

Present : Bertram C.J.

1922.

NANDUWA v. PUNCHIRALA et al.

111—C. R. Panwila, 5,101.

Kandyan law—Intestate succession—Person dying leaving children by two or more beds.

Where a person dies intestate, leaving issue by two or more beds, the estate is divided among children *per stirpes* and not *per capita*.

IN this case the plaintiff sued the defendant for possession of the western half share of the field called Uduporowekumbura of 5 lahas in paddy sowing extent by inheritance through his full-brother Puncha. The defendants filed answer stating that the second defendant as a half-sister of the plaintiff was entitled to half of the field. At the trial the plaintiff admitted that the second defendant was the daughter of his mother Kirie by her second husband. On this admission the learned Commissioner of Requests declared the second defendant entitled to half the share of Kirie's estate.

The plaintiff appealed.

H. V. Perera, for appellant.

R. C. Fonseka, for respondent.

August 21, 1922. BERTRAM C.J.—

There is no doubt that both in the answer and in the issues, the law on this matter had been misconceived, but the learned Judge has correctly apprehended it. It has been settled by a decision of this Court in *Siriya v. Kalua*¹ that where a person dies intestate, leaving issue by two or more beds, the estate is divided among the children *per stirpes* and not *per capita*. That is recognized as settled law in *Modder's Kandyan Law*, paragraph 268, page 504. Mr. H. V. Perera asks me to refer this matter again for a Full Court, as the Court in 1889 was not unanimous. I do not feel justified in doing so. The law has been so accepted since the year 1857, and I agree with the observations of Burnside C.J., that there should be a fixed rule rather than one varied from time to time. Mr. Perera suggests there may be some ambiguity, and asks me to declare that his client is at least entitled to an undivided half of the land in question. That, however, was not contested, and I think the learned Judge's judgment and his decree admit of no ambiguity.

The appeal must therefore be dismissed, with costs.

Appeal dismissed.

¹ (1889) 9 S. C. C. 45.