WIJESEKERA
v.
SENEVIRATNE

COURT OF APPEAL
L. H. DE ALWIS, J. AND H. A. G. DE SILVA, J.
C.A. 250/72 (F)
D. C. KALUTARA 1807/L
JANUARY 25, 1983.

Matrimonial Rights and Inheritance — Limitation of a married woman's power of disposal of immovable property before Married Women's Property Ordinance, No. 18 of 1923 came into force — Written consent of husband.

Held —

Section 8 of the Matrimonial Rights and Inheritance Ordinance restricts a married woman from disposing of any immovable property by a deed *inter vivos* except with the written consent of her husband. This section was repealed by the Married Women's Property Ordinance, No. 18 of 1923 which came into force on 01.7.1924. But the limitation of a married woman to dispose of such property still continued in cases where the woman was married before the Married Women's Property Ordinance came into force on 1st July 1924 and the property had been acquired by her prior to that date.

Where the plaintiff woman married on 11.2.1924 before the Married Women's Property Ordinance came into force and the property was acquired by her on Deed No. 269 of 20.1.1924 shortly before her marriage (also prior to the Married Women's Property Ordinance came into force) the written consent of her husband was necessary. But such consent was there because he had written to the defendant in 1967 that he told his wife " to do whatever she pleases with these lands ". Hence the action of the wife to have a deed executed by her in 1967 in favour of the defendants on the ground that she was a woman who was married and had acquired the property before the Married Women's Property Ordinance came into operation on 1.7.1924 cannot succeed. The written consent need not appear on the face of the deed nor need it to be notarially executed.

Cases referred to :—

1. *Perera v. Perera* 49 NLR 255
2. *Fradd v. Fernando* 36 NLR 201
3. *Ponnamal v. Pattayo* 13 NLR 201

APPEAL from judgment of the District Judge of Kalutara

H. W. Jayewardene, Q.C. with *V. C. B. Ratnayake, Lakshman Perera* and *C. R. de Alwis* for appellant.

Daya Guruge for respondent.

Cur. adv. vult

18 March 1983
L. H. DE ALWIS, J.

The only question that arises for determination in this appeal is whether the letter dated 21.4.67 (D2) constitutes a written consent given by the plaintiff's husband to her, within the meaning of section 8 of the Matrimonial Rights and Inheritance Ordinance (Cap. 57, RLE), to transfer the land in suit to the defendant on deed No. 3010 of 6.9.67 (D1).

Section 8 of the Matrimonial Rights and Inheritance Ordinance restricts a married woman from disposing of any immovable property by a deed *inter vivos,* except with the written consent of her husband. This section along with certain others were repealed by the Married Women's Property Ordinance No. 18 of 1923 (Cap. 56). But the limitation of the power of a married woman to dispose of such property still continued in cases where the woman was married before the Married Women's Property Ordinance came into force on the 1st of July 1924, and the property had been acquired by her prior to that date.

It was held in *Perera v. Perera* (1), that a woman married before July 1, 1924, cannot dispose of immovable property acquired before that date without the written consent of the husband.

In the present case, the plaintiff was married on 11.2.1924, according to the marriage certificate (P2), that is, before the Married Women's Property Ordinance came into operation. The land in suit is the first one of several lands gifted to her and her intended husband, in consideration of their marriage, by deed No. 269 of 20.1.1924 (P1) which was also prior to the Married Women's Property Ordinance.

The Plaintiff by deed No. 3010 dated 6.9.67 (D1) transferred a half share of the land referred to in deed P2 to G. A. Wijesekera, the defendant. Thereafter she instituted the present action on 16.10.1970 and by her amended plaint of 3.2.74 sought to have the deed (D1) set aside as void, on the ground, *inter alia*, that she was a woman who was married and had acquired the property, before the Married Women's Property Ordinance came into operation on 1.7.1924 and that her husband had not consented to the execution of the deed. The defendant's case was that the plaintiff's husband had consented to the transfer of the land to him.

The plaintiff did not give evidence but called her husband who was shown in cross-examination, letter D2 dated 21.4.67 written by him, wherein he has stated that he told his wife " to do whatever she pleases with these lands ", that is, the lands referred to in the deed of 1924 (P1). He admitted in evidence that he wrote this letter in reply to the defendant's request to purchase the land in suit from his wife, the plaintiff.

The learned District Judge has taken the view that although the plaintiff's husband has stated that his wife could do whatever she pleased with the lands referred to in the deed of 1924, there was nothing to show that the plaintiff's husband consented to the sale of the land in suit and that the deed D1 does not show on its face that he had consented to the sale of the property referred to in the deed. He accordingly held that the deed D2 was void for lack of the plaintiff's husband's consent, and entered judgment for the plaintiff.

In my view the conclusion reached by the learned Judge on the construction of the letter D2 is clearly wrong. He admits that in D2 the plaintiff's husband has stated that his wife could do whatever she pleased with the lands referred to in the deed of 1924. The land in suit is one of the lands referred to in the deed of 1924 and the consent given by plaintiff's husband to his wife to do whatever she pleased with the lands in that deed applies to the land in suit also. That letter constituted a written consent to

his wife to dispose of or deal with any of the lands referred to in the deed of 1924 (P1). The letter D2 was written on 21.4.67 a little over 4 months before the deed D1 was executed on 6.9.67. Apart from the reasonable inference that the written consent in D2 was given in respect of the land in D1, the plaintiff's husband under cross-examination, admitted that he gave his consent to the sale of the land in suit.

The letter D2, it is true, is addressed by the plaintiff's husband to the defendant, but he has stated in writing that he had given his consent to his wife to do as she pleased with the land, in that letter he informs the defendant that he has forwarded his letter inquiring about the land to his wife who lived at the time at Kirillapone. He gave the defendant permission to meet his wife to discuss the matter and furnished him with directions to locate her residence in Colombo. It is really a letter of introduction to the defendant and conveys his written consent to his wife to sell any of the lands acquired by her on the deed of 1924 (P1). The defendant must naturally have shown the letter of introduction to the plaintiff before he commenced negotiations regarding the purchase of the land in suit.

Learned Counsel for the plaintiff-respondent submitted that the written consent of the plaintiff's husband should be recited in the deed itself. But there is no such requirement in law. In *Fradd v. Fernando* (2) Dalton J., observed that it is not necessary that the consent should appear on the face of the document making the disposition or that it should be given by a writing notarially executed.

Learned Counsel for the respondent also submitted that the consent must be such as will leave no need or room for oral evidence or conflicting inferences, as to its meaning. He was *relying on the dissenting judgment of Wood Renton, J. in Ponnamal v. Pattayo* (3). In the present case the letter D2 contains a clear expression in writing of the plaintiff's husband's consent to his wife to dispose of or deal with any of the lands

gifted to her in the 1924 deed (P1) and that deed includes the land in dispute. The deed D1, conveying the land in suit to the defendant, has therefore been executed with the knowledge and written consent of the plaintiff's husband and is valid.

I accordingly set aside the judgment of the learned District Judge and dismiss the plaintiff's action with costs. The appeal is allowed with costs.

H. A. G. DE SILVA, J. — I agree.

Appeal allowed.