

IN THE PRIVY COUNCIL

No.5 of 1961

74034

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

BETWEEN:-

PONNUPILLAI, widow of Velauther
Kathirgamar

Appellant

- and -

CHELLAPPAH KUMARAVETPILLAI

Respondent

C A S E FOR THE RESPONDENT

- 10 1. This is an appeal from a decree, dated the 23rd November, 1959, of the Supreme Court of Ceylon (Basnayake, C.J. and Pille, J.) allowing an appeal from a decree, dated the 18th October, 1955, of the District Court of Jaffna setting aside a deed of the 2nd June, 1954 known as deed No.206, declaring the Appellant entitled to the land to which deed No.206 relates, and granting certain consequential relief. Record
p.89
p.74
- 20 2. Deed No.206 witnessed the sale of a piece of land to the Respondent by a woman called Sivapakkiam. Sivapakkiam was a married woman subject to the customary law known as Tesawalamai; the Jaffna Matrimonial Rights and Inheritance Ordinance therefore applied to her. She entered into deed No.206 without the consent of her husband, relying upon an Order made by the District Court of Jaffna on the 8th September, 1949 under Section 8 of that Ordinance. The validity of that Order is in issue in this Appeal. The following are the relevant Sections of the Jaffna Matrimonial Rights and Inheritance Ordinance (Legislative Enactments of Ceylon, 1938 ed., cap.48; Vol.2, p.24): p.120
p.112
- 30 6. Any movable or immovable property to which any woman married after the commencement of this Ordinance may be entitled at the time of her marriage, or, except by way of tediatetam as hereinafter defined, may become entitled during her marriage, shall, subject and without

Record

prejudice to the trusts of any will or settlement affecting the same, belong to the woman for her separate estate, and shall not be liable for the debts or engagements of her husband, unless incurred for or in respect of the cultivation, upkeep, repairs, management, or improvement of such property, or for or in regard to any charges, rates, or taxes imposed by law in respect thereof, and her receipts alone or the receipts of her duly authorised agent shall be a good discharge for the rents, issues, and profits arising from or in respect of such property. Such woman shall, subject and without prejudice to any such trusts as aforesaid, have as full power of disposing of and dealing with such property by any lawful act inter vivos without the consent of the husband in case of movables, or with his written consent in the case of immovables, but not otherwise, or by last will without consent, as if she were unmarried. 10 20

x x x x x x x x

8. If in any case in which the consent of a husband is required by this Ordinance for the valid disposition of or dealing with any property by the wife, the wife shall be deserted by her husband or separated from him by mutual consent, or he shall have lain in prison under a sentence or order of any competent court for a period exceeding two years, or if he shall be a lunatic or idiot, or his place of abode shall be unknown or if his consent is unreasonably withheld, or the interest of the wife or children of the marriage require that such consent should be dispensed with, it shall be lawful for the wife to apply by petition to the District Court of the district in which she resides or in which the property is situated for an order authorising her to dispose of or deal with such property without her husband's consent; and such court may, after summary inquiry into the truth of the petition, make such order, and that subject to such conditions and restrictions as the justice of the case may require, whereupon such consent shall, if so ordered and subject to the terms and conditions of such order, become no longer necessary for the valid disposition of or dealing with such property 30 40

by such woman. Every such petition shall require a stamp of ten rupees, but no further stamp duty shall be required for any legal proceedings under this section. Such order shall be subject to appeal to the Supreme Court:

10 Provided, however, that in any case where a separation a mensa et thoro has been decreed by a competent court, the consent of the husband shall not be necessary to enable the wife so separated to deal with or dispose of her property. The summary inquiry prescribed by this section may be held by the District Judge in his private room if either party so requires.

20 3. Deed No.206 related to a piece of land in the Jaffna District of the Northern Province of Ceylon, 20 lachchams in extent, called Kalakkokkan Kodiyapulam and Kalakkokkan. This land is hereinafter called "the disputed land". It was given to Sivapakkiam by the Appellant, her mother, as a dowry in 1928.

4. On the 24th March, 1949 Sivapakkiam made an application to the District Court of Jaffna under section 8 of the Jaffna Matrimonial Rights and Inheritance Ordinance. In this application she stated that her husband had been of unsound mind for seven or eight years, and there was no prospect of his being cured. She described in a Schedule to the application the disputed land, and certain other lands which had also formed part of her dowry, and asked for permission to mortgage, otty mortgage or lease all these lands without the permission of her husband, and for 'such other and further relief as to this Court shall seem meet'. A brother of Sivapakkiam intervened in the proceedings, alleging that Sivapakkiam herself was of unsound mind. When the application came before the Court the brother was represented by counsel, but he did not call any evidence, and the learned District Judge was fully satisfied that Sivapakkiam was of sound mind. The application came before the Court on the 8th September, 1949. The only witness was Sivapakkiam herself, who described her husband's condition and said she had no way of maintaining herself and him. She went on to say:

"I move for permission of Court to mortgage or sell the properties mentioned by me one

Record

by one. I want to sell the first land described in the Schedule to the Plaintiff" (i.e. the disputed land).

- p.112 The learned District Judge allowed Sivapakkiam's application, and concluded his judgment with these words:
- p.112,LL.42-45 "The Petitioner may either mortgage or sell her properties without the concurrence of her husband whichever is more profitable".
- p.119 5. In pursuance of this Order of the District Court, Sivapakkiam mortgaged the disputed land on the 17th December, 1953, to secure a loan of Rs. 15,000. On the 2nd of June, 1954 she executed deed No.206. This deed recited the District Court's Order of the 8th of September, 1949, and the agreement for the sale of the disputed land by Sivapakkiam to the Respondent (her husband's brother) for Rs.20,000 "subject to mortgage". 10
- p.120
p.121,LL.9-13
p.121, LL.14-26
- p.6, LL.25-26 6. Sivapakkiam died without issue on the 6th of May, 1955. 20
- p.1
p.6
p.6, LL.26-27 7. The present proceedings were instituted by a Plaintiff issued by the Appellant in the District Court of Jaffna on the 2nd June, 1955. As amended on the 23rd June, 1955, the Plaintiff alleged that the Appellant was entitled to the disputed land as sole heir of Sivapakkiam. The Plaintiff further alleged:
- p.7 LL.19-44 a) that the District Court's Order of the 8th September, 1949 was null and void, because Sivapakkiam's application had not asked for that Order, the Order had not been specifically obtained for the purpose of executing deed No.206, and any permission granted by that Order had been exhausted by the execution of the mortgage of the 17th December, 1953: 30
- p.8 LL.11-20 b) that deed No.206 was executed without any consideration and the transaction witnessed by it was not in reality a sale: 40
- p.8, LL.21-28 c) that at the time of the execution of deed No.206 the disputed land had been worth Rs. 60,000, so that the transaction was liable to be set aside on the ground of laesio enormis.

The Appellant claimed a declaration that she was entitled to the disputed land, or alternatively an Order setting aside deed No.206.

8. By his Answer, dated the 15th August, 1955, p.10
the Respondent contended that the District p.10 L.35-
Court's Order of the 8th September, 1949 was p.11 L.7
valid in law. He denied the allegations
summarised in a) and b) of paragraph 7 of this
case. As to the allegation summarised in c), p.11 LL.8-12
10 he pleaded that at the time of the execution of
deed No.206 the disputed land had not been worth
more than Rs.20,000.

9. The action was tried in the District Court
on the 14th and 17th of September and the 5th
of October, 1955. Evidence was given by a pp.16-62
number of witnesses on both sides, including
evidence of the value of the disputed land and
the financial position of the Respondent at the
time of the execution of deed No.206.

20 10. The learned District Judge delivered pp.63-73
judgment on the 18th October, 1955. He referred
to the circumstances leading up to Sivapakkiam's pp.63-64
application to the District Court, and to that
application itself. He then referred to evidence pp.65, L.37-
which had been given that in June, 1954 a p.66, L.5
latcham of the disputed land had been worth
about Rs.2,500 to Rs. 3,000. He therefore said
it was clear that the consideration of Rs.20,000
had been "much less than half the value of the p.66; L.47 -
30 land". The learned District Judge then referred p.67, L.41
to certain other evidence which, in his view,
went to show that the Respondent had been in
financial difficulties in June 1954, so that
it was "hardly likely" that he would have had
any money with him. He said he disbelieved the
Respondent's evidence that his parents had given
him money. The learned District Judge then
referred to the statement in the Notary's
attestation of deed No.206 that the consideration
40 had not passed in the Notary's presence, and for
these reasons held that the deed "was not in
fact a sale". Turning to consider the validity
of the Order of the 8th September, 1949, the p.69, L.8-
learned District Judge said the Court could not p.70, L.7
grant anything more than was claimed unless the
Petition was amended. Sivapakkiam's evidence
asking for a sale, he said, was inconsistent with

Record

p.70 LL.8-32 the application, and therefore the Court had had no jurisdiction to order a sale. He therefore held that the alleged sale by deed No.206 was null and void. The learned District Judge finally held that an Order made under section 8 of the Ordinance must be made with reference to a particular transaction; and that the Order of the 8th of September, 1949, even if made with jurisdiction, had been exhausted, as far as the disputed land was concerned by the making of the mortgage on the 17th December, 1953. He therefore gave judgment for the Appellant, and the decree of the District Court declared the Appellant entitled to the disputed land and set aside deed No.206. 10

p.70 L.40 -
p.71, L.45

pp.73-75

p.76 11. The Respondent appealed to the Supreme Court of Ceylon by a Petition of Appeal dated the 21st October, 1955. The appeal was heard by Basnayake, C.J. and Pulle, J. on the 9th, 10th and 11th June, 1959. Judgment was reserved, and was delivered on the 23rd of November, 1959. 20

pp.83-89

pp.83-85
p.85 L.28-
p.86 L.35 12. The learned Chief Justice (with whom Pulle, J. agreed), having referred to the facts, said the learned District Judge had been wrong in holding that the District Court had had no jurisdiction to make an Order permitting a sale. The learned Chief Justice referred to section 8 of the Ordinance, and said that the Orders which the Court might make under the section were not limited or restricted by the prayer in the application. The Court had a discretion. The words of the section were very wide, empowering the Court to "make such order..... as the justice of the case may require". It was within the competence of the Court to give authority to sell when the authority for which the application asked was authority to mortgage. An applicant under section 8 was not bound to specify in the application the manner in which he meant to deal with the property. It was sufficient to ask for authority to deal with the property without the husband's consent, and it was the Court that was empowered to decide the extent and nature of the authority to be granted. 30

p.86 L.36-
p.87 L.26 40

p.87 LL.27-
47 Basnayake, C.J. went on to hold that the learned District Judge had been mistaken in thinking that the authority granted by the Order of the 8th

September, 1949 had been exhausted by the execution of the mortgage of the 17th December, 1953. The Order had imposed no restriction on the mortgage or sale of the lands, and such an authority did not exclude a mortgage first, and afterwards a sale of the same property. The judgment of the learned District Judge was therefore reversed, and the Appellant's action dismissed with costs.

p.89

10 13. The Respondent respectfully submits that the Order made by the District Court of Jaffna on the 8th September, 1949 was in all respects a valid and effective order, giving to Sivapakkiam power to sell the disputed land without the concurrence of her husband. Sivapakkiam's application of the 24th March, 1949 was not only for permission to mortgage or otty mortgage or lease the property to which it referred, but also for 'such other and
20 further relief as to this Court shall seem meet'. Under section 8 of the Ordinance, the power of the District Court upon this application was to 'make such order as the justice of the case may require'. The relief to be granted was thus within the discretion of the Court. The learned District Judge was
30 justified, upon the material before him, in exercising that discretion by giving Sivapakkiam permission to mortgage or sell, whichever might be more profitable.

40 14. When giving evidence at the hearing of her application, Sivapakkiam said she was seeking permission "to mortgage or sell" the properties to which the application related. She also said expressly that she wanted to sell the disputed land. In the Respondent's respectful submission, the learned District Judge was therefore entitled to treat the application of the 24th March, 1949 as amended so as to include a prayer for permission to sell the properties without the concurrence of Sivapakkiam's husband. He in fact described the application in his judgment as an application by Sivapakkiam 'to mortgage or sell the property.... without the concurrence of her husband'.

15. Further, the learned Chief Justice, in the Respondent's respectful submission, was right in

Record

in holding that it is not necessary for an application under Section 8 of the Ordinance to be made with reference to a particular transaction, and that the Order of the 8th September, 1949 empowered Sivapakkiam first to mortgage the disputed land and subsequently to sell it.

16. The Respondent respectfully submits that in the present proceedings the learned District Judge was wrong in thinking that the price for which Sivapakkiam sold the disputed land was 'much less than half the value of the land'. The price stated in deed No.206 was Rs. 20,000, but the purchaser took the disputed land subject to a mortgage for Rs.15,000. Consequently, even if the Appellant's figure of Rs.60,000 as the value of the disputed land at the time of the execution of deed No.206 is accepted, the disputed land was sold for considerably more than half its value, and no question of laesio enormis arises. The learned District Judge was also wrong in holding that deed No.206 'was not in fact a sale'. There was no evidence to justify such a finding. The learned District Judge relied upon evidence which he thought showed that the Respondent was short of money at the time of the execution of the deed. This, in the Respondent's submission, might have shewn that he was likely to have difficulty in paying the price due under the contract of sale, but it was not evidence that deed No.206 was a fraudulent document purporting to bear witness to a contract of sale which did not exist.

10

20

30

17. The Respondent respectfully submits that the decree of the Supreme Court of Ceylon is right and ought to be affirmed, and this appeal ought to be dismissed, for the following (amongst other)

R E A S O N S

- (1) BECAUSE the Order made by the District Court of Jaffna on the 8th September, 1949 was a valid order:
- (2) BECAUSE that Order empowered Sivapakkiam to sell the disputed land without the concurrence of her husband:

40

- (3) BECAUSE Sivapakkiam sold the disputed land to the Respondent by a contract witnessed by deed No.206:
- (4) BECAUSE there was no evidence of laesio enormis:
- (5) BECAUSE the Appellant failed to establish any reason for setting aside deed No.206.

J.G. LE QUESNE

No.5 of 1961

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

PONNUPILLAI, widow of Velauther
Kathirgamar Appellant

- and -

CHELLAPPAH KUMARAVETPILLAI
Respondent

C A S E FOR THE RESPONDENT

LEE & PEMBERTONS,
11, South Square,
Gray's Inn,
London, W.C.1.

Solicitor for the Respondent