

MUDALIHAM I v. BANDIRALA.

C. R., *Matale*, 1,763.

1898.
March. 4.

Kandyan Law—Acquired property—Inheritance—Property purchased by son from father.

P's father sold and transferred certain lands to P. P died intestate, leaving him surviving a paternal aunt and a maternal uncle—*Held*, that under the Kandyan Law the lands were the acquired property of P, and as such devolved, unlike ancestral paraveni property, on the maternal uncle.

THIS was an action in ejectment and for a declaration of title to certain lands which the plaintiff, a Kandyan, claimed as the uncle and only living heir of one Punchirala, who was admitted by the defendants to be the owner of the lands in dispute.

The issues framed were : (1) Is plaintiff the brother of Punchi Menika, the mother of Punchirala ? (2) Is the third defendant a sister of Bandirala, who is the father of Punchirala ? (3) Is first defendant entitled to the land as an associated husband (with Bandirala) of Punchi Menika, whose son was Punchirala ? And (4) Has any title passed to second defendant by the alleged sale to him by first defendant ?

After evidence heard, the Commissioner (Mr. Panabokke) dismissed plaintiff's case by the following judgment :—

“ This is a pure case of Kandyan Law. The issue presented to the Court for decision is shortly, whether the property of an intestate Kandyan who died childless goes to his mother's or father's relations.

“ As the property in question has descended from the father and not the mother, it is clear that it must go to the paternal aunt of the deceased and not to his maternal uncle, who is plaintiff in this case. The case reported on 3 S. C. C. of 12th July, 1878, is exactly in point.

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“The first defendant in this case has no right whatever to the land, nor has the second, who claims to derive his title under the first. I hold the first and second issues proved, namely, that plaintiff is brother of Punchi Menika, and that Kiri Menika is sister of Bandirala.

“I have already decided the other two issues.

“I therefore dismiss the claims of the plaintiff, and give judgment for the lands for Kiri Menika, with costs. Plaintiff and first and second defendant will bear their own costs.”

Plaintiff appealed.

Bawa, for appellant.

Sampayo, for respondent.

4th March, 1898. BONSEE, C.J.—

This is a dispute between the paternal aunt and the maternal uncle of one Punchirala (who died intestate) as to the right of inheritance to his landed property.

That question depends on another question as to whether the landed property is acquired property, or is what is called ancestral paraveni property. If it is ancestral paraveni property, the paternal aunt is entitled to it, because, according to Kandyan Law, paternal property reverts to the paternal side and maternal property to the maternal side ; but if it was acquired property, the maternal uncle would be entitled to succeed. Sawyer (page 13) is the authority for that proposition. I am of opinion that this was acquired property of Punchirala. It is stated in the pleadings and not denied that Punchirala's father sold and transferred the said lands to his son Punchirala. Under these circumstances it seems impossible to hold that this was not acquired property.

It is not necessary to decide whether the result would have been the same if Punchirala had acquired the property by donation from his father. It was argued that acquired property means property acquired in any way except by descent, and that the word “acquired” is equivalent to the English term “purchase” in its legal signification.

Mr. Justice Grenier in *Tennekoongedera Ukkurala v. Samarasinghe William Tillekeratne* (5 S. C. C. 47) seems to have been of that opinion, but, as I said before, it is not necessary to decide that question now.

The decree will be reversed, and it will be declared that the maternal uncle is entitled to succeed. He will have his costs.