Present: Ennis J. and Shaw J.

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NAGARATNAM *v.* MUTTUTAMBY *et al.*

196—D. C. Jaffna, 9,651.

Tesawalamai—*Inheritance—Property inherited by grandson (daughter's son) on death of grandfather—Grandson dying issueless—Do both uncles and aunts inherit the property of grandson?*

A died leaving him surviving two sons B and C, a daughter D, and a grandson E (by a deceased daughter).

Held, that under the *Tesawalamai* the property which devolved on E on the death of A was inherited on the death of E issueless equally by B, C, and D, and not by D alone.

THE facts are set out in the judgment of the learned District Judge (M. S. Sreshta, Esq.):—

It is common ground (*vide* the pleadings and the admissions on the date of trial) that the land originally belonged to one Manikavasagar, who died in 1876 leaving a widow, Mannipillai, who died on October 10, 1895. Manikavasagar had two daughters, Aminipillai and Parupathypathinipillai, and two sons, Kanapathipillai and Ponnambalam. Aminipillai predeceased Manikavasagar, leaving a son, Theivanathan, who died in 1898. Ponnambalam died on September 20, 1895, leaving a daughter, Nagaratnam, who is the plaintiff, and who was a minor when Mannipillai died and attained majority in 1907. Nagaratnam is married to the third defendant.

It is also common ground that on the death of Manikavasagar, Theivanathan (the son of Aminipillai, who was dead), Parupathypathinipillai, Kanapathipillai, and Ponnambalam each inherited a one-fourth share of this land . . . . . .

The dispute is as to Theivanathan's one-fourth, which according to the plaintiff devolved on Theivanathan's uncles, Kanapathi and Ponnambalam, and which according to the defendants devolved on Theivanathan's aunt, Parupathypathinipillai . . . . . .

The plaintiff's contention is that Theivanathan having inherited the one-fourth share direct from Manikavasagar, that one-fourth share, on Theivanathan's death, as *mudusam* property devolved on the male relations, Kanapathi and Ponnambalam. The defendants' contention is that this one-fourth must be regarded as the *chidenam* of Aminipillai and should go to her surviving sister Parupathypathinipillai, the first defendant.

Both the parties rely on the principle that males inherit from males and females from females, which under the *Tesawalamai* is supposed to govern the devolution of property by inheritance.

But the plaintiff does not go so far as to say that because Theivanathan was a male his one-fourth share should go to a male, for then his one-fourth would go to his nearest male relation, his father. But he says that this one-fourth having been derived from Manikavasagar

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it should devolve on the latter's male heirs, viz., Kanapathi and Ponnambalam.

To decide the question involved, it is desirable to ascertain whether and to what extent the principle "males inherit from males and females from females" governs the devolution of property by inheritance under the *Tesawalamai*.

Originally the husband's property (*mudusam*) devolved on his sons only, and the wife's property (*chidenam*) was distributed among the daughters as dowry. Thus the husband's property always remained with the male heirs and the wife's property with the female heirs. But, as shown in section 1, sub-section 2, of *Tesawalamai*, this rule gradually fell into disuse, the dowry being given to the daughters indiscriminately from the *chidenam* of the mother and the *mudusam* of the father. It followed as a corollary that the sons inherited what remained of both the *mudusam* of their father and the *chidenam* of their mother. The old line of division between *mudusam* and *chidenam* was obliterated so far as inheritance by children was concerned.

Whatever force the principle in question may have had with regard to inheritance collaterally or in the ascending line, it does not govern inheritance in the descending line (any doubt on this point is cleared by the decision in *Chellappa v. Kanapathy* [1]).

The law regarding inheritance collaterally in the ascending line is to be found in section 1, sub-sections 5 and 7, of the *Tesawalamai*. Sub-section 5 provides that when a dowried daughter died without issue her property indisputably devolves on her dowried sisters, their daughters, and granddaughters; if none of them be in existence, the brothers, their sons, and grandsons inherit. Sub-section 7 provides that when a son dies his property is inherited in like manner, that is to say, if he has no issue his brothers, their sons, and grandsons inherit, failing them, his sisters, their daughters, and granddaughters inherit. The word "indisputably" in sub-section 5 should be noted. It shows that the law stated was a well-recognized one. It cannot be said that this law was the ancient one, and fell into disuse like the law regarding the devolution on children of the *mudusam* and *chidenam*. If it had fallen into disuse, the word "indisputably" would not have been employed. Moreover, the latter part of sub-section 5 shows that the law regarding collateral succession, just enunciated, was in existence, although the rule as to dowries being distributed only out of the *chidenam* was no longer observed. For, in seeking heirs in the ascending line, it is stated that the dowry must be split into its component parts of *mudusam*, *chidenam*, and *tediatetam*. The necessity for such a division shows that when "indisputably" sisters, their daughters, and granddaughters inherited from a deceased dowried woman, dowries had ceased to be given solely out of the *chidenam*.

As regards succession in the ascending line in default of descendants and collateral heirs, the property of a dowried daughter must be split, as I have said, into its component parts of *mudusam*, *chidenam*, and *tediatetam*. If the parents are dead, the father's brothers, their sons, and grandsons inherit the *mudusam* and half of the *tediatetam*, and the mother's sisters, their daughters, and granddaughters, inherit the *chidenam* and the remaining half of the *tediatetam*.

[1] *(1914) 17 N. L. R. 294.*

Although with regard to this rule the word "indisputably" is not used, as it is contained in the same sub-section as the rule regarding collateral succession, we may certainly infer that the rule regarding succession in the ascending line was as "indisputable" and well recognized as the rule regarding collateral succession.

The clue to the desire to keep the paternal property among the male next of kin of the father and the maternal property among the female next of kin of the mother is to be found in the fact that among the Tamils, as among the Hindus of India, the joint family system existed; a daughter, when she married, ceased to be a member of her father's family, but became a member of her husband's family—she went out of her old family entirely, and could not, therefore, inherit from either her brothers or male cousins. But she could inherit from her sisters, because they like her were no longer members of her father's family, and for similar reason she could inherit from her female cousins.

It is to be noted that when a dowried woman died issueless her sister was the heir; if the sister was dead and had a daughter, the niece was the heir; but if the sister once inherited the property, on her death the devolution of the property followed the ordinary rule of devolution; that is to say, her sons as well as the undowried daughters inherited the property. (See section 1, sub-section 14, paragraph 2.) This sub-section no doubt says that the sons of the sister will inherit all her property, but this must be read with the rest of the *Tesawalamai*, from which it is clear that what was meant was that the sons alone will inherit it, being assumed that the daughters had been already dowried.

Similarly, once a dowried woman's heir in the ascending line has inherited her property, the rule as to females inheriting from females is superseded by the ordinary rules of succession.

It is also to be noted that the *Tesawalamai* speaks only of dowried daughters and of sons, and makes no mention of undowried daughters. This is because among the Tamils every woman must marry, and it is considered the duty of parents to give their daughters in marriage. It is also considered the duty of the parents to set apart property to be given to each daughter as dowry. The possibility of a woman not marrying or not receiving a dowry was therefore not contemplated in the *Tesawalamai*. We may, therefore, safely substitute in section 1, sub-section 6, of the *Tesawalamai*, the following words: "If every one of the daughters has received a dowry or has inherited property from her parents" for the words "If all the daughters are married in the manner above stated and each has received the dowry then given by their parents."

The nett result of the examination of the sections of the *Tesawalamai* relating to inheritance is thus that the rule as to males inheriting from males and females inheriting from females is not observed in the descending line, but is observed in the collateral line, and is observed in the ascending line after ascertaining the portion derived from the father and that portion derived from the mother.

Now, there is nothing in the *Tesawalamai* to justify our inferring that when a person dies without descendants or collateral heirs his property should revert to the source from which it was derived, whatever the source may be. In other words, there is nothing in the *Tesawalamai* to justify our holding that his property must be made to revert

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to Manikavasagar to ascertain the heirs. So much of Theivanathan's property as formed the *muduaam* of his father should go to his father (he is alive), and so much of it as formed the *chidenam* of his mother should go to his mother's female next of kin; so much of it as was his parents'—*tediatetam*—should go half to his father and half to his mother's next of kin. We must endeavour to find out which of these three classes of property the property inherited from Manikavasagar should be put. As Theivanathan inherited this property, because he was the son of Aminipillai, who was the daughter of Manikavasagar, we can only call it the *chidenam* of Aminipillai. It must, therefore, go to the sole sister of Aminipillai, viz., Parupathypathinipillai.

Wadsworth (with him *Arulanandam*), for the plaintiff, appellant.—Theivanathan's heirs are his uncles and aunts, and not his aunt only, as contended for by the respondents. The contention that males succeed to males and females to females is not recognized now in connection with cases of this kind. See *Chellappa v. Kanapathy* [1] and *Valipillai v. Saravanamuttu.* [2]

The new Ordinance (No. 1 of 1911) embodies the old *Tesawalamai* in most points. See *17 N. L. R. 382.* Section 29 of the new Ordinance, it is submitted, is only a re-enactment of the old law. This section bears out appellant's contention.

The District Judge was wrong in treating this as *chidenam* property. The property was never given in dowry to Theivanathan's mother. The property devolved on Theivanathan direct from his grandfather. On the death of Theivanathan, issueless, the property inherited by him from his grandfather must revert to his grandfather's heirs. The grandfather's heirs are all his children—both his sons and daughters.

The appellant's construction is more reasonable than the respondents', and is in conformity with the spirit of the recent decisions.

Balasingham, for the defendants, respondents.—The position taken up by the appellant is far different from his attitude in the lower Court. It was conceded in the District Court that either the aunt or the uncles were entitled to the property of Theivanathan. It was common ground that both parties could not inherit his share. The only contention in the lower Court was as to whether the property of Theivanathan was to be treated as the mother's *chidenam* property or not. If it was *chidenam* property, then there was no question as to the aunt being the sole heir.

The property devolved on Theivanathan by right of his mother, and has therefore to be treated as *chidenam* property. Property inherited by a wife devolves in the same manner as dowry property. See *Atherton's Tesawalamai, s. 2* (*Muttukistna 727*). Theivanathan's mother was married, and has to be treated as a dowried daughter. See *17 N. L. R. 244.* The property came

[1] *(1914) 17 N. L. R. 204.*

[2] *(1914) 17 N. L. R. 381.*

to Theivanathan by right of his mother *per stripes*, and has to be treated therefore as the mother's dowry property.

[Ennis J.—Section 15 says that on the death of a spouse the property which that spouse inherited from the father goes to his nearest relations, and the property which that spouse derived from the mother to the mother's nearest relations. There is nothing to show that it goes to the mother's sisters only.] Section 15 does not contemplate a case of this kind. [Ennis J.—But the principle is the same.] The words " nearest relations " is a mistranslation for " heirs." The Tamil text makes it clear.

[*Wadsworth*.—It has been held that we cannot look into the Tamil or Dutch text, and that we must confine ourselves to the English text as printed in the Ordinances.]

The new Ordinance (No. 1 of 1911) does not embody the old *Tesawalamai*. There are several points in which the law has been considerably altered. The new Ordinance gives the order of succession thus: descendants, ascendants, and collaterals. The old Ordinance prefers collaterals to ascendants. The new Ordinance is not a guide to a decision of this case.

If the mother was alive and had inherited the property and then transmittted it to Theivanathan, there can be no doubt that only the aunt would have been the heir. Why should it on principle make any difference if Theivanathan's mother predeceased him ?

Counsel also adopted the argument of the District Judge set out in his judgment.

Cur. adv. vult.

July 5, 1915. ENNIS J.—

In this appeal the only point argued was as to succession under the *Tesawalamai*.

In 1876 one Manikavasagar died, leaving a daughter (second defendant), a son Kanapathipillai (fourth defendant), another son Ponnambalam, and a grandson Theivanathan by a daughter who had predeceased him. His property, the land in question, was divided equally between the four.

In 1893 Theivanathan died unmarried, and the present dispute is as to the persons entitled to inherit.

The second defendant is the wife of the first defendant. The third defendant is the husband of the plaintiff, Nagaratnam, who is a daughter of Ponnambalam. The plaintiff claims that the sons of Manikavasagar inherited to the exclusion of the daughter, while the second defendant, the daughter, claimed that she inherited to the exclusion of the sons. On the appeal counsel for the appellant, however, submitted that all the children of Manikavasagar inherited equally, and abandoned his claim to a greater share. There is nothing in the *Tesawalamai* directly in point. Clause 1 of section I states the ancient rule regarding inheritance to property brought together in marriage. It divides such property into three classes:

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mudusam or inherited property brought by the husband, *chidenam* or dowry brought by the wife, and *tediatetam* or acquired property. By the ancient rule *mudusam* property was inherited by the sons, the daughter received dowry from the mother's property, and the acquired property was equally divided between all the children irrespective of sex. Clause 2 of section 1 shows that a change was introduced, and the ancient rule of succession was modified, because it became the custom to take the dowry of the daughters from any of the three classes of property. In consequence of this change it has been held that undowried daughters inherit equally with sons (*Chellappa v. Kanapathy* [1]); that for purposes of inheritance there is no distinction between married and unmarried daughters (*Kudiar v. Sinnar* [2]); and that where a man dies intestate and issueless leaving nephews and nieces by a deceased sister, both nephews and nieces inherit (*Valipillai v. Saravanamuttu* [3]).

Clauses 1 and 2 of section 1 deal only with property brought together in marriage. In the present case the property does not fall within that category, as Theivanathan was not married. He inherited the property from his maternal grandfather after the death of his mother. With regard to the devolution of such property the *Tesawalamai* is silent. Clause 15 of section 1 is the nearest approach to a rule of succession in such a case. That clause provides that on the death of one of two married persons without issue: if the husband, the property which proceeded from his father returned to the father's "nearest relations," while his mother's nearest relations took any property which was originally the dowry of the husband's mother, the father's nearest relations and the mother's nearest relations each taking a one-fourth of the acquired property. Similarly, if the wife died, all she inherited from her father returned to her father's "nearest relations," and her mother's dowry to her mother's "nearest relations," half the acquired property being divided between them. It is particularly to be observed that in this clause the heirs of the wife in respect of her mother's dowry are the mother's "nearest relations," and no exclusion is made in respect of sex, which is not the case in the second paragraph of clause 5, which deals with the devolution of the dowry of a wife who dies without issue. It would seem, therefore, that the rule for the devolution of inherited property as distinct from *chidenam* (which word appears to apply only to dowry given a wife on marriage) may be gathered from clause 15, and under that clause the wife's property inherited from her father goes to the father's "nearest relations," and there is no distinction of sex when the heirs are named. It would seem that inherited property devolving in the ascending line goes back to the nearest relations, irrespective of sex, of the immediate ancestor through whom the property was inherited.

[1] *(1914) 17 N. L. R. 294.* [2] *(1914) 17 N. L. R. 248.*
[3] *(1914) 17 N. L. R. 381.*

This view of the *Tesawalamai* rule for the devolution of such inherited property finds support in the provisions of Ordinance No. 1 of 1911, section 29. Although that Ordinance does not apply in the present case. it presumably reproduced as far as possible the existing custom.

I see no reason to extend the ancient rule laid down in the *Tesawalamai* for the devolution of property which was distinctly *chidenam* to any other kind of property. The ancient rule itself was modified in the *Tesawalamai* in 1707, when the reason for its application was disappearing. The Supreme Court has given effect to the modification, and the Ordinance No. 1 of 1911 now establishes the altered rule.

The learned District Judge in an able judgment found in favour of the defendants, but, in my opinion, he was wrong in striving to bring the property in dispute into one of the categories into which property brought together in marriage is classified.

I would set aside the decree. Judgment should be entered for the plaintiff on the basis that the disputed property of Theivanathan devolved upon his maternal uncles and aunts equally. The case should go back for decision as to damages. I would give the appellant costs of the appeal.

SHAW J.—

This case raises a question of succession amongst the Tamils of Jaffna.

One Manikavasagar died in 1876, leaving two sons, Kanapathipillai and Ponnambalam, and a daughter, Parupathypathinipillai, also a grandson, Theivanathan, who was the son of another daughter. Aminipillai, who had predeceased him. Each of these four persons inherited one-fourth share of the property.

Theivanathan died unmarried in 1893, and the question in dispute is who succeeded to the property that had come to him from his maternal grandfather Manikavasagar.

The District Judge has held that the property is *chidenam* property, and therefore by virtue of paragraph 1 of section 1 of the *Tesawalamai* is inherited by the female heirs exclusive of the males, and that, therefore, upon Theivanathan's death the whole of his interest passed to his maternal aunt Parupathypathinipillai, to the exclusion of his two maternal uncles or their representatives.

The plaintiff at the trial contended that the property passed to the uncles only in exclusion of their sister Parupathypathinipillai; this contention was, however, withdrawn upon the appeal, and the claim put forward before us was that the three inherited equally. In my opinion the appeal should succeed. The property was not *chidenam* or dowry property of Theivanathan's mother, and was not even inherited by her at all, but came to Theivanathan after her death as one of the heirs of his grandfather; the fact that it came from his

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maternal grandfather does not in my view stamp it as *chidenam* within the meaning of paragraph 1 of the *Tesawalamai*.

The provisions of the *Tesawalamai* do not give us much assistance in the present case, except as showing generally that the maternal property goes to the maternal relations and the paternal property to the paternal relations. The only paragraphs, viz., 14 and 15, which refer to inherited maternal property make no mention of it devolving upon females only, and the trend of the recent cases is to the effect that inherited property both paternal and maternal devolves on the heirs irrespective of sex (see *Chellappa v. Kanapathy* [1] and *Valipillai v. Saravanamuttu* [2]). The Ordinance of 1911, passed to remedy the chaotic state of the law as laid down by the *Tesawalamai*, provides to the same effect, and may be taken as some guide as to what the former law is considered to have been.

I agree to the order suggested by my brother Ennis in this case.

Set aside and sent back.