1957 *Present :* Sansoni, J.

MARKANDU, Appellant, *and* RAJADURAI, Respondent

S. C. 310—C. R. Jaffna, 2,980

Thesawalamai Pre-emption Ordinance No. 59 of 1947—Section 2—" Heirs ".

Persons who claim to come within section 2 (1) (*b*) of the Thesawalamai Pre-emption Ordinance, No. 59 of 1947, must first satisfy the condition that they would be heirs of the intending vendor if he should then die intestate; that condition having been satisfied, they must also satisfy the condition that they are descendants, ascendants or collaterals within the third degree of succession.

APPEAL from a judgment of the Court of Requests, Jaffna.

C. Renganathan, with *A. C. Krishnarajah*, for the 2nd defendant-appellant.

A. Nagendra, for the plaintiff respondent.

Cur. adv. vult.

March 7, 1957. SANSONI, J.—

This is an action for pre-emption which involves the interpretation of section 2 of the Thesawalamai Pre-emption Ordinance No. 59 of 1947. The 1st defendant-appellant sold a 1/6th share of the land in question to the 2nd defendant, his maternal uncle. But the 1st defendant has children, and the plaintiff claimed that he as a co-owner was entitled to pre-empt that 1/6th share. The 2nd defendant claims that he as the maternal uncle was an heir who also had the right of pre-emption and he relies on section 2 of the Ordinance which reads :—

(1) " When any immovable property subject to the Thesawalamai is to be sold, the right of pre-emption over such property, that is to say, the right in preference to all other persons whomsoever to buy the property for the price proposed or at the market value, shall be restricted to the following persons or classes of persons :—

(*a*) the persons who are co-owners with the intending vendor of the property which is to be sold, and

(*b*) the persons who in the event of the intestacy of the intending vendor will be his heirs.

(2) For the purpose of this Ordinance, the term " heirs " means all descendants, ascendants and collaterals up to the third degree of succession, and includes—

(*a*) children, grandchildren and great-grandchildren ;

(*b*) parents, grandparents on both the paternal and maternal sides and great-grandparents on all sides ;

(*c*) brothers and sisters whether full or of the half blood ;

(*d*) uncles and aunts, and nephews and nieces, both on the paternal and maternal sides, and whether of the full or of the half blood ".

It will be noticed that the right is restricted to co-owners and *persons who in the event of the intestacy of the intending vendor will be* his heirs.

Mr. Renganathan for the 2nd defendant-appellant submitted that as the term " heirs " has been defined in the section no other meaning can be given to it, and certainly not the meaning which de Sampayo, J., gave it in *Ponniah v. Kandiah* [1]. The learned Judge there said :—

" The word I think refers to persons who would be heirs if the owner should now die ".

Mr. Renganathan would give the word a much wider meaning and include all those persons who are mentioned in section 2 (2) of the Ordinance. He relied on the definition of the words " means " and " means and includes " in Stroud's Judicial Dictionary and submitted that the definition of the word " heirs " was exhaustive.

Now if one were to substitute for the word " heirs " in section 2 (1) (*b*) the definition appearing in section 2 (2), the result would be unintelligible. Again, section 2 (1) (*b*) does not read " the persons who are the heirs of the intending vendor " : if it did, the substitution of the persons mentioned in the clause defining " heirs " would provide the result for which Mr. Renganathan contends. Obviously the heirs contemplated in section 2 (1) (*b*) are those persons whom de Sampayo, J., referred to as " persons who would be heirs if the owner should now die ". It is for that reason, I think, that the word " heirs " in section 2 (1) (*b*) is qualified by the phrase " in the event of the intestacy of the intending vendor " : and it is for that reason that one cannot include all those persons falling within the clause defining the term " heirs " simpliciter as persons who have the right of pre-emption.

Under the law as it stood before the Ordinance was passed there was no limitation as to the degree of succession within which heirs who claimed the right of pre-emption should fall. The Ordinance, however, restricted the right to those who were within the third degree of succession. The reason, I think, is because the report of the Thesawalamai Commission, dated 12th December, 1929 (Sessional Paper III of 1930) contained a recommendation that the right should be restricted " to those who would be heirs of the vendor up to the third degree in the case of intestacy ".

My view, then, is that persons who claim to come within section 2 (1) (*b*) must first satisfy the condition that they would be heirs of the intending vendor if he should then die intestate : that condition having been satisfied, they must also satisfy the condition that they are descendants, ascendants or collaterals within the third degree of succession. Only in this way can full effect be given to all the words of section 2 (1) (*b*) and section 2 (2).

As the 2nd defendant-appellant is not an heir of the 1st defendant according to this interpretation of section 2, I agree with the learned District Judge that he had no right of pre-emption.

The appeal is dismissed with costs.

Appeal dismissed.

[1] *(1920) 21 N. L. R. 327.*