

1905.
December 13.

APPUHAMI v. LAPAYA.

C. R., Kegalla, 6,202.

Kandyan Law—Acquired property—Illegitimate children—Succession.

B, who was owner of a certain land by purchase, died intestate, leaving him surviving (1) H, his son; (2) W, the illegitimate son of his late son R; and (3) L, his nephew. H also subsequently died intestate and without issue and survived by W and L. W conveyed half share of the land to his mother, who conveyed to plaintiff in an action by plaintiff against L.

Held, that on B's death W became entitled to a half share of the land.

Under the Kandyan Law where a person dies intestate leaving both legitimate and illegitimate children, his *acquired* property is divided equally between them.

Bawa, for appellant.

H. Jayewardene and *Wadsworth*, for respondent.

13th December, 1905. WENDT, J.—

This appeal raises a question of Kandyan Law as to intestate succession. One Balaya acquired by purchase the land in question, and dying intestate left surviving him (1) his son Horatala, (2) Wattuwa, the illegitimate son by one Salloo of his late son Rattarana, and (3) the first defendant, who on the one hand is said to be the son of both Balaya and his brother Kiriya by a common wife Garu, and on the other hand the son of Kiriya alone. Horatala next died intestate and without issue, survived by Wattuwa and Salloo and first defendant. Wattuwa conveyed half Balaya's interest in the land to his mother Salloo, who thereafter conveyed it to plaintiff. Plaintiff's case is that Wattuwa inherited one-half of Balaya's share of the land, as it was acquired property, and that Horatala took the other half. The Commissioner, if I understand him aright, is of opinion that although Wattuwa would have inherited his father Rattarana's acquired property, he was excluded from inheriting his grandfather Balaya's acquired land by the existence of Horatala. On Horatala's death the land, as his *paraveni* property, passed to first defendant, whether he was half-brother or cousin only of Horatala, Wattuwa being excluded from the inheritance of *paraveni* land by the illegitimacy of his birth.

The question is, did Wattuwa inherit any interest in Balaya's estate? Had Rattarana lived to inherit, Wattuwa would on the death have taken no part on the inheritance, because the land would then have become his father's *paraveni* property. Can we look upon

his claims as being on exactly the same footing, as if they were preferred by Rattarana being alive at Balaya's death and being an illegitimate son?

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Assuming we can, Armour says (*Cap. III., sec. 2, Perera's Edn. p. 34*): "In some cases illegitimate children are even competent to inherit their fathers' *purchased lands* as well as goods and chattels. Thus, if a man of high caste cohabited with a woman of inferior family rank and maintained that woman in his own house, and was attended and assisted by her until his demise, then, in case that man died intestate and left not a widow who had been lawfully wedded to him, and left not legitimate issue, his landed property, which he had acquired by purchase, will devolve to his illegitimate issue, the child or children of the said woman of low caste or inferior family rank; but his *paraveni* or ancestral lands will return to his next of kin amongst his blood relations." These words imply that a widow or legitimate issue would exclude the illegitimate children from inheriting the acquired lands. The old authority, Sawyer, does not support this view: he merely states (pp. 7, 8): "The issue of his low caste wife can inherit the lands acquired by their father. . . . but should no provision of this kind exist for the children of the low caste wife, they will in that case be entitled to temporary support from their father's hereditary property." The *Niti-Nighanduwa* is the basis of Armour's work, in fact the original edition of his book was *Niti-Nighanduwa* or Grammar of Kandyan Law." The original passages (at pp. 14 and 71 of LeMesurier and Panabokka's translation of the Sinhalese work) give no countenance to the statement that a widow or legitimate children would exclude the illegitimate children. And in *Mahatmaya v. Banda* (2 S. C. R. 142) Lawrie, J., held (although the point did not arise for adjudication) that the acquired property would be divided between the legitimate and illegitimate issue. He gives a reference to D. C., Kandy, 721, which I had occasion recently to verify. The judgment of the Supreme Court in that case delivered on the 24th August, 1842, held that the legitimate son took one-half of the acquired property and the illegitimate children the other half. In the hypothetical case I have put, therefore, Rattarana would have shared with Horatala the acquired property of Balaya.

Then does the fact that Rattarana was dead when the succession opened make any difference? In principle I can see no reason for holding it does. "Acquired property" in Kandyan Law possessed the quality of being heritable by illegitimate children as well as by legitimate, and Wattuwa was therefore not disentitled to take a share. He succeeds directly to his grandfather; the property does

1905. not come " through " his father Rattarana in the sense that the
December 13. father ever had any interest in it, and there is therefore no reason
WENDT, J. for the argument that when it reached Wattuwa it was Rattarana's
paraveni property.

It follows that Wattuwa was entitled to sell to his mother one-half of Balaya's interest of one-eighth of the land. The remaining one-eighth has passed from Horatala to first defendant. Plaintiff will therefore have judgment against first defendant for one-eighth of the land (worth Rs. 30), with costs in the appropriate class in the Court of Requests. The dismissal of the action as against second defendant is affirmed, but without appeal costs to second defendant. The first defendant will pay plaintiff's appeal costs.
