

1935

Present : Poyser and Koch JJ.

## CHETTY v. CHETTY.

23—D. C. (Inty.) Jaffna, 8,059.

*Thesawalamai—Malabar inhabitants of Jaffna—Vaniyas settled in Jaffna for three generations—Governed by Thesawalamai.*

Where Tamils, belonging to the community known as Vaniyas, had made Jaffna their home for three generations and had observed the customs followed by other Hindu families,—

*Held*, that the parties are Malabar inhabitants of Jaffna within the meaning of Regulation No. 18 of 1806, to whom the *Thesawalamai* applies.

THE petitioner applied for letters of administration to the estate of a deceased person, Parameswary, on the footing that she is an heir of the deceased according to the *Thesawalamai*. The respondent, the father of the deceased, claimed to be the sole heir on the ground that the parties were governed by the Roman-Dutch law. The learned District Judge held that the *Thesawalamai* applied to the parties.

*Hayley, K.C.* (with him *Balasingham* and *N. E. Weerasooria*), for appellant.—The parties to these proceedings are Vaniya Chetties. Their customs are different from those of the Tamils of the Northern Province. They are a distinct race and have not been assimilated into the community of Jaffna Tamils. The Jaffna Tamils are the descendants of the Tamil inhabitants of the Kingdom of Jaffna when it was ruled by Tamil Kings. *Thesawalamai* applies only to those Jaffna Tamils who can be said to be inhabitants of the Northern Province. It does not apply to a different race such as the Vaniya Chetties.

Regulation No. 18 of 1806 speaks of “Thesawalame or customs of the Malabar inhabitants of the Province of Jaffna”. This Regulation contemplated only those who were inhabitants of the Province of Jaffna in 1806 and their descendants. The ancestors of the parties to this action settled down in Jaffna only for the last three generations and so they cannot be held to be governed by the *Thesawalamai*.

In *Savundaranayagam v. Savundaranayagam*<sup>1</sup> it was decided that a Tamil coming over from outside the Province of Jaffna and settling in Jaffna could not acquire the status of a Malabar inhabitant of the Province of Jaffna. The facts of the present case are very much stronger in favour of the appellant.

*H. V. Perera* (with him *S. Nadesan*), for respondent.—The word “Vaniya Chetty” does not mean a race. It is the name of a caste. There are a large number of castes among Tamils. One of such castes is the Vaniya caste. The members of this caste belong to the Tamil race and are therefore Malabars within the meaning of Regulation No. 18 of 1806. That the parties to this action are Malabars has been conceded in the lower Court. The simple question in this case is whether Parameswary

the deceased was a Malabar inhabitant of the Northern Province. There is no doubt that she was a Malabar. It is equally clear that she was an inhabitant of the Northern Province.

It is not necessary that Parameswary's ancestors should have been inhabitants of the Province of Jaffna in 1806. The regulation does not say that it applies to those who were inhabitants in 1806 and not to those who were inhabitants in 1807. Considering the fact that the *Thesawalamai* is a special law and that the burden of proving that she is subject to it is on him who pleads it, it will be almost impossible for many persons who consider themselves subject to the *Thesawalamai* to prove affirmatively that their ancestors were inhabitants prior to 1806. Neither can a Court of law profitably launch on such an investigation.

There is also no reason why 1806 and not 1707 the year of the collection of the *Thesawalamai* should be taken as the crucial date.

In *Spencer v. Rajaratnam*<sup>1</sup> Enns J. states the crucial date is the date of death of the person in question. So the only question is whether a person was a Malabar inhabitant on the date of his death. There is no justification for a further limitation of the word "inhabitant".

See *Velupillai v. Sivakamipillai*<sup>2</sup>, where too the meaning of the word "inhabitant" is considered.

*Savundaranayagam v. Savundaranayagam* (*supra*) does not decide that a Tamil coming from outside the Northern Province cannot become subject to *Thesawalamai*. It decides on the facts that the burden of proving that Savundaranayagam was subject to the *Thesawalamai* was not discharged.

*Cur. adv. vult.*

*Hayley, K.C.*, in reply.

September 13, 1935. POYSER J.—

The question to be decided in this appeal is whether succession to the estate of the deceased child Parameswary is to be governed by the *Thesawalamai* or the Roman-Dutch law.

The petitioner applied for letters of administration on the footing that she is an heir of the deceased according to the law of the *Thesawalamai*. The third respondent, the father of the deceased, claimed to be the sole heir of the deceased on the ground that the law to which the parties are subject is the Roman-Dutch law.

The material facts as found by the trial Judge are briefly as follows:— The parties in the case are admittedly Tamils and belong to the community known as the Vaniyas, they have for about three generations made Jaffna their permanent home and they observe the main customs observed by the other Hindu families of Jaffna. Further, the third respondent himself has previously acted as if he were subject to the *Thesawalamai* for he caused his deceased wife's estate to be administered according to that law.

Those being the facts, the question for decision is whether the parties can be said to be Malabar inhabitants of Jaffna within the meaning of Regulation No. 18 of 1806.

<sup>1</sup> 16 N. L. R. 321.

<sup>2</sup> 13 N. L. R. 74.

It is conceded that the word Malabar used in the above Regulation is synonymous with 'Tamil'; it was also admitted in the lower Court that the parties have a Ceylon domicile.

It was argued on behalf of the appellant that the *Thesawalamai* applies only to those who were Malabar inhabitants of Jaffna in 1806 and their descendants and does not apply to those Tamils from India or Ceylon who have settled in Jaffna after that date.

In this case the deceased's great-grandfather Nagalingam Chetty came from India, the date is uncertain but would be at least 50 or 60 years ago.

The District Judge has rejected that argument; he points out that the *Thesawalamai* itself indicates that it was intended to apply to future settlers from India.

Clause 17 of section 1 commences as follows:—"If a Pagan comes from the Coast or elsewhere and settles himself here . . . ." The Coast presumably means the Coast of India. While this clause strongly supports the Judge's finding, there is nothing in the *Thesawalamai* to indicate that it would not apply to Tamils who subsequently became inhabitants of Jaffna. The following authorities also support the Judge's finding. *Velupillai v. Sivakamipillai*,<sup>1</sup> in which Middleton J. observes:—

"I think that we must construe the word 'inhabitant' in a more extended meaning than is given to it in the dictionaries from which Mr. Jayewardene drew his definition. I would construe it as indicating a 'permanent inhabitant', one who has his permanent home in the Province of Jaffna. The question of domicile has been introduced here; and, of course, in a measure that question affects the inference as to the meaning of the word 'inhabitant'."

Wood Renton J., in the course of his judgment in the same case, said:—

"I think that the term 'inhabitant' must be interpreted in the sense of a person who, at the time in question, had acquired a permanent residence in the nature of domicile in that Province".

In a later case, *Spencer v. Rajaratnam*,<sup>2</sup> Wood Renton A.C.J. stated:—

"I adhere to the opinion which I expressed in that case (*Velupillai v. Sivakamipillai*) that the term 'inhabitant' in Regulation No. 18 of 1806 must be interpreted in the sense of a person who at the critical period had acquired a permanent residence in the nature of domicile in that Province. It is not desirable or possible to lay down any general rules as to the circumstances which will suffice to establish the existence of such a residence. Each case must depend on its own facts".

In the same case Ennis J. stated:—

"The *Thesawalamai* are not the customs of a race or a religion common to all persons of that race or religion in the Island; they are the customs of a locality, and apply only to Tamils of Ceylon who are

<sup>1</sup> 16 N. L. R. 321.

inhabitants of a particular Province. The customs constitute a local rather than a personal law, and this turns on whether Naganathan was or was not in fact an inhabitant of Jaffna at the date of his death ”.

If the principles set out in the above cases are applied, and they are binding on us, there cannot be the slightest doubt that the parties in this case are inhabitants of Jaffna.

I think the District Judge, who dealt at length with both the facts and the law, has come to a correct conclusion.

I would dismiss the appeal with costs.

KOCH J.—I agree.

*Appeal dismissed.*

