

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L

FROM THE FEDERAL COURT IN MALAYSIA  
(Appellate Jurisdiction)

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B E T W E E N :

AR.PL. PALANIAPPA CHETTIAR (Defendant) Appellant

- and -

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

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RECORD OF PROCEEDINGS

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BULCRAIG & DAVIS  
4 John Street,  
LONDON WC1N 2EX.

Solicitors for the  
Appellant

PHILIP CONWAY THOMAS & CO  
61 Catherine Place,  
LONDON SW1E 6HB.

Solicitors for the  
Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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INDEX OF REFERENCE

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page No.</u>
<u>IN THE HIGH COURT IN MALAYA</u> <u>AT SEREMBAN</u>			
1.	Writ of Summons	4th January 1974	1
2.	Statement of Claim	4th January 1974	3
3.	Statement of Defence	20th March 1974	5
4.	Proceedings	15th July, 17th and 20th December 1976	6
5.	Written submission for Defendant	29th December 1976	8
6.	Written submission for Plaintiff	15th January 1977	13
7.	Judgment	17th June 1977	39
8.	Order	17th June 1977	52

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page No.</u>
<u>IN THE FEDERAL COURT IN MALAYSIA</u> <u>(Appellate Jurisdiction)</u>			
9.	Notice of Appeal	12th July 1977	53
10.	Memorandum of Appeal	25th August 1977	54
11.	Judgment	7th October 1978	56
12.	Order	7th October 1978	65
13.	Order of the Federal Court granting final leave to appeal H.M. The Yang Dipertuan Agong	19th September 1979	67

EXHIBITS

<u>Exhibit Mark</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page No.</u>
<u>Plaintiff's Exhibit</u>			
A	Appeal Record in Federation of Malaya Civil Appeal, No. 62 of 1950, comprising the following:-		
	Statement of Plaintiff	21st November 1950	68
	Written Statement of Counterclaim of Defendant	3rd April 1951	72
	Reply and Defence to Counterclaim	30th April 1951	74
	Judge's Notes including Notes of Evidence	1st July 1958	75
	Grounds of Decision, Application for postponement of Trial	1st July 1958	79
	Judgment	1st July 1958	81
	Order	1st July 1958	83
	Notice of Appeal	7th July 1958	84

<u>Exhibit Mark</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>
<u>Plaintiff's Exhibit</u>			
A	Memorandum of Appeal	15th September 1958	85
	Exhibit P1. Ledger of P.L.A.R. Firm	Not reproduced	
	Exhibit P2. Costs incurred in registration of Title	Not reproduced	
	Exhibit P3. Ledgers of P.L.A.R. Firm	Not reproduced	
	Exhibit P4. Memorandum of Transfer	27th February 1935	90
	Exhibit P.5. Certificate of Title, No. 1175 of Lot No. 926 Mukim Si Rusa	Not reproduced	

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DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL  
BUT NOT REPRODUCED

<u>Description of Document</u>	<u>Date</u>
<u>IN THE FEDERAL COURT</u>	
Notice of Motion for Conditional Leave to Appeal	28th November 1978
Affidavit of Arumugam Rajah	15th November 1978
Order granting conditional Leave to Appeal	14th December 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L

FROM THE FEDERAL COURT IN MALAYSIA  
(Appellate Jurisdiction)

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---

B E T W E E N :

AR.PL. PALANIAPPA CHETTIAR (Defendant) Appellant

- and -

10 A.R. LAKSHMANAN CHETTIAR and PL.AR.L.  
LETCHUMANAN CHETTIAR and ANA RUNA  
LEYNA LAKSHMANAN CHETTIAR (Plaintiff) Respondent

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RECORD OF PROCEEDINGS

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No. 1

WRIT OF SUMMONS

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GENERALLY INDORSED WRIT OF SUMMONS  
(O. 2, r. 3)  
IN THE HIGH COURT IN MALAYA AT SEREMBAN  
(Civil Suit 1974 No. 4)

In the High  
Court

---

No. 1  
Writ of  
Summons  
4th January  
1974

Between

20 A.R. Lakshmanan Chettiar @  
PL.AR.L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar Plaintiff

And

AR.PL. Palaniappa Chettiar of  
c/o No. 57 Klyne Street, Kuala Lumpur Defendant

The Hon'ble Tan Sri H. Suffian P.S.M., D.I.M.P.,  
J.M.N., S.M.B. (Brunei) P.J.K., Chief Justice of  
the High Court in Malaya in the name and on behalf  
of His Majesty the Yang di-Pertuan Agong.

30 TO: AR.PL. Palaniappa Chettiar  
of c/o No. 57 Klyne Street, Kuala Lumpur.

In the High Court

No. 1  
Writ of  
Summons  
4th January  
1974  
(cont'd)

WE COMMAND you, that within 12 days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A.R. Lakshmanan Chettiar @ PL.AR.L. Letchumanan Chettiar @ Ana Runa Leyna Lakshmanan Chettiar.

AND TAKE NOTICE that in default of you so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS, Mr. Kang Hwee Gee, Senior Assistant 10

Registrar of the High Court of Malaya, the 5th day of January, 1974.

Sd. Atma Singh Gill & Gill Sd. Kang Hwee Gee  
.....  
Plaintiff's Solicitors Senior Assistant Registrar, High Court, Seremban.

N.B. - This Writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of last renewal, including the day of such date and not afterwards. 20

The Defendant (or Defendants) may appear hereto by entering an appearance (or appearances) either personally or by Solicitor, at the Registry of the High Court at Seremban.

A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order of \$3.00 with an addressed envelope to the Assistant Registrar of the High Court at Seremban. 30

GENERAL INDORSEMENT

The Plaintiff's claim is against the Defendant as owner of 1/3rd undivided share in 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, in his own right and another 1/3rd share therein against the Defendant as heir at law of PL.AR. Arunasalam Chettiar deceased. 40

Dated this 4th day of January, 1978.

Sd. Atma Singh Gill & Gill  
Solicitors for the Plaintiff

THIS WRIT accompanied by Statement of Claim was issued by Syarikat Atma Singh Gill & Gill of and whose address for service is No. 1 Jalan Tunku Hassan, Seremban, Solicitor for the said Plaintiff(s) who resides at 72 Paul Street, Seremban.

In the High Court

No. 1  
Writ of Summons  
4th January 1974  
(cont'd)

No. 2

STATEMENT OF CLAIM

No. 2

Statement of Claim - 4th January 1974

IN THE HIGH COURT IN MALAYA AT SEREMBAN

10

Civil Suit No. 4 of 1974

Between

A.R. Lakshmanan Chettiar @  
PL.AR.L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar                      Plaintiff

And

AR.PL. Palaniappa Chettiar,  
of c/o No. 57, Klyne Street,  
Kuala Lumpur.    Defendant

STATEMENT OF CLAIM

- 20      1.      The Plaintiff is a co-parcener with the Defendant, being a member of a separated Hindu Joint Family known as "PL.AR." Firm at Port Dickson.
2.      The said Hindu Joint Family of which PL.AR Arunasalam Chettiar was at all material times the Karta or Manager of the said Joint Family, which was separated by Order of Court dated 11.7.64 in the Seremban High Court in Civil Suit No. 34 of 1951.
- 30      3.      In or around 1934 the said Karta bought at a Public Auction 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 in the State of Negri Sembilan in area 40 acres 2 roods 30 poles (hereinafter referred to as "the said land").
4.      The said land was bought with the funds of the said Joint Family property, whereby the said land became the property of the said family, but as the said Karta owned about
- 40

In the High Court

No. 2  
Statement of  
Claim - 4th  
January 1974  
(cont'd)

100 acres of rubber lands and in order to take advantage of the rubber restriction coupons, the said Karta around 27.2.35 transferred the said land to the name of the Defendant, free from any consideration whereby the Defendant became the Trustee of the said land for the said Hindu Joint Family. The Transfer was registered on 8.3.35, when the Plaintiff was a minor only 6 years of age.

10

5. From the date of the said transfer the said Karta retained control of the said land and the income therefrom which was brought into the said Karta's account, but due to some misunderstanding between the said Karta and the Defendant, the said Karta filed a Suit in the High Court at Seremban for the return of the said land, which suit was resisted by the Defendant and ultimately he won the case on Appeal to the then Privy Council on 31.1.62. The said Privy Council holding that the said transaction was illegal as the said Karta practised a deceit on the public administration and that the damage lay where it fell, whereby the said land is still registered in the name of the Defendant herein. (The decision reported in (1962) M.L.J. at P. 143 et seq refers).

20

6. The Plaintiff avers that the foregoing position may be binding on the said Karta and the said Defendant in so far as the said Karta's 1/3rd undivided share in the said land was concerned, but the said decision is not binding on the Plaintiff, as the said land is the joint property and the Plaintiff a co-parcener thereof in respect of the 1/3rd undivided share therein.

30

7. The Plaintiff who is the Executor of the Estate of the said Karta, in order to protect his interest in the said land had in or around May 1972 lodged a Private Caveat in the Land Registry entitled "CAVEAT (PRIVATE) JILID: 37 FOLIO: 50".

40

The Plaintiff claims:-

(1) A division of the said land among the parties interested or a sale of the said land and distribution of the proceeds among the Plaintiff, Defendant and the said 1/3rd share of the said Karta (since deceased) be deposited into Court until the disposal

50



of the Appeal to His Majesty the  
Yang Di Pertuan Agong.

In the High  
Court

- (2) The Defendant do render accounts of  
the income and expenditure arising  
out of the management of the said  
land by him from 1962 and pay over  
his share to the Plaintiff.

No. 2  
Statement of  
Claim - 4th  
January 1974  
(cont'd)

- (3) Costs and such further or other relief.

Dated this 4th day of January 1974.

10

Sd: Atma Singh Gill & Gill  
Solicitors for the Plaintiff

To: The abovenamed Defendant  
AR.PL. Palaniappa Chettiar  
of c/o No. 57 Klyne Street,  
Kuala Lumpur.

This statement of Claim is filed by Messrs.  
Atma Singh Gill & Gill, Solicitors for the Plaintiff  
of and whose address for service is at No. 1 Jalan  
Tunku Hassan, Seremban.

20

No. 3

STATEMENT OF DEFENCE

No. 3

Statement of  
Defence  
20th March  
1974.

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit No. 4 of 1974

BETWEEN

A.R. Lakshmanan Chettiar @  
PL.AR.L. Letchumanan Chettiar @  
And Runa Leyna Lakshmanan Chettiar          Plaintiff

AND

30 AR.PL. Palaniappa Chettiar  
of c/o No. 57, Klyne Street,  
Kuala Lumpur.                                  Defendant

D E F E N C E

1. The Defendant denies the averments  
contained in the Statement of Claim.

In the High Court  
No. 3  
Statement of Defence  
20th March 1974.  
(cont'd)

2. Further answering the Defendant states that the land held under Certificate of Title No. 4246 for Lot 926 in the Mukim of Si-Rusa in the District of Port Dickson in the State of Negri Sembilan was not part of the Joint Family property.
3. The said land was sold by the late Arunachalam Chettiar to the Defendant for \$7,000/- on 27.2.1935 and thereafter the deceased had no title whatsoever to the property. The said land belongs to the Defendant exclusively. 10
4. The Plaintiff is not a co-parcener with the Defendant with respect to the said land and is not entitled to any share in the said land or in the income derived from the said land. The Defendant is not liable to render account to the Plaintiff.
5. The Privy Council has held by its Judgment dated 31.1.1962 that the deceased Arunachlam Chettiar was not entitled to contend that the transfer dated 27.2.1935 was fraudulent or ineffective and get any relief on that basis. The Plaintiff is prevented in law from raising the issue once again. 20
6. In any event the Plaintiff is barred by the law of limitation from claiming a 1/3rd undivided share in the said land.
7. Wherefore the Defendant prays that the Plaintiff's claim be dismissed with costs. 30

Sd: Lovelace & Hastings  
Defendant's Solicitors.

Delivered this 20th day of March, 1974 by Messrs. Lovelace & Hastings, Solicitors for the Defendant.

No. 4  
Proceedings  
15th July  
1976

No. 4  
PROCEEDINGS

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO. 4 OF 1974

Between

40

A.R. Lakshmanan Chettiar @  
PL.AR.L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar Plaintiff

In the High  
Court

No. 4  
Proceedings  
15th July  
1976  
(cont'd)

And

AR.PL. Palaniappa Chettiar  
of c/o No. 57 Klyne Street,  
Kuala Lumpur. Defendant

IN OPEN COURT

This 15th day of July 1976

10

Coram : AJAIB SINGH J.

Atma Singh Gill for Plaintiff

A.D. Rajah for Defendant

Adjourned to a date to be fixed.

Sd: Ajaib Singh J.  
15.7.76

17th and 20th  
December  
1976

IN THE HIGH COURT IN MALAYA AT SEREMBAN

CIVIL SUIT NO. 4 OF 1974

IN OPEN COURT

This 17th day of December 1976

20

Coram : AJAIB SINGH J.

Atma Singh Gill for Plaintiff

Marjoribanks for Defendant

Civil Suit No. 34 of 1951 - Bundle 'A'  
Parties to put in written submissions.

Intd. A.S.

IN CHAMBERS

This 20th day of December 1976

Coram: AJAIB SINGH J.

30

Atma Singh Gill for plaintiff - mentions also for  
Marjoribanks for defendant.

Atma Singh Gill

In the High Court

No. 4  
Proceedings  
17th and 20th  
December  
1976  
(cont'd)

Ask for amendment - para 6 of Statement of claim - after the word "may" in the first line add - "or may not"

And after the word "therein" at the end of the paragraph delete full-stop and add - "and 1/2 share of the said Karta's 1/3 share in the said land"

Paragraph 7(1) of the statement of claim amended as per slip attached.

(Mr. Atma Singh Gill informs court that he has spoken to Mr. Marjoribanks who has no objection to the proposed amendments).

10

Court - Application for amendment as above allowed.  
Liberty to defendant to file amended defence if any within 10 days.

Sd: Ajaib Singh J.

No. 5  
Written submission for Defendant  
29th December 1976

No. 5  
WRITTEN SUBMISSION FOR DEFENDANT  
IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO: 4 OF 1974

20

Between

A.R. Lakshmanan Chettiar @  
PL.AR.L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar Plaintiff

And

AR.PL. Palaniappa Chettiar  
of c/o No. 57, Klyne Street,  
Kuala Lumpur. Defendant

WRITTEN SUBMISSION ON BEHALF OF THE DEFENDANT

30

The main issues are as follows:

- (i) Whether the said land was part of the Hindu Joint Family or the separate property of PL.AR. Arunasalam Chettiar (hereinafter referred to as the Father) at the time of transfer by the Father to the Defendant.

(ii) If the part of the Hindu Joint Family is the Plaintiff bound by the judgment in the Privy Council case between the Defendant and the Father reported in (1962) A.C. page 295.

In the High Court

No. 5  
Written submission for Defendant 29th December 1976  
(cont'd)

(iii) If Plaintiff not so bound is this present suit barred by the provisions of the Limitation Ordinance 1953.

A. Onus of Proof

10 The said land was registered in the name of the Father at the time of transfer and it is for the Plaintiff to prove that the said land is part of the Hindu Joint Family.

See the case of:

In the estate of T.M.R.M. Vengadasalam Chettiar

(1941) M.L.J. Reprint pages 120, 121 and 123

20 In particular the head note on page 120 and the passage in the judgment of Poyser C.J. (F.M.S.) B & F on page 123 and in the judgment of Carey J. on page 124 I at the bottom of the left hand column and D.E. and F in the right hand column.

30 No evidence has been adduced by the Plaintiff to prove that the said land is part of the Hindu Joint Family but there is ample evidence on record to show that the Father always claimed the said land to be his own separate property and that he transferred it in trust to the Defendant to evade the provisions of the Rubber Regulations No. 17 of 1934.

It is common ground that the Father sued the Defendant asking for a retransfer of the said land and the case went to the Privy Council.

A full report of the facts and findings are set out in the case of:

A.R.P.L. Paliappa Chettiar (the Defendant in this present case)

Against

40 P.L.A.R. Arunasalam Chettiar (the Father) (1962) A.C. page 295, 286 and the judgment on pages 300, 301, 302 and 303.

The appeal record in F.M. Civil Appeal No.

In the High Court  
No. 5  
Written submission for Defendant  
29th December 1976.  
(cont'd)

34 of 1958 has been filed in Court and marked and this record contains the pleadings and evidence which was before the Privy Council in the above case.

I beg to refer to the statement of claim on page 3 and 4 of the record and to make the following observations.

- (i) The father sued in his private capacity and not as Karta of the Hindu Joint Family.
- (ii) He alleged that he transferred the land in trust for the Defendant. 10
- (iii) He alleged that the beneficial interest in the said land always vested in him.

I would refer to the Defence on page 8 and the Reply on page 10 and make the following observations.

- (a) The pleadings in paragraph 2 and 3 of the Defence are not reconcilable, more so as the Defendant counterclaimed on the basis that he was beneficially entitled to the said land. 20
- (b) The allegation that the said land was an asset of the Hindu Joint Family was considered by the learned trial Judge on page 24 (20) of the Record but rejected.
- (c) In paragraph 2 of the Reply the Father denies that he held the said land in trust for the Hindu Joint Family.

I now refer to the evidence on oath given by the Father which is recorded on pages 1, 2 and 3 of the Record and which has been accepted by the trial Judge the Federal Court of Appeal and the Privy Council as being correct. 30

- (i) The Father said that he paid \$8,081/- for the land and produced his ledger supporting it. He produced his own personal ledger not the ledger of the Hindu Joint Family.
- (ii) He stated at the bottom of page 12 the said land was not joint property it was self acquire.
- (iii) He stated at the bottom on page 13 that he had no intention of making a present to his son. 40

The above statements can only be construed

as meaning that the said land was the Father's separate property capable of being dealt with as he chose and not an asset of the Hindu Joint Family of which he had no power of disposal.

In the High Court

No. 5  
Written submission for Defendant  
29th December 1976  
(cont'd)

See Mulla on Hindu Law 14th edition page 319 para 256.

It is to be noted that none of the special powers have been alleged by the Plaintiff in this case.

10 Although a member of a Hindu Joint Family the Father can own separate property.

See Mulla page 269 paragraph 222.

I would ask leave to refer to the Father's will which is the subject matter of Seremban High Court Probate Suit No. I of 1973 a copy of which is attached hereto and to make the following points:

- 20 (i) Page 1 third paragraph, the Father refers to "assets found belonging to me personally as my separate property"
- (ii) Page 2 (a), The constructions must mean that the Father is complaining that the Defendant refused to retransfer to his Father the said land belonging to the Father and that as the Defendant kept the said land for himself he was to be disinherited.

30 It is submitted that the evidence available is overwhelming against the claim that the said land is part of the Hindu Joint Family and I would ask for a finding that the said land was held by the Father as his separate property and that it belongs absolutely to the Defendant in accordance of the judgment of the Privy Council.

B. Effect of Privy Council case.

If it is held that the said land is an asset of the Hindu Joint Family then it is submitted that the judgment of the Privy Council is binding on the Plaintiff as being rejudicate.

See Mulla page 313, 317 and 319

40 If the Father was the karta then the judgment against him is binding on the Plaintiff as a co parcener.

Although he may not have had the right under

In the High Court

No. 5  
Written submission for Defendant  
29th December 1976  
(cont'd)

Hindu Law to dispose of the said land nevertheless he did so and the judgment is final.

C. Limitation.

If it is held that the said land is an asset of the Hindu Joint Family and the Privy Council decision is not binding on the Plaintiff then I submit that the Plaintiff's claim is barred by limitation.

The Plaintiff seeks a declaration that the transfer of the said land by the Father to the Defendant is void so far as he is concerned as he was a minor aged 6 years of age at the time of the transfer i.e. 8.3.1936.

10

His right of action to have the transfer declared void as void against him could have been brought when he was 21 years of age i.e. in 1950 and it is submitted that the action is now barred under section 9(I) of the Limitation Ordinance No. 4 of 1953.

Being a minor he would be given an extra 6 years within which to file action by virtue of section 24(I) of the Limitation which would bring the period to 1956.

20

He did not file action until 4th January, 1974, i.e. 18 years from 1956.

I would refer also the section 22(i) and (2) of the Limitation Enactment in which the period is 6 years.

It is submitted that the right of action accrued to the Plaintiff as on the date of transfer by Father to the Defendant i.e. 27.2.35 and that by the time the Plaintiff attained majority the 12 year period would have expired but as he had a further 6 years by reason of his disability he should have filed action in 1956.

30

I would refer to the following cases on the subject of accrual of action and limitation.

- (i) Nasri V. Mesah (1971) 1. MLJ page 32
- (ii) Tan Swee Lan v. Engku Nik binti Engku Muda & ors (1973) 2 MLJ page 187

40

In the first case the law is laid down that time begins to run for the purpose of limitation from the date of any infringement or threat of infringement of the Plaintiff's rights.



It is immaterial who was in actual possession of the said land.

In the High Court

It is submitted that the Plaintiff's rights were threatened.

No. 5  
Written submission for Defendant 29th December 1976 (cont'd)

- (i) When the transfer of the said land was made in 1935 or
- (ii) When the Defendant refused to retransfer the said land to his Father who then filed Seremban High Court Civil Suit No. 62 of 1950.

10

I would submit that the Plaintiff has failed in fact and in law and that the suit should be dismissed with costs to be paid by the Plaintiff personally.

Dated the 29th day of December, 1976.

N.A. Marjoribanks  
Counsel for the Defendant

This Written Submission on Behalf of the Defendant is filed by Messrs. Lovelace & Hastings, Solicitors for the Defendant whose address for service is at No. 57 Jalan Klyne, Kuala Lumpur.

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No. 6

WRITTEN SUBMISSION FOR PLAINTIFF

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IN THE HIGH COURT IN MALAYA AT SEREMBAN

CIVIL SUIT NO. 4 OF 1974

No. 6  
Written submission for Plaintiff 15th January 1977

BETWEEN

A.R. Lakshmanan Chettiar @  
PL.AR.L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar                      Plaintiff

30

AND

AR.PL. Palaniappa Chettiar  
of c/o No. 57 Klyne Street,  
Kuala Lumpur.    Defendant

WRITTEN SUBMISSION ON BEHALF OF THE PLAINTIFF

1. My Lord, before I proceed to write my Submission on behalf of the Plaintiff, upon

In the High  
Court

No. 6  
Written  
submission  
for  
Plaintiff  
15th January  
1977.  
(cont'd)

the pleadings in this Suit, allow me to  
comment on the Submission of the learned  
Counsel for the Defendant.

2. It is alleged that there were 3 main issues  
involved as follows:-
- (i) Whether the said land was part of the  
Hindu Joint Family or separate property  
of PL.AR. Arunasalam Chettiar  
(hereinafter referred to as "the  
Father") at the time of transfer by the  
Father to the Defendant. 10
  - (ii) If the said land was part of the Hindu  
Joint Family is the Plaintiff bound by  
the Judgment in Privy Council case  
between the Defendant and the Father  
reported in (1962) A.C. page 295.
  - (iii) If the Plaintiff not so bound is this  
present suit barred by the provisions  
of the Limitation Ordinance 1953.
3. (i) I crave leave to refer to Bundle "A"  
page 3, para. 3 of the Statement of  
Claim by the Father against the  
Defendant, in respect of the 40 acres,  
which reads:- 20
- "3. On 27th February 1935, the  
Plaintiff transferred the said land to  
his son the Defendant on trust that the  
Defendant should hold the said land in  
trust for the Plaintiff. No trust Deed  
was executed in view of the relationship  
between the Plaintiff and the Defendant  
and no consideration was paid for the  
said transfer". 30
- (ii) Then I crave leave to refer to page 8  
of the said Bundle "A" which is the  
Defence and in particular to paragraph  
2 thereof which reads as follows:-
- "2. The Defendant admits that prior to  
27th February 1935 the land held under  
Certificate of Title No. 4246 and  
referred to in paragraph 2 of the Plaint,  
stood registered in the name of the  
Plaintiff but states that he held the  
same in trust for Hindu Joint Family  
known as RM.P.K.P. AR. in which the  
Plaintiff, the Defendant and one  
Lakshmanan Chettiar were coparceners". 40

(iii) Then at page 12 of Bundle "A" at lines 12 - 18, the Father in his evidence depones as follows:-

"In 1934 at an auction I bought some land at Port Dickson. I paid \$8081.00 I produce my ledger supporting it Ex.P1".

(iv) At page 13 of Bundle "A" first line on top, the Father says:

10 "All property at Port Dickson is subject of a suit in India. (Rawson states that parties have agreed to accept decision of Indian Court on other properties)".

(v) Then on the same page in the 25th line from top, the Father deponed:

20 "PL.AR. is my firm. I am sole-proprietor. Account shows that my son was trustee. Had I received \$7000 it would appear in accounts.

I had no intention of making a present to my son. Sole object was to avoid having to disclose that I held more than 100 acres of rubber land".

(vi) Then at page 23 of Bundle "A" from the 3rd line from below, which is the Judgment, which reads as follows up to page 24 lines 1 to 31:-

30 "The Plaintiff therefore decided to put the property in his own son's name, so that his rubber land was ostensibly held by two different persons neither of whom held a holding exceeding 100 acres.

40 On 27th February 1935, the Plaintiff transferred the land to his son the Defendant. The Plaintiff gave evidence that the Defendant paid to him no consideration of any kind whatsoever. In the transfer, however, the Plaintiff acknowledged a sum of \$7000. The Plaintiff says that this was done for convenience in order to avoid delays in registering the transfer in the Land Office. A document of title was subsequently issued and is in the possession of the

In the High Court

No. 6  
Written submission for Plaintiff  
15th January 1977.  
(cont'd)

In the High  
Court

No. 6  
Written  
submission  
for  
Plaintiff  
15th January  
1977.  
(cont'd)

Plaintiff. The Plaintiff has been enjoying the income of the land since 1934 and has paid all quit rents due in respect of the land.

The Plaintiff's agent gave evidence in support of the Plaintiff and added that in 1938 the Defendant came to Malaya but never approached him concerning that land or its management.

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The Defendant's defence was, in effect, that the land was part of the property of a Hindu Joint Family and was held by the Plaintiff on trust for the Joint Family in which the Plaintiff, the Defendant and on Lakshmanan Chettiar were coparceners. The Defendant in his defence alleged that the Plaintiff had transferred this joint property to him for the sum of \$7,000. The Plaintiff's case had the ring of truth and in the absence of any evidence I regard it as probable. If the story of the Plaintiff is true then it is quite clear that the Plaintiff has practised a deceit on the public administration of the country in order to get benefit for himself."

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(vii) My Lord, in order to discharge the onus of proof that the said land was the Hindu Joint Family property, the Plaintiff in this suit the subject matter of these proceedings i.e. No. 4 of 1974, does not rely only on the Pleadings. Nor on the record in Seremban High Court Civil Suit No. 62 of 1950, which is Federation of Malaya Civil Appeal No. 34 of 1958 and which is now marked "Bundle 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 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 before your Lordship.

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(viii) The Judgment of the Supreme Court of India dated 25.10.1963 to which I crave leave to refer at page 21 of the said Judgment paragraph 2 thereof reads as follows:-

In the High  
Court  
No. 6  
Written  
submission  
for  
Plaintiff  
15th January  
1977.  
(cont'd)

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"Having carefully considered the contents of the letters, the conduct of the 1st Defendant in allowing himself to be assessed to tax qua the income of PL.AR. firm as a Hindu undivided family and the evidence about the commencement and consolidation of that business with the aid of funds which originally belonged to the larger joint family business, and viewed in the light of the character of the business which was of the same nature as the original family business, we have no doubt that the P.L.A.R. Port Dickson business was started and conducted by the first defendant for and on behalf of himself and his sons and was not his exclusive business".

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(ix) As regards the said letters exchanged between the Defendant as Plaintiff in that suit and the Father, referred to in the said Judgment, I urge your Lordship to refer to page 17 of the said Judgment from line 3 from top up to the whole of page 18 and up to the end of the top paragraph at page 19 thereof:-

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"Out of these letters one is of the year 1934 and the rest are of the year 1947 and onwards. In these letters the first defendant kept the plaintiff informed about the dealings and transactions of the P.L.A.R. business, especially about the management of the rubber estates and has given diverse directions about entries to be posted in the headquarters account. In many of these letters the estate and the business are referred to as "our business" and "our estate". Exhibit A-13 dated February 2, 1934 is a letter written by the first defendant to the plaintiff with which were enclosed the copies of the day book of the P.L.A.R. firm transactions. In that letter directions were given by the first defendant about cashing certain bundis and making payment of

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In the High  
Court

No. 6  
Written  
submission  
for  
Plaintiff  
15th January  
1977  
(cont'd)

certain debts. The plaintiff has also been asked to receive a quantity of paddy from A.R.M. Ramaswami Mudaliar. In the letter Ext. A-3 dated February 20, 1947 the first defendant wrote to the plaintiff informing him that "our estates are much over-grown with lalan (weeds). Only if they are removed, trees will grow well and rubber juice can be extracted". He then bewails that large amounts will have to be expended for clearing the weeds and assures the plaintiff that he will get the work done at a moderate expenditure. Directions have been given in that letter about certain payments to be made coupled with a request to attend to the prosecution of a suit pending in the Civil Court at Devakottai. In Ext. A-2 dated March 29, 1947 there is a reference to the proposed institution of a suit in Malaya in which the costs were estimated at about 10,000 dollars. The plaintiff is then informed by the first defendant that if rubber was extracted only from "our estate", a sum of 200 dollars may have to be spent, but in view of the prevailing low prices of rubber it was not desirable to do so. The first defendant then writes that it would be "beneficial to extract the rubber after removing the weeds" and proceeds to say that "we might even purchase other estates if we liked, we did not want to clear our other estates". The first defendant also informed the plaintiff that he desired to sell away the business and to receive as much as possible as soon as the moratorium was removed. In the letter Ext. A-4 dated April 22, 1947, he is bewailing the considerable expenditure required to be incurred for weeding and pruning the rubber estates. He has also informed the plaintiff that arrangements were being made for borrowing a loan of 5,000 Malayan dollars from a Chinese money-lender and if that were obtained, he would get the wild shrubs and weeds removed and retain the balance for necessary expenses and even send a part of it to India. Similarly in letter Ext. A-5 dated June 1, 1947

10 with which the copies of the day  
books from February to May 1947 were  
enclosed the Plaintiff was informed  
that if the accounts were looked  
into "the money we are getting, can  
be seen". He has further stated  
that there was great financial  
stringency in Malaya and it was not  
possible to borrow loans. There is  
also a note at the end of the letter  
in which it is stated "We cannot own  
and manage estates hereafter". In  
letter Ext. A-6 dated July 4, 1947  
there was also a reference to some  
financial transactions and the  
refusal of the Chinese money lender  
to advance monies, and to some  
petition for payment of compensation  
for loss sustained in 40 acres of  
20 rubber estate. The other letters  
proceed in the same vein: it is not  
necessary to set out in detail the  
contents thereof. It is sufficient  
to observe that the contents of the  
letters indicate a clear admission  
that the plaintiff was interested in  
the business carried on in Malaya.  
The business and the estate were  
frequently referred to as "our  
30 business" and "our estate", whereas  
in respect of matters which were  
personal to the first defendant the  
first person singular was used.

40 There is also the evidence about  
the assessment to income tax of the  
income from the P.L.A.R. business.  
It appears that originally the income  
of the business was assessed in India  
as the income of the individual  
business of the first defendant, but  
it is common ground that in the  
assessment year 1934-35 the income  
from the P.L.A.R. firm at Port Dickson  
was assessed in the hands of the first  
defendant in the status of a Hindu  
undivided family. Exhibit A-52 is the  
order of assessment dated March 31,  
1941 for the assessment year 1940-41.  
There is a similar order of assessment  
50 for the year 1941-42 Ext. A-54 and for  
the year 1942-43 Ext. A-55. In all  
these cases, assessment of the first  
defendant is made not as an  
individual but as a Hindu undivided  
family. Even as late as August 8,

In the High  
Court  
No. 6  
Written  
submission  
for  
Plaintiff  
15th January  
1977.  
(cont'd)

In the High  
Court

No. 6  
Written  
submission  
for  
Plaintiff  
15th January  
1977.  
(cont'd)

1950, by Ext. A-56 the Income-tax Officer had called upon the first defendant to prepare a true and correct statement of the family's total income and total world income during the previous assessment year. The income of the business having been originally assessed as the income of an individual, it could not without some proceeding taken by the first defendant be assessed thereafter as income of a Hindu undivided family. The first defendant has not been able to give any rational explanation about the circumstances in which the change came to be made. He merely stated that he was assessed as a joint Hindu family, but that assessment was not correct and that he that he had filed an application to the Income-tax Officer stating that by mistake he had been described as such and that it should be rectified, and that the application was pending on the date when he was examined in Court. In cross-examination he stated that the application for rectification of the income-tax assessment from the Hindu undivided family to an individual was made two or three years ago i.e., in the year 1950. He was unable to give the exact date of the application and even to produce a copy of the application made to the Income-tax Officer. This evidence also supports the case of the plaintiff that the income from the business was regarded as income of the joint family.

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Mr. Kesava Ayyangar appearing on behalf of the first defendant submitted that an admission before the Income-tax authorities that the income of the P.L.A.R. was for purposes of assessing income-tax to be regarded as income of a Hindu undivided family is not conclusive or even of much evidentiary value, and the true character of the business must be adjudged in the light of other circumstances. Counsel relied upon *Malik Harkishan Singh v. Malik Pratap Singh and others* (1) in which the Privy Council observed at p.190 that:

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(1) A.I.R. (1938) P.C. P.189.



"It is by no means a rare thing that a person makes a statement that he is a member of a joint with his relative, but has reason of his own for making that statement. It is not his statement, but his actings and dealings with the estate, which furnish a true guide to the determination of the question of the jointness or otherwise".

In the High Court

No. 6  
Written submission for Plaintiff  
15th January 1977  
(cont'd)

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(x) My Lord, until the said decision of the Supreme Court of India, to which the parties had agreed to abide by in the proceedings in this Honourable Court in Civil Suit No. 34 of 1951, the Father had throughout maintained that all the properties bought by him in Malaya were his personal acquisitions, as also maintained by him at page 13 of Bundle "A" "P.L.A.R. is my firm. I am sole proprietor".

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But the said Supreme Court in its said judgment dated 25.10.63 at page 21 paragraph 2 already stated in paragraph 3(ix) of this submission supra, the learned Judge SHAH J. at P.28 of the said judgment decreed, as follows up to page 29, top:-

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"(i) 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, and the plaintiff is entitled to a third share therein. It is declared that division of the assets of the business will be made as agreed by the parties before the High Court at Seremban in Civil Suit No. 34 of 1951 as recorded in the decree in the order of that Court on December 3, 1954, and further before the High Court of Madras in C.M.P. No.6218 of 1956. Appropriate directions to be obtained by the parties in suit No. 34 of 1951 from the High Court at Seremban.

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(ii) The decree directing an account

In the High  
Court  
                      
No. 6  
Written  
submission  
for Plaintiff  
15 January  
1977  
(cont'd)

of the 21 enums is vacated for  
it does not survive in view of  
the decree given to the  
plaintiff for partition of all  
the assets of the P.L.A.R. firm.

(iii) The decree of the High Court  
declaring that the first  
defendant is liable to account  
to the plaintiff for the sum of  
Rs. 36,686-2-9 debited in  
respect of his second marriage  
expenses is set aside.

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(iv) It is directed that the first  
defendant do pay to the  
plaintiff the "Asthi" amount of  
Rs. 3,800/- deposited with the  
first defendant on March 23,  
1906, together with interest at  
the appropriate rate applicable  
to the claim.

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In view of the divided success there  
will be no order as to costs of these  
appeals. Order as to costs of the  
High Court is maintained.

(Sd.) A.K. SARKAR, J.  
(Sd.) J.C. SHAH, J.  
(Sd.) RACHUBAR DAYAL, J.

October 25, 1963".

4. At page 2 of the written submission of the  
learned Counsel for the Defendant it is  
averred on top as follows:-

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(i) "No evidence has been adduced by the  
Plaintiff to prove that the said land  
is part of the Hindu Joint Family but  
there is ample evidence on record to  
show that the Father always claimed  
the said land to be his own separate  
property and that he transferred it  
in trust to the Defendant to evade the  
provisions of the Rubber Regulations  
No. 17 of 1934".

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(ii) The learned Counsel for the Defendant  
by so stating, appears to have been  
influenced by the authority relied on  
by him: i.e. In re Estate of T.M.R.M.  
Vengadasalam Chettiar Decd., (1941)  
(M.L.J.) Reprint Vol. P.120 et. seq.



In the High  
Court

No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977  
(cont'd)

- (i) See: Hindu Law by N.R. Raghavachariar  
6th Edn. Pages 381 - 382  
paragraph 324.
- (ii) The criterion in an alleged benami  
(trust) transaction is to consider  
from what source the money came with  
which the purchase was made?  
  
See: Dhurm Das Pandey & ors. v  
Mussumat Shama Soondri Dibiah 3  
Moore's Indian Appeals P.229 10  
and at P. 240; at P.242 top.
- (iii) My Lord at page 382 of the said text  
paragraph 324 continued, it reads  
"The maxim in pari delicto potior est  
conditio possidentis does not apply  
to such a case, the true principal  
applicable being that party must fail  
who first has to allege the fraud in  
which he participated (13)".  
  
See: Kotayya v Mahalakshamma A.I.R. 20  
(1933) MAd. P.457 right hand  
column; then at P.458 right  
hand column last 13 lines and  
the rest of the said case.
- (iv) The main question being whether a  
purchase and transfer of the property  
was one for the benefit of the joint  
family. (17)  
  
See: Girijanandini Devi & Others v.  
Bijendra Narain Choundhary A.I.R. 30  
(1967) S.C. P.1124 et seq and  
at P.1127 right hand column; at  
P.1129 right hand column and at  
P.1130 left hand column.
- (v) The English law of advancement does  
not apply in India, whether it be son  
or wife.  
  
See: Sura Lakshmiah Chetty & others  
v Kothandarama Pillai A.I.R.  
(1925) P.C. P.181 et seq. 40
8. The Judge, in the said Seremban High Court  
case No. 62 of 1950 by the Father for the  
retransfer of the said estate to him had  
concluded that the son did not pay any money  
for the transfer and the Father's story had a  
ring of truth, although he lost the suit  
because of illegality, the onus was on the

Defendant in this case the subject matter of this suit to prove that he paid \$7000 to the Father or is self acquired by him, which onus was never discharged. He the Defendant in this suit the subject matter of the proceedings herein, could not and have never discharged the onus that \$7000/- was paid by him. The judge had rejected his plea, when Father proved by "Ext. P1" that he had paid \$8081.

In the High  
Court  
No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977  
(cont'd)

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See: Rajangam Ayyar v Rajangam Ayyar A.I.R. (1922) P.C. P.265 et seq.

9. The learned Defence Counsel at page 2 of his submission in the last 2 lines and then to page 3 thereof says as follows:-

"I would refer to the Defence on page 8 and the Reply on page 10 and make the following observations:

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- (a) The pleadings in paragraphs 2 and 3 of the Defence are not reconcilable, more so as the Defendant counterclaimed on the basis that he was beneficially entitled to the said land.
- (b) The allegation that the said land was an asset of the Hindu Joint Family was considered by the learned trial Judge at page 24(20) of the Record but rejected.
- (c) In paragraph 2 of the Reply the Father denies that he held the said land in trust for Hindu Joint Family".

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10. (i) My Lord, it must be borne in mind that the Defendant's Counterclaim against his father for accounts from 1935 onwards was dismissed by the Privy Council.

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- (ii) The Defendant's own admission in paragraph 2 of his Defence is an admission against his own pecuniary interest and is binding on him. He cannot blow hot and cold, by pleading that he held in trust where it suited him and that it was his own now against the action by the brother, because of the Privy Council's decision in his favour.

In the High  
Court  
                      
No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977  
(cont'd)

- (i) See: Harihar Rajguru Mohapatra & Anor. v. Nabakishore Rajaguru Mohapatra & Others A.I.R. (1963) Orissa P.45 at Page 48 right hand column.
- (ii) See: Firm Malik Des Raj Faquir Chand v Firm Piara Lal Aya Ram & Ors. A.I.R. (1946) Lahore P.65 (DB) of 3 Judges. 10
- (iii) See: Kowsulliah Sundari Dasi & anor. v Mukta Sundari Dasi & ors. I.L.R. (1884 - 85) Vol. II P.589.
11. As regards the Father's will, this was executed on 19.3.66 which is after the ruling by the Supreme Court of India on 25.10.63, "that the P.L.A.R. Port Dickson business was started and conducted by the first defendant for and on behalf of himself and his sons and was not his exclusive business". 20
12. Therefore my Lord, after the partition had been confirmed by the Supreme Court of India as aforesaid the Defendant as Plaintiff in Seremban High Court Civil Suit No. 34 of 1951 on 18.6.64 filed a notice of Motion asking for 4 prayers, which Motion was set down for hearing on 11.7.64, when it was ordered that final judgment be entered for the Plaintiff in this suit as prayed pursuant to Consent Order of this Honourable Court dated the 3rd day of December 1954 and it was also ordered that a Receiver to be agreed between the parties and appointed within two weeks with liberty to apply and Defendants were also ordered to pay costs of this suit. 30 40
13. The Father appealed to the Federal Court of Malaysia, which was entitled Civil Appeal No. 61 of 1964, which was heard on 14.3.1966 and the Federal Court confirmed 4 items of the said High Court judgment i.e. final judgment but varied the order by adding the following:
- "(i) That the issues adjudicated upon by the Supreme Court of India in the Court of the Subordinate Judge, 50

Devakottai Originating Summons No.  
70 of 1950 be binding on the  
parties;

In the High  
Court

No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977  
(cont'd)

(ii) That the costs of this suit be taxed  
as between Solicitor and Client and  
paid out of the assets of the estate".

And the Federal Court allowed the said  
Father's Appeal.

- 10 14. Thereafter on 27.10.67 the Plaintiff filed a  
Summons in Chambers, in which he applied for  
the 1st Defendant to render accounts to him  
from the very inception of the business of  
PL.AR. firm in 1926, with liberty to falsify  
and surcharge and an enquiry to ascertain  
the amount found due to the Plaintiff from  
the said Joint Hindu Family estate to be  
paid by the Father, which came up for  
hearing on 3.11.67 and then adjourned to  
20 4.1.68 in Open Court and Judgment delivered  
by the Honourable MR. Justice Ismail Khan (as  
he then was) inter alia the Father to file  
and render accounts to the Defendant, as  
Plaintiff in that suit, of the said Father's  
management of his PL.AR business from the  
date of commencement i.e. from 1926, within  
two months from the date of the order dated  
21.3.68.
- 30 15. The Father Appealed to the Federal Court of  
Malaysia against the said order for accounts  
from the inception of PL.AR. firm in 1926,  
which was entitled Civil Appeal of X21 of  
1968, which was heard on 24.9.68 and  
Judgment delivered by the Federal Court on  
4.11.68 dismissing the said Appeal but  
granted three months to the 1st Defendant  
(Father) to file the said accounts from the  
said date.
- 40 16. The Father Appealed to His Majesty the Yang  
di-Pertuan Agong against the said order for  
accounts from 1926, which Appeal was  
entitled Privy Council No. 17 of 1969, and  
on 22nd July 1974, Lord Simon of Glaisdale,  
delivered Judgment allowing the said Appeal  
and ruled inter alia that from the time a  
member of a Joint Hindu Family made an  
unequivocal demand for partition from the  
Karta or Manager of such family, he can only  
ask for accounts from the date of demand for  
the said partition which date was ruled as  
50 15th July 1950. The said Judgment is  
reported and I crave your Lordship's leave

In the High  
Court

No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977  
(cont'd)

to refer thereto.

See: PL.AR. ARunasalam Chettiar & Ors. v.  
AR.PL. Palaniappa Chettiar (1974) 2  
M.L.J. PP. 133-134 in particular  
P.134 right hand column letters  
"B - D".

17. Alienation by the Manager or Karta, of Hindu Joint Family property is allowed under the personal law, which applied to the parties herein but such alienation is restricted for family necessities. 10

See: Hindu Law by N.R. Raghavachariar 6th Edn. P.311 et seq.

18. For instances of legal necessity, See: pages 327-329 of the said text.

19. As to Father's alienation when not binding on the son's interest.

See: pages 351 - 354 of the said text.

20. Son's remedies for wrongful alienation.

See: pages 367 - 368 of the said text. 20

21. The point taken by the learned Counsel for the Defendant in paragraph B at page 4 of his written Submission cannot stand because in effect it is tantamount to saying that the Defendant can plea the said Privy Council Judgment in his favour as a defence, such a stand does not avail against the Plaintiff in this suit, because by relying on the said Judgment the Defendant is pleading fraud on his part, which in law he cannot do. 30

See: The said text on Hindu Law pages 381 - 382. The text book by Mullah relied on by the learned Counsel is outmoded by subsequent changes in Hindu Joint Family Law in India.

22. Coming to the point of Limitation pleaded and submitted in the written Submission of the Counsel for Defence. My Lord, again I respectfully submit that in suits among Members of a Hindu Joint Family, a plea of Limitation cannot succeed. This plea was raised on behalf of the Father in his Appeal to the Federal Court and was rejected. 40



See: PL.AR. Arunasalam Chettiar & Ors. v  
AR.PL. Palaniappa Chettiar (1969) 1  
M.L.J. P.55 at P.58 right hand  
column letters "H - I" as per Ong  
(F.J.) as he then was.

In the High  
Court

No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977  
(cont'd)

- 10 23. I therefore respectfully submit that the Plaintiff has not failed in fact and in law to prove his case, BUT on the contrary he was in fact proved his case to the hilt instead of the usual standard on balance of probabilities.
24. My Lord, having commented on the said written Submission of the Counsel for the Defendant, allow me to address your Lordship on the pleadings of the parties herein and I shall endeavour to avoid any repetition by referring to my written Submission above and the material clause thereto.
- 20 25. (i) My Lord, I crave leave to refer to page 5 of the Bundle of Pleadings, paragraphs 1, 2 and 3 of the Plaintiff's Statement of Claim, the gist of which is as follows:-
- (ii) The Plaintiff says that he was a co-parcener with the Defendant, who was a separated member of the Hindu Joint Family known as PL.AR.Firm at Port Dickson.
- 30 (iii) That the Karta or Manager of the said Hindu Joint Family was PL.AR. Arunachalam Chettiar at all material times, which (family) was separated by order of Court dated 11.7.64 in the Seremban High Court in Civil Suit No. 34 of 1951.
- 40 (iv) That in or around 1934 the said Karta bought at a Public Auction 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 in area 40 acres 2r. 30 poles (hereinafter referred to as "the said land").
- (v) I crave leave to refer to page 8 of the Bundle of Pleadings, which is the Defence and in paragraph 1 thereof the Defendant denies the averments contained in the said Statement of claim.

In the High Court

No. 6  
Written submission for Plaintiff  
15th January 1977  
(cont'd)

(vi) In paragraph 2 of the said Defence it is averted that the said land, was not part of the Joint Family property. Impliedly he admits the existence of the Hindu Joint Family of "PL.AR." Firm at Port Dickson, but not the land being one of the properties thereof.

(vii) In paragraph 3 of his Defence he avers, that the said land was sold by the late Arunachalam Chettiar to him for \$7,000/- on 27.2.1935 and that the deceased had no title whatsoever to the said land and that the said land belonged to him exclusively.

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26. My Lord, in view of the Judgment of the Supreme Court of India dated 25.10.63, read with the Judgment in Seremban High Court Civil Suit No. 34 of 1951 which has twice gone to the Federal Court of Malaysia and ended up with the Judgment in Privy Council Appeal No. 17 of 1969 delivered on 22nd July 1974 and the said Judgment was registered with His Majesty, the Yang di-Pertuan Agong on 13th day of March 1975, the Defendant cannot be heard to say that he was not a coparcener of the Hindu Joint Family known as PL.AR. at Port Dickson, which assertion he had himself adverted against the Father and succeeded despite the Father's denials throughout, and that the Defendant was entitled to a 1/3 share therein. The said date 13.3.75 is the date on which the Prime Minister signed the said Judgment and order on behalf of His Majesty the Yang di-Pertuan Agong. The Privy Council decision is reported as stated above and repeated hereunder:

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(i) PL.AR. Arunasalam Chettiar & Ors. v AR.PL. Palaniappa Chettiar (1974) 2 M.L.J. P. 133 et seq.

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(ii) In the said Judgment it was confirmed that the PL.AR. and its assets belonged to the Hindu Joint Family and the Defendant was held to be entitled to a one third-share.

See: page 133 of the said report at right hand column, letters "B - G".

(iii) It was also confirmed that the matter fell to be decided by Mitakshara Law,

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as the personal law of the parties.

In the High  
Court

See: page 134 of the said report  
left hand column, letter "B"  
onwards.

No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977  
(cont'd)

- (iv) It was also confirmed that the Defendant (as Plaintiff/Respondent in that Appeal) was a co-parcener of the said Hindu Joint Family of PL.AR.

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See: page 134 aforesaid left hand column, letters "D - E".

- (v) In the said Judgment the contention of the 1st Appellant (i.e. the Father) that the PL.AR. firm and its business at Port Dickson, was his personal property was not accepted and that the Defendant herein (as the Respondent/Plaintiff) was correct in his contention that he had been an active and passive participant in the said Hindu Joint Family.

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See: the said page 134 right hand column, letters "A - B".

- (vi) See: PL.AR. Arunasalam Chettiar & Ors. v AR.PL. Palaniappa Chettiar (1969) 1 M.L.J. P.55 - P.58.

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27. My Lord, I crave leave to refer to paragraphs 4 and 5 of the Statement of Claim, the gist of which is that the said land was bought with the funds of the said Joint Family property whereby the said land became the said family's property.

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28. That as the said Karta owned about 99 acres of rubber lands already and in order to take advantage of the rubber restriction coupons the said Karta in or around 27.2.35 transferred the said land to the Defendant (son) free from any consideration whereby the Defendant became the Trustee of the said land for the said Hindu Joint Family and the transfer was registered in the Defendant's name on 8.3.35, when the Plaintiff was a minor only 6 years old.

29. That as from the date of transfer the said Karta retained Control of the said land as regards income and expenditure until the decision of the Privy Council on 31.1.62.

In the High  
Court

No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977.  
(cont'd)

The said Council holding that the said transaction being illegal on the ground that the Karta practised a deceit on the Public Administration and that damage lay where it fell and the said land is still registered in the name of the Defendant herein.

See: (1962) M.L.J. P. 143 et seq. to which I will refer later.

30. In reply to the said averments of the Plaintiff, the Defendant again in paragraph 4 of his defence says that he is not a coparcener with the Plaintiff in respect of the said land and that the Plaintiff is not entitled to any share in the said land or in the income derived from the said land and that the Defendant is not liable to render account to the Plaintiff. 10
31. In paragraph 5 of his Defence he alleges that the Privy Council has held, that the deceased Arunachalam Chettiar was not entitled to contend that the transfer dated 27.2.35 was fraudulent or ineffective and get any relief on that basis and that the Plaintiff is prevented in law from raising the issue once again. 20
32. My Lord, this stand taken by the Defendant can have no merit, because of various aspects of Hindu Joint Family property and irregular or improper alienation by a Karta, for the benefit of such family interse, of property belonging to such family was governed by Mitakshara Law. That such alienation did not bind the said Hindu Joint Family. 30
33. In the 1962 Privy Council Judgment, the said Council accepted the findings of the learned Judge, that the Defendant had paid nothing for the transfer as purchase price, as opposed to the Defendant's stand there that he paid \$7,000/-, and even the transfer and registration fees were accepted to have been paid by the Father as Karta. 40
34. See: Palaniappa Chettiar v. Arunasalam Chettiar (1962) M.L.J. P.143 at P.144 left hand column, letter "B"
- (i) See also left hand column, page 144 that the said Karta kept the title continued possession of the said land. He also received all income and paid

expenses. The Defendant as appellant paid nothing received nothing.

In the High Court

- (ii) See also the said Judgment at page 144 right hand column between letters "D - E".

No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977.  
(cont'd)

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"In order to avoid these regulations, the father decided to put the 40 acres into his son's name so that his rubber land was ostensibly held by two different persons, neither of whom held a holding exceeding 100 acres. "I had no intention," he said, "of making a present to my son. The sole object was to avoid having to disclose that I held more than 100 acres of rubber land".

20

- (iii) Then see also at page 145 left hand column, letters "A - B", even his counterclaim for an account of Income and Expenditure was dismissed.

- (iv) My Lord, the transfer of the said land by the Father to the Defendant, was not for any legal necessity as applied in Mitakshara law but was for purposes of benefit to the said Hindu Joint Family.

30

- (v) I crave leave to refer to page 327 of the said Hindu Law text, paragraph 292, stating what was legal necessity and benefit.

- (vi) Then I crave leave to refer to the same page but paragraph 293 which gives instances of legal necessity up to page 328.

40

- (vii) Then I crave leave to refer to page 329 of the said text, paragraph 294, which gives instances of family benefit. The said paragraph gives such instances which are very wide up to page 331 thereof and the preservation of property or the nature of quantum of yield, are regarded as beneficial.

See: case cited at Page 329 of the said text in note (18) Brijmohan v Sarabjit A.I.R. (1937) Oudh

No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977.  
(cont'd)

- (ix) The said transfer by the Father to the Defendant was not a sale for money and if it was then the proof is on the Defendant, which he had failed because the learned Judge in Bundle "A" rejected his defence and believed the Father.

As to Burden of proof see Page 10  
331 of the said Hindu law text  
paragraph 295.

35. My Lord, as to the law on the effect of Father's invalid alienation, I crave leave to refer to paragraph 306 at Page 351 of the said Hindu Law text. The phrase in the said paragraph "if the consideration for the alienation is untainted by illegality or immorality" does not mean "in pari delicto" as held by the Privy Council in the Appeal arising from Bundle "A". Illegality according to Hindu law is doing something against a pious and accepted custom. And for the alienee to stand in the Vendor's shoes he should have paid money.

- (i) See: Suraj Bunsu Koer (Mother and  
Guardian of the Infant Sona)

and

Sheo Proshad Singh & Others  
The Law Reports Indian Appeal 30  
vol. 6 P.88 and at PP.101 below  
& 102 top.

- (ii) Since the Defendant paid nothing to the Father and the transfer was for the preservation of the property for the benefit of the family which was governed by Mitakshara law of Hindu Joint Family property and the said alienation was not binding on the Plaintiff in this suit in respect of his own 1/3rd share and the 1/3rd share belonging to the Father should be an asset and included in as an asset in the list of assets and liabilities of the deceased father as such alienation was not binding on the Father also.

- (iii) For the Defendant to succeed that the said land, the subject of these

proceedings is his own then such acquisition should be without detriment to the joint family estate. Here it clearly is and therefore the said transfer is void as against the Plaintiff.

See: Sureshchandra v Bai Ishwari  
A.I.R. (1938) B0m. P.206.

In the High  
Court  
No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977.  
(cont'd)

10 36. My Lord, I crave leave to refer to paragraph 306 at Page 351 of the said text, "Effect of invalid alienation", read on up to 2nd note (8) at Page 352 i.e. from line 1 top to about 15 lines thereafter.

See: the said case quoted i.e. Palavarapu Lingayya & others v. Vuputuri Punnayya & Ors. A.I.R. (1942) (Mad) (FB) of 3 Judges P. 183 and P.184 et seq.

20 37. The above decision decides that if the Father alienated Family property, which alienation is thereafter set aside the Purchaser, should have back his proportionate sum from the Father's share, if any money had been paid by the purchaser to the Father. In this case the subject matter of these proceedings there is no question of purchase or sale, but benami or trust. Money was paid by the Father.

30 See: Mt. Bilas Kunwar v Desraj Ranjit Singh & Ors. A.I.R. (1915) P.C. P.96 at P.97 right hand column.

40 38. But in this case the High Court had held and accepted by the Privy Council, that the Defendant did not pay the \$7000/- to the Karta as alleged by him. Therefore nothing is due to the Defendant in respect of the Father's share therein. My further respectful Submission is that the Father did not have to give in his evidence the reason for transferring the said land to the Defendant (Son). All he had to do was that he trusted his Son. The reason for the said transfer involving illegality, would then have to be pleaded or evidence given by the Defendant and he would have had to disclose his own fraud and the maxim in pari delicto potior est conditio possidentis would not have been invoked against the Father. My Lord, I am only saying this in passing.

In the High Court  
                      
No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977.  
(cont'd)

39. Then I crave leave to refer to page 353 of the said Hindu Law text, top part the last 3 lines thereof:

"The position of the alienee from the father and the rights of the sons regarding the father's alienation has been summarised by Satyanarayana Rao, J. in Paramanayakam Pillai v. Sivaraman, (13) as follows:-"

See: Paramanayakam Pillai v Sivaraman (1952) 10  
A.I.R. (Mad) P.419 (F.B.) of 3JJ and at  
P.437 left hand column below,  
paragraph 37 to right hand column  
whole column, except the last  
paragraph thereof. The 7 rules as  
summarised by the said author of the  
said Hindu Law text at PP.353 to 354  
as to Father's alienation and the  
rights of the sons thereafter.

40. In the present suit before your Lordship there is no question of any payment, because of the said 1962 Privy Council decision accepting the lower Court's judgment that the Father's story had a ring of truth, except it was a deceit against Public Administration, which in passing I respectfully submit was done inadvertently or in his zeal to get back the land, which according to the authorities quoted above would have been the Father's Hindu Joint Property. Another reason appears to be that he wanted to disown or disinherit the Defendant because of the Son's disobedience, aggravated by his reply in Bundle "A" Page 7 and the consequential defence. My Lord, still in passing, I respectfully submit that the Father under such circumstances, if he had taken proper legal advice would have disinherited him before the said decision of the Supreme Court of India dated 25.10.63 and the Privy Council decision in the Father's 40 acres land claim i.e. Seremban High Court Civil Suit No. 62/50 i.e. Bundle "A".

(i) See: Page 487 of the said Hindu Law text paragraph 412 last 3 lines and paragraph 413.

(ii) See: Dharma v Amulyadhan I.L.R.(1906) Cal. Vol. 33 P.1119 et seq. although the said case is on Family law of the Dayabhaga



School, but the same principal applies to The Mitakshara School.

IN the High Court

No. 6  
Written submission for Plaintiff 15th January 1977.  
(cont'd)

41. My Lord, I now refer your Lordship to page 367, of the said Hindu Law text paragraphs 314 and 315 up to page 370 of the said text and the cases quoted in the notes thereto.

10 42. My Lord, I now crave leave to refer to paragraph 6 of the Statement of Claim as amended, the gist of which is that the Father's alienation of the 1/3rd share of the Plaintiff, which by virtue of his birth in the said Hindu Joint Family had belonged to him, is not binding on the Plaintiff.

See: Page 294 of the said Hindu Law text paragraph 265.

20 43. Further that the Plaintiff was entitled to half of the 1/3rd share which belonged to the Father as a result of the Partition action by the Defendant and the decision of the Supreme Court of India to which the parties had agreed to be bound. And each 1/3rd share must be equal. Therefore the 40 acres must come into the hotchpot.

See: Mst. Ratnabai v Bholadeo & ors. A.I.R. (1956) Nag. P.247.

(i) See: the said text on Hindu Law pages 875 - 876 and at Pages 878 - 879.

(ii) The Plaintiff is entitled to sue.

30 See: Sri Raja Bommadevara etc. v Sri Rajah etc etc Zancindar Guru. A.I.R. (1951) P.234.

(iii) My Lord, it is my duty to place on record also that at the instance of the Defendant, who is the Plaintiff in Seremban High Court Civil Suit No. 34 of 1951, this Honourable Court, on the 1st day of September 1964, inter alia made the following order:-

40 "IT IS ORDERED that T. Chellappah, Accountant, No. 22, Klyne Street, Kuala Lumpur, be and is hereby appointed the Receiver of PL.AR. Firm and to carry out the terms of the Judgment dated the 11th day of July 1964 AND IT IS

In the High  
Court

No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977.  
(cont'd)

ORDERED that the costs incurred  
in the appointment of Receiver  
to be borne by the Plaintiff  
till the disposal of the Appeal."

- (iv) After the said appointment on 19.9.64 the 1st Defendant, through his then Solicitors handed over the Index Book for collecting Rent, 1964 from July Ledger, 1964 from July 1964 Cash Book, Business Registration Certificate No. 15260 and 25 issue documents of Title, for lands belonging to the said Firm of PL.AR. 10
- (v) It is noticed from the accounts filed by the said Receiver, that the Quit Rents for the said 40 acres for the years of 1967 to the year 1974 in the total sum of \$2842.80 has been paid by the said Receiver, from the proceeds of PL.AR. Firm. 20
- (vi) The said payment though made without any order of Court must have been paid by the said Receiver at the request of the Defendant, which implies that the Defendant knows that the said property is the property of PL.AR. though registered in his name, having been transferred by the Father in 1935 to him in trust.
44. I crave leave to refer to the 1st prayer as amended for a declaration that the transfer of the said land by the Father herein is void as against the Plaintiff and an Order for division of the said land among the parties interested or a sale of the said land by Public Auction and distribution of the proceeds among the Plaintiff, Defendant as to 1/3rd share each and that the Father's 1/3rd share be added as an asset to the Schedule of Assets and Liabilities of the said Estate of the said deceased in Probate Suit in this Honourable Court No. 1 of 1973. 30
- See: the said text on Hindu Law P.351.
45. I refer to prayers 2 and 3 of the Plaintiff which pray for accounts from 1962 and also costs of this suit to be paid by the Defendant. 40

Dated this 15th day of January, 1977.

Sd: Illegible.

ATMA SINGH GILL  
Counsel for the Plaintiff

In the High  
Court

This Written Submission on behalf of the Plaintiff is filed by Messrs. Gill & Tang, Advocates & Solicitors of and whose address for service is at No. 1, Jalan Tunku Hassan, Seremban.

No. 6  
Written  
submission  
for Plaintiff  
15th January  
1977.  
(cont'd)

No. 7  
JUDGMENT

No. 7  
Judgment  
17th June  
1977

10 IN THE HIGH COURT IN MALAYA AT SEREMBAN

CIVIL SUIT NO. 4 OF 1974

Between

A.R. Lakshmanan Chettiar alias  
PL. AR.L Letchumanan Chettiar  
alias Ana Runa Leyna Lakshmanan  
Chettiar

Plaintiff

And

AR. PL. Palaniappa Chettiar

Defendant

J U D G M E N T

20 The Plaintiff in this case seeks a  
declaration that the transfer of a piece of 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 an area of 40 acres 2 roods  
30 poles (hereinafter referred to as the 40 acres)  
effected by one PL. AR Arunasalam Chettiar  
(deceased) in favour of the defendant on March 8,  
1935 is void as against the plaintiff. He seeks a  
30 further order for a division of the 40 acres among  
himself, the defendant and the estate of  
Arunasalam Chettiar or a sale of the 40 acres by  
public auction and distribution of the proceeds  
among the three parties. The plaintiff also prays  
for an order that the defendant do render accounts  
of the income and expenditure arising out of the  
management of the 40 acres and to pay to the  
plaintiff his share.

40 In his statement of claim the plaintiff avers  
that Arunasalam Chettiar was the Karta of a joint  
Hindu family of which the plaintiff and the  
defendant were coparceners. In 1934 Arunasalam

In the High  
Court

No. 7  
Judgment  
17th June  
1977.  
(cont'd)

Chettiar (hereinafter referred to as the karta) bought the 40 acres at a public auction from funds belonging to the Joint Hindu family whereby the 40 acres became part of the family property. However as the karta was already the owner of about 100 acres of rubber estate and in order to avoid the rubber regulations which were applicable to owners of rubber estates of over 100 acres the karta transferred the 40 acres to the defendant on February 27, 1935 without any consideration whereby the defendant became the trustee of the 40 acres for the joint Hindu family. This transfer was registered on March 8, 1935. The plaintiff further avers that from the date of the transfer the karta retained control of the 40 acres and received income from it which was brought into the karta's accounts but that due to some misunderstanding between them the karta sued the defendant in Civil Suit No. 62 of 1950 for the return of the 40 acres. He was successful in the High Court as well as on appeal in the Supreme Court but upon further appeal to the Privy Council the karta's claim to the 40 acres failed on the ground that he had practised a deceit on the public administration. The 40 acres thus remained registered in the name of the defendant. The plaintiff avers that the decision of the Privy Council may or may not be binding on the karta and the defendant in so far as the karta's one-third undivided share in the 40 acres is concerned but that the decision is not binding on the plaintiff as the 40 acres belonged to the joint family of which the plaintiff was a coparcener.

In his defence the defendant denies that the 40 acres were part of the joint Hindu family property and he avers that the land had been sold to him by the karta for \$7,000 on February 27, 1935 and thereafter the karta had no title whatsoever to the property. He states that the 40 acres now belong to him exclusively. The plaintiff is not a coparcener with the defendant in respect of the 40 acres and he is not entitled to any share in the land or in the income derived from the land. The defendant avers that he is not liable to render accounts to the plaintiff. The defendant further avers that Privy Council had held that the karta was not entitled to contend that the transfer of the 40 acres to the defendant was fraudulent or ineffective and therefore the plaintiff is now prevented in law from raising the same issue again. In any event the defendant avers that the plaintiff is barred by the law of limitation from claiming any share in the land.

No evidence was adduced in this case and the

parties rested their respective cases on the pleadings and the bundle of agreed documents which in fact is the appeal record in F.M. Civil Appeal No. 34 of 1958 arising from civil Suit No. 62 of 1950 between the defendant as the appellant and the karta as the respondent. It was this appeal which eventually went up to the Privy Council in respect of the 40 acres.

In the High  
Court

No. 7  
Judgment  
17th June  
1977.  
(cont'd)

10           There are several issues to be decided in  
this case. First whether the 40 acres were part  
of the joint family property or whether they were  
the separate property of the karta at the time of  
their transfer by the karta to the defendant. If  
the 40 acres were the separate property of the  
karta neither the plaintiff nor the joint family  
can have any claim to the 40 acres. Secondly if  
the 40 acres were part of the joint family property  
was the karta competent under Hindu law to alienate  
immovable property belonging to the joint family.  
20           Thirdly if the 40 acres belonged to the joint  
family is the plaintiff in the present proceedings  
bound by the decision of the Privy Council in  
Civil Suit No. 62 of 1950 between the defendant  
and the karta and lastly if the plaintiff is not  
so bound would the present suit be barred by the  
provisions of the Limitation Ordinance 1953.

30           Mr. Marjoribanks for the defendant submitted  
that the 40 acres were registered in the name of  
the karta at the time of the transfer to the  
defendant and it was for the plaintiff now to  
prove that the 40 acres were part of the joint  
Hindu family property. He said that no evidence  
had been adduced by the plaintiff to discharge this  
onus of proof but there was ample evidence on  
record to show that the karta always claimed the  
land to be his own separate property and that he  
transferred it in trust to the defendant to evade  
the provisions of the Rubber Regulations of 1934.  
40           In Civil Suit No. 62 of 1950 the karta sued the  
defendant in his private capacity and not in his  
capacity as the karta of the joint Hindu family.  
The karta in that suit had alleged that he  
transferred the 40 acres in trust and that the  
beneficial interest in the land was always vested  
in himself.

50           Mr. Marjoribanks conceded that in Civil  
Suit No. 62 of 1950 the defendant had pleaded that  
the 40 acres were the assets of the joint Hindu  
family. However this averment was rejected by the  
trial Judge. When the karta bought the 40 acres  
in 1934 he entered the transaction in his own  
ledger and not in the ledger of the joint Hindu  
family. The karta had no intention of making a  
present to the defendant. The 40 acres were the

In the High Court

No. 7  
Judgment  
17th June  
1977.  
(cont'd)

karta's separate property capable of being dealt with as he chose and they were not the assets of the joint Hindu family of which he had no power of disposal.

Mr. Marjoribanks next submitted that if it was held that the 40 acres were assets of the joint Hindu family then the judgment of the Privy Council was binding on the plaintiff as being res judicata. Judgment against the karta was binding on the plaintiff as a coparcener and although the karta may not have had the right under Hindu law to dispose of the 40 acres nevertheless he did so and the judgment was final. Lastly Mr. Marjoribanks submitted that if it was held that the 40 acres were assets of the joint Hindu family and that the Privy Council decision was not binding on the plaintiff then the plaintiff's claim was barred by limitation under section 9(1) of the Limitation Ordinance 1953. The plaintiff was a minor aged 6 years at the time of the transfer of the 40 acres by the karta to the defendant on March 8, 1935 and the plaintiff's right of action to have the transfer declared void as against him could have been brought when he was 21 years of age 1950. Being a minor he would be given an extra 6 years within which to file his action by virtue of section 24(1) of the Limitation Ordinance which would bring the period to 1956 but the plaintiff did not file the action until January 4, 1974 which was about 18 years after 1956. Mr. Marjoribanks submitted that for the purpose of limitation time began to run from the date of any infringement or threat of infringement of the plaintiff's rights. He submitted that the plaintiff's rights were threatened when the transfer of the 40 acres was made in 1935 or when the defendant refused to retransfer the 40 acres to the karta who had then to file Civil Suit No. 62 of 1950 to recover the 40 acres.

Mr. Atma Singh Gill for the plaintiff submitted that the 40 acres belonged to the joint Hindu family and were not the separate property of the karta. He referred to the defence filed in Civil Suit No. 62 of 1950 wherein the defendant had made an admission that the 40 acres registered in the name of the karta were held in trust for the joint Hindu family in which the karta, the plaintiff and the defendant were coparceners. It was submitted that the Privy Council decision on appeal in that suit was not binding on the plaintiff and that the transfer of the 40 acres by the karta to the defendant in 1935 was invalid for not having been made for the benefit of the joint family. Mr. Atma Singh Gill submitted further that during the

hearing of Civil Suit No. 62 of 1950 the parties had agreed to accept the decision of the Indian Courts on properties in Port Dickson which together with the family properties in India were the subject-matter of a suit between the same parties in India. The decision of the Supreme Court of India was made on October 25, 1963 declaring that the PL. AR. firm at Port Dickson was not the sole proprietorship of the karta but belonged to the joint Hindu family. On the question of limitation Mr. Atma Singh Gill submitted that the plea of limitation cannot succeed in this case by virtue of section 22 (1) (b) of the Limitation Ordinance which provides that no period of limitation shall apply to an action by a beneficiary under a trust to recover trust property or the proceeds thereof in the possession of the trustee.

In the High  
Court

No. 7  
Judgment  
17th June  
1977  
(cont'd)

20 The background leading to the present suit may be stated briefly. The plaintiff and the defendant are the sons of the karta - the plaintiff by his second wife Meenakshi and the defendant by his first wife Lakshmi who dies in 1922. Until about the year 1923 the karta was a member of his earlier joint Hindu family which was carrying on a money-lending business in Kuala Lumpur and Port Dickson in the name of K.M.P.L. firm. The accounts of the family business were maintained by the firm in these two towns with copies thereof sent to

30 Kandanoor, India, where the accounts were entered in the family name of R.M.P.K.P. In the course of their business in Kuala Lumpur and Port Dickson the family acquired several immovable properties including rubber estates. In about the year 1923 a division of the joint family assets between the karta and his brothers commenced and on January 1, 1927 the karta obtained as his share of the assets in Port Dickson enums (outstandings) valued at \$24,056, a house and some rubber estates valued at \$96,000.

40 The karta also took over liability for certain debts of the joint family and thereby his share in the assets of the Port Dickson firm was equalised. On August 22, 1926, even before the division of the family assets was completed, the karta started a money-lending business in the name of PL.AR. with the aid of funds withdrawn from the K.M.P.L. firm and other borrowings. On January 3, 1927 he brought into this business the enums, the house and the rubber estates as assets of the business. Copies

50 of the day-book entries of PL.AR. firm were sent from Port Dickson to Kandanoor and duly entered in books maintained at Kandanoor. The defendant was residing at Kandanoor and attended to the postings of the entries and certain transactions in India relating to the Port Dickson business.

In the High Court

No. 7  
Judgment  
17th June  
1977.  
(cont'd)

In 1949 the relations between the karta and the defendant were strained the karta having claimed that the PL.AR. business belonged to him exclusively. The defendant then filed a suit (O.S. No. 70 of 1950) against the karta, the plaintiff and Meenakshi in the Court of the Subordinate Judge at Devakottai, India. The suit finally ended up in the Supreme Court of India where it was held inter alia that the PL.AR. firm in Port Dickson and the assets thereof were the estate of the joint Hindu family consisting of the karta, the plaintiff, the defendant and Meenakshi and that the defendant was entitled to a third share therein. Shah J. in his judgment observed that with regard to the defendant's claim relating to his share in the assets of the PL.AR firm in Port Dickson on the footing that it was a joint family business the court was faced with a preliminary difficulty in that the business was carried on in a foreign State, the assets of that business included immovables and by the rules of private International Law no claim may be maintained in a court in India for partition of immovables outside the jurisdiction. His Lordship said that the defendant had instituted a suit in the High Court at Seremban (No. 34 of 1951) for a declaration that the defendant had an interest in the PL.AR. firm in Port Dickson as a member of a joint Hindu family consisting of himself, the karta and the plaintiff and for partition of the assets of the joint family. In that suit it was agreed by the parties that they would abide by any final decree or decision of the courts in India on the issue arising in O.S. No.70 of 1950 in the Court of the Subordinate Judge at Devakottai as to whether the PL.AR. firm at Port Dickson and the assets thereof belonged to a joint Hindu family as alleged by the defendant or were the separate property of the karta and the plaintiff as claimed by them. As a result of this agreement the Seremban High Court ordered that all further proceedings in Civil Suit No. 34 of 1951 be stayed until the final determination of O.S. No. 70 of 1950 in the Indian Courts. Shah J. said -

"..... Ordinarily the Courts in India have, by the rules of private International Law, no authority to adjudicate upon title to immovable property situate outside India. But the defendants having agreed in Suit No. 34 of 1951 before the Supreme Court of the Federation of Malaya, the parties applied by C.M.P. No. 6218 of 1956 in the High Court at Madras that the issue relating to the title to the assets of the PL.AR. firm be decided.



The High Court was therefore expressly invited by the parties to give a decision on the merits of the dispute in the light of the evidence led before the Trial Court and the High Court agreed to decide the disputed questions. Before us also, counsel for the parties have adopted the same attitude, and have asked us to decide the appeal on the merits, including the dispute as to title to immovables in Port Dickson."

In the High Court

No. 7  
Judgment  
17th June  
1977.  
(cont'd)

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In 1950 the karta filed Civil Suit No. 62 of 1950 in the High Court at Seremban against the defendant claiming a retransfer of the 40 acres to himself which he had transferred to the defendant in 1935. In his statement of claim the karta said that he was the registered owner of the 40 acres in Port Dickson which was cultivated with rubber and that on February 27, 1935 he transferred the 40 acres to his son the defendant in trust for himself. The defendant disputed the karta's claim denying that the karta had transferred the 40 acres to him in trust. He alleged that he in fact had purchased the 40 acres from the karta for a sum of \$7,000 on February 27, 1935. The defendant also alleged in his statement of defence that before the date of the transfer the 40 acres were registered in the name of the karta but that they were held by the karta in trust for the joint Hindu family in which the karta, the defendant and the plaintiff were coparceners.

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In his evidence in the High Court in Civil Suit No. 62 of 1950 the karta said that in 1934 he had bought the 40 acres at an auction for the sum of \$8,081 and he produced what he described as his ledger in support. He said that about six months later he transferred the 40 acres to the defendant in order to avoid the rubber regulations then in force which were applicable to persons holding rubber estates of more than 100 acres. The karta said that when he bought the 40 acres he was already the owner of some 99 acres of rubber estate. He said that he had been receiving all the income from the 40 acres and had paid out the expenses. The defendant took no part of the income nor did he incur expenses. He said further that the 40 acres were not joint property but were his self-acquired property. All the property in Port Dickson he said was the subject-matter of litigation in India. (The record in the proceedings in Civil Suit No. 62 of 1950 disclose that the parties had agreed as they did in Civil Suit No. 34 of 1951 referred to in the judgment of Shah J. to accept the decision of the Indian Court).

In the High  
Court

No. 7  
Judgment  
17th June  
1977  
(cont'd)

The karta succeeded in his claim in Civil Suit No. 62 of 1950 in the High Court as well as on appeal to the Supreme Court of the Federation of Malaya. However on further appeal to the Privy Council (Palaniappa Chettiar v. Arunasalam Chettiar - (1962) A.C. 294) it was held that the karta was not entitled to a re-transfer of the 40 acres. The karta had practised a deceit on the public administration and applying the dictum of Lord Mansfield in the case of Holman v. Johnson (1) the Privy Council refused to "lend its aid to a man who founds his cause of action upon an immoral or an illegal act". 10

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 PL.AR. and that they were not the separate property of the karta. When the karta commenced his money-lending business in the name of PL.AR. on August 22, 1926 he did so with funds withdrawn from the earlier joint family firm of K.M.P.L. which was then in the process of being partitioned and after the division of the movable and immovable properties the karta bought his share into the PL.AR. firm on January 3, 1927. The ledger which the karta had produced during the hearing of Civil Suit No. 62 of 1950 was the PL.AR. 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 PL.AR. 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. In so far as the 40 acres are concerned the inferences which 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 PL.AR. and were not the separate property of the karta. In his judgment Shah J. said - 20 30 40

" In considering whether the business started by the first defendant (karta) at Port Dickson was of the joint family of himself and his sons, besides the fact that the business was of the same type as was originally carried on by the larger joint 50

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(1) (1775) 1 Cowp. 341, 343

family in the name of K.M.P.L. And that it was commenced and consolidated with the aid of funds of the joint family of K.M.P.L. there are two other pieces of evidence which must be taken into consideration. Certain letters written by the first defendant (karta) to the plaintiff (defendant) who was at Kandanoor disclose the first defendant's (karta) attitude towards the PL.AR. business. Out of these letters one is of the year 1934 and the rest are of the year 1947 and onwards. In these letters the first defendant (karta) kept the plaintiff (defendant) informed about the dealings and transactions of the PL.AR. business, especially about the management of the rubber estates and has given diverse directions about entries to be posted in the headquarters account. In many of these letters the estate and the business are referred to as "our business" and "our estate". Exhibit A-13 dated February 2, 1934 is a letter written by the first defendant (karta) to the plaintiff (defendant) with which were enclosed the copies of the day book of the PL.AR. firm transactions. In that letter directions were given by the first defendant (karta) about cashing certain hundis and making payment of certain debts. The plaintiff (defendant) has also been asked to receive a quantity of paddy from A.R.M. Ramaswami Mudaliar. In the letter Exhibit A-3 dated February 20, 1947 the first defendant (karta) wrote to the plaintiff (defendant) informing him that "our estates are much overgrown with lalang (weeds). Only if they are removed, trees will grow well and rubber juice can be extracted". He then bewails that large amounts will have to be expended for clearing the weeds and assures the plaintiff (defendant) that he will get the work done at a moderate expenditure.

Directions have been given in that letter about certain payments to be made coupled with a request to attend to the prosecution of a suit pending in the Civil Court at Devakottai. In Exhibit A-2 dated March 29, 1947 there is a reference to the proposed institution of a suit in Malaya in which the costs were estimated at about 10,000 dollars. The plaintiff (defendant) is then informed by the first defendant (karta) that if rubber was extracted only from "our estate", a sum of 200 dollars may have to be spent, but in view of the prevailing low prices of rubber

In the High  
Court

No. 7  
Judgment  
17th June 1977  
(cont'd)

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In the High  
Court

No. 7  
Judgment  
17th June  
1977  
(cont'd)

it was not desirable to do so. The first defendant (karta) then writes that it would not be "beneficial to extract the rubber after removing the weeds" and proceeds to say that "we might even purchase other estates if we liked, we did not want to clear our other estates". The first defendant (karta) also informed the plaintiff (defendant) that he desired to sell away the business and to receive as much as possible as soon as the moratorium was removed. In the letter Exhibit A-4 dated April 22, 1947, he is bemoaning the considerable expenditure required to be incurred for weeding and pruning the rubber estates. He has also informed the plaintiff (defendant) that arrangements were being made for borrowing a loan of 5,000 Malayan dollars from a Chinese money-lender and if that were obtained, he would get the wild shrubs and weeds removed and retain the balance for necessary expenses and even send a part of it to India. Similarly in letter Exhibit A-5 dated June 1, 1947 with which the copies of the day books from February to May 1947 were enclosed the plaintiff (defendant) was informed that if the accounts were looked into "the money we are getting, can be seen". He has further stated that there was great financial stringency in Malaya and it was not possible to borrow loans. There is also a note at the end of the letter in which it is stated "We cannot own and manage estates hereafter". In letter Exhibit A-6 dated July 4, 1947 there was also a reference to some financial transactions and the refusal of the Chinese money-lender to advance monies and to some petition for payment of compensation for loss sustained in 40 acres of rubber estate. The other letters proceed in the same vein: it is not necessary to set out in detail the contents thereof. It is sufficient to observe that the contents of the letters indicate a clear admission that the plaintiff (defendant) was interested in the business carried on in Malaya. The business and the estate were frequently referred to as "our business" and "our estate", whereas in respect of matters which were personal to the first defendant (karta) the first person singular was used".

The 40 acres of rubber estate referred to in the above passage are the 40 acres in the present suit. It is quite clear from the findings by the Supreme Court of India that the karta had

throughout regarded the rubber estates as belonging to the joint Hindu family firm of PL.AR. and that the defendant knew about this as he was being kept informed of the dealings of the firm in Port Dickson by the karta. The karta of a joint Hindu family has the power to alienate property belonging to the joint family for valuable consideration but he may do so only for the purpose of legal necessity or for the benefit of the estate. 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 held more than 100 acres of rubber land". In the memorandum of transfer the karta had acknowledged that the defendant had paid him \$7,000 for the 40 acres but as the trial Judge had found the defendant had in fact paid nothing and this finding of the trial court was accepted in the Privy Council. The 40 acres transferred by the karta to the defendant in 1935 were thus held by the defendant only in name and he is deemed in law to have held them in trust for his joint Hindu family.

I think it is pertinent also to point out that the defendant's stand here is diametrically opposite to his stand in Civil Suit No. 62 of 1950. He now avers that at the time when the karta transferred the 40 acres to him in 1935 they were the separate property of the karta and not part of the assets of the joint family firm of PL.AR. whereas in his statement of defence in Civil Suit No. 62 of 1950 which was filed against him by the karta for a retransfer of the 40 acres the defendant stated that the 40 acres were held by the karta in trust for the joint Hindu family in which the karta, the plaintiff and the defendants were coparceners. 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.

I am also of the view that the Privy Council decision in the case of Palaniappa Chettiar v. Arunasalam 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

In the High  
Court

No. 7  
Judgment  
17th June  
1977  
(Cont'd)

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 (2)). 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. AR. In the circumstances I hold that the Privy Council decision cannot operate as res judicata against the plaintiff or against the joint family.

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On the issue of limitation I agree with Mr. Atma Singh Gill that this being an action by a beneficiary to recover trust property from a trustee 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."

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The plaintiff's first prayer at the end of his statement of claim is for a declaration that the transfer of the 40 acres by the karta to the defendant is void as against the plaintiff. Secondly the plaintiff seeks an order for the division of the 40 acres or a sale of the land and distribution of the proceeds among the coparceners. I am afraid I do not quite appreciate the first prayer for it seems to me to be somewhat out of tune with the plaintiff's averments in the state of claim. I do not consider it appropriate nor do I

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(2) (1954) M.L.J.131

think that there is any evidence to make an order in terms of the first prayer. Declaring the transfer void will take the plaintiff nowhere. What the plaintiff really wants according to his averments in the statement of claim is a declaration that the defendant holds the 40 acres in trust for the joint Hindu family and in terms of the second prayer that the 40 acres be brought into the family property for distribution.

In the High  
Court

No. 7  
Judgment  
17th June  
1977  
(cont'd)

10 In the circumstances therefore I hold and declare that the 40 acres registered in the name of the defendant are held in trust by him for and on behalf of the joint Hindu family consisting of the plaintiff, the defendant and Meenakshi and consisting also of the karta until his death. I further order that the 40 acres be brought into the joint Hindu family and divided equally between the plaintiff, the defendant and the karta as coparceners or that the 40 acres be sold by public  
20 auction and the proceeds thereof distributed equally among the three coparceners. The one-third share of the deceased karta is to be added as an asset of the karta's estate. I also order that the defendant shall render accounts of the income and expenditure arising out of his management of the 40 acres and that an inquiry into the accounts be held by the Senior Assistant Registrar. Costs of the proceedings to be paid by the defendant to the plaintiff.

30 Dated this 17th day of June, 1977.

Sd: Ajaib Singh  
(AJAIB SINGH)  
JUDGE,  
HIGH COURT, MALAYA,  
SEREMBAN

Atma Singh Gill, Esq. .. for Plaintiff

Solicitors  
Gill & Tang, Seremban.

N.A. Marjoribanks, Esq. .. for Defendant

40 Solicitors  
Lovell & Hastings, Kuala Lumpur.

In the High  
Court

No. 8  
Order  
17th June  
1977

No. 8

O R D E R

IN THE HIGH COURT IN MALAYA AT SEREMBAN

CIVIL SUIT 1974 No. 4

Between

A.R. Lakshmanan Chettiar @  
PL.AR. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar                      Plaintiff

And

AR.PL. Palaniappa Chettiar    10  
of c/o No. 57 Klyne Street,  
Kuala Lumpur.    Defendant

BEFORE THE HONOURABLE MR. JUSTICE AJAIB

SINGH, JUDGE, HIGH COURT, MALAYA              IN OPEN COURT

THIS 17TH DAY OF JUNE 1977

O R D E R

THIS SUIT coming up for hearing in the presence of Mr. Atma Singh Gill of Counsel for the Plaintiff and Mr. N.A. Marjoribanks of Counsel for the Defendant on the 17th day of December, 1976 and in the presence of the Plaintiff and the Defendant herein AND UPON HEARING both Counsel aforesaid that they did not intend to adduce any evidence respectively and that the parties rested their respective cases on the pleadings and the Bundle of Agreed Documents marked "A" and that Mr. N.A. Marjoribanks would submit and serve his Written Submission within fourteen days therefrom Mr. Atma Singh Gill would submit and serve his written submission within 14 days thereafter IT WAS ORDERED that this case be adjourned for Judgment to a date to be fixed AND THIS SUIT COMING UP FOR JUDGMENT this day IT IS HEREBY DECLARED 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 of 40 acres 2 roods 30 poles (hereinafter referred to as "the 40 acres") registered in the name of the Defendant is held in trust by him for and on behalf of the Joint Hindu Family consisting of the Plaintiff, the Defendant and Meenakshi and consisting also of the Karta named Arunasalam Chettiar until his death, AND IT IS ORDERED that the 40 acres be brought into the JOINT HINDU FAMILY and divided equally between the Plaintiff,



10 the Defendant and the Karta as coparceners AND IT IS ORDERED that the 40 acres be sold by Public Auction and the proceeds thereof be distributed equally among the three co-parceners, AND IT IS ORDERED that the one-third share of the deceased Karta is to be added as an asset to the Kartas' estate AND IT IS ORDERED that the Defendant to render accounts of the income and expenditure arising out of his management of the 40 acres AND IT IS ORDERED that an inquiry into the accounts be held by the Senior Assistant Registrar of this Court AND FINALLY IT IS ORDERED that the costs of the proceedings herein be paid to the Defendant to the Plaintiff.

In the High Court  
No. 8  
Order  
17th June  
1977  
(cont'd)

GIVEN under my hand and the Seal of the Court this 17th day of June, 1977.

L.S. SGD. DAPHNE R.N. SEBASTIAN  
Senior Assistant Registrar  
High Court, Seremban.

20 This Order is taken out by M/s. Gill & Tang, Advocates & Solicitors for the Plaintiff of and whose address for service is at No. 1 Jalan Tunku Hassan, Seremban.

No. 9

Notice of Appeal

In the Federal Court  
(Appellate Jurisdiction)

IN THE FEDERAL COURT IN MALAYSIA  
(APPELLATE JURISDICTION)

No. 9  
Notice of Appeal - 12th July 1977

FEDERAL COURT CIVIL APPEAL NO. 149 OF 1977

Between

AR. PL. Palaniappa Chettiar Appellant

And

30 A.R. Lakshmanan Chettiar @  
PL.AR.L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar Respondent

(In the Matter of Civil Suit No. 4  
of 1974 in the High Court in Malaya  
at Seremban)

Between

A.R. Lakshmanan Chettiar @  
PL.AR.L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar Plaintiff

In the Federal  
Court  
(Appellate  
Jurisdiction)

And

AR.PL. Palaniappa Chettiar

Defendant

NOTICE OF APPEAL

No. 9  
Notice of  
Appeal - 12th  
July 1977  
(cont'd)

TAKE NOTICE that AR.PL. Palaniappa Chettiar, the Appellant/Defendant being dissatisfied with the decision of the Honourable Mr. Justice Ajaib Singh, given at the High Court at Seremban on the 17th day of June, 1977 appeals to the Federal Court against the whole of the decision.

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Dated this 12th day of July, 1977.

Sd. Lovelace & Hastings.  
Appellant's Solicitors

To: The Chief Registrar,  
Federal Court,  
Kuala Lumpur.

The Senior Assistant Registrar,  
High Court, Malaya,  
Seremban

The Respondent and/or his Solicitors,  
Messrs. Gill & Tang,  
No. 1 Jalan Tunku Hassan,  
Seremban.

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The address for service of the Appellant is at Messrs. Lovelace & Hastings, No. 57 Jalan Klyne, Kuala Lumpur 01-21, Selangor.

No. 10  
Memorandum  
of Appeal  
25th August  
1977.

No. 10

Memorandum of Appeal

IN THE FEDERAL COURT IN MALAYSIA  
(APPELLATE JURISDICTION)

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FEDERAL COURT CIVIL APPEAL NO. 149 OF 1977

BETWEEN

AR.PL. Palaniappa Chettiar

Appellant

AND

A.R. Lakshmanan Chettiar @  
PL.AR.L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar Respondent

In the Federal  
Court  
(Appellate  
Jurisdiction)

(In the Matter of Civil Suit No. 4  
of 1974 in the High Court in  
Malaya at Seremban)

No. 10  
Memorandum  
of Appeal  
25th August  
1977.  
(cont'd)

BETWEEN

10 A.R. Lakshmanan Chettiar @  
PL.AR.L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar Plaintiff

AND

AR.PL. Palaniappa Chettiar Defendant)

MEMORANDUM OF APPEAL

AR. PL. PALANIAPPA CHETTIAR the Appellant  
abovenamed appeals to the Federal Court against  
the whole of the decision of the Honourable Mr.  
Justice Ajaib Singh given at the High Court at  
Seremban on the 17th day of June, 1977 on the  
following grounds:

- 20 1. The learned Judge erred in law and in fact  
in holding that the land held under Certificate of  
Title No. 4246 for Lot 926 in the Mukim of Si-Rusa  
in the District of Port Dickson was part of the  
Joint Hindu Family property as the Plaintiff failed  
to discharge the burden of proof.
- 30 2. The Learned Judge erred in law and in fact in  
having made use of the Judgment of the Supreme  
Court of India dated the 25th day of October, 1963  
to arrive at his decision when the said Judgment  
was not put in evidence at the hearing.
3. The Learned Judge erred in fact and in law  
in holding that the Privy Council Judgment dated  
31.1.62 is not binding on the Plaintiff.
4. The Learned Judge erred in fact and in law  
in holding that the Defendant is deemed to have  
held the forty (40) acres of land in trust for his  
Joint Hindu Family, in the absence of any  
supporting evidence.
- 40 5. The Learned Judge erred in fact and in law  
in holding that the Defendant is not barred by the  
law of limitation by virtue of the provisions of  
Section 22(1)(b) of the Limitation Ordinance 1953  
as the said section does not apply in this case.

In the Federal  
Court  
(Appellate  
Jurisdiction)

No. 10  
Memorandum  
of Appeal  
25th August  
1977.  
(cont'd)

6. In any event the Learned Judge erred in fact and in law in ordering that the forty (40) acres be brought into the Joint Hindu Family and divided equally between the Plaintiff, the Defendant and the Karta (deceased) as coparceners for the following reasons:

- (i) The Plaintiff could only claim his share, if any, in the forty (40) acres of land and has no locus standi to claim the Karta's one-third share on behalf of the Karta's estate. 10
- (ii) The Karta was bound by the Privy Council Judgment dated 31.1.62 and his one-third share in the forty (40) acres of land cannot be added as an asset of the Karta's estate.

Dated this 25th day of August, 1977.

Sgd. Lovelace & Hastings  
Solicitors for the Appellant

No. 11  
Judgment  
7th October  
1978

NO. 11

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J U D G M E N T

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 149 of 1977

Between

AR.PL. Palaniappa Chettiar

Appellant

and

A.R. Lakshmanan Chettiar @

PL.AR.L. Letchumanan Chettiar @

Ana Runa Leyna Lakshmanan Chettiar

Respondent 30

(In the Matter of Civil Suit No. 4  
of 1974 in the High Court in  
Malaya at Seremban

BETWEEN

A.R. Lakshmanan Chettiar @  
PL.AR.L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar      Plaintiff      In the Federal  
Court  
(Appellate  
Jurisdiction)

AND

AR.PL. Palaniappa Chettiar      Defendant)      No. 11  
Judgment  
7th October  
1978.  
(cont'd)

CORAM: Gill, Chief Justice, Malaya  
Syed Othman, Judge, Federal Court,  
Abdul Hamid, Judge, High Court.

JUDGMENT OF GILL, C.J.

10            This is an appeal by the Defendant in Civil  
Suit No. 4 of 1974 in the High Court at Seremban,  
AR.PL. Palaniappa Chettiar, from a judgment of  
Ajaib Singh J. whereby it was declared that the  
land held under Certificate of Title No. 4246 for  
Lot No. 916 in the Mukim of Si-Rusa in the District  
of Port Dickson in the State of Negri Sembulan  
comprising of 40 acres 2 roods 30 poles registered  
in the name of the Defendant is held by him in  
trust for and on behalf of the Joint Hindu Family  
20            consisting of himself, A.R. Lakshmanan Chettiar  
alias PL.AR. Letchumanan Chettiar alias Ana Runa  
Leyna Lakshmanan Chettiar (the Plaintiff) and  
Meenakshi and consisting also of the Karta named  
PL.AR. Arunasalam Chettiar until his death on 19th  
August, 1972, following which declaration the  
consequential orders made were (a) that the 40  
acres be brought in to the Joint Hindu Family and  
divided equally between the Plaintiff, the Defendant  
and Karta as coparceners, (b) that the 40 acres be  
30            sold by public auction and the proceeds thereof be  
distributed equally among the three coparceners,  
(c) that the one-third share of the deceased Karta  
be added as an asset to Karta's Estate, (d) that  
the Defendant do render accounts of the income and  
expenditure arising out of his Management of the  
40 acres, and (e) that an enquiry into the accounts  
be held by the Senior Assistant Registrar of the  
court.

40            Until about the year 1923 Arunasalam Chettiar  
was a member of an earlier Joint Hindu Family  
which was carrying on a moneylending business in  
Kuala Lumpur and Port Dickson in the name of  
K.M.P.L. Firm. In or about that year a division  
of the Joint Hindu Family assets of that firm  
between the Karta and his brothers commenced. But  
even before the division was completed Arunasalam  
Chettiar started a moneylending business in the  
firm name of PL.AR. on 27th August 1926. On 3rd  
January 1927 he brought into his own moneylending  
50            business his share of his assets including rubber

In the Federal estates which he obtained from the other Joint Court Hindu Family. The result was that he set up a separate business of his own.  
(Appellate Jurisdiction)

No. 11  
Judgment  
7th October  
1978.  
(cont'd)

The defendant is Arunasalam Chettiar's elder son by his first wife Lakshmi who died in 1922, and the plaintiff is his younger son by his second wife Meenakshi. The land in question was purchased at a public auction by Arunasalam Chettiar in 1934. Before that he was already the owner of about 100 acres of rubber lands. In order to avoid the Rubber Regulations which were applicable to owners of rubber lands of over 100 acres, he had the said land registered in the defendant's name on 8th March 1935, although he retained control over the land and received income from it which was entered into his accounts.

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In 1949 relations between the Karta and the defendant became strained, as the Karta claimed that the assets of the PL.AR. business belonged to him exclusively. This resulted in the defendant filing a suit in 1950 (O.S. No. 70 of 1950) against the karta, the plaintiff and Meenakshi in the Court of the Subordinate Judge at Devakottai, India in relation to his share in his father's property.

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In 1950 the Karta filed Civil Suit No. 62 of 1950 in the High Court at Seremban against the defendant claiming a retransfer to him of the 40 acres which he had transferred to the defendant in 1935. The basis of his claim was that he had transferred the 40 acres to the defendant in trust for himself. The defendant disputed the Karta's claim denying that the Karta had transferred the 40 acres to him in trust. He alleged that he had in fact purchased the 40 acres from the Karta for a sum of \$7,000/- on 27th February 1935. He further alleged in his statement of defence that before the date of the transfer, the 40 acres were registered in the name of the Karta but that they were held by the Karta in trust for the Joint Hindu Family in which the Karta, the defendant and the plaintiff were coparceners.

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In 1951 the defendant filed Civil Suit No. 34 of 1951 in the High Court for a declaration that he had an interest in the PL.AR. Firm in Port Dickson as a member of the Joint Hindu Family consisting of himself, the karta and the plaintiff and for partition of assets of the Joint family. In that suit it was agreed by the parties that they would abide by any decree or decision of the Courts of India on the issues arising in O.S. No. 70/50 in the Court of the Subordinate Judge at Devakottai as to whether the PL.AR. Firm

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at Port Dickson and the assets all belonged to the Hindu Joint Family as alleged by the defendant or were the separate property of the karta and the plaintiff as claimed by them. As a result of this agreement the Seremban High Court ordered that all further proceedings in Civil Suit No. 34 of 1951 be stayed until the final determination of O.S. No. 70 of 1950 in the Indian Courts.

In the Federal Court  
(Appellate Jurisdiction)  
No. 11  
Judgment  
7th October 1978.  
(cont'd)

10 As regards Civil Suit No. 62 of 1950 for the return of the 40 acres, the karta was successful in the High Court as well as on appeal in the Supreme Court, but upon further appeal to the Privy Council the karta's claim to the 40 acres failed on the ground that he had practised a deceit on the public administration. The 40 acres thus remained registered in the name of the defendant.

20 The suit in India finally ended up in the Supreme Court in India where it was held, inter alia, that the PL. AR. Firm in Port Dickson and the assets thereof were the assets of the Joint Hindu Family consisting of the Karta, the plaintiff, the defendant and Meenakshi and that the defendant was entitled to a third share therein. Shah J. in his judgment observed that with regard to the defendant's claim relating to his share in the assets of PL.AR. Firm in Port Dickson on the footing that it was Joint Family business, the Court was faced with a preliminary difficulty in that the business was carried on in a foreign State, the assets of that business included immoveables and by the rules of private International law no claim may be entertained in a Court in India for partition of the immoveables outside the jurisdiction.

30 In consequence of the judgment and order of the Supreme Court of India, the High Court at Seremban on 11th May 1964 made an order in Civil Suit No. 34 of 1951 that an account be taken of all moveable and immoveable property of the Hindu Joint Family and of the amount due to the defendant as one of the three coparceners in the family. The appeal from that order to the Federal Court was dismissed but as neither the order of the High Court nor that of the Federal Court had specified the date from which the accounting should start there were further proceedings which ended in the Privy Council making the order that the account must be taken from the date of the unequivocal demand for partition made by the defendant by the commencement of his suit on 15th July 1950.

40 That brings me back to the Civil Suit from which this appeal has arisen. In his statement of

In the Federal Court  
(Appellate Jurisdiction)

No. 11  
Judgment  
7th October  
1978.  
(cont'd)

Claim the plaintiff (respondent) sought a declaration that the transfer of the 40 acres in favour of the defendant (appellant) was void as against himself. He further sought an order for the division of the 40 acres amongst himself, the defendant and the estate of Arunasalam Chettiar or a sale of the 40 acres by public auction and distribution of the proceeds amongst the three parties. The plaintiff also prayed for an order that the defendant do render an account of the income and expenditure arising out of the management of the 40 acres and do pay the plaintiff his share.

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No evidence was adduced before the learned trial judge, the parties resting their respective cases on the pleadings and the bundle of agreed documents which in fact consisted of the appeal record in F.M. Civil Appeal No. 34 of 1958 arising from Civil Suit No. 62 of 1950 between the defendant as the appellant and the karta as respondent. It was this appeal which eventually went up to the Privy Council in respect of the 40 acres.

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The plaintiff averred in his statement of claim that a decision of the Privy Council holding that the transaction between the karta and defendant was illegal may be binding on the said karta and the defendant in so far as the karta's one-third undivided share in the said land was concerned, but that the said decision was not binding on him as the said land was Joint Hindu Family property in respect of which he as co-parcener was entitled to one-third undivided share.

30

It was submitted by Mr. Marjoribanks on behalf of the defendant that, as the 40 acres were registered in the name of the karta at the time of the transfer to the defendant, it was for the plaintiff to prove that they were part of the Joint Hindu Family property. He said that no evidence had been adduced by the plaintiff to discharge this onus of proof, that there was ample evidence on record to show that the karta claimed the land to be his own private property and that he had transferred it in trust to the defendant to avoid the provisions of the Rubber Regulations of 1934. Moreover, in Civil Suit No. 62 of 1950 the karta sued the defendant in his private capacity and not in his capacity as karta of the Joint Hindu Family, alleging that he transferred the 40 acres in trust and that the beneficial interest in the land was always vested in himself.

40

50



10 Mr. Marjoribanks conceded that in Civil Suit No. 62 of 1950 the defendant had pleaded that the 40 acres were the assets of the Hindu Joint Family, but he argued that this averment was rejected by the trial Judge. He next submitted that if it was held that the 40 acres were assets of the Joint Hindu Family, then the judgment of the Privy Council was binding on the plaintiff as being res judicata. He lastly submitted that if it was held that the 40 acres were assets of the Joint Hindu Family and that the Privy Council decision was not binding on the plaintiff, then the Plaintiff's claim was barred by limitation under sec. 9 of the Limitation Ordinance 1953.

In the Federal Court  
(Appellate Jurisdiction)  
No. 11  
Judgment  
7th October  
1978.  
(cont'd)

20 Mr. Atma Singh Gill for the plaintiff submitted that the 40 acres were the assets of the Hindu Joint Family and not the separate property of the karta. In this connection he referred to the defence filed in Civil Suit No. 62 of 1950 wherein the defendant had made an admission that the 40 acres were held in trust for the Hindu Joint Family in which the karta, the plaintiff and the defendant were coparceners. He further submitted that the Privy Council decision on appeal in that suit was not binding on the plaintiff and that the transfer of the 40 acres by the karta to the defendant in 1935 was invalid as not having been made for the benefit of the Joint Family. He next said that during the hearing of Civil Suit No. 62 of 1950 the parties had agreed to accept the decision of the Indian Courts in relation to properties in Port Dickson which together with the family property in India were the subject matter of the suit in India, and that the Indian Supreme Court had declared that the PL.AR Firm at Port Dickson was not the sole-proprietorship of the karta but belonged to the Joint Hindu Family. On the question of limitation, he submitted that the plea could not succeed because of sec. 22(1)(b) of the Limitation Ordinance as regards recovery of trust property by a beneficiary.

50 After considering the evidence and the submissions made on behalf of the parties the learned Judge came to the conclusion that there was ample evidence to establish that the 40 acres formed part of the assets of the Joint Hindu Family Firm of PL.AR. and that they were not a separate property of the karta. In this connection he made reference to the civil suit in the High Court at Seremban in which the parties had agreed to abide by the decision of the Supreme Court in India. The learned Judge has set out lengthy passages from the judgment of the Supreme

In the Federal Court  
Court  
(Appellate  
Jurisdiction)  
No. 11  
Judgment  
7th October  
1978.  
(cont'd)

to go into that judgment. He pointed out that the defendant's stand in this case was diametrically opposed to the stand which he took in Civil Suit No. 62 of 1950, and he took the view that the ultimate decision of the Privy Council in that case did not operate as res judicata against the plaintiff, because all that the Privy Council held was that the karta was not entitled to the re-transfer of the 40 acres to himself because he had based his claim on an illegal act by virtue of the deceit practised on the public administration. He next pointed out that the doctrine of res judicata can operate only where the parties are the same and the issues between them are the same or essentially the same as those in the first proceedings. He further pointed out that the Privy Council had in no way adjudicated upon the question of any right to the 40 acres by the Joint Hindu Family of PL.AR. On the question of limitation he agreed with the submission made by Mr. Atma Singh Gill. In the result he pronounced the judgment making the declaration and the orders from which this appeal has been brought.

The appeal is based on six separate grounds which are set out in the memorandum of appeal. Counsel for the appellant, Mr. R.D. Rajah, delivered written submissions to the court which dealt with all the grounds. I do not think it is necessary to paraphrase them. The points which the learned counsel made may be summarised as follows. The learned Judge was wrong in relying on the judgment of the Supreme Court in India, especially when it was not produced and admitted in evidence. The learned Judge was also wrong in treating as evidence the pleadings, and especially the admissions by the appellant, in Civil Suit No. 62 of 1950. The agreement in Civil Suit No. 34 of 1951 cannot apply to the present case because the land which is the subject matter of this suit was not one of the lands in dispute in that case, litigation about it having started earlier. A karta transferring property without the consent of the coparceners loses his share and can only transfer his share and not that of his coparceners. The karta is bound by the decision of the Privy Council at least in so far as his one-third share in the 40 acres is concerned. There was no evidence that the Karta held the 40 acres in trust for the Joint Hindu Family, nor had it been proved that the 40 acres is being held by the appellant in trust for the respondent, so that the action is statute barred. The respondent had filed this action in his personal capacity and not as executor of the

karta's estate, so that the learned trial Judge had no jurisdiction to order that one-third share be added to the schedule of the assets of the karta's estate. Even assuming that the action was filed by the executor on behalf of the estate, he cannot maintain this action until a grant of probate is issued to him.

In the Federal Court  
(Appellate Jurisdiction)

No. 11  
Judgment  
7th October  
1978.  
(cont'd)

10 The points made by counsel for the respondent were as follows. The land in question could not be included amongst the lands in dispute in Civil Suit No. 34 of 1951 because it had already been the subject matter of a separate litigation. The parties agreed to abide by the decision of the Supreme Court in India and on that basis the instant appellant signed judgment against the Karta in respect of his one-third share. In paragraph 2 of his Statement of Defence in Civil Suit No. 62 of 1950, the present appellant admitted that the land comprised in Certificate of Title No. 20 4246 (the land in question in this suit) was held by the father in trust for himself and the parties to this appeal. The appellant gave no evidence in Civil Suit No. 62 of 1950 to substantiate his story that he paid \$7,000/- for the transfer. The trial Judge in that case in fact accepted the story of the father that no money had been paid for the transfer of the land. Taking all these things into consideration the property was undoubtedly the property of the Hindu Joint Family. 30 Even if the karta could not get his share of the land for himself, his estate can, because the whole of the land is now held by the appellant for the entire Joint Hindu Family of which the appellant is only one of the co-parceners.

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 40 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 relying 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 PL. AR. Firm in Port Dickson belonged to a Joint 50 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

In the Federal Court  
(Appellate Jurisdiction)

No. 11  
Judgment  
7th October  
1978.  
(cont'd)

name of Arunasalam Chettiar like the rest of the assets of the firm of PL.AR. 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.

I do not think I need consider the argument on behalf of the respondent that even if the karta could not get back his one-third share in the land if he were alive, his estate is entitled to it, even though there seems to be no logic in that argument, because the respondent brought this action in his personal capacity and not as representative of the estate of Arunasalam Chettiar deceased. The only question, therefore, which has to be decided in this case is whether the Respondent as one of the coparceners can recover his one-third share. 10 20

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. 30 40

With regard to the learned trial Judge's decision as to the karta or his estate being entitled to one-third share in the land, with respect, there would appear to be no alternative but to set it aside in the present case.

For the reasons I have stated I would allow the appeal to the extent that the reference in the learned trial judge's declaration to the Karta or his estate be deleted, 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 50

that the orders for accounts and inquiry do stand. In all the circumstances of the case the respondent must pay one-third of the appellant's costs of this appeal and in the Court below.

In the Federal Court  
(Appellate Jurisdiction)

Kuala Lumpur  
7th October 1978.

J.S. GILL  
CHIEF JUSTICE  
MALAYA

No. 11  
Judgment  
7th October  
1978.  
(cont'd)

Syed Othman F.J. and Abdul Hamid J. concur.

10 Mr. R.D. Rajah for the Appellant,  
Solicitors. Messrs. Lovelace & Hastings.

Mr. Atma Singh Gill for Respondent.  
Solicitors: Messrs. Gill & Tang.

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No. 12

O R D E R

---

No. 12  
Order  
7th October  
1978

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 149 OF 1977

20

BETWEEN

AR.PL. Palaniappa Chettiar Appellant

AND

A.R. Lakshmanan Chettiar @  
PL. AR. L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar Respondent

(In the Matter of Civil Suit No. 4 of  
1974 in the High Court in Malaya at  
Seremban

BETWEEN

30

A.R. Lakshmanan Chettiar @  
PL. AR. L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar  
Plaintiff

AND

AR. PL. Palaniappa Chettiar Defendant)

In the Federal CORAM: GILL, CHIEF JUSTICE, MALAYA  
Court SYED OTHMAN, JUDGE, FEDERAL COURT,  
(Appellate ABDUL HAMID, JUDGE, HIGH COURT.  
Jurisdiction)

No. 12  
Order  
7th October  
1978.  
(cont'd)

IN OPEN COURT

THIS 7TH DAY OF OCTOBER, 1978

O R D E R

THIS APPEAL coming up for hearing on the 12th and the 24th days of July, 1978 in the presence of Encik A.D. Rajah of Counsel for the Appellant and Encik Atma Singh Gill of Counsel for the Respondent 10  
AND UPON READING the Appeal Record herein AND  
UPON HEARING the Submissions of Counsel as  
aforesaid IT WAS ORDERED that this Appeal be  
adjourned for Judgment and the same coming up for  
Judgment this day in the presence of Counsel as  
aforesaid IT IS ORDERED that this Appeal be and is  
hereby allowed to the extent that the reference in  
the learned trial Judges declaration to the Karta  
or his estate be deleted from the Order dated the 17th day of June, 1977 AND IT IS FURTHER ORDERED 20  
that the consequential Orders be amended to provide  
for sale of the land by public auction and payment  
out of the proceeds of the sale of the Respondent's  
one-third share, but that the Orders for accounts  
and inquiry do stand AND IT IS FURTHER ORDERED that  
the Respondent must pay one-third of the Appellant's  
taxed costs of this Appeal and in the Court below  
AND IT IS LASTLY ORDERED that the deposit of  
\$500.00 paid by the Appellant for security of the  
Appeal herein be refunded to the Appellant. 30

Given under my hand and the Seal of the  
Court this 7th day of October, 1978.

Sgd.  
CHIEF REGISTRAR,  
FEDERAL COURT,  
KUALA LUMPUR.

This Order is filed by Messrs. Lovelace &  
Hastings, Solicitors for the Appellant whose  
address for service is at No. 57 Jalan Klyne,  
Kuala Lumpur. 40

No. 13.

ORDER GRANTING FINAL LEAVE TO APPEAL

In the Federal  
Court  
(Appellate  
Jurisdiction)

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA  
LUMPUR

(APPELLATE JURISDICTION)

No. 13  
Order granting  
final leave to  
Appeal - 19th  
September 1979

FEDERAL COURT CIVIL APPEAL NO. 149 OF 1977

BETWEEN

AR.PL. Palaniappa Chettiar Appellant

AND

10 A.R. Lakshmanan Chettiar @  
PL. AR. L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar Respondent

(In the matter of Civil Suit No. 4 of  
1974 in the High Court in Malaya at  
Seremban

BETWEEN

A.R. Lakshmanan Chettiar @  
PL. AR. L. Letchumanan Chettiar @  
Ana Runa Leyna Lakshmanan Chettiar Plaintiff

20 AND

AR. PL. Palaniappa Chettiar Defendant)

STAMPED B/8865/80  
1.60/-  
21/5/80

CORAM: RAJA AZLAM SHAH, ACTING LORD PRESIDENT,  
MALAYSIA

CHANG MIN TAT JUDGE, FEDERAL COURT

IBRAHIM MANAN JUDGE, FEDERAL COURT

IN OPEN COURT

30 THE 19TH DAY OF SEPTEMBER 1979

O R D E R

UPON MOTION made into Court this day in the  
presence of Mr. A.D. Rajah of Counsel for the  
Appellant and Mr. T.S. Gill for the Respondent  
AND UPON READING the Notice of Motion dated the  
13th day of June, 1979 and the Affidavit of  
Arumugam Deva Rajah sworn to on the 29th day of  
March 1979 and filed herein AND UPON HEARING  
Counsel as aforesaid IT IS ORDERED that final

In the Federal Court  
(Appellate Jurisdiction)

No. 13  
Order granting final leave to Appeal - 19th September 1979 (cont'd)

leave be and is hereby granted to the Appellant to appeal to His Majesty the Yang Dipertuan Agung against the decision of this Honourable Court given on the 7th day of October, 1977 in the above Federal Court Civil Appeal No. 149 of 1977 AND IT IS ORDERED that the costs of and incidental to this application be costs in the cause.

Given under my hand and the Seal of the Court this 19th day of September 1979.

Sgd. Illegible  
CHIEF REGISTRAR,  
FEDERAL COURT,  
MALAYSIA.

10

This Order is filed by Messrs. Lovelace & Hastings, Solicitors for the Appellant whose address for service is at No. 57, Jalan Klyne, Kuala Lumpur.

EXHIBITS

Exhibit A  
Statement of  
Plaint in  
Suit No. 62  
of 1950  
21st November  
1950

E X H I B I T S

Exhibit A

Statement of Plaintiff in Suit  
No. 62 of 1950

20

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT SEREMBAN

Civil Suit No: 62 of 1950

P.L.A.R. Arunasalam Chettiar of No. 13,  
Main Street, Port Dickson. Plaintiff

Vs:

A.R.P.L. Palaniappa Chettiar son of  
Arunasalam Chettiar of Kondanoor,  
Rammad District, S. India. Defendant

30

STATEMENT OF PLAINT

The abovenamed Plaintiff states as follows:-

1. The Plaintiff is a land owner residing at No. 13 Main Street Port Dickson and the Defendant is carrying on business in Kondanoor, Rammad District, South India.



2. That prior to 27th February 1935 the Plaintiff was the registered owner of the land held under Certificate of Title bearing No. 4246 lot No. 926 in extent 40 acres 2 roods and 30 poles, situated in the Mukim of Si Rusa in the State of Negri Sembilan. The said land is cultivated with rubber.

Exhibit A  
Statement of  
Plaint in  
Suit No. 62  
of 1950  
21st November  
1950.  
(cont'd)

10 3. On 27th February 1935 the Plaintiff transferred the said land to his son the Defendant on trust that the Defendant should hold the said land in trust for the Plaintiff. No trust Deed was executed in view of the relationship between the Plaintiff and the Defendant and no consideration was paid for the said transfer.

4. The title to the said land has always been in the possession of the Plaintiff, the Plaintiff has been enjoying the income from the said land and has been paying all quit rents due in respect of the said land.

20 5. That on the 4th day of October 1950 the Plaintiff made arrangement to sell the said land to one Toh See Toh of Port Dickson for a sum of \$16000/- and received an advance of \$2,000/- undertaking to complete the sale within 40 days from the said date.

30 6. Thereafter on the same date viz: 4th October 1950 the Plaintiff wrote a letter to the Defendant requesting him to execute in favour of the Plaintiff a valid and proper Power of attorney enabling him to complete the said sale.

A copy of the said letter is hereto attached and marked "A".

7. That the Defendant sent a letter dated 14th October 1950 to the Plaintiff refusing to comply with the Plaintiff's request. A copy of certified Translation of the letter is hereto attached and marked "B".

40 8. The said land was merely registered in the name of the Defendant who had no beneficial interest in the said land. The beneficial interest in the said land vested always in the Plaintiff.

The Plaintiff prays judgment:-

- (a) For a declaration that Defendant is a Trustee of the said land holding the same in trust for the Plaintiff.
- (b) That Defendant be ordered to execute

Exhibit A

Statement of  
Plaint in  
Suit No. 62  
of 1950  
21st November  
1950.  
(cont'd)

a valid and registrable transfer of  
the said land in favour of the  
Plaintiff on a day to be named by  
this Honourable Court.

(c) In the alternative should Defendant  
fail to transfer the said land to the  
Plaintiff on or before the day  
mentioned above the Registrar of this  
Court be ordered to execute the  
necessary transfer. 10

(d) Costs.

(e) For such further order as this  
Honourable Court may seem to meet.

Sd. E. Joseph  
Solicitors for Plaintiff

sd. in Tamil  
Plaintiff.

I, P.L.A.R. Arunasalam Chettiar the above-  
named Plaintiff do hereby declare that the above  
statement is true to my knowledge except as to  
matters stated on information and belief and as to  
those matters I believe it to be true. 20

Dated this 21st day of November 1950.

sd. in Tamil  
Plaintiff

---

This is the document marked "A" referred  
to in the Plaint of P.L.A.R. Arunasalam  
Chettiar.

sd. in Tamil  
Plaintiff

P.L.A.R. Arunasalem Chettiar  
Main Street  
Port Dickson  
4th October 1950. 30

Mr. A.R.P.L. Palaniappa Chettiar  
s/o Arunasalam Chettiar  
Kondanoor  
Ramanad District  
South India.

Dear Sir,

This is to inform you that I have made an  
agreement and received part of purchase price to  
sell the land held under C.T. No. 4246 lot No. 926 40



Exhibit A  
Statement of  
Plaint in  
Suit No. 62  
of 1950  
21st November  
1950.  
(cont'd)

Translated by me:  
Sd: R. Ramaswami Iyer  
14.11.50  
Tamil Interpreter  
Supreme Court, Seremban.

Exhibit A  
Statement of  
the Defendant  
and Counter-  
claim - 3rd  
April 1951.  
Suit No. 62  
of 1950

EXHIBIT A  
STATEMENT OF THE DEFENDANT AND COUNTERCLAIM  

---

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT SEREMBAN  
Civil Suit No. 62 of 1950

10

P.L.A.R. Arunasalam Chettiar of No. 13  
Main Street, Port Dickson Plaintiff

vs.

A.R.P.L. Palaniappa Chettiar son of  
Arunasalam Chettiar of Kandanoor,  
Rammad District, South India Defendant

WRITTEN STATEMENT OF DEFENDANT

The Defendant abovenamed states as follows:

1. The Defendant does not deny the statement in  
paragraph 1 of the Plaint. 20

2. The Defendant admits that prior to 27th  
February 1935 the land held under Certificate of  
Title No. 4246 and referred to in Paragraph 2 of  
the Plaint, stood registered in the name of the  
Plaintiff but states that he held the same in  
trust for the Hindu Joint Family known as RM.P.  
K.P.AR. in which the Plaintiff, the Defendant and  
one Lakshmanan Chettiar were coparceners.

3. The Defendant denies that the Plaintiff  
transferred the said land to the Defendant on  
trust as alleged in paragraph 3 of the Plaint but  
states that he purchased the land from the  
Plaintiff for the sum of \$7000-00. 30

4. The Defendant denies that the Plaintiff  
enjoyed the income from the said land as stated  
in paragraph 4 of the Plaint but states that the  
Plaintiff being the father of the Defendant was  
entrusted with the management of the said land.

The Plaintiff is liable to account to the Defendant for the income from the estate.

Exhibit A  
Statement of  
the Defendant  
and Counter-  
claim - 3rd  
April 1951.  
Suit No. 62  
of 1950.  
(cont'd)

5. With regard to paragraphs 5, 6 and 7 of the Plaintiff, the Defendant admits that the Plaintiff asked the Defendant for a Power of Attorney to enable him to transfer the land but the Defendant refused to authorise him to sell the land.

10 6. The Defendant denies the allegations in paragraph 8 of the Plaintiff and states that he is not entitled to the reliefs claimed in the Plaintiff.

The Defendant prays that the suit be dismissed with costs.

#### COUNTERCLAIM

The Defendant repeats his statements above and claims that the Plaintiff is liable to account to the Defendant for the income collected by the Plaintiff from the said land from the 27th day of February 1935 to this date.

20 The Defendant prays that the Court make,

- (1) an order that the Plaintiff render an account of the profits from the land from 27th day of February 1935 and that the Plaintiff pay to the Defendant any sum found due on taking such account,
- (2) an order for further or other relief to the Defendant, and
- (3) an order that the Plaintiff pay the costs.

30 Sd. M.N. Cumarasami                      sd. A.R.P.L. Palaniappa  
Defendant's Solicitor.                      Chettiar  
Defendant.

I, A.R.P.L. Palaniappa Chettiar son of Arunasalam Chettiar the defendant abovenamed, hereby declare that the above statement is true to my knowledge except as to matters I believe it to be true.

Dated this 3rd day of April, 1951.

sd. A.R.P.L. Palaniappa Chettiar  
Signature.

Exhibit A

Defence to  
Counterclaim  
Suit No. 62  
of 1950  
30th April  
1951

EXHIBIT A

REPLY AND DEFENCE TO COUNTER-  
CLAIM

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT SEREMBAN

Civil Suit No. 62 of 1950

P.L.A.R. Arunasalam Chettiar of No. 13  
Main Street, Port Dickson Plaintiff

vs.

A.R.P.L. Palaniappa Chettiar son of 10  
Arunasalam Chettiar of Kondanoor,  
Ramnad District, S. India Defendant

REPLY AND DEFENCE TO COUNTERCLAIM

The Plaintiff abovenamed states as follows:-

1. The Plaintiff joins issue with the Defendant on his Defence.

2. And in further answer to paragraph 2 thereof the Plaintiff denies that prior to the 27th February 1935 or at any time he held the land held under Certificate of Title No. 4246 in trust for a Hindu Joint Family known as RM.P.K.P.AR. 20

3. And in further answer to paragraph 3 thereof the Plaintiff denies that the Defendant purchased the said land from the Plaintiff for the sum of \$7,000-00/

4. And in further answer to paragraph 4 thereof the Plaintiff denies that he managed the said land for the Defendant and that he is liable to account for the income therefrom.

5. As to the Counterclaim the Plaintiff repeats his denies that he is liable to account for the income collected by him from the said land since the 27th February 1937. 30

sd. Shearn Delamore & Co. sd. in Tamil  
Plaintiff's Solicitors Plaintiff's Signature

I, P.L.A.R. Arunasalam Chettiar the above-named Plaintiff do hereby declare that the above statement is true to my knowledge except as to matters stated on information and belief and as to those matters I believe it to be true. 40

Dated this 30th day of April, 1951.

sd: in Tamil - Signature.

EXHIBIT A

JUDGES NOTES - SUIT 62 of 1950

Exhibit A  
Judge's Notes  
Suit No. 62  
of 1950  
30th June  
1958.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

Seremban Civil Suit No. 62 of 1950

P.L.A.R. Arunasalam Chettiar of  
No. 13 Main Street, Port Dickson                      Plaintiff

vs:

10      A.R.P.L. Palaniappa Chettiar son of  
Arunasalam Chettiar of Kondonoor,  
Ramnad District, South India.                      Defendant

NOTES OF EVIDENCE

Monday, 30th June, 1958                      Before Smith, J.

Rawson for Plaintiff.  
Cumarasami for Defendant.

Cumarasami applies for adjournment.

Ramani is ill. I was solicitor. No bar to  
plaintiff. Mr. Ramani on record from 1953.  
Ramani ill beginning May. Fixed 29th April.

20      Rawson: instructed to oppose. No sudden illness.

Objection known. Plaintiff here on visit.  
Application refused.  
Mr. Cumarasami asks leave to withdraw from case.  
I say I cannot grant leave but if he wishes to  
leave Court he is at liberty.

Defendant in person.  
Defendant applies:

I apply for postponement as counsel is ill.  
I have known for 2 weeks.

30      Application refused.

Defendant states he does not wish to appear. I  
warn him of possible result.

Adjourn at 10.25 to 20.40 a.m.

sd. B.G. Smith  
Judge.

Resume 10.45 a.m.

Defendant again applies for adjournment.

Exhibit A  
Judge's Notes  
Suit No. 62  
of 1950  
30th June  
1958.  
(cont'd)

States not his mistake.  
Defendant leaves Court.

Rawson:

Plaintiff claims defendant holds on trust. Bought 1934. Transfer 1935 for no consideration. Resulting trust. Defence Hindu Joint Family: sold for \$7,000/-

Rubber Regulation was in force. This allowed these proceedings to be granted as a small holding. Resulting trust.

10

P.W.1: P.L.A.R. Arunasalam Chettiar:  
affirmed states in Tamil.

I live at P.D. I am plaintiff.

Defendant is son by my first wife.

Ex.P1 In 1934 at an auction I bought some land at P.D. I paid \$8,081.00. I produce my ledger supporting it, Ex. P1.

I kept estate in my name for 6 - 7 months.

I transferred it to my son because my holding of rubber would become about 139 acres and exceed 100 acres.

20

My son did not pay \$7,000/-. He paid nothing.

Ex.P2 I executed transfer to my son while we were both in India. It was registered in Malaya by my agent. I paid all the costs, Ex. P2.

I have received all income up to today. I paid wages and assessment. My son has never paid any part of assessment.

30

Ex.P3 My son has received no part of income. Some of my ledgers touching the income are in Court, Ex.P3. Others are filed in India in a civil suit between us.

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).

40



Indian Court holds that firm property in P.D. was not joint family property.

Exhibit A  
Judge's Notes  
Suit No. 62  
of 1950  
30th June  
1958.  
(cont'd)

In 1950 I agreed to sell property to Mr. Toh See Toh. My son was in India. I asked him to complete transfer. He sent me no P/A. Copy correspondence appears on statement of plaint. I had to institute these proceedings.

10

I produce true copy of transfer to son, Ex.P4. I produce certificate of title, Ex.P5,

I had no trust deed because it was my own son. My son was 22 y.o. He was fully aware of reason. He knew he held in trust.

My agent was M.S. Perumal (recog.). He is here today.

20

By Court: My son did not pay me \$7,000. I was under impression I had to put amount in: it is merely mentioned for sake of registration.

Returns were not called for in respect of the land.

Benefit was that I did not send the return.

P.L.A.R. is my firm. I am sole proprietor.

30

Account shows that my son was trustee. Had I received \$7,000 it would appear in accounts.

I had no intention of making a present to my son. Sole object was to avoid having to disclose that I held more than 100 acres of rubber land.

P.W.2: M.S. Perumal: affirmed states in Tamil.

I live at P.D. I know plaintiff. Before last man I was his agent. There was a firm P.L.A.R.

40

Plaintiff was sole member. I purchased 40 acres rubber land. This ledger, day book, of P.L.A.R. shows it was bought at auction and later transferred to A.R.P.L.

Exhibit A

Judge's Notes  
Suit No. 62  
of 1950  
30th June  
1958.  
(cont'd)

Palaniappa Chettiar. I was agent. Firm had 99 acres. If firm had over 100 acres I had to go to Controller instead of to the Land Office to get coupon for rubber production. Easier to deal with land office. I informed plaintiff. He told me to prepare a memorandum of transfer mentioning \$7,000/. I do not know why \$7,000 was put in. He directed me to do so. I had transfer stamped. I do not know if they would accept without transfer sum. 10

I do not know procedure if no value.

I do not know if \$7,000 was paid. I was under impression land still belonged to plaintiff. I dealt with it on that basis. In 1938 defendant came to P.D. He made no complaint as to why this land was dealt with.

By the Court: I do not know if small estates were allowed to tap more than estates over 100 acres. I thought there would be more correspondence with larger estates. 20

Rawson: case proved.

No defence of gift.  
Either purchased or joint family.  
Estoppel not pleaded.  
S. 92 (f)

C.A.V.  
Adjourn to 10 a.m.

Tuesday, 1st July, 1958.

For judgment. 30  
Rawson for plaintiff.  
Defendant absent.

I deliver judgment, also reasons for not allowing adjournment.

I do further order that the caveat be deemed to be withdrawn on presentation of the transfer in favour of the plaintiff.

I do further order that Registrar of Titles, N.S. do make and endorse all such entries and memorials on the registrar and issue documents of title to the said land as shall be necessary or expedient to give effect to this judgment. 40

Books of account Pl, 2, 3 released to

plaintiff on his undertaking to produce forthwith at any time before 30th July and to produce forthwith at any time until appeal is heard if appeal is filed before 30th July and in meantime not to take them out of jurisdiction.

B.G. Smith  
JUDGE.

Exhibit A  
Judge's Notes  
Suit No. 62  
of 1950  
30th June  
1958.  
(cont'd)

10 Certified true copy,  
sd: D.C. Haslan  
Secretary to Judge.  
3.7.58.

---

EXHIBIT A

\_\_\_\_\_  
GROUNDS OF DECISION. APPLICATION FOR  
POSTPONEMENT OF TRIAL  
\_\_\_\_\_

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

Seremban Civil Suit No. 62 of 1950

20 P.L.A.R. Arunasalam Chettiar of  
No. 13 Main Street, Port Dickson Plaintiff

vs:

A.R.P.L. Palaniappa Chettiar son of  
Arunasalam Chettiar of Kondanoor,  
Ramnad District, South India. Defendant

Grounds of Decision

Application for postponement of trial

This case was set down for hearing on 30th June, 1958, by a letter dated 29th April, 1958, from the Registrar to the parties' solicitors.

30 Since early 1953 the defendant had retained Mr. Ramani as senior counsel to appear and argue the case at the trial. About the beginning of May Mr. Ramani was taken ill and on the day of the trial was still ill. On 23rd June, 1958, the defendant's solicitor wrote to the plaintiff's solicitor informing them that an application would be made to the Court for postponement on the day of hearing, nothing that the application would be opposed.

Suit No. 62  
of 1950.  
Grounds for  
decision.  
Application  
for postpone-  
ment of Trial  
1st July 1958

Exhibit A

Suit No. 62  
of 1950.  
Grounds for  
decision.  
Application  
for postpone-  
ment of Trial  
1st July 1958  
(cont'd)

It is clear from the defendant's solicitor's letter that he had been in touch with the plaintiff's solicitor before 23rd June, 1958, concerning an adjournment but no application of any kind had been made to the Court. When the matter came before me it was submitted by the plaintiff's solicitors that this matter had been ready for trial since 1953 and that the plaintiff wished the matter to proceed. Counsel also pointed out that the illness of Mr. Ramani had at all times been known to the defendant's solicitor so that there had been ample time to instruct other senior counsel.

10

In view of the defendant's delay in not indicating that he desired an adjournment until one week before the trial and because the defendant or his solicitor must have known at least a month ago that Mr. Ramani might not be able to appear on 30th June, 1958, I declined to allow any further adjournment of this case. I gave as an additional reason the fact that Mr. Ramani's was not the only advice which the defendant was able to draw upon in this suit. I therefore refused the application and allowed the trial to continue. At this stage Mr. Cumarasami asked my leave to withdraw from the case. I stated that I had no power to give him leave to withdraw but that if he wished to leave the Court he was at liberty to do so.

20

The defendant personally then made a further application for adjournment which I refused. Mr. Cumarasami's reasons for withdrawing from the case I do not know. I did not consider that the defendant was in the position of a person who had suddenly through no fault of his own been deprived of the services of his legal adviser.

30

The defendant stated that he wished to take no further part in the proceedings and left the Court. I then called upon the plaintiff to prove his case.

Sd. B.G. Smith,  
JUDGE,  
SUPREME COURT,  
FEDERATION OF MALAYA.

40

Kuala Lumpur,  
1st July, 1958.



Exhibit A  
Judgment  
Suit No. 62  
of 1950  
1st July 1958.  
(cont'd)

transferred the land to his son the defendant. The plaintiff give evidence that the defendant paid to him no consideration of any kind whatsoever. In the transfer, however, the plaintiff acknowledges that he received from the defendant a sum of \$7,000. The plaintiff says that this was done for convenience in order to avoid delays in registering the transfer in the land office. A document of title was subsequently issued and is in the possession of the plaintiff. The plaintiff has been enjoying the income of the land since 1934 and has paid all quit rents due in respect of the land. 10

The plaintiff's agent gave evidence in support of the plaintiff and added that in 1938 the defendant came to Malaya but never approached him concerning the land or its management.

The defendant's defence was, in effect, that the land was part of the property of a Hindu Joint Family and was held by the plaintiff on trust for the Joint Family in which the plaintiff, the defendant and one Lakshmanan Chettiar were coparceners. The defendant in his defence alleged that the plaintiff had transferred this joint property to him for the sum of \$7,000. The plaintiff's case had the ring of truth and in the absence of any evidence from the defendant I regard it as probable. If the story of the plaintiff is true it is quite clear that the plaintiff has practised a deceit on the public administration of the country in order to get a benefit for himself. In view, however, of the Court of Appeal decision in Sardara Ali v. Sarjan Singh, (1957) 23 M.L.J., page 165, it appears that the plaintiff's possible turpitude is no reason for denying to him the orders which he seeks. 20 30

I considered also whether the plaintiff was estopped by the terms of the receipt in the transfer in favour of the defendant dated 23rd February, 1935 from denying that he had received \$7,000 consideration from the defendant for the land. In the absence of evidence from the defendant the explanation given by the plaintiff appears to me to be probable and to fall within proviso (f) to section 92 of the Evidence Ordinance, 1950. I therefore make orders in the terms prayed by the plaintiff, direct that the defendant do execute a valid and registrable transfer of the said land in favour of the plaintiff on or before the 29th day of July, 1958, and award to the plaintiff his taxed costs. 40 50

Sd. B.G. Smith,  
JUDGE, SUPREME COURT,  
FEDERATION OF MALAYA

Kuala Lumpur,  
1st July 1958

Certified true copy

sd. D.C. Haslam  
Secretary to Judge,  
Kuala Lumpur.

Exhibit A  
Judgment  
Suit No. 62  
of 1950  
1st July 1958.  
(cont'd)

---

EXHIBIT A

O R D E R

---

Order - 1st  
July 1958  
Suit No. 62  
of 1950

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

10 IN THE HIGH COURT AT KUALA LUMPUR

Seremban Civil Suit No. 62 of 1950

P.L.A.R. Arunasalam Chettiar of  
No. 13 Main Street, Port Dickson Plaintiff

vs.

A.R.P.L. Palaniappa Chettiar son of  
Arunasalam Chettiar of Kandanoor,  
Rannad District, South India. Defendant

BEFORE THE HONOURABLE MR. JUSTICE SMITH,  
JUDGE, FEDERATION OF MALAYA

20 IN OPEN COURT

This 1st day of July 1958

O R D E R

30 THIS SUIT coming on for final hearing on the  
30th day of June, 1958 before this Court in the  
presence of Mr. D.G. Rawson, counsel for the  
Plaintiff and, upon counsel for the Defendant  
withdrawing in the presence of the Defendant AND  
UPON READING the pleadings and UPON HEARING the  
evidence and what was alleged by Counsel for the  
Plaintiff and the Defendant declining to take  
part in the proceedings THIS COURT DID ORDER that  
this suit should stand for Judgment, and this  
suit standing for judgment this day in the  
presence of counsel for the Plaintiff.

THIS COURT DOTH declare that the Defendant  
is a trustee of the land held under Negri Sembilan  
Certificate of Title No. 4246 for Lot No. 926 in  
the Mukim of Si Rusa and doth hold the same in

Exhibit A  
Order - 1st  
July 1958  
Suit No. 62  
of 1950  
(cont'd)

trust for the Plaintiff.

AND THIS COURT DOETH ORDER that the Defendant do execute and deliver to the Plaintiff a valid and registrable transfer of the said land in favour of the Plaintiff on or before the 29th July 1958 and that in default the Registrar of this Court do execute a transfer of the said land in favour of the Plaintiff.

AND IT IS FURTHER ORDERED that the Registrar of Titles Negri Sembilan do make and indorse all such entries and memorials on the register and issue documents of title to the said land as shall be necessary or expedient to give effect to this judgment. 10

AND IT IS FURTHER ORDERED that the Caveat No. 103546 Volume XXXI Folio 49 be deemed to be withdrawn upon the presentation of a valid and registrable transfer in favour of the Plaintiff.

AND IT IS LASTLY ORDERED that the Defendant do pay to the Plaintiff the costs of this Suit as taxed by the proper officer of this Court. 20

Given under my hand and the seal of the Court this 1st day of July, 1958.

sd. Lee Moh Wah

Ag. Senior Asst. Registrar,  
High Court, Kuala Lumpur.

(seal)

True copy  
sd. Lee Moh Wah  
Ag. Senior Asst. Registrar,  
Supreme Court, Kuala Lumpur.  
22.7.58

30

Notice of  
Appeal - Suit  
No. 62 of  
1950 - 7th  
July 1958

EXHIBIT A  
NOTICE OF APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR

Civil Appeal No. 34 of 1958

BETWEEN

A.R.P.L. Palaniappa Chettiar son  
of Arunasalam Chettiar

Appellant

40

And



P.L.A.R. Arunasalam Chettiar of  
No. 13 Main Street, Port Dickson Respondent

(In the matter of Seremban Civil Suit  
No. 62 of 1950

Between

P.L.A.R. Arunasalam Chettiar of No.  
13 Main Street, Port Dickson Plaintiff

And

10 A.R.P.L. Palaniappa Chettiar son  
of Arunasalam Chettiar Defendant)

Exhibit A  
Notice of  
Appeal - Suit  
No. 62 of  
1950- 7th  
July 1958  
(cont'd)

NOTICE OF APPEAL

TAKE NOTICE that A.R.P.L. Palaniappa Chettiar  
son of Arunasalam Chettiar being dissatisfied with  
the decision of the Honourable Mr. Justice B.G.  
Smith given at Kuala Lumpur on the 1st day of July,  
1958 appeals to the Court of Appeal against the whole  
of the said decision.

Dated the 7th day of July, 1958.

20 Sd. AR.PL. Palaniappa Chettiar  
Appellant.

To: The Registrar,  
Supreme Court,  
Kuala Lumpur

And to:  
The abovenamed Respondent or his  
Solicitors Messrs. Shearn, Delamore & Co.,  
Advocates and Solicitors,  
Kuala Lumpur.

30 The address for service of the appellant is  
AR.P.L. Palaniappa Chettiar, No. 62, Jalan Raya  
West, Klang.

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EXHIBIT A

MEMORANDUM OF APPEAL

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IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

F.M. Civil Appeal No. 34 of 1958

BETWEEN

Memorandum of  
Appeal - Suit  
No. 62 of  
1950 - 15th  
September  
1958

Exhibit A  
Memorandum of  
Appeal - Suit  
No. 62 of  
1950 - 15th  
September  
1958  
(cont'd)

A.R.P.L. Palaniappa Chettiar son  
of Arunasalam Chettiar Appellant  
And  
P.L.A.R. Arunasalam Chettiar of  
No. 13 Main Street, Port Dickson Respondent  
(In the matter of Seremban Civil Suit  
No. 62 of 1950)

Between

P.L.A.R. Arunasalam Chettiar of No. 10  
13 Main Street, Port Dickson Plaintiff  
And  
A.R.P.L. Palaniappa Chettiar son  
of Arunasalam Chettiar Defendant)

MEMORANDUM OF APPEAL

A.R.P.L. Palaniappa Chettiar, son of  
Arunasalam Chettiar, the appellant abovenamed,  
appeals to the Court of Appeal against the whole  
of the decision of the Honourable Mr. Justice Smith  
given at Kuala Lumpur on the 1st day of July, 1958  
on the following grounds: 20

1. The learned Trial Judge was wrong in refusing  
the defendant's application for an adjournment of  
the hearing of the suit and in doing so he has  
failed to exercise his discretion in a judicial and  
reasonable manner.

2. The learned Trial Judge failed to appreciate  
that the granting of an adjournment of the hearing  
would not in any way prejudice the plaintiff's case.

3. The learned Trial Judge was wrong in holding  
that the appellant was not in a position of a 30  
person who had suddenly through no fault of his  
own been deprived of the service of his legal  
adviser.

4. The learned Trial Judge erred in law in  
failing to consider that as the defendant was the  
registered proprietor of the land in question, his  
title was indefeasible.

5. The learned Trial Judge was wrong in holding  
that the plaintiff's evidence was supported by the  
evidence of his agent. 40

6. The learned Trial Judge erred in law in  
holding that the principles laid down in the case  
of Sardara Ali v Sarjan Singh (1957) 23 M.L.J.

page 165 are applicable to this case.

Dated this 15th day of September, 1958.

Sd: Illegible  
Solicitors for the Appellant

To: The Senior Asst. Registrar,  
Supreme Court,  
Kuala Lumpur.

And to:  
Messrs. Shearn Delamore & Co.,  
Solicitors for the Respondent,  
The Embankment, Kuala Lumpur.

10

Exhibit A  
Memorandum of  
Appeal - Suit  
No. 62 of  
1950 - 15th  
September  
1958  
(cont'd)

Exhibit A

Exhibit P1.  
Suit No. 62  
of 1950.  
Ledger of  
P.L.A.R. Firm  
(not produced)

EXHIBIT A

Exhibit P1. Ledger of P.L.A.R. Firm

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Ledger of P.L.A.R. Firm  
(To be produced)

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Exhibit P2.  
Suit No. 62  
of 1950  
Costs  
incurred in  
registration  
of Title  
(not produced)

EXHIBIT A

Exhibit P2. Costs incurred in registration of Title

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Costs incurred in registration of title  
(To be produced)

---

Exhibit P3.  
Suit No. 62  
of 1950  
Ledgers of  
P.L.A.R. Firm  
(not produced)

EXHIBIT A

Exhibit P3. Ledgers of P.L.A.R. Firm

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Ledgers of P.L.A.R. Firm  
(To be produced)

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10

Exhibit P4.  
Suit No. 62  
of 1950  
Memorandum  
of Transfer  
27th February  
1935.

EXHIBIT A

Exhibit P4. Memorandum of Transfer

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Stamped \$42/-  
Stamped at Stamp Office  
Seremban on 8th March 1935.

GOVERNMENT OF NEGRI SEMBILAN  
Schedule XX Col. CXXI Folio 38.  
(Under (Section 110) of "The Land Code,  
1926")

20

MEMORANDUM OF TRANSFER

Exhibit A

10 I, P.L.A.R. Arunasalam Chetty of Port  
Dickson presently of Kondanoor, Ramnad District,  
South India being registered as the proprietor  
subject to the lease charges or other registered  
interests stated in the document of title thereto  
of the whole of the land held under Certificate of  
Title No. 1175 for lot No. 926 in the mukim of  
Si Rusa in the district of Port Dickson in area  
40 acres 2 roods 30 poles in consideration of the  
sum of Dollars Seven thousand (\$7,000.) only paid  
to me by A.R.P.L. Palaniappa Chettiar son of  
Arunasalam Chettiar of Kondanoor, Ramnad District,  
South India the receipt of which sum I hereby  
acknowledge do hereby transfer to the said A.R.P.L.  
Palaniappa Chettiar son of Arunasalam Chettiar all  
my right title and interest in the said land.

Exhibit P4.  
Suit No. 62  
of 1950  
Memorandum  
of Transfer  
27th February  
1935.  
(cont'd)

20 Sd. P.L.A.R. Arunasalam Chetty  
(in Tamil)  
Signature of Transferor

True copy  
sd. Illegible  
Registrar of Titles,  
Negri Sembilan.  
(Seal)

30 I, A.R.P.L. Palaniappa Chettiar son of  
Arunasalam Chettiar of Kondanoor, Ramnad District,  
S. India accept this transfer in the terms stated.  
  
sd. A.R.P.L. Palaniappa Chetty.  
Signature of transferee

Dated this 27th day of February 1935.

Memorial made in the register of Titles  
Volumn CX folio 30 this 8th day of March, 1935 at  
2.50 p.m.

(Seal) sd. R.L. German  
Registrar of Titles,  
State of N. Sembilan.

SCHEDULE XXXVIII (a)

(Under section 178 of "The Land Code, 1926")

40 I hereby testify that the signature of the  
Transferor above written in my presence on this  
27th day of February, 1935 is to my own personal  
knowledge the true signature of P.L.A.R. Arunasalam  
Chetty who has acknowledged to me, A. Ramamja  
Azengar, President, Bench of Magistrates, Karaikudi,

Exhibit A  
Exhibit P4.  
Suit No. 62  
of 1950  
Memorandum  
of Transfer  
27th February  
1935.  
(cont'd)

Ramnad District, S. India, that he is of full age  
and that he has voluntarily executed this  
instrument.

WITNESS my hand

Sd: A. Ramamja Azengar  
President Bench of Magistrates,  
Karaikudi (Seal)  
27.2.35.

SCHEDULE XXXVIII (a)

(Under section 178 of "The Land Code, 1926") 10

I hereby testify that the signature of the  
Transferee above written in my presence on this  
27th day of February 1935, is to my own personal  
knowledge the true signature of A.R.P.L.  
Palaniappa Chettiar son of Arunasalam Chettiar who  
has acknowledged to me, A. Ramamja Azengar,  
President, Bench of Magistrates, Karaikudi, Ramnad  
Dt. South India, that he is of full age and that  
he has voluntarily executed this instrument.

WITNESS my hand

20

sd. A. Ramamja Azengar  
President Bench of Magistrates  
Karaikudi. (Seal)  
27.2.35.

Exhibit P.5.  
Suit No. 62  
of 1950  
Certificate  
of Title No.  
1175 for Lot  
No. 926 Mukim  
of Si Rusa  
(Not produced)

EXHIBIT A

Exhibit P.5 Certificate of Title No. 1175  
for Lot No. 926 Mukim of Si Rusa

N.S. Certificate of Title No. 1175 for  
Lot No. 926 Mukim of Si Rusa

(To be produced)

30

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L

FROM THE FEDERAL COURT IN MALAYSIA  
(Appellate Jurisdiction)

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B E T W E E N :

AR.PL. PALANIAPPA CHETTIAR (Defendant) Appellant

- and -

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

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RECORD OF PROCEEDINGS

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BULCRAIG & DAVIS  
4 John Street,  
LONDON WC1N 2EX.

Solicitors for the  
Appellant

PHILIP CONWAY THOMAS & CO.,  
61 Catherine Place,  
LONDON SW1E 6HB.

Solicitors for the  
Respondent