1951 *Present :* **Basnayake J. and Gunasekera J.**

KANDAPPU, Appellant, *and* VEERAGATHY *et al.*, Respondents

S. C. 125—D. C. Point Pedro, 3,460

Thesavalamai—*Section 3, Part I—Inheritance—" Dowry "—Gift made to daughter subsequent to date of marriage—Daughter's right to inherit parents' property.*

The sense in which the expression " dowry " is used in the *Thesavalamai* excludes a gift made after marriage. A gift given to a daughter after her marriage has already taken place cannot therefore operate as " the act or *doty ola* " for the purposes of Section 3, Part I, of the *Thesavalamai*, and does not prevent her from inheriting property from her parents.

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

S. J. V. Chelvanayakam, K.C., with *V. Arulambalam*, for the defendant appellant.

C. Thiagalingam, K.C., with *H. W. Tambiah* and *A. Nagendra*, for the respondents.

Cur. adv. vult.

June 6, 1951. BASNAYAKE J.—

In this action the plaintiff seeks to obtain a decree declaring him entitled to an undivided half-share of the land Kottikoil described in the plaint. He claims to be entitled thereto by virtue of deed No. 2,780 of May 14, 1939, whereby one Velupillai Arumugam transferred to him certain lands including the subject-matter of this action. Velupillai Arumugam's title rests on a deed of gift executed by his mother Wallipillai, daughter of Ledchumy.

The case of the defendants is that Wallipillai was not entitled to the land in question. They contend that she had been given a dowry on her marriage and had therefore no right to inherit her mother Ledchumy's property. Each party also made a claim based on prescriptive possession.

It is admitted that Ledchumy was the original owner of the land in dispute and that on her death she was survived by her husband, her daughter Wallipillai and son, Kandar Alvar. It is also admitted that Wallipillai was married and that Velupillai Arumugam is her son.

[1] *(1911) 14 N. L. R. 385.*

The learned District Judge has held in favour of the plaintiff both on the question of title and on the question of prescriptive possession.

Learned Counsel for the appellant confined his argument to the question whether Wallipillai was entitled to inherit property from her mother. He submitted that she was not. He cited in support the following passage from section 3, Part 1, of the *Tesawalamai* :

> " The daughters must content themselves with the dowry given them by the act or *doty ola*, and are not at liberty to make any further claim on the estate after the death of their parents, unless there be no more children, in which case the daughters succeed to the whole estate."

The above statement is by no means precise. I understand it to mean that the married daughters to whom a dowry has been given may make a claim to the estate of their parents only if there are no other children, viz., sons and unmarried daughters. This view of the law has been accepted by this Court and has been thus stated by Lyall-Grant J. in the case of *Eliyavan v. Velan et al.* [1]: " The admitted principle of the *Tesawalamai* is that if a daughter is dowried she loses her rights to her parents' inheritance."

The evidence in the instant case does not establish either the date of Ledchumy's death or of Wallipillai's marriage. Nor is there evidence of a *doty ola* or that dowry was given on Wallipillai's marriage. There is evidence that, in June, 1904, after Wallipillai's marriage and after Ledchumy's death, Wallipillai's father, brother and uncle gave her a gift of a number of lands including a portion of the land Kottikoil. But I am unable to hold that the deed of gift is a *doty ola*. The sense in which the expression dowry is used in the *Tesawalamai* in my opinion excludes a gift made after the marriage.

In *Tambapillai et al. v. Chrinnatamby et al.*[2] this Court held that under the *Tesawalamai* dowry may be given before the marriage. Although that question does not arise here that decision is likely to create difficulty in a case where the donee dies after the gift but before the marriage. The gift cannot in that event be called dowry. There can be no dower without a marriage. Dowry is primarily a gift given at the time of marriage. The expression does not, in my opinion, admit of any other meaning in the *Tesawalamai*.

It is clear from the *Tesawalamai* that the granting of the " *doty* " or " *doty ola* " is an act performed at the time of the marriage and not during the marriage. The deed of June, 1904, in favour of Wallipillai cannot therefore operate as " the act or of *doty ola* " for the purposes of section 3, Part I, and does not prevent her from inheriting her mother's property.

The appellant is therefore not entitled to succeed.

The appeal is dismissed with costs.

GUNASEKARA J.—I agree.

Appeal dismissed.

[1] *(1929) 31 N. L. R. 356 at 358*

[2] *(1915) 18 N. L. R. 348.*