

1948

Present : Basnayake J.LAPAYA, Appellant, and SURUWAMIE *et al.*, Respondents*S. C. 269—C. R. Matale, 7,265**Kandyan law—Brothers married in association—Death of one—Devolution of his estate—Brothers with separate wives get no share.*

Under Kandyan law where brothers are married in association, on the death of one of them his estate devolves on the others to the exclusion of those brothers who have separate wives.

APPPEAL from a judgment of the Commissioner of Requests, Matale.

L. G. Weeramantry, for plaintiff appellant.

H. W. Jayewardene, for defendants respondents.

Cur. adv. vult.

September 9, 1948. BASNAYAKE J.—

The plaintiff-appellant, one Wahalamuni Dewayalegedera Lapaya (hereinafter referred to as the plaintiff), brings this action against Wahalamunidewayalegedera Suruwamie and Wahalamunidewayalegedera

Pusumba (hereinafter referred to as the defendants), in order to have himself declared entitled to two-thirds of a field called Deniyekumbura and to have the defendants ejected therefrom. He also claims damages in a sum of Rs. 50 and continuing damages at Rs. 3 per mensem. The defendants resist his claim. The plaintiff is the son of one Kumudu and the first defendant is her sister Jangu's daughter. The second defendant is the son of the first.

It appears that one Huwanda was the owner of a field called Deniyekumbura of 1 amunam and 2 lahas paddy sowing extent. He had two sons Hapuwa and Sonda who were associated husbands of one Meniki. They divided the field between them in equal shares. The northern half was taken by Sonda, the younger brother, and the southern half by Hapuwa, the elder brother. They had four children Kumudu, Jangu, Dingiri and Pusumba. Hapuwa died in October, 1881 (P6). In December, 1897, Sonda gifted to his daughters Kumudu, Jangu and Dingiri by deed No. 14468 of December 9, 1897 (P7) his share of his residing land and of a field called Uda Kumbura and the northern half of Deniyekumbura known as Siyambalagahayatakumbura. After the execution of that deed Jangu and Dingiri who had been married in *deega* in 1875 (P2 and P3) returned to the *mulgedera* while Sonda was alive. Later they built separate houses on the lands gifted to them and continued to live there. Kumudu married in *binna*. On the same day on which P7 was executed Kumudu, Jangu and Dingiri executed a usufructuary mortgage of Siyambalagahayatakumbura (D3). They had earlier on October 25, 1897 (D2) executed a similar mortgage in respect of Hapuwa's half of the field Deniyekumbura on the footing that they had inherited it on his death and were in lawful possession of it since then.

The learned Commissioner held that Jangu and Dingiri re-acquired *binna* rights and were each entitled to a $\frac{1}{4}$ of Hapuwa's share of Deniyekumbura. I agree with the learned Commissioner's finding. The cases cited¹ by counsel for the appellant do not affect that finding. It is clear that Sonda re-admitted Jangu and Dingiri into the family and restored them to their natural rights of inheritance. There is no evidence that any of the children of Meniki were Hapuwa's, nor is there any evidence that his father was alive at the time of his death. In P7 Sonda calls Kumudu, Jangu, and Dingiri his daughters, but in D2 they refer to Hapuwa as their father. Little assistance can therefore be gained from the statements in the deeds. But in the absence of evidence that Hapuwa had children, it may be assumed that he died without issue of his own. There is also no evidence that his father survived him. In the circumstances I propose to rest my decision on the following rule of inheritance stated by Sawers² :—

“Where an estate is enjoyed undividedly or otherwise by three brothers, two of whom being married to one wife, while the third brother has a separate wife: in the event of one of the friendly or

¹ *Appuhamy et al v. Kumarihamy et al.* (1922) 24 N. L. R. 109 at 111.

Mudiyanse v. PUNCHIMENIKA et al. (1933) 35 N. L. R. 179 at 181.

Simon v. Dingiri and others (1916) 3 C.W.R. 55.

² *Sawers' Digest of the Kandyan Law, Chap. 1, Section 20, p. 7.*

Marshall's Notes of Sir J. D'Oyly & Mr. Sawers: Kandy, Law of Inheritance, section 70, p. 335.

associated brothers dying without issue, the other brother, with whom he had the joint wife, shall be his sole heir ; the brother having a separate wife shall have no share of such demised brother's property of any kind."

According to this rule, on Hapuwa's death his lands must be regarded as having devolved on his associated brother Sonda, through whom Jangu and Dingiri on their return to the *mulgedera* acquired rights therein equally with Kumudu ¹.

The plaintiff's action must therefore fail. He is not entitled to the declaration he seeks. His appeal is dismissed with costs.

Appeal dismissed.

