

RAMALINGAM *et al.* v. PUTHATHAI.1899.
August 23.*C. R., Jaffna, 1,344.*

Thesavalamai of Jaffna—Husband and wife—Alienation of land by wife when living separate from her husband—Sale for the sake of maintenance—Validity of deed.

According to the *Thesavalamai* of Jaffna, it is competent for a wife who is separated from her husband to alienate, without her husband joining in the deed, a land for the sake of procuring maintenance for herself.

THIS was an action praying for a cancellation of a deed dated 7th January, 1893, so far as it related to an undivided half share of certain lands, and for a declaration of title in favour of second plaintiff.

Plaintiff averred that one Viratai died intestate without issue leaving the defendant, her sister, and the second plaintiff, the only daughter of another sister (who had predeceased the intestate) as her heirs to the lands in question ; that the defendant, pretending title to them by virtue of a deed which purported to have been made by Viratai in her favour, took wrongful possession of second plaintiff's share ; that the said deed was a forgery ; and that, even if it was genuine, Viratai, at the time she made it, was a married woman, and could not make it without her husband joining in the grant.

The issues agreed upon were as follows :—

- (1) Was the deed of 7th January, 1893, genuine or a forgery ?
- (2) Was Viratai's husband living with her at the date of that deed ?
- (3) If he was not living with her, should he have joined in the deed in order to make it valid ?
- (4) If she was living with him, was the deed valid ?

The Commissioner held the deed was genuine ; that Viratai was separated from her husband at the time the deed was drawn, and had been so separated for some years ; and that her husband need not have joined her in the deed. He therefore dismissed plaintiff's case.

Plaintiff appealed.

Sampayo, for appellant.

Cur. adv. vult.

28th August, 1899. WITHERS, J.—

The Commissioner has found not only that Viratai signed the impeached transfer, but that she signed it under the circumstances recited in the document as the occasion for her selling the lands

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transferred by the document. That is to say, she was separated from her husband, and according to the recitals in the documents she was compelled to sell the lands to procure herself maintenance. That implies her husband's assent.

The circumstances of this case differentiate it from the case of *Silva v. Dissanaike*, D. C., Tangalla, No. 8; reported in 2 C. L. R. 123, upon which the respondent's counsel relied. I do not find that the Thesavalamai provides for a similar case.

The other case relied on for the respondent (Jaffna, 598, *Ambalavaner v. Cander*, to be found in Mutukistna's edition of the Thesavalamai at p. 293) is too meagrely reported to be of any use.

The chapter in the Thesavalamai intituled " Gift or Donation " is not in point. The rule given there is that the wife, being subject to the will of the husband, may not give anything away even out of her dowried property without her husband's consent, but from the context it appears that that rule applies only when husband and wife are living peaceably together. Besides, this document purports not to be a gift of Viratai's dowried property, but an assignment for valuable consideration. The judgment is affirmed.
