

1902.
August 19.

BANDULAHAMY v. RAMMENIKA.

C. R., Ratnapura, 5,805.

Kandyan Law—Right of illegitimate children to maintenance out of inherited estate of their father—Right of their mother to retain possession of such land.

Under the Kandyan Law, the mother of the illegitimate children of a person who has left him surviving his mother and brothers has no right to retain possession of any portion of his ancestral estate on account of the maintenance of such children.

IN this case the plaintiffs, who were the brother and the mother of one Malhamy, deceased, alleged themselves to be his only heirs, and sought to recover one-half share of a land called Arambahenawatta and the house standing thereon, which belonged to him by paternal inheritance. The defendant denied their right and contended that she was the wife of the said Malhamy, and that he left three children by her as his heirs, and she claimed the said share of the said premises, but at the trial she limited her claim to maintenance only therefrom.

The Commissioner (Mr. T. R. E. Loftus) dismissed the petitioner's claim in these terms:—

“ It was agreed that the first issue to be tried should be, whether the deceased Malhamy left any illegitimate children. Evidence was forthcoming and not met by the plaintiffs. Defendant argued that the illegitimate children were entitled to maintenance, and plaintiff argued that so long as the children had any acquired property they could not claim maintenance. I hold that defendants' contention is right. The case cited for defendant (District Court, Kandy, 23,067, *Perera's Select Decisions*, 186) does not apply. The Kandyan Law being silent, the Roman-Dutch Law must be followed. Defendant has therefore a right to maintain her children from the produce of this land. Plaintiffs' action is dismissed with costs.”

Plaintiff appealed.

Bawa, for appellant.—The Roman-Dutch Law does not apply. The case of *Subaliya v. Kannangara (Tambyah, 3)*, which rests on Voet, does not apply to the Kandyans, because the Kandyan Law is explicit on the subject. The rights of illegitimate children under the Kandyan Law are discussed in *Perera's Armour*, p. 34, and *Niti Nigandua*, p. 14. Illegitimate children have no right to maintenance from the ancestral estate. Indeed, children born in

wedlock of a low-caste mother do not succeed to the ancestral property, but only to the property acquired by the parents. Ancestral property vests absolutely in the blood relations of the deceased owner, clear of any encumbrance for maintenance. The circumstances of the present case are not a *casus omissus* in Kandyan Law, and therefore it is needless to refer to the Roman-Dutch Law. The illegitimate children may have a personal claim for maintenance, but it must be formulated, and cannot be anything more than a claim for payment of money. It cannot be a *jus retentionis* in regard to lands belonging to the deceased father. In *Giranga v. Haramanis* (2 S. C. C. 191) it was held that the widow's claim to maintenance did not justify a mortgage by her of her late husband's lands.

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Morgan, for respondent.—As the deceased father put the defendant in possession of the land, she keeps it till maintenance of herself and her children are properly provided for. *Rankira v. Kiri Etana* (1 C. L. R. 86). She has held possession for twelve years, and has a claim on the estate of the deceased. *Tambyah*, pp. 2, 3. As the Kandyan Law is silent on the subject, the Roman-Dutch Law should be followed, and that law is in favour of the respondent.

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The first plaintiff and his brother Malhami owned equal shares of a garden called Arambahena. Malhami died without apparently having married or leaving legitimate issue. He had cohabited however, with the defendant, who says that she had three children by him. The plaintiffs, failing to obtain possession of Malhami's share of the house and garden, prayed for a declaration of title. The defendant simply denied that she had forcibly appropriated the produce of the land, or that she had caused the plaintiffs any damage, and asked that the action might be dismissed. At the trial she added that she had been Malhami's mistress, and claimed maintenance for her children. It seems that so far as acquired property goes, the defendant is in possession of that, but it appeared to the Court that she had a claim for the maintenance of the children upon the inherited property, and that the claim justified her in resisting the plaintiffs' action.

The plaintiffs argue that it is established, according to Kandyan Law, that illegitimate children cannot under such circumstances as these claim maintenance out of the inherited property of the intestate father. Mr. Morgan, on the other hand, urges for the defendant that there is such a claim, because there being here a

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August 19. provide, the Roman-Dutch Law should apply.

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A.C.J.

I think I need not at the present moment offer an opinion on that point, because it appears to me—and my impression is strengthened by the decision quoted from the 2nd volume of the *S. C. C. 191*—that, even if the defendant has a right to maintenance out of the inherited estate of the man who was the father of her children, that right does not carry with it any right to retain possession of the land and house, which under the Kandyan Law passed to the heirs of the intestate. I think the Commissioner was wrong in dealing with the case as he did, and that his decision must be set aside, without prejudice, however, to any proceeding which the defendant may see fit to take with the view of establishing the right of her illegitimate children to maintenance out of the inherited estate of their father.
