IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

CA 1090/2000 (F)

D.C. Avissawella Case No. 199/P

Nadurana Pathirannehelage Hemaratne of Atulugama, Dehiowita.

Plaintiff-Appellant.

vs.

01. Nedurana Pathirannehelage Tilakaratne, Atalugama, Dehiowita.

02. Nedurana Pathirannehelage Charlis Singho, Atalugama, Dehiowita.

2a. Nedurana Pathirannehelage Lakshmi Siriyalatha Padmasiri, Ataugama, Dehiowita.

3. Pattiyakandage Janenona Weragala, No. 954, Talangama-North, Malambe.

4. Pathberiya Appuhamilage Podimenike, 'Kumari', Atalugama, Dehiowita.

Defendant-REspondents.

BEFORE : A.W.A. Salam, J

COUNSEL : C. Amaratunga for the Appellant.

C. Wanigapura for the 1st Defendant-Appellant.

ARGUED ON :05.10.2011

DECIDED ON : 30.04.2013

A W A Salam, J

The appellant in this appeal was the plaintiff in the action instituted for the partition of a land called MONATENNA GALAPALLE HENA more fully set out in the schedule to the plaint which was later depicted in the preliminary plan No 510 prepared by S S R A Jayasingha, Commissioner of Court. The extent of the corpus as described in the preliminary plan is 3 roods and 13.5 perches. There was no dispute as to the identity of the corpus.

The parties were not at variance that they are governed by the Kandyan Law in regard to the devolution of title. The main points of contest raised at the trial were of twofold. To begin

with, the plaintiff took up the position that Aushadahamy, Punchirala Arachchila, and Kudagamage Naidehamy were the original owners of the corpus in the proportion of 1/3 share each. The contesting parties (3rd and 4th defendants) disputed the position of the plaintiff on that account and maintained that Naidehamy who was said to be entitled to 1/3 share, in fact owned only 1/4 share (and not 1/3 share as asserted by the plaintiff) and the balance 1/12 share was owned by Bandulahamy.

The learned district judge answered the point of contest as between the plaintiff and the 3rd and 4th defendants on the question relating to the original ownership in favour of the contesting defendants. Accordingly, the learned district judge held that the original owners of the corpus were Aushadahamy, Punchirala Arachchila, Kudagamage Naidehamy and Bandulahamy in the proportion of 1/3, 1/3, 1/4, 1/12 respectively. In coming to this conclusion the learned district judge has examined the oral evidence adduced before him and carefully analysed the manner in which Naidehamy and Bandulahamy and their successors in title have dealt with

their share from and out of the corpus. Having given my anxious consideration to the convincing reasons given by the trial judge which had influenced him in the decision in favour of the 3rd and 4th defendant on the question of the original ownership of the corpus, I see no reason to interfere with the same.

The other question that arises for decision in this appeal is whether it is correct to allot shares to the plaintiff and the 1st defendant which they say that they acquired through Podihamy and Nandawathie. According to the plaintiff Hondahamy died leaving three children namely Appuhamy, Podihamy and Nandawathie. The said Podihamy and Nandawathie married after the death of their father under the Marriages Ordinance (General) and therefore were not disqualified from inheriting from their deceased father at that time. The contesting defendants contended that the two daughters of Hondahamy by having contracted marriages under the Marriages Ordinance (General). They submit that these two marriages should be treated as deega marriages and

therefore they are disqualified from being heirs to their deceased father.

It is of much importance to bear in mind that Hondahamy died in the year 1925 and the two daughters of Hondahamy whose title to the corpus is contested, entered into matrimony in 1926 and 1935 (vide P9 and P10). Based on these facts, the plaintiff contend that the said two daughters of Hondahamy having married after the death of the father will not fall under the group of people deserve to be disqualified from inheriting the father's estate under Kandyan Law.

To buttress his argument the plaintiff cited that under Kandyan Law (Amendment Ordinance) of 1944 a woman who married in deega after her father's death forfeited the right to paternal inheritance. However, this principle has been unstiffened by the introduction of section 12 (1) of the Kandyan Law Amendment Ordinance which reads as follows.

> *12 (1) The deega marriage of a daughter after the death of her father shall not affect or deprive her of any share of his estate to which she shall have become entitled, upon*

his death, provided that if within a period of one year after the date of such marriage the brothers and binna-married sisters of such daughter or any one or more of them, but if more than one then jointly and not severally, shall tender to her the fair market value of the immovable property constituting the aforesaid share or any part thereof, and shall call upon her to convey the same to him or her or them, such daughter shall so convey and shall be compellable by action so to do.

In the circumstances, it was contended on behalf of the plaintiff that in terms of section 12 (1) of the Kandyan law (Amendment) Ordinance the two daughters of Hondahamy who married in deega should not be disqualified from inheriting the estate of their deceased father.

It has to be noted that the KANDYAN LAW Ordinance No 39 of 1938 which was passed on 1.1.1938 was amended by Ordinance No 25 of 1944 and the objective of the said Ordinance was to declare and amend the Kandyan Law in certain respects. As stated above the two daughters of Hondahamy had married prior to the year 1938. The provisions of section 12 (1) has no retrospective operation or deemed or

construed to have, any such effect except in such cases where express provision is made to the contrary. (Vide Section 27 of the Kandyan Law (Amendment). More particularly the provisions of section 12 and the other provisions in the Kandyan Law Ordinance were applicable only to marriages contracted after the commencement of the Kandyan Law Ordinance. Since the marriage of both daughters of Hondahamy whose right of inheritance from the deceased father is in issue, had taken place after the commencement of the Kandyan Law Ordinance and therefore the Provision of section 12 (1) of the said Ordinance has no application to the present dispute.

The rights of a "deega" married daughter to acquire the property of the late father on the basis of paternal inheritance has been considered in several cases. Undoubtedly in a deega marriages a wife is considered a member of the husband's family. In such an event she puts an end to her being treated as a member of the Mulgedara or the parental home. The character of the marriage under Kandyan Law reflects greatly on the place of residence subsequent to the marriage as agreed upon at the time of the solemnization of the marriage.

Forfeiture of rights to succession is interwoven with the type of marriage, namely whether it is binna or deegae.

The effect of a deega marriage of a daughter is that she loses the right to succeed to the estate of her father. In absence of any evidence to the contrary a deega marriage indicates the quitting from her parental home and point to a departure to join another family.

For the reasons stated in a cogent manner in the judgement, the learned district judges finding that both Podihamy and Nandawathie should be treated as having married in deega cannot be faulted.

In the case of Lewis Singho vs Kusumawathie 2003 2 SLR 128 it was held that the production of the marriage certificates under the General Marriages Ordinance, where there is no entry with regard to the nature of the marriage, the presumption is that the marriage is deega and not binna. When the above principle is applied to the facts of the present case, no difficulty could arise to exclude the two daughters' of Hondahamy from being the heirs of the deceased father. The position would be different had they married after the

commencement of the Kandyan Law Ordinance. If that be so Section 12 of the Kandyan Law (amendment) would be applicable and Podihamy and Nandawathie could probably have inherited from the father if the market value of their share is not offered by their siblings, namely the brother and the sister who married in binna within the stipulated period of time.

As such, I find no reasons whatsoever to interfere with the judgement of the learned district judge and therefore proceed to dismiss the appeal subject to costs.

Judge of the Court of Appeal

NR/-