305

1965 *Present :* **Sri Skanda Rajah, J., and Manieavasagar, J.**

L. A. BABANISA and others, Appellants, and **L. A. UKKU and others,** Respondents

S. C. 84/62 (Inty.)-D. G. Avissawella, 8900/P

Kandyan law-Deega marriage-Test of forfeiture of right of inheritance-Granddaughter married in deega-Her right to inherit her maternal grand-father's property-Kandyan Law Declaration and Amendment Ordinance (Cap. 59), ss. 10 (7) (a), 10 (4).

Under Kandyan law, when a daughter is married in deega, it is not necessary that she should be conducted to her husband's home on the very day of her marriage. The test of forfeiture of her right to any portion of her father's estate is her severance from her family. Such severance may occur at any time after marriage, end not necessarily on the day when she is married.

A grand-daughter married in deega has no claim as heir to her maternal grandfather's immovable property if the grand-father gave her in deega marriage and dowered her after the death of her mother and there are other descendants entitled to the grand-father's estate.

APPEAL from an order of the District Court, Avissawella.

W. D. Gunasekera, with M. T. M. Sivardeen, for 6th to 12 defendants-appellants.

N. E. Weerasooria, Q.G., with Nimal Senanayake and Miss P Abeyratne, forplaintiff-respondent.

Cur. adv. vult.

306

January 13, 1965. **MANICAVASAGAR, J.-**

In this action which is for the partition of a land called Kudumbikandahena and Watta, described in the schedule to the plaint, and depicted in plan PI filed in the record, the 1st to 5th defendants are entitled to an undivided 2/3 share ; there is no dispute about this of the balance 1/3 the 6th to 11th defendants are admittedly entitled to an undivided 1/6; the dispute is in regard to the remainder which the plaintiff claims as against the 6th to 11th defendants.

The 6th to 11th defendants are the children of Dinesa, whilst the plaintiff is a daughter of Rankiri; Rankiri and Dinesa are the children of two brothers, Unga and Sitta who had a common wife : Unga and Sitta were entitled to an undivided 1/ from Lokupeduru Atchige Baba, one of the three original owners.

The questions which we have to decide are

(1) Was the plaintiff married in deega ;

(2) Is she an heir ab intestato to the estate of her grand-fathers, Unga and Sitta ; and

(3) if (1) and (2) are answered in the affirmative has she forfeited her right of succession.

The plaintiff married Kudapeduru Atchige Sedirissa; at the time of her marriage, her mother Rankiri was dead; the plaintiff after her mother's death, lived with Unga and Sitta, and was maintained by them ; they gave her in marriage, and according to the evidence of Babanissa, the 6th defendant, which was not contradicted or challenged, she was given a dowry on her marriage. Plaintiff's marriage was registered (exhibit 6D1) and the document shows that she was married in deega ; this is sufficient to hold that she severed her connections with the family home and thereby forfeited her rights to the family inheritance ; it was however open to the plaintiff to prove that though the certificate shows a deega marriage, she did not forfeit her rights. The plaintiff's evidence is that for 4 or 5 years after her marriage she lived in the family mulgedera with her husband, and thereafter went to her husband's home where she still continues to live. The 6th defendant said that after the plaintiff's marriage she was conducted to her husband's home ; no issue was raised on this particular question of fact, and therefore there is no finding by the learned District Judge ; nor does he say whether he accepts or rejects the evidence of the plaintiff or the 6th defendant on this question.

On the basis that the plaintiff left her family home 4 or 5 years after her marriage, Mr. Weerasooria submits that this is sufficient to infer that she did not sever her connections with her mulgedera ; his argument was that the conducting of the bride to her husband's home is a part of the ceremony of the marriage, and if it was not done on the day of the marriage, a subsequent departure does not entail a forfeiture ; he cited no authority in support of this proposition. I consider the argument untenable for this reason : forfeiture to a share of the family property is the consequence of the severance of the daughter from her family, and

---

her entry into that or her husband's home ; that is the essence of forfeiture ; the departure to the husband's home need not be on the day of the marriage ; it may be at any subsequent period of time but prior to her father's death. Hayley at page 375 in his Sinhalese Laws and Customs cites from the Niti Nighanduwa an instance of a binna married daughter who leaves her parental home subsequently, and lives with her husband in his home ; she will not be entitled to a share in the father's lands on his death ; there are several instances in our case reports which serve to show that the test of forfeiture is the severance of the daughter from her family during the life of the parent to whose estate she claims to succeed, and this may occur at any time after marriage, and not necessarily on the day she is married. So that even adopting the plaintiff's evidence, though on an examination of it I observe such a conflict in her story on this question that I do not regard it as a firm foundation to proceed upon, her marriage was in fact in deega, for quite apart from the evidence provided by the marriage certificate, she had left the family home and continued to live away from it.

Mr. Weerasooria submits that the plaintiff is entitled through her mother Ranlciri to a share of this land which was her paraveni property, though she (Rankiri) had predeceased her associated fathers, Unga and Sitta : he relied on section 10 (4) of the Kandyan Law Declaration and Amendment Ordinance (Cap. 59, Vol. 3 of the Legislative Enactments (Revised, Edition) 1956) : by this provision maternal paraveni property is deemed to mean paraveni property derived from or through the mother : and paraveni property (or ancestral or inherited property) is immovable property to which a deceased person was entitled by succession to any other person who has died intestate (vide section 10 (la) of the same Ordinance). These provisions recognise a person as heir to his/her maternal grand-parents immovable property through the deceased mother ; so

did the law prior to this legislation: the question here is whether a grand-daughter married in deega is an heir to her maternal grand-father's property : my view is that the general rule is subject to certain limitations imposed by the common law applicable to the Kandyans. If the grand-daughter be the only child of her deceased mother she would be an heir, provided her mother did not go out in deega : if the mother was not married in deega, her daughter will still have no claim as heir to the estate of her maternal grand-father, if he gave her in deega marriage and dowered her after the death of her mother, and there be other descendants entitled to succeed to his intestate. For this view I rely on the following passage which Hayley in his Treatise on the Laws and Customs of the Sinhalese (page 405) cites from the Niti Nighanduwa.

" There is one modification of the right of a deega married granddaughter who is the only child of her father or binna-married mother, forming an exception which most pertinently illustrates the importance of the dowry in such matters. If the grand-daughter at the date of the death of the parent through whom she would claim, is

---

not married, but is subsequently given away in deega by the grandfather himself, she has no further claim upon his estate, should he have other descendants to inherit. The reason for this is to be found in the fact that the grand-father would in such a case provide the dowry, thereby diminishing the property available for his other descendants. In other words, the grand-daughter gets an advancement of a portion equivalent to that which she would otherwise inherit on the grandfather's death."

The evidence in this case is that there are other descendants of Unga and Sitta entitled to inherit on their death.

The decision in the case of Menikhamy v. Ransohamy [1 (1930) 11 C. L. R. 31.]also lays down a similar principle in regard to a grand-daughter's claim to succeed to her paternal grand-father's estate. In this case the grand-daughter who was married in deega claimed a share of her grand-father's estate, her father having predeceased her grand-father. Garvin, A.C.J. (Lyall Grant, J., agreeing) said, " a daughter who by reason of a deega marriage was excluded from participating in her father's estate, is also excluded from participating in the estate or in the portion of the estate of her grand-father which would have come to her through her father ". My opinion is that the plaintiff has no claim as heir to her maternal grandfather's immovable property and is therefore not entitled to any share of the land in suit.

Some days after the argument was concluded in this case, Mr. Senanayake, the junior counsel for the respondent submitted for our consideration the references reported in 19 N.L.R. 353 at 354 and 46 N.L.R. 54 at 55 as authority for the proposition that the rule of forfeiture applies only to succession to the estate of the father. These cases are no authority for the submission that the rule of forfeiture does not apply to succession to the mother's estate; that is a submission which he invites us to adopt, inferentially. To say, without reserve, that a deega married daughter is an heir to her mother's estate is not a proposition which I can accept, having regard to what is said by text book writers on the subject: Hayley at page 463 cites two passages from Sawers, and one from Armour which are against the adoption of the submission made by counsel as an inflexible rule. I do not consider it necessary to discuss this in detail as it is not relevant to the questions which we have to determine : we are here not discussing a right of succession to the estate of a deceased mother, but succession to the maternal grand-father's estate through the deceased, and I have stated my opinion on this question. The appeal is allowed with costs both here, and in the court of first instance, and the plaintiff's action is dismissed.

SRI SKANDA RAJAH, J.-I agree.

Appeal dismissed.

- End -