

Present: Wood Renton C.J. and De Sampayo J.

1917.

SELLAMBRAM v. KADIRAIIE *et al.*

93—D. C. (Inty.) Nuwara Eliya, 66.

*Domicil—Kangany residing in Ceylon for thirty or thirty-five years—Evidence that kangany stated that he had made Ceylon his home—Evidence Ordinance, ss. 32 and 33 and 100—Casus omissus—English law of evidence—Grant of letters of administration.*

The statement of a person that he had made Ceylon his home is admissible in evidence after his death, when the question at issue is whether he had acquired a domicil in Ceylon.

"It was argued that this evidence was not admissible, inasmuch as the provisions of sections 32 and 33 of the Evidence Ordinance are exhaustive of the cases in which statements of deceased persons are capable of proof. But evidence of this kind would clearly be admissible under the law of England, to which we have to look in regard to *casus omissi* in the Evidence Ordinance."

A kangany, a native of India, resided in Ceylon for thirty to thirty-five years, till his death. During that period he returned to India on three occasions. The children of his first marriage were in Ceylon, and he left his second wife in India. There was evidence that he told the superintendent of his estate that he looked upon Ceylon as his home.

*Held*, that he had acquired a domicil of choice in Ceylon.

If a person is domiciled in Ceylon, the grant of administration to his estate is governed by the law of this colony.

THE petitioner (Sellambram) applied for letters of administration to the estate of his brother Avada, head kangany, on the ground that he was entitled as such to a half share of his estate under the Hindu law. He also relied on an agreement (P 1) between Avada and himself, the effect of which he contended was to entitle him to a half share of the inheritance.

The learned District Judge held that the agreement was not a genuine document, and that Avada was domiciled in Ceylon, and not subject to Hindu law.

The petitioner appealed.

The evidence in this case relating to the question of domicil was as follows:—

Mr. Aiyadurai calls—

Sellambram, affirmed; Avada Kangany was my elder brother; he came to Ceylon thirty or thirty-five years ago. He first went to Kandapola. After that he went to India; about five or six years afterwards. He married his first wife in India. He was married when he first came. He left his wife in Ceylon and went to India. There he remained about

1917.

*Sellambram  
v. Kadiraie*

six months. First wife's name was Meya. Meya never went to India after she came. Her children were two daughters, Karuppaie and Kadiraie.

In India we brothers owned one property in common. On his first visit to India he did not buy lands. He returned to Ceylon. About seventeen years after he went a second time to India. He married a second time on that visit. Her name was Periani. They were married in India. But before marriage he lived with Periani, and before marriage Kadiraie was born. After Kadiraie, Periya Caruppen was born. The second visit was about twenty-two years ago. The marriage ceremony was about twenty-two years ago. Kadiraie was born in India. During the second visit he remained one year. We lived in the same house. During that visit he bought land. After that he visited India in 1913 and bought a land. He remained in India six months. He came back to Ceylon. He did not go back again. He died in 1916. I visited Ceylon when he was a kangany. I used to come once or twice a year, bringing cloths and coolies. He usually had 200 coolies. ....

*Cross-examined.*—At the time of his last visit my brother came to defend an action instituted by me in the Indian Courts. I sued my brother for a certain sum of money, alleging I was a partner with my brother. He stayed six months or three months. I cannot be certain of the exact length of time. I am certain it was not longer than six months. The agreement is dated March, 1913. When the case was instituted my brother was in Ceylon. He came solely for the purpose of defending the action when he came last time to India. I had two other brothers besides the deceased. The lands which we inherited we owned in common. Community of property is only as regards paternal inheritance. That is the custom in India. ....

*Re-examined.*—In the Indian case I was asked to bring a partition suit. We were all born in India. When my brother came to Ceylon he was thirty-five or thirty-eight. .... My brother has left approximately Rs. 3,000.

Allayan, affirmed; son of Muttan, Tamil, Head Kangany of Bromley estate. I have been forty years in Ceylon. I used to go to India once in eight or ten years. I have property in India. Landed property. I consider India my permanent residence. ....

Cadirevail, affirmed: son of Andy. Tamil. Forty-eight. Kangany of High Forest. .... I have been in Ceylon over thirty years. I go to India off and on, I consider India my permanent home. There I have land and houses. ....

Mr. Modder calls—

Arthur Douglas Atkins, sworn: superintendent, Maha Uva estate, I know Avada for five years. I used to speak about going to India to Avada. He gave me to understand he was not particularly keen to go to India, and said he was going to stop in Ceylon, and he said he looked upon Ceylon as his home. He went to India in 1913 for the purpose of defending himself in a case brought against him by Sellambram. Sellambram was always writing asking for half share of Avada's property. I asked Avada. He said Sellambram had nothing to do with it. The coolies were his own. As far as I know, Sellambram did not recruit coolies for Avada. I would expect to know if this were so. The impression which Avada gave me was that he never intended to go to India.

*Cross-examined.*—Avada went to India four or five months after I had been on the estate. He never spoke to me about his property in India. I wired to Sellambram to come to Ceylon. Sellambram's relatives asked me to wire to him. When he came to Maha Uva and requested me to put him in charge of Avada's affairs I refused. He may have remained on the estate for three or four weeks. He has been on the estate off and on. It was about two or three weeks after he came I objected to his being on the estate. This was because there were rows in the lines. I object to Sellambram. I would rather fifth respondent obtained letters of administration than the petitioner. I gave notice to seven coolies the other day who owed debts to Avada Kangany.

*Re-examined.*—The coolies being estate servants have been taken over to the estate account. I am running them without a kangany.

*Cross-examined.*—The total amount due to Avada Kangany would probably be from Rs. 5,000 to Rs. 7,000.

The judgment of the District Judge on the question of domicile was as follows:—

The third issue, which I will deal with next, depends upon the question of domicile. The question for decision is whether the deceased had acquired a domicile of choice in Ceylon. The question of his residence in Ceylon is easily established, and for a period of twenty-two years he resided here, and only went to India once, when he was compelled to do so owing to the institution of the case referred to in D 1; it might be reasonably deduced from this that the deceased really had intended to make his home in Ceylon. On the question of intention, there is the evidence of Mr. Atkins to the effect that the deceased said "he looked upon Ceylon as his home." I had some hesitation in deciding that Mr. Atkins's evidence was sufficient to establish the fact that Ceylon was deceased's domicile of choice, but in view of the deceased's failure to visit India for twenty-two years, except on an occasion when compelled to do so, I think it may be fairly held that the intention to make Ceylon his home, as stated by Mr. Atkins, may be construed as indicating that Ceylon was his domicile of choice. On the third issue, I, therefore, decide that, so far as the movables are concerned, the daughters of the deceased are heirs to his estate.

*A. St. V. Jayawardene* (with him *Mutunayagam*), for petitioner.

*Bartholomeusz*, for respondents.

*Cur. adv. vult.*

October 12, 1917. WOOD RENTON C.J.—

The point involved in this appeal is whether Sellambram, the brother, or Sinna Kadiraie, a daughter, and Arumugam, the husband of another daughter, of Avada, the deceased head kangany of Mahauva estate, Halgran-oya, should be allowed to administer his property. The learned District Judge has decided this question in favour of Kadiraie and Arumugam, and Sellambram appeals. The appeal was presented to us in the following way. Avada was domiciled in India, and by Hindu Law or Custom Sellambram was

1917.

WOOD  
RENTON C. J.*Sellambram  
v. Kadirait*

entitled to a half share of his estate. He should, therefore, have his claims to the administration considered, and, in any event, letters of administration should not be granted to the respondents whose interests were adverse to his own. The learned District Judge held that Avada had acquired a domicile of choice in Ceylon, but gave no adjudication on the question of Sellambram's position under Hindu law, for the simple and sufficient reason that the appellant based his case in the District Court on an entirely different ground. He relied on an alleged agreement in writing (P 1) on March 14, 1913, between Avada and himself, the effect of which, he contended, was to entitle him to a half share of the inheritance. The learned District Judge held that this agreement was a forgery, and I see no reason to doubt that his conclusion on the point was a correct one. There is no material in the record that would enable us to deal with Sellambram's supposed claim to a share of the inheritance under Hindu law. I am of opinion that the learned District Judge's decision that Avada had acquired a domicile of choice in Ceylon is correct. He had been resident in the Island for a period of from thirty to thirty-five years. During that period he had returned to India on only three occasions, and on the last of these occasions he went because he was compelled to defend an action brought against him by Sellambram himself. The children of his first marriage are in Ceylon. It is true that he left his second wife in India, but she had been his mistress before she became his wife, and he may very well have desired to legalize the relationship. Sellambram's evidence as to the purchase of lands by Avada in India is of the vaguest and most unsatisfactory character. Finally, there is the circumstance that he told Mr. Atkins, the superintendent of his estate, that he looked upon Ceylon as his home. It was argued in support of the appeal that this evidence was not admissible, inasmuch as the provisions of sections 32 and 33 of the Evidence Ordinance are exhaustive of the cases in which statements of deceased persons are capable of proof. But evidence of this kind would clearly be admissible under the law of England, to which<sup>1</sup> we have to look in regard to *casus omissi* in the Evidence Ordinance. If Avada was domiciled in Ceylon, the grant of administration to his estate is governed by the law of this Colony, and, under section 523 of the Civil Procedure Code, the claim of the respondents, who are his heirs, must be preferred to that of the appellant, who is merely a creditor under the alleged agreement of March 14, 1913.

On these grounds I would dismiss the appeal, with costs.

DE SAMPAYO J.—I agree.

*Appeal dismissed.*

<sup>1</sup>Section 100.