

1954

*Present: Gratiaen J. and Gunasekara J.*

FREDA WICKREMASINGHE, Appellant, and D. H.  
KIRIMUTTU *et al.*, Respondents

*S. C. 80—D. C. Kegalle, 7, 194*

*Kandyan Law—Kandyan widow—Diga association with another man after death of husband—Forfeiture of her rights in former husband's property.*

A Kandyan widow (whose husband died before the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938, came into operation) forfeits her life-interest in her husband's acquired property if, without contracting a valid marriage, she forms a *diga* association with another man.

**A**PPPEAL from a judgment of the District Court, Kegalle.

*B. H. Aluwihare*, with *W. D. Gunasekera*, for the 3rd defendant appellant.

*H. W. Jayewardene*, with *D. R. P. Goonetilleke*, for the plaintiff respondent.

*Cur. adv. vult.*

March 9, 1954. GRATIAEN J.—

The only question which calls for consideration in this appeal is whether a Kandyan widow (whose husband died before the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938, came into operation) forfeits her life-interest in her husband's acquired property if, without contracting a valid marriage, she forms a *diga* association with another man.

In *Ukkubanda v. Heenmenika*<sup>1</sup> a Divisional Bench of this Court authoritatively decided that a Kandyan widow's remarriage in *diga* is visited with forfeiture of her rights over the acquired as well as the *paraveni* property of her former husband. It has now been argued that no such forfeiture takes place unless the subsequent *diga* association is regularised by formal registration as a marriage under the Kandyan Marriage Ordinance (Cap. 96). In my opinion, however, the *ratio decidendi* of *Ukku Banda's case (supra)* is of wider import.

As Garvin J. points out, the principle underlying the rule of forfeiture on remarriage is that it generally results in "the quitting of the family house by the widow . . . involving a severance of the family tie". Similarly, Dr. Hayley observes that "the essence of the offence seems to have been the departure from the home rather than the remarriage"—*Sinhalese Laws and Customs* p. 359. According to the *Niti Niganduwa*, a Kandyan woman's "marriage right" entitles her to be maintained and supported from the profits of her husband's property even after his death, but only so long as she retains her connection with the "home" into which she was admitted on her marriage.

It seems to me that the test which ought to be applied in cases of this kind is whether all the circumstances in which a widow has "quitted the family home" and formed a *diga* association with another man are sufficient to justify the inference that she thereby intended finally and completely to sever "the family tie" which previously subsisted. An analogy may be found, *mutatis mutandis*, in the cases where a person voluntarily abandons his existing place of domicile *animo non revertendi*, and, by permanently settling in another country, acquires a new domicile of choice.

If we apply this test to the facts of the present case, we find that, shortly after her husband Punchi Banda died in 1937, his widow Dingiri Menika returned to the home of her mother and her brothers in the village of Maneloluwa. Not long afterwards, she and a man called Ukkubanda formed an association which, though not registered as a formal marriage was intended (and has so far proved) to enjoy a permanent character. Ever since then, they have lived together in Ukkubanda's house in Bamunugedera as if they were man and wife, and three children have been born to them. Should their association, even at this late stage, be formally regularised under the Kandyan Marriage Ordinance, it would be recognised retrospectively as a valid *diga* marriage, and their children would be legitimated—*Dissanayake v. Punchi Menike*<sup>2</sup>. But,

<sup>1</sup> (1928) 30 N. L. R. 180.

<sup>2</sup> (1953) 55 N. L. R. 108.

in the meantime, the severance of her tie with the family of her former husband and the consequential forfeiture of her rights in respect of his property are already complete. Her position is in no way better than that of a Kandyan daughter who forfeits her paternal inheritance by "going out in *diga*" without contracting a valid marriage.

For these reasons, I am of the opinion that the appeal should be dismissed with costs. " "

GUNASEKARA J.—I agree.

*Appeal dismissed.*