

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

1. Nayani Manohari Balasuriya,
(Minor)
2. Hubert Balasuriya (Next Friend),
Both of No 52, Old Road,
Veralupe, Ratnapura.

Plaintiffs

C.A. No. 109 / 2000 F

Vs.

D.C. Ratnapura No. 6199 / P

1. Ramanayake Arachchilage Lakshman
Ramanayake,
2. Ramanayake Sarthchandra
Ramanayake,
3. R. A. Appuhamy,
All of Kalawana.

Defendants

AND NOW BETWEEN

1. Ramanayake Arachchilage Lakshman
Ramanayake,
2. Ramanayake Sarthchandra
Ramanayake,
3. R. A. Appuhamy (deceased),
- 3a. Ramanayake Arachchilage Lakshman
Ramanayake,
- 3b. Ramanayake Sarathchandra
Ramanayake,
All of Kalawana.

Defendant Appellants

Vs

1. Nayani Manohari Balasuriya,
(Minor)
2. Hubert Balasuriya (Next Friend),
Both of No 52, Old Road,
Veralupe, Ratnapura.

Plaintiff Respondents

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Anuruddha Darmaratne with Upendra
Walgampaya for the 3a and 3b Defendant
Appellants

R.M.D. Bandara with W.E. De Silva for the
Plaintiff Respondents

ARGUED ON : 30.07.2013

DECIDED ON : 22.10.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondents (hereinafter referred to as the Respondents) instituted the said action against the 1st and 2nd Defendant Appellants in the District Court of Ratnapura seeking to partition the land described in the schedule to the plaint. The 3rd Defendant Appellant has been added as a party to the action after the completion of preliminary survey. After trial the learned Additional District Judge has delivered a judgment in favour of the

Respondents. Being aggrieved by the said judgement dated 22.02.2000 the 1st 2nd and 3rd Defendant Appellants (hereinafter referred to as the Appellants) have preferred the instant appeal to this court.

At the hearing of this appeal both parties admitted that upon the issue No 05 raised by the Appellants, the sole question to be dealt with by this court is that whether Sujatha Thilakarathna one of the four children of R. A. Thilakaratne had married in 'Diga' and thereby had forfeited her rights to the paternal inheritance.

It was common ground that the marriage between said Sujatha Thilakaratne and the 2nd Appellant had been registered under the General Marriages Ordinance. The learned counsel for the Appellants contended that under and in terms of Section 28(1) of the Kandyan Marriage and Divorce Act said marriage of Sujatha Thilakaratne is presumed to be in "Dega". The Respondents contended that although the marriage between said Sujatha Thilakeratne and the 2nd Respondent had been registered under the General Marriages Ordinance, by conduct she had regained 'binna' rights and hence she had not forfeited her rights to the paternal inheritance.

Section 28(1) of the Kandyan Marriage and Divorce Act reads thus;

28(1) The registration under this Act of a Kandyan marriage shall be the best evidence of the marriage before all courts and in all proceedings in which it may be necessary to give evidence of the marriage. Where the marriage registration entry, which under section 23 (3) constitutes such registration, does not

indicate whether the marriage was contracted in binna or diga, the marriage shall be presumed to have been contracted in diga until the contrary is proved.

Section 3(2) of the said Act stipulates that “The fact that a marriage, between persons subject to Kandyan law, is solemnized and registered under the Marriage Registration Ordinance shall not affect the rights of such persons, or of other persons claiming title from or through such persons, to succeed to property under and in accordance with the Kandyan law.

On the other hand Section 9(1) of the Kandyan Law (Declaration and Amendment) Ordinance No 39 of 1938 (Cap. 59) stipulates that “A marriage contracted after the commencement of this Ordinance in binna or in diga shall be and until dissolved shall continue to be, for all purposes of the law governing the succession to the estates of deceased persons, a binna or a diga marriage, as the case may be, and shall have full effect as such ; and no change after any such marriage in the residence of either party to that marriage and no conduct after any such marriage of either party to that marriage or of any other person shall convert or be deemed to convert a binna marriage into a diga marriage or a diga marriage into a binna marriage or cause or be deemed to cause a person married in diga to have the rights of succession of a person married in binna, or a person married in binna to have the rights of succession of a person married in diga.”

It seems that the parties who have married after the coming into operation of the Kandyan Law (Declaration and Amendment) Ordinance cannot regain ‘binna’ rights or ‘diga’ rights on account of their conduct. According to the marriage certificate (P 7) the marriage between said Sujatha Thilaratne and Hubert

Balasuriya (2nd Appellant) has been registered on 20th of January 1977. It is clear that Sujatha Thilakeratne had married after the coming into operation of the Kandyan Law (Declaration and Amendment) Ordinance of 39 of 1938 (Cap. 59).

In the case of R. P. D. Gunasena vs. R. P. D. Ukku Menika 78 N.L.R. 529 it had transpired that Ukku Menika (the 2nd Respondent) was married in diga to one William on the 11th of July 1935; William was a man from Aragoda. Kiri Menika (the 3rd Respondent) was married in diga to one Sirimali of Ballapana on the 14th of October, 1938. The youngest daughter Dingiri Menika (the 4th Respondent) married one James of Aragoda, also in diga on the 24th of October 1944. His Lordship Tennakoon CJ held that "I would accordingly hold that the 2nd Respondent Ukku Menika and the 3rd Respondent Kiri Menika were heirs of Sendiya. In the case of the 4th Respondent Dingiri Menika (Dingu), she having married after the coming into operation of the Kandyan Law (Declaration and Amendment) Ordinance (Cap. 59) cannot be admitted to binna rights in view of section 9 (1) of that Ordinance. That section provides inter alia, that: 'No conduct after any marriage whether binna or of either party to that marriage or any other person shall.. cause or be deemed to cause a person married in diga to have the rights of succession of a person married in binna or a person married in binna to have the rights of succession, of a person married in diga.'

The learned District Judge has held that all three sisters are heirs of the deceased Sendiya and entitled to shares in the immovable properties. While affirming his decision in so far as it concerns the 2nd and 3rd respondent sisters, I would allow the appeal only so far as it concerns the 4th respondent and hold that she the 4th respondent is not entitled to succeed to her deceased father's immovable properties."

In the said circumstances I hold that said Sujatha Thilakaretne who had married in 'diga' had forfeited her rights to the paternal inheritance and hence by conduct she could not regain such rights in view of the mandatory provisions contained in Section 9(1) of the Kandyan Law (Declaration and Amendment) Ordinance. Hence the issue No 01 should be answered in the negative and the issues No 05 and 06 should be answered in the affirmative. Therefore I allow the appeal of the Appellants with costs.

Appeal allowed.

Judge of the Court of Appeal