

1934

Present : Garvin S.P.J. and Akbar J.

SINNATHANGACHY *v.* POOPATHY *et al.*

186—(Inty.) Jaffna, 7,511.

Thesawalamai—Succession to husband's property—Parties married before Ordinance No. 1 of 1911 came into operation—Right of widow to give dowry.

Where a person, subject to the *Thesawalamai*, and married before the *Thesawalamai Ordinance* (No. 1 of 1911) came into operation, died leaving a widow and children,—

Held, the property of the deceased vested in his widow who had the right to apply it to give dowry to a daughter.

The son's right to the residue is suspended until the death of the widow.

A PPEAL from an order of the District Judge of Jaffna.

Weerasooria (with him *Subramaniam*), for the first and third respondents-appellant.

N. Nadarajah, for the second respondent-respondent.

June 27, 1934. GARVIN S.P.J.—

The parties to this appeal are the widow of *Ambalavanar Ponnampalam* of *Uduvil* deceased, their daughter the first respondent, and her husband the third respondent, and their son the second respondent. The widow applied for letters of administration to the estate of her husband and order *nisi* was entered on April 16, 1930. This order was made absolute on November 10, 1930. The widow, thereafter, moved the Court for permission to sell the deceased's half share in two properties which are numbered 1 and 8 in the inventory to pay the debts of the deceased. Her application was allowed, but later at her own instance the sale was

stayed. She made a second application when the second respondent, her son, objected to the sale. The broad ground upon which he asked the Court to refuse the administratrix permission to sell these interests was that that would prejudice him in that the result of the sale would be to divest the estate of the two remaining properties to which as a son he might have succeeded. It would seem that on the very day on which order *nisi* was entered, the administratrix executed a deed by which she settled on her daughter as dowry all the properties which formed part of this estate save and except those bearing Nos. 1 and 8 respectively. The second respondent, thereafter, offered to bring in half the amount of the debts with the object of saving these properties from sale. After argument, the learned District Judge made order directing the first and second respondents each to bring into Court what he referred to as their *pro rata* shares of costs of administration and liabilities of the deceased, according to such property "as devolved on them at the date of the death of the deceased". It is evident that this order proceeded upon the impression that immediately upon the death of the deceased his property devolved upon his daughter, the first respondent, and his son, the second respondent, in certain definite proportions. In this, I think, the learned District Judge was mistaken. The position under the *Thesawalamai* is by no means the position which has been created since the new *Thesawalamai* Ordinance, No. 1 of 1911, was passed. The deceased and his wife were apparently married according to their own rites in 1891, but there is evidence afforded by an affidavit and an extract from the Register of Marriages submitted by counsel in proof of the fact that a marriage between these parties was solemnized on November 10, 1893, and duly registered under the General Marriage Ordinance. The questions which arise in this case must therefore be decided with reference to the law as it existed prior to the passing of the new *Thesawalamai* Ordinance.

It is to be gathered from rule 9, section 1, of the *Thesawalamai* as it appears on page 5 of Volume I. of the Ordinances that upon the death of a man leaving children and a widow, their mother, his property remains with the mother in whom is vested the right to apply that property or any part thereof in giving a dowry or dowries to their daughters on marriage. The son or sons take nothing so long as the mother remains alive. It is impossible to say, therefore, that in this case at the death of the deceased, Ambalavanar Ponnampalam, his property devolved upon his son and daughter or that it devolved in any particular portion. All that is clear is that the property remained with the widow and that she had the right to apply the property or so much of it as she thought necessary in giving her daughter a dowry. The son, no doubt, had the right to take what was left, but even that right was suspended until the death of the widow. The view of the law to which I have just given expression, derives support from the judgments in *Nagaratnam v. Alagaratnam*¹ and *Tambapillai v. Chinnatamby*².

The order of the District Judge, therefore, cannot be sustained. If there are debts of this estate which have not yet been paid, the available

¹ 14 N. L. R. 60.

² 18 N. L. R. 348.

assets of the deceased must obviously be realized. We would therefore, direct that the objection of the second respondent be dismissed and that the application of the administratrix for leave to sell these properties be granted.

The appellants are entitled to the costs of this appeal but we make no order as to the costs in the Court below.

AKBAR J.—I agree.

Appeal allowed.

