1950 *Present :* **Nagalingam J. and Pulle J.**

SOORANAMMAH, Appellant, *and* AMIRNATHAPILLAI *et al.*, Respondents

S. C. 18—D. C. (Testy.) Jaffna, 730

Company Law—Allotment of additional shares—Does not always signify profits— Thesavalamai—Thediatheddam.

Out of the dowry money of a wife who was subject to the Thesavalamai, 25 shares in a Company were purchased in the name of her husband. In consequence of the fact that the nominal capital of the Company was subsequently raised, an additional number of 45 shares was allotted to the husband without payment of any consideration; but the 45 shares did not represent any part of the profits of the Company.

Held, that, in the circumstances, the additional 45 shares were the sole property of the wife and were impressed with a trust in her favour.

N. Kumarasingham, for the administratrix appellant.

V. Arulambalam, with *A. Nagendra*, for the 3rd and 18th respondents.

Cur. adv. vult.

[1] *8 Ad. and El. 901 (= 112 E. R. 1080).*

October 25, 1950. PULLE J.—

The appellant in this case is the widow of one Santhiapillai Asseervatham who died intestate and issueless on the 4th December, 1946, and the administratrix of his estate. The contest between her and the heirs relates to certain undivided shares in seven allotments of land, numbered 5 to 11 in the inventory of the immovable property, and 45 shares held by the deceased in the Valigamam West Omnibus Co., Ltd. In regard to the allotments referred to the widow maintained that they came within the description of Thediathetam property and as to the shares that the deceased held them in trust for her. The learned District Judge held against her on both points and she appeals from that order.

It is admitted that the seven allotments of land were inventorised in the administration of the estate of the deceased's father and that at the time they devolved they were inherited properties in the hands of the deceased. The question for decision is whether in the events which occurred later their character underwent a change from Muthusom to Theidathetam.

It would appear that in 1925 the deceased transferred the properties in question and some others in trust to one Rosairo, widow of Mariampillai Gnanapiragasam. Two mortgages were executed, one in 1928 and the other in 1934 by Rosairo, but both were for the benefit of the deceased. The oral evidence which the learned Judge has accepted points to Rosairo having had nothing more than the bare legal estate while the deceased had the beneficial enjoyment thereof. By a conveyance dated the 7th February, 1941, marked P1, Rosairo transferred the properties to the deceased and on this document an argument is based in support of the contention that either all the allotments or a part of them to the value of Rs. 560.35 must be treated as Thediathetam.

On the face of it P1 is a conveyance of the lands in question and others for a consideration of Rs. 1,000. The conveyance proceeds to recite: " Out of the said sum of Rs. 1,000, I have received the balance sum of Rs. 439 in full from him who paid the same stating that it is a portion of his muthusom money after crediting a sum of Rs. 560.35 " on account of the two mortgages created by Rosairo. If the conveyance by the deceased to Rosairo was subject to a trust, as the learned Judge was entitled so to find on the evidence, the transfer of the legal estate by P1 would not alter the character which the properties had at the time of the conveyance to Rosairo. The reference to the muthusom money has no significance because the evidence is that Rosairo received no monies on the execution of P1. There is also no evidence from which it could be inferred that money expended by the deceased in redeeming the mortgages was Thediathetam property. In my opinion the learned Judge was entitled to find that the lands in question were at all times material to the case the property inherited by the deceased from his father.

In order to ascertain whether the 45 shares in the Valigamam West Omnibus Co., Ltd., were held by the deceased in trust for the widow it is necessary to go back to the earlier history of the connexion of the deceased with the Company. The case for the widow is that the deceased purchased an omnibus in 1937 with her dowry money. After the passing of the Omnibus Service Licensing Ordinance, No. 47 of 1942, the omnibus

was taken over by the Company in return for which the deceased was allotted 25 shares of Rs. 100 each. By document dated 30th August, 1942, the deceased gave a writing, P7, by which he admitted that it was purchased with the dowry money. The learned District Judge was inclined to doubt the truth of this statement but, with great respect. I may say that this doubt cannot be justified. In point of fact learned Counsel for the heirs was content to argue the appeal on the basis that P7 is a correct record of the transaction relating to the purchase of the bus. After the allotment of the 25 shares the deceased by an assignment P6 dated the 11th November, 1943, purported to donate these shares to the widow subject to the condition that after his death the widow during her lifetime and after her one Arokiasamy " may recover, receive and enjoy the shares hereby assigned and conveyed as their own '. What ever be the true legal effect of this assignment the deceased held the 25 shares at the time they were allotted to him as trustee for the widow.

The Company had a nominal capital of Rs. 100,000 and thereafter it was raised to Rs. 280,000. Additional shares were, therefore, allotted without the payment of any consideration to those already holding shares in the proportion of 9 to 5 with the result that the deceased was allotted as the registered holder of 25 shares an additional 45 shares. What the additional nominal capital of Rs. 180,000 represented one can only conjecture. The evidence on behalf of the Company is that the capital was increased in order to raise a loan from the bank and that no money was paid by the shareholders for these additional shares. It is, however, not unusual for a company to convert accumulated profits which might lawfully have been distributed as dividends into shares by increasing the capital where the Articles of Association permit of such increase.

The case for the heirs is that the 45 shares represented the profits arising, during the subsistence of the marriage, from the 25 shares of which the widow was the beneficial owner. The learned District Judge was not prepared to regard the 45 shares as representing any part of the profits of the Company. That is a finding which he was entitled to reach both on the law and the facts; *vide* the case of *Bouch v. Sproule* [1] and the observation made thereon in the judgment of the Privy Council in *Hill v. The Permanent Trustee Co. of New South Wales Ltd.* [2] and also the judgment of the Court of Appeal in *In re Doughty.* [3] Once the 25 shares in the hands of the deceased were impressed with a trust it followed necessarily that the 45 shares were also impressed with the same trust and, if they could not properly have been regarded as profits arising from the 25 shares, then the entirety of the 45 shares remained at all material times the sole property of the widow. In this view of the case the finding that the widow had failed to prove that the 45 shares were held in trust by the deceased for her cannot be supported. The judgment of the learned District Judge will, therefore, be varied to the extent that there will be a declaration that the deceased held the 45 shares No. 2216-2260 in the Valigamam West Omnibus Co., Ltd., in trust for the widow.

There will be no costs of appeal and the costs of the inquiry in the District Court will be divided.

NAGALINGAM J.—I agree.

Judgment varied.

[1] *(1887) 12 Appeal Cases 385.*

[2] *(1930) A. C. 720.*

[3] *(1947) 1 Ch. 263.*