

1967

Present : Tennekoon, J.

ALICE NONA, Appellant, and G. SUGATHAPALA, Respondent

S. C. 710/67—M. C. Kandy, 49908

Maintenance—Kandyan woman married in binna—Refusal by her to change her residence—Effect thereof on her claim for maintenance from her husband—Maintenance Ordinance, s. 4—Kandyan Law Declaration and Amendment Ordinance (Cap. 59), s. 9 (1).

Where a Kandyan woman who has contracted a *binna* marriage refuses to change her residence on the ground that if she changes her residence and goes to live with her husband her rights of inheritance may be affected, she is not entitled to claim maintenance from her husband if he offers to maintain her on condition of her living with him. In such a case, the ground urged by the wife is not a sufficient reason within the meaning of section 4 of the Maintenance Ordinance for her to refuse to live with her husband.

APPEAL from a judgment of the Magistrate's Court, Kandy.

L. D. Bandaranayake, for the Applicant-Appellant.

No appearance for the Defendant-Respondent.

September 14, 1967. TENNEKOON, J.—

In this case the applicant was a Kandyan who had contracted a *Binna* marriage with her husband. She claims maintenance from her husband the defendant. The defendant offered to maintain the applicant on condition of her living with him. The applicant however refused on the ground that if she changed her residence and went to live with her husband her rights of inheritance might be affected. The Magistrate held that this was not a sufficient reason within the meaning of Section 4 of the Maintenance Ordinance for the wife to refuse to live with her husband.

I agree with the Magistrate's view. Under the law now governing the rights of *Binna* married daughters change of residence cannot affect the nature of the marriage or her rights to succession. See Section 9 (1) of the Kandyan Law Declaration and Amendment Ordinance (Chapter 59, 1956 Edition of the Legislative Enactments). Admittedly the marriage was one contracted after 1938 and the provision of this Section will accordingly apply. The appeal is dismissed.

Appeal dismissed.