

APPUHAMY v. KIRIHENEYA *et. al.*

D. C., Kandy, 8,647.

1896.

July 10
and 14.

Burden of proof—Proof not necessary of averments not denied and in respect of which no issue is framed—Kandyan Law—Right of widow to alienate husband's property for payment of his debts—Duties and status in family of Kandyan widow.

When a defendant makes an averment in his answer, and no replication is filed to meet it, it is open to the plaintiff, if he denies the averment, to have an issue framed on it, and thus put the defendant to the proof of the facts averred. If no issue in that way is settled, parties must be held not to have been at issue on those facts, and no burden lies on the defendant to prove them.

Under the Kandyan Law, a widow left by the husband's death with young children was the head of the house and family until her sons grew up to manhood. On her devolved the duty of paying her husband's debts. So, where a Kandyan widow sold her deceased husband's lands to pay his debts, *held*, that the purchaser acquired a good title as against the husband's heir.

THIS was an action to recover possession of certain lands that belonged to one Ranghami, deceased. The plaintiff was his son, and claimed as his sole heir. The defendants were purchasers of the lands from Ranghami's widow. They averred in their answer that Ranghami had died in debt, and that the lands had been sold to them by his widow to enable her to pay his debts. No replication was filed, and no issue was suggested by the plaintiff on that averment. The District Judge, however, held that the defendants should have proved that averment; but inasmuch as they had omitted to do so, and the plaintiff had proved title, he gave him judgment. The defendants appealed.

Dornhorst, for appellants.

Sampayo, for respondent.

Cur. adv. vult.

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14th July, 1896. LAWRIE, J.—

The learned District Judge intimated in his judgment that he would have dismissed the action if the defendants had proved that the father of the plaintiff had died in debt, and that his debts were paid by the price paid for these lands when they were sold by his widow.

The defendant averred these facts in the fifth paragraph of the answer; the plaintiff did not reply. It was open to him, if he denied the averments in that fifth paragraph to have had an issue framed and so to have put the defendant to the proof. No issue to that effect was settled, and I take it that the parties must be held not to have been at issue on these facts. I hold that the defendants' averments that the sale was to pay the ancestor's debts were not denied, and that no burden lay on the defendant to prove these.

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 *diga*; 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. This sale was completed by the widow more than thirty years ago. It appears that the widow acted unselfishly, for she sold acquired lands in which she had a greater personal interest than in the *paraveni* lands which she did not sell.

The defendants have a title which the plaintiff has no right to disturb. The judgment is set aside, and judgment is entered for the defendant with costs.

WITHERS, J.—

My brother Lawrie's judgment has my hearty concurrence. It seemed just enough in all conscience that the defendant should be quieted in the possession of a land which he has held under a *boná fide* title for more than a quarter of a century. As my brother has shown, justice in this case is according to law. Appellant to have his costs in both Courts.