

18/83

No.16 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT IN MALAYSIA
(Appellate Jurisdiction)

B E T W E E N:

AR.PL.PALANIAPPA CHETTIAR (Defendant) APPELLANT

- and -

A.R. LAKSHMANAN CHETTIAR @ PL.AR.L.
LETCUMANAN CHETTIAR @ ANA RUNA
LEYNA LAKSHMANAN CHETTIAR (Plaintiff) RESPONDENT

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CASE FOR THE APPELLANT

RECORD

1. This is an appeal by leave of the Federal Court in Malaysia at Kuala Lumpur (Gill C.J. Syed Othman F.J. and Abdul Hamid J.) from a Judgment and Order of the said Court dated 7th October 1978, in Federal Court Civil Appeal No. 149 of 1977, allowing in part the appeal of the Appellant against the whole of the Judgment and Order dated 17th June 1977 of the High Court in Malaya at Seremban (Ajaib Singh J), granting the Respondent

pp.57-66

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p.39 1.10-
p.53 1.20

(1) a declaration that the land held under Certificate of Title No.4246 for Lot No.926 in the Mukim of Si-Rusa, in the District of Port Dickson, comprising 40 acres 2 roods 30 poles (hereinafter referred to as "the 40 acres") registered in the name of the Appellant was held in trust by him for and on behalf of the Joint Hindu Family (hereinafter called "the Hindu Joint Family") consisting of the Respondent, the Appellant, the Respondent's mother Meenakshi (hereinafter called "Meenakshi") and consisting also of the parties' father Arunasalam Chettiar (hereinafter called "the Karta") until his death

p.52 1.33-
p.53 1.11

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RECORD

(2) an order that the 40 acres be brought into the Hindu Joint Family and divided equally between the Plaintiff, the Defendant and the Karta as coparceners

(3) an order that the 40 acres be sold by public auction and the proceeds thereof be distributed equally among the three coparceners

(4) an order that the one-third share of the Karta was to be added as an asset to the Karta's estate 10

(5) an order that the Appellant should render accounts of the income and expenditure arising out of his management of the 40 acres

(6) an order that an inquiry into the said accounts be held by the Senior Assistant Registrar of the said High Court and

(7) an order that the costs of the proceedings therein be paid by the Appellant to the Respondent

p.66 2. On 7th October 1978 the Federal Court ordered 20

p.52 1.41-
p.53 1.7 (1) that the Appellant's appeal be and was thereby allowed to the extent that the reference in the learned trial Judge's declaration to the Karta and his estate be deleted from the Order dated 17th June 1977

p.66 (2) that the consequential orders be amended to provide for sale of the land by public auction and payment out of the proceeds of sale of the Respondent's one third share, but that the Orders for accounts and inquiry do stand 30

(3) that the Respondent must pay one-third of the Appellant's taxed costs of the Appeal therein and in the Court below and

(4) that the deposit of \$500 paid by the Appellant for security of the Appeal therein be refunded to the Appellant.

pp.52-53 1.20 3. The Appellant appeals against the Judgment and Order dated 7th October 1978 of the Federal Court to the extent that the same did not allow with costs the Appellant's appeal from the Judgment and Order dated 17th June 1977 of the High Court. 40

4. The main issues in the case are

(1) Whether the 40 acres are the Appellant's own absolute property or whether the Respondent has discharged the burden of proving that they form part of the property of a Hindu Joint Family known as PL.AR. Firm (hereinafter called "the Hindu Joint Family") consisting of the Karta until his death in 1972, the Appellant, the Respondent and Meenaskshi.

10 (2) Whether, since the 40 acres are subject to the Malaysian Land Code 1965 (hereinafter called "the 1965 Code") and were previously subject to the Federated Malay States Land Code 1926 (hereinafter called "the 1926 Code") the Appellant's title thereto and interest therein are indefeasible.

20 (3) Whether the Malaysian Courts were entitled to have regard to the alleged principles and authorities of Hindu law cited to them and, if they were, whether such principles and authorities were duly proved.

(4) Upon what pleadings, evidence, documents and other material is the Court entitled to rely for the purpose of deciding issue (1) above?

30 (5) In particular, what is the effect of the fact that the parties adduced no evidence before the learned trial Judge, but agreed to rest their respective cases on the pleadings in this case and the bundle of agreed documents in the Record hereof headed and hereinafter called "Exhibit A"?

p.7 ll.16-25,
p.40 l.54 -
p.41 l.8,
p.52 ll.22-26
and p.60 ll.
14-25

(6) What if any relevance and effect as regards the Respondent's claims in this case have a decree of the Supreme Court of India dated 11th May 1964 and an order of the High Court at Seremban in the Civil Suit No.34 of 1951, referred to in the judgments of the learned trial Judge and the Federal Court?

p.44-
p.49 l.5,
pp.58-59
and p.63
ll.44-53

40 (7) Whether by virtue of the decision of the Privy Council in A.R.P.L. Palaniappa Chettiar v P.L.A.R. Arunasalam Chettiar 1962 A.C.294 (hereinafter called "the 1962 Privy Council decision") the Respondent is wholly or partly estopped per rem judicatam from claiming that the 40 acres belong to the Hindu Joint Family, and what effect the 1962 Privy Council decision has on these proceedings.

(8) If the 40 acres were property of the Hindu Joint Family whether the transfer of them

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by the Karta to the Appellant was invalid or liable to be set aside and, if so, to what extent.

(9) If the 40 acres were property of the Hindu Family whether the Respondent's claims or any of them are barred by the law of limitation.

- p.76 11.15-17 5. The Appellant is the Karta's eldest son by his first wife and the Respondent is the Karta's younger son by his wife Meenakshi. In 1934 the Karta, who already held some 99 acres of rubber lands in his name, bought the 40 acres, which are also rubber lands, at an auction for \$8081. After holding the 40 acres in his name for some months he transferred them to the Appellant, who was then 22 years old. The memorandum of transfer dated 27th February 1935 which they both signed stated that the Appellant had paid \$7000 for the 40 acres. The transfer (hereinafter called "the 1935 Transfer") was registered on 8th March 1935. In October 1950 the Karta, wishing to sell the 40 acres, wrote to the Appellant asking him to execute a power of attorney for that purpose in favour of the Karta, The Appellant refused. On 21st November 1950 the Karta brought an action in the High Court at Seremban Civil Suit No.62 of 1950 (hereinafter called "the 1950 Action") claiming that the Appellant held the 40 acres in trust for the Karta and should retransfer them. The Appellant registered the claim. By his Defence dated 3rd April 1951 he admitted that the 40 acres were registered in the Karta's name before the 1935 Transfer and in paragraph 2 stated that the Karta held them in trust for the Hindu Joint Family known as RM. P.K.P. AR. (hereinafter called "the RM. P.K.P. AR. family") in which the Karta, the Appellant and the Respondent were coparceners. The Respondent in paragraph 3 of his Defence denied that the Karta transferred the 40 acres to him on trust as alleged by the Karta and stated that the Appellant had brought the land from the Karta for \$7000.
- p.77 1.14
p.88 1.15-
p.89 1.33
p.70 1.29-
p.71 1.23
p.71 1.30
p.72 1.5
p.68 1.22-
p.70 1.23
p.72 11.21-28
p.72 11.29-33
p.75
pp.81-82
p.82 11.25-26
p.76 11.36-38
p.81 1.28-
p.82
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estates of over 100 acres and that the Appellant had not paid any consideration for the 1935 Transfer. He held that in transferring the 40 acres for this purpose the Karta had "practised a deceit on the public administration of the country in order to get a benefit for himself" but nevertheless granted him the relief claimed. The Appellant appealed to the Court of Appeal of the Federation of Malaya (F.M. Civil Appeal No.34 of 1958) against Smith J's decision, which the Court of Appeal affirmed. On further appeal by the Appellant the Privy Council held in the 1962 Privy Council decision that since the Karta had of necessity to disclose that he had practised a deceit on the public administration, even though he had not pleaded it, he was not entitled to a re-transfer of the 40 acres from the Appellant. The Karta had had to disclose his deceit or illegality to get over first, the fact that the transfer stated that the Appellant had paid \$7000 for the 30 acres and secondly, the presumption of advancement namely that the Karta intended the transfer as a gift to the Appellant (1962 A.C.294, at pp.301-2).

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7. Besides the 1950 Action there has been other litigation between the Appellant and the Karta and other members of their family, not included in Exhibit A but mentioned by Ajaib Singh J. and Gill C.J. in their judgments in the present proceedings. On 15th July 1950 the Appellant filed a suit in the Court of the Subordinate Judge at Devokottai, India, claiming inter alia that the PL AR Firm at Port Dickson and the assets thereof belonged to the Hindu Joint Family consisting of the Karta, the Appellant, the Respondent and Meenakshi and that the Appellant was entitled to a third share therein. On 2nd April 1961 the Appellant began Civil Suit No.34 of 1951 (hereinafter called "the 1951 suit") in the High Court at Seremban against the Karta, the Respondent and Meenakshi, claiming inter alia a declaration that all properties moveable or immovable held by or in the name of the Karta or Meenakshi belonged to the Hindu Joint Family. The relevant part of the prayer for relief in the 1951 suit is referred to at page 17 lines 29-43 of the Record of Privy Council Appeal No.32 of 1981 the short title of which is PL. AR.Letchumanan Chettiar -v- AR. PL. Palaniappa Chettiar. The 1951 suit was stayed by consent until the final determination of the Indian proceedings, the Defendants in the 1951 suit undertaking to abide in the 1951 suit by any final decision in the

p.82 11.30-31

p.83 1.9

p.84 1.32

p.44 and pp.58-59

p.44 1.31-44 and p.58 1.48 - p.59 1.9

RECORD

	Indian proceedings. After an appeal to the High Court at Madras the Indian proceedings went to the Supreme Court of India which declared inter alia that the PL. AR. Firm at Port Dickson and its assets were the estate of the Hindu Joint Family and the Appellant was entitled to a third share therein. The declaration did not, however, state the date from which accounts should be taken between the parties, which led to further litigation up to the Privy Council whose decision is reported as <u>PL. AR. Arunasalam Chettiar and others v. A.R.P.L. Palaniappa Chettiar</u> , Appeal No.17 of 1969 at 1974 2 M.L.J. pp.133-4. The Privy Council allowed an appeal from the Federal Court of Malaysia reported at 1969 1 M.L.J. pp.55-9 and held that the date from which accounts should be supplied, following the partition of the Hindu Joint Family, was 15th July 1950.	10
p.27 1.38- p.28 1.6		
p.27 11.28-37		
p.1-p5 1.19	8. On 4th January 1974 the Respondent began the present proceedings claiming against the Appellant a one-third undivided share in the 40 acres in his own right and another one-third share as the Karta's heir at law. By his accompanying Statement of Claim the Respondent alleged that he and the Appellant were members of the separated Hindu Joint Family known as the PL. AR. Firm at Port Dickson, of which the Karta had been the manager; that in 1934 the Karta had bought the 40 acres with funds belonging to the Hindu Joint Family; that to take advantage of the rubber restriction coupons he transferred the 40 acres free from any consideration to the Appellant, who thereby became trustee of the 40 acres for the Hindu Joint Family; and that the transfer was registered on 8th March 1935 when the Plaintiff was 6 years old. The Respondent also alleged that the Karta retained control and the income of the 40 acres but due to some misunderstanding with the Appellant filed a suit (the 1950 Action) for its return which the Respondent resisted and won in the Privy Council on the ground that the transaction was illegal as the Karta had practised a deceit on the public administration. By paragraph 6 of his Statement of Claim, as amended by leave of the High Court granted on 20th December 1976, the Respondent averred that the foregoing position might or might not be binding on the Karta and the Respondent so far as the Karta's 1/3 undivided share in the 40 acres was concerned, but the said decision was not binding on the Plaintiff, as the 40 acres were joint property and the Respondent a coparcener thereof in respect of the 1/3 undivided share therein and 1/2 share of the Karta's 1/3 share therein. He	20
p.2 11.33-40		
p.3 1.10- p.5 1.19		
p.4 11.11-28		30
p.4 11.29-37 and p.8 11.1-7		40
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claimed inter alia a division of the 40 acres among the parties interested or a sale thereof and distribution of the proceeds among the Respondent and the Appellant and that the Karta's alleged 1/3 share be deposited in Court pending appeal to His Majesty the Yang Di-Pertuan Agong.

- 10 9. By his Defence dated 20th March 1974 the Appellant denied the averments contained in the Statement of Claim; stated that the 40 acres were not property of the Hindu Joint Family, but were sold to him by the Karta for \$7000 in 1935 and belonged to the Appellant exclusively; denied that he the Appellant was a coparcener or accountable in respect of the 40 acres; alleged that as the Privy Council had decided in 1962 that the Karta was not entitled to contend that the 1935 Transfer was fraudulent or ineffective, and get any relief on that basis, the Respondent was prevented in law from raising the issue once again; and alleged that in any event the Respondent was barred by the law of limitation from claiming a one-third undivided share in the 40 acres. p.5 1.22-
p.6 1.35
- 20 10. On 17th December 1976 the suit came up for hearing before Ajaib Singh J. in the presence of the parties and their Counsel. Both Counsel stated that they did not intend to adduce any evidence and that the parties rested their respective cases on the bundle of agreed documents marked "A" (namely Exhibit A) and it was ordered that Counsel for the Respondent and Appellant respectively should file written submissions. p.7 11.16-25
p.52 11.17-30
- 30 11. The Appellant's Counsel in his written submissions dated 29th December 1976 contended first that the onus was on the Respondent to prove that the 40 acres belonged to the Hindu Joint Family and that the Respondent had not discharged it. Counsel referred to the pleadings, notes of evidence and decision of Smith J. in the 1950 Action and the 1962 Privy Council decision and pointed out that Smith J. had accepted the Karta's evidence that he had bought the 40 acres with his own money, but not the statement in the Appellant's defence that he held the 40 acres in trust for the RM. P.K.P. AR. family; this statement was in any case inconsistent with the Appellant's claim that he paid \$7000 for the 40 acres and was denied by the Karta in his Reply and Defence to Counterclaim. p.8 1.18-
p.13 1.31
p.9 11.10-31
p.82 11.18-28
p.76 11.15-38
p.72 11.21-28
p.72 11.29-33
p.74
- 40 50 12. The Appellant's Counsel next submitted that even if the 40 acres had been part of the joint p.11 1.34-
p.2 1.2

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family property, the 1962 Privy Council decision was final and binding on the Respondent, whether or not the Karta had the right to dispose of the 40 acres. Thirdly he submitted that the Respondent's present claim was barred by limitation both as a claim to recover land or as a claim by a beneficiary to recover trust property or for breach of trust, under section 9(1) and 22(2) of the Limitation Ordinance No.4 of 1953 (now the Limitation Act 1953 No.254). Time ran from when the Respondent's rights were allegedly infringed or threatened, which was when the Karta transferred the 40 acres in 1935 or alternatively when the Respondent refused to retransfer them in 1950. In either case, and even allowing for the fact that by section 24(1) of the Limitation Act the Respondent had six years from attaining his majority in which to file suit, his claim was barred.

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13. The Respondent's Counsel in his written submissions dated 15th January 1977 commented on the submissions made on behalf of the Appellants and referred to the pleadings, evidence and Smith J's judgment in the 1950 Action. He did not dispute that the burden of proof was on him and said;

"In order to discharge the onus of proof that the said land was the Hindu Joint Family property the Plaintiff (i.e. the Respondent) ... does not rely only on the Pleadings. Nor on the record ... which is now marked "Bundle A" (i.e. Exhibit A) and the 1962 A.C. page 294 et seq, but the Plaintiff is also relying on the cumulative effect of the Judgment of the Supreme Court of India to which the Father (i.e. the Karta) and the Defendant had agreed to abide by in respect of the dispute of the Father claiming to be the sole proprietor of PL. AR. Firm at Port Dickson and the Defendant alleging that he was a member of the Hindu Joint Family consisting of the Plaintiff (Father) the Defendant and Lakshmanan Chettiar who is the Plaintiff in this suit."

The Respondent's Counsel cited at length from the judgment of the Supreme Court of India and said that on the basis of that Court's judgment and decree he had "overwhelming evidence.. that the P.L.A.R. business at Port Dickson had been adjudged as Joint Hindu Family property". The passage of the said decree on which he relied began:

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"There will be a declaration that the P.L.A.R. Firm at Port Dickson and the assets thereof are the estate of the joint Hindu Family consisting of the plaintiff and the Defendants".

p.21 11.31-36

The declaration did not state what those assets were or that they included the 40 acres.

- 10 14. It was also submitted that the Respondent did not have to give evidence and prove that the 40 acres was Hindu Joint Family Property; that the Karta had received the nucleus of the property from a partition of his and his brothers' estate in about 1926; that the Karta bought 99 acres of rubber estates from this nucleus and bought the 40 acres for \$8081; and that to decide the question of the ownership of the 40 acres one must consider the source of the purchase money, not the English law of advancement or the illegality involved in the transfer of the 40 acres by the Karta to the Appellant. The Respondent also submitted (inter alia) that the Appellant could not rely on the 1962 Privy Council decision as a defence or on a plea of limitation as against members of a Hindu joint family, and that by Hindu law the said transfer was an improper alienation and not binding on the Hindu Joint Family.
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- 30 15. Ajaib Singh J gave judgment on 17th June 1977. He summarised the Respondent's claim and the pleadings. He said that the issues were first whether the 40 acres belonged to the Hindu Joint Family or had been the Karta's own separate property. If they were the latter, he said that neither the Respondent nor the Hindu Joint Family could have any claim to them. Secondly, if the 40 acres were Hindu Joint Family property, whether the Karta could have alienated them. Thirdly, if they were Hindu Joint Family property whether the Respondent was bound by the 1962 Privy Council decision. Fourthly, if he was not so bound, whether the present suit was barred by the law of limitation. After referring to the written submissions of Counsel, the learned trial Judge said that until about 1923 the Karta had been a member of an earlier joint Hindu family which carried on a moneylending business at Kuala Lumpur and Port Dickson in the name of K.M.P.L. firm and that in 1926 the Karta started another money-lending business in the name of PL.AR. with the aid of assets from the K.M.P.L. firm. Then in 1949 relations between the Karta and the Appellant became strained and the Appellant filed the Indian proceedings already mentioned.
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- p.23 11.14-26
- p.23 11.27-53
- p.24 11.1-40
- p.28 1.21-
p.29 1.5
- p.32 11.26-34
& p.34 1.13-
p.36 1.19
- p.39 1.10-
p.51
p.41 11.9-26
- p.41 1.27-
p.43 1.19
- p.43 11.19-55
- p.44 1.1-
p.45 1.11.

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The learned trial Judge said that as the Indian Courts did not have jurisdiction in a suit for partition of immovables in Port Dickson, Malaysia, the Appellant had filed the 1951 suit in the Seremban High Court. Ajaib Singh J next referred to the pleadings and evidence in the 1950 action and said that the record in the 1950 action "disclosed that the parties had agreed, as they did in Civil Suit No.34 of 1951... to accept the decision of the Indian Court." 10

16. The Appellant respectfully submits that Exhibit A, which contains this record, does not disclose any such agreement. The Appellant and his Counsel were not in Court during the hearing of the 1950 action or when Smith J. gave judgement. According to Smith J's notes of the Karta's evidence about the 40 acres and of the explanation given by Mr. Rawson, his Counsel;

p.76 11.36-41 "This was not joint property, it was self acquired property. All property at P.D. is subject of a suit in India." (Rawson states that parties have agreed to accept decision of Indian Court on other properties)". 20

p.46 11.1-13 Ajaib Singh J. then mentioned that the Karta succeeded in the 1950 Action in the High Court and the Federal Court, but failed in the Privy Council.

17. Turning to the 40 acres in the present case, Ajaib Singh J. held that the Respondent should succeed, on the ground that there was ample evidence that the 40 acres were part of the assets of the joint Hindu firm of PL.AR. This evidence, he said, was that the Karta had used assets from an earlier joint family firm of K.M.P.L. in the PL.AR firm; that he had produced the PL.AR firm ledger during the hearing of the 1950 Action; that the parties in the 1950 Action as well as the 1951 suit had (so he said) agreed to abide by the decision of the Supreme Court of India; and the findings of the Supreme Court of India. The learned Judge cited at length from their judgment which he said referred to the 40 acres. 40

p.46 1.46-
p.49 1.5

p.49 11.5-28 18. On the second issue Ajaib Singh J. held that as the Karta had not alienated the 40 acres out of legal necessity or for the benefit of the estate, the Appellant held the 40 acres on trust for the Hindu Joint Family. The learned Judge said that the Appellant had admitted this to be so in the 1950 Action. On the third issue the learned Judge said that the 1962 Privy Council decision 50

p.49 1.47-
p.50 1.28

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10 did not operate as res judicata because it had not determined the issue of any right of the Hindu Joint Family, as distinct from the Karta claiming as beneficial owner, to the 40 acres. On the fourth issue the learned Judge held that the claim was not barred by limitation because time does not run against a beneficiary seeking to recover trust property in the possession of a trustee. p.50 11.29-40

19. The Order of the High Court dated 17th June 1977, recited inter alia that the parties' Counsel stated that they did not intend to adduce any evidence and that the parties rested their respective cases on the pleadings and the bundle of agreed documents which is Exhibit A and granted the Respondent the relief mentioned in paragraph 1 of this Case. On 12th July 1977 the Appellant gave notice appealing against the whole of Ajaib Singh's decision, stating the grounds of appeal in a memorandum of appeal dated 25th August 1977. pp.52-53 1.20

20 p.53 1.21-
p.54 1.26
p.54 1.27-
p.56 1.19

20. The Federal Court gave judgment on 7th October 1978. Gill C.J., with whom Syed Othman F.J. and Abdul Hamid J. concurred, said that in 1926 the Karta started a business of his own in the firm name of PL.AR and brought into it his share of the assets including some rubber estates of an earlier joint Hindu family. The learned Chief Justice then mentioned the Indian proceedings, the 1950 Action and the 1951 Suit. Turning to the present proceedings be noted that no evidence was adduced before the trial Judge, the parties resting their cases on the pleadings and the bundle of agreed documents (Exhibit A). After referring to the written submissions made in the High Court on behalf of the parties Gill C.J. said that Ajaib Singh J. in holding that the 40 acres was Hindu Joint Family property had referred to the 1951 Suit, in which the parties had agreed to abide by the judgment of the Supreme Court of India, and had set out lengthy passages from their judgment which he did not need to go into. After summarising the rest of Ajaib Singh J's judgment and the submissions of Counsel in the Federal Court he stated his conclusion as to the ownership of the 40 acres thus: p.56 1.20

30 p.57 1.39-
p.58 1.3
p.58 1.17-
p.59 1.50

40 p.60 11.14-23

p.60 1.35-
p.61 1.42
p.61 1.43-
p.62 1.2

p.62 1.2-
p.63 1.4

50 "In my judgment, the answer to this appeal is fairly simple. As I have stated earlier, the parties in this case rested their respective cases on the pleadings and an agreed bundle of documents ... I do not think therefore that the learned trial Judge

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was wrong in relying on those documents. The judgment of the Supreme Court of India was only relevant to the extent that in pursuance of it, by consent of the parties, an order was made in Civil Suit No.34, of 1951 that the entire property of the PL.AR Firm in Port Dickson belonged to a Joint Hindu Family of which Arunasalam Chettiar was the Karta and the parties to the present suit were his coparceners. The land in question may or may not have been referred to in Civil Suit No.34 of 1951 but it was one of the assets which were held in the name of Arunasalam Chettiar like the rest of the assets of the firm of PL.AR ... All that the Privy Council decided in the earlier suit was that the transfer of this particular piece of land by the father to the son was illegal, so that the father was not entitled to have it transferred to him." 10 20

p.64 11.10-21 Gill C.J. rejected the argument that the argument that the Karta's estate could get back the Karta's one-third share in the 40 acres, as but said that the Respondent was suing in his personal capacity, the only question was whether the Respondent could recover his own one-third share. The learned Chief Justice held that as the alienation of the 40 acres was not for legal necessity or payment of an antecedent debt, the Respondent was entitled to have the alienation set aside to the extent of his beneficial interest therein, although the Karta's estate was not entitled to a share in the 40 acres. The Federal Court accordingly allowed the appeal in part, as mentioned in paragraph 2 of this Case. 30

p.64 1.46-
p.66

pp.67-68 1.17 21. On the 19th September 1979 the Federal Court in Malaysia made an order granting the Appellant final leave to appeal to His Majesty the Yang-Di Pertuan Agong.

22. The Appellant respectfully submits that the decision of the Federal Court, insofar as such decision did not allow the Appellant's appeal from the decision of the learned trial Judge, was wrong and should be reversed, and that this appeal should be allowed with costs, for the following amongst other 40

REASONS

(1) BECAUSE the Respondent did not discharge the burden of proving that the 40 acres were property of the Hindu Joint Family. 50

10 (2) BECAUSE the 40 acres being land situated in Malaysia, the Malaysian Courts should have determined the Respondent's claims solely by reference to Malaysian law, particularly the 1926 Code and the 1965 Code and had no jurisdiction to determine the Respondent's claims otherwise than in accordance with Malaysian law. By virtue of sections 42, 47 and 110 of the 1926 Code and section 340 of the 1965 Code the Appellant's title to and interest in the 40 acres are indefeasible

(3) BECAUSE the Malaysian Courts should not have had regard to the alleged principles and authorities of Hindu law relied upon by the Respondent in support of his case and, in any event, those alleged principles and authorities were not duly proved.

20 (4) BECAUSE the parties adduced no evidence before the learned trial Judge and rested their respective cases on the pleadings in this case and the agreed bundle of documents in Exhibit A, whereas the learned trial Judge and the Federal Court in reaching their decisions took into account material outside that upon which the parties rested their cases, and to which Counsel for the Appellant had confined his submissions.

30 (5) BECAUSE the Appellant, in reliance on the agreement between the parties' Counsel to that effect, having adduced no evidence before the learned trial Judge and having rested his case on the said pleadings and Exhibit A, it would be inequitable if the Respondent could rely on, and he should be estopped from relying on, material outside that on which he had agreed to rest his case.

(6) BECAUSE had the learned trial Judge and the Federal Court had regard only to the material on which the parties had rested their cases, they would have held that there was no or alternatively insufficient evidence that the 40 acres were property of the Hindu Joint Family.

40 (7) BECAUSE the learned trial Judge and the Federal Court gave no or alternatively insufficient weight to the Karta's oral evidence in the 1952 action, particularly his statement that the 40 acres were self-acquired and not joint property, and to the fact that Smith J. found that the Karta's case had the ring of truth.

p.76 1.11-
p.77 1.17
p.76 1.11
p.77 1.17
p.82 11.26-27

50 (8) BECAUSE the said decree of the Supreme Court of India and the said order of the High Court at Seremban in the 1951 suit should not

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have been taken into consideration.

(9) BECAUSE even if, contrary to the Appellant's contention, it were permissible to take the said decree and order into consideration, the learned trial Judge and the Federal Court erred in relying on the same when holding that the 40 acres were property of the Hindu Joint Family in that

(a) the decree of the Supreme Court of India as relied upon did not say what were the assets of the Hindu Joint Family or that the 40 acres were among such assets and 10

(b) the 40 acres were not among the properties the subject of the Appellant's claims in the 1951 Suit.

(10) BECAUSE the Respondent is estopped by the 1962 Privy Council decision from claiming that the 40 acres are property of the Hindu Joint Family or that he has a beneficial interest in the 40 acres. 20

(11) BECAUSE, even if the 40 acres had ever been part of the Hindu Joint Family property the 1935 transfer vested them in the Appellant as sole legal and beneficial owner

(12) BECAUSE the Federal Court erred in law and in fact in holding that the Respondent had a one-third share in the 40 acres and that the 1935 Transfer should be set aside to the extent of such share particularly as the Respondent did not claim that it should be set aside in his writ of statement of claim in these proceedings. 30

pp.1-5 1.19

(13) BECAUSE, even if the 40 acres were property of the Hindu Joint Family

(a) the Respondent's claims in respect of the 40 acres would be barred by the Malaysian law of limitation under the Limitation Act 1953 and/or by the laches of the Respondent and

(b) if and insofar as Hindu law might be relevant to the determination of the said claims, they would be barred by the Indian law of limitation particularly the Limitation Acts 1908 and 1963. 40

(14) BECAUSE the judgments of the Federal Court and Ajaib Singh J. were wrong.

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(15) BECAUSE the Federal Court mistakenly thought that the 40 acres were held in the name of Arunasalam Chettiar instead of the Appellant. p.63 l.52-
p.64 l.2

10 (16) BECAUSE the Federal Court's Order dated 7th October 1978 that the references in Ajaib Singh J's declaration to the Karta or his estate be deleted from the Order dated 17th June 1977 is not in accordance with the Federal Court's decision that the Respondent was only entitled to a one-third share in the 40 acres in his personal capacity.

STEPHEN HUNT
Lincoln's Inn
10th January 1983.

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT IN
MALAYSIA

BETWEEN:

AR.PL. PALANIAPPA CHETTIAR
(Defendant) APPELLANT

- and -

A.R. LAKSHMANAN CHETTIAR
@ PL.AR.L. LETCHUMANAN
CHETTIAR @ ANA RUNA LEYNA
LAKSHMANAN CHETTIAR
(Plaintiff) RESPONDENT

CASE FOR THE APPELLANT

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