1932 *Present :* **Garvin S.P.J. and Akbar J.**

NACHIPILLAI *v.* *VELUPILLAI et al.*

152—D. C. (Inty.) Jaffna, 7,774.

Thesavalamai—Agreement by child of first bed to abandon claim—Renunciation of inheritance—Validity.

Where, under the *Thesavalamai*, the respondent, who was the daughter of X by the first bed, gave him a document, signed by herself and her husband in the following terms:—

"Whereas, he (X), having conveyed as "Nintham" all the properties derived from the mother (of the respondent) absolutely, has given jewellery to the value of Rs. 300 for the share which ought to devolve on her out of his properties; we have received the same and have executed and granted this deed of release, declaring that we have no further right or claim over the properties movable and immovable in his possession"..

Held, that the respondent had not abandoned her claim to a share in the intestate estate of X.

THIS was an application for the administration of the estate of one Kandar Murugesu. The appellant, as widow of the intestate, applied for letters of administration, but in her application she omitted to include the respondent, who was a daughter of the deceased by the first bed, among the heirs and to give her notice. The respondent intervened and claimed a share of the estate according to the Thesavalamai. The appellant contended that she had surrendered her rights to the estate by the deed in question.

De Zoysa, K.C. (with him *Weerasooria* and *Thillainathan*), for appellant.—There are two facts in the recital of the deed. First, the respondent had received all that she was entitled to receive from her mother. Secondly, she received jewellery to the value of Rs. 300. She took the jewels in lieu of the share which ought to devolve on her out of his properties. If the document is treated as an agreement, it is a good act enforceable at law (*Godfrey v. Godfrey*[1]). If it is contended as being obnoxious to public morality as the surrender of a future inheritance, it is submitted that the receipt of Rs. 300 as dowry estopped the respondent from repudiating the agreement.

H. V. Perera (with him *Nadarajah*), for first respondent.—An agreement not to claim a future inheritance is prohibited under Roman-Dutch law as being *contra bonos mores*. A *spec successionis* cannot be surrendered, (*Burge, Volume IV. 236*). The sum of Rs. 300 was given to compound for a larger sum due to the respondent in the administration case and not as a consideration for the release.

March 16, 1932. AKBAR J.—

In this testamentary case for the administration of the estate of Kandar Murugesu, the appellant, as the widow of the intestate, applied for letters of administration, but in her application she only made her children, who were children by the second bed of the intestate, respondents and omitted to include the respondent to this appeal, who is a daughter of the deceased by his first bed as an heiress, and to notice her as a respondent to the application. The respondent intervened and claimed a share of the estate according to the *Thesavalamai*, but the appellant contended that she had forfeited such rights by signing document "X" (see translation X1 and X2), whereby the appellant urged she had given up all her rights to a share in the intestate estate and had surrendered those rights. This is the sole question that has to be decided in this appeal, namely, whether the respondent had given up all her rights to a share of her father's intestate estate by document "X" or not. If she had given up such rights, the respondent would fail in this appeal; and if she had not, the appeal would have to be dismissed with costs, leaving it to the respondent to make her claim with regard to specific properties belonging to the intestate at the time of his death according to the *Thesavalamai*, on the footing that she is a daughter of the intestate by the first bed who had not forfeited her rights.

There are only two questions which arise in this appeal, the first question being what is the exact interpretation of deed "X". The second question, which is one of law only, arises if I interpret "X" in the sense in which it was contended for by Mr. de Zoysa for the appellant. Some evidence was led in this case as to the circumstances in which this document came to be drawn up and these circumstances are of considerable importance on the question of the interpretation of "X". It appears the respondent is the daughter of the intestate by his first wife and that, after the latter's death, the intestate married the appellant in 1893, by whom he had several children. In 1899 the intestate administered the intestate estate of his first wife in testamentary case

[1] *3 Moore Privy Council cases 316.*

No. 539. By deed R 3 dated June 19, 1900, he transferred two lands as the *mudusam* property of his late wife to the respondent. By R 4 dated June 28, 1900, he transferred half of a certain land to the respondent, as the half of a *tediatetam* or acquired property under the *Thesavalamai*. He stated in that deed that the omission to include this share in the first deed was due to an oversight.

On May 1, 1901, the respondent was married and "X" is dated May 3, 1901. Under the *Thesavalamai, Chapter III.*, on the death of the respondent's mother she was entitled to all the *mudusam* property of her mother and half of the *tediatetam* property or property common to the two spouses acquired by either of them and retained in his or her name, the other half going to the surviving spouse, namely, the respondent's father. As the intestate married a second time, as regards his estate it will be divided equally between the children of the first bed and the children of the second bed. By section 11 of the old code, when a father wishes to marry a second time, the children of the first bed are to be brought up by close relatives and the father must give up the whole of the *mudusam* property and the half of the *tediatetam* property to such guardians to be used for the benefit of the children. If these facts are kept in mind, one is able to appreciate the full import of the document "X" in spite of certain ambiguous words appearing in the English translation. I think the clear intention was that in consideration of the transfer of jewellery worth Rs. 300, the respondent and her newly married husband agreed to give up any claim that the respondent may have in respect of any *tediatetam* property which may still be in the possession of her father. The deed R 4 gives a clue to the meaning of the words in document "X". The words "for the share which ought to devolve on the second named of us out of *his* properties" are explained further by the subsequent words "we have no further right or claim over the properties movable or immovable *in his possession*". I think this was the clear intention of the document and it cannot in any way be construed as meaning that the respondent abandoned all claims which she may have to a share in the intestate estate of her father whenever he happens to die intestate. This is the view to which the District Judge has himself come and I think it is correct.

As my brother pointed out during the argument, if the object of the intestate in getting document "X" signed by the respondent was to deprive her of her share in his intestate estate on his death, nothing could have been easier than for him to have made a will leaving his property to his children by the second bed. This finding concludes this appeal, but a further point of law was referred to during the argument, which is of such importance that I think I should indicate it shortly in my judgment.

It will be noticed that even if agreement "X" is given the effect Mr. de Zoysa contended that it had, the question arises whether such an agreement is valid in law. When a person dies, by the law of intestate succession his heirs get certain shares in the intestate property. Can the effect of that law be taken away by contract between the intestate and one of the would-be heirs? Mr. de Zoysa quoted a passage from *Berwick's Voet, p. 80*, namely, *Book XVIII., title 4*, but that is a reference to a passage

from the Code Book II., title 3, paragraph 30, which relates to a pact between two heirs. It is stated there that a pact between two heirs is said to be valid when it relates to the share of one of them in the estate of a person not yet dead, if it is known to and is acquiesced in by the intestate till his death. But even so this refers only to an agreement between two heirs and I do not think the principle could be extended to the case now before me. Reference may be made in this connection to *Volume IV. of Burge's Colonial Laws (old edition, p. 236)*, where Burge notes that the Civil Law rejected a renunciation of the *legitime*. I need not say anything further on this point of law as it does not arise for decision in view of my opinion on the question of the interpretation of the document. In this view the appeal should be dismissed with costs.

GARVIN S.P.J.—I agree.

Appeal dismissed.