

In the Matter of the Intestate Estate of BANDA, Deceased.
MALAGOMUWA RAM MENIKA, Applicant for Letters of
Administration, and DINGIRI BANDA, KORALA, Respondent.
NELLOWA UKKU AMMA, Opposing Petitioner.

1897.
October 7.

D. C. (Testamentary), Kurunegala, 576.

*Testamentary jurisdiction—Application for letters of administration—
Petition of opposition and prayer that opponent may be recognized
as an heir of the intestate—Omission to name opponent as an heir
in applicant's petition—When such issue may be raised—Civil
Procedure Code, ss. 530 and 533—Kandyan widow's right under
s. 531.*

The question whether a person, not named as a respondent to the petition for letters of administration, is an heir of the intestate, may be tried as an issue between the applicant and opponent at the earliest opportunity.

IN this matter the applicant, as the widow of the late Malagomuwa Ratemahatmaya, applied for letters of administration to his estate, naming in his petition her son (the respondent) as the only heir of the intestate. The opposing petitioner, alleging to be the daughter of the intestate by his first wife, filed a petition of opposition, and prayed that her name may be added on the record as an heir, and that she may be declared entitled to joint administration with the applicant. The applicant denied that the opposing petitioner was the daughter or an heir of the intestate, and contended that the petition of the opponent was premature, and that she should wait to prefer her claim to be named an heir till the assets were ready for distribution. The matter came on for hearing on 5th August, 1897, when the Acting District Judge (Mr. J. S. Drieberg) made the following order :—

“ Petitioner, Ram Menika, has applied to administer the estate of her husband, Tennekon Mudiyansele Banda, Ratemahatmaya, naming herself and her son, the respondent, as heirs. The opposing petitioner, Ukku Amma, alleges that she is the daughter of the deceased by his first wife, Kiri Menika, and as such is an heir of the deceased along with the petitioner Ram Menika and her son Dingiri Banda.

“ The opposing petitioner prays that her name may be entered in the record as an heir of the intestate, and that she may be declared entitled to administer the estate with the respondents or either of them.

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“ The petitioner denies that the opposing petitioner is a daughter of the intestate. An order *nisi* was entered on petitioner’s application under section 531 of the Civil Procedure Code. The opposing petitioner’s application is made under section 533. It was contended by Mr. Sampayo, for the petitioner, that the opposing petitioner’s application to be named an heir of the intestate is premature, and could not be made at the present stage of the case; and that the only objection permissible to be now raised is objection of grant of letters of administration to the applicant.

“ The omission to name an heir is a relevant fact (section 530), and is one which the opposing petitioner was bound to raise at the earliest opportunity, and which the Court, for obvious reasons, should adjudicate on at once.

“ It appears to me unreasonable in the extreme, as contended for by Mr. Sampayo, that the opposing petitioner should be required to wait to prefer her claim to be named an heir till assets are ready for distribution.

“ In my opinion the procedure adopted by Mr. Goonewardene, in preferring the claim of the opposing petitioner at this stage and asking that it be adjudicated upon, is quite correct (sections 533 and 535). Surely, the question whether or not the opposing petitioner is an heir is one arising between the parties, and which should be tried (section 533).

“ For the above reasons I frame the following issues under section 533 :—(1) Was Kiri Menika the lawful wife of the intestate? If so, (2) Is Ukku Amma the daughter of intestate and Kiri Menika?

“ Mr. Goonewardene desired that if it be found that the opposing petitioner is an heir of the intestate, her claim to joint-administration with the petitioner and her son, the respondent, or either of them, be considered, on the ground that section 523 does not apply to a Kandyan widow, whose rights as such are essentially different to, and much less than, those of a widow under the Roman-Dutch Law. I must decline to frame such an issue. Section 523 makes no exception, and the petitioner, who is admittedly the widow, is entitled to administration. I appoint the 18th instant for the trial of the issues framed, costs to abide result of same.”

Against this order the applicant appealed.

Sampayo, for appellant.

Dornhorst and *H. Jayawardana*, for respondent.

7th October, 1897. LAWRIE, A.C.J., and BROWNE, A.J.—

Affirmed, no reasons to the contrary appearing to this Court.