

Aug. 17, 1911

Present : Lascelles C.J.

DINGIRI BANDA v. KIRI BANDA.

259A and B—C. R. Matale, 9,401.

*Kandyan law—Person dying without ascendants or descendants—Contest as to acquired property between maternal uncle and paternal half-brother.*

Under Kandyan law a maternal uncle is entitled to the acquired property of an intestate in preference to the paternal half-brother of the intestate.

IN this case the plaintiff purchased the premises in dispute from the half-brothers on the father's side of one Kalu Banda, the original owner, who acquired the same on deed No. 5,099 dated November 20, 1895. The plaintiff's right was disputed by the defendant, who is the maternal uncle of Kalu Banda. Kalu Banda died leaving no descendants or ascendants. The parties went to trial on the issue as to who was entitled to the acquired immovable property of Kalu Banda—his half-brothers (plaintiff's vendors) or his maternal uncle (the defendant).

The learned Commissioner of Requests held that the property should be divided equally between the half-brothers and the maternal uncle, and declared the plaintiff entitled to only a half of the premises. He also divided the costs.

Both plaintiff and defendant appealed.

*J. W. de Silva*, for the plaintiff.—*Sawer* (p. 13) clearly lays down the law of succession as to acquired immovable property. The half-brothers have a better right than maternal uncles. Even as regards inherited property, the half-brothers have a better right than maternal uncles (*Pereira's Armour* 43).

The passages cited from *Pereira's Armour* 118 and 154 by the defendant in the lower Court refer to movable property.

Counsel cited *Dingiri Menika v. Appuhamy*; <sup>1</sup> *Mudalihamy v. Bandirala*; <sup>2</sup> *Sawer* 8, 13; *Marshall* 344, 348; *Modder* 188.

*Vernon Grenier*, for defendant.—*Sawer* (p. 13) seems to assume that full-brothers and sisters taking and actually enjoying is a condition precedent to devolution as he sets out.

That the mother is heiress to acquired property of all kinds and not merely to usufruct is now indisputable (*Punchirala v. Dingiri*

<sup>1</sup> (1900) 6 N. L. R. 135.

<sup>2</sup> (1898) 3 N. L. R. 209.

*Menika et al.*,<sup>1</sup> *Mudalihamy v. Bandirala*<sup>2</sup>), and preference for uterine relatives is shown in 2 *Thompson* 642 (note), 648, 649, and 654.

Mr. Modder, at page 188, has compared the tables, and gives his opinion in our favour.

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*Cur. adv. vult.*

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This appeal raises a question with regard to the Kandyan law of inheritance. Kalu Banda, the *propositus*, died leaving no direct ascendants or descendants, and the contest is between Kalu Banda's paternal half-brother, whose interest is vested in the plaintiff, and his maternal uncle, the defendant. The property in dispute is acquired property. The Commissioner of Requests has divided the property equally between the plaintiff and the defendant, but I can find no authority relating to acquired immovable property which supports such a distribution. Two conflicting sets of rules are given by Sawyer (*Marshall* 348) for the devolution of the acquired property of "an unmarried daughter" and "a child" (no distinction being apparently made between the two cases). In the first set of rules, which, for convenience, I will refer to as table A, the brothers and sisters of the father's half-blood occupy the fifth place and the maternal uncle the sixth place. In the other table, which I will call table B, maternal uncles and aunts rank seventh and half-brothers and sisters on the father's side tenth. In discussing these two tables of descent, Sawyer, as reported in *Marshall* 348, states that table A was in accordance with the opinion of the Adigar and some others, but that certain other chiefs took exception to table A in some respects. I understand from Sawyer's notes that all the chiefs ultimately agreed with the order of succession set out in table B. It is clear, I should add, from note 112 (*Marshall* 350) that these rules of descent apply to immovables as well as to movable acquired property. Mr. Modder, in his valuable work on Kandyan law, discusses these two tables of descent on pages 187 and 188, and states that an inspection of the manuscript of Sawyer's notes had supplied additional reason in favour of the conclusion that table B was that which received the unanimous approval of the chiefs and was adopted by Sawyer himself. Mr. Modder has adopted table B without qualification as the authority regulating the devolution of the acquired property of a child dying intestate.

Mr. Silva, for the plaintiff-appellant, relies on the rules of descent given on page 13 of *Sawyer's Digest*, according to which the property devolves on brothers and sisters of the father's half-blood in priority to maternal uncles. Now, it is true that these rules have sometimes been regarded as applicable to acquired property, as in *Mudalihamy v. Bandirala*<sup>2</sup> and in other cases cited in *Modder* 188; but this

<sup>1</sup> (1888) 8 S. C. C. 135.

<sup>2</sup> (1898) 3 N. L. R. 209.

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construction involves a serious difficulty, for it can hardly be supposed that Sawyer should, without any explanation or comment, have given two different and irreconcilable sets of rules for the devolution of acquired property.

I am inclined to think the latter part of the passage on page 13 of *Sawyer's Digest*, namely, the part following the word "ultimately," applies to *paraveni* and not to acquired property. The passage is certainly capable of this construction ; it begins with a reference to *paraveni* property, then follows a reference to acquired property ; the sentence then proceeds "ultimately it is decided," &c. If the word "it" be construed as relating to *paraveni* property, placing the allusion to acquired property in a parenthesis, the rules of inheritance will apply only to *paraveni* property, and the contradiction which would otherwise exist between this section and subsequent passages relating to acquired property will be avoided. It is difficult to extract the principle on which these rules are founded but inasmuch as the acquired property of a child dying intestate devolves on the mother in preference to any other relative, it is not surprising that the mother's brother should rank before the half-brothers and sisters on the father's side.

The decree must be set aside, and the action must be dismissed with costs both here and in the Court below.

*Defendant's appeal allowed.*