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KIRI MENIKA *et al.* v. MUTU MENIKA.

D. C., Kurunegala, 6,074.

Kandyan Law—Inheritance—Right of illegitimate children to acquired property of male parent—Meaning of acquired and paraveni property—Value of Kandyan Law authorities.

K B and M R were brothers. K B by first plaintiff, who was not duly married to him, left two illegitimate children, the second and third plaintiffs. On K B's death, the three plaintiffs claimed certain of his lands as against defendants, who were the children of M R. The lands in dispute were acquired by K B by gift from his father.

Held, per LAWRIE, J.—That, according to the Kandyan Law, illegitimate children have no claim to land which their father inherited, but they have a right to his acquired property.

“Acquired” property includes property as well purchased as inherited by a person and gifted to his son.

“Paraveni” land means land held by a man in his own right over which he has disposing power, and which on his death intestate will pass to his heirs.

What is opposed to *paraveni* is not *acquired* land, but land held in *maruwena*.

Sawers is the best authority on Kandyan Law.

Armour's opinion has not the same weight as Sawers'.

THE facts and law of the case are fully stated in the following judgment of the District Judge (Mr. Macleod):—

This case raises a most interesting point of Kandyan Law. and I must thank the proctors for the parties, Messrs. Daniels and Gunawardana, for the trouble they have taken to place before me the various authorities on the subject, and the full manner in which they have argued the case.

The facts relevant to the decision in this case are as follows:—

One Rajagam Mudiyansele Kiri Banda was owner of the four lands mentioned in the plaint, and he died intestate about four years ago. First plaintiff, Kiri Menika, lived with him as his wife, and has issue to him, second and third plaintiffs. Ukku Ettana and Kalu Banda. Notice of the intended marriage between the intestate Kiri Banda and first plaintiff, Kiri Menika, was given, but the marriage was never actually celebrated before the Registrar. It is however admitted that first plaintiff and Kiri Banda were of the same caste and respectability. Defendants are the children of Kiri Banda's predeceased brother, Menik Rala. The question to be decided is, “Who are the lawful heirs to the four lands above mentioned?”

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Mr. Daniels argues that plaintiff's are in any case entitled to the lands in dispute, whether they be paraveni or acquired property. He cites as authority Solomons' *Manual of Kandyan Law*, p. 17.

But they would have a right to the paraveni property of their father if he was of equal rank and caste with the woman, and acknowledged the issue as his children.

Solomons refers in a footnote to *Armour*, p. 135, and *Sawers*, p. 4. Perera's edition of *Armour*, to which I have referred, has no bearing on this point in p. 135, but *Sawers*, p. 4, says: "A daughter having unauthorized intercourse with a paramour in his father's house bearing children, such children have no right of inheritance in their maternal grandfather's or grandmother's property; but the father being known and the children acknowledged by him, they would have a claim of inheritance in his paraveni property, provided the paraveni were of equal rank and degree with the mother."

I cannot think that this is any authority for the proposition of Mr. Daniels. Two elements are essential: (1) the intercourse must be unauthorized; and (2) it must take place in her father's house. Neither of these elements is proved or admitted in this case.

I therefore think the real question is whether the lands in dispute are the intestate's paraveni, or whether they are his acquired property. If acquired, it is agreed that plaintiffs are entitled to judgment.

Mr. Gunawardana, for defendants, admits plaintiff's claim to the fourth land. He contests plaintiff's right to the first three lands and makes this proposition of law: "These lands, being the paraveni and not the acquired property of Kiri Banda's father, and gifted, not sold to the heir-at-law, Kiri Banda, ought to be considered Kiri Banda's paraveni property."

He thus distinguishes the present case from the one reported in 5 S. C. C. 46 (D. C., Kandy, 88,284), where the father bought property and gifted it to his son, and also from the one reported in 3 N. L. R. 210 (C. R., Matale, 1,763), where the father sold his paraveni property to his son. No decision of the Supreme Court precisely in point has been cited on either side.

I therefore decide this case on my interpretation of *Armour's* definition of *lat himi*, given on p. 90 of Perera's *Armour*. The definition is as follows: "This right, namely, *lat himi*, or right of acquest to property, is acquired by gift or bequest, by purchase, by prescription, or otherwise."

As they stand, these words are wide enough to cover the gift by a father of his paraveni property to his heir-at-law. The following sections of *Armour* illustrate and expand the above-quoted definition.

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I have read those sections carefully, but cannot find any distinction drawn between the donor's paraveni and the donor's acquired property.

This can scarcely be merely an inadvertent omission, for acquired property is sharply distinguished from paraveni property in most parts of the Kandyan Law, and Armour would not have overlooked it if the distinction existed in relation to the right of *lat himi*. Then there is no distinction between gifts to heirs-at-law and gifts to strangers. Both equally fall within the definition. Sections 91 and 92 expressly use such words as "for gifts to children," &c.

"If a parent.....makes a donation to one of his children a deed of gift.....in favour of the donor's child."

I therefore think that there is no distinction between the acquired and paraveni property of the donor, and that whether the gift be made to the heir-at-law or to a stranger it is equally acquired by the donee.

Moreover, in this particular case Kiri Banda was not the sole heir-at-law of his father, and would not therefore have inherited the whole of the lands in dispute from his father independently of the deed of gift.

Plaintiffs must have judgment, with Rs. 10 as damages, and costs.

Against this judgment, defendants appealed.

Bawa, for first and second defendants, appellants.

Dornhorst, for plaintiffs, respondents.

Cur. adv. vult.

17th October, 1899.—LAWRIE, J.

I understand the law to be that among Kandyan illegitimate children have no claim to land which their father inherited.

I regard Mr. Sawers as the best authority on Kandyan Law. He was Judicial Commissioner of Kandy from 17th August, 1821, until he retired on pension on 3rd July, 1827. In his notes (page 7) he says: "The issue of the low-caste wife can inherit the lands acquired by their father whether by purchase or by gift from strangers, but cannot inherit any part of the property which has descended to him from his ancestors while a descendant of one of the pure blood of the ancestors, however remote, remains to inherit."

Austin, p. 148, notes a decision dated 13th December, 1824, where Mr. Sawers and the chiefs held that the children of an irregular connection were entitled to inherit the father's "purchased" property.

Sir Charles Marshall's notes on *Kandyan Law* are copied from *Sawers*, and the passage on p. 7 of *Sawers* is repeated on p. 336 of *Marshall*.

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The *Niti Nighanduwa*, which, in my opinion, was written between 1830 and 1840, p. 14, says: "Children of a concubine will not be entitled to maintenance from the ancestral estate, though in some instances his acquired property, movable and immovable, will become their property."

Armour's *Grammar of the Kandyan Law* (first published in the *Ceylon Miscellany* in 1842) is mainly a translation of the *Niti Nighanduwa*, but the paragraph (*Armour*, p. 135) headed "Illegitimate issue" is (so far as I have ascertained) not to be found in the *Niti Nighanduwa*. I do not know where Armour took it from. It is printed in Perera's *Armour*, p. 34, section 2, "Duty of parents towards illegitimate children." There Armour limits the property to which such children can succeed to the father's purchased lands, or landed property which he had acquired by purchase. The italics which appear in Perera's *Armour*, p. 34, are also in the original *Armour*, p. 135.

Mr. Armour's opinion has not the same weight as Mr. Sawers', for he was not a Judge; he was appointed Interpreter to the Judicial Commissioner in October, 1819; afterwards he was Secretary to the Judicial Commissioner's Court, an office which he held when Mr. Sawers was the Commissioner.

In D. C., Kandy, 19,306 (20th November, 1847), reported in *Austin*, p. 108, Mr. Justice Temple assumed that a concubine of a deceased Kandyan would be entitled to "acquired" property of the father, and this was affirmed on 22nd September, 1856. The case is reported both by *Austin*, p. 147, and by *Lorenz*, vol. I., p. 189.

In 66,981, D. C., Kandy, I sustained the right of illegitimate children to acquired property. Here it is conceded that the illegitimate children have right to one land purchased by Kirihamy and gifted to Kiri Banda.

I am unable to draw a distinction between property inherited by a father and gifted to his son, and property purchased by a father and gifted to his son. In the former case as in the latter I say that the son "acquired" the property. In his careful and able judgment Mr. Macleod draws a distinction between "acquired" and "paraveni" property. I do not understand that there is such a distinction. "Paraveni" means lands held by a man in his own right over which he has disposing power, and which on his death intestate will pass to his heirs. What is opposed to "paraveni" is not "acquired" land, but land held in maruwena, that is, by a tenancy-at-will, or land held by a man in virtue of

1899. his office, such as the endowments of a vihara by a priest or the
October 17. lands held of old by Disawas and other high officials during their
LAWRIE, J. tenure of office.

The interpretation clause of Ordinance No. 4 of 1870 defines paraveni pangu to mean "an allotment or share of land in a temple or "nindagama village held in perpetuity," and Sir John D'Oyly said, "Paraveni land is that which is the private property of "an individual proprietor, land long possessed by his family, but "so called also, if recently acquired in fee simple" (see the glossary published on 23rd June, 1869, and also the appendix of the *Niti Nighanduwa*, p. 119).

In the present case I hold the lands were the acquired property of the deceased by gift from his father. He would have inherited only an undivided share of these lands; by gift he acquired the whole.

Affirmed.
