

CHAPTER 71

KANDYANLAW

Ordinances
Nos, 39 of 1938,
25 of 1944.

AN ORDINANCE TO DECLARE AND AMEND THE KANDYAN LAW IN CERTAIN RESPECTS.

[1st January. 1939.]

Short title and
application of
Ordinance.

1. (1) This Ordinance may be cited as the Kandyan Law Declaration and Amendment Ordinance.

(2) This Ordinance shall apply to persons subject to the Kandyan law.

cancel or revoke in whole or in pan any gift, whether made before or after the commencement of this Ordinance, and such gift and any instrument effecting the same shall thereupon become void and of no effect to the extent set forth in the instrument of cancellation or revocation:

Interpretation-

2. In this Ordinance, unless the context otherwise requires—

(a) "gift" means a voluntary transfer, assignment, grant, conveyance, settlement, or other disposition *inter vivos* of immovable property, made otherwise than for consideration in money or money*s worth,

(b) "donor" means a person who has made a gift;

(c) "donee " means a person in whose favour a gift has been made ;

(d)"the commencement of this Ordinance " means the 1st day of January, 1939.

Provided that the right, title, or interest of any person in any immovable property shall not, if such right, title, or interest has accrued before the commencement of this Ordinance, be affected or prejudiced by reason of the cancellation or revocation of the gift to any greater extent than it might have been if this Ordinance had not been enacted.

(2) No such cancellation or revocation of a gift effected after the commencement of this Ordinance shall be of force or avail in law unless it shall be effected by an instrument in writing declaring that such gift is cancelled or revoked and signed and executed by the donor or by some person lawfully authorized by him in accordance with the provisions of the Prevention of Frauds Ordinance or of the Deeds and Documents (Execution before Public Officers) Ordinance.

Method of
revocation.

I — TRANSFER OF PROPERTY

Validity of
deeds of
disposition not
to be affected
by absence of
clause of
disinherison,

3. Any deed or instrument, executed after the commencement of this Ordinance, whereby any property, movable or immovable, is transferred, assigned, granted, conveyed, settled, or otherwise disposed of, shall be of full force and effect according to the tenor of such deed or writing notwithstanding the absence therein of any clause providing, expressly or otherwise, for the disinherison of the heirs of the person executing such deed or instrument.

5. (1) Notwithstanding the provisions of section 4 (1), it shall not be lawful for a donor to cancel or revoke any of the following gifts where any such gift is made after the commencement of this Ordinance :—

Deeds of gift
•which cannot
be revoked.

Revocation of
deeds of gift.

4. (1) Subject to the provisions and exceptions hereinafter contained, a donor may, during his lifetime and without the consent of the donee or of any other person,

(a) any gift by virtue of which the property which is the subject of that gift shall vest in the trustee or the controlling *viharadhipati* for the time being of a temple under the provisions of section 20 of the

Gift to a
temple.

Buddhist Temporalities Ordinance or in any *bhikkhu* with succession to his sacerdotal pupil or pupils or otherwise than as *pudgalika* for the benefit of himself and his heirs, executors, administrators or assigns;

Gift in consideration of marriage.

- (b) any gift in consideration of and expressed to be in consideration of a future marriage, which marriage has subsequently taken place ;

Gift effecting a charitable trust

- (c) any gift creating or effecting a charitable trust as defined by section 99 of the Trusts Ordinance ;

Gift where right to revoke is renounced.

- (d) any gift, the right to cancel or revoke *which* shall have been expressly renounced by the donor, either in the instrument effecting that gift or in any subsequent instrument, by a declaration containing the words)
CFOioS® " or words of substantially the same meaning or, if the language of the instrument be not Sinhala, the equivalent of those words in the language of the instrument:

Provided that a declaration so made in any such subsequent instrument shall be of no force or effect unless such instrument bears stamps to the value of five rupees and is executed in accordance with the provisions of the Prevention of Frauds Ordinance or of the Deeds and Documents (Execution before Public Officers) Ordinance.

-(2) Nothing in this section shall affect or be deemed to affect the revocability of any gift made before the commencement of this Ordinance.

Compensation for revocation,

6. (1) Upon the cancellation or revocation of any gift, the donor shall be liable to pay to the donee compensation in such sum as shall represent the cost of any improvements to the property effected by the donee, after deducting the rents and profits received by him, and the expenses

incurred in the fulfilment of the conditions, if any, attached to the gift, provided that if the donee has made default in the fulfilment of any such conditions, no compensation shall be payable to him in respect of the improvements or otherwise.

(2) Such compensation shall be payable to any donee otherwise entitled thereto whether or not he would be an heir at law of the donor in the event of such donor dying intestate,

(3) In this section " donee " includes any person who has succeeded to the title of the donee under the gift.

II — ADOPTION*

7. (1) No adoption effected after the commencement of this Ordinance shall avail in law to create any right or liability unless it be evidenced by an instrument in writing with the consent of the person adopted expressed in the instrument and signed by both the adopter and the person adopted, in the presence of—

Method of adoption

- (a) a District Judge, a Judge of a Family Court or a Judge of a Primary Court; or

- (b) a licensed notary and two witnesses:

Provided that if the person adopted be a minor, such consent may be given and such instrument signed on his behalf by his parents or, if only one parent is alive, by that parent; but if there is no surviving parent or if either of his parents cannot be found or is incapable of acting in this behalf by reason of unsoundness of mind, ill health, or other incapacity, the District Court, Family Court or Primary Court having local jurisdiction over the place where the minor ordinarily resides may, upon petition made to such court by any person interested and after such inquiry as the court may deem necessary, appoint any person or persons to give such consent and to sign such instrument.

For the purposes of the Civil Procedure Code or of the Primary Courts' Procedure Act and of the Stamp Ordinance

• See also section 16 of the Adoption of Children Ordinance.

an application to the District Court, Family Court or Primary Court under this section shall be deemed to be an action of the value of one hundred rupees.

(2) No stamp duty shall be payable or chargeable in respect of any instrument of adoption executed in accordance with the provisions of subsection (1) or of any application to a court made under that subsection.

Rights of person adopted.

8. (1) On the death of the adopter intestate, a person duly adopted, whether before or after the commencement of this Ordinance, shall have such right of succession to his estate as if he were a legitimate child of the adopter, that is to say, if the adopter leave him surviving no child or descendant of a deceased child, then as an only child, or if the adopter leave a child or children or a descendant of a deceased child, then to the same extent and in like manner as a child, and if married in *binna* or in *diga* as the case may be, then as a child so married ; but the person adopted shall, by virtue of the adoption, have no right of succession to any person other than the adopter.

Adopter not to succeed.

(2) The adopter shall not, by virtue of the adoption, acquire any right to succeed to the estate or any part thereof of the person adopted on his death intestate.

Person adopted succeeds to own parents or relations.

(3) Notwithstanding the adoption, the person adopted shall continue to have such right of succession to his or her own parent or parents, or any other person, as he or she would have had if the adoption had not been effected.

Adoption not to be revoked.

(4) A duly effected adoption shall not be cancelled or revoked, and no cancellation or revocation shall affect any right or liability arising out of the adoption.

III — MARRIAGE

Binna and diga marriages.

9. (I) 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*.

(2) Where after the commencement of this Ordinance a woman leaves the house of her parents and goes out in *diga* with a man, but does not contract with that man a marriage which is valid according to law, she shall not by reason only of such departure or going out forfeit or lose or be deemed to have forfeited or to have lost any right of succession to which she is or was otherwise entitled on the death of any person intestate.

IV — INHERITANCE : IMMOVABLE PROPERTY

10. (1) The expressions " *paraveni* property" or "ancestral property" or "inherited property" and equivalent expressions shall mean immovable property to which a deceased person was entitled—

- (a) by succession to any other person who has died intestate, or
- (b) under a deed of gift executed by a donor to whose estate or a share thereof the deceased would Have been entitled to succeed if the donor had died intestate immediately prior to the execution of the deed, or
- (c) under the last will of a testator to whose estate or a share thereof the deceased would have been entitled to succeed had the testator died intestate:

Provided, however, that if the deceased shall not have left him surviving any child or descendant, property which had been the acquired property of the person from whom it passed to the deceased shall be deemed acquired property of the deceased.

Partition of *paraveni* property.

(2) Where the *paraveni* property of any person includes a share in any immovable property of which that person is a co-owner, any divided part of or interest in that property which may be assigned or allotted to that person by any deed of partition executed, or by any decree for partition entered by a court, after the commencement of this Ordinance, shall for all purposes be and be regarded as *paraveni* property of that person.

be entitled to maintenance out of the *paraveni* property of the deceased but shall not by reason of such re-marriage forfeit her aforesaid life estate in the acquired property;

Acquired property.

(3) Except as in this section provided, all property of a deceased person shall be deemed to be acquired property.

(c) should the surviving spouse be an *ewessa* cousin of the deceased intestate, she shall not thereby become entitled to any share in the estate larger than that to which she would otherwise have become entitled •

Widow an *ewessa* cousin.

" Paternal *paraveni* ".
" maternal *paraveni* ".

(4) The expressions " paternal *paraveni* " and " maternal *paraveni* " and similar or equivalent expressions shall be deemed to mean *paraveni* property as hereinbefore described derived from or through the father or from or through the mother, as the case may be.

(d) in the event of the deceased leaving him surviving no other heir, the surviving spouse shall succeed to all his property both *paraveni* and acquired.

When widow married in *diga paraveni*

Widow.

11. (1) When a man shall die intestate after the commencement of this Ordinance leaving a spouse him surviving, then—

(2) In this section " maintenance " when used with reference to any property, whether *paraveni* or acquired, means maintenance out of the income of such property.

(a) the surviving spouse shall be entitled to an estate for life in the acquired property of the deceased intestate, and, if there be no acquired property, or if such property be insufficient for her maintenance, then to maintenance out of the *paraveni* property:

12. (1) The *diga* 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.

Daughter married in *diga* after father's death.

Provided that if the deceased intestate shall have left a child or descendant by a former marriage, the surviving spouse's life estate shall extend to only one-half of the acquired property;

Provided, further, that the surviving spouse shall out of her estate for life in the acquired property be bound to maintain the legitimate children of the deceased—

(2) In this section " marriage " means a marriage contracted after the commencement of this Ordinance.

- (i) if such children are minors and in need of maintenance ; and
- (ii) if the deceased left no *paraveni* property or if such *paraveni* property is insufficient for the maintenance of such children;

13. When a man shall die intestate after the commencement of this Ordinance leaving him surviving issue by two or more marriages, such issue and the descendants of any predeceased child or children shall inherit *inter se* in all respects as if there had been but one marriage and the estate of the deceased shall not descend *per stirpes* to the issue of each marriage according to the number of marriages.

Issue of two marriages: *per capita*.

Re-marriage of widow.

(b) if the surviving spouse shall contract a *diga* marriage, she shall cease to

Legitimate and illegitimate.

14. For the purposes of succession to the estate of any person who shall die intestate after the commencement of this Ordinance the term "legitimate" shall mean born of parents married according to law* and the term "illegitimate" shall mean born of parents not married according to law:

Provided that a legal marriage between any parties shall have the effect of rendering legitimate any children who may have been procreated between the same parties before the marriage, unless such children shall have been procreated in adultery.

Illegitimate children,

15. When a man shall die intestate after the commencement of this Ordinance leaving an illegitimate child or illegitimate children—

- (a) such child or children shall have no right of inheritance in respect of the *paraveni* property of the deceased ;
- (b) such child or children shall, subject to the interests of the surviving spouse, if any, be entitled to succeed to the acquired property of the deceased in the event of there being no legitimate child or the descendant of a legitimate child of the deceased;
- (c) any such child shall, subject to the interests of the surviving spouse, if any, be entitled to succeed to the acquired property of the deceased equally with a legitimate child or the legitimate children, as the case may be—
 - (i) if the deceased intestate had registered himself as the father of that child when registering the birth of that child; or
 - (ii) if the deceased intestate had in his lifetime been adjudged by any competent court to be the father of that child.

Succession to person dying intestate leaving no surviving spouse or descendant.

16. If a person shall die intestate after (he commencement of this Ordinance leaving him or her surviving parents, whether married in *binna* or in *diga*, or a parent, but no child or descendant of a child and no surviving spouse, then—

(a) the parents in equal shares, or if one only be alive, then that one shall, if there be surviving any brother or sister of the deceased or the descendant of a brother or sister, be entitled to a life estate in the acquired property of the deceased. The right of a sole surviving parent shall arise and continue whether or not the other parent shall have died before the deceased intestate;

Father and mother-

(b) on the death of the surviving parent. the acquired property shall, subject to the provisions of section 17, devolve upon the brother or sister or brothers and sisters, or the descendant or descendants of any deceased brother or sister by representation;

Brothers and sisters-

(c) if there be no brother or sister or descendant of a deceased brother or sister, the parents in equal shares, or the surviving parent as the case may be, shall become entitled to the property;

When no surviving brother or sister.

(d) the father, or if the father be dead the next heir or heirs on the father's side, shall inherit the paternal *paraveni*, and the mother, or if the mother be dead the next heir or heirs on the mother's side, shall inherit the maternal *paraveni*. The mother shall not inherit paternal *paraveni* unless there be surviving no heir on the father's side, and in like manner the father shall not inherit maternal *paraveni* unless there be surviving no heir on the mother's side,

Paternal *paraveni* and maternal *paraveni*.

17. In the devolution of the estate of any person who shall die intestate after the commencement of this Ordinance,

Brothers and sisters *inter se* always inherit as sons and daughters.

(a) whenever the estate or any part thereof shall devolve upon heirs other than a child or the descendant of a child, and such heirs are in relation to one another brothers or sisters, or brothers and sisters, or the descendants of any deceased brother or sister, such heirs shall inherit *inter se* the like

shares and in like manner as they would have done had they been the children or descendants of the deceased intestate;

The half-blood per capita.

(b) whenever the estate or any share thereof shall devolve upon heirs who in relation to one another are of the half-blood, such heirs *inter se* shall inherit *per capita* and the estate shall not descend to them *per stirpes*.

Succession to woman married in *diga* or married in *binna* on mother's property.

18. (1) When a woman unmarried, or married in *diga*, or married in *binna* on her mother's property, shall die intestate after the commencement of this Ordinance leaving children or the descendants of a child or children, the estate of the deceased shall devolve in equal shares upon all such children, (the descendant or descendants of any deceased child being entitled to his or their parent's share by representation) whether male or female, legitimate or illegitimate, married or unmarried, and, if married, whether the marriage be in *binna* or in *diga*'.

Provided that if the deceased was married in *binna* as aforesaid, an illegitimate child or children shall not be entitled to succeed to the *paraveni* property of the deceased ;

Provided, further, that the descendant of a deceased child shall be entitled to that child's share by representation whether or not he or she has been kept apart from the deceased intestate.

Woman married in *binna* on father's property.

(2) When a woman married in *binna* on her father's property shall die intestate after the commencement of this Ordinance leaving children or the descendants of a child or children, such child or children, and his or their descendant by representation, shall be entitled to succeed *inter se* in like manner and to the like shares as they would have become entitled out of the estate of their father:

Provided that if the deceased was married in *binna* as aforesaid an illegitimate child or children shall not be entitled to succeed to the *paraveni* property of the deceased.

19. On the death intestate of a woman married in *diga*, leaving a surviving spouse but no child or descendant of a child, such surviving spouse shall not be entitled, and shall not be deemed to have been at any time entitled, to any part of the immovable property of the deceased other than the part consisting of the acquired property to which the deceased became entitled subsequent to and during the subsistence of such marriage in *diga*.

Rights of *diga* widower on death of spouse intestate and issueless.

V — INHERITANCE : MOVABLE PROPERTY

20. Heirlooms and live and dead stock appertaining to immovable property to which a person has become entitled as *paraveni* property as defined by section 10 shall, on his dying intestate after the commencement of this Ordinance, devolve in like manner as immovable property and the following provisions of this Ordinance shall not apply thereto.

Heirlooms and movables appertaining to *paraveni*.

21. When a man shall die intestate after the commencement of this Ordinance leaving a surviving spouse she shall be entitled to all wearing apparel, jewellery and ornaments used by her or provided for her use by her deceased husband.

The widow's paraphernalia.

22. When any person shall die intestate leaving a surviving spouse and a child or children, or the descendant of any deceased child entitled to represent his or her parent, the surviving spouse, whether the marriage was in *binna* or in *diga*, shall succeed in like manner and to a like share of all the movable property of the deceased whenever obtained, as if he or she had been a legitimate child of the deceased.

The widow or widower.

23. Subject to the aforesaid right of the surviving spouse, if any, the property of any person who shall die intestate after the commencement of this Ordinance shall devolve in equal shares upon all his or her surviving children (the descendant or descendants of any deceased child being entitled to his or her or their parent's share by representation) whether male or female, legitimate or illegitimate, married or unmarried, and, if married, whether the marriage be in *binna* or in *diga*:

All children inherit equally.

Provided that if the deceased was a male person an illegitimate child shall not succeed if there be surviving any legitimate child or the descendant of a legitimate child ;

assistance, support, or benefit, become entitled to succeed to any interest in the estate of such deceased intestate to which he would not have become entitled had such assistance, support or benefit not been rendered.

Provided further that the issue of a legitimate child *inter se* shall succeed in like manner.

26. Nothing in this Ordinance shall be deemed to affect or render invalid any existing judgment, decree, or order of a court of competent jurisdiction in respect of any property or the right, title or interest of any person in respect of property the subject-matter of the action in which such judgment, decree, or order was given, passed, or made. Saving existing judgements, decrees, or orders.

When there is no surviving descendant

24. When any person shall die intestate after the commencement of this Ordinance leaving no child or descendant of any deceased child, the surviving spouse, if any, shall succeed to all the movable property of the deceased.

VI — GENERAL

Assistance and support not to affect rights of succession

25. A person who has rendered assistance and support or any other benefit to a person who has subsequently died intestate, shall not by reason of such

27. The provisions of this Ordinance shall not have, and shall not be deemed or construed to have, any retrospective effect except in such cases where express provision is made to the contrary. Ordinance not to have retrospective effect unless expressly so provided.