

Present: Drieberg J.

1929.

THAMOTHERAM v. NAGALINGAM.

101—C. R. Point Pedro, 23,674.

Thesawalamai—Salary of husband as schoolmaster—Tediatetam—Jaffna Matrimonial Rights and Inheritance Ordinance No. 1 of 1911, s. 21 (b).

The salary earned as a teacher by a person, who is governed by the *Thesawalamai*, is not *tediatetam* property within the meaning of section 21 of the Jaffna Matrimonial Rights and Inheritance Ordinance.

A PPEAL from an order of the Commissioner of Requests, Point Pedro.

The plaintiff-appellant in person.

H. V. Perera (with him *Croos da Brera*), for first defendant, respondent.

November 20, 1929. DRIEBERG J.—

The appellant and his wife, the second defendant-respondent, are Jaffna Tamils subject to the *Thesawalamai*.

The first defendant in execution of a judgment obtained against the second defendant seized a half of the salary due to the appellant as a teacher in Hartley College, Jaffna. This action is one under section 247 of the Civil Procedure Code and is brought by the appellant for a declaration that the half share of his salary seized is not liable in execution of the decree against his wife. The Commissioner of Requests held that it was liable, and the appeal is from that order.

It was necessary for the purposes of this appeal to know whether the appellant and his wife were married before or after the coming into operation of the Jaffna Matrimonial Rights and Inheritance Ordinance No. 1 of 1911. I put off the further hearing of the appeal for proof of this, and the appellant has submitted a certified copy of his marriage certificate, which shows that they were married on August 16, 1912, and their matrimonial rights are, therefore, governed by the provisions of this Ordinance.

The appellant has no property whatever, and his only income is his monthly salary as a teacher of Rs. 215, which he says is all spent on the maintenance of himself and his family.

By section 9 of the Ordinance any property to which a husband shall become entitled during marriage except by way of *tediatetam* belongs to him for his separate estate; the similar provision in the case of wives is stated, and with greater detail, in section 8; section 9

1929.

DREIBERG J.

Thamotheram
v. Nagalingam

does not qualify the word *tediatetam* by the words "as hereinafter defined," but even so the word *tediatetam* must be accepted as defined in the Ordinance.

Section 21 states:—"The following property shall be known as *tediatetam* of any husband or wife:

- (a) Property acquired for valuable consideration by either husband or wife during the subsistence of marriage.
- (b) Profits arising during the subsistence of marriage from the property of any husband or wife."

It is not possible to say that the salary earned by the appellant falls under section 21 (b). Mr. Perera contends that section 21 (a) applies, and that the salary is earned by the rendering of services which would constitute valuable consideration. The section deals with the profits of the property of either spouse, which become the common property of both, and with the acquisition of property during marriage by either spouse, which also becomes *tediatetam* or common property. The reason underlying this is that acquisitions during marriage, though made with the money of one spouse, would ordinarily in some measure be due to the efforts and assistance of the other spouse.

In considering the question of money belonging to a husband before marriage but invested after marriage on a mortgage of land, de Sampayo J. said "the expression 'property acquired for valuable consideration' in section 21 well applies to purchases and the like but is wholly inapplicable to investment on loans" (*Nalliah v. Ponniah*¹). In that case the Supreme Court adopted the view of the Acting District Judge, Sir Ambalavanar Kanagasabai, who said: "In my opinion it (section 21) does not go the length of saying that the mere accident of purchase during the married state gives the property the character of *tediatetam*. The valuable consideration referred to in that section must have been itself *tediatetam* to make the property *tediatetam*, as it was before the Ordinance."

In the above case the husband, who had invested on the mortgage of a house during marriage money which was his own before marriage bought the house during the marriage, part of the consideration being the amount of the debt, which was discharged, and the balance out of earnings during marriage and of interest on his investment. The District Judge struck a proportion according to these respective sums of money and declared the husband entitled to a share of the house which corresponded to the mortgage debt and the rest to be *tediatetam* to be divided between husband and wife.

The judgment of the Supreme Court proceeded on the basis that the earnings of the husband were regarded as *tediatetam*. I have sent for and examined the record of this case. The husband was a lawyer who had saved money before his marriage and continued

¹ (1920) 22 N. L. R. 198.

investing this thereafter. He had Rs. 9,200 before marriage, and at his death, four years later, he had Rs. 17,272, being principal and interest due on loans. This represented the accumulated interest on the original sum and the savings from his professional income. He had also acquired the house I have referred to.

1929.
DRIEBERG J.
Thamotheram
v. Nagalin-
gam

Money which a man has saved from professional earnings, which he has set aside or invested, and which is not needed for his ordinary expenditure, can be regarded as acquisitions or as acquired property. I do not think these expressions are applicable to the salary of the appellant in this case. It is just sufficient for his needs and is exhausted in fulfilling the natural and legal obligations he is under of supporting his wife and children.

I allow the appeal. Let decree be entered for the appellant declaring that the half share of his salary seized is not executable under the decree in D. C. Jaffna No. 21,079. The first defendant-respondent will pay the appellant his costs of the proceedings in the lower Court and of this appeal.

Appeal allowed.
