

KANTAMMA v. KANAPATHIPILLEY *et al.*

1906.

February 2.

C. R. Jaffna, 27,584.

Tesawalamai—Wife's chose in action—Rights of husband—Merger—
Otty bond—"Matrimonial Rights Ordinance, 1876."

According to the *Tesawalami* a chose in action belonging to the wife does not vest in the husband.

THE plaintiff, who is the wife of the second defendant, sued one Kanapathipilley and her husband for the recovery of the amount due on an *otty* deed granted by the second defendant in 1872 in favour of the plaintiff's mother, who died intestate leaving plaintiff as her sole representative. The first defendant had purchased the land from the second defendant subject to the *otty* bond. The first defendant pleaded that the claim was barred by prescription.

The Commissioner overruled the plea of prescription, and gave judgment for plaintiff as prayed with costs.

In appeal.

Wadsworth, for first defendant, appellant.

E. W. Jayawardene (*H. Jayawardene* with him), for plaintiff, respondent.

2nd February, 1906. WENDT, J.—

The plaintiff in this case is the wife of the second defendant living separately from him, and she seeks to recover an *otty* debt incurred by second defendant in 1872. The original *otty* holder was plaintiff's mother, to whom plaintiff has succeeded *ab intestato*.

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The first defendant is a purchaser from second defendant of the land subject to the encumbrance. The only issues tried in the Court below were whether or not first defendant took the land free of the *otty*, and whether the debt was prescribed. These points are no longer in question. When the appeal was first argued (before the Chief Justice) the Ordinance No. 15 of 1876 was regarded as applicable to the parties, and on that footing this Court was of opinion that the mortgagee's rights, as a *chose* in action belonging to plaintiff, had vested in her husband, the second defendant, and so being lost by merger. It was subsequently discovered that that Ordinance did not govern Tamils in Jaffna, and the judgment did not pass the seal. Parties are now agreed that the *Tesawalamai* regulates their rights, and the question is whether there is anything in that customary law which deprives plaintiff of her right to enforce the *otty*. I am of opinion there is not. On the contrary, the *Thesawaleme* regards a wife's inherited property as being, like her dowry, her separate property. See a case reported at page 261 of Mutukisna's edition, where a similar action like the present was sustained both by the District Court and this Court in Appeal. Appellant's counsel sought to raise a further question as to whether the share conveyed to the first defendant could alone be made liable for the defendant. No issue was raised on this point, and consequently the facts necessary for its determination have not been brought out. I, therefore, decline to consider it. The appeal is dismissed with costs.
