

**IN THE COURT OF AP
PPEAL OF THE DEMOCRATIC SOCIALISTIC
REPUBLIC OF SRI LANKA.**

D.G. Sobani,
Kolongalla,
Hiriwadunna.

Plaintiff.

CA.883/97(F)
DC Kegalle No. 4291/L

Vs.

D.G. Siripala,
Kolongalla,
Hiriwadunna.

Defendant.

And

D.G. Siripala,
Kolongalla,
Hiriwadunna.

Defendant-Appellant

Vs.

D.G. Sobani,
Kolongalla,
Hiriwadunna.

Plaintiff-Respondent.

Rathna Banjanayalage Piyadasa,
Kolongalla,
Hiriwadunna.

Substituted Plaintiff – Respondent.

Before : E.A.G.R. Amarasekara J.

Counsel : Mr. Vidura Gunarathna for the Defendant Appellant.
Mr. Premachandra for the Plaintiff Respondent.

Decided On : 06.07.2018

E.A.G.R. Amarasekara J.

The original Plaintiff Respondent (hereinafter referred to as the Plaintiff) had instituted the case No. 4291/L in the District Court of Kegalle against the Defendant Appellant (hereinafter referred to as the Defendant) by her plaint dated 02.08.1989 and inter alia had averred the following;

- a) Unga, the father of both the Plaintiff and the Defendant owned undivided portions of the lands more fully described in the schedules to the plaint.
- b) The lands more fully described in the 1st and 2nd schedules were occupied by Unga while the land described in the 3rd schedule was occupied by the Plaintiff.
- c) Unga died on 1st January 1985 leaving the Plaintiff and her two sisters and the brother, the Defendant.
- d) Since aforesaid two sisters had gone on 'Deega' marriages they are not entitled to paternal inheritance.
- e) Therefore, only the Plaintiff herself and the Defendant inherit the land described in the schedules to the plaint.
- f) The Defendant had fraudulently executed a deed of transfer bearing No. 4446 dated 31 December 1984 attested by I.H.H. Banda, Notary Public.
- g) Unga was not in his proper senses and was in a critical condition for about 1 month preceding his death.
- h) Unga had neither placed his thumb print nor his signature to the aforesaid deed but some other person had placed his thumb impression to it fraudulently.

- i) The Plaintiff came to know about the aforesaid deed only after she received summons in case No. 24882 filed by the Defendant in District Court of Kegalle.
- j) A cause of action has accrued to her against the Defendant to obtain a declaration that the aforesaid deed No. 4446 is an invalid deed.

In her plaint the Plaintiff has prayed inter alia;

- a) To obtain a declaration to the effect that the said deed is invalid.
- b) To obtain a declaration that the Plaintiff is entitled to inherit Unga's property
- c) For cost & other reliefs.

The Defendant filed his answer dated 06.06.1990 and pleaded inter alia;

- a) The properties described in the schedules to the plaint belonged to Unga.
- b) Said Unga transferred the said properties to the Defendant on deed No. 4446 dated 31.02.1984 attested by I.M.H. Banda, Notary Public.
- c) The Defendant and his predecessors were in occupation of these lands for more than 10 years against the Plaintiff and the rest of the world and acquired prescriptive title.
- d) The Plaintiff had forcible occupation of the Defendant's land since 31.12.1984 causing damages.

The Defendant has vehemently denied any fraudulent involvement in executing the deed No. 4446 and that it is an invalid deed. The Defendant in his original answer has prayed inter alia;

- a) for a dismissal of the Plaintiff's action.
- b) for a declaration that he is the owner of the lands described in the plaint.
- c) for an order to eject the Plaintiff from the said lands.
- d) for damages and cost of the litigation.

After the filing of replication by the Plaintiff denying the Defendant's claim, the Defendant had filed his amended answer dated 02.09.1991. In his amended

answer the Defendant had added a new stance to the original position he took up in the original answer stating that the Plaintiff had gone on 'Deega' marriage forfeiting her rights of inheritance to her father's property.

The Decision on the dispute described as aforesaid depends on the answers that the court can reach on the following questions.

1. Is the aforesaid deed No. 4446 a fraudulent deed or not, as contemplated in issues No 4, 5, 7 and 8 raised at the trial?
2. Did the Plaintiff forfeit her rights to inherit her father's property by going on a Deega marriage, as contemplated in issues no.9 and 10 raised at the trial?

As per the evidence led at the trial, Unga died on 01.01.1985 due to old age- (vide death certificate marked as 1B3). As per the Defendant's evidence and his witness the Notary Public the deed in question was executed on the previous day at Notary Public's office in Kegalle. The Defendant has stated in evidence, that his father Unga went to the Notary Public's office, which is about 3 ½ miles away from his house at Kolongalla, by bus, a mode of public transport. It is difficult to believe that a person who died due to his old age on the following day, i.e. on 01.01.1985, was strong enough to travel by bus on the day prior to his death to Kegalle Town to execute a deed. The position of the Plaintiff and her witness Somawathie was that Unga was critically ill for about 3 to 4 months and not in his proper senses prior to his death. The aforesaid position of the Plaintiff and her witness is more probable than the Defendant's version of Unga's visit to Notary Public's office by bus, if Unga had died due to old age on 01.01.1985. On the other hand, this court observes that Unga had placed his signature on P2 which indicates that he was a person who used to sign instead of placing his thumb print. However, on deed No. 4446 the purported thumb print of Unga is placed instead of the signature. If Unga was able to travel to Kegalle by bus to execute the deed, it is questionable why he could not place his signature as usual. In the attestation to the said deed the Notary has stated that Unga who was not known to him but known to the witnesses placed his thumb print as his hands were trembling due to old age. On the other hand, if Unga was not known to the Notary Public he is not a suitable witness to prove that Vendor of deed No. 4446 was Unga, who placed his signature before him. In such a backdrop of factual matrix the Learned District Judge has come to the conclusion

that the deed No. 4446 is a fraudulent document. I cannot find fault with such a conclusion or decide that such a conclusion is perverse or not based on facts before him.

The entries in the Kandyan marriage register book, marked as 81, confirm that in the year 1946 the Plaintiff went on a Deega marriage. Even the Plaintiff admitted in evidence that she went to Mathawa, her husband's village on a Deega marriage. Deega marriage generally deprives a daughter, who is subject to Kandyan law, of inheritance to her father's estate. The essence of a Deega marriage is the severance of the daughter from the father's family and her entry into that of her husband and her consequent forfeiture of any share in the family property- {Vide *Punchimenika Vs Appuhamey* (1917) 19 NLR 353}. This court is also aware that entry in the marriage register shall be the best evidence of the marriage contracted. At the same time this court is aware that on certain occasions, a Deega married daughter can acquire Binna rights by cessation of the severance from father's family and re-establishing the connection with father's family on its original basis.

Mere returning to Mulgedara (Father's house) or maintaining close connection with Mulgedara after marriage will not be conclusive of the fact that the Deega married daughter acquired Binna rights. It must appear that the father in his lifetime, or the family after his death, has manifested an intention to admit the daughter to Binna rights (See *Kandyan Law and Buddhist Ecclesiastical Law* by Dissanayake and Colin de Soysa at Page 165 and 167 citing from *Mudiyanse Vs. Punhimenika* (1933) 12 Cey. Law Rep 257, *Mudiyanse Vs Punchi Menika* (1993) 35 NLR 179).

The following are illustrative of acquisition of Binna rights by a Deega married daughter.

- 1) By being recalled by the father and remarried in Binna,
- 2) By her father, on her return to his house along with her husband, assigning to them and putting them in possession of a part of his house and a specific share of his lands.

- 3) On her returning home along with her husband and attending on her father and rendering him assistance until his death.
- 4) On her coming back and attending on and assisting her father during his last illness, and the father on his death bed expressing his will that she should have a share of his land- (vide Kandyan Law and Buddhist Ecclesiastical Law by Dissanayake and Colin de Soysa at page 164 quoting Perera's Armour on Kandyan Law).
- 5) Execution of a series of deeds by the brothers, together with the Sister married in Deega indicating the waiver or forfeiture- {vide Banda Vs Ungurala (1922) 50 NLR 276}.
- 6) Where a Kandyan permits his sisters in spite of their marriage in Deega to possess their share of immovable property belonging to their father's estate for a long period of time indicating the waiver of the forfeiture- {vide Appu Naide Vs Hin Menika (1948) 51 NLR 63}.

Even in the case of Wickramasinghe Vs. Robert Banda (2005) 1 SLR at page 246, her Ladyship Shirani Bandaranayake J (as she then was) mentioned the following instances which may prove the acquisition of Binna rights by a Deega married daughter.

- a) having a close link with Mulgedara even after the marriage.
- b) By a subsequent marriage in Binna.
- c) By leaving a child with the grand parents at Mulgedara.
- d) By possessing shares of property in spite of marriage in Deega.
- e) Any evidence to indicate the waiver of forfeiture of rights by the other members of the family.

Thus, it is clear whether a Deega married daughter re-acquired the Binna rights depends on the factual situation of each case. If the Deega married daughter can prove the cessation of the severance from father's family and re-establishment of connection with the same on its original condition or waiver of forfeiture of rights by the father or other heirs to the father's estate, she can successfully establish before a court of Law that she has re-acquired the Binna rights to her father's estate.

The Plaintiff while giving evidence has admitted that she went on a Deega marriage to Mathawa, the village of her husband but she has stated that she returned to her paternal house after 3 days and stayed there for 3 to 4 years with her husband on the request of her parents as they wanted one to attend on them-(vide her evidence at page 55 and 56 of the brief). Thereafter her father executed a deed in favour of her giving certain lands belonging to him. She has further stated that she still lives there in a land given by her father and her husband too lived there till he died. The deed marked as P2 also confirms that her father bequeathed several lands to her. The Plaintiff has also said that the paddy land in the 3rd schedule to the plaint, though no deed was written in her favour was given to her by her father in 1948 and she has been in possession of the same from that date-(vide page 57 of the brief.) The Plaintiff's stance is that though she went on Deega, her parents did not allow her to leave the paternal house- (vide page 57 of the brief). Even the Defendant during cross examination has answered that the Plaintiff lived in Kollongalla, he father's village since the time he could remember. He has not denied the fact that their parents asked the Plaintiff to stay in the Mulgedara after a few days of her Deega marriage and that her father bequeathed certain lands belonging to him to the Plaintiff. These facts on a preponderance of evidence show that the Plaintiff, though she went on a Deega marriage as per her marriage certificate, returned to Mulgedara and thereafter she continued to live with her husband in the land given to her by her father. Even her father during his life time had bequeathed his properties to her. These facts indicate the cessation of the severance from father's family as well as the waiver of her forfeiture to paternal property by her father himself. Therefore, on a preponderance of evidence one can come to the conclusion that the Plaintiff has re-acquired her Binna rights. In such a backdrop I am not inclined to hold that the final conclusion of the learned District Judge is perverse or not supported by the facts that emerged in this case.

On the other hand, has the Plaintiff not re-acquired her Binna rights, the defendant could have taken up the position even in his original answer itself that she had forfeited her inheritance to paternal properties but he took up such a stance only in his amended answer. That indicates that this stance with regard to Deega marriage is most probably an afterthought.

For the foregoing reasons I dismiss the appeal with costs.

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Judge of the Court of Appeal