[1]*Present :* Middleton A.C.J. and Grenier J.

TAMBYAH *v.* SINNATANKAM *et al.*

165—D. C. Jaffna, 1909.

Sampayo, K. C., for appellant.

Tissaveerasinghe, for respondent.

January 25, 1910. MIDDLETON A.C.J.—

In this case the plaintiff prays to be declared owner and proprietor of one-third share of two lands described in the plaint, excluding house and plantation share of coconut trees in the first land. According to the plaint, it woud appear to me as if the plaintiff had admitted the lands in question as part of his mother's dowry ; and if that were so, then it seems to me in point of law, according to the decisions of this Court in *11 N. L. R. 345* affirming the decision of this Court at page 46 of the same volume, the plaintiff would not be entitled to succeed.

Putting aside this we will go to the question of possession decided by the Judge. He has found that the property formed part of the estate of the mother of the parties. He has found that the property became the subject of division many years ago, and he has held that the plaintiff by acquiescing in the division is now precluded from making the claim he does in this case. It is clear from his own evidence that for something like thirty years the first defendant has been in possession of one of the lands. To my mind it is an extremely strong circumstance why, if that was so, plaintiff should have acquiesced in an adverse possession for so long a period. There is also an appearance of conscientious hesitation on his part with regard to the house and the coconut plantation.

With regard to the second defendant, the evidence shows that the second land was in possession of the second defendant on a title derived from his mother. In my opinion, it is impossible for us to hold that the learned Judge had acted in opposition to the facts by holding as he has held that the plaintiff's action should be dismissed. I hold that the plaintiff's appeal should be dismissed with costs.

GRENIER J.—I agree.

Feb. 20, 1911

VAN LANGENBERG A.J.

Nagaretnam v. Alagaretnam

share of certain lands which belonged to his mother, who died intestate leaving him and three daughters, and he set out that on her death the lands devolved on him and his three sisters in equal shares. In his judgment Middleton A.C.J. says :—

" According to the plaint, it would appear to me as if the plaintiff had admitted that the land in question was part of his mother's dowry land, and if that was so, it seems to me that in point of law, according to the decision of this Court in 11 *N. L. R.* 345, which is the judgment in review of the decision of this Court reported in page 46 of the same volume, the plaintiff would not be entitled to succeed."

Following this opinion, I hold that Mr. Bawa's contention is correct. On the other point, I agree with the learned District Judge that under the *Tesawalamai* the husband has a right to allot as dowry to his daughter such portions of the dowry property of his deceased wife as he may think fit. Under sub-section (9) a similar right is given to the wife who survives her husband. It was pressed upon us by counsel for the appellant that Edward Spaulding by reason of his second marriage had lost whatever right he may have had to deal with his wife's property. I do not think that the second marriage altered the position. Sub-section 11 no doubt states that where a father marries a second time and the nearest relation takes charge of the children, he " is obliged to give at the same time with his child or children the whole of the property brought in marriage by his deceased wife and the half of the property acquired during his first marriage," but the duty is still cast on him to give his daughter out of this property a dowry when she marries. So I am of opinion that the dowry deeds executed by Spaulding gave each of the grantees good title to an undivided half of the land. I would therefore dismiss the appeal with costs.

Appeal dismissed.