

1947

Present : Keuneman A.C.J. and Jayetileke J.

MOHIDEEN *et al.*, Appellants, and PUNCHI BANDA, Respondent.

S. C. 181—D. C. Kurunegala, 2,711.

Kandyan Law Amendment Ordinance—Proviso to section 10 (1)—Meaning of the word child—Legitimate or illegitimate—Devolution of property.

The word child in the proviso to section 10 (1) of the Kandyan Law Amendment Ordinance, No. 39 of 1938, includes an illegitimate child.

A PPEAL from a judgment of the District Judge of Kurunegala.

E. A. P. Wijeratne (with him A. H. E. Molamure), for the plaintiffs, appellants.

C. V. Ranawake, for the defendant, respondent.

Cur. adv. vult.

July 15, 1947. KEUNEMAN A.C.J.—

The plaintiffs brought this action, claiming an undivided half share of the field called Galahitiyawa kumbura. It is not in dispute that this share belonged to Dingiri Menika, and that on her death in 1935 it devolved on Ranhamy Vederala. The plaintiffs-appellants alleged that on the death of Ranhamy Vederala in 1944, the share passed to his illegitimate child Kirihamy *alias* Kirimudiyanse, who sold by P 3 of November 6, 1944, to the plaintiffs. Ranhamy Vederala and his wife Dingiri Menika were Kandyans, and the plaintiffs alleged that the property must be regarded as the acquired property of Ranhamy Vederala.

The defendant denied the title of the plaintiffs, and asserted that the share in question was the *paraveni* property of Ranhamy Vederala, and on his death passed to his full brother, the defendant, to the exclusion of the illegitimate child.

The question depends on the interpretation of section 10 of the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938. Under section 10 (1) "the expression 'paraveni property' . . . shall mean immovable property to which a deceased person was entitled—

(a) by succession to any other person who has died intestate."

There can be no doubt that Ranhamy Vederala became entitled to the property in succession to Dingiri Menika who had died intestate, and that under section 10 (1) the share in question must be regarded as *paraveni* property, if the proviso to section 10 (1) is not taken into account. It is the proviso that raises the difficulty which we have to solve.

The proviso runs as follows :—

"Provided, however, that if the deceased shall not have left him surviving 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."

For the purposes of this case "the deceased" is Ranhamy Vederala, and "the person from whom it passed to the deceased" is Dingiri Menika. It is admitted that as far as Dingiri Menika was concerned, the property when in her hands was acquired property. The question therefore ultimately resolves itself into this—Do the words "child or descendant" refer only to legitimate issue, or do they relate to issue both legitimate and illegitimate? It is agreed that if the former interpretation is accepted, then the share in question must be regarded as the acquired property of Ranhamy Vederala, which passed to the illegitimate child Kirihamy, and from him to the plaintiffs. If the latter interpretation is correct, then the share must be regarded as *paraveni* property, which passed to the full brother of Ranhamy Vederala, the defendant.

The District Judge accepted the latter interpretation and dismissed the plaintiffs' action with costs. The present appeal is from that order.

The District Judge was not prepared to give a "restricted meaning" to the term "any child or descendant" in the proviso to section 10 (1). He pointed out that legitimate and illegitimate children are specially mentioned in sections 14, 15 and 22, and argued that "if the draftsman of the Ordinance had the intention of restricting the meaning of the word 'child' to legitimate children only in the proviso to section 10, there is no reason why he should not have done so, especially when both classes of children are mentioned in other sections of the same Ordinance."

On the other hand, the opinion of Sampayo A.J. has been cited to us. "I am not aware of any reason for not applying to a Kandyan deed of gift the general rule of construction obtaining under the English and the Roman-Dutch law that such an expression as 'children', 'issue', or 'descendants' *prima facie* means lawful children, issue or descendants". It is true, however, that the appeal was decided on the ground that the "whole structure of the deed" indicated that only legitimate children, issue and descendants were referred to.

I have carefully examined the terms of Chapter IV. of the Ordinance dealing with the rights on intestacy to immovable property. Section 10 has already been referred to. Section 11 deals with the rights of the widow. Under section 11 (1) (a) where a man dies intestate the surviving spouse is entitled to an estate for life in the acquired property of the deceased intestate, and if that property is insufficient for her maintenance, then to maintenance out of the *paraveni* property, "provided that if the deceased intestate left a child or descendant by a former marriage, the surviving spouse's life-estate shall extend to only one half of the acquired property". This is followed by the proviso that the surviving spouse shall out of her estate for life in the acquired property be bound to maintain "the legitimate children of the deceased" under certain conditions.

It is to be noted that the phrases "child or descendant by a former marriage" and "legitimate children" in section 11 are significant, and it can be argued that when the draftsman of the Ordinance referred to legitimate issue, he did so in no uncertain terms, and that when the word "child" or "descendant" was used, he referred to a wider class than the legitimate children or descendants.

Similarly under section 13, there is a reference to "issue by two or more marriages".

Under section 14 the terms "legitimate" and "illegitimate" are defined.

Section 15 deals with the rights of "illegitimate children". Such children have no right of inheritance in respect of the *paraveni* property of the deceased. But subject to the interests of the surviving spouse they are entitled to succeed to the acquired property of the deceased in the event of there being no legitimate child or the descendant of a legitimate child of the deceased, and where there are legitimate children illegitimate children are entitled to succeed to the acquired property with the legitimate children under certain specified conditions.

Section 16 deals with an intestacy, where the deceased has left "no child or descendant of a child and no surviving spouse". As this section involves both the *paraveni* and the acquired property, it can be argued with some force that the words "child" and "descendant" cover both the legitimate and the illegitimate issue.

Section 17 deals with devolution under an intestacy upon "heirs other than a child or the descendant of a child" and relates both to *paraveni* and to acquired property.

Section 18 deals with the case of a "woman unmarried, or married" dying intestate and leaving "children or the descendants of a child or children", and a proviso deals with the position of illegitimate children in regard to *paraveni* property.

See also Chapter V. which relates to movable property.

On an examination of all the sections of the Ordinance I am of opinion that the finding of the District Judge is correct, and that where the draftsman of the Ordinance used the word "child" or "descendant" he meant a wider class than the legitimate issue, and that these words cover both the legitimate and the illegitimate issue. In the present case this interpretation does lead to an anomalous situation but I think this cannot be avoided.

In these circumstances, the appeal is dismissed with costs.

JAYETILEKE J.—I agree.

Appeal dismissed.
