

MANIKKAN *et al.* v. PETER.

D. C., Kegalla, 954.

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Kandyan wife—Marriage with low-country Sinhalese man residing in Kandyan territory—Death of the wife, intestate, leaving her surviving her husband and child—Death of the child—Inheritance—Ordinance No. 15 of 1876, ss. 2 and 6—“Different race.”

A low-country Sinhalese is not a person of “different race or nationality” (in the words of section 2 of the Ordinance No. 15 of 1876) from a Kandyan Sinhalese. Therefore, under the proviso of the same section, the matrimonial rights of a low-country Sinhalese husband and his Kandyan wife are to be governed by the Kandyan Law.

Where D. M, a Kandyan woman, married a low-country Sinhalese man living in the Kandyan territory and died intestate, leaving her surviving her husband and an infant child, which also died,—

Held, that her mother and brother, and not her husband, should inherit her property.

THIS was an action to declare that plaintiffs were entitled to the whole of a certain land and to an undivided one-third of another land. It was admitted that the land belonged to one Dingiri Mahatmaya, and was purchased by her from her father Balahamy by a deed dated 9th October, 1889; that she married the defendant, a low-country Sinhalese residing in the Kandyan Provinces, on the 12th September, 1894; that the marriage was

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registered and the husband and wife lived in Balahamy's *mulgedara* till the 21st December, 1896, when Dingiri Mahatmaya died intestate, leaving her surviving an infant child, who died a few days afterwards; and that the plaintiffs were purchasers from the mother and brother of Dingiri Mahatmaya.

The issue was whether the mother and the brother of Dingiri Mahatmaya or her husband inherited her property, which was situated in the Kandyan Provinces.

The District Judge gave judgment for plaintiff as follows:—

“ The facts are admitted. The only question for decision is whether the succession to Dingiri Mahatmaya's lands is to be governed by the Kandyan Inheritance Law or the Roman-Dutch Law.

“ In my opinion the *lex loci rei citæ* must apply *i. e.*, the Kandyan Law. The Matrimonial Rights and Inheritance Ordinance, No. 15 of 1876, section 2, enacts that ‘ whenever a woman marries, after the proclamation of the Ordinance, a man of a different race or nationality from her own, she shall be taken to be of the same race and nationality as her husband for all the purposes of the Ordinance. Save as aforesaid, this Ordinance shall not apply to Kandyans or Mohammedans, or to Tamils under the Tesavalamai.’ Dingiri Mahatmaya did not marry a man of a different race or nationality from her own. The Sinhalese of the maritime provinces are not a different race or nation from the Sinhalese of the high lands, commonly called Kandyans.

“ I hold that the land mentioned in the libel devolved, on the death of Dingiri Mahatmaya's child, on her mother and brother by purchase, from whom they are claimed by the plaintiff.

“ Let judgment be entered for plaintiffs as prayed with costs of suit.”

H. Jayawardena, for appellant.—It has been decided in *Wijesinha v. Wijesinha* (9 S. C. C. 199) that the Kandyan Law does not apply to a low-country Sinhalese man resident in the Kandyan Provinces. He is not of the same race as the Kandyan. Therefore, when Dingiri Mahatmaya married the defendant, she became, under section 2 of the Ordinance No. 15 of 1876, a low-country Sinhalese. The matrimonial rights of these persons must be governed by the provisions of that Ordinance. Upon the death of Dingiri, section 26 made her surviving husband her heir to one-half of her immovable property and the other half went to her infant child; and upon the death of the child intestate, its half went under section 40 to the father (the defendant) by the North Holland Law. The judgment of the Court below is thus clearly wrong.

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Bawa (with him *Dornhorst*), for respondent.—That would be the conclusion if the premises were allowed. But the defendant is nationally and racially one with his deceased wife, and the inheritance must be governed by the Kandyan Law, under the proviso of section 2 of the Ordinance No. 15 of 1876. The reasons given by each of the judges who decided *Wijesinha v. Wijesinha* are not the same, and Mr. Justice Dias's dictum that the low-country Sinhalese man was as much a stranger in the Kandyan Provinces as a European admits of considerable doubt. It is not denied that the Sinhalese in the Kandyan country and those in the maritime districts are members of the same nationality, that is, they occupy the same country, speak the same language, and are ruled by the same religious and social ideals of life. These facts denote a common origin, which is also what the term "race" means. Race means common stock. Hence the provisions of the Matrimonial Rights and Inheritance Ordinance do not apply to the present case. The District Judge is right in deciding the question of inheritance by the rule of the Kandyan Law.

H. Jayawardena in reply.

Cur. adv. vult.

11th September, 1899. WITHERS, J.—

The facts of the case which present a question of law for decision are the following:—One Dingiri Mahatmaya owned some lands which are situate in the Kandyan Provinces. She married a Sinhalese of the low-country, who lived with his wife on one of her lands and in it she died. This lady's mother and brother, claiming to succeed to her landed property as her next of kin, alienated these lands to the plaintiff, a Moorman.

The defendant is in possession of these lands, which he avers belong to him by right of his wife, who died intestate, and by right of a child, their sole offspring, who survived his mother, but died before action brought.

The question is, Who has the superior title, the plaintiff or the defendant? The defendant's counsel argued that the provisions of the 6th section of the Matrimonial Rights and Inheritance Ordinance of 1876 pointed to the Roman-Dutch Law as the law which should govern this case.

That section enacts as follows:—

"The respective matrimonial rights of every husband and wife, domiciled or resident in this Island, and married after the proclamation of this Ordinance, in, to, or in respect of movable property shall, during the subsistence of such marriage and of such domicile or residence, be governed by the provisions of this Ordinance."

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It was argued as a matter of fact that Dingiri Mahatmaya married a person of a different race, and hence, as the wife died intestate, the surviving husband, under section 26 of the Ordinance, would inherit one-half of her immovable property, and the other half would, under section 27, devolve on the child of the marriage; and that as the child died intestate, the child's half of the immovable property would devolve on the father by the Roman-Dutch Law as it prevailed in North Holland (see section 40 of the Ordinance). Now, I think, that argument is quite sound if Dingiri Mahatmaya's husband can be regarded as a person of a different race and nationality from his wife. The husband was of course of the same nationality as his wife, but was he of the same race as well? Reliance was placed by counsel, who so contended, on the dictum of Mr. Justice Dias in the case of *Wijesinha v. Wijesinha*, D. C., Kegalla, No. 6,283, reported in 9 S. C. C. 199.

In that case two low-country Sinhalese married in community of estate and settled at Ambepussa, where they acquired landed property, and the question for decision was whether the right of inheritance to that property was to be governed by the Roman-Dutch Law or the Kandyan Law. Chief Justice Burnside decided that the question must be governed by the Roman-Dutch Law, on the ground that as the property was situated in the maritime provinces the *lex loci rei citæ* determined the matter. Mr. Justice Clarence came to the same conclusion on somewhat different grounds. He observed that it was impossible to maintain that what has been considered as Kandyan Law amounted to a distinct *lex rei citæ* governing absolutely the devolution of land, as, for instance, gavelkind land in Kent; that all we know is that a certain section of the community within the Kandyan Provinces, viz., the Kandyan Sinhalese, were allowed to retain their own customary law. Hence, as the husband and wife in that case were not Kandyan Sinhalese, but Sinhalese of the maritime provinces, it could not be maintained that they became subject to the incidents of the Kandyan Law.

Mr. Justice Dias came to the same conclusion, but he made observations in his judgment, which have been pressed upon by counsel. He observed that a low-country man, *i.e.*, a Sinhalese man settled in the maritime provinces, was as much a stranger in the Kandyan Provinces as a European, and in *Robertson's* case, reported in 8 S. C. C. 36, this Court had held that the devolution of property of Europeans in the Kandyan Provinces was not subject to the customary laws of the Kandyans, and that in his opinion the same rule would apply to a Sinhalese man of the maritime provinces.

But it will be seen that Mr. Justice Dias was dealing with the case of a Sinhalese man of the maritime provinces who had acquired lands in the Kandyan Provinces.

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This is a case relating to inheritance to a land owned by a married woman of the Kandyan Provinces. Nor is it a decision on the point before us whether a Sinhalese man of the maritime provinces is of a different race to that of a woman of the Kandyan Provinces. It may be, from his observations in that case that he would have gone that length.

Now, what was the object of the Matrimonial Rights and Inheritance Ordinance of 1876? It was to break up the old Roman-Dutch Law of community of estate and to preserve the separate interests of husband and wife in immovable property. By that Ordinance a married woman, who has a separate interest in immovable property, can dispose of it in her husband's lifetime by any lawful act *inter vivos*, with the written consent of her husband, but not otherwise, and she is quite free to dispose of it by last will.

By this Ordinance it was also intended to conserve the customary law of Kandyans, Mohammedans, or Tamils of the Northern Province who are or may become subject to the Tesavalamai, except in those cases where the husband is not of the same race and nationality as the wife.

So we come back to the question of race. What does "race" connote? It connotes, in my opinion, a people belonging to the same stock. It can hardly be contended that the Kandyan Sinhalese and the Sinhalese of the maritime provinces are not people of the same stock. If the question of law is to be answered as I have answered it, the judgment must be affirmed. I would accordingly affirm it.

BROWNE A.J.—I agree.

