

CHAPTER 70

MATRIMONIAL RIGHTS AND INHERITANCE (JAFFNA)

Ordinances
Nos. 1 of 1911,
58 of 1947.

AN ORDINANCE TO AMEND THE LAW RELATING TO THE MATRIMONIAL RIGHTS OF THE
TAMILS WHO ARE NOW GOVERNED BY THE "TESAWALAMAI" WITH REGARD TO
PROPERTY AND LAW OF INHERITANCE.

[17th July. 1911.]

PART I

PRELIMINARY

Short title.

1. This Ordinance may be cited as the Jaffna Matrimonial Rights and Inheritance Ordinance.*

where hereinafter is otherwise expressly provided) be governed by such law as would have been applicable thereto if this Ordinance had not been passed.

Application of Ordinance.

2. This Ordinance shall apply only to those Tamils to whom the Tesawalamai applies, and it shall apply in respect of their movable and immovable property wherever situate.

5. The respective matrimonial rights of every husband and wife married after the commencement of this Ordinance in, to, or in respect of movable or immovable property shall, during the subsistence of such marriage, be governed by the provisions of this Ordinance.

Matrimonial rights of those married after the Ordinance to be governed by the Ordinance.

Applicability of Tesawalamai to married women.

3. (1) Whenever a woman to whom the Tesawalamai applies marries a man to whom the Tesawalamai does not apply, she shall not during the subsistence of the marriage be subject to the Tesawalamai.

6. All 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 which she may during the subsistence of the marriage acquire or become entitled to by way of gift or inheritance or by conversion of any property to which she may have been so entitled or which she may so acquire or become entitled to, shall, subject and without 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 atone or the receipts of her duly authorized agent shall be a good discharge for the rents, issues,

Property of a wife acquired during or before marriage to remain her separate property.

(2) Whenever a woman to whom the Tesawalamai does not apply marries a man to whom the Tesawalamai does apply, she shall during the subsistence of the marriage be subject to the Tesawalamai.

PART II

MATRIMONIAL RIGHTS OF HUSBAND AND WIFE WITH REFERENCE TO PROPERTY

Matrimonial rights of spouses married before the Ordinance.

4. The respective matrimonial rights of any husband and wife with regard to property or status arising under or by virtue of any marriage solemnized before the commencement of this Ordinance, and all rights which any other person may have acquired or become entitled to under or by virtue of any such marriage, shall (except

* See also section 24 (2) of the Judicature Act.

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.

disposition of or dealing with such property 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 Court of Appeal:

Property of husband acquired before or after marriage to be his separate property.

7. All movable or immovable property to which any husband married after the commencement of this Ordinance may be entitled at the time of his marriage, or, which he may during the subsistence of the marriage acquire or become entitled to by way of gift or inheritance or by conversion of any property to which he may have been so entitled or which he may so acquire or become entitled to, shall, subject and without prejudice to the trusts of any will or settlement affecting the same, belong to the husband for his separate estate. Such husband shall, subject and without prejudice to any such trusts as aforesaid, have full power of disposing of and dealing with such property.

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 Judge of the Family Court in his private room if either party so requires.

Power to Family Court to supply consent in certain cases.

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 person of unsound mind 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 Family Court of the district in which she resides or in which the property is situated for an order authorizing 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

9. It shall be lawful for any husband or wife (whether married before or after the commencement of this Ordinance), notwithstanding the relation of marriage, to make or join each other in making during the marriage any voluntary grant, gift, or settlement of any property, whether movable or immovable, to, upon, or in favour of the other; but, except jewels, personal ornaments, and wearing apparel suitable in respect of value to the wife's rank given to her by her husband, all property so granted, gifted, or settled, and all acquisitions made by a husband or wife out of or by means of the moneys or property of the other, shall be subject to the debts and engagements of each spouse in the same manner and to the same extent as if such grant, gift, settlement, or acquisition had not been made or had not occurred.

power of husband or wife to make gifts to each other.

10. (1) If any question or dispute shall arise between any husband and wife (whether married before or after the commencement of this Ordinance) relative to any property declared by this Ordinance to be the separate property of the wife, either party may apply by motion in a summary way to the Family Court of the district in which either party resides, and thereupon the Judge of the Family Court may make such order, direct such inquiry, and award such costs as he shall think fit; and the Judge of the Family Court may, if either party so require, hear the application in his private room.

Power of Family Court to settle dispute between husband and wife

(2) Any order so made shall be subject to appeal to the Court of Appeal.

(3) Every such motion shall require a stamp of ten rupees, but no further stamp duty shall be required for any other legal proceedings under this section.

Power to husband or wife to effect policy of insurance upon his or her life.

11. A husband or wife (whether married before or after the commencement of this Ordinance) may after the commencement of this Ordinance effect a policy of insurance upon his or her own life or the life of his or her wife or husband, as the case may be, for his or her separate use; and the same and all benefits thereof if expressed on the face of it to be so effected shall enure accordingly, and the contract in such policy with a married woman shall be as valid as if made with an unmarried woman,

Effect of life insurance by husband in favour of wife or children.

12. A policy of insurance, whether effected before or after the commencement of this Ordinance, by any married man (whether married before or after the commencement of this Ordinance), on his own life and expressed upon the face of it to be for the benefit of his wife or of his wife and children or any of them, shall enure and may be deemed a trust for the benefit of his wife for her separate use and of his children or any of them according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or his creditors or form part of the estate;

Provided that if it shall be proved that the policy was effected and the premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid.

Married woman having separate property to be liable to maintain her children.

13. A married woman having separate property adequate for the purpose shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children:

Husband's liability not affected thereby.

Provided that nothing in this Ordinance shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

PART III
INHERITANCE

14. 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.

Applicability of sections of this Part of the Ordinance.

15. Property devolving on a person by descent at the death of his or her parent or of any other ancestor in the ascending line is called mudusam (patrimonial inheritance).

Mudusam or property devolving on death of ancestor.

16. Property devolving on a person by descent at the death of a relative other than a parent or an ancestor in the ascending line is called urumai (non-patrimonial inheritance).

Urumai or property devolving on death of relative.

17. Property received by any person in mudusam, or in urumai, or in dowry, or under a will as heir, or legatee, or in donation, or in a manner other than for pecuniary consideration from a father, or any of his ascendants, or any of his collateral relations is said to be property derived from the father's side.

Property derived from the father's side.

18. Property received in mudusam, or in urumai, or in dowry, or under a will as heir or legatee, or in donation, or in a manner other than for pecuniary consideration from a mother, or any of her ascendants, or any of her collateral relations, is said to be property derived from the mother's side.

Property derived from the mother's side.

19. No property other than the following shall be deemed to be the thediatheddam of a spouse :—

Meaning of the thediatheddam.

(a) Property acquired by that spouse during the subsistence of the marriage for valuable consideration, such consideration not forming or representing any part of the separate estate of that spouse.

(b) Profits arising during the subsistence of the marriage from the separate estate of that spouse.

20. On the death of either spouse one half of the thediatheddam which belonged to the deceased spouse, and has not been

Devolution of the thediatheddam.

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disposed of by last will or otherwise, shall devolve on the surviving spouse and the other half shall devolve on the heirs of the deceased spouse.

issue by representation, or only on half-brothers and half-sisters related to the intestate by the side of the mother and their issue by representation, if there are no full brothers and sisters or their issue.

Inheritance generally.

21. Subject to the right of the surviving spouse in the preceding section mentioned, the right of inheritance is divided in the following order as respects (a) descendants, (b) ascendants, (c) collaterals.

27. All the persons above enumerated failing, the property derived by the intestate from the father's side and one-half of the remainder of the intestate's estate (exclusive of the property derived from the mother's side) shall devolve on the paternal grandparent or grandparents of the intestate, if surviving; and failing them, on paternal uncles and aunts and the issues of the paternal uncles and aunts by representation; paternal uncles and aunts and their issues failing, on the great-grandparent or great-grandparents per capita, if surviving; and failing them, on the brothers and sisters of the paternal grandparents and their descendants, if surviving; afterwards on the brothers and sisters of the next nearest in the ascending line of the father and their descendants by representation, if surviving.

Rights of paternal grandparents, paternal uncles and aunts, and great-grandparents.

Rights of children, grandchildren, and remoter descendants.

22. Children, grandchildren, and remoter descendants are preferent to all others in the estate of the parents. All the children take equally per capita; but the children or remoter issue of a deceased child take per stirpes.

Heir in default of children.

23. The children and remoter descendants failing, the whole of the property the deceased derived from the father's side and one-half of the remainder of the estate of the deceased (exclusive of the property derived from the mother's side) the father, if surviving, shall inherit.

28. The property derived from the mother's side and one-half of the remainder of the intestate's estate (exclusive of that derived from the father's side) shall devolve on the maternal grandparent or grandparents, if surviving; and failing them, on maternal uncles and aunts and the issue of the maternal uncles and aunts by representation; maternal uncles and aunts and their issue failing, on the great-grandparent or great-grandparents per capita, if surviving; and failing them, on the brothers and sisters of the maternal grandparents and their descendants, if surviving; afterwards on the brothers and sisters of the next nearest in the ascending line of the mother and their descendants by representation who may be surviving,

Rights of maternal grandparents, maternal uncles and aunts, and maternal great-grandparents.

Mother's right where children fail.

24. The whole of the property the deceased derived from the mother's side and one-half of the remainder of the estate of the deceased (exclusive of the property derived from the father's side) the mother, if surviving, shall inherit.

Rights of brothers and sisters where father has predeceased intestate.

25. Father failing, the property of the intestate derived from the father's side and one-half of the remainder of the intestate's estate (exclusive of that derived from the mother's side) shall devolve upon the intestate's full brothers and sisters as well as upon half-brothers and half-sisters related to the intestate by the side of the father, in equal shares, and their children and other issue by representation, or only on half-brothers and half-sisters related to the intestate by the side of the father and their issue by representation, if there are no full brothers and sisters or their issue.

29. Except when otherwise expressly provided, if all those who succeeded to the inheritance are equally near in degree to the intestate, they take per capita and not per stirpes.

How estate is divided where those who inherit are equally near in degree to intestate.

Rights where mother has predeceased intestate.

26. Mother failing, the property of the intestate derived from the mother's side and one-half of the remainder of the intestate's estate (exclusive of that derived from the father's side) shall devolve upon the intestate's full brothers and sisters as well as on half-brothers and half-sisters related to the intestate by the side of the mother, in equal shares, and their children and other

30. (1) On failure of kindred on the father's side, property derived from that side shall devolve on the mother and her kindred in the order mentioned in the preceding sections.

How property is divided on failure of kindred on the side of either parent.

(2) On failure of kindred on the mother's side, property derived from that side shall devolve on the father and his kindred in the order prescribed in the foregoing sections.

38. A surviving spouse continuing in possession of the estate of the deceased spouse as stated in the last section shall be bound to maintain the children till they attain majority either by effluxion of time or by marriage.

Liability of surviving spouse to maintain minor child

When whole inheritance goes to the surviving spouse.

31. All the persons above enumerated failing, the entire inheritance goes to the surviving spouse, if any.

PARTY

When estate escheats to the State.

32. If anyone dies intestate without heirs, his or her estate escheats to the State. If, however, any heirs can be found, even beyond the tenth degree, they take the inheritance.

INTERPRETATION AND REPEAL

Collation of property by children or grand-children.

33. Children or grandchildren by representation becoming with their brothers and sisters heirs to the deceased parents, unless they abandon all right to inherit as heirs ab intestato, are bound to bring into hotchpot or collation all that they have received from their deceased parents above the others by way of dowry or otherwise on the occasion of their marriage, or to advance or establish them in life, unless it can be proved that the deceased parent either expressly or impliedly released any property so given from collation,

39. In this Ordinance, unless there is something repugnant in the subject or context—

Interpretation.

Rights of illegitimate children.

34. Illegitimate children shall inherit the property of their intestate mother, but not that of their father.

"immovable property" includes land, incorporeal tenements, and things attached to the earth or permanently fastened to anything which is attached to the earth, and any interest in land except such as arises from a mortgage;

"movable property " means property of every description except immovable property;

Devolution of property of illegitimate children.

35. When an illegitimate person leaves no surviving spouse or descendants, his or her property will go to the mother, and then to the heirs of the mother so as to exclude the State.

"matrimonial rights" means the respective rights and powers of married parties in or about the management, control, disposition, and alienation of property belonging to either party, or to which either party may be entitled during marriage;

Cases not provided for by this Ordinance.

36. In all questions relating to the distribution of the property of an intestate where this Ordinance is silent, the provisions of the Matrimonial Rights and Inheritance Ordinance, and such laws as apply to the Tamil inhabitants of the Western Province, shall apply.

"unmarried" means not having a husband or wife living.

All words expressive of relationship shall apply to a child in the womb at the time in question who is afterwards born alive.

PART IV

LIFE INTEREST

Interest of surviving spouse in estate devolving on minor child.

37. When the estate of a deceased parent devolves on a minor child, the surviving parent may continue to possess the same and enjoy the income thereof until such child is married or attains majority.

40. So much of the provisions of the Repeal. collection of customary law known as the Tesawalamai, and so much of the provisions of section 8 of the Wills Ordinance, as are inconsistent with the provisions of this Ordinance are hereby repealed.