Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Grenier.

1909.
May 3.

RANHOTIA *v.* BILINDA *et al.*

D. C., Kandy, 18,662.

Kandyan Law—Acquired property—Rights of father and brother of deceased.

According to Kandyan Law, where a person dies unmarried, childless, and intestate, his acquired property devolves on his father to the exclusion of his brother.

ACTION *rei vindicatio.* The facts are stated in the following judgment of the District Judge (F. R. Dias, Esq.) (May 18, 1908) :—

" The plaintiff in this action is claiming title to a half share of a certain land, alleging title as sole heir-at-law of his brother Singa, who died unmarried and intestate in 1887. The defendants and added parties are the step-mother and step-brother of the plaintiff. Admittedly, the plaintiff has never had a day's possession of this land, and his right entirely depends on the answer to the question whether he, as the only brother of the owner Singa, was under the Kandyan Law his heir-at-law to the exclusion of his father Sarana.

" The facts of the case are these. One K. Sarana was first married to a woman named Singu, by whom he had two children, Singa and the plaintiff. In 1878 this land was purchased under the deed P 1 in the joint names of Sarana and Singa (father and son), so that each became entitled to a half. Singa died in 1887, his mother Singu having predeceased him, and the father Sarana possessed the entire land and dealt with it as his own. After Singu's death Sarana married the first defendant, by whom he had three children, the second defendant and the two added parties. In 1893 Sarana leased the whole and in perpetuity to one Ukkuwa, and after passing through two or three other hands, the first and second defendants took over an assignment of that lease in 1901, and have been in possession ever since. It will thus be seen that the rights claimed by the first and second defendants are not derived by them as heirs-at-law of Sarana, but as successors in title to his lease.

" The question which arises on these facts is, whether Sarana was entitled to deal with the whole land as his own after the death of his son Singa in 1887. In my opinion he was. According to *Armour's Kandyan Law, pp. 88, 89,* the mother is heiress to the acquired property of all kinds left by a child who dies unmarried, childless, and intestate, and such property is entirely at her disposal, and if

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the mother had died previous to the demise of her child, then the father will be entitled to the reversion of the deceased child's acquired property.

" The plaintiff's counsel cited what appears to be a contrary view of the Kandyan Law on this point appearing in page 344, section 96, of *Marshall's Judgments* (*Sawer's Digest, p. 13*), where it is said that if a person die childless, but leaving parents, brothers, and sisters, the property which the deceased received from his parents revert to them respectively, and his acquired property, whether land, cattle, or goods, also goes to his parents, but only the usufruct of it.

" These opinions are undoubtedly in conflict, and for the reasons given by Layard C.J. in *T. Sangi v. T. Mohotta*,[1] I prefer to follow the opinion of Armour in preference to that of Sawer or Marshall. Hence in that view of the law I must hold that on Singa's death in 1887 (his mother having predeceased him) his father Sarana became solely entitled to this land, which was acquired property, to the exclusion of the plaintiff.

" On the question of prescription, too, that has been raised, the plaintiff must fail. He brought this action in August, 1907, and alleges in his plaint that he was a minor till ten years previously, that is, till 1897. This is, however, proved to be not true, for he was married in 1894 at the age of twenty-three years. His cause of action is therefore clearly prescribed, as it is admitted that Sarana's lessees and their assignees have been in continuous possession ever since October, 1893. It was suggested on behalf of plaintiff that no prescription would run against him till his right to possession had accrued to him, namely, on the death of his father Sarana in 1907. That is quite a new idea, as the plaintiff came to Court on the footing that he was absolutely entitled to a half of which the defendants had got into wrongful possession five years ago. As I have held before, it was not a mere usufruct that Sarana had but absolute ownership, and nothing vested in plaintiff on Sarana's death. I dismiss the plaintiff's action with costs."

The plaintiff appealed.

Wadsworth (with him *F. J. de Saram*), for the plaintiff, appellant.

E. W. Jayewardene, for the defendants, respondents.

Cur. adv. vult.

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This was an action by the plaintiff to be declared the owner of an undivided half share of the land called Halgangalehena, 1 amunam in extent, and more fully described in the first paragraph of the plaint. The plaintiff claimed title as sole heir-at-law of his brother Singa, who died unmarried and intestate in 1887.

[1] (1903) 6 *N. L. R. 210.*

The following facts appear to have been admitted by both sides in the Court below. One K. Sarana, who was the father of Singa and of the plaintiff, was first married to a woman named Singu. Sarana and Singa purchased the land in question in 1878 under deed P, each of them thus becoming entitled to a half share. Singa died in 1887, his mother Singu having died before him. After Singu's death Sarana married the first defendant, by whom he had three children, the second defendant and the two added parties. In 1893 Sarana leased the whole land to one Ukkuwa in perpetuity, and the first and second defendants took an assignment of that lease in 1901, and have been in possession ever since.

The District Judge framed the following issues :—

(1) Was the plaintiff the heir-at-law of Singa ?

(2) Is the plaintiff's cause of action prescribed ?

The plaintiff relied upon a passage from *Sawer's Digest* (*p. 13*), where it is said that if a person die childless, but leaving parents, brothers, and sisters, the property which the deceased received from his parents reverts to them respectively, and his acquired property, whether land, cattle, or goods, also goes to his parents, but only the usufruct of it.

The plaintiff's contention therefore was that on his brother Singa's death, his acquired property did not go absolutely to his parents, but his parents were entitled to the usufruct of it. It is admitted that the property in dispute was Singa's acquired property, and if Sawer's statement of the law be correct, then the plaintiff's contention is right, and he is entitled to succeed in this action. But we were also referred to a statement of the law to be found in *Armour, pp. 88–89*, where it is said that the mother is heiress to the acquired property of all kinds left by a child who dies unmarried, childless, and intestate, and such property is entirely at her disposal, and if the mother had died previous to the demise of her child, then the father will be entitled to the reversion of the deceased child's acquired property.

It will thus be seen that there is a direct conflict between *Sawer* and *Armour* in regard to the question whether the acquired property of a son goes to the father or to the brothers and sisters. According to *Armour*, where both father and mother are alive, and one of their sons dies unmarried, childless, and intestate, his acquired property goes absolutely to the mother to the exclusion of the father, and it is only in the event of the mother having predeceased her son that the father becomes entitled to the property. I need hardly say that *Armour's* opinion is not based upon any positive rule of the Kandyan Law to be found in any standard authority on the subject, nor is *Sawer's* opinion, on the other hand, based on any such authority. But dealing as we are with a system of primitive law and custom such as obtains amongst Kandyans, I am inclined to think that the

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District Judge was right in following the opinion of *Armour* rather than of *Sawer*. It seems to me consistent with natural justice that the acquired property of a son should go to the father rather than to the brothers. In most primitive communities a father is considered the head of the family, and whatever a son acquires, he generally acquires as a result of the assistance and help of his father, and therefore it seems right to me that in case a son dies unmarried, childless, and intestate, his acquired property should go to his father to the exclusion of his brothers.

As regards the question of prescription, I am of opinion that the plaintiff is not entitled to succeed, because it was not a mere usufruct that Sarana had, but the actual dominium, and nothing vested in the plaintiff on Sarana's death. The appeal must be dismissed with costs.

HUTCHINSON C.J.—I concur.

Appeal dismissed.