

1954

Present : Pulle J. and K. D. de Silva J.

KANNAMMAH, Appellant, and T. SANMUGALINGAM *et al.*,
Respondents

S. C. 120—D. C. (Inty.) Jaffna, 999

Thesavalamai—Jaffna Matrimonial Rights and Inheritance Ordinance (Cap. 48), s. 20—Thediatheddam—Vesting of title to it—Retrospective effect of amending Ordinance No. 58 of 1947.

Under section 20 of the Jaffna Matrimonial Rights and Inheritance Ordinance, before it was amended on 3rd July, 1947, by Ordinance No. 58 of 1947, title to half of *thediatheddam* property acquired by a husband vested in his wife immediately upon the acquisition of the property. Such immediate vesting of title in the wife was not inconsistent with the husband's right to sell or mortgage the property.

The amending Ordinance, No. 58 of 1947, does not operate so as to affect title to property which had already vested in a spouse prior to the date of amendment.

APPPEAL from a judgment of the District Court, Jaffna.

H. V. Perera, Q.C., with *H. W. Tambiah*, for the appellant.

No appearance for the respondents.

Cur. adv. vult.

January 19, 1954. PULLE J.—

The appellant in this case is the widow of one Muttukrishnar Thambiappah who died on the 13th May, 1948, leaving a last will dated 14th

April, 1948, now admitted to probate, made jointly with the appellant. Prior to 3rd July, 1947, the date on which the Jaffna Matrimonial Rights and Inheritance Amendment Ordinance, No. 58 of 1947, came into operation and after the year 1926 the deceased purchased interests in several immovable properties. As executrix the widow has sought to administer only a half share of the interests referred to on the footing that at the time of her husband's death she was entitled to the remaining half share by the operation of section 20 of the Jaffna Matrimonial Rights and Inheritance Ordinance (Cap. 48). Consequent on two reports made by the Secretary of the Court the learned District Judge, after hearing counsel for the widow, has made order that the entirety of the properties bought by the deceased be administered and that a fresh declaration be sent to the Commissioner of Estate Duty and Stamp Duty recovered on that footing. The appeal is from this order. Learned counsel for the appellant stated that the Commissioner of Estate Duty does not contest the appellant's claim.

The submission on behalf of the appellant is that as the deceased acquired each property a title to a half was immediately vested in her and that in the absence of any alienation by the deceased, by right of management under the Tesawalamai, the title to her share continued to be vested in her and that that share did not form part of the estate of the deceased. It was further submitted on the authority of *Kandavanam v. Nagammah et al.*¹ and *Akilandanayaki v. Sothinagaratnam et al.*² that the amending Ordinance of 1947 did not operate so as to affect the title vested in her. I have not been able to extract from the judgment under appeal a convincing reply to this argument. From the questions addressed by the Judge to counsel he appears to have taken the view that an immediate vesting of title in a wife upon the acquisition of property by a husband was not possible because such vesting was inconsistent with his right to sell or mortgage the property. This view is contrary to the decision in the case of *Iya Mattayer v. Kanapathipillai*³ in which Dalton J. sets out the position clearly as to the vesting of title at pages 307 to 309. The power which the husband has to sell or mortgage *tediatetam* property is no more inconsistent with a prior vesting of title than, as was pointed at the argument before us, the sale of property by an administrator is inconsistent with a vesting of title in the heirs immediately on the death of an intestate. See also the case of *Ponnachchy v. Vallipuram et al.*⁴ followed by Dalton J. in *Iya Mattayer's case*⁵.

The next question is whether any event had occurred between the acquisition of the properties and the death of the deceased which resulted in the wife losing her title to a half share of the properties. The learned Judge after citing the last paragraph at p. 105 of *46 C. L. W.* from the judgment of Gratiaon J. in *Kandavanam v. Nagammah et al.* stated—

“ I hold that the amending Ordinance governs the devolution of the deceased's estate and the entirety of the deceased's *tediatetam* passed on his death according to the amended section 20.”

¹ 1952) 46 C. L. W. 104.
1952) 53 N. L. R. 385.

² (1928) 29 N. L. R. 301.

³ (1925) 25 N. L. R. 151.

⁵ (1928) 29 N. L. R. 301.

I may observe with respect that the passage at p. 105 does not support the conclusion reached by the District Judge. On the contrary the concluding sentence at p. 105 which reads,

“ *In any event, the vested rights of either spouse in respect of *tediatetam* property acquired prior to 3rd July, 1947, by the other spouse remain totally unaffected by the subsequent repeal of section 20 (1) of the principal Ordinance. The repealing Ordinance does not purport to forfeit the vested rights of either the living or the dead.*” must be taken to qualify the general words of the earlier sentence to the effect that should death occur after 3rd July, 1947, the new section substituted by the amending Ordinance would govern the case.

I would set aside the order appealed from and declare that the appellant is not bound to administer more than a half share of the properties acquired by her husband prior to 3rd July, 1947. There will be no costs of appeal.

K. D. DE SILVA J.—I agree.

Order set aside.

