Present : Ennis J. and Schneider A.J.

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PONNAMAH *v.* KANAGASURIYAM.

17—D. C. Jaffna, 9,468.

Tesawalamai—*Acquired property—Property acquired after marriage—Insurance policy—Improvements effected on joint property after marriage*—Tesawalamai, *s. 1 (16).*

All property purchased after the date of marriage is presumed to be acquired property until the contrary is proved.

The value of premiums paid during marriage on the husband's life insurance policy was held to be acquired property.

Where a husband bought three-fourths share of a land before marriage, and one-fourth share after marriage, and spent money for improvements on the land after marriage—

Held, that section 1, sub-section (16), did not apply.

THE facts are set out in the judgment.

A. St. V. Jayewardene and *Arulanandan*, for the appellant.

Bawa, K.C., and *Balasingham*, for the respondent.

Cur. adv. vult.

July 11, 1916. ENNIS J.—

This was an action for divorce. The plaintiff, in addition, prayed for a division of the property, for alimony, and for provision for a child of the marriage, a daughter. She obtained a decree for divorce, and has been awarded Rs. 6,925 as the half share of the property found by the Court to be divisible between the parties. Her claim for alimony was refused, and a sum of Rs. 2,500 was ordered to be settled on the child. The defendant appeals from the order allowing the plaintiff Rs. 6,925 and the order settling Rs. 2,500 on the child. The plaintiff's claim in respect of the property to be divided is found in a schedule to the plaint. The parties appear to have agreed to divide between them the property acquired after the marriage. They appear, further, to have agreed that the *Tesawalamai* should control the decision as to what property is acquired property. Following this rule, the learned Judge has held that all property purchased after the date of marriage is presumed to be acquired property under the *Tesawalamai* until the contrary is proved. The case in Muttukristna's *Tesawalamai*, at page 30, seems to support that contention, and also in Katiresu's *Tesawalamai* two cases are cited for the same proposition. The presumption would appear to be correct, because at the time when the *Tesawalamai* was written it would seem that a son, before marriage and during the lifetime of his father, could not hold for himself any property gained

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or earned by him during the time of his bachelorhood; it all belonged to his father. So that on the marriage the property brought together, which is dealt with in section 1 of the *Tesawalamai*, would be, on the side of the husband, such property as the son had received as a gift from his father, or, if his father had been dead at the time, had inherited from him, and purchases after that would presumably be made from the profits which section 1 distinctly says are acquired property. On this ground the learned District Judge has dealt with each of the items in the schedule.

On appeal four of these items only as settled by the learned District Judge have been pressed for our consideration, namely, Nos. 1, 3, 7, and 8.

With regard to the item No. 1, it appears that the plaintiff entered into a contract for the purchase of certain land prior to his marriage. After the marriage he paid a sum of Rs. 200 to complete the purchase money. The District Judge holds that this sum of Rs. 200 was paid from the acquired property. The defendant in giving evidence does not say that it was not so paid, and applying the presumption applied by the learned District Judge the finding is right.

With regard to item No. 3, a sum of Rs. 8,830 was held by the Judge to be acquired property. This sum was received from the Notary Sithamparapillai, and was paid in respect of the acknowledged debt of Rs. 7,000 and another acknowledged debt of Rs. 1,500, and the balance being interest. The defendant stated that the sum of Rs. 7,000 was paid in respect of a half share of the land called Navatkadu, which had been gifted to him at the request of his sister by Sithamparapillai. It appears that the defendant received this deed of gift in 1906, the marriage of the parties was in 1901. The deed of gift purported to be in consideration of natural love and affection. In 1912 the defendant instituted a partition action in respect of this land. That action was No. 8,329 in the District Court. He further instituted another action, No. 8,439, in the District Court for the recovery of Rs. 4,870, money paid as surety for a debt due to Manicam by Sithamparapillai and his wife. The defendant in his evidence stated that the land Navatkadu was purchased in 1902 with the money borrowed from Manicam. These two actions were settled, and according to the evidence the defendant accepted Rs. 7,000 for his share of the land, and Rs. 1,500 in respect of the payments he had made to Manicam on Sithamparapillai's behalf. The learned District Judge has held that the deed of gift by Sithamparapillai was in fact made not as a gift, but because Sithamparapillai had purchased the land for the defendant. In arriving at that conclusion, he seems to have taken into consideration the case No. 8,329. No copy of that case has been put in evidence, so that the reason for the finding, so far as it is based on that case, fails. However, it would seem that the two cases were settled at the same time, and if Rs. 7,000 was the sum paid in respect of the land, and

Rs. 1,500 in respect of money paid on behalf of Sithamparapillai, a sum of Rs. 3,000 odd of the moneys paid by the defendant to Manicam remains unaccounted for. That money, it would seem from the case No. 8,439, came out of the profits which accrued to the defendant during the time of his marriage. On that basis the onus of proof as to why this sum of Rs. 3,000 odd should have disappeared in the settlement was on the defendant. The finding of the Judge, therefore, that the so-called deed was not in fact a gift, but a transfer following on money consideration, finds some support in an inference from the terms of the settlement, as the defendant admits that in 1906, the date of the gift, the value of the share of the land then said to be gifted was Rs. 3,000. In these circumstances, I do not feel inclined to interfere with the finding that the sum claimed in item No. 3 was of acquired property.

With regard to item No. 7, the plaintiff claimed Rs. 5,000 as the value of a life insurance policy. Rs. 2,100, the amount of premium paid to date, has been held by the Judge to be acquired property. Inasmuch as the full sum was payable in 1918, and the premiums still to be paid were at the rate of less than Rs. 500 per year, the amount found to be acquired property would seem to be too little in respect of this policy. However, the plaintiff's counsel in the Court below waived any excess. The policy was taken out after the marriage, and applying the presumption I have already referred to, the premiums have been paid out of the acquired property.

With regard to item No. 8, this was a sum of Rs. 1,800 said to be due from one Nagalingam. The defendant stood security for Nagalingam, and was sued in that capacity. He says that in order to pay the debt he sold the land marked No. 2 in the schedule and paid the debt with the proceeds, and that he subsequently recovered from Nagalingam the sum of Rs. 1,800. The District Judge has found that the land mentioned in item No. 2 to the schedule was not acquired property, and seeing that the item No. 8 is the proceeds on the conversion of that property, I consider that the learned District Judge was wrong in holding it to be acquired property. Before leaving the question as to what property has been acquired, I should mention a sum of Rs. 2,000 in respect of the first item on the schedule. This sum was money paid for improvements on a certain land at Anuradhapura. It was urged that this Rs. 2,000 was expended on *mudusam* property, and, therefore, attached to that property, but inasmuch as one-fourth of the land was purchased after the marriage, the wife was a co-owner in the land, and the improvements effected could not be held to attach exclusively to the *mudusam* property of the defendant. Inasmuch as the property was not hereditary property, in that it never belonged to the defendant's father, but was purchased by the defendant, and so does not fall within the definition of *mudusam* property given in section 1 (1), and sub-section (16) does not apply.

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With regard to the settlement of Rs. 2,500 on the child, the parties have departed from their adherence to the *Tesawalamai* in the law applicable as to this claim. Section 622 of the Civil Procedure Code is the only provision now existing with regard to the interests of children in case of divorce in such a case as this. That section enables the Court to make orders with respect to the custody, maintenance, and education of the minor children. Strictly speaking, there is a difference between a settlement for the benefit of the minor child and an order for maintenance. Counsel for the appellant does not wish to press this distinction, inasmuch as the money is for the benefit of the child. The order must be deemed to be an order under section 622 of the Civil Procedure Code, and the Court should give directions as to the investment of this money and the payment of the interest. In the judgment there is a clerical error of Rs. 100 in the item of Rs. 300 enumerated in the sums added together and found to be Rs. 13,850; the amount found to be acquired property in respect of item No. 12 was Rs. 200 only, and not Rs. 300. I would accordingly amend the decree by reducing the amount payable to the plaintiff from Rs. 6,925 to Rs. 5,975. Each party should, in my opinion, pay its own costs on the appeal.

SCHNEIDER A.J.—I agree.

Varied.