1947 *Present :* **Windham J.**

SWAMIPILLAI, Appellant, *and* SOOSAIPILLAI, Respondnent.

S. C. 165—C. R. Mallakam, 13,005.

Thesavalamai—*Property of deceased wife—Life interest of husband—Extent of such interest—Sale by son after majority—Rights of vendee—Chapter 51, sections 9 and 11—Chapter 48, section 37.*

Under the *Thesavalamai* in terms of Chapter 51 of the Legislative Enactments a husband married before 1911 is entitled to a life interest in his deceased wife's property provided he does not marry again and dowers his daughters.

The provisions of Chapter 48 of the Legislative Enactments have no application to questions concerning the rights of spouses where the parties were married before 1911.

APPEAL from a judgment of the Commissioner of Requests, Mallakam.

C. Shanmuganayagam, for the defendant, appellant.—Every clause of a statute should be construed with reference to the context and the other clauses of the statute so as to make a consistent enactment of the whole statute. (Maxwell on Interpretation 8th ed., p. 20 *A. G. v. Brown*[1].) Clause 1 of section 11 of the *Thesawalamai* read together with clauses 2, 3 and 4 sufficiently indicates that the widower has a right to possess the deceased spouse's estate only until the daughters are married and the sons acquire a competent age, unlike the widow who by reason of her sex has been endowed with larger rights as set out in section 9.

If, however, section 11 is considered not sufficiently clear on this point, the question has to be decided on general principals (*Kuddiar v. Sinnar*)[2] and with reference to the principles underlying the provisions of Ordinance No. 1 of 1911, in view of the fact that the latter is an Ordinance which gave expression to certain established customs (*Vallipillai V. Saravanamuttu*[3] ; *Murugesu v. Kasinathar*)[4], whereas the *Thesawalamai* is in the words of Tennyson nothing but a " wilderness of single instances (*Chellappa v. Kanapathy*)[5]. in fact the Legislature considered section 11 of the *Thesawalamai:* obsolete in certain respects (*Thevanapillai v. Ponniah*[6] ; *Annapillai v. Sarawanamuttu*)[7]. The widower's rights under the *Thesawalamai* are narrower than under the Ordinance of 1911 ; the latter, though extending that right, did not give the widower a complete life-interest—*Annapillai v. Saravanamuttu* (*supra*).

The decision in *Chellappah v. Arumugam*[8], which is the sole basis of the learned Commissioner's judgment in the present case, is not applicable, as the facts are different ; in that case the deceased mother left an infant child, while here the child was a major at the time of the mother's death ;

[1] *(1920) 1 K. B. 773 at 791.*
[2] *(1914) 17 N. L. R. 243.*
[3] *(1914) 17 N. L. R. 381.*
[4] *(1923) 25 N. L. R. 201.*
[5] *(1914) 17 N. L. R. 294.*
[6] *(1914) 17 N. L. R. 437.*
[7] *(1938) 40 N. L. R. 1.*
[8] *5 Tamb 145.*

the learned Judge has further stated in that case : " I express this opinion with some hesitation in view of the decision reported in *3 Lorensz 193* " ; where it was held that according to the *Thesawalamai* and customs of the place, the children being dead, the intestate's husband had no interest in the estate. Moreover, *Chellappah v. Arumugam* (*supra*) has been overruled by *Theagarajah v. Paranchotipillai*[1]. where the right of administering the wife's estate would have been granted to the widower if he was considered to have any life-interest.

S. J. V. Chelvanayakam, K.C. with *A. Vythilingam*, for the plaintiff, respondent.—Ordinance No. 1 of 1911 does not apply to the present case , section 14 of the Ordinace expressly states that the " following " sections do not apply to parties married before 1911 ; sections 37 and 38 relating to life-interest were " following " sections even at the time the Ordinance was enacted.

The *Thesawalamai* is the only law applicable to the present case. The relevant provision of the *Thesawalamai* is section 11, but all clauses other than clause 1 of the section are irrelevant to the point at issue. Even in the case of clause 1 it is incorrect to assume that the words " so long as he " ought to be interposed by implication before the words " does with his child ".

Annapillai v. Sarawanamuttu (*supra*) is not relevant as it dealt with a case where the parties were married after 1911. *Sinnathangachy v. Poopathy*[2] is the latest authority regarding the rights of the surviving spouse to the property of the deceased spouse ; it was held there that the position under the *Thesawalamai* was quite different from that under the Ordinance of 1911. *Chellappah v. Arumugam* (*supra*) has not been overruled by *Theagarajah v. Paranchotipillai* (*supra*) as the question of life-interest was not decided in the latter case. See also *Muttukisna pp. 220 and 222.*

C. Shanmuganayagam, in reply.—Section 14 of the Ordinance of 1911 refers only to part 3 of the Ordinance and not to part 4 which relates to life-interest. *Sinnathangachy v. Poopathy* (*supra*) decided only widow's rights, not widower's . See aslo *Muttukisna pp. 118 and 43.*

Cur. adv. vult.

December 16, 1947. WINDHAM J.—

The plaintiff-respondent sued for a declaration that he was entitled to possession of, and to a life interest in, certain land, and for the ejection of the defendant-appellant therefrom. The facts, which are not in dispute, were as follows. The land had been the property of the respondent's wife, whom he married in 1901. They had only one child, a son, who was born in 1903. The wife died in 1938. The respondent did not remarry, nor did he even propose to do so. In 1941 the son sold his mother's interests in the property to the appellant. In 1944 the son died, aged 40. The respondent thereupon brought this action.

The sole point for decision is a legal one, namely, whether, upon the death in 1938 of his wife (the owner of the property), the respondent

[1] *(1907) 11 N. L. R. 46 and 345.* [2] *(1934) 36 N. L. R. 103.*

acquired a life interest in it, or whether such interest as he may have acquired in it ceased upon his son's attaining his majority and accordingly had expired when the latter sold the property to the appellant in 1941. The relevant provisions of the law are sections 11 and 9 of the *Thesawalamai* (Cap. 51), and (it is argued for the appellant) section 37 of the Jaffna Matrimonial Rights and Inheritance Ordinance (Cap. 48).

The first point for decision is whether section 37 of the latter Ordinace (Cap. 48) applies at all to the present case, having in view the fact that the respondent and his wife were married before 1911. Section 37 reads as follows :—

> " 37. When the estate of a deceased parent devolves on a minor child, the survivint parent may continue to possess the same and enjoy the income thereof until such child is married or attains majority".

It is conceded by Mr. Chelvanayakam for the respondent that if this section does apply, then the appeal must be allowed, since the property in dispute devolved on the son, and the latter had attained his majority before he disposed of it to the defendant, and the interest of the respondent in it terminated, under the section, upon his son's attaining his majority. But it seems to me quite clear that this Ordinance (Cap. 48), has no application in the present case, by reason of section 14 thereof, which provides that—

> " The following sections of this Ordinance shall apply to the estate of such persons only as shall die after the commencement of this Ordinance, and shall be then unmarried, or if married, shall have been married after the commencement of this Ordinace ".

Section 37 is, and in the form in which the Ordinance was enacted in 1911 also was, one of the " following sections ". Accordingly it does not apply to the present case, the parties having been married in 1901.

That this Ordinance, Cap. 48, has no application to questions concerning the rights of one spouse over property of the other, upon the latter's death, where the parties were subject to the *Thesawalamai* and had been married before 1911 (*i.e.*, the year of the enactment of the " new *Thesawalamai* Ordinance ", which has now become Cap. 48) was laid down in clear terms in *Sinnathangachy v. Poopathy*,[1] where it was held that questions of devolution arising upon such a marriage " must therefore be decided with reference to the law as it existed prior to the passing of the new *Thesawalamai* Ordinance ". In short, we must have recourse to the provisions of the *Thesawalamai*, Cap. 51. It has been contended for the appellant that, even if section 37 of Cap. 48 cannot be directly applied in the present case, its principles should be applied on order to throw light on the meaning of sections 9 and 11 of Cap. 51, which he argues, are vague. But I think this would be a quite unjustified method of getting round the specific provisions of section 14 of Cap. 48. It will be noted that it was pointed out in *Sinnathangachy v. Poopathy* that " the position under the *Thesawalamai* is by no means

[1] (1934) *36 N. L. R. 103.*

the position which has been created since the new *Thesawalamai* Ordinance, No. 1 of 1911, was passed", (*i.e.*, Cap. 48). Furthermore, the provisions of sections 9 and 11 of the *Thesawalamai*, Cap. 51, so far as they relate to the question now in issue, are in my view not vague, and even if they were to be considered so, they have been the subject of judicial interpretation which I hold to be binding on this Court. Section 11 of Cap. 51 provides that—

> " If the mother dies first leaving a child or children the father remains in the full possession of the estate so long as he does not marry again, and does with his child or children and with his estate in the like manner as is above stated with respect to the mother ".

The remainder of section 11 is, in my view, irrelevant to the present case, since it is concerned solely with the event of the father (widower) marrying a second time or wishing to do so. Under the relevant portion of section 11 which I have quoted, therefore, the respondent would seem to be entitled to possession of the estate deriving from his deseased wife, for life, so long as he remains unmarried and " does with his child or children and with his estate in the like manner as is above stated with respect to the mother ". What is required to be done by a mother " as above stated ". *i.e.*, where the positions are reversed and the father predeceases the mother, is set out in section 9. which provides as follows :—

> " If the father dies first leaving one or more infant children, the whole of the property remains with the mother, provided she takes the child or children she has procreated by the deceased until such child or children (as far as relates to the daughters) marry ; when the mother on giving them in marriage, is obliged to give them a dowry, but the son or sons may not demand anything so long as the mother lives, in like manner as is above stated with respect to parents ".

From this it appears that all that is required to be done by the mother, in order that she may be entitled to keep possession of the property for her life, is that she shoud keep and give dowries to her daughters, if any. In the present case there were no daughters. And the section expressly provides that " the son may not demand anything so long as the mother lives ". Vide *Sinnathangachy v. Poopathy* again, confirming, that to be the position. Referring back to section 11, then, whose effect is to import the provisions of section 9 *mutatis mutandis*, I think it is clear that where the mother dies first, the father is similarly entitled to full possession of the estate and the son may not demand anything so long as the father lives. The only two provisos are that the father shall not marry again and that he shall (importing the provisions of section 9) keep the daughters until they marry, and then shall endower them ; and neither of these provisos is applicable in the present case. It will be noted that there is nothing in section 9 or 11 of Cap. 51, as there is in section 37 of Cap. 48, limiting the rights of the surviving spouse to the children's attaining theri majority.

The above view as to the effect of sections 9 and 11 of Cap. 51 in such a case as the present was adopted in *Chellappah v. Arumugam*[1], where the widower's interest " till either death or remarriage " was recognized. That case was decided in 1900, but it has never been overruled.

I have been referred by Mr. Shanmuganayagam for the appellant to the case of *Theagarajah v. Paranchotipillai*, reported in 11 N. L. R. at page 46 and (in review) at page 345. That was a case where, as here, the mother left property and predeceased her husband. It was held, on an application for letters of administration to the estate of their daughter, who died subsequently in infancy, that, the daughter having inherited the property from her mother, the mother's next of kin were her legal heirs, and not the father. That no doubt is the true position ; property derived from the mother devolves on her daughter and, should the latter die without issue, will revert to the mother's heirs and not to the father or his heirs. But that is a question of the devolution of the ultimate and absolute title. Admittedly, the father would inherit no absolute title to the property. But nothing in that case decided that the devolution should not be subject to the father's life interest in the property. Accordingly *Chellappah v. Arumugam* remains the unchallenged authority on the subject of the father's life interest, where the marriage took place before 1911. Reference has also been made to *Annapillai v. Saravanamuttu*[2], but that case was one where, by reason of the marriage having taken place after 1911 the provisions of the latter Ordinance, Cap. 48, applied. It may well be, as was there suggested, that in such a case section 37 of Cap. 48 has impliedly " repealed " section 11 of Cap. 51. But only in respect of cases to which Cap. 48 is applicable at all, that is to say, only in cases which are not excluded from its operation by section 14 thereof.

For the above reasons I hold that the respondent is entitled to possession of, and, unless he remarries, to a life interest in, the land in dispute ; and this appeal must be dismissed with costs.

Appeal dismissed.