

*Present* : Ennis and Porter JJ.

1923.

MENIKA *et al.* v. NEINA

264—D. C. Kurunegala, 8,338 A.

*Buddhist priest—Right to succeed to mother's estate—Kandyan law*

Under the Kandyan law a man does not forfeit his right to succeed to his mother's estate by becoming a priest.

**T**HE facts are set out in the judgment.

*Samarawickrema*, for defendant, appellant.

*Nararatnam* (with him *Soertsz*), for plaintiff, respondents.

December 21, 1923. ENNIS J.—

This was an action for declaration of title and for ejection. The parties are Kandyans, and the matter is subject to Kandyan law. It appears that the property belonged to one Batti Etna, who had two children—Siridarahamy and Podiappuhamy. Siridarahamy mortgaged the property on September 11, 1911. He died leaving a widow, Ransohamy, and two children, who are the first and second plaintiffs, both minors; Podiappuhamy was a priest but after the death of his father he disrobed and lived with the widow Ransohamy. On May 31, 1915, by the deed No. 18,136 the widow leased a share of this land to the defendant for ten years. On the same date Podiappuhamy executed the deed No. 18,137, and leased the remainder of the property to the defendant for fourteen years. Podiappuhamy then died, and the widow Ransohamy, as curator of the estate of the first and second plaintiffs, brought the present action to be declared entitled to the share which Podiappuhamy purported to deal with. The learned Judge held that by

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becoming a priest Podiappuhamy had forfeited his interest in the estate, and the only question on appeal is whether the learned Judge is right in holding that there had been a forfeiture. The material before us is very scanty. The *Niti Nighandua*, p. 106, in chap. 5, section 1, dealing with inheritance by maternal right, says that a son whether he be a layman or priest will have an equal right to the maternal inheritance. This is a perfectly definite statement that there is no forfeiture in the case of property which formed part of the mother's estate. *Sawyer, Modder's ed. at p. 7, chap. I., art. 27*, says:

“ A son becoming a priest thereby loses all right of inheritance in the property of his parents, because to take the robe is to resign all worldly wealth; nor shall he be restored to his right of inheritance by throwing off the robe after his father's death, unless he shall have done so at the request of his brother or by the unanimous request of his brothers, as the case may be; in that event he will have a right to that share of his parents' property, which would have fallen to him, had he never taken the robe.”

It is to be observed that this paragraph in *Sawyer* says that he cannot recover any rights after his father's death, but it makes no mention of non-recovery of rights on the mother's death. This paragraph appears in *Pereira's Armour at p. 51* under the heading of disqualification of *paternal* inheritance. At page 84 where *Armour* deals with the succession to the mother's estate, it is said that if a mother dies intestate leaving two sons, one of whom is a priest, that the priest's rights to share in the estate remain in abeyance, and if a mother die intestate leaving an only child, a priest, that all the maternal estate vested in him to the exclusion of her collaterals. So also in *Marshall at p. 337*, a case is cited where a priest came into a succession after all his associated fathers were dead. In view of these authorities, it would seem that there is no definite statement that a priest does not inherit his mother's estate. There are one or two statements that a priest's inheritance of his mother's estate is in abeyance, and, in the *Niti Nighandua*, we have a definite statement that the priest succeeds to his mother's estate. Inasmuch as there is a presumption against a forfeiture, and there is no clear authority before us that in the Kandyan law a man forfeits his right to succeed to his mother's estate by becoming a priest, I would hold there has been no forfeiture. I would accordingly allow the appeal with costs, set aside the judgment appealed from, and dismiss the plaintiff's action, with costs.

PORTER J.—I agree.

*Appeal allowed.*