

1956 Present: Basnayake C.J., Gunasekara J., Pulle J.,
de Silva J. and Sansoni J.

SOOSAIPILLAI *et al.*, Appellants, and SOOSAIPILLAI,
Respondent

S. C. 119—D. C. Jaffna, 5,605

Tesawalamai—Property of deceased wife—Rights of husband—Sale by son—Rights of vendee—Cap. 51, Part I, ss. 9 and 11—Jaffna Matrimonial Rights and Inheritance Ordinance (Cap. 48), ss. 4, 14, 37, 38, 40.

Sections 9 and 11 of Part I of the Tesawalamai (Cap. 51) apply to the estate of a spouse married before, and dying after, 17th July 1911 (the date of commencement of the Jaffna Matrimonial Rights and Inheritance Ordinance). Section 37 of the Ordinance has no application to such a case.

APPEAL from a judgment of the District Court, Jaffna. This case was referred to a Bench of five Judges under section 51 of the Courts Ordinance.

One Anasipillai, who was married to the plaintiff in 1901, died in August 1938 leaving a major son, Tiruchelvar. In 1941 Tiruchelvar sold certain lands to the 1st defendant purporting to claim them by right of inheritance from his mother Anasipillai. In the present action the plaintiff, who did not re-marry, claimed the right of possession of the lands left by Anasipillai, by virtue of section 11 of Part I of the Tesawalamai (Cap. 51).

C. Renganathan, with *M. Shanmugalingam*, for Defendant-Appellants.

S. Thangarajah, for Plaintiff-Respondent.

Cur. ad. vult.

July 4, 1956. BASNAYAKE, C.J.—

The only question that arises for determination on this appeal is whether sections 9 and 11 of Part I of the Tesawalamai apply to the estate of a spouse married before 17th July 1911, the date of commencement of the Jaffna Matrimonial Rights and Inheritance Ordinance (hereinafter referred to as the Ordinance), dying after that date. This very question has been decided in the affirmative in the case of *Suami pillai v. Soosai pillai*¹ and I am in entire agreement with the opinion expressed by Windham J. in that case.

A contrary view appears to have been taken by de Kretser J. in the earlier case of *Ambalacannar v. Ponnamma and the Secretary, District Court, Colombo*², wherein he has expressed the opinion that sections 9 and 11 of the Tesawalamai have been repealed by section 40 of the Ordinance.

¹ (1947) 49 N. L. R. 83.

² (1911) 20 C. L. W. 1 at 4.

The latter case cannot be regarded as in point as the Judgment does not state that the deceased spouse was married before the Ordinance came into force. The Tesawalamai is undoubtedly repealed by section 40 of the Ordinance, but only in respect of those to whom the Ordinance applies and then only in so far as it is inconsistent with the Ordinance. I am unable to agree with the view taken by de Kretser J. if he intended that section 40 affected the rights of those who fall outside the ambit of the Ordinance, viz., those who were married before its commencement.

The facts on which the above question arises for decision are as follows. One Anasipillai who was married to the plaintiff in 1901 died in August 1938 leaving a major son by name Tiruchelvar who died in 1944. By deed No. 2230 of 19th November 1941 (D1) Tiruchelvar sold the lands in dispute to the 1st defendant claiming them by right of inheritance from his mother. The plaintiff, who has not re-married, claims the right of possession of the lands left by Anasipillai by virtue of section 11 of Part I of the Tesawalamai.

Learned counsel for the appellant contended that the provision that applies to the instant case is section 37 of the Ordinance, and not section 11 of Part I of the Tesawalamai. He argued that the limitation imposed by section 14 of the Ordinance is confined to Part III of it and has no application to Parts IV and V and that section 37, which occurs in Part IV, is therefore not governed by section 14, which reads as follows :—

“The following sections of this Ordinance shall apply to the estate of such persons only as shall die after the commencement of this Ordinance, and shall be then unmarried, or if married shall have been married after the commencement of this Ordinance.”

The words “following sections of this Ordinance” are wide enough to extend to all the sections that follow section 14, and there is nothing in the context of that section or the sections that follow it which has the effect of confining the limitation imposed by it to the sections in Part III of the Ordinance. Those words in my opinion are wide enough to catch up all the succeeding sections, including sections 37 and 38 though they be in Part IV. Both Parts III and IV deal with the estates of deceased persons.

Learned counsel also laid great emphasis on the heading to Part III of the Ordinance. He contended that the heading “Inheritance” confines the application of section 14 to Part III. Headings in a statute do not always control the text. Headings in statutes belong to two classes¹—headings which can be read grammatically into the group of sections to which they relate and headings which have no direct connection with the language of such sections. Headings of the first class constitute a sort of preamble² to the sections immediately following them and are not used in more recent statutes. Headings of the latter class are generally regarded as having been inserted for the purpose of convenience of reference, and not as being intended to control the interpretation of the sections grouped under each heading as in the case of

¹ *The King v. Suppar*, 18 N. J. R. 322 at 326.

² *Martins v. Fowler*, (1929) A. G. (P. C.) 716.

the Ordinance under consideration. Headings may be looked at only for the purpose of resolving any doubt as to ambiguous words. They cannot be used to give a different effect to clear words of a section. In the instant case the section is in my opinion clear, and the heading cannot be called in aid to give it a different meaning.

It is also evident from section 4 that the Ordinance does not apply to persons married before its commencement except where it is otherwise expressly provided therein.

For the above reasons I am of opinion that section 37 of the Ordinance has no application to the instant case.

Learned counsel's contention is therefore not entitled to succeed. The appeal is accordingly dismissed with costs.

GUNASEKARA, J.—I agree.

PULLE, J.—I agree.

DE SILVA, J.—I agree.

SANSONI, J.—I agree.

Appeal dismissed.
