

1956

Present: Gratiaen, J., and Gunasekara, J.

SONNANDARA, Appellant, and DINGIRI ETANA *et al.*,
Respondents

S. C. 453—D. C. Kegalle, 6,883

Kandyan Law—Death of person intestate and issueless—Inheritance—“Acquired property”—Kandyan Law Declaration and Amendment Ordinance No. 39 of 1938, proviso to s. 10 (1).

The proviso to section 10 (1) of the Kandyan Law Declaration and Amendment Ordinance confirmed the earlier law when it declared:

“ . . . if the deceased shall not have left surviving him any child or descendant, property which had been the acquired property of the person from whom it passed to the deceased shall be deemed acquired property of the deceased. ”

APPEAL from a judgment of the District Court, Kegalle.

C. R. Gunaratne, for the plaintiff appellant.

H. W. Jayewardene, Q.C., with *P. Ranasinghe*, for the defendants respondents.

Cur. adv. vult.

January 31, 1956. GRATIAEN, J.—

A Kandyan gentleman named Patabenda acquired the land in dispute by purchase in 1892. He died intestate leaving his widow, a son named

¹ (1919) 21 N. L. R. 76.

² (1917) 20 N. L. R. 62.

³ (1901) 4 N. L. R. 353.

⁴ 4 East. 441.

Appu, and three *diga* married daughters. Appu accordingly inherited the property subject to a life-interest in the widow Podimonike.

Appu died intestate and issueless in 1919 and a contest has arisen as to whether upon that event the property, for purposes of devolution under the Kandyan Law, constituted *paraveni* property or "acquired property". We have not been referred to any decisions of this Court which precisely cover this question and it would be unsafe (without closer investigation of the problem) to assume that the proviso to section 10 (1) of the Kandyan Law Declaration and Amendment Ordinance No. 39 of 1938 confirmed the earlier law when it declared :

" . . . if the deceased shall not have left surviving him any child or descendant, property which had been the acquired property of the person from whom it passed to the deceased shall be deemed acquired property of the deceased."

Learned Counsel agreed that, if the learned District Judge has correctly decided that the land must be regarded as the acquired property of Appu for purposes of succession to his estate in 1919, the judgment under appeal must be affirmed.

In the absence of earlier authoritative pronouncements of this Court, a problem of this kind cannot be solved with confidence. According to Dr. Hayley, "the somewhat fanciful division of the species of inheritance (i.e., under the Kandyan Law before it was codified) does not appear to provide any canons or principles for the elucidation of the rules of intestate succession." "*The Laws and Customs of the Sinhalese*", page 220.

The *Niti-Niganduwa* indicates at page 103 that, when a Kandyan dies intestate and issueless, any property which had previously passed to him by inheritance as the "newly acquired" property of his deceased father would not fall within the category of "paternal" or *paraveni* property. On the contrary, it must be regarded as his "acquired property" although in fact it had come to him by inheritance from his father. The reason, apparently, is that when a person dies issueless a broad distinction is drawn between his property which had previously "belonged to his father by *paraveni* right" and property which his father had "acquired by purchase or other means". *Perera's Armour* page 47. This distinction has, in a slightly different context, been recognised in *Ukkurala v. Tillekeratne*¹. When the direct line of descent is broken, the so-called "newly acquired" property of the deceased's father is not regarded as having at any time formed part of "the family lands". *Hayley (supra)*, page 221.

For these reasons, I take the view that the proviso to section 10 (1) of the Ordinance is in truth declaratory of the earlier law, and that the learned District Judge's conclusion must be affirmed. I would accordingly dismiss the appeal with costs.

GUNASEKARA, J.—I agree.

Appeal dismissed.

¹ (1932) 5 S.C.C. 46 (F.B.)