

~~CH.G.27~~

4, 1953

No. 381, 1951

UNIVERSITY OF LONDON
W.C.I.
- 9 FEB 1954
INSTITUTE OF ADVANCED
LEGAL STUDIES

Supreme Court of Ceylon
No. 374 (Final) of 1948.

District Court, Colombo
No. 2997.

33197

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

BETWEEN

NOORUL MUHEETHA of "Noorul Mahal" Dickman's Road,
Bambalapitiya, Colombo.....*Substituted Defendant-Appellant.*

AND

1. MRS. SITTIE RAFEEKA LEYAUDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER and
5. AYNUL NASEERA all of 69/10, Cotta Road, Borella,
Colombo.....*Plaintiffs-Respondents.*

RECORD
OF PROCEEDINGS

INDEX — PART I.

Serial No.	Description of Document	Date	Page
1	Journal Entries	28th September, 1943 to 11th August, 1950	1
2	Plaint of the Plaintiffs	27th September, 1943	7
3	Answer of the Defendant	3rd February, 1944	11
4	Issues Framed	—	12
5	Plaintiffs' Evidence	—	14
6	Defendant's Evidence	—	15
7	Addresses of Counsel	—	15
8	Judgment of the District Court	31st May, 1945	15
9	Decree of the District Court	31st May, 1945	18
10	Petition of Appeal to the Supreme Court	7th June, 1945	20
11	Judgment of the Supreme Court	26th July, 1950	23
12	Decree of the Supreme Court	26th July, 1950	27
13	Application for Conditional Leave to Appeal to the Privy Council	23rd August, 1950	28
14	Decree granting Conditional Leave to Appeal to the Privy Council	25th August, 1950	29
15	Application for Final Leave to Appeal to the Privy Council	14th September, 1950	31
16	Decree granting Final Leave to Appeal to the Privy Council	17th October, 1950	32

PART II.
EXHIBITS
Plaintiffs' Documents

Exhibit No.	Description of Document	Date	Page
P1	Deed No. 1428	28th June, 1927	39
P2	Certificate of Death	6th December, 1929	46
P3	Certificate of Birth	4th January, 1914	34
P4	Certificate of Birth	13th April, 1915	35
P5	Certificate of Birth	22nd March, 1917	36
P6	Certificate of Birth	9th December, 1920	37
P7	Certificate of Birth	22nd May, 1922	38
P8	Certificate of Curatorship and Guardianship in D. C. Colombo Case No. 2608	31st May, 1933	47

Defendant's Documents

Exhibit No.	Description of Document	Date	Page
D1	Deed No. 1483	4th February, 1928	42
—	Letters of Administration in D. C. Colombo Case No. 11957	17th June, 1948	48

No.....

Supreme Court of Ceylon
No. 374 (Final) of 1948.

District Court, Colombo
No. 2997.

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

BETWEEN

NOORUL MUHEETHA of "Noorul Mahal" Dickman's Road,
Bambalapitiya, Colombo.....*Substituted Defendant-Appellant.*

AND

1. MRS. SITTIE RAFEEKA LEYAUDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER and
5. AYNUL NASEERA all of 69/10, Cotta Road, Borella,
Colombo.....*Plaintiffs-Respondents.*

RECORD OF PROCEEDINGS

PART I.

No. 1
Journal
Entries
28-9-43 to
11-8-50
—continued

(6)

9-2-44. Prosper Abraham for Plaintiff.
H. W. De Saram for Defendant.
Vide application (5) to fix trial.
Trial 31-8.

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

(7)

5-8-44. Proctor for plaintiff files list of witnesses and documents and moves
for summons on them. 10
Summons allowed.

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

(8)

30-8-44. Proctor for plaintiff files additional list of witnesses and docu-
ments and moves for summons on the witnesses.
Summons allowed.

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

(9)

31-8-44. *Vide* proceedings.
Trial postponed for 14-5-45.

Intld. S. C. S.
A. D. J. 20

(10)

14-5-45. Trial.
Vide proceedings.
Judgment on 31-5-45,
Documents tomorrow.

Intld. M. A. S., 30
A. D. J.

(11)

14-5-45. Documents P 1 to P 8 filed with list

(12)

15-5-45. Defendants documents for 18-5

Intld. M. A. S.,
A. D. J.

(13)
18-5-45. Defendant's documents for 21-5.

Intld. M. A. S.,
A. D. J. No. 1
Journal
Entries
28-9-43 to
11-8-50
—continued

Later document D1 filed with list (13a).

(14)
31-5-45. *Vide* judgment delivered and filed.

10 Judgment for plaintiff as prayed for with costs but allowing
damages at Rs. 350/- per annum restricted in the case of all the plain-
tiffs to two years prior to the date of action and damages at the same
rate thereafter.

Intld. M. A. S.,
A. D. J.

(14A)
Decree entered.

(15)
5-6-45. Proctor for plaintiff applies for execution by issue of writ of
possession to have the defendant ejected and writ of execution against
the property of the defendant.

20 Copy decree (15A) filed.
Allowed.

Intld. M. A. S.,
A. D. J.

(16)
7-6-45. Mr. H. W. De Saram for defendant files Petition (16A) of appeal
against the Judgment of this Court dated 31-5-45 and tenders stamps
Rs. 12/- for certificate in appeal Rs. 24/- for S. C. Judgment, Rs. 6/60
for service of notice of appeal.

30 Usual steps.

Intld. M. A. S.,
A. D. J.

Stamps Rs. 12/- affixed on certificate in appeal form.
Stamps Rs. 24/- affixed on S. C. Judgment form and cancelled.

(17)
7-6-45. Proctor for defendant appellants files notice given to Proctor for
plaintiff that the defendant will on 12-6-45 or sooner if possible deposit
Rs. 150/- as security for Plaintiffs-Respondents' costs of appeal and
tender stamps Rs. 6/60 to cover the expenses of serving notice of
appeal on the plaintiffs-respondent's Proctor.

40 Call on 12-6-45.

Intld. M. A. S.,
A. D. J.

No. 1
Journal
Entries
28-9-43 to
11-8-50
—continued

(18)

7-6-45. Proctor for defendant-appellant moves to tender Rs. 150/- as security for plaintiffs-respondents' cost of appeal and moves for an order to deposit this sum.

He further moves that Court do allow the notice of appeal on the plaintiffs-respondents to be issued for service on them. Proctor for plaintiffs respondents consents.

Allowed.

Sgd. M. A. S.,
A. D. J. 10

(19)

7-6-45. The defendant-appellant tenders application for appeal briefs.

Deposit Rs. 30/- for the 2 copies.

Intld. M. A. S.,
A. D. J.

(20)

8-6-45. Proctor for appellant files K. R. for Rs. 30/- being fees for appeal briefs.

(21)

12-6-45. Proctor for defendant appellant tenders Bond (21A) to prosecute 20 appeal K. R. (21B) for Rs. 150/- being security for costs of appeal and notice of appeal.

Issue notice of appeal for 27-6-45.

Intld. M. A. S.,
A. D. J.

Stamps Rs. 6/60 affixed on notice of appeal and cancelled.

(22)

12-6-45. Notice of appeal with copy of Petition of appeal issued on Proctor for plaintiffs to W. P.

(23)

19-6-45. Proctor for defendant files Petition (23A) and affidavit (23B) and moves that execution of the decree be stayed until the appeal has been decided.

Proctor for plaintiffs has received notice for 21-6-45.

Call on 21-6-45.

Intld. M. A. S.,
A. D. J.

(24)
21-6-45. Prosper Abraham for plaintiff.
H. W. De Saram for defendant.
Case called *vide* application (23).
Stand out 26-6.

Intld. M. A. S.,
A. D. J.

(25)
26-6-45. Case called *vide* application (23).
Vide proceedings.
Call case for security on 9-7-45.

10

Intld. M. A. S.,
A. D. J.

(26)
27-6-45. Notice of appeal served on Proctor for plaintiffs.

Intld. M. A. S.,
A. D. J.

(27)
6-7-45. Proctor for defendant files security Bond (27A) and K. R. (27B)
for Rs. 1,500 and moves for an order staying execution of the writ of
possession till the hearing of the appeal.
Allowed.

20

Intld. M. A. S.,
A. D. J.

(28)
8-3-46. *Vide* office memo—Further fees for the appeal briefs are due as
follows :
H. W. de Saram for defendant-appellant Rs. 15/-.
Prosper Abraham for plaintiffs-respondents' Rs. 22/50.
Call for them.

30

Intld.....
A. D. J.

(29)
14-3-46. With reference to letter of 8th instant Mr. H. W. de Saram
informs that the defendant-appellant died two months ago and that
on his estate being administered he will take the necessary steps in the
matter.
Note and file.

Intld.....
A. D. J.

No. 1 (30)
Journal
Entries
28-9-48 to
11-8-50
—continued

6-5-48. The appellant in this case has died. As his widow N. Muheetha has applied for letters of administration in testamentary proceedings No. 11957 of this Court and she has not yet obtained letters.

For certified copies of brief she has to pay Rs. 15/- and moves for a deposit order for Rs. 15/-.

Take steps to substitute the heirs and move.

Intld.....

A. D. J.

(31)

23-8-48. Proctor for petitioner files his appointment as Proctor for the petitioner together with a certified copy of Letters of Administration issued in case No. 11957T of this Court, her petition, affidavit and moves that the petitioner be appointed in place of the deceased defendant.

Proctor for plaintiffs take notice.

Allowed.

Petitioner is substituted in place of deceased defendant appellant. Forward case in due course.

Intld.....

A. D. J.

(32)

26-8-48. Proctor for petitioner moves that Court be pleased to allow petitioner's motion dated 3-5-48 for a D/N to deposit Rs. 15/- for typewritten copies.

Issue paying in voucher for Rs. 15/-.

Intld.....

A. D. J.

(33)

27-8-48. Paying in Voucher for Rs. 15/- issued.

(34)

3-9-48. Kachcheri receipt S/7 5579/71883 of 28-8-48 for Rs. 15/- filed.

(35)

2-10-48. Forward record to S. C. with two copies of brief.

(36)

11-8-50. Record received from the Registrar Supreme Court.

Appeal dismissed with costs—*vide* copy of judgment annexed.

Intld.....

A. D. J.

Plaint of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

1. MRS. SITTIE RAFEEKA LAYAÚDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER
5. AYNUL NASEERA all of 69/10 Cotta Road, Borella
in Colombo.....*Plaintiffs.*

10 No. 2997

vs.

(dead) IDROOS LEBBE MARIKAR MOHAMED SATHUK of
34½, Kuruwe Street, Colombo.....*Defendant.*

NOORUL MUHEETA of "Noor Mahal" Dickman's Road,
Bambalapitiya substituted in place of the 1st defendant
deceased.

On this 27th day of September, 1943.

The plaint of the plaintiffs abovenamed appearing by Prosper Abraham
their Proctor states as follows :—

1. The premises in respect of which this action is brought and which
20 is described in the schedule hereto is situated within the jurisdiction of
this Court.

2. One Saffra Umma who was the owner of the said premises by deed
No. 1428 dated 28th June, 1927 attested by N. H. M. A. Cader Notary
Public gifted the same to the plaintiffs abovenamed subject to a life interest
reserved to the said donor and also subject to a fidei commissum binding
each of the said donees.

3. The said Saffra Umma died on the 6th December, 1929 whereupon
the five plaintiffs who were then minors having been born on the 4th
January 1914, 13th April 1915, 22nd March 1917, 9th December 1920 and
30 the 22nd May 1922 respectively became entitled to receive the rents and
profits of the said premises and otherwise possess the same.

4. The defendant who has no manner of right or title to the said
premises has been since 6th December, 1929 in wrongful and unlawful
possession of the same denying the plaintiffs rights thereto to the plaintiffs
loss and damage of Rs. 450 per annum.

No. 2
Plaint of the
Plaintiffs
27-9-43
—*continued*

5. The said premises are reasonably worth Rs. 5,000/-.
6. The plaintiffs other than the 5th plaintiff limit their claim for damages to the 2 years immediately preceeding this action.

Wherefore the plaintiffs pray that :—

- (a) They be declared entitled to the said premises.
- (b) The defendant be erected therefrom.
- (c) The plaintiffs be placed in possession thereof.
- (d) The defendant be ordered to pay damages at the rate set out above for the 2 years immediately preceeding this action to plaintiffs 1 to 4 and from 6th day of December 1929 to the 5th plaintiff 10 with further damages to all plaintiffs at the said rate from date hereof together with legal interest thereon till the plaintiffs are placed in possession.
- (e) For costs of suit and
- (f) For such other and further relief in the premises as to this Court shall seem meet.

Sgd. PROSPER ABRAHAM,
Proctor for Plaintiffs.

The Schedule above referred to:—

1. All that undivided forty one ninety six parts of the house and 20 ground bearing assessment No. 14 and presently bearing assessment No. 57 Messenger Street in Colombo the entire land is bounded or reputed to be bounded on the North by the property of Muttu Weera Chetty Wairawar Chetty and Mr. J. A. Schokman, on the east by the other part of this garden and a part of the house of Sella Umma, on the South by the Messenger Street and on the West by the other part of this garden and the house of Isboe Lebbe Sesma Lebbe containing or reputed to contain in extent twenty two square perches more or less as described in the Diagram or map annexed to the Title deed thereof.

2. All that allotment of land with the buildings thereon bearing 30 assessment No. 14 presently bearing assessment No. 57 Messenger Street within the Municipality and District of Colombo Western Province and bounded on the North East by the property of O. L. M. Abdul Carim bearing Assessment No. 15 on the South East by Messenger Street on the South by the property of S. L. Madar Lebbe bearing Assessment No. 13 and on the North West by the property of Iyah Canoo Chetty bearing

Assessment No. 91 Barber Street containing in extent five and thirty two one hundredths perches according to the Figure of Survey and description thereof dated the 20th day of November 1908 made by Francis M. Perera Licensed Surveyor. No. 2
Plaint of the
Plaintiffs
27-9-43
—continued

Sgd. PROSPER ABRAHAM,
Proctor for Plaintiffs.

Premises No. 57 Messenger Street

PEDIGREE

10 SUFFRA UMMA — Fiscal Conveyance 3365/1887 P. Arunachalam
23-9-1887 Fiscal Colombo
and
Gift 1428/27-5 49/29-2-1912 W. W.
and 28-6-1927
N. H. M. A.
CADER, VANDERSMADT DE ROOY,
N. P. N. P.

- 20
 1. Sittie Rafeeka
 2. Mohamed Awfer
 3. Mohamed Laafi
 4. Sittie Sameena
 5. Aynul Naseena } Present owners.

Colombo 27th September, 43.

PROSPER ABRAHAM,
Proctor for Plaintiff.

Abstract of title relating to Premises No. 57, Messenger Street

No. & Date	Notary	Instrument	Grantor	Grantee	Land and Boundaries	Extent	Remarks
3565/1887 23-9-1887		Final Conveyance	P. Arunachalam Fiscal, Colombo	Suffra Umma	Undivided 41/96 parts of premises No. 14 Presently No. 57 Messenger Street Colombo	A0. R0. 22 SQ. P.	
49 29-2-1912	W. E. Vander Smadt de Rooy, N.P.			Suffra Umma	Premises No. 14 Presently No. 57 Messenger Street Colombo	A0. R0. 5 $\frac{32}{100}$ P.	
1428 27-5 & 28-6 1927	N. H. M. A. Cader, N.P.	Gift	Suffra Umma	1. Sittie Rafaka 2. Mohamed Awfer 3. Mohamed Lafir 4. Sittie Sameena 5. Aynul Naseera	—do—		Subject to a life interest in favour of the Donor

Colombo, 27th September, 1943.

Sgd. PROSPER ABRAHAM,
Proctor for Plaintiffs.

Answer of the Defendant

IN THE DISTRICT COURT OF COLOMBO

- 1. MRS. SITTIE RAFEEKA LAYAÚDEEN
- 2. MOHAMED AWFER
- 3. MOHAMED LAFIR
- 4. MRS. SITTIE SAMEENA AZVER
- 5. AYNUL NASEERA all of 69/10 Cotta Road, Borella
in Colombo.....*Plaintiffs.*

10 No. 2997

vs.

IDROOS LEBBE MARIKAR MOHAMED SATHUK of
Colombo.....*Defendant.*

On this 3rd day of February 1944.

The answer of the defendant abovenamed appearing by H. W. de Saram his Proctor states as follows :—

(1) Answering the 2nd and 3rd paragraphs of the plaint the defendant denies that the Deed No. 1428 referred to was valid or effective to pass to the plaintiffs Saffra Umma's right title and interest in and to the premises described in the schedule to the plaint.

20

(2) Answering paragraph 4 of the plaint the defendant states that the said Saffra Umma gifted the said premises to the defendant by Deed No. 1483 dated 4th February, 1928 attested by N. D. H. Abdul Cader of Colombo, Notary Public, and that he has ever since been in lawful possession thereof.

(3) As a matter of law the defendant states that this action cannot be maintained owing to a misjoinder of causes of action.

Wherefor the defendant prays :—

30

- (a) that the action of the plaintiffs be dismissed with costs, and
- (b) for such further and other relief as to this Court shall seem meet.

Sgd. H. W. DE SARAM,
Proctor for Defendant.

Issues Framed

31-8-44.

ADVOCATE U. A. JAYASUNDERA for plaintiff.

ADVOCATE A. R. H. CANAKARATNE, K.C., with ADVOCATE F. C. W. VANGEYZEL for defendants.

Mr. Jayasundere refers me to para 1 of the answer and says he is unable to say on what grounds the defendants are challenging Deed 14280 as being invalid and ineffective.

Mr. Canakaratne submits that the plaintiff should take up a definite position—whether Deed 14280 is governed by Muslim Law or Roman Dutch Law, in which event he will state his grounds.

Mr. Jayasundere states that his contention is that the Deed is governed by Roman Dutch Law.

Mr. Canakaratne states that in that event his objection is that the Deed is invalid for want of acceptance.

Mr. Canakaratne wishes me to note that he does not submit to the proposition of counsel for plaintiff that Deed 14280 must necessarily be governed by Roman Dutch Law; that it will still be open to him to argue that it is governed by Muslim Law; and that the Deed is invalid and ineffective under that law.

Mr. Jayasundere also wishes me to note that he will submit that even if the Deed is governed by Muslim Law it is still a valid Deed.

The necessary issues can be framed at the trial because I am given to understand that the plaintiffs are not ready today on account of the absence of a material witness.

Of Consent trial postponed for 14-5-45.

Plaintiff will pay defendants a sum of Rs. 105/- as costs of today.

Sgd. S. C. SWAN,
A. D. J. 30

14-5-45.

Advocate Herat for plaintiff instructed by Mr. Abraham.

Advocate E. G. Wickremanayake with Advocate D. W. Fernando for defendant instructed by Mr H. W. de Saram.

ISSUES.

No. 4
Issues
Framed
31-8-44
---continued

Mr. Herat suggests :

(1) Was Deed 1428/28-6-1927 (P1) valid and effective to pass to the plaintiffs right title and interest in the premises forming the subject matter of this action ?

(Both parties admit the execution of Deeds 1428/28-6-1927 and 1483/4-2-1928.

It is admitted that Suffra Umma died on 6-12-1929.)

(2) If so, are the plaintiffs entitled to be declared owners of the said 10 premises as against the defendant ?

(3) Has the defendant been in wrongful possession of the said premises since 6-12-1929 ?

(4) If so, what damages are the plaintiffs entitled to? Damages agreed upon at Rs. 350/- per annum, restricted in the case of all the plaintiffs to two years prior to date of action and damages suffered thereafter.

Mr. Fernando suggests :

(5) Was the said Deed 1428 duly accepted by or on behalf of the donees ?

(6) If not, have the plaintiffs any title to the land in dispute ?

20 (7) Was the said Deed 1428 revoked by the donor Suffra Umma ?

(8) If so, have the plaintiffs any title to the land in dispute ?

(9) Is there a misjoinder of causes of action ?

(10) If so, can the plaintiffs maintain this action ?

Mr. Herat objects to issue (5) on the ground that it is not pleaded in the answer. He objects to issue 7 on the same ground.

As regards the objection to issue 5 it must be noted that although it is correct that want of acceptance is not pleaded in the answer, it is clear from the proceedings of 31-8-44 that this issue has been outlined and the parties were aware of it. I allow issue 5.

30 As regards the objection to issue 7 I think if the defendant relied on the revocation of the Deed of Gift 1428 in order to prove his title on the subsequent gift in his favour (Deed No. 1483), obviously he should have specially pleaded this revocation in his answer. The issue is relevant and I would allow it, but if counsel for plaintiffs is not ready to meet it, I am prepared to give him a date to get ready.

At this stage Mr. Fernando moves to amend issue (7) as follows :

(7) Was the said Deed No. 1428 expressly revoked by the donor Sufra Umma by her subsequent Deed of Gift No. 1483/4-2-1928 ?

Mr. Herat has no objection, and I allow the amendment.

No. 5

Plaintiff's Evidence

Mr. Herat calls.

MOHAMMED AWFER Affirmed, 30 Businessman, Cotta Road, Colombo.

I am the 2nd plaintiff. The 1st, 4th and 5th plaintiffs are my sisters. The 3rd plaintiff is my brother. My grandmother was Suffra Umma. She was my father's mother. Defendant is my paternal uncle. Suffra Umma by Deed 1428 of 28-6-1927 P 1 gifted certain premises to the five plaintiffs subject to certain conditions mentioned in that Deed. At the date of that 10 Deed my father was dead. By that Deed my grandmother reserved to herself the right to receive the income and rents from the premises gifted to us. My grandmother died on 6-12-1929. I produce marked P2 certified copy of her death certificate. I also produce marked P3 birth certificate of my sister the 1st plaintiff who was born on 4-1-1914. I produce marked P4 my birth certificate showing that I was born on 13-4-1915. I produce marked P6 the birth certificate of my brother the 3rd plaintiff showing that he was born on 22-3-1917. I produce marked P6 the birth certificate of my sister the 4th plaintiff showing that she was born on 9-12-1920. I also produce the birth certificate of my sister the 5th plaintiff marked P7 20 showing that she was born on 22-5-1922.

At the time of my father's death we were all minors. My mother was appointed curatrix and guardian over the estates of all of us five plaintiffs. In D. C. Colombo 2608 I produce certified copy of certificate of curatorship and guardianship marked P8. My mother was also the administratrix of my father's estate. Since the death of my grandmother Suffra Umma on 6-12-1929 my uncle the defendant has been enjoying the income of the premises gifted to us by the Deed of Gift P1. The defendant is in wrongful possession. We are entitled to receive the income from 6-12-1929. My brothers and sisters and I claim damages from the defendant at the 30 rate agreed upon.

The Deed of Gift P1 has been accepted by my mother on our behalf.

M. Awfer
Cross-exami-
nation

Cross-examined: Before 6-12-1929 my grandmother was in possession of the land in dispute. Neither I nor my brothers and sisters who are the plaintiffs in this action had possession of this property prior to that date.

Q. You know that your grandmother executed Deed of Gift 1483 of 4-2-1928 in favour of your uncle the defendant?

A. I have heard of it.

M. Awfer
Re-exami-
nation

Re-examined: During my grandmother's lifetime she did not send us the income from these premises.

Sgd. M. A. SAMARAKOON, 40
A. D. J.

Mr. Fernando admits that Deed P1 was accepted by the mother of the plaintiffs on their behalf.

Mr. Herat closes his case reading in evidence P1 to P8.

No. 6No. 6
Defendant's
Evidence**Defendant's Evidence**

Mr. Fernando marks in evidence D1—Deed 1483 of 4-2-1928 and closes his case.

No. 7No. 7
Addresses of
Counsel**Addresses of Counsel**

Mr. D. W. Fernando addresses the Court and cites.

43 N.L.R. 193.

34 N.L.R. 281.

10 37 N.L.R. 201 (220, 221).

Minlajet 169.

Tyabji—Principles of Mohammedan Law sections 330, 420, 424.

Sgd. M. A. SAMARAKOON,

A. D. J.

INTERVAL.

Mr. Herat address the Court and cites.

34 N.L.R. page 281 at pages 285 and 286.

20 Law Recorder page 68.

6 N.L.R. at page 212.

20 Maarsdorp Vol. 1 page 267.

Moriss' English and Roman Dutch Law page 108.

Maarsdorp Vol. III page 107.

Documents tomorrow.

Judgment 31-5-45.

Sgd. M. A. SAMARAKOON,

A. D. J.

No. 8No. 8
Judgment
of the
District
Court
31-5-45**Judgment of the District Court****JUDGMENT**

30 The plaintiffs—five in number—have brought this action against the defendant for declaration of title to the premises described in the schedule to the plaint. Admittedly Suffra Umma the plaintiffs' grandmother, was the owner of the premises and she by Deed No. 1428 of 28th June 1927—P1—gifted the premises reserving a life interest for herself. The Deed also creates a fidei commissum in favour of the children of the donees.

No. 8
Judgment
of the
District
Court
31-5-45
—continued

The defendant admits the execution of this Deed but claims title to the premises on a later Deed of Gift executed by the said Suffra Umma No. 1483 of 4th February, 1928—D1. His case is that the Gift P1 was not a valid Gift according to Muslim Law and that the acquired title on his Deed D1 in which, it may be noted the donor purports to revoke the Gift made by her on P1.

The following issues were raised at the trial :—

- (1) Was Deed No. 1428 of 28-6-1927—P1—valid and effective to pass to the plaintiffs right title and interest in the premises forming the subject matter of this action ? 10
- (2) If so, are the plaintiffs entitled to be declared owners of the said premises as against the defendant ?
- (3) Has the defendant been in wrongful possession of the said premises since 6-12-1929 ?
- (4) If so, what damages are the plaintiffs entitled to ?
(Damages agreed upon at Rs. 350/- per annum, restricted in the case of all the plaintiffs to 2 years prior to date of action and damages suffered thereafter).
- (5) Was the said Deed No. 1428 duly accepted by or on behalf of the donees ? 20
- (6) If not, have the plaintiffs any title to the land in dispute ?
- (7) Was the said Deed No. 1428 expressly revoked by the donor Suffra Umma by her subsequent Deed of Gift No. 1483 of 4-2-1928?
- (8) If so, have the plaintiffs any title to the land in dispute ?
- (9) Is there a misjoinder of causes of action ?
- (10) If so, can the plaintiffs maintain this action ?

At the trial Counsel for the defendant admitted that in as much as Deed P1 creates a fidei commissum, it is governed by the Roman Dutch Law and he cited the case of Aliya Marikar Abuthahir vs. Aliya Marikar Mohamed Sally (43 New Law Reports page 193). He, however, argued 30 that the Deed P1 was invalid firstly on the ground that it has not been duly accepted, and secondly on the ground that the Deed P1 was revoked by the subsequent Deed of Gift D1. Admittedly the Gift P1 was accepted by the plaintiffs' mother and the plaintiffs' father was dead at the time.

Counsel for the defendant argued that although the document, in so far as it creates a fidei commissum, is governed by the Roman Dutch Law, yet the question of acceptance must be regarded as being governed by the Muslim Law. He thus argued that as under the Muslim Law the mother

was not the natural guardian, she was therefore not qualified to accept the Gift. I think this argument involves the error which was pointed out in the decision of the Privy Council in the case of Weerasekere *vs.* Peiris—34—New Law Reports, page 281. Once it is admitted that the Document P1 is a Deed of Gift creating a fidei commissum then it seems to me clear that the transaction as a whole must conform to the requirements of the Roman Dutch Law. Under the Roman Dutch Law the surviving parent can accept a Gift on behalf of the minor children. (See Fernando *vs.* Weerakoon 6 New Law Reports, page 212) I hold therefore that the acceptance
 10 by the mother on behalf of her minor children was a valid acceptance.

No. 8
 Judgment
 of the
 District
 Court,
 31-5-45
 —continued

On the question of revocation too, the same principle applies. It is clear law that under the Roman Dutch Law a Deed of Gift cannot be revoked by the donor except in special circumstances or unless the power of revocation is expressly reserved. In the Deed of Gift P1 there is no reservation of the right to revoke. As the Roman Dutch Law applies to Deed P1, I would hold that the donor in P1 could not revoke that Gift by the subsequent Deed D1 and that, despite the execution of the Deed D1 and the revocation contained in it, the earlier Gift remained valid.

At the trial it was agreed that in the event of the plaintiffs obtaining
 20 judgment, damages should be at Rs. 350/- per annum, restricted in the case of all the plaintiffs to two years prior to the date of action and to damages at the same rate thereafter.

I would answer the issues as follows :

1. Yes.
2. Yes.
3. Yes.
4. As agreed.
5. Yes.
6. Needs no answer.
- 30 7. No.
8. Needs no answer.
9. & 10. Not pressed.

I enter judgment for the plaintiffs as prayed for with costs but allowing damages at Rs. 350/- per annum restricted in the case of all the plaintiffs to two years prior to the date of action and damages at the same rate thereafter.

Sgd. M. A. SAMARAKOON,

A. D. J.

31-5-45.

Decree of the District Court

IN THE DISTRICT COURT OF COLOMBO

1. MRS. SITTIE RAFEEKA LAYAÚDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER
5. AYNUL NASEERA all of 69/10 Cotta Road, Borella
in Colombo.....*Plaintiffs.*

No. 2997/L

vs.

10

- (dead) 1. IDROOS LEBBE MARIKAR MOHAMED SATHUK of
34¹/₈, Kuruwe Street, Colombo.....*Defendant.*
2. NOORUL MUHEETA of "Noor Mahal" Dickman's Road,
Bambalapitiya substituted in place of the 1st defendant
deceased.

This action coming on for final disposal before M. A. Samarakoon, Esquire, Additional District Judge of Colombo, on the 14th May, 1945, in the presence of Mr. Adv. Kingsley Herath instructed by Mr. Prosper Abraham, Proctor, on the part of the plaintiffs and Mr. Adv. E. G. Wickremanayake with Mr. Adv. D. W. Fernando instructed by Mr. H. W. de Saram, Proctor on the part of the defendant and again on the 31st day of May, 1945, it is ordered and decreed :

- (a) that the plaintiffs be and they are hereby declared entitled to the premises in the schedule hereto described.
- (b) that the defendant be ejected from the said premises.
- (c) that the plaintiffs be restored to possession of the said premises.
- (d) that the defendant do pay to the plaintiffs damages at the rate of Rs. 350/- per annum restricted in the case of all the plaintiffs to two years prior to the date of action, namely 28th September, 1943, and damages at the same rate thereafter till the plaintiffs are restored to possession.
- (e) that the defendant do pay the plaintiffs the costs of this action.

The Schedule referred to above

No. 9
Decree of the
District
Court
31-5-45
—continued

1. All that undivided forty one ninety six parts of the house and ground bearing Assessment No. 14 and presently bearing Assessment No. 57, Messenger Street, in Colombo, the entire land is bounded or reputed to be bounded on the North by the property of Muttu Weeran Chetty, Wairawe Chetty and Mr. J. A. Schokman on the East by the other part of this garden and a part of the house of Sella Umma on the South by the Messenger Street and on the West by the other part of this garden and the house of Isboe Lebbe, Sesma Lebbe containing or reputed to contain in
10 extent twenty two square perches more or less as described in the Diagram or Map annexed to the title Deed thereof.

2. All that allotment of land with the buildings thereon bearing Assessment No. 14 presently bearing Assessment No. 57, Messenger Street, within the Municipality and District of Colombo, Western Province and bounded on the North East by the property of O. L. M. Abdul Carim bearing Assessment No. 15 on the South East by Messenger Street on the South by the property of S. L. Madar Lebbe bearing Assessment No. 13 and on the North-West by the property of Iyah Canoo Chetty bearing Assessment No. 91, Barber Street, containing in extent five and thirty two
20 one hundredths perches according to the Figure of Survey and description thereof dated the 20th day of November, 1908, made by Francis M. Perera Licensed Surveyor.

Sgd. M. A. SAMARAKOON,
Adl. District Judge

This 31st day of May, 1945.

No. 10**Petition of Appeal to the Supreme Court**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

1. MRS. SITTIE RAFEEKA LEYAUDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER
5. AYNUL NASEERA all of 69/10 Cotta Road, Borella
in Colombo.....*Plaintiffs.*

D.C. Colombo Case No. 2997/L vs. S.C. (F) 374 of 1948 10

- (dead) 1. IDROOS LEBBE MARIKAR MOHAMED SATHUK of
57, Messenger Street, Colombo.
2. NOORUL MUHEETA of "Noor Mahal" Dickman's Road,
Bambalapitiya substituted in place of 1st defendant
deceased.....*Defendant.*
- (dead) 1. IDROOS LEBBE MARIKAR MOHAMED SATHUK of
57, Messenger Street, Colombo.
2. NOORUL MUHEETA of "Noor Mahal" Dickman's Road,
Bambalapitiya substituted in place of the 1st defendant
deceased.....*Defendant-Appellant.* 20

vs.

1. MRS. SITTIE RAFEEKA LEYAUDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER
5. AYNUL NASEERA all of 69/10 Cotta Road, Borella
in Colombo.....*Plaintiffs-Respondents.*

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES
OF THE SUPREME COURT OF THE ISLAND OF CEYLON, COLOMBO. 30

On this 7th day of June, 1945.

The petition of appeal of the defendant-appellant abovenamed appearing by H. W. de Saram his Proctor states as follows:—

1. The plaintiffs-respondents sued the defendant-appellant in the above-styled action for declaration of title to certain premises described in the schedule to the plaint.

No. 10
Petition of
Appeal to
the Supreme
Court
7-6-45
—continued

2. The plaintiffs-respondents claimed title to the said premises by virtue of a Deed of Gift Bearing No. 1428 dated the 28th June, 1927, attested by N. H. M. A. Cader, Notary Public, and executed by one Saffra Umma in their favour.

3. The plaintiffs-respondents maintained that the said Deed created a valid fidei commissum and that on the death of the said Suffra Umma the premises in question devolved on them subject to a fidei commissum binding each one of them.

4. The defendant-appellant filed answer denying the title of the plaintiffs-respondents and claimed title himself under and by virtue of Deed No. 1483 dated the 4th February, 1928 attested by the said N. H. M. A. Cader, Notary Public, and executed by the said Saffra Umma in his favour. The defendant-appellant also claimed title by prescription as he had been and still is in possession of the said premises since the execution of the Deed aforesaid.

5. The case went to trial on the 14th May, 1945, before the learned Additional District Judge on the following issues :—

- (1) Was Deed 1428 of 28th June, 1927, (P1) valid and effective to pass to the plaintiffs right, title and interest in the premises forming the subject matter of this action ?
- (2) If so, are the plaintiffs entitled to be declared owners of the said premises as against the defendant ?
- (3) Has the Defendant been in wrongful possession of the said premises since 6th December, 1929 ?
- (4) If so, what damages are the plaintiffs entitled to ?
- (5) Was the said Deed 1428 duly accepted by or on behalf of the donees ?
- (6) If not, have the plaintiffs any title to the land in dispute ?
- (7) Was the said Deed No. 1428 expressly revoked by the donor Saffra Umma by her subsequent Deed of Gift No. 1483 of 4th February, 1928 ?

No. 10
 Petition of
 Appeal to
 the Supreme
 Court
 7-6-45
 --continued

- (8) If so, have the plaintiffs any title to the land in dispute ?
 (9) Is there a misjoinder of causes of action ?
 (10) If so, can the plaintiffs maintain this action ?

6. By his judgment dated 31st May, 1945, the learned Additional District Judge entered decree in favour of the plaintiffs-respondents.

7. Being aggrieved and dissatisfied with the said Judgment and decree the defendant-appellant begs to appeal to Your Lordships' Court on the following among other grounds which learned Counsel will at the hearing of this appeal argue :—

- (a) that the said judgment is contrary to law and against the weight of evidence adduced in the case.
 (b) it is in evidence that the Deed by which the plaintiffs-respondents claimed title to the premises in question has been revoked by Saffra Umma during her lifetime by Deed D1 by which defendant-appellant was put in possession of the said premises and claimed title thereto.
 (c) it is submitted that Deed P1 fails for want of due and proper acceptance under Muslim Law.
 (d) it is further submitted that it was open to Saffra Umma the donor, during her lifetime and before delivery of premises passed on to the donees in P1 to revoke the said Gift and donate the premises in question to the defendant-appellant.

Wherefore the defendant-appellant prays that your Lordships' Court be pleased to set aside the judgment and decree entered in this case and dismiss the plaintiffs-respondents action with costs and for such further and other relief as to Your Lordships' Court shall seem meet.

Sgd. H. W. DE SARAM,
Proctor for Defendant-Appellant.

Judgment of the Supreme Court

No. 11
Judgment of
the Supreme
Court
26-7-50

S. C. No. 347—L.

D. C. Colombo No. 2997.

Present: DIAS, S.P.J. & PULLE, J.*Counsel*: E. B. WICKRAMANAYAKE, K.C., with S. CANAGARAYER & M. S. M. HUSSAIN, for the Defendant-Appellant.

H. V. PERERA, K.C., with H. W. JAYAWARDENE & G. F. SETHUKAVALER for Plaintiffs-Respondents.

10 *Argued on*: 17th May, 1950.*Decided on*: 26th July, 1950.

PULLE, J.

The appellant in this case is the defendant against whom the plaintiffs have obtained a decree declaring them entitled to the premises described in the schedule to the plaint and for ejectment and damages.

The parties are Muslims. The plaintiffs based their title on a Deed of Gift No. 1428 of the 28th June, 1927, marked P1, executed in their favour by one Saffra Umma. The defendant relied on a later Deed of Gift No. 1483 of 4th February, 1928, marked D1 by which Saffra Umma
20 after purporting to revoke Deed No. 1428 gifted the same premises to the defendant. The only point urged in favour of the appeal was that the Gift made by P1 was bad for want of a valid acceptance.

One Idroos Lebbe Marikar Mohamed Zain the son of Saffra Umma was married to Sheka Marikar Fatheela Umma. Their children are the plaintiffs of whom the first, who is the eldest, was born on 4th January, 1914. At the time the Deed P1 was executed, Mohamed Zain, the father was dead and the plaintiffs were minors.

By the Deed of Gift P1 Saffra Umma reserved to herself the right to enjoy the rents and profits of the premises during her life time and created
30 a *fidei commissum* in favour of the children of the donees. There were other conditions and restrictions to which it is not necessary to refer for the purpose of deciding the question arising on this appeal. The Gift was accepted by Fatheela Umma in the following words :

“ And these presents further witness that I Sheka Marikar Fatheela Umma who is the mother of the said donees do hereby thankfully accept the forgoing Gift for and on behalf of the said donees who are all minors ”.

Pg. 11
 Judgment of
 the Supreme
 Court
 26-7-50
 —continued

The validity of this acceptance was attacked on the ground that the parties to the Deed of Gift being Muslims, Fatheela Umma, as the mother of the donees, did not have the capacity to accept the Gift on behalf of her children.

It is not disputed that Saffra Umma did not intend to make a Gift such as is recognised in Muslim Law but that she did, in the words of the Privy Council in the case of *Weerasekere vs. Peiris*¹, intend to create and that she did create a valid *fidei commissum* such as is recognised by the Roman-Dutch Law.

Learned Counsel for the appellant contends that to constitute a valid donation acceptance by the donee is essential. Where the donee is a minor it is not every person who is empowered to accept the donation on behalf of the minor. He relies on the cases of *Fernando vs. Weerakoon*² and *Wellappu vs. Mudalihami*³. The former case decided that a minor cannot accept a Gift, until at least he attains majority and that a grand parent and parents, when not also the donors, may accept for the minor. Both cases specifically held that a father who is the donor cannot act in the dual capacity of donor and acceptor. Reliance was also placed on *Cornelis vs. Dhamawardene*⁴ according to which Middleton, J. held, "that the acceptance of a Deed of Gift made by a father in favour of his minor child by an uncle of the minor on behalf of the minor is not a valid acceptance as not having been an acceptance of a legal or conventional guardian". The capacity of a legal or natural guardian to accept is also recognised in *Fernando et al vs. Cannangara*⁵ and *Silva vs. Silva*⁶. It is argued on these authorities that if Fatheela Umma did not at the time she purported to accept the Gift come within the description of legal or natural guardian of her children the Gift failed and that the question whether she was the natural guardian fell to be determined by the Muslim and not the general law of the land.

There is undoubtedly authority for the statement that in Muslim law a mother is not the natural guardian. See the judgment of Mr. Ameer Ali in the Privy Council case of *Imambandi and others vs. Mutsaddi and others*, (1917-18) Law Reports Indian Appeals 73. Great stress was laid on the following passage in Minhaj Et Talibin, P 169 :—

"A father is the guardian of his children during their minority. In default of the father the guardianship reverts to the father's father, and then to a testamentary executor appointed for that purpose by the father or father's father, and as a last resort to the Court, which, however, may depute some reliable person as administrator. A mother can never be guardian in her own right, but the father or father's father may so appoint her by will".

40

-
1. (1933) 34 N.L.R. 281.
 2. (1903) 6 N.L.R. 212.
 3. (1903) 6 N.L.R. 233.
 4. (1907) 2 A.C.R. XIII.
 5. (1900) 3 N.L.R. 6.
 6. (1909) 11 N.L.R. 161.

The soundness of the argument urged on behalf of the appellant rests on the validity of two propositions :—

No. 11
Judgment of
the Supreme
Court
26-7-50
—continued

- (1) That a transaction the efficacy of which depends on the Roman Dutch Law ought to be split up into its component parts and the legality of each part tested in order to ascertain whether or not it is obnoxious to the personal or religious law of the parties to the transaction.
- (2) That the entirety of the Muslim Law of guardianship is part of the personal or religious law applicable to Muslims in Ceylon.

10 The judgment of the Privy Council in *Weerasekera vs. Peiris*¹ is itself a warning against dividing up a transaction, intended to be governed by one system of law, into parts and pronouncing against its validity because one part does not survive a test by the application of the personal or religious law governing the contracting parties. It is clear that under the Roman-Dutch Law upon the death of the father the mother is vested with the rights of control over the person and property of her children, in the absence of special arrangements made by the father in a testamentary disposition. In the present case there is no suggestion that any one else
20 besides Fatheela Umma exercised, de facto, the rights of a guardian over her children. On the death of her husband she was appointed administratrix of his estate. Further in 1933 she was appointed by Court curator of the estate and guardian of the person of the minors. I do not see anything intrinsically objectionable, in these circumstances, in regarding Fatheela Umma, in the Roman-Dutch Law sense, as a natural guardian entitled to accept the Gift for and on behalf of her minor children.

The subject is not free from difficulty. Difficulties always arise when a single transaction falls within the orbits of different systems of law. Though not exactly in point I would quote Professor Cheshire who says in his work on Private International Law (3rd Edition) p 259, “The
30 desideratum of Private International Law is to reduce as far as possible the number of laws that govern the ordinary dealings of life. The ideal is that a single transaction should be governed by a single law, and though, of course, this is not completely attainable, if it is at least possible and desirable in the matter of capacity”. I appreciate that guardianship is perhaps more a matter of status than of capacity but even here judicial opinion does not favour the rigid application of the *lex domicilii*. Lord Greene, M.R., is quoted at p. 256 (ib) as saying :—

40 “It would be wrong to say that for all purposes the law of the domicile is necessarily conclusive as to capacity arising from status... There cannot be any hard and fast rule relating to the application the law of the domicile as determining status and capacity for the purpose of transactions in this country”.

No. 11
Judgment of
the Supreme
Court
26-7-50
—continued

In my judgment the validity of the acceptance by Fatheela Umma has to be determined solely within the framework of the Roman-Dutch Law. If she were governed by that law, she would on the facts of the case be the natural guardian of her children and, therefore, empowered to accept the Gift on their behalf.

If the conclusion which I have reach is not correct, it still remains to be determined whether the principles of Muslim Law on which the appellant has relied can be regard as part of the law applicable to Muslims in Ceylon. In the case of *Rahiman Lebbe and another vs. Hassan Ussan Umma and others*⁷ Schneider, A.J., said “The reported cases show that since 1862 our Courts have consistently followed the principle that it is so much and no more of the Mohammedan Law as has recived the sanction of custom in Ceylon that prevails in Ceylon..... It is true the treatises on the Mohammedan Law generally are frequently referred to in our Courts. But this is done only to elucidate some obscure text in our written Mohammedan Law or in corroboration of evidence of local custom. I cannot find a single decision that has gone to the length of holding that apart from the prevalence of a local custom Mohammedan Law has any application in Ceylon”. Ennis, J., said much to the same effect. No authority has been cited showing that a Muslim widow in Ceylon is not regarded as the natural guardian of her minor children.

Learned counsel for the plaintiffs cited the case of *In the matter of the Application of Sego Meera Lebbe Ahamadu Lebbe Marikar for a Writ of Habeas Corpus*⁸ as authority for the general proposition that whatever might be the Muslim Law according to the Koran a question of guardianship has to be determined according to the general law applicable to all inhabitants of the country. In the case cited the custody of a Muslim child was claimed both by the father and the maternal grandmother, the mother being dead. It was held that there was no Muslim Law in force depriving the father of his right to such custody in preference to all other persons. Dias, J., said “the Mohammedan Law on this point, as it is found in books, is mixed up with various considerations peculiar to their faith; and in the absence of evidence to the contrary, I am inclined to uphold the right of the father as against the grandmother. It is a rule recognised by all civilised countries and consonant to natural justice”. The judgment of Drieberg, J., in *Junaid vs. Mohideen et al*⁹ indicates that the particular ruling that a father is preferred to a grandmother as a guardian has not been followed in numerous cases since the judgment of Wood-Renton, J., in *Wappu Marikar and Ummaniumma*¹⁰. The principle enunciated by Dias, J., however, remains unaffected. One point, therefore, clearly emerges from a consideration of the cases on this point that before Muslim Law could be applied there must be a *cursus curiae* in favour of applying that law. There is no *cursus curiae* of which I am aware which deprives a

7. (1916) 3 C.W.R. 88 at 99.

8. (1889-91) 9 S.C.C. 42.

9. (1933) 34 N.L.R. 141.

10. (1912) 14 N.L.R. 225.

Muslim widow of a preferential right to the custody and guardianship of her minor children and to be in charge of their property. It would indeed be strange if a Muslim widow having the preferential right to administer her husband's estate under Section 523 of the Civil Procedure Code, the title to a part of which estate would vest in her children, is not to be regarded as their natural guardian. In the result I find that the appellant is not entitled to have recourse to Muslim Law to defeat the plaintiffs' claim that Fatheela Umma was empowered by the general law of the land to accept the gift.

No. 11
Judgment of
the Supreme
Court
26-7-50
--continued

10 For the reasons which I have stated the appellant's contention that the Gift to the plaintiffs was bad for want of a valid acceptance fails.
I would dismissed the appeal with costs.

Sgd. M. F. S. PULLE,
Puisne Justice.

DIAS, S.P.J.
I agree.

Sgd. R. F. DIAS,
Senior Puisne Justice.

No 12

Decree of the Supreme Court

No. 12
Decree of
the Supreme
Court
26-7-50

20 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
D. C. (F) 374/1948.

MRS. SITTEE RAFEEKA LEYADEEN and 5 others all of
69/10, Cotta Road, Borella, Colombo.....*Plaintiffs-Respondents.*
against

NOORUL MUHEETHA of "Noor Mahal" Dickman's Road,
Bambalapitiya.....*Defendant-Appellant.*

30 Action No. 2997. District Court of Colombo.

This cause coming on for hearing and determination on the 17th May, 1950 and 26th day of July, 1950, and on this day, upon an appeal preferred by the defendant-appellant before the Hon Mr. R. F. Dias, LL.D., Senior Puisne Justice and the Hon. Mr. M. F. S. Pulle, Puisne Justice of this Court, in the presence of Counsel for the appellant and respondents.

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

Witness the Hon. Mr. E. G. P. Jayetilleke, K.C., Chief Justice, at Colombo, the 4th day of August, in the year of our Lord One thousand
40 Nine hundred and Fifty, and or Our Reign the Fourteenth.

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

No 13

No. 13
Application
for Condi-
tional Leave
to Appeal to
the Privy
Council
23-8-50

Application for Conditional Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

D. C. Colombo Case No. 2997 (Land)
S. C. No. 874 of 1948

1. MRS. SITTIE RAFEEKA LEYAUDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER and
5. AYNUL NASEERA all of 69/10, Cotta Road, Borella,
Colombo..... *Plaintiffs.* 10

vs.

IDROOS LEEBE MARIKAR MOHAMED SATHUCK of
57, Messenger Street, Colombo..... *Defendant.*

NOORUL MUHEETHA of "Noorul Mahal" Dickman's Road,
Bambalapitiya, Colombo..... *Substituted Defendant.*

between

NOORUL MUHEETHA of "Noorul Mahal" Dickman's Road,
Bambalapitiya, Colombo..... *Substituted Defendant-Appellant.*

vs.

20

1. MRS. SITTIE RAFEEKA LEYAUDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER and
5. AYNUL NASEERA all of 69/10, Cotta Road, Borella,
Colombo..... *Plaintiffs-Respondents.*

To

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

On this 23rd day of August, 1950.

30

The humble petition of Noorul Muheetha, the substituted defendant-appellant abovenamed, appearing by S. A. Seyed Hamid, her Proctor, sheweth as follows :—

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 26th day of July, 1950, the substituted defendant-appellant is desirous of appealing therefrom.

No. 13
Application
for Condi-
tional Leave
to Appeal to
the Privy
Council
23-8-50
—continued

2. That the said judgment is a final judgment, and the matter in dispute on the appeal amounts to or is of the value of Rupees Five thousand or upwards.

3. Notice of this application has been duly given within 14 days of the judgment abovementioned to the plaintiffs-respondents.

Wherefore the appellant prays for Conditional Leave to Appeal against the said judgment of this Court dated the 26th day of July, 1950, to His Majesty the King in Council.

Sgd. S. A. SEYED HAMID,
Proctor for Substituted Defendant-Appellant.

No 14

Decree granting Conditional Leave to Appeal to the Privy Council

No. 14
Decree
granting
Conditional
Leave to
Appeal to
the Privy
Council
25-8-50

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

- 20 1. MRS. SITTIE RAFEEKA LEYAUDEEN
- 2. MOHAMED AWFER
- 3. MOHAMED LAFIR
- 4. MRS. SITTIE SAMEENA AZVER and
- 5. AYNUL NASEERA all of 69/10, Cotta Road, Borella,
Colombo.....*Plaintiffs.*

vs.

IDROOS LEBBE MARIKAR MOHAMED SATHUCK of
57, Messenger Street, Colombo.....*Defendant.*

30 NOORUL MUHEETHA of "Noorul Mahal" Dickman's Road,
Bambalapitiya, Colombo.....*Substituted Defendant.*

between

NOORUL MUHEETHA of "Noorul Mahal" Dickman's Road,
Bambalapitiya, Colombo.....*Substituted Defendant-Appellant.*

vs.

- 1. MRS. SITTIE RAFEEKA LEYAUDEEN
- 2. MOHAMED AWFER
- 3. MOHAMED LAFIR
- 4. MRS. SITTIE SAMEENA AZVER and
- 40 5. AYNUL NASEERA all of 69/10, Cotta Road, Borella,
Colombo.....*Plaintiffs Respondents.*

No. 14
Decree
granting
Conditional
Leave to
Appeal to
the Privy
Council
25-8-50
—continued

Action No. 2997 (Land) (S. C. 374).

District Court of Colombo.

In the matter of an application by the Substituted-Defendant-Appellant abovenamed dated 23rd August, 1950, for Conditional Leave to appeal to His Majesty the King in Council against the decree dated 26th July, 1950.

This matter coming on for hearing and determination on the 25th day of August, 1950, before the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, and the Hon. Mr. R. F. Dias, LL.D., Senior Puisne Justice, of this Court, in the presence of Counsel for the petitioner 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. 3,000/- and hypothecate the same by Bond or such other security as the Court 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.

Witness the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, at Colombo, the 1st day of September, in the year of our Lord One thousand Nine hundred and Fifty, and of Our Reign the Fourteenth.

30

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

No. 15

Application for Final Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 15
Application
for Final
Leave to
Appeal to
the Privy
Council
14-9-50D. C. Colombo Case No. 2997 (Land)
S. C. No. 374 of 1948

1. MRS. SITTIE RAFEEKA LEYAUDEEN
 2. MOHAMED AWFER
 3. MOHAMED LAFIR
 4. MRS. SITTIE SAMEENA AZVER
105. AYNUL NASEERA all of 69/10 Cotta Road, Borella,
Colombo.....*Plaintiffs.*

*vs.*IDROOS LEBBE MARIKAR MOHAMED SATHUK of
57, Messenger Street, Colombo.....*Defendant.*NOORUL MUHEETA of "Noor Mahal" Dickman's Road,
Bambalapitiya, Colombo.....*Substituted-Defendant.**between*NOORUL MUHEETA of "Noor Mahal" Dickman's Road,
Bambalapitiya, Colombo.....*Substituted Defendant-Appellant.*20 *vs.*

1. MRS. SITTIE RAFEEKA LEYAUDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER
5. AYNUL NASEERA all of 69/10 Cotta Road, Borella,
Colombo.....*Plaintiffs-Respondents.*

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

30 On this 14th day of September, 1950.

The humble petition of Noorul Muheetha the substituted defendant-appellant abovenamed appearing by S. A. Seyed Hamid, her Proctor, sheweth as follows :—

No. 15
Application
for Final
Leave to
Appeal to
the Privy
Council
14-9-50
—continued

1. That the appellant on the 25th day of August, 1950. obtained Conditional Leave from this Honourable Court to appeal to his Majesty the King in Council against the judgment of this Court pronounced on the 26th day of July, 1950.

2. That the appellant has in compliance with the conditions on which such appeal was granted (1) deposited with the Registrar of the Supreme Court a sum of Rupees Three thousand (Rs. 3,000/-) and hypothecated the same by bond and (2) deposited with the Registrar of the Supreme Court a sum of Rupees Three hundred (Rs. 300/-) in respect of fees mentioned in Section 4 (b) and (c) of the Appeals (Privy Council) Ordinance. 10

Wherefore the appellant prays that she be granted Final Leave to Appeal against the said judgment of this Court dated the 26th day of July, 1950 to His Majesty the King in Council.

Sgd. S. A. SEYED HAMID,
Proctor for Substituted Defendant-Appellant.

No. 16
Decree
granting
Final Leave
to Appeal to
the Privy
Council
17-10-50

No. 16

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. 20

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

1. MRS. SITTIE RAFEEKA LAYAÚDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER
5. AYNUL NASEERA all of 69/10, Cotta Road, Borella,
Colombo.....*Plaintiffs.*

vs.

IDROOS LEBBE MARIKAR MOHAMED SATHUK of
57, Messenger Street, Colombo.....*Defendant.* 30
NOORUL MUHEETA of "Noorul Mahal" Dickman's Road,
Bambalapitiya, Colombo.....*Substituted-Defendant.*

between

NOORUL MUHEETA of "Noorul Mahal" Dickman's Road,
Bambalapitiya, Colombo.....*Substituted Defendant-Appellant.*

vs.

1. MRS. SITTIE RAFEEKA LEYAÚDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER and
5. AYNUL NASEERA all of 69/10, Cotta Road, Borella,
Colombo.....*Plaintiffs-Respondents.* 40

Action No. 2997 (Land) (S. C. 374)

District Court of Colombo.

No. 16
Decree
granting
Final Leave
to Appeal to
the Privy
Council
17-10-50
—continued

In the matter of an application by the appellant abovenamed dated 14-9-50 for Final Leave to appeal to His Majesty the King in Council against the Decree of this Court dated 26th July, 1950.

This matter coming on for hearing and determination on the 17th 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 respondents.

10 The applicant having complied with the conditions imposed upon him by the order of this Court dated 25th August, 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 12th day of October, in the year of our Lord One thousand Nine hundred and Fifty, and Our Reign the Fourteenth.

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

Exhibits
 P 3
 Certificate
 of Birth
 4-1-14

PART II.**EXHIBITS****P 3. Certificate of Birth****P 3**

CEYLON

CERTIFICATE OF BIRTH

No. 24023

Western Province.

Colombo District.

No. 3, Maradana Division

Date and Place of Birth : 4th January, 1914
 No. 79, Temple Road 10

Name : Sittie Rafica

Sex : Female

Name and Surname of Father : Idroos Lebbe Marikar Mohamed Zain

Name & Maiden Name of Mother
 and Nationality : Fahila Umma—Moor

Rank or Profession of Father
 and Nationality : Jeweller—Moor

Were Parents Married : Yes

Name & residence of informant
 and in what capacity he gives
 information : Idroos Lebbe Marikar Mohamad Zain
 91, Temple Road 20
 Father

Informants Signature : Sgd. I. L. M. ZAIN

When Registered : 28th March, 1914

Signature of Registrar : Sgd. Illegibly

I, W. D. Jayasinghe Additional Assistant Provisional Registrar of Births and Deaths of the District do hereby certify that the foregoing is a true copy of the Original Register of Births of the Registrar of the No. 3, Maradana Division of the Colombo District filed in this Office and the same is granted on the application of Mr. M. Z. M. Azver.

Sgd. 30
Addl. Asst. Prov. Registrar.

Colombo, 9th June, 1943.

P 4. Certificate of Birth

Exhibits

P 4

Application No. 8873

P 4
Certificate
of Birth
13-4-15

CEYLON

CERTIFICATE OF BIRTH

No. 20010

Western Province

Colombo District

No. 4 Division

Date and Place of Birth : Thirteenth April, 1915
14, Messenger Street, New Bazaar Ward

Name : Mohamado Awfer

10 Sex : Male

Name and Surname of Father : Idroos Lebbe Marikar Mohamado Zain

Name and Maiden Name of
Mother and Nationality : Sheik Marikar Fathila. MoorRank or Profession and
Nationality of Father : Landed Proprietor, Moor

Were Parents Married : Yes

Name & Residence of informant } Idroos Lebbe Marikar Mohamad Zain
and in what capacity he gives } 14, Messenger Street,
information : } Father

20 Informant's Signature : Sgd. I. L. M. M. ZAIN

When Registered : Twenty third April, 1915

Signature of Registrar : Sgd. C. RUDD

Name if added etc : —

Date of addition etc : —

I, W. D. Jayasinghe Additional Assistant Provincial Registrar of Births and Deaths of the Colombo District do hereby certify that the foregoing is a true copy of the Original Register of Births of C. Rudd Registrar of the No. 4 Division of the Colombo District filed in this office and the same is granted on the application of Mr. M. Z. M. Azver.

30

Sgd. W. D. JAYASINGHE,
*Addl. Asst. Prov. Registrar.*Provincial Registrar's Office,
Colombo, 9th June, 1943.

Exhibits

P 5
Certificate
of Birth
22-3-17**P 5. Certificate of Birth**

Application No. 8871

CEYLON

CERTIFICATE OF BIRTH

No. 30541

Western Province

Colombo District

No. 3, Maradana Division

Date and Place of Birth : Twenty second March, 1917
No. 79, Temple Road

Name : Mohamed Laffir

Sex : Male 10

Name and Surname of Father : Idroos Lebbe Marikar Mohamed Zain

Name and Maiden Name of
Mother and Nationality : Fatila Umma Moor

Were Parents Married : Yes

Name & Residence of informant and in what capacity he gives information : Idroos Lebbe Marikar Mohamed Zain
No. 79, Temple Road
Father

Informant's Signature : Sgd. I. L. M. M. ZAIN

When Registered : Second May, 1917 20

Signature of Registrar : Sgd. K. D. PETER

Name if any added etc : —

Date of addition etc : —

I, W. D. Jayasinghe Additional Assistant Provincial Registrar of 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. K. D. Peter Registrar of the No. 3, Maradana Division of the Colombo District filed in this Office and the same is granted on the application of Mr. M. Z. M. Azver.

Sgd. W. D. JAYASINGHE, 30
Addl. Asst. Prov. Registrar.
Colombo Dist.

Provincial Registrar's Office,
Colombo, 11th June, 1943.

P 6. Certificate of Birth

Exhibits

P 6

Application No. 26853

P 6
Certificate
of Birth
9-12-20

CEYLON

CERTIFICATE OF BIRTH

No. 26853

Western Province

Colombo District

No. 4 Division

Date and Place of Birth: Ninth December, 1920

No. 14, Messenger Street, New Bazaar
Ward

10 Name : Sithi Samina

Sex : Female

Name and Surname of Father : Idroos Lebbe Marikar Mohamado Zain

Name and Maiden Name of
Mother and Nationality : Shaika Marikar Fatila Umma. MoorRank or profession and
Nationality of Father : Landed Proprietor. Moor

Were Parents Married : Yes

Name & Residence of informant) Idroos Lebbe Marikar Mohamadu Zain
and in what capacity he gives) No. 14, Messenger Street,
20 information?) Father

Informant's Signature ; Sgd. I. L. M. M, ZAIN

When Registered : Eighteenth January, 1921

Signature of Registrar : Sgd. R. SARAVANAMUTTU, M.B.

I, W. D. Jayasinghe Additional Assistant Provincial Registrar of 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. R. Saravanamuttu, M.B., Medical Registrar of the New Moor Street, No. 4 Division Colombo District filed in this Office and the same is granted on the application of Mr. M. Z. M. Azver.

30

Sgd. W. D. JAYASINGHE,
*Addl. Asst. Prov. Registrar.*Provincial Registrar's Office,
Colombo, 11th June, 1943.

Exhibits
P 7
Certificate
of Birth
22-5-22

P 7. Certificate of Birth

Application No. 8872

CEYLON

CERTIFICATE OF BIRTH

No. 28769

Western Province

Colombo District

No. 4 Division

Date and Place of Birth : Twenty second May, 1922
No. 94, Messenger Street,
New Bazaar Ward

Name : Ainul Nazira 10

Sex : Female

Name and Surname of Father : Idroos Lebbe Marikar Mohamed Zain

Name and Maiden Name of
Mother and Nationality : Seka Marikar Fatilaumma. Moor

Rank or Profession and
Nationality of Father : Landed Proprietor. Moor

Were Parents Married : Yes

Name & Residence of Informant) Idroos Lebbe Marikar Mohamed Zain
and in what capacity he gives) No. 94, Messenger Street,
information :) Father 20

Informant's Signature : Sgd. I. L. M. M. ZAIN

When Registered : First July, 1922

Signature of Registrar : Sgd. R. SARAVANAMUTTU, M.B.

I, W. D. Jayasinghe Additional Assistant Provincial Registrar of 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. R. Saravanamuttu, M.B., Registrar of the No. 4 Division of the Colombo District filed in this Office and the same is granted on the application of Mr. M. Z. M. Azver.

Sgd. W. D. JAYASINGHE, 30
Addl. Asst. Prov. Registrar.

Provincial Registrar's Office,
Colombo, 10th June, 1943.

P 1. Deed No. 1428**P 1****No. 1428**

Exhibits

P 1
Deed
No. 1428
28 6-27

This indenture made and entered into between Saffra Umma of No. 56, New Moor Street in Colombo (widow of the late Meera Lebbe Marikar Idroos Lebbe Marikar deceased) hereinafter sometimes called and referred to as the Donor of the one part and Idroos Lebbe Marikar Mohammed Sathuck of No. 230, Galle Road, Wellawatte in Colombo of the other part.

Whereas under and by virtue of a Fiscal's Transfer bearing
10 No. 3365/1887 and dated the twenty third day of September, 1887 and given under the hands of P. Arunachalam Esquire Fiscal of Colombo and Deed No. 49 dated the 29th day of February, 1912, and attested by William Edward Vandersmidt de Rooy of Colombo, Notary Public, the said Saffra Umma is the lawful owner and seized and possessed of or otherwise well and sufficiently entitled to all those premises in the Schedule hereto fully described.

And whereas the said Saffra Umma is desirous of giving and granting the said premises unto her grand children Mohamed Zain Sittie Rafeeka, Mohamed Zain Mohamed Awfer, Mohamed Zain Mohamed Laafir,
20 Mohamed Zain Sitthie Sameena and Mohamed Zain Aynul Naseera (children of her son Idroos Lebbe Marikar Mohamed Zain late of Colombo deceased) hereinafter called and referred to as Sitthie Rafeeka. Mohamed Awfer, Mohamed Laafir, Sittie Sameena and Aynul Naseera subject to the terms, conditions, reservations and restrictions hereinafter contained.

Now know ye and these presents witness that in pursuance of the aforesaid desire and in consideration of the natural love and affection which she has and bears unto her said grand children Sittie Rafeeka, Mohamed Awfer, Mohamed Laafir, Sittie Sameena and Aynul Naseera and for divers other good and sufficient cause and considerations her here-
30 unto specially moving doth hereby give grant convey set over and assure by way of Gift subject nevertheless to the terms conditions reservations and restrictions hereinafter contained unto them the said Sittie Rafeeka, Mohamed Awfer, Mohamed Laafir, Sittie Sameena and Aynul Naseera (hereinafter sometimes called the Donees) all that and those the aforesaid premises in the schedule hereto fully described together with all rights privileges easements servitudes advantages and appurtenances whatsoever thereto belonging or appertaining or in any wise held used or enjoyed therewith or reputed or known as part parcel or member of the same or any part thereof and all the estate right title interest property claim and
40 demand whatsoever of me the said Donor in to upon or out of the same.

To have and to hold the said premises hereby conveyed or expressed so to be with the appurtenances thereof which are of the value of Rupees Five Thousand unto them the said Sittie Rafeeka, Mohamed Awfer, Mohamed Laafir, Sittie Sameena and Aynul Naseera their heirs and

Exhibits
 P 1
 Deed
 No. 1428
 28 6-27
 —continued

executors and administrators in equal shares subject to the terms conditions reservations and restrictions following that is to say that she the said Saffra Umma doth hereby reserve to herself the right to recover, receive and enjoy the rents profits and income of the said premises during her lifetime and after her death the same shall devolve upon the said Donees who shall not sell mortgage or otherwise alienate the said premises or any part thereof nor lease the same for any period exceeding three years at a time and after the death of each of them the share of such of them so dying shall devolve upon his or her surviving child or children according to Mohammedan Law.

10

If any of the said donees however shall die unmarried and without issue the share or shares of such of them so dying shall go to and devolve upon the surviving brother or brothers and sister or sisters of the child or children so dying in equal shares.

Provided always that in the event of the said Donees or any of them attaining his or her marriageable age no marriage shall be contracted or effected without the approval and consent of the Donor (if she be living) or in her absence the said Idroos Lebbe Marikar Mohamed Sathuk being first obtained as he is the Wali under the Muslim Law.

And the said Donor for herself, her heirs, executors and administrators doth hereby covenant with and declare unto them the said Sittie Rafeeka, Mohamed Awfer, Mohamed Lafir, Sittie Sameena and Aynul Naseera and their respective aforewritten that the said premises hereby conveyed or intended so to be are free from all encumbrances and that she and her aforewritten shall and will always warrant and defend the same unto them and their respective aforewritten against any person or persons whosoever.

And the said Idroos Lebbe Marikar Mohamed Sathuk who is the paternal uncle of the said donees doth hereby renounce all and every right interest or claim whatsoever which he may or shall have in respect of the said premises hereby gifted adverse to them and in the event of any question arising as to the validity of these presents by reason of the said Donees not being put into possession of the said premises according to law the said Idroos Lebbe Marikar Mohamed Sathuk hereby agrees not to take any objection whatsoever to his advantage or take any other steps whatsoever detrimental to the interests of the said Donees in respect of the premises hereby conveyed.

And these presents further witness that I Sheka Marikar Fatheela Umma who is the mother of the said Donees do hereby thankfully accept the foregoing gift for and on behalf of the said Donees who are all minors.

In witness whereof the said Saffra Umma, Idroos Lebbe Marikar Mohamed Sathuk and the said Sheka Marikar Fatheela Umma have hereunto and to two others of the same tenor and date set their respective hands at Colombo on this 27th day of May One thousand Nine hundred and twenty seven.

The Schedule above referred to

Exhibits

1. All that undivided forty one ninety six 41/96 parts of the house and ground bearing Assessment No. 14 situated at Messenger Street in Colombo the entire land is bounded or reputed to be bounded on the North by the property of Muttu Weeran Chetty Wairawer Chetty and Mr. J. A. Schokman, on the East by the other part of this garden and a part of the house of Sella Umma on the South by the Messenger Street and on the West by the other part of this garden and the house of Isboe Lebbe, Sesma Lebbe containing or reputed to contain in extent twenty two square
 10 perches more or less or described in the Diagram or Map annexed to the title Deed thereof.

P 1
Deed
No. 1428
28-6-27
—continued

2. All that allotment of land with the buildings thereon bearing Assessment No. 14 situated at Messenger Street, within the Municipality of Colombo Western Province and bounded on the North East by the property of O. L. Abdul Carim bearing Assessment No. 15, on the South East by Messenger Street, on the South by the property of S. L. Madar Lebbe bearing Assessment No. 13 and on the North West by the property of Iyah Canoo Chetty bearing Assessment No. 91, Barber Street containing in extent five and thirty two one hundredth perches according to the figure
 20 of Survey and description thereof dated the 30th day of November, 1908, made by Francis M. Perera Licensed Surveyor.

Witnesses :

Sgd. L. M. M. NOORDEEN

This is the signature of Saffra Umma

Sgd. (In Arabic)

Sgd. A. C. M. MAHMOOD

Sgd. I. L. M. M. SATHUCK

Sgd. N. H. M. A. CADER.

Signed by Sheka Marikar Fatheela }
 Umma at Colombo this 28th day } Sgd. FATHEELA ZAIN
 of June, 1927 in our presence. }

30 Sgd. W. M. ABDUL RAHIMAN

Sgd. A. C. M. MAHMOOD

Sgd. N. H. M. A. CADER,

Notary Public.

I, Noordeen Hadjar Mohammed Abdul Cader of Colombo in the Island of Ceylon Notary Public by lawful authority duly admitted do hereby certify and attest that the forgoing Instrument having been duly read over and explained by me to the within named Saffra Umma and Idroos Lebbe Marikar Mohamed Sathuk in the presence of Levvai Marikar Mohamed Noordeen of Queensland, Wellawatta and Abdul Careem
 40 Mohamed Mahmood of No. 30, Messenger Street, both in Colombo the subscribing witnesses thereto all of whom are know to me the same was

Exhibits
P 1
Deed
No. 1428
28-6-27
—continued

signed by the said Saffra Umma (who signed her name in Arabic) and Idroos Lebbe Marikar Mohamed Sathuk and also by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo on this 27th day of May, one thousand nine hundred and twenty seven.

I further certify and attest that the duplicate of this instrument bears five stamps of the value of Rs. 176/- and the original a stamp of Re. 1/- which were supplied by me and that before the said instrument was so read over the following alterations were made viz: In the original page 1 line 14 "am" was struck off and "is" substituted. In the duplicate page 1 line 14 similar alteration was made page 3 line 9 "i" in "or" was altered. In the original page 4 line 16 "on the north" were interpolated.

Sgd. N. H. M. A. CADER,

Date of Attestation :
27th Day of May, 1927.

Notary Public.

I, Noordeen Hadjar Mohammed Abdul Cader of Colombo, Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me to the within named Seku Marikar Fathila Umma in the presence of the Honourable Wappudi Marikar Abdul Rahiman of Wellawatta and Abdul Careem Mohamed Mahamood of No. 30, Messenger Street in Colombo the subscribing witnesses thereto all of whom are known to me the same was signed by the said Seka Marikar Fatheela Umma (who signed her name as Fatheela Zain) and also by the said witnesses and by me the said Notary in the presence of one another all being present at the same at Colombo aforesaid on this twenty-eighth day of June, One thousand Nine hundred and Twenty-seven.

Sgd. N. H. M. A. CADER,

Date of attestation :
28th June, 1927.

Notary Public.

30

D.1
Deed
No. 1483
4-2-28

D 1. Deed No. 1483

D 1

Application No. 1205

No. 1483

To all to whom these presents shall come I Saffra Umma of No. 56, New Moor Street in Colombo widow of the late Meera Lebbe Marikar, Idroos Lebbe Marikar deceased (hereinafter sometimes calling myself and referred to as the Donor).

Send Greeting :

Exhibits

Whereas under and by virtue of Deed No. 3365/1887 dated the twenty third day of September, 1887 and given under the hands of P. Arunachalam Esquire Fiscal of Colombo and Deed No. 49 dated the 29th day of February, 1912, and attested by William Edward Vander-smadt de Rooy of Colombo, Notary Public, I the said Saffra Umma became the lawful owner and seised and possessed of or otherwise well and sufficiently entitled to the premises in the schedule hereto fully described.

D 1
Deed
No. 1483
4-2-28
—continued

10 And whereas by Deed No. 1428 dated the 27th day of May and 28th day of June, 1927, and attested by N. H. M. Abdul Cader of Colombo, Notary Public, I purported to Gift the said premises unto my grandchildren Sittie Rafeeka, Mohamed Awfer, Mohamed Lafir, Sittie Sameena and Aynul Naseera subject to my life interest and certain other conditions in the said Deed contained.

And whereas by my last will and Testament No. 1429 dated the 27th day of May, 1927, and attested by the said N. H. M. Abdul Cader, Notary Public, I the said Saffra Umma did will and devise the said premises mentioned in Deed No. 1428 of the 27th May, 1927, to my said grand-
20 children.

And whereas by my subsequent will No. 657 dated the 3rd day of September, 1927, and attested by Assena Marikar Mohamed Fuard, Notary Public, I gave and devised unto my grand daughters Mohamed Zain, Sittie Rafeeka and Mohamed Zain Sittie Sameena only the aforesaid premises subject to the conditions in the said will contained.

And whereas I the said Saffra Umma am now desirous of revoking the said Deed of Gift No. 1428 and give and grant the said premises unto my son Idroos Lebbe Marikar Mohamed Sathuk subject to the terms and conditions and restrictions hereinafter contained.

30 Now know ye and these presents witness that I the said Saffra Umma in pursuance of the aforesaid desire do hereby revoke the said Deed of Gift No. 1428 dated the 27th day of May, 1927, and in consideration of the natural love and affection which I have and bear unto my said son Idroos Lebbe Marikar Mohamed Sathuk and for divers other good and sufficient causes me hereunto specially moving do hereby give, grant convey, set over and assure by way of Gift absolute and irrevocable (subject nevertheless to the terms and conditions and restrictions hereinafter contained) unto my said son Idroos Lebbe Marikar Mohamed Sathuk, his heirs executors and administrators all that and those the aforesaid premises
40 in the schedule hereto fully described together with all rights, privileges easements, servitudes, advantages and appurtenances thereto belonging or appertaining or in any wise held used or enjoyed therewith or reputed or

Exhibits
D 1
Deed
No. 1488
4-2-28
—continued

known as part and parcel or member of the same or any part thereof and all the estate right title interest property claim and demand whatsoever of me the said Donor in to upon or out of the same.

To have and to hold the said premises hereby conveyed or intended or expressed so to be with the appurtenants thereof which are of the value of Rupees Five Thousand Rs. 5,000 unto him the said Idroos Lebbe Marikar Mohamed Sathuk his heirs, executors and administrators subject nevertheless to the terms and conditions and restrictions following that is to say that the said premises shall not be sold, mortgaged or otherwise alienated by the said Idroos Lebbe Marikar Mohamed Sathuk nor shall the rents profits and income thereof become in any way liable to be seized attached or sold for any of his debts or liabilities whatsoever nor shall the same be leased out for any term or period of more than three years at a time but he shall be at liberty to recover receive and enjoy the rents profits and income thereof during his life time and after his death the said premises shall go to and devolve upon his son Mohamed Sathuk Mohamed Huzain subject to the same conditions as hereinbefore set out. Provided nevertheless that in the event of the said Mohamed Sathuk Mohamed Huzain attaining the age of thirty years the said premises shall vest in him absolutely.

20

And I the said Donor for myself, my heirs, executor and administrators do hereby covenant with and declare unto him the said Idroos Lebbe Marikar Mohamed Sathuk and his aforewritten that the said premises hereby conveyed or intended so to be are free from all encumbrances and that I and my aforewritten shall and will always warrant and defend the same unto him and his aforewritten against any person or persons whomsoever.

And these presents further witness that I the said Idroos Lebbe Marikar Mohamed Sathuk do hereby thankfully accept the foregoing Gift subject to the foregoing conditions.

30

In witness whereof we the said Saffra Umma and Idroos Lebbe Marikar Mohamed Sathuk have hereunto and to two others of the same tenor and date set our respective hands at Colombo on this Fourth day of February, One thousand Nine hundred and Twenty-eight (1928).

The Schedule above referred to

1. All that undivided Forty one Ninety six parts of the house and ground bearing Assessment No. 14 situated at Messenger Street in Colombo the entire land is bounded or reputed to be bounded on the North by the property of Muttu Weeran Chetty, Weurawar Chetty and Mr. J. A. Schokman on the east by the other part of this garden and a part of the house of Sella Umma on the South by the Messenger Street and on the West by the other part of this garden and the house of Isboe Lebbe,

Sesme Lebbe containing or reputed to contain in extent twenty two square perches more or less as described in the Diagram or Map annexed to the Title Deed thereof.

Exhibits
D 1
Deed
No. 1483
4-2-28

2. All that allotment of land with the buildings thereon bearing Assessment No. 14 situated at Messenger Street within the Municipality and District of Colombo Western Province and bounded on the North East by the property of O. L. M. Abdul Carim bearing Assessment No. 15 on the South East by Messenger Street on the South by the property of S. L. Madar Lebbe bearing Assessment No. 13 and on the North West by the property of Iyah Canoo Chetty bearing Assessment No. 91 Barber Street, containing in extent Five and Thirty two one hundredth perches according to the Figure of Survey and description thereof dated the 20th day of November, 1908, made by Francis M. Perera, Licensed Surveyor.

Witnesses :

	This is the signature of Saffra Umma
Sgd. L. M. M. NOORDEEN	Sgd. (In Arabic)
Sgd. A. C. M. MAHMUD	Sgd. I. L. M. M. SATHUCK
	Sgd. N. H. M. A. CADER, <i>Notary Public.</i>

I, Noordeen Hadjiar Mohamed Abdul Cader of Colombo in the Island of Ceylon Notary Public by lawful authority duly admitted do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within named Saffra Umma and Idroos Lebbe Marikar Mohamed Sathuck in the presence of Levvai Marikar Mohamed Noordeen of Wellawatte and Abdul Careem Mohamed Mahmud of No. 30, Messenger Street, both in Colombo the subscribing witnesses thereto all of whom are known to me the same was signed by the said Saffra Umma (who signed her name in Arabic) and Idroos Lebbe Marikar Mohamed Sathuk and also by the said witnesses and by me in the presence of one another all being present at the same time at Colombo aforesaid on this 4th day of February, 1928.

I further certify and attest that the duplicate of this instrument bears 3 stamps of the value of Rs. 90/- and the original a stamp of one rupee which were supplied by me and that before the said instrument was so read over the following alterations were made viz : in the duplicate page 1 line 9 "h" was altered in "hands"; page 3 line 12 "Idroos Lebbe Marikar" were struck off; page 4 line 1 of the Schedule "forty" was struck off and "forty" was re-inserted. In the original page 1 line + "and" was altered; page 4 line 1 of the Schedule "forty" was struck off and "forty" re-inserted.

Sgd. N. H. M. A. CADER,
Notary Public.

Date of Attestation :
4th February, 1928.

Exhibits
 P 2
 Certificate
 of Death
 6-12-29

P 2. Certificate of Death

Application No. 8874

CEYLON

CERTIFICATE OF DEATH

No. 47676

Western Province

Colombo District

No. 4 Division

1. Date and Place of Death : Sixth December, 1929
56, New Moor Street, St. Paul's Ward
2. Name in full : Uduma Lebbe Marikar Saboora
Umma 10
3. Sex and Nationality : Female Ceylon Moor
4. Age : Seventy years
5. Rank or Profession : Merchant's Wife
6. Name of Parents : F. Uduma Lebbe Marikar
M. Sinnachchi Umma
7. Cause of Death and Place of
Burial or Cremation : Asthenia due to Chronic Hemiplegia
8. Name & Residence of Informant } Wappu Lebbe Hadjar Mohamed
and in what Capacity he } Haniffa, 96, New Moor Street,
gives information : } Nephew present at Death 20
9. Informant's Signature : Sgd. In Tamil
10. When Registered : Seventh December, 1929
11. Signature of Registrar : Sgd. D. P. KITULGODA

Certificate to be written below.

I W. D. Jayasinghe, Additional Assistant Provincial Registrar of Births and Deaths of the Colombo District, do hereby certify that the foregoing is a true copy of the Original Register of Deaths of Dr. D. P. Kitulgoda Registrar of the No. 4, Division of the Colombo District, filed in this Office, and the same is granted on the application of Mr. M. Z. M. Azver. 30

Sgd. W. D. JAYASINGHE,
Addl. Asst. Prov. Registrar.

Provincial Registrar's Office,
 Colombo, 9th June, 1943.

**P 8. Certificate of Curatorship and Guardianship
in D. C. Colombo Case No. 2608**

P 8

Exhibits
P 8
Certificate
of Curator-
ship and
Guardian-
ship in D.C.
Colombo
Case
No. 2608
31-5-33

CERTIFICATE OF CURATORSHIP AND GUARDIANSHIP

IN THE DISTRICT COURT OF COLOMBO

Testamentary Jurisdiction No. 2608.

**In the matter of the Estate of Sittie Rafeeka and four others.
Minors.**

1. Whereas this Court, has under the Provisions of Chapter XL of the
10 Code of Civil Procedure, appointed you Fathila Zain of Manning Place,
Wellawatte to be curator of the Estate of a minor, until the said minors
shall have attained the age of Twenty one years: You are hereby entrusted
with the charge of the property of the said minors.

You may exercise the same powers in the management of the Estate
as might have been exercised by the said minors if not a minor and you
may collect and pay all just claims, debts and liabilities due to or by the
Estate of the said minors.

2. X X X X

3. You are to keep regular accounts of all moneys received or
20 disbursed by you on account of the Estate, and to preserve all vouchers
and other documents necessary to prove the correctness of such amounts.

4. In the event of the certificate being recalled under the provisions
of Section 591 of the said Code, you will be required to make over the
property in your hands to your duly appointed successor and to account to
such your successor for all sums of money or other property received of
disbursed by you.

5. In the event of your desiring to resign your trust this court will
give you a discharge therefrom on your accounting to your duly appointed
successor for all sums of money or other property received or disbursed by
30 you and on your making over the property in your hands to such your
successor.

6. You are hereby appointed guardian of the person of the said
minors.

Exhibits
 P 8
 Certificate
 of Curator-
 ship and
 Guardian-
 ship in D. C.
 Colombo
 Case
 No. 2608
 31-5-33
 —continued

7. You are bound to provide for the education of the said minors in a suitable manner under the general superintendence and control of this Court.

8. X X X X

9. You may for any sufficient cause be removed from your trust by this Court.

Sgd. G. C. THAMBYAH,
District Judge.

The 31st day of May, 1933.

Letters of
 Administra-
 tion in D. C.
 Colombo
 Case
 No. 11957
 17-6-48

Letters of Administration in D. C. Colombo Case No. 11957 10

“A”

Nett Value of Estate Rs. 53,000/-.

Estate Duty Rs. 1060/-

LETTERS OF ADMINISTRATION
 IN THE DISTRICT COURT OF COLOMBO

Testamentary Jurisdiction No. 11957

To NOORUL MUHEETHA
 of “Noor Mahal” Dickman’s Road, Bambalapitiya, Colombo.

Whereas Idroos Lebbe Marikar Mohamed Sathuk of Messenger Street, Colombo deceased, lately departed this life without leaving any will you are 20 therefore fully empowered and authorised by these presents to administer and faithfully dispose of the property and estate, rights and credits of the said deceased, and to demand and recover whatever debts may belong to his estate, and to pay whatever debts the said deceased did owe, so far as such property and estate, rights, and credits shall extend, you having been already affirmed well and faithfully to administer the same, and to render a true and perfect inventory of all the said property and estate, rights and credits to this Court on or before the 30th day of September, 1948 next, and also a true and just account of your administration thereof on or before the 20th day of January, 1949. And you are therefore by these 30

presents deputed and constituted Administrator of all the property and estate rights and credits of the said deceased. (You are, nevertheless, hereby prohibited from selling any immovable property of the estate unless you shall be specially authorised by the Court so to do).

Exhibits
 Letters of
 Administra-
 tion in D. C.
 Colombo
 Case
 No. 11957
 17-6-48
 —continued

And it is hereby certified that the Declaration and Statement of Property under the Estate Duty Ordinance have been delivered, and that the value of the said estate on which Estate Duty is payable, as provisionally assessed by the Commissioner of Stamps, amounts to Rs. 53,000/-.

And it is further certified that it appears by a provisional Certificate granted by the Commissioner of Stamps and dated the 5th day of April, 1948, that Rs. 1060/- on account of Estate Duty (and interest on such duty) has been paid.

Given under my hand and the Seal of the Court this 17th day of June, 1948.

Sgd. N. SINNETAMBY,
Additional District Judge

No.....

Supreme Court of Ceylon
No. 374 (Final) of 1948.

District Court, Colombo
No. 2997.

In the Privy Council
on an Appeal from the Supreme Court of Ceylon

BETWEEN

NOORUL MUHEETHA of "Noorul Mahal",
Dickman's Road, Bambalapitiya,
Colombo.....,..... *Substituted-Defendant-Appellant.*

AND

1. MRS. SITTE RAFEEKA LEYAUDEEN
2. MOHAMED AWFER
3. MOHAMED LAFIR
4. MRS. SITTE SAMEENA AZVER
5. AYNUL NASEERA, all of 69/10, Cotta Road,
Borella, Colombo..... *Plaintiffs-Respondents.*

**RECORD
OF PROCEEDINGS**
