

SILVA HAMINE v. AGONIS APPUHAMY.

1900.

June 6.

D. C., Negombo, 4.

Husband and wife—Separate estate of wife desiring to deal with it, without her husband's consent or concurrence—Ordinance No. 15 of 1876, s. 12—Proper course to take.

Where a wife, owning immovable property, lives separate from her husband and desires to lease a portion of it without his consent and concurrence, the proper course, under section 12 of Ordinance No. 15 of 1876, is not to apply for a general order empowering her to lease without her husband's consent and concurrence, but to bring the proposed lease before the court and ask that her husband's concurrence in it should be dispensed with.

THIS was an application made under section 12 of Ordinance No. 15 of 1876 by the wife of one Agonis Appuhamy, the respondent, for an order authorizing her to deal with one of her properties without his consent. It appeared that the applicant and respondent were married in 1885, and that since July, 1898, the applicant had left the respondent's house and lived apart from him, apparently by mutual consent. The District Judge, after hearing the parties, ordered that the applicant should have power to lease out one-fourth of the separate estate without the respondent's consent, but that she should file in Court a statement

1900.
June 6.

showing what property she wished to lease out, to whom, and upon what terms, and that upon such information being submitted the Court would make a definite order in respect of the lease.

The applicant appealed.

Sampayo, for appellant.—In view of section 9 of the Matrimonial Rights and Inheritance Ordinance of 1876, the applicant petitioned the District Court under section 12. The property is now in charge of her husband, and as she lives separate from him she desires to lease it herself. [BONSER, C.J.—Section 12 necessitates proof that the husband withheld his consent unreasonably. Before coming into Court you should present to the husband a deed of lease, and if he refuses to give his consent you may pray that his consent may be dispensed with.] The wife has alleged that her husband has withheld his consent unreasonably. It being admitted that the property in question is her separate estate, she is entitled to the profits of the whole. The District Judge is wrong in imposing conditions upon her.

Van Langenberg, for respondent.—The conditions imposed are proper under section 12, and seem to be required by the justice of the case. Section 9 of Ordinance No. 15 of 1876 gives the wife having a separate estate full power of disposing of and dealing with such property with the written consent of her husband. The order of the District Judge, so far as it goes, is correct. If the appellant wants further powers, she could apply to the Court again.

BONSER, C.J.—

I think this appeal must be dismissed.

The appellant has mistaken her rights. She is the owner of certain immovable property, and she and her husband are living separate, apparently by mutual consent. She wishes to lease part of the property, and she has applied to the Court under section 12 of Ordinance No. 15 of 1876 for a general order empowering her to lease the property without her husband's consent and concurrence in the lease.

It seems to me that what she ought to have done was to have brought the proposed lease before the District Judge and to have asked that her husband's concurrence in that lease should be dispensed with. She could then have brought before the Court all the facts of the case regarding the lease, the parties to the lease, the rents to be paid, &c., and the Court would then have been able to say whether the case was one in which the husband's consent might properly be dispensed with. I understand that

the Court is quite willing to make an order, if these conditions are complied with. I do not understand that the District Judge has made a formal order that under no circumstances can she lease more than one-fourth of the property. If he made such an order, it would be wrong. It will be open to her at any time to make a similar application to the Court in respect of her remaining property.

1900.
June 6.
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MONCREIFF, J.—Concurred.
