

1956

Present : Basnayake, A.C.J., and Weerasooriya, J.RAN MENIKA, Appellant, and NANDOHAMY *et al.*, Respondents*S. C. 227—D. C. Kurunegala (Inty.) 4849/T**Kandyan Law—Illegitimate daughter married in diga—Forfeiture of right to inherit father's acquired property—Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938, ss. 13, 15 (c).*

Section 15 (c) of the Kandyan Law Declaration and Amendment Ordinance does not enable a *diga* married illegitimate daughter to have a right of inheritance to her father's acquired property.

Where a Kandyan died intestate leaving legitimate children and also an illegitimate daughter who was married in *diga*—

Held, that the illegitimate daughter had no right of inheritance to her father's acquired property.

APPEAL from a judgment of the District Court, Kurunegala.

C. R. Guneratne, for 2nd respondent-appellant.

H. W. Jayewardene, Q.C., with *P. B. Dissanayake*, for petitioner respondent.

Civ. adv. vult.

February 16, 1956. BASNAYAKE, C.J.—

The only question that arises for determination on this appeal is whether a *diga* married illegitimate daughter forfeits her right to inherit her father's acquired property in consequence of her marriage in *diga*.

Shortly the facts are that one Sohondirala whose estate is being administered by the petitioner, his *binna* married daughter, left two children by his marriage, the petitioner and the first respondent, a daughter who married in *diga* in 1924. He also left an illegitimate daughter who married in *diga*, in 1921, the second respondent, (hereinafter referred to as the appellant).

The learned District Judge has held that the first respondent and the appellant having married in *diga* have forfeited their rights to the inheritance and that the petitioner alone is entitled to the property left by Sohondirala.

Learned Counsel for the appellant while conceding the correctness of the learned District Judge's decision in regard to the first respondent, contends that the learned District Judge was wrong in law when he held that the illegitimate daughter who married in *diga* forfeited her rights. He contends that in Kandyan Law an illegitimate daughter does not by marrying in *diga* forfeit her rights to her father's acquired property.

He submits that, as Sohondirala died in 1950 after the Kandyan Law Declaration and Amendment Ordinance No. 39 of 1938 (hereinafter referred to as Kandyan Law Ordinance) came into operation, he would be entitled to claim the benefit of section 15 (c) of that Ordinance, as the deceased intestate had registered himself as the father of the appellant when registering her birth. That section reads—

“When a man shall die intestate after the commencement of this Ordinance leaving an illegitimate child or illegitimate children—

(a) such child or children shall have no right of inheritance in respect of the paraveni property of the deceased ;

(b) such child or children shall, subject to the interests of the surviving spouse, if any, be 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 ;

(c) any such child shall, subject to the interests of the surviving spouse, if any, be entitled to succeed to the acquired property of the deceased equally with a legitimate child or the legitimate children, as the case may be—

(i) if the deceased intestate had registered himself as the father of that child when registering the birth of that child ; or

(ii) if the deceased intestate had in his lifetime been adjudged by any competent court to be the father of that child ”.

If the appellant had remained unmarried or had contracted a marriage in *binna*, there would have been no question of her right to share in the succession to her father's acquired property. But having married in *diga* she cannot escape the consequences of such a marriage which are thus stated in Armour's Grammar of Kandyan Law (Perera's edition), p. 30—

“A daughter will be incapacitated from inheriting landed property from her father by being given away in Deega marriage by her father— it being premised that she remained settled in Deega until her father's death, and that her father left other issue a son, or a daughter settled in the father's house in Beena ”.

This statement of the law of forfeiture of the right to inherit the landed property of the father has been consistently affirmed by this Court. The appellant lost her right to share in the inheritance of her father's acquired property as an illegitimate child by being given in marriage in

diga and remaining so settled until her putative father's death and is therefore not entitled to succeed in her claim. Section 15 of the Kandyan Law Ordinance does not have the effect of restoring the rights that were lost when she married in *diga*.

Learned Counsel has also argued that while section 13 of the Ordinance prescribes how children of two or more marriages shall inherit the property of their father it does not state the rule of inheritance governing a case where a man dies intestate leaving legitimate as well as illegitimate children.

He submitted that the rule in such a case, according to Kandyan Law, was that the legitimate children took one moiety and the illegitimate children the other. The rule of inheritance submitted by Counsel has the authority of the decisions¹ of this Court.

The question then is whether the appellant forfeited her rights to the inheritance by her marriage in *diga*. Learned Counsel submits that she did not. He relies on the rule of Kandyan Law that a *diga* marriage does not result in a forfeiture if the daughter were the only child of a man's first, or second, or third marriage.

He contends that the rule is capable of extension to illegitimate children; but has cited no authority in support of the proposition. The rule on which Counsel relies has the authority of this Court² and of such writers as *Armour* and *Sauers*³ but there is no authority or justification for the extension of that rule to children who are not children of a marriage.

It is not claimed that the appellant is a child by the deceased intestate's marriage and the rule of forfeiture will therefore prevail as the appellant cannot bring herself within its exception.

The appeal is accordingly dismissed with costs.

WEERASOORIYA, J.—

I have nothing to add to the judgment of My Lord the Chief Justice except in regard to the point urged by Mr. Guneratne on the basis of the rule of Kandyan Law that on a man dying intestate and leaving legitimate as well as illegitimate children, his acquired property is divided into two moieties of which one would be shared by the illegitimate children. It seems to me that section 15 of the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938, has brought about a substantial change of the law in this respect. Paragraph (c) of that section provides that the illegitimate child or children referred to therein shall be entitled to succeed to the acquired property of the deceased *equally* with his legitimate child or children. In a case to which that Ordinance applies, the position therefore would be that there is no separate moiety which devolves on the illegitimate child or children, and there is, accordingly, no room for the application of the principle relied on by Mr. Guneratne that in the absence of any other representative in the illegitimate line

¹ *In re Sundara, deceased (1907) 10 N. L. R. 129; Appuhami v. Lapaya (1905) 8 N. L. R. 328.*

² *Punchi Menika v. Tennekoongedere (1813) Morgan 350—D. C. Col., Kandi, 20898, (1851) Austin 122.*

³ *Armour 63, 71, 73, Sauers 3.*

to inherit that moiety it would fall to an illegitimate daughter who has contracted a *diga* marriage, even though she may otherwise have forfeited her right of inheritance to her father's acquired property.

I agree that the appeal should be dismissed with costs.

Appeal dismissed.
