

1949

Present : Nagalingam and Windham JJ.

SACHCHITHANANTHAN, Appellant, and SIVAGURU,
Respondent

S. C. 445—D. C. Point Pedro, 2,935

Thesavalamai—Property purchased by wife—Marriage after Jaffna Matrimonial Rights Ordinance—The diatetam—Effect of amending Ordinance—Retrospective—Ordinance No. 58 of 1947.

Ordinance No. 58 of 1947 amending the Jaffna Matrimonial Rights and Inheritance Ordinance is retrospective in its operation.

¹ 47 N. L. R. 393.

² (1888) 10 Allahabad 166.

³ 48 N. L. R. 110.

⁴ Section 75 of the Courts Ordinance.

1*—J. N. A 88962 (5/49)

APPPEAL from a judgment of the District Judge, Point Pedro.

H. W. Tambiah, with S. Sharvananda, for plaintiff appellant.

C. Thiagalingam, with V. Arulambalam, for defendant respondent.

Cur. adv. vult.

April 12, 1949. NAGALINGAM J.—

This appeal involves a point of some importance in the law of inheritance relating to persons governed by the Jaffna Matrimonial Rights and Inheritance Ordinance. I shall adopt the facts, so far as they are material, for the purpose of the present appeal, as ascertained by the learned District Judge, the correctness of which findings has not been disputed at the argument.

Two persons, Sivakampillai and Manickam, were at one time the co-owners of the entirety of the land sought to be partitioned in this case. By deed P6 of July, 1937, these two persons conveyed the land to one Aththal subject to the condition that the vendee should reconvey the premises to the vendors on payment of the consideration with the interest stipulated therein within a period of three years from the date of the execution of the deed. By deed P7 of October, 1937, Aththal re-transferred the entirety of the land to Sivakampillai, who was one of the vendors to her. Sivakampillai died intestate, leaving her surviving her husband Periyathamby and three children, the plaintiff and the two defendants. The husband by deed P8 of 1945 purported to convey to the plaintiff a half-share of the land.

The defendants contend that the deed P8 was inoperative to convey any title to the plaintiff. The case for the plaintiff is that as Sivakampillai was married subsequently to 1911, that is to say, after the coming into operation of the Jaffna Matrimonial Rights and Inheritance Ordinance, the purchase by her of the property from Aththal by deed P7 of October, 1937, fell into the category of property known as Thediatetam within the meaning of section 19 of the Ordinance, as it stood prior to its amendment by the Jaffna Matrimonial Rights and Inheritance (Amendment) Ordinance, No. 58 of 1947. The defendants on the other hand assert that as a result of the new section that was substituted by the amending Ordinance in place of the earlier section 19, if it can be shown that Sivakampillai purchased the land with her separate property then the property ceases to be Thediatetam within the meaning of the new section and that no rights vested in the husband so as to make the deed P8 effective. The learned Judge has found as a fact that the consideration provided by Sivakampillai for the purchase of the land by deed P7 was in fact her separate property.

Counsel on each side concedes that the interpretation placed by opposing Counsel on the earlier and later sections numbered 19 would support the devolution of title contended for by the respective parties. The question on which they are at issue, however, is whether the amending section which was proclaimed law on July 4, 1947, subsequent to the date of Sivakampillai's death, has application to the question of the distribution of her estate.

Mr. Sharvananda for the plaintiff appellant argues that no statute should be construed to have a retrospective operation and that the amending Ordinance cannot be construed so as to give to the new section which replaces the old the same effect as if it had been originally enacted in the principal Ordinance itself but that the effective operation of the new section must be deemed to date from the date when it became law. In support of his contention he relied upon the following authorities :—

1. The Privy Council case of *Ponnammah v. Armugam*¹ where, in delivering the judgment of the Board, Lord Davey made the following observation :—

“ It is unnecessary therefore to discuss the question whether intention is sufficiently shown to take this case out of the well known rule on the construction of statutes that the rights of parties must be decided according to the law as it existed when the action was commenced.”

2. The case of *Colonial Sugar Trading Co. v. Irwin*², also a Privy Council case, where Lord McNaughten expressed himself in these words :

“ In either case there is an interference with existing rights contrary to the well known general principle that statutes are not to be held to act retrospectively unless the clear intention to that effect is manifested.”

3. The Divisional Bench case of *Guneratne v. Appuhamy*³ where the above passage from Lord McNaughten's judgment was cited by Lascelles A.C.J. who held that the Ordinance No. 12 of 1894, which amended section 547 of the Civil Procedure Code, had no retrospective effect.

4. Maxwell⁴ who states the principle as follows :—

“ They (Statutes) are construed as operating only in cases or on facts which come into existence after the Statutes were passed unless a retrospective effect be clearly intended. It is a fundamental rule of English Law that no Statute shall be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication.”

It will be seen that every one of the authorities cited contains a qualification of the proposition as stated by Mr. Sharvananda and that is that a retrospective effect may have to be given to a Statute if such an intention can be clearly gathered from its terms.

Mr. Thiagalingam contends that the intention of the Legislature to give the amending Ordinance a retrospective effect is clearly expressed by the enactment of section 7 of the amending Ordinance. This section expressly states that the amendments made by the amending Ordinance shall not be deemed to affect the mutual rights of the parties in the case

¹ (1905) 8 N. L. R. 223.

² (1906) 9 N. L. R. 90.

³ 74 L. J. P. C. 77.

⁴ *Interpretation of Statutes* 9th ed. p. 221.

of *Avichy Chettiar v. Rasamma*¹ or in any other case decided in accordance with that decision at any time prior to the date on which the amending Ordinance comes into operation. If the operation of the amending Ordinance was to be only prospective, one cannot very well see the need for enacting this section, for the rights of parties would be governed by the law as it stood anterior to the amending Ordinance and what that law was was clearly and expressly set out in the aforesaid Divisional Bench case of *Avichy Chettiar v. Rasamma*.

Mr. Sharvananda urges that as a consequence by this amendment not only would the rights of parties to the case of *Avichy Chettiar v. Rasamma* not be affected but those of all other persons, whether their rights had been adjudicated upon or not, but that the Legislature had *ex abundanti cautela* enacted this provision and that this provision was really unnecessary. It is difficult to assent to this proposition. Where in construing a provision of a Statute two constructions are possible, one giving some effect to it and the other resulting in no effect being given to it, it is a sound canon of construction that that construction should be upheld which gives some effect to the provision. That by enacting this section the Legislature has clearly revealed its mind that the amending Ordinance was to be retrospective in its operation is the only view therefore possible.

Mr. Sharvananda also put forward a second line of argument based upon the fact that the amending Ordinance specifically repealed the old section 19 in express words and that by virtue of section 6 (3) (b) of the Interpretation Ordinance such repeal did not affect the right acquired by the husband who had married Sivakampillai when the repealed section was in operation and of treating the property acquired by Sivakampillai in the circumstances set out above as Thediatetam as defined in the old section. To hold the contrary, he said, would result in positive injustice being done to the husband, which the Legislature could not have intended and which it had striven to prevent by expressly enacting section 6 (3) (d) of the Interpretation Ordinance to meet such a situation; and he further argued that where a repeal is intended to affect rights already vested there must be, as provided in section 6 (3), an express provision to that effect, and referred to the provision in the Mortgage Ordinance, Cap. 74, where in section 17 (3) the Legislature took pains to say that the particular chapter of the Ordinance applied to mortgages and transfers of land whether created, executed or arising before or after the commencement of the Ordinance, words corresponding to which have not been inserted by the Legislature in the amending Ordinance.

I think there is great force in this argument because, though some implied provision may be inferred from the terms of section 7 of the amending Ordinance, no *express* provision is to be found therein whereby it could be said that any rights that had accrued were intended to be affected. To uphold this contention, however, would be to ignore the clearly expressed intention of the Legislature that it intended to alter the law as expressed in the case of *Avichy Chettiar v. Rasamma* (*supra*). But I do not think that section 6 of the Interpretation Ordinance can be said

¹ (1933) 35 N. L. R. 313.

to make inroads into the well understood canon of construing Statute Law that where the dominant intention in enacting a Statute is clear, the fact that the construction based on such intention takes away vested rights is no ground for construing the Statute in a different sense, although the consequences may appear unjust and harsh. In *Barber v. Pigden*¹ the Law Reform (Married Women and Tort Feasors) Act, 1935, was construed as putting an end to the liability of a husband for his wife's torts committed prior to the passing of the Act and thereby depriving a party against whom the tort had been committed from pursuing the undoubted right he had prior to the passing of the Act of holding the husband liable.

For these reasons I am of opinion that the amending Ordinance is retrospective in its operation and that the judgment of the learned District Judge is right. The appeal therefore fails and is dismissed with costs.

WINDHAM J.—I agree.

Appeal dismissed.
