

Feb. 20, 1911

Present : Hutchinson C.J. and Van Langenberg, A.J.

NAGARETNAM v. ALAGARETNAM *et al.*

330—D. C. Jaffna, 7,262.

Tesawalamai—Daughters inherit deceased mother's dowry property to the exclusion of sons—Right of fathers to apportion dowry property among daughters.

Where a woman dies leaving sons and unmarried daughters, her dowry property in respect of which she died intestate is inherited by the daughters to the exclusion of the sons.

The husband has a right to allot as dowry to his daughters such portions of the dowry property of his deceased wife as he may think fit.

THE facts are set out in the judgment.

Wadsworth, for the plaintiff, appellant.

Bawa (with him *Balasingham*), for the defendants, respondents.

The following authorities were cited at the argument :—
Valliammaipillai v. Ponnampalam ;¹ *Murugesu v. Vairavan* ;²
Theagaraja v. Paranchothipillai ;³ *Theagaraja v. Paranchothipillai* ;⁴
Tambyah v. Sinnatankam and another (see footnote, page 63) ;
Chapapathy Kurukul v. Sivaprakasapillai et al., ;⁵ *Muttukisna's*
Tesawalamai, pp. 112, 147, 157, 89, 87 ; *Silva v. Silva*.⁶

Cur. adv. vult.

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Savuntharypillai, the wife of Edward Spaulding, died in 1885, leaving two daughters, Alagamma and Chellam, and two sons, Rajarati and Thambiraja. This action is brought to recover a share in her *chidenam* property, the plaintiff claiming as the purchaser of their rights from the two sons. The parties are persons to whom the *Tesawalamai* apply, and the defendants claim the whole property under dowry deeds executed by the father, Edward Spaulding, after his wife's death and after he had married again, whereby he gave one-half in 1889 to Alagamma (through whom the first defendant claims) on her marriage, and the other half in 1901 to the other daughter Chellam, who is the third defendant, on her marriage with the second defendant.

The main issue was whether the dowry deeds to Alagamma and Chellam conveyed title to the shares which they purported to grant. The District Court has held that they did. The plaintiff appeals, and contends that on the mother's death her four children became entitled to the property in equal shares, and that the father had no right to give the whole of it in dowry to the daughters, and that, moreover, he had (under clause 11 of section 1 of the *Tesawalamai*) no power to dowry his daughters without the consent of their maternal grandparents or guardians. He contends that when the father marries again after his wife's death, it is his duty to find a suitable husband for the daughters, and then to confer with the guardians in giving the dowry ; that these dowry deeds made without their concurrence are therefore invalid, and that the law of the *Tesawalamai* is that, where no dowry is given, all the children share equally in their mother's *chidenam* property.

The *Tesawalamai*, as they are set out in our authorized edition of the Laws of Ceylon, are far from clear. But I think that they say that the ancient law was that the property brought in by the husband always remained with the male heirs, and the *chidenam*

¹ (1901) 2 Br. 234.

² (1904) 2 Bal. 141.

³ (1907) 11 N. L. R. 46.

⁴ (1908) 11 N. L. R. 345.

⁵ (1905) 8 N. L. R. 62 ; 1 Bal. 108.

⁶ (1907) 10 N. L. R. 234.

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with the female heirs, and that when a daughter, having received her dowry, diēs without issue, her dowry (*chidenam*) devolves on her sisters and their daughters and granddaughters, to the exclusion of her brothers. And clause 11 says that where a mother dies and her husband marries again, the mother-in-law or nearest relation generally takes the children, if they are still young, to bring them up, and in such case the father must hand over at the same time with the children the whole of her mother's *chidenam* and half of the property acquired during his marriage with her, and when the daughters become marriageable he must go to the grandfather or grandmother with whom they are, in order to marry them and give them a dowry, both from the property, which he has so handed over and also from his own hereditary property. And "this being done," *i.e.*, when the daughters are dowried and married, if anything remains of the property so given up to the relations, the sons then come in. The principle underlying all this with regard to *chidenam* seems to be that the whole of it should go to the daughters, while the *modesium* (brought in by the husband) goes to the sons, although the parents may, when they give a daughter in marriage, give her dowry from either the *chidenam* or the *modesium* or both. The rules are primitive, and do not provide for every case, and do not know anything about formal transfers of title. And in an ordinary case, such as this, it may not be easy to say in whom the legal title is vested, since a notarial deed is now necessary for its transfer *inter vivos*. The father transferred his property to the daughters by notarially executed deeds; but possibly the legal title was not vested in him. In my opinion on the death of his wife her dowry property vested in her daughters, subject to his right to apportion it between them as dowry on their marriage; if the dowry deeds were invalid because the legal title was not vested in him, the property belonged to them in equal shares.

I think, therefore, that the appeal should be dismissed with costs.

VAN LANGENBERG A.J.—

This is a partition action. It was admitted that the land sought to be partitioned was the dowry property of Savuntharypillai, wife of Edward Spaulding, who died in 1885, leaving two sons, Rajaratnam and Thambirajah, and two daughters, Alagamma and Chellam, the third defendant. The plaintiff claims title to an undivided half of the land by purchase from the two sons. She allots one-quarter to the first defendant, who is Alagamma's child, and the remaining quarter to the third defendant. The defendants deny the plaintiff's title to any share of the land, and say that Edward Spaulding by deed D 1, in 1889 allotted to Alagamma an undivided half share of the land as dowry on the occasion of her marriage, and gave the remaining half by deed No. 1,305, dated June 5, 1901, to the third defendant as her dowry. Edward

Spaulding contracted a second marriage on some date prior to 1889. It was contended in the Court below that under the *Tesawalamai*, which governs the case, on the death of Savuntharypillai, her children succeeded to her dowry property in equal shares, and that it was not competent for Edward Spaulding to alienate his deceased wife's property, and that, therefore, no title passed to Alagamma and the third defendant under the dowry deeds executed by their father. It appears to have been conceded in the Court below that each child took a fourth on the death of their mother, and on the other point the learned Judge held that under section 1, sub-section 11, it was allowed to the father to deal with his deceased wife's property in the way that he has done. He accordingly dismissed the plaintiff's action, and the plaintiff has appealed.

Mr. Bawa, who appeared for the respondents, while supporting the finding of the learned District Judge, argued that where a woman died leaving sons and unmarried daughters, her dowry property in respect of which she died intestate was inherited by the daughters to the exclusion of the sons, and in support of his contention he cited to us the case of *Tambyah v. Sinnatankam and another*¹. In that case the plaintiff claimed to be entitled to a

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