1936

Present : **Moseley J. and Fernando A.J.**

SEETHANGANIAMMAL *v.* ELIYAPERUMAL.

185—D. C. Jaffna, 6,739.

Thediathetam—*Gratuity paid to public servant—Not acquired property—Thesawalamai Ordinance, No. 1 of 1911, s. 21.*

The gratuity paid to a public servant on retirement from service is not *thediathetam* property within the meaning of section 21 of Ordinance No. 1 of 1911.

Avitchy Chettiar v. Rasamma (35 N. L. R. 313) and *Thamotheram v. Nagalingam (31 N. L. R. 257)* referred to.

APPEAL from a judgment of the District Judge of Jaffna.

N. Nadarajah (with him *Kumarasingham*), for plaintiff, appellant.

N. E. Weerasooria (with him *T. S. Fernando*), for defendant, respondent.

Cur. adv. vult.

October 26, 1936. FERNANDO A.J.—

The plaintiff-appellant sued the defendant-respondent for a divorce and a decree *nisi* was entered in her favour in D. C. Jaffna, 1,416, on February 13, 1934. That decree also provided for alimony to be paid by the respondent, and presumably the order for alimony was based on the salary that was then drawn by the defendant who was in the service of the District Road Committee of Mullaittivu. On April 1, 1934, the defendant retired from Government service, and on February 16, 1934, he drew a sum of Rs. 1,060 which admittedly was paid to him as a gratuity on his retirement. On September 3, 1934, the plaintiff filed this action claiming half the gratuity as her share of the defendant's acquired property, and in the plaint she stated that in the divorce action, a division of the acquired property was ordered as between the plaintiff and the defendant whose rights with regard to property are governed by the Thesawalamai.

[1] *36 N. L. R. 326.* [2] *13 C. L. Rec. 238.*

When the case came up for trial in the District Court, no evidence was led, but certain admissions were made, and on these admissions, the learned District Judge dismissed the plaintiff's action with costs, and he made that order on the footing that the plaintiff admittedly could not claim a half share of the salary earned by the defendant between the date of action and the date of decree, and that for the same reason, the plaintiff was not entitled to claim a half share of the gratuity which was given in lieu of the salary which the defendant might have earned if he had continued in service.

The learned District Judge appears to have thought that in the case of *Thamotheram v. Nagalingam* [1] Drieberg J. held that the salary of the husband was acquired property within the meaning of section 21 of Ordinance No. 1 of 1911. An examination of that judgment, however, will show that although Drieberg J. was of opinion that money which a man had saved from professional earnings which he has set aside or invested, and which is not needed for his ordinary expenditure, could be regarded as acquisitions or as acquired property, he proceeded to say that he did not think that these expressions were applicable to the salary of the appellant in that case. I do not think that this judgment in any way disturbs the principles definitely laid down by a Bench of three Judges of whom Drieberg J. was one, in the case of *Avitchy Chettiar v. Rasamma* [2]. Garvin A.C.J. who delivered the judgment in that case in which both the other Judges concurred said, " The question before us must be settled by interpretation of the language of the legislature ", and he referred to that portion of section 21 which is the provision under which the appellant claims a half share of the gratuity. " The words of that section are as follows :—' Property acquired for valuable consideration by a husband or wife during the subsistence of the marriage.' " " If regard be paid to the scheme and purposes of the Ordinance, it seems to me that it has provided a definition (of *thediathetam*) in section 21, and it has done so not only for the purposes of inheritance, but generally for the purposes of the Ordinance. " He held that in the case before him, the premises were acquired for valuable consideration during the subsistence of the marriage, and therefore fell within the definition of *thediathetam.*

The property in question in this case is admittedly a gratuity in money paid to the defendant on his retirement from service and it is impossible to hold that this gratuity is property acquired for valuable consideration. As Counsel for the respondent submitted the words " for valuable consideration " must be interpreted as they would be under the English law, and even if it can be argued that this gratuity is something paid to the defendant for his past services, then they would not be paid to him for valuable consideration. But it is impossible in my opinion to bring salary as such within the definition contained in section 21 and all that the Supreme Court held in *Thamotheram v. Nagalingam (supra)* was that an investment of money saved from professional earnings might be regarded as acquired property. I would, therefore, hold that the gratuity in question is not *thediathetam* within the meaning of section 21 of Ordinance No. 1 of 1911.

[1] *31 N. L. R. 257.* [2] *35 N. L. R. 313.*

In view of this position, it is not necessary to discuss the other question, namely, whether plaintiff can still claim this property in view of the order made in the divorce action. The order made in that case is not in fact before us, although the proceedings of April 3, 1935, appear to indicate that the plaint and decree in that action were in fact produced, but they are not in the record in this case.

The appeal, therefore, fails and must be dismissed with costs.

MOSELEY J.—I agree.

Appeal dismissed.