

Present: De Sampayo J.

1916

TIKIRALE v. PAVISTINAHAMY

135—C. R. Matale, 11,435.

Husband and wife—Deed purporting to dispose of immovable property executed by married woman—Attestation of deed by her husband who was a notary—"Written consent" not given—Ordinance No. 15 of 1876.

A deed by a married woman, by which she purported to convey immovable property, was attested by her husband, who was a notary.

Held, that the deed was invalid, as her husband (notary) had not expressed his consent to the execution of the deed in writing.

THE facts appear from the judgment.

Sansoni, for defendant, appellant.—The learned Commissioner was wrong in holding that the deed by Helenahamy in favour of one predecessor was invalid. Helenahamy's husband has signed the deed, and that is equal to his consent being given in writing (see *Ponnammal v. Pattaye*¹).

¹ 6 S. C. D. 87.

² I. L. R. 22 Cal. 286.

³ 4 N. L. R. 213.

⁴ (1910) 13 N. L. R. 201.

1916.
Tikirale v.
Pavistina-
hamy

[De Sampayo J.—But in this case Helenahamy's husband happens to be the attesting notary and he had to sign the deed.] But here the notary has signed in two places, once in Sinhalese and then in English. It is submitted that the Sinhalese signature, which is below the signatures of the two witnesses, was made by him as husband, and the English signature was made as notary.

J. Joseph, for plaintiff, respondent, not called upon.

June 6, 1916. DE SAMPAYO J.—

The only point that need be considered on this appeal is whether the deed No. 6,697, dated March 11, 1886, executed by Helena Mendis in favour of the defendant's predecessor in title, was legally operative. Helena Mendis was the wife of Arnolis Dias, and their marriage relations were governed by the provisions of the Ordinance No. 15 of 1876. She therefore, required the written consent of her husband for disposing of her immovable property. Curiously, her husband was the notary who attested the deed, but that fact is in itself insufficient to satisfy the requirements of the Ordinance. The defendant's counsel refers to the husband's signature appearing below those of two witnesses, and relies on the Full Bench decision in *Ponnammal v. Pattaye*.¹ That decision has no application to the present case. There the husband, who was not himself the notary, had put his signature below those of the witnesses, and the majority of the Court considered that in the circumstances his signature had no other meaning than as giving consent in writing, though there were no express words to that effect. But in this case Arnolis Dias was the attesting notary, and as his signature was required as such, its appearance on the deed has not the same significance. Counsel for the defendant then points out that Arnolis Dias has signed twice over, first in Sinhalese and then in English, and argues that he first signed as husband and as giving his consent, and then as attesting notary. But it is impossible to accept this suggestion. For, in addition to the signature below those of the witnesses, there is a formal attestation clause, which, of course, has been signed by Arnolis Dias in his capacity as notary only, and there also he has signed twice over in the same way as in the former place. The fact appears to be that Arnolis Dias, as notary, adopted this form of signature, as, indeed, a Sinhalese notary is now at least obliged to do by the Ordinance No. 1 of 1907, section 29, sub-section (20), and that although his name is put both in Sinhalese and in English, it is one and the same signature. That being so, the defendant is not able to depend on the ruling in *Ponnammal v. Pattaye*.¹

The appeal fails, and is therefore dismissed, with costs.

Appeal dismissed.

¹ (1910) 13 N. L. R. 201.