

SAMARAKOON
v
SAMARAKOON AND ANOTHER

COURT OF APPEAL
UDALAGAMA, J., AND
NANAYAKKARA, J.
CA NO. 1035/93 (F)
D.C. KANDY 9742/P
FEBRUARY 11 AND
NOVEMBER 14, 2003

Kandyan Law Ordinance, No. 3 of 1870 – Right of a deega married daughter to acquire property of father – Entry in marriage certificate – Is it conclusive? – Right of a Buddhist priest to parental inheritance – Vinaya discipline – Buddhist Temporalities Ordinance, section 23 – Pudgalika property – Inheritance from father permitted under the statute.

Held:

- (i) The marriage as being one under the General Marriages Ordinance, there is no indication as to whether the marriage was in fact a *deega* or *binna* marriage as found in the marriage certificate issued under the Kandyan Law Ordinance. In the circumstances, the marriage certificate by itself would not clearly indicate that the parties have gone out in *deega*.

Furthermore there appears to be no cogent evidence of a severance with their *mulgedera* so essential to a *deega* marriage.

- (ii) When considering section 23 of the Buddhist Temporalities Ordinance, a Buddhist priest is entitled to own property which is termed as *pudgalika* property. The provisions of section 23 permit such priest to even inherit property. Notwithstanding the rules of Vinaya, the statute permits priests to deal with property and as such the transfer of shares by the priest reciting title as to have devolved from his father is not invalid.

APPEAL from the judgment of the District Court of Kandy

Rohan Sahabandu for appellant.

L.C. Seneviratne, P.C., with *U.H. Wickremasinghe* for plaintiff-respondent.

Cur.adv.vult.

July 15, 2003

UDALAGAMA, J.

The plaintiff in D.C. Kandy case No. 9742/P instituted action to partition a land called Kande Kumbura of 12 Lahas paddy sowing extent morefully described in the Schedule to the plaint. 01

The parties to the action appear to have accepted the corpus to be partitioned and that the original owners of the said land were Punchi Rala, and Dingiri Appuhamy and that the parties were Kandyans governed by the Kandyan Law.

The case had gone to trial on 30 issues and the learned District judge having considered the evidence of the Surveyor who executed the Commission, the officers from the Land Registry, and the plaintiff who tendered documents marked P1 to P13 including the plan 'X' and also the evidence of the 1st defendant, H.B. Samarakoon on behalf of the 2nd defendant, by his impugned judgment dated 16.07.1993 entered judgment for the plaintiff on the basis of shares as referred to by the learned District Judge in his answers to issues Nos. 27 and 28. 10

Aggrieved, the 2A defendant-appellant appeals therefrom.

The two questions for determination in this appeal as submitted by the learned Counsel for the appellant and also conceded to by the learned Counsel for the respondent were the rights of a "deega" married daughter to acquire the property of the father on the basis of paternal inheritance and the rights of a Buddhist priest to paternal inheritance. It is apparent from the proceedings that the parties were agreed as to the original owner of the corpus to be partitioned (Menik Rala alias Dingi Rala) and that he died leaving as his heirs his two sons called Punchi Rala and Dingiri Appuhamy referred to above. 20

It is also common ground that Punchi Rala had four children, namely, Dingiri Appuhamy, Dingiri Menika, Dingiri Amma and Rev. Seelananda. 30

It is also conceded that Appuhamy aforesaid had six children including the 2nd defendant, Heen Banda, the predecessor to the 2A defendant-appellant.

The dispute appears to have arisen over the claim of the 2A defendant that Dingiri Menika and Dingiri Amma referred to above who purportedly went out in "*deega*" had forfeited their rights to the paternal inheritance and the other son who robed as Rev. Seelananda had also forfeited his rights to any property inherited from his father leaving Appuhamy the sole heir to the paternal inheritance of Punchi Rala, the half share owner.

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Dingiri Amma referred to above who is said to have married in "*deega*" vide the marriage certificate bearing No. 1102 (2D4) undoubtedly indicate that the marriage as being one under the General Marriages Ordinance and that there is no indication as to whether the marriage was in fact a "*Deega*" or "*Binna*" marriage as found in the marriage certificates issued under the Kandyan Law (Ordinance No. 3 of 1870). Accordingly it is my view that the entry in 2D4 by itself would not clearly indicate that the aforesaid Dingiri Amma had, gone out in "*deega*". That fact cannot be determined on the face of 2D4. The same reasoning is relevant in respect of Dingiri Menika who also appears to have got married under the General Marriages Ordinance, vide 2D5.

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Dingiri Amma referred to above who was entitled to 1/8 share from her father had transferred that share without objection from Appuhamy the predecessor of 2A defendant-appellant. The same could be said of the rights of Dingiri Menika. The aforesaid transfers had taken place as far back as 1920 and 1928. Significantly even the children of said Appuhamy had not objected to such transfers, nor taken any step to invalidate them. The learned District Judge's conclusion that Dingiri Amma and Dingiri Menika had married after the death of their father and that the rights of the father Punchi Rala devolved on them is in accord with the evidence. So is the finding of the learned District Judge that Dingiri Amma and Dingiri Menika by deeds 1623 dated 26.04.1920 and the deed No. 203 dated 18.02.1928 referred to above had as stated in the deeds referred to transferred their rights which as stated had devolved on them from paternal inheritance 60 years prior to the institution of this action without any objection by anyone implying acquiescence to their rights of paternal inheritance. In any event there appears to be no cogent evidence of a severance with their *mulgedera* so essential to a '*deega*' marriage.

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Rev. Seelananda referred to above another son of Punchi Rala by deed No. 596 dated 11.03.1931 has also transferred his rights to the land, the subject matter of this action, on the basis of paternal inheritance which as stated by the learned Counsel for the appellant was against Vinaya discipline, However, I am inclined to the view when considering the provision of section 23 of the Buddhist Temporalities Ordinance that a Buddhist priest under the said ordinance is entitled to own property which is also termed as "Pudgalika property." The provisions of section 23 aforesaid also permits such priest to even inherit property. In view of the said provision I am inclined to the view notwithstanding rules of Vinaya that Statute permits priests to deal with property and as such the transfer of 1/8 share by Rev. Seelandanda reciting title as to have devolved from his father is not invalid. 80

Accordingly I am inclined to the view that the learned District Judge by his impugned judgment had on the above two pivotal matters before court had clearly come to a finding on the evidence led before him on a balance of probability relevant to issues Nos. 20 and 21 that Dingiri Menika, Dingiri Amma and Rev. Seelananda's rights to paternal inheritance had not been affected and that the impugned judgment does not warrant interference. 90

Accordingly this appeal is dismissed with costs.

NANAYAKKARA, J. - I agree.

Appeal dismissed