

1899.  
August 22.

MENIK ETTANA *et al.* v. ALLIS APPU.

C. R., Avisawella, 1,061.

*Registration of deeds—Preference by earlier registration—Ordinance No. 14 of 1891, s. 17—Deed of sale by husband to wife—Proof of valuable consideration—Matrimonial Rights Ordinance, 1876, s. 19.*

A having, by deed of 27th August, 1888, sold a land to T, executed on 7th December, 1889, a deed of sale transferring the same land to his own wife. The latter deed was registered on 31st December, 1889, and the former on 30th June, 1890.

In an action brought by A's widow against T for recovering possession of the land—*Held*, that as all movable property to which a woman is entitled during her marriage is by Ordinance No. 15 of 1876, section 19, vested absolutely in her husband, the money which was mentioned in the deed of 7th December, 1889, as having been paid to A by his wife must be taken to be his own money, and the transfer to her to be without consideration.

THIS was an action to recover possession of an undivided share of the field called Delgahakumbura, which the first plaintiff alleged she had purchased from her husband, Telenis Appuhamy. The deed in her favour was dated 9th December, 1889, and was registered on the 31st of the same month. The other plaintiffs were her children.

The defendant claimed title also from Thelenis Appuhamy under a deed of sale dated 27th August, 1888, but registered on 30th June, 1890.

The plaintiffs did not prove payment of valuable consideration for the deed of sale in favour of the first plaintiff, which recited that Thelenis Appu, "for and in consideration of Rs. 200" paid to him by Menik Ettana, sold and transferred the land to her.

The Commissioner decided that the first plaintiff's deed should have preference, and that her title to the field was completed by prescriptive possession. He rejected the evidence of possession led by the defendant.

Defendant appealed.

H. J. C. Perera appeared for defendant.

Dornhorst, for plaintiff, respondent.

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The plaintiff's subsequent deed should get priority only if it was for valuable consideration. It was a transfer by a husband to a wife. They were, I understand, low-country Sinhalese. Certainly the name of the plaintiff's husband, Telenis, is that of a low-countryman.

By the Ordinance of 1876 all movable property to which a married woman is entitled during her marriage vests absolutely in her husband, so that presumably the money handed by the plaintiff to her husband Telenis as the consideration for the transfer was his own money. In other words, the transfer to her was not for valuable consideration. The defendant is in possession, and the plaintiff has not proved right to the land by virtue of a later transfer for valuable consideration registered prior to the defendant's earlier deed.

I dismiss the action.

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LAWRIE,  
A.C.J.

