1967 *Present :* **H. N. G. Fernando, C.J., and Samerawickrame, J.**

NAGARATNAM (d/o V. Murugappar), Appellant, *and*
V. SUPPIAH, Respondent

S. C. 570/64 (F) D. C. Point Pedro, 7096

Thesavalamai—Persons to whom the law is applicable—Permanent residence acquired by an Indian Tamil in Northern Province—Relevancy of the Citizenship Acts of 1948 and 1949—Marriage contracted prior to Ordinance No. 58 of 1947—Dissolution by divorce in 1959—Rights of wife against the divorced husband in respect of thediatheddam—Jaffna Matrimonial Rights and Inheritance Ordinance (Cap. 58), as amended by Ordinance No. 58 of 1947—Scope of s. 20 of the principal Ordinance.

An Indian Tamil, who, by his permanent residence and marriage in Jaffna prior to 1949, is shown to have been an inhabitant of the Northern Province, is subject to the Thesavalamai. The fact that when the Citizenship Acts were enacted in 1948 and 1949 he did not have the qualifications necessary for citizenship under those Acts is not relevant to the question whether he had already become a permanent resident of the Northern Province prior to 1949.

The Jaffna Matrimonial Rights and Inheritance Ordinance, as amended by Ordinance No. 58 of 1947, does not affect any right acquired prior to the date of the amending Ordinance. Accordingly, where a marriage contracted before the date of the amending Ordinance is dissolved by a decree for divorce after the amending Ordinance came into force, the wife is entitled to claim from the divorced husband, under the law relating to *tediatetam* in section 20 of the principal Ordinance, one-half of the unspent profits which, before the amending Ordinance became law, had accrued after the marriage from a business which the husband had commenced before the marriage. (*Quaere*, whether section 20 of the principal Ordinance ceased, after the 1947 amendment, to entitle the wife to profits arising from the business subsequently to the date of the amendment).

APPEAL from a judgment of the District Court, Point Pedro.

C. Ranganathan, Q.C., with *K. Thevarajah*, for the plaintiff-appellant.

E. R. S. R. Coomaraswamy, with *C. Chakradaran* and *V. Tharumalingam* for the defendant-respondent.

Cur. adv. vult.

October 16, 1967. H. N. G. FERNANDO, C.J.—

The principal question for decision in this action was whether the defendant, who is the divorced husband of the plaintiff, is subject to the *Tesawalamai*. According to the evidence of the defendant, he had

been born in India about 1910. At the age of about 14 years, he had come to a village in the Northern Province where he had been employed for some years. In 1930 he started the business of a trader in the same village and in 1935 he married the plaintiff, who was herself a permanent inhabitant of Jaffna. The defendant had thereafter resided and carried on business in the Northern Province ; he described himself as a permanent resident of the Jaffna District.

The *Tesawalamai* applies to the "Malabar inhabitants" of the Northern Province, including persons of the Tamil race who settled in Jaffna after the enactment of Regulation 8 of 1806 (*Chelly v. Chelly* [1]). It was held in a series of decisions of this Court that "inhabitant" means a person "who had acquired a permanent residence in the nature of domicile in the Northern Province" (13 N.L.R. 74), or "who has his permanent home in the Province" (16 N. L. R. 321), or "a person who has a Ceylon domicile and a Jaffna inhabitancy" (45 N. L. R. 414). The defendant's admission that he is a permanent resident of Jaffna, coupled with the facts that he lived and worked there for about 20 years, that he is of the Tamil race, that he contracted a marriage to a Jaffna resident, and that he has never resided elsewhere since 1924, amply establish that he was an inhabitant of the Northern Province.

The learned District Judge held to the contrary for two reasons—(*a*) because at the time of his marriage, the defendant had described himself as an "Indian Tamil", and (*b*) because it was not proved that the defendant was a citizen of Ceylon by descent or registration.

The description "Indian Tamil" is referable to the fact that the defendant was not a Jaffna Tamil in the sense that his family had not been resident in Jaffna and that he himself had been an immigrant from India. But that description does not alter the effect of the proved fact of the defendant's permanent residence in Jaffna which constituted him an actual inhabitant of the Northern Province.

The Citizenship Acts define the political status of citizens of Ceylon. These Acts were enacted only in 1948 and 1949, and the fact that a person did not at that stage have the qualifications necessary for citizenship is not relevant to the question whether that person had already become a permanent resident of the Northern Province. We are not concerned in this case with the more difficult question whether a person who has come to Ceylon after 1948, and does not acquire citizenship in Ceylon, can claim that he has nevertheless been a permanent inhabitant of Ceylon.

Counsel appearing for the defendant at the appeal did not seriously support the finding of the trial Judge, and for the reasons stated, we reverse that finding and hold that the defendant is subject to the Thesawalamai.

[1] *(1935) 37 N. L. R. 253.*

The marriage between the plaintiff and defendant was dissolved in 1959 by a decree for divorce. By that time the Jaffna Matrimonial Rights and Inheritance Ordinance had been amended by Ordinance No. 58 of 1947. Prior to that amendment, s. 20 (1) of the Ordinance (Chapter 48 of the 1938 Edition) provided that the *tediatetam* of each spouse included one-half of the profits from the separate property of the other spouse ; on that basis the plaintiff in this case became entitled to one-half of the profits which arose after the marriage from a business which the plaintiff had commenced before the marriage. By sub-section (2) of s. 20, the plaintiff become entitled upon the divorce in 1959 to take her half of the accumulated profits.

But Counsel for the defendant argued that because s. 20 was repealed *in toto* by the Ordinance of 1947, and because the present s. 20 of the principal Ordinance (now Chapter 58) contains no provision corresponding to the former s. 20, these profits are not now recoverable by the plaintiff. The answer to this argument is similar to that given by the majority of a Bench of 5 Judges in the case reported in 53 N.L.R. 385. The amending Ordinance did not affect any right acquired before the amendment. Under the former s. 20 (1), the plaintiff was entitled to one-half of the profits of the business, i.e., she was, at the time when the amending Ordinance become law, the owner of that one-half, subject only to her husband's right as manager of the property to dispose of it. That ownership was a right she acquired under the former section, and since the husband did not exercise his power of disposition, she remained the owner immediately prior to the amendment. That right was not affected by the amending Ordinance, and with the entry of the divorce decree in 1959 the husband ceased to have the power of disposition of the wife's share.

According to the findings of fact of the trial Judge, the half-share of the profits from the business from the time of the marriage until 1947 far exceeded the sum of Rs. 10,000 which the plaintiff has claimed in this action. Hence it is not necessary to decide in this case the question whether the former s. 20 of the Ordinance ceased, after the 1947 amendment, to entitle the wife to profits arising from the business subsequently to the date of the amendment.

The decree dismissing the plaintiff's action is set aside, and decree will be entered in favour of the plaintiff for—

(*a*) Rs. 10,000 and Rs. 989·56 being interest at the legal rate on Rs. 10,000 from 7.7.59 till date of action, i.e., 28.6.61 ;

(*b*) interest at the legal rate on Rs. 10,989·56 from date of action till date of decree and further interest at the same rate on the aggregate amount of the decree till payment ;

(*c*) costs in both Courts.

SAMERAWICKRAME, J.—I agree.

Appeal allowed.