1929.

Present: Fisher C.J. and Drieberg J.

FRANCIS DANIEL DAVID *v.* DAVID *et al.*

159—D. C. (Inty.) Jaffna, 22,900.

Thesawalamai—Females inherit from females—Application of principle to unmarried sister—Conditional gift—Estoppel.

Where, under the *Thesawalamai*, a married woman died without issue, leaving an unmarried sister and three brothers—

Held, that the sister was entitled to succeed to the dowry property of the intestate to the exclusion of the brothers.

Held also, that where the surviving sister accepted a conditional gift of the shares of the brothers on the footing that she was entitled to a one-fourth share, the sister was not estopped from claiming title to the whole land.

THIS was an action for declaration of title to one-fourth share of a land, which belonged to one Maria, who died leaving as her heirs three brthers and one unmarried sister. The parties were

governed by the *Thesawalamai*, and the question in issue was whether the property, which was dowered on Maria by parents, devolved on the brothers and the sister in equal shares, or solely on the sister. The learned District Judge held that the sister was estopped from claiming title to the whole land by reason of the fact that she had been a party to certain deeds with the brothers on the footing that she was entitled to only a one-fourth share.

H. V. Perera (with *Subramaniam*), for defendant, appellant.—Property in dispute was that of Maria. She died leaving one unmarried sister, Elizabeth, and three brothers, John, Francis, and Benjamin. Property devolved on Elizabeth alone to the exclusion of the brothers, vide *Kuddiar v. Sinnar*.[1] Females succeed to females.

The transfer P 2 of March 7, 1900, by one of the brothers, Benjamin (first defendant, administrator of Maria's estate), purporting to give a fourth share each to Elizabeth and to the three brothers is invalid in law.

P 2 being invalid, title to the whole property vested in Elizabeth.

The donation P 3 by the three brothers on November 19, 1904, of each of their one-fourth share to Elizabeth on certain terms and conditions transferred nothing in effect, since title already vested in Elizabeth.

Elizabeth has dealt with the property in part : this does not preclude her title to the whole. The brothers have not dealt with their shares at all since 1904. Defendant claims title from Elizabeth.

N. E. Weerasooria (with *Gnanapragasam*), for plaintiff, respondent.—Cases quoted refer to devolution of property to married sisters, to the exclusion of brothers. In the present case Elizabeth was not married at the time of Maria's death.

P 2 is valid; P 3 also valid; P 3 was acquiesced in by Elizabeth, who signed it. Only one brother consented to marriage of Elizabeth according to terms of P 3 ; shares of two brothers did not vest in her.

Elizabeth dealt with only her share and one brother's share—and is estopped from claiming anything more. The two brothers' shares remained with them : they now claim it.

November 4, 1929. FISHER C.J.—

The first point in this case is whether on the death of Maria, leaving three brothers and one unmarried sister Elizabeth, the property with which Maria had been dowered devolved upon the three brothers and the sister in equal shares, or on the sister solely. The learned Judge held that it devolved on the sister only, and I think that that conclusion is right. De Sampayo J. in his judgment in *Kuddiar v. Sinnar* [2] says:—" One general rule of the *Tesawalamai* is that males succeed to males and females to females, and

[1] *17 N. L. R. 243.*

[2] *17 N. L. R. at p. 244.*

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accordingly it was held in *Thambar v. Chinnatamby* [1] that where an unmarried woman left a married sister and brothers, the sister succeeded to the exclusion of the brothers." Again, Grenier J. in his judgment in *Thiagarajah v. Paranchotipillai* [2] says:—" There is thus recognized by the *Tesawalamai* a principle regulating intestate succession, which may be described as a fundamental one, that males inherit from males and females from females."

The general principle that females inherit from females must, in my opinion, be taken to apply in this case. The fact that Elizabeth was unmarried at the time of Maria's death seems to be no reason for holding that the principle does not apply. Sub-section (6) of section 1 of the *Tesawalamai* supports the view that Elizabeth succeeded to the entire property. That section states:— " Although it has been stated that where a sister dies without issue the dowry obtained by her from her parents devolves to her other sister or sisters " and goes on to deal with a case in which the deceased sister leaves her mother surviving her who has " in the meantime become a widow and poor." That being so, in my opinion the contention that the legal title for the property remained vested in Elizabeth, who sold her interest to the defendant-appellant under circumstances to which I shall hereafter refer, is perfectly sound. The learned Judge was of opinion that Elizabeth had " come to an understanding with her brothers as to the rights of inheritance," and on that footing he held that in the events which had happened she must be taken to have been entitled to only one-fourth of Maria's property. The subsequent dealings with the property were, firstly, a transfer, P 2, dated March 7, 1900, by one of the three brothers, the first defendant, Benjamin David, purporting to act as administrator of Maria, by which the property was conveyed to the three brothers and the sister " in equal shares," that is to say, one-fourth share to each of them. At that time Elizabeth was a minor, but in any case the transfer could not affect the title which had devolved upon her on the death of her sister. The next document, P 3, dated November 19, 1904, purports to be a transfer by the three brothers of their respective one-fourth shares to their sister. It contained the following provisions:—

" In case if the said Elizabeth Muttammah were to marry in proper way according to the wish of the said John David, Francis Daniel David, and Benjamin David, and when she gets our consent in writing this donation will hold good and be a valid one; otherwise we make it invalid.

" After obtaining the aforesaid consent if Elizabeth Muttammah were to marry, we do hereby agree and undertake that all the above-described properties will be her dowry.

[1] *(1903) 4 Tamb. 60.* [2] *11 N. L. R. 46.*

" And know all men by these presents that I, the said Elizabeth Muttammah, do hereby accept this donation with gratitude and with my full mind subject to the above-said conditions and in testimony thereof I do set my signature hereto. "

By that document the three brothers were in fact giving nothing to Elizabeth which they had the right to give, and that being so it would require very strong evidence to show that Elizabeth by executing that document was estopped from denying the title of her three brothers to three-quarters of the property. In fact, one of the brothers, John David, arranged Elizabeth's marriage for her, and though there was no consent in writing by the other two, there was no reliable evidence to show that at the time of the marriage the other two brothers really took exception to it. But the construction of the whole document by which the so-called transferors conveyed the property to Elizabeth, subject to the conditions set out above, clearly shows that it did purport to be a transfer to her and could not of itself operate as a re-transfer in the event of Elizabeth marrying without the consent of her brothers. The document was not a family arrangement with mutual concessions. It purported to convey other properties besides the property in dispute, and with some of these Elizabeth undoubtedly dealt on the basis of their being her absolute property. Certain documents and pleadings were relied upon as showing that Elizabeth acted on the view that the two-fourths of the brothers who had not consented to her marriage did not belong to her. But there was no document to show that these two brothers dealt with this two-fourths of their own and, in my opinion, Elizabeth did nothing which could operate to divest her of the title which devolved on her on Maria's death. Even if she " came to an understanding with her brothers, " as stated by the learned Judge, a legal title cannot pass by such a process unless possibly in a case where the person to whom the property is supposed to have passed has done something to his prejudice or altered his position in consequence to the knowledge of the supposed *quasi*-transferee which precludes the latter as against the former from saying that the property is still vested in him or her.

There was a further incident, namely, an action in 1923 by the present defendants to partition the property in which Elizabeth and her husband and the present plaintiff were defendants. That action was brought because Elizabeth by mortgaging the property had placed it in jeopardy of passing out of the family. The mortgagor had brought an action to enforce his security and the execution of the decree was stayed pending a decision in the partition action. The action, however, was settled, and the minute relating to the settlement is as follows:—(*D* 3) " As the plaintiff is buying the share of the second defendant and as a portion

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of the purchase amount having been paid and as the deed of transfer is to be executed in favour of the plantiff, I move to withdraw the action." That was signed by the Proctor for the plaintiff and by the Proctor for the third defendant, the plaintiff in the present action. The deed of transfer referred to in that minute was executed on the following day and the third defendant's Proctor was a witness to the deed. It conveyed the property now in question as Elizabeth's property to the plaintiffs in the action. It is clear that the plaintiff was bound by that settlement and must be taken to have known of all its terms. For these reasons it is clear to my mind that the entirety of the property in question is vested in the defendants, and the judgment of the learned Judge must therefore be set aside and decree must be entered dismissing the action with costs in this Court and in the Court below.

DRIEBERG J.—I agree.

Appeal allowed.