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38,1952

No. 871 1001

Supreme Court of Ceylon
No. 27 of 1949.

District Court, Colombo
UNIVERSITY OF LONDON
No. 4518.
21 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

IN HIS MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

A. H. M. ABDUL CADER of No. 10, Elliot Place, Borella,
Colombo.....*Petitioner-Appellant.*

AND

1. A. R. A. RAZIK, and
2. AMEENA UMMA, wife of A. R. A. Razik, both of
"Hajara Villa", Fareed Place, in Bambalapitiya,
3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of
No. 10, Elliot Place, Borella, in Colombo,
4. HAMEEDA SITHY ZUBEIDA, also of "Hajara
Villa", Fareed Place, in Bambalapitiya.....*Respondents-Respondents.*

RECORD
OF PROCEEDINGS

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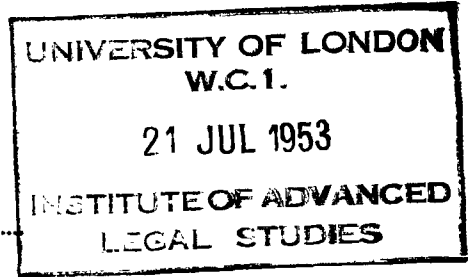
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Villa", Fareed Place, in Bambalapitiya.....*Respondents-Repondents.*

RECORD OF PROCEEDINGS

PART I.

No. 1
Journal
Entries
14-3-47 to
30-3-49
—continued.

- (8) 29-5-47. Objections filed.
Inquiry on 25-9-47. Intld. N. S.
- (9) 18-6-47. 3rd respondent A. M. Shafeek consents to her being appointed guardian over the person of the minor.
File. Intld. N. S.
- (10) 19-7-47. Proctors informed that case will not be heard on 25-9-47.
- (11) 26-7-47. Mr. K. Rasanathan for petitioner with reference to notice issued on him by Secretary moves that this case be called on 10 31-7-47 for fixing another date for inquiry and undertakes to inform respondents' Proctor of this fact.
Call on 31-7-47. Intld. N. S.
- (12) 31-7-47. Mr. K. Rasanathan for petitioner.
Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents.
Case called—*vide* (10) and (11)—to fix a fresh date of inquiry.
Inquiry 31-10. Intld. N. S.
- (13) 31-10-47. Mr. K. Rasanathan for petitioner. 20
Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents.
Inquiry.
Vide proceedings—Inquiry 4-12-47. Intld. N. S.,
A. D. J.
- (14) 4-12-47. Mr. K. Rasanathan for petitioner.
Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents.
Inquiry—Of consent S. O. for inquiry 5-12. Intld. N. S.
- (15) 5-12-47. Mr. K. Rasanathan for petitioner. 30
Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents.
Inquiry.
Vide proceedings—Inquiry for 23-1-48. Intld. N. S.
- (16) 16-1-48. Mr. K. Rasanathan for petitioner moves to file petitioners' list of witnesses and documents and moves for summons.
Proctors for respondents received notice and copy list.
Issue summons. Intld. N. S.

- No. 1
Journal
Entries
14-3-47 to
30-3-49
—continued.
- (17) 16-1-48. Summons to witnesses No. 1 to 7 in (16) issued to W. P.
- (18) 21-1-48. Messrs. Moonesinghe and Jayamaha for 1st and 2nd Respondents move to file list of witnesses and move for summons. Proctor for petitioner received notice.
Issue summons. Intld. N. S.,
A. D. J.
- (19) 22-1-48. Messrs. Moonesinghe & Jayamaha for respondents move to file the respondents' additional list of witnesses. Proctors for petitioner received notice.
Issue summons. Intld. N. S.,
A. D. J.
- (20) 23-1-48. Mr. K. Rasanathan for petitioner. Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents. Inquiry.
Vide proceedings—Call case on 26-1-48. Intld. N. S.,
A. D. J.
- (21) 26-1-48. Case called—vide above order at (20). Vide proceedings—Call case on 3-2-48. Intld. N. S.,
A. D. J.
- (22) 3-2-48. Mr. K. Rasanathan for petitioner. Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents. Mr. A. C. Mohammado for the minor. Case called—vide order at (21). Vide proceedings—Inquiry re-fixed for 23rd and 24th March, 1948. Intld. N. S.,
A. D. J.
- (23) 13-2-48. Mr. K. Rasanathan for petitioner moves to file petitioners' additional list of witnesses. Proctors for 1st and 2nd respondents received notice. File. Intld. N. S.,
A. D. J.
- (24) 17-2-48. Summons to witnesses Nos. 1 to 7 in (16) and 1 to 3 in (23) issued to W. P.
- (25) 27-2-48. Messrs. Moonesinghe & Jayamaha for 1st and 2nd respondents move to file 1st and 2nd respondents' additional list of witnesses and move for summons. Proctor for petitioner received notice. Issue summons. Intld. N. S.,
A. D. J.

No. 1
Journal
Entries
4-8-47 to
9-8-49
—continued.

(26) 2-3-48. Summons to witnesses Nos. 1 to 4 in (25) and No. 1 in (18) issued to W. P.

(27) 6-3-48. Messrs. Moonesinghe & Jayamaha for 1st and 2nd respondent move to file 1st and 2nd respondents' additional list of witnesses and move for summons.

Proctor for petitioner received notice.

Issue summons.

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

(28) 11-3-48. Summons to witnesses in (27) issued to W. P.

(29) 23-3-48. Mr. K. Rasanathan for petitioner. 10

Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents.
Mr. A. C. Mohammado for the minor.

Vide (22).

Inquiry.

Vide proceedings and order.

Inquiry fixed for tomorrow.

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

(30) 24-3-48. *Vide* proceedings and order.

Further hearing on 14th, 15th and 16th July, 1948.

Intld. N. S., 20
A. D. J.

(31) 22-4-48. Summons to witnesses Nos. 4, 5 and 6 in (16) and Nos. 1 and 2 in (23) issued to W. P.

(32) 8-7-48. Summons to witnesses Nos. 1 to 4 in (25) issued to W. P.

(33) 8-7-48. Proctor for petitioner moves to file the petitioner's additional list of witnesses in this case. Further he moves for summons on the witnesses.

Proctors for respondents object to the list as the inquiry has already started.

Allowed subject to any objection that may be taken, on certified copies being obtained. 30

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

(34) 8-7-48. Summons to witnesses No. 1 in (33) issued to W. P.

(35) 14-7-48. Mr. K. Rasanathan for petitioner.

Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents.

Vide proceedings.

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

- (36) 15-7-48. Mr. K. Rasanathan for petitioner.
Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents.
Vide proceedings.

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

No. 1
Journal
Entries
14-3-47 to
30-3-49
—continued.

- (37) 16-7-48. Mr. K. Rasanathan for petitioner.
Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents.
Vide proceedings.
Order on 2-8-48.

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

- 10 (38) 16-7-48. List of documents with documents X1 and its translation,
X2, X3 and X4 filed of record.

- (39) 22-7-48. List of documents P1 to P3 filed.

- (40) 2-8-48. Mr. K. Rasanathan for petitioner.
Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents.
Vide order (40).

The marriage of Sithy Zubeida to Rashid Bin Hassan
is valid and I so hold.

- 20 The petitioner will pay the respondents the costs of this
inquiry. Pronounced in open Court in the presence of Mr.
Rasanathan for petitioner.

Mr. M. A. Mahroof on behalf of Messrs. Moonesinghe &
Jayamaha takes notice and Mr. A. C. Mohammado for Sithy
Zubeida.

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

- (41) 5-8-48. Proctor for petitioner moves that this case be set down for
inquiry on the question of the appointment of a curator over the
property of the minor for a date in early September. Proctors
for 1st, 2nd and 4th respondents take notice for 2-9.

- 30 Call on 2-9 to fix date for inquiry.

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

- (42) 10-8-48. Mr. K. Rasanathan, Proctor for petitioner, files petition of
appeal and tenders stamps of Rs. 3 for certificate in appeal and
stamps of Rs. 6 for S. C. judgment.

He also tenders notice of security undertaking to deposit a
sum of Rs. 500 as security for respondents' costs in appeal and a
sufficient sum of money to cover the expenses of serving notice
of appeal on the respondents on 25-8-48.

- 40 Proctors for 1st, 2nd and 4th respondents receive notice.
The 3rd respondent also receives notice.

No. 1
Journal
Entries
14-3-47 to
30-3-49
—continued.

Proctor for petitioner also applies for typewritten copies of the case and moves for a paying voucher for Rs. 25.

- (1) Accept petition of appeal.
- (2) Security 25-8-48.
- (3) Issue paying-in-voucher for Rs. 25.

Intld. S. J. C. S.,
D. J.

- (43) 12-8-48. Paying-in-voucher for Rs. 25 issued.
- (44) 25-8-48. Security—Proctors for respondents absent. 10
I accept security.
Mr. Rasanathan asks for two deposit notes for Rs. 250 each.
Allowed. Issue notice of appeal on bond being perfected for 23-9.
Intld. N. S.
- (45) 25-8-48. Two paying-in-vouchers for Rs. 250 each issued.
- (46) 25-8-48. Mr. K. Rasanathan tenders two security bonds with K. R. Nos. S/7 No. 71546 and S/7 No. 71546 each for Rs. 250. together with notice of appeal and copies of petition of appeal. He also tenders K. R. No. S/7 70405 for Rs. 25 being typewritten brief fees. 20
File security bonds and K. R. R.
Issue notice of appeal.
Intld. N. S.,
A. D. J.
- (47) 26-8-48. Notices issued to W. P.
- (48) 27-8-48. K. R. for Rs. 250 filed.
- (49) 27-8-48. K. R. for Rs. 250 filed.
- (50) 2-9-48. *Vide* (41). Proctors present.
Inquiry into appointment of curator fixed for 27-1-49.
Intld. N. S.
- (51) 23-9-48. Notice of appeal reported served on respondents. 30
Forward record to S. C. in due course.
Intld. N. S.,
A. D. J.
- (52) 6-10-48. Messrs. Moonesinghe & Jayamaha, Proctor for 1st and 2nd respondents apply for two typewritten copies of the case and move for a paying-in-voucher for Rs. 16.
Issue paying-in-voucher for Rs. 16.
Intld. N. S.,
A. D. J.

- (53) 18-10-48. Paying-in-voucher for Rs. 16 issued.
- (54) K. R. for Rs. 16 filed.
- (54) 29-11-48. Mr. A. C. Mohammado, Proctor for 3rd respondent applies for a typewritten copy of the case and moves for a paying-in-voucher for Rs. 8.
Issue paying-in-voucher for Rs. 8. Intld. N. S.,
A. D. J.
- (55) 27-1-49. Mr. K. Rasanathan for petitioner.
Messrs. Moonesinghe & Jayamaha for 1st—2nd respondents.
10 Inquiry *re* appointment of a curator over the property of the
minor (41).
Proceedings filed.
Let an Inventory be filed by curator.
Let an Inventory be filed by curator with notice to the other
sides on 17-2-49. Intld. N. S.,
A. D. J.
- (56) K. R. for Rs. 8 filed.
- (57) 17-2-49. Mr. K. Rasanathan for curator.
20 Inventory filed.
Let a statement of Income be filed on 24-3.
Security to be filed thereafter. Also monthly allowance.
Intld. N. S.,
A. D. J.
- (59) 24-3-49. Mr. K. Rasanathan for curator.
Statement of Income filed.
Affidavit not stamped.
C. C. to report. Intld. N. S.,
A. D. J.
- 30 (60) 25-3-49. In terms of Order of Court dated 27-1-49 let notice with
copies of statement be served on the Proctors for the other
parties to the application returnable 9-5. Curator's Proctor to
take steps. Office to inform him. Intld. N. S.,
A. D. J.
- (61) 28-3-49. Letter written to Proctor for curator. Intld.
- (62) 30-3-49. Mr. K. Rasanathan for curator states that he has preferred
in this case an interlocutory appeal and the briefs are now ready
for despatch to the Supreme Court.

No. 1
Journal
Entries
14-3-47 to
30-3-49
—continued.

In the meantime there is the curatorship proceedings which has to go on. Therefore he moves that a sub-file should be opened up with copies of the portions relevant to the curatorship proceedings.

He further moves that the record be sent to the Supreme Court.

A sub-file to be opened when case is sent to Supreme Court.

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

No. 2
Petition
of the
Petitioner
14-3-47

No. 2

10

Petition of the Petitioner.

In the Matter of an Application under Section 582 and also known as 587 of the Civil Procedure Code, in respect of Hameeda Sithy Zubaida, minor of Colombo.

A. H. M. ABDUL CADER of No. 10, Elliot Place, Colpetty,
Colombo *Petitioner.*

No. 4518/G *vs.*

1. A. R. A. RAZIK,
2. AMEENA UMMA, wife of A. R. A. Razik, both of Fareed Place, Bambalapitiya, 20
3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of No. 10, Elliot Place, Borella, Colombo..... *Respondents.*

On this 14th day of March, 1947.

The petition of the petitioner abovenamed appearing by K. Rasanathan his Proctor states as follows :—

1. The petitioner is the father of the abovenamed Sithy Hameeda also known as Zubaida who is a minor having been born on the 12th October, 1932.

2. The said minor is the owner *inter alia* of the following properties, viz.:—(a) Half share of No. 21 and 23 Fareed Place ; and (b) 4/15th share 30 of the following Nos. 97, 99, 101, Third Cross Street ; and (c) No. 187, 187A, Norris Road, and No. 1, 3, 5, 7, 9 and 11, Second Cross Street, Pettah, and the jewellery deposited in the Testamentary Case No. 6980/T of the District Court of Colombo.

3. The said properties devolved on the minor on the death of their mother Sithy Hajara who died on the 17th day of December, 1932, and whose estate is being administered in Case No. 6980/Testy. of the District

Court of Colombo. The petitioner is the duly appointed administrator *de bonis non* to the said estate.

No. 2
Petition
of the
Petitioner
14-3-47
—continued.

4. The said properties are very valuable and yield an annual rental of more than Rs. 14,400 of which the minor's share is about Rs. 4,200.

5. (a) In Case No. 6980/Testy. of the District Court of Colombo referred to above, the petitioner has made an application under section 712 of the Civil Procedure Code praying for a citation of the first respondent abovenamed requiring him to bring to the credit of the said case the rents and profits collected and received by him in respect of the properties mentioned in para. 2 (b) above during the period commencing from January, 1933, and ending February, 1947.

(b) The 1st respondent has admittedly received all the rents and profits of the said properties during the said period but has not as yet accounted for the same or any portion thereof and the application made by the petitioner under section 712 of the Civil Procedure Code and referred to above is still pending.

6. (a) In Case No. 1543/L of the District Court of Colombo the duly appointed administrator of the estate of the said Sithy Hajara has sued the 2nd respondent who is the wife of the 1st respondent for a declaration of title to No. 187 and 187A, Norris Road, and Second Cross Street, and for damages consequent on her wrongful possession of the said property.

(b) The properties which are the subject matter of Case No. 1543/L were by Deed No. 395 dated 2nd April, 1930, and attested by M. Kamer Cassim gifted by the 2nd respondent to the late Sithy Hajara and accepted by the 1st respondent for and on behalf of his daughter the donee.

(c) The 2nd respondent at the instigation of the 1st respondent has in Case No. 1543/L filed answer alleging that she is the owner of the said properties and Deed No. 395 referred to above were bad in law.

(d) This Case No. 1543/L is still pending.

7. Neither a curator over the property of the said minor nor a guardian over the person of the said minor has been appointed.

8. The said minor now resides with the 1st and 2nd respondents who are the grand-parents, but I state that the 1st and/or 2nd respondents should not be appointed guardian over the minor nor curator over the properties of the minor as they are, as set out above acting against the interests of the minor, and are endeavouring to claim the minor's properties as their own.

9. The petitioner submits that the 3rd respondent who is the sister of the minor abovenamed is a fit and proper person to be appointed guardian over the person of the said minor.

10. The petitioner prays that he be appointed curator over the property of the said minor.

No. 2
Petition
of the
Petitioner
14-3-47
—continued.

11. The interests of the petitioner and/or the 3rd respondent are not in any way adverse to that of the minor.

Wherefore the petitioner prays :—

- (a) for an order on the 1st and 2nd respondents to produce in Court on every date of inquiry into this application Sithy Hameeda also known as Zubaida the minor abovenamed ;
- (b) that the petitioner be appointed curator over the property of the said minor ;
- (c) that the 3rd respondent be appointed the guardian over the person of the said minor ;
- (d) for costs and for such other and further relief as to this Court shall seem meet proper.

Sgd. K. RASANATHAN,
Proctor for Petitioner.

No. 3

Affidavit of the Petitioner.

In the Matter of an Application under Section 582 and also known as 587 of the Civil Procedure Code, in respect of Hameeda Sithy Zubaida, minor of Colombo.

A. H. M. ABDUL CADER of 10 Elliot Place, Colombo.....*Petitioner.* 20

No. 4518/G *vs.*

1. A. R. A. RAZIK,
2. AMEENA UMMA, wife of A. R. A. Razik, both of Fareed Place, Bambalapitiya,
3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of No. 10, Elliot Place, Borella, Colombo.....*Respondents.*

I, Abdul Hamid Mohamed Abdul Cader of 10, Elliot Place, Borella, in Colombo, not being a Christian, do hereby solemnly sincerely affirm and declare as follows :—

1. I am the petitioner abovenamed, and am the father of the above-30 named Sithy Hameeda also known as Zubaida who is a minor having been born on the 12th day of October, 1932.

2. The said minor is the owner *inter alia* of the following properties, viz.:—(a) Half share of No. 21 and 23, Fareed Place ; and (b) 4/15 (four-fifteenth) share of the following Nos. 97, 99, 101, Third Cross Street ; and (c) Nos. 187, 187A, Norris Road, and Nos. 1, 3, 5, 7 and 9 and 11, Second Cross Street, Pettah, and the jewellery deposited in the Testamentary Case No. 6980/Testy. of the District Court of Colombo.

3. The said properties are very valuable and yield an annual rental of more than Rs. 14,400 of which the minor's share is about Rs. 4,200.

No. 3
Affidavit
of the
Petitioner
13-3-47

4. (a) In Case No. 6980/Testy. of the District Court of Colombo referred to above, I made an application under section 712 of the Civil Procedure Code praying for a citation on the 1st respondent abovenamed requiring him to bring to the credit of the said case the rents and profits collected and received by him in respect of the properties mentioned in para. 2 (b) above during the period commencing from January, 1933, and ending February, 1947.

—continued.

10 5. The 1st respondent has admittedly received all the rents and profits of the said properties during the said period but has not as yet accounted for the same or any portion thereof and the application made by me under section 712 of the Civil Procedure Code and referred to above is still pending.

6. (a) In Case No. 1543/L of the District Court of Colombo the duly appointed administrator of the estate of the said Sithy Hajara has sued the 2nd respondent who is the wife of the 1st respondent for a declaration of title to No. 187 and 187A, Norris Road, and Nos. 1, 3, 5, 7, 9 and 11, Second Cross Street, and for damages consequent on her wrongful possession of the said property.

(b) The properties which are the subject matter of Case No. 1543/L were by Deed No. 395 dated 2nd April, 1930, and attested by M. Kamer Cassim, gifted by the 2nd respondent to the late Sithy Hajara and accepted by the 1st respondent for and on behalf of his daughter the donee.

(c) The 2nd respondent at the instigation of the 1st respondent has in Case No. 1543/L filed answer, alleging that she is the owner of the said properties and Deed No. 395 referred to above was bad in law.

(d) This Case No. 1543/L is still pending.

7. Neither a curator over the property of the said minor nor a guardian over the person of the said minor has been appointed.

8. The said minor now resides with the 1st and 2nd respondents who are the grand-parents, but I state that the 1st and/or 2nd respondents should not be appointed guardian over the minor nor curator over the properties of the minor as they are, as set out above acting against the interests of the minor, and are endeavouring to claim the minor's properties as their own.

9. I submit that the 3rd respondent who is the sister of the minor abovenamed is a fit and proper person to be appointed guardian over the person of the said minor.

40 10. I pray that I be appointed curator over the properties of the said minor.

11. My interest and/or that of the 3rd respondent are not in any way adverse to that of the minor.

No. 3
Affidavit
of the
Petitioner
13-3-47.
—continued.

12. Therefore I pray that an order on the 1st and 2nd respondents to produce in Court on every date of inquiry into this application Sithy Hameeda also known as Zubaida the minor abovenamed, and that I be appointed curator over the properties of the said minor, and that the 3rd respondent be appointed guardian over the person of the said minor.

Signed and affirmed to at Colombo
on this 13th day of March, 1947. Sgd. A. H. M. ABDUL CADER.

Before me,
Sgd. (Illegibly).
C. O. 10

No. 4
Inquiry

No. 4

Inquiry.

4518/G.

31-10-47.

ADV. THIAGALINGAM with ADV. NAVARATNARAJAH for petitioner.

ADV. HANIFFA for respondents.

Mr. Thiagalingam opens his case and sets out the pedigree of parties as follows :—Razik married Ameena Umma. He is the 1st respondent and his wife the 2nd respondent. They had an only child Sitti Hajara who was married on the 13th November, 1913, to the petitioner for letters 20 of curatorship. The issue of that marriage is Fareeda a girl who on the 14th November, 1946, married Shafeek. Petitioner proposes that this Fareeda might well be the guardian of the person of the minor. Fareeda had a sister Zubaida who is the subject matter of these proceedings and over whom it is proposed to appoint a curator. Sithy Hajara died on the 17th December, 1932. Petitioner is now 38. He married a second wife and there are some divorce proceedings against the previous one. The second wife is Miss Gilat who was converted to the Muslim Faith. For these reasons it is said that petitioner is unfit to be curator. That is the main ground of objection. 30

At this stage it is agreed that inquiry be put off in order that the matter may be adjusted.

I also notice that the minor has not been represented by a guardian *ad litem*. I think this is necessary to proceed further with this inquiry. I have made order that in curatorship cases a G. A. L. should always be appointed first, to represent the minor. How it came to be omitted in this case I do not know. Petitioner's Proctor will take steps to appoint a G. A. L. before the next date before inquiry proceeds. Inquiry refixed for 4-12-47.

Sgd. N. SINNETAMBY, 40
A. D. J.

No. 4518/Guardian.

5th December, 1947.

No. 4
Inquiry
—continued.

MR. ADV. THIAGALINGAM with MR. ADV. NAVARATNARAJAH
inst. for the petitioner.

MR. ADV. HANIFFA inst. for the respondent.

Mr. Thiagalingam submits papers for the appointment of a G. A. L. over the minor. The minor is not present to consent to this application. A medical certificate is submitted on her behalf.

Before the formal appointment is made the minor will have to be present in Court. In these circumstances the inquiry is postponed for 10 the 23rd of January, 1948. Appointment will be made on the same date. The minor will have to be produced on that day. Mr. Haniffa undertakes to do so.

It is agreed that during December and January the minor is sent to the father twice, that is, on the 28th of December, 1947, and on the 15th of January, 1948, at 8 a.m. and that the minor will be sent back to Mr. Razik before lamplight on those days.

Sgd. N. SINNETAMBY,
Addl. District Judge.
5-12-47.

20 4518/G.

23-1-48.

Mr. Mohamadu files proxy on behalf of Sithy Hameeda *alias* Zubaida.

Mr. Chelvanayagam appears for her instructed by Mr. Mohamadu and submits that the alleged minor in respect of whom it is proposed to appoint a guardian is in law not a minor and that therefore no appointment need be made ; if however an appointment is to be made the petitioner is not a proper person to be so appointed.

Mr. Haniffa has no objection.

Mr. Thiagalingam for petitioner states there is no marriage, but assuming there is, she is a minor because marriage confers no majority on 30 a Muslim girl. She is still subject to the provisions of the Code which makes Court the guardian. There are two chapters in the Code dealing with these questions but there is no provision anywhere which says marriage confers majority. He submits there is no marriage at all and Mr. Chelvanayagam has no right of audience to appear and ask Court to hear him through proxy granted by this girl. Mr. Thiagalingam refers to the order made on the last date.

For purpose of arriving at a settlement, at this stage Mr. Thiagalingam invites the Court to be pleased to talk to the girl and to ascertain from her her own desires and wishes and her own story about this marriage. If 40 the Court is of opinion that she is happy now and should remain as she is,

No. 4
Inquiry
—continued. **Mr. Thiagalingam** states he will advise his client not to canvas the question of marriage. There is no undertaking given at this stage by the petitioner.

It is now 4 p.m. **Mr. Chelvanayagam** has no objection to the Court speaking to the girl. So is **Mr. Haniffa**.

Call case on 26-1-48.

Sgd. **N. SINNETAMBY,**
A. D. J.

Guardian 4518.

26th January, 1948.

MR. ADV. CHELVANAYAGAM, K.C., with **MR. ADV. NAVARATNARAJAH** for the minor Zubeida.

10

MR. ADV. HANIFFA inst. for the respondent.

At the request of parties I interviewed Zubeida, the minor, who is now alleged to have got married. I found her to be an educated and intelligent girl, with a mind of her own. In order to put her at her ease I first discussed with her matters of topical interest and matters which would normally interest a girl of her age, such as school, school friends, picture shows, etc., and when I found from her conversation that she was at ease and spoke freely, I put to her the question of her marriage. From what she said she appears to be quite happy with her husband and created in my mind the impression that she had married him of her own free will. 20 On the question of her seeing her father, I tried to persuade her to do so, and I told her that it would be in her interest to obtain her father's consent to her marriage, or, otherwise, to see him and try to persuade him to give her his consent. If she had any fears, I stated that this could be arranged in the precincts of the Court and in the presence of her Proctor or, even her husband. On this point she was adamant, even obstinate, and would give no reason for not wanting to see her father, except that he had neglected her from her childhood.

Call on 3rd February, 1948.

Sgd. **N. SINNETAMBY,** 30
A. D. J.
26-1-48.

D. C. 4518/G.

3rd February, 1948.

MR. ADV. THIAGALINGAM for the petitioner.

MR. ADV. HANIFFA for the respondent.

MR. ADV. ABDULLA for the minor who is now alleged to be married.

Mr. Thiagalingam states that in pursuance of the Court's direction on the last date he has pointed out to his client the consequences of his persisting in his position that the alleged marriage is invalid. The father, however, desires that the question of validity should be gone into in the 40 interest of the child herself and her children and in the interest of Muslim

Law. He further states that if the Court holds that the marriage is invalid the petitioner is quite content to give his consent to this marriage should the daughter invite him to do so. In these circumstances Mr. Thiagalingam asks that the matter be set out for inquiry, one of the questions to be determined being the validity of the marriage and her alleged right to be represented without a guardian.

Mr. Haniffa has no objection to the matter of the validity of the marriage being fixed for inquiry. It is really a question of the interpretation of the Muslim Law as it exists.

10 Inquiry is fixed for the 23rd and 24th March, 1948.

Sgd. N. SINNETAMBY,
A. D. J.

4518/G.

23-3-48.

ADV. CHELVANAYAGAM with ADV. ABDULLA for the minor.
ADV. THIAGALINGAM with ADV. NAVARATNARAJAH for petitioner.

ADV. HANIFFA for 1st and 2nd respondents.

MR. THIAGALINGAM addresses Court.

Mr. Abdulla states that all the documents in the case are with the 20 senior Counsel with whom he had a consultation last night. He was expected to arrive today but he has not arrived yet.

It is now half an hour after the time at which Court normally sits. This case has been specially fixed for today and tomorrow. Mr. Abdulla is unable to go on without the documents.

Mr. Thiagalingam objects to a postponement but he states if a date is granted he would ask for costs of today and tomorrow.

Order : As Mr. Abdulla is unable to go on with the case in the absence of documents I grant his application for a date but he will pay the petitioner the costs of today. I fix the inquiry for tomorrow.

30

Sgd. N. SINNETAMBY,
A. D. J.

D. C. 4518/G.

24th March, 1948.

Same appearances as on the last date.

The first question that has to be decided is whether the minor is no longer a minor ; in other words, whether she had attained majority by the alleged marriage which is said to have taken place. I shall for the present confine the inquiry to that question only.

Mr. Chelvanayagam calls—

A. J. M. WARID affd. Muslim Registrar of Marriages, Grandpass.

40

I am also a Lebbe attached to the Grand Mosque, New Moor Street. I have been a Registrar of Marriages for 12 years. Before me my father

Respondent's
Evidence
A. J. M.
Warid
Examina-
tion

No. 4
Inquiry
Respondent's
Evidence
A. J. M.
Warid
Examination
—continued.

had been a Registrar of Marriages. Like that we have been registering Muslim marriages for eight generations. I am licensed under the Muslim Marriage Registration Ordinance to register Muslim marriages.

I am a Muslim belonging to the Shafi sect. But if it becomes necessary for me to attend to any business of a Muslim belonging to the Hanafi sect I become a Hanafi and do that business.

To Court : I change my sect for the time being and revert to it later.

Q. How do you do the change—are there any formalities to be observed?—At that moment I declare that I am for the time being becoming a Hanafi in order to attend to that business. After the registration is over I become a Shafi. There is nothing to declare when I become a Shafi ; this is only something to be kept in mind.

There are Hanafi mosques in Colombo. Near about my mosque there is a Hanafi mosque in Pettah. I go and worship in that mosque also. I cannot function in that mosque as a priest because I am the priest of the New Moor Street Mosque. People belonging to the Hanafi sect come and worship in my mosque. Even today people of that sect worship in my mosque.

I married the girl Sithy Zubaida to Rashid Bin Hassan on the 11th December, 1947. I registered the marriage. I can issue a certificate of marriage. I issued this certificate of marriage marked X1. The marriage register is with me. I have to keep the register in duplicate, one copy is sent to the Registrar-General and the other is with me in the book. I married this girl as a Muslim belonging to the Hanafi sect. The girl told me that she was a Hanafi and that she wanted to be married as a Hanafi and she made a declaration before me to that effect. On the 11th December, 1947, she gave me a written explanation which I produce marked X2. There are two other documents with X2. Those two documents (marked X3 and X4) were also given to me by the girl. I brought these documents X2, X3 and X4 to Court from my house. From the time of the marriage onwards they were with me. All these three documents were given to me a short time before I performed the registration of marriage.

X3 is a document by which she has appointed her uncle Zahir Mohideen as her Wali.

X4 is an affidavit by Sithy Zubaida as to her status. "Bulu'u" means she has attained the age of discretion. It is the Arabic word for puberty.

A. J. M.
Warid
Cross-examination

XXN. I said that my family has been functioning as Registrar of Marriages for eight generations. I know when the Registration Ordinance of Muslim Marriages came into force ; that was in 1806. I know what is meant by a "kadi tham". There is no difference between a kaditham and registering a marriage. I have been granted permission by Government to register Muslim marriages. I need a Wali for the purpose of effecting registration. I have no power myself to dispense with the presence of a Wali before registering a marriage.

Q. But the Kathi has got the power in fit cases after inquiry to dispense with Walis?—If it is a Shafi marriage the Kathi can be a Wali.

No. 4
Inquiry
Respondent's
Evidence
A. J. M.
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Cross-
examination
—continued.

Q. A Kathi alone can dispense with the physical presence of some relative as a Wali and assume himself the jurisdiction of being a Wali and not you?—I cannot.

Q. When people come before you to register marriages, you must satisfy yourself as to who the Wali is?—Yes, that is one of my duties.

Q. If you know that the girl is a daughter of a particular person, you are aware that that person—the father—must be the Wali and no others?
10 —I will first go through the preliminary, that is, I will ask the girl whether she is a Shafi or Hanafi.

Q. If she is a Shafi what happens?—Then I will find out who the real Wali will be and I will ask him to be present. If the father is living I will insist on the father being present.

Q. If she is not a Shafi and if she is a Hanafi?—I will register the marriage in the presence of a Wali appointed by the bride, whoever he may be—anybody nominated by the girl.

Q. You say in the Hanafi school there is no definite designation of who and who alone can be a Wali, in what order?—No.

20 Q. You do not profess to know the Hanafi law?—I know a little of that law.

Q. Do you say there in the witness box that you can give evidence on Hanafi doctrines as a scholar?—No, I do not.

Q. From where did you get the piece of evidence that under the Hanafi law a Wali can be anybody named by the bride?—Hanafi people have been coming and getting marriages registered by me; I have also referred up the Hanafi law a little.

Hanafi law is contained in the book called “Hanafi Fikhu” by Ahmed Ibnu Hambili. It is in Arabic as well as in Arabic Tamil. I
30 have not brought the book to Court. I say in that book it is stated, as far as the Hanafi school of thought is concerned, that a bride can nominate anybody as her Wali.

For a Hanafi girl to be married there must be a Wali. According to the present Marriage Registration Ordinance she must appoint somebody as a Wali.

Q. As a Hanafi do you say that before a bride marries somebody she must have a Wali?—Yes, there must be a Wali.

Q. Did you get that also from the same book that you mentioned?
—That is not mentioned in that book.

40 I gave the name of the text book writer just now. That name is Ahmed Ibnu Hambili.

Q. Do you know that he propounded the Hambili school of thought in Mohamedan Law?—No, Hanafi.

Q. The authority you mentioned propounded the Hambali school of thought?—Although I mentioned the name as Hambali the proper

No. 4
Inquiry
Respondent's
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Cross-
examination
—continued.

name is Imam Abu Haniffa ; by mistake I said Hambali. As there are four sects I mistook that name.

The Arabic name of that book is "Fikhu". Fikhu means Law. That is the name of the book. I do not know whether there is any other name to that book. I have the book at home, I refer to it when necessary. I know a little Arabic.

Q. As far as you know even for a Hanafi a Wali is essential to enable a bride to marry?—Under the pure law it is not necessary to have a Wali but under the Ordinance a Wali is required.

Q. Leave the registration side completely out—as far as the Hanafi 10 sect is concerned does a bride require a Wali to contract a marriage?—We don't require. If the bride wishes that somebody should be appointed we appoint a Wali ; otherwise we do the marriage without a Wali.

Q. What you say is, in regard to the Hanafi school of Muslim Law, to answer the question whether a girl needs a Wali to contract a marriage you got to first determine what the girl's wishes are?—Yes.

Q. If the girl says she wants a Wali then a Wali is essential to make a legal marriage?—Yes.

Q. If the girl says "I want no Wali" then no Wali is necessary to contract a legal marriage?—Apart from the requirements of the Regis- 20 tration Ordinance there will be no need for a Wali.

Q. In this particular case, although this girl was a Hanafi she had expressed a wish to have a Wali to contract a marriage?—Yes.

Q. She told that to you?—Yes.

Q. Because she expressed that wish you never thought it illegal for her to contract a marriage unless she produced a Wali?—Yes. According to my register there must be a person to fill up the cage under the requirements of the Marriage Registration Ordinance.

(Counsel tells witness to forget the Registration Ordinance for the moment.)

30

Q. In this case the girl came along to you and expressed the wish that she must have a Wali to contract a marriage?—I asked the girl.

Q. You asked the girl whether she wants a Wali?—I asked her whom she had appointed Wali.

Q. You asked her that question because she was a Hanafi?—Yes.

Q. If she told you that she wanted no Wali, would you have performed the religious ceremony?—Yes.

Q. But in this particular case, because she said she wanted a Wali, you called for Wali?—Yes.

Q. Did you take any steps to ascertain what the relationship of the 40 Wali was that this girl named to the girl herself?—Yes.

I know the girl. I knew her grandfather, Mr. Razick. He is known to me for a very long time. He did not come and speak to me about this matter.

Q. Did he come at all?—Where? He did not come to see me.

Q. Did he come when you solemnised the marriage?—He was there in his house. I performed the ceremony in his house.

Q. Was he present at the time of the ceremony?—Yes. I know the father of the girl.

Q. Did you ask the girl whether she sought the consent of her father?—When she said she was a Hanafi it was not necessary for me to ask her.

To Court : I asked her “ you have your father, why don't you speak about this to your father ”. She said “ I only know that father is living, I have not seen him from my younger days and from my small years I have been brought up as a Hanafi and I am a Hanafi ”.)

Q. Did you ask the girl whether she got the consent of her father?—I did ask her.

Q. Did the girl say that she applied to her father for his consent?—No.

Q. You understood from the girl that she had never raised the question of a marriage with the father?—Yes.

Q. There was no suggestion made that the father had refused to consent to the marriage?—No.

Q. When the girl said that she must have a Wali did you address your mind to the question as to who could be a Wali under the Hanafi law?—I did not consider it necessary to address my mind to that question.

Q. You do not know, even under the Hanafi school of thought who and who alone can be Walis?—Yes.

Q. Do you say that a father can be a Wali under the Hanafi school of thought?—He can be a Wali.

Q. If the father available do you say anybody else can be a Wali?—Yes.

Q. Amongst the Shafis that cannot happen ; if the male parent is available he should be the Wali and nobody else can be the Wali?—Yes. If the father refuses to be a Wali the Kathi can be the Wali.

I am a Ceylon Moor. So are all these people ; that is I am speaking of Mr. Razik's people. They have been living here for generations.

Mr. Razik's father and Mrs. Razik's father are Ceylon Moors. All belong to the Shafi school. I do not know to which mosque Mr. Razik goes. Up to this point of time I do not know whether he is a shafi or not. I do not know to what sect the father of the girl belongs. I only know what the girl told me and what her grandmother told me. Nobody else told me anything. There was also the affidavit of the girl signed before a Justice of the Peace saying that she is a Hanafi. The J. P. has also witnessed it to say that she is a Hanafi because she signed in his presence.

The mosque in which I officiate is at New Moor Street. Mr. Razik may have come to that mosque at times. If he came there he should worship as a Shafi. I have never seen him come to that mosque. I have

No. 4
Inquiry—
Respondent's
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Cross-
examination
—continued.

not gone to the Maradana Mosque for "Kothuba". I may have gone to the Maradana Mosque on ordinary occasions but not for Kothuba. I have never gone there for Kothuba.

Q. Have you been to the Maradana Mosque for any purpose?—I have been to the Maradana Mosque.

Q. For purposes of worship have you been there?—No. I have never seen Mr. Razik there.

Q. You have never seen Mr. Razik in any Mohamedan mosque?—I have not seen him worshipping; he may have come for functions.

He has come for functions at mosques. On those occasions I did not see him going into the mosque for prayer. The functions I am talking about are feasts: (kanthries), lectures, meetings.

Q. What are the mosques where Mr. Razik has been seen by you attending these functions?—I have seen him in our mosque at New Moor Street. This is a Shafi mosque. I have not seen him anywhere else.

Q. The girl who was married, does she go to a mosque?—I do not know.

Q. You have never seen her going to any mosque?—No.

Q. Had you seen her grandmother going to any mosque?—No.

Q. You know nothing about it?—Yes.

20

Q. Did you tell anybody "I will not register this marriage unless you produce a Wali"?—No, I did not.

Q. Who were the people present at the marriage—was Mr. Adv. Haniffa present at the marriage?—There were several people, I did not see who and who were present. I did not see Mr. Haniffa there.

There might have been about 40 to 50 people in the room where I was. There were other people outside. There was a large crowd.

I was not taken from the New Moor Street Mosque to the bride's house. I went from my home at Grandpass. A message was left at my house on the 10th evening. I was told by someone in my house on the 10th evening that I was asked to come to Mr. Razik's house on the next day. The message was that I was required for the purpose of registering some marriage; I did not know whose marriage. I did not know to what sect the bride and bridegroom belonged.

On the 11th I went to Mr. Razik's place at about 6 p.m. I went by tram car and bus. Nobody came to fetch me. When I went there I saw a big gathering. And for the first time I was told who the parties to the marriage were going to be. As I went into the house I sat in the hall. There was a table placed for us in the hall and I sat there. There were about two or three people in the hall—not more than two or three people.

Q. Can you recall the two or three people?—Zahir Mohideen who has signed as Wali and their close male relatives.

The documents X2, X3 and X4 were not handed to me in that place where I was seated. In the adjoining hall the bride and her mother's

mother were there. I was called into that hall and there these papers were handed over to me by the bride personally. She signed the letter which she was handing over to me in my presence. She placed only her signature. She did not write anything else in that letter. I understand a little English.

No. 4
Inquiry—
Respondent's
Evidence—
A. J. M.
Warid—
Cross-
examination
—continued.

(Shown X3) :

Q. Was that the signature that was put in your presence?—Yes. No, that is not the one—the other one.

Q. How many documents did this girl hand to you?—Three documents.

Q. The girl handed to you all the three documents?—Yes.

Q. Nothing was handed to you by Zahir Mohideen?—No.

Q. Did he not hand to you his own appointment by the girl as Wali?—The girl gave it to me in the presence of Zahir Mohideen.

Q. You told us that from that hall you were sent for inside?—Yes.

Q. Directly you went into that hall the girl came up and handed you this document without any previous conversation between you and her?—As soon as I entered the grandmother of the girl called me in. The girl came up. She said that she was going to marry today, that she was 20a Hanafi and that she was the bride.

Q. Before you went into the room you did not know one word about all this?—No, I made inquiries outside.

To Court : After I went to the house only I knew about it.

Q. Did Mr. Razick tell you?—No.

Q. Who told you?—Zahir Mohideen told me.

He told exactly what was going to happen. Before I went into the room I knew what would happen.

To Court : Q. What did you know exactly?—Zahir Mohideen said that the marriage was going to be according to the Hanafi sect. Then I 30 told him that if the marriage is going to be according to the Hanafi sect I must meet the girl.)

Q. You told him “you must bring these various writings signed by the girl”?—I did not.

To Court : Q. When he said that what did you say?—I asked him what proof he had to show that this was a Hanafi marriage.)

Q. You told him that certain things had to be done if it were going to be a Hanafi marriage?—Yes. No.

Q. Then you asked him what ground he had to make you believe that they were Hanafis?—Yes.

40 Q. Then Mr. Mohideen told you all the reasons?—Yes.

Q. Thereafter you told Mohideen “I must go and speak to the girl, the girl must give me these answers, then only I will do this”?—Yes.

To Court : Q. Did you say what the answer also should be?—Yes.)

No. 4
Inquiry—
Respondent's
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examination
—continued.

Q. Was the bridegroom anywhere about at all?—No.

Q. You never spoke to the bridegroom up to that point of time?—
No, I did not.

Q. Did you see him at all?—I saw him only at that time.

Q. Did you see him at all on that day?—I saw him later.

Q. Before you went to the room and talked to the girl had you seen the bridegroom?—No.

Q. Up to this day you do not know to what sect the bridegroom belongs?—When the bridegroom came I asked him to what sect he belonged and he said that he was also a Hanafi. 10

He said he was always a Hanafi from the time he was born.

He said so. I had known the bridegroom earlier. I had not seen him in any mosque.

Q. After getting the girl's replies you came and you say you performed the marriage?—Yes.

Q. Did you only register the marriage or did you perform the marriage also?—I did both.

Q. At the performance of the marriage are you aware that very often there is one officiating priest who attends to the marriage ceremonies and there is another one who conducts the marriage ceremony? 20
—No; only one person.

Q. You say there are no functions where two "lebbes" officiate?—If two priests are invited then there will be work for both.

Q. That is, they perform two separate functions?—One priest will register the marriage and the other will conduct the religious ceremonies.

Q. I am talking only about the marriage ceremony, not about registration of marriage—if a wealthy parent can afford it is it usual for the performance of the marriage to call two lebbes?—It is not usual.

Q. You never heard that before?—There are cases of two and even three lebbes being called. 30

(Shown X1.) Witness is referred to cage 16 (5):

That cage refers to the Lebbe who performs the marriage. The next cage is headed: "Tholil Nadaipikkum Lebbai".

Q. Neither of those two designations relate to the man who registers the marriage?—Sub-section (6) relates to the person who registers the marriage. If the same priest does the registration as well as the religious part of it he signs at the bottom cage only. Cage No. 15 will show the person who conducts the religious ceremony; his name will appear there.

To Court: If there are two different persons the top of the form will show the person who registers the marriage and cage 15 will show the 40 name of the person who conducts the religious ceremony.)

Q. After the bridegroom came did you get the bridegroom to sign the original of document X1?—Yes.

Q. Straightaway also you got the other people to sign the original of XI?—Yes.

Q. Before you got that signature, how long earlier had the bridegroom come?—He had come at about 7-30 p.m. I did not get his signature straightaway. After he came I went up to him and filled up the form. Thereafter I performed the religious ceremony.

Q. What was the religious ceremony you performed?—I recited “kothuba”.

Q. You recite that like you recite in the mosque?—No. This is 10 a different kothuba.

Q. The same kind of words and ritual as you find in any marriage?—Yes.

Q. No difference in that?—Yes.

Q. The words are identically the same?—Yes.

Q. Intonation of words is the same?—Yes.

Q. When that was done the only people before you were the bride, bridegroom and the Wali?—There were the bridegroom, the Wali, the witnesses and other people who could be there.

Q. After having done that what else did you do?—I take the 20 consent of the girl or the Wali; after that we say so much “mahar”, he gives that and that completes the marriage. After that the signatures are obtained. That is all the ceremony.

The mosque at Pettah I referred to is mainly attended by Memon merchants in the Pettah. Ceylonese also go there. I can officiate in that Hanafi Mosque if I am appointed.

Q. Do you say you have the necessary qualifications to be appointed?—If they appoint me I can provide myself with the necessary requirements.

Q. Every time you officiate there you will become a Hanafi by reciting some words and when you come back you will become a Shafi?—Yes.

REXN.: I know Ghouse who was officiating at the Memon Mosque. He is a Ceylon Moor. He belongs to the Shafi sect. I cannot say for how long he was officiating at that mosque. I know he was there for some time.

The girl's husband's name is Rashid Bin Hassan. In Arabic Bin means son. Rashid Bin Hassan means Rashid son of Hassan. I knew the father of the bridegroom. He is not living. He was born in Ceylon. Mrs. Razik's father was not a Ceylon Moor; he was an Arab. The 40 Arabs belong to the Hanafi sect.

Women normally do not come into our mosques. They never come to any mosque. Before I registered this marriage I ascertained the wish of the bride. Her wish was she wanted to marry Rashid Bin Hassan. I ascertained that wish from her.

Sgd. N. SINNETAMBY,
A. D. J.

No. 4
Inquiry—
Respondent's
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A. J. M.
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Cross-
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—continued.

No. 4
Inquiry—
Mrs. Zubaida
Rashid—
Examination

MRS. ZUBAIDA RASHID.....affd., No. 27, Fareed Place, Bam-
balapitiya.

I attended the Muslim Ladies' College. Before that I attended the Holy Family Convent. I am 15 years and 6 months old. I am married to Mr. Rashid Bin Hassan. I married him of my own wish and consent. I married him on the 11th of December, 1947. I attended puberty when I was 12 years. From my infancy I had been brought up by my grandfather and grandmother. My grandfather is Mr. Razik. Mrs. Razik is my mother's mother. I was brought up as a Hanafi. I do not know my father. During all the time I was with my grandparents my father did not come to see me. My husband is related to me on my mother's side. He is my grandmother's brother's son. I knew him from my childhood.

(Shown X2) : I signed that document. I gave it to the Registrar.

Q. You gave it to the Registrar before you were married or after ?
—After—before I married.

(Shown X3) : I signed X3. Mr. M. Zahir Mohideen is referred to there as my Wali. He is an uncle of mine, my father's first cousin. He was in the habit of coming to my house and seeing me. I knew him well. On the day of my marriage he was present. He signed as my Wali. 20

(Shown X4) : I signed this affidavit before a Justice of the Peace. I handed the documents X3 and X4 to Mr. Zahir Mohideen. I handed them to him before my marriage.

To Court : When I say " before marriage " I mean on the same day. I handed them over on the day of the marriage before my marriage.) Rashid Bin Hassan and I are living as husband and wife. My husband is an elected member of the Municipal Council. I am quite happy with him.

(Luncheon interval).

Sgd. N. SINNETAMBY, 30
A. D. J.

24-3-48.

(After lunch).

Mrs. Zubaida
Rashid—
Cross-
examination

MRS. ZUBAIDA RASHID.....affd., XXD.:

I am 15 years and 6 months old. I was born on 12th October, 1932. I do not know to read and write Tamil.

(Shown a copy of X1 in English) : My age is given here as 16 years. I do not know who gave this age. I did not give this age.

I married on 11th December. " J.P. " means a Member of Parliament. I have gone before a J.P. once, on the date I married. I married at about 8-15 p.m. Lights were on. The J.P. came home before the marriage ; before the lights were put on. He came in the evening. I know the J.P. I signed a typed statement before him. 40

Q. Can you remember now, was it typed or hand written ? A. I cannot remember.

My sister is Alavi. I am friendly with her. I have been to her house Salonika some time ago. I met my father there. He spoke to me nicely. I cannot now remember whether my father asked me whether I was taught my religion.

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—continued.

Now I have some property. I know the numbers. They are 23, Fareed Place, and 99, 3rd Cross Street.

Q. Do you know that the transfer took place in your name recently ?

A. Yes.

When I married my grandfather gave those two properties to me.

10 Q. Did your grandfather tell you this ?—No.

That is what I am saying.

No one told me to marry my husband. I spoke to him before marriage. I asked him whether he would marry me and he said yes.

Q. Did he ask you whether you would marry him ? A. Yes, he asked me.

He did the first talking. I did not observe purdah with him. I attended Holy Family Convent until I was ten years old. My grandfather knew that my present husband used to talk to me. My husband comes to Mr. Razik's house always. That is before marriage. Mr. Razik
20 did not put the idea of marriage into my head. No one suggested this marriage to me. My husband has property like I have ; he said so. He did not tell me the numbers of those properties. One is in Slave Island and the other is in Maradana. I have not seen those properties. I do not know their numbers. I do not know anything about the income from them. This is what my husband told me.

Q. How long before the 11th December—how many days—did you and your husband Mohamed Bin Hassan talk to each other ?—(No answer).

Q. Was it the previous day ?—No. About a week before.

30 To the best of my memory, my husband did not talk to me about marriage ; I used to speak to him before marriage. That is when I was a little girl. After I became a big girl I did not speak to him. Then I spoke to him only after marriage.

(To Court : Q. How did the marriage come about, if you spoke to him only after marriage ; how was it arranged ? A. I told my grandmother that I wanted to marry him, that I did not want anybody else. After that grandmother went and told grandfather, Mr. Razik, and I told my uncle to come and be the Wali.

When we were small we decided to marry. We decided to marry
40 each other when we were about 10 years old. After that until December, 1947, I did not speak to him at all even without the other people's knowledge.)

My grandfather did not tell me when I was 10 years old that I should marry my husband.

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—continued.

I did not discuss this case with anybody. I went to see my Proctor. I went newly to the Proctor's office. I cannot remember when I went.

I left Holy Family Convent when I was about 10 years old. That is, when I attended puberty I left school. That is why I left that school. Then I went to Muslim Ladies' College where purdah is observed and I observed that purdah very strictly.

I am not now expecting a baby.

Q. When did you tell your grandmother—how many days before the 11th—that you wanted to marry this man? Was it the previous day?

A. No. I told her on the 6th of December. 10

I told her on 6th December that I wanted to marry this man.

Q. Did you see your husband on the 3rd? A. My husband used to come there but I did not go and see him.

I was ill in December. I was ill on the 5th.

Q. 5th evening you got well? A. In the morning I was ill. I was not all right in the evening. On the 6th morning I was slightly well. On the 6th evening I was well.

Q. And you promptly told your grandmother? Yes.

Q. You were ill only for a day? A. Yes.

I was ill on the 5th. I was all right on the 4th. I was all right 20 on the 1st, 2nd and 3rd December.

Q. Did your grandfather ever tell you that you had to come to Court? A. Yes.

Q. When was that? A. 5th.

(Mr. Chelvanayagam objects to these questions on the ground that they are not relevant to the issues in the case.

Mr. Thiagalingam says that the object of the questions is to show that the marriage has been foistered on the girl and that she has been tutored to give this evidence.

I allow the questions.) 30

Q. On the 6th when you told your grandmother about this you did not know what your husband would say: you had not spoken to him. Is that not so? A. I did not understand.

On the 6th I told my grandmother I wanted to marry Bin Hassen. I knew that he will agree.

Q. How did you know that he will agree? A. He said that he was waiting for me and I said that I was waiting for him. When I was about 10 years old we said that we would wait for each other. I was confident that he was agreeable.

I do not know his age. When I was small I did not know how old 40 he was.

Q. Was it that when you were five you told him that you would marry him? A. No.

Q. Not 6, 7, 8, 9? A. I was 10 years old.

Q. Just a day before you attained puberty? A. Yes.

(To Court : I attained puberty when I was 12 years old.)

I did not understand the previous question.

Q. At the age of 10 was it you who broached the matter with him or he with you? A. Both.

Q. Both talked at the same time. Is that what happened? You said will you marry me and he said will you marry me? A. No.

Q. Did both talk at the same time and ask each to marry the other?
10 A. He asked me first.

Q. Then you asked him whether he will marry you? A. Yes.

(To Court : When he asked me I said all right, that I will marry him. Then I asked him "Will you marry me"? and he said "all right".)

Q. On the 7th did you speak to your husband? A. No.

Q. On the 8th? A. No.

Q. On the 9th did you speak to your husband? A. No.

Q. 10th? A. No.

Q. 11th? A. Yes.

Q. At what time? A. Night.

20 Q. On the 6th you did not see any outsider? A. No.

Q. Nobody? A. No.

There are certain males in regard to whom I need not observe purdah. I do not observe purdah with my grandfather, my uncle M. Zabir Mohideen, that is all.

Q. On the 6th you did not talk to any male in regard to whom you had to observe purdah? A. I talked to no one.

Q. Did you talk to anybody on the 7th in regard to when you had to observe purdah? A. No.

Q. 8th? A. No.

30 (To Court : Q. In other words, apart from your grandfather and uncle you did not speak to anybody else? A. Yes, the Registrar.)

The Registrar is the person who gave evidence before me. I spoke to him on the 11th.

Q. Are you remembering something that was told you.....?

A. I can remember.

I uncovered myself when I spoke to the Registrar.

Q. Why? A. I do not observe purdah when I talk to priests.

The 11th was the first time I spoke to a priest.

Q. Who told you to uncover before a priest? A. No one said.

40 Q. You did it on your own? A. Yes.

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On the 9th or 10th I did not speak to anybody else in respect of whom I had to observe purdah. On the 11th I spoke to the priest at about 6 p.m.

Q. Who told you to speak to the priest? A. Nobody asked me to speak. I did it on my own.

Q. Nobody told you to say anything to the priest? A. My grandfather and the Registrar were staying on the other side and I and my grandmother stayed on this side, and I spoke.

(To Court : The Registrar and my grandfather were on one side and my grandmother and I were on the other side. There was an open space 10 separating us. We stood opposite to each other.)

Grandfather is Mr. Razik and grandmother Mr. Razik's wife.

Q. Were you taken into the room where you met and spoke to the priest by anybody? Did you go of your own accord, or were you taken by your grandmother? A. I went of my own accord. My grandmother came with me.

Nobody told me to go before that priest. I asked grandmother to come with me before the priest because I wanted to marry.

Q. What did you want to tell the priest? That you wanted to marry? A. Yes. 20

Q. Who told you to tell the priest? (No answer).

Q. Was it on your own accord? A. Yes.

(To Court : My grandfather arranged for the priest to come. I knew that he was coming and I got ready.)

Q. Who told you to get ready? A. I myself got ready.

(To Court : Q. Was the priest got down at your request or did your grandfather say that he was getting the priest and that the wedding can take place? A. Yes.)

That very day I signed a statement before a J. P. I covered myself with my sari when I spoke to him. I signed the affidavit in the office 30 with my grandfather and grandmother. This occurred in the evening.

Q. That is how long before the Lebbe came—how many hours? A. That I do not know. I cannot say.

Q. Could it be in the morning or are you sure it was in the evening? A. I am sure the J. P. came in the evening.

I cannot say roughly at what time. It was after I had tea. I knew that I was going to meet him. I told my grandmother to arrange it for that day. I told her on the 11th morning.

Q. Not on the 10th? A. I told her on the 5th itself.

I told her on the 5th to get permission from my husband. To make 40 arrangements for the marriage I told her on the 11th. Until the 11th I had not decided on what day to marry. On the 11th morning I made up my mind to have the wedding.

Q. When did you decide to have the wedding on the 11th? Was it on the 11th morning? A. Yes.

Q. Did you make your wedding clothes? A. That evening itself grandfather went and bought me a sari.

Q. Why did you suddenly say to yourself on the 11th morning that you will marry that night? A. Because I am a young girl and I cannot come here to Court.

Q. Who told you about coming to Court? A. My grandmother and grandfather.

10 Q. What did they tell you? A. That I had to go on the 5th to Court and I said I could not.

Q. Who told you that marriage will enable you to keep out of Court? A. No one.

My grandparents told me on the 5th that I had to go to Court. Therefore I said I will marry my husband. They told me that the Judge wanted me to attend Court. They did not tell me that the only way I could avoid going to Courts was by marrying at once.

I made up my mind on the 5th because I was told that I had to attend Court. I did not think that if I married I need not have come to Court. No one put the idea into my head. On the 5th I decided to marry because I was asked to come to Court and because I was a young girl and I did not want to come to Court. If I was married I did not mind coming to Court. I objected to coming to Court as an unmarried girl.

I thought that unmarried girls should not go to Court. I thought that married women could attend Court. No one gave me this idea. There is nothing from which I got this impression.

Q. I put it to you that on the 5th morning somebody told you that you had been asked to come to Court, it is not usual for unmarried girls to go to Court, marry at once. Is that not the truth? A. No one told me.

On the 11th morning I made up my mind to have the marriage ceremony that evening. I had no special reason for making up my mind on the 11th morning to have the marriage ceremony that evening.

A large number of people came to the wedding. I do not know how many ladies came. I can mention the names of some ladies. Some of my friends came. Grandfather invited them.

(Shown X4): I do not know who typed this. My uncle got all this done and brought it to me. I told my uncle to have it typed.

Q. What did you tell him to have typed? A. An affidavit.

40 Q. What was it you said should be written? A. I did not say. He did it for me.

I did not tell him what to put down. When he wrote it and brought it to me I read it. I cannot remember what I read. I do not know what BULUGH means. I have heard the word DISCRETION before but I

No. 4 do not know what it means. (Witness is asked to spell the word and she
Inquiry— Mrs. Zubaida spells it : DISCREATION).

Rashid— I belong to the Muslim Religion. Muslims are divided into various
Cross- sects. I know one ; I know of the Hanafi sect. I have heard of the
Examination Shafi sect but I do not know what it is.
—continued.

I did not first hear the word Hanafi on the 11th. I heard of it in my small days ; from my small days I have been brought up as a Hanafi. I first heard the word Hanafi when I was a little girl. I first heard the word Shafi used when I was young, but I do not know what it means. I know what Hanafi means. 10

Q. What does it mean? A. Hanafi's pray.

I know the Hanafi prayers.

Q. Who told you that the Hanafi's pray? A. When I was small I was brought up as a Hanafi. My grandmother told me I was a Hanafi. She also prays in the same way. She is also a Hanafi.

(Shown X4) : The J. P. here is W. M. Hassim. I know him and I have seen him.

Q. Did you observe purdah with him? A. When I signed this I put my sari over my head.

I signed this after tea. This document is dated 9th December, 1947. 20
When my husband signed the book before the Registrar I was not present.

I read Muslim religious books. I do not know Tamil. I read them Arabic. I know Arabic. I read the Quaran.

Q. The Quaran you read has it the name of any particular person who edited it or made a comment or any such thing? A. By Prophet Mohamed.

I have heard of the Fathahul Dehiyana but I have not read it. I have not heard of the Falhahul Mahani.

I have not looked at the date on X4. I do not know how the date 9th came here. 30

(To Court : Having seen the document X4 I say that I signed it on the 9th and not on the 11th. I made a mistake when I said 11th ; I am sorry.)

(Witness is asked to read through X4.)

Having read this I now say that I signed this on the 9th and not on the 11th.

(To Court : Q. Having seen this document, do you still say that it was only on the 11th morning that you decided to have the wedding on the 11th night? A. My earlier statements were made before I saw X4. 40

Q. Having seen X4, which is signed on the 9th, do you still say that it was only on the 11th morning that you decided to marry on the 11th evening? A. On the 11th.)

Q. Could it be that the date on the document X4 is a mistake and that you really signed it on the 11th, in the evening? A. No.

Q. Tell us in your own words when was this document signed? A. 9th.

(Further hearing on 14th, 15th and 16th July, 1948.)

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examination
—continued.

Sgd. N. SINNETAMBY,
A. D. J.

14-7-48.

10 ADV. THIAGALINGAM with ADVs. NADESAN & NAVARATNA-
RAJAH for the petitioner.

ADV. AZEEZ for the 1st and 2nd respondents.

ADV. CHELVANAYAGAM, K.C., with ADVs. ABDULLA and
MARKHANI for Mrs. Zubeida Rasheed.

MRS. ZUBEIDA RASHEED recalled. Affd.

(XXN. contd.): I swore an affidavit on 9th December, 1947.

Q. Did anybody tell you before that that an affidavit was necessary?

A. No one told me.

Q. At whose instance was that affidavit prepared. Who asked that an affidavit should be prepared? A. My uncle Zahir Mohideen.

20 He gave instructions that an affidavit should be prepared. I do not know to whom he gave those instructions for the preparation of the affidavit. I did not tell my uncle what the contents of the affidavit should be. My uncle got the affidavit typed and he brought it before me for signature. I read the affidavit. All the information contained in the affidavit was given by my uncle to the person who typed the affidavit.

(To Court: My uncle spoke to me before he gave instructions for the typing of the affidavit. No one else spoke to me.)

I cannot now remember what I stated in that affidavit.

30 (To Court: I signed two affidavits. One on 9th December and another on the 11th—two on the 9th and one on the 11th. One affidavit was signed on the 9th and one letter and another letter on the 11th.)

I cannot now remember the contents of the affidavit I signed. I cannot remember what I stated in the affidavit.

Q. Do you know the reason or for what purpose you gave that affidavit? A. No answer.

40 (To Court: Somebody brought the affidavit to me to get my signature. One Mr. Hashim brought the affidavit to me for signature. Hashim is the J.P. He came to me to get the affidavit signed. No one else was with him. He came alone. Nobody came with him to the house. My grandmother and grandfather were with me when I signed the affidavit. Mr. Hashim told me what I was to sign. Mr. Razik told me what I was to

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sign. Now I cannot remember what he told me. Because he told me I signed it after reading and satisfying myself that it was correct.)

Q. Did Mr. & Mrs. Razik ask you to sign this affidavit? A. (No answer).

(To Court : Q. Before you went to the J.P. to sign the affidavit did your grandfather and grandmother tell you that you had to sign the affidavit? A. My grandfather told me.)

Q. Did anyone else other than he speak to you about this affidavit before he asked you to sign it? A. No one.

The only person who spoke to me about the affidavit was my grand-10 father just before I signed it. He told me the purpose of the affidavit. I cannot remember the reasons he gave me for asking me to sign the affidavit.

Q. Did you know the purpose for which you signed this affidavit? A. (No answer).

(To Court : Q. Why did you sign it, for what purpose? A. I cannot remember.)

I know what the affidavit contains.

Q. What does it say? (No answer).

I cannot remember the purpose for which I signed the affidavit. I do not want the Court to infer that I signed that affidavit because my 20 grandfather wanted me to sign it.

Q. Tell me why you signed the affidavit? (No answer).

Q. Did anybody explain to you the meaning of the word Bulugh? A. No one explained.

It means age of discretion.

Q. When did you come to know that the meaning of the word Bulugh was age of discretion? (No answer).

Q. Did you on the day that you signed the affidavit, without anybody explaining to you what Bulugh meant, know that Bulugh meant age of discretion? A. It was written in the affidavit. 30

The words age of discretion were also in the affidavit.

(To Court : Q. Was there anything in the affidavit to show that Bulugh meant age of discretion or did any one tell you that it meant age of discretion? (No answer).

Q. Didn't Mr. Hashim tell you? A. Yes.

He told me on that day that Bulugh meant age of discretion. That is when he read the affidavit to me.)

On the last date when I was cross-examined I said that I did not know what Bulugh meant. Since the last date nobody told me the meaning of the word. 40

(To Court : Q. Who told you that it means age of discretion? A. After the last date I asked my grandfather what Bulugh means and he said age of discretion.

I came to know its meaning only after the last date.)

(Shown X4) : This is the affidavit signed on the 9th. I did not see this document since the last date of inquiry.

On the 9th I also signed X3 (shown).

Q. Who told you that a document in the form of X3 should be signed? (No answer).

(To Court : My grandfather did not tell me ; my uncle Mr. Mohideen told me that it should be signed.)

My uncle brought X3 to me for signature. Before he brought the 10 document to me he did not talk to me about it.

Q. Before he brought you this document did you speak to him about it? (No answer).

(To Court : Nobody discussed the contents of that document with me until it was brought to me for signature by Mohideen.)

Before it was brought by Mohideen to me for signature I gave him no instructions.

(Shown X3) : The blanks are filled up in my handwriting. The blanks were filled in by me at the time I signed it. I cannot remember what pen I used in filling up the blanks. I filled up the blanks and then signed 20 and dated the document.

Q. Did anybody ask you to fill in the name of Zaheer Mohideen in that blank? A. I did it on my own.

I thought Zaheer Mohideen was the proper person I should put down at the time. Mohideen was there at the time. He did not ask me to put his name in.

(To Court : Q. Why did you choose Zahir Mohideen in preference to your grandfather? A. Because he was my father's first cousin.)

It is incorrect to say that Mohideen's name was suggested by anybody.

My signature and the date are in a different ink to that used for the 30 the names.

Q. Can you explain the difference in inks? (No answer).

(To Court : Q. Is it possible that you wrote on two separate dates or two separate times? (No answer).

Q. Can you explain that? A. No.)

I heard the word Wali for the first time when I signed X3. When I wrote this document I came across the word for the first time.

Q. Did you then ask anybody what it means? (No answer).

Q. Or did anybody tell you without your asking? (No answer).

Q. You did not ask? A. No.

40 No one told me what it meant and I did not know what it meant.

(To Court : Before this date I did not hear the term Wakil. I did not know its meaning then. Even now I do not know the meaning of the term Wakil.

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Q. The inference is obvious that you just signed what was put before you? A. No. They explained it to me.)

My grandfather explained X3 to me. My grandfather did not suggest the insertion of the name of Mohideen in the blank.

(To Court : (Shown X3). Q. How did he explain X3 ; what did he tell you? A. He explained that Mr. Mohideen is my Wali.

Q. Did he tell you that you should sign that and get married? A. No.

Q. Did you then ask him what Wali meant? (No answer.)

My grandfather did not ask me to insert Mohideen's name in X3. 10

(To Court : Q. All that your grandfather told you was that Mohideen was your Wali? (No answer).

Q. Or is it that he did not explain it at all to you? A. No, he explained it to me.

Q. Apart from telling you that so and so was your Wali what else did he tell you? A. I cannot remember.)

I knew whom I was going to marry and I told my uncle. On this day my grandfather did not tell me who my husband was to be.

Q. Did he tell you why it was necessary to sign X3? A. (No answer). 20

Q. Did you ask him why it was necessary to sign this document? (No answer).

(To Court : Question repeated but the witness does not answer.)

Q. Did you ask him anything at all? A. No, he told me.

Q. What did he tell you? A. That my Zaheer uncle was my Wali and that I was going to marry Mr. Bin Hassen.

Q. Did he tell you why it was necessary for you to sign this document to be married? (No answer).

Q. You cannot remember? A. No.)

Q. Today can you say why you signed document X3? Appointing 30 Zaheer Mohideen as your Wali? (No answer).

Q. Why was that necessary? (No answer).

I do not know where document X3 was typed and from where it was brought.

(Shown X2). Q. Who brought you this document? (No answer).

(To Court : This is signed by me and dated 11th December.)

Q. Who brought X2 to you? A. My uncle Zaheer.

Before bringing it to me for signature he did not discuss it with me. Nobody else spoke to me about it before it was brought for signature. I remember signing X2. I signed it in the evening about 7 p.m., before 40 the marriage ceremony.

Q. At that time were you told by anybody why you had to sign that document? (No answer).

(To Court : Q. Did Mohideen or anybody else tell you why it was necessary for you to sign this document? A. Zahir Mohideen told me it was necessary to sign this document.

Q. What did he tell you? (No answer.)

I first began to recite the Quaran when I was a little girl of about 9 or 10 years.

Q. Did your grandfather help you? A. No, my grandmother helped me.

I do not know the names of the different sects among the Muslims. I know only one, the Hanafi sect. I do not know of any other sect. I first heard the word Hanafi when I was a little girl. To the best of my recollection my grandmother first mentioned the word Hanafi to me.

Q. In what connexion did she first used the word Hanafi? A. When she told me to say prayers she used the word Hanafi.

She taught me prayers. Prayers were not read from the Quaran; we prayed. When she prayed she used the word Hanafi. I cannot say for what reason she used the word Hanafi. She did not tell me that there were more than one sect of Muslims. She did not tell me to what sect my mother belonged, or my father. I do not know to what sect my grandfather belongs. My grandmother did not tell me.

At no time did my grandmother tell me that I was a Hanafi. I was brought up as a Hanafi. My grandmother told me that I was brought up as a Hanafi. She told me when I was about 9 years old. I did not then ask her what Hanafi meant.

(To Court : Q. Why did she tell you that; any special reason? A. No.)

I did not ask her what my father and mother were brought up as. I did not ask her about Mr. Razik. Shortly after my grandmother told me that I was a Hanafi I forgot about it. About the time of my marriage nobody mentioned to me that I was a Hanafi.)

(To Court : Q. Until you saw it on document X3 no one mentioned the word Hanafi to you? A. No.

Q. Then did you ask Mohideen what Hanafi meant? A. No.

I did not sign that document because it was put before me by my elders.)

My grandfather and grandmother are Muslims. I do not know whether my sister is a Muslim; she was not with me. I do not know whether she is of another faith. I think she is a Muslim. I have lived with my sister for some time; she came to my place. She never reads the Quaran. I do not regard my sister as a Christian or Hindu. I think she is of the Islamic faith. My grandfather professes the Islamic faith. I thought both of us belonged to the same religion. I did not notice any difference in his observance of the religion and mine. I was always under

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the impression that my grandfather and I belonged to the same faith and the same sect. I thought that he was also a Hanafi.

(To Court : I thought that all Muslims were Hanafis.)

I did not know whether Mohideen was a Hanafi. I did not know whether there were other sects besides the Hanafi sect. I thought that all my relations belonged to the Hanafi sect.

I am a Ceylon Moor. I attended the Muslim Ladies' College. A large number of Ceylon Moor children studied there. The children all said their prayers. They prayed together. I prayed in the same way as the other children at the College. I did not leave Muslim Ladies' College. I am not now attending College. I married on 11th December, 1947. The week prior to that I did not attend College. On the 11th morning I did not go to school. I went to school on the 10th. Thereafter I did not go to school. Until then I joined in the prayers with the other children at the College. I gave up attending school on the morning of the day I married.

At the Muslim Ladies' College I did not hear anybody use the term Hanafi. All Ceylon Moor children were taught the Islamic faith.

I spoke to my husband when I was about 10 years old. Both of us then agreed to marry each other. I do not know that my husband is 20 passed 30 years of age now. I am 15 years and 6 months old now and my husband is about 30. I do not know that when I was 10 years old my husband would have been about 25. When I was about 9 or 10 years old I told my husband that I wanted to marry him. He was 25 years old at the time. I love him very much. I did not think of him as a brother. I wanted to marry him. The young man of 25 told the girl of 10 that he would marry her. This took place on the estate where we went for the raids. He was living with us. I went there with my grandmother and grandfather. Mr. Bin Hassen also came to the estate. He proposed marriage to me. I agreed. I did not tell my grandfather and 30 grandmother at that time.

(To Court : Q. At that time did you know what marriage meant?
A. I knew.)

Q. In the sense in which you know it now? A. No.)

I did not tell my grandfather or grandmother that he was a nice fellow and that I wanted to marry him. I did not think that I was doing anything wrong. We lived together on the estate until I came to Colombo some time long after the raids. I cannot remember when we returned to Colombo. After I came to Colombo, before I attained age, I spoke to him, but not after that.

40

My grandfather did not on his own tell me before I married that I should marry. Neither did my grandmother. No other marriage was proposed to me ; neither was there any talk of marriage with me by my grandfather or grandmother.

I attained age when I was 12. I married at 15. During the 3 years attaining age I did not speak to him about marriage. I told my grandfather I desired to marry. My uncle made the necessary arrangements for the wedding. I told my grandmother I desired to be married and she told my uncle. Getting the priests, inviting guests and other arrangements for the marriage were all done by my uncle.

I heard the word Bismillah which is mentioned in the prayers but I do not know its meaning. I have recited this word in my prayers both at home and at College. (Witness recites that portion of the prayer in which the word Bismillah occurs.)

(Counsel for the other respondents are not cross-examining this witness.)

REXD.

Now I am fasting. Fasting commenced 6 days ago.

Between the last date of inquiry and this day I met my father at Adv. Thiagalingam's house. My father said that if I spoke to him he will withdraw this case and now after speaking to him he has not done so.

(To Court : He said that if I will speak to him at Mr. Thiagalingam's house he will withdraw this case and I spoke to him.)

I went to Mr. Thiagalingam's accompanied by my husband. I spoke to my father alone. He asked my husband to stand outside.

(To Court : My father spoke to me and I answered him.)

I knew that there were other cases between my father and Mr. Razik about some lands. I think those matters were settled that day I went to Mr. Thiagalingam's.

My grandmother understands English ; she speaks to me at home in Tamil. I speak to my grandmother in Tamil, but to my grandfather and my husband in English.

(Shown X2, X3 and X4) : I read and understood X2 before I signed it. I signed it willingly. I read and understood X3 before I signed it. I signed it at my own wish.

I read and understood X4 before I signed it. I signed it of my own wish.

Sgd. N. SINNETAMBY,
A. D. J.

A. R. A. RAZIK affirmed.

I am the 1st respondent in this application. My wife is the 2nd respondent. Zubeida is my daughter's daughter. Petitioner is my deceased daughter's husband. I am a member of the Senate. For many years I have been a member of the State Council. My daughter was my only child. She died soon after Zubeida's birth. Petitioner left my society on the day that my daughter was buried—17-12-42—saying that

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—continued.

he will never return to me. In point of fact he never came back. Ever since feelings between us have been strained. My daughter left two children, both daughters, Fareeda and Zubeida. Fareeda is now married. Only Zubeida was with me since her mother's death. Fareeda who is married to Shafeek was taken away by the father. She now lives with her husband. Fareeda wrote to me saying that she was to be married to Shafeek and I asked her whether it was a love match as the man was a clerk. Before marriage she came home, but not after marriage. I have no objections to this girl's going to her father. My wife and I brought this girl up as my child. In fact she was the only child in the house. 10

I am a Ceylon Moor. My wife's father was an Arab, and her mother a Seyed who is a descendant of the prophet. My wife's father was a Hanafi. My wife has been a Hanafi right through. I am myself a Hanafi. I brought up Zubeida as a Hanafi for the reason that when her father left I thought there would be trouble in getting her married. As a Hanafi she could marry with any Wali. I do not know what sect her father belongs to.

(To Court: It is a simple thing to turn Shafi. When I go into a Shafi mosque and I conscientiously think I am a Shafi, I am a Shafi. The question of the father's sect did not arise when he married my daughter.) 20

Most Moors in Ceylon are Shafis. Hanafi, Shafi, Humbli and Malik are divisions of the major Sunni Sect. The distinction between Hanafi and Shafi is minute. A Hanafi when he says his prayers ties his hands and then leaves them down. The Shafi will hold his hands tied always. I do not know what Afghans are. A Shafi says his prayers loud but the Hanafi says his prayers to himself.

Zubeida said her prayers with my wife. Most Arabs are of the Hanafi sect. When Zubeida was summoned to appear in Court I did not then think of marriage for her. She knew her husband. He is my wife's elder brother's youngest son. He is also a Hanafi. His name is 30 a full Arab name Rasheed Bin Hassen meaning Rasheed the son of Hassen. He is strictly speaking an Arab. He has been in social contact with me and my wife all along.

Q. Was it from your point of view a very desirable marriage for this girl? A. As long as it was her choice I did not mind.

I saw no objection to it at all. In fact I welcomed it. I had no objection to his being the husband of my granddaughter. Accordingly she was married by the Marriage Registrar. We are all Hanafis and she married as a Hanafi. Ever since she and her husband are living in my house. 40

XXD.

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examination

I am a Hanafi for the last 10 years. Before that I was a Shafi. As I explained earlier, my daughter having died and this child being under me, my wife being a Hanafi, I had to become a Hanafi. I can change over in a minute. Conversion is absolute religious conviction.

Q. What is the religious conviction that made you change over?

A. I refuse to answer that question.

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examination
—continued.

One of the reasons was that my daughter had died and this girl was with me. Earlier I also said that I thought that there would be trouble when I wanted to give her in marriage and I brought her up as a Hanafi. I need not be a Hanafi to give my grand-daughter in marriage. Ten years ago out of religious conviction I changed from Shafi to Hanafi. It was not as a result of listening to any teaching; it was from conviction.

I belong to the Sunni Sect. My relations are all Sunnis even now. 10 I do not know whether they knew that I belonged to the Shafi school 10 years ago and that I was now a Hanafi. Most Ceylon Moors belong to Shafi Sect. Ten years ago I decided to become a Hanafi. After I decided to become a Hanafi, in the course of my dealings with people of my community, there was no reason for me to inform them of the change over. If the occasion came it was simple to change over. There was no occasion for me to tell anybody of my community that I had changed over. I see no reason for my going about beating a tom-tom that I have become a Hanafi. The question whether one is a Shafi or Hanafi, I do not think, affects inheritance. I think there is a difference 20 in the two sects in matters of inheritance. In questions of marriage there is a difference in the two sects. The Ceylon Moor community is larger than the community which belongs to the Shafi sect. There is no reason for me to ask what religion a person belongs to. A Muslim is judged by his acts. There is no reason to prevent a person changing his sect. Under the Sunni sect there are four divisions and one can go from one to another. No one actually knows to what school any member of the sect belongs. I know that my father was a Hanafi. I do not know of any other Ceylon Moor who is a Hanafi. My father is dead. Nobody knew that I was a Hanafi until I was questioned. I think it is the same with anybody 30 else. I do not know to what school any other person belongs. Nobody asks another to what school he belongs. It was only after this case came up that people knew that I was a Hanafi.

I had only one child. She was also a Hanafi, brought up by my wife as such. I do not know whether she died a Hanafi. It is one's faith. I do not know to what school petitioner belongs; I am not worried. He is a Ceylon Moor himself. My wife brought up my daughter as a Hanafi. After her marriage I do not know what happened to her.

(Shown letter dated 14/8/43 written by witness to the Public Trustee certified copy of which is marked P1). This is my letter. In this I say 40 that my daughter belonged to the Shafi sect. When she died she must have been a Shafi. That letter must correctly represent the school to which my daughter belonged. She was a Shafi after her marriage. Before marriage I knew that she was a Hanafi. I also said that I did not know to what school she belonged after marriage.

Q. Then how came you to write in P1 that she belonged to the Shafi sect? A. I belonged to the Shafi sect 10 years ago and as such I would

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—continued.

have preferred my daughter to be a Shafi. When this letter came in—evidently the Public Trustee wanted to settle some matter or other—I would have written that she belonged to the Shafi sect.

I said that my wife brought my daughter up as a Hanafi. I knew this. I did not know what she was after marriage. I cannot explain how I came to call her a Shafi. Possibly they asked me whether she was a Shafi and I said yes. May I see the letter from the Public Trustee to me.

(Shown copy of letter dated 6/8/43 from the Public Trustee to Mr. Razik, the witness, certified copy of which is marked P2). The question asked by the Public Trustee is to what sect of the Islamic faith my daughter 10 belonged. I understood the letter sufficiently well to answer that she belonged to the Shafi sect. I cannot explain how I came to send that reply but I know that there is very little difference in the two schools and I was anxious to give these children my share of the property. I cannot say that what I have stated in that letter is false. As I have written it it must be correct. I would have given the matter due thought at the time of writing the letter.

I do not refer to the Indian Muslims as Coast Moors. That is a term that I do not want the Ceylon Moors to use, but I am keen on keeping the distinction between the Ceylon Moors and the Indian Moors. Indian 20 Muslims largely belong to the Hanafi sect but they are few in comparison to the Ceylon Moors. Some of the Ceylon Moors are descended from the Arab settlers in this Island. The others may have come from South India. I can say that as far as possible marriage between Ceylon Moors and Indian Moors are avoided. Generally speaking that is so. But poor people may marry. I do not think that marriages between Ceylon Moors and Indian Moors involve a difference of status. Such marriages are generally discouraged. I do not know that Shafis avoid marriage with Hanafis. Really they are one sect and they do not avoid. I cannot give an instance of a Shafi Ceylon Moor marrying a Hanafi Moor. As 30 far as sect is concerned a Sunni does not marry a Malik.

I was on the committee that considered the new Muslim Divorce Ordinance. We had to go through it. That Ordinance is not in force yet. I am aware as a Senator and as a member of the State Council that there is in Ceylon a Muslim Marriage and Divorce Ordinance. A committee was appointed to correct it because of a number of errors. Under that Ordinance if the father refuses to give his consent to a marriage you can ask the Kathi for his consent.

Q. When that was the position what was the necessity for you to bring up your daughter as a Hanafi? A. Where this Ordinance is 40 concerned I personally thought that there was no need to go into it at all where my religion was concerned. If she was a Hanafi there would be no trouble in getting her married without going to a Kathi or the father as the father had refused to come to my house. I thought that as a Hanafi it would be easy for her to marry the man of her choice.

Q. Did anybody else besides you and your wife know that this child was being brought up as a Hanafi? A. I do not know whether anybody knew it. There was no necessity for me to tell it.

The others in my house are the servants and they are Tamils and Sinhalese. Mr. Mohideen is a visitor once a month from the father. I do not know whether anybody else in the house knew that the child was being brought up as a Hanafi as they are non-Muslims. To my knowledge nobody at the Muslim Ladies' College knew that this girl was a Hanafi. I did not and there was no necessity for me to tell the College authorities that this girl was a Hanafi.

I was listening to the child's evidence about prayers. She got mixed up. There are prayers which are said five times a day and the reading of the Quaran.

Q. At the Muslim Ladies' College the children there pray? A. Which prayers do you mean, the repeating of the Quaran or the five times a day prayer. She comes home. She only takes part in the reading of the Quaran.

The children of the College take part in the five times a day prayer called Thaluhai. I understand that they take part in this prayer.

20 Q. Are you in a position to say whether this child took part in Thaluhai or not? A. I am in a position to say that she did not take part. It did not arise for me to write to the College saying that the girl will not take part in these prayers. When she comes home she says her prayers and goes back.

The times of the prayer varies. The times of the five prayers varies from 4-30 to 4-50 according to sunrise. During school hours there is only the Luhar prayer. This she says at home as she comes for lunch. That is between 12-30 and 12-40 according to sunrise. Subehir is in the morning about 4-30 or 5, Luhar from 12-30 to 12-45 and Asset from 3-30 to 3-50. As a Hanafi she can say both prayers together. Magrib is at about 6-25 and Eshar at 7-45. These times vary with the sunrise and sunset.

(Adjourned for lunch.)

Sgd. N. SINNETAMBY,
A. D. J.

(After lunch.)

A. R. A. RAZIK affirmed, XXN.—*Contd.*

I belong to the Maradana Mosque, but I go anywhere to the Dehiwala Mosque or the Wellawatte Mosque, etc. I generally go to the Wellawatte Mosque. That is a Shafi Mosque. After Ramazan I have not been to any mosque for Friday prayers, with regard to our other prayers we usually do that at home. I have been to the Wellawatte Mosque and the Maradana Mosque. They are also Shafi mosques. I have been to the Bankshall Street Mosque and the New Moor Street Mosque and even to the Slave Island Java Lane Mosque. When I say I have been going to

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these mosques I mean for Friday prayers. I am a member of the congregation of the Maradana Mosque which is a Shafi mosque. I have never participated in the meetings of the congregation of the Maradana Mosque. I am not entitled to participate in the meetings of the congregation of that mosque because I have not been registered as a member. I made my application to be enrolled a member but they had not the courtesy to even send me a reply. I made the application about six months ago for registration as a member. I have not applied to any Hanafi mosque for registration as a member. There is only one Hanafi mosque and that is in 2nd Cross Street. Even Ceylon Moors go to that Hanafi mosque—¹⁰ most of the business men in the Pettah go on Fridays to that mosque for prayers, but most of the Indian Muslims go for worship to that mosque. The Indian Muslims who do business in the Fort and the Pettah go to that mosque and the Indian Muslims living outside those areas go to the Shafi Mosque. The only mosque in respect of which I applied for membership was a Shafi mosque. The Friday prayers take place with the congregation with a priest. I do not know whether only Shafis are entitled to be registered as members of the congregation at the Maradana Mosque. Perhaps that is the reason why I got no reply to my application to them. I did not mention in my application for membership that I was a Hanafi.²⁰ Nor did I mention that I was a Shafi. I did not do so because that question did not arise.

I came to know that my grand-daughter was interested in Bin Hassen about two or three years ago. It was after she attained puberty. I came to know about it because my wife told me about it. When we went to the estate at Makola during the raid we were there for about an year and Bin Hassen also stayed with us there and Zubaida was a little girl at the time about 10 or 11 years of age and then we noticed she was attached to the young man. She did not show any attachment in our presence. As Ceylon Moors we do not encourage that sort of thing of a young girl³⁰ forming an attachment for a man like that, if the girl is grown up.

I was in Court listening to the evidence of Zubaida only for about half an hour. I knew that Zubaida was summoned to appear in Court in connection with the Curatorship proceedings in December. She had to appear in Court on the 5th December. She and I appeared in Court on the 4th I believe. I am open to correction as to the date but I believe it was on the 4th. She and I came to Court before her marriage. On that occasion I had raised objections to her coming to Court and I suggested to my Proctor that if this matter could be taken up in Chambers it would be more decent being my grand-daughter I did not like that she⁴⁰ should appear openly in Court being a young lady. She did not raise any objection to coming to Court. She was very annoyed but she could not do anything as the lawyers said she had to come.

The question of the marriage was first broached in December I believe, on the 6th December. Zubaida herself told my wife that she did not like to go to Court as on the day before when she went to Court and she came

back after she had been cross-examined—she was waiting in the sun for a long time on the 4th. She had not been cross-examined, I made a mistake when I said so. She said she had been waiting in the car the whole time and if she is asked to come to Court she will feel unhappy and she suggested that she should be married. So that she could come to Court as a married lady and set an example to the community that young girls should not attend Court. That is what I thought that she should set an example to others in the community and that young girls should not come to Court.

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—continued.

10 Did you take the necessary steps to see that her marriage was solemnized? When she told my wife I think on the 6th or the 7th Zahir Mohideen came there and then my wife mentioned to him what my granddaughter had said that she was in love with Bin Hassen and wants to marry him.

(Question repeated): Yes, on the 11th.

Until the 11th did you do anything to bring about the solemnization of the marriage? Yes.

Then why did you say just now on the 11th? On the 10th and 11th I should say.

20 On the 9th? Yes, from the 9th.

The 9th, 10th and 11th? Yes.

Did you yourself discuss this question of marriage with anybody else? Yes, with my wife.

Anybody else? Mr. Zahir Mohideen.

Anybody else? Mr. Hashim too who signed the affidavit.

Before the affidavit was signed and after your daughter expressed her wish did you discuss this question of the marriage with anybody else? I cannot remember. After she expressed her desire to marry and Zahir Mohideen came and my wife told him that the girl was in love with the boy and we should help her to marry then I phoned up Mr. Hashim and
30 got him to the house. After that I asked some relations to come home.

When the girl said she was in love with the young man I did not contact Bin Hassen and ask him what he had to say about it. I did not contact him and ask him about it. I think my wife did that. I cannot remember meeting him and speaking to him about it. I did not see my wife question him. I took no steps to contact Bin Hassen to find out if he was willing. Neither did I instruct anybody else to contact him. I knew he was willing to marry the girl. These two had been together as children and from what my wife told me I knew that the boy was willing
40 to get married. He did not express that to me but he expressed it to somebody else who conveyed it to me. That was very much earlier. That was about 1945. In December, 1947, the girl said that she wanted to marry the young man, and then I knew that he was certain to marry the girl. I say so because he had very good proposals which he refused to marry this girl.

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examination
—continued.

Even as a matter of courtesy did you not call him and tell him your grand-daughter wants to marry you are you willing? No. I did not because I knew he was anxious to marry her.

Did you not think that at least one should give a little notice to this man? My wife did. I did not speak to him. I did not ask anybody to speak to him. I know that my wife had. I personally know that because my wife told me. She told me that she had spoken to the boy also. I cannot remember on what date that was, it was between the 7th and 11th. My wife telephoned Bin Hassen's mother.

But he came to your house between the 6th and the 11th? Yes, 10 he did, but I am not sure of the date. My wife phoned up Bin Hassen's mother and said that the girl wants to get married and whether she has any objection. The mother said no and then my wife asked her to ask her son if he had any objection and from there it started.

On the telephone, without any visit by you or your wife to the bridegroom's house, on the telephone the whole matter was adjusted? Not adjusted, when the boy came home she must have spoken to him.

The first communication to the mother of Bin Hassen was on the telephone. That is not unusual among relations. It is an unusual method of proposing marriages among Ceylon Moors? I do not know 20 that. When a boy is waiting for a girl that is not unusual. I had not earlier told Bin Hassen's mother that her son was waiting for this girl, for the reason that his mother does not come in front of me. Between the 6th and the 11th Bin Hassen came to my house.

You took no part in negotiating this marriage? I certainly took part. I was the grandfather and I took part.

Did you take part in negotiating this marriage? No.

Either before 6th December or after that? I did not. I had nothing to do about it in December in negotiating it. Before the 6th December I did not take any part in negotiating this matter, and after 30 that also I did nothing. When a girl and boy is in love I do not think there would be any question of a dowry. If they thought of a dowry a boy in the position of Bin Hassen who is a member of the Municipal Council could have married a girl with a very good dowry. Bin Hassen's mother is in purdah and she would not come before me and therefore she did not discuss anything about a dowry.

I have seen X3, X3, X4. (Shown X4). I saw this for the first time on the 9th morning, that is the day that Mr. Hashim came to attest the signature. Mr. Hashim came in the evening and I saw this document in the morning. I got this done through my lawyer, Mr. Mahroof. I 40 consulted my lawyers. I told my lawyers that Zubaida wants to marry this boy, what are the things that have to be done, will you please get those papers ready—that is all I told my lawyer.

To enable her to get married without the consent of her father you had brought her up as a Hanafi? Yes.

From so long ago as 10 years ago? Yes.

Because you knew what the Hanafi law on the subject was? Yes. I went to my lawyer and gave him certain facts and I consulted him.

What were the facts you gave him? That Zubaida wanted to marry Bin Hassen and she is a Hanafi, please get all the relevant papers ready and I told him that Mr. Mohideen will come and take the papers, but unfortunately Mohideen could not go.

There is registration at the solemnization of a Muslim marriage. If a Hanafi girl wants to get married we do not inform the Registrar the marriage is celebrated and it is done on the day of the marriage.

What is it on which you wanted a lawyer to draft papers? An affidavit had to be sworn.

Did you know that? When I consulted the lawyer he said an affidavit was necessary and another paper too.

And did you give him the necessary instructions to draft it? He would know that better than I.

Did you give him the necessary facts to draft it? No. I told him the girl wanted to marry, that is all and I said get up the relevant papers. This is what I said, this girl wants to marry this young man get up the relevant papers.

Did you give him the facts? What facts are you referring to. I told him my grand-daughter was going to marry Bin Hassen and she is a Hanafi and as she is a Hanafi will you please get ready any relevant papers. I did not say anything else. Before he drafted the papers whether the lawyer spoke to anybody else I cannot say. I cannot remember whether he came to my house before he drafted them. He brought the papers to my house. I am sorry, I went for the papers on the next day. He had been to my house before that. I did not give him any other facts.

(Counsel reads affidavit). I would have mentioned the date of birth 12-10-32. I would have said that she has attained age and is now 15 years and 2 months. All that is in the affidavit was well known to the lawyer and I also must have told him. I would accept the position that I gave him all that information.

Besides X4 he drafted another paper (shown X2) this is that paper. There was another paper (Shown X3) this is that. X2, X3, X4 were drafted by my lawyer. He had them typed when I went there. He gave them to me when I went there.

Before you did this had you any discussion with your grand-daughter? No, I did not, it is not customary, not even a father should do that. Usually the grandmother does that. I did not want a wali. My lawyer said we should have a wali. Sahid Mohideen had come to the house and he himself was going to be the wali. I did not suggest the name of the wali to the Proctor.

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—continued.

Who suggested that Sahid Mohideen should be the wali? May have been my grand-daughter. I do not know how he came to be the wali. At that time I did not know, now I know. I first came to know on the 7th December. Because on the 7th he had been to the house and had talked to Zubaida and she had said, you must be my wali.

Are you sure of that? Yes.

She may not have used the word wali, she said you could give me away.

X2 typed on the top "11th Dec., 1947". X3 and X4 are dated 9-12-47. These three documents did not come into existence at the same time. The two dated 9th is in handwriting were given together, the other dated 11th came on the 11th that is X2. I now remember this document X2 had to be typed very quickly. When the Katib came he said he must have authority from the young lady and this was typed then and there, and it was done on the 11th night and I believe it was typed on my typewriter. I got it typed. That was about an hour before the solemnization of the marriage. At that time I had decided upon who the wali was going to be.

Why was the name of the wali then left blank? Evidently because we wanted her to answer the name of the wali as she liked, we did not want to force anything on her.

Did she not mention the name of the wali earlier? Why in that paper X3. On the 9th she had written X3. This is her own writing.

In spite of that you did not want to type it? Yes.

Did you fear there would be trouble? No.

Were you present when she signed X4? I was there. After I got the affidavit from the Proctor and before it was signed I had the document with me. Only at the time of signing I took it out.

Similarly with regard to X2? Yes, but my wife may have had it. These papers were left with my wife after my lawyer gave them to me. I said these are the papers that must be signed and gave them to my wife. I did not ask her to get Zubaida's signature to them.

Why did you leave them with your wife instead of keeping them? As a matter of fact there are a number of papers in my office which deal with other people and I handed these to my wife and told her when Hashim comes get her signature.

I am a Ceylon Moor. My child is a Ceylon Moor and my grandchildren are Ceylon Moors.

On the 5th December, 1947, I came to a settlement in Court by which I undertook to send the daughter to see the father and I carried that out to the letter. I asked my grand-daughter to go after that settlement but she refused to go. On the 5th she thought of marrying. The marriage took place on the 11th and thereafter I had no control.

REXD. A Hanafi would always attend a Hanafi mosque but you can attend any mosque—that is the mistake they are making. A Shafi can attend any mosque. There is nothing to prevent it. All our mosques are dedicated to Allah. I know Dr. Imam. He is a Hanafi. He married a Miss Marikar a Ceylon Moor girl. She must be a Shafi—she is a Shafi. I married a Hanafi and I was a Shafi then.

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Sgd. N. SINNETAMBY,
D. J.

Mr. Chelvanayagam closes his case reading X1 to X4.

10 Mr. Nadesan marks certified copy of Certificate of Birth of the minor Hamida P3 and P2 letter from Public Trustee.

He closes his case reading P1 to P3.

Further hearing tomorrow.

Sgd. N. SINNETAMBY,
D. J.

No. 5

Addresses of Counsel

4618/G.

No. 5
15-7-48
Addresses of
Counsel

Appearance as before.

20 MR. NADESAN addresses Court on the law. He says admittedly this lady is a Ceylon Moor and belongs to the Mohammedan Faith, and Mr. Razik says he is a Moor. In respect of persons of the Moorish community in this Island it is necessary to ascertain what the law is that is applicable to them, and he submits that the law is that which by usage and custom prevails among the Moorish or Mohammedan community in Ceylon. In other words it is futile to attempt to show what is the law applicable by reference to treatises or books in respect of the vast range of subjects covered by what is known as Mohammedan Law and commentaries on them in various countries.

30 The Muslim Code of 1806 in Vol. 1 of the old Legislative Enactments, page 34, sec. 64 onwards, deals with the customs of Muslims in matrimonial matters. Mr. Nadesan emphasizes that this sets out the custom and usage which was in existence, by which persons who belonged to the Moorish or Mohammedan community were governed; in 1852 this was extended to the whole Island by Ordinance 5 of 1852, section 10. The Code of 1806 codified the existing customs and usages. So far as the Mohammedans of this country are concerned, they must, in respect of marriage, be governed by those customs and usages and nothing else. It is not open to them to say, in India this is what has happened, or that the High Court in India
40 or the Privy Council in an Indian case took such a view. What is applicable to the Moors or Mohammedans in Ceylon is only that part of the

No. 5
Addresses of
Counsel
—continued.

Muslim Law which by custom and usage is applicable to them. No amount of reference to any decision will be of any avail in Ceylon unless it is established that that is part of the usage of this country. There is no evidence that what is claimed by the respondents is part of the usage of this community in Ceylon ; all the indications are definitely to the contrary.

Mr. Nadesan refers to the Code of 1806, section 64, which sets out the usage. So that one may know precisely the view our Courts have taken in regard to the Muslim Law, he refers to a case reported in 19 N. L. R. at 175, 178 (Ennis, J.); p. 183 (Schneider, J.). He refers also to 35 N. L. R. 67 (Macdonell, C.J.) and at p. 81 (Garvin, S.P.J.). 10

People coming from other countries settling down here and marrying here are also governed by the same local usages and customs—see N. L. R. 425 ; also 16 N. L. R. 235.

Mr. Nadesan invites attention to the Muslim Marriage Ordinance, Vol. III, Chapter 99, which became law on 1st January, 1937. Anterior to that date the customs and usages were incorporated in the enactment itself. If this marriage took place before the 1st January, 1937, there cannot be the slightest doubt that under the Ceylon law it would be an invalid marriage. One of the questions that has to be decided is whether by this Muslim Marriage Ordinance those previous usages and customs²⁰ which were in existence at that date have been abrogated, and a new liberty has been given to these Muslim girls. Mr. Nadesan submits that the new Ordinance did not, in any event, take away the effect of the previous customs and usages that were in existence, though it abrogated the Code. Here there is a consolidation of the previous law. He refers to Sections 6 (1) and 6 (2), the exception, Section 21 (2). Does this Ordinance contemplate a Wali appointed by the bride or a Wali in law. According to Hanafi law a girl who has attained the years of discretion can just get married ; there is no Wali in the case of marriages of adult Hanafis. This refers to a person who can lawfully be the Wali and³⁰ applies to all Mohammedans, and goes on the basis of certain customs. This contemplates the existence of a Wali ; it does not contemplate that any marriage can take place without a Wali. Mr. Nadesan refers to Section 50 of the Marriage and Divorce Ordinance which says “..... shall not affect the Muslim Law of Marriage and Divorce.....”...There is no express repeal. Why should there be any reference to the affecting of the Muslim Law of Marriage and Divorce unless it be that the customs and usage in Muslim marriage are incorporated in a Code ?

Section 50 has been considered in 35 C. L. W., p. 62. So far as the common law is concerned, those were based on the Shafi school of law.⁴⁰ He refers to 17 N. L. R. 338, 10 N. L. R., p. 3. The law, so far as the Ordinance is concerned, is applicable to all who profess the Muslim Faith. It might be that a particular Muslim or Mohammedan is of a different sect altogether, but when one is concerned with finding out what the law applicable to the Mohammedan concerned is, no individual can say I am governed by some other law of some other country. The sanction behind

the law is the custom and usage of this country, and something cannot be a custom which is an exception to the community, and it cannot be recognised by the law.

Mr. Nadesan refers to an article written by Mr. Adv. Haniffa in the Ceylon Law Journal, Vol. I., pages 13, 14, 19, 32, 33, 46 and 47, headed "Marriage under Muslim Law", which shows the concept of the law applicable in these matters, which Mr. Nadesan says he adopts. He also refers to Vol. II., pp. 8, 23 and 31.

Further hearing tomorrow.

10

Sgd. N. SINNETAMBY,
A. D. J.

After lunch.

MR. NADESAN continues his address :

Cites Vol. I, C. L. J. 13. Essentials of marriage are given. "Female must be given in marriage by an elder Wali or Guardian". Submits Hanifa gives here prevailing law in Ceylon and he makes no exceptions. Reads section 2 *re* Wali. Reads how Guardianship in for marriage arises. Wali should be in order of priority. If the chief man is absent the next person in priority becomes the Wali and no one else. If there are persons of the same degree who want to act as Wali the girl can elect. Page 19 deals with ownership and emancipation. This shows the usage and how people have understood the law. Reads page 32. Where the father abuses his authority the Kathib is authorised to interfere. In the case where the woman is a widow her consent must be obtained even though the Wali is her father. Page 33 gives the marriage ceremony. It does not state that a Hanafi can marry of her own accord without a Wali. It is absurd for the girl to say she does not want a Wali.

Cites Vol. II, C. L. J. 23. Valid and invalid marriages. According to the Shafis a marriage is either valid or invalid. Absence of witnesses, absence of Wali makes a marriage invalid. Muslim law in Ceylon is not Shafi law, it is a development of its customs and usages. One will have to go to text books for elucidation as to what is the law in the absence of usage as is shown in 16 N. L. R. 71. This has been commented on in another case, it does not mean that the questions of customs and usage can be established by reference to text books. On this part of the case counsel submits the validity of the marriage has to be ascertained by reference to custom and usages applicable to the Moors which were in force and which also had been put in the form of a Code. It is irrelevant to consider the law with regard to the various sects unless there is definite evidence to establish that any of those customs or usages has become part of the law. Cites 16 N. L. R. 235. There is conflict between the Shafi law and the customs and usages. One is therefore concerned with the customs and usages. In the Marriages and Divorces Ordinance full effect

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Addresses of
Counsel
— continued.

is given to the law which existed earlier. There is no distinction made between different classes. Copy of the registration has been produced and this proves that a valid ceremony has taken place. Refers to section 29 of the Marriage and Divorce Ordinance 29 (2). Not according to the Muslim law but according to the Muslim law in force in Ceylon. That law is found in the Code of 1806 which incorporates the usages and customs.

The few provisions of the Indian Law on the subject is not applicable. Apart from certain parts of the Shafi law which by custom and usage has become part of the law of the Muslims of Ceylon there is nothing to indicate in the reports or anywhere that any other section of the Muslim law prevailing in India has become part of the law of Ceylon. In that connection refers to position with regard to Shafi law in Ceylon. Cites Tyabji, 1913 Ed. Reads Art. 20. This deals with people who have reached the age of puberty and discretion. Consent must be given by themselves or their agents or proxies. In the Shafi law it says that a Wali is necessary to give a woman in marriage. She can never contract herself in marriage otherwise. Nothing in the Code of 1906 to indicate that the common law which it embodies was in any way abrogated and the very terms of it show that they never had in contemplation a case of a person entering into contract by herself. Counsel refers to the way in which Tyabji deals with the questions of Wali, page 87. He deals with one class agents or proxies of marriage—Art. 54. Sections 54 to 58 deal with agents and proxies of marriage. Then he deals with Guardians for marriage. That is in sections 59, 60. Guardian for marriage is a person who is authorised by law to make a valid contract of marriage on behalf of a minor or a person of unsound mind. Then he goes on to deal with persons entitled to be Guardians for marriage, page 91, Art. 61. Under the Hanafi law there is no question of guardian for marriage arising in respect of a person who is a major and reached the age of discretion. It is a contradiction in terms to speak of a person having emancipated herself from guardianship and there and thereafter to speak of a guardianship for marriage. Under the Hanafi law a person who has reached the age of discretion emancipates herself from guardianship and she can enter into a contract of marriage herself and appoint agents or a proxy a Wali under the common law connotes a Guardian for marriage and the consent of the Guardian is necessary. Section 61 gives the persons who are entitled to be guardians for marriage in respect of minors. Under the Hanafi law it is a misnomer to speak of Guardian or Wali when the girl has attained the age of discretion. Cites Amir Ali, Vol. 2, page 295. Under the Hanafi law it gives the persons entitled to be guardians of marriage of minors or persons of unsound mind only. Persons entitled to be guardians of marriage in the case of a minor is given in Art. 64. Counsel submits the Hanafi system has not been recognised as the common law of Ceylon at any time among the Muslims.

Court wishes to know whether any one can establish he is subject to the Hanafi law and not to the Shafi law? Counsel says it depends on the meaning that is to be given to the word Sect. The word sect is not

defined. Text books refer to the Sunni Sect and Siya Sect and the other sects as the four stools. Refers to Muslim Intestate Successors Ordinance, Chap. 50, Vol. 2, Legislative Enactments. Submits the Code of 1806 set out the customs and usages in respect of Muslims so far as inheritance is concerned. The law with regard to intestate succession anterior to 1917 in respect of all Muslims to which ever sect they belong was the same.

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Counsel
---continued.

Court wants to know whether where the Code is silent you fall back on the Shafi law. Counsel submits before 1931 in respect of matters governed by the Code it made no difference whether he was a Shafi or
10 Hanafi. Submits nowhere is it said in the Marriages and Divorce Ordinance that in respect of a sect a Wali is unnecessary. Submits one is concerned to ascertain what is the sanction behind certain law and if it is custom and usage that would be the only law. Submits it is established what the custom and usage is prior to 1-1-37, submits he has established it by showing that the Code of 1806 is applicable. There is nothing in the Marriage and Divorce Muslim Ordinance which is in conflict with the Code of 1806. In respect of marriage if the Muslims are governed by the law of each sect it means the customs and usages of the people of that
20 community. It did not vary from sect to sect, it was the customs of the Moors or Mohammedans. There is nothing to show there was any other custom or usages. The Ordinance is also framed on the basis that that was the custom and usage.

Cites 35 N. L. R. 68 in which are cited 19 N. L. R. 248 and 14 N. L. R. 300. Counsel submits Chap. 50 seems to recognise the existence of sects. Then the marriage laws should vary according to the customs and usages of the different sects if their customs are different. The Code does not recognise sects because the customs and usages in respect of marriage are the same. Nowhere is it said that the different sects have different customs and usages in Ceylon. According to the Code the laws of inheritance is the same then the law of intestate succession would be the same.
30 Submits there is another argument though they make a distinction in regard to intestate succession in respect of the sects so far as the Marriage Ordinance is concerned they have made no such distinction. It may be for the reason that so far as Muslim law of inheritance applicable to various sects is concerned they might have wanted to catch up even other Muslim people who are not domiciled here. The validity in respect of the common law applicable to Muslims in Ceylon is based on custom and usage and that custom and usage is found in the Code of 1806. In 1921 when enactment was passed and made reference to sects a difficulty arose. But
40 that again is a matter which has got to be established with regard to the law applicable to them on the customs and usages of the sects. Submits if it is conceded that there are different sects that does not mean that Counsel should go further and concede that the laws in respect of intestate succession between these different sects is not different among themselves,

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Counsel
—continued.

it may be the same or it may be there are modifications. So far as inheritance is concerned there is no difference between the Hanafi and the Shafi Sects.

Further hearing tomorrow.

Sgd. N. SINNETAMBY,
D. J.

4518/G.

16th July, 1948.

Appearance as before.

MR. NADESAN continues his address :

He refers to the Gazette of the 1st March, 1929, Part II, page 178, 10 and draws attention to the words "The Muslim law of intestacy as is now in force in the Island has been preserved". These objects and reasons are in relation to the Intestate Succession Ordinance.

He refers to section 5 of Ordinance No. 10 of 1931. In the present Ordinance (Cap. 50) this section 5 is omitted. So far as intestate succession in Ceylon is concerned we are governed by the Code of 1806 which gives the custom and usage. With regard to sect, one has to look up the principles; there are certain principles which have been adopted by Muslims in this country and as a result of those principles being adopted certain instances arise. The Code modified those instances. When one 20 looks at those principles where Sect law appears one has to look at other authorities so far as Ceylon is concerned. Today, under the law, the Code of 1806 is still in existence so far as inheritance and intestate succession is concerned, and it has not been intended to change the law of intestacy in that view of the matter.

Supposing the law of inheritance of the Shia Sect is diametrically opposite to the provisions of the Code of 1806, then is it open for one to say that the law applicable is not the Code of 1806, which is still there, which is applicable to Moors or Mohammedan inhabitants of Ceylon; or is one to apply the Shia law of inheritance. 30

Would not Cap. 50 amount to an amendment of the Code of 1806? That is the question the Court has to determine. So far as the Muslims in Ceylon are concerned the law has to be based on their customs and usages and nothing else. In the case of Shias in this country what one has to consider is the custom and usage applicable on them and the custom and usage applicable are set out in the Code of 1806. If that is accepted, no question of a different sect will apply. In the case of those matters where no provision is made by the Code of 1806 then the Court will look to the law of these various sects—what are the principles—the Court will apply the principles of the sect to which the party belongs. 40

A further view is, Muslim law has been considered as a sort of personal law. In section 2 provision is made not only for the Moors or the Mohammedan inhabitants of Ceylon but also for the Muslims who may belong to

different sects who may come from other parts and purchase property here. So far as Ceylon Muslims are concerned whatever their sect may be they are held to have adopted these laws as stated in the Code of 1806. In respect of those persons who come to Ceylon, the law applicable to them on intestacy shall be the law of their sect, but it is curious that the Attorney-General should say in this statement that "the Muslim law of intestacy which is now in force in the Island has been preserved".

What is the interpretation of section 2? Any sect that comes before the Court will have to establish the customs and usages that prevail among that sect in this country. If one looks at it in that way, so far as the Sunni sect is concerned, despite their sub-divisions their customs and usages are the same. When one looks back to the law of this country, when one refers to Muslim law here it is the Muslim law as established in Ceylon. There is no reason to think that when reference is made to Muslim law in Ceylon that reference is made to Muslim law as prevailing in any other country. The Muslim law as adopted and followed here has become part and parcel of the law of Ceylon; it cannot become part and parcel of the law of Ceylon unless it has been adopted by custom and usage, because there is no other sanction behind the law except that.

If it be that among Muslims the law-giver is the Prophet and that the law is the same for all Muslims wherever they may be, then the law is the Shafi law as given in the Quran. The law as interpreted by different exponents in different countries has nothing to do with Ceylon.

The law of inheritance applicable to the Khoja Muslims of Bombay is the Hindu law because that was the custom which they followed at a particular time.

He cites Tyabji's Principles of Mohammedan Law, Article 10.

It has been held in a number of cases that Ceylon Moors belong to the Shafi sect. If a Hindu can be subject to Muslim law or if a Muslim can be subject to Hindu law, what is there strange in suggesting, whether a person is a Shafi or Hanafi, that in so far as customs and usages are concerned he is governed by the Code of 1806.

The Supreme Court decisions have laid emphasis over and over again to the fact that the Muslim law in Ceylon is what has been adopted by custom and usage as the law. But in respect of matters where there is a cast or a sect regard must be had of the general principles of Muslim law that have been followed in the country.

Refers to the case reported in 35 N. L. R. 57 at 81. He says he does not for a moment concede that it was ever intended, subsequent to 1931, that the law of intestate succession affecting the Muslims living in this country should be different from what the law is. If that is intended it is necessary by legislation to set out the law of inheritance applicable to the different sects. Or for every sect to come to Court and say what the law is that is applicable to them, and if the Court finds that that has been the custom and usage then the Court is entitled to take that into consideration and look for elucidation.

If a person who is not domicile in Ceylon leaves certain immovable property the question may arise as to whether he is a Mohammedan inhabitant of Ceylon. If he is not domicile in Ceylon then it may be that the Code of 1806 would not apply to such a Muslim. In that state of affairs the question would arise as to what the law is that is to be applied in a case of devolution of immovable property. One can argue that the law should be the Roman Dutch Law. It may be with a view of obviating that difficulty that this provision in section 2 was brought in.

Supposing an Indian Muslim who owns immovable property in Ceylon wishes to make a deed of donation here, the law applicable to that donation shall be the Muslim law applicable to the sect to which he belongs. If he does not own immovable property? One does not know what the position of movable property here is with regard to donation.

He refers to 1 Ceylon Law Recorder, p. 4 (Mr. Justice Akbar's articles).

He refers to sections 7 and 8 of the Marriage and Divorce (Muslim) Ordinance, Cap. 99.

The decision of the Bombay High Court does not make law so far as Ceylon is concerned. No evidence has been led that that law or that custom or that usage has ever been adopted in Ceylon. It is fundamental that there should be evidence that such a thing can be done in Ceylon. On the other hand all the indications are that if a girl cannot get the consent of her father or the Wali then she can go to the Kathi and ask for his consent. The device of man saying he is a Hanafi and praying in a certain way is not custom and usage. It may be a matter of conviction with regard to prayer, but with regard to the law can it be contemplated for one moment that by this device one can shape up the very inheritance of the law one is subject to unless there is a custom established in this country which would permit a person using it.

He refers to section 50 of the Marriage and Divorce (Muslim) Ordinance. Does it refer to the Muslim Law of marriage at the time it was published? If so, what was it? It is to that law effect is given by this very Marriage and Divorce (Muslim) Ordinance. This was not meant to alter that law, it was not meant to introduce into this country the whole body of Indian law and Indian decisions. It is idle to suggest that merely because a Shafi girl in India of 18 became a Hanafi and therefore she was held to be entitled to get married and therefore that that law should apply to Ceylon. If that is conceded it also can apply in respect of very many other things, in respect of inheritance, even donations.

The Muslim community in Ceylon is a well defined community. They had their own laws and customs and usages even as early as the Dutch times. The Dutch codified and followed them; thereafter the British followed the same and those customs and usages were embodied in the Code of 1806. A Ceylon Moor or Muslim cannot say today, for the purpose of avoiding the salutary provisions of the law that he became a

Hanafi by doing certain things unless of course definite proof is established that there was such a custom and usage in this country among the Muslim community which had the force of law.

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Counsel
—continued.

On the facts no evidence of any kind has been led with regard to any custom or usage among any other sect, which is contrary to the customs and usages laid down in the Code of 1806 or in subsequent legislation.

So far as Mr. Razik was concerned he was a Shafi (P2). In Ceylon, so far as Ceylon Moors are concerned the presumption is that they are all Shafis. It has to be established by affirmative testimony that the girl
10 was a Hanafi, by testimony from which an inference can be drawn that she was a Hanafi. Apart from everything else there is no legal proof from which the Court can conclude that she is a Hanafi. The law that is applicable to a Moor man in Ceylon is the Shafi law.

He cites 17 N. L. R. 338 ; 10 N. L. R. 3 ; 1 Balasingham's Laws of Ceylon 112, Cap. 10, section 183 and subsequent sections.

On the question of usage Mr. Nadesan refers to 19 N. L. R., p. 178 at 185.

MR. CHELVANAYAGAM addresses Court :

He submits—

20 The question is whether these two people were married. What is the conception of marriage to the law generally? And in Muslim law does that same conception apply or does a different conception apply. Supposing the two of them are not registered under the Registration Ordinance, are they not married?

The nearest minimum of ceremonies indicative of a desire for a permanent union between a man and a woman, with intention of marriage, is a valid marriage. The Registration Ordinance is only a matter of proof. Supposing this Registration Ordinance was not passed how were people to get married?

30 On the nature of marriage in Mohammedan law Mr. Chelvanayagam cites Tyabji (3rd Edn. 1940), page 100.

Fitzgerald on Mohammedan Law, p. 37, section 3.

The Amending and Consolidating Ordinance was something which was unauthorised. He cites 48 N. L. R., p. 529 at 540.

" A faulty registration cannot make a marriage irregular which is otherwise regular.

In the revision effected the Enactment has left out the Code of 1806. What is the Muslim law of marriage and divorce at the time this Ordinance was framed? Some customs and habits and rules and regulations of a
40 people in 1806 of which nobody can have trace, of which only expert evidence is available today.

It is not necessary to seek an interpretation of the section when the section is very clear. When those portions of the Mohammedan Code are

repealed it does not mean that the Muslim law shall not apply to the Muslims but the general law shall apply. But for the proviso the Roman Dutch Law applies. Before that Code and after that Code, to the Muslims the Muslim law applies. What is that law? That is the Muslim Law for the time being. The Muslim law that will apply today is the law of the country of today. How are you going to get the Muslim law? By the manner in which the Court will get at it, namely, judgment, text book writers, Codes, Authorities on the subject, etc. Could a distinction be drawn between the Muslim law as such and the Muslim Law as introduced into Ceylon? Such a distinction does not exist. 10

The trend of the decisions of the Supreme Court is not that the Muslim law in Ceylon is only so much of it as has been adopted and practised by the Muslims in Ceylon. The principle applied to that matter is that the Muslim law in Ceylon is the general Muslim law with no territorial distinctions. There will only be distinctions between sect and sect, but the Muslim law anywhere does not draw any distinction as for a particular sect. This particular section in the Ordinance was intended to make applicable to Ceylon Muslims the Muslim law to which that sect or people of that school would be attached. This is irrespective of whether it was in force in Ceylon before or after, but that question does not arise 20 because the country recognises today that the Muslim law applicable to the Muslims in Ceylon at all times and introduced into Ceylon is the Muslim law without any variation.

The judgment of the Supreme Court in 35 N. L. R. 57 is no longer law. It has been over-ruled in 43 N. L. R. p. 193. As to what the Muslim law is Mr. Chelvanayagam cites—Tyabji (3rd Edn.), pp. 9, 13, 54. The tenets, ways and customs are applicable, will be applied according to the school to which a person belongs. That is the general principle of the Muslim law. Does the statute apply the Muslim law that way or does it, through the Courts, adopt any other law. 30

One must look at the intentions of the legislature to get a guidance as to what is meant by Muslim law when the legislature was dealing with that matter at about that time. He refers to the Muslim Wakfs Ordinance of 1939, Cap. 50. The Muslim law is used in this enactment. Another enactment which transpired at about the same time is the Ordinance of 1929. They say not the Muslim law as introduced into Ceylon, not the Muslim law embodying the customs and manners which had been applied and practised in Ceylon, but the Muslim law. Supposing it is known what the Muslim law is as applied to any particular sect to which a person belongs irrespective of territories, what is the dictionary meaning 40 as used in this Ordinance of 1929? It is the Muslim law as applied to Muslims all over the world who profess a certain sect. What has the Supreme Court done? It has gone to India to find from text book writers what the law is.

Cites 2 Balasingham's Reports, page 188. 16 N. L. R. p. 71. The legislature did not say expressly that in all matters it is the Muslim law that shall govern Muslims in Ceylon. Supposing the legislature has not

said so specifically in regard to marriage but the legislature has said that the personal law will apply, in this particular case the Court will find the personal law in the authorities and text books. That is the source of Muslim law. This country by statute adopts that. Here is a particular case where the Supreme Court has adopted it. If somebody says there is a particular custom which alters the law then it is for him to call experts to prove that matter, but on the question of pure law one must go to the authorities on the subject.

Cites 26 N. L. R. p. 330 ; 17 N. L. R. p. 338. As to the applicability of Muslim law a certain clue can be found in the Charter of 1801, section 32.

(Interval.)

Sgd. N. SINNETAMBY,
A. D. J.

4518/G.

16-7-48.

After lunch.

MR. CHELVANAYAGAM continues his address :

He cites 44 N. L. R. 574. In that case principles of Hanafi law were applied by the Judge in deciding the question of custody of a child. The only interpretation one can give to the term Muslim Law, Mr. Chelvanayagam states, is Muslim Law, of whatever school ; there are no two senses in which that term is used. If that be the position there is no justification in restricting it to the Muslim Law as consolidated in Ceylon.

Questioned by Court : Do the various systems differ in regard to the need for a Wali ? A. It will be conceded that under the Hanafi Sect there need be no Wali at all ; the Wali is merely an agent.

Q. He has the power of consent ? A. There are two things the Wali does : He supplements the immaturity of the child by giving authority and the other is acting as the agent of the child at the marriage ceremony.

Q. A Wali need no act in accordance with the directions given by the minor. He can withhold his consent ? A. Supposing for example both are consenting, the ceremonial part of the Wali then is to act as the agent ; even in that case the consent of the father or guardian is necessary. In Muslim Law even a husband can act through an agent and a wife can act through an agent, provided the principles have consented.

Mr. Chelvanayagam refers to Fitzgerald on Muslim Law, pp. 38 and 39. If for example the father gives the consent on behalf of the girl, he gives two consents at the same time. It is not necessary that the agent in Muslim Law should be also a person who is required to give the authority for the marriage. That is incidental.

It is granted that under the Hanafi law it is not necessary to have the consent of the father. Mr. Nadesan says he does not contest that Hanafi law prevails in India.

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Counsel
—continued.

Mr. Chelvanayagam states there are no two Hanafi laws ; there is only one Hanafi system. Whether that applies to Ceylon is another question ; whether it is a part of the Indian Law is another question. In those territories where Hanafi law is part of the law of the land it recognises that the girl does not require the consent of the father.

There is no presumption at all that everybody in Ceylon is of the Shafi Sect. It is a question of fact to be decided in each case. But it might be known as a fact that most of the Muslims in Ceylon are Shafis. There can be no such dictum that the law applicable to the Muslims of Ceylon is the Shafi Law. The only presumption is that once a person¹⁰ says I am a Muslim and professes that Faith, unless it is proved to be false it is a conclusion of law that the Muslim Law applies. The next question is Muslim Law of which sect applies. Now comes the question whether in Ceylon where most Muslims are Shafis these people could be Hanafis. But that is a question of fact to be decided by the evidence.

In regard to how Muslims become members of various Sects, he refers to Fitzgerald, p. 17 ; Amir Ali, Vol. II, 1929 Edn. Sec. 2—Change of Sect, p. 238 ; 1864 Bombay High Court Reports, p. 236.

Regarding the question of marriage, no particular form of ceremony is necessary. See 1922 A.I.R. (PC) 159 ; 17 Indian Appeals, p. 73. 20

In regard to the meaning of the term WALI see Vol. II, Amir Ali, p. 302.

Mr. Nadesan wishes to cite 38 N. L. R. p. 37 at 42, on the question of Kaikuli.

Mr. Chelvanayagam says his argument does not exclude any particular custom prevailing here. His argument is directed to show what is the Muslim Law.

Sgd. N. SINNETAMBY,
A. D. J

Order on 2-8-48.

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No. 6.

Order of the District Court.

No. 6
Order of the
District
Court

D. C. 4518/G.

2nd August, 1948.

ORDER

The petitioner, who is a Muslim, seeks in this case to have himself appointed curator over the property of his minor daughter Sithy Zubeida. He made as respondents to his application the 1st and 2nd respondents who are the father and mother of his deceased wife. It would appear from the evidence that on the death of his wife the petitioner left the house of the 1st respondent who is a prominent member of the Muslim⁴⁰ community, but his daughter, who was then very young, continued to live with her grand-parents. There appear to have been some disputes

over the property belonging to the minor which, I understand, has now been settled. That perhaps was the principal reason why the application was made by the petitioner to have himself appointed curator.

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When the matter had been fixed for inquiry the minor herself appeared through Counsel and took up the position that she was no longer a minor, having married Rashid Bin Hassen on the 11th December, 1947. X1 is the marriage certificate which was duly produced in Court. But the petitioner, however, contended that no valid marriage had taken place inasmuch as the only lawful "Wali" who could have consented on behalf
10 of the girl to any marriage proposed to her is her father the petitioner and he had not given his consent to any such marriage. The minor on the other hand claimed to be a Mohammedan of the Hanafi sect and, therefore, one who could contract a lawful marriage without the services of a Wali. Petitioner also contended that marriage does not confer majority on a Muslim girl but it was agreed that the inquiry should in the first instance be confined to the question of whether there was or was not a valid marriage in the absence of consent by the father as her lawful Wali.

—continued.

The only evidence led in the case was on behalf of the respondents. 20 Sithy Zubeida also gave evidence. She was absent on a day on which she was due to be present in Court on the ground of illness, and it is her case that thereafter she did not desire to appear in Court as an unmarried Muslim girl and she therefore decided to get married to Rashid Bin Hassen with whom she is alleged to have had an earlier understanding.

The main dispute in this case is with regard to whether Sithy Zubeida is a Shafi or a Hanafi and whether the Muslim law relating to the Hanafi sect applies to this marriage. It was contended by the petitioner that all Muslims in Ceylon are Shafis subject to the laws governing the Shafi sect and that in the case of Shafis it is necessary that a Wali should give his
30 consent for a marriage. Under the law governing Shafis it is not everybody and anybody who can be the Wali. The law lays down which persons can act as Walis on behalf of a bride; the first among them is the father. It is, of course, clear law that in the case of Shafis, unless the Wali gives his consent there is, subject to certain exceptions, no marriage. For the respondents it was contended that Sithy Zubeida belonged to the Hanafi sect and that therefore it was not necessary for her to obtain the consent of a Wali in order to get married. Under the law governing the Hanafis a girl who has attained puberty may contract a marriage without a Wali or she may appoint anyone she pleases as her agent for the marriage;
40 such a person is also designated "Wali"—Ameer Ali, p. 350. For the purpose of the Muslim Marriage Ordinance, Cap. 99, a Wali was in fact in this case appointed. This, however, does not affect the legality of the marriage, the Wali being appointed to comply with the requirements of the Registration Ordinance, as the Registrar of Marriages is required to obtain the signature of a Wali before he can register a marriage. Evidence was given with regard to the ceremonies conducted, by the officiating priest, who was also the Registrar of Marriages, by the girl herself and by

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Mr. Razik. One may take it that all the requirements of the law in order to constitute a valid marriage under the Muslim law were complied with in so far as the actual consent of the bride and bridegroom to the contract is concerned. According to the Muslim law marriage is a contract and not a sacrament. The cross-examination of the witnesses was confined to this question of the appointment of a Wali and whether Sithy Zubeida was in point of fact a Hanafi and not a Shafi. It is to these two points that I propose to address myself.

Sithy Zubeida stated in her evidence that she was brought up from childhood by her grandmother, Mrs. Razik. Mrs. Razik's parents are 10 Arabs and she (Mrs. Razik) has been and is a Hanafi. Sithy Zubeida's present husband Rashid Bin Hassen is also of Arabic descent and is a Hanafi. Mr. Razik himself was a Shafi but he says that about ten years ago he became a Hanafi. According to the girl she was taught her religion by her grandmother. She said her prayers with her grandmother and she was told that she was a Hanafi. She does not personally know the differences between the various sects. In point of fact she did not even appear to know that there were several sects among the Muslims professing the Islamic Faith. She thought that all Muslims were Hanafis. The Priest who gave evidence no doubt at one stage did say that Mrs. Razik 20 was a Shafi but in re-examination he corrected himself and said that she was a Hanafi. Mr. Razik himself stated that Sithy Zubeida was brought up as a Hanafi. Mr. Razik's people are all Ceylon Moors but Mrs. Razik's father was an Arab and Arabs are all generally of the Hanafi sect. I see no reason to reject their evidence on this point. It stands uncontradicted. The petitioner did not choose to enter the witness-box and to refute the evidence given by Mr. Razik, Sithy Zubeida and the Priest with regard to the sect to which Sithy Zubeida belonged.

According to Mr. Razik he decided to become a Hanafi to bring the girl up as a Hanafi when her father the petitioner left his house and said 30 he would have nothing more to do with him on the death of his (petitioner's) wife, the mother of Sithy Zubeida. Mr. Razik then says that he anticipated trouble when the time arrived for Sithy Zubeida's marriage and he wanted to be in a position to solemnize her marriage without having to obtain the consent of her father. Had she been brought up as a Shafi and had he himself continued to profess the Shafi doctrine there might have been difficulty in bringing about a marriage. In order to dispense with her father's consent as statutory Wali Mr. Razik decided to become a Hanafi. The difference between the Hanafis and the Shafis is very small and confined more or less to the manner in which they say their 40 prayers ; in most matters they are alike. They belong to the same school of law, namely, the Sunni sect: differences are only minor relating chiefly to questions of marriage and inheritance.

At the marriage there were produced before the Registrar the request X2 by Sithy Zubeida asking the Registrar to solemnize her marriage with Rashid Bin Hassen and appointing her uncle Zahir Mohideen as her Wali. X3 is the actual act of appointment by which Zahir Mohideen is appointed

Wali. The girl was subjected to a lengthy and severe cross-examination with regard to the meanings of the terms used in these documents and to the circumstances under which she came to sign them. Cross-examination at a certain stage created the impression that she signed these documents more or less at the instance of her elders. She however says that the meanings of the terms were explained to her by her grandfather at the time she signed it but that she is now not able say what these terms exactly mean. Words like "wakki" she never heard before. She did not appear to know the exact meaning of "Wali" or of the word "Bulugh" which appear in the document X4. But she does say that she had attained puberty and that she had right through been maintained and brought up by, and received religious instruction from, her grandmother who belong to the Hanafi sect. She, however, appears to be accustomed to using the word "Wali" and to know that a Wali is necessary in order that a marriage may be duly solemnized. She is a young girl of about 15 years and it is not surprising that under the stress of cross-examination there were moments when she became thoroughly confused and was unable to give satisfactory answers. But in the main I am satisfied that these documents were explained to her at the time she signed them and that she signed them in order that she may be lawfully married to Rashid Bin Hassen.

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It would appear that according to her evidence Sithy Zubeida had an understanding with Rashid Bin Hassen when she was about 9 or 10 years old but she said that she never met him after she attained puberty. It is possible that the question of this marriage was brought to a head by the requirement that she should attend Court in connection with this inquiry and that it was more or less the work of the elders than herself. I do believe that there was some sort of understanding between herself and Rashid Bin Hassen, with perhaps the consent and knowledge of the elders, that this marriage should eventually take place. The institution of the present application forced her into the marriage at a date earlier than she perhaps intended.

On the facts I am satisfied that Sithy Zubeida was brought up as a Hanafi and observed the requirements of that sect in matters relating to her religion. I also hold that she went through a ceremony of marriage, both she and the bridegroom Rashid Bin Hassen consenting, on the day in question without the consent of her father. The question is whether this marriage is valid in the absence of her father's consent as a Wali. This is a pure question of law which I shall now proceed to discuss.

It was contended on behalf of the petitioner that only so much of the Mohammedan law as has been established by custom and usage alone governs the Mohammedan inhabitants of this country; in so far as marriage and inheritance are concerned these customs and usages, it is submitted, were codified in the Code of 1806 which formed the law of this country prior to the Legislative Enactments of 1938: so far as the Mohammedans of this country are concerned, they must in respect of

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marriage be governed by those customs and usages as set out in the Code and nothing else. The Code be it noted was repealed by two Ordinances, namely, No. 10 of 1931 in respect of intestate succession, and No. 27 of 1929 in respect of marriage and divorce. The original Ordinances as passed contained expressed provisions with regard to the repeal of the Code of 1806, but with the introduction of the revised edition in 1938 those portions of the Ordinance relating to this expressed repeal were omitted it being unnecessary as at the same time the Code of 1806 was also omitted. Section 2 of Cap. 50, dealing with intestate succession provides that the law applicable to the intestacy of any deceased Muslim shall be the Muslim law governing the sect to which the deceased Muslim then belong. Likewise section 50 of the Marriage and Divorce Ordinance, Cap. 99, provided that the repeal of sections 64 to 102 of the Mohammedan Code of 1806 shall not affect the Muslim law of marriage and divorce and the rights of Muslims thereunder.

It will thus be seen that so far as intestate succession and marriage and divorce are concerned it is the Muslim law which governs the Mohammedans domiciled in the Island. The question is what is the Muslim law? Is it confined to only so much of it as has been established by custom and usage or does it include the entirety of the Muslim law as set out by the text book writers on the subject? Learned Counsel for the petitioner contends that it is confined only to the customs and usages practised in Ceylon, which is set out in the Code of 1806 and that the formal repeal of that Code makes no difference. It is still those customs and usages that bind members of the Mohammedan community in their relations with each other and with others. It must, however, not be forgotten that the Mohammedan Code of 1806 has been held in several cases to be imperfect, that it even transgresses the pure Mohammedan law in certain respects, and that where no provision is to be found in the Code of 1806 in regard to any matter, recourse may be had to the Mohammedan law. (Vide 26 N. L. R. 330 ; 16 N. L. R. 425). In the last of these cases, *Khan vs. Maricar* (16 N. L. R. 425) it was held that the Mohammedan law is based on religion and is applicable to all followers of Islam in Ceylon. That case recognised that in such personal relations as marriage and divorce it is the Mohammedan law that is in force. In the case of *King vs. Miskin Umma* (26 N. L. R. 330) the question of divorce was under consideration. Chief Justice Bertram made the following observations :—

“ The brief Code of Mohammedan law promulgated in this colony in 1806 is no doubt a very rough codification of certain portions of a very great system of jurisprudence. It is not exhaustive and has to be read in the light of the general principles of that jurisprudence. But I am unable to say that enactments so promulgated, in so far as they related to the matters under consideration, make any substantial departure from those principles.”

In that case recourse was had to text books on Mohammedan law in order to decide the question of whether the accused was or was not properly divorced. In the case of *Lebbe vs. Thameen* (16 N. L. R. 71) the Supreme

Court held that on the question of pure law (as distinguished from questions of usage or practice) the proper course is to refer to the standard text books on the subject, and not to resort to the opinions of experts.

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Dealing with the questions of inheritance and marriage in the case of *Narayanan vs. Saree Umma* (21 N. L. R. 439) Justice De Sampayo held that in such matters reference may be made to the text writers where there is a *casus omissus* in the Code of 1806. He continued :

10 “ The Local Mohammedan Code it is true provides only for such matters as those mentioned, but the Mohammedan law as such is applicable to the Mohammedans of Ceylon. By a long course of judicial practice which cannot be questioned, the original sources of Mohammedan law and the recognised commentaries thereon have always been referred to as authorities on any points not provided for in the Mohammedan Code which, though called a Code, is not, and does not profess to be, a complete embodiment of the laws applicable to Mohammedans.”

It will thus appear that so far as divorce and inheritance are concerned the law governing the Mohammedans in Ceylon is the same as that governing Mohammedans anywhere else in the world. That is the law of 20 the Prophet Mohammed as adumbrated and explained by the various schools of thought and religion. In this connection I may refer to an article by one of our learned Judges well versed in Mohammedan law which appears in Volume I of the Ceylon Law Recorder. The article in question dealt with the Mohammedan law of intestate succession and the learned contributor in referring to local decisions on the point expressed the view that in the case of Mohammedans, where no provision is made in the Mohammedan Code which was then in force, the law which governs questions of intestate succession would be the law governing the sect to which a person, whose rights are in question, belongs. Learned Counsel 30 for petitioner placed much emphasis upon the observations of Chief Justice Macdonell and Justice Garvin in the case of *Sultan vs. Peiris* reported in 35 N. L. R. 57. In that case the question under consideration was whether a Muslim deed of gift which created a *fidei commissum* was valid and in the course of the judgment the learned Judges referred to the earlier decisions with regard to contractual rights of Muslims and quoted the observations of Justice Schneider in *Rahiman vs. Ussan Umma* (19 N. L. R. 175). The main point decided in the case of *Sultan vs. Peiris* relating to donations and *fidei commissum* was over-ruled in a subsequent case of *Abuthahir vs. Mohamed Sally* reported in 43 N. L. R. 193. I do 40 not know, however, whether the observations of the learned Judges who decided *Rahiman vs. Ussan Umma* and *Sultan vs. Peiris* were intended to apply to such matters as marriage and divorce, with regard to which other Judges had expressed different views.

It is true that with regard to such matters as the validity of contracts, construction of deeds, Wills and so on it is the general law that applies and not the Mohammedan law. Thus in the case of *Abdul Rahiman vs.*

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Ussan Umma, already referred to, it was held that an ante-nuptial contract entered into between Mohammedans is not invalid. In that case it was sought to be established that such a contract being obnoxious to the general Mohammedan law, was of no force or avail in Ceylon. The Judges, however, held that with regard to such matters the Ceylon law is based on usage and that where there is no provision in the Code and no ancient custom has been proved the general law of the land, namely, the Roman Dutch Law, should apply. Justice Schneider in the course of his judgment observed that the whole body of Mohammedan jurisprudence does not obtain currency here. Whether this observation was intended to apply 10 not only to matters of contract but to matters relating to marriage and divorce is not clear. But in that particular case the learned Judges were dealing with an ante-nuptial contract. In *Narayanan vs. Saree Umma*, on the other hand, Justice De Sampayo was clearly of the opinion that Mohammedan law was applicable to all Mohammedans, even on such questions as the attainment of majority.

These conflicting views of the learned Judges are somewhat difficult to reconcile except on the basis that with regard to matters not relating to marriage and divorce and inheritance it is the law of the land that applies, but with regard to such matters it is the Mohammedan law in its 20 entirety that would apply. This view is supported by the subsequent legislation embodied in Cap. 50 relating to intestate succession, and in Cap. 99 relating to marriage and divorce. In both these enactments the Muslim law without any special reference to custom and usage is made applicable to all Muslims. Quite apart, therefore, from authority it seems to me that under the statute law as it stands today it is the Mohammedan law which should govern parties who are Mohammedans in matters relating to marriage. Learned Counsel for the petitioner contended that the Muslim law which is preserved by these two enactments is the Muslim law which has been established by custom and usage ; in fact that the law 30 has not been changed : that the Code is practically still in force as it embodies all the customs and usages that were practised by the Mohammedans of this country : that the amendments in the two Ordinances were intended to preserve only so much of the Muslim law that was in force before the amendment and that it did not introduce the entire body of jurisprudence relating to marriage, divorce and inheritance governing Mohammedans in other countries. I find it rather difficult to accede to this proposition. Even the original Charter of 1801 and the earlier Proclamation of 1799 conserved to the inhabitants of the country “ the laws and institutions as subsisted under the ancient government of the United 40 Province ”. It will be seen that so much of the Muslim law as subsisted during the Dutch period quite apart from the custom and usage was conserved to the Mohammedans of Ceylon, and according to judgments already cited, in matters relating to matrimonial affairs recourse has always been had to text writers and authoritative decisions. The amendments introduced by Cap. 50 and Cap. 99, it seems to me, put the matter beyond doubt and enacts that in such matters it is the Muslim law that

governs. If anything else was intended one would have expected it to be specifically stated.

The next contention put forward by learned Counsel for the petitioner is that in Ceylon there is a presumption that every Muslim belongs to the Shafi Sect and that the law which governs them should be the Shafi law. Under the Shafi law, as already pointed out, a Mohammedan girl, even though she has attained the years of discretion or puberty, cannot contract a valid marriage without the consent of her lawful Wali or guardian who, in this instance, would be the father. The presumption therefore was
 10 that Sithy Zubeida, being a Ceylon Muslim was a Shafi and that the marriage she had contracted without her father's consent would be invalid. I do not, however, think that the authorities go so far as to lay it down that every Ceylon Moor is presumed to be a Shafi. In point of fact the earlier authorities on the subject rely upon a passage in Amir Ali, in concluding that the Moors in Ceylon are Shafis.

In point of fact the original passage in Amir Ali, Volume II (1917 Edition), pages 17 and 18 is to the effect that Shafi doctrines are generally followed among the Muslims of the Malabar Coast and Ceylon. There is thus no presumption that every Muslim in Ceylon is a Shafi; it is only
 20 stated that generally they belong to the Shafi school of thought. It is a question of evidence whether a person is a Shafi or belongs to any other school of thought. In point of fact the existence of the various sects is expressly recognised by Cap. 50 of the Legislative Enactments in relation to intestate succession and donations. Section 2 of that Enactment states that the law applicable to the property of a deceased Muslim shall be the Muslim law governing the sect to which such deceased Muslim belonged. So too section 3 provided for law relating to donations being governed by the sect to which the donor belongs. It will thus be clear that although
 30 it must be taken as generally correct that the Muslims of Ceylon belong to the Shafi sect, there is nothing to prevent a Muslim from belonging to any other sect or from establishing that he does so belong. The differences between the various sects or sub-divisions of the Sunni school of law are very small and according to the authorities a member of one sect may easily convert himself to any of the other sects. The Sunni sect is the orthodox sect and there are very little differences between the various sub-divisions, namely, the Shafis, the Hanafis, the Mallikis and the Ham-balis. (*Vide* Fitzgerald's Mohammedan law, p. 18).

In this particular case I am satisfied that Sithy Zubeida was brought up as a Hanafi and belonged to the Hanafi school of law. In point of
 40 fact Mr. Razik stated in evidence that he himself became a Hanafi and allowed his grand-daughter to practise the Hanafi doctrine because he anticipated difficulty from her father in the event of marriage being arranged for her. The changing of doctrine, it has been held in India, may be done to escape an inconvenient rule of law of one's own school, for Shafi women, who desire to defeat the rights of their marriage guardians, do so by professing their conviction of the correctness of Hanafi doctrine in that respect (*Vide* Fitzgerald, p. 18). This is well established by legal

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decisions of Indian Courts. In the case of *Hayat-Un-Nissa vs. Ali Khan* a Sunni Mohammedan widow who professed the Shia faith when she married the Shia husband was held, on the death of her husband, to have discarded the religion which was temporarily imposed upon her as a Shia wife, as evidence was led to show that after her husband's death she once again practised the principles governing the Sunni sect (*Vide* 17 Law Reports Indian Appeals (1889—1890), p. 73). In the case of *Muhammad Ibrahim vs. Gulam Ahmad* reported in 1 Bombay High Court Reports (1864), p. 236, it was held that a Mohammedan female of any one of the four sects can elect on attaining puberty to belong to whichever of the 10 other three sects she pleases. In this particular case a girl, whose parents and family were followers of the Shafi school, changed her sect to that of a Hanafi in order to validly enter into a marriage without the consent of her father. In the same case it was held, and this was conceded by learned Counsel on both sides, that under the Hanafi school a Hanafi virgin does not require the consent of her father as Wali to contract a valid marriage.

Although at first sight to those unaccustomed to the Muslim law it may appear preposterous that a young girl, on attaining puberty, can change her sect for purpose of convenience and so affect the rights of 20 others, this is an established principle of the Mohammedan law. The Ceylon Ordinances, in matters relating to marriage and inheritance, recognise the existence of these sects and it seems to me that this recognition must also include the rights governing the members of these sects, such for instance, as changing from one sect to another. In this view the act of Sithy Zubeida in appointing her Wali for the purposes of her marriage, and getting married without the consent of her father, is perfectly legitimate according to the established principles of Mohammedan law.

I am accordingly of the view that the marriage of Sithy Zubeida to Rashid Bin Hassan is valid and I so hold. The petitioner will pay the 30 respondents the costs of this inquiry.

Sgd. N. SINNETAMBY,
Adl. District Judge.

Pronounced in open Court in the presence of :

MR. RASANATHAN Proctor for petitioner.

MR. M. A. MAHROOF who takes notice on behalf of Messrs. Moonesinghe & Jayamaha Proctors for respondents.

MR. A. C. MOHAMED for Sithy Zubeida.

Sgd. N. SINNETAMBY,
Adl. District Judge. 40

No. 7.

Petition of Appeal to the Supreme Court.

No. 7
Petition of
Appeal to the
Supreme
Court
10-8-48

S. C. No. 27

D. C. Colombo No. 4518/Gdn.

A. H. M. ABDUL CADER of No. 10, Elliot Place, Borella,
Colombo *Appellant.*

vs.

1. A. R. A. RAZIK, and
2. AMEENA UMMA, wife of A. R. A. RAZIK, both of
"Hajara Villa", Fareed Place, in Bambalapitiya.
103. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of
No. 10, Elliot Place, Borella, in Colombo.
4. HAMEEDA SITHY ZUBEIDA also of "Hajara Villa",
Fareed Place, in Bambalapitiya *Respondents.*

To

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

On this 10th day of August, 1948.

The Petition of Appeal of the appellant abovenamed appearing by
K. Rasanathan his Proctor states as follows :—

- 20 1. The appellant is the father of the 4th respondent who is a girl
15 years old, and of the 3rd respondent.
2. The 1st and 2nd respondents are respectively the grandfather
and grandmother of the 3rd and 4th respondents.
3. In these proceedings the appellant made an application (a) that
he be appointed curator over the property of the 4th respondent, (b) that
the 3rd respondent be appointed guardian over the person of the said
minor.
4. Notice of this application was duly served on the respondents.
5. (a) On the 5th December, 1947, the appellant made an application
30 that a guardian *ad litem* be appointed over the minor for the purposes of
this application for the appointment of a curator and a guardian.
5. (b) On the same day (5th December, 1947) the 1st and 2nd
respondents alleged that the 4th respondent was ill and moved for a
postponement of the inquiry and accordingly the inquiry was postponed
for the 23rd January, 1948.
5. (c) On the same day (5th December, 1947) at the instance of the
District Court the 1st respondent who was in Court agreed and undertook
to send the 4th respondent to the father (appellant) twice, *i.e.* on the 28th
December, 1947, and 15th January, 1948, at 8 a.m. and the minor should
be sent back by the appellant to the 1st respondent before lamp-light on
those days.

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5. (d) The 1st respondent committed a breach of the said undertaking and did not send the minor to the house of the appellant on those days or on any dates.

6. On the 23rd January, 1948, the 4th respondent alleged that a guardian *ad litem* could not be appointed for the reason that she was not a minor for the purposes of Chapter 35 of the Civil Procedure Code on the ground that she was on 11th December, 1947, lawfully married to one Rasheed Bin Hassan.

7. The appellant alleged that the said marriage was void on the ground *inter alia* that the said marriage was contracted by the 4th respondent without the appellant's consent. The 4th respondent claimed that she was a Hanafi and that she was entitled to contract a marriage without the consent of anyone.

8. The learned Judge thereupon held an inquiry into the question whether the said marriage was valid.

9. After the inquiry the learned Judge made order on the 2nd of August, 1948, that the marriage was valid. Being dissatisfied with the said order the appellant begs to appeal therefrom to Your Lordship's Court for the following amongst other reasons that may be urged by Counsel at the hearing of the appeal:—

(a) The said order is contrary to law and to the weight of evidence in this case.

(b) The evidence does not justify the learned Judge finding that the 4th respondent is a Hanafi.

(c) The parents of the 4th respondent are Shafis and the presumption is that the 4th respondent is also a Shafi. This presumption has it is submitted not been rebutted by the evidence in this case particularly the evidence of the 4th respondent.

(d) The evidence clearly indicates that the said marriage was not contracted by the 4th respondent in the exercise of her own free will. It would appear that she was forced into the marriage by the 1st and 2nd respondents. There was no "Consent" on the part of the 4th respondent to this marriage.

(e) Even on the assumption that the 4th respondent is a Hanafi the appellant submits that the Muslim Marriage Law of the Island requires that the consent of this appellant is necessary for the validity of the marriage of the 4th respondent. The alleged marriage of the 4th respondent is not valid.

Wherefore the appellant prays that Your Lordship's Court be pleased (a) to set aside the order of the learned District Judge dated 2nd August, 1948.

(b) To direct that the 4th respondent do appear in these proceedings by a guardian *ad litem* duly appointed.

(c) For costs and for such other and further relief as to Your Lordship's Court shall seem meet.

Sgd. K. RASANATHAN,
Proctor for Appellant.

No. 8.

Inquiry *re* Appointment of a Curator.

No. 8
Inquiry *re*
Appoint-
ment of a
Curator
27-1-49

D. C. 4518/G.

27th January, 1949.

MR. ADV. THIAGALINGAM for the original petitioner.

MR. ADV. AZEEZ for the alleged minor, Sithy Hameeda *alias* Zubeida.

MR. HANIFFA for 1st and 2nd respondents.

Mr. Thiagalingam opens his case and draws attention to the proceeding of 31st October, 1947, 5th December, 1947, and 23rd January, 1948. He states that the alleged minor is now 16 years and a few months old.

10 At this stage the case is settled. The parties are agreed that Rasheed Bin Hassan should be appointed as curator on his giving security to be fixed by Court. This agreement is without prejudice to the rights of either party with regard to the validity of the marriage which question is now under appeal.

Of consent Rasheed Bin Hassan is appointed curator subject to his filing an Inventory and giving a bond to the satisfaction of Court. It is also agreed that after he files the Inventory, the Court will, in its discretion allow a certain amount out of the income for the maintenance of the wife and the balance is to be accounted for and brought into Court by the
20 curator.

It is further agreed that the Court will hear the parties only on the question of the correctness of the Inventory when it is filed and the amount of the rents recovered or recoverable, but that all other matters are left solely to the discretion of the Court.

Let an Inventory be filed by curator with notice to the other sides on 17th February, 1949.

Sgd. N. SINNETAMBY,
A. D. J.

No. 9.

Judgment of the Supreme Court.

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S. C. 27.

D. C. Colombo 4518/G.

No. 9
Judgment of
the Supreme
Court
28-9-50

*Between*A. H. M. ABDUL CADER.....*Appellant.**And*

1. A. R. A. RAZIK,
2. AMEENA UMMA,
3. ALAVEE MAZAHIMA,
4. HAMEEDA SITHY ZUBEIDA *Respondents.*

Before JAYETILEKE, C.J. and SWAN, J.

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the Supreme
Court
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—continued.

Counsel : C. THIAGALINGAM, N. M. DE SILVA, P. NAVARATNA-
RAJAH and N. ARULAMBALAM, for appellant.

M. I. M. HANIFFA with M. H. A. AZEEZ and M. MARK-
HANI, for 1st and 2nd respondents.

H. V. PERERA, K.C., with U. A. JAYASUNDERA, K.C.,
M. MARKHANI and M. S. ABDULLA, for 4th
respondent.

Argued on : 19th, 20th and 21st September, 1950.

Decided on : 28th September, 1950.

SWAN, J.

10

We are concerned in this appeal with the validity of an alleged marriage between the 4th respondent and one Rasheed Bin Hassan. The matter came up indirectly before the District Court in the following circumstances. The appellant, who is the father of the 4th respondent—a Muslim young lady below the age of 21—applied to the District Court of Colombo to have himself appointed curator of the property of the 4th respondent and the 3rd respondent, who is the married sister of the 4th respondent appointed guardian over the person of the minor. Later he moved that a guardian *ad litem* be appointed over the minor for the purpose of the substantial application he had made for the appointment of a curator and guardian. Chapter 35 of the Civil Procedure Code deals with actions by or against minors and persons under other disqualification. Section 502, which is the last section in that Chapter, states that “for the purposes of this Chapter a minor shall be deemed to have attained majority or full age on his attaining the age of 21 years, or on marrying, or obtaining letters of *venia aetatis*”. The application by the appellant for the appointment of a curator and guardian was an “action” within the meaning of Section 6 of the Civil Procedure Code which declares that “every application to a Court for relief or remedy through the exercise of the Court’s power or authority, or otherwise to invite its interference, constitutes an action”. The second application of the appellant for the appointment of a guardian *ad litem* was therefore, as a matter of procedure, entirely correct. When, however, the question of the appointment of a guardian *ad litem* came up the minor herself appeared and said that she had married Rasheed Bin Hassen in the interval between the appellant’s application and her appearance. The appointment of a guardian *ad litem* was, therefore, unnecessary if Section 502 governed the matter as undoubtedly it did. The appellant, however, challenged the validity of the marriage and the Court was, therefore, required in an incidental proceeding to decide this issue. After a lengthy inquiry the learned District Judge held that there had been a valid marriage. One would, in the circumstances, have expected a wise and tolerant father to have accepted the decision as final

and conclusive. But he has pursued the matter further and has now asked this Court to reverse the finding of the lower Court and declare that marriage invalid.

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—continued.

It has been held by our Courts that marriage does not confer majority upon a Muslim below the age of twenty-one (see *Narayan vs. Saree Umma et al* (21 N. L. R. 439) and *Kalendralevvai vs. Avamma* (48 N. L. R. 508). Therefore it was competent for the learned District Judge to have taken the view that, whether or not the alleged marriage was valid, he could still proceed to appoint a guardian over the person of the 4th respondent and a curator of her property. It is only in respect of actions by or against minors that the procedural requirements of Chapter 35 of the Civil Procedure Code are applicable. In point of fact what happened after the learned Judge's finding regarding the validity of the alleged marriage shows that the parties accepted this as the correct legal position, for on 27-1-49 of consent Rasheed Bin Hassan was appointed curator "without prejudice to the rights of either party with regard to the validity of the marriage which question is now under appeal".

As regards the question at issue on this appeal the following facts should be noted. The 4th respondent was, at the date of the impugned marriage, 15 years and 2 months old. By letter X 2 addressed to Katheeb A. J. M. Warid, Muslim Registrar of Marriages, she requested him to marry her to Mr. Rasheed Bin Hassan according to the Hanafi Law. In the same letter she informed the Registrar that she had appointed her uncle, Mr. Marikar Mohideen, as her *Wali*. X3 is the act of appointment. X4 is an affidavit in which the 4th respondent gives the date of her birth, declares that she has passed the age of *bulugh* or discretion, and states that she belongs to the *Hanafi* sect and follows her religion accordingly. The marriage was solemnized according to Muslim rites by Katheeb Warid on 11-12-47 as appears from the Certificate of Marriage issued by him, marked X1.

The first point to consider is whether the 4th respondent was or was not a Hanafi at the time of the alleged marriage. The learned District Judge has held that she was a Hanafi and with that finding we agree. I would say that, on the evidence, a contrary view would have been unreasonable, especially if one bears in mind the fact that the 4th respondent was brought up from her infancy by her maternal grandmother, the 2nd respondent who is a *Hanafi*.

The next point is whether, being a Hanafi, the 4th respondent could contract herself in marriage. Mr. Thiagalingam admits that under what he calls "pure" Muslim Law a Hanafi girl who has reached the age of *bulugh* can marry without the assistance of a *wali* or marriage guardian. He contends, however, that that law is not applicable to Muslims in Ceylon.

Mr. Thiagalingam firstly relies upon the age of Majority Ordinance No. 7 of 1865 (Cap. 53 of the New Legislative Enactments). That Ordinance makes twenty-one years the legal age of majority for all persons for all purposes. Mr. Thiagalingam points to Section 2 of the Indian

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Judgment of
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—continued.

Majority Act 9 of 1875 which provides “ that nothing herein contained shall affect (a) the capacity of any person to act in the following matters, namely marriage, dower, divorce and adoption ”, and argues that, in the absence of a similar reservation in our Age of Majority Ordinance, twenty-one years is the age of majority for Muslims in all matters including marriage. But our Courts have considered the effect of the Age of Majority Ordinance on the rights of Muslims in the matter of marriage and taken the view that “ majority ” for the purpose of a marriage contract in the case of Muslims is not affected by that Ordinance. In *Marikar vs. Marikar* (18 N. L. R. 481), Sampayo, J., having discussed the age of 10 capacity for Muslims, made the following observations :—

“ According to Mohammedan Law, therefore, not only has Cader Saibo Marikar attained the age of “ majority ” and become capable of contracting himself in marriage but the authority of the plaintiff as guardian, if any, has ceased. But some difficulty arises out of the provisions of Ordinance 7 of 1865 which fixes the legal age of majority at twenty-one years. In my opinion the Ordinance has regard to the attainment of *legal majority for general purposes, or the majority which under the Mohammedan law is conferred by “ discretion ”, and does not affect the age of capacity for purposes of marriage* ”. In *Narayan vs. Saree Umma* (21 20 N. L. R. 439), Sampayo, J., referred to the earlier case mentioned above and said “ as was pointed out in *Marikar vs. Marikar* there are two kinds of majority under Mohammedan law, namely *one as regards capacity to marry without the intervention of a guardian and the other as regards a general capacity to do other acts as a major* ”. With regard to those other acts it was held that the Age of Majority Ordinance was applicable to Muslims as well. But this decision has been dissented from in *Assanar vs. Hamid* (50 N. L. R. 102) where it was held, in effect, that for all purposes a Muslim minor attained majority on reaching the age of puberty. We are content, in this case, to say that for the purpose of marriage a Muslim 30 attains “ majority ” on reaching the age of bulugh or puberty.

The last point for determination is whether a Muslim girl can enter into a contract of marriage in Ceylon without a wali or marriage guardian. For a virgin of the Shafi sect, whatever her age may be, a wali is necessary. For a Hanafi girl who has attained the age of “ bulugh ” a wali is not required. Mr. Thiagalingam, however, contends that the latter principle has never been adopted in Ceylon and in support of his contention points to sections 64 and 65 of the Mohammedan Code of 1806. But that Code has been repealed, and in place of those sections which dealt with intestate succession we have the Muslim Intestate Succession and Wakfs Ordinance 40 10 of 1931 (Cap. 50), and in place of those sections which dealt with marriage and divorce we have Ordinance 27 of 1929 as amended by Ordinance 9 of 1934 (Cap. 99). Section 50 of Cap. 99 reads as follows :—“The repeal of sections 64 to 102 (first paragraph) of the Mohammedan Code of 1806 which is effected by this Ordinance shall not affect the Muslim law of marriage and divorce and the rights of Muslims thereunder”. Mr. Thiagalingam says that although Sections 64 to 102 have been repealed

we must still look to those section for the relevant Muslim law. With that contention we do not agree. We know that the Code of 1806 was compiled at a time when it was believed that all Mohammedans in Ceylon were of the Shafi sect. In fact, when that Code was submitted to the Governor it was stated to be "the Code of the laws observed by the Moors in the province of Colombo and acknowledged by the head Moormen of the district to be adapted to the present usages of the caste". It was soon realised that the Code was not exhaustive, and our Courts have held that where it is silent recourse should be had to text books for the relevant Muslim Law. It was also found, in course of time, that there were other sects than Shafis in Ceylon. The right of every Muslim to deal and be dealt with according to the law of the particular sect to which he belongs is expressly stated in the Muslim Intestate Succession and Wakfs Ordinance (Cap. 50). That Ordinance was proclaimed on 17-6-1931. In it we find a declaration that the law applicable to the intestacy of any deceased Muslim domiciled in Ceylon shall be the Muslim law governing the sect to which he belonged: and as regards donations not involving *fidei commissa*, usufructs and trusts a declaration to the like effect. The Marriage and Divorce (Muslim) Ordinance No. 27 of 1929 as amended by Ordinance 9 of 1934 was proclaimed on 1-1-37. By that time the Legislature had openly recognised the right of Muslims in certain matters to deal and be dealt with according to the law governing the sect to which they belonged. It was, therefore, in our opinion, unnecessary to say so in so many words in Section 50 of Cap. 99. The words "Muslim Law" in that section cannot mean anything more or less than the Muslim law governing the sect to which the particular person belongs. We would, therefore, hold that in a matter of marriage or divorce a Muslim is governed by the law of the sect to which he or she belongs.

Even then, contends Mr. Thiagalingam, under Cap 99 a *wali* is necessary for a Muslim woman whatever her sect may be. Undoubtedly Section 8 (1) provides that the marriage register shall be signed by the *wali* of the bride except where the Kathi has expressly authorised such marriage under Section 21 (2) which enables a Kathi to sanction a marriage even against the express wishes of the *wali*. The proviso to that subsection also empowers the Kathi to authorise the registration of a marriage where a woman has no wali. We do not think it therefore follows that even where the Muslim law does not require the intervention of a wali in a particular case Section 8 (1) supersedes that law. The reasonable interpretation of that section read in conjunction with Section 50 appears to be that where the Muslim law requires a bride to be represented by her wali he shall sign the marriage register on her behalf, where it does not the signature of a wali to the marriage register is unnecessary.

In this case, however, the bride appointed her uncle as her wali and the Kathi approved of the appointment and permitted the wali so appointed to sign the marriage register. Fitzgerald in his book on Mohammedan Law at p. 56 says: "Even where a guardian is superfluous in law it is considered respectable to have one". At the next page the writer goes

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28-9-50
—continued.

on to say : “ A woman of full age who can dispose freely of her own hand as in Hanafi and Shia law can obviously ask any one she chooses to give her away ”. Amir Ali (4th Ed., Vol 2, p. 350) sets out the law in these words : “ The Hanafis hold that an adult woman is always entitled to give her consent without the intervention of a wali. When a wali is employed and found acting on her behalf he is presumed to derive his power solely from her ”.

It seems to be clear that under Muslim Law a Hanafi maiden can act without the intervention of a *wali* or marriage guardian, or appoint a wali herself for the purpose of her marriage. We would therefore hold ¹⁰ that a valid contract of marriage according to Muslim law was entered into between the 4th respondent and Rasheed Bin Hassan on 11-12-47 and that the marriage was duly registered in accordance with the provisions of the Marriage and Divorce (Muslim) Ordinance, Cap. 99.

The appeal fails and is dismissed with costs.

JAYETILEKE, C.J.,
I agree.

Sgd. V. L. St. C. SWAN,
Puisne Justice.

Sgd. E. G. P. JAYETILEKE,
Chief Justice. 20

No. 10
Decree of the
Supreme
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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.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

A. H. M. ABDUL CADER of No. 10, Elliot Place, Borella,
Colombo *Appellant*

vs.

1. A. R. A. RAZIK and 30
2. AMEENA UMMA, wife of A. R. A. Razik, both of
“ Hajara Villa ”, Fareed Place, in Bambalapitiya,
3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of
No. 10, Elliot Place, Borella, in Colombo,
4. HAMEEDA SITHY ZUBEIDA also of “ Hajara Villa ”,
Fareed Place, in Bambalapitiya *Respondents.*

Action No. 4518/Guardian.

In the District Court of Colombo.

This cause coming on for hearing and determination on the 19th, 20th and 21st days of September, 1950, and on this day, upon an appeal preferred by the appellant before the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, and the Hon. Mr. V. L. St. C. Swan, Puisne Justice, of this Court, in the presence of Counsel for the appellant and respondents.

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Decree of the
Supreme
Court
28-9-50
—continued.

It is considered and adjudged that this appeal be and the same is hereby dismissed with costs.

Witness the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, at Colombo, the 4th day of October, in the year of our Lord One thousand Nine hundred and fifty, and of our Reign the Fourteenth.

Sgd. W. G. WOUTERSZ,
Deputy Registrar, S. C.

No. 11.

Application for Conditional Leave to Appeal to the Privy Council.

No. 11
Application
for Condi-
tional Leave
to Appeal
to the Privy
Council
10-10-50

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

A. H. M. ABDUL CADER of No. 10, Elliot Place, Borella,
in Colombo *Petitioner*

20 No. 27 (Inty.) S. C./D. C. 4518/G. *vs.*

1. A. R. A. RAZIK of "Hajara Villa", No. 27, Fareed place, Bambalapitiya.
2. AMEENA UMMA, wife of A. R. A. Razik of "Hajara Villa", No. 27, Fareed Place, Bambalapitiya,
3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of No. 10, Elliot Place, Borella, Colombo,
4. HAMEEDA SITHY ZUBEIDA also of "Hajara Villa", No. 27, Fareed Place, Bambalapitiya *Respondents*

And

30 A. H. M. ABDUL CADER of No. 10, Elliot Place, Borella,
Colombo *Appellant*

vs.

1. A. R. A. RAZIK and
2. AMEENA UMMA, wife of A. R. A. Razik, both of "Hajara Villa", No. 27, Fareed Place, Bambalapitiya,
3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of No. 10, Elliot Place, Borella, Colombo.

No. 11
Application
for Conditional Leave
to Appeal
to the Privy
Council
10-10-50
—continued.

4. HAMEEDA SITHY ZUBEIDA also of "Hajara Villa",
No. 27, Fareed Place, Bambalapitiya Respondents.

To

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

On this 10th day of October, 1950.

The Petition of the Appellant abovenamed appearing by his Proctor K. Rasanathan states as follows :—

1. That feeling aggrieved by the judgment and decree of this Court dated 28th September, 1950, the appellant is desirous of appealing therefrom to His Majesty the King in Council. 10

2. The said judgment is a final judgment and the matter in dispute on the appeal is well over the value of Rs. 5,000 and the appeal involves directly a question to a Civil Right the value of which is over Rs. 5,000.

3. The appellant further submits that the question involved in the appeal is one which by reason of its great public importance ought to be submitted to His Majesty the King in Council.

4. That notice of the intended application for Leave to Appeal was served on the respondents in terms of Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance (a) on the 30th September, 1950, by Ordinary Post with Certificate of Posting (b) by the Fiscal, 20 Western Province, Colombo, by affixing such notices on the outer doors or gates of the respondents' residences (c) by publication thereof in the Ceylon Daily News of the 6th October, 1950, consequent on an application to this Court for substituted service (proof whereof is hereto annexed)

5. The appellant tenders herewith a Certified Copy of the Inventory filed of record in this case in the Lower Court in proof of the value of this action.

Wherefore the appellant prays that Your Lordships' Court be pleased to grant Conditional Leave to appeal against the said judgment and decree of this Court dated 28th day of September, 1950, to His Majesty 30 the King in Council and for costs and for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. K. RASANATHAN,
Proctor for Appellant.

No. 12.

Decree Granting Conditional Leave to Appeal to the
Privy Council.

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

No. 12
Decree
Granting
Conditional
Leave to
Appeal to
the Privy
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12-10-50

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

A. H. M. ABDUL CADER of No. 10, Elliot Place, Borella,
in Colombo *Petitioner*

vs.

1. A. R. A. RAZIK of "Hajara Villa", No. 27, Fareed Place, Bambalapitiya,
2. AMEENA UMMA, wife of A. R. A. Razik of "Hajara Villa", No. 27, Fareed Place, Bambalapitiya,
3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of
10 No. 10, Elliot Place, Borella, in Colombo,
4. HAMEEDA SITHY ZUBEIDA also of "Hajara Villa,"
No. 26, Fareed Place, Bambalapitiya..... *Respondents*

And

A. H. M. ABDUL CADER of No. 10, Elliot Place, Borella,
Colombo *Appellant*

vs.

1. A. R. A. RAZIK and
2. AMEENA UMMA, wife of A. R. A. Razik of "Hajara Villa, of No. 27, Fareed Place, Bambalapitiya,
203. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek, of
No. 10, Elliot Place, Borella, in Colombo,
4. HAMEEDA SITHY ZUBEIDA also of "Hajara Villa,"
of No. 27, Fareed Place, in Bambalapitiya..... *Respondents*

Action No. 4518/G (S. C. No. 27 (Inty.) of 1950.

In the District Court of Colombo.

In the matter of an application by the petitioner abovenamed dated 11-10-50 for Conditional Leave to Appeal to His Majesty the King in Council against the decree of this Court dated 28-9-50.

This matter coming on for hearing and determination on the 12th
30 day of October, 1950, before the Hon. Mr. H. H. Basnayake, K.C., Puisne Justice, and the Hon. Mr. M. F. S. Pulle, K.C., Puisne Justice, of this Court, in the presence of Counsel for the applicant and there being no appearance for the respondents.

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 :—

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3000 and hypothecate the same by bond or such other security as the Court

No. 12
Decree
Granting
Conditional
Leave to
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the Privy
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12-10-50
—continued.

No. 12
Decree
Granting
Conditional
Leave to
Appeal to
the Privy
Council
12-10-50
—continued.

in terms of Section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

2. Deposit in terms of 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).

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. 10

Witness the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, at Colombo, the 18th day of October, in the year of our Lord One thousand Nine hundred and fifty, and of our Reign the Fourteenth.

Sgd. W. G. WOUTERSZ,
Deputy Registrar, S. C.

No. 13
Application
for Final
Leave to
Appeal to
the Privy
Council
19-10-50

No. 13.

Application for Final Leave to Appeal to the Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

A. H. M. ABDUL CADER of No. 10, Elliot Place, Borella,
in Colombo *Petitioner* 20

No. 27 (Inty.) S. C./D. C. 4518/G. *vs.*

1. A. R. A. RAZIK of "Hajara Villa", No. 27, Fareed Place, Bambalapitiya,
2. AMEENA UMMA, wife of A. R. A. Razik of "Hajara Villa", No. 27, Fareed Place, Bambalapitiya,
3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of No. 10, Elliot Place, Borella, in Colombo,
4. HAMEEDA SITHY ZUBEIDA also of "Hajara Villa," No. 27, Fareed Place, Bambalapitiya..... *Respondents*

And 30

A. H. M. ABDUL CADER of No. 10, Elliot Place, Borella,
Colombo *Appellant*

vs.

1. A. R. A. RAZIK and
2. AMEENA UMMA, wife of A. R. A. Razik of "Hajara Villa", of No. 27, Fareed Place, Bambalapitiya,

- 3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of No. 10, Elliot Place, Borella, in Colombo,
- 4. HAMEEDA SITHY ZUBEIDA also of "Hajara Villa," of No. 27, Fareed Place, in Bambalapitiya..... *Respondents.*

No. 13
Application
for Final
Leave to
Appeal to
the Privy
Council
19-10-50
—continued.

To

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

On this 19th day of October, 1950.

The Petition of the Petitioner-Appellant abovenamed appearing by
10 his Proctor K. Rasanathan states as follows :—

1. The petitioner abovenamed obtained Conditional Leave on the 12th day of October, 1950, to appeal to His Majesty the King in Council from the judgment and decree of this Court dated the 28th September, 1950.

2. The petitioner has in compliance with the conditions on which Leave was granted deposited a sum of Rupees Three thousand only (Rs. 3,000) with the Registrar of this Court being security for costs of the respondents on the 18th day of October, 1950, and mortgaged and hypothecated the said sum of Rupees Three thousand (Rs. 3,000) with the
20 Registrar on the 19th day of October, 1950.

3. The petitioner has further deposited with the Registrar of this Court a further sum of Rupees Three hundred only (Rs. 300) in respect of the amount and fees mentioned in Section 4 (2) (b) and (c) of the Privy Council Ordinance, Cap. 85, on the 18th day of October, 1950.

4. The petitioner has given due notice of this application to all the four respondents and produces herewith proofs thereof: (a) Certificate of Posting (Ordinary Post), (b) Registered letter receipts.

Wherefore the petitioner prays that he be allowed Final Leave to Appeal to the Privy Council from the judgment and decree of this Court
30 dated the 28th day of September, 1950, for costs and such other and further relief as Your Lordships' Court shall seem meet.

Sgd. K. RASANATHAN,
Proctor for Appellant.

No. 14.

Decree Granting Final Leave to Appeal to the Privy Council

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

40 A. H. M. ABDUL CADER of No. 10, Elliot Place,..... *Petitioner*

No. 14
Decree
Granting
Final Leave
to Appeal
to the Privy
Council
24-10-50

No. 14
Decree
Granting
Final Leave
to Appeal
to the Privy
Council
24-10-50
—continued.

vs.

- 1. A. R. A. RAZIK of "Hajara Villa", No. 27, Fareed Place, Bambalapitiya,
- 2. AMEENA UMMA, wife of A. R. A. Razik of "Hajara Villa", No. 27, Fareed Place, Bambalapitiya,
- 3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of No. 10, Elliot Place, Borella, in Colombo,
- 4. HAMEEDA SITHY ZUBEIDA also of "Hajara Villa," No. 27, Fareed Place, Bambalapitiya.....*Respondents*

And

10

A. H. M. ABDUL CADER of No. 10, Elliot Place, Borella, Colombo *Appellant*

vs

- 1. A. R. A. RAZIK and
- 2. AMEENA UMMA, wife of A. R. A. Razik of "Hajara Villa", of No. 27, Fareed Place, Bambalapitiya,
- 3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of No. 10, Elliot Place, Borella, in Colombo,
- 4. HAMEEDA SITHY ZUBEIDA also of "Hajara Villa," of No. 27, Fareed Place, in Bambalapitiya..... *Respondents* 20

Action No. 4518/G.—(S. C. No. 27 (Inty.) of 1950).

In the District Court of Colombo.

In the matter of an application by the appellant abovenamed dated 19-10-50 for Final Leave to appeal to His Majesty the King in Council against the decree of this Court dated 28-9-50.

This matter coming on for hearing and determination on the 24th day of October, 1950, before the Hon. Mr. C. Nagalingam, K.C., and the Hon. Mr. M. F. S. Pulle, K.C., Puisne Justices of this Court, in the presence of Counsel for the appellant.

The applicant having complied with the conditions imposed on him 30 by the order of this Court dated 12th October, 1950, 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. Mr. E. G. P. Jayetileke, K.C., Chief Justice, at Colombo, the 27th day of October, in the year of our Lord One thousand Nine hundred and fifty, and of our Reign the Fourteenth.

Sgd. W. G. WOUTERSZ,
Deputy Registrar, S. C. 40

PART II.
EXHIBITS.

P 3. Birth Certificate of Hameeda.

Exhibits
—
P 3
Birth
Certificate of
Hameeda
12-10-32

P 3. CERTIFICATE OF BIRTH.

Application No. 5245.
No. 234.

Western Province.

Colombo District.

No. 2B North Division.

-
- | | | |
|-------|--|---|
| 1. | Date and Place of Birth : | Twelfth October, 1932. "Hajara Villa," Fareed Place, Bambalapitiya. |
| 2. | Name : | Hameeda. |
| 10 3. | Sex : | Female. |
| 4. | Name and Surname of Father : | Abdul Hamid Mohamed Abdul Cader. |
| 5. | Name and Maiden Name of Mother, and Nationality : | Sithy Hajara. Ceylon Moor. |
| 6. | Rank or Profession and Nationality of Father : | Merchant. Ceylon Moor. |
| 7. | Were Parents married : | Yes. |
| 20 8. | Name and Residence of Informant, and in what capacity he gives information : | Abdul Hamid Mohamed Abdul Cader "Stonyhurst", 8th Lane, Colpetty, Father. |
| 9. | Informant's Signature : | Sgd. Illegibly. |
| 10. | When registered : | First December, 1932. |
| 11. | Signature of Registrar : | Sgd. Verona F. Wirasekera, L.M.S. |
| 12. | Name if added or altered after registration of Birth : | — |
| 13. | Date of addition or alteration : | — |
-

I, R. A. Wickramanayake, Addl. Assistant Provincial Registrar of
30 Births and Deaths, of the Colombo District, do hereby certify that the foregoing is a true copy of the Original Register of Births of Dr. Miss Verona F. Wirasekera, Registrar of the Wellawatte District of the Colombo District, filed in this office and the same is granted on the application of Mr. K. Rasaratnam.

Sgd. R. A. WICKRAMANAYAKE,
Addl. Assistant Provincial Registrar.

Assistant Provincial Registrar's Office,
Colombo, 14th July, 1948.

Exhibits

P 2
Letter from
Public
Trustee
6-8-43

P 2. Letter from Public Trustee.

My No. D 156 TT 14.
Negombo, August 6, 1943.

Estate of the late Sithy Hajara
D. C. Colombo Case No. 1542.

Dear Sir,

Please be good enough to inform me early to what sect the late Sithy Hajara belonged.

2. Also please confirm that both the children of the deceased are girls. 10

Yours faithfully,
Sgd. M. A. L. SALGADO,
for Public Trustee.

1. A. R. A. Razik, Esq., J.P., M.S.C.
2. A. H. M. Abdul Cader, Esq.,
No. 10, Elliot Place,
Colombo.

P 1
Letter to the
Public
Trustee
14-8-43

P 1. Letter to the Public Trustee.

P 1.

A. R. A. RAZIK, J.P.
M.S.C.

464, Baseline Road, 20
14-8-43.

THE PUBLIC TRUSTEE,
NEGOMBO.

Dear Sir,

Re your letter MY No. D 156 TT 14 of yesterday's date I have to inform you that my daughter the late Sithy Hajara belonged to the Shafi sect and not to the Hanafi sect.

Yours faithfully,
Sgd. A. R. A. RAZIK.

X 3
Letter of
Authority
9-12-47

X 3. Letter of Authority.

30

X 3.

I, Hameeda *alias* Sithy Zubeida being a Muslim of the Hanafi Sect do hereby authorise and empower my uncle M. Zahir Mohideen to act as my agent Wali and Wakil, to give me in lawful wedlock to Mr. Rasheed Bin Hassan and to take all necessary steps in that behalf.

Sgd. SITHY ZUBEIDA.

Colombo, 9th December, 1947.

X 4. Affidavit.

Exhibits

X 4.

I, Hameeda *alias* Sithy Zubeida, being a Muslim do hereby solemnly, sincerely and truly affirm, declare and say as follows :—

- (1) I was born on the 12th day of October, 1932.
- (2) I have now passed the age of *bulugh* and the age of discretion.
- (3) I have from the date of my birth been living and still am living with my maternal grandmother Mrs. Ameena A. Razik. My mother died at my grandmother's residence on or about the 17th day of December, 1932.
- 10 (4) I have all throughout been maintained, supported and educated by my grandmother.
- (5) I do hereby declare that I belong to the Hanafi Sect and follow my religion according to the rites of the Hanafi Sect.

Sgd. SITHY ZUBEIDA.

Signed and affirmed to at Colombo
on this 9th day of December, 1947.

Sgd. Illegibly.
J.P.**X 2. Letter.**

20 X 2

KATHEEB A. J. M. WARID,
COLOMBO.

27, Fareed Place,
Bambalapitiya,
11th December, 1947.

X 2
Letter
11-12-47

Dear Registrar,

Will you please marry me to Mr. Rasheed Bin Hassen according to the Hanafi law.

I have appointed my uncle Mr. M. Zahir Mohideen as my Wali.

Yours faithfully,
Sgd. SITHY ZUBEIDA.

30

X 1. Certificate of Marriage.

X 1.

*(Translation)*X 1
Certificate of
Marriage
11-12-47

No. 1209

CERTIFICATE OF MARRIAGE
CEYLON.

Muslim Marriage and Divorce Registration Ordinance
(Chapter 99)

District Division : Colombo.
Area of Officiating Priest : Colombo Mudaliyar's Division.
Officiating Priest solemnising Marriage : Abdul Jawad Mohamed Warid.

Exhibits																				
XI Certificate of Marriage 11-12-47 —continued.	1. Names in full :	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; width: 50%;"> Bridegroom Rasheed Bin Hassen 30 years </td> <td style="text-align: center; width: 50%;"> Bride Mohamed Abdul Cader Hameeda <i>alias</i> Sitti Subaida. 16 years </td> </tr> </table>	Bridegroom Rasheed Bin Hassen 30 years	Bride Mohamed Abdul Cader Hameeda <i>alias</i> Sitti Subaida. 16 years																
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	2. Whether previously married or divorced :	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; width: 50%;">—</td> <td style="text-align: center; width: 50%;">—</td> </tr> </table>	—	—																
—	—																			
	3. If divorced, the proof of such divorce :	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; width: 50%;">—</td> <td style="text-align: center; width: 50%;">—</td> </tr> </table>	—	—																
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	4. Residence :	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; width: 50%;"> Juvenile Cottage, Dematagoda </td> <td style="text-align: center; width: 50%;"> Hajara Villa, Bambala- pitiya, Colombo. </td> </tr> </table>	Juvenile Cottage, Dematagoda	Hajara Villa, Bambala- pitiya, Colombo.																
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	5. Name of Father or Guardian :	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; width: 50%;">—</td> <td style="text-align: center; width: 50%;">Mrs. Amina Razik</td> </tr> </table>	—	Mrs. Amina Razik																
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	6. Guardian's Position :	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; width: 50%;">—</td> <td style="text-align: center; width: 50%;">Mother, begotten Mother.</td> </tr> </table>	—	Mother, begotten Mother.																
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	7. Mahar Amount and whether the same was paid :	Rupees Three hundred (Rs. 300) paid.																		
	8. Dowry amount :	Nil.																		
	9. Kaikooly amount :	Nil.																		
	10. Place of Solemnisation of Marriage :	Hajara Villa, Bambalapitiya, Colombo.																		
	11. Date and Hour of Solemnisation of Marriage :	Eleventh December, 1947, at 8 o'clock in the 20 afternoon.																		
	12. Date of Registration :	Eleventh December, 1948.																		
	13. Name and Residence of 1st Witness :	Ahamed Cassim Mohamed, J.P., No. 146, Hultsdorf Street.																		
	14. Name and Residence of 2nd Witness :	Wappu Marikar Mohamed Cassim, J.P., No. 16, Pendennis Avenue, Colpetty.																		
	15. Name of Priest Solemnising Marriage :	Abdul Jawad Mohamed Warid.																		
	16. Signatures :—	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">1. Bridegroom :</td> <td style="width: 30%;">Signature :</td> <td style="width: 40%;">Rasheed B. Hassan.</td> </tr> <tr> <td>2. Bride's Wali :</td> <td style="text-align: center;">,,</td> <td>Mohamed Zahir Mohideen.</td> </tr> <tr> <td>3. 1st Witness :</td> <td style="text-align: center;">,,</td> <td>Ahmed Cassim Mohamed, J.P.</td> </tr> <tr> <td>4. 2nd Witness :</td> <td style="text-align: center;">,,</td> <td>Wappu Marikar Mohamed Hassim, J.P.</td> </tr> <tr> <td>5. Priest solemnising marriage :</td> <td></td> <td></td> </tr> <tr> <td>6. Officiating Priest :</td> <td></td> <td>Sgd. Illegibly.</td> </tr> </table>	1. Bridegroom :	Signature :	Rasheed B. Hassan.	2. Bride's Wali :	,,	Mohamed Zahir Mohideen.	3. 1st Witness :	,,	Ahmed Cassim Mohamed, J.P.	4. 2nd Witness :	,,	Wappu Marikar Mohamed Hassim, J.P.	5. Priest solemnising marriage :			6. Officiating Priest :		Sgd. Illegibly.
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No.....

Supreme Court of Ceylon
No. 27 of 1949.

District Court, Colombo.
No. 4518.

*In His Majesty's Privy Council
on an Appeal from the Supreme Court of Ceylon*

BETWEEN

A. H. M. ABDUL CADER of No. 10,
Elliot Place, Borella, Colombo.....*Petitioner-Appellant.*

AND

1. A. R. A. RAZIK, and
2. AMEENA UMMA, wife of A. R. A. Razik, both of "Hajara Villa", Fareed Place, in Bambalapitiya,
3. ALAVEE MAZAHIMA, wife of M. S. M. Shafeek of No. 10, Elliot Place, Borella, in Colombo,
4. HAMEEDA SITHY ZUBEIDA, also, of "Hajara Villa", Fareed Place, in Colombo.....*Respondents-Respondents.*

RECORD
OF PROCEEDINGS
