

TITTEWELLE SANGI v. TITTEWELLE MOHOTTA.

D. C., Kurunegala, 1,948.

1903.
February 18
and 20.

Kandyan Law—The lathimi rights of a childless widow to her husband's acquired property, in preference to his half-brother—Relative weight of the authority of Armour and Sawers.

Where a Kandyan died leaving acquired property, and there was a contest between his childless widow and his half-brother for such property:

Held, that the widow was his heir, and as such was absolutely entitled to his property by *lathimi* right in preference to his half-brother.

The relative weight of the opinions of Sawers and Armour on the point in question discussed and considered, and the latter authority approved and followed.

THE lands in question in this case were the acquired property of Kiriya Gandureya, a Kandyan, who died two years before action brought. The plaintiff, as Kiriya's widow, complained that the defendant, who was her husband's half-brother, had taken forcible possession of the lands. Kiriya left no children. He survived his parents. He never had a brother. He had a sister, who predeceased him, leaving no issue.

The District Judge (*Mr. Mason*) found that in such a case, on the authority of Armour (*Perera's Edition, p. 23*), plaintiff, as Kiriya's widow, had an absolute *lathimi* right to the lands of her husband. to the exclusion of the deceased's more distant relatives. He added: "Mr. Modder's contention that defendant being a half-brother was not a distant relation, and therefore not liable to exclusion, is untenable. The grammatical construction of the words 'to the exclusion of the deceased's more distant relations' is to the exclusion of the deceased's relations more distant than those already named, *i.e.*, full-brothers and sisters and their children."

A decree was accordingly entered in favour of plaintiff for the lands claimed, with damages and costs.

The defendant appealed.

Sampayo, K.C., for appellant.—The passage cited from *Armour, p. 23*, in support of the plaintiff's contention, is not on all fours with the present case, and does not apply. *Armour's* illustration would apply if the special conditions therein specified were fulfilled. He wrote regardless of the strict requirements of grammatical rules and canons of construction, as his book plainly showed, and *Perera* adopted the author's language in his edition. Therefore it would not be wise to be guided by the grammatical arrangement of the phrases and sentences in *Armour's* book,

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without regarding the spirit of the Kandyan Law. The concluding portion of the passage from Armour supports the appellant's contention, that plaintiff cannot succeed to the exclusion of the defendant. A childless widow may succeed, but it was only in very exceptional cases, and the exception mentioned by Armour receives support from Sawers, who gives another illustration: "but if the barren widow be the husband's paternal aunt's daughter or his maternal uncle's daughter, she inherits, next to full-brothers, the acquired lands":—all which clearly showed that it was only in rare instances that a childless widow succeeded. None of the exceptional circumstances referred to in the above illustration were proved to exist in the present case.

Unlike in other cases, the presumption did not arise here that the lands in question were acquired through the assistance and the industry of the widow. Under the circumstances, therefore, all that the widow might fairly and reasonably expect was maintenance out of the estate, but not the entire estate—which was a large one—and which ought to revert to the rightful heir, the appellant, and be thus conserved in the deceased's family, to which respondent was a stranger. That is a ruling principle of the Kandyan Law.

H. A. Jayawardene, for respondent.

Cur. adv. vult.

20th February, 1903. LAYARD, C.J.—

The plaintiff complains that the defendant, who is Kiriya's half-brother, has taken forcible possession of certain lands.

The Judge has held that (1) the lands claimed in this suit were the acquired property of one Kiriya Gandureya, a Kandyan; (2) plaintiff is Kiriya's widow; (3) Kiriya left no children; (4) Kiriya survived his parents; (5) Kiriya never had a brother; and (6) Kiriya had a sister, who predeceased him, leaving no issue.

On the authority of *Perera's Armour*, p. 23, he finds that plaintiff, Kiriya's widow, has an absolute right to the lands belonging to Kiriya by right of acquest, to the exclusion of the deceased's more distant relations. It is admitted that no case in point is to be found in the books or in the decisions of the Supreme Court, but it is contended in appeal, on the authority of Mr. Justice Lawrie, that Mr. Armour's opinion ought not to be given the same weight as Mr. Sawers', and it is pointed out that Mr. Sawers (*Campbell's Edition*, p. 23) restricts the right of a widow to inherit next to the full-brothers of her husband to the case in which the widow is the husband's paternal aunt's daughter. The two authorities cited undoubtedly disagree.

To justify us in setting aside the judgment of the District Judge, we must be satisfied that the authority of Sawers ought to have more weight given to it than Armour. It is true that in the case reported in 3 N. L. R. 378 Mr. Lawrie said that Mr. Armour's opinion ought not to be given the same weight as Mr. Sawers'.

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"This opinion is directly opposed to what Mr. Lawrie gave expression to in an unreported case (C. R., Kurunegala, No. 4,944, November 12, 1897). He there lays down that Sir Charles Marshall, whom Dias, J., praises as the best writer on Kandyan Law, did not profess to know much about it. His paragraphs are taken from Sawers' Digest, but Sawers was Judicial Commissioner in Kandy soon after 1815, and is no mean authority, though I think, when he and Armour disagree, I prefer to follow Armour."

I am indebted for this last authority to that valuable and useful treatise on Kandyan Law by Mr. Proctor Modder,* who, in discussing the relative value of Sawers' and Armour's opinions, points out (p. xii of the preface to that book) that "Armour was not only a Judge—not that being a Judge [Mr. Modder thinks] necessarily adds to the weight of one's authority—but a Sinhalese scholar, a qualification which Sawers lacked, and an apt student possessed of an inquiring turn of mind and imbued with an anxiety to acquire the best information on any subject he was interested in. His long and extensive intercourse with the Kandyan chiefs and Buddhist priests, with whom he, as interpreter and secretary, came into daily contact for upwards of eighteen years, gave him an insight into the laws, customs, and usages of the Kandyans, which few people differently placed could have obtained. Moreover, he was constantly surrounded by records of the Judicial Commissioner's Court, and made the best use of them by noting down points of interest and importance, so that, as pointed out by Carr, C.J., the authority of Mr. Armour, founded as it is on a series of decisions of the late Judicial Commissioner's Court, is certainly entitled to greater weight than is sought to be assigned to it."

In a note to p. xiii of the same preface I find the following:—
"The late Mr. C. L. Ferdinands, Solicitor-General, and afterwards District Judge of Colombo, who stood in the first rank of Kandyan lawyers, in arguing a point of Kandyan Law before the Supreme Court in appeal said: 'The point was a new one, but

* "A Treatise on Kandyan Law, collated from the works of D'Oyly, Sawers, and Armour; with the case law bearing on the subject, systematically arranged for facilitating reference; and with an introduction by Frank Modder, Proctor, Supreme Court, Ceylon. Life Member of the Ceylon Branch of the Royal Asiatic Society." Albion Press, Galle, 1902.—Ed.

1903. *February 18 and 20.* Armour was a safe authority on such questions.' Creasy, C.J., in upholding the contention of Mr. Ferdinands, ruled: 'It seems to us that the District Judge did right in following the authority of Armour.' (D. C., Kandy, 56,750; 2 *Grenier*, 1873, pt. III. p. 25.)"

I am not convinced that on every occasion we ought to give greater weight to Sawers' opinion than to that of Armour. The District Judge has followed the latter, and I am not prepared to say that in the present case he was wrong in doing so. There is nothing to show me that Sawers' opinion on this particular point should be given greater weight to than Armour's, and as I cannot say that the District Judge is wrong in following it I would affirm the judgment of the Court below.

As pointed out by the respondent's counsel, the particular passage relied on by the District Judge is cited with approval by Phear, C.J., in a judgment of the Full Court (*Punchirala v. Punchi Menika*, 2 S. C. C. 44), and I consider that approval should not be lightly disregarded, and that no sufficient reasons have been shown why we should not follow the opinion of Armour in this particular case. The judgment of the District Judge must be affirmed with costs.

MONCREIFF, J.—

I agree that we should follow the law as we find it in Armour. The passage quoted from Sawers has some appearances of being at variance with Armour; but it does not contradict him, and it does not enable me to say with certainty what Sawers would have said if the precise case contemplated by Armour had been put to him.
