

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 OF MALAYSIA  
(Appellate Jurisdiction)

B E T W E E N :

AR. PL. PALANIAPPA CHETTIAR (Defendant) Appellant

- and -

A.R. LAKSHMANAN CHETTIAR @ PL.A.R.L.  
LETCHUMANAN CHETTIAR @ ANA RUNA  
LENYA LAKSHMANAN CHETTIAR (Plaintiff) Respondent

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CASE FOR THE RESPONDENT

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1. This is an Appeal from the Judgment and Order of the Federal Court of Malaysia (Gill, C.J., Syed Othman, F.J., and Abdul Hamid, J.,) dated the 7th day of October 1978, which allowed an Appeal by the Appellant (Defendant in the original action) in part from a Judgment and Order of the High Court in Malaya at Seremban (Ajaib Singh, J.) dated the 17th day of June 1977.

pp.56-66

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2. The Appeal is concerned with the share in and proceeds of the land held under Certificate of Title No.4246 for Lot No.926 in the Mukim of SiRusa in the District of Port Dickson in the State of Negri Sembilan in area 40 acres 2 roods 30 poles (hereinafter referred to as "the said land")

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3. The Appellant and the Respondent are sons of P.L.A.R. Arunasalam Chettiar (hereinafter referred to as "the said Karta") and the parties are governed by the Mitakshara school of Hindu law. The Appellant is a son by the said Karta's first wife, Lakshmi, who died in 1922 and the Respondent is a son by the said Karta's second

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wife, Meenakshi.

4. In or around 1934, the said Karta bought the said land at a public auction and on or about the 27th day of February 1935, transferred the said land to the name of the Appellant merely to avoid restrictions on the ownership of the size of "rubber-land" in Malaya. The said transfer was registered when the Respondent was only six years of age. From the date of the said transfer the said land and income therefrom was brought into the said Karta's account.

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pp.68-90 and  
also Exhibit  
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In 1950, the said Karta filed a suit (No.62 of 1950) in the High Court at Seremban for the return of the said land which the Karta claimed was his separate property which suit was resisted by the Appellant. The Appellant alleged in his Statement of Defence that before the date of the transfer, the said land was registered in the name of the said Karta but it was held by the said Karta in trust for the Joint Hindu family in which the said Karta, the Appellant and the Respondent herein were co-partners. On Appeal to the Judicial Committee of the Privy Council it was held that the said Karta was not entitled to a re-transfer of the said land because he had practised a deceit on public administration. (reported in Palaniappa Chettiar v Arunasalem Chettiar - 1962 - A.C. - 295). As a result of the said decision, the said land still remains registered in the name of the Appellant. However, as the executor of the said Karta, the Respondent in or about May, 1972 lodged a Private Caveat in the Malaysian Land Registry regarding the said land.

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5. In 1950, the Appellant instituted proceedings in the Subordinate Court of Devakottai in India against the Karta, the Respondent and his mother claiming various reliefs one of which was for a direction that the moveable and immoveable properties belonging to the joint Hindu family be determined and divided into three shares and for the allotment of one share to him. While that suit was still pending in India, the Appellant started Seremban High Court Civil Suit 34 of 1951 in relation to what he alleged to be Joint Family property in Malaya. On the 1st April, 1952, the Subordinate Court of Devakottai in India, even though recognising that it had no jurisdiction as to the immovable assets in Malaya, held that PL.A.R. firm at Port Dickson and its assets belonged exclusively to the said Karta as his own separate property. The Appellant herein appealed in the High Court of Madras but before that appeal

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10 was heard, on the 3rd December 1954, the High Court at Seremban made a Consent Order staying the proceedings in Malaya pending final determination of the Indian Proceedings, the parties agreeing to abide by such determination. The Supreme Court of India declared, in its judgment given on the 25th October 1963, that PL.A.R. firm and its assets belonged to the Joint Hindu Family of which the Karta, the Appellant and Respondent were co-partners and the Appellant herein being entitled to a one third share of the assets thereof.

20 6. By a Statement of Claim, as amended, filed in the High Court of Malaya at Seremban (Suit No. 4 of 1974), the Respondent averred the said land to be the property of the Joint Hindu family and that he was a coparcener thereof in respect of the one-third undivided share therein and half share of the said Karta's share in the said land. By Statement of Defence, filed on behalf of the Appellant on the 20th March, 1974, the following main issues were raised. pp.35 and p.8 pp.5/6

- 30 (i) Whether the said land was part of the Hindu Joint family or the separate property of the said Karta at the time of the said transfer (i.e. 29th February 1935)?
- (ii) If the said land was part of the Hindu Joint family assets was the Karta competent under Hindu law to alienate immoveable property belonging to the Hindu Joint Family.
- (iii) If the said land was part of the Hindu Joint family, is the Respondent bound by the judgment in the Privy Council case between the Appellant and the said Karta reported in 1962-A.C. page 295.
- (iv) If the Respondent is not so bound, is this barred by the provisions of the Limitations Ordinance 1953 of Malaysia?

40 7. In the said Civil Suit No.4 of 1974, the Appellant made his written submissions on the 29th December 1974 and the Respondent did so on the 15th January 1975. No evidence was adduced and the parties rested their respective cases on the pleadings and the bundle of agreed documents. pp.8/13 pp.13/39

8. On the 17th day of June, 1977, the learned Judge, Adaib Singh, J., in his Judgment in Suit No.4 of 1974 declared that the said land registered in the name of the Appellant is held by him in

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trust for and on behalf of the Joint Hindu Family consisting of the Appellant, the Respondent and the said Meenakshi and consisting also of the said Karta until his death (on the 19th August, 1972).

pp.52-53

Following that declaration the learned Judge ordered that the said land be brought into the Joint Hindu Family and divided equally between the Appellant, the Respondent and the said Karta as coparceners and that the said land be sold by public auction and the proceeds thereof be distributed equally among the three coparceners and that one-third share of the said Karta be added as an asset to his Estate and that the Appellant do render accounts of the income and expenditure arising from his management of the said land and that an enquiry into the accounts be held by the Senior Registrar of that Court.

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p.46

9. The learned Judge (Ajaib Singh, J.) reviewed written submissions, evidence and arguments and concluded (it is respectfully submitted correctly) that: (a) "Now to deal with the 40 acres in the present proceedings. After considering the evidence and the submissions made on behalf of the parties I have come to the conclusion that the plaintiff must succeed in this case. In my view there is ample evidence to establish that the 40 acres formed part of the assets of the Joint Hindu family firm of P.L.A.R. and that they were not the separate property of the Karta. When the Karta commenced his money-lending business in the name of P.L.A.R. on August 22 1926 he did so with funds withdrawn from earlier joint family firm of K.M.P.L. which was then in the process of being partitioned and after the division of the moveable and immoveable properties the Karta brought his share into the P.L.A.R. firm on January 3, 1927. The ledger which the Karta had produced during the hearing of Civil Suit No.62 of 1950 was the P.L.A.R. firm ledger. In that suit as well as in Civil Suit No.34 of 1951 the parties had agreed to abide by the decision of the Supreme Court of India in O.S.70 of 1950 and the Supreme Court had held that the P.L.A.R. firm in Port Dickson and the assets thereof were the estate of the Joint Hindu Family consisting of the defendant, the Karta, the Plaintiff and Meenakshi. Insofar as the 40 acres are concerned the inferences that may be drawn from the facts as found by the Supreme Court conclusively establish that the 40 acres were assets of the Joint Hindu family firm of P.L.A.R. and were not separate property of the Karta."

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10 (b) "The 40 acres in the present case were transferred by the Karta to the defendant not for the purpose of legal necessity or for the benefit of the estate but were transferred solely for the purpose of avoiding the prevailing rubber regulations. The trial Judge in Civil Suit No.62 of 1950 had accepted the evidence of the Karta that he had no intention of making a present to my son. The sole object was to avoid having to disclose that I had more than 100 acres of rubber land." p.49

(c) "The averment in Civil Suit No.62 of 1950 is a clear admission by the defendant that the 40 acres belonged to the joint Hindu family and in my view the evidence in the proceedings before me strongly supports this contention." p.49

20 (d) "I am also of the view the Privy Council decision in the case of Palaniappa Chettiar v. Arunasalen Chettiar (supra) cannot operate as res judicata against the plaintiff and that the decision is not binding upon him. The Plaintiff was not in any way concerned in the Privy Council case where it was held that the Karta was not entitled to a retransfer of the 40 acres to himself because he had based his claim on an illegal act namely that he had practised a deceit on the public administration. The doctrine of res judicata operates where the parties are the same or are persons claiming under them and where the issues between them are the same or substantially the same as those in the first proceedings. The doctrine does not operate where the issues in the second proceedings are different. (See the case of Chung Guat Hooi v G.H. Goh - 1954 - M.L.J. - 131). The issues in the present case are certainly not the same or substantially the same as in the Privy Council case. There the Karta alleged that he was the beneficial owner of the 40 acres and that they were being held by the defendant in trust for himself. And the defendant claimed that the 40 acres belonged to him as he had bought them from the Karta for valuable consideration. However, in the present case the plaintiff claims that the 40 acres are held in trust by the defendant for the joint Hindu family and that they be brought in for distribution among the beneficiaries in the joint family. The Privy Council has in no way adjudicated upon the question of any right to the 40 acres by the Joint Hindu family of PL.A.R. In the circumstances I hold that the Privy Council decision cannot operate as res judicata against the Plaintiff or against the joint family." p.49.50

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p.50 (e) "On the issue of limitation I agree with Atma Singh Gill that this being an action by a beneficiary no period of limitation can apply to it by virtue of the provisions of section 22(1) (b) of the Limitation Ordinance 1953 which states that "No period of limitation prescribed by this Ordinance shall apply to an action by a beneficiary under a trust, being an action ... to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the Trustee and converted to his use." 10

p.54 10. On the 12th July 1977 the Appellant appealed to the Federal Court in Malaysia and lodged the Memorandum of Appeal on the 25th August 1977. On p.55/56 7th October, 1978 the Federal Court in Malaysia (Appellate Jurisdiction) unanimously (Syed othman F.J. and Abdul Hamid, J. concurring with the Judgment delivered by J.S.Gill, L.J.) allowed the Appeal to the extent that the reference in the learned trial judge's declaration to the said Karta or his estate be deleted and amending the consequential orders, inter alia, to provide for p.57/65 sale of the land by public auction and payment out of the proceeds of the sale of the respondent's one third share. 20

p.64/65 11. It is respectfully submitted that the Federal Court were right for upholding the conclusions of the learned trial judge for the reasons given by the Federal Court. In particular, it is respectfully submitted that the Federal Court were right in concluding that: 30

p.63/64 "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 consisting of the appeal record in F.M. Civil Appeal No.34 of 1958 which contained the complete record of the pleadings, the notes of evidence and the judgment in Civil Suit No.62 of 1950. I do not think therefore that the learned trial Judge was wrong in relaying on those documents. The judgment of the Supreme Court in 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 P.L.A.R. 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 40 50

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 P.L.A.R. Indeed the land in question had already been the subject matter of litigation in the earlier suit. 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 the property retransferred to him.

On the authorities, the answer to that question is in the affirmative. As stated by Mulla on Hindu Law (14th Edn.) at page 336, paragraph 268, where a member of a Joint Family governed by the Mitakshara Law sells or mortgages more than his own interest in the Joint Family property, the alienation not being one for legal necessity or for payment by a father of an antecedent debt, the other members or persons to whom their interest in the property have passed, are entitled to have the alienation set aside to the extent of their own interest therein. In this case the Karta transferred the whole of the land to the Appellant who is entitled to retain his own one third share in the property and may or may not be entitled to retain the deceased Karta's share, but he is certainly not entitled to retain the one third share which rightly belongs to the Respondent as the third coparcener."

12. The Appellant was given Leave to Appeal to His Majesty the Yang Di Pertuan Agong on the 19th September 1979.

The Respondent respectfully submits that this Appeal should be dismissed with costs and that the Order made by the Federal Court should be confirmed for the following, among other:

R E A S O N S

1. BECAUSE the Federal Court was right in holding that the said land belonged to a Joint Hindu family and that the Appellant and the Respondent and the Karta were coparceners.
2. BECAUSE the Federal Court correctly held that the Respondent was not bound by the judgment in the Privy Council case between the Appellant and the said Karta (1962 - AC 295.) which was on the basis of the Karta's claim to the land as being his separate property and this decision was delivered before the decision in the Indian

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Proceedings given on the 25th October 1963, holding that all the assets of PL.A.R. firm belonged to the Joint Hindu Family.

3. BECAUSE the Federal Court were right in concluding that the Respondent as one of the coparceners is entitled to recover his one-third share.

4. BECAUSE the Judgment and Order of the Federal Court were right.

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PARAMJIT S. GILL

VASANT KOTHARI



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BETWEEN:

AR. PL. PALANIAPPA CHETTIAR  
(Defendant) APPELLANT

- and -

A.R. LAKSHMANAN CHETTIAR &  
PL.AR.L. LETCHUMANAN CHETTIAR  
& ANA RUNA LENYA LAKSHMANAN  
CHETTIAR (Plaintiff) RESPONDENT

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CASE FOR THE RESPONDENT

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PHILIP CONWAY THOMAS & CO.  
61 Catherine Place,  
London SW1E 6HB  
Solicitors for the Respondent