

~~File~~

12/1952

No. 17/1951

UNIVERSITY OF LONDON
 V.C. 1.
 21 JUL 1953
 INSTITUTE OF ADVANCED
 LEGAL STUDIES

Supreme Court of Ceylon
No. 512M (Final) of 1947

District Court, Colombo
No. 10 (Special)

**IN THE PRIVY COUNCIL
 ON AN APPEAL FROM THE SUPREME
 COURT OF CEYLON**

VALLIYAMMAI ATCHI of No. 247, Sea
 Street, Colombo, Executrix of the Last
 Will and Testament of K. M. N. S. P.
 Natchiappa Chettiar *Plaintiff-Respondent.*

VERSUS

THE ATTORNEY-GENERAL OF
 CEYLON *Defendant-Appellant.*

**RECORD
 OF PROCEEDINGS**

INSTITUTE OF ADVANCED
 LEGAL STUDIES,
 25, RUSSELL SQUARE,
 LONDON,

31429

No.

Supreme Court of Ceylon
No. 512M (Final) of 1947

UNIVERSITY OF LONDON
W.C.1.
District Court, Colombo.
No. 10 (Special) 21 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL
ON AN APPEAL FROM THE SUPREME
COURT OF CEYLON

VALLIYAMMAI ATCHI of No. 247, Sea
Street, Colombo, Executrix of the Last
Will and Testament of K. M. N. S. P.
Natchiappa Chettiar *Plaintiff-Respondent*

VERSUS

THE ATTORNEY-GENERAL OF
CEYLON *Defendant-Appellant*

RECORD OF PROCEEDINGS

PART I.

INDEX

PART I

<i>Serial No.</i>	<i>Description of Documents</i>	<i>Date</i>	<i>PAGE</i>
1 ..	Journal Entries	2nd April, 1941, to 30th September, 1948	1
2 ..	Petition of Appeal of the Petitioner to the District Court, Colombo, with Schedule of Accounts	2nd April, 1941 ..	18
3 ..	Petition of the Petitioner with Pedigree	9th July, 1941 ..	24
4 ..	Affidavit of the Petitioner ..	9th July, 1941 ..	27
5 ..	Statement of Objections by the Respondent	22nd October, 1942 ..	30
6 ..	Proceedings on Preliminary Objec- tions by the Respondent	..	31
7 ..	Order of the District Court on the Preliminary Objections	15th December, 1942 ..	54
8 ..	Petition of Appeal of the Attorney- General, Defendant-Appellant, against the Order of the District Court	23rd December, 1942 ..	61
9 ..	Judgment of the Supreme Court ..	1st May, 1944 ..	64
10 ..	Decree of the Supreme Court ..	1st May, 1944 ..	74
11 ..	Further Proceedings ..	..	75
12 ..	Judgment of the District Court ..	7th May, 1947 ..	320
13 ..	Defendant-Appellant's Petition of Appeal to the Supreme Court	16th May, 1947 ..	342
14 ..	Judgment of the Supreme Court ..	24th June, 1949 ..	345
15 ..	Decree of the Supreme Court ..	24th June, 1949 ..	354
16 ..	Application of Defendant-Appellant for Conditional Leave to Appeal to Privy Council	4th July, 1949 ..	356
17 ..	Judgment of the Supreme Court Granting Conditional Leave to Appeal	20th July, 1949 ..	357
18 ..	Decree of the Supreme Court Grant- ing Conditional Leave to Appeal	20th July, 1949 ..	359
19 ..	Application of Defendant-Appellant for Final Leave to Appeal to Privy Council	26th July, 1949 ..	361
20 ..	Decree of the Supreme Court Grant- ing Final Leave to Appeal	21st September, 1949 ..	362

INDEX

PART II

EXHIBITS

Applicant's Documents

<i>Exhibit No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>PAGE</i>
A 1 ..	Notice of objections to assessment..	23rd February, 1940 ..	568
A 2 ..	Notice of objections to assessment..	26th November, 1940 ..	570
A 3 ..	Letter	11th March, 1941 ..	577
A 4 ..	Letter	5th September, 1939 ..	542
A 5 ..	Letter	30th January, 1940 ..	572
A 6 ..	Ledger	1925-1926 (not trans- mitted)	
A 6a ..	Translation of page 74 of A6 ..	March, 1925, 1926 ..	424
A 6b ..	Translation of page 285 of A6 ..	March, 1926 ..	425
A 7 ..	Not filed.		
A 8 ..	Original Deed of Partition " Meeri "	22nd January, 1912 (not transmitted)	
A 8a ..	Translation of A8 ..	22nd January, 1912 ..	380
A 9 ..	Day Book	1911 (not transmitted)	
A 9a ..	Translation of page 126 of A9 ..	6th June, 1911 ..	374
A 9b ..	Translation of page 1 of Day Book..	1910, 1911 ..	376
A 10 ..	Ledger	1922 (not transmitted)..	
A 11 ..	Ledger	1925-1926 (not trans- mitted)	
A 12 ..	Ledger	1924-1926 (do.)	
A 13 ..	Day Book	1897-1898 (do.)	
A 13a ..	Translation of Folio 19 of A13 ..	10th September, 1897 ..	371
A 13b ..	Translation of Folio 48 of A13 ..	14th October, 1897 ..	371
A 14 ..	Day Book	1895, 1896 (not trans- mitted)	
A 14a ..	Translation of Folio 36 of A14 ..	May, 1895 ..	370
A 15 ..	Day Book	1898, 1899 (not trans- mitted)	
A 15a ..	Translation of Folio 60 of A15 ..	3rd June, 1898 ..	372
A 15b ..	Translation of Folio 8 of A15 ..	12th April, 1898 ..	372
A 16 ..	Day Book	1907-1908 (not trans- mitted)	
A 16a ..	Translation of Folio 192 of A16 ..	19th August, 1908 ..	373
A 17 ..	Day Book	1904-1905 (not trans- mitted)	
A 18 ..	Notice of Assessment of Income Tax year ending 31.3.35	10th November, 1934 ..	490
A 19 ..	Notice of Assessment of Income Tax year ending 31.3.34	1st March, 1934 ..	491

<i>Exhibit No.</i>	<i>Description of Document</i>	<i>Date</i>	PAGE
A 20 ..	Letter ..	.. 9th October, 1942 ..	578
A 21 ..	Promissory Note ..	.. 26th March, 1907 ..	373
A 22 ..	Promissory Note ..	.. 19th August, 1908 ..	373
A 23 ..	Ola Book ..	.. 1864 (not transmitted) ..	
A 23a ..	Translation of entries in A23	.. 1864.. ..	363
A 24 ..	Ola Book ..	.. 1879 (not transmitted) ..	
A 24a ..	Translation of entries in A24	.. 1879	368
A 25 ..	Ola Book ..	.. 1874, 1875 (not trans- mitted)	
A 25a ..	Translation of entries in A25	.. 1874, 1875, 1876 ..	366
A 26 ..	Letter (Tamil) ..	.. 1929 (not transmitted) ..	
A 26a ..	Translation of A26	.. 1929	437
A 26b ..	Envelope ..	.. (not transmitted)..	
A 27 ..	Letter (Tamil) ..	.. 12th January, 1929 (not transmitted) ..	
A 27a ..	Translation of A27	.. 12th January, 1929 ..	438
A 27b ..	Envelope ..	.. (not transmitted) ..	
A 28 ..	Letter (Tamil) ..	.. 13th June, 1930 (not transmitted) ..	
A 28a ..	Translation of A28	.. 13th June, 1930 ..	455
A 28b ..	Envelope ..	.. (not transmitted)..	
A 29 ..	Letter (Tamil) ..	.. 16th December, 1930 (not transmitted)	
A 29a ..	Translation of A29	.. 16th December, 1930 ..	456
A 29b ..	Envelope ..	.. (not transmitted)..	
A 30 ..	Letter (Tamil) ..	.. 17th January, 1932 (not transmitted)	
A 30a ..	Translation of A30	.. 17th January, 1932 ..	469
A 30b ..	Envelope ..	.. (not transmitted) .	
A 31 ..	Letter (Tamil) ..	.. 2nd October, 1926 (not transmitted)	
A 31a ..	Translation of A31	.. 2nd October, 1926 ..	423
A 31b ..	Envelope ..	.. (not transmitted) ..	
A 32 ..	Letter (Tamil) ..	.. 30th February, 1927 (not transmitted)	
A 32a ..	Translation of A32	.. 30th February, 1927 ..	428
A 32b ..	Envelope ..	.. (not transmitted)..	
A 33 ..	Letter (Tamil) ..	.. 17th October, 1929 (not transmitted)	
A 33a ..	Translation of A33	.. 17th October, 1929 ..	439
A 33b ..	Envelope ..	.. (not transmitted)..	
A 34 ..	Letter (Tamil) ..	.. 11th May, 1931 (not transmitted)	
A 34a ..	Translation of A34	.. 11th May, 1931 ..	458
A 34b ..	Envelope ..	.. (not transmitted)..	

<i>Exhibit No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>PAGE</i>
A 35 ..	Indian Deed ..	.. 26th March, 1886 (not transmitted)	
A 35a ..	Translation of A35	.. 26th March, 1886 ..	369
A 36 ..	Ledger ..	.. 1931, 1932 (not transmitted)	
A 36a ..	Translation of Folio 118 of A36	.. 26th March, 1932 ..	471
A 36b ..	Translation of Folio 101 of A36	.. 1931, 1932 ..	479
A 37 ..	Ledger ..	.. 1938 (not transmitted)..	
A 37a ..	Translation of Folios 18 and 11 of A37	1938, 1939 ..	507
A 38 ..	Ledger ..	.. 1936, 1937 (not transmitted)	
A 38a ..	Translation of Folios 6 and 7 of A38	1936, 1937 ..	503
A 38b ..	Translation of Folio 355 of A38	.. 1937 ..	507
A 39 ..	Ledger ..	.. 1927-1929 (not transmitted)	
A 40 ..	Ledger ..	.. 1929-1930 (not transmitted)	
A 41 ..	Ledger ..	.. 1930-1931 (not transmitted)	
A 42 ..	Same as A36a and A36b	.. ..
A 43 ..	Translation of Folios 43, 174 of Ledger	1932, 1933 ..	481
A 44 ..	Translation of Folios 134, 135 of Ledger	1933, 1934 ..	492
A 45 ..	Translation of Folios 6, 7 of Ledger	1934, 1935 ..	493
A 46 ..	Ledger ..	.. 1935, 1936 (not transmitted)	
A 46a ..	Translation of Folio 6 of A46	.. 1935, 1936 ..	494
A 46b ..	Translation of Folio 7 of A46	.. 1935, 1936 ..	494
A 47 ..	Same as A38.		
A 48 ..	Translation of Folios 6, 7 and 8 of Ledger	1937, 1938 ..	504
A 49 ..	Translation of Folios 6, 7 and 8 of Ledger	1938, 1939 ..	509
A 50 ..	Indian Income Tax Notice	.. 1926, 1927 ..	426
A 51 ..	Indian Income Tax Notice	.. 1928, 1929 ..	432
A 52 ..	Indian Income Tax Assessment	.. 1927-1928 ..	429
A 53 ..	Indian Income Tax Assessment	.. 1928-1929 ..	434
A 54 ..	Indian Income Tax Assessment	.. 1929-1930 ..	440
A 55 ..	Indian Income Tax Assessment	.. 1931-1932 ..	459
A 56 ..	Indian Income Tax Assessment	.. 1932-1933 ..	482
A 57 ..	Indian Income Tax Assessment	.. 1935-1936 ..	495
A 58 ..	Copy of <i>Plaint</i> in D. C., Colombo, No. 3,130	17th April, 1935 ..	497
A 59 ..	Copy of <i>Answer</i> in D. C., Colombo, No. 3,130	12th July, 1935 ..	499

<i>Exhibit No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>PAGE</i>
A 60 ..	Journal Entries in D. C., Colombo, No. 3,130	2nd September, 1935 ..	500
A 61 ..	Decree in D. C., Colombo, No. 3,130	3rd September, 1935 ..	501
A 62 ..	Translation of Folio 42 of Balance Sheet Book up to 31-12-38	— ..	513
A 63 ..	Letter ..	29th May, 1933 ..	486
A 64 ..	Copy of Deed No. 1,604 ..	3rd March, 1930 ..	442
A 65 ..	Copy of Fiscal's Conveyance No. 13,689/1922	22nd December, 1922 ..	388
A 66 ..	Copy of Deed No. 1,354 ..	2nd July, 1932 ..	471
A 67 ..	Copy of Deed No. 2,021 ..	19th August, 1932 ..	474
A 68 ..	Ledger ..	1929-1930 (not trans- mitted)	
A 68a ..	Translation of Folio 2 of A68 ..	1930 ..	456
A 69 ..	Ceylon Income Tax Assessment Year ending 31.3.38	— ..	512
A 70 ..	Cheque Book ..	1929 (not trans- mitted)	
A 71 ..	Envelope ..	(not transmitted)..	
A 72 ..	Envelope ..	(not transmitted)..	
A 72 ..	Envelope ..	(not transmitted)..	
A 73 ..	Envelope ..	(not transmitted)..	
A 74 ..	Ledger ..	1918-1921 (not trans- mitted)	
A 74a ..	Translation of Folio 4 of A74 ..	1918-1920 ..	384
A 75 ..	Ledger ..	1919 (not transmitted)..	
A 75a ..	Translation of Folio 63 of A75 ..	1919-1921 ..	386
A 76 ..	Press Copy Book ..	(not transmitted)..	
A 76a ..	Translation of Folio 337 of Press Copy Book		387
A 77 ..	Same as R9.		
A 78 ..	Same as R10.		

Respondent's Documents

<i>Exhibit No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>PAGE</i>
R 1 ..	Declaration and Statement of Property for Commissioner of Stamps	5th October, 1932 ..	477
R 2 ..	Letter ..	29th September, 1932 ..	476
R 3 ..	Letter ..	28th September, 1932 ..	476
R 4 ..	Copy of Deed No. 3,717	26th March, 1925 ..	391
R 5 ..	Copy of Deed No. 3,954	24th March, 1926 ..	394
R 6 ..	Decision of Income Tax Board of Review	10th October, 1941 ..	573
R 7 ..	Declaration of Property under Estate Duty Ordinance	4th August, 1939 ..	533
R 8 ..	Copy of letter ..	4th August, 1939 ..	535
R 9 ..	Copy of letter ..	30th March, 1939 ..	518
R 10 ..	Copy of letter ..	27th June, 1939 ..	531
R 11 ..	Copy of letter ..	28th November, 1939 ..	541
R 12 ..	Petition to Supreme Court for Sole Testamentary Jurisdiction of Estate of K. M. N. S. P. Natchiappa Chettiar	23rd March, 1939 ..	514
R 13 ..	Affidavit re Sole Testamentary Jurisdiction of Estate of Natchiappa Chettiar	23rd March, 1939 ..	516
R 14 ..	Petition in D. C., Colombo, Testamentary No. 8,802	17th April, 1939 ..	525
R 15 ..	Amended Petition in D. C., Colombo, Testamentary No. 8,802	27th April, 1939 ..	528
R 16 ..	Amended Petition in D. C., Colombo, Testamentary No. 8,802	12th May, 1939 ..	529
R 17 ..	Translation of Last Will ..	(undated) ..	521
R 18 ..	Copy of Probate in D. C., Colombo, Testamentary No. 8,802	17th April, 1940 ..	555
R 19 ..	Statement of Objections in D. C., Colombo, Testamentary No. 8,802	12th August, 1939 ..	536
R 20 ..	Copy of Affidavit in D. C., Colombo, Testamentary No. 8,802	5th April 1939 ..	510
R 21 ..	Copy of Affidavit in D. C., Colombo, Testamentary No. 8,802	12th May, 1939 ..	531
R 22 ..	Copy of Petition in D. C., Colombo, Testamentary No. 8,802	24th August, 1939 ..	538
R 23 ..	Copy of Affidavit in D. C., Colombo, Testamentary No. 8,802	24th August, 1939 ..	540
R 24 ..	Copy of Inventory in D. C., Colombo, Testamentary No. 8,802	28th August, 1940 ..	546
R 25 ..	Affidavit in D. C., Colombo, Testamentary No. 8,802	5th April, 1939 ..	518
R 26 ..	Certificate of Payment of Estate Duty	5th May, 1941 ..	573

<i>Exhibit No.</i>	<i>Description of Document</i>	<i>Date</i>	<i>PAGE</i>
R 27 ..	Certificate of Registration of Business Names	19th August, 1919 ..	385
R 28 ..	Statement of Change of Business Names	3rd April, 1925 ..	389
R 29 ..	Affidavit	8th April, 1925 ..	390
R 30 ..	Certificate of Registration of a Firm	16th April, 1925 ..	391
R 31 ..	Statement of Change of Business Names	31st March, 1926 ..	421
R 32 ..	Certificate of Registration of an Individual	9th April, 1926 ..	422
R 33 ..	Statement of Change of Business Names	18th October, 1935 ..	502
R 34 ..	Plaint in D. C., Colombo, No. 1,961	4th November, 1940 ..	556
R 35 ..	Answer in D. C., Colombo, No. 1,961/L	5th March, 1941 ..	565
R 36 ..	Audit Report	1st October, 1932 ..	480
R 37 ..	Letter	6th June, 1939 ..	545
R 38 ..	Letter	26th May, 1939 ..	545
R 39 ..	Certificate of Deduction of Income Tax	20th May, 1939 ..	544
R 40 ..	Certificate of Deduction of Income Tax	20th May, 1938 ..	512
R 41 ..	Certificate of Deduction of Income Tax	20th May, 1939 ..	543
R 42 ..	Letter	30th March, 1938 ..	511
R 43 ..	Letter	11th May, 1939 ..	543
R 44 ..	Assessment of Income Tax Year ending 31st March, 1933	16th May, 1933 ..	487
R 45 ..	Amended Notice of Assessment of Income Tax	8th July, 1933 ..	489
R 46 ..	Letter	5th April, 1939 ..	542
R 47 ..	Letter	15th July, 1939 ..	545
R 48 ..	Letter	11th May, 1939 ..	543
R 49 ..	Financial Statement for the Year ended 31st March, 1932	(undated) ..	461
R 50 ..	Affidavit	19th August, 1937 ..	506

PART I

No. 1

Journal Entries

No. 1
Journal Entries
2-4-41 to
30-9-49.

IN THE DISTRICT COURT OF COLOMBO.

In the matter of appeal under sections 34 and 38 of Chapter 187 in respect of Estate Duty on the Estate of late K. M. N. S. P. Natchiappa Chettiar.

10 VALLIYAMMAI ATCHI of No. 247, Sea Street, Colombo, Executrix of Last Will and Testament of K. M. N. S. P. Natchiappa Chettiar in D. C. Colombo Testamentary Case No. 8802 *Petitioner Appellant.*

vs.

THE ATTORNEY-GENERAL, Colombo *Respondent.*

(1) 2. 4.41. Mr. N. M. Zaheed, Proctor, files proxy (1a) from the petitioner together with Petition (1b) of appeal against the assessment of Estate Duty and moves for an order under section 38 of Estate Duty Ordinance Chapter 187 to issue notice on the Attorney-General.
20

He also files a statement (1c) of accounts.

Issue notice on Attorney-General with copy of petition of appeal for 8.5.41.

(Sgd.) C. NAGALINGAM,
District Judge.

(2) 16. 4.41. Notice issued on Attorney-General.
Mr. N. M. Zaheed for petitioner.

(3) 8. 5.41. Notice on the Attorney-General served.

Proxy filed.

Intd. C.N.

Inquiry 22/7.

Intd. C.N.

30

No. 1
Journal Entries
2-4-41 to
30-9-49—contd.

- (4) 2. 7.41. As the Solicitor-General and Crown Counsel Mr. Basnayake who appear for the respondent will be engaged in a case specially fixed before the Full Bench on 21.7 and as the argument is likely to take more than one date Mr. G. H. Gratiaen moves that case be refixed for some other date.
(Mr. Zaheed for Petitioner consents). Refix inquiry 19.9.41 and 22.9.41.
Intld..... 10
- (5) 11. 7.41. Proctor for petitioner files petitioner's list of documents.
- (6) 11. 7.41. Proctor for petitioner files petitioner's list of witnesses.
- (7) 12. 7.41. Proctor for petitioner moves that a Commission to the Court of the Subordinate Judge at Siraganga at Ramnad District, South India, for the examination of the witnesses named in the petition 7a and 7b be issued. He files petition and affidavit of petitioner. 20
Call on 17/7.
Intld.....
- (8) 17. 7.41. Mr. N. M. Zaheed for petitioner.
Mr. G. H. Gratiaen for Attorney-General.
Case called with 8802/T in connection with application to issue commission to Subordinate Judge, Siraganga.
Intld.....
D. J.
27/8. 30
- (9) 27. 8.41. Mr. N. M. Zaheed for petitioner.
Mr. G. H. Gratiaen for Attorney-General.
Inquiry—see proceedings.
Intld.....
D. J.
- (9a) 27. 8.41. Vide proceedings.
Inquiry refixed for 31/10 and 18/11.
Intld.....
D. J.
- (10) 12. 9.41. Case called to re-fix trial date.
Refix inquiry for 18/11 and 28/11. 40
Intld.....
D. J.

- (11) 16.10.41. Defendant moves to revoke proxy granted by him to Mr. E. G. Gratiaen, Proctor, and his assistants Messrs. G. H. Gratiaen and M. N. Spencer.

No. 1
Journal Entries
2-4-41 to
30-9-49—contd.

Mr. G. H. Gratiaen consents.

Allowed.

Intld.....
D. J.

- 10 (12) 27.10.41. Mr. John Wilson moves to file his appointment as Proctor for defendant (12a) together with revocation of proxy (12b).

Filed.

Allowed.

Intld. C. N.
D. J.

- (13) 31.10.41. Proctor for petitioner files petitioner's additional list of witnesses.

Filed.

Intld. W. S.
D. J.

20

- (14) 4.11.41. As the permanent Judge is on leave till the end of this year, and as the hearing of this case is not likely to be finished during the period of acting of the acting Judge, Proctors for petitioner and respondent move that the hearing of this matter be postponed for some day next year convenient to Court.

Call on 5/11.

Intld. C. N.
D. J.

30

- (15) 5.11.41. Case called—vide (14).

Mr. Zaheed for petitioner.

Mr. Wilson for respondent.

Call before Mr. Weeraratne on 6/11 as he will be functioning in this Court on the 18th and 28/11 for which dates this case is fixed for hearing.

Intld. C. N.
D. J.

No. 1
Journal Entries
2-4-41 to
30-9-49—contd.

- (16) 6.11.41. Case called—vide (14) and (15) Mr. N. M. Zaheed for petitioner.
Mr. John Wilson for respondent.
Vide J. E. (14). I understand that after inquiry before order is delivered a commission might have to be sent to India.
Call 18/11. Case postponed.
Intld.....
- (17) 18.11.41. Mr. N. M. Zaheed for petitioner. 10
Mr. John Wilson for respondent.
Vide above entry (16).
Vide above.
My appointment is till 23rd December.
Trial postponed to 2 and 3 March, 1942.
Intld.....
- (18) Respondent's Proctor's bill of costs payable by respondent taxed at Rs. 363.60.
Intld.....
- (19) 20. 2.42. Since the appellant is unable to procure owing to the war situation the attendance on the 2nd and 3rd March, 1942, of a number of witnesses who have to come from India, proctor for appellant moves that the inquiry be postponed for later dates. Proctor for respondent consents. 20
- (20) 20. 2.42. Case called.
Mr. Zaheed in support of (19).
Refix inquiry 26th and 27th May, 1942.
Intld.....
D. J.
- (21) 7. 5.42. As a number of important witnesses in support of the appellant's case are in India and as the appellant is unable to procure their attendance on the 26th and 27th May, 1942, Proctor for appellant moves that this inquiry be postponed to a later date. Proctor for respondent consents. 30
- (22) 8. 5.42. Case called. Vide (21).
Mr. Zaheed for appellant.
Mr. Wilson for respondent.
Refix inquiry for 28th and 29th July, 1942. 40
Intld.....
D. J.

- (23) 15. 7.42. Proctor for respondents files list of witnesses and moves for summons.
File.
- No. 1
Journal Entries,
2-4-41 to
30-9-49—contd.
- Intld.....
A. D. J.
- (24) 18. 7.42. Ss. on witness (2) in respondent's list of witnesses issued to Fiscal, W. P.
- Intld.....
- 10 (25) 21. 7.42. Proctor for petitioner annexes telegram received by him informing him about the illness of Ramanathan Chettiyar and moves that the inquiry fixed for the 28th and 29th July, 1942, be postponed.
Call on 21/7.
- Intld.....
A. D. J.
- (26) 21. 7.42. Mr. N. M. Zaheed for appellant.
Mr. John Wilson for respondent.
Case called—Vide (25).
- 20 Mr. Adv. Chelvanayagam for petitioner applies for a postponement. See telegram 25 (a).
Mr. Wilson for respondent has no objection to a date. He asks for costs.
Inquiry postponed for 20, 26 and 29 October, 1942.
Petitioner to pay respondent all costs of 28th and 29th July as taxed.
- Sgd.....
- 80 (27) 2. 9.42. Proctor for respondent moves to certify payment of the sum of Rs. 279/50 being the costs of 28th and 29th days of July, 1942, paid by the petitioner in the above proceedings.
He also tenders uncanceled stamps to the value of Rs. 24 being stamps to the subpoena issued by me on the 15th day of July, 1942.
Note and file.
- Sgd. S. C. S.
D. J.
- 40 (28) 1.10.42. Proctor for petitioner files petitioner's additional list of witnesses and list of documents.
Proctor for respondent received notice.
Allowed on obtaining certified copies of relevant documents.
- Intld.....
A. D. J.

No. 1
Journal Entries
2-4-41 to
30-9-49—contd.

- (29) 16.10.42. Summons on witness No. 2 in respondent's list of witnesses re-issued to Fiscal, W P.
Intld.....
- (30) 16.10.42. Proctor for petitioner moves to amend his list of documents dated 1.10.42 by deleting items 1 and 2 and inserting 1 and 2 in the notice.
Proctor for respondent received notice for the 20th instant.
Call on 20/10.
Intld..... 10
A. D. J.
- (31) 20.10.42. Mr. N. M. Zaheed for appellant.
Mr. J. Wilson for respondent.
Inquiry—vide (26).
Vide proceedings.
I fix the 22nd of this month as the date for the statement of objections. If petitioner appellant feels that further pleadings should be filed she should do so before the 26.10.42.
No costs of today. 20
Intld.....
A. D. J.
- (32) 21.10.42. Proctor for respondent moves to file respondent's additional list of witnesses.
Proctor for petitioner received notice.
File.
Intld.....
A. D. J.
- (33) 21.10.42. Proctor for petitioner moves to file the petitioner's additional list of witnesses and the additional list of documents relied on by the petitioner in the above case. 30
Proctor for respondent received notice.
File.
Intld.....
A. D. J.
- (34) 21.10.42. Proctor for petitioner moves to file the petitioner's additional list of witnesses and additional list of documents relied on by the petitioner in the above case. 40
Proctor for respondent received notice.
File.
Intld.....
A. D. J.

- No. 1
Journal Entries
2-4-41 to
30-9-49—*contd.*
- (35) 22.10.42. Mr. N. M. Zaheed for appellant.
Mr. John Wilson for respondent.
Objections.
- (36) 26.10.42. Proctor for respondent files respondent's additional list of witnesses.
Intld.....
A. D. J.
- 10 (37) 26.10.42. Mr. N. M. Zaheed for appellant.
Mr. John Wilson for respondent.
(37a) Objections filed with notice to Proctor for petitioner.
(37b) Inquiry (a)
Vide proceedings filed.
Further hearing 29 October, 1942.
Intld.....
A. D. J.
- 20 (38) 29.10.42. Mr. N. M. Zaheed for appellant.
Mr. John Wilson for respondent.
Inquiry (3)
Vide proceedings filed.
Further hearing on 3rd and 27th November, 1942.
Intld.....
A. D. J.
- (39) 3.11.42. Mr. N. M. Zaheed for appellant.
Mr. John Wilson for respondent.
Inquiry (4)
Vide proceedings filed.
Further hearing on 10.11.42.
Intld.....
A. D. J.
- 30 (40) 10.11.42. Mr. N. M. Zaheed for appellant.
Mr. John Wilson for respondent.
Vide proceedings filed.
Further hearing on 16th December.
Order on preliminary objections reserved.
Intld.....
A. D. J.
- 40 (41) 13.11.42. Documents A1-A5 and A6a and A6b filed.
A6 Ledger in Record Room.
Intld.....
Documents R1-R26 filed.
Intld.....

No. 1
Journal Entries
2-4-41 to
30-9-49—*contd.*

- (42) 15.12.42. Mr. N. M. Zaheed for appellant.
Mr. John Wilson for respondent.
Case called.
(42a) Vide order delivered and filed.
Intld.....
A. D. J.
15/12/42.
- (43) 16.12.42. Mr. N. M. Zaheed for appellant.
Mr. John Wilson for respondent.
Inquiry. 10
(43a) Vide proceedings.
Call case on 25/1/43 to fix further dates for
inquiry.
Intld.....
A. D. J.
- (44) 23.12.42. Mr. John Wilson for defendant files petition of
appeal of the defendant under section 764 of
the C. P. C. and moves that the same be
accepted. 20
Proctor for plaintiff receives notice.
(44b) Proctor for defendant-appellant tenders
application for typewritten copies and (44c)
notice of appeal with copy of (44d) appeal
petition.
Issue notice of appeal for 25/1/43.
Intld.....
A. D. J.
- (45) 24.12.42. Notice of appeal issued on Mr. Zaheed, Proctor
for appellant to Fiscal, W. P. 30
Intld.....
- (46) 25. 1.43. Mr. John Wilson for appellant.
Mr. N. M. Zaheed for respondent.
1. Notice of appeal on Mr. N. M. Zaheed served.
Forward record in appeal to S. C. in due course.
2. Case called to fix further dates for inquiry.
Call case on 5/7/43 for fixing further date of
inquiry.
Intld.....
A. D. J.
- (47) 5. 7.43. Case called. 40
Call 26/10/43.
Intld.....
A. D. J.

- (48) 19. 8.43. Appellant and respondent have removed their type-written copies. No. 1
Journal Entries
2-4-41 to
30-9-49—contd.
- (49) 19. 8.43. Case forwarded to Registrar, Supreme Court.
with 2 type-written copies.
Intld.....
Secy.
- (50) 16. 5.44. Registrar, S. C., returns the record.
The appeal is dismissed with costs.
File.
10 Intld. S. S.
- (51) 11. 7.44. The appeal of the Attorney-General having been dismissed. Mr. N. M. Zaheed for petitioner moves that the appeal of the petitioner be fixed for hearing. Proctor for respondent consents. Inquiry on 15th November and 4th December.
Intld. S. S.
- (52) 10.11.44. Proctor for petitioner files the petitioner's additional list of witnesses and documents relied on by the petitioner.
20 File.
Intld.....
A. D. J.
- (53) 15.11.44. Case called.
Mr. N. M. Zaheed for appellant.
Mr. John Wilson for respondent.
Inquiry vide (51)
Vide proceedings.
Further hearing on 4.12.44.
Intld.....
A. D. J.
- (54) 20.11.44. Mr. N. M. Zaheed, Proctor, files petitioner's additional list of witnesses in above case.
Proctor for respondent received notice.
Intld.....
A. D. J.
- (55) 4.12.44. Mr. N. M. Zaheed for appellant.
Mr. John Wilson for respondent.
Further hearing.
Vide proceedings—further hearing postponed for
40 7th, 8th, 9th and 11 May, 1945.
Intld.....
A. D. J.

No. 1
Journal Entries
2-4-41 to
30-9-49—contd.

- (56) 2. 5.45. Proctors for the petitioner and respondent move that this case fixed for hearing on 7, 8, 9 and 11th instant be refixed for some other dates and that the case be called on 8th instant for dates.
Call on 7.5.45.
Intld.....
A. D. J.
- (57) 7. 5.45. Mr. N. M. Zaheed for appellant.
Mr. J. Wilson for respondent.
Inquiry. 10
Vide motion (56).
Call on 8/5.
Sgd.....
A. D. J.
- (58) 8. 5.45. Case called vide above order.
This case has been partly heard by my predecessor.
On motion of Mr. Zaheed for appellant call case on 11th May to ascertain convenient dates from my predecessor and to refix dates of inquiry.
Intld..... 20
A. D. J.
- (59) 11. 5.45. Mr. N. M. Zaheed for appellant present.
Mr. J. Wilson for respondent, present.
Case called to refix date of enquiry.
Of consent call on 18/5 for the inquiry.
Intld.....
A. D. J.
- (60) 18. 5.45. Mr. N. M. Zaheed for appellant—present.
Mr. J. Wilson for respondent—present.
Case called for dates of enquiry. 30
Convenient dates not sent up by my predecessor.
Call on 29/5.
Intld.....
A. D. J.
- (61) 29. 5.45. Mr. N. M. Zaheed for appellant.
Mr. J. Wilson for respondent.
Case called vide order at (60).
Convenient date not decided upon by my predecessor.
Call on 12/6. 40
Sgd.....
A. D. J.

- (62) 12. 6.45. Mr. N. M. Zaheed for appellant.
Mr. John Wilson for respondent.
Case called—vide (61).
Convenient date of inquiry not decided upon.
Vide order in J. E. (61). Call case on 29/6.

No. 1
Journal Entries
2-4-41 to
30-9-49—*contd.*

Sgd. V.E.R.
A. D. J.

- 10 (63) 29. 6.45. Mr. N. M. Zaheed for appellant, present.
Mr. John Wilson for respondent.
Case called—vide (62).
Inquiry refixed for 10th, 11th, 12th, 13th December, 1945, before Mr. Schokman.

Sgd. V.E.R.
A. D. J.

- 20 (64) 13.11.45. Notice to proctors for parties that the case will not come up for inquiry on 10th to 13th December as Mr. Schokman will be on leave on those dates and case will be called on the 10th December.

Sgd. V.E.R.
A. D. J.

- (65) 13.11.45. Proctors written to.

- (66) 10.12.45. Mr. Adv. Chelvanayagam instructed by Mr. N. M. Zaheed for appellant—present.
Mr. John Wilson for respondent—present.
Case called—vide (64).
Inquiry refixed for 27th to 31st May.

Sgd. V.E.R.
A. D. J.

- 30 (67) 20. 5.46. Mr. N. M. Zaheed for petitioner.
Mr. J. Wilson for respondent moves that the inquiry fixed for 27th instant to the 31st instant be postponed for some other dates with a view to settlement.

Call on 22.5.46.

Sgd. V.E.R.
A. D. J.

No. 1
Journal Entries
2-4-41 to
30-9-49—contd.

- (68) 22. 5.46. Mr. N. M. Zaheed for appellant.
Mr. J. Wilson for respondent.
Case called for fresh date, of inquiry.
Inquiry or settlement for 10th, 11th, 12th and
13th September, 1946.

Sgd. V.E.R.
A. D. J.

- (69) 6. 8.46. As the case has been partly heard by Mr. S. J. C. Schokman when he was functioning as a Judge of this Court and as a number of witnesses had been examined before him proctor for plaintiff moves that steps may be taken to have the hearing continued before him. If it is not possible to have the hearing continued before Mr. Schokman and as the said witnesses have all to come from India, he moves that an order be made by this court that evidence already recorded be read at the hearing before a new Judge without calling the said witnesses.

10

He annexes a letter from Mr. John Wilson.

20

Write to Mr. Schokman, D.J., Galle, to inquire whether he can hear this case on September 10, 11, 12, and 13. It has been partly heard by him. An early reply is requested. If Mr. Schokman can hear the case tell him that arrangements will be made by me to have him duly gazetted A. D. J., Colombo, for the purpose.

Intld. S. C. S.

Written to.

30

Intld.....

- (71) 21. 8.46. With reference to our letter of the 7th instant Mr. S. J. C. Schokman, D. J., Galle, regrets to state that he was not prepared to hear the above case. It is a long case in which, as far as he can now recall, he heard only a little evidence above 1½ years ago; examined before him have completely disappeared.

Inform proctors. Do they agree to the previous evidence being read instead proceedings being started "de Novo".

40

Intld. N.S.
A. D. J.

- No. 1
Journal Entries
2-4-41 to
30-9-49—contd.
- (72) 10. 9.46. Mr. N. M. Zaheed for appellant.
Mr. J. Wilson for respondent.
Inquiry.
Vide proceedings. Adjourned for 11.9.46.
Intld. N.S.
A. D. J.
- (73) 11. 9.46. Further hearing.
Vide proceedings.
Further hearing for 12.9.46.
Intld. N.S.
A. D. J.
- 10 (73a) 12. 9.46. Summons to witness on Mr. Sabamuttu issued by
proctor for respondent from the list already
filed.
- (74) 12. 9.46. Mr. N. M. Zaheed for appellant.
Mr. J. Wilson for respondent.
Further hearing.
Vide proceedings—Further hearing for 13.9.46.
Intld. N.S.
A. D. J.
- 20 (75) 13. 9.46. Further hearing.
Vide proceedings—further hearing postponed for
21st, 22nd, 23rd, and 24th October, 1946.
Intld. N.S.
A. D. J.
- (76) 16. 9.46. Order delivered.
Intld. N.S.
A. D. J.
- (77) 19. 9.46. One Subpoena reissued on witness No. 2 in (23).
Intld.....
A. D. J.
- 30 (78) 14.10.46. Mr. J. Wilson for respondent files additional list
of witnesses. Proctor for petitioner received
notice, Court objects to this, as it is filed at a
late stage.
File subject to objection.
Intld. N.S.
A. D. J.

No. 1
Journal Entries
2-4-41 to
30-9-49—*contd.*

- (79) 16.10.46. Mr. N. M. Zaheed for petitioner files additional list of witnesses and documents.
Proctor for respondent received notice subject to objection.
(1) Re 1 obtain certified copy.
(2) Subject to this and subject to the objection by the other side, allowed.
Intld. N.S.
A. D. J.
- (80) 16.10.46. Vide (73). 10
2 sub-poenas issued.
Intld.....
A. D. J.
- (81) 21.10.46. Mr. N. M. Zaheed for appellant.
Mr. J. Wilson for respondent.
Adjourned inquiry.
Vide proceedings—adjourned for 22.10.46.
Intld. N.S.
A. D. J.
- (82) 22.10.46. Adjourned inquiry. 20
Vide proceedings—adjourned for 23.10.46.
Intld. N.S.
A. D. J.
- (83) 23.10.46. Adjourned inquiry.
Vide proceedings—adjourned for 24.10.46.
Intld. N.S.
A. D. J.
- (84) 23.10.46. Mr. J. Wilson for respondent moves to file the respondent's additional list of witnesses.
Proctor for appellant received notice. 30
Intld.....
A. D. J.
- (85) 24.10.46. Adjourned inquiry.
Vide order and proceedings—adjourned for 25.10.46.
Intld. N.S.
A. D. J.

- (86) 25.10.46. Adjourned inquiry.
 Vide proceedings—case is specially fixed for expert evidence and addresses for 24th to 28th February, 1947.
 Intld. N.S.
A. D. J.
- (87) 31. 1.47 Mr. J. Wilson for respondent moves to file respondent's additional list of witnesses in the case.
 Proctor for petitioner received notice.
 File.
 Intld. S.C.S.
A. D. J.
- (88) 6. 2.47. Mr. N. M. Zaheed for petitioner moves to file petitioner's additional list of witnesses.
 Proctor for respondent received notice.
 Intld. S.C.S.
A. D. J.
- (89) 13. 2.47. Mr. N. M. Zaheed moves to file appellant's additional list of witnesses.
 Proctor for respondent received notice.
 File.
 Intld. N.S.
A. D. J.
- (90) 24. 2.47. Mr. N. M. Zaheed for petitioner.
 Mr. J. Wilson for respondent.
 Inquiry.
 Vide proceedings—adjourned for 25.2.47.
 Intld. N.S.
A. D. J.
- (91) 25. 2.47. Adjourned inquiry.
 Vide proceedings—adjourned for 26.2.47.
 Intld. N.S.
A. D. J.
- (92) 26. 2.47. Mr. N. M. Zaheed for appellant.
 Mr. J. Wilson for respondent.
 Adjourned inquiry.
 Vide proceedings—adjourned for 27.2.47.
 Intld. N.S.
A. D. J.

No. 1
Journal Entries
2-4-41 to
30-9-49—*contd.*

- (93) 27. 2.47. Adjourned inquiry.
Vide proceedings—adjourned for 28.2.47
Intld. N.S.
A. D. J.
- (94) 28. 2.47. Adjourned inquiry.
Vide proceedings—adjourned for 3.3.47.
Intld. N.S.
A. D. J.
- (95) 3. 3.47. Adjourned inquiry.
Vide proceedings—C. A. V 10
Address on 13th, 14th and 15th March, 1947.
Intld. N.S.
A. D. J.
- (96) 13. 3.47 Case called for addresses.
Vide proceedings—further hearing 14.3.47
Intld. N.S.
A. D. J.
- (97) 14. 3.47. Mr. N. M. Zaheed for appellant.
Mr. J. Wilson for respondent. •
Furthering hearing—vide proceedings. 20
Further hearing 15.3.47.
Intld. N.S.
A. D. J.
- (98) 15. 3.47. Further hearing.
C. A. V.
- (99) 17. 3.47. Mr. N. M. Zaheed for appellant tenders documents with a list.
File.
Intld. N.S.
A. D. J. 30
- (100) 21. 3.47. Mr. J. Wilson for respondent files documents R1 to R50.
Intld.....
A. D. J.

(101) 7. 5.47. Vide judgment delivered.

No. 1
Journal Entries
2-4-41 to
30-9-49—contd.

Enter decree declaring that the property assessed by the Commissioner of estate duty as being liable to pay estate duty is property which comes within the provisions of section 73 of the Ordinance and that accordingly, no sum of money is payable in respect of it as estate duty. The appellant will be entitled to the costs of these proceedings.

10

Intld. N.S.
A. D. J.

(102) 16. 5.47. Mr. John Wilson for respondent files petition of appeal under section 764 of C. P. C. and moves that the same be accepted. He also tenders application for appeal briefs and notice of appeal.

Proctor for petitioner has received notice.

1. Accept.
2. Issue notice of appeal for 19.6.47.

20

Intld. N.S.
A. D. J.

(103) 16. 5.47. Notice of appeal issued on proctor for petitioner.
Intld.....

(104) 19. 6.47. Notice of appeal served on Mr. N. M. Zaheed, Proctor, for petitioner.
He is absent.
Forward record to S. C.

Intld. N.S.
A. D. J.

(105) 1. 9.47. Record forwarded to S. C.

30

Intld.....

(106) 7. 7.49. Record received from S. C.

1. Appeal dismissed with costs.
2. It is ordered by the S. C. that a decree be entered in favour of the executrix against the Crown for the payment of a sum of Rs. 285,308/42 overpaid by her as estate duty, together with legal interest at 5% in terms of section 192 C. P. C. from date of action until date of decree, and thereafter on the aggregate amount of the decree until payment in full.

40

3. It is also ordered that the executrix is entitled to her costs of this appeal and in the court below.

Proctor for steps. Call 25.8.49.

Intld. N.S.
A. D. J.

(107) 10. 8.49. Mr. N. M. Zaheed for appellant for steps *re* J. E. 106. Proctor to take steps and move.

Intld. N.S.

(108) 30. 9.49. Registrar, S. C., moves that this record be forwarded together with the productions for necessary action, as the defendant has been granted final leave to appeal to the Privy Council. 10

Forward case record with the productions.

Intld. N.S.
A. D. J.

Petition of Appeal of the Petitioner with Schedule of Accounts

IN THE DISTRICT COURT OF COLOMBO

20

No. 10 Special

Testamentary Jurisdiction No. 8,802

In the matter of an appeal under sections 34 and 38 of the Estate Duty Ordinance, No. 1 of 1938, Chapter 187 of the Legislative Enactments of Ceylon 1938 from the Assessment of Estate Duty on the estate of the late KM. N. SP. Natchiappa Chettiar.

Between

VALLIYAMMAI ATCHI of No. 247, Sea Street, in Colombo, Executrix of the Last Will and Testament of KM. N. SP. Natchiappa Chettiar, deceased.....*Petitioner* 30

and

THE ATTORNEY GENERAL.....*Respondent.*

To

His Honour the District Judge of Colombo.

This 2nd day of April, 1941

The petition of appeal of the petitioner above named appearing by N. M. Zaheed her proctor states as follows:—

No. 2
Petition of
Appeal of the
Petitioner with
Schedule of
accounts
2-4-11—contd.

1. The petitioner who is the appellant is the Executrix of the Last Will and Testament of K.M. N. S.P. Natchiappa Chettiar, deceased, whose Estate is being administered in Testamentary Case No. 8,802 of this Court.

2. The respondent is the Attorney-General of Ceylon.

3. By his notice of Assessment dated 3rd February, 1940, and his Additional Notice of Assessment dated 7th November, 1940, the
10 Assessor, Estate Duty, assessed the Estate of the said Natchiappa Chettiar as liable to duty and fixed the amount of the duty at Rs. 278,021.70 and Rs. 290,784.12 respectively.

4. Being desirous of appealing from the said assessments the appellant duly delivered to the Commissioner of Estate Duty a notice of objection dated 23rd February, 1940, to the earlier assessment and another notice of objection dated the 26th November, 1940, to the said additional assessment.

5. The said notices of objection duly set out specifically the several grounds upon which the appellant contends that she is not
20 liable to pay the estate duty claimed and that the assessments are erroneous.

6. By his letter dated 11th March, 1941, the Commissioner notified to the appellant that he has determined to maintain the assessment in part.

7. Being aggrieved by the said assessments of estate duty, the appellant begs to appeal therefrom to Your Honour's Court on the following amongst other grounds on which she contends that she is not liable to pay estate duty and that the assessments are erroneous.

(1) (a) That the deceased K.M. N. S.P. Natchiappa Chettiar
30 was a member of a Hindu undivided family.

(b) That the entire property which has now been assessed as liable to duty was and is the joint property of that Hindu undivided family.

(c) That the entire immovable property which has now been assessed as liable to duty, if it had been movable property, would have been the joint property of that Hindu undivided family

(d) No estate duty is payable by virtue of the provisions of section 73 of the Estate Duty Ordinance, No. 1 of 1938 (Chapter 187), as amended by the Estate Duty Amendment Ordinance,
40 No. 76 of 1938.

(e) No property passed on the death of the deceased within the meaning of the Estate Duty Ordinance for the reasons that in respect of the entire property in question the interest of the deceased who was a member of a Hindu undivided family is not one that passes on death within the meaning of that Ordinance.

No. 2
 Petition of
 Appeal of the
 Petitioner with
 Schedule of
 accounts
 2-4-41—contd.

(2) (a) The following amounts shown as "schedule of own accounts" and "schedule of sundry creditors" in the statement furnished in connection with the declaration of property sent to the Commissioner, a copy of which is annexed hereto marked P1 and pleaded as part of this petition, have to be deducted in arriving at the value of the Estate that might become liable to duty in the event of the grounds of objection set out in the last preceding paragraph failing.

(i) At the time of the death of the deceased, he had no interest in the moneys shown as "sons account" in the schedule referred to above. The said moneys were the property of the sons themselves or alternatively were moneys payable to the sons by the Estate. 10

(ii) The items shown as "charity accounts" are moneys payable by the Estate to the various charities or alternatively they are moneys held by the deceased in trust for the said charities.

(iii) The items detailed in the schedule of sundry creditors in respect of Indian creditors are debts payable by the Ceylon Estate.

(b) The following amounts of money too have to be deducted in addition to those mentioned in paragraph 2 (a) above.

(i) The interest accrued up to the date of death of the deceased on the sums referred to in paragraph 2 (a) amounting to Rs. 36,527.33. 20

(ii) Salaries and rent payable by the deceased at the date of his death amounting to Rs. 1,530.12.

(3) The Executrix is not liable to pay any interest charged either on the Provincial Assessment or on the Additional Assessment.

8. The Commissioner has recovered as duty and interest:

(a) Rs. 280,013.16 on or about 30th May, 1940.

(b) Rs. 12,762.42 on 29th January, 1941.

and (c) Rs. 555.31 on 22nd February, 1941.

totalling a sum of Rs. 293,330.89 of which the Commissioner has agreed to refund Rs. 7,749.50 leaving a balance of Rs. 285,581.39 which sum appellant claims is repayable to her. 30

Wherefore the appellant prays that Your Honours Court be pleased:

(a) To declare that the appellant is not liable to pay Estate Duty in respect of the said Estate of K.M. N. S.P. Nachiappa Chettiar and to order the respondent as representing the Crown to repay to the appellant the sum of Rs. 293,330.89 together with interest at 9 per cent. per annum from the dates of payment till date of order and thereafter at the same rate on the aggregate amount till date of payment in full. 40

- (b) In the alternative to declare the appellant entitled to the deductions claimed in paragraph 7 sub-paragraphs 2 (a), 2 (b) and (3) above and to order the respondent as representing the Crown to repay to the appellant the amount of the Duty overpaid on the footing of such declaration together with interest at 9 per cent. per annum from the dates of payment till date of order and thereafter at the same rate on the aggregate amount till date of payment in full.
- 19 (c) To award costs to the appellant and to grant her such other or further relief as to Your Honours Court shall seem meet.

No. 2
Petition of
Appeal of the
Petitioner with
Schedule of
accounts
2-4-41—contd.

Sgd. N. M. ZAHEED.
Proctor for Appellant.

P. 1.

FINANCIAL STATEMENTS OF MESSRS. KM. N. SP.
FIRM, COLOMBO

Total Ceylon Estate belonging to the Hindu undivided family left
by deceased, KM. N. SP. Natchiappa Chettiar.

		<i>Immovables</i>		<i>Rs. c.</i>	
Kandawala Estate	260,000 0
House Properties	349,500 0
					<u>609,500 0</u>
		<i>Movables</i>		<i>Rs. a. p.</i>	
<i>Business Assets :—</i>					
Furniture and fixtures	340	1 9
Ceylon Government bonds	30,000	0 0
Shares in Ceylon companies	25,798	0 0
Sundry debtors on mortgage, &c., (less reserve)	1,684,944	5 6
Advance on coupons	102,278	4 9
<i>Other Advances :—</i>					
Suspense	1,000	0 0
Rent	1,718	1 0
Staff	1,701	11 9
				4,426	12 9
Cash at Bank on deposits	50,000	0 0
Cash at Bank current accounts	11,979	13 9
Cash on hand	13,539	4 3
				1,923,306	10 9
<i>Less liabilities :—</i>					
To Ceylon creditor	309	0 3
On Suspense account	843	3 9
For Salaries	697	5 9
Advance rents collected	2,835	0 9
Advance interest	651	12 3
				5,336	6 9
				1,917,970	4 0
				<u>NET MOVABLES</u>	<u>OR 1,917,970 25</u>

**FINANCIAL STATEMENTS OF MESSRS. KM. N. SP.
FIRM, COLOMBO—contd.**

No. 2
Petition of
Appeal of the
Petitioner with
Schedule of
accounts
2-4-41—contd.

Balance Sheet as on December 31, 1938

<i>Liabilities</i>	<i>Rs. a. p.</i>	<i>Assets</i>	<i>Rs. a. p.</i>
Capital ..	51,100 0 0	Estates and properties ..	358,924 2 3
Additional capital ..	363,062 4 3	Furniture and fixtures ..	340 1 9
Current account ..	969,036 0 3	Company shares ..	33,203 0 0
Own accounts ..	831,863 8 0	Ceylon Government bonds ..	30,000 0 0
<i>Sundry creditors :—</i>		<i>Rs. a. p.</i>	
On open accounts ..	13,973 12 0	Sundry debtors	1741,672 1 6
For Salaries ..	697 5 9	Less reserve	56,727 12 0
" Suspense ..	843 3 9		1,684,944 5 6
<u>15,514 5 6</u>		Advance on coupons ..	102,278 4 9
Advance rent ..	2,835 0 9	Dollar speculation account ..	25,034 3 3
Advance interest ..	651 12 3	Remittances account ..	18,010 1 0
<i>Profit and loss account :—</i>		<i>Advances and deposits :—</i>	
Nett profit as per profit and loss account ..	113,617 2 3	<i>Rs. a. p.</i>	
		Income tax ..	15,000 0 0
		Suspense ..	1,000 0 0
		Rent ..	1,718 1 0
		Staff ..	1,708 11 9
			19,426 12 9
		Cash at Bank on deposit ..	50,000 0 0
		Cash at Bank on current account ..	11,979 13 9
		Cash on hand ..	13,539 4 3
			2,347,680 1 3
	<u>2,347,680 1 3</u>		<u>2,347,680 1 3</u>

Examined and found correct.

(Subject to our report of even date)

Incorporated Accountants.

Profit and Loss Account for the Period April 1, 1938, to December 31, 1938

<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
To Interests to Banks ..	961 14 0
To Establishment ..	788 9 0
To Bonus ..	5,000 0 0
To rent rates, &c. ..	52 1 9
To printing and stationery ..	32 14 0
To Postage and telegrams ..	113 10 9
To Mess clothing, &c. ..	1,693 5 6
To Travelling and conveyance ..	236 9 6
To Rickshaw repairs ..	35 2 3
To Bank charges ..	9 11 3
To Legal and audit ..	300 14 3
To claim in insolvency case ..	600 0 0
To Sundries ..	503 14 3
To Nett profit ..	113,617 2 3
	<u>123,945 12 9</u>
By interest received ..	83,733 12 0
By Rentals collected (net) ..	19,437 1 9
By Dividends from shares ..	1,046 10 3
By Profit from tea coupons ..	551 4 9
By Profit from rubber coupons ..	17,057 2 3
By Income from Kandawala Estates ..	2,119 13 9
	<u>123,945 12 9</u>

Examined and found correct

(Subject to our report of even date)

Incorporated Accountants.

Schedule of own accounts							No. 2
				Rs.	a.	p.	Petition of
<i>Own Sons accounts :—</i>							Appeal of the
Natchiappa Chettiar				263,302	2	0	Petitioner with
Ramaswami Chettiar				263,302	2	0	Schedule of
Subramaniam Chettiar				263,226	11	6	accounts
							2-4-41—contd.
					789,830	15	6

Charity accounts :—							
				Rs.	a.	p.	
Sundry charities				1,133	2	0	
Sadukkal Madam, &c.				36,534	5	9	
Karuppar Kovil				3,082	11	6	
Kalyanapakku				1,238	11	9	
Vairavar				43	9	6	
					42,032	8	6
					831,863	8	0

Schedule of Sundry Creditors							
				Rs.	a.	p.	
<i>In Ceylon :—</i>							
R. H. Sadiris de Silva (coupon account)					309	0	3
<i>Outside Ceylon :—</i>				Rs.	a.	p.	
N. S. P. Meenakahi Achi				266	12	9	
M. R. S. T. Kothai				194	0	6	
S. M. Devanai				8,161	9	0	
Karuppayee daughter of Valliammai				5,042	5	6	
					13,664	11	9
					13,973	12	0

Details of interest Paid							
				Rs.	a.	p.	
Imperial Bank					631	12	3
P & O. Bank					314	14	6
Indian Bank					15	3	3
					961	14	0

Details of Establishment Charges							
				Rs.	a.	p.	
N. K. V. L. Ramanathan Chettiar					428	9	0
Rickshawmen					360	0	0
					788	9	0

List of Shares in Companies							
Name of the Co.			No of shares	Market Price		Value	
				Rs.	c.		
Marigolds			200	9	0	1,800	0
Uplands			155	11	0	1,705	0
Bopitiyas			200	7	0	1,400	0
Hatbawes			150	3	50	525	0
Poonagalas			300	10	0	3,000	0
Opalgallas			377	4	0	1,508	0
Jebongs			100	7	0	700	0
Forest Hills			100	2	50	250	0
Kongsis			100	7	50	7,500	0
Doomoos			200	8	50	1,700	0
High Forests			200	21	0	4,200	0
Shawlands			250	2	0	500	0
Kuttapitiyas			145	6	0	870	0
Vogans			100	15	0	1,500	0
Hunugallas			100	8	50	850	0
Miyanaawitas			100	10	0	1,000	0
Langat Rivers			80	10	0	800	0
Wanarajaha			50	37	0	1,850	0
Beverlacs			178	5	0	890	0
						Total..	25,798 0

No. 3
Petitioner of the
Petitioner with
Pedigree
9-7-41

No. 3

Petition of the Petitioner with Pedigree

IN THE DISTRICT COURT OF COLOMBO

No. 10 Special

Testamentary Jurisdiction No. 8802

In the matter of an appeal under sections 34 and 38 of the Estate Duty Ordinance, No. 11 of 1938, Chapter 187 of the Legislative Enactments of Ceylon 1938 from the Assessment of Estate Duty on the Estate of the late KM. N. SP. Natchiappa Chettiar.

Between

10

VALLIYAMMAI ATCHI of No. 247, Sea Street, in Colombo, Executrix of the Last Will and Testament of KM. N. SP. Natchiappa Chettiar, deceased *Petitioner.*

And

THE ATTORNEY-GENERAL *Respondent.*

This 9th day of July, 1941.

The petition of the petitioner above named appearing by N. M. Zaheed, her proctor, states as follows:—

1. The petitioner is the appellant and is the Executrix of the Last Will and Testament of KM. N. SP. Natchiappa Chettiar, deceased, whose Estate is being administered in Testamentary Proceedings No. 8802 of this Court. 20

2. The Testator, the said Natchiappa Chettiar, was a Nattukottai Chettiar from India who had been carrying on business in Ceylon as a Money Lender. The Testator was a Hindu and the managing member of a joint Hindu family which consisted of himself, his sons, his widow the appellant and daughters.

3. It was the contention of the appellant that all the property left by the deceased was the joint property of that family. Therefore whilst making the statutory declaration and statement of property to the Commissioner for Estate Duty, the appellant claimed that the estate of the deceased was not liable to pay estate duty in terms of section 73 of the Estate Duty Ordinance. Up to the date of the death of the said Natchiappa Chettiar he had been assessed as a joint Hindu family and taxed accordingly by the Commissioner of Income Tax who is also the Commissioner for Estate Duty. 30

4. However the Commissioner of Estate Duty by his Additional Notice of Assessment dated 7th November, 1940, finally assessed the

Estate of the said Natchiappa Chettiar as liable to duty and fixed the amount of the duty at Rs. 290,784.12. This assessment has proceeded on the basis that the estate left by the deceased was not the joint property of a Hindu undivided family but the separate property of the deceased.

No. 3
Petition of the
Petitioner with
Pedigree
9-7-41—contd.

5. The petitioner objected to the said assessment and stated *inter alia* that the deceased K. M. N. S. P. Natchiappa Chettiar was a member of a Hindu undivided family and that the entire property which has now been assessed as liable to duty was and is the joint property of that Hindu undivided family, but the Commissioner of Estate Duty notified to the petitioner that he has determined to maintain his aforesaid assessment.

6. Being dissatisfied with the said assessment, the petitioner has appealed to this court in terms of sections 34 and 38 of the Estate Duty Ordinance, No. 1 of 1938, and the appeal is now fixed for inquiry on the 19th and 22nd September, 1941.

7. One very important question that arises for decision in this appeal is whether the estate of the deceased was the joint property of a Hindu undivided family of which the deceased was a member or whether it is the separate property of an individual, namely, the deceased. On this matter evidence will have to be placed before the Court.

8. Joint property of a Hindu undivided family acquires that characteristic, *inter alia*:

- (a) by being ancestral in origin and/or
- (b) by having been jointly acquired by members of a joint family and/or
- (c) by having been thrown into the common stock of the joint family.

9. In trying to establish one or more of the matters referred to in paragraph 8 above it will be necessary to lead evidence, *inter alia*, on—

- (a) the history of the family of the deceased;
 - (b) the ancestral origin of the property which the deceased left at his death;
- and (c) the manner in which the deceased and/or his father held their property, namely, whether as joint family property or as separate property.

10. The only witnesses who can speak to the matters referred to in paragraphs 8 and 9 are very old people. Further the number of such people now living is very few.

No. 3
Petition of the
Petitioner with
Pedigree
9-7-41—contd.

11. The family is set out in the pedigree in the schedule below. The oldest member of his family now living is KM. N. N. Natchiappa Chettiar who is now about 75 years old.

12. The evidence of the said Natchiappa Chettiar is very material to the case of the petitioner. That witness however is unable to come to Ceylon to give evidence owing to his physical condition and to the poor state of his health. The said Natchiappa Chettiar is old, is feeble, has weak sight and even recently had to undergo an operation.

13. Petitioner requested the said Natchiappa Chettiar to come to Ceylon to give evidence in this case but the said Chettiar has refused to do so, because of the state of his health. Natchiappa Chettiar is in full possession of his mental faculties. 10

14. Petitioner returned to Ceylon on the 5th July, 1941, and saw the said witness last on the 4th July, 1941, and petitioner is personally aware that the said Natchiappa Chettiar is unfit to travel to Ceylon.

15. This said Natchiappa Chettiar has been in Ceylon and was willing originally to come and give evidence in this Court and petitioner expected to have him present at the trial of this case but after the last operation in June this year it has become impossible for him to travel to Ceylon. 20

16. Another man who is acquainted with the matters referred to in paragraphs 8 and 9 above is one MR. M. V. L. Karuppan Chettiar of Kallal. This witness is about 65 years old and has refused to come to Ceylon to give evidence though requested to do so by the petitioner. The said Karuppan Chettiar has never left India and gone abroad.

17. If the evidence of at least one of the said two witnesses is not recorded, the case of the petitioner will suffer very greatly, as there are no other persons who can speak to the earlier events of the family of the deceased. 30

18. It has thus become necessary to issue a Commission to record the evidence of the said two witnesses.

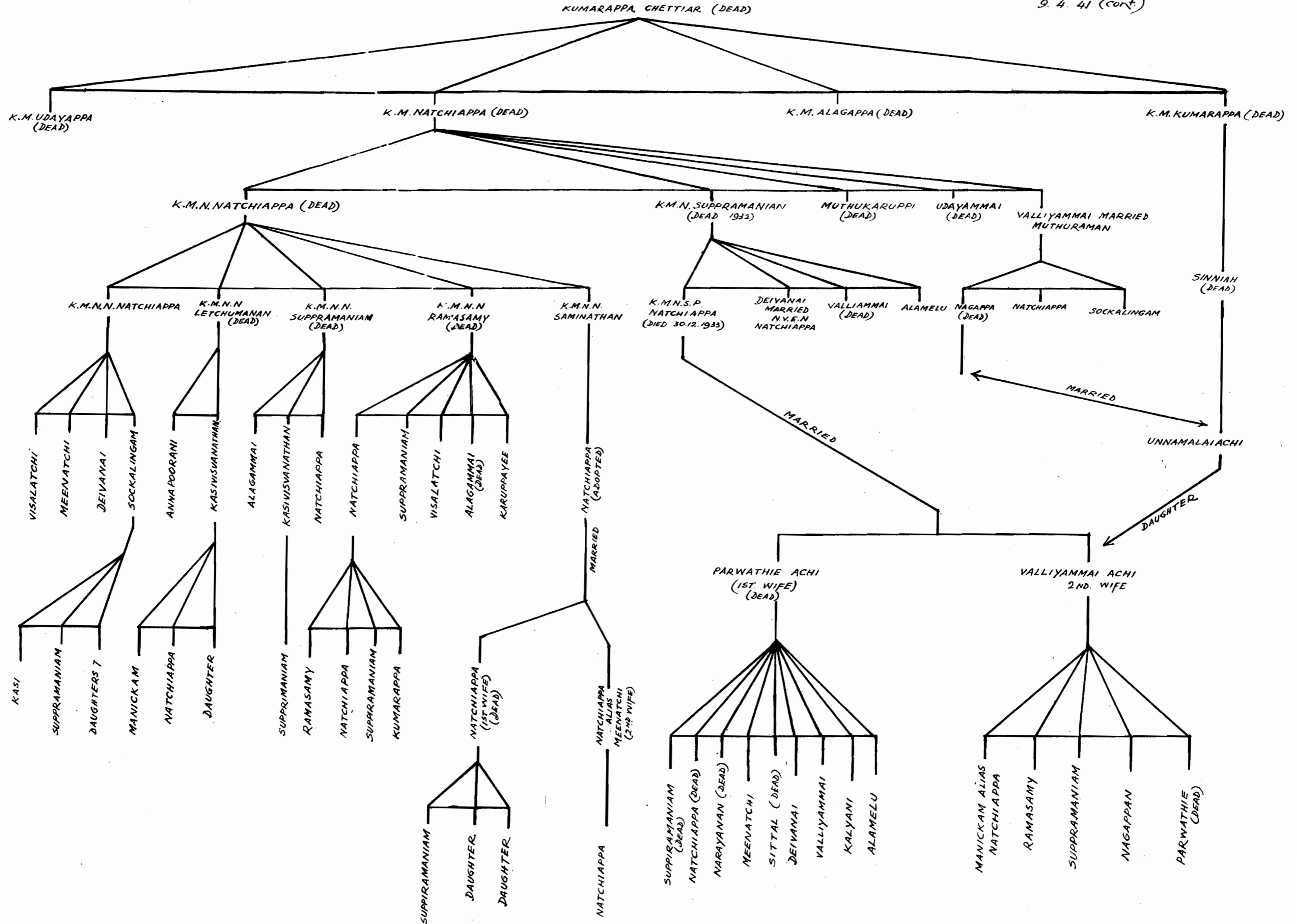
19. The Judge of the Subordinate Court of Sivaganga is the most appropriate person to whom the Commission might be issued.

Wherefore the petitioner prays that this Court be pleased to order (a) the issue of a Commission to examine the said two witnesses; KM. N. N. Natchiappa Chettiar and MR. M. VL. Karuppan Chettiar, (b) for costs and for such other and further relief in the premises as to this Court shall seem meet. 40

Sgd. N. M. ZAHED,
Proctor for Petitioner.

D.C. COLOMBO
CASE NO. 10 SPECIAL

No. 3.
Petition of the Petitioner
with Pedigree
9. 4. 41 (cont.)



No. 4

Affidavit of the Petitioner

No. 4
Affidavit of the
Petitioner
9-7-41

IN THE DISTRICT COURT OF COLOMBO

No. 10 Special

Testamentary Jurisdiction No. 8802

In the matter of an appeal under sections 34 and 38 of the Estate Duty Ordinance, No. 1 of 1938, Chapter 187 of the Legislative Enactments of Ceylon 1938 from the Assessment of Estate Duty on the Estate of the late K. M. N. S. P. Natchiappa Chettiar.

10

Between

VALLIYAMMAI ATCHI of No. 247, Sea Street, in Colombo, Executrix of the Last Will and Testament of KM. N. SP. Natchiappa Chettiar, deceased *Petitioner.*

and

THE ATTORNEY-GENERAL *Respondent.*

I, VALLIYAMMAI ATCHI of No. 247, Sea Street, in Colombo, not being a Christian do hereby solemnly, sincerely and truly declare and affirm as follows:—

20 1. I am the petitioner and appellant and am the Executrix of the Last Will and Testament of KM. N. SP. Natchiappa Chettiar, deceased, whose Estate is being administered in Testamentary Proceedings No. 8802 of this Court.

2. The Testator, the said Natchiappa Chettiar, was a Nattukottai Chettiar from India who had been carrying on business in Ceylon as a money lender. The Testator was a Hindu and the managing member of a joint Hindu family which consisted of himself, his sons, myself and daughters.

30 3. It was my contention that all the property left by the deceased was the joint property of that family. Therefore whilst making the statutory declaration and statement of property to the Commissioner for Estate Duty, I claimed that the estate of the deceased was not liable to pay estate duty in terms of section 73 of the Estate Duty Ordinance. Up to the date of the death of the said Natchiappa Chettiar he had been assessed as a joint Hindu Family and taxed accordingly by the Commissioner of Income Tax who is also the Commissioner for Estate Duty.

4. However the Commissioner of Estate Duty by his Additional Notice of Assessment dated 7th November, 1940, finally assessed the

No. 4
Affidavit of the
Petitioner
9-7-41—contd.

Estate of the said Natchiappa Chettiar as liable to duty and fixed the amount of the duty at Rs. 290,784.12. This assessment has proceeded on the basis that the estate left by the deceased was not the joint property of a Hindu undivided family but the separate property of the deceased.

5. I object to the said assessment and stated *inter alia* that the deceased KM. N. SP. Natchiappa Chettiar was a member of a Hindu undivided family and that the entire property which has now been assessed as liable to duty was and is the joint property of that Hindu undivided family, but the Commissioner of Estate Duty notified to me that he has determined to maintain his aforesaid assessment. 10

6. Being dissatisfied with the said assessment, I have appealed to this Court, in terms of sections 34 and 38 of the Estate Duty Ordinance, No. 1 of 1938, and the appeal is now fixed for inquiry on the 19th and 22nd September, 1941.

7. One very important question that arises for decision in this appeal is whether the estate of the deceased was the joint property of a Hindu undivided family of which the deceased was a member or whether it is the separate property of an individual, namely the deceased. On this matter evidence will have to be placed before the Court. 20

8. Joint property of a Hindu undivided family acquire that characteristic, *inter alia*,

- (a) by being ancestral in origin and/or
- (b) by having been jointly acquired by members of a joint family and/or
- (c) by having been thrown into the common stock of the joint family.

9. In trying to establish one or more of the matters referred to in paragraph 8 above it will be necessary to lead evidence, *inter alia*, on— 30

- (a) the history of the family of the deceased,
 - (b) the ancestral origin of the property which the deceased left at his death;
- and (c) the manner in which the deceased and/or his father held their property namely whether as joint family property or as separate property.

10. The only witnesses who can speak to the matters referred to in paragraphs 8 and 9 are very old people. Further the number of such people now living is very few. 40

11. The family is set out in the pedigree set out in the schedule annexed to the petition. The oldest member of his family now living is K. M. N. N. Natchiappa Chettiar who is now about 75 years old.

12. The evidence of the said Natchiappa Chettiar is very material to my case. That witness however is unable to come to Ceylon to give evidence owing to his physical condition and to the poor state of his health. The said Natchiappa Chettiar is old, is feeble, has weak sight and even recently had to undergo an 10 operation.

13. I requested the said Natchiappa Chettiar to come to Ceylon to give evidence in this case but the said Chettiar has refused to do so, because of the state of his health. Natchiappa Chettiar is in full possession of his mental faculties.

14. I returned to Ceylon on 5th July, 1941, and saw the said witness last on 4th July, 1941, and I am personally aware that the said Natchiappa Chettiar is unfit to travel to Ceylon.

15. The said Natchiappa Chettiar has been in Ceylon and was willing originally to come and give evidence in this Court and I 20 expected to have him present at the trial of this case but after the last operation in June this year it has become impossible for him to travel to Ceylon.

16. Another man who is acquainted with the matters referred to in paragraphs 8 and 9 above is one MR. M. VL. Karuppan Chettiar of Kallal. This witness is about 65 years old and has refused to come to Ceylon to give evidence though requested to do so by me. The said Karuppan Chettiar has never left India and gone abroad.

17. If the evidence of at least one of the said two witnesses is not 30 recorded, my case will suffer very greatly, as there are no other persons who can speak to the earlier events of the family of the deceased.

18. It has thus become necessary to issue a commission to record the evidence of the said two witnesses.

19. The Judge of the Subordinate Court of Sivaganga is the most appropriate person to whom the commission might be issued.

The foregoing affidavit having been duly read over and explained by me to the within-named affirmant in Tamil, her own language and she appearing to understand the contents thereof the same was signed and affirmed to at Colombo this 9th day of July, 1941. } (Sgd.) In Tamil
Before me
Sgd. Illegibly.
Commissioner for
Oaths.

No. 5
Statement of
Objections by
the Respondent
22-10-42

No. 5

Statement of Objections by the Respondent

IN THE DISTRICT COURT OF COLOMBO

No. 10 Special

Testamentary Jurisdiction No. 8802

In the matter of an appeal under sections 34 and 38 of the Estate Duty Ordinance, No. 1 of 1938, Chapter 187 of the Legislative Enactments of Ceylon 1938 from the Assessment of Estate Duty on the estate of the late KM. N. SP. Natchiappa Chettiar.

Between

10

VALLIYAMMAI ATCHI of No. 247, Sea Street, in Colombo, Executrix of the Last Will and Testament of KM. N. SP. Natchiappa Chettiar, deceased *Petitioner.*

Vs.

THE ATTORNEY-GENERAL *Respondent.*

On this 22nd day of October, 1942.

The statement of objections of the respondent appearing by his Proctor John Wilson showeth as follows:—

1. The liability to Estate Duty should properly be determined according to the law of Ceylon. Evidence of the law of domicile of the deceased irrelevant in these proceedings and the appellant is not entitled to lead such evidence. The appellant is not entitled to canvass in an appeal under section 34 of the Estate Duty Ordinance a decision of the Commissioner, under section 73. The respondent states that the appellant has not submitted for the decision of the Commissioner of Estate Duty under section 73 of the Estate Duty Ordinance the question whether the property passing on the death is the joint property of a Hindu undivided family. 20

2. The appellant is estopped from giving or leading any evidence to the effect that the Ceylon Estate of the deceased KM. N. SP. Natchiappa Chettiar referred to in the assessment of the Commissioner of Estate Duty dated 12th May, 1941, is joint property of a Hindu undivided family of which the deceased was a member by the representations made by the deceased in 1932 through his attorney, L. Ramanathan Chettiar, that Suppramaniam Chettiar, father of the deceased Natchiappa Chettiar, left no property whatsoever at the time of his death. 30

3. The findings of the Board of Review of Income Tax that the property left by the deceased is not joint property operates as *Res Judicata* and precludes the appellant from leading evidence that the property left by the deceased is joint property. 40

4. The appellant having obtained probate on payment of Estate Duty on the representation that the deceased had executed a valid will and was competent to dispose of the property referred to in that will is not entitled to lead evidence to establish a position contradictory to the will or to the testator's competency to dispose of the property he devised by his Will.

No. 5
Statement of
Objections by
the Respondent
20-10-41—contd.

5. Every allegation in the petition of appeal inconsistent with the determination of the Commissioner of Estate Duty is hereby denied.

10

Sgd. JOHN WILSON,
Proctor for Respondent.

No. 6

Proceedings on Preliminary Objections by the Respondent

No. 6
Proceedings on
Preliminary
Objections by
the Respondent

27.8.41.

MR. ADVOCATE CHELVANAYAGAM instructed by MR. ZAHEED for petitioner.

MR. ADVOCATE BASNAYAKE, Crown Counsel, instructed by MR. GRATIAEN for the Attorney-General.

20 Mr. Advocate Chelvanayagam says that he does not press for an order on this application today. He will endeavour to procure the presence of the witness Natchiappa Chettiar either on the 19th of September or on the 22nd of that month or on any date for which the inquiry may be fixed. If he is unable, however, to bring the witness down he says he will renew this application either upon the materials already placed before the Court or upon such further materials as he will be able to obtain. But he says whether the witness Natchiappa Chettiar is present on the date, fixed for the inquiry or not that will not prevent him from going on with the enquiry.

30 Mr. Advocate Basnayake, Crown Counsel, has no objection to this. Under the circumstances I make no order on this application.

Mr. Advocate Chelvanayagam now applies that the enquiry be refixed down the roll.

Mr. Advocate Basnayake, Crown Counsel, has no objection.

Refix enquiry for 31.10 and 18.11.

Sgd.....
D. J.

20th October, 1942.

D. C. 10 Special

Petitioner appellant present.

MR. ADVOCATE NADARAJAH, K.C., with MESSRS. ADVOCATES CHOKSY and CHELVANAYAGAM instructed by MR. ZAHEED for the appellant.

MR. H. H. BASNAYAKE, Crown Counsel, with MR. ADVOCATE WALTER JAYAWARDENA instructed by MR. WILSON for the Crown.

Mr. Advocate Basnayake says that he is raising certain preliminary objections. 10

This is an appeal against the assessment of estate duty by the executor. Objections to the assessment are—

(1) The most important of the grounds of appeal turns on the question that the deceased was a member of an undivided Hindu family and that property left by him was joint property, and therefore upon his death no estate duty is payable.

The respondent's reply to this will be that questions of Hindu Law will not apply to proceedings under the Estate Duty Ordinance. The law to be applied is the Ceylon Law both with regard to movable and immovable property except those cases provided for by section 73 20 of the Ordinance, Vol. IV page 602. See section 73. Section 73 has been repealed and a new section has replaced it. That is section 5 of Chapter 187 page 105 of the Supplementary Vol. 1 of 1941.

(2) The present appellant who is the executrix of the deceased Natchiappa Chetty is estopped by the conduct of Natchiappa Chetty from saying in these proceedings against the Crown that he inherited any property from his father. The conduct being the declaration made by the deceased through his attorney that his father left no property at his death and thereby he induced the 30 Commissioner of Estate Duty not to levy estate duty on the death of his father. Therefore he is estopped now from saying that he inherited property from his father.

(3) The decision of the Income Tax Board of Review is *res judicata* on the question of whether the property of the deceased is joint property. The Board of Review has decided that it is not joint property.

(4) The executrix having obtained probate and paid duty is precluded in these proceedings from saying that the deceased had no right to dispose of the property which he has disposed of by his 40 will.

Before Mr. Advocate Basnayake proceeds to elaborate the various objections stated by him above I ask Mr. Advocate Nadarajah, K.C., whether he is prepared to meet these objections. He says he is not, and submits that these objections should have been embodied in a statement of objections. See section 40 pp. 590, 591 of the Ordinance.

I agree with Mr. Advocate Nadarajah. Had the respondent applied to Court under the first proviso to this section for permission to file the objections mentioned by Mr. Basnayake today, 10 I think the Court would have directed him to do so. I find that this case is on for inquiry on the 26th of this month and the following 29th. The most satisfactory course would be for me to direct the respondent to file a written statement of objections with notice to the other side. I fix the 22nd of this month as the date for the statement of objections.

If the petitioner appellant feels that further pleadings should be filed in reply to this statement of objections, she should do so before the 26th of October.

20 There will be no costs of today.

Sgd.....
A. D. J.

20.10.42.

D. C. 10 Special
Trial resumed.

26th October, 1942.

Parties and appearances as on the last date.

Mr. Basnayake, Crown Counsel, says that he proposes to call certain evidence, only just so much as is necessary for founding the questions of law set out in the statement of his objections. The facts he proposes to place before Court are distinct and 30 separate and have no bearing, so he says, upon the general facts on which this appeal has been filed.

Mr. Advocate Nadarajah, K.C., on the other hand says that it would be very unsatisfactory to break up the case piecemeal and that he being the appellant is entitled to place all the facts and upon them make his submissions of fact and law. He says that in reply to the facts that Mr. Basnayake, Crown Counsel, seeks to place before Court today, he may have to place a counter-array of facts which it may not be quite easy to separate from the main facts of this appeal.

40 Looking at the statement of objections filed by the Attorney-General, I am inclined to think that the facts on which Mr. Basnayake seeks to support his preliminary objections are distinct and separate facts which need not get intervoven with the facts of the main appeal.

I accordingly allow Mr. Basnayake's application.

No. 6
Proceedings on
Preliminary
Objections by
Respondent
—contd.

No. 6
 Proceedings on
 Preliminary
 Objections by
 Respondent
 —contd.

Mr. Basnayake, Crown Counsel, calls:—

L. G. GUNASEKERA. Affd. Assessor, Estate Duty. Department of the Commissioner of Estate Duty. I have been an assessor for about 9 years and all along in the Department of the Commissioner of Estate Duty. I produce marked R1 a declaration under the Estate Duty Ordinance, No. 8 of 1919, made on 5th October, 1932. This declaration is made under section 21 of Ordinance No. 8 of 1919—this is the Old Ordinance—by the attorney of Nachchiappa Chettiar, Ramanathan Chettiar. The declaration does not show that the deceased Supramaniam Chettiar, in respect of whose estate the declaration is made, left any property. It shows that he left no property. I issued a notice on the 29th September, 1932, calling for a return and the declaration was made on KM. N. SP. Natchiappa Chettiar, Sea Street. I have got a copy of that notice in my file which I produce marked R2. (Shown letter marked R3.) It is in reply to R3 that I issued the notice R2. There must have been another letter. R2 is a document subsequent to R3. Prior to that I issued a notice on the 5th of September, 1932. The copy of that notice is not in my file. I have a journal entry. It is on the journal entry the notice was issued. It may be one of the printed forms. In reply to this notice, which I cannot trace, I got the letter R3. R3 is to the effect that the deceased left no property whatsoever at the time of his death and is signed by L. Ramanathan Chettiar, per pro KM. N. SP. Natchiappa Chettiar. After this letter I issued the notice R2 and the declaration was made on R1. The declaration returned that there was no property left by Supramaniam Chettiar. According to that declaration I made investigation. I wrote to the Banks to enquire whether the deceased had a bank account. I found that he had no bank account. Thereafter I made, what is called a NIL return acting on this declaration.

Two deeds were sent with this declaration which I produce marked R4 and R5. R4 is sale by Supramaniam Chettiar to Natchiappa Chettiar, the deceased in this case, on 26th March, 1925, of a share of Kandawala Estate. R5 is a sale by Supramaniam Chettiar, the father of the deceased in this case, of a large number of mortgage bonds in favour of Supramaniam Chettiar on 24th March, 1926. These deeds accompanied the declaration. I was induced by the declaration and the accompanying deeds to make the assessment that I made in this case. Had I known that the deceased left property I would have assessed for estate duty. If as it is now alleged that Supramaniam Chettiar left property to his son Natchiappa Chettiar, I would have got a large sum by way of estate duty.

The present appellant is the executrix of the estate of Natchiappa Chettiar and it was Natchiappa Chettiar's attorney who made the declaration in respect of Supramaniam Chettiar's estate, acting for

Natchiappa Chettiar. I subsequently out of curiosity worked out the estate duty. Merely accepting the face value of the deeds, it will be between 8 and 9 thousand rupees.

I received from the Commissioner of Income Tax the finding of the Board of Review, on the appeal by the present appellant in this case to the Board of Review from a finding of the Commissioner that the estate left by the deceased is not joint property.

No. 6
Proceedings on
Preliminary
Objections by
the Respondent
—contd.

To Court:

I received from the Commissioner of Income Tax the finding of the Board of Review from an appeal by the Executrix to the Board of Review from a decision of the Commissioner that the property is not properly of a member of a joint Hindu undivided family. I got a copy of that finding from the Commissioner of Income Tax.)

I produce a copy of the decision of the Board of Review marked R6.

(Mr. Advocate Nadarajah objects to the document R6.

I allow the document in).

The return, upon the death of Natchiappa Chettiar was a declaration under section 29 of the Estate Duty Ordinance Vol. IV Cap. 187 page 587. I produce the return marked R7 which was made under section 29. I got a copy of that declaration with me. The return was made by the executrix of Natchiappa Chettiar by attorney Letchumanan Chettiar. According to the declaration all the property left by Natchiappa Chettiar is exempted from duty. That declaration is dated 4th August, 1939. I produce a letter dated 4th August, 1939, marked R8, which accompanied that declaration. I made an assessment of a duty of Rs. 283,034.62 on that declaration. This is the assessment after the appeal. The assessment from which there was an appeal is for Rs. 290,784.12. From this assessment there was an appeal to the Commissioner. The Commissioner decided to maintain the assessment appealed against. From the Commissioner's assessment an appeal has been taken to this Court.

Q. Was there an application for a decision by the Commissioner under section 73 of the Estate Duty Ordinance?

A. There was only this declaration. This declaration was treated as an application and the Commissioner made a decision. The Commissioner's decision was that it was not the joint property of a member of a Hindu undivided family. They refer both to movable and immovable property. The appellant did not place before the Commissioner any material beyond the declaration for establishing that the property was joint property.

X X D

I was not in the Estate Duty Department in 1932. I came to the Department in 1933. The Commissioner of Estate Duty in 1932 was Mr. Prasad.

No. 6
 Proceedings on
 Preliminary
 Objections by
 Respondent
 —contd.

(To Court: Before I came to the Estate Duty Department I was in the Income Tax Department. We amalgamated the two.)

I was then an Assistant Assessor in the Income Tax Department. Along with the declaration R7, in the covering letter R8 the appellant explicitly raised the question of exemption of the property under section 73. That was over-ruled. I also wrote a letter on the 30th January refusing to grant an exemption. I followed it up by serving notice of assessment on the 3rd February, 1940. To this, appellant filed objections under section 35 of the Estate Duty Ordinance, Cap. 187. I have the original of that objection dated 10 23rd February, 1940, addressed to the Commissioner of Estate Duty.

(Mr. Advocate Nadarajah puts in a certified copy of the statement of objections and marks it A1.)

Thereafter there was a subsequent additional assessment. That was dated 7th November, 1940. I served the notice of assessment dated 7th November, 1940. My assessment which is called the additional notice of assessment was the final assessment. The earlier one to which A1 was sent was considered a provisional assessment. To my final assessment dated 7.11.40 the appellant sent up a notice of objections under section 35 again on 26.11.40. I produce 20 a copy of this marked A2. So that, when the Commissioner decided to maintain or uphold my assessment he had the declaration R7, the covering letter R8 and also documents A1 and A2 before him, and he decided to maintain the assessment.

On the 11th March, 1941, the Commissioner notified to the appellant that he has made up his mind to maintain the assessment subject to small modifications. I produce the notification marked A3. Before my assessment or the Commissioner's ultimate decision no evidence was called for.

Q. There was no request by the Commissioner. 30

A. There was one letter written by me dated 5.9.39.

I produce the letter marked A4. Apart from this, there was no request. I wanted some further proof as regards the amounts paid to the sons of the deceased. I haven't the figures. He must have given some kind of figures. A4 was complied with. I cannot say in what way. Might have been by an interview. I made my order by letter of 30.1.40. I produce it marked A5. It stated that this estate was not exempt from estate duty.

Q. From 1932 up to the time of the death of the deceased Natchiappa Chettiar you know as a fact that he was assessed for 40 income tax as a member of an undivided Hindu family? First of all he was assessed as a member of an undivided Hindu family?

A. I think so.

On the death of Natchiappa Chettiar the claim for estate duty was sent in. Then the Income Tax office re-assessed.

(To Court: On the basis that he was not a member of a joint undivided Hindu family.)

On 2nd April, 1941, appeal has been filed in this Court. I have seen the Income Tax file for purposes of estate duty.

No. 6
Proceedings on
Preliminary
Objections by
the Respondent
—*contd.*

Q. You know, as a matter of fact, an application was made for a postponement of the hearing by the Board of Review, pending the hearing of this case by Court?

A. I don't know whether I can give that information. I am under an oath of secrecy in Income Tax work.

10 *Q.* Does the oath of secrecy extend to the judgment in this case of the Board of Review?

A. That has been sent to me as Assessor of Estate Duty.

I was the clerk of the Board of Review on these particular dates. I have not signed the judgment as clerk. I have signed a certified copy. I am still the clerk of the Board of Review of Income Tax.

Q. Was an application made to the Board of Review for a postponement of the hearing of the appeal pending the decision of this case?

A. If I am in order in answering it, I will answer it.

20 (Mr. Basnayake, C.C., refers to section 4 (1) of Vol. IV of Legislative Enactments of Ceylon page 613.)

(Witness asks whether in view of the fact that he is bound by the oath of secrecy he is at liberty to answer the question put to him by counsel.)

(I direct him to answer the question.)

30 I was Clerk on the Board of Review at that time. I was present when this was argued. Mr. Chelvanayagam appeared and he was heard. An application was made for adjournment on the hearing of the appeal pending the hearing of this appeal in the District Court. The Board remarked that they had to deal with the question of assessment of Income Tax and could not permit to put off the hearing. Under the Ordinance the party told the Assessor that he had no estate and I made a re-assessment and subsequently found that there was property. I had power to assess. Under the New Ordinance a limited power has been reserved. Rolling of years does not bar me to re-assess the estate for purposes of estate duty.

Q. I believe you were contemplating the assessing of the estate of Supramaniam Chettiar.

40 *A.* I have not discussed it with the Commissioner.

No. 6
 Proceedings on
 Preliminary
 Objections by
 Respondent
 —contd.

Q. I believe Mr. Prasad was the officer who had to make the final order—at that time in 1932 or 1933?

A. I have made the assessment.

Q. The final notice or certificate, if I am not mistaken, is granted by Mr. Prasad?

A. That is a certificate. A certificate under section 23. It is not the assessment.

(To Court: The assessment is made by me and on that a certificate is issued signed by the Commissioner.)

My duty in the Department at that time was to assess duty as an officer under the Commissioner of Stamps. I had no personal interest in the matter. The declaration R1 was sent under statutory requirements of the old Ordinance, No. 8 of 1919. I notified him to send up a declaration. In response to my notice I had the letter R3 dated 28.9.32. Then I sent up R2. This declaration was submitted in response to R2. The earlier letters were signed by one Mr. Gurusinghe. At that time he was in charge of this file. I came in and took charge of this in 1933—about August. The assessment was made on the 26th of August. I cannot remember the exact date I came into this office—some time in August, 1933. I first dealt with this matter, as far as the minute in file goes, on the 19th August. Till then it was in the hands of Mr. Gurusinghe and Mr. Toussaint. Both were in the office. On the 19th of August the file came into my hands. I looked into the statements and made the assessment. The certificate was issued by Mr. Prasad on 28th August, 1933. I did not make enquiries personally. The office made enquiries. As far as I can see from the file certain inquiries were made by the officers in charge.

Q. You cannot say, except what you see in the minutes, what was the nature of the inquiries and what interviews took place between the assessors and the declarant.

A. There is no note of an interview in the file.

Personally I cannot say what happened. I believe the declaration reached my office somewhere in 1932 October; on the 6th of October. Between the 6th October, 1932, and the 19th August, 1932, the matter was dealt with by these two officers, Messrs. Gurusinghe and Toussaint. I say now that Supramaniam Chettiar left property.

Q. You do not know what his status was in India.

A. What I know is confined to the file. Outside that I know nothing.

I know as a fact that there are a large number of Chetty traders in Ceylon. I cannot say whether those traders have an institution

known as the joint undivided Hindu family. I know about joint undivided Hindu family. I have had some matters of that type coming before me.

No. 6
Proceedings on
Preliminary
Objections by
the Respondent
—contd.

Q. You know as a matter of fact that a male member of a joint undivided Hindu family when he dies leaves no property?

A. Not necessarily.

Q. Generally they would leave no property.

A. I said not necessarily.

Q. Why do you say now that Supramaniam Chettiar left
10 property?

A. I have not definitely found out that he left any property. He has made a statement.

I did not discuss the question of Supramaniam leaving property.

Q. What made you surmise that Supramaniam left any property.

A. I think they made some statements, I am not sure.

Q. Who made some statements? The assessee. They are not in the file. Some statements to the assessor's accountant. I am not sure.

20 Q. You are not sure what made you think he left property?

A. I have not gone into this question.

There was an earlier letter of the 5th of September, 1942. There is no copy of that letter in my file. It is a printed form calling upon the legal representative of the deceased to make a statement in terms of the Estate Duty Ordinance.

Re-Exn.

I produce R9, R10 and R11.

Sgd.....
A. D. J.

30 26.10.42.

Mr. Basnayake, Crown Counsel, closes his case reading in evidence R1 to R11 and R12 and R13 application to the Supreme Court and the affidavit respectively.

Sgd.....
A. D. J.

Mr. Advocate Nadarajah, K.C., says that without it being understood that he acquiesces in the order that I made when Mr. Basnayake applied to lead evidence on the preliminary objections, he would now lead evidence only to meet the evidence
40 just adduced by Mr. Basnayake.

No. 6
 Proceedings on
 Preliminary
 Objections by
 Respondent
 —contd.

Mr. Advocate Nadarajah calls

N. K. V. L. RAMANATHAN CHETTIAR. Affd.

I knew the deceased KM. N. SP. Supramaniam Chettiar. I have been working under him. I knew his son Natchiappa. I have been working under him also. I knew the other members of the family.

Q. What exactly was the family status of Natchiappa and Supramaniam.

A. They were members of a joint undivided Hindu family.

This business of KM. N. SP. was left by the family consisting 10 of the father and son. Supramaniam Chettiar died in 1932. I was looking after the affairs of Supramaniam Chettiar in Ceylon. I got the notice R2 calling upon me to make a statutory declaration. I sent letter R3 stating that Supramaniam Chettiar had left no property whatsoever at the time of his death. Then a statutory notice was served on me. I sent up the declaration R1. I consulted lawyers before I sent up R1. Even before R3 was sent up I consulted lawyers. I consulted Mr. N. M. Saheed, Proctor. When I sent R3 in 1932 I consulted Mr. Saheed. I got legal advice and sent up R1. I did not understand the legal position of joint 20 undivided Hindu family at the time I sent up the declaration, nor of the provisions of the Estate Duty Ordinance. I don't know English. I can talk, write and read Tamil.

Supramaniam Chettiar executed two deeds in favour of his son Natchiappa. The first was with regard to Kandawala Estate and the other in regard to certain mortgage bonds. Though these two deeds were executed, still Supramaniam Chettiar managed the business. No consideration passed on the deeds.

(To Court: I was present at the execution of the deed.)

I was working in that firm. I know the time when the deeds 30 were executed. I was at the Notary's Office.

(To Court: C. T. Kandiah was the notary who attested the deeds. I did not see any consideration passing at the time the bond was executed. I am aware that no consideration passed at the time those deeds were executed.)

I have got my books in Court to prove that.

(Mr. Basnayake desires it to be recorded that he objected to the above answers regarding consideration.)

X X N

At the time I made the declaration R1, I was the attorney of 40 Natchiappa Chettiar. In that declaration I said that the deceased Supramaniam Chettiar left no property whatsoever in Ceylon. I might have attached the two deeds R4 and R5 with that declaration. I have no recollection. I remember having attached

to that declaration on the instructions of my proctor a statement to the effect that the mortgage bonds and a share of Kandawala Estate had been sold by the deceased to Natchiappa Chettiar his son. I signed those two statements before a Commissioner of Oaths. I mentioned the number of the two deeds.

I also wrote letter R3 dated 28th September, 1932, informing the Commissioner of Stamps that Supramaniam Chettiar left no property whatsoever at the time of his death. I signed that letter as the attorney of Natchiappa Chettiar. Letter R2 to which I
10 replied was addressed to Natchiappa Chettiar. I took action on that letter because I was his attorney. I was present at the execution of these deeds. Supramaniam Chettiar was in Ceylon at that time. Natchiappa Chettiar was not in Ceylon at that time.

Re-Exn.

I produce the ledger of the firm marked A6 at that time. I produce the translations of page 74 of the day book and page 235 marked A6 (a) and A6 (b).

(Mr. Basnayake objects to the documents. I allow the documents in.)

20

Sgd.....
A. D. J.

Mr. Advocate Nadarajah closes his case reading in evidence A1 to A6 and A5 (a) and A6 (b).

Lunch interval.

Mr. Basnayake, Crown Counsel:

Statute under which estate duty is made payable is the law of our country. See Estate Duty Ordinance, Cap. 187, Vol. IV., page 574. See section 3 "Ceylon Estate" is defined at page 604.

The property in Ceylon which passes under his death is part of
30 Natchiappa Chettiar's estate.

Natchiappa Chettiar is an Indian domiciled in India, who settled down in Ceylon and carried on business here. Was property that he died possessed of in Ceylon, property which passed on his death? The passing of property has to be interpreted according to the law of Ceylon. For determining estate duty the law of domicile does not apply. See terms of will of Natchiappa filed in case No. 8802 Testamentary.

Natchiappa has left a large estate movable and immovable, valued at Rs. 1,700,000.

40 It is connected that Natchiappa was not domiciled in Ceylon. The property disposed of by Natchiappa has passed on his death. The law of Ceylon decides the question whether the property passed or not.

No. 6
Proceedings on
Preliminary
Objections by
the Respondent
—contd.

No. 6
 Proceedings on
 Preliminary
 Objections by
 Respondent
 —contd.

See sections 6 and 7.

The words "competent to dispose" occur in sections 24 and 26.
 "Competent to dispose" should be decided according to the laws of Ceylon.

"Total estate" is defined at page 606.

For the purpose of estate duty, the question of passing will be decided by that particular law of the country where the property is situated. See section 73, this section takes note of foreign law

See section 32 regarding assessment. The assessor is not expected to know the foreign laws. Legislature gives him power 10
 to assess according to our law. No principle either in international law or in our law which imports into the consideration of this matter the Hindu Law. One has to look at the law of Ceylon only to determine the liability of an estate to pay estate duty.

All Ceylon property, even of a member of an undivided joint Hindu family is liable to estate duty. This, of course, without reference to section 73. Section 73 modifies the above statement to this extent. If you satisfy that the property of a member of a Hindu undivided family that is in Ceylon is joint property, then 20
 no duty is charged. To that extent section 73 creates an exemption in favour of members of Hindu undivided family.

According to section 73, where it is proved that a person whose estate is the subject of consideration is a member of a joint undivided Hindu family, the Ordinance does not operate upon the estate, but where such is not proved, then estate duty will be payable and the law applicable for determining that estate duty, and therefore in determining the estate that passed upon death, is Ceylon law and not other law with regard to properties movable 30
 and immovable in Ceylon.

See *Winans vs. Attorney-General* 1910 Appeal cases p. 27.

See section 37 functions of Commissioner. Section 38 deals with appeal.

It is now 4 p.m.

Further hearing on the 29th October, 1942.

Sgd.....
 A. D. J.
 26.10.42.

29th October, 1942.

Trial resumed.

Parties and appearances as on the last date.

Mr. Basnayake, Crown Counsel (*contd.*)

The scheme of the Ordinance provides for a special exemption in the case of Hindus who come to Ceylon for the purpose of business or otherwise. The reason is, under the Income Tax Ordinance, section 20 (7) treats them differently from other taxpayers.

Hindu undivided family are treated as a unit for purposes of Income tax. The individual in Ceylon who represents the family for the time being is regarded as the person in Ceylon for purposes of taxation.

No. 6
Proceedings on
Preliminary
Objections by
Respondent
—contd.

The Income Tax Ordinance was in existence at the date Estate Duty Ordinance was introduced—Income Tax Ordinance in 1932 and the Estate Duty Ordinance in 1938. The policy of the legislature would appear from the fact that when they came to impose Estate duty they did not lose sight of the fact that Hindu family
10 was specially treated for purposes of Income tax and a special rate of an additional 3 per cent. was charged to make compensation for the additional charge. Special provisions were made in section 73 of the Estate Duty Ordinance by which the Commissioner was authorised—in case where the property is taken to be joint property—to look into the matter and made a decision as to whether joint or not.

See R9, R11.

The burden is upon the appellant to prove that he got a certificate exempting this property from estate duty on the ground that it was property belonging to a Hindu family.

20 There must be a special application, as there was in this case (R9) for a ruling under section 73. It cannot be embodied in a statement of objections under sections 35 or 36.

Appeal machinery in connection with appeals is not the machinery to get a certificate from the Commissioner in respect of the Hindu family property.

Under the old Estate Duty Ordinance there were certain matters which were specially left to the judgment of the Commissioner but appeals were provided for specially in those cases.

See section 17 of Ordinance No. 8 of 1919 page 581. See sub-
30 section 8 of this section.

1911 A.C. 179 at page 192.

There was no intention to give an appeal from the decision of the Commissioner under section 73. If there was such an intention it would have been stated in some section of the Ordinance.

21 Q.B.D. 313 at 319 (Rex vs. Bloomsbury, Income Tax Commissioner.)

42 N.L.R. 97 (Kanagasundaram vs. Podihamine.)

43 N.L.R. 230 (Vanderpoorten vs. Settlement Officer.)

(1941) 3 All England 338 at 348 and 363 (Liversiege vs. Anderson
40 and another.)

Section 73 (a) says “proved to the satisfaction of the Commissioner”.

29.10.42.

(Lunch interval)

Sgd.....
A. D. J.

No. 6
Proceedings on
Preliminary
Objections by
Respondent
—contd.

Mr. Basnayake, C. C.

No principle of law which says that law of domicile governs immovable property.

Dicey's Conflict of Laws 4th edition page 553 Rule 150.

In considering the question what passed on death, one has to consider what law applies to (1) movable property (2) immovable property. To immovable it is the law of *Locus Siti*.

Regarding movable property see principle in *Winan's* case.

The general principle that movable property is governed by the law of domicile is modified by *Winan's* case which is an authority 10 that law of domicile is not applicable to questions of estate duty. See page 34 of that case.

Hanson on Death Duties (8th edn.) page 2.

38 N.L.R. 313, 318. Section 27 of No. 8 of 1919.

Objection No. 2

See section 115 of the Evidence Ordinance. R1, R3, R4 and R5 constitute the representation that the father left no property whatsoever on his death. He had transferred all the movable and immovable properties to his sons—he had sold them.

Spencer Bower on Estoppel by Representation page 37 para 40. 20 Also para 36 page 36 Summary.

Objection No. 3

Decision of the Board of Review is R6. Finding of the Board of Review is the finding of a competent tribunal. But the Board of Review can state the case to the Supreme Court. See section 74 of the Income Tax Ordinance Vol. IV page 670.

Spencer Bower on Res Judicata page 9 section 13.

Objection No. 4

Brooms Legal Maxims page 103 (10th Edn.).

L.R. 7 House of Lords page 861. (*Codrington vs. Codrington*) 30

Mr. Adv. Nadarajah, K.C.

The petition of appeal raises two questions; first, the liability of the estate to pay duty and secondly, if the estate is liable, whether it is liable in respect of certain sums distributed to the sons more than 3 years before the death of the deceased as set out in the books.

See section 58 (2). This is the reply to the judgment in case 38 N.L.R. 313.

See sections 17 and 18 and 58 in contrast to section 73.

Ordinance does not provide a machinery for obtaining a finding under section 73.

(1866) 1 Common Pleas 699 at 706 and 712.

38 N.L.R. at 319.

It is now 4 p.m. Further hearing on 3rd and 27th November, 1942.

Sgd.....
A D J.

No. 6
Proceedings on
Preliminary
Objections by
Respondent
—contd.

3rd November, 1942.

10 Hearing resumed.

Parties and appearances as before.

Mr. Adv Nadarajah, K.C

See page 577 of Vol. IV proviso section 6, sub-proviso (iii).

See sections 17 and 22 of the Old Ordinance, No. 8 of 1919.

Respondent's contention was that there was an appeal against valuation under these sections because the general sections did not apply.

See section 22 sub-sections 3 and 4.

These sections allowed appeal only to "persons accountable."

20 Section 24 is a section of general application in all manner of things where an estate is administered. Section 17 (8) is a section of wider scope. Section 34 speaks of "any person".

The case of Board of Education vs. Rice has no application to the facts of this case because the decision there was the decision of an administrative body and there is no provision in the Ordinance providing for an appeal.

Finance Act 1894-1919 Webster Brown (1921 Edn.) sections 7 (12) and 10.

30 *Liverseige vs. Atkinson* has no bearing on the facts of this case. There is no appeal tribunal erected by the law connected with that case.

In the matter of payment of estate duty, it is the Estate Duty Ordinance that governs. Estate Duty Ordinance does not show what property passes.

Undoubtedly it is the Estate Duty Ordinance that applies to all questions with regard to the payment of the estate duty subject to this modification: that certain terms and phrases that occur in the Ordinance should be interpreted according to law.

40 Section 73 is also a part of and a section in the Estate Duty Ordinance. When you apply section 73 you are applying the Estate Duty Ordinance.

Exemption in favour of joint Hindu family is the direct result of the expressed provision in section 73 of the Estate Duty Ordinance.

“ Passing of property ” is defined. That does not say what standard we are going to apply to this property.

Is this property that passed on death or not? Assuming this is not joint Hindu family property, then, here, among these people there is a manner of devolution according to which it cannot be said that property passes on death.

See section 21 of Cap. 47, Vol. II, page 21.

As far as immovables are concerned undoubtedly it is the law of 10 the land. What is the law of domicile as regards movable property? To find that out one has to find out devolutions among these people in India.

Under the Thesawalamai upon the death of one of the spouses half of the diatetam remains vested in the surviving spouse.

A difference is drawn in Winan's case between estate duty on one side and legacy duty and succession duty on the other.

38 N.L.R. at page 316 (Ramasamy Chettiar vs. Attorney-General).

Mr. Basnayake now says that he concedes that the question of 20 Joint Hindu Family was submitted to the decision of the Commissioner on document R9—also A1 and A2.

Objection No. 3

The Board of Review is constituted under section 70 of the Cap. 188 Vol. iv pp. 668-670. See sections 73 (5) to (8). Their powers are confined to sub-section 8. Reasons cannot constitute a finding. It is a tribunal with a very limited jurisdiction.

Appeals to the Supreme Court from the decision of the Board of Review lie on questions of law.

See sections 74 and 75.

30

The decisions under this Ordinance cannot be used as *res judicata* in a decision under the provisions of the Death Duty Ordinance.

Res Judicata.

Our law *re res judicata* is not all contained in the various sections of the Civil Procedure Code. See section 207.

There is no dispute regarding property in these tax collecting ordinances.

The rights adjudicated upon under these ordinances are not identical with the rights adjudicated upon in ordinary civil suits which give rise to a plea of *res judicata*.

40

1915 A.C. 478 (Commissioners of Inland Revenue vs. Brooks).

L.R. 1926 A.C. 155 Hoystad and others vs. Commissioner of Taxation.

L.R. 1932 2 K.B.D. 362 at 380 (Commissioners of Inland Revenue vs. Sneath).

There is no decision of the question of lis so as to constitute an estoppel by *res judicata*.

In the cases of statute liability when a party is asked to make a declaration and a decision is made by a Board on that declaration that decision does not operate as *res judicata*.

What is a court of competent jurisdiction? Board of Review may be a tribunal of competent jurisdiction for purposes of Income Tax but not for Estate Duty.

L.R. 1875-76 1 Q.B.D. 589 (Rajaratnam vs. Commissioner of Stamps).

A.I.R. 1930 Madras 209.

2nd Objection:

See evidence of Mr. Gunasekera.

(Lunch Interval)

A.I.R. 1937 Bombay at 51, 52.

R3 is dated 28 September, 1932. R2 is the reply to R3. Then R1 is signed after that.

20 See section 115 of the Evidence Ordinance. Statement by an attorney will not bind the principal under section 115.

Spencer Bower on Estoppel by Representation section 188 p. 158.

A.I.R. 1941 Oudh 230 at 240.

Objection No. 4

See section 24 of the Estate Duty Ordinance Cap. 187 Vol. IV.

Codrington vs. Codrington applies to the doctrine of election.

Williams Law of Executors and Administrators Vol. 1, p. 439 and at 440.

59 English Reports 123 (Thornton vs. Kerley).

30 70 English Reports 445 Campbell vs. Beaufort.

1866 L.R. 2 Q.B.D. 612 (Baraclough vs. Greenhough).

Maine's Hindu Law page 911.

Mr. Basnayake, C. C., in reply.

Commissioner is given power in a number of sections.

See section 6 proviso (iii). Sections 13, 17, 18, 45, 48, 48 (2), 49 (1), 49 (2) 50, 53, 58 and then 73.

The scheme of the Ordinance provides for an appeal from the functions of the Assessor.

What section 34 means by “ his liability to pay ” is the liability of the executor to pay personally the duty.

1924 A.C. 385 at 389.

We are not concerned here with the question of succession to property but with the question as to who is liable to pay tax.

Succession may be regulated by the law of domicile, but liability to pay estate duty should be regulated by the Ordinance.

It is now 4 p.m.

Further hearing 10th November, 1942.

Sgd..... 10
 A. D. J.
 3.11.42

10th November, 1942.

Hearing resumed.

Parties and appearances as before.

Mr. Basnayake, Crown Counsel, continues address.

Objection No. 2

Spencer Bower on Res Judicata page 3 para 6.

The decision of the Board of Review is a final decision.

See section 74 of the Income Tax Ordinance Cap. 188, Vol. IV, 20 p. 620.

Board of Review according to the Income Tax Ordinance is a judicial tribunal.

Spencer Bower on Res Judicata para 10 page 5.

Continuation of para 10 at page 6 (12 lines from top); page 9 para 13; page 11 para 15 (5 lines from the beginning of the para). Para 17 page 13; para 190 page 174.

See sections 72 and 74 of the Income Tax Ordinance.

Section 70 constitutes a Board. The Advisory Board is not the same as the Board of Review. Advisory Board is referred to in 30 section 3. Advisory Board has no judicial power.

The fact that appeal is heard in camera does not detract from the value of the findings of the Board. Nowhere is it laid down that only proceedings in open court carry the hallmark of the virtue of *res judicata*.

The case of Commissioners of Inland Revenue vs. Smeath (1932 2 K.B. 362) has no application to our Ordinance.

Halsbury Statute Vol IX page 429 Income Tax Act 1918.

Special Commissioner in this case has not merely judicial but executive functions also.

See section 121 of the Income Tax Act at page 485 section 148.

Estoppel

The case of Sangaralingam Nadar vs. Commissioner of Income Tax Madras (1930 A.I.R. Madras 209) is the same as the Sneath case. This authority does not apply to the Income Tax Ordinance in Ceylon.

No. 6
Proceedings on
Preliminary
Objections by
Respondent
—contd.

Objection No. 4

It is not open to a party to approbate and reprobate a conduct at the same time. Here, the executor having come with the will and proved it and having paid estate duty and obtained certificate
10 cannot now turn round and say that no estate duty is payable. See section 51.

See section 58 page 597.

Money paid on mistake of law cannot be recovered under the provisions with regard to refund.

Vol. IV Encyclopaedia of Laws of England at page 543 (3rd Edn.)

Sgd.....
A. D. J

I require some time to consider the preliminary questions dis-
20 cussed by Counsel.

Mr. Advocate Nadarajah, K.C., applies that Nachchiappa Chettiar, who is present in Court be examined today pending my decisions on the preliminary matters. He says this witness is feeble and old and he has come to Ceylon from India at some inconvenience and it may not be easy for him to attend Court another day if this matter is going to be postponed for a long date. He also says that the evidence that this witness will give will be on the relationship of the various parties connected with this case and of the manner in which they were associated with each other both on
30 domestic as well as business matters.

Mr. Advocate Basnayake says that on the last occasion all that Mr. Advocate Nadarajah stated when he wanted to have this witness' evidence recorded was that he was going to speak to family relationship. Mr. Advocate Basnayake says that if this witness is going to speak to other matters, he may not be able to cross-examine the witness.

I allow Mr. Nadarajah to examine the witness on all matters but if at the end of his examination it is found that Mr. Advocate Bas-
40 nayake is in some difficulty to cross-examine him, I will allow Mr. Basnayake an opportunity for cross-examination later.

Sgd.....
A. D. J

10.11.42

No. 6
 Proceedings on
 Preliminary
 Objections by
 Respondent
 —contd.

Mr. Adv Chelvanayagam calls:—

Vyraavan Chettiar's son Nachiappa Chettiar Affirmed.

62. Trader in piece goods. Madura.

My vilasam is Navana Vana Eena Navana, that is N.V.E.N. I know the deceased Nachiappa Chettiar. I married Nachiappa Chettiar's sister. My wife's name is Theivady Achy. She is alive. I married in that family 47 years ago. I am 62 years old now. I live in the village called Kallal. Nachiappa Chettiar was staying at Sambanur. Kallal is 2 miles from Sambanur. At the time I married the father of the deceased, Nachchiappa Chettiar, was **10** alive. His name is Supramaniam Chettiar. Supramaniam Chettiar had three daughters and one son. That son is the deceased Nachiappa Chettiar. The daughters are Theivany Achy, Valliamma Achy, Alamelu Achy. Valliamma Achy is dead, Alamvelu Achy is alive. She is married to Murugappa Chettiar. Murugappa Chettiar is also alive. At the time I married into this family, Nachiappa Chettiar the deceased was married. He had married about two months before my marriage.

To Court:

Nachiappa Chettiar died four years ago. He was about 52 or 53 **20** years at the time of his death.

Nachiappa Chettiar first married Parwathy Achy. She is dead. He had children by the first marriage. He had sons and daughters. Those sons by that marriage are dead. The daughters are living. He had six daughters, one died and five are living. He had three sons and they are all dead.

The deceased Nachiappa Chettiar married a second time, that is he married Valliamma Achy. Valliamma Achy has four children and they are all sons.

I knew my father-in-law, Supramaniam Chettiar. I also know **30** the deceased, Nachiappa Chettiar, very well. My father-in-law had a brother. His name is Nachiappa Chettiar. He was the elder brother of Supramaniam Chettiar. This Nachiappa Chettiar lived at Sembanur in the southern portion of the house. Supramaniam Chettiar lived in the northern portion of the same house. I knew this Nachiappa Chettiar also well. These two brothers had the vilasam Koon Mana Navana.

Koon Mana Navana Natchiappa Chettiar had children. He had five sons and I know those sons very well. The names of the children are (1) Nachiappa Chettiar (the eldest son) (2) Letchu- **40** mannan Chettiar (3) Supramaniam Chettiar (4) Ramasamy Chettiar and (5) Saminathan Chettiar. Of these five sons the eldest Nachiappa Chettiar and the youngest Saminathan Chettiar are alive. The other three sons are dead. Both these people Nachiappa and Saminathan are living in Sembanur. They are still living in the

same house. This gentleman Nachiappa is over 70 years. He is unable to walk. He is weak. He is not in a condition that will permit him to come to Ceylon.

No. 6
Proceedings on
Preliminary
Objections by
Respondent
—contd.

(Mr. Advocate Basnayake objects to this evidence as embodying the opinion of this witness. I allow the evidence to go in. It is relevant evidence but as to the value that should be attached to this witness' opinion, that is another matter.)

10 The house in which Koonā Mana Navana Supramaniam Chettiar lived in a big house. Nachiappa Chettiar's wife lives in the northern portion of the house where Koonā Navanna Supramaniam Chettiar lived. That is the widow of Nachiappa Chettiar. She lives with her children. This is the portion where my wedding took place.

20 All these people including myself belong to the class called Natukotai Chettiars. We are all inhabitants of South India. We are Hindus by religion. I remember the time when Koonā Mana Navana Nachiappa Chettiar and Koonā Mana Navana Supramaniam Chettiar divided their property. I know that personally. Such divisions are common among our people. I myself have partitioned with my elder brother. Before I divided with my elder brother we were one family (Ka-kudumbam). After that division I am living with my son. I have only one son. My son has sons.

The division between Koonā Mana Navana Nachiappa Chettiar and Koonā Mana Navana Supramaniam Chettiar took place about thirty years ago.

To Court:

Q. Under what vilasam did K. M. N. Nachiappa Chettiar start business after the division?

30 A. He excluded one son out of the five and the other four sons joined in the business and carried on under the vilasam Navana Suna Ravana Mana Ouvana (N. S. R. M. S.). The vilasam of Koonā Mana Navana Supramaniam Chettiar after the division was Koonā Mana Navana Suna Pana. The things divided by these two brothers Koonā Mana Navana Nachiappa Chettiar and Koonā Mana Navana Supramaniam Chettiar were the house, lands in India, jewellery and the Colombo shop. The Colombo shop at that time was known by the vilasam Kuna Mana Navana. The division is effected by a "Panjayat" appointed by the parties. This is the custom among our people. For a division among these parties
40 Panjayat was appointed. They were Avana Moona Murugappa Chettiar of Kallal and Suna Koonā Ravana Mana Ramasamy Chettiar. Murugappa Chettiar is Alavelu Achy's husband's father; that is, my wife's sister's husband's father. I know him well. These two arbitrators are now dead. On that occasion when all these things were partitioned a document was executed. Such

No. 6
 Proceedings on
 Preliminary
 Objections by
 Respondent
 —contd.

a document if written on Ola is called a "muri" and if written on paper is called "Trastuvis". I saw the document that was executed on that occasion. I produce the Trastuvis marked A8. (the translation is marked A8a). I know the signatories to this document. It is signed by Nachiappa Chettiar and Supramaniam Chettiar.

(*To Court:* I am very familiar with their signature.)

The Panjayat consisted of Avana Moona Murugappa Chettiar and Suna Keena Ravana Mana Ramasamy Chettiar. They have also signed that. Navana Moona Roona Kumarappa Chettiar of Sembanur is dead. I knew him also. I knew the existence of this document at that time. A8 is the document by which those two people divided their property. 10

To Court:

I was present when this document was signed.)

Q. Before the execution of that document how did Kuna Mana Navana Nachiappa Chettiar and Kuna Mana Navana Supramaniam Chettiar live?

(Question objected to. I allow the question.)

A. They were living in the same house. (*To Court:* They were 20 having separate cooking establishments.)

Q. How did they hold their properties.

(Question objected to. I allow the question). *To Court:* Q. Did they look after the several properties severally or did they look after the properties jointly?

A. They were in common.)

Q. Before the document was signed, did the two of them in Ceylon have one business or more than one business?

(Question objected to. I allow it.)

A. They had one business under the vilasam Koonna Mana 30 Navana.

(*To Court:* I was not in Ceylon. But I knew this while in India.)

After the document was executed Supramaniam Chettiar and his son Nachiappa Chettiar lived together. At the time the document was executed the deceased Nachiappa Chettiar's son was living.

(*To Court:* Q. Did Supramaniam Chettiar and his son Nachiappa Chettiar trade together.

A. Yes.

(Supramaniam Chettiar and his son Nachiappa Chettiar traded 40 together under the vilasam Kuna Mana Navanna Suna Pana).

Koona Mana Navana Suna Pana Nachiappa Chettiar had three sons at that time. They died. The eldest son was 12 or 13 years old when he died, the other 8 years and the third 4 years. Koona Mana Navana Supramaniam Chettiar and Koona Mana Navana Nachiappa Chettiar lived in the same house. The father Supramaniam Chettiar and the son Nachiappa Chettiar joined together.

(To Court: The father Supramaniam Chettiar and the son Nachiappa Chettiar were in the same house and were living together in the northern side of the house. They had the same cooking establishments.)

Koona Mana Navana Suna Pana Nachiappa Chettiar and his wife lived in the same side. They all lived together.

(To Court: I married Theivane Achy and took her away to my place. Valliamme Achy, her sister, was dead. Alamelu Achy also married and went away with her husband. Therefore the only child who remained was Nachiappa who lived with his father in the northern house. And Nachiappa and his first wife and afterwards the second wife and their children lived there.)

My wife and her sisters before they married and went away were living in the northern side of this house.

Q. What was the worship of your father-in-laws house.

A. There was a "Sami". There was a shrine room in that house.

Q. By whom was that shrine room, with an idol inside, used?

A. Supramaniam Chettiar and all the household worshipped together.

Q. You know among your people there is a system called Joint Family system.

(Mr. Advocate Basnayake objects. Objection upheld.)

Q. Do you know whether Koona Mana Navana Nachiappa Chettiar and Koona Mana Navana Supramaniam Chettiar lived as one joint family prior to A8?

(Question objected to. I uphold the objection. But I would allow the question with the modification that the word "joint" be deleted—that is "one family".)

A. They lived as one family.

Q. Did they live as Kakudumbam?

(Question objected to. I allow the question.)

A. Yes.

I have come to Ceylon for the purpose of this case. I have no interest in Ceylon. I have come to Ceylon at the request of Valliamma Achy. I came to give evidence once before in respect of the same matter before the Income Tax Commissioner in 1941. Before that I never carried on business in Ceylon.

No. 6
Proceedings on
Preliminary
Objections by
the Respondent
—contd.

(Mr. Advocate Basnayake says that he is not ready today to cross-examine this witness. He wishes to consider this evidence in consultation with an expert in Madras before cross-examining the witness. He asks for three weeks time. I am not quite sure whether Mr. Basnayake is entitled as a matter of right to a date. However, in view of the fact that this witness' evidence is being recorded today before a decision on the preliminary objections, on which decision perhaps Mr. Basnayake relies for a disposal of this case, I am prepared to give a date. If before that date Mr. Basnayake decides not to cross-examine the witness he will inform the Court 10 and the other side at the earliest opportunity.

I reserve my order on the preliminary objections.

Further hearing on the 16th December, 1942.

Sgd.....
A. D. J.

10. 11. 42.

No. 7
Order of the
District Court
on the Preliminary
Objections
15-12-42

No. 7.

Order of the District Court on the Preliminary
Objections.

D. C. 10 Special.

20

ORDER

The appellant in this case is the executrix of the Last Will and testament of one K. M. N. S. P. Nachiappa Chettiar, deceased. She appeals from the assessment of estate duty made by the Assessor in respect of the estate of the deceased. At the hearing in this Court certain matters of law were submitted by the respondent, who is the Attorney-General, in limine. Before stating them it is necessary to set out the following facts:

The deceased Nachiappa Chettiar died leaving movable and immovable property in Ceylon. He carried on business in Ceylon 30 as a Banker and a money lender. He was domiciled in India and he died there in December 1938. He left a last will which was duly proved in testamentary case No. 8802 of this Court and probate was issued to the appellant; she having paid under protest the estate duty as assessed by the Assessor. The papers that were filed in this Court for application for probate and the prior papers filed in the Supreme Court in connection with the application for conferring sole testamentary jurisdiction of this Court, state that the deceased left property in Ceylon.

It would appear that when Nachiappa Chettiar's father Supra- 40 maniam Chettiar, who was also a Banker and money lender, died a declaration (R1) was forwarded to the Commissioner of Estate Duty under section 21 of the Old Estate Duty Ordinance, No. 8 of 1919, to the effect that Supramaniam Chettiar left no property. To this declaration which was made by one Ramanathan Chettiar as

attorney of Nachchiappa Chettiar, were annexed two deeds (certified copies are R4 and R5) which showed that Supramaniam Chettiar had during his life time sold, conveyed and assigned a land and a large number of mortgage bonds to his son. The attorney also wrote letter R3 to the Commissioner of Stamps in which he stated that Supramaniam Chettiar left no property whatsoever at the time of his death. The Assessor of Estate Duty was induced by the declaration R1 and the documents R3, R4 and R5 to make what is called a " Nil " return. It would also appear in connection with

10 the assessment of income tax payable by the deceased Nachiappa Chettiar, the executrix maintained before the Commissioner of Income Tax that her deceased husband was a member of a Hindu undivided family; the Commissioner held that the deceased was not that. An appeal was taken to the Board of Review and the Board dismissed the appeal holding that the appellant failed to satisfy them that the Commissioner's decision was incorrect (R6). There was no application made by the appellant to the Board under section 74 (1) of the Income Tax Ordinance, Cap. 188 Vol. IV of the Legislative Enactments of Ceylon to state a case for the opinion of the

20 Supreme Court. In connection with the estate duty payable by this estate the executrix caused letter R9 to be written to the Commissioner of Estate Duty in March, 1939, in which she asserted that her husband was a member of a Hindu undivided family.

I would now state the preliminary matters of law that were argued before me and I think it would be convenient to state them in the following manner. The respondent submits that the law applicable to questions of estate duty in Ceylon is Ceylon law and wherever the domicile of a man may be, his movable property in Ceylon is liable to pay estate duty according to the provisions of the

30 Estate Duty Ordinance, Cap. 187, of the Legislative Enactments of Ceylon. There is no dispute of course with regard to immovable property. The appellant while conceding the applicability of the Ordinance, makes an exception with regard to movable property. She says that in the case of such property it is the law of the domicile of the deceased that determines the liability. She further says that even if the movable property is liable to pay estate duty under the Ordinance, her husband was a member of a Hindu undivided family and therefore, under section 73 of the Ordinance which has now been repealed and replaced by section 5 of Cap. 187

40 of the supplementary Volume 1 of 1941 no estate duty is payable. The respondent denies as a fact that the deceased was a member of a Hindu undivided family and rejoins as a matter of law that the appellant not having submitted for the decision of the Commissioner of Estate Duty under section 73 the question whether deceased was or not a member of a Hindu undivided family, or in the alternative not having proved that fact to the satisfaction of the Commissioner she is not entitled to agitate that question in appeal. The respondent also pleads that the finding of the Board of Review

No. 7
Order of the
District Court on
the Preliminary
Objections
15-12-42—contd.

of Income Tax that the deceased was not a member of a Hindu undivided family operates as a *res judicata* in this case.

With regard to the declaration R1 respondent argues that the appellant is stopped from asserting that the deceased was a member of a Hindu undivided family by reason of the representation contained in R1 that the father of the deceased Nachiappa Chettiar left no property whatsoever at the time of his death. A further point of law submitted by the respondent is that the appellant having obtained probate of the will, cannot now say that the deceased left no property, nor can she say that he was not competent to make a will. 10

As regards the first matter argued by the respondent, I do not think that the high authority of *Winans vs. The Attorney-General* (1910) A.C. 27 is necessary to support the respondent's position although that case is conclusive of the matter in dispute in favour of the respondent. But the value of that authority which lays down that the principle of *mobilia sequuntur personam* does not apply to estate duty is in the underlying reasons for it and one of the reasons is set out as follows in the judgment of the House of Lords :— 20

“ In the case of the foreign citizen no taxation, of course, falls, except upon property situate within the United Kingdom, and I know no reason either under the law of nations, by the custom of nations, or in the nature of things why property within the jurisdiction of this country possessed and held under the protection of its law should not, upon transfer from the dead to the living, pay the same toll which would have been paid by the property enjoying the same protection but owned by a deceased British subject.”

In this case the deceased was a British subject, though not domiciled in Ceylon and he having possessed and held property in Ceylon under the protection of its law, that property should pay the same toll which would have been paid by property owned by a deceased British subject domiciled in Ceylon. There are definite provisions in our Ordinance with regard to the liability for estate duty in respect of property in Ceylon owned by a deceased who was not domiciled in Ceylon. According to section 3 of our Ordinance “ in the case of every person dying on or after the 1st day of April nineteen hundred and thirty-seven there shall be, subject to certain exceptions, levied and paid upon the value of the Ceylon estate a duty called Estate Duty.” Ceylon estate is defined in section 77 of the Ordinance and in the case of a deceased person who was not domiciled in Ceylon, it consists of all property in Ceylon settled or not settled which passes on his death (See (b)). Property passing on death is also defined and what property is deemed to pass on death is set out in the section 6, while section 7 and the sections following it set out property which shall not be deemed to be property passing on the death of the deceased. If the intention of the 40

legislature was that, in the case of a deceased person who was not domiciled in Ceylon, movable property should be excluded it would have been so stated, but the words used are "all property in Ceylon". Section 6 (a) refers to property which the deceased was at the time of his death "competent to dispose". These last three words occur in sections 24 and 26 also; and they too have an interpretation given to them by section 77. I am therefore of opinion that the mere fact of a non-Ceylon domicile does not exclude the operation of the Estate Duty Ordinance upon movable property situated in Ceylon. The only questions that have to be considered in respect of all property in Ceylon of a deceased person who was not domiciled in Ceylon, are whether such property passed on his death and whether it was property of which he was competent to dispose. These are questions that have to be decided according to our law.

The appellant then relies on section 73 of the Ordinance which in its amended form is as follows:—

"Where a member of a Hindu undivided family dies, no estate duty shall be payable—

- 20 (a) on any movable property which is proved to the satisfaction of the Commissioner to have been the joint property of that family or
- (b) on any immovable property, where it is proved to the satisfaction of the Commissioner that such property, if it had been movable property, would have been the joint property of that family".

The respondent's rejoinder to this on the law is that the appellant having failed to prove to the satisfaction of the Commissioner that property was the joint property of a Hindu undivided family, cannot now raise that question on appeal. At the argument it was conceded by Mr. Basnayake, Crown Counsel, that the question of Hindu undivided family was submitted by the appellant to the decision of the Commissioner. He did so in view of documents R9, A1 and A2. Before going into the legal aspect of the matter I wish to say that it would be unfair indeed to the appellant if she is precluded from agitating this question before this Court, because it would appear from the materials placed before me hitherto that although in letter R9 of the 30th March, 1939, it was submitted to the Commissioner on behalf of the executrix that the deceased was a member of a Hindu undivided family, the Commissioner did not give an opportunity to her to prove her assertion to his satisfaction. Even when notices of objection to the assessment A1 and A2 in the forefront of which was this question of membership, were delivered to the Commissioner he did not give such opportunity to the executrix, but he decided to maintain the assessment in part.

Now, what is the legal aspect of this matter? The executrix having failed to prove to the satisfaction of the Commissioner the

No. 7
Order of the
District Court on
the Preliminary
Objections
15-12-42—contd.

fact of her husband's membership of a Hindu undivided family, can she raise that question on appeal before this Court. The difficulty that I am experiencing in the particular facts of this case is this: if the matter had been submitted to the consideration of the Commissioner of Stamps and he had ruled on it definitely, then it may be said that the matter is coming on in appeal. But here, the Commissioner has not ruled on the matter although he had been invited to do so, and therefore, it appears to me that this matter is coming on for decision for the first time before this Court. But assuming that the communication contained in letter R9 and the notification of the Commissioner's determination under section 37 tantamount to a finding by the Commissioner under section 73, does an appeal lie. Mr. Basnayake, Crown Counsel, relied among other authorities on the cases of *Kanagasundaram v. Podihamine* (1940) 42 N.L.R. 97 and *Vanderpoorten v. The Settlement Officer* (1942) 43 N.L.R. 230 in support of his argument that no appeal lay from the decision of the Commissioner under section 73 because if there was an appeal it would have been expressly provided for in some section of the Ordinance. He also referred to sections 17 and 22 of the old Estate Duty Ordinance, No. 8 of 1919, where provision is made for appeals from decisions, valuations and assessments made by the Commissioner of Stamps in respect of the various matters set out in those sections. I agree with Mr. Basnayake on the authorities cited by him that in special proceedings like these an appeal would not lie unless specially provided for by law. But is there no provision in the Estate Duty Ordinance for such appeals?

Before answering this question I would refer to his argument based on the words "to the satisfaction of the Commissioner" in section 73. Counsel's position is that this "satisfaction" is something personal to the Commissioner and his pronouncement with regard to his satisfaction or otherwise cannot be canvassed in appeal. As regards this argument I would content myself with referring to the following passage in the judgment of Brett M.R. quoted by Mr. Justice Soertz in *Ramasamy Chettiar v. The Attorney General* (1937) 38 N.L.R. 313. It is as follows:—

"that he would 'be very loth to hold that that is so, and to think that there is no remedy open to persons in the position of the prosecutor . . . and that the officials in a department of the Government have been constituted the sole and exclusive judge whether they ought to be satisfied or not.'"

But neither the Master of the Rolls nor Mr. Justice Soertz pronounced a decision on this point, nor would I take upon myself to decide it because the question whether the Estate Duty Ordinance contains provision for an appeal from a pronouncement under section 73 can be decided on other grounds. It is important to note that section 73 introduces new law. There is nothing similar to it in the old Ordinance. It is also important to note that provisions

for appeal were made specifically under certain sections against the ruling of the Commissioner in respect of the various matters contained in those sections. But in the new Ordinance there is no specific provision for such appeals with special reference to such matters. On the other hand, we have a general section. It is section 34 and it is as follows:—

No. 7
Order of the
District Court on
the Preliminary
Objections
15-12-42—contd.

10 “ Any person aggrieved by the amount of any assessment of estate duty made under this Ordinance, whether on the ground of the value of any property included in such assessment or the rate charged or his liability to pay such duty or otherwise, may appeal to the appropriate District Court in the manner hereinafter provided.”

20 According to this section, any person aggrieved by the amount of assessment may appeal among other things, on the ground “ of his liability to pay such duty or otherwise ”. I think these last words are wide enough to include a case where an executor denies his liability to pay duty on the ground that the deceased was a member of a Hindu undivided family. I am inclined to think that the Estate Duty Ordinance provided a wider range of appeals than the old Ordinance and perhaps one reason for this is that an important provision, namely, section 73, has been introduced into the new Ordinance. It is not at all likely that an appeal would have been denied against a decision under section 73 which deals with a matter of very great importance when appeals are provided for in respect of less important matters. I am, therefore, of opinion that an appeal lies under section 34 of the Ordinance from a decision of the Commissioner of Estate Duty under section 73.

30 The next question is whether the finding of the Board of Review of Income Tax operates as a *res judicata* in this case. I bear in mind the maxim *interest rei publicae ut sit finis litium*. I also bear in mind that the Board of Review appointed under section 70 of the Income Tax Ordinance, Cap. 188, of the IVth Volume is a judicial tribunal though it is not a court of record. But is that a justification for saying that the finding of this Board embodied in R6 is a *res judicata* in this case? Under section 74 of the Income Tax Ordinance the decision of the Board shall be final provided no case on a question of law for the opinion of the Supreme Court has been stated. But I think that the finality with which the decision of the Board is impressed operates only with regard to the Income Tax Ordinance. The Income Tax Ordinance and the Estate Duty Ordinance are two tax collecting enactments. It is not possible to say that they are worked on a similarity of principles. That being so, what is pronounced to be final in one Ordinance cannot have the same effect in the other. Moreover, income tax is a recurring levy and it is estimated periodically and all matters in connection with such estimate are considered periodically whereas estate duty falls for collection only once. It may be that the question of membership

40

No. 7
Order of the
District Court on
the Preliminary
Objections
15-12-42—contd.

in a Hindu undivided family may arise for decision every time income tax is assessed. That being so, I do not think that the decision of the Board of Review which is pronounced in connection with the estimate of income tax for a particular year should operate as *res judicata* in connection with estate duty. But the greatest difficulty I experience is this: What section 73 says is that something should be proved to the satisfaction of the Commissioner. I do not think it will be possible to tell the Commissioner of Estate Duty that he should consider himself satisfied that a certain state of things exists because the Board of Review is so satisfied. I am, therefore of opinion that the decision of the Board of Review is not a *res judicata* in this case. 10

The next question is estoppel. If I understood Mr. Basnayake aright this is how the estoppel arises. Nachiappa represented to the Commissioner of Estate Duty by R1 that his father Supramaniam left no property. Therefore the property that Nachchappa possessed during his life time and left at his death was not ancestral property. It was his own property. It cannot be said to be the property of Hindu undivided family. But I venture to think that a representation that the father left no property and a subsequent assertion that the son is a member of a Hindu undivided family are two different things. I do not at present know the incidence of rights and obligations arising from an institution called Hindu undivided family which is known to the Hindu Law. I cannot say that the only property held and possessed by a member of a Hindu undivided family should be ancestral property inherited from his father. But there is another obstacle to the operation of estoppel in this case. The persons who made the representation with regard to the estate of Supramaniam is not identical with nor privy to the person who is making the present assertion. No doubt the individual who made the representation was Nachiappa through his attorney but he made it as the representative of Supramaniam. He was the privy of Supramaniam. The present representation is made by the executrix of Nachiappa. She is the privy of Nachiappa. But Supramaniam and Nachiappa are two different personnel and so are their privies. They are deemed strangers for the purpose of estoppel. (See Spencer Bower on Estoppel by Representation, page 158 para 188). I therefore hold that there is no estoppel in this case. 20

The last question for decision has been submitted as follows by Mr. Adv. Basnayake at the argument. 30

“ It is not open to a party to approbate and reprobate a conduct at the same time. Here, the executor having come with the will and proved it and having paid estate duty and obtained certificate, cannot now turn round and say that no estate duty is payable. See section 51 ”.

I do not think the doctrine of election has application here. According to section 51 of the Ordinance the certificate issued by

the Commissioner shall be presumed to be correct until the contrary is proved, and in the absence of proof a court shall act on any such statement without requiring further proof thereof. It is the proof to the contrary that the executrix is seeking to make. She is not concluded by the certificate. And under section 24 she shall be liable to pay the estate duty in respect of all property of which the deceased was competent to dispose at his death. The application for probate and the paying of estate duty under protest should not debar her from raising the question of the property of which the deceased was competent to dispose at his death. I am of opinion that the issuing of probate has no operation beyond a declaration that the will has been proved and beyond the appointment of an executor. It does not operate to give validity to the contents of the will. And an executrix who has applied for probate and to whom it has been issued is not precluded thereby from denying her liability to pay estate duty.

No. 7
Order of the
District Court on
the Preliminary
Objections
15.12.42—contd.

10

Sgd.....
A D. J.

15.12.42.

20

No. 8

Petition of Appeal of the Defendant Appellant
to the Supreme Court

IN THE SUPREME COURT OF THE ISLAND
OF CEYLON

D. C. 10 Special.

D. C., Colombo, Testamentary Case No. 8802

THE ATTORNEY-GENERAL of Ceylon...*Defendant-Appellant.*

Vs.

VALLIYAMMAI ATCHI of No. 247, Sea Street, Colombo,
Executrix of the Last Will and Testament of K. M. N. S. P
Natchiappa Chettiar *Plaintiff-Respondent.*

30

This 23rd day of December 1942.

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES
OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

The petition of appeal of the Attorney-General, Defendant-Appellant abovenamed, appearing by John Wilson, his proctor, states as follows:

1. The Plaintiff-Respondent appealed to the District Court under section 34 of the Estate Duty Ordinance (Cap. 187) against the assessment, under section 32 of the said Ordinance, of the estate

40

No. 8
Petition of
appeal of the
Defendant
Appellant to
the Supreme
Court
23.12.42

No. 8
Petition of
Appeal of the
Defendant
Appellant to the
Supreme Court
23-12-42—*contd.*

duty payable in respect of the estate of the deceased K. M. N. S. P. Natchiappa Chettiar on the following among other grounds urged in the petition of appeal filed under section 38 of that Ordinance :—

- (a) that the deceased K. M. N. S. P. Natchiappa Chettiar was a member of a Hindu undivided family;
- (b) that the entire property which has now been assessed as liable to duty was and is the joint property of that Hindu undivided family;
- (c) that the entire immovable property which has now been assessed as liable to duty, if it had been movable property would have been the joint property of that Hindu undivided family; 10
- (d) that no estate duty is payable by virtue of the provisions of section 73 of the Estate Duty Ordinance, No. 1 of 1938 (Cap. 187) as amended by the Estate Duty Ordinance, No. 76 of 1938;
- (e) that no property passed on the death of the deceased within the meaning of the Estate Duty Ordinance for the reason that in respect of the entire property in question the interest of the deceased who was a member of a Hindu undivided family is not one that passes on death within the meaning of that Ordinance. 20

2. The defendant-appellant raised the following preliminary objections to the appeal of the plaintiff:

- (i) The liability to Estate Duty should properly be determined according to the law of Ceylon. Evidence of the law of domicile of the deceased is irrelevant in these proceedings and the appellant is not entitled to lead such evidence. The appellant is not entitled to canvass in an appeal under section 34 of the Estate Duty Ordinance a decision of the Commissioner under section 73. The Respondent states that the appellant has not submitted for the decision of the Commissioner of Estate Duty under section 73 of the Estate Duty Ordinance the question whether the property passing on the death of the deceased is the joint property of a Hindu undivided family. 30
- (ii) The appellant is estopped from giving or leading any evidence to the effect that the Ceylon estate of the deceased K. M. N. S. P. Natchiappa Chettiar referred to in the assessment of the Commissioner of Estate Duty dated 12th May, 1941, is joint property of a Hindu undivided family of which the deceased was a member by the representations made by the deceased in 1932 that Suppramaniam Chettiar, father of the deceased 40

Natchiappa Chettiar, through his Attorney, L. Ram-nathan Chettiar left no property whatsoever at the time of his death.

No. 8
Petition of
Appeal of the
Defendant
Appellant to the
Supreme Court
23-12-42—*contd.*

- (iii) The findings of the Board of Review of Income Tax that the property left by the deceased is not joint property operates as *res judicata* and precludes the appellant from leading evidence that the property left by the deceased is joint property.
- 10 (iv) The appellant having obtained probate on payment of estate duty on the representation that the deceased had executed a valid Will and was competent to dispose of the property referred to in that Will is not entitled to lead evidence to establish a position contradictory to the Will or to the testator's competency to dispose of the property he devised by his Will.
3. After hearing the parties on the preliminary objections to the appeal, the learned District Judge reserved his order which he delivered on the 15th December, 1942.
- 20 4. The defendant appellant, being aggrieved by the findings of the learned District Judge—
- (a) that an appeal lies under section 34 of the Estate Duty Ordinance from a decision of the Commissioner of Estate Duty under section 73;
- (b) that the plaintiff is not estopped from giving or leading evidence to the effect that the Ceylon estate of the deceased, K. M. N. S. P. Natchiappa Chettiar, referred to in the assessment for estate duty dated 12th May, 1941, is joint property of a Hindu undivided family of which the deceased was a member.
- 30 (c) that the decision of the Board of Review of Income Tax pleaded in paragraph 3 of the statement of objections is not *res judicata*;
- (d) that the plaintiff, who is also an heir of the deceased, is entitled to question the right of the testator to make the Will she has proved and under which she has benefited appeals to Your Lordships' Court on the following among other grounds which may be urged at the hearing of the appeal:—
- 40 (i) that the finding of the learned District Judge that the decision of the Commissioner under section 73 of the Estate Duty Ordinance is subject to an appeal under section 34 of the said Ordinance is contrary to law;

No. 8
Petition of
Appeal of the
Defendant
Appellant to the
Supreme Court
23-12-42—*contd.*

- (ii) that the learned District Judge has failed to appreciate the question of estoppel by representation pleaded in paragraph 2 of the appellant's statement of objections. The finding that the person " who made the representation with regard to the estate of Suppramaniam is not identical with nor privy to the person who is making the present assertion " is not justified in law.
- (iii) That the finding that the decision of the Board of Review of Income Tax that the property left by the deceased is not joint property does not operate as *res judicata* is not justified in law. 10
- (iv) That the finding that the executrix, who also takes under the Will as an heir, is entitled to lead evidence that the testator was not competent to make the Will, is not justified in law.

Wherefore the defendant-appellant prays--

- (a) that the order of the learned District Judge be set aside,
(b) for costs, and 20
(c) for such other and further relief as to Your Lordships' Court may seem meet.

Sgd. JOHN WILSON,
Proctor for Defendant-appellant.

No. 9
Judgment of
the Supreme
Court
1-5-44

No. 9

Judgment of the Supreme Court

S. C. 51/1943

D. C. Colombo No. 10.

Present: HOWARD C.J. and WIJEYWARDENE J.

Argued: 23rd, 24th and 30th March, 1944.

Counsel: H. H. BASNAYAKE, Crown Counsel, with 30
WALTER JAYAWARDENA, Crown Counsel, for
the Attorney-General-Appellant.

H. V. PERERA, K.C., with N. NADARAJAH, K.C.,
and S. J. V. CHELVANAYAGAM for the plaintiff-
respondent.

Delivered on 1st May, 1944.

HOWARD, C.J.

No. 9
Judgment of the
Supreme Court
1-5-44—contd.

This is an appeal by the Attorney-General from an order of the District Judge of Colombo holding:—

- (a) That an appeal lies under section 34 of the Estate Duty Ordinance from a decision of the Commissioner of Estate Duty under section 73.
- 10 (b) That the plaintiff is not estopped from giving or leading evidence to the effect that the Ceylon estate of the deceased K. M. N. S. P. Natchiappa Chettiar referred to in the assessment for estate duty dated 12th May, 1941, in joint property of a Hindu undivided family and of which the deceased was a member.
- (c) That the decision of the Board of Review of Income Tax that the property left by the deceased is not joint property does not operate as *res judicata*.
- 20 (d) That the plaintiff who is also an heir of the deceased is entitled to question the right of the testator to make the will she had proved and under which she has benefited.

In this Court, Mr. Basnayake on behalf of the Attorney-General has asked us to say that the learned Judge came to a wrong decision with regard to findings (a), (b) and (c). With regard to (a) section 73 of the Estate Duty Ordinance is worded as follows:—

“ Where a member of a Hindu undivided family dies, no estate duty shall be payable—

- (a) On any movable property which is proved to the satisfaction of the Commissioner to have been the joint property of that family; or
- 30 (b) on any immovable property, where it is proved to the satisfaction of the Commissioner that such property, if it had been movable property would have been the joint property of that family: ”

It is conceded by the respondent that the Commissioner was not satisfied that the property of the deceased was joint property of a Hindu undivided family. In those circumstances Mr. Basnayake contends that there is no appeal from the decision of the Commissioner. To hold that the decision of the Commissioner under this provision can be made the subject of an appeal to the District Court would, in effect, substitute for the words “ proved to the satisfaction of the Commissioner ” the words “ proved to the satisfaction of the District Court. ” In support of this proposition

40 Mr. Basnayake has cited the recent House of Lords decision in

No. 9
Judgment of the
Supreme Court
1-5-44—contd.

Liversidge v. Sir John Anderson and another (1942 1 A. C. 206) in which it was held that, where the Secretary of State, acting in good faith under Reg. 18B of the Defence (General) Regulations 1939 makes an order in which he recites that he has reasonable cause to believe a person to be of hostile associations and that by reason thereof it is necessary to exercise control over him and directs that that person be detained, a court of law cannot inquire whether in fact the Secretary of State had reasonable grounds for his belief. The matter is one for the executive discretion of the Secretary of State. At pages 219-220 in his judgment, Viscount Maugham stated as follows:— 10

“ My Lords, I think we should approach the construction of Regulation 18B of the Defence (General) Regulations without any general presumption as to its meaning except the universal presumption, applicable to orders in Council and other like instruments, that, if there is a reasonable doubt as to the meaning of the words used, we should prefer a construction which will carry into effect the plain intention of those responsible for the Order in Council rather than one which will defeat that intention. My Lords, I am not disposed to deny that, in the absence of a context, 20 the *prima facie* meaning of such a phrase as ‘ if A. B. has reasonable cause to believe ’ a certain circumstance or thing it should be construed as meaning ‘ if there is in fact reasonable cause for believing ’ that thing and if A. B. believes it. But I am unable to take the view that the words can only have that meaning. It seems to me reasonably clear that, if the thing to be believed is something which is essentially one within the knowledge of A. B. or one for the exercise of his exclusive discretion, the words might well mean if A. B. acting on what he thinks is reasonable cause (and, of course, acting in good faith) believes the thing in 30 question. ”

His Lordship then proceeds to detail a number of circumstances which tend to support the latter conclusion and states as follows:—

“ Any one of these various circumstances is sufficient to satisfy the first fact which the Secretary of State must believe, and I do not doubt that a court could investigate the question whether there were grounds for a reasonable man to believe some at least of those facts if they could be put before Court. But then he must at the same time also believe something very different in its nature, namely, that by reason of the first fact, ‘ it is necessary to exercise control over ’ the person in question. To my mind this is so clearly 40 a matter for executive discretion and nothing else that I cannot myself believe that those responsible for the Order in Council could have contemplated for a moment the possibility of the action of the Secretary of State being subject to the discussion, criticism and control of a judge in a Court of law. If, then, in the present case the second requisite, as to the grounds on which the Secretary of State can make his order for detention, is left to his sole

discretion without appeal to a court, it necessarily follows that the same is true as to all the facts which he must have reasonable cause to believe ”.

No. 9
Judgment of the
Supreme Court
1-5-44—contd.

On page 221 His Lordship also says:

“ Thirdly, and this is of even greater importance, it is obvious that in many cases he will be acting on information of the most confidential character, which could not be communicated to the person detained or disclosed in Court without the greatest risk of prejudicing the future efforts of the Secretary of State in this and like matters for the defence of the realm. A very little consideration will show that the power of the court (under s. 6 of the Act) to give directions for the hearing of proceedings in camera would not prevent confidential matters from leaking out, since such matters would become known to the person detained and to a number of other persons. It seems to me impossible for the court to come to a conclusion adverse to the opinion of the Secretary of State in such a matter. It is beyond dispute that he can decline to disclose the information on which he has acted on the ground that to do so would be contrary to the public interest, and that this privilege of the Crown cannot be disputed. It is not ad rem on the question of construction to say in reply to this argument that there are cases in which the Secretary of State could answer the attack on the validity of the order for detention without raising the point of privilege. It is sufficient to say that there must be a large number of cases in which the information on which the Secretary of State is likely to act will be of a very confidential nature. That must have been plain to those responsible in advising His Majesty in regard to the Order in Council, and it constitutes, in my opinion, a very cogent reason for thinking that the words under discussion cannot be read as meaning that the existence of ‘ reasonable cause ’ is one which may be discussed in a court which has not the power of eliciting the facts which in the opinion of the Secretary of State amount to ‘ reasonable cause ’ ”.

Finally His Lordship states that the objections to an appeal in a case of mere suspicion and in time of war are not far to seek, but; however that may be, an application to the High Court, with power to the Judge to review the action of the Secretary of State, seems to be completely inadmissible and he was unable to see that the words of the regulation in any way justify the conclusion that such a procedure was contemplated. A careful perusal of the judgment of Viscount Maugham and of their other Lordships, who shares his view, indicates that the extraordinary and abnormal conditions arising from the war demanded that, in the interests of the safety of the realm, the Secretary of State should have the sole discretion to decide as to whether there is reasonable cause for believing that a person has hostile associations and that by reason thereof it is necessary to exercise control over him. The matter was one for

No. 9
Judgment of the
Supreme Court
1-5-44—contd.

executive discretion and their Lordships could not believe that those responsible for the Order in Council could have contemplated for a moment the possibility of the action of the Secretary of State being subject to the discussion, criticism and control of a Judge in a court of law. The majority of their Lordships held that this was the plain intention of the Order in Council.

Mr. Basnayake also referred us to two other recent cases namely *Point of Ayr Collieries, Ltd., vs. Lloyd George* (1932; 2 A.E.R. 546) and *Carltona, Ltd., vs. Commissioners of Works and others* (1943 2 A.E.R. 560). Both cases were decided by the Court of Appeal which formulated the same principle as that expressed in *Liversidge v. Anderson* (supra) that the legislature intended the executive to be answerable only to Parliament and that the Courts cannot question the bona fide action of the Minister. To hold otherwise would mean that the courts would be made responsible for carrying on the executive government in these matters. Having regard to the grounds on which these decisions were based, they do not, in my opinion, in any way assist the argument put forward by Mr. Basnayake. 10

In Murugappa Chetty vs. The Commissioner of Stamps (24 N.L.R. 231) it was held that the term "debts and incumbrances" in section 17 (1) (b) of the Old Estate Duty Ordinance, No. 8 of 1919, refers to such debts and incumbrances as have been incurred or created within the Island, and for the purpose of payment of estate duty, debts incurred or payable out of the Island are not to be deducted from the estate. At the end of his judgment in this case Schneider, J., stated as follows:— 20

"Incidentally, I would also mention that the language of section 17 (1) (b) is such that the opinion of the Commissioner appears to conclude the question as to what are the 'debts' or 'incumbrances' which might be deducted." 30

This statement was purely obiter. The question of an appeal from the decision of the Commissioner was not argued. The statement of the learned Judge does not in any way bind the court in regard to the question with which we are now confronted.

In *Wijeyesekera v. Festing* (1919; A. C. 646) it was held by the Privy Council that when after the receipt of a report directed to be made under section 4 of the Acquisition of Land Ordinance, 1876, the Governor under section 6 directs the Government Agent to take orders for the acquisition of specified lands in Ceylon it is not open to the owner to contend in any court that the land is not needed for a public purpose. 40

Mr. Basnayake also cited in support of his argument a case under the old Estate Duty Ordinance, No. 8 of 1919, *N. Ramaswamy Chettiar vs. The Attorney-General* (38 N.L.R. 313).

In this case it was held that estate duty that has been over paid may be recovered by action against the Crown. It was argued by the Solicitor-General that the Commissioner was the sole judge of the question whether there has been an over payment and whether there should be a refund. With regard to that argument, Soertsz J. at pages 319-320 stated as follows :—

“ The next point taken by the Solicitor-General is that the Commissioner of Stamps is the sole judge of the question whether there has been over payment and whether
10 there should be a refund. The Courts, he says, have no jurisdiction in the matter. In this connection we were referred to the case in *re Nathan* (L.R. 12 Q.B. 461). That case arose on an application made under section 23 of 5 & 6 Victoria, Chapter 79 which is the counterpart of section 28 of our Estate Duty Ordinance. These sections provide that ‘ when it is proved by affidavit or declaration on oath or affirmation and proper vouchers *to the satisfaction* of the Commissioners’

Brett, M.R. commenting on a similar argument addressed to the court, said that it was not necessary to decide the point, but
20 that he would ‘ be very loth to hold that that it is so, and to think that there is no remedy open to persons in the position of the prosecutor . . . and that the officials in a department of the Government have been constituted the sole and exclusive judge whether they ought to be satisfied or not’. In this case too, it is not necessary to decide that point for the plaintiff’s claim is not made under section 28, but under section 27 of the Ordinance. In section 27 the words ‘ to the satisfaction of the Commissioner ’ do not occur. The simple words are ‘ if at any time within three years . . . the value of *the*
30 *property on which estate duty has been paid is found to exceed the true value of the property subject to estate duty it shall be lawful for the Commissioner of Stamps, and he is hereby required to return the amount of duty which had been over-paid* . . .’

It would appear that Soertsz J. was not called upon to decide and did not decide whether the use of the words “to the satisfaction of the Commissioner ” precluded the Courts from reviewing his decision. In, however, *re Nathan* (L.R. 12 Q.B. 461) Brett, M.R., was apparently unwilling to hold that officials in a
40 department of the Government have been constituted the sole and exclusive judge whether they ought to be satisfied or not. In my opinion the case of *N. Ramaswamy Chettiar vs. the Attorney-General* does not support the contention of the Attorney-General.

In all the cases so far cited by me there was nothing in the phraseology of the legislative enactment under review giving a right of appeal either express or implied.

No. 9
Judgment of the
Supreme Court
1-5-14--contd.

In my opinion section 73 of the Ordinance cannot be considered apart from the other provisions of the Ordinance. It must accordingly be construed with particular reference to section 34 which is worded as follows:—

“ Any person aggrieved by the amount of any assessment of estate duty made under this Ordinance whether on the ground of the value of any property included in such assessment or the rate charged or his liability to pay such duty or otherwise, may appeal to the appropriate District Court in the manner hereinafter provided.”

The section therefore grants an appeal to the appropriate District Court to “any person aggrieved by the amount of any assessment of estate duty made under the Ordinance, whether on the ground of . . . or his liability to pay such duty or otherwise.” The respondent maintains that the property is that of a joint Hindu family and on this ground he is not liable to pay. I do not think, therefore, that it can be argued that he is not a person aggrieved. He may therefore appeal. Similarly I am of opinion that the terms of section 34 are wide enough to allow for appeals by persons who are aggrieved by decisions of the Commissioner or the Assessor, as the case may be, under sections 6, 17, 18, 20 and 23. Both counsel have called in support of their rival contentions the case of *The Duke of Beaufort vs. Crawshay* (L.R. 1866 1 C.P. 699). In this case it was held that where a statute gives power to a Judge at *nisi prius* to exercise a discretion as to the admission of a document in evidence, his decision is subject to the general supervision and control of the Courts out of which the record comes, unless the express language of the statute makes his decision final. 1 Wm. 4 c. 22, s. 10 makes the deposition of a witness taken under it inadmissible in evidence, unless it shall appear *to the satisfaction of the judge* that the deponent is unable from *permanent* sickness or other *permanent* infirmity to attend the trial. Though it is competent to the Court to review his decision, it is for the judge to satisfy himself of the deponent's inability to attend, by such evidence as he shall think fit; and that the court will not interfere, unless it be shown that the judge has been misled by false evidence, or that injustice has resulted from the course pursued at the trial. At page 706 Earle C.J. states as follows:—

“ The Judge who presides at *nisi prius* sits as a member of, and his decisions are subject to review by, the Court from which the record comes, unless he is acting under a statute the language of which expressly negatives or excludes the application of that general principle. Looking at the words of this statute, I have come to the conclusion that they are

20

30

40

not sufficient to deprive the Court of that ordinary jurisdiction. If the statute had contained negative words, the question would have presented itself in a very different shape. The result is, that, in my opinion, the decision come to by my brother Blackburn in this case is subject to review. Then, having this general jurisdiction, ought we to exercise it in this case by holding that the learned Judge fell into a mistake, and grant a new trial? Upon that part of the case I think the rule fails."

No. 9
Judgment of the
Supreme Court
1-5-44— contd.

- 10 The case no doubt is an authority for the proposition that the court in the exercise of its ordinary jurisdiction will not interfere with the exercise by the judge at nisi prius of his discretion unless it is shown that he has been misled by false evidence or that injustice has resulted. But that is a very different proposition from the contention now put forward that there is no review at all. It has also to be borne in mind that the language of section 73 of the Ordinance, no more than the phraseology employed in 1 Wm 4, c. 22 s. 10 does not expressly negative or exclude the jurisdiction of the Courts by way of review. Moreover the language of section 20 34, in my opinion, expressly provides for such review. For the reasons I have given, I have come to the conclusion that the District Judge was right in holding that an appeal lies under section 34 from a decision of the Commissioner under section 73.

With regard to the question of *res judicata* Mr. Basnayake has invited our attention to *Hoystead vs. Commissioner of Taxation* (1926; A.C. 155). The head note of this case is as follows:

- 30 "Under a will the annual income from an estate in Australia was divisible by the trustees between the testator's daughters. The trustees objected to an assessment for the financial year 1918-1919 under the Land Tax Assessment Act, 1910-1916, of Australia; they claimed under s. 38 sub-s. 7 of the Act a deduction of £5,000 in respect of the share of each daughter. A case was stated for the opinion of the Full Court of the High Court upon the questions: (1) Whether the shares of the joint owners, or of any and which of them, in the land were original shares within s. 38; (2) How many deductions of £5,000 the respondent should make. The Full Court answered these questions as follows: (1) The shares of the six children surviving at the date of the assessment; (2) Six. Judgment upon the objection was entered accordingly. Upon the assessment for 1919-1920 the Commissioner allowed only one deduction of £5,000 contending that the beneficiaries were not joint owners within the meaning of the Act. Upon a case stated the Full Court upheld that view and held that the Commissioner was not 40 estopped by the previous decision.

Held that the Commissioner was estopped since although in the previous litigation no express decision had been given whether the beneficiaries were joint owners, it being assumed and admitted that they were, the matter so admitted was fundamental to the decision then given."

The question as to how many deductions of £5,000 the trustees were entitled to had already been settled for the year 1918-1919 and settled expressly by the High Court of Australia. The Commissioner of Taxation wished to withdraw the admission made in those proceedings—an admission of a fact fundamental to the decision—and embark on a fresh litigation upon a different assumption of fact. It was held that he could not be permitted to do so and that he was bound by the previous judgment, although it might be true that subsequent light or ingenuity might suggest some traverse which had not been taken. With regard to this case I would observe that it was a decision of the Full Court of Australia that caused estoppel by reason of *res judicata*. In the present case we are asked to say that a decision of the Board of Review on an appeal under section 70 of the Income Tax Ordinance (Cap. 188) is *res judicata* in respect to a matter to be decided under section 34 of the Estate Duty Ordinance (Cap. 187). I cannot regard *Hoystead vs. Commissioner of Taxation* as supporting this contention. 10

On the other hand I consider that the case of *Commissioners of Inland Revenue vs. Sneath* (1932; 2 K.B. 362) is an authority that supports the contention that the matter is not *res judicata*. In this case it was held that a decision of the Commissioners for the special purposes of the Income Tax Acts in assessing super tax for a previous year that certain deductions can be made does not operate as a *res judicata* to prevent a contrary decision in assessing super tax for a later year. At pages 380-381 Lord Hanworth M.R. stated the conditions that must be fulfilled if an estoppel arising upon *res judicata* is to be effective as follows: 30

" There must be a *lis inter partes* in which the point relied upon for establishing the estoppel was not merely incidentally or collaterally, discussed and litigated, but was fundamental to the conclusion reached by the court. The Court must be one of one competent jurisdiction that has seisin of the case for the purpose of reaching a final decision *inter partes*, though it may be a private tribunal such as an arbitrator, whose forum is a domestic one constituted by the parties themselves." 40

He then held that the assessment was final and conclusive between the parties only in relation to the assessment for the particular year for which it is made. So the decision of the Board of Review

- constituted under the Income Tax Ordinance can be regarded as final and conclusive between the Crown and the respondent as to the latter's income in regard to the particular year but not as to future years. This being so, the Board's decision upon any incidental question of fact or law, however necessary it may be for the purpose of ascertaining the income for the year of assessment, cannot be conclusive in reference to the ascertainment of the respondent's income for any subsequent year of assessment with which the Board has nothing to do. Still less can it be regarded
- 10 as creating an estoppel by means of *res judicata* in a matter that arises under a different enactment—the Estate Duty Ordinance. The decision of the Board was not a decision of a *lis partes* so as to create an estoppel by way of *res judicata*. The cases of *Broken Hill Proprietary Co., Ltd., vs. Municipal Council of Broken Hill* (1926; A.C. 94) and *Sankaralingum Nadar vs. Commissioner of Income Tax, Madras* (1930; A.I.R. Mad. p. 209) also lend support to this view. The District Judge was, therefore, correct in holding that the decision of the Board of Review of Income Tax is not *res judicata*.
- 20 The further point referred to us, (b) argued by Mr. Basnayake has not been strongly pressed. It is suggested that as Natchiappa Chettiar, the deceased, represented to the Commissioner of Estate Duty that his father Suppramaniam left no property, therefore the property possessed by Nachiappa Chettiar during his life time and left at his death was not ancestral but his own property. The plaintiff as executrix of Natchiappa Chettiar cannot, therefore, so it is argued, be heard to say that this property is property of a Hindu undivided family. There is no substance in this argument, particularly when it is borne in mind that the representation was
- 30 made as the representative of Suppramaniam whereas the present representation is made by the executrix of Natchiappa Chettiar. This point also fails.

For the reasons I have given the appeal is dismissed with costs.

Sgd. J. C. HOWARD,

Chief Justice.

I agree.

Sgd. E. A. L. WIJEYWARDENE,

Puisne Justice.

No. 10
Decree of the
Supreme Court
1-5-44

No. 10

Decree of the Supreme Court

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,
DEFENDER OF THE FAITH, EMPEROR OF INDIA.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

VALLIYAMMAI ATCHI of No. 247, Sea Street, Colombo.
Executrix of the Last Will and Testament of K. N. S. P.
Natchappa Chettiar *Plaintiff-Respondent*

vs.

10

THE ATTORNEY GENERAL *Defendant-Appellant*

Action No. 10.

District Court, Colombo.

This cause coming on for hearing and determination on the 23rd, 24th, 30th March and 1st day of May, 1944, and on this day upon an appeal referred by the Defendant before the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, and the Hon. Mr. E. A. L. Wijeyewardena, K.C., Puisne Justice, of this Court in the presence of Counsel for the appellant and the respondent.

It is considered and adjudged that the Order made in this action by the District Court of Colombo and dated the 15th day of December, 1942, be and the same is hereby affirmed and this appeal is dismissed. 20

And it is further ordered and decreed that the defendant appellant do pay to the plaintiff-respondent her taxed costs of this appeal.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, at Colombo this 1st day of May, 1944, and of our Reign the Eighth.

Sgd. D. A. A. PÉRERA,
Deputy Registrar, S.C.

No. 11
Further Proceedings

No. 11
Further
Proceedings
—contd.

D.C. 10 Special.

16th December, 1942.

Enquiry Resumed

Parties and appearances as on the last date except that Mr. Adv. Nadarajah, K.C., is absent today.

Mr. Adv. Chelvanayagam asks that an order be made with regard to the costs of the argument on the matters that were for inquiry in limine. I shall make such order when I make final adjudication
10 on the substantial appeal.

VYRAVAN CHETTIAR'S SON NACHIAPPA CHETTIAR
Recalled. Affirmed.

XXN.

I am infirm. I am suffering from diabetes. I don't understand English. I do not know English at all. I stated that I came to Ceylon to give evidence in this case and in the proceedings before the Commissioner of Income Tax. Before that I had never been to Ceylon. I am 62 years old. My memory is quite good. In spite
20 of my disease my memory is good. I traded at Madura. I have now ceased to carry on that business. I ceased to carry on business seven or eight years ago. I carried on that business as a sole proprietor. It was my sole business. It was not a family business. Originally it was a family business but it became my sole business afterwards when I separated. When it was a family business there were three members; they were Nachiappa Chettiar, Murugappa Chettiar and myself Nachiappa Chettiar. The other two were my brothers. There were no other partners at any time. The business was carried on for about 80 years. I am only 62 but the business started before I was born. It was carried on even during the life
30 time of my father. I succeeded my father. After the death of my father we three brothers entered into the business. I closed the business during the last Great War in 1918 or 1920. I cannot exactly remember the year but I closed the business during the last war; that is the 1914-1918 Great War.

Q. You said earlier that you closed your business about 7 years ago?

A. That is my sole business.

Our partnership was broken up during the Great War of 1914-1918. As the business suffered on account of the war we broke up
40 that partnership. The war did not affect my sole business. I started my own business after the war was over. The family

business was carried on for 80 years. I started on my own some years after the termination of the partnership business with my brothers.

(To Court : Q. Was there a partnership business at all between you and your brothers?

A. That was a joint business (pangu yaparam).)

I cannot say now without looking into records how long after the termination of the partnership business that I started my business.

Q. Roughly about how many years?

No answer.

10

Q. Does your memory fail you?

A. About 5 or 6 years after we closed our (pothu) joint business.

I carried on my sole business for 10 years. I closed my business as the price of cloth went up very high. My two brothers carried on business separately after that. They carried on a cloth business. One brother closed down his business and the other is still carrying on. I have no other brothers besides those who carried on business with me. I married the sister of the deceased Nachiappa Chettiar. I am the brother-in-law of the deceased. I am not related to the deceased in any other way. I was 15 years old when I married. I married 47 years ago. My wife was 10 years old then. My marriage was taken two after the marriage of Nachiappa the deceased. He was about 12 or 13 years. He is about 4 years younger than I.

20

Q. What you said in your examination in chief is not correct: You said at the time of his death he was about 52 or 53 years. He died in 1938?

A. Yes that is correct.

Q. Then he is several years younger than you—about 7 years younger?

30

A. He will be about 4 years younger than I.

The statement made by me earlier is a mistake. I was a lad at the time I got married. I was 15. I had left school at the time. I was not carrying on business but my father was carrying on our joint business. I was not engaged in any activity. I left school and after I got married I went to the boutique at Madura. I went to Madura a year after I married. Madura is about 50 miles from Sembanur. There is train from Kallal to Madura. At the time I married, my wife, Nachiappa and Supramaniam, Nachiappa's father, were living in the northern part of the house to which I have referred. In the southern part of the house was the elder Nachiappa, that is the elder brother of Supramaniam. The house covered an area of two acres.

40

(To Court : The building alone covered an extent of two acres. It is a masonry building.)

No. 11
Further
Proceedings
—contd.

The building was about 4 or 5 years old at the time of my marriage. I have been visiting Sembanur before my marriage. I have my relations there. Kuna Mana Navana Nachiappa Chettiar son of Nachiappa Chettiar is my relation. He was married to my aunt's daughter. I cannot now say how often I have gone to Sembanur. I was then a little boy. I remember the building of the house. I was then a little boy. The house was built by K. M. N. Nachiappa Chettiar and his younger brother Supramaniam Chettiar. At the time of building the house the father of Nachiappa Chettiar and Supramaniam Chettiar was dead. I don't remember the father of Nachiappa. I have not seen him.

I spoke of a division between Nachiappa and Supramaniam. That division was after the building of the house—about 20 years after. That is the division in support of which I produced the document A8. I was about 30 or 32 years at that time. They built the house and they lived in that house. The northern and southern parts are well defined. They were separated. There was one building, 8 rooms on the southern portion and 8 rooms on the northern portion. Each room will be about a quarter of the size of this Court room. They are under one roof. I say that there was a roof covering two acres. Besides these rooms Nachiappa Chettiar and Supramaniam Chettiar had built their own additions in their respective portions.

Q. It is Nachiappa and Supramaniam who built the house?

A. They have made additions to the old building.

There is a compound between the northern and southern portions. There is a quadrangle in the centre. There were additions made to this building both by Nachiappa and Supramaniam. Supramaniam Chettiar added five or six rooms. Nachiappa Chettiar added eight rooms.

Q. Are there electricity and drainage in this building.

A. Supramaniam Chettiar's portion had electric lights.

When Supramaniam Chettiar died he was 75 years old. Nachiappa Chettiar the younger brother must have been about 65 when he died. I cannot say in what year Nachiappa Chettiar died. He died in Sembanur in that very house. Supramaniam also died in that very house. Nachiappa had five sons. His eldest son Nachiappa is still alive. His youngest son Saminathan is also alive. Letchumanan Chettiar the second son died about 20 years ago. I cannot remember the year. My memory is in the same condition as before. Supramaniam the third son died about 15 years ago. Ramasamy died 8 or 9 years ago. Ramasamy Chettiar died in the same building at Sembanur. Letchumanan Chettiar also died in

the same place. I do not know whether Supramaniam Chettiar died in his own village or somewhere else. They were all married. After their marriage they lived in this big house. The division between Supramaniam and Nachiappa took place after my marriage. I am not in a position to say anything about the Ceylon business of K.M.N. nor do I know anything about the business of K.M.N.S.P. Nor about the business of N.S.R.M.S. I know of no other division other than the one I have spoken. There was no division before that. I know that their business was carried on in common. In the house they lived separately. Supramaniam and Nachiappa are very much older than I. I am speaking to facts I know. I cannot say whether they made a division before I came to know them. The division that I spoke of was after the building of that big house. I remember the occupation of that house. There was a house warming ceremony. 10

Q. Was it a grand ceremony?

A. According to the custom of the village.

I attended the ceremony. I was invited. On the day of the house warming they had divided the northern half and the southern half. Even on that day each party occupied their respective portions and had their 'pongal' in those portions. There were two separate functions, one in the northern half by Supramaniam and the other in the southern half by Nachiappa. 20

Q. I suppose you brought presents on this occasion.

A. I followed the custom.

Q. You took two presents, one for Nachiappa Chettiar and the other for Supramaniam Chettiar.

A. I went to the house of Nachiappa Chettiar's son Nachiappa. I was not married then.

Q. You said you attended the house warming and that there were two receptions, so that if you had brought presents you would have brought for Nachiappa and Supramaniam. 30

A. No, we go to the relations house and attend their ceremony. Nachiappa's son Nachiappa was my relation.

Nachiappa's eldest son married my aunt's daughter. I therefore gave him the present. I went and had a view of Supramaniam's part of the house. I took my meals in Nachiappa's house. There were religious ceremonies on this occasion. The ceremonies were conducted separately by Supramaniam and separately by Nachiappa. On the date of the house warming there was a division of the house. I cannot say how old Nachiappa, son of Supramaniam was at the time of this house warming. I cannot say definitely whether he was there; he may have been there. 40

Q. After your marriage how often did you visit this house?

No. 11
Further
Proceedings
—contd.

A. We went whenever we were invited. I never went there without an invitation.

Q. Were you invited often?

A. Yes.

Q. How often were you invited?

A. I am unable to say.

Q. It is for this reason that I asked you whether your memory was good.

10 A. My memory is good. I cannot remember how often I went.

Q. Did you go once in 5 years.

A. I might have gone even once a month but I have no recollection.

Q. If you go once a month you must remember that?

A. I might have gone whenever I was in my village. How could I have gone when I was in Madura?

20 I was present at the division by A8. I was invited by Supramaniam Chettiar. Besides me and the two arbitrators the others present were Nachiappa Chettiar the elder brother and his children—he had five children—and Supramaniam Chettiar son of Nachiappa Chettiar. Nachiappa son of Supramaniam was present. I am certain that he was there. I am equally certain that Nachiappa's five sons were there. There were several others but I cannot mention their names. There was a man called Kumarappa Chettiar. He is N. M. R. Kumarappa Chettiar. He was a partner. He was a member of the family of Nachiappa Chettiar and Supramaniam Chettiar. They are cousins or children of brothers and sisters. I am unable to say definitely what the relationship is but I think they are cousins.

30 Q. Why are you so vague about relationships?

A. There are about 20 houses—members of the family.

Q. Although there are 20 houses, do you know the relationship of each to the other?

A. They are all children of brothers.

Q. You are called as a witness by the appellant to speak to family relationships and that is why I am putting these questions to you?

A. Kumarappa Chettiar was brought to write the document.

Q. Why was he selected?

A. He was called and he was asked to write and he wrote.

Q. You said he was brought to write, that is why I asked why he was selected?

A. It is our custom not to call outside people to write such a document; our own people are called.

Q. Why were you not asked to write?

A. A member of the family writes it.

Q. Then, can you say how Kumarappa was related to Nachiappa or Supramaniam? 10

A. Kumarappa Chettiar may be a grandson of Koonna Mana Navana Nachiappa Chettiar or Supramaniam Chettiar's uncle.

Nachiappa Chettiar the deceased was married at the time of my marriage. At that time he was learning in school. At the time of the partition he was visiting Colombo with his father. I don't know anything about the Ceylon business. I am unable to say how it was carried on. It was said to be a joint business. I don't know anything except for what I was told.

Q. Did the deceased Nachiappa Chettiar build any houses at any time? 20

A. No. Supramaniam Chettiar built a house.

Q. Did he build a house in Sembanur?

A. No.

Q. Did he build a house anywhere else?

A. No.

Q. Are you sure of that?

A. Yes.

After the house was built there were additions to it. These additions were contiguous.

Q. When I asked you whether K. M. N. S. P. Nachiappa Chettiar built the house, you said Supramaniam Chettiar built the house. Is that house this one or another? 30

A. I was referring to the additions.

K. M. N. S. P. Nachiappa Chettiar did not make any additions.

(Para 4 of K. M. N. S. P. Nachiappa Chettiar's will put to witness.)

A. That is the house built by his father.

(*To Court:* Nachiappa Chettiar says that. He had no such new house. According to me, apart from the northern half share of that big house which belonged originally to his father on a division, he had no other house of which he was the entire owner.) 40

Q. That house according to K. M. N. S. P. Nachiappa Chettiar's will was to the north of the big house?

No. 11
Further
Proceedings
—contd.

A. He refers to the addition by Supramaniam Chettiar.

Q. Did K. M. N. S. P. Nachiappa Chettiar have a house in Madura?

A. No. It is correct to say that K. M. N. S. P. Nachiappa Chettiar had at Keelaiyoor and Salingapattai villages in Melur Taluk, Madura district, paddy and kurakkan sowing lands and house.

10 *Q.* Then why did you say that he has no house?

A. I said that he had not built any house at Sembanur.

Q. I asked you whether he had a house anywhere else?

A. You now give me details and I therefore remember.

Q. Who built that house?

A. I got that for him.

(*To Court:* I sold this land and house to him.)

I sold about 15 years ago. About 15 or 16 years from this day. I sold in about 1926 or 27. I was having my business at that time. I found it necessary to sell this, therefore I sold it. I sold to 20 Nachiappa alone. Nachiappa Chettiar's father Supramaniam Chettiar was living at that time and he paid me the money. The deed was written in favour of Nachiappa Chettiar for Rs. 4,500. The money was paid in cash to my creditors.

There was one room in this house used as a place of worship. This was in the southern portion of the house. This room was of the same size as the other rooms.

Q. In this village he had other places of worship?

A. Yes, Siva Kovil. There are two places of worship?

30 Supramaniam Chettiar and his brother Nachiappa Chettiar built the Sivan Kovil. This kovil was built after building the house. It was after my marriage; I cannot remember how long after. There was a ceremony in connection with the opening of that temple. K. M. N. Nachiappa Chettiar lived for about 20 years after my marriage. K. M. N. Supramaniam died in 1932. Nachiappa Chettiar died before Supramaniam Chettiar. They jointly built the temple and the expenses were borne jointly. They bore the expenses jointly during the course of the building. There are expenses connected with the maintenance of the temple. Nachiappa Chettiar did not contribute towards the maintenance. The 40 temple was built jointly and Supramaniam Chettiar spent in connection with the maintenance of his own account. Supramaniam

Chettiar is dead and his son is also dead. After the temple was built Supramaniam Chettiar brother of Nachiappa Chettiar maintained the temple. Nachiappa Chettiar did not maintain any temple.

Q. Do you know why the younger brother maintained and not the elder?

A. Perhaps he did not want to contribute and the younger brother was willing to contribute and he maintained on his own accord.

This temple was built before the division. It was before the division that Supramaniam Chettiar maintained the temple by himself. I am unable to say definitely. I am only definite that after the building was completed Supramaniam Chettiar maintained the temple but I cannot say when. It was completed before the division. Immediately after the completion it was maintained by him. It may be before the division. 10

(Lunch Interval)

I got a dowry when I married. I got Rs. 2,000 in cash and jewellery worth about Rs. 5,000. I did not get any land. When Alamelu got married she got a dowry. She got Rs. 5,000 in cash and Rs. 5,000 worth of jewellery. She got no land. At the time of this division my wife's mother was living. She is dead now. I am unable to say how long after the division she died. She died about 20 years ago from now. I too have effected a division of my property. I partitioned with my elder brother. All three of us brothers divided among ourselves. 20

Q. You said in your evidence "before I divided with my elder brother"? Is that correct?

A. The division was between myself and the children of the two deceased brothers. My two brothers died. 30

Q. What year was that?

A. About 24 or 25 years from today.

All the properties were in the name of my elder brother. I had a division 25 years ago. At that date neither of my brothers was alive. I cannot remember how many years before that date they died. May be about 3 or 4 years before the division. The eldest brother died later, the brother next to him died before. I am unable to say the interval between the two deaths.

(To Court: The interval between the deaths is about 5 or 6 years.)

I divided by means of a document. I have books at home. I had the books before me for effecting the division. We had two arbitrators to decide as to what share each person should get. I 40

did not divide. I had two arbitrators. The division was recorded on paper and on ola. We lived in one common house at that time and we are still living in one common house. I divided the house into three parts. Our house is as big as the house of my brother-in-law or may be bigger than that. It covered an extent of about two and half acres.

No. 11
Further
Proceedings
—contd.

10 Q. You have also said that after the division, that is 1911 division, between K. M. N. Nachiappa and K. M. N. Supramaniam that Nachiappa Chettiar started business under the vilasam of N. S. R. M. S.?

A. Yes, four of them.

Q. Why four of them?

A. They left out one son.

Q. That is why I am asking you?

A. Perhaps he did not want to join or he did not agree with the rest.

Q. You don't know the reason?

A. I am unable to say.

20 Q. One was excluded from the business. He is Letchumanan Chettiar. After the division K. M. N. Supramaniam Chettiar took the vilasam Koon Mana Navana Soona Pana. I know this because that is what I was told.

Q. So that you are not in a position to deny if it is true, that the business of K. M. N. S. P. existed before that date?

A. No it was not there. That is what I was told and I believe it. I am certain that no business was done before the partition under the vilasam Koon Mana Nawana Soona Pana.

Q. Can you explain why the vilasam Koon Mana Navana was taken by the younger brother and not by the elder?

30 A. The elder brother immediately after the division gave over the business to his four sons and the four of them joined together and carried on business under the vilasam Navana Soona Ravana Mana Savana.

Q. Why did that prevent them taking K. M. N.?

A. One separated, therefore they would not have agreed to use that vilasam after the division.

04 Before the division there was a firm K. M. N. Then there was a division. It is the custom in our village to take the original vilasam only if all the children agree. There was no agreement that Supramaniam should take the vilasam K. M. N.

(*To Court* : When the two brothers divided their business the youngest brother Supramaniam assumed the vilasam K. M. N. and letters " Soona Pana ". If the business was carried on by the added to it apparently his own name which is represented by the father Nachiappa he would have assumed a vilasam somewhat like K. M. N. S. R. M. S. But here, in so far as the new vilasam is started by the sons of Nachiappa Chettiar, they restricted their vilasam to the name of their father and the first letters of their own names. In this vilasam N. S. R. M. S. the first letter N represents Nachiappa the eldest of the five sons. Therefore in this vilasam the name of their father is not represented.) In the new business K. M. N. Nachiappa had no share. 10

Q. In your examination in chief you were asked by the Court " under what vilasam did K. M. N. Nachiappa Chettiar start business after the division." Your answer was " he excluded one son out of the five and the other four sons joined in the business and carried on under the vilasam Navana Soona Ravana Mana Savana ".

According to that evidence K. M. N. Nachiappa was a member of that firm?

A. No. 20

(*To Court* : After Nachiappa Chettiar and his younger brother Supramaniam Chettiar divided their business, Nachiappa Chettiar did not carry on any business at all. The four sons carried on the business in which the father helped. At the time of his death he gave off the interests he got on a division of the ancestral business.)

K. M. N. Nachiappa Chettiar kept his share with him. He did not come and do any business here. He retained his interests in his hands. He was in his village, he never came to Ceylon. The division was of the business and other assets. He gave his children whatever he had in the village—all he had. 30

Q. After the date of the division Nachiappa Chettiar was a penniless man?

A. He must have kept something for himself; he would not have gone to his children for his needs.

I was present at the partition. I read the document A8. There were two arbitrators. There was a recorder. The two arbitrators sat on the floor. They dictated A8 to the man who copied it. The man wrote it down. After it was written it was read to those present. The recorder read the document. It was then signed. There were two copies. A copy was given to each brother. I am familiar with the contents of the document. 40

(Document A8 is read to witness).

Q. There was a deed of partition executed before this date?

A. They might have divided some property earlier, but this is the final division.

Q. There was then, according to this document a deed of partition dated the 29th day of the month of Thai of the year of Vikurthi?

10 A. They have referred here to an earlier division of sundry things. There was a division in 1891, of credit and debit transactions, village and jewellery and sundry things. I said earlier that there was no division before 1911 because I did not know of this earlier partition until I read A8. I only told what I knew. I have read the document A8 and I have heard it read but I cannot remember. There was a partition of the building on the house warming ceremony. The method which was adopted was to draw lots. By lots they decided that Supramaniam should have the northern half and Nachiappa the southern half. There is reference in A8 to the separate possession. I admit that there is reference in A8 to additional buildings erected both by Nachiappa Chettiar and Supramaniam Chettiar.

(To Court : At the time of this document A8 Nachiappa Chettiar's son Ramasamy and Supramaniam Chettiar's son Nachiappa were both in Colombo.)

20 It was a mistake when I said earlier that Nachiappa son of Supramaniam was at Sembanur at this partition ceremony. He is my brother-in-law. These things happened 30 years ago and I could not recollect. Now I know after I read A8.

(To Court : I have no independent recollection of where they were at the time A8 was signed. But from this document A8 now I see that they were in Ceylon.) My statement that Nachiappa was present at the partition is not correct.

Q. Does not the deed of partition A8 show that both the firms K. M. N. S. P. and N. S. R. M. S. were in existence?

30 A. It is from the proceeds of this partition that they started the business under the vilasam N. S. R. M. S.

At the time of the deed of partition neither K. M. N. S. P. nor N. S. R. M. S. was in existence. It was about the time of this deed that the two vilasams came into existence and they were referred to in the deed. Actually the two vilasams started after the writing and although the document refers to earlier payments as a matter of fact, these payments were made at the division.

Q. I suggest to you that according to this document the firms of N. S. R. M. S. and K. M. N. S. P. were in existence?

40 A. The decision was to carry on the business under this vilasam but the business was not actually started.

Q. I also suggest to you that your evidence that the firms of N. S. R. M. S. and K. M. N. S. P. started after the division referred to in A8 is false?

A. In anticipation of a division of the business they start new vilasams and start the business of the new vilasam on an auspicious day and open accounts in the name of prominent chettiers. But the actual division takes place subsequently.

A8 suggests that there are certain monies in the firms of K. M. N. S. P. and N. S. R. M. S. and Nachiappa and Supramaniam are to draw from these monies. Most of the lands partitioned were not lands inherited by them. All these properties were properties purchased by Nachiappa and Supramaniam. These were not inherited property, but purchased property. 10

I was familiar with the affairs of the deceased K. M. N. S. P. Nachiappa Chettiar. He confided in me. The firm A. R. N. S. P. in Burma was a private business of Supramaniam Chettiar. It was not partitioned because it was a later business. The firm S. P. N. S. P. in Malaya belongs to Supramaniam Chettiar. I am not aware of the statement made by Nachiappa Chettiar in Ceylon that Supramaniam Chettiar left no property at the time of his death.

Re-examined: There was a " muttam " in that big house. That courtyard is in the middle of the house. This house was built all round that courtyard. 20

(To Court : The building is not in the shape of a " pana " on all four sides.)

The children of both houses can come into that court yard and play. There was no line in the court yard dividing it into two portions. There were two house warming ceremonies done at the same time, but the relations of the different parties went to the different houses.

(To Court : These ceremonies were going on in the two sides of the house at one and the same time. Guests consisting of friends and relatives of either of the parties were assembled at their respective portions.) 30

At the date of the house warming K. M. N. Nachiappa Chettiar had a large family. Two or three of his children were married at that time. The oldest member of that family that is now living is Nachiappa Chettiar, son of K. M. N. S. P. Nachiappa Chettiar. He will know more about these things than I. He is 72 or 73 years old. He was married at the date of the house warming ceremony. I transferred some of my Madura lands to K. M. N. S. P. Nachiappa Chettiar. Supramaniam Chettiar paid me for that. It was after this partition. Supramaniam was very old and although he paid the money, the deed was executed in favour of his son. Supramaniam and Nachiappa were living together at that time. I was not present at any partition earlier to the one recorded in A8. It is customary to divide property belonging to a joint estate from time to time. 40

Q. You told under cross-examination that some of these properties that were partitioned were bought and not ancestral property. Out of what funds were they bought?

A. (Mr. Advocate Basnayake objects. I rule the question out.)

I said that Kumarappa Chettiar who wrote A8 was a "pangali" and what I meant thereby was that he was a close relative of this family descending from a common ancestor through males.

Sgd. JAMES JOSEPH,

A. D. J.

16.12.42.

10

Call case on 25th January, 1943, to fix further dates for inquiry.

Ltd. J. J.

D J

15th November, 1944.

D. C. Special 10

MR. ADV. NADARAJAH, K.C., with MR. ADV. CHELVANAYAGAM instructed by MR. ZAHEED for the appellant.

MR. M. W. H. DE SILVA, K.C., Attorney-General, with MR. H. H. BASNAYAKE, Crown Counsel, instructed by MR. WILSON for the respondent.

20 MR. NADARAJAH opens his case. The deceased died on the 30th December, 1938, leaving a last will which has already been marked R17 and probate granted in case No. 8802 marked R18. Notice of objections filed by the executrix dated 23.2.40 has been marked A1. The objections dated 2.10.40 against additional assessment is marked A2. The Commissioner by letter dated 11.3.41 notified the appellant that he upheld the assessment A3.

Evidence of witness Vyravan Chettiar's son Natchiappa Chettiar has already been recorded regarding this matter.

See 29 N.L.R. 225—how vilasams are formed.

30 Mayne's Hindu Law 10th Edn. pp. 565 and 567 re partial partition.

See 31 N.L.R. 395 at 405 on the question of registration of the business by a member of a joint Hindu family.

Mr. Nadarajah calls.

S. M. S. P. SOCKALINGAM CHETTIAR affirmed.

47. I am the son of Muthuraman Chettiar. In Colombo I am the manager of the Chettinad Corporation. I have been the manager of the Corporation for about fifteen years. I hold a power of attorney from the Directors.

40 My mother is Valliammai Atchi. I knew the late K.M.N. Suppramaniam. I was related to him. He was a brother of my mother. My mother had two brothers in all, that is, K.M.N. Natchiappa Chettiar and K.M.N. Suppramaniam Chettiar. My

mother had two sisters namely Odayammai Atchi and Muttukaruppy Atchi. Muttukaruppy and Odayammai are dead. My mother is very old. She will be about 85 or 90 years of age. Besides me my father and mother had two other children. Their names are Nagappa and Natchiappa. Therefore Valliyammai had three children with me.

My brother Nagappa married Unnamalai Atchi. That lady has come to Colombo. Nagappa and Unnamalai Atchi had five children, three boys and two girls. The appellant Valliyammai is one of them. Unnamalai Atchi belonged to the bigger family circle to which the father Suppramaniam belonged but may be a little removed. I cannot say how she came into the bigger family circle. 10

I do not know personally my maternal grandfather. As far as the family talk goes he was known as Natchiappa Chettiar.

I came to Ceylon for the first time 20 years ago. I came here round about 1923 or 1924. Then my mother's brother Suppramaniam had a business in Ceylon. The business carried the vilasam K.M.N.S.P. The other uncle Natchiappa Chettiar also had a business that is to say, the other uncle and his sons carried on the same business. They had one business and they were carrying on separately. K.M.N. Suppramaniam Chettiar and his son Natchiappa were carrying on business together. At the beginning the business of K.M.N.S.P. was carried on by Suppramaniam Chettiar. After his death his son Natchiappa Chettiar carried on that business. 20

Q. During the life time of Suppramaniam Chettiar did Natchiappa Chettiar have anything to do with that business?

A. Both of them carried on the business together.

I have been to the house of K.M.N. Suppramaniam Chettiar in India several times. I remember the time my uncle K.M.N. Natchiappa Chettiar was alive. I have visited him at his house. His house is seven miles from my village. The name of my village is Natchipuram. Sambanur is the name of the village of my uncle Natchiappa. When I went there I saw him living with his brother in the same house. The elder brother of K.M.N. Suppramaniam Chettiar died about 30 years ago. I attended his funeral; that was in Sembanur. I am a son of Muthuraman. 30

I know what is meant by an undivided Hindu family. For some time I was a member of a joint Hindu family, that is to say, my brothers and I. Now we have divided. I divided from my brothers about 15 years ago. Suppramaniam and Natchiappa, my mother's brothers were living as members of an undivided Hindu family. They were said to have lived like that long ago. 40

I visited Suppramaniam after the death of Natchiappa. At that time K.M.N. Suppramaniam Chettiar and his son Natchiappa were living together along with their families. Suppramaniam and his elder brother Natchiappa were not having the same mess. The father and son were cooking together and the others were separate. The others were the children of the elder brother of K.M.N. Suppramaniam Chettiar.

10 K.M.N. Suppramaniam Chettiar my uncle was a Hindu. He was living at Sembanur in South India. That was his home. He married there. His children all married in India. Natchiappa, his son, was also a Hindu. He was also a permanent resident of Sembanur. He belongs to the Indian Tamil community. He married twice; both wives he married in India. Both were Indian Tamil women. They were Parwathy Atchi and Valliyammai Atchi.

Natchiappa came and stayed in Ceylon at intervals. He came for the purpose of his business. After attending to his business he went back. He used to come and go for the purpose of his business. His business in Ceylon was attended to by his manager.
20 His wife Parwathy Atchi had not come to Ceylon. Valliyammai had come and gone. Parwathy never came to Ceylon. Valliyammai has now come to Ceylon in connection with this matter and she had come before also. That was after the death of K.M.N.S.P. Natchiappa Chettiar. She did not come during the life time of Natchiappa Chettiar. Valliyammai Atchi had four sons and a daughter. The daughter is dead. The sons are all in India. Parwathy's children were all daughters. They were all married in India

X X N

30 I was born in Nachiyapuram. I said that place was seven miles from Sambanur where K.M.N. Suppramaniam Chettiar lived. I went to school in my village. I did not go to Madura or Madras. I first got employed in Burma. When I went to Burma I was 15 years old. I was in Burma for about 10 years. I came to Ceylon about 20 years ago. So that 30 years I spent out of India. During the time I was in Burma and Ceylon I have been visiting my native place often. I have gone on a number of occasions. When I go to my village I used to stay for ten days, a month or ten months, I am unable to say definitely for what period I used to remain when I go.

40 From my childhood days I have been visiting the house of K.M.N. Suppramaniam Chettiar. Whenever there was any occasion or function in that house we used to go and when we have a function they used to come. My first visit was not on a function. They were my relations and when my mother visited them she took me also.

No. 11
Further
Proceedings
—contd.

Q. What was the first visit or occasion on which you remember to have visited?

A. We went for every function that took place in that family.

Q. Do you remember any special occasion on which you first visited his house—anybody's wedding?

A. I have gone for a wedding and a birthday ceremony.

I have attended Valliyammai's wedding and also the weddings of all the children of Natchiappa Chettiar; also Raman Chettiar's children's weddings. Natchiappa Chettiar's children's weddings means the children of the elder brother of Suppramaniam Chettiar. 10

Natchiappa's full vilasam is K. M. N. S. P.—that is, the husband of Valliyammai Atchi.

Q. You attended his wedding with Valliyammai Atchi?

A. I have attended the weddings of the children of Parwathy Atchi.

Q. You did not attend the wedding of K. M. N. S. P. Natchiappa Chettiar with Valliyammai Atchi?

A. I have attended.

I have also attended the weddings of Parwathy Atchi's children. Their names are Valliyammai, Meenatchi, Sittal and 20 another two or three children. I have been attending the weddings of all the children. These weddings took place at Sembanur in that house.

Q. You said that K. M. N. S. P. Natchiappa Chettiar had a separate mess from K. M. N. Natchiappa?

A. The two brothers had separate messes; the father and the son had the same mess.

Q. I am not asking about the father and son?

A. The two brothers had separate messes; the two brothers meaning K. M. N. Natchiappa and K. M. N. Suppramaniam. 30

I am not definite when they separated but it must be about 35 or 40 years ago. I did not visit at a time when they were having the same mess. When I first visited these people they had separate messes. At the time I first came to know these two people there was a business called K. M. N. S. P. That is when I first came to know Suppramaniam and Natchiappa, the two brothers, there was a business called K. M. N. S. P. That business I say was conducted for some time and thereafter K. M. N. S. P. Natchiappa joined that business with his father Suppramaniam; so that, first this business was conducted by Suppramaniam Chettiar under that 40 vilasam and subsequently Natchiappa his son joined that business. Subsequently Natchiappa carried on the business alone after his father Suppramaniam died—not after he retired. I am aware that Suppramaniam sold all his properties to Natchiappa at one

stage. I cannot say how long before his death he sold these properties. I think it was two or three years before. After that he had no share in that business. I do not know whether he had a few shares. So far as I am aware the business was carried on by Natchiappa alone. At that time there was another rubber business in Ceylon. I do not know what vilasam it contained. I know the children of K. M. N. Natchiappa Chettiar. The eldest man's vilasam was N. S. That was the vilasama that was used in Ceylon.

No. 11
Further
Proceedings
—contd.

Q. The other son, had he also a business.

10 *A.* Even today he is running a business in Colombo. One man's vilasam is S. P. K., the other man's K. M. N. R. M. and another K. M. N. N. S. Those brothers are having separate businesses. They have no partners in the money lending business. There is no rubber business now. The business in which there are partners is the business under the vilasam K. M. N. N. S. They are having a Mill. There is a partner in that business. The partner's name is Palaniappa Chettiar. He is not a descendant or ascendant of Samynathan Chettiar.

20 Sometimes when a partnership is dissolved there is a division of the partnership property. I know firms where several people have joined together and carry on a partnership business. Such businesses are registered in Ceylon. In the business names register the names of the partners are given. When one partner leaves or when there is an addition of a partner they delete or add the name in the register.

30 I knew K. M. N. Suppramaniam Chettiar personally. From my knowledge of him I say that he is an honest man. He was a religious man and a business man. I certainly say that he was a truthful man. In the same way Natchiappa Chettiar was also a truthful man. I would not say that they are people who would state what is false in a document. I spoke of partition of partnership property. It is usual for Chettiars to buy property with partnership money.

Q. Supposing two people A and B are doing business together and A buys property in his own name with the partnership money—do you recognise that the other partner also will be entitled to a share in that property?

A. The property would be bought in the name of the firm.

40 If it is bought in the name of one man there will be an agreement between the partners. Subsequently, at a partition that property also will be divided among the two.

Q. If two partners lend money on a mortgage bond, one man would assign his right.

A. They will not take in the name of two people; they would take in the name of the firm.

Q. When a deed is entered into in the name of two people, each gives half the money on it?

A. If it is in the name of two people there might be an understanding among them—whether it is half or three fourths share for each.

I am aware that Suppramaniam and Natchiappa father and son had lent money in their joint name. I know that as a matter of fact. I am also aware that Suppramaniam and Natchiappa had bought shares of property in Ceylon. I cannot say that each had a separate share of his own; it must be according to the partnership. 10 I do not know that Kandawala Estate was purchased by four persons. I know that there was a land acquisition case of Natchiappa in respect of Kandawala Estate. I know the land. I do not know whether it was purchased by two persons at a Fiscal's sale. I do not know the details of that. Generally I know that that land belonged to them, that is, belonged to two or three Muslims and Chettiars. It is said that Suppramaniam Chettiar transferred his share to Natchiappa but I do not know the details of the transfer. I do not know the father of K. M. N. Natchiappa Chettiar and K. M. N. Suppramaniam Chettiar. I do not know 20 personally whether the father had any business in Ceylon.

I know about worship by Hindus. For that purpose there are images in some houses. Some go to the temple. In one house there was an image. Even today there is an image. That image is the portion of the house occupied by K. M. N. S. P. Suppramaniam Chettiar.

Q. Are you sure that it is in the portion of Suppramaniam and not Natchiappa's?

A. Natchiappa Chettiar is Suppramaniam Chettiar's son. Both are in the same portion. 30

There is no image in the portion of Natchiappa Chettiar, brother of Suppramaniam Chettiar. The elder Natchiappa, that is the brother of Suppramaniam Chettiar, I think occupied the southern portion. I have not carefully observed the northern and southern portions. They occupied separate portions. The portions were separated according to a partition.

Q. Was there any physical partition put up at any time for separating these two portions?

A. To all appearances the different portions are distinct.

Q. What is there to separate? 40

A. There is no separate boundary wall or anything like that. To all appearances they are distinct. Visitors will know it, and occupants also will know it.

Chetty firms sometimes borrow capital from their relatives. When they get money like that there may be some arrangement among themselves about payment of interest. There is a normal arrangement that when a certain amount is deposited a certain amount as interest is to be paid to the capital. If I had a business of my own and I borrowed from my brother Rs. 100,000 at $\frac{3}{4}$ per cent. per month, then I would pay him that interest. Any profits apart from that interest would be mine. If I borrowed that money from my father the same thing would not operate. The father
10 would separate and give it to the son or if the capital is in the firm he would add some interest on to it. It is not usual to borrow from a father to do a separate business. If father puts capital into a business that money is father's separate money.

Q. If the business was carried on by the son any profits would be the son's?

A. I cannot say what arrangement there would be. Sometimes there would be an agreement for the son to give some interest. It would depend on the agreement between the parties.

I knew this Natchiappa very well. I knew his business trans-
20 actions also but not very well. He did not build a separate house in India for residence. I know that he built a portion of the residing house. He has built a kovil and madam.

Q. He says in his last will " I have a new house in Sembanur which belongs to me alone " do you know where that house is and what it is?

A. He has added a portion to the old building. I say that that is what is referred to as a new house.

I know that Natchiappa and some others had a business in Malaya. I do not know the partners of that business. They
30 might have been two or three of their own people. I know K. M. A. R. of Sembanur. There is no business in Sembanur, by that vilasam. I know there was a business in Pavamdoti, A. R. N. S. P. In that business K. M. A. R. of Sembanur also had a share. I know the people K. M. A. R. They are members of the same family of K. M. N. S. P. K. M. A. R. is Arunachalam Chettiar. He and Suppramaniam Chettiar may be called brothers. Arunachalam Chettiar is not Suppramaniam Chettiar's own brother but he is called a brother. He may be a cousin but I do not know. They are called " pangali ".

40 Q. Can you trace the actual relationship to the first ancestor of Arunachalam and Suppramaniam Chettiar?

A. They may be related but I cannot say what the actual relationship is. He might be, by somebody married to one of the ladies of the family.

No. 11
Further
Proceedings
—contd.

A. R. K. M. Meenatchi Atchi may be the wife of Arunachalam Chettiar. I do not know R. R. V. Alagamma Atchi. I know that there was a firm in Malaya in which Natchiappa Chettiar had an interest—in Srimpan Ampe. S. P. N. S. P. is the vilasam of that business. It is said that there were two or three other partners to that business. I do not know their names but if names are mentioned I can tell whether they are the partners. I know A. R. S. P. Natchiappa Chettiar. He is related to K. M. N. S. P. Natchiappa Chettiar. I do not know how they are related. They are people of Kallal which is about 2 or 3 miles away from 10 Sembanur.

I am not aware that Natchiappa Chettiar had gifted a large sum of money to three of his sons. I have been in and out of his house frequently. I was not told about this. There are certain things which they tell me and certain things which they don't.

Re-Exn. (Interval).

Sgd. S. J. C. SCHOKMAN,
A. D. J.

(After interval)

S. M. S. P. SOCKALINGAM CHETTIAR.

(Re-Exn.)

20

I have said that I knew Natchiappa Chettiar, the elder brother of Suppramaniam Chettiar. I have seen Natchiappa Chettiar during his life time. I knew him from my childhood, from the time I was 10 or 15 years old. I am unable to say definitely when he died. I can say approximately when he died.

When I knew him the firm K. M. N. & S. P. was in existence. I do not know when the firm was started. I heard that before that firm was started there was another firm in common between the two brothers.

Natchiappa left five sons. I have given their names. One of 30 them is also called Natchiappa. His vilasam was N. S. in Colombo. Another son was Letchimanan. He was in India. He is dead. He has left children. He had no business in Ceylon. His vilasam in India was K. M. N. L. In forming the vilasams generally the initial letter or letters of the names of the father and grandfather are used. The third son of Natchiappa was Suppramaniam. His vilasam was K. M. N. S. P. Ramasamy's vilasam was K. M. N. R. M. I knew Ramasamy very well. He died. The other son of Natchiappa was Saminathan. His vilasam was K. M. N. N. S. Of the five sons all are dead except Saminathan. 40

As far as I know from my own observation most of the chettiars belong to undivided families.

Q. When a member of a joint Hindu family starts a business with the funds of the family to whom does that business belong?

No. 11
Further
Proceedings
—contd.

(The Attorney-General objects to this question as it involves a question of law.

Mr. Nadarajah says that it is a question of fact in view of the questions put in cross-examination regarding the methods in which business was started. He further says that he only wishes to know how the witness regards it as a question of fact.

I allow the question to be put.)

10 A. If a man starts a business for himself, it belongs to him. If it is started as a partnership business, it belongs to the partners of the firm.

If a member of an undivided Hindu family starts a business with the family funds, that business belongs to the family. There are instances to my knowledge when a member of an undivided Hindu family has entered into partnership with others. That also happens.

I have said that K. M. Arunachalam was a "pangadu". When I used the term I meant to convey this: The term includes
20 those relatives from whom persons can be adopted but from whom people cannot marry—that circle of relatives who are related to one another so as to give up children to another family as adopted sons but who cannot be given in marriage to the females of that family.

The Tamil word for "partner" is "pangukaran". I would describe a partnership business and a joint family business in Tamil in this way: A partnership business is called "pangukarandu" and a family business as "podukuddamban". A family business is also known as the vilasam.

30 Sgd. S. J. C. SCHOKMAN,
D. J.

UNNAMALA ATCHI. AFFD.

The appellant is my daughter. I am 61 years old. I know the last witness Sockalingam. He is my husband's brother. My father's name is Sinniah Chettiar. His father's name was Kumarappa Chettiar. Sinniah had one brother, namely, Arunachalam Chettiar. My father and Arunachalam were brothers. Kumarappa was the father of Sinniah and Arunachalam. Kumarappa my father's father had 4 brothers, viz: Natchiappa Chettiar—Suppramaniam Chettiar—Alagappa Chettiar and
40 Udayappa Chettiar.

Of these brothers I knew only Udayappa Chettiar. I was 10 years old when he died. I knew the late K. M. N. S. P. Suppramaniam Chettiar also. I was related to him. He and Natchiappa

Chettiar were also members of the joint family. The father of K. M. N. S. P. Suppramaniam was Natchiappa Chettiar. K. M. N. S. P. Suppramaniam had a brother named Natchiappa and his father was also named Natchiappa. The father of Natchiappa who was the father of Suppramaniam and Natchiappa was Kumarappa Chettiar. I do not know whether Kumarappa had another brother.

I have already said that my father was Sinniah and that his father was Kumarappa. Kumarappa had four sons, viz., Natchiappa—Allagappa—Udayappa and Kumarappa. 10

Of those four sons Natchiappa was the father of Suppramaniam and Kumarappa was the father of Sinniah.

I have known K. M. N. S. P. Suppramaniam personally as well as his brother K. M. N. Natchiappa. I have gone to their house several times. I also know Suppramaniam's son Natchiappa. He married my daughter, the appellant. The brothers Suppramaniam and Natchiappa lived as a joint family. I do not know whether there were properties belonging to that joint family. I know that they lived together as members of a joint Hindu family. I knew that both of them had boutiques in Ceylon in partnership. They 20 were jointly running that business in Ceylon. I do not know the villasam. I was also born in the house in which they were living. The four brothers were born in the house of Sinniah and I was also born there. When I came to know things the persons living in the house were Suppramaniam Chettiar and Natchiappa Chettiar. I do not know who lived there before them. I knew those two persons when they were living there. The others were living separately in two or three houses elsewhere. The two persons referred to were living in the house together. There are three separate houses in the same compound one apart from the other. My father and 30 others were living in one of the houses and Natchiappa and Suppramaniam in another house. In the third house Udayappa and Allagappa were living. My daughter the wife of K. M. N. S. P. Natchiappa was living in the same house where Suppramaniam lived. She is now living in the house where Natchiappa and Suppramaniam lived together. That house was built more than 50 or 60 years ago by both Natchiappa and Suppramaniam. They were brothers. They must have lived there together for about 50 years. I do not know what happened after that. It is in that house their children are living now. I know Natchiappa's children. They 40 are also living in that house. They are not living indiscriminately there. Suppramaniam's children live in the north of the house and those of Natchiappa Chettiar to the south. They are living in two separate portions of the same house but the compound is common. They also cook separately but some other things are done in common. Whenever they have wedding ceremonies those ceremonies are held in the whole house. The father Suppramaniam and his son Natchiappa lived in common. The compound was the family compound.

The two brothers must have partitioned when they were living in the house. First the two brothers Suppramaniam and Natchiappa lived there together. Then they separated. Thereafter Suppramaniam and his son Natchiappa who is my son-in-law lived together for about 30 or 35 years, till the death of Suppramaniam. They also cooked together, worshipped together and ran business together. I do not know what business they ran.

X X D

My memory is quite good. I knew I had to give evidence in this
10 case. I discussed the matter with regard to relationship with my
advocate. No one told me the names of my relatives. I know my
parents and their relatives. I have said that my father was
Sinniah. When I was studying I was told that his full name was
Kuna Mana Chena Sinniah. My grandfather was Kumarappa
and father Sinniah and therefore the words Kuna Muna Chena were
adopted. My full name is Kuna Muna Chena Unnamala Atchi.
My father Sinniah was a son of Kumarappa. Kumarappa's
father's name was also Kumarappa. My grandfather Kumarappa
was called Kuna Muna Kumarappa. My father was called
20 Sinniah Kumarappa. My grandfather was also called Kumarappa.
He had four brothers, viz., Natchiappa Chettiar—Allagappa
Chettiar—Udayappa Chettiar and Kumarappa Chettiar.

All those four might have formed a joint family at the very start.
I have heard those names from my ancestors. They might have
formed a joint family. My grandfather left two sons: Sinniah
and Arunachalam—no one else. Allagappa's son was Ramasamy
Chettiar. He left only that son. He had no other children.
Ramasamy, Sinniah and Arunachalam were members of a joint
family at the start. I do not know when they separated. I do not
30 know of their separation. I know that they were living together.
Natchiappa my grandfather's brother had only two sons, viz.,
Natchiappa and Suppramaniam, and three daughters. Suppra-
maniam, his brother Natchiappa, my father and my uncle Aruna-
chalam and Ramasamy the son of Allaggappa all formed a joint
family at an early stage. After some time they separated. I do
not know when they separated. I heard that they formed a joint
family.

I married Nagappa, a son of Suppramaniam's sister Valliamma.
40 Suppramaniam had a son Natchiappa. Nagappa had also a
brother named Natchiappa, and another brother Sockalingam.
Natchiappa, the son of Suppramaniam, my husband Nagappa, Nat-
chiappa his brother and Sockalingam his brother formed a joint
family. My husband, Valliamma and Natchiappa formed a
separate family.

Q. You say that your husband's family was not joint with Natchiappa's family.

A. Natchiappa, my family and Sockalingam all formed one joint family.

By joint family I mean this: The brothers were close relatives. Valliammai Atchi, sister of Suppramaniam, was born in the house in question.

Q. Suppose Natchiappa, your husband's brother, earns some money will that belong to Nagappa and Sockalingam also.

A. No.

10

Q. Suppose Natchiappa the son of Suppramaniam earns some money will that belong to him or to anyone else along with him?

A. To him alone—to no one else.

I have said that Suppramaniam and Natchiappa carried on business in Ceylon. I know that. I have been coming to and going from Ceylon. I came to Ceylon two or three years ago after Natchiappa's death. Before that I did not come here. I do not know myself what business Suppramaniam and Natchiappa carried on in Ceylon. I know that Suppramaniam carried on business in Ceylon 20 at one time. I do not know whether he did so alone or in partnership. I know that he was carrying on business in Ceylon. I do not know whether before Suppramaniam died, Natchiappa had taken up the business in Ceylon. I remember Suppramaniam's brother Natchiappa. I know that they carried on business together. They carried on that business in Colombo. That business belonged to those two persons. When they came to India and bought things I knew that. After some time they separated and ran separate boutiques. They separated 30 or 35 years ago. I was living in my mother's house when they talked about the separation. I knew 30 all about the separation. I do not know why they separated.

Q. After the separation their common business was turned into a separate business?

A. I knew that they separated. I know the names of my relations. I do not know Ana Runa Una Mana Menatchiar. I know Kuna Ana Mana Arunachalam Chettiar. He is my uncle, my father's younger brother. I do not know whether he had a business in common with Natchiappa Chettiar. I do not know whether he had a business in Burma. I do not know whether any of my relatives had a business in Burma along with Natchiappa. My uncle 40 Arunachalam and Natchiappa are now dead. I do not know

whether before they died they carried on business in partnership; they may have done so. I do not know whether Natchiappa Chettiar had a business in Malaya. I am not aware of his business in any other place nor who his partners were in those places.

Q. Then how do you know about his business in Ceylon?

A. Because Valliammai is married and I was also born.

I have acquired knowledge about the Ceylon Business. I have not gone to the other places referred to. I came to know of the business in Ceylon that he was running a boutique in Ceylon before
10 I came to Ceylon. His father Suppramaniam was a man of means. Both Suppramaniam and Natchiappa earned money. I know that both of them earned much and that they had boutiques in Ceylon. The two brothers Suppramaniam and Natchiappa had boutiques in Ceylon. They had boutiques together in Ceylon as one business. I know that they did that business for about 50 years till they died.

Q. At no time was Suppramaniam and his brother separated in business.

A. They separated. That was done over 35 years ago.

20 They carried on business in Ceylon till they died. After that their children may have carried on the business.

My daughter's husband did not build any separate house. He improved the same house and made additions for the convenience in cooking, eating and accommodation. The additions he made were a porch and a big hall.

Q. If Natchiappa in his last will says that he put up a new house, that is not correct?

A. I do not know what he has written in the will. He has not put up a new, separate house, but he has only made additions.

30 Q. If he states that he has put up a new house, that is not correct?

A. He did not put up a new house.

Q. You do not know whether he put up a new house anywhere in South India?

A. Yes. Except the additions to the existing house he did not put up a separate house.

To my knowledge there was no house warming ceremony in the house of Natchiappa Chettiar. If there was a house warming ceremony I would have known about it. Without my knowledge

No. 11
Further
Proceedings
—contd.

there could not have been a house warming ceremony in view of the fact that his wife is my daughter. In the house of Natchiappa's father Suppramaniam there must have been ceremonies, but there were no ceremonies to my knowledge.

My son-in-law Natchiappa was first married to a lady called Parawathy Atchy.

Q. You did not know anything about him while he was married to Parawathy?

A. I knew him.

Q. Do you know about his affairs and other things before your 10 daughter married him?

A. I did not know about his business before he married my daughter but about his family matters I knew very well even before he married my daughter.

He married her 16 years ago. At that time Suppramaniam was alive. His brother Natchiappa was dead at the time. I know the house in which my daughter is now living. That is the house which was occupied by Natchiappa and Suppramaniam his father. I do not know when it was built. I have said in examination in chief that it was built about 50 years ago. It must have been built over 20 50 years ago. I must have been a little child at the time about 4 or 5 years old. I did not know at the time who built it but later I came to know that it was built by both the brothers Natchiappa and Suppramaniam. I do not know the amount spent on building it. It is correct to say that there are four separate houses in the same compound including the house occupied by Suppramaniam and his brother Natchiappa. I am also occupying one of those houses. The other two houses are occupied by Allagappa and another. The houses are separate houses where cooking, &c., are done separately.

Re-Exd.

30

One of those houses was occupied by Natchiappa, son of Kumarappa. That was the house built during the time of Suppramaniam and Natchiappa. I have said that Suppramaniam and Natchiappa partitioned their assets about 35 years ago. Shortly after the partition Natchiappa died.

(It is now 4 p.m.)

Further hearing is therefore postponed for 4th December, 1944).

Sgd. S. J. C. SCHOKMAN,

A. D. J.

15.11.44.

40

D. C. Special 10

4th December, 1944.

No. 11
Further
Proceedings
--contd.

Same appearance as on the last date.

Certain mistakes in the typed copy of the last day's proceedings are corrected, counsel for both sides agreeing.

Mr. Nadarajah calls:—

A. R. SOMASUNDERAM CHETTIAR. AFFD.

I am also known as Kumarappa Chettiar. I am 51 years old. My native land is Chambanoor in the Ramnad District. I was born in the Tamil year "Visaya Varusan"; that year must be
10 1894. My father was Arunachalam Chettiar. He had one brother namely Sinniah Chettiar. I was not in attendance in Court on the last date of inquiry. I know Unnamala Atchi. (Unnamala Atchi who gave evidence on the last date is called into Court.) This is Unnamala Atchi my uncle Sinniah's daughter. She and I are children of two brothers. It is her daughter who is the petitioner in this case, namely Valliammai.

The name of my father's father was Kumarappa Chettiar. He had two sons namely Sinniah and Arunachalam. Unnamala is the daughter of Sinniah and I am Arunachalam's son.

20 (At this stage the Attorney-General objects to this witness being examined on the ground that his name appears on a list of witnesses filed on 9th November, 1944. He says the petitioner is not entitled to file a list of witnesses after the case has started.

Mr. Nadarajah says that the trial on the merits of this case commenced on 15th November, 1944, and that he only moved to have the evidence of one witness Vairavan Chettiar's son Natchiappa Chettiar recorded on 10.11.42 after the argument on the preliminary questions of law as the witness was old and feeble. He further says that that witness has since died. He also says that as this
30 witness has already been sworn in and his evidence has commenced, his evidence cannot now be rejected. He refers to section 147, 121 (2) and 175 of the Code.

ORDER

At the hearing which took place in October and November, 1942, certain preliminary questions were considered and decided and the case thereafter went up in appeal. The hearing with regard to facts commenced in this court on the 15th November, 1944, and this witness' name appears on a list dated 9th November, 1944. It cannot therefore be said that the list was filed with this witness'
40 name merely to fill in a gap in the evidence which was discovered after the leading of evidence had commenced.

I allow the witness to be examined but in weighing his evidence I shall keep in mind the objection taken by the Attorney-General as to the lateness of the list in which his name appeared.)

I knew the late K. M. N. S. P. Natchiappa Chetty. He was the husband of Valliyammai Atchi. I knew him well, being people of the same village and also because he was married to my cousin's sister's daughter. The native place of the deceased K. M. N. S. P. Natchiappa Chettiar was in India. He and I lived in the same village. I know the house where he was living during his life time. His house was about 50 feet away from mine. We had a joint 10 business in Burma; the vilasam being Ana Runa Navanna Suna Pana. That business was carried on in Poundothy, Burma. It was started about 20 years ago by my father Arunachalam Chettiar and K. M. N. S. P. Suppramaniam, father of the deceased Natchiappa Chettiar. They started that business in partnership under that vilasam in Poundothy Burma. I have been to Burma. I was working there in that firm (A. R. N. S. P.). I cannot say for how long I worked there. I used to go there and work for two years, return to India and then go back and work for another period.

My father died six years ago. He and I were members of a Hindu 20 joint family. When he died his share in A. R. N. S. P. continued to remain as a share of the joint Hindu family of myself and my brothers. K. M. N. S. P. Suppramaniam is not living now. He died about 12 years ago. His share in the firm A. R. N. S. P. is possessed by the members of his family. They are also members now of a joint Hindu family. On the death of K. M. N. S. P. Suppramaniam Chettiar his share in A. R. N. S. P. went to the members of his joint Hindu family. The members of that joint family living at present are four in number. There are four little sons of K. M. N. S. P. Natchiappa Chettiar, son of K. M. N. S. P. Suppra- 30 maniam. When K. M. N. S. P. Suppramaniam was alive the members of the family in addition to him were Natchiappa Chettiar and his sons. The members of the joint Hindu family after Suppramaniam's death, when Natchiappa was alive, were Natchiappa and his sons.

I have said that the firm, A. R. N. S. P. in Burma was run by my father Arunachalam Chettiar and K. M. N. S. P. Suppramaniam. Suppramaniam had eight " annas " (shares), my wife Menatchi one anna, my sister Alagamma one anna and I six annas. An " anna " is a share. Suppramaniam's eight shares belonged to 40 his joint family. Similarly my six shares belong to the joint family comprised of myself and my brothers. During my father's life time. I, my father and my brothers constituted a joint Hindu family

Besides knowing Suppramaniam and Natchiappa as persons living close to my house, there is a family connection between my family and Suppramaniam's family. The relationship is this: my

grandfather, Suppramaniam's grandfather and two others were children of the same father. My grandfather's name was Kumarappa Chettiar and Suppramaniam's grandfather was Natchiappa Chettiar. My father's father Kumarappa Chettiar and Suppramaniam's father Natchiappa Chettiar were brothers. There were two others who were brothers of Kumarappa and Suppramaniam namely, Udayappa Chettiar and Alagappa Chettiar. Natchiappa the brother of my grandfather had two sons: Suppramaniam and Natchiappa. Of these two the elder was Natchiappa Chettiar. I
 10 knew Natchiappa Chettiar, the elder brother of Suppramaniam. I knew him in my village, Sembinoor. When I knew Suppramaniam and Natchiappa they were doing money lending business. They were carrying on that business in Colombo. I have known them from my childhood ever since I began to understand things. I knew where they lived—Sembinoor. They were living about 50 feet from my house. I have been to their house several times. They owned properties in the village. When they were carrying on the business of money lending in Colombo, they had properties. The vilasam under which they carried on the business was Kuna Mana
 20 Navanna (K. M. N.). I know their properties in India. They possessed the properties jointly as members of a joint family. Both of them lived in the same house, each occupying different portions, from the time the house was built. They carried on business together until about 32 years ago as members of a joint Hindu family. In Chettinad there are divided families and undivided families. The members of a joint Hindu family do not divide up their assets amongst themselves. When a family is not divided the assets are also not divided. There are families which continue to be joint families all throughout and there are some families
 30 who divide when some displeasure or differences arise.

Natchiappa and his brother Suppramaniam divided their property 32 years ago. They appointed some arbitrators and divided the Colombo business and their properties in the village. Till the date of that division these two brothers were members of an undivided joint Hindu family. I know that 32 years ago they divided the Colombo business and their immovable properties, because I was a frequent visitor to their house. I used to go there. They were prominent people in the village. I know these facts owing to constant visits to the house. In addition to the two arbi-
 40 trators there were other arbitrators also. Those arbitrators settled all the differences. After the differences had been settled and the shares allotted, the rights of the parties were put down in writing and Natchiappa and Suppramaniam signed that writing. I have seen the document. I had occasion to attest their signatures. I can recognise their signatures (shown original of A8). I identify their signatures on this document. There are two signatures over the stamp. Those signatures are those of Natchiappa and Suppramaniam.

No. 11
Further
Proceedings
—contd.

After the signing of that document, the two brothers started possessing according to the division. After the division of the business in Colombo by A8, they carried on the business. K.M.N.S.P. Suppramaniam and his son Natchiappa carried on business as the members of a joint family under the vilasam of Kana Mana Navanna Suna Pana (K.M.N.S.P.)

Natchiappa the elder brother of Suppramaniam had five sons, namely, Natchiappa Chettiar, Letchimanan Chettiar, Suppramaniam Chettiar, Ramasamy Chettiar and Saminathan Chettiar.

Out of these five brothers Letchimanan did not come to Ceylon. 10 The other four carried on business in Colombo under the vilasam Navanna Suna Navinna Mana Savanna (N.S.R.M.S.) All the four brothers jointly carried on that business with the money that belonged to Natchiappa Chettiar from the Colombo firm run during the time of Natchiappa Chettiar. That firm was the business that was divided by the document A8. Natchiappa the elder brother of Suppramaniam remained at home and the four sons carried on the business N.S.R.M.S. Natchiappa died about 4 or 5 years after the division. The firm N.S.R.M.S. was also divided between the four brothers. It is now run under four 20 vilasams, namely, Navanna Chona, Suna Pana Kavana, Kuna Mana Navanna Ravanna Mana and Kuna Mana. I know the firm K.M.N.R.M. the firm of Ramasamy. That was owned by Ramasamy, son of Natchiappa Chettiar.

(The Attorney-General objects to this evidence as being irrelevant to the consideration of the question arising in this case.)

Mr. Nadarajah says this evidence is relevant as he is relying on a judgment of the Supreme Court. That Ramasamy's estate was the subject matter of D.C. case No. 3130.)

Ramasamy died. I know that the administrators of his estate 30 have written to the Attorney-General asking for a refund of estate duty on the ground that he belonged to a joint Hindu family.

(Mr. Nadarajah moves to tender the plaint, answer, issues, judgment and decree of the Supreme Court in D.C. case No. 3130 marked A9.)

The Attorney-General objects. He states that the judgment is not a judgment *in rem* and is also not a judgment to which Suppramaniam or his heirs were parties.)

Sgd. S. J. C. SCHOKMAN,

A. D. J. 40
4-12-44.

It is now 4 p.m. Further hearing is postponed for May 7, 8, 9, and 11, 1945.

D. C. 10 Special

10th September, 1946.

No. 11
Further
Proceedings
—contd.

MR. ADV. NADARAJAH, K.C., with MR. ADV. CHELVANAYAGAM and MR. ADV. ANTON MUTTUKUMARU instructed by MR. ZAHEED for the appellant.

MR. H. H. BASNAYAKE, K.C., Attorney-General, with MR. WEERASOORIYA, Crown Counsel, for the Crown.

MR. BASNAYAKE refers to section 88 of the Courts Ordinance and asks that the witnesses who have given evidence before my predecessor be re-heard and that the trial be commenced afresh.

- 10 Mr. Chelvanayagam moves that the evidence of all witnesses who have been lead and who have been cross-examined be regarded as forming part of these proceedings and in particular the evidence of Nachiappa Chettiar who was examined and cross-examined on 10-11-42 and 16-12-42. He states that this evidence was specifically taken *de bene esse* and that the witness is now dead and that his evidence will be admissible under section 33 of the Evidence Ordinance.

- 20 He states that there are three other witnesses of whom one has not been cross-examined and who is not now available; two have been examined and cross-examined and are available.

With regard to the witnesses who are alive, Mr. Chelvanayagam states that he has no objection to calling them if the Crown insists.

Mr. Basnayake for the Crown states that he wants those witnesses to be examined.

- 30 I have no alternative but to allow the application of the Crown under section 88 of the Courts Ordinance. With regard to the witness who is dead, viz., Nachiappa Chettiar, son of Vyravan Chettiar, I shall hear arguments when the appellant moves to read in evidence in these proceedings the evidence that has already been recorded by my predecessor. For the present I do not propose to make an order with regard to that.

Mr. Chelvanayagam opens his case. He says two points arise for decision, whether—

- (a) the deceased was a member of a joint Hindu family.
(b) All the property that he left in Ceylon which is taxed with duty was the joint property of a Hindu family.

He refers to the Estate Duty Ordinance (Cap. 187) sec. 73 (Amendment page 105).

- 40 He says property may be joint either by reason that it was ancestral property or by reason of the fact that separate property of each individual member of a family was pooled together and treated as a joint property. He states that in this case in order

to establish property of joint Hindu family he relies largely, but not exclusively, on an ancestral nucleus from which there were subsequent purchases.

He refers to the pedigree filed in the case. He says that Nachiappa Chettiar and the deceased's father Suppramaniam Chettiar carried on business in Ceylon under the firm name of KM.N.S.P. Suppramaniam Chettiar had a brother KM.N. Nachiappa Chettiar. KM.N. Nachiappa Chettiar and KM.N. Suppramaniam Chettiar were the sons of one KN. Nachiappa Chettiar who was a son of Kumarappa Chettiar. He says he will lead evidence of this. 10

He says that evidence will be led that KM.N. Nachiappa Chettiar and KM.N. Suppramaniam Chettiar were carrying on business under the vilasam KM.N. He also says that evidence will be led that at a certain stage KM.N. Nachiappa Chettiar and KM.N. Suppramaniam Chettiar divided the joint estate among themselves. He relies on this division and the manner of the division to establish his case.

He says KM.N. Nachiappa Chettiar divided his share among his five sons and each of them except Letchimanan, who did not come to Ceylon, carried on business separately. Evidence will be led that the four children of KM.N. Nachiappa Chettiar carried on business in Ceylon under the name of N.S.R.M.S. They later divided their joint property. Ramasamy Chettiar carried on business in Ceylon under the vilasam KM.N.N.R.M. Ramasamy Chettiar died. Then the question of estate duty arose. The estate duty was paid for the entire estate on the ground that the entire estate belonged to Ramasamy Chettiar. Subsequently his administrator asked for a refund of duty on the ground that the property was joint undivided property of a Hindu family consisting of Ramasamy Chettiar and his children. The case was reported in 38 N.L.R. 313. 20 30

KM.N. Suppramaniam Chettiar had only one son, viz., the deceased in this case. Suppramaniam Chettiar and his son carried on business under the name of KM.N.S.P. until he died in 1932. Before Suppramaniam Chettiar died he transferred all his Ceylon assets to his son and went to India. When he died there was no property standing in his name.

At the preliminary proceedings the Crown, he says, took up the position that Natchiappa was estopped from denying that Suppramaniam Chettiar and he were not members of a joint Hindu family because when Suppramaniam died it was stated that Suppramaniam Chettiar had no property in Ceylon and the estate was not taxed. That was taken as a preliminary objection. He says that if Suppramaniam Chettiar's property, which he transferred to Natchiappa Chettiar, was ancestral property he could not do anything to the detriment of the members of his family. He says that 40

such a transfer is merely nominal and that there are Privy Council decisions to that effect. He says that his case is that Suppramaniam Chettiar transferred to Nachiappa Chettiar for the purpose of vesting legal title in the son, as the father was going away to India, in order to make it convenient for the son to carry on the business here.

10 He says, by the first wife Nachiappa Chettiar had several daughters who were married and had been given dowries. Those alive are Theivam, Valliamma, and Alagachy. By his second wife, who is the executrix, he had four sons Manickam alias Nachiappa, Ramasamy, Suppramaniam and Nagappa, and a daughter, who is dead. He executed a last will.

On the preliminary objections taken by the Crown the Supreme Court gave a decision which is reported in 45 N.L.R. 230.

The division between Nachiappa Chettiar and Suppramaniam is contained in the document marked earlier in the proceedings as A8.

20 He says that it is his case that when a joint family property is divided it is not divided all at one stage. Such property is often divided at several stages according to requirements. A8 he says was a final division and records all the other earlier divisions and whatever was left they divided on that occasion. That document records the division of the Colombo property into equal shares of Rs. 103,000.

(At this stage Mr. Nadarajah, K.C., addresses me on the legal aspects.)

He refers to Mayne on Hindu Law (10th edn.) at page 337 para 263.

He says that joint property arises in one of the three ways—

30 (1) When the managing member has received ancestral property from his ancestors.

(2) Without any such inheritance the brothers earn together and pool all their earnings; those assets will be joint undivided property.

(3) By blending all individual earnings. He refers to 29 N.L.R. p. 225 at 229.

31 N.L.R. p.385 at 405.

38 N.L.R. p.313—Referring to this case he says the case presented on behalf of Ramasamy Chettiar was that he was entitled to a one-third share.

40 He says that all members of a family male and female are not entitled to take part in the joint property of the family; it is only a narrower group consisting only of the males within a certain degree who take interest in a joint property and are called coparceners.

He refers to Mayne on Hindu Law p. 338 para 264 and 265 (a) also page 359 para 281 page 361 para 283.

Joint ownership of property concluded on partition.

He refers to Mayne page 567 para 458.

He refers to documents A1 to A6 (a) and (b) and A8.

He also refers to documents put in evidence by the Crown, viz. :—

R1 Declaration under the old Estate Duty Ordinance of 1919.

R3 and reply R2.

R4 deed of transfer from KM.N.S.P. Suppramaniam Chettiar to Nachiappa Chettiar dated 26-3-25. 10

R5 deed No. 3954 of 24-3-26.

R6 decision of the Income Tax Board of Review.

R7 declaration dated 4-8-39 sent by the executrix, under Cap. 187 in respect of her husband's estate.

R8 letter giving cover to R7.

R9, R10, R11. Correspondence.

R12 petition to the Supreme Court dated 23-3-29.

R13 affidavit of Ramanathan Chettiar in support of R12.

R14 petition to this Court in case No. 8802T.

R15 and R16 amended petition. 20

R17 Last Will of 4th December 1938.

R18 probate. R19 statement of objections in 8802/T made by some other parties.

R20 affidavit of one of the executors.

R21 affidavit of Letchiman

R22, R23 petition and affidavit for serving processes.

R24 Inventory.

R25 affidavit from witnesses to the Will to prove the Will.

R26 Certificate of Commissioner dated 5-5-41.

Mr. Nadarajah calls:— 30

N.K.V.L. RAMANATHAN CHETTIAR. Affirmed, 51.

I am a Hindu born at Devakotai in India. I came to Ceylon about 40 years ago when I was a boy of about 11 or 12. I came here as my father was doing business in Jaffna. His name was N.K.V.L. Letchumanan Chettiar. I went straight to Jaffna when I came to Ceylon. I lived in my father's shop till 1914, till I reached the age of 18 or 19. In 6 years I got acquainted with the business methods. Thereafter I came to Colombo and took employment under the firm of KM.N.N.R.M. The name of the

person is KM.N.N.R.M. Ramasamy Chettiar. I was here for 6 years. I was the attorney of Ramasamy Chettiar till 1920 or 1921. Then I went to the firm of KM.N.S.P. Suppramaniam Chettiar and Natchiappa Chettiar, father and son, were the proprietors. I joined his firm in 1923. Up to date I am in that firm, so that I know all that happened from 1923 up to date in that firm of KM.N.S.P. KM.N.N.R.M. and KM.N.S.P. were related. Suppramaniam Chettiar's brother's son is Ramasamy Chettiar. In connection with my employment both under KM.N.N.R.M. and

10 K.M.N.S.P. I had occasion to go to their native place. Their native place is Sembanoor in the Ramnad District. Sembanoor is 20 miles from my village Devakotai. While in India I used to go once or twice a month to their place formerly by bullock cart and now by bus. As attorney I live two years in India and two years here. I go to my home on holiday and remain there for about two years. During that time I used to visit the Suppramaniam family once or twice a month. When I am there, if my master wants anything he sends for me. When I am in Colombo also he has sent for me and I have gone to India to his house.

20 I knew very well Suppramaniam Chettiar and his son Nachiappa Chettiar whose estate is in question in this case. The father of Suppramaniam Chettiar was Nachiappa Chettiar son of Kuma-rappa Chettiar. This Nachiappa Chettiar had two sons. I do not know whether he had any daughters. The two sons were KM.N. Nachiappa Chettiar the elder, and Suppramaniam Chettiar. The elder brother Nachiappa Chettiar had five sons. I knew four of these children personally, viz., Nachiappa Chettiar, Letchu-manan Chettiar, Ramasamy Chettiar and Saminathan Chettiar. Besides these four sons I knew there was another son called Sup-

30 pramaniam Chettiar. This son died young.

In about 1916 or 1917 I became the attorney of KM.N. Rama-samy Chettiar. I joined him before I became his attorney.

KM.N. Suppramaniam Chettiar had only one son and three or four daughters. Only two of them are now living. His son's name is KM.N.S.P. Nachiappa Chettiar, with regard to whose estate this appeal has been referred to this Court.

Suppramaniam Chettiar, the father of Nachiappa Chettiar the testator died in 1932. The testator Nachiappa Chettiar died in 1938. I was working under him also. I know the children of

40 the testator. He married twice, first Parwathy Achy and his second wife is Valliamma Achy. Valliamma Achy the widow, is the executrix in this case. By Parwathy Achy Nachiappa Chettiar had three sons and six daughters. I cannot remember the names of the sons. All the sons died unmarried—they predeceased their father. They died before their father married Valliamma Achy, so that when Nachiappa Chettiar married Valliamma Achy there was no male heir. Para-wathy Achy also died. After her death Natchiappa Chettiar

married Valliamma Achy and left four sons and one daughter who is dead. The four sons are alive. They are all young, the eldest being 16. He is not married. Their names are Manickam alias Nachiappa, Ramasamy, Suppramaniam and Nagappan. When I joined the firm of KM.N.N. Ramasamy Chettiar in 1914 the firm of KM.N. was not in existence. I joined KM.N. Suppramaniam Chettiar in 1923 and was appointed his attorney in 1925. Prior to that the firm of KM.N.S.P. was established—in 1910 or 1912.

The joint Hindu family system prevailed in South India, i.e., in Sembanoor and Devakotai. Suppramaniam Chettiar and his father Nachiappa Chettiar belonged to a Hindu joint family. They were Hindus and Tamils and belonged to the community called Nadukotai Chetties. I am also a member of that community. Members of this community do business on a large scale. Nachiappa Chettiar and Suppramaniam Chettiar, the father and son, were from Sembanoor. They were born and bred there and died there. They got married from the adjoining village. 10

Suppramaniam Chettiar and his son Nachiappa Chettiar lived together in one mess. They worshipped at one shrine. They had their own temple. Before I became the attorney I had been to their place. On those occasions Suppramaniam Chettiar and his wife and children were all living together in one house. This house in which Suppramaniam Chettiar and his son Nachiappa Chettiar lived formed a portion of a large house separated off for them. This portion consisted of five rooms. Suppramaniam Chettiar and his son Nachiappa Chettiar and his family lived in that portion of five rooms. The other portion of the house consisting of five rooms was occupied by Nachiappa Chettiar the brother of Suppramaniam Chettiar and his children. After Suppramaniam Chettiar's brother Nachiappa Chettiar died his children continued to live there. 20 30

(Interval.)

Sgd. N. SINNATHAMBY,

10-9-46.

A. D. J.

(After Interval)

N.K.V.L. RAMANATHAN CHETTIAR. Affirmed.

(Examination in chief continued.)

I remember I was personally attending to certain matters in connection with the Income Tax declarations of Natchiappa Chettiar, the testator. I had to search for old documents in that connection, and I searched and found out Indian Income Tax returns, partition deeds and account books. 40

I have referred to "muri" a partition deed. (Shown document marked A8.) This is the document. The executrix and I found it.

Some of the joint Hindu families indulge in trading and in that connection, they preserve certain documents. There is a room where they store the documents. The documents are kept in "pettagams" there. The executrix and I searched a number of rooms, and in the course of that search we found the document A8. I have read the document. It has been signed by two persons, namely, Suppramaniam Chettiar and his elder brother. I am familiar with the signature of Suppramaniam Chettiar but not with the signature of the other person.

No. 11
Further
Proceedings
—contd.

10 (To Court: the elder brother is KM. Natchiappa Chettiar.)

I recognise the signature of KM.N. Suppramaniam Chettiar on the document A8. He has signed the document in Tamil. (Shown the signature) He has signed as Kuna Muna Navinna Suppramaniam. "KM.N." is a vilasam and stand for the names of Suppramaniam's father and grandfather viz: Kumarappa and Natchiappa.

(Second paragraph of A8 read out by witness) "KM.N." is the vilasam of a firm of which both Natchiappa Chettiar and Suppramaniam Chettiar were members.

20 (Third paragraph of A8 is also read out by witness.) That paragraph refers to the liquidation of the firm KM.N. on the 6th January, 1911. It is stated there that a total of cash Rs. 206,949-38 has been collected out of the common fund of the firm of KM.N. up to 6th June, 1911. It is further stated that half of that sum, the half share of Natchiappa, was paid to his five children, namely, Rs. 103,474.69 and the other half to Suppramaniam Chettiar.

I next produce the day book of the firm KM.N.S.P. for the year 1911 marked A9. I invite attention of court to an entry appearing in folio 126 of A9 (translation marked A9A). On page 30 128 of A9 there is a crediting entry. The sum shown in the entry is the sum referred to in the document A8. The entries in the book A9 begin on the 15th May, 1910, with a credit in favour of the Hindu God, Muttuvinayar, and two other Hindu Gods. I produce a translation of the entries on the first page marked A9B. Entries of that type are made when new accounts are opened. The book shows that accounts of a firm in existence were brought forward. The accounts were brought forward from the firm KM. N. The book contains accounts of the firm KM. N. S. P. It is clear from the book that the firm KM. N. S. P. started on the 15th May, 1910. 40 The first entry is dated 15th May, 1910. Till 20th January, 1911, there are no other entries. That shows that the business was started on an auspicious date (15th May, 1910) but that it actually started on 20th January, 1911. One of the entries on 15th May, 1910, shows a sum of Rs. 51,100 credited to headquarters. Against the date 20th January, 1911, there is a debit of Rs. 51,100. From the nature

of the entries and the dates which expired in the interval between the auspicious date, I can say that the business of the firm actually began on 20th January, 1911. Before that the firm KM. N. was in existence.

The capital of the new firm KM. N. S. P. was Rs. 103,474.69 and it came into the firm on 6th June, 1911. That was the money which KM. N. S. P. received as its share from KM. N. From 1911 the new business KM. N. S. P. went on and flourished. I came into the business by 1921 or 1922 and up to date I have been in charge of the business. I have examined all the books of the business. I can say that there was no other capital when the firm KM. N. S. P. was started. 10

Q. Can you say from your own knowledge by reason of your connection with the firm and by reason of your examination of all the books of the firm that the present estate is the result of the various investments of the sum of Rs. 103,474.69?

(Mr. Basnayake objects to the question. He submits that the witness can only speak from personal knowledge with regard to what happened from 1923.

(*To Court:* I have seen all the books of the firm. They are in Court.) 20

Mr. Nadarajah states that he does not insist on the answer to the question just yet, and that he would come to the matter later.)

(Evidence.—*contd.*)

The day book A9 ran till 12th November, 1912. I do not have the ledger for that year. The day book A9 does not show that any capital was brought into the firm. One of the books I found as the result of my search was a ledger containing entries starting in 1922.

(Mr. Nadarajah proposes to produce the ledger marked A10. 30

Mr. Basnayake objects to the production of the document on the ground that it has not been listed. After reference to the record it is found that the book has been listed. Mr. Basnayake therefore withdraws the objection.

I allow the production of the book). A10 was the ledger of the firm KM. N. S. P. for 1922 and it ran till March, 1924.

I next produce marked A11, ledger containing accounts from February, 1925, till 5th February, 1926. I have already produced A6 ledger for the period February, 1925, to March, 1927.

I further produce marked A12 ledger for the period April, 1924, to March, 1926. 40

I have all the books of the firm KM. N. S. P. kept from 1930 up to the death of Natchiappa. Those books are in the custody of the District Court of Colombo and I have summoned the Secretary to produce them.

I next produce the day book of the firm K. M. N. for 1897-1898 marked A13. I have got certain portions in that day book which are relevant translated. In folio 19 of the day book there is an entry showing a sum of Rs. 1.58 against the name of Navanna. He is Suppramaniam's elder brother. (Translation marked A13A.) That sum of Rs. 1.58 has not been debited to a partner but to the common expenses of the firm. Another entry in the book in folio 48 shows that expenses of Suna Pana Natchiappa plus expenses of his son Swaminathan and of Andaramalay, a kanakapulle, amounting to Rs. 46.67 were debited to the interest account of the firm and not to individual account of each of those persons. (Translation of the entry marked A13B).

10

I further produce another day book of the firm K. M. N. for 1895-1896 marked A14. In folio 37 there is an entry relating to railway expenses of Chuna Pana (Suppramaniam). (Translation of the entry marked A14A.)

20

I also produce A15, day book for 1898-1899 (Entry on folio 60 referred to). Swaminathan was the son of Natchiappa, the elder brother of Suppramaniam and Natchiappa was the son of Suppramaniam. (Translation of the entry on page 60 marked A15A and translation of entry on folio 8 marked A15B.)

I further produce marked A16, day book for 1907-1908 of the firm K. M. N. (Entry in folio 192 under "interest expenses" referred to.) That entry shows an expenditure of Rs. 102.86. That amount has been charged to the interest account. All the entries I referred to have been charged to interest account.

I next produce book marked A17 of the firm K. M. N. for 1904-1905. Besides the documents I have produce, I have also found certain stray balance sheets for earlier years.

30

The books I have produced namely A13-A17 purport to be books of the firm K. M. N. That firm was run by Natchiappa, the elder brother of Suppramaniam. In A8 a sum of Rs. 206,000 odd is shown as having been collected from that firm.

40

Suppramaniam died in 1932. The Income Tax Ordinance came into force from 1932 or 1933. At that time it was I who was in charge of the firm K. M. N. S. P. The returns were made by me. The income of Natchiappa Chettiar, a son of Suppramaniam my principal, was assessed. Natchiappa too paid Income Tax as a member of a Hindu undivided family. I produce notices of assessment served on me for Natchiappa for the year ending 31st March, 1935, marked A18. I draw the attention of Court to the endorsement on the back of A18 to the effect that the assessment was on the basis that Natchiappa was a member of a joint Hindu family.

I also produce a notice of assessment for the year 1934 marked A19. I draw the Court's attention to the fact that the tax has been levied at the rate of 10 per cent.

My principal Natchiappa died in 1938. After his death the Income Tax Commissioner stated that the property was not the property of an undivided Hindu family and re-assessed on the basis that the property was that of an individual for three years preceding his death. I appealed against that assessment. The judgment of the Board of Review has already been produced marked R6. It was in connection with that matter I had to search for documents. I had to do so for the purpose of establishing my claim.

Suppramaniam and Natchiappa, father and son, were also taxed in India. 10

(Mr. Nadarajah proposes to produce certain assessments of the Income Tax authorities in India with regard to the income of K. M. N. S. P. Natchiappa Chettiar and K. M. N. S. P. Suppramaniam Chettiar or which they claim that the income shall be regarded as belonging to members of an undivided Hindu family and the acceptance of the claim by the Income Tax authorities in India.

Mr. Basnayake objects to the production of Income Tax returns to prove that Natchiappa and Suppramaniam were members of an undivided Hindu family. He submits there is no evidence that in India the members of an undivided Hindu family are charged an additional tax as in Ceylon. Before the documents are admitted, evidence should be led that the status as described in those documents is a material circumstance for the purpose of Income Tax. Till such evidence is led, he objects to the production of the documents. 20

Mr. Basnayake further submits that he would insist on the officer who made the assessments being called in order that he may examine him as to the assessments.

Mr. Nadarajah states that before attempting to put the documents in, his Proctor had taken the precaution of showing the documents to the Proctor on the other side and the latter had waived proof of the documents. He adds that the waiver is embodied in a document and he produces the document marked A20. 30

Mr. Nadarajah further submits that the documents are admissible. He adds that he relies on certain definite statements made in the documents and not on inference that might be drawn by the unit rate of Income Tax levied on the assessee. He refers to section 13 of the Evidence Ordinance. That section, he points out, is the same as section 13 of the Indian Evidence Act. He emphasises the words "transaction" and "rights" occurring in the section. The word "right" includes a public right and not a private right. The word "transaction" is dealt with by Amir Ali at page 177, 31st Edition. 40

I call upon Mr. Basnayake to address me with regard to the implications of section 13. He submits that section 13 applies to a right but not to any status. He adds that in Ceylon it may apply to a right claimed, because in Ceylon an additional tax is charged for members of a Hindu undivided family.

Mr. Nadarajah cites:

(1941) Amir Ali page 174.

No. 11
Further
Proceedings
—contd.

In view of the document A20, Mr. Basnayake withdraws his objection to the due proof of the documents.

As it is nearly 4 p.m. now I adjourn the inquiry for tomorrow and also reserve my order on the objection for tomorrow.

Sgd. N. SINNATHAMBY,
A. D. J.
10.9.46

10 Same appearances

(Certain errors in the previous day's proceedings are corrected.)

With reference to the objection raised on the last date I ask Mr. Nadarajah whether he could state what the Income Tax law in India at the time of the assessments was with regard to a joint Hindu family, whether it gave them any rights or subjected them to any disability.

Mr. Nadarajah states he is not in a position to answer that question now and asks that I make an order with regard to the production of the documents at a later date when he will address me more fully.

Mr. Basnayake has no objection. In the circumstances I do not propose to make an order now but will make the order after both Mr. Nadarajah and Mr. Basnayake have addressed me further on the subject.

N. K. V. L. RAMANATHAN CHETTIAR. Affirmed.
(Examination in chief continued.)

In my evidence yesterday I said that I have some books belonging to the firm K. M. N. Amongst the documents I found there was a promissory note given in 1907 in favour of K. M. N. Suppramaniam Chettiar as well as a promissory note in favour of K. M. Natchiappa Chettiar, dated 19th August, 1908. I produce the two notes marked A21 and A22 respectively.

In the olden times the Chettiars as business men kept regular accounts and they do so even now. They keep their accounts in books. Their accounts have been kept in olas also. I have personally seen Chettiars keeping regular accounts in olas. Amongst the documents I found there were also three ola books relating to

the balance sheet of the firm K. M. N. for 1864. I produce those olas marked A23. I also produce a translation marked A23A of some of the olas which show that they contain a balance sheet account of moneys lent on interest to constituents of Sembinoor Kumarappa Chetty Natchiappa up to the 30th December, 1864. Sembinoor Kumarappa Natchiappa was the grandfather of the deceased Natchiappa. According to that balance sheet, Sembinoor Kumarappa Natchiappa appears to have had a business in Ceylon. One of the items shows that a sum of Rs. 5,333 was lent on a mortgage bond No. 262 to one Liyanage Appuhamy of Pananpatty which is adjacent to Kadugannawa. 10

I also found another ola for the year 1869. I produce it marked A24, as well as a translation of the first page marked A24A. The first page contains a poem which has also been translated. Another page contains accounts with various persons. Another ola was also found for the year 1874 (marked A25). I produce a translation of one of the pages marked A25A. One of the entries in that page shows a payment of Rs. 31.50 to Mr. Advocate Grenier. It also contains an entry showing payment of Proctor's fees to Mr. Prins. A part of that entry is not clear. 20

I have been in the firm K. M. N. S. P. from about 1923 up to date. I therefore know the affairs of the firm from my own personal knowledge from 1923 onwards. Whilst in charge of the business I had occasion to look into the older books—the books prior to 1923. I have already produced in Court books for some of the years from 1911 onwards. All the books from 1926 up to 1938 are available in Court. One or two may be missing. I do not know whether that is so.

From what I know of the firm, there was no other capital utilised barring the sum of Rs. 103,474.69 shown in A8. As far as I am aware it is that sum which has been lent and re-lent and which has swelled up. The firm K. M. N. S. P. was doing a large money lending business. The rate of interest charged by the firm was 12 per cent. There may have been occasions when 18 per cent. was charged. Generally the rate of interest charged was 12 per cent. We used to lend money on promissory notes and mortgage bonds and as a result of the investments we had in the course of collection to take over certain properties. One of these properties is the estate called Kandawala Estate at Ratmalana. That property was acquired by the Crown for the aerodrome. Four lakhs was paid to the firm for that property as compensation. The property is two hundred acres in extent. The amount lent on the mortgage of the property was Rs. 10,000. Only a portion of the property was acquired by Government. The remaining portion is 120 acres in extent. Similarly other properties were also taken over by the firm. I remember the depression in 1931 or 1932. At that time I had to take over several properties from the debtors of the firm. 30
40

The properties have now become enhanced in value. At the time of the death of Natchiappa Chettiar they were worth much—certainly much more than when they were taken over. That is how the estate of Natchiappa has become so big.

No. 11
Further
Proceedings
—contd.

10 K. M. N. S. P. Suppramaniam gave me a power of attorney in 1925. He gave me the power of attorney to enable me to conduct the business. Natchiappa Chettiar also appointed me as his attorney. He did so about the same time as when I was appointed attorney by Suppramaniam Chettiar. I was appointed attorney of Natchiappa subsequent to my appointment by Suppramaniam. I cannot remember who appointed me attorney first. Suppramaniam died in 1932. Before I was appointed attorney by either Natchiappa or Suppramaniam, the firm had joint attorneys in Colombo, namely Mayandi and Karuppan Chetty. Both of them are dead. After Suppramaniam and Natchiappa had appointed me their attorney they went off to India. They used to write to me from India giving me instructions.

20 I remember executing certain transfers in 1926. The documents have been produced already marked R4 and R5. One of the deeds was in respect of Kandawala Estate and the other was an assignment of mortgage bonds. No money was paid by the father and his son. I was present in Colombo when the deeds R4 and R5 were executed by Suppramaniam. At that time I was in charge of the business of K. M. N. S. P. belonging to the father and son. The books of the period when the deeds were executed were also in my charge. All those books are available in Court today. No money whatsoever was paid on either of those deeds by the son to the father. In the books, however, there was debiting and crediting.

30 I have produced ledger for 1925 already marked A6 and also translation of folio 74 of the ledger marked A6A showing the debiting and crediting. That is in respect of R4. The other deed R5 was in 1926. I also produced the ledger for 1926 marked A6B and translation of the folio 285 marked A6C relating to the deed R5.

40 Notwithstanding the two transfers the firm K. M. N. S. P. continued its business in the same way as it had carried on before. At the time Suppramaniam was in India, he was writing to me and I was writing to him. Even after the transfer it was Suppramaniam the father who gave me instructions as to the management. I have some of the letters written by him after 1925. I produce one of the letters written to me by him in 1929 marked A26. I also produce the translation marked A26A as well as the envelope in which it was posted marked A26B. I produce the envelope to prove the date of posting. The postmark there shows the date 27th September, 1929. The year "Sukila Varusham" given in the letter corresponds to the year April 1929-March 1930. In that letter he gives me instructions as to what I should do in regard to the business.

Along with me there was also another attorney functioning in Colombo, namely, Letchumanan Chettiar. He was working along with me in 1931. (Shown A27.) This is a letter of Suppramaniam Chettiar written to my co-attorney, Letchumanan. I produce the letter marked A27, translation A27A and the envelope A27B. The date of the envelope is 25th January, 1930. The year given in the letter is "Sukila", i.e., 1929-1930. The letter shows that I was in India at the time and Letchumanan is asked there to send me a permit to enable me to return to Ceylon. The letter also refers to a ten thousand rupee cheque of D. C. Senanayake.

10

I produce another letter marked A28. It was written to me by Suppramaniam Chettiar. (Translation of A28 marked A28A and the envelope A28B.) The letter appears to have been written to me on the 27th June, 1930. The Tamil year corresponding to 1930 is "Piranothootha". The letter gives detailed instructions about some of the debts.

I next produce another letter marked A29. (Shown A29.) This is a letter written by Suppramaniam Chettiar to Letchumanan Chettiar my co-attorney. I produce a translation of the letter marked A29A and the envelope marked A29B. The body of A29 (shown) is in the handwriting of Natchiappa, son of Suppramaniam, but the letter is signed by his father Suppramaniam. It was sent to me on 31st December, 1930, the Tamil year being "Piramothootha".

20

I further produce another letter marked A30. (Shown A30.) This letter which is a very long one was written to Letchumanan. It is in the handwriting of a kanakapulle but it is signed by Suppramaniam. I also produce a translation of the letter marked A30A and the envelope A30B. The letter has been posted to my firm on 30th January, 1932, the Tamil year being "Pirasorpathy". That Tamil year corresponds to the year 1931-1932. Suppramaniam died shortly afterwards.

30

Up to the time of his death, Suppramaniam was in active management of his business. I have been able to get from India some of my letters written to him as well as the envelopes. I produce a few of them.

(Shown A31.) This is a letter written by me to Suppramaniam Chettiar. An English date is given in the letter. I also produce a translation of the letter marked A31A as well as the envelope which shows the Ceylon postmark. The date of the Ceylon postmark is not clear but the date of the India postmark is clear. The date on which the letter reached Kallal is shown as 22nd October, 1936. In the letter I informed my master K. M. N. S. P. Suppramaniam with regard to what I did on his instructions. The envelope in which I sent the letter is a printed one, the addressee being given as K. M. N. S. P. Suppramaniam.

40

(Shown A32.) This is a letter written by me to Suppramaniam Chettiar, dated 16th March, 1937. I produce that letter as well as a translation of the letter A32A and the envelope A32B. I produce further a letter written in 1929 marked A33. It is a letter written by me to Suppramaniam and is dated 17th October, 1929. I also produce a translation of the letter marked A33A and the envelope A33B.

No. 11
Further
Proceedings
—*contd.*

10 (Shown a document.) This is also a letter written to me by Suppramaniam Chettiar, dated 11th May, 1931. I produce the letter marked A34, a translation A34A and the envelope A34B. That letter was written one year and a few months before the death of Suppramaniam. From the letters I have produced and from my personal knowledge, I say that Suppramaniam Chettiar was in full charge of the business. During the period 1925-1932, he and his son were living together in the same house.

20 In connection with this case I brought to Ceylon a Chettiar for the purpose of giving evidence namely Natchiappa, son of Vairavan Chettiar. I remember he gave evidence in this case. He was a son-in-law of K. M. N. S. P. Suppramaniam and brother-in-law of K. M. N. S. P. Natchiappa. He gave evidence in this case on 12th November, 1942. He was cross-examined on 16th December, 1942. He died about a year ago. K. M. N. Natchiappa Chettiar, the elder brother of Suppramaniam, is dead. The father of Suppramaniam was K. M. Natchiappa. He is also dead. Out of the children of K. M. N. Natchiappa, the elder brother of Suppramaniam Chettiar, four are dead. Swaminathan, one of the children, is alive. He is about 62 years old. I have asked him to come here for the purpose of giving evidence. He refused to come. He did not desire to come to Ceylon as he is an old man. He gave evidence in 30 K. M. N. R. M. Ramasamy's case. That case was also in connection with assessment of death duty.

(Mr. Nadarajah proposes to produce the plaint, answer, issues and decree in D. C., Colombo, case No. 3130 (T) of this Court in which Ramasamy Chettiar, the administrator of the estate of K. M. N. R. M. Ramasamy, sued the Attorney-General for refund of estate duty on the basis that the estate belonged to a joint Hindu family and that the assessment should be governed by the "Mitrakshaara" law.

40 Mr. Basnayake objects to the production of the documents on the ground that they are not relevant and that they have not been listed.

With regard to the objections Mr. Nadarajah refers to page 5 of the proceedings, dated 4th December, 1944, wherein he informs the Attorney-General that he would be producing the documents. He says that although he is unable at the present moment to say whether a list has been filed or not, notice of the fact that he was producing the documents was given to the Attorney-General on

the last date of proceedings before my predecessor, namely 4th December, 1944, when he moved to tender the documents and the Attorney-General objected stating that the judgment was not a judgment in rem or one to which Suppramaniam or his heirs were parties.

On the question of relevancy Mr. Nadarajah hands over a fuller pedigree, a copy of which, he says, has already been given to the Attorney-General. He refers to the pedigree and to the fact that Suppramaniam and K. M. N. Natchiappa divided the common property between themselves by A8. According to A8, Natchiappa wanted his half share (Rs. 103,000 odd) to be paid to his five sons. 10

Mr. Nadarajah further submits that the claim by Ramasamy was based on the same principle and in respect of the same joint Hindu family of which Ramasamy's father and the present testator Natchiappa's father were members.

At this stage the objection on the ground that the documents are not listed is withdrawn, as it is discovered that they have in fact been listed.

Mr. Nadarajah next refers to (1937) All India Reports, Privy Council page 69. 20

He submits that the case shows that the quality of the property in this case is the same as that in the case of which he proposes to produce the plaint, answer, &c. He also draws my attention to the fact that the respondent in this case and the respondent in case No. 3130 are the same.

Mr. Nadarajah further cites:

Sections 13 and 43 of the Evidence Ordinance. (1931) All India Reports page 89. He refers in particular to the passage at page 91. (1940) Munir on evidence. Pages 88 and 91.

38 N. L. R. page 313. 30

At this stage Mr. Nadarajah moves to read in evidence the judgment in case No. 3130.

Mr. Basnayake refers to section 43. He submits that the only section under which the judgment can be regarded as relevant is section 13. The case of Ramasamy vs. the Attorney-General is not a case in which the representative of the deceased in this case claimed a right nor is it a case in which the deceased himself or his father claimed a right. Though Natchiappa and Ramasamy had a common ancestry, there is no evidence that they are members of a joint Hindu family. The right claimed in the other case was a claim by Ramasamy a member of a joint Hindu family with his two sons. The right claimed in this case is the right of Natchiappa a cousin of Ramasamy to be regarded as a member of a Hindu undivided family. In the two cases in question there are two 40

different rights, two different people. If the property which Natchiappa got as his share was joint property could he have distributed it in the way he did?

No. 11
Further
Proceedings
—contd.

Mr. Basnayake proceeds to submit that the fact that Ramasamy claimed a certain status does not necessarily mean that other members of the same family have the same status. The Privy Council judgment cited is not on all fours with the present case.

(Interval)

Sgd. N. SINNATHAMBY,

10

A. D. J.

11.9.46.

(After Interval)

11.9.46.

Mr. Basnayake continues his address.

He argues that the plaint and so on will be relevant if Suppramaniam Chettiar has asserted his rights. He refers to Sarkar at p. 116 (7th edn.). He says that the right claimed in the case cited by counsel for the appellant is the same right.

Mr. Nadarajah argues that the right claimed is an exemption
20 from payment of estate duty. The right claimed is based on the assertion that the appellant is a member of a joint undivided Hindu family. He says that in this case he seeks to prove the quality of the Rs. 206,000 half share of which went to Suppramaniam Chettiar. He says that though the right claimed in this case is not identical with the right claimed by Ramasamy Chettiar, the basis on which the right is claimed is identical—both emanated from the same source. The right asserted in this case was that Natchiappa Chettiar and Suppramaniam Chettiar were members
30 of a joint Hindu family. That right was asserted in this case as well as in the other case.

He refers to Munir page 88 section 13.

I shall make an order on both questions after which the documents, if allowed, may be admitted in evidence.

Mr. Nadarajah will continue with the evidence.

N. K. V. L. RAMANATHAN CHETTIAR recalled.

I came first as an employee of the firm of KM. N. N. R. M. that
40 is Ramasamy Chettiar. He died. He has two sons. When Ramasamy Chettiar died his eldest son was about 16 years and the other 13 or 14. I think he died in 1930, before the death of Suppramaniam Chettiar. I know that Ramasamy Chettiar's estate was administered but I was not in that firm then. I know the action filed by the attorney of his. Ramasamy Chettiar's kittangi was in the same place as that of Suppramaniam Chettiar. They were in one house and there were two boxes. The administrator of the estate of Ramasamy Chettiar filed an action against the Attorney-General. I know that as a fact.

In A8 certain immovable properties in India were also partitioned. I draw the Court's attention to para 2 of A8 for a partition of a property described there. That property was divided into two halves and given to Suppramaniam and Natchiappa. I produce the deed of sale referred to therein marked A35 (translation A35A). That is apparently which had been bought in the name of KM. N. Nachiappa Chettiar in the year 1886.

KM. N. SP. Nachiappa Chettiar transferred some monies in the name of his minor sons. I cannot say in what year this was done. I have to refer to the books. It was transferred in the year 1931, 10
March 26th.

Money of the deceased amounting to Rs. 251,000 was brought forward and was credited in the name of the two children, viz., N. SP. Nachiappa Chettiar *alias* Manickam Chettiar and N. SP. Ramasamy Chettiar.

I produce the ledger for 1931/32. I mark folio 118 as A36 and the translation of that folio A35A.

The administrator also claimed certain exemptions in regard to certain trust funds amounting to Rs. 31,573. I produce the ledger for the year 1931 and mark folio 101 as A36 (b), where credit is 20
given for a charity. No particulars of the charity are entered. A temple was managed in Sembanoor; I think it was in connection with that temple.

I am the agent of KM. N. S. P. I only know that this money did not belong to the estate. I do not know the details of that account. I do not know for what purpose the money was used and who gave it. There is nothing to show that any payments have been made against this.

I produce the ledger for the year 1938 folio marked A37 (translation of the folio A37A). The amount is stated there. It is on 30
account of a 'madam' for Sadhus. In A37 there is a description of the charity. I am unable to say when this charity was introduced. I have to refer to the previous ledgers. I find the same entry in the 1937 ledger also.

I produce ledger for the year 1937. I mark folio 11 as A38. The entry there reads Sembanoor Karuppam Kovil Fund Rs. 3,082.11.6. These are monies collected for the purpose of the temple which monies were in the hands of the deceased. I do not know whether in respect of the Sadhu madam fund those monies were collected or whether they were the deceased's. 40

Page 12 shows credit of 4369 as belonging to the Vyravan Fund. The Sadhu madam fund was going on from the time I joined the firm.

There were certain monies which belonged to others which were deposited with the deceased. Monies were deposited by Meenachi

Achy, Kothai. Folio 70 of A37 shows that Theivanu Achy had deposited Rs. 740 odd. Folio 18 shows that Karuppai, daughter of Valliamma, deposited Rs. 5,000 odd. These monies were deposited with the Chettiar firm as a banker. These monies in any event are not liable to taxation. They did not belong to the deceased.

No. 11
Further
Proceedings
—contd.

10 There was a transfer entry in favour of the 3rd son, Suppramaniam Chettiar. This appears in the ledger for 1937 marked A38 folio 355 marked A38 (b). These are credit entries in favour of his son. In the event of the court holding that the property is joint Hindu family these are exempt from duty.

XXV.

20 I came to Ceylon in 1906. I came to learn business. My parents were alive at the time I came to Ceylon. I have no brothers. I was the only child alive at that time. There were children elder to me but they died. I am the sole surviving child of my parents. My parents had no property, none whatever. There was a small residing house of my father which I sold to settle my father's debts. It was sold after I came to Ceylon in 1906. When I left India my parents were living in that house. My father had his business in Jaffna. I was 18 years old when my father died. My mother died 2 or 3 years ago. My father was dealing in rice and paddy in Jaffna. He imported from India. He did not make much money in his business. He did not leave any money to me when he died. I was in Jaffna till 1914. For 8 years I worked in my father's business. The business was carried on up to the date of his death. He died, I think, in 1914. He had liabilities.

30 After 1918 I was employed on a salary by K. M. N. N. Ramasamy Chettiar. He is a cousin of Nachchiappa Chettiar, son of the brother of Suppramaniam Chettiar. I joined the business of K. M. N. N. R. M. as an assistant to Ramasamy Chettiar. I was engaged by Ramasamy Chettiar. My work was to lend money and collect them. Ramasamy Chettiar was carrying on the business of money lending. After I joined him Ramasamy Chettiar was in Ceylon for 1 year and went to India. Then he gave me his power of attorney and thereafter he used to visit Ceylon. I was paid a salary of Rs. 30 and meals. I worked as his attorney for 6 years. Yes till 1920, throughout these 6 years I was not in Ceylon. I used to go to India and remain for a year or 2. Of these 6 years I was in Ceylon for about 4 years.

40 I am not related to Ramasamy Chettiar. At the end of six years I spent one year in India and joined the firm of KM. N. SP. I left Ramasamy Chettiar as there was little business and he was not able to pay me a higher salary. It was he who recommended me to join this other firm as it was a big firm. I was engaged by Suppramaniam Chettiar for KM. N. SP. as an agent, that is, I was entrusted with the management of the business. The power of

attorney was given to me after two years. I was paid Rs. 150 a month and food and clothing. Suppramaniam Chettiar was not in Ceylon at the time I was engaged by that firm.

(*To Court:* He engaged me in India when I had gone there on leave and I came to Ceylon and joined that firm.)

The deceased Nachiappa Chettiar was in Ceylon at the time I was engaged by Suppramaniam Chettiar. Suppramaniam Chettiar came to Ceylon after I was engaged. I think he came in 1925. Till 1925 Suppramaniam Chettiar was in India. Nachiappa Chettiar the deceased was in Ceylon in 1922/23 and left for India in 1924. After that he paid several visits to Ceylon. I do not remember whether he came in 1925. As far as I know he did not come in 1925. I am unable to say definitely in what years he came to Ceylon. He came several times but I cannot give the year. 10

When Nachiappa Chettiar was in Ceylon I functioned in the same capacity as I functioned under Ramasamy Chettiar, that is, as the next in charge or assistant. The power of attorney given by Nachiappa's father Suppramaniam had no time limit. It was till his death. After Suppramaniam Chettiar died I continued to be the attorney. For special purposes powers of attorney were drawn and I continued to hold the same office and the same status and my salary was increased once in 2 years. At the time of Suppramaniam Chettiar's death I was getting a salary of Rs. 250. 20

During Suppramaniam Chettiar's life time I cannot remember whether I instituted any legal proceedings on his behalf or defended him in any action. During Nachiappa Chettiar's life time I instituted legal proceedings in connection with the Kandawala land acquisition case. This is the only case I remember. There may have been some recoveries later but I do not remember.

After Nachiappa Chettiar died I was appointed as the attorney of the executrix. As attorney I carried on the same business. I am in that firm from the time of Suppramaniam Chettiar. Whenever the necessity arose a power of attorney was given. I was not in Ceylon at all times but whenever I am here I carry on the business. Accounts are sent to me to India and I look into them. 30

I do not know English. I understand a little.

As attorney of Nachiappa Chettiar as well as Suppramaniam Chettiar I am quite familiar with their business. I also knew the true state of the assets of Suppramaniam Chettiar and the true state of the assets of Nachiappa Chettiar. There was nothing that was kept away from me but I may have forgotten certain things. I believe nothing was kept away from me. 40

I was a witness to the last will of Nachiappa Chettiar. The business was registered. Everything that was required by law was done but I cannot remember when the business was registered. It was under the name of K. M. N. S. P. I know the business registration form. I do not know whether the business was registered

in the name of an individual at the time I joined. I do not know whether it was registered under the name of Suppramaniam Chettiar.

No. 11
Further
Proceedings
—contd.

(Mr. Basnayake marks certificate of registration dated 2nd May, 1919, and 19th August, 1919, as R27.)

R27 was in existence when I came to the firm. In 1925 for the first time Nachiappa Chettiar, son of Suppramaniam Chettiar, had his name in the business names registration certificate.

10 (Mr. Basnayake marks certificate of registration dated 28.11.24 showing that Nachiappa Chettiar had been admitted as a partner.)

I cannot remember whether I signed the application for change of business.

Further hearing adjourned for tomorrow.

Sgd. N. SINNATHAMBY,
A. D. J.
11.9.46.

D. C. 10 Special 12.9.46

Same appearances

Errors in the previous day's proceedings are corrected.

20 N. K. V. L. RAMANATHAN CHETTIAR. Affirmed.

(X X N—contd.)

30 In R28 the Registrar of Business Names was asked to change the registration of the business on the ground that Natchiappa Chettiar had been admitted as a partner. That was in 1925. I was employed in the firm KM. N. SP. at the time. I know the signature of Suppramaniam Chettiar. (Shown the original of R28.) This is signed by Suppramaniam Chettiar. I remember his signing the document and sending it. There was a registration form displayed in the place of business but I cannot recollect whether the names of both Suppramaniam and Natchiappa appeared in that form or not.

(Shown the original of R29.) This is signed by Suppramaniam. After R29 was sent a new certificate of registration was issued.

(Mr. Basnayake produces certificate of registration marked R30, dated 16th April, 1925). Both the names of Suppramaniam and Natchiappa were shown in the certificate. Suppramaniam's address was given there as No. 94, Sea Street, Colombo, Natchiappa's as Sembinoor, Ramnad District, South India.

40 On 31st March, 1926, I signed a statement relating to a change in the business. (Shown R31 dated 31st March, 1926.) This is

the document I have signed it. I have stated that Suppramaniam had ceased to be a member of the firm. I signed an affidavit to that effect. I signed R31 on behalf of both Nachiappa and Suppramaniam as their Attorney. They did not sign the document. In making the statement I followed the advice of my Proctor, Mr. C. T. Kandiah. The statement is a true statement. Thereafter, the certificate of registration contained only the name of Nachiappa. (Certificate produced marked R32 dated 9th April, 1926.)

I was in the firm in 1935. I cannot say definitely whether I was in Ceylon in 1935. I have been in Ceylon for most of the time I have been connected with the firm. (Shown R33 dated 18th October, 1935.) This was signed by the testator, Nachiappa. By that document he asked that the particulars with regard to his name be changed from Nachiappa, son of Suppramaniam Chettiar, to Kuna Mana Navinna Sinna Pana Nachiappa Chettiar, son of Suppramaniam Chettiar, also known as Suppramaniam Nachiappa Chettiar. He further asked that the following be inserted in Cage 11: "Agent and licensed dealer in rubber also carrying on business under the name Sena Muna Sivanna Mana on behalf of Alamelu, grand daughter of Suna Muna Ramasamy Chettiar and Sinnan Chettiar, grandson of Suppramaniam, Chettiar." R33 therefore shows that Nachiappa Chettiar was not only carrying on his business but also business with others. Alamelu referred to there is a daughter of Sitha, who is a daughter of Nachiappa and testator. Ramasamy Chettiar mentioned in R33 is Sitha's father-in-law. In the pedigree I have produced Ramasamy's name does not occur. The name of Alamelu also does not occur there. She belongs to some other family. Sinnan Chettiar is a son of Sitha who appears in the pedigree. Sinnan Chettiar's name also does not occur in the pedigree.

In 1925 Suppramaniam Chettiar by deed No. 3717 (R4) transferred an undivided $\frac{1}{4}$ th share of Kandawela Estate to his son Nachiappa Chettiar the testator. I was in Ceylon at the time the deed was executed. I was present at the execution of the deed. I do not know what the Notary wrote with regard to the consideration. No consideration passed on the deed. If the deed purports to be a conveyance of the property for consideration, I will not deny that it purports to do so. The consideration given in the deed is Rs. 15,000.

On 24th March, 1926, by deed No. 395 R5 Suppramaniam Chettiar assigned to his son Nachiappa Chettiar 17 mortgage bonds. The bonds are purported to have been assigned for consideration. No consideration, however, passed. I was present in Ceylon on 24th March, 1926. I was present at the execution of the deed R5. I did not sign the deed as a witness.

Suppramaniam Chettiar died in 1932. As the attorney of Natchiappa Chettiar, I made a declaration and statement of property under the Estate Duty Ordinance, No. 8 of 1919 (R1). (Shown R1) I identify my signature on this document. The statement is a true statement. On page 5 of R1 in statement (c) the value of property shown in cage (b) is given as Rs. 167,250. That sum represents the value of the property which the testator received as a gift from Suppramaniam more than three years prior to the death of Suppramaniam. That sum is made up of the value of Kandawela Estate transferred on R4 and the value of bonds assigned on R5. After Suppramaniam's death I claimed exemption from estate duty on the ground that he had left no property in Ceylon, and the exemption asked for was granted.

(Shown R3) I wrote this on 28th September, 1932. I have stated here that Suppramaniam Chettiar left no property whatsoever at the time of his death. At the date of R3, that was so, according to the books. Suppramaniam Chettiar died on the 12th March, 1932. On the date he ceased to be a member of the firm there is no entry in the books with regard to it. The date on which Natchiappa joined the firm is also not given in the books.

A6 is the ledger for the year 1st April, 1925-31st March, 1926. In that book there is an entry dated 26th March, 1925, under Natchiappa's account showing a sum of Rs. 15,000 debited to him, being the value of 1/4th share of Kandawala estate. There is no credit to Natchiappa under that date as well as before that date. After that date, there is a credit to Natchiappa. On 27th March, 1925, there is a credit entry brought forward from an old account, the amount being Rs. 685,846.11. An attorney is changed once in 2 years and the new attorney makes new entries, the account kept by the previous attorney being called the old account. The sum of Rs. 685,000 odd was the amount that grew from the original Rs. 103,000 odd which was Suppramaniam's share at the partition.

The next entry crediting to Natchiappa is dated 10th February, 1926, the amount given being Rs. 41,000.56. That sum also has been brought to the credit of Natchiappa from an old account.

The next entry in the book giving credit to Natchiappa shows a sum of Rs. 23,398.24 being an excess of credits over debits. That amount has been brought to the credit of Natchiappa from the previous account.

The next entry to the credit of Natchiappa in A6 is dated 26th March, 1926, and that entry also shows an excess of credits over debits. In other words the excess of credits over debits have been brought to the new account in A6 from the previous account.

I have said that the sum of Rs. 685,000 odd credited to Natchiappa comes from an old account. I do not have the book for the

year preceding the year for which A6 was kept. I have the book for 1923 which shows that a sum of 6 lakhs odd was carried over to an account opened on 31st March, 1924. The balance on 31st March, 1924, was Rs. 629,320.55. In the book for 1923 there is no separate account for Natchiappa. Only the vilasam of the firm is given in that book, name KM. N. SP. but not Natchiappa's name. There is one book which is not here. That book will contain the balance brought up to March, 1925. As the books go to several persons the book in question may have been misplaced. I am unable to say for what years books are missing. I do not say many books are missing. Some of the older books are missing. 10

(To Court: I discovered the loss of those books when I searched for them for the purpose of this case as well as other cases.) For safe keeping some books were removed to Puwakkpitiya, some to India and some were also produced in Court.

With regard to the sum of Rs. 685,000 odd shown in A6, that sum refers to the capital of the firm although it has been credited to Natchiappa in the ledger. The book is in my own handwriting and I have credited Natchiappa there with the sum of Rs. 685,000 odd. The 15,000 rupee credit was also entered in the name of Natchiappa. I have continued entering capital. The entries start from the middle of the page. The ledger is headed "KM. N. SP." The credit of Rs. 685,000 odd in favour of Natchiappa appears under date 27th March, 1925. The ledger is for the period 1st April, 1925-31st March, 1926. The income tax year starts in March and ends in April the next year. In the book in question the account was started in February, 1925, because that was the auspicious time for the purpose. The sum of Rs. 685,000 odd is credit transferred from the old account. 20

On the date previous to the date of that entry (26th March, 1925) there is an amount credited in the book; namely Rs. 15,000. There is no "3/4ths" mentioned in the entry. The entry is to the effect that 1/4th share Rs. 15,000 in respect of Kandawela estate was transferred by a deed executed by Mr. A. T. Kandiah, Proctor, in favour of Natchiappa. "At 3/4ths" does not appear in the entry. 30

(Witness reads the entry again and says): There is an entry here of "3/4ths interests". That means that 9 per cent. interest has been charged from Natchiappa. If the amount had not been credited, we would have had to pay him interest at nine per cent. In the entry with regard to the sum of Rs. 685,000 it is stated "3/4ths transferred from old account". That was also interest. Interest appears in the ledger but no one paid interest. The entries of interest are made in order that the attorney may be paid his bonus. The attorney gets a bonus only if any sum more than nine per cent. of the capital is earned for the year. 40

At the end of the period 1st April, 1925-31st March, 1926, for which A6 was kept, a balance sheet was drawn up. The book does not show that balance sheet. A balance sheet is prepared by the firm at the end of every Income Tax year. I cannot say whether all the balance sheets prepared by the firm are available or not. The balance sheets for the last 4 or 5 years are available in Colombo. Natchiappa died in 1938. I have seen the balance sheet for 1937. Every year thereafter also I saw the balance sheets. I can say definitely there was a balance sheet in 1925 but I cannot
10 say when I last saw it.

Sometime back a book was kept for two years, but now a book runs only for a year. After 21st March, 1926, there is a certain amount credited in favour of Natchiappa in A6. That shows that the accounts were closed on the 21st of March. Instead of accounts being closed on that date, they were closed on the 26th March, 1926. Natchiappa's account was balanced on 26th March, 1926, and the total amount standing to his credit as on that date is shown in the ledger as Rs. 833,727.28 inclusive of interest. In the folio where that is shown there is no credit entry in respect of
20 the sum of Rs. 152,250 the value of the bonds assigned on or about 26th March, 1926.

I have the ledger for 1924-1925 among the books. It is marked A12. I now find that on 24th March, 1926, the firm KM. N. SP. has been credited with the sum of Rs. 152,250. That is shown in folio 285 of A12. On 30th March, 1926, the same amount has been debited and the account balanced. On 24th March, 1926, also Natchiappa has been debited with the same amount. There is an entry to that effect appearing in the same folio. No interest is shown there. As no money passed on the 24th cross entries for
30 like amounts were made on the 30th of March, closing the two accounts. My explanation for the entry on 30th March is this. I made that entry because no money passed. As a credit entry of Rs. 152,250 was made a debit entry was also made of an equal amount. The object of the entry was to show that no consideration passed on account of the deed. That was done on legal advice given by my Proctor. Suppramaniam was in his old age at the time. The entries were made to prevent trouble after his death. By making the entries we wanted to prevent obstacles in the way of litigation, to prevent the defendant when sued on the bond
40 taking up the position that Suppramaniam was dead and no Letters of Administration had been obtained and therefore the action was not maintainable. We were not having the question of Estate Duty in mind at the time. We had no intention of evading the payment of estate duty at the time. Suppramaniam and I consulted each other after which the entry was made to avoid legal obstacles which might result after the death of Suppramaniam. In

No. 11
Further
Proceedings.
—contd.

the deed it was stated that Rs. 152,250 was paid as consideration. That was done by the lawyer for legal purposes. No money however, passed on the deed.

Sgd. N. SINNATHAMBY,
A. D. J.

It is 4 p.m. now.

Further hearing is therefore adjourned for tomorrow.

•

Sgd. N. SINNATHAMBY,
A. D. J.
12.9.46. 10

D.C. 10 Special. 13. 9. 46.

Same appearances.

I inform Counsel that the order on the admissibility of the documents which counsel for the appellant sought to produce in evidence will be delivered on Monday the 16th instant.

N. K. V. L. RAMANATHAN. Recalled, affirmed.
X X N contd.

(Page 74 of the ledger A12 referred to.) The words " By the Grace of Siva " are printed on the top of the page as well as on the top of every other page of the book. Just under those words 20 on page 74 the following has been printed " In the Colombo firm of Kona Mana Navanna Suna Pana ". Below that appears the account Ana Lena Mana Abdul Hamid. On the top of the page there also printed headings, viz., " Date, Debit Rs. and Credit Rs. "

(Page 74 of A6 referred to) A6 is the ledger for the period 25th March, 1925-12th March, 1926. The cover of the book does not show what period is covered by the book. The account in the ledger commences on 6th April, 1925. To find out when the account actually commenced I will have to examine all the folios from the 30 day book.

(To Court: I have said that each of the ledgers is for a period of 1 or 2 years. A6 is for a period of 2 years. Roughly all the accounts in A6 would have closed by the end of February or March, 1927.)

The account in the next book commences on 4th February, 1927, and ends roughly in March, 1929. (The ledger is marked A39 by Mr. Chelvanayagam.)

The account in the next ledger starts on 21st January, 1929, and continues roughly up to 30th March, 1930. (Ledger marked A40.) 40

The next ledger account commences on the 13th April, 1930, and ends on 31st March, 1931. (Ledger marked A41.)

No. 11
Further
Proceedings
—contd.

The account in the next ledger commences on 1st February, 1931, and ends in March, 1932. (Ledger marked A42.)

The next ledger account commences on 1st April, 1932, and continues up to 31st March, 1933. (Ledger marked A43.)

(Page 74 of A6 referred to.) There is an entry here which reads: "Debit and credit account of KM. N. SP. with the Colombo firm of KM. N. SP." That is only a book entry. No cash actually
10 passed. The firm KM. N. SP. referred to in the entry as having an account with the Colombo firm KM. N. SP. refers to the same KM. N. SP. There is no distinction made in the entry. There is no difference between "KM. N. SP. and the Colombo firm of KM. N. SP." One name is printed as "Colombo KM. N. SP." and the other is written by hand as "KM. N. SP."

(*To Court:* It would not have made any difference whether I wrote "KM. N. SP." or "Colombo KM. N. SP.")

KM. N. SP. had a branch in Rangoon and also in Malaya. I am not sure whether they had branches in 1925. As far as I
20 can recollect the branches in Rangoon and Malaya were opened in 1929 or 1930. In 1925 there was only one KM. N. SP. and that was in Ceylon. There was no KM. N. SP. in India.

(Entry in A6 dated 25th March, 1925, referred to.) This entry is with regard to the transfer of 1/4th share of Kandawala Estate. The reason why only 1/4th share was transferred was this. Originally half share of the estate was bought in the name of the father and the son. The father transferred his 1/4th share to the son. On the 25th March, 1925, the date of R4, the testator Natchiappa Chettiar owned a half share of Kandawala estate. Immediately
30 after the execution of the deed R4 he became entitled to a half share. The share transferred by R4 is 1/4th. Natchiappa Chettiar was entitled to 1/4th of Kandawala estate, Abdul Rahman to 1/4th, Y. L. M. Khalid to 1/4th and Suppramaniam to the balance 1/4th. On 24th March, 1925, the testator owned 1/4th share of Kandawala Estate. On 26th March, he became the owner of half share. According to the deeds, he was entitled to 1/4th share on 24th or 25th March and to half share on 26th March, 1925. The 1/4th share owned by the testator before his father's
40 share was transferred to him had been purchased by the testator at a Fiscal's sale. The account in the books I have produced commence from 1923. The Fiscal's sale referred to was in execution of a mortgage decree prior to 1923. The money lent on the bond was money belonging to the firm KM. N. SP. I do not have the book for the year in which the money was lent. The share was bought in the names of both Natchiappa and Suppramaniam. The

Fiscal's transfer was in favour of both. It is not specifically stated there that the share was transferred in equal shares. Subsequently Natchiappa came to own the rest of Kandawala Estate. That was in July and August, 1932.

(A43 referred to.) According to page 174 of A43 on 2nd July, 1932, Natchiappa bought a quarter share belonging to A. Abdul Rahiman and on 19th October, 1932, a quarter share from Khalid. That is shown on page 174 of P43 under the heading "Purchase money of Kandawala Estate." The printed heading "KM. N. SP." also appears above the entry. At the time of the 10 purchase by Natchiappa from Abdul Rahiman and Khalid, Suppramaniam was dead. Those purchases were private purchases from the owners. On page 174 it is also shown that the sum paid to Abdul Rahiman for his 1/4th share was Rs. 29,000 and that the amount paid for Khalid's 1/4th share was Rs. 29,500.

(*To Court:* It was I who purchased on behalf of Natchiappa. The consideration consisted partly of money due by the vendors to the firm and partly of money actually paid.)

The amount standing to the credit of Natchiappa at the date of the transfers was Rs. 765,186.47. That is shown on page 43 of 20 ledger A43. That sum was the value of all the assets standing to the credit of Natchiappa.

(*To Court:* The sum also represents assets of the firm. There is no separate account for the capital of the firm. The ledger heading is "KM. N. SP.")

Though the amount on page 43 of ledger A43 is shown as an amount standing to the credit of Natchiappa, the sum is the firm's money.

(Page 118 of A42 also marked A36 referred to.)

There is an entry here with regard to the money which the 30 testator gifted to his sons. It shows a sum of Rs. 251,000 credited to one of the sons, Natchiappa.

The next entry which is dated 26th March, 1932, reads "Interest credited from 21st March, 1931, to 31st March, 1932, at the rate of 3/4ths after deducting certain interest called "Vadivatiya" Rs. 22,855.72". That sum was credited on 26th March, 1932. The amount originally credited to Natchiappa the testator's son was Rs. 251,000. The same entry as that of 26th March, 1943, which I read out appears on the same page in respect of Ramasamy, another son of Natchiappa the testator. That entry 40 appears below the entry of 26th March. A sum of Rs. 251,000 was also transferred to Ramasamy. In the testator's account there is a corresponding debit of the two sums of Rs. 251,000 each transferred to the sons. That is shown in an entry on page 93 of A36. That entry shows that Rs. 502,000 has been debited, comprised of the two sums of Rs. 251,000 credited to Natchiappa and Ramasamy.

On the day after that debit (31st March, 1932) the testator Natchiappa's account stood at Rs. 1,221,032.62. Previous to the debit of Rs. 502,000 the account stood at Rs. 221,032.62. Suppramaniam died on 12th March, 1932. At the time of the transfer in 1935 the testator's son Natchiappa was about 6 years old and the age of the other son Ramasamy was approximately 4 years. I have given the amounts credited on 21st March, 1932, to the respective accounts of the minors Ramasamy and Natchiappa. Interest was thereafter credited annually to these two accounts, calculated at the rate of 9 per cent. The interest varied each year.

(Entry in A37 relating to the accounts of the minors Natchiappa and Ramasamy referred to.) On 1st April, 1938, the amount to the credit of Natchiappa is shown as Rs. 264,729.89 and a like amount is also shown as credited to Ramasamy under the same date. I remember reading out an entry of 26th March, 1932, showing that a sum of Rs. 22,855.72 was credited as interest. On 26th March, 1932, the amount standing to the credit of the minors was Rs. 273,855.72. Out of that amount a certain proportion has been credited to the third son of the testator. Otherwise the sum of Rs. 273,000 odd would have increased.

(Ledger for 1st February, 1933-31st March, 1934, marked A44.) On page 134 of A44 appears the account of Natchiappa the minor, dated 31st March, 1933. According to that account a sum of Rs. 298,453.42 has been credited to his account as well as interest Rs. 17,883.32. The total being Rs. 316,336.74. There is also a corresponding entry in the book with regard to the minor Ramasamy showing a like sum credited by way of capital and interest.

(Ledger for 1st April, 1934-31st March, 1935, marked A45.) On folio 6 of A45 appears the account of Natchiappa Chettiar on 1st April, 1934. A sum of Rs. 316,336.74 is shown as having been brought forward from the previous ledger. To that interest Rs. 18,954.90 has been added under date 31st March, 1935, the total being Rs. 335,291.64. The same amounts have been credited to Ramasamy in his account which appears on page 7 of A45.

(Ledger for 1st April, 1935-31st March, 1936, marked A46.) On folio 6 of that ledger is shown the account of Natchiappa Chettiar. The entry reads: "Brought forward from previous ledger Rs. 335,291.64; interest credited on 28th March, 1936; Rs. 20,090.67; total Rs. 355,382.31. The same amounts have been credited to Ramasamy on page 7 of the ledger.

(Ledger for 1st April, 1936-31st March, 1937, marked A47.) In A47 Natchiappa's account appears on page 6. According to that account on 21st March, 1937, a sum of Rs. 18,460.76 has been debited on account of credit given to Natchiappa's younger brother Suppramaniam. On 1st April, 1936, a sum of Rs. 355,000 odd has been brought forward. There is no interest credited under that

date. Under date 21st March, 1937, a sum of Rs. 14,196.34 has been credited as interest to the minor Natchiappa. A like amount has also been credited to Ramasamy.

(*To Court:* Before the interest was credited there was a debit of Rs. 118,460.76. That sum was the amount transferred to the credit of Suppramaniam on 21st March, 1937. A similar amount was debited to Ramasamy's account on the same day.)

On that date an account was opened for Suppramaniam. In A47 on page 355 a sum of Rs. 236,921.53 is shown as standing to the credit of Suppramaniam, younger brother of Natchiappa and 10 Ramasamy on 31st March, 1937. A sum of Rs. 14,196.34 has been credited to him as interest on the same date. On that date interest has been credited to Natchiappa and Ramasamy also, namely, Rs. 14,196.34 each. Thereafter, the respective capital of Suppramaniam and Natchiappa stood at Rs. 251,117.87 or Rs. 251,117.88 there being a difference of one cent.

(Ledger for 1st April, 1937-31st March, 1938, marked A48). Page 6 of A48 shows that a sum of Rs. 251,117.88 standing to the credit of Natchiappa has been brought forward from the previous ledger. According to A48 in January, 1938, a sum of Rs. 1,419.62 20 has been debited to Natchiappa's account as Income Tax. Each of the other two sons have also been debited with a similar amount. On 30th March, 1938, each of the accounts has been credited with interest Rs. 15,031.62 giving a total of Rs. 264,729.89 in each account. The testator Natchiappa died in December, 1938.

(Ledger for April, 1938-March, 1939, marked A49.) On page 6 of ledger A49 there is an entry dated 26th March, 1939. Each of the three accounts has been credited there with interest Rs. 15,824.58, the total sum to the credit of each of the minors on that date being Rs. 279,051.31. Income Tax debited is shown as 30 Rs. 1,503.14 for each of the three minors, that sum being Income Tax paid from 29th October, 1938.

Suppramaniam who is the third son of the testator is now 13 years old. In 1927 he was about 4 years old. The testator had another son Nagappa. No sum of money has been credited to Nagappa in the books at any time. He was born about 1939. He is about 8 or 9 years old now. I cannot say exactly in what year he was born. When his father died he was about a year old. In 1938 I was in India. I was one of the witnesses to the will of Natchiappa Chettiar the testator. At the time I witnessed the 40 will Nagappa was an infant. I cannot say what his age was at the time. I cannot say why the sum of Rs. 118,460.76 was transferred to the account of Suppramaniam. In 1937 Letchumanam and I were attorneys. I was present when the transfers were made in the books in 1931. I made the transfers on the instructions of Natchiappa the testator. I do not know what his intention was with regard to the transfers. In making the transfers I only carried out his orders

I was in Ceylon in 1931, the year in which the transfers in favour of Natchiappa and Ramasamy were made. I was the attorney of Natchiappa the testator. He must have been in Ceylon at the time of the transfers. Suppramaniam, the testator's father, was alive at the time. He was not in Ceylon at the time, he was in India. There is nothing in the books to show that the amounts transferred were gifts. They are shown in the books as transfers. No sum was ever entered in my name in the books because I did not belong to the testator's family and I was not an heir. There is no such
10 transfer in the books in favour of the testator or in the favour of any other person.

The business of the firm KM. N. SP. is still being carried on under that vilasam. Entries in respect of the minors Natchiappa, Suppramaniam and Ramasamy are still being made in the books. The entries are made separate. Since the transfers, no entry has been made in favour of Nagappa or anyone else, except the three minors. The latest book of the firm I have in Court is for the year 1938-1939 (A49).

I remember Natchiappa signed an affidavit on 19th August, 1937,
20 but I cannot say what the contents were. That affidavit was signed in Ceylon. I handed it over to the auditor of the firm. I do not know whether he submitted it to the Income Tax or Estate Duty Office.

I was not summoned to India for the purpose of signing the will of the testator as a witness. I was in India at the time it was signed. The original of the will has been produced in the testamentary case.

(Mr. Basnayake puts in a certified copy of the translation of the will marked R17 filed of record.)

30 Before the will was signed, it was read out to me. My recollection is that the testator signed the will. I do not remember whether he affixed his thumb impression to the will. He was a man who could sign. At the time of his death, the testator owned a large number of house properties. According to the will the business was to be carried on till all his sons became majors. The business is now being carried on by the widow Valliamma Achi. She has three attorneys. I am one of them.

By the document R5 to which I have referred a large number of bonds were assigned to Natchiappa by his father. By that docu-
40 ment all the bonds with the exception of one, were assigned in favour of Natchiappa and Suppramaniam. By R5 only Suppramaniam's share was assigned. I cannot say why the bonds were assigned in favour of both Suppramaniam and Natchiappa.

My firm has accounts in two or three Banks. In 1925 as far as I remember the firm had accounts in the Imperial and National Banks. In 1926 also the firm had accounts in those banks.

The books of the firm will show the bank balance in 1925 and 1926, the years in which R4 and R5 were executed. The balance in the National Bank was Rs. 395.39 on 31st March, 1926, and Rs. 83.20 in the Imperial Bank on 31st December, 1926. There were no transactions with the Imperial Bank in March, 1926. The last balance in that Bank prior to 26th March, 1926, was Rs. 70.55. That was the balance since August, 1925. There have been transactions with that Bank from March, 1926, up to 16th April, 1926. On the 16th April there was a loan account of the firm in the Bank. Between November 18th, 1925, and April 16th, 1926, there was no 10 loan business of the firm with the bank in question. The loan had been squared up on November 18th, 1925. The firm obtained a loan thereafter in April, 1926. Between November, 1925, and April, 1926, the firm did not owe any money to the Bank.

I have given yesterday the amount standing to the credit of Natchiappa on 26th March, 1926, the amount being Rs. 823,000 odd. That sum represents the value of assets, consisting of mortgage bonds, promissory notes, house property and other immovable property owned by Natchiappa on 26th March, 1926, apart from the half share of Kandawala estate owned by him on 20 that date.

(Interval)

Sgd. N. SINNATHAMBY,
A. D. J.

(After Interval)

N. K. V. L. RAMANATHAN CHETTIAR. Recalled.

(X X N—contd.)

Apart from his interest in Kandawala Estate the deceased Nachiappa Chettiar did not leave any immovable property in March, 1936. In 1932, the year in which Suppramaniam Chettiar died, 30 Nachiappa Chettiar owned property in Ceylon apart from Kandawala Estate. (Witness refers to a book.) I am now looking into a balance sheet called ' ayin thohai ', that is totals of ledger balances. In 1934 Nachiappa Chettiar owned immovable property to the value of Rs. 302,928.09. Before Suppramaniam Chettiar died Nachiappa Chettiar owned properties. I know the inventory that was filed when Nachiappa Chettiar died. In it I gave a list of the immovable properties. I know the list of immovable property which I gave in the inventory. All the particulars there are correct. Some of the properties mentioned there were owned by him 40 in 1932 before Suppramaniam Chettiar died. I cannot say which are the properties owned. The book I am referring to shows only the value of the properties and not the description. I as attorney collected rents.

Q. Can you say from what properties you got rent before Suppramaniam Chettiar died?

A. I am unable to give the numbers; I can mention some of the properties.

Up to 31st March, 1932, I supplied a balance sheet to the Income Tax Department. The 'ayin thohai' book I am having does not give the balance in 1932 as it starts from 1933. In the balance sheet I supplied to the Income Tax Department I gave a list of immovable properties which were owned by Nachiappa Chettiar.
10 That list is not shown in my book for 1933. Only the total amount is mentioned in the book. If the names and numbers are given I will be able to say whether they are the properties owned by Nachiappa Chettiar at that time.

(The properties mentioned in the balance sheet read to witness.) Those were the properties owned by Nachiappa Chettiar during the life time of Suppramaniam Chettiar. Outside that list to my knowledge Nachiappa Chettiar did not own any other immovable property during Suppramaniam Chettiar's life time. I know the immovable properties mentioned in the inventory. My books will contain
20 entries which show the dates on which they were acquired. Nos. 40, 42 and 44, Bankshall Street, were purchased but I do not know when they were purchased. It is difficult to search for the date without knowing the year. I became the attorney in 1925—since then I have been in the firm. I used to be away in India also. Except for the periods I used to be in India I was concerned with the firm's business. Even if a transaction takes place in my absence, when I come back to Ceylon I will learn of it from the books. I do not remember the year the Bankshall Street properties were acquired. In regard to the Wilson Street property also I am unable to say in
30 what year they were acquired unless I go through the books and examine them. If I had the deeds it will be possible to search but they are in India.

The income that Nachiappa Chettiar got from the house properties in 1932 whilst Suppramaniam Chettiar was alive, is not entered in the ledger. With regard to rents there was a special book which I have sent to India for Income Tax purposes.

The Kandawala Estate account is entered in the book. If any income had been received it would have been duly entered in the respective folio. But I find only the expenditure account in the
40 book. There are no receipts as no tapping had been done for a long time and no rubber was sold. There is an entry of Rs. 25 by sale of coconuts and another Rs. 75.

I now find the house rent account entered in the book. The rents collected during the month of April, 1931, are shown as Rs. 1,340.34. They include the arrears also. This is not credited to Nachiappa Chettiar's account but to House Rent account received. With regard to Kandawala Estate there is no income except for small amounts in respect of sale of coconuts.

No. 11
Further
Proceedings
—contd.

I spoke of a book in which house rent receipts were entered up and sent to India. I cannot say in what year that was done. I remember a book like that was kept for one year. It was done for one year as our auditors in India said that no tax would be levied on rents recovered in Ceylon if a separate account is sent to India. Therefore I sent the auditors a separate account of the house rent.

There were monies lent on promissory notes in 1931. It is not possible for me to give the total amount outstanding on promissory notes unless I collect the figures from the ledgers. I have not struck a balance. I am able to give the amount as at 31st March, 1926. 10 There is no total. I have a list which gives the items separately but the amount on account of promissory notes is not totalled up. I can give the total by adding up the different items. Those promissory notes in the list are notes in favour of Nachiappa Chettiar. Some of the notes were obtained before, and some after, R4 and R5 were executed. R4 is dated 31.3.45. My list is dated 31.3.26. I cannot say whether that list contains promissory notes taken from the 24th of March, 1926, to the 31st of March, 1926. My assistant cannot check that up from the list, nor can I check it, because there are no dates given in the list. If promissory notes had been taken 20 between the 24th March and the 31st March, 1926, my books will show them. I must have the day book for it, otherwise I will have to go through all the folios in the ledger. The day book is in India.

On the 24th of March, 1926, besides the bonds referred to in R5 I remember there was one other bond. That bond was in favour of Nachiappa Chettiar. There will be entries regarding that one bond in the ledger for March 1926. I have to refer to the bond to find out the names of the parties before I refer to the ledger. I remember this solitary bond because at that time I went through all the bonds in order to find out those that were in the name of one 30 man and those in the name of both. I remember coming across only one bond in favour of Nachiappa Chettiar.

Seventeen bonds were assigned under R5. I can say what amount was due on each of those bonds on the day they were signed if the names are given to me by going through the ledger.

(Witness refers to A6.) With regard to the mortgage bond of O. L. M. Abdul Majeed, the loan due on the bond appears in two or three places. The bond says Rs. 15,000 half assigned plus interest thereon. The interest due on that bond is not shown separately. The interest due on that bond and other loans is shown 40 together. Interest has been calculated up to December, 1925. Thereafter interest was due for three months January to March, 1926. The amount is Rs. 3,000 for the three months.

With regard to the account of Mohamed Sanoon, at 24th March, 1926, no interest has been entered. I am unable to say from A6 what balance interest was due from Sanoon on account of the bond. I took a bank note and a bond. A6 only speaks of a bank note. A

bank note gives a date on which payment is to be made, Abdul Majeed's interest is shown as it was on an on demand note. In this case it is a bank note and payment was due on a certain date. I got a note and a bond from Sanoon for the same debt.

With regard to the account of Naina Mohamed Nachia there too the interest account does not appear as a note payable on a fixed date was obtained.

The account of Abdul Azeez Mohamed Saleem gives the interest received up to December, 1925. Three months interest due from 10 January to March, 1926, is at the rate of Rs. 125.42 a month.

The account of A. L. Marikar Mohamed Cassim shows no interest as there too a note payable on a fixed date was obtained.

On the date on which R5 was executed there was interest due on the bonds which were assigned which amounts are not mentioned in R5. It was stated in R5 that interest was due. The assignment is in respect of principal and interest.

I am unable to say whether in R3, letter to the Commissioner of Estate Duty, and in R1, the return I mentioned the interest that was due. The auditors prepared the accounts. I think interest 20 was shown. I signed an affidavit. I signed what was prepared by the auditors. I must have read the affidavit before I signed it but I did not go into details. The affidavit was explained to me by a Commissioner of Oaths, Mr. de Krester. I was aware of what I was signing.

When the deceased Nachiappa Chettiar died he had branches in Burma and Malaya. I have not been to the Burma branch. The business in Burma was that of money lending. The vilasam of the business was A. R. N. SP That was a joint business of the deceased and one Somasuntharam Chettiar. That Somasun- 30 tharam Chettiar is not in this pedigree. He is distantly related. I cannot say exactly what share each partner had in that business. I do not know what capital they had in that business, except that I heard it was three or four lakhs. They owned large extents of paddy fields, about 5,000 acres. The Burma business did not belong exclusively to Nachiappa Chettiar.

I know the last will of Nachiappa Chettiar to which I was a witness. In that will he bequeathed the Burma business and he called his share his property. That is the usual term. Although the term used is that it is his sole property, what is meant is that it 40 belongs to him and the members of his family. SP is one of the vilasams of the family—the Burma vilasam is AR. N. SP N and SP stand for Suppramaniam Chettiar's father Nachiappa and Suppramaniam Chettiar. AR stands for the other partner. The younger Nachiappa Chettiar's initials do not come into that business as it would prolong the length of the vilasam.

Q. Why did not the business in Ceylon continue as KM. N. instead of adding SP as previously?

A. The adding of the initials to the vilasam depends on the wishes of the head of the family who carries on the business.

(To Court: The usual practice is to add the initials but it is left to the wish of the person managing the business.)

Two of the partners of the Burma business were women—Meenatchy Achy and Alagamma Achy. They were either sisters of the other partner or a sister and a daughter of that partner.

The deceased had a business in Malaya. I do not remember the vilasam of that business. The business called SP. N. SP was also in partnership. I remember he had two other partners, not three, one of whom was a Nachiappa Chettiar. Those two partners in the Malaya business do not appear in the pedigree of the deceased. They are outsiders.

Therefore the partners of the Burma business and of the Malaya business were outsiders.

(For want of time further hearing is adjourned for the 21st, 22nd, 23rd and 24th October, 1946.)

Sgd. N. SINNATHAMBY, 20
A. D. J.
13.9.46.

D. C. 10 Special

16th September, 1946.

ORDER

Learned Counsel for the appellant seeks to put in evidence:

(a) Certain assessments made by the Income Tax authorities in India with regard to the income of the deceased KM. N. SP. Nachiappa Chettiar and/or his father KM. N. Suppramaniam Chettiar in which according to Counsel, they claimed their income should be regarded as belonging to members of an undivided Hindu family, 30 and that the claim was accepted by the Income Tax authorities;

(b) A judgment of this Court in case No. 3130 (T) in which the administrator of the estate of KM. N. N. Ramasamy Chettiar sued the Attorney-General for refund of estate duty on the ground that the estate belonged to a Hindu undivided family.

I shall deal with each of these separately.

With regard to the Income Tax assessments, I have perused those documents, and they contain several pages in one of which the status of the assessee is described as "Joint Hindu Family". Learned Counsel for the appellant seeks to produce these documents 40 under section 13 of the Evidence Ordinance as a transaction or an instance in which a right of the deceased Natchiappa Chettiar and Suppramaniam Chettiar to be regarded as members of a joint Hindu family was recognised. The learned Attorney-General objected to the production of the documents on the ground that there was no evidence that in India the members of a Hindu undivided family

are charged an additional tax as in Ceylon. He submitted that before the documents are admitted, evidence should be led that a status as described in the documents is a material circumstance for the purpose of Income Tax.

Although it was agreed that Counsel should address me on this question of the Income Tax law in India, they did not do so but instead submitted to me textbooks on the subject. The learned Attorney-General submitted the 4th edition of the Law of Income Tax in India by V. S. Sundaram. I have been unable to find any-
 10 thing in that volume with regard to any change in the rate of Income Tax that can be levied in the case of a Hindu undivided family, but in page 117 it is stated that a Hindu undivided family is regarded as a single unit for Income Tax purposes. One does not, I imagine, need authority for this proposition. If the property of a Hindu undivided family is assessed on that basis, it must necessarily be assessed as one unit, but if the property is assessed as property of each individual forming the undivided family, it must be assessed on a different basis. Where, therefore, the assessment specifies that the status of the assesses is that of a Hindu undivided family, the
 20 inference must be that the assessment was made on that basis. The term "Hindu undivided family" in the assessment is not merely descriptive but is a recognition of a status which gives rise to certain rights or disabilities in the assessment. I am, therefore, of the opinion that these assessments are admissible under section 13 either as transactions or instances in which a right of the deceased to be regarded as a member of a Hindu undivided family were recognised. I accordingly allow the production of the documents.

I shall now deal with the admissibility of the judgment sought
 30 to be produced in evidence. An examination of the evidence led so far and the pedigree filed shows that Ramasamy Chettiar whose estate was administered in Testamentary case No. 3130 was the son of KM. N. Natchiappa Chettiar who in turn was the brother of KM. N. Suppramaniam Chettiar. The testator in the present case is Suppramaniam's son KM. N. SP. Natchiappa Chettiar. The judgment against the Crown in Ramasamy's case establishes the fact that Ramasamy was a member of a Hindu undivided family, that the property in respect of which estate duty was paid was property belonging to such a family and that the Administrator
 40 was entitled to recover from the Commissioner estate duty wrongly paid.

Learned Counsel for the appellant sought to produce the judgment as a transaction in which the "quality of the estate" which forms the subject matter of the present action was recognised. For that purpose he argued that by A8 he has established the fact that Natchiappa and Suppramaniam partitioned amongst themselves the property of a Hindu undivided family of which they were members and that Natchiappa's share by A8 went to his children, one of whom is Ramasamy. The suggestion was that in Ramasamy's case
 50 the judgment proceeded on the footing that Ramasamy's estate was ancestral property derived from his father Natchiappa, and that as

Natchiappa and Suppramaniam were brothers, Suppramaniam's estate must also be regarded as property of a Hindu undivided family of which Suppramaniam and his son Natchiappa were members. Evidence has been led to show that Suppramaniam's property was property of a Hindu undivided family of which his son Natchiappa was a member, and that therefore Natchiappa's estate consisted of ancestral property which formed the property of a Hindu undivided family of which Natchiappa and his children were members.

The decree in Ramasamy's case only declared that Ramasamy's 10 estate was a property of an undivided Hindu family of which Ramasamy and his children were members and that it was, therefore, not liable to pay estate duty. In order to serve the purpose, which learned counsel wanted the judgment to serve, it is necessary to go beyond the formal adjudication in the case and accept the findings of fact in the judgment and the reasons which it was held that Ramasamy's estate was the property of an undivided Hindu family. This is precisely what the Privy Council, in the case cited and relied on strongly by learned Counsel for the appellant, stated could not be done. The Privy Council in that case (Govinda 20 Narayan Singh and others vs. Sham Lal Singh and others—A. I. R. (1931) P. C. p. 89) held that the judgment was admissible as a transaction to establish the existence of a right, but that the findings of fact and the reasons for the judgment were inadmissible as transactions under section 13 of the Evidence Ordinance.

I have examined this Privy Council case very carefully and have come to the conclusion that it is no authority for permitting the judgment in Ramasamy's case to be admitted as evidence in this case. The plaintiffs in the Privy Council case represented in two 30 moieties a zamindari known as Pandara Raj. The defendants were the Thakur of Achra and some part purchasers of the Achra Estate. The Thakurs were a junior branch of the Pandara family. The Thakur branch had leased out a portion of the Achra villages for mining purposes. The action was instituted by the plaintiffs against the defendants and a company to whom the mining rights were leased, for a declaration that the sub-soil rights of the leased property belonged to the plaintiffs and not to the Thakur of Achra and his co-owners. The Thakurs were a part of the Pandara family and their case was that the property of the zamindari was partible, and there was a partition of the zamindari under which the Thakurs 40 were given the Achra villages.—If there was a partition the Thakurs would have been entitled to sub-soil rights as well. In order to establish this partition they produced the proceedings in a suit instituted in 1793 by Raja Protab Narain and the sons of his father's only brother Kuljan Singh. The Achra branch were not parties to this suit but in that case the Rajah's nephews claim to a partition was successful and a moiety of the zamindari went to each of the two branches who were the plaintiffs in the case. The Privy Council held that the earlier case between the two sets of plaintiffs in 1793 was admissible in the case in question in order to establish 50

a particular transaction in which the partibility of the Pandara estate was recognised. The defendants however, sought by producing the judgment in the 1793 case to prove certain facts which were established in that litigation. There was evidence, and the Court in the 1793 case held, that the Achra villagers had come to the Thakur branch by partition. This finding of fact was accepted in the case in question by the original Court as evidence that the Achra villagers had come to the Thakur branch by partition. The Privy Council held that the reasons on which the judgment was
10 founded and the findings of fact were inadmissible as transactions under section 13.

Applying the principles established in the Privy Council case to the question now under consideration, the judgment in Ramasamy's case embodying the findings of fact and the reasons for the decision, is clearly not admissible. The decree, issues, plaint and answer are admissible if they can be regarded as instances or transactions in which a right sought to be established in this case was recognised. The learned Attorney-General contended that the right
20 sought to be established in this case was that the property of KM. N. SP. Natchiappa Chettiar, the deceased testator, was the property of an undivided Hindu family and the right established in Ramasamy's case was that the estate of Ramasamy was the property of an undivided Hindu family. He contended that one is not an instance in which the other was recognised. While I agree that if the decree in Ramasamy's case is sought to be produced as a particular instance in which Nachchiappa Chettiar's estate was recognised as property of an undivided Hindu family, his contention is sound, I do not think that that is the only reason why the decree in Ramasamy's case can be produced as evidence in this case:
30 Learned Counsel for the appellant sought to produce it on the ground that the basis on which the right is claimed in both cases is identical, viz., that both emanated from the same source. Ramasamy's case will not be evidence to establish that the property which was held to be the property of an undivided Hindu family emanated from Nachiappa Chettiar and Suppramaniam Chettiar as joint members of a Hindu family, unless the judgment is produced. The judgment, as I have held, is clearly not admissible. The question is whether the decree can be admitted in evidence for any purpose. It seems to me that it can.

40 One of the questions for decision in this case and in respect of which evidence was led, is whether the deceased Nachiappa Chettiar was a member of an undivided Hindu family. In order to establish this, oral evidence was led that other branches of the family also were members of undivided Hindu families. For instance, it was stated that the deceased's father Suppramaniam and his brother KM. N. Nachiappa Chettiar were members of an undivided Hindu family and that they partitioned their joint property by A8.

No. 11.
Further
Proceedings
—contd.

Further evidence was led that the members of this family and of other Chettiars resident in South India were subject to the Hindu Law recognising undivided Hindu families.

I am of the view that the decree in Ramasamy's case is relevant under section 13 of the Evidence Ordinance to establish an instance or a transaction in which a member of this family was recognised as being the principal or manager of an undivided Hindu family. To that extent the decree in Ramasamy's case is admissible. It is admissible as a piece of evidence to support the contention of the appellant that the deceased Nachiappa Chettiar also was subject 10 to the Hindu Law obtaining in South India and was a member of an undivided Hindu family. As the findings of fact in that case are inadmissible, at most the decree might also be evidence that Ramasamy's estate was ancestral property but it will not clearly establish that fact, as it is possible for the property of an undivided Hindu family to be acquired by means other than from an ancestral nucleus.

It may be possible, in view of the evidence already led with regard to the division of property between Suppramaniam Chettiar and Nachiappa Chettiar by A8 and other evidence that may hereafter 20 be led, to come to a conclusion that Ramasamy's estate was, as Counsel put it, of the same quality as the estate of the deceased testator Nachiappa Chettiar. I do not propose to say anything more with regard to this at the present moment.

Although Counsel for the appellant did not expressly state that he desired to produce the decree in order to establish the fact that Nachiappa Chettiar, the deceased testator, was a member of an undivided Hindu family. I allow the decree, plaint, answer and issues in D. C., Colombo, case No. 3130/T to be produced only for the purpose indicated above. The judgment I rule out as being 30 inadmissible.

Sgd. N. SINNATHAMBY,

A. D. J.

16.9.46.

Pronounced in open Court in the presence of Mr. Saheed for Appellant and Mr. Wilson for Respondent.

Sgd. N. SINNATHAMBY,

A. D. J.

10 Special.

21st October, 1946.

No. 11
Further
Proceedings
—contd.

MR. ADVOCATE NADARAJAH, K.C., with MR. ADVOCATE CHELVANAYAGAM and MR. ADVOCATE MUTTUCUMARU instructed by MR. SAHEED for the Appellant.

MR. WEERASOORIYA, Crown Counsel, with MR. DEHERA-GODA for the Crown Respondent.

Mr. Weerasooriya states that the Attorney-General has suddenly taken ill and is unable to conduct the case today and that he is therefore not in a position to go on with the case.

- 10 Mr. Chelvanayagam states that in these circumstances he asks only that he be given an opportunity of leading evidence of the witness who is now in the box with regard to certain documents which the Court by its order dated the 16th September, 1946, allowed plaintiff appellant to produce. Although the witness is at the present moment under cross-examination, Crown Counsel has no objection to these documents being put in today and the witness being examined with regard to them.

- 20 It is agreed that the cross-examination of the witness and the rest of the case be continued from tomorrow. Crown Counsel states that if the learned Attorney-General is still unwell he will continue with the case.

It is agreed that in any event the Crown will not be entitled to the costs of today.

N. K. V. L. RAMANATHAN CHETTIAR. Recalled, affirmed.

(To Mr. Chelvanayagam)

- 30 I have already told the court that the father Suppramaniam Chettiar and the son Nachiappa Chettiar were assessed income tax in India. I produce the notice demanding payment under section 29 of the Indian Income Tax Act of 1923 for the year of assessment 1926-27, marked A50. It is dated the 31st August, 1926. I also produce a similar demand notice for the year 1928-29, marked A51, which is addressed to KM. N. SP. Suppramaniam Chettiar and son. It is dated the 31st October, 1928.

- 40 I produce marked A52 the Income Tax assessment for the year 1927-28. The assessee is given as KM. N. SP. Suppramaniam Chettiar and son. Under the column "status" it is given as "Hindu undivided family". Amongst the income that is assessed I point out to income from the Colombo shop. It is described as "Colombo sole shop" to show that it belongs to these two people and to no others.

No. 11
Further
Proceedings
—contd.

I also produce marked A53 the assessment for the year 1928-29. The name of the assessee is given this time as KM. N. SP. Suppramaniam Chettiar. The "status" is given as Hindu undivided family. Amongst the income is included the Colombo, KM. N. SP. shop.

I produce marked A54 the Indian Income Tax assessment for the year 1929-30 where the name of the assessee is given as KM. N. SP. Suppramaniam Chettiar and the status is again given as Hindu undivided family. Amongst the income a reference is made to the Colombo KM. N. SP. shop. 10

I produce marked A55 the Indian Income Tax assessment for the year 1931-32. The name of the assessee is given as KM. N. SP. Suppramaniam Chettiar and the status is given as Hindu undivided family. The source of income is given as business of sole money lending at Colombo and joint money lending at Sungampar and other sources.

Suppramaniam Chettiar died in 1932. Up to that date the Income Tax assessments give his name alone or his name and his son's name. There was no separate assessment for the father and for the son up to that time. 20

I produce the notice of assessment for 1932-33 marked A56 which gives the name of the assessee as KM. N. SP. Nachiappa Chettiar for the first time. At that time the father was dead. The "status" is given as Hindu undivided family. This particular document A56 has been produced before the local Income Tax Department and it has their seal which reads "Assessor, Division 1, 22nd December, 1933". Amongst the description of the income there is reference to the Colombo KM. N. SP. firm.

Similarly I produce marked A57 the Indian Income Tax assessment for the year 1935-36. The name of the assessee is KM. N. SP. Nachiappa Chettiar and the status is given as Hindu undivided family. Amongst the income mentioned there is reference to the Colombo KM. N. SP. firm. 30

I also produce plaint marked A58, answer A59, issues A60 and the decree of this Court A61 in case No. 3130.

Sgd. N. SINNATHAMBY,
A. D. J.

21.10.46.

Further hearing for tomorrow.

D. C. 10 Special.

22.10.46.

No. 11
Further
Proceedings
—contd.

MR. WEERASOORIYA, C. C., with MR. TENNEKOON, C. C., for the Crown instructed by MR. WILSON.

Appearances for the appellant same as before.

N. K. V. L. RAMANATHAN CHETTIAR. Affirmed.

X X N—contd.

10 The business of the firm KM. N. SP. consisted of lending money on mortgage bonds, cheques, promissory notes and bank notes. According to the deed R4 a quarter share of Kandawela Estate was transferred by Suppramaniam to the testator. R5 is the deed of assignment of mortgage bonds by Suppramaniam to the testator. There were many promissory notes, bank notes and cheques given to the firm. Most of them were in the names of both Suppramaniam and Natchiappa the testator. The names of the obligees do not appear in the books.

20 I have said that I have brought to court most of the books of the firm KM. N. SP. These books are for the years 1924-1938. There are two books for 1919. The books not brought to Court are in India. On the last date I referred to a separate account of the testator and his sons in the books. The testator had another son Nagappa. There is no account of Nagappa appearing in the books. He was given a small sum of Rs. 50 or Rs. 100 by his father when the latter left India but I am not sure whether the amount is entered in the books.

(To Court: There is no transfer in favour of Nagappa.)

30 With regard to the other sons of the testator apart from the amounts transferred to them and the accrued interest credited to them, there are no other amounts in their names. The account of the testator consists of the accumulated capital, profit and interest. The amount he spent on himself when he was in Ceylon will also appear in the books. Whatever amounts, he spent in India will appear in the books kept in India. The amount spent by him in Ceylon on travelling, food and clothing will appear in the Ceylon account under petty expenditure.

40 The testator died in December 1938. Before his death, on 1st April 1938, the balance to his credit was Rs. 969,036.01½. At the time of his death apart from the amount standing to his credit, he owned the whole of Kandawala Estate, the value of which was 2½ to 3 lakhs. In the inventory filed in testamentary case No. 8802 relating to the estate of the testator, the total assets shown amount to Rs. 2,600,000. In addition to those assets, there are other sums in the names of Suppramaniam Chettiar, Manickam Chettiar, Ramasamy Chettiar and some others. Those sums must also be added to make up the total assets.

On 31st December, 1938, there is a sum of Rs. 969,036.01½ standing to the credit of the testator and Rs. 263,226 to the credit of Manickam. Ramasamy and Suppramaniam have also been credited with Rs. 263,226 each. The following items also appear: Sembinoor Maidan (park or flower garden) Rs. 36,534; current account between Colombo and India Rs. 363,062 and Indian boutique capital; Rs. 51,000. The sum shown as capital of the Indian boutique does not carry any interest and has been reserved as bonus or profit to be given to agents. That sum also forms part of the capital in question in this case. There are various other items of smaller amounts varying from Rs. 1,000 to 9,000. There is also an expenditure reserve of Rs. 56,000. The total amounts to Rs. 2,414,736. The details appear on page 42 of the ledger balance book commencing from 31st March, 1937, marked A62. That book contains extracts from the ledgers. It corresponds to the balance sheet. A ledger balance book is prepared periodically once in three months. 10

At the time of the testator's death I was in India. I returned to Ceylon thereafter. A declaration in respect of the estate of the testator was called for by the Commissioner of Estate Duty and declaration R7 was accordingly furnished. An application was also made to the Supreme Court by the Administratrix for the purpose of having sole testamentary jurisdiction conferred on the District Court of Colombo in respect of the estate. That application is marked R12 in the present proceedings. In connection with that application, I filed an affidavit. In paragraph 7 of the affidavit it is stated that by his will, the testator subject to the payment of certain legacies bequeathed all his property in Ceylon to his sons. The names of the sons are given in the affidavit. 20

R14-R16 are petitions filed by the administratrix in D. C., Colombo, testamentary case No. 8802 asking for probate of the last will of the deceased. R18 is the grant of probate in the same case. I remember objections were taken by heirs of the deceased to the granting of probate. Those objections were finally withdrawn. They were filed on the advice of interested parties. The objectors were Menatchi, Thewammi and Valiamma (wife of Ramanathan) and certain other parties. Menatchi Thewamma and Valiamma were daughters of the testator by his first wife. The inventory filed in the same case is R24. 30

Up to the time of his death the testator had been assessed for the purpose of Income Tax on the footing that he was a member of a Hindu undivided family. After his death the Income Tax authorities in Ceylon taxed him on a different footing namely as an individual. The executrix thereupon preferred an appeal from the assessment to the Income Tax Board of appeal. That appeal was disposed of in 1941. R6 is a copy of the judgment of the Income Tax Board of Appeal. The appeal was dismissed. The contention of the executrix was that the testator was a member of a Hindu 40

undivided family. I do not know that an appeal lies from a judgment of the Board of Review. Income tax was paid in accordance with the decision of the Board. A certain amount was paid—not the full amount.

No. 11
Further
Proceedings
—contd.

(*To Court:* I think the tax amount was paid.)

By the deed of assignment R5 certain mortgage bonds were assigned to Natchiappa the testator. The bonds assigned were given by Abdul Majeed. Subsequently Majeed effected a transfer of a number of lands in favour of the testator. After the death
10 of the testator the executrix claimed those lands as absolute property of the testator. Abdul Majeed contested that position in D. C., Colombo, case No. 9621 (L) his position being that the transfer was in trust. In that case he asked for a reconveyance of the properties which had not been sold. I remember answer was filed in that case by the executrix. (Certified copy of the plaint and answer in that case marked R34 and R35 respectively.)

The estate of the testator Natchiappa was assessed by the estate duty authorities on the footing that it was not the property of a Hindu undivided family. As attorney, I attended to the matter
20 relating to the appeal made by the executrix for revision of the assessment. I am aware that certain objections to the notice of assessment were filed on her behalf. That notice of assessment is A1. There was also another notice dated 26th November, 1940 (A2).

The declaration in respect of the estate of Suppramaniam Chettiar marked R1 is a sworn declaration by me. Cage "D" of R1 provides the answer to the following question: "Did the deceased at the time of his death hold any property whatsoever as a joint tenant or on joint account"? The answer given is "nil". That
30 declaration was made by reason of the deeds R4 and R5. Suppramaniam died having divested of money and property. As he had transferred to Natchiappa the testator I thought he was not possessed of any money or property. I followed up the declaration by letter R3 addressed to the Commissioner of Stamps, dated 28th September, 1932, stating that the late Suppramaniam Chettiar left no property whatever at the time of his death.

In 1932 when Income Tax was first introduced to Ceylon and in connection with the assessment of the Income Tax payable by Natchiappa the testator, I remember a letter was written by Sambimurthy, the accountant of the firm, to the Income Tax Department
40 dated 1st October, 1932.

(Mr. Weerasooriya undertakes to call the writer. Subject to that, the production of the letter is allowed. The letter is marked R36.)

In that letter it is stated that Natchiappa, testator, was a non-resident, that he does not belong to a Hindu undivided family, that he has no interests in the Island, and that his father is Suppramaniam Chettiar. I remember a letter to that effect was written. Sambimurthy was the accountant of the firm. Subsequently he made

No. 11.
Further
Proceedings.
—contd.

a claim that the testator belonged to a Hindu undivided family. That was accepted by the Income Tax authorities. Some years later when the revision of his assessment was considered, certain questions were asked by the authorities about entries in the books relating to the payment of Rs. 250,000 odd to the three sons of Natchiappa the testator. In that connection I remember an affidavit was submitted by the testator. I do not know the contents.

Re-Exd.

The accountant Sambimurthi came to Ceylon in 1932 immediately after Income Tax was introduced to the Island. On 1st October, 1932, he sent an audited report of the firm KM. N. SP. (R32). In connection with that report he has made certain statements. I did not authorise him to state that Natchiappa, the testator, was not a member of a joint Hindu family. Sambimurthy did not show me letter R36 before he sent it. Soon after that letter was sent, the statement made by him that the testator was not a member of a Hindu undivided family was corrected. On 29th May, 1933, seven months after R36 was written, Sambimurthy wrote to the Income Tax Commissioner stating that Natchiappa, the testator, belonged to a joint Hindu family and lodging an appeal against the assessment. I produce a copy of that letter marked A63. The Department accepted that statement and assessed on the basis that the testator was a member of a joint Hindu family. (A63 is accepted as a correct copy by Crown Counsel.) From the day the assessment was made on that basis till the death of the testator, the Income Tax Department assessed his income on the basis that he belonged to a joint Hindu family. It was after his death that the assessment made on that basis was revised. The appeal to the Board of Review was in respect of income for a year previous to the death of Natchiappa, the testator. For the subsequent years the Income Tax authorities assessed the estate on the footing that it did not belong to a joint Hindu family and the appeals were preferred against those assessments. Those appeals are pending the decision of this case.

Majeed was a person who borrowed moneys from the firm KM. N. SP. He was borrowing money from the firm for 25 or 30 years. He was engaged in hardware business. He borrowed on mortgage bonds and also on notes. I produce the deed of transfer executed by him in favour of Natchiappa the testator No. 1604 dated 3rd March, 1930, marked A64. A large number of properties which Majeed transferred are set out in that deed. It also sets out the debts due by him to the firm. The attestation gives a list of mortgage bonds and promissory notes which were discharged. Some of those transactions took place in 1925, before Suppramaniam transferred to Natchiappa the testator. In 1930 Majeed closed down his business as he had suffered losses as a result of the depression. He instituted an action claiming that the properties transferred by him to Natchiappa, the testator, were transferred in trust for him (Majeed). The plaint in that case is R34.

In R35 the executrix denied that the properties were transferred in trust and stated that the transfers were outright transfers. I gave instructions for the answer in that case. I did not give instructions that Natchiappa, the testator, claimed the property as his separate property and not as property belonging to the family of which he was not a member. The executrix was the defendant in that case. It was filed after the death of Natchiappa, the testator. The case is now pending before the Privy Council.

No. 11.
Further
Proceedings.
—contd.

10 When the testator died his assets included a number of immovable properties in Ceylon. The business of the firm K.M. N. SP. was chiefly moneylending. The properties he owned at the time of his death were properties acquired in liquidation of debts due. Kandawala Estate was the first property acquired by the firm in Ceylon. It was purchased in 1922 at a Fiscal's sale in discharge of certain mortgage debts. I produce, marked A65, the Fiscal's transfer by which Kandawala Estate was purchased. By that transfer a half share was bought by Suppramaniam and Natchiappa, the testator, and the other half by two Muslims Abdul Rahaman and O. L. M. Yusoof Lebbe. Suppramaniam and
20 Natchiappa are described in the transfer as execution creditors under the writ under which the property was sold. The shares bought by Abdul Rahaman and Yusoof were later purchased by the firm K.M. N. SP. Those shares were also bought in liquidation of debts. Abdul Rahaman's share was bought by deed No. 1354, dated 2nd July, 1932, A67. That deed sets out that quarter share was bought for Rs. 29,000 odd, out of which Rs. 27,200 was the amount of the debt due. Abdul Rahaman was also a person who used to borrow moneys from the firm. The other quarter share of
30 Kandawala Estate belonging to Yusoof Lebbe which was bought at the Fiscal's sale under a transfer (A65) was also transferred to the firm by deed No. 2021 dated 19th August, 1932, (A67) by the children of Yusoof Lebbe after his death. That share was transferred for Rs. 29,500. That was also transferred in payment of a debt. In the attestation it is stated that the consideration was set off in part payment of the principal amount due to the gratnee on a certain bond.

40 Kandawala Estate is a rubber and coconut estate. In 1931 and 1932 there was no demand for rubber. Originally Kandawala Estate consisted of 326 acres out of which the Crown acquired 200 acres. The whole estate was bought for Rs. 175,000. There was a land acquisition case where I claimed compensation. The compensation paid for the acquisition was Rs. 360,000. The balance left after the acquisition remained as property of the firm. The sum of Rs. 360,000 was paid by the Crown before the death of Natchiappa, the testator. Kandawala Estate was first acquired in 1922 by A65. Majeed's deed, A64 was in 1930. Between 1922 and 1930 no land was bought. Majeed's property was sold for two lakhs. In the year the property was bought an account for that

property was started for the first time in the books. There are two ledgers in Court for 1929-1930. The first ledger is marked A40.

(Mr. Chelvanayagam marks the second ledger for that year A68.) On page 2 of A68 there is a total debit and credit account, a purchase account. (The page is marked A68A.) That account is the first account with regard to the properties bought from Majeed. That account is continued in the other books. A large number of properties were bought from Majeed worth about two lakhs. A number of these properties have been sold. There are still a number of properties bought from Majeed which have not been sold. Except in cases where the firm was compelled to take over property from the debtors, no other properties have been purchased. There is a separate folio in the books in respect of all property mortgaged to the firm. The property purchase account shows a sum of two lakhs. That sum has been written off in Majeed's account as he has paid the money. 10

I have said in cross-examination that when Kandawala Estate was bought, the purchase price was to be deducted from the capital appearing in the ledgers. In other words the folio containing the capital account did not include the value of properties bought. When properties are bought, the account in respect of those properties will appear in the property account. To find out the value of all the assets the various items must be taken together. Those items which must be taken together are property account, money due on mortgage bonds and amounts lent on notes. The assets are assessed from those items. I have said that the capital account was in the name of Natchiappa the testator during the time he was the head of the firm. 20

(To Court: The capital account will appear in the books on the receipt side and the amounts lent on the expenditure side.) I have said that a portion of the amount standing to the credit of Natchiappa, the testator, was transferred in the names of the sons. That is shown in page 118 of A42. The date on which money was transferred for the first time to the names of the sons is 26th March, 1931, the amount being Rs. 251,000. On the same date there was a transfer of a like amount to Ramasamy. Odd figures are treated by chettiar as lucky figures. That is why the amount transferred was Rs. 251,000. That amount is entered against the names of the two sons. Natchiappa Chettiar *alias* Manickam Chettiar is the eldest son of the testator. He is a boy. He is in Court now. He is 17½ years old. In 1931 he must have been a child. At that time there were only two sons of Natchiappa, the testator. Ramasamy Chettiar is the younger brother of Manickam Chettiar. He was also a child in 1931. When the two amounts were transferred to the names of the two boys, a corresponding reduction was made of the moneys standing to the credit of Natchiappa the testator. When those two transfers were made no money passed to anybody. 30 40

Only book entries were made. The amounts transferred were in the firm and they were utilised for the business. (Page showing account of Natchiappa *alias* Manickam marked A36A.) The same page also contains the account of Ramasamy. Deductions from the original capital are shown at page 93 (marked A36B.) I have said in cross-examination that the amounts transferred to the two sons shown at A36A went on increasing from year to year as a result of the addition of interest, until the third son was born, and then the amount standing to the credit of the two sons was divided among the three children. That division was made on 21st March, 1937. (A38 page 355 referred to.) The division appears on that page. The amounts standing to the credit of each of the original two sons increased from Rs. 251,000 to Rs. 355,382. Those amounts appear on pages 6 and 7 of A38. The increase in the account of each of the two sons is due to the addition of compound interest. All the money was in the business of the firm, and the addition of interest was done in the books.

On pages 6 and 7 the total of the two amounts standing to the credit of the two sons has been divided by three and a one third share has been allotted to the third child Suppramaniam. In the result the share of each of the three children amounts to Rs. 236,921.63. That is shown on page 355 of A38. (Pages 6, 7 and 355 of A38 marked A38A, A38B and A38C respectively.) The division was not done with the consent of the sons. It is merely a book entry. Each of the amounts was credited with interest by the firm and also debited with Income Tax. The Department of Income Tax did not allow the firm to show the amounts standing to the credit of the sons as a separate account and to deduct interest payable in respect of those amounts for the purpose of Income Tax assessment. I produce, marked A69, the Ceylon Income Tax assessment of the firm for the Income Tax year ending 31st March, 1938. The notes at the back of that assessment show that what I deducted as interest paid to the sons has been added in computing profits. Separate Income Tax returns were never sent by the firm in respect of the sons to whom sums of money were transferred. The income of these sons was never assessed separately. Until the death of Natchiappa, the testator, the whole income of the firm KM. N. SP. was assessed as a single income. That income was inclusive of income earned. The fourth son was born shortly before the death of the testator. At that time no adjustment was made of the account.

I have been questioned in this case with regard to the bank balance of the firm on 26th March, 1925. In 1926 before the execution of R4 and R5, there were overdrafts or loans obtained from the Bank. Before 1926 the bank account was in the name of Suppramaniam Chettiar. After 1926 it continued in his name. I do not have all the pass books for the period 1926-1932. I searched for them but could not find them. In the course of the search I came across one of the cheque books of the period referred to. During that time

No. 11.
Further
Proceedings.
—contd.

I was attorney of Suppramaniam Chettiar and I had authority to sign cheques. The other chettiars and I sign mostly in Tamil, and because we sign in Tamil, we sign blank cheques before accountants in the bank and keep those blank cheques with us. The bank puts a seal on the cheques showing that they admit the signature. I used a cheque during the period 1928-1931 containing blank cheque leaves with my signature admitted by the bank. I produce that book, marked A70. In that book there are four unused blank cheque leaves signed by me before the Bank Accountant.

(To Court: The book shows that in 1929 Suppramaniam had a bank account.) 10

The counterfoils in A70 shows the years in which the cheques were drawn, namely, 1928, 1929 and 1930. The bank account was in the name of Suppramaniam Chettiar. In 1930 Majeed's properties which were worth two lakhs were taken over by A64. The deed was in Natchiappa's name. Letters were written to me during that time by Suppramaniam Chettiar. Those letters have been filed in the land case referred to. I was also questioned in this case with regard to the firm in Burma in which Suppramaniam and Natchiappa had only a fractional interest. K. M. Arunachalam owned the other interests. There was also a shop in Malaya. In that shop also there were other people outside the family who owned some interests. Till Suppramaniam's death in 1932 and even till 1933 correspondence was addressed to Suppramaniam Chettiar. I produce envelopes of letters written from the firm A. R. M. in Burma addressed to Suppramaniam Chettiar in 1927, 1928 and 1932 marked A71A, A71B and A71C respectively. 20

(Mr. Weerasooriya objects to the production of the documents on the ground that they have not been listed. He next withdraws the objection. 30

I allow the production of the documents.)

In 1926 or at any time before 1926 there was no separation of the funds as belonging to Suppramaniam and funds belonging to Natchiappa the testator. Before 1926 notes and bonds were obtained in the names of both of them. In 1926 the interests of Suppramaniam were transferred to Natchiappa by R4 and R5. That was done because Suppramaniam was growing old, and because he wanted to prevent trouble and interruption in the business.

Natchiappa, the testator, was the trustee of the firm S. S. R. M. That vilasam represents the name Suna Sena Ravana Mana. That firm now belongs to Sinnan Chettiar, grandson of Natchiappa, the testator. Sinnan Chettiar is the child of the testator's daughter. The name of Natchiappa's daughter's husband was also Sinnan Chettiar. Natchiappa the testator had a daughter Sittal. Her husband was Sinnan. By Sinnan and Sittal, there was one son, 40

namely, Sinnan Chettiar. Ramasamy Chettiar was Sittal's father-in-law. The trust property was created by Ramasamy Chettiar in favour of his grandson Sinnan Chettiar and Natchiappa, the testator, was the trustee. The moneys belonging to the trust do not belong to the firm KM. N. SP. Those moneys belong to the trust. The daughter and son referred to are not members of Natchiappa's family. During the life time of the testator, the money was administered as a trust and that trust was known by the vilasam S. S. R. M.

No. 11.
Further
Proceedings.
—contd.

10 When R4 and R5 were executed, no money passed from the son to the father. By R4 a quarter share of Kandawala Estate was transferred. When Suppramaniam died I made declarations R1 and R2 to the Estate Duty Office. Proctor C. T. Kandiah was my legal adviser at the time those declarations were made. The legal adviser at the time was Mr. N. M. Saheed—not Mr. Kandiah. The declarations were made on legal advice after the Proctor was consulted.

20 In my cross-examination I have used the word "bank note". By that term I meant a note which is made payable on a certain date generally at a bank. Chetties have a business of lending money on that basis. In the case of bank notes when the principal is paid, interest up to the date of payment is deducted, with the result that if there is a note for a certain sum it will carry no further interest up to that date. The principal is paid by the chetty after deduction of interest. In the course of my business, apart from the capital, borrowed money is also used. Money is borrowed from banks and other chetty firms. From the banks we are given loans with interest up to 18 per cent. The lowest interest charged by the banks is 6 per cent. Apart from the Exchange
30 Banks, we borrow from other chetty firms. The big chetty firms from which we used to borrow are R. M. A. R. M., A. R. A. R. S. M. and R. M. M. S. T. Those firms are bigger firms than mine. My firm borrowed money from those firms at a rate of interest much less than the rate charged by the Banks. The Bank rate varies from time to time. It never exceeds 9 per cent. It varies between 6 and 9 per cent. according to the demand for loans in the country. The money borrowed at those rates by my firm were lent out carrying interest up to 18 per cent. The amounts borrowed by the firm
40 from other chetty firms and the banks appear in the books of the firm. Occasionally there are losses on the transactions in question. My firm has not lost very much on those transactions.

(Interval)

Sgd. N. SINNATHAMBY.

22. 10. 46.

A. D. J.

(After Interval)

No. 11.
Further
Proceedings.
—contd.

N. K. V. L. RAMANATHAN CHETTIAR. Recalled.

(*Re-Exn.—contd.*)

I told the court regarding Majeed's transfer in 1930. We had correspondence with Suppramaniam Chettiar and letters regarding that are filed in Majeed's case. I have also produced in this case A26 a letter from Suppramaniam Chettiar to us which refers to Majeed's transaction. A26 was written in September, 1929. A29 which I have already produced was written on the 31st December, 1930. It states "see that the house rents are strictly collected". In December, 1930, rents were collected from the houses which were transferred by Majeed. 10

I was a witness to the last will of Natchiappa Chettiar. That will leaves most of his properties to his four sons. Natchiappa Chettiar and his sons belong to a joint Hindu undivided family. In respect of immovables in India under the joint family system the daughters do not inherit. In Ceylon according to Ceylon law there might have been difficulty in respect of immovable property in Ceylon. To avoid the possibility of daughters being entitled to immovable property he left a last will leaving his properties to his son. In other words he has disposed of his Ceylon property in the way they would have devolved in India. 20

In the business registration form the father and sons had been described as partners. They have not been described as members of a joint family as there was no column provided for it. There is a column to show what partners are. He had filled that according to the columns there.

With regard to Kandawala Estate transaction I was questioned by the other side about the entries in A6 at page 74. The Rs. 15,000 which was shown as the consideration of deed R4 is shown in A6 at page 74, a quarter share of Kandawala Estate. For a half share the father and son paid Rs. 46,500. They bought this with a secondary mortgage. The primary mortgage was in favour of C. W. Mackie & Sons. They paid half the primary mortgage and Abdul Rahman and Usuf paid the other half. That is to say they paid Rs. 46,500 and Rs. 49,500—Rs. 96,000 in all and the other half Abdul Rahman and Usuf paid and that half share was later bought by us for Rs. 29,500. At the time we bought the price of rubber lands had fallen. 30

The consideration of Rs. 15,000 paid on R4 is shown in A6. There is a cross entry, Natchiappa Chettiar is debited and K.M. N. SP. is credited. Both entries appear at page 74 of A6 and 40

is marked A6a. They are dated the 26th March, 1925. In other words Natchiappa Chettiar is debited and the firm is credited. There was no transfer of any money on that transaction. It was only a paper transaction. After these transfers, the owner of the firm is shown as Natchiappa Chettiar himself.

No. 11.
Further
Proceedings.
—contd.

10 The consideration of Rs. 152,250 on R5 is shown at page 285. The cross entry for that appears in the same page. Natchiappa Chettiar's folio is debited and the firm's folio is credited. There was no actual cash transaction in respect of that. That too is a book entry. The credit and debit are under date 24th March, 1926 (marked A6b). These very entries are reversed on the 30th March, on the same folio. The entry was made in order that there might be a record of the transfer deed. Similarly that Rs. 15,000 (A6a) referred to earlier has been reversed on the 12th of March, 1926. There again it was done in order to show a record of the deed of transfer.

20 Between the last date and this I have made further search for books in India. All books that I found have been brought to court. The executrix's house is a big house. There are a lot of wooden boxes and almirahs. There, I have searched for account books of various years. All the books that I could possibly produce in relation to this firm I have brought to Court. On the last occasion I said that the day books were in India. I have brought them also here. The Crown has an Indian accountant going through our books. I have allowed him access to all our books.

30 There was a rent receipt book in respect of Majeed's properties that was asked and I said that that book was in India. All those rent books are in Court. I kept a separate account for rents. The total rents were taken into the profits of the firm. All those books are available to the other side for inspection.

I have the 1918-1919 books here. From these books I have been able to find out the capital of the firm. I produce the ledger for the period 1918 to 1921 marked A74. Page 4 (marked A74a) gives the account as "credit account of native places". That shows a portion of the capital of the business—Rs. 437,540 on 31st March, 1919. I produce another ledger marked A75 and at page 63 (marked A75a) appears the account of the firm KM. N. SP. On the 31st March, 1919, the capital is shown as Rs. 350,000. That is also a portion of the capital of the firm.

40 I also produce a press copy book kept by Suppramaniam and Natchiappa, marked A76. At page 337 (marked A76a) there is a letter written by Suppramaniam to the Burma firm, dated the 22nd day of the month of "Markali" in the year "Vipava". According to the calendar the corresponding English date is the 5th of January, 1929.

No. 11.
Further
Proceedings.
—contd.

The executrix is in Court. She has been in Court throughout these proceedings. She was the second wife of the deceased, Nachiappa Chettiar.

(To Mr. Weerasooriya with permission of Court.)

(Shown A74a.) The credit is Rs. 437,540. It speaks of a transfer from an old account. That is to say it appeared in a previous ledger. The earlier book from which this account was transferred is not with me. The debit of Rs. 350,000 referred to has been transferred out of this amount into another account.

Sgd. N. SINNATHAMBY, 10

22.10.46.

A. D. J.

Mr. Chelvanayagam proposes to call Unamalai Atchy and he states that her evidence will relate to the pedigree and the fact that Nachiappa Chettiar and his ancestors lived and owned properties as members of a joint Hindu family.

Mr. Weerasooriya at this stage objects to any fresh evidence being led on this point or on any other point before this Court which had not already been led before the Commissioner. He states, however, that he has no objection to the evidence being led subject to a ruling on this objection at a later stage. 20

Mr. Chelvanayagam states that it is not open to the Crown to raise this objection at this stage of the proceedings quite apart from the validity of the objection on other grounds.

I shall hear arguments on this matter at the conclusion of the case. Subject to such ruling Mr. Chelvanayagam may lead evidence of the witness.

UNAMALAI ATCHY. Affirmed.

Valliammai Atchy, the appellant in this case, is my daughter. I am 64 years. I gave evidence in this Court about two years ago.

My father's name is Sinniah Chettiar and his father's name is Kumarappa Chettiar. Kumarappa Chettiar had two sons, Sinniah and Arunachalam. I do not know that Kumarappa Chettiar. I had not seen him. I was a little child when he died. I do not remember my father. When my father died I was 6 years old. 30

I knew the husband of my daughter Valliammai. I knew his father. My son-in-law's name is Nachiappa Chettiar. His father's name is Suppramaniam Chettiar. Suppramaniam Chettiar was related to me.

Suppramaniam Chettiar and Nachiappa Chettiar were brothers. I did not know their father; I have heard of his name. The father was also Nachiappa Chettiar. That Nachiappa Chettiar and my grandfather Kumarappa Chettiar were brothers. There were four brothers namely Nachiappa, Alagappa, Kumarappa and Udayappa.

No. 11.
Further
Proceedings.
—contd.

10 Suppramaniam Chettiar and his brother Nachiappa Chettiar lived in Sembanur. I know the house in which they lived. Now, in that house the children of Nachiappa Chettiar live. Nachiappa Chettiar I refer to is the son of Suppramaniam Chettiar. My daughter also lives there. I live separately in the house belonging to my husband.

I know Nachiappa Chettiar, the brother of Suppramaniam Chettiar. I know his children. His oldest son is another Nachiappa Chettiar, the next is Letchumanan Chettiar, the third is Suppramaniam Chettiar, the fourth, Ramasamy Chettiar and the fifth, Saminathan Chettiar. Of these only Saminathan Chettiar is now alive. Saminathan also lives in the same house as the executrix and her children.

20 Suppramaniam Chettiar and his brother Nachiappa Chettiar lived together in one house, Suppramaniam Chettiar occupying the northern portion and Nachiappa Chettiar the southern portion of that house.

I have heard of a system called joint Hindu family system. Nachiappa Chettiar and his brother Suppramaniam Chettiar belonged to the same family. They are now living separately one on north and the other on the east portion of the house. At the beginning they may have lived together. I know that they lived together.

30 The younger brother Suppramaniam Chettiar had one son called Nachiappa Chettiar, that is, the testator.

Suppramaniam and Nachiappa lived together as one family. They lived together, cooked together and had their meals together. I was born at Sembanur in the same house, that is the old house. The house has been re-built now.

I know that Suppramaniam Chettiar had a business in Ceylon. Suppramaniam Chettiar and his brother Nachiappa Chettiar came to Ceylon and attended to that business in turn. At that time Suppramaniam Chettiar and his elder brother Nachiappa Chettiar had business connections in Ceylon.

40 (Further hearing for tomorrow.)

Sgd. N. SINNATHAMBY,
A. D. J.

22.10.46.

Appearances as on the last date

UNAMALAI ATCHY. Affirmed.

(EXN. in chief—*contd.*)

My husband is dead. I have two sons and the eldest is married. My sons and I live together in my husband's house. That is, the married son, the unmarried son and I live together. That is the way people live in South India. My sons did not divide from their father when he was alive.

Yesterday I said that Suppramaniam Chettiar and Nachiappa Chettiar came to Ceylon and attended to their business in turn. These two people divided at one time. Before they separated they lived together. After the division Suppramaniam Chettiar lived with his son Nachiappa Chettiar. The son Nachiappa married twice. His first wife Parawathy Atchy is dead. After her death it was that Nachiappa Chettiar married my daughter. When he married my daughter Suppramaniam Chettiar was alive. Before Suppramaniam Chettiar died my daughter had two children, two sons. Both of them are alive. Valliammai Atchy's two sons were born before Suppramaniam Chettiar died. They are Ramasamy and Manikam. Manikam is in Court. 10 20

Before Suppramaniam Chettiar died his son, Nachiappa, his wife and sons all lived together. Nachiappa had daughters by his first marriage who got married. Before they married they lived together with Nachiappa Chettiar and Suppramaniam Chettiar. After they married they went away with their husbands.

X X N

I reside in Nachipuram, seven miles from Sembanur. I have been residing in Nachipuram for about 40 years. I used to go to Sembanur on special occasions like weddings, funerals and almsgivings. 30

I knew Suppramaniam Chettiar father of Nachiappa Chettiar. I also knew Suppramaniam Chettiar's brother Nachiappa Chettiar. Both of them were living in one house in Sembanur. Their father Nachiappa Chettiar was also living in that same house. It was a very large house. The Natukotai Chetty community invariably lived together like this with their families.

As regards the business dealings of Nachiappa Chettiar and Suppramaniam Chettiar, sons of Nachiappa Chettiar, I had no knowledge at that time. Later I knew that each of them remained in Ceylon for two years by turn and attended to their business here. I do not know the vilasam of that business. I know the particular place where they carried on their business. I do not know with what assets that business was started and carried on. 40

Nachiappa Chettiar, brother of Suppramaniam Chettiar, died about 34 or 35 years ago. I do not know what happened to the business that was conducted by Suppramaniam Chettiar and Nachiappa Chettiar. I only knew that they came to Ceylon to carry on that business. Up to the time of Nachiappa Chettiar's death he continued to live in that house. His brother Suppramaniam Chettiar also continued to occupy a portion of that house. His son Nachiappa Chettiar also occupied a portion of that house.

No. 11.
Further
Proceedings.
—contd.

- 10 I heard of a separation of a property held jointly by Nachiappa Chettiar and Suppramaniam Chettiar. The division took place on the decision of arbitrators. I was not present when any deed of partition was signed or any ceremony in connection with that. If there was a separation of property still these people will continue to occupy the same portion of the house in which they lived. In other words they did not move out from one portion and start to occupy another portion of the house.

- 20 Q. Among the Natukotai Chetty community the different members of the family continue to live in the house notwithstanding the property ceasing to be joint property.

A. Whatever they earned they kept together jointly. They cook together, they eat together and live together.

Re-examination. Nil.

Sgd. N. SINNATHAMBY,

23-10-46.

A. D. J.

- 30 Mr. Chelvanayagam moves to read in evidence the evidence given by Vyraavan Chettiar's son, Nachiappa Chettiar, on the 10th of November 1942 and the 16th December, 1942, before Mr. James Joseph, a Judge of this Court. He states that the witness' evidence had been taken *de bene esse* and that he is now dead.

Mr. Chelvanayagam refers to the proceedings of the 10th of November 1942. He refers to the proceedings of the record. He also refers to the Judge's note at the end of the examination in chief. He refers also to proceedings of 16th December, 1942.

He submits that excepting for the fact that the words *de bene esse* were not used, everything else was done to show that the recording of the evidence was done *de bene esse*. He refers to section 178.

- 40 (At this stage Mr. Weerasoriya states that his position is that the evidence was not taken *de bene esse*.)

Mr. Chelvanayagam submits that the words "before trial" means either before the date on which the trial was commenced before me in which event the evidence would have been recorded

before the trial, or they mean before the date on which proceedings commenced before Mr. James Joseph. If the latter, the evidence forms part of the proceedings at the trial and could be taken into consideration by me.

He also refers to section 33 of the Evidence Ordinance.

Mr. Weerasooriya for the Crown objects to the reading of this evidence. He submits that section 178 of the Civil Procedure Code has no application because the trial had already commenced. He draws attention to the journal entry of 27-8-41 on which date the case was fixed for the 31st of October and the 18th of November, thereafter the case was called on the 12th September and postponed from day to day and ultimately taken up on the 20th of October, 1942, and on that date was postponed for the 26th of October and on that day further hearing was put off for the 29th of October. He submits that the trial had commenced on the 20th October, 1942. On that day certain preliminary objections were taken and considered. Hearing was adjourned on 20th October for 3rd November and thereafter for 10th November. It was on the 10th November that Nachiappa Chettiar's evidence was recorded. He submits that this means that trial had commenced and that section 178 does not apply. Even if section 178 applies, he submits that there must be evidence that the witness cannot be produced.

Mr. Weerasooriya submits that there may be a statement that the man was dead by a witness but at the time that statement was made this was not relevant and the witness was not cross-examined. He submits the evidence should be affirmative either by a person who saw the dead body or who was present at the funeral and so on. The mere statement that a witness is dead may be a statement based on hearsay.

He also refers to section 88 of the Courts Ordinance.

Mr. Chelvanayagam in reply submits that on the 10th of September 1946 while opening his case he made special reference to the death of this witness. He draws attention to the evidence of the proceedings before me.

Mr. Chelvanayagam states that if the Crown did not accept the position that the man was dead, they should have cross-examined the witness with regard to that.

He submits that the trial commenced when these proceedings started before me. The evidence recorded *de bene esse* will in any event be before the trial.

Mr. Chelvanayagam at this stage states that he will lead some further evidence and I shall make my order with regard to the admissibility of the evidence of Nachiappa Chettiar tomorrow.

Mr. Chelvanayagam now calls:—

S.M.S.P. SOCKALINGAM CHETTIAR. Affirmed.

No. 11.
Further
Proceedings.
—contd.

I am 48 years. I gave evidence in this case earlier. I have been the Manager of the Chettinad Corporation for about 15 or 20 years. The Chettinad Corporation is a limited liability company. It is a very big company. We are carrying on hardware business in Ceylon and also building contracts. The extent of business done in Ceylon is about 20 or 30 lakhs a year.

10 I know the firm of K.M.N.S.P. I knew the deceased Nachiappa Chettiar. I also knew his father Suppramaniam Chettiar. My mother's name is Valliammai. She was a sister of Suppramaniam Chettiar and of Nachiappa Chettiar.

Suppramaniam Chettiar is the father of the testator. In other words the deceased in this case was a cousin of mine.

(*To Court:* My mother Valliammai is a sister of KM. N. Suppramaniam Chettiar. Suppramaniam Chettiar is the father of the deceased testator, KM. N. SP. Nachiappa Chettiar.)

20 Suppramaniam Chettiar's elder brother was also a Nachiappa Chettiar. I do not know the name of the father of Nachiappa Chettiar, Suppramaniam Chettiar and Valliammat.

I have been to the house of my uncles Nachiappa Chettiar, and Suppramaniam Chettiar. They lived in two portions of the same house.

30 I have brothers. All of us belong to the Natukottai community. We are Hindus of South India. We are all governed by the Hindu Law. Amongst us there is the joint family system. At the commencement I was joint with my brothers. Now I have separated. My eldest brother is Nagappa, the second brother is Natchiappa, and I am the third son. Nagappa was the husband of the last witness Unamalai Atchy.

I have sons. My sons and I are joint. I have not separated from my sons. My brother and I divided on a document drawn up between the three of us. The division took place on the decision of four arbitrators. My sons and I are living in the same house holding property together.

40 My uncle Nachiappa Chettiar and Suppramaniam Chettiar were also joint for some time and thereafter they separated. After the division my uncle Suppramaniam Chettiar joined with his son Nachiappa Chettiar. I know that thereafter Suppramaniam Chettiar and Nachiappa Chettiar lived together in the same house. They not only lived together but they had their meals together and held property together. They lived as members of the same family.

No. 11.
Further
Proceedings.
—contd.

Nachiappa Chettiar, son of Suppramaniam Chettiar, had sons by his first wife. After the death of those sons and after the death of his first wife he married the present executrix.

I know the time that Suppramaniam Chettiar died. I was then in Colombo. After his death Nachiappa Chettiar, his wife and sons lived together and they formed a joint family. Nachiappa Chettiar had a sister called Theivanu. Theivanu married one Nachiappa Chettiar. I do not know that Nachiappa Chettiar's father. That Nachiappa Chettiar died.

My uncles Suppramaniam Chettiar and Nachiappa Chettiar and their children are all South Indian Hindus subject to the Hindu Law. 10

X X N

My sons and I live as a joint family together with my unmarried daughters. I am the managing member of that joint family. I own separate property but my children are also entitled to such property. They will inherit it after my death.

Q. Have you any property which does not form part of the joint property?

A. All the property is in my name on the deeds. 20

(To Court: Q. Supposing one of your sons died, your grandchildren will come in with the other sons claiming shares in that in equal proportions?

A. No. The grandchildren will be entitled to the share of the deceased son.)

I am Manager of the Chettinad Corporation and draw a salary of Rs. 125 a month. That represents my own earnings. I can do whatever I like with that money. I can put it in the bank and accumulate it. That will be my separate property. I can invest my accumulated earnings in any business I may own; or I can invest it in the earnings of the joint property. I can do whatever I like. 30

Re-Exn.

To my knowledge KM. N. SP. Nachiappa Chettiar was never employed anywhere. Nor was KM. N. SP. Suppramaniam Chettiar employed anywhere to my knowledge.

Sgd. N. SINNATHAMBY,

23-10-46.

A. D. J.

Mr. Chelvanayagam reads in evidence documents A1 to A6 and closes his case putting in evidence documents P1 and A6 to A76, and also the evidence of Nachiappa Chettiar subject to the order of court with regard to its admissibility. He states that there is no document corresponding to document A7 but by an error it has been marked A8 instead of marking it A7.

No. 11.
Further
Proceedings.
—contd.

Mr. Weerasooriya refers to section 73 of the Estate Duty Ordinance.

10 He cites Mulla (48th edn.) page 228 para 212 also page 236 para 220.

He submits that the burden of establishing that a property is joint property is on the party asserting it.

He states that A8 is only proof of a division of property but not proof that that property was previously joint property. He refers to the acts of Nachiappa Chettiar which shows that he did not regard the property as joint, viz., R4 and R5, the last will of Nachiappa Chettiar, R17, R14 to R16, R13 and R18. He also puts in evidence the affidavit of Nachiappa Chettiar relating to the gift in favour of his three sons.

20 He cites 38 N.L.R. 201.

Mr. Weerasooriya proposes to call Mr. L. G. Gunasekera.

Mr. Chelvanayagam objects to the witness being called on the ground that he was in Court throughout these proceedings.

It is admitted that the witness was in court throughout the proceedings except for last afternoon.

Mr. Weerasooriya submits that it was assumed that Mr. Gunasekera would be of assistance to the law officers of the Crown and the other side should have objected to his presence if they did not wish him to remain in Court.

30 Mr. Weerasooriya states that the witness' evidence in the main will relate to matters of which there are records in writing and that these records would be produced and that nothing with regard to his own personal knowledge will be led.

ORDER

Section 174 no doubt contemplates witnesses being kept out of Court but it is intended to apply to witnesses who speak with regard to facts of which they had personal knowledge, relevant to the issue in the case. Furthermore, it requires that there should be an application or a motion by one of the parties that the witnesses

should be kept out of Court. No doubt, the practice of the Court is for the Interpreter Mudaliyar, without any application by either party to request witnesses to go out of Court into the witness shed.

The witness proposed to be called is an officer of the Income Tax and Estate Duty Department and proposes to give evidence only in regard to facts of an official nature, facts which are borne out by documents which it is proposed to produce.

Furthermore, if the appellant had objection to the witness remaining in Court, he might have at an earlier stage objected to his presence particularly as this witness did give evidence in the earlier proceedings and as his name appears in the list of witnesses. 10

The proviso to section 174 vests the Court with a discretion and I propose, in this case, to exercise that discretion and to permit the witness to be called.

Sgd. N. SINNATHAMBY,
A. D. J.

23-10-46.

L. G. GUNASEKERA. Affirmed.

I am the Acting Assistant Commissioner of Estate Duty, Income Tax and Stamps. I have been Assessor for 12 years. 20

In my file there is a journal entry which reads—" Notice on KM. N. SP. Nachiappa Chettiar sent under Registered post." That was on the 5th September, 1932. R3 was apparently received in reply to that notice. Letter R2 was sent by the Department to Natchiappa Chettiar. In that letter Nachiappa Chettiar was called upon to furnish a declaration and statement of property. In response to that, the declaration R1 was furnished, which I produce. Along with that declaration was sent copies of two deeds R4 and R5. According to the cage in the declaration the deceased left no property whatsoever. In cage D there is provision for information regarding joint property owned by the deceased. The first question in cage D is " Did the said deceased at the time of his death hold any property whatsoever as a joint tenant or on joint account "? The answer to that is " nil ". There is provision for remarks in that statement. There too it is entered as " nil ". 30

(Lunch Interval.)

Sgd. N. SINNATHAMBY;
A. D. J.

23-10-46.

(After Interval)

L. G. GUNASEKERA.

No. 11.
Further
Proceedings.
—*contd.*(Examination in chief—*contd.*)

I have said that the declaration R1 was received in respect of the estate of Suppramaniam Chettiar. The assessment was made by me. It was made on the evidence contained in that declaration.

The income of Natchiappa, the testator, was assessed for the purpose of Income Tax by the Income Tax Department. R36 is a copy of a letter written by N. Sambamurthy, dated 1st October, 1932. I remember having seen the original of that letter.

(Mr. Chelvanayagam objects to the production of the copy O. He submits that when the document was first put, he thought it was the original that was being put to the witness (Ramanathan Chettiar.)

Mr. Weerasooriya states that the original was sent to the Attorney-General's department and was lost there.

Mr. Chelvanayagam states he thought the original was available.

Mr. Weerasooria admits that he did not expressly state that the original was not with him. I shall have to hear evidence to justify the production of secondary evidence with regard to the contents of the original of R 36.

Mr. Chelvanayagam objects to the copy R36 being put to the witness unless the loss of the original is first proved.

The witness is sent beyond the hearing of the Court, and I hear argument with regard to the objection.

At this stage Mr. Chelvanayagam states that subject to the proof of the loss of the original, he has no objection to the witness being questioned with regard to the contents.

Mr. Weerasooriya undertakes to lead evidence with regard to the loss of the original.

ORDER

In the circumstances, subject to proof that the original was lost, I permit the witness to be questioned with regard to the contents.

(Evidence.—*contd.*)

I remember seeing a letter in terms of R36 sent by Sambamurthy to the Income Tax authorities wherein he made a claim that

Nachiappa Chettiar was not a member of a Hindu undivided family. The original was sent to the Crown Proctor in connection with this case.

(To Court) R36 is a copy in the files of the Department. It is a typed copy. The original was a part of the audit report by Sambamurthy. The copy was made by the office. I am aware of the appeals preferred to the Income Tax Board of Review. I am not aware that the original of R36 was placed before the Commissioner of Estate Duty. It was placed before the Board of Review in connection with another appeal, an appeal relating to the assessment of KM. N. SP. for Income Tax purposes. 10

(Shown A63). Subsequently on 29th May, 1933, Sambamurthy wrote another letter to the Commissioner of Income Tax to the effect that the business belonged to a Hindu undivided family of which Nachiappa Chettiar was the managing member. That position was acted upon by the Income Tax authorities, and Nachiappa Chettiar's income was taxed on the footing that he belonged to a Hindu undivided family. Having regard to the provisions of the Income Tax Ordinance, it was more profitable for Natchiappa to have the income taxed on the footing that he belonged to a Hindu undivided family. Subsequently the Ordinance was amended by which incomes of members of Hindu undivided families were subject to an additional tax. At the date of A63 there was no such provision. Subsequently, as a result of investigations made by the Department of Income Tax regarding the gift made by the testator to his three sons, the question of the assessment in respect of Natchiappa Chettiar as a member of a Hindu undivided family was reconsidered. A fresh assessment was made on the footing that Natchiappa Chettiar was an individual. That re-assessment was made somewhere after 29th January, 1940, after the death of Nachiappa Chettiar. An appeal was filed against that assessment by the executrix. I remember the judgment of the Board of Review dismissing the appeal. I produce a copy of that judgment marked R6. 20 30

(Mr. Weerasooriya states he will produce only that part of the judgment which shows that the appeal was dismissed and not the grounds on which the appeal was dismissed.)

An appeal against that order was not preferred to the Supreme Court.

Information was called for by the Department with regard to the gifts made by Nachiappa the tastator to his sons. A claim in respect of amounts alleged to have been paid as interest to the sons was disallowed by the Department, and the assessee appealed against that. We were informed that there was an affidavit sworn to by the assessee and we called for that affidavit. Thereafter, an 40

affidavit was received by the Department. It was annexed to a letter dated 6th June, 1939, and received in the office on 7th June, 1939. The letter was written by Sambamurthy. (It is marked R37.) I saw that affidavit myself. In the letter Sambamurthy stated that he was sending the affidavit for perusal and return. The affidavit was accordingly returned. It was returned by Mr. Burah, an officer of the department. It was not I who returned the document. I do not have the document with me. I have gone through the files; the affidavit is not there. There is a note made by me in the files which reads as follows: "The original may be returned provided a copy is retained." There is also a letter in the files written by Sambamurthy stating that I had discussed the affidavit with him. I have no notes of that interview. I now remember the contents of the affidavit. A copy of the affidavit was made. I have the copy. It was made in the office; I cannot say by whom. The affidavit was returned on 15th July, 1939. My order to retain a copy was made on 13th July, 1939. I can say what the contents of the affidavit were.

No. 11.
Further
Proceedings.
—*contd.*

- Q. What were the contents?
- 20 (Mr. Chelvanayagam objects to any evidence being led with regard to the contents of that document until he is given an opportunity of cross-examining the witness as to his means of knowledge and also until it is proved that the original is missing.)

ORDER

I disallow the question until evidence has been led to satisfy me that the original has been lost. After such evidence has been led I shall give the Crown an opportunity of recalling the witness for the purpose of questioning him with regard to the contents of the document.)

- 30 (Evidence.—*contd.*)

The assertion of fact contained in the affidavit was not accepted by the Income Tax Department. (Shown A69.) This is a notice of assessment for the year ending 31st March, 1938. Note 2 at the back refers to tax paid at source in respect of interest credited to the sons account. As we were not allowing the amount as a deduction on Income Tax, we gave credit for that sum. Tax was actually paid at source in respect of interest credited to the sons. So the assessee was allowed credit for the tax so paid. He was informed by the Department that credit would be allowed on production of the certificates with regard to the tax at source. The Department did not actually allow him credit but informed him that credit would be allowed on production of the certificates. (Shown certain certificates.) These certificates were called for by

No. 11.
Further
Proceedings.
—contd.

the Department. They were sent to the Department by post with a covering letter from Sambamurthy. (Covering letter is marked R38 and the certificates R39, R40 and R41 respectively.) The covering letter is dated 26th May, 1939.

An appeal was filed on the 30th March, 1938. I cannot say whether that appeal was in respect of the assessment made on A69 or on the previous assessment. The appeal was made on the ground that sums amounting to Rs. 42,590 representing interest paid to the sons account under the circumstances already explained had been incorrectly included in the assessment. I produce the original of the petition of appeal marked R42. That appeal was withdrawn by a letter dated 11th May, 1939, which I produce marked R43. Between the date on which the appeal was filed and the withdrawal of the appeal I believe Sambamurthy saw me in connection with estate duty. (Shown declaration marked R7.) This declaration is dated 4th August, 1939. It has been made by the attorney of Natchiappa the testator. According to that declaration exemption was claimed in respect of all the properties left by the testator on the footing that it was property belonging to a Hindu undivided family. I made an assessment on that declaration. In all three assessments were made. The amount of the last assessment was Rs. 290,784.12. The amount of the assessment prior to that was Rs. 278,021.70. Two appeals against those two respective assessments were filed. The appeals are A1 and A2. Apart from those appeals no material was placed before the Commissioner of Estate Duty to prove the contention that the property belonged to a Hindu undivided family. The Commissioner maintained the assessments leaving out about five sums. The amended assessment was Rs. 283,034.62. The present appeal to the District Court is from the order by which that assessment was made.

X X N.

The Commissioner I referred to is the Commissioner for Estate Duty working under the Estate Duty Ordinance. He is also the Commissioner for Income Tax working under the Income Tax Ordinance and also the Commissioner for Stamps working under the Stamps Ordinance. All the three offices referred to are held by the same person and the departments are housed in the same building. I am an officer of the three departments as I have right of excess to the files of those departments.

Natchiappa the testator died on the 31st December, 1938. Up to that date his income was assessed on the basis that he belonged to a joint Hindu family. The additional tax on Income of a joint Hindu family came into operation in 1937 or 1938 the tax being three per cent. of the income. A joint Hindu family was taxed under the category, of a "body of persons" and it was therefore taxed at double the unit rate plus three per cent. At the

time the three per cent. additional tax was imposed by the Income Tax Ordinance on a joint Hindu family exemption from estate duty was granted and another ordinance was passed at the same time for that purpose.

No. 11.
Further
Proceedings.
—contd.

10 I came to know for the first time that exemption was claimed from estate duty for the estate in this case on 30th March, 1939. I came to know that from a letter written by Sambamurthy. I produce the letter marked A77. I received it on 31st March, 1939. A certificate was required from the Commissioner so that probate
20 might issue in the testamentary case. That certificate was never issued. I was the official who dealt with the letter A77. On receipt of that letter I think I had an interview with Sambamurthy. I do not have a note of the interview. I do not have a record of the date of the interview. I wrote to Sambamurthy in reply to A77. The reply is dated 27th June, 1939, marked A78. There I call upon Sambamurthy for a declaration and I point out that a list of all the property must be furnished if a claim is made for exemption. In reply to that declaration R7 was sent dated 4th August, 1939. At the interview Mr. Sambamurthy pointed out that KM. N. SP.
had been assessed for the purpose of Income Tax as a joint Hindu family. Up to the date of the interview I personally did not know the contents of the files relating to KM. N. SP. That was so because I had been working in a branch where I did not deal with those files. I had seen the files before the declaration. I have no note of the date on which I first saw the files. That was done before 10th May, 1939, after the date of letter A77.

(At this stage for want of time further hearing is adjourned for tomorrow.)

Sgd. N. SINNATHAMBY,

30

23.10.36.

A D J.

24.10.46.

ORDER

40 Counsel for the appellant moved to read in evidence the deposition already recorded by my predecessor of Natchiappa Chettiar son of Vyravan Chettiar on the 10th of November, 1942, and the 16th of November, 1942. He contended that this evidence was regarded *de bene esse* under section 178 of the Civil Procedure Code and was therefore admissible in evidence in the proceedings before me. He further submitted it was also admissible under section 33 of the Evidence Ordinance in as much as the witness was dead and had been cross-examined by the Crown when he gave his evidence.

Crown Counsel opposed the application on two grounds. He first contended that the evidence recorded on the dates in question was not recorded *de bene esse* and that if it was sought to produce the evidence under section 33 of the Evidence Ordinance there was insufficient material on which the Court could hold that the witness was dead. On this point there is the definite evidence of the witness Ramanathan Chettiar. It was not merely one single statement that the witness was dead but it was prefaced by evidence to the effect that this witness had been brought from India in order to give evidence before my predecessor that he was cross-examined and that he died about an year ago. All this was intended to indicate that this evidence of death was being led in order to enable that evidence already recorded of Natchiappa Chettiar being produced under the provisions of section 33 of the Evidence Ordinance. The Crown did not cross-examine him on this point and Mr. Chelvanayagam contended that it was for the Crown in view of the affirmative evidence to show that the witness was not dead or to show that Ramanathan Chettiar's evidence of his death was not based on his own personal knowledge. In this connection it must not be forgotten that at the very commencement of the proceedings before me learned Counsel who appeared for the appellant in opening his case stated that this particular witness Natchiappa Chettiar was dead that his evidence was specifically taken *de bene esse* and that he proposed to read in these proceedings his evidence under section 33 of the Evidence Ordinance. In view of these facts and in view of the fact that the witness Ramanathan Chettiar professed to know that the said Natchiappa Chettiar was dead, it was the duty of the Crown, had they contested the fact, to have cross-examined Natchiappa Chettiar on the point, and if they showed satisfactorily that his knowledge was not personal, to have given the appellant an opportunity of leading other evidence on the point. At no stage was it suggested by the Crown that the witness was not dead and in the circumstances I am of the view that there is sufficient evidence on record to establish the fact that the witness is dead. That being so, his evidence is clearly admissible under section 33 of the Evidence Ordinance. The witness was cross-examined and the point in issue was the same in both proceedings.

With regard to the contention that this witness' evidence was led *de bene esse*, there is no doubt material on record in the proceedings before my predecessor to show that the witness' evidence was recorded after the judge had recorded evidence in respect of certain preliminary matters and had reserved his order on these matters. It was not necessary to lead the evidence of this particular witness at this stage to enable the judge to adjudicate on the preliminary issues. After argument of Counsel was heard by the Judge on the

10th of November, 1942, learned Counsel for the appellant applied that this witness' evidence be recorded pending decision of the preliminary matters. He urged that the witness was feeble and old and had come over from India at some inconvenience and that it was not very easy for the witness to attend Court on another day if the case be postponed for a long date. The application was allowed and the witness was examined and cross-examined.

No. 11.
Further
Proceedings.
—contd.

10 The only question is whether this evidence can be admitted under section 178 in view of the provision in that section that evidence *de bene esse* should be recorded after the institution of the action and "before trial". It was contended by the Crown that "before trial" meant before the commencement of the trial and that as the evidence had been recorded by my predecessor after the trial had commenced it was inadmissible. The words "before trial" in section 178 do not appear to have received judicial interpretation. In the corresponding Indian Rules and orders the words "before trial" do not exist. In an ordinary case evidence recorded *de bene esse* is normally recorded before the trial. If it is recorded after the trial, then it would not be evidence *de bene esse* but evidence recorded in the normal course. The difficulty in the present case is caused by the fact that there was a change on the Bench and by the fact that the Crown demanded that all the witnesses be re-summoned and re-heard before me. Section 88 of the Courts Ordinance (Cap. 6) is the enabling section providing for the continuance of an action begun before a judge who is no longer on the bench by his successor. Section 88 specifically provides that where witnesses are re-summoned and re-heard the trial shall be commenced afresh. One must, therefore, infer that the trial proper commenced when the witnesses were first re-summoned and re-heard. If this view of the law is correct then the evidence recorded by my predecessor can be regarded as having been recorded before the trial. If, however, it is contended that the trial commenced before my predecessor I am inclined to agree with the argument advanced by the learned Counsel for the appellant that in that event evidence recorded after the trial commenced would be evidence in the case and cannot be disregarded. Looking at the matter from a different angle, if one can consider the words "before trial" with reference to the issues in the case, it is possible to give the words a reasonable interpretation which would be applicable to the facts of this case. In this particular case there were in fact two trials, one in respect of preliminary issue and the other in respect of the other matters which came up for adjudication. The preliminary matters required only certain evidence of a restricted nature and in order to try them only that evidence was led. The trial in respect of the other matters for adjudication was postponed for a subsequent date and it was in respect of these other matters that the evidence of the deceased witness Natchiappa Chettiar was

No. 11.
Further
Proceedings.
—contd.

led. I think one can reasonably contend that this evidence was led before the trial on those other issues which the Court had not at that time decided to adjudicate upon. In that sense the evidence may be regarded as having been given before trial and therefore admissible in these proceedings.

I am, therefore, of the view that the evidence of Natchiappa Chettiar is admissible both under section 178 of the Civil Procedure Code and under section 33 of the Evidence Ordinance and I permit it being read in evidence.

Sgd. N. SINNATHAMBY, 10
24.10.46. A. D. J.

D. C 10 Special. 24th October, 1946.

Mr. Basnayake, Attorney-General, with Mr. Weerasooriya, Crown Counsel, instructed by Mr. John Wilson, for the Crown.

Appearances for the appellants same as on previous date.

(Order is delivered with regard to the admissibility of the deposition of Natchiappa Chettiar, son of Vairavan Chettiar—vide order annexed.)

L. G. GUNASEKERA. Affirmed. 20

(X X N.—contd.)

In 1939 the assessors who were dealing with the Income Tax in respect of KM. N. SP. were Mr. Burhar and Mr. Rajapathirana. Some time after the date of A77 KM. N. SP. had been assessed for the purpose of Income Tax as a joint Hindu family. Assessment on that basis was not made in the first year of assessment.

After May, 1939, a few of the Income Tax assessments were revised. One revision was made on 7th February, 1940. That revision was made in respect of the assessment for the Income Tax year ending 31st March, 1937. Another revision of assessment was made on 20th March, 1940, for the year ending 31st March, 1940. In 1937 or 1938 an assessment was made for the year 1936/1937 and tax was paid on that assessment. That assessment was revised under the powers conferred by the Income Tax Ordinance to revise assessment for periods up to three years. The basis of that revision was that Natchiappa Chettiar the testator was an individual and not a member of a Hindu undivided family. I do not have the name of the officer who made the revision. The officer who sent the notice was Mr. W. J. R. Mann, the Assistant Commissioner. The revision must have been made by some officer. 40

I am aware that the revision was made for the years ending 31st March, 1937, 31st March, 1938, and 31st March, 1939. The Income Tax Assessor who was attending to that work was in contact with me in my capacity as Estate Duty Assessor. I was dealing with the estate duty files at the time. In other words the estate duty and the Income Tax Assessors were acting in conjunction with each other in connection with the revision of the assessments. It is from the revised assessment in question that the executrix appealed. The executrix maintained that the assessment made on the basis of
10 a joint Hindu family was correct. The Commissioner and the Board of Review held otherwise.

Assessments of Income Tax in respect of K.M. N. SP. have been made since the death of the testator, Natchiappa. Those assessments have been made in respect of his estate. Subsequent to the death of Natchiappa, assessments have been made on the basis that the estate was that of a deceased person. That basis is the same as the basis of a "body of persons"—not the same as "Hindu undivided family". The additional tax is charged in the case of
20 assessment on the basis of a Hindu undivided family. The assessments subsequent to the death of Natchiappa Chettiar referred to were made without addition of the extra tax.

I have said that for the very first year the assessment was made on the basis that Natchiappa was an individual. That assessment was for the year 1932-1933. Immediately that assessment was made there was an appeal against it. That appeal was lodged on 29th May, 1933. The original letter asking for the revision is I think the letter which has been lost. I do not have the original in the files. The claim for assessment on the basis of a Hindu undivided family was accepted on appeal. That claim was accepted
30 on 3rd July, 1933. The order accepting the claim was made by the Assessor Mr. Raju.

Mr. Raju was a member of the Indian Income Tax Department. He was loaned for services in the Ceylon Income Tax Department when the Department began to function. He is an Indian. I am not sure whether he was specially employed to deal with Indian Income Tax returns and assessments. He dealt with many categories of files. I do not know whether he specially dealt with Indian Income Tax returns and assessments. He was in Ceylon for six years. Previously he had been a member of the Indian
40 Income Tax service for a number of years. I do not know whether at the time he was in Ceylon, he was familiar with the joint Hindu family system. I was working in the Estate Duty Department. Previously I was an Advocate. There were also a number of other officers in the Department holding the same qualification. Mr. Raju had experience with regard to Indian Income Tax. He was brought out to Ceylon for the purpose of training other Assessors. At that time neither I nor the other

Ceylonese officers of the Department knew anything about the joint Hindu family system. I do not think Mr. Raju specially dealt with matters relating to joint Hindu families.

There was no hearing with regard to the appeal. Income tax assessments noted in A63 were not produced at the time. They were not produced before Mr. Raju. They were produced later in connection with some other matter. At the time of the appeal there were orders that the Assessor should accept practically anything because the work of the Department was just beginning. The result was that from the very commencement of Income Tax till the death of the testator, Natchiappa, tax was paid on the basis of a Hindu undivided family. The very first assessment on the basis that Natchiappa was an individual was revised. 10

The first claim in connection with the Estate Duty assessment was that the whole estate should be free from duty because it was the property of a joint Hindu family. There was also an alternative claim, viz., that the sums of money shown as the sons' account should be exempted from assessment. I was the Assessor who had to make the statutory decision on the claim that the whole estate should be exempted. From my assessment there was an appeal to the Commissioner, and the alternative claim was made that even if the whole estate was assessable, from that whole estate should be exempted the amounts shown as belonging to the sons. I advised the Commissioner to disallow the appeal, and the appeal was disallowed by him. 20

Q. Your position today is that the amounts shown as the sons' account are not the separate property of the sons?

A. For the purpose of my assessment that matter was not relevant.

Q. In your assessment you have included the amounts shown as the sons' account? 30

A. Yes.

Q. Therefore the amounts were relevant?

A. They may have been given as gifts which did not conform to the requirements of certain sections.

If they were given as gifts they would be assessable. I have assessed the amounts shown under the category of sons account and my position today is that they are assessable for the purpose of Estate Duty. At the moment of assessment I regarded the amounts as the property of the estate, as property that passed on the death of Natchiappa, the testator. Under the Estate Duty Ordinance, estate duty is payable on an estate which passes on death and also on certain property which does not pass on death 40

which is specially categorised. I have treated the property in this case as property that passed on death. I have done that in the present assessment. I was aware in this case that the moneys shown as sons' account has been transferred in the sons' names in 1931. Nevertheless I treated that account as one which was not their separate account. I did not treat it as their separate property.

No. 11.
Further
Proceedings.
—contd.

Q. The Income Tax Department never treated those moneys as the separate property of the sons?

10 *A.* I do not think it is necessary to go into that question for Income Tax purposes.

The department did not treat any income derived from those moneys as income derived by the sons separately.

(*To Court:* In other words on that income I did not assess income of the sons. I assessed KM. N. SP. on the income derived from the moneys in question also.)

20 The firm KM. N. SP. claim a deduction out of their income for Income Tax purposes on account of interest on the items called the sons' account. That was disallowed. I have the return which contains the first claim made by the firm for Income Tax purposes. The deduction was claimed for the Income Tax year 1937-1938. The claim was made in 1938—after 1st April, 1937. It was made in respect of the income for 1936-1937. The return is signed by the agent. In that return the Income for the year in question was given after deducting a sum of Rs. 42,590 which according to the assessee, had been paid to the sons' account as interest. The Assessor disallowed the claim for that deduction.

30 (Shown A69.) This is a notice of assessment for the Income Tax year 1937-1938. The meaning of note (1) at the back is that to the return of income certain items had been added. One of the sums added is a sum of Rs. 42,590, interest paid to the sons' which had been deducted in the return. In that return the assessee had deducted interest as interest paid to certain non-residents. If interest was paid to non-residents tax on that interest had to be paid separately, therefore the assessee paid the tax on that interest. The three certificates I have produced namely, R39-R41 are certificates of payment of income tax to the Department for the years ending 31st March, 1937, and 31st March, 1938. They include the certificates of tax paid to the Department in
40 respect of A69. The source referred to in the documents is Ceylon Income. The certificates were sent to the Department so that credit might be given for the tax paid when recovering the tax assessed in A69. Ultimately, on A69 the Department recovered tax on the basis that no interest was paid to the sons' account by the firm.

No. 11.
Further
Proceedings.
—contd.

The appeal against the rejection of the claim on account of interest was withdrawn. In the result, at no point of time has the assessee KM. N. SP. been allowed any deduction by my Department for payment of interest to the sons account.

(To Court: When I said "my Department" I meant the Departments of Income Tax as well as Estate Duty.)

The Department treated the sons' account as a device for getting the tax payable by the assessee reduced. As the appeal was withdrawn there was no occasion for satisfying the Department that the amount shown as sons' account was separate property of the sons. I personally considered that amount was the separate property of the sons for the purpose of estate duty. I still maintain that position. I only dealt with the property for the purpose of estate duty. 10

Under the Estate Duty Ordinance property gifted by the deceased within three years of his death is assessable for the purpose of estate duty. With regard to property gifted before three years of death however, estate duty could not be levied except under certain circumstances. That property would be taxable where bona fide possession has not been assumed by the donee. 20

In connection with the Estate Duty assessment by me, I never called upon the assessee the executrix to place any evidence before me. I had a number of interviews with Mr. Sambamurthy for the purpose of getting certain matters explained. Every time I requested him or other representatives of the assessee to attend an interview, the request was complied with. When the appeal against my assessment was filed, the Commissioner had to consider the appeal. Before deciding on the appeal, it was open to the Commissioner to call for evidence. He did not call for any evidence to be placed before him. Before he arrived at his finding I put the case up before him. On my case the Commissioner was convinced that the appeal to him should be dismissed. Previously he had heard the Income Tax Appeal similar to the appeal in question. Therefore he did not want anything further to be placed before him with regard to the appeal by the assessee in this case. I was not present at the Income Tax Appeal heard before him but I was present at the appeal before the Board of Review. I was then the Clerk to the Board of Review. 30

The declaration R1 made by Ramanathan Chettiar in respect of Suppramaniam's estate was made in a printed form. When that declaration was made, the Estate Duty Ordinance in force was the Ordinance of 1919. There is no reference in that Ordinance of 1919 to joint Hindu family. 40

Q. At the time the declaration R1 was made there was very little known by the Department in Ceylon about joint Hindu families?

A. I was not in the Department then.

I have been a student of the English law. I know in what sense the words " Joint " is used in the English law, in the Roman-Dutch law and in the Hindu law. I admit the idea of jointness in the Hindu law is different from the jointness in the English and Roman-Dutch law. The declaration R1 speaks of a joint tenant or joint account. It does not speak of any interest which the deceased had in the property of a joint Hindu family. I suppose " joint account " is the same as a joint family account. My interpretation of the item under schedule " D " of R1 is that it refers to
 10 interest in a joint Hindu family in 1932.

No. 11.
 Further
 Proceedings.
 —contd.

Q. I put it to you on 10th October, 1932, not even you a trained lawyer would have thought that column had any reference to joint Hindu family interest?

A. I took it to be any interest in any joint family.

Q. Your position is that declaration by Ramanathan Chettiar was incorrect?

A. No. I do not think it is incorrect.

Q. You intend prosecuting Ramanathan for making that statement?

20 A. I am not aware of any such intention.

Q. You do not say now that he made a false statement in R1?

A. According to the evidence he gave the statement appears to be false.

Q. Therefore you intend prosecuting him for making a false declaration?

A. It depends which evidence is accepted.

Q. If it is accepted that the estate is that of a joint Hindu family you will advise that Ramanathan Chettiar be prosecuted for making the statement in question?

30 A. It is not within my province to advise that.

If the appeal succeeds Suppramaniam's estate will also be liable to estate duty. That may be so in either event. If certain conditions are satisfied I am entitled even now to tax Suppramaniam's estate.

RE-EXD.

R1 is the declaration relating to the estate of Suppramaniam Chettiar. It is dated 5th October, 1932, and it has been signed by Ramanathan Chettiar. That document was forwarded as a result of letter R2 from the Commissioner of Estate Duty to the
 40 Accountant, Mr. Sambamurthy. R2 is dated 29th September, 1932.

No. 11.
Further
Proceedings.
—contd.

(Shown R36.) It would appear from this document that at the same time Sambamurthy was having correspondence with the Estate Duty Department. He was also corresponding with the Income Tax Department regarding the assessment of Natchiappa's income. R36 bears a date which is five days previous to that of R1. According to R36 the position was taken up that Natchiappa Chettiar was a non-resident and did not belong to any Hindu undivided family. Two documents are referred to in R1. Those are documents produced in evidence marked R4 and R5 namely, the assignment of mortgage bonds and the transfer of a quarter share of Kandawala Estate. Letter R2 addressed to Natchiappa Chettiar asked for a declaration and the declaration which followed was R1 by Ramanathan Chettiar the attorney of Natchiappa. In that declaration the position taken up was that Suppramaniam had divested himself of his property at the time of his death and therefore no estate duty was payable. Five days later Sambamurthy has sent R36 claiming that Natchiappa was a non-resident individual and not a member of a Hindu undivided family. That assertion was accepted by the Income Tax Assessor and the assessment was made on that footing. Letter A63 was written by Sambamurthy in May, 1933. What was pointed out in A63 was accepted by the Commissioner and a revised assessment was made. The original assessment (marked R44) was made on 8th May, 1932, assessing Natchiappa as a non-resident individual. The tax assessed is Rs. 8,890.25. The revised assessment after the receipt of A63 was made on the 14th March, 1934. (Revised assessment is marked R45.) According to that assessment the tax payable is Rs. 4,459. That was the total tax. A certain sum was refunded. Natchiappa was taxed as a "body of persons" and the tax payable by him was the sum of Rs. 4,459. The refund did not amount to Rs. 4,459, but to about Rs. 1,300 less. Taxation on the basis of a non-resident individual and taxation on the basis of a Hindu undivided family would not represent Rs. 4,459. Tax on the basis of a body of persons would be Rs. 7,593. The difference in the revised assessment would be the difference between that and the sum of Rs. 8,890.25. For the purposes of Income Tax Natchiappa, the testator, continued to be assessed on the basis of the revised assessment up to the time of his death.

About 1937 a question arose as to the gifts made by Natchiappa, the testator, in favour of his sons. As regards those gifts, the claim in respect of interest was disallowed.

Sgd. N. SINNATHAMBY,
A. D. J.

24.10.46.

(Interval)

(After Interval)

No. 11.
Further
Proceedings.
—*contd.*

L. G. GUNASEKERA Affirmed. (Recalled.)

(Re-examination.—*contd.*)

I was referring to certain assessments made by the Income Tax Department for the purpose of Income Tax where claims as regards amounts paid as interest were rejected. A69 is the notice of assessment for the year ending March 31, 1938. On the back of the notice of assessment the assessee was informed that certain taxes will be set off on production of certain receipts. There was an appeal filed
10 against the assessment represented by document A69 as well as against the assessment for the year 1937-38. It was as a result of assessment that certificates A39 to 41 were produced. Ramanathan Chettiar has stated in evidence, referring to these gifts, that they were mere book entries. That view was put forward before me on the 4th of August, 1939; that will be after the appeals were withdrawn and after an interview with me.

With regard to the appeal relating to assessment for the Income Tax year 1937-38 the Accountant wrote a letter to me dated the 5th April, 1939. I produce that letter marked R46. That letter
20 requested me to put the matter up before the tribunal on the question of only the deduction of interest. I first considered the assessment of the estate of Nachiappa Chettiar for the purpose of estate duty shortly after the 30th March, 1939, after the receipt of the letter R9. When I got this letter I had no other information that the firm of KM. N. SP. referred to in the letter was the same firm of which Suppramaniam Chettiar was the original managing partner. Subsequently I came to know that. In 1940 I was aware of what was happening in the Income Tax Department. In January 1940 I first had information which led me to connect the firm
30 of KM. N. SP. with Suppramaniam Chettiar. Earlier in 1939 I had an interview with the Accountant, that is, between the 30th of March and August. In that connection the Accountant wrote to me letter R8 dated the 4th August, 1939. There was a reference to an affidavit of the deceased which was discussed at the interview. The letter also proceeded to give me the dates of credit of the three accounts entered in the book in favour of his three sons, the last entry being on the 21st of March, 1937, in favour of the son, Suppramaniam. In that interview I indicated to the Accountant what action I proposed to take on the material that had come to
40 my knowledge.

(Mr. Chelvanayagam objects to questions being put with regard to withdrawal of the appeal as he did not suggest anything to dispute that it was withdrawn or propose to do it and he says that these questions do not arise out of cross-examination.)

Crown Counsel states that he is putting these questions in order to explain the withdrawal of the appeal and explain why the sums which were said to be gifts to the sons were included in the assessment.

ORDER

I allow the questions to be put as in the cross-examination the witness was examined with regard to these sums which the assessee claimed to be excluded from his income and which claim was disallowed.)

The appeal was subsequently withdrawn on the 11th of May. 10

Q. What were all the facts before you on which you came to this decision?

The fact that the properties had been purchased by Nachiappa on the deeds and the fact that appeals against the disallowance of the interest from the income tax had been withdrawn.

From the assessment there was an appeal to the Commissioner of Estate Duty. I was questioned as to whether the Commissioner called for any evidence. There is no duty cast on the Commissioner under the Ordinance to call for evidence. In the letter R9 a request is made to certify that the estate of the deceased is not liable to duty under the provisions of section 73 of the Ordinance and no evidence was led before the Commissioner in support of the position taken up by the appellant. 20

I was also asked whether at any time the gifts in favour of the three sons were regarded by the estate duty authorities as the separate properties of the sons and I said no. The assessment of Nachiappa Chettiar's estate was on the footing that he was an individual.

Q. On what footing then were these gifts executed for purposes of estate duty? 30

A. They were not excluded.

Q. On what footing were they regarded as forming part of the estate?

A. As property of which he was competent to depose.

Q. Will you refer to section 6 and say under which provision of that you acted?

A. As a matter of fact I did not definitely decide whether it should be 6 (a) or 6 (b), but as the tax was the same I did not differentiate between the two.

Q. You stated that after the death of Nachiappa Chettiar the estate was assessed for purposes of Income Tax. Will you refer to the provisions of the Ordinance and say under which section the assessment was made? 40

A. Under section 24.

(To Mr. Chelvanayagam with permission of Court.)

R46 is a letter by the Accountant.

No. 11.
Further
Proceedings.
—contd.

Q. There he claimed that interest payable to sons' account falls outside the joint family property?

A. He says that the interest should be allowed as a deduction from the income of the joint family.

Q. Should be charged against the joint family estate?

A. Yes, his position was that the properties were joint family property.

10 I stated that in a later interview I indicated something to the Accountant after which he withdrew the appeals. I haven't got a note of it. I told the Accountant that in view of this position I would have to consider the position of having to assess the gifts for estate duty.

Q. In other words you said you would treat the monies claimed on sons' account as part of the estate?

A. No, at that time I was not in a position to contest the claim that it was joint Hindu family property—so I was going to treat as property gifted. That is, tax them for estate duty on the ground
20 that they were gifts as coming under section 6 (d).

Q. You told the accountant that you would tax these gifts for estate duty under 6 (d)?

A. I would have to consider the position.

One gift was within three years and the other gift may have come under the latter portion.

Q. So that the withdrawal of the appeal by Mr. Sambamurthy would help the position taken up by you?

A. No.

Q. Because by withdrawing the appeal he supports the position
30 that the children had no separate estate?

A. By withdrawing the appeal he took up the position that it was a paper transaction.

Q. In other words in withdrawing the appeal he tried to show that there were no gifts at all?

A. Yes.

Q. By withdrawing the appeal he tried to show according to you, that the sons' account did not exist in reality?

A. Yes.

No. 11.
Further
Proceedings.
—*contd.*

Q. If that is so they should be liable to estate duty?

A. They cannot be.

At the time I did not tell Mr. Sambamurthy that I was taxing the whole estate for estate duty. I said that I was taxing only these gifts and nothing else at that stage. This was in about April 1939. The whole estate except the gifts were part of a joint Hindu family property and these gifts had been paid out of Hindu joint family property. At that time I took up the position that these gifts were taxable to estate duty while the balance of the estate was not taxable to estate duty because that was Hindu joint family property. 10

Sgd. N. SINNATHAMBY,

A. D. J.

24.10.46.

M. M. SAMBAMURTHY. Affirmed.

I am an Incorporated Accountant. I know the firm of KM. N. SP. I did not know the original managing partner. I first acted for the firm in April 1932. From 1932 onwards I acted on behalf of the firm KM. N. SP. for purposes of Income Tax. There were occasions to obtain instructions in my dealings with the Income Tax Department on behalf of the firm. I obtained such instructions either from Ramanathan Chettiar or Letchumanan Chettiar—they were the two attorneys, and some times from Nachiappa Chettiar who was here for a few days. 20

Income Tax was introduced in Ceylon from 1st April, 1932.

(Shown copy of R36.) That is my report which was attached to the account sent for the assessment year 1932-1933. I keep carbon copies of typewritten letters. I do not have my files. They are old files and I sent them to India for safekeeping during the air raids. The copy of R36 shown to me is a true copy of the report I sent. As regards para 2 of the letter, to make that statement I received instructions from Ramanathan Chettiar who was here at that time. That was the first year I took up the work of the firm. That Ramanathan Chettiar is here in Court. He was attorney of Nachiappa Chettiar. On that return certain notices of assessment were issued. In May 1933, I wrote letter A63. That is a letter lodging an appeal against the assessment on the ground that the estate belonged to a Hindu undivided family. At about the same time I had nothing to do with the Estate Duty Department. 30

Suppramaniam Chettiar died in March 1932. I do not know anything about the return sent. 40

On that letter A63 an appeal was taken and the appeal was allowed. The claim was accepted by the Department and he was assessed accordingly.

- In the course of my employment, in connection with the Income Tax work of Nachiappa I had occasion to examine the books and I became aware that certain gifts appeared in the books as having been made in favour of the minor sons. Some of the gifts were there before I looked up the books—prior to 1932. There were credits in favour of some of the minor children. There was an entry in favour of one of the sons Suppramaniam under date 21st March, 1937. Certain questions were raised by the Income Tax Department regarding those credits for purposes of Income Tax.
- 10 When a claim was made subsequently to the interest paid on those credits as an allowance against the profits of the firm, the Income Tax Department queried it and ultimately disallowed it. In that connection I was requested by the Income Tax authorities to produce evidence relating to those credits. I wrote to them saying that there is an affidavit to prove that these credits represented the individual properties of those three minors and on that footing I claimed the interest payments as a deduction from the firm's income. I saw that affidavit. It was by Nachiappa Chettiar the deceased. I do not know the date of the affidavit. I can give the month—somewhere in
- 20 August 1937. I tendered the affidavit to the Income Tax Department on their calling for it. The Income Tax Department subsequently returned it to me with a covering letter. I do not have that covering letter. I cannot remember the date.

Q. Could you say roughly how many months or how many weeks or how many days after you sent it you got it back?

A. It is difficult for me to say.

Q. Could it be in July 1939?

A. If I can have a look at the Assessor's letter.

(Shown office copy of letter dated 15th July, 1939.)

30 (Mr. Weerasooriya marks this letter R47.)

(Mr. Chelvanayagam has no objection.)

I received the original of this letter and the affidavit. I handed the affidavit to Ramanathan Chettiar, I do not know whether it was on that very day or the next day. I sent for Ramanathan Chettiar and handed it back. My memory is rather hazy as to whether the Kanakapulle or Ramanathan Chettiar gave the affidavit to me originally to be sent to the Income Tax authorities. Either Ramanathan Chettiar or the Kanakapulle gave it to me. I am definite, however, that later I returned the document to Ramanathan

40 Chettiar.

(Shown R9.) In connection with the estate of Nachiappa Chettiar I sent the letters R9. In that letter I have claimed that Nachiappa Chettiar was a member of a Hindu undivided family and I have asked that the Commissioner of Estate Duty certify that the

estate of the deceased is not liable to estate duty by virtue of section 73 of the Estate Duty Ordinance. Subsequent to that letter I remember I had an interview with Mr. Gunasekera regarding the estate duty assessment. I do not quite remember whether the existence of an affidavit was discussed at that time.

(Shown letter R8.) I sent that letter to the Estate Duty Department. R8 refers to an interview and that an affidavit was discussed at the interview. Usually I do not keep a minute of the interviews I have. Usually I deal with the results of interviews within a day or two and there is no need to keep minutes. 10

Q. At the time of the interview were there appeals pending under the Income Tax Ordinance from assessment made of the income of Nachiappa Chettiar relating to interests which had not been allowed?

A. Perhaps there was.

It is very likely that an appeal was pending.

I cannot really recollect whether an appeal was filed in respect of previous assessments but in respect of A69 I recollect that an appeal was filed.

(Further hearing adjourned for tomorrow.) 20

Sgd. N. SINNATHAMBY,

A. D. J

24.10.46.

25th October, 1946.

(Same appearances as on the last date)

Errors in previous day's proceedings are corrected by consent.

M. M. SAMBAMURTHY. Affirmed. (Recalled.)

(E X N.—contd.)

On the last date I said that I could not recall in respect of which previous assessments appeal was filed. But I said that an appeal was filed in respect of the assessment set out in A69. It is my impression that this particular assessment was appealed against and not any previous assessment disallowing the claim. According to the notice on A69 the assessee has been asked to produce certain certificates. That is for purposes of adjustment of tax at source against the tax sought to be charged now. Those certificates are R39 to R41 and those certificates bear the signature of Letchumanan Chettiar, one of the attorneys of the firm. Normally I should have filed the appeal against this assessment on the instructions of the local attorney, that is either Letchuman Chettiar or Ramanathan Chettiar. 30 40

I referred to an interview which I had with Mr. Gunasekera.

No. 11.
Further
Proceedings.
—contd.

(Shown R39.) This is signed by me forwarding the three certificates R39 to R41.

(Shown R42.) That is an appeal lodged by me in relation to the assessment year 1937 to 1938. R42 is an appeal against the assessment A69. One of the grounds of appeal is as regards interest. That is ground 3. Subsequently I withdrew 2 of the grounds but I wanted to proceed with the appeal as regards ground 3.

10 (Shown R46.) That letter is written by me. That was also written on the instruction of one of the attorneys. I cannot say which attorney gave the instruction. Subsequently I wrote R43 after my interview with Mr. Gunasekera to the effect that even the 3rd ground has been withdrawn. Two appeals had been filed on the same ground in respect of assessment for two different years. R43 relates to the assessment year 1938-1939.

(Shown letter dated 11th May, 1939.) This was written by me.

(Mr. Weerasooriya marks it R48.)

This refers to the assessment year 1937-1938.

20 In respect of the estate of Nachiappa Chettiar I had written to the Commissioner of Estate Duty, letter dated 30th March, 1939, marked R9 asking that the estate be assessed for purposes of estate duty on the footing that Nachiappa Chettiar was a member of a Hindu undivided family and asking that exemption be given under section 73.

Q. That position will be inconsistent with the appeals filed by you against the disallowance of interest on the instructions given to you by the attorney which appeals you subsequently withdrew?

30 (Mr. Chelvanayagam objects on the ground that it is one of the questions that this Court has to decide and that the witness is questioned with regard to opinion.)

Mr. Weerasooriya now, in view of the objection, alters the question to read as follows:—

Q. Has the withdrawal of the appeals by your letter R48 and R43 anything to do with the fact that you had made a claim in R9?

A. It might have influenced my clients to give me instructions to withdraw the appeals in those two cases.

(It is brought to my notice that R9 has been marked as A77 and A78 is the same document as R10.)

40 I cannot recollect whether the withdrawals of the two appeals in connection with income tax was after the interview with Mr. Gunasekera or at about the same time. If Mr. Gunasekera says that it was after the interview I will not contradict him.

No. 11.
Further
Proceedings.
—contd.

(At this stage Mr. Weerasooriya moves to lead secondary evidence of the affidavit given by Nachiappa Chettiar dated the 19th of August, 1937, which according to the witness, he sent to the Income Tax Department, received it back and handed it to the attorney of Nachiappa Chettiar, viz., Ramanathan Chettiar. Crown Counsel also states that Ramanathan Chettiar has been noticed to produce the original.

Mr. Chelvanayagam admits that Ramanathan Chettiar was noticed to produce the original.

Mr. Chelvanayagam at this stage asks that he be given an opportunity of cross-examining the witness with regard to his assertions regarding this document before secondary evidence is led. 10

ORDER

I allow Mr. Chelvanayagam's application and allow him at this stage to cross-examine the witness only on this question with regard to the loss of this document, in order that I may decide whether secondary evidence of the contents of this document may be led.

At this stage Mr. Chelvanayagam submits that he be allowed to cross-examine the witness generally on all matters and if the court allows secondary evidence of the document to be led, that the Crown lead such evidence in re-examination and that he be given an opportunity thereafter to cross-examine only with regard to the secondary evidence. Crown Counsel has no objection to such a course being pursued. I therefore allow Mr. Chelvanayagam to cross-examine generally. 20

Mr. Weerasooriya says that he has finished the examination of the witness apart from this question of secondary evidence.)

TO MR. CHELVANAYAGAM.

I learnt my accounting in England. I was in England in 1930 and 1931. I spent in all one year, part of 1930 and part of 1931. I returned to Madras in March 1931 as an Incorporated Accountant. Then I was employed under another accounting firm in Madras as a senior assistant. Then I heard that income tax law was to be introduced in Ceylon and that there will be scope for Accountants there and thereafter I came to Ceylon. I came to Colombo for the first time on the 9th April, 1932. Prior to that I had had no knowledge of the Indian Law. It was not one of the subjects for our examination. I had to learn Ceylon Income Tax law after I came here. Since it was based on English Law it was easier for me to learn. I studied English Income Tax law. That was one of the subjects for my examination. In the English law there was no reference whatsoever to joint Hindu family. 30 40

In April 1932 amongst my clients there were a number of Hindus —over 100. At that time the Department sent out a circular to all Accountants signed by Mr. Raju who was Assessor at that time, that in case of all Chettiar firms, Accountants should give certain particulars in the audit report. I do not have one of these circulars.. One of the particulars asked for to be inserted by the Accountant was the name of the firm.

No. 11.
Further
Proceedings.
—contd.

(Mr. Weerasooriya objects to the contents of the document being led.

10 I uphold the objection as the circular itself has not been produced.)

The circular related to Chettiar's business.

When I made my first return in respect of KM. N. SP. I cannot remember whether I had that circular before me. The circular was received not immediately in April 1932 but sometime later. I cannot recollect now whether I had it before me when I prepared this return.

20 I remember this return was prepared in October, 1932. It is likely, from the form in which the report has been drafted, that I had the circular before me. R36 is dated the 1st October, 1932. The circular should be later than April.

(To Court: I do not know the date of the circular. From the way in which the report has been drafted I believe that it was drawn up in accordance with the instructions in that circular.)

30 In the year 1932 or early 1933 I must have sent over 100 returns of Indian assesses in Ceylon. For the first year I must have sent hundred or more returns of Hindus. To all these 100 or more returns I must have annexed audit reports similar to R36. R36 was attached to the accounts prepared by me to which the return of income for the previous year was attached. For the purpose of making these audit reports I had to say whether the Chettiar was an individual or belonged to an undivided Hindu family and if he was an individual I had to say whether he was a resident or non-resident. I had to answer those questions in the report in accordance with the circular.

40 From 1932 up to now I have been practising as an Accountant in Ceylon, in the course of which I have come across cases where questions of Hindu law have arisen but the difficult points arose only recently. In 1939 Mr. Rajapathirana was appointed Acting Assistant Commissioner Unit 1, after Mr. Raju. He sent out a questionnaire and asked that in every Hindu case to get it filled up categorically on the basis of which decisions were later taken. This question of Hindu law was in the Act itself to start with. I cannot say the exact date on which I started knowing these questions but my experience, of course, has grown from day to day. Today I have a rough idea as to what joint Hindu family is. In

1932 when I sent R36 I cannot say that I had a clear idea—it should have been rather hazy. My idea of Hindu joint family now is to a small extent more than what I had in 1932.

Q. In 1932 October when you sent R36 did your Indian clients have a clear conception of what a Hindu undivided family or what an individual was or to distinguish between Hindu undivided family and individual?

A. It is difficult for me to answer that question. I knew next to nothing. I cannot say whether my clients knew all that. I have an appreciation of the distinction between Hindu undivided family and individual today. I could not have had that appreciation in October 1932—not to the same extent as I am having today. 10

Q. To your knowledge did Ramanathan have a clear conception of a Hindu undivided family and individual in 1932?

A. I did not know anything at all myself. I cannot really now recollect whether he appreciated all the implications of it and gave me instructions accordingly. I should have thought that he did.

In making my audit reports I acted on the instructions of my clients. Before I wrote R36 I do not remember whether on this particular occasion I got instructions from Ramanathan. In the ordinary course of business I do not reply to these questions without instructions from my clients. 20

Q. With the result you cannot say what the questions you put to Ramanathan were and what the replies were which made you to write R36?

A. I cannot remember the exact words of my questions to Ramanathan Chettiar or the exact words of his reply. My recollection is that in the usual course I should have put these questions to every client to answer the instructions and then embody them in my report.

I was present in Court when Crown Counsel opened the case for the Crown in this matter. I recollect Crown Counsel mentioning to Court that if a joint family property was partitioned that the partitioned portions were separate property. 30

Q. In 1932 what was your opinion.

A. All those things happened years and years ago, I cannot recollect at what mental state of equipment I was in 1932.

Q. Did you at any time think that when joint family property was partitioned, such partitioned portions were necessarily separate property?

A. Just like that, I had some such conception of Hindu law. 40

Q. Today do you think that when a joint family property is partitioned the partitioned portions are separate property?

No. 11.
Further
Proceedings.
—contd.

A. They are. They will be separate if the new people had no male children. If the divided persons have children they will form the new joint family.

Q. According to your opinion divided portions will be separate property if the divided persons had no children?

A. Yes. When they have male children they automatically form a new family and this property forms the nucleus.

10 Q. Before you wrote R36 it is possible that you put a number of questions to Ramanathan as to whether his principal was divided or undivided and various questions and from those you drew your own inference?

A. I should have had the circular before me, translated the questions to him and got his answers. That is what I should have done. That is what I did in every case.

Q. Is there a question in this form whether the assessee represents a Hindu undivided family?

20 A. There are only three questions, i.e., name of the assessee, full vilasam and whether the business belonged to a Hindu undivided family or to an individual.

The first question I put was whether the business belonged to a Hindu undivided family and I recorded the answer to that. The next question I put was his name—of course I should have asked for his name earlier—and then whether he had any other business interest in Ceylon. Those are the three questions I put in consequence of the instructions contained in the circular. I did not put anything more to find out whether the information he gave me was correct or not or whether he realised what an undivided family meant. I as an Accountant would have done the work in a particular way. From that I think I would have put certain questions. I being very new certainly I should not have gone on my own in those cases. I should not have done anything on my own. When I used words regarding Hindu undivided family my conversation with Ramanathan was in Tamil. The questionnaire was in English. To represent Hindu undivided family the Tamil words used were “Ekak Kudumbam” I do not remember having gone into such details as to whether families were divided or undivided. I went through all these questions with every
30 Chettiar.
40

Q. Did you put any question as to whether a man was an individual or not?

A. That question arose only after I settled the Hindu undivided family matter.

(*To Court:* I did not put that question in all cases. It was only in cases when a man said that he was not a Hindu undivided family that I put that question.)

If he said he was not a Hindu undivided family I would have put the question whether he was a resident or non-resident. Among individuals there were two categories, resident and non-resident. I did not specifically ask him whether he was an individual when he said "no" to Hindu undivided family. It is inferred that he was an individual and then I asked him whether he was a resident or non-resident.

10

At that time Mr. Raju was in the Income Tax Department. He has been a member of the Indian Income Tax service. I used to go and discuss assessments with him. Mr. Raju had been for a number of years in the Indian Income Tax Department. He is from South India. He is a Tamil but he is an Indian Christian. He has been working entirely in South India. He was attached to the Madras Province. In the course of his work he should have dealt with Hindu families. In this case in connection with the appeal from the first assessment I remember to have discussed with him the question of Hindu undivided family.

20

(Shown A63.) That was in May 1933. I sent that appeal to the office in the usual course and I do not now remember whether I had an interview or whether it was settled by Mr. Raju himself. I enclosed the Indian assessment also. About this assessment or the appeal I do not recollect whether I spoke to Mr. Raju. Mr. Raju allowed the appeal on the footing that it was Hindu undivided family property and sent me back the Indian assessment. In other words, he did that on my sending A63 along with the Indian Income Tax assessment. I do not know whether the Indian Income Tax assessment was sent with A63 or subsequently. I am not certain but I am certain that he settled the appeal after seeing the Indian Income Tax assessment. I made this appeal on the instructions given by Ramanathan Chettiar, that is my memory. It may be Ramanathan Chettiar or Letchiman Chettiar. My recollection is that for the first few years Ramanathan was in sole charge. I met Nachiappa Chettiar very much later, round about the date of the affidavit. From the very commencement until the death of Nachiappa Chettiar the estate was assessed as of a Hindu undivided family. I cannot recollect whether the 1937-38 and 1936-37 income tax assessments of Nachiappa Chettiar were revised as on the basis that he was an individual. There were revisions of some of the previous years. My impression is that they were after the death of Nachiappa Chettiar.

30

40

I based the appeal A63 that the estate belonged to a joint Hindu family on the Indian assessment order. The Indian authorities were supposed to have gone through this matter in great detail and from that order we knew that it was Hindu undivided family property. At that time I remember to have seen only one

Indian assessment order relating to this particular assessee applicable to that assessment year. I had a branch office in Karikal, in South India. I sent returns to the Indian Income Tax Office as well.

No. 11.
Further
Proceedings.
—Contd.

Q. For Indian Income Tax purposes as a joint Hindu family the income of all the members of the family are pooled together.

A. It is not quite correct to put it that way. The income out of all the assets belonging to a Hindu undivided family will be assessed as if they were one unit.

10 Q. Even if there were five coparcenaries?

A. The number of coparcenaries makes no difference.

In 1937 or 1938 in respect of the income tax return of Nachiappa Chettiar I claimed deductions of interest supposed to have been paid to the sons account on the basis that they were interests paid to certain non-resident individuals as though they were outsiders. In making that claim as an Accountant I put all the facts before the Income Tax Department and I asked them to come to a decision.

Q. Did you put it before them that there were credits in the books?

20 A. That is also referred to in my report of the 1st October, 1932.

(Shown R36.) Q. Does this not make specific reference to the sons account?

A. General reference to all such items not only to those sums but also similar items in the name of his mother and other people to which interests have been claimed in the book.

Without looking into the document I cannot say now whether the interest paid to the sons were there. They should be there. The question of interest payments to the sons would have mattered in 1932. I do not have the actual return of the accounts.

30 (Shown the account sent with R36.) My position is that in 1932 the sons' interests have been claimed but subsequently disallowed.

(Mr. Weerasooriya marks the account sent with R36 as R49.)

The interests paid to the deceased mother, the two sons, one married daughter and three unmarried daughters were all claimed as deductions in the original return. They were all disallowed in the assessment. Thereafter till 1937 I did not make the deductions in respect of the sons. I claimed deductions again in 1937-38 for that year's assessment. That was also disallowed, on appeal. These amounts appear as credits in the books from 1931 onwards in
40 respect of two of them and from 1937 onwards in respect of the third son. What was given to the third was a portion of what appeared as credit to the first and second sons. That is my impression. I am not certain about that. In 1933 the interests that I

No. 11.
Further
Proceedings.
—Contd.

claimed on the sons' account were disallowed on the basis that they were not legitimate payments out of the business. In examination-in-chief I referred to these amounts as gifts and credits. Apart from the books I know nothing about the amounts credited to the sons. I only knew that there were credits in the books. I cannot say in what circumstances they were made. The Income Tax authorities knew that there were credits in the books in respect of the minor children. I never hid that fact from them, since that fact has been mentioned in the first balance sheet. I believe in subsequent years they were all shown as "own accounts". The book credits in favour of the minor sons should have been known to the Income Tax authorities. One of the reasons for the disallowance of the credits may be because they were artificial or not a payment at all to an outsider. 10

Q. Or that they were not payments at all?

A. It comes to the same thing.

These interests I claimed as deductions from the profits of Nachiappa Chettiar were merely added on to the credits of the sons in the book. If the monies were actually paid the accounts would be debited with the amounts. To my memory there was no such debit in the books. 20

I sent R9 on the 30th March, 1939, to the Estate Duty Office. On that date I claimed exemption from estate duty for the whole estate. At the time I sent that, the appeal from the 1937-1938 income tax assessment was pending. That appeal was on three grounds. On the 5th April, 1939, that is five days after I sent R9, I wrote R46.

Q. Even five days after you claimed exemption from estate duty you maintained the appeal regarding the sons' credits?

A. This appeal was filed on the 5th April, 1939—R9 is 30th March. 30

By R9 of 30th March I claimed exemption from estate duty on the ground that all property left by Nachiappa Chettiar was joint Hindu undivided family property. Before that I had claimed deductions from the profits of Nachiappa Chettiar of the interests paid to the sons. By R46 on the 5th April, 1939, I still maintained that position. I was instructed to maintain that same position.

(Shown R8.) On 4.8.39 I wrote to the Estate Duty Department giving my view of the credits to the sons on instructions. The view expressed in R8 are my own and they were not views expressed on instructions from my clients. I argued that in Hindu law those credits could not be recognized. I first came to that view at about that time, after the interview with the Commissioner was over. At the interview I would have mentioned to the Commissioner that 40

these credits to the sons would not hold good in Hindu law. It is exceedingly likely that I would have argued with the Commissioner on the substance given in R8. According to that particular view in R8 these credits could not be held as separate property of the sons. It was in keeping with that view that I appealed in respect of the credits in favour of the sons.

No. 11.
Further
Proceedings.
—Contd.

The estate of Natchiappa Chettiar is being assessed for income tax now. In that assessment it is not assessed as an estate. I am attending to the Income Tax returns of KM. N. SP. even now.
10 I do not remember whether in that assessment the sons' account is treated as part of the estate.

Q. After the death of Natchiappa Chettiar in 1938 the amounts standing to the credit of the sons are taken as part of the estate?

A. That case hardly arises for purposes of assessment.

All the income of KM. N. SP. firm is assessed for Income Tax. No deduction is allowed for any payment to the sons. That is the basis that is continued after the death of Natchiappa Chettiar. I do not know whether the interests allowed to those three sons
20 have been credited in the books.

(Shown R36 of 5th April, 1939.) On that I claimed the credits to the sons as having been taken out of joint family funds as a result of the alleged gift. Later I changed my view when I wrote R8 on the 4th of August, 1939. On the 4th August, 1939, I took the view that is contained in R8, that is, that the credits to some of the sons would not be upheld by a court of law. In other words, another son to whom gifts were not given can challenge the gifts on the basis that they formed part of the estate.

I sent an affidavit to the Income Tax Department. As far as
30 I recollect I handed it back to Ramanathan Chettiar. I remember to have sent my office peon to call Ramanathan Chettiar to my office to hand it over to him. I have no note anywhere in my books to show that I handed it back. I did not post the affidavit; I did not take a receipt when I handed it. I had not taken receipts even when more important documents were handed back. I heard that Ramanathan Chettiar denies having got that back. I repeat that my memory is that I handed it to Ramanathan Chettiar. I have had dealings with Ramanathan Chettiar for the last 14 or 15 years. He is a very responsible person. I asked him whether I did not
40 hand it back to him. He said that he could not remember having got that affidavit back. I have not been summoned to produce it. My summons was to give evidence. When I came here I knew that I would be questioned about the affidavit.

(*To Court:* I realise the importance of that affidavit. When Ramanathan Chettiar said that he could not recollect having got it back I tried to find it in my files and in places where I was likely to have filed or likely to have placed it and it is not there).

(XXN—contd.)

In 1942 during the raids all my old office records were removed to Karikal in India. They are still there. I sent a telegram last Monday to India to send me all the files relating to KM. N. SP. I have not got the files as yet.

I have a Manager in my office. I go to India but I do not spend 10
half the year in Ceylon and half in India. I cannot say that I used to spend exactly 5/12th of the year in India.

ORDER

I shall now make my order with regard to secondary evidence being led of the affidavit, the original of which is not produced. The evidence is that the document was sent back by the Income Tax authorities to the witness Sambamurthy and that Sambamurthy handed it back to Ramanathan Chettiar. Ramanathan Chettiar denies that he is in possession of the document. It is admitted that he had been noticed to produce it. Mr. Samba- 20
murthy states that in spite of searches made by him he has not been able to find the document. It may be in India. He has sent for his files but these have not arrived.

In these circumstances I hold that the document is not available and has been misplaced or lost by either Sambamurthy or Ramanathan Chettiar, neither of whom seem to be very certain, but speak only from recollection, as to whether the document was actually handed to Ramanathan Chettiar or not. In any event the Crown through no default of their own are unable to produce it in 30
reasonable time.

I accordingly allow secondary evidence to be led.

RE-EXN

I stated that I met Natchiappa Chettiar when he came to Colombo in about August 1937. In order to send the affidavit to the Income Tax Office I obtained it either from Ramanathan Chettiar or Letchumanam Chettiar on a subsequent date. I saw that affidavit. I got a copy of that affidavit myself. It is in my file. Both original and copy were typed in my office. The copy I have is a carbon copy of the original. The copy is not signed or dated. After it was made I had occasion to look into the 40
copy. That copy is a correct copy of the original.

(Mr. Weerasooriya proposes to produce this copy.)

Mr. Chelvanayagam says he has no objection to the production of the copy "for what it is worth".)

I produce the copy marked R50. The original was handed over to them to be signed by Natchiappa Chettiar and dated. R50 is a copy of that original. This is an absolutely identical carbon copy of the original. I can speak to that because I have taken it out of my own file. Quite apart from the copy I have my own recollection of the original. My recollection is that the original contained the same averments. At every stage of my communication with the Income Tax authorities I asked for instructions from the two attorneys. This was a large firm doing a lot of business but there were few employees. They had litigations. They obtained legal advice. They had a Proctor. I do not know Mr. C. T. Kandiah. I cannot say who their Proctors were from 1932 onwards. I came to know Mr. Saheed recently about 4 or 5 years ago.

No. 11.
Further
Proceedings.
—Contd.

(To Mr. Chelvanayagam with permission.)

The original affidavit was to be signed by Natchiappa Chettiar. I drafted it. As an Accountant sometimes I gave legal advice, within the scope of my duties. This was one of those cases. I drafted the affidavit for the purpose of supporting the claim for deduction of interests to the sons. What should have happened was we should have explained to him the position and on his instructions we should have drafted the affidavit. The idea of the affidavit was to support the deduction of interests payable to the sons' account.

Q. I suppose you and Natchiappa put your heads together and drafted the affidavit?

A. Rather I should have explained to Natchiappa Chettiar the implications and Mr. Natchiappa should have explained these things and I asked him to sign an affidavit. That is what I remember to have done.

Q. If the affidavit went through you knew there would be a deduction of income tax?

A. Yes.

I was advising Natchiappa Chettiar on Income Tax matters. No Proctor came in at that stage. The attempt to get a reduction of Income Tax failed.

Sgd. N. SINNATHAMBY,

A. D. J.

25.10.46.

With regard to R36 Mr. Chelvanayagam states that if Crown Counsel says that the original is lost he will accept it. Crown Counsel states that his instructions are that the original has been lost.

In view of this admission no evidence is necessary with regard to the loss of the original of R36.

Mr. Weerasooriya closes his case reading in evidence documents R1 to R20, R24 and R26 to R50.

Mr. Weerasooriya states that the other documents R21 to R23 and R25 have not been referred to in the proceedings before me. He states if he finds that any of these documents have been referred to in the proceedings before me or in the evidence of Nat-chiappa Chettiar, son of Vyravan Chettiar, he will formally mark them at a later stage.

10

For expert evidence on Indian Law and for addresses the case is specially fixed for the 24th to 28 February, 1947.

Sgd. N. SINNATHAMBY,

A. D. J.

25.10.46.

D.C. 10 Special.

24th February, 1947.

MR. ADVOCATE NADARAJAH, K.C., with MR. ADVOCATE CHELVANAYAGAM and MR. ADVOCATE A. MUTTUCUMARU instructed by MR. ZAHEED for the appellant.

MR. H. H. BASNAYAKE, K.C., ATTORNEY-GENERAL, with MR. WEERASOORIYA, CROWN COUNSEL, for the Crown. 20

MR. NADARAJAH calls:—

T. R. VENKATARAMA SASTRI. Affirmed.

I am a member of the Madras Bar. I have been as such since 1899. I was Advocate-General of Madras from 1924 to 1928. I was Law Member of the Madras Executive Council in 1928. I was a member of the Bajpai Commission that came to Ceylon. I am a member of the Hindu Law Reform Committee, under the Chairmanship of Sir B. M. Rahu. That is a Government of India Committee. I was also a member of the Judicial Service Commission appointed to report on the proper relationship that should exist between the Judiciary and the Executive. I am still in the active practice. As Counsel I have had to deal with a large number of matters involving questions of Hindu Law.

30

People in the Madras Presidency are governed by the Hindu Law—by a school known as Mithaksara. There is another school known as Dayabhaga School. There is a third school often referred to as Mithila School which is really a branch of the Mithaksara School. The word “Mithaksara” means a short

commentary, the literal meaning of the word being " few letters ". There is a text book known as the " Mithaksara Text Book ". There is a commentary on this law by Yajnavalkya. That is the law giver's name. The author is known as Vignamiswera.

No. 11.
Further
Proceedings.
—Contd.

I know Sanskrit very well. We have occasions to cite Sanskrit text in Court. The school of law which governs the people in Madras Presidency is the Mithaksara School.

10 There is a very big training community in South India known as Nattukottai Chettiars Community. This community is generally resident in Madura and Ramnad Districts. Most of the Nattukottai Chettiars in these districts are Hindus. They are governed by the Mithaksara School of Law. According to the Mithaksara Text every Hindu family is presumed to be joined. I refer to Mayne, Chapter 8, page 337, 10th Edition—headed " Joint Family ". The joint and undivided is the normal condition of Hindu society. This book was written by Sri Nivasa Iyar, who was also an Advocate-General in Madras.

By the word " joint " it is intended to convey the following :

20 If a person had children born to him, he and they together form members of one joint undivided family. If there were grand-children born in that family they become members of the same undivided joint family. Likewise the great grand-children also become members of the same undivided family.

They together form a unit, something like a corporation, into which people may be born and from which people may die. This unit which changes in personnel is known as " Joint Undivided Hindu Family ".

30 That corporation is not broken until a division takes place. If there is property they may divide property and form separate units and in the division keep it as its own. When they are a unit they earn together, live together, having their mess, worship and property in common. If it divides, they divide it into two corporations of a similar family. This status of Joint Hindu Family cannot be put an end to until there is a partition.

40 The corporation can also cease to exist if all its members die, including the last member. Any subsequent male descendant below the third generation will not be entitled to a share except when the earliest ancestor dies. After son, the grandson and great-grandson would form the coparcenary members of a joint family. The members of that family will include the wives and unmarried daughters. So long as the Joint Hindu Family exists no individual member could be entitled to a definite share in that property. I refer to the case of Apooiy reported in 11 Moor's Indian Appeals, page 75. There can be a Joint Hindu Family which has no property. In such a case all the members earn and bring their property to the

common fund. The property is treated as property of the joint family. The joint character is indicated by their use of their earnings, in the manner in which a joint family treats its property using it for the benefit of the members of the family, without calculating how much any person is entitled to. If one branch of the family, for instance, has many daughters to be married they will spend all the money on that branch of the family. Their food and worship is common. Just as in the Roman Law it is the ancestor that conducts the worship. If only some members earn and the others do not, the earnings will be common to all. The earnings will be used for the joint family as a whole. If a man dies, his sons (2 or 3 or 4) become members of the coparcenaries possessing properties of the father in common. This is in case where the father and sons are already members of the Hindu Joint Family. If a father had four sons who had their own families, that group will form one joint undivided family, and when the father dies the property owned by that group becomes property exclusively of the four sons and their families. If the property of the father and four sons was ancestral property it remains ancestral property on the death of the father. If the father had separate property of his own on his death that also becomes ancestral property in the hands of the sons, and that also forms part of the property. If the father and sons were alive the father's self acquired property did not belong to the corporation in its fullest sense and was owned by the father and the sons would have the possibility of succession to it. By the theory of the texts referred to in this latest edition of Mayne, even if it is self acquired property it is property in which the sons acquire the right by birth but there is nothing to prevent the father from alienating it during his lifetime. If he did not alienate it, it becomes joint family property just like ancestral property. Even though the father might have had control during his lifetime, each member of the joint undivided family apart from having joint property can have his own self acquired separate property. A member of a joint family if he earns any money may without making it available to the common pool of the corporation, either keep that property as a separate property or bring it into the common pool. If he does not put it in, at his death it becomes his ancestral property and comes into the common pool; but during his lifetime he can deal with it as he pleases. If there is family property the presumption is that every item of property of each member of the family is joint property. If he claims it as his own separate property he must prove. A separate property can also be obtained by inheritance, by sources other than from his father. For instance, if the last surviving member of a Joint Hindu Family dies his property goes to some other member of the family and that other member acquires it as his separate property and his brothers and sisters have no right to regard it as property belonging to their Joint Hindu Family.

10

20

30

40

A joint family property can come into existence in the following ways:—

No. 11.
Further
Proceedings.
—Contd.

10 Ancestral property inherited from an ancestor is joint family property of his decendants. Whatever they add to it by any effort of their own business, trade, etc., will be part of the joint family property. Even without ancestral property they can carry on business together and the earnings will form joint property of that family. Even if one of them earns, he can put it in the common pool and make it joint family property. It is generally described in the books as throwing into the common stock.

I may add that a gift may be made to that joint family, e.g., somebody interested in that family may give a property to that joint family and then it becomes a common property of that joint family.

20 If a family divides common properties in place of one property we have now two or three or four families. According to the number of brothers, the property of each of these branches is ancestral property in that sense. Each branch of that family becomes a new corporation. Accretions to ancestral property will also become common property of the common joint family. If a father of a joint family of four sons has separate property, and he gives that property to one of his sons, according to the Madras view the property becomes a property not only of his sons but also his sons' children. In short, it becomes ancestral property of the sons. These matters are dealt with in "Mayne" at page 353, section 275.

I refer to page 356, section 279, where the question of separate property being gifted is being dealt with. At page 357 the author sets out that when a property is ancestral three descendants become entitled to it. That book was issued in 1938.

30 In a case reported in All India Reports, page 195, 1945, Madras, I appeared in this case. In this case I had invited His Lordships of the Madras High Court to refer this question to a Full Bench. This principle was first set out in 24 Madras I. L. R. 429. The Bombay view which was different was not being adopted in Madras.

Hindu joint undivided family divide their property as follows:—

40 They set up separate household, separate worship and separate property. Three essential symbols of a joint family (food, worship and estate) are divided at partition. Generally, this happens when members of a family quarrel among themselves. This process of dividing takes time in the case of a big family. They first separate and live apart and then they appoint arbitrators to help them to divide their property.

In law there is the possibility of their being a partial partition. By partial partition is meant that people who have got several

items of property to divide decide to become divided in respect of some items of property and remain owners of a joint undivided property in regard to the rest of the property, continuing their old status in regard to them. There can be an essential partition in respect of some property and the status of undivided joint Hindu ownership in respect of the rest. It is possible for one member of the family to be separate, undivided. Partial partition can therefore be in respect of—

- (a) Property.
- (b) Member of the family.

10

One chief element of a joint undivided property is that all the expenses of each undivided family account is debited to the common pool, and spending more or less by different members of the family is not a matter of calculation.

No account is taken of any differences of the amounts expended on each member when there is a partition. Generally if in one branch there are several daughters the expenses in respect of these daughters are very heavy while in the case of another branch where there are more children there may be male children to bring money in. All this is not taken into account when there is a partition unless there is an allegation of fraud. Where there is a joint family the conduct or action by any member cannot undo or put an end to the joint family or the joint property except of course if they demand a division.

20

Nattukottai Chettiar families are generally trading families. If say two members of a joint family come to Ceylon and register themselves as partners and carry on business here it does not effect the joint family character. I refer to 46 Madras 673; 70 Madras Law Journal: Page 214, Mayne, page 391, paragraph 304, deals with trading families. Death does not put an end to a trade, but partnership can end with the death of a partner.

30

I refer to page 392 in Mayne. Representation made by members of a joint family in order to deal with constituents does not affect the rights of the joint Hindu family. I may explain.

The members of a joint family who do not directly take part in the conducting of a business are liable to the extent of the joint family property. If they had any separate property it is unaffected by it. But if any member represents himself as a partner in the business his separate property too will become liable for the purpose of partnership. This is set-out in case reported in 70 Madras Law Journal, page 214 (at page 217). A statement by a member of a family that they are divided does not affect the case if the other facts show that they continue to operate as a joint family. I refer to A.I.R. (1936) Privy Council, page 264.

40

There is a case dealing with sales by father to a son both of whom are members of an undivided family. In that it was held (1941 All India Report Privy Council, page 14) that such a thing cannot take place.

No. 11.
Further
Proceedings.
—Contd.

58 Indian Appeals, page 175, also reported in 1931 A. I. R. (P.C.) page 136. It is also referred to in Mullahas, Principles of Hindu Law, pages 269 and 270, 1946 Edition.

10 Where a trading family carries on its business through one of its members in Ceylon on behalf of the Joint Hindu Family, where these trading members in Ceylon for instance carry on business with others as partners then their interest in the partnership is partner of a joint family. Joint family property would be liable for the debts of the entire partnership. For instance two trading families form a partnership, each family's interest in the partnership will be of property of the joint family to which it belongs. I refer to 46 Madras 673 at page 678. I also refer to page 270 of "Income Tax" by Sunderam, 7th Edition, section 2. sub-section 16.

20 The idea of partnership is well known in India today. There is an act called the Indian Partnership Act which generally follows the principles of law of partnership in England. Often the question arises when several people trade together whether their partnerships belong to a Hindu Joint Undivided Family. Often it has to consider the dissolution of a partnership on the one hand and the division of a joint property on the other.

There may be several matters in common between the two. They are distinct and distinguishable in law.

30 I have read through the evidence and the documents led in the case. I have examined the document A8—the partition between Natchiappa and Supramaniam. The original document is in Tamil. The translation is in English. I can read the document in Tamil as well. Reading that document I regard it as a partition between members of their joint family and also partition of their property, the heads of that family at that time being Natchiappa and Supramaniam. I have come to this conclusion for the following reasons:—

40 There is a division of one item of property purchased by A35 for the debt due by the debtor to the firm on dealings between 1876 and 1878. The property was purchased in the name of Natchiappa, the elder brother. There is another property for which no deed is produced, 11/36th share of the same property. Though this property stands in the name of Natchiappa according to the deed they divided it between the two brothers. Charity properties are divided and provision has been made for the charities hitherto managed together, each branch taking up the management of particular items of charity.

No. 11.
Further
Proceedings.
—Contd.

They were living in different parts of their ancestral house in India for the sake of convenience—northern portion to Supramaniam and southern portion to Natchiappa. This division is confirmed in the document; each portion is to become the absolute property of the brother in occupation. That is in the first clause of the document.

Two items of property were sold by their sons who were in Ceylon looking after their business. Each is directed to sell the property and the amount of money fetched from the two houses are distributed as follows: Rs. 2,500 to charities by cash. Expenses are met and the remainder divided between the two parties, by payment to their respective firms which had commenced business by then, the whole document being a division of properties and not dissolution of the firm. 10

One feature which I may add: So far as Natchiappa is concerned he was carrying out a division of his half share between himself and his sons and that is incorporated in the terms of document A8.

I infer from these documents that a son of Supramaniam and a son of Natchiappa were in Colombo carrying out certain directions according to A8. It also indicates that the sons were taking part in this business. If Natchiappa and Supramaniam were joined at a partition two brothers divided the entire property and the children took with their fathers, Natchiappa and his children will take half share and Supramaniam and his sons will take the other half share. According to document A8 the property is divided, one half between Natchiappa and his children and one half between Supramaniam and his children. There was a sort of double partition. As between Natchiappa and his sons it indicates a joint family. It was natural to infer that it was a division of a joint property between Natchiappa and Supramaniam also. It follows logically that if Natchiappa and his sons owned the property as members of a joint family, Supramaniam and his family owned their share as members of a joint family, in the partition for himself taking house and other properties in the village in India Rs. 103,000 or whatever his share, he directs it to be handed over to his sons. This division is not inconsistent with a partition among members of a joint family. A man may take less than his share. A joint family property may be divided in any proportions to which the members of the family consent. If the property was divided by A8 and it fell to Supramaniam as his property a sum of Rs. 103,000 was credited to the firm started by Supramaniam, then Supramaniam's son would have had an interest in that property as member of Supramaniam's family. Even before the division he had an interest in the common property of the family to which Natchiappa, Supramaniam and their children belong. The share that Subramaniam took, he took on behalf of himself, his children and his children's 20 30 40

children. What Subramaniam got on A8 and all enlargements of it had the same character, viz., property of the joint Hindu family. Subramaniam after A8 cannot change the character of the property he got under A8, but he can divide it between himself and his sons. Even if Subramaniam divided it with his sons that property would still continue to have the same character.

No. 11.
Further
Proceedings—
—Contd.

10 In 1926 Subramaniam executed some deed in favour of his son Natchiappa (R4 and R5). I have examined these deeds. The character of the property dealt in the deeds cannot be changed. It will not matter even if he makes representation that the property is his own separate property. It will not affect the character of the property as among the members of the family. It may operate as an estoppel.

Sgd. N. SINNATHAMBY,
A. D. J.

(ADJOURNED FOR LUNCH)

(After Lunch)

T R. VENKATARAMA SASTRI

(Examination in chief—*contd.*)

20 Q. Assuming that before R4 and R5 the properties transferred by those documents were the separate property of Subramaniam and by R4 and R5 those properties had been gifted to Natchiappa what would be the nature of those properties in Natchiappa's hands?

A. In the Madras case in 1945 AIR it shows that they will be ancestral properties in the hands of Natchiappa and his children; he would take the property for himself and for those who are caught up in his joint Hindu family, i.e., only his male descendants.

30 Q. If that is so, Natchiappa would not deal with the property that he got from his father as gift to the detriment of the other members of his family?

A. To the detriment of his sons.

Q. You have seen the evidence in the case; that shows that when R4 and R5 were executed no money or consideration was paid by the sons or father?

A. That is so, I have read the evidence.

Q. Apart from A8 what other evidence, documentary or otherwise, is there in the case from which a Hindu lawyer would draw an inference one way or other, as to the nature of the property?

No. 11.
Further
Proceedings.
—Contd.

A. I have seen the documents A23, A24 and A25—1864, 1869 and 1874 respectively. Those three documents would show that Nachiappa, the 1st son of Kumarappa, was carrying on a business under the name of K. M. N. The two sons born to him continued the business under K. M. N. until 1912, the date of partition referred to in A8. In other words they show a business under the same vilasam in the hands of the father from 1864 to 1912.

Q. What light has that to throw on the nature of the property that K. M. N. had in 1912.

A. It naturally suggests that K. M. N. was the property of Nachiappa Chetty, the two sons joining him during his lifetime and continuing the business after his death, leaving it undivided till 1912. Some small arrangement had been made between the sons in 1891 by way of dividing some properties. From A8 it appears they made the final division in 1912. Until the final division in 1912 the firm had been functioning from the year 1864. During the intervening period the two brothers were living together without distinction from the status of a joint family. Those are the things I can see from the record. 10

Q. If K. M. N. existed at the time of the 1st Nachiappa, son of Kumarappa, and thereafter in the hands of the sons of that Nachiappa can any inference be drawn as to the nature of the property in the hands of the sons? 20

A. It will be joint family property as soon as K. M. N. the first died. The whole property of the family including the firm will become ancestral property in the hands of the two brothers, letting in their sons and grandsons as and when they are born, into the corporation, which is the joint family property of those two brothers.

Q. That is, even if the property that Nachiappa the first, the son of Kumarappa, had with him at the time he was carrying on the firm of K. M. N. was separated in his hands, it would have been joint in the hands of his sons? 30

A. Yes, irrespective of whether it was ancestral or self-acquired.

Q. Regarding the series of documents A13 to A17—these are accounts of the same firm during the period 1895 to 1908—what do the entries there show relating to the nature of the property and the manner in which the property was held by Nachiappa?

A. The expenditure is debited not to the individual account but put down as expenditure charged to the General Account, i.e., expenditure of each of different individuals treated as expenditure of the family, indicative of no distinction between the members of 40

the family in regard to the quantum of expenditure and suggesting that the 2 branches of the family administered their property in the manner in which a joint family would administer it. I say that the documents A13 to A17 have in them the evidence indicating that the property in the hands of Nachiappa and Subramaniam were joint during that period.

No. 11.
Further
Proceedings.
—Contd

Q. There are two documents, promissory notes A21 and A22, that is before the division by A8?

10 A. They indicate that in a joint family although the property stands in one brother's name or another brother's name, it would be joint family property, and A8 gives evidence that they are treating the whole family property as joint, that is the conclusion to be drawn by all these documents I am referring to.

Q. You have seen a series of documents from the Indian Income Tax authorities A50 to A57. What would they indicate?

20 A. A50 to A55 relate to the time of Subramaniam when he was alive. A56 and A57 and A18 and A19 relate to the time after his death. A50 to A55 gives both of them for the year 1926-1927. In the first two documents both father and son are mentioned; in the other documents the father's name is mentioned and he is stated to be a member of a Hindu undivided family. These are indicative of what I otherwise get out of some of the documents, that they are members of a joint family continuing as a joint family; these are the indications of A50 to A55. Subramaniam dies, and we have A56 and A57 which show that Nachiappa continued as joint family; that is what all the other documents show, as to the existence of one corporation called the family. I took these with certain other documents. About A17 documents are transferred by R5. All the properties transferred in R4 and R5 stand in the names of both of them.

30 Q. Do you draw any inference from them?

A. I draw the inference that they were a joint family from 1911 onwards. At a certain stage they began to take the documents together then the father executed R4 and R5 but so far as the income tax authorities were concerned, Subramaniam goes on treating himself as the head of the family.

40 All that appears in that document is consistent with the fact that Subramaniam was the head of the joint family of which he and his sons were members and thereafter it continues with Nachiappa as head of the family. I may add that Subramaniam Chetty sent the figures to the Income Tax authorities as a member of the joint family notwithstanding the transactions of 1925 and 1926 and his name again appears as the head of the joint family in the Income Tax assessments from 1926 onwards up to the time of his death; the first two years his name appears with his sons.

No. 11.
Further
Proceedings.
--Contd.

Q. There is a suggestion made that by R4 and R5 Subramaniam transferred all his interests and properties in Ceylon to Nachiappa and thereafter had nothing to do with the family. Have you seen a number of documents, A26 to A31, addressed to Ceylon to Subramaniam and A32 to A34 after the transactions in R4 and R5?

A. Yes. Similarly the documents A70-A73 deal with the Burma firm, the father still guiding the affairs of the firm; and in a joint family it is the father, normally the head of the family, who does it though members of the family may be deputed to look after its affairs. 10

Q. Often the power of alienation is in the hands of the head of the family?

A. For necessity and for the benefit of the estate. The father has the right to dispose of the property only for the necessities of the family and for the benefit of the family. But the word 'benefit' has been the subject of many contests. There is no absolute right of disposing of the property of the family. The head of the family is called "Karthā".

Q. All these considerations and all the evidence referred to make you infer that the property left by Nachiappa at his death is all joint, property belonging to a joint Hindu family? 20

A. That is the conclusion to be drawn from the above authorities.

Q. Does the Last Will of Nachiappa contradict that inference?

A. His making the will does not affect the conclusion to be drawn from the earlier material. It may turn out to be invalid altogether or it may be that he gave suggestions for the guidance of the family. It does not disprove that a joint family existed before. It rather seems to me that he wanted to give all the properties to his sons as members of the joint family. 30

Q. That is, first of all, from the manner in which he has disposed of the property by the Last Will, he gave all his Ceylon properties to his two sons?

A. Besides making provision for the widow and the unmarried daughters, as far as I remember.

Q. If Nachiappa died leaving immovable property in India, how would that have gone, intestate?

A. To the sons, subject to provision for maintenance for the widow and marriage portions for the daughters. In other words 40

to the very same person to whom the property will go as in a joint family, making provision for those who will be entitled to it in the joint family.

No. 11.
Further
Proceedings.
—Contd.

Q. Quite apart from that, if the property in Nachiappa's hands during his life time was joint property, it necessarily means that it was his property as well as the property of his sons? And such property he cannot will away to the detriment of his sons at his death?

A. He cannot Will away.

10 *Q.* In fact in India questions arise very often as to the validity of the will of a son of a Hindu family and they are held invalid insofar as they go against the provisions of the Hindu Law?

A. In so far as they affect the rights of the sons they may be declared invalid. Without their consent the will has no effect.

Q. At certain years Nachiappa the last credited his sons with certain monies in his account books?

A. Yes, in 1931.

Q. He gave to two of his sons two sums of money and when the third son was born he divided it among all three?

20 *A.* Six years later in 1937 the total amount was divided into 3 parts in favour of the three sons. Those entries have no value. They are not inconsistent with the property being regarded as joint family property under Hindu law.

Q. If the two sums of money were given to two sons in 1931 it cannot be later on divided up among all three?

30 *A.* That is a habit that has been considered by the Indian Courts and decided. There is no provision for advancement in Hindu law. Unless it is proved that the transaction was intended to separate the property to be given to the sons it does not affect the ownership of the property and it is only a paper transaction. In fact the Privy Council itself has laid down a different principle to the doctrine of advancement in England. In England when a father gives property to the son it is intended to be for the son's benefit.

The entries in the accounts here are treated as nominal transfers. I refer to Mayne's Hindu law, 950 where the matter is discussed. In England an exception is made to this rule (Witness reads.) But it has not been extended to Hindu Law.

40 *Q.* In other words, viewing those entries in the ledgers by Nachiappa in favour of his two sons first and then to the third, viewing those entries as a Hindu lawyer, you would not consider them as transfers from the father to the sons?

No. 11.
Further
Proceedings.
—Contd.

A. They carry in themselves the proof that the entries are not intended to transfer. If he had made a gift of 251 and 251 to the two brothers, the third brother could not take any part of it. Therefore it is proof that those entries are merely nominal entries not intended to take effect as gifts made by the father to the sons.

I refer to 6 Moore's Indian Appeals, page 53.

XXD

You said that the joint family consists of father, son, grandson and great grandson?

A. Yes.

10

I referred in my examination-in-chief to the first of the appeals in 11 Moore's 75, in connection with partial partition, that refers to Appuvia's case.

Q. Taking the context of A8 what is a village? The document A8 speaks of 1/8 of a village, towards the end.

A. I cited 11 More only for the conception of the family. In India the concept of the village is not different to that in Ceylon; in this case they are speaking of a village in the possession of a number of people; the whole village belongs to a number of people. One man sells 1/8; the reference is to 1/8 share of an entire village which may be owned by several people—the village land from which income is derived from a number of shares; the village there refers to land in the village.

20

Q. According to this concept of village, land in a village is not owned by one person?

A. It depends on the system adopted. Some people possess land in what is called "shifting severalties", each man possessing a certain share; the villager gathers together all the land and divides it saying, you own this, you own that; after 20 years they pool it together and divide again; there are records indicating what share each man is entitled to; the land is not always given permanently to one person. That was the system of village administration which existed in South India.

30

This document refers to the possessions of this family by reason of purchases and it deals with the land in the village; 1/8 of the village is 1/8 of the distributable land in the village, 1/8 of the land which produces income. The people who hold title would know what exactly that is in extent. That is sufficient conveyance.

Q. Is the word "division" used to separate one's share from the rest or does it refer to the actual separation of the property, in reference to the members of the family?

40

A. They can do both. They can say, you two brothers shall take such and such a portion; even though the property may not be divided the income may be divided into two parts, and it becomes a division of income rather than an actual division by metes and bounds; the actual division by metes and bounds may come later.

No. 11.
Further
Proceedings.
—Contd.

Q. Say, there are 2 members of a Hindu family who have a business from which they get an income of Rs. 1,000 what can they do?

10 A. They may say that this business shall be treated as divided for the purpose of income though the business is carried on by the two brothers; or they can find out what each has taken from the business and decide what each is entitled to. They may decide that the business may be conducted jointly, take no account of diverse expenditure in each case but treat all such expenditure as expenditure of the family; then it will continue as a joint family business. Mayne refers to such a case.

Q. How would they set about the division of the business?

20 A. If they want to carry on the business together, if it was not divided and so long as they continue as a joint family, they won't break the business, they will take the income. But if the business was divided and separated they will begin to keep separate ledgers and expenditure which is not common between the parties would be entered in the account of the person concerned. If it was not divided, the expenditure of both would go to a common item, the expenditure account and the expenditure is not counted as so much on one and so much on the other; the whole expenditure is met out of the estate. In the joint family the books will have one expenditure account and all expenditure will be charged to that, but if the property is divided they will have separate ledger
30 accounts for each member of the family and the expenditure of each will be debited to his account and the share of income of each credited.

Q. If three members divide, but not by metes and bounds?

A. That division means, hereafter I propose to keep my income for myself; if they conduct the business together then they are entitled to definite shares of the income and expenditure is met out of that income. If they make up their accounts at the end of the year, they will say, out of the income you are entitled to so much, you have drawn so much.

40 Q. If three members were carrying on their business together without dividing their income?

A. Their expenditure will be met in common as a joint family and their income and expenditure does not depend on the individual on whom it is expended; but it is the total expenditure of the whole family; it is debited to the family and not to the individual.

Q. If one member takes very much more than all the others?

A. Subject to the manager's control, it becomes the expenditure of the family; the manager is at liberty to give each of the members of the family as much of the income of the family as he pleases, subject to the manager's control over the general affairs of the corporation. It will lead to dissatisfaction and then to division. So long as they are together the difference in expenditure is not counted but treated as expenditure of the family as a whole.

When income is separated or divided the expenditure of each person is put against his ledger and the income of a person is credited to his account; but it is open to a member even if it is divided, if he so chooses, to give his entire income to another, to a member of the family or to any outsider; if the divided member can make a gift to any third party, he can give or sell or devise or make a will of it. 10

Q. The accretions of that separate income, if collected in a bank would be separate particularly after that kind of division?

A. What each man does with it is not the concern of another. What he acquires is his own.

Q. Of three members if one is extremely careful and the others not, one would be in a position to purchase much more property both movable and immovable than the others? 20

A. Yes, after a division.

Q. If he buys immovable property, that would be his separate property?

A. Yes, what he purchases is his own.

Q. While retaining common interest in the property of the family a member can have property separately which he has purchased out of the divided income of the common property?

A. In such a case whatever he acquires is his own; side by side with his joint business there can grow a separate business. 30

Q. When a business is carried on together by brothers who have divided, one of the brothers, being extremely careful, side by side with his common but divided business, he can have business of his own, one or more separate businesses?

A. Yes.

Q. So that members of a family doing common, divided business in India, one may start a separate business in Ceylon, one in Burma one in Malaya.

A. Yes, and also any two of them may carry on a separate business. 40

Q. That business would be called the separate property of that one, two or more persons?

A. Yes.

Q. Is such activity known to the Nattucottai Chetti community?

A. All I can say is that I am not personally aware of such business. But I admit it is possible legally. I have not come across any such Nattucottai Chettiar family.

Q. In this case Nachiappa speaks of the business carried on by him in India and of the business carried on by him in partnership with others?

A. Yes, one man carrying on his own business also carrying on business with another in partnership. I have seen quite a number of cases in which the family has a business of its own and it has a common business with another family in Burma or in Malaya.

Q. Have you come across a case like this where a member of a family carried on business in partnership with a member of another family?

A. If one family can be a trading firm another family can do that.

20 Q. Take the case of Nachiappa the 3rd, the last, who says in his Will (Counsel reads para 3 of R17) a member of a Hindu family trading with another in common as a partnership?

A. This sole business he refers to is not the sole business of himself but the business of which he has a share along with the family. He is not carrying on the business with any definite fraction of the property in his own name but with the joint property belonging to himself and others in common as a member of the joint Hindu family.

30 Q. You said a member of a joint family is free to get from the manager as much money as the manager, without risking a challenge to divide the property, will give?

A. Yes, and if he uses that money to advantage, that advantage is his. If a sum of money is separated from the family, he may use that money and it is his.

Q. Can you extend that to a loan?

A. If the family can lend to a member to carry on a business, then it is his, subject to the obligation to return the money. The size of the loan would depend on the prosperity of the family itself.

Sgd. N. SINNATHAMBY.

A. D. J

Adjourned till tomorrow.

Appearances same as before.

Errors in previous day's proceedings corrected.

T. R. VENKATARAMA SASTRI affirmed.

(XXN contd.)

Q. Can a joint family lend money to a member of that family for the purpose of carrying on business?

A. It can lend; the amount lent depends on the willingness of the parties.

Q. Can the members of a family lend money to its managing member for the purpose of carrying on business? 10

A. It cannot.

Q. Why do you say that?

A. The managing member is the person who conducts the affairs of the family; the managing member cannot lend to himself unless the members of the family who are majors enter into an agreement specifically lending it to the manager to conduct his affairs separately. Otherwise there can be no loan by the manager to himself; if the manager acts for other people he cannot lend to himself.

Q. Can the manager do so with the agreement of all the other members? 20

A. If all the members are adults they can enter into any agreement for a loan or division or anything else.

Q. Adult members of a Hindu family can agree to lead to the manager property of the family for the purpose of carrying on a separate business?

A. Yes, all the other members together being able to agree.

A father cannot assent to a transaction of that kind on behalf of his son who is a minor.

If all the members of the family are adults they can enter into a transaction of that kind with the manager; by adult I mean a person who has attained majority. If there are minors no one can enter into such an agreement on their behalf. The answer is that the adult members of a family can, by agreement. They can agree that the manager shall take money from the family and use it for his own individual purpose. 30

Q. If the family consists of father and son, the son, being a major, can agree with the father that the father shall take as much money as he likes out of the joint property and carry on a separate business?

No. 11.
Further
Proceedings.
—Contd.

A. If they are the only two members of the family that is possible.

Q. The profits of that separate business will be separate property of the manager. He can dispose of that property by will?

A. Yes.

10 Q. He can sell that property at his sole discretion?

A. He can do what he likes with that new business.

(To Court: With regard to this consent, how is that consent to be given? What is the evidence of that consent normally required in Hindu law?)

I refer to Mayne page 375, 2nd sub-para of 294. That passage itself deals with other members than the manager. It was that passage I had in mind when I said that if the parties agree it must be on a definite agreement to prove to the satisfaction of the Court that one member asked for a loan and the other members agreed to give it as a loan for the purpose of carrying on other business. If there is no such proof the presumption is that it is the joint family business carried on with joint family funds).

20

Q. The passage read out from Mayne does not say express consent.

A. It is left to the Court to infer from all the facts of the case.

Q. Hindu law does not lay it down that the consent of the members should be given expressly.

A. What I say is that there must be such evidence as to enable the Court to arrive at a positive conclusion that a business started by one member is upon a contract with other members to the effect that they would lend; otherwise the presumption normally is that it belongs to the joint family, unless it is established to the satisfaction of the court that it is given as a personal loan.

30

Q. (Counsel reads the last sentence of the passage from Mayne.)

A. From the entries in the books they may come to the conclusion that there is a special contract. One has to gather the intention from the evidence in the case and from that the Court may infer either that it is a separate business or that it belongs to the joint family.

In pages 359 and 360 of Naji's Hindu Law last sentence of para 281 there is a reference to the presumption in favour of its being regarded as joint family property. Presumption occurs in many passages—page 373, para 293. If the joint family fund is used for the acquisition of property the presumption will be that the acquisition is to the joint family property unless there is a contract to the contrary in the manner suggested or it is proved.

Q. At the foot of page 375 (Counsel reads).

A. That passage says the intention ' may be ' because that fact alone is not to be taken into consideration, but it has to be taken with all the facts of the case; inference of intention may be drawn or may not be drawn. 10

Q. In the absence of proof of division, which is the legal presumption—the burden of proof that any particular property is joint family property is in the first instance upon the person who claims it as co-parceniary property?

A. Yes.

Q. For an acquisition to be presumed to be joint family property there must be a nucleus admitted or proved ?

A. Yes. 20

Q. And that nucleus must be adequate?

A. Yes.

Q. And that nucleus must come from joint family property ?

A. Yes, nucleus is joint family property.

Q. I want to put to you page 374 section 294 (Counsel reads).

A. It is for the Court to decide whether it is proved by the facts of the case. There is nothing in Hindu law which necessarily requires that agreement should be written down, such special agreement to be in writing.

Q. So that there is nothing in Hindu law which would debar any court from inferring agreement from the course of conduct of the parties? 30

A. Nothing.

Q. I wish to put to you another passage on the same point of Hindu law by Raghavachariar, 3rd edition, p. 284 " there is no presumption in Hindu law that a business....." (Counsel reads).

A. I should say that it is somewhat loosely expressed but it conveys the same idea as the passage in Mayne. In the first instance it has to be proved that there exists a nucleus of joint property

in order to hold that it is joint family property; if there is no evidence of any kind as to joint family property there is no presumption that any property belongs to the joint family. It refers to any property or business.

No. 11.
Further
Proceedings.
—Contd.

Q. What I am seeking to establish is that there is a difference between the joint family business and other joint family property.

A. I am not aware of any such distinction; if it is stated "business" only I do not agree with that view.

10 Q. (Counsel reads). "There is no presumption in Hindu law that a business carried on by a member of a joint family is joint family business". Do you agree with this statement.

A. I agree, but that is not confined to "business" only but in respect of all properties belonging to the members.

Q. Do you agree with this: "Nor is there a presumption that a business carried on by him in partnership with a stranger is joint family business"?

A. I agree.

20 Q. Do you agree with this "unless it can be shown that a business conducted by a member of a Hindu joint family is drawn from joint family property all that he earns from that business..... remains the separate property of the member"?

A. I agree, but not in most cases.

Q. Do you agree that whatever may be the presumption in favour of ownership by the joint family in the case of any other property in the hands of an individual member, no such presumption can be applied in the case of a business conducted by a member?

30 A. I do not agree. If I may explain, it draws a distinction between property and business. The textbook referred to is by a living author. The presumption is laid down in Mayne. I refer to page 337, the opening page of the chapter on joint family, 3rd para from bottom. The idea contained there is embodied in the passage cited with reference to "firm". It applies to all properties. This sentence here applies to "firm" in that passage from Raghavachariar. The next sentence seems to distinguish the presumption in the case of other properties from the presumption in the case of "firm". I don't think there can be such a distinction. This is the latest edition of Mayne on Hindu Law.

Q. I refer to Hindu law by Gupte published in Bombay page 303, Article 73, para 2 (Counsel reads).

40 A. That author's name I hear for the first time today. I agree with what has been said there. I agree that the burden of establishing joint property lies on plaintiff. I agree with the statement

“ where parties to a suit have been proved to be members of a joint Hindu family the onus of proving subsequent separation between them is on the party alleging such separation.”

Q. Do you agree “ in the case of a member of a Hindu family the mere fact that each or any of them has small transactions of his own does not prove that they were necessarily separate ” ?

A. I agree.

Q. Do you agree with this: “ The rule that once it is admitted or proved that a joint family possesses joint property the presumption is that all property held by one or more members of the family is joint family property, provided that such joint property is sufficient to raise a presumption, has been held by the Privy Council not to apply to a trade or business.....” (Counsel reads). 10

A. If it has been so held in 1942, my answer has to be corrected to that extent; if that statement is there in the Privy Council case it corrects my answer.

(Counsel hands over the report of the Privy Council judgment, 42 Privy Council AIR page 18).

A. My answer needs correction to the extent of the Privy Council judgment and shows that Raghavachariar’s statement is correct. 20

Q. At the foot of page 16 “ special consideration apply to the question whether.....” (Counsel reads).

A. I agree, that supports Raghavachariar.

Q. In the light of that Privy Council decision, Raghavachariar’s statement at 284 is correct.

A. Yes. Gupte’s statement is also correct. It is possible that Mayne’s next edition will contain the correction.

One possible explanation I may mention in that case apparently the words “ recover it from the other members of the family,” mean he must prove that it is family business before he can recover it. 30

Q. Do you like to use in the course of your evidence the word “ division ” or “ partition ” ?

A. “ Partition ” is the usual term, “ division ” also may be used. ‘ Division ’ means that properties are still common but the parties have agreed that they will be entitled to definite shares fixed at the moment of the division; they are divided in status but not in property; that is one stage. The next stage is by metes and bounds; allocation of particular properties to particular individuals. In regard to the first it is division in status; the second is partition of all the property. That is the language consistently used in books. 40

Q. At page 91 of 11 Moore, at the foot of the page "It is necessary to bear in mind" (Counsel reads). So that it would appear from that passage that when parties divide in status that division in status is not always followed by a division of the actual property.

No. 11.
Further
Proceedings.
—Contd.

A. That is correct.

The division in status separates them completely so that they no longer form a joint family. Division of status is the same as division of right, as stated in 11 Moore's Indian Law.

10 Q. Where a division in status has taken place, for all ostensible purposes the properties may be managed as if there had been no division?

A. The property may be managed the same as before, but the rights of the joint family will have come to an end by the division in status.

Q. An outsider will not know that a division has taken place?

A. May or may not.

Q. But there can be cases in which the outside world will not know that a division has taken place?

20 A. That is so.

Q. The books may be kept the same as before?

A. They will not be kept the same as before; so far as outsiders are concerned, they may not know; the family knows that they no longer pool their resources together but each will have his own share of income and pay his expenses out of his own share. Division in status involves the division of right in regard to income arising out of the property and definite shares.

30 Q. In such a case, the person who was the managing member before the division in status would, if he continued to manage the property, be acting in a different role?

A. Yes, in a different role; that has been decided by a case in Madras.

Q. A person who was a manager bound by certain rules of Hindu Law would become a person bound by rules of partnership?

A. By the rules of tenancy in common.

Q. But if the property was a business he would be bound by the rules of partnership?

A. Rules very like partnership; if you call partnership I would not object as nothing turns on it.

Q. Then you say that a person who was bound before the division by the rules of Hindu Law would after the division be bound by the rules of partnership?

A. By the rules applicable to partnership. It will be an action of co-tenants for a division of common property. It must be business. The mode of working out the partnership may be the same as laid down in the Partnership Act.

Q. But if after the division the business is carried on by the original members would not a contract of partnership be implied?

A. I do not wish to say so exactly for this reason, that if there were two persons who were dividing and one died, his sons will step into the partnership in the joint family business now separated, but in partnership it will stand dissolved and an action for dissolution must lie. A new partnership is not entered into in a family which carries on business undivided. 10

Q. I do not want to say it is exactly as in the case of a partnership with all the incidents of partnership law, but the mode of working it is exactly the same?

Q. The expenses of the business after the division will be debited to the common fund of the partnership? 20

A. Undoubtedly.

Q. There are no general rules in regard to what expenses should be debited?

A. The expenses of each member will be put into the ledger of that branch.

Q. But there may possibly be expenditure which is treated as common?

A. The business expenses are common; the individual expenses are not common expenses; division of status means that there should be separate ledgers. 30

Q. There is nothing to prevent a combination of persons after the division in status from keeping their accounts in any way they like?

A. They can do so. If there are four sons divided in status they become 4 units. Generally I am prepared to say any deviation of that right is their choice.

Q. There is no hard and fast rule according to which the accounts need be kept after the division in status?

A. I should like to express it this way; the division in status means that the income and expenditure are separate, but there is nothing to prevent their agreeing to do otherwise in any respect. 40

Q. For example a certain item of expenditure, say on clothes, may be debited to common funds?

No. 11.
Further
Proceedings.
—Contd.

A. If they agree they can do so.

Q. Or for instance expenditure on food may be treated as common.

A. They may still continue to live on one mess. By agreement they can do anything they like.

Q. Contributions to charity may come from a common fund?

10 A. Even after the division they may generally not contribute equally to charities.

Q. Cannot a person make an unequal contribution?

A. I have stated, equality is the general rule; inequality may be agreed to; I am stating the law and what is generally done. If a branch of the family did not want to have anything to do with charities the others may carry it on. Unwillingness to contribute to charity may exist in a family; it may be out of five, four may contribute and one may not.

Q. So that the fact that certain expenses are debited to a common account will not lead to any inferences by itself?

20 A. Yes, no inferences by itself.

(To Court: Supposing you take the case of four members of a family, three of them agree to contribute towards a charity, the fourth does not; how will that expenditure be entered in the books?)

A. It will be entered in the accounts of the three in equal portions; in the fourth it will not occur; unless they agree that in such an event they may go to one account. One who does not want to contribute is hardly likely to agree to it.)

Q. I put to you a passage in Gupte at page 304 para 5 foot of the passage (Counsel reads)?

30 “ On partition the trade or business carried on by the joint family ceases to be a joint family business.....an agreement of partnership will be implied.”

A. If that is implied, it will be so.

Q. Do you agree with this passage: “ an agreement among the members of a joint trading family to carry on the family business on the same lines as before partition must be taken in law to constitute a partnership when the joint family is dissolved ”?

A. I agree with that.

Q. So that by examining the books of a partnership of the members of a joint family which has divided in status one cannot draw any inference one way or another?

A. One cannot draw an inference from that fact only.

Q. The fact that outsiders have described that partnership which came into existence after the division in status as a "Hindu undivided family" or "Hindu undivided business" leads to no inference from that alone?

A. If the division is proved, third parties saying that they are Hindu undivided family will not mean anything. 10

Q. Because, as I stated earlier, a division in status may take place without any others than the members of the family knowing anything about it?

A. Possibly. Even in the case of an actual division they may be ignorant of a division. It is possible that members who have divided may continue to be described by others as a joint family.

Q. Does the Hindu Law of India require that a division in status should be evidenced by any kind of document?

A. They may come to a division with or without documents; if it is evidenced by a document there is some difference of opinion as to whether it should be registered. A document is not necessary. 20

Q. Even though a division in status may affect immovable property?

A. Yes. It has been held by the Privy Council.

If there is no writing an intention expressed to the other party may be proved by their living apart or worshipping apart.

Q. So that a division in status may be proved by the subsequent conduct of the parties?

A. Yes, that is so.

Q. If a document is executed at a division need that document be registered? 30

A. The view that it should be registered is the view of the Madras High Court, whether it affects immovables alone or movables in addition; but if it is not registered the whole document may fail.

Q. I draw your attention to the document R17; please look at the original of that document (document sent for).

Till then I put to you this particular passage from Gupte at p. 236 para 8 (Counsel reads). Partition in either sense may be total or partial?

A. I agree. I agree with the whole of it. 40

Q. Whether partition or division of property has been total or partial can be inferred from the conduct of parties subsequent to the partition?

No. 11.
Further
Proceedings.
—Contd.

A. Yes.

Q. Under Hindu Law who can make a Will?

A. A major can make a will. Eighteen is the age of majority. He can make a will in respect of property which he owns, belonging to himself. He cannot make a Will of property in which he has a share as a member of a joint Hindu family.

10 Q. His separate property can be devised to any person he likes?

A. Yes, whether to members of the family or to strangers he can give what he likes.

Q. What would you call separate property?

A. Any property which has come to him individually on division; any property which he might have inherited from a third party but not from father, grandfather or great grandfather; and also his separate acquisitions which are including gifts made to him which he inherits from a third party other than parents.

20 Q. For instance, can a lawyer dispose of all the property he earns as a member of the bar?

A. If he keeps his property separate he can certainly dispose of it.

Q. Or a person who conducts a separate business?

A. Yes, his own business in which no member of the joint family is interested, he can dispose of.

Q. Although he is a member of a joint family he can dispose of the property which is his own, in any way he likes?

30 A. It ought to be in writing; I think a writing is required. The dispositions in the Presidency towns ought to be in writing in accordance with the Succession Act but in the mofussil it is otherwise.

Q. Can you assist me on this point: Is a Will expressed in some other form than in writing bad or inoperative?

A. I don't say bad. I think it requires certain formalities.

Sgd. N. SINNATHAMBY,

A. D. J.

Adjourned for lunch.

(After Lunch)

T. R. VENKATARAMA SASTRI. Affirmed.Cross examination (*contd.*)

Section 57 of the Indian Succession Act of 1925 consists of 11 parts. I refer to part 6. The 3rd Clause applies to all Wills or codicils made after January, 1927. Now all Wills made after 1.1.27 by a Hindu must be in writing in the form prescribed and attested by two witnesses. We have to go to the Hindu Laws to find out who can make the Will. Competency is not governed by the Succession Act. Any competent person executing a Will should execute it in this form. 10

A member of a Hindu undivided family is not competent to execute a Will. Hindu only designates the religion to which he belongs. Whether he is competent to make a Will depends on the Hindu Law. If he makes a Will the form he should follow is prescribed. He must be a Hindu and he must be competent to make a Will.

This Act requires the attestation of two witnesses who have seen the testator sign the document or they should have the acknowledgment of the testator with regard to his signature before they sign. It was required at one time that both witnesses must be present and sign in the presence of each other. I do not know whether that condition is still required. 20

(Shown R17.) This conforms with the requirements of the Succession Act in the making; it has been probated.

There are four witnesses. On the face of it it appears to satisfy the requirements.

According to the Hindu Law a person may dispose of his separate property separately; he cannot dispose of his joint undivided share or interest. He cannot make a Will, he cannot make a gift, but he can sell for a consideration, so far as his share is concerned. 30

Joint family property in no circumstances can be disposed of by Will. The last surviving member may dispose of it, during his period of his sole ownership, but if a child is born the right is gone again.

It has been doubted by the Privy Council that all members can jointly sign a Will, unless it can be supported on the footing that it is by family arrangement. There is an Allahabad case on the point.

Among members of a Hindu undivided family the writing of a Will is not an unusual event. Many members of Hindu undivided families have written Wills that have come before Court, but they 40

have been held to be invalid. A member cannot provide for a guardian of a minor child, he cannot dispose of his property, he cannot provide for the maintenance of his wife, he cannot provide for anything definite, because the right to property ceases after death.

No. 11.
Further
Proceedings.
—Contd.

- The writing of a Will among members of a Hindu undivided family is not an unusual event. There are a number of cases in the reports. The cases in the reports may be unusual. If you take the variety of cases it may be unusual. There are cases in which
- 10 Wills have been executed, but they are few compared with the population of the country. In law a member of a Hindu undivided family, whether he has large or small property, cannot make a Will. There are cases of people leaving Wills, which the Court has to consider valid or invalid. I think there are definite cases about the matter.

Q. When the person makes a Will he would do so only in respect of property which he thinks he can devise by Will?

A. That is not necessary. That is a matter to be decided on the facts of each case.

- 20 The month referred to in the introductory paragraph of the Will is December. The date given lower down in the translation 3.12.38 is correct.

“ With full consent and with full consciousness ” is not entirely correct. It means with full willingness and with full consciousness. My mind follows the act that I am doing. These terms are usually used in Wills. Any villager would draw a Will in that form. The Village “ KURNAM ” (accountant) is the person who usually draws a Will.

- 30 In para 3 of the translation of the Will “ I have at Colombo ” is correct. According to para 3 the writer of the will describes the property of the firm or vilasam of M. N. S. P. as belonging “ to him solely ”. He repeats himself. Emphasis is laid on the expression “ to me alone as sole proprietor ”. The more correct translation would be “ to me alone in my sole right ”.

The expression for the partnership, firm, is “ Kootukadai ”. The firm is referred to as A. R. N. S. P. is correct. The share $\frac{19}{32}$ is stated as $\frac{1}{2}$ plus $\frac{1}{16}$ plus $\frac{1}{32}$. KUTUYAPARAM is the Tamil for PARTNERSHIP. It means carrying on business together, partnership.

- 40 “ KMAR of Sombanur $\frac{3}{8}$ share in common ” is correct. The figures given here are $\frac{1}{4}$ plus $\frac{1}{8}$.

The word KUTUYAPARAM is not repeated in every case.

The 3/8 share of PUDDUWU is referred to as belonging to K. M. A. R. PUDUWU is generally used at the beginning and the share afterwards. For that clause alone, the word means "in common".

The word PUDUAKA is in reference to K. M. A. R. It does not appear in connexion with the shares to which the testator is entitled.

The firm of A. R. N. S. P. consists of the testator and the others having the shares as mentioned and which is at Sambanur.

In the first he refers to KUTUYAPARA and in the Malayan firm he uses the word KUTUKADA both meaning the same thing. 10

In para 4 the same word as is used in para 3 for "to me alone" is used. The house is also referred to as belonging "to me alone". The emphasis is that it belongs to him alone, even with regard to the house.

"I have at Sembanur a money lending business and paddy and kurukkan lands" is correct.

That para 5 is consistent with the properties described in paras 3 and 4 as being the separate property of the testator, is a matter for the Court ultimately. The only thing I will point out is that in para 4 the house also is referred to as his own. Paragraphs 5, 4 and 3 go together and tend in the same direction. 20

Paras 3 and 4 speak of the property as the sole property of the testator.

Q. Para 5 devises that property to the four sons?

A. I do not know. The whole of his property is devised.

Such a devise would be effective if they were his own exclusive property.

(Para 9 read.) The Tamil word meaning belonging to me has been translated as "my own". It might mean "my own". The words used there are "Ennudai Thanathu". 30

Q. According to the direction of the testator in para 9 is it consistent with the property dealt with therein being the separate property of the testator?

A. He proceeds on that basis throughout.

(Para 10 read) "My share" is translated correctly. The whole of the property devised by the Will R17 is dealt with as if it were the testator's own exclusive property.

There is no estate duty yet in India. (Shown paras 6 and 8 of translation of R17.) He is providing out of this property for his daughter and his wife. It is consistent with the rest of the Will. 40

(Shown R4 and R5.)

Q. Does a member of an Hindu undivided family derive any benefit or advantage, in India, by making a Will in respect of his property, if the property which he is seeking to devise is joint property?

A. He gains the advantage of disposing of it as he likes. Nothing else. What else can a dying man have. He wishes that his last intentions should prevail in respect of the property. That is the desire.

10 Earlier in my evidence I said that there have been several cases in the Courts where Wills have been made by a member of an Hindu undivided property and the right of the testator in each of those cases to will has been questioned in the Courts. The contest in those cases centred round the capacity of the testator to gift the property, and also testamentary disputes. Those who impugned those Wills may have been other members of the family—one party claiming that it is joint property and the other party claiming that it is disposable property.

Q. A person who makes a Will even in respect of separate property, as in this case extensive and large property, does lay a certain amount of trouble in store for those who take under the Will?

A. Not in this Will. Generally such contingencies arise. It does not arise in this case. It is given to the same children; provision being made only to those for whom provision can be made.

I admit that a person who makes a Will does lay in trouble for those who are mentioned as devisees; in places in which he gives against the law of inheritance it creates trouble for both the devisees and the members of the family.

Q. What is the Hindu Law relating to gifts?

30 A. I think that property that cannot be willed cannot be gifted either. The final decision of the Privy Council in all cases was that joint family property is not to be either gifted or willed. I refer you to 7 Indian Appeals page 181 and 5 Bombay page 48, a decision of the Privy Council in a Bombay case that a person is not entitled to make a gift in Will, or make a gift. I think both these cases are connected. Both cases are referred to in Mayne at page 883 para 749.

Q. What is the property he can give away during his lifetime?

40 A. Out of the joint property he can provide for what are considered necessary duties of the joint family; to set up a daughter in marriage or maintain her until marriage, or give her a dowry. All these gifts can only be made by the manager of the joint family. He decides what should be given and it is given. But otherwise if a man wants to give the whole or any part of his share he cannot do so. He can neither give nor will. If he has separate funds of his own he can do so to anyone.

No. 11.
Further
Proceedings.
—contd.

A gift of money can be given to the donee for essential purposes. The manner of gifting can be a record in books. If the inference is a gift, it can be supported by an entry in the books. For instance, if there is a ledger of the business he can open a page; that will by itself not amount to a gift. Each matter has to be decided on the facts of the case.

A gift may take the form of an entry in a book, but in the case of immovable property a registered deed is necessary. If movables are intended to be delivered a separate account is made. A symbolic delivery may be found in circumstances which show that a gift has been intended. Delivery may be constructive. You can hand over from one to another. If it is intended to be treated separately thereafter it will be stated. 10

I know that in this case the deceased Natchiappa Chetty made an affidavit, in Ceylon. I did not see it. I know he made an affidavit. That says that the children's accounts have been credited with certain sums of money. The affirmant says that he has no right or interest in it. This document coupled with the entries in the books would be sufficient to effect a gift in Hindu Law; if it is intended it can so separate. 20

In this case I see one peculiarity of two sons being credited with their amounts first. If they are gifts they could not be transferred to a third name. Therefore the natural inference that arises is that all these are merely entries made in a book. It is for the Court to decide what is intended by Natchiappa Chetty in regard to this.

A father by his own action can divide between himself and his sons. The division between the father and the sons *inter se* is at the father's discretion. So far as I know that power has not been exercised partially. 30

Q. Is there anything in Hindu Law to prevent such a division being made partially?

A. I cannot cite Indian authorities which say that it can or cannot be made. But if a father wants to divide partially there is nothing so far as Hindu Law. Law books go against it. If it can be done between the sons, it can be done between the father and the son. I refer you to para 446 page 558 Maynes Hindu Law. I know of no case of partial division between father and sons. Such a case has not come up before the Courts. It is only when it comes to Court that I know anything about it. 40

R4 is a transfer by Suppramaniam Chettiar of his share in Kandawala estate to his son for a consideration. It is a disposition of property.

Q. A disposition such as R4 purports to make can be made only by a person owning separate property?

A. A father dealing with his sons or grandsons can give up his share of property to them and walk out of the co-parcenary.

In a joint family any one member can relinquish his share in favour of all the other co-parceners. R4 is consistent with joint property. If it were joint property only a share would be transferred. R4 purports to transfer his half share of the land. That is his entire interests in the property.

No. 11.
Further
Proceedings.
—contd.

Q. R4 is a conveyance for a consideration of Suppramaniam's share in Kandawala Estate—not a share of the family, but half share in the estate?

A. Yes. He sells for a consideration.

10 *Q.* That is consistent with a transfer of separate property?

A. Yes.

I said that a father can also part with his interest in the joint property. It can take the form of this interest.

R4 conveys a fraction; that fraction which the grantor owns.

Q. If it were joint property he would have no right to convey the entirety?

20 *A.* Until a division is made nobody is entitled to any particular share in one sense. In the other sense, the renunciation by the father will take the form of his withdrawing his connexion with the property, or it may be that a half share to which he is entitled today is given up today. I think in reported cases it has taken both forms.

R4 as it is expressed may be a renunciation or may be a transfer, the point of view depending on the conclusion to be drawn.

Q. How does a parent renounce his right to immovable property?

30 *A.* He gives all the property to his sons and does not claim anything. The renunciation may be of all the interests to which the family is entitled or to his own interests. If a division were made and he is entitled to a half share they would get that half share. The renunciation would be that he is given away the half share to which he is entitled.

If a property is transferred by a parent to his son for a consideration on the face of it, it may be a renunciation or a disposition. If it is for a consideration it cannot be a renunciation to a gift.

Sgd. N. SINNATHAMBY,

A. D. J.

Further hearing tomorrow.

26.2.47.

Appearances as before.

Errors in previous proceedings corrected.

T. R. VENKATARAMA SASTRI. Affirmed.

(XXN—*contd.*)

(Shown R4.) This is an absolute sale and assignment by Suppramaniam, the father, to Natchiappa of a certain share in Kandawala Estate.

Q. That document is consistent with the property given thereby being the separate property of Supramaniam? 10

A. So far as the wording of this document goes, yes. So far as the language goes it shows it to be his property. Whether it is joint family property or not would depend on other considerations.

I cannot say that it is inconsistent. On the face of the document it is treated as his separate property.

Q. The execution of a document of this nature in regard to the property of a member of an Hindu undivided family would be consistent with the property being joint property?

A. May be, except that in this document it is treated as his own property. That is the language in this document. 20

It is not consistent with the property being joint family property. I do not say it is inconsistent. The language proceeds on the footing that it is his property. It does not proceed on the footing that it is joint property.

Q. If the 1/4th share of Kandawala Estate which Suppramaniam disposes of by this document was joint property, would he have given this document R4?

A. If it is joint property he could have written this document; he could do so in law and in fact.

Even if it is joint family property this kind of document may be written. I am not answering on the physical point of view. Even in law such a document may be executed in respect of joint property. In law any member of an Hindu family may write a document in this form even if the property were joint property. This may be a document written by a member of a joint family to his co-parceners. In law this document would be taken as a sale. On the face of this document all interest in the property is given up. 30

Q. The execution of R4 by Supramaniam, even if it related to joint property, would have the effect of conveying the title in that property to Natchiappa? 40

10 A. On the face of it, it will convey the property to Nachiappa on this document alone. In law, if it was joint property, and Suppramaniam purported to transfer joint property, it will lose the effect of the transfer; it will give title to Natchiappa as his separate property on this document because the father will have no interest whatever. Natchiappa and his sons will have interests in that property. So far as the face of this document is concerned there is a reference to sale. If it were a sale it will pass the interest of Suppramaniam as the father to Nachiappa and his children who would constitute the joint family. As I said earlier the relinquishment that a man makes should be made in favour of all the other members of the family. That is the law. It can only be given, in law, to Nachiappa and all his children together. The father's interest would be cut off. The rest is family interest.

20 I have said earlier that a member of an Hindu joint family had no right to convey property belonging to the family either by devise or by will. A member of a family relinquishing property in favour of the other members of the family only withdraws his interests. Withdrawal of interest is made by renunciation or by gift of whatever interest he has in the property to the other members of the family. He cannot take the property and give it to another. Relinquishing in favour of others is not considered to be a gift.

Q. What would you call such an action as you described of a member of an Hindu undivided family?

A. Renunciation is the word used in the books. Some call the document a "release deed".

I would not say that renunciation is a common practice among families. Very old men who would not have anything to do with direct management of affairs do so.

30 In regard to immovable property renunciation in respect of one item of property is not known; there can be no such thing as partial renunciation.

Q. What form does renunciation take?

40 A. It takes two forms. A deed of renunciation may be required if immovable property is also part of the family property and it will require registration. One does not go through the formality of a registered instrument when he takes a small item of property. A formal partition is possible when he takes small items of movable property for himself and says that he has nothing to do with the other property. A man who does not want to take a share of the property can take something and renounce his right to the rest. That can be put through without writing.

Q. Do I understand you to say that if a renunciation affects both movable and immovable property a deed is necessary?

A. Yes.

Q. If it affects movable property alone it can be done by physically parting with the property?

A. That is so far as the law is concerned.

Q. How can a member of a family part with joint property?

A. At a division he can renounce. That division is the form in which renunciation is made by taking a some small movable property, say Rs. 1,000, the rest going to the others. That is done though it is unequal. A person may take some books and say that the other property belongs to the family. Such a thing is provided for.

Q. If there are four members of a family and they have different kinds of movable property including books, how does the member who wants to renounce proceed to do so? 10

A. He takes some property and says that he renounces the rest. He tells the other members, not necessarily descendants, he tells his three brothers that he takes this property and that he does not want anything to do with the rest. It is an oral statement. The rest of the property becomes joint property. A partition by deed would have to be effected if it is immovable property. The member who renounces thereafter drops out of the family. He becomes a separate member. 20

Q. In regard to immovable property the deed would recite " I renounce my right to all the property? "

A. If there is a deed it would say " I renounce all my right, title and interest in favour of all the other members ".

R4 does not purport to be a renunciation.

Q. Nor does *R4* say that the grantor is transferring his share to the property?

A. His right, title and interest.

R4 recites in the schedule an earlier purchase by the grantor. *R4* conveys the entirety of the right, title and interest of the 1/4th share of *Kandawala Estate* which *Suppramaniam* purchased. 30

Q. So that *R4* having regard to what I said earlier on the form and manner of renunciation, cannot be said to be a renunciation?

A. I said that *R4* is not a renunciation. There can be no renunciation of a part of a property. Furthermore, this purports to be a sale. No question of renunciation can therefore arise.

Q. If it is not a renunciation then *R4* is inconsistent with that property being joint property?

A. It is in the form of a sale. A man can sell his share in the property to his own co-parceners. 40

R4 is not inconsistent with the property being joint property. A co-sharer can sell his share of the property to the members of his family or even to strangers. He cannot will, he cannot gift, but he can sell. The purchase price takes the place of the property in the common fund. He can sell his share in the common property to another member of the joint family. He can sell to anyone. It is possible for a member of the family to sell his interest to any one, including a member.

No. 11.
Further
Proceedings.
—contd.

10 A member of an Hindu undivided family can sell his interest in one property at one time and his interest in another property at another time, and the vendees will work it out in a partition suit.

Q. It is possible for a member of an Hindu undivided family who possesses 10 lands to execute conveyances on 10 different occasions to either members or strangers.

A. Such cases have occurred and the vendee will “ work it out ” in a partition suit. A Full Bench has decided this matter.

Q. That property in the hands of the vendee member of a family is separate property?

20 A. It depends from what fund the purchase price is paid. If it is paid out of joint family funds it becomes joint family property. If it is paid from separate money it becomes his separate property.

Q. Having regard to the document A65 which discloses the fact that the vendee on R4 was a co-purchaser with the vendor of R4 of the property in Kandawela Estate would that be consistent with the property being separate property?

A. It may be separate property or it may be joint property. That would depend on other facts.

30 Taking R4 and A65 it depends whether the property purchased on A65 was purchased by two joint family members or two separate people. A65 says that the property was purchased by father and son. Half of the estate was purchased by two people under A65. On the face of it A65 shows that the acquisition was made by two people jointly. It may be joint purchase or a purchase by two people.

Q. As a rule when immovable property is purchased with joint family funds the conveyance is in favour of the manager?

A. May be the manager or may be in favour of the other members.

40 It may be written in favour of the manager only. The manager has the right to make the purchase in his own name, but he may purchase it in favour of the members. There have been occasions of purchases in the names of one or in all the names. I cannot say whether generally the purchase is made by the manager. I have

known a number of cases in which the purchase has been made in the name of the manager only. I think the other form of purchase is also made. I have come across several cases of separate purchase and purchase by two members only.

Q. You said that it was possible for a member of a family to renounce his interest in movable property in a certain way?

A. If movables are the only property renunciation is possible without a writing. If there are immovables also the renunciation with regard to movables is not possible because it is only part of the family property. 10

If the property consists of movables and immovables there can be no renunciation in respect of the movables alone. It must cover the whole property. Nor can there be renunciation in respect of the immovables alone. It must be their own family property. Renunciation by a member must be renunciation in the family property as a whole.

(Shown R5.) This is a conveyance by Suppramaniam in favour of his son Nachiappa of his share in a large number of bonds, all of which except one are in favour of the father and son jointly.

On the face of it R5 is in the same terms as R4. The conveyance is of right, title and interest. All that I said with reference to R4 applies to this also, with regard to its being consistent or inconsistent with joint family property. 20

Q. It would appear from R5 that father and son had separate interests in the bonds assigned by that document?

A. The nature of the interests of the father and the son is not clearly stated in any passage.

Q. This document R5 does not proceed on the footing that the property assigned is joint property.

A. It does not state that it is joint property. It proceeds on the footing that he is entitled to half share. 30

It does not state that it is joint property. So far as the wording goes there is nothing to indicate that it is joint property. Questions that relate to one document alone without reference to all the facts in the case really lead to these inconvenient form of answers that I have to give to the inconvenient forms of questions. It all depends on anterior and subsequent facts. So far as this document is concerned it does not state that it is joint property.

Q. Have you got in India a Business Names Registration Act similar to the Business Names Registration Ordinance in Ceylon? 40

A. If they wish to register the name they can do so. I do not know of any compulsion at law at the moment that they should

register. If there are more than 20 individuals it must be registered. That is the Companies Act I think. The Companies Act lays down that if the number of people joined together is more than 20 it has to be registered. Partnerships need not necessarily be registered.

10 In examination-in-chief I referred to documented A13 to A17. A13A is the translation of document A13. A13 shows that a sum of Re. 1 has been paid to a person called Navanna and also certain expenses to see a drama. Yesterday I said that debiting any kind of expenses to a common fund does not by itself always indicate anything. On the suggestion that they might have agreed to debit expenditure in common even after division, A13 to A17 has no bearing. If it is viewed as a contract between parties even after division they should so expend it in common.

Q. Debiting a member's expenses to the firm can also take place when that member renders some kind of service; works for the firm?

A. Ordinarily, in joint families, except by agreement, there is no payment for the managers.

20 If Navanna was in Ceylon and working in the firm it might have been that the common expenses were borne by agreement. It would be properly debited as expenses of the firm.

It would simplify matters if I say that, if the suggestion is that they might have been divided in 1891, that they were not a joint family from 1891, that they only carried on this business in common up to 1912, it would make no difference whether the division was in 1891 or 1912 as the same legal consequences would follow.

30 I draw the inference that they still retained the joint family status. They do not refer to any property other than these originally divided in 1891. Whether they were divided from 1891 or 1912 the two branches inherit property which began with the grandfather and each of them takes it as the joint family property.

I accede to the suggestion that even if after they ceased to be a joint family they kept accounts in the joint family form. It is difficult to prove.

Q. I say the documents A13 to 17 indicate that the property in the hands of Nachiappa and Suppramaniam were joint during that period?

40 A. Yes. The suggestion that it might be a partnership from 1891 is what I understood there. I do not deny the possibility of an agreement.

Q. Looking at these documents, the expenses of going to see a drama was paid out of the common fund and rail fare was paid out of the firm money?

A. Those are normally things that go into separate ledgers. That is the normal condition one would expect.

No. 11.
Further
Proceedings.
—contd.

(Shown A14.) Interest expenses and rail fare expenses of K. P. to go to Kadugannawa and return may be consistent with expenses of the firm. It may be the expenses of the firm whether divided or not. If Kadugannawa is the place of business he would go on behalf of the firm. I do not draw the inference that A14 does not indicate that the property of Suppramaniam and Nachiappa was joint. It is not inconsistent with the expenditure being firm's expenditure. I have not examined the entries. There is the possibility of an agreement that some of those items which were separate may have been put into the fund by agreement. Parties may have agreed as to what items should be put into the joint expenditure. 10

By agreement all the expenses could have been put against the expenses of the firm. Some of the items for example those in A14A might have been the expenditure of the firm, not personal expenditure of the individual.

(Shown) A21 and A22 are two pro notes of 1907 and 1908, one in the name of one brother and the other in the name of the other brother. On the face of those documents no inference can be drawn one way or the other. That they belonged to a firm could be inferred from other matters, but not from the documents themselves. 20
(Referring to documents A50 to A57 and A52 to A55.) In India under the Income Tax Act prevailing in 1926 Hindu joint families apart from individuals had, I think, the same quantum of tax to pay except when it comes under super tax. Super tax begins in the case of an individual at a lower figure. Individuals were super taxed from Rs. 25,000 and joint families were taxed from Rs. 75,000. They were required to show that they were individuals or joint families. The Income Tax Officer decides one way or the other after making inquiries as are necessary. The rate of income tax alone is the same. The difference arises in super tax rate increases as the income increases. I do not think there is any difference as regards the income tax rates. 30

Q. According to the decisions in India as far as income tax is concerned the declaration or the acceptance of the status of an assessee as an Hindu undivided family is not binding on the revenue authorities in any subsequent year?

A. They can accept the statement one year and modify it the other year under examination. I think it was held that the income tax authorities may hold a firm, a joint family, even though it may have been registered in two names. They may hold that an assessee is an individual despite the fact that in a previous year of assessment they were assessed as a joint family. There is no res judicata in regard to their decisions. 40

The return made for income tax is accepted by the authorities as the basis on which super tax is to be charged.

In India income tax began in the year 1896. Thereafter there have been several Acts. The last consolidated Act was in 1939 with subsequent amendments.

No. 11.
Further
Proceedings.
—contd.

Documents A50 to A57 are for the years 1926 and thereafter.

I say that Suppramaniam had left Ceylon by 1926. On 31st March 1926 he ceased to be registered as a member of the firm.

A52 to A57 are notices of assessment by the Income Tax Department. A50 and A51 are notices of demand.

10 In India an assessee is required to make a return. In his return he is required to state whether he is a member of a Hindu joint family or an individual.

(Referring to document A8) Virethikiruthu mentioned as the year in para 1 I have verified to be 1912. The date ' 29th day of the month Thai in the year Vikurthui ' is 10th February, 1891.

20 First of all there is a reference to a deed of partition whereby a partition was made of debit and credit transactions. That is a partition prior to A8. That partition according to A8 was effected by a deed. I know that that deed is not produced in this case. Then it speaks of the " partition made on the occasion of the house warming ceremony in the house you live in ", the date of which is not given. Prior to the date of A8 there have been two partitions of the property of the people affected by A8. From this document I cannot say that the arrangement at the time of the house warming ceremony was the partition. It is immaterial. The instrument itself speaks of a date of partition and that it was partitioned by deed. Then it speaks of a further partition made on the occasion of the house warming ceremony. That is not apparently treated as a partition, because it says that the agreement which was tentative is now confirmed so far as the house is concerned. The document says " which respectively possess the said respective portions absolutely for ever ". It is made absolute.

30 Q. Am I to understand it to be that what was partitioned in fact was recorded by this document?

A. If that is the way you understand it let it be so. If my inference is wrong and what you state is the fact I have nothing to say. It is a possible construction. If there was a partition earlier, may be a second partition took place soon after.

40 According to Hindu law there need be no deed. If there is a deed it has to be registered. If there is no deed you can make a partition orally. From this it would seem, without any reference to a document, that a partition was made on the day of the house warming ceremony. In contrast with the deed of partition referred to in the opening, there is no deed and no writing. This partition was going on in 1908 and 1910. They agreed that different

individuals were to occupy different parts of the house. It is now confirmed. 'And in accordance with your present respective portions thereof' suggests that they were in possession after the partition.

Q. The partition was made and the persons entitled to the respective shares went into possession under this?

A. When they took possession of the respective portions at the time of the house warming ceremony.

Q. And then they proceeded to build a second hall and a garden in the premises of the back yard? 10

A. Yes. All that is taken into consideration and entered here.

"At your own respective costs" may refer to the expenses of the constructions effected. Each one paid for his part of the building. That is consistent with divided possession: "It has been decided that you yourselves shall respectively possess the said respective portions absolutely for ever."

Then there is a devise of certain properties, a 5/32 share in March 1886, prior to the date of the partition referred to, even before 1891. May be 1886. That is under a deed of sale for Rs. 2,000 on the 23rd day of the month of Ani of the year of Sobakiruthu (that is 7th July, 1903) in favour of Nachiappa for his common benefit. It says that Nachiappa and Suppramaniam shall possess their half shares 'absolutely for ever according to the terms of the said deed of sale'. 'It has been decided' refers to a decision of the arbitrators which was told them and they recorded. 20

Q. The 2nd paragraph speaks of a purchase in favour of Nachiappa for the common benefit?

A. In the name of Nachiappa.

Then it speaks of a decision that they shall each possess their half shares separately and absolutely from the date of this document. 30

Q. At the time of the purchase of this 5/32nd village Suppramaniam and Nachiappa were divided in status?

A. That is the assumption on which you are putting questions. It may be a division of part of the property and the rest of it being joint family property. The indication is that they were members of a joint family. It is the prima facie inference that it is joint family property, but need not necessarily be so.

Q. The 1891 division, on the recital, might have been a division of status? 40

A. Might or might not have been a division of status. It seems to me that division of status is an immaterial fact for the conclusion.

The final conclusion that Suppramaniam and his son as members of a family possessed a half share of the property is exactly the same whether the partnership was between 1891 and 1912 or a joint family still continued. The law is the same.

No. 11.
Further
Proceedings
—contd.

I am prepared to concede that the 1891 division might have been a division of status.

10 The next paragraph says that after paying off the “ liabilities of the common firm, &c., up to June 6, 1911. That is the date prior to the date of this document. After excluding the division made by Nachiappa the aggregate cash collection due to the half share of Nachiappa was paid in equal proportion to his five children on his order as per particulars of Colombo day book of such a date and the half share of Suppramaniam was paid to him. If between 1891 and 1912 they were partners, the partnership assets amount to this. If the Court takes the conclusion that from 1891 onwards up to 1912 they were partners rather than members of an Hindu undivided family, this statement would mean a division of partnership. If there was a partnership before 1891 that belonged to a joint family and after that it belonged to the two brothers separately.

20

Adjourned for Lunch.

(Sgd.) N. SINNATAMBY,
A. D. J.

(After Lunch)

26.2.47.

T. R. VENKATARAMA SASTRI recalled.

(X X N—contd.)

30 Q. Take the 4th paragraph of A8 from “ In addition to this the 2 houses.....” That means each had an attorney—Nachiappa’s son and Suppramaniam?

A. Yes.

Q. “.....was paid to the firm of NSRMS and half share of Nachiappa was paid to.....”

A. Yes

Q. You know from the evidence NSRMS was a firm of 4 sons of Nachiappa?

A. Yes.

Q. So that that is an independent firm, not the firm consisting of the joint family of Nachiappa and his sons?

40 A. KMNSP is the separate firm of the other branch and this is the firm of 4 out of 5 sons of Nachiappa. It may be a joint family

business, or may not be; one son may go out of the family and the other four may remain together; the father may go out or one son may go out but the others may decide to carry on together; it may be a firm or a partnership.

Q. Out of 5 if one was excluded, the firm of 4 is not a joint family?

A. If they were living together, it might be a joint family; if they were not living together it might be a partnership. So far as this document goes it might be a partnership.

Q. There is no evidence of any kind or special agreement between Nachiappa and his 4 sons or 5 sons? 10

A. There is none.

Q. In the absence of such agreement you call this partnership?

A. May be a partnership because they can unite and live together; so far as this document goes it indicates there might be a partnership.

Q. From the proceeds of the sale of these 2 houses in Ceylon, there are certain outgoings in regard to a madam and flower garden. Would that also be considered as partnership?

A. I don't say it is inconsistent with there being a partnership between the two brothers. My answer is it is possible; it might be a partnership. 20

Q. Take the 5th para from which certain trees are divided, or the land on which the trees stand is divided: "Nachiappa has already cut down one Margosa tree....." That also indicates partnership?

A. That is not evidence of partnership, not necessarily indicating partnership, but it is not inconsistent with partnership.

Q. What is "SAWMMIYA"—11th of Thai?

A. 24th January, 1910. 30

Q. That division is also consistent with partnership?

A. Not inconsistent with partnership.

Q. The rest of it deals with charities to be conducted separately?

A. They are providing for charities separately; that is not inconsistent with joint family. In the case of joint family they got joint worship; whether they have to perform any ceremony at home or at any temple which they consider to be their family

deity's they perform only one worship so long as they are joint. For example funeral ceremonies for the ancestors are performed by one brother on a common account and not by both; if they are divided they have to do them separately.

No. 11.
Further
Proceedings
—contd.

Q. A joint family then will have a common worship?

A. Yes.

Q. But when the members are placed under an obligation, separately providing charities like madams and flower gardens, would that not be indicative of partnership?

10 A. It won't be indicative of partnership; by itself this para indicates that they are till then united in worship, that they were together before but they are separating in the matter of worship.

Q. Subramaniam purchased 2 lands—Nindavadam—that would not be directions to a member of a joint family?

A. Particularly among Nattucottai chetties there will be this kind of directions, that each member of a family dividing should look after and do certain things. In the absence of a division they will have to look after these things.

20 Q. In your examination-in-chief you said joint worship was not an essential feature of a joint family?

A. I did not say that; joint worship always implies a joint family; after division the two brothers would perform the ceremonies separately on the day of the father's death.

Q. If a partnership made contributions to charity, on a dissolution of that partnership it would be natural to make provision for the continuance of those charities? I mean in the case of a partnership between two members of a family?

30 A. That kind of arrangement for contributions would have been made at a partition at which the 2 branches severed; whatever is the date on which they severed, they will make arrangements for those respective contributions if they divided.

The partnership is not between two members of the family. They open a page in which they enter the charities. Arrangements can be made for a distribution of that money when the partnership breaks; that is not connected with the antecedent common worship of the members. Each member of the partnership has his own worship; they together out of a firm make contributions to charities; they may make contributions to charities which are unconnected with worship.

40 Q. If on dissolution of a partnership it is provided that the members shall continue to contribute to specified charities?

A. At any rate I don't think it is usual; they may make arrangements for charities which they had been hitherto conducting and the amount of money they have in possession they will distribute, but no one provides for each man conducting a separate charity in future. It is when they have a common worship and common charity they may make provision for one man conducting one thing and one man conducting another, for the future. In the case of a partnership their relationship breaks on dissolution.

Q. Is there anything in law against such a direction being given? 10

A. I know of no law that they cannot do that; any arrangement may be made between 2 parties but it is not usual in the case of partnerships; but it is usual in the case of partitions of joint property.

Q. I refer to "As there lies a sum of Rs. 2,684.53 at the firm of N. S. R. M. S." That suggests that that firm was in existence at this date?

A. In the other case I think it was in May, 1910, followed up by the first entries in 1911 January.

Q. (Counsel reads the document) "Nachiappa shall have half his income less income tax; Suppramaniam shall have half the income less tax....." There is separation of property? 20

A. Yes, separation for the management of charity property; each one has a sum of money at his disposal for performing certain things, in which both are interested and both are interested for the future also.

Q. Take that reference to 1/8th village, 1/32 village in all aggregating to 5/32. The first day of the month of the year SOBAKARUTHU. What does that mean? 12th February, 1904. 30

Q. 7th day of PURATTASI?

A. 22nd September, 1908.

Q. 28th day of the month of AIPPISI of the year SAWMMIYA?

A. 13th November, 1909.

Q. (Counsel reads the document further). This document is, as you said before, consistent with their having been a partnership and the partnership assets being distributed.

A. This part of it in reference to worship seems to indicate that they are a joint family until the date of division. 40

Q. All those properties referred to in the para dealing with charities are properties acquired after the partition in 1891?

No. 11.
Further
Proceedings.
—contd.

A. These purchases have been made after the year 1891.

Q. I want to refer you to the documents R27 and R32.

A. R27 is Suppramaniam's name, is registered as the owner of the firm in 1919. It is received in the office of the Registrar of Business Names, Colombo, on 19th August, 1919.

Q. Does that document describe Suppramaniam carrying on business as an individual?

10 A. The individual is named in full. That would be consistent with the business being a joint family business. It might be a separate business, but not inconsistent with the joint family.

Q. R28 is a statement that Suppramaniam's son Nachiappa has been admitted as a partner in the business?

A. Yes.

Q. That would be consistent with the idea of joint family business?

A. I think it is not inconsistent.

20 Q. Is that consistent with the partnership between father and son?

A. This statement by itself, the language of it, says Nachiappa is admitted as a partner. If he is already in the business previously this would throw light on the position. This is only an entry of his name for purposes of business; he being a member of the joint family is registered for the purpose of this Ordinance—that would be the conclusion; at some stage it must be done; I cannot give a reason why he did it now rather than earlier.

Q. Look at R31; there Subramaniam has ceased to be a member of the firm; that is inconsistent with joint family business.

30 A. Not necessarily. For purposes of business registration of different people may be adopted at different times without destroying the joint family character. If there is a joint family this does not destroy it. If there is a joint family business for which a registered manager has to be appointed, one man may come in at any time and go out at any time; another person may come in at another time; these registrations are not inconsistent with the joint family if it is existing at the time. It is for that that I gave the passage from Sundaram.

No. 11.
Further
Proceedings.
—contd.

Q. I believe you said earlier that a manager of a Hindu family can borrow from the family and start a separate business of his own.

A. Yes, he can.

Q. If a member of a Hindu family, be he manager or any other member, borrows from either the family or from some 3rd person and trades with that money in his own name?

A. The manager of the family can start a business of his own without using the family funds in any manner.

Q. If the manager of a family borrows money from the other members or from joint family funds and trades with that money separately the profits he earns in that business are his separate property? 10

A. The manager of the family cannot borrow from the joint family except, as I said in my answer before, where all the other members of age in the family all agree. In the case of other members of the family they can borrow from the manager and conduct a business of their own; but in the case of the manager, having used the family funds, he must prove that it is under an agreement or a loan. Otherwise his business will be treated as on behalf of the family. 20

Q. But given these conditions which you mentioned a manager can borrow from the joint family fund and carry on a separate business?

A. Yes. In that case and under those conditions, the profits are his separate property. It does not matter where the place in which he carries on business, i.e., it may be anywhere, Burma or Malaya. His own obligation is to pay back the loan, if it is a loan on which he carries on the business. That is at page 375 of Mayne already referred to. 30

Q. You referred to certain authorities in your examination in chief. You referred to a case in 46 Madras 673?

A. Page 678 the last passage.

Q. That did not lay any definite principle. It only decided a question of fact that the firm was not carrying on business on behalf of the joint family.

A. (Witness reads the passage.) That is what I said. .

Q. That was a joint family of father and four sons carrying on a partnership business?

A. Yes. 40

Q. Then you referred to 36 A. I. R. Madras 94; Ramasamay Chettiar vs. Sirinavasa Aiyar?

No. 11.
Further
Proceedings.
—*contd.*

A. Yes.

Q. What was the proposition you gave in support?

A. (Witness reads.) I am reading from the headnote. That is what I stated.

For the division of father as between his sons I referred to P. C. case 36 A. I. R., P. C 264.

10 (Shown R1.) This is a return made by Ramanathan Chettiar, the attorney under the Estate Duty Ordinance. There he says that Suppramaniam Chettiar left no property on his death.

Q. It is consistent with his having transferred all the property included in his name and inconsistent with his having been at the time of his death a member of the joint family?

A. That is the footing on which it proceeds. But as to whether the father after alienation will continue as a member of the joint family is a question which will have to be decided.

Q. You will see that by R1 a statement called ' C ' mentions 1/4 share of Kandawala Estate Rs. 15,000.

20 A. Yes. Rs. 152,250 giving 17 lots—that relates to R5. That is in answer to the question at (B) of schedule ' C '.

Q. That statement is consistent with the property mentioned there being the property of Suppramaniam?

A. It is not inconsistent with it being separate property. If other evidence do not exist it might be contended that it is separate property.

Q. Statement ' D ' para 1. Is that statement consistent with it being separate property?

30 A. That statement again asserts that Suppramaniam Chettiar left no property either on joint account or otherwise. It says so.

Q. Look at R3. That is consistent with the property dealt with in R4 and R5 being separate property of Suppramaniam.

A. There is nothing in this document which prevents its being separate property.

Q. And inconsistent with its being at the time of his death joint property?

A. This document by itself says nothing about its being joint or separate. It deals with it as the property of Natchiappa Chettiar, though he left no property whatsoever at the time.

RE-EXD

Q. The fractions that are given in the original of the document R17 are according to the South Indian computation?

A. Yes. 1 has a figure; $\frac{1}{2}$ has another letter for it; $\frac{1}{4}$ another for it; $\frac{1}{8}$ has a letter and so on the fractions go down to $\frac{1}{320}$ in the South Indian computation; they give each a separate letter for all those fractions. The share of Natchiappa is given as $\frac{19}{32}$ — 10
 $\frac{16}{32}$ is represented by half, $\frac{2}{32}$ is $\frac{1}{16}$ and $\frac{1}{32}$ has another symbol; therefore it consists of 3 letters. $\frac{19}{32}$ is made up in that way. It is in that manner that fractions of the firm ARNSP are given in the original of R17. That ultimately works out in modern fashion, out of 35 shares in the business 19 belong to the testator, 2 to one party, 2 to another, &c.

Q. To the firm of KMAR?

A. $\frac{1}{4}$ plus $\frac{1}{8}$. The words used are KMAR "POTHU".

Q. Four groups of people, himself, two women and a vilasam KMAR? 20

A. Yes, that is KMAR as a whole; the firm of KMAR take it in common.

Q. In your evidence it is recorded "The manager is at liberty to give each of the members of the family.....".

A. Yes, I am sure I gave that answer in that form. There is no special fraction of the amount that can be given or cannot be given. If he makes a gift of money it can be utilised in any manner he pleases; if he puts it in a Derby Sweep and gets a large sum of money, he is the owner of it; so far as the family is concerned that is treated as proper expenditure in so far as it is given to a person for his expenditure. But if he wants to have a gift of a large sum of money it is not in the discretion of the manager to give as much as he likes beyond what may be considered reasonable if a question is raised about its propriety. That is in page 375, para 294 of Maine (witness reads). 30

Q. In other words the manner in which the manager parted with money to other members of the family is a matter of evidence in each case?

A. That would be a matter to be decided on the evidence in the case. 40

Q. You have also stated that a manager cannot lend to himself?

A. He cannot. When he lends to another he need not consult anyone; when he lends to himself he cannot do so unless the corporation as a whole consents to it.

Q. In the case of this particular family here, KMN the 1st Natchiappa, we have some evidence that he had a business?

A. His sons Natchiappa and Suppramaniam are found to carry on a business together under the same vilasam as their father had; that same business continues till 1912; that they are living together is a matter given in evidence.

Q. From evidence as to the manner in which they started when they are both trading together they will not be presumed to be partners?

A. They are members of a joint family. As soon as he died it became joint family business in the hands of Natchiappa and Suppramaniam, whether it is ancestral property or self acquired property of the ancestors.

Q. Thereafter the date on which they partitioned or divided is the material point?

A. If they divide subsequently each takes for his branch of the family his due share of the ancestral property. In the hands of the persons who divide the property it is ancestral property into which children will be born claiming a right and others may die losing it. It is the law of the corporation that is applicable to the properties so descending to Suppramaniam and Nachiappa.

Q. You have also stated that A8 appears to be a final partition of a joint family between Nachiappa and Suppramaniam; but if it were otherwise, if they were partners to A8 and had been carrying on the business of a partnership between Nachiappa and Suppramaniam, would the property in the hands of Suppramaniam be different in character?

A. I think they are just as if it divided in 1912 and the two branches take the property. If they divided in 1891, Suppramaniam and his sons on the one side and Nachiappa and his sons on the other will form into divided families carrying on the business together, deciding to carry on the business together; then their interests in that firm from 1891-1912, until 1912, is the half share to one joint family and half share to the other joint family; the fact that it is the firm that was conducting this business between 1891 and 1912 will not affect the ancestral character of the property in the hands of the two branches whenever they divide the houses.

Q. In other words in respect of Suppramaniam's half share, Suppramaniam and his son Nachiappa would have been joint?

A. They are members of a joint family.

Q. After that, you have already stated that looking at A8 as a whole it appears to you as a division of a joint family property?

A. That is what I have said.

Q. Of that branch Suppramaniam and Nachiappa, when Suppramaniam drops out Nachiappa would hold whatever is left between himself and his sons?

A. The top K. M. Nachiappa's properties and acquisitions thereto, his sons Suppramaniam, his grandson Nachiappa and his children to the 4th generation will all be entitled to. 10

Q. You were asked some questions about Nachiappa being in partnership with others in the Burma and Malayan business; there are documents in the case showing whether the business started before Suppramaniam's death or after?

A. A71, A72, and A73 shown deal with letters posted to and from Burma by Suppramaniam himself before his death.

Q. If the evidence is that that firm was there during Suppramaniam Chettiar's lifetime, at his death what would the character of Nachiappa's interest be? 20

A. It would belong to his sons and his sons' descendants as joint family property.

Q. In that last will R17 you were cross-examined in relation to the properties which the testator calls his own; does he in the same document refer to the ancestral house as his own?

A. Yes, this is the portion I referred to, para 4; that is the para in which he refers to the divided house between Nachiappa and Suppramaniam.

Q. That is the half share out of the house of which the other half share belongs to his uncle at Sembanur? 30

A. The language is this "In the house in which one half share belongs to my uncle and the other half share belongs to us " and says, putting aside the share given to my uncle and occupied by him, the other portion which belongs to me alone is hereby dealt with as in para 4. The words "my own" occur in every other para and it also occurs in connection with what is undoubtedly joint property divided between 2 branches.

(To Court: Why do you say it is ancestral house?)

It refers to partition between Nachiappa and Suppramaniam in the partition A8. The whole house belongs to Nachiappa and Suppramaniam; they divided it into a northern half for the younger brother and southern half for the elder brother. In A8 partition the 2 brothers divided the house between themselves; it is in that house in which the members of the family lived. That house his father got he refers to as his own, using the language he uses in other clauses.)

No. 11.
Further
Proceedings
—contd.

10 Q. But this may refer to some other house, other than the house in A8?

A. In A8 'periya' does not indicate big in size but merely age. The new house purchased he refers to first; then he says "in the 'periya' house etc." A8 deals with division between the testator's uncle and father and the division into a northern half share and southern half share.

Q. If the passage in R17 referring to the house at Sembanur is the same as the one referred to in A8, definitely that would be joint family property?

20 A. It would be. In regard to that property the word "EMAKKU" does not exclude the rights of his children; he calls the property his own as a father with his own children, all of whom are minors; his reference to the property as his own would be natural, it is not exclusive of the children. PERIYA WEEDU is a term for the family house, ancestral home in the village.

In South India a father won't say "the property of myself and my children". There would be nothing wrong in his referring to the family property as his property.

About last wills attempting to dispose of joint property I referred to page 495 Mullah, Section 368.

30 A father who has a number of minor sons cannot dispose of joint property by his will. I refer to 53 Indian appeals p. 123. A minor can receive a gift; some guardian can accept it on his behalf. if the father really intended to make a separate gift or divided the sons from himself.

Q. Regarding the disposition of property by R4 and R5 what you say is the nature of the property disposed of must be found out from the earlier history of that property?

A. Or it may be later.

40 Q. If Suppramaniam and Nachiappa spent their joint monies to buy Kandawala Estate, then Kandawala Estate would be joint in whatever name it might be bought?

A. If it is joint family funds that were used, the property would be joint family property.

Q. You were asked to show that the items of expenditure from A13 to A17 might be the result of agreement; you said that that was possible; but there is no evidence to show that it is the result of any agreement.

A. Whether there is or not is not for me to say; I form my opinion by a number of incidents which existed.

In assessing a joint family—in the Indian Income Tax assessments—the income of the whole family property is taken as one unit of assessment; no tax is levied on the separate income of individuals from that income. 10

If Suppramaniam and Nachiappa were treated as separate individuals under a common tenancy right to the joint family, then there would be separate income tax to the divided individuals. The rate of tax will depend on the graded slam; as it goes up the tax increases; the rate of tax on Rs. 100,000 would be greater than on two sums of Rs. 50,000. The slam works out in big business up to 13 and 14 annas in the rupee.

The term used for joint family is EKKA KUDUMBAM OR THOHA KUDUMBAM.

I was asked a question on A8 at page 3; “ All the four expenditures aggregating was paid at the firm of ” 20
The document indicates that it was the half share of Nachiappa. It was only paid by being left at a certain place.

Page 1 of that document at the last para “ 5/32 village purchased under a deed of sale ” That refers to a land bought before the partnership of 1891; the rest of the purchases are after 1891. As to what the partition of 1891 did one cannot say without looking at the document itself. Partitions like that of 1891 are not uncommon.

In A8 in regard to division of charities and temples and making 30
provision for their being looked after, I may add that if it was a partnership between 1891 and 1912, I should expect statements of account of the partnership between the two parties during the intervening period. Taking A8 as a whole I say it is clearly consistent with the other documents referred to.

Reference was made to a sum of 2 or 3 lakhs which was put to 2 or 3 minor sons and the balance in the hands of Nachiappa being with him and his sons. A new son born will become joint family and the father will possess the same disabilities as a manager. There is a passage in Maine in regard to this. 40

Q. In other words it is extremely unlikely that Nachiappa divided with his 2 minor sons without a division with his father?

A. The one thing I mentioned was that if it was given to the two sons he won't take it back again; he has taken it back and divided it among the others.

I have some idea of the English Law in commercial matters. In the word 'joint' as between English and Hindu Law there is a difference that has been put down in a Privy Council case. In "joint tenant" in English law there is no survival.

No. 11.
Further
Proceedings
—*contd.*

I was shown a document by the Attorney-General (R1 and R3), certain forms which Ramanathan filled up where the words "joint property" are used under the Ceylon Law. I won't undertake to say what is the meaning of that or in what sense it was used in the Ceylon Law.

10 (To Attorney-General with permission of Court :

In regard to Gupte, para 4 (1) page 60 "the Hindu family is already joint in food and worship....." I don't say that in regard to worship. I would say that in regard to food. Nattucottai families generally live apart as soon as the son marries. Worship is divided between the brothers or between father and son only if they lived in different places.

20 Two brothers living in two different places having to perform worship in one place, they may perform in different places. If they are in separate places both of them do it separately; even the widow does it separately even if the sons are not there.

(To Mr. Chelvanayagam :

Nattucottai Chetties are people of South India. I am acquainted to a certain extent with the manners of Nattucottai Chetties in South India. I am myself from South India and practised as a lawyer in Madras Presidency. Habits and manners might vary with different presidencies. I don't know from where Gupta is.)

Adjourned till 12.30 p.m. on 27. 2. 47

Sgd. N. SINNATAMBY,
A. D. J.

30 27.2.47.

Appearances same as on previous date.

Errors in previous day's proceedings corrected by consent.

Mr. Chelvanayagam is not calling any further evidence in regard to this matter.

Mr. Basnayake, Attorney-General, calls :

K. RAJA AIYAR. Affirmed.

I am the Advocate-General of Madras since July, 1945. I am also the Chairman of the Committee recently appointed by Government to go into the question of the separation of the Judiciary from

the Executive. I am of 35 years standing at the Bar. I have worked in association with Mr. Srinivasa Aiyangar who was also Advocate-General and who revised Maine's latest edition on Hindu Law. In the course of my practice at the Bar I have had a fairly large volume of work relating to Nattucottai Chetties and I have been able to gain knowledge as to the way they conduct their business transactions.

The normal constitution of a Hindu Family is presumed to be joint in estate, worship and food.

(To Court: By "estate" I mean ownership of property. 10

Jointness in worship is not essential; in fact so far as South India is concerned I do not know that any importance at all is attached to jointness in worship.

I think the passage from Gupte at page 60 para 4 (1): "A Hindu family is ordinarily joint in food and worship but a family does not cease to be joint and undivided merely because its members are not joint either in food or worship or both, as for instance where they have separate arrangements as a matter of convenience" is a correct statement of the law, because what is primarily important is jointness in estate. 20

That statement of Gupte's finds support in the Privy Council judgment reported in 12 Moore's Indian Appeals at 540. (Counsel reads.)

Q. What is meant by the word "partition" in regard to joint property?

A. Partition is a term which can be applied to the conversion of joint property into separate property. It can certainly be also applied to the division of co-owned property.

Q. Can it also be applied to the division of the assets of a partnership? 30

A. I don't think it is legally accurate to describe division of partnership as partition of partnership but as dissolution of partnership or distribution of "assets" but the word "division" would be more correct in regard to partnership. "Distribution" is the legal term. I suppose Chetties might employ the word "partition" in connection with their partnerships.

Q. In the Tamil language is there a different word for "division" and a different word for "partition" in regard to property.

A. The Tamil word is PIRIVINAI. I don't think there is a separate Tamil word to bring out that distinction. 40

Q. Am I right in saying there is no Tamil word which brings out the distinction between the distribution of assets and the dissolution of a partnership?

A. I think the same expression is used for that purpose also—KUTTU PIRIVINAI or BAHAM is the word used in the case of partition.

Joint family property is co-parcenary property in which the members of a family have right by birth.

10 In regard to co-parcenary property there is a community of interest and unity of possession between all members of the co-parcener and upon the death of anyone of them the others take by survivalship that in which during the deceased's lifetime they had a common interest and common possession.

If two brothers traded together their business can be either a joint family business or a partnership business. It will be a joint family business if they carry on on behalf of the joint family or if joint family monies are used for the conduct of that business.

20 There is nothing in Hindu law to prevent say two brothers who are members of an undivided family, from carrying on business on their own account apart from the joint family.

Q. If such a business is divided or partitioned or if the assets of such a business are partitioned, will the sons of the partners get any interest in the respective shares?

A. If the business which they have been carrying on is their separate business, then the sons of the respective partners do not get any interest when they divide it as between themselves.

(*To Court:* But if it was joint family business, then when the joint family splits up two separate joint families are constituted as between two branches.)

30 If 2 brothers carry on a business during the lifetime of their father who is himself carrying on business, the normal presumption in regard to the brothers' business would be that it is the brothers' separate business.

The passage from Maine's Hindu Law, 10th edition, 373 para 293 (Counsel reads) is an accurate statement of the law and well supported by authority.

There is nothing in Hindu Law to prevent a manager of a family consisting of himself and his adult son from starting and carrying on a business of his own.

40 (*To Court:*

Q. You said where a father carries on business and the sons at the same time carry on another business the presumption is the sons are carrying on their separate business?

A. Yes, because they will be in the position of junior members: the father and sons constitute a joint family; the junior members carry on a business.

Q. Is it a legal presumption that you draw or are there any decided cases where it has been so held?

A. I think there is some authority for it which I could give later.)

Q. When you say that a manager of a joint family may carry on business jointly with his adult son you would extend that not only to one son but to more than one?

10

A. Yes, to all his adult sons. I say that because a business is only one kind of property; there is nothing to prevent the manager from having his own self acquired possessions or some other members of the family from having their own self acquired possessions; there is nothing to prevent some other members of the family from carrying on a business as their own.

(To Court: There is no presumption that in the case of business carried on by anybody it is his family business. The latest case in the Privy Council supports it. Such a presumption does not apply in the case of a business. It is for the person who avers it to prove.

20

Q. But does the converse also hold good?

A. The presumption is that every business which is carried on by anybody, be he manager or other member of the family is his own business—even the manager—because I think there must be a reason; in the case of a business it has his own risks—I am speaking only of a business. By that of course I do not say that it cannot be shown that they do it on behalf of the family.

In the case of property other than business, if the manager is in possession of property, it is presumed to be joint property. In the case of property in the possession of other persons, if they claim it as their self acquired property, then in a suit for partition the burden is on the person who claims it is joint family property to prove it. The proof of the nucleus or sufficient nucleus carries with it the consequence that this property is also presumed to be joint family property. The burden is one which shifts from time to time, but these are some of the presumptions as they have been stated in cases.

30

The principles which I have just now stated are also expressed by the Privy Council in 1942 AIR (PC) 13 at 16. (Counsel reads.)

(To Court: That seems to suggest that in the words of the Privy Council, whether that presumption is right or not in the case of other property, in the case of a business that is not so.)

40

Q. In this case you have 2 Nachiappas who matter, Nachiappa the second and Nachiappa the third—if they may be so numbered—and Nachiappa the first is the father of Nachiappa the second and Suppramaniam?

A. Yes.

Q. If Nachiappa the 2nd and Suppramaniam had a joint family business, KMN, but Suppramaniam wanted to carry on a separate business of his own, was there anything to prevent him doing so, in law?

10 *A.* Nothing, because as I said it is open to either the one or the other to carry on a separate business.

Whether a particular business is joint family business or separate business is essentially a question of fact in each case, and that would have to be determined by a review of all the facts and the conduct of the parties before, after and contemporaneous as well.

Q. If a separate business is started by a member of a Hindu undivided family with money borrowed by a member from the joint family but returned in a short time, will you say that that business which was started with borrowed capital is joint or separate?

20 *A.* Even if he does not return it immediately, if it is money borrowed from a joint family with which a member carries on business, it would be his own separate business.

Q. If the borrower was the manager?

A. The manager cannot lend to himself, but if he takes a loan with the consent of the other members of the family, then he is in the same position, in my opinion, as any other member.

(To Court .

Q. If they are minors?

30 *A.* If there are adults and minors who constitute the joint family, my view of the matter is—I don't think I can lay my hand on any particular authority—the consent of the adult members would be sufficient to validate a loan in favour of the manager. My reason for stating that is that instead of granting a loan to a third party they can easily grant a loan to a manager. What is prohibited in the case of a manager or in the case of other members of a family is a transaction detrimental to the interests of the minors.)

The consent of the adult members could be either expressed or implied.

Sgd. N. SINNATHAMBY,

A. D. J.

27.2.47.

After lunch.

K. RAJA AIYAR. Affirmed.
(Exam.-in-chief—*contd.*)

I refer you to the decision in AIR 1933 Mad. p. 920 and 25 Madras 149—a leading case in Madras.

Q. In this connection if the K. M. N. business had been dissolved in 1912 as A8 seems to suggest, but that in 1910 Suppramaniam had started a business under the name of K. M. N. S. P. would you say that the firm which Suppramaniam started in 1910 was a joint family firm of Suppramaniam and his son or his separate business. 10

A. It will depend on what funds were used for that firm.

It would not be presumed to be a joint family business. If there is evidence to show that he borrowed money, of course, it strengthens the inference that it was his own separate business.

Q. Suppose the manager of a joint family, unauthorised or without authority takes money out of the joint family funds and starts a business, would that business be joint family or separate?

A. It will be open to the members of the family to claim that business as joint family business if they want to do so. 20

Q. Can the other members waive such a claim?

A. There is nothing to prevent the other members from waiving such a right. It will be joint family property if it had been acquired to the detriment of joint family funds. It is open to the other members not to claim it as joint family business but to allow him to treat it as separate property if he claimed it as separate property.

If they were to treat it as separate property the manager would be able to dispose of it as he liked. If it is his separate property he can dispose of it as he likes and his sons would have no claim. The characteristic of separate property is that the sons have no interest in it by birth. The position is that what in law would be regarded as joint property may by agreement of parties be treated as separate property, because it is a matter for the members of the family. By agreement it can be treated as separate property. 30

I know that according to A8 each of the brothers Nachiappa and Suppramaniam got Rs. 103,000 odd.

Q. If that sum was never utilised in the business of K. M. N. S. P. which started in 1910 what would that business be?

A. If that sum was never utilised and no other joint family funds used for the firm it would remain his separate business; and his son Nachiappa would get no interest in that business which was started by Suppramaniam as his own concern.

Q. If that sum was never utilised in the business, would the entry of a debit and credit to the extent of Rs. 103,000 make any difference.

A. The book entry of a credit and debit would not make any difference to what I have stated.

10 Q. Is a joint family firm regarded as a partnership?

A. No. It is not regarded as a partnership at all.

The Indian Contract Act and the Indian Partnership Act apply to partners.

Q. Is a joint family firm governed by the Partnership Act?

A. It is expressly not governed by the Partnership Act. The Partnership Act sec. 5 says that members of an Hindu undivided family carrying on a family business as such are not partners in such a business.

20 Q. In regard to the law of Gifts, can a member of a joint undivided family make a gift?

A. No. He cannot make a gift of his family property. He can make a gift of his separate property.

By separate property I mean property which belongs to him in his own right without the interest of anybody else attaching to it by birth; in which there are no vested rights of other persons. Property acquired in a separate business would be separate property. A Hindu can make a will in respect of his separate property, but not in respect of joint family property. If a Hindu makes a will in respect of his joint family property that will would be invalid.

30 Q. If a gift of separate property is made by a Hindu in favour of his son?

A. It is on that point that there is that remarkable conflict of opinion in the courts. The Madras court has held the view that the gift by the father in favour of his son would presumably be joint family property in the absence of any indication of intention to the contrary. The other courts have taken a different view. One case was taken up to the Privy Council but they declined to comment on it.

40 I agree with what is stated at page 86 of Gupta on this point. That is the view which has been taken by, I think, Mayne and Raghavachari. Mulla does not appear to have expressed an opinion.

No. 11.
Further
Proceedings
—contd.

Raghavachari deals with this same subject at page 269 to page 270. Mayne at p. 358 says that the view of the Bombay, Allahabad and Lahore courts is to be preferred. He says that that view is supported by the Mithakshara text. My own view is that the view of the Allahabad court is correct. In fact the Madras High Court has made several exceptions to that rule and has confined itself only to gifts by a father in favour of his son.

Q. Mr. Sastri at page 3 of his evidence says: “ There can be a joint Hindu family which has no property. In such a case all the members earn and bring their property to the common fund ” Is that correct? 10

A. As you read it it is not quite accurate. It may be correct if they bring it to the common fund in the manner of joint family co-parceners; even then it cannot be accurate because co-owners also may bring in to the common fund.

The members of a joint family who earn money, for themselves, are under no obligation to bring it to the common fund. By “ for themselves ”, I mean by their own efforts without utilising the joint family property. Even if they utilise a joint family property the question to consider is whether it was as a result of an arrangement with the joint family or to the detriment of the joint family. 20

Q. In the statement at page 5, “ even without ancestral property they can carry on business together and the earnings will form joint property of that family ”; he is under no obligation to bring it to the common pool?

A. He is under no obligation. That statement is not quite correct. If without ancestral property they carry on business together they may carry on for their own benefit and the earnings do not, *ipso facto*, belong to the joint property of that family.

There is no obligation at all on any member throwing into the common fund. 30

Q. At page 7 Mr. Sastri said “ Nattukottai Chettiar families are generally trading families. If say two, etc ”. Is that correct?

A. It would be correct if the two members of the joint family are all the members who constitute the joint family. If they were only some of the members of a joint family and they came and registered themselves and carried on business then unless it is proved that they were carrying on the business on behalf of the joint family, it is not the business of the joint family. 46 Madras 673 is no authority for the proposition in the form in which it is stated because there the joint family consisted of the father and four sons. The four sons alone constituted a partnership and entered into a deed of partnership. The question which arose in the Income Tax 40

proceedings was whether those four persons were carrying on business on behalf of the joint family. In fact the question which is put is, does the registration of the brothers as the firm as defined by section 2 preclude the assessment of the family as an undivided family. The answer was that it does preclude. That is the four brothers will be treated not as carrying on business on behalf of the joint family, but as partners unless the firm which was registered is shown to be carried on on behalf of and for the benefit of the joint family, which means that the four brothers are really agents on behalf of the joint family. Unless that fact is established the four brothers who are members of a joint family who enter into partnership will be treated only as a partnership and not as carrying on business on behalf of the joint family. The sentence which Mr. Sastri evidently relied on is "The mere constitution of a partnership between some members of a joint family will not preclude them if they are members of the partnership which conducted business on behalf of and for the benefit of the joint family." The fact that there is a deed of partnership between them does not effect the real character of the business. And at page 677 it is also stated that

10 "even if joint family funds are utilized in the trade that circumstance does not affect it." The members who actually take part in the trade may enter into a deed of partnership between themselves. It is not conclusive to show that funds of the family were utilised in the trade because they might have borrowed just as if it were a loan from strangers. In such a case the test is how are the profits utilised.

20

(Shown A13 to A17.) These documents are extracts from Day Books. Certain expenses are debited to interest expenses.

30 Q. Does a debit of expenses such as those mentioned in A13A throw any light on the question whether the business is a partnership or joint family?

A. They do not throw any light at all upon that question.

(Shown A14.) I would say the same of all from A13 to A17. They are merely incidental expenses incurred in the running of a business which are debited under the head "Interest expenses".

Q. What is "interest expenses"?

40 A. I take it they are expenses incurred out of interest received from the constituents. I may say that by itself it is a very unusual entry because in my experience I have never yet come across interest expenses in any day book or ledger. Probably miscellaneous expenses incurred in connection with the running of the firm which were possibly entered as debits in the interest page.

(Shown A23 to A25.) These are accounts. A23 is the 1864 account of K. Nachiappa. A24 is the K.M.N. Madura account. A25 the K.M.N. 1874. to 1877 account.

Q. Do these throw any light on the nature of the business, whether it was joint family or partnership?

A. They only show that some business was carried on by a person of the name of S. Nachiappa. That he was carrying on business is all that I am able to say from these entries. That he had partners, or whether it was joint family business or separate business cannot be judged from these accounts.

Q. At page 15 Mr. Sastri says “ I say that the documents A13 to A17 have in them.....during that period.” Do you agree?

A. I am sorry I am not able to draw that inference. 10

Q. Referring to A23 to A25 Mr. Sastri says at page 13 “ I have seen the documents A23, A24 and A25.....they show a business under the same vilasam in the hands of the father from 1864 to 1912?

A. I do not know whether Mr. Sastri could have said that because A23 to A25 stops with 1877 and they cannot show that the business was continued. The answer at page 13 would be correct if it stopped at “ was carrying on a business under the name of K. M. N.” That is all that those documents indicate. The next statement: “ The two sons born to him continued the business until 1912, the date of the partition referred to in A8 ”, may be Mr. Sastri’s own inference which he has drawn from the documents and facts as a whole. I do not agree that such an inference flows from A23 to A25, nor do I agree that, “ in other words they show a business under the same vilasam in the hands of the father from 1864 to 1912 ”. I do not understand how such an inference is possible from A23 to A25. 20

(Shown) A26 to A31 are letters. They do not throw any light on whether the business of K. M. N. S. P. was a joint family business or a partnership. They represent merely instructions given by him as regards the conduct of the business. 30

(Shown) A35 is a deed of transfer of 5/32nd share in satisfaction of a debt due from certain persons in India, the deed being in favour of Nachiappa the 2nd. This very property is divided in A8. I am acquainted with the tenor of A8 and A35.

Q. Mr. Sastri says at page 9, “ I have read through the evidence and the documents led in evidence in this case. I have examined this document A8 I have come to this conclusion for the following reasons:—There is according to the deed they divided it between the two brothers.” Does A35 support such an inference? 40

A. A35 is a conveyance by a debtor to the firm of Nachiappa and Suppramaniam in respect of money owned by the debtor to

that firm. Therefore when the firm was dissolved and those assets distributed in 1911 I take it that this property was also divided under that document of 1911.

No. 11.
Further
Proceedings
—contd.

Q. Whether A35 by itself will support the view that A8 is a partition between the members of the joint family and also of their property

10 A. If thereby it is meant to convey the idea that this property conveyed under A35 is joint family property or as joint family property it was divided in A8 I cannot comment on. But if the inference is only that certain common property which was owned by Nachiappa and Suppramaniam (we not knowing in what character or with what legal incidence they held that property) was divided under A8 it will be perfectly right.

At the time of A8 they might have been members of a divided family or they might have been members of an undivided family. (Shown A50 and A55.) Two of them are demand notices by the Income Tax authorities in India and the remainder are notices of assessment.

20 Q. On the face of them they purport to be an assessment of a joint Hindu family?

A. A50 and A51 do not refer to an undivided family, but A52, A53, A54 and A55 refer to an undivided family. A50 and A51 refer only to Suppramaniam and Nachiappa. That is not a description of a joint family. A50 and A51 refer to Suppramaniam and his son. In one he is described by name and in the other not by name but merely as "son". That is not a description of an undivided family. Those two documents relate to 1926 and 1928.

30 I do not remember the year in which Supertax was imposed in India. Supertax was introduced in 1920.

Documents A52 to A55 describe the assessee as an Hindu undivided family.

(Shown A64 to A67.) Q. These are conveyances in favour of Nachiappa after 1932?

A. Not all of them. A64 is in favour of Nachiappa. A65 I think is in favour of both. A66 in favour of Nachiappa A67 Nachiappa. A65 is dated 1922, A64 1930, A66 1932 and A67 1932.

40 Q. When property is purchased by a joint undivided family in whose name is the conveyance usually made?

A. If there is a manager the conveyance is usually taken in the name of the manager. There is always a manager of a joint family.

A65 is in favour of both Suppramaniam and Nachiappa.

Q. That indicates that both Suppramaniam and Nachiappa had separate money?

A. Both Suppramaniam and Nachiappa had advanced money on a mortgage in their joint names; they had filed a suit, obtained decree and became purchasers at a Court auction and this conveyance is in the name of both.

In India it would be usual to make a conveyance in favour of the manager and a son, if the family consists of father and a son.

R4 and R5 are conveyances by Suppramaniam to his son Nachiappa. 10

Q. Are those two documents consistent with the property conveyed thereby being the separate property of Suppramaniam?

A. They are consistent with the property being treated as separate property of Suppramaniam.

Q. And are they inconsistent with the property being joint family property?

A. I think they are inconsistent with the property being joint property of Suppramaniam and Nachiappa.

Q. If Suppramaniam had been the owner of joint property at the date of his death, would it be correct to say that he left no property at all? 20

A. No. If he was the owner of joint property at his death he dies possessed of undivided property which survives to Nachiappa as the surviving member of the joint family.

(Shown R3.) This is a statement by Ramanathan Chettiar that Suppramaniam left no property whatsoever at the time of his death.

Q. If Subramaniam was a member of an Hindu undivided family and if the family had property at the time of his death? 30

A. Of course that statement would be wrong. He would have left property because there was his interest in the joint property—himself and his son possessed property.

Q. (Shown R17.) I believe you said earlier that except in regard to separate property a member of an Hindu undivided family cannot make a will effective in law?

A. Yes.

I have read this will.

Q. That will is consistent with the property divided thereby being the separate property of Nachiappa?

A. In fact the document expressly says it is his separate property and he proceeds to execute the will on that assumption.

Q. That will is inconsistent with the property devised thereby being the undivided family property?

A. Nachiappa certainly does not deal with the property as if it were undivided property. In fact I think he emphasises in more places than one that the property with which he is dealing is his own which he can in law deal with. Every testator who deals with property says "I am in full possession of my senses, it is my own to deal with."

(To Court: Q. In this connection there was some reference to a big house in para 4 of the will. What is the exact Tamil expression.

A. "Peria Veedu" is used to indicate big house; it may be big in size.

Q. It was suggested that it was in reference to the ancestral house?

A. I cannot say. In the context it might mean merely big house in size. Whether it means anything more or not I cannot say.)

Q. Would a direction to this effect (Shown para 9 of R17) be consistent with joint family property?

A. No. Because if it is joint family property he cannot give any directions with regard to the firm. He cannot make a will.

(Shown para 11 of R17.) Such a direction is also possible if the property dealt with by the will is his separate property. The whole will is inconsistent with the property being joint property.

Q. According to Hindu Law the widow would not have the powers given by para 11?

A. No. She would have only the powers of a natural guardian in respect of a minor son, and as soon as the first of the sons becomes a major he would become the kartha of the firm.

(Shown) R27 is the business name Registration of 1919 of Subramaniam Chettiar as an individual carrying on business under the name of K. M. N. S. P.

Q. Such a registration would be consistent with the firm being a separate business of Suppramaniam?

A. Yes. I suppose it depends on the Business Names Ordinance. It does not lead to any inference either one way or the other.

Such a registration would be consistent with the firm being a separate business.

By R28 Nachiappa the son of Suppramaniam is admitted a partner in the business.

Such an admission to partnership in the business is not consistent with the business being joint family business. Reading R27 and R28 together I would say that the two documents taken together, proceed upon the footing that up to R28 Suppramaniam was the sole owner of the business and that the business became a partnership business in 1925 by reason of the admission of Nachiappa into the business as a partner. 10

(To Court: Q. Suppose it was actually a joint business: suppose Suppramaniam was running this business in Ceylon out of joint family funds and then suddenly before he sends in this registration the Ordinance came into force requiring that all businesses carried on under a name should be registered under the Ordinance (his son may be in India, not in Ceylon) and he registers him as a partner. Then his son comes out to Ceylon and joins him in conducting the business. He wishes to secure to his son all the advantages of a partnership as known in English law; he considers it desirable that he should register his son's name—he may have done it for such a purpose? 20

A. If he did it for such a purpose it will not affect the character of the business. Nachiappa must have had an interest in the business from the day he was born, prior to 1925, from the time the business was started and even in 1919. If, as this document says, he was admitted as a partner into the business, then it is inconsistent with the notion that it is a joint family business.)

In R30 the father Suppramaniam ceased to be a member of the partnership. 30

Q. Such cessation would be inconsistent with the business being a joint family business?

A. All these documents apparently proceed on the footing that the business is not a joint family business but a partnership business. In determining the question of fact these may have to be taken into consideration and given their appropriate weight.

It would appear from R5 that it is an assignment of a number of bonds by Suppramaniam in favour of his son Nachiappa; that in the same bond father and son had monies which they claimed separately, and an equal amount of money. 40

In the case of joint property members of an Hindu undivided family cannot, except at a division, claim separate items of property.

(To Court: Suppose the father and son divided in equal shares?

No. 11.
Further
Proceedings
—contd.

A. Before the division neither the one nor the other can say he has a particular property. That is the reason why I ventured to differ in respect of R4 and R5. R4 and R5 proceed on the footing that the father is entitled to a particular share in particular property and the son is entitled to a particular share in those items. This transaction is inconsistent with its being joint family property.)

10 From A65 it would appear that both father and son possess shares in Kandawala Estate at the same time.

Q. Such a purchase would be inconsistent with the property being joint property?

A. On the face of it, it is more consistent with the purchase by two persons as tenants in common rather than as members of a joint family. Any two persons may take conveyances and if the claim is in equal shares they take the conveyance in their joint names.

20 I said that it is open to a Hindu to give a gift of his separate property to his son or to anyone. It is in evidence that Nachiappa gave gifts of first two sums of money to his two sons and later another sum of money to his 3rd son. It is also in evidence that he had four sons. There is also the evidence that the money given to the 3rd son was out of the interest earned by the gifts to the two sons, drawn from the money which stood to the credit of the two sons.

Q. Could any inference be drawn with regard to the nature of the property?

A. The property was his own to do what he liked with. He could not in the first instance give sums of money to his two sons if it was joint family property.

30 Q. The gifts were evidenced by entries in the books. The sons were minors. In Hindu law is there any provision regarding acceptance of gifts, or is a gift valid merely on the making of it?

40 A. In the case of these credit entries the question whether they really constitute gifts or not has been subject of discussion. It is a question of considerable doubt. There is a decision of the courts on the point. The trend of the decisions is to the effect that a mere entry in a book of account is not sufficient. There should be something more. That is my recollection. There is the case of "Chambers" which went up to the Privy Council. There is also another case.

Sgd. N. SINNATHAMBY,
A. D. J.

Adjourned for tomorrow.

Appearances same as before.

Errors in previous day's proceedings corrected by consent.

K. RAJA AIYAR. Affirmed.
(*Exn.-in-chief—contd.*)

The cases I had in mind relating to the effect of entries on books of account are: AIR 1945 Madras, p. 473 and the Chambers' case reported in 1944 AIR (PC) p. 78.

Q. That authority in 1945 AIR Madras supports the opinion you expressed yesterday that mere entries in accounts are insufficient to constitute a gift or a trust? 10

A. Yes.

According to Hindu law a valid gift by a father to the son must be a completed gift; as to how a gift is completed may depend upon the nature of the property. If the gift is money, the particular sum, for example, will be separated from the general funds of the business and placed upon a footing incompatible with the exercise of beneficial ownership by the donor.

(*To Court:* I don't think a formal acceptance by the donee is necessary.) 20

Q. In this case according to document A36a, on the 26th March, 1931, in the lifetime of Suppramaniam the father of Nachiappa a sum of Rs. 251,000 was transferred to two of the three sons of Nachiappa in the books?

A. Yes.

Q. Was it competent according to Hindu law for Nachiappa during the lifetime of his father Suppramaniam to make a gift of property if that property is joint family property?

A. It could not be competent for Nachiappa to gift property in favour of two of his sons whether it was during the lifetime of his father or even after that. That is if the property is joint family property, but if the property is separate he can do what he likes with it. 30

Q. In 1937 a sum of Rs. 118,000 is transferred in the books from each of the accounts of the two sons who received the gifts in 1931 to a third son.

A. According to Hindu law (or any other law) if the money transferred in the books in 1931 is a gift I don't think it would be competent for the donors to take away any part of that property and give it to anybody else, *i.e.*, revoke it partially. 40

Q. Does the fact that two brothers had one business under the same vilasam in Ceylon necessarily lead, according to Hindu law, to an inference that that business is a joint family business?

No. 11.
Further
Proceedings
—contd.

A. The character of the business which they were carrying on has got to be determined by other circumstances; that does not lead to any inference either the one way or the other.

Q. Does the use of a vilasam by a member of a Hindu family who are carrying on business lead to any kind of inference, from the mere fact of the vilasam, in regard to that property?

10 A I would say no, because an individual may trade under a vilasam; partners may trade under a vilasam, joint family members may trade under a vilasam. The existence of a vilasam does not indicate anything as to the nature of the business, whether it is joint family business or separate business.

Q. Supposing there is a joint family consisting of two brothers, or a father and son, owning joint family property in India where the "Methakshara" law applies, can the members of that joint family of either father and son or two brothers come to Ceylon and trade here as partners?

20 A. Certainly they can; the nature of the property they acquire in Ceylon from the proceeds of their business would be, assuming from your question that they came here and merely carried on a business here without reference to the joint family funds, that they would hold that property as partners and it would be their separate property. Any property they purchased in Ceylon with the proceeds of that business would be their separate property. Any property they purchased in India with the proceeds of such a business would also be their separate property.

30 If a son during the lifetime of his father trades with strangers and earns money, his profits would presumably be his separate property just as if he had gone and employed himself and earned money.

Q. It is in evidence in this case that both Suppramaniam and Nachiappa, that is father and son, had separate assets in their respective names

(Mr. Nadarajah objects to that question.)

Q. If a father and son at the same time had separate assets what would be the nature of those separate assets?

A. Each will own them separately for himself.

40 Q. If a father has immovable property in his name and at the same time his son also has immovable property standing in his name, can one draw an inference as to the nature of that property in the hands of the father and in the hands of the son?

A. Presumably it would be property separately owned by the father and the son as opposed to joint family property. If the father had separate funds and son had separate funds and there is a conveyance in favour of both, then the property is held by them not as members of a joint family but as tenants in common.

Q. If some property stands in the name of the son alone and some in the name of the father alone, can any inference be drawn as regards that property?

A. If the father and the son have separate funds the properties standing in their separate names might also be separate properties. 10

(To Court: Does not the answer to that question depend on the answer to the question from where they got the money to start the business?

A. That is really the test.)

Q. If the business is started by a member of a Hindu family with funds he has borrowed and if later he takes into the business or utilises, joint family funds, would the character of the business alter?

A. If the business was started as a separate business then I do not think that the mere fact that later on joint family funds are brought into the business would convert that business into joint family business. 20

(To Court: It would be true of the converse also because if it is a joint family business then the fact that he brought his separate funds would not convert it into a separate business. If the property is purchased as his own self-acquired property supposing he spent joint family funds merely for the repair of buildings, there would only be a liability to return those joint family funds. The real test is to ascertain the inception, unless of course from the numerous acts there can be an intention to throw that separate property into the common fund, in which case there must be clear evidence of intention to waive separate rights in favour of the joint family. 30

If a member of a joint family sells his interest in the joint family property then the vendee acquires an equity to work out his rights by means of a partition suit in which he may ask the Court to allot that particular property to the share of his vendor so that he could get a title to it. If the vendee is a stranger then he is a stranger to the joint family also. If the vendee is a member of the joint family it will depend upon from where the money comes—that is the final and acid test, where did the funds come from and what are the presumptions to be applied. 40

In Hindu law the position of manager, whether he is regarded as trustee or agent, is not very clearly defined. I think in 26 Madras p. 380 the position is laid down. He is not strictly a trustee; he

is loosely a trustee, and therefore the passage at Gupte 134 Article 36 “ When the manager has neither a larger proprietary interesthe is neither agent nor trustee of the joint family property ” is perfectly right.

In regard to nucleus, whether a business started with an adequate nucleus from joint family funds in a joint family business is a question of fact and not a question of law.

10 Yesterday in reading R17 there arose some doubt as to the meaning of the words “ big house ” in the translation, whether big in size or in the sense of ancestral house. In the context I think it refers to big in size, because the expression “ PERIYA WEEDU ” in ordinary Chetti parlance more applies to elders; it represents individuals rather than a house as such.

(To Court: Q. Can it refer to the place where the elders stay?

20 A. It can refer to either the one or the other, but in this context I think it refers to big in size. Among Chetties the custom is as soon as marriage takes place they set up a separate house; that separate house always refers to the other houses as the PERIYA WEEDU indiscriminately using the term to indicate the elders of the family, the house in which the elders live. But in the context here, when it refers to one house and another house, PERIYA WEEDU I think refers to the big house. The word “ big house ” in the other context refers to the elders in the big house; it is association of ideas.)

X X D

30 I heard of Gupte only when I came to Colombo; from his book I see he is practising in Bombay; I have not heard of this gentleman before nor is his book utilised in my practice. Not knowing him of course I cannot say one way or another about his position in the Bar. Mr. Raghavachari's book I have seen; he is practising; that book is fairly well known to me. As against these two gentlemen Mulla and Mayne edited by the late Mr. Sirinivasa Iyengar are well known authorities, undoubtedly. Mulla has been re-edited last year. I was rather surprised that the editor had not referred to the 42 Privy Council case.

40 I have a large number of clients among Chetties. From my practice I have come to know that Nattucottai Chetties are a trading community living in Ramnad, Madura and Pudukottai districts of South India. Pudukottai is a native State subject to British suzerainty. Sembanur, if it is in Karaikuddi, is subject to Madras jurisdiction. Most of these Chettiars are Hindus; they are Hindus for all purposes. These Nattucottai Chettiars generally carry on money lending business and also functioned as bankers though now they have turned to other activities.

I have come across several cases where a family business has been carried on from generation to generation; I have heard of the firm

of AR. AR. SM. which has gone on for a large number of years. These Chettiars carry on business in parts of the British Empire such as Ceylon, Malaya, Burma, Indo-China and Siam. Generally a very big Chettiar money lending family, say in the Ramnad District, would own businesses in various places like Burma, Ceylon and Malaya. Most of these businesses are generally carried on by representatives, either strangers appointed as attorneys or various male members of the family. These representatives in these various places, when they happen to be members of the family, take turns in the management; for instance the father would be in charge in India, the eldest son might be in Ceylon and the second son in Rangoon.

10

Q. When any particular member of the family is managing a business, say in Colombo, all the transactions in Colombo will be entered in that man's name?

A. It will be carried on under the vilasam of the family. Generally these Chettiars carry on business under vilasams. For instance, where the father is Arunasalam, the son is Arunasalam and grandson is Somasunderam; if the grandfather is carrying on business, he carries on business under the vilasam ANA RUNA: That is his name as well as his vilasam. When he dies the vilasam would be ANA RUNA ANA RUNA. In short they take the initials of the two or three ancestors. Generally when the representative carries on business say in Colombo or Rangoon, the person in active management when he wants to indicate that he is carrying on business under the firm vilasam, prefixes the vilasam to his name. Assuming AR. AR. SM. was a joint family business, and it has an agent, one Annamalai, he would sign as AR. AR. SM. Annamalai and all the documents would be taken in the name of AR. AR. SM. Annamalai Chettiar. When the same Annamalai is succeeded by another agent, say Caruppiah, then the document would be written in the name of AR. AR. SM. Caruppiah and so on when one agent supplants another. Similarly where the elder son carries on the business AR. AR. SM. he would write his own name prefixing the vilasam. Supposing the 2nd son comes to relieve the first son, he will sign his name in the same manner as another agent. And if for a short time the father happens to come in and take over active business managements documents would be in the name of the father with the vilasam prefixed.

20

30

I know that several actions for partition of Nattucottai Chetties' estates have come up before the courts and in some of them I have found they had branches in various places all belonging to the joint Hindu undivided family; the manager or representative has got particular powers in all such cases; the representative sends up accounts to the headquarters in India. Generally they maintain in the headquarters in India duplicates of books kept in Colombo

40

or Burma. I also know when the proprietor or head of the family is in India instructions are sent out to the various representatives as to what should be done in the normal course of business.

No. 11.
Further
Proceedings
—contd.

In the case of Nattucottai Chetties their assets will consist of immovable property and/or trading assets and in the case of trading families no distinction is drawn between immovable properties and trading assets. The same view has been taken in two cases reported in 27 Madras Law Journal 671 and 654.

10 Q. According to that judgment it would not be correct to say that there is no distinction between immovable properties, trading assets and assets of the joint Hindu family?

A. Yes, all this time of course we are assuming that there is a joint trading family. Once it is shown that a business was started with the nucleus of ancestral property that business continues as the joint undivided Hindu family business whatever may be the conduct or behaviour of the members subsequently.

Q. It would be legitimate to say even if one of the male members executed transfers or a last will it would not affect the character of the business?

20 A. Yes, once it is established that the business is a joint family business.

Q. You have had cases in India where members of the Nattucottai Chetty community who are members of a joint Hindu undivided family, ignoring that fact, have executed last wills?

A. There have of course been cases in which wills have been executed in the case of joint family property which have come up before the Courts, but I cannot say I am aware of any case personally in which a Nattucottai family has executed a will in respect of his foreign business, dealing with joint property.

30 Q. You know the firm RM. AR. AR. RM. where one of the members executed a last will.

A. I don't know the details of it. I am not aware of the result of the case; it is now before the Privy Council. What happens in regard to those wills is that the joint Hindu family property cannot pass under the operation of those wills but if there is a separate property it will go under the will; the clauses of the will will be inoperative in so far as they affect the property of the joint Hindu family.

40 Q. Have you also come across cases where the head of a family, the father, had made entries in books of alleged gifts to his minor descendants?

A. I have come across cases more in connection with entries relating to charities; in fact the case which I referred to in 1945 AIR (Madras) 473 is a case in which entries had been made in connection with charities.

Q. Would it be correct to say that a joint Hindu family business cannot come to an end until partition, generally?

A. Yes, if it is joint family business. But the business itself may come to an end. If the business is a continuing business, undoubtedly.

Q. Out of the many characteristics which go into a joint Hindu family the chief, or some, are jointness in worship.....? 10

A. I do not understand, speaking for myself, what exactly is joint worship in South India and what exactly is separate worship when the members divide. Yes, generally in a Hindu undivided family one of the characteristics is joint worship; another is joint mess, and a third joint property.

Q. If all these three features exist there can be no doubt that that is a joint Hindu family owning joint property?

A. Not necessarily owning property, because it can be theoretically joint in estate without owning property. 20

A joint Hindu family is more in the nature of a corporation and with reference to the property owned by it, it is the group or the corporation that owns the property. That group of persons varies from time to time according as members died off or new members are born into the family and it is correct to say that in a joint Hindu family business a Chettiar is literally born into the business. This joint Hindu family may consist of male members and female members; the narrower group would be the male members who are called co-parceners; the rights to property would be confined to co-parceners. The female members have got certain rights in regard to maintenance and on marriage; they have no claim to a share except of course under the Act of 1937 (Hindu Womens Property Act). In such a joint Hindu family consisting of males and females owning property, on partition between the male members, each male member with the share he gets on partition starts a new joint Hindu family, unless of course one of the fatal events takes place like barrenness or bankruptcy. 30

Separate property in the hands of the father, if he dies without transferring or bequeathing by will, will become ancestral on devolution by intestacy, and immediately the devolution takes place, the sons and grand children acquire an interest. 40

Separate property transferred by the owner, the head of the family, to a stranger will be separate property in the hands of the stranger.

Q. If transferred by gift to one of the sons?

A. The Madras High Court takes the view that it would be treated in the same manner as ancestral property.

Q. If a father of four sons gives his separate property to the son he likes best, will the other three be entitled to a share of it?

A. No that son will also have a share of the ancestral property.

Q. If such a case were decided in the Court of Madras, it would be ancestral property?

A. Yes it would be.

10 Q. Have you come across any case of the Privy Council where impartible property donated by the owner to a person who is not in the line of succession has been held to be separate while the same transfer to a man who is in the line of succession has been held to be joint? (I am thinking of the case at 1946 AIR (PC) 103 at 106). (Counsel reads.) What is "Gadinashi"?

A. He is the head, the man who sits on the throne, the proprietor.

Q. In that case in regard to impartible property, it was regarded as joint family property despite the will?

A. Yes.

20 Q. A partition of a joint Hindu undivided family can be either partial or complete?

A. Yes. It can be partial in regard to either to a particular property or property of a particular person or persons.

With reference to the properties which have not been divided up the family may continue joint or a severance in status might have taken place earlier. The way in which the Privy Council puts it the presumption is it is generally regarded as complete, but the parties may agree to be joint in status in spite of a partial division.

30 In my experience of partitions among Nattucottai Chetties, the processes have taken a few years in some instances; it all depends on the extensiveness of the property.

In a Chetty family having business in Madras, Saigon, &c., one business at one place may be divided at one time and another business at another place at another time. They generally come to an agreement as to what should be done in regard to the various businesses; there is no uniform rule.

40 In some cases division of status may be the last. The division of status has very often come first and then they make arrangements as to the conduct of the various businesses. There is nothing to prevent it coming last.

In the case of one member separating there may be partial partition.

There have been cases of reunion after division, though rare. On partition each of the male members having their children become separate, joint undivided Hindu families.

Separate properties in the hands of the descendants will by devolution become ancestral.

Separate property if given by gift to the normal person who would get it by inheritance is treated as ancestral; even by will it is the same unless of course the court finds a different intention.

10

Apart from these two methods there are other ways in which a joint Hindu family can have joint property.

Q. Take the illustration of father and sons; they all as a group cultivate property and utilise the earnings for the benefit of the family.

A. That becomes joint family property.

Q. There can also be a case where the four sons not working jointly, but separately, bring back the earnings and put into the common pool and the common pool is utilised for the expenditure of all the members of a Hindu family without calculating as to who took more or who took less. That would be blending?

20

A. I won't call it really blending.

Q. One of the essentials to find out the nature of a property, whether joint or separate, is to find out the use the income of that property is put to?

A. I won't say that because there have been instances in which the use has been interpreted as due to generosity or motives of kindness, but the property has nevertheless been held to be separate property; it might be one of the ways to find out whether it is joint or separate.

30

When you come to divide a joint family property what is left is divided; no account is taken as to what amount has been spent upon individual members.

Q. So that when you find in a document of partition that a certain sum of money has been divided 50-50 it is a fair indication that particular amounts expended on a particular member have not been reckoned but what is left has been divided?

A. It would not necessarily be the inference. In a partnership generally the partners have got ledger folios for each partner and a capital account. All drawings by each partner are debited to his particular account and if there are any overdrawings that

40

would be set off against his share of the profits. But if that does not take place and all the expenses are debited to a common account and the balance is divided, it is a fair indication that it is not a partnership but it is co-parcenary business.

No. 11.
Further
Proceedings
—contd.

In partnerships joint worship seldom exists. I am not quite sure that Chettiars without any blood relationship have established some kind of a common charity or temple. I believe sometimes they do establish such charities.

Q. Do they bring these charities also into the dissolution?

10 A. Generally we deal with these matters in partition suits in which joint family properties are in question.

In joint family business and in every business there will be an expense account.

Q. You have separate accounts for expenditure such as business expenses for carrying on the business, payments to each partner, etc., but in a co-parcenary business or common joint family business there is one account for all expenses.

20 A. I am not prepared to dogmatise and say that. There have been innumerable methods; it all depends on the peculiar genius for book-keeping of the community.

(*To Court:* The essential difference in a partnership is that individual drawings of each partner will be debited to his own account, but where the partnership expenses are concerned they are all debited to one account; but in the other case monies given to several members will go into one account.)

Q. Say one of the four sons of a family is a great lawyer and makes several lakhs and he just throws all his earnings to the common fund. That is what you call blending?

30 A. Yes. By his conduct in handing it over he blends his earnings and makes it joint.

Q. Another characteristic is, all accretions to joint property are necessarily joint?

A. Yes.

Q. Another characteristic is, in a joint family owning joint property, undivided, one of the male members dies; on his death the rest get it by survivorship; so much so that on the death of that male member one cannot say that at the moment of death he died possessed of property?

A. Of course he dies possessed of property.

40 Q. Are you aware of any authority?

A. The will takes effect after death.

Q. In a joint Hindu family when one member drops by death you cannot say he died possessed of any property—Mulle p. 449 Sec. 369.

A. The property he possessed in his lifetime. It is only so long as he is alive that he can own property; it all depends on the angle in which you look at it.

There is no question of succession in regard to a Hindu undivided family.

From that point of view if R3 purported to deal with joint property which passed by survivorship on death, then the views 10 expressed therein may be correct.

Q. In R3 he does not give any reason why he left no property?

A. I cannot say that that is necessarily wrong.

It is consistent with Suppramaniam Chetty having been a member of a joint undivided Hindu family owning joint property.

I have not studied Ceylon law. I do not claim to give any opinion when it affects Ceylon law. Generally I cannot say what the position in Ceylon is. Nor can I say what transfers would have had to be done to bring certain things into line with Ceylon law. 20

The manager of a joint Hindu family is generally the father, and he is called KARTHAN; he has got certain rights with regard to the management and certain obligations also; his rights are somewhat circumscribed; he is a man *sui generis*.

Q. The nearest approach to that position would be “ Trustee ” without some of the obligations or some of the duties?

A. There might be some fiduciary relationship by reason of his possession of property and right of management but I don't think it would be correct to describe him as a trustee.

Q. In 26 Madras their Lordships seem to think “ Trustee ” 30 is nearer than any another?

A. That is the relationship between the manager and the other members of the family. I agree with the passage in Maine's Hindu Law 380, Sec. 299, “ the position of a KARTHAN or Manager is *sui generis*..... ”

Sgd. N. SINNATHAMBY,

A. D. J.

(After Lunch)

No. 11.
Further
Proceedings
—contd.

K. RAJA AIYER. Affirmed.

(X X N-contd.)

If the business is a joint family business, the fact that in the course of the business transfers had been made in the name of one member or another would now affect it?

10 A. If the business is a joint family business the fact that conveyances from debtors of properties have been obtained in the names of individual members will not make any difference. The property conveyed will be joint property because the business is a joint business.

Q. And persons in whose names the transfer are taken will be trustees for the joint family?

A. They do not become trustees, they hold the property on behalf of the joint family.

If he takes it as agent of the firm he holds it as trustee for the firm.

20 Q. (Shown 21 N. L. R. 389). Here Somasundaram Chettiar the person in whose name the property is conveyed is one of the members of the firm?

A. I see that they have put it up on the ground that he was an agent and that he took it as an agent, and therefore as an express trustee.

Q. Will I be right in saying that where the business has been joint family business transfers and conveyances may be taken in the name of one individual member or another?

A. Yes.

30 I agree with the view of the Privy Council as stated in 6 Moore's Indian Appeals p. 53. This case is an authority for the position that where a purchase is made in the name of the son it is a *ben ami* transaction.

When I said earlier that partition is a term which can be applied to the conversion of joint property into separate property, what I meant was that what was originally owned by members of a joint family is converted into two separate estates in the sense that they became divided. The property becomes joint property in the hands of the member to whom it goes in so far as he and his male descendants are concerned.

40 Q. In the case of a Nattukottai Chetty businesses are not securities, pro notes, &c., taken in the name of one or more members of the firm for convenient collection?

A. I do not know whether that is the practice or the rule. It is certainly taken in the name of the agent who is managing. But whether it is taken in the names of two persons, I do not know. I do not know that mortgage bonds are written in the names of either principal, manager or agent. Generally for the purpose of convenience they appoint an agent and they give a power of attorney to that agent.

Q. When the security too is taken in the name of the agent plus the principal, or one of the co-parceners?

A. I am not aware of it.

10

Q. If a joint Hindu family business is really owned by a group or two co-parceners, father and son, there can be no objection if father and son are shown as parties contracting on the security?

A. There can be no objection in law. It is equally consistent with their being also partners in respect of the business.

The income tax authorities in India are very careful to examine and find out particulars of families; I suppose they are equally careful in Ceylon.

(Shown A50 and A51.) These are demand notices calling upon the parties for declaration. In these two notices father and son are described by name.

20

A52 is an assessment after necessary examination or preliminary inquiries. In that they definitely put down the status of Suppramaniam and son as an Hindu undivided family. Similarly A52 to A55 which are for the years 1927 to 1932 all describe father and son as members of an Hindu undivided family.

In the four assessments the income from the Colombo shop is shown as an asset of the Hindu undivided family. In describing the Colombo shop they give it the name Colombo Sole Shop. That looks to be in contradistinction to the partnership shop in Burma. In the years 1927 to 1932 Suppramaniam and Nachiappa have been taxed on the profits of the Colombo shop as members of an Hindu undivided family.

30

I have been furnished with a copy of the evidence recorded in this case. I have also been furnished with copies of documents.

I notice that in R4 and R5 Suppramaniam purports to assign his interests to his son both in immovable and movable property in Ceylon. No Indian assets are included. That was in the years 1925 and 1926.

I was also supplied with copies of documents A26 to A34. These are instructions which Suppramaniam Chettiar gives to the attorney in charge of the Colombo business as to how the business

40

should be conducted. Although by R4 and R5 he had transferred to his son certain mortgage bonds and promissory notes and lands he is the man who is directing the business and giving instructions in these letters.

No. 11.
Further
Proceedings
--contd.

Q. That is quite consistent with the joint Hindu family continuing?

A. If he had really parted with his interests by R4 and R5 he could not give instructions.

10 Q. It is also quite consistent with the business being still joint Hindu family business?

A. The question is when he retired from the business.

These are merely transfers of particular items of assets and I do not know whether those instructions relate to these assets. If they are instructions relating to these assets, I do not know what inference can be drawn from them because he has parted with his interest in those items in favour of his son.

Q. It is also consistent with the transfers being made in favour of the son for the purpose of convenience of collection?

20 A. It is inconsistent with his having transferred them; if the transfers are real and operative then he has no further interest.

Q. If the transfers were sham?

A. Then they retain the character as it was previous to the assignment. If the property was owned by Suppramaniam and Nachiappa otherwise than as joint family members then it retains that character.

No man can transfer joint family property.

Q. Here the transfers are perfectly consistent with the character of the business being that of joint family business?

30 A. When I gave my answers I did not know whether R4 and R5 were connected with the business.

Q. Assuming for a moment that the mortgage bonds, promissory notes and lands formed part of the joint Hindu family business of K. M. N. S. P. in Colombo, the transfers R4 and R5 cannot affect the character of the business?

A. No. Once you postulate that the property is joint family property then whatever is done cannot change its character. But in determining the question whether it is joint family property or not, these matters have to be taken into consideration.

Q. If, for instance, for some of those transfers no money was paid by son to the father, if Suppramaniam subsequent to the transfer continued to manage them, that would be a matter for the court to consider whether the intention of the parties was that the transfer was a sham?

A. It is a question of fact, whether a particular transaction is a sham or not, a transfer would depend on the facts of the particular case.

If I recollect aright in 1941 Privy Council 48 a particular transfer was held by the Privy Council to be a sham transfer. 10

Q. Did you examine the documents and bonds transferred by R5?

A. Yes. All documentts are in favour of both. I take it from you that they deal with the period 1918 to 1925.

According to the registration of business names Nachiappa was registered as a partner only in 1925.

(Shown R28.) In this case the notification purports to be made on 3rd April, 1925, saying that Nachiappa is admitted as a partner. From these documents I find that they obtained the securities as far back as 1918. 20

A65 is a transfer in favour of Suppramaniam and Nachiappa. In 1930 by A64 one Abdul Majeed transfers to Nachiappa only. I cannot say that I examined A64 carefully. It refers to a consideration of jewels and promissory notes in 1918. A64 was made over to Nachiappa in payment of certain debts incurred under a bond of 23rd September, 1918. (Shown A64, R5, R28 and R4.) You see that according to R28 Nachiappa is admitted a partner in 1925; according to R5 and A64 Nachiappa was having interests in the business in 1918. (I am assuming that all these transactions are business transactions. All those transactions might be business transactions or independent acquisitions of property apart from the business.) 30

Q. The statement that he is a partner will not affect the character of the property assuming that the family is a joint family and the transaction a business transaction.

A. Its importance is very little. If it was previously a joint family business it cannot affect it.

(Shown 70 Madras Law Journal p. 214.) A statement of partnership does not affect its character. I think that that case decided that members of a joint family are not necessarily partners. 40

If a joint Hindu family business is carried on by a father and after the father by his son and the son changes the vilasam that would not change its character.

No. 11.
Further
Proceedings
—contd.

I have read the evidence and the documents produced in this case in a general way.

Q. Will I be correct in stating that the documents produced show that a person called Kumarappa Nachchiappa had a money lending business in Colombo in 1864? (Shown A23.)

A. Yes.

10 A24 mentions a fair number of constituents or customers of this firm. It shows that there was a K. M. N. firm in Madura. A25 shows that there was K. M. N. firm in Colombo in 1874.

Q. Will I be right in saying that A25 shows that this firm went on up to 1877?

A. The transactions go up to February 1877.

20 A35 shows that in 1886 there was a transfer to Nachiappa the 2nd of certain property on account of debts due to the firm in Colombo during 1876 to 1878. It does not refer to K. M. N. firm. It refers to a firm conducted by Nachiappa. The document shows that this debtor had transactions with Nachiappa's firm from 1876 to 1878. Nachiappa, son of Nachiappa, is the transferee. The firm is that of Nachiappa, son of Kumarappa.

(Shown the last entry on A23.) The connection between this and that may not exist. That is not a matter for my opinion. If the two transactions are connected, if this transaction to which you refer in A23 is the identical transaction referred to in A35, it shows that the two businesses which are referred to are the same.

Q. The transferee is Nachiappa the 2nd?

30 A. This is in favour of Nachiappa, son of Nachiappa.

In A23 the account starts with Kumarappa Nachiappa the father. If the two transactions are one then there is possible connection.

This is one of the properties dealt with in A8.

The other documents from A 13 to A 17 and A 21 and A 22 show the continuity of the business of K. M. N. from 1895 to 1908. The bonds referred to in R 5 and A 64 show connection from 1918 right down to 1925.

40 (Shown A 8.) This document purports to be a deed of partition. That, prima facie, judging from the Tamil word, is a partition of joint Hindu property. That word would be hardly

used for a distribution of partnership assets. It is a partition of property. Then it goes on to say that there is a partition of debit and credit transactions, partition of village jewellery and other sundry things which had already taken place and refers to a partition having taken place earlier in respect of those three things. Then it goes on to refer to certain portions of the house divided and confirms the division, wherein they lived. It goes on further to deal with the property mentioned in A 35. The 2nd paragraph says "after paying off in full the liabilities of the common firm K. M. N. as per account rendered during the agency of Nachiappa to 6th June, 1911, &c.," and proceeds to divide that equally between the two brothers. What remains is divided into two equal shares. It goes on to say that the half share due to Nachiappa the 2nd is to be paid to his five children and the Rs. 103,000 is handed over to Suppramaniam. Then, in addition, it deals with certain immovable property in Colombo. Then expenses and certain other items for the flower garden and premises and provision made to charities which go to make up the joint worship. The balance of Rs. 7,000 is divided between the firm of M. S. R. M. S. and Nachiappa, son of Suppramaniam. Then it goes on to divide certain mango and tamarind trees, &c., and says "which possess the balance interest.....for common benefit". It makes provision for a division of trees in their own home. 10

The next page goes on to say that Nachiappa and Suppramaniam possess in common the temple, &c. There are definite provisions with regard to the temple. One is asked to repair the temple and the other is asked to repair the flower gardens. The provisions contained here indicate more a division or partition of joint property belonging to a joint Hindu family, because when parties partition they partition everything belonging to them. This document is capable of being either one to wit joint Hindu family property or the other to wit co-owned property. It is only a partition of property which belongs to them. In a partnership dissolution temple and flower gardens are not normally found. 30

Q. In a normal partnership one does not expect to find a temple and palmyrah trees being cut up and divided?

A. If it is joint family property it is consistent with that.

Now I know that a business started in 1864 and certain documents show a fair amount of continuity of that business. Then in 1912, this document shows a partition of the business. All property is divided between the two brothers Nachiappa the 2nd and Suppramaniam. If you postulate an undivided family it is joint property. Unless they divided their status earlier this must be regarded as a partition in law of property merely as joint family property. 40

Q. If they had divided themselves in status it is rather difficult to accept an equal division for the business?

A. It will be an equal division of the balance because so far as I can see there are two ledger pages in the names of Nachiappa and Suppramaniam. They might have drawn equal amounts and waived the balance.

10 The only doubt is that the division might have taken place in 1891 or in 1912. In 1891, an earlier division of the village jewellery and sundry things took place in the village. That is what is referred to as a division in 1891. There was a partial division in 1891, and final division in 1912. In 1891, the entire properties appear to have been divided. In 1912, they complete it by dividing the Ceylon business also.

Generally Chettiars, as Hindus, would rather begin a business on a good day of the month. If the partition process was going on one of the members might have said that he would start his business a day before the partition was completed—irrespective of the partition he can start his business. After starting the business on an auspicious day they put through some debit and credit entries.

20 (Shown A 9B.) This is the cash and day book of the firm K. M. N. S. P., beginning with an invocation to the Gods. It is dated 15th May, 1910. On 15th May, the first five items are in the names of deities. The next item credit of profit Rs. 11; the next credit headquarter Rs. 51,100; then credit K. M. N. Rs. 100 and then debit of K. M. N. That is a return of the money. After that no entries are made.

30 The next entry is on 20th January, 1911, credit to headquarters Rs. 51,100. The book entry shows that the money was received on 15th May, and returned on 20th January, of the next year. From 15th May, 1910, to 20th January, 1911, no business takes place. The first entry on 20th January, 1911, is a credit of Rs. 156 supposed to be profit. On 20th January apart from certain other entries the most important entry is the return of Rs. 51,100 which was supposed to have come in from headquarters on 15th May, 1910.

40 I see a number of transactions in January. On the 6th January, 1911, Rs. 103,474 is received. Thereafter the transactions go on fully. Rs. 103,474 both debit and credit is a book entry. I do not know whether the Rs. 51,100 transaction is a genuine one or not. It was received on 15th May, 1910, and supposed to have been returned on 20th January, 1911. The Rs. 103,000 is debited and credited on the same day. I have not investigated the bringing in of any capital on 20th January, 1911.

From A9A I cannot say that the books are kept continuously. There is a break between May, 1910, and January, 1911.

I am also aware of the fact that Nachiappa after the death of Suppramaniam has been assessed first by the Indian Income Tax authorities as a Hindu undivided family—A 56 and A 57.

(Shown A18.) This has a note that he is taxed as a Hindu undivided family at 10 per cent.

Joint family business and a partnership have a distinction.

I have also stated that there is nothing in law theoretically to prevent a member of an undivided family starting a business alone. The profits of that business will be separate property. He might utilise joint family funds but that does not make it a joint family business. Even if he started with joint family funds the business might be treated as his business and so far as the joint family is concerned it is given credit for the money taken. If it is not treated as a loan but if he utilises it as joint family property it will be open to the other members of the family to claim it as joint family property. The property must be acquired without detriment to the joint family fund. 10

Other adult members of the joint family can consent to the manager's taking joint family monies for the purpose of his starting a separate business of his own. I do not think that the minor members when they come of age could challenge it. There is no case on the point. It is my view. A manager is a fiduciary member. The advantage gained by him may be claimed by the other members. If there are minors it would depend on whether the other adult members of the family are competent to consent and bind the minors. 20

I said in examination-in-chief (Shown A 26-31.) "That would not throw any light on whether the business of K. M. N. S. P. was a joint family business or a partnership, &c." That is on the letters, by themselves. Every document in a case throws light when considered with another document. Taken with other documents they might be consistent with the property being separate property or joint or joint family property. 30

Q. (Shown R17.) He gives one or two instructions about the management of the business. The giving over of the business to the widow—the rest of the devise—is consistent with what would happen when Nachiappa dies as a member of a joint family.

A. I do not think so. Except that he gives property to his son. All the property is given to the sons. The sons would normally be coparceners. 40

If it were a joint Hindu family all these provisions which interfere with the joint family property cannot be valid and operative in law.

(Shown R50.) If the property were joint family property this statement cannot affect it.

(*To Court:* I said that where a father carries on a business and the sons carry on a separate business the presumption, in law, is that the sons' business would be their own business and the income and profits presumably would be their own. I referred to 1925 Madras and 1933 Madras. It is also consistent with other positions which are generally assumed, namely, that a member can start business on his own. There is no resumption that that business is joint family property; and therefore if father and sons constitute members of a joint family and the sons alone start a business that it necessarily follows that the business is family business, unless it is shown that joint family funds were utilised or that they were carrying on on behalf of the joint family.)

No. 11.
Further
Proceedings
—contd.

Sgd. N. SINNETAMBY,

A. D. J.

Further hearing on Monday.

3.3.47.

Appearances as before.

Errors in previous day's proceedings corrected by consent.

K. RAJA AIYAR. Affirmed.

20 (X X N—*contd.*)

Q. If, for instance, when a joint Hindu family property, including business, is being partitioned one of the members starts a similar business on an auspicious day and after a year brings in the whole of his share from the joint business into the new business and carries on the business utilising his share of the business, would that be joint family property or not?

30 *A.* As no business was done since the starting of the business and the facts show that the subsequent business has been carried on with money brought from the partition it would lead to the strong inference that the subsequent business was also intended to be a joint family business.

Q. Would it be correct to say that the law as regards the lending is put correctly in 1929 A.I.R. P.C. p. 1 and in 1943 A.I.R. PC. p. 40?

A. Yes.

Q. In the last will of Nachiappa he speaks of a business of which he is sole proprietor and a business of which he is a partner?

A. Yes.

Q. He distinguishes two kinds of business, one his own and the other with somebody else in partnership in Burma?

A. Yes.

With reference to the answer in the evidence about the document A8 I wish to make it clear that that document is consistent with the partition of Hindu joint family property. Taking A8 by itself, without reference to any other, is consistent with either partition of joint Hindu family property or co-owned property. There is nothing in the document itself which necessarily forces one to one conclusion or another.

10

RE-EXX.

I was asked in cross-examination about Gupta.

Q. You said that you had no occasion to use Gupta in Madras?

A. Yes.

Q. You have, since coming to Ceylon, occasion to look at it?

A. Yes.

Q. There is no reason to believe that although Gupta is from Bombay that the statements made by him in his book on Hindu law are incorrect?

A. The whole of the book—I can't say.

20

Q. Do you know that Gupta is alive or dead?

A. I do not know whether Gupta is alive or dead.

Q. You have said this in cross-examination: " I heard of Gupta only when I came to Colombo. From his book I see that he is practising in Bombay. I have not heard of this gentleman nor is his book utilised in my practice. Not knowing him I cannot say one way or the other of his position at the bar. I have seen Mr. Rajavachariar. He is practising. His book is fairly well known to me. Mulla and Mayne are well known authorities undoubtedly " ?

A. Yes.

30

Q. Why do you say " as against these gentlemen " ?

A. Mayne's Hindu law and Mulla's Hindu law are recognised as leading authorities on the subject. They are eminent men and the books are edited by eminent men.

I have had occasion to refer to Rajavachariar sometimes in the courts, but not Gupta.

Q. Do you like to modify the statement " as against these gentlemen " ?

A. I think it is substantially correct. There is no doubt that in Madras people would swear by Mayne and Mulla, rather than by Gupta, though as a matter of fact, several passages in Mayne have been dissented from. Even Mulla fails to refer to 1922 P. C.

Q. You said in examination-in-chief and in cross-examination that “ The fact that certain letters of the alphabet occur in a vilasam does not enable one to draw any inference as to whether the business carried on under that vilasam is a partnership or a joint family business or a business carried on by an individual ?

10 A. Yes. I have given that answer.

Q. You said that trading assets and immovable property of a joint family are not as a rule distinguished ?

A. In the case of Nattukottai Chettiar trading families there is no distinction between the family property and assets actually employed in the trade.

Q. Will you elaborate that statement ?

20 A. That is, it is not as in an ordinary partnership—any particular sum is set apart and earmarked for the conduct of the business so that as far as the creditors are concerned they can look to that. In the case of Nattukottai Chettiars the theory is that all the property is put in as capital of the business. So much so that any creditor who obtains a decree is entitled to proceed against any portion of the property belonging to the family.

Q. But as between the members of the family some of the assets may be divided and the others not ?

30 A. The question in that form can arise only in the case of joint family businesses. My answer applies to joint family businesses. In the case of divided members who are carrying on business together it would be each man's own property which would be brought in; so far as his branch is concerned there will be no distinction between capital he puts in and his own family assets.

Q. That is not a case where divided members combine to do business ?

A. Yes. It is merely one aspect of emphasising the notion that in the case of such families of family partnerships the strict law of partnership does not apply. The relationship between them is not that of partners; it is not that they contribute certain amount as capital.

40 Q. When you spoke of a joint family business in the context just immediately preceding, do you speak of a business in which immovable property is not an asset either in a money lending business or in a trading business ?

A. In such a business which is carried on by the members of a family there is no separate capital. What the Madras High Court says is that all the property of the family, whether it consists of immovable property or otherwise, should be regarded as capital invested in the business. The book might or might not show any capital. Even where the books show a particular sum as capital, if it is a joint family venture, then the creditor is regarded as being entitled to proceed against all the property of the firm.

Q. So that the statements in the books will not be the sole creditor? 10

A. No.

Q. On the question of joint worship, I believe you expressed the view that you did not understand what was meant by joint worship in South India at any rate?

A. Yes.

Q. In what sense do they use the expression " joint worship " in South India?

A. I think in the case of Nattukottai Chettiars who establish charities in common where the family is joint all the members of the joint family conduct that charity in common. Then at partition they enter into arrangements regarding the conduct of that charity by a system of rotation or by turns. 20

Q. So that the combined maintenance of charities may, in certain cases, continue even after division in status?

A. Yes.

Q. In the 1946 Privy Council case which was cited to you the appeal was from the High Court of Allahabad. The law that prevails in Allahabad is the Dayabaga?

A. I think the Dayabaga is in Bengal. That case dealt with impartible property as joint family property for the purpose of succession. The character of that joint family property passing by succession was not effected by reason of its having been disposed of by will in favour of the person who would otherwise have taken it. 30

Q. Do you know whether the branch of Hindu law in force in Allahabad is the the Mitaksara?

A. In Allahabad it is the Mitaksara which prevails supplemented by, I think, the Benares school.

Q. The 1946 Privy Council case is not a case of gift, *donatio intervivos*?

A. No. 40

It is a devise of impartible property.

No. 11.
Further
Proceedings
—contd.

Q. So that the decision of the Privy Council in this case (1946 P.C., A.I.R. p. 103) does not affect the opinion I gave in regard to *donatio intervivos* of separate property?

A. In my opinion this case has no direct authority and has no bearing upon a case of bequest or gift by father in favour of his son. On that question I do not regard this case as having any bearing.

10 Q. You were asked that the process of partition of a Hindu undivided family is one that takes some time especially in the case of families which own property in India and outside. What is the time so far as it has come to your knowledge that has usually taken in the partitioning of a Hindu undivided family?

A. I cannot say that it has taken any particular time now can one deduce any average. Partitions sometimes are rushed through, very rapidly, and finished as soon as possible having regard to the nature of the properties. Sometimes they are long drawn out. What is long drawn out is the partition by means and bounds.

20 Q. A partition on paper by means of a document need not take time?

A. It depends upon the extensiveness of the properties and the convenience of parties.

Q. Where partial partition is effected in respect of property which is partitioned the members of the family are separate?

A. Yes. That must be regarded as separate in respect of that property.

Q. Would it be correct to say this: That if there is evidence of partition of property the presumption is in favour of a total partition?

30 A. Yes. The presumption is in respect of an entire partition both in respect of individuals as well as in respect of the property.

Q. When you say "both in respect of individuals" you mean in status?

A. Yes. In status as well as the persons who constituted the joint family.

Q. You said that utilisation of income may indicate the nature of the property?

A. Yes.

Q. Do you wish to qualify that statement or elaborate it?

A. The way in which any property is enjoyed and the way in which the income from the property is enjoyed may indicate whether it is co-owned property or joint family property.

(*To Court:* That is one of the factors to be taken into consideration whether the property is co-owned or joint property.)

I answered in cross-examination by saying that if the income of the property is being shown to be used by the persons who owned that income, not in divided shares but indiscriminately, by the members just as if they were members of a joint family, or if they blend it and put it into a common chest along with other joint family income and the expenses are incurred from that joint fund, those are indications which would show that the intention is to treat such property as joint family property. 10

Q. And may one also draw this inference; that the persons who are combining in that very business have by agreement decided to treat certain expenditure as common expenditure?

A. I agree. There is nothing to prevent an agreement between the parties that there should be an account but that they should spend indiscriminately and take the balance in certain defined proportions. 20

Sgd. N. SINNATHAMBY,
A. D. J.

Adjourned for lunch.

After lunch.

K. RAJA AIYAR. Affirmed.
(RE-EXN—Contd.)

Q. You have said this in cross-examination when you were speaking of document A8. "This document purports to be a deed of partition. That *prima facie* judging from the Tamil word is a partition of joint Hindu property"? 30

A. Yes. It is a partition of joint property. Whether it is joint family property in the strict sense or whether it is otherwise than joint family property in that strict sense is a matter which has to be determined with reference to other circumstances. By Joint Hindu family property I do not mean undivided property.

Q. You say in continuation "that word". That is the Tamil word in A8 "would be hardly used for a distribution of partnership assets"?

A. Yes.

Q. You say it is a partition of property?

A. Yes.

Q. Is it not likely that laymen who are the authors of A8 did not observe the legal distinction between division and distribution of partnership assets?

A. They might have used the expression to indicate division of property as well as of partnership. In fact they have used the expression.

10 Q. You said that the practice among Nattukottai Chettiars who carry on business is that when an Agent signs for the principal he prefixes the vilasam to his individual name?

A. Yes.

Q. But that practice is not uniform?

A. Whenever the Agent acts on behalf of the principal or on behalf of the firm in order to indicate that it is a transaction of the principal or of the firm he prefixes the vilasam to his individual name. But whenever he acts in his individual capacity he would not use the vilasam. The fact that he is acting as an agent might be indicated by him in other ways as well.

20 Q. In the documents R27 to R32—those are the documents which relate to registration of the business of Suppramaniam Chettiar—the Agent has acted under a power of attorney. Whenever he signed for the principal he signed it in this way: per pro K. M. N. S. P. Nachiappa Chettiar, underneath L. Ramanathan?

A. Yes.

I said that here they prefix the vilasam of the firm to indicate that it is a business transaction of the firm.

30 Q. If an Agent is acting for a joint family business would it be necessary for him to sign on behalf of every member of the firm?

A. No.

Q. How many sign in such a case?

A. If there is a family vilasam he will use the family vilasam. If he is the holder of a power of attorney granted by the Kartha he will say "per pro" that power of attorney which is granted by the kartha of that family.

Q. In the case of a joint family carrying on a business in any place it is not necessary for each member to employ a separate Agent?

40 A. Yes.

Q. If each member employs a separate Agent and these Agents act for the members can one draw an inference one way or the other?

A. It will be an indication that the respective persons have separate interests in the matter in respect of which they give separate powers of attorney and it would not be consistent with the affairs or the management of the affairs of a joint family?

Q. (Shown A9B.) On 15th May, 1910, there are credits to certain Gods. What do those credits to Gods indicate?

A. They are generally employed in the starting of a new business. 10

Q. On that same date there is a credit of Rs. 51,100 and thereafter credit and debt entries?

A. There is a break of 7 months. There are credits and debits of monies received and paid out.

Q. Business starts in May, 1910; on January, 1911, there are credits and debits and the sum of Rs. 51,100 is remitted to headquarters. Now looking at A9A and A9B can one say that no business was done between May 15th, 1910, and June 6th, 1911?

(Mr. Nadarajah objects to this question on the ground that the witness is being asked his opinion with regard to matters which it is for the court to decide and with regard to which he is not called into the box as an expert. He also submits that if he has offended in this respect in questioning the expert witness on matters outside their province he would ask that those answers be deleted. 20

Mr. Basnayake formulates his question afresh.

Q. Looking at A9A and A9B is there evidence that business took place between 15th May, 1910, and June 6, 1911?

(Mr. Nadarajah objects to this question also on the same ground.)

ORDER

I agree with Mr. Nadarajah. The answer to this question would be one outside the province of the witness. It is not a question which relates to the Hindu law with regard to which the witness was called into the box as an expert. I, however, do agree that several questions have in the course of examination and cross-examination been put to witnesses called on behalf of the appellant and the Crown relating to matters which are not strictly within their province. It is not always possible when a question is being put to decide at that stage how far it is a question of law and how far it is a question of fact. But, I think, that where the answer relates to questions of fact this court will come to its decisions and will not rely or take 30 40

into consideration any answer given by the expert witness. I therefore disallow the question in the form in which it is put but I indicate to the learned Attorney-General that if there is any statement made by the witness in cross-examination he can put that statement specifically to the witness and ask for any explanation which he thinks is necessary.)

No. 11.
Further
Proceedings
—contd.

Sgd. N. SINNATHAMBY,

A. D. J.

RE-EXN—*Contd.*

10 Q. You have said this in cross-examination “ from A9A. I cannot say that the books are kept continuously. There is a break between May, 1910, and January, 1911.” (Shown A9A and A9B.) Is there any indication of a break?

A. By that statement I meant that after May 16, 1910, there is no entry until January 20, 1911. That is all I can say.

Q. Between May, 1910, and June, 1911, there are several debit and credit entries?

A. Yes. One is at page 1 and the other is at page 126.

20 Q. Looking at A9A and A9B one can draw no inference as to whether business was done or not between those two dates, except in January, 1911.

A. I can give no answer.

Q. In Hindu law there is no presumption of continuity of a joint family business?

A. There are a number of presumptions in Hindu law. I do not think this is a presumption in Hindu law.

Sgd. N. SINNATHAMBY,

A. D. J.

10 Special D. C.

3rd February, 1947.

30

(3 p.m.)

Mr. Basnayake states that he wishes to argue a preliminary point of law which was raised earlier in the proceedings but has not been adjudicated upon. He refers to section 73 of the Estate Duty Ordinance Vol. IV page 602 as amended by section 5, Ordinance No. 76, of 1938, and draws attention to the words “ to the satisfaction of the Commissioner ”.

He submits that this does not give a right of appeal. He admits that the Supreme Court has held that there is an appeal from the decision of the Commissioner to this Court under section 30 *et al.*

Mr. Basnayake submits that the word "appeal" suggests an appeal to a higher tribunal to decide a matter which was submitted to the tribunal to decide a matter which was submitted to the tribunal of first instance on the material that was placed before the tribunal of first instance; that having placed just one or two items of evidence before the tribunal of first instance the party cannot go to the court and place a volume of evidence and invite the appeal tribunal to reverse or set aside the decision of the original tribunal. He states that the only material which this court is entitled to look at in appeal under section 73 of the Estate Duty Ordinance is the material that was placed before the Commissioner. It would be doing violence to the word "appeal" to place new material now. 10

Mr. Basnayake submits that the Commissioner has stated that the movable and immovable property which this member of the Hindu family died possessed of was not Hindu undivided family property and that this court is invited to say that the Commissioner is wrong. He submits that if the Commissioner had all the material that was placed before this court, it cannot be said for certain which way he would have decided, but the Commissioner has not been made to come to a conclusion on the material placed before this court and that therefore it is not open to the appellant to turn up quite late in the day and produce all the evidence at its disposal which it had not placed before the Commissioner. He states that the subsequent amendments to the Ordinance have made it necessary for the parties to submit to this court only such documents and evidence that was placed before the Commissioner in regard to assessment. He refers to sections 36, 36 (a), 37 (2) and 39 (2). 20 30

He states that the Commissioner should have the opportunity of considering all evidence the appellants propose to place before the appeal tribunal, and the position in regard to appeal from section 73 is no different. The Supreme Court having held that the general appeal sections of this Ordinance apply to section 73, one has to assume that all these sections apply. He states that he is making use of these amendments to show that the legislature has now made it quite clear what at first seemed not very clear.

He cites 8 N. L. R. 223 at 228. 40

MR. NADARAJAH addresses me.

He states that the words used in the relevant section are "where it is proved to the satisfaction of the Commissioner he shall grant exemption." He submits that in this case the appellant applied to the Commissioner for exemption and the Commissioner turned it

down summarily and never called for any evidence. The letters that are relevant on this point are A5, R9, R10 and R11. He submits that no opportunity was given to the appellant nor was he called upon to lead any evidence by the Commissioner. He invites attention to A1, A2 and A3. If the position is that there was to be a sort of inquiry before the Commissioner—semi-judicial proceedings—when a party has to be heard before an order is made, and an order is so made without such procedure, the only other alternative for the appellant is to appeal to this court. He refers to section 14 of the Civil Procedure Code. He states that an appeal ceases to be an appeal the moment a document is filed in this court and a copy served on the Attorney-General; it becomes a regular action.

No. 11.
Further
Proceedings
—contd.

10 He refers to the statement of the Attorney-General filed in these proceedings dated the 22nd October, 1942, in which the present objection is not taken. He submits that the learned Attorney-General having not taken that objection at that time and his going to raise it now in the face of section 14 is not proper.

20 He points out that amendment 6, section 6, Ordinance 8 of 1941, came into operation on the 26th of April, 1941, that is, long after the present application had passed to the Commissioner of Stamps and the appellant came into this Court. The appellant came into this Court on the 2nd April, 1941. Ordinance 8 of 1941 was proclaimed on the 26th of April, 1941.

30 This amendment, he submits, has been brought not to force the Commissioner to give a fair hearing to the assessee but in order to arm himself with the provisions of the law to force the assessee to make a clear breast of the whole position before the Commissioner so that when he comes into court he might know what the evidence is and what the documents are (section 4 of Ordinance 5 of 1937). He refers to sections 37 and 39. He submits that it cannot be said that the appellant did not set out the grounds of appeal—see A1 and A2.

It is common ground; he states that the Commissioner called for no evidence. How can the question of evidence come in now? See section 35.

40 He submits that neither section 39 nor section 35 have they complied with fully. The appellant is still contending that this is Hindu undivided family property as pleaded on the first occasion. Under section 34 the appeal shall be regarded as an action and the rules of procedure and the provisions of the Civil Procedure Code shall apply accordingly.

He submits that the new Ordinance 8 of 1941 provides for certain conditions precedent to be observed before evidence becomes admissible. All that the old section says is that an appellant cannot raise

No. 11.
Further
Proceedings
—contd.

any new ground. He submits that the appellant does not raise any new ground. Therefore this objection comes too late and comes only as an objection to the admissibility of evidence.

MR. BASNAYAKE in reply.

Cites 45 N. L. R. 230 at 236.

He states that the right of appeal as determined by the Supreme Court is, as far as the Court is concerned, the right to review the decision of the Commissioner.

N. SINNETHAMBY,

A. D. J. 10

3.3.47.

13.3.47.

Appearances same as on previous date.

Learned Attorney-General states that on the last occasion he put a passage from Gupta to the witness Mr. Rajah Aiyar. Mr. Nadarajah objected to that passage being put on the ground that this author is a living author and when the passage is put to the witness in that form it would go down on the record as an opinion not only of the witness but also of Gupte; if Gupte's opinion has to be recorded he should be called into the box. I have a recollection of this matter and of disallowing the question on the footing that Gupte was a living author. At that time there was no question as to whether he was dead or alive and it was taken for granted that he was alive. 20

The learned Attorney-General continues his address. He says this appeal is under the Estate Duty Ordinance Vol. IV page 589, section 34. Sections 36, 37 and 38 provide for the various steps in appeal. He also refers to section 40 as well as section 73 as amended by Ordinance No. 76 of 1938. There are two points to the appeal; one is whether the Commissioner is right in deciding that the deceased left no property which can be called joint property or that all the property left by the deceased was not joint property; the other points are mentioned in the petition of appeal of 2nd April, 1941, para 7 (2) (A). He refers to para 8 of the petition. It is not open to this Court in an appeal from a decision under section 73 to take into consideration evidence other than that placed before the Commissioner. He submits that if the court rules that evidence which was not placed before the Commissioner cannot be considered by this court, then all the documents concerned are R4 and R5 and A1, A2 and A8. The rules under the Estate Duty Ordinance are embodied in section 3. He refers to the expression "Ceylon Estate" which is defined at page 604 according to which, in the case of the deceased in this case, all property in Ceylon 30 40

settled or not settled which passed on his death is liable to duty. He refers to section 6 which specifies the property. The position is deceased claims to come within section 73. The person so claiming must prove that he comes within that section; the burden of proof is on such person; in this case he must prove he is a member of a Hindu undivided family. In this case one has to bear in mind the law applying to the deceased, evidence on which was given by an expert for each side. No man coming into this country can say that his domicile is in a country where the law is different and claim to conduct himself in that way so far as property in this country is concerned. It is in evidence that Nachiappa traded in Ceylon, had his domicile in Ceylon, bought lands, lent money, instituted legal proceedings and recovered the money so lent, opened bank accounts, borrowed money and generally carried on a money lending business, was an owner of extensive house property. It is also in evidence that his father prior to the year 1926 purchased lands in Ceylon and was a money lender, in some instance, jointly with others and in a large majority of instances jointly with his sons, and that he had a registered business under the name of K. M. N. S. P. It is in evidence that father and son had property in their respective names, purchasing property independently in their respective names and it would appear that the firm K. M. N. S. P. on the declaration of the father and son was a money lending firm, and each of them employed their money in other activities than money lending. The course of conduct in Ceylon apart from any section of the law of domicile, would show that both father and son acted as if they were individuals who owned property over which each of them had sole power or disposition. The business registration application and certificate, the deeds executed by Suppramaniam R4 and R5, the last will of Nachiappa, all are documents which are consistent with the attitude they adopted while they were in Ceylon as owners of property, people who carried on business like any person domiciled in Ceylon. As against the course of conduct evidenced by these documents one is asked to believe that all those documents were a sham, that they were part of a skilful scheme to evade the difficulties of the law in regard to the recovery of the monies they had lent and that intrinsically all the property which the father owned and after his death the son, were property of a joint undivided Hindu family.

40 In regard to the statement made by Ramanathan and Vyravan, one need not take into account what Vyravan has said because he says that as far as the business in Ceylon is concerned he does not know anything about it himself and that though he was present at the division recorded in A8 his knowledge of Ceylon affairs is little. One may assume that Vyravan's evidence in regard to the Ceylon business is not evidence which helps the appellant one bit. He says in cross-examination "I am not in a position to

state anything about the Ceylon business.....". Vyraavan does not go to establish anything beyond the document A8. But it goes to show that there is no general rule which is applicable to either this family of K. M. N. S. P. or any other in regard to their status. Vyraavan says that he had a partnership as well as his sole business. From that one cannot assume anything, merely because they are Nattucottai Chetties, that the business transactions which they conducted are joint family, sole or partnership. One has to examine the evidence in each case and see whether that evidence proves clearly the contention which they put forward. He says 10 this because the other side quoted a case on 12 N. L. R.; because Ramasamy son of Nachiappa successfully decided that he was a member of an undivided Hindu family that case does not help us because the experts also said that not one circumstance is conclusive of the nature of the property or the status of the individual. One has to take all the circumstances together and without any preconceived notions as to Nattucottai or their vilasams come to a conclusion on the facts proved that the case is the one they claim it to be.

The presumption on which evidence was given by the experts that a Hindu is a member of an undivided family and that property of a family is joint property, his submission is that that presumption though it forms part of Hindu law cannot be applied in this case because with regard to what a court may or shall presume our Evidence Ordinance is there. If any circumstance is laid down in the Ordinance as one which the court may or shall presume that only is the presumption which the court can act on. The presumption in Hindu law will not extend to Ceylon in a decision under section 73 which has to proceed on known facts; the onus of proof is cast on the person who claims. He refers to sections 101, 103, 106, 109 30 and 110 of the Evidence Ordinance; so that the entire burden of proof in this case is cast both by the Estate Duty and Evidence Ordinance on the appellant.

Taking the evidence in the chronological order, taking first the evidence which the Crown relies on for its case, the earliest documents one has is R27 of 19th August, 1919, executed by Suppramaniam—registration entries declaring that Suppramaniam Chetty is an individual carrying on business in Ceylon under the business name of K. M. N. S. P.; that is made at a time when, according to the appellant's claim, the business belonged not only 40 to Suppramaniam but also to others. One cannot assume that when a man is required by law to make a solemn declaration he makes it in full understanding that that declaration is a false one, especially when the man is not here to say that it is false. One has to assume that man's innocence of acts which redound to his discredit; he says there he is the owner of the money lending business and Suppramaniam from all accounts understands what he says

because in 1910 according to document A8 he was a party to a division of property and Suppramaniam is a business man who carries on business both in Ceylon and India.

No. 11.
Further
Proceedings
—cont'd.

10 He makes a further statement in R28. That is also a statement required by law the full force and effect of which the law assumes he understood. That is a statement which Suppramaniam makes about 6 years after the statement in R27. If by any accident or otherwise he had unwittingly placed himself in a false position in 1919 when he made R27, he had ample time to rectify it. So one must assume, unless the contrary has been proved, that Suppramaniam's statements are correct. This statement is made on oath. R30 is the certificate of registration dated 16th April, 1925. Then in 1926 a statement R31 dated 31st March, 1926, is made by the attorney that Nachiappa Chetty Suppramaniam Chetty has ceased to be a member of the firm to which he was admitted as a partner in 1925; that is also made on oath. Then R32 is the certificate of registration which shows that Nachiappa Chetty is now the owner of the business after the change whereby Suppramaniam ceased to be a partner.

20 R33 dated 18th October, 1935, is a further statement of change by Nachiappa who is now the owner of the business; in cage 1 he suggests some alteration in the business name. At that stage 1935 Nachiappa discloses for the first time that as far as he was concerned he was carrying on other business which he got inserted later. When he was made a partner in 1925 the business was a money lending business. In 1935 after the death of Suppramaniam in 1932 Nachiappa asked that the business registration entry be amended by the inclusion of the properties as set out in R33. One gathers from this that Nachiappa had other businesses the particulars of which he asked the Registrar-General to insert in the registration entry. And he became a partner and continued to carry on the business of which his father ceased to be a member in 1926. What happened in 1926? Suppramaniam Chettiar executed documents R4 and R5 in 1925 and 1926 respectively. The certificate of registration in which Nachiappa was admitted a partner is R30. In April 1925, and in March 1925 his father sells him for a sum of Rs. 15,000 by document R4 a $\frac{1}{4}$ share of Kandawala Estate. In 1926, the year in which the father ceases to be a member of the firm and the son becomes the sole proprietor the father again proceeds to convey for value his interest in a large number of bonds by R5.

40 We have in evidence that when R4 was executed Nachiappa Chetty was in his own right owner of $\frac{1}{4}$ share of Kandawala Estate and that on the execution of R4 he became the owner of one half. R5 purports to convey Suppramaniam's share in a large number of bonds which have been executed jointly in favour of Nachiappa and Suppramaniam beginning from the year 1918 till the year 1925,

except one bond in favour of Suppramaniam, Nachiappa and some others; that bond is No. 3869—5th item; so that at that time Nachiappa Chetty had a legal interest in these bonds and on the face of these deeds the father and son had equal interest not only in the bond but also in the immovable property as persons owning separately and executing deeds as if they are separate property. After 1926, the date of departure of Suppramaniam to India, till 1932 the date of his death, Suppramaniam did not come to Ceylon. Nachiappa the sole proprietor of the business carried on the business and amassed a large fortune. 10

R1 is the return made on the death of Suppramaniam dated 5th October, 1932, signed by Ramanathan Chettiar as attorney, in which he answers the various questions and says that Suppramaniam left no property in statement C of R1 para (B). He inserts the particulars in statement C and then follows this up to R3. R4 and R5 supported by R1 and A3 say in consequence of these transfers Suppramaniam left no property, because he had transferred all his property in Ceylon to his son by the documents to which reference is made in R1.

The statement is made by Nachiappa Chettiar the son, although signed by Ramanathan. Then Nachiappa died 6 years later and on his death one finds that his property is valued at, not in the neighbourhood of Rs. 167,000, but he leaves an estate in 1938 of Rs. 2,736,653—inventory in R24. This vast estate includes several assets which did not figure in R4 and R5; items 1-35 in R24 are all properties which did not appear in R4 and R5. Ramanathan said in evidence that most of these properties were purchased by Nachiappa while the father was here in Ceylon and in Nachiappa's name. This is also consistent with the attitude adopted by father and son. 20 30

(Adjourned for Lunch).

(After Lunch).

Mr. Basnayake continues his address:

Suppramaniam died in 1932 and thereafter Nachiappa continued the business. Nothing in the documents to throw any light on the business of Nachiappa. Course of conduct proves that the property of Suppramaniam and the property of Nachiappa were their sole individual property and not the property of any Hindu undivided family. Nachiappa died in 1938. He died leaving last will R17. R17 is also consistent with the position found in R1 to R5 and the registration. The recitals in Nachiappa's will show that the property he was disposing of by that will was his own property—he states so in unmistakable language. In the will there are special words to emphasise the personal nature of the property. The will 40

was executed a few days before his death—executed on 3rd December, 1938, and he died on 30th December, 1938. He was 53 years old at the time. According to his will Pathmani Atchi died in 1936, 12 years before the will was made. Will written in Tamil and Natchiappa knew the force of the language used. He says the property belonged to him as sole proprietor. Testator not mistaken because in the next breath he refers to a partnership business. Refers to para 9 of the will and submits they are directions a person would give who considered himself to be the owner of such

No. 11.
Further
Proceedings.
—contd.

10 property.

After death of the testator application was made for sole testamentary jurisdiction in respect of the this will by the appellant in March 1939, Ramanathan filed affidavit R13. On 17th April, 1939, R14 filed by the petitioner for probate. On 27th April, R15 is filed which is an amended petition.

(Mr. Chelvanayagam interposes and says that the amendment was only to make the children respondents). A month later R16 was filed. Same recitals.

20 R19 is dated 12th August, 1939, and is the statement of objections filed. For the first time objectors bring in the question of Hindu joint family and they questioned the right of the deceased to dispose of the property. R20 is the affidavit of Valiammatchi attached to R14. R21 is the affidavit which should go with R19 statement of objections. R22 is answer to the statement of objections R19. Significance of this is that the petitioner does not say anything about Hindu family or joint family. The objectors stated it was joint property and alleged fraud and stated that no will could be made and testator was of unsound mind, &c. Crown is not concerned with all that.

30 R23 is the affidavit of Letchmanan Chettiar who says he is the attorney of the petitioner. No attempt made to claim that the will was a genuine will or to admit the statement that it was not the will of the testator. Counsel submits that on the R documents it has been consistently proved that it is the property of a separate person. The other position was not taken up till the estate duty was claimed.

R24 is the inventory. R25 merely proves the execution of the will. By R26 dated 25th May, 1941, certificate of estate duty issued.

40 R26 is the assessment based on R7 which is the return dated 4th September, 1939.

R9 is the first document which takes up the position that property left by Nachiappa by his will R17 is the property of a Hindu undivided family. That is dated 30th March, 1939. The Commissioner replied to that in June 1939 by R10. R11 is dated 28th

November, 1939, and written by Pröctor Zaheed. Commissioner held the estate was not exempt from payment of the duty and then these proceedings started.

Up to the point of R9 the position of the appellant and Nachiappa and his father has been a consistent one, that the property in Ceylon was the property of individuals and not the property of a Hindu undivided family. After the death of Nachiappa in R9 for the first time a claim is made that the estate had no duty payable. Submits in this case there are several documents, there are books, though not in sequence, some of them unconnected. Most of them day books produced to show that from 1876 the transactions as shown in those books prove from the system of accounting that the court cannot infer that the property of the deceased was the property of a joint undivided family. Not consistent with such an inference is also the fact that Majeed filed a case in 1940-R34 against the appellant in respect of many of the properties mentioned in the inventory R24 claiming that many of the properties were held in trust for him. He is one of the people who appears on the document R5. The answer of the appellant is R35. Even in the answer nothing is said about Hindu undivided family. There is no reference to any kind of Hindu family in the plaint. If the property formed part of a Hindu undivided family it would have been relevant to mention it for the reason that Nachiappa was not acting for himself but as manager or agent for another. The status of the parties who transacted that business should have been before the court. If the plaintiff in that case had succeeded in proving that Nachiappa held such properties in trust it would have made a difference because that action was against Valiamma and the minors would have been affected. And if it was joint Hindu family property it could not avail Majeed to get a decree against Valliamma. Therefore the position is consistent that it was the property of an individual and not the property of a member of a Hindu undivided family.

With regard to the gift to his sons R15 Nachiappa himself transfers in 1931 in his books two sums of Rs. 251,000 to each of his two sons Manikam and Ramasamy. In 1937 he transfers a sum of money to his 3rd son Suppramaniam. The first transfers were out of the credit in the books of Natchiappa, the 3rd transfer is made out of credits in favour of Manikam and Ramasamy taking from each a like sum. In 1931 he had no right to give these sums of money to his two sons, at a time when his father was alive, nor could he have done so in favour of his third son if it was a Hindu joint family. Looking at the case from such an angle it is clear and unmistakable that it was the property of an individual, the separate property of an individual. All these documents show that it was his property..

The appellant presents the A documents as against this and says that the strength of the A documents and the evidence of Ramathan destroys the effect of the R documents. With regard to

Ramanathan's evidence he is an interested person. He was the attorney of Suppramaniam and Nachiappa from 1923. He is still the attorney of the appellant. It was to his interests to present a picture in favour of the appellant. In the absence of evidence which is unimpeachable it would be unsafe in the teeth of the documentary evidence to accept Ramanathan's explanation given for the shortcomings in the appellant's case. His oral evidence is sought to be utilised to bridge that gap. There should be documents, ledgers, &c., to bridge the gap if one goes on that testimony.

10 Vyraman knows nothing of the Ceylon evidence. He is a brother-in-law of the deceased. He speaks of a house warming ceremony and he has given evidence of custom. The evidence of custom does not affect the real issue in the case. There is no universal custom. One is therefore left to gather from the documents the state of affairs that existed in Ceylon. We are not concerned with what the position was in regard to this business in India.

No. 11.
Further
Proceedings
—contd.

K. M. N. S. T. came to an end in 1911 or 1912 and out of the assets of that business arose two firms K. M. N. S. P. and N. M. R. N. S. There are books of 1910 and 1911-A9B and A9A. A913

20 is the day book of the Colombo business K. M. N. S. T. Counsel refers to A8 which he submits is claimed to be the foundation of the entries in the books. What is significant about A8 is that it is not a recognised book. The first time that A8 was discovered was when Ramanathan went in search of various documents for this case.

N. SINNATHAMBY,
A. D. J

Further hearing tomorrow.

14.3.47.

Same appearances as on previous date.

30 Attorney-General continues his address:

Yesterday he stated that R9 was the earliest reference to Hindu undivided family but there are documents R36 and A63 which are even earlier. R36 is dated 1st October, 1932, and is a letter written by Sambamurthy to the Income Tax Department forwarding an audit report in which he says he has examined the books of MRRY KMNSP Nachiappa Chettiar and "Mr. Chettiar is a non-resident and he does not belong to a Hindu undivided family. Sambamurthy in his evidence on the 24th October, 1946, states, as regards para 2 that statement was made on instructions received

40 from Ramanathan Chettiar. A62 is written in May 1933, after R 36, signed by Sambamurthy. He also refers to the evidence of Sambamurthy and to Mr. Gunasekera's evidence on the 23rd October, 1946.

A8 purports to record details of the partition on the 21st January, 1907—he refers to para 1. There was existing at that date

No. 11.
Further
Proceedings
—contd.

1912 another deed of partition but that document is not produced and no evidence given as to why it is not produced. Partition was made by that document of the debit and credit transactions. He refers to para 2 which speaks of the previous partition—the last sentence of para 2. We don't know when the father of Nachiappa died, Nachiappa the first. In 1886-1903, it would appear that purchases had been made by Nachiappa. In A8 there is reference to partition of a village. He submits that does not convey any information as to whether the village was property possessed in common by the two brothers as co-owners, or property of the family. There is no reason to infer from A8 that it is joint family property. It is separate property of the two brothers owned as a whole which was divided. He refers to the next para where reference is made to " your common firm KMN " in the language of those who took part in this ceremony of division. It was open for them to use the correct, appropriate, expression and it has been impressed in these proceedings that the word joint family has a special expression ĒKAKUDUMBUM. One would expect that term to be used in a document such as A8 if the idea was joint family property, but it is not there; that proves it is consistent with division of parties. They pay off all the liabilities and get the net result of their money dividing it between the co-owners. It is consistent with partitioned property and having regard to the conduct of parties subsequently it is conclusive that it is partitioned property. " Your common firm " he submits is " Your partnership firm; it does not mean it is joint family property. In addition to this the two houses in Colombo are divided; certain instructions are given in regard to the partnership assets. Nachiappa does not take his share but it is paid in equal portions to his five children. In regard to the Colombo property it is given to the firm of NSRMS—half goes to Supparamaniam and the other half to the firm of NSRMS, the firm of 4 children. One has to gather from this that in 1912, the firm of four sons of Nachiappa was in existence. KMNSP was also in existence in 1912. The two firms existed after the division and Ramanathan's evidence has to be rejected on that point. This is a division of mainly property purchased in India, mostly in favour of Nachiappa the elder brother and property owned by the two brothers. There is nothing in A8, with all the expert evidence, to show that this is joint Hindu family property. There is reference to a deed of partition which is not before Court. He submits A 8 is merely a record of division of partnership assets. Suppramaniam and Nachiappa get their shares having wound up the firm. He gives the Colombo property to four of his sons, to the firm of NSRMS; if it were joint property he would have given it as he would give other property to the five sons. Nachiappa disposed of the property in that way as he liked. The fifth son was alive at that time; he was not in the firm of NSRMS.

He refers to A9B and A9A. A9B is the opening entries of the account book. When an account book is opened it is customary to make credits of sums of money; that would indicate that it is the opening page of the account book. One sees from that page that there is a KMN in existence on that day. There is KMN, KMNSP, and NSRMS, all existing at the same time. KMN is not Suppramaniam's; it is not Nachiappa. It shows NSRNS and KMNSP were doing business together. The second item of Rs. 1,500 under January 20, 1911, shows that KMNSP jointly with

10 NSRNS obtained a note from one Abdul Rahaman and KMNSP's half share is there given as Rs. 1,500. All subsequent items are similar to this. We come then to the Rs. 51,100 item. The remittance of Rs. 51,100 is in respect of a loan taken on the 10th May from India; that is the source from which it came. In the absence of evidence to the contrary one may assume that KMN is the firm from which it came; this is January, 1911. This shows that KMN was in existence in January, 1911. We come then to page 126. These documents do not create a connected story; there are gaps. They are business transactions that appear to have been

20 started much earlier than 1910. Even the Rs. 103,000 came to Ceylon and went back, according to the entry of June 6, so that the nucleus which is said to have been the origin of the Ceylon business does not exist, if the Ceylon firm existed earlier.

Turning to the earliest account A23 translation A23A—there is nothing on the face of that document to show that KMNSP is a joint family firm; nor does it support the claim that money left by Nachiappa Chetty is money of a joint family. There is A24 of 1869 a similar document. It was produced to show the normal entries of a firm doing business, not a joint family or any other

30 kind of business. Then there is A21 and A22—promissory notes. There is no evidence in A21 that Suppramaniam is a member of a joint Hindu family. A22 is a loan from KMN Nachiappa Chetty. That again shows that before 1910, Nachiappa Chetty was carrying on business of lending money in his own name. That does not support the theory that KMN was a firm in Ceylon before 1912, and after 1912, started the firm of the sons of Nachiappa and Suppramaniam.

He refers to A 35, the deed referred to in A 8; that deed is in favour of Nachiappa Chetty and was given in consideration of some

40 loan; it only shows there was a firm of which Nachiappa was a member. That does not show there was a family property in 1876, or at the date of division, nor does it show that Nachiappa was acting as agent, attorney or in any other capacity; when an attorney signs a document on behalf of a principal he puts the principal's initials and his own name. A document executed by people in India referring to "your firm" does not carry with it one and one only interpretation. So A35 does not convey anything.

No. 11.
Further
Proceedings
—contd.

Then A26 letter from Suppramaniam regarding the conduct of the business, and A27 to A34, all these letters are produced to show that although Suppramaniam left Ceylon after R4 and R5 he continued to direct the business. There is nothing in them to show that he directed the business; they contain in some cases paternal advice, quite consistent with Suppramaniam having retired from the business, but only acting as an advisor; they do not show that Suppramaniam had not retired. They don't throw any light on the nature of the property of Nachiappa after Suppramaniam retired.

10

Then there are the other letters in which appear the various transactions in favour of Nachiappa. There is one thing to be gathered from all of them, that Nachiappa had property in Suppramaniam's time; he had a separate ledger page, and a large sum of money when Suppramaniam was in Ceylon.

He refers to the cross-examination of Ramanathan on 12.9.46; it shows that Nachiappa had a sum of Rs. 629,320.55 to his credit in 1924, and brought down from the earlier book which is not produced; it shows he had money on his own and was carrying on a separate business on his own account. Kandawala Estate was originally purchased in the names of four people; it is not as if it was one family concern in which Suppramaniam was the only man and Nachiappa's name was included occasionally for convenience. What convenience was there? Each person, father and son, had a separate attorney. He submits that the documents which have been produced by the appellant do not go to show that what appears from the R documents is not true, is a sham, of some ignorant people who did not appreciate the legal significance of joint family arrangements as far as Ceylon was concerned. But that is not so, because when they go to fill up the Indian Income Tax returns A50, &c., they are described differently. In one case father and son both appear; he draws attention to A52. In India, according to the expert evidence, one can have joint family property in one place and separate property in another place.. Those assessments and notices do not carry the appellant's case any further. He also refers to the other documents A 58 to A 61. By looking at the proceedings in another case one cannot decide the issues in this case. The question of joint family property is a question of fact. The fact that one branch decides to carry on a business as a joint family does not prove that another branch does in the same way. He asks the court to treat those documents as having no bearing on the questions that arise in this case. The original association of Nachiappa and Suppramaniam was a partnership. A9A is the division of partnership assets. Suppramaniam was carrying on independent business before A8 and Nachiappa was carrying on independent business before A8. Suppramaniam having started his business in Ceylon,

20

30

40

carries on that business as his own treating it as his sole business; at the same time he signs as having got money, makes a large fortune, larger than the one Suppramaniam chose to sell to his sons. In the same way Nachiappa was independently carrying on business on his own. Suppramaniam having carried on his own business decides to leave the Island selling his property.

No. 11.
Further
Proceedings
—contd.

On the question of law, learned Attorney-General cites a case reported in 38 NLR at 201, also a case of estate duty under the Ordinance of 1919; he also refers to page 205 and to the last para
10 of page 207.

Re refers to Ramanathan's evidence with regard to R1 on the 22nd October, 1946. He is the person who signs R1 and he says exactly what it is.

Vilasam does not by itself indicate anything.

He submits that the evidence in this case is overwhelmingly in favour of the position that the property of Nachiappa is sole property of his own and not joint undivided property.

MR. NADARAJAH addresses court on behalf of the appellant and invites the court's attention to certain judgments of the Supreme
20 Court of the law of Ceylon relating to this matter. It must be kept in mind that the Chettiers of South India had come to this country as far back as 1830, and have carried on business here for about a century, and as such their affairs have been matters adjudicated before the Supreme Court, beginning with a case reported in 5 N. L. R. 265 and ending with one reported in 33 N. L. R. 16 and including cases reported in 7 N. L. R. 239; 8 N. L. R. 131. The sum total of those judgments show that when a Chettiar carries on business in Ceylon he does so under a vilasam and that that vilasam may be the property of a joint Hindu family, or property
30 of an individual, or property of a partnership but as far as an external party is concerned and the constituents of that business is concerned the transactions fall into two categories, viz., when promissory notes are given in the name of the manager or agent with the name of the vilasam prefixed the whole firm can sue; but when you come to immovable property a fundamental distinction has been drawn according to the law of Ceylon—where a man transfers an immovable property to a Chettiar with the vilasam prefixed the title to that property vests in that particular individual whatever may be his relationship to the vilasam as representing a group.
40 But if the vilasam of the firm is prefixed it would be a very good indication that that man is holding the property as trustee or agent for that group which owns the vilasam; but as far as legal title is concerned it is that individual that this court will recognise in regard to transactions in the deed. If deeds have been executed in favour of KMNSP Suppramaniam Chettiar, it is Suppramaniam

alone who can transfer, lend or mortgage that property. Assuming that KMNSP was owned by a group of persons, one significant factor is the fundamental difference of the constitution of society under the Methakshara system of law and under the law of Ceylon. In India, the idea of property seems to be property owned by a group—the group idea is there. But in Ceylon such tendencies have not been recognized and the group idea does not exist. He is a man who belongs to a group in India, when he comes to Ceylon and acquires property in Ceylon, to act or behave in order to get the benefits of the laws of this country? A group or corporation may consist of a large number of persons, males, females, minors, &c. It is common ground that that group is always represented so far as its dealings with the outer world are concerned, by the eldest male member; he is the man who stands virtually for a group and, in a sense, is the group itself. And when such a person comes over to Ceylon and holds properties admittedly belonging to the group of which he is the KARTHAR, and he says the property is mine and declares “ I, so and so..... ” is he arrogating to himself sole ownership or is he a trustee or manager or agent? Mr. Nadarajah refers to Maniagars of the Temples in the north of Ceylon who speaks of “ my temple ”. There is that kind of loose talk. 10

But when we come to the group as such there is a significant judgment of the Privy Council where it sets forth very clearly what is the position—1926 appeal case p. 761 it is also a Chettiar vilasam in Penang; he refers to the foot of page 763 and 764. This position was accepted in Ceylon as correct in a recent judgment in 33 N. L. R. page 16. It begins at page 18 and page 19 summarises the grounds; he also refers to page 21 referring to the P. C. judgment and also p. 23. 30

Mr. Nadarajah also cites 17 N. L. R. 257, 1 C. L. W. 155 and 21 N. L. R. 389, the last being the judgment of the Privy Council. The position established in that case is very clear.

Then certain other aspects of the matter are dealt with in 29 N. L. R. 225 at 229; 31 N. L. R. 385 at 405; 38 N. L. R. 313 and with regard to registration of declarations p. 317 last para.

This is a complete answer to some of the arguments put forward by the Attorney-General based upon the certificates of business registration and declarations.

There is another aspect to be considered. In considering all statutes, it is a fundamental principle of law that the statute must be strictly construed as against the Crown and in favour of the subject, because the Crown is taking away the subject's property—the State being a capitalist State. It must be construed strictly against the State and not against the individual. Before the State can ask for tax it is an obligation cast on the State to prove beyond 40

any manner of doubt that the provisions of the statute apply with great force to the facts of the case. If there is the slightest doubt the benefit of that doubt must be given to the subject. On this point there are two cases; a Privy Council case from Australia where the duty of the Crown was laid down—1934 Appeal cases page 61 at p. 68. “The subject ought not to be taxed on refinements other than by clear words.....” This view was adopted in Ceylon in 39 N. L. R. 481 at 483, 484, 488 “—my own view is that even if the Commissioner has established the fact it would be by no means
10”. The Act must fit the facts like hand and glove.

Sgd. N. SINNATAMBY,
A. D. J.

Adjourned for lunch.

(After Lunch)

Mr. Nadarajah continues his address:

On the question of taxation if the court is satisfied that the facts attract taxation then the tax must be paid but if the facts do not attract taxation legally you cannot inflict taxation; that is the broad principle.

20 On the question of the pleadings between Nachiappa's executrix and the application of the executrix for letters why certain minors were omitted and why there was no reference to the fact of a joint Hindu family should be considered after we consider the legal position. The manager of an undivided Hindu family is normally the eldest male member. I have satisfied the court by reference to cases in Ceylon that where documents have existed in the name of the manager with the vilasam he is in the position to act for all practical purposes between his corporation on the one side and a third party
30 on the other. He can be sued and the Privy Council has held if he is sued the firm will be bound. Counsel draws attention to Muller 9th ed. 287 sub-sec. 5. If the widow is sued and she fights the case fully can the minors be heard to say that the widow has compromised their rights. Cites Maines Hindu Law 385 sec. 301. If according to both laws, in India and Ceylon; the eldest male member represents the whole corporation and is deemed to represent all including minors and elders what is the necessity for the managing partner of the Hindu family owning property in his own name. The arguments urged by the Attorney-General cannot
40 be given serious consideration owing to the legal position of the manager and hopeless inconvenience will be involved if in any litigation you have to take the whole army into court before the case can be settled. The same view is stated by Justice Keuneman in a recent case when the question arose of the fiduciary representing fidei commissarie unborn. 43 N. L. R. 387 and at 392. The rule

is made applicable in this case to joint Hindu families. If that case was fought out fully what is wrong. Another aspect of the matter is there is provision in the C. P. C. which provides that a man who has a will should produce that will and if he does not produce it he undergoes the risk of a fine of Rs. 1,000. In this case there is this will, which may be of absolutely no effect, but the obvious duty is to send it to court and in applying for probate it is not necessary to state anything more than that this is the will and these are the properties. The heirs are at liberty to come and say that the properties come to them by a different right, &c. Counsel submits if one looks at the matter more strictly, supposing the sons are entitled to shares and they are the members of a undivided Hindu family, in Ceylon if the property is only in the name of the testator and he is the only title holder (17 N. L. R.) even though a trustee the title would devolve according to the law of succession and devolution will be half in the widow and half in the children. What does the testator do therefore, he leaves all to his sons which is also identical with the position of a joint Hindu family. He is doing something there satisfying all parties deeming that the boys are the members of a joint Hindu family. The only way of circumventing the resulting difficulty of the law of intestacy in this country he makes a will. 10 20

Counsel invites attention to the sections of the Act—Estate Duty Ordinance of 1938, section 3. This is the section which imposes the estate duty. (Reads section 73.) The relevant two sections therefore are 3 and 73. This is the ordinance as originally passed. Taking 73 it simply says “on any proof”. This will not take in immovable property. So it was amended by Ordinance 76 of 1938. Section 5. Therefore both movable and immovable property is exempted. Other sections have been referred to by the Attorney-General; they are 32 and 33 which are assessment sections. 33 gives the right to make additional assessments. After that is done under 34 there is the right of appeal. Analysing that section there are three or four matters in regard to which an appeal is lodged to this court. (1) Where you say it is over-valued, (2) where the party says the rate should be lower, (3) where the party says he is not liable. The liability to pay is one ground specifically reserved on which a man can appeal. Before appealing he is called upon to do certain things so that the Commissioner can inform himself of the correct state of affairs. Counsel emphasises the point that his client is not liable to pay—that is the ground urged both before the Commissioner and this court. The main ground is the deceased was a member of an undivided Hindu family and all assets are assets belonging to the Hindu family and therefore not liable for duty. Section 37 really leaves room for negotiations between the appellant and the Commissioner. Counsel says A1, A2 and A3 are sufficient for his purpose. Comparing A1 and A2 with 30 40

A3 they are the same. Section 40 says you must notice the Attorney-General. Sec. 41 gives the court a discretion. Sec. 41 seems to contemplate an amendment. What is the nature of the amendment whether it be the taking up of a new position or the inserting of an omitted paragraph counsel says he is not aware, sufficient to say there is a certain amount of discretion vested in the court. The subject sued the Government on a cause of action having given notice, he comes into court and alters that cause of action. Objection is taken that notice was not given of that. It is
 10 to meet that difficulty that this Ordinance was enacted in 1938, and came into operation on 23rd December. Petition of appeal was filed on 2.4.41. Notice to the Commissioner was given in February, 1940. A2 was in November, 1940.

Coming to the facts. All the evidence of the testimony led in this case and the documentary evidence point in one way only. Apart from saying this and that and drawing certain deductions, is there any other evidence of a positive character which negatives the existence of a joint undivided Hindu family. Before we approach this question we are told that Kumarappa the great grand-
 20 father of the deceased was a native of Sembanur of Ramnad District. Mr. Raja Iyer when giving evidence was not sure of the location of that place in India. He was doubtful whether it was in Ramnad or Pudukottai. That is made clear in the evidence of Ramanathan. He says "native place was Sembanur in the Ramnad District". So that Kumarappa was a native of Sembanur, his sons were domiciled in India, Nachiappa and Suppramaniam and Suppramaniam's sons were all people resident and domiciled in Sembanur. The evidence is they are all Hindu. If that be so we have been told by Judgments of the Privy Council and
 30 accepting the dictum of Sir Stewart Schneider that a Chetty is literally born into the business, these people were all born into the business. If they are born into the business and if they are Hindus we are told by both experts that they are generally governed by Metekeser system of Hindu law. We go further; we are also told that Chettiars constitute a trading community and their occupation in life is money lending. And we have Sir Stewart's observation for all practical purposes they exist for business only and they are a trading community from generation to generation governed by the Hindu law. And we are told by experts and by the Supreme
 40 Court that a joint undivided family can have a joint business and joint property and joint means. They go out and come back and pool their earnings. Do not these constitute a joint family. With this preliminary what strikes one in this case is that in 1864, we have A23. Counsel invites attention to the entries in A23. There are the names of Don Marthelis, Hendrick Perera and so on. Do these not prove conclusively that in 1864, there was business

of money lending in Ceylon belonging to Kumarappa Natchiappa. This proves he had a business in Ceylon and he has produced his books to prove that. In 1869, we find a business in Madura A24, under the vilasam of K. M. N. M. The first one was also K. M. N. A25. The entries in A25 are such that it cannot possibly apply to a money lending business outside Ceylon. Why? For the simple reason the train fare paid to Maliappa to Kadugannawa proves that. There is also fees paid to Proctor Prins, fees paid to Adv. Grenier 31.50, &c. That is the business from 1875 to 1877 of K.N.S. in Colombo and Madura, that is up to 1877. Some intervening documents are not available and one cannot expect to have all the documents at this distance of time. Am I wrong then in asking the court to hold that a firm of K.M.N. owned by Nachiappa was started prior to 1864, and went on till 1877, on these documents. I go further in 1886, we have A 35. That is the deed of transfer in favour of Nachiappa—K. M. N. Nachiappa of certain properties in India. That is an important document. Here he is buying some property in Sembanur. I have produced documents from 1876 to 1877, to show that the business was the business of K.M.N. the father of Nachiappa. A35 refers to business transactions in 1876.

Counsel says in answer to court that he knows the burden is on him to prove undivided Hindu family property and he will satisfy the court on that point.

There are missing links counsel admits but owing to the time that has elapsed is it unreasonable to draw necessary inferences?

Counsel continues, there is nothing in the evidence led in cross-examination which compels the court to reject what I contend for as the only reasonable inference in this case. There is a further circumstance I shall refer to which proves that must necessarily be so. I put forward one position—you have evidence that Nachiappa No. 1 was having a business in Colombo in 1876. In 1886 you find Nachiappa No. 2 getting a transfer in India in regard to a debt incurred by the transferors in Colombo in the year 1876. The only evidence before the court is not Nachiappa No. 1 had a business in Colombo. There is no evidence that Nachiappa No. 2 had an independent business running parallel on that date. In the absence of such evidence the court will have to proceed on the probabilities of the case. Therefore father and son were a Hindu family and if that is so and they had a firm in Colombo it would be correct to call that firm the firm of either the father or the son. Then A8 shows a partitioning of the firms.

There is no evidence that in 1876 Suppramaniam was born. You have no evidence that he was in existence or not. You are not told what his position was in 1876. It is a very significant fact. The Attorney-General cross-examined my client and got out certain facts. In the absence of any evidence whether Suppramaniam was

in existence you cannot draw any inference in regard to Suppramaniam and his elder brother in 1876 but you can draw an inference with regard to Nachiappa No. 2 and Nachiappa No. 1 father and son. Then in 1910 or 1912 the father and son bring their property into a hotch potch and divide. That is the identical property. 5/32 shares of Eravel transferred upon deed No. 459 of 26.3.1886 is one property mentioned. Let us see whether this can be identified with the property settled in A8. Counsel reads 2nd para in A8. It is identified by the date of the deed, the share of the land and also the transferor. The fact that that land was allowed by Nachiappa to be brought into the pool for division between him and Suppramaniam does it not straight away negative the submission that it is individual property and that he had an individual business in 1879. This was not an individual business, if so he would have claimed it as his own property. In regard to property both in his own name and connected up with his ancestral and collateral with whom he shares it the alleged partition clearly establishes the fact that the firm of K. M. N. started business in Colombo at least in 1864 and there are statements of account till 1886 and the property is divided by the two brothers in 1910/12. From that it is possible to draw the inference which the Attorney-General wants you to draw.

In regard to another aspect, who is producing the documents in regard to this deed, in regard to the accounts of 1864, 1869, 1875, 1877 and 1912. Ramanathan swears he found them with Suppramaniam. No suggestion that these documents are fabricated. There is the stamp of truth and honesty in them. If that is true is it possible that Nachiappa carried on a separate business. If it was a separate business why was he so foolish to allow his separate property to be pooled with the other properties of the common firm.

The next document that bears some importance is A14 1895 to 1896. This is the day book of K.M.N. May 12th, 1895, the entry is railway fare and expenses to Suppramaniam to go to Kadugannawa and return. There is another entry A13B October 15, 1897, a debit to Nachiappa and Swaminathan to come from native place 14.19. These expenses are debited to the common firm. So that A14 and A13 also show that the firm name was K. M. N. We find Suppramaniam coming and Nachiappa coming and Nachiappa's children coming in. All expenses debited to the common firm. These books were all here for inspection by the Crown.

The next document is A15 for period 1898 to 1899. That is also important and show the tuition fees of Swaminathan and Nachiappa being Rs. 4. Then there is the evidence of Ramanathan of 10.9.46. This evidence has not been challenged by the other side. Swaminathan is the son of Nachiappa elder brother of Suppramaniam and Nachiappa is son of Suppramaniam, that is two brothers children.

Then certain books are missing and we start with certain documents A15B dated April 18, 1898. This is shortly after the Hindu New Year. There is an entry of amount paid to Kandasamy as two months pocket money Rs. 3.08. The next in order of chronology is A17, a day book of K. M. N. for 1904-1905. That is after a gap of 6 years. This shows that there was a day book of that firm in that year.

The next item is A16 1907 to 1908. There is one entry of a debit to the common expense dated 19.8.08. £5 credited to the new account. Suppramaniam gives an At Home before he leaves to India costing Rs. 102. That also goes into the common account. If he was having a separate business and Nachiappa a separate business why does this go into the common fund. 10

The next document of interest and having a bearing on K. M. N. is A21 of 1907 and A22 of 1908. These must be taken together—you must look at the whole thing. This show there was a firm of K. M. N. going back to 1864. Then I produced two notes (1907, 1908) in favour of K. M. N. Suppramaniam and K. M. N. Nachiappa. The firm of K. M. N. by its representative Suppramaniam and the firm K. M. N. by its representative Nachiappa. Does that show that Nachiappa was carrying on a sole business. The two documents taken together contradict that. And how then does it have the same vilasam? If they were running different business they would not have the same vilasam; it would be different. These two documents show that Nachiappa and Suppramaniam had taken part in the management of the firm K. M. N. in 1907 and 1908. The oral testimony has its frailties but because it has frailties you cannot throw it aside especially where it is consistent with the documents. It is interested parties who can give evidence. How can anyone else know anything about it. Where the oral testimony is supported by documents there is no room for escape. The question of varying statements being made came in much later. Ramanathan who was speaking of these facts has made statements and declarations at different periods but that was done later. He may have been capable of making different statements like that, but there is other evidence on this point that of Unamalai Atchi and Vyramen Chetty and they support Ramanathan. They state that during this period they were moving together in one house, having joint mess and joint business as a fact. These are related parties. Unamalai Atchy is a sister and the other witness is a brother-in-law. They state that Suppramaniam and Nachiappa were living together as an undivided Hindu family. No aspersions can be cast against these two witnesses. There is also the book entries showing the debits to the common fund. It is not only Ramanathan who can be said to turn his cap. The Crown has turned its cap several times in this case. They had assessed the property as joint Hindu family property and took 3 per cent. and 20 30 40

then seeing there was a large estate they are for a reassessment. Counsel refers to Ramanathan's evidence in connection with these documents.

No. 11
Further
Proceedings
—cont'd.

The next document it would be interesting to deal with is A8. This began the partition in 1910 and completed it in 1912. The next group of documents would be A8, A9, A9A and A9B.

Sgd. N. SINNATHAMBY,

A. D. J.

Mr. Nadarajah continues his address :

10 I have shown you that the firm continued as K. M. N. right down till 1912 when the property was transferred. Kumarappa is shown to be a rich man. Rs. 20,000 in 1864 is a large sum.

It is clear when Nachiappa died he left some property. What happened to that property? Then there is certain oral testimony deposed to by the man called Nachiappa, son of Vyravan. His evidence is on proceedings of 10.11.42 recorded before Mr. James Joseph and you have made order allowing that evidence. He is a brother-in-law of the deceased. Counsel reads the evidence. This evidence shows that two brothers Suppramaniam and Nachiappa
20 had the vilasam K.M.N. It also shows the relationship between Saminathan and Nachiappa. That is on the question of A8. This evidence is corroborated by the evidence of S. M. S. P. Sockalingam who is a close relation of the appellants—
appellants brothers daughter is married to him. He is also related to Suppramaniam. Reads proceedings of 23.10.46. This evidence has not been challenged. There is one more witness who speaks to the same point Anamalay Atchi. She is the mother-in-law. Similarly the rest of the evidence supports this position. Ramanathan also gives the same evidence and this evidence
30 must necessarily be true. His evidence is in proceedings of 11.9.46. Ramanathan has been first working under Ramasamy Chetty and he left that firm and came on to K. M. N. S. P. and held the power of attorney of Nachiappa and Suppramaniam and he was associated with them for about 23 years. There is therefore the oral evidence of three witnesses and Ramanathan stating what they actually observed. Their evidence can only mean one thing that Suppramaniam and Nachiappa formed a joint family and after that Suppramaniam and his son and then Nachiappa and his son formed the joint family. As against that what is the evidence to
40 contradict that oral testimony. With this background let us get back to the documents. From 1864 to 1912 we have the firm of K. M. N. going on. That is sufficient to prove beyond doubt that

this was a family business carried on from generation to generation. Then there is A8 which puts the lid on it. It is suggested that Nachiappa and Suppramaniam may have been partners. Assuming that is a possibility let us examine the documents to see if there is anything in them which is consistent one way or the other or negatives the one and asserts the other. If they were partners and were dissolving a partnership and distributing the assets would they not say " partner "; why use the word " younger brother " ? The use of the words younger brother and sons of Suppramaniam shows they were dividing properties between members of the same family. It also shows that there has been a division of the portion of the assets. What is known and spoken to by the experts as partial partition and joint family property. I have never heard of partial partition of partnership assets. You either have dissolution of a partnership or none at all. That one position completely negatives the idea of partnership. The next point is what are they partitioning? Residential house. How does that come into the partnership? It is a partial separation but they confirmed it by this deed. That is the significant fact. That is the strongest point against a partnership. The next para of A8 is regarding the 32nd village. It says here " for your common benefit ". So that he got two properties in 1886 and 1903 bought for common benefit and brought into the common pool for purposes of partition. He was the elder brother and he was in control of the management. The next para 4 of A8 says after paying in full the liabilities of the common firm. Why do they use the word common firm? Why not partnership. Nachiappa is referred to here as agent, not as partner. Then when the new firm started the debits are all debited and the balance sum is divided equally, which shows this was a joint Hindu family business and not a partnership. If it was a partnership the drawings of the partners would have been taken into account and deducted from each particular share and the balance paid over. But here they take the debits of Suppramaniam and Nachiappa and then divide the balance among the sons. Another factor to be remembered is they say after excluding the debits made by Nachiappa and Suppramaniam. Counsel reads para 5. It says sale of a property held in common. Para 6 says common expenses for the temple and for charitable purposes are deducted in equal shares and balance paid over. The next paragraph deals with half palmyrah trees, mango trees and Margosa trees. The next para 7 makes provisions for the building of Puliyar temple. Deficiency to be borne equally by Nachiappa and Suppramaniam. Para 3 proves it must necessarily be a joint Hindu family " acquired in favour of Nachiappa and Suppramaniam " for the temple. Both of them were to hold that as property of the temple. Counsel submits he would not ask the Court to accept Sastri's opinion but would ask the Court to accept his reasons. Reads the evidence on 24.2.47. The Crown expert Mr. Raja Iyar himself

10

20

30

40

agrees with Mr. Sastri's reasons. With regard to A8 Counsel reads evidence. He says judging from the Tamil word it is partition of the joint Hindu property. That word would hardly be used for distribution of partnership assets. That is an opinion upon which the Court can act. It is the opinion of an expert. When Sastri is put each clause he says yes to the questions and I put the whole back ground to Raja Iyer and he says it is more a joint Hindu family partition. This document A8 as understood by the two experts is a partition of joint Hindu family property. No other conclusion is possible in this case on the strength of these documents and the evidence of Mr. Sastri and Mr. Iyar and the intrinsic statements and the partial partition. I will go further, if I stop at A8 I claim that my case is cast iron but the case goes further; we have a series of documents from there onwards which clinches the matter. In 1910 to 1911 the division was taking place. A certain length of time had elapsed till 1912 when it is confirmed; till 7.6.11 when the final deed is signed the vilasam is continued as K. M. N. from 1864. That is a dominant fact and immediately the brothers separate two firms crop up. K. M. N. S. P. starts in 1910, after the partition proceedings had come into full swing. We are not told that Suppramaniam had any other assets. He may have had but what is the proof. A9A is the Day Book of 6.6.1911. This is supported by A8 because that shows account as at 6.6.1911. The first entry is on 6.6.1911 is a debit of the common firm 103,474. Debit also on this date for our half share 103,474 headquarters account. That is the identical amount mentioned in the partition deed. On page 3 there is the entry by credit to headquarters account 103,474. What can these entries mean except the receipt of money into the firm. The first debit showed the headquarters firm indebted to him and the second entry shows that that money has come in. That shows that that sum of money being the money of Suppramaniam had come into the firm of K. M. N. S. P. The firm actually started earlier on 15.5.10 on an auspicious day A9B. On that day it started by crediting sums to all the Gods. Then credit of headquarters 51,100. That is as having borrowed from headquarters. After that there is no entry till 29.1.11. On 29.1.11 the good borrowers were shared by the two firms. Certain promissory notes are divided between the two firms. Obviously these two firms had branched off from the parent firm and were taking over jointly certain of the properties. If you take all these debits and compare them with the credits of K. M. N. you come to the end of it on page 5 where the total credits and debits agree except for a sum of Rs. 218.08 which may be some interest. There is not a single item showing that Suppramaniam or Nachiappa put in any of their personal capital. Once the money entered on 6.6.11 comes in then the business goes on. On that point there is no reason why the Court should not accept the evidence of Ramanathan supported as he is by the books. The suggestion of the Attorney-General cannot be accepted

because it is not founded on any evidence. The evidence of Ramanathan stands unchallenged. Counsel refers to pages 11, 12 and 19. If there was other capital the witness should have been cross-examined and entries shown to him. The witness says he can say there was no other capital when the firm of K. M. N. S. P. was started. He says he has been with the firm of K. M. N. S. P. from 1923 and knows the affairs of the firm from personal knowledge from 1923 onwards. Then we come to an important item, the 1919 registration R27. K. M. N. S. P. is shown as owned by Nachiappa and Suppramaniam. Cites 70 Mad. L. J. 214. We have here the same view. Then comes R27, R28 showing that Nachiappa has been admitted as a partner in K. M. N. S. P. Long before 1925 Nachiappa's name appears in documents and transaction with Suppramaniam. Suppramaniam proposed if he died his estate will have to be administered and so on, and he thought he will bring in his son so that as surviving partner he could go on without any administration—that seems to be the explanation for this. By R29 and R30 Suppramaniam is shown to be a member of the firm 24.3.46. R31 is a certificate which shows that Suppramaniam has gone out. R32 shows he ceased to be a partner. R4 and R5 are the assignments of certain mortgage bonds and promissory notes and transfer of lands. R4 is a transfer of land on 26.3.25. and R5 is the assignment of a bond in 1926. R5 purports to assign 17 mortgage bonds and all those bonds are in favour of both father and son. That is an important point. The earliest of them is 1918; they are prior to the date shown in the certificate as the date on which Nachiappa was admitted as a partner and it shows that these are debts due to the firm. Similarly all the bonds are in favour of Suppramaniam and Nachiappa from 1918 to 1925 except one prior to the date on which Nachiappa was said to have been taken in as partner. Along with these A64 Majeed's bond is one of the bonds assigned and Majeed later transferred certain properties to Nachiappa only when Suppramaniam was alive.

The letters A24 and A26 are very important. A26 is a letter by Ramanathan. The dates of these letters are fixed in the evidence, it is prior to 1925. A30 are instructions by Suppramaniam. A31 refers to Majeed that is on 18.10.26 after R5. Counsel refers to the evidence. Suppramaniam held the reins of management right up to the point of death. There are more documents. In 1926 to 1928 the income tax assessments of India so far as Suppramaniam is concerned, A50 to A57—A50 and A51, are demand notices. These are addressed to Suppramaniam and son. The assessment for 1927-28 A52 is addressed to Suppramaniam and son and states Hindu undivided family income from Colombo shop. Immediately after he goes to India gives directions as regards management to Letchimanam and Ramanathan and submits himself to be taxed as an undivided family with his son. A53

gives the same status. A54 the same and A55 the same. Then he dies. I got the evidence from Raja Iyer that the income tax people in India are careful as regards the question of status. After Suppramaniam died Nachiappa is assessed. From 1932-1936 A56, A57. Status is here as Hindu undivided family by Nachiappa. Now after Suppramaniam's death Nachiappa becomes the family. Similarly in A57. By A18 and A19 Nachiappa is taxed in Ceylon. There was an attempt to tax him first as an individual. Immediately an appeal is filed. Refers to Mr. Gunasekera's evidence.

10 He says the claim for assessment as Hindu undivided family was accepted on appeal. Nachiappa gets himself taxed in India as undivided Hindu family and same in Ceylon.

Mr. Basnayake relies a good deal on transfers from father to son. Admittedly an undivided family has got property in his own name bought with the funds of the Hindu family. How is he to make an effective transfer to the group. He says let me execute a transfer to my immediate successor who will be working as manager when I die. Can that be said to be inconsistent with the position. If he dies without executing a transfer in favour of the son on whom does it devolve, obviously on the widow and daughters who have no share.

20 The question is what are the surrounding circumstances in the case and what are his obligations. Similar transfers between father and son are not unknown in India. In such a case the judges have looked at all the circumstances and come to a decision. One such case is 1941 A I R P.C. 48 where it was held the transfer from one co-partner to another does not affect their rights inter se. Nachiappa was taxed by the Crown up to his death at that rate. A18, A19 is in respect of Ceylon taxation.

Counsel cites 1945 Mad. 195; 1924 Mad. 499; 1946 Privy Council

30 103. If the property was ancestral it was in the hands of Nachiappa No. 1 and that property came to his sons Nachiappa and Suppramaniam and that immediately became ancestral. Once ancestral always ancestral till one of the male heirs failed from barrenness or bankruptcy. Cites 38 NLR 313 at 316. Majeed's account is entered in A75 page 40. Cites 27 Mad. L. J. 651; 1931 Privy Council 264. 1941 Nagpur Peshwar 230. The Attorney-General cites 60 Law Times Rep. at page 520. This is relevant on the construction of documents R4, R5.

Mr. Nadarajah cites 44 N.L.R. 47.

40 Judgment on 7th May.

Sgd. N. SINNATHAMBY,
A. D. J.

JUDGMENT

These proceedings were instituted by the executrix of the estate of one KM. N. SP. Nachiappa Chetty, under section 34 of the Estate Duty Ordinance, Cap. 187, appealing against the decision of the Commissioner of Estate Duty assessing the duty payable by the said estate at Rs. 290,784.12.

KM. N. Nachiappa Chettiar died on 30.12.38 leaving behind him a Last Will, copy of which (R17) has been produced in this case. The will was admitted to probate in case No. 8,802 of this court and the widow Valliamma Achchi, the named executrix, was entrusted with the administration of the estate (R18). The executrix filed an inventory (R24) disclosing assets in Ceylon consisting of movable and immovable property aggregating in value to Rs. 2,618,035.66. In order to obtain probate her Auditor wrote to the Commissioner of Estate Duty letter R9 dated 30th March, 1939, requesting him to certify that the estate was not liable to Estate Duty by virtue of the provisions of section 73 of Ordinance No. 1 of 1938. The Auditor was by letter R10 requested to submit a declaration in the form provided, and he accordingly did so by R7. In R7 the net value of the estate is given as Rs. 2,527,470.25 and described as property exempt from estate duty. The Assessor, however made a provisional assessment against which the assessee gave notice of objection (A1) as required by sections 35 and 36 of the Estate Duty Ordinance. A final assessment was subsequently made by the Commissioner of Estate Duty to which also the executrix objected by notice of objection A2. The Commissioner, however, in terms of section 37 of the Ordinance decided to maintain the assessment, except in respect of some minor matters, and notified the assessee accordingly by letter A3 dated 11th March, 1941. The present appeal is against this decision of the Commissioner.

Exemption was claimed on the footing that the deceased KM. N. SP. Nachiappa Chettiar was a member of an undivided Hindu family and that the property he left behind was the property of the said joint Hindu undivided family. Section 73 of the Ordinance as amended by Ordinance No. 75 of 1938 provides that where a member of a Hindu undivided family dies no estate duty shall be payable—

- (a) On any movable property which is proved to the satisfaction of the Commissioner to have been the joint property of that family, or
- (b) on any immovable property where it is proved to the satisfaction of the Commissioner that such property, if it had been movable property, would have been a joint property of that family.

At the time the Commissioner decided to maintain the assessment, according to the learned Attorney-General who is the respondent to this appeal, he had before him only documents A1, A2, R7 and R8. The assessor, however, states that the Commissioner came to this decision only on documents A1 and A2 and on a decision he had reached in respect of an appeal by the assessee against an assessment of income tax payable by the deceased under the provisions of the Income Tax Ordinance wherein the assessee claimed the right to be assessed on the basis of a Hindu undivided family. After certain

10 evidence had been led in the proceedings before this court, the Crown took up the position that it was not open to this court to consider any evidence other than such evidence as had already been placed before the Commissioner. The learned Attorney-General argued that inasmuch as the present proceedings was an " appeal " against a decision of the Commissioner the court should confine itself to reviewing the findings of the Commissioner only upon such evidence as had been led before the Commissioner. He sought to draw an analogy between an appeal under the Estate Duty Ordinance and an ordinary appeal in a civil action wherein the court of

20 appeal is precluded from considering evidence which had not been led before the trial court. This objection, as contended by learned counsel for the appellant was in reality an objection to the admissibility of evidence in the proceedings before this court. It was taken after the evidence of the principal witness in the case for the appellant had been taken. This witness had not given evidence before the Commissioner and, in point of fact, if this court was to confine itself to such evidence as had been led before the Commissioner, practically all the evidence recorded in these proceedings should have been ruled out.

30 These proceedings were instituted in April, 1941. At that time the Estate Duty Ordinance made no express provision with regard to the question raised by the learned Attorney-General; it merely stated that any person aggrieved by the amount of the assessment of Estate Duty may appeal to the District Court, provided that within 30 days of the notice of assessment he delivered to the Commissioner a written notice of objection setting out the several grounds upon which it is contended that he is not liable to pay estate duty. The Commissioner, it is provided, shall, after delivery to him of the notice of objection. either withdraw the claim for estate

40 duty or notify to the appellant that he has determined to maintain the assessment in all or in part. There is no express provision for the hearing of evidence; the Commissioner is not bound to hear any evidence; nor is there any provision which would entitle the assessee to compel the Commissioner to hear evidence or receive documents in evidence. Normally, one would, however, expect the Commissioner to consider all such material as is placed before him by the assessee and I have no doubt that in this case too, if the assessee had wanted to produce any documents or to lead any

No. 12
 Judgment of
 the District
 Court 7.5.47.
 —contd.

evidence, the Commissioner would have been willing to let her do so. The point, however, is that the assessee could not have insisted upon it. Presumably, in view of this defect or omission, the Estate Duty Ordinance was amended by Ordinance No. 8 of 1941, wherein provision was made for the addition of sub-sections 36 (a) and 37 (2) by which the appellant was required to transmit to the Commissioner a list specifying the documents upon which, and names of persons upon whose evidence, the appellant proposes to rely, and by which the Commissioner was required to consider any evidence which the appellant may desire to adduce before him. The Commissioner was also given the power of requiring the appellant to produce any documents included in the list for inspection and to call for evidence by affidavit or otherwise of any person mentioned in the list. The contention of the learned Attorney-General is that what was intended in the original provisions of the Ordinance has been made clear by the amendment. I am unable to agree with this contention. If it was intended that no evidence other than the evidence placed before the Commissioner should be led in this Court, what was the need or the necessity for the amendment. Furthermore, it seems to me against all the principles of procedure and equity that a person should be debarred from leading evidence in this court which he had neither the right nor the opportunity of leading before the Commissioner. It is in evidence that the Commissioner did not call for any evidence; nor did he ask the assessee to satisfy him that the assessee's contention in regard to the nature of Nachiappa Chettiar's estate was correct. In point of fact, on this point the evidence of the assessor is as follows:—

10

20

“ Before deciding on the appeal it was open to the Commissioner to call for evidence. He did not call for any evidence to be placed before him..... Previously he had heard the Income Tax appeal similar to the appeal in question. Therefore he did not want anything further to be placed before him with regard to the appeal by the assessee in this case.

30

In view of this, it does not seem to be proper and I do not think it was the intention of the legislature that this should be so, to shut out in this court evidence which had not been led before the Commissioner. The analogy which the learned Attorney-General sought to draw between an appeal from a finding of the Commissioner and an appeal from a judgment of this court to the Supreme Court cannot justifiably be drawn. If there is any substance in this contention, it is difficult to understand why provision is made in section 40 of the Estate Duty Ordinance for regarding an appeal filed in this court as an action between the appellant as plaintiff and the Crown as defendant, and why it is there provided that the provisions of the Civil Procedure Code shall apply. The amendment of the Estate Duty Ordinance came into force after the present appeal was filed, and would not apply to it. Furthermore, even

40

The deceased Nachiappa Chettiar belonged to a trading family of Nattucottai Chettiars. According to the evidence, his great-grandfather was one Kumarappa Chettiar. This Kumarappa Chettiar died leaving four sons, one of whom was K. M. Nachiappa, who for purposes of convenience will be referred to as Nachiappa (1). This Nachiappa died leaving two sons, viz., KM. N. Nachiappa, who for purposes of convenience will be referred to as Nachiappa (2), KM. N. Suppramaniam and three daughters. Nachiappa (2) died leaving five sons, viz., KM. N. N. Nachiappa, KM. N. N. Lechumanan, KM. N. N. Suppramaniam, KM. N. N. Ramasamy and KM. N. N. Swaminathan. Of these only the first and the last are now alive. The other son of Nachiappa (1), viz., KM. N. Suppramaniam, died on the 1st March, 1932, leaving one son KM. N. SP. Nachiappa who for purposes of convenience will be referred to as Nachiappa (3) and 3 daughters. It is in respect of the estate of Nachiappa (3) that the estate duty in question was levied. 10

The evidence in the case shows that Nachiappa (1) was carrying on business in Ceylon under the vilasam of KM. N.—K. M. presumably standing for his father's name Kumarappa. This is established by documents A23, A24 and A25. A23 is a balance sheet showing monies lent on interest to constituents by Kumarappa Chetty Nachiappa of Sembanur; these particulars are recorded in an ola leaf which has been produced and has been marked A23; A23A is the translation thereof; it is dated 20th December, 1864; it shows the aggregate of the amounts lent as Rs. 23,923, and among the constituents appear the names of Appuhamy of Paranipathy, which place is adjacent to Kadugannawa, G. Don Mathes Silva Appuhamy also described as Paranipathi Constable and Wattala Alwis Hendrickge Perera. A25 which is also a record of accounts on an ola leaf (translation A25A) describes the contents as "Account of Kuna Mana Navanna—Ledger Bundle". Below that appears the entry "Debit and Credit account of Paranipathy Appuhamy". It is to be noted that this Paranipathy Appuhamy's name also appears in A23 as one of the constituents of Kumarappa Nachiappa. The same ola leaf bundle contains also the ledger account of Paranipathy Constable for 1875, 1876 and presumably 1877: this last year is not quite legible in the ola manuscript. These two ledger accounts show payments to various persons including fees paid to a proctor (Mr. Prins) and to Counsel (Mr. Adv. Grenier). There is also evidence to show that Kumarappa Nachiappa's two sons Nachiappa (2) and Suppramaniam also carried on business under the same vilasam of KM. N. This is established by the evidence of Nachiappa Chetty son of Vyravan Chetty and by document A8 which is a deed of partition between the two brothers Nachiappa 2 and Suppramaniam; this document is dated 22nd January, 1912. It is entered into, according to the first paragraph 20 30 40

thereof, between "Nachiappa and his younger brother Suppramaniam, sons of Kuna Mana Nachiappa Chettiar of Sembanur". It is a document drawn up by two arbitrators who partitioned the property of the two brothers between them. In paragraph 4 thereof they refer to the business carried on in Colombo as "your common firm of Kuna Mana Navanna". This document makes it clear beyond doubt that Nachiappa and Suppramaniam also carried on business under the vilasam of KM. N. The documents A23 to A25 show that the firm of KM. N. established by Kumarappa Chetty

10 was in existence at least up to 1877. There is no specific evidence as to when or whether the two sons came into that business, nor is there evidence as to what happened to the firm of KM. N. carried on by Kumarappa, but the deed A35 makes it clear that Nachiappa (2) was a member of a firm which was being carried on in Colombo, and A8 makes it clear that Nachiappa (2) and Suppramaniam were carrying on business under the vilasam of KM. N. Taking into consideration the system that exists among the Nattukottai Chettiar trading families according to which father and son trade together often under the same vilasam, it would I think, in view of the

20 established facts, be not unreasonable to infer that the business carried on by the two sons Nachiappa and Suppramaniam under the vilasam of KM. N. was the same business that was carried on by the father Nachiappa (1) under that vilasam.

There is no definite evidence as to the date on which Nachiappa (1) died, but from the evidence of Nachiappa Chettiar the son of Vyraavan Chettiar, who married into the family 47 years prior to the date on which he gave evidence, it would appear that at the time he came into the family only the two brothers, viz., Nachiappa (2) and Suppramaniam were living in the ancestral house; he does

30 not know the father of these two; he had not seen him and he says that the father was dead when the two sons "built"—by which term he meant made additions to—the ancestral house. He further stated that document A8 was executed about 20 years after the building of the house. From this one may infer that Nachiappa (1) was not alive in the early 'nineties. Unnamalai Achchi who was born in this ancestral house and who was related to the family even before her daughter married Nachiappa (3) states that she did not know the father of Suppramaniam and Nachiappa (2); she is now 62 years of age, and she further states that her grandfather

40 Kumarappa, who was a brother of Nachiappa (1) died when she was a little child. This evidence helps to establish the fact that Nachiappa (1) was not alive in the early 'nineties, so that the firm of KM. N. during that period was being carried on by the two sons. It may be that Nachiappa (1) died in the 'eighties, and even during that period it was the two sons who were carrying on the business under that vilasam. There is also the evidence of Sockalingam Chettiar that the two brothers were never employed under anyone

No. 12
Judgment of
the District
Court 7.5.47
—contd.

else. The inference is, on these facts, justified that the debt referred to in A35 as due to "your firm" is a reference to a debt due to the firm of KM. N. carried on by Nachiappa (2) either with his father or with his brother or with both. It was contended by the learned Attorney-General that the firm referred to in A35 may have been a separate firm carried on by Nachiappa (2) quite independently of the family. If this were so, why is it that this property which has been transferred personally to Nachiappa (2) was brought into the partition which was effected by A8? If it was Nachiappa 2's own separate property there was no need for him to divide it with his brother unless of course the consideration was out of monies which belonged to both brothers. 10

The appellant, in order to establish the fact that the firm KM. N. was a joint family business, produced certain account books which show certain items of expenditure incurred on behalf of Suppramaniam and Nachiappa and their children debited to a common account which is called "interest expenses account". The earliest of these is A14 in which Suna Pana, which according to the evidence is a reference to Suppramaniam incurred expenditure in proceeding to Kadugannawa; this is debited to interest expenses. 20 It is possible that this trip to Kadugannawa may have been on behalf of the firm. A13B—folio 8—shows in 1898 an amount of Rs. 3.08 paid for light refreshments taken by Swaminathan, who is a son of Nachiappa (2) and Nachiappa. Similarly A13B at folio 48 shows interest expenses debited with costs of Suppramaniam, Nachiappa and Swaminathan for travelling from their native place. The evidence is that Swaminathan referred to is the son of Nachiappa (2). A13A in 1897 shows interest expenses debited with Re. 1 given to Navanna meaning Nachiappa "to go to see drama". 30 A15A shows that interest expenses have been debited with the tuition fees of Swaminathan and Nachiappa who probably are the children of Nachiappa (2) and A16A shows interest expenses debited with the expenses incurred in connection with "the feast" held by Suna Pana (Suppramaniam) before travelling. Had these entries in the books of account stood by themselves one would have hesitated to draw any inference therefrom. Taken in conjunction with the other facts established in the case, they support the contention that the business of KM. N. was a joint family business and that items of expenditure incurred on behalf of members of the joint family were debited to a common account—in this case Interest Expenses 40 a/c—and not to each of the persons on whose behalf the expenditure was incurred.

The two documents A21 and A22 are promissory notes in which the payees' names are KM. N. Suppramaniam Chettiar and KM. N. Nachiappa Chettiar; according to the well established usage among Nattucottai Chettiars recognised by Supreme Court or Privy Council decisions, this means Suppramaniam acting on behalf of

the firm of KM. N. lent Rs. 500 on A21 and Nachiappa Chettiar acting on behalf of the firm KM. N. lent Rs. 2,000 on A22. These documents are in 1907 and 1908. One may therefore reasonably infer that KM. N. was a firm in existence then managed by both Suppramaniam Chettiar and Nachiappa Chettiar together or alternately and that the sums set out in A21 and A22 were lent by the firm. At the moment of lending the agent or attorney was in 1907 Suppramaniam Chettiar and in 1908 Nachiappa Chettiar.

No. 12
Judgment of
the District
Court 7.5.47.
—contd.

10 The next document produced, in point of date, is A8. This document strongly supports the case for the appellant that the property of the firm of KM. N. was ancestral property belonging to a joint Hindu undivided family. It would at this stage be convenient to mention that both experts who gave evidence on the Hindu law are agreed that joint property of an undivided Hindu family can come to an end by a partition or division of the property between the individual members or between branches of the same family, and that the process of the division may take several years; it may at any particular point of time be partial or complete. The appellant contends that A8 is the document by which the final
20 partition of the joint family property of Nachiappa and Suppramaniam was effected between the two branches of which they were the heads. The learned Attorney-General on the other hand contends that A8 is nothing more than a document by which two partners divided their partnership assets. Taking the document as a whole I do not think it possible to come to that conclusion. To begin with, paragraph 1 refers to a partition between Nachiappa and his younger brother Suppramaniam. If it was a partnership, the words "younger brother" are hardly likely to be used. Instead the word "partner" would more probably have been used. It was
30 executed on the 22nd January, 1912. It recites an earlier partition of certain credit transactions, village, jewelleries and other sundry things of the native place: the division of jewelleries would also seem to indicate that it is family property and not partnership property that is being divided. The document confirms an existing partition of the house in which Nachiappa (2) and Suppramaniam lived at Sembanur. Then paragraph 3 refers to the 5/32 village purchased on A35 and another share purchased on another deed which was not produced; but the paragraph specifically states that on the two deeds the village in question was purchased in the name
40 of Nachiappan "for your common benefit". The entire share which stood in the name of Nachiappa is divided equally between the two brothers. A35 expressly describes the consideration for the transfer as the debt due by the vendors to the vendee in respect of transactions the vendors' agent had in Colombo "with your firm from the month of October, 1876, till the year October, 1878". The vendee is described as "Nachiappa Chetty, son of KM. Nachiappa Chetty" and is obviously a reference to Nachiappa (2).

No. 12
Judgment of
the District
Court 7.5.47.
—contd.

Why should this property be brought into the partition unless Suppramaniam was also a member of the firm whose debt was liquidated by the execution of A35. The only firm of which both brothers were members according to the evidence is the firm of KM. N.

Paragraph 4 refers to "your common firm of KM. N." and provides that, after deducting debits made by Nachiappan and Suppramaniam up to the 6th day of June, 1911, the balance according to the accounts aggregating to Rs. 206,949.38, is divided equally, and a half share is paid to the five children of Nachiappa (2) and the other half share to Suppramaniam as per particulars entered in the day book at 6th June, 1911. If this was a division of partnership assets, pure and simple, it is strange that the share each partner became entitled to is identically the same. One would have expected the drawings of each of the partners during that period to be different and to have been deducted from the share payable to each. This equal division, after deducting the debits of Suppramaniam and Nachiappa without reference to the value of those debits, seem to indicate that this business was not partnership business but family business. Corroboration of the statement in paragraph 4 with regard to the payment of Rs. 103,474.69 to Suppramaniam Chettiar was established by the production of the day book of the firm of KM. N. SP. of 6th June, 1911. At page 126 of the day book appears an entry :

" To debit also on this date for our half share thereof entered in Headquarters Account, Rs. 103,474.69 "

On the same day there is a credit entry which reads as follows :

" By credit of headquarters a/c being the transfer of corresponding credit in the headquarters a/c of KM. N. comprising of excluding half share of KM. N. N. credited to our half share..... Rs. 103,474.69 "

The learned Attorney-General suggests that these were merely book entries and do not show that Rs. 103,000 came into the firm of KM. N. SP. from KM. N. on that day. But why should book entries of this nature be made in 1911? My reading of the two entries is as follows: The " Day Book " is a day book of the Colombo firm of KM. N. SP. The first entry debits KM. N. SP., Colombo, with a sum of Rs. 103,474.69 in the books of KM. N. SP., Colombo, indicating thereby that that sum of money has been received from their headquarters. The second entry is a credit of the headquarters account of this sum; that is to say, the headquarters Account in the books of KM. N. SP., Colombo, is credited with a sum of Rs. 103,474.69 because payment of that sum had been made by the Headquarters to the Colombo account. The first entry would in the normal course be posted in to the capital account of

KM. N. SP. and the second entry into the ledger account of headquarters; the capital account being debited with Rs. 103,474.69 inasmuch as the Colombo firm of KM. N. SP. received that sum, and the headquarters would be credited with the same sum in as much as the headquarters sent that sum to Colombo. Unfortunately ledgers of this period were not produced and are not available. The entry crediting headquarters further speaks of a transfer from the headquarters account of KM. N. and undoubtedly is a reference to the division referred to in paragraph 4 of A8. The next paragraph in A8 refers to a sale of two houses under a Power of Attorney granted to Ramasamy, the son of Nachiappa (2), and Nachiappa (3), son of Suppramaniam. After deducting certain expenses the balance is stated to be paid in equal shares to the firm of N. S. RM. S. and KM. N. SP. through Ramasamy, son of Nachiappan (2) and Nachiappan, the son of Suppramaniam respectively.

Now the firm of N. S. RM. S. according to the evidence is a firm which was formed by four of the sons of Nachiappa (2). The pedigree table shows that he had five sons. Each of the letters N. S. RM. S. is the initial of each of the sons excluding Lechmanan. For some reason Lechmanan was not a member of this firm. RM. stands for Ramasamy. The evidence of Nachiappa, the son of Vyravan, shows that it was at the request of Nachiappa (2) that the payment was made to his sons and not to him. This, according to the evidence of the experts in the case, seems to indicate a double division, i.e., first a division between Nachiappa and Suppramaniam and then a division between Nachiappa and his five children. The reason why only four joined to form the firm is not clear, but it is possible, according to the evidence of the experts, for one member of a joint Hindu family to renounce his rights in the joint property either for consideration or without it.

The next paragraph deals with a division of palmyrah trees, mango trees, tamarind trees and margosa trees, and in the course of the division it is stated that as Nachiappa had already cut down one mango tree, Suppramaniam shall possess the other tree standing in the southern side of the land. These particulars are not of the sort one expects to find in a deed dissolving partnership and distributing partnership assets. The next paragraph 7 deals with the charities each is directed to perform and with the temple and flower garden which they are directed to possess in common. The next paragraph also refers to certain properties purchased in favour of Suppramaniam and Nachiappa for the Sivan Temple at Sembanur and providing for the income from these properties being utilised for the said temple. These directions are inconsistent with A8 being a document dissolving a partnership. When a partnership is dissolved and assets distributed provision is not made and directions are not given as to how the partners should behave thereafter. A dissolution of part-

No. 12
Judgment of
the District
Court 7.5.47.
—contd.

nership cannot and does not take place in stages. It is final and embraces all the property of the partners. It puts an end to all joint ownership. On the other hand, when joint property of a Hindu family is partitioned, provision is invariably made with regard to the manner in which religious charities should be conducted. This is the evidence of the experts. The fact that throughout this document the division is always equal and is made after the expenses of both, without reference to the amount expended by each, are deducted from the total, seems to point to the fact that it is a division of joint property and not a partition of partnership assets. The learned Attorney-General contended that this document, far from establishing the fact that the firm of KM. N. ceased on that day and two new firms of N. S. RM. S. and KM. N. SP. were created on that day, seems to indicate that all three firms existed side by side even before the division; but the deed itself is only a sort of final partition of properties the division of which had commenced earlier. In point of fact the document A9B which is the Cash and Day Book of the Colombo firm of KM. N. SP. indicates that this firm nominally started its existence on the 15th May, 1910. On that day, following the usual practice current among Nattukottai Chettiars, several Hindu Gods are propitiated by small items being entered in the books to their credit and the Headquarters of the firm of KM. N. SP. is credited with a large sum of Rs. 51,100. Actual business, according to this book, started on January 20, 1911, which from the entries appears to be the date on which KM. N. SP. and N. S. RM. S. started to divide the assets of the firm of KM. N. Between May 16, 1910, and January 20, 1911, no entries appear in that book. The reference therefore in A8 to the firms of KM. N. SP. and N. S. RM. S. does not negative the fact that A8 is a deed of partition between Suppramaniam and his brother Nachiappan 2. The evidence of the witness Nachiappa, son of Vyravan shows that in anticipation of the final division the firms of KM. N. SP. and N. S. RM. S. were established on an auspicious day, but that they actually came into existence as a result of the firm of KM. N. ceasing to exist as the natural result of the partition.

All the available books of the firm of KM. N. SP. were produced by the witness Ramanathan Chettiar. They were available in court, and according to him the Crown had an Indian Accountant examining them for the purpose of this trial. Ramanathan Chettiar in his evidence specifically stated that it was from this sum of Rs. 103,000 odd referred to in A8 and entered in the book A9A that the business expanded and developed into what was eventually left on the death of Nachiappa (3). He stated that the books did not show that any other capital came into the firm and added that during the depression the firm was compelled to take over lands from people who were indebted to the firm. These they subsequently sold at greatly enhanced prices when conditions became more prosperous,

e.g., 200 acres of Kandawala Estate which cost the firm Rs. 175,000 was sold for Rs. 360,000. In this way the capital of the firm quickly grew and expanded without additions from any external source. This has not been contradicted by the Crown though their accountant went through all the books of the firm that were available. At first all the books from 1924 to 1938 and two books for 1919 only were produced in Court, the other books being left in India. Subsequently Ramanathan Chetty brought all the books that were available including the ones originally left in India and they were made available to the Indian accountant of the Crown.

No. 12
Judgment of
the District
Court 7.5.47.
—*contd.*

20 The other documents relied on by the appellant are some Income Tax Assessments made in Ceylon as well as in India. A18 and A19 are assessments issued on Nachiappa (3) for the income tax years ended March, 1935, and March, 1934, respectively. The assessment in both cases is made on the footing that the assessee is a member of a Hindu undivided family. According to the assessor, Mr. Gunasekera, who gave evidence, it served the purpose of the assessee to be assessed in Ceylon at that stage as a member of a Hindu undivided family. Then, unlike as at present, no additional tax appears to have been imposed on Hindu undivided families, and it may be that the assessee held himself out as a member of a Hindu undivided family merely for the purpose of getting the benefit of a lower tax. The Income Tax Department continued throughout to assess Nachiappa Chetty on the basis that he was carrying on the business of a joint undivided Hindu family. It would appear that in the first year of assessment the Auditor of Nachiappa Chetty wrote a letter R36 which followed the prescribed form suggested in a circular of the Department, claiming that Nachiappa Chettiar was a non-resident individual.

30 Mr. Sambamurthy, the Accountant, states that when he wrote this letter on the 1st October, 1932, in respect of the very first year of assessment, after the Income Tax Ordinance came into force for the first time, he would, in the ordinary course of business, have consulted his client, but he says that at that time he had no clear conception of what a Hindu undivided family was or what constituted its joint property; in fact he says he knew next to nothing. The agent of Nachiappa Chettiar, viz., Ramanathan Chettiar, has in his evidence denied that he gave Sambamurthy instructions to make this statement. In any event, by letter A63, dated 29th May, 1933,

40 Sambamurthy wrote again to the department objecting to the assessment made on the basis of his letter A36 and lodging an appeal against it on the ground that Nachiappa Chettiar was the managing member of a Hindu undivided family and that the business of K.M. N. SP. belongs to the said undivided family. On this appeal the Income Tax authorities accepted the contention and assessed the property of Nachiappa Chettiar as the property of an undivided Hindu family. After the death of Nachiappa Chettiar, the department has reassessed the income tax payable by Nachiappa Chettiar

for the last three years prior to his death on the basis that his property was not the property of a Hindu undivided family. Against this there was an appeal to the Board of Review who by R6 upheld the decision of the Commissioner of Income Tax and held that Nachiappa Chettiar's income was liable to be taxed as that of an individual. Against that decision no case was stated to the Supreme Court but in the meantime the present appeal in respect of Estate Duty was filed. The appellant also produced the income tax notices and assessments made by the Indian authorities in respect of a property of Suppramaniam and later Nachiappa. Of these documents A52 to A57 are assessments made by the Income Tax Department in India for several years between 1927 and 1936. In cage 2 of these documents the name of the assessee is required to be inserted. The earliest document A52 shows the name of the assessee as KM. N. SP. Suppramaniam Chettiar and son, while A53, A54, and A55 for the income tax years 1928-29, 1929-30 and 1931-32 respectively, give the assessee's name as KM. N. SP. Suppramaniam Chettiar. A56 for the year 1932-33, after the death of Suppramaniam gave the name of the assessee as Nachiappa Chettiar; so does A57. Cage 3 of these forms is headed " Status " and the status is given in all these documents as " Hindu undivided family ". It has been contended and on this point there is no difference of opinion in the views expressed by the legal experts on Hindu Law, that although a family may be undivided, they may own no property at all or each member may own separate property, and that the burden of establishing that the property held by the members is the joint property of a Hindu undivided family is cast upon the person asserting it. The mere fact, therefore, that these documents describe Nachiappa and Suppramaniam Chettiar as being members of a Hindu undivided family does not go to show that their business is also property of the undivided family. Although when the documents were produced I understood that they were intended to establish instances in which the status was recognised, they also indicate that the assessment of this undivided family's property includes what is described in the assessment as " Colombo sole shop ". All these assessments give the details of the property of the family under the heading " Assessment Order ". Among them, in A52, is included " Colombo sole shop ". In A53 it is described as " Colombo KM. N. SP. shop ". In A55, A56 and A57 it is described as " Colombo KM. N. SP. sole shop ". The word "sole" is apparently used to indicate that the shop belonged entirely to the family and was not carried on in partnership with other families or other persons. Now these assessment orders are instances in which the Colombo firm of KM. N. SP. had been regarded as property of the Hindu undivided family.

The documents that I have already referred to, starting from 1864 and coming down up to the date of death of Nachiappa Chettiar,

though they do not continuously cover all the years in between, in my opinion indicate that the property of the firm of KM. N. SP. belongs to a family and not to the individual members described in the Business Names Registration form as partners thereof. Apart from the documents there is the oral evidence of Ramanathan Chettiar, the attorney of the firm, who has been with the firm from 1923 and has been attorney from 1925, which shows that the two brothers were carrying on this business as the business of the family. Ramanathan Chettiar is corroborated in this respect by

10 Nachiappa Chettiar, the son of Vyraavan Chettiar and by Alamelu. Though these last two witnesses do not specifically refer to the firm of KM. N. SP. Colombo, their evidence establishes the fact that Suppramaniam and Nachiappa (2) lived as joint family in one house in Sembanur and had joint worship and up to a stage, joint food. After the separation, shortly before A8 was executed, Nachiappa (2) occupied the southern portion of the house and Suppramaniam, the northern portion thereof. Then Suppramaniam and his son were joint in mess and in worship. This evidence establishes clearly that Nachiappa (2), Suppramaniam and his son

20 Nachiappa (3) along with the children of Nachiappa (2) were members of a joint family prior to the division by A8. Thereafter the family broke up into two branches. Nachiappa (2) and his family lived in the southern portion, while Suppramaniam and his children lived as a joint family in the northern portion. In a case decided by the Supreme Court, it was held that Ramasamy, the son of Nachiappa (2) was a member of a joint family and the proceedings in that case were permitted to be produced in order to establish this fact.

Having established the existence of a joint family, the burden

30 is on the appellant to show that the property is the property of that family. As I have already stated, one may, from the documents produced, infer that the business of KM. N. carried on by Kumarappa Chettiar was, after his death, continued by his sons under the same vilasam. This would be ancestral property in their hands. Then by A8 they divided this and other property and each branch will, according to the experts and the text books hold the property so divided and allotted to it as ancestral in its hands. According to the division, a sum of just over Rs. 103,000 was given to Suppramaniam and it is from this sum that Suppramaniam and

40 Nachiappa (3) started their business of KM. N. SP. From these facts the inference is natural that KM. N. SP's capital originated from a nucleus of ancestral property, and is therefore joint family property. The evidence establishes beyond doubt that KM. N. SP. was the firm carried on by father and son. On the death of the father the son carried on the business, and it would be reasonable to infer that he took over the property that was left by his father, and in his hands this again would be ancestral. It is possible that part of the assets of the firm of KM. N. SP. carried on by Suppramaniam and his son and later by Nachiappa (3) contained his

individual earnings and perhaps even their separate property although the evidence does not justify such a conclusion being reached. Even if they had mingled their own separate property with the joint property of the family, according to the decisions of the Indian Courts and the Privy Council, the property so enlarged must be regarded as joint family property—*vide* AIR 1923 P.C. 57.

As against this body of evidence led by the appellant, the Crown relied on certain returns and deeds executed by members of this family to show that the property was the individual separate property of first Suppramaniam Chettiar and later Nachiappa (3). 10

The earliest of these documents is the certificate of registration (R27) which describes the firm of KM. N. SP. as a money-lending firm owned solely by Nachiappa Chettiar and Suppramaniam Chetty. The next is R28 which is signed by Suppramaniam Chettiar, dated 3rd April, 1925, and in which he says, Nachiappa Chettiar has been admitted as a partner in the business. Certificate of Registration R30 was accordingly issued in which both Nachiappa and Suppramaniam are stated to be partners. The next document R31 of March, 1926, states that Suppramaniam Chetty has ceased to be a member of the firm and, in pursuance of that statement of change, R32 was issued registering Nachiappa Chettiar as the sole owner of the firm of KM. N. SP. In R33 Nachiappa Chettiar makes certain alterations in the original entry and refers to a business carried on by him on behalf of Alamelu and certain others. Had these documents stood alone, they would certainly be proof of the fact that the firm of KM. N. SP. was originally owned by Suppramaniam Chettiar, that Nachiappa was admitted as a partner in 1925 and that Suppramaniam left the firm and Nachiappa became the sole owner in 1926. Shortly prior to R30, which is the registration of Nachiappa as a partner with his father, by R4 Suppramaniam sells his interest in Kandawala Estate to Nachiappa for Rs. 15,000 and in 1926, when the father ceased to be a member, he assigns to him by R5 his interest in a large number of bonds, all of which except one, were in the names of both. The Business Names Registration Ordinance came into force in 1919 and it requires the registration of all firms carrying on business under a business name. The Ordinance requires that the names of the partners carrying on the business should be given in the return. At the time the Ordinance came into force very few people in Ceylon knew anything about joint Hindu family property, and Suppramaniam who when then the managing member or KARTA, of the family, it seems to me, cannot be blamed for describing himself as the owner of the property. So far as outsiders were concerned he may have been regarded as owner of the joint property, but as between him and the members of the family the position is quite different. The mere fact that he holds himself out as the sole 20 30 40

owner will not affect the character of the property in respect of which he so holds himself out. If a property is joint property, the legal experts who gave evidence in the case are of the opinion that it will make no difference to the character of the property itself, which will continue to be joint family property, and to the rights of the co-parceners *inter se*. As *Drieberg J.* remarked in *Ady-cappa Chetty vs. Thomas Cooks*, 31 N.L.R. at p. 405, when the Business Names Registration Ordinance came into force, Chettiar had great difficulty in filling up the forms. Those who were mem-
 10 bers of undivided Hindu families and traded as trading families, in order to comply with the requirements of the law, appear to have been advised to give their names as partners of the firm. The Ordinance does not have any special cage to describe members of Hindu undivided families. One can understand a Chettiar describing himself as a partner when there was no other description provided for in the form which he had to fill up. When Suppramaniam left Colombo, and went back to his native place in about 1925 or 1926, he enters his son as a partner in the return to the Registrar of Business Names, and shortly after his name is omitted. This, as
 20 suggested by learned Counsel for the appellant, may have been done merely to enable Nachiappa Chettiar to comply with the requirements of the law in Ceylon, in order to carry on the business of KM. N. SP. If Nachiappa were not a member of the firm prior to his admission by R30 in 1925, how is it that several of the bonds referred to in R5 were taken in his name so far back as 1918 or 1925? Furthermore, the properties hypothecated by Majid to the firm of KM. N. SP. were by A64 transferred to Nachiappa only, although at that time Suppramaniam was alive. The attestation to A64 shows that
 30 the consideration for the transfer consisted of several bonds and several notes, some of which were executed in 1918, 1920, 1922 and 1925. Though *prima facie* the entry in the registration form is a point against the appellant, too much significance cannot be attached to it in view of the other facts established in this case—*vide* in this connection the observations of *Soertsz J.* in *Ramasamy Chetty vs. Attorney-General*, 38 N.L.R. at page 317. The evidence of Ramanathan Chettiar which I accept is that the moneys lent to Majeed and to the owner of Kandawala Estate is money of the firm. If in point of fact Suppramaniam Chettiar ceased to be
 40 a member of the trading firm of KM. N. SP. after 1926 as would appear from document R31, it is difficult to understand why he thereafter continued to get himself assessed with his son in India as a joint Hindu family for the purposes of income tax (A52 to A55) Other evidence has been adduced to show that, although Suppramaniam Chettiar for the purpose of the Business Names Registration Ordinance is stated to have retired from the firm, he continued to take an active part in the management of the firm. He thereafter wrote several letters giving directions to the local agent in

Colombo as to how the business should be conducted. Specific orders, and not mere advice as contended by the learned Attorney-General, are contained in the letters A26 of 1929, of 1930, A28 of 1930, A29 of 1930 and A30 of 1932. Ramanathan Chettiar who was attorney in Ceylon has replied to some of these letters and given details of the transactions conducted at Colombo—*vide* A31 of October, 1926, A32 of March, 1927, A33 of October, 1929, and A34 of May, 1931. Furthermore there is a cheque book produced in the case which was in use from May, 1928, up to July, 1931. There are in it some unused cheque leaves which have been cancelled. It is the custom among Chettiar traders in Colombo who deal with banks to sign all the leaves of their cheque book and have their signatures, as it is in Tamil, admitted by the bank; this is usually done in the presence of the bank's shroff. The Chettiar then takes away the cheque book and operates on it as and when required. The cheque book A70 and the letters referred to corroborate the evidence of Ramanathan Chettiar that although in 1926 Suppramaniam went to India he continued to manage the firm from there up to the date of his death.

10

The Crown also relies on R1 which is a return made by Ramanathan Chettiar as attorney of Nachiappa Chettiar, on the death of Suppramaniam, to the Commissioner of Estate Duty. According to the evidence, R1 was accompanied by the two deeds R4 and R5. According to the return R1, Suppramaniam left no property when he died, but in statement C the attorney of Nachiappa 3 gives a sum of Rs. 167,250 as the estimated value of property gifted more than 3 years before the testator's death. The properties in question are properties dealt with by R4 and R5. R4 is a transfer of Suppramaniam's interests in Kandawala Estate which was purchased by Suppramaniam and Nachiappa jointly at a fiscal sale on A65. It was contended by the Crown that, if Suppramaniam left no property, it cannot be said that he had an interest in the assets of the firm of KM. N. SP. at that time. If he had such an interest, those interests should have been disclosed as assets of his estate liable to the payment of estate duty. It was therefore contended that the assets of the firm of KM. N. SP. at the time of Suppramaniam's death were the sole property of Nachiappa, and this is further borne out by the conduct of Nachiappa in making the return R1 and supporting it with the documents R4 and R5, thereby indicating that the only property left by Suppramaniam was transferred three years prior to his death to Nachiappa. It is possible, as was suggested, that at that time Ramanathan Chettiar, acting for Nachiappa, in order to avoid payment of duty, may have made a "nil" return on R1. At the same time, one cannot say that he was wrong in making such a return if he went on the footing that the property of the firm in which Suppramaniam had interests was joint family property, though in his evidence he does not take up this position. The experts are agreed, and this is supported by the Privy Council decisions cited, that in the case of a Hindu family

20

30

40

inheritance is not by succession but by survivorship, and even lawyers are not quite clear in their minds as to whether interests a co-parcener has in the joint property can be said to belong to his estate on his death, that is to say, are interests which he was competent to dispose of at the time of his death.

10 Mr. Rajah Aiyar, the Advocate General of Madras, who was called to give expert evidence by the Crown, though at first he took up the position that when a member of a joint Hindu family dies he dies possessed of property, appeared to agree with the view expressed by Mullah—section 368 p. 432 (9th Ed.) that when a member of a joint Hindu family drops by death one cannot say that he died possessed of property. He further said that from that point of view R3, which is a letter which accompanied R1 in which it is stated that Suppramaniam Chettiar left no property whatsoever at the time of his death, is correct. One cannot therefore say that, because R1 does not disclose any property as having been left by Suppramaniam Chettiar, all the property in the firm of KM. N. SP. at the time of Suppramaniam's death must be regarded as the individual property of Nachiappa and not family property in which both Nachiappa and his father Suppramaniam had co-parcenary interests. On the other hand, A65 shows that a share of Kandawala Estate was purchased jointly by Suppramaniam and Nachiappa who were the only members of the co-partnership at the time and A66 and A67 show that the remaining share of Kandawala Estate was purchased from the vendees at the Fiscal's sale. With regard to the share purchased jointly at the Fiscal's sale on A65, far from being the separate property of each, the presumption in Hindu law according to the Indian decisions would appear to be that it is family property. This presumption was recognised in the case of Sudarsanam vs. Narsimhulu, (1902) 25 Madras 149.

20

30

Coming to the question of the transfers on R4 and R5, they are transfers by the father to the son, and although on the face of the deeds they appear to be for valuable consideration the evidence of Ramanathan Chettiar, which I accept and is borne out by the entries in the books, is that no consideration passed—vide A6A and A6B. There were merely credit and debit entries which were duly balanced by debit and credit entries being made subsequently. The transfers must accordingly, even if they dealt with separate property of Suppramaniam, be regarded as gifts which according to decisions of the Madras High Court, within whose jurisdiction the deceased was domiciled, would be ancestral property in the hands of the sons—vide AIR 1945 Madras p. 195.

40

The next document relied on by the Crown is the last will of Nachiappa Chetty (R17). While it is true that R17 is consistent with the position that the property left therein is the sole property of Nachiappa as an individual one must construe that will in the light

of the other evidence in the case. It is clear law, and no authority is needed for the proposition, that on the death of Nachiappa Chettiar, if he had left no will, his immovable property would have descended upon the heirs according to the law of intestate succession in force in Ceylon. His daughters and the widow would then have been entitled to a greater share of his estate than his sons. Under the Hindu law, as explained by the legal experts and the text books, neither the widow nor the daughters of a Hindu are entitled to any share in the co-parcenary property of a Hindu; they are only entitled to the right of maintenance, dowry, &c. The property goes entirely to the sons and other male descendants up to the third generation. It was suggested, and this suggestion is borne out by the evidence of Ramanathan, that in order to avoid the possibility of the daughters becoming entitled to the immovable property in his name situated in Ceylon, Nachiappa executed the last will leaving the properties to his sons. The disposition of his properties according to the will is consistent with the manner in which it would have devolved if the property had been in India and if it was joint property of a Hindu family. I accept the evidence of Ramanathan on this point and I have no doubt that the will was executed merely to serve this purpose. There is in the will provision for the executrix continuing to manage the firm of KM. N. SP. till the last son becomes a major; this is no doubt inconsistent with the Hindu law which gives the mother, as natural guardian of the son, the right to look after the family property till the eldest son comes of age and becomes the KARTA of the firm—vide the evidence of Mr. Raja Aiyar on this point. In other respects the will in the main conforms to the Hindu law and gives the female members of the family only a right to maintenance. There is, however, one significant fact about this will. All the property described in the will is described as property belonging to the testator as his own separate property. He describes the money lending firm in Colombo as belonging to him alone as his sole property. He also describes the northern portion of the house at Sembanur as belonging to him alone. This, obviously, cannot be so; he got it under a partition which was confirmed by A8, and the reference in paragraph 4 of the will which excludes the half share due to the testator's paternal elder uncle makes it clear that the house dealt with is the ancestral house. In the will that house is described as the "big house"; the Tamil expression is PERIYA VEEDU. Mr. Rajah Aiyar in his evidence stated that this is a reference to a house large in size, but later agreed that sometimes the house in which the elders live, by association of ideas, is referred to as PERIYA VEEDU. There is a similar Sinhalese expression MAHAGEDERA which also means big house; the reference is to the ancestral house. In my experience the words "PERIYA VEEDU" have been used by Tamils to indicate the ancestral house. The mere fact that in this last will Nachiappa Chettiar describes the property as his alone does not

10

20

30

40

alter the character of the property dealt with therein if in point of fact it was property of an undivided family. It has been so held in India. In (1904) 27 Madras 228 a statement in a will that the property was self acquired was held not to be evidence on the question of whether the property was joint family property or self acquired.

No. 12
Judgment of
the District
Court 7.5.47,
—contd.

- There is evidence that during his life time Nachiappa Chettiar transferred two sums of money out of the assets of the firm to two of his sons who were then alive. This was in 1931 and is shown in
- 10 page 118 of the ledger of 1931-32. A sum of Rs. 250,000 is there transferred to the credit of Nachiappa (3's) eldest son, Manicam Chettiar. On the same page a similar sum appears as having been transferred to Nachiappa Chettiar (3's) other son, Ramasamy Chettiar. In 1932 interest at 9 per cent. is added to these amounts. Each of these sums with accumulated interest in 1936 amounted to Rs. 355,382.31. According to the evidence of Ramanathan Chettiar, when the 3rd son, Suppramaniam Chettiar, was born Rs. 118,460.76 $\frac{1}{2}$ was transferred from the account of each of the two sons, Manicam and Ramasamy, to the credit of the 3rd son, Suppramaniam Chettiar.
- 20 The result was that each of the three sons then had to his credit a sum of Rs. 251,117.89—vide A38A and A38B, folios 6, 7 and 355 of the ledgers for 1936-37. It was contended by the Crown that this disposition of property belonging to the firm by Nachiappa shows that the property was his own and not joint family property. On the face of it this would appear to be so, but it is to be noted that the transfer was to the sons who would have been entitled to co-parcenary interests in the property. Shortly before Nachiappa's 4th son, Nagappan, was born, no similar re-distribution took place. When the income tax of KM. N. SP. Nachiappa was being
- 30 assessed, a deduction was claimed on his behalf in respect of these transfers, but according to the evidence of the Assessor the Income Tax authorities regarded these transfers merely as a device to reduce the amount payable as income tax and refused to recognise them. An appeal was lodged against the findings of the Income Tax authorities, but later withdrawn. The Hindu law makes it clear that no gift of this nature can be made by the KARTA of an undivided Hindu family of the family property. That Nachiappa Chettiar did not intend these to be absolute gifts is shown by the fact that after gifting Rs. 251,000 to each of his two sons he appears
- 40 to revoke the gift, which he cannot do according to Hindu law, as stated by the experts, and to divide it up among all the three sons. In support of this alleged gift to the two sons, Nachiappa Chettiar, presumably at the instance of those advising him, swore an affidavit, copy of which (R50) was produced in the case. Therein he says that the property in the sons' names are their exclusive property. There is no doubt that the money came from the firm of KM. N. SP. and if the property of KM. N. SP. were joint family property these alleged gifts would, according to Hindu law, be ineffective.

I believe these entries were made to reduce the amount payable as income tax and perhaps to make provision for dependants. In Chambers case AIR 1944 PC. 79 similar entries made with the object of avoiding death duties and to provide for dependants were held not to be gifts.

Majeed, who has been referred to already as one of the persons owing money to the firm of KM. N. SP. transferred by A64 properties which he had earlier mortgaged to KM. N. SP. in liquidation of his debt. After the death of Nachiappa, Majeed filed a case in 1940 for a declaration that the properties transferred were held by Nachiappa Chetty as trustee for Majeed. The executrix of Nachiappa, viz., Valliammai Achchi, was made the defendant to that action and she filed an answer (R35) in which she denied that the transfer was for trust and took up the position that it was an absolute transfer to the deceased. The learned Attorney-General argued that the answer (R35) said nothing about Hindu undivided family and was an item of evidence in support of the case for the Crown. He stated that, if in point of fact the property transferred by Majeed was the property of an undivided Hindu family the executrix should have made that averment in the answer and it would have been necessary to join the minors or at least the other members of the family in order that a binding decree might be obtained against them. I am unable to see the force of this argument. The properties transferred were mainly immovable properties situated in Ceylon and a decree obtained against the executrix would, it seems to me, be binding upon the members of the family. In this connection it will be relevant to consider the effect of sections 472 and 475 of the Civil Procedure Code. A74 is a transfer to KM. N. SP. Nachiappa and title to it, under the Ceylon law, would vest in Nachiappa. On his death, in an action to recover the said property, the Ceylon procedure would apply and it seems to me that the proper person to be sued is the executor, under section 472 of the Civil Procedure Code. Such an action would be binding on all parties who had beneficial interests in the property. There would, it seems to me, be no need to make the others parties to the action though the Court, had it deemed it desirable, would have been entitled to do so.

According to the evidence of the legal experts, decisions of the Courts and the text books cited—mainly Mullah and Maine—it is clear that the normal estate of every Hindu family is joint, and the presumption is, according to the decision in 12 Moore's Indian appeals at page 540 that such family is joint in food, worship and estate. In the absence of proof of division such is the presumption. Though the presumption is that the family is joint, the burden of establishing that any particular property is the joint property of that family is upon the person who asserts it for the reason that a member of a joint undivided family can make separate acquisition

of property for his own benefit—AIR 1929 PC. 1. In this particular case the facts indicate that the firm of KM. N. started in 1864 with Kumarappa Chettiar and was subsequently carried on by his two sons. Thereafter there was a partition as established by document A8. According to the law, when joint property is partitioned, the share that goes to each of the co-parceners continues to be joint property in his hands in which he and his male descendants have co-parcenary interests. I think it is clear that in this case after the division by A8 KM. N. SP. started business with the share allotted to Suppramaniam Chettiar and this must therefore be regarded as ancestral property in which Suppramaniam and his children had co-parcenary interests. The evidence of Ramanathan establishes the fact that this nucleus of ancestral property which was obtained at the partition rapidly grew and enlarged to the sum which was left by Nachiappa at his death. The books that were produced do not show any separate ledger page for Suppramaniam and Nachiappa into which drawings made by each of them were posted. There is an account in the name of KM. N. SP. and later in the name of Nachiappa but this, according to Ramanathan Chettiar's evidence, only shows the capital of the firm. Perusal of the entries under that heading supports this statement. Even if separate property was brought into the business, in law such property would become blended with the joint estate and the whole property would become joint—AIR 1923 PC. 57.

Although the presumption in Hindu law is that once a nucleus of ancestral property and its sufficiency is established all property of the members of the family is joint, it has been held that this does not apply to trade or business. Bhuru Mals case—AIR (1942) PC. p. 18. In that particular case the original nucleus was landed property of small value in the place where the family existed and the business was in another place started by one member of the family, and it was shown that when the business was started the family property had not been mortgaged or leased in order to raise funds. Whether this decision applies to a case where the nucleus itself is business assets is not clear. In a case like the one which forms the subject matter of the present proceedings there is, it seems to me, no need to rely on this presumption. The evidence shows that the business of KM. N. SP. started with a nucleus of Rs. 103,000 which by the joint labour of the co-parceners developed with its accretions to the sum which now forms the capital of the business.

The documents produced by the Crown, had they stood by themselves, would certainly have created a prima facie case to establish the fact that the property left by Nachiappa Chettiar was his own separate property, but the other evidence in the case is, in my view, so convincing that the conclusion with regard to the character of the property being joint property of a Hindu family is irresistible. I accordingly hold that the assets of the firm of KM. N. SP. and the

No. 12
Judgment of
the District
Court 7.5.47
—contd.

property in respect of which estate duty has in this case been recovered is the joint property of the family of which the deceased, Nachiappa Chettiar, was the head or KARTA. It is accordingly not liable to pay estate duty. In view of my finding on this question it is not necessary for me to consider the alternative prayer in the appellant's petition.

In the prayer of the appellants application to this Court she asks that the Commissioner of Estate Duty be ordered to repay the appellant the estate duty recovered with interest at 9 per cent. I do not think it is within the jurisdiction of this Court to make such a specific order. Section 40 of the Estate Duty Ordinance expressly provides that the decree entered should only specify the amount, if any, which the appellant is liable to pay as estate duty under the Ordinance. The effect of such a decree would be to make it incumbent on the Commissioner to repay anything over and above the amount decreed as payable, if in point of fact an additional amount has already been recovered. I accordingly direct that decree be entered in these proceedings declaring that the property assessed by the Commissioner of Estate Duty as being liable to pay estate duty is property which comes within the provisions of section 73 of the Ordinance and that, accordingly, no sum of money is payable in respect of it as estate duty.

The appellant will be entitled to the costs of these proceedings.

Sgd. S. SINNATAMBY,
A. D. J.

Delivered in open Court in the presence of Mr. N. M. Zaheed, Proctor for appellant, and Mr. John Wilson, Crown Proctor.

No. 13
Defendant
appellant's
Petition of
Appeal to the
Supreme Court
16.5.47.

No. 13.
Defendant-Appellant's Petition of Appeal to the
Supreme Court

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

THE ATTORNEY-GENERAL of
Ceylon *Defendant-Appellant.*

D. C. Colombo Special 10

Testy. Case No. 8802

Vs.

VALLIYAMMAI ATCHI of No. 247, Sea Street, Colombo,
Executrix of the Last Will and Testament of K. M. N. S. P.
Natchiappa Chettiar *Plaintiff-Respondent.*

To

The Honourable the Chief Justice and the other Judges of the
Supreme Court of the Island of Ceylon.

This 16th day of May, 1947.

The Petition of Appeal of the Attorney-General, the defendant-appellant abovenamed, appearing by John Wilson, his Proctor, states as follows:—

No. 13
Defendant
Appellant's
Petition of
Appeal to the
Supreme Court
16.5.47.
—contd.

10 1. The plaintiff respondent appealed to the District Court of Colombo under Section 34 of the Estate Duty Ordinance (Cap. 187) against the assessment, under Section 32 of the said Ordinance, of the estate duty payable in respect of the estate of the deceased K. M. N. S. P. Natchiappa Chettiar on the following among other grounds urged in the petition of appeal filed by her under Section 38 of that Ordinance:—

(a) that the deceased K. M. N. S. P. Natchiappa Chettiar was a member of a Hindu undivided family.

(b) that the entire property, which has been assessed as liable to duty, was and is the joint property of that Hindu undivided family.

(c) That the entire immovable property which has been assessed as liable to duty, if it had been movable property, would have been the joint property of that Hindu undivided family.

20 (d) that no estate duty is payable by virtue of the provisions of section 73 of the Estate Duty Ordinance, No. 1 of 1938 (Cap. 187), as amended by the Estate Duty Amendment Ordinance, No. 76 of 1938.

(e) that no property passed on the death of the deceased within the meaning of the Estate Duty Ordinance for the reason that in respect of the entire property in question the interest of the deceased, who was a member of a Hindu undivided family, is not one that passes on death within the meaning of that Ordinance.

30 2. The learned District Judge after hearing evidence of both parties, by his judgment delivered on the 7th May, 1947, held:

(a) that the deceased, K. M. N. S. P. Natchiappa Chettiar, was a member of a Hindu undivided family.

(b) that the firm of K. M. N. S. P. and the property in respect of which estate duty has been recovered is the joint property of the family of which the deceased Natchiappa Chettiar was the head or "Karta."

(c) that, accordingly, no estate duty was payable on the said property.

40 3. The learned District Judge further directed that decree be entered declaring—

(a) that the property assessed by the Commissioner of Estate Duty as being liable to pay estate duty is property which comes

No. 13

Defendant
Appellant's
Petition of
Appeal to the
Supreme Court
16.5.47.
—contd.

within the provisions of section 73 of the Estate Duty Ordinance, and that, accordingly, no sum of money is payable in respect of it as estate duty:

(b) that the plaintiff was entitled to the costs of these proceedings.

4. Being aggrieved by the said judgment and decree, the defendant-appellant appeals to Yours Lordships Court by virtue of the provisions of section 43 of the Estate Duty Ordinance (Cap. 187) on the following, among other grounds, which will be urged by counsel on his behalf at the hearing of this appeal:— 10

(a) the said judgment is contrary to law and against the weight of evidence adduced in the case.

(b) The learned District Judge erred in permitting the plaintiff to lead evidence before him which had not been placed before the Commissioner of Estate Duty, from whose order the plaintiff appealed to the District Court.

(c) The learned District Judge failed to attach due weight to the acts of the deceased, K. M. N. S. P. Natchiappa Chettiar, as disclosed in the documents R4, R5, R17, R27, R28, R30 to R33 and R50 which documents by themselves and in the light of the other documentary and oral evidence adduced on behalf of the defendant-appellant raised a strong presumption that the said property was not the property of a Hindu undivided family and which presumption, it is submitted, has not been displaced by the documentary and oral evidence adduced on behalf of the plaintiff-respondent. 20

(d) It is submitted that a member of a Hindu undivided family cannot in law gift any property *inter vivos* or dispose of it by last will and that the fact that the deceased did so is very strong evidence that he regarded those properties his own separate acquisitions. 30

(e) It is submitted that the utilisation of joint family funds in a trade or business does not by itself raise any presumption that such business is the property of a Hindu undivided family and that the learned Judge failed to appreciate the quantum of evidence necessary for discharging the burden which fell on the plaintiff-respondent of proving that the capital of the K.M.N.S.P. firm originated from a sufficient nucleus of ancestral property, in order to constitute such business the property of a Hindu undivided family. 40

(f) It is submitted that the description of status given as "Hindu undivided family" in the Income Tax assessments relating to payment of Indian Income Tax is insufficient to establish that the deceased was a member of a Hindu undivided family.

(g) The learned Judge has erred in interpreting the words "Colombo K.M.N.S.P. sole shop" used in documents A55, A56 and A57 as indicating that the shop belonged entirely to the family and was not carried on in partnership with other families or other persons.

No. 13
Defendant
Appellant's
Petition of
Appeal to the
Supreme Court
16.5.47
—contd.

Wherefore the defendant-appellant prays:—

(a) that the said judgment and decree of the learned District Judge be set aside.

10 (b) that order be made maintaining the assessment of estate duty made by the Commissioner of Estate Duty.

(c) for the defendant's costs of this appeal and of the proceedings in the District Court, and

(d) for such other and further relief as to Your Lordships' Court may seem meet.

Sgd. JOHN WILSON,
Proctor for defendant-appellant.

No. 14.

JUDGMENT OF THE SUPREME COURT

No. 14
Judgment of the
Supreme Court
24.6.49

S.C. 512.

D.C. (F) Colombo 10 Special.

20 VALLIAMMAI ATCHI of No. 247, Sea Street, Colombo,
Executrix of the Last Will and Testament of K.M.N.S.P.
NATCHIAPPA CHETTIAR *Plaintiff-Respondent.*

Against

THE ATTORNEY-GENERAL of
Ceylon *Defendant-Appellant.*

PRESENT: WIJEYWARDENE, *C.J.*, and GRATIAEN, *J.*

ARGUED ON: 16th, 17th, 18th, 19th, 20th, May 1949. 14th, 15th,
16th, 17th June, 1949.

DECIDED ON: 24th June, 1949.

30 M. F. S. PULLE, *K.C.*, Acting Attorney-General, with H. W. R.
WEERASOORIYA, *C.C.*, for the Crown.

H. V. PERERA, *K.C.*, with V. A. KANDIAH and N. M. DE
SILVA for the Respondent.

GRATIAEN, J.

K. M. N. Natchiappa Chettiar died on 30th December, 1938. The amount of duty payable in respect of his estate under the Estate Duty Ordinance (Chapter 187) was assessed at Rs. 290,784-12.

No. 14
 Judgment of the
 Supreme Court
 24.6.49
 —contd.

Notice of objection to this assessment was forwarded to the Commissioner of Estate Duty, who, however, affirmed the assessment under Section 37. A petition of appeal was accordingly filed on behalf of the executrix of the estate in the District Court of Colombo, and in terms of Section 40 of the Ordinance the appeal was proceeded with as an action between the executrix and the Crown. Pending the hearing of the appeal the executrix was required to pay to the Commissioner of Estate Duty the full amount of duty claimed from the estate, and it is common ground that, certain adjustments having subsequently been made, the balance sum paid by the executrix and not since repaid to her amounts to Rs. 285,308.48. 10

The executrix claimed total exemption from estate duty by virtue of the provisions of Section 73 of the Ordinance, as amended by Section 5 of Ordinance No. 76 of 1938, on the ground that the deceased was a member of a Hindu undivided family, and that the property in respect of which estate duty has been assessed was not his separate property but the joint property of the undivided family of which he was a member. It was claimed in the alternative that, apart from the operation of Section 73, the property of a Hindu undivided family could not be regarded as having "passed on the death" of one of its individual members within the meaning of the Ordinance. In the view which I have taken, this alternative proposition does not require to be considered. 20

Certain preliminary legal objections were unsuccessfully raised on behalf of the Crown in the lower Court and in an interlocutory appeal to this Court. Hence the delay in the final determination of the proceedings. When the trial was eventually resumed the learned District Judge entered a declaratory decree in favour of the executrix on the basis that the property belonged to a Hindu undivided family of which the deceased was a member, and that the exemption conferred by Section 73 of the Ordinance accordingly applied. He held however that, although no estate duty was in fact payable under the Ordinance, he had no jurisdiction under the Ordinance to enter a decree against the Crown for the return of the sum of Rs. 285,308.48 which, on the basis of his judgment, had been over-paid to the Commissioner of Estate Duty. The Crown now appeals to this Court from the judgment of the learned Judge. The executrix has filed cross-objections against that part of the judgment which refuses her a decree for the return of the sum paid by her under protest in terms of section 44 (2) of the Ordinance. 30 40

The main question which calls for decision is whether the property in Ceylon in respect of which the assessment was made has been proved to be the property of a Hindu undivided family and not the separate property of the deceased. The learned Judge held on the evidence (a) that the deceased was a member of a Hindu undivided family, (b) that this family owned on the relevant date certain joint property in India, (c) that the property in Ceylon in respect of

which estate duty has been claimed by the Commissioner was similarly joint property belonging to the family. At the proceedings in the lower Court the Crown had strenuously contested each of these facts, but the learned Attorney-General frankly, and I think very properly, conceded before us that the evidence on points (a) and (b) which I have enumerated could not reasonably be challenged. In view of this admission, the only issue of fact which remains for our decision is whether the learned Judge was correct in holding that the property in Ceylon was not separate property which the deceased possessed to the exclusion of the undivided family to which he belonged. It is, of course well settled law that

10 “ a member of a Hindu undivided family can make separate acquisition of property for his own benefit which would remain free and separate in his hands unless it can be shown that the business grew from joint family property or that the earnings were blended with joint family estate.”—per Lord Buckmaster in “*Annamalai Chetty vs. Subramaniam Chetty*” (1).

As the Crown now accepts the position that the deceased did belong to a Hindu undivided family which possessed joint

20 property in India, it is perhaps convenient at this stage to set out the relevant facts which have been clearly proved and are no longer in dispute. The deceased belonged to a South Indian trading family of Nattucottai Chettiars whose male members for at least three successive generations had also been engaged in business in Ceylon. The deceased's grandfather was K. M. N. Natchiappa (who for convenience will be called “ Natchiappa 1 ”). Natchiappa 1 had two sons, K. M. N. Suppramaniam (the deceased's father) and K. M. N. Natchiappa (who for convenience will be called “ Natchiappa 2 ”). Natchiappa 1 and his two sons lived, after

30 the fashion of a Hindu undivided family, in a common home with common worship and a common mess, and the family, as an undivided unit, owned property which, in India at any rate, admittedly possessed all the characteristics of “ joint property ” as understood in the system of law obtaining in that country. After Natchiappa 1's death, his two sons and their respective families continued to live in the ancestral home as an undivided family and to possess the Indian property belonging to the family as joint property. (As the position with regard to the property in Ceylon remains controversial, I shall for the time being leave the

40 facts relating to it out of my narrative.) After some years the brothers Suppramaniam and Natchiappa 2 agreed that there should be a separation of the respective branches of their family, and in accordance with the recognised usage in such cases a deed of partition—A8 of 1912—was drawn up by arbitrators selected for the purpose. The legal effect of such a partition is not in dispute. The severance of the two branches from the original undivided family becomes final and complete, but the ancestral property which passes to each branch under the partition remains joint property in the hands of that branch which now assumes as a fresh unit the

No. 14
 Judgment of the
 Supreme Court
 24-6-49
 —contd.

character of a Hindu undivided family. So it was with the family of the deceased's father Supramaniam and the ancestral property which it received under A8. The contention for the Crown in the Court below was that A8 operated only as a division between Suppramaniam and Natchiappa 2 of the assets of a commercial partnership as opposed to the assets of a Hindu undivided family. This position has now been abandoned as far as the Indian assets are concerned, but it is still adhered to with some show of tenacity in respect of the Ceylon assets which were dealt with by A8. The issue must therefore be examined. The Crown no longer argues that A8 must be regarded as effecting either a partition of the assets of a commercial partnership *and of nothing else* or (as the executrix has consistently claimed) the partition *simpliciter* of the joint property of a Hindu undivided family. No suggestion was made at the trial to a witness who claimed to speak with personal knowledge of the execution of A8 that it was intended to operate partly as a division of one species of property and partly as a division of the other. Nor is there any evidence that it is customary to complicate the formal separation of the branches of a Hindu family and the division of their ancestral property, involving as it does certain special legal consequences, by introducing into the partition other assets separately owned by individual members to the exclusion of the undivided family. The language in A8 certainly appears to treat the Ceylon assets as being in no way different from the Indian assets. 10 20

The property in Ceylon which was dealt with by A8 consisted of the assets of a money-lending business which had admittedly been jointly carried on until 1912 by the brothers Natchiappa 2 and Suppramaniam (I shall assume that it has not been *conclusively* proved to be identical with the original business of Natchiappa 1, although I agree with the learned Judge that on the evidence this was very probably the case). There is no evidence that there was any deed of partnership between the brothers regulating the terms of this business enterprise on a strictly commercial basis, nor do the books of the business disclose any distribution of profits such as one would expect in the case of a commercial venture as opposed to a joint family business. The learned Judge enjoys the advantage of professional experience of the usages of Chetty traders in Ceylon and after an exhaustive analysis of the oral and documentary evidence in the case he arrived at the conclusion that the Ceylon assets dealt with by A8 were the joint property of a Hindu undivided family in exactly the same way as the Indian assets admittedly had been. I find the reasons for arriving at this conclusion irresistible, and I do not consider it necessary to refer in detail to the evidence which admittedly tends to support the case for the executrix. It is no doubt true that, as against this evidence, certain documents relied on by the Crown might point to a different conclusion unless an attempt be made to understand them with reference to the 30 40

business methods of Chetty money-lenders which are matters of common knowledge. For instance, the idea of a Hindu undivided family which owns property as a unit or association distinct from its individual members has for many years been acknowledged and has received both statutory and judicial recognition in this country, but it is well known that members of such families in the transaction of their business have invariably encountered difficulties in seeking to adjust to the requirements of our local laws the special features attaching to the personal laws of their country of domicile. It is in relation to this background that one must interpret the endeavours of Suppramaniam to comply with the provisions of the Business Names Registration Ordinance of 1918. Similarly, it is in this light that one should seek to understand his attempts, before finally retiring from Ceylon, to leave the joint property of his undivided family in the hands of his son, the deceased, who succeeded him in the management of the family business. So it is again that I find nothing specially sinister in the behaviour of the deceased when the time was approaching for him to retire in his turn from the management of the business. The same motive which influenced Suppramaniam when he purported first to admit his son as a “partner” of the business and then to transfer to him entirely his interest in the so-called “partnership” for a patently fictitious consideration, is to my mind the explanation for the later devices of the deceased who, in anticipation of death, purported by a last will to “dispose” not only of the Ceylon assets but also of what was admittedly joint property in India belonging to the undivided family. That motive was to preserve the joint property of the undivided family in the hands of succeeding generations of its male members in such a way that, so far as business acumen and legal ingenuity could achieve the desired end, the laws of Ceylon should in no way prevent the joint property of a Hindu undivided family from remaining within the family by survival. I am in complete agreement with the learned Judge that the evidence in the case convincingly establishes that the business carried on in Ceylon by Natchiappa 2 and Suppramaniam under the vilasam “K.L.M.” was the joint property of the undivided family of which they were both members, and that after the division in 1912 of the property by the deed A8, Suppramaniam continued to carry on the identical business under the new vilasam “K.L.M.S.P.” not on his own account but as the joint property of the new undivided family of which he was now the head. When Suppramaniam retired to India and later died, the business remained in the hands of his son, the deceased, as joint family property and not as separate property possessed by him for his own benefit to the exclusion of the family.

It was argued by the Crown that, on the authority of “*Bhuru Mal vs. Jaganath*” (2) the onus was on the executrix to prove affirmatively that the business of K.L.M. carried on by Suppramaniam and

No. 14
 Judgment of
 the Supreme
 Court
 24-6-49
 —contd.

Natchiappa 2, and the later business of K.L.M.S.P. were in fact the joint property of an undivided family. Even if this be so, the burden has been amply discharged. Moreover, in the present case we have clear evidence that there was a Hindu undivided family possessed of some property at least which was admittedly joint. The Ceylon property was also possessed *jointly* by the male members of the undivided family, and in the absence of any evidence of a commercial partnership the terms of which were inconsistent with the incidence of joint family property, I think that the only reasonable inference which can be drawn from the proved facts is that the business was joint family property and not the separate asset of any individual member of the family. The facts of the present case seem to approximate to those which were considered by the Privy Council in "*Rampershad Tewarry vs. Sheochurn Doss*" (3) when it was held that a business carried on jointly by the members of a Hindu undivided family is presumed to be joint family property and not an ordinary commercial partnership. The position would no doubt be different in the case of a business separately acquired and carried on by a single member of the family. In that event the principles laid down in "*Annamalai Chetty vs. Subramaniam Chetty*" (1) and "*Bhuru Mal vs. Jaganath*" (2) would no doubt apply.

As far as the appeal of the Crown is concerned, it remains only to consider a legal submission made by the learned Attorney-General which I hope I have not misunderstood. The substance of his argument appears to be that even though the Legislature may have intended by Section 73 of the Estate Duty Ordinance, both in its original and its amended form, to give recognition to the law of South India by which a Hindu family, as a legal *persona* which is distinct from its individual members, may own and possess movable or immovable property, the fact remains that no such Hindu law has in fact been introduced by express legislation as part of the law of Ceylon. In the circumstances, it is urged, Section 73 of the Ordinance is wholly inoperative. With the greatest respect, I think that the argument—or at least the argument as I have understood it—is fallacious. We have not been referred to any doctrine of our Common law to which the concept of a family capable of owning property as a legal *persona* is inherently repugnant. In practice however, the continued ownership of property by an unincorporated association the identity of whose members changes from time to time must inevitably create problems. It is an essential feature of the law of South India relating to the joint property of a Hindu family that on the death of any member of the family the remaining members take not by survivorship but by survival. In the case of movable property situated in Ceylon and belonging to a Hindu undivided family, no difficulties arise on the death of a member of the family, because

the law applicable would be the law of the deceased's country of domicile. In the case of immovable property, however, the laws of the country of domicile would not govern the case. It was therefore felt that the original language of Section 73 of the Estate Duty Ordinance exempting "any" joint property of a Hindu undivided family from the operation of the Ordinance might create some difficulty in the case of immovable property (vide the observations of Fernando, J., and the admissions of Counsel on this point in "Periakaruppan Chettiar vs. Commissioner of Stamps" (4). It was for this reason that Section 73 was in my opinion amended by Ordinance No. 76 of 1938 to read as follows:—

"Where a member of a Hindu undivided family dies, no estate duty shall be payable—

- (a) on any movable property which is proved to have been the joint property of that family;
- (b) on any immovable property when it is proved that such property, *if it had been movable property*, would have been the joint property of that family."

The intention was to resort to a fiction which would remove in the case of immovable property the difficulties which do not attach to the movable property belonging to a Hindu undivided family. In rejecting the submission made by the learned Attorney-General, I am comforted by the knowledge that a Hindu family is, for income tax purposes, taxed by the Crown as a "body of persons" capable of owning property in this country and deriving income therefrom. In that respect at least no anxiety seems to exist as to whether the clear intention of the Legislature to regard a Hindu family as an owner of property has been frustrated. It is on behalf of the same "body of persons" for whose benefit exemption from the payment of estate duty is claimed. The Crown cannot have it both ways. In my opinion the appeal of the Crown against the judgment of the learned District Judge should be dismissed with costs, and I would make order accordingly.

I now proceed to consider the cross-appeal of the executrix. On various dates between 30th May, 1940, and 22nd February, 1941, the Commissioner of Estate Duty has, pending the appeal, recovered from her in terms of Section 44 (2) sums aggregating Rs. 293,330.89. On 5th May, 1941, a sum of Rs. 8,022.41 was repaid to the executrix. In the result the nett amount overpaid to the Commissioner as estate duty, on the basis of the learned District Judge's judgment with which I am in agreement, amounts to Rs. 285,308.48. The estate has been deprived of the use of this money for a period which already exceeds eight years. The question is whether the learned District Judge has correctly decided that the provisions of the Ordinance give him no jurisdiction to enter a decree ordering the Crown to

refund the money to the executrix. In my opinion he is vested with such jurisdiction, and this is certainly a case in which it should be exercised. I can find nothing in the Ordinance which compels me to hold that an assessee who has been required to pay as estate duty a sum of money on the basis of an erroneous assessment must rest content with the cold comfort of a declaratory decree to the effect that the assessment was wrong.

Section 34 of the Ordinance entitles a person aggrieved by the amount of any assessment of estate duty to appeal to the appropriate District Court against the assessment. The jurisdiction conferred on the Court is not a purely appellate jurisdiction such as is vested in this Court, for example, when a case is stated by the Board of Review under the provisions of the Income Tax Ordinance (Chapter 188). Once a petition of appeal has been filed and a copy thereof served on the Attorney-General as required by Section 38, the appeal proceeds not merely as a contest between the assessee and the Commissioner but "*as an action between the appellant us plaintiff and the Crown as defendant*" (Section 40). The provisions of the Civil Procedure Code are brought into operation and where an action lies against the Crown, the relief claimed by the plaintiff need not be restricted to a mere declaratory decree. The second proviso to Section 40 makes express reference to the decree which shall be entered in the "action". Under this proviso the decree is required to contain a declaration as to the amount, if any, which the assessee is liable to pay as estate duty, but it does not state that the relief granted in the action must necessarily be confined to such a declaration. Indeed, the learned Attorney-General concedes that these decrees invariably order the payment of costs in favour of the successful party, and there is a very clear indication that the language of Section 54 (2) contemplates the possibility of a decree capable of execution for the payment of money to the Crown (should the Crown succeed). I do not find any provision which precludes, in appropriate cases, the entering of a decree for the repayment of money against the Crown where an assessee has been compelled to pay as estate duty a sum which he was not liable to pay. In such cases the extent of the assessee's grievance must be the measure of the relief which he has a right to claim in the action which is proceeded with under Section 40 against the Crown. It is for this reason that at a certain stage the Crown, represented by the Attorney-General, steps in and the Commissioner of Estate Duty drops out as a party to the litigation. The appeal proceeds as an "action" so that, in the interests of finality, a decree capable of execution may be entered either in favour of the Crown or binding on it as the case may be. In the present case I would enter a decree in favour of the executrix against the Crown for the payment of a sum of Rs. 285,308.42 overpaid by her as estate duty, together with legal interest at 5 per cent. in terms of Section 192 of the Civil

Procedure Code from the date of action until the date of this decree, and thereafter on the aggregate amount of the decree until payment in full. The executrix is entitled to her costs of this appeal and in the Court below.

No. 14
Judgment of
the Supreme
Court
24-6-49—contd.

- (1) A. I. R. (1929) P. C. 1.
- (2) A. I. R. (1942) P. C. 13.
- (3) 10 Moore's Indian Appeals 490.
- (4) 38 N. L. R. 201.

Sgd. E. F. N. GRATIAEN,

Puisne Justice.

10

WIJEYEWARDENE, C. J.

I agree.

Sgd. E. A. L. WIJEYEWARDENE,

Chief Justice.

No. 15.

Decree of the Supreme Court

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS KING,
DEFENDER OF THE FAITH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

VALLIYAMMAI ATCHI of No. 247, Sea Street, Colombo,
Executrix of the Last Will and Testament of K. M. N.
S. P. Natchiappa Chettiar *Plaintiff-Respondent.*

Against

10

THE ATTORNEY-GENERAL of Ceylon ... *Defendant-Appellant.*

Action No. 10 Special.

District Court of Colombo.

This cause coming on for hearing and determination on the 16th, 17th, 18th, 19th, 20th May and 14th, 15th, 16th, 17th and 24th June, 1949, and on this day, upon an appeal preferred by the defendant before the Hon. Sir E. A. L. Wijeyewardene, Kt., K.C., Chief Justice, and the Hon. Mr. E. F. N. Gratiaen, K.C., Puisne Justice of this Court, in the presence of Counsel for the Appellant and Respondent.

It is considered and adjudged that the Appeal of the Crown 20
against the judgment of the District Judge be and the same is
hereby dismissed with costs.

It is further ordered that a Decree be entered in favour of the
executrix against the Crown for the payment of a sum of
Rs. 285,308.42 overpaid by her as estate duty, together with legal
interest at 5 per cent. in terms of section 192 of the Civil Procedure
Code from the date of action until the date of this decree, and
thereafter on the aggregate amount of the decree until payment in
full.

The executrix is entitled to her costs of this appeal and in the 30
Court below.

Witness the Hon. Sir Edwin Arthur Lewis Wijeyewardene, Kt.,
K.C., Chief Justice, at Colombo, the 24th day of June, in the
year of our Lord One thousand Nine hundred and Forty-nine, and
of our Reign the Thirteenth.

No. 15
Decree of
the Supreme
Court
24-6-49—*contd.*

Sgd. W. G. WOUTERSZ,
Acting Deputy Registrar, S. C.

No. 16
Application for
Conditional
Leave to
Appeal to
Privy Council
4.7.49.

No. 16.

Application for Conditional Leave to Appeal to Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

S. C. Final No. 512.

D. C. Colombo No. 10 Special.

THE ATTORNEY-GENERAL of Ceylon ... *Defendant-Appellant*.

vs.

VALLIYAMMAI ATCHI of No. 247, Sea Street, Colombo,
Executrix of the Last Will and Testament of
K. M. N. S. P. Natchiappa Chettiar ... *Plaintiff-Respondent*. 10

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF
THE HONOURABLE THE SUPREME COURT OF THE
ISLAND OF CEYLON

This 4th day of July, 1949.

The petition of the defendant-appellant above named appearing by John Wilson his Proctor states as follows:—

1. Feeling aggrieved by the judgment and decree of this Honourable Court pronounced in this case on the 24th day of June, 1949, the defendant-appellant above named is desirous of appealing therefrom to His Majesty the King in His Privy Council. 20

2. That the said judgment is a final judgment and that the matter in dispute on the appeal is upward of the value of Rs. 5,000.

Wherefore the defendant-appellant prays for conditional leave to appeal from the said judgment and decree entered on the 24th day of June, 1949, to His Majesty the King in Council.

Sgd. JOHN WILSON,
Proctor for Defendant-Appellant.

No. 17.

Judgment of the Supreme Court granting Conditional Leave to Appeal

No. 17
Judgment of
the Supreme
Court
granting
conditional
leave to
appeal
20-7-49

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the Matter of an Application for Conditional Leave to appeal to His Majesty the King in His Privy Council

*S. C. Application No. 318/1949: S. C. No. 512 D. C.
(F) Colombo 10*

THE ATTORNEY-GENERAL (*Defendant-Appellant.*)

10

vs.

VALLIYAMA ATCHI (*Plaintiff-Respondent.*)

Coram: WIJEYWARDENE, C. J., & CANEKERATNE, J.

Counsel: H. W. R. WEERASURIYA, Crown Counsel, in support.
N. M. DE SILVA for the respondent.

Argued on: July 20, 1949.

Decided on: July 20, 1949.

WIJEYWARDENE, C. J.

This is an application for leave to appeal to His Majesty in Council from a final judgment of this Court.

20 Rule 3 of the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance enacts:—

“ Leave to appeal under Rule 1 shall only be granted by the Court in the first instance—

(a) upon the condition of the appellant.....entering into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding Rs. 3,000 for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent.....;

(b) upon such other conditions.....”

30 It is contended by Mr. Weerasuriya that the Attorney-General who represents the Crown in this case is not bound to give security under that Rule. His statement at the Bar that it has been the practice for the Attorney-General not to give security in such cases has not been canvassed by the Counsel for the respondent. That practice appears to follow naturally from the proposition that the

No. 17
 Judgment of
 the Supreme
 Court granting
 conditional
 leave to appeal
 20-7-49—*contd.*

Crown cannot be compelled to pay but makes payment as an act of grace when ordered to do so by any of His Majesty's Courts. I may in this connection refer to the provisions of section 462 of the Civil Procedure Code that "no writ against person or property shall be issued against the Attorney-General in any action brought against the Crown in any case."

I am of opinion that the provision in Rule 3 (a) requiring the giving of security does not apply in the present case as the Rule does not state expressly that the right of the Crown is affected by it and as it does not appear by necessary implication that the Crown is bound by it (section 3 of the Interpretation Ordinance). 10

Leave to appeal is granted under Rule 3 but such leave is not subject to the condition in Rule 3 (a).

Sgd. E. A. L. WIJEYWARDENE,
Chief Justice.

CANEKERATNE, J.

I agree.

Sgd. A. R. H. CANEKERATNE,
Puisne Justice.

No. 18.

Decree of Supreme Court granting Conditional Leave to Appeal

No. 18
Decree of
Supreme Court
granting
conditional
leave to appeal
20-7-49

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS KING,
DEFENDER OF THE FAITH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

VALLIYAMMAL ATCHI of No. 247, Sea Street, Colombo,
Executrix of the Last Will and Testament of M. K. N.
S. P. Natchiappa Chettiar *Plaintiff-Respondent.*

10

Against

THE ATTORNEY-GENERAL of Ceylon ... *Defendant-Appellant.*

Action No. 10 Special (S. C. No. 512 Final)

District Court of Colombo.

In the matter of an application by the Attorney-General dated 4th July, 1949, for Conditional Leave to Appeal to His Majesty the King in Council against the decree of this Court dated 24th June, 1949.

20

This matter coming on for hearing and determination on the 20th day of July, 1949, before the Hon. Sir Edwin Arthur Lewis Wijeyewardene, Kt., K.C., Chief Justice, and the Hon. Mr. Arthur Reginald Henry Canekeratne, K.C., Puisne Justice, of this Court, in the presence of Counsel for the applicant and respondent.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :

Deposit in terms of the provisions of section 8 (a) of the Appellate Procedure (Privy Council Order) with the Registrar a sum of Rs. 300 in respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

No. 18
Decree of
Supreme Court
granting
conditional
leave to appeal
20-7-49—*contd.*

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Sir Edwin Arthur Lewis Wijeyewardene, Kt., K.C., Chief Justice, at Colombo, the 20th day of July, 1949, in the year of our Lord One thousand Nine hundred and Forty-nine and of our Reign the Thirteenth.

Sgd. W. G. WOUTERSZ,
Acting Deputy Registrar, S. C. 10

No. 19.

Application of Defendant Appellant for Final Leave to
Appeal to Privy Council

No. 19
Application of
Defendant-
Appellant for
final leave to
appeal to Privy
Council
26.7.49

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

S. C. No. 512, Final

D. C. Colombo No. 10 Special.

THE ATTORNEY-GENERAL of Ceylon ... *Defendant-Appellant.*

vs.

10 VALLIYAMMAI ATCHI of No. 247, Sea Street, Colombo,
Executrix of the Last Will and Testament of K. M. N.
S. P. Natchiappa Chettiar *Plaintiff-Respondent.*

and

THE ATTORNEY-GENERAL of Ceylon ... *Defendant-Appellant.*

vs.

VALLIYAMMAI ATCHI of No. 247, Sea Street, Colombo,
Executrix of the Last Will and Testament of K. M. N.
S. P. Natchiappa Chettiar *Plaintiff-Respondent.*

On this 26th day of July, 1949.

20 The petition of the defendant-appellant above named appearing
by John Wilson, his Proctor, sheweth as follows :—

1. That the defendant-appellant on the 20th day of July, 1949,
obtained conditional leave from this Honourable Court to appeal
to His Majesty the King in Council against the judgment of this
Court pronounced on the 24th June, 1949.

30 2. That in granting conditional leave to appeal, this Court made
order that the provisions of Rule 3 (a) of the Rules in the Schedule
to the appeals (Privy Council) Ordinance (Cap. 85) as regards the
giving of security are not applicable to the defendant-appellant;
and in the said order no conditions were imposed under Rule 3 (b)
of the said rules.

3. That the defendant-appellant has on the 26th day of July,
1949, deposited the sum of Rs. 300 in respect of the amounts and
fees as required by paragraph 8 (a) of the Appellate Procedure
(Privy Council) Order 1921 made under section 4 (1) of the Appeals
(Privy Council) Ordinance (Cap. 85).

Wherefore the defendant-appellant prays that he be granted
Final Leave to Appeal against the said judgment of this Court
dated 24th June, 1949, to His Majesty the King in Council.

Sgd. JOHN WILSON,
Proctor for Defendant-Appellant.

No. 20.

Decree of the Supreme Court granting Final Leave to Appeal

No. 20
Decree of the
Supreme Court
granting final
leave to appeal
21-9-49

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS KING,
DEFENDER OF THE FAITH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

VALLIYAMMAI ATCHI of No. 247, Sea Street, Colombo,
Executrix of the Last Will and Testament of M. K. N.
S. P. Natchiappa Chettiar *Plaintiff-Respondent.*

Against

10

THE ATTORNEY-GENERAL of Ceylon ... *Defendant-Appellant.*

Action No. 10 Special (512 Final)

District Court of Colombo.

In the matter of an application by the defendant-appellant above named for Final Leave to Appeal to His Majesty the King in Council against the decree of this Court dated 24th June, 1949.

This matter coming on for hearing and determination on the 21st day of September, 1949, before the Hon. Mr. A. R. H. Caneke-ratne, K.C., Puisne Justice, and the Hon. Mr. E. F. N. Gratiaen, K.C., Puisne Justice of this Court, in the presence of Counsel for the applicant. 20

The applicant having complied with the conditions imposed on him by the Order of this Court dated 20th July, 1949, granting Conditional Leave to Appeal.

It is considered and adjudged that the applicant's application for final leave to appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Hon. Sir Edwin Arthur Lewis Wijeyewardene, Kt., K.C., Chief Justice, at Colombo, the 21st day of September, in the year of our Lord One thousand Nine hundred and Forty-nine and of our Reign the Thirteenth. 30

Sgd. W. G. WOUTERSZ,
Acting Deputy Registrar, S. C.

PART II
EXHIBITS

Exhibits
No. A23a
Translation of
Entries in A23.
1864.

No. A23a. Translation of Entries in A23

A23a

(Translation of entries in an Ola Leaf)

Siva's Grace

Balance sheet account of the moneys lent on interest to constituents by Sebanoor Kumarappa Chetty Nachiappan.

10 Out of Rs. 23,923 pu 11/16 entered in 13 olas received from native place up to 20th December, 1864, deducting Rs. 571 pu 11 5/8 entered in 1 ola being amount remitted to the native place the balance is Rs. 23,351 pu 1 1/16 of which the constituents debit particulars are:

Debit of Karunkulam Sayna Voona Sekappa Chetty's firm being amount due on the Cheetu of transactions a/c Rs. 39 Pu 9 11/16.

20 Debit of Appuhamy of Paranipathy adjacent to Kadugannawa whose proper name is Galaboda Liyanage Don Juwanis Silva Appuhamy being amount lent on 17th June, 1864, upon mortgage bond No. 262 on terms of payment in 2 years' time carrying interest at 1½ per cent. payable in advance once in 6 months, such mortgage bond having been obtained 400 pounds Rs. 5,333 Pu 4.

On this, advance interest has been received for one year from 17.6.64 to 17.6.65 on granting 2 receipts.

30 Debit of Paranipatty Constable whose proper name is Galaboda-liyanage Don Matthi Silva Appuhamy being amount lent on 8th April 64 on the mortgage of house, garden and field by mortgage bond, on terms of payment in 2 years time carrying advance interest at 1 1/2 per cent. payable once in 6 months being 300 pounds whereof 100 pounds is contributed by Koono Lana Sayna, leaving which our contribution is 200 pounds Rs. 2,666 Pu 8.

As regards this, interest up to 8th April, 1865, has been received. Having agreed that, thereafter at the end of one year interest would be paid for a period of one year ending the 8th April 66, a receipt has been granted. The amount due on the above bond is.....

Rs. 3,211

June 9th same debit, being amount lent on bond upon the terms that payment should be made in 2 years' time, carrying advance interest at 1 1/2 per cent., payable once in 6 months, being £150...

..... Rs. 2,000 pu

Exhibits
No. A23a
Translation of
Entries in
A23, 1864
—contd.

As for this interest up to 9th June 65 has been received. On the bond by Wattala Alwis Hendrickge Perera obtained jointly with Panangudi Muttu Kana Pana Lana the amount due as per copy of transactions account in respect of 5 due dates, after leaving what has been received up to date, is 32 1/2 pounds Rs. 433 Pu 4.

Debit of Okkur Kana Roona Seenana, being amount on 1 cheetu payable in twelve months from 11th April 64 carrying interest at 1 per cent., being 100 pounds Rs. 1,333 Pu 4.

Debit of Paaganeri Kana Thenappa Chetty's firm as per transactions a/c. Rs. 20 Pu 10 1/8. 10

Ola Leaf 2

Debit of Paarampatty Pisappa Chetty Narayanan Chetty being amount on 1 cheetu payable in one year from 20th September 64 carrying interest at 1 per cent., being 100 pounds. Rs. 1,333 Pu 4.

Debit of Devakotai Moona Kulandawilan Chettiar's firm on 16th August 64, being amount payable in one year, carrying interest at 31/32 per cent., 200 pounds, debit on 3rd September 20 pounds, debit on 6th 80 pounds, debit on 16th November 19 1/2 pounds and debit on 4th December 20 pounds in all 339 1/2 pounds. Rs. 4,526 Pu 8.

Debit of Devakotai Theyna Palaniappa Chetty's firm on 1st October 64, on 1 cheetu being amount payable in 12 months carrying interest at 1 per cent., 160 pounds and debit on 27th 60 pounds totalling 220 pounds. Rs. 2,933 Pu 4. 20

Debit of Devokotai Nana Moona Meyappa Chettiar's firm being amount payable in 12 months carrying interest at 61/64 per cent. as per transactions a/c. Rs. 404 Pu 7/16.

Debit of Kandaramanikkam Murugappa Chetty Muttappen on 1 cheetu payable in 12 months from 19th December 64 carrying interest at 1 per cent. 50 pounds. Rs. 666 Pu 8.

Debit of Oranganpatty Kona Pana Kana Roona Veyna Suppramaniam Chetty's firm on 1 cheetu payable in 12 months from 26th October 64, being 75 pounds. Rs. 1,000 Pu 30

Debit of Kambanoo Pana Lana Moona Roona Ramanathan Chetty's firm, on 1 cheetu payable in 12 months from 10th December 64 carrying interest at 1 per cent., being 50 pounds. ... Rs. 666 Pu 8.

Particulars of the constituents to whom the money belonging to the Madam has been lent.

Debit of Oranganpatty Olagappa Chetty. Chettiappa Chetty on 1 cheetu payable in 12 months from 7th August 64 carrying interest at 1 per cent., 50 pounds. Rs. 666 Pu 8. 40

Debit of Paganeri Valliappa Chetty.

Arunasalam Chetty on cheetu payable in 12 months from 1st September 64 carrying interest at 1 per cent. Rs. 306 Pu 10 1/16

Debit of Keelapoongudi Periyam Chetty Arunasalam Chetty's firm on 1 cheetu payable in 12 months carrying interest at 1 per cent., 50 pounds. Rs. 666 Pu 8.

Karuppiah Kovil money. Debit of Paganeri Valliappa Chetty Arunasalam Chetty, on 1 cheetu payable in 12 months from 1st September 64 carrying interest at 1 per cent. Rs. 336 Pu 6 1/8

10 Same debit, same rate of interest, same payable date, Amman Kovil money. Rs. 241 Pu 7 3/4.

Karunkulam Nagappa Chetty Sevugan Chetty's money—debit of Devakotai Avanna Roona Mondiyappa Chetty's firm on 1 cheetu, payable in 12 months from 9th February 64 carrying interest at 1 per cent. Rs. 779 Pu 1 5/8.

Koona Mana Alagappen's money.

Debit of Kandramanikkam Murugappa Chetty Muthappen on 1 cheetu payable in 12 months from 19th December 64 carrying interest at 15/16 per cent. 70 pounds 12 shillings. ... Rs. 941 Pu 4.

20 Naduwakotai Arumugam Chetty's money.

Debit of Devakotai Moona Payna Runa Arunasalam Chettiyar's firm, being amount payable in 12 months from 1st October 64 carrying interest at 15/16 per cent. Pounds 266.10.1½
Credit on 22nd December, being amount received from Mangudi Soona Valliappan's firm, less 100 pounds, amount paid 166 pounds 10. 1½. Rs. 2,220 Pu 1

Same money. Debit of Mangudi Supramaniam Chetty Valliappen's firm on cheetu payable in 12 months from 22nd December 64 carrying interest at 15/16 per cent., 100 pounds. Rs. 1,333 Pu 4

30 Same debit same money. The amount which was with Soona Pana Supramaniam was paid to the above Valliappen 6 pounds
..... Rs. 80/Pu.

11th day of Andi in the year Krodana credit of Davakotai Moona Kulandaivelan Chettyar's Colombo firm. Ana Lana Arunasalam Chettiar's firm a/c. and salary a/c., having been looked into the amount for which 1 Hundi was issued for overdrawn amount is
..... Rs. 3,154.

Translated by

Sgd. Illegibly,
S. T., D. C., Colombo.
19.10.42.

Exhibits
No. A25a
Translation of
Entries in A25
1874, 1875,
1876.

No. A25a Translation of Entries in A25

A25a

Translation

Ola Leaf

Account of Koona Mana Nawanna—Ledger Bundle. Debit and credit a/c of Paranipatti Appuhamy.

1874

August 4. To train fare paid to Kalaiappan to go to Kaduganawa and return. 3.50

Sept. 1. To postage of 2 notices with acknowledgment receipt 10
.50

1875

Jany. 4. To 4 stamps paid to Mr. Prins Jr. to sue for £420. 16.00

To also binding fee .25

Jany. 11. To 2 stamps for summons for 420 (portion eaten by worm).

Jany. 23. To train fare to go to Kandy and return for service of summons, meals expenses and to Peon being (eaten by worm) and to the person who registered the summons (portion eaten by worms). 20

Feb. 15. To value of stamps to a receipt for notice 5.00 odd

March 24. To train fare to Kalaiappan to go to Kandy and return for service of notice being Rs. 4, meals expenses 81 cents to the Sinhalese person to register notice 50 cents, and to Peon Re. 1.

Total 6.00 odd

April 10. To value of stamps to file replication 4.00

July 1. To a letter posted to Kandy (torn) ...

July 19. To value of stamps to fix trial date 5.75 odd

Aug. 4. To value of stamps for decree nisi 5.00 odd

Aug. 14. To train fare to go to Kandy and return for service of notice of decree nisi for trial date Rs. 4, to the Sinhalese person to register notice cents 25, to the peon Rs. 2.50 and sundry expenses (eaten by worm) 30

Total 6.75 odd

Sept. 11. To advocate Mr. Grenier £3. 3s. 31.50

October 13. To value of stamps for decree nisi 5.00 odd

Nov. 1. To Perera of Mr. Prins bungalow .25

	Nov. 12. To train fare to Kalaiappan to go to Kandy and return for registration of decree nisi for 22nd ultimo being Rs. 4, to the Sinhalese person to register the notice 25 cents, to the peon and to A. R. RM for 2 meals	7.75	Exhibits No. A25a Translation of Entries in A25 1874, 1875, 1876 —contd.
	Nov. 30. To value of stamps to obtain decree nisi Ola Leaf.	9.00	
	Account of Koona Mana Nawanna—Ledger Bundle. Debit and Credit a/c of Paranaipatti Constable.		
	1875		
10	June 29. To Mr. Prins Jr. to sue for on the £115. Note fell due for £100 and interest on same £64 odd aggregating £164 odd and take out summons in case No. 67750	12.75	
	July 15. To the Sinhalese person to resister summons 25 cents, to the Process Server who served summons Rs. 2, to meals for Solai Alagu 37½ cents.		
	Total	2.50 odd	
	August 5. To value of stamps	4.00 odd	
	Aug. 18. To value of stamps to Perera for trial date	5.00 odd	
	Oct. 27. To Adv. Mr. Grenier £3. 3s.	31.50	
20	1876.		
	Jan. 20. To 2 Fiscal stamps for writ and decree nisi	1.00 odd	
	Nov. 10. To another Proctor when Mr. Prins Jr. was out of practice (portion eaten by worms)	—	
	To train fare to Kalaiappan to go to Kadugannawa and return (eaten by worm)	—	
	Jan. 30. To proctors fees to Mr. Prins Jr.	18.50	
	Jan. 8. To Perera to take warrant	1.00	
	Jan. 13. To Proctors fees to Mr. Prins Jr. for the 12th and (not clear)	—	
30	Jan. 24. By £20 on granting receipt by Odayappa Chetty in favour of Kalaiappan and £15 from New a/c. Total £35.	350.00	
	Feb. 5. To train fare to Kalaiappan and Subramaniam to go to Kadugannawa and return being Rs. 7, to Subramaniam's picture of N. AL. being Re. 1 and sundry expenses being 25 cents.		
	Total	8.25	
	Feb. 9. To mosque	1.00	
	To also offering to Sembanur Karuppar Kovil	35.00	
	Total credit Rs. 350 less total debit Rs. 218 odd balance credit being Rs. 131 odd.		

Translated by

Sgd.....

Sworn Trans. D. C. Colombo.

29.11.44.

Exhibits
No. A24a
Translation of
Entries in A24.
1879.

No. A24a Translation of Entries in A24

A24a

Translation of entries in Ola Leaf.

Front side.

K. M. N. Madura a/c bundle.

Siva's Grace

Meenambal's Protection

Kadiravel's Protection.

To the Kings that reign on earth

To the people that live in the Universe

To those that learn these all days

Let this account be as precious as their eyes.

10

Reverse side.

On 14th November in the year 79, Olaikudiyan resigned.

On the same date Kumaravelue resigned.

Year No. 573.

Translated by,

Sgd. Illegibly,

S. T., D. C. Colombo.

19.10.42.

20

Translation of entries in an Ola Leaf

Siva's Grace.

Ola a/c of remittances to and from Colombo.

Credit on 11th day of Vaikasi in the year Sukkila.

1 Hundi received for obtaining payment on the 4th day of Massi
in the year Vipava from Virachilai Moona Ravanna Mana with
Madura ruling rate of interest

Rs. 2,000

Credit on 22nd day of Aani, 1 Hundi received for obtaining pay-
ment from Oona Ravanna Mana Mayna with interest at the rate
ruling at this place, from 6th day of Maasi in the year Vipava.

Rs. 4,000

30

Credit on 19th day of Andi, 1 Hundi received for obtaining payment from Oona Ravanna Mana Oona with interest at Madura ruling rate from 10th day of Markali in the year Vipava. Rs. 10,000

Exhibits
No. A24a
Translation of
Entries in A24.
1879
—contd.

Credit on 25th day of Chittirai in the year Pirasotpatthi, 1 Hundi received for obtaining payment from Ravanna Mana Pana Lena Soona with interest from 13th day of Karthigai in the year Sukkila.
Rs. 500

10 This also credit as on 27th day of Massi in the year Sukkila, 1 Oona Ravanna Mana Oona Hundi for obtaining payment with rate of interest ruling at this place. Rs. 200

Credit on 29th as on 14th day of Painguni in the year Vipava, 1 Hundi received carrying interest at the ruling rate for obtaining payment from Vana Ena Navanna Kana Ravanna Mana.

No. A35a Translation of A35

Exhibits
No. A35a
Translation of
A35. 25.3.86.

A35a

Translation.

1R 8As.

Sankaraiyar, Sembanur, Rupees one and a half.

Subramaniaiyer, Vendor, Tiruppur.

Copy of Document No. 459.

20 The Deed of sale executed and delivered on the 26th day of March, 1886—14th day of Panguni in Parthipa Year to Nachiappa Chetty, son of Koonna Mana Nachiappa Chettiar, Nattukottai Chetty Caste, Money Lender, trader by occupation of Sembanur, Solapuram Taluk, Sivaganga Division in Madura District, by two persons (1) Letchimi Achi wife of Nawanna Alagappa Chettiar's son Arunachalam Chettiar of Devakottai Ramnad District, same caste, independent means, age 34 (2) Valliappa Chettiar son of the said Alagappa Chettiar's younger brother Sevugan Chettiar, same caste, money lender, trader by occupation, age 29. We have effected sale
30 to you of the five upon thirty-two (5/32) share of Erivila Kanmoni Village, situated within the four boundaries mentioned below at Sembanur Village, Tiruppur Sub-District in Madura District, and received Rs. 1,250 to which Alagappa Chettiar, father-in-law of the said Letchimi Achi and great uncle of Valliappa Chetty, became lawfully entitled to by right of purchase on 2nd April, 1864, from Ana Lana Arunachalam Chettiar of Devakottai and the same had been since that date in his possession and now is in our possession. Receipt of the said sum of Rs. 1,250 is as follows:—

40 In the transaction our agent Rakkappa Chetty had in Colombo with your firm from the month of October, 1876, till October in the year '78, there was amount overdue to you from us in terms of the

Exhibits
No. A35a
Translation of
A35. 25.3.86
—contd.

account. As we have received the consideration on the sale by your setting off the amount over due to you, we have executed and delivered the deed of sale of our own will and that you shall possess and enjoy from generation to generation the 5/32 shares including the proprietary rights in the farm together with the trees and plantations and everything thereon the hollow and high land of about 2, ½ Sei paddy field and 20 Gurukkams of cultivable field with liberty to dispose of or to alienate in any manner whatsoever. All taxes due shall be paid by you. We have delivered to you the original deeds of sale relating to the above village. Four boundaries. 10
South of the metal quarry passage running from east to west to Kellakkoddai, west of the sathuni water course from which water comes to Sembanur Kanmoi, north of Senrakudi Medai, east of Keelakkoddai boundary limit. The Erivilan Kanmoni village situate within these four boundaries.

Mark of Letchimi Achi.

Valliappa Chetty.

25th March, 1886.

(Witnesses)

Sgd. Illegibly, 20
..... 10.1.42,
Sub-Registrar.

Exhibits
No. A14a
Translation of
Folio 36 of A14
11.5.95.

No. A14a Translation of Folio 36 of A14.

A 14a

Translation.

Extract from Day Book of Koonā Mana Navanna Firm Colombo commencing from the 30th day of Sithirai in the year Manmatha—11th May, 1895.

Folio 36

May 11.	x	x	x	30
12.	x	x	x	

To interest expenses—Railway fare expenses of Soona Pana to go to Kadugannawa and return. Rs. 2.87½

Translated by,

Sgd. Illegibly.
S. T., D. C. Colombo.
19.10.42.

No. A 13a. Translation of Folio 19 of A 13.
A 13a
Translation

Exhibits
 No. A13a
 Translation of
 Folio 19 of A13.
 10.9.97.

Extracts from Day Book of Koonna Mana Nawanna, Firm,
 Colombo, for the period commencing from 27th day of Avani in the
 year Evilampi—10th September, 1897.

Folio 19

	Sept. 10.	x	x	x
10	12.	Interest expenses Re. 1 to Navanna to go and see Drama and 58 cts. being cost of Tappal Book.		
		Total Dr. Rs. 1.58.		

Translated by
 Sgd. Illegibly.
 S. T., D.C. Colombo.
 8.9.1946.

No. A 13b. Translation of Folio 48 of A 13.

A 13b
Translation

Exhibits of
 No. A13b
 Translation of
 Folio 48 of A13.
 14.10.97.

20 Extracts from Day Book of the Firm of Koonna Mana Nawanna,
 Colombo—Evilampi Year, Puraddathi 30th—14th October, 1897.

Folio 48

	Oct. 14.	x	x	x
	15.	x	x	x

Interest expenses—

Soona Pana Nachiappan Saminathan and Athiramilaki to come
 from Native place Rs. 40/19 as per memo.

1 tin castor oil Rs. 5/87½, temple, Barber and medicine -/61.

Total Dr. Rs. 46.67½.

30 Translated by
 Sgd. Illegibly.
 S. T., D. C. Colombo.
 8.9.46.

Exhibits
No. A15a
Translation of
Folio 60 of A15.
3.6.98.

No. A 15a. Translation of Folio 60 of A 15.

A 15a

Translation

Extracts from Day Book of Colombo Firm commencing from the 22nd day of Vaikasi in the year Vilampi—3rd day of June 1898.

June 1898

Folio 60

To interest expenses—Tuition fees of Saminathan and Nachiappan for period from the 1st to 31st ultimo being Rs. 4; Rs. 1.62½ for Sagasthiranama Arachanai in Pillaiyar Temple and Rs. 1.50 for effecting repairs to the chest. 10

Total Rs. 7.12½

Translated by

Sgd. Illegibly.
S. T., D. C. Colombo.
8.9.1946.

Exhibits
No. A15b
Translation of
Folio 8 of A15
18.4.98.

No. A 15b. Translation of Folio 8 of A 15.

A 15b

Translation

Extracts from Day Book of Koonna Mana Navanna Firm, Colombo, for the period commencing from the 7th day of Sirthirai in the year Vilampi 12th April, 1898. 20

Folio 8

April 18.

x x

To amount paid to Kandasamy for light refreshments taken by Nachiappan and Saminathan during Masi and Panguni—2 months being Rs. 2.44; charity, Barber and temple -/64.

Total 3.08

Translated by

Sgd. Illegibly. 30
S. T., D. C. Colombo.
8.9.1946.

No. A 21. Promissory Note.
A21

Colombo, 26.3.1907.

Exhibits
No. A21
Promissory Note
26.3.07.

Rs. 500.

On demand I, the undersigned, promise to pay to K. M. V. Subramaniam Chetty or order the sum of Rs. 500 currency for value received. Interest to be at 2% per annum.

Sgd. Illegibly.
Sgd. on 5 cts. stamp.

10 Witnesses :

Sgd. in Tamil.
Sgd. Purnalingam. _____

No. A 22. Promissory Note.

A22

Colombo, 19.8.1908.

No. A22
Promissory Note
19.8.08.

Rs. 2,000.

On demand I, the undersigned, S. M. Mohamed Sally, promise to pay to K. U. N. Nachiappan Chetty or order the sum of Rs. 2,000 currency for value received with interest at 10% p.a. from date
20 hereof.

Sgd. Illegibly.
No. 80, Main St., Colombo.

Witnesses :

Sgd. in Tamil.
Sgd. S. Olaganathan. _____

No. A 16a. Translation of Folio 192 of A 16.

A 16a
Translation

No. A16a
Translation of
Folio 192 of
A16. 19.8.08.

30 Day Book entries of the credits and stock in the firm of Koona Mana Nawanna, Colombo.

4th day of Avani in the year Keelaka—19th August, 1908.

Extracts from Day Book—folio 192.

Aug. 23. Credit of New Account to this date—5 pounds sterling
50.00

Interest expenses being the expenses of the feast held by Soona Pana before travelling as per bill
102.86

Translated by
Sgd. Illegibly.
S. T., D. C., Colombo.
27.11.1944

No. A9a. Translation of Page 126 of A9

A 9a

Translation

By Grace of Siva

Cash and Day Book of the Firm of Colombo Kuna Mana Nawanna Soona Pana.

Hindu year of " Virethi Kiruthu Waikasi " 24th 1911 (Corresponding to 6th June, 1911). Page 126.

June 6. To debit of Kuna Mana Nawanna as on this date per Sivan Kovil Temple a/c 515.62½ 10

To debit also on this date 572.97

To debit also on this date for our half share thereof entered in Headquarters a/c 103,474.69

By credit from Ana Roona Ana Roona Sowanna Mana on this date £50. 500.00

To debit on 5th Nawanna Soona Rawanna Mana Sawanna for £10. 100.00

By credit from the pro note a/c of Oona Lena Mana Asen Tambi jointly with Nawanna Soona Rawanna Mana Sawanna by cash received for note which fell due on this date Rs. 500 and by taking another note for Rs. 500, in all Rs. 1,000, out of which our half 500.00 20

To debit simultaneously on 1 note falling due on 5th Pirattasi Rs. 500, out of which our half. 250.00

To debit of the pro note a/c of I. L. Mammela Marikar jointly with Nawanna Soona Rawanna Mana Sawanna falling due on 25th Awani on one note for Rs. 551.75 our half 275.87½

By credit received simultaneously in respect of the above joint account on one note discounted with Madras Bank on the 2nd instant Rs. 270.65, on one note falling due on 1st Adi Rs. 283.85, on one note falling due on 10th Rs. 312.50, on one note falling due on 24th Rs. 500, in all for 4 notes Rs. 1,304 out of which our half 652.00 30

By credit from Ana Lena Mana Abdul Careem on pro note a/c jointly with Nawanna Soona Rawanna Mana Sawanna on one note discounted with Madras Bank on 2nd instant falling due on 30th Ani Rs. 500, on one note falling due on 7th Adi Rs. 500, on one note falling due on 10th Rs. 250, on one note falling due on 17th Rs. 2,000, on one note falling due on 26th Rs. 400, on one note falling due on 27th Rs. 200, in all 6 notes Rs. 3,850 out of which our half 1,925.00 40

Page 127

Exhibits
No. A9a
Translation of
page 126 of
A9. 6.6.11
—contd.

- June 6.* By credit received from Ana Abdul Rahuman pro note a/c jointly with Nawanna Soonna Rawanna Mana Sawanna discounted with the Bank of Madras on 2nd instant falling due on 4th Adi on one note for Rs. 400 out of which our half share 200.00
- By credit received from I. L. M. Abdul Aziz pro note a/c jointly with Nawanna Soonna Rawanna Mana Sawanna on one note discounted on the 2nd instant with the Bank of Madras falling due on 10 6th Adi for Rs. 344.37 out of which our half 172.18½
- By credit received from Soonna Leyna Naina Marikar promissory note a/c jointly with as aforesaid on one note discounted with Bank of Madras on 2nd instant falling due on 10th Adi Rs. 150 out of which our half share 75.00
- By credit received from S. L. M. Muhiadeen promissory note a/c jointly with Kuna Mana Nawanna Nawanna on one note discounted with Bank of Madras on 3rd inst. falling due on 6th Adi Rs. 500, on one note falling due on 8th Awani Rs. 500, aggregate on two notes Rs. 1,000 out of which our half 500.00
- 20 By credit received from L. W. Berti Soysa cash a/c in respect of the joint note taken with Nawanna Soonna Rawanna Mana Sawanna on 20th ultimo for Rs. 10,000 out of which our half 5,000.00
- To debit simultaneously jointly as aforesaid on one note falling due on the 27th Awani for Rs. 10,000 out of which our half 5,000.00
- By credit received from Nawanna Soonna Rawanna Mana Sawanna in respect of the note discounted on the 1st inst. interest commission Rs. 3,487.80, cash Rs. 2.20, aggregate 3,490.00
- 30 To debit of Madras Bank discounted on the 2nd as per voucher interest stamp less Kandy commission 6,989.71
- By credit received from Sembanoor Sivan Kovil temple through Kuna Mana Nawanna share on profits of Rs. 1,031.25 less the half for Nawanna Soonna Rawanna Mana Sawanna our half 515.62½
- June 6.* By credit profit received from I. L. Mamela Marikar on one note interest commission for ½ Rs. 7.09. From Oona Lena Mana Assen Tamby on one note interest commission for half Rs. 6.98, from L. W. Berti Soysa on one note interest commission Rs. 127.12½, in all 141.21
- 40 By credit of headquarters a/c being the transfer of corresponding credit in the headquarter a/c of Kuna Mana Nawanna comprising of the profits and the balance in the said headquarter a/c totalling Rs. 223,949.65 and deducting therefrom the balance in the property purchase a/c Rs. 13,000, M. K. R. M. debit a/c of Rs. 3,950 and

Exhibits
No. A9a
Translation of
Page 126 of
A9. 6.6.11
—contd.

the cash balance of Rs. 50.28 all three totalling Rs. 17,000.28 thus leaving a balance of Rs. 206,949.37½ from which excluding the half share of K. M. N. N. credit to our share. 103,474.69

Interest expense bathing well man for the last month for Soona Pana Re. 1, for Nawanna -/75, Kawanna -/75, for dhoby ink for ½ ct., 25 hoppers cts. 12, paid to Soona Pana for the way expenses to go to India Rs. 30, for 15 notes discounted with the Madras Bank interest commission stamps Kandy Galle commission for our half Rs. 36.39, in all. 69.26

Translated by

Sgd.....

Sworn translator, D. C. Colombo.

8.2.41.

10

No. A9b. Translation of Page 1 of A9

A 9b

Translation

By Grace of Siva

No. A9b
Translation of
Page 1 of A9
1910, 1911.

“ Praying for the help of God Sri Meenatchi Sundespurar ”.
Cash and Day Book of the Firm of Colombo Kuna Mana Nawanna
Soona Pana. 20

Hindu year of “ Satharana ”, month of Walkasi 2nd (Corresponding to 15th May, 1910).

Page 1

1910

May 15.	Credit of Muttu Vinayagar	.25	
	do. Kadir Velayathusamy	.25	
	do. Subramaniamswamy	.25	
	do. Sevugarayar	.25	
	do. Theepaanchammal	.25	
	do. Profit	11.00	30
	do. Cash from home	10.50	
	do. Headquarters	51,100.00	
	do. Kuna Mana Nawanna	100.00	
16.	To debit of Kuna Mana Nawanna	100.00	

1911

Jan'y. 20. By Profit credit of Ana Abdul Rahuman for three promissory notes interest commission Rs. 94.25, from O. L. M. Yoosoof for one note interest commission 8.65, from Oona Leyna Muna Assen Tamby for 1 note interest commission 13.66, from M. L. M. Shariff for 1 note interest commission 17.36, from Kuna Mana Meera Levvai for 1 note interest commission Rs. 3.94, from Kuna Mana Haji Abubaker for 1 note interest commission Rs. 15.75, from L. L. A. Haniffa for 1 note interest commission Rs. 3.37½, aggregate. 156.98

To debit on pro note a/c of Ana Abdul Rahiman taken jointly with Nawanna Soona Rawanna Mana Sawanna on 3 notes falling due on 14th Adi Rs. 1,000, falling due on 20th Rs. 1,000, falling due on 27th Rs. 1,000, respectively, aggregate Rs. 3,000, out of which our half-share 1,500.00

Exhibits
No. A9b
Translation of
page 1 of A9.
1910, 1911
—contd.

Jany. 20. To debit of O. L. M. Yoosof note a/c taken jointly with Nawanna Soona Rawanna Mana Sawanna on 1 note falling due on the 18th Sittirai Rs. 500 out of which our half share

Page 2 250.00

- 10 To debit of Oona Leyna Mana Assen Thamby note a/c taken jointly with Nawanna Soona Rawanna Mana Sawanna on 1 pro note falling due on 28th Panguni Rs. 1,000 out of which our half 500.00

To debit of M. L. M. Sharibu note a/c jointly with Nawanna Soona Rawanna Mana Sawanna taken for Rs. 1,000 falling due on 25th Sittirai our half 500.00

To debit of Kuna Mana Meera Levvai pro note a/c taken jointly with Nawanna Soona Rawanna Mana Sawanna 1 note falling due on 28th Masi for Rs. 500 out of which our half 250.00

- 20 To debit of Koonna Mana Raji Abubucker pro note a/c jointly taken with Nawanna Soona Rawanna Mana Sawanna on 1 note falling due on 10th Sittirai for Rs. 1,000 out of which sum our half 500.00

To debit of Y. L. A. Haniffa pro note a/c taken jointly with Nawanna Soona Rawanna Mana Sawanna on 1 note falling due on 23rd Panguni for Rs. 250 our half 125.00

To remittance to headquarters on this date in respect of the credit of date here of 51,100.00

- 30 By credit from Kuna Mana Nawanna as on 17th inst. Rs. 625, as on 18th Rs. 1,000, and as on 19th Rs. 2,000, total 3,625.00

21. By credit from Kuna Mana Nawanna as on 19th for £12½ 125.00

To debit of Oona Leyna Mana Assen Tamby pro note a/c taken jointly with Nawanna Soona Rawanna Mana Sawanna falling due on 20th Masi on 1 note for Rs. 250 out of which our half 125.00

By credit of profit in respect of above interest commission 2.00

Page 3

1911

- 40 *Jany. 21.* To interest expenses for " Sagastira Nama Archani " offerings to God Muttu Vinayagar 1/75, stamps for postage to India cts. 4½ 1.79½

22. By credit from Kuna Mana Nawanna on 21st £250 received 2,500.00

Exhibits
No. A9b
Translation of
page 1 of A9.
1910, 1911
—contd.

To debit of R. E. S. de Zoysa on demand note a/c taken on this date jointly with Nawanna Soona Rawanna Mana Sawanna in the name of Kuna Mana Nawanna for Rs. 5,000 out of which our half 2,500.00

By credit simultaneously received in respect of the above on demand note interest from this date up to 21st Sittirai for £90 at the rate of 14 Rs. 175 out of which our half 87.50

23. By credit received from Kuna Mana Nawanna as for 22nd £150 1,500.00

To debit of O. L. M. Yoosoof pro note a/c taken jointly with Nawanna Soona Rawanna Mana Sawanna falling due on 23rd Waikasi for Rs. 1,000 out of which our half 500.00 10

To debit of Ana Lena Mana Abdul Careem cash a/c paid on 22nd jointly with Nawanna Soona Rawanna Mana Sawanna Rs. 2,200 out of which our half 1,100.00

By credit of profit received from O. L. M. Yoosoof for 1 note interest commission 22.69

24. By credit received from Kuna Mana Nawanna on 23rd for £25 250.00

To debit of Ana Leyna Mana Abdul Careem cash a/c on 23rd paid jointly with Nawanna Soona Rawanna Mana Sawanna Rs. 500 out of which our half share. 250.00 20

25. To debit of Kuna Mana Aji Abubucker pro note a/c on pro notes jointly taken with Nawanna Soona Rawanna Mana Sawanna 1 note falling due on 16th Panguni for Rs. 203.25, one note falling due on 28th for Rs. 251, one note falling due on 24th Sittirai for Rs. 2,000, the 3 promissory notes aggregate to Rs. 2,454.25 out of which our half Page 4 1,227.12
1911

Jany. 25. By credit received from Kuna Mana Nawanna as on 24th £120 1,200.00 30

By credit received profit for the 3 notes of Kuna Mana Aji Abubucker interest and comm. 39.50

26. By credit received from Kuna Mana Mawanna as on 25th £10. 100.00

To debit of D. C. Senanayake pro note a/c taken jointly with Nawanna Soona Rawanna Mana Sawanna signed by Simon Senanayake falling due on 26th Panguni on a note for Rs. 200 our half share 100.00

By credit received profit in respect of above 1 note interest and commission our half 2.25 40

30. By credit received from Ana Lena Mana Abdul Careem cash a/c in respect of the note taken on 22nd our half. 1,350.00

To debit of simultaneous note a/c taken jointly with Nawanna Soona Rawanna Mana Sawanna signed by S. L. Muhamadu Kassim and endorsed by him 1 note falling due on the 23rd Panguni Rs. 250, one note falling due on 22nd Sittirai Rs. 250, one note falling due on 23rd Waikasi Rs. 250, one note falling due on 23rd Ani Rs. 250, one note falling due on 22nd Adi for Rs. 250, one note falling due on 23rd Awani Rs. 250, one note falling due on 23rd Piratasi Rs. 250, one note falling due on 23rd Arpasi Rs. 250, one note falling due on 23rd Kartigai Rs. 250, one note falling due on 23rd Markali Rs. 250, one note falling due on 23rd Thai 912 Rs. 250, one note falling due on 23rd Masi Rs. 250, all the 12 notes aggregate Rs. 3,000 out of which our half share Page 5. 1,500.00

10

By credit received profit from Ana Leyna Mana Abdul Careem interest commission on 12 pro notes our half 132.20
Interest expenses for Ola leaves 10 bundles .31

1911

Jany. 21. By credit received from Kuna Mana Nawanna on 30th 3,200.00

20

To debit of Kuna Mana Meera Levvai pro note a/c falling due on the 10th Panguni one note for Rs. 500 out of which for Nawanna Soona Rawanna Mana Sawamma Rs. 250 and for our half 250.00

To debit of Ana Mana Moona Muhamadu Iburahim Saibu pro note a/c taken jointly with Nawanna Soona Rawanna Mana Sawanna on 1 note falling due on 10th Panguni for Rs. 500, one note falling due on 16th for Rs. 500, one note falling due on 22nd Rs. 500, one note falling due on 28th for Rs. 500, one note falling due on 3rd Sittirai for Rs. 500, and one note falling due on 9th for Rs. 500, on all the six notes Rs. 3,000, out of which our half 1,500.00

30

To debit of Bert. H. L. Dias Bandaranayake promissory note a/c taken jointly with Nawanna Soona Rawanna Mana Sawanna one note falling due on 29th Sittirai for Rs. 3,000, our half 1,500.00

By credit received profit from Kuna Mana Meera Levvai on one note interest commission Rs. 3.78, from Ana Mana Moona Muhammadu Iburahim Saibo on the 6 pro notes interest and commission Rs. 30.66, from Bert. H. Dias Bandaranayake for one note interest commission Rs. 48 aggregating 82.44

Total credits received	65,598.31
Total debits paid	65,379.23
Balance in hand	219.08

40

Translated by

Sgd. Illegibly.

Sworn Translator, D. C. Colombo.

8.2.41.

Exhibits
No. A9b
Translation of
page 1 of A9.
1910, 1911
—contd.

No. A 8a Translation of A8

Exhibits
No. A8a
Translation of
A8 22.1.12.

A 8a.

Translation

Details of the Partition made between Nachiappan and his younger brother, Suppramaniam, sons of Koonna Mana Nachiappa Chettiar of Sembanur in the presence of Awanna Moona Murugappa Chetty and Soona Seena Raman Chetty, both of Kallal on the (Tamil) 9th day of the month of Thai of the year of Virethikiruthu:

Taking into consideration the deed of Partition whereby a partition was made of the debit and credit transactions, village, 10
jewelleries and other sundry things of native place on the (Tamil) 29th day of the month of Thai of the year of Vikuruthi, and in accordance with the partition made on the occasion of the house warming ceremony of the house you live in whereby Nachiappan possessed the southern half portion of the said house and Suppramaniam possessed the northern half portion thereof according to casting of "Cheettu" and celebrated the said house warming ceremony, and in accordance with your present respective possession thereof by erecting second-hall, third-hall and garden 20
premises on the backyard and western side of the respective portions of the said house at your own respective costs, it has been decided that you yourselves shall respectively possess the said respective portions absolutely for ever. The 5/32nd village purchased under a deed of sale for Rs. 1,250 on the 26th day of March, 1886, from Letchimi Atchi Valliappa Chetty of Devakottai and the 11/32nd village purchased under a deed of sale for Rs. 2,000 on the Tamil 23rd day of the month of Ani of the year of Sebakiruthu from the said Nawanna Seyna Valliappa Chetty of Devakottai both aggregating to 1/2 village situated at Yerivilaneythal within the four boundary limits of Sembanur in favour of Nachiappa for your common benefit; excluding the 1/160th village from our (your) said 30
portion as Meyna Leyna Meyna Nachiappan Chettiar has purchased 81/160th village at the said village, the remaining portion being 79/160th village it has been decided that Nachiappan shall possess 79/320th village thereof for his half share and Suppramaniam shall possess 79/320th village thereof for his half share respectively and absolutely for ever in accordance with the terms of the said deeds of sale.

After paying off in full the liabilities of your common firm of Koonna Mana Nawanna of Colombo as per account rendered during 40
the agency of Nachiappan and Mayandi up to the 6th day of June, 1911, and after excluding the debits made by Nachiappan and Suppramaniam at native place and Colombo up to the said date and

all the expenditure incurred during the said agency, the aggregate cash—collections being Rs. 206,949.38—Rs. 103,474.69 due to the half share of Nachiappan was paid in equal proportions to his five children on his order as per particulars of the Colombo Day Book of the 6th day of June, 1911, and Rs. 103,474.69 due to the half share of Suppramaniam was paid to him as per particulars of the said Day Book.

Exhibits
No. ABa
Translation of
A8 22.1.12
—contd.

- 10 In addition to this the two houses, i.e., one at Urugodawatta and the other at Slave Island in the said place (i.e., Colombo) of the approximate value of Rs. 13,000 which were held in common were sold under Power of Attorney granted to Ramasami, son of the said Nachiappan, and Nachiappan, son of the said Suppiramaniam, who are at present in Colombo authorising them to sell the said houses, i.e., the house at Urugodawatta for Rs. 8,000 and the house at Slave Island for Rs. 4,500 and the rent received from the said two houses is Rs. 390 all aggregating to Rs. 12,890; excluding therefrom the taxes and repairs charges paid for the Urugodawatta house and the commission paid for the sale of the said house Rs. 409.31, the taxes paid for the Slave Island house and the commission paid for the sale of the said house Rs. 205.75, the sum paid per Nawanna Soona Rawanna Māna Sawanna by writing off in the account of native place for the Madam (Choultry) and Nanthawanam (flower garden and premises) Rs. 2,500 and the sum paid per firm of Koonā Mana Nawanna Soona Pana by writing off in the account of Native-place for the Madam (Choultry) and Nanthawanam (flower garden and premises) Rs. 2,500, all the four expenditures aggregating to Rs. 5,615.06; the remaining sum being Rs. 7,274.94, Rs. 3,637.47 due to the half share of Nachiappan was paid per Ramasamy his son at the firm of Nawanna Soona Rawanna Mana Sawanna, and 20 Rs. 3,637.47 due to the half share of Suppiramaniam was paid per Nachiappan, his son, at the firm of Koonā Mana Nawanna Soona Pana. 30

- 40 It has been decided that Nachiappan shall divide and possess half and Suppiramaniam shall divide and possess the other half of the palmyrah trees, mango trees and the "Karai" lands and the "Karai" tamarind trees and margosa trees of native place. As two margosa trees of the Peekkulaikkal garden were purchased from Surulattan, son of Sinnanalanagan, and as Nachiappan has already cut down one margosa tree for his half share, it has been decided that Suppiramaniam shall possess the other margosa tree standing on the southern side for his half share. The balance principal Rs. 58.41 and the interest due on the deed of mortgage for Rs. 97 granted by Muthadatchi, daughter of Perumal, in favour of Nachiappan for common benefit on the (Tamil) 11th day of the month of Thai of the year of Sowmiya excluding therefrom Rs. 38.59 for Vana Eena Moona Roona Seena Thana of Kallal was given to Nachiappan's share, and the principal Rs. 59.58 and the

Exhibits
No. A8a
Translation of
A8 22.1.12
—contd.

interest due on the deed of mortgage granted by Semmanan son of Seyna Seyvugan in favour of the said person, was given to Suppramaniam's share.

Nachiappan and Suppiramaniam shall for ever possess in common the Pillaiyar temple, the Madam (Choultry) and the Nanthawanam (flower garden and premises), situated at Ayinoothan Oorani Karai. As the Madam (Choultry) and the Nanthawanam (flower garden and premises) are to be newly erected, Nachiappan shall in his management erect the Madam (Choultry) and complete it. Nachiappan himself shall erect the Pillaiyar temple at a moderate cost and have the management of the said Pillaiyar temple and the Madam (Choultry). Suppiramaniam shall purchase new land, erect in his management the Nanthawanam (flower garden and premises) dig well, &c., grow (flower) plants and look after the management of the said Nanthawanam (flower garden and premises). As there lies a sum of Rs. 2,684.53 at the firm of Nawanna Soona Rawanna Mana Sawanna and a sum of Rs. 2,684.53 at the firm of Koonna Mana Nawanna Soona Pana for the costs of erecting the said Pillaiyar temple, Madam (Choultry) and Nanthawanam (flower garden and premises) Nachiappan shall draw from and out of the said sum which lies at the firm of Nawanna Soona Rawanna Mana Sawanna for the cost of erecting the Pillaiyar temple and the Madam (Choultry) and carry on the said work, and Suppiramaniam shall draw from and out of the said sum which lies at the firm of Koonna Mana Nawanna Soona Pana, erect the Nanthawanam (flower garden and premises) grow (flower) plants and carry on the said work. As there is Pillaiyar-sei Pokkarivayakkal Mattathupunsal for this purpose, Nachiappan shall have half its income less tax for the Madam (Choultry) and the Pillaiyar temple, and Suppiramaniam shall have half its income less tax for the Nanthawanam (flower garden and premises). Both of you shall be carrying on the work as above referred to until the moneys now set apart on both sides for the Pillaiyar temple, Madam (Choultry) and Nanthawanam (flower garden and premises) as above referred to are completely drawn off. Any deficiency shall be equally borne by Nachiappan and Suppiramaniam.

The 1/8th village at the Oottikulam Yanthal of Kandippatti purchased for Rs. 1,200 on the (Tamil) 19th day of the month of Aippiai of the year of Sobakiruthu from Suppiramaniam Chettiar, son of Nawanna Kannappa Chettiar of Nattarasankottai, the 1/32nd village purchased at the said village for Rs. 300 on the Tamil 1st day of the month of Masi of the said year (Sobakiruthu) from Ramanathan Chettiar, son of Arunasalam Chettiar of Nattarasankottai, the 3/32nd village acquired under two deeds of usufructuary mortgage at the said village for Rs. 1,100 on the (Tamil) 7th day of the month of Purattasi of the year of Keelaga from Krishnaiyar son of Viswanathaiyar of Nattarasankottai, and

the 1/32nd village acquired under deed of usufructuary mortgage at the said village for Rs. 400 on the (Tamil) 28th day of the month of Aippiai of the year of Sowmiya from Sigappi, wife of Nallathambi of Sengulippatti, all aggregating to 5/32nd village under deeds of sale and 1/8th village under deeds of usufructuary mortgage were acquired in favour of Nachiappa and Suppiramaniam for the Siva temple of Sembanur at the said Dharmasanam Ootikulam Yenthal from and out of the sum credited in favour of the Siva temple of Sembanur: and the incomes of the said village have been utilised for the said Siva temple itself from that time up to the date hereof; the said village and the incomes derived therefrom shall therefore be further utilised for the said Siva temple itself for ever. If it sometimes happens to sell the said purchased 5/32nd village, and to make over the said usufructuary mortgaged 1/8th village and to get back the money by releasing the said usufructuary mortgaged 1/8th village, Nachiappan, son of the said Nachiappan, shall for the said Nachiappan sign and receive payment of the moneys and utilise the said moneys for the said Siva temple. In Tamil *செவ்வாசனம்* in the third line of the second page and *செவ்வாசனம்* in the twenty-first line of the third page hereof are interpolations.

10

20

Both of you have each in possession of a deed of partition of the same tenor and handwriting.

Sgd. Koon Mana Nawanna Nachiappan.

Sgd. Koon Mana Nawanna Suppiramaniam.

Arbitrators:

Sgd. Awanna Moona Murugappa Chetty of Kallal.

Sgd. Soona Seena Ramasmy Chetty of the said place.

Written by:

Sgd. Nawanna Moona Roona Kumarappa Chetty of Sembanur.

30

Translated by

Sgd. Illegibly,
Sworn Translator, D. C., Colombo.

11.2.41.

Exhibits
No. A8a
Translation of
AS 22.1.12
—contd.

Exhibits
No. A74a
Translation of
Folio 4 of A74.
1918-1920.

No. A 74a. Translation of Folio 4 of A 74.

A 74a.

Translation

Colombo

KM. N. SP.

KM. N. SP Firm Colombo.

Ledger folio 4.

Credit a/c. of Native Place.

Year 1918.

Particulars

Rs. cts.

May 23. Credit	10.50	10
March 1, 1919. Credit. Transferred for this date from old account—excess credit lying thereon for new current rate of interest	437,463.95	
March 2. Credit for 1st instant—Kana Roona brought with him for travelling expenses when coming down from native place on 29th Thai in the year Kalayuthi	16.00	
March 21. Credit for this date. Mavanna issued receipt and obtained from Ahoram son of Pampaian servai on account of money due at native place	50.00	
Total credit ...	437,540.45	20
July 20. Credit for this date. Karuppiah brought with him when coming down from native place on 29th day of Ani in the year Sitharthi for his travelling expenses	26.00	
Total credit ...	437,566.45	
Debit for 1st March, 1919. To Koon Mana Navanna Soona account without entry in Day Book	350,000.00	
Balance credit ...	87,566.45	
February, 1920. Debit for 26th February <i>re</i> amount credited in the Native Place Remittance Ledger No. 14 without entry in Day Book	19,529.52	30
March 1. Credit. Interest for the period from 1st March, 1919, to 29th February, 1920, as per memo of new current rate of interest less cross interest for 8 days	6,685.03	
Debit simultaneously for this date—transferred to next ledger—Native place remittance ledger principal including interest	74,721.97	
Total credit ...	444,251.49	
Total debit ...	444,251.49	
Total debit and credit equalised.		

No. R 27. Certificate of Registration of Business Names.*Copy (for official purposes).***R 27.****BUSINESS NAMES ORDINANCE (CAP 120).****CERTIFICATE OF REGISTRATION OF INDIVIDUALS.**

Certificate No. 708.

I hereby certify that the following Statement, made in pursuance of the Business Names Ordinance (Cap. 120) was registered in the Office of the Registrar of Business Names for the Western Province, under number 708 on the Second day of May, 1919.

10	1. The Business Name:	Kuna Mana Navenna Suna Pana (K.M.N.S.P.)
	2. The General Nature of the Business:	Money Lending.
	3. The Principal Place of the Business:	No. 94, Sea Street, Colombo.
20	4. The Date of the Commencement of the Business, if the Business was commenced after November 7, 1918:	_____
	5. Any other Business Name or Names under which the Business is carried on:	_____
	6. The present Name (in full) of the Individual:	Natchiappa Chetty Suppiramaniam Chetty.
30	7. Any former Name (in full) of the Individual:	_____
	8. The Nationality of the Individual:	British.

Exhibits
No. R27
Certificate of
Registration of
Business
Names
19.8.19.

February 17, 1921. Credit. Interest for the period from 1st March, 1920, to 28th February, 1921, i.e., 12 months as per memo of interest calculated at the new current rate being Rs. 34,392.35 less Rs. 71.65 being cross interest for 8 days the interest being 34,320.70

Exhibits
No. 75A
Translation of
Folio 63A of
A75 of 1919-
1921
—contd.

March 1. Debit transferred for this date to New account	411,223.23
	411,223.23
Total credit	411,223.23
Total debit	411,223.23

10 Total debit and credit equalised.

No. A 76a. Translation of Folio 337 of Press Copy Book.

**A 76a.
Translation**

No. A76a
Translation of
Folio 337 of
Press Copy
Book.

Press Copy Book—folio 337

No. 48

KM. N. SP.

AR. N. SP.

Sembanur.

Paung Dawthi.

22nd day of Markali in the year Vipava.

To

20 Kumarappa.

With regard to the request for a credit with the firm of K.M.N.N.S. of Kadapana in favour of Alaimelu Achy of Kallal, daughter of N.S.P. of Sembanur, to carry one sixteenth per cent. interest over the Rangoon current rate of interest amount to be paid is Rs. 750.

You shall pay this sum of Rs. 750 together with interest at Rangoon current rate from this date to the order of K.M.N.N.S. Mutturaman Chettiar of Kadapana having this duly discharged and debited to our account.

30 Other matters through post.

With blessings,
Sevugarayar Theepanchammal Thunai,
Sgd. K.M.N.S.P. Suppramaniam Chetty.

Exhibits
No. A65
Copy of Fiscal's
Conveyance
No. 13689/1922
22.1.22.

No. A 65. Copy of Fiscal's Conveyance No. 13,689/1922.

A 65.

COPY 13689/1922

**FISCAL'S CONVEYANCE TO PURCHASER AFTER
CONFIRMATION OF SALE BY COURT**

TO ALL TO WHOM THESE PRESENTS SHALL COME

GREETING

Whereas by virtue of a writ of execution issued from the District Court of Colombo in Case No. 5,789 bearing date the third (3rd) day of October, 1922, directed to the Fiscal of the Western Province, he was directed to levy the sum of Rs. 125,715 and interest by sale of the hereinafter described property mortgaged with the plaintiffs by Alfred Joseph Richard de Soysa of Lakshmigiri, Thurstan Road, Colombo, the defendant in the said case:

10

And whereas the Fiscal of the said Province did cause the property hereinafter described after due notice and publication in manner by law prescribed to be exposed to public sale on the 30th day of October, 1922, by R. B. Ratnaike acting under the authority of the said Fiscal and was sold to (1) K.M.N.S.P. Suppramaniam Chettiar, (2) K.M.N.S.P. Nachiappa Chettiar, both of Sea Street, Colombo, the plaintiffs in the said case and A. Abdul Rahaman and O. L. M. Yoosooif Lebbe, both of 3rd Cross Street, Colombo, as the highest bidder at the said sale for the sum of Rs. 93,000:

20

And whereas the said (1) K.M.N.S.P. Suppramaniam Chetty, and (2) K.M.N.S.P. Nachiappa Chetty being the execution creditors under the said writ have been allowed credit in the sum of Rs. 46,000 out of the said purchase money in reduction of their claim and have produced the order of court copy whereof is annexed to the original hereof and the said A. Abdul Rahaman and O. L. M. Yoosooif Lebbe have duly paid to the said Fiscal a sum of Rs. 11,625 and obtained credit for the balance in terms of an order dated the 27th November, 1922, copy of which is annexed to the original hereof and thus became entitled to a Conveyance to the said property in the proportion of one-fourth each:

30

And whereas the said Court by an order dated the 12th day of December, 1922 copy of which is annexed to the original hereof has duly confirmed the said sale.

Now these presents witness that Walter de Livera, Deputy Fiscal of the District of Colombo, Western Province, in consideration of the said sum of Rs. 46,500 as credited to the said (1) K. M. N. S. P. Suppramaniam Chetty and (2) K. M. N. S. P. Nachiappa Chetty and the sum of Rs. 46,500 so paid and credited to the said A. Abdul Rahaman and O. L. M. Yoosooif Lebbe as aforesaid, the receipt whereof the said Deputy Fiscal doth hereby acknowledge, hath sold

40

and assigned and by these presents doth sell and assign unto the said (1) K. M. N. S. P. Suppramaniam Chetty and (2) K. M. N. S. P. Nachiappa Chetty and A. Abdul Rahaman and O. L. M. Yoosoof Lebbe their heirs, executors, administrators and assgins the following property mortgaged with the plaintiffs and decreed and ordered to be sold by the said order of court, viz., all that divid-
 10 ed and defined portion of all that those the estate plantations and premises called and known as Kandawala Estate situated at Ratmalana in the Palle Pattu of Salpiti Korale in the District of Colombo, Western Province, comprising the lots marked Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 in Plan No. 3797 dated the 14th May, 1920, made by V. S. A. Dias, Surveyor and Leveller, which divided and defined portion is bounded on the north by the road to Attidiya, Dawson Estate belonging to John Perera, field belonging to Mr. L. W. A. de Soysa, land called Gampotta belonging to John Perera, field belonging to Peeris Appu and Geeris Appu, on the east by land belonging to N. B. Fonseka, land described in T. P. 75775 and 75776, owita belonging to Manis Appu, field of N. B. Fonseka and the Panadura River, on the south by the road reservation, and
 20 on the west by the Galle Road containing in extent (exclusive of the reservation shown in the said plan No. 3797) 325 acres 0 roods and 27 perches as described in the diagram or map annexed to the original of these presents and marked No. 1025 dated the 16th day of December, 1922, made by M. B. de Silva, Fiscal's Licensed Surveyor; and all the right, title, interest and claim whatsoever of the said defendant into upon, or out of the said premises.

To have and to hold the same with their and every of their appurtenances to them the said (1) K. M. N. S. P. Suppramaniam Chetty and (2) K. M. N. S. P. Nachiappa Chetty and A. Abdul
 30 Rahaman and O. L. M. Yoosoof Lebbe their heirs, executors, administrators and assigns for ever.

In witness whereof the said Deputy Fiscal hath hereunto subscribed his name at Colombo this 22nd day of December, 1922.

Sgd. W. DE LIVERA,
 Deputy Fiscal.

No. R 28. Statement of Change of Business Names.

R 28.

BUSINESS NAMES ORDINANCE (CAP. 120).

Form R.B.6.

40 (To be accompanied by the Certificate of Registration.)

STATEMENT OF CHANGE UNDER SECTION 7.

In pursuance of the provisions of Section 7 of the Business Names Ordinance (Cap. 120) the following statement of a change which

Exhibits
 No. A65 Copy
 of Fiscal's
 conveyance
 No. 13689/1922.
 22.12.22
 —contd.

No. R 28
 Statement of
 Change of
 Business Names
 3.4.25.

Exhibits
No. R 28
Statement of
Change of
Business Names
3.4.25.
—contd.

was made or occurred in the particulars registered in the Office under number 708 on the Twenty-eighth day of November, 1924, in respect of Kuna Nana Navenna Suna Pana (K.M.N.S.P.) is made by me the undersigned.

1. Nature of Change: Natchippa Chetty, son of Suppramaniam Chetty of Sembanoor in Ramnad District, South India, has been admitted as a partner in the business.

Nationality: British.

Other business occupation if any: None. 10

2. Date of Change: 2 April, 1925.

Dated this 3rd day of April, 1925.

To the Registrar of Business Names for the Western Province.

Signature or Signatures:

Sgd. In Tamil.

K. M. N. S. P. SUPPRAMANIAM CHETTY.

**No. R 29. Affidavit.
R 29.**

No. R 29
Affidavit
8.4.25.

I, Kuna Mana Navenna Suna Pana Suppramaniam Chetty of Sea Street in Colombo not being a Christian do solemnly, sincerely and truly affirm and declare as follows:— 20

1. That my son Nachiappa Chetty was admitted a partner of the firm of Kuna Mana Navanna Suna Pana (K.M.N.S.P.) on the 2nd day of April 1925.

2. That to the best of my belief all the particulars contained in the accompanying statement marked A and dated the 3rd day of April 1925 and furnished by me under the provisions of the Registration of Business Names Ordinance, No. 6 of 1918, are true.

Sgd. K. M. N. S. P. SUPPIRAMANIAM CHETTY.

This 8th April, 1925. 30

The foregoing affidavit having been read over, &c., &c.
Before me.

Sgd. Illegibly.
J. P.

No. R 30. Certificate of Registration of a Firm.

Exhibits
No. R 30
Certificate of
Registration of
a Firm
16.4.25.

R 30.**CERTIFICATE OF REGISTRATION OF A FIRM.**

I hereby certify that the following statement made in pursuance of the Business Names Ordinance (Cap. 120) was registered in the Office of the Registrar of Business Names for the Western Province under No. 708 on the 16th day of April, 1925, pursuant to a statement of change furnished under section 7.

Business Name: **Kuna Mana Nawanna Suna Pana (K.M.N.S.P.)**

10 Nature of Business: Money lending.

Place of Business: 94, Sea Street, Colombo.

Name in Full: **Nachiappa Chetty Suppiramaniam Chetty—
British—94, Sea Street.**

**Nachippa Chetty, son of Suppiramaniam
Chetty—British—Sembanoor, S. India.**

Sgd. **F. ANTHONISZ,**
Asst. Registrar of Business Names.

16th April, 1925.

No. R 4. Copy of Deed No. 3717.

20

R 4.**DEED No. 3717.**

No. R 4
Copy of Deed
No. 3717
26.3.25.

**TO ALL TO WHOM THESE PRESENTS SHALL COME KUNA MANA
NAWANNA SANA PANA SUPPRAMANIAM CHETTY OF SEA STREET IN
COLOMBO IN 'THE ISLAND OF CEYLON HEREINAFTER CALLED AND
REFERRED TO AS THE VENDOR**

SEND GREETING

Whereas the said vendor is seized and possessed of or otherwise well and sufficiently entitled to the premises hereinafter fully described in the schedule to these presents:

30 And whereas the said vendor has agreed for the absolute sale and assignment to **Kuna Kana Nawanna Suna Pana Nachiappa**

Exhibits
No. R 4
Copy of Deed
No. 3719
26.3.25.
—contd.

Chetty, son of Suppramaniam Chetty of Sea Street aforesaid (hereinafter called and referred to as the vendee) of the said premises intended to be hereby granted and conveyed free from encumbrances at the price or sum of Rs. 15,000:

Now know Ye and these presents witness that the said vendor in pursuance of the said agreement and in consideration of the sum of Rs. 15,000 paid by the said vendee the receipt whereof the said vendor doth hereby admit and acknowledge do hereby sell, grant, convey and assign transfer set over and assure unto the said vendee his heirs, executors, administrators and assigns all the right, title, interest, claim and demand whatsoever of the said vendor into, out or upon the said premises together with all and singular the rights, ways, easements, servitudes, liberties, privileges and appurtenances whatsoever to the said premises hereby conveyed appertaining or usually held or enjoyed therewith or reputed or known as part or parcel thereof and all deeds writings and muniments of title thereto belonging. 10

To have and to hold the said premises hereinbefore expressed to be hereby granted with all their appurtenances unto and to those of the said vendee his heirs, executors, administrators and assigns for ever. 20

And the said vendor doth hereby for himself, his heirs, executors, and administrators covenant with the said vendee, his heirs, executors, administrators and assigns that the said premises are free from all encumbrances whatsoever made or suffered by the said vendor or any person or persons lawfully claiming from under or in trust for the said vendor and that he the said vendor now hath good right to grant and convey the said premises in manner aforesaid and that it shall be lawful for the said vendee, his heirs, executors, administrators and assigns at all times hereinafter quietly to enter into hold and enjoy the said premises without any eviction or interruption by the said vendor or the person claiming through or in trust for him and that the said vendor and his heirs, executors, administrators shall and will warrant and defend the said premises and every part thereof unto the said vendee, his heirs, executors, administrators and assigns against any person or persons whomsoever and that the said vendor, his heirs, executors and administrators and every person having or claiming any estate, right, title, or interest in the same premises hereby granted and conveyed or any part thereof from under or in trust for the said vendor shall and will from time to time and at all times hereafter at the request and cost of the said vendee his heirs, executors, administrators and assigns do and execute or cause to be done and executed all such acts, deeds and things whatsoever for the further and more perfectly assuring the said premises and every part thereof unto the said vendee, his heirs, executors, administrators and assigns in manner aforesaid as shall or may be reasonably required. 30 40

In witness whereof the said vendor doth hereby set his hand to three of the same tenor and date as these presents at Colombo on the 26th day of March, 1925.

The Schedule above referred to.

An undivided one fourth part or share of all that divided and defined portion of all that and those the estate plantations and premises called and known as Kandawala Estate situate at Ratmalana in the Palle Pattu of Salpiti Korale in the District of Colombo, Western Province, comprising the lots marked Nos. 10 1, 2, 3, 4, 5, 6, 7 and 9 in plan No. 3797 dated 14th May, 1920, made by V. S. A. Dias, Surveyor and Leveller, which said divided and defined portion is bounded on the north by the road to Attidiya, Dawson Estate belonging to Mr. L. W. A. de Soysa, land called Galpotte belonging to John Perera, field belonging to Peeris Appu and Geeris Appu, on the east by land belonging to N. B. Fonseka, land described in T.Ps. 75775 and 75776, Owita belonging to Pabilis Appu, field of N. B. Fonseka and the Panadura river, on the south by road reservation, and on the west by the Galle Road, containing
20 No. 3797) three hundred and twenty-five acres and twenty-seven perches (A325. 0. 27) is as described in the diagram or map marked No. 1025 dated the 16th day of December, 1922, made by M. B. de Silva, Fiscal's Licensed Surveyor, which said premises are held and possessed by the said vendor under and by virtue of deed No. 13689/1922 dated 22nd day of December, 1922, given under the hand of W. de Livera, Deputy Fiscal, Western Province.

Signed in the presence of us.

This is the signature of

Pana Lena Suna Pana

30 Signed in Tamil.

Leyna Caruppan Chetty.

Signed. V. P. L. S. SWAMINATHAN.

This is the signature of
Kuna Mana Navanna Suna Pana.

Signed in Tamil.
Suppramaniam Chetty.

I Cathiravailoopillai Thamotherampillai Kandaiya, Notary Public of Colombo in the Island of Ceylon, do hereby certify and attest, etc., that the consideration within mentioned was
40 acknowledged to have been received previously and that seven stamps, etc.....

Signed. C. I. KANDAIYA.
Notary Public.

Date of Attestation,
26th March, 1925.

Exhibits
No. R 4
Copy of Deed
No. 3719
26.3.25.
—contd.

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26.

No. R 5. Copy of Deed No. 3954

R 5.

DEED NO. 3954

TO ALL TO WHOM THESE PRESENTS SHALL COME, I KOONA MANA NAVANNA SOONA PANA SUPPRAMANIAM CHETTY OF SEA STREET, COLOMBO, (HEREINAFTER CALLING MYSELF THE ASSIGNOR).

SEND GREETING.

Whereas Oduma Lebbe Marikar Abdul Majeed of No. 85, Messenger Street, Colombo (hereinafter referred to as the obligor), by Bond No. 1300 dated 23rd September, 1918, and attested by G.A.H. Wille of Colombo, N.P., became held and firmly bound unto me the said assignor and Koonna Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 30,000 lawful money of Ceylon being money lent and advanced to him on promissory notes, cheques and I.O.U. chits with the conditions thereunder written together with interest thereon and for securing the payment of the said sum of Rs. 30,000 and all interest to become due thereon the said obligor mortgaged and hypothecated to and with me the said assignor and the said Koonna Mana Navanna Soona Pana Nachiappa Chetty and our respective heirs, executors, administrators or assigns all those several lands and premises in the schedule A hereto fully described as a first or primary mortgage free from all encumbrances:

And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 1300 the sum of Rs. 15,000 together with interest thereon as stipulated in the said bond:

And whereas the said obligor by Bond No. 1265 dated 26th January, 1920, and attested by W. E. V. de Rooy of Colombo, N. P., became held and firmly bound unto me the said assignor and the said Koonna Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 25,000 like lawful money of Ceylon lent and advanced to him on promissory notes, cheques and I.O.U. chits as aforesaid and for securing the payment of the said sum of Rs. 25,000 and all interest to become due thereon the said obligor mortgaged and hypothecated to and with me the said assignor and the said Koonna Mana Navanna Soona Pana Nachiappa Chetty and our respective heirs executors administrators or assigns all those several lands and premises in the schedule B hereto fully described as a first or primary mortgage free from all encumbrances:

And whereas there is now due and owing to me the said assignor under and by virtue of the said bond No. 1265 the sum of Rs. 12,500 together with interest thereon as stipulated in the said bond:

And whereas Oduma Lebbe Marikar Mohammado Sanoon of No. 104, Old Moor Street, Colombo, by bond No. 281 dated 21st September, 1920, and attested by N. M. Zaheed of Colombo, N. P., became held and firmly bound unto me the said assignor and the

said Koonā Mana Navenna Soonā Pana Nachiappa Chetty in the sum of Rs. 20,000 like lawful money of Ceylon lent and advanced to him on promissory notes, cheques, and I.O.U. chits as aforesaid and for securing the payment of the said sum of Rs. 20,000 and all interest to become due thereon the said Oduma Lebbe Marikar Mohamed Sanoon mortgaged and hypothecated to and with me the said assignor and the said Kana Mana Navanna Soonā Pana Nachiappa Chetty and our respective aforewritten all that land and premises in the Schedule C hereto fully described as a first or

Exhibits
No. R5
Copy of Deed
No. 3954
21.3.26
—contd.

10 primary mortgage free from all encumbrances:

And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 281 the sum of Rs. 10,000 together with interest thereon as stipulated in the said Bond:

And whereas Naina Mohamado Natchia, widow of the late Koonā Lana Kawana Cader Minnar, Sekadi Umma, wife of Seyadu Ahamadu and Sara Umma, wife of Cader Bawa, all of Arasanagari in India and Koonā Lana Kawanna Rauther Naina Mohamado and Koonā Lana Kawanna Mohammado Marikar, both of No. 16, Grandpass in Colombo, Koonā Lana Kawanna Mohamado Meera Saibo and Pathuma Beebee, wife of Sahul Hamid, both also of Arasanagari aforesaid (hereinafter referred to as the mortgagors) by bond No. 3944 dated 31st January, 1923, and attested by W. A. S. de Vos of Colombo, N. P., became held and firmly bound unto me the said assignor and the said Koonā Mana Navenna Soonā Pana Nachiappa Chetty in the sum of Rs. 35,000 like lawful money of Ceylon lent and advanced to them on promissory notes, cheques and I.O.U. chits as aforesaid and for securing the payment of the said sum of Rs. 35,000 and all interest to become due thereon the said mortgagors mortgaged and hypothecated to and with me the said

30 assignor and the said Koonā Mana Navenna Soonā Pana Nachiappa Chetty and our respective aforewritten all those several lands and premises in the schedule to the said Bond fully described:

And whereas the said mortgagors paid a sum of Rs. 17,000 out of the said sum of Rs. 35,000 due on the said Bond No. 3944 and obtained a release created by deed No. 3335 dated 12th September, 1923, and attested by the Notary attesting these presents whereby the lands and premises called and known as Ambegahalanda and Haloluwa situated at Hapitigam Korale in the District of Negombo in extent 24 acres 1 rood and 10 perches were released from the said

40 Bond No. 3944:

And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 3944 the sum of Rs. 9,000 together with interest thereon as stipulated in the said bond; and for the purpose of securing the balance principal and interest due on the said bond all those several lands and premises in the schedule D hereto fully described are mortgaged and hypothecated as a first or primary mortgage free from all encumbrances.

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

And whereas Abdul Azeez Mohamed Saleem of Rosmead Place in Colombo by Bond No. 3869 dated 22nd September, 1922, and attested by W. A. S. de Vos of Colombo, Notary Public, became held and firmly bound unto me the said assignor and Ravenna Mana Ana Roona Ana Roona Ravenna Mana Arunasalam Chetty and the said Koonna Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 25,000 like lawful money of Ceylon lent and advanced to him on promissory notes, cheques, I.O.U. chits with the conditions thereunder written together with interest thereon and for securing the payment of the said sum of Rs. 25,000 and all interest to become due the said Abdul Azeez Mohamed Saleem mortgaged and hypothecated to and with me the said assignor and the said Ravenna Mana Ana Roona Ana Roona Ravenna Mana Arunasalam Chetty and Koonna Mana Navanna Soona Pana Nachiappa Chetty all those several lands and premises in the schedule E hereto fully described as a first or primary mortgage free from all encumbrances: 10

And whereas there is now due and owing to me the said assignor under and by virtue of the said bond No. 3869 the sum of Rs. 6,250 together with interest thereon as stipulated in the said bond:

And whereas Ahamado Lebbe Marikar Mohamado Cassim Hadjiar of Hulftsdorp Street, Colombo, by Bond No. 824 dated 6th December, 1924, and attested by the said N. M. Zaheed became held and firmly bound unto me the said assignor and Koonna Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 10,000 like lawful money of Ceylon being money lent and advanced to him on promissory notes, cheques, I.O.U. chits with the conditions thereunder written together with interest thereon and for securing the payment of the said sum of Rs. 10,000 and all interest to become due thereon the said Ahamado Lebbe Marikar Mohamado Cassim Hadjiar mortgaged and hypothecated to and with me the said assignor and the said Koonna Mana Navanna Soona Pana Nachiappa Chetty and our respective heirs, executors, administrators or assigns all that land and premises in the schedule F hereto fully described as a primary mortgage free from all encumbrances: 20 30

And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 824 the sum of Rs. 5,000 together with interest thereon as stipulated in the said bond:

And whereas Samsy Lebbe Marikar Hadjiar Mohamed Zuhar of No. 114, Old Moor Street in Colombo, by Bond No. 4335 dated 14th February, 1925, attested by W. A. S. de Vos of Colombo, Notary Public, became held and firmly bound unto me the said assignor and Koonna Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 45,000 like lawful money of Ceylon being money lent and advanced to him on promissory notes, cheques, I.O.U. chits with the conditions thereunder written together with the interest thereon 40

and for securing the payment of the said sum of Rs. 45,000 and all interest to become due thereon the said Samsy Lebbe Marikar Hadjiar Mohamed Zuhar mortgaged and hypothecated to and with me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty and our respective aforewritten all those several lands and premises in the schedule G hereto fully described as a first or primary mortgage free from all encumbrances:

Exhibits
No. R 5
Copy of Deed
No. 3964
24.3.26
—contd.

10 And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 4335 the sum of Rs. 22,500 together with interest thereon as stipulated in the said Bond:

20 And whereas the said Oduma Lebbe Marikar Abdul Majeed by Bond No. 3486 dated 29th March, 1924, and attested by the Notary attesting these presents became held and firmly bound unto me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 20,000 like lawful money of Ceylon being money lent and advanced to him on promissory notes, cheques, and I.O.U. chits with the conditions thereunder written together with interest thereon and for securing the payment of the said sum of Rs. 20,000 and all interest to become due thereon the said Oduma Lebbe Marikar Abdul Majeed mortgaged and hypothecated to and with me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty and our respective aforewritten as a primary mortgage free from encumbrances all those lands and premises in the schedule H1 hereto fully described and as a secondary mortgage all those lands and premises in the schedule H2 hereto fully described subject to the primary mortgage created by Bond No. 3129 dated 11th September, 1922, and attested by the Notary attesting these presents:

30 And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 3486 dated 29th March, 1924, the sum of Rs. 10,000 together with interest thereon as stipulated in the said Bond:

40 And whereas Ahamado Lebbe Marikar Abdul Hamid of Messenger Street in Colombo by Bond No. 3457 dated 1st March, 1924, and attested by the Notary attesting these presents became held and firmly bound unto me the said assignor and Koonana Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 25,000 like lawful money of Ceylon being money lent and advanced to him on promissory notes, cheques and I.O.U. chits with the conditions thereunder written together with interest thereon and for securing the payment of the said sum of Rs. 25,000 and all interest to become due thereon and for securing the payment of the said sum and interest the said Ahamado Lebbe Marikar Abdul Hamid mortgaged and hypothecated to and with me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty and our respective aforewritten all those lands and premises in the schedule I hereto fully described as a first or primary mortgage free from all encumbrances:

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 3457 the sum of Rs. 12,500 together with interest thereon as stipulated in the said bond :

And whereas Oduma Lebbe Marikar Sheeda Umma and Colenda Marikar Mohamed Shaheed, both of 1st Division, Maradana, in Colombo, by Bond No. 3182 dated 24th November, 1922, and attested by the Notary attesting these presents became held and firmly bound unto me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 20,000 like lawful money of Ceylon being money lent and advanced to them on promissory notes, cheques, and I.O.U. chits with the conditions thereunder written together with interest thereon and for securing the payment of the said sum of Rs. 20,000 and all interest to become due thereon the said Oduma Lebbe Marikar Sheeda Umma and Colenda Marikar Mohamed Shaheed mortgaged and hypothecated to and with me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty and our respective aforewritten all that land and premises in the schedule J hereto fully described as a first or primary mortgage free from all encumbrances : 10

And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 3182 the sum of Rs. 10,000 together with interest thereon as stipulated in the said bond : 20

And whereas Isboo Lebbe Hadjiar Aboo Haniffa and Oduma Lebbe Marikar Yoosoof Lebbe, both of Silversmith Street in Colombo, by Bond No. 3215 dated 23rd January, 1923, and attested by the Notary attesting these presents became held and firmly bound unto me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 13,000 like lawful money of Ceylon lent and advanced with interest thereon and for securing the payment of the said sum of rupees thirteen thousand and all interest to become due thereon the said Isboo Lebbe Hadjiar Aboo Haniffa and Oduma Lebbe Marikar Yoosoof Lebbe mortgaged and hypothecated to and with me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty and our respective aforewritten all that land and premises in the schedule K hereto fully described as a secondary mortgage subject to the primary mortgage created by bond No. 400 dated 18th March, 1922, and attested by Stanley F. de Saram of Colombo, Notary Public, but free from any other encumbrances : 30

And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 3215 the sum of Rs. 6,500 together with interest thereon as stipulated in the said bond : 40

And whereas Mohamed Sham Marikar Mohamed Mohideen of Kayman's Gate in Colombo by Bond No. 3290 dated 21st June, 1923, and attested by the Notary attesting these presents became held and firmly bound unto me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chettiar in the sum of

Rs. 10,000 like lawful money of Ceylon being money lent and advanced to him on promissory notes cheques and I.O.U. chits with the conditions thereunder together with interest thereon and for securing the payment of the said sum of Rs. 10,000 and interest to become due thereon the said Muhamed Sham Marikar Mohamed Mohideen mortgaged and hypothecated to and with me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty all those lands and premises in the schedule L hereto fully described as a first or primary mortgage free from all encumbrances:

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

10

And whereas there is now due and owing to me the said assignor under and by virtue of the said bond No. 3290 the sum of Rs. 5,000 together with interest thereon as stipulated in the said bond:

20

And whereas Marikar Hadjiar Mohamado Zubaid of No. 11, Silversmith Street in Colombo, by Bond No. 3041 dated 6th May, 1922, and attested by the Notary attesting these presents became held and firmly bound unto me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 7,000 like lawful money of Ceylon being money lent and advanced to him on promissory notes, cheques, and I.O.U. chits with the conditions thereunder written together with interest thereon and for securing the payment of the said sum of Rs. 7,000 and all interest to become due thereon the said Marikar Hadjiar Mohamado Zubaid mortgaged and hypothecated to and with me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty all that land and premises in the schedule M hereto fully described as a first or primary mortgage free from all encumbrances:

30

And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 3041 dated 6th May, 1922, the sum of Rs. 3,500 with interest thereon as stipulated in the said bond:

40

And whereas Ommu Kulthum, widow of Seka Marikar Ahamado Lebbe Hadjiar of Old Moor Street, Colombo, by Bond No. 3429 dated 10th January, 1924, and attested by the Notary attesting these presents became held and firmly bound unto me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 4,000 like lawful money of Ceylon being money lent and advanced and for securing the payment of the said sum of Rs. 4,000 and all interest to become due thereon the said Ommu Kulthum mortgaged and hypothecated to and with me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty and our respective aforewritten all that land and premises in the schedule N hereto fully described as a first or primary mortgage free from all encumbrances:

And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 3429 the sum of Rs. 2,000 with interest thereon as stipulated in the said bond:

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

And whereas the said Oduma Lebbe Marikar Abdul Majeed by Bond No. 3129 dated 11th September, 1922, and attested by the Notary attesting these presents became held and firmly bound unto me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 10,000 like lawful money of Ceylon being money lent and advanced to him on promissory notes, cheques and I.O.U. chits with the conditions thereunder written together with interest thereon and for securing the payment of the said sum of Rs. 10,000 and interest to become due thereon the said Oduma Lebbe Marikar Abdul Majeed mortgaged and hypothecated to and with me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty and our respective aforewritten all those lands and premises in the schedule O hereto fully described as a first or primary mortgage free from all encumbrances : 10

And whereas there is now due and owing to me the said assignor under and by virtue of the said bond No. 3129 the sum of Rs. 5,000 with interest thereon as stipulated in the said bond :

And whereas the said Oduma Lebbe Marikar Abdul Majeed by Bond No. 3087 dated 11th July, 1922, and attested by the Notary attesting these presents became held and firmly bound unto me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 20,000 like lawful money of Ceylon being money lent and advanced to him on promissory notes, cheques, and I.O.U. chits with the conditions thereunder written together with interest thereon and for securing the payment of the said sum of Rs. 20,000 and all interest to become due thereon the said Oduma Lebbe Marikar Abdul Majeed mortgaged and hypothecated to and with me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty and our respective aforewritten all those several lands and premises in the schedule P hereto fully described as a first or primary mortgage and as a secondary mortgage subject to the primary mortgage created by the said Bond No. 1265 all those lands and premises in the schedule B hereto fully described : 20 30

And whereas there is now due and owing to me the said assignor under and by virtue of the said Bond No. 3087 the sum of Rs. 10,000 with interest thereon as stipulated in the said Bond :

And whereas the said Oduma Lebbe Marikar Abdul Majeed by Bond No. 3701 dated 3rd March, 1925, and attested by the Notary attesting these presents became held and firmly bound unto me the said assignor and the said Koonana Mana Navanna Soona Pana Nachiappa Chetty in the sum of Rs. 15,000 like lawful money of Ceylon being money lent and advanced to him on promissory notes cheques I.O.U. chits with the conditions thereunder written together with interest thereon and for securing the payment of the said sum of Rs. 15,000 and all interest to become due thereon the 40

said Oduma Lebbe Marikar Abdul Majeed mortgaged and hypothecated to and with me the said assignor and the said Koonna Mana Navanna Soona Pana Nachiappa Chetty and our respective aforewritten all those lands and premises in the schedule Q hereto fully described as a first or primary mortgage and as secondary and tertiary mortgage subject to the primary and secondary mortgages created by Bonds Nos. 1265 and 1300 and 3087 aforesaid all those lands and premises in the schedules B, A and P hereto fully described:

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

10 And whereas there is now due and owing to me the said assignor under and by virtue of the said bond No. 3701 the sum of Rs. 7,500 with interest thereon as stipulated in the said bond:

And whereas I have agreed with Koonna Mana Navanna Soona Pana Nachiappa Chetty of Sea Street in Colombo (hereinafter referred to as the assignee) for the absolute sale and assignment to him of all my right, title and interest in and over all those in part recited several bonds and mortgages thereby affected over all those several lands and premises and the principal sums, interest and all moneys now due thereon and henceforth to become due thereon for

20 the prices or sum of Rs. 152,250:

Now know Ye and these presents witness that I the said assignor in pursuance of the said agreement and in consideration of the said sum of Rs. 152,250 lawful money of Ceylon well and truly paid to me by the said assignee (the receipt whereof I do hereby admit and acknowledge) do hereby grant, sell, cede, assign, transfer, set over and assure unto him the said assignee, his heirs, executors, administrators and assigns all that the said sum of Rs. 152,250 so due and owing to me by the said in part recited several bonds and all and singular the moneys now due or henceforth to become due by way of

30 interest thereon and the mortgages and other securities thereby affected and the full benefit and advantage thereof and all the estate, right, title, interest, claim, and demand whatsoever of me the said assignor into, out of, or upon the said moneys, bonds, mortgages, securities and premises to be held by him the said assignee and his aforewritten together with full power, warrants and authorities, means and remedies for the recovery of the said sums and interest and for enforcing the payment thereof and for the realization of the said mortgage in as full, ample and beneficial a manner to all intents and purposes whatsoever as I might or could have done in case

40 these presents had never been made.

To have and to hold receive and take the said in part recited several bonds and mortgages and the said sum of Rs. 152,250 and all interest mentioned to be hereby granted, assured and set over unto the said assignee, his heirs, executors, administrators and assigns for his own proper use and benefit absolutely and for the consideration aforesaid I the said assignor do hereby nominate, constitute and appoint the said assignee or his aforewritten my true and lawful

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

attorney irrevocably in his or their name or names or in my name but for his or their name or names or in my name but for his or their sole use and benefit to ask, demand, sue for, recover and receive all principal and interest due and to become due upon and in respect of the said several bonds and to give receipts, releases and other discharges for the same or so much thereof as shall be received and on non-payment thereof in my name or in his name or in the name of his aforewritten and at his or their cost and risk to commence and prosecute any action, suit or other proceedings for compelling the payments thereof and for the realization of the said several mortgages and one or more attorney or attorneys under him to appoint and whatsoever the said assignee or his aforewritten shall do or cause to be done in and about the said premises I do hereby ratify, allow and confirm. 10

And I the said assignor do hereby for myself, my heirs executors and administrators covenant with the said assignees and his aforewritten that I have good and just right to assign the said moneys, bonds and mortgages in manner aforesaid and that I have not made, done or executed or knowingly permitted or suffered to be done or executed any act, deed, matter or thing whatsoever whereby or by means whereof the said several bonds, mortgages and the moneys due thereon as aforesaid or any of them or any part thereof are is, can, shall, or may be released, discharged or encumbered in any manner howsoever. 20

Provided however and it is hereby expressly agreed and declared that I do not in any manner warrant and defend the recovery of the moneys due under and by virtue of the said several bonds or the solvency of the said several mortgagors mentioned in the said bonds or the sufficiency of all and singular the securities comprised in the said bonds hereby assigned. 30

In witness whereof I the said assignor do set my hand to three of the same tenor and date as these presents at Colombo on this 24th day of March, 1926:

The Schedule A above referred to

1. All that divided one half part or share marked letter A shaded pink in the plan with the house standing thereon from and out of the allotment of land marked Lot No. 5 and bearing assessment No. 15, presently No. 2385/15, situated at Avondale Road, Second Division, Maradana, within the Municipality and in the District of Colombo, Western Province, and which said divided half part marked letter A is bounded on the North by the property of Philippu Nayde, on the East by the other half part of the same land marked letter B belonging to Sella Umma, wife of Wappu Marikar Hadjiar Slema Lebbe, on the South by Arab Lane twenty-six links wide, and on the West by the land of Wapitcha Marikar 40

Meera Lebbe Marikar Hadjiar; containing in extent two square perches and thirty-six one hundredths of a square perch (A0. R0. P2.36/100) as per plan dated the 28th October, 1895, made by J. de A. Dissanayake, Registered Land Surveyor. A130/215.

Exhibits
No. B 5
Copy of Deed
No. 3954
24.3.26
—contd.

2. All those two allotments of lands with the buildings standing thereon bearing assessment Nos. 282 and 283 presently Nos. 748/283 (1-2) situated at Dematagoda within the Municipality of Colombo aforesaid; bounded on the North by a reservation for a pathway four feet wide, on the East by premises bearing Assessment No. 10 281 belonging to S. L. Sinne Lebbe Marikar, on the South by Dematagoda Road, and on the West by premises bearing Assessment No. 284 belonging to Ahamed Ally Abdul Rahaman; containing in extent two square perches (A0. R0. P2 13/100.) according to the figure of survey and description thereof No. 389 dated 23rd February, 1913, made by A. R. Savundranayagam, Licensed Surveyor and Leveller. A111/256.

3. All that remaining portion of land with the buildings standing thereon bearing assessment No. 98 presently No. 639/98 situated at Messenger Street within the Municipality of Colombo aforesaid; 20 bounded on the North by Messenger Street, on the East by the house No. 97, the property of Slema Lebbe Hadjiar, on the South by the portion of this premises sold and conveyed to Ismail Lebbe Marikar Mohamado Hussan, and on the West by the house No. 98A the property of Saibo Alia Marikar; containing in extent one square perch and 99/100ths of a perch subject to the right which Cadija Umma of No. 98, Messenger Street, Colombo, widow of the late Cassim Lebbe Marikar Levana Marikar of Colombo, deceased, has reserved to herself, viz., the right to possess the said premises and to take and appropriate to herself the rents, profits, 30 issues and income thereof during her lifetime according to the Deed No. 780 dated the 14th of April, 1913, attested by G. M. M. G. Brito, Notary Public. A130/216.

4. All that allotment of land with the buildings standing thereon bearing assessment No. 62a presently No. 682/62a situated at Messenger Street within the Municipality of Colombo aforesaid bounded on the North-east by the property of S. Deen Hadjiar bearing assessment No. 62, on the South-east by the property of Robert Singho bearing assessment No. 61, on the South-west by the property of I. L. Abdul Rahaman bearing assessment Nos. 63, 64 40 and 65, and on the North-west by Messenger Street; containing in extent sixteen perches and 25/100ths of a perch which said premises are otherwise described as bounded on the North by the high road leading to Grandpass, on the East by the other part of this garden belonging to Thangamma, on the South by the property of Don Conrad Peter Dias Mohandiram; and on the West by the property of Siman Perumal Chetty; containing in extent sixteen perches and 26/100ths of a perch. A118/197.

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

5. Undivided five-eighth parts or shares of and in the allotment of land marked letter A in the plan and of and in the buildings thereon being a portion of the premises bearing assessment No. 90 situated at Messenger Street within the Municipality of Colombo aforesaid; bounded on the North-east by the other defined part of the same land marked letter B in the plan also bearing assessment No. 90 and now belonging to Ahamado Lebbe Notaries Segu Lebbe, on the South-east by a part No. 7 now the property of the Government, on the South-west by the part No. 5 now the property of Isboe Neyna Marikar Neyna Marikar, and on the North-west by Pass Nakelgam Street now calling Messenger Street; containing in extent nine square perches and 95/100ths of a perch. A122/289. 10

6. All that house and premises bearing assessment No. 120, presently No. 58/120, situated at Hulftsdorp Street within the Municipality of Colombo aforesaid and bounded on the North by Hulftsdorp Street, on the East by the property of Mr. Lobendhan, on the South by the property of Paulo Appu, and on the West by the property of the widow Meyer; containing in extent eight square perches and 19/100ths of a perch.

7. All those allotments of land with the buildings thereon bearing assessment No. 1343/167 and 1342/168 situate at Second Division Maradana in Maradana Ward within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 169 belonging to Kiduru Kanny Saphia Umma and assessment No. 172 belonging to Kiduru Kanny Abdul Majeed and Kiduru Kanny Mohamed Sheriff, on the East by premises bearing assessment No. 8, Maligakande Road, belonging to the estate of the late Katchi Mohamado and assessment No. 1 belonging to I. L. M. H. Abdul Raheman, on the South by premises bearing assessment Nos. 166 and 166A belonging to O. L. M. Abdul Majeed, and on the West by Second Division Maradana Road; containing in extent twenty-nine and 18/100 perches (A0. R0. P29 18/100.) according to the survey plan bearing No. 832 made on the 21st day of February, 1918, by A. R. Savundranayagam, Licensed Surveyor and Leveller. A128/380. 20 30

8. All that divided portion of land with the buildings now bearing assessment No. 1341/169 being the western portion of premises bearing assessment No. 169 situated at Second Division, Maradana, in Maradana Ward within the Municipality of Colombo aforesaid and which said divided portion is bounded on the North by premises bearing assessment No. 170 belonging to Kiduru Kanni Abdul Majeed and Kiduru Kanny Mohamado Shareef and passage, on the East by premises being the other part of premises bearing assessment No. 169 belonging to Kiduru Kanni Saphia Umma, on the South by premises bearing assessment Nos. 167 and 168 belonging to Kiduru Kanny Mohamado Sheriff and Sinne Lebbe Asha Umma, and on the West by Second Division, Maradana Road; containing 40

in extent three perches and fifty-six hundredths of a perch according to the survey plan No. 831 made on 21st day of February, 1918, by A. R. Savundranayagam, Special Licensed Surveyor and Leveller. A128/379.

Exhibits
No. R 5
Copy of Deed.
No. 3954
24.3.26
—contd.

9. All those the aforesaid allotments of land with the buildings thereon bearing assessment Nos. 748/283³, 748/283³, 283⁴ and 283⁵ situate at Dematagoda Road in Maradana Ward within the Municipality of Colombo aforesaid; bounded on the North by premises bearing assessment No. 188 belonging to Sinne Lebbe Marikar, on the East by premises bearing assessment No. 283⁵ belonging to C. L. Uduma Lebbe, on the South by Dematagoda Road, and on the West by premises bearing assessment No. 283² belonging to O. L. M. Abdul Majeed; containing in extent one perch and ninety-eight hundredths of a perch (A0. R0. P1 98/100) according to the figure of survey thereof bearing No. 834 dated 21st day of February, 1918, made by the said A. R. Savundranayagam. A138/149.

The Schedule B above referred to

1. All that defined one-fourth part of the garden and house and other buildings and plantations thereon situate at Maradana (now called Second Division, Maradana) in Maradana Ward within the Municipality of Colombo aforesaid formerly bearing assessment No. 166 presently No. 1344/166; bounded on the North by the garden of Kay Lebbe Ponny Oummah, on the East by the garden of Assena Lebbe, on the South by the garden of Hadji Umma, wife of Sinne Tamby Slema Lebbe, and on the West by the Maradana High Road now called Second Division, Maradana; and containing in extent eight and four-tenth (8. 4/10) square perches as per figure of survey thereof dated the 1st day of July, 1863, and made by H. F. de Zilva, Surveyor. A132/185.
2. All that house and ground formerly bearing assessment No. 166A presently No. 1345/166A, Second Division, Maradana, Colombo, aforesaid described in Deed No. 1154 of the 20th October, 1888, attested by W. B. de Fry of Colombo, Notary Public, as a portion of ground marked letter B with the buildings thereon situate at Second Division, Maradana, Colombo, within the Municipality and District of Colombo, Western Province, which said house and ground No. 1345/166A are bounded on the North by the part of land belonging to Ramath Umma and now to Ibrahim Natchia (now bearing No. 166 and being the northern half of the premises formerly No. 166), East by the garden of Assen Lebbe, now of Isu Lebbe Marikar Slema Lebbe Hadjar, on the South by a part of a garden now belonging to Isboo Lebbe Wappu Marikar, and on the West by the Maradana High Road, containing in extent eight square perches and 4/10 of a perch and which said premises are also described in plan No. 446 dated 23rd May, 1913, made by

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

A. R. Savundranayagam as follows:—An allotment of land with the buildings thereon bearing assessment No. 166A situated at Second Division, Maradana, within the Municipality and District of Colombo, Western Province, bounded on the North by premises bearing assessment No. 166 belonging to O. L. M. Abdul Majeed, East by premises bearing assessment No. 1, Maligakande Road, belonging to I. L. M. H. Abdul Raheman, South by premises bearing assessment No. 165 belonging to W. M. Wappu Marikar, West by Second Division, Maradana Road; containing in extent eight and 50/100 perches. A136/285.

10

3. All that part of the garden with the buildings thereon formerly bearing assessment No. 169 presently No. 1337a/169 situated at Second Division, Maradana, within the Municipality of Colombo aforesaid and bounded on the North by the other part belonging to Sinne Lebbe Ismail Marikkar, on the East by the garden of Sinne Tamby, on the South by the other part belonging to Packeer Bawa Pitche Tamby, and on the West by the high road; containing in extent fourteen and thirty-six one hundredths perches excluding however therefrom the portion of land with the buildings thereon bearing assessment No. 1341/169 in extent three and 56/100 perches sold to Oduma Lebbe Marikar Abdul Majeed. A131/354.

20

4. An allotment of land shaded pink and marked lot No. 1 with the buildings standing thereon being a portion of premises formerly bearing assessment Nos. 163 and 164 and now No. 1348-1350/164 (1-2) situate at Second Division, Maradana, within the Municipality of Colombo aforesaid; bounded on the North-east by the property of Allie Lebbe Bawa Lebbe now of Isboe Lebbe Wappu Marikar, on the South-east by a part of the same land marked lot No. 4 in the plan, on the South-west by a part of the same land marked lot No. 2 in the plan, and on the North-west by the Second Division Maradana Road; containing in extent five perches and sixty-four one hundredths of a perch according to the survey plan No. 1 dated the 24th day of March, 1897, made by Frederick Bartholomeusz, Licensed Surveyor. A134/113.

30

5. An allotment of land shaded pink and marked lot No. 2 with the buildings standing thereon being a portion of premises bearing assessment Nos. 1348a/163 and 164 situated at Second Division, Maradana, within the Municipal limits of Colombo bounded on the North-east by a part of the same land marked lot No. 1 in the plan, on the South-east by a part of the same land marked lot No. 4 in the plan, on the South-west by a part of the same land marked lot No. 3 in the plan, and on the North-west by Second Division, Maradana Road; containing in extent five perches and four hundredths of a perch according to the survey plan No. 2 dated the 24th March, 1897, made by Frederick Bartholomeusz, Surveyor, which said premises are described as follows:—according

40

to plan No. 973 dated 2nd October, 1919, made by A. R. Savundranayagam, Special Licensed Surveyor, allotment of land with the buildings thereon bearing assessment No. 164 and marked lot No. 2 situated at Second Division, Maradana, aforesaid, bounded on the North by premises bearing assessment Nos. 164 being lot 1 (a portion of the same land) belonging to Packeer Bawa Sesma Lebbe, on the East by premises bearing assessment No. 163 belonging to Assen Bawa Marikar Mohamed Ali Marikar, on the South by premises bearing assessment No. 163 being lot No. 3 belonging to Packeer Bawa Amala Marikar, and on the West by Second Division Maradana Road; containing in extent six perches and eight one-hundredths of a perch. A58/117.

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

6. All that allotment of land with the buildings thereon bearing assessment No. 1348b/163 being the eastern portion of lot No. 3 situated at Second Division, Maradana, within the Municipality of Colombo aforesaid; bounded on the North by premises bearing assessment No. 164 being lot 2 (a portion of the same land) belonging to Packeer Bawa Sinne Lebbe Marikar, on the East by premises bearing assessment No. 163 belonging to Assen Marikar Bawa Mohamed Ali Marikar, on the South by Maligakande Road, and on the West by the remaining portion of lot No. 3 bearing assessment No. 163 belonging to the said Packeer Bawa Amala Marikar; containing in extent two perches and twenty-three hundredths of a perch according to the figure of survey thereof No. 974 dated 2nd October, 1919, made by the said A. R. Savundranayagam. A135/172.

The Schedule C above referred to

All that allotment of land being the allotment marked No. 14 in the general plan No. 73A dated 15th June, 1896, and made by Chas. Van Rooyen of Colombo with all the buildings standing thereon including part of the house now bearing assessment No. 84 situated at Colpetty within the Municipality and in the District of Colombo, Western Province; bounded on the North by a roadway eighteen feet wide, on the East by lot No. 12 purchased by J. G. C. Mendis, on the South by lot No. 13 purchased by the said J. G. C. Mendis bearing assessment No. 84A, and on the West by the Colpetty Main Road; containing in extent two roods and twenty-one square perches (A0. R2. P21.) according to the figure of survey thereof No. 92 dated 15th June, 1896, made by the said Charles Van Rooyen, Licensed Surveyor. A134/2.

The Schedule D above referred to

1. All that land called Wasanpahahena with the buildings and plantations standing thereon situated at Dadagomuwa in the Meda Pattu of Siyane Korale in the District of Colombo, Western Province; bounded on the North by land belonging to a gentleman

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

and by land belonging to Wickrema-aratchi Menikrala more correctly by land belonging to Wickrema-aratchi Vithanaralage Juanis Appu and to a gentleman and the high road, on the East by a lake, on the South by land belonging to Dadayakkara Mohandiram Mahatmaya, and on the West by land belonging to Selenchi Appuhamy and by land belonging to Simitchiya; containing in extent seventeen acres one rood and twelve perches (A17. R1. P12.) exclusive of the road passing through the land as per plan No. 95 dated the 20th February, 1911, made by M. G. de Silva, Licensed Surveyor. E137/259.

10

2. All that land called Dombagahawatte with the plantations and buildings standing thereon situated at Dadagamuwa in the Meda Pattu of Siyane Korale aforesaid and bounded on the North by land appearing in plan No. 67206, on the North-east by lands appearing in plans Nos. 67206 and 67203, on the East by land appearing in plan No. 67203, on the South-east by land claimed by Baronchy Appu, on the South by lands claimed by Caronchy Appu and Samuel Appu, on the South-west by lands claimed by Samuel Appu Naidehamy and others, and on the West by land claimed by Naidehamy and others and wewa; containing in extent fourteen acres two roods and thirty-one perches as per plan No. 983 dated 1st July, 1898; made by E. M. Van Dort, Licensed Surveyor. E137/258.

20

3. All that one undivided half part or share of and in all that land called Gonnagahalande situated at Dadagomuwa aforesaid and bounded on the East and South-east by land of Karonchi Appu, on the West and South-west by land described in plan No. 67205, and on the North-west by land described in plans Nos. 67205 and 67206; containing in extent six acres two roods and thirty-six perches. E147/90.

30

4. All that defined portion of land called Batadombagahawatte together with the titled house and two boutiques standing thereon situated at Pattalagedera in the Meda Pattu of Siyane Korale aforesaid and bounded on the North by iron railings on the limit of the land belonging to Veyangoda Coconut Mills, on the East by the tiled boutique and another portion of this land belonging to Abaran Appuhamy, on the South by the cart road from Negombo to Veyangoda, and on the West by the iron railings on the limit of the land belonging to the Veyangoda Coconut Mills containing in extent about four perches. E141/209.

40

The Schedule E above referred to

1. All that and those the property and premises called and known as " The Farm " comprising (a) All that field called Wellabodakumbura situated in the Village Parana Amuna in the Palle Pattu of the Salpiti Korale in the District of Colombo, Western

Province, and bounded on the North by the high road leading to Kalapaluwawa, on the East by Aswedduma Kumbura now belonging to Vitanage Salamankure, on the South by Mylanga Kumbura belonging to Vitanage Salamonkure, and on the West by Beligahakumbure belonging to the estate of the late Dr. J. B. Misso containing in extent four acres three roods and fourteen perches as per survey thereof dated the 27th August, 1894, made by J. H. Krickenbeck, Surveyor and Leveller:

Exhibits
No. R 3
Copy of Deed
No. 3954
24.3.26
—contd.

10 (b) Twenty-three undivided twenty-four parts or shares of and from ~~all~~ that field called Milanage Pillawa Kumbura situated in the village Welikada in the Palle Pattu aforesaid and bounded on the North by the field of Andris Kure now belonging to Mr. E. J. Koelman, on the East by the fields of Advocate Alwis and Vitanage Cornelis Kure, on the South by the field of David Kure, and on the West by the field of Doctor Misso; containing in extent three acres and eighteen perches according to the figure of survey thereof dated 30th September, 1899, made by the said J. H. Krickenbeck;

20 (c) All that allotment of land situated at Galboda in the Cross Road from Welikade and adjoining the minor road leading to Hewagam Korale in the Palle Pattu of Salpiti Korale aforesaid and bounded on the North by the minor road leading to Hewagam Korale, on the South by the paddy field belonging to Punchi Appuhamy, on the South-east by the paddy field belonging to Punchi Appuhamy, and on the West by the Buddhist Temple land; containing in extent one acre three roods and one square perch;

30 (d) All that allotment of land called Aratchigeyewatte *alias* Pelangahawatte *alias* Delgahawatte situated at Welikade aforesaid and bounded on the North by the high road, on the East by the field said to belong to Louis Perera and others, on the South by field of Louis Perera, and on the West by the property of A. Abraham Perera; containing in extent one acre three roods and two perches according to the survey and description thereof dated the 27th day of July, 1899, made by Charles Schwallie, Licensed Surveyor;

(e) All that half part or share of a field called Aswedduma Kumbura situated in the village Etul Kotte in Palle Pattu aforesaid and bounded or reputed to be bounded on the North by the high road, on the East by the canal, on the South by Kankanige Kumbura, and on the West by Wellaboda Kumbura; containing or reputed to contain in extent about one acre;

40 (f) One undivided half part or share of the field called Aswedduma Kumbura situated at Welikada aforesaid and bounded on the North by the high road, on the East by the edge of the river, on the South by the field belonging to Andris Appuhamy, and on the West by Wellaboda Kumbura; containing in extent about two bushels of seed paddy sowing extent;

(g) All that portion of the field called Wettakaiya-athekumbura situated in the village Etul Kotte aforesaid and bounded on the North by the field called Wellabodakumbura of Vitanage Andris

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

Kure, on the East by the other part of Welatantrige Juanis Boteju, on the South by the field of James Alwis Esquire, and on the West by the field called Mylange Kumbura of Vitanage Andris Kure; containing in extent three roods and thirty perches as per figure of survey thereof dated 10th October, 1878, made by H. M. Koelmeyer, Land Surveyor; and

(h) All that one-twelfth and the remaining eleven-twelfths of a portion of the field called Vattekeygawatte Pillawa situated at Welikada aforesaid and which said portion is bounded or reputed to be bounded on the North by the portion of the field called 10
Aswedduma Kumbura, on the East by the portion of the said field belonging to Davith Singho Appuhamy and others, on the South by the portion of the same field, and on the West by the other portion of the same field belonging to Cornelis Cooray; containing in extent three roods and thirteen and $\frac{23}{100}$ perches as per figure of survey dated twenty-first day of December, 1899, and made by Frederick Bartholomeusz, Surveyor.

2. All that field called and known as “Wetakeiyapotta Kumbura” *alias* “Wetakeiyagaha Kumbura”, situated at Etul Kotte in the Palle Pattu of the Salpiti Korale in the District of Colombo, Western Province, and formerly bounded on the North by the field of Kankanige family and others, on the East by Kotte Ela, 20
on the South by Don Manuelge Kumbura, and on the West by Witanage Kumbura and presently bounded on the North and West by the property of Mr. A. A. M. Saleem, on the East by the Kotte river or Kotte canal, on the South by Medilla belonging to the heirs of Wirasingha-atchige Don Jacolis, and containing in extent two acres two roods and twenty-five perches or more (A2. R2. P25.). M223/88.

3. All that allotment of land, buildings and premises called the Farm and containing in extent one acre one rood and thirty-eight 30
perches (A1. R1. P38.) and situated at Welikade in the Palle Pattu of Salpiti Korale in the District of Colombo aforesaid and bounded on the North by the road from Colombo to Kalapaluwawa, on the East by the remaining portion of ‘D’, on the South-east by the Pillewa and Heen Ela of Mr. D. C. Lewis, and on the South-west by Pelengahawatte of Muhandiramge Gabriel Gomis as per survey plan No. 915 dated 30th January, 1920, and made by James W. Amerasekera, Registered Licensed Surveyor and Leveller. M207/15. 40

The Schedule F above referred to.

All that land and premises bearing Nos. 76, 77, 78, 79, and 80 situated at Wilson Street and Nos. 7, 8 and 9 situated at Goat Street within the Municipality and District of Colombo, Western

Province; bounded on the North by the property of Marthinus Appu and Allis Appu, on the East by Goat Street, on the South by Wilson Street, and on the West by the house bearing No. 81; containing in extent eleven and sixty-one hundredth perches (11. 61/100) according to the figure of survey dated 27th May, 1890, made by Charles Schwallie, Surveyor. A110/6.

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

The Schedule G above referred to.

- 10 1. All that house and ground situated at Hill Street within the Municipality and in the District of Colombo, Western Province, and bearing assessment No. 753/36 bounded on the North by the garden of Daniel Appu, on the East by the Hill Street, on the South by the garden of Andris Mendis Mudaliyar, and on the West by the garden of Christoffel Pulle, which according to the town survey of 1869 is bounded as follows:—on the North by the property of Mrs. Stewart, No. 37, on the South by the property of Mrs. G. A. Dias, No. 35, on the East by Hill Street, and on the West by the property of Britto Pulle, No. 91 to 96, and contains in extent one rood and twenty-two square perches (A0. R1. P22.). A 153/144.
- 20 2. An allotment of land with the buildings thereon bearing assessment No. 799/17, situated at Old Moor Street within the Municipality and in the District of Colombo, Western Province; bounded on the North by premises bearing assessment No. 45 of Sinne Lebbe and premises bearing assessment No. 44 of C. R. Noordeen, on the East by premises bearing assessment No. 18 of A. L. M. Levina Marikar, on the South by Old Moor Street, and on the West by premises bearing assessment No. 16 of M. L. M. Ummal Hassena, containing in extent eight and twenty-six one-hundredths perches (A0. R0. P8 26/100.) according to the figure of survey thereof
- 30 No. 1,085 dated 21st March, 1921, made by James W. Amarasekera, Registered Licensed Surveyor and Leveller, which said premises are according to the title deeds described as follows:—
- (a) All that half part of a house and ground situated and lying in Old Moor Street within the Municipality and District of Colombo, Western Province, and bounded on the North by the garden of Marjee Umma, on the East by a drain, on the South by Old Moor Street, and on the West by the other part, containing in extent three and three twenty-fifth square perches (A0. R0. P3 3/25.) as per figure of survey thereof dated the 23rd July, 1829, and
- 40 (b) A half part of a house and ground situated and lying in Old Moor Street within the Municipality and District of Colombo, Western Province, and bounded on the North by the garden of Marjee Umma, on the East by the other part, on the South by Old Moor Street, and on the West by the house of Orunoor Pillai; containing in extent

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

three and three twenty-fifth square perches (A0. R0. P3 3/25.) as per figure of survey thereof dated the 4th August, 1823, authenticated by G. Schneider, Esquire, Land Surveyor-General, which said premises now form one property bearing assessment No. 17, Old Moor Street, Colombo. A 152/118.

3. All that allotment of land with the buildings constructed thereon bearing assessment No. 299/199, Sea Street and No. 15, Chekku Street, situated between Sea Street and Chekku Street within the Municipality and in the District of Colombo, Western Province, bounded on the North by the house of Mathes Rodrigo Yalayden, on the East by Chekku Street, on the South by the other part of Cornelis Pinto Aratchi, and on the West by Sea Street; containing in extent five and four one-hundredths square perches (A0. R0. P5 4/100.). A 141/228. 10

The Schedule H' above referred to.

1. All that defined allotment of land being the northern portion of premises bearing assessment No. 20, Silversmith Street, situated at Quarry Road in the New Bazaar Ward within the Municipality and District of Colombo, Western Province; bounded on the North by Quarry Road, on the East by premises bearing assessment No. 22 belonging to O. L. M. Abdul Majeed, on the South by the southern portion of premises bearing assessment No. 20 belonging to W. M. H. Muttu Rauther Natchia, and on the West by premises bearing assessment No. 11 belonging to A. L. M. Abdul Hamid; containing in extent twenty-eight and eighty-six one-hundredth square perches (A0. R0. P28 86/100) according to the figure of survey thereof bearing No. 1429 dated 19th January, 1924, made by A. R. Savundranayagam, Licensed Surveyor and Leveller. 20

2. All that allotment of land bearing assessment No. 16 situated at Silversmith Lane in Hultsdorf within the Municipality and District of Colombo, Western Province; bounded on the North by the premises bearing assessment Nos. 78, 79, and 80 on the East by land claimed by A. L. M. Abdul Hamid and O. L. M. Abdul Majeed, on the South by the portion of this land given for a Hindu Temple, and on the West by land claimed by M. J. David formerly of J. P. Alvares; containing in extent fourteen and eighty one-hundredth perches (A0. R0. P14 80/100) according to the Survey No. 1058 dated the 3rd January, 1921, made by J. W. Ameresekera, Licensed Surveyor. 30 40

3. All that allotment of land marked letter A in violet ink in the survey plan and description thereof bearing No. 2176 dated 8th January, 1910, and made by C. H. Frida, Licensed Surveyor, situated at Silversmith Lane in New Bazaar within the Municipality and District of Colombo, Western Province, and bounded on

the North by the Property of Ayacannoo Chetty, on the East by lot T of K. Muthu Karuppan Chetty and now of Subramaniam Chetty and a portion of this premises acquired by the Municipal Council, on the South by Silversmith Lane and on the West by lot B of M. Ramasamy formerly of Saravana Chetty; containing in extent eighteen and forty-four one hundredth perches (A0. R0. P18 44/100) according to plan No. 1509 dated the 17th April, 1919, made by M. G. de Silva, Fiscal's Licensed Surveyor.

Exhibits
No. R 5
Copy of Deed
No. 3954
24-3-26.
—contd.

- 10 4. All that allotment of land situated at New Bazaar within the Municipality and District of Colombo, Western Province; bounded on the North, West and East by land bearing assessment No. 16 claimed by Muniandy Chetty and others, and on the South by Silversmith Lane containing in extent six and thirty-two one-hundredth perches (A0. R0. P6 32/100).

The Schedule H² above refered to.

1. All that house and ground bearing assessment No. 21 situate at Silversmith Street within the Municipality and District of Colombo, Western Province; bounded on the North by Old Moor Street, on the East by premises No. 22 belonging to A. L. M. Abdul Hamid and O. L. M. Abdul Majeed, on the South by Silversmith Street, and on the West by premises bearing assessment No. 20 belonging to Wappoo Marikar Hadjar; containing in extent twenty perches and 87/100 of a square perch; which said premises have been previously described with different boundaries under title A 128/25.

2. All that allotment of land with the buildings thereon bearing assessment No. 22 situated at Silversmith Street in New Bazaar within the Municipality and District of Colombo, Western Province; bounded on the North by Old Moor Street, on the East by premises bearing assessment No. 23; belonging to the heirs of the late Muthusamy Ramalingam Chetty, on the South by Silversmith Street, and on the West by premises bearing assessment No. 21 belonging to Wappoo Marikar Hadjar; containing in extent twenty-one and seventy-one one-hundredth square perches (A0. R0. P21 71/100.) according to plan No. 749 dated 1st November, 1916, made by A. R. Savundranayagam, Licensed Surveyor and Leveller.

The Schedule I above referred to.

1. All that part of a house and ground now bearing assessment No. 23 with all the other buildings and rooms standing thereon situated at Silversmith Street within the Municipality and District of Colombo, Western Province; bounded on the North by the Government stone pit, on the East by property of Avoo Lebbe, on the South by Silversmith Street, and on the West by the property of Andris Naide; containing in extent twenty-four seventy-one

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

one-hundredth perches according to the figures of survey dated 27th January, 1830, duly authenticated by Captain G. Schneider, Surveyor-General.

2. All that portion of land with the several tenements standing thereon presently bearing assessment No. 24 situated at Silversmith Street aforesaid; bounded on the North by parts Nos. 5 and 6 now by Old Moor Street, on the East by Quarry Road, on the South by Silversmith Street, and on the West by part No. 9 now said to belong to Ramalingam; containing in extent twenty-two $\frac{77}{100}$ square perches according to survey dated 10th February, 1906, made by H. G. Dias, Licensed Surveyor; which said two premises are according to plan No. 713 dated 7th February, 1924, made by Geo. L. Schokman, Licensed Surveyor and Leveller, described as follows:— 10

Two contiguous allotments of land with the buildings thereon bearing assessment No. 23 and 24 now divided into three portions marked A and B bearing assessment Nos. 23 and 24, Silversmith Street, respectively and C bearing assessment No. 23, Quarry Road in New Bazaar Ward, within the Municipality and District of Colombo, Western Province; bounded on the North by Old Moor Street, now Quarry Road, on the East by Quarry Road, on the South by Silversmith Street, and on the West by the property of Andris Naide now bearing assessment No. 22; containing in extent one rood seven decimal thirteen perches (A0. R1. P7.13). 20

The Schedule J above referred to.

Two allotments of land in plan of 10th December, 1894, marked A and B with the buildings bearing assessment No. 101 situated at 1st Division, Maradana, within the Municipality and District of Colombo, Western Province, and bounded on the North by Skinner's Road South, on the South-east by the property belonging to Mohamed Ismail Mohamed Haniffa, on the South-west by the 1st Division, Maradana Road, and on the North-west by the portion of land No. 101A belonging to Uhanida Umma; and containing in extent one rood and twenty-six and $\frac{95}{100}$ perches as per figure of survey No. 732 dated the 7th October, 1918, made by J. W. Amerasekera, Licensed Surveyor. 30

The Schedule K above referred to.

All that and those the land, buildings, offices and premises bearing assessment No. 28 situated at Chatham Street in the Fort of Colombo within the Municipality and District of Colombo, Western Province of the Island of Ceylon, comprising the following allotment of land forming one property and which from their situation as respects each other can be included in one survey to wit:— 40

(a) All that house and ground situated at Chatham Street aforesaid, bounded on the North by the house of

Mr. Schroter, on the East by the house of Jan Paulis, on the South by Chatham Street, and on the West by the house of the late Mr. Andries, of Mr. Schroter; containing in extent eight square perches and eighty-four one-hundredths of a square perch (A0. R0. P8 84/100.) according to the figure of survey thereof No. 3,355 dated the 1st day of April, 1829, and duly authenticated by G. Schneider, Land Surveyor-General.

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

- 10 (b) All that house and ground situated and lying in Chatham Street aforesaid bounded on the North by the house of Daddy Parsee, on the East by the house of Captain Dickson, on the South by the aforesaid Street, and on the West by the house of Van Lo; containing in extent nine square perches and thirty-six one-hundredths of a square perch (A0. R0. P9 36/100.) according to the figure of survey dated the 22nd April, 1822, and authenticated by F. R. Reimere, District Surveyor.

The Schedule L above referred to.

- 20 All that divided western portion marked letter A in the survey plan dated 25th March, 1893, made by F. Bartholomeusz, Surveyor, of the land with the buildings standing thereon situated at Symonds Road in 2nd Division, Maradana, within the Municipality and District of Colombo, Western Province; bounded on the North by a portion of the same ground of Segoe Mura Lebbe Hadjie Marikar, on the East by Symonds Road, on the South by the property of Sinne Lebbe, and on the West by the lake; containing in extent thirty-one perches (A0. R0. P31.).

The Schedule M above referred to.

- 30 All that allotment of land with the buildings standing thereon bearing assessment No. 11, situated at Silversmith Street, within the Municipality and District of Colombo, Western Province; bounded on the North by the garden of Marikar Pulle Mapulle, since acquired by Government for a road, on the East by the garden of Pattiya Paulige Don Manuel, on the South by Silversmith Street, and on the West by another portion of land; containing in extent twenty-eight perches and 45/100 of a perch excluding therefrom however a portion marked lot A in the plan bearing No. 960 dated 21st August, 1919, made by A. R. Savundranayagam, Special Licensed Surveyor, the extent of ten perches and 64/100 of a perch
40 sold to Ahamado Lebbe Marikar Abdul Hamid and Oduma Lebbe Marikar Abdul Majeed by deed No. 1,085 dated 29th August, 1919, attested by M. R. Akbar of Colombo, Notary Public.

The Schedule N above referred to.

All that house and ground bearing assessment No. 13 Old Moor Street within the Municipality and District of Colombo, Western

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

Province bounded on the North by the house of Neyna Lebbe, on the East by the house of Slema Lebbe Marikar Mohamado Lebbe, on the South by Old Moor Street, and on the West by the house of Muttu Mira Koporal Neyna Marikar; containing in extent seven square perches and 29/100 of a perch which said house and ground are now described as an allotment of land with the buildings standing thereon bearing assessment No. 13 in Ward No. 195, Old Moor Street within the Municipality and District of Colombo, Western Province; bounded on the North by the house of Neyna Lebbe, now bearing assessment No. 119 of A. L. Abdul Careem, on the East 10 by the house of S. L. M. Mohamado Lebbe, now bearing assessment No. 14 of S. L. Asia Umma, on the South by the Old Moor Street, and on the West by the house of M. W. K. Naina Marikar, now bearing assessment No. 12 of S. M. Mohamado; containing in extent nine and three one-hundredth perches (A0. R0. P9 3/100.) as per figure of survey No. 507 dated 31st January, 1921, and made by G. L. Schokman, Licensed Surveyor.

The Schedule O above referred to.

1. All that house and ground bearing assessment No. 21 situate at Silversmith Street within the Municipality and District of Colombo, Western Province, bounded on the North by Old Moor Street, on the East by premises No. 22 belonging to A. L. M. Abdul Hamid and O. L. M. Abdul Majeed, on the South by Silversmith Street, and on the West by premises bearing assessment No. 20 belonging to Wappoo Marikar Hadjiar; containing in extent twenty perches and 87/100 of a square perch; which said premises have been previously described with different boundaries under title A 128/25. 20

2. All that allotment of land with the buildings thereon bearing assessment No. 22 situated at Silversmith Street in New Bazaar within the Municipality and District of Colombo, Western Province; bounded on the North by Old Moor Street, on the East by premises bearing assessment No. 23 belonging to the heirs of the late Muttusamy Ramalingam Chetty, on the South by Silversmith Street, and on the West by premises bearing assessment No. 21 belonging to Wappoo Marikar Hadjiar; containing in extent twenty-one and seventy-one one-hundredth square perches (A0. R0. P21 71/100.) according to plan No. 749 dated 1st November, 1916, made, by A. R. Savundranayagam, Special Licensed Surveyor and Leveller, and registered under title A 124/222. 30 40

The Schedule P above referred to.

1. All that eastern portion marked lot B with the buildings and plantations standing thereon now bearing assessment No. 1,292/21A together with the right of way three feet wide opened through the portion marked letter A from and out of three-fifth parts of the

10 allotment of land marked lot No. 1 called Ambagahawatta situated at Dematagoda within the Municipality and District of Colombo, Western Province, the said portion marked lot B is bounded on the North by the other part of the same garden, the property of Saibo Doray Samy Lebbe Marikar, East by a portion of the same land marked letter C belonging to Packeer Lebbe Mamman, South by the garden of Sinne Lebbe Cader Lebbe now of Peer Sinne Tamby, and West by the other part of the same garden marked letter A belonging to Assen Meera Lebbe Samsudeen, Pitche Tamby Assen Natchia and Assen Meera Lebbe Mohamado Cassim; containing in extent ten and 80/100 perches (A0. R0. P10 80/100.).

20 2. All that half part of the house and premises bearing assessment No. 74 now No. 81 situated at Messenger Street within the Municipality and in the District of Colombo, Western Province; bounded on the North by the high road to Grandpass, on the East by the property of Pooatchy Umma, on the South by the property of Sinne Lebbe and on the West by the other part marked letter B; containing in extent thirteen and a quarter square perches (A0. R0 P13 $\frac{1}{4}$.) according to the figure of survey dated the 25th day of August, 1877, made by A. Van Heer, Surveyor.

30 3. All that allotment of land with the buildings standing thereon bearing assessment Nos. 163 and 164, situated at Second Division, Maradana, within the Municipality and in the District of Colombo, Western Province, and which said allotment of land presently bearing assessment Nos. 1,352/163A9 and 1,351/164A9 is bounded on the North by the property of Isboe Lebbe Wappu Marikar, now premises bearing assessment No. 165 of Wappu Marikar Mohamado Usuph, on the East by the other part of this property bearing assessment Nos. 164/A10 and 163/A2 of Packeer Bawa Regina Umma, on the South by Maligakande Road, and on the West by part of this property bearing assessment Nos. 163/A8 and 164/A8 of Mohamed Ally; containing in extent two perches and eighty-four one-hundredth of a perch (A0. R0. P2 84/100.) as per figure of survey No. 523 dated 12th April, 1921, made by Geo. L. Schokman, Licensed Surveyor and Leveller.

40 4. All that allotment of land (in the plan dated 18th day of March, 1864, made by A. A. Anthonisz, Surveyor, described as a slip of land lot No. 2.) with the buildings standing thereon bearing assessment No. 79, situated at Vandermeijden's Polder, now known as Messenger Street, within the Municipal limits of Colombo in the District of Colombo, Western Province; bounded on the North-east by lot No. 3 belonging to Odoma Lebbe Marikar Neyna Marikar, on the South-east by the other part of this garden, on the South-west by the garden of Sinne Lebbe Saibo, and on the North-west by the road to pass Nakelgam; containing in extent twenty and 88/100 square perches which said premises are otherwise described as follows:—All that allotment of land with the buildings thereon bearing Municipal Assessment No. 79 situated at Messenger Street

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

in New Bazaar Ward within the Municipality and District of Colombo, Western Province; bounded on the North-west by Messenger Street, on the North-east by premises bearing No. 78 belonging to N. M. Mohamado Cassim Hadjar and N. M. Mohamado, on the South-east by premises bearing assessment Nos. 34 and 35 belonging to the trustees of the Suppramaniam Hindu Temple, Silversmith Street, and on the South-west by premises bearing assessment No. 80 belonging to I. L. M. Abdul Cader; containing in extent twenty perches and forty-two one-hundredths of a perch (A0. R0. P20 42/100.) as per figure of survey and description thereof No. 532 dated 25th January, 1914, made by A. R. Savundranayagam, Licensed Surveyor. 10

5. All that allotment of land shaded dark pink in the plan marked B with a house standing thereon bearing assessment No. 163 situated at Maligakanda Road within the Municipal limits of Colombo in the District of Colombo, Western Province; bounded on the North-east by the property of Isboe Lebbe Wappu Marikar, on the South-east by the other part marked letter C, on the South-west by Maligakande Road, and on the North-west by a part of the same land marked letter A; containing in extent three perches (A0. R0. P3.) according to the figure of survey dated 21st February, 1903, made by Charles Schwallie, Registered Land Surveyor, which said premises form a divided portion of an allotment shaded pink and marked lot No. 5 with the buildings standing thereon being a portion of premises bearing assessment No. 163 and 164 situated at Maligakande Road within the Municipal limits of Colombo in the District of Colombo, Western Province; bounded on the North-east by the property of A. L. Bawa Lebbe now of Isboe Lebbe Wappu Marikar, on the South-east by a part of the same land marked lot No. 6 in the plan, on the South-west by the Maligakande Road, and on the North-west by a part of the same land marked No. 4 in the plan; containing in extent nine perches and forty-eight one-hundredths of a perch (A0. R0. P9 48/100.) according to the survey plan No. 5 dated 24th March, 1897, made by F. Bartholomeusz, Surveyor. 20 30

6. All that house and ground No. 50½ now bearing assessment No. 75 situated at Messenger Street within the Municipality of Colombo in the District of Colombo, Western Province, and bounded on the North by the high road (now called Messenger Street), on the East by the property of Pieris Mohandiram, and on the South and West by the property of Villeyar Chetty Arunasalam Chetty; containing in extent twenty square perches and 83/100 of a perch; which said premises are according to a recent survey thereof No. 795 dated 3rd July, 1917, made by C. C. Wijetunga of Colombo, Special Licensed Surveyor, described as follows:—An allotment of land with the buildings thereon bearing assessment No. 78 situated at Messenger Street within the Municipality of Colombo in the District of Colombo, Western Province; bounded on the North by Messenger 40

Street, on the East by the property of Noordeen Hadjiar bearing assessment No. 77, on the South by the property of Suppramaniam Samy Kovil bearing assessment Nos. 34 and 35, Silversmith Street, and on the west by the property of Uduma Lebbe Marikar Abdul Majeed bearing assessment No. 79; containing in extent 20 perches (A0. R0. P20.) and presently described as follows:—

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

10 All that allotment of land with the buildings standing thereon bearing assessment No. 78, Ward No. 659, situated at Messenger Street within the Municipal and District of Colombo, Western Province; and bounded on the North by Messenger Street, on the east by premises bearing assessment No. 77 belonging to the estate of I. L. M. Noordeen Hadjiar, on the South by premises bearing assessment Nos. 34 and 35 belonging to the Hindu Temple, and on the West by premises bearing assessment No. 79 of O. L. M. Abdul Majeed; containing in extent twenty-one perches and sixty-two one-hundredths of a perch (A0. R0. P21 62/100.), according to the survey and description thereof bearing No. 2,295 dated 27th February, 1920, made by H. G. Dias, Surveyor and Leveller.

The Schedule Q above referred to.

20 1. An allotment of land with the buildings thereon bearing assessment No. 44A now No. 3,564 situated at Tanque Salgado at Modera in Mutwal Street, Kotahena Ward, within the Municipality and District of Colombo, Western Province; bounded on the North-east by the premises bearing assessment No. 3,565/44 formerly of S. L. Dona Maria Hamine and J. A. Perera and now belonging to Benedict Perera, on the South-east by premises bearing assessment No. 20, Second Marshall Street, formerly of M. D. P. Jayasundera and Mrs. Salgado and now belonging to Stephen Silva, on the South-west by premises bearing assessment No. 3,563/43, formerly of S. L. Don Philippu and Mrs. Salgado and now belonging to Stephen Silva, and on the North-West by Mutwal Street, formerly known as Modera Street; containing in extent five and eighteen one hundredth perches (A0. R0. P18/100.) according to the figure of survey No. 1,054 dated 26th day of June, 1920, made by A. R. Savundranayagam, Licensed Surveyor.

40 2. An undivided five-sixth part of all that allotment of land called Kongahawatte bearing assessment No. 3,563/44 situated at Modera in Mutwal Street in Kotahena Ward within the Municipality and District of Colombo aforesaid; bounded on the North-east by Second Marshall Street formerly known as Elie Lane, on the South-east by premises bearing assessment No. 20 (Second Marshall Street) belonging to Stephen Silva and formerly of M. D. P. Jayasundera Appuhamy, on the South-west by premises bearing assessment No. 3,564/44 belonging to O. L. M. Abdul Majeed and A. L. M. Abdul Hamid, formerly of Batapolage Dona Carlina,

Exhibits
No. R 5
Copy of Deed
No. 3954
24.3.26
—contd.

and on the North-West by the high road called Mutwal Street leading to Mutwal; containing in extent seven and fifty-four one-hundredth perches (A0. R0. P7 54/100.) according to the figure of survey No. 1,189 dated the 17th day of October, 1921, made by A. R. Savundranayagam, Special Surveyor.

3. All that lot marked A in the plan thereof being one-half part of the house and garden bearing assessment No. 43 and tinted red, situated at Mutwal within the Municipality and District of Colombo, Western Province; bounded on the North-east by the other half part of the same garden marked BB in the plan and tinted purple and allotted to Wijeyeratne Mohandirange Mathes Fernando, on the South-east by the other part of the same garden belonging to Sannaswatte Liyanage Don Andris, presently of W. G. de Alwis, on the South-west by the garden of Colombage Bastian Fernando, and on the North-west by the high road; containing in extent six and thirteen-fiftieth square perches (A0. R0. P6 13/50.) according to the survey dated 11th January, 1900, made by D. D. Samarakone, Licensed Surveyor. 10

4. An undivided one-sixth part or share of all that allotment of land called Kongahawatte bearing assessment No. 3,563/44, situated at Modera Street in Mutwal Street in Kotahena Ward within the Municipality and District of Colombo, Western Province; bounded on the North-east by Second Marshall Street, formerly known as Elie Lane, on the South-east by premises bearing assessment No. 20 (Second Marshall Street) belonging to Stephen Silva and formerly of M. D. P. Jayasundera Appuhamy, and on the South-west by premises bearing assessment No. 3,564/44, belonging to O. L. M. Abdul Hamid, formerly of Batapolage Dona Carlina, and on the North-west by the high road called Mutwal Street leading to Mutwal; containing in extent seven and fifty-four one-hundredth perches (A0. R0. P7 54/100.) 30

Signed in the presence of us :

Signature of Koonna Mana Navanna Soona Pana Suppramaniam Chetty.

Sgd. in Tamil.

Signature of Seyna Seena Navanna Kandasamy Chetty.

Sgd. in Tamil.

Sgd. B. N. LYE.

(Attestation omitted).

Sgd. C. T. KANDAIYA,
Notary Public. 40

Date of Attestation.
24th March, 1926.

(SEAL)
Sgd. C. T. KANDAIYA,
Notary Public.

No. R 31. Statement of Change of Business Names

Exhibits
No. R 31
Statement of
Change of
Business
Names 31.3.26.

R 31.**BUSINESS NAMES ORDINANCE (CAP. 120).****FORM R.B.N. 6.****Statement of Change under Section 7**

In pursuance of the provisions of Section 7 of the Business Names Ordinance (Cap. 120), the following statement of a change which was made or occurred in the particulars registered in the Office of the Registrar of Business Names for the Western Province under
10 Number 708 on the 16th day of April, 1925, in respect of Kuna Mana Navenna Suna Pana (K.M.N.S.P.) is made by us/me the undersigned.

1. Nature of Change: Natchiappa Chetty Suppramaniam Chetty has ceased to be a member of the firm.

2. Date of Change: 24th March, 1926.

Dated this 31st day of March, 1926.

To the Registrar of Business Names for the Western Province.

Signature or Signatures:

20

(Sgd.) In Tamil (N. Subramaniam Chetty).

Attorney Per Pro. K. M. S. P. Supperai-
maneian Chetty.

L. Ramanathan Chetty.

(Sgd.) In Tamil.

Per Pro. K. M. N. S. P. Nathiyappa Chetty
L. Ramanathan Chetty.

Exhibits
R. 32
Certificate of
Registration
of an Individual
3.4.36.

**No. R 32. Certificate of Registration of an Individual.
R 32.**

BUSINESS NAMES ORDINANCE (CAP. 120).

CERTIFICATE OF REGISTRATION OF AN INDIVIDUAL.

Certificate No. 708.

I hereby certify that the following statement, made in pursuance of the Business Names Ordinance (Cap. 120), was registered in the Office of the Registrar of Business Names for the Western Province, under number 708 on the Ninth day of April, 1926, pursuant to a statement of change furnished under section 7.

10

1. The Business Name: KUNA' MANA NAVENNA SUNA PANA (K.M.N.S.P.)
2. The General Nature of the Business: Money Lending.
3. The Principal Place of the Business: No. * 247 Sea Street, Colombo.
(Sgd.) E. R. de S.
4. The Date of the commencement of the Business, if the Business was commenced after November 7, 1918: _____
5. Any other Business Name or Names under which the Business is carried on: _____
6. The present Name in full of the Individual: Natchiappa Chetty, son of Suppramaniam Chetty.
7. Any former name (in full) of the Individual: _____
8. The Nationality of the Individual: British.
9. The Nationality of Origin of the Individual, if not the same as the present Nationality: _____
10. The usual Residence of the Individual: Sembanoor, Ramnad District, South India.
11. The other Business Occupation (if any) of the individual: _____

20

30

Office of the Registrar of Business Names for the Western Province.

Dated at Colombo this 9th day of April, 1926.

Sgd. A. W. SEYMOUR,
Registrar of Business Names for the Western Province.

* Consequent on re-assessment.

Sgd. E. R. de Silva,
Asst. Registrar.
14 6. 1934.

No. A 31a. Translation of A 31.**A 31a.**
TranslationExhibits
No. A31a
Translation of
A31. 2.10.26.

Seal	Sivamayam	Sembanur
K.M.N.S.P.	18. 10. 26	KM. N. SP.

Colombo,

2nd Ayypasi (October) in the Year Adchaya Ramanathan writes:

10 On receipt of this letter you will come to know all the news of this place. As regards the news there, received letters Nos. 49 and 50 written on Avani (August) 26th and Puraddathy (September) 27th.

We will take care not to lend to O. L. M. Abdul Majeed over and above the sum of Rs. 164,950 which is now due on the Bond. We will also take care to get as soon as possible the balance interest due on his on Demand.

20 On the balance of Rs. 115,500 due on M. H. M. Sulaiman Bros. cash account, they have paid Rs. 12,500 two days ago. Now there is Rs. 103,000 as balance due on their cash account. It seems that they have about 60,000 lbs. of rubber in stock and that in the said business they have sustained loss over Rs. 50,000 to Rs. 60,000.

We will also take care to obtain on demand for the balance due on D. C. Senanayake's cash account.

KL. K's Attorney Naina Muhamadu has not yet come. They say that reply is received that he would come as soon as possible. We have received Rs. 50 recently on account of the balance due on his unsecured debt.

30 The current month coupons were sold with rubber to C. W. Mackie & Co. at the price of 1.07. Thereafter the price came down to 1.04. Now the price is 1.12.

We will take care to obtain renewals of On Demand from Khalid and Zubair.

I am now half healthy. Yet without perfect health, sometimes I am healthy and sometimes unhealthy.

It will be very good for me if you or KR can conveniently come here and relieve me enabling me to go to my native place and return in a month's time. Two permits are sent herewith.

For other matters, we will write and send on receipt of the letter from there.

**No. A 6a. Translation of Page 74 of A 6.
A 6a.**

Exhibits
No. A6a
Translation of
Page 74 of A6
March 1925,
1926.

Page 74 Ledger, Colombo Translation K. M. N. S. P.
" By Grace of Siva "

Debit and credit account of Kuna Mana Nawanna Soona Pana
with the firm of Colombo Kona Mana Nawanna Soona Pana.

<i>Year</i> 1925		<i>Particulars</i>	<i>Debits</i>		<i>Credits</i>	
<i>Month</i>	<i>Date</i>		<i>Rs.</i>	<i>c.</i>	<i>Rs.</i>	<i>c.</i>
March	.. 25 ..	By credit as at date hereof by transfer of the $\frac{1}{4}$ share belonging to you in the Kandawala Estate by Deed No. 3717 dated March 26, 1925, attested by C. T. Kandaiya, Notary Public, executed in the name of Kuna Mana Nawanna Soona Pana Natchiappa Chettiar to bear interest at $\frac{3}{4}$..				10
					.. 15,000 0	
		1926				
March	.. 12 ..	By credit as on 20th instant interest at the rate of $\frac{3}{4}$ from March 26, 1925, up to March 19, 1926, as per interest bill Rs. 1,327.50 credit is to be made for the unexpired period 14 days less additional interest at $\frac{3}{4}$ Rs. 4.64..			.. 1,322 86	20
		To debit simultaneously as on 20th instant transferred to the account of Nawanna Soona Pana Nawanna Natchiappa Chettiar ..	16,322	86		30
Total debit and credits closed.						

" By Grace of Siva "

Debit and Credit of Nawanna Soona Pana Nawanna Natchiappa Chettiar.

<i>1925</i>		<i>Rs. c.</i>		<i>Rs. c.</i>	
March	.. 26 ..	To debit as per Deed of transfer No. 3717 written and taken on this date attested by Mr. C. T. Kandaiya, Notary Public, transferring thereby the $\frac{1}{4}$ share of Kandawala Estate which is in the name of Kuna Mana Nawanna Soona Pana for interest at $\frac{3}{4}$ in favour of Kuna Mana Nawanna Soona Pana Natchiappa Chettiar ..	15,000	0	40
	27 ..	By credit for interest at $\frac{3}{4}$ transferred from old account for 1st April, 1925 ..		.. 685,846	10
		1926			
		Total less debits over credit ..		.. 670,846	10

			<i>Rs. c.</i>	Exhibits No. A6a Translation of Page 74 of A6 March 1925, 1926.— <i>contd.</i>
<i>1926</i>				
February	10 ..	By credit as on 16th instant in respect of the entry made of the over credit on the old account ..	.. 41,006 56	
		By credit also as on this date in respect of the entry made of the amount which was over credited in the debit and credit account of the firm ..	.. 23,398 23	
10	March .. 12 ..	By credit as on 20th instant next being transfer of the credit balance of Kuna Mana Nawanna Soona Pana account ..	.. 16,322 86	
		By credit also as on March 26, 1926, interest at $\frac{3}{4}$ from March 26, 1925, up to March 25, 1926, as per interest bill Rs. 60,222.46 $\frac{1}{2}$ out of less interest for further unexpired 8 days at $\frac{3}{4}$ a sum of Rs. 120.44 $\frac{1}{2}$ ..	.. 60,102 02	
20			.. 60,102 02	
		Total credit for March 26, 1926, principal and interest for 12 months at the rate of $\frac{3}{4}$ ..	.. 811,675 78	

Translated by
Sgd. Illegibly.

Sworn Translator of the District Court of Colombo.
8th February, 1941.

No. A 6b. Translation of Page 285 of A 6.
A 6b.

30	<i>A 6b</i>	<i>Translation</i>	<i>Ledger Page 285</i>
	Colombo	“ By Grace of Siva ”	K. M. N. S. P.

No. A6b
Translation of
Page 285 of A6
March 1926.

Debit and credit of Kuna Mana Nawanna Soona Pana account
with the firm of Colombo Kuna Mana Nawanna Soona Pana.

			<i>Debit</i>	<i>Credit</i>
			<i>Rs. c.</i>	<i>Rs. c.</i>
<i>Year</i>				
<i>Month</i>		<i>Particulars</i>		
<i>1926</i>				
March	.. 24 ..	By credit as per deed of Assignment No. 3954 dated on this date attested by Mr. C. T. Kandaiya, Notary Public ..		.. 152,250 00
40	30 ..	To debit for the earlier credit ..	.. 152,250 00	
		Total debit and credit closed.	_____	_____

Exhibits
Translation of
Page 265 of A6
March 1926.
—contd.

		Debit and credit of Kuna Mana Nawanna Soona Pana Nawanna account.		
		1926		Rs. c. Rs. c.
March	.. 24 ..	To debit as per Deed of Assignment written and taken on this date bearing No. 3954 attested by Mr. C. T. Kandaiya, Notary Public, from Soonā Pana	..	152,250 00
	30 ..	By credit for earlier debit	..	.. 152,250 00

Translated by
Sgd. Illegibly.

10

Sworn Translator of the District Court of Colombo.
8th February, 1941.

No. A50
Indian Income
Tax Notice
1926-1927.

No. A50. Indian Income Tax Notice.
A50.

Assessment under Section 23 (9).

Year of Account—Tamil year and official year.

Year of assessment—1926-27.

Notice of demand under section 29 of the Indian Income Tax Act, 1922.

Messrs. Suluamanian Chettiar and son, Natchiappa Chettiar, 20
Sembanur.

1. You have been assessed for the current year to income tax amounting to Rs. 1,240—13—0 as shown in the copy of the assessment form overleaf.

You are required to pay the amount of Rs. 1,240—13—0 on or before the 15.10.1926 to the Sub-Treasury Officer at Tirupattur, when you will be granted a receipt.

If you do not pay the tax on or before the date specified above, you will be liable to a penalty which may be as great as the tax due from you.

30

If you are dissatisfied with your assessment you may present an appeal under sub-section (1) of section 30 of the Indian Income Tax Act, 1922, to the Assistant Commissioner of Income Tax at Madura within 30 days from the receipt of this notice, on a petition duly stamped in the form prescribed under sub-section (3) of section 30 and verified as laid down in that form.

The appropriate chalan should be sent along with the amount paid. Should you lose the chalans attached to this notice of demand, it will be necessary for you to apply to the Income Tax Officer for copies of fresh chalans.

Exhibits
No. A50
Indian Income
Tax Notice
1926-1927.
—contd.

If you remit the demand by money order, you should send it to the Sub-Treasury Officer, Tirupattur, and should state on the money order form that the payment is on account of income tax.

Sgd. Illegibly.

Income Tax Officer.
Second circle.

10

Dated 31.8.1926.

(Place) Karaikudi.

Intld.

31.8.26.

ASSESSMENT FORM

Assessment for 1926-27

District or area: Karaikudi Second Circle.

Name of Assessee: Suluamanian Chettiar.

Address: Suluamanian Chettiar and son, Nachiappa Chettiar.

20	Serial No.	Detailed sources of Income	Amount of income		Tax deducted at source		Remarks
			Rs.	As.	Rs.	As.	
	1.	Salaries ..	..			
	2.	Interest on Securities ..	..			
	3.	Property ..	200				
	4.	Business ..	25,653				
	5.	Profession ..	..			
	6.	Other sources ..	..			
			Rs.	As.	Rs.	As.	
30	(i)	Total income ..			25,853	M.	
	(ii)	Deduction on account of provident fund, insurance premia, &c. ..					
	(iii)	Deduct sums received from a firm the profits of which have been charged to tax ..	6,000				
	(iv)	Deduct amount of interest from tax-free securities of the Government of India of a local Government ..					
40	(v)	Income now to be taxed ..			19,853	—..	
	(vi)	Rate at applicable 12 pies per rupee ..					
	(vii)	Amount of tax ..			1,240	13..	

Exhibits
No. A50.
Indian Income
Tax Notice
1926-1927
—contd.

Serial No.	Detailed source of Income	Amount of Income		Tax deducted at source		Remarks
		Rs.	Α.	Rs.	Α.	
(viii)	Deduction under section 17 ..					
(ix)	Amount of deductions at source from salary of interest on securi- ties for which credit is given under section 18 (5) ..					
(x)	Abatement on account of dividends (at pies per rupee) ..					10
(xi)	Abatement on account of income from a registered firm (at pies per rupee) ..					
(xii)	Nett amount of tax (or refund) ..			1,240	13..	
(xiii)	Penalty under section 28 (or section 25 (2)) ..					
(xiv)	Total sum payable (in figures as well as in words) ..			1,240	13..	

Rupees one thousand two hundred and forty and annas thirteen only. 20

Sgd. Illegibly.
Income Tax Officer.

Dated 31.8.1926.

No. A32a
Translation of
A32 30.2.27.

**No. A 32a. Translation of A 32.
A 32a.**

No. 98

With the help of Sri Meenadchy
K. M. N. S. P., Colombo.

Sivamayam

Sembanur

13.3.27.

KM. N. SP. 30

30th day of Masi (February) in the year Adchaya.

Ramanathan writes:

You will come to know the news of this place on receipt of this letter. As regards the news there, received the letter bearing No. 57 written on the 24th instant.

Now O. L. M. Majeed says that as far as the encumbrances were looked into, they are in order and that he will within four days look into the balance and adjust. We will try to get in the same manner. We will also try to get from Majeed a Bank Note for Rs. 3,000 and Rs. 1,000 in cash in respect of the balance sum of Rs. 4,000 due on 3/4th interest. He has already been asking for

40

the payment of Rs. 5,000 due on his mortgage. We have said that we cannot pay as interests are in arrears. Since then we asked for note for the balance interest. He had been telling to wait until the man comes to open up new account. When we ask him now he says today and tomorrow. We will as soon as possible try to get Rs. 1,000 in cash and Note for the balance Rs. 3,000. We will get the balance interest Chittai and enter it and having made the Balance Sheet deliver over to KR. We will also deliver over to KR the handwritten letters relating to the aforesaid persons.

Exhibits
No. A32a
Translation of
A32 30.2.27.
—contd.

10 No reply is received till this date to the letter written to Government in connection with the Estate.

Attempt was made to amicably recover from KL.K. but they say to accept Rs. 50, Rs. 100 and withdraw the action. We said that we will accept if the principal and costs save the interest were paid, to which they disagreed and say that it is not convenient for them now. I will accept if the principal and costs of action were paid, otherwise I will as far as I can take further steps.

20 A. Abdul Rahmaṅ is informed of what you wrote about Kalid. He says that if he is not satisfied with the manner Kalid conducts his business, he will inform us to immediately obtain the money and that he himself will take the trouble to see that the money is recovered. We will see that the On Demand account is entered up in the new account.

As we have written to Pavundothy and Rangoon to send remittance before 20th March and as soon as the same is received will adjust.

We will see to get from Avoo Lebbe Marikar in exchange of On Demand dated 18th March and that particulars of date of the previous On Demand are inserted in the new On Demand.

30 We will send copy of S. S. RM's account and Balance Sheet.

Other matters we will write to you on perusal of letter from there.

Sgd. Ramanathan Chetty.

No. A 52. Indian Income Tax Assessment.

No. A 52.

Income Tax Department

F No. 775/27-28

Ramnad

District: Karaikudi II Circle.

Dated 10th October, 1927.

No. A52 Indian
Income Tax
Assessment
1927-1928.

- 40
- (1) Year of assessment 1927-28.
 - (2) Name of Assessee (with complete address): K. M. N. S. P. Subrahmanyam Chettiar and son, Sembanur.
 - (3) Status—(whether individual, registered or unregistered firm, Hindu undivided family, company or other association of individuals): Hindu undivided family.

Exhibits
No. A52
Indian Income
Tax Assessment
1927-1928.
—contd.

- (4) Sources of income with exact nature of business: Property, money lending business at headquarters, Colombo, and joint money lending business at Paungdothi and Kuala Lumpur.
- (5) Branches:—
- (a)
- (b)
- (c)
6. Shares in (a) registered and
(b) unregistered firms. A. R. N. S. P. firm, Paungdothi. 10
7. Partners—(a) names with shares.
(b) are they separately assessed?
8. Income returned: Rs. 200 from property, Rs. 20 from headquarters, Rs. 24,501-15-9, remittances from Colombo, share income from Paungdothi—not known.
9. Accounts—(a) Books produced: Day book extracts for Colombo sole shop and day book and ledger for the Kuala Lumpur firm and for business at headquarters. 20
(b) Method of Accounting: Cash and mercantile basis.
(c) Accounting period: Akshaya for Kuala Lumpur and 1926-27 for Colombo and headquarters.
10. Section and sub-section under which assessment made: 23 (3).

ASSESSMENT ORDER

Property: Last year's figure Rs. 200 will be repeated. 30
Business (a) headquarters: The income of Rs. 20 returned agrees with the accounts produced and is accepted.

Colombo Sole Shop

	Rs.	A.	P.	
The extracts show the following remittances:				
Remittance to Oor, as returned ...	24,501.	15.	9	
Add—remittance by debit to Rokka Chittai a/c ...	244.	6.	6	
By debit to charges a/c payment to the assessee in cash ...	26.	0.	0	40
Amt. remitted for payment of income tax ...	1,245.	0.	0	
Amt. paid for Mahasivastri Abhishekam ...	100.	0.	0	
	26,117.	6.	3	

The day book extracts for the old agency at Colombo show also that on 14th April, 1926, Rs. 25,000 was remitted to the assessee's partnership firm at Paungdothi in Burma. On 16th March, 1927, Rs. 26,914 was got back at Colombo from the firm. The assessee's agent contends that the amount remitted to Paungdothi should not be treated as remittances of profits from Colombo, as it was remitted in the usual course of business between his Colombo shop and his Paungdothi firm. He agrees however that if at all Rs. 1,938/15/3 representing the interest on amounts at credit of the Colombo shop might be taken as income accrued to the assessee in British India. The Paungdothi firm is said to have been started only about two years ago. The assessee has got in his Colombo shop over 10 lakhs of rupees comprising his entire capital and the accumulated profits earned in the shop. Any remittances from Colombo to Paungdothi firm, have therefore, to be treated as having been made from the available profits in order to finance the new business at Paungdothi in which the assessee is a partner. It is not denied that there were sufficient profits available for remittances from Colombo. I am of opinion that the transaction is not to be regarded as one in the mere course of business between the two places and that the sum of Rs. 25,000 is taxable as remittance of profits irrespective of the subsequent withdrawal of money from the Paungdothi firm at the close of the year of account.

Total remittances from Colombo together with interest accrued in Burma then amount to Rs. 53,055.

(c) *Kuala Lumpur*

Day book and ledger produced show that the business was closed on the 30th Panguni of Krodana. There was a cash balance of \$451.90 on the above date which has not been accounted for. I estimate half of this sum as utilised by the agent for travelling expenses and the other half as brought to British India. At 155 exchange, the rupee value is Rs. 250 out of which assessee's share is Rs. 75. This will be taxed as remittance of profits to the assessee. The agent has no objection.

Share Income

Subject to communication from Burma, the assessee's share of profits in the Paungdothi firm will, for purposes of rate be estimated as Rs. 10,000.

The total income is Rs. 63,350 and the taxable income is Rs. 53,350.

Tax at 18 pies in the rupee is Rs. 5,001/9/0.

Sgd. Illegibly.
Income Tax Office.
Second Circle.
11th October, 1927.

Exhibits
No. A52
Indian Income
Tax Assessment
1927-1928.
—contd.

Exhibits
No. A51
Indian Income
Tax Notice
1928-1929.

No. A 51. Indian Income Tax Notice.

A 51.

Sec. 23 (3)

Year of Assessment.

Notice of demand under section 29 of the Indian Income Tax Act, 1922.

To:

Subramaniam Chettiar & Son, Sembanur.

1. You have been assessed for the current year to income tax amounting to Rs. 4,728.15, as shown in the copy of the assessment form overleaf. 10

2.

3. You are required to pay the amount of Rs. 4,728.15 on or before the 15.12.28 to the Sub-Treasury Officer at Tirupattur, when you will be granted a receipt.

4. If you do not pay the tax on or before the date specified above, you will be liable to a penalty which may be as great as the tax due from you.

5. If you are dissatisfied with your assessment you may present an appeal under sub-section (1) of section 30 of the Indian Income Tax Act, 1922, to the Assistant Commissioner of Income Tax at Madura within 30 days from the receipt of this notice, on a petition duly stamped in the form prescribed under sub-section (3) of section 30 and verified as laid down in that form. 20

* * * *

6. The appropriate chalan should be sent along with the amount paid. Should you lose the chalans attached to this notice of demand, it will be necessary for you to apply to the Income Tax Officer for copies of fresh chalans.

7. If you remit the demand by money order, you should send it to the Sub-Treasury Officer, Tirupattur, and should state on the money order form that the payment is on account of income tax. 30

Sgd. Illegibly.

Income Tax Officer.

Dated 31.10.1928.

Intld:

(Place) Karaikudi.

31.10.28.

ASSESSMENT FORM
(ASSESSMENT FOR 1928-29)

Exhibits
No. A51
Indian Income
Tax Assessment
1928-1929.

District or Area : Karaikudi II Circle.

Name of Assessee: SUBRAMANIAM CHETTIAR & SON.

Address : Sembanur.

Serial Number	Detailed sources of income	Amount of Income		Tax deducted at source	Remarks
		Rs.	c.		
10	1. Salaries ..	..	—	
	2. Interest on securities ..	..	—	
	3. Property ..	..	200 0		
	4. Business ..	..	50,242 0		
	5. Profession ..	..	—	
	6. Other sources share income ..	..	10,000 0		
				<i>Rs.</i> <i>c.</i>	<i>Rs.</i> <i>c.</i>
	(i) Total income ..	..	..		.. 60,442 0
	(ii) Deduction on account of Provident Fund, insurance, premia, etc. ..	..	..		.. —
20	(iii) Deduct sums received from a firm the profits of which have been charged to tax ..	..	10,000 0		
	(iv) Deduct amount of interest from tax-free securities of the Government of India or of a local Government ..	..	..	—
	(v) Income now to be taxed ..	..	..		.. 50,442 0
	(vi) Rate applicable 18 pies per rupee ..	..	..		.. —
	(vii) Amount of tax ..	..	..		.. 4,728 15
	(viii) Deduction under section 17 ..	..	..		.. —
30	(ix) Amount of deductions at source from salary or interest on securities for which credit is given under section 18 (5) ..	..	..		.. —
	(x) Abatement on account of dividends at pies per rupee) ..	..	..		.. —
	(xi) Abatement on account of income from a registered firm (at pies per rupee) ..	..	..		.. —
	(xii) Net amount of tax ..	..	..		.. 4,728 15
	(xiii) Penalty under section 28 (or section 25 (2) ) ..	..	..		.. —
40	(xiv) Total sum payable (in figures as well as in words) ..	..	..		.. 4,728 15
	Rupees Four thousand seven hundred and Twenty-eight and cents fifteen only.				

Sgd. Illegibly.
Income-tax Officer.

Dated October 31, 1928.

No. A 53. Indian Income Tax Assessment.

A 53.

Income Tax Department.

F 775. Ramnad District: Karaikudi II Circle.

Dated 26th October, 1928.

1. Year of assessment: 1928-29.
2. Name of Assessee (with complete address): K. M. N. S. P. Subrahmanyan Chettiar (M. R. Ry), Sembanur.
3. Status—(whether individual, registered or unregistered firm, Hindu undivided family, company or other association of individuals): Hindu undivided family. 10
4. Sources of income with exact nature of business: Property, money lending at headquarters and Colombo and joint money lending business at Paungdothi and Sungumbar.
5. Branches:—
 - (a)
 - (b)
 - (c)
6. Shares in 20
 - (a) Registered and
 - (b) Unregistered Firms: A. R. N. S. P. Paungdothi.
7. Partners—
 - (a) names with shares.
 - (b) are they separately assessed?
8. Income returned: Rs. 200 from property, loss of Rs. 215 from headquarters and Rs. 8,721-10-6 remittance from Colombo.

9. Accounts—

- (a) Books produced. Day book and ledger in Cadjan for headquarters and day book copies for Colombo and Sungumbar.
- (b) Method of Accounting: Cash and mercantile basis combined.
- (c) Accounting period: *Prabhava* for headquarters and Sungumbar and 1927-28 for Colombo.

Exhibits
No. A53
Indian Income
Tax Assessment
1928-1929
—contd.

10. Section and sub-section under which assessment made:
23 (3).

ASSESSMENT ORDER

Property: The authorised agent says there was no change. The income will be taken as Rs. 200 as in last year.

Business—Headquarters.

The loss of Rs. 215 returned agrees with the books and is accepted.

Colombo K.M.N.S.P. Shop

The day book copies produced show the following remittances:

- 20 (a) To the debit of Oor Rs. 5,661.13.6. This item is included in the remittance of Rs. 8,721.10.6 returned.
- (b) To the debit of Oor. Amount paid for hundi given by the assessee on account of sridanam for his daughter Rs. 4,124.10.6.
- (c) Amount remitted for payment of income tax Rs. 5,045.0.0.
- (d) Remittance to Paungdothi firm 30,000.0.0.

ITEM B

- 30 The agent contends that this item should not be treated as a remittance for the reason that though the hundial was drawn in British India payment therefor was made only in Colombo from the Colombo shop. The effect of the transaction is to reduce the profits of the Colombo shop to the extent of the amount of the hundi and to correspondingly reduce the assessee's liability to his daughter or to his son-in-law in whose favour the hundi was drawn. This is clearly a constructive remittance.

Exhibits
No. A58
Indian Income
Tax Assessment
1928-1929.
—contd.

ITEM (D)

The authorised agent contends that only Rs. 3,059.13.0 out of this item is liable to be taxed as the balance of Rs. 26,944 was a debt owed by the assessee to his Paungdothi firm. He says that the remittance of Rs. 25,000 made from Colombo to the Paungdothi firm on 14.4.1926 has been treated by him as a remittance of profits to headquarters in accordance with the decision of the Department in connection with the assessment for 1927-28 though it was meant at first only as a loan to the partnership business at Paungdothi. He argues, therefore, that the counter remittance of Rs. 26,944 made by the Paungdothi firm to Colombo on 16.3.1927 becomes a loan advanced by the Paungdothi firm to Colombo and should set off against the remittance of Rs. 30,003.13.0 (Rs. 30,000 being the remittance and Rs. 3.13.0 telegraphic charges) made in the accounting year and the balance of Rs. 3,059.13.0 alone is taxable. In order to dispose of this objection, it is only necessary to ascertain whether according to the assessee's books there was any balance owed by Colombo to the Paungdothi firm on or prior to 20.4.1927 on which date the remittance was made. The books of the Colombo shop for both the old and the new agencies do not show any such balance. The adjustments made by the assessee in regard to the remittance of Rs. 25,000 on 14.4.1926 in pursuance of the decision of the Department that it was a remittance out of profits were only on 10.3.1928 and can, if at all, affect only the transactions subsequent to 10.3.1928. As it is not denied that there were sufficient profits, I hold that all the four items are taxable.

Interest on loans advanced to N.V.E.N. shop, Madras

The copies of account of the N.V.E.N. shop, Madras, with the assessee's Colombo shop filed in connection with the proceedings under section 34 for 1927-28 show that at the beginning of the year of account 1927-28, the N.V.E.N. shop, Madras, owed Colombo two sums of Rs. 72,538.14.6 and Rs. 18,420.5.9 respectively. The interest on these that arose in British India in the year of accounts is taxable under section 4 (1). According to the account copies Rs. 5,626.6.6. was the interest credited to the assessee on the former sum on 3.3.1928. No adjustment of interest was made in respect of Rs. 18,420.5.9. 10½% being the stipulated rate of interest, Rs. 1934 will be taken as the interest that arose in British India. The aggregate interest chargeable is then Rs. 7,560.

Sungumbar S.P.N.S.P. (Joint). This was started newly on the 21st Vaikasi of Prabhava. The day book copies produced do not show any remittance in the year of account.

Share income in Paungdothi A.R.N.S.P. Firm

Subject to communication from the Income Tax Officer, Pegu, I estimate the share profits as Rs. 10,000.

Total income is Rs. 62,591 and the taxable income is Rs. 52,591.
Tax at 18 pies in the rupee is Rs. 4,930.7.0.

Exhibits
No. A58
Indian Income
Tax Assessment
1928-1929
—contd.

(Sgd.) Illegibly,
Income Tax Officer.
26. 10. 28

No. A 26a. Translation of A 26.

10

A. 26a.

No. A26a
Translation of
A26 1929.

Translation

No. 43 Sivamayam K. M. N. S. P.
K. M. N. S. P. Colombo.
Sembanur.

12th day of Puraddathy (September) in the year Sukkila, 1929.

This matter written to Ramanathan. Now you will know on receipt of this letter from here and letter No. 42 of the 5th. Received from there letters Nos. 38 and 39 of the 6th and 7th and enclosed thereon a schedule to obtain money from Savanna of Karaikudi Rs. 1,000.

20

Now, received money on 1,000 rupees Hundial, Ledger must be produced for the purpose of Income Tax and for that 6th October has been fixed. Therefore on the date of receipt of this, send here our new and old ledgers by parcel. As the date is too short, on the date of receipt of this, do not delay even a little in sending them. Address must be written as via Kallal.

30 Money sent to A. M. A. of Madura has not come. Two letters are written from here. No replies to them also. See the matter of O. M. M. Abdul Majeed's mortgage settled without delay. You have written that you have paid half commission on account of Karaikudi S. N. Hindial. Instead of that you could have obtained Madras Notes and remitted insured. In future do not pay such commission and take. Eucalyptus oil bottle sent by S. P. K. has reached.

Exhibits
No. A26a
Translation of
A26 1929
—contd.

May you go on increasing A. L. M. Abdul Raheem's. Let Rs. 3,000 given already remain for what we have obtained written and see whenever he requests you to pay him the balance Rs. 3,000 and get back. What you wrote about visiting the Ratnapura houses is right. Nevertheless you have written that it is not Ratnapura but Peliyagoda. Can it be sold at the time we want. We will consider about it later. You have written that it is worth Rs. 25,000. Write whether the estate is included. What is the estimate and what are they. Can the said properties be sold at the time we think. Can the shops in small town fetch rents. What you have written does not appear to be correct. It looks as if Arabi's son is simply putting off. Unlike that strictly demand and get the on demand, and write. The whole amount can be left with Arabi. Amounts collected can be made to be given to R. M. Do whatever is advisable. 10

What would be the worth of the properties mortgaged previously for Rs. 38,000 by A. L. M. Abdul Raheem. As current liability is large and until it is liquidated do not lend anyone. Has A. R. M. Farsy's deed been executed and our money repaid? If not executed get the deed and keep safe. 20

Other matters later.

By the grace of Sevukarayar Theeppanchama.

Sgd. SUPPRAMANIAM CHETTY.

No. A 27a. Translation of A 27.

No. A27a
Translation of
A27 12.1.29.

A 27a.

Translation

Sembanur	Sivamayam	Colombo
K. M. N. S. P.	No. 57	K. M. N. S. P.

12th day of Thai (January) in the year Sukkila.

The matter written to Letchumanan. Now you will know on receipt of this letter from here. Received letters from there dated 1st and 8th instant Nos. 55 and 56. Received Day Book notes of 1st January to 15th. 30

As was said to cash D. C. Senanayake's 10,000 rupees cheque on 28th, do it. If he requests to hold the cheque without being

presented to the Bank on that day, persuade him. Do not fall out with him. We shall get Ramanathan on his arrival there to demand and obtain.

Exhibits
No. 27a
Translation of
A27 12-1-29.
—contd.

Speak agreeably to those from whom interest is due and recover as much as they can pay.

As it is written that price of rubber has gone up, it can be sold without hurry as A. A. O. directs.

Send permit without delay for Ramanathan. On receipt we will send him.

- 10 On the day of receipt of this, pay R. M. A. R. A. R. R. M. Firm Rs. 100 on account of Maha Sivarathiry Abhishekam ceremony and write in the expenditure account. Write about it to R. M. A. R. A. R. R. M. Avergal of Devakottai and also here.

Other matters later.

Yours

By the Grace of Sevukarayar Theepanchammal.

Sgd. SUPPRAMANIAM CHETTY.

Verify and write whether mortgage is executed by O. L. M. Abdul Mageed.

- 20 **No. A 33a. Translation of A 33.**

A 33a.

With help of Sri Meenadchy

No. A33a
Translation of
A33 17-10-29.

K. M. N. S. P. Colombo

Sembanur.

K. M. N. S. P.

Sivamayam

No. 43.

1st day of Ayypasi (October) in the year Sukkila. 17.10.29.

Ramanathan writes:

- 30 This letter and letter No. 42 written on 23rd ultimo would have reached in regard to the matters of this place. About matters relating to that place, cause it written.

The details of the present cash dealings from 1.10.29 to 16.10.29. 50 pounds have been given to A. L. M. Abdul Raheem on interest at one and quarter, 300 Pounds to O. L. M. M. Sanoon on interest

Exhibits
No. A33a
Translation of
A33 17-10-29.
—contd.

at one, 1,172 Pounds to M. L. M. Zainally on interest at eleven and 750 Pounds to O. L. M. Abdul Majeed on interest at one. Of this 120 Pounds were given to M. L. M. Zainally by cash. The others all were exchanges.

M. A. Mohamado Ismail's younger brother, M. A. Mohamado Hussain, were indebted to several of our people in Rs. 180,000 and to the building contractor and to the shops at Fort in Rs. 60,000. Therefore Mohamado Ismail and Mohamado Hussain borrowed on their signature Rs. 125,000 from R. M. A. R. A. R. R. M. on interest at one and Rs. 50,000 from K. S. P. S. and Rs. 50,000 from K. M. N. N. S. and Rs. 15,000 from us and paid in liquidation of the aforesaid debts. There is still due from the said Hussain to P. R. M. the balance sum of about Rs. 28,500 payable by monthly instalments on a latter date. In consideration of interest charged at high rate and as repayments to be made on latter dates if they reduce a large sum on account of interest his elder brother said that he would pay the debt. They have said that they will accept on receipt of the instructions from their place. 10

We have raised a loan of Rs. 50,000 from the National Bank on 9.10.29 K. M. N. N. S. having signed in and we having made endorsement and we took Rs. 25,000 and K. M. N. N. S. Rs. 25,000. 20

Cause New Ledger sent from here to be returned soon.

There is due up to 16.10.29 on current account Rs. 8,700 to the National Bank, Rs. 5,100 to P. R. L., Rs. 900 to R. M. A. R. A. R. R. M., Rs. 36,000 to S. R. M. M. R. M. R. M., and Rs. 30,600 to V. K. R. S. T. There is due from P. R. S. P. N. K. N. Rs. 100, from N. K. V. L. Rs. 9,900 and from S. S. N. K. N. Rs. 600.

Other matters we will write to you on perusal of letter from there.

Sgd. RAMANATHAN CHETTY. 30

A54
Indian Income
Tax Assessment
1929-1930.

No. A 54. Indian Income Tax Assessment.

A 54.

763/29—30

Dated the 11th October, 1929.

Income Tax Department

Karaikudi, III Circle

District: Ramnad.

- (1) Year of assessment: 1929-30.
- (2) Name of Assessee (with complete address): M. R. RY.
K. M. N. S. P. Subramanian Chettiar, Sembanur.
- (3) Status—(Whether individual, registered or unregistered firm, Hindu undivided family, company or other association of individuals): Hindu undivided family. 40

- (4) Sources of income with exact nature of business: Property, money lending at Headquarters and Colombo and joint money lending business at Paundothi and Sungambar.

Exhibits
No. A 54
Indian Income
Tax Assessment
1929-1930.
—contd.

- (5) Branches:—

(a)

(b)

(c)

Nil.

- 10 6. Shares in (a) Registered and
(b) Unregistered Firms. Nil.
7. Partners—(a) names with shares.
(b) are they separately assessed?
8. Income returned: Rs. 4,445.
9. Accounts—(a) Books produced.
(b) Method of accounting: Cash and mercantile basis combined.
(c) Accounting period: Vibhava.
10. Section and sub-section under which assessment made: 23 (3).

ASSESSMENT ORDER

- 20 *Property*.—I accept the return namely Rs. 200 as in last year.

Business Headquarters.—I accept the loss of Rs. 754.14.6 returned as it agrees with the books.

Colombo K. M. N. S. P. Shop.—There were no remittances to the assessee during the year of account.

Sungambar SP. N. SP. (Joint).—There were no remittances to the assessee during the year of account.

Other Source: Income from Investments

- 30 The assessee's Colombo accounts show advances of two sums of Rs. 73,000 as for 3rd March, 1928, and Rs. 18,420 as for 1st March, 1927, respectively made to Madras N. VE. N. on Thavanai. The rate of interest stipulated being Colombo Pudu Nadappu interest. Interest has not been adjusted in the accounts on that thavanai loans. I estimate the accrued interest for a period of 12 months on the above two advances at Rs. 8,500 and this will be added to the other interest of the assessee.

Share income in Paungdothi A. R. N. S. P. Firm

Subject to communication from the Income Tax Officer, Pegu, I estimate the share of profits as Rs. 10,000.

- 40 Thus the assessee's total income is Rs. 17,946 and the taxable income is Rs. 7,946 and tax at 9 pies in the rupee is Rs. 372/8/0 which must be paid on or before 20th November, 1929.

Sgd. Illegibly,
Addl. Income Tax Officer.
15.10.29.

Exhibits
No. A64
Copy of Deed
No. 1604
3-3-80.

No. A 64. Copy of Deed No. 1,604.

A 64

DEED No. 1,604

TO ALL TO WHOM THESE PRESENTS SHALL COME ODUMA LEBBE
MARIKAR ABDUL MAJEED OF NO. 85, MESSENGER STREET IN COLOMBO,
HEREINAFTER CALLED AND REFERRED TO AS THE SAID VENDOR

SENDS GREETING

Whereas the said vendor is under and by virtue of the deeds hereinafter referred to is seized and possessed of or otherwise well and sufficiently entitled to the several lands and premises hereinafter in the schedule hereinafter written fully described: 10

And whereas the said vendor has agreed with Koonna Mana Navenna Soona Pana Natchiappa Chetty of No. 94, Sea Street in Colombo (hereinafter called and referred to as the said vendee) for the sale to him of the said several lands and the premises at or for the price or the sum of Rs. 203,300.

Now know Ye and these presents witness that the said vendor in pursuance of the said agreement and in consideration of the said sum of Rs. 203,300 well and truly paid to him by the said vendee (the receipt whereof the said vendor doth hereby admit and acknowledge) doth here sell and assign, transfer, set over and assure unto the said vendee his heirs, executors, administrators, and assigns the aforesaid several lands and premises in the said schedule hereunder written fully described together with all and singular the rights, privileges, easements, servitudes and appurtenances whatsoever to the said several lands and premises belonging or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate, right, title, interest, property, claim and demand whatsoever of him the said vendor into, upon, or out of the same. 20

To have and to hold the said several lands and premises hereby conveyed together with the appurtenances thereof unto the said vendee his heirs, executors, administrators and assigns for ever. 30

And the said vendor doth hereby for himself, his heirs, executors and administrators declare and covenant to and with the said vendee his heirs, executors, administrators and assigns that he, the said vendor, now has good right to convey the said several lands and premises in manner aforesaid and that the same are free from encumbrances and that he and his aforewritten shall and will always warrant and defend the title to the said several lands and premises against any and every person or persons whomsoever and that he and his aforewritten shall and will at all times hereafter at the request and cost of the said vendee or his aforewritten do and execute or cause to be done and executed all such further and other acts, deeds, assurances, matters, and things as he or they shall or may reasonably 40

require for more perfectly and effectually conveying and assuring the said several lands and premises unto the said vendee, his heirs, executors, administrators and assigns.

Exhibits
No. A64
Copy of Deed
No. 1604
3-3-30.—contd.

In witness whereof the said vendor has set his hand to these presents and to three others of the same tenor and date at Colombo aforesaid on this 3rd day of March 1930.

The Schedule above referred to.

10 1. All that allotment of land called Kongahawatte bearing assessment No. 3565/44 situated at Modera in Mutwal Street in Kotahena Ward within the Municipality and District of Colombo, Western Province; bounded on the North-east by second Marshal Street, formerly known as Elie Lane, on the South-east by premises bearing assessment No. 20, Second Marshal Street, belonging to Stephen Silva and formerly of M. D. P. Jayasundara Appuhamy, on the South-west by premises bearing assessment No. 3564/44 belonging to O. L. M. Abdul Majeed and A. L. M. Abdul Hamid, formerly of Batapolage Dona Carlina, and on the North-west by the high road called by Mutwal Street leading to Mutwal; containing in extent seven and one-hundredth perches (A0. R0. 7 54/100)
20 according to the figure of survey No. 1,189 dated the 17th day of October, 1921, made by A. R. Savundranayagam, Special Licensed Surveyor, and registered under title A 144/273, which said premises have been held and possessed by the said vendor under and by virtue of deed No. 1518 dated October, 1921, attested by M. R. Akbar of Colombo, Notary Public, and deeds Nos. 308 and 313 dated 1st July, 1922, and 12th August, 1922, respectively, both attested by M. S. J. Akbar of Colombo, Notary Public.

30 2. All that allotment of land with the buildings thereon bearing assessment No. 3564/44 situated at Tanque Salgado at Modera in Mutwal Street aforesaid and bounded on the North-east by the premises bearing assessment No. 3565/44 formerly of S. L. Dona Maria Famine and J. A. Perera and now belonging to Benedict Perera, on the South-east by premises bearing assessment No. 20, Second Marshal Street, formerly of M. D. P. Jayasundara and Mrs. Salgado and now belonging to Stephen Silva, on the South-west by premises bearing assessment No. 3565/43, formerly of S. L. Philippu and Mrs. Salgado and now belonging to Stephen Silva, and on the North-west by Mutwal Street, formerly known as Modera Street; containing in extent five and eighteen one-hundredth perches
40 (A0. R0. P5 18/100.) according to the figure of survey No. 1054 dated the 26th day of June, 1920, made by A. R. Savundranayagam, Special Licensed Surveyor; which said premises have been held and possessed by the said vendor under and by virtue of deed Nos. 174 and 308 dated 30th July, 1920, and 1st July, 1922, respectively, both attested by M. S. J. Akbar of Colombo, Notary Public, and registered under title A 151/241.

Exhibits
No. A64
Copy of Deed
No. 1604
3-3-30.—*contd.*

3. All that allotment of land with the buildings standing thereon bearing assessment No. 3563/43A (marked BB and tinted purple in the plan hereinafter mentioned) being the divided half part of the house and garden bearing assessment No. 43, situated at Tanque Salgoda in Mutwal aforesaid, and bounded on the North-east by a portion of this land belonging to Sannaswatte Liyanage Don Johannes, on the South-east by the other part of the same garden belonging to Sannaswatte Liyanage Don Andris, on the South-west by the other half part of the same garden marked AA in the said plan tinted red and belonging to Jayasinghe Aratchige Abraham Perera, and on the North-west by the high road; containing in extent six and thirteen-fiftieth perches (A0. R0. P6 13/50.) according to the said plan No. 346 made by D. D. W. Samarakone, Licensed and Registered Surveyor; which said premises have been held and possessed by the said vendor under and by virtue of deed No. 624 dated 2nd May, 1927, attested by Canaga Rayer of Colombo, Notary Public, and registered title A 181/235. 10

4. All that lot marked AA in the plan thereof being one half part of the house and garden bearing assessment No. 3562/43 and tinted red, situated at Mutwal aforesaid and bounded on the North-east by the other half part of the same garden marked BB in the plan and tinted purple and allotted to Wijeyeratne Mohandirange Mathes Fernando, on the South-east by the other part of the same garden belonging to Sannaswatte Liyanage Don Adris, presently of W. G. de Alwis, on the South-west by the garden of Colombage Bastian Fernando, and on the North-west by the high road; containing in extent six and thirteen-fiftieth square perches (A0. R0. P6 13/50.) according to the survey dated 11th January, 1920, made by D. D. Samarakone, Licensed Surveyor; which said premises have been held and possessed by the said vendor under and by virtue of deed No. 1518 dated 29/31 of October, 1921, attested by M. R. Akbar of Colombo, Notary Public, and deed No. 308 dated 1st July, 1922, attested by M. S. J. Akbar of Colombo, Notary Public, and registered under title A 147/241. 20 30

5. All that allotment of land with the buildings thereon bearing assessment No. 682/62A situated at Messenger Street within the Municipality and in the District of Colombo, Western Province; bounded on the North-east by the property of S. Deen Hadjar bearing assessment No. 62, on the South-east by the property of Robert Singho bearing assessment No. 61, on the South-west by the property of I. L. Abdul Rahiman bearing assessment Nos. 63, 64 and 65, and on the North-west by Messenger Street; containing in extent sixteen 25/100 square perches (A0. R0. P16 25/100.) according to the figure of survey thereof bearing No. 1150 dated 23rd May, 1905, made by F. M. Perera, Licensed and Registered Surveyor; which said premises have been held and possessed by the said vendor and by virtue of deeds No. 469 dated 23rd February, 1906, attested 40

by M. P. Weerasooriya, No. 7002 dated 24th September, 1908, No. 7479 dated 10th June 1910, and No. 7520 dated 13th August, 1910, all attested by W. B. de Fry of Colombo, Notary Public, and No. 919 dated 8th February, 1915, attested by C. M. M. G. Brito of Colombo, Notary Public, and registered under title A 173/35.

Exhibits
No. A 64
Copy of Deed
No. 1604
3-3-30.—contd.

6. All that allotment of land with the buildings standing thereon bearing assessment No. 78, Ward No. 659, situated at Messenger Street aforesaid, and bounded on the North by Messenger Street, on the East by premises bearing No. 77 belonging to the estate of I. L. M. Noordeen Hadjiar, on the South by premises bearing assessment Nos. 34 and 35 belonging to the Hindu Temple, and on the West by premises bearing assessment No. 79 of O. L. U. Abdul Majeed; containing in extent twenty-one perches and sixty-two one-hundredths of a perch (A0. R0. P21 62/100.) according to the figure of survey No. 2295 dated the 27th February, 1920, made by H. G. Dias, Licensed Surveyor, which said premises have been held and possessed by the said vendor under and by virtue of deeds No. 1558 dated 21st January, 1922, attested by M. R. Akbar of Colombo, Notary Public, and No. 308 dated 1st July, 1922, attested by M. S. J. Akbar of Colombo, Notary Public, and registered under title A173/35.

7 All that allotment of land with the buildings thereon bearing Municipal assessment No. 79, Ward No. 658, situated at Messenger Street aforesaid; bounded on the North-west by Messenger Street, on the North-east by premises bearing No. 78 belonging to N. M. Mohamed Cassim Hadjiar and N. M. Mohammadu, on the South-east by premises bearing assessment Nos. 34 and 35 belonging to the Trustees of Suppramaniam Hindu Temple, Silversmith Street, and on the South-west by premises bearing assessment No. 80 belonging to I. L. M. Abdul Cader; containing in extent twenty perches and forty-two hundredths of a perch (A0. R0. P20 42/100.) as per survey and description thereof No. 532 dated 25th January, 1914, made by A. R. Savundaranayagam, Licensed Surveyor and Leveller; which said premises have been held and possessed by the said vendor under and by virtue of deed No. 353 dated 5th March, 1914, attested by N. M. M. Abdul Cader of Colombo, Notary Public, and registered under title A 173/52.

8. (a) All that allotment of land marked lot B2 in plan thereof together with the trees, plantations and everything situated at Messenger Street aforesaid; bounded on the North by lot B1 belonging to Abdul Careem Zaitoon Umma, on the East by premises bearing assessment No. 80/656 belonging to Mr. L. M. Idroos Lebbe Marikkar, on the South by the premises belonging to Mr. Assan Lebbe Mohamed, and on the West by lot A2 belonging to the said Uduma Lebbe Marikkar Abdul Majeed; containing in extent seven perches and 85/100 of a perch (A0. R0. P7 85/100.) as per

Exhibits
No. A64
Copy of Deed
No. 1604
3-3-30.—contd.

plan No. 2122 dated 7th April, 1928, made by A. R. Savundranayagam; and

(b) All that remaining defined western half part of the land with the buildings thereon formerly bearing assessment No. 74, presently bearing assessment No. 81, situated at Messenger Street aforesaid; and which said western half part is bounded on the North by high road to Grandpass, on the East by the property of Pooatchy Umma more correctly by the above described half part belonging to Abdul Careem Zaitoon Umma, on the South by the property of Sinne Lebbe, and on the West by the other portion of this land; containing in extent thirteen and a quarter square perches (A0. R0. P13 $\frac{1}{4}$.) according to the survey plan thereof dated 25th August, 1877, made by A. L. Van Heer, Surveyor, save and except therefrom a divided and defined portion marked lot A1 in extent (A0. R0. P4 65/100.) perches conveyed to Abdul Careem Zaitoon Umma under deed No. 719 dated 6th November, 1928, attested by T. Canagarayar of Colombo, Notary Public; which said two properties adjoin each other and form one property and can be included in one survey A 124/192. 10

9. All that allotment of land with the buildings thereon bearing assessment No. 68, Ward No. 675, situated at Messenger Street aforesaid; bounded on the North by Messenger Street, on the East by the property of Arisi Marikar Hadjar bearing assessment No. 676/67, on the South by the property of Miss L. Pieris bearing assessment No. 538/40, and on the West by the property of Ahamado Lebbe Marikar bearing assessment No. 672/69; containing in extent one rood five and fifty-one hundredth perches (A0. R1. P50/100.); which said premises have been held and possessed by the said vendor under and by virtue of deeds Nos. 1560, dated 31st May, 1929, No. 1569 dated 25th June, 1929, and No. 1592 dated 26th October, 1921, all attested by N. H. M. Abdul Cader of Colombo, Notary Public, and registered under title A 192/180. 20 30

10. An allotment of land with the buildings thereon bearing assessment No. 98, Ward No. 639, situated at Messenger Street aforesaid; and bounded on the North by Messenger Street, on the East by premises bearing assessment No. 97 belonging to Samsi Lebbe Hadjar, and on the South and West by premises bearing assessment Nos. 98A and 98B being other portions of No. 98 belonging to Mohamado Hassan; containing in extent five and four one hundredth perches according to the survey made by A. R. Savundranayagam, on the 27th September, 1914, which said premises have been held and possessed by the said vendor under and by virtue of deeds No. 780 dated 14th April, 1913, and No. 908 dated 17th December, 1914, both attested by C. M. M. G. Brito of Colombo, Notary Public, and registered under the title A 114/138. 40

11. All that defined allotment of land being the northern portion of premises bearing assessment No. 20, Ward No. 564, Silversmith

- Street, situated at Quarry Road in New Bazaar Ward within the Municipality and District of Colombo, Western Province; bounded on the North by Quarry Road, on the East by premises bearing assessment No. 22 belonging to O. L. M. Abdul Majeed, on the South by the southern portion of premises bearing assessment No. 20 belonging to W. M. H. Muttu Rauther Natchia, and on the West by premises bearing assessment No. 11 belonging to A. R. M. Abdul Hamid; containing in extent twenty-eight and eighty-six one hundredth square perches (A0. R0. P28 86/100.) according to the figure of survey thereof bearing No. 1429 dated 19th January, 1924, made by A. R. Savundranayagam, Licensed Surveyor and Leveller; which said premises have been held and possessed by the said vendor under and by virtue of deed No. 471 dated 31st January, 1924, attested by M. S. J. Akbar of Colombo, Notary Public, and registered under title A 181/231.
- 10
12. All that house and ground bearing assessment No. 21, Ward No. 563, situated at Silversmith Street aforesaid; bounded on the North by Old Moor Street, on the East by premises No. 22 belonging to A. L. M. Abdul Hamid and O. L. M. Abdul Majeed, on the South by Silversmith Street, and on the West by premises bearing assessment No. 20 belonging to Wapoo Marikar Hadjiar; containing in extent twenty perches and 87/100 of a perch held and possessed by the said vendor under and by virtue of certificate of title issued in case No. 51869 of the District Court of Colombo, under the hand of William Wadsworth, Esq., District Judge, and deed No. 316 dated 19th August, 1922, attested by M. S. J. Akbar of Colombo, Notary Public, and registered under the title A 173/47.
- 20
13. All that allotment of land with the buildings thereon bearing assessment No. 22, Ward No. 562, situated at Silversmith Street aforesaid; bounded on the North by Old Moor Street, on the East by premises bearing assessment No. 23 belonging to the heirs of the late Muttusamy Ramalingan Chetty, on the South by Silversmith Street, and on the West by premises bearing assessment No. 21 belonging to Wappu Marikar Hadjiar; containing in extent twenty-one and seventy-one one hundredth square perches (A0. R0. P21 71/100.) according to plan No. 749 dated 1st November, 1916, made by A. R. Savundranayagam, Special Licensed Surveyor and Leveller, which said premises have been held and possessed by the said vendor under and by virtue of deeds No. 957 dated 8th February, 1917, attested by G. A. Wille of Colombo, Notary Public, and registered under title A 124/222.
- 30
- 40
14. All that allotment of land bearing assessment No. 16, situated at Silversmith Street in Hultsdorf within the Municipality and District of Colombo, Western Province; bounded on the North by the premises bearing assessment Nos. 78, 79 and 80, on the East by land claimed by U. L. M. Abdul Hamid and O. L. M. Abdul Majeed, on the South by the portion of this land given for a Hindu

Exhibits
No. A 64
Copy of Deed
No. 1604
3-3-30.—contd.

Exhibits
No. A64
Copy of Deed
No. 1604
3-3-30.—contd.

Temple, and on the West by land claimed by M. J. David, formerly of J. P. Alvares; containing in extent fourteen and eighty-one one hundredth perches (A0. R0. P14 81/100.) according to survey No. 1058 dated the 3rd January, 1921, made by J. W. Ameresekera, Licensed Surveyor, held and possessed by the said vendor under and by virtue of certificate of title issued in case No. 263 of 1921 of the District Court of Colombo, under the hand of Allan Beven, Esq., District Judge of Colombo, and deed No. 316 dated 19th August, 1922, attested by M. S. J. Akbar of Colombo, Notary Public, and registered under title A 173/46.

10

15. All that allotment of land marked letter A in violet ink in the survey plan and description thereof No. 2176 dated 8th January, 1910, and made by C. H. Frida, Licensed Surveyor, bearing assessment No. 16, situated at Silversmith Lane in New Bazaar within the Municipality and District of Colombo, Western Province; and bounded on the North by the property of Ayacanno Chetty, on the East by lot T of Muttu Karuppen Chetty and a portion of this premises acquired by the Municipal Council, on the South by Silversmith Lane, and on the West by lot B of M. Ramaswamy, formerly of Saravana Chetty; containing in extent eighteen and forty-four one-hundredth perches (A0. R0. P18 14/100.) according to plan No. 1509 dated the 17th April, 1919, made by M. G. de Silva, Fiscal's Licensed Surveyor, held and possessed under Fiscal's conveyance No. 12127/1919 dated the 28th day of May, 1919, given under the hand of Walter de Livera, Deputy Fiscal of the Colombo District, and deed No. 316 dated 19th August, 1922, attested by M. S. J. Akbar of Colombo, Notary Public, and registered under title A 181/232.

20

16. All that allotment of land situated at New Bazaar within the Municipality and District of Colombo, Western Province; bounded on the North, West and East by land bearing assessment No. 16 claimed by Muniandy Chetty and others, and on the South by Silversmith Lane; containing in extent six and thirty-two one hundredth perches (A0. R0. P6 32/100.) which said premises presently bearing assessment No. 16 have been held and possessed by the said vendors under and by virtue of deed No. 92 dated the 23rd day of November, 1920, attested by Arthur H. Abeyratne, Notary Public, and deed No. 316 dated 19th August, 1922, attested by M. S. J. Akbar of Colombo, Notary Public, and registered under title A 171/244.

30

17. All that house and premises bearing assessment No. 59/120, situated at Hultsdorf Street within the Municipality of Colombo aforesaid; bounded on the North by Hultsdorf Street, on the East by the property of Mr. Lobendhan, on the South by the property of Paulo Appu, and on the West by the property of the widow Meyer; containing in extent eight square perches and 19/100ths of a perch held and possessed by the said vendor under and by virtue of deed

40

No. 8393 dated 3rd March, 1914, attested by N. M. de Fry of Colombo, Notary Public, and registered under title A 173/37.

Exhibits
No. A 64
Copy of Deed
No. 1604
3-3-30.—*contd.*

18. All that divided one half part or share marked letter A shaded pink in the plan with the house standing thereon from and out of the allotment of land marked lot No. 5 and bearing formerly assessment No. 2385/15, presently No. 24, situated at Avondale Road, Second Division, Maradana, within the Municipality and in the District of Colombo, Western Province; and which said divided half part marked letter A is bounded on the North by the property of Philippu Nayde, on the East by the other half part of the same land marked letter B belonging to Sella Umma, wife of Wappu Marikar Hadjiar Slema Lebbe, on the South by Arab Lane twenty-six links wide, and on the West by the land of Wapitchi Marikar Meera Lebbe Marikar Hadjiar; containing in extent two square perches and thirty-six one hundredths of a square perch (A0. R0. P2 36/100.) as per plan dated the 28th October, 1895, made by J. de A. Dissanayake, Registered Land Surveyor, held and possessed by the said vendor and by virtue of deed No. 409 dated 6th March, 1914, attested by G. A. H. Wille of Colombo, Notary Public, and registered under title A 108/130 and 130/215.

19. All that divided portion of land with the buildings and everything thereon formerly bearing assessment No. 1603/119 and again No. 409, situated at Second Division, Maradana within the Municipality and in the District of Colombo, Western Province; and bounded on the North by land bearing assessment No. 120 now No. 407, on the East by the remaining portion of this same land, on the South by Temple Road, and on the West by Maradana Road; containing in extent one and eighty-one hundredth perches (A0. R0. P1 80/100.) as per figure of survey bearing No. 1503 dated 12th April, 1918, made by Jos. Rodrigo, Licensed Surveyor: which said premises had been held and possessed by the said vendor under and by virtue of deed No. 774 dated 3rd August, 1929, attested by T. Canagarayar, Notary Public, and registered under title A 190/172.

20. All that portion of an allotment of land with the buildings thereon formerly bearing assessment No. 119 and 120 and presently bearing assessment Nos. 9 and 11, situated at Temple Road, Second Division, Maradana in Colombo aforesaid; and which said portion is bounded on the North by premises bearing assessment No. 120 belonging to Abdulla Sa Ismail Lebbe, on the East by premises bearing assessment No. 125 belonging to Mr. Charles Perera, on the South by Temple Road, and on the West by portion of the same premises belonging to Hadjie Marikar Tamby; containing in extent two and seventy-five hundredth perches (A0. R0. P2 75/100.) according to the plan and figure of survey thereof dated the 19th day of January, 1907, and made by H. G. Dias, Licensed Surveyor; which said premises have been held and possessed by the said vendor under

Exhibits
No. A64
Copy of Deed
No. 1604
3-3-30.—*contd.*

and by virtue of deed No. 676 dated 6th February, 1928, attested by Canagarayer of Colombo, Notary Public, and registered under title A 89/111.

21. (a) All those two allotments of lands with the buildings standing thereon bearing assessment Nos. 748/283 (1-2), situated at Demetagoda within the Municipality of Colombo aforesaid; bounded on the North by a reservation for a foot-path four feet wide, on the east by premises bearing assessment No. 281 belonging to S. L. Sinne Lebbe Marikar, on the South by Demetagoda Road, and on the West by premises bearing assessment No. 284 belonging to Ahamed Ally Abdul Rahman; containing in extent two square perches and thirteen one hundredths of a square perch (A0. R0. P2 13/100.) according to the figure of survey and description thereof No. 389 dated 23rd February, 1913, made by A. R. Savundranayagam, Licensed Surveyor and Leveller, held and possessed by the said vendor under and by virtue of deed No. 249 dated 17th April, 1913, attested by G. A. Wille of Colombo, Notary Public, and registered under title A 173/34; and 10

(b) All those allotments of lands with the buildings thereon bearing assessment Nos. 748/283³, 283⁴ and 283⁵, situated at Demetagoda Road in Maradana Ward aforesaid; bounded on the North by premises bearing assessment No. 199 belonging to Sinne Lebbe Marikar, on the East by premises bearing assessment No. 283⁶ belonging to C. L. Udumalebbe, on the South by Demetagoda Road, and on the West by premises bearing assessment No. 283² belonging to O. L. M. Abdul Majeed; containing in extent one perch and ninety eight hundredths of a perch (A0. R0. P1 98/100.) according to the figure of survey thereof bearing No. 834 dated 21st day of February, 1918, made by A. R. Savundranayagam, Special Licensed Surveyor and Leveller, held and possessed by the said vendor under and by virtue of deed No. 30 dated 23rd February, 1918, attested by N. M. Zaheed of Colombo, Notary Public, and registered under title A 173/38; which said premises Nos. (a) and (b) adjoin each other and bear new assessment Nos. 7, 9, 11 and 13, Demetagoda Road. 20 30

22. (a) All those allotments of land with the buildings thereon bearing assessment Nos. 1343/167 and 1342/168, situated at Second Division, Maradana, in Maradana Ward aforesaid; and bounded on the North by premises bearing assessment No. 169 belonging to Kiduru Kanny Saphia Umma, and assessment No. 172 belonging to Kiduru Kanny Abdul Majeed and Kiduru Kanny Mohamed Sheriff, on the East by premises bearing assessment No. 8, Maligakanda Road, belonging to the estate of the late Katchi Mohamado, and assessment No. 1 belonging to I. L. M. H. Abdul Raheman, on the South by premises bearing assessment Nos. 166 and 166A belonging to O. L. M. Abdul Majeed, and on the West by Second Division, Maradana Road; containing in extent twenty-nine 40

and eighteen one-hundredth perches (A0. R0. P29 18/100.) according to the survey plan bearing No. 832 made on the 21st day of February, 1918, by A. K. Savundranayagam, Licensed Surveyor and Leveller, held and possessed by the said vendor under and by virtue of deed No. 829 dated 20th March, 1918, attested by M. R. Akbar of Colombo, Notary Public, and registered under title A 167/15.

Exhibits
No. A61
Copy of Deed
No. 1604
3-3-30.—*contd.*

10 (b) All that divided portion of land with the building bearing assessment No. 169, situated at Second Division, Maradana, aforesaid; and which said divided portion is bounded on the North by premises bearing assessment No. 170 belonging to Kiduru Kanny Abdul Majeed and Kiduru Kanny Mohamed Sheriff and passage, on the East by premises being the other part of premises bearing assessment No. 169 belonging to Kiduru Kanny Saphia Umma, on the South by premises bearing assessment Nos. 167 and 168 belonging to Kiduru Kanny Mohamed Sheriff and Sinne Lebbe Asha Umma, and on the West by Second Division, Maradana Road; containing in extent three perches and fifty-six hundredths of a perch according to the survey plan No. 831 made on the 21st day of February, 1918, by A. R. Savundranayagam, Special Licensed Surveyor and Leveller, held and possessed by the said vendor under and by virtue of deed No. 827 dated 20th March, 1918, attested by M. R. Akbar of Colombo, Notary Public, and registered under title A 167/16; and

30 (c) All that part of the garden with the buildings thereon bearing assessment No. 1337A/169, situated at Second Division, Maradana aforesaid; bounded on the North by the other part belonging to Sinne Lebbe Ismail Marikar, on the East by the garden of Sinne Tamby, on the South by the other part belonging to Packeer Bawa Pitche Tamby, and on the West by the high road; containing in extent fourteen and thirty-six one hundredth perches (A0. R6. P14 36/100.) excluding therefrom the portion of land with the buildings thereon bearing assessment No. 1341/169 in extent three and 56/100 perches (A0. R0. P3 56/100.) sold to Aduma Lebbe Marikar Abdul Majeed, and possessed by the said vendor under and by virtue of deed No. 970 dated 13th January, 1919, attested by M. R. Akbar of Colombo, Notary Public, and registered under title A 131/354; which said premises Nos. (a), (b) and (c) are contiguous and bear present assessment Nos. 263, 265 and 267.

40 23. All that defined one fourth part of the garden and house and other buildings and plantations thereon, situated at Second Division, Maradana aforesaid, bearing assessment No. 1344/166; bounded on the North by the garden of Kay Lebbe Ponny Oumma, on the East by the garden of Hadjie Oomma, wife of Sinne Tamby Slema Lebbe, and on the West by the Maradana high road now called Second Division, Maradana; and containing in extent eight and four tenth (8 4/10) square perches as per figure of survey thereof dated the 1st day of July, 1863, and made by H. F. de Silva, Surveyor, which

Exhibits
No. A 64
Copy of Deed
No. 1604
3-3-30.—*contd.*

said premises bear new assessment No. 269, Maradana Road, and have been held and possessed by the said vendor under and by virtue of deed No. 248 dated the 17th April, 1913, attested by G. A. H. Wille of Colombo, Notary Public, and registered under title A 167/12.

24. All that house and ground formerly bearing assessment No. 1345/166A, presently bearing assessment No. 27, situated at Second Division, Maradana aforesaid; bounded on the North by the part of land belonging formerly to Ramah Umma and now to Ibrahim Natchia bearing assessment No. 166 and being the northern half of the premises formerly bearing No. 166, East by the garden of Assen Lebbe, now of Isu Lebbe Marikar Slema Lebbe Hadjiar, on the South by a part of a garden now belonging to Asboo Lebbe Wappu Marikar, and on the West by the Maradana high road: containing in extent eight square perches and $\frac{4}{10}$ perches and which said premises are also described in plan No. 446 dated 23rd May, 1913, made by A. R. Savundranayagam, as follows:—an allotment of land with the buildings thereon bearing assessment No. 166A, situated at Second Division, Maradana, aforesaid; bounded on the North by premises bearing assessment No. 166 belonging to O. L. M. Abdul Majeed, East by premises bearing assessment No. 1, Maligakande Road, belonging to I. L. M. H. Abdul Rahman, South by premises bearing assessment No. 165 belonging to Wappu Marikar, West by Second Division, Maradana; containing in extent eight perches and fifty one hundredths of a perch (A0. R0. P8 50/100.) held and possessed by the said vendor under and by virtue of deed No. 252 dated 3rd July, 1913, attested by C. E. A. Samarakkoddy of Colombo, Notary Public, and registered under title A 173/39.

25. (a) All that allotment of land shaded pink and marked lot No. 1 with the buildings standing thereon bearing assessment Nos. 1348-1350/164 (1-2), situated at Second Division, Maradana aforesaid; bounded on the North-east by the property of Allie Lebbe Bawa Lebbe, now of Isubu Lebbe Wapoo Marikar, on the South-east by a part of the same land marked lot 4 in the plan, and on the South-west by a part of the same land marked lot 2 in the plan, and on the North-west by the Second Division, Maradana Road; containing in extent five perches and sixty-four one hundredths of a perch (A0. R0. P5 64/100.) according to the survey plan No. 1 dated the twenty-fourth day of March, 1897, made by Frederick Bartholomeusz, Licensed Surveyor, held and possessed by the vendor under and by virtue of deed No. 1586 dated 25th November, 1919, attested by G. A. H. Wille of Colombo, Notary Public, and registered under title A 152/18 and A 173/41; and

(b) An allotment of land shaded pink and marked lot No. 2 with the buildings standing thereon being a portion of the premises bearing assessment No. 1348A/163 and 164, situated at Second Division, Maradana aforesaid; bounded on the North-east by a part

of the same land marked lot No. 1 in the plan, on the South-east by a part of the same land marked lot No. 4 in the plan, on the South by a part of the same land marked lot No. 3 in the plan, and on the North-west by Second Division, Maradana Road; containing in extent five perches and four hundredths of a perch (A0. R0. P5 4/100.) according to the survey plan No. 2 dated the 24th March, 1897, made by Frederick Bartholomeusz, Surveyor, which said premises are described as follows according to plan No. 973 dated 2nd October, 1919, made by A. R. Savundranayagam, Special Licensed Surveyor, an allotment of land with the buildings thereon bearing assessment No. 164 and marked lot No. 2, situated at Second Division aforesaid; bounded on the North by premises bearing assessment No. 164 being lot 1 (a portion of the same land) belonging to Packeer Bawa Sesma Lebbe, on the East by premises bearing assessment No. 163 belonging to Assen Bawa Marikar Mohamed Ali Marikar, on the South by premises bearing assessment No. 163 being lot No. 3 belonging to Packeer Bawa Amala Marikar, and on the West by Second Division, Maradana Road; containing in extent six square perches and eight one hundredths of a perch (A0. R0. P6 8/100.) held and possessed by the said vendor under and by virtue of deed No. 1558 dated 25th October, 1919, attested by G. A. Wille of Colombo, Notary Public, and registered under title A 173/42; which said premises Nos. (a) and (b) bear new Nos. 277 and 279, Maradana Road.

26. All that allotment of land with the buildings thereon bearing assessment No. 1348/163 being the eastern portion of lot No. 3, situated at Second Division, Maradana, aforesaid; bounded on the North by premises bearing assessment No. 164 being lot No. 2 of Packeer Bawa Sinne Lebbe Marikar, on the East by premises bearing assessment No. 163 belonging to Assen Marikar Bawa Mohamed Ali Marikar, on the South by Maligakanda Road, and on the West by the remaining portion lot No. 3 bearing assessment No. 163 belonging to the said Packeer Bawa Amala Marikar; containing in extent two perches and twenty-three one hundredths of a perch (A0. R0. P2 23/100.) according to the figure of survey thereof No. 974 dated 2nd October, 1919, made by A. R. Savundrayagam, Special Licensed Surveyor, held and possessed by the said vendor under and by virtue of deed No. 1559 dated 25th October, 1919, attested by G. A. H. Wille of Colombo, Notary Public, and registered under title A173/43; the said premises bear new Nos. 11, 13, 15 and 17, Maligakanda Road.

27. (a) All that allotment of land with the buildings standing thereon bearing assessment Nos. 1352/163A9 and 1351/64A9; is bounded on the North by the property of Isboe Lebbe Wappu

Exhibits
No. A64
Copy of Deed
No. 1604
3-3-30.—*contd.*

Marikar, now premises bearing assessment No. 165 of Wappu Marikar Mohamado Usuph, on the East by the part of this property bearing assessment Nos. 164A10 and 163A2 of Packeer Bawa Regina Umma, on the South by Maligakanda Road, and on the West by part of this property bearing assessment Nos. 163A8 and 164A8 of Mohamed Ally; containing in extent two perches and eighty-four one hundredths of a perch (A0. R0. P2 84/1000.) as per figure of survey No. 523 dated 12th April, 1921, made by Geo L. Schokman, Licensed Surveyor and Leveller, held and possessed by the said vendor under and by virtue of deed No. 735 dated 12th April, 1922, attested by M. S. Akbar of Colombo, Notary Public, and registered under title A 173/51; and

10

(b) All that allotment of land shaded dark pink in the plan and marked letter B with a house standing thereon bearing assessment No. 163, situated at Maligakanda Road within the Municipal limits of Colombo in the District of Colombo, Western Province; bounded on the North-east by the property of Isboe Lebbe Wappu Marikar, on the South-east by the other marked letter C, on the South-west by Maligakanda Road, and on the north-west by a part of the same land marked letter A; containing in extent three perches (A0. R0. P3.) according to the figure of survey dated 21st February, 1903, made by Charles Schwallie, Registered Land Surveyor, held and possessed by the said vendor under and by virtue of deed No. 254 dated 5th November, 1921, attested by M. S. J. Akbar of Colombo, Notary Public, and registered under title A 117/249; the aforesaid premises Nos. (a) and (b) now bear new Nos. 31, 33, 35, 37, 41/7. 41/8 and 41/9.

20

Witnesses:

This is the signature of

1. Signed in Tamil. Sgd. O. L. M. Abdul Majeed.

Cassie Lebbe Marikar Mohamed
Ibrahim.

30

2. Sgd. M. D. Mohideen.

Sgd. N. M. Zaheed,
Notary Public.

(Attestation omitted)

Attested on 3rd March, 1930. (SEAL).

Sgd. N. M. Zaheed.
Notary Public.

No. A 28a. Translation of A 28.

Exhibits
No. A28a
Translation of
A28 13.6.80.
—contd.

A 28a.

Translation.

No. 79
K.M.N.S.P.
Sembanur

Sivamayam

K.M.N.S.P.
Colombo.

13th day of Ani (June) in the year Pirametheetha.

The matter written to Ramanathan. Now, you will know on receipt of this letter from here and letter No. 78 of the 8th. Received letter No. 80 of the 7th instant from there.

Now pay S.S.R.M's money Rs. 10,000 to K.M.N.N.R.M. and write. Thereafter we shall write to you to give the other moneys. Write if good firms are known to you and are agreeable.

You wrote that A. L. M. Abdul Raheem's property at Barnes Place, Colpetty, is under mortgage for Rs. 44,000, but for how much did he buy it. I understand that he bought it for Rs. 40,000. How mortgage has been executed for Rs. 44,000. The estimate written in the book is Rs. 35,000 for tenement Nos. 48, 49, 49A Ferry Street, Rs. 25,000 for tenements Nos. 1-19 Princes Gate and Rs. 35,000 for 1054/93, 95, Albert Garden, Colpetty. On a perusal of your letter we find that all tenements are settled and the Colpetty property only is for Rs. 44,000 and interest for eight months, and the tenement of which faces two sides of the Road, but sale was negotiated for only one side. Your letter could not be understood well. Write in detail as to what properties are mortgaged, the amount, whether they are primary, secondary or tertiary, and out of them which properties are now realised for Rs. 33,000 and also write in detail immediately as to what properties are under mortgage for Rs. 44,000 and what are the present estimates of their value. As written that interest will be collected within 4 or 6 days, do so without delay.

Interest must be recovered from Saleem Hadjiar every month without becoming overdue. From what month interest is now due. It is better to cancel Abdul Cader's 10,000 rupees mortgage and to obtain on demand from Samsudeen. Do what is advisable.

It does not matter if transactions are being had with Ghouse, son of I. A. M. Meera Lebbe Marikar. Deposit moneys collected as the balance due to the National Bank is large. As written in the previous letter write whether remitted by registered insurance Rs. 1,500 on our account, Rs. 1,000 on account of Sadhus' Choultry and Rs. 500 on account of Sivan Temple. Other matters later.

Sgd. SUPPRAMANIAM CHETTY.

Exhibits
No. A29a
Translation of
A29 16.12.30.

A 29a. Translation of A 29.

A 29a.

Translation

No. 112
K.M.N.S.P.
Sembanur.

Sivamayam

K.M.N.S.P.
Colombo.

16th day of Markali (December) in the year Pirametheetha.

The matter written to Letchumanan. Now, you will come to know from this letter from here and from letter No. 101 dated 11th instant. Received from there letters dated 8th instant Nos. 111 and 112 sent registered and enclosed therewith Rs. 1,500 on our account, and Rs. 1,000 on account of Sadhus' Choultry. 10

Now on the re-opening of Sub-Registrar's Office we register and send the Power of Attorney. Write if you have received Rs. 6,000 on account of principal from O. L. M. M. Sanoon. Recover from him interest if due. Write in detail whether you have received interest Rs. 50 from M. L. M. Haniffa and entered in the account. Recover interest due from others by demanding of them. See the house rents are strictly collected.

Take steps to draw the proceeds of sale of Zubair's property. 20
Pay the collected amounts towards current dues.
Other matters later.

Sgd. SUPPRAMANIAM CHETTY.

A 68a. Translation of Folio 2 of A 68.

No. 68a
Translation of
folio 2 of A68
1930.

A 68A

Translation

Colombo

K.M.N.S.P. Firm, Colombo

K.M.N.S.P.

Debit & Credit Account relating to Purchase of Property.

Ledger Folio 2.

30

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
1930	.		

March 3. Debit amount due to us from Majeed on 21st on on Demand notes secured under mortgage affecting the properties mentioned in deed of sale No. 1604 executed this day by O. L. M. Abdul Majeed before N. M. Zaheed, Notary, being Rs. 185,950;

	Rs. 3,000 being amount due on two notes secured under mortgage.	
	Rs. 6,081.66 being amount due on interest account against on demand notes secured under mortgage.	
	Rs. 4,000 due on on demand notes unsecured.	
	Rs. 80 due on above interest account	
	Rs. 1,200 being amount due in respect of two notes unsecured.	
10	Rs. 1,515 being amount due on a cheque No. F.D. 085768 drawn on National Bank this day in favour of O. L. M. Abdul Majeed for payment to Mr. C. Nagalingam, Advocate, his mortgage claim, affecting premises No. 409, Temple Road.	
	Rs. 1,430 being amount retained for payment of taxes and	
	Rs. 43.44 being amount due on a cheque No. F.D. 085769 drawn on National Bank this day in favour of Majeed.	Total 203,300.00
20	Debit also. Stamps affixed to the deed of sale—the value being Rs. 3,289 and Rs. 620 being amount due on cheque drawn on National Bank and delivered to Mr. Zaheed, Proctor, on account of his fees for the deed of sale	Total 3,909.00
	Debit. Stamps to lease No. 1605 attested this day by N. M. Zaheed, Notary, for a period of one year agreeing to pay the monthly rental of Rs. 400 in respect of premises No. 20, Silversmith Street, where O. L. M. Abdul Majeed is carrying on business being Rs. 42 and Rs. 30 on account of Notary's fees.	Total 72.00
30		
	<i>March 19</i>	
	Debit. 1000 house rent bills and 300 Advance Bills printed at Ananda Press	10.50
	<i>March 24.</i>	
	Credit one Imperial Bank cheque received from Proctor Rustomjee on the sale of premises No. 120, Hultsdorf, to Hassenally Abdul Hussen upon deed No. attested by F. Rustomjee, Proctor	15,000.00
40		
	Debit. Paid in respect of commission to L. S. A. Caffoor, Broker, for the sale of the above property and obtained receipt.	1,000.00

Exhibits
No. A68a
Translation of
folio 2 of A68
1930.
—contd.

March 31.

Debit. Cost of Tenancy Agreement Book being
Rs. 4.50, stamps to receipt being Re. 1, rick-
shaw hire being Rs. 3.65, and Rs. 7.20 being
cost of petrol purchased for motor cars paid
to drivers. 16.34

Balance debit 193,307.84

Carried over to folio 89 of next ledger.

No. A34a
Translation of
A 34
11.5.31.
—contd.

A 34a. Translation of A 34.

A 34a.

10

Translation

With help of Sri Meenadchy.

K.M.N.S.P. Colombo

Sembanur K.M.N.S.P.

Sivamayam

No. 19

28th day of Sithirai (April) in the year Pirasotpathy.

11. 5. 31.

Ramanathan writes:

You will come to know the news of this place on receipt of this letter. In regard to matters there, received letter No. 13 written on the 27th instant. 20

Now, Arabi died suddenly on 9. 5. 31 Saturday evening without ailing from any sickness and was buried yesterday. Four days ago he had come to the shop. Only about two hours before his death his relations came to know that he was seriously ill. He has also executed a Last Will. Its details will be known in four or six days. I shall write in the next letter all details relating to it.

I think it is possible now to deposit with S.K.R.S.K.R. Rs. 15,000 and odd the dowry money of Ana Lana lying in credit with us. If you write to deposit accordingly I shall do so and get a hand written letter. 30

I think it is possible to deposit at present with O. L. K. K. N. Rs. 10,000 out of S. S. R. M.'s money. If you write to me so, I will do so accordingly.

Abdul Raheem has paid the principal Rs. 30,000 and interest in full due on his mortgage. Its details I shall write to you in the next letter.

Sgd. RAMANATHAN CHETTY.

A55—Indian Income Tax Assessment 1931-32
 Income Tax Office, III. circle,
 Karaikudi,
 Dated 30-12-1931.

Exhibits
 No. A55
 Indian Income
 Tax assessment
 1931-1932.

Income Tax Department

Ramnad District

- (1) Year of assessment: 1931-32.
- (2) Name of Assessee (with complete address): M. R. RY.
 K. M. N. S. P. Subramanian Chettiar, Sembanur.
- 10 (3) Status:—(Whether individual, registered or unregistered
 firm, Hindu undivided family, company or other
 association of individuals): Hindu undivided family.
- (4) Sources of income with exact nature of business:
 Property, Business—Sole moneylending at Colombo
 and joint moneylending at Sungambar and other
 sources—Share income from A. R. N. S. P. firm,
 Paungdawthi.
- (5) Branches:—
- 20 (a)
 (b)
 (c)
6. Shares in (a) Registered and
 (b) Unregistered Firms. $\frac{1}{2}$ share in the A. R. N. S. P.
 firm Paungdawthi.
7. Partners—(a) names with shares.
 (b) are they separately assessed? $\frac{1}{2}$ share in the
 A. R. N. S. P. firm Paungdawthi.
8. Income returned: Rs. 5,162-5-6.
- 30 9. Accounts—(a) Books produced: Day book and ledger in
 cadjan for Headquarters original day book and ledger
 for Colombo and day book extracts for Sungambar.
 (b) Method of Accounting: Chetty system.
 (c) Accounting period: Pramodhutha for Sungambar
 and 1930—31 for Colombo.
10. Section and sub-section under which assessment made: 23 (3).

ASSESSMENT ORDER

Property.—As in previous years Rs. 500 will be adopted under
 this head.

40 *Business:* (i) *Headquarters.*—No moneylending business as such
 is carried on and the small interest receipts and the interest pay-
 ments will be ignored as in previous years. The pay of the

Exhibits
No. A55
Indian Income
Tax assessment
1931-1932.
—contd.

clerk employed in writing up the accounts amounting to Rs. 96 and the incidental charges under " Stationery ", viz., postage, and lighting amounting to Rs. 24.14.0 will be allowed as also bad debts amounting to Rs. 31,339/4/3 which arose in connection with the loans advanced by the assessee's Colombo firm to Madras N. VE. N. Doing so, the loss under headquarters then comes to Rs. 31,460.

(ii) *Colombo K. M. N. S. P. (Sole)*

To the admitted remittances of Rs. 35,322.1.3 will be added the remittances amounting to Rs. 16,378.1.9 made by debit to (Tamil 10 characters) account and Rs. 186 made by debt to " expense " account. It is contended that the remittance of Rs. 16,378.1.9 is not taxable as it does not represent business profits but represents remittances out of rentals received from the properties owned by the assessee. The properties in question were acquired in the course of money lending business and receipts therefrom as also the expenses incurred thereon are recorded in the assessee's books for the money lending business, i.e., the properties are treated like any other assets of the firm. In the circumstances the income from rentals should be treated as business profits only and the remittances there- 20 from taxed. Doing so, the total remittances of the assessee from this concern then come to Rs. 51,886.

(iii) *Sungambar SP. N. SP. (Joint.)*

The day book extracts produced do not show any remittances to the assessee in the year of a/c. The original closed accounts of this agency should be produced next year as also the accounts for the new business started in Vaikasi of Pramodhutha.

Total income of the assessee from business as a whole then comes to Rs. 20,426.

Other Sources—Shares Income

30

Assessee's share of loss from the A. R. N. S. P. firm, Paungdawthi, comes to Rs. 13,091.

Total and taxable income.—Assessee's total and taxable income is Rs. 7,835. Tax thereon at 9 + 9/8 pies in the rupee is Rs. 413.3.0. This must be paid on or before the 5.2.32.

Sgd. Illegibly.
Income Tax Officer.

31.12.31.

461

No. R49 Financial Statements for the year ended 31st March, 1932.

Exhibits
No. R 49
Financial
Statements
for the year
ended
31st March,
1932

R 49.

FINANCIAL STATEMENTS OF
M. R. Ry. K. M. N. S. P. NACHIAPPA CHETTIAR AVL.,
247, SEA STREET, COLOMBO,

FOR THE YEAR ENDED 31ST MARCH, 1932

M. N. SAMBAMURTI & CO.
Incorporated Accountants (London),
196, Sea Street, Colombo

Exhibits
No. R49
Financial
Statements for
the year ended
31st March 1932
—contd.

M. R. Ry. KM. N. SP. Nachiappa Chettiar Avl., 247, Sea Street. Colombo

OLD ACCOUNT

Profit and Loss Account for the year ended March 31, 1932

		Rs.	A.	P.			Rs.	A.	P.
To Interest ..	..	89	4	6	By Interest ..	..	37	4	9
Bonus to staff ..	..	4,500	0	0	Net loss carried forward	..	4,551	15	9
					<hr/>				
					4,589 4 6				
					<hr/>				
					4,589 4 6				

Balance sheet as on March 31, 1932

LIABILITIES						ASSETS		Rs.	A.	P.	
Profit and loss account :—				Old account ..		..		48,261	6	6
Opening	Rs.	A.	P.	New account ..		..		2,917	2	6
Balance	55,730	8	9								
Less loss ..	4,551	15	9								
				Rs.	A.	P.					
				51,089	4	6					
				<hr/>							
				51,089	4	6					
				<hr/>							
							51,089	4	6		
				<hr/>							

Examined and found correct.

Sgd. Illegibly,
Incorporated Accountant.

10

M. R. Ry. KM. N. SP. Nachiappa Chettiar, 247, Sea Street Colombo

NEW ACCOUNT

Profit and Loss Account for the Year ended March 31, 1932

		Rs.	A.	P.			Rs.	A.	P.
To Interest ..	..	1,26,510	8	2	By Interests ..	..	1,54,423	6	6
Establishments ..	..	3,729	0	9	Rents from house	..	1,340	5	6
Rent and lighting ..	..	179	2	3	properties ..	..	103	12	3
Postage and telegrams ..	..	43	11	9	Receipts from estate ..	..	66,962	6	8
Printing and stationery	..	40	5	0	Net loss ..	..		
Mess, &c., to staff ..	..	1,058	15	9					
Travelling ..	..	91	7	3					
Legal ..	..	2	8	0					
Subscription to Naga- rathar Association ..	..	12	0	0					
Bank commission ..	..	309	4	0					
Charity, presents and personal ..	..	6,163	1	6					
Bad debts written off ..	..	4,501	11	6					
Doubtful debts reserve ..	..	80,188	3	0					
					<hr/>				
					2,22,829 14 11				
					<hr/>				
					2,22,829 14 11				
					<hr/>				

Examined and found correct.

Sgd. Illegibly,
Incorporated Accountant.

20

30

40

M. R. Ry. KM. N. SP. Nachiappa Chettiar Avl., 247, Sea Street., Colombo

NEW ACCOUNT

Balance Sheet as on March 31, 1932

			Rs. A. P.			Rs. A. P.			Exhibits
	Capital ..	51,100	0	0	Furniture and fixtures ..	145	0	0	No. R49
	Additional capital ..	82,513	3	9	Estates and house				Financial
	Proprietor's current account	7,84,506	12	6	Properties ..	1,69,133	1	6	Statements for
	Kula Lampur branch ..	10,035	2	3	Advances to staff ..	1,352	8	0	the year ended
	Sundry creditors:—				Rent paid in advance ..	2,528	1	0	31st March 1932
10	Rs. A. P.				Sundry				—contd.
	On open				Rs. A. P.				
	account 6,28,238	7	3		Debtors 14,10,721	13	3		
	Forsalaries	71	6	6	Less doubt-				
		6,28,309	13	9	ful debts				
	Advance interest ..	891	10	6	reserve	80,188	3	0	
	Old account ..	2,917	2	3		13,34,352	13	9	
20					Cash at Bankers ..	12,782	0	9	
					Cash on hand ..	1,541	8	9	
					Profit and loss account:—				
					Net loss as				
					per P. & L. 66,962	6	8		
					Less open-				
					ing Bal.	28,523	11	5	
						38,438	11	3	
		15,60,273	13	0		15,60,273	13	0	

Examined and found correct.

Sgd. Illegibly.
Incorporated Accountant.

Profit and Loss Adjustment Account for Purposes of Income Tax

			Rs. A. P.			Rs. A. P.		
30	To Net loss as per P. & L. account OLD ..	4,551	15	9	By Items inadmissible			
	Do. P. & L. New Account	66,963	6	8	New Account Int. on capital	72,274	10	9
	Rent from house property	1,340	5	6	Int. on private			
	Receipts from estates ..	103	12	3	charities ..	2,754	4	3
	Adjusted income ..	8,231	8	4	Int. charity			
		81,190	0	6	presents, &c.	6,163	1	6
						81,190	0	6

Statement of Total income

			Rs. A. P.		
40	Income from Agriculture ..	227	4	0	
	Income from Business ..	8,231	8	4	
	Income from Rents ..	13,032	0	0	
		21,490	12	4	

Sgd. Illegibly.

KANDAWALA ESTATE

Income and Expenditure Account for the Year ended March 31, 1932

			Rs. c.			Rs. c.		
50	To Salaries and wages ..	2,003	18		By Sale of coconuts	1,931	59	
	Manuring ..	125	14		Rents received	960	0	
	Plucking, supervising and carting	178	50					
	Travelling ..	22	38					
	Licence for firearms ..	15	25					
	Loose tools, &c. ..	82	65					
	Charity and presents ..	26	50					
	Excess of income over expenditure:							
		Rs. c.						
	KM. N. SP. .. (½)	214	0					
	K. Abdul Rahim .. (¼)	106	99					
	Y. L. M. Kalif .. (¼)	107	0					
		427	99					
		2,891	59			2,891	59	

60 Examined and found correct.

Sgd. Illegibly.
Incorporated Accountants

Exhibits
No. R49
Financial
Statements for
the year ended
31st March 1932
—contd.

KM. N. SP. Nachiappa Chettiar Avl.

House Property Statement

		Name of Street and No.	Municipal Value		Municipal Taxes	
			Rs.	c.	Rs.	c.
1.	Quarry Road	5	700	0	140	0
2.	Do.	3	510	0	102	0
3.	Temple Road	9	150	0	30	0
4.	Do.	11	80	0	16	0
5.	Do.	11a	900	0	180	0
6.	Maradana (Second)	Nos.261/33 and 34	120	0	24	0
7.	Do.	261/35, 36, 37, 38 and 39	325	0	65	0
8.	Do.	261/40 and 41	135	0	27	0
9.	Do.	261/42 to 64	1,050	0	210	0
10.	Do.	261/65 and 66	235	0	27	0
11.	Do.	263	450	0	90	0
12.	Do.	265 to 269 at 450 each	1,350	0	270	0
13.	Do.	271	500	0	100	0
14.	Do.	277/279	1,250	0	250	0
15.	Do.	409	250	0	50	0
16.	Maligakande Road	11/13	370	0	74	0
17.	Do.	15/17	330	0	66	0
18.	Messenger Street	62 A, A'	470	0	94	0
19.	Do.	78	400	0	80	0
20.	Do.	87	200	0	40	0
21.	Do.	98	350	0	70	0
22.	Silversmith Street	21/4 to 22	1,515	0	303	0
23.	Chetti Street	48 and 46	2,500	0	500	0
24.	Chekkadi Street	33	200	0	40	0
25.	Forbes Road	69	250	0	50	0
26.	Temple Road	24	900	0	180	0
27.	Dematagoda Road	88	700	0	140	0
28.	Do.	88a	200	0	40	0
			16,290	0	3,258	0

		Rs.	c.
Annual Value	..	16,290	0
Less Statutory Allowance of 1/5		3,258	0
Net annual Value	..	13,032	0

This amount is included in the statutory income computation.

<i>Amount of Debt</i>	<i>Rate of Interest</i>	<i>Remarks</i>	<i>Creditor's Name and Address</i>	<i>Rs.</i>	<i>A.</i>	<i>P.</i>	<i>Exhibits No. R49 Financial Statements for the year ended 31st March 1932</i>
<i>Non-residents :—</i>							
15,762 0 ..	..	Married sisters ..	{ N. S. P. Alamelu, Kallal, S. India ..	174	11	6	---contd.
8,703 0 ..	..	Sister's daughter	{ N. S. P. Devaniyachi, S. India ..	333	8	6	
			{ Karuppayee S. India ..	146	0	0	
10		Married daughter	{ K. M. Kellabiran Pillai, Sembanur, Ramnad District ..	36	9	6	
			{ S. M. Minakshi Kandramanickam ..	269	12	0	
8,703 0 ..	..		{ Minakshi, Ramnad District ..	504	6	9	
			{ M. R. S. T. Kothai Achi, Kallal, Ramnad District ..	164	10	0	
			{ S. L. R. M. Sivakami ..	166	14	10	
			{ Kuala Lampur Branch ..	879	15	3	
				2,640	14	4	
<i>Residents :—</i>							
20	C/jac.		M. S. MN., Sea Street, Colombo ..	425	10	9	
	Do.		S. S. R. M., Sea Street, Colombo ..	342	8	9	
			RM. AR. AR. RM., Sea Street, Colombo ..	40	11	3	
				808	14	9	
			<i>Bankers:</i> The National Bank, Colombo ..	145	0	9	
<i>Others :</i>							
			Private charities ..	2,752	4	3	
			Private endowments :				
30		Deceased Mother ..	Minakshi ..	933	13	4	
		Son ..	N. S. P. N. Manickam ..				
			Ch. ..	22,541	15	6	
		Son ..	N. S. P. N. Ramasamy ..	22,541	15	6	
		Married daughter ..	S. N. Devianiachi ..	465	3	9	
		Unmarried daughter	S. N. Kalyani ..	465	3	9	
		Unmarried daughter	S. N. Valliammai ..	465	3	9	
40		Unmarried daughter	S. N. Alamelu ..	465	3	9	
				47,878	11	4	
			Interest on own capital ..	72,274	10	9	
				1,229,05	10	4	
<i>Abstract :</i>							
				<i>Rs.</i>	<i>A.</i>	<i>P.</i>	
			Bankers ..	145	0	9	
			Non-resident ..	2,650	14	4	
			Residents ..	808	14	9	
			Others ..	1,22,905	10	4	
				1,26,510	8	2	
50		OW Account ..	<i>Resident</i> V. K. R. St. Sea Street, Colombo ..				89.4.6

Exhibits No. R49 Financial Statements for the year ended 31st March 1932 —contd.	Amount of Debt	Rate of Interest	Remarks	Creditor's Name and Address	Rs.		A. P.		
<i>Non-residents :—</i>									
	15,762 00 ..	..	Married sisters ..	N. S. P. Alamelu, Kallal, S. India	Rs.	A.	P.		
					..	147	1	6	
				N. S. P. Devaniyachi, S. India	..	333	8	6	
	8,703 00	Sister's daughter		Karuppayee, S. India	..	146	0	0
				K. M. Kellabiram Pillai, Sembanur, Ramnad District ..	..	38	9	6	
			Married daughter		S. N. Minakshi Kandramanickam	..	269	12	0	10
	8,703 00 ..	..	..	Minakshi, Ramnad District ..	..	504	6	9	
				M. R. S. T. Kothai Achi, Kallal, Ramnad District ..	..	164	10	0	
				S. L. R. M. Sivakami ..	..	166	14	10	
				Kuala Lumpur Branch ..	..	879	15	3	
						2,640	14	4	
<i>Residents :—</i>									
			C/ac.	M. S. MN., Sea Street, Colombo	..	425	10	9	
			Do.	S. S. R. M., Sea Street, Colombo	..	342	8	9	20
				RM. AR. AR. RM., Sea Street, Colombo	..	40	11	3	
						808	14	9	
				Bankers : The National Bank, Colombo	..	145	0	9	
<i>Others :</i>									
				Private charities	..	2,752	4	3	
				Private endowments :					
..	..	Deceased Mother ..	..	Minakshi ..	..	933	13	4	30
..	..	Son ..	..	N. S. P. N. Manickam	..				
				Ch. ..	..	22,541	15	6	
..	..	Son ..	..	N. S. P. N. Ramasamy	..	22,541	15	6	
..	..	Married daughter ..	..	S. N. Devianiachi ..	..	465	3	9	
..	..	Unmarried daughter	..	S. N. Kalyani	..	465	3	9	
..	..	Unmarried daughter	..	S. N. Valliammai ..	..	465	3	9	40
				Unmarried daughter	S. N. Alamelu	465	3	9	
						47,878	11	4	
				Interest on own capital	..	72,274	10	9	
						1,22,905	10	4	
<i>Abstract :</i>									
						Rs.	A.	P.	
				Bankers	..	145	0	9	
				Non-resident	..	2,659	14	4	
				Residents	..	808	14	9	
				Others	..	1,22,905	10	4	
						1,26,510	8	2	50
..	..	OW Account	..	Resident	..				
				V. K. R. St., Sea Street, Colombo	..	89.4.6			

Details of salaries paid.

New account.

	Rs.	A.	P.
N. K V L. Ramanathan Chettiar	2,747	8	0
Lakshamanan Asst.	647	8	0
Vellachami Asst.	38	15	6
Pichamuttu—Rickshaw	285	1	3
Sundaram, Clerk	10	0	0
	<u>3,729</u>	<u>0</u>	<u>9</u>

Exhibits
No. R49
Financial
Statements for
the year ended
31st March 1932
—contd.

10 *Old account*

Bonus was paid to the old Kadirasan Temple
Bank Commission and Ledger fees details:

	Rs.	A.	P.
Paid shroff, National Bank	285	8	0
Ledger fees, Imperial Bank	23	12	0
	<u>309</u>	<u>4</u>	<u>0</u>

Details of bad debts written off:

4,501.11.6 Mariumbu Nachi Kaula Umma: Rs. 15,000
were advanced to him on the security of certain house properties
20 which were subsequently brought to public auction to enforce the
decree obtained against him. In this way Rs. 11,000 were recovered
on the 29th April, 1931, and the balance was settled with the debtor
for Rs. 1,100 on the 21st November 31 finally. The balance has been
written off.

Details of doubtful debts provided for: 18,168.8.6. M. L. M.
Zainally.

30 There were several pro notes outstanding against him to the
tune of Rs. 38,149.83 of which Rs. 30,000 was secured and the rest
unsecured, when the party died. All his creditors entered into an
arrangement in about May, 1931, with the executors of the deceased
to accept transfer of the stock in trade to Messrs. Darley Butler &
Co., Ltd., as trustees for the creditors, to be realised and the pro-
ceeds applied towards the satisfaction of their claims. Our client
agreed to this agreement only on the understanding that he be
allowed to enter claim as unsecured to the extent of Rs. 18,000 and
odd as the value of the security that they had originally taken for
Rs. 30,000 had fallen in value to the whereabouts of Rs. 20,000 by
about that time.

Exhibits
No. R49
Financial
Statements for
the year ended
31st March 1932
—contd.

Up to the 31st March, 1932, the following sums were received from Darley Butler on this account.

	Rs.	c.
1st September	...	1,140.97
9th October	...	1,400.00
21st December	...	1,088.99
	...	<u>3,629.96</u>

Further the rents from the security taken by them were permitted by the executors to be received by them and in this way Rs. 675 has been credited to this account during the year. In addition to these, since the close of the year, a sum of Rs. 907.50 has been received in April 1932. Further our client expects to receive about a thousand rupees out of the last sale of the remaining stock in trade which is shortly to take place. 10

The security has now further fallen down in value to about Rs. 15,000 and the sum has not yet been conveyed to our client as the executors are not yet able to do it. The balance that will ultimately remain unrealised in this account is therefore expected to be Rs. 18,168.86 which has now been reserved.

D. C. Senanayake. There were several pro notes to the extent of Rs. 38,000 outstanding against him and accrued interest thereon up to date amounts to Rs. 3,831.10.8 thus bringing the balance to Rs. 41,831.10.8. Interest has been received up to 8th May, 1931, and it was found that all his properties had been by this time otherwise mortgaged. The executors however, have since declared a dividend of Rs. 523.30 out of the income of the estate in favour of our client which has been received by him on the 5th May, 1932, i.e., subsequent to the accounting year. Now the mortgagees are moving to enforce their right of seizure and sale when the income also will stop. As there is therefore no hope of receiving any further dividends, the balance in the account over the subsequent dividend received, viz., Rs. 523.30 has been reserved. 20 30

S. S. N. R. M. Ramanathan Chettiar, Kochchikade, Negombo.

A sum of Rs. 10,000 was advanced to him a few years back but last renewed in March 1931, interest has been received up to that date. There have been no further receipts on account. He is now heavily involved and it is even feared that his liabilities may exceed his assets, most of them having been already mortgaged. An action has already been commenced against him by another creditor the result of which is not yet known. Under these circumstances the entire balance in his account including accrued interest to date, has been fully reserved. 40

Suhar. Rs. 49,000 was advanced to him on a mortgage. A suit was filed on 16. 4. 30 and the same was decreed on 28. 4. 30. One of the properties was sold for Rs. 25,080 in November 1930 and another on 10. 2. 31 for Rs. 7,070. The third property was sold on the 1st February, 1932, for Rs. 12,453.12.0 leaving a balance on that date of Rs. 5,121.1.0. Interest up to date of the 31st March, 1932 has been calculated and debited for Rs. 9,002.12.0, thus bringing the balance in his account to Rs. 14,198.13.0. When the case was in progress another property was taken from his mother as an additional security which still remained to be disposed of as on the 31st March, 1932. It is estimated that this security will realise Rs. 4,500 out of this balance. The balance has been provided against.

Exhibits
No. R49
Financial
Statements
for the year
ended 31st
March 1932
—contd.

No. A30a. Translation of A30.

A 30a

Translation

Sembanur
K. M. N. S. P.

Sivamayam
No. 60

Colombo
K. M. N. S. P.

No. A30a
Translation of
A30 17.1.32.

17th day of Thai (January) in the year Pirasotpathy.

20 The matter written to Letchumanan. Now you will know on receipt of this letter from here.

Received Rs. 1,000 sent from there insured under registered cover on the 1st instant on account of Meenadchy Achy, wife of N. S. P., and letter No. 65 of 14th instant enclosed therewith Rs. 1,000 on home account also under registered cover.

30 Now, your writing that A. A's property No. 46, Keyzer Street, has been settled at the price of Rs. 39,750 and that a demand has been made of you for a letter undertaking that our Ramanathan shall release on his arrival is reasonable. As Ramanathan comes there starting on the 30th instant it is not necessary in the meantime for you to give a letter. Tell them to have the deeds, &c., prepared. Release may be written and granted and money obtained as soon as Ramanathan comes. Write as to which property was released last year on a Power of Attorney granted to you and tendered to court as security. If you and Kandasamy are satisfied with the Maradana property after having seen it, write also the details whether mortgage is to be executed. Kandasamy wrote letter that there are still some mortgages forthcoming. We wrote to him to take you to see the properties and
40 write to me. Write also in detail if you have gone and seen them.

Exhibits
No. A30a
Translation of
A30 17.1.32
—contd.

Write as to whether as written in the previous letter, principal and interest were recovered from M. T. K. A. V. Sevu of Negombo and credited to Pavundothy Shop, and whether you have intimated to that place and again in four days you remitted Rs. 5,000 to K. M. A. R. Suppramaniam Chetty and the same was debited to Pavundothy and this was intimated to that place. We have written to Pavundothy to send certain amounts there. On receipt of them credit to Pavundothy and write its details then and there to that place and here.

Kandasamy has written that lending and recovering in small sums may be had with the vilasam known as V. R. R. M. A. on S. S. R. M's account. Lend Rs. 5,000 by cheque per Kandasamy to the aforesaid shop on S. S. R. M's account and obtain a hand written letter from the Attorney for interest at 10. To make up that sum obtain from Kandasamy the amount lying to their credit and for the balance draw from our account and debit to S. R. M. M. Write also whether money was recovered in respect of the dishonoured cheque given by Sanoon on account of interest and whether cheque for interest was obtained from the abovenamed for past months and also whether money was recovered from Proctor Zaheed on his cheque for Rs. 150 given to us. You have, I find out from the entries of 6th January, credited Rs. 150 by the cheque drawn on the National Bank in respect of the Note for Rs. 750 due on 17th February next. Is it 40 days before the due date that he has paid Rs. 150; write about it. You write that Rs. 150 were obtained on account of the said note after we wrote to you from here strongly as you have obtained Rs. 50 and exchanged earlier than due date in December from the abovenamed. Write clearly whether those two are separate.

Recover without delay the interest overdue from Salim Hadjiar and others. Write whether money was obtained for court order sent to Devakottai returned duly signed, and whether it is credited.

Send here without delay a copy in English as soon as prepared and printed by the Government in respect of Income Tax.
Other matters later.

Give S. N. Theivanai's money to M. A. L. M. K. R., prepare a hand written letter and send to Karuppan Chettiar for his signature asking him to give it here or send there. Write whether you have done so.

Sgd. SUPPRAMANIAM CHETTY. 40

No. A 36a. Translation of Folio 118 of A 36

A 36a.

Translation

Exhibits
No. A36a
Translation of
Folio 118 of A36
26.3.32

Colombo. Ledger folio 118. KM. N. S.P.
K. M. N. SP. Firm Colombo.

Debit and Credit Account of Navanna Soona Pana Nawanna
Ramasamy Chettiar *alias* Manickam Chettiar

10	Year		Particulars	Dr.	Cr.
	Month	date		Rs. c.	Rs. c.
			Credit for March 26, 1931, from N. S. P. Natchiappa Chettiar's Account for interest at $\frac{3}{4}$ th per cent. on 12 months' due without entry in Day Book ..	— ..	251,000 0
	1932				
	March ..	26 ..	Credit for April 1 this year— interest at $\frac{3}{4}$ th per cent. calcu- lated at compound rate for the period from March 26, 1931, to March 31 (instant), deducting cross interest	— ..	22,855 72
20			Total principal including interest for $\frac{3}{4}$ per cent. interest from 1st April 1932 on 12 months' due	— ..	273,855 72

Carried over to next Ledger folio 57.

Translated by,
Signed Illegibly,
Sworn Translator,
30 D. C. Colombo, October 21, 1946.

NO. A66. COPY OF DEED NO. 1354

A 66.

DEED No. 1354.

TO ALL TO WHOM THESE PRESENTS SHALL COME ABOO HANIFFA
MOHAMED ABDUL CADER, THE ADMINISTRATOR OF THE INTESTATE
ESTATE OF AHAMAD ALI ABDUL RAHAMAN OF 3RD CROSS STREET,
COLOMBO.

SENDS GREETINGS

40 Whereas the said Ahamad Ali Abdul Rahaman was during his
life time under and by virtue of Fiscal's Conveyance No. 13689/1922
dated 22nd day of December one thousand nine hundred and
twenty-two given under the hand of W. de Livera, Deputy Fiscal.
Western Province, seized and possessed of or otherwise well and
sufficiently entitled to an undivided one-fourth of all that premises
hereinafter more fully described in the schedule hereto :

No. A66
Copy of Deed
No. 1,354
2.7.32.

Exhibits
No. A66
Copy of Deed
No. 1,354 2.7.32
—contd.

And whereas the said Ahamad Ali Abdul Rahaman departed this life intestate on the 28th day of September, 1930, and his estate is being administered in Testamentary proceedings No. 5393 of the District Court of Colombo :

And whereas letters of administration to the estate of Ahamad Ali Abdul Rahaman was granted to the said Aboo Haniffa Mohamed Abdul Cader in the aforesaid Testamentary case No. 5393 :

And whereas the District Court of Colombo in the aforesaid Testamentary case No. 5393 by its order dated the 27th day of June, 1932, authorised the said Aboo Haniffa Mohamed Abdul Cader to sell the premises for the sum of Rs. 29,000 unto Nachiappa Chettiar, the son of Suppramaniam Chettiar of Sembanur in Ramnad District, South India, carrying on business in the Island of Ceylon under the name, style or vilasam of Koonna Mana Navanna Suna Pana (hereinafter called the vendee) :

Now know ye and these presents witness that the said Aboo Haniffa Mohamed Abdul Cader as Administrator as aforesaid hereinafter called the vendor in pursuance of the said order of the District Court of Colombo and in consideration of the said sum of Rs. 29,000 well and truly paid by the said vendee at or before the execution of these presents (the receipt whereof the said vendor doth hereby admit and acknowledge) doth hereby grant, bargain, sell, assign, convey, transfer, assure, and set over unto the said vendee, his heirs, executors, administrators, and assigns all the aforesaid undivided premises called "Kandawala Estate" hereinafter more fully described in the schedule together iwth all the buildings, erections, fixtures, machinery, plantations, crops, produce, stores, tools, utensils, implements, furniture and effects, cattle and other the dead and live stock and together with all privileges, easements, servitudes and rights of way and appurtenances whatsoever appertaining to the said premises belonging or in any wise appertaining or held to belong or be appurtenant thereto or used or enjoyed therewith and all the estate, right, title, interest, claim, and demand whatsoever of the said, Ahamed Ali Abdul Rahaman and of the said vendor as Administrator as aforesaid in, to, upon, or out of the said premises.

To have and to hold the said premises together with all and singular the appurtenances thereto hereby granted or intended so to be unto the said vendee and his aforewritten for ever, free from all encumbrances.

And the said vendor for himself his heirs, executors, and administrators covenant with the said vendee his heirs, executors, administrators and assigns that the said vendor hath not at any time heretofore as such administrator as aforesaid or otherwise made done, executed or knowingly suffered or been party or privy to any act, deed, matter, or thing whatsoever whereby or by means whereof the said premises or any part thereof hereby transferred

or conveyed or expressed or intended so to be are/is, can, shall, or may be impeached or encumbered in title, charge, estate, or otherwise howsoever.

Exhibits
No. A66
Copy of Deed
No. 1,854 2.7.32
—contd.

And that the said vendor as administrator as aforesaid doth hereby for himself and his aforewritten covenant and declare that the said premises are free from all encumbrances whatsoever and that he shall and will at all times hereafter at the request and cost of the said vendee and his aforewritten do and execute or cause to be done and executed all such further and other acts, deeds, matters
10 and things whatsoever as shall or may be reasonably required for further and more perfectly assuring the said premises unto the said vendee, his heirs, executors, administrators and assigns.

In witness whereof the said vendor doth set his hand to these presents and to two others of the same tenor and date at Colombo on this Second day of July, One thousand Nine hundred and Thirty-two.

The Schedule above referred to.

All that and those the estate and plantations and premises called and known as "Kandawala Estate" situated at Ratmalana in the
20 Palle Pattu of Salpiti Korale in the District of Colombo, Western Province, comprising the lot marked Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 in Plan No. 3797 dated 14th May, 1920, made by U. S. A. Dias, Surveyor and Leveller; which said divided and defined portion is bounded on the North by Road to Attidiya, Dawson Estate belonging to L. W. A. de Soysa, land called Galpotte belonging to John Perera, field belonging to Peiris Appu and Geeris Appu, on the East by land belonging to N. B. Fonseka, land described in title plan No. 75775, 75776, Owita belonging to Manis Appu, field of M.
30 B. Fonseka and the Panadura River, on the South by Road reservation, and on the West by Galle Road; containing in extent exclusive of the reservation shown in the said Plan No. 3797 three hundred and twenty-five acres and twenty-seven perches (A325. R0. P27.).

Witnesses.

(Sgd.) A. M. Fajurdeen

(Sgd.) A. H. M. Abdul Cader.

(Sgd.) A. C. A. Raheem.

(Sgd.) A. M. Fuard,
Notary Public.

40

(Attestation omitted.)

Attested on 2nd day of July, 1932.

(SEAL)

(Sgd.) A. M. Fuard,
Notary Public.

No. 67. Copy of Deed No. 2021

A 67

DEED No. 2021

Exhibits
No. A67
Copy of Deed
No. 2,021
19.8.32

TO ALL TO WHOM THESE PRESENTS SHALL COME YOOSOOF LEBBE MOHAMED KHALID OF 47, DEMETAGODA ROAD IN COLOMBO, AND YOOSOOF LEBBE RUCKIYA UMMA OF NO. 482, HOLLAND HOUSE, COLPETTY IN COLOMBO.

SEND GREETING

Whereas the said Yoosoof Lebbe Mohamed Khalid and Yoosoof Lebbe Ruckiya Umma are seized and possessed of and under and by virtue of Deed No. 427 dated the 30th day of April, 1930, attested by A. C. M. Abdul Cader of Colombo, N. P., and otherwise lawfully entitled to the premises hereinafter in the schedule hereunder written fully described :

And whereas the said Yoosoof Lebbe Mohamed Khalid and Yoosoof Lebbe Ruckiya Umma have agreed with Koonna Mana Nawanna Soona Pana Nachiappa Chettiar of No. 247, Sea Street, Pettah, in Colombo, for the absolute sale and assignment to him of the said premises at or for the price or sum of Rs. 29,500 of lawful money of Ceylon :

Now know ye and these presents witness that the said Yoosoof Lebbe Mohamed Khalid and Yoosoof Lebbe Ruckiya Umma in pursuance of the said agreement and in consideration of the said sum of Rs. 29,500 well and truly paid to them the said Yoosoof Lebbe Mohamed Khalid and Yoosoof Lebbe Ruckiya Umma at or before the execution of these presents the receipt whereof the said Yoosoof Lebbe Ruckiya Umma do hereby admit and acknowledge, do hereby sell, assign, transfer, set over, and assure unto the said Koonna Mana Nawanna Soona Pana Nachiappa Chettiar, his heirs, executors, administrators, and assigns the lands and premises fully and particularly described in the schedule to these presents together with the buildings, erections, fixtures, machinery, plantations, crops, produce, stores, tools, utensils, implements, furniture and effects, cattle and other the dead and livestock and everything standing thereon and together with all privileges, easements, servitudes and right of way and appurtenances whatsoever appertaining to the said premises or belonging or in anywise appertaining or held to belong or be appurtenant thereto is used or enjoyed therewith and all the estate, right, title, interest, property, claim and demand whatsoever of these the said Yoosoof Lebbe Mohamed Khalid and Yoosoof Lebbe Ruckiya Umma in, to, or upon or out of the said premises.

To have and to hold the said property and premises with all and singular the appurtenances thereto hereby granted and conveyed

or intended so to be unto the said Koonā Mana Nawanna Soona Pana Nachiappa Chettiar, his heirs, executors, administrators, and assigns for ever free from all encumbrances.

Exhibits
No. A67
Copy of Deed
No. 2,021
19.8.32—contd.

10 And the said Yoosoof Lebbe Mohamed Khalid and Yoosoof Lebbe Ruckiya Umma do hereby for themselves and their respective heirs, executors, and administrators covenant and agree with the said Koonā Mana Nawanna Soona Pana Nachiappa Chettiar his heirs, executors, administrators, and assigns that they the said Yoosoof
10 Lebbe Mohamed Khalid and Yoosoof Lebbe Ruckiya Umma now have good right to convey the said property and premises and everything standing thereon in manner aforesaid and that the same are free from all encumbrances and that they and their respective
10 aforesaid shall and will always warrant and defend the title to the same and every part or portion thereof against any and every person or persons whomsoever and that they, the said Yoosoof
10 Lebbe Mohamed Khalid and Yoosoof Lebbe Ruckiya Umma and their respective aforesaid, shall and will at all times hereafter at the request and cost of the said Koonā Mana Nawanna Soona
20 Pana Nachiappa Chettiar or his aforesaid do and execute or cause to be done and executed all such further and other acts, deeds
20 assurances, matters and things as he shall or may reasonably require for more perfectly and effectually conveying and assuring the said property and premises unto the said Koonā Mana Nawanna Soona
20 Pana Nachiappa Chettiar, his heirs, executors, administrators and assigns.

In witness whereof the said Yoosoof Lebbe Mohamed Khalid and Yoosoof Lebbe Ruckiya Umma have set their respective hands to these presents and to two others of the same tenor and date at Colombo aforesaid on this nineteenth day of August one thousand
30 nine hundred and thirty-two.

The Schedule above referred to.

An undivided one fourth (1/4) part or share of all that and those the estate plantations and premises called and known as Kandawala Estate situated at Ratmalana in the Palle Pattu of Salpiti Korale in the District of Colombo, Western Province; comprising the lots marked 1, 2, 3, 4, 5, 6, 7, 8 and 9 in plan No. 3747 dated 14th May, 1920, made by V. S. A. Dias, Surveyor and Leveller; and bounded on the North by the Road to Attidiya, Dawson Estate belonging to Mr. L. W. A. de Soysa, land called Galpotta
40 belonging to John Perera, field belonging to Peiris Appu and Geeris Appu, on the East by the land belonging to N. B. Fonseka, land described in T. Ps. 75775 and 75776, owita belonging to Manis Appu, field of N. B. Fonseka, and the Panadura river, on the South by the road reservation, and on the West by Galle Road;

Exhibits
No. A67
Copy of Deed
No. 2,021
19.6.32—contd.

containing in extent (exclusive of the reservation shown in the said plan No. 3797) three-hundred-and-twenty-five acres and twenty-seven perches (A325. R0. P27.) as described in the diagram or map marked No. 1025 dated 16th day of December, 1922, made by M. B. de Silva, Fiscal's Licensed Surveyor.

Witnesses

- | | | |
|---------------------------|-----------------------|----|
| 1. Sgd. M. Muheeb Saleem. | Sgd. Y. L. M. Khalid. | |
| 2. Sgd. L. A. S. Pullai. | Y. L. Ruckiya Umma. | |
| | Sgd. in Arabic. | 10 |

Attested on 19th August, 1932.

Sgd. N. M. Zaheed,
Notary Public.

No. R3 Letter
28.9.32

No. R3. Letter.
R 3.

No. 247, Sea Street,
Colombo, 28th Sept. 1932.

The Commissioner of Stamps,
Colombo.

Sir,

20

With reference to your notice No. 6916T dated the 5th instant, I have the honour to inform you that the late K. M. N. S. P. Suppramaniam Chetty (who has been incorrectly stated in the notice as K. M. N. N. S. P.) left no property whatsoever at the time of his death.

Sgd. Per pro K. M. N. S. P.
Nachiappa Chettiar.
L. Ramanathan Chettiar.

No. R2 Letter
29.9.32

No. R2. Letter.
R 2.

30

Stamp Office,
Colombo, 29th September, 1932.

Journal No. 6916/K. M. N. S. P. Suppramaniam
Chetty—deceased.

With reference to your letter dated the 29th instant you are required to furnish the Declaration and Statement of Property without further delay. If no duty was found to be payable a certificate to that effect would be issued.

Sgd. K. T. S. Gurusinghe,
for Commissioner of Stamps. 40

Nachiappa Chettiar,
247, Sea Street,
Colombo.

**No. R1. Declaration and Statement of Property for
Commissioner of Stamps**

R 1.

24278

Exhibits
No. R1
Declaration and
Statements of
Property for
Commissioner of
Stamps 5.10.32

THE ESTATE DUTY ORDINANCE, No. 8 of 1919.

FORM A—DECLARATION AND STATEMENT OF PROPERTY FOR THE
COMMISSIONER OF STAMPS, PRESCRIBED UNDER
RULE 3.

10 Name and Address of
accountable parties and/or
proctor where notices may
be served. K. M. N. S. P. Natchiappa
Chettiar, 247, Sea Street,
Colombo.

Testamentary Case No.
Journal No. 6916.

In the Estate of Koona Mana Nawenna Soona Pana Suppramaniam
Chettiar.

I, N. K. V. L. Ramanathan Chettiar, attorney of K. M. N. S.
P. Natchiappa Chettiar, do solemnly sincerely and truly declare and
affirm (or make oath and say) as follows:—

20 The Statement A hereto annexed is a full and true statement of
all the property in respect of which duty has, subject to the proper
deductions, become payable on the death of the above-named
deceased of Sembanur, Ramnad District, South India, who died on
the 12th March, 1932, at Sembanur, domiciled in South India.

The deceased left no Will.

30 The Statement B hereto annexed is a true statement of
the deceased's funeral expenses; and of the debts or encumbrances
incurred or created by him bona fide for full consideration in money
or money's worth wholly for the deceased's own use and benefit,
which debts were due from the deceased at the time of his death,
without any right of reimbursement from any other estate
or person.

The valuation set out opposite to the several items in Statement A
fully and fairly represents, to the best of my knowledge information
and belief, the values of the said items respectively at the date of
the death of the deceased, and aggregates Rs. Nil.

The aggregate amount of the deductions as shown in the
Statement B is Rs. Nil.

40 The Statement C hereto annexed is a full and true statement of
the property of the deceased in respect of which exemption from

Exhibits
No. R1
Declaration and
Statement of
Property for
Commissioner of
Stamps 5.10.32
—contd.

estate duty is claimed upon the grounds set forth therein, and the value of such property at the time of death was Rs. 167,250 to the best of my knowledge, information and belief.

I have truly and faithfully made answer to the questions contained in Statement D.

Declared by the abovenamed
at Colombo on this 5th day of
October, 1932.

Sgd. In Tamil.

10

Before me.
Sgd. Illegibly.
Commr. for Oaths.

		Statement A.			
	x	x	x	x	
		Statement B.			
	x	x	x	x	
		Statement C.			
		Schedule No. I			
Bond No.	1,300	...	...	15,000	
„	1,265	...	...	12,500	20
„	281	...	...	10,000	
„	3,944	...	...	9,000	
„	3,869	...	...	6,250	
„	824	...	...	5,000	
„	4,335	...	...	22,500	
„	3,486	...	...	10,000	
„	3,457	...	...	12,500	
„	3,182	...	...	10,000	
„	3,215	...	...	6,500	
„	3,290	...	...	5,000	30
„	3,041	...	...	3,500	
„	3,429	...	...	2,000	
„	3,129	...	...	5,000	
„	3,087	...	...	10,000	
„	3,701	...	...	7,500	
			Total ...	152,250	

The above Bonds have been assigned by the deceased to K. M. N. S. P. Natchiappa Chettiar by deed No. 3954 dated 24th March, 1926, attested by C. T. Kandaiya of Colombo, Notary Public (certified copy whereof is hereto annexed).

Sgd. in Tamil.

40

Before me.
Sgd. Illegibly.
Commr. for Oaths.

Statement C.
Schedule No. II.

Exhibits
No. R1
Declaration and
Statement of
Property for
Commissioner of
Stamps 5.10.32
—contd.

10 $\frac{1}{4}$ share of Kandawela Estate situated at Ratmalana in the District of Colombo, sold by the deceased to K. M. N. S. P. Natchiappa Chettiar by Deed No. 3717 dated the 26th March, 1925, attested by C. T. Kandaiya of Colombo, Notary Public (certified copy whereof is hereto annexed).

15,000

Total of Schedule I. 152,250

Grand Total. Rs. 167,250

Sgd. in Tamil.

Before me.
Sgd. Illegibly.
Commr. for Oaths.

Statement D.

x x x x

20 In terms of Section 23 (3) of Ordinance No. 8 of 1919, I certify that no Estate Duty is payable.

Sgd. M. PRASAD,
Commissioner of Stamps.

Stamp Office,
Colombo, 8th August, 1933.

No. A 36b. Translation of Folio 101 of A 36.

A 36b.

Translation

Colombo

Ledger folio 101
Charity Credit.

KM. N. SP.

No. A36b
Translation of
Folio 101 of
A36 1931, 1932.

Year			
Month	Date		Rs. c.
1931			
March	.. 22	.. Credit for February 16, 1931, for New Current interest reducing 1/16 per cent. on 12 months due transferred from Old Account	.. 29,102 78
1932			
March	.. 26	.. Credit for April 1 this year interest at New Current rate reducing 1/16th per cent. calculated at compound rate for the period from February 16, 1931, to March 31 (instant) deducting cross interest ..	2,470 81
Total principal including interest for New Current interest reducing 1/16 per cent. for the period from April 1, 1932, on 12 months due			.. 31,573 59

Carried over to Next Ledger folio 49.

Exhibits
No. A36b
Translation of
Folio 104 of
A36 1931, 1932
—contd.

		Translation		
Colombo		Ledger Folio 93		KM. N SP.
		KM. N. SP. Firm Colombo		
Debit and Credit a/c of Navanna Soona Pana Nachiappa Chettiar.				
Year	Particulars	Dr.	Cr.	
		Rs. c.	Rs. c.	
1931				
	<i>March 22</i>			
	Credit for 26th instant transferred from old a/c for interest at $\frac{3}{4}$ th per cent. on 12 months due ..		1,337,608 89	
	<i>March 31</i>			10
	Debit for 26th March (instant) transferred from Kandawala Estate Purchase a/c of KM. N. SP. Nachiappa Chettiar, the amount lying in debit thereon	116,576 26		
	Balance Credit		1,221,032 63	
	Debit for 26th March, 1931, without entry in Day Book —amount credited against N. SP. N. Nachiappa Chettiar <i>alias</i> Manikam Chettiar being Rs. 251,000 and amount credited against N. SP. N. Ramasamy Chettiar being Rs. 251,000 ..	502,000 0		20
	Balance Credit		719,032 63	
	1932			
	<i>March 26</i>			
	Credit for 1st of April this year interest at $\frac{3}{4}$ th per cent. calculated at compound rate for the period from 26th March, 1931, to 31st March (instant) deducting cross interest ..		65,474 15	
	Principal including interest as at 1st April, 1932, for interest at $\frac{3}{4}$ per cent. on 12 months due Cr. ..		784,506 78	
	Carried over to next Ledger Folio 43.			30

No. R 36. Audit Report.

R 36.

M. N. Sambamurti, 196, Sea St., Colombo.
1st Oct., 1932.

AUDIT REPORT.

I do hereby certify that I have examined the books of M. R. Ry. K. M. N. SP. Nachiappa Chettiar Avl, 247, Sea St., Colombo, and that this account is in accordance therewith. I have seen the int. calculations, but I could not verify any of the items of expenditure with vouchers as none of them were available. I have verified that all profits and income have been credited and have received all explanations required.

Mr. Chettiar is a non-resident and he does not belong to any of the Hindu Undivided Family. He has no other interests within the Island. His father's name is Mr. Subramaniam Chettiar.

No. R36 Audit
Report 1.10.32

There are several payments of interest to certain endowments created by Mr. Chettiar himself in his books. Interest on these have been regularly calculated and credited up to date. It is represented that the credit to his deceased mother is to be distributed to his married sisters. It is further represented that the various endowments will never be appropriated by him and that in future interest credits or payments to these accounts will be made on the same lines as in the case of the other non-resident creditors. These interest payments have not been written back by me in the profit and loss adjustment a/c.

Exhibits
No. R36 Audit
Report 1.10.32
—contd.

Subject to the foregoing remarks I am satisfied that the books correctly record all the transactions of the business for the period in question and that this account discloses the full profits of the firm to the best of my knowledge and belief.

Sgd. M. N. SAMBAMURTI,
Incorporated Accountant.

No. A 42. (Same as A 36a)

No. A42 same as
A36a

No. A 43. Translation of Folios 43 and 174 of Ledger.

No. A43
Translation of
Folio 43 and 74
of letter

20

A 43.

Translation

Colombo

KM. N. SP.

Ledger folio 43

KM. N. SP. Firm, Colombo.

Debit and Credit A/c of Navanna Soona Pana Nachiappa Chettiar.

Year	Particulars	Dr. Rs. c.	Cr. Rs. c.
1932			
April 1			
	Credit from page 93 of previous Ledger for interest at $\frac{3}{4}$ % from the 1st instant on 12 months due ..	..	784,506 78
1933			
March 24			
	Credit for 1st April this year interest at $\frac{3}{4}$ % for the period from 1st April, 1932, to 31st March, i.e., 12 months deducting cross interest for 8 days ..	..	70,464 41
	Total Credit .. ..	..	854,971 19
March 31			
	Credit for 1st of April this year—amount lying in credit in the old a/c .. ..	..	2,917 14
	Debit simultaneously interest expenses a/c ..	92,701 86	
	Debit also. Transferred to New a/c ..	765,186 47	
	Total Debit and Credit equalized.		

Exhibits
No. A43
Translation of
Folios 43 and 74
of ledger 1932-
1933.—*contd.*

Colombo

A 43.

Translation

KM. N. SP.

Ledger Folio 174

KM. N. SP. Firm, Colombo.

Debit and Credit of Kandawala Estate Purchase a/c.

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
1932		<i>Rs. c.</i>	<i>Rs. c.</i>
<i>July 2</i>			
	Debit. As per deed of sale No. 1,354 of this date attested by A. M. Fuard, Notary, of the one-fourth share belonging to A. Abuthal Rehuman sold by A. H. M. Abuthal Kader, Administrator, with the authority of court—amount due from A. Abuthal Rehuman as principal Rs. 27,200, amount due on interest a/c Rs. 263·68 and Rs. 1,536·32 paid by cheque drawn on National Bank. Total purchase value	29,000 0	10
	Debit also. Stamps to deed of sale at the rate of Rs. 16 per 1,000 being Rs. 464, and Rs. 50 being Proctor's fees paid to Mr. Fuard, Proctor. Total ..	514 0	20
	Total Debit	29,514 0	
<i>August 19</i>			
	Debit. Purchased this day under deed No. 2021 attested by N. M. Zaheed the $\frac{1}{4}$ th share belonging to Usuf Lebbe Rukiya Umma and Y. L. M. Khalid	29,500 0	
	Debit also. To stamps to deed of sale being Rs. 473 and Proctors fees Rs. 73.50 paid per National Bank cheque. Total	546 50	30
	Total Debit	59,560 50	
1933			
	<i>March 31.</i> Credit. Transferred to New a/c		59,560 50
	Total Debit and Credit equalized.		

No. A56
Indian Income
Tax Assessment
1932, 1933

No. A 56. Indian Income Tax Assessment.

A 56.

Income-tax Office. III Circle,
Karaikudi, Dated 5.2.1933.

F. No. 763/32-33

Income-tax Department.

Ramnad District:

40

- (1) Year of assessment: 1932-33.
- (2) Name of Assessee (with complete address): M. R. Ry. K. M. N. SP. Nachiappa Chettiar, Sembanur.
- (3) Status—(Whether individual, registered or unregistered firm, Hindu undivided family, Company or other association of individuals): Hindu undivided family.

(4) Sources of income with exact nature of business: Property, Business, Sole moneylending at Colombo and joint moneylending at Sungambar and other sources—share of income.

Exhibits
No. A56 Indian
Income Tax
Assessment
—contd.

(5) Branches:—

(a)

(b)

(c)

6. Shares in (a) Registered and

10 (b) Unregistered Firms. 16/35 share in the A. R. N. S. P. firm, Paungdawthi.

7. Partners—(a) names with shares.

(b) are they separately assessed?

8. Income returned: Rs. 5,033—7—6.

9. Accounts—(a) Books produced. Daybook and ledger for Headquarters and daybook extracts for Colombo and Sungambar concerns.

(b) Method of Accounting: Chetty system.

(c) Accounting period: Prajothpathi for Sungambar and 1931-32 for Colombo.

20 10. Section and sub-section under which assessment made: 23 (3).

ASSESSMENT ORDER

Property: As in previous years, Rs. 500 will be adopted under this head.

BUSINESS

(i) *Headquarters*

30 No moneylending as such is carried on at Headquarters and both the small interest receipts and interest payments will be ignored as in previous years. But the charges incurred at headquarters in writing up the accounts, viz. Rs. 131.9.0. will be allowed. Doing so, the loss under headquarters comes to Rs. 131.9.0.

(ii) *Sungambar K. M. N. SP. (Joint)*

The day book extracts produced do not disclose any remittances to the assessee. The original closed account should be produced on or before 16.3.1933.

(b) *New account.* Remittances by debit to “expenses a/c” comes to Rs. 14.30.

Total remittances from this concern then come to Rs. 14.5.0.

(iii) *Rentals from the properties in Colombo*

40 Accounts produced do not disclose any remittances from the rentals which are being collected by the Colombo K. M. N. R.M. concern.

Exhibits
No. A56
Indian Income
Tax Assess-
ment—contd.

(iv) *Colombo K. M. N. SP. (sole)*

(a) *Old A/c.* The day book extracts produced do not show any remittances to the assessee.

(b) *New a/c.* The remittances by debit to "Oor" or "head-quarters a/c" which have been admitted come to Rs. 5,605.1.0. Besides the above remittances, there have been remittances in the year to the Paungdawathi A. R. N. S. P. partnership in Burma amounting to Rs. 63,600. Details for the remittances are given below:

1.	5th May, 1931.			10
		To amount sent to Rangoon KM. AR. Chokkalingam Chettiar by telegraph transfer through the Mercantile Bank, Colombo.	Rs. 25,000	
2.	31st July, 1931.			
		To amount sent to Rangoon KM. AR. Subramaniam Chettiar through the National Bank, Colombo,	Rs. 25,000.	
3.	1st February, 1932.			
		To value of Colombo National Bank draft sent to Rangoon KM. AR. Subramaniam Chettiar	Rs. 5,000	20
4.	27th Feby., 1932.			
	do.	do.	Rs. 3,500	
5.	8th March, 1932.			
	do.	do.	Rs. 5,100	
		<hr/>		
		Total	63,600	

It is contended by the assessee's agent the above remittances were made in the usual course of business by the Colombo concern, of the assessment that they represent merely loans made to the Paungdawathi partnership that interest has also been charged by the Colombo concern on the amounts sent by it to the partnership and shown as Adhayam in the books of the Colombo concern and that as no portion of the remittances were withdrawn or appropriated by the assessee for his own use in British India they cannot be treated as remittances to the assessee. 30

Colombo K. M. N. SP. concern is the sole shop of the assessee while the Paungdwathi A. R. N. SP. concern is a partnership of five persons of whom the assessee is the senior and dominant partner holding 16/35 shares. The managing partner of the partnership referred to is KM. AR. Kumarappa Chettiar, the proprietor of the Rangoon KM. AR. concern. Copies of the correspondence relating 40

to the remittances in question that passed between the managing partner of the Paungdathi concern and his agent at Colombo filed show that the assessee had large funds lying uninvested in his sole concern at Colombo but that, on the other hand, the Paungdawthi partnership was hard pressed for moneys and that the managing partner of the concern therefore approached the assessee with a request for financial assistance and that at the same time the assessee's agent at Colombo also wrote to the assessee at headquarters and obtained his permission for the remittance of moneys to the Paungdawthi partnership. In his letter to the assessee the managing partner of the Paungdawthi partnership states *inter alia* that owing to the adverse conditions then prevailing in Burma, it would not be possible for him to raise any further loans there to meet the pressing liabilities of the partnership. that he had ascertained that large funds were lying uninvested in assessee's sole shop at Colombo and the moneys to the extent of Rs. 25 or Rs. 30 thousand may be ordered to be sent to the partnership to be returned later on.

It is clear from the facts set out above that moneys were sent to the Paungdwathi partnership in order to relieve the financial difficulties of the partnership and the remittances which were made by the assessee's sole concern at Colombo should therefore be deemed to represent only advances in the nature of additional capital made by the assessee from out of his surplus funds in his sole concern at Colombo and not real loans to the partnership as contended. It has not been proved that the assessee's Colombo concern generally lends money to persons and firms outside Ceylon and the contention that the moneys were sent to the Paungdawthi partnership in the usual course of business cannot be accepted for a moment as moneys are not flowing constantly between Colombo and Paungdawthi. The charging of interest to the Paungdawthi concern does not conclusively prove the character of the remittances made, which must in the circumstances stated above be deemed to be remittances to the assessee himself. It is not the case that sufficient profits are not available to meet the remittances made from Colombo in the year and the remittances in question which comes to Rs. 63,600 should be taxed in his hands along with the remittances admitted by the assessee.

Total income of the assessee from this concern will then amount to Rs. 69,205. Setting off the loss incurred under the headquarters, viz. ; Rs. 131 against the income of Rs. 69,219 the net income from business comes to Rs. 69,088.

Other sources: Shares income. Pending receipt of communication from the Income Tax Officer, Pegu, no income will be taken under shares of income from the Paungdwathi joint concern.

Total and taxable income. Assessee's Lot 1 and taxable income comes to as under :

Exhibits No. A 56 Indian Income Tax Assessment 1932, 1933.	Property	<i>Rs. c.</i>	
	Business		500.00
		<i>Rs. c.</i>	
	1. Headquarters loss	131.00	
	2. Sungambar KM. N. SP. Joint	.14	
	3. Colombo to K. M. N. S. P. Sole	69,205.00	
	Nett income	69,088	10
	Total	69,588.00	

Assessor's total and taxable income come to Rs. 69,588. Tax thereon at 25 pies per rupee is Rs. 9,060/15/0. Surcharge at 25/4 pies per rupee is Rs. 2,265.4.0. Total tax due then is Rs. 11,326.3.0. This must be paid on or before 10.3.1933.

Sgd. Illegibly.
Income Tax Officer.

No. A 63
Letter
29.5.33.

No. A63. Letter.

A 63

M. N. Sambamurti & Co. 196 Sea St. 20
Colombo,
29th May, 1933.

To
The Asst. Commissioner,
Unit 1.
The Income Tax Office, Colombo.
Dear Sir,

Ref. C. H. 38 K. M. N. S. P.

I have been instructed by my client to lodge with you a notice of appeal against your assessment under charge No. 30,274 dated 16th May, 1933, on the following grounds, viz. : 30

Exhibits
No. A 56
Indian Income
Tax Assessment
1932, 1933.
—contd.

The business belongs to a Hindu undivided family of which Mr. Nachiappa Chettiar is the managing member. He has three minor sons and has inherited properties from his father which substantiates this fact. Further in India the business has been assessed as belonging to a Hindu undivided family over a series of years.

My client therefore humbly prays that you may be good enough to cancel the original assessment and proceed to make a revised assessment.

Thanking you. 40

I remain, Dear Sir,
Your obedient servant,
Sgd. M. N. SAMBAMURTI.

No. R 44. Assessment of Income Tax Year ending March 31, 1933
Income Tax, Year ending March 31, 1933.

Charge No. 30274

To: K. M. N. S. P. Nachiappa Chettiar, Esq., 247, Sea Street, Colombo.

Notice of Assessment
R 44

CEYLON INCOME TAX

Exhibits
No. R 44
Assessment of
Income Tax
Year ending
March 31, 1933.

Take notice that the Assessor, Unit, has assessed your income as follows:—

Source of Income		Amount Assessed	Rs. c.	Tax Payable—	Rate	Tax
		Rs. c.		Taxable Income		Rs. c.
A.—	Profits from Agriculture	..	..	..	..	..
B.—	Profits from employment	..	..	..	..	..
C.—	Profits from trades, professions, &c.	..	..	..	..	..
D.—	Interest from sources in Ceylon	..	..	..	..	..
E.—	Dividends from Ceylon Companies	..	..	..	..	..
F.—	Interest, &c., from the United Kingdom in India	..	..	..	..	..
G.—	Foreign income	..	..	..	..	..
H.—	Annual value of residence owned	..	..	..	..	..
I.—	Rents of properties	..	..	..	..	..
K.—	Other profits and income	..	..	..	..	..
Less Interest, &c., paid		..	..	..	..	..
Losses		..	..	..	..	..
Allowances:—						
Earned Income		..	..	..	..	..
Personal		..	..	..	..	..
Wife		..	..	..	..	..
Children		..	..	..	..	..
Dependent Relatives		..	..	..	..	..
Total		..	..	..	..	..
Total Taxable Income		..	..	..	..	..

This slip must be detached and forwarded with your remittance to—
The Commissioner of Income Tax,
Administrative Branch (C),
Colombo.
Year to March 31, 1933

Charge No. 30,274
File No. CH 38
Name: K. M. N. S. P. Nachiappa Chettiar
Address: 247, Sea Street, Colombo
Tax payable: Rs. 8,890.25
Due date: July 4, 1933.

If not paid on or before the due date, a further sum will be charged.

The above amount is payable by you on or before July 4, 1933.

If not paid on that date, a sum not exceeding 20 per cent. of this tax will be added.

If you object to the above assessment, you must give notice of appeal in writing within 21 days of the date hereof, stating the grounds of objection.

Income Tax Office,
Colombo, May 16, 1933.
66—J. N. A 93846 (6/50)

Sgd. J. M. DOULTON,
Assistant Commissioner, Unit 1.

No. R 45. Amended notice of Assessment of Income Tax.

R 45

CEYLON INCOME TAX

Income Tax Year ending March 31, 1933

*Amended Notice of Assessment*Exhibits
No. R 45.
Amended notice
of assessment of
Income Tax
8.7.1933.File No. CH 38.
Charge No. 30274

To :

10 K. M. N. S. P. Nachiappa Chettiar, Esq.,
of 247, Sea Street, Colombo.

Take notice that you have been assessed as follows :—

	<i>Rs.</i>	<i>c.</i>
Income—Profits from Trade, Business, Agriculture, &c.	80,561	0
<i>Less</i> Interest, &c., paid	4,626	0
Taxable Income	<u>75,935</u>	<u>0</u>

Tax Payable—

<i>Taxable Income Rs. c.</i>	<i>Rate</i>	<i>Tax Rs. c.</i>
20 75,935 0	at 10 per cent.	7,593 50
		<u>7,593 50</u>
	Tax payable	<u>7,593 50</u>

The Commissioner of Income Tax,
Estate Duty and Stamps.

The above amount is payable by you on or before July 22, 1933. If not paid on that date a sum not exceeding 20 per cent. of the tax will be added. Original notice issued on May 16, 1933

Income Tax Office,
Colombo, July 8, 1933.Sgd. J. M. DOULTON,
Assistant Commissioner, Unit I.

CEYLON INCOME TAX

30 This slip must be detached and forwarded with your remittance to—

The Commissioner of Income Tax,
Administrative Branch (C),
Income Tax Office,
Colombo.*Year to March 31, 1933.*Charge No. 30274.
File No. CH 38.
Name : K. M. N. S. P. Nachiappa Chettiar.
Address : 247, Sea Street, Colombo

40 Tax payable : Rs. 7,593·50.

Due date : July 22, 1933.

If not paid on or before the due date, a further sum will be charged.

Tax : Rs. 7,593·50.

Exhibits
No. A 18
Notice of
Assessment of
Income Tax
Year ending
31.3.35,
10.11.34.

**No. A 18. Notice of Assessment of Income Tax Year
Ending 31. 3. 35**

A 18.

CEYLON INCOME TAX

INCOME TAX YEAR ENDING MARCH 31, 1935.

Notice of Assessment.

File No. 33/345

Charge No. 61248

To K.M.N.S.P. of 247, Sea St., Colombo.

Take notice that the assessor, Division 2, has assessed your 10 income as follows:—

		<i>Rs. c.</i>	
Income—Trades, Rents and Agriculture	.. ..	78,690	0
<i>Less</i> interest, &c, paid	.. ..	36	0
		78,654	0
	Taxable Income	..	78,654 0
<i>Tax Payable</i>		<i>Rate</i>	<i>Tax</i>
Taxable income Rs. 78,654	.. ..	At 10%	7,865 40
		At 12%	—
			7,865 40
	Tax payable	..	7,865 40 20

The above amount is payable by you on or before 5th January, 1935.

If not paid on that date a sum not exceeding 20 per cent. of the tax will be added.

If you object to the above assessment you must give notice of appeal in writing within 21 days of the date hereof stating the grounds of objection.

Please read notes on the back of this form.

(Sgd.) T. D. PERERA,
Asst. Commissioner, Unit 1. 30

Income Tax Office,
Colombo, 10th November, 1934.

**No. A 19. Notice of Assessment of Income Tax Year
ending 31. 3. 34.**

Exhibits
No. A 19
Notice of
Assessment of
Income Tax
Year ending
31.3.35,
1.3.39.

**A 19.
CEYLON INCOME TAX**

INCOME TAX YEAR ENDING MARCH, 31, 1934.

Notice of Assessment.

To

K.M.N.S.P. of 247, Sea St., Colombo.

Take notice that you have been assessed as follows:

10		<i>Dr.</i>		<i>Cr.</i>
		<i>Rs. c.</i>		<i>Rs. c.</i>
	Income			124,222 0
	Less interest, &c., paid			—
				124,222 0
	Taxable Income ..			124,222 0
	Tax payable			
	<i>Taxable Income</i>	<i>Rate</i>		<i>Tax</i>
	<i>Rs. c.</i>			<i>Rs. c.</i>
	124,222 0	10%		12,422 20
		Tax payable ..		12,422 20

20 The above amount is payable by you on or before the 19th April, 1934.

If not paid on that date, a sum not exceeding 20 per cent. of the tax will be added.

If you object to the above assessment you must give notice of appeal in writing within 21 days of the date hereof stating the grounds of objection.

(Sgd.) Illegibly.

Asst. Commissioner, Unit 1.

Income Tax Office,

30 Colombo, 1st March, 1934.

British Indian Relief granted for 1933-34.

(Sgd.) Illegibly.

Income Tax Officer.

8. 6. 35.

Exhibits
No. A 44
Translation of
Folios 134, 135
of Ledger
1933, 1934.

No. A 44. Translation of Folios 134, 135 of Ledger.

A 44.

Colombo

KM. N. SP.

Ledger, Folio 134

KM. N. SP. Firm of Colombo

Debit and Credit account of Navanna Soona Pana Nachiappa Chettiar *alias* Manicam Chettiar.

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
1933			
<i>March 31</i>			10
	Credit at April 1 of this year transferred from old a/c at $\frac{3}{4}\%$ on 12 months due	298,453	42
1934			
<i>March 31</i>			
	Credit at April 1, 1934. Interest at $\frac{1}{2}\%$ as per interest bill from April 1, 1933, to March 31 (instant)	17,883	31
	Total Credit	316,336	73

Carried over to next ledger page 6.

A 44.

Translation

20

Colombo

KM. N. SP.

Ledger Folio 135

KM. N. SP. Firm, Colombo.

Debit and Credit account of Nawanna Soona Pana Nawanna Ramasamy Chettiar.

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
1933			
<i>March 31</i>			
	Credit at April 1 of this year transferred from old a/c for interest at $\frac{3}{4}\%$ on 12 months due	298,453	42
1934			
<i>March 31</i>			
	Credit at April 1, 1934, interest at $\frac{1}{2}\%$ as per interest bill for the period from April 1, 1933, to 31st instant	17,883	31
	Total Credit	316,336	73

Carried over to next ledger page 7.

No. A 45. Translation of Folios 6 and 7 of Ledger.

Exhibits
No. A 45
Translation of
Folios 6 and 7
of Ledger 1934,
1935.

A 45.

Translation

Colombo

KM. N. SP

Ledger Folio 6

KM. N. SP. Firm, Colombo

Debit and Credit account of Navanna Soona Pana Navanna
Nachiappa Chettiar alias Manicam Chettiar.

Year	Particulars	Dr.	Cr.
10 1934			
	<i>April 1</i>		
	Credit from page 134 of previous ledger for interest from this date at $\frac{1}{2}\%$ on 12 months due ..		.. 316,336 73 $\frac{1}{2}$
	1935		
	<i>March 31</i>		
	Credit interest at $\frac{1}{2}\%$ as per interest bill for the period from 1st April, 1934, to this date, i.e., 12 months .. .. .		.. 18,954 91
20	Total credit at 1st April, 1935, for $\frac{1}{2}$ per cent. interest .. .. .		.. 335,291 64
	Carried over to next ledger folio 6.		

A 45.

Translation

Colombo

KM. N. SP.

Ledger Folio 7

KM. N. SP. Firm, Colombo

Debit and Credit account of Navanna Soona Pana Navanna
Ramasamy Chettiar.

Year	Particulars	Dr.	Cr.
30 1934			
	<i>April 1</i>		
	Credit from page 135 of previous ledger for interest from this date at $\frac{1}{2}\%$ on 12 months due ..		.. 316,336 73 $\frac{1}{2}$
	1935		
	<i>March 31</i>		
	Credit interest at $\frac{1}{2}\%$ as per Interest Bill for the period from 1st April, 1934, to this date, i.e., 12 months .. .. .		.. 18,954 91
	Total credit at $\frac{1}{2}\%$ interest for 1st April, 1935 ..		.. 335,291 64
40	Carried over to next ledger page 7.		

Exhibits
No. A 46a.
Translation of
Folio 6 of A46
1935, 1936.

No. A 46a. Translation of Folio 6 of A 46.

A46a

Translation

Colombo

KM. N. SP.

Ledger Folio 6

KM. N. SP. Firm, Colombo

Debit and Credit account of Navanna Soona Pana Navanna Nachiappa Chettiar *alias* Manican Chettiar.

<i>Year</i>	<i>Particulars</i>	<i>.. Dr.</i>	<i>Cr.</i>
1935			
<i>April 1</i>			10
	Credit from page 6 of previous ledger for interest at $\frac{1}{2}\%$ from this day on 12 months due ..	.. 325,291 64	
1936			
<i>March 28</i>			
	Credit for 1st April of this year, interest at $\frac{1}{2}\%$ as per interest bill for the period from 1st April, 1935, to 31st March (instant) i.e., 12 months ..	.. 20,090 67	
	Credit ..		.. 355,382 31
	Carried over to next ledger page 6.		20

No. A46b
Translation of
Folio 7 of A46
1935, 1936.

No. A 46b. Translation of Folio 7 of A 46.

A 46b

Colombo

KM. N. SP.

Ledger Folio 7

KM. N. SP. Firm, Colombo

Debit and Credit account of Navanna Soona Pana Navanna Ramasamy Chettiar.

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
1935			
<i>April 1</i>			30
	Credit from page 7 of previous ledger—for interest from this date at $\frac{1}{2}\%$ on 12 months due ..	.. 335,291 64	
1936			
<i>March 28</i>			
	Credit for 1st April of this year—interest at $\frac{1}{2}\%$ as per interest bill for the period from 1st April, 1935, to 31st March (instant) i.e., 12 months ..	.. 20,090 67	
	Credit ..		.. 355,382 31
	Carried over to next ledger folio 7.		

A 57 Indian Income Tax Assessment
A57

Exhibits
No. A 57
Indian Income
Tax Assessment
1935, 1936.

Income Tax Office, III Circle,
Karaikudi,

Camp: Kallal: Dated 27. 7. 1935.

F. No. 763/35-36

New F. No. 5105/35-36

Income Tax Department.

District:

- 10 (1) Year of assessment: 1935-36.
- (2) Name of Assessee (with complete address): **KM. N. SP. Nachiappa Chettiar, Sembanur.**
- (3) Status—(Whether individual registered or unregistered firm, Hindu undivided family, company or other association of individuals): **Hindu undivided family.**
- (4) Sources of income with exact nature of business: **Property, and Business (sole money lending at Colombo and joint money lending at Sungambar and Paungdawthi.**
- 20 (5) Branches:—
- (a)
- (b)
- (c)
6. Shares in
- (a) Registered and
- (b) Unregistered Firms: **16/35th share in A. R. N. SP., Paungdawthi.**
7. Partners
- (a) names with shares.
- 30 (b) are they separately assessed?
8. Income returned: **Rs. 36,319-11-6.**
9. Accounts
- (a) Books produced: **Daybook and ledger for headquarters and day book extracts and compiled ledgers for Colombo and Sungambar concerns.**
- (b) Method of accounting: **Chetty system.**
- (c) Accounting period: **Official year for Colombo and Dhava for business at other places.**
- 40 10. Section and Sub-section under which assessment made:
23 (3).

ASSESSMENT ORDER

Exhibits
No. A 57
Indian Income
Tax Assessment
1935, 1936.
—contd.

The assessee's agent appeared with accounts. These were examined. I have heard the assessee who appeared in person at Kallal regarding the remittances to Karuppar Koil and other points. The assessee's income will be determined as follows:—

Property: I accept the figure returned, viz., Rs. 500.

Business: (i) Headquarters: No business is being done at headquarters. As in previous years I allow Clerk's salary and postage amounting to Rs. 120.

(ii) *Colombo K.M.N.SP. (Sole)* 10

The remittances from the business profits amount to Rs. 17,625 10. 9. and those from the rental income of the assessee amount to Rs. 18,348. 3. 0 as per books produced by him. I accept these figures. Their total is Rs. 35,973. 13. 9.

The following will be added.

9. 1.35	By debit to expenses being the cost of coat stitched for the assessee	Rs. A. P.	
	.. .. .	20	0 0
15. 1.35	Debit to expenses being the cost of freight and samanas taken by the assessee. The expenses claimed amount to Rs. 159.5. I estimate the samanas, &c., brought to British India at Rs. 25		20
	.. .. .	25	0 0
		<hr/>	
		36,018	13 9

The assessee carried on a joint business in rubber with two of his agents, Lakshamanan Chettiar and one N. K. V. L. This business was closed in the account year itself. The accounts do not show any remittances and the business is said to have ended in a loss.

(iii) *Sungambar SP. N. SP. (joint)*

There are no remittances to the assessee.

(iv) *Share income.* The assessee has a share in AR. N. SP. Paungda. He states that the business is working at a loss. I have not heard anything from the Income Tax Officer, Chettyars Circle, Pegu, regarding the share income. No income will be taken into account under this head. 30

The income under business is Rs. 35,898.

The total and taxable income is Rs. 36,398. Tax on this at 23 and 23/6 pies in the rupee is Rs. 5,086.14.0. This must be paid on or before 5. 9. 35.

(Sgd.) Illegibly.
Income Tax Officer.

28. 7. 35 40

No. A 58. Copy of Plaintiff in D.C., Colombo, No. 3130.**A 58.**

In the District Court of Jaffna

No. 3130

Navanna Ramasamy Chettiar of No. 247, Sea Street, Colombo, Administrator of the Estate of N. Ramasamy Chettiar, late of Sembanur in Ramnad District South India.....Plaintiff.

Vs.

The Honourable the Attorney-General, Colombo.....Defendant.

10 On this 17th day of April 1935.

The plaintiff of the plaintiff above-named appearing by S. Ratnasakaram, his Proctor, states as follows:—

1. The plaintiff is the administrator duly appointed in Testamentary proceedings No. 6286 of the District Court of Colombo of the estate of Nachiappa Chettiar Ramasamy Chettiar, deceased, who was carrying on business as a money lender in Ceylon under the vilasam of " K. M. N. N. R. M. "

20 2. The said Nachiappa Chettiar Ramasamy Chettiar was a Hindu domiciled in India and one of three members of a joint or undivided Hindu Family with his two sons (1) Nachiappa Chettiar and (2) Suppramaniam Chettiar joint in family and joint in property and was subject to, and governed by the " Mitakshara Law " of India.

3. The said Ramasamy Chettiar being so domiciled in India and being subject to and governed by the said " Mitakshara Law " died intestate at Sembanur in the District of Ramnad in South India on or about the 5th September, 1932.

30 4. In Testamentary proceedings No. 6286 of the District Court of Colombo in respect of his estate the Commissioner of Stamps valued the said estate on 24th May, 1934, at Rs. 399,247 of which the movables forming the said estate were valued by the said Commissioner at Rs. 389,085.

5. Under the said " Mitakshara Law " which applied to the case the said movables were the joint property of and belonged to the said joint Hindu family of which the deceased was one and as such he would be entitled on partition only to one third thereof, of the value of Rs. 129,695.

40 6. The remaining two-thirds of the said property did not form part of the property passing on the death of the deceased and the estate of the deceased was not liable to pay duty on the said two-third shares.

Exhibits
No. A 58
Copy of plaintiff
in D.C.
Colombo,
No. 3130,
17.4.35.

Exhibits
No. A 58
Copy of plaint
in D.C.
Colombo,
No. 3130,
17-4-35.
—contd.

7. The Commissioner claimed that the total value of the said movables was Rs. 380,085 and demanded as duty payable thereon and on the value of the immovables with interest, a sum of Rs. 24,289.74.

8. The plaintiff has paid to the Commissioner of Stamps on account of Estate Duty a sum of Rs. 20,945.45 and the said Commissioner is demanding payment of a further sum of Rs. 3,344.29.

9. The value of the movable property on which estate duty has been paid, viz., Rs. 389,085, is now found to exceed the true value of the property subject to estate duty on the death of the deceased, viz., Rs. 129,695, and the estate duty payable thereon and on the value of the immovables with interest is Rs. 5,592.02 and not Rs. 24,289.74. 10

10. The amount of duty which has been overpaid is therefore Rs. 15,353.43 which is the difference between the sum of Rs. 20,945.45 paid to the Commissioner and Rs. 5,592.02 justly and truly payable to the Commissioner.

11. The plaintiff requested the Commissioner of Stamps to return the amount of duty which had been overpaid and to withdraw his claim for further payment but he has failed and neglected to do so. 20

12. As the amount overpaid has been paid to and is in the hands of the Crown to whom it belongs, a cause of action has accrued to the plaintiff to institute an action against the defendant as representing the Crown to demand the return of the said amount.

13. Notice in writing dated 1st February, 1935, as required by section 461 of the Civil Procedure Code, had been delivered to the defendant and more than one month has expired after the delivery of the said notice. 30

Wherefore the plaintiff prays that (1) for a declaration that the sum of Rs. 3,344.29 is not payable to the Commissioner of Stamps;

(2) that the Court may be pleased to order the defendant to return the said sum of Rs. 15,353.43 less a discount of $2\frac{1}{2}$ per cent. thereon;

(3) legal interest thereon from date of action till payment in full; and

(4) for costs of suit and for such other and further relief in the premises as to this Court shall seem meet.

Sgd. S. Ratnakaram, 40
Proctor for Plaintiff.

No. A 59. Copy of Answer in D.C., Colombo, No. 3130.**A 59.**

In the District Court of Colombo

No. 3130

Mavanna Ramasamy Chettiar of No. 247, Sea Street, Colombo,
Administrator of the estate of N. Ramasamy Chettiar, late of
Sembanur in Ramnad District South India. Plaintiff.

Vs.

The Hon. the Attorney-General Defendant.

10 On this 12th day of July, 1935.

The answer of the defendant above-named, appearing by F. J. de Saram and his assistant Clifford Trevor de Saram, his Proctors, states as follows:—

1. The defendant admits the averments contained in paragraphs 1 and 13 of the plaint.
2. Answering paragraphs 2, 3, 5, 6, 9, 10 and 12 of the plaint, the defendant denies the averments contained therein and puts the plaintiff to the proof thereof.
- 20 3. Answering paragraphs 4 and 7 of the plaint, the defendant states that the Commissioner of Stamps on the 24th May, 1934, assessed the net value of the estate administered in Testamentary proceedings No. 6286 of this Court at Rs. 399,247. The gross value of the movables forming part of the said estate was valued at Rs. 389,085. The defendant states that a sum of Rs. 23,954.82 with interest thereon at 4 per cent. from the 6th September, 1933, was claimed as the duty payable in respect of the nett value of the said estate.
- 30 4. Answering paragraph 8 of the plaint the defendant denies that a sum of Rs. 20,945.45 was paid to the Commissioner of Stamps on account of estate duty, but admits that a sum of Rs. 20,610.53 has been paid as estate duty and a sum of Rs. 669.47 on account of interest. The defendant admits that a further sum of Rs. 3,344.29 with interest thereon at 4 per cent. per annum from the 17th July, 1934, is still due and payable in respect of the said estate.
- 40 5. The defendant denies that any sum whatsoever has been ever paid by way of estate duty or interest but admits that the plaintiff has applied to the Commissioner of Stamps for a refund of certain sums alleged by the plaintiff to have been overpaid and has further requested that the claim for the balance duty be withdrawn.

Exhibits
A59
Copy of Answer
in D.C.,
Colombo,
No. 3,130,
12-7-35.

Exhibits
No. A 59
Copy of Answer
in D.C.,
Colombo,
No. 3,130,
12-7-35.
—contd.

6. Further answering the defendant states that plaintiff cannot in law maintain this action.

Wherefore the defendant prays that the Court be pleased (a) to dismiss the plaintiff's action with costs and (b) for such other and further relief as to this Court shall seem meet.

Sgd. Trevor de Saram,
Proctor for defendant.

No. A 60.
Journal Entries
in D.C.,
Colombo,
No. 3,130,
2.9.35.

No. A 60. Journal Entries in D.C., Colombo, No. 3130.

A 60.

In the District Court of Colombo

10

No. 3130

Navanna Ramasamy Chettiar of No. 247, Sea Street, Colombo, Administrator of the Estate of N. Ramasamy Chettiar, late of Sembanur in Ramnad District, South India Plaintiff.

Vs.

The Hon. the Attorney-General, Colombo Defendant.

Plaint accepted—summons to issue.

Itd. *D. J.*

2nd Sept. 1935.

Mr. Adv. Hayley, K. C., with Mr. Adv. Tissaverasingha, 20 instructed by Mr. Ratnakaram, for the plaintiff.

Mr. Adv. Basnayake, Crown Counsel, instructed by Mr. Trevor de Saram, for the defendant.

Issues

Mr. Hayley suggests:

1. Was the deceased a Hindu domiciled in India?
2. Was he a member of the joint Hindu family?
3. If so, what amount of estate duty was payable on his estate?
4. Is the plaintiff entitled to a refund as prayed in the plaint?
5. If so, how much?

30

Mr. Basnayake suggests:

6. If the deceased was a member of the joint or undivided family, was the business carried on by him in Ceylon under the firm of K. M. N. N. R. M. an asset of the joint or undivided family?

7. Are the assets and liabilities disclosed in the declaration made under section 21 of Ordinance No. 8 of 1919 the assets and liabilities of K. M. N. N. R. M. ?

Exhibits
No. A 60.
Journal Entries
in D.C.,
Colombo,
No. 3130.
2-9-35
—contd.

8. Inasmuch as the plaintiff had a right of appeal under sec. 22 (3) of Ordinance No. 8 of 1919 from the assessment and valuation of the Commissioner of Stamps, is he entitled to question the assessment and valuation in these proceedings ?

10 Mr. Hayley objects to issues 6 and 7. Mr. Basnayake does not press these. I think they are properly withdrawn. Mr. Hayley also objects to issue 8 suggested by Mr. Basnayake.

I allow the issue, and if necessary I will allow the plaintiff a postponement to consider that issue, and if so I shall make any necessary order as to costs.

No. A 61. Decree in D.C., Colombo, No. 3130.

No. A 61
Decree in D.C.,
Colombo,
No. 3130,
3.9.35.

A 61.

DECREE

In the District Court of Colombo

No. 3130

20 Navanna Ramasamy Chettiar of No. 247, Sea Street, Colombo, Administrator of the estate of N. Ramasamy Chettiar, late of Sembanur in Ramnad District. Plaintiff.

Vs.

The Hon. the Attorney-General, Colombo. Defendant.

30 This action coming on for final disposal before W. S. de Saram, Esquire, D. J. of Colombo, on the 3rd day of September, 1935, in the presence of Mr. Adv. Hayley, K. C., with Mr. Tissaverasinghe, instructed by Mr. Ratnakaram, Proctor, on the part of the plaintiff, and of Mr. Adv. Basnayake, Crown Counsel, instructed by Mr. Trevor de Saram, Proctor, on the part of the defendant; it is ordered and decreed that the defendant do pay to the plaintiff the sum of Rs. 12,190 less 2½ per cent. discount.

It is further ordered and decreed that the defendant do pay to the plaintiff the costs of this action and interest at 9 per cent. per annum on the amount due on the decree from date of decree.

Sgd. W. S. de Saram,
District Judge.

September 3, 1935.

Exhibits
No. R 33.
Statement of
Change of
Business Names
18.10.35.

No. R 33. Statement of Change of Business Names.

R 33.

COPY (FOR OFFICIAL PURPOSES)

Sgd. D. Walton.

Regr. of Business Names, W. P.

Colombo, 25th October, 1946.

BUSINESS NAMES ORDINANCE (CAP. 120)

FORM R. B. N. 6.

STATEMENT OF CHANGE UNDER SECTION 7

In pursuance of the provisions of Section 7 of the Business Names Ordinance (Cap. 120) the following statement of a change which was made or occurred in the particulars registered in the Office of the Registrar of Business Names for the Western Province under number 708 on the Ninth day of April, 1926, in respect of Kuna Mana Navanna Suna Pana is made by me the undersigned.

(K. M. N. S. P.)

1. Nature of Change. (1) Cage 1. The word " or " to be interpolated between the word " Pana " and the letter " K ". The Business Name to read " Kuna Mana Navanna Suna Pana " or " K.M.N.S.P. "
- (2) Cage 6. The words " Natchiappa Chetty son of Suppramaniam Chetty " to be deleted and the words " Kuna Mana Navanna Suna Pana Natchiappa Chettiar son of Suppramaniam Chettiar also known as Suppramaniam Chettiar Natchiappa Chettiar " to be inserted.
- (3) Cage 7. The words Natchiappa Chetty son of Suppramaniam Chetty to be inserted.
- (4) Cage 11. The words " Banker, general merchant, commission agent and licensed dealer in rubber. Also carrying on business

under the name 'Suna Seena Ravenna Mana' on behalf of Alamelu, grand-daughter of Suna Seena Ravenna Mana Ramasamy Chettiar, and Sinnan Chettiar, grandson of S. S. R. M. Ramasamy Chettiar" to be inserted.

Exhibits
No. R 33.
Statement of
Change of
Business Names
18.10.35
—contd.

10

2. Date of Change: 18th October, 1935.

Dated this 18th day of October, 1935.

To: The Registrar of Business Names for the Western Province.

Signed at Tirupattur, Ramnad District, South India, on this 18th day of October, 1935, by Suppramanian Chettiar Natchiappa Chettiar in the presence of me.

Sgd. in Tamil.

18. 10. 35.

Sgd. Illegibly. President, Bench of Magistrates,

20

Tirupattur, Ramnad District.

No. A 38a. Translation of Folios 6 & 7 of A 38.

A 38a.

Translation

No. A 38a
Translation of
folios 6 and 7
of A 38 1936,
1937.

Colombo

KM. N. SP.

Ledger Folio 6

KM. N. SP. Firm, Colombo

Debit and Credit Account of Navanna Soona Pana Kavanna Nachiappa Chettiar *alias* Manickam Chettiar

	Year	Particulars	Dr.	Cr.
30	1936 April	1 .. Credit as per page 6 of previous ledger for interest at half per cent. from this date on 12 months due ..	Rs. c.	Rs. c. 355,382 31
	1937 March	21 .. Debit for April 1, 1936, reamount credited in the name of younger brother Suppiramaniam Chettiar .. Credit simultaneously interest as per Chittai at half per cent. for the period from April 1, 1936, to March 31 (instant), i.e., 12 months less cross interest ..	118,460 76½	14,196 34
40		Balance credit ..	—	251,117 89

Carried over to next ledger page 6.

Exhibits
No. A 38a
Translation of
folios 6 and 7
of A 38
1936, 1937
—contd.

A 38a.
Translation
Colombo KM. N. SP.
Ledger Folio 7
KM. N. SP. Firm, Colombo
Debit and Credit Account of Nawanna Soona Pana Navanna
Ramasamy Chettiar

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
1936			
April 1 ..	Credit from page 7 of previous ledger for interest at half per cent from this date on 12 months due ..	Rs. c.	Rs. c.
			10
			355,382 31
1937			
March 21 ..	Debit for April 1, 1936, re-amount credited in the name of younger brother Suppramaniam Chettiar Credit simultaneously interest as per interest Bill at half per cent. for the period April 1, 1936, to March 31 instant, i.e., 12 months less cross interest ..	118,460 76	20
			14,196 34
	Balance credit ..		251,117 89
Carried over to next ledger page 7.			

No. A 48
Translation of
folios 6, 7 and
8 of Ledger
1937, 1938.

No. A 48. Translation of Folios 6, 7 & 8 of Ledger.

A 48.
Translation
Ledger Folio 6.
KM. N. SP. Firm, Colombo
Debit and Credit Account of Navanna Soona Pana Navanna 30
Nachiappa Chettiar *alias* Manicam Chettiar

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
1937			
April 1 ..	Credit from page 6 of previous ledger for interest at half per cent. from this date on 12 months due ..	Rs. c.	Rs. c.
			40
			251,117 89

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>	<i>Exhibits No. A 48 Translation of folios 6, 7 and 8 of ledger 1937, 1938 —contd.</i>
1938				
January 26	.. Debit paid income tax at the rate of 10 per cent. for the year 1937-38 on the profits accrued from April 1, 1936, to March 31, 1937 ..	Rs. c.	Rs. c.	
		1,419 62½		
	Balance credit ..		249,698 26½	
10 March .. 30	.. Credit for April 1 of this year interest at ½ per cent. for the period from April 1, 1937, to March 31 instant, i.e., 12 months deducting cross interest for 8 days ..		15,031 62½	
	Total credit ..		264,729 89	

Carried over to next ledger page 6.

A 48.

Translation

20 Colombo

KM. N. SP.

Ledger Folio 7.

KM. N. SP. Firm, Colombo

Debit and Credit Account of Navanna Soona Pana Navanna
Ramasamy Chettiar

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
1937			
April 1	.. Credit from page 7 of previous ledger for interest at ½ per cent. from this date on 12 months due ..	Rs. c.	Rs. c.
			251,117 89
30			
1938			
January 26	.. Debit paid income tax at the rate of 10 per cent. for the year 1937-38 on the profit accrued from April 1, 1936, to March 31, 1937 ..	1,419 62½	
	Balance credit ..		249,698 26½
March .. 30	.. Credit for April 1 of this year interest at ½ per cent. for the period from April 1, 1937, to March 31, i.e., 12 months deducting cross interest for 8 days ..		15,031 62½
40			
	Total credit ..		264,729 89

Carried over to next ledger folio 7.

Exhibits
No. A 48
Translation of
Folios 6, 7 and 8
of Ledger
1937-1938
—contd.

Colombo

A 48.

Translation

KM. N. SP.

Ledger Folio 8

KM. N. SP. Firm, Colombo

Debit and Credit Account of Nawanna Soona Pana Navanna
Suppramaniam Chettiar

Year	Particulars	Dr.	Cr.
		Rs. c.	Rs. c.
1937			
April 1 ..	Credit from page 355 of previous ledger for interest at $\frac{1}{2}$ per cent. from this date on 12 months due		10
			.. 251,117 67 $\frac{1}{2}$
1938			
January 26 ..	Debit paid income tax at the rate of 10 per cent. for the year 1937-38 on the profits accrued from April 1, 1936, to March 31, 1937	1,419 62 $\frac{1}{2}$	
	Balance credit ..		.. 249,698 25
March .. 30 ..	Credit for April 1 of this year, interest at $\frac{1}{2}$ per cent. for the period from April 1, 1937, to March 31 (instant), i.e., 12 months deducting cross interest for 8 days		20
			.. 15,031 62 $\frac{1}{2}$
	Total credit ..		.. 264,729 87 $\frac{1}{2}$

Carried over to next ledger folio 8.

No. R 50.
Affidavit
19.8.37.

No. R 50. Affidavit.

R 50.

I, K. M. N. S. P. Nachiappa Chettiar of Sembanur, presently of 247, Sea Street, Colombo, do hereby solemnly, sincerely affirm as follows:—That the amounts credited to my children's accounts in the names of N. S. P. N. Manikkam Chettiar *alias* Nachiappa Chettiar (2) N. S. P. N. Ramaswami Chettiar and (3) N. S. P. N. Subramaniam Chettiar in my Colombo books are their exclusive property and that I have no manner of right or interest therein. 30

Sgd. K. M. N. S. P. NACHIAPPA CHETTIAR.

The foregoing affidavit having been read over, to the undersigned in his own language and he appearing to understand the contents thereof affirmed and signed at Colombo on this 19th August, 1937. 40

Before me.

Sgd.

C. O.

No. A 38b. Translation of Folio 355 of A 38.**A 38b
Translation**Exhibits
No. A 38b
Translation of
Folio 355 of
A 38 1937.

Colombo.

KM. N. SP.

Ledger Folio 355

KM. N. SP. Firm, Colombo

Debit and Credit Account of Navanna Soona Pana Nawanna
Suppramaniam Chettiar

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
		Rs. c.	Rs. c.
10	1937		
March	21 .. Credit at April 1, 1936, by entry made in the account of N. SP. N. Nachiappa Chettiar also known as Manickam Chettiar Rs. 118,460.76½ and in the account of N. SP. N. Ramasamy Chettiar Rs. 118,460.76½ for interest at half per cent. on 12 months due		236,921 53
20	Credit also interest as per interest Bill at half per cent. for 12 months from April 1, 1936, to 31st instant (March) deducting cross interest		14,196 34
	Total credit ..		251,117 87
	Carried over to next ledger folio 8.		

No. A 37a. Translation of Folios 18 & 11 of A 37.**A 37a.
Translation**No. A 37a.
Translation of
Folios 18 and
11 of A 37.
1938, 1939

30 Colombo

K. M. N. S. P.

Ledger Folio 18

KM. N. SP. Firm, Colombo

Debit and Credit Account of Karuppaiyi, daughter of Vallammai

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
		Rs. c.	Rs. c.
April	1 .. Credit as per folio 235 of previous ledger—for interest at 3/16 per cent. from this date on 12 months due		3,047 05

Exhibits
No. A 37a
Translation of
Folios 18 and
11 of A 37.
1938, 1939
—contd.

Year		Particulars	Dr.		Cr.	
			Rs.	c.	Rs.	c.
May	1938 16	.. Credit received from KM. N. N. R.M. an Indian Bank cheque bearing No. C. 973807 ..			1,000	0
		Total credit ..			4,047	05
June	25	.. Credit deposited to our account at the Imperial Bank by KM. N. N. R.M. ..			1,000	0
		Total credit ..			5,047	05
October	29	.. Debit paid income tax for the year 1938-1939 on the profit accrued during the year from June 26, 1937, to March 31, 1938, at 10 per cent. ..	4	70		
		Balance credit ..			5,042	35

March	1939 26	.. Credit at April 1, 1939 interest at 3/16 per cent. for 12 months for the period from April 1, 1938 to March 31 (instant) deducting cross interest for 8 days ..			105	39
		Total credit ..			5,147	74
Carried over to folio 18 of the Next Ledger						

A 37a
Translation

Year		Particulars	Dr.		Cr.	
			Rs.	c.	Rs.	c.
April	1938 1	.. Credit as per folio 9 of previous Ledger for interest at 3/16 per cent. from this date on 12 months due ..			36,534	36
February	1939 28	.. Debit obtained a Draft on Chartered Bank in the name of Navanna Valliammai Achy and forwarded ..	1,500	0		
		Balance credit ..			35,034	36

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>	<i>Exhibits</i>
		Rs. c.	Rs. c.	No. A 37a. Translation of Folios 18 and 11 of A 37. 1938, 1939 —contd.
1939				
March 26	.. Credit at April 1, 1939, interest at 3/16 per cent. for 12 months from April 1, 1938, to March 31 (instant) deducting cross interest for 8 days		818 51	
		Total credit ..	35,852 87	
Carried over to folio 11 of next ledger.				

10 **No. A 49. Translation of Folios 6, 7 & 8 of Ledger.****A 49.****Translation**

Colombo.

KM. N. SP.

Ledger Folio 6**KM. N. SP. Firm, Colombo****Debit and Credit Account of Navanna Soona Pana Navanna
Nachiappa Chettiar *alias* Manickam Chettiar**No. A 49
Translation of
Folios 6, 7,
and 8 of
Ledger 1938,
1939

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
		Rs. c.	Rs. c.
1938			
20 April 1	.. Credit from page 6 of previous Ledger for interest at $\frac{1}{2}$ per cent. from this date on 12 months due		264,729 89
October 29	.. Debit paid income tax at 10 per cent. for the year 1938-39 on the profit accrued from April 1, 1937, to March 31, 1938	1,503 15	
		Balance credit ..	263,226 74
1939			
30 March 26	.. Credit for April 1, 1939, interest at $\frac{1}{2}$ per cent for the period from April 1, 1938, to 31st instant, i.e., 12 months, deducting cross interest for 8 days		15,824 57
		Total credit ..	279,051 31
Carried over to page 6 of next ledger.			

Exhibits
No. A 49
Translation of
Folios 6, 7 and
8 of Ledger,
1938, 1939
—contd.

510

A 49.

Translation

Colombo.

KM. N. SP.

Ledger Folio 7

KM. N. SP. Firm, Colombo

Debit and Credit Account of Navanna Soona Pana Navanna
Ramasamy Chettiar

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
1938			
April	1 .. Credit from page 7 of previous ledger for interest at $\frac{1}{2}$ per cent. from this date on 12 months due	Rs. c.	Rs. c.
			10
October	29 .. Debit paid income tax at 10 per cent. for the year 1938-39 on the profit accrued from April 1, 1937, to March 31, 1938	1,503 15	
		Balance credit	263,226 74
1939			
March	26 .. Credit for April 1, 1939, interest at $\frac{1}{2}$ per cent for the period from April 1, 1938, to 31st instant, i.e., 12 months, deducting cross interest for 8 days	..	15,824 57
		Total credit	279,051 31
Carried over to page 7 of next ledger.			

A 49.

Colombo.

KM. N. SP.

Ledger Folio 8

KM. N. SP. Firm, Colombo

Debit and Credit Account of Navanna Soona Pana Navanna
Suppramaniam Chettiar

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>
1938			
April	1 .. Credit from page 8 of previous ledger for interest at $\frac{1}{2}$ per cent. from this date on 12 months due	Rs. c.	Rs. c.
			264,729 87½
October	29 .. Debit paid income tax at 10 per cent. for the year 1938-39 on the profit accrued from April 1, 1937, to March 31, 1938	1,503 15	
		Balance credit	263,226 72

<i>Year</i>	<i>Particulars</i>	<i>Dr.</i>	<i>Cr.</i>	<i>Exhibits</i>
1939				No. A 49
March 26 ..	Credit for April 1, 1939, interest at $\frac{1}{2}$ per cent. for the period from April 1, 1938, to 31st instant, i.e., 12 months, deducting cross interest for 8 days ..	Rs. c.	Rs. c.	Translation of Folios 6, 7 and 8 of Ledger, 1938, 1939 —contd.
			15,824 57	
		Total credit ..	279,051 29	

Carried over to page 8 of next ledger.

10

No. R 42. Letter.**R 42.**No. R 42.
Letter. 30.3.38.

M. N. Sambamurti & Co.

P. O. Box 210

Colombo, 30th March, 1938.

The Assistant Commissioner,
Unit 1,
Income Tax Office.

Ref. Assessment 37-38 File No. 33/345. K. M. N. S. P.

Dear Sir,

20 I am instructed by my clients to lodge with you a notice of appeal against the assessment made on them bearing charge No. 62437 dated the 23rd instant, on the grounds that the following amounts have been incorrectly included in the assessment.

1. A sum of Rs. 3,949 representing recoveries of bad debt written off prior to 31.3.31.

2. A sum of Rs. 500 representing damages from a party for not obtaining the loan stipulated for, which is in the nature of a casual profit.

30 3. Sums amounting to Rs. 42,590 representing interest paid to sons' accounts under circumstances already explained.

I therefore humbly beg that you may be so good as to amend the assessment.

I remain, dear Sir,

Your obedient servant,

Sgd. M. N. SAMBAMURTI.

Exhibits
No. A 69
Ceylon Income
Tax Assessment
31.3.38

No. A 69. Ceylon Income Tax Assessment.

A 69.

CEYLON INCOME TAX

Notice of assessment for the Income Tax year ending March 31, 1938.

To:

Messrs. K. M. N. S. P.

247, Sea Street, Colombo.

Take notice that the Assessor Unit 1, has assessed your income as follows:—

			Rs.	c.	Rs.	c.	
Profits from agriculture	..	..	..		3,533	0	10
Profits from trades	..	..	..		120,950	0	
Rents of properties	..	..	..		22,249	0	
Interest and dividends from sources in Ceylon	..	..	..		288	0	
Less interest	..	..	170	0	147,020	0	
Losses	..	..	..		170	0	
		Taxable income	..		146,850	0	
		Tax Payable					
Tax payable	146,850.00	at 15 per cent.	..		22,027	50	
Payable	..	..	..		22,027	50	20

The following have been added to profits as computed :

Bad debt recovery	..	..	..	3,949	0
Damages	..	..	..	500	0
Interest to sons	..	..	..	42,590	0

The tax paid at source to sons will be set off on production of certificates already issued by you.

No. R 40
Certificate of
Deduction of
Income Tax
20.5.38

No. R 40. Certificate of Deduction of Income Tax.

R 40.

CERTIFICATE OF DEDUCTION OF INCOME TAX

I certify that on paying or crediting to Subramaniam Chettiar of Sembanoor, a person out of Ceylon, the sum mentioned in the subjoined statement, I deducted the amount of Income Tax shown in the statement and I further certify that this Tax has been or will be paid by me personally to the Commissioner of Income Tax, Ceylon. 30

Sgd. M. LETCHUMANAN CHETTIAR
for K. M. N. S. P. Firm.

Date: 20.5.1938.

Nature of Annual Payment, e.g., interest, rent, ground rent, royalty, annuity, &c.	Description of property or income out of which the annual payment is made	Gross Amt. of the payment for which I have deducted the Tax	Amount of the Tax deducted at 10 per cent.	Net Amount actually paid by me	Period (i.e., year half year, &c.) for which the payment was due, and date on which due	Exhibits No. R 40. Certificate of Deduction of Income Tax 20.5.38 —contd.
Interest ..	Money credits	15,031 62..	1,503 16..	13,528 46..	Year to 31.3.38	
Interest ..	Money credits	14,196 34..	1,419 63..	12,776 71..	Year to 31.3.37	

10

Tax paid to cover Rs. 2,922/79.

June 2, 1939.

No. A 62. Translation of Folio 42 of Balance Sheet Book.

No. A 62
Translation of
Folio 42 of
Balance Sheet
Book 31.12.38

A 62.

Translation

Sivamayam

Meenakshi Sundereswarar Thunai.

BALANCE SHEET BOOK

Folio 42.

Balance Sheet Credit up to 31st December, 1938

				Rs. c.
20	Credit Sri Muthuvinayakar ..	..	..	17 0
	Credit Kathiravolayutha Swamy ..	..	..	1,065 12
	Credit Subramania Swamy ..	..	..	17 0
	Credit Sevugarayar ..	..	..	17 0
	Credit Theepanchammal ..	..	..	17 0
	Credit Capital of native place firm ..	..	..	51,100 0
	Credit current a/c of native place firm ..	..	..	363,062 27
	Credit Navanna Soona Pana Nachiappa Chettiar ..	..	..	969,036 01
	Credit Navanna Soona Pana Navanna Nachiappa Chettiar also known as Manickam Chettiar ..	..	..	263,226 73
30	Credit Navanna Soona Pana Navanna Ramasamy Chettiar ..	..	..	263,226 73
	Credit Navanna Soona Pana Navanna Suppramaniam Chettiar ..	..	..	263,226 73
	Credit Current a/c of Navanna Manickam ..	..	..	75 40
	Credit Current a/c Navanna Ramasamy ..	..	..	75 40
	Credit Charity, &c., of Sadhus Muttu flower garden of Sembanur Koonna Maha Navanna Soona Pana ..	..	..	36,534 36
	Credit Karuppar Kovil of Sembanur ..	..	..	3,082 72
	Credit Kaliyanappaku a/c ..	..	..	1,238 74
	Credit Vairavar ..	..	..	43 60
	Credit Meenakahi Achy, wife of Navanna Soona Pana ..	..	..	266 80
40	Credit MR. ST. Kothai of Kallai ..	..	..	194 03
	Credit Soona Navanna Thoivanai ..	..	..	8,161 56
	Credit Karuppai, daughter of Valliammai ..	..	..	5,042 34
	Credit Advance of property ..	..	..	2,835 05
	Credit Advance interest ..	..	..	651 76
	Credit doubtful debts—reserve a/c ..	..	..	56,727 75
	Credit Mrs. A. C. Koelmeyer ..	..	..	843 23
	Credit R. H. Sadiris de Silva lease a/o ..	..	..	309 01

Exhibits		Rs.	c
No. A 62	Credit Mavanna Letchumanan current a/c	697	36
Translation of	Credit tea coupon	551	30
Folio 42 of	Credit share dividend	1,046	64
Balance Sheet	Credit Kandawala Estate	2,119	86
Book 31.12.38	Credit rubber coupons purchase a/c	17,057	14
—contd.	Credit house rent	19,437	11
	Credit total profit	83,733	75
	Total Credit	2,414,736	49

R 12 Petition
to Supreme
Court for Sole
Testamentary
Jurisdiction of
Estate of
K. M. N. S. P.
Natchiappa
Chettiar
28.3.39

R 12. Petition to Supreme Court for Sole Testamentary Jurisdiction of Estate of K. M. N. S. P. Natchiappa Chettiar. 10

R 12.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for vesting of Sole Testamentary Jurisdiction in terms of section 70 of the Courts Ordinance, No. 1 of 1889.

And in the matter of the Last Will and Testament of Koonna Mana Nawanna Soona Pana Nachiappa Chettiar, son of Suppramaniam Chettiar also known as Suppiramaniam Chettiar Nachiappa Chettiar of Sembanur, Tirupattur, Taluk, Ramnad District, South India. Deceased. 20

Valliammai Atchi of Sembanur, Tirupattur, Taluk, Ramnad District, South India Petitioner.

To:

The Honourable the Chief Justice and the other Judges of the Honourable the Supreme Court of the Island of Ceylon.

This 23rd day of March, 1939.

The petition of the petitioner above named, appearing by N. M. Zaheed, her Proctor, states as follows:— 30

1. The abovenamed deceased Koonna Mana Nawanna Soona Pana Nachiappa Chettiyar also known as Suppiramaniam Chettiar Nachiappa Chettiar died at Sembanur aforesaid on the 30th day of December, 1938, leaving a Last Will filed herewith marked "A" together with a translation thereof marked "B", whereby he appointed his wife, the petitioner above named, the sole executrix thereof.

2. The deceased is the identical person mentioned as Koonana Mana Nawanna Soona Pana Nachiappa Chettiar in the certificate of death herewith filed marked " C " and the translation thereof marked " D ".

Exhibits
No. R 12
Petition to
Supreme Court
for Sole
Testamentary
Jurisdiction
of Estate of
K. M. N. S. P.
Nachiappa
Chettiar
28.3.39
—contd.

3. The heirs of the said deceased, according to the law governing the Chettiar community, namely, the Hindu law, are his male children, namely, Manickam *alias* Nachiappan, Ramasamy, Suppiramanian, and Nagappa, all of whom are minors and the children of the petitioner.

10 4. The abovenamed deceased carried on business at Sea Street in Colombo under the name, style, and firm or vilasam of Koonana Mana Nawanna Soona Pana or K. M. N. S. P.

5. By the said Last Will the deceased above named, subject to the payment of certain legacies, devised and bequeathed all his properties in Ceylon to his sons, the said Manickam *alias* Nachiappan, Ramasamy, Suppiramanian, and Nagappan, and directed his wife, the petitioner above named, *inter alia* to carry on the business of the deceased and to take charge of, possess and manage all the properties of the deceased till the last son, namely, the said
20 Nagappan, becomes a major.

6. The abovenamed deceased left property in Ceylon of the value of Rs. one million seven hundred and forty-three thousand one hundred and four and cents thirty-nine (Rs. 1,743,104.39) as shown in the annexed schedule.

7. To the best of the petitioner's knowledge and belief most of the assets of the deceased are found in the District Court of Colombo and the most convenient court to exercise sole testamentary jurisdiction in respect of the said estate is the District Court of Colombo.

30 8. The petitioner claims the grant of probate of the said Last Will of the said deceased as the sole executrix named therein and does not anticipate any opposition to her application.

Wherefore the petitioner prays (a) that Your Lordships' Court may be pleased to make order directing and appointing the District Court of Colombo to have and exercise sole and exclusive jurisdiction in respect of the property in Ceylon of the abovenamed deceased;

(b) for costs of these proceedings; and

40 (c) for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd.

Proctor for Petitioner.

Exhibits
R 12. Petition
to Supreme
Court for Sole
Testamentary
Jurisdiction of
Estate of
K. M. N. S. P.
Nachiappa
Chettiar
—contd.

SCHEDULE ABOVE REFERRED TO

			Rs.	c.	
Immovable properties	..	..	605,000	0	
Shares in Companies	..	..	25,798	0	
Mortgage Bonds	..	..	1,630,355	77	
Leases and agreements	..	..	98,700	60	
Amount of Court decrees	..	..	100,330	96	
Amounts on Promissory Notes, &c.	..	..	48,236	65	
Amount on Government Securities and in Banks	..	..	1,109,407	29	
Cash in hand	..	..	12,355	52	10
Chettiar's current a/c	..	..	16,183	23	
<hr/>					
Total assets	..	..	2,646,368	02	
Less total liabilities	..	..	903,263	63	
<hr/>					
Nett value of Estate	..	..	1,743,104	39	

No. R 13.
Affidavit re Sole
Testamentary
Jurisdiction of
Estate of
Nachiappa
Chettiar
—contd.

**No. R 13. Affidavit re Sole Testamentary Jurisdiction of Estate of
Nachiappa Chettiar.
R 13.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for vesting of Sole Testamentary Jurisdiction in terms of section 70 of the Courts Ordinance, No. 1 of 1889. 20

And in the matter of the Last Will and Testament of Koonana Mana Nawanna Soona Pana Nachiappa Chettiar, son of Suppiramaniam Chettiar also known as Suppiramaniam Chettiar Nachiappa Chettiar of Sembanur, Tirupattur, Taluk, Ramnad District, South India. Deceased.

Valliyammai Atchi of Sembanur, Tirupattur, Taluk, Ramnad District, South India. Petitioner.

I, Leyna Ramanathan Chettiar of No. 247, Sea Street in Colombo, do hereby solemnly, sincerely and truly declare and affirm as follows: 30

1. I am one of the duly appointed attorneys of the Petitioner above named under and by virtue of the Power of Attorney dated the 20th day of February, 1939, and executed before the Sub-Registrar of Tirupattur in South India.

2. I am personally aware of the facts hereinafter set out.

3. The abovenamed deceased Koonana Mana Nawanna Soona Pana Nachiappa Chettiar, also known as Suppiramaniam Chettiar Nachiappa Chettiar, died at Sembanur aforesaid on the 30th day of 40

December, 1938, leaving a Last Will filed with the petition of the abovenamed petitioner marked " A " together with a translation thereof marked " B " whereby he appointed his wife, the petitioner above named, the sole executrix thereof.

Exhibits
No. R 13.
Affidavit re Sole
Testamentary
Jurisdiction of
Estate of
Nachiappa
Chettiar
—contd.

4. The deceased is the identical person mentioned as Koonna Mana Nawanna Soona Pana Nachiappa Chettiar in the Certificate of Death marked " C " and the translation thereof marked " D " and referred to and filed with the petition of the abovenamed petitioner.

10 5. The heirs of the said deceased, according to the law governing the Chettiar community, namely, the Hindu law, are his male children, namely, Manickam *alias* Nachiappan, Ramasamy, Suppiramanian and Nagappan, all of whom are minors and the children of the petitioner.

6. The abovenamed deceased carried on business at Sea Street in Colombo, under the name, style and firm or vilasam of " Koonna Mana Nawanna Soona Pana " or K. M. N. S. P.

20 7. By the said Last Will the deceased above named, subject to the payment of certain legacies, devised and bequeathed all his properties in Ceylon to his sons, the said Manickam *alias* Nachiappan, Ramasamy, Suppiramanian and Nagappan, and directed his wife, the petitioner above named, *inter alia*, to carry on the business of the deceased and to take charge of, possess and manage all the properties of the deceased till the last son, namely, the said Nagappan, becomes a major.

8. The abovenamed deceased left property in Ceylon of the value of Rupees one million seven hundred and forty-three thousand one hundred and four and cents thirty-nine (Rs. 1,743,104.39) as shown in the schedule annexed to the petition of the abovenamed petitioner.

30 9. The said Valliammai Atchi, the petitioner above named, by the Power of Attorney hereinbefore recited appointed me one of her attorneys in Ceylon to have the said Will proved and to obtain probate thereof and for that purpose to apply to this Honourable Court to appoint the District Court of Colombo to have and exercise sole Testamentary Jurisdiction in respect of the said estate.

10. To the best of my knowledge and belief most of the assets of the deceased are found in the District Court of Colombo and the most convenient Court to exercise sole Testamentary Jurisdiction in respect of the said estate is the District Court of Colombo.

40 11. I was present at the funeral of the deceased at Sembanur aforesaid when the funeral ceremonies were conducted and also at the cremation of the body of the said deceased at Sembanur.

Exhibits
No. R 13
Affidavit re Sole
Testamentary
Jurisdiction of
Estate of
Nachiappa
Chettiar
—contd.

12. The petitioner has authorised me to ask for a grant of probate of the said Last Will of the said deceased as the sole executrix named therein and neither the petitioner nor I anticipate any opposition to her application for probate.

Sgd. L. RAMANATHAN CHETTIAR.

Affirmed to at Colombo on this 23rd March, 1939.

Before me.

Sgd.

Commissioner for Oaths.

No. 10

No. R. 9. Copy of Letter.

R 9.

Colombo, 30th March, 1939.

No. R 9.
Copy of Letter.
30.3.39

M. N. SAMBAMURTI & CO.

To:

The Commissioner of Stamps,
Colombo.

Dear Sir,

REF. Estate Duty Assessment K. M. N. S. P. Nachiappa Chettiar, deceased.

20

I am instructed to inform you that K. M. N. S. P. Nachiappa Chettiar died on or about the 30th December, 1938. He was a member of the Hindu Undivided Family of K. M. N. S. P. who is being assessed for purposes of Income Tax under file 33/345.

I beg that you may be so good as to certify that the estate of the above deceased is not liable to Estate Duty by virtue of section 73 of Ordinance No. 1 of 1938.

Sgd. M. N. SAMBAMURTI.

No. R 25.
Affidavit in
D. C., Colombo,
Testamentary
No. 8802
5.4.39

No. R 25. Affidavit in D. C., Colombo, Testamentary No. 8802.

R 25.

30

In the District Court of Colombo

No. 8,802 Testy.

Valliyammai Atchi of Sembanur. Petitioner.

We, A. M. A. MR. Murugappa Chettiar, son of Murugappa Chettiar of Kallal, Muthiah Asari, son of Muthiah Asari, Native Doctor of Sembanur, and S. Sankaraiyar, son of T. Subbaiyar of

Kallal, all in Tirupattu, Taluk, Ramnad District, South India, do hereby solemnly, sincerely and truly declare and affirm jointly and severally as follows:—

Exhibits
No. R 25.
Affidavit in
D. C., Colombo,
Testamentary
No. 8802
—contd.

1. We are personally aware of the facts hereinafter set out.

2. The abovenamed deceased was personally known to us the affirmants herein named; we were present at the residence of the above named deceased at Sembanur in Tirupattu, Taluk, Ramnad District in South India on the 3rd December, 1938, together with NK. V. L. Ramanathan Chettiar, son of Letchumanan Chettiar of Devokottai, who is also personally known to us, the said affirmants, and saw the said Koonna Mana Nawanna Soona Pana Nachiappa Chettiar, also known as Suppiramaniam Chettiar Nachiappa Chettiar, the deceased above named, subscribe his name to the document No. 21 of 1938, now produced and marked A and declare and publish the same as his Last Will and Testament in the presence of us the affirmants and of the said NK. V. L. Ramanathan Chettiar and in testimony thereof at the request of the said deceased and we the said A. M. A. MR. Murugappa Chettiar, Muthiah Asari and S. Sankaraiyar and the said NK. V. L. Ramanathan Chettiar, in the presence of one another, all being present together at the same time, signed the said Last Will as witness.

3. The signature KM. N. SP. Nachiappa Chettiar subscribed to the said Last Will marked A is the handwriting in Tamil of the said deceased and the signatures A. M. A. MR. Murugappa Chettiar, Muthiah Asari and S. Sankaraiyar subscribed to the said Last Will marked A are in the respective handwriting of us the same A. M. A. MR. Murugappa Chettiar, Muthiah Asari and S. Sankaraiyar, and the signature NK. V. L. Ramanathan Chettiar subscribed to the said Last Will marked A in the handwriting of the said NK. V. L. Ramanathan Chettiar.

4. I, the said A. M. A. MR. Murugappa Chettiar, was also present at the residence of the said deceased at Sembanur aforesaid on the 4th December, 1938, together with the said NK. V. L. Ramanathan Chettiar and K. Ramachandra Raw, Sub-Registrar of Tirupattur, and saw the said deceased subscribe his name and affix his left thumb impression to the said Last Will marked A and admitting the execution of the said document marked A as the Last Will and Testament.

5. I, the said A. M. A. MR. Murugappa Chettiar do hereby further declare and affirm that the left thumb impression in the said last will marked A is that of the said deceased, that the signature A. M. A. MR. Murugappa Chettiar subscribed to the said Last Will marked A is in my handwriting and that the signatures “NK. V. L. Ramanathan Chettiar” and “K. Ramachandra Raw” subscribed to the said Last Will marked A are in the handwriting of the witness NK. V. L. Ramanathan Chettiar and K. Ramachandra Raw, the Sub-Registrar of Tirupattur.

Exhibits
No. R 25.
Affidavit in
D. C., Colombo,
Testamentary
No. 8802
—contd.

6. We further declare and affirm that the said K. M. N. S. P. Nachiappa Chettiar, also known as Suppiramaniam Chettiar Nachiappa Chettiar, at the time of his executing the said Last Will and testament and declaring the same to be so was to all appearance of good and sound memory and mind and understanding.

Sgd. by the three affirmants in Tamil.

The foregoing affidavit having been read over, etc., etc.

Before me. N. S. Parameswaran,
Sub-Registrar,
Tirupattur, 5.4.39.

10

No. R 20.
Copy of
affidavit in
D. C., Colombo,
Testamentary
No. 8802 5.4.39

**No. R 20. Copy of Affidavit in D. C., Colombo, Testamentary
No. 8802.
R 20.**

In the District Court of Colombo

No. 8,802 Testy.

I, Valliyammai Atchy of Sembanur, Tirupattur. Ramnad District, South India, do hereby solemnly, sincerely and truly declare and affirm as follows:—

I am the petitioner above named.

2. The above named deceased K. M. N. S. P. Nachiappa Chettiar, son of Suppiramaniam Chettiar also known as Suppiramaniam Chettiar Nachiappa Chettiar, died at Sembanur aforesaid on the 30th December, 1938, leaving a Last Will filed herewith marked A together with a translation thereof marked B, whereby he appointed me, his wife, the sole executrix thereof. 20

3. The said deceased left him surviving myself, his widow, 5 daughters (1) Meenatchi, (2) Deivanai, (3) Valliyammai, (4) Kalayani, and (5) Alamely, and 4 sons, Manickam *alias* Nachiappan, Ramasami, Suppiramaniam, and Nagappan.

4. The heirs of the said deceased according to the law governing the Chettiar community, namely, the Hindu law, are his male children, the said Manikam, *alias* Nachiappan, Ramasamy, Suppiramaniam, and Nagappan, all of whom are minors and children of me, the petitioner. 30

5. The abovenamed deceased left property in Ceylon of the value of Rs. 1,743,104.39 as shown in the schedule to the relative petition.

6. The abovenamed deceased carried on business at Sea Street in Colombo under the name, style and firm or vilasam of Koonana Mana Navanna Soona Pana K. M. N. S. P. 40

7. By the Last Will the deceased above named, subject to the payment of certain legacies, devised and bequeathed all his properties in Ceylon to his sons, the said Manickam *alias* Nachiappan, Ramasamy, Suppiramaniam, and Nagappan, and directed me, the petitioner above named, *inter alia*, to carry on the business of the deceased and to take charge of, possess and manage all the properties of the deceased till the last son, namely, the said Nagappan becomes a major.

Exhibits
No. R 20.
Copy of
Affidavit in
D. C., Colombo,
Testamentary
No. 8802
—contd.

10 8. The Honourable the Supreme Court of the Island of Ceylon by its order dated the 29th March, 1939, directed and appointed this Court to have and exercise sole and exclusive testamentary jurisdiction in respect of the estate and effects in Ceylon of the abovenamed deceased.

9. I claim a grant of probate of the said Last Will of the said deceased as the sole executrix named therein.

Sgd. VALLIAMMAI ATCHI.

Before me. N. S. Parameswaran,
Sub-Registrar,
Tirupattur, 5.4.39.

20 **No. R 17. Translation of Last Will.**

R. 17.
Translation

No. R 17.
Translation of
Last Will
(undated)

Grace of the Gods " Pillaiyar " and " Siva "

The Last Will left by Koonna Mana Nawana Soona Pana Natchiappa Chettiar, son of Suppiramaniam Chettiar, Esquire, Nattukottai Chettiar, Banker of about 54 years old of Sembanur, Tirupattur, Taluk, Ramnad District, with full consent and with full consciousness on the 18th day of (Tamil) the Karthikai month of the Vegutnaniya year corresponding to the 3rd day of December, 1938.

30 1. I married Parwathi Atchi, daughter of Seyna Seena Nawanna Narayanan Chettiar of Kandaramanickam by whom I have six daughters, namely, (1) Meenatchi, (2) Sittal, (3) Deiwanai, (4) Valliyammai, (5) Kalyani, and (6) Alamelu, of whom except Alamelu, the last daughter, the other five daughters have been married, of whom Sittal the second daughter is no more and the remaining four daughters are living at the residence of their husbands and all of whom including the said Sittal are blessed with children also.

40 2. After the death of the said Parwathi Atchi some 12 years ago, I married Valliyammai Atchi, daughter of Soona Moona

Exhibits
No. R 17.
Translation of
Last Will
(undated)
—contd.

Natchiappa Chettiar of Natchipuram as my second wife, by whom I have till now four sons, namely, (1) Manickam *alias* Natchiappan, (2) Ramasamy, (3) Suppiramaniam, and (4) Nagappan, and all the said four sons are at present minors.

3. I have at Colombo a money lending firm under the name, style and firm or vilasam of " Koonana Mana Nawanna Soona Pana " and the properties thereof belonging to me alone as sole proprietor. Besides this, there is at (Pawundothi) Paung Dawthi in Burma, a partnership firm under the name, style and firm or vilasam of " Ana Roona Nawanna Soona Pana " wherein I have 19/32 share, Koonana Mana Ana Roona of Sembanur 3/8 share in common, Ana Roona Koonana Mana Meenatchi Atchi of the said place (Sembanur) 1/16th share, and Veyna Nawanna Veyna Alagammai Atchi of Kallal 1/16th share, all the shares aggregating to one and three upon thirty-two (1 and 3/32) shares, and there is at (Sungampur) Simpang Ampet in Malaya, a partnership firm under the name, style and firm or vilasam of " Soona Pana Nawanna Soona Pana " wherein I have invested as capital 9,500 dollars, Soona Seenana Rawanna Mana of Kallal 4,250 dollars, Ana Roona Soona Nachiappa Chettiar of the said place (Kallal) 4,250 dollars and Charities 750 dollars, all aggregating to 18,750 dollars.

4. Besides these, I have at Sembanur a new house belonging to me alone and the northern half part or share due to my half share belonging to me alone of the adjoining southern big house excluding the half share due to my paternal elder uncle and others; I have at the Keelaiyoor and Salingapatti villages in Melur, Taluk, Madura District, paddy and kurakkan sowing lands and house; and I have at Sembanur money lendings and paddy and kurakkan sowing lands.

5. I have made my said four sons and the sons who would hereafter be born to me entitled to own, possess and enjoy all the movable and immovable properties which belong to me as aforesaid and which may hereafter belong to me, money lending firms, my shares in partnership firm, sums of cash in hand and banks and all the sums due to me on mortgages, usufructuary mortgages, Government securities, together with all the right, title and interest, after my life time; and they and their heirs shall equally own, possess and enjoy my (said) properties for ever as hereinbelow mentioned.

6. They shall give Alamelu, my unmarried aforesaid sixth daughter, and each and every daughter who would hereafter be born to me, in marriage according to the customs and manners of the community at an expense to the extent of (Rs. 20,000) twenty thousand each from my estate.

7. They shall perform the " Seermurai " (celebrations accompanied by presents of cash and things) to be performed according to the customs and manners of the community to all aforesaid daughters and to the daughters who would hereafter be born to me and they

shall meet all the expenditure to be spent according to the customs and manners of the community for and on behalf of all my aforesaid sons and their respective heirs from my estate then and there.

Exhibits
No. B 17.
Translation of
Last Will
(undated)
—contd.

8. They shall pay Valliyammai Atchi, my second wife, during her life time for her own expenses to the extent of Rs. 2,000 per year from my estate.

9. They shall continue without winding up my own aforesaid money-lending firm under the name, style and firm or vilasam of " Koonana Mana Nawanna Soona Pana " at Colombo till my last son becomes major; but, no one shall borrow money for and on behalf of my estate either for the business of the said firm or for any other reason.

10. The undermentioned executrix shall have power and authority to continue with the remaining partners my aforesaid partnership firms under the names, styles and firms or vilasams of " Ana Roona Nawanna Soona Pana " and " Soona Pana Nawanna Soona Pana " at (Pawundothi) Paung Dawthi and (Sungampar) Simpang Ampet respectively, to release if necessary either all or some of the remaining partners and to receive money by transferring my share of the said firms either unto the said partners or unto a third person; and no one shall be empowered to borrow money for and on behalf of the said firms also.

11. For the purpose of doing and performing all matters and things hereinabove referred to I have nominated and appointed Valliyammai Atchi, my second wife, as executrix. She as executrix shall take charge of, possess and manage all my properties till my last son becomes major and she shall give charge of the said properties unto all my sons immediately after the said son becomes a major. The said executrix shall have power and authority to compromise or waive the unsecured, mortgaged and other debts or moneys due to my estate and to effect cash sales of my properties; but the said executrix shall have power and authority to purchase immovable properties at the realization of the decree entered either in my name or in the name of my estate and as for the debts or moneys due to me.

12. Save and except those referred to in the aforesaid 6th and 7th paragraphs my daughters shall have no other right, title or interest whatsoever in my estate.

13. Valliyammai Atchi, my second wife, whom I have hereby nominated and appointed as executrix shall have power and authority to nominate and appoint an executor whom she likes for the purpose of managing my estate after her life time. As the said Valliyammai Atchi is a permanent resident of India she shall have power and authority to nominate and appoint either someone in whom she has confidence or anyone of my sons as agent by granting a power of attorney for the purpose of doing and performing the matters and things above referred to.

Exhibits
No. R 17.
Translation of
Last Will
(undated)
—contd.

14. In case (Kosa, Poothal) letters of administration, &c., in Malaya and Ceylon are to be taken concerning the firms above referred to after my life time Valliyammai Atchi, the said executrix, shall hereby have power and authority to conduct the said administration proceedings by granting powers of attorney unto persons in whom she has confidence. And Valliyammai Atchi, the said executrix, shall have power and authority to nominate and appoint agents to conduct income tax proceedings in India and other foreign countries concerning the aforesaid firms, to take all proceedings concerning thereof and to get refund of income tax. 10

15. Each and every item referred to in this Last Will shall come into force after my life time.

16. I have full power and authority to alter and cancel this Last Will.

In page 1 last line "....." corrected and in page 2 line 11, 4 corrected, line 19 "....." and line 28 "....." corrected.

Sgd. KM. N. SP. Nachiappa Chettiar.

Witnesses:—

Sgd. A. M. A. MR. Murugappa Chettiar, son of Murugappa Chettiar of Kallal. 20

Sgd. NK. V. L. Ramanathan Chettiar, son of Letchumanan Chettiar of Devakottai.

Sgd. Muthian Asari, son of Muthian Asari, Native Doctor, of Sembanur.

Written by:—

Sgd. S. Sankaraiyer, son of T. Subbaiyer of Kallal, who is also a witness.

This Document consists of five sheets.

Presented at his own residence at Sembanur in Tirupattur Sub-District, on the 4th day of December, 1938, between the hours of 10 and 11 a.m. by— 30

Sgd. KM. N. SP. Natchiappa Chettiar.

Execution admitted by:—Left thumb impression.

Sgd. KM. N. SP. Natchiappa Chettiar, son of KM. N. Suppiramaniam Chettiar, Nattukottai (Chettiar), Banker (Money-lender) of Sembanur.

Identified by:—

Sgd. A. M. A. MR. Murugappa Chettiar, son of Murugappa Chettiar, Nattukkottai (Chettiar), Moneylender, of Kallal, presently of Sembanur (husband of younger sister). 40

Sgd. NK. V. L. Ramanathan Chettiar, son of Letchumanan Chettiar, Nattukkottai (Chettiar), Moneylender of Devakottai, presently of Sembanur.

Exhibits
No. R 17
Translation of
Last Will
(undated)
—contd.

Sgd. K. RAMACHANDRA RAW,
Sub-Registrar.

4th December, 1938.

Registered as No. 21—of the year 1938 in Book 3, Volume 16, pages from 60 to 64.

Sgd. K. RAMACHANDRA RAW,
Sub-Registrar.

10

5th December, 1938.

The seal of the Sub-Registrar of Tirupattur.

Translated by:

Sgd. Illegibly,
Sworn Translator.

9. 2. 39.

No. R 14. Petition in D. C., Colombo, Testamentary No. 8802.

R 14.

In the District Court of Colombo

Testy. No. 8802

No. R 14
Petition in
D. C., Colombo,
Testamentary
No. 8802
17. 4. 39.

20

In the matter of the Last Will and Testament of
Koonna Mana Nawanna Soona Pana Nachiappa Chettiar,
son of Suppiramanian Chettiar, also known as Suppiramanian Chettiar Nachiappa Chettiar of Sembanur, Tirupattur, Taluk, Ramnad District, South India. Deceased.

Valliyammai Atchi of Sembanur, Tirupattur, Taluk, Ramnad District, South India Petitioner.

This 17th day of April, 1939.

30 The petition of the petitioner above named appearing by N. M. Zaheed, her Proctor, states as follows:—

1. The abovenamed deceased K. M. N. S. P. Nachiappa Chettiar also known as Suppiramaniam Chettiar Nachiappa Chettiar died at Sembanur aforesaid on the 30th December, 1938, leaving a Last Will filed herewith marked " A " together with a translation thereof marked " B ", whereby he appointed his wife, the petitioner above named, the sole executrix thereof.

Exhibits
No. R 14
Petition in
D. C., Colombo,
Testamentary
No. 8802
17. 4. 39.
—contd.

2. The said deceased left him surviving his widow, Valliyammai Atchi, the petitioner above named, 5 daughters, Meenatchi, Deivainai, Valliyammai, Kalyani, and Alamelu, and 4 sons, Manickam *alias* Natchiappan, Ramaswamy, Suppiramaniam and Nagappan.

3. The heirs of the said deceased according to the law governing the Chettiar community, that is, the Hindu law, are his male children: the said Manickam *alias* Nachiappan, Ramasami, Suppiramaniam, and Nagappan, all of whom are minors and children of the petitioner.

4. The abovenamed deceased left property in Ceylon of the value of Rs. 1,743,104.39 as shown in the annexed schedule. 10

5. The abovenamed deceased carried on business at Sea Street in Colombo under the name, style and firm or vilasam of Koonana Mana Nawanna Soona Pana or K. M. N. S. P.

6. By the said Last Will the deceased above named, subject to the payment of certain legacies, devised and bequeathed all his properties in Ceylon to his sons, the said Manickam *alias* Nachiappan, Ramasamy, Suppiramaniam, and Nagappan, and directed his wife, the petitioner above named, *inter alia*, to carry on the business of the deceased and to take charge of, possess and manage all the properties of the deceased till the last son, namely, the said Nagappan, becomes a major. 20

7. The Hon. the Supreme Court of the Island of Ceylon by its order dated the 29th March, 1939, directed and appointed this Court to have and exercise sole and exclusive testamentary jurisdiction in respect of the estate and effects in Ceylon of the abovenamed deceased.

8. The petitioner claims a grant of probate of the said Last Will of the said deceased as the sole executrix named therein.

Wherefore the petitioner prays for an order declaring the said Last Will proved; that she be declared the executrix of the estate of the said deceased; that probate to the said Last Will be granted to her accordingly; for costs of these proceedings, and for such other and further relief in the premises as to this Court shall seem meet. 30

Sgd. N. M. ZAHEED,
Proctor for Petitioner.

THE SCHEDULE ABOVE REFERRED TO

<i>Immovables</i>		Rs.	c.		
Premises Nos.	328, 332 and 336, Old Moor Street, Colombo	..	40,000	0	40
"	369, Old Moor Street	..	2,000	0	
"	46 and 48, Sea Street, and 33, Chekku Street, Colombo	..	25,000	0	
"	40, 42 and 44, Bankshall Street	..	16,000	0	
"	13, St. Lucia's Street, Kotahena	..	2,000	0	
"	93 and 95, Wilson Street, Colombo	..	3,000	0	

<i>Immovables</i>		<i>Rs.</i>	<i>c.</i>	<i>Exhibits</i>	
	Premises No.	53, 55 and 59, Wilson Street, and 10, 12 and 14, Court Street ..	8,000	0	Exhibits No. R 14 Petition in D. C., Colombo,
	"	78 and 80, Messenger Street, Colombo ..	3,000	0	Testamentary No. 8802 17. 4. 39.
	"	120, Messenger Street, Colombo ..	3,000	0	—contd.
	"	250, 252 and 254, Messenger Street, Colombo ..	7,000	0	
	"	91, 91 (1-6) and 93, Silversmith Street ..	10,000	0	
	"	39 and 45, Kuruwe Street ..	15,000	0	
	"	85 (1-32), Dematagoda Passage ..	10,000	0	
10	"	515, Maradana Road, Colombo ..	5,000	0	
	"	517, Maradana Road, Colombo ..	5,000	0	
	"	519, Maradana Road, Colombo ..	5,000	0	
	"	521, Maradana Road, Colombo ..	5,000	0	
	"	523, Maradana Road, Colombo ..	5,000	0	
	"	531, Maradana Road, Colombo ..	7,000	0	
	"	535, Maradana Road, Colombo ..	7,000	0	
	"	15, 17 and 21, Maligakanda Road ..	5,000	0	
	"	7, 9, 11 and 15 Dematagoda Road ..	20,000	0	
	"	126 and 130, Dematagoda Road ..	8,000	0	
20	"	319/10 and 321, Dematagoda Road ..	4,000	0	
	"	94, Temple Road, Colombo ..	7,000	0	
	"	733, Maradana Road ..	2,000	0	
	"	171, Forbes Road ..	3,000	0	
	"	4, Sumner Place ..	12,000	0	
	"	38, 38 (1-3), 42, 44, 46 and 50, Saunders and 79 and 81, Church Street, Colombo ..	17,000	0	
	"	60, 62, 64, 68 (3-10) and 70, Bridge Street, Colombo ..	10,000	0	
	"	46, 48, 50 and 54, Shorts Road ..	10,000	0	
	"	385, 387, 389, 391 and 393, Colpetty, and 2, 8 and 14, Fifth Lane, Colpetty ..	20,000	0	
30	"	465, Colpetty ..	15,000	0	
	"	42, 44, 44 (2-21) and 46, Symonds Road ..	23,000	0	
	"	28 (22-23), Symonds Road ..	6,000	0	
	"	Kandawala Estate, Ratmalana (A 133. R 3. P 27.) ..	260,000	0	
		Total ..	605,000	0	

Movables

	Shares in companies ..	25,798	0
	Amounts due on mortgage bonds ..	1,630,355	77
40	Amounts due on Leases and Agreements ..	98,700	0
	Amounts due on Court Decrees ..	100,330	96
	Amounts due on Promissory Notes and Cheques ..	48,236	65
	Government Securities and in Banks ..	109,407	29
	Cash in hand ..	12,355	52
	Amounts due on Chettiers Current Account ..	16,183	23
	Total assets ..	2,646,368	02
	Less liabilities ..	903,263	63
	Net value of estate ..	1,743,104	39

Exhibits
No. R 15
Amended
Petition in
D. C., Colombo,
No. 8802
27. 4. 39.

No. R 15. Amended Petition in D. C., Colombo, No. 8802.

R 15.

In the District Court of Colombo

No. 8802 Testy.

In the matter of the Last Will and Testament of
K. M. N. S. P. Nachiappa Chettiar.

Valliyammai Atchi of Sembanur Petitioner.

and

1. Meenatchi
2. Deivanai
3. Valliyamma
4. Kalyanai and
5. Alamelu, all of Tirupattur, India
6. Manickam *alias* Nachiappan
7. Ramasamy, both of 247, Sea Street
8. Suppiramaniam, and
9. Nagappen, both of Tirupattur Respondents.

10

This 27th day of April, 1939.

The amended petition of the petitioner above named appearing
by N. M. Zaheed, her Proctor, states as follows:—

20

1. The abovenamed deceased K. M. N. S. P. Nachiappa Chettiar, also known as Suppiramaniam Chettiar Nachiappa Chettiar, died at Sembanur aforesaid on the 30th December, 1938, leaving a Last Will filed herewith marked " A " together with a translation thereof marked " B ", whereby he appointed his wife, the petitioner above named, the sole executrix thereof.

2. The said deceased left him surviving his widow, Valliyammai Atchi, the petitioner above named, 5 daughters Meenatchi, Deivanai, Valliyammai, Kalyanai, and Alamelu (the 1st, 2nd, 3rd, 4th and 5th respondents above named), and 4 sons Manickam *alias* Nachiappan, Ramaswamy, Suppiramaniam, and Nagappan (the 6th, 7th, 8th and 9th respondents above named).

30

3. The heirs of the said deceased according to the law governing the Chettiar community, i.e., the Hindu law, are his male children of the said Manickam *alias* Nachiappan, Ramaswamy, Suppiramaniam, and Nagappan, the abovenamed 6th, 7th, 8th and 9th respondents, all of whom are minors and children of the petitioner.

4. The abovenamed deceased left property in Ceylon of the value of Rs. 1,743,104.39 as shown in the schedule.

5. By the said Last Will the deceased above named, subject to the payment of certain legacies, devised and bequeathed all his properties in Ceylon to his sons, Manickam *alias* Nachiappan, Ramasamy, Suppiramaniam, and Nagappa, the abovenamed 6th, 7th, 8th and 9th respondents, and directed his wife, the petitioner above named, *inter alia*, to carry on the business of the deceased and to take charge of, possess and manage all the properties of the deceased till the last son, namely, Nagappan, the abovenamed 9th respondent, becomes a major.

6. The abovenamed deceased carried on business at Sea Street in Colombo, under the name, style and firm or vilasam of Koonana Mana Nawanna Soona Pana or K. M. N. S. P.

7. The Hon. the Supreme Court of the Island of Ceylon by its order dated the 29th March, 1939, directed and appointed this Court to have and exercise sole and exclusive testamentary jurisdiction in respect of the estate and effects in Ceylon of the abovenamed deceased.

8. The petitioner claims a grant of probate of the said Last Will of the said deceased as the sole executrix named therein.

Wherefore the petitioner prays for an order declaring the said Last Will proved; that she be declared the executrix of the estate of the said deceased; that probate to the said Last Will be granted to her accordingly; for costs of these proceedings; and for such other and further relief in the premises as to this Court shall seem meet.

Sgd. N. M. ZAHEED,
Proctor for Petitioner.

No. R 16. Amended Petition in D. C., Colombo, No. 8802.

R 16.

In the District Court of Colombo

No. 8802 Testy.

In the matter of the Last Will and Testament of
K. M. N. S. Nachiappa Chettiar.

Valliyammai Atchi of Sembanur Petitioner.

Vs.

1. Meenatchi, wife of S. N. K. Nagappa Chettiar of Kandaramanikka
2. Deivanai, wife of S. Vairavana Chettiar *alias* Kasi Chettiar of Sockanathapuram

Exhibits
No. R 15
Amended
Petition in
D. C., Colombo,
No. 8802
27.4.39
—contd.

No. R 16
Amended
Petition in
D.C., Colombo,
No. 8802
12.5.39

Exhibits
No. R 16
Amended
Petition in
D. C., Colombo,
No. 8802
12.5.39.
—contd.

3. Valliyammai, wife of Ramanathan Chettiar *alias* Vellayappa Chettiar of Aranamanai Siruvayal
4. Kalyani, wife of Palaniappa Chettiar of Kallai
5. Alamelu of Sembanur
6. Manickam *alias* Nachiappan, and
7. Ramasami, both of 247, Sea Street, Colombo
8. Suppiramaniam, and
9. Nagappa, both of Sembanur, the 5th, 6th, 7th, 8th and 9th respondents are minors appearing by their guardian *ad litem*, the 10th respondent 10
10. Unnamalai Achi, widow of S. M. Nagappa Chettiar of Nachipuram in Ramnad District Respondents.

On this 12th day of May, 1939.

The amended petition of the petitioner above named appearing by N. M. Zaheed, her Proctor, states as follows:—

1. The abovenamed deceased K. M. N. S. P. Nachiappa Chettiar also known as Suppiramaniam Chettiar Nachiappa Chettiar died at Sembanur aforesaid on the 30th December, 1938, leaving a last will filed herewith marked “ A ” together with a translation thereof marked “ B ”, whereby he appointed his wife, the petitioner above named, the sole executrix thereof. 20

2. The said deceased left him surviving his widow Valliyammai Atchi, the petitioner above named, 5 daughters Meenatchi, Deivanai, Valliyammai, Kalyani, and Alamelu, the 1st, 2nd, 3rd, 4th and 5th respondents above named, and 4 sons Manickam *alias* Nachiappan, Ramasami, Suppiramaniam, and Nagappan, the 6th, 7th, 8th and 9th respondents above named.

3. The heirs of the deceased according to the law governing the Chettiar community, that is, the Hindu law, are his male children the said Manickam *alias* Nachiappan, Ramasami, Suppiramaniam, and Nagappan, the abovenamed 6th, 7th, 8th and 9th respondents, all of whom are minors and children of the said petitioner. 30

4. The abovenamed deceased left property in Ceylon of the value of Rs. 1,743,104.39 as shown in the annexed schedule.

5. The abovenamed deceased carried on business at Sea Street in Colombo, under the name, style and firm or vilasam of K. M. N. S. P.

6. By the said Last Will the deceased above named, subject to the payment of certain legacies, devised and bequeathed all his properties in Ceylon to his sons, Manickam *alias* Nachiappa, Ramasami, Suppiramaniam, and Nagappan, the abovenamed 6th, 7th, 8th and 9th respondents, and directed his wife, the petitioner above named, *inter alia*, to carry on the business of the deceased, and 40

to take charge of, possess and manage all the properties of the deceased till the last son, namely, Nagappan, the abovenamed 9th respondent, becomes a major.

Exhibits
No. R 16
Amended
Petition in
D.C., Colombo,
No. 8802
12.5.39
—contd.

7. The 5th, 6th, 7th, 8th and 9th respondents above named are minors of the respective ages of 19, 10, 5 and 1½ years and it is necessary that a guardian *ad litem* should be appointed over them.

10 8. Unnamalai Achi, widow of S. M. Nagappa Chettiar of Nachiappuram in Ramnad District, S. I., the 10th respondent, above named, who is grandmother of the said minors, is a fit and proper person to be appointed guardian *ad litem* of the said minors for the purpose of these proceedings; she has no interest adverse to that of the said minors and is willing to be so appointed.

9. The Hon. the Supreme Court of the Island of Ceylon by its order dated the 29th day of March, 1939, directed and appointed this Court to have and exercise sole and exclusive testamentary jurisdiction in respect of the estate and effects in Ceylon of the abovenamed deceased.

10. The petitioner claims a grant of probate of the said Last Will of the said deceased as the sole executrix named therein.

20 Wherefore the petitioner prays for an order declaring the said Last Will proved; that she be declared the executrix of the estate of the said deceased; that probate to the said Last Will be granted to her accordingly; that the abovenamed 10th respondent be appointed guardian *ad litem* over the 5th, 6th, 7th, 8th and 9th respondent minors to represent them in these proceedings; for costs of these proceedings; and for such other and further relief in the premises as to this Court shall seem meet.

Sgd. N. M. ZAHEED,
Proctor for Petitioner.

30 **No. R 21. Copy of Affidavit in D. C., Colombo, Testamentary
No. 8802.**

No. R 21
Affidavit in
D.C., Colombo,
Testamentary
No. 8802
12.5.39

R 21.

In the District Court of Colombo
No. 8802 Testy.

Valliyammai Atchi of Sembanur Petitioner.

And

1 to 10 above named Respondents.

40 I, Mawanna Letchumanan Chettiar of No. 247, Sea Street in Colombo, being a Hindu, do hereby solemnly, sincerely and truly declare and affirm as follows:

1. I am one of the duly appointed attorneys of the petitioner above named under and by virtue of Power of Attorney dated 20th February, 1939, and executed before the Sub-Registrar of Tirupattur in South India.

Exhibits
No. R 21
Affidavit in
D.C., Colombo,
Testamentary
No. 8802
12.5.39
—contd.

2. I am personally aware of the facts hereinafter set out.

3. The 5th, 6th, 7th, 8th and 9th respondents above named are minors of the respective ages of 19, 10, 8, 5 and $1\frac{1}{2}$ years and it is necessary that a guardian *ad litem* should be appointed over them.

4. Unnamulai Atchi, widow of S. M. Nagappa Chettiar of Nachiappuram in Ramnad District, South India, the 10th respondent, is the grandmother of the said minors, is a fit and proper person to be appointed guardian *ad litem* of the said minors for the purpose of these proceedings. She has no interest adverse to that of the said minors and is willing to be so appointed. 10

5. The 1st respondent resides at Kandramanikkam and the 2nd respondent at Sockanathapuram, both within Ramnad District in South India. The notice in this case can be served on them through the District Munsiff, Devakottai.

6. The 3rd respondent resides at Aranmanai, Siruvayal, and the 4th respondent at Kallal, both within Ramnad District in South India. The notice in this case can be served on them through District Munsiff, Devakottai.

7. I therefore pray that the court be pleased to make order under sections 69 and 70 of the Civil Procedure Code directing that notice in this case be served on the 1st, 2nd, 3rd and 4th respondents through the District Munsiff of Sivanga and Devakottai. 20

Sgd. M. Letchumanan Chettiar,

Before me.

(Sgd.) L. H. de Kretser,

C. O.

12. 5. 39.

No. R 10.
Letter
27.6.39

No. R 10. Letter.

R 10.

30

Estate Duty Office.
Colombo, 27th June, 1939.

K. M. N. S. P. Nachiappa Chettiar, Deceased.

Gentlemen,

With reference to your letter dated 30th March, 1939, asking for a certificate that the estate of the above deceased is not liable to estate duty, I have the honour to draw your attention to section 29 of the Estate Duty Ordinance, No. 1 of 1938, which requires the executor of every deceased person to deliver to me a declaration of property within six months after the death of the deceased. 40

2. I shall be glad if you will be so good as to comply with this requirement in regard to the estate of the abovenamed deceased. I shall point out that if you claim that the estate of the deceased is not liable to Estate Duty exemption may be claimed in cage 1 of the statutory form but a full and true statement of the particulars relating to the estate of the deceased including the value thereof should be set out.

Exhibits
No. R 10
Letter
27.6.39
—contd.

3. Two copies of the form of declaration are enclosed herewith to be filled in and sent to me in duplicate.

10

Sgd. C. A. SPELDEWINDE
Assessor, Estate Duty.

Messrs. M. N. Sambamurti & Co.

No. R 7. Declaration of Property Under Estate Duty Ordinance.
R 7.

No. R 7
Declaration of
Property under
Estate Duty
Ordinance
4.8.39

File No. ED/N 159.

ESTATE DUTY ORDINANCE, NO. 1 OF 1938.
DECLARATION OF PROPERTY REQUIRED UNDER
SECTION 29 (1)

20	Name of deceased	K. M. N. S. P. Nachiappa Chettiar
	Date and place of death	} December 30, 1938, at Sembanoor, South India.
	Age and occupation of deceased	.. 54 years. Money lender and Banker.
	Domicile of deceased	.... British India.
	Whether deceased left a Last Will (if so, a certified copy should be annexed)	} Yes.
	Name and address of executor	} Valliammai Achi (widow), by Attorney, M. Letchumanan Chettiar,
30	Name and address of Proctor acting for him	} N. M. Zaheed, Esquire, Proctor, Colombo
	Name of District Court and number of testamentary case	} Colombo District Court, 8802 Testamentary,

* * * *

<i>Exempt Property</i>		<i>Rs.</i>	<i>c.</i>
Movable	..	.. 19,17,970	25
Immovables		.. 6,09,500	0
		<hr/>	
		25,27,470 25	
		<hr/>	

Exhibits
No. R 7
Declaration of
Property under
Estate Duty
Ordinance
4.8.39
—contd.

Declaration

I declare that to the best of my knowledge, information and belief the statements contained in this form and in the schedules attached thereto are true and correct and that I have disclosed all the property liable to estate duty on the death of the deceased and have made a true and correct estimate of the value of such property.

Valliammai Achi by Attorney.

Sgd. M. LETCHUMANAN CHETTIAR.

Signature of Executor.

Dated this Fourth day of August, 1939.

10

PROVISIONAL NOTICE OF ASSESSMENT.

Charge No. 9316.

To Valliammai Achi (widow) by Attorney, M. Letchumanan Chettiar, C/o N. M. Zaheed, Esqr., Proctor, 250, Hulftsdorp. Take notice that the estate duty in respect of the estate of K. M. N. S. P. Natchiappa Chettiar, deceased, has been assessed as follows:—

		<i>Rs.</i>	<i>c.</i>	
<i>Assets</i>				
Immovable property (Exr's value provisionally accepted)	..	609,500	0	
Movable property	.. ..	1,917,970	0	20
		<hr/>	2,527,470	0
Deductions	.. ..	—	
		<hr/>	2,527,470	0
	..	2,527,470	0	
<i>Estate Duty</i>				
Estate Duty on Rs. 2,527,470 at 11 per cent. with interest at 4 per cent. per annum from December 31, 1939	.. ..	278,021	70	
		<hr/>		

This assessment is provisional and is liable to revision.

The above amount is payable by you on or before 3rd March, 1940, and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

30

If you object to the above assessment you must give notice to appeal in writing within 30 days of the date hereof, stating the grounds of objection.

Sgd. L. G. GUNASEKERA,
Assessor, Estate Duty.

PROVISIONAL CERTIFICATE

In terms of Section 49 of the Estate Duty Ordinance, 1938, I certify that the estate duty amounting to rupees two hundred and seventy-eight thousand and twenty-one and cents seventy (Rs. 278,021.70) with interest Rs. 1,991.46 has been paid.

Exhibits
No. R 7
Declaration of
Property under
Estate Duty
Ordinance
4.8.39.
—contd.

Sgd. Illegibly.

for Commissioner of Estate Duty.

Date 30th March, 1940.

No. R 8. Letter.

No. R 8.
Letter
4.8.39

10

R 8.

Copy

Colombo, 4. 8. 1939.

M. N. SAMBAMURTI & Co.

To

The Assessor, Estate Duty,
Income Tax Office, Colombo.

Dear Sir,

Ref. Edg./71 (VDA) K. M. S. P.
Nachiappa Chettiar, deceased

20 With reference to your letter of the 27th June I beg to forward herewith the forms of declaration in duplicate duly completed claiming exemption from duty in respect of the full Ceylon Estate of the deceased in virtue of section 73 of the Estate Duty Ordinance. The estate left by the deceased outside the Island is not furnished in view of the said claim.

On the question of the affidavit of the deceased discussed between us in an interview some time back, I submit the following points for your earnest consideration:—

30 1. The managing male member of the family has no power to gift any portion of the family assets either to its own members or to outsiders except to a very limited extent under certain circumstances. This will mean that legally no title has passed to the alleged donees and the affidavit has no legal force.

2. The alternative view of regarding the deceased as effecting a partition of the family property as between himself and his children is equally untenable as a partition cannot be effected with a minor.

3. The following are the dates of credit of the three accounts raised in the books in favour of the three sons:—

40	Nachiappan <i>alias</i> Manickam	...	...	26.3.31
	Ramaswami	...	...	do.
	Subramaniam	...	...	21.3.37

Exhibits
No. R 8
Letter
4.8.39.
---cont'd.

The 4th son, Nachiappan, is not in the picture and the alleged gifts will be easily held by the Indian Courts to be void against him by virtue of the foregoing considerations.

Sgd. M. N. SAMBAMURTI

No. R 19
statement of
objections in
D. C., Colombo,
Testamentary
No. 8802
12.8.39.

**No. R 19. Statement of Objections in D. C., Colombo,
Testamentary No. 8802**

R 19.

In the District Court of Colombo

No. 8802 Testy.

In the matter of the Last Will and Testament of Koonna 10
Mana Nawanna Soona Pana Nachiappa Chettiar, son
of Suppiramaniam Chettiar, also known as
Suppiramaniam Chettiar Nachiappa Chettiar,
Tirupattur, Taluk, Ramnad District, South
India Deceased.

Valliyammai Atchi of Sembanur, Tirupattur, Taluk, Ramnad
District, South India Petitioner.

And

1. Meenatchi, wife of A. N. K. Nagappa Chettiar of
Kandaramanikkam
2. Deivanai, wife of S. Vairavan Chettiar, *alias* Kasi 20
Chettiar of Sockanathapuram
3. Valliyammai, wife of Ramanathan Chettiar *alias* Vel-
layappa Chettiar of Aranmanai, Siruvayal
4. Kalyani, wife of Palaniappa Chettiar of Kallal, all in
Ramnad District, S. India
5. Alamelu of Sembanur, Ramnad District, S. India
6. Manickam *alias* Nachiappan, and
7. Ramasami, both of 247, Sea Street, Colombo
8. Suppiramaniam, and
9. Nagappan, both of Sembanur aforesaid; the 5th, 6th, 7th, 30
8th and 9th respondents are minors appearing by their
guardian *ad litem*, the 10th respondent, and
10. Unnamulai Achi, wife of S. M. Nagappa Chettiar
of Nachiapuram in Ramnad District, South
India Respondents.

On this 12th day of August, 1939.

The statement of objections of the 1st, 2nd, and 3rd respondents
above named appearing by their Proctor, Lakshmanan Alagu-
sundaram Chettiar, states as follows:—

40

1. The deceased had six daughters including Sittal. The said
Sittal is now dead; and her (the said Sittal's) children to wit: (a)

Alamelu and (b) Sinnan Chettiar are necessary parties to these proceedings. The alleged consent (if any) of the 5th respondent has been obtained by fraud.

Exhibits
No. R 19
statement of
objections in
D. C., Colombo,
Testamentary
No. 8802
12. 8. 39.
—contd.

2. The deceased being subject to the Mitakahara School of Hindu Law was a member of an undivided Hindu joint family consisting of these respondents among others and the joint family estate cannot in law be disposed of by Last Will.

10 3. The property dealt with under the Last Will cannot form the subject matter of a Last Will; and the deceased could not in law make and was incapable in law of making any Last Will and was incompetent to make such Last Will.

4. The Last Will produced was not executed according to and in conformity with the forms and solemnities prescribed by the laws of India.

5. The Last Will is not the act and deed of the deceased. The deceased was not of sound mind and understanding at the time of the execution thereof.

20 6. Even if the deceased did sign the Last Will while of sound mind and understanding (which these respondents deny in fact) the signature of the deceased was induced by fraud and undue influence practised upon the deceased by petitioner and others.

7. The deceased had in his Lands—

- (a) moneys due to Parwathy Atchy now deceased;
- (b) moneys due to these respondents; and
- (c) moneys of the firm of SS. R.M. of which the deceased was a trustee.

These respondents reserve these claims among others for separate proceedings.

8. The deceased owes large sums of money to "charities".

30 9. Even if the will was admitted to probate, the administration of the estate should not be granted to the petitioner as she is outside the jurisdiction of this Court.

Wherefore the respondents pray that—

- (a) probate of the said will to the petitioner be refused;
- (b) the estate of Koona Mana Nawanna Soona Pana Nachiappa Chettiar, son of Suppiramaniam Chettiar, also known as Suppiramaniam Chettiar Nachiappa Chettiar, deceased, be administered as an intestacy, and
- 40 (c) for costs of these proceedings and for such other and further relief as the Court may be pleased to grant in the premises.

(Sgd.) A. ALAGASUNDERAM CHETTIAR,
Proctor for 1st, 2nd, and 3rd respondents.

Exhibits
No. R 22
Petition in
D. C., Colombo,
Testamentary
No. 8802
24. 8. 39.

**No. R 22. Petition in D. C., Colombo, Testamentary
No. 8802.**

R 22.

In the District Court of Colombo

Testy. No. 8802

In the Matter of the Last Will and Testament of
Koonna Mana Nawanna Soonna Pana Nachiappa
Chettiar son of Suppiramaniam Chettiar also known as
Suppiramaniam Chettiar Nachiappa Chettiar of Sem-
banur, Tirupattur, Taluk, Ramnad District, South India. 10

Valliyammai Atchi of Sembanur, Tirupattur, Taluk,
Ramnad District, S. India Petitioner.

And

1. Meenatchi, wife of S. N. K. Nagappa Chettiar, Kandara-
manikkam
2. Deivanai, wife of S. Vairavan Chettiar *alias* Kasi Chettiar
of Sockanathapuram
3. Valliyammai, wife of Ramanathan Chettiar *alias* Vellay-
appa Chettiar of Aranmanai Siruvayal 20
4. Kalyani, wife of Palaniappa Chettiar of Kallal, all in
Ramnad District, South India.
5. Alamelu of Sembanur, Ramnad District, South India
6. Manickam *alias* Nachiappan and
7. Ramasami, both of 247, Sea Street, Colombo.
8. Suppiramaniam, and
9. Nagappa, both of Sembanur aforesaid, the 5th, 6th, 7th, 8th
and 9th respondents are minors appearing by their
guardian *al litem*, the 10th respondent.
10. Unnamulai Achi, wife of S. M. Nagappa Chettiar 30
of Nachiapuram in Ramnad District, South
India Respondents.
11. Alamelu of Nachiapuram in Ramnad District, South India

12. Sinnan Chettiar of Kallal in Ramnad District, South India; the 12th respondent is a minor appearing by his guardian *ad litem*, the 11th respondent Added Respondents.

Exhibits
No. R 22
Petition in
D. C., Colombo,
Testamentary
No. 8802
24. 8. 39.
—contd.

This 24th August, 1939.

The petition of the petitioner above named appearing by N. M. Zaheed, her Proctor, states as follows:—

- 10 1. The 1st, 2nd and 3rd respondents in their statement of objections have disclosed two new parties, the abovenamed Alamelu and Sinnan Chettiar, children of a predeceased daughter of the deceased.
2. The said Alamelu and Sinnan Chettiar might on an intestacy be among the heirs of the deceased and therefore they may be added as parties.
- 20 3. The said Sinnan Chettiar is a minor of the age of 13 years and it is necessary to appoint a guardian *ad litem* to represent him in these proceedings. The said Alamelu is the elder sister of the said Sinnan Chettiar. She is a fit and proper person to be so appointed and she has no interest adverse to that of the said Sinnan Chettiar.
4. The said Alamelu and Sinnan Chettiar are not in the Island. They are presently residing at Nachiapuram and Kallal respectively, both within Ramnad District. Notices on them can be served through the District Munsiff at Devakottai.

Wherefore the petitioner prays that—

1. Both the said Alamelu and Sinnan Chettiar be made respondents.
2. That the said Alamelu be appointed guardian *ad litem* over the said Sinnan Chettiar.
- 30 3. For leave of Court to give notice of these proceedings to the said Alamelu and Sinnan Chettiar through the District Munsiffs of Devakottai and Sivaganga; and
4. For such other and further relief in the premises as to the Court shall seem meet.

Sgd. N. M. ZAHEED,
Proctor for Petitioner.

Exhibits
No. R 23
Affidavit in
D. C., Colombo
Testamentary
No. 8802
24. 8. 39.

**No. R 23. Affidavit in D. C., Colombo,
Testamentary No. 8802.**

R 23.

In the District Court of Colombo.

Testy. No. 8802

Valliyammai Atchi of Sembanur, Tirupattur, Taluk,
Ramnad District, South India Petitioner.

And

1. Meenatchi, wife of S. N. K. Nagappa Chettiar of Kandara-
manikkam and 9 others Respondents. 10
11. Alamelu of Nachiapuram in Ramnad District
12. Sinnan Chettiar of Kallal in Ramnad District; the 12th
respondent is a minor appearing by his guardian *ad*
litem, the 11th respondent Added Respondents.

I, Mavanna Letchumanan Chettiar of 247, Sea Street in
Colombo, being a Hindu, do hereby solemnly, sincerely and truly
declare and affirm as follows:

1. I am one of the duly appointed attorneys of the petitioner
above named under and by virtue of Power of Attorney dated 20th
day of February, 1939, and executed before the Sub-Registrar of 20
Tirupattur in S. India.
2. I am personally aware of the facts hereinafter set out.
3. The 1st, 2nd and 3rd respondents in their statement of
objections have disclosed two new parties, the abovenamed Alamelu
and Sinnan Chettiar, children of a predeceased daughter of the
deceased.
4. The said Alamelu and Sinnan Chettiar might on an intestacy
be among the heirs of the deceased and therefore they may be
added as parties.
5. The said Sinnan Chettiar is a minor of the age of 13 years 30
and it is necessary to appoint a guardian *ad litem* to represent
him in these proceedings. The said Alamelu is the elder sister
of the said Sinnan Chettiar. She is a fit and proper person to
be so appointed and she has no interest adverse to that of the said
Sinnan Chettiar.

6. The said Alamelu and Sinnan Chettiar are not in the Island. They are presently residing at Nachiapuram and Kallal respectively, both within Ramnad District, South India. Notice on them can be served through the District Munsiffs at Devakottai and Sivagana.

Exhibits
No. R 23
Affidavit in
D. C., Colombo,
Testamentary
No. 8802
24. 8. 39.
—contd.

Sgd. LETCHUMANAN CHETTIAR.
(Signed in Tamil).

Signed and affirmed to at Colombo on this 24th day of August, 1939.

10 Before me:

Sgd. L. H. de Kretser,
Commissioner for Oaths.

No. R 11. Letter.

R 11.

250, Hultsdorf St., Colombo.
28. 11. 1939.

No. R 11
Letter
28. 11. 39.

The Commissioner of Estate Duty,
Colombo.

Sir,

20 Estate No. EDG/71 K. M. N. S. P. Nachiappa
Chettiar, deceased. Testy. Case No. 8802.

With reference to the above estate I have the honour to inform you that I am appearing for the executrix and that the Testamentary case is standing over for your certificate.

2. An application has been made by my client through Messrs. M. N. Sambamurti & Co. in or about June, 1939, claiming exemption from estate duty under section 73 of the Estate Duty Ordinance.

30 3. Several actions in which the deceased was a party are pending in the Colombo Courts. A number of mortgage bonds for which payment has been made have to be discharged. Arrears of interest and rents have to be recovered without delay.

4. I shall therefore thank you to issue the necessary certificate to the District Court early to enable the executrix to obtain probate without delay.

Sgd. N. M. ZAHEED,
Proctor for Executrix.

Exhibits
No. A 4
Letter
5. 9. 39.

No. A 4. Letter.**A 4.**

Estate Duty Office, Colombo,
5th September, 1939.

Sir,

K. M. N. S. P. Nachiappa Chettiar, deceased.

With reference to your letter of the 4th August, 1939, please be good enough to let me know the amounts credited to the accounts raised in the books in favour of the deceased's sons, Manikam Chettiar, Ramaswami Chettiar and Subramaniam Chettiar.

10

I am, Sir,
Your Obedient Servant,
Sgd. L. G. GUNASEKERA,
Assessor, Estate Duty.

M. N. Sambamurti, Esqr.,
P. O. Box 210,
Colombo.

No. R 46
Letter
5. 4. 39.

No. R 46. Letter.**R 46.**

Colombo, 5th April, 1939.

20

To the Assessor,
Unit 1,
Income Tax Office.

With reference to your letter of the 23rd March, I beg to inform you that I am instructed to withdraw the appeal on points (1) and (2) mentioned in your letter reserving only the question of addition of the interest to sons for decision. The managing male member Nachiappa Chettiar (since deceased) has sworn to the fact of this gift in favour of the several children by an affidavit. This gift then ceases to belong to the Hindu undivided family and any interest credited thereto is a charge on the income of the family.

30

As it is proposed to take the question up before the higher tribunals I submit that the case be put up for hearing by the Commissioner.

Sgd. M. N. SAMBAMURTI.

543

R 43. Letter.

R 43.

Exhibits
No. R 43
Letter
11. 5. 39.

11th May, 1939.

The Assessor,
Unit 1,
Income Tax Office.

Dear Sir,

REF. Assessment 38-39 Appeal.
File 33/345 K. M. N. S. P.

10 With reference to my letter of the 5th April, last appealing against the above assessment, I beg to inform you that I am withdrawing the appeal on the question of the interest to the sons account.

Sgd. M. N. Sambamurti.

No. R 48. Letter.

R 48.

Letter
No. R 48
11. 5. 39.

Colombo, 11th May, 1939.

The Assessor,
Unit 1,
Income Tax Office.

20

Dear Sir,

In continuation of my letter of the 5th April, I beg to inform you that I am withdrawing the appeal on the question of the interest to the sons.

Sgd. M. N. SAMBAMURTI.

No. R 41. Certificate of Deduction of Income Tax.

R 41

No. R 41
Certificate of
Deduction of
Income Tax
20. 5. 39.

CERTIFICATE OF DEDUCTION OF INCOME TAX

30 I certify that on paying or crediting to Nachiappa Chettiar of Sembanur, a person out of Ceylon, the sum mentioned in the sub-joined statement, I deducted the amount of Income Tax shown in the statement, and I further certify that this Tax has been or will be paid by me personally to the Commissioner of Income Tax, Ceylon.

Sgd. M. LETCHUMANAN CHETTIAR
for K. M. N. S. P. Firm.

Date: 20.5.39.

Exhibits
No. R 41
Certificate of
Deduction of
Income Tax
20. 5. 39.
—contd.

	Nature of Annual Payment, e.g., interest, rent, ground rent, royalty, annuity, &c.	Description of property or income out of which the annual payment is made	Gross Amt. of the payment for which I have deducted the Tax	Amount of the Tax deducted at 10 per cent.	Net Amount actually paid by me	Period (i.e., year, half year, &c.) for which the payment was due, and date on which due
			Rs. c.	Rs. c.	Rs. c.	
Interest	..	Money credits	15,032 60..	1,503 26 ..	13,529 34..	Year to 31.3.38
Interest	..	Money credits	14,196 34..	1,419 63 ..	12,776 71..	Year to 31.3.37

Tax paid to cover Rs. 2,922.89. 10

2nd June, 1939.

No. R 39
Certificate of
Deduction of
Income Tax
20. 5. 39.

No. R 39. Certificate of Deduction of Income Tax.

R 39

CERTIFICATE OF DEDUCTION OF INCOME TAX

I certify that on paying or crediting to Ramasami Chettiar of Sembanur, a person out of Ceylon, the sum mentioned in the sub-joined statement, I deducted the amount of Income Tax shown in the statement, and I further certify that this Tax has been or will be paid by me personally to the Commissioner of Income Tax, Ceylon.

20

Sgd. M. LETCHUMANAN CHETTIAR.

for K. M. N. S. P. Firm.

Date: 20.5.1939.

	Nature of Annual Payment, e.g., interest, rent, &c.	Description of property or income out of which the annual payment is made	Gross Amt. of the payment for which I have deducted the Tax	Amount of the Tax deducted at 10 per cent.	Net Amount actually paid by me	Period (i.e., year, half year, &c.) for which the payment was due, and date on which due
			Rs. c.	Rs. c.	Rs. c.	
Interest	..	Money credits	15,032 60..	1,503 26..	13,529 34..	Year to 31.3.38
Interest	..	Money credits	14,196 34..	1,419 63..	12,776 71..	Year to 31.3.37

30

Tax paid to cover Rs. 2,922.89.

2nd June, 1939.

545

No. R 38.
R 38.

Exhibts
No. R. 38
Letter
26. 5. 39.

P. O. Box 210,
Colombo, 26th May, 1939.

To
The Assessor,
Unit 1,
The Income Tax Office.

Dear Sir,

10 REF. File No. 33/345 THB
K. M. N. S. P.

With reference to your letter of the 17th instant, I am forwarding herewith the certificates in form 50A called for, for favour of necessary action.

Sgd. M. N. SAMBAMURTI.

No. R 37. Letter.
R 37.

No. R 37
Letter
6. 6. 39

P. O. Box 210,
Colombo, 6th June, 1939.

20 To
The Assessor,
Unit 1,
The Income Tax Office.

Dear Sir,

REF. File 33/345/THB
K. M. N. S. P.

With reference to your letter of the 31st May, I am forwarding herewith the affidavit called for, for favour of your perusal and return.

30 M. N. SAMBAMURTI,

No. R 47, Letter.
R 47.

No. R 47
Letter
15. 7. 39.

15th July, 1939.

K. M. N. S. P. Assessment 1938/39.

Gentlemen,

With reference to your letter dated the 6th June, 1939, I have the honour to return herewith the affidavit sent by you.

Sgd.....
Income Tax Assessor.

40 M. N. Sambamurti & Co.,
Colombo.

Exhibits
No. R 24
Inventory in
D. C., Colombo,
Testamentary
No. 8802
28. 8. 40.

No. R 24. Inventory in D. C., Colombo, Testamentary

No. 8802.

R 24.

Testamentary Jurisdiction No. 8802

In the District Court of Colombo

In the Matter of the Last Will and Testament of Koona Mana Nawanna Soona Pana Natchiappa Chettiar son of Suppiramaniam Chettiar also known as Suppiramaniam Chettiar Natchiappa Chettiar of Sembanur, Tirupattur, Taluk, Ramnad District, South India, deceased.

10

Valliyammai Atchi of Sembanur, Tirupattur, Taluk, Ramnad District, South India..... Executrix.

INVENTORY

(A) *IMMOVABLES*

	<i>Rs. c.</i>	<i>Rs. c.</i>
1. Premises Nos. 328, 332, and 336, Old Moor Street, Colombo, valued at ...	40,000 0	
2. Premises No. 369, Old Moor Street, Colombo, valued at ...	2,000 0	20
3. Premises Nos. 46 and 48, Sea Street, and 33, Chekku Street, Colombo, valued at ...	25,000 0	
4. Premises Nos. 40, 42 and 44, Bankshall Street, Colombo, valued at ...	16,000 0	
5. Premises No. 13, St. Lucia's Lane, Kothahena, Colombo, valued at ...	2,000 0	
6. Premises Nos. 93 and 95, Wilson Street, Colombo, valued at ...	3,000 0	
7. Premises Nos. 53, 55 and 59, Wilson Street, and Nos. 10, 12 and 14, Court Street, Colombo, valued at ...	8,000 0	30
8. Premises Nos. 78 and 80, Messenger Street, Colombo, valued at ...	3,000 0	
9. Premises No. 122, Messenger Street, Colombo, valued at ...	3,000 0	
10. Premises Nos. 250, 252 and 254, Messenger Street, Colombo, valued at ...	7,000 0	
11. Premises Nos. 91, 91 (1-16) and 93, Silver-smith Street, Colombo, valued at ...	10,000 0	
12. Premises Nos. 39 and 45, Kuruwe Street, Colombo, valued at ...	15,000 0	40
13. Premises No. 85 (1-32), Dematagoda Passage, Colombo, valued at ...	10,000 0	
14. Premises No. 515, Maradana Road, Colombo, valued at ...	5,000 0	
15. Premises No. 517, Maradana Road, Colombo, valued at ...	5,000 0	
16. Premises No. 519, Maradana Road, Colombo, valued at ...	5,000 0	50

INVENTORY

		Rs. c.	Rs. c.	Exhibits No. R 24 Inventory in D. C., Colombo, Testamentary No. 8802 28. 8. 40. —contd.
	17. Premises No. 521, Maradana Road, Colombo, valued at	5,000 0		
	18. Premises No. 523, Maradana Road, Colombo, valued at	5,000 0		
	19. Premises No. 531, Maradana Road, Colombo, valued at	7,000 0		
10	20. Premises No. 535, Maradana Road, Colombo, valued at	7,000 0		
	21. Premises Nos. 15, 17 and 21, Maligakande Road, Colombo, valued at	5,000 0		
	22. Premises Nos. 7, 9, 11 and 15, Dematagoda Road, Colombo, valued at	20,000 0		
	23. Premises Nos. 126 and 130, Dematagoda Road, Colombo, valued at	8,000 0		
	24. Premises Nos. 319/10 and 321, Dematagoda Road, Colombo, valued at	4,000 0		
20	25. Premises No. 94, Temple Road, Colombo, valued at	7,000 0		
	26. Premises No. 733, Maradana Road, Colombo, valued at	2,000 0		
	27. Premises No. 171, Forbes Road, Colombo, valued at	3,000 0		
	28. Premises No. 4, Sumner Place, Colombo, valued at	12,000 0		
	29. Premises Nos. 38, 38 (1-3), 42, 44, 46 and 50, Saunders Court, and 79 and 81, Church Street, Slave Island, Colombo, valued at	17,000 0		
30	30. Premises Nos. 60, 62, 64, 66, 68 (3-10) and 70, Bridge Street, Colombo, valued at	10,000 0		
	31. Premises Nos. 46, 48, 50 and 54, Shorts Road, Slave Island, Colombo, valued at	10,000 0		
	32. Premises Nos. 385, 387, 389, 391 and 393, Colpetty, and 2, 8 and 14, Fifth Lane, Colpetty, Colombo, valued at	20,000 0		
	33. Premises No. 465, Colpetty, Colombo, valued at	15,000 0		
40	34. Premises Nos. 42, 44, 44 (2-21) and 46, Symonds Road, Colombo, valued at	23,000 0		
	35. Premises No. 28 (11-23), Symonds Road, Colombo, valued at	6,000 0		
	36. Kaudawala Estate in Ratmalana in extent A 133, R 3, P 27, valued at	260,000 0		

(B) MOVABLES

LIST OF SHARES IN COMPANIES

	1. Marigolds 200 shares valued at Rs. 9 each share	1,800 0
50	2. Uplands 155 shares valued at Rs. 11 each share	1,705 0
	3. Bopitiyas 200 shares valued at Rs. 7 each share	1,400 0

Exhibits
No. R 24
Inventory in
D. C., Colombo,
Testamentary
No. 8802
28. 8. 40.
—contd.

	Rs.	c.	Rs.	c.
LIST OF SHARES IN COMPANIES.—contd.				
4. Hatbawes 150 shares valued at Rs. 3.50 each share	...	525	0	
5. Poonagallas 300 shares valued at Rs. 10 each share	...	3,000	0	
6. Opalgallas 377 shares valued at Rs. 4 each share	...	1,508	0	
7. Jebongs 100 shares valued at Rs. 7 each share	...	700	0	
8. Forest Hills 100 shares valued at Rs. 2.50 each share	...	250	0	10
9. Kongsis 100 shares valued at Rs. 7.50 each share	...	750	0	
10. Doomoos 200 shares valued at Rs. 8.50 each share	...	1,700	0	
11. High Forest 200 shares valued at Rs. 21 each share	...	4,200	0	
12. Shawlands 250 shares valued at Rs. 2 each share	...	500	0	20
13. Kuttapitiyas 145 shares valued at Rs. 6 each share	...	870	0	
14. Vogans 100 shares valued at Rs. 15 each share	...	1,500	0	
15. Hunugallas 100 shares valued at Rs. 8.50 each share	...	850	0	
16. Miyanawitas 100 shares valued at Rs. 10 each share	...	1,000	0	
17. Langat Rivers 80 shares valued at Rs. 10 each share	...	800	0	
18. Wanarajahs 50 shares valued at Rs. 37 each share	...	1,850	0	30
19. Beverlacs 178 shares valued at Rs. 5 each share	...	890	0	

(C) LIST OF MORTGAGE BONDS

PRINCIPAL AND INTEREST				
1. No. 810 dated 23rd December, 1935	...	18,000	0	
2. No. 2580 dated 11th May, 1936	...	2,500	0	
3. No. 399 dated 4th June, 1936	...	12,500	0	
4. No. 2623 dated 14th August, 1936	...	1,500	0	40
5. No. 1106 dated 21st December, 1937	...	1,520	0	
6. No. 1149 dated 16th June, 1938	...	4,046	67	
7. No. 2690 dated 17th January, 1937	...	7,500	0	
8. No. 2699 dated 20th February, 1937	...	5,058	32	
9. No. 2897 dated 21st October, 1938	...	1,013	62	
10. No. 96 dated 1st March, 1937	...	7,000	0	
11. No. 1649 dated 16th March, 1937	...	2,000	0	
12. Nos. 2251 and 2805 dated 4th April, 1934, and 10th January, 1938, respectively	...	8,684	65	
13. No. 2641 dated 15th September, 1936	...	12,070	0	50
14. No. 2403 dated 21st May, 1935	...	55,320	84	
15. No. 2538 dated 18th February, 1936	...	3,000	0	
16. No. 2527 dated 29th January, 1936, and No. 272 dated 24th November, 1938	...	5,033	33	
17. No. 2729 dated 27th May, 1937	...	1,000	0	

		Rs.	c.	Rs.	c.	Exhibits
		PRINCIPAL AND INTEREST—Continued				No. R 24
						Inventory in
						D. C., Colombo,
						Testamentary
						No. 8802
						28.8.40.—contd.
	18.	No. 2784 dated 15th October, 1937	...	1,000	0	
	19.	No. 2884 dated 19th September, 1938	...	1,500	0	
	20.	No. 1062 dated 31st May, 1937	...	10,000	0	
	21.	No. 1110 dated 5th January, 1938	...	5,000	0	
	22.	No. 1146 dated 8th June, 1938	...	5,000	0	
	23.	No. 1128 dated 21st February, 1938	...	5,000	0	
	24.	No. 120 dated 17th June, 1937	...	9,200	0	
	25.	No. 123 dated 3rd July, 1937	...	10,000	0	
10	26.	No. 1084 dated 4th August, 1937	...	1,500	0	
	27.	No. 1825 dated 30th September, 1937, and No. 1879 dated 31st January, 1938	...	30,150	0	
	28.	No. 157 dated 6th October, 1937	...	5,596	25	
	29.	No. 147 dated 16th October, 1937	...	4,060	0	
	30.	No. 150 dated 26th October, 1937	...	5,000	0	
	31.	No. 1827 dated 15th November, 1937	...	12,572	92	
	32.	No. 2794 dated 17th November, 1937	...	6,613	76	
	33.	No. 591 dated 24th November, 1937	...	8,093	34	
	34.	No. 2814 dated 5th February, 1937	...	7,564	57	
20	35.	No. 2807 dated 20th January, 1938	...	7,247	95	
	36.	No. 836 dated 9th July, 1934	...	6,000	0	
	37.	No. 970 dated 20th February, 1936	...	2,000	0	
	38.	No. 1088 dated 12th August, 1937	...	3,000	0	
	39.	No. 167 dated 16th February, 1938	...	55,000	0	
	40.	No. 175 dated 24th February, 1938	...	4,552	50	
	41.	No. 179 dated 2nd March, 1938	...	4,100	0	
	42.	No. 2245 dated 27th March, 1934 and No. 2381 dated 11th March, 1935	...	4,200	0	
30	43.	No. 184 dated 18th March, 1938	...	3,526	25	
	44.	No. 730 dated 18th March, 1938	...	5,000	0	
	45.	No. 2722 dated 20th April, 1937, No. 2732 dated 1st June, 1937, and No. 2834 dated 21st March, 1938	...	6,540	62	
	46.	No. 1894 dated 26th March, 1938	...	20,000	0	
	47.	No. 172 dated 28th March, 1938	...	700	0	
	48.	No. 174 dated 28th March, 1938	...	2,500	0	
	49.	No. 169 dated 28th March, 1938	...	2,000	0	
	50.	No. 189 dated 28th March, 1938	...	502	92	
40	51.	No. 2246 dated 25th March, 1934, No. 2247 dated 29th March, 1934, and No. 2281 dated 19th June, 1934	...	5,583	33	
	52.	No. 2300 dated 16th July, 1934	...	6,045	0	
	53.	No. 2542 dated 2nd March, 1936	...	8,093	34	
	54.	No. 1619 dated 4th June, 1936	...	2,013	34	
	55.	No. 1637 dated 8th August, 1936	...	6,120	0	
	56.	No. 1664 dated 21st November, 1936, and No. 54 dated 9th February, 1938	...	2,822	19	
	57.	No. 1674 dated 4th January, 1937	...	512	0	
50	58.	No. 2693 dated 25th January, 1937	...	1,000	0	
	59.	No. 93 dated 4th March, 1937	...	5,133	34	
	60.	No. 2156 dated 26th July, 1933	...	1,017	50	
	61.	No. 1459 dated 23rd June, 1934	...	7,093	34	
	62.	No. 2420 dated 4th July, 1935	...	2,040	0	
	63.	No. 2476 dated 12th November, 1935	...	2,105	0	

Exhibits
No. R 24
Inventory in
D. C., Colombo,
Testamentary
No. 8802
28.8.40.—contd.

		Rs.	c.	Rs.	c.
PRINCIPAL AND INTEREST—Continued					
64.	No. 1396 dated 8th February, 1933	...	3,558	34	
65.	No. 1304 dated 28th October, 1931	...	10,066	67	
66.	No. 2383 dated 26th March, 1935	...	5,225	0	
67.	No. 2335 dated 11th October, 1934	...	13,076	34	
68.	No. 2664 dated 30th October, 1936	...	5,393	75	
69.	No. 2675 dated 23rd December, 1936	...	3,511	07	
70.	No. 1611 dated 11th May, 1936	...	10,062	50	
71.	No. 2145 dated 5th July, 1933	...	5,310	0	
72.	No. 1645 dated 17th June, 1930, No. 2252 and 2253 dated 9th April, 1934	...	40,433	34	10
73.	No. 2477 dated 12th November, 1935	...	1,296	90	
74.	No. 1593 dated 18th February, 1936	...	30,200	0	
75.	No. 2562 dated 18th March, 1936	...	3,718	75	
76.	No. 2159 dated 18th August, 1933	...	6,105	0	
77.	No. 2402 dated 21st May, 1935	...	24,934	68	
78.	No. 809 dated 14th March, 1934	...	6,400	0	
79.	No. 2433 dated 26th July, 1935	...	8,250	0	
80.	No. 2356 dated 4th January 1935	...	10,408	38	20
81.	No. 1511 dated 29th March, 1935, No. 1651 dated 2nd November, 1936	...	12,880	0	
82.	No. 993 dated 26th May, 1936, and No. 1052 dated 14th April, 1937	...	2,180	0	
83.	No. 2307 dated 13th August, 1934, No. 2434 dated 26th July, 1935, and No. 2543 dated 2nd March, 1936	...	9,641	25	
84.	No. 2594 dated 29th June, 1936, and No. 2682 dated 2nd January, 1937	...	53,389	45	
85.	No. 1565 dated 6th December, 1935	...	5,262	50	30
86.	No. 1487 dated 3rd December, 1934, and No. 1680 dated 8th February, 1937	...	7,534	81	
87.	No. 1760 dated 15th March, 1933	...	647	25	
88.	No. 1292 dated 31st December, 1931	...	3,120	0	
89.	No. 2259 dated 24th April, 1934	...	3,160	0	
90.	No. 1468 dated 16th July, 1934	...	27,187	50	
91.	No. 1439 dated 28th February, 1934	...	11,848	75	
92.	No. 1585 dated 5th February, 1936, and No. 1616 dated 30th May, 1936	...	2,152	70	40
93.	No. 1422 dated 7th September, 1933	...	6,400	0	
94.	No. 2076 dated 17th January, 1933	...	4,333	75	
95.	No. 1461 dated 28th June, 1934	...	6,077	50	
96.	No. 1550 dated 8th December, 1934, and No. 1701 dated 27th November, 1937	...	3,180	0	
97.	No. 1628 dated 15th July, 1936	...	5,175	0	
98.	No. 1397 dated 26th January, 1929	...	4,240	0	
99.	No. 3950 dated 22nd March, 1926	...	6,869	50	
100.	No. 2203 dated 13th January, 1934	...	1,179	75	
101.	No. 2249 dated 1st April, 1934	...	1,810	0	50
102.	No. 2322 dated 17th September, 1934	...	754	0	
103.	No. 124 dated 19th May, 1937	...	25,250	0	
104.	No. 89 dated 19th May, 1937	...	1,511	25	
105.	No. 2740 dated 18th June, 1937	...	7,000	0	
106.	No. 551 dated 8th June, 1938	...	15,000	0	
107.	No. 2765 dated 19th August, 1937	...	3,202	50	
108.	No. 150 dated 2nd September, 1937	...	5,337	50	

		Rs.	c.	Rs.	c.	Exhibits No. R 24 Inventory in D. C., Colombo, Testamentary No. 8802 28.8.40.—contd.
PRINCIPAL AND INTEREST—Continued						
	109. No. 2770 dated 3rd September, 1937	23,300	0			
	110. No. 1537 dated 12th July, 1935, No. 1583 dated 3rd February, 1936, No. 1598 dated 3rd March, 1936, and No. 602 dated 9th Decem- ber, 1937	40,525	0			
10	111. No. 1823 dated 30th September, 1937	1,530	0			
	112. No. 446 dated 4th October, 1937	3,247	50			
	113. No. 1838 dated 25th October, 1937	31,050	0			
	114. No. 152 dated 13th November, 1937	2,527	9			
	115. No. 2097 dated 24th February, 1933, No. 2177 dated 30th October, 1933, No. 2212 dated 16th February, 1934, No. 2570 dated 16th April, 1936, and No. 2673 dated 17th December, 1936	25,806	62			
	116. No. 192 dated 21st December, 1937	7,186	62			
	117. No. 1876 dated 26th January, 1938	6,034	0			
	118. No. 2810 dated 27th January, 1938	9,031	25			
20	119. No. 1764 dated 20th March, 1931	19,874	0			
	120. No. 2333 dated 4th October, 1934	8,306	67			
	121. No. 2278 dated 6th June, 1934	13,062	50			
	122. No. 1545 dated 15th August, 1935, No. 1655 dated 12th November, 1936, and No. 1725 dated 16th April, 1937	17,950	0			
	123. No. 2841 dated 6th April, 1938	3,663	83			
	124. No. 2843 dated 17th April, 1938	8,451	56			
	125. No. 2866 dated 30th June, 1938	10,000	0			
	126. No. 223 dated 26th September, 1938	10,058	34			
30	127. No. 1349 dated 30th September, 1938	8,500	0			
	128. No. 2889 dated 4th October, 1938	15,075	0			
	129. No. 2891 dated 7th October, 1938	15,087	50			
	130. No. 1047 dated 30th March, 1937, No. 1064 dated 4th June, 1937, No. 1074 dated 3rd July, 1937, No. 1123 dated 25th January, 1938, No. 1165 dated 28th July, 1938, No. 1167 dated 22nd August, 1938, No. 1175 dated 24th September, 1938, and No. 1178 dated 12th October, 1938	14,078	34			
40	131. No. 2796 dated 26th November, 1937	20,361	47			
	132. No. 101 dated 22nd March, 1937	4,526	94			
	133. No. 2899 dated 4th November, 1938	5,000	0			
	134. No. 2219 dated 1st March, 1934, No. 2343 dated 13th November, 1934, No. 2377 dated 18th February, 1935, No. 2511 dated 8th January, 1936, and No. 2576 dated 30th April, 1936	176,635	42			
	135. No. 2913 dated 16th December, 1938	4,500	0			
	136. No. 4906 dated 19th December, 1938	48,096	0			
50	137. No. 2836 and No. 2838 dated 2nd April, 1938,	177,010	0			
	138. No. 1703 dated 20th March, 1937, and No. 1919 dated 14th July, 1938	10,768	0			
	139. No. 1712 dated 3rd April, 1937	1,814	0			
	140. No. 1767 dated 15th June, 1937	6,925	0			
	141. No. 1910 and No. 1911 dated 19th May, 1938	4,051	5	1,630,355	77	
	Carried over			2,261,153	77	

Exhibits
No. R 24
Inventory in
D. C., Colombo, (D)
Testamentary
No. 8802
28.8.40.—*contd.*

		Rs.	c.	Rs.	c.
Brought forward ...				2,261,153	77
AMOUNTS DUE ON LEASES AND AGREEMENTS					
1.	Nos. 1728 and 1729 dated 19th April, 1937 ...	591	31		
2.	No. 511 dated 25th January, 1937 ...	113	83		
3.	No. 523 dated 20th February, 1937 ...	239	83		
4.	No. 1687 dated 26th February, 1937 ...	1,236	76		
5.	Nos. 1784 and 1785 dated 21st July, 1937 ...	796	91		
6.	No. 1691 dated 1st March, 1937 ...	763	50		
7.	No. 1696 dated 10th March, 1937 ...	717	28		10
8.	Nos. 1713 and 1714 dated 3rd April, 1937 ...	852	34		
9.	Nos. 1715 and 1716 dated 7th April, 1937 ...	682	50		
10.	Nos. 1723 and 1724 dated 12th April, 1937 ...	423	70		
11.	Nos. 1768 and 1769 dated 15th June, 1937 ...	1,918	84		
12.	Nos. 1827 and 1828 dated 30th September, 1937 ...	395	53		
13.	Nos. 1846 and 1847 dated 3rd November, 1937 ...	312	97		
14.	Nos. 1850 and 1851 dated 18th November, 1937 ...	704	9		20
15.	Nos. 1852 and 1853 dated 18th November, 1937 ...	658	90		
16.	Nos. 1856 and 1857 dated 13th December, 1937 ...	1,658	89		
17.	Nos. 605, 606 and 607 dated 15th December, 1937 ...	836	95		
18.	Nos. 1867 and 1868 dated 5th January, 1938, and Nos. 1940 and 1941 dated 28th, September, 1938 ...	6,160	3		
19.	No. 497 dated 22nd December, 1936 ...	1,062	72		30
20.	No. 528 dated 23rd February, 1937 ...	3,112	58		
21.	Nos. 1883 and 1884 dated 10th February, 1938 ...	1,234	16		
22.	No. 1954 dated 21st October, 1938 ...	2,000	0		
23.	No. 626 dated 4th March, 1938 ...	14,008	52		
24.	No. 630 dated 17th March, 1938 ...	5,863	9		
25.	Nos. 1895 and 1896 dated 31st March, 1938 ...	28,829	25		
26.	No. 2226 dated 12th March, 1934 ...	156	76		
27.	Nos. 1946 and 1947 dated 6th October, 1938 ...	7,100	36		40
28.	No. 740 dated 7th October, 1938 ...	15,000	0		
29.	Nos. 1949 and 1950 dated 13th October 1938 ...	1,269	0	98,700	60
				2,359,854	37
(E) AMOUNTS DUE ON COURT DECREES					
1.	D. C., Colombo Case No. 9523M. ...	11,025	0		
2.	D. C., Colombo Case No. 8550M. ...	6,367	50		
3.	D. C., Colombo Case No. 8591M. ...	23,915	63		
4.	D. C., Colombo Case No. 8118M. ...	2,937	86		
5.	D. C., Colombo Case No. 8079M. ...	1,937	65		
6.	D. C., Colombo Case No. 53477 ...	2,781	65		50
7.	D. C., Colombo Case No. 53122 ...	37,600	97		
8.	D. C., Colombo Case No. 7816M. ...	13,375	97		
9.	D. C., ...	389	12	100,330	96
				2,460,185	33

		Rs.	c.	Rs.	c.	Exhibits No. R 24 Inventory in D. C., Colombo, No. 8802 28.8.40.—cont'd.
		Brought forward		2,460,185	33	
(F)	AMOUNTS DUE ON PROMISSORY NOTES AND CHEQUES	...	48,236 65	48,236	65	
				<hr/>		
				2,508,421	98	
(G)	AMOUNTS ON GOVERNMENT SECURITIES AND IN BANKS					
	1. Ceylon Government 3½% Loan	...	30,000 0			
	2. Fixed deposit in the Imperial Bank, Colombo	...	50,000 0			
10	3. P. & O. Bank, Current Account	...	134 36			
	4. Indian Bank, Current Account	...	263 84			
	5. Imperial Bank of India, Current Account	...	11,485 15	91,883	35	
				<hr/>		
				2,600,305	33	
(H)	CASH IN HAND ON 30TH DECEMBER, 1938	...	12,355 52	12,355	52	
(I)	AMOUNTS DUE TO THE DECEASED ON CHETTIAR'S CURRENT ACCOUNTS					
	1. From Old Kathiresan Temple, Colombo	...	1,718 06			
	2. From A. V. R. A., Colombo	...	500 0			
20	3. From S. S. R. M., Colombo	...	56 75			
	4. From N. K. V. L., Colombo	...	3,100 0	5,374	81	
				<hr/>		
Total Assets				2,618,035	66	
LIABILITIES						
	1. Amount due to the Temples	...	1,134 37			
	2. Amount due to N. S. P. N. Natchiappa Chettiar <i>alias</i> Manickam Chettiar	...	263,226 74			
	3. Amount due to N. S. P. N. Ramasamy Chettiar	...	263,226 74			
30	4. Amount due to N. S. P. N. Suppiramanian Chettiar	...	263,226 74			
	5. Amount due to N. S. P. N. Natchiappa Chettiar <i>alias</i> Manickam Chettiar, current account	...	75 39			
	6. Amount due to N. S. P. N. Ramasamy Chettiar on current account	...	75 39			
	7. Amount due on Charity account	...	36,534 36			
	8. Amount due on Charity account	...	3,082 72			
	9. Amount due on Charity account	...	1,238 74			
	10. Amount due on Charity account	...	43 59			
50	11. Amount due to N. S. P. Meenatchi Atchi	...	266 80			
	12. Amount due to MR. ST. Kothai	...	194 03			
	13. Amount due to S. N. Deivanai	...	8,161 56			
	14. Amount due to V. Karuppayee	...	5,042 34			

Exhibits
No. R 24
Inventory in
D. C., Colombo,
Testamentary
No. 8802
28.8.40.—*contd.*

LIABILITIES—*Continued*

		Rs.	c.	Rs.	c.
15.	Amount due to doubtful debts Reserve Account	56,727	75		
16.	Amount due to R. H. Sadrís de Silva on lease-account	309	01		
17.	Amount due to M. Letchumanan Chettiar on current account	697	36	903,263	63
TOTAL NETT VALUE OF ESTATE ...				1,714,772	3

I, Valliyammai Atchi of Sembanur, Tirupattur, Taluk, Ramnad District in South India, presently of No. 247, Sea Street in Colombo, not being a Christian, do hereby solemnly, sincerely and truly declare and affirm as follows:—

1. I am the Executrix named in the Last Will and Testament of the deceased above named and appointed in Court in the above case.

2. To the best of my knowledge information and belief the above-written Inventory contains a full and correct account of the properties, rights, credits and debts of the abovenamed deceased so far as I have been able with due diligence to ascertain the same.

3. I have made a careful estimate and valuation of the properties belonging to the above estate and of the credits and debts relating thereto and to the best of my knowledge and belief the sums set opposite to the respective items in the said Inventory are the present valuation of the respective items and are correct.

Sgd. in Tamil.
Valliammai Atchi.

The foregoing Inventory and affidavit having been duly read over and explained by me to the withinnamed affirmant in Tamil, her own language, and she appearing to understand the contents thereof, the same was signed and affirmed to at Colombo on this 28th day of August, 1940.

Before me.

Sgd. L. H. DE KRETZER,
Commissioner for Oaths.

**No. R 18. Probate in D. C., Colombo, Testamentary
No. 8802.**

R 18.

PROBATE

In the District Court of Colombo

No. Testy. 8802

Exhibits
No. R 18
Probate in
D. C., Colombo,
Testamentary
No. 8802
17. 4. 40.

10 In the Matter of the estate of the late Koonna Mana Nawanna Soona Pana Nachiappa Chettiar, son of Suppiramaniam Chettiar, also known as Suppiramaniam Chettiar Nachiappa Chettiar, deceased, of Sembanur, South India.

Be it known to all men that on the 31st day of October, 1939, the Last Will and Testament of Koonna Mana Nawanna Soona Pana Nachiappa Chettiar, son of Suppiramaniam Chettiar, also known as Suppiramaniam Chettiar Nachiappa Chettiar, deceased, a copy of which is hereto annexed, was exhibited, read and proved before this Court and administration of all the property and estate rights, credits of the deceased was and is hereby committed to Valliyammai Atchi of Sembanur, Tirupattur, Taluk, Ramnad District, South India.

20 The Executor in the said Last Will and Testament named the said Valliyammai Atchi aforesaid being first affirmed faithfully to execute the said will by paying the debts and legacies of the deceased testator as far as the property will extend and the law will bind and also to exhibit into this Court a true, full and perfect Inventory of the said property on or before the 5th day of December, 1940, and to file a true and just account of your executorship on or before the 10th day of April, 1941.

30 And it is hereby certified that the Declaration and Statement of Property under the Estate Duty Ordinance have been delivered and that the value of the said estate on which estate duty is payable, as assessed by the Commissioner of Stamps amounts to Rs. 2,527,470.

And it is further certified that it appears by a certificate granted by the Commissioner of Stamps and dated the 30th day of March, 1940, that Rs. 278,021.70 on account of estate duty has been paid.

Sgd. C. Nagalingam.

D.J.

17th April, 1940.

Exhibits
No. R 34
Plaint in
D. C., Colombo,
No. 1961
4. 11. 40.

No. R 34. Plaint in D. C., Colombo, No. 1961.

R 34.

In the District Court of Colombo

No. 1961

(Dead) 1. O. L. M. Abdul Majeed of No. 39, Eliband Road,
Bambalapitiya.

2. S. C. Samuel of Kinross Avenue, Bambalapitiya,
Executor of the Estate of 1st plaintiff, deceased.
Substituted in place of 1st plaintiff, deceased.

Vs.

10

Valliammai Atchi, Executrix of the Estate of the late
K. M. N. S. P. Nachiappa Chetty of Sembanur,
Tirupattur, Taluk, Ramnad District, South India,
and of No. 247, Sea Street, in Colombo.....Defendant.

On this 4th day of November 1940.

The plaintiff of the plaintiff above named, appearing by Thiru
Canga Rayan, his Proctor, states as follows:

1. The properties which are the subject matter of this action
are situated and the cause of action set out herein arose at Colombo
within the local limits of the jurisdiction of this Court. 20

2. The defendant carries on business as a money lender at
Colombo aforesaid.

3. The late K. M. N. S. P. Nachiappa Chetty was carrying on
business as a money lender at Colombo at the date material to this
action. One Ramanathan Chetty was his accredited servant and
agent. The said Nachiappa Chetty and Ramanathan Chetty were
at all times trusted friends and advisers of the plaintiff.

4. At the beginning of the month of March, 1930, the plaintiff
owned and possessed *inter alia*—

	Rs.	c.	30
(a) Movables being stock-in-trade of the value of ...	250,000		
(b) Nos. 3565/44, 3564/44, 3563/43A and 3562/43 in Mutwal, Colombo (properties 1-4 in Schedule " A " hereto) of the value of ...	7,068		
No. 682/62A (now Nos. 250, 252 and 254) Messenger Street, Colombo (property 5 in Schedule " A " hereto) of the value of ...	14,900		
No. 78, Messenger Street (now No. 369, Old Moor Street, and No. 158, Messenger Street, Colombo (property 6 in Schedule " A " hereto) of the value of ...	11,400		40

		<i>Rs.</i>	<i>Rs.</i>	Exhibits
	No. 79, Messenger Street, Colombo (property 7 in Schedule "A" hereto) of the value of ...	11,400		No. B 24 Plaint in D. C., Colombo, 1,11.40.
	Lot B2 and No. 81, Messenger Street (now No. 353, Old Moor Street, Colombo) (properties 8A and B in Schedule "A" hereto) of the value of ...	5,000		
	No. 68, Messenger Street, Colombo (property 9 in Schedule "A" hereto) of the value of ...	36,480		
10	No. 98 (now Nos. 79 and 80), Messenger Street, Colombo (property 10 in Schedule "A" hereto) of the value of ...	9,120		
	Nos. 20, 21 and 22 in Ward Nos. 564, 563 and 562, Silversmith Street (now Nos. 228, 332 and 336, Old Moor Street, and Nos. 91/1-16 and 93, Silversmith Street), Colombo (properties 11-13 in Schedule "A" hereto) of the value of ...	137,360		
	No. 16, Silversmith Lane, Colombo, including Lot A and a portion (properties 14-16 in Schedule "A" hereto) of the value of ...	10,000		
20	No. 59/120, Hultsdorf Street, Colombo, property 17 in Schedule "A" hereto) of the value of ...	15,200		
	No. 24, Avondale Road, 2nd Division, Maradana, Colombo (property 18 in Schedule "A" hereto) of the value of ...	3,990		
	No. 409 (now No. 733), 2nd Division, Maradana, Colombo (property 19 in Schedule "A" hereto) of the value of ...	7,600		
	Nos. 9 and 11, Temple Road, Colombo (property 20 in Schedule "A" hereto) of the value of ...	4,085		
30	Nos. 748/283 (1-2) and 748/283 (3-5), Dematagoda Road, Colombo (properties 21A and B in Schedule "A" hereto) of the value of ...	28,262		
	Nos. 263, 265, 267, 269 and 271, 2nd Division Maradana (now Nos. 515, 517, 519, 521 and 523, 2nd Division, Maradana, and Nos. 85 (1-32), Dematagoda Road, Colombo) (properties 22A and c, 23 and 24 in Schedule "A" hereto) of the value of (Rs. 71,250 + Rs. 23,972) ...	95,222		
40	Nos. 277 and 279 (now Nos. 531 and 535), 2nd Division, Maradana, Colombo (properties 25 A and B in Schedule "A" hereto) of the value of ...	37,500		
	Nos. 11, 13, 15 and 17, Maligakande, Colombo, (properties 26 in Schedule "A" hereto) of the value of ...	5,808		
	Nos. 31, 33, 35, 37, 41/7, 8 and 9, Maligakanda, Colombo (properties 27 A and B in Schedule "A" hereto) of the value of ...	19,720		
	In all of the value of ...	460,115		
	(c) Other immovable properties of the value of ...	200,000	0	
	5. The debts of the plaintiff at or about this period were—			
50	(a) Unsecured debts being money due to third parties about ...	225,857	40	

		Rs.	c.
Exhibits No. R 34 Plaint in D. C., Colombo, No. 1961 4.11.40.—contd.	(b) Secured debts being money due to on mortgages in favour of the said K. M. N. S. P. Nachiappa Chettiar	195,031	66
	(c) Unsecured debts due to the said Nachiappa Chetty	5,280	0
	(d) Secured debts due to a third party	1,515	0
	(e) Amount of rates and taxes	1,430	0
	(f) Other debts about	120,000	0

6. In February, 1930, when the plaintiff was in bad health and in financial embarrassments, owing to lack of liquid cash, the said K. M. N. S. P. Nachiappa Chetty by his servant and agent the said Ramanathan Chetty promised to act as the trustee of the plaintiff and suggested to the plaintiff to give over the entire management of the plaintiff's affairs to the said Nachchiappa Chetty. 10

7. Shortly thereafter it was agreed by and between the plaintiff and the said K. M. N. S. P. Nachiappa Chetty (by his agent and attorney the said Ramanathan Chetty)—

(a) That the plaintiff should execute a transfer of the properties referred to in paragraph 4 (b) above and more fully described in the schedule " A " annexed to this plaint in favour of the said K. M. N. S. P. Nachiappa Chetty. 20

(b) That the deed of transfer should purport to be for a consideration of Rs. 203,300.

(c) That the said K. M. N. S. P. Nachiappa Chetty should hold the said properties in trust for the plaintiff and should collect the rents profits and incomes thereof as trustees of and for and on behalf of the plaintiff.

(d) That the sums so collected should be devoted by the said K. M. N. S. P. Nachiappa Chetty to pay the said rates and taxes to wit Rs. 1,430 referred to in para 5 (e) above and the sum of Rs. 1,515 referred to in paragraph 5 (d) above in the first instance and afterwards to the payment of rates and taxes and the expenses in connection with the repairs of the said properties and paying himself interest at 12 per centum per annum on the said sums of Rs. 195,031.66, Rs. 5,280, Rs. 1,515, and Rs. 1,430 (referred to in paragraph 5 (b) (c) (d) and (e)) amounting in all to Rs. 203,256.66 and finally in liquidating the balance amount due out of the said sum of Rs. 203,300. 30

(e) That whenever the plaintiff arranged for the sale of any of the said properties the said K. M. N. S. P. Nachiappa Chetty should convey and transfer such properties to such purchaser or 40

purchasers so arranged and that the purchase price should be paid to the said K. M. N. S. P. Nachiappa Chetty and the same should be applied by the said Nachiappa Chetty in liquidation of the said sum of Rs. 203,300 due to him from the plaintiff.

Exhibits
No. R 34
Plaint in
D. C., Colombo,
No. 1961
4.11.40.—contd.

(f) That on liquidation of the said sum of Rs. 203,300 and interest or on payment of the said sum of Rs. 203,300 and interest, the said K. M. N. S. P. Nachiappa Chetty should reconvey unto the plaintiff or his heirs at the expense of the plaintiff or his heirs the said properties or such of the said properties as remain unsold.

- 10 (g) That the plaintiff should remain in possession as true owner of two of the said properties to wit: premises No. 81 Messenger Street (new 353, Old Moor Street) and No. 78 (new No. 158) Messenger Street, Colombo, and more fully described in the Schedule " C " annexed to the plaint.

8. In pursuance of the said agreement the plaintiff executed deed No. 1604 dated 3rd March, 1930, and attested by N. M. Zaheed of Colombo, N. P., and the said Nachiappa Chetty became entitled to hold the said properties in trust for the plaintiff and for the purposes aforesaid.

- 20 9. Within a few weeks of the execution of the said deed No. 1604, the said K. M. N. S. P. Nachiappa Chetty, having come to Ceylon, personally agreed to hold the said properties in trust for the plaintiff and to carry out the terms hereinbefore referred to. Thereafter the plaintiff took the said Nachiappa Chetty to the various properties set out in the said deed No. 1604 and described in the Schedule " A " hereto (except the properties No. 81, Messenger Street (new No. 353, Old Moor Street) and 78 (new No. 158), Messenger Street aforesaid and more fully described in the Schedule " C " annexed to the plaint) and got all the tenants in the
30 said various properties inspected then by the said Nachiappa Chetty to attorn to the said Nachiappa Chetty. The said Nachiappa Chetty thereafter collected the rents of the said properties (save and except the above 2 properties) on the terms of the trust aforesaid.

- 40 10. The said K. M. N. S. P. Nachiappa Chetty duly collected the rents and profits of the said properties (except of No. 81, Messenger Street (now No. 353, Old Moor Street) and No. 78 (now No. 158) Messenger Street, Colombo, aforesaid). The plaintiff from time to time between March, 1930, and June, 1931, found purchasers for the undermentioned properties and the said Nachiappa Chetty transferred the said properties to the said purchasers for the sum stated herein:

Exhibits
No. R 84
Plaint in
D. C., Colombo,
No. 1961
4.11.40.—*contd.*

	<i>Rs.</i>	
(a) No. 120, Hultsdorf Street, sold for ...	15,000	
(b) No. 24, Avondale Road, ditto ...	4,000	
(c) Nos. 7, 9, 11 and 13, Dematagoda Road, sold for	24,000	
(d) Nos. 31, 33, 35, 37 and 41/7-9, Maligakanda, ditto ...	9,000	
(e) 42 and 44, Marshall Street, Mutwal, ditto ...	9,000	
(f) 68, Messenger Street, sold for ...	25,500	
(g) 16, Silversmith Lane, ditto ...	12,500	
(h) 79, Messenger Street, Colombo; amount received by Nachiappa Chetty having deducted Rs. 4,500 (being amount due to a third party, (the vendee) on mortgage by plaintiff out of the full consideration of Rs. 10,500 ...	6,000	10
Total ...	105,000	

11. The said K. M. N. S. P. Nachiappa Chetty further received a sum of Rs. 2,478.89 being compensation awarded by the Colombo Municipal Council for the portion of premises Nos. 68, 78, 79 and 81, Messenger Street, Colombo, acquired by the Colombo Municipal Council. 20

12. In October, 1930, the said K. M. N. S. P. Nachiappa Chetty by his attorney the said Ramanathan Chetty requested plaintiff to allow 10 per centum commission unto the said Nachiappa Chetty on rent collections as remuneration or to take over the properties and pay the balance sum due to him, the said Nachiappa Chetty. The plaintiff having made the necessary arrangements with another chetty agreed to pay the balance due and to obtain a deed of reconveyance of the remaining properties from the said Nachiappa Chetty and the said Ramanathan Chetty in accordance with the terms of the trust sent over the title deeds to plaintiff's lawyers to make out the necessary deed of reconveyance. 30

13. The said K. M. N. S. P. Nachiappa Chetty immediately thereafter came again over to Ceylon, gave up the claim put forward by his attorney for the remuneration, and reaffirmed his willingness to carry out the terms of the said agreement referred to in paragraph 7 hereof.

14. The said K. M. N. S. P. Nachiappa Chetty further advised the plaintiff not to sell any of the other properties covered by the said deed No. 1604 as the said Nachiappa Chetty anticipated that the balance sums due to him, which was about Rs. 60,000 (roughly) would be liquidated within a reasonable time and it was agreed in or about June, 1935, that he would hold the said properties in trust for the plaintiff on the following among other terms and conditions:— 40

(a) that the trust properties were to be retransferred to the plaintiff in March, 1940;

(b) that the interest payable to the said Nachiappa Chetty from 1935 on outstandings was to be reckoned at 9 per centum per annum (and not at 12 per centum per annum as received till 1935);

(c) that accounts would be rendered faithfully by the said Nachiappa Chetty to plaintiff in March, 1940, and that the said Nachiappa Chetty would pay to plaintiff all sums of money received by the said Nachiappa Chetty over and above his just claims;

10 (d) that if any sum was due from the plaintiff to the said Nachiappa Chetty, the plaintiff should pay the same to the said Nachiappa Chetty.

15. The said K. M. N. S. P. Nachiappa Chetty died in India on the 30th day of December, 1938. The sum due to the said Nachiappa Chetty from the plaintiff in respect of the transaction between the plaintiff and the said Nachiappa Chetty had been liquidated out of the sums collected by the said Nachiappa Chetty and there was no sum due and owing from the plaintiff to the said Nachiappa Chetty at the time of his death.

20 16. In or about December, 1939, the plaintiff became aware that, contrary to the terms of the trust, the said Ramanathan Chetty had in August, 1937, sold premises Nos. 9 and 11, Temple Road, Colombo, one of the properties referred to in the said deed No. 1604 for a sum of Rs. 1,000.

30 17. The said K. M. N. S. P. Nachiappa Chetty by his last will dated 3rd December, 1938, appointed the defendant, his widow, the executrix of his said will and directed the defendant to take charge of, possess and manage all the properties in Ceylon till the last of his sons (Manickam *alias* Nachiappa, Ramasamy, Suppiramaniam and Nagappan) the said Nagappan became a major. The said Nagappan is of the age of 3 years. The defendant took charge of and entered into possession of the said properties.

18. The defendant proved the said last will and testament of the said Nachiappa Chetty in testamentary case No. 8802 of this Court and obtained probate thereof. The said Ramanathan Chetty and one Nawanna Letchumanan Chettiar are the agents and attorneys of the defendant above named.

40 19. In or about November, 1939, the defendant by her servant and agent the said Ramanathan Chetty agreed and undertook to retransfer unto the plaintiff the properties fully described in the Schedule " B " annexed hereto and to account to the plaintiff for the moneys received as the rents and profits of the properties described in the Schedule " A " annexed hereto and the proceeds of

Exhibits
No. R 34
Plaint in
D. C., Colombo,
No. 1961
4.11.40.—*contd.*

Exhibits
No. R 34
Plaint in
D. C., Colombo,
No. 1961
4.11.40.—*contd.*

sale of the Temple Road property aforesaid, in March 1940 or earlier on grant of probate in testamentary case No. 8802 of this Court. Further the defendant likewise and at the same time promised and agreed to make out a formal retransfer unto plaintiff of properties in Schedule " C " hereto, which the plaintiff has always been in possession of.

20. In or about January, 1940, the defendant fraudulently and in breach of the trust referred to in paragraph 7 hereof claimed that the estate of the said K. M. N. S. P. Nachiappa Chetty is entitled to the properties aforesaid.

10

Alternatively the plaintiff states:

21. (a) The said K. M. N. S. P. Nachiappa Chetty was in February, 1930, the holder of mortgages granted by the plaintiff and the largest creditor of the plaintiff. The said Nachiappa Chetty availed himself of the position of the largest creditor as aforesaid and by promising to act in the best interest of the plaintiff and to look after his properties for the interests of the plaintiff got the plaintiff to execute a transfer of the said properties referred to in the said Schedule " A " annexed to this plaint in favour of the said Nachiappa Chetty.

20

(b) The plaintiff did not intend to convey the said properties absolutely to the said Nachiappa Chetty by executing a transfer thereof and the said Nachiappa Chetty knew that the plaintiff had no such intention.

(c) The said properties were then reasonably of the value of Rs. 460,115.

(d) In the circumstances aforesaid when the said properties were transferred by the execution of the said deed No. 1604 an obligation to act in the best interests of the plaintiff with regard to the said properties was imposed on the said Nachiappa Chetty and true beneficial interest in the said properties remained in the plaintiff though the mere title passed to the said Nachiappa Chetty and the said Nachiappa Chetty became entitled to get the sums then due to the said Nachiappa Chetty in respect of the said mortgages the said unsecured debts and other sums spent by the said Nachiappa Chetty for and on behalf of the plaintiff at the time of the execution of the said deed or thereafter together with interest thereon and to have a charge on the said properties for the said sums and interest and became bound to account to the plaintiff for all sums received as rent or income from the said properties or as the purchase price or compensation from the said properties if sold or acquired or as otherwise.

30

40

22. The said Nachiappa Chetty received a sum of Rs. 105,000 as the purchase price of the properties transferred to the purchasers found by the plaintiff (as hereinbefore stated in paragraph 10) a

sum of Rs. 2,478.89 as compensation awarded as aforesaid (as referred to in paragraph 11 above) and a sum of Rs. 1,000 being proceeds of sale in respect of premises No. 9 and 11, Temple Road aforesaid (as referred to in paragraph 16 above), in all amounting to Rs. 108,478.89; and the said Nachiappa Chetty collected the rents and profits aforesaid.

Exhibits
No. R 34
Plaint in
D. C., Colombo,
No. 1961
4.11.40.—contd.

23. (a) The plaintiff repeats the averments contained in paragraph 12 hereof.

10 (b) The said Nachiappa Chetty immediately thereafter again came over to Ceylon and gave up the claim put forward by his attorney for remuneration. The said Nachiappa Chetty advised the plaintiff not to sell any of the other properties referred to in the said deed No. 1604 as the said Nachiappa Chetty anticipated that the balance sum due to him would be liquidated within a reasonable time. In the premises the said Nachiappa Chetty continued to hold the said remaining properties as a trustee for the plaintiff.

20 24. In or about June, 1935, there was only about Rs. 60,000 (roughly) due to the said Nachiappa Chetty in respect of the charge he held over the said lands referred to in the said Schedule "A" hereto, and he anticipated the same would be liquidated within a few years. The said Nachiappa Chetty, however, then stated that he would retransfer the remaining properties (out of those in the said Schedule "A" hereto) to the plaintiff in March, 1940.

30 25. All sums due to the said Nachiappa Chetty in respect of the said charge on the properties referred to in the said deed No. 1604 (mentioned in paragraph 21 hereof) had been liquidated some time before the death of the said Nachiappa Chetty and the said Nachiappa Chetty at or about the time of his death held the remaining properties aforesaid in trust for the plaintiff.

26. The defendant in or about November, 1939, by her servant or agent the said Ramanathan Chetty agreed and undertook to re-transfer the various properties as stated in paragraph 19 hereof.

27. On or about January, 1940, the defendant fraudulently and wrongfully repudiated the obligations imposed on the said testator and on her as executrix of and as the person in possession of the said properties and claimed that the estate of the said Nachiappa Chetty is entitled to the said properties absolutely.

40 28. Referring to both causes of action, that defendant has failed and neglected to re-transfer unto the plaintiff the properties described in Schedules "B" and "C" and to render to the plaintiff an account as aforesaid and to pay to plaintiff moneys received by the defendant and her deceased husband, the said Nachiappa Chetty, the defendant is now in the wrongful, unlawful and fraudulent possession of the properties in Schedule "B" annexed hereto.

Exhibits
No. R 34
Plaint in
D. C., Colombo,
No. 1961
4.11.40.—*contd.*

29. The plaintiff estimates and assesses the sum now payable to him by the defendant at Rs. 10,000 and further damages at Rs. 1,600 per mensem.

Wherefore the plaintiff prays:

I. (a) For a declaration that the said K. M. S. P. Nachiappa Chetty obtained the said transfer No. 1604 dated 3rd March, 1930, and attested by N. M. Zaheed, N. P., in trust for the plaintiff on the terms and conditions set out in paragraph 7 above and held the said properties in trust for the plaintiff.

(b) For a declaration that the defendant holds the properties described in Schedule " B " hereto in trust for the plaintiff. 10

(c) For judgment against the defendant in the sum of Rs. 10,000.

(d) That the Court may be pleased to order the defendant to re-transfer and convey to plaintiff the said properties described in Schedules " B " and " C " hereto annexed.

(e) For an order to eject the defendant from the said properties described in Schedule " B " hereto and to place plaintiff in the quiet and undisturbed possession thereof.

(f) For judgment for continuing damages at Rs. 1,600 per mensem from this date till plaintiff is vested to possession of the properties described in the Schedule " B " hereto annexed. 20

(g) For costs of this action.

Alternatively to (a), (b) and (c) above:

II. (a) That the Court may be pleased to declare:

(i) That the said K. M. N. S. P. Nachiappa Chetty held the said properties referred to in the said Schedule " A " from the said 3rd March, 1930, in trust for the plaintiff; that the said Nachiappa Chetty became bound to give an account of the same received as rents profits and income of and from the said properties and the sums re-received as consideration on the sale of any of the sold properties or as compensation and an account of the sums due to the said Nachiappa Chetty in respect of the moneys due at the time of the execution of the said deed, the sums spent for and on behalf of the plaintiff thereafter together with interest thereon. 30

(ii) That the defendant holds the remaining properties out of those in the said Schedule " A " in trust for the plaintiff.

(b) For judgment against the defendant for such sum as is found to be due on the taking of the account aforesaid or in the event of the defendant failing to give a proper account thereof, for judgment in the said sum of Rs. 10,000. 40

III. For such other and further relief as to this Court shall seem meet.

Sgd. T. CANAGA RAYAR,
Proctor for Plaintiff.

* * * * (Schedule omitted) * * *

No. R 35. Answer in D. C., Colombo, No. 1961/L.

R 35.

In the District Court of Colombo

No. 1961/L

Exhibits
No. R 35
Answer in
D. C., Colombo,
No. 1961/L
5. 3. 41.

O. L. M. Abdul Majeed Plaintiff.

Vs.

Valliammai Atchy, executrix of the estate of the late
K. M. N. S. P. Defendant.

On this 5th day of March, 1941.

10 The answer of the defendant abovenamed appearing by N. N. Saheed her Proctor states as follows :—

1. Answering paragraph 1 of the plaint the defendant admits the jurisdiction of this Court.

2. The defendant admits the averments in paragraphs 2, 11, 17 and 18 of the plaint.

3. Answering paragraph 3 of the plaint the defendant denies that Nachiappa Chettiar and Ramanathan Chettiar were trusted friends or advisers of plaintiff. The defendant admits the other averments in that paragraph.

20 4. Answering paragraph 4 of the plaint the defendant:

(a) Denies the ownership or possession and value of the properties in sub-paragraphs (a) and (c) thereof.

(b) Denies the value of the properties referred to in sub-paragraph (b) thereof but admits that plaintiff owned the said properties.

5. Answering paragraph 5 of the plaint the defendant:

(a) Denies the debts referred to in sub-paragraphs (a) and (f) thereof.

(b) Admits the debts referred to in sub-paragraphs (b), (c), (d) and (e) thereof.

30 6. The defendant denies the averments in paragraphs 6, 7, 12, 13, 14, 19, 23, 24, 25 and 26 of the plaint.

7. Answering paragraph 8 of the plaint the defendant:

(a) Admits the execution of the deed therein referred to.

(b) States that the transfer to Nachiappa Chettiar was a transfer of both legal and beneficial interests in the properties conveyed by that deed.

(c) Denies that Nachiappa Chettiar held the said properties or any of them in trust for plaintiff.

Exhibits
No. R. 35
Answer in
D. C., Colombo,
No. 1961/L
4.11.40.—contd.

8. Answering paragraph 9 of the plaint the defendant:

(a) States that possession was taken by Nachiappa Chettiar through his servants of all the properties transferred by deed No. 1604 except premises bearing Nos. 81 and 78, Messenger Street.

(b) Denies the other averments in that paragraph and in particular that Nachiappa Chettiar ever possessed the said properties on the terms of basis of any trust whatsoever.

9. Answering paragraph 10 of the plaint the defendant:

(a) Admits that Nachiappa Chettiar collected rents and profits of the properties that he took possession of. 10

(b) Admits that Nachiappa Chettiar sold the properties referred to therein under items (a) to (h).

(c) States that plaintiff took some part in the negotiations which preceded the sales of some of the said properties.

(d) admits the correctness of the value realised for items marked (a), (c), (d), (e) and (g) but denies the correctness of the values realised for items marked (b), (f) and (h) and in particular denies the averments regarding deductions of Rs. 4,500 in item marked (h).

(e) Denies the remaining averments in that paragraph. 20

10. Answering paragraph 15 of the plaint the defendant:

(a) Admits that Nachiappa Chettiar died in India on 30th December, 1938.

(b) Denies the remaining averments in that paragraph.

11. Answering paragraph 16 of the plaint the defendant:

(a) Admits that the Temple Road property was sold for Rs. 1,000.

(b) Denies the other averments in that paragraph.

12. Answering paragraphs 20 and 27 of the plaint the defendant states:

(a) That she had all along claimed the said properties absolutely for the estate of Nachiappa Chettiar. 30

(b) There was no occasion in January, 1940, or at any other time for defendant to make any special claim in respect of those properties.

(c) That there was no fraud or breach of trust or obligation on defendant's part.

13. Answering paragraph 21 of the plaint the defendant:

(a) Admits that in February, 1930, Nachiappa Chettiar held mortgages granted by plaintiff.

(b) Denies all the other averments in that paragraph.

14. Answering paragraph 22 of the plaint the defendant:

(a) Admits the receipt by Nachiappa Chettiar of the sums of Rs. 2,478,89 as compensation and Rs. 1,000 as proceeds of sale of premises Nos. 9 and 11, Temple Road.

(b) Admits that Nachiappa Chettiar collected the rents and profits of the properties transferred to him and of which he had taken possession.

10 (c) Denies the correctness of the figures Rs. 105,000 and Rs. 108,478.89 set out in that paragraph.

(d) Denies the remaining averments in that paragraph.

(e) States further that in all the said matters Nachiappa Chettiar acted as absolute owner and not as trustee.

15. Answering paragraphs 28 and 29 of the plaint the defendant denies:

(a) That plaintiff was at any time or is now entitled to a re-transfer of the properties referred to therein or to any account or to the payment of any monies.

20 (b) That the defendant is in wrongful or unlawful or fraudulent possession of the properties referred to therein.

16. Further answering the defendant states that:

(a) Prior to March, 1930, Nachiappa Chettiar had been carrying on in Colombo the business of a money lender in the course of which he had lent moneys to plaintiff.

(b) In or about February and March, 1930, plaintiff was very heavily indebted to Nachiappa Chettiar and to others.

30 (c) As the plaintiff was unable to pay off all his debts to Nachiappa Chettiar and as the mortgaged properties had greatly depreciated in value it was agreed between plaintiff and the said Nachiappa Chettiar that the plaintiff should sell and convey to Nachiappa Chettiar all the immovable properties that were then under mortgage to the latter.

(d) The transfer deed No. 1604 was thus executed as an outright conveyance and there was no trust of any kind involved.

40 (e) As plaintiff was living at that time in premises bearing No. 78, Messenger Street, and his mother was living in premises bearing No. 81, Messenger Street, Nachiappa Chettiar, at the request of the plaintiff, did not insist on obtaining possession of the same. Nachiappa Chettiar so acted out of sympathy with plaintiff and because he did not wish to deprive plaintiff or his mother of their residence and not because of the existence of any trust.

Exhibits
No. R 35
Answer in
D. C., Colombo,
No. 1951/L
5.3.41—contd.

Exhibits
No. R 35.
Answer in
D. C., Colombo,
No. 1916/L
5.3.41—*contd.*

17. As matter of law the defendant pleads:

- (a) that the plaint does not disclose any cause of action;
(b) that the plaint does not disclose any trust enforceable in law;
(c) that the plaintiff cannot enforce any of the premises or agreements pleaded in the plaint to transfer properties and/or creating a trust in respect of those properties for the reason that the said premises or agreements are not in writing and notarially attested, and
(d) that plaintiff's causes of action, if any, are prescribed.

Wherefore the defendant prays that plaintiff's action be dismissed with costs and for such other or further relief in the premises as to this Court shall seem meet. 10

Sgd. N. M. ZAHEED,
Proctor for Defendant.

No. A 1. Notice of Objection to Assessment.

A 1.

D. C., Colombo, 10 Special

Volume 11

Colombo, 23.2.1940.

In the Matter of Notice of Objection under section 35 of the Estate Duty Ordinance, No. 1 of 1938. 20

To
The Commissioner of Estate Duty,
Colombo.

Sir,

File No. ED/N. 159—Charge No. 9,316—
Testamentary Case No. 8,802, D. C., Colombo—
Estate of K. M. N. S. P. Nachiappa Chettiar.

With reference to your notice of assessment in respect of the above estate dated the 3rd February, 1940, and received by my Proctor on the 5th February, 1940, I, Valliyammai Atchi, the executrix of the said estate, do hereby give you Notice of Objection to the said assessment. 30

The grounds of my objection are—

1. (a) That the deceased K. M. N. S. P. Nachiappa Chettiar was a member of a Hindu undivided family.

(b) That the entire property which has now been assessed by you as liable to duty was and is the joint property of that Hindu undivided family.

Exhibits
No. A 1.
Notice of
Objection to
Assessment.
23.2.40.

(c) That the entire immovable property which has now been assessed by you as liable to duty, if it had been movable property, would have been the joint property of that Hindu undivided family.

(d) No estate duty is payable by virtue of the provisions of section 73 of the Estate Duty Ordinance, No. 1 of 1938 (Chapter 187) as amended by the Estate Duty Amendment Ordinance, No. 76 of 1938.

10 (e) No property passed on the death of the deceased within the meaning of the Estate Duty Ordinance for the reason that in respect of the entire property in question the interest of the deceased who was a member of a Hindu undivided family is not one that passes on death within the meaning of that Ordinance.

2. The above paragraph deals with the grounds of objection which apply to the entire estate. The following grounds of objection apply to particular portions of the property that he has now been assessed and are raised in addition to the above.

20 (a) The following amounts shown as "Schedule of own accounts" and "Schedule of sundry creditors" in the statement furnished in connection with the declaration of property sent to you have to be deducted in arriving at the value of the estate that might become liable to duty in the event of the grounds of objection set out in the last preceding paragraph failing. Another copy of that statement is attached hereto.

(i) At the time of the death of the deceased he had no interest in the moneys shown as "sons account" in the schedule referred to above. The said moneys were the property of the sons themselves or alternatively were moneys payable to the sons by the estate.

30 (ii) The items shown as "charity accounts" are monies payable by the estate to the various charities or alternatively they are moneys held by the deceased in trust for the said charities.

(iii) The items detailed in the schedule of sundry creditors in respect of Indian creditors are debts payable by the Ceylon Estate.

2. (b) The following amounts of money too have to be deducted in addition to those mentioned in paragraph 2 (a) above:—

(i) The interest accrued up to the date of death of the deceased on the sums referred to in paragraph 2 (a) amounting to Rs. 36,527.33.

(ii) Any balance of Income Tax payable by the deceased as at the date of his death.

40 (iii) Salaries and rent payable by the deceased at the date of his death amounting to Rs. 1,530.12.

2. (c) From the value of movable property has to be deducted a sum of Rs. 7,838.88 which is an asset outside Ceylon and has been wrongly taxed along with Ceylon assets.

Exhibits
No. A 1.
Notice of
Objection to
Assessment.
23.2.40—contd.

Exhibits
No. A 1.
Notice of
Objection to
Assessment.
23.2.40—contd.

2. (d) From the value of the immovable property has to be deducted a sum of Rs. 4,500 being the value of premises No. 158, Messenger Street, Colombo, in respect of which the deceased had at no time possession or any beneficial interest.

2. (e) Shares in companies should have been valued as per the executrix's return at Rs. 25,798 which was the market value of the shares at the time of death. The shares should not be valued as per balance sheet at Rs. 33,203.

(f) House properties should be valued at only Rs. 345,000. Rs. 365,000 appearing as increase by official valuation in the additional notice of assessment should be deleted. The executrix's valuation represented the correct value of these properties. 10

(g) The amount of Rs. 25,034 appearing in the additional notice of assessment is not a Ceylon asset and should not be made subject to duty. Even the value of that item at date of death was much less as the dollar had depreciated at the date from its value when money was sent from Ceylon.

(h) The sum of Rs. 18,010 appearing as Remittance a/c in the additional notice of assessment was no asset of the estate and no duty is payable thereon. 20

(i) The executrix is not liable to pay any interest charged either on the provisional assessment or on the additional notice of assessment.

I am, Sir,

Your obedient servant,

Sgd. In Tamil.

Valliyammai Atchi, the executrix of the
estate of KM. N. SP. Nachiappa Chettiar.

No. A 2. Notice of Objection to Assessment.

A 2.

Colombo, 26th Nov., 1940.

In the Matter of Notice of Objection under section 35 of the
Estate Duty Ordinance, No. 1 of 1938.

To
The Commissioner of Estate Duty,
Colombo.

Sir,

File No. ED/N159—Charge No. 9316— Testamentary Case
No. 8802 D. C., Colombo—Estate of K. M. N. S. P. Nachiappa
Chettiar. 40

With reference to your (a) Notice of Assessment dated 3rd
February, 1940, and (b) Your Additional Notice of Assessment

Exhibits
No. A 2.
Notice of
Objection to
Assessment.
26.11.40.

dated the 7th November, 1940, in respect of the above estate, I, N. M. Zaheed, Proctor, for Valliyammai Atchi, the executrix of the said estate, do hereby give you notice of objection to the said assessments. The grounds of my objections are—

Exhibits
No. A 2.
Notice of
Objection to
Assessment.
26.11.40—contd.

1. (a) That the deceased K. M. N. S. P. Nachiappa Chettiar was a member of a Hindu undivided family.

(b) That the entire property which has now been assessed by you as liable to duty was and is the joint property of that Hindu undivided family.

10 (c) That the entire immovable property which has now been assessed by you as liable to duty, if it had been movable property, would have been the joint property of that Hindu undivided family.

(d) No estate duty is payable by virtue of the provisions of section 73 of the Estate Duty Ordinance, No. 1 of 1938 (Chapter 187) as amended by the Estate Duty Amendment Ordinance, No. 76 of 1938.

20 (e) No property passed on the death of the deceased within the meaning of the Estate Duty Ordinance for the reason that in respect of the entire property in question the interest of the deceased who was a member of a Hindu undivided family is not one that passes on death within the meaning of that Ordinance.

2. The above paragraph deals with grounds of objection which apply to the entire estate. The following grounds of objections apply to particular portions of the property that has now been assessed and are raised in addition to the above.

30 (a) The following amounts shown as “ schedule of own accounts ” and “ schedule of sundry creditors ” in the statement furnished in connection with the declaration of property sent to you have to be deducted in arriving at the value of the estate that might become liable to duty in the event of the grounds of objection set out in the last preceding paragraph failing. Another copy of that statement is attached hereto.

(i) At the time of the death of the deceased he had no interest in the moneys shown as “ sons account ” in the schedule referred to above. The said moneys were the property of the sons themselves or alternatively were moneys payable to the sons by the estate.

40 (ii) The items shown as “ charity accounts ” are moneys payable by the estate to the various charities or alternatively they are moneys held by the deceased in trust for the said charities.

(iii) The items detailed in the schedule of sundry creditors in respect of Indian creditors are debts payable by the Ceylon Estate.

2. (b) The following amounts of money too have to be deducted in addition to those mentioned in paragraph 2 (a) above.

Exhibits
No. A 2.
Notice of
Objection to
Assessment.
26.11.40.—contd.

(i) The interest accrued up to the date of death of the deceased on the sums referred to in paragraph 2 (a) amounting to Rs. 36,527.33.

(ii) Any balance of Income Tax payable by the deceased as at the date of his death.

(iii) Salaries and rent payable by the deceased at the date of his death amounting to Rs. 1,530.12.

2. (c) from the value of movable property has to be deducted a sum of Rs. 7,838.88 which is an asset outside Ceylon and has been wrongly taxed along with Ceylon assets. 10

2. (d) From the value of the immovable property has to be deducted a sum of Rs. 4,500 being the value of premises No. 158, Messenger Street, Colombo, in respect of which the deceased had at no time possession or any beneficial interest.

I am, Sir,
Your obedient servant,
Sgd. In Tamil.

Valliyammai Achi, executrix of the
Estate of K. M. N. S. P. Nachiappa
Chettiar. 20

Sgd. N. M. Zaheed,
Proctor for Executrix,

No. A 5. Letter.

A 5.

Department of Income Tax, Estate
Duty & Stamps.

Colombo, 30th January, 1940.

Estate of K. M. N. S. P. Nachiappa Chettiar, deceased.

Sir,

With reference to your letter dated 28th November, 1939, I have the honour to inform you that there is clear evidence that the estate is not exempt under section 73. 30

It will accordingly be assessed for duty.

I am, Sir,
Your obedient servant,
Sgd. L. G. GUNASEKERA,
Assessor, Estate Duty.

N. M. Zaheed Esqr.,
Proctor,
250, Hultsdorf St., Colombo.

No. A 5.
Letter.
30.1.40.

No. R 26. Certificate of Payment of Estate Duty.**R 26.**

Form No. 248.

Exhibits
No. R 26.
Certificate of
Payment of
Estate Duty.
5.5.41.**THE ESTATE DUTY ORDINANCE**

(Cap. 187)

Department of Income Tax,
Estate Duty & Stamps
Administrative Branch (c).
Colombo, May 5, 1941.10 Amended Certificate that Estate Duty has been paid.
Section 49 of the Estate Duty Ordinance (Cap. 187).

D. C., Colombo, Case No. 8802.

I hereby certify that the declaration of property in the Estate of K. M. N. S. P. Natchiappa Chettiar, deceased, who died on the 30th day of December, 1938, has been duly delivered; the estate duty amounting to Rs. 283,034 and cents 62 with interest Rs. 2,273.86 has been paid; and that the value of the property on which estate duty is payable as shown by the statement by the overleaf is Rs. 2,573,042.

Dated this fifth day of May, 1941.

20

Sgd. A. D. P.

Asst. Commissioner of Estate Duty.

To,

The District Judge,
Colombo.**No. R 6. Decision of Income Tax Board of Review.****R 6.**

Income Tax appeal to the Board of Review

Messrs. K. M. N. S. P.

Assessment File No. 33/345

Bra No. 146

No. R 6.
Decision of
Income Tax
Board of Review.
10.1.41.30 *Members of the Board:*

Sir Mohamed Macan Markar (Chairman)

Francis de Zoysa, Esq. K.C.

Rosslyn Koch, Esqr.

*Present for the Appellant:*Mr. S. J. C. Chelvanayagam, Advocate, instructed by Mr.
Salahudeen, Proctor.

Exhibits
No. R 6.
Decision of
Income Tax
Board of Review
10.10.41.—contd.

Supporting the Assessment:

Mr. C. B. E. Wickremasinghe, Assistant Assessor.

Dates of Hearing:

5th, 13th and 15th August, 1941.

Decision of the Board:

The appellant's contention in this case is that the deceased (whose widow and executrix is the assessee) Nachiappa was a member of a joint Hindu family and that the business carried on under the vilasam of K. M. N. S. P. was not his personal property but that its assets form part of the assets of a joint family.

10

The evidence placed before the Commissioner to prove that the deceased assessee was a member of a joint family was of far too general a character. We cannot at all accept the evidence of N. K. V. L. Ramanathan Chetty. The evidence of N. V. E. N. Nachiappa Chetty (who married the deceased's sister) and the evidence of N. Saminathan Chetty (a cousin of the deceased) is of the slightest character consisting mainly of assertions of the very fact which has to be established and does not carry the appellant's case further than where the legal presumption, that every Hindu family is normally presumed to be a joint Hindu family, places it. Affidavits have been tendered from A. V. R. A. Adycappa Chetty, Nachiappa Chetty, son of Ramasamy Chetty, and M. R. A. R. S. Suppramaniam Chetty, but none of them was called either before the Commissioner or before the Board and so we cannot act on their affidavits alone. We are not satisfied with the evidence placed before the Commissioner by the appellant and do not act upon it. We cannot accept it as proving that the business of the firm of K. M. N. S. P. was a joint family business.

20

The main argument of the appellant was that Suppramaniam (the father of the deceased) and Suppramaniam's brother, Nachiappa, carried on the business of "K. M. N." as members of a joint family and acquired properties which were the assets of the firm of K. M. N. by their joint exertions and that this raises a legal presumption that the property so acquired was joint property of a Hindu undivided family. In further support of this position document A8 was produced by the appellant, and great reliance was placed on it to prove that the business of K. M. N. was joint property of a Hindu undivided family.

30

However, it is evident from A8 that there had been an earlier partition of the family in February, 1892. The document A8 also refers to a previous partition of the family house whereby the two brothers Nachiappa and Suppramaniam possessed the southern and northern portions respectively and thereafter made additions at the expense of the respective parties and possessed their respective portions separately. The partition of 1892 is said to have

40

been of the "debit and credit transactions, village jewellerys and other sundry things of native place". The partition of these assets and the family house at a date anterior to the document A8 indicates that there had been a severance of the joint status of Suppramaniam and Nachiappa earlier.

Exhibits
No. R 6.
Decision of the
Income Tax
Board of Review
10.10.41.—*contd.*

10 If the firm of K. M. N. was started in Colombo after the partition of 1892 or after the partition of the family house referred to in A8 and therefore after the severance, the legal presumption that the assets of the business of the firm of K. M. N. were acquired by the joint exertions of members of a joint Hindu family does not arise and the main argument cannot be sustained. It will then be necessary for the appellant to produce some other evidence to establish that the assets of the firm of K. M. N. constituted the joint property of a Hindu undivided family. Document A8 does not throw any light on this aspect. A8 may well be a division of assets and property acquired by two brothers in common or in partnership and not necessarily the division of joint family property in view of the indications in it that there had been a severance of the status earlier. In these circumstances
20 we are unable to hold that the business of "K. M. N." has been proved to have been joint family property.

There is no reliable evidence before us on which we can hold that the firm of "K. M. N." in Colombo was in existence anterior to the partition of February, 1892, and that it continued to be a joint family business unaffected by any earlier partition until the division of its assets in June, 1911, when Suppramaniam started the firm of K. M. N. S. P. with his half share of the assets of K. M. N. and that he thereby impressed the character of a joint Hindu family business on the new firm.

30 Even if there had not been a severance of the joint status prior to A8 or even if Suppramaniam and Nachiappa acquired the properties which formed the assets of K. M. N. by their joint exertions, we are not prepared in this case to act on the mere presumption of law that those assets should be presumed to be joint family property, especially as the presumption is only to be drawn if there are not circumstances which give a contrary indication, and it cannot be said in this case that there are not any such indications. The acts and conduct of Suppramaniam in regard to the business of K. M. N. S. P. tend to show that even the firm
40 of K. M. N. (with a share of the assets of which K. M. N. S. P. was started) was not a joint family business but rather a business owned either in common or in partnership, for if it had been a joint family business one would hardly expect to find Suppramaniam dealing with another business which he had apparently commenced with a share of the assets of a joint family business as if it were his separate property.

Exhibits
No. R 6.
Decision of
Income Tax
Board of Review
10.10.41.—*contd.*

The books of the firm of K. M. N. are said to have been seen by N. K. V. L. Ramanathan Chetty even in 1915 (which is 3 years after the date of A8) but they have not been produced. They would have thrown much light on the question whether K. M. N. was a joint family business or was the self-acquired property of the two of them. In the circumstances, we are not prepared merely to apply any legal presumption and hold that K. M. N. was necessarily a joint family business.

Had there been evidence, which we could have accepted, to show that A8 was unambiguously a partition of property which at its date was joint family property, the subsequent acts and conduct of Suppramaniam or of Nachiappa could not of course have changed the character of the property. The document A8 does not itself show the nature of the property dealt with by it or help to remove the difficulties created by the mention of the earlier partition. 10

The evidence afforded by the conduct of Suppramaniam himself in regard to the business of K. M. S. P. such as the entries on the Register of Business Names (R1, R2, R3), the transfer of his interests in Kandawala Estate by R7, the Assignment of Mortgages by R8 are facts which in our view are sufficient to rebut any presumption in favour of joint ownership in regard to the business of "K. M. N." Nachiappa Chetty's affidavit R10 where he says that the sum of Rs. 789,830 was the exclusive property of his three sons, the gift by Nachiappa of about five lakhs to his two sons in March, 1931, even in the life time of Suppramaniam, and the last Will which Nachiappa executed a few weeks before his death, also lend support to the view that the business of K. M. N. S. P. was not the property of a joint Hindu family but was the separate or self-acquired property of Suppramaniam which he gave to his son Nachiappa the deceased. The acts and conduct both of Suppramaniam and of Nachiappa after him, is consistent with the position that the firm of K. M. N. S. P. was separate or self-acquired property and not joint family property and is sufficient to rebut any presumption of law that may have availed the appellant otherwise. 20 30

The appellant has failed to discharge the onus which was on him of satisfying us that the decision of the Commissioner, upon the facts and materials before him, was incorrect.

We dismiss the appeal and confirm the assessment. We make no order as to the costs of the argument of the appeal on the 5th, 13th and 15th August, 1941. 40

Sgd. M. M. MARKAR,
Chairman.

Colombo, October 10, 1941.

No. A 3. Letter.**A 3.**

Exhibits
No. A 3.
Letter.
11.3.41.

Estate Duty Office,
Colombo, 11th March, 1941.

Estate No. ED/N.159—K. M. N. S. P.
Nachiappa Chettiar, deceased.

Madam,

10 With reference to your notice of objection against the assessment of estate duty in the above matter, I have the honour to notify you under section 37 of the Estate Duty Ordinance, that I have determined to maintain the assessment in part.

2. The assessment will be amended as follows:

(a) By the inclusion of premises No. 158, Messenger Street, valued at Rs. 4,500.

(b) By a reduction of Rs. 5,540 in value of shares in Companies.

(c) By treating the sum of Rs. 32,872 representing the Dollar Speculation Account and the current account balance of A. R. N. S. P. partnership, Burma, as an asset situated outside Ceylon.

20 (d) By the deletion of a sum of Rs. 18,010 being Remittances Account.

(e) By the allowance of a sum of Rs. 18,528 as income tax due by the deceased.

3. The notice of the amended assessment will be issued in due course.

I am, Madam,

Your obedient Servant.

Valliyammai Achi,

c/o N. M. Zaheed,

Proctor, S.C.,

250, Hultsdorf.

Exhibits
No. A 20.
Letter.
9.10.42.

No. A 20. Letter

A 20.

250, Hultsdorf Street,
Colombo, 9.10.1942.

John Wilson, Esqr.,
Proctor, S. C.

Dear Sir,

D. C., Colombo, Special 10.

I shall be moving to produce in evidence at the hearing of this case the following original documents which I forwarded to you for perusal and return: **10**

1.	Indian Income Tax Demand Notice dated 31.8.26		
2.	Do.	do.	31.10.28
3.	Do.	Tax Assessment order dated	10.10.27
4.	Do.	do.	25.10.28
5.	Do.	do.	26.10.28
6.	Do.	do.	29. 5.29
7.	Do.	do.	11.10.29
8.	Do.	do.	30.12.31
9.	Do.	do.	5. 2.33
10.	Do.	do.	27. 7.35

20

There can be no doubt as to the authenticity of these documents and in the circumstances I shall be obliged if you will admit the proper execution of the said documents and waive formal proof of same.

Yours faithfully,

Sgd. N. M. ZAHEED.

Formal proof of execution waived.

Sgd. John Wilson,
Proctor for Respondent.

No.

Supreme Court of Ceylon
No. 512M (Final) of 1947.

District Court, Colombo.
No. 10 (Special).

Valliyammai Atchi of No. 247, Sea Street, Colombo,
Executrix of the Last Will and Testament of K. M. N.
S. P. Natchiappa Chettiar Plaintiff-Respondent.

Versus

The Attorney-General of Ceylon...Defendant-Appellant.

R E C O R D
O F
P R O C E E D I N G S
