

Supreme Court of Ceylon.
No. 153 (Final) of 1952.

District Court, Colombo,
No. 20429.

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

BETWEEN

M. R. M. M. R. MURUGAPPA CHETTIAR
of No. 62, Sea Street, Colombo *Plaintiff-Appellant.*

AND

1. MUTHTHAL ACHY, widow of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District.
2. KANNAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District.
3. KARUPPEN CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District.
4. ARUNACHALAM CHETTIAR, son of Letchumanan Chettiar of No. 91, New Moor Street, Colombo.
5. ALAGAPPA CHETTIAR, son of Letchumanan Chettiar.
6. NATCHAMMAI ACHY, widow of Karuppen Chettiar and daughter of Letchumanan Chettiar, both of A'Thekkur Tirupatur, Ramnad District in India.

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20 FEB 1957
INSTITUTE OF ADVANCED LEGAL STUDIES

Defendants-Respondents.

RECORD
OF PROCEEDINGS

INDEX—PART I.

Serial No.	Description of Document	Date	Page
1	Journal Entries	26-11-48- 28-7-54	1
2	Petition of the 2nd Plaintiff	26-11-48	13
3	Affidavit of the 2nd Plaintiff	26-11-48	15
4	Formal Order of the District Court	26-11-48	17
5	Plaint of the Plaintiffs	30-11-48	17
6	Answer of the Defendants	18-3-49	21
7	Amended Plaint of the Plaintiffs	15-7-49	26
8	Issues framed	—	28
9	Plaintiff's Evidence	—	30
10	Defendants' Evidence	—	71
11	Addresses to Court	—	75
12	Judgment of the District Court	1-10-51	85
13	Decree of the District Court	12-10-51	93
14	Petition of Appeal to the Supreme Court	19-10-51	94
15	Judgment of the Supreme Court	9-7-54	98
16	Decree of the Supreme Court	9-7-54	107
17	Application for Conditional Leave to Appeal to the Privy Council	2-8-54	108
18	Decree granting Conditional Leave to Appeal to the Privy Council	23-8-54	109
19	Application for Final Leave to Appeal to the Privy Council	14-9-54	111
20	Decree granting Final Leave to Appeal to the Privy Council	13-10-54	112

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PART II**EXHIBITS.****Plaintiffs' Documents.**

Exhibit Mark	Description of Document	Date	Page
P 1	Journal Entries, Affidavits, etc., in D.C., Colombo No. 3836/G	19-2-42 to 17-10-47	123
P 2	Motion filed in D.C., Colombo, No. 3836/G ...	31-3-43	134
P 3	Interest Bill	1930-1948	168
P 4	Petition filed in D.C., Colombo, No. 11556 ...	17-9-45	142
P 5	Inventory filed in D.C., Colombo, No. 11556 ...	11-4-46	144
P 6	Final Account filed in D.C., Colombo, No. 11556 ...	7-8-47	146
P 7	Journal Entries in D.C., Colombo, No. 11556 ...	1945-1947	139
P 8	Power of Attorney No. 3282	6-3-47	149
P 9	Arbitrators' Award	26-8-28	114
P 10	Statement showing rate of interest	1929-1941	170
P 11	Receipt	9-1-30	120
P 11A	Credits and Debits list	9-1-30	120
P 12	Account Book extracts	1929	162
P 13	Account Book	1920-1935	not printed.
P 14	Extract from Day Book, page 54	1929	164

Defendants' Documents.

Exhibit Mark	Description of Document	Date	Page
D 1	Undial	Jan., 1940	122
D 2	Certificate of Death of M. C. Muthaiya Chetty ...	28-7-29	119
D 3	Issues and Judgment in D.C., Colombo, No. 18106 ...	(Undated)	153
D 4	Certificate of Registration of Business Name ...	6-6-29	118
D 5	Debit and Credit Account of Murugappa Chetty ...	June, 1929	164
D 6	Debit and Credit Account of M. R. M. M. S. ...	July-Aug., 1929	166
D 7	Debit and Credit Account of VR. KR. ...	July-Aug., 1929	166
D 8	Issues in D.C., Colombo, No. 18107 ...	4-9-49	158
D 9	Affidavit of Murugappa Chettiar filed in D.C., Colombo, No. 8886/G ...	11-2-47	137
D 10	Affidavit of Meenakshi Achy filed in D.C., Colombo, No. 8886/G ...	3-3-47	138
D 11	Amended Plaintiff in D.C., Colombo, No. 20470 ...	30-9-49	159
D 12	Page 121 of Ledger of the Firm of K. R. K. N. L. ...	1929	171
D 13	Page 16 of Ledger of the Firm of K. R. K. N. L. ...	1930-1932	172
D 14	Page 9 of Ledger of the Firm of K. R. K. N. L. ...	1932-1933	172
D 15	Page 9 of Ledger of the Firm of K. R. K. N. L. ...	1933-1934	173
D 16	Page 9 of Ledger of the Firm of K. R. K. N. L. ...	1934-1935	173
D 17	Page 9 of Ledger of the Firm of K. R. K. N. L. ...	1935-1936	174
D 18	Page 9 of Ledger of the Firm of K. R. K. N. L. ...	1936-1937	174
D 19	Page 9 of Ledger of the Firm of K. R. K. N. L. ...	1937-1938	175
D 20	Page 9 of Ledger of the Firm of K. R. K. N. L. ...	1938-1939	175
D 21	Page 9 of Ledger of the Firm of K. R. K. N. L. ...	1939-1940	176
D 22	Page 9 of Ledger of the Firm of K. R. K. N. L. ...	1940-1941	176
D 23	Page 8 of Ledger of the Firm of K. R. K. N. L. ...	1941-1942	177
D 24	Page 7 of Ledger of the Firm of K. R. K. N. L. ...	1942-1943	177

Defendants' Documents.

Exhibit Mark	Description of Document	Date	Page
D 25	Page 7 of Ledger of the Firm of K. R. K. N. L. ...	1943-1944	178
D 26	Composite translation of D 12 to D 25 ...	—	—
D 27	Page 89 of Ledger D 12 ...	8-10-29	167
D 28	Day Book of the Firm of K. R. K. N. L. ...	1929	not printed

Supreme Court of Ceylon
No. 153 (Final) of 1952

District Court, Colombo
No. 20429.

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

BETWEEN

M. R. M. M. R. MURUGAPPA CHETTIAR

of No. 62, Sea Street, Colombo.....*Plaintiff-Appellant.*

AND

- 1 MUTHTHAL ACHY, widow of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District.
- 2 KANNAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District.
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- 6 NATCHAMMAI ACHY, widow of Karuppen Chettiar and daughter of Letchumanan Chettiar, both of A'Thekkur Tirupatur, Ramnad District in India.

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Defendants-Respondents.

RECORD OF PROCEEDINGS

PART I.

Journal Entries

No. 1
Journal
Entries
26-11-48 to
28-7-54

IN THE DISTRICT COURT OF COLOMBO

No. 20429.

P. VELLASAMPILLAI.....*Petitioner.*

vs.

1. MUTHTHAL ACHY and Others.....*Respondents.*

10 26-11-48. Mr. C. M. Chinnaiya, Proctor, files proxy from the petitioner, together with petition, affidavit and draft plaint, and for reasons stated therein moves to appoint the petitioner as next friend over the minor for the purpose of suing the defendants.

Mr. Adv. Kumarasinghe in support.

Petitioner present and consents.

I appoint petitioner as next friend of the minor for the purpose stated.

(Intd.) S. S.
D. J.

20 (2) Formal order entered

(Intd.).....

(3) 1-12-48. Proctor for plaintiffs files plaint and moves to issue summons.

Accept plaint and issue Summons for 11-2-49.

(Intd.) S. S.,
D. J.

(4) 14-12-48. Summons tendered. Summons out of Ceylon. Affidavit required.

30 (5) 16-12-48. Proctor for plaintiff files affidavit and for reasons stated therein moves

(a) that summons be issued to the District Munsiff, Sivaganga, South India, for service on 1st, 2nd, 3rd, 5th and 6th defendants to appear within 21 days of such service.

No. 1
Journal
Entries
26-11-48 to
28-7-54
—continued.

(b) that the said District Munsiff be directed to make three separate attempts to effect personal service and that if personal service cannot be effected to serve it by way of substituted service.

Allowed.

Defendants to appear within 21 days.

(Intd.) S. S.,
D. J.

(6) 8- 1-49. Summons issued on 1-3, 5th and 6th defendants India and 4th defendant W.P. 10

(7) 11- 2-49. Mr. C. M. Chinnaiya for plaintiff.
Proxy of defendants filed with motion.
Answer on 25/2.

(Intd.) S. S.,
D. J.

(8) 23- 2-49. Mr. S. Somasundaram for defendants.
Answer.
S.O. 11/3.

(Intd.) S. S.,
D. J. 20

(9) 11- 3-49. Answer.
S.O. 18/3.

(Intd.) S. S.,
D. J.

(10) 18- 3-49. Answer filed.
Trial 13-12-49.

(Intd.) S. S.,
D. J.

(11) 6- 7-49. Proctor for plaintiff moves to amend the plaint as per motion. 30
Proctor for defendants received notice for 15-7-49.
Call on 15-7-49.

(Intd.) H. A. DE S.,
D. J.

- (12) 15- 7-49. Mr. C. M. Chinnaiya for plaintiff.
Mr. S. Somasundaram for defendants.
Case called *vide* (11) to amend plaint.
Amended plaint is filed.
By consent it is accepted.
Amended answer on 26-8-49.

No. 1
Journal
Entries
26-11-48 to
28-7-54
—continued.

(Intd.) H. A. DE S.,
D. J.

- 10 (13) 26- 8-49. Amended answer.
Defendants not filing amended answer.
Trial already fixed.

(Intd.) H. A. DE S.,
D. J.

- (14) 17-10-49. Proctor for plaintiff with notice to the proctor for defendants files list of documents and witnesses and moves for summons.
Re 6 obtain certified copy.
Subject to this allowed.

(Intd.) H. A. DE S.,
D. J.

- 20 (15) 6-12-49. Proctor for plaintiff with notice to proctor for defendants files additional list of witnesses and moves for summons.
Allowed.

(Intd.) S. S.,
D. J.

- (16) 8-12-49. Summons issued on 4 witnesses by plaintiff.

- 30 (17) 9-12-49. Mr. S. Somasundaram, proctor for defendants with notice to proctor for plaintiff files defendants' list of witnesses and documents in the above case.
File.

(Intd.) S. S.,
D. J.

- (18) 12-12-49. Proctor for plaintiff files additional list of witnesses with notice to proctor for defendants.
File,

(Intd.) S. S.,
D. J.

No. 1
Journal
Entries
26-11-48 to
28-7-54
—continued.

(19) 12-12-49. Summons issued on 1 witness by plaintiff.

(20) 13-12-49. Trial *vide* (10).
Mr. C. M. Chinnaiya for plaintiff.
Mr. S. Somasundaram for defendant.
Plaintiff's list filed.
Defendants' list filed.
Vide proceedings (20) filed.
Call on 20-1-50.

(Intd.) S. S.,
D. J. 10

(21) 23-12-49. Summons issued on 2 witnesses by defendant.

(22) 13- 1-50. Summons issued on 1 witness by plaintiff.

(23) 20- 1-50. Case called *vide* (20).
Call case on 3/2 for plaintiff to elect.

(Intd.) S. S.,
D. J.

(24) 3- 2-50. Case called *vide* (23).
Trial will be taken up on 20-2-50.

(Intd.) H. A. DE S.,
D. J. 20

Minor who is now a major wants to go on with the case.

He can file a proxy in the meanwhile.

(Intd.) H. A. DE S.,
D. J.

(25) 10- 2-50. Mr. C. M. Chinnaiya files his appointment as proctor for the 1st plaintiff along with the petition and affidavit and for reasons stated therein prays for an order discharging his next friend and granting leave to the petitioner to proceed with his action in his own name. 30
Allowed.

(Intd.)

(26) 18- 2-50. Proctor for plaintiffs with notice to the proctor for defendants files additional list of witnesses and documents and moves for summons on them.

Allowed.

Obtain certified copy.

(Intd.) H. A. DE S.,
D. J.

(27) 20- 2-50. Trial—*vide* (24).
Mr. C. M. Chinnaiya for plaintiffs.
Mr. S. Somasundaram for defendant.
Vide proceedings filed (27).
Call case before the D.J. on 8-3-50.

(Intd.)
A. D. J.

10 (28) 8- 3-50. Case called—*vide* (27).
Mr. C. M. Chinnaiya for plaintiffs.
Mr. S. Somasundaram for defendants.
Vide proceedings.

(Intd.) H. A. DE S.,
D. J.

(29) 15- 3-50. Letter to Mr. Schokman, D.J., Kandy, sent.

(Intd.)

(30) 21- 3-50. D.J., Kandy, for this record for reference and return.
Forward after calling case tomorrow.

(Intd.) H. A. DE S.,
D. J.

20 (31) 23- 3-50. Case called *vide* (28).
Mr. C. M. Chinnaiya for plaintiffs.
Mr. S. Somasundaram for defendant.
Call case on 4-4-50.
Forward record to D.J., Kandy, as requested
by him.

(Intd.) H. A. DE S.,
D. J.

30 (32) 4- 4-50. Case called.
Inform proctors that Mr. Schokman is not prepared to
hear this case. *Vide* his letter.
Trial is fixed before me on 25-10-50 to be continued, if
necessary, on 26-10-50.

(Intd.) H. A. DE S.,
D. J.

No. 1
Journal
Entries
26-11-48 to
28-7-54
—continued.

- (33) 31- 7-50. Proctor for plaintiff files plaintiff's additional list of witnesses and moves for summons.
Proctor for defendant receives notice.
Allowed.
(Intd.) H. A. DE S.,
D. J.
- (34) 3- 8-50. Summons issued on 1 witness by plaintiff.
- (35) 4- 8-50. Summons issued on 2 witnesses by plaintiff.
- (36) 25-10-50. Trial *vide* (32).
Mr. C. M. Chinnaiya for plaintiff. 10
Mr. S. Somasundaram for defendant.
Vide proceedings.
(Intd.) H. A. DE S.,
D. J.
- (37) 6-11-50. Summons issued on 2 witnesses by plaintiff.
- (38) 20-12-50. Trial *vide* (36).
Mr. C. M. Chinnaiya for plaintiff.
Mr. S. Somasundaram for defendant.
For want of time trial will be taken up 21/12.
(Intd.) 20
D. J.
- (39) 21-12-50. Trial *vide* (38).
Vide proceedings filed.
Further hearing on 25th and 26th April.
Nadarajan Chettiar warned to appear.
(Intd.)
A. D. J.
- (40) 12- 2-51. As the proceedings of 21-12-50 have not been filed of record and the dates of trial *viz.* 25th and 26th April, 1951, have not been entered of record, proctor for plaintiff submits that the plaintiff is unable to issue summons to witnesses (1) Mr. V. R. M. V. A. Vaiyapuri Pillai, (2) Mr. M. S. R. M. Ramasamy Chettiar, (3) M. R. M. M. N. Nadarajan Chettiar, and (4) the Secretary, for the trial. He moves that the court be pleased to direct the process clerk to issue the summons to witnesses already tendered to him to the Deputy Fiscal, W.P., for service and report.
Issue,
(Intd.) 40
D. J.

(41) 20- 2-51. Summons issued on 3 witnesses by plaintiff.

(42) 24- 2-51. Summons issued on 1 witness by plaintiff.

(43) 4- 4-51. Proctor for plaintiff, with notice to proctor for defendants, files plaintiff's list of witnesses and documents and moves for summons.
Allowed.

No. 1
Journal
Entries
26-11-48 to
28-7-54
—continued.

(Intd.)
D. J.

(44) 6- 4-51. Summons issued on 1 witness by plaintiff.

¹⁰(45) 25- 4-51. Trial (contd.) *vide* (39).

Mr. C. M. Chinnaiya for plaintiff.

Mr. S. Somasundaram for defendants.

Vide proceedings filed.

Trial adjourned for 5th and 6th September. Plaintiff will pay the defendants the costs of today and tomorrow. Warrant will be made returnable on 1-8-51.

(Intd.)
D. J.

²⁰(46) 10- 5-51. Mr. K. Rasanathan, proctor, files appointment as proctor for witness N. Nadarajan Chetty together with a medical certificate and moves to recall the warrant issued against him.

Proctor submits that the witness will be fit to attend court only after a month from 8-5-51.

Support.

(Intd.)
D. J.

(47) 12- 5-51. Warrant issued on witness Nadarajan Chettiar returnable 1-8-51.

³⁰

(Intd.)

(48) 14- 5-51. *Vide* proceedings and order filed.

(Intd.)
D. J.

No. 1
Journal
Entries
26-11-48 to
28-7-54
—continued.

- (49) 8/9-6-51. Registrar, S.C., returns record with S. C. judgment.
Warrant issued on petitioner be suspended until 4-7-51.
If on or before that date petitioner appears in court and deposits security in cash in the sum of Rs. 500/- undertaking to appear on the next trial date which is 5-9-51 and on any subsequent date of trial of which due notice is given to him the warrant will be recalled. If the petitioner does not appear or furnish security in terms of this order the warrant for arrest of petitioner will be executed in terms of the original order of the District Judge. 10
Proctor to note.
Call on 4-7-51.
(Intd.)
D. J.
- (50) 13- 6-51. Proctor for witness Nadarajan Chettiar moves for deposit note for Rs. 500/-. He further moves that this case be called on 14/6 for the appearance of witness before this court.
Issue deposit note. 20
Call 14/6.
(Intd.)
D. J.
- (51) 13- 6-51. Voucher for Rs. 500/- issued.
- (52) 14- 6-51. Case called—*vide* (50).
Mr. C. M. Chinnaiya for plaintiff.
Mr. S. Somasundaram for defendants.
Mr. K. Rasanathan for witness Nadarajan Chettiar.
Vide proceedings.
Recall warrant in terms of the order of S.C. 30
(Intd.)
D. J. 21/6.
- (53) 4- 7-51. Case called—*vide* (49).
Mr. C. M. Chinnaiya for plaintiff.
Mr. S. Somasundaram for defendant.
Mr. K. Rasanathan for witness Nadarajan Chettiar.
Proctor and petitioner absent.
The security deposited should be hypothecated by bond.
Inform proctor for witness to do so. 40
(Intd.)
D. J.

(54) 26- 7-51. Proctor for plaintiff with notice to proctor for defendant files plaintiff's additional list of witnesses and documents and moves for summons.
Allowed.

No. 1
Journal
Entries
26-11-48 to
28-7-54
—continued.

(Intd.)
D. J.

(55) 30- 7-51. Summons issued on 5 witnesses by plaintiff.

(56) 2- 8-51. Summons issued on 1 witness by plaintiff.

10 (57) 5- 9-51. Trial *vide* (45) contd.
Mr. C. M. Chinnaiya for plaintiff.
Mr. S. Somasundaram for defendant.
Vide proceedings filed.
Further hearing on 6-9-51.

(Intd.)
D. J.

(58) 6- 9-51. *Vide* (57) Trial contd.
Vide proceedings filed.
Further hearing on 20-9-51.

20 (Intd.)
D. J.

(59) 19- 9-51. The witness M. R. M. M. N. Nadarajan Chettiar having given evidence in this case, proctor for witness above-named moves for an order of payment for Rs. 500/- deposited by the said witness as security for his presence in this case, in favour of the witness.
Allowed.

(Intd.)
D. J.

30 (60) 20- 9-51. Further hearing *vide* (58).
Mr. C. M. Chinnaiya for plaintiff.
Mr. S. Somasundaram for defendant.
Vide proceedings filed.
Judgment on 12-10-51.

(Intd.)
D. J.

No. 1
Journal
Entries
26-11-48 to
28-7-54
—continued.

- (61) 26- 9-51. Proctor for plaintiff tenders documents marked P1 to P14 duly stamped.
Check and file.

(Intd.)
D. J.

- (62) 26- 9-51. Proctor for defendant tenders documents marked D1 to D28 duly stamped.
Check and file.

(Intd.)
D. J. 10

- (63) 28- 9-51. Reqn. No. 1194 for Rs. 500/- issued in favour of the witness.

(Intd.)

- (64) 12-10-51. Judgment delivered for relief on 2/11.

(Intd.)
D. J.

- (65) 19/20-10-51. Proctor for defendant Mr. S. Somasundaram files petition of appeal of the defendant-appellant against the judgment of this court dated 12-10-51 together with stamps for Rs. 33/- and Rs. 16/50. ²⁰
Stamps affixed to blank forms and cancelled.
Accept.

(Intd.)
D. J.

- (66) 19/20-10-51. Proctor for defendant having tendered the petition of appeal of the defendant-appellant and the court having accepted the same, he states that he will move for permission of court to tender security in the sum of Rs. 250/- on 31-10-51 by depositing same to the credit of this case and hypothecating the same as security ³⁰ for any costs which may be incurred by the plaintiffs in appeal in the premises, and also to tender on the said date sufficient stamps for serving notice on plaintiffs.

Proctor for plaintiff received notice with copy of petition of appeal.

Call on 31/10.

(Intd.)
D. J.

(67) 20-10-51. Proctor for defendant-appellant files application for type-written copies and moves for a p-i-v. for Rs. 50/-.
Issue.

No. i
Journal
Entries
26-11-48 to
28-7-54
—continued.

(Intd.)
D. J.

10 (68) 26-10-51. Proctor for plaintiff files plaintiff's statement with translation showing a sum of Rs. 16,658/17 as the amount in terms of the judgment delivered on 12-10-51 and moves that decree be entered for plaintiff in terms of judgment.
Proctor for defendants received notice for 2-11-51.
Call on 2/11.

(Intd.)
D. J.

(69) 27-10-51. Voucher for Rs. 50/- issued to proctor for defendant-appellant being copying fees.

(Intd.)

20 (70) 31-10-51. Case called *vide* (66).
Mr. C. M. Chinnaiya for plaintiff.
Mr. S. Somasundaram for defendant.
Of consent security tendered is accepted.
Issue notice of appeal on bond being perfected for 30/11.

(Intd.)
D. J.

(71) 31-10-51. Proctor for defendant-appellant tenders security bond together with K.R.R. and also notice of appeal.
File.
Issue notice for the date already given.

30 (Intd.)
D. J.

(72) 1-11-51. Notice of appeal issued to Fiscal, Western Province.

(Intd.)

No. 1.
Journal
Entries
26-11-48 to
28-7-54
—continued.

- (73) 2-11-51. Mr. C. M. Chinnaiya for plaintiff.
Mr. S. Somasundaram for defendant.
Case called *vide* (64) and (68).
S.O. for 30/11.
- (74) 30-11-51. Mr. C. M. Chinnaiya for plaintiff-respondent.
Mr. S. Somasundaram for defendant-appellant.
1. Notice of appeal served on proctor for plaintiffs-respondents. Forward record to S. C.
2. Case called—*vide* (64), (68) and (73).
Mr. Somasundaram accepts the correctness of the 10 statement.
Enter decree in terms of my judgment.

(Intd.)
D. J.

(75) Decree entered.

- (76) 1- 4-52. Record forwarded to Registrar, Supreme Court, for typing of briefs.
Documents P10, P13, D26 and D28 sent under separate cover.

(Intd.) 20

- (77) 9- 6-52. Two typewritten copies sent to proctor for appellant.
Two typewritten copies sent to proctor for respondent.

(Intd.)
9-6-52.

- (78) 28- 7-54. Registrar, S.C., returns record together with S.C. judgment.

The appeal is allowed and the plaintiff's action is dismissed with costs in both courts.
Proctors to note.

(Intd.) 30
D. J.

Petition of the Second Plaintiff**IN THE DISTRICT COURT OF COLOMBO**

In the matter of an application for the appointment of Next Friend over the minor M. R. M. M. M. R. Murugappen Chettiar of 62, Sea Street, Colombo.

PAVANNA VELLASAMPILLAI of No. 62, Sea Street, Colombo.....*Petitioner*

vs.

1. MUTHTHAL ACHY, widow of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District,
- 10 2. KANAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District,
3. KARUPPEN CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District,
4. ARUNACHALAM CHETTIAR, son of Letchumanan Chettiar of No. 91, New Moor Street, Colombo,
5. ALAGAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District, and
6. NATCHIAMMAL ACHY, widow of Karuppen Chettiar and daughter of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District.....*Respondents.*
- 20

On this 26th day of November, 1948.

The petition of the petitioner above-named appearing by C. M. Chinnaiya his proctor states as follows :—

1. The minor above-named is 20 years old and is carrying on business at Colombo under the name style and firm of “ M. R. M. M. M. R. Murugappa Chettiar ”. The petitioner is the manager of the said business.

2 (a). In or about August, 1929, one Muthiah Chettiar the father of the minor above-named died leaving some monies belonging to the minor above-named in the custody of Pavanna Vellasampillai, the petitioner above-named.

2 (b). In or about January, 1930, the said Pavanna Vellasampillai acting for and on behalf of the minor above-named deposited with one K. R. K. N. L. Letchumanan Chettiar a sum of Rs. 18,700/- which amount the said Letchumanan Chettiar agreed to pay to the minor above-named together with interest thereon at the rate prevailing from time to time among the Chettiar Community, the interest being added to the principal from time to time according to the custom prevailing and calculated in the manner customary among the Chettiars in their dealings with each other. The parties hereto are Chettiars,

No. 2
Petition
of the
2nd Plaintiff
26-11-48
—continued.

3. The said K. R. K. N. L. Letchumanan Chettiar deposited to the credit of the said minor a sum of Rs. 20,488·18 in 3836 Civil Guardian of the District Court of Colombo on 9th April, 1943, and the balance amount due is Rs. 22,445·52 as at date hereof.

4 (a). The said Letchumanan Chettiar died leaving behind as his heirs the respondents above-named who have all adiated the inheritance of the said deceased.

4 (b). The said estate of the said Letchumanan Chettiar was administered in Testamentary Case No. 11556 of the District Court of Colombo and the estate was duly closed. 10

5. There is now justly and truly due and owing from the respondents above-named the sum of Rs. 22,445·52 which or any part thereof the respondents have failed and neglected to pay though thereto often demanded.

6. It has become necessary for the minor above-named to sue the respondents for the recovery of the said sum of Rs. 22,445·52 as aforesaid.

7. The minor above-named is in India for the wedding of his sister Valliammai Achi and unable to come to Ceylon. The petitioner prays that the minor's presence may be dispensed with. The petitioner was duly appointed next friend of the said minor in the District Court of Colombo cases Nos. 2111/18106/M and 2136/18581/M.

8. The petitioner is of full age and he has no interest adverse to the minor and he is a fit and proper person to be appointed the Next Friend of the minor above-named for the purpose of suing the respondents for the recovery of the amount due to the minor. A copy of the draft plaint is herewith filed.

9. The 1st, 2nd, 3rd, 5th and 6th respondents above-named are residing outside the Island in A'Thekkur, Tirupatur, Ramnad District, South India, and the summons in this case can be served through the District Munsiff at Sivaganga. 30

10. The petitioner is advised that the claim against the respondents will become prescribed on 17th December, 1948.

Wherefore the petitioner prays :—

- (a) That he be appointed Next Friend of the minor above-named for the purpose of suing the respondents above-named for the recovery of the amount due to the minor aforesaid.
- (b) For costs, and
- (c) For such other and further relief as to this court shall seem meet.

(Sgd.) C. M. CHINNAIYA, 40
Proctor for Petitioner,

Affidavit of the Second Plaintiff**IN THE DISTRICT COURT OF COLOMBO**

In the matter of an application for the appointment of Next Friend over the minor M. R. M. M. R. Murugappen Chettiar of 62, Sea Street, Colombo.

PAVANNA VELLASAMPILLAI of 82, Sea Street in Colombo.....*Petitioner.*

vs.

1. MUTHTHAL ACHY, widow of Letchumanan Chettiar of
10 A'Thekkur Tirupatur, Ramnad District,
2. KANAPPA CHETTIAR, son of Letchumanan Chettiar of
A'Thekkur Tirupatur, Ramnad District,
3. KARUPPEN CHETTIAR, son of Letchumanan Chettiar of
A'Thekkur Tirupatur, Ramnad District,
4. ARUNACHALAM CHETTIAR, son of Letchumanan Chettiar
of No. 91, New Moor Street, Colombo,
5. ALAGAPPA CHETTIAR, son of Letchumanan Chettiar of
A'Thekkur Tirupatur, Ramnad District,
6. NATCHIAMMAI ACHY, widow of Karuppen Chettiar and
20 daughter of Letchumanan Chettiar of A'Thekkur
Tirupatur, Ramnad District.....*Respondents.*

I, Pavana Velasampillai of No. 82, Sea Street in Colombo, not being a Christian do hereby solemnly, sincerely and truly declare and affirm as follows :—

1. The minor above-named is 20 years old and is carrying on business at Colombo under the name style and firm of “ M. R. M. M. R. Murugappa Chettiar ”. I am the Manager of the said business.

2. (a) In or about August, 1929, one Muthiah Chettiar the father of the minor above-named died leaving some monies belonging to the minor
30 above-named in my custody.

2. (b) In or about January, 1930, I acting for and on behalf of the minor above-named deposited with one K. R. K. N. L. Letchumanan Chettiar a sum of Rupees Eighteen Thousand Seven Hundred (Rs. 18,700/-) which amount the said Letchumanan Chettiar agreed to pay the minor above-named together with interest thereon at the rate prevailing from time to time among the Chettiar Community, the interest being added to the principal from time to time according to the custom prevailing and calculated in the manner customary among the Chettiars in their dealings with each other. The parties hereto are Chettiars.

No. 3
Affidavit
of the
2nd Plaintiff
26-11-48
—continued.

3. The said K. R. K. N. L. Letchumanan Chettiar deposited to the credit of the minor a sum of Rs. 20,488·18 in 3836 Civil Guardian of the District Court of Colombo on 9th April, 1943, and the balance amount due is Rs. 22,445·52 as at date hereof.

4. (a) The said Letchumanan Chettiar died leaving behind as his heirs the respondents above-named who have all adiated the inheritance of the said deceased.

4. (b) The said estate of the said Letchumanan Chettiar was administered in Testamentary Case No. 11556 of the District Court of Colombo and the estate was duly closed. 10

5. There is now justly and truly due and owing from the respondents above-named the sum of Rs. 22,445·52 which or any part thereof the respondents have failed and neglected to pay though thereto often demanded.

6. It has become necessary for the minor above-named to sue the respondents for the recovery of the said sum of Rs. 22,445·52 as aforesaid.

7. The minor above-named is in India for the wedding of his sister Valliammai Achi and unable to come to Ceylon, I pray that the minor's presence may be dispensed with. I was duly appointed Next Friend of the said minor in District Court of Colombo, Cases Nos. 2111/18106/M and 20 2136/18581/M.

8. I am of full age and I have no interest adverse to the minor and I am a fit and proper person to be appointed the Next Friend of the minor above-named for the purpose of suing of the respondents for the recovery of the amount due to the minor. A copy of draft plaint is herewith filed.

9. The 1st, 2nd, 3rd, 5th and 6th respondents above-named are residing outside the Island in A'Thekkur Tirupatur, Ramnad District, South India, and the summons in this case can be served through the District Munsiff at Sivaganga.

10. I am advised that the claim against the respondents will become 30 prescribed on 17th December, 1948.

The foregoing affidavit having been duly read over and explained by me to the affir-
mant in Tamil his own language and he
appeared to understand the contents here-
of the same was signed and affirmed to at
Colombo on this 26th day of November,
1948.

(Sgd.) In Tamil.

Before me,
(Sgd.) Illegibly. 40
Commissioner for Oaths.

Formal Order of the District Court

FORMAL ORDER

IN THE DISTRICT COURT OF COLOMBO

In the matter of the application for the appointment of Next Friend over the minor M. R. M. M. R. Murugappen Chettiar of 62, Sea Street, Colombo.

PAVANNA VELLASAMPILLAI, 62, Sea Street, Colombo.....*Petitioner.*

No. 2212/CG. *vs.*

10 1. MUTHTHAL ACHY, widow of Letchumanan Chettiar and five others.....*Respondents.*

This matter coming on for disposal before S. J. C. Schokman, Esquire, District Judge of Colombo, on the 26th day of November, 1948, on the application of the proctor for the petitioner praying that the petitioner above-named be appointed next-friend of the M. R. M. M. R. Murugappen Chettiar who is a minor and the petitioner who is the manager of the minor's business being present and having consented to the appointment.

It is ordered that the said petitioner be and he is hereby appointed 20 next-friend of the said minor for the purpose of this action.

(Sgd.) S. J. C. SCHOKMAN,
District Judge.

The 26th day of November, 1948.

No. 5

Plaint of the Plaintiffs

IN THE DISTRICT COURT OF COLOMBO

1. M. R. M. M. R. MURUGAPPA CHETTIAR, late a minor by his next-friend,
2. PAVANNA VELLASAMPILLAI of No. 62, Sea Street, Colombo, but now of full age.....*Plaintiffs.*

30 No. 20429/M. *vs.*

1. MUTHTHAL ACHY, widow of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District,
2. KANAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District,

No. 5
 Plaint of
 the Plaintiffs
 30-11-48
 —continued.

- 3. KARUPPEN CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District,
- 4. ARUNACHALAM CHETTIAR, son of Letchumanan Chettiar of No. 91, New Moor Street, Colombo,
- 5. ALAGAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District, and
- 6. NATCHIAMMAI ACHY, widow of Karuppen Chettiar and daughter of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District.....*Defendants.*

On this 30th day of November, 1948. 10

The plaint of the plaintiffs above-named appearing by C. M. Chinnaiya their proctor states as follows :—

1. The 1st plaintiff is a minor of the age of 20 years old and he is carrying on business at Colombo under the name style and firm of “ M. R. M. M. R. MURUGAPPA CHETTIAR ”. The 2nd plaintiff is the manager of the said business.

2. In or about August, 1929, one Muththiah Chettiar the father of the minor above-named died leaving some monies belonging to the minor above-named in the custody of Pavanna Vellasampillai, the 2nd plaintiff above-named. 20

3. In or about January, 1930, the 2nd plaintiff above-named acting for and on behalf of the minor above-named deposited with one K. R. K. N. L. Letchumanan Chettiar a sum of Rs. 18,700/- which amount the said Letchumanan Chettiar agreed to pay to the minor the 1st plaintiff above-named together with interest thereon at the rate prevailing from time to time among the Chettiar Community the interest being added to the principal from time to time according to the custom prevailing and calculated in the manner customary among the Chettiars in their dealings with each other. The parties hereto are Chettiars.

4. The said K. R. K. N. L. Letchumanan Chettiar deposited to the credit of the 1st plaintiff a sum of Rs. 20,488·18 in 3836 Civil Guardian of the District Court of Colombo on 9th April, 1943, and the balance amount due is Rs. 22,445·52 at date hereof, as per account particulars marked “ A ” annexed hereto and pleaded as part and parcel of this plaint. 30

5. The said Letchumanan Chettiar died leaving behind as his heirs the defendants above-named who have all adiated inheritance of the said deceased.

6. The estate of the said Letchumanan Chettiar was administered in Testamentary Case No. 11556 of the District Court of Colombo and the estate was duly closed. 40

7. There is now justly and truly due and owing from the defendants above-named as heirs of the said Letchumanan Chettiar deceased the sum of Rs. 22,445·52, which or any part thereof the defendants have failed and neglected to pay though thereto often demanded,

8. A cause of action has thus accrued to the plaintiffs to sue the defendants for the recovery of the said sum of Rs. 22,445·52.

9. By its order dated the 25th day of November, 1948, the District Court did appoint the 2nd plaintiff as next-friend of the 1st plaintiff.

No. 5
Plaint of
the Plaintiffs
30-11-48
—continued.

Wherefore the plaintiffs pray :—

- (a) That judgment be entered in favour of the 1st plaintiff against the defendants jointly and severally against the defendants jointly and severally for the said sum of Rs. 22,455·52 with legal interest thereon from date hereof till payment in full,
- 10 (b) For costs of suit, and
- (c) For such other and further relief as to this court shall seem meet.

(Sgd.) C. M. CHINNAIYA,
Proctor for Plaintiffs

Documents filed with the plaint :—

Account particulars marked letter “ A ” and pleaded as part and parcel of this plaint together with the translation.

Documents relied on by the plaintiffs :—

20 The plaintiffs’ books of account.

(Sgd.) C. M. CHINNAIYA,
Proctor for the Plaintiffs

P3

Translation

Dr. KR. KN. L. INTEREST BILL

Date	Particulars	Cr.	Dr.
			Rs. cts.
1930			
Jan. 1. Debit.	To interest at 3/4 per cent. for 23 days on the sum of Rs. 18,700/-	...	107 53
30 Feb. 1. Debit.	To interest up to December at the average rate of 7, 15/64 for 12 months on the sum of Rs. 18,700/-	...	1,352 83
		Total ...	1,460 36
1931			
Jan. 1. Debit.	To interest at the average rate of 8, 19/64 for 12 months on the sum of Rs. 20,160·36 summed up with interest	...	1,672 68
1932			
40 Jan. 1. Debit.	To interest at the average rate of 7, 14/64 for 12 months on the sum of Rs. 21,833·04 summed up with interest	...	1,576 07

No. 5 Plaint of the Plaintiffs 30-11-48 —continued.	Date	Particulars	Cr.	Dr.	
				Rs.	cts.
	1933				
	Jan. 1.	Debit. To interest at the average rate of 5, 49/64 for 12 months on the sum of Rs. 23,409·11 summed up with interest		1,349	68
	1934				
	Jan. 1.	Debit. To interest at the average rate of 4, 36/64 for 12 months on the sum of Rs. 24,758·79 summed up with interest		1,129	62
	1935				10
	Jan. 1.	Debit. To interest at the average rate of 4, 31/64 for 12 months on the sum of Rs. 25,888·41 summed up with interest		1,161	36
	1936				
	Jan. 1.	Debit. To interest at the average rate of 4, 21/64 for 12 months on the sum of Rs. 27,049·77 summed up with interest		1,170	76
	1937				
	Jan. 1.	Debit. To interest at the average rate of 4, 24/64 for 12 months on the sum of Rs. 28,220·53 summed up with interest		1,234	65
	1938				20
	Jan. 1.	Debit. To interest at the average rate of 4, 21/64 for 12 months on the sum of Rs. 29,455·18 summed up with interest		1,274	85
	1939				
	Jan. 1.	Debit. To interest at the average rate of 4, 21/64 for 12 months on the sum of Rs. 30,730·03 summed up with interest		1,368	44
	1940				30
	Jan. 1.	Debit. To interest at the average rate of 4, 13/64 for 12 months on the sum of Rs. 32,098·47 summed up with interest		1,349	14
	1941				
	Jan. 1.	Debit. To interest at the average rate of 4, 1/2 for 12 months on the sum of Rs. 33,447·61 summed up with interest		1,505	14
	1942				
	Jan. 1.	Debit. To interest at the average rate of 4, 1/2 for 12 months on the sum of Rs. 34,952·75 summed up with interest		1,572	87
	1943				
	Jan. 1.	Debit. To interest up to 8th April being 3 months and 8 days at the rate of 3/8 on the sum of Rs. 36,525·62 summed up with interest ...		447	47
	Apl. 9.	Debit. To interest up to 31st December being 8 months and 22 days at 3/8 per cent. on Rs. 16,037·44 being balance after crediting Rs. 20,488·18		525	23

1944	Jan. 1. Debit. To interest at the average rate of 4, 1/2 for 12 months on the sum of Rs. 17,010·14 summed up with interest	765 45
1945	Jan. 1. Debit. To interest at the average rate of 4, 1/2 for 12 months on the sum of Rs. 17,775·59 summed up with interest	799 90
1946	10 Jan. 1. Debit. To interest at the average rate of 4, 1/2 for 12 months on the sum of Rs. 18,575·49 summed up with interest	835 90
1947	Jan. 1. Debit. To interest up to May being 5 months at the average rate of 1, 7/8 on the sum of Rs. 19,411·39 summed up with interest	363 96
	June 1. Debit. At this date including interest	19,775 35
	To interest at 9% for the period up to 30-11-48 —18 months	2,670 17
	Total at 1st December	22,445 52

No. 5
Plaint of
the Plaintiffs
30-11-48
—continued.

20

No. 6

Answer of the Defendants

IN THE DISTRICT COURT OF COLOMBO

1. M. R. M. M. R. MURUGAPPA CHETTIAR, minor by his next-friend,
2. PAVANNA VELLASAMPILLAI of No. 62, Sea Street, Colombo *Plaintiff.*

No. 20429/M. *vs.*

1. MUTHTHAL ACHY, widow of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District,
2. KANAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District,
3. KARUPPEN CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District,
4. ARUNACHALAM CHETTIAR, son of Letchumanan Chettiar of No. 91, New Moor Street, Colombo,
5. ALAGAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District, and
6. NATCHIAMMAI ACHY, widow of Karuppen Chettiar and daughter of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District..... *Defendants.*

30

40

No. 6
Answer
of the
Defendants
18-3-49

No. 6
Answer
of the
Defendants
13-3-49
—continued.

On this 18th day of March, 1949.

The answer of the defendants above-named appearing by Sabapathy Somasundaram and his assistant Sinnatambipillai Thuraisingham, their proctors states as follows :—

1. The plaintiffs cannot have and maintain this action for the following reasons :—

(a) The plaint is bad for non-compliance with section 45 of the Civil Procedure Code. The Court has no jurisdiction to hear and determine this action.

(b) Assuming (without admitting) the allegations in the plaint to be¹⁰ correct, the facts disclosed therein disclose no cause of action available to plaintiffs. There was no privity of contract between the plaintiffs and the said K. R. K. N. L. Letchumanan Chettiar.

2. The plaintiffs' claim if any is barred by the provisions of the Prescription Ordinance (Vol. 11, Chap. 55, sections 7 and 10).

3. The defendants are unaware of the averments in paragraphs 1 and 9 of the plaint and deny all and singular the other allegations in every other paragraphs of the plaint subject to the express admissions contained herein.

4. Certain moneys belonging to and included in the estate of the late²⁰ Muthiah Chettiar referred to in paragraph 2 of the plaint were left for safe keeping with the said K. R. K. N. L. Letchumanan Chettiar to be dealt with as the said K. R. K. N. L. Letchumanan Chettiar thought fit for the use of an undivided joint Hindu family consisting of the 1st plaintiff, his mother and his sister.

5. The late Muthiah Chettiar died leaving an estate of over Rs. 2,500/-. The plaintiffs cannot maintain this action in terms of section 547 of the Civil Procedure Code without administering and obtaining grant of probate or letters of administration duly stamped to the estate of the said Muthiah Chettiar deceased. ³⁰

6. From and out of the moneys referred to in paragraph 4 above and with accretions thereof as appearing in the accounts of the said K. R. K. N. L. Letchumanan Chettiar, a sum of Rs. 5,010·18 was paid out on a Hundi dated 9th February, 1940, drawn by Segappi Achy *alias* Meenatchi Achy the mother of the 1st plaintiff in favour of V. R. K. R. Kandavarayanpatty in India.

7. Whatever balance that was available on this account was paid in by the said K. R. K. N. L. Letchumanan Chettiar (now deceased) to the credit of case No. 3836 Civil Guardian of this court on the 9th April, 1943, and has been drawn out by the 1st plaintiff on or about 4th March, 1947. ⁴⁰

8. The said K. R. K. N. L. Letchumanan Chettiar at all times kept accounts and dealt with the deposits referred to in paragraph 4 in a manner known to the 1st and 2nd plaintiffs and to the members of the undivided joint family referred to above; and the plaintiffs *inter alia* acquiesced in and accepted such proceedings as correct. The defendants plead that the

accounts annexed to this answer and marked " X " were always known to and accepted as correct by the 1st plaintiff and his mother and their servants and agents at all material times. The plaintiffs for the reasons pleaded herein are estopped from asserting this claim or challenging the correctness of this account. The plaintiffs are bound to accept such account.

No. 6
Answer
of the
Defendants
18-3-49
—continued.

9. The defendants admit that they are the heirs of the said K. R. K. N. L. Letchumanan Chettiar. With the death of the said K. R. K. N. L. Letchumanan Chettiar after the deposit of moneys in the aforesaid case
10 No. 3836, action (if any) on the subject matter of the claim made herein ended. The estate of the said K. R. K. N. L. Letchumanan Chettiar did not include any part of the moneys claimed in this case. The estate of the said K. R. K. N. L. Letchumanan Chettiar was duly administered in case No. 11556 Testamentary of this court. The plaintiffs have no right in law to sue the defendants personally in this action.

Wherefore the defendants pray that plaintiffs' action be dismissed with costs and for such other and further relief as to this court shall seem meet.

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendants.

20

Memo of documents filed with answer :
Statement of accounts marked " X ".

" X "

Translation

			Rs.	cts.	Rs.	cts.
1929						
Sept.	28.	Credit 60 pounds as at the 27th	...	Cr.	600	00
Oct.	1.	Credit 30 pounds as at the 30th ultimo	..	..	300	00
	2.	Credit 200 pounds as on the 1st	...	..	2,000	00
	4.	Credit 130 pounds as on the 3rd	...	..	1,300	00
30	5.	Credit 490 pounds as on the 4th	...	..	4,900	00
	7.	Credit 225 pounds as on the 6th	...	..	2,250	00
	9.	Credit 30 pounds as on the 8th	...	..	300	00
	10.	Credit 100 pounds as on the 9th	...	..	1,000	00
	15.	Credit 120 pounds as on the 14th	...	..	1,200	00
	17.	Credit 90 pounds as on the 16th	...	..	900	00
	21.	Credit 270 pounds as on the 20th	...	..	2,700	00
	24.	Credit 50 pounds as on the 23rd	...	..	500	00
Nov.	2.	Credit 25 pounds as on the 1st	...	..	250	00
	5.	Credit 20 pounds as on the 4th	...	..	200	00
40	23.	Credit 15 pounds as on the 22nd	...	..	150	00

No. 6 Answer of the Defendants 18-3-49 —continued.	1931					
	Dec. 9.	Credit 15 pounds as on the 8th	...	Cr.	150 00	18,700 00
	Mar. 31.	Credit interest as per interest bill for the period from 27th September, 1929, till this date	...	,,	2,257 06	20,957 06
	1932					
	Mar. 30.	Credit interest as per interest bill for the period from 1st April, 1931, till the 31st instant	...	,,	1,738 78	22,695 84
	1933					10
	Mar. 31.	Credit interest as per interest bill for the period from 1st April, 1932, till this date	...	,,	1,517 88	24,213 72
	April 19.	Debit to tax paid this day through P. N. S. Aiyar per Imperial Bank cheque	...	Dr.	151 78	24,061 94
	1934					
	Mar. 31.	Credit interest at the rate of 1 per cent. of Imperial Bank rate for the period from 1st April, 1933, till this date	...	Cr.	237 45	24,299 35
	June 23.	Debit to tax paid this day through P. N. S. Aiyar per Imperial Bank cheque	...	Dr.	23 74	24,275 61
	1935					
	Mar. 31.	Credit interest at the rate of 1 per cent. of Imperial Bank rate for the period from 1st April, 1933, till this date	...	Cr.	239 47	24,515 08
	June 10.	Debit to tax paid through P. N. S. Aiyar per Imperial Bank cheque	...	Dr.	23 93	24,491 15
	1936					
	Mar. 31.	Credit interest at the rate of 1 per cent. of Imperial Bank rate for the period from 1st April, 1935 till this date	...	Cr.	241 60	24,732 75
	Aug. 10.	Debit to tax paid through P. N. S. Aiyar per Imperial Bank cheque	...	Dr.	24 16	24,708 59
	1937					
	Mar. 31.	Credit interest at the Imperial Bank rate of 1 per cent. for the period from 1st April, 1936, till this date	...	Cr.	244 45	24,953 04
						40

	Oct. 22.	Debit to income tax paid for the years 1936-37	... Dr.	24 45	24,928 59		
	1938						No. 6 Answer of the Defendants 18-3-49 —continued.
	Mar. 31.	Credit interest at the Imperial Bank rate of half per cent. for the period from 1st April, 1937, till this date	Cr.	123 00	25,051 59		
	Sept. 9.	Debit to amount paid to P. N. S. Aiyar <i>re</i> income tax	... Dr.	12 30	25,039 29		
	1939						
10	Mar. 31.	Credit interest at the Imperial Bank rate of half per cent. for the period from 1st April, 1938, till this date	Cr.	125 22	25,164 51		
	Aug. 18.	Debit to payment of income tax through P. N. S. Aiyar	... Dr.	15 02	25,149 49		
	1940						
20	Feb. 8.	Debit to Hundial written and granted to VR. KR. of Kandavarayanpatti for Rs. 5,000/- on the 9th inst. by Sigappi Achi <i>alias</i> Meenadchi Achi paid in this place to VR. KR. L. with interest till this date by cheque drawn on Imperial Bank bearing No. 3/A 41774	... Dr.	5,010 18	20,139 31		
	Mar. 31.	Credit interest at half per cent. for the period from 1st April till this date.	... Cr.	122 23	20,261 54		
	July 23.	Debit to income tax paid for the years 1939-40	... Dr.	14 67	20,246 87		
	1941						
30	Mar. 31.	Credit interest as per interest bill for the period from 1st April, 1940, till this date	... Cr.	101 23	20,348 10		
	Aug. 11.	Debit to payment of income tax for the years 1940-41	... Dr.	12 15	20,335 95		
	1942						
	Mar. 31.	Credit interest as per interest bill for the period from 1st April, 1941, till this date	... Cr.	101 70	20,437 65		
40	Oct. 19.	Debit to payment of income tax for the years 1941-42	... Dr.	15 26	20,422 39		

No. 6
Answer
of the
Defendants
18-3-49
—continued.

1943

Mar. 31. Debit to stamps Rs. 10/- and to proctor's fees Rs. 21/- for filing motion in court to deposit the amount credited by Proctor S. Somasundaram Total ... Dr. 31 00 20,391 39

Credit interest at the rate of half per cent. for the period from 1st April, 1942, till this date ... Cr. 102 11 20,493 50

1943

Apr. 8. Debit to the deposit at the Kacheri this day by Imperial Bank cheque on account of the deposit order obtained on 7th April, 1943, for depositing the amount lying in credit in case No. D.C. 3836 ... Dr. 20,488 18 Bal. 5 32

Oct. 16. Debit to payment of income tax for the years 1942-43 ... Dr. 15 32 Bal. debit 10 00

1944

Mar. 31. Credit by expense account ... Cr. 10 00 Equalized

No. 7
Amended
Plaint of the
Plaintiffs
15-7-49

No. 7

Amended Plaint of the Plaintiffs

IN THE DISTRICT COURT OF COLOMBO

1. M. R. M. M. R. MURUGAPPA CHETTIAR, minor by his next friend,
2. PAVANNA VELLASAMPILLAI of No. 62, Sea Street in Colombo *Plaintiffs*

No. 20429/M.

vs.

1. MUTHTHAL ACHY, widow of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District, 30
2. KANAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District,
3. KARUPPEN CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District,
4. ARUNACHALAM CHETTIAR, son of Letchumanan Chettiar of No. 91, New Moor Street, Colombo,
5. ALAGAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District, and
6. NATCHIAMMAI ACHY, widow of Karuppen Chettiar and daughter of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District..... *Defendants.* 40

On this 15th day of July, 1949.

The amended plaint of the plaintiffs above-named appearing by C. M. Chinnaiya their proctor states as follows :—

No. 7
Amended
Plaint of the
Plaintiffs
15-7-49
—continued.

1. The 1st plaintiff is a minor of the age of 20 years old and he is carrying on business at Colombo under the name style and firm of “ M. R. M. M. R. Murugappa Chettiar ”. The 2nd plaintiff is the manager of the said business.

1A. The fourth defendant resides, the contract sought to be enforced was made and the cause of action hereinafter set out has arisen in Colombo
10 within the jurisdiction of this Court.

2. In or about August, 1929, one Muththiah Chettiar the father of the minor above-named died leaving some monies belonging to the minor above-named in the custody of Pavanna Vellasampillai, the 2nd plaintiff above-named.

3. In or about January, 1930, the 2nd plaintiff above-named acting for and on behalf of the minor above-named deposited in Colombo with one K. R. K. N. L. Letchumanan Chettiar a sum of Rupees Eighteen Thousand Seven Hundred (Rs. 18,700/-) which amount the said Letchumanan Chettiar agreed in Colombo to pay to the minor the 1st plaintiff above-
20 named together with interest thereon at the rate prevailing from time to time among the Chettiar Community the interest being added to the principal from time to time according to the custom prevailing and calculated in the manner customary among the Chettiars in their dealings with each other. The parties hereto are Chettiars.

4. The said K. R. K. N. L. Letchumanan Chettiar deposited to the credit of the 1st plaintiff a sum of Rs. 20,488·18 in 3836 Civil Guardian of the District Court of Colombo on 9th April, 1943, and the balance amount due is Rs. 22,445·52 at date hereof, as per account particulars marked “ A ” annexed hereto and pleaded as part and parcel of this plaint.

30 5. The said Letchumanan Chettiar died leaving behind as his heirs the defendants above-named who have all adiated inheritance of the said deceased.

6. The estate of the said Letchumanan Chettiar was administered in Testamentary Case No. 11556 of the District Court of Colombo and the estate was duly closed.

7. There is now justly and truly due and owing from the defendants above-named as heirs of the said Letchumanan Chettiar deceased the sum of Rs. 22,445·52, which or any part thereof the defendants have failed and neglected to pay though thereto often demanded.

40 8. A cause of action has thus accrued to the plaintiffs to sue the defendants for the recovery of the said sum of Rs. 22,445·52.

9. By its order dated the 25th day of November, 1948, the District Court did appoint the 2nd plaintiff as next friend of the 1st plaintiff,

No. 7
Amended
Plaint of the
Plaintiffs
15-7-49
—continued.

Wherefore the plaintiffs pray :—

- (a) That judgment be entered in favour of the 1st plaintiff against the defendants jointly and severally for the said sum of Rs. 22,445·52 with legal interest thereon from date hereof till payment in full,
- (b) For costs of suit, and
- (c) For such other and further relief as to this Court shall seem meet.

(Sgd.) C. M. CHINNAIYA,
Proctor for Plaintiffs. 10

Documents filed with the plaint :

Account particulars marked letter “ A ” and pleaded as part and parcel of this plaint together with the translation.

Documents relied on by the plaintiffs :

The plaintiffs’ books of account.

No. 8
Issues
Framed

No. 8

Issues Framed

13-12-49.

Mr. Adv. Chelvanayagam, K.C., with *Adv. Navaratnarajah* and *Adv. Thavathurai* for plaintiff. 20

Mr. Adv. Thiagalilingam for defendant.

Mr. Chelvanayagam states his case and suggests the following issues:—

1. Did 2nd plaintiff deposit with K. R. K. N. L. Letchumanan Chettiar a sum of Rs. 18,700/- in or about January, 1930 ?
2. Did the 2nd plaintiff make the said deposit for and on behalf of the 1st plaintiff ?
3. Did the said Letchumanan Chettiar agree to pay to the 1st plaintiff the said sum of Rs. 18,700/- with interest thereon at the rate prevailing among the chettiar community, the interest being added to the principal from time to time and calculated in the manner customary among chettiers 30 in their dealings with each other ?
4. Did the said Letchumanan Chettiar deposit to the credit of the 1st plaintiff in the latter’s curatorship case on 9th April, 1943, a sum of Rs. 20,488·18 being a portion of the monies referred to in issues 1 to 3 ?
5. What balance amount, if any, is due to the 1st plaintiff out of the monies referred to in issues 1 to 3 ?
6. Are the defendants heirs of the said Letchumanan Chettiar who have adiated the latter’s inheritance ?

7. Has the estate of Letchumanan Chettiar been closed ?

8. Are the defendants liable to pay the 1st plaintiff the balance, if any, found due under issue 5 ?

No. 8
Issues
Framed
—continued.

Mr. Thiagalingam objects to issue 3 insofar as it refers to the calculation of interest in a manner customary among chettiars in their dealings with each other.

He objects to the latter portion of issue 4, “ being a portion of the monies referred to in issues 1 to 3 ” as it is not caught up by the pleadings.

He suggests the following further issues :—

10 9. (a) Is the money claimed in this case property of the estate of the late Muthiah Chettiar ?

(b) Has the estate of Muthiah Chettiar been duly administered ?

(c) If the estate of Muthiah Chettiar has not been administered, can this action be had and maintained ?

10. Were certain monies, the subject matter of the claim in this case, left for safekeeping with K. R. K. N. L. Letchumanan Chettiar to be dealt with as the said Letchumanan Chettiar thought fit for the use of an undivided joint Hindu family consisting of the 1st plaintiff, his mother (Cigarpee) and his sister at the instance of Cigarpee ?

20 11. Did Letchumanan Chettiar from and out of the monies referred to in issue 10 and accretions thereof, as appearing in the accounts of Letchumanan Chettiar, pay out a sum of Rs. 5,010·18 on a ‘ Hundi ’ dated 9th January, 1940, drawn by Cigarpee in favour of V. R. K. R. of Kandavarainpatti in India ?

12. (a) Was whatever balance available in the account of K. R. K. N. L. Letchumanan Chettiar paid into and received by court to the credit of case No. 3836 C.G. of this Court on 9th April, 1943 ?

(b) Has the 1st plaintiff drawn out such monies in or about 4th March, 1947 ?

30 13. (a) Did K. R. K. N. L. Letchumanan Chettiar keep accounts and deal with the deposit in a manner known to the 1st plaintiff and to the other members of the undivided joint family referred to in issue 10 ?

(b) Has the 1st plaintiff acquiesced in and accepted such accounts and such dealings as correct ?

(c) Is the 1st plaintiff estopped from asserting this claim ?

14. Did the estate of K. R. K. N. L. Letchumanan Chettiar include any part of the money claimed in this case ?

15. Can plaintiffs sue the defendants personally in this action ?

40 With regard to issue 3 Mr. Chelvanayagam states that the custom he refers to is to calculate interest from time to time at the rate prevailing

No. 8
Issues
Framed
—continued.

among the chettiar community and adding that interest to the principal. He suggests that the issue be amended to read as follows :—

3. Did the said Letchumanan Chettiar agree to pay 1st plaintiff the said sum of Rs. 18,700/- with interest thereon at the rate prevailing among the chettiar community, interest being added to the principal from time to time in accordance with the custom prevailing among chettiars in their dealings with each other ?
He suggests issue 4 in the following manner :—

4. (a) Did the said Letchumanan Chettiar deposit to the credit of the 1st plaintiff in the latter's curatorship case on 9th April, 1943, a¹⁰ sum of Rs. 20,488·18 ?

(b) Was such money a portion of the monies referred to in issues 1 to 3 ?

Mr. Chelvanayagam says that he objects to the words “ at the instance of the said Cigarpee ” at the end of issue 10 as it is not pleaded.

He says that he has no objection to the other issues suggested by Mr. Thiagalingam.

Mr. Thiagalingam says that as Mr. Chelvanayagam's objection to the statement in issue 10 at whose instance he acted on the ground that it is not pleaded, he has no objection to the omission of the words “ at the²⁰ instance of the said Cigarpee ”. But the defendants' case is that the person at whose instance Letchumanan Chettiar acted was Cigarpee and not the plaintiff.

I frame the following issues :—

1 to 8 as suggested by learned counsel for the plaintiffs, issues 3 and 4 (a) and 4 (b) being in the amended forms, and also issues 9 to 15 as suggested by learned counsel for the defendants with the omission of the words “ at the instance of the said Cigarpee ” at the end of issue 10.

No. 9
Plaintiff's
Evidence,
P. Vellasamy
Pulle
Examination

No. 9

30

Plaintiff's Evidence

Mr. Chelvanayagam calls :

P. Vellasamy Pulle, affirmed, 61, Kanakapulle and Agent, Sea Street.

I am the 2nd plaintiff in this case. First plaintiff is a Nattukottai Chettiar. I do not belong to that class. Defendants are all Nattukottai Chettiars. First defendant is the widow of one Letchumanan Chettiar. Second to 6th defendants are the children of the deceased Letchumanan Chettiar. Letchumanan Chettiar was also a Nattukottai Chettiar.

First plaintiff's father was Muttiah Chettiar. Muttiah Chettiar carried on business in Ceylon, to my knowledge, from 1906. He was doing⁴⁰ business in Ceylon even before that. From 1906 until his death in 1929

I worked under Muttiah Chettiar. Muttiah Chettiar had children by three wives. First plaintiff is the child by Muttiah Chettiar's 3rd wife. By his 2nd wife Muttiah Chettiar had sons who are trading in Ceylon. They are Nadarajan Chettiar, Thiagarajah Chettiar and Manickam Chettiar. By his 1st wife Muttiah Chettiar had only daughters. By his 3rd wife 1st plaintiff is the only son. The other children were girls. By his 3rd wife Muttiah Chettiar had one son and one daughter.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Examination
--continued.

Muttiah Chettiar and his sons were all from South India and they are Hindus.

10 Q. Before Muttiah Chettiar died what happened to his monies ?
A. He divided the money among his children.

The division was into four parts, a part each to the three sons by his previous wives and one part to the minor son. The division was at an arbitration consisting of four people. They were three chettiars from the same village and a fourth Chettiar from another village. The arbitrators made an award. One of those four Chettiars is at Akiab in Northern Burma, the others are dead.

At the time of the division Nadarajan Chettiar was a grown-up man. At the time of the division he was 22 years old. At that time Thiagarajan 20 Chettiar was about 20 years old and Manickam Chettiar was about 7 years old ; 1st plaintiff Murugappen Chettiar was about 1½ years old at the time.

In terms of that division separate shares were taken by the two elder sons, Nadarajan and Thiagarajan. They set themselves up in business separately. In respect of Manickam Chettiar and 1st plaintiff, Muttiah Chettiar ran a business for each of them. He ran two separate businesses, one for each. He kept separate books for the separate businesses. He gave each of the sons a separate vilasam for their businesses. First plaintiff got the vilasam M. R. M. M. M. R. and Manickam Chettiar got the vilasam M. R. M. M. M. M. Muttiah Chettiar himself traded under the 30 vilasam M. R. M. M. M. Similarly Nadarajan Chettiar and Thiagarajan Chettiar took separate vilasams. Each of their vilasams was different from those of the other sons and that of the father.

The decision of the arbitrators whereby this money was divided I have with me.

(Mr. Chelvanayagam seeks to mark in evidence the arbitrator's award.

Mr. Thiagalingam objects unless a party to the award is called).

(Witness : I know the signatures of Suppramaniam Chettiar and Muttiah Chettiar, two of the arbitrators. It is Suppramaniam Chettiar 40 who is now at Akiab).

(Order—Learned counsel for the plaintiff has not been able to refer me to any particular sub-section of section 32 of the Evidence Ordinance under which this document can be marked in evidence without one of the parties to it being called. I accordingly uphold the objection taken by Mr. Thiagalingam).

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Examination
—continued.

At the division a portion fell to the 1st plaintiff. Muttiah Chettiar ran a business with that money. I was also there. The business was run under the vilasam of M. R. M. M. R. These monies were not mixed up with any other monies. It was kept separately and a separate business was run.

Q. Was that business run during the lifetime of Muttiah Chettiar?

A. Yes.

At that time I worked in that vilasam. I know all the dealings in respect of that business.

Q. Did all the monies that fell to the share of the 1st plaintiff be¹⁰ utilised or only a portion of it? A. The whole amount was utilised for that vilasam.

Q. That vilasam did it have any other monies than the monies that came to it at the division? A. No.

The money that fell to the share of the 1st plaintiff after the division belonged to the 1st plaintiff. That money did not belong to Muttiah Chettiar from that date.

Similarly the portion that fell to Manickam Chettiar was kept separately.

The money that belonged to Murugappen Chettiar was handled by²⁰ Muttiah Chettiar as the boy was a minor.

Shortly after the business of M. R. M. M. R. was started for the 1st plaintiff Muttiah Chettiar died. He died in August, 1929, in Colombo. At the time of his death Muttiah Chettiar was 64 years old. At the time of Muttiah Chettiar's death I was with him. At the time of the death of Muttiah Chettiar the monies that belonged to the 1st plaintiff were managed by me and invested by me. I collected the money and distributed it with Chettiar firms and closed everything.

I collected all the money belonging to the boy and I distributed it among Chettiar firms and I left for India. Before Muttiah Chettiar died³⁰ there were books for the 1st plaintiff's business. There were a rough book, a ledger, day book and the book in which particulars of promissory notes were entered. These books were all with me. Securities for monies lent out by the firm were also with me. The balance cash in the till was also in my hands. Everything was in my hands.

Sometime thereafter, on 10th January, 1930, I left for India. From the death of Muttiah Chettiar till about the time I left for India, the custody of the 1st plaintiff's business and his dealings were mine. In the course of these few months I got a fairly large sum of money into my hands. I collected about 2 lakhs of rupees. I invested this money with⁴⁰ Chettiar firms at chetty interest.

I have moved in chetty circles from 1906. Nattukottai Chettiars have an association among themselves in Colombo. That is called the Nattukottai Chettiars Association. The Chettiars business is lending money to the public and to other businesses. The Chettiar's main business is lending money. For that purpose he charges varying rates of

interest from the public. Chettiers in their transactions among themselves have a different rate of interest. That is called the prevailing rate. That rate is subject to change. Monthly they congregate in the temple and discuss the question and fix the rate. The rate that is fixed for the month is called the Nadapuvatti—agreed before the gods.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Examination
—continued.

I invested the 1st plaintiff's monies which were in my hands at Chettiar rates of interest ; that is, at Nadapuvatti. In this way I invested about Rs. 160,000/-. Of this amount I deposited with K. R. K. N. L. Letchumanan Chettiar Rs. 18,700/-.

10 K. R. K. N. L. Letchumanan Chettiar is a relation of the plaintiff. He married Muttiah Chettiar's daughter by his 1st wife. I know Letchumanan Chettiar personally. He comes from the same village as I. When I invested this sum of Rs. 18,700/- with Letchumanan Chettiar he knew, and I told him, that it was the 1st plaintiff's money.

Q. When you deposited the money with Letchumanan Chettiar to whom did he promise to return it ?

(Mr. Thiagalingam objects to this question as Letchumanan Chettiar is dead.

I allow the questions).

20 A. He agreed to repay the money to Murugappen Chettiar, the 1st plaintiff.

Q. What was the rate of interest at which he agreed to repay the money ? A. That is the Nadapuvatti, the prevailing chetty rate of interest.

I made similar investments with other Chettiers. All of them are relations.

I made an entry of all these deposits in the ledger book belonging to 1st plaintiff's vilasam. I handed the books to Nadarajan Chettiar and obtained a receipt from him when I was leaving for the coast. Nadarajan
30 Chettiar was the eldest son of Muttiah Chettiar. I have not summoned Nadarajan Chettiar today in this particular case to produce the books as he is in India.

Q. Had you summoned Nadarajan Chettiar earlier in a similar case to produce the books in this court ?

(Mr. Thiagalingam objects to the question on the ground that it is irrelevant.

Mr. Chelvanayagam says that it is very relevant to show why he did not summon him in this case.

I allow the question).

40 A. I summoned him earlier.

Q. That was a case that went to trial ? A. Yes.

Q. How many months ago ? A. About September or August this year.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Examination
—continued.

Q. You summoned Nadarajan Chettiar to produce the books?
A. Yes.

He appeared in court without the books and stated that they were at Sivaganga courts.

(Mr. Thiagalingam objects to this witness stating the reason given by Nadarajan Chettiar for not producing the books on the ground that it is hearsay.

Mr. Chelvanayagam says that it does not matter for his case whether the reason given by Nadarajan Chettiar is true or false, he only wants to elicit evidence to show the reason why plaintiff did not summon him in the present case.

In answer to me the witness says : I heard Nadarajan give the reason in open court.

I allow the reason given by Nadarajan Chettiar to be recorded).

Nadarajan said that he was sued in a case in Sivaganga and that the books have been produced in that court.

(Sgd.) S. J. C. SCHOKMAN,
D. J.

(Interval).

After lunch.

20

P. Vellasamy Pillai, affirmed.

Examination (contd.). Nadarajan Chetty and the 1st plaintiff are now litigating and there are cases pending. The number of one case is 20470 of this court. That case is still pending. That is a case filed by the plaintiff against Nadarajan Chetty. I am the next-friend of the plaintiff in that case.

(Mr. Chelvanayagam moves to produce copy of the plaint filed by the 1st plaintiff in case No. 20470.

Mr. Thiagalingam objects on the ground that it is irrelevant.

I uphold the objection. Witness has referred to litigation which he says exists between these two parties and has given the number of the case. I do not think it is necessary to produce any pleadings in that case as they are irrelevant for the determination of the issues in this case).

Apart from the case in Colombo there is a case pending between the 1st plaintiff and Nadarajan Chetty in Sivaganga. It is in that case that the books are deposited. I am the person who is assisting the 1st plaintiff in fighting that case also. I have seen the books of the 1st plaintiff in the Sivaganga courts.

In 1942 the curatorship case was started in this court in respect of the estate of the 1st plaintiff—No. 3836. I produce a copy of the journal entries in that case P1. Various persons deposited moneys to the credit of the minor in that case. They are the people with whom I had deposited moneys. They are Chettiars. One of them was K. R. K. L. Letchimanan

Chettiar. He deposited in the curatorship case a sum of Rs. 20,488·18. I produce the motion filed by Letchimanan's proctor in that case P2 dated 31-3-43 whereby he moved to deposit the sum of Rs. 20,488·18 to the credit of that case. The date on which the money was deposited, that is the principal and interest due to the minor is 9-4-43. The motion P2 says that the money is the principal and interest due to the minor in respect of moneys lying to his credit with the said K. R. K. L. Letchimanan Chettiar.

No. 9
Plaintiff's
Evidence
P. Vellasanmy
Pulle
Examination
—continued.

Q. Do you say that is all the money that was due to 1st plaintiff from K. R. K. L. Letchimanan Chetty at that date? A. No, Rs. 10 36,000/- would have been the amount due at that date according to the Nadappu vatty.

I have calculated how the amount would have increased from January, 1930, according to the Nadappu vatty. The Nadappu rates are available from Chettiars' books in Colombo. I have summoned some Chettiars to produce their books containing the rates from 1930 up to date. I have calculated at those rates the amount due from Letchumanan Chetty. I produce that calculation which I made P3.

(Mr. Chelvanayagam says that it is annexed to the original plaint and he marks it P3).

20 In that account I have calculated the interest for each year according to the rates prevailing in those years and at the end of the year I have added the interest to the principal and calculated the interest on that sum for the next year and so on. You have to add the interest to the principal if the interest is not paid at the end of the year, if he had paid the interest at the end of each year it would not have been added to the principal. That way of calculating is in accordance with the custom prevailing and that is the Chetty practice. Letchimanan Chetty agreed to pay the interest like that yearly and that is the custom among the Chetty firms. I have given credit to Letchimanan Chetty for the sum of Rs. 20,488·18 30 deposited in April, 1943, in making that computation. I have calculated the amount due up to 30th November, 1948, the date of the plaint, and the balance due according to my account is Rs. 22,455·52. Letchimanan Chetty died after 1943 leaving the 1st defendant as his widow and 2nd to 6th defendants as his children. His estate was administered in Testamentary Case No. 11556 of this court. I produce the petition in that case P4, inventory P5, administrator's final account P6 and journal entries P7. The inventory includes the value of the deceased's business with the firm of K. R. K. L. and the estate totals Rs. 59,150/-. I point out in the final account that the administrator had collected a sum of Rs. 64,802·67 as 40 assets of the estate and that the bulk of the estate had been distributed among the defendants. I know the administrator of that estate Verappa Chettiar son of Myandi Chettiar. He is now dead. I point out in the journal entries under date 6-11-47 where the court has made order that the heirs are majors and they have accepted the account as correct. Nadarajan Chettiar is now in India. I claim on behalf of the 1st plaintiff the money shown in the plaint as the balance due.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination

Cross-examination. I am a Tamil man. The parties are all Chettiars. In 1930 I left for India and I remained in India for about 1 or 1½ years. While at India I did not do anything. When Muttiah Chettiar died in August, 1929, I had no employment of any kind. Murugappen Chettiar was born on the 16th December, 1927. He was born in India. Muttiah Chettiar died in Colombo. At the time Muttiah Chettiar died, Murugappen's mother was in India. She was called Segapi. Nadarajan Chettiar was in Ceylon at the time that Muttiah Chettiar died. Thiagarajah Chettiar and Manickam Chettiar were also here at that time. By Muttiah Chettiar's first wife his children were three girls and by his marriage to Segapi he had two sons Murugappen Chettiar and Valiappen Chettiar. The family consisting of Segapi, Murugappen and Valiappen were in India. I last saw Suppramaniam Chettiar four months ago when he came to Ceylon. He is now in Akiyab according to my information. I was told he is there. I returned from India in 1931 towards the end of that year. After I came I took employment under M. T. K. L. Letchimanan Chetty and was there for three years. During that period I had nothing to do with Nadarajen or Segapi or Manikam. After I left Letchimanan Chettiar I joined the firm of V. R. K. R. L. of Kandavarayen pathi. After the three years at Letchimanan Chettiar's I went to India and remained for two years. My village is Atekkar. I know Segapi. When I went to India after Muttiah died I saw her. After that I have not seen her. Now she must be 45 to 50 years old. She is a woman who is able to look after her own affairs. I took up service under V. R. K. R. L. in 1937 and I was working in that firm for six years. During that period I had nothing to do with the affairs of Segapi's family or Nadarajen, Manikam and others. Murugappen Chetty is in India today. All the cases filed by Murugappen up to now were filed by me. Murugappen has given evidence in one case. That is the case against K. R. K. M. A. R. In that case judgment was entered and it is now in appeal. That was a similar action for recovery of principal and interest. K. R. K. M. A. R. is a relative of Murugappen Chetty. The case against Nadarajen Chetty was also filed by me. He is angry with me. When I was working under M. K. L. I was not on speaking terms with him and even prior to that I was not on speaking terms with Nadarajan Chettiar. Nadarajan Chetty has never spoken to Murugappen Chetty. I know because I am told everything and I know it. He himself has told me so. I do not go to any functions of Nadarajen Chetty and I do not know who attend such functions. Personally from 1930 I have had nothing to do with Nadarajen Chetty or Murugappen Chetty till 1947. I do not know the personal relationship between Nadarajen Chetty and Murugappen Chetty till the year 1947. Segapi Atchi has not spoken to me about these cases. She did not have the right to draw this money from Letchimanan Chetty. None of her money was deposited with Letchimanan Chetty nor was there so far as I know any moneys of hers with Letchimanan Chetty.

I have seen the answer of the defendants. Instructions for the plaintiff were given by me to the proctor. In giving money to Letchimanan Chetty I was acting as the agent of Murugappen Chetty. I told that to

my lawyers. I told them that Murugappen Chetty at that time was a baby a year or two old and I also told them that Murugappen's mother was living at that time. Murugappen Chetty came to Ceylon in September for the case and left in October. I hold his power of attorney and I act for him in this case.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

(Mr. Chelvanayagam offers to mark the document it is marked P8).

I have no other power of attorney. (Shown the reverse of D1).

This bears my signature. The endorsement on the back of D1 is in my handwriting. According to that endorsement I had received on this document Rs. 5,010·18 on the 16th of Thai in the year Peramadi. That would be about the end of January, 1940. At that time I was in the employ of V. R. K. R. M. I cannot remember who drew this undial D1. I received that money. I would have read the undial and received the money and I would have known who the drawer was and who the drawee. Segapi is also called Menatchi. (Shown the face of D1).

This undial has been drawn by Menatchi on the firm of K. R. K. N. L. In these undials the first line contains the date, the second line contains the name of the payee and the third line the account to which the amount is to be debited.

(Shown D1). In D1 the first line contains the date 9th day of Thai in the year Peramadi, the second line directs that payment be made to V. R. K. R. Kandavarayan Pathi and she has directed that the amount be debited to M. R. M. M. M. R. of Neikupai. She has asked Letchimanan Chetty to pay Rs. 5,010/- and to debit M. R. M. M. M. R. in his books. I understood that very well at that time. I knew nothing about this document because it came when I was in a different firm. When I instructed my lawyers to file this action I did not remember this nor did I pay any heed to it. Segapi had no right to tell Letchimanan Chetty to pay out money to V. R. K. R. and debit M. R. M. M. M. R. I took this document and obtained the money from K. R. K. N. L. I did not know that K. R. K. N. L. having paid that money would have debited M. R. M. M. M. R. All that I know is that I received this money. There is a request in D1 to debit M. R. M. M. M. R. with that money and according to our business that would have been done. When Muttiah died Segapi wrote to me, soon after he died. After Muttiah died, Nadarajan Chetty and Segapi wrote to me in two different ways because they had a row. Segapi gave me certain instructions which were counter to what Nadarajan Chetty wrote to me. Although they gave me contrary instructions I deposited this money with K. R. K. N. L. and I also deposited moneys with other vilasams. I knew K. R. K. N. L. Letchimanan Chetty. Fourth defendant who is in court is the son of K. R. K. N. L. Letchimanan Chetty. When Muttiah died the father of the 4th defendant was in India. He was in India till the end of 1929. In 1929 I did not see him. I saw him in 1930 because I was in India in that year. In 1929 I saw him in Colombo and at the time of Muttiah's death he went to India and after that I went to India and saw him in 1930. Before I went to India I had deposited that money with the firm of K. R. K. N. L. At that time 4th defendant

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

was in Ceylon, and it is from the 4th defendant that I got the money on the undial. I am referring to the undial DI. I did not tell my lawyers that in January, 1930, I acted on behalf of Murugappen Chetty and deposited money with one K. R. K. N. L. Letchimanan Chetty. I cannot say whether I said I deposited the money with "one" Letchimanan Chetty but I told my lawyers that I deposited the money with that vilasam and the money was given to Letchimanan Chetty. I cannot remember now whether 4th defendant was in Ceylon at that time. I got employment under the present vilasam in 1947. Murugappen Chetty is a young man. He does not drink. He is not yet married. I have some property worth about Rs. 10,000/- or 15,000/-. The lands I am possessed of are worth about that. I have in cash Rs. 2,000/- or 3,000/-. I do not carry on a money lending business with that money. That money is to my credit in the firm's books. I have left that Rs. 3,000/- with a certain person. That money is carrying interest. Murugappen Chetty is not doing business here but I am managing the business of this vilasam for him. Plaintiff's vilasam is still doing business in Ceylon in money lending. I am doing that for plaintiff. Business is being done to the extent of Rs. 70,000/- to 80,000/-. When I took charge of this business Rs. 140,000/- was drawn from the curatorship case and with that money I am doing business. Out of that about Rs. 80,000/- is invested in Colombo. What I mean is I am reinvesting the money drawn from the curatorship case. The proxy in this case is not signed by Murugappen Chetty. He is a major today. He became a major last December. I have no power of attorney given by him after that date. I am still having the power of attorney he gave me. He gave me that power of attorney when he attained majority at 18. After he became 21 he has not given me a power of attorney.

At this stage Mr. Thiagalingam refers to section 486 of the Code and states that as it has now transpired the minor has attained majority the minor has to elect as to whether he will go on with this action or not in terms of that section, and if he elects to go on with the action he should file his own proxy.

Mr. Chelvanayagam agrees that the 1st plaintiff who is now a major should be asked to elect in terms of this section. As 1st plaintiff is in India at present he asks for another date for the 1st plaintiff to elect.

Call case on 20-1-50 for the 1st plaintiff to elect. If he elects to go on with the case further hearing will be continued on 20-2-50.

(Sgd.) S. J. C. SCHOKMAN,
D. J. 40

20th February, 1950.

Mr. Adv. Navaratnarajah for plaintiff instructed.

Mr. Adv. Canagarayar for defendant instructed.

Mr. Navaratnarajah states that the plaintiff's evidence, apart from the evidence of a formal witness, has already been led before Mr. Schokman.

Mr. Canagarayar states that his senior counsel, Mr. Thiagalingam, wishes this case to be heard by Mr. Schokman and moves that it be called before the District Judge on another date.

Mr. Navaratnarajah has no objection.

Call case before the District Judge on 8th March, 1950.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

(Sgd.) K. D. DE SILVA,
A. D. J.
20-2-50.

8th March, 1950.

10 Mr. Adv. Chelvanayagam, K.C., with Mr. Adv. Navaratnarajah for plaintiffs.

Mr. Adv. Thiagalingam with Mr. Adv. Canagarayar for defendants.

Mr. Adv. Thiagalingam moves that this case which has been partly heard by Mr. Schokman, my predecessor here, be continued before him. He says that in the interests of justice this case which commenced before him should be heard to a finality by him.

Mr. Chelvanayagam says he has no objection to Mr. Schokman continuing to hear this case or if that were not feasible he has no objection to this court hearing the case *de novo*.

20 Mr. Thiagalingam says that he is going on a holiday and he would be glad if this case could be taken up for trial after the 15th July.

Write to Mr. Schokman and ask him whether he is prepared to continue to hear this case which has been partly heard by him. Please also inform him that counsel have made a request to me that a date after 15th July be given for the trial. That application has been made by counsel on personal grounds.

Call case on the 23rd inst.

(Sgd.) H. A. DE SILVA,
D. J.
8-3-50.

80

25th October, 1950.

1st and 2nd plaintiffs present.

Mr. Adv. Chelvanayagam, K.C., with Mr. Adv. Navaratnarajah and Mr. Adv. Thavadurai for plaintiff instructed by Mr. Chinnaiya.

4th defendant present.

Mr. Adv. Thiagalingam with Mr. Adv. Canagarayar instructed by Mr. Somasundaram for defendant.

Mr. Thiagalingam points out that 1st plaintiff who was a minor at the date of the action has now elected to go on with the case and the 2nd
40 plaintiff now has no status and his name should be struck out of the
plaint. He cites section 487 of the C. P. C.

Mr. Navaratnarajah has no objection to the 2nd plaintiff being struck out as he has no further status or interest in the case.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

ORDER

2nd plaintiff who was the next-friend of the minor plaintiff is struck out of the suit because the minor has now become a major and has elected to proceed on with the case in his own name.

Issues have been framed on 13-12-49 before my predecessor. Counsel for plaintiff and defendant agree that those issues be adopted. I adopt those issues. It is also agreed that the witness Vellasamy Pillai be recalled and the evidence given by him before my predecessor be read out to him and any further questions be asked in examination in chief.

P. Vellasamy
Pulle
Examination

Mr. Chelvanayagam calls.

10

P. Vellasamy Pillai, affirmed, recalled.

(The evidence given by this witness on 13-12-49 before my predecessor is read out to him).

Mr. Chelvanayagam examined the witness further in chief.

The evidence given by me on the previous occasion is correct. I affirm to its correctness. I stand by that evidence. Nadarajan Chettiar I referred to who is the eldest son of Muttiah Chettiar is in Colombo today and I have summoned him to come to court to speak to the books of the 1st plaintiff's business that I have already referred to in respect of this particular transaction, that is. No security or writing was taken from²⁰ K. P. K. N. L. when the money was given. It was not necessary to get a writing or security. It was entered in the account and given. Letchi-manan Chettiar to whom I gave this money was a son-in-law of Muttiah Chettiar. He was married to a daughter of Muttiah Chettiar by his first wife. Since I filed this action the 1st plaintiff Murugappah Chettiar has become a major and he has now adopted the action and he is in court today.

P. Vellasamy
Pulle
Cross-
Examination

Cross-examination. Mr. Thiagalingam states that his cross-examination of this witness is not over and that he wants to cross-examine the witness further.

30

He asks that the trial be adjourned at this stage on personal grounds. It is now 1-30 p.m.

Mr. Chelvanayagam consents.

Trial is postponed for 20-12-50 to be continued if necessary on 21-12-50.

(Sgd.) H. A. DE SILVA,
D. J.

21st December, 1950.

Mr. Adv. Chelvanayagam, K.C., with Mr. Adv. Navaratnarajah instructed by Mr. Sinniah for plaintiff.

40

Mr. Adv. Thiagalingam, K.C., with Mr. Adv. Kumarasingham and Mr. Adv. Canagarayar for the defendant,

It is agreed that the issues and proceedings of the 13th December, 1949, up to the stage when the witness was called be adopted but the examination of the witness is to start *de novo*.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

Mr. Chelvanayagam opens his case. He states when action was filed 1st plaintiff was a minor and 2nd plaintiff was his next-friend. Pending action 1st plaintiff became a major and he has adopted the action and the action continues in the name of the 1st plaintiff alone. 2nd plaintiff has been now struck off the case. 1st plaintiff was born in 1928. He was the son of one Muttiah Chettiar. Muttiah Chettiar did a very large money
10 lending business in Ceylon. He has children by three wives. By his first wife he had some and by the second wife some sons and by the third wife he had the 1st plaintiff a son and a daughter. Muttiah Chettiar's third wife the mother of the 1st plaintiff is one Segappi *alias* Meenatchi. Muttiah Chettiar realising the difficulties that will arise among the step-brothers, before his death divided his money and assets among his sons in the way in which assets are divided among the members of a joint Hindu family. That was a voluntary division to which all parties agreed. He referred the matter to arbitrators and they met and divided the property among the sons who accepted the division.

20 (Mr. Kumarasingham says he does not admit the arbitration or the division). In respect of each one of the sons—two by the second wife and one by the third wife he started a firm, Nadarajan and Thiagarajah were the sons by the second wife and Manikam by the third wife. The daughters had been dowried and he had finished with them. Parties are now concerned with the firm that Muttiah started with Murugappen because it is with moneys that money that is the subject matter of this case. Nadarajan for whom he started a firm is now perhaps the biggest money lending man in Sea Street today and he is now adverse to the plaintiff, because the plaintiff has had to file a case against Nadarajen Chetty. Thiagarajah
30 similarly is a big Chetty firm. In August, 1929, plaintiff was 1½ years old. It is plaintiff's case that some moneys had become the moneys of 1st plaintiff before his father's death and nothing passed by reason of the death. That is not admitted by the other side, they say 1st plaintiff inherited the money from Muttiah after his death and Muttiah Chettiar's estate not having been administered the plaintiff cannot maintain this action. Muttiah Chetty had started the firm in 1st plaintiff's name when 1st plaintiff was a minor and there were separate books. The original 2nd plaintiff Vellasamy was trustee agent and kanakapulle of Muttiah Chetty at the time that Muttiah Chetty was carrying on business before
40 the division and after the division Vellasamy was put in charge of the firm of the 1st plaintiff and whatever moneys that were lent out and collected in respect of that business was done by Vellasamy. Vellasamy carried on the money lending business of the 1st plaintiff in the same way after Muttiah Chetty died. He collected the assets of the 1st plaintiff and he invested that in other Chetty firms at what is called nadappu vatti. In that manner he invested Rs. 180,000/- in 1929. That is all money belonging

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

to the plaintiff. Because the plaintiff was still young Vellasamy did not want to undertake risky business and he thought it safer to deposit various sums of money in relative's firms at nadappu vatti. That is how Vellasamy comes in. Among the people with whom he deposited money was one K. R. K. N. L. Letchimanan Chettiar. He was married to Muttiah's daughter by his first wife. Letchimanan was prepared to keep this money at the Chettiar's rate of interest. At that time in 1929 and before that there were people in Ceylon who used to deposit moneys in Chettiar firms, and the Chettiars used to pay interest at 5 or 6 per cent. at smaller rates they themselves charged their customers. The arrangement¹⁰ between Vellasamy on behalf of the 1st plaintiff and Letchimanan Chetty was that the money was to be deposited at the nadappu rate of interest and the amount deposited with him was Rs. 18,700/-. Vellasamy wrote up his books of account and handed them over to Nadarajen Chettiar and left the firm and went away. The money was accruing with the Chettiar rate of interest in the various firms. Some time later when 1st plaintiff was coming of age some Chettiars did not want to hold this money any longer and the moneys were deposited in curatorship case No. 3836 marked P1. On 31-3-43 K. R. K. N. L. filed a motion in that case and deposited²⁰ Rs. 20,488.18 as money belonging to the minor. That motion is marked P2. The basis of the deposit and to whom the money is returnable are matters that are disputed but that will hardly bear disputing because of the motion filed in that case. After depositing the Rs. 20,488/- Letchimanan Chetty died. He left an estate in Ceylon which was administered by the attorney of one of his heirs. His heirs in that case were his widow and children. That estate was administered in case No. 1156T of this court. Petition for letters is dated 17-9-45 P4. Inventory of the Ceylon assets of the business is P5 dated 11-4-46. Final account P6 was filed on 7-8-47 which shows that the assets of K. R. K. N. L. were divided among his wife and children. Plaintiff says that the Rs. 18,700/- were deposited³⁰ with K. R. K. N. L. to be returned to plaintiff at the Chetty rate of interest. He got the money on that basis and returned Rs. 20,000/- odd but there is still a balance returnable because between 1929 and 1943 the Rs. 18,700/- would have become at least Rs. 30,000/- and the plaintiff is suing for that balance. The defence is a half way house between certain denials putting plaintiff to the proof of everything and another defence, namely, that when Muttiah Chettiar died the property devolved on his third wife and her son the 1st plaintiff and her daughter. They formed a joint family under the control and management of Segappi and that Letchimanan kept that money to be controlled by Segappi and to be paid⁴⁰ back to her and that Rs. 3,000/- or 4,000/- had been paid back to Segappi by K. R. K. N. L. That is the point that is in dispute and it is inconsistent with the motion filed by K. R. K. N. L., P2. In point of fact Segappi was the step-mother-in-law of Letchimanan Chetty. The legal position is whether the money in deposit in K. R. K. N. L.'s firm should be returned to the plaintiff with nadappu vatti (2) whether defendants are liable to return the balance and whether they are entitled to deduct the amount they paid Segappi.

Mr. Chelvanayagam calls.

Vellasamy Pillai, affirmed.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Examination
—continued.

I was the original 2nd plaintiff in this case. I have now dropped out of the case because the 1st plaintiff has become a major. 1st plaintiff is now carrying on this case. He is present in court today. 1st plaintiff is a Natukottai Chettiar and he comes from South India. I also come from South India but I do not belong to the Chettiar community. The defendants in this case are all Natukottai Chettiars. 1st defendant is the widow of K. T. K. N. Letchimanan Chettiar and 2nd to 6th defendants are
 10 the children of Letchimanan Chettiar. He himself was a Natukottai Chettiar. Letchimanan Chetty is now dead. I have been in Ceylon from 1906 and I have been working in Chettiar firms. I am very well acquainted with the money lending Chettiar's business. 1st plaintiff's father was Muttiah Chettiar and he carried on a money lending business in Ceylon. He was carrying on business in Ceylon even before I came to Ceylon in 1906. Muttiah died in August, 1929. From 1906 to 1929 I worked with Muttiah Chettiar. Muttiah Chettiar was married three times. 1st plaintiff in this case is the child by the third wife and the third wife is living in
 20 India. By his first wife he had three daughters and no sons. By the second wife he had three sons and four daughters. The sons were Nadarajan Chettiar, Thiagarajah and Manikam Chettiar. By the third wife he had 1st plaintiff and one daughter. Muttiah was also a Natukottai Chettiar from South India. Some time before his death he divided his assets among the four sons that is Nadarajan, Thiagarajah, Manikam and Murugappen, the 1st plaintiff. Each got 1/4th share. Roughly the amount that fell to 1st plaintiff's share was Rs. 181,000/- odd. This division took place on 26-8-28. 1st plaintiff was then about 1½ years old. 1st plaintiff was born in December, 1927. When the arbitration was held and the division made in August, 1928, 1st plaintiff was less than a year
 30 old. There was a Panchaya or arbitration and there were four arbitrators. They were appointed to divide the assets of Muttiah Chettiar. When the Panchaya was held in India I was in Ceylon. I know about it only from the award of the arbitrators which I read. Three of the arbitrators are now dead and the 4th one is in Burma. The arbitration award is filed in court in the case against Nadarajan Chettiar. It is filed there by 1st plaintiff and it is binding on this court. I have taken a certified copy of that document. The award was signed by the four arbitrators and the sons of Muttiah. Nadarajan Chetty and Thiagarajah Chetty have signed it. I produce a copy of that award marked P9.

40 (Mr. Kumarasingham objects unless someone who is a party to the document is called. Mr. Chelvanayagam says he is calling Nadarajan Chettiar. I allow the document to be produced as Nadarajan Chetty is being called).

In terms of that award Rs. 181,000/- odd was set apart for the 1st plaintiff and with that Rs. 181,000/- odd Muttiah Chettiar started a firm in the name of M. K. M. M. R. M. R. Muttiah's firm had the vilasam of

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Examination
—continued.

M. R. M. M. M. Nadarajan Chetty's firm was M. R. M. M. M. N. Thiagarajah Chetty's firm had the vilasam of M. R. M. M. M. T. Manikam Chetty's vilasam was M. R. M. M. M. M. These four vilasams were started in 1929. Nadarajan Chetty and Thiagarajah Chetty started in June, 1929, and Muttiah Chetty started the other two firms for Manikam and Murugappah. They were minors and Muttiah Chetty looked after those firms for them.

Q. In respect of the minor plaintiffs did he keep separate books?

A. Yes.

In respect of the minor Manikam he had separate books. The moneys 10 of this plaintiff were kept in the firm of M. R. M. M. M. R. and treated separately. In 1929 Muttiah Chetty was an old man and I was the man working under him.

Q. You were a trusted servant? A. Yes.

Muttiah Chetty died soon after that. He died in Ceylon. When he died the books of the plaintiff and the moneys were in my hands. I was kanakapulle for both firms of Murugappan and Manikam. In addition I was also kanakapulle for Nadarajan Chetty and Thiagarajah. Those two had their business in different premises. After the death of Muttiah Chettiar I distributed the Murugappen's money to Chetty firms at the 20 prevailing rates of interest (nagappu vatti) Manikam's money I entrusted to Nadarajan Chetty to carry on that business. That was done because they were full-brothers and Murugappen was a half-brother. In that manner I deposited with Chettiar firms about Rs. 150,000/- to Rs. 160,000/-. One of the firms in which I deposited plaintiff's money was K. R. K. N. L. Letchimanan Chettiar. I deposited with that firm Rs. 18,700/-. K. R. K. N. L. Letchimanan Chettiar was Muttiah Chetty's son-in-law having married his first wife's daughter. These were all entered in the books of Murugappen Chetty. Those books are now in the Indian courts and I have got certified copies. With regard to the Rs. 18,700/- that was depo- 30 sited with K. R. K. N. L. I spoke to Letchimanan Chettiar. He knew and I also told him it was the minor Murugappen's money and that Letchimanan Chetty had to return the money to Murugappen Chettiar. He had to return the money with the addition of interest usually paid between Chettiars, that is nagappu vatti. I know the custom in regard to nagappu vatti. In Colombo the Chettiars have an association. It is a voluntary association. They meet from time to time and determine what the rate of interest should be among themselves. They meet once a month. The rate would depend on the discount rate at the bank. It would be 1 or 3/4th per cent. different from the bank rate. The rate is 40 4½ 5 sometimes 8 and 9 per cent. depending on the demand for money. Chettiar money lender firms have dealings among themselves. That is one firm lends to another firm or deposits with another firm certain moneys. In respect of those transactions between Chettiars they pay interest at the nagappu rate. Letchimanan Chettiar agreed to pay nagappu vatti on this money which was given to him. In the calculation of nagappu vatti if the interest is not paid from time to time the interest is added to the

outstanding amount. That is done once a year. The interest payable for the year is added to the principal and interest of the previous years or the interest is paid on that total sum in the next year. The nagappu rate from 1929 up to date that prevailed among the Chettiars is in record in the various Chetty firms except that from the year 1942 there was no nagappu rate prevailing. I have summoned some Chettiars firms to produce the rate that was determined from time to time from 1929 onwards and also to produce the decisions arrived at at the temple. I produce a statement showing the rate of interest payable as nagappu vatti from month to month from July, 1929, to March, 1941, P10.

No. 9
Plaintiff's
Evidence
P. Velasamy
Pulle
Examination
—continued.

(Mr. Kumarasingham does not admit the correctness of this statement. Mr. Chelvanayagam undertakes to prove the rate).

In this statement when it states $\frac{3}{4}$ per cent. that is $\frac{3}{4}$ per cent. per month. After March, 1944, there is no record of the rate of interest that is because the Chettiars did not arrive at a decision and there was no nagappu vatti and they arranged it personally among themselves according to their convenience. The last rate that was agreed upon was $\frac{24}{64}$ per cent., that is $\frac{24}{64}$ of a rupee for Rs. 100/-. I have calculated on the Rs. 18,700/- at the current rates of interest. I produce that statement
20 P3. That shows the interest that accrued from time to time according to the nagappu rate. After March, 1941, I calculated at $4\frac{1}{2}$ per cent. That is the last rate that was agreed on in March, 1941, among the Chettiars. In 1948 I lent at 9 per cent. to other firms and so I charged that rate. In 1948 Rs. 140,000/- was drawn from the court and invested at 9 per cent. and so I charged at that rate.

(Mr. Chelvanayagam at this stage states he cannot claim at 9 per cent. for the period June, 1947, to 30th November, 1948, he restricts it to $4\frac{1}{2}$ per cent.).

After 1942 the Chettiars did not fix up the nagappu vatti. After
80 March, 1941, in respect of transactions between Chettiar firms they paid interest but there was no fixed agreed rate prevailing among the Chettiars and in respect of their transactions each Chetty firm by agreement charged interest on loans at a rate fixed by them.

(Mr. Chelvanayagam states that his evidence will be that according to the custom among Chettiars when the customary rates ceased to be fixed the last prevailing rate would be in force until the loan was returned in respect of transactions entered into at the time the customary rates were being fixed).

To COURT :

40 After June, 1941, Chettiars did not meet and fix the nagappu vatti and after that the interest in respect of each transaction was decided between the parties and that was individually arranged and followed. There was no established custom in regard to interest payable in respect of Chetty transactions after June, 1942).

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Examination
—continued.

(Mr. Kumarasingham at this stage suggests the following issue :

If there was no customary rate of interest as pleaded in para 3 of the plaint after June, 1941, is plaintiff entitled to any interest after that date in any event.

Mr. Chelvanayagam has no objection to this issue. He suggests as a corollary :

If there was no customary rate fixed after March, 1941, is plaintiff entitled to interest at the last rate that was fixed among the Chettiers in March, 1945, or is plaintiff entitled to reasonable interest and if so at what rate). 10

(I accept both issues. Questions of fact may be involved in deciding what is the reasonable rate, but as this defence is not likely to be offered today no prejudice will be caused and parties can get ready upon these questions of fact on the adjourned date and this witness cross-examined if necessary in regard to it).

I deposited these monies with various people in 1929 after the death of Muttiah Chettiar. I deposited Rs. 18,700/- with Letchimanan Chettiar. I entered that in the books of M. R. M. M. R. I left the firm of M. R. M. M. R. on 10-1-30. I handed over the books of plaintiff's firm to Nadarajan Chetty and obtained a receipt before I left. That receipt is filed in case 20 No. 18107 of this court. I produce a certified copy of that receipt P11.

(This receipt is admitted subject to Nadarajan Chetty being called).

This receipt shows the various amounts which I told Nadarajan Chettiar was payable by the various persons to Murugappen Chettiar.

(Mr. Kumarasingham objects to this document on the ground that all that Nadarajan Chettiar acknowledges on the first sheet of the document is the receipt of the books and keys. There is no reference to the subsequent parts of the document in the document in which he has subscribed his signature.

ORDER :

30

I allow the document to be produced. If Nadarajan Chetty who is being called denies any part of the document was given by him that will naturally be ruled out at that stage. Subject to that I allow the document to be produced. I agree that it will not be evidence of the contents of the books but merely an acknowledgment by Nadarajan Chetty of a list of debts owing to Murugappen Chettiar according to the books).

(Mr. Chelvanayagam marks the account portion of the document P11A and the list of documents P11B.

Mr. Kumarasingham at this stage also states that the document is not listed. Evidence has already been given in regard to its contents and I allow it to go in). 40

(Mr. Chelvanayagam says he does not admit that the document has not been listed).

In the receipt that Nadarajan Chetty gave me there is a list of the ledger balances. When I gave over the books to Nadarajan Chetty I explained to him the amounts that I had lent to various firms. In the receipt that he gave me I got those ledger balances also noted for my own protection. In P11A among the investments that I made to the various people there is a sum of Rs. 18,700/- paid to K. R. K. N. L. Sometime after I left the firm one of the Chettiar firms with whom I had left money started a curatorship guardian case in this court for the plaintiff. That is case No. 3836 of this court. I produce the journal entries in that case

10 P1. That case was started by M. R. M. S. S. Sunderam Chettiar. He is also one of the persons with whom I had deposited moneys belonging to the plaintiff. He started those proceedings on 19-2-42 and he deposited to the credit of that case Rs. 63,000/- odd. Thereafter on 31-3-43 K. R. K. N. L. Letchimanan Chettiar filed a motion in that case P2 and asked for a deposit order for depositing Rs. 20,488.18. That sum was deposited to the credit of that case on the 6th or 7th April, 1943. I produce the motion P2 filed by K. R. K. N. L. Letchimanan Chettiar's proctor moving to deposit that sum of money. I point out that in that motion Letchimanan Chettiar states that the money was due to the plaintiff Murugappen

20 Chettiar and that was due in respect of moneys lying to his credit with Letchimanan Chettiar. Rs. 20,488.18 is not the full amount that was due plaintiff had to get more. In my account I have given credit for the Rs. 20,488.18 and I claim the balance Rs. 22,445/-. That is the amount claimed in the plaint. I agree that I have to give him credit for interest which I am willing to take at $4\frac{1}{2}$ per cent. and for which I have charged 9 per cent.

No.
Plaintiff's
Evidence
P. Vellasamy
Pulle
Examination
—continued.

(Sgd.) N. SINNATAMBY,
D. J.

Luncheon Interval.

30 21st December, 1950.

After Lunch.

P. Vellasamy Pulle, recalled, affirmed.

Examination-in-Chief (contd.). Subsequent to that Letchimanan Chettiar died leaving behind as his heirs his widow, the 1st defendant and his children 2nd to 6th defendants. His estate was administered in Testamentary case No. 11556 of this court. I produce the petition asking for letters of administration dated 17th September, 1945, marked P4.

I produce the inventory in that case dated 11th April, 1946, marked P5.

40 He left an estate in Ceylon amongst which there was the business firm of K. R. K. N. L. That is disclosed in the inventory P5.

I produce final account dated 7th August, 1947, marked P6 which shows that the estate has been distributed amongst his widow and children—the defendants in this case.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Examination
—continued.

I produce journal entries in the case marked P7. I point out that in the final account the administrator had collected Rs. 64,802·67 as assets of the estate. The bulk of it had been distributed among these defendants.

Weerappa Chettiar was the administrator of the estate holding a power of attorney from one of the heirs. He was not an heir. He is now dead. On 6th November, 1947, in the Testamentary case the court had made order that the heirs were majors and that they accepted the final account as correct.

Nadarajan Chettiar (the eldest brother of the plaintiff) and the plaintiff are not on friendly terms. There is litigation between them. Plaintiff has sued Nadarajan Chettiar in these courts and in the Indian courts. The account books of the firm of M. R. M. M. R. that I gave to Nadarajan Chettiar are filed in the Indian courts in the case pending between plaintiff and Nadarajan Chettiar. I have been assisting the plaintiff in this case and in other cases where he has sued for the return of monies similarly deposited.

In the Indian case against Nadarajan Chettiar also I am helping the plaintiff. In these courts there are 8 cases filed. Two of them have been decided and they are in appeal. This case is the third. Five other cases are pending.

I saw the account books of M. R. M. M. R. which I gave Nadarajan Chettiar in the Indian courts. Nadarajan Chettiar submitted the books to court and they are in the Indian record room. There is a folio for the K. R. K. L. N. transaction. I have a certified copy of that account. I move to produce that account.

(Mr. Kumarasingham objects to the production of that document. He says that it was in a list filed only yesterday that it was stated that this list was to be produced. He says that no proper notice has been given. Mr. Kumarasingham says that he objects to the certified copy itself. He submits that it is a matter that goes to the root of the matter and therefore the books of account themselves must be produced. He says he does not know who wrote the books.

Mr. Chelvanayagam submits that Nadarajan Chettiar has been summoned to produce the books. It is now known that Nadarajan Chettiar came into court without the books. The notice to Nadarajan Chettiar to produce the books is two years old. He says that the account is produced to show that the debt is shown in those books.

Mr. Kumarasingham submits that this is not a public document.

Mr. Chelvanayagam says that the document is admissible under sections 74 and 77 of the Evidence Ordinance. He says it is also admissible under section 82. Section 65 (3) also applies. If it is a public document the only method of proving it is by the production of a certified copy and not by the production of the original.

Mr. Chelvanayagam desires to put a few more questions before the question of admissibility of this document is decided.)

Examination-in-Chief (contd.). The accounts of K. R. K. L. N. which are shown in the account books produced in the Indian courts were written by a kanakapulle who wrote under my direction. The entries were made by the kanakapulle. The transactions contained therein were made by me and I got the kanakapulle to make the entries in the books. I have now got a copy of the K. R. K. L. N's. entries in court. I did not compare the entries in the certified copy with the entries in the book. They were compared in court and certified by the court. I can recall the entries that were made under my direction in 1929-30. I went through the books in the court also. The only thing is that I did not compare the certified copy with the entries in the book. Nadarajan Chettiar produced the books in that court. Murugappen Chettiar was a party to that case. The case is between Nadarajan Chettiar and Murugappen Chettiar. I am not a party in that case. Murugappen Chettiar is a party in that case. I am a witness in that case. The books were produced by Nadarajan Chettiar in court and marked. It is not possible to get those books until the case is concluded. Even Nadarajan Chettiar cannot get those books. When the case is concluded, as owner, the plaintiff can call for the books. The books belong to Murugappen Chettiar. I applied for the books for the purposes of this case but they refused to give the books until that case was over.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Examination
—continued.

(I ask Mr. Kumarasingham whether he desires to cross-examine the witness in regard to the questions which were put in order to make this document admissible.

Mr. Kumarasingham cross-examines the witness :)

The Indian case has not gone to trial yet. Documents and statements have been filed by parties. On 3rd January, 1951, the Indian case will be taken up for trial. I cannot remember the date Nadarajan Chettiar filed the books in court. When I filed plaint in this case I instructed my proctor about the accounts. I do not know the name of the certifying officer. I do not know the rank of the certifying officer. Our Wakil applied for a certified copy of the account and obtained this for us. I have had this copy with me for the last two months.

(Mr. Kumarasingham also objects on the ground that the document is not properly certified. The translation does not say who the certifying officer is.

Mr. Chelvanayagam cites Talyon on Evidence, Vol. 1, pages 13 and 14, Cap. 2, Section 10.

ORDER :

The plaintiff seeks to produce a certified copy of certain entries in a book of account which has been deposited in the Indian courts. The book has been deposited there not by the plaintiff but by one Nadarajan Chettiar. According to the evidence it has been marked and an application to remove it has been refused. I doubt whether the present plaintiff could in any event have been given authority to remove it as the books have been produced by another party, at least until the case is decided.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Examination
—continued.

That case is not yet decided. In these circumstances where the original cannot be produced for some reason not arising from default or neglect of the plaintiff within reasonable time the court is empowered to lead secondary evidence of the document—*vide* section 55 (3). The document in question appears to be a public document and inasmuch as it forms part of a record or proceedings in court the only method of proving it is by a certified copy. A certified copy is produced. The seal of the court appears to be that of the Sivaganga court. Learned counsel for the defendant objects on the ground that there is nothing to show that the person certifying the document is a responsible officer who certified it. In this connection section 82 was cited and the case decided in 39 N.L.R. 454 wherein reference is made to an English Act which is referred to in Taylor at pages 13 and 14.

I do not think it is necessary to prove that any particular officer who certifies a document is a person so authorised to certify if the document bears the seal of the court. This document bears the seal of the court and the presumption will operate in favour of its genuineness.

Another objection of learned counsel for the defendant is that the document was listed after the last proceedings. This may be so but the object of getting parties to list their documents before trial is to prevent possible fabrication of documents after the case has commenced. I do not think there is such a danger because the document is already a production in an Indian court. Furthermore the original documents, namely, the account books are referred to in the plaintiff's list.

In the circumstances I allow the document to be produced.

(The document is marked P12).

(Mr. Chelvanayagam continues the examination of the witness).

Moneys lent to K. R. K. L. N. which are claimed in this case belong to the plaintiff. The claim as stated in the plaint subject to the reduction of interest at $4\frac{1}{2}$ per cent. is due.

30

P. Vellasamy
Pulle
Cross-
Examination

Cross-examination. From 1930 to 1947 I was employed under other firms. Between 1906 and 1929 I was employed under the plaintiff's father. During the period Muttiah Chettiar was away in India I held his power of attorney in Ceylon.

When Muttiah Chettiar died Nadarajan Chettiar may have been about 23 years old and Thiagarajah Chettiar about 22 years old. Both of them ran their own businesses. I looked after their affairs. I was the manager of four vilasams. During that time Muttiah Chettiar used to come to Ceylon and go. Muttiah Chettiar died in Ceylon. At that time Nadarajan and Thiagarajah and Manikam were here. Letchimanan Chettiar, father of the defendants, was in India at the time of Muttiah Chettiar's death. Letchimanan Chettiar did not remain in India till I saw him there in January, 1930. He came to Ceylon in the meantime.

I gave evidence in this case earlier before Mr. Schokman, D.J.

Q. Did you say in the earlier proceedings that when Muttiah Chettiar died the father of the 4th defendant was in India? A. Yes, at the time of the death he was in India. He came thereafter.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

He was in the habit of coming and going within a month. Letchi-
manan Chettiar came to Ceylon before 1930 and after the death of Muttiah
Chettiar. He came and I gave him money. I personally handed over
the money to him about 7 or 8 times. Every time I gave the money in
the boutique it was in the presence of Letchimanan Chettiar. I gave
instructions to file this action. I gave particulars of the account of
10 Letchimanan Chettiar with the plaintiff. I did not say that the money
was given to him at various times on various dates in 1929. I did not
receive the interest from the beginning. Interest was due from the actual
date of lending the moneys but in 1947 when I filed this action, after the
account books had been taken away by Nadarajan Chettiar, I calculated
interest from 1930. P12 was not available to me from October, 1949.
Our Wakil may have had it with him from that time. Two months ago
I went to India in connection with the case and at that time he handed
the document to me. On instructions from the proctor the Wakil was
written to obtain this document. As soon as I went to India I obtained
20 this document. As the document was required only when the case is
heard on my visit last time I obtained the document. The list filed with
the plaint in this case contains only the total amount. The Tamil state-
ment filed with the plaint was drawn up by me to calculate the interest
just before the case was filed. It gives the total amount of interest.

(Sgd.) N. SINNATAMBY,
D. J.

(Further hearing on 25th and 26th April. Nadarajan Chettiar is
warned to appear on the next date of trial).

25th April, 1951.

30 Counsel as before except that Mr. Navaratnarajah says that Mr. Adv.
Thavadurai appears on the last date and he also appears today with him.

P. Vellasamy, affirmed.

Cross-examination (contd.). I am a Tamil man and the parties to this
case are all Chettiars. In 1930 I left for India and I remained in India for
1 or 1½ years. While at India I did not attend to any business or do any-
thing. When Muttiah Chettiar died in August, 1929, I had no employ-
ment of any kind. When I said that Muttiah Chettiar died in 1929, that
is correct he died at the end of July or August, 1929.

(Shown death certificate of Muttiah Chettiar D2).

40 This gives the date of death as 29-7-29. That will be correct. Muru-
gappen Chettiar was born on 16-12-27. He was born in India. Muttiah
Chettiar died in Colombo. At the time he died Murugappen Chettiar's
mother was in India. She is called Segappi *alias* Meenatchi. Nadarajan

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

Chettiar was in Ceylon at the time that Muttiah Chettiar died. Thiagarajan Chettiar was in Ceylon at the time and also Manikam Chettiar. By Muttiah Chettiar's first wife his children were three girls and by his marriage to Segappi he had one son and one daughter, Murugappen Chettiar and Valiamma. The family of Segappi, Murugappen and Valiamma were in India and they were a joint family.

I do not know Suppramaniam Chettiar. There was one Suppramaniam one of the arbitrators in the Panchayam. I last saw him in Ceylon about six or seven months ago. He is now in Akiyab. I returned from India in 1931, towards the end of that year. After I came I took employment under M. I. T. K. L. Letchimanan Chettiar and I was there for three years. During that period I had nothing to do with Nadarajan, Segappi and her family or Manikam Chettiar. After I left Letchimanan Chettiar I joined the firm of V. R. K. R. L. of Kandarayan Patti. After the three years with Letchimanan Chettiar I went to India and stayed there two years and came back again and took employment under V. R. K. R. L. I know Segappi and when I went to India after Muttiah Chettiar's death I saw her once. After that I did not see her till 1947 when I have since seen her. She is about 45 years old. She is a woman who is able to look after her affairs. I took service under V. R. K. R. L. in 1937 and I worked there for two laps of three each consecutively. During that period I had nothing to do with the affairs of Segappi's joint family or of Nadarajan's joint family or of Manikam Chetty's joint family. Murugappen Chetty is in Ceylon today and he is in court. All the cases filed by Murugappen Chetty in Colombo courts were really filed by me. There was one case which was filed against K. R. K. N. A. R. that is case No. 18106. That case is now in appeal.

In evidence in chief I referred to a case as being a case similar to this case which I had filed.

(Shown issues in that case D3).

30

(Mr. Navaratnarajah objects.

Mr. Thiagalingam says that the relevancy is as follows : the other case dealt with entirely different matter and in evidence in chief the witness said the points in issue in that case were the same as in this case. He wants to show that the points in issue are widely different.

I allow the production—marked D3).

There was also an action against Nadarajan Chetty at the instance of Murugappen Chettiar but in truth and in fact filed by me. I filed all the cases.

I do not know the personal relationship between Nadarajan Chettiar and Murugappen Chettiar from the time of Murugappen's birth till 1947. Segappi has not spoken to me about this case. I do not know whether she did not have the right to draw this money from the defendant firm at any time.

Q. Did you give this evidence before Mr. Schokman, D.J., that Sigappi did not have the right to draw this money—money you deposited

on behalf of the plaintiff with the defendant firm, from Letchimanan Chetty? A. I cannot remember.

(Both parties agree that if reference is made to the previous evidence given by any witness the court can look at that evidence and take it into consideration).

None of Segappi's money was deposited with Letchimanan Chetty nor so far as I know were any moneys of Segappi with Letchimanan Chetty.

(Mr. Navaratnarajah at this stage states that Nadarajan Chetty who was warned to appear in court on the last date and on whom summons in addition had been served to be present today is absent.

His name is called out.

Whose kanakapulle who is present in court states that 10 days ago Nadarajan Chetty went to India and he is said to be ill there. He submits a medical certificate.

Mr. Thiagalingam states that his case will be greatly prejudiced if this witness is not available.

Mr. Navaratnarajah states that he made a mistake, he should have brought this to the notice of the court earlier.

Nadarajan Chetty's kanakapulle is present in court.

Mr. Thiagalingam states that if he proceeds with the cross-examination of this witness it will prejudice his case without knowing as to whether Nadarajan Chetty will give evidence or not.

I quite appreciate the possibility of prejudice being caused. Many questions were asked from this witness which otherwise would not have been asked at the last day's proceedings. Counsel for the plaintiff should at the commencement of the day have applied for a date if Nadarajan Chetty was not present today.

Both sides are agreed that the witness is a material witness.

I indicate to Mr. Thiagalingam that I leave it to him to decide whether he is to continue the cross-examination of this witness or to consent to a date.

He states he prefers not to continue the cross-examination.

Mr. Navaratnarajah moves for a warrant. The medical certificate which has been submitted is a most unsatisfactory one. Witness is said to have left for India 10 days ago knowing fully well that not only had he been warned to attend court on the date fixed for trial but he also had been summoned. The medical certificate as I have already said is most unsatisfactory.

I allow the application for a warrant and issue warrant on the witness.

Trial is adjourned for 5th and 6th September. Plaintiff will pay the defendant the costs of today and tomorrow.

Warrant will be made returnable on 1-8-51.

(Sgd.) N. SINNATAMBY,
D. J.

No. 9
Plaintiff's
Evidence
—continued.

14th May, 1951.

Mr. Adv. Somasunderam in support of the application of 10-5-41 submits a medical certificate and asks that the warrant that was issued against a witness be recalled.

This witness was specially warned by this court to be present on the adjourned date of hearing of this case. He was a witness that was required by both sides. On the last occasion that he appeared he was specially warned by this court to appear on the next date. I will recall counsel indicating that it was difficult to get at this witness and that it will not be possible to serve summons within the period for which the case was postponed. But despite the fact that he was warned by this court he went away to India and submitted a certificate of illness which this court considered unsatisfactory. A warrant was accordingly ordered. He now makes application and offers to surrender to court. Before he makes any application on his part I want him first to surrender to court. After that I will consider any application that is made in regard to his appearance on the next date. If the Fiscal finds that the defendant is actually ill he need not arrest and produce him but should instead report to court.

(Sgd.) N. SINNATAMBY,
D. J. 20

S. C. Application No. 301

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

M. R. M. M. N. NADARAJAN CHETTIAR of Sea Street,
Colombo*Petitioner.*

against

MUTHAL ATCHY, widow of Letchimanan Chettiar and others,
all of South India.....*Defendants.*

Action No. 20429/M.

District Court of Colombo

30

In the matter of an application for revision of proceedings had in the above case.

This matter coming on for hearing and determination on the 6th day of June, 1951, before the Hon. Mr. E. F. N. Gratiaen, K.C., Puisne Justice, and the Hon. Mr. H. A. de Silva, Puisne Justice of this court in the presence of counsel for the petitioner.

It is ordered that the execution of the warrant issued on petitioner be suspended until the 4th July, 1951. If on or before that date the petitioner appears in court and deposits security in cash in the sum of Rs. 500/-, undertaking to appear on the next trial date, which is the 5th September, and on any subsequent date of trial of which due notice is given to him the warrant will be recalled. If the petitioner does not appear or furnish security in terms of this order the warrant for the arrest of the petitioner will be executed in terms of the original order of the District Judge.

No. 9
Plaintiff's
Evidence
—continued.

Witness the Hon. Sir Edward George Perera Jayetileke, Kt., K.C.,
10 Chief Justice, at Colombo, the 8th day of June in the year of Our Lord
one thousand nine hundred and fifty-one and of our reign the fifteenth.

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

Application for Revision in D.C. Colombo 20429 (301)

Present : GRATIAEN, J. and DE SILVA, J.

Counsel : E. B. WICKRAMANAYAKE, K.C., with SOMASUNDARAM, for
petitioner.

Argued and decided on : 6th June, 1951.

GRATIAEN, J.

20 In view of Mr. Wickramanayake's statement that his client is willing
to furnish security to ensure his attendance in court on the next trial date
we make order as follows :—That the execution of the warrant issued on
the petitioner will be suspended until the 4th July, 1951. If on or before
that date the petitioner appears in court and deposits security in cash in
the sum of Rs. 500/- undertaking to appear on the next trial date, which
is the 5th September, and on any subsequent date of trial of which due
notice is given to him the warrant will be recalled. If the petitioner does
not appear or furnish security in terms of this order the warrant for the
arrest of the petitioner will be executed in terms of the original order of
30 the learned District Judge.

(Sgd.) E. F. N. GRATIAEN,
Puisne Justice.

DE SILVA, J.
I agree.

(Sgd.) H. A. DE SILVA,
Puisne Justice.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

14th June, 1951.

Mr. Rasanathan for the witness.

Witness present.

Mr. Rasanathan tenders Kachcheri receipt for Rs. 500/- on behalf of the witness and moves that the same be accepted as security.

Accept security. The witness gives an undertaking to appear on the next date of trial, namely, 5-9-51. In view of this undertaking I make order recalling the warrant in terms of the order of the Supreme Court.

(Sgd.) M. A. SAMARAKOON,
Acting D. J. 10

5th September, 1951.

Same appearances.

P. Vellasamy, affirmed.

Cross-examination (contd.). I was cross-examined on the Undial D1. And I gave certain evidence in regard to D1 before Mr. Schokman.

(At this stage counsel agree that the entire evidence given by this witness at the previous hearing be regarded as having been given at this hearing and that this court take that also into consideration).

(Mr. Thiagalingam refers to the cross-examination of this witness during the previous proceedings). 20

Muttiah Chettiar, plaintiff's father, is a son of Murugappa Chettiar; that is, plaintiff's grandfather's name is also Murugappa. When Muttiah Chettiar died K. R. K. N. Letchimanan Chettiar was in India. I did not say that Letchimanan was in India till the end of 1929. Letchimanan was not here at the time of Muttiah's death; he was in India at that time. Muttiah died in 1929, July. From that time on Letchumanan was not in India till the end of 1929; in the meantime he came back. In 1929 I saw Letchumanan when he came after the chettiar's death. I saw him in 1929.

(Evidence given by this witness on 13-12-49 read to witness). It is 30 not correct that he was in India till the end of 1929; he came. (Previous evidence read to witness.) I cannot say whether that is right or wrong. What is stated there (which is read out to the witness) is wrong. As a matter of fact at the time the chettiar died he was in India. After that, being a relation, he and mudalali came. Within 2 or 3 months he went back to India.

Q. That is to enable you to say that you talked to Letchumanan and came to an agreement with regard to the interest? A. No.

He came to Colombo at the end of August or in September, 1929. I saw him in Colombo at the end of 1929. 40

(To COURT :

Q. On the last date you gave evidence you stated that in 1929 you saw him in Colombo? A. Yes.

That is right. What I say that he was in India from 1929 till 1930 is not correct. He came in the meantime to Colombo for a few months. That is after Muttiah died).

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

I know now that Letchumanan is dead.

Q. I put it to you that you deposited these moneys with the firm of K. R. K. N. L. at the request of Sigappu? A. No.

Q. Did Sigappi send you a power of attorney? A. No.

Q. At no time? A. No.

Sigappi did not write to me at any time. At the time of Muttiah Chettiar's death she wrote to me. She wrote to me within a few days of Muttiah's death. I got the letter before I deposited these moneys in the firm of K. R. K. N. L. I got only one letter from somebody putting Sigappi Atchi's name. Muttiah Chettiar in his lifetime did not ask me to deposit the money in any firm. Sigappi did not tell me to do so. The eldest male member of the family was Nadarajah Chetty. He was in Ceylon at the time of Muttiah Chetty's death. I was at that time a kanakapulle under Muttiah.

Q. Do you say that after Muttiah died you, as kanakapulle, without express instructions from anybody, deposited the money with K. R. K. N. L. firm? A. Without anybody's authority I deposited the money on my own.

At that time Murugappan was a child. He could not give me any instructions. Muttiah did not have the vilasam M. R. M. M. R. There was a vilasam with the initials M. R. M. M. M. R. M. R. M. M. M. R. was registered. I know that under the Ordinance the registration of that vilasam had to be hung up in the place of business. Accordingly in the place of business of M. R. M. M. M. R. the registration was hung up. It was I who did that.

I understand a few English words. The proprietor of a business vilasam has to give his name. In that certificate which I hung up at the premises of M. R. M. M. M. R. the proprietor's name was given as Muttiah Chettiar; it was so registered.

(Shown D4 certified copy of the registration of the vilasam of M. R. M. M. M. R.). Under the column of proprietor's name Muttiah's name has been inserted. The particulars for this registration were given by both Muttiah and me.

On Muttiah Chettiar's death the assets of the firm of M. R. M. M. M. R. were over 2 lakhs of rupees. Muttiah Chettiar had no assets in Ceylon at the time of his death.

(To COURT : He was running the business of this vilasam M. R. M. M. M. R.).

Muttiah's estate was not administered up to date. After Muttiah died I do not know that Sigappi claimed the entire assets of M. R. M. M. M. R. firm as belonging to her family. After Muttiah's death the assets of

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

M. R. M. M. M. R. firm were not claimed by anybody. Sigappi did not claim it as belonging to her minor child and her family. She wrote to me one letter.

Q. Sigappi wrote to you telling you how to deal with the funds of M. R. M. M. M. R.? A. No.

She did not tell me how to deal with the assets of M. R. M. M. M. R. Neither did Nadarajah. He wanted the assets. He wanted the accounts.

Q. Did he want you to give over the assets to him? A. He asked for everything; he wanted the assets also; but I did not give him.

Nadarajah had no right. He asked for everything, but I did not give 10 him. Sigappi made no request of me contrary to the request of Nadarajah.

(To COURT: She wrote to me calling upon me to bring all the assets and give over to her in India. She claimed the assets).

Sigappi and Nadarajah claimed the assets. How could anybody claim? Both claimed it. They did not expressly say that they had a right to it; they both asked that the assets be given to them. That I refused to do. In the end I entrusted Rs. 34,000/- and the books to Nadarajah.

I had lent out to Chettys and various people moneys which were in the firm of M. R. M. M. M. R. Somebody had to recover that money. At 20 a certain stage I entrusted the business affairs of this firm of M. R. M. M. M. R. with the books of the business and liquid assets to Nadarajah; that was at the end.

Nadaraja Chettiar has recovered Rs. 5,000/- only out of the money lent by me which was lent to a relation. Only Rs. 5,000/- of the money invested with Chetty firms was recovered by Nadarajah. M. A. L. M. S. is the firm from which Nadarajah recovered Rs. 5,000/-.

While Murugappan was still a minor I sued M. A. L. M. S. for the recovery of that money lent by me. It is written in the account that M. A. L. M. S. had paid Nadarajah. When I sued M. A. L. M. S. they 30 filed answer stating that the money was paid over to Nadarajah and the action which I filed on behalf of Murugappa was dismissed in the lower court and is up in appeal. It is still not decided.

K. R. K. N. Letchimanan Chettiar in 1929 was about 50 years old.

When Muttiah Chettiar died here Segappi was in India. According to Chetty customs quite a number of relatives would call on Sigappi. It is customary for relations to stay there for 2 or 3 weeks. Letchumanan was married to a daughter of Muttiah by his first wife. Sigappi knew that Letchimanan had a big business here. At that time Nadarajah was angry with Segappi and her family. Segappi would not have looked up to 40 Letchumanan for any help. What help can I give Sigappi? When she asked me to hand the assets over to her I declined to do so.

Q. Would it be right to say that Sigappi would have looked to Letchumanan for help? A. No.

(To COURT :

Q. To whom then? A. Her maternal uncles, Muttiah Chettiar and Palani Chettiar).

They had no business here. I do not know that Muttiah Chettiar came armed with a power of attorney from Sigappi. I did not hear of that up to date. I do not know the vilasam of Muttiah. That is her mother's brother. Segappi could have gone to V. R. K. R. who had business connections here who was a relation of her. K. R. K. N. L. is not a relation. V. R. K. R. is the only relation of Sigappi.

10 After I gave over the affairs of Murugappa to Nadaraja I lost all connections with the firm of M. R. M. M. M. R.

Q. On whose instructions did you entrust the affairs and assets of the firm of M. R. M. M. M. R. to Nadaraja in 1930? A. He being the closest relation I thought I could not wait with a small amount in hand and I gave it up. I acted on my own in this.

Having done that I had nothing to do with the firm of M. R. M. M. M. R. from 1930 to 1945. I did not know what was happening to the affairs of M. R. M. M. M. R. I knew nothing till as late as I started filing these cases.

20 Q. According to you Sigappi had no control over this fund lying at K. R. K. N. L.? A. Yes.

(Shown D1).

Q. Nonetheless on the Undial D1 drawn by Sigappi (witness answers) I do not know whose thumb impression is on D1.

I did not ask Murugappa whether Sigappi drew up D1. When I asked he said he knew nothing about this. I doubt it.

Q. Do you doubt the genuineness of this? A. I cannot.

Q. The Undial is said to be drawn by a woman called Sigappi? A. It appears to have been written by one Segappi.

30 It is addressed to the firm of K. R. K. N. L. The drawer of the Undial tells the firm of K. R. K. N. L. to pay Rs. 5,000/- out of the moneys of M. R. M. M. M. R.

(To COURT : This Undial is drawn on K. R. K. N. L. firm. Payment has to be made by K. R. K. N. L. They have paid this money. With my hands I got the money. Yet I cannot say whether this Undial is genuine. K. R. K. N. L. is also a relation of Segappi by marriage.

Q. Are you suggesting that this man would have paid Rs. 5,000/- without being satisfied about the signature? A. That is possible.

40 It is possible that he would have paid that money without having been satisfied about this signature. Letchumanan Chettiar would have paid the money).

The Undial came to my hands. I cannot say whether payment was going to be made on this Undial out of the funds which I had kept with K. R. K. N. L. The Undial says, "Debit M. R. M. M. M. R. with this

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Cross-
Examination
—continued.

payment". I knew that the account of M. R. M. M. R. with the defendant firm was the account which I opened. I knew that that account was going to be debited with this payment according to the Undial.

Q. Had Sigappi the right, if this is a genuine document, to send this Undial? A. I cannot say that.

(Witness' previous evidence put to him).

Sigappi had no right to write asking for this money to be paid. I received this money on behalf of V. R. K. R., the payee.

The books I handed over to Nadaraja were maintained by my assistant under my supervision. In those books there is an account for the plain-10 tiff in this case, Murugappen.

(Shown D5). This is a copy of the account of Murugappan with M. R. M. M. R. Those books are in the Indian courts. According to the books of M. R. M. M. R. Murugappan is a creditor of the firm of M. R. M. M. R. He has been given credit by Muttiah in M. R. M. M. R's books. Muttiah has from time to time debited that account with the expenses incurred by him for Murugappan.

Q. According to the account D5 the firm of M. R. M. M. R. owed Murugappa on 8-6-29 Rs. 128,000/- odd? A. Yes.

To the firm of M. R. M. M. R. another firm M. R. M. M. S. had 20 given a loan on 10th July, 1929, on a note signed by Muttiah. That amount was paid back by me after Muttiah's death.

(Shown D6). This is a true copy of the account of M. R. M. M. S. in the books of M. R. M. M. R.

Similarly Muttiah had borrowed from V. R. K. R. another sum of money for M. R. M. M. R. After his death I paid that money too from the funds of M. R. M. M. R. D7 is a copy of that account in the books of M. R. M. M. R.

In case 18106 I sued the firm K. R. K. N. R. Mr. Chelvanayagam, k.c., appeared for me and Mr. Wickramanayake, k.c., appeared for the 30 other side. I filed case 18107 against M. A. M. L. S.

(D8 is a certified copy of the issues in that case).

That is the case I lost.

Certain moneys were deposited to the credit of case No. 3836 guardian by three Chetty firms. Eventually Murugappa drew out that money. He drew that money by filing an affidavit from himself and from his mother. Both affidavits were submitted by Murugappa to court. Mr. Navaratnarajah supported the application and the moneys were paid to Murugappa. For the purposes of obtaining the money from court I came and worked for it. I knew the contents of both affidavits. 40

(Shown the affidavit of Murugappa certified copy of which is marked D9).

In this Murugappa says as a member of an undivided joint Hindu family it is his duty to donate the necessary dower for his sister, etc. That is correct. The plaintiff also said that his mother is in India and that she

is his lawful guardian during his minority. That is also correct. (Shown D10 certified copy of affidavit of Sigappi). What is stated there is correct.

As a result of these applications the District Judge allowed Murugappa to draw moneys including moneys deposited by the defendant and it was used for dowering a child.

Q. According to Hindu conception in India Sigappi would deposit all moneys belonging to the Hindu family of which she is a member in the name of her eldest son? **A.** Yes.

I gave instructions to my proctor fixing the date of deposit as January, 10 1930. I gave a statement of account and left in 1930. Thereafter I do not know. I am paid by Murugappa as his employee Rs. 170/-. I have only Rs. 3,000/-.

Q. Did you tell your proctor that on or about January, 1930, you, acting on behalf of the minor Murugappa, deposited certain moneys with Letchumanan Chettiar? **A.** I did not say that. I gave him the accounts.

To say that the money was deposited with the defendant firm in January, 1930, is wrong.

Re-examination. Muttiah Chettiar carried on business himself under the vilasam of M. R. M. M. M. That business was commenced by him in 20 1910. I took employment under him from 1906. At the partition of Muttiah's joint family property plaintiff was allowed Rs. 181,000/- odd. Each of the sons got an equal amount. Manickam, Murugappen, Thiagarajan and Nadarajan were the sons. Manickam and Murugappan were minors at the date of the partition. Both of them were very young. Manickam was about 4 or 5 years old and Murugappan about 1½ months old. Nadaraja was about 25 years old, and the other son was 20 years old.

With the money that was given to him Nadaraja did business on his own under the vilasam of M. R. M. M. N. Thiagaraja also carried on 30 business. The money that was allotted to the plaintiff was managed under the vilasam of M. R. M. M. M. R., the capital of which was Rs. 181,000/- odd.

After Muttiah's death Sigappi wrote a letter to me asking me to bring everything over to India. Nadaraja Chettiar was also asking for it. I did not give it to either because there was a dispute between the two. I regarded the minor Murugappa the owner of the money that was lying to the credit of the firm of M. R. M. M. M. R.

From M. R. M. M. S. Muttiah Chettiar borrowed Rs. 5,000/- on a note. The vilasam affixed by Muttiah was M. R. M. M. M. R.

40 In regard to the money that was allotted to Manickam Chettiar Muttiah ran that business also under the vilasam of M. R. M. M. M. M. The assets of that vilasam after the death of Muttiah Chettiar were also here and I gave it over to Nadaraja Chettiar. Manickam was a full-brother of Nadaraja.

No. 9
Plaintiff's
Evidence
P. Vellasamy
Pulle
Re-
Examination
—continued.

The moneys of the vilasam of M. R. M. M. R. were deposited by me with various Chetty firms in Colombo. They knew that it was the minor's money and I told them it was the minor's money.

Q. You left Ceylon in January, 1930? A. Yes.

I returned to Ceylon in 1931 to the firm of M. I. T. K. L. I was with that vilasam for three years. Thereafter I was with the firm of V. R. K. R. L. When I was with V. R. K. R. L. this document D1 was received. When I was with the firm of V. R. K. R. L. I did not know whether they had paid and accounted for all moneys I had deposited with them. The Undial was received by me in 1940 or so. At that time I did not know whether arrangements had been entered into between the plaintiff and Sigappi Achi. As an employee of the firm of V. R. K. R. L. I could not have refused to accept the Undial and carry out the instructions contained therein.

(Sgd.) N. SINNATAMBY,
D. J.

Nadarajan
Chetty
Examination

Nadarajan Chetty, affirmed, 45, Money Lender, Sea Street.

My father was Muttiah Chettiar. He had four sons. I carry on business under the name of M. R. M. M. M. N. My father partitioned the Ceylon assets amongst his sons in 1928. At that time his sons Manickam and the plaintiff in this case were minors. He divided his assets into four. He retained some moneys separately for himself. There was a partition of the joint family property. After keeping some property separately for himself the balance was divided among the four sons. I cannot say with what capital I started my business. My vilasam was started after the partition. This Rs. 180,000/- and other moneys I had were the nucleus—I cannot remember. My brother Thiagaraja also started a business after the partition. Thiagaraja's business was looked after by me. The money that was allotted to the plaintiff was kept by my father Muttiah Chettiar. He also kept Manickam's money. My father started two businesses under two vilasams. One was M. R. M. M. R. which stands for Murugappa Chettiar. That firm did business with the money allotted to Murugappa Chettiar. Similarly another business was started for Manickam Chettiar—M. R. M. M. M. M. The capital of that business was what Manikam received at the partition.

After the death of Muttiah Chettiar I took over the business of Manickam who is a full-brother of mine. In regard to the moneys that were lying in the firm of M. R. M. M. M. R. they belonged to Murugappa Chettiar because they were credited to him.

At the time of Muttiah's death Vellasamy was not the kanakapulle. 40 Somasundaram was the kanakapulle. Vellasamy was employed in the firm which I and Thiagarajah took charge of. I did not ask Somasundaram to hand over to me the assets of M. R. M. M. M. R. Sigappi asked that the assets of M. R. M. M. M. R. be handed to her. She sent an uncle of

hers with a power of attorney to ask these assets from Somasundaram. Somasundaram or anybody else did not hand over the assets to her. The moneys of the firm of M. R. M. M. R. were deposited with various Chetty firms after the death of Muttiah. It was given to Muttiah Chettiar's relations and outsiders also. N. M. A. R. and A. M. R. M. are the two outside firms to whom money was lent.

No. 9
Plaintiff's
Evidence
Nadarajan
Chetty
Examination
—continued.

I received from Vellasamy the books of the firm of M. R. M. M. R. He also handed to me certain promissory notes in connection with the affairs of the firm. I gave him a receipt for them.

10 In October or November, 1929, Vellasamy was in the firm of M. R. M. M. R.

(Shown copy of the receipt and three documents marked P11, P11A and P11B).

P11 is correct. I cannot speak to the other documents. I did not give a list. He gave me a list and I gave a receipt. To the receipt I gave a copy of the list was not attached. I gave only a receipt. In the receipt P11 there is a reference to a list. That receipt refers to the list he gave me. That list is with me. I cannot say in whose handwriting that list was. I am unable to say whether P11A and P11B are copies of that list.

20 (Shown the original of P11A). This is not in the handwriting of my kanakapulle.

(Shown the original of P11A which has been marked P2 and filed in case No. 18107). This is not in my handwriting or in the handwriting of my kanakapulle. This is the first day I saw the original of P11A. I have a list in my house which was given to me by Vellasamy.

It was when that list was given that I gave the receipt P11. The documents were handed to me and Vellasamy left the firm of M. R. M. M. R. That was in January, 1950. Thereafter I recovered a sum of Rs. 5,000/- from M. R. M. L. That is money due to the firm M. R. M. M. R. and I accounted for it. There is now litigation between me and the plaintiff in this connection. That Rs. 5,000/- is credited to the plaintiff in the accounts. The money is credited to the account of M. R. M. M. R. After deducting the moneys due to me and I have brought the balance to the credit of that case which was filed by plaintiff against me.

(The deed is marked P9).

I signed the original of P9.

Cross-examination. There is an action pending between Murugappa and me. I cannot remember the number of the case Murugappa brought against me. That is No. 20470. It is in appeal. In that case Murugappa took up the position that the arbitration award P9 is entirely bad.

Nadarajan
Chetty
Cross-
Examination

40 (Mr. Thiagalingam marks a certified copy of the amended plaint dated 30-9-49 in D.C. 20470 as D11). Murugappa in that case took up the position that the arbitration proceedings were totally bad and therefore not binding on him. That is his case—that the arbitration and the amount both are wrong. He has also filed against me a suit in India.

No. 9
Plaintiff's
Evidence
Nadarajan
Chetty
Cross-
Examination
—continued.

Q. Has Murugappa claimed what is called a Tharapenga in the Indian suit? A. Yes.

Tharapenga is the wife's share.

Vellasamy was in my employ at the time of Muttiah's death. He left me about October or November, 1929. I discontinued him.

I cannot say whether my vilasam of M. R. M. M. M. N. was in existence prior to the arbitration award P9. My name was registered as the proprietor of M. R. M. M. M. N., and not Muttiah's name.

Thiagaraja Chettiar also started a vilasam about the same time that I started my vilasam. That was M. R. M. M. M. T. The registered proprietor of that business was Thiagaraja.

Q. Do you know who the registered proprietor of M. R. M. M. M. R. was? A. Muttiah Chettiar's name.

Q. You already told his honour that at the division certain assets were set apart for your father Muttiah Chettiar? A. Yes.

Q. When Muttiah Chettiar died was any estate duty paid on account of any estate of Muttiah Chettiar? A. I do not know.

Q. Not as far as you are aware? A. Yes.

Q. The division of the family property was, according to you, in 1928, (P9)? A. Yes. 20

Q. When Vellasamy left you you told his honour he somehow or other got into the vilasam of M. R. M. M. M. R.? A. Yes.

Q. How did he do that? A. Somasundaram took him in.

Q. You told us also that an attorney came from India armed with a power of attorney from Sigappi to Colombo? A. Yes.

Q. That is a man named Muttiah, uncle of Sigappi? A. Yes.

Q. Do you know whether Muttiah went and made any request of Vellasamy? A. I do not know.

Interval.

(Sgd.) N. SINNATAMBY, 30
D. J.

After lunch.

5th September, 1951.

Nadarajan Chettiar.

P12 is the account of the defendant firm in the books of M. R. M. M. M. R. In that account in the books of M. R. M. M. M. R. defendants are debited with various sums of money from time to time. The first item that has been paid into defendant firm by the firm of M. R. M. M. M. R. is Rs. 600/-. That amount is said to have been taken to defendant's firm by Sovanna Mana and given to the defendant firm. Sovanna Mana was the 40 kanakapullai of M. R. M. M. M. R. that is Somasundaram. So too the first and second sums were given to the defendant firm by Sovanna Mana.

The third item of Rs. 2,000/- was also given by Sovanna Mana and the 4th amount. The next item Rs. 4,900/- was given by Sovanna Mana. The 7th item of Rs. 2750/- was given by Sovanna Mana and also the 9th and 10th items. The 17th item of Rs. 900/- has been given by Lena. I do not know who Lena is. On the 2nd November Rs. 250/- has been given by Sovanna Mana and on the 22nd also the money was given by Sovanna Mana. These moneys were paid into the defendant firm by the hands of Somasundaram according to the account of the firm of M. R. M. M. M. R.

No. 9
Plaintiff's
Evidence
Nadarajan
Chetty
Cross-
Examination
—continued.

10 Somewhere in January Vellasamy gave me all the assets of the firm of M. R. M. M. M. R. and the books of that firm. I did not ask for them. Vellasamy said that Segappi Atchi asked him to entrust them to me and go. He says he deposited moneys with other Chetty firms at the request of Segappi Atchi. She was the third wife of my father. My brother the plaintiff is in court. I am a wealthy man worth about 30 to 40 lacs.

Re-examination. I gave evidence in two other cases in which the plaintiff had sued a number of Chettiars for recovery of various sums of money. I gave Vellasamy a receipt in January, 1930, and Vellasamy handed me a list containing the names of various debtors to the firm of M. R. M. M. M. R. These moneys were not deposited by Vellasamy to those various firms, it was Somasundaram who deposited those moneys with those Chetty firms.

20 **Q.** In case No. 18107 did you say this “Vellasamy deposited Rs. 5,000/- of the minor’s moneys with Sockalingam Chetty?”

(Mr. Thiagalingam objects—leading question). In that case whether Vellasamy acted on behalf of Segappi was not at issue. He says in no case was that at issue except in this case. In the conduct of those cases nobody worried whether Vellasamy gave the money or Somasundaram.

ORDER :

30 I agree that the question appears to be one which amounts to cross-examination of the witness. In the circumstances of this case and under the circumstances in which this witness came to give evidence I allow the question to be put and the witness can give any explanation he likes as to why he made that statement).

To COURT :

Q. Did you direct your mind to the question as to whether it was paid by Vellasamy or Somasundaram when you gave that evidence or were you at that moment thinking of the firm who lent the money? **A.** In that case I had only in mind the firm that lent the money).

40 **Q.** Did you say this “like that Vellasamy had deposited moneys belonging to the minor with other Chettiars”? **A.** I cannot remember having said that.

Q. Did you say this “the firm mentioned in P1 is the vilasam of the firm belonging to the minor plaintiff”? **A.** Yes, I said that,

No. 9
Plaintiff's
Evidence
Nadarajan
Chetty
Re-
Examination
—continued.

Q. Money belonging to the firm which belongs to the minor was deposited with various Chettiars? A. Yes.

Q. Whether it was deposited with Vellasamy or not can you say?
A. Before Vellasamy joined that firm Somasundaram gave the money.

Q. Vellasamy was employed in the firm of M. R. M. M. M. R.?
A. Yes, he was also doing our work.

Q. Your firm was carried on under the vilasam of M. R. M. M. M. N.?
A. Yes.

The books of account of that firm are available. The salary of Vellasamy was debited with the firm of M. R. M. M. M., that is my father's firm. 10

Q. Is his salary debited in the books of M. R. M. M. N.? A. No.

This vilasam of M. R. M. M. M. N. was started by me in 1928. Books of account had been maintained for that vilasam from that time onwards. It was Somasundaram who appointed Vellasamy. After the death of Muttiah Somasundaram looked after the vilasam of M. R. M. M. M. R. The assets of the vilasam of M. R. M. M. M. R. were recognised as belonging to the plaintiff.

Q. Did the Chetties with whom these moneys were deposited know to whom the money belonged? A. I cannot say that.

Sockalingam was one of the persons with whom money was deposited. 20

In 1929 there was no trouble between myself and Segappi Atchi. With regard to the affairs of M. R. M. M. M. R., Segappi Atchi did not communicate with me.

Q. In 1930 it was you who terminated the services of Vellasamy?
A. He brought these things and entrusted them to me and I received them.

Q. Did you terminate his services, or purport to do so? A. No I did not. He wanted to go away.

Q. And you recovered the sum of Rs. 5,000/- from Sockalingam?
A. Yes. 30

Q. Did you send that money to Segappi Atchi. A. No. I credited that in the books of M. R. M. M. M. R.

Q. In the action filed by plaintiff against you you gave him credit for that sum? A. I credited him with that sum and brought the balance to court.

Q. Somasundaram was in the firm of M. R. M. M. M. R. when Vellasamy was there? A. Yes.

Q. Vellasamy was the senior kanakapillai? A. Yes.

Q. Somasundaram had to take orders from Vellasamy? A. Yes.

(Sgd.) N. SINNATAMBY, 40
D. J.

Murugappah Chettiar, affirmed, 24, Money Lender, Sea Street.

I was in court when the other witnesses gave their evidence. I carry on business under the name of M. R. M. M. R. There was a curatorship case No. 3836 in connection with my estate.

No. 9
Plaintiff's
Evidence
Murugappah
Chettiar
Examination
—continued.

Q. Certain moneys had been paid to the credit of that case by various Chettiars? A. Yes.

Q. Why did they credit these moneys into that case? A. Because I was a minor.

Q. Who lent those moneys? A. The kanakapillai who was employed in that firm.

Q. What is his name? A. Vellasamy.

Q. He was employed in the firm which was started in your name? A. Yes.

Q. And all that was done by your father when you were a little child? A. Yes.

Q. Who told you all this? A. Vellasamy.

Q. Have you adopted all that Vellasamy did in connection with the lending of this money? A. Yes.

Cross-examination. I am not married. I am doing nothing. Vellasamy is doing the business. I go to India and come. Occasionally I go to the pictures.

Murugappah
Chettiar
Cross-
Examination

Q. That is about all you do? A. And also I look after the business.

Q. Your father died when you were about a year old? A. Yes.

Q. You do not know anything that happened at all till you were 10 or 12 years of age? A. Yes.

I know Somasundaram now. I came to know him after 1942 that is after I came to Colombo in 1941. I was then a student. I was then 14 or 15 years of age.

Q. Till then you had never been outside your home in India? A. I had gone to Madura and other places but not outside India. The closest town I had gone to was Madura and that was about 60 miles away. I had also gone to Trichinopoly. I did not go anywhere far away. My mother was looking after me.

Q. She was your natural guardian? A. Yes.

Q. And she looked after all your affairs? A. Yes.

Q. You filed an affidavit in the curatorship case No. 3836? A. Yes.

Q. There you said that you were a member of an undivided Hindu family consisting of yourself your sister and your mother? A. Yes.

Q. You also said that your mother was your lawful guardian during your minority? A. Yes.

No. 9
Plaintiff's
Evidence
Murugappah
Chettiar
Cross-
Examination
—continued.

Q. Your mother was in fact looking after you and spending for you? A. Yes.

Q. She collected all the income? A. No, there was no income to collect. Apart from the interest that accumulated in court there was no other income. There was no income in India.

My father died when I was a little child. My mother had no property. I did not live on air. In the firms of N. M. A. R. and A. M. R. M. there was money from which my mother took money and my mother also took loans from outside.

N. M. A. R. firm has certain moneys of the vilasam of M. R. M. M. M. R. in their hands and my mother took those moneys from N. M. A. R. and spent it on us.

Q. Did she take the money or the interest only? A. That was not specified whether it was out of the principal or interest but she received the money and spent it on us. Those moneys were taken as loans by my mother and recently I paid that.

Q. But there was money due to you from that firm? A. My mother had taken more than was due to her from that firm, she took less than what was due. Deducting that she received the money. Similarly in regard to the other firm of A. M. R. M. 20

I know that an Undial was produced when Vellasamy was in the witness box long ago before the D.J. Mr. Schokman. I was not in court on that day. I was not in Ceylon at that time.

Q. Did Vellasamy mention about the Undial to you about 1½ years ago? A. No he did not say.

Q. Up to date he has not told you? A. He told me about one year ago.

Q. You asked him about it? A. I saw the answer filed by them and I questioned my mother and she said she had borrowed Rs. 3,500/- for dowry and they wanted a document from her showing also the interest and she gave a document. 30

Q. Your mother had to pay some money to V. R. K. R.? A. She said she had borrowed from them.

Q. She did not owe them any money? A. Yes.

Q. How much did she owe them? A. Rs. 3,500/- and interest.

Q. Then V. R. K. R. demanded a return of that money from your mother? A. She said they wanted a writing for Rs. 5,000/- and she gave it. I asked her about the Undial and she said she gave a document.

Q. Your mother told you she drew out an Undial from out of your funds to pay that firm? A. Yes.

Q. She drew the Undial payable by K. R. K. L. M. the defendants? A. She did not tell me the details of the Undial. 40

Q. Specifically it was pleaded in the answer that out of the moneys referred to in para 4 a sum of Rs. 5,000/- was paid by Undial dated 9-1-40 drawn by your mother in favour of V. R. K. R. That is the para you put to your mother? A. Yes.

No. 9
Plaintiffs
Evidence
Murugappa
Chettiar
Cross-
Examination
—continued.

Q. That para says everything from whom, for whom and what the amount was? A. Yes. She said she was a woman and a document was brought and she was asked to place her thumb impression and she did so. V. R. K. R. brought a document and she signed it.

Q. You told all that to Vellasamy? A. Some of those thing I
10 told him.

Q. Did you not tell him that this Undial was sent by your mother?
A. Yes I told him.

Q. And that your mother expected payment of the Rs. 5,000/-?
A. Yes. I was in court when Vellasamy was put this document in cross-examination.

Q. Vellasamy said he did not know then if it was genuine or not?
A. Yes.

Q. That is entirely untrue in view of what you had told him? A.
Yes, my mother said she gave that Undial in favour of V. R. K. R.

20 I met Vellasamy for the first time in 1947. Before that I had not set eyes on him. I had not employed him before that as my agent.

Q. So far as you know prior to that date he never acted for you at your request? A. No he did not.

Re-examination. My mother cannot read or write Tamil. My mother had taken loans from other firms than N. M. A. R. and R. M. A. R. She had borrowed from Suppramaniam Chetty Rs. 200/- and from M. R. S.
Rs. 200/-.
Murugappa
Chettiar
Re-
Examination

(Sgd.) N. SINNATAMBY,
D. J.

30 *Ramasamy Chetty*, affirmed, 38, Money Lender, Sea Street.

Ramsamy
Chettiar
Examination

My vilasam is M. S. R. M. I came to Ceylon in 1926 and joined the firm of S. S. I was a partner of that firm. I know what is meant by nadapu vatti. That nadappu vatti is entered in my books. This is the book in which it is recorded. I produce an extract from that book showing the nadappu vatti from January, 1929 to 1941. The nadappu vatti is discussed in the temple and decided upon and the Pandaram comes round giving the rate to Chetties. This interest is charged only on moneys lent to Chetties and it ceased in 1941. On transactions after 1941 if there is no agreement in regard to the rate of interest the 1941 rate is adopted.
40 If it is above the 1941 rate it is fixed by agreement. If they do not agree upon the rate it is the 1941 rate that is charged. Compound interest is recovered annually.

Cross-examined,

(Sgd.) N. SINNATAMBY,
D. J.

No. 9
Plaintiff
Evidence
Ramasamy
Chettiar
Examination
—continued.

Further hearing tomorrow.

6th September, 1951.

Counsel as before.

Errors in the previous day's proceedings are corrected.

Ramasamy
Chettiar
Cross-
Examination

Ramasamy Chettiar, affirmed, recalled.

Cross-examination. After 1941 I had transactions with other Chetty firms. We had dealings with K. R. S. T. Sivalingam Chetty. Those transactions were done with nadappu rate of interest. I borrowed from K. R. S. T. Rs. 3,000/-. I owe him that money now. We had agreed upon the rate of interest at 3/8 per cent. a month up to 1949. Now the rate of interest is double that. Being short of money we obtained that temporary accommodation. The last nadappu vatti recorded by the association was in 1941 and the rate then fixed was 3/8 per cent. per month. I have brought my books to court. The loan of Rs. 3,000/- is entered in a book which is at present with the auditors. The current books are not in the shop now. The transactions which take place now are recorded in rough books. I gave the books to the auditor 15 days ago. I had one book which has been in use for the last three or four years. The book which is in court is a separate book which I had kept to record the nadappu vatti. In this book is recorded the rates of interest decided upon from time to time. The nadappu vatti is recorded in the last two or three pages of the book. The extract P10 was taken from this book.

(Mr. Chelvanayagam marks the book P13).

P10 is a copy of the entries in P13. I have been writing up this book from 1926, from the time I came to Ceylon. Each month after the 15th of the month the Pandaram goes round and gives the rate. I have made entries of the rates in 1926 and 1927. There are no entries prior to 1926. I got summons to come today. I keep this book for general information and not for any particular reason of mine. I took no part in the meetings at the temple. I cannot mention the names of other Chetties who have lent moneys on nadappu vatti. When a Chetty wants a short loan he takes it from another Chetty on the nadappu vatti rate of interest. The interest is not agreed upon for each specific loan, the custom is to pay the nadappu vatti except when sometimes a higher rate is agreed upon.

Re-examined.—Nil.

(Sgd.) N. SINNATAMBY,
D. J.

Mr. Chelvanayagam closes his case reading P1 to P13.

Defendants' Evidence

Mr. Thiagalingam calls.

K. R. K. N. Arunachalam Chettiar, affirmed, 41, 4th defendant.

First defendant is my mother. The 2nd, 3rd and 5th defendants are my brothers. The 6th is my sister. My father was the late Letchimanan Chetty. My father had no dealings with the plaintiff Murugappen Chetty. Muttiah Chetty the father of the plaintiff was known to me. My father was married to Muttiah's daughter by his first wife. Muttiah died in
10 Colombo. At the time of his death he had a wife in India named Segappi also called Menachi. By Segappi he had Murugappen and a daughter. Murugappen was then 1½ years old.

When Muttiah Chetty died in Colombo I was in India. My father was also in India. On the occasion of Muttiah's death we went and saw the widow Segappi. My father, mother, myself and other relatives went and saw her. We went and stayed there 15 days. We called on her after that also. On the occasion that we went there Segappi told my father something and as a result of that my father said he did not want the money and wrote to our agent her to get the money from M. R. M. M.
20 M. R. firm and to record it in the account book.

Q. Was there any agreement to pay any interest to anybody? *A.* There was no such agreement.

Q. At whose instance did you come to receive that money into the firm? *A.* At the request of Segappi Atchi.

We had nothing to do either with Murugappen or with Vellasamy. The money was brought from M. R. M. M. R. and paid into our firm by a kanakapillai. I do not know who that kanakapillai was at that time. After this case was filed we thought it was Vellasamy and after Nadarajan Chetty gave evidence yesterday I came to know it was the kanakapillai
30 Somasundaram.

It is usual for a Chetty firm when they have money like that to send the owner of the money a statement of the account and the end of each year after fixing the interest. We send the statement after the 31st of March each year adding the interest. A statement like that was sent fixing the interest in respect of this money. Interest was paid as agreed upon. In this particular case up to 1933 we fixed the rate of interest at the nadappu rate, that is because we were investing that money we made up our mind to pay the nadappu rate. There was no agreement with Segappi or anyone else to pay any interest on this money.

40 In 1934 we found that money was lying in the banks here and there and we said we could not pay nadappu vatti and we were prepared to pay the bank rate of interest for deposits. Statements were sent after that yearly showing the bank rate of interest. Segappi did not complain about it at any time.

No. 10
Defendants'
Evidence
Arunacha-
lam Chettiar
Examination
—continued.

In 1940 an Undial was sent in favour of V. K. R. K. R. calling upon us to pay Rs. 5,000/- and to debit M. R. M. M. R. with that amount. We paid it accordingly and debited that firm. The Undial was sent by Segappi. I was in Colombo then and I paid the money on that Undial. That is the Undial D1. I gave the money to Vellasamy. Vellasamy did not tell me at any time that these moneys belonged to Murugappen Chetty. I would not have paid the money on that Undial if the money was not under the control of Segappi at that date. I gave it because it was her money.

The original amount that was from time to time brought into this 10 account was Rs. 18,700/- commencing with the sum of Rs. 600/- on 28-9-29.

I produce my ledger for 1929, D12. The account commenced on folio 121 of D12. It was then carried on to page 16 of the next ledger D13 and then to the next ledger D14 on page 9. It was then carried over to ledger D15, page 9, D16 page 9, D17 for the year 1935 page 9, D18 for 1936, page 9, D19 for 1937 page 9, D20 for 1938 page 9, D21 for 1939 page 9 and D22 for 1940 page 9.

For the year April, 1939 to March, 1940, in D21 under date 8-2-40 I have debited this account with Rs. 5,010·18 being the value of Undial D1, and at the end of March, 1940, there was still to the credit of this account 20 of Segappi a sum of Rs. 20,261·54. The account shows that till 1933 I allowed interest at the nadappu rate and thereafter at the bank rate. My books have been regularly kept in the course of business. A statement of this account was sent every year to Segappi and after Murugappen Chetty attained the age of 14 or 15 years he must have looked into these statements. I know personally that he looked into these statements because I visited them frequently and he used to question me about the account. D22 is carried on to the 1941 ledger D23 folio 8 and it is carried on to the next ledger D24 the ledger for 1942 folio 7. At the end of March, 1943, there was a sum of Rs. 20,493·50 to the credit of that account. That is 30 inclusive of interest credited at half per cent. which was the bank rate. Then the account is carried on to D25 for 1943 and on 8-4-43 I paid to the credit of case No. 3836 a sum of Rs. 20,488·18 and debited this account. I did that at the request of Segappi Atchi. I say that no money is payable to the plaintiff.

Arunacha-
lam Chettiar
Cross-
Examination

Cross-examination. I have got with me all the account books of the firm of my father, that is the firm of K. R. K. N. L. I have produced the ledgers from 1929 to 1943 and I have got the day books in court. (Witness is asked to produce the day book for 1929-30 which he does).

I am not running that business now. I have now my own business 40 which has the vilasam of L. A. R. S. P. I started that business in 1945. In 1943 when I deposited the Rs. 20,000/- odd in court I was working under the vilasam of K. R. K. N. L. That firm carried on business up to 1944. After that I started my own business. My father died in 1945. Up to till shortly before his death the firm of K. R. K. N. L. was carried on. When the Rs. 20,000/- was deposited in court my father was

alive. My father was the sole owner of K. R. K. N. L. Before he died he divided his assets among myself and his other sons. It is about that time that I started my separate business. I started my business in 1945 after my father died.

No. 10
Defendants'
Evidence
Arunacha-
lam Chettiar
Cross-
Examination
—continued.

I was in court yesterday. I was inside the court. I was in court on the previous date of trial. Vellasamy gave evidence and Murugappen Chetty gave evidence.

Q. Did you tell your lawyers that these statements were examined by Murugappen Chetty? A. I did not tell.

10 Q. Did you tell your lawyers that the monthly statements of this account had been sent to Segappi Atchi? A. I did not tell.

Q. When did you tell your lawyers that for the first time? A. I never told them.

Q. Not even this morning? A. This morning I told my lawyers that at the end of March every year everybody was sent a copy of the account.

Plaintiff is my mother's half-brother. I do not know if he has a vilasam. When he was a child M. R. M. Muttiah ran his business. Now he has a vilasam, namely, M. R. M. M. M. R. His father's vilasam was 20 M. R. M. M. M. R. His father's vilasam was the same. When the vilasam of M. R. M. M. M. R. came into existence I do not know. I knew my grandfather Muttiah very well and I was in Ceylon when he was doing his business here. When I first knew him his vilasam was M. R. M. M. Muttiah Chettiar. The last M.R. in M. R. M. M. M. R. stands for Murugappen Chetty. I know my uncle Nadarajan Chetty. I speak to him when I meet him. I know his brother Thiagarajah and his brother Manickam. I do not know the earlier vilasam of the plaintiff. It is not that we are on bad terms. I do not know that vilasam because there was no business run for him or on his behalf. I do not know that my mother's 30 brothers during their father's life time partitioned their father's estate, but I have heard of it now. Under that partition the plaintiff got his share. That share was not exclusively for him but for his family, that is for the third bed of Muttiah Chetty. That was for himself, his mother and sister. They formed a separate family. The money that my father took after the death of Muttiah was out of that portion. The Rs. 20,000/- was taken out of Segappi's money. Rs. 21,000/- was allotted to Segappi and Rs. 51,000/- to the plaintiff. The partition was done by arbitrators. According to the decision of the arbitrators a separate sum was given to Murugappen Chetty and a certain sum was given to Segappi for her 40 expenses. At the partition it was separately given like that. I have taken copies of Murugappen's account from the Sevaganga courts.

I was in court yesterday when Nadarajan Chetty gave evidence. He is older than I. The division by Muttiah was into four portions after reserving a portion for himself. The three sons were given portions separately and plaintiff's share was reserved for him and the business M. R. M. M. M. R. was run. My father borrowed the money at the request

No. 10
Defendants'
Evidence
Arunacha-
lam Chettiar
Cross-
Examination
—continued.

of Segappi out of their family money which in the partition came to the plaintiff. Among the Nattukottai Chetties the women are given dowries. Whether Segappi got her dowry I do not know. Females are entitled to maintenance and to dowry and they do not get a share. I came to Ceylon in 1918 and worked under K. R. K. N. L. firm. I first studied in school and resided in that firm. After I finished studies I worked in that firm. The books of the firm will contain entries to show when I was in India and when in Ceylon but when I come from India with money there will be no entry in the books. There is only one entry in the books with regard to the expenses of my father as travelling expenses because he always brought 10 money with him when he came from India. My father was in India when Muttiah died. I know that because we were all together in India. I was also in India at that time. Two years after that my father came to Ceylon. My books may show that. When I said there was only one entry with regard to my father in the books that is not correct. I looked at only the 1931-32 books. He did not come earlier than that. In my account books I am referred to sometimes with the first letter of the alphabet of my name. I would be referred to in the books as Ana Roona. My father was Letchi- manan and the kanakapillai referred to him in the books as Lena. If three verties were purchased for my father the entry would be three 20 verties purchased for Lena or sometimes the entry may read as purchased for the Chettiar. Generally the name or initials are put.

(Shown D12 page 96 marked P14). There is the following entry under date 8th August, 1929 : " For three verties bought for Lena Rs. 5.85." That is three verties bought for my father. On the 8th August, 1929, he may have been here or somebody going to India may have purchased the articles and taken them to India for him. I cannot remember if he was in India or Ceylon in August, 1929. At the time of Muttiah's death he was in India and in October he sent a draft and money was paid on that. He could have come in August and gone back to India. In 30 October, 1929, my father drew up an Undial. That is entered in the book. It appears on page 89 under date 8th October. The Undial was sent by my father from India drawn on the Colombo firm and the money was paid on that to P. L. S. P. K. M. There is nothing in the entry to show who made the Undial but it is because it was sent by the Chetty that it is entered in the home account. The sons would not send Undials, if they send it will be entered in their own account and paid out of their account. Page 89 is a separate account for home account. There is no other folio for my father.

My proctor in this case is S. Somasundaram. The proctor whom I 40 got to deposit the Rs. 20,000/- in the curatorship case was the same proctor. He has been my father's lawyer and thereafter mine. I gave instructions to deposit the Rs. 20,000/- in court.

Q. In terms of your instructions Mr. Somasundaram filed a motion and got a deposit order? A. I told him that Segappi wanted the money deposited and asked him to deposit it and gave him a cheque. I do not know how the proctor drew up the motion.

Re-examination. At the time that Muttiah died my father was in India. In October he drew out an undial while he was at India to be paid out the firm in Ceylon. In October I married and I was also in India. After Muttiah died I came to Ceylon in 1932. I did not come to Ceylon after Muttiah's death and before my marriage. My father also did not come. He came to Ceylon about 1½ years after I married. Thevali this year is on 29th October. It is customary to buy clothes of good quality here to be sent to India. Also when someone goes from Ceylon to India we buy good verties and send to India.

No. 10
Defendants'
Evidence
Arunachalam Chettiar
Re-
Examination
—continued.

10 I do not know anything about the award or its terms by which Muttiah's assets were divided.

I produce a composite translation of the relevant pages in D12 to D25, marked D26. I produce D27 translation of page 89 of D12 of the entry under date 8-10-29.

During my cross-examination my day book for 1929 was called for by the other side and handed over and it was examined by Vellasamy. I produce that day book for 1929 D28 where the various items entered in the ledger D12 find supporting entries.

(Sgd.) N. SINNATAMBY,
D. J.

20

Mr. Thiagalingam closes his case reading D1 to D28.
Mr. Chelvanayagam further marks in evidence P 14.

(Sgd.) N. SINNATAMBY,
D. J.

Further hearing postponed for 20-9-51.

No. 11

Addresses to Court

No. 11
Addresses
to Court

20th September, 1951.
Counsel as before.

80 Mr. Thiagalingam addresses the court.

Submits there are two legal questions in this case but he will first deal with the facts. The action is for a large sum of money Rs. 22,000/- against the estate of a deceased person. The sum claimed is what is said to be the balance due on a deposit of Rs. 18,000/- after acknowledging part payment of Rs. 20,000/- odd. The Rs. 20,000/- is claimed as nagappu vatti. Cites 32 N.L.R. 275 and 31 N.L.R. 97. When the court is called upon to deal with a claim against the estate of a deceased person over and above the ordinary rules applicable a greater burden is placed upon the court to ensure that plaintiff is perfectly on solid ground. Looked at in that way

No. 11
Addresses
to Court
—continued.

in this case the only evidence in support of the claim is the evidence of Vellasamy. The next question would be does this money belong to the present plaintiff or did it belong to Muttiah Chetty. There is no question the plaintiff is the ultimate party legally entitled to this money but it may be stated that it belongs not to him alone but to his mother and two sisters as well. Legally does this money belong to the estate of the dead man in respect of which plaintiff can make a claim. These are the two main heads under which the facts can be considered. Dealing with the 2nd position is this money belonging to the estate of Muttiah or is it money to which plaintiff can make a legal claim without administering the estate of his 10 father. Muttiah died on 29-7-29 D2. This money was deal with in the books of the firm of M. R. M. M. M. R. and the book P11 shows that the plaintiff appears as a debtor in the books. It is also established that the business was registered and the name of the proprietor given as Muttiah Chetty P4. We have then a business carried on under the vilasam of M. R. M. M. M. R. of which the sole proprietor is given as Muttiah Chetty. Nobody pretends that by registering a business in your name as proprietor he can claim that business as his. If that were so anyone can register a vilasam in his name and say he is the proprietor of it.

On the other hand where as a result of a division of co-parcenary pro-20 perty certain money is earmarked for an infant then our law steps in and says that you cannot carry on business with that money, you cannot do anything with that money qua minor's money without the court's consent or sanction. Under our law a person cannot do business with that money. If you have the minor's money you are accountable to the minor for that money with interest or with the profits whichever is more. So far as the court is concerned your dealing with that money is your business, you have dealt with it without sanction. The legal position is the man who deals with that money is dealing with it on his own, he may be a trustee he may be anything. Assuming now that the money was earmarked for 30 M. R. M. M. M. R. at the family partition and the father gets the control of the money and trades with that money he is liable to return that money with the interest or profits. Otherside any adventurer can get hold of minor's money and later say he lost it. The father if he deals with the money becomes a debtor to the minor and that claim can be enforced by the minor when he comes of age purely on the basis that the father has had his money and must repay it with interest or the profits which ever is greater. That that is the correct relationship is shown by the registration D4. The Registrar would not have registered the minor as the proprietor of the business because a child cannot act or think. It can have no agent. 40 It can do nothing in the world. The man carries on a business in his name, no doubt he gives it a vilasam which his son will adopt but he is the proprietor and is regarded as a creditor in the books. The books produced D5 contains entries which may be argued merely mean that D5 just sets out the capital brought in by a particular person. It is unfortunate that these books themselves are not before court but what books are before the court make it perfectly clear. Those are the books of M. R. M. M. M. R. and the particular account is a debit and credit account of M. Murugappah and not

the firm of M. R. M. M. M. R. thereby identifying the business with the man. It is not a capital account but the account of a creditor with whom the firm is dealing. A capital account will be headed capital account. Nor will you have in a capital account any withdrawals debited. If money is drawn from a business it will not be debited to the capital account but will be debited in a separate account and the capital will remain the same. What is taken for current expenses, etc. would not come out from the capital account. D5 shows that the account of Murugappen has been credited with Rs. 183,000/-. Then there are debits for purchasing dia-

10 monds and for the house warming ceremony and so on. That shows that the firm of M. R. M. M. M. has got minor's money in its hands and the minor wants brilliants to wear and that is debited. This is a typical account of a creditor of the firm. The division of the assets resulted in a certain amount of money being earmarked for the minor and a certain amount for the father. The moneys earmarked for the minor must have been mixed up in this vilasam of M. R. M. M. M. There is evidence that the money earmarked for Manicam and nobody knows what has happened to that money. The legal position is that the moneys were moneys which belonged to Muttiah and that he was a creditor to the minor for that money.

20 In the result when a trustee dies his estate has got to be administered. It has not been administered. If A holds property as trustee in favour of his son on his death that will pass to A's executor or heirs who will hold it again as trustee. If A holds property in trust for another nothing passes on death and no duty is payable. Title is always in the man who is trustee and in his successor qua trustee who may be his own executor. Looked at in that way the claim must fail on the ground that this money belongs to the estate of Muttiah and no claim is being made to it qua heir of Muttiah. The claim is being made as being minor's money. It is not contended that the money does not belong to the minor but legally

30 it is money of Muttiah who is a debtor to the minor who will get it at some time but he cannot claim it without the necessary intermediary steps. The proper party to sue here is the estate of Muttiah. No estate duty has been paid. The evidence is that no estate duty was paid on the estate of Muttiah. That is evidence given on the very first day on 12-12-49. If a boy gets money at a lottery the parents cannot deal with that money except with the sanction of court. Vellasamy in his evidence correctly sets out the position. Counsel refers to evidence. This evidence gives an indication of what the position is with regard to this money. Refers to evidence. This indicates the nature of the business of M. R. M.

40 M. M. R. and what Vellasamy did. This evidence means Muttiah started business with the minor's money in his own name and received moneys from three parties and gave his own notes to M. R. M. M. S. That money was repaid after Muttiah's death. It was paid from these very funds. It was Muttiah Chetty's money. Vellasamy says he paid that money from the funds of M. R. M. M. M. R. D6 and D7 are accounts similar to D5 which is the account of Murugappen. They were moneys of Muttiah and on his death Vellasamy paid two of the debts. The cause of all this litigation is Vellasamy. He is liable to the minor for the money and he is

just keeping himself safe from action for an accounting at the instance of the minor by this litigation. Can it be that all the evidence he gave was false evidence coloured by the fact that there may be legal machinery available to bring him to account. That he gave false evidence on that point is patent. He has led everybody up the garden path. The money then is the money of Muttiah and the action must fail.

Assume that argument is bad and that the money belonged to the minor. The basis of the claim is that and that is the claim the defendant has to meet. Murugappen says that certain money belonging to him was given to the defendant's father by the hand of Vellasamy and he wants 10 back that money. That position is full of legal pitfalls. Examining the factual position Vellasamy's story is that in 1929 after Muttiah died he personally made some arrangements with Letchimanan and paid him this money. We now know that Vellasamy's evidence is false by a simple perusal on the account of K. R. K. N. L. in the books of M. R. M. M. M. R. M. R. M. M. M. R's books were continued after Muttiah died and when moneys were paid to K. R. K. N. L. debit entries were made in the books of M. R. M. M. M. R. That account has been produced marked P12. P12 as entered in the books of M. R. M. M. M. R. refer to the deposits with the firm of K. R. K. N. L. They show deposits made from September to 20 November, 1929, and not in January, 1930, as stated by Vellasamy in the plaint. Vellasamy had nothing to do with the deposits because the hand that gave the money was Somasundaram's who is referred to throughout as Sovanna Mana.

The intrinsic evidence of the document is supported by Nadarajen. Attempt was made to show that he was in court when plaintiff gave evidence and came out with false stories. There is no suggestion that his evidence as to whether Vellasamy was employed in Muttiah's shop is false. He says that Vellasamy was in the shop and Somasundaram was investing 80 the moneys of M. R. M. M. M. R. to different people. On that point again therefore plaintiff's case must fail. Vellasamy had nothing to do with it then. It may be said it does not matter whose hand gave the money it is the minor's money. Secondly it may be said it may be anybody's money but plaintiff has not come into court that it is some third party's money and defendant has enriched himself and must therefore make good the money. That is not the action here, it is an action on a contract. It is money deposited with an agreement to repay.

(Reads plaint). The action is based on a contract and when you base it on a contract it is vital not to shift ground and say forget the contract you have got money belonging to me and it must be repaid. That is a 40 different class of action. Apart from the documents in this case one has only to read the evidence of Vellasamy to see what an utter liar he can be. Counsel reads the evidence of Vellasamy. Vellasamy's evidence shows that once he left M. R. M. M. M. R. in January, 1930, thereafter he had nothing to do with the firm till 1945. The money was under the control of Segappi she gave it to Letchimanan and defendants paid it on her undial. She had the controlling power over that money and

it was paid on her instructions. Letchimanan was not here in 1929. He was away at the time Muttiah died he was not in Ceylon till the end of 1929. Thereafter Vellasamy had gone to India and seen him there in January, 1930. In the meantime before Vellasamy went to India he had deposited money with K. R. K. N. L. Counsel says he has made two points. There was an undial about which Vellasamy pretended to be ignorant about and later admitted. The controlling person of that fund was Segappi to the knowledge of Vellasamy and so far as defendants were concerned and Vellasamy accepted that position and received the money on the undial drawn by Segappi. The second point made in cross-examination was that Letchimanan was not here on the relevant dates from July, 1929, to the end of 1929 and Vellasamy had to go in January, 1930, and meet him. Defendant's evidence is that Letchimanan was in India and did not come back till 1½ years later. Against that there is the evidence of Vellasamy and there is P12 which shows that the money was deposited not by Vellasamy but by Somasundaram. When the matter came up again before this court Vellasamy is clever enough to know the mistake he has made and on both points he has tried to lie and failed. In his evidence on this page he is very precise. That is evidence given on 21-12-50, after lunch. This evidence is given after the admissions in cross-examination before Mr. Schokman. At this point of time nobody has appreciated the implications of P12. In P12 which is produced by the other side there is the account of K. R. K. N. L. in their books. No question seems to have been addressed to anyone as to whose hand paid the money. At that stage he said he paid the money. The real key to the whole thing is discovered when Nadarajen gave evidence in chief. He says that Vellasamy was not working there it is Somasunderam who was working there and he gave the money and strangely enough corroboration is found in the document P12 with regard to that. Vellasamy did not know what was in that entry and he gave that evidence. Reads evidence. In this evidence he went back on what he had said on 13-12-49. Contrast this evidence with the document P12. Deposits were made according to P12 from September to December, 1929, and this is the man who says he went in January, 1930, and saw him there.

Defendant's case is that Letchimanan was in India when Muttiah died. He was married to Muttiah's first wife's daughter and Letchimanan had gone to pay his respects to Segappi. Segappi prevailed upon him to take this money and hold it for the family. On Muttiah's death two parties claimed control of the funds, Segappi and Nadarajen. Segappi asked Letchimanan to take the money and keep it for the family. The controlling power at that time was Segappi. There is the earlier evidence of Vellasamy given before Mr. Schokman that two people gave him contrary instructions Nadarajen and Segappi. Reads evidence. He says that Segappi did not write to him at any time. Then he says at the time of Muttiah's death she wrote. He is a consummate liar. Evidence read. He says he got the letter before he deposited the money with K. R. K. N. L. Nadarajen says that this man entrusted the books and money to him at the request of Segappi. Nadarajen is a witness called by the

No. 11
Addresses
to Court
—continued.

plaintiff. No party can impugn his own witness unless he has asked for permission to cross-examine him as an adverse witness. If an unwilling witness speaks the truth he cannot be called an adverse witness. Counsel says he is not concerned with the other two cases and their merits . . . he knows that neither case was the plea put forward by the defendant that the money came into defendant's firm at the instance of Segappi and there was no evidence as in this case of D1 the undial which sets the seal of truth on defendant's story in this case. D1 was cashed and the money received by Vellasamy. The inference should be drawn from this evidence that Vellasamy is a liar. He was not the kanakapillai of Murugappah 10 during that time and Letchimanan was not in Ceylon in 1929.

Defendant's case is that in August, 1929, Muttiah died and at the time he and his father were in India. The father did not return till 1½ years later. In cross-examination the books are called for and a diligent search is made and an entry is shown showing three verties for Lena. This evidence is supported by the 20 books produced. Everybody knows Chetty customs. When a deposit is made an account is sent yearly showing the accrued interest which is capitalised again and interest reckoned on the capital.

Further hearing tomorrow.

20

(Sgd.) N. SINNATAMBY,
D. J.

21st September, 1951.

Counsel as before except that Mr. Adv. Nadarasa appears with Mr. Thiagalingam today.

Mr. Thiagalingam continues his address :

Vellasamy was asked whether he did not question plaintiff or Suppramaniam about document D1, he said no. Murugappen got into the box and he said he questioned his mother as regards the details and that Vellasamy's evidence is false. When all that is considered there can be 30 no doubt that this court must not act upon the evidence of Vellasamy, particularly when the claim is against the estate of a deceased person. Here there is a concrete case on behalf of the defendant. He takes up a position that was never put forward in any other case and counsel says that is why he marked the issues in the other case in this case. It does not matter to whom the money belonged it came into the custody of the defendant at the instance of Segappi and deposited in court at her instance, that is the evidence of the 4th defendant. Part of the money was repaid at the instance of Segappi. As regards the motions P1 and P2 in the guardianship case. In P2 the proctor says it is money belonging to the 40 estate of the minor. Segappi tells the defendant to deposit the money in that case and the phraseology used is correct. The money belonged to the joint family and when Segappi wanted it deposited in that case the motion was drafted in that way. Court cannot now import into that motion a legal significance. Whatever the legal form may be one looks

behind that legal form to find the true nature of the transaction. Counsel says in support of the position that the money belonged to Muttiah he marked two accounts D6 and D7. All these show that Murugappen was a creditor of the firm of M. R. M. M. R.

No. 11
Addresses
to Court
—continued.

Counsel reads the issues : Issue 2. In the original plaint they said the money was deposited in January, 1930. They do not say where the contract was entered into whether here or in India. When the position was taken up that there was no averment in regard to jurisdiction then they amended the plaint and said the thing occurred in Colombo. Para 10 was amended. The answer to this issue will be that plaintiff deposited no money at all with Letchimanan. If the court accepts the evidence of Nadarajen that is the only conclusion the court can come to. Refers to Kotier page 35. A minor cannot enter into a contract of any kind. Principle of agency does not apply. In this case no issue of ratification. Murugappen says he ratified it at a late stage but in that event there must be plea of agency and ratification. Vellasamy never spoke of ratification. Murugappen admits he did not know Vellasamy till 1947. If ratification is pleaded certain rights must flow to the defendant. Submits apart from all that issues 1 and 2 should be answered in favour of the defendant. No 20 deposit made by Vellasamy and defendant did not deal with him.

Issue 3 will also go against the plaintiff if the court holds that defendant dealt with this money at the instance of Segappi. Issue 4 has been amended. It originally assumed as framed that the money was received in terms of issues 1, 2 and 3. Counsel says his position was it was not deposited in terms of issues 1, 2 and 3 and so the issue was amended at page 3. Issues 6, 7 and 8 could be dealt with together. Plaintiff has had a misconception of the legal position in regard to the liability of a deceased person. Assume that Murugappen's manager deposited the money with Letchimanan. Letchimanan is now dead. His estate is being administered by an executor and not by any of the defendants. The executor is Werappen Chetty. There is no question of adiation of the estate. That doctrine is available in respect of an estate below Rs. 2,000/- in value where the heirs deal with the estate and then they are liable for the debts of the estate. But where there is administration the executor alone is liable and the action must be against the executor. No question of adiation here. No available action against the heirs of the estate who have been paid their shares by the executor. Proper remedy is to sue the executor because he represents the estate of the deceased. If he is dead they can go into the testamentary case and move for administration *de bonis non* and ask the heirs to bring back the money and make a proportionate division.

In this case if the court enters a decree it will be executable against each person individually. Each will be called upon to pay the full amount. If the creditor is restricted to his legal rights he must go to the testamentary court and ask for administration *de bonis non* and it may be another judicial decree will have to be entered against each particular heir in respect of the excess money he has paid out. It will not be a joint and several

decree. The liability will be to the extent of the excess in the hands of the executor subject to the repayment by the heirs who have received their share. If a decree is entered in a case of this nature the decree is joint and several against all and once such a decree is entered the court has no control over it. There can be no adjudication of the rights *inter se*.

Issue 9A. This issue will be answered in defendant's favour because of the account in M. R. M. M. R's books.

Issue 10. Refers to of the evidence. Nadarajen has stated that is money was given at the request of Nagapi to the various firms.

Issue 11. This must be answered in defendant's favour. The document D1 is admitted and the money was paid.

12A. Terms of the motion must be looked at in its proper setting.

13. Periodically accounts supplied to Segappi and plaintiff knew that. He accepted those accounts and he is barred. It is in defendant's pleadings that every member of the family knew that accounts were submitted. The accounts showed the different rates of interest. If defendant was accounting for the money in the wrong way plaintiff should have protested and if he did protest he would have got the money back in 1934. Estoppel. Refers to 4 Barwell and Adolphus 433. 2 C.L. Rec. 157. In the 2 C.L.W. case the father died and his executor drew the money from the bank. The daughter sued the bank. The bank said it paid the executor. The Supreme Court held the father's estate was entitled to the money.

Mr. Chelvanayagam replies :

Cites case reported in 43 N.L.R. 361 in which case counsel says he and Mr. Thiagalingam appeared. In that case Mr. Thiagalingam submitted the same argument as he has done here and the action was dismissed, but the Supreme Court reversed that decision. The testamentary case of defendant's father has been proved—documents P4 to P7. All defendants have been made respondents and shown as heirs. P6 is the most relevant document and is the final account. This shows the immovable property and value of the business handed over to the heirs all amounting to Rs. 64,802/-. It shows the distribution of the money realised from the Forbes Road property. The widow is given half and the children half. Comments on the 2 C.L.W. case. It was the father's money which he gave to the bank. In the receipt from the bank it stated he was going to apply that for the benefit of his daughter. Reads evidence. The bank had no contract with the plaintiff in that case.

Plaintiff's case is and it is no more in doubt that between 28th September and 8th December, 1929, certain moneys were deposited with Letchimanan. There is a vast distinction between a debt payable by an estate and a contingent debt which may or may not become payable. In the case of a debt payable by the estate only the executor or administrator can be sued, in a contingent debt different considerations apply. That is expressly stated in the 43 N.L.R. case. Reads at page 363, last para. Here it was to recover a contingent debt. The judge gets over section 364

by what appears on page 364. The answer to this question would depend on the facts of each case, says the judge in that case. In the case of a devise the title vests in the devisee and the executor has no title. In the case of intestate succession title vests in the administrator and if the heirs have got a right he passes title subject to the payment of the debts, and the administrator too can deal with it. In the case of testacy title vests in the devisee. In the case of an intestacy the administrator can ask that a property be sold for the payment of a debt. In the case of a devise he has no such rights, he has to ask for a marshalling of assets. It is a mixture of the Roman Dutch law and the English law. The distinction that defendant's counsel has drawn is a distinction without a difference. It did happen in the 43 N.L.R. that the liability was a contingent one but the reasoning of the judge on which the result of that case depended is that you can follow up the assets, in what way. It does not say that only in respect of contingent liabilities you can follow up the assets in the hands of the heirs or devisees and not in the case of others. Reads 472 which catches up the facts of this present case.

The real question in this case arising out of the C.L. Rec. case is whose money was this and how was the contract entered into. Between September and December, 1929, moneys were deposited with Letchimanan Chetty predecessor in title of the defendants. This is not disputed. At that time Muttiah was dead. Counsel says he will concede that it was deposited by Somasundaram. Vellasamy's case is he made the deposit on behalf of the minor. It is nobody's case that it was Muttiah's money. That is not even defendants' case. All that defendant says he opened a business and gave himself as proprietor but in respect of this money the evidence is very clear that it was the minor's money. That it was the minor's money is proved by every portion of this case. First there was the partition P9. Nadarajen says the money fell to the lot of the minor. Evidence of defendant himself is that this money belong to the joint family of which plaintiff was the sole surviving male member. Reads defendant's evidence. Defendant's father borrowed money which at the partition was given to plaintiff. When Muttiah was not living this transaction took place between somebody on plaintiff's side and Letchimanan on the other side. Whose money was this and who had the money, is the question. Nadarajen's evidence is very clear, and it is identical with his evidence given in the other cases. Nadarajen says the money allotted to plaintiff was kept by his father and a business started for him. In regard to the money in M. R. M. M. R. he says it belonged to plaintiff because it was credited to him. Facts of this case are different from the case cited, there it was the father's money title to which had not passed to anybody else. Adverse criticism has been made against Vellasamy. He has acted as the good Samaritan to the boy. He deposited all these moneys in various responsible firms not allowing it to get mixed up with Nadarajen's money. In respect of the small sum that got mixed up with Nadarajen's money there is no litigation. Nadarajen admits that in October-November, 1929, Vellasamy was in this firm. His salary is not entered in Nadarajen's books. In December also he must have been

No. 11
Addresses
to Court
—continued.

there up to 10th January when he handed over the books. Nadarajen says between Somasundaram and Vellasamy, Vellasamy was the senior man and when they were working in plaintiff's firm Somasundaram took orders from Vellasamy. These actions were filed after Vellasamy came back to the plaintiff. Vellasamy will be liable to the plaintiff if he mishandled these moneys. But for Vellasamy the minor would not have been able to trace these moneys. Almost the whole of the Rs. 180,000/- were deposited by Vellasamy in various firms where the money was safe. As regards Vellasamy's evidence that he deposited this money in January, 1930, with Letchimanan, he says he did not say that. He says he handed 10 over the case to the proctor and the proctor had said January, 1930—that was the date on the receipt P11. To that was attached two lists which gave a detailed account and the place where the money was lying and that showed the amount with Letchimanan. That is underlined in P11A. Having this document in hand and not having P12 plaintiff's proctor went on the basis that the money was deposited on 9-1-30. The court will not give much regard to that mistake. Vellasamy is not lying on that point. The books were in the Indian courts and not available and the actual transaction could not have been detailed out. Letchimanan says he was present and he met Letchimanan in Colombo and made the arrangements 20 for the nadappu vatty. Vellasamy was called a liar. The contradictions appear in the evidence. There was some confusion between the father of the 4th defendant and the 4th defendant himself. That is evidence given before another judge. Counsel who was cross-examining had been putting the questions in English referring to the two persons Letchimanan and 4th defendant making up the two and it is not possible today to say categorically that Vellasamy was in India and did not meet him referred to 4th defendant's father, he may have been referring to the 4th defendant himself.

Reads proceeding.

30

Luncheon interval.

(Sgd.) N. SINNATAMBY,
D. J.

21st September, 1951.

After lunch.

Mr. Chelvanayagam continues his address :

He refers to the evidence.

Having in examination in chief said that he left the money with Letchimanan Chettiar and that Letchimanan Chettiar promised to pay 40 him, it is unlikely that in the afternoon he would say that he did not see Letchimanan Chettiar. Nobody can with definiteness say that the man in his evidence categorically stated that in 1929 Letchimanan Chettiar was in India and that the witness did not see him in Ceylon.

Up to a very late stage what was defendant's case? Defendant's case is that Vellasamy deposited this money with the defendant at the instance of Segappi Achi. It is also their case that both Segappi and Nadarajen

tried to get control of this money from Vellasamy. So that according to them Vellasamy credited this money in 1929. In the later portion of the case when Nadarajen Chettiar comes in and says that Vellasamy was not in the firm in August-September, 1929, they want his evidence rejected completely. No. 11
Addresses
to Court
—continued.

The cross-examination shows that the defendant's case is that Segappi wrote to Vellasamy asking him to give over charge of the money.

Vellasamy's evidence, he submits, cannot be rejected.

Segappi—defendants are Chettiars, plaintiffs are Chettiars. They all know the position of Segappi in relation to this money. Nobody hands over money to Segappi. They know that handing over money to her will not give them a discharge. Nadarajen Chettiar credits plaintiff's account. He does not give the money to Segappi. Segappi is a red herring across the trail.

P2—Mr. Somasundaram deposited the money to the credit of the curatorship case on their behalf.

It is too late to take up the position that this is Segappi's money or Muttiah Chettiar's money. Until 1943 they did not advise themselves that they could have deposited the money in a curatorship case.

Fourth defendant says that they credited interest at the nadappu vatti rate. That corroborates the evidence of the plaintiff. It is idle to say that only as long as they were making money they will pay interest at the nadappu vatti rate.

He submits that it was the minor's money that was taken and deposited with various Chettiars, all relatives of the minor. Possibly in 1929 the Chettiars had use for this money in their business and nadappu vatti was the usual course of business with them. They undertook no unnecessary liability. They took the money and used it as long as it was beneficial to them. But when lean years came they did not advise themselves about a curatorship case.

The legal issues do not help the defendant.

Documents tomorrow.

Judgment 12-10-51.

(Sgd.) N. SINNATAMBY,
D. J.

No. 12

Judgment of the District Court

JUDGMENT

No. 12
Judgment
of the
District
Court
12-10-51

This action was originally instituted on behalf of the 1st plaintiff, who at the time was a minor, by his next-friend, the 2nd plaintiff. Since then the 1st plaintiff has become a major and the 2nd plaintiff has dropped out of the case. It was alleged that in or about January, 1930, the 2nd plaintiff, Vellasamy, acting for and on behalf of the minor deposited a sum of

No. 12
Judgment
of the
District
Court
12-10-51
—continued.

Rs. 18,700/- with Letchimanan Chettiar which amount Letchimanan Chettiar agreed to pay the minor with interest calculated according to the rate customary and prevalent among the Chettiar community. Subsequently on 9th April, 1943, Letchimanan Chettiar deposited a sum of Rs. 20,488.18 in curatorship case 3836 started in respect of the assets of the minor plaintiff. There is alleged to be a balance due from Letchimanan Chettiar after giving credit for the money deposited in the curatorship case, and this action has been brought against the heirs of Letchimanan Chettiar for the recovery of this balance : Letchimanan having died on 15th March, 1945, the defendants who are his heirs are sought to be made liable on the ground that they adiated his inheritance.

The defence as set out in the answer and the issues is, *inter alia*, that the money in question was the property of one Muttiah Chettiar and inasmuch as Muttiah Chettiar's estate was not administered plaintiff cannot maintain this action. It is also pleaded that this money was left with Letchimanan Chettiar for safekeeping by the mother of the minor plaintiff to be dealt with as the said Letchimanan Chettiar thought fit for the use of the undivided Hindu family of which the minor plaintiff was a coparcener. The defendants also claim credit in a sum of Rs. 5,010.18 paid on an undial drawn by the mother of the minor plaintiff against these funds. It is further alleged that accounts were from time to time rendered to the 1st plaintiff and the 1st plaintiff having acquiesced and accepted those accounts he is estopped from claiming anything which is not set out in those accounts.

One Muttiah Chettiar was the father of the 1st plaintiff and was carrying on business under the vilasam of M. R. M. M. M. In 1928 he effected a partition of his joint family property among the co-parceners of that joint family consisting of himself and his four sons. He had married three times. By his first bed his children were all girls. By his second bed he had three boys, namely, Nadarajen Chettiar, Thiagarajen Chettiar and Manickam Chettiar, and a girl. By the third bed he had one son, Murugappan, the 1st plaintiff, and a girl. The deed of partition (P9) has been produced. It has been signed by Muttiah Chettiar on behalf of himself and his two minor children and by Nadarajen Chettiar and Thiagarajen Chettiar who were then majors. The joint estate was divided into four after provision had been made for maintenance of the female members of the family and for the maintenance of Muttiah Chettiar. Each of the four sons received a 1/4th share. It was provided in para. 10 that the minor, Manickam Chettiar's share was to be held by Muttiah Chettiar, Nadarajen Chettiar and Thiagarajen Chettiar and that Murugappen Chettiar's share was to be held by his father Muttiah Chettiar. In accordance with these provisions Nadarajen Chettiar started a separate business under the vilasam of M. R. M. M. N. Thiagarajen Chettiar started a business under the vilasam of M. R. M. M. M. T. Muttiah Chettiar who was already carrying on business under the vilasam of M. R. M. M. started another business in the name of his minor son Manickam under the vilasam of M. R. M. M. M. N. and one in the name of the minor son Murugappen

under the vilasam of M. R. M. M. M. R. This appears to be so from the evidence as well as from the registration of the business of M. R. M. M. M. R. (D4). The name of the individual carrying on this business is given as Muttiah, but he is also stated to have two other businesses under the name of M. R. M. M. Navanna, standing for Manickam, and M. R. M. M. Moona, standing for Muttiah. It was admitted that a business name would not be registered in the name of minor children of such tender years as the 1st plaintiff was then, and the registration of the business of M. R. M. M. M. R. in the name of Muttiah Chettiar is consistent with the deed of partnership.

10 It is abundantly clear that though the business was registered in the name of Muttiah Chetty it belonged to Murugappan Chettiar.

No. 12
Judgment
of the
District
Court
12-10-51
—continued.

With the death of Muttiah Chettiar on 29th July, 1929 (*vide* D2) there appears to have been no one to carry on the business of Murugappen. Nadarajen Chetty who gave evidence says that he continued to carry on the business of his brother Manickam till he came of age. With regard to Murugappa's business moneys were invested after the death of Muttiah Chettiar by the kanakapulle of the firm with various Chettiar's most of whom were close relatives of the minor Murugappen. It is plaintiff's case that the moneys were in point of fact deposited by Vellasamy who at that

20 time was attending to the business of the firm of M. R. M. M. M. R. Vellasamy's evidence is that he was the kanakapulle of Muttiah Chettiar and with the formation of the new business in addition to attending to Muttiah Chettiar's own business was also kanakapulle of the brothers Nadaraja, Thiagaraja and Murugappa. With the old man's death he continued to attend to the business of M. R. M. M. M. R. and invested those moneys by depositing them with relatives on agreements with them that they would pay nadappu vatti, or customary interest, upon these deposits. Nadarajen Chettiar, it is the evidence, is now not on good terms with his step-brother Murugappa. There is litigation between them and Nadarajen Chettiar at

30 one stage tried to make out that Vellasamy was not employed under M. R. M. M. M. R. but was kanakapulle to himself and Thiagaraja and that the business of M. R. M. M. M. R. was carried on by the other kanakapulle Somasundaram. Some colour is lent to this version by the fact that in the account books both of M. R. M. M. M. R. and K. R. K. N. L., which is the vilasam of the defendant's father, the deposits in respect of the sum claimed in this case are stated to have been given by Sovenna Mana which stands for Soma. Subsequently, however, Nadarajen conceded that Vellasamy also was employed under the firm of M. R. M. M. M. R. and that Somasundaram was below Vellasamy as second kanakapulle, Vellasamy

40 being the chief kanakapulle. He also admitted that Vellasamy was kanakapulle in October and November, 1929.

The accounts P12 show that this sum of Rs. 18,000/- was deposited mainly in October, November and December, 1929. According to Nadaraja's evidence at that time Vellasamy was in the firm of M. R. M. M. M. R. Only Rs. 600/- was deposited in September. The fact, therefore, that Sovenna Mana is alleged to have deposited these moneys only means that it was handed to K. R. K. N. L. by Somasundaram. I see no reason to

No. 12
Judgment
of the
District
Court
12-10-51
—continued.

doubt Vellasamy's evidence on this point. It is also borne out by the evidence of Nadaraja in an earlier case, 18107/M, wherein he admitted that moneys were deposited with various firms by Vellasamy for and on behalf of M. R. M. M. M. R. Nadaraja was an adverse witness and it was with some difficulty that these facts were elicited from him. It was only at the very end that he admitted that Somasundaram had to take orders from Vellasamy and that Vellasamy was the chief kanakapulle. The defendant's own books D12 also have the same account in the ledger giving the debit and credit account of M. R. M. M. M. R. This account, however, does not expressly say by whom the moneys were deposited but 10 the dates are the same. It shows that interest had from time to time been credited to this account and was calculated at the nadappu rate till March, 1934, when interest was credited at the bank rate. It is in evidence that at this time Letchimanan Chettiar had deposited large sums of money in the bank and, therefore, was paying interest at the rate at which he received it from the bank. It is not denied that there was a rate of interest in operation among Chettiars in regard to moneys deposited by one Chetty firm with another or borrowed by one Chetty firm from another. That rate depended on the bank rate and varied from it by about 3/4 to 1 per cent., according to the evidence of Vellasamy. Chettiars had an associa- 20 tion of their own at which the rate of interest was fixed from month to month. It varied from 4, 13/69 per cent. to 8, 19/64 per cent., and a statement showing this rate of interest was produced marked P10. It was produced by a Chetty who kept a copy of the declared rates in his books by the name of Ramasamy Chetty. The book itself is produced marked P13. I see no reason to doubt the evidence of Ramasamy Chettiar. Since 1941 which was the last day on which this association of Chettiars fixed the Chetty rate of interest the interest paid by Chettiars in transactions *inter se* had remained unchanged. In fact, there had since then been no meeting of the Association and the evidence is that unless otherwise 30 agreed upon the last rate fixed in 1941 was adopted. It would appear that in respect of this transaction Letchimanan Chettiar also paid interest at the nadappu rate until he changed it to the bank rate in 1934. Letchimanan Chettiar was married to a child of Muttiah Chettiar by his first bed. He is a son-in-law of Muttiah Chettiar and, therefore, one who, it will be reasonable to infer, knew of the partition and that the money in question belonged to Murugappan Chettiar, the minor. In point of fact, in the curatorship case Letchimanan Chettiar filed a motion and brought a sum of Rs. 20,488/- into court stating that the money belonged to the minor 40 Murugappan.

After the death of Muttiah Chettiar Vellasamy appears to have decided to go away to India and in 1930 he handed over all the books with a list of debtors to Nadarajan Chettiar and obtained receipt P11 from Nadarajan. He subsequently came back from India and sought employment under one V. R. K. R. When he was there he received payment on behalf of V. R. K. R. from Letchimanan Chettiar of a sum of Rs. 5,010.18 upon an undial, D1. This was an undial drawn by Segappi, the mother of the minor plaintiff on the firm of K. R. K. N. L, with the request that it

should be debited against the account of M. R. M. M. R. The money was paid. Segappi put her thumb mark to the undial and the minor plaintiff admits that this money was taken by his mother for the maintenance of herself and for family purposes. Defendant claims credit in this sum. The business of M. R. M. M. R. being joint family property I think that this would be a reasonable charge which could be made against the joint family assets of that firm, and the firm of K. R. K. N. L. should be given credit in this sum. As a matter of fact, it was Vellasamy himself who got payment on this undial from the 4th defendant. I am satisfied upon the
 10 evidence that the money of the firm of M. R. M. M. R. is in fact money belonging to the minor Murugappen's joint family and that it did not belong to Muttiah Chettiar although for the purposes of the Business Names Registration Ordinance it was registered in his name. In point of fact, I do not see how defendants can dispute this point in view of the averment in P2 by Letchimanan Chettiar that the money belonged to the minor Murugappen. It must be noted that at the time of this transaction Murugappen was the sole male member of the joint family and until sons were born to him his mother and sister, who with him formed his joint family, would only have a right to maintenance and no-co-parcener's
 20 interest in the joint family property.

It was also suggested that certain accounts appearing in the books of M. R. M. M. R. supported the contention of the defendants that the assets of the firm of M. R. M. M. R. really were vested in Muttiah Chetty and not in Murugappen. The accounts in question refer to Murugappen's ledger account D5 and the accounts of two other firms M. R. M. M. S. and V. R. K. R. (D6 and D7). D5 purports to be a ledger account of Murugappen Chetty. It credits him with Rs. 183,071.12 stating that it is a 1/4 share under the partition award. It also debits him with certain
 30 other items. It was contended that this was merely the sort of account that would appear in respect of anybody to whom money was due by the business. That is a possible view to take in regard to D5. But D5 is also not inconsistent with the fact that Murugappen has been credited with this amount as it represents his contribution to the capital and inasmuch as this amount represents capital it would be debited to the capital account. Unfortunately the books of the firm are not available. There may be a separate capital account which has been debited with this amount but the books have not been produced as they are filed in the Sivaganga courts. With regard to D6 these were moneys borrowed in July, 1921, during the
 40 lifetime of Muttiah Chetty for the purpose of business from these two creditors; they were subsequently repaid in August and the accounts closed. These do not, in my opinion, in any way support the plaintiff's contention that the money formed part of the estate of Muttiah Chettiar.

The next defence raised related to the agreement with regard to interest. Vellasamy was cross-examined at length with regard to the alleged agreement. In his plaint Vellasamy says that the money was lent in January, 1930, but it transpires from the accounts of both M. R. M. M. M. R. and K. R. K. N. L. that the money was deposited in small sums

No. 12
Judgment
of the
District
Court
12-10-51
—continued.

during October-November, 1929. It is stated that during that time Letchimanan Chettiar was not in Ceylon, and therefore, the alleged agreement could not have been entered into between him and Vellasamy. Vellasamy was examined upon this point when the case was first heard before my predecessor, Mr. Schokman. In the course of his evidence he first stated that when he invested the money with Letchimanan Chettiar he told Letchimanan Chettiar that it was plaintiff's money and that Letchimanan agreed to repay it to the minor paying interest at the nadappu rate. After lunch on the same day he was cross-examined and in the course of that cross-examination he made a statement which, as it appears on the record, would seem to suggest that Letchimanan Chettiar was in India in 1929 right up to the end of that year and that Vellasamy did not see him in 1929 but only saw him in India in 1930. But his evidence immediately thereafter is to the effect that he saw him in Colombo in 1929 and after Muttiah's death he went to India and saw Letchimanan in India. According to the 4th defendant, Arunachalam Chettiar, his father was in India at the time of Muttiah's death. There is, however, an entry in their books of account which shows that in August, 1929 (that is after Muttiah's death) three verties were bought for Lena, Lena standing for Letchimanan (*vide* P14). Arunachalam also in his evidence at one stage stated that interest was paid upon the amount deposited with them as agreed upon. Later, however, he went back on this and stated that there was no agreement with regard to the payment of interest. The fact, however, is that in his books plaintiff is credited with interest at the nadappu rate. If the money was deposited with him for safekeeping there was no need to pay interest at all. The books certainly seem to support Vellasamy. I therefore think that Vellasamy's evidence on this point can be accepted inasmuch as it is supported by the defendant's own books with regard to interest.

Letchimanan Chettiar died on 15th March, 1945, *vide* para. 2 of P4, and after that testamentary case 11556 was instituted in respect of his estate. The administrator was one Verappa Chettiar and all the defendants were made respondents, *i.e.* the heirs. The final account filed in the case (P6) shows that a sum of Rs. 64,802/- was distributed among the heirs and the journal entry (P7) shows that the heirs have accepted this account as correct. One may, therefore, justifiably come to the conclusion that the heirs have adiated the inheritance of Letchimanan Chettiar and to the extent of the money that has come into their hands they will be liable to creditors of the estate for debts due by the estate.

Two defences in law were taken. One was that the plaintiff was estopped from denying that the interest he was entitled to recover was the interest that has in fact been paid into the curatorship case. It was stated that accounts were from month to month rendered by K. R. K. N. L. to Segappi, the mother of the minor plaintiff, and that the amounts mentioned therein on account of interest were not disputed. The only witness who gave evidence on this point is the 4th defendant. Questions were not put to any of the plaintiff's witnesses with regard to it; for instance, Nadarajen Chetty or to Vellasamy, or even to Murugappen. I am not prepared

upon the evidence of Arunachalam Chetty to hold that the accounts were in point of fact systematically and regularly sent to either Segappi or Murugappa. Even if such accounts were sent I have doubts as to whether it would operate by way of estoppel.

No. 12
Judgment
of the
District
Court
12-10-51
—continued.

The other defence in law was to the effect that the wrong parties had been sued and that so long as there was a debt due by the estate of Letchi-
manan it was the administrator who should have been sued. There is
evidence in this case which would suggest that the administration of the
estate had been completed. If the executor were sued he may have been
10 able to plead *plene administravit* because it would appear from the proceed-
ings of the testamentary case which have been produced, namely, the final
account and the journal entry, that the state has been distributed among
the heirs. In such a case it is open to a creditor who has not been paid to
sue the heirs in possession of the deceased's estate and they would become
liable to the extent to which they have benefited. Under our law title to
property vests in the heirs and not in the administrator, the administrator
only having the power to sell property for the purpose of administration.
The matter was considered in the case reported in 43 N.L.R. at page 361.
There the debt was a contingent debt which had not come into existence
20 at the time the administration was in progress. The principle, however,
seems to be the same. In that case it was held that the heirs could be
sued. As in that case here too the heirs are in actual possession and in the
words of Mr. Justice Soertsz it would be extremely unreal to describe them
as "persons beneficially interested" in that property within the meaning
of section 472 of the Civil Procedure Code. I accordingly hold that the
plaintiff can maintain this action against the heirs but they will be liable
only to the extent to which they have benefited from the estate.

Reference was also made to a case reported in 2 Ceylon Law Recorder
at page 157 in support of the proposition that where money is deposited by
30 one person for and on behalf of another this other has no right to that
money. In that case, however, it was established that the person deposit-
ing the money was the owner of it and although he deposited it on behalf
of a minor child whom he intended to benefit he was entitled to withdraw
it. In the present case, however, the money that was deposited was not
money that belonged either to Vellasamy or to Muttiah. It was in fact
money belonging to the minor and was deposited by Vellasamy for and on
behalf of the minor. Different considerations will apply where money
deposited belongs to the person on behalf of whom it was deposited. In
the result I hold that the defendants are liable to the extent to which they
40 have benefited from the estate to plaintiff for the sum deposited with
them together with interest calculated at nadappu rate less the amount
paid upon the undial. As compound interest is payable and in view of
the fact that credit must be given for payment on the undial, this amount
will have to be ascertained. Judgment will, accordingly, be entered for
plaintiff in this sum once it has been ascertained. Plaintiff will file a
statement with notice to the defendant setting out the amount that in this

No. 12
Judgment
of the
District
Court
12-10-51
—continued

way would become due less the amount deposited to the credit of the curatorship case.

I answer the issues framed as follows :—

1. It was deposited in September, October and November, 1929.
2. Yes.
3. Yes.
- 4A. Yes.
- B. Yes.
5. The balance amount will have to be calculated upon my findings. Before decree is entered a statement will have to be filed by plaintiff in terms of my judgment.
6. Yes.
7. Yes.
8. Yes, to the extent to which they have benefited from the estate.
- 9A. No.
- B. Does not appear to arise. In any case the money is joint family property which is acquired by survivorship and not by succession.
- C. Yes.
10. No.
11. Yes. Defendants are entitled to credit in this sum.
- 12A. Not the entire balance.
- B. Yes.
- 13A. No.
- B. No.
- C. No.
14. Yes.
15. Yes, to the extent to which they have benefited.

20

Decree will be entered for plaintiff against the defendants jointly and severally as heirs to the extent to which they have benefited from the estate of Letchimanan Chettiar after the statement referred to in my judgment has been filed by plaintiff with notice to the other side and accepted by court. Plaintiff will also be entitled to the costs of suit.

(Sgd) N. SINNATAMBY,
D. J.

Judgment delivered in open court in the presence of proctors for plaintiff and defendant.

(Sgd.) N. SINNATAMBY,
D. J. 40

12-10-51.

Decree of the District Court

IN THE DISTRICT COURT OF COLOMBO

1. M. R. M. M. R. MURUGAPPA CHETTIAR, late minor by his next-friend,
2. PAVANNA VELLASAMPILLAI of No. 62, Sea Street,
Colombo *Plaintiffs.*

No. 20429/M.

vs.

1. MUTHTHAL ACHY, widow of Letchimanan Chettiar of A'Thekkur, Tirupatur, Ramnad District,
2. KANAPPA CHETTIAR, son of Letchimanan Chettiar of A'Thekkur, Tirupatur, Ramnad District,
3. KARUPPEN CHETTIAR, son of Letchimanan Chettiar of A'Thekkur, Ramnad District,
4. ARUNACHALAM CHETTIAR, son of Letchimanan Chettiar of No. 91, New Moor Street, Colombo,
5. ALAGAPPA CHETTIAR, son of Letchimanan Chettiar of A'Thekkur, Ramnad District, and
6. NATCHIAMMAI ACHY, widow of Karuppen Chettiar and daughter of Letchimanan Chettiar of A'Thekkur, Tirupatur, Ramnad District..... *Defendants.*

This action coming on for final disposal before N. Sinnatamby, Esq., District Judge, Colombo, on the 12th day of October, 1951, in the presence of Mr. C. M. Chinnaiya, Proctor, on the part of the plaintiff, and of Mr. S. Somasundaram, Proctor, on the part of the defendants, it is ordered and decreed that the defendants, as heirs to the extent to which they have benefited from the estate of K. R. K. N. L. Letchimanan Chettiar, deceased, do jointly and severally pay to the plaintiff the sum of Rs. 16,658.17 with legal interest thereon at 5 per cent. per annum from the date hereof till payment in full and costs of suit.

(Sgd.) N. SINNATAMBY,
District Judge.

The 12th day of October, 1951.

Petition of Appeal to the Supreme Court

**IN THE HONOURABLE THE SUPREME COURT OF THE
ISLAND OF CEYLON**

1. M. R. M. M. M. R. MURUGAPPA CHETTIAR, late minor by his
next-friend,
2. PAVANNA VALLASAMPILLAI of No. 62, Sea Street in
Colombo *Plaintiffs.*

vs.

1. MUTHTHAL ACHY, widow of Letchimanan Chettiar of
A'Thekkur, Tirupatur, Ramnad District, 10
2. KANNAPPA CHETTIAR, son of Letchimanan Chettiar of
A'Thekkur, Ramnad District,
3. KARUPPEN CHETTIAR, son of Letchimanan Chettiar of
A'Thekkur, Tirupatur, Ramnad District,
4. ARUNACHALAM CHETTIAR, son of Letchimanan Chettiar
of No. 91, New Moor Street in Colombo,
5. ALAGAPPA CHETTIAR, son of Letchimanan Chettiar,
6. NATCHAMMAI ACHY, widow of Karuppen Chettiar and
daughter of Letchimanan Chettiar, both of A'Thekkur,
Tirupatur, Ramnad District in India *Defendants.* 20

IN THE MATTER OF A PETITION OF APPEAL

By

1. MUTHTHAL ACHY, widow of Letchimanan Chettiar of
A'Thekkur, Tirupatur, Ramnad District,
2. KANNAPPA CHETTIAR, son of Letchimanan Chettiar of
A'Thekkur, Ramnad District,
3. KARUPPEN CHETTIAR, son of Letchimanan Chettiar of
A'Thekkur, Tirupatur, Ramnad District,
4. ARUNACHALAM CHETTIAR, son of Letchimanan Chettiar
of No. 91, New Moor Street in Colombo, 80
5. ALAGAPPA CHETTIAR, son of Letchimanan Chettiar,
6. NATCHAMMAI ACHY, widow of Karuppen Chettiar and
daughter of Letchimanan Chettiar, both of A'Thekkur,
Tirupatur, Ramnad District in India *Defendants-Appellants.*

against

- M. R. M. M. M. R. MURUGAPPA CHETTIAR of No. 62, Sea
Street in Colombo *Plaintiff-Respondent.*

To :

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

No. 14
Petition of
Appeal to
the Supreme
Court
19-10-51
—continued.

On this 19th day of October, 1951.

The petition of appeal of the defendants-appellants above-named appearing by Sabapathy Somasundaram and his assistant Sinnathambipillai Thuraisingham, their proctors, states as follows :—

1. The plaintiff-respondent then a minor appearing by Pavanna Vellasampillai as his next-friend (since struck out from the action on the
10 respondent becoming a major) filed this action in July, 1949, for the recovery of the balance of sum money out of the capital and interest alleged to have been due to him from one K. R. K. N. L. Letchimanan Chettiar. The appellants were sued as the heirs of the said Letchimanan Chettiar who had adiated inheritance of the deceased Letchimanan Chettiar. It was alleged that Vellasampillai acting as agent of the respondent had in 1930 deposited with K. R. K. N. L. Letchimanan Chettiar a sum of Rs. 18,700/- which the said Letchimanan Chettiar agreed to repay to the respondent with compound interest according to custom
20 among Chettiars and at rates prevailing from time to time among the Chettiar community. A balance amount of Rs. 22,445·52 as per account particulars annexed to the plaint and marked “ A ” was claimed. The defendants-appellants denied their liability to pay the said sum on several grounds.

2. At the trial of the action the following issues were framed :—

(1) Did the second plaintiff deposit with K. R. K. N. L. Letchimanan Chettiar a sum of Rs. 18,700/- in or about January, 1930 ?

(2) Did the second plaintiff make the said deposit for and on behalf of the 1st plaintiff ?

(3) Did the said Letchimanan Chettiar agree to pay 1st plaintiff the
30 said sum of Rs. 18,700/- with interest thereon at the rate prevailing among the Chettiar community, interest being added to the principal from time to time in accordance with the custom prevailing among Chettiars in their dealings with each other ?

(4) (a) Did the said Letchimanan Chettiar deposit to the credit of the 1st plaintiff in the latter's curatorship case on 9th April, 1943, a sum of Rs. 20,488·18 ?

(b) Was such money a portion of the monies referred to in issues 1 to 3 ?

(5) What balance amount if any is due to the 1st plaintiff out of the
40 monies referred to in issues 1 to 3 ?

(6) Are the defendants heirs of the said Letchimanan Chettiar who have adiated the latter's inheritance ?

(7) Has the estate of Letchimanan Chettiar been closed ?

No. 14
Petition of
Appeal to
the Supreme
Court
19-10-51
—continued.

(8) Are the defendants liable to pay the 1st plaintiff the balance if any found due under issue 5 ?

(9) (a) Is the money claimed in this case property of the estate of the late Muttiah Chettiar ?

(b) Has the estate of Muttiah Chettiar been duly administered ?

(c) If the estate of Muttiah Chettiar has not been administered can this action be had and maintained ?

(10) Were certain monies the subject matter of the claim in this case left for safe keeping with K. R. K. N. L. Letchumanan Chettiar to be dealt with as the said Letchumanan Chettiar thought fit for the use of an undivided joint Hindu family consisting of the 1st plaintiff, his mother (Segappi) and his sister ?

(11) Did Letchumanan Chettiar from and out of the monies referred to in issue 10 and accretions thereof as appearing in the account of Letchumanan Chettiar pay out a sum of Rs. 5,010.18 on a hundi dated 9th January, 1940, drawn by Segappi in favour of V. R. K. R. of Kandavarainpatti in India ?

(12) (a) Was whatever balance available in the account of K. R. K. N. L. Letchumanan Chettiar paid into and received by Court to the credit of case No. 3836 C.G. of this court on 9th April, 1943 ? 30

(b) Has the 1st plaintiff drawn out such monies in or about 4th March, 1947 ?

(13) (a) Did K. R. K. N. L. Letchumanan Chettiar keep accounts and deal with the deposit in a manner known to the 1st plaintiff and to the other members of the undivided joint family referred to in issue 10 ?

(b) Has the 1st plaintiff acquiesced in and accepted such accounts and such dealings as correct ?

(c) Is the 1st plaintiff estopped from asserting this claim ?

(14) Did the estate of K. R. K. N. L. Letchumanan Chettiar include any part of the money claimed in this case ? 30

(15) Can the plaintiffs sue the defendants personally in this case ?

(16) If there was no customary rate of interest as pleaded in para 3 of the plaint after June, 1941, is plaintiff entitled to any interest after that date in any event ?

(17) If there was no customary rate fixed after March, 1941, is plaintiff entitled to interest at the last rate that was fixed among the Chettiars in March, 1945, or is plaintiff entitled to reasonable interest and if so at what rate ?

The learned Judge delivered judgment on the 12th day of October, 1951, answering the issues as follows :— 40

(1) It was deposited in September, October and November, 1929.

(2) Yes. (3) Yes. (4) (a) Yes, (b) Yes. (5) The balance amount will have to be calculated upon my findings. Before decree is entered a statement will have to be filed by the plaintiff in terms of my judgment. (6) Yes. (7) Yes.

No. 14
Petition of
Appeal to
the Supreme
Court
19-10-51
—continued

(8) Yes to the extent to which they have benefited from the estate. (9) (a) No. (b) Does not appear to arise. In any case the money is joint family property which is acquired by survivorship and not by succession. (c) Yes.

(10) No. (11) Yes, defendants are entitled to credit in this sum. 10 (12) (a) Not the entire balance. (b) Yes. (13) (a) No. (b) No. (c) No. (14) Yes. (15) Yes, to the extent to which they have benefited. The learned Judge also awarded the plaintiff-respondent costs of the suit.

3. Being dissatisfied with the said judgment and order of the learned District Judge the defendants-appellants beg to appeal to Your Lordships' Court on the following among other grounds that may be urged by counsel at the hearing of this appeal.

(i) That the said judgment is contrary to law and against the weight of evidence in this case.

(ii) The learned District Judge erred in admitting in evidence the 20 documents P9, P11, P11 (A), P11 (B) and P12.

(iii) It is admitted that the evidence of Vellasamy Pillai regarding the circumstances under which the deposit of Rs. 18,700/- was made with Letchumanan Chettiar, the party on whose behalf the deposit was made and the terms of the agreement with Letchumanan Chettiar should not have been accepted, especially when Letchumanan Chettiar himself is dead and Vellasampillai's story has been found to be false in regard to the hundi.

(iv) It is submitted that the money deposited with Letchumanan Chettiar in fact belonged to the estate of the late Muttiah Chettiar and this 30 action cannot be maintained without administration being taken out in respect of Muttiah Chettiar's estate.

(v) As far as Letchumanan Chettiar was concerned Letchumanan Chettiar dealt with Segappi Atchi and was accountable only to her. Letchumanan Chettiar had no transactions with the plaintiff or with anybody on his behalf.

(vi) It is submitted that there is no reliable proof as to the rates of interest that were to be paid on the said sum of Rs. 18,700/-.

(vii) It is submitted that the plaintiff-respondent is estopped from asserting his claim.

40 (viii) It is submitted that the plaintiff-respondent cannot in law sue the defendants personally in this action.

(ix) The judgment is unworkable and does not define the liability of each of the defendants,

No. 14
Petition of
Appeal to
the Supreme
Court
19-10-51
—continued.

Wherefore the defendants-appellants pray :—

- (a) that the judgment of the learned trial Judge be set aside
- (b) that plaintiff-respondent's action be dismissed
- (c) for costs and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendants-Appellants.

Settled by :

C. THIAGALINGAM, K.C.,
N. NADARASA,

Advocates.

10

No. 15
Judgment of
the Supreme
Court
9-7-54

No. 15

Judgment of the Supreme Court

S.C. No. 153 of 1952.

D.C. Colombo No. 20429/M.

MUTHTHAL ACHY, widow of Letchumanan Chettiar and five

others *Defendants-Appellants.*

vs.

M. R. M. M. R. MURUGAPPA CHETTIAR.....*Plaintiff-Respondent.*

Present : GRATIAEN, J., and FERNANDO, A.J.

Counsel : C. THIAGALINGAM, Q.C., with N. NADARASA for the appellants. 20

S. J. V. CHELVANAYAKAM, Q.C., with P. NAVARATNARAJAH and
C. MANOHARA for the respondent.

Argued on : 23rd, 25th and 29th June, 1954.

Decided on : 9th July, 1954.

GRATIAEN, J.

A wealthy Natucottai Chetty named Muttiah was the head of a joint Hindu family domiciled in South India. By his first marriage he had two daughters, one of whom was married to K. R. KN. L. Letchumanan Chettiar (hereinafter called "the deceased"). By his second marriage he had two grown-up sons (Nadarajah and Thiagarajah) and a minor son (Manickam). He finally married a woman named Segappi, and by that union he had a daughter and a minor son (the plaintiff).

On 18th May, 1929, Muttiah decided to partition his estate among his four sons who were co-parcenary members with him of the joint family. An award P9 made by certain of his trusted neighbours made elaborate provision for this proposed separation.

No. 15
Judgment of
the Supreme
Court
9-7-54
—continued.

Clause 11 of the award provided that, as far as the plaintiff was concerned, “the properties and cash which the fourth share-holder minor Murugappah Chettiar *is to get* are to be held *to the order of his father Muttiah Chettiar*, which sum is to be enhanced profitably *and paid to him after his attainment of majority*”.

10 The plaintiff was at this time only 17 months old. In accordance with the award P9, he became (although he was too young to appreciate the alteration in his status) the head of a new joint Hindu family consisting of himself, his mother and his sister. The legality of such a partition during the minority of one or more of the co-parcenary members is well recognised by the Mitakshara law, and Clause 11, which I have previously quoted, was no doubt intended to meet the recommendation in the *Baudhayana* that “the shares of sons who are minors; together with the interest, should be placed under good protection until the majority of the owners”—*Mayne’s Hindu Law (8th Ed.) Section 476*.

20 Muttiah took early steps to implement the award P9. With regard to the plaintiff’s share, he had himself registered in Colombo on 22nd May, 1929, as the proprietor of a new business under the vilasam “MR. M. M. MR.”, and it is perfectly clear that he did so not for his personal advantage but in order to discharge the trust imposed on him for the benefit of the plaintiff and of the new family unit of which the plaintiff had become the sole co-parcenary member. The initial amount credited to the plaintiff in the firm’s books was Rs. 181,962/-, *i.e.* his proportionate share of the proceeds of the partition.

Very shortly after the business of MR. M. M. MR. had commenced, 30 Muttiah died in Colombo on 28th May, 1929, when the plaintiff, his mother and his sister were still in India. In consequence of this event, the plaintiff’s mother became his natural guardian. Unfortunately, no express provision had been made in P9 as to who should succeed to the management of the plaintiff’s affairs upon Muttiah’s death until the plaintiff attained majority.

As to what took place immediately after the death of Muttiah, is, on certain important matters, controversial. It has been sufficiently established, however, that out of the liquid assets of MR. M. M. MR. Vellasamy, a trusted servant of Muttiah who had been employed in Muttiah’s own 40 business for several years and had also become the senior kanakapulle of the new business, caused various sums amounting in the aggregate to Rs. 18,700/- to be deposited in Colombo between 28th September, 1929, and 27th November, 1929, with Letchumanan’s firm (K. R. KN. L.). The main dispute in this case relates to the circumstances in which those sums were deposited with K. R. KN. L., and, more particularly, the precise obligations undertaken by the deceased, as the sole owner of K. R. KN. L.,

No. 15
Judgment of
the Supreme
Court
9-7-54
—continued.

in regard to the payment of interest on the amount so deposited. Before considering this vital issue, however, I shall refer to certain subsequent events the details of which are no longer controversial.

On 9th January, 1930, Vellasamy left Ceylon for India after severing his connection with the firm of MR. M. M. MR. and handing over all accounts books and relevant documents to the plaintiff's eldest step-brother Nadarajah. In these books, the plaintiff was shown as a "creditor" of the firm in a sum of Rs. 181,962/- (*i.e.* the original capital brought into the business); the firm of K. R. KN. L., on the other hand, was shown as a "debtor" in the sum of Rs. 18,700/-. After this date¹⁰ Vellasamy ceased to have any business relationship with any member of Muttiah's family until 1947.

An incident of some importance took place ten years later. In February, 1940, the plaintiff's mother Segappi drew a bill of exchange or "*undial*" in India for Rs. 5,000/- on the deceased's firm K. R. KN. L. in Colombo in favour of a firm named V. R. K. R., with a direction that, when this sum was paid by K. R. KN. L., it should be *debited to the firm of MR. M. M. MR.* The explanation of this transaction, which was accepted by the learned Judge, was that Segappi had previously borrowed Rs. 5,000/- from V. R. K. R. in India in order to meet the household expenses of the²⁰ joint family consisting of herself, the plaintiff and her daughter. She accordingly arranged with the deceased (also in India) that his firm in Colombo should honour the "*undial*" and debit the payment against his outstanding account with MR. M. M. MR. The *undial* was in fact met on presentation as arranged, and Rs. 5,010·18 was debited as arranged in K. R. KN. L.'s books. *The person who actually received this payment in Colombo on behalf of V. R. K. R. was no other than Muttiah's former kanakapulle Vellasamy who had since joined V. R. KR. in a similar capacity.*

On 19th February, 1942, the plaintiff (still a minor) was living in India under the care and protection of his mother Segappi. Another³⁰ debtor of MR. M. M. MR. was anxious to repay his debt in view of repeated demands by Segappi. On legal advice, he obtained an order that the Secretary of the District Court of Colombo be appointed curator of the plaintiff's estate, so that someone would be in a position to give valid receipts for payments of this kind.

On 8th April, 1943, the deceased Letchuman also deposited Rs. 20,480·18 to the credit of the curatorship case. This amount represented, according to the deceased's books of accounts, the total sum due at that date (less Rs. 5·32) from the firm of K. R. KN. L. to the firm of MR. M. M. MR. in connection with the original deposits aggregating Rs. 18,700/-⁴⁰ made between September, 1929, and November, 1929. The small outstanding sum of Rs. 5·32 was shortly afterwards caught up in a payment of income tax by K. R. KN. L. on behalf of MR. M. M. MR. and the account of the transactions between these two firms was then closed.

All moneys credited to the curatorship case were withdrawn in due course by the plaintiff with his mother's formal consent during his minority.

Letchuman himself died on 18th March, 1945. According to his own books of account, he had long since completely settled his debt to the firm of MR. M. M. MR. Over three years later, however, *i.e.* on 1st December, 1948, the plaintiff (who was still a minor) sued the appellants (the heirs of the deceased) in the present action for the recovery of a further sum of Rs. 22,455·52 alleged to be still due to him in connection with the original deposit of Rs. 18,700/- in 1929 (*i.e.* 19 years before the action commenced). The action was instituted through the plaintiff's next friend Vellasamy who had joined him as his attorney and kanakapulle in 1947.

No. 15
Judgment of
the Supreme
Court
9-7-54
—continued.

10 The validity of the plaintiff's claim depends very largely, if not entirely, on the truth of Vellasamy's version of the terms on which sums aggregating Rs. 18,700/- had been deposited with the defendants' firm K. R. KN. L. in 1929. According to Vellasamy, he decided, *on his own initiative*, to invest the assets of MR. M. M. MR. after the death of his employer Muttiah with various Chetty firms owned (except in two cases) by close relatives of Muttiah's family. He regarded these assets as the exclusive property of the plaintiff, and considered it his duty to promote the interests of the minor (who was powerless to protect himself) by entering into these transactions on the minor's behalf as a *negotiorum gestor*.

20 Vellasamy's version is that he directly (and on his own responsibility as the self-constituted agent of a 21 month old infant) contracted with the deceased Letchuman in connection with the deposits or loans which form the subject matter of this action; and that the deceased unequivocally agreed to repay the principal in due course *to the plaintiff* together with accrued compound interest calculated as "nadappu vattai" rates—that is to say, "rates prevailing from time to time among the Chettiar community, the interest being added to the principal from time to time according to the custom prevailing and calculated in the manner customary among Chettiers in their dealings with one another".

30 The schedule annexed to the plaint sets out in detail the manner in which the plaintiff's claim was computed. It credits the deceased's account with the sum of Rs. 20,488·18 deposited on 8th April, 1943, in the curatorship case, but makes no allowance for the earlier payment in 1940 against Segappi's *undial*.

The learned Judge accepted Vellasamy's evidence as to the terms of his alleged agreement with the deceased in 1929, but directed (in favour of the appellant) that credit be given for the payment of Rs. 5,010·18 in 1940, as "this would be a reasonable charge which could be made against the joint family assets of the firm of MR. M. M. MR.". In accordance
40 with a reconstructed statement of account filed in court, a decree was entered against the defendants jointly and severally for Rs. 16,658·17 together with legal interest from date of the decree until payment in full.

The main ground of appeal which was pressed before us relates to the issues of fact. It was also argued, as a matter of law, that the money deposited with deceased in 1929 was the money of Muttiah Chetty—so that, although it was no doubt invested for the ultimate benefit of the

No. 15
Judgment of
the Supreme
Court
9-7-54
—continued.

joint Hindu family of which the plaintiff was the sole co-parcenary member, the only person entitled to recover it from the deceased or his heirs was a duly appointed representative of Muttiah's estate.

In any view of the matter, it was an extremely difficult case to decide. The trial commenced on 18th December, 1949, before the (then) District Judge Mr. S. J. C. Schokman. After Vellasamy's cross-examination had been nearly completed, Mr. H. A. de Silva was appointed District Judge of Colombo, and the trial commenced afresh before him on 25th October, 1950, subject to an agreement that Vellasamy's previous evidence be incorporated in the new proceedings. After some further evidence of 10 Vellasamy had been recorded, the trial was put off for 21st December, 1950. In the meantime, Mr. de Silva had ceased to function as District Judge, and the trial was resumed *de novo* before the learned Judge whose judgment is now under appeal. Vellasamy's evidence was once again recorded (subject to a similar agreement regarding the earlier proceedings). He was examined and cross-examined on 21st December, 1950. His cross-examination was resumed on 25th April, 1951, and concluded on 5th September, 1951. The case for the appellant was closed on 6th September, 1951. Eventually, judgment was delivered on 12th October, 1951. In the result, the learned Judge was faced with the task of assessing the 20 evidence of the chief witness who had testified before him on three dates covering a period of nearly 9 months, and of testing it in the light of his earlier evidence recorded before two other Judges in December, 1949, and October, 1950. Having regard to these long delays, the advantage which a trial Judge normally enjoys of forming his personal impression of a witness' credibility (based on demeanour) was considerably reduced.

Apart from these special considerations, the inherent difficulty in deciding the issues of fact in this litigation was more fundamental. The plaintiff based his claim on Vellasamy's version of a conversation which allegedly took place between him and the deceased man Letchuman over 30 20 years before the trial commenced. No independent witness was present at that conversation, and the suggested agreement was not contemporaneously or even subsequently reduced to writing. In addition, the court was necessarily deprived of the advantage of hearing Letchuman's explanation of the circumstances in which his firm received the money, and the precise nature of his obligations in regard to the payment of interest. The situation therefore necessarily called for a very cautious judicial approach.

Jessell, M.R., remarked, with reference to cases of this kind, "it is a rule of prudence that, sitting as a jury, we do not give credence to the 40 unsupported testimony of the claimant, with a view, no doubt, of preventing perjury, and with a view of protecting a dead man's estate from unfounded claims"—*In re Finch, Finch vs. Finch* (1883) 23 Ch. D. 267 at 269. These observations were at one time regarded as laying down a rule (equivalent to a rule of law) that claims against a dead man's estate could never be maintained unless they were corroborated by independent evidence. But it is now recognised that the true principle is not so rigid,

The court's duty is to approach the case "*with great jealousy*, because the claim is brought forward against the estate of a deceased person when that person, who was a chief actor in the transaction impugned, was dead"—*per* Fry, L.J. in *re Garnett; Gandy vs. Macaulay* (1885) 31 Ch.D. 1 at 16. No. 15
Judgment of
the Supreme
Court
9-7-54
—continued

"The statement of a living man is not to be disbelieved because there is no corroboration, although in the necessary absence through death of one of the parties to the transaction, it is natural that in considering the statement of the survivor we should look for corroboration in support of it; but if the evidence given by the living man brings conviction to the tribunal
10 which has to try the question, then there is no rule of law which prevents that conviction being acted upon"—*per* Sir John Hannen in *re Hodgson : Beckett vs. Ransdale* (1885) 31 Ch.D. 177 at 183. These views were adopted with approval in *Rawlinson vs. Scholes* (1898) 15 T.L.R. 8, and have also been acknowledged in Ceylon as prescribing the correct judicial approach to claims against the estate of a deceased person.—*Velupillai vs. Sidambaram* (1929) 31 N.L.R. 97 at 99.

I find no indication in the judgment under appeal that the learned Judge specially directed his mind to the standard of proof laid down by these authorities. Besides, his main reason for believing Vellasamy's
20 evidence was that he considered it to be "corroborated" by certain entries in the deceased's books of accounts—whereas they are equally consistent whether with the view that Letchuman had in fact undertaken (and discharged) obligations less onerous than those imputed to him by Vellasamy.

As I read the judgment under appeal, the learned Judge's acceptance of the plaintiff's case was largely based on his objective assessment of Vellasamy's testimony, and not on his personal impression of the demeanour of the witness. In these circumstances, and in view of the non-direction to which I have previously referred, it is our duty to decide for
30 ourselves whether Vellasamy's version can safely be acted upon in regard to two crucial issues:—

- (1) was the money deposited with K. R. KN. L. in pursuance of a contract directly entered into between Vellasamy and the deceased?
- (2) If so, had the deceased bound himself unconditionally—*i.e.* even after the year 1933—to let the sum deposited accumulate at "nadappu vatti" rates of compound interest until repayment?

As to the first question, one should, in my opinion, examine with considerable caution (and perhaps with strong suspicion) Vellasamy's assertion that he acted entirely on his own initiative in entering into a number of
40 money-lending contracts for a minor's benefit without the prior authority of senior members of the child's family—particularly as, according to his version, the plaintiff's mother and eldest step-brother had themselves made conflicting claims to be entrusted with the funds available. Vellasamy was not bound to the plaintiff by ties of kinship or even of race. His authority as the kanakapulle of MR. M. M. MR. had terminated in his master's death, and it seems inherently improbable that, if he had virtually

No. 15
Judgment of
the Supreme
Court
9-7-54
—continued

defied the instructions of Segappi and Nadarajah (who was still his employer in regard to other business affairs) he would have undertaken the functions of a gratuitous intermeddler. It is more natural to suppose that he would have left these important decisions to persons who were more closely concerned with the future management of the minor's affairs. There is no independent oral evidence to prove that the contemporaneous loans to other Chetty firms had also been directly negotiated by Vellasamy entirely on his own initiative. The fact that Rs. 18,700/- was in fact handed over to K. R. KN. L. by Vellasamy in 1929 (or at least in pursuance of his instructions to the junior kanakapulle) has no doubt been sufficiently established, but that does not completely solve the issues which are more vitally controversial.

In regard to the defendant's claim to be credited at least with the amount paid on the *undial* in 1940 on Segappi's directions, Vellasamy's partnership and palpable lack of candour in the witness box also justify the criticism that his evidence on other important issues called for special vigilance—having regard particularly to the circumstances that the deceased was not available to give the court his own explanation of these disputed matters.

It has not been suggested that Letchuman was a dishonourable man who would normally be disposed to fabricate his books of accounts in order to avoid liability to an infant to whom he was very closely connected by marriage. According to his books, he credited the firm of MR. M. M. MR. with "nadappu vattai" rates of interest until 1933 and thereafter only at the ruling Bank rates of interest. The learned Judge regarded these earlier entries as strong corroboration of Vellasamy's version. To my mind, they are equally consistent with the theory that Letchuman had bound himself by contract (either with Vellasamy or with someone else) to pay compound interest in accordance with Chetty custom so long as he had the money invested with outsiders in the ordinary course of his money-lending transactions, but not during periods when the money was merely lying idle in the Bank, owing to altered conditions, without profit to himself. The learned Judge was satisfied that during the latter period (*i.e.* after the year 1933) "Letchuman Chettiar had deposited large sums of money in the Bank, and was therefore paying interest at the rate at which he received it from the Bank". I find it very difficult to believe that, in these circumstances, Letchuman would have chosen to retain the money after 1933 on such unprofitable terms if he was still obliged to pay "nadappu vattai" rates of interest without any corresponding commercial advantage to himself.

40

Letchuman was in close touch with Segappi in India throughout the relevant period, and it is significant that the *undial* transaction took place in consequence of an arrangement directly arrived at between them in India. If, therefore, the plaintiff's case is scrutinised with "great jealousy", we cannot reasonably rule out the possibility that the money was taken over by Letchuman in 1929 as the result of some agreement arrived at after a family conference in India, and not (as Vellasamy alleges) in

pursuance of a contract entered into in Colombo with a mere intermeddler. Again, although the original obligation (according to the debtor's own books) was to pay compound interest on the amount deposited, is it unreasonable to suppose that the terms were subsequently altered by mutual agreement within the family circle when conditions in the money market had so fundamentally changed in 1933? Letchuman did not lack the funds to return the money in 1933; nor was he under any proved necessity to retain it for his personal benefit. Segappi who is still alive was not called by the plaintiff to state what she knew concerning the terms
 10 of the transaction.

No. 15
 Judgment of
 the Supreme
 Court
 9-7-54
 —continued.

It is a matter of common knowledge that it was customary for Chettiar money-lenders to pay each other "nadappu vatti" rates of interest on short-term accommodation loans received for the purpose of profitable investments by the borrower. It seems very unlikely, on the other hand, that a prudent Chetty with business instincts characteristic of his race would bind himself to pay such onerous rates merely for the doubtful privilege of keeping the money in fixed deposit in a Bank.

The learned Judge was not prepared to accept the 4th defendant's version of the transaction. It would therefore be improper for us, sitting
 20 in appeal, to take a contrary view. Let it then be assumed that this particular appellant had succumbed to the temptation to give false evidence in resisting what he perhaps believed to be an unfounded claim. Nevertheless, the real issue for decision was whether, in the circumstances of this case, the testimony of Vellasamy (the only surviving party to the alleged oral contract) was sufficiently convincing to justify a decree against the heirs of a man who had died some years before the action was instituted.

I am very conscious of the limits which necessarily circumscribe the right of an appellate tribunal to disturb the conclusions arrived at by a Judge of first instance on questions of fact. In the present case, however,
 30 I am satisfied that it is our duty to set aside the judgment under appeal. The learned Judge had not reminded himself of the special vigilance which ought to be exercised whenever a court of law adjudicates upon belated claims against a dead man's estate. In addition, he paid insufficient attention to certain improbabilities inherent in Vellasamy's version. Finally, he has treated items of evidence as corroboration which were in truth corroborative only of matters which were not in controversy. Indeed, I take leave to doubt if Vellasamy's evidence would have brought conviction to the learned Judge's mind if he had himself approached the case with "great jealousy" as he should have done. I would allow the
 40 appeal and make order dismissing the plaintiff's action with costs in both courts. In the view which I have taken, it is unnecessary to decide the question of law raised by Mr. Thiagalingam.

(Sgd.) E. F. N. GRATIAEN,
Puisne Justice.

FERNANDO, A.J.

I entirely agree with my brother's conclusion that the learned Judge's finding of fact on the principal issue in this case cannot be sustained, and I desire to add some additional reasons in support of that conclusion.

Even if plaintiff's principal witness Vellasamy was making an honest attempt to give truthful evidence, his recollection of the circumstances of the alleged transaction with the deceased Letchuman was at least confused and unreliable. To judge from the instructions he gave to the plaintiff's proctor for the purpose of filing suit, the sum of Rs. 18,700/- was according to his recollection paid to Letchuman in 1930, but his subsequent evidence was that the sum was deposited in instalments in the latter months of 1929. Vellasamy's recollection of his meeting with Letchuman on the occasion of the alleged agreement was also vague. He admitted that Letchuman was in India at the time of Muttiah's death, but was unable to say when precisely Letchuman returned to Ceylon and had the alleged conversation concerning the deposit of the money. At one stage he even said that he did not see Letchuman in 1929, but saw him in India in 1930 because he himself was then in India. Again, his statements that he personally handed over money to Letchuman at the latter's place of business on several occasions is inconsistent with the entries in the book P12 (kept by Vellasamy) according to which the sums were delivered by one Somasundaram (also an employee of the deceased Muttiah).

In the circumstances of this case, where the evidence as against Letchuman needs to be tested with more than ordinary care, it was in my opinion unsafe in view of these and other contradictions, to rely completely on Vellasamy's account of the precise undertakings to which Letchuman bound himself by the alleged agreement.

The deposits of considerable sums of money were made without any writing and without any receipts, and, whatever may be the obligations which Letchuman undertook, it is clear that whoever made the deposit relied very much on Letchuman's sense of honour. It is unlikely that Letchuman would have entered into such a transaction with a mere servant, however trusted, of his father-in-law Muttiah. But even assuming that Letchuman did accept the deposit from Vellasamy without some prior arrangement with a member of the family, it is unreasonable to suppose that Vellasamy, who was not himself a member of Muttiah's family or of the Chetty community, would have actually discussed terms with an "elder" of the family who could be relied on to protect the interests of his infant step-brother. The obligations undertaken by Letchuman were probably best understood by himself and could not have been different in nature from those which attached to Muttiah by the award P9, namely, that "the sum must be enhanced profitably". The alteration of the interest rate was made at a time when payment at the

customary rates could no longer be regarded as practicable or reasonable. While conscious of the duty of a court to exercise special care of the interests of minors, I feel quite unable to hold that the alteration constituted a breach of Letchuman's obligation to the plaintiff.

No. 15
Judgment of
the Supreme
Court
9-7-54
—continued.

I agree that the appeal must be allowed.

(Sgd.) H. N. G. FERNANDO,
Acting Puisne Justice.

No. 16

Decree of the Supreme Court

No. 16
Decree of
the Supreme
Court
9-7-54

10 ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER OTHER
REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH
D.C. (F) 153-M/1952.
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

M. R. M. M. R. MURUGAPPA CHETTIAR of No. 62, Sea Street
in Colombo.....*Plaintiff-Respondent.*

against

MUTHTHAL ACHY, widow of Letchumanan Chettiar of A'Thekkur
Tirupatur, Ramnad District and others.....*Defendants-Appellants.*

Action No. 20429/M.

20 In the District Court of Colombo

This cause coming on for hearing and determination on the 23rd, 25th and 29th June and 9th day of July, 1954, and on this day, upon an appeal preferred by the Defendants-Appellants before the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice and the Hon. Mr. H. N. G. Fernando, Acting Puisne Justice, of this court, in the presence of Counsel for the appellant and respondent.

It is considered and adjudged that this appeal be and the same is hereby allowed and the plaintiff's action is dismissed with costs in both courts.

30 Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice at Colombo, the 19th day of July, in the year of our Lord One thousand Nine hundred and Fifty-four and of Our Reign the Third.

(Sgd.) W. G. WOUTERSZ,
Dy. Registrar, S. C.

**Application for Conditional Leave to Appeal to the
Privy Council**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

M. R. M. M. R. MURUGAPPA CHETTIAR of No. 62, Sea Street
in Colombo *Plaintiff-Appellant.*

S.C. No. 153/1952

D.C. (Final) Colombo

vs.

No. 20429/M.

1. MUTHTHAL ACHY, widow of Letchumanan Chettiar of
A'Thekkur, Tirupatur, Ramnad District ; 10
2. KANNAPPA CHETTIAR, son of Letchumanan Chettiar of
A'Thekkur, Ramnad District ;
3. KARUPPEN CHETTIAR, son of Letchumanan Chettiar of
A'Thekkur, Tirupatur, Ramnad District ;
4. ARUNACHALAM CHETTIAR, son of Letchumanan Chettiar
No. 91, New Moor Street in Colombo ;
5. ALAGAPPA CHETTIAR, son of Letchumanan Chettiar ;
6. NATCHAMMAI ACHY (widow of Karuppen Chettiar) and
daughter of Letchumanan Chettiar) both of A'Thekkur, 20
Tirupatur, Ramnad District in India.....*Defendants-Respondents.*

To :

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

On this 2nd day of August, 1954.

The humble petition of the plaintiff-appellant above-named appearing by C. M. Chinnaiya, his Proctor, sheweth as follows :—

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 9th day of July, 1954, the plaintiff-appellant is desirous of appealing therefrom. 30
2. The said judgment is a final judgment and the matter in dispute on the appeal amounts to more than Rupees Five thousand.
3. Notice of this intended application for leave to appeal has been given by the plaintiff-appellant in the manner following :—
 - (a) The plaintiff-appellant has on 19-7-54 sent by post to the defendants-respondents severally a notice of which a copy marked ' A ' is attached to the affidavit accompanying this petition ;
 - (b) The plaintiff-appellant has on 19-7-54 sent to the defendants-respondents severally telegrams, a copy of which marked A2 is attached to the affidavit accompanying this petition ; 40

(c) The plaintiff-appellant has on 19-7-54 sent by post to Mr. S. Somasundaram, who is the Proctor on record for the respondents a notice, a copy of which is marked A1 referred to above.

No. 17
Application
for
Conditional
Leave to
Appeal to
the Privy
Council
2-8-54
—continued.

4. On the appellant's application, Your Lordships' Court on 19-7-54 ordered substituted service of notice of this application to be given to the respondents by :

(a) serving the notice of the intended application on Mr. S. Somasundaram, who is the Proctor on record for the respondents ;

10 (b) publishing the said notice in the Tamil Daily Newspaper, namely, "The Virakesari".

5. The appellant has complied with the said order of Your Lordships' Court, by

(a) sending on 19-7-54 the said notice to Mr. S. Somasundaram the Proctor on record for the respondents, a copy of the said notice is referred to above as A1 ;

(b) publishing on 21-7-54 the said notice of this application in the Tamil Daily Newspaper ' Virakesari ' a copy of which marked A3 along with a translation marked A4 is annexed to the affidavit accompanying this petition.

20 6. All the said notices and substituted notice have been served as provided by law within 14 days of the judgment of Your Lordships' Court.

Wherefore the appellant prays for conditional leave to appeal against the said judgment of this court dated 9th July, 1954, to Her Majesty the Queen in Council.

(Sgd.) C. M. CHINNAIYA,
Proctor for Plaintiff-Appellant.

No. 18

Decree Granting Conditional Leave to Appeal to the Privy Council

No. 18
Decree
Granting
Conditional
Leave to
Appeal to
the Privy
Council
23-8-54.

30 ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER OTHER REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

M. R. M. M. R. MURUGAPPA CHETTIAR of No. 62, Sea Street in ColomboAppellant (Plaintiff-Respondent).

against

1. MUTHTHAL ACHY, widow of Letchumanan Chettiar of A'Thekkur, Tirupatur, Ramnad District ;
2. KANNAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur, Ramnad District ;

No. 18
Decree
Granting
Conditional
Leave to
Appeal to
the Privy
Council
28-8-54
—continued.

3. KARUPPAN CHETTIAR, son of Letchumanan Chettiar of A'Thekkur, Tirupatur, Ramnad District ;
4. ARUNACHALAM CHETTIAR, son of Letchumanan Chettiar of No. 91, New Moor Street in Colombo ;
5. ALAGAPPA CHETTIAR, son of Letchumanan Chettiar ;
6. NATCHAMMAI ACHY (widow of Karuppen Chettiar) and daughter of Letchumanan Chettiar, both of A'Thekkur, Tirupatur, Ramnad District in India.

Action No. 20429/M (S.C. 153/'52).

District Court of Colombo.

In the matter of an application dated 2nd August, 1954, for conditional leave to appeal to her Majesty the Queen in Council by plaintiff-appellant against the decree dated 9th July, 1954.

This matter coming on for hearing and determination on the 23rd day of August, 1954, before the Hon. Mr. H. W. R. Weerasooriya, Puisne Justice and the Hon. Mr. K. D. de Silva, Puisne Justice of this Court, in the presence of Counsel for the petitioner.

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. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice at Colombo, the 26th day of August, in the year of our Lord One thousand Nine hundred and Fifty-four and of Our Reign the Third.

(Sgd.) W. G. WOUTERSZ,
Dy. Registrar, S. C.

**Application for Final Leave to Appeal to the
Privy Council**

No. 19
Application
for Final
Leave to
Appeal to
the Privy
Council
14-9-54

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for final leave to appeal to the Privy Council.

M. R. M. M. R. MURUGAPPA CHETTIAR of No. 62, Sea Street,
Colombo *Plaintiff-Appellant.*

S.C. No. 153/1952
10 D.C. (Final) Colombo *vs.*
No. 20429/M.

1. MUTHTHAL ACHY, widow of Letchumanan Chettiar of A'Thekkur, Tirupatur, Ramnad District ;
2. KANNAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur, Ramnad District ;
3. KARUPPAN CHETTIAR, son of Letchumanan Chettiar of A'Thekkur, Tirupatur, Ramnad District ;
4. ARUNACHALAM CHETTIAR, son of Letchumanan Chettiar of No. 91, New Moor Street in Colombo ;
- 20 5. ALAGAPPA CHETTIAR, son of Letchumanan Chettiar ;
6. NATCHAMMAI ACHY, widow of Karuppan Chettiar (and daughter of Letchumanan Chettiar) both of A'Thekkur, Ramnad District in India *Defendants-Respondents.*

To :

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

On this 14th day of September, 1954.

The humble petition of the plaintiff-appellant above-named appearing by Mr. C. M. Chinnaiya, his Proctor, states as follows :—

30 1. That the appellant on the 23rd day of August, 1954, obtained conditional leave from this Honourable Court to appeal to Her Majesty The Queen in Council, against the judgment of this Court, pronounced on the 9th day of July, 1954.

2. That the appellant has, in compliance with the usual conditions on which such leave was granted, given security in a sum of Rupees Three

No. 19
Application
for Final
Leave to
Appeal to
the Privy
Council
14-9-54
—continued.

thousand (Rs. 3,000/-) for securing the payment of any loss and all costs of appeal of the respondents which may be ordered either by this court or by Her Majesty in Council. The appellant has deposited at the Treasury the said sum of Rs. 3,000/- and has hypothecated the said sum of Rs. 3,000/- to and with the Registrar of the Supreme Court by Bond dated 13th September, 1954.

The appellant has also further deposited at the Treasury a sum of Rupees Three hundred (Rs. 300/-) as required by Rule 8 (a) of the Appellate Procedure (Privy Council) Order 1921, for making typing and certifying proceedings, pleadings and documents in this case, to be furnished to Her Majesty in Council.

3. The notice of final leave to appeal to Her Majesty in Council, was posted to the respondents, together with a copy of this petition by ordinary and registered post, and the registered postal articles receipt marked " A " is filed herewith.

The said notice together with a copy of this petition has also been sent to the Proctor on record for the respondents. The registered postal article receipt marked ' G ' is herewith filed.

Wherefore the appellant prays that Your Lordships' Court be pleased to give him final leave to appeal to Her Majesty the Queen in Council, and 20 for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) C. M. CHINNAIYA,
Proctor for Plaintiff-Appellant.

No. 20
Decree
Granting
Final Leave
to Appeal to
the Privy
Council
13-10-54

No. 20

Decree Granting Final Leave to Appeal to the Privy Council

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER OTHER
REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON 30

M. R. M. M. R. MURUGAPPA CHETTIAR of No. 62, Sea Street
in Colombo*Appellant (Plaintiff-Respondent).*

against

1. MUTHTHAL ACHY, widow of Letchumanan Chettiar of A'Thekkur, Tirupatur, Ramnad District ;
2. KANNAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur, Ramnad District ;
3. KARUPPAN CHETTIAR, son of Letchumanan Chettiar of A'Thekkur, Tirupatur, Ramnad District ;

4. ARUNACHALAM CHETTIAR, son of Letchumanan Chettiar of No. 91, New Moor Street in Colombo ;
5. ALAGAPPA CHETTIAR, son of Letchumanan Chettiar ;
6. NATCHAMMAI ACHY (widow of Karuppan Chettiar) and daughter of Letchumanan Chettiar, both of A'Thekkur, Tirupatur, Ramnad District in India.

No. 20
Decree
Granting
Final Leave
to Appeal to
the Privy
Council
13-10-54
--continued.

Action No. 20429/M (S.C. 153/'52).

District Court of Colombo.

In the matter of an application by the plaintiff-appellant above-named dated 14th September, 1954, for final leave to appeal to Her
10 Majesty the Queen in Council against the decree of this court dated 9th July, 1954.

This matter coming on for hearing and determination on the 13th day of October, 1954, before the Hon. Mr. M. F. S. Pulle, Q.C., Puisne Justice and the Hon. Mr. H. N. G. Fernando, Acting Puisne Justice of this Court, in the presence of Counsel for the petitioner.

The applicant having complied with the conditions imposed on him by the order of this Court dated 23rd August, 1954, granting conditional leave to appeal.

It is considered and adjudged that the applicant's application for
20 final leave to appeal to Her Majesty the Queen in Council be and the same is hereby allowed.

Witness the Hon. Mr. M. F. S. Pulle, Q.C., Puisne Justice at Colombo, the 1st day of November, in the year of our Lord One thousand Nine hundred and Fifty-four and of Our Reign the Third.

(Sgd.) W. G. WOUTERSZ,
Dy. Registrar, S. C.

PART II
EXHIBITS

P9

Arbitrators' Award

Translation

Rs. 4

INDIA

INDIA

TWO RUPEES

FOUR RUPEES

TWO RUPEES

The 11th day of Avani in the year Vipa.

The decision arrived at by us four arbitrators (1) Pana Lana Soona 10 Pana Lana Palaniappa Chettiar of Netkuppai, Tirupatur Taluk, Ramnad District, Julla ; (2) Koon Mana Ravanna Mana Avanna Andiappa Chettiar of Vekupatti, Ponnamaravathy Keelavaddam Tirumayam Taluk in Pudukottai State ; (3) Koon Pana Lana Soona Pana Lana Suppramaniam Chettiar of Netkypai, Tirupatur Taluk in Ramnad, Jilla ; and (4) Leyana Pana Kana Roona Karuppen Chettiar of the aforesaid place in the matter of division of four shares to the four share-holders, namely : (1) Nadarajan Chettiar ; (2) Thiagarajan Chettiar ; (3) Manickam Chettiar (minor) and (4) Murugappa Chettiar (minor). We have in our possession the terms of reference to arbitrate executed on a three-fourth rupee docu-20 ment on the 3rd day of Avani in the year Vipa by the three persons, namely : (1) Nadarajan Chettiar ; (2) Thiagarajan Chettiar, children of Meenachchi, second wife of Muttu Moona Rooma Muththiah Chettiar of Ketkupai in Tirupatur Taluk, Ramnad, Jilla ; and (3) Muttiah Chettiar as guardian of the minor Manickam Chettiar of the age of about 6 years son of the said Meenadchi and of the said Muttiah Chettiar's third wife Segappi alias Meenadchi's minor son Murugappa Chettiar of about 10 months old and after hearing their oral statements.

1. Nadarajen Chettiar is to be paid Rupees Seven thousand Two hundred and Fifty (Rs. 7,250/-) being the one-third share thereof out of 30 his mother's money Rs. 21,750/-.

2. Thiagarajen Chettiar is to be paid Rupees Seven thousand Three hundred and Fifty for two purposes to wit : Rs. 7,250/- as being the one-third share thereof out of his mother's money Rs. 21,750/- and Rs. 100/- for ornaments to the eldest child similar to that of the first share-holder.

3. For the minor Manickam Chettiar—he is to be paid Rupees Thirteen thousand One hundred and Fifteen (Rs. 13,115/-) to the order of three persons, namely : (1) Muttiah Chettiar father of this minor ; (2)

Nadarajen Chettiar, elder brother of this minor ; and (3) Thiagarajen Chettiar second elder brother of this minor for five purposes, to wit : Rs. 7,250/- as being the one-third share thereof out of his mother's money Rs. 21,750/-, Rs. 250/- for festivals similar to that of the 1st and 2nd share-holders Rs. 525/- for the Karthigai auspicious day, Rs. 5,000/- as wedding expenses Diamond Thali and for ornamental presents and Rs. 90/- for the eldest child's ornaments.

Exhibits
P 9
Arbitrators'
Award
26-8-28
—continued.

3. For the minor Murugappa Chettiar—Rupees Twenty-one thousand Eight hundred (Rs. 21,800/-) are to be paid to the said Muttiah Chettiar, father of this minor similar to that of the 1st, 2nd and 3rd share-holders for nine purposes to wit : Rs. 175/- for festivals by this minor, Rs. 1,000/- for the bangle wearing ceremony Rs. 400/- for the Karthigai auspicious day, Rs. 3,500/- as wedding expenses, diamond thali and ornamental presents, Rs. 75/- for eldest child's ornaments, Rs. 1,200/- for the bangle wearing ceremony of this minor's eldest sister Valliammal, Rs. 450/- for the Thiruvathirai day ceremony, Rs. 13,000/- for wedding and Rs. 2,000/- for meals and clothing after the death of this minor's father Muttiah Chettiar for this minor's mother Segappi *alias* Meenadchi till her life time and for the last days of her livelihood.

20 5. The four share-holder's father Muttiah Chettiar is to be paid Rupees Thirty-seven thousand Five hundred (Rs. 37,500/-) for three purposes to wit : Rs. 17,500/- as presentation to the first and second wives' daughters, Rs. 10,000/- for their performance of charity and Rs. 10,000/- for his meals, clothings, pilgrimage and expenses of his last days of his life. He is to receive the aforesaid sum and deposit as " credit of Muttu Moona Roona Moona of Netkuppai payable to the order of the said Muttiah Chettiar " and to draw for the above expenses. The balance left after his life time is to be deposited and signature letter obtained payable to the order of the male major children of the second and third wives and
80 after the life time of the said Muttiah Chettiar after deducting the last days expenses the balance is to be held by those who are majors of the four share-holders and divided into four shares after the minors attaining majority.

6. By way of functional presents to the said Muttiah Chettiar's sisters and to the first wife's daughters, Rupees Six thousand Five hundred (Rs. 6,500/-) are to be paid to the four share-holders father Muttiah Chettiar, Muttiah Chettiar is to receive this sum as " credit of Netkuppai Muttu Moona Roona Moona sisters and first wife's daughter's functional presents fund payable to the order of Muttiah Chettiar." After his life-
40 time the balance left is to be deposited and obtained signature letter payable to the order of those male children of the second and third wives who are majors and who are to perform the functions. The balance left after their life time is to be held payable to the order of those male children of the second and third wives who are majors and who are to continue performing the said functions.

7. By way of functional presents to the second wife's daughters of the said Muttiah Chettiar, Rs. 16,000/- is to be paid to him the said Muttiah

Exhibits
 P 9
 Arbitrators'
 Award
 26-8-28
 —continued.

Chettiar, father of the four share-holders. The said Muttiah Chettiar is to receive the said sum as "Credit of Netkuppai Muttu Moona Runa Moona's second wife's daughter's functional fund payable to the order of the said Muttiah Chettiar." After his life-time the balance left to be deposited and letter obtained payable to the order of the male children of the said wife who are majors and who are to perform the functions during their life-time. The amount left as balance after their life-time is to be held payable to the order of the male children of the said wife who are majors and who are to continue performing the functions.

8. By way of functional presents to Valliammai, daughter of the 10
 third wife of Muttiah Chettiar Rupees Two thousand Five hundred (Rs. 2,500/-) are to be paid to him the said Muttiah Chettiar, father of the four share-holders. He is to receive the said sum as "Credit of Netkuppai Muttu Moona Roona Moona's third wife's daughter Valliammal functional presents fund payable to the order of the said Muttiah Chettiar." The balance amount left after his life-time is to be deposited and letter obtained payable to the order of Murugappa Chettiar son of the above said wife who is to perform the functions till his life-time. The balance amount left after his life-time is to be held payable to the order of Murugappa Chettiar son of the above said wife who is to perform the functions. 20

9. That from the income of the old building, new building, car shed, compound, estates, jewellerys, silver-wares, investments and dues in our places, and in the business of the firm of Moona Ravanna Mana Moona Moona in Colombo and other movable and immovable properties and each of the four share-holders' father Muttiah Chettiar expenses required for the new building are to be deducted and from the remainder the amounts shown in those eight paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 are to be deducted and the balance then left with the aforesaid properties are to be divided into four parts among the four share-holders.

10. The properties and cash which the third share-holder minor 30
 Manickam Chettiar is to get are to be held to the order of three persons, namely: (1) his father Muttiah Chettiar, (2) his elder brother Nadarajen Chettiar, and (3) his second elder brother Thiagarajen Chettiar and which sum is to be enhanced profitably and paid to him after attainment of majority.

11. The properties and cash which the fourth share-holder minor Murugappa Chettiar is to get are to be held to the order of his father Muttiah Chettiar and which sum to be enhanced profitably and paid to him after his attainment of majority.

12. Income tax and labour tax payable by the four share-holders' 40
 father Muttu Moona Roona Muttiah Chettiar are to be paid by the four share-holders till such time as they have divided all in the proportion of four shares till those four share-holders have divided among themselves into four parts.

13. The taxes payable to Muttu Moona Roona Muttiah Chettiar, father of the four share-holders. The rates or taxes for buildings and

properties and other taxes are to be paid by the four share-holders in the proportion of four shares till the four share-holders have divided among themselves into four parts.

Exhibits
P 9
Arbitrators'
Award
26-8-28
—continued.

14. Out of the gold and silver jewels and brilliant ornaments the jewels mentioned in the list which Muttu Moona Roona Muttiah Chettiar desires to provide for his third wife Meenadchi are to be divided into four parts after the life-time of the said Muttu Moona Roona Muttiah Chettiar.

15. The sum of Rs. 11,070/- drawn by Muttu Moona Moona Nadarajan Chettiar in native place and lying to his debit is to be debited to the said Nadarajan Chettiar together with new current rate of interest prevailing in Colombo.

16. After the decision of the arbitrators the reference of arbitration is given to Nadarajan Chettiar referred to in the first paragraph.

17. After the life-time of Muttu Moona Roona Muttiah Chettiar, his third wife Segappi *alias* Meenadchi is to deliver over to Kalithuruwa (golden necklace) to her daughter Valliammai.

The decision setting out the division has been written by one and the same person bearing the same tenor and given to each of the four share-holders.

19. The sum of Rs. 11,070/- mentioned in paragraph 15 which together with new current rate of interest from the date of said Hundy and from the date of each debit entered in the account are to be deducted from the share of the amount due to Muttu Moona Roona Moona Nadarajan.

Copy of the referendum is written and given to four persons.

SHARE-HOLDERS :

(Sgd.) Muttu M. R. M. Nadarajan Chetty (in Tamil).
(Sgd.) Muttu M. R. M. Thiagarajen Chetty (in Tamil).
(Sgd.) Muttiah Chetty, Guardian of the minor Muttu
M. R. M. Manickam Chetty (in Tamil).
(Sgd.) Muttiah Chetty, Guardian of the minor Muttu
M. R. M. Murugappa Chetty (in Tamil).

ARBITRATORS :

(Sgd.) P. L. S. P. L. Palaniappa Chetty (in Tamil).
(Sgd.) K. M. R. M. A. Andiappa Chetty (in Tamil).
(Sgd.) K. P. L. S. P. L. Suppramaniam Chetty (in Tamil).
(Sgd.) L. P. K. R. Karuppen Chetty.

This is drawn and witnessed by

T. L. RAMURU IYER,

Translated by :
(Sgd.) Illegibly.

Sworn Translator
D.C. Colombo.
12th April, 1948.

Certificate of Registration of Business Name

TRUE COPY

(Sgd.) Illegibly.
Asst. Regr. of Business Names, W.P.
Colombo, 4th May, 1951.

BUSINESS NAMES ORDINANCE (Cap. 120)

CERTIFICATE OF REGISTRATION OF AN INDIVIDUAL

Certificate No. 7375

I hereby certify that the following statement, made in pursuance of 10 the Business Names Ordinance (Cap. 120) was registered in the office of the Registrar of Business Names for the Western Province, under number 7375 on the fifth day of June, 1929 :—

- | | | |
|--|---|----|
| 1. The Business Name : | Moona Rawanna Mana Moona
Moona Roona
“ M. R. M. M. M. R.” | |
| 2. The general nature of the
business : | Money lending | |
| 3. The principal place of the
business : | 54, Sea Street, Colombo | 20 |
| 4. The date of the commencement
of the business, if the busi-
ness was commenced after
7th November, 1918 : | 22nd May, 1929 | |
| 5. Any other business name or
names under which the busi-
ness is carried on : | Moona Rawanna Mana Moona
Mawanna and Moona Rawanna
Mana Moona Moona | |
| 6. The present name of the indi-
vidual : | Muttiah Chetty, son of Murugappa
Chetty | |
| 7. Any former name of the indi-
vidual : | — | 30 |
| 8. The nationality of the indi-
vidual : | British | |
| 9. The nationality of origin of the
individual, if not the same as
the present nationality : | — | |

10. The usual residence of the individual : Neyikuppai, Ramnad District, South India
11. The other business occupation (if any) of the individual : —

Exhibits
D 4
Certificate of
Registration
of Business
Name
6-6-29
—continued.

Office of the Registrar of
Business Names for the
Western Province.

Dated at Colombo this 6th June, 1929.

10

(Sgd.) G. FURSE ROBERTS,
*Registrar of Business Names for the
Western Province.*

D2

Certificate of Death of M. C. Muthaiya Chetty

Appln. No. 1649.

CEYLON

No. 47130.

CERTIFICATE OF DEATH

Western Province

Colombo District
No. 4 Division.

- 20 1. Date and place of death : 28th July, 1929,
54, Sea Street, St. Paul's Ward
2. Name in full : Murugappa Chetty Muthaiya Chetty
3. Sex and race : Male—Indian Tamil
4. Age : 63, years
5. Rank and profession : Money lender
6. Names of parents : F. Murugappa Chetty
M. Walliamma
7. Cause of death and place of burial or cremation : Broncho Pneumonia
Dr. M. M. Kumaraswamy
- 30 8. Name and residence of informant and in what capacity he given information : Pandianpillai Wellasamypillai, 54,
Sea Street, person present at death
9. Informant's Signature : (Sgd.) in Tamil
10. When registered : 28th July, 1929
11. Signature of Registrar : (Sgd.) D. P. Kitulgoda

I hereby certify that the foregoing is a true copy of a death registration entry filed of record.

Colombo, 9th May, 1951.

(Sgd.)
Assistant Registrar-General.

D 2
Certificate of
Death of
M. C.
Muthaiya
Chetty
28-7-29

Exhibits
 P 11
 Receipt
 9-1-30

P11

Receipt

Translation

This 9th day of January, 1930, THE RELEASE DOCUMENT written and granted by M. RM. M. M. N. Nadarajen Chettiar in favour of P. Vellasamy Pillai.

Witnesseth :—

Having received from you the key of the Pettagam belonging to our M. RM. M. M. R. firm together with the documents as enumerated in the list and having taken charge of the accounts and having looked into the 10 account of your salary goods, etc. you are discharged.

And should anyone file any suit or pleadings against you regarding M. RM. M. M. R. firm I agree and undertake to take charge of the court expenses incurred on such cases.

Signed over six cent stamp.

(Sgd.) M. RM. M. M. R. Nadarajen Chettiar.
 9-1-30.

P 11 A
 Credits and
 Debits List
 9-1-30

P11A

Credits and Debits List

					CREDITS (Assets)		
					Rs.	cts.	20
Credit	Sri Muthuvinayaga	...	...	...	0	75	
„	Sri Sunderaseyer	...	...	...	0	75	
„	Sri Kathirvelayutha Swamy	...	...	...	0	75	
„	Karuppiah	...	...	...	0	75	
„	Sri Alathikettaiyanar	...	...	...	0	75	
„	Profits	...	...	...	12,714	42	
„	Shop (Firm)	...	...	...	401	00	
„	Home (India)	...	...	...	450	00	
„	M. R. M.	...	...	...	9,259	11 30	
„	M. Murugappa Chetty	...	...	...	181,962	00	
„	SP. Rasu	...	...	...	40	00	
„	RM. M.	...	...	...	120	00	
„	MT. K. S. L. Visalakshi	...	...	...	70	00	
„	S. P. M. Keliyanai	...	...	...	165	00	
„	M. R. K. N. L. Sinnekutty	...	...	...	50	00	
„	M. RM. M. M. N.	...	...	...	400	00	
				Total	205,634	98	

DEBITS

		Rs. cts.		Exhibits
				P 11 A
Debit	M. R.M. N. M. ...	...	399 00	Credits and
	„ K. M. Meeransaibo ...	...	6,000 00	Debits List
	„ A. C. Abdul Hameed and Majeed ...	...	650 00	9-1-30
	„ A. C. Mohideen Bawa & Co. ...	...	250 00	—continued.
	„ W. M. A. Majeed ...	...	5,000 00	
	„ A. P. H. Careem & Co. ...	...	5,000 00	
	„ Purchase of goods ...	...	144 60	
	„ M. Samsudeen Ahamed of Galle ...	...	1,060 00	
10	„ H. L. Roche & Bros. ...	...	8,000 00	
	„ M. R. M's second bed daughter ...	...	169 00	
	„ M. R. M's first bed daughter ...	...	35 00	
	„ M. R.M. M. M. common expenses account ...	...	1,057 71	
	„ P. L. S. P. L. ...	...	39,400 00	
	„ M. R.M. M. S. ...	...	38,800 00	
	„ N. M. A. R. ...	...	16,500 00	
	„ M. A. L. M. S. ...	...	5,000 00	
	„ A. M. R. M. ...	...	11,000 00	
	„ M. R. Somasundaram ...	...	465 25	
20	„ K. R. KN. L. ...	...	18,700 00	
	„ M. R. P. T. M. ...	...	22,100 00	
	„ KR. KN. R. ...	...	11,050 00	
	„ Muttiah Chettiar of Poolankurichchi ...	...	143 63	
	„ J. R. Rayan ...	...	5,366 70	
	„ Ana Ravanna ...	...	6,065 00	
	„ W. M. Saleem ...	...	311 00	
	„ S. Packir Tamby & Co. ...	...	322 00	
	„ Interest expenses ...	...	1,146 30	
	„ Meals expenses ...	...	394 44	
		Total ...	205,539 63	
30	Balance in Day Book on 9-1-30 ...	...	95 35	
		Total ...	205,634 98	

	Lease Bond for 1,250/- for No. 73 Sea Beach Road of Samsudeen		
	Ahamed of Galle ...	...	1
	J. L. Roche Bros. on demand for 6,000/- and another for 12,000/-	...	2
	W. M. A. Majeed endorsed on demand note for 5,000/-	...	1
	K. M. Meeran Saibo on demand note for 10,000/-	...	1
	A. C. Sahul Hameed and Abdul Majeed on demand for 800/-	...	1
	A. C. Mohideen Bawa & Co. on demand note for 400/-	...	1
40	S. P. Rayan on demand for 4,000/- bank note for 1,500/- (2) 363/70 (1)	...	4
	Ana Ravanna bank notes for 250/-, 500/-, 375/-, 425/-, 250/-, 250/-,		
	1,000/-, 250/-, 500/-, 500/-, 250/-, 500/-, 250/- ...	...	15

Exhibits	Melapatty Periyajadai guarantee letter for 10,000/-	...	...	...	...	...	1
P 11 A	W. M. Saleem bank notes for 125/-, 180/-, 200/-, 125/-	...	...	...	...	...	3
Credits and Debits List 9-1-30	S. Pakir Tamby & Co. bank notes for 200/-, 150/-, 150/-, 200/-, 150/-, 150/-, 150/-, 250/-	...	...	...	...	...	8
—continued.	M. R. M. M. R. register form	...	...	...	...	...	1
	M. R. M. M. M. do.	...	...	...	...	...	1
	Undials for 21,000/-, 21,000/- and 20,500/- written and granted by MR. M. R. M. By MT. M. R. M. Nadarajen Chettiar and Thiagarajen Chettiar and dated 2nd Karthigai Vipe Varusha)	...	...	...	...	...	10
	and on the said date in favour of M. R. M. Manikkam Chettiar by Nana and Theena for 53,000/-, Rs. 55,450/- Veeramkal Veeram 53,000/- 4,315/-, 4,400/-, 4,400/- undials	...	...	...	...	...	6
	Day Book 1 ledgers, 2 balance current book with home account, 1 expenses account book, 1 note-balance book 1 or in all	...	...	...	...	...	7
	Cash box	...	...	...	...	...	1
	Iron box	...	...	...	...	...	1
	Almirah	...	...	...	...	...	1
	Table	...	...	...	...	...	1
	Mats	...	...	...	...	...	2

In all 63 pieces documents, balance, etc. on above have given in charge to 20 M. R. M. M. N. Nadarasan Chettiar.

D 1
Undial
January
1940

D1

Undial

Translation

SIVAMAYAM

The 9th day of Thai in the year Piramathy.
Credit. VR. KR. of Kandavarayanpatti.
Debit. M. R. M. M. MR. of Netkuppai.

The amount due and payable to you together with interest to this date is Rs. 4,643·13·3 and have borrowed and received this day currency 30 value of Rs. 356·2·9 for household expenses. The two items aggregate to Rs. 5,000/-.

KR. KN. L. Nadarajen Chettiar shall pay in Colombo this sum of Rupees Five thousand together with interest from this date at the new

current rate prevailing in Colombo to bearer on the order of the aforesaid Karuppen Chettiar and having credited herein to have it debited against our account.

Exhibits
D 1
Undial
January
1940
—continued.

India
One Anna
Revenue

× This is the mark of M. R. M. MR.
Segappi Achi *alias* Meenadchi Achi.
— Left thumb impression.

10 Witness : (Sgd.) N. S. MR. Sivalingam Chettiar,
Kandavarayanpatti.

This is drawn and witnessed by SP. Velautham Servai of Kandavarayanpatti of affixing this mark.

ENDORSEMENT :

(Sgd.) VR. KR. Karuppen Chetty.

The 16th day of Thai in the year Piramathy.

The amount mentioned in this undial is Rs. 5,000/- and interest for 17 days is Rs. 10/18, aggregating to Rs. 5,010·18. We have received this sum of Rupees Five thousand Ten and Cents Eighteen by cheque drawn on the Imperial Bank bearing No. BA 41774.

(Sgd.) VR. KR. L. VELLASAMPILLAI.

Translated by :

(Sgd.) M. Veluppillai,
S.T., D.C. Colombo,
9th December, 1949.

P1

**Journal Entries, Affidavits, etc. in D.C.
Colombo No. 3836/G**

P 1
Journal
Entries,
Affidavits
etc. in D. C.
Colombo
No. 3836/G.
19-2-42 to
17-11-47

IN THE DISTRICT COURT OF COLOMBO

30 In the matter of the estate of M. R. M. MURUGAPPA CHETTIAR (Minor).

Guardian No. 3836.

M. R. M. M. S. SOMASUNDARAM CHETTIAR of Sea Street,
Colombo*Petitioner.*

(1) 19- 2-42. Mr. K. T. Chittampalam, Proctor, files proxy (1a), petition (1b) affidavit (1c) and order of Supreme Court (1d) and for reasons stated in the petition he moves that the petitioner above-named be appointed curator of the property of the minor.

Respts ?

40

Issue D/O.

(Intd.) Illegible.

D. J.

Exhibits
P 1
Journal
Entries,
Affidavits
etc. in D. C.
Colombo
No. 3886/G.
19-2-42 to
17-10-47
—continued.

- (2) 23- 2-42. Deposit note No. 37083 for Rs. 63,905·04 issued to M. R. M. M. S. Sunderam Chettiar being amount deposited on behalf of the minor with “ M. R. M. M. S.” firm.

Respondents not noticed.

Let this matter be mentioned in Court.

(Intd.) J. J.,
D. J.

- (3) 4- 3-42. K.R. No. 24043 of 24-2-42 for Rs. 63,905·04 filed.
(4) 23- 3-42. With reference to the sum of Rs. 22,100/- and interest lying to the credit of the minor with M. R. P. L. M. Muthu Ramen Chettiar of 36, Sea Street, Colombo, being moneys deposited to the credit of the minor between the 3rd and 26th days of November, 1929, Mr. S. Somasundaram, Proctor, files his appointment for the said M. R. P. L. M. Muthuramen Chettiar (4a) and moves for an order to deposit to the credit of this case sum of Rs. 39,395·77, being principal and interest calculated up to the date of motion (23-3-42 after deducting the expenses incurred in bringing same to the credit to this case as shown in memo attached to motion. 20

He also files certified copy of the Power of Attorney (4b) Allowd.

(Intd. J. J.,
D. J.

- (5) 23- 3-42. Deposit note No. 29138 for Rs. 38,395·77 issued—*vide* (4).
(6) 24- 4-42. K.R. No. 26798 of 24-3-42 for Rs. 38,395·77 filed.
(7) 2- 4-43. Proctor for M. R. M. M. S. Sundaram Chettiar moves for an order to deposit Rs. 267·67 to the credit of this case.

Issue deposit order.

(Intd.) J. J., 30
A. D. J.

- (8) 6- 4-43. Mr. S. Somasundaram, Proctor, files his appointment for K. R. K. N. L. Letchumanan Chettiar (8a) and moves for an order to deposit Rs. 20,488·18 being principal and interest due to the minor in respect of moneys lying to his credit with the said K. R. K. N. L. Letchumanan Chettiar less expenses incurred in depositing the amount to the credit of the said case.

Issue deposit order.

(Intd.) J. J., 40
A. D. J.

- (9) 7- 4-43. Deposit note No. 38255 for Rs. 267·67 issued to M. R. M. M. S. Sundaram Chettiar—*vide* (7). Exhibits
P 1
- (10) 7- 4-43. Deposit note No. 38256 for Rs. 20,488·18 issued to K. R. K. N. L. Letchumanan Chettiar—*vide* (8). Journal
Entries,
Affidavits
etc. in D. C.
Colombo
No. 3836/G.
19-2-42 to
17-10-47
—*continued*.
- (11) 28- 4-43. K.R. T/4 No. 28872 for Rs. 20,488·18 filed.
- (12) 31- 5-43. Mr. K. T. Chittampalam written to *re* deposit note at (9).
Call 1/7.
- (13) 28- 6-43. K.R. No. 38183 of 21-6-43 for Rs. 267·67 filed.
- 10 (14) 30- 6-43. No curator has been appointed in this case as asked for
in the petition.
Vide J.E. of 23-2-42.
Submitted.

(Sgd.) K. S. A. J. FERNANDO.
30/6.

Write to proctor for 29/7.

(Intd.) J. J.,
A. D. J.

- (15) 5- 7-43. Mr. K. T. Chittampalam, Proctor, written to.
- 20 (16) 29- 7-43. Case called.
Notice proctor 2/9.

(Intd.) J. J.,
A. D. J.

- (17) 3- 8-43. Notice issued.
- (18) 6- 8-43. The Commissioner of Income Tax moves for an O/P for Rs. 368·28 to cover tax due at source under section 44 of I.T.O. on loan board interest of Rs. 2,046/- credited to Mr. M. R. M. M. R. Murugappa.
Refer to proctor for report by 19/8.

30 (Intd.) J. J.,
A. D. J.

- (18a) 10- 8-43. Lr. at (18) referred to Mr. K. T. Chittampalam, Proctor.
- (19) 19- 8-43. Mr. K. T. Chittampalam for curator. Report on 18 letter from Commissioner, Income Tax.
Write to proctor for 23/9.

(Intd.) J. J.,
A. D. J.

- (20) 19- 8-43. Attention of proctor invited.

- Exhibits (21) 26- 8-43. *Vide* post card from C.I.T. inviting attention to (18) and interim reply thereto (21a).
- P 1
Journal
Entries,
Affidavits
etc. in D. C.
Colombo
No. 3836/G.
19-2-42 to
17-10-47
—continued.
- (22) 2- 9-43. Mr. K. T. Chittampalam for petitioner.
Notice on proctor for petitioner served.
He is present and so moving.
Let Secretary be appointed curator.
Steps to appoint a curator.
- (Intd.) J. J.,
A. D. J.
- (23) 22- 9-43. Mr. K. T. Chittampalam, Proctor, files his appointment 10 for the Secretary, District Court, who was appointed curator of the estate of the minor (23a).
For reasons stated in motion, he moves that security be fixed at Rs. 1,000/-.
Allowed personal bond in Rs. 1,000/-.
- (Intd.)
A. D. J.
- (24) 23- 9-43. Report (18) letter from C.I.T.
Notice proctor for 14-10-43.
- (Intd.) S. J. C. S., 20
D. J.
- (25) 19- 9-43. Notice issued.
- (26) 14-10-43. Notice on proctor for curator served.
He is present.
Report on letter (18).
Mr. Chittampalam says he has no objection to money being to Commissioner of Income Tax.
Issue O.P.
- (Intd.) S. J. C. S., 30
D. J.
- (27) 16-10-43. Order of payment 70583 for Rs. 368·28 issued in favour of the Commissioner of Income Tax.
(Intd.) C. E.,
Secy.
- (Intd.) S. J. C. S.,
A. D. J.

- (28) 1-11-43. Commissioner of Income Tax calls for O.P. for Rs. 368·28 being tax due at source in terms of section 44 (1) of the I.T.O. on Loan Board interest of Rs. 2,046/- credited to Mr. M. M. M. R. Murugappa Chettiar for $\frac{1}{2}$ year to 30-6-43. Rate of tax is 18%. Inform Commissioner of Income Tax that the order of payment for Rs. 368·28 posted on 18-10-43.
- Exhibits
P 1
Journal
Entries,
Affidavits
etc. in D. C.
Colombo
No. 3836/G.
19-2-42 to
17-10-47
—continued
- 10 (Intd.) S. J. C. S.,
A. D. J.
- (29) 3-11-43. Commissioner of Income Tax so informed.
- (30) 11-11-43. Commissioner of Income Tax points out that the tax paid on 18-10-43 was on Loan Board interest credited for the half year to 31-12-42. The tax called for by this letter of 28-10-43 was on the interest credited for $\frac{1}{2}$ year to 30-6-43.
Pay.
- (Intd.) S. J. C. S.,
A. D. J.
- 20 (31) 15-11-43. Order of payment 70902 issued to the Commissioner of Income Tax for Rs. 368·28.
- (Intd.) S. J. C. S.,
A. D. J.
- (32) 27-11-43. Income tax receipt No. Z.18491 of 19-11-43 for Rs. 368·28 filed.
- (33) 15-12-43. Mr. K. T. Chittampalam files inventory (33a) and security bond and moves that letters be issued in the above case.
File security bond and move.
- 30 (Intd.) S. C. S.,
A. D. J.
- (34) 26- 4-44. Commissioner of Income Tax moves for a payment order for Rs. 337·77 being tax due at 18% in the Loan Board dividend.
Verify and pay.
- (Intd.) S. J. C. S.,
A. D. J.

- Exhibits (85) 2- 5-44. O.P. 71663 for Rs. 337·77 issued in favour of Commissioner of Income Tax.
- (Intd.) S. J. C. S.,
A. D. J.
- P 1**
Journal
Entries,
Affidavits
etc. in D. C.
Colombo
No. 3836/G.
19-2-42 to
17-10-47
—continued.
- (36) 20- 5-44. Receipt from the Commissioner of Income Tax for Rs. 337·77 received and filed.
- (37) 30- 6-44. Mr. K. T. Chittampalam for petitioner.
Vide (85) security bond not filed. I appoint the present secretary curator of the property of the minor in place of Mr. C. Emmanuel retired. 10
Call case on 27-7-44 for bond.
- (Intd.) S. J. C. S.,
A. D. J.
- (38) 27- 7-44. Bond.
S.O. 7/9.
- (Intd.) S. J. C. S.,
A. D. J.
- (39) 28- 7-44. Mr. K. T. Chittampalam written to for 7/9.
- (40) 4- 8-44. Mr. J. N. Culanthavelu, Secretary, moves that he be allowed to give personal security in Rs. 1,000/- in the 20 above case.
Personal bond in Rs. 1,000/-.
- (Intd.) S. J. C. S.,
A. D. J.
- (41) 4- 9-44. Mr. K. T. Chittampalam files his appointment (41a) as proctor for curator in the above case.
File.
- (Intd.) S. J. C. S.,
A. D. J.
- (42) 7- 9-44. Mr. K. T. Chittampalam for petitioner. 30
Bond.
S.O. 19/10.
- (Intd.) S. J. C. S.,
A. D. J.
- Bond filed.
(Intd.) J. N. C.,
Secy. 11-9.

- Exhibits**
P 1
Journal
Entries,
Affidavits
etc. in D. C.
Colombo
No. 3836/G.
19-2-42 to
17-10-47
—continued.
- (43) 13- 9-44. The official curator files security bond.
Bond to be stamped.
(Intd.) S. J. C. S.,
A. D. J.
- (44) 5-10-44. The Commissioner of Income Tax calls for an O.P. for
Rs. 455·07 being tax due at source at 18% on Loan Board
interest of Rs. 2,528·20 credited to M. M. R. M. Muru-
gappa Chettiar for $\frac{1}{2}$ year to 30-6-44.
Pay.
10 (Intd.) S. J. C. S.,
A. D. J.
- (45) 6-10-44. P.O. 79386 for Rs. 455·07 issued in favour of C.I.T.
(Intd.) S. J. C. S.,
A. D. J.
- (46) 19-10-44. Mr. K. T. Chittampalam for official curator.
Stamp duty on bond Rs. 5/- tendered.
Issue certificate.
(Intd.) S. J. C. S.,
A. D. J.
- 20 (47) 9-11-44. Receipt No. Z.19892 dated 12-10-44 for Rs. 455·07 from
Commissioner of Income Tax filed.
- (48) 27- 4-45. The Commissioner of Income Tax calls for an O.P. for
Rs. 460·62 being tax due at source at 18% on Loan Board
of Rs. 2,559/- credited to M. M. R. M. Murugappa
Chettiar for $\frac{1}{2}$ year to 31-12-44.
Verify and pay.
(Intd.) V. E. R.,
A. D. J.
- (49) 3- 5-45. P.O. for Rs. 460·62 issued to C.I.T.
30 (Intd.) V. E. R.,
A. D. J.
- (50) 10-10-45. The C.I.T. calls for an O.P. for Rs. 390·06 being tax due
at 20% on L.B. interest of Rs. 1,950·30 credited to M.
M. R. M. Chettiar for $\frac{1}{2}$ year ended 30-6-45.
Verify and pay.
(Intd.) V. E. R.,
A. D. J.

- Exhibits (51) 11-10-45. P.O. 81606 for Rs. 390·06 issued to C.I.T.
 P 1
 Journal
 Entries,
 Affidavits
 etc. in D. C.
 Colombo
 No. 3886/G. (52) 17- 5-46. C.I.T. calls for an O.P. for Rs. 528·48 to cover tax due
 19-2-42 to
 17-10-47
 —continued. at 20% on Loan Board interest of Rs. 2,642·40 credited
 to M. M. R. M. Murugappa Chettiar for $\frac{1}{2}$ year to 31-12-45.
 Verify and pay.
 (Intd.) V. E. R.,
 A. D. J.
- (53) 20- 5-46. P.O. 91569 for Rs. 528·48 issued to C.I.T. 10
 (Intd.) V. E. R.,
 A. D. J.
- (54) 25- 5-46. Receipt No. Z.21859 dated 22-5-46 from Commissioner
 of Income Tax for Rs. 528·48 is filed.
- (55) 21-10-46. C.I.T. requests a P.O. for Rs. 461·20 to cover tax due at
 23% on Loan Board interest of Rs. 2,005·20 credited to
 M. M. R. M. Murugappa Chettiar for half year to 30-6-46
 in terms of Section 44 (1) of the I.T.O.
 Verify and pay.
 (Intd.) N. S., 20
 A. D. J.
- (56) 7-11-46. P.O. A.2028 for Rs. 461·20 issued to C.I.T.
 (Intd.) S. C. S.,
 A. D. J.
- (57) 12- 2-47. Mr. K. T. Chittampalam for petitioner files proxy
 together with affidavit and petition and moves for an
 O.P. Rs. 137,340·50.
 To be supported.
 (Intd.) N. S., 30
 A. D. J.
- (58) 18- 2-47. *Vide* proceedings and order.
Re application at (57) to withdraw Rs. 137,340·50.
 (Intd.) N. S.,
 A. D. J.

- (58/1) *Vide* proceedings.
- (59) 3- 3-47. Mr. K. T. Chittampalam for petitioner files proxy for petitioner together with petition and affidavit and for the reasons stated moves that petitioner be appointed next-friend of M. R. M. M. Murugappa Chettiar. Proposed next-friend and minor present and both consent to the appointment. I make the appointment.
- Exhibits
P 1
Journal
Entries,
Affidavits
etc. in D. C.
Colombo
No. 3886/G.
19-2-42 to
17-10-47
—continued.
- (Intd.) N. S.,
A. D. J.
- 10(60) 4- 3-47. Mr. K. T. Chittampalam for petitioner files proxy together with petition and affidavit and moves for an O.P. in favour of M. R. M. M. M. R. Murugappan Chettiar. Affidavit of M. R. M. M. M. R. Murugappan Chettiar also filed.
- I am satisfied that the law governing this matter is the law obtaining in the place where the minor is domiciled, *viz.* India. He is a Hindu subject to this Hindu law. He attains majority at 18 but for the purposes of applications under the Civil Procedure Code he must as I indicated to learned counsel who supported the application be represented by a next-friend. This has since been done. The birth certificate shows that the minor has now attained over 18 years of age.
- I accordingly allow the application and direct that an O.P. issues in favour of Murugappa Chettiar for the amount on deposit.
- (Intd.) N. S.,
D. J.
- 30 (61) 5- 3-47. P.O. A.2092 for Rs. 139,377.35 issued to M. R. M. M. M. R. Murugappan Chettiar.
- (Intd.) N. S.,
A. D. J.
- (62) 14-10-47. C.I.T. *vide* letter No. DS-20/ETL of 9-10-47 wishes to know the date of withdrawal of the money lying to the credit of M. M. R. M. Murugappa Chettiar.
- Reply that the money due to M. R. M. M. Murugappan Chettiar was withdrawn on 5-3-47.
- (Intd.) N. S.,
A. D. J.
- 40 (63) 17-10-47. Replied,
- (Intd.) T. A. P. H., DE S.

IN THE DISTRICT COURT OF COLOMBO

Exhibits
 P1
 Journal
 Entries,
 Affidavits
 etc. in D. C.
 Colombo
 No. 3836/G
 19-2-42 to
 17-10-47
 —continued.

No. 3836.

In the matter of an application for the appointment of a curator in respect of the property of M. R. M. M. M. R. Murugappa Chettiar of Nerkuppai, Ramnad District, South India (Minor).

M. R. M. M. S. SUNDARAM CHETTIAR of Sea Street in Colombo.....*Petitioner.*

I, M. R. M. M. S. Sundaram Chettiar of Sea Street, Colombo, not being a Christian do hereby solemnly sincerely and truly declare and affirm as follows :—

1. I am the petitioner above-named and a partner of the firm of 10 M. R. M. M. S.

2. The above-named minor M. R. M. M. M. R. Murugappa Chettiar is a minor of the age of 14 years.

3. A sum of Rs. 38,800/- was deposited on the 28th day of October, 1929, for and on behalf of the said minor with the firm of M. R. M. M. M. S. who are bankers carrying on business at No. 161, Sea Street, Colombo.

4. The minor's mother frequently through her lawyers demanded the payment of the said sum of Rs. 38,800/-, but my firm replied that they are prepared to deposit same if she applied and obtained from the District Court of Colombo a Certificate of Curatorship to the property situated in 20 Ceylon of the said minor.

5. Neither the mother of the minor nor the brothers of the said minor who are all in India had applied for a Certificate of Curatorship.

6. It is necessary that a curator be appointed to enable me to deposit the principal and interest due to the said minor.

7. As the minor is a resident beyond the limits of Ceylon the Supreme Court by its order dated 16th day of February, 1942, has appointed this court to have and exercise jurisdiction in connection with the appointment of a curator in respect of the property of the said minor.

8. The Secretary of the District Court of Colombo is a fit and proper 80 person to be appointed curator of the said minor to enable me to deposit the sum of Rs. 68,905·04 due to the minor.

9. I speak to the above facts of my own personal knowledge.

The foregoing affidavit having been duly read over, and explained to the affir mant abovenamed and he appeared to understand the contents hereof and affirmed to and signed at Colombo on this 16th day of February, 1942. }

(Sgd.) In Tamil.

Before me,
 (Sgd.) S. W. PERERA,
 C. O.

IN THE DISTRICT COURT OF COLOMBO

In the matter of the estate of M. R. M. M. R. Murugappa Chettiar of Neikupai in South India—a minor.

M. R. M. M. S. SUNDARAM CHETTIAR of Sea Street in Colombo.....*Petitioner.*

Guardianship Case No. 3836.

Exhibits

P1

Journal
Entries,
Affidavits
etc. in D.C.
Colombo
No. 3836/G
19-2-42 to
17-10-47
—continued.

With reference to the sum of Rs. 22,100/- and interest lying to the credit of the above-named minor with M. R. P. L. M. Muthuraman Chettiar of 36, Sea Street, Colombo, being moneys deposited to the credit of the said minor between the 3rd and 26th days of November, 1929, I file my
10 appointment as proctor for the said M. R. P. L. M. Muthuraman Chettiar and move for an order to deposit to the credit of the above case the sum of Rs. 38,395·77 being principal and interest calculated up to the date hereof after deducting the expenses incurred in bringing the same to the credit of the above case as shown in the memo below. I also file certified copy of his Power of Attorney.

THE MEMO REFERRED TO

	Principal	Rs. 22,100·00
	Interest calculated up to 23-3-42	„ 16,573·22
		<u>Rs. 38,673·22</u>
20	Deduct on account of income tax payable on the interest	„ 244·95
		<u>Rs. 38,428·27</u>
	Stamps and fees incurred in bringing the amount to Court	„ 32·50
	Balance ...	<u>Rs. 38,395·77</u>

(Sgd.) S. SOMASUNDARAM,
Proctor for M. R. P. L. M. Muthuraman Chettiar.

Colombo, 19th March, 1942.

Exhibits

P2
 Motion filed
 in D.C.
 Colombo
 No. 3836/G
 31-3-43

P2

Motion Filed in D.C. Colombo No. 3836/G

IN THE DISTRICT COURT OF COLOMBO

In the matter of the estate of M. R. M. M. R. Murugappa Chettiar of Nerpukkai in South India—a minor.

M. R. M. M. S. SUNDARAM CHETTIAR.....*Petitioner.*

Guardianship Case No. 3836.

I file my appointment as proctor for N. R. K. N. L. Letchumanan Chettiar of 91, New Moor Street, and move for an order to deposit to the credit of the above case a sum of Rs. 20,488·18 being principal and interest 10 due to the above minor in respect of moneys lying to his credit with the said K. R. K. N. L. Letchumanan Chettiar less expenses incurred in depositing the amount to the credit of the said case.

(Sgd.) S. SOMASUNDARAM,
Proctor for K. R. K. N. L. Letchumanan Chettiar.

Colombo, 31st March, 1943.

IN THE DISTRICT COURT OF COLOMBO

In the matter of an application for the appointment of a curator in respect of M. R. M. M. R. Murugappa Chettiar of Kerkuppai, Ramnad District, South India. 20

MEENACHCHI ACHY, wife of the late M. R. M. M. M. Muttiah Chettiar of Nerkuppai presently of Colombo.....*Petitioner.*

No. 3836G.

I, Meenachchi Achy, wife of the late M. R. M. M. M. Muttiah Chettiar of Kerkuppai presently of Colombo, not being a Christian do hereby solemnly sincerely and truly declare and affirm as follows :—

1. I am the mother of the said M. R. M. M. R. Murugappan Chettiar who is a member of an undivided joint Hindu family consisting of himself his sister and myself the petitioner. The said Murugappan Chettiar is a permanent domicile of India. 30

- 2. The said Murugappan Chettiar is a major according to his personal law having been born on 16th December, 1928.
- 3. A sum of Rs. 137,340·50 is lying to his credit in this case.
- 4. As a member of an undivided joint Hindu family it is the duty of the said Murugappan Chettiar to donate the dowry to his sister who is 21 years old and who should be given in marriage.
- 5. The said Murugappan Chettiar is carrying on business in India and moneys are required for the purpose of his business.
- 6. I have no further interest adverse to that of the said Murugappan Chettiar.

Exhibits
 P2
 Motion filed
 in D.C.
 Colombo
 No. 3836/G.
 31-3-43
 —continued.

The foregoing affidavit having been duly read over, and explained to the affirmant above-named and she having appeared to understand the contents thereof set her signature thereto and affirmed to at Colombo on this 3rd day of March, 1947.

Left thumb impression of Meenachchi Achy.

Before me,
 (Sgd.) F. E. R. VANNITAMBY
 C. O.

IN THE DISTRICT COURT OF COLOMBO

In the matter of an application for the appointment of a curator in respect of M. R. M. M. R. Murugappan Chettiar of Nerkuppai, Ramnad District, South India.

No. 3836/G.

MEENAKSHI ACHY, wife of the late M. R. M. M. M. Muthiah Chettiar of Nerkuppai presently of Colombo.....*Petitioner.*

I, Meenakshi Achy, wife of the late M. R. M. M. M. M. Muthiah Chettiar of Nerkuppai presently of Colombo not being a Christian do hereby solemnly sincerely and truly declare and affirm as follows :—

1. I am the mother of the said M. R. M. M. M. R. Murugappan Chettiar who is a member of an undivided joint Hindu family consisting of himself his sister and myself the petitioner. The said Murugappan Chettiar is a permanent domicile of India.

2. The said Murugappan Chettiar is a major according to his personal law having been born on 16th December, 1928,

Exhibits
P2
Motion filed
in D.C.
Colombo
No. 3886/G.
31-3-48
—continued.

3. A sum of Rs. 137,840·50 is lying to his credit in this case.
4. As a member of an undivided joint Hindu family it is the duty of the said Murugappan Chettiar to donate the dowry to his sister who is 21 years old and who should be given in marriage.
5. The said Murugappan Chettiar is carrying on business in India and moneys are required for the purpose of his business.

The foregoing affidavit having been duly read over and explained to the affirmant above-named and she having appeared to understand the contents thereof set her signature thereto and affirmed to at Colombo on this 3rd day of March, 1947.

Left thumb impression of
Meenakshi Achy.

10

Before me,
(Sgd.) F. E. R. VANNITAMBY,
Commissioner for Oaths.

Account Sheet

Kachcheri : Colombo.

Case No. 3886/G. 20

Date.	No. of Kachcheri Receipt, etc.	Amt. of Deposit	Amt. of Payment	Balance
4- 3-42	C/4 24043	Deposit 63,905 04		63,905 04
24- 3-42	C/4 26793	„ 38,395 77		102,300 80
9- 4-43	I/4 28872	„ 20,488 18		122,788 90
21- 6-43	I/4 38183	„ 26,267 67		123,056 60
	Dividend for year ended 30-6-42	2,046 00		
	Dividend for year ended 31-12-42	2,046 00		127,148 60 80
	Dividend for year ended 30-6-43			
16-10-43	Order of payment to C.I.T.		368 28	126,780 80
15-11-43	O.P. to C.I.T.		368 28	126,412 10
2- 5-44	Div. for half year ended 31-12-43	1,876 50		128,288 60
„	O.P. in f/o C.I.T.	337 70		127,950 60
6-10-44	Div. for half year ended 30-6-44	2,528 20		130,479 00
—	P.O. in f/o C.I.T.		455 07	130,233 90 40
3- 5-45	Div. for half year ended 31-12-44	2,559 00		132,582 90
—	P.O. to C.I.T.		460 62	132,122 50

Date.	No. of Kachcheri Receipt, etc.	Amt, of Deposit	Amt. of Payment	Balance	Exhibits
10-10-45	Div. half year ended 30-6-45	1,950 30		134,072 60	P2 Motion filed in D.C. Colombo No. 3886/G. 31-3-43 —continued.
11-10-45	P.O. to C.I.T.		390 06	133,682 50	
20- 5-46	Div. half year ended 31-12-45	2,642 40		136,324 90	
—	P.O. to C.I.T.		528 48	135,796 50	
7-11-46	Div. half year ended 30-6-46	2,005 20		137,801 70	
10 —	P.O. to C.I.T.		461 20	137,340 50	
5- 3-47	Div. half year ended 31-12-46	2,036 85		139,377 50	
—	P.O. to M. R. M. M. M. Murugappa Chettiar		139,377 35	Nil	

IN THE DISTRICT COURT OF COLOMBO

In the matter of the estate of M. R. M. M. M. R. Murugappa Chettiar of Neerpukkai in South India—a minor.

M. R. M. M. S. SUNDARAM CHETTIAR.....*Petitioner.*

20 Guardianship Case No. 3836.

I file my appointment as proctor for K. R. K. N. L. Letchumanan Chettiar of 91, New Moor Street, Colombo, and move for an order to deposit to the credit of the above case a sum of Rs. 20,488·18 being principal and interest due to the above minor in respect of moneys lying to his credit with the said K. R. K. N. L. Letchumanan Chettiar less expenses incurred in depositing the amount to the credit of the said case.

(Sgd.) S. SOMASUNDARAM,

Proctor for K. R. K. N. L. Letchumanan Chettiar.

Colombo, 31st March, 1943.

30

D9

**Affidavit of Murugappa Chettiar Filed in
D.C. Colombo No. 3836/G**

IN THE DISTRICT COURT OF COLOMBO

In the matter of the application for the appointment of a curator in respect of the property of M. R. M. M. M. R. Murugappa Chettiar of Neykuppai, Ramnad District, South India.

No. 3836/G.

M. R. M. M. M. R. Murugappa Chettiar of Neykuppai, Ramnad District, South India.....*Petitioner.*

D9
Affidavit of
Murugappa
Chettiar
filed in D.C.
Colombo
No. 3836/G.
11-2-47

Exhibits
 D9
 Affidavit of
 Murugappah
 Chettiar
 filed
 in D.C.
 Colombo
 No. 3836/G.
 11-2-47
 —continued.

I, M. R. M. M. R. Murugappa Chettiar of Neykuppai, Ramnad District, South India, at No. 90, Sea Street, Colombo, not being a Christian do hereby solemnly sincerely and truly declare and affirm as follows:—

1. I am the petitioner above-named.
2. I am a member of an undivided joint Hindu family consisting of myself my sister and my mother and I am a permanent domicile of India.
3. I am a major according to my personal law having been born on 16th December, 1928. I produce the Birth Certificate marked "A" with its translation.
4. A sum of Rs. 137,340·50 is lying to my credit in this case. 10
5. As a member of an undivided joint Hindu family it is my duty to donate the necessary dowry to my sister. She is now 21 years old and she must be given in marriage. A sum of Rs. 40,000/- is required for her jewellery, marriage expenses and dowry.
6. I am now carrying on business in India and moneys are required for the purpose of that business.
7. My mother is in India and she was lawful guardian during my minority.
8. Under the circumstances I beg the court be pleased to issue an Order of Payment in my favour for the said sum of Rs. 137,340·50. 20
9. I speak to the above facts of my own personal knowledge.

The foregoing affidavit having been duly read over and explained to the affirmant above-named & he appearing to understand the contents thereof set his signature & affirmed to at Colombo on this 11th day of February, 1947.

(Sgd.) M. R. M. M. R. Murugappa
 Chettiar

Before me,
 (Sgd.) D. H. JAYASINGHE, 30
 C. O.

D 10
 Affidavit of
 Meenakshi
 Achy filed
 in D.C.
 Colombo
 No. 3836/G.
 3-8-47

D10

**Affidavit of Meenakshi Achy Filed in
 D.C. Colombo No. 3836/G**

IN THE DISTRICT COURT OF COLOMBO

In the matter of an application for the appointment of a curator in respect of M. R. M. M. M. R. Murugappa Chettiar of Nerkuppai, Ramnad District, South India.

MEENAKSHI ACHY, wife of the late M. R. M. M. M. Muttiah
 Chettiar of Nerkuppai presently of Colombo.....*Petitioner.* 40

I, Meenakshi Achy, wife of the late M. R. M. M. Muttiah Chettiar of Nerkuppai presently of Colombo not being a Christian do hereby solemnly sincerely and truly declare and affirm as follows :—

Exhibits
D10
Affidavit of
Meenakshi
Achy filed
in D.C.
Colombo
No. 3886/G.
3-3-47
—continued.

1. I am the mother of the said M. R. M. M. R. Murugappa Chettiar who is a member of an undivided joint Hindu family consisting of himself his sister and myself the petitioner.

2. The said Murugappa Chettiar is a major according to his personal law having been born on December, 1928.

3. A sum of Rs. 137,340.50 is lying to his credit in this case.

10 4. As a member of an undivided joint Hindu family it is the duty of the said Murugappa Chettiar to donate the dowry to his sister who is 21 years old and who should be given in marriage.

5. The said Murugappa Chettiar is carrying on business in India and moneys are required for the purpose of his business.

6. I have no interest adverse to that of the said Murugappa Chettiar.

The foregoing affidavit having been
duly read over and explained to the
affirmant and she having appeared
to understand the contents thereof
20 set her signature thereto and affirmed
to at Colombo on this 3rd day of
March, 1947.

(Sgd.) Thumb Impression of
Meenakshi Achy

Before me,
(Sgd.) Illegibly.

C. O.

P7

Journal Entries in D.C. Colombo No. 11556

IN THE DISTRICT COURT OF COLOMBO

P7
Journal
Entries
in D.C.
Colombo
No. 11556
1945-47

30 In the matter of the estate of the late Letchumanan Chettiar also known as Kana Roona Kana Nana Leyna Letchumanan Chettiar son of Kannappa Chettiar of A'Thekkur, Tirupatur Taluk, Ramnad District, in South India, deceased.

Testy.

Juris.

between

No. 11556.

VEERAPPA CHETTIAR, son of Mayandy Chettiar of 91, New Moor Street in Colombo.....Petitioner.

and

40 1. MUTHTHAL ATCHY, widow of Letchumanan Chettiar, all of A'Thekkur, Tirupatur Taluk, Ramnad District in South India and others.....Respondents.

Exhibits
P7
Journal
Entries
in D.C.
Colombo
No. 11556
1945-47
—continued.

(1) This 17th day of September, 1945.

Mr. S. Somasundaram files proxy (1a) affidavit (1c) and a petition (1b) of the petitioner, certified copy of power of attorney (1d) S.C. Order (1e) declaration of property (1f) praying for letters of administration to the estate of the above-named deceased, and moves that an Order Nisi be entered declaring the status of the petitioner and his right as the attorney of the 4th respondent to take out letters of administration to the estate of the intestate.

The motion is allowed, and it is hereby ordered that an Order Nisi be entered declaring that the petitioner is entitled to letters of administration to the estate of the said intestate, and that a copy of the said order be published in the Government Gazette and twice in the Ceylon Daily News newspaper for 15-11-45.

(Sgd.) V. E. RAJAKARIER,
Additional District Judge

Date.

- (2) 29- 9-45. *Vide* (1) Decl. and St. of property forwarded to C. E. D.
(8) 6-10-45. *Vide* (1) Order Nisi entered.
(4) 15-11-45. Mr. S. Somasundaram for petitioner. 20
1. Gazette and papers filed.
2. Respts.—minute of consent filed.
Order Nisi made absolute.
Await certificate for 21/2.

(Intd.) V. E. R.

- (5) 17-11-45. O.A. entered.
(6) 14-12-45. Prov. certificate of C.E.D. filed.
Value of estate—Rs. 59,150/-.
No defy.
(7) 15-12-45. Oath and bond for 21-2-46.

(Intd.) V. E. R. 30
A. D. J.

- (8) 18-12-45. Mr. S. Somasundaram for petitioner for reasons stated moves that court do accept a personal bond for a nominal amount from petitioner for the issue of letters.
Personal bond in Rs. 5,000/-.

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

- | | Date. | | Exhibits |
|----|----------------|--|---|
| | (9) 21- 2-46. | Oath and bond.
Filed.
Issue letters. | P7
Journal
Entries
in D.C.
Colombo
No. 11556
1945-47
—continued. |
| | | | (Intd.) V. E. R.,
A. D. J. |
| | (10) 25- 2-46. | <i>Vide</i> (9) letters entered.
Inventory on 11-4-46.
Final acct. on 21-11-46. | |
| | | | (Intd.) V. E. R.,
A. D. J. |
| 10 | | | |
| | (11) 5- 3-46. | C.E.D. informs that the prov. certificate issued on 12-12-45 has now been made final. | |
| | (12) 11- 4-46. | Mr. S. Somasundaram for admr.
Inventory filed. | |
| | | | (Intd.) V. E. R.,
A. D. J. |
| | (13) 21-11-46. | Final a/c—not filed.
<i>Vide</i> motion—S.O. 30-1-47. | |
| | | | (Intd.) N. S.,
A. D. J. |
| 20 | | | |
| | (14) 30- 1-47. | Final a/c.
<i>Vide</i> motion—S.O. 6-3-47. | |
| | | | (Intd.) S. C. S.,
A. D. J. |
| | (15) 6- 3-47. | Final a/c—not filed.
<i>Vide</i> motion—S.O. 5-6-47. | |
| | | | (Intd.) N. S.,
A. D. J. |
| 30 | (16) 5- 6-47. | Mr. S. Somasundaram for admr. moves for two months time to file final a/c.
F.A. for 7-8-47. | |
| | | | (Intd.) N. S.,
A. D. J. |

- Exhibits (17) 7- 8-47. Mr. S. Somasundaram for admr.
 Final a/c—filed.
 Consent of respts. 4/9/ . (Intd.) N. S.
 P7 A. D. J.
 Journal Entries in D.C. Colombo No. 11556' 1945-47 —continued.
- (18) 7- 8-47. No defy.
 (19) 4- 9-47. Consent of respts. to final a/c.
 Vide motion—S.O. 6-11-47. (Intd.) N. S.,
 A. D. J. 10
- (20) 6-11-47. Consent of respts. to final a/c—filed.
 Secretary's report for 15-1-48. (Intd.) N. S.,
 A. D. J.

The heirs who are all majors have accepted the a/c as correct.

It may be accepted and proceedings terminated.
 (Intd.) M. N. P.
 12/1.

Ordered accordingly. (Intd.) N. S.
 12/1. 20

P4
 Petition filed
 in D.C.
 Colombo
 No. 11556
 17-9-45

P4

**Petition Filed in D.C. Colombo No. 11556
 IN THE DISTRICT COURT OF COLOMBO**

In the matter of the intestate estate and effects of Letchumanan Chettiar also known as Kana Roona Kana Nana Leyna Letchumanan Chettiar, son of Kannappa Chettiar of A'Thekkur, Tirupatur Taluk, Ramnad District in South India, deceased.

VERAPPA CHETTIAR, son of Mayandy Chettiar of 91, New Moor Street in Colombo.....*Petitioner.* 80

Testy.

Juris.

and

No. 11556.

1. MUTHTHAL ATCHY, widow of Letchumanan Chettiar ;
2. KANNAPPA CHETTIAR ;
3. KARUPPEN CHETTIAR ;
4. ARUNACHALAM CHETTIAR ;
5. ALAGAPPA CHETTIAR, all sons of Letchumanan Chettiar ;
 and 40
6. NATCHIAMMAL ACHY, widow of Karuppen Chettiar and daughter of Letchumanan Chettiar, all of A'Thekkur, Tirupatur Taluk, Ramnad District in South India.....*Respondents.*

On this 17th day of September, 1945.

The petition of the petitioner above-named appearing by Sabapathy Somasundaram his proctor states as follows :—

Exhibits
—
P4
Petition filed
in D.C.
Colombo
No. 11556
17-9-45
—continued.

1. The petitioner above-named is the lawfully constituted attorney in Ceylon of Arunachalam Chettiar the 4th respondent above-named.

2. Letchumanan Chettiar also known as Roona Kana Leyna Letchumanan Chettiar son of Kannappa Chettiar the above-named deceased who was carrying on business in Colombo in the Island of Ceylon under the name style and firm of K. R. K. N. L. died intestate at A'Thekkur, Tirupatur Taluk, Ramnad District in South India, on the 15th day of March, 1945, without having made a will and leaving as his next of kin his widow the 1st respondent and five children the 2nd, 3rd, 4th, 5th and 6th respondents above-named and seized and possessed of property movable and immovable in the said Island.

3. The estate of the said Letchumanan Chettiar who was the managing member of a Hindu undivided family consisting of himself and his four sons of the 2nd, 3rd, 4th and 5th respondents above-named at the time of his death was of the value of Rs. 59,150/- as set out in the Schedule hereto.

4. On an application made to the Honourable the Supreme Court of the Island of Ceylon by the petitioner as attorney of the said 4th respondent under section 68 of Chapter 6 of the Legislative Enactments of Ceylon the said court by its order of the 7th day of September, 1945, directed and appointed this court to have and exercise sole testamentary jurisdiction in respect of the property and estate of the said Letchumanan Chettiar.

5. The deceased having been a member of a Hindu undivided family no estate duty is payable.

6. The petitioner applies for letters of administration to the estate and effects of the said deceased as attorney of the 4th respondent who is the 3rd son and an heir of the said deceased.

7. The respondents consent to letters of administration being issued to the petitioner.

Wherefore the petitioner prays :—

- (a) that letters of administration to the estate and effects of the above-named deceased be issued to him ;
- (b) for costs of these proceedings ; and
- (c) for such other and further relief as to this court shall seem meet.

(Sgd.) S. SOMASUNDARAM,
Proctor for Petitioner.

Exhibits

THE SCHEDULE ABOVE REFERRED TO

P4
 Petition filed
 in D.C.
 Colombo
 No. 11556
 17-9-45
 —continued.

Immovable property.	
Premises Nos. 60, 64/4, 5, 6, 7, 8, 9, 10, 11, 12 and 14, situated at Forbes Road, Maradana, within the Municipality and District of Colombo, Western Province, of the value of	Rs. 10,000·00
Value of business of deceased in the firm of Kana Roona Kana Nana Leyna also known as K. R. K. N. L. at No. 91, New Moor Street, in Colombo, of the value of	„ 49,150 00
	<u>Rs. 59,150·00</u> 10

(Sgd.) S. SOMASUNDARAM,
Proctor for Petitioner.

Memorandum of documents filed with the petition.

1. Supreme Court order dated 7th September, 1945.
2. Certified copy of Power of Attorney.

P5
 Inventory
 filed in D.C.
 Colombo
 No. 11556
 11-4-46

P5

Inventory Filed in D.C. Colombo No. 11556

IN THE DISTRICT COURT OF COLOMBO

In the matter of the intestate estate and effects of Letchumanan Chettiar also known as Kana Roona Kana Nana Leyna Letchumanan Chettiar, 20 son of Kannappa Chettiar of A'Thekkur, Tirupatur Taluk, Ramnad District in South India, deceased.

VEERAPPA CHETTIAR, son of Mayandy Chettiar of 91, New Moor Street in Colombo.....*Petitioner.*

Testy.

Juris.

and

No. 11556.

1. MUTHTHAL ATCHY, widow of Letchumanan Chettiar ;
2. KANNAPPA CHETTIAR ;
3. KARUPPEN CHETTIAR ;
4. ARUNACHALAM CHETTIAR ;
5. ALAGAPPA CHETTIAR ; and
6. NATCHIAMMAL ATCHY, widow of Karuppen Chettiar and daughter of Letchumanan Chettiar all of A'Thekkur *Respondents.* Tirupatur Taluk, Ramnad District in South India.

80

A true and perfect inventory of the estate of the above-named deceased,

ASSETS

Exhibits

Immovable Property :

Premises Nos. 60, 64/4, 5, 6, 7, 8, 9, 10, 11, 12 and 14, situated at Forbes Road, Maradana, within the Municipality and District of Colombo, Western Province, of the value of Rs. 10,000·00

P5
Inventory
filed in D.C.
Colombo
No. 11556
11-4-46
—continued.

Movable Property :

Value of business of deceased in the firm of Kana Roona Kana Nana Leyna also known as K. R. K. N. L. at No. 10 91, New Moor Street in Colombo, of the value of ... ,, 49,150·00
Rs. 59,150·00

I, M. Veerappa Chettiar of 91, New Moor Street in Colombo, being a Hindu solemnly sincerely and truly declare and affirm as follows:—

1. I am the administrator of the estate of the above-named deceased.

2. To the best of my knowledge, information and belief the above-written inventory contains a full and perfect account of all the property movable and immovable and the rights and credits and the liabilities of the said deceased so far as I have been able with due diligence to ascertain the same.

20 3. I have made a careful estimate and valuation of all the property the particulars of which are set forth and contained in the said inventory and to the best of my judgment and belief the sums set opposite to the items in the said inventory fully and fairly represents the present value of the items to which they are set opposite.

The foregoing affidavit having been read over and interpreted to the affir-
mant in Tamil his own language by
me and he appearing to understand
the contents thereof wrote his signa-
30 ture thereto and affirmed to the truth
and correctness thereof at Colombo
on this 11th day of April, 1946. } (Sgd.) In Tamil.

Before me,
(Sgd.) D. H. JAYASINGHE,
C. O.

Exhibits

P6

Final
Account
filed in D.C.
Colombo
No. 11556
7-8-47

Final Account Filed in D. C. Colombo No. 11556

IN THE DISTRICT COURT OF COLOMBO

In the matter of the intestate estate and effects of Letchumanan Chettiar also known as Kana Roona Kana Nana Leyna Letchumanan Chettiar, son of Kannappan Chettiar of A'Thekkur, Tirupatur Taluk, Ramnad District in South India, deceased.

VEERAPPA CHETTIAR, son of Mayandy Chettiar, attorney of Arunachalam Chettiar, son of Letchumanan Chettiar of 91, New Moor Street in Colombo.....*Petitioner.* 10

Testamentary

Jurisdiction

and

No. 11556.

1. MUTHTHAL ATCHY, widow of Letchumanan Chettiar;
2. KANNAPPA CHETTIAR;
3. KARUPPEN CHETTIAR;
4. ARUNACHALAM CHETTIAR;
5. ALAGAPPA CHETTIAR, all sons of Letchumanan Chettiar;
and
6. NATCHIAMMAI ACHY, widow of Karuppen Chettiar and daughter of Letchumanan Chettiar, all of A'Thekkur, Tirupatur Taluk, Ramnad District in South India.....*Respondents.* 20

Administrator's Final Account

RECEIPTS

By Amount realised by sale of premises Nos. 60, 64/4, 5, 6, 7, 8, 9, 10, 11, 12 and 14, situated at Forbes Road, Maradana, within the Municipality of Colombo	...	Rs. 15,000·00
„ Amount recovered out of the book debts due to the business of Kana Roona Kana Nana Layna K. R. K. N. L.	... ..	„ 13,500·00 20
„ Amount realised from A. R. M. Hamdoon and A. R. M. Abdul Wahid in case No. 1546/M.B. D.C. Colombo as principal and interest up to 20-5-47 and on account of stamps and disbursements incurred in the said case	... ..	„ 3,849·79
„ Balance amount of book debts unrecovered	... ..	„ 31,800·21
„ Excess of disbursements over receipts	... ..	„ 652·67
Total	... ..	Rs. 64,802·67

DISBURSEMENTS

				Exhibits
				P6
				Final Account filed in D.C. Colombo No. 11556 7-8-47 —continued.
To	Amount paid to the 1st respondent out of the proceeds of property at Forbes Road	Rs.	7,500·00	
	„ Amount paid to the 2nd respondent out of the proceeds of property at Forbes Road	„	1,500·00	
	„ Amount paid to the 3rd respondent out of the proceeds of property at Forbes Road	„	1,500·00	
	„ Amount paid to the 4th respondent out of the proceeds of property at Forbes Road	„	1,500·00	
10	„ Amount paid to the 5th respondent out of the proceeds of property at Forbes Road	„	1,500·00	
	„ Amount paid to the 6th respondent out of the proceeds of property at Forbes Road	„	1,500·00	
	„ Amount paid to the 2nd to 5th respondents out of the moneys realised from the book-debts of the business of Kana Roona Kana Nana Layna K. R. K. N. L. ...	„	13,500·00	
	„ Amount of stamps and disbursements incurred in D.C. Colombo 1546/M.B.... ..	„	70·41	
20	„ Amount paid to 2nd to 5th respondents out of the moneys realised in action No. 1546/M.B.—D.C. Colombo	„	3,779·38	
	„ Amount of book debts of the business of Kana Roona Kana Nana Layna (K. R. K. N. L.) unrecovered and taken over by the heirs	„	31,800·21	
	„ Stamps and disbursements incurred in this case as per Schedule “ A ”	„	302·67	
	„ Fees paid to S. Somasunderam, Proctor, in respect of these proceedings	„	350·00	
	Total ...	Rs.	<u>64,802·67</u>	

SCHEDULE “ A ”

30 *Stamps, etc. re Application to S.C. for Sole Testamentary Jurisdiction*

Proxy	Rs.	20·00
Affidavit	„	20·00
Two exhibits @ 6/30	„	13·00
Certified copy of Power of Attorney	„	1·00
Counsel's fees	„	21·00
Carried forward ...	Rs.	<u>75·00</u>

Exhibits

P6

Final
Account
filed in D.C.
Colombo
No. 11556
7-8-47
—continued.

*Stamps, etc. re Application to the District Court for
Administration of the Estate*

	Brought forward	...	Rs.	
				75·00
Proxy	20·00
Affidavit	20·00
Certified copy of Power of Attorney	1·00
Binding fees	0·50
Stamps for Order Nisi and disbursements	21·00
Publication of Order Nisi in Gazette including money order charges and postage	20·92 ¹⁰
Publication of Order Nisi in Daily News and disbursements	39·25
Stamps for order absolute	20·00
„ oaths of office	20·00
„ for bond	25·00
„ For inventory	20·00
„ for final account	20·00
				Total ... Rs. 302·67

I, M. Veerappa Chettiar of 91, New Moor Street in Colombo being a Hindu solemnly sincerely and truly declared and affirm as follows :—

1. I am the administrator in the above case. 20

2. To the best of my knowledge, information and belief the above-written Final Account contains a full and true statement of all my receipts and disbursements on account of the estate of the said deceased and of all moneys and other property belonging to the said estate which have come into my hands or which have been received by any person by my order or authority for my use and that I do not know of any error or omission in the account to the prejudice of any creditor or persons interested in the estate of the said deceased.

The foregoing affidavit having been read over and interpreted to the affir-
mant in Tamil his own language by
me and he appearing to understand
the contents thereof wrote his signa-
ture thereto and affirmed to the truth
and correctness thereof at Colombo
on this 7th day of August, 1947.

(Sgd.) In Tamil. 80

Before me,
(Sgd.) F. E. R. VANNITAMBY,
C. O.

Power of Attorney No. 3282

P8
Power of
Attorney
No. 3282
6-3-47

To all to whom these presents shall come, I, Murugappan Chettiar son of Muthiah Chettiar of No. 90, Sea Street in Colombo, in the Island of Ceylon.

SEND GREETING :

Whereas I am carrying on business under the name style and firm or vilasam of Moona Rawanna Mana Moona Moona Roona *alias* M. R. M. M. M. R. Murugappan Chettiar of No. 90, Sea Street in Colombo, aforesaid.

10 And whereas I am desirous of appointing some fit and proper person as my attorney to manage and transact all my business and affairs in the said Island.

Now Know Ye and these presents witness that I the said Murugappan Chettiar, son of Muthiah Chettiar have made, nominated, constituted and appointed and by these presents do make nominate, constitute and appoint Vellasamy Pillai, son of Pandian Pillai of No. 90, Sea Street in Colombo, to be my true and lawful attorney to act for me and on my behalf and in the name of the said firm or otherwise for all and each and every or any of the following purposes that is to say :—

20 To superintend, manage and control the houses, lands, estate and other landed property which I now am or hereafter may become entitled to possessed of or interested in and to sell and dispose of or to mortgage and hypothecate or to demise and lease or to convey by way of exchange the houses, lands, estates and other landed property which I now am or hereafter may become entitled to possessed of or interested in.

To call for and to give and consent to partition of the said lands, houses, buildings and premises or any of them between me and the other proprietor or proprietors thereof.

30 To purchase or take on lease for me any necessary lands, tenements or hereditaments as to my said attorney shall seem proper.

In the event of any such purchase, sale, lease, exchange, mortgage and hypothecation partition or for any other purpose whatsoever for me and in my name and as my act and deed to sign execute and deliver all deeds and other writings necessary for giving effect and validity to the same respectively or to any contract agreement or promise for effecting the same respectively.

40 To ask demand sue for recover and receive of and from all persons liable now or hereafter to pay and deliver the same respectively all sums and sums of money, debts, legacies, goods, effects and things whatsoever now owing payable or belonging or which shall or may at any time hereafter be due owing and payable coming or belonging to me or to my said firm and on payment or delivery thereof to give sign and execute receipts releases and other discharges for the same respectively and thereupon to

Exhibits
 P8
 Power of
 Attorney
 No. 8282
 6-3-47
 —continued.

manage, employ and deal with the same as I could or might lawfully do and on non-payment or non-delivery thereof or of any part thereof to commence carry on and prosecute any action or actions, suit or suits or other proceedings whatsoever before any Court or Courts in the said Island for receiving and compelling the payment or delivery thereof.

To state finally settle and adjust all accounts reckonings and demands whatsoever between me and any person or persons whomsoever and to compromise, disputes and differences and to refer matters to arbitration and to sign and execute all necessary bonds, submissions and references therefor and to enforce any award. 10

To sell and convert into money all goods, effects and things which now belong or at any time hereafter shall belong to me or to my said firm and invest the money which now belong or at any time hereafter may belong to me or to my said firm upon such security as my said attorney shall consider good and sufficient and from time to time vary such investments for other or others of the same or like nature or to release such security.

To appear for me before any court or courts in the said Island as plaintiff defendant or intervenient and to sign and grant all necessary proxy or proxies to any proctor or proctors of the said courts and the same from time to time to recall and revoke and to prosecute or defend 20 any suit or suits or other proceedings now or hereafter to be brought by or against me or the said firm and to proceed to judgment thereon or to suffer judgment by way of default to be entered against me or the said firm and to admit any claim or claims which may be brought against me or the said firm in such court or courts as my said attorney shall think fit and against any judgment order or decree of any of the said courts to appeal and prosecute such appeal before the Supreme Court of the said Island and from any judgment order or decree of the said Supreme Court to appeal to His Majesty the King in Council and give all necessary securities and sign all necessary bonds for the prosecution of such appeals. 30

To prove any debt or debts due to me personally or to my said firm by any person who shall be adjudged an insolvent in any court or courts in the said Island and to vote in the election of assignees and to accept any offer of composition and otherwise to represent and act for me in such insolvency proceedings.

To raise and borrow money from any person or persons or company or companies or bank or banks in Ceylon and to grant such securities and documents and to sign and execute such documents on my behalf.

To open an account with any bank or banks in Ceylon on account of my said firm or in my own name and to operate on the said accounts and 40 to draw, make, sign and endorse cheques for the purpose of drawing money out of any bank or banks in Ceylon.

To obtain accommodation by way of overdraft from any bank or banks in Ceylon and to draw cheques to the extent of such overdraft with or without security.

To draw, sign, make, endorse, accept and discount any bill or bills of exchange or promissory note or notes or bills of lading and to sign and endorse cheques, vouchers, orders of payment or requisitions for the purpose of drawing money from any bank or banks or from any Government department.

Exhibits
P8
Power of
Attorney
No. 3282
6-3-47
—continued.

To attend to all matters connected with the Income Tax Department and to send in my returns and to appeal against any order or assessment of the Commissioner and for that purpose to sign and execute all documents.

To register with the Registrar of Business Names any firm-name for
10 me or jointly with others and to sign and execute all documents for registering the said firm-name according to the laws of Ceylon.

Generally to do execute and perform all such further and other acts, deeds, matters and things whatsoever which my said attorney shall think necessary or proper to be done in and about or concerning my business estates, lands, houses, debts or affairs as fully and effectually to all intents and purposes as I might or could do if I were personally present and did the same in my proper person it being my intent and desire that all matters and things respecting the same shall be under the full management, control and direction of my said attorney.

20 And for more effectually doing, effecting, executing and performing the several matters and things aforesaid I give and grant unto my said attorney full power and authority from time to time to appoint one or more substitute or substitutes to do execute and perform all or any of the matters and things aforesaid and such substitute or substitutes at pleasure to remove and to appoint another or others in his or their place or places I hereby promising and agreeing to ratify, allow and confirm all and whatsoever my said attorney or his substitute or substitutes shall lawfully do or cause to be done in the premises by virtue hereof.

30 And I do hereby direct that all acts which shall be had, made or done by my said attorney or his substitute or substitutes before he or they shall have received notice of my death or the revocation of the authority contained in these presents shall be as binding and valid to all intents and purposes as if the same had taken place previous to my death or before the revocation, any rule of law or equity to the contrary notwithstanding.

40 And it is hereby expressly declared and agreed that as against me and my said firm and any person claiming under me or my said firm every act, deed, matter or thing which my said attorney or his substitute or substitutes shall execute or cause to be executed or done in relation to the premises subsequent to the revocation of the powers expressed to be here- by conferred or any of them shall be binding and conclusive for ever or every person claiming the benefit of such act, deed, matter or thing who shall have not prior to the execution or doing thereof received express

Exhibits
 P8
 Power of
 Attorney
 No. 3282
 6-8-47
 —continued.

notice in writing of such revocation and it is hereby further declared that no such person shall be bound to inquire or ascertain whether I am living or whether the said powers or any of them have or has been revoked or otherwise determined.

In witness whereof I the said Murugappan Chettiar, son of Muthiah Chettiar do hereunto and to two others of the same tenor and date as these presents set my hand at Colombo on this sixth day of March, 1947.

(Sgd.) M. R. M. M. R. MURUGAPPAN CHETTIAR.

Signed in the presence of us :

(Sgd.) D. STEN E. ABEYSEKERA.

10

(Sgd.) P. S. FERNANDO.

(Sgd.) K. T. CHITTAMPALAM.

N. P.

I, Karthigasu Thiru Chittampalam of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the within named executant Murugappan Chettiar son of Muthiah Chettiar who is known to me in the presence of Don Stephen Edward Abayasekera of Dalugama in Kelaniya and Pathirannehelage Simeon Fernando of Moratuwa the subscribing witnesses thereto both²⁰ of whom are also known to me, the same was signed by the said executant as "M. R. M. M. R. Murugappan Chettiar", by the said witnesses (the former of whom signed as "D. Sten E. Abayasekera" and the latter as "P. S. Fernando") and also by me the said Notary in my presence and in the presence of, one another all being present together at the same time at Colombo on this Sixth day of March One Thousand Nine Hundred and Forty Seven.

And I further certify and attest that before this Instrument was so read over and explained the following alterations were made, viz: In the Original page 4 line 16 "own" was interpolated, page 6 line 3 "in his or their place" were deleted and that the Duplicate of this Instrument bears a stamp of the value of Rs. 5/- and that the said stamp was supplied by me.

Date of attestation : 6th March, 1947.

Which I attest

(Sgd.) K. T. CHITTAMPALAM,
Notary Public.

Issues and Judgment in D.C. Colombo No. 18106

IN THE DISTRICT COURT OF COLOMBO

D3
Issues and
Judgment
in D.C.
Colombo
No. 18106
(undated)

M. R. M. M. R. MURUGAPPA CHETTIAR of No. 90, Sea Street, Colombo, by his next-friend Pavanna Vellasamy Pillai of No. 90, Sea Street, Colombo.....*Plaintiff.*

vs.

KANNAPPA CHETTIAR ARUNASALAM CHETTIAR, carrying on business under the name style and firm of K. R. K. N. A. R.
10 at No. 91, New Moor Street, Colombo.....*Defendant.*

ISSUES

Mr. Chelvanayagam suggests the following issues :—

1. Did Vellasamy Pillai acting for and on behalf of the plaintiff deposit with the defendant on or about January, 1930, a sum of Rs. 11,050/- ?
2. Did the defendant agree to hold the said sum in deposit and pay back to the minor plaintiff the said sum together with interest at rates current among members of the Chetty community ?
3. Was it the custom among the Chetty community in respect of
20 transactions amongst themselves to add interest to the principal at the end of every year and calculate interest on the aggregate sum annually ?
4. What amount, if any, is owing from the defendant to the minor plaintiff ?

Mr. E. G. Wickramanayake objects to issue 1 in its present form as it comprises two issues. He suggests that the issue be split up and framed in the following manner :—

- 1a. Did Vellasamy Pillai deposit with the defendant on or about January, 1930, a sum of Rs. 11,050/- ?
- 1b. In doing so did Vellasamy Pillai act for and on behalf of the
30 minor plaintiff ?

Mr. Chelvanayagam has no objection to his first issue being split up into two as suggested by Mr. Wickramanayake.

Mr. Wickramanayake suggests the following further issue :

5. Even if issues 1a, 1b, 2 and 3 are answered in the affirmative can the plaintiff maintain this action ?

Case goes to trial on issues 1a, 1b to 5,

JUDGMENT

Exhibits

D8

Issues and
Judgment
in D.C.
Colombo
No. 18106
(undated)
—continued.

Minor plaintiff through his next-friend sues the defendant for the recovery of a sum of Rs. 26,317·19 being the aggregate to the principal sum of Rs. 11,050/- and interest thereon. Defendant has filed answer and an amended plaint and amended answer have also been filed. The defendant in his amended answer too has pleaded to the amended plaint and denied liability and has asked that the action be dismissed. The case went to trial on issues 1a, 1b to 5 framed at the trial.

Shown of all the legal technicalities in this case the following facts stand out in bold relief: A sum of Rs. 11,050/- belonging to the minor plaintiff had come into the hands of the defendant so far back as November, 1929, or January, 1930, whatever the actual date may be. The defendant so far back as 11th August, 1932, offered to pay a sum of Rs. 13,217·42 to any person authorised to receive this sum of money on behalf of the minor from the defendant. This sum of Rs. 13,217·42 offered by the defendant represents not only the principal sum of Rs. 11,050/- but a sum also by way of interest calculated on some basis, whatever that basis may be. Since September, 1933, or thereabouts this sum of Rs. 13,217·42 has been deposited to the current account of the defendant in the Mercantile Bank of India, Ltd. Defendant always had a sum sufficient to pay this sum of money, namely, Rs. 13,217·42 in his bank. Defendant did not start a curatorship case or any other case and bring the money into court to the credit of the minor. Minor plaintiff's mother, who was the natural guardian of the minor plaintiff after his father's death did not start a curatorship case. Nor did any other party interested start a curatorship case till 1942 when a certain debtor of the minor filed curatorship case No. 3836 of this court in respect of the estate of the minor plaintiff. Certified copy of the journal sheet in 3836/G has been produced marked P5. This curatorship or guardian case has been started on 19th February, 1942. The defendant has not chosen to deposit the money which he admits is due by him in the curatorship case. The minor plaintiff through his next-friend Vellasamy Pillai filed this action. Defendant's witness who really is the son of the defendant in his evidence offered to pay the plaintiff the sum of Rs. 14,700·26 and learned counsel for the defendant has agreed to decree being entered against the defendant for the said sum of Rs. 14,700·26. That is the amount lying now to the credit of the defendant in the Mercantile Bank of India, Ltd. according to the bank statement produced marked D9. Plaintiffs on the other hand, have maintained that upon this sum of Rs. 11,050/- belonging to the minor plaintiff that came into the possession of the defendant a sum of Rs. 26,317·19 is now due calculating interest on the said sum of Rs. 11,050/- from 9th January, 1930, on the basis of interest calculated as obtaining among the members of the Chetty community among themselves. Plaintiffs and defendant are all Chettiars and money lenders. The minor plaintiff is clearly related to the defendant. Defendant is alive but he is at present in India. Counsel for the plaintiff has stated to court that not-

withstanding the claim of Rs. 26,317·19 made by the plaintiff from the defendant, plaintiff is prepared to accept Rs. 13,217·42 together with Ceylon Government Loan Board interest as from the 11th August, 1932, calculating interest in the manner that the Loan Board does. So that the only question that I have to consider today is whether the defendant should pay to the plaintiff only the sum of Rs. 14,700·26 as offered by him or Rs. 13,217·42 with Loan Board interest thereon as from the 11th of August, 1932.

Exhibits
D3
Issues and
Judgment
in D.C.
Colombo
No. 18106
(undated)
—continued.

There is no doubt and the evidence supports it, that this sum of
¹⁰Rs. 11,050/- was handed by Vellasamy Pillai to the defendant somewhere about the end of 1929. Minor plaintiff's father was Muttiah Chettiar. He died somewhere in August, 1929. Muttiah Chettiar had children by three wives. By his second and third wives he had four male children of whom the minor plaintiff is one and Nadarajah is another. Nadarajah is Muttiah Chettiar's son by his second wife. Minor plaintiff is one of the children by Muttiah Chettiar by his third wife. His third wife is Segappi Achi who is still living. She is at present in India. The minor plaintiff was born in India in 1927. So that when his father Muttiah Chettiar died in August, 1929, minor plaintiff was one year and a few months old.
²⁰Muttiah Chettiar before his death divided his money among his four children and started four vilasams for the four sons. The vilasam allotted to the minor plaintiff was M. R. M. M. R. Vellasamy Pillai who has given evidence has stated that the defendant agreed to pay interest upon the sum of Rs. 11,050/- given to him by Vellasamy Pillai according to the rate of interest obtaining amongst Chettiars when they lend money to each other or when one person has the use of the other person's money. His evidence is that at the date when this money was actually handed over to the defendant the latter was not in Ceylon but that his son Palaniappa Chettiar was conducting the defendant's business in Ceylon holding
³⁰a power of attorney under him. That Palaniappa is now dead. Another son of his Karuppiyah Chettiar, succeeded Palaniappa Chettiar as attorney and that person is also dead. Defendant's second son Kanappa Chettiar who has given evidence is now looking after his father's business holding a power of attorney. There is also the evidence of Vellasamy Pillai that after he handed the money to Palaniappa Chettiar in Ceylon he went to India and informed the father of his having given this money to Palaniappa Chettiar (that is the son of the defendant) and that defendant agreed to pay the usual interest obtaining among Chettiars themselves. That that position was accepted by Arunachalam Chettiar is proved by the fact
⁴⁰that on 11th August, 1932—that is to say, about three years after the money was given to his firm on behalf of the plaintiff—defendant offered to pay whomsoever be the person who was authorised to receive the money on behalf of the minor a sum of Rs. 13,217·42. So that between November, 1929, and 11th August, 1932, this sum of Rs. 11,050/- had earned in the hands of the defendant a sum of Rs. 2,000/-. Therefore there is no difficulty in holding that the defendant did in fact receive this money belonging to the minor from Vellasamy Pillai the kanakapulle of

Exhibits

D8

Issues and
Judgment
in D.C.
Colombo
No. 18106
(undated)
—continued.

the minor's father upon the agreement that the defendant would give on that money the usual interest.

But from the 11th August, 1932, defendant had no use for minor plaintiff's money. He did not want to utilise this money nor did he want any longer to be the custodian of minor plaintiff's money. Mr. J. A. Perera, Proctor, acting on behalf of Segappi Achi, mother of the minor plaintiff and widow of Muttiah Chettiar, by letter dated 19th January, 1930, addressed to Palaniappa Chettiar demanded the payment to her of the sum of Rs. 11,050/- which was in the hands of Palaniappa Chettiar and which money belonged to her minor son Murugappa Chettiar. Only 10 the principal sum of Rs. 11,050/- was claimed by minor plaintiff's mother Segappi Achi, *vide* D6. Thereafter on 28th September, 1932, this same Segappi Achi, the mother of the minor plaintiff, through Mr. Krishna-swamy, Advocate, Sivaganga, addressed a letter to Mr. R. Muttuswamy, Proctor, Colombo, acting on behalf of minor plaintiff's mother, stating that Segappi Achi was the guardian of her minor son Murugappa and that she was willing to receive the monies if Mr. Muttuswamy's client tendered same to her ; it is also stated in that letter that in default of payment of the said sum to her defendant (Mr. Muttuswamy's client) could not escape liability to pay interest. So that it is pretty clear that after the letter of 20 29th January, 1930, D6 was addressed by Mr. J. A. Perera who was acting on behalf of Segappi Achi to Palaniappa Chettiar the son the defendant, there appears to have been some correspondence between Segappi Achi or her agent, whoever he may be, and Palaniappa Chettiar's or defendant's proctor, Mr. Muttuswamy, and hence the letter dated 20th September, 1932 (D7) addressed by Mr. Krishnaswamy, Advocate, acting for Segappi Achi, to Mr. Muttuswamy, Proctor. D5 is the letter dated 11th August, 1932, written by Mr. Muttuswamy to the mother of the minor plaintiff acting on behalf of the defendant wherein he offered a sum of Rs. 13,217·42 to the duly appointed guardian who was legally empowered to receive the 30 money. That letter was followed by another letter dated 25th September, 1933, D8 written by Mr. Muttuswamy to minor plaintiff's mother. Mr. Muttuswamy when he wrote that letter too was acting on behalf of the defendant. In that letter the defendant has refused to pay any money to the minor plaintiff's mother because she had no right to receive same. The letter requires Segappi Achi to have a lawful guardian appointed, if one had not been already appointed, to receive the money. Defendant has also in D8 through his proctor intimated to minor plaintiff's mother that he was willing to pay this amount, that is to say Rs. 13,217·42 less some income tax paid, namely, Rs. 42·47, provided a proper guardian or 40 curatorship were appointed. By his letter dated 11th August, 1932, D5 defendant through his proctor Mr. Muttuswamy intimated to the mother of the minor plaintiff that he would not pay interest on this money after 21st August but would deposit same in the bank. There was a certain sum of money far in excess of the claim of the minor plaintiff as at that time in the Mercantile Bank of India to the credit of the defendant. But it must be borne in mind that the money was left in the current account

of the defendant. He did not deposit that money to the credit of the minor plaintiff in the bank. Nor did he start a current account in the minor's name in the bank. The position that now arises is, "Was there a duty cast upon the defendant, if he wanted to return the money to the minor, to do so in an effective manner." It has been definitely proved, I think, in this case that up to 1932 defendant had the use of this money and for that defendant had credited the minor with a certain amount of interest. His own letters show that. His letters also show that from August, 1932, defendant had no more use for the plaintiff's money. That being so, was there not a duty then cast upon the defendant to pay that money back to the minor plaintiff? No doubt there was no person legally entitled at that date to receive the money for the minor. But the defendant, who was then being advised by his lawyers, certainly must have been told that the defendant was not without any remedy. He could have started a curatorship case himself and deposited the money in court or he could have brought an action in the appropriate court making the minor plaintiff a party duly represented. Defendant has not chosen to do either. As a result of the failure on the part of the defendant to get himself discharged from the liability to the minor in the legal way, he left that money to his own account with a bank which earned hardly any interest or income.

The evidence is that from about 1945 the banks have not been paying out any interest on current accounts. So that from 1945 the minor has been denied even the meagre interest that the banks paid out to its customers who ran current accounts. But before 1945 interest at the rate of 1 per cent. or 2 per cent. appears to have been given by the bank to these running current accounts. If this money had been deposited in court to the credit of the minor plaintiff by the defendant, he certainly would have earned the usual Loan Board dividends according to the system of the issue of dividend on the money deposited in court observed by the Loan Board. Plaintiff's counsel now says that he is prepared to accept the Loan Board dividends in the manner the dividends are calculated as from 11th August, 1932, when the defendant offered to pay a sum of Rs. 13,217·42. I think that offer is a very reasonable one. Taking all the circumstances into consideration I am satisfied that the plaintiff is entitled to recover from the defendant Loan Board dividends upon the sum of Rs. 13,217·42 as from the 11th August, 1932.

With regard to the claim made by the plaintiff that he should be paid interest according to the rates prevailing among the members of the Chettiar community I am not satisfied that he is entitled to recover this, for so far back as 11th August, 1932, the defendant has made it clear to the person most interested in the minor plaintiff—that his mother—that he (defendant) did not want this money and that he was not going to utilise this money and that he was not liable to pay interest. The act of omission on the part of the defendant in not returning the money to the minor (which money admittedly up to 11th August, 1932, has been utilised by the defendant) has resulted in the minor plaintiff's having lost

Exhibits
D3
Issues and
Judgment
in D.C.
Colombo
No. 18106
(undated)
—continued.

Exhibits
 D8
 Issues and
 Judgment
 in D.C.
 Colombo
 No: 18106
 (undated)
 —continued.

a fair sum by way of interest. Therefore my order is as follows : The defendant will pay the minor plaintiff (who is now a major) the sum of Rs. 13,217·42 with interest calculated thereon as from 11th August, 1932, according to the rates of interest declared by the Ceylon Government Loan Board and according to the method of calculating interest and the declaration of dividends by the said Board up to date. Thereafter the minor plaintiff will be entitled to legal interest on the aggregate.

With regard to the issues framed I answer them as follows :—

1a. Vellasamypillai deposited with the defendant about November, 1929, a sum of Rs. 11,050/- being money belonging to the minor plaintiff. 10

1b. Yes.

2. Yes, but only up to the 11th August, 1932.

3. Yes.

4. Rs. 13,217·42 with interest calculated thereon from 11st August, 1932, in the manner that the Ceylon Government Loan Board declares dividends and according to the Loan Board rate of interest up to date.

5. Yes.

There remains the question of costs. The plaintiffs undoubtedly have exaggerated their claim. Defendant in his answer did not admit that any sum whatsoever was due and no money was brought into court by the defendant. So that, under the circumstances I order the defendant to pay plaintiff half the costs of suit.

Let the plaintiff's proctor submit to court on or before the 23rd September, 1949, a statement obtained from the Ceylon Government Loan Board office showing the rates of interest declared by the Board from June, 1932, and also a statement showing the manner of the declaration of dividends. Thereafter I shall order decree once the amount payable by the defendant to the minor plaintiff is ascertained.

(Sgd.) H. A. DE SILVA,
 D. J. 30

D8
 Issues
 in D. C.
 Colombo
 No. 18107
 4-9-49

D8

Issues in D. C. Colombo No. 18107

Mr. Chelvanayagam suggests the following issues :—

1. Did Vellasamy Pillai, the next-friend, entrust to the late Sockalingam Chettiar the father of the defendants a sum of Rs. 5,000/- ?

2. Did Sockalingam Chettiar agree to pay to the minor plaintiff the said sum of Rs. 5,000/- together with interest thereon at 9% ?

3. Are the defendants the heirs of Sockalingam Chettiar ?

4. Have defendants adiated the inheritance of Sockalingam Chetty.

5. Are the defendants liable to pay the plaintiff the said sum of Rs. 5,000/- and accruing interest ?

6. If so what is the amount ?

Mr. Wickramanayake objects to issue No. 1. He objects to the way it is framed and wants it framed as in the plaint. He says the issue should read thus :

7. On instructions from Muttiah Chetty the father of the minor above-named did Vellasamy Pillai entrust to Sockalingam Chetty Rs. 5,000/- on or about 9-1-30 ?

8. Is plaintiff's cause of action if any prescribed ?

Mr. Chelvanayagam further suggests :

9. Did Vellasamy Pillai entrust the money referred to namely Rs. 5,000/- on instructions from Muttiah Chetty, the father of the minor plaintiff ?

Mr. Wickramanayake has no objection to issue No. 9 suggested by Mr. Chelvanayagam. He says that issue 1 which he had objected to seeks to bring in precisely the matters that were sought to be brought in by the amendment to the plaint which has been rejected by this court and affirmed by the Appeal Court.

ORDER

Issue 1 suggested by Mr. Chelvanayagam is rejected. Issue No. 7 suggested by Mr. Wickramanayake is in terms of para 2 of the plaint. It must be remembered that the amendment to the plaint was rejected by this court and from that order an appeal was taken by plaintiffs and that appeal was dismissed. The point has been carefully considered by my predecessor who made order rejecting the amendment. The form of issue No. 1 certainly tends to bring out the points raised in the amendment to the plaint that was rejected.

I therefore reject issue No. 1 and adopt issues 2 to 9.

(Sgd.) H. A. DE SILVA,
D. J.
4-9-49.

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D11

Amended Plaint in D.C. Colombo No. 20470

IN THE DISTRICT COURT OF COLOMBO

No. 20470/M

1. M. R. M. M. R. MURUGAPPA CHETTIAR, late a minor by his next-friend who is now of full age ;
2. PAVENNA VELLASAMY PILLAI of No. 62, Sea Street in Colombo*Plaintiffs.*

vs.

M. R. M. M. N. NADARAJAN CHETTIAR of 170, Sea Street in Colombo*Defendant.*

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Exhibits
D8
Issues
in D.C.
Colombo
No. 18107
4-9-49
---continued.

D11
Amended
Plaint
in D.C.
Colombo
No. 20470
30-9-49

Exhibits
 D11
 Amended
 Plaint
 in D.C.
 Colombo
 No. 20470
 30-9-49
 —continued.

On this 30th day of September, 1949.

The amended plaint of the plaintiff above-named appearing by C. M. Chinnaiya his proctor states as follows :—

1. The defendant resides at Colombo within the jurisdiction of this court.

2. (a) The plaintiff is the only son of M. R. M. M. M. Muttiah Chettiar by his third wife Meenatchi.

(b) The said Muttiah Chettiar married three times. His children (a) by the first wife are three daughters (b) by the second wife are Nadarajah Chettiar, Thiagarajan Chettiar, Manikkam Chettiar (three sons) and Seethai, Rasu, Meenatchi and Kalyani (four daughters) (c) by the third wife are Murugappa Chettiar (son) and Valliammai Atchi (daughter).

3. The said M. R. M. M. M. Muthiah Chettiar his wives and children are members of the Natukottai Chettiar family and are governed by the Mithakshara system of Hindu law.

4. (a) The said Muttiah Chettiar and his sons were members of a joint Hindu family.

(b) The said joint family was possessed, in and prior to 1928 of properties movable and immovable both in India and in Ceylon.

5. (a) On or about the 26th day of August, 1938, the Ceylon assets²⁰ of the said joint family were purported to be divided up amongst the members of the said joint family by arbitrators who were nominated for that purpose.

(b) The plaintiff who was only 10 months in August, 1928, was not duly represented in the said arbitration.

(c) Thus and otherwise the said division is not binding on the plaintiff.

FOR A CAUSE OF ACTION

6. (a) The defendant took charge of all the Ceylon assets of the said joint family. 80

(b) And this defendant has thereafter paid to the plaintiff various sums of money between May and June, 1929, aggregating to Rs. 181,962/- on account of the plaintiff's share of the said assets.

7. The plaintiff states that his share of the said assets is well over the amount paid to him.

8. The defendant is liable in law to render an account of the said assets.

ALTERNATIVE TO THE FIRST CAUSE OF ACTION

9. The defendant who as aforesaid took charge of all the said assets had under the said division to pay to the plaintiff the sum of Rs. 181,962/-⁴⁰ and after the death of the plaintiff's father the sum of Rs. 21,800/-, Rs. 2,500/- and Rs. 5,000/-. The plaintiff's father died in August, 1929.

10. The defendant paid to the plaintiff the sum of Rs. 181,962/- and kept back the sum of Rs. 21,800/-, Rs. 2,500/- and Rs. 5,000/- to wit :— Rs. 29,300/- which amount the defendant undertook to pay and became in liable in law to pay, as also according to Chetty customs to pay the plaintiff together with interest thereon at the rate prevailing from time to time among the Chettiar community the interest being added to the principal from time to time according to the custom prevailing amongst the Nattukottai Chettiars and calculated in the manner customary among the Chettiars in their dealings with each other.

Exhibits
D11
Amended
Plaint
in D.C.
Colombo
No. 20470
30-9-49
—continued.

10 11. There is now due to the plaintiff a sum of Rs. 74,380·30.

FOR A SECOND CAUSE OF ACTION

12. On or about the 9th of June, 1930, the defendant took over assets of the plaintiff to the value of Rs. 34,034·70 and agreed and became liable in law to pay as also according to Chetty custom prevailing among the Chettiar community to pay the said amount to the plaintiff together with interest thereon at the prevailing rate from time to time among the Chettiar community the interest being added to the principal from time to time according to the customs prevailing and calculated in the manner customary amongst the Chettiars in their dealings with each other.

20 13. (a) The defendant has in fact recovered from the said debtors the full amount of Rs. 34,034·70 together with accrued interest thereon. The defendant has thus enriched himself at plaintiff's expense in the said sum of Rs. 34,034·70 together with the accrued interest thereon.

(b) There is now due to the plaintiff on the said account the sum of Rs. 86,241·03.

FOR A THIRD CAUSE OF ACTION

14. On or about August, 1929, from the moneys belonging to the plaintiff was expended a sum of Rs. 1,057·71 on the funeral of the said Muthiah Chettiar and the defendant agreed and became liable in law as
30 also according to the Chetty custom to pay plaintiff a sum of Rs. 763·78 together with interest thereon at the rate prevailing from time to time among the Chettiar community the interest being added to the principal from time to time according to the custom prevailing and calculated in the manner customary among the Chettiars in their dealings with each other.

15. There is now due to the plaintiff a sum of Rs. 2,010·73.

16. There is now justly and truly due and owing from the defendant the sum of Rs. 162,632·06 being the full amount due on the above-named alternative cause of action and 2nd and 3rd causes of actions which or any
40 part thereof the defendant has failed and neglected to pay though thereto often demanded.

17. A cause of action has accrued to the plaintiff to sue the defendant for the recovery of the said sum of Rs. 162,632·06 and for an accounting in the first cause of action.

Exhibits
 D11
 Amended
 Plaintiff
 in D.C.
 Colombo
 No. 20470
 30-9-49
 —continued.

18. By its order dated the 1st day of December, 1948, the District Court did appoint P. Vellasampillai the next-friend of the plaintiff.

19. The said Muthiah Chettiar during his lifetime commenced the business carried on under the vilasam of "M. R. M. M. R." with the assets of this plaintiff for the benefit of the plaintiff. The said Pavanna Vellasampillai who was Muthiah Chettiar's attorney after the death of the said Muthiah Chettiar handed over *inter alia* the books of account furniture fittings to the defendant and left for India. All the said books of accounts furniture and fittings are with the defendant. A list of the articles as handed over is marked "A" and herewith filed. 10

20. The plaintiff states that he is entitled to the said articles mentioned in the list "A". The defendant has failed and neglected to return the same and a cause of action has accrued to the plaintiff to sue for the recovery of the said articles. By the defendant's failure to return the said books of account the plaintiff has suffered great damage and the plaintiff holds the defendant liable for all damages that may be caused thereof. The plaintiff reserves to himself the right to sue the defendant for such damages.

WHEREFORE THE PLAINTIFF PRAYS

1. (a) That the defendant be directed to account to the plaintiff for 20 the balance share of the plaintiff and the defendant be directed to pay the plaintiff whatever sum may be found due to the plaintiff in such accounting.
- (b) Or in the alternative for judgment in the sum of Rs. 74,380.30 together with legal interest thereon from date hereof.
2. For judgment in the said sum of Rs. 88,251.76 with legal interest from date hereof.
3. For an order directing the defendant to deliver the articles mentioned in list "A" to the plaintiff.
4. For costs of suit. 30
5. For such other and further relief as to this court shall seem meet.

(Sgd.) C. M. CHINNAIYA,
 Proctor for Plaintiff.

P12
 Account
 Book
 Extracts
 1929

P12
 Account Book Extracts
 Translation

ACCOUNT OF KANA ROONA KANA NANNA LEYNA

Folio 79

		Rs.	cts.
1929			
Sept. 28.	To amount taken by Sovanna Mana by cheque cash and gave at the house on 27th	600	00
Oct. 1.	To amount taken on the 30th by Sovanna Mana and given at the house by cheque and cash pounds 30 ...	300	00

		Rs. cts.	Exhibits
1929			
Oct.	2. To Eastern Bank cheque taken and given by Sovanna Mana at the house pounds 200 on 1st	2,000 00	P12 Account Book Extracts 1929 —continued.
	4. To amount taken and given by S.M. at the house pounds 130 on 3rd	1,300 00	
	5. To amount taken by Leyna and given at the house on the 4th pounds 500 of which less pounds 10 taken by S.M. on 4th	4,900 00	
10	7. To cheque on the 6th at the house by Sovanna Mana and also cash pounds 225 or	2,250 00	
	9. To cheque and cash on 8th at the house by Sovanna Mana pounds 30 or	300 00	
	10. To amount on 9th at the house by Sovanna Mana pounds 100 or	1,000 00	
	15. To cheque and cash on 14th as per details pounds 120 or	1,200 00	
	17. To amount given by Leyna at the house on 16th pounds 90 or	900 00	
	20. To cheque and cash this day by Leyna pounds 270 or	2,700 00	
20	24. To National Bank cheque at the house on 23rd	500 00	
Nov.	2. To amount by Sovanna Mana at the house on 1st pounds 25 or	250 00	
	5. To amount at the house by Sovanna Mana on the 4th pounds 20 or	200 00	
	23. To amount on 22nd pounds 15 or	150 00	
	27. To amount by Sovanna Mana at the house on 26th pounds 20 or	200 00	
	By amount debited on KR. KN. AR. on 26th with no reference to the day book Rs. 200·00		
80		To balance debit ... 18,550 00	
Dec.	9. To amount on 8th	150 00	
	Total ...	18,700 00	

Exhibits
P14
Extract
from
Day Book,
page 54
1929

Extract from Day Book, page 54

Translation

EXTRACT FROM THE DAY BOOK OF K. R. K. N. L.
COLOMBO

Page 54

Year	Month	Date	Credit Debit	Credit Rs. cts.	Debit Rs. cts.	
1929	×	×	×	×	×	10
August 8. Expenses—To cost of 3 dhoties purchased for Leyna				Rs.	Dr. 5 85	

Translated by :

(Sgd.) M. VELUPILLAI,
S.T., D.C. Colombo.
6th September, 1951.

D5
Debit and
Credit
Account of
Murugappa
Chetty,
June 1929

Debit and Credit Account of Murugappa Chetty

Translation

IN THE SUB. COURT OF SIVAGANGA

20

O.S. 2 OF 1949

Document produced on behalf of 1st defendant

Page 50

Debit and Credit Account of M. Murugappa Chetty

Year	Month	Date	Particulars	Cr.	Dr.	
1929	June	4.	Credit. The one-fourth share due at the date 6th Vaikasi of this Hindu year corresponding to the 18th May of this year in terms of the arbitrators' award of 15th			80

Year	Month Date	Particulars	Cr.	Dr.	Exhibits D5 Debit and Credit Account of Murugappa Chetty June 1929 —continued.
1929	June 4,	Karthigai in the year Visava being Rs. 154,199·1·3 and in terms of the arbitrators' award due for Puthimai (initial celebration of birth) wedding, functional presents and money for his mother, etc. being Rs. 21,800/- aggregating to Rs. 175,999·1·3 and by interest on the said sum for the period from the 25th day of Karthigai up to the 5th day of Vaikasi to wit : 5 months and 12 days at the new current rate prevailing here for the exact number of 120, 35/64 days being Rs. 7,072·04 Total Rs.	183,071·12		
		5. Debit. To cost of 28 diamonds purchased for ear-stud at the date 18th ultimo ...		462·00	
		8. Debit. To cost of goods purchased at the date 11th ultimo, for house warming ceremony per M. R.M. M. M. account ...		112·00	
		Debit also at the date 18th ultimo to cash in hand as per Day Book entry to above account		535·12	
		Total Credit and Debit	183,071·12	1,109·12	
		Balance Credit ...	181,962·00		

(Stamped) Subordinate Judge's Court, Sivaganga, Recd. 28-2-49.

Corrections : Nil.

True copy

(Sgd.) Illegibly.

80

Supdt.
8-8-51.

Translated by :
(Sgd.) M. VELUPPILLAI,
Sworn Translator, D.C. Colombo.
4-9-51.

Exhibits
D6
 Debit and
 Credit
 Account of
 M. RM. M.S.
 July-August
 1929

Debit and Credit Account of M. RM. M. S.

Translation

Page 70

M. RM. M. S. LOAN ACCOUNT—DEBIT AND CREDIT ACCOUNT

1929	Cr.	Dr.
July 10. Credit. By an on demand made and granted this day by Moona stipulating the loan at 8 per cent interest, falling due on 5th September of the current year ...	10,000·00	10
Aug. 13. Debit at the date 12th paid this day for and against which falls due on the 8th September of the current year ...		10,000·00
14. To difference of extra interest as per Chittai on account of the amount debited on the 12th inst. for loan of Rs. 10,000/- which falls on the due date ...		65·65
Credit by above ...	65·65	
Total Dr. and Total Cr. ...	10,065·65	10,065·65

(Stamped) 20
 Subordinate Judge's Court, Sivaganga.
 Received 28-2-49.

True copy
 (Sgd.) Illegibly.
 Supdt.

D7
 Debit and
 Credit
 Account of
 VR. KR.
 July-August
 1929

Debit and Credit Account of VR. KR.

Translation

Page 72

VR. KR. LOAN ACCOUNT—DEBIT AND CREDIT

1929	Cr.	Dr.
July 17. Credit by an on demand made and granted this day by Moona for the loan falling due on 15th September of the current year stipulating interest at 8% ...	10,000·00	
Carried forward ...	10,000·00	

Interest Bill

Translation

Dr. KR. KN. L. INTEREST BILL

	Cr.	Dr.
1930.		
Jan. 1. Debit. To interest at 3/4 per cent. for 23 days on the sum of Rs. 18,700/- ...		107·53
Feb. 1. Debit. To interest up to December at the average rate of 7, 15/64 for 12 months on the sum of Rs. 18,700/- ...		1,352·83 10
Total ...		<u>1,460·36</u>
1931.		
Jan. 1. Debit. To interest at the average rate of 5, 12/64 for 12 months on the sum of Rs. 20,160·36 summed up with interest		1,672·68
1932.		
Jan. 1. Debit. To interest at the average rate of 7, 14/64 for 12 months on the sum of Rs. 21,833·04 summed up with interest		1,576·07 ²⁰
1933.		
Jan. 1. Debit. To interest at the average rate of 5, 49/64 for 12 months on the sum of Rs. 23,409·11 summed up with interest		1,349·68
1934.		
Jan. 1. Debit. To interest at the average rate of 4, 36/64 for 12 months on the sum of Rs. 24,758·79 summed up with interest		1,129·62 ⁸⁰
1935.		
Jan. 1. Debit. To interest at the average rate of 4, 31/64 for 12 months on the sum of Rs. 25,888·41 summed up with interest		1,161·36
1936.		
Jan. 1. Debit. To interest at the average rate of 4, 21-64 for 12 months on the sum of Rs. 27,049·44 summed up with interest		1,170·76 ⁴⁰

		Cr.	Dr.	Exhibits
1937.				
Jan. 1. Debit.	To interest at the average rate of 4, 24/64 for 12 months on the sum of Rs. 28,220·55 summed up with interest			P3 Interest Bill 1930-1948 —continued.
			1,234·65	
1938.				
Jan. 1. Debit.	To interest at the average rate of 4, 21/64 for 12 months on the sum of Rs. 29,455·18 summed up with interest			
10			1,274·85	
1939.				
Jan. 1. Debit.	To interest at the average rate of 4, 21/64 on the sum of Rs. 30,730·03 summed up with interest ...			
			1,368·44	
1940.				
Jan. 1. Debit.	To interest at the average rate of 4, 13/43 for 12 months on the sum of Rs. 32,098·47 summed up with interest			
			1,349·14	
20 1941.				
Jan. 1. Debit.	To interest at the average rate of 4, 1/2 for 12 months on the sum of Rs. 33,447·61 summed up with interest			
			1,505·14	
1942.				
Jan. 1. Debit.	To interest at the average rate of 4, 1/2 for 12 months on the sum of Rs. 34,952·75 summed up with interest			
			1,572·87	
30 1943.				
Jan. 1. Debit.	To interest up to 8th April being 3 months and 8 days at the average rate of 3/8 on the sum of Rs. 36,525·62 summed up with interest ...			
			447·47	
	Apl. 9. Debit.	To interest up to 31st December being 3 months and 22 days at 3/8 per cent. on Rs. 16,037·44 being balance after crediting Rs. 20,488·18		
			525·23	
1944.				
40 Jan. 1. Debit.	To interest at the average rate of 4, 1/2 for 12 months on the sum of Rs. 17,010·14 summed up with interest			
			765·45	

Exhibits	1945.	Cr.	Dr.
P3 Interest Bill 1930-1948 —continued.	Jan. 1. Debit. To interest at the average rate of 4, 1/2 for 12 months on the sum of Rs. 17,775·59 summed up with interest		799·90
	1946. Jan. 1. Debit. To interest at the average rate of 4, 1/2 for 12 months on the sum of Rs. 18,575·49 summed up with interest		835·90 10
	1947. Jan. 1. Debit. To interest up to May being 5 months at the average rate of 1, 7/8 on the sum of Rs. 19,411·39 summed up with interest		363·96
	June 1. Debit. At this date including interest ...		19,775·35
	To interest at 9% for the period up to 30-11-48—18 months		2,670·17
	Total at 1st December ...		22,445·52

P10
 Statement
 showing
 rate of
 interest
 1929-41

P10

20

Statement Showing Rate of Interest

Year	January	February	March	April	
1929	3/4	51/64	47/64	3/4	
1930	3/4	3/4	3/4	43/64	
1931	43/64	45/64	45/64	45/64	
1932	44/64	44/64	45/64	42/64	
1933	33/64	33/64	33/64	31/64	
1934	24/64	24/64	26/64	25/64	
1935	24/64	24/64	24/64	24/64	
1936	23/64	23/64	23/64	24/64	30
1937	23/64	23/64	23/64	23/64	
1938	24/64	23/64	23/63	24/64	
1939	24/64	23/64	23/64	24/64	
1940	23/64	24/64	24/64	22/64	
1941	24/64	24/64	24/64		
Year	May	June	July	August	
1929	43/64	43/64	41/64	41/64	
1930	42/64	42/64	42/64	42/64	
1931	45/64	40/64	40/64	45/64	
1932	41/64	38/64	5/64	35/64	40
1933	31/64	31/64	1/64	31/64	

Year	January	February	March	April	Exhibits	
1934	25/64	24/64	4/64	24/64	P10 Statement showing rate of interest 1929-41 —continued.	
1935	24/64	24/64	4/64	24/64		
1936	23/64	23/64	3/64	23/64		
1937	23/64	23/64	3/64	24/64		
1938	24/64	24/64	2/64	22/64		
1939	24/64	24/64	4/64	25/64		
1940	22/64	22/64	2/64	22/64		
1941						
10 Year	Sept.	Oct.	Nov.	Dec.		
1929	41/64	42/64	43/64	43/64		8 19/64
1930	42/64	37/64	37/64	40/64	7 63/64	
1931	45/64	3/4	45/64	45/64	8 19/64	
1932	85/64	35/64	35/64	33/64	7 14/64	
1933	81/64	31/64	29/64	24/64	5 49/64	
1934	24/64	24/64	24/64	24/64	4 36/64	
1935	26/64	23/64	23/64	23/64	4 31/64	
1936	23/64	23/64	23/64	23/64	4 21/64	
1937	23/64	24/64	24/65	24/64	4 24/64	
20 1938	22/64	23/64	23/64	23/64	4 21/64	
1939	24/64	23/64	24/64	23/64	4 29/64	
1940	22/64	22/64	22/64	22/64	4 13/64	
1941						

D12

Page 121 of Ledger of the Firm of K. R. K. N. L.

Translation

Ledger Folio 121

KR. KN. L. FIRM—COLOMBO

Debit and Credit Current Account of M. R. M. M. R.

80 Year	Month	Date	Particulars	Credit Debit	Credit Debit	Credit Debit	Balance
					Rs. cts.		Rs. cts.
1929	Sept.	28	Credit at 27th Pounds 60	Cr.	600 00	Credit	600 00
	Oct.	1	Credit at 30th Pounds 30	Cr.	300 00	Credit	900 00
		2	Credit at 1st Pounds 200	Cr.	2,000 00	Credit	2,900 00
		4	Credit at 3rd Pounds 130	Cr.	1,300 00	Credit	4,200 00
		5	Credit at 4th Pounds 49	Cr.	4,900 00	Credit	9,100 00
		7	Credit at 6th Pounds 225	Cr.	2,250 00	Credit	11,350 00
		9	Credit at 8th Pounds 30	Cr.	300 00	Credit	11,650 00
40		10	Credit at 9th Pounds 100	Cr.	1,000 00	Credit	12,650 00
		15	Credit at 14th Pounds 120	Cr.	1,200 00	Credit	13,850 00
		17	Credit at 16th Pounds 90	Cr.	900 00	Credit	14,750 00
		21	Credit at 20th Pounds 270	Cr.	2,700 00	Credit	17,450 00
		24	Credit at 23rd Pounds 50	Cr.	500 00	Credit	17,950 00
	Nov.	2	Credit at 1st Pounds 25	Cr.	250 00	Credit	18,200 00
		5	Credit at 4th Pounds 20	Cr.	200 00	Credit	18,400 00
		23	Credit at 22nd Pounds 15	Cr.	150 00	Credit	18,550 00
	Dec.	9	Credit at 8th Pounds 15	Cr.	150 00	Credit	18,700 00

Carried over to folio 16.

D12
Page 121 of
Ledger of
the firm of
K.R.K.N.L.
1929

Exhibits
D13
Page 16 of
Ledger of
the Firm of
K.R.K.N.L.
1930-32

Page 16 of Ledger of the Firm of K. R. K. N. L.

Ledger folio 16

KR. KN. L. FIRM—COLOMBO

Debit and Credit Account of M. R. M. M. M. R.

Year Date Month	Particulars	Credit Debit	Credit Debit Rs. cts.	Credit Debit	Balance Rs. cts.
1930					
April 1	Credit. As per page 121 of Ledger No. 3	Cr.	18,700 00	Credit	18,700 00 10
1931					
Mar. 31	Credit. Interest for the period from 27th September, 1929, till this date, as per interest bill	Cr.	2,257 00	Credit	20,957 06
1932.					
Mar. 30	Credit. Interest for the period from 1st April, 1931, till the 31st inst. as per interest bill	Cr.	1,738 78	Credit	22,695 84

D14
Page 9 of
Ledger of
the Firm of
K.R.K.N.L.
1932-33

Page 9 of Ledger of the Firm of K. R. K. N. L.

Ledger Folio 9

DEBIT AND CREDIT ACCOUNT OF M. R. M. M. M. R.

Year Date Month	Particulars	Credit Debit	Credit Debit Rs. cts.	Credit Debit	Balance Rs. cts.
1932					
April 1	Credit. As per page 16 of previous ledger	Cr.	22,695 84	Credit	22,695 84
1933.					
Mar. 31	Credit. Interest for the period from the 1st of April, 1932, till this date, as per interest bill	Cr.	1,517 88	Credit	24,213 27

D15

Page 9 of Ledger of the Firm of K. R. K. N. L.

Ledger Folio 9

KR. KN. L. FIRM—COLOMBO

Debit and Credit Account of M. R. M. M. M. R.

Year Date Month 1933.	Particulars	Credit Debit	Credit Debit	Credit Debit	Balance
			Rs. cts.		Rs. cts.
10 Nov. 1	Credit. As per page 9 of previous ledger	Cr.	24,213 72	Credit	24,213 72
19	Debit. Paid taxes this day through P. N. S. Aiyer by cheque drawn on Imperial Bank	Dr.	151 78	Credit	24,061 74
1934. Mar. 31	Credit. By interest at 1 p.c. of the Imperial Bank rate for the period from the 1st April, 1933, up to the month of Thai	Cr.	237 41	Credit	24,299 35

Exhibits

D15

Page 9 of
Ledger of
the Firm of
K.R.K.N.L.
1933-34

20

D16

Page 9 of Ledger of the Firm of K. R. K. N. L.

Ledger Folio 9

KR. KN. L. FIRM, COLOMBO

Debit and Credit Account of M. R. M. M. M. R.

Year Date Month 1934.	Particulars	Credit Debit	Credit Debit	Credit Debit	Balance
			Rs. cts.		Rs. cts.
April 1	Credit. As per page 9 of previous ledger	Cr.	24,299 35	Credit	24,299 35
30 June 23	Debit. Paid taxes through P. N. S. Aiyer this day by cheque drawn on Imperial Bank	Dr.	33 74	Credit	24,275 61
1935. Mar. 31	Credit. Interest for the period from 1st April, 1934, till this date at the Imperial Bank rate of 1 p.c.	Cr.	239 47	Credit	24,515 08

D16
Page 9 of
Ledger of
the Firm of
K.R.K.N.L.
1934-35

D17

Exhibits
D17
Page 9 of
Ledger of
the Firm of
K.R.K.N.L.
1935-36

Page 9 of Ledger of the Firm of K. R. K. N. L.

Ledger Folio 9

KR. KN. L. FIRM—COLOMBO

Debit and Credit Account of M. R. M. M. M. R.

Year	Date	Particulars	Credit Debit	Credit Debit Rs. cts.	Credit Debit	Balance Rs. cts.
1935.	April 1	Credit. As per page 9 of previous ledger	Cr.	24,515 08	Credit	24,515 08 10
	June 10	Debit. Paid taxes through P. N. S. Aiyer by cheque drawn on Imperial Bank	Dr.	28 98	Credit	24,491 15
1936.	Mar. 31	Credit. Interest for period from 1st April, 1935, till this date at the Imperial Bank rate of 1 per cent.	Cr.	241 60	Credit	24,732 75

D18

D18
Page 9 of
Ledger of
the Firm of
K.R.K.N.L.
1936-37

Page 9 of Ledger of the Firm of K. R. K. N. L.

20

Ledger Folio 9

KR. KN. L. FIRM—COLOMBO

Debit and Credit Account of M. R. M. M. M. R.

Year	Date	Particulars	Credit Debit	Credit Debit Rs. cts.	Credit Debit	Balance Rs. cts.
1936.	April 1	Credit. As per page 9 of previous ledger	Cr.	24,732 75	Credit	24,732 75
	Aug. 10	Debit. Paid income tax through P. N. S. Aiyer by cheque drawn on Imperial Bank	Dr.	24 16	Credit	24,708 59
1937.	Mar. 31	Credit. Interest for the period from 1st April, 1936, till this date at the Imperial Bank rate of interest	Cr.	244 45	Credit	24,953 04

175

D19

Page 9 of Ledger of the Firm of K. R. K. N. L.

Ledger Folio 9

KR. KN. L. FIRM, COLOMBO

Debit and Credit Account of M. R. M. M. R.

			Rs. cts.		Rs. cts.	
1937.						
April	1	Credit.	As per page 9 of previous ledger	Cr.	24,958 04	
				Credit	24,958 04	
10	Oct.	22	Debit.	Paid income tax for the year 1936-37	Dr.	24 45
				Credit	24,928 59	
1938.						
Mar.	31	Credit.	Interest for the period from 1st April, 1937, till this date at the Imperial Bank rate of half per cent.	Cr.	128 00	
				Credit	25,051 59	

Exhibits
D19
Page 9 of
Ledger of
the Firm of
K.R.K.N.L.
1937-38

D20

Page 9 of Ledger of the Firm of K. R. K. N. L.

Ledger Folio 9

KR. KN. L. FIRM, COLOMBO

Debit and Credit Account of M. R. M. M. R.

			Rs. cts.		Rs. cts.	
20	1938.					
	April	1	Credit.	As per page 9 of previous ledger	Cr.	25,051 59
				Credit	25,051 59	
	Sept.	9	Debit.	Paid income tax through P. N. S. Aiyer for the years 1938-39	Dr.	12 30
				Credit	25,089 29	
30	1939.					
	Mar.	31	Credit.	Interest for the period from 1st April, 1938, till the 31st inst. at the Imperial Bank rate of half per cent,	Cr,	125 22
				Credit	25,164 51	

D20
Page 9 of
Ledger of
the Firm of
K.R.K.N.L.
1938-39

Exhibits

D21
Page 9 of
Ledger of
the Firm of
K.R.K.N.L.
1939-40

D21

Page 9 of Ledger of the Firm of K. R. K. N. L.

Ledger Folio 9

KR. KN. L. FIRM, COLOMBO

Debit and Credit Account of M. R. M. M. R.

			Rs. cts.		Rs. cts.
1939.					
April 1	Credit.	As per page 9 of previous ledger	Cr. 25,164 51	Credit	25,164 51
Aug. 18	Debit.	Paid income tax through P. N. S. Aiyer for the years 1939-40	Dr. 15 02	Credit	25,149 49 ¹⁰
1940.					
Feb. 8	Debit.	Paid for the Hundial of Rs. 5,000/- drawn up and granted by Segappi Achi <i>alias</i> Meenatchi Achi to V. R. K. R. of Kandaverayanpati on the 9th inst. together with interest till this date by cheque drawn on Imperial Bank	Dr. 5,010 18	Credit	20,189 81 ²⁰
Mar. 31	Credit.	Interest for the period from 1st April till this date at the rate of half per cent.	Cr. 122 23	Credit	20,261 51

D22
Page 9 of
Ledger of
the Firm of
K.R.K.N.L.
1940-41

D22

Page 9 of Ledger of the Firm of K. R. K. N. L.

Ledger Folio 9

KR. KN. L. FIRM, COLOMBO

Debit and Credit Account of M. R. M. M. R.

			Rs. cts.		Rs. cts. ⁸⁰
1940.					
April 1	Credit.	As per page 9 of previous ledger	Cr. 20,261 54	Credit	20,261 54
July 28	Debit.	Paid income tax for the years 1939-40	Dr. 14 67	Credit	20,246 87
1941.					
Mar. 31	Credit.	Interest for the period from 1st April, 1940, till this date as per interest bill	Cr. 101 23	Credit	20,348 10

D23

Page 8 of Ledger of the Firm of K. R. K. N. L.

Ledger Folio 8

KR. KN. L. FIRM, COLOMBO

Debit and Credit Account of M. R. M. M. M. R.

				Rs. cts.		Rs. cts.
1941.						
April	1	Credit.	As per page 9 of previous ledger	Cr.	20,348 10	Credit 20,348 10
Aug.	11	Debit.	Paid income tax for the years 1940-41	Dr.	12 15	Bal. Credit 20,385 95
1942.						
Mar.	31	Credit.	Interest for the period from 1st April, 1941, till this date as per interest bill	Cr.	101 70	Credit 20,487 65

D24

Page 7 of Ledger of the Firm of K. R. K. N. L.

Ledger Folio 7

KR. KN. L. FIRM, COLOMBO

Debit and Credit Account of M. R. M. M. M. R.

				Rs. cts.		Rs. cts.
1942.						
April	1	Credit.	As per page 8 of previous ledger	Cr.	20,487 65	Credit 20,487 65
Oct.	19	Debit.	Paid income tax for the years 1941-42	Dr.	15 26	Credit 20,422 89
1943.						
Mar.	31	Debit.	To stamps Rs. 10/- and proctor's fees being Rs. 21/- enabling to file motion and deposit in court the amount lying in credit through Proctor Mr. S. Somasundaram Dr.		81 00	Credit 20,391 89
30		Credit.	Interest for the period from 1st April, 1942, till this date at the rate of half per cent.	Cr.	102 11	Credit 20,493 50

Exhibits
D28
Page 8 of
Ledger of
the Firm of
K.R.K.N.L.
1941-42

D24
Page 7 of
Ledger of
the Firm of
K.R.K.N.L.
1942-48

Exhibits
 D25
 Page 7 of
 Ledger of
 the Firm of
 K.R.K.N.L.
 1948-44

Page 7 of Ledger of the Firm of K. R. K. N. L.

Ledger Folio 7

K. R. K. N. L. FIRM, COLOMBO

Debit and Credit Account of M. R. M. M. R.

				Rs. cts.		Rs. cts.
1948.	April 1	Credit.	As per previous page 7	Cr.	20,498 50	Credit 20,498 50
	8	Debit.	Deposited at the Kachcheri by cheque drawn on Imperial Bank with regard to the deposit order issued on 7-4-48 for paying the money in case D.C. 3886 of the amount lying in credit	Dr.	20,488 18	Credit 5 32
	Oct. 16	Debit.	Paid income tax for the years 1942-48	Dr.	15 32	Debit 10 00
1944.	Mar. 31	Credit.	By expenses account	Cr.	10 00	Squared.

Supreme Court of Ceylon
No. 153 (Final) of 1952

District Court, Colombo
No. 20429

*In Her Majesty's Privy Council
on an Appeal from the Supreme Court of Ceylon*

BETWEEN

M. R. M. M. R. MURUGAPPA CHETTIAR
of No. 62, Sea Street, Colombo.....*Plaintiff-Appellant.*

AND

1. MUTHTHAL ACHY, widow of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District.
2. KANNAPPA CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District
3. KARUPPEN CHETTIAR, son of Letchumanan Chettiar of A'Thekkur Tirupatur, Ramnad District.
4. ARUNACHALAM CHETTIAR, son of Letchumanan Chettiar of No. 91, New Moor Street, Colombo.
5. ALAGAPPA CHETTIAR, son of Letchumanan Chettiar.
6. NATCHAMMAI ACHY, widow of Karuppen Chettiar and daughter of Letchumanan Chettiar, both of A'Thekkur Tirupatur, Ramnad District in India.

Defendants-Respondents.

RECORD
OF PROCEEDINGS
