1953 *Present :* **Gratiaen J. and Weerasooriya J.**

C. NAGANATHAR, Appellant, *and* S. VELAUTHAM *et al.*, Respondents

S. C. 214—D. C. Point Pedro, 3,712

Thesavalamai—*Wife's separate immovable property—Husband's position in regard to such property*—Quia timet *action—Jurisdiction of Court to enter a declaratory decree—Jaffna Matrimonial Rights and Inheritance Ordinance (Cap 48.), ss. 6, 19 (b), 20 (1)—Amending Ordinance No. 58 of 1947.*

A Court has jurisdiction to grant relief in the form of a declaratory decree in *quia timet* proceedings when such a decree would accomplish the ends of precautionary justice for the protection even of future or contingent rights. The Court must, however, be satisfied that the declaratory decree asked for in any particular action relates to a concrete and genuine dispute and would, if passed, serve some real purpose in the event of future litigation between the same parties.

By a deed executed in July 1944, a wife, to whom the *Thesavalamai* applied, purported, during the subsistence of her marriage but without her husband's consent, to convey her separate immovable property. Earlier, in November, 1943, the husband had, in the exercise of his right to manage his wife's property, informally leased her interests to certain parties.

Held, (i) that, under section 6 of the Jaffna Matrimonial Rights and Inheritance Ordinance, the conveyance executed by the wife without her husband's consent was void *ab initio*.

(ii) that although the husband had no proprietary interest in the separate property of his wife, he had other present and contingent interests therein. He was entitled, in the circumstances, to institute action asking for a declaration that the conveyance which his wife had purported to execute was null and void.

APPEAL from a judgment of the District Court, Point Pedro.

C. Renganathar, with *V. Ratnasabapathy*, for the plaintiff appellant.

H. W. Tambiah, with *S. Sharvananda*, for the 3rd and 4th defendants respondents.

Cur. adv. vult.

October 29, 1953. GRATIAEN J.—

The plaintiff and his wife Thangammah are persons to whom the Thesewalamai applies. Their marriage was solemnised according to Hindu rites in June 1939, and in March 1939 the plaintiff's wife received from her father by way of gift an interest in certain immovable properties including the lands to which this action relates. The effect of their marriage was that, although the properties remained her separate property, she was absolutely prohibited by the provisions of sec. 6 of the Jaffna

Matrimonial Rights and Inheritance Ordinance (Cap. 48) from alienating them *inter vivos* during the subsistence of the marriage without the consent of her husband. In addition, the future income of the property (at least until the date on which the amending Ordinance No. 58 of 1947 came into operation) became *tediatetam* common to both spouses by virtue of sec. 19 (*b*) and sec. 20 (1) of the Ordinance.

By a deed D1 dated 1st July 1944 Thangammah purported, during the subsistence of the marriage, but without the plaintiff's consent, to convey certain shares in the property to the 4th defendant. This alienation was clearly void *ab initio—Chellapa v. Kumaraswamy* [1]—because " it was in contravention of her husband's right and could not be supported by the Tamil law ".

The plaintiff instituted this action against the 1st, 2nd, 3rd and 4th defendants on the following basis : he claimed that, in the exercise of his right to manage his wife's property for their mutual benefit, he had on 1st November 1943—i.e., before the execution of D1—informally leased her interest in the land in dispute to all four defendants at an agreed rental; that the defendants had since repudiated their obligations as lessees under him, and that the 4th defendant (as purported owner) and her husband the 3rd defendant (presumably as the manager of his wife's separate property) were wrongfully setting up an independent title under the void deed D1. He accordingly asked (*a*) for a declaration that the purported conveyance under D1 was null and void ; (*b*) for damages, and (*c*) to be restored to possession of the property.

The defendants joined issue with the plaintiff upon the allegations in the plaint, and in addition raised a preliminary objection that the action, as originally constituted, was bad for misjoinder of parties and of causes of action. This latter objection having been upheld at the commencement of the trial, the plaintiff elected to continue these proceedings against only the 3rd and 4th defendants for his declaratory decree in respect of the void alienation D1. His right to sue all four defendants in separate proceedings upon the other disputed causes of action were specially reserved to him.

The learned District Judge correctly decided that the purported alienation by Thangammah to the 4th defendant without the plaintiff's consent was void *ab initio*, and rejected their alternative plea that the shares conveyed had in truth been held in trust for the 4th defendant by Thangammah. Nevertheless, a declaratory decree in favour of the plaintiff was refused on the ground that he had no proprietary interest in the separate property of his wife who was not a party to the action.

The learned District Judge has, in my opinion, taken too narrow a view of the jurisdiction of a Court to grant relief in the form of a declaratory decree in *quia timet* proceedings. Cases may well occur in which such a decree would be justified to accomplish the ends of precautionary justice for the protection even of future or contingent rights. *Vide* the authorities cited in *Hewavitarane v. Chandrawathie* [2]. In a very recent decision of the Court of Appeal in England, Denning L.J. stated, " I know of no

[1] *(1915) 18 N. L. R. 435.*

[2] *(1951) 53 N. L. R. 169 at 174, 175.*

limit to the power of the Court to grant a declaration *except such limit as it may in its discretion impose upon itself* "—see *Barnard v. National Dock Labour Board* [1]. On the one hand, I agree entirely that a Court should not permit itself to be converted into a *forum* for the discussion of purely academic problems, and ought therefore to be satisfied that the declaratory decree asked for in any particular action relates to a concrete and genuine dispute and would, if passed, serve some real purpose in the event of future litigation between the same parties.

Although the plaintiff cannot claim to be the present owner of his wife's separate property, he was undoubtedly vested at the relevant date with marital authority to restrain his wife from alienating her immovables *inter vivos*. Moreover he had, at the time of the void alienation complained of, a present vested interest in the *income* of that property. Whether he continued to retain such an interest since the Jaffna Matrimonial Rights and Inheritance (Amendment) Ordinance, No. 58 of 1947, came into force on 3rd July 1947 need not be here discussed. Suffice it to say that D 1 had been executed in derogation not only of his marital authority but also of a right which he then enjoyed to share in the income of the property. Moreover, even upon a construction of the amending Ordinance which is least favourable to him it cannot be said for certain that he does not enjoy at least a *contingent right* to receive any part of the income of that property if his wife should predecease him. It is idle to speculate now whether that right will ever become enlarged into a vested right, but the plaintiff is now entitled to complain of an invasion of his contingent rights by trespassers who seek to divert the income by asserting pretended ownership of the property under a void alienation.

Finally, it cannot be said that a declaratory decree would not be of real assistance to the plaintiff in the litigation which the learned Judge has granted him permission to proceed with against all four defendants in separate proceedings. His claims to the management of his wife's separate property, and to have leased it out to the defendants in the exercise of these powers have both been challenged. Obviously, therefore, the onus will be on him to establish them. But before that litigation commences, it would manifestly be to his advantage to get out of the way, so to speak, the false assertion of the 4th defendant to be the owner of the property.

Upon all these considerations, I think that the learned District Judge should not have refused the plaintiff relief in this action. I would set aside the judgment under appeal, and enter a decree declaring, as between the plaintiff and the 3rd and 4th defendants, that the deed No. 11,236 dated 1st July 1944 and attested by M. S. Kandiah, Notary Public, is null and void *in so far as it purports to be a conveyance of the interests of the plaintiff's wife Vinnasithamby Thangammah*. The 3rd and 4th defendants must pay to the plaintiff his costs in both Courts.

WEERASOORIYA J.—I agree.

Appeal allowed.

[1] *(1953) 2 W. L. R. 995 at 1009.*