1948 *Present:* **Dias and Nagalingam JJ.**

PUNCHIRALA, Appellant, *and* BANDA, Respondent

S. C. 89—D. C. Badulla, 8,470

Kandyan Law—Paraveni property of deceased—Minor children—Paying debts of deceased—Right of widow to sell—Need for curatorship proceedings.

Under Kandyan law a widow has the right to sell her deceased husband's *paraveni* property during the minority of her children for the payment of the debts of her deceased husband without the sanction of Court. In such a case where the deceased left minor children the widow need not obtain letters of curatorship.

APPEAL from a judgment of the District Judge, Kandy.

H. W. Jayewardene, for plaintiff appellant.

N. Kumarasingham, for defendant respondent.

Cur. adv. vult.

November 15, 1948. DIAS J.—

The land in dispute belonged to one Keerala who was a person subject to the Kandyan Law. It is asserted in the plaint and not traversed in the answer, that the land in question belonged to Keerala " by right of devolution from his father Badderala ". Therefore, the land was the *paraveni* or ancestral property of Keerala.

Keerala died intestate leaving surviving him his widow, Heen Menika, and five children. Except for Banda the eldest child, the other four were presumably minors. It is common ground that Keerala's estate was not liable to administration. It is also admitted that no certificate of curatorahip was issued to Heen Menika in regard to the property of her minor children, and that the sanction of the Court was not obtained for the sale of the minors' undivided 4/5th share of the land in dispute.

By deed D1 dated May 8, 1932, the widow Heen Menika and her eldest son Banda conveyed the land in dispute to Ukkubanda whose title has now devolved on the defendants respondent. D1 recites that Heen Menika executed the conveyance " in the exercise of her rights as a Kandyan widow, and for the purpose of paying the debts of her deceased husband ". Banda, the other vendor, recited that he is the eldest son of Keerala. Being a major he was entitled to deal with his undivided 1/5th share. There is no contest regarding this 1/5th share.

By deed P4 dated October 7, 1945, the other four children of Keerala sold 4/5ths of the land in dispute to the plaintiff. The notary's attestation to this deed shows that no consideration passed from the vendee to the vendors at the time of its execution.

The question for decision is whether a Kandyan widow has the right to sell her deceased husband's land during the minority of her children for the payment of the debts of the deceased without the sanction of the Court? The provisions of Ordinance No. 39 of 1938 have no application to this case.

On the death of a Kandyan intestate leaving a widow and children his *paraveni* or ancestral property pass to the children, the widow being entitled to maintenance and support out of the *paraveni—Hayley p. 352–353.* In regard to *acquired property* the widow has a life interest while she remained unmarried—see *Ukku Banda v. Heen Menika*[1]. In the present case, therefore, on the death of Keerala, the title to the land in dispute, being *paraveni* or ancestral property, would become vested in Keerala's children, subject to the right of the widow, Heen Menika, to claim maintenance and support therefrom.

There is, however, another principle of the Kandyan Law which confers on the widow the right to alienate or charge the property of her deceased husband in order to pay the debts of the deceased. In *Appuhamy v. Kirihenaya*[2] a Kandyan widow in order to pay the debts of her deceased husband sold certain lands for that purpose. The Supreme Court upheld the sale on the grounds (*a*) that " the widow held the position and owed to her children and her husband's creditors the duty which now is laid on a legal representative ", (*b*) that the sale was completed by the widow over thirty years ago, that is to say, before the Civil Procedure Code was enacted, and (*c*) " It appears that the widow acted unselfishly, for she sold *acquired* lands in which she had a greater personal interest than in the *paraveni* lands *which she did not sell* ". This is a judgment of Lawrie J. who was for many years the District Judge of Kandy and whom Wood Renton J. in *Muttiah Chetty v. Dingiriya*[3] described as " an expert Kandyan lawyer ". Therefore, if a Kandyan widow under the Kandyan Law did not have the right to sell the *paraveni* or ancestral lands for the payment of the debts of her deceased husband, there was no point in drawing attention to the fact that she had not sold the *paraveni* lands in preference to the acquired property, or that she had, in fact, sold the *acquired* lands in which she as widow had a greater personal interest. Although there are apparently conflicting passages in Modder, section 179 of his work on the Kandyan Law (2nd edition p. 310 *et seq.*) supports the view taken by Lawrie J. in *Appuhamy v. Kirihenaya* (*supra*): " A *diga* widow with children, is responsible to see that the debts of her deceased husband are paid to the extent *of the property left undisposed of by him*, and over which she has control ". Modder cites Sawers as his authority for this proposition. Lawrie J. in *Kirimenika v. Mutumenika*[4] said " I regard Mr. Sawers as the best authority on Kandyan Law . . . . Mr. Armour's opinion has not the same weight as Mr. Sawers', for he (Armour) was not a Judge ". Sawers (18. s 2) says " The debts of the deceased must be paid by those who inherit his or her *property* according to the value of their respective shares—the money and paddy or grain debts should be paid by those who inherit the lands ; but if the movable property of the deceased be large in proportion to the landed property, the heirs of the movable property must pay a share of the debt in proportion to the value of the movable property ". It is to be noted that Sawers draws no distinction between *paraveni* or ancestral property of the deceased, and his acquired property. Hayley takes the same view. He says at page 495 of his book on Sinhalese Law : " If the value of the estate is below that amount (*i.e.*, the administrable

[1] *(1928) 30 N. L. R. 181 (Div. Ct.)*
[2] *(1896) 2 N. L. R. 155.*
[3] *(1907) 10 N. L. R. at p. 375.*
[4] *(1899) 3 N. L. R. 376.*

limit), and it is not administered, the heirs are liable for the debts *pro rata*. So the *diga* married widow in possession of *property* has been held liable for her husband's debts—not personally—but as a sort of administratrix, and for this purpose may *sell or mortgage the property*". This eminent authority makes no distinction between *paraveni* or ancestral property on the one hand, and the acquired property of the deceased on the other. *Appuhamy v. Kirihenaya* (*supra*) was considered by the Divisional Bench in *Lebbe v. Christie*[1], but the correctness of that decision was not called in question.

The question was also raised whether the Kandyan widow could sell the lands of the deceased when there are minor heirs without a certificate of curatorship. Under the Kandyan Law the widow has the same rights as an administratrix. An administrator has the right to sell the property of the deceased to pay his debts without obtaining letters of curatorship when there are minor heirs. I do not think the fact that the estate of the deceased is below Rs. 2,500 in value, casts a duty on the Kandyan widow to obtain a certificate of curatorship. In my opinion the sale of the 4/5ths share is valid.

I am, therefore, of opinion that the judgment appealed from is right. The appeal is dismissed with costs.

NAGALINGAM J.—I agree.

Appeal dismissed.