1937 *Present* : **Maartensz and Hearne JJ.**

TIKIRIKUMARIHAMY, appellant, *and* NIYARAPOLA *et al.*, Respondents.

38—D. C. Kandy, 5,201.

Adoption—Public declaration—No formal announcement—Validity—Kandyan law.

To constitute a valid adoption under the Kandyan law, there should be a public declaration that the child was adopted for purposes of inheritance.

The declaration need not be made on a formal occasion.

APPEAL from a judgment of the District Judge of Kandy.

N. E. Weerasooria (with him *S. W. Jayasuriya*), for petitioner, appellant.

H. V. Perera, K.C. (with him *E. B. Wikremanayake* and *Cyril E. S. Perera*), for respondents.

Cur. adv. vult.

November 30, 1937. MAARTENSZ J.—

The main question for decision in this appeal is whether the learned District Judge's finding that the added-respondents are the adopted children of Dingirikumarihamy, and her heirs as such is correct.

The petitioner-appellant, the deceased's step sister, applied in this suit for letters of administration as sole heir of the deceased. Her application was opposed by the respondent who claimed to be entitled to administer the estate as the deceased's husband.

The first added-respondent, referred to as Cyril in these proceedings, is said to be a son, of the deceased's or the son of respondent's cousin. It is possible that the deceased's cousin is or was the wife of the respondent's cousin and that both statements are correct.

The second added-respondent is a daughter of the deceased's sister.

There is no evidence as to the circumstances in which the first added-respondent was adopted. But there is evidence that he lived in the deceased's house, that he went to school from there . . . . which is not rebutted.

The second added-respondent was born in the deceased's house. Her mother's evidence is to the effect that she agreed to give the child to be born to her to the deceased if the child were a girl. This suggests that having adopted a boy, the deceased, who was childless, wished to adopt a girl.

There can, I think, be no doubt that the added-respondents lived with and were brought up by the deceased from their infancy. But that is insufficient to constitute a valid adoption according to the Kandyan law.

In the case of *Loku Banda v. Dehigama Kumarihamy*[1] it was held—I quote the head note—that "in order to constitute a valid adoption under the Kandyan law no particular formalities or ceremonies are required; but it is necessary that the parties should be of the same caste and that the adoption should be public and formally and openly declared and acknowledged, and it must also clearly appear that the adoption was for the purpose of inheriting the property of the adoptive parent."

We were referred in support of his contention to the case of *Tikiri Banda v. Loku Banda*[2] and the case of *Tikiri Kumarihamy v. Punchi Banda*[3].

In the former case there was evidence that the adoptive parent told the father of the girl to whom the alleged adopted child was proposed in marriage: "We have adopted the child intending to give all our property to him". The District Judge held that this evidence did not help the plaintiff who claimed adoption as it was merely a private conversation between the adoptive parent and the father of the girl.

Wood Renton J. said, I take it, with regard to the evidence "neither adoption as a protege, nor a private assertion of an intention to adopt for purposes of inheritance will suffice", and observed that the fact of adoption must be proclaimed with a degree of publicity which may vary according to circumstances.

Hayley, in his book on Kandyan Law at p. 207 states "the numerous cases, however, in which the Courts have refused to recognize adoption, although the intention to adopt seems to have been established, have apparently settled the law to the effect that there must be a public declaration; but what constitutes such a declaration has not been defined".

There are three cases in which the declaration of adoption was made on the occasion of a proposal of marriage. The first is D. C. Kandy, No 53809, *Grenier's Reports (1873) Part III., p. 117 (4)*) where the adoptive parent stated that he had adopted the first defendant, who

[1] *10 N. L. R. 100.* [2] *2 Bal. Rep. 144.* [3] *2 Browne's Rep. 299.*

claimed to be an adopted daughter, that he wished her to inherit his lands and objected to her being married in *diga*. This was held to be a formal declaration of adoption though it was not proved that it was made after a calling together of headmen or relations. What Sinhalese word was used for the word "inherit" does not appear in the judgment.

The next case is *Tikiri Kumarihamy v. Punchi Banda* (*supra*) where the adoptive parent said he had adopted his nephew and intended to give him his property. Bonser C.J. said that the words "to give him his property" were not the same as "to inherit" and held that the nephew had not proved that the adoption was for the purpose of inheritance.

In the third case *Tikiri Banda v. Loku Banda* (*supra*) already referred to, Wood-Renton J. emphasised the use of the words "to give" the property instead of "to inherit" the property, although the District Judge said the Sinhalese expression which was translated "to give" meant literally "to belong to" and thus meant "to inherit". The District Judge said that this statement was insufficient as it was made in the course of a private conversation. I presume he meant that it was not a formal declaration.

With all due deference, I think the learned Judges in the last two cases have attached too much importance to the actual words used and not considered the circumstances in which they were used. A child may be brought up in a house as an act of charity or adopted for the purpose of inheriting the property of the adoptive parent. If an adoptive parent on an occasion, as a proposal of marriage, says "I have adopted the child to give him my property", I cannot see what other inference there can be but that the adoption of the child was for the purpose of the child inheriting the property of the adoptive parent.

I am accordingly of opinion that the intestate's statement to the schoolmaster that she was bringing up the children and that she intended to give her property to the children was a declaration that she had adopted the children in order that they should inherit her property.

The next question is whether the statement to the schoolmaster and the 2nd added-defendant's mother was a public declaration. In my judgment, what Sawer meant when he said that the adoption must be publicly declared was that there must be evidence of persons to whom the fact of adoption was expressed and that it could not be implied from the fact of a person being brought up in the adoptive parents' house and treated as a child of the house.

There remains the further question whether the adoption must be formally declared.

Solomons, in his *Manual of Kandyan Law* (*page 6*) lays down on the authority of three cases reported in *Austin's Reports, pages 52, 64 and 74*, that the adoption must be formally declared and acknowledged. By formally, I take it, is meant a special occasion arranged for the purpose of making the declaration. The cases cited by him no doubt indicate that the declaration should be made on a formal occasion such as a calling together of headmen or relations or neighbours. But the authority cited in these cases, for that proposition is *Sawer's Digest, page 26*. I find, however, on reference to the Digest that Sawer does not lay down that the adoption must be formally declared. What he says is "a regular

adoption must be publicly declared and acknowledged". The necessity for a formal declaration is inconsistent with the earlier statement in *Solomon's Manual* that for the purpose of adoption "there were no prescribed formalities or ceremonies to be gone through".

I am accordingly of opinion that there is no authority for the statement that the adoption must be declared not only publicly, but also be formally declared.

I would therefore affirm the finding of the District Judge and dismiss the appeal with costs.

HEARNE J.—

The appellant applied in the District Court of Kandy to be appointed administratrix of the estate of Dingiri Kumarihamy, a Kandyan woman, who, as was held by the District Court and affirmed by this Court on appeal, had died intestate. In deciding the question of whether the appellant should be appointed administratrix or whether the husband of the deceased was entitled to letters of administration the Judge addressed himself to the issue of whether the two added-respondents were adopted by the deceased. He held that they were adopted by the deceased for the purpose and with the intention that they were to inherit her property and this appeal turns on the question of whether he was right in so holding.

It has been strongly urged upon us that the declaration by an adoptive parent to the effect that she had adopted a child for the purpose of inheritance would, if made, as the Counsel for the appellant put it, "in casual conversation", fall short of the strict proof required by law.

I am unable to find any authority for the view that declarations made in the course of conversation do not amount to such declarations as a Court of law would act upon. In the case of *Ukku v. Sinna*[1] Ennis J. acted upon declarations in conversation as proof of adoption while in *Tikiri Kumarihamy v. Punchi Banda* (*supra*) Bonser C.J. did not rely upon the conversations deposed to in evidence not because they were mere conversations but for the reason that they did not amount to a declaration that the appellant in that case was to inherit the declarant's property. That Ennis J. regarded the declarations in *Ukku v. Sinna* (*supra*) and *Tikiri Kumarihamy v. Punchi Banda*[2] as no more than declarations in conversation is apparent from what he says. "In one case *Tikiri Kumarihamy v. Punchi Banda* (*supra*) where the evidence consisted of conversation as in this case, the decision was based on the use of the word "give" instead of "inherit" used in conversation by the deceased when speaking of the ultimate disposal of the property . . . .". In support of his submission Counsel for the appellant relied upon the case reported in *Tikiri Kumarihamy v. Punchi Banda* and upon the case of *Tikiri Banda v. Loku Banda*[3]. The former I have dealt with. The latter is not an authority which supports him for in this case it was held that "the intention to adopt the appellant, as heir was not communicated to anybody".

In District Court, Kandy, 53,309 ((*1873*) *Grenier's Reports 117* (4)) it was laid down that "while the law prescribes no particular formalities

[1] *Bal. N. C. 75.* [2] *2 Browne's Rep. 299.* [3] *2 Bal. Rep. 144.*

or ceremonies for a valid Kandyan adoption, it is necessary that the parties should be of the same caste and that the adoption should be public and formally and openly declared and acknowledged" and further that "it should be clearly understood that the child was adopted on purpose to inherit the adoptive parents' property". These tests were quoted with approval in *Loku Banda v. Dehigama Kumarihamy* (*supra*) and in several other cases decided by this Court; but unfortunately "the exact scope of the terms is not so easy to understand". *1 Bal. N. C. 75.*

In *Tikiri Kumarihamy v. Punchi Banda* (*supra*) Bonser C.J. refers to "public" as being equivalent to "generally known". Moncrieff J. in the same case refers to occasions "which could be described as public".

Dias J. in *Pusumbahamy v. Keerala*[1] speaks of "a public declaration" being necessary while Hutchinson C.J. in *Loku Banda v. Dehigama Kumarihamy* (*supra*) seems to lay down that a "public and formal declaration" is indispensable. What can these terms connote? I find it difficult to understand the exact sense in which the word "formally" is used. If no particular formalities are necessary the declaration need not be according to a particular formula as long as it is clearly understood that the adoption was for purposes of inheritance; if no ceremonies are prescribed the declaration need not be made on a "ceremonious occasion". It is agreed that the declaration need not be made when members of the public are assembled together for the purpose of hearing the declaration or that the declaration need be made in a public place. What then is meant by a public declaration and what are occasions which can be described as public?

I take the rule that has been laid down by this Court to be this; that the adoption must be public in the sense that it must be generally known and that publicity must have been given to the adoption for the purpose of inheritance as the result of an open declaration and acknowledgment on the part of the adoptive parent which need not be on a ceremonious occasion which may be made in the course of conversation, and which must be proved to have been made to members of the public as distinct from members of the adoptive parent's household or relatives or even persons interested in the question of the adoption. In the latter case it would be a private declaration and not a public one. It would appear from one of the reported cases that a statement made to a legal adviser would also fall in the latter class.

I agree to the proposed order.

Appeal dismissed.

[1] *2 C. L. R. 53.*