Present : Ennis and De Sampayo JJ.

1922

BANDARANAYAKE *v.* BANDARANAYAKE

129—D. C. Kandy, 29,546.

Kandyan woman marrying a Low-country Sinhalese—Matrimonial rights of the parties.

Where a Kandyan Sinhalese woman marries a low-country Sinhalese, her matrimonial rights are governed by the Kandyan law and not by Ordinance No. 15 of 1876.

A Kandyan Sinhalese is not a person of a different race or nationality from a low-country Sinhalese.

THE facts are set out in the judgment of the District Judge (W. S. de Saram, Esq.):—

The plaintiff, a Kandyan lady, was married to the defendant, a low-country Sinhalese, and they lived together for fifteen or sixteen years. The plaintiff had some property of her own in the Kandy District. Defendant had some property at Henaratgoda in the Colombo District. In June, 1919, the plaintiff and defendant gave a joint and several promissory note for Rs. 2,000 to Y. C. Y. Muttiah Pulle. According to the plaintiff she got nothing out of that money which was spent entirely by the defendant on a shooting trip to Polonnaruwa and Trincomalee, on which trip she accompanied him. According to the defendant he spent that money not on the shooting trip, but on their lands.

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I would, therefore, find that the defendant got all the money on the note and spent it for his own purposes and not on the lands. Certainly not on plaintiff's lands. I believe the plaintiff with regard to this money. The note was subsequently sued on, and the assignee of the decree who happened to be plaintiff's father obtained payment in full by seizing money lying to the credit of the defendant in a testamentary case. The defendant has thus discharged the note. He claims in reconvention repayment to him by the plaintiff on the ground that the money was really raised by him for the improvements of plaintiff's lands. As I find that the money was not raised for any such purpose, the claim in reconvention must fail, nor can he succeed in claiming a refund of part of the amount, as it is quite clear the money was raised for himself alone. And I believe that plaintiff only joined in signing the note in order to obtain the necessary credit for her husband.

A couple of months after the note, in August, 1919, the plaintiff and defendant raised another Rs. 2,000 on a bond. The lands hypothecated being those of the plaintiff. According to the plaintiff she got none of that money which was spent entirely by the defendant for his own purposes, mainly in manuring his Henaratgoda property.

In January, 1921, the plaintiff discharged the bond. It makes no difference that she did so without waiting to be sued as an obligor under the bond. She had to pay the amount, and it is only natural she should have done so, as she states, to prevent the risk of the properties being sold. In September, 1921, the plaintiff obtained a divorce, a suggestion for the defence is that owing to that fact she is now falsely attempting to repudiate her liabilities. That contention has to be considered, but it may equally be said that now the parties have been divorced, the plaintiff is obliged to seek her legal remedy to recover her money. Judgment was entered for the plaintiff.

Pereira, K.C. (with him *E. W. Perera* and *Weerasooriya*), for the appellant.

Drieberg, K.C. (with him *Navaratnam*), for the respondent.

October 30, 1922. ENNIS J.—

The plaintiff, respondent, in this case was at one time the wife of the defendant, appellant. She sued the defendant to recover the sum of Rs. 2,425, which she said she had been compelled to pay to save certain landed property from seizure and sale under a mortgage which she had given to secure the repayment of a sum of Rs. 2,000 advanced to her husband. Various issues of fact were framed in the Court below as to whether the money lent did, in fact, go to the husband, and whether he spent it on his own property; and the learned Judge in this matter has believed the plaintiff and disbelieved the defendant, and has found that the money was in fact borrowed by the defendant, and that he spent it on his own lands. In the Court below the defendant claimed Rs. 2,000 in reconvention, and his claim was dismissed. He now appeals, and on appeal it was argued that the Kandyan law did not apply to the present case, as the plaintiff, a Kandyan, on her marriage to the defendant, a low-country Sinhalese, took the status of her husband, and, therefore, that the general law of the country applies to this case, and that the plaintiff cannot maintain the action.

No issue on this point was raised in the Court below; no evidence taken in the matter, and further there was a distinct claim of some character by the defendant in reconvention against the plaintiff, which was not withdrawn, but which was decided by the Judge in giving judgment. In my opinion it is too late to raise this question now. But as it has been raised I would set out, as far as I am able to, the gist of the contention, which was this: That under section 2 of the Ordinance No. 15 of 1876 the wife is to be taken to be of the same race and nationality as her husband for certain purposes. But except for this purpose, and presumably the purpose is the question of the status of the wife the Ordinance does not apply to Kandyans. Mr. Pereira, for the appellant, was unable to maintain that the parties were of a different nationality or of a different race. But he suggested that there was some difference of status which would bring in the general law as between husband and wife. I myself am unable to see how the section of that Ordinance applies to the marriage between the plaintiff and the defendant in the present case. On the question of fact there is no reason to interfere with the finding of the learned Judge. It was a question of belief in the evidence, and the Judge believed the plaintiff in preference to the defendant. The question of the claim in reconvention was necessarily not pressed in view of the argument led on appeal.

I would dismiss the appeal, with costs.

DE SAMPAYO J.—

The special case provided for by section 2 of the Ordinance No. 15 of 1876 is that of a woman who marries a man of a different race and nationality from her own, in which case the Ordniance declares that she shall be taken to be of the same race and nationality as her husband. The section goes on to say that, save as already provided, the Ordinance shall not apply to Kandyans. Judicial authority so far has been that a low-country Sinhalese is not a person of a different race or nationality from a Kandyan Sinhalese, and that, therefore, under the provisions of the same section the matrimonial rights of a low-country Sinhalese husband and his Kandyan wife are to be governed by the Kandyan law. See the case of *Manikkan v. Peter.* [1] I think we ought to follow that decision because not only is it reasonable, but it accords with the view that ought to be taken in regard to the historical relations between low-country Sinhalese and Kandyan Sinhalese. As my brother has already remarked, the question is not fit to be fully argued and decided in this case, because it was not raised in the Court below and referred to in the judgment of the District Judge, and it is not even mentioned in the petition of appeal. I agree that this appeal be dismissed, with costs.

Appeal dismissed.

[1] *(1899) 4 N. L. R. 243.*