1929

Present: Lyall Grant J. and Maartensz A.J.

ELIYAVAN *v.* VELAN *et al.*

136—D. C. (Inty.) Jaffna, 22,812.

Tesawalamai—Daughter dowried by brother after death of father—*Acceptance of dowry—Renunciation of parental estate.*

Where, under the *Tesawalamai*, after the death of the father, a daughter was dowried by the brother, the acceptance of the dowry by the daughter operates as a renunciation of her rights to the paternal estate.

THIS was an appeal from a judgment of the District Judge of Jaffna. The plaintiffs sued for the partition of a land belonging to the estate of one Vellan Suppan, whose daughter was the second plaintiff. The defendants, who were the sons and the widow of Suppan, contended that the second plaintiff had been dowried by her, brother the ninth defendant, and that she was not entitled to any further claim on the parental estate. The learned District Judge dismissed the plaintiffs' action.

Croos Dabrera, for plaintiffs, appellants.

Subramaniam, for defendants, respondents.

November 11, 1929. LYALL GRANT J.—

The first and second plaintiffs are husband and wife and they instituted this action in the District Court of Jaffna to Partition a certain land. The plaintiffs claimed in right of the second plaintiff being the daughter of Vellan Suppan and his wife Nagamutty, and they called as defendants the widow Nagamutty (eleventh defendant) and the remaining children of Vellan Suppan and Nagamutty.

The ninth, tenth, and eleventh defendants (ninth and tenth being sons of Vellan Suppan) asserted that all the female children of Vellan Suppan had been dowried.

The fourteenth defendant (wife of the ninth) supported this averment but alleged that the whole land had been transferred to her by deed for valuable consideration.

The plantiffs' right to partition the land obviously depended on whether the second plaintiff had been dowried. The case went to trial on the following issues:—

(1) Was she dowried by the ninth defendant and her parents ?

(2) Was she dowried by the ninth and fourteenth defendants at the request of the eleventh defendant?

(3) Were all the daughters of Vellan Suppan dowried ? It is common ground that if the second plaintiff has been dowried the case is at an end, as she would then have no right to institute this action.

The learned District Judge came to the conclusion that all the daughters of Vellan Suppan had been dowried and that the second plaintiff received a dowry from her eldest brother (the ninth defendant) and his wife (the fourteenth defendant).

He accepted the evidence furnished by various receipts in the case of the other daughters, and in the case of the second plaintiff the evidence furnished by a formal deed of dowry dated September 16, 1925.

The facts were not seriously disputed, but it was contested that it was only a daughter who was dowried by her parents who was debarred from the inheritance and that a daughter dowried by her brother was not so debarred.

This argument was rejected by the learned District Judge, who found against the plaintiffs. From this judgment the plaintiffs and the first to the eighth defendants appealed.

It was argued before us that on the death of Vallan Suppan, the widow had by the *Tesawalamai* no more than a life interest in the estate and that the fee vested absolutely in the children *pro rata* at the death of the father.

Reference was made to the Jaffna Matrimonial Rights and Inheritance Ordinance, No. 1 of 1911, section 22, and to the case of *Murugesu v. Kasinathar*,[1] where it was held that on the death of a wife before her husband a half share vests in the heirs of the deceased wife subject to the *Tesawalamai* relating to its liability to be applied to the payment of debts. The other half remains the property of the surviving husband.

The judgment merely restates the provisions made by Ordinance No. 1 of 1911, section 22.

Section 16 of that Ordinance shows that the subsequent sections apply only to persons married after the passing of the Ordinance.

It was admitted that Vellan Suppan and Nagamutty were married before 1911, and accordingly section 22 of the 1911 Ordinance does not apply to their inheritance.

It was, however, argued on behalf of the appellants that the 1911 Ordinance merely recapitulated the existing *Tesawalamai* and reference was made to section 1, paragraph 9. of that Code.

[1] *25 N. L. R. 201.*

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Section 9 reads as follows:—

> If the father dies first leaving one or more infant children, the whole of the property remains with the mother, provided she takes the child or children she has procreated by the deceased until such child or children (as far as relates to the daughters) marry, when the mother, on giving them in marriage, is obliged to give them a dowry; but the son or sons may not demand anything so long as the mother lives, in like manner as is above stated with respect to parents.

This paragraph appears to me to indicate that on the death of the father the mother has complete control of the whole of the property subject possibly to certain restrictions on alienation.

The important point is that the Code puts an obligation on the mother to dowry daughters.

It does not say, nor can one assume, that the mother has to dowry a daughter from her own share, leaving intact that daughter's share inherited from her father.

The admitted principle of the *Tesawalamai* is that if a daughter is dowried she loses her rights to her parents' inheritance, and section 9 is intended to carry this principle into effect after the father has died.

To attain this object it is necessary that the whole property should be under the control of the mother and that any such payment should have the effect of discharging the estate from any further claim against it by a daughter so dowried.

It was however contended that the facts of this case are different. Here the daughter's dowry was met by a grant of land, not from the ancestral estate and not given by the mother, but given out of property belonging to the brother and his wife and donated by them.

The plaintiffs-appellants say that such a payment is not dowry and does not prevent their claiming a share in the inheritance.

I think the plaintiffs are estopped from raising such a contention. They both signed the deed of 1925. That deed conveys to the second plaintiff an estate expressly as dowry. The deed is signed by both the plaintiffs, and in it they say: "We, the said Maruthan Elaiyavan and wife Illeduchumi, do hereby accept this dowry."

It seems to me clear that the acceptance of that land by the plaintiffs as dowry necessarily implied the renunciation of their rights to any share in the estate of the second plaintiff's parents. This result must have been before the eyes of the parties when they accepted the gift. There was no other consideration.

I am of opinion that the judgment of the learned District Judge is correct, and the appeals are dismissed with costs.

MAARTENSZ A. J.—I agree.

Appeal dismissed.