

1961      *Present* : Weerasooriya, J., and L. B. de Silva, J.

U. BABI, Appellant, and H. V. DANTUWA and others, Respondents

*S. C. 319—D. C. Badulla, 13061*

*Kandyan Law—Death of husband intestate—Right of widow to sell immovable property of the deceased—Scope.*

Under the Kandyan Law a widow without minor children has no right to sell the immovable property of her deceased husband for the payment of his debts. Such a sale cannot convey good title as against the other heirs of the deceased.

**A**PPPEAL from a judgment of the District Court, Badulla.

*T. B. Dissanayake*, for the Defendant-Appellant.

No appearance for the Plaintiffs-Respondents.

*Cur. adv. vult.*

February 28, 1961. L. B. DE SILVA, J.—

The Plaintiffs claimed the lands in suit by inheritance from their deceased brother Himiya, subject to the life interest of his widow Muthi. Plaintiffs concede that the life interest of Muthi has now devolved on the defendant on Deed No. 362 (D 17) of 27th July, 1955.

The defendant Appellant claimed the entirety of the said lands on two grounds :—

- (1) As the adopted daughter of Himiya.
- (2) The Deed D 17 was executed by the widow of the deceased to settle his debts and it conveyed the rights of the deceased to the defendant-appellant.

The learned District Judge has held that the defendant has failed to prove that she was adopted by the deceased for purposes of inheritance. We see no reason to interfere with the finding of the learned District Judge on this point.

On the 2nd ground, the learned District Judge has held that the defendant has failed to prove that it was necessary for the widow to sell these lands for the payment of the deceased's debts, though some debts of the deceased were in fact settled by the widow by the said sale.

We were prepared to hold in this case that the widow sold the said properties upon this deed (D 17) to settle the debts of the deceased and that it was necessary for her to do so for this purpose.

The parties are governed by the Kandyan Law. We heard Counsel for the Appellant further on the question whether a Kandyan widow who had no children, was entitled to sell the immovable property of her deceased husband to settle his debts, in so far as it affected the rights of the deceased's other heirs.

We are indebted to the learned Counsel for the Appellant for the assistance that he has given us on this matter, which involves a difficult question of Kandyan Law, specially as the respondents were unrepresented in this appeal.

It has been held in *Appuhamy v. Kiri Henaya*<sup>1</sup> as follows:—

“A widow left by her husband's death with young children was by Kandyan Law the head of the house and family until her sons grew up to manhood. She had the right to give her daughters out in digas, on her devolved the duty of paying her husband's debts. Administration of an intestate's estate was unknown to the Kandyan Law. The widow held the position and owed to her children and to her husband's creditors the duty which now is laid on a legal representative.”

It was held in that case that the sale by the widow of the acquired lands of her deceased husband, conveyed good title as against the son of the deceased.

In that case Lawrie J. was dealing with the right of a Kandyan widow left with a young son at the death of her husband, to sell the acquired immovable property of her husband, to settle his debts.

In *Supen Chetty v. Kumarihamy*<sup>2</sup> Middleton J. held as follows:—

“Looking at the position of the digas widow generally as disclosed in Armour and Sawyer and the words of the second paragraph of page 18 of Sawyer, I would hold that the meaning of the words following in paragraph 9 page 18 of Sawyer is that the widow is not liable personally but as a sort of administratrix to see that the debts of the deceased are paid whether she inherits as a childless widow or does not inherit as in the case where she has children. *Although*

<sup>1</sup> (1896) 2 N. L. R. 155.

<sup>2</sup> (1905) 3 Balasingham's Reports, 96.

*she does not inherit, the property is more or less under her control especially if there are minors and this I would infer is the reason why the liability to pay the debts is put on her."*

He further stated at page 98, "It would seem that a diga married widow may only inherit when she is left childless" and cited "Armour's Grammar of the Kandyan Law" by Perera (p. 22) referring to the authority of Sawyer.

What Perera stated at page 22 on the authority of Armour was as follows :—

"If the deceased proprietor left no issue, and had survived his parents and has full brothers and sisters, then his widow will have an absolute 'Lat Himi' right to such lands as belonged to the deceased by right of acquest (that is to say, lands which were not derived to him by inheritance but which he had acquired by purchase, or which he had obtained from a stranger by rendering assistance) to the exclusion of the deceased's more distant relations, (paternal aunt's children for instance)."

The case of *Supan Chetty v. Kumarihamy* is not quite relevant to the point at issue in this case, as the question at issue there was whether the widow was personally liable for her husband's debts irrespective of what she had inherited from her husband.

Sawers' Digest of the Kandyan Law, Page 18 under Memoranda of the Laws which regulate the succession to Movable property, para 1 states, "When a man dies intestate, his widow and children are his immediate heirs, the widow having the custody and administration of the property, so long as she lives in her husband's house . . .". The administration of property referred to there is the administration of movable property.

Sawers' Digest, Chapter 1, Succession to Immovables, at para. (1) states, "When a man dies intestate, his widow and children are his immediate heirs, but the widow, although she has the chief control and management of the landed estate of her deceased husband, has only a life interest in the same . . .".

It is clear that the widow has the chief control and management of the immovable property of her deceased husband when he has left children but not otherwise. I may mention that the widow's life interest extends only to the acquired lands of the deceased husband and not to his inherited lands.

Under Chapter 11, Succession to Movables, Sawers' Digest at page 21, para. 13, states,

"The debts of the deceased must be paid by those who inherit his or her property, according to the value of their respective shares . . .".

Chapter 11 para. 14 states, "It is the pious duty incumbent on sons to pay their parents' debts, although they may not have inherited any property from them . . ."

Chapter 11, para 15 states, " A diga wife is liable to pay the debts of the deceased husband, whether she may have inherited property from him or not . . .".

It is against the recognized principles of justice that an heir should be liable for the debts of the deceased in excess of his inheritance. As there are conflicting statements by Sawers on such liability, in the passages cited above, Middleton J. held in *Supen Chetty v. Kumarihamy*, that there was no such personal liability of a widow under the Kandyan Law.

In *Bandara Menika v. Imbuldeniya*,<sup>1</sup> it was held that under the Kandyan Law, a widow with minor children, has a right to mortgage the estate of her deceased husband for the payment of his debts.

In that case too, the Court considered the right of a Kandyan widow with minor children to mortgage the immovable property of the deceased husband, to pay his debts. Gunasekara, J. held that if she had a right to alienate immovable property for that purpose, there appears to be no reason in principle for holding that she could not exercise the lesser right of mortgaging the property.

Sawer's Digest of Kandyan Law, Chapter IX, paragraph 3 states, " The widow has no right to dispose of her husband's lands contrary to what the law directs, although she has a usufruct of them, unless she was specially authorized by her husband that he might thereby secure to his relict the dutiful obedience of his children."

Learned Counsel for the Appellant was not able to cite to us any case where a widow, without children, was held to have the right to sell the immovable property of her deceased husband, to pay his debts.

There was some reason why a widow with minor children, should have been given that right. She was the head of the family and she owed a duty to protect the interests of her minor children by settling the deceased's debts even by the sale of his immovable property. She could naturally be expected to safe-guard the interests of her own children, in the absence of any form of administration under the Kandyan Law. She could owe no such duty to the collateral heirs of her husband when the deceased has left no issue.

Considering the general principles of the Kandyan Law and the reported cases, I hold that a Kandyan widow without minor children, has no right to sell her deceased husband's immovable property so as to affect the rights of other heirs of the deceased.

The appeal is dismissed without costs.

WEERASOORIYA, J.—I agree.

*Appeal dismissed.*

<sup>1</sup> (1949) 50 N. L. R 478.