1971 *Present :* Alles, J., and Samerawickrame, J.

K. PATHMANATHAN *et al.*, Appellants, *and*
A. AIYATHURAI and another, Respondents

S. C. 287/68 (F)—D. C. Jaffna, 2218/L

Thesavalamai—Dowry given by father to married daughter after the death of the daughter's husband—Validity and effect—Thesavalamai Regulation (Cap. 63), ss. 3, 5.

Under Thesavalamai the question whether a father's gift to his married daughter subsequent to her marriage is a donation *simpliciter* or a postponed fulfilment of an earlier obligation to provide her with a dowry is essentially dependent on the facts.

P, a married daughter of parents who were governed by Thesavalamai, received by way of dowry certain lands from her father. The deed was executed in 1926, ten years after her husband had died. It stated that " for and in consideration of the marriage that has taken place earlier unto my daughter Ponnammah, widow of Ramalingam of the same place and in consideration of the promise made by me to her that I shall give her a dowry, I do hereby grant and convey by way of dowry unto her the lands mentioned therein . . ."

Held, that the deed of 1926, although it was executed ten years after the death of P's husband, was a valid dowry deed and not a deed of donation. Accordingly, under section 3 of the Thesavalamai Regulation (Cap 63), P forfeited all her rights to her mother's property in the present case to the benefit of another daughter. Even assuming that a half share of the mother's property had vested in P on her mother's death in 1914, the effect of the dowry deed was to divest her of all shares in that property and create a forfeiture.

APPEAL from a judgment of the District Court, Jaffna.

C. Ranganathan, Q.C., with *V. Tharmalingam*, for the defendants-appellants.

C. Chellappah, for the plaintiffs-respondents.

Cur. adv. vult.

April 3, 1971. ALLES, J.—

The plaintiffs-respondents, husband and wife, instituted this action for a declaration that the 2nd plaintiff, Annammah, was entitled to the lands described in the schedule to the plaint. At the trial the defendants did not contest the second land in the schedule and the parties proceeded to trial in respect of the first land only.

The plaintiff's case was that by dowry deed P2 of 1909 Sellamma, wife of Muttu, was entitled to these lands. Sellamma died in 1914 leaving her husband and two daughters, Annamma and Ponnammah *alias* Thangamma. By P3 of 1926 Muttu gave by way of dowry certain lands

belonging to him to his daughter Ponnammah and the plaintiffs maintain that in view of this dowry deed, Ponnammah forfeited all her rights to Sellamma's property and that therefore her sister Annamma became entitled to the entirety of the lands described in the schedule. The 1st defendant is the husband of Rajaluxmey, the deceased daughter of Ponnammah and the 2nd and 3rd defendants are their children.

It has been established that Sellamma married before 1911 and that therefore she was governed by the Thesavalamai (Ch. 63). Ponnammah's husband died in 1916 and the main point for the decision of the Court was whether P3 of 1926 was a dowry deed, or whether it was only a deed of donation which would not preclude Ponnammah from inheriting a half share of her mother's estate. If P3 was a dowry deed she would forfeit all her rights to her mother's estate (Vide S. 3 of the Thesavalamai Regulations and the decision of Lyall Grant J. in *Elivayan v. Velan* [1]. It has been strongly urged by learned Counsel for the appellant that the facts militate against the view that P3 can be called a dowry deed. It was executed 10 years after the death of Ponnammah's husband and therefore did not have the characteristic of a dowry deed, which it was submitted should be granted only at the time of marriage or on the occasion of a contemplated marriage. In support Counsel cited the decision of Basnayake J. in *Kandappu v. Veeragathy* [2]. This decision has however not been followed by Gratiaen J. in the later case of *Thesiger v. Ganeshlingam* [3] where the learned Judge stated that he was unable to accept the narrow interpretation in *Kandappu v. Veeragathy* and held that " the question whether a *subsequent gift* by a parent to a married daughter operates and was intended to operate as a donation *simpliciter* or as a postponed fulfilment of the earlier obligation to provide her with a dowry was essentially a question of fact ". This view was approved by Tambiah J. in *Murugesu v. Subramaniam* [4]. In doing so Tambiah J. followed the earlier decisions of the Supreme Court in *Murugesar v. Ramalingam* [5] and *Tambipillai v. Chinnatamby* [6]. Mr. Ranganathan submitted that these decisions only applied to cases where the marriage was in existence at the time the dowry deed was executed and could not in any event apply to a case where it was sought to dowry a daughter long after her husband's death and when the marriage had terminated. It was his submission that even other systems of law only recognised the execution of a dowry settlement either in contemplation of marriage or during lawful wedlock. Under the Kandyan law a deed granted by the parents in consideration of marriage contemplated the grant of a dowry during the subsistence of the marriage—*Kandappa v. Charles Appu* [7]— and Voet 23-3-7 (Gane's translation Vol. IV p. 152) also refers to the giving of a dowry " before marriage or during lawful wedlock ". He therefore submitted that it would be unrealistic to refer to a deed of donation to a married daughter 10 years after her husband's death as a dowry deed.

[1] *(1929) 31 N. L. R. 356.*
[2] *(1951) 53 N. L. R. 119.*
[3] *(1952) 55 N. L. R. 14.*
[4] *(1967) 69 N. L. R. 532.*
[5] *(1881) 4 Tambyah's Reports 176.*
[6] *(1915) 18 N. L. R. 348.*
[7] *(1926) 27 N. L. R. 433 at 438.*

While Counsel's submissions are not without attraction, I think that since the customary law of the Tesawalamai recognises "that daughters must content themselves with the dowry given them by the act or doty ola, and are not entitled to make any further claim on the estate....." (S. 3) and " the daughters are at liberty to induce their parents to increase the doty " (S.5) the term dowry deed under the Tesawalamai must be given a liberal construction. This was an eminently reasonable method whereby under the Tesawalamai adequate provision was made by the parents for both married and unmarried daughters. Since the question, whether a subsequent gift to a married daughter is a donation *simpliciter* or a postponed fulfilment of an earlier obligation to provide her with a dowry, is essentially dependent on the facts, it is pertinent to consider the intention of the donor. According to the recital in P3 Muttu states—

" that for and in consideration of the marriage that has taken place earlier unto my daughter Ponnammah, widow of Ramalingam of the same place and in consideration of the promise made by me to her that I shall give her a dowry, I do hereby grant and convey by way of dowry unto her the lands mentioned herein . . . "

The recital in P 3 which was made in 1926, when there was harmony between Muttu's two daughters, make it abundantly clear that Muttu intended to make provision for Ponnammah who was a widow at the time in pursuance of a fulfilment of an earlier obligation to make provision for her. I therefore take the view that, on the facts of the instant case, P 3 was a dowry deed and Ponnammah forfeited her rights to her mother's property. Even assuming that a half share of this property had vested in her on her mother's death in 1914, the effect of the dowry deed would be to divest her of all shares in that property and create a forfeiture.

There remains for consideration two further matters which were raised by Counsel for the appellant—prescription and estoppel. Until 1962 when this action was instituted and even during the trial the plaintiffs and Ponnammah lived in the same house on the premises in suit. On 2nd February 1952 three deeds, D1, D2, and D3 were executed by the parties. D1 was a dowry deed executed by the plaintiffs in favour of their daughter Alagmalar. Ponnammah was also a donor on the deed and one of the lands dowried on D1 was a land received by Ponnammah from her father on P 3. D 2 was a dowry whereby Ponnammah granted to her daughter Rajaluxmey certain lands and she recites as her title to these lands the deed of dowry in favour of her mother Sellamma in 1909 and the deed given to her by her father Muttu (P3). The 1st plaintiff was a witness to the Deed. D3 is a mortgage bond whereby the plaintiffs and Rajaluxmey and her husband borrowed money from the plaintiff's daughter and her husband. In spite of these deeds Ponnammah continued to live in the same house with the plaintiffs and there is no doubt that she was in possession but the possession was not of such a nature as to create a prescriptive title against Annammah. On the issue of estoppel although D2 is a dowry deed by Ponnammah of the disputed land to Rajaluxmey, the title recited is that of

Sellamma and the 1st plaintiff is a witness to the deed; it has not misled the defendants and led them to act to their detriment nor have the defendants suffered any loss. The 1st plaintiff stated in evidence that the plaintiffs paid off the mortgage debt on bond D 3. This has not been contradicted by the defendants who called no evidence. The plea of estoppel therefore fails.

In the result the order of the learned District Judge in the Court below is affirmed and the appeal is dismissed with costs.

SAMERAWICKRAME, J.—I agree.

Appeal dismissed.