

## PERERA v. SETUWA

155—D. C. Kurunegala, 4,919

*Kandyan law—Diga-married sister—right to inherit paraveni property of deceased sister.*

A *diga*-married sister is precluded by her *diga* marriage from inheriting the *paraveni* property of her deceased sister.

THE facts are set out in the judgment.

*G. Koch*, for the plaintiff, appellant.—The effect of *diga* marriage is to prevent a *diga*-married daughter from inheriting from her parents. She does not by a *diga* marriage forfeit a right to inherit from a deceased sister.

It has been held that even a *diga*-married daughter does not lose her right to inherit from her parents if she maintains a constant touch with the *mulgedara* (16 N. L. R. 238). Counsel cited *Armour* 50 ; *Sawyer 1 and 45* ; 478—C. R. Kurunegala, 1,526 (January 23, 1914) ; 192—C.R. Matala, 9,722 (July 30, 1912).

*J. S. Jayewardene*, for the respondent.—By a *diga* marriage a woman loses all rights to inherit the paternal property. Even property which a daughter inherits on the death of her parents ceases to be her property the moment she marries in *diga*. The principle of inheritance is that the paternal property should always remain in the family. Counsel cited *Armour* 50, 6 N. L. R. 133, 5 *Leader* 39, 7 N. L. R. 100, 2 N. L. R. 92.

*Koch*, in reply.

*Cur. adv. vult.*

July 1, 1914. LASCELLES C.J.—

This case raises the question whether, under Kandyan law, a *diga*-married sister is precluded by her *diga* marriage from inheriting the *paraveni* property of her deceased sister. Moluwa Duraya died about thirty-six years ago, leaving five children, one of whom, a daughter, Pini, died without issue. Her share in the paternal inheritance was one-fourth, as her sister Bilindi had been married out in *diga*, presumably in her father's lifetime. Bilindi, in November, 1910, by deed No. 995 purported to sell a one-twentieth share, being her share in Pini's inheritance, to the plaintiff, who is now bringing a partition action for the share.

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The cases of *Dingiri Menika v. Appuhami*,<sup>1</sup> *Dullewe v. Dullewe*,<sup>2</sup> *Dinga v. Hapuwwa*,<sup>3</sup> and *Kiriwatte v. Genetirala*<sup>4</sup> throw little light on the matter now in question, as the question is now with regard to paternal *paraveni* property, and not to acquired property.

The position assumed by the appellant is a curious one. Bilindi by her *diga* marriage unquestionably forfeited any share in the paternal estate. It is now contended that on the death of her sister without issue she is entitled to come in and claim a share of the same estate. This seems to me opposed to the recognized principles of Kandyan law.

Mr. Modder (page 178) lays down the proposition for which the respondent contends without doubt or qualifications: "If a man died without issue and intestate, leaving a sister married out in *diga*, and a brother, the latter will succeed to the deceased's share of the paternal *paraveni* lands to the exclusion of the *diga*-married sister, whether the said sister had been so married away previous to the demise of their father or subsequently." So, where the deceased leaves a brother and an unmarried sister, the share devolves on them in common, but if the sister is afterwards married in *diga*, she forfeits her share and the whole goes to the brother.

I cannot doubt the correctness of this statement of the law, which is supported by several authorities. For example, in *Armour* 43 (s. 19), under the heading "Rights of Brothers and Sisters," the writer, after laying down the proposition that a *diga*-married daughter, whether married before or after the father's death, is excluded from a share in the paternal estate, proceeds as follows:—

"If the deceased left a brother and an unmarried sister, his share of the paternal *paraveni* property will of course devolve to the survivors jointly; but in the event of the sister being afterwards married away in *diga*, she will thereby be deprived of her title to participate in the possession of the said lands, which will then remain entirely to the surviving brother."

This passage shows that by Kandyan law the disqualification of a *diga* marriage operates after the father's death, and after the children who succeeded him might be thought to have acquired vested interests. The Kandyan law appears to regard the paternal estate as still subsisting after the heirs have entered on the inheritance.

The next passage is still more to the point. A family consists of two brothers and a *diga*-married daughter. The first brother dies without issue, and his share devolves on the second brother. The second brother then dies leaving a widow and a child.\* Then the

<sup>1</sup> 6 N. L. R. 133.

<sup>2</sup> 5 *Leader Reports* 39.

<sup>3</sup> 7 N. L. R. 100.

<sup>4</sup> 2 N. L. R. 92.

\* [In this illustration the child predeceases the widow (mother). The widow takes a share by right of her child.—*Ed.*]

share of the first brother, which had devolved on the second brother, is divided between the *diga*-married sister and the second brother's widow. In this example, what is now in dispute is taken for granted. On the death of the first brother, the whole of his share goes to the surviving brother to the exclusion of the *diga*-married sister.

I think the District Judge has arrived at a correct conclusion, and I would dismiss the appeal with costs.

ENNIS J.—I agree.

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*Appeal dismissed.*

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