

1923.

*Present : Porter J. and Garvin A.J.*

**PONNACHCHY v. VALLIPURAM et al.**

*94—D. C. Jaffna, 15,869.*

*Tesswalamai—Property acquired by wife in her name—Right of husband to donate half share of same.*

Where property is “acquired” by a wife during marriage and deed is executed in her favour, it vests by law in both the spouses.

Where a wife acquired a property during marriage and the deed was in her name only, and where subsequent to the purchase the husband lived in separation from his wife, and donated a half share of the property to the plaintiff,—

*Held*, that the donation was valid though the conveyance was in the name of the wife only.

**K**ANTHAPPAR and his wife Letchimippillai, the third added party, purchased by deed, which was in the name of the third added party alone, dated December 28, 1881 (marked P1), one-fourth share of the land sought to be partitioned in this action. Kanthappar who has been living in separation from his wife, the third added party, donated one-eighth share of this land as his share of *thediathetam* to the plaintiff-appellant by deed No. 2,456 dated September 29, 1918 (marked P 2), and the third added party sold her one-eighth share to the defendant. The plaintiff-appellant brought this action to partition her one-eighth share, and the Counsel for third

1923.  
 Ponnachchy  
 v.  
 Vallipuram

added party took objection *in limine* on the date of trial to the plaintiff's maintaining this action, on the ground that the legal title for one-eighth share still vested with the third added party, and the plaintiff-appellant derived no title by the donation P 2 in her favour, and the learned District Judge held as follows :—

I agree that as the conveyance of an undivided one-fourth of this land was in favour of Ledchumy, the legal title is in her subject no doubt to certain equitable rights which Kanthappar would have under the *Tesawalamai* and by our law of trusts.

Both spouses being alive, I am of opinion that the conveyance of one-eighth of the land by Kanthappar who has not got the legal title to the plaintiff, did not pass the legal title. (See judgment of Bertram C.J. in *Sellachchy v. Visuvanathan Chetty*<sup>1</sup>, and unless the party who asks for a partition has the legal title to the share he claims he cannot maintain a suit for that purpose (*Silva v. Silva*<sup>2</sup>).

I therefore dismiss plaintiff's action, with costs of the third added party.

*Balasingham*, for the plaintiff, appellant.—The right of the husband to donate a half of the acquired property was never questioned in *Sellachchy v. Visuvanathan Chetty* (*supra*). The passage in the judgment of Bertram C.J. relied on by the District Judge refers to property situated outside the Northern Province. The principle of the Roman-Dutch law that whether a property is acquired by the wife or husband it still becomes common property and can be dealt with by the husband applies to acquired property under the *Tesawalamai*. The only difference is that under the *Tesawalamai* spouse can give a donation of only one-half of the common property. Even if the wife acquires property in her name, it is still liable for the husband's debts both under the Roman-Dutch law and the *Tesawalamai*.

*Joseph*, for the defendant, respondent.—It has been held in a series of cases that without a notarial conveyance no title passes. Here the deed was in favour of the wife alone. Bertram C.J. has held in the Full Court case referred to that where a husband bought a property in his name, the wife has only a right to call upon him or his heirs for a transfer of one-half. Here the parties lived in separation, and therefore the husband cannot deal with the wife's property. See 60—*D. C. Jaffna, 16,177, S. C. Min., July 11, 1923.*

[Garvin J.—That case refers to property acquired after separation.

*Cur. adv. vult.*

August 2, 1923. PORTER J.—

This is an appeal from a judgment in a partition action. In this appeal it would appear that a certain Ambalavar Kanthappar and his wife Letchimippillai, the third added party, purchased by deed which was in the name of the third added party alone, bearing

<sup>1</sup> (1922) 23 N. L. R. 97.

<sup>2</sup> (1916) 19 N. L. R. 47.

No. 910 and dated December 28, 1881 (marked P 1), a one-fourth share of the land sought to be partitioned in this action. The said Ambalavar Kanthappar, who has been living in separation from his wife, donated one-eighth share of this land to the plaintiff-appellant by deed No. 2,456 dated September 29, 1918 (marked P 2) and the third added party sold her one-eighth share to the defendant. The plaintiff-appellant brought this action to partition her one-eighth share, and the learned District Judge dismissed the plaintiff's action with costs on the ground that the plaintiff has no legal title, inasmuch as the conveyance by the said Kanthappar did not pass the legal title to the plaintiff. It will be noted that Kanthappar by the conveyance to the plaintiff merely donated his own share, half, which vested in him by operation of law. The whole matter is fully discussed in *Seelachchy v. Visuvanathan Chetty (supra)*, which laid it down that the husband had no power to gift more than a half share of acquired property, and by Garvin A.J. that at the time the property was acquired, it vested by law in both the spouses. I would, therefore, allow this appeal, and set aside the judgment, and send the record back to the District Court. The appellant is to have the costs of this appeal and of the Court below.

GARVIN A.J.—I agree.

1923.

PORTER J.

*Ponnachchy*  
v.  
*Vallipuram*

*Appeal allowed.*

