

~~PC~~  
~~PC~~  
Judgment  
8, 1960

8

1959

Supreme Court of Ceylon,  
No. 619 ( Final ) of 1955.

District Court, Colombo,  
No. 6759/PN.

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

BETWEEN

1. HUSSENABAI HASSANALLY
2. YAHYABHAI AKBERALLY both of Wellawatta, Colombo  
(Substituted in place of the 5th defendant (deceased) 6th and 7th Defendants-Appellants.

AND

1. MOHAMED MUHEETH MOHAMED CASSIM of 289, Darley  
Road, Maradana, in Colombo.. .. Plaintiff-Respondent.
2. ABDUL RAHIMAN ZANEERA UMMA of 289, Darley Road,  
Maradana, in Colombo .. .. 1st Defendant-Respondent.
3. MOHAMED MUHEETH MOHAMED FAUSZ of 289, Darley  
Road, Maradana, in Colombo.. .. 2nd Defendant-Respondent.
4. MOHAMED MUHEETH ABDUL MAJEED of 289, Darley Road,  
Maradana, in Colombo .. .. 3rd Defendant-Respondent.
5. MOHAMED MUHEETH AYUNUL WADOODA of 289, Darley  
Road, Maradana, in Colombo.. .. 4th Defendant-Respondent.
6. ABDUL HAMEED SITTY HAJIRA.
7. ABDUL HAMEED MOHAMED MUHEETH.
8. ABDUL HAMEED UMMA SHIFFA, minors by their guardian-ad-  
litem the 4th defendant-respondent .. 8th, 9th and 10th Defendants-Respondents.

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RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON  
W.C.1.

- 7 FEB 1961

INSTITUTE OF ADVANCED  
LEGAL STUDIES

ii

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No. 1.

## Journal Entries

No. 1  
Journal Entries  
19.1.53 to  
30.9.57.

## IN THE DISTRICT COURT OF COLOMBO

Mohamed Muhith Mohamed Cassim of Darley Road,  
Maradana ..... Plaintiff  
vs.

No. 6759/P.N. 1. Abdul Rahuman Zancera Umma and four  
Class : VI. others of Colombo..... Defendants.

Amount : Rs. 35,000/-.

<sup>10</sup> Nature : Partition.

Procedure : Regular.

## JOURNAL

(1) The 19th day of January, 1953:

Mr. K. Rasanathan files appointment (1a) and Plaint (1) together with Document marked " B " being the Pedigree and " A " being the Abstract of Title and *Lispendens* in duplicate for registration and return.

1. Plaint accepted.
2. File *Lispendens* before 28.1.53.

20

(Intd.) M. M. I. K.,  
A. D. J.

Later—*Lispendens* tendered.

1. Forward *Lispendens* to the Registrar of Lands, Colombo, for registration and return before 25.2.53.
2. Plaintiff to deposit survey fees estimated at Rs. 75/- together with commission before 25.2.53.

(Intd.) M. M. I. K.,  
A. D. J.

(2) 22.1.53.

<sup>30</sup> *Lispendens* sent for registration. Paying-in-Voucher issued.

(Intd.).....  
22.1.53.

(3) 18.2.53.

The Registrar of Lands, Colombo, returns *lispendens* duly registered.

File.

(Intd.).....  
Asst. Secy.

No. 1  
Journal Entries  
19.1.53 to  
30.9.57—  
Continued

(4) 25.2.53.

Mr. K. Rasanathan for plaintiff. Survey fees and commission. K.R. 1795/06884 for Rs. 75/- due tendered. To comply with Section 12 of the Partition Act on 29.4.53.

(Intd.) M. C. S.,  
A. D. J.

(5) 29.4.53.

Mr. K. Rasanathan for plaintiff.

To comply with Section 12 of the Partition Act. Papers filed. Issue summons returnable 29.7. 10

(Intd.) M. C. S.,  
A. D. J.

(6) 30.4.53.

Commission with copy of plaint issued to Mr. V. Karthigesu, Surveyor, returnable 27.7.53.

(Intd.).....

(7) 2.5.53.

Summons and notices tendered not in order.

(Intd.).....

(8) 26.5.53.

Summons issued on defendants W.P. Notice issued on Fiscal W.P. Notice issued on V. A. St. Paul's Ward. 20

(Intd.).....

(9) 2.7.53.

Mr. V. Karthigesu Surveyor files his report (9a) Preliminary Plan No. 1301 (9b) copy of field notes (9c) and memo of charges (9d) and moves Court to allow him to withdraw the amount deposited as survey fees in this action.

1. File and mention on 29.7.53.

2. Payment thereafter.

(Intd.) M. C. S., 30  
A. D. J.

(10) 24.7.53.

Mr. R. Jeremiah proctor for 1st to 4th defendants files his appointment as proctor for 1st-4th defendants in this case. These defendants admit the shares allotted to them in the plaint.

File and mention on 29.7.53.

(Intd.) G. M. de S.,  
A. D. J.

(11) 29.7.53.

Mr. K. Rasanathan for plaintiff.  
 Mr. R. Jeremiah for 1st to 4th defendants.  
 (a) Notice to Fiscal—affixed.  
 (b) Summons served on 1st-5th defendants. Absent.  
 (c) Publication due. Tendered.  
 (d) Return to commission for Preliminary Survey due. Already filed. *Vide J.E. (9).*

1. Verify and pay commissioner.
- 10 2. Secretary to specify the difference in survey fees in terms of Section 9 of the Partition Act, to be deposited on or before 30.9.
3. Statement of claim on .....

Mr. S. R. Amerasekera for Petitioners states that the 5th defendant is dead. He files appointment for Hussenabai Hassanally and Yahyabhai Akbarally the executor and the executrix of the last will of the said deceased together with petition and affidavit and moves that they be substituted in place of the deceased and a date be given for the answer.

1. Add them as 6 and 7th defendants.
- 20 2. Answer on 30.9.53.

(Intd.) M. C. S.,  
 A. D. J.

(12) 4.8.53.

(9d)

Memo of charges taxed at ..	..	Rs.	85.50
In deposit .. .. .	..	,,	75.00
			-----
Difference ..	..	Rs.	10.50
			-----

Percentage on valuation will be considered by Court when the bill for final partition is tendered.

30 (Intd.).....

(13) 5.8.53.

Requisition No. 462 for Rs. 75/- issued in favour of Mr. V. Karthigesu, Surveyor. *Vide J.E. (11) D(1).*

(Intd.) ..... (Intd.) J. H. F.,  
 Sr. Asst. Secretary. Adm. Secretary.

(14) 30.9.53.

Mr. K. Rasanathan for plaintiff.  
 Mr. R. Jeremiah for 1st to 4th defendants.  
 (a) Balance survey fees Rs. 10.50 due 14.10.

No. 1  
 Journal Entries  
 19.1.53 to  
 30.9.57—  
 Continued

No. 1  
Journal Entries  
19.1.53 to  
30.9.57.—  
Continued

(b) Statements due. Not filed. Mr. S. R. Amerasekera for 5th defendant with the consent of the plaintiff. As documents dating 1871 have been applied for, he moves for time till 14.10.53.

Allowed for 14.10.

(Intd.) G. M. de S.,  
A. D. J.

(15) 14.10.53.

Mr. K. Rasanathan for plaintiff.  
Mr. R. Jeremiah for 1st to 4th defendants.  
Mr. S. R. Amerasekera for 5th defendant.  
Statement due. Filed.  
Trial 15.3.54.

10

(Intd.) G. M. de S.,  
A. D. J.

(16) 2.3.54.

Mr. S. R. Amerasekera, proctor for 6th and 7th defendants with notice to proctor for plaintiff files 6th and 7th defendants' list of witnesses and documents and moves for summons.

1. Issue summons on witnesses 1-4, 6 and 7.

2. *Re* witness No. 5, obtain certified copies of documents purported to be produced and move.

(Intd.) G. C. T. A. de S.,  
A. D. J.

(17) 5.3.54.

Summons issued on 1st witness by 5th and 7th defendants.

(Intd.).....

(18) 15.3.54.

Mr.K. Rasanathan for plaintiff.  
Mr. R. Jeremiah for 1st to 4th defendants.  
Mr. S. R. Amerasekera for 5th defendant.  
*Vide* J.E.(15) Trial. Plaintiff and defendants 1-4 present.

30

*Vide* proceedings. Trial refixed for 27.7.

(Intd.) G. C. T. A. de S.,  
A. D. J.

Proceedings filed.

(Intd.).....  
1.3

(19) 23.6.54.

Mr. K. Rasanathan, proctor for plaintiff with notice to proctor for 6th and 7th defendants moves to file the additional list of witnesses and documents on behalf of the plaintiff and further moves for



summons on the witnesses. A copy of the list was sent under registered cover to proctor for 5th to 7th defendants.

Allowed.

Issue summons.

(Intd.) G. C. T. A. de S.,  
A. D. J.

No. 1  
Journal Entries  
19.1.53 to  
30.9.57—  
Continued

(20) 1.7.54.

Summons issued on 2 witnesses by plaintiff.

(Intd.).....

10(21) 27.7.54.

Mr. K. Rasanathan for plaintiff.

Mr. R. Jeremiah for 1st-4th defendants.

Mr. S. R. Amerasekera for 5th defendant.

Vide Journal Entry(18)Trial. Plaintiff and 2nd defendant present.

Vide proceedings.

Take case off trial.

Amend plaint 1.9.

(Intd.) G. C. T. A. de S.,  
A. D. J.

20 Proceedings filed.

(Intd.).....  
29.7.

(22) 14.8.54.

Proctor for petitioner files petition and affidavit from the petitioner and for reasons stated therein moves that the 4th respondent be appointed Guardian *ad-litem* over 1st-3rd respondents minors.

Enter and issue *Order/Nisi* for 1.9.54.

(1) (Intd.) M. M. I. K.,  
A. D. J.

30(23) 14.8.54.

Proctor for plaintiff with notice to proctors for 4th, 6th and 7th defendants, files amended plaint.

1. Mention on 1.9.54.

2. Amended answer of 6th and 7th defendants on same date.

(2) (Intd.) M. M. I. K.,  
A. D. J.

(24) 1.9.54.

Mr. K. Rasanathan for plaintiff.

Vide Journal Entry (23) amended plaint already filed.

40 Accepted. Amended answer due. Filed *Order Nisi* not entered and issued. Enter and issue now for.....Notice respondents' proctor. Of consent 4th respondent is appointed Guardian-*ad-litem* over 1st-3rd respondents. Enter *Order Absolute-Add-Trial* 28.2.

(Intd.) G. C. T. A. de S.,  
A.D.J.

No. 1  
Journal Entries  
19.1.53 to  
30.9.57—  
Continued

(25) 3.9.54.

Proctor for 6th and 7th defendants tenders application for execution of Decree by issue of writ against the plaintiff.

Allowed.  
Issue writ.

(Intd.) M. M. I. K.,  
A.D.J.

(26) 21.9.54.

Writ issued against plaintiff W. P. returnable on 16.9.55.

(Intd.)..... 10

(27) 29.10.54.

The Deputy Fiscal, Colombo, states that immovable property to the value of Rs. 13,500/- was seized on 23.10.54.

(28) 20.12.54.

The Deputy Fiscal, Colombo, returns writ and states that a sum of Rs. 157.50 was recovered and deposited at the Colombo Kachcheri on 3.12.54.

Poundage for Rs. 1.92 was also recovered and credited to revenue.

(29) 12.1.55.

Mr. S. R. Amerasekera, proctor for 6th and 7th defendants, moves 20 for an Order of Payment in favour of the 6th and 7th defendants for a sum of Rs. 157.50, being amount recovered and deposited by the Fiscal. Proctor for plaintiff consents.

Allowed.

Issue Order of Payment accordingly.

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

(30) 17.1.55.

*Vide* Journal Entry (29).

Payment Order 09458 for Rs. 157.50 issued to (1) H. Hassanally 30 and (2) Y. Akbarally, 6th and 7th defendants.

(Intd.).....  
Jr. Asst. Secy.

(Intd.) J. H. F.,  
Adm. Secy.

(31) 23.2.55.

Summons issued on two witnesses by plaintiff.

(32) 25.2.55.

Mr. S. R. Amarasekera, proctor for 6th and 7th defendants, files additional list of witnesses and moves for summons. Proctor for plaintiff received notice.

There is no time to issue summons now.

(Intd.)..... 40  
A.D.J.

(33) 25.2.55.

The Counsel in this case only yesterday desired to produce plan No. P.B. 230/49, dated 4.8.49 and the permit issued thereon dated 2.8.49 relating to premises No.113, New Moor Street, Colombo, and for that purpose it is necessary to issue summons on the Municipal Engineer to produce the said plan. He (Mr. S.R. Amerasekera) Proctor for 5th defendant moves to issue summons on the Municipal Engineer.

Issue summons.

(Intd.) G. C. T. A. de S.,  
A. D. J.

10

(33(a) 25.2.55.

Summons on 1 witness by 6th and 7th defendants.

(34) 28.2.55.

Mr. K. Rasanathan for plaintiff.

Mr. R. Jeremiah for 1st-4th defendants.

Mr. S. R. Amerasekera for 6th and 7th defendants.

Vide Journal Entry (24) Trial. Plaintiff, 1st-4th defendants present.

Vide proceedings.

20

Further hearing 29.3.

(Intd.) G. C. T. de S.,  
A. D. J.

Proceedings filed.

(Intd.).....  
17.3.

(35) 29.3.55.

Mr. K. Rasanathan for plaintiff.

Mr. R. Jeremiah for 1st-4th defendants.

Mr. S. R. Amerasekera for 6th and 7th defendants.

30

Vide J.E. (34). Further hearing.

Vide proceedings. Documents to be filed today.

Judgment reserved.

(Intd.) G. C. T. A. de S.,  
A. D. J.

Proceedings filed.

P1-P9 filed.

6D1-6D5 filed.

(Intd.).....  
6.4.

40

Forward record to D.C., Galle.

(Intd.) G. C. T. A. de S.,  
A. D. J.

No. 1  
Journal Entries  
19.1.53 to  
30.9.57—  
Continued

(36) 18.5.55.

*Vide* letter No. JAA/11/48 from the J.S.C. Mr. G. C. T. A. de Silva has been appointed A.D.J. on 20.5.55.

(Intd.).....

(37) 20.5.55.

Mr. K. Rasanathan for plaintiff.

Mr. R. Jeremiah for 1st-4th defendants.

Mr. S. R. Amerasekera for 6th and 7th defendants.

Judgment *vide* letter above. Judgment delivered in open Court.

(Intd.) G. C. T. A. de S., 10

A. D. J.

Judgment filed.

(Intd.).....

23.5.

(38) 2.6.55.

Mr. K. Rasanathan, Proctor for plaintiff-appellant, files petition of appeal.

File.

(Intd.) G. C. T. A. de S.,

A. D. J. 20

(39) 2.6.55.

Mr. K. Rasanathan, Proctor for plaintiff-appellant, states that the petition of appeal presented by the plaintiff-appellant on 2.6.55 against the judgment and order of this Court dated 20.5.55 having been received by the said Court, he will on behalf of the plaintiff-appellant on 8.6.55 at 10.45 o'clock in the forenoon or soon thereafter move to tender Rs. 250/- as security for any costs which may be incurred by the 6th and 7th defendants-respondents in appeal in the premises and will on the said day deposit in Court sufficient sum of money to cover the expenses by serving notice of appeal on them. He also moves 30 for a Paying-in-Voucher for Rs. 25/- for appeal brief.

1. Issue notice of security for 8.6.55.

2. Issue Paying-in-Voucher for Rs. 250/- and Rs. 25/-.

(Intd.) G. C. T. A. de S.,

A. D. J.

(40) 2.6.55.

Mr. K. Rasanathan, Proctor for plaintiff-appellant, files consent motion from the 1st, 2nd, 3rd, 4th and 8th-10th respondents and moves that security for their costs of appeal be dispensed with.

Proctor for 1st-4th defendants and 4th defendant-respondent for and on behalf of 8th-10th defendants-respondents minors consent. Proctor certifies to the signature of 4th defendant-respondent.

No. 1  
Journal Entries  
19.1.53 to  
30.9.57—  
*Continued*

File.

(Intd.) G. C. T.A. de S.,  
A. D. J.

(41) 2.6.55.

Notice of security sent to Fiscal W.P. to be served on proctors for 1st-4th and 6th and 7th defendants-respondents and on 4th  
10 respondent.

(Intd.).....

(42) 7.6.55.

Mr. K. Rasanathan, Proctor for plaintiff, tenders decree in this case ; it is entered of record.

(Intd.).....

*Asst. Secy.*

(43) 8.6.55.

Mr. K. Rasanathan for plaintiff-appellant.

No return to notice of security on 1st-4th, 6th and 7th and 4th  
20 respondents.

Later received. They are absent. Notices served. Mr. Rasanathan and plaintiff are absent. No order. *Eo-die*. Later Mr. Rasanathan appeals to me that security be accepted. He says that the defendants have been noticed.

Security accepted.

Perfect bond.

Issue notice of appeal for 27.7.55.

(Intd.) G. C. T. A. de S.,

A. D. J.

30(44) 9.6.55.

Mr. K. Rasanathan, proctor for plaintiff-appellant, tenders bond to prosecute, K.R.R., for Rs. 250/- and Rs. 25/- and notice of appeal.

*Vide* Journal Entry (43). Issue notice of appeal for 27.7.55.

(Intd.).....

*Sr. Asst. Secy.*

(45) 10.6.55.

Notice of appeal issued on proctors for 1-4, 6 and 7 Guardian-*ad-litem* by 8th-10th defendants-respondents.

K.R. L/2 No. 887/043587 of 9.6.55 for Rs. 250/- filed.

40 K.R. L/12 No. 886/043586 of 9.6.55 for Rs. 25/- filed.

No. 1  
Journal Entries  
19.1.53 to  
30.9.57—  
Continued

(46) 27.7.55.

Mr. K. Rasanathan for plaintiff-appellant.

Mr. R. Jeremiah for 1st-4th defendants respondents.

Mr. S. R. Amerasekera for 6th and 7th defendants respondents.

Notice of appeal served on :—

Proctor for 1st-4th defendants-respondents.

Proctor for 6th and 7th defendants-respondents.

4th defendant as Guardian-*ad-litem* over 8th-10th defendants-respondents.

Forward Appeal.

(Intd.) G. C. T. A. de S.,

A. D. J.

10

(47) 31.8.55.

Mr. S. R. Amerasekera for 6th and 7th respondents moves for a Paying-in-Voucher for Rs. 12/- for appeal brief. Issue Paying-in-Voucher for Rs. 12/-.

(Intd.) G. C. T. A. de S.,

A. D. J.

Paying-in Voucher issued.

(Intd.)..... 20

1.9.

(48) 10.11.55.

The Appeal Branch requests additional fees to be called from the following :—

Mr. K. Rasanathan .. .. . Rs. 23/-

Mr. R. Jeremiah .. .. . „ 48/-

Mr. S. R. Amerasekera .. .. . „ 48/-

Call for fees by registered post.

(Intd.) G. C. T. A. de S.,

A. D. J. 30

Fees called for by registered post.

(Intd.).....

10.11.

(49) 29.11.55.

K.R.D./13 No. 2442/031511 of 24.11.55 for Rs. 48/- filed.

(50) 9.12.55.

K.R.D/13 No. 882/035881 of 8.12.55 for Rs. 23/- filed.

(Intd.).....

(51) 16.12.55.

Record forwarded to S.C.

(Intd.).....

40

(52) 19.9.57.

The Registrar, S.C., returns record and states that it is considered and adjudged that this appeal be and the same is hereby allowed holding that the 6th and 7th defendants are not entitled as against the plaintiff to any rights. The Decree for sale entered by the D.J. is amended by striking out all the directions which follow the order for the sale of the property under the Partition Act and the bringing into Court of the proceedings thereof to abide the further orders of Court.

No. 1  
Journal Entries  
19.1.53 to  
30.9.57—  
Continued

10 It is further decreed that the 6th and 7th Defendants do pay to the plaintiff Rs. 105/- as the cost of contest in the D.C. and also do pay the cost of this appeal.

1. Call case on 30.10.57 for steps.
2. Inform Proctor.

(Intd.).....  
A.D.J.

Proctor informed.

(Intd.).....  
25/9.

20(53) 30.9.57.

The Registrar, S.C., *vide* his letter APN of 28.9.57, requests that this record be forwarded to him as an application for Conditional Leave to appeal to the Privy Council has been filed in the S.C.

Forward record.

(Intd.).....  
A.D.J.

**No. 2.**

**Plaint of the Plaintiff**

**IN THE DISTRICT COURT OF COLOMBO**

No. 2  
Plaint of the  
Plaintiff  
19.1.53.

30

Mohamed Muhith Mohamed Cassim of Darley  
Road, Maradana.....*Plaintiff*

No. 6759/P.

*vs.*

Class : VI.

Nature : Sale.

Value : Rs. 35,000/-

Pro : Regular.

1. Abdul Rahuman Zaneera Umma of Darley Road.
2. Mohamed Muhith Mohamed Fausz.
3. Mohamed Muhith Abdul Majeed.
4. Mohamed Muhith Ayunul Wadooda, all of Darley Road, Maradana, Colombo.

No. 2  
Plaint of the  
Plaintiff  
19.1.53—  
Continued

5. Akbarally Abdul Hassan Davoodbhoy of  
50, Dam Street, Colombo. Deceased.
6. Hussanbai Hassanally.
7. Yahabhai Akbarally both of Wellawatta in  
Colombo, 6th and 7th defendants substitu-  
ted in place of 5th defendant deceased.....

.....Defendants.

This 19th day of January, 1953.

The plaint of the plaintiff abovenamed appearing by Kasi Pillai Rasanathan, his Proctor, states as follows :—

10

1. The parties to this action reside and the land which is the subject-matter of this action is situated within the Jurisdiction of this Court.

2. That under Certificate of Title issued in Case No. 46998 one Rahumath Umma was the owner and was seized and possessed of all that house and garden bearing old Assessment No. 47, thereafter No. 38 and presently bearing assessment No. 113 situated and lying at New Moor Street within the Gravets of Colombo within the Jurisdiction of this Court and bounded on the North by the garden of Satta Marikkar, East by the house of Assen Lebbe, South by New Moor Street and West by the house of Tangatchy Umma containing in extent fourteen square perches, which said premises is also according to Plan No. 963 dated 8th December, 1916, made by M. G. de Silva, Licensed Surveyor, is bounded on the North by the premises bearing assessment No. 30 in Siripina Lane, East by premises bearing assessment No. 392, South by New Moor Street and West by premises bearing assessment No. 37 containing in extent fourteen and 47/100 perches, subject to a *fidei commissum* created in favour of her descendants in Deed No. 943 dated 22nd July, 1871, attested by J. F. Prins, Notary Public, namely :—“ that Candoo Umma (mother of Rahumath Umma) shall not sell, alienate, mortgage or encumber the said premises or any part thereof or the issues, rents and profits thereof but shall possess and enjoy the same during her natural life and that after her death the same shall devolve on her children share and share alike and if there be one child on such child and thereafter on the child or children of such her child or children and go from generation to generation under the *fidei commissum* Law of Inheritance.”

3. The said Rahumath Umma departed this life intestate leaving as her heirs two children, Ummu Sheefa and Zaneera Umma the 1st defendant whereby each of whom became entitled to half share of the said land.

4. The said Ummu Sheefa died intestate leaving as her heirs her four children Mohamed Fausz the 2nd defendant, Majeed the 3rd defendant, Cassim the plaintiff and Ayunul Wadooda the 4th defend-



ant : whereby each of whom became entitled to 1/8th share of the said land.

No. 2  
Plaint of the  
Plaintiff  
19.1.53—  
Continued

5. The plaintiff and the 1st to 4th defendants are thus entitled to the said land and premises in the following shares, to wit :

Plaintiff to an undivided	..	..	1/8th share
1st Defendant to an undivided	..	..	4/8th share
2nd Defendant to an undivided	..	..	1/8th share
3rd Defendant to an undivided	..	..	1/8th share
4th Defendant to an undivided	..	..	1/8th share

10 All such shares being subject to the aforesaid *fidei commissum*.

6. The parties to this action and their predecessors in title have been in the quiet, undisturbed and uninterrupted possession of the said land and premises for the last 10 years and upwards by a title adverse to and independent of all others and have acquired a title thereto by prescription in terms of Section 3 of Ordinance No. 22 of 1871.

7. The said land is of the value of Rs. 35,000/-, and it is impracticable to possess the same in common.

8. The 1st defendant has leased her half share of the said premises to the 5th defendant and he is made a party to this action in order to give notice thereof.

Wherefore the plaintiff prays :—

- (a) That the plaintiff and the 1st to 4th defendants be declared entitled to the said land and premises in the shares set out in paragraph 5 hereof.
- (b) That the same be ordered to be sold in terms of the Partition Act 16 of 1951.
- (c) For costs and for such other and further relief as to this Court shall seem meet.

30

(Sgd.) K. RASANATHAN,  
*Proctor for Plaintiff.*

*Memorandum of documents produced and filed with the plaint.*

1. Abstract of title marked A.
2. Pedigree marked B.

(Sgd.) K. RASANATHAN,  
*Proctor for Plaintiff.*

*Memorandum of documents relied on by the Plaintiff.*

1. Certificate of title in D.C. No. 46998.
2. Decd No. 943 dated 22nd July, 1871.

40

(Sgd.) K. RASANATHAN,  
*Proctor for Plaintiff.*

**PEDIGREE "B"**

Premises No. 47 thereafter 38 presently No. 113 New Moor Street, under certificate of Title in D.C. 46998.

	Rahumath Umma	Owner subject to <i>Fidei Commisum</i>	
	Dead		
	I		
	I		J
	Umma Shifa 1/2 Dead		Zaneera 1st Deft. 1/2
I	I		
	2	3	4
I	I	I	I
Fausz. 2nd deft. 1/8	Majeed 3rd deft. 1/8	Cassim Plt. 1/8	Ayunul Wadooda 4th deft. 1/8

Colombo, 19th January, 1953.  
 (Sgd.) K. RASANATHAN,  
 Proctor for Plaintiff.

**ABSTRACT OF TITLE "A"**

No. and Nature of Document	From Whom to Whom	Area or Fraction of Land Dealt with	Boundaries	Whether Registered	Original or Copy
1. Certificate of title in D.C. 46998.	District Judge to Rahumath Umma	Land No. 47, New Moor St., extent $14 \frac{47}{100}$	North by garden of Satta Marikkar, East by house of Assen Lebbe, South by New Moor Street, West by house of Thangatchy Umma, which said premises as per plan No. 963 dated 8th December, 1916, made by M. G. de Silva, Licensed Surveyor, is bounded on the North by premises No. 30 in Siripina Lane, East by premises No. 392, South by New Moor Street, West by premises No. 37.	—	Copy

Colombo, 19th January, 1953.  
 (Sgd.) K. RASANATHAN,  
*Proctor for Plaintiff.*

No. 2  
 Print of the  
 Plaintiff  
 19.1.53—  
*Continued*

No. 3  
Commission to  
Surveyor.  
30.4.53

No. 3.

Commission to Surveyor

COMMISSION

IN THE DISTRICT COURT OF COLOMBO

Mohamed Muhith Mohamed Cassim of Darley  
Road, Maradana.....Plaintiff

No. 6759/P.

vs.

1. Abdul Rahuman Zaneera Umma of Darley  
Road, Maradana,
2. Mohamed Muhith Mohamed Fausz, 10
3. Mohamed Muhith Abdul Majeed,
4. Mohamed Muhith Ayunul Wadooda, all of  
Darley Road, Maradana,
5. Akbarally Abdulhussan Davoodbhoy of 50,  
Dam Street, Colombo.....Defendants.

To Mr. V. Karthigesu,  
*Licensed Surveyor,*  
286, Dam Street, Colombo.

Whereas the plaintiff has instituted the abovestyled action against the defendant for a partition of all that house and garden bearing old 20 assessment No. 47 thereafter 38 and presently bearing assessment No. 113 situated at New Moor Street, within the Gravets of Colombo, and bounded on the North by the garden of Satta Marikkar, East by the house of Assen Lebbe, South by New Moor Street and west by the house of Tangatchy Umma containing in extent 14 square perches which said premises is also described according to Plan No. 963, dated 8th December, 1916, made by M. G. de Silva, Licensed Surveyor, is bounded on the North by premises Assessment No. 30, in Siripina Lane, East by premises bearing Assessment No. 392, South by New Moor Street and West by premises bearing assessment No. 37, contain- 30 ing in extent fourteen 47/100 perches in terms of Partition Act 16 of 1951.

And whereas you have been obtained Commissioner to survey the said land and premises and produce a plan thereof.

You are further ordered to group trees on the land as the case may be according to kind age and claims and if they are in different lots that fact too should be mentioned. The number of various trees in each group should be given and other necessary particulars.

You may survey any larger land which may be pointed out by any defendant as the subject-matter of this action. 40

You are therefore commanded to proceed to the said land with due notice to the parties and survey the land and produce a plan thereof before this Court on or before the 27th day of July, 1953.

A sum of Rs. 75/- is deposited in the Colombo Kachcheri to cover the probable costs of survey (a true copy of the plaint is also attached hereto).

By Order of Court,  
(Sgd.) Illegibly,  
*Asst. Secretary.*

No. 3  
Commission to  
Surveyor,  
30.4.53—  
*Continued*

This 30th day of April, 1953.  
(Intd.) K. R.,  
*Proctor for Plaintiff.*

10

No. 4.

**Surveyor's Report and Plan No. 1301.**

No. 4  
Surveyor's  
Report and  
Plan No. 1301.  
30.6.53.

**IN THE DISTRICT COURT OF COLOMBO**

No. 6759/P.  
Mohamed Muhith Mohamed Cassim of  
Darley Road, Maradana.....*Plaintiff*  
*vs.*  
Abdul Rahuman Zaneera Umma of Darley  
Road, Maradana, and four others.....  
.....*Defendants.*

- 20 Preliminary Plan No. 1301, dated 15.6.53.
- (i) Date fixed for commencement of survey 23.5.53.
- (ii) (a) Date of issue of notice of survey to parties by registered post 6.5.53.
- (b) Date of oral proclamation of survey 8.5.53.
- (iii) Date of survey 23.5.53.
- (iv) Nature and value of property surveyed :—
- (a) Value of soil of the property in extent 14.07 perches. After careful inquiries in the vicinity, I fix the value of a perch of land at this locality at Rs. 2,000/-. Therefore the value of 14.07 perches = 30 Rs. 28,140/-.
- (b) Buildings :—
- Building marked 1 is Lavatory and bath. It contains a plinth area of 88 sq. feet valued at Rs. 8/- per sq. ft. = Rs. 704.00.
- Building marked 2 is living quarters. It contains a plinth area of 456 sq. ft. valued at Rs. 12/- per sq. ft. = Rs. 5,472/-.
- Building marked 3 is a trade store. It contains a plinth area of 992 sq. ft. valued at Rs. 12/- per sq. ft. = Rs. 11,904/-.

No. 4  
Surveyor's  
Report and  
Plan No. 1301  
30.6.53—  
Continued

Besides the buildings the drainage would cost.. .. .	Rs. 2,500·00
Water service would cost .. .. .	„ 700·00
Electricity would cost .. .. .	„ 500·00
	<hr/>
	Rs. 3,700·00
	<hr/>
Therefore the total cost of the entire building	Rs. 21,780·00
After deducting 1/10 of the cost for deterioration .. .. .	„ 2,178·00
	<hr/>
the building is now worth .. .. .	Rs. 19,602·00
	<hr/>
With the value of the soil the entire property is worth .. .. .	Rs. <u>47,742·00</u>

10

(a) Parties present.—The 3rd defendant and one P. Soranalingam, the representative of the administrators of the estate of the late 5th defendant. The 3rd defendant stated that he represented the plaintiff, the 1st, 2nd and 4th defendants. The above said Soranalingam stated that he was instructed to state that this property was taken on lease for 30 years by the late 5th defendant in 1946, the land was bare then and that all the buildings were put up by the late 5th defendant. The 3rd defendant admitted the above statement but stated that only the 1st defendant leased out her half share in the property. 20

I, Veluppillai Karthigesu, Licensed Surveyor and Leveller of 286 Dam Street, Colombo, not being a Christian, do hereby, solemnly, sincerely, and truly, declare and affirm and state as follows:—

1. I am the Commissioner appointed in the above case.

2. I executed the commission issued to me in the above case in accordance with the directions made therein, and to the best of my information and knowledge, the foregoing particulars relating to my survey of the property described in plan No. 1301, dated 15.6.53, and certified copy of my field notes are true and accurate and my said plan and particulars mentioned therein embody the particulars prescribed by Section 18 (1) of the Partition Act No. 16 of 1951. 30

Signed and affirmed to at  
Colombo on this 30th  
day of June, 1953  
Before me

(Sgd.) V. KARTHIGESU,  
*Commissioner, Licensed  
Surveyor and Leveller.*

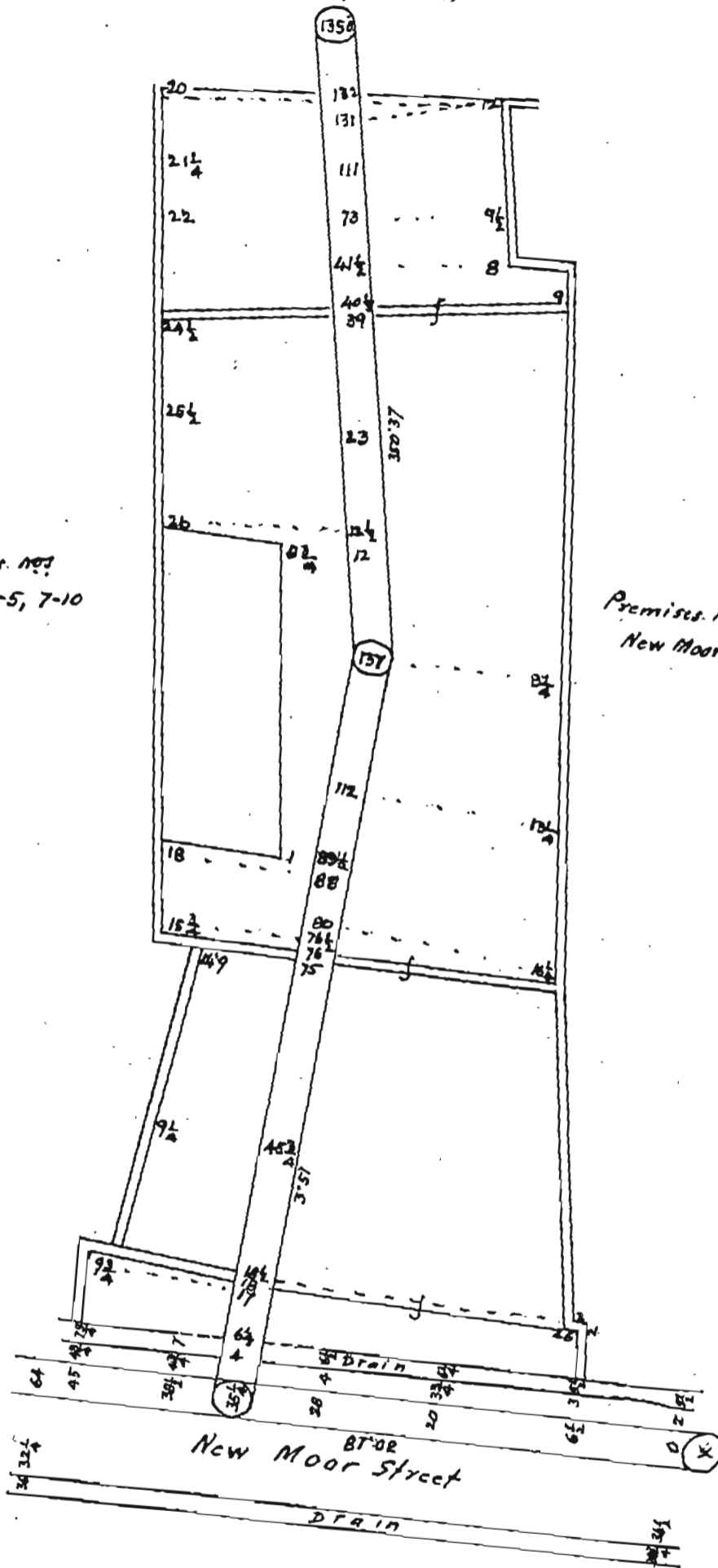
(Sgd.) Illegibly,  
*Commissioner for Oaths.*



Premises No. 75  
Siripina Lane

Premises Nos.  
G III, III/1-5, 7-10

Premises No. 116  
New Moor Street



I certify that this is a true copy of my field notes

sgdt. V. Karthigesu  
Commissioner Licensed  
Surveyor & Leveller

True copy of field notes filed of  
record in D.C. Colombo Case No. 6759/P  
in connection with Plan No. 1301 dated  
15.6.1953 made by Mr V. Karthigesu  
Commissioner, Licensed Surveyor & Leveller

*N. Siva Sundaram*  
N. Siva Sundaram  
Licensed Surveyor & Leveller  
286 Dam Street Colombo 20-2-1958



No 5.

Petition of The Executrix and Executor of the  
Last Will and Testament of A. A. Davoodbhoy  
IN THE DISTRICT COURT OF COLOMBO

No. 5  
Petition of the  
Executrix and  
Executor of the  
Last Will and  
Testament of  
A. A.  
Davoodbhoy.  
27.7.53.

M. M. Mohamed Cassim of Darley Road,  
Colombo. ....Plaintiff

No. 6759/PN.

vs.

5. Akbarally Abdulhussan Davoodbhoy and  
others. ....Defendants.

10

1. Hussanabai Hassanally.  
2. Yahyabhai Akbarally, both of Wellawatte  
in Colombo.....Petitioners.

On this 27th day of July, 1953.

The Petition of the Petitioners above-named appearing by Samuel Robert Ameresekere, their Proctor, states as follows :—

1. The petitioners are the Executrix and Executor respectively of the Last Will and Testament of Akbarally Abdulhussan Davoodbhoy deceased.

2. The said Akbarally Abdulhussan Davoodbhoy the 5th defend-  
20 ant in this case died on 6th December, 1949, leaving a Last Will and Testament No. 3663, dated 25th June, 1949, whereby he appointed the petitioners as the executrix and executor and Trustees of the said Last Will and Testament.

3. Application for Probate in respect of the said Last Will and Testament has been made by the petitioners in Case No. 14433/T of this Court.

4. It has become necessary for the purpose of this case to get the petitioners substituted in place of the said Akbarally Abdulhussan Davoodbhoy the 5th defendant deceased.

30 Wherefore the petitioners pray :—

- (a) that the petitioners be substituted in place of Akbarally Abdulhussan Davoodbhoy the 5th defendant deceased ;
- (b) for costs, and
- (c) for such other and further relief as to this Court may seem meet.

Colombo, 28th day of July, 1953.

(Sgd.) S. R. AMERESEKERE,  
Proctor for Petitioners.

No. 6  
Affidavit of Y.  
Akbarally.  
27.7.53.

No. 6.

**Affidavit of Y. Akbarally**

**IN THE DISTRICT COURT OF COLOMBO**

M. M. Mohamed Cassim of Darley Road,  
Maradana in Colombo.....*Plaintiff*

No. 6806/PN.

*vs.*

5. Akbarally Abdulhussan Davoodbhoy and  
others..... *Defendants.*

I, Yahyabhai Akbarally of Wellawatte, Colombo, do solemnly,  
sincerely and truly declare and affirm as follows :— 10

1. I am one of the executors of the Last Will and Testament of  
Akbarally Abdulhussan Davoodbhoy deceased.

2. The said Akbarally Abdulhussan Davoodbhoy the 5th Defend-  
ant in this case died on 6th December, 1949, leaving a Last Will  
and Testament No. 3660, dated 25th June, 1948, whereby he appointed  
his widow, Hussanabai Hassanally, and myself as executrix and execu-  
tor and Trustees of the said Last Will and Testament.

3. Application for Probate in respect of the said Last Will and  
Testament has been made in Case No. 14433/T of this Court.

4. It has become necessary for the purpose of this case to get 20  
the said Hussanabai Hassanally and myself as executrix, executor  
and Trustees substituted in place of the said Akbarally Abdulhussan  
Davoodbhoy the 5th defendant deceased to enable us to file our  
statement of claim.

Signed and affirmed to at Colombo on this 27th day of July, 1953.

(Sgd.) YAHIYA AKBARALLY,

Before me :

(Sgd.).....  
*Commissioner for Oaths.*

No. 7  
Statement of  
Claim of the 6th  
and 7th  
Defendants.  
14.10.53.

No. 7.

**Statement of Claim of the 6th and 7th Defendants**

**IN THE DISTRICT COURT OF COLOMBO**

Mohamed Muhith Mohamed Cassim of Darley  
Road, Maradana, Colombo.....*Plaintiff*

No. 6759/P.N.

vs.

No. 7  
Statement of  
Claim of the 6th  
and 7th  
Defendants.  
14.10.53—  
Continued

10

1. Abdul Rahuman Zancera Umma.
2. Mohamed Muhith Mohamed Fausz.
3. Mohamed Muhith Abdul Majeed.
4. Mohamed Muhith Ayumul Wadooda, all of Darley Road, Colombo.
5. Akbarally Abdulhussan Davoodbhoy of 50, Dam Street, Colombo. (Dead).
6. Hussenabai Hussanally.
7. Yahiyabai Akbarally—substituted in place of 5th defendant deceased. . . . Defendants.

On this 14th day of October, 1953.

The statement of claim of the 6th and the 7th defendants above-named (substituted in place of the 5th defendant deceased) appearing by Samuel Robert Amaresekera their Proctor, states as follows :—

1. These defendants are the Executors and Trustees of the Estate of the late Akbarally Abdulhussan Davoodbhoy the 5th defendant deceased.

2. These defendants admit the averments in paragraph 1 of 20 the plaint.

3. Answering to paragraph 2 of the plaint these defendants state that the said Rahumath Umma having become the purchaser of the said premises in the said Case No. 46998, became absolutely entitled to the said premises. The declaration by the District Judge in the said Certificate of Title that the said premises are subject to the *fidei commissum* created by Deed No. 943 of 22nd July, 1871, attested by John Prins, N.P., was made without jurisdiction and is of no force or avail in law.

4. Answering to paragraphs 3, 4 and 5 of the plaint, these defend- 30 ants state that the said Rahumath Umma died leaving as her sole heir Abdul Rahuman Zancera Umma the 1st defendant who became absolutely entitled to the said premises.

5. Answering to paragraph 6 of the plaint, these defendants state that the 1st defendant has acquired a prescriptive title to the entirety of the said premises.

6. Answering to paragraph 7 of the plaint these defendants state that the said land together with the buildings erected thereon by the 5th defendant is of the value of Rs. 43,500/-.

7. Answering to paragraph 8 of the plaint, these defendants 40 state :

- (a) that the 1st defendant by Deed No. 737, dated the 11th December, 1945, and attested by A. C. M. Abdul Cader, Notary Public, leased and devised the entirety of the said land and the premises described in Case

No. 7  
Statement of  
Claim of the 6th  
and 7th  
Defendants.  
14.10.53—  
Continued

No. 6806/P.N. of this Court to the 5th defendant deceased for a term of 30 years commencing from the 1st day of January, 1946, and received a sum of Rs. 2,700/- being the rent of the said premises for the period 1st January, 1946, to the 31st December, 1960 ;

- (b) that according to the terms and conditions of the said lease the 5th defendant erected buildings and made other improvements on and to the said land at a cost of Rs. 35,000/-, and
- (c) that the said buildings and other improvements are of the 10 value of Rs. 35,000/-today.

Wherefore the 6th and 7th defendants pray :—

- (a) that the plaintiff's action be dismissed ;
- (b) that in the event of a sale of the said premises being ordered in terms of the Partition Act, the Court do order that a sum of Rs. 35,000/- being compensation in respect of the buildings erected and other improvements made by the 5th defendant be paid to these defendants out of the proceeds of sale, and the rents of the unexpired portion, of the period 1st January, 1946, to the 31st December, 1960, be refunded by the 1st defendant to these defendants ;
- (c) for costs ; and
- (d) for such other and further relief as to this Court shall seem meet.

(Sgd.) S. R. AMERESEKERE,  
*Proctor for 6th and 7th Defendants.*

Settled by Mr. Advocate D. L. Edussuriya.

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**No. 8.**

**Proceedings**

No. 8  
Proceedings.  
15.3.54.

D.C. 6759/P.  
15th March, 1954.

30

Plaintiff and defendants 1-4 present.  
Mr. Advocate Renganathan for plaintiff instructed.  
Mr. Jeremiah for 1st defendant.  
Mr. Advocate Edussuriya for defendants 6th and 7th instructed.

Mr. Edussuriya asks for a date on the ground that Mr. Doraisingham, an architect, who is summoned to give evidence with regard to the value of the improvements is ill. He has sent a medical certificate. Mr. Renganathan has no objection to a date provided

his costs are paid. In the circumstances I allow the application for a date. By consent defendants 6th and 7th will pay to plaintiff Rs. 210/- as costs of today.

No. 8  
Proceedings.  
13.3.54—  
Continued

Trial 27/7/54.

(Intd.) G. C. T. A. De S.,  
A.D.J.

27th July, 1954.

Plaintiff and 2nd defendant present.

Mr. T. Parathalingam for plaintiff instructed by Mr. K.  
10 Rasanathan.

Mr. Edussuriya for 6th and 7th defendants instructed by Mr. S. R. Amerasekera.

Mr. Edussuriya refers to para 2 of the plaint. The certificate of title refers to a *fidei commissum*. Section 5 contemplated that all parties interested in the *fidei commissum* should be before Court. He refers to *Abcysundere vs. Abcysundere* in 12 N.L.R.

Mr. Parathalingam states that the plaintiff and the 4th defendant are entitled to this property. To that plaint was joined the 5th defendant who was the lessee of this property from the 1st defendant.  
20 He refers to para 4 of the answer and says that the lease does not refer to compensation for improvements.

Mr. Parathalingam states that he understands that the 4th defendant has got children but asks for time to intimate correctly to Court the facts so that the necessary parties could be included.

(Intd.) G. C. T. A. De S.,  
A.D.J.

Adjourned.

27th July, 1954.

Mr. Advocate T. Parathalingam for plaintiff instructed.

30 Mr. Advocate D. L. Edussuriya for defendants 6 and 7 instructed.

Mr. Parathalingam states that 4th defendant has three children, viz. Sitti Ajira aged 4, Muheeth aged 3 and Ummu Sheefa aged 1. Third defendant is unmarried. Second defendant is unmarried. Plaintiff is unmarried. 1st defendant, Zaneera Umma, has no children. He states that by virtue of Section 5 of the Partition Act, he is compelled to join them to this action. He states that if he had known this earlier he would have had them brought here and the necessary formalities gone through. He states that he cannot proceed on the  
40 plaint as it stands at the moment and he asks for a postponement. With regard to costs he asks the Court to take into consideration the fact that the defendants in their answer have not taken up this position.

No. 8  
 Proceedings.  
 15.3.54—  
 Continued

They have attacked the plaint. On the last date when this case was put off they have not brought this defectiveness in the plaint to the attention of Court.

Mr. Edussuriya invites the attention of Court to Section 7 of the Partition Act.

In the circumstances the case will have to be taken off the trial roll and the children of the 4th defendant be made parties to the action. By consent plaintiff will pay the 6th and 7th defendants 15 guineas as costs of the postponement. Take case off trial roll. File amended plaint on 1.9.54.

(Intd.) G. C. T. A. De S.,  
 A.D.J. 10

No. 9  
 Petition of M.  
 M. Mohamed  
 Cassim.  
 August, 1954.

**No. 9.**

**Petition of M. M. Mohamed Cassim  
 IN THE DISTRICT COURT OF COLOMBO**

M. M. Mohamed Cassim of Darley Road,  
 Maradana, Colombo.....*Plaintiff*

*vs.*

N. 6759/P.N. A. R. M. Zaneera Umma and others.....  
 .....*Defendants. 20*

*between*

M. M. Mohamed Cassim of Darley Road,  
 Maradana.....*Petitioner.*

*and*

1. Abdul Hameed Sitty Hajira.
2. Abdul Hameed Mohamed Muheeth.
3. Abdul Hameed Ummu Shiffa, minors.
4. Mohamed Muheeth Ayunul Wadooda, all of  
 Darley Road, Maradana, Colombo.....

.....*Respondents. 30*

On this.....day of August, 1954.

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

1. The petitioner abovenamed instituted the above action for the partition of the premises mentioned in the plaint.

2. The said action came up for trial on the 27th of July, 1954, and it became necessary that the abovenamed 1st, 2nd and 3rd respondents should be added as parties under section 5 of the Partition Act 16 of 1951.

3. The said 1st, 2nd and 3rd respondents are minors of the ages of 6, 5 and 3 years respectively and it is necessary that a guardian-*ad-litem* should be appointed over the said minors for purposes of this action.

4. The abovenamed 4th respondent who is the mother of the said minors is a fit and proper person to be appointed their guardian-*ad-litem* and she has no adverse interests to those of the said minors.

Wherefore the petitioner prays that the abovenamed 4th respondent be appointed guardian-*ad-litem* over the 1st, 2nd and 3rd respondents minors for purposes of this action,

(2) for costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) K. RASANATHAN,  
*Proctor for Petitioner.*

No. 9  
Petition of M.  
M. Mohamed  
Cassim.  
August, 1954—  
*Continued*

No. 10.

Affidavit of M. M. Mohamed Cassim

IN THE DISTRICT COURT OF COLOMBO

M. M. Mohamed Cassim of Darley Road, Maradana, Colombo.....*Plaintiff*

*vs.*

A. R. M. Zaneera Umma and others.....  
.....*Defendants.*

*between*

M. M. Mohamed Cassim of Darley Road, Maradana, Colombo.....*Petitioner.*

*and*

1. Abdul Hameed Sitty Hajira.
2. Abdul Hameed Mohamed Muheeth.
3. Abdul Hameed Ummu Shiffa, minors.
4. Mohamed Muheeth Ayunul Wadooda, all of Darley Road, Maradana, Colombo....  
.....*Respondents.*

I, M. M. Mohamed Cassim of Darley Road, Maradana in Colombo, not being a Christian, do hereby, solemnly, sincerely and truly affirm, aver and declare as follows :—

1. I instituted the above action against 1st to 5th defendants for the partition of the premises mentioned in the plaint.

2. The said action came up for trial on the 27th of July, 1954, and it became necessary that the abovenamed 1st, 2nd and 3rd respondents should be added as parties under section 5 of the Partition Act No. 16 of 1951.

No. 10  
Affidavit of  
M. M. Mohamed  
Cassim.  
11.8.54.

20

No. 6759/PN.

30

40

No. 10  
Affidavit of  
M. M. Mohamed  
Cassim.  
11.8.54—  
Continued

3. The said 1st, 2nd and 3rd Respondents are minors of the ages of 6, 5 and 3 respectively and it is necessary that a Guardian-*ad-litem* should be appointed over the said minors for purposes of this action.

4. The abovenamed 4th respondent who is the mother of the said minors is a fit and proper person to be appointed their Guardian-*ad-litem* and she has no adverse interests to those of the said minors.

Signed and affirmed to at Colombo } (Sgd.) M. M. M. CASSIM.  
on this 11th day of August, 1954

Before me,  
(Sgd.).....  
*Commissioner for Oaths.*

10

No. 11  
Amended Plaintiff  
of the Plaintiff.  
14.8.54.

No. 11.

Amended Plaintiff of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

Mohamed Muheeth Mohamed Cassim of  
Darley Road, Maradana....*Plaintiff*

*vs.*

No. 6759/PN.

Class : VI.

Value : Rs. 35,000/-

Procedure : Regular

1. Abdul Rahuman Zaneera Umma of Darley Road, Maradana. 20

2. Mohamed Muheeth Mohamed Fausz.

3. Mohamed Muheeth Abdul Majeed.

4. Mohamed Muheeth Ayunul Wadooda, all of Darley Road, Maradana, Colombo.

5. Akbarally Abdulhussan Davoodbhoy of 50, Dam Street, Colombo.

6. Hussenabai Hassanally.

7. Yahiyabhai Akbarally—substituted in place of the 5th defendant deceased.

8. Abdul Hameed Sitty Hajira—minor. 30

9. Abdul Hameed Mohamed Muheeth—minor.

10. Abdul Hameed Umma Shiffa, all are minors by their Guardian-*ad-litem*—the 4th defendant.

.....*Defendants.*

This.....day of August, 1954.

The amended plaintiff of the plaintiff abovenamed appearing by Kasipillai Rasanathan, his Proctor, states as follows:—

1. The parties to this action reside and the land which is the subject-matter of this action is situated within the jurisdiction of this Court. 40



2. That under certificate of title issued in Case No. 46998 one Rahumath Umma was the owner and was seized and possessed of all that house and garden bearing old assessment No. 47, thereafter No. 38 and presently bearing assessment No. 113, situated and lying at New Moor Street within the Gravets of Colombo within the jurisdiction of this Court and bounded on the North by the garden of Satta Marikkar, East by the house of Assen Lebbe, South by New Moor Street and West by the house of Tangatchy Umma containing in extent fourteen square perches which said premises is also according  
10 to Plan No. 963, dated 8th December, 1916, made by M. G. De Silva, Licensed Surveyor, bounded on the North by the premises bearing assessment No. 30 in Siripina Lane, East by premises bearing assessment No. 392, South by New Moor Street and West by premises bearing assessment No. 37, containing in extent fourteen and 47/100 perches, subject to a *fidei commissum* created in favour of her descendants in Deed No. 943, dated 22nd July, 1871, attested by J. F. Prins, Notary Public, namely :— “ that Candoo Umma (mother of Rahumath Umma) shall not sell, alienate, mortgage or encumber the said premises or any part thereof or the issues, rents and profits thereof but shall  
20 possess and enjoy the same during her natural life and that after her death the same shall devolve on her children share and share alike and if there be one child on such child and thereafter on the child or children of such her child or children and go from generation to generation under the *fidei commissum* law of Inheritance.”

3. The said Rahumath Umma departed this life intestate leaving as her heirs two children Ummu Shiffa and Zancera Umma the 1st defendant whereby each of whom became entitled to half share of the said land subject to the aforesaid bond of *fidei commissum*.

4. The said Ummu Shifa died intestate leaving as heirs her  
30 four children Mohamed Fausz the 2nd defendant, Majeed the 3rd defendant, Cassim the Plaintiff and Ayunul Wadooda the 4th defendant whereby each of whom became entitled to one-eighth share of the said land subject to the aforesaid bond of *fidei commissum*.

5. The plaintiff and the 1st to 4th defendants are thus entitled to the said land and premises in the following shares, to wit :—

Plaintiff to an undivided	..	..	1/8th share.
1st Defendant to an undivided	..	..	4/8th share.
2nd Defendant to an undivided	..	..	1/8th share.
3rd Defendant to an undivided	..	..	1/8th share.
40 4th Defendant to an undivided	..	..	1/8th share.

all such shares being subject to the aforesaid *fidei commissum*.

6. The parties to this action and their predecessors in title have been in the quiet undisturbed and uninterrupted possession of the said land and premises for the last 10 years and upwards by a title

No. 11  
Amended Plaintiff  
of the Plaintiff.  
14.8.54—  
*Continued*

adverse to and independent of all others and have acquired a title thereto by prescription in terms of Section 3 of Ordinance No. 22 of 1871.

7. (a) The 8th, 9th and 10th defendants abovenamed are the children of the 4th defendant abovenamed and are made parties to this action under section 5 of the Partition Act No. 16 of 1951.

(b) The 8th, 9th and 10th defendants abovenamed are minors aged 6, 5, and 3 years, respectively, and appear by their Guardian-*ad-litem*, the 4th defendant abovenamed.

8. The said land is of the value of Rs. 35,000/- and it is impracticable to possess the same in common.

9. The 1st defendant has leased her half share of the said premises to the 5th defendant and he is made a party to this action in order to give notice thereof.

Wherefore the Plaintiff prays —

(a) that the plaintiff and the 1st to 4th defendants be declared entitled to the said land and premises in the shares set out in paragraph 5 hereof ;

(b) that the said premises be ordered to be sold in terms of the Partition Act, No. 16 of 1951 ;

(c) for costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) K. RASANATHAN,  
*Proctor for Plaintiff.*

Memorandum of documents produced and filed with the plaint :

1. Abstract of title marked A.
2. Pedigree marked B.

(Sgd.) K. RASANATHAN,  
*Proctor for Plaintiff.*

Memorandum of documents relied on by the Plaintiff.

1. Certificate of title in D.C. No. 46998.
2. Deed No. 943, dated 22nd July, 1871.

(Sgd.) K. RASANATHAN,  
*Proctor for Plaintiff.*

No. 12  
Amended  
Statement of  
Claim of the 6th  
and 7th  
Defendants.  
1.9.54.

No. 12.

**Amended Statement of Claim of the 6th and 7th  
Defendants**

**IN THE DISTRICT COURT OF COLOMBO**

Mohamed Muhith Mohamed Cassim of Darley  
Road, Maradana, Colombo . . . . . *Plaintiff* 40

No. 6759/P.N.

vs.

No. 12

Amended  
Statement of  
Claim of the 6th  
and 7th  
Defendants.  
1.9.54—  
Continued

1. Abdul Rahuman Zaneera Umma.
2. Mohamed Muhith Mohamed Fausz.
3. Mohamed Muhith Abdul Majeed.
4. Mohamed Muhith Ayunul Wadooda all of  
Darloy Road, Colombo.
5. Akbarally Abdullhussan Davoodbhoy of 50,  
Dam Street, Colombo (Dead).
6. Hussenabai Hassanally.
7. Yahyabhai Akbarally—substituted in place  
of 5th defendant deceased.... *Defendants.*

10

On this 1st day of September, 1954.

The amended Statement of Claim of the 6th and 7th defendants abovenamed (substituted in place of the 5th defendant deceased) appearing by Samuel Robert Ameresekere, their Proctor, states as follows:—

1. These defendants are the Executors and Trustees of the Estate of the late Akbarally Abdullhussan Davoodbhoy, the 5th defendant deceased.
- 20 2. These defendants admit the averments in paragraph 1 of the amended plaint.
3. Answering to paragraph 2 of the amended plaint these defendants state that the said Rahimath Umma having become the purchaser of the said premises in the said Case No. 46998, became absolutely entitled to the said premises. The declaration by the District Judge in the said Certificate of Title that the said premises are subject to the *fidei commissum* created by Deed No. 943 of 22nd July, 1871, attested by John Prins, N.P., was made without jurisdiction and is of no force or avail in law.
- 30 4. Answering to paragraphs 3, 4 and 5 of the amended plaint these defendants state that the said Rahimath Umma died leaving as her sole heir Abdul Rahuman Zaneera Umma the 1st defendant who became absolutely entitled to the said premises.
5. Answering to paragraphs 6 and 7 of the amended plaint these defendants state that the 1st defendant has acquired a prescriptive title to the entirety of the said premises.
6. Answering to paragraph 8 of the amended plaint, these defendants state that the said land together with the buildings erected thereon by the 5th defendant is of the value of Rs. 43,500/- but deny  
40 that the common possession is impracticable.
7. Answering to paragraph 9 of the amended plaint these defendants state —

No. 12  
Amended  
Statement of  
Claim of the 6th  
and 7th  
Defendants.  
1954—  
Continued

- (a) that the 1st defendant by Deed No. 737, dated the 11th December, 1945, and attested by A. C. M. Abdul Cader, Notary Public, leased and devised the entirety of the said land and premises described in Case No. 6806/PN. of this Court to the 5th defendant—deceased for a term of 30 years commencing from the 1st day of January, 1946, and received a sum of Rs. 2,700/- being the rent of the said premises for the period 1st January, 1946, to the 31st December, 1960;
- (b) that according to the terms and conditions of the said lease 10 the 5th defendant erected buildings and made other improvements on and to the said land at a cost of Rs. 35,000/-; and
- (c) that the said buildings and other improvements are of the value of Rs. 35,000/- today.

8. Further answering these defendants state that the said 1st defendant by her conduct in executing and claiming benefit under Deed No. 360, dated 4th September, 1920, attested by G. E. G. Weerasinghe, N.P. and Deed No. 101, dated 25th June, 1951, attested by L. L. P. de Silva, Notary Public, and duly registered in the books of 20 the Land Registry, Colombo, under Division A, Volume 145, Folio 243, represented to the 5th defendant that she was the sole owner of the said premises and had the right to enter into the said lease bond No. 737, dated 11th December, 1945, attested by A. C. M. Abdul Cader, Notary Public.

9. Further answering these defendants state —

- (a) that Deed No. 943, dated 22nd July, 1871, attested by J. F. Prins, Notary Public, and the certificate of title issued in Case No. 46998 of the District Court of Colombo have not been registered in the correct Division A, Volume 111, 30 Folio 101, which these defendants say is the correct Division, Volume and Folio and the plaintiff cannot claim priority of registration for them over the said Deed of Lease No. 737, dated 11th December, 1945, attested by A. C. M. Abdul Cader, Notary Public, and that they are not admissible in evidence;
- (b) that the said Deed of Lease No. 737, dated 11th December, 1945, attested by A. C. M. Abdul Cader, Notary Public, has been duly registered in the correct Division, Colombo A. and Volume 111, and Folio 101, and these defendants 40 claim priority for it over the documents executed in favour of the plaintiff and others and also claim the benefit of such registration.

Wherefore the 6th and 7th defendants pray —

- (a) that the plaintiff's action be dismissed ;
- (b) that in the event of a sale of the said premises being ordered in terms of the Partition Act, the Court do order that a sum of Rs. 35,000/- being compensation in respect of the buildings erected and other improvements made by the 5th defendant be paid to these defendants out of the proceeds of sale, and the rents of the unexpired portion, of the period 1st January, 1946, to the 31st December, 1960, be refunded by the 1st defendant to these defendants.
- (c) for costs, and
- (d) for such other and further relief as to this Court shall seem meet.

(Sgd.) S. R. AMERESEKERE,  
Proctor for 6th and 7th Defendants.

No. 12  
Amended  
Statement of  
Claim of the 6th  
and 7th  
Defendants.  
1.9.54—  
Continued

**No. 13.**

**Points of Contest**

No. 13  
Points of  
Contest.

28th February, 1955.

Plaintiff and defendants 1 and 4 present.

20 Mr. Advocate Parathalingam for Plaintiff instructed by Mr. K. Rasanathan.

Mr. Advocate Edussuriya for 6th and 7th defendants, instructed by Mr. S. R. Amerasekera.

Mr. Edussuriya opens his case and states that the 5th defendant, since deceased, took a lease of both properties ; the 6th and 7th defendants have been substituted. The 5th defendant took a lease from Zancera Umma the 1st defendant. He refers to the pedigree filed by the plaintiff. Mr. Edussuriya states that his case is that the 5th defendant took a lease No. 737 of 1945 from the 1st defendant who purported to lease the entirety of the property on the footing that she was the sole owner. The lease was for 30 years from 1st January, 1946. She drew Rs. 2,700/- as rent for 15 years from the 1st January, 1946. She leased both these properties for the same amount. According to the terms of the lease, we were to put up buildings on this land and at the end of the 30 years we would have to surrender the lease without being entitled to any compensation. The certificate of title was not registered. Ummu Shiffa in 1920 renounced any interests she had in the property in favour of the 1st defendant by a deed. The 5th defendant took a lease in good faith; put up a building on the land which forms the subject-matter of this action. The Commissioner has valued this building at

No. 13  
Points of  
Contest—  
Continued

Rs. 19,602/-. My valuation is a little more than that. I have got Mr. Thuraisingham to value this building. According to Mr. Thuraisingham in January, 1949, according to the prevailing rates at that time, the building would have cost Rs. 25,122/-. Mr. Thuraisingham has also valued this building as at September, 1953, when it was much more. Mr. Edussuriya says that he cannot claim anything more than Rs. 25,100/- for his client, if he should succeed. His client's claim is only for compensation. He says he is also claiming the balance rent.

Mr. Parathalingam says that the original owner of this property <sup>10</sup> was Ahamadu Lebbe Marikkar. He by deed No. 943 of the 22nd July, 1871, conveyed the property to Candoo Umma subject to a perpetual *fidei commissum*. Candoo Umma died in 1890, leaving two children Rahumath Umma and one Abdul Cader. Under the *fidei commissum* they got half and half. Abdul Cader died leaving three children, Rabia Umma, Rameena Umma and Anver, and each became entitled to an undivided one-sixth share. Rabia Umma filed partition case No. 46998. Rahumath Umma bought the property at the partition sale, subject to the *fidei commissum* contained in the deed No. 943. By certificate of title dated 1920, Rahumath Umma became entitled <sup>20</sup> to the entirety of this property subject to the *fidei commissum* in the deed. Mr. Parathalingam states that as far as compensation is concerned, it depends on the terms of the lease. His submission is that Rahumath Umma got this property by certificate of title subject to the *fidei commissum*.

Rahumath Umma died on the 2nd August, 1921, leaving two children, Zaneera Umma and Umma Shiffa. Umma Shiffa died on the 24th March, 1938, leaving behind the plaintiff, Mohamed Fausz the 2nd defendant, Majeed the 3rd defendant and Ayunul Wadooda the 4th defendant. Mr. Parathalingam refers to para 1 of the lease as <sup>30</sup> regards the payment of compensation. He reads also para 4.

Points of contest :—

1. Whether the 6th and 7th defendants are entitled to compensation in respect of the buildings put up by the 5th defendant on the lease No. 737 of 11th December, 1945 ?

2. If so, in what sum ?

Mr. Edussuriya says that all the owners will be liable to pay the compensation.

I accept points of contest 1 and 2.

No. 14.  
Plaintiff's Evidence

No. 14  
Plaintiff's  
Evidence

Plaintiff's case.  
Mr. Parathalingam calls—

MOHAMED MUHITH CASSIM. Affirmed. 22, Unemployed,  
Darley Road.

M. M. Cassim  
Examination.

I am the plaintiff. I ask for a sale of the premises bearing assessment No. 113, depicted in plan No. 1301 made by Mr. Karthigesu marked X.

10 Q. Are you aware of what buildings lie on the land ?

A. There is a big store.

Q. Is there much of bare land ?

A. Behind the store there is a space.

Q. Do you know the extent of this property ?

A. 14·07 perches according to the plan. I ask for a sale of this particular land. The 1st defendant Zaneera Ummu is my aunt. By certificate of sale dated 2nd September, 1920, issued in Case No. 46998, Rahumath Umma became entitled to the entirety of the property subject to a *fidei commissum* by deed No. 943 of 22nd July, 20 1871. I produce certificate of title marked P1. Rahumath Umma died and I produce marked P2 the application made by Rahumath Umma in Special Case No. 847, Entail, where she applied to Court to buy this particular property. Rahumath Umma died on 2nd August, 1891, and I produce marked P3 her death certificate. Rahumath Umma died leaving two children, Zaneera Umma the 1st defendant and Umma Shiffa. Umma Shiffa is my mother.

Q. Has Zaneera Umma got any children ?

A. No.

Q. Is she in Court ?

30 A. She is in Court today.

Umma Shiffa died on the 24th March, 1938, and I produce the death certificate of my mother marked P4. In P4 the name of Umma Shiffa's mother is given as Rahumath Umma. Umma Shiffa, my mother had four children when she died. They are, myself, I produce marked P5 my birth certificate ; the 2nd defendant Fausz, whose birth certificate I produce marked P6 ; the 3rd defendant Abdul Majeed whose birth certificate I produce marked P7 ; and the 4th defendant Ayunul Wadooda whose birth certificate I produce marked P8. The 4th defendant has got three children Sitty Hajira the 8th defend- 40 ant, Mohamed Muheeth the 9th defendant and Ummu Shiffa the 10th defendant. The 1st defendant Zaneera Umma is entitled to half, I am entitled to one-eighth, the 2nd defendant to one-eighth, the 3rd defendant to one-eighth, and the 4th defendant to one-eighth. The property is subject to an entail in my hands.

No. 14  
Plaintiff's  
Evidence  
M.M. Cassim  
Cross-  
examination

*Cross-examined.*

Q. In 1951 Zaneera Umma gifted the entirety of this property to Fausz the 2nd defendant ?

A. Yes.

Q. That is because your mother Umma Shiffa had in 1920 renounced her interests in this property in favour of Zaneera Umma ?

A. Yes.

Q. The certificate of title P1 was never registered ?

A. I don't know.

(Mr. Edussuriya marks as 6D1 the encumbrances relating to 10 this property to show that it was never registered. *Lispendens* is registered in the same folio).

Q. The deed of gift creating the *fidei commissum* was not registered ?

A. I don't know.

Q. So far as you are aware from the time you came to know things Zaneera Umma held herself out to be the owner of the entirety of this property ?

A. Yes.

Q. And Zaneera Umma by deed of lease No. 737 of 11th Decem- 20 ber, 1945, marked 6D2 leased the entirety of this property along with the Siripina Lane property which forms the subject-matter of case No. 6806/P to the 5th defendant ?

A. Yes.

Q. For a period of 30 years from the 1st January, 1946 ?

A. Yes.

Q. The 5th defendant put up all the buildings on this land ?

A. Yes.

Q. In 1949 ?

A. Yes.

*Re-examined.*—Nil.

(Intd.) G. C. T. A. De S.,

A.D.J.

Plaintiff's case closed reading in evidence P1-P8.



## Defendants' Evidence

## DEFENDANTS' CASE

Mr. Edussuriya calls —

T. DURAISINGHAM. Affirmed, 45, Architect, 36, Pamankade Lane, Wellawatte.

No. 15  
Defendants'  
Evidence.

I am an Architect. I have been practising for 9 years as such. I am a Licenciate Member of the Incorporated Association of Architects, A.F.S. (Eng.), A.M.I.S.E. At the request of Mr. Amerasekera, 10 proctor for the 6th and 7th defendants, I made a valuation of the buildings on the land which forms the subject-matter of this action. I was furnished with the plan approved by the Colombo Municipal Council, dated 1949.

T. Durai-  
singham  
Examination.

(Mr. Edussuriya withdraws the plan as Mr. Parathalingam objects to its production if no member of the Municipality is present).

I have made a plan for the purpose of valuation. I produce that marked 6D3. I swear to the correctness of that plan. I also produce marked 6D4 my valuation report which is as at January, 1949. The rates given there are the rates which prevailed at that time. 20 I have also prepared a valuation report as at September, 1953, which I produce marked 6D5. The cost of the building in September, 1953, is higher than the cost in January, 1949.

*Cross-examined.*

Q. You have done a fair amount of work for Mr. Amerasekera ?

A. I cannot say ; this is about the second case.

Q. When were you first requested by Mr. Amerasekera to value property on behalf of anybody ?

A. I cannot say ; might have been about a year or two before this. Before 9.3.54 I was first requested by Mr. Amerasekera to 30 value property. That was the very first case when Mr. Amerasekera requested me to value property.

Q. Before March, 1954, did Mr. Amerasekera ask you to value property for the first time ?

A. Yes. 6D4 was valued at the request of Mr. Amerasekera.

Q. On the 9th March, 1954, you made the report 6D4 ?

A. Yes.

Q. When did Mr. Amerasekera first request you to value this property ?

A. Just a few days before the 9th March, 1954.

T. Durai-  
singham  
Cross-examin-  
ation.

No. 15  
 Defendants'  
 Evidence.  
 T. Durai-  
 singhm  
 Cross-examin-  
 ation—  
 Continued

Q. Did Mr. Amerasekera tell you there is a case pending ?

A. He asked me to value it for the purpose of a case.

Q. Did Mr. Amerasekera tell you that there has been a valuation already made for this property ?

A. I have not been told.

Q. Were you not aware that a commission went out to Mr. Karthigesu to value the buildings on this land ?

A. I never knew. At the time when I went to the spot nobody told me that Mr. Karthigesu valued this land. I heard only last week that he had valued this land. 10

Q. Was Mr. Karthigesu's plan put forward to you ?

A. Only the report. I disagreed with that report at that time. I am essentially an architect.

Q. And your work consists mainly of drawings for buildings, you just plan the building on paper ?

A. We plan the buildings on paper; but we are responsible for the construction also.

Q. Apart from your responsibility, your main function as an Architect is to plan the building on paper ?

A. It is not that. 20

Q. Which is the most important part of your work, planning or construction ?

A. Both are related.

Q. But which is more important from your point of work ?

A. Both are equally important.

Q. The second part of your function, that is putting up the building according to plan would certainly be simpler than actually putting the plan on paper ?

A. Both are as difficult.

Q. The construction of a building is very often given to contractors ? 30

A. Yes. Architects don't undertake actual building construction.

Q. Architects do not in any way deal with the purchase of goods and other requirements for the construction of the building ?

A. No.

Q. With regard to your qualifications you had not to pass any examination or any test with regard to the valuation of goods or value of materials for the construction of buildings ?

A. That is not necessary. My qualification is for building 40 survey and for valuation of buildings. I have had experience of valuing buildings before.

Q. Before you were asked by Mr. Amerasekera to value this particular building, how many other experiences have you had of valuing buildings ?

A. I have valued more than 1½ dozen buildings.

Q. The building is fairly old ?

A. Within six years' time.

Q. Were you told that it was within six years' time ?

A. I was given an approved plan of the Municipality. Apart from the approved plan of the building, I had given the age of the building as about six to seven years.

Q. That building contains a store ?

A. There is a large hall in front. At present it is used for all sorts of things. On the day I went to inspect these premises I saw some stores, as well as some beddings. There is a lavatory. There is drainage and water service.

Q. Your 1st item in 6D4 is 17·30 cubes excavation in foundations ?

A. Yes.

Q. What was the basis on which you estimated Rs. 103·80 as the amount expended in that particular item ?

A. In working out the quantities and the rate prevailing at that time.

Q. What is meant by 17·30 cubes ?

A. That is the cubical amount of bricks under the excavation.

Q. Did you examine the foundation of the building ?

A. No. I went by the approved plan.

Q. Does the approved plan give any indication of the depth of the foundation ?

A. Yes.

Q. You know the soil condition of that particular land ?

A. I don't follow your question.

Q. You know anything about the underground soil of that particular land ?

A. Are you asking about the soil or whether what is contained in the foundation. I don't know about the nature of the soil. From the surface of the ground I could make out what the soil is. I have taken measurements of the building as it stands and prepared a plan.

Q. But the measurements you took are almost the same as given in the approved plan ?

A. It may be to some error.

Q. The material by which you came to this figure of 17·30 cubes is on data available from the approved plan ?

A. Partly available on the approved plan.

No. 15  
 Defendants'  
 Evidence.  
 T. Durai-  
 singham  
 Cross-examin-  
 ation—  
 Continued

Q. What is the data which you came to this conclusion which is not given in the approved plan ?

A. That is the length of the walls.

The length of the walls is given on the approved plan, but I went on my own measurement. There are certain errors in the length of the walls in the approved plan and my plan.

Q. With regard to Item 1 in 6D4 can you tell the Court that there has been any difference between your lineal measurements and the measurements as appearing in the approved plan ?

A. There was some error. 10

Q. If you had assessed the cubes purely on the information available on the approved plan would you have come to a different conclusion ?

A. It would have been different.

Q. Would it have resulted in a great difference in the amount ?

A. There would have been a difference.

Q. Same in Item 2, how did you arrive at that figure ?

A. In the same method as I arrived for the excavation.

Q. By just looking at the depth of the foundation in the approved plan you assessed in cubes, brickwork in foundations in lime ? 20

A. Yes.

Q. In valuing the bricks used for the foundation you appreciate that there are different qualities of bricks ?

A. I gave the normal prevailing rate for bricks at that time then. That was in January, 1949.

Q. But the prevailing price you gave was the best price at that time ?

A. I gave the rates for workmanship including cost of material and including lime and sand.

Q. The value was the best or highest value which was prevailing at that time ? 30

A. It is the normal rate prevailing at that time.

Q. Would you agree with me that at the time there were rates less than the rates which you have allotted to these various articles in 6D4 ?

A. There would have been.

Q. Why did you give a higher rate than the lesser ?

A. There may be rates cheaper or higher also.

Q. It is only by actual excavation and looking into the foundation you will be able to say the type of material which has gone into the foundation ? 40

A. I had not done so.

Q. If you had done so this large amount of Rs. 3,518/- would have been reduced ?

A. I cannot say.

Q. As a valuer can you say that that foundation done cheaper can be done for a sum of Rs. 2,500/-?

A. It can be done, but the building may not stand.

Q. A foundation put up at Rs. 2,500/- will resist for how many years ?

A. I cannot say.

10 Q. The building will last from six to seven years ?

A. It may.

Q. You appreciate now that this figure of Rs. 3,518/- might have been appreciably reduced if you had an opportunity of looking into the brick work ?

A. It might perhaps have increased.

Q. If it had been reduced, what is the maximum by which it would be reduced ?

A. I cannot answer that.

Q. You told us that the rate of Rs. 3,518.70 was the normal  
 20 rate prevailing at that time. If the quantities varied the amount would be more than Rs. 3,500/- odd. Do you feel that if you had examined the brickwork by digging up the foundation the amount which you would have assessed would have been appreciably more than Rs. 3,518/-?

A. I cannot say whether it will be more or less.

Q. You made no attempt to look into the brickwork of the foundation as such ?

A. No.

Q. Item 4 in 6D4, 21.25 cubes dry earth filling under floors ?  
 30 How would you explain that ?

A. That is according to the length and breadth of each room and height of each filling. You can't fill up with wet earth. They use ordinary broken debris from old buildings. Gravel is the proper earth.

Q. Did you find out whether it was dry earth ?

A. I will have to dig up the foundation to find out. It has got to be dry earth filling. It cannot be anything else. Dry earth filling is mainly gravel or broken debris or pure earth.

Q. Take Item 7, that you say is the bricks used for the construc-  
 40 tion of various walls and pillars ?

A. Yes.

Q. Can you say how many bricks would have gone in constructing those walls and pillars ?

A. I will have to work it out.

No. 15  
Defendants'  
Evidence.  
T. Durai-  
singham  
Cross-examin-  
ation—  
Continued

Q. You did not work out this figure of Rs. 4,316/- on the basis of bricks used ?

A. I worked it according to the rates prevailing at that time, which is according to the tenders we have received.

Q. You put down the rates as far as your report is concerned according to the tenders which you receive at or about that time ?

A. At about that time.

Q. You had made no attempts to get the official rates prevailing at that time ?

A. There is no official rate.

10

Q. Did you make any effort to get the rates prevailing at that time from any local authority ?

A. There is no authority to give the rates.

Q. You appreciate your rates will be different from a number of other architects ?

A. I cannot say that.

Q. Your value in 1949 is Rs. 25,122.45 ?

A. Yes.

Q. That would be a valuation which would not be on the low side ?

20

A. That is according to my own knowledge ; it is a fair valuation of the building.

Q. Would buildings standing on this land be reasonably worth a sum of Rs. 20,000/- ?

A. I can give about 10% from my valuation for depreciation. I have not given any depreciation in my valuation.

Q. Is it not the normal practice to give a depreciation ?

A. The normal practice is to give depreciation. On all those occasions where I am instructed only, I do it.

Q. Is it not the normal practice to give credit for depreciation ? 30

A. If we are asked to only.

T. Durai-  
singham  
Re-examin-  
ation.

*Re-examined.*

Q. Besides drawing the necessary plans, what other work does an architect do ?

A. He has got to call tenders for construction of buildings ; supervise buildings and estimates have to be made, quantities have to be made, rates have to be laid down and the owners have to be told what it will cost.

Q. As a rule contractors are paid against the architect's certificate at various stages of the building ?

40

A. Yes.

Q. The architect has to certify that the work has been done according to the plans and so on ?

A. Yes.

Q. Is this a substantially built building ?

A. Yes.

Q. And you have given the rates prevailing in 1949 for constructing a building of this type ?

A. Yes.

Q. Similarly in 6D5 the other report, you have given the cost of constructing this building in September 5th, 1953 ?

A. Yes.

(Intd.) G. C. T. A. De S.,  
A.D.J.

Defendant's case closed reading in evidence 6D1-6D5.

Mr. Parathalingam moves to call Messrs. Perera and Perera, Architects, to testify to the value of the building.

Mr. Edussuriya objects as Mr. Parathalingam has already closed his case. He later states that he has no objection to Mr. Parathalingam calling Messrs. Perera & Perera.

20 I allow the application.

(Intd.) G. C. T. A. De S.,  
A.D.J.

Mr. Parathalingam calls —

E. F. D. Perera. Affirmed. 60. Architect, Colpetty.

I inspected these premises in June, 1954. These premises contain a large store, living quarters, lavatory. There is electric wiring, drainage and water services. I produce marked P9 my report wherein I valued this building at Rs. 20,000/-.

*Cross-examined.*

30 Q. That is Rs. 20,000/- at the date of inspection ?

A. Yes.

Q. That is June, 1954 ?

A. Yes.

Q. You say under para A the front portion of the building is nearly 10 years old ?

A. Yes.

Q. Who give you that information ?

A. According to the material used, when you look at it you can say it is about 10 years.

No. 15  
Defendants'  
Evidence.  
T. Durai-  
singham  
Re-examin-  
ation—  
*Continued*

Plaintiff's  
Evidence.  
E. F. D. Perera  
Examination.

E. F. D. Perera  
Cross-  
examination.

No. 15  
E. F. D. Perera  
Cross-  
examination—  
Continued.

Q. Did you find out from the Municipality when this building was put up ?

A. No.

Q. It may be less than 10 years, may be less than 6 years old ?

A. It is possible.

Q. You know these buildings were actually put up in 1949. The front portion you gave as nearly 10 years old ?

A. Yes. The area of the floor is 990 sq. ft.

Q. You have given a value of Rs. 12,870/- based on floor area only ?

A. Yes. 10

Q. You did not work out quantities and rates ?

A. This is a rough valuation taking for granted that the front portion was 10 years old.

Q. In B of your report you have arrived at a figure of Rs. 4,660/- based on floor area ?

A. Yes.

Q. In C, the lavatory block, again on floor area on the assumption that all these buildings are 10 years old ?

A. Yes. 20

Q. Electric lighting with connection Rs. 450/- ?

A. Yes.

Q. You have even valued the land ?

A. Yes. The actual value of buildings is Rs. 20,000/-.

Q. The value of the land is Rs. 25,320/?

A. Yes.

I have given a rough estimate of the value of the building. I have not gone into details ; it is based on floor area.

Re-examined.—Nil.

(Intd.) G. C. T. A. De S., 30  
A.D.J.

Plaintiff's case closed reading in evidence P1-P9.

No. 16  
Addresses to  
Court.

No. 16.  
Addresses to Court

Mr. Edussuriya addresses Court. He says that unless it can be proved that the 5th defendant was aware of this *fidei commissum*, compensation should be paid. He cites 4 C.W.R. 98, 19 N.L.R. 492, 18 N.L.R. 57 (page 62 gives all the facts) and 47 N.L.R. 361.

At this stage Mr. Parathalingam states that he is not well and asks for a date for further argument. 40



Mr. Edussuriya has not concluded his argument.

It is agreed that plaintiff will not be entitled to cost of today in any event.

Further hearing 29.3.

(Intd.) G. C. T. A. De S.,  
A.D.J.

No. 16  
Addresses to  
Court—  
Continued

29th March, 1955.

Same appearances.

Mr. Edussuriya cites 47 N.L.R. 361, 4 C.W.R. 98 at 99 ; reported  
10 in 19 N.L.R. 492. The 2nd defendant in that action had purchased  
from the fiduciary and also taken a lease from one of the persons  
entitled to a life interest. The facts appear in 18 N.L.R. 57 at 61  
and 62. Refers to 6D1 produced to show that certificate of title  
P1 is not registered and the deed of gift which created the *fidei com-*  
*missum* 943 of 1871 is not registered. Refers to evidence at page 4.  
The plaintiff admits that Zancera Umma gifted to the 2nd defendant.  
Mr. Edussuriya moves to mark the two deeds referred to in 6D1,  
Deed 316 of 4.9.1920 by which Ummu Sheefa renounced all her interests  
etc., in the property in question (that is admitted by the plaintiff),  
20 Deed 101 dated 25.6.1951 by Zancera Umma 1st defendant by which  
she gifts the entire property with the house thereon to the 2nd plaintiff.  
He is producing these deeds only for the purpose of showing that he  
is entitled to compensation. Deed 101 affects the title also.

Mr. Parathalingam objects to these deeds being marked. He  
states that his instructions are that 6D1 is not a complete encumbr-  
ance sheet relating to this property and his instructions are that deed  
943 has been registered. 1st defendant is alive. She is the person in  
whose favour the deed of renunciation has been made. She is the  
one who is supposed to have renounced the property in favour of  
30 2nd plaintiff. She could have been called but he has refrained from  
calling her but now relying on 6D1 he wants to mark those documents.

Mr. Edussuriya states that he did not have a certified copy of  
these deeds on that date. He states that in view of Mr. Paratha-  
lingam's objection he is not pressing his application to mark these  
deeds.

Mr. Edussuriya draws the attention of Court to 6D1, no notice of  
the *fidei commissum*. He states that he is a *bona fide* improver. The  
lease gives him a right to occupy the premises for a period of 30 years.  
He submits that he has now occupied these premises for 9 years and  
40 2 months having given them the right to occupy the premises and  
the buildings for 30 years. He recognized Zaneera Umma as the  
owner of the entirety of these premises and that is corroborated by  
1st plaintiff who has admitted that. A partition action is filed and

No- 16  
Addresses to  
Court—  
Continued

a sale is prayed for and when a sale takes place he has to leave the premises. The question is whether he is entitled to compensation for the buildings. There is a similar case reported in 26 N.L.R. 97 at 100. These are useful improvements. The lessee is entitled to compensation in the case of useful improvements. Thambyah's Landlord and Tenant, page 131. Refers to 6D4 and 6D5 reports of Thuraiasingham, 6D4 is a valuation as at January, 1949, and 6D5 is a valuation as at September, 1953. With regard to compensation he can claim only the cost of making the improvement or the present value whichever is less, 21 N.L.R. 33. He can claim only 25,122/45. Depreciation 10 does not enter the question. If there is any depreciation assuming it is 10 per cent, which he says is too much, 10 per cent must be deducted from 6D5 and when that deduction is made there is hardly any difference.

Mr. Parathalingam addresses Court and states that by certificate of title P1 Rahamath Umma bought the half share and thereby became entitled to the whole (refers to application P2) subject to the *fidei commissum* contained in 943 (the certificate of title says so). Whatever is caught up in the certificate of title is good. You cannot attack Rahamath Umma's title on the certificate of title P1. Submits 20 that Deed 943 of 27th July, 1871, creates a perpetual *fidei commissum* for four generations and in support he cites 20 N.L.R. 225. Rahamath Umma died on 2nd August, 19 , and she left two children Zaneera Umma 1st defendant and Ummu Sheefa. Ummu Sheefa was entitled to half the property subject to the *fidei commissum* and Zaneera Umma was entitled to the other half subject to the *fidei commissum*. Mr. Edussuriya relies on 6D1 to show that Ummu Sheefa renounced whatever she had in favour of Zaneera Umma. All that it means is that Ummu Sheefa gave up her life interest to Zaneera Umma in 1920. Ummu Sheefa died in 1938, P4 death certificates. From the date 30 of Ummu Sheefa's death plaintiff and defendants 1, 2, 3, 4 became entitled to half of the property in question. The present position is this: plaintiff and defendants 1, 2, 3, 4 in whom title to half the property is at the moment are bringing an action for sale making the defendants Zaneera Umma in whom the other half share is and the lessees of Zaneera Umma. Plaintiff is a *fidei commissari* and Zaneera Umma is a fiduciary. The title of the plaintiffs is independent of Zaneera Umma, the title of the plaintiffs is under the *fidei commissum*. Plaintiffs do not get absolutely. The children of the 4th defendant have been added. Defendants 8, 9 and 10 are the children of the 40 4th defendant and they get the property free of the entail. Plaintiff and defendants 2, 3 and 4 are subject to the *fidei commissum*. Even if the property is sold the proceeds will be brought to Court. As between plaintiff and defendants 2 to 4 who are the *fidei commissariis* the 4th defendant is a fiduciary. Assuming that Umma Sheefa renounced her title and Zaneera Umma had full title Mr. Edussuriya's case is that 1st defendant Zaneera Umma hold herself out to be the

true owner of the property and that his clients got the property on the lease *bona fide* without notice of any *fidei commissum* and compensation is payable to him. 6DI commences from April, 1912. There is also a note in Volume 145, folio 243. A/298/93 has not been produced and that contains the registration of the original deed of gift, of the certificate of title and the application for special leave. It is well settled law that the rights of lessees are covered by a lease. If under the lease under which Mr. Edussuriya's clients are entitled to remain in the property if there is express permission that they are not entitled to compensation that is the end of the matter.

Mr. Edussuriya states that he has produced all the extracts relating to the property.

Mr. Parathalingam states that as far as the lease goes Mr. Edussuriya must satisfy the Court that under the lease itself he is entitled to compensation, the question that he was not aware of the *fidei commissum*, that he took in good faith makes no difference. Under the lease no compensation is payable to the 6th and 7th defendants. Where the lease expressly states that compensation is not payable under any circumstances then to allow for occupation any compensation will negative the lease. Refers to the lease under which compensation is claimed. No provision for payment of compensation is made. Paragraphs 1 and 4 do not contemplate the duration for which he is entitled to be in the premises. Refers to paragraph 5 of the lease. The paragraph relied on by Mr. Edussuriya does not militate against the averments in paragraphs 1, 4 and 5. Submits that under the lease no compensation is payable. If compensation is payable it is payable only by 1st defendant Zaneera Umma for the reason that she gave the lease to defendants 6 and 7 and plaintiff and the other defendants who take the property independently of Zaneera Umma and under the *fidei commissum* have no connection with Zaneera Umma cannot be responsible for Zaneera Umma's acts. Refers to Walter Perera 373 "Rights of lessees in respect of improvements." Submits that there is nothing in the law called a *bona fide improver*, a person is either a *bona fidei* possessor or a *mala fidei* possessor. Refers to Wille "Landlord and Tenant" 3rd Ed. 250 "Special arrangements concerning compensation." Refers to the Privy Council judgment in 19 N.L.R. 492. This case does not have the remotest connection to the present case. In 19 N.L.R. there is no reference at all to Kathiravel Chetty *quae* lessee and it is of no hold in deciding this case. 47 N.L.R. 361 contemplates a transfer from the fiduciary, does not mention a lessee. In 26 N.L.R. 97 the facts are entirely different, in this particular case one of the covenants of the lease was broken by the lessor. The lessee will not be entitled to compensation from anybody claiming the property independent of the lessor. Cites 17 N.L.R. 279 at 281 and 284. The defendants 6th and 7th should go against Zaneera Umma. Submits that under the

No. 18  
Addresses to  
Court—  
Continued

lease defendants 6th and 7th are shut out completely. This is an action brought by the fiduciaries and the property is still subject to an entail in the hands of the plaintiff and defendants 1 to 9 and no compensation can be paid from the proceeds of sale. Zaneera Umma was not called to give evidence.

Mr. Edussuriya states that with regard to the case reported in 17 N.L.R. 279, there is nothing in the present case to show that Zaneera Umma was not the owner of the entire property. Zaneera Umma has not filed answer; she is acting in collusion with the plaintiff and defendants 2nd to 4th. In 17 N.L.R. the *fidei commissum* 10 was admitted. He states that compensation will not be subject to the *fidei commissum*, only the soil. Asks for a refund of the rent for the unexpired period.

Mr. Parathalingam submits that defendants 6 and 7 are entitled to a refund of the balance rent for the unexpired period but they are only entitled to a refund from Zaneera Umma and not from the proceeds of the sale to which the perpetual *fidei commissum* attaches.

Judgment reserved.

(Intd.) G. C. T. A. De S., 20  
A.D.J

No. 17  
Judgment of the  
District Court.  
20.5.55.

No. 17.

### Judgment of the District Court

#### JUDGMENT

The plaintiff asks for a sale under the Partition Act of the premises bearing No. 113 depicted in plan X filed of record.

By virtue of the final decree entered in Case No. 46998 of this Court, Rahumat Umma became entitled to the entirety of the property subject to the *fidei commissum* created by deed No. 943 of 22.7.1871 (P1 and P1a). There is no dispute as to the devolution of title under 30 Rahumat Umma. I accept the evidence of the plaintiff and find that title to the land proved as stated by him. The shares of the land are correctly set out in paragraph 5 of the amended plaint.

Two points of contest have been formulated in this case. The 1st defendant purported to lease the entirety of the land to the 5th defendant by deed 6D2 dated 11.12.1945 for a period of 30 years commencing from 1.1.46 on the footing that she was the sole owner of the premises. The indenture of lease, 6D2, provides *inter alia* :

- (1) that the lessee shall within a reasonable time, at his own expense, erect a building and that the lessor will not be liable for payment of any sum of money so expended by the lessee ;
- (2) the lessee shall continue to exercise the use and enjoy the rights, benefits, interest, and the income of the premises and the buildings erected on the land " during the pendency of 30 years " in terms of the lease.

No. 17  
 Judgment of the  
 District Court.  
 20.5.55—  
*Continued*

Clause 4 provides that the lessee shall keep and preserve the 10 said buildings and at the termination of the said term of 30 years, peaceably deliver up the whole of the said premises to the lessor free of payment of any kind whatever as aforesaid. The 5th defendant died and the 6th and 7th defendants have been substituted in place of the deceased 5th defendant. The 6th and 7th defendants claim compensation in respect of the building that now stands on the land which had been erected by the 5th defendant in accordance with the terms of the lease. Their contention is that the decree for sale will have the effect of extinguishing their right to remain in occupation of the premises and that the purchaser of the premises at the sale 20 to be held in pursuance of the decree will deny them the right to enjoy the use of the building. The plaintiff resisted their claim for compensation on the ground that no compensation is payable under the terms of the lease. The plaintiff relies particularly on clause 4 of the lease which specifically provides for the termination of the lease free of payment of any kind. But the question is whether the lessee is not entitled to remain in possession of the premises until the expiration of the period of 30 years stipulated in the lease or to receive compensation if the lease is terminated before the stipulated period. The situation that has now arisen was not certainly envisaged 30 by the parties and no provision has been made in the deed of lease itself to meet this situation. Such a situation could not have been contemplated by the 5th defendant at the time of the execution of the lease as the lessor the 1st defendant leased the entire premises representing herself to be the sole owner thereof. The position taken by the plaintiff that 6th and 7th defendants are not entitled to compensation or to remain in possession is an attempt on his part to completely ignore the provisions of the deed of lease. A similar case came up for consideration before the Supreme Court recently, viz :—*Harriet Samarassekera vs. Lakshmi Munasinghe and 4 others* (51 C.L.W. 102). In 40 the course of the judgment in that case Gratiaen J., made the observation that the decree might well have directed a sale of the property subject to the servitude. That was also an action under the Partition Act for the sale of the land together with the buildings standing thereon. The building had been erected not by the owner of the land, but by a third party with the consent of the owner of the land. There is nothing in the Partition Act of 1951, which prevents me

No. 17  
 Judgment of the  
 District Court.  
 20.5.55—  
*Continued*

from entering a decree for a sale of these premises in question subject to the rights of the 6th and 7th defendants to remain in occupation of the buildings for the full period of the lease. I would accordingly direct a sale of the premises subject to the 6th and 7th defendants' exclusive right to hold and use the buildings for the full period of the lease. In that view of the matter it is not necessary to consider the question of the compensation in respect of the buildings on this land. However, it is desirable that I should consider the points of contest that have been formulated in this case.

That the 5th defendant constructed the buildings on the land 10 on the strength of the lease granted in his favour by the 1st defendant is not denied. Neither the final decree in the partition case nor the deed of gift creating the *fidei commissum* appears to have been registered. The 1st defendant no doubt held herself out as the sole owner of the land and the 5th defendant constructed the buildings subject to the conditions set out in the deed of lease in the *bona fide* belief that the 1st defendant was the sole owner of the premises. The plaintiff and the other heirs of Umma Sheefa made no protest. They stood by and acquiesced in the improvement of the land by the 5th defendant. There is authority for the proposition that the 20 fiduciary is entitled as against the *fidei commissary* to the same rights of compensation for improvements as any other *bona fide* possessor and to the retention of the *fidei commissum* property until compensation is paid and that a purchaser from the fiduciary is in the same position as the fiduciary (47 N.L.R. 361). The original lessee in this case was more or less in the same position as a purchaser. The authorities cited by counsel on both sides had been considered in the case reported in 47 N.L.R. 361. I therefore hold that the 6th and 7th defendants who had been substituted in place of the 5th defendant deceased are entitled to compensation for the improvements effected 30 by the 5th defendant.

The quantum of compensation remains to be considered. There is no disagreement as to the basis of assessment of compensation. The general principle is that the improver is entitled to the original cost of the improvement or to its present value, whichever is less. The contesting defendants rely on the evidence of Mr. Thuraisingham, a qualified architect, in support of their valuation. He valued the building at Rs. 25,122/- as at January, 1949. According to him the building was constructed in or about 1949. He has prepared a plan for the purpose of this valuation and he appears to have gone into the 40 question of compensation very carefully. His report 6D4 contains a detailed valuation of the building. He has also assessed the cost of the building as at September, 1953. According to his valuation report, 6D5, he has valued the cost of the building at Rs. 27,304/- as at September, 1953. On the other hand, Mr. Perera, the plaintiff's architect, valued the building in June, 1954, at Rs. 20,000/-. It

would appear from his evidence that his is only a rough estimate. His report P9 does not give all the details which are to be found in the report of Mr. Thuraisingham. I prefer to accept Mr. Thuraisingham's report, 6D4. No question of depreciation arises as the valuation is based on the cost of building as in 1949. I hold that the 6th and 7th defendants are entitled to the sum of Rs. 25,122.45 as compensation for the buildings erected by the 5th defendant, out of the amount which represents the value of the buildings when the property is put up for sale in pursuance of the decree entered in this case. As I indicated earlier the question of compensation arises only in the event of my earlier findings being reversed in appeal.

Enter decree for sale of the premises bearing assessment No. 113 depicted in plan X subject to the right of 6th and 7th defendants who have been substituted in place of the 5th defendant deceased, to remain in possession of the half share of the premises and the entirety of the buildings thereupon for the full period of 30 years commencing from 1.1.46 as stated in the deed of lease, 6D2. Plaintiff's costs are to be borne *pro rata* in terms of the schedule of costs. Plaintiff will pay the 6th and 7th defendants Rs. 105/- as costs of contest.

20

(Sgd.) G. C. T. A. De Silva,  
A.D.J.

Delivered in open Court.

(Sgd.) A. L. S. SIRIMANNE,  
A.D.J.

No. 17  
Judgment of the  
District Court.  
20.5.55—  
Continued

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No. 18.

Decree of the District Court.

DECREE

IN THE DISTRICT COURT OF COLOMBO

Mohamed Muhith Mohamed Cassim of Darley  
Road, Maradana.....Plaintiff  
*vs.*

30

No. 6759/P.

1. Abdul Rahiman Zaneera Umma of Darley Road,  
Maradana,
2. Mohamed Muhith Mohamed Fausz,
3. Mohamed Muhith Abdul Majeed,
4. Mohamed Muhith Ayunul Wadooda all of Darley  
Road, Maradana,
- (Dead) 5. Akbarally Abdulhussan Davoodbhoy of 50, Dam  
Street, Colombo,
- 40 6. Hussenabai Hassanally,

No. 18  
Decree of the  
District Court.  
20.5.55.

No. 18  
Decree of the  
District Court.  
20.5.55—  
Continued

7. Yahyabhai Akbarally, substituted in place of the  
5th defendant ..... *deceased.*  
(Minor) 8. Abdul Hameed Sithy Hajira,  
(Minor) 9. Abdul Hameed Mohamed Muheeth,  
(Minor) 10. Abdul Hameed Ummu Shiffa by their G.A.L. the  
4th defendant ..... *Defendants.*

This action coming on for final disposal before G. C. T. A. de Silva, Esquire, Additional District Judge, Colombo, on the 29th day of March, 1955, in the presence of Mr. Advocate Parathalingam, instructed by Mr. K. Rasanathan, Proctor, on the part of the plaintiff and of Mr. Advocate Edussuriya, instructed by Mr. S. R. Amerasekera, Proctor, on the part of the 6th and 7th defendants and the plaintiff and the 1st and 4th defendants also being present and judgment having been delivered on the 20th May, 1955.

It is ordered and decreed that the plaintiff and 1st to 4th defendants are hereby declared entitled to all that house and garden now bearing Assessment No. 113 situated at New Moor Street within the Municipality and District of Colombo, Western Province, and more fully described in the Schedule hereto in the following shares, to wit:—

Plaintiff to an undivided .. .. .	1/8th share	20
1st defendant to an undivided .. .. .	4/8th share	
2nd defendant to an undivided .. .. .	1/8th share	
3rd defendant to an undivided .. .. .	1/8th share	
4th defendant to an undivided .. .. .	1/8th share	

subject to *fidei commissum* created by Deed No. 943 dated 22nd July, 1871, marked P1-a and filed of record.

It is further ordered and decreed that the said property be sold in terms of the provisions of the Partition Act, No. 16 of 1951, and the proceeds thereof be brought into Court to abide its further orders.

It is further ordered and decreed that the said property be sold subject to the rights of the 6th and 7th defendants who have been substituted in place of the 5th defendant deceased, namely, to remain in possession of the half share of the premises and the entirety of the buildings thereon for the full period of 30 years commencing from 1st January, 1946, as stated in the Deed of Lease filed of record marked 6D2.

It is further ordered and decreed that the plaintiff's costs are to be borne *pro rata* in terms of the Schedule of costs.

It is further ordered and decreed that the plaintiff do pay the 6th and 7th defendants Rs. 105/- as costs of contest.  
This 20th day of May, 1955.

(Sgd.) A. L. S. SIRIMANNE,  
*Additional District Judge.*



*The Schedule Above Referred to :—*

All that house and garden now bearing Assessment No. 113 situated at New Moor Street within the Municipality and District of Colombo, Western Province, bounded on the North by premises now bearing Assessment No. 75 (Siripina Lane), on the East by premises now bearing Assessment No. 115 (New Moor Street), on the South by New Moor Street and on the West by premises now bearing Assessment Nos. G.111/1—5, 7-10 (New Moor Street) containing in extent fourteen decimal nought seven perches (A0. R0. P.14.07) according to Survey Plan No. 1301 dated 15th June, 1953, made by V. Karthigesu, Licensed Surveyor.

*This Land was formerly described as :—*

All that house and garden bearing old Assessment No. 47, thereafter No. 38 and presently bearing Assessment No. 113 situated and lying at New Moor Street within the gravets of Colombo within the jurisdiction of this Court and bounded on the North by the garden of Satta Marikar, East by the house of Assan Lebbo, South by New Moor Street and West by premises bearing Assessment No. 37, containing in extent fourteen and 47/100 perches, subject to *fidei commissum*, created in favour of her descendants in Deed No. 943 dated 22nd July, 1871, attested by J. F. Prins, Notary Public.

Drawn by me :

(Sgd.) K. RASANATHAN,  
*Proctor for Plaintiff.*

No. 18  
Docket of the  
District Court.  
20.5.55—  
*Continued*

**No. 19.**

**Petition of Appeal to the Supreme Court  
IN THE SUPREME COURT OF THE  
ISLAND OF CEYLON**

No. 19  
Petition of  
Appeal to the  
Supreme Court.  
2.6.55.

30 Mohamed Muheeth Mohamed Cassim of  
Darley Road, Maradana, in Colombo . . .

..... *Plaintiff*

*vs.*

D.C. Colombo  
Case No. 6759/PN.

1. Abdul Rahiman Zancera Umma of Darley Road, Maradana, in Colombo.
2. Mohamed Muheeth Mohamed Fausz.
3. Mohamed Muheeth Abdul Majeed.
4. Mohamed Muheeth Ayunul Wadooda—all of Darley Road, Maradana, in Colombo.
5. Akbarally Abdulhussen Davoodbhoy of 50, Dam Street, in Colombo (Dead).
6. Hussenabhai Hassenally.

40

No. 19  
 Petition of  
 Appeal to the  
 Supreme Court.  
 2.6.55—  
 Continued

7. Yahyabhai Akbarally, substituted in place of the 5th Defendant deceased.
8. Abdul Hamced Sitty Hajira.
9. Abdul Hameed Mohamed Muheeth; and
10. Abdul Hamced Ummu Sheeffa, all are minors by their Guardian-*ad-litem* the 4th defendant..... *Defendants*

*and*

Mohamed Muheeth Mohamed Cassim of Darley Road, Maradana, in Colombo..... 10  
 ..... *Plaintiff-Appellant*

*vs.*

1. Abdul Rahiman Zancera Umma of Darley Road, Maradana, in Colombo.
2. Mohamed Muheeth Mohamed Fausz.
3. Mohamed Muheeth Abdul Majeed.
4. Mohamed Muheeth Ayunul Wadooda—all of Darley Road, Maradana, in Colombo.
5. Akbarally Abdulhussen Davoodbhoy of No. 50, Dam Street, Colombo (Dead). 20
6. Hussenabhai Hassenally.
7. Yahyabhai Akbarally, substituted in place of the 5th defendant deceased.
8. Abdul Hameed Sitty Hajira.
9. Abdul Hameed Mohamed Muheeth.
10. Abdul Hameed Ummu Shiffa, all are minors by their Guardian-*ad-litem* the 4th Defendant-respondent.....  
 ..... *Defendants-Respondents.*

To The Hon. The Chief Justice and the other Judges of the 80  
 Honourable the Supreme Court of the Island of Ceylon.

On this 2nd day of June, 1955.

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

1. The plaintiff-appellant instituted the abovenamed action for the partition of premises No. 113, New Moor Street in Colombo described more fully in the schedule to the plaint.

2. The first to fourth defendants-respondents accepted the shares allotted to them in the plaint and agreed to the said proposed partition.

3. The 8th, 9th and 10th Defendants are the minor children of the 4th defendant and were made parties under Section 5 of the Partition Act, No. 16 of 1951.

4. (a) The 5th defendant as an alleged lessee under the 1st defendant was made a party to the action under Section 5 of the Partition Act, No. 16 of 1951.

(b) The said 5th defendant having died, the 6th and 7th defendants were substituted in place of the said 5th defendant.

(c) The said 6th and 7th defendants claimed to be entitled to remain in possession of the entirety of the said premises during the full period of the said lease (viz., 30 years from 1.1.46) and in the alternative claimed compensation for the improvements to the said 10 premises effected by them in a sum of Rs. 43,500/-.

(d) At the trial Counsel appearing for the said 6th and 7th defendants restricted the claim to compensation in a sum of Rs. 25,100/- and raised the following points of contest :—

(1) Whether the 6th and 7th defendants are entitled to compensation in respect of the buildings put up by the 5th defendant on the lease No. 737 of 11th December, 1945 ?

(2) If so, in what sum ?

5. The case went to trial on the said two points of contest and by his order dated 20th May, 1955, the learned Additional District 20 Judge directed a sale of the said premises subject to the said 6th and 7th defendants' exclusive right to hold and use the buildings erected in the said premises for the full period of the lease, and held that, in the event of the said view of his being reversed in appeal, the said 6th and 7th defendants were entitled to the sum of Rs. 25,122/45 as compensation for the buildings erected by the 5th defendant, out of the amount which represents the value of the buildings when the property is put up for sale in pursuance of the decree entered in this case.

Being aggrieved and dissatisfied with the said judgment and 30 order the plaintiff appellant humbly begs to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged at the hearing of this appeal.

(a) The said Judgment and Order is contrary to law and against the weight of the evidence.

(b) The lease bond 6 D2 did not provide for any compensation being payable to the lessee in the event of the lessee having to quit possession of the leased premises and it is respectfully submitted that Section 92 of the Evidence Ordinance applies and the order of the learned Trial Judge with regard to the exclusive right of the 6th and 40 7th defendants to remain in possession or to be entitled to compensation is erroneous.

(c) That the said premises are subject to a valid *fidei commissum* created by deed No. 943, dated 23.7.1871, marked P1A in favour of the descendants of Candu Umma and that the said *fidei commissum*

No. 19  
 Petition of  
 Appeal to the  
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 2.6.55—  
*Continued*

is valid for 4 generations and that the 1st defendant had only a fiduciary interest in the said premises in respect of a half share thereto and that the lease can be valid only till her lifetime and that too in respect of her share only.

(d) that in any event the plaintiff, the 2nd, 3rd and 4th defendants were not parties to the said lease bond 6D2 and are not bound thereby.

(e) That on the Principle of *caveat emptor* the 5th defendant could not be deemed to have been a *bona fide* lessor or improver and that accordingly neither he nor the 6th and 7th defendants could be declared entitled to possession or improvements to the 10 prejudice of parties not bound by the said lease 6D2.

(f) That the learned Judge in his Judgment refers to the facts that neither the Final Decree in the partition case nor the Deed of Gift creating the *fidei commissum* (viz., P1A) appears to have been registered. This point, it is submitted, was not canvassed by the contesting 6th and 7th defendants nor was any issue raised thereon. On the other hand, it was accepted as common ground that the said premises are subject to a valid *fidei commissum*. If the point had been canvassed the Plaintiff could have met it by producing the relevant documents at the trial, and now seeks per-20 mission of Your Lordships' Court to tender the said documents at the hearing of this appeal in order to show that the 5th defendant was or ought to have been fully aware of the facts that the said premises were subject to a valid *fidei commissum* as aforesaid and was therefore not a *bona fide* Lessee.

(g) That the parties are entitled to a decree for sale as prayed for absolutely and that the 6th and 7th defendants have no rights whatsoever in, to, upon or over the said premises or to compensation.

Wherefore the Plaintiff-Appellant prays—

- (a) that the said Judgment and Order be set aside ; 30
- (b) that decree for sale be entered as prayed for in the plaint ;
- (c) for costs of appeal and of the Court below and for such other and further relief in the premises as to Your Lordships' Court shall seem meet.

(Sgd.) K. RASANATHAN,  
 Proctor for Plaintiff-Appellant.

Settled by :  
 C. CHELLAPPA,  
 Advocate.

## No. 20.

## Judgment of the Supreme Court

No. 20  
Judgment of the  
Supreme Court.  
5.9.57.

S.C.(F.) 619—L.  
1955.

D.C. Colombo, 6759/PN.

Mohamed Muheeth Mohamed Cassim of  
Darley Road, Maradana, Colombo.....  
.....Plaintiff-Appellant

vs.

Abdul Rahiman Zanecra Umma of Darley  
Road, Maradana, Colombo, and nine others  
.....Defendants-Respondents.

10

*Present* : H. N. G. Fernando, J. and T. S. Fernando, J.

*Counsel* : Sir Lalita Rajapakse, Q.C., with C. Chellappa and V. C. Gunatileke for the Plaintiff-Appellant.

H. V. Perera, Q.C., with G. T. Samarawickreme and Miss Maurcen Seneviratne, for the 6th and 7th Defendants-Respondents.

*Argued* : 2nd, 3rd, and 4th July, 1957.

*Decided* : 5th September, 1957.

20 H. N. G. FERNANDO, J.:

This is an action for a declaration of title to a property now bearing assessment No. 113, New Moor Street, Colombo, and for a sale of the property under the Partition Act. The plaintiff claimed that the property was held by one Rahumath Umma under a bond of *fidei commissum* in favour of her descendants, and that in terms of the instrument creating the entail, title is now vested as to a half-share in the 1st defendant and as to a one-eighth share in each of the following, that is the plaintiff and the 2nd, 3rd and 4th defendants, in each case subject to the *fidei commissum*. The 1st defendant is a  
30 daughter of Rahumath Umma, and the other claimants are the children of another daughter, now deceased. The 8th, 9th and 10th defendants, being the children of the 4th defendant and therefore prospective fiduciaries are made parties under section 5 of the Act.

None of the parties already mentioned has contested the action, but the 6th and 7th defendants do so in the following circumstances. As representatives of the Estate of the 5th defendant, now deceased, they filed answer denying the existence of a *fidei commissum* and pleading that on the death intestate of Rahumath Umma (in 1921), her daughter the 1st defendant became the sole and absolute owner of the  
40 property; they claimed that the 1st defendant had leased the property to the 5th defendant by 6D2 of 1945 for a period of 30 years, that rent for the first 15 years of the term (that is until 31st December, 1960), had been paid in advance; and further that in terms of the lease the 5th defendant had erected buildings to the value of Rs. 35,000/-.

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Supreme Court  
5.9.67—  
Continued.

They prayed for a dismissal of the action, or in the alternative for payment to them out of the proceeds of sale of the value of the buildings. At the commencement of the trial the contest as to title was abandoned, and the only point of contest upon which the parties went to trial concerned the question of compensation. On this point too, Counsel restricted the claim to Rs. 25,000 odd which is the amount of compensation ultimately awarded in the decree. But the learned trial Judge went further than the contesting defendants appear to have anticipated, and in ordering decree for sale declared that they would be entitled to remain in possession of a half-share of the premises 10 and of the entirety of the buildings for the full term of the lease, that is until December 31st, 1976. The plaintiff has appealed against both the award of compensation and the declaration in favour of the contesting defendants.

The lease 6 D2 in favour of the 5th defendant clearly provided that the lessee should erect buildings on the land, and that he would at the end of the 30-year term deliver possession of the buildings to his lessor without payment of compensation, and it is clear that the buildings were in fact erected on the faith of these provisions in the lease and in ignorance of the fact that persons other than the lessor 20 had any rights or interests in the land. The question which arises is whether a lessee of one fiduciary owner who in good faith makes improvements is entitled to claim compensation for improvements as against the other fiduciary owners and prospective *fidei commissaries*, and if so whether there is any *jus retentionis* until the payment of such compensation.

An answer to this question was formulated in the case of *Soysa v. Mohideen* (1) many years ago. In that case the owner of a land donated it to A, B, C and D subject to a *fidei commissum* in favour of the issue of the donees with a provision that upon the death issueless 30 of any donee the other donees would succeed to the share subject to a *fidei commissum* in favour of their own issue. C and D died issueless and thereafter the donor purported to revoke the original deed and to re-donate the property absolutely to A and B who subsequently leased the property to the defendant for a period of 15 years, the lease containing a condition that upon its termination A and B should take over any buildings erected by the lessee, paying to the lessee half the cost of erection. Shortly before the end of the term stipulated in the lease, A's children successfully claimed half the property on the footing of the original deed and of the invalidity of the purported 40 revocation. The only question that remained was whether the defendant lessee was entitled to claim compensation for the buildings he had erected. The Full Court unanimously decided that the lessee was not entitled to compensation. The following passages occur in the judgment of Pereira, J. at pages 285 and 286:—"It is now well-settled law in the Colony that, in order to be entitled to compen-

(1.) 17 N.L.R. 279.

sation for improvement, a person should have had, not only possession of the property improved, but *bona fide* possession of it. By "possession" is here meant what was known to the civil law as the *possessio civilis* as distinguished from *possessio naturalis*. The former, of course, meant *detentio animo domini* (3 Burge). At one time it was thought that, in Ceylon, even a *mala fide* possessor might recover compensation for improvements, and that a lessee might also, in certain circumstances, even in the absence of express or implied agreement with the lessor, do so. But all doubts as to the absence  
 10 of right in a *mala fide* possessor to recover compensation for improvements were set at rest by the judgment of the Full Court in the case of *The General Ceylon Estates Co. Ltd. v. Pulle*." "A lessee, however, is not without his rights in respect of improvements made by him on the property leased with the consent or acquiescence of the lessor of the property leased.

As explained by Chief Justice Massdorp (*Mass Inst.*, Vol. II, pp. 56, 57), a lessee who makes improvements on the property leased with the consent or acquiescence of the lessor has a right to compensation, and also a tacit mortgage, for the value of the materials over the prop-  
 20 erty improved. *This, of course, is a right resulting from contract, and it cannot be enforced as against a person who is no party to the contract.* It may be that the lessor or his legal representative may claim the benefit of the lessee's improvements and be entitled to compensation. The question here involved does not arise in the present case, and need not be further considered."

In my opinion the legal consequences of the transaction involved in the present case would be identical with those which flowed from the facts in *Soysa v. Mohideen* (1). In both cases the lessee acted in good faith in ignorance of the existence of a *fidei commissum*:  
 30 in both cases there had been a lease by a person purporting to claim as absolute owner, but who ultimately turned out to be a fiduciary, and in both cases the lease has to be held inoperative in view of an assertion of title by *fidei commissary* heirs. In fact the present case from the point of view of Equity appears to be stronger for the claimants; because firstly, here the claimants are the heirs of a deceased sister of the lessor, whereas in *Soysa v. Mohideen* the claimants were the children of the lessor although they claimed not in that capacity but on an independant title under the deed creating a *fidei commissum*; and *secondly*, the lease in the present case provided for surrender of  
 40 the buildings without compensation upon termination and not, as in *Soysa v. Mohideen* for surrender with half compensation. While the application of that decision is in my opinion conclusive against the claim of the contesting defendants, I shall consider Mr. Perera's argument that subsequent decisions have, by recognition of the principle of "unjust enrichment," modified the rigour of the earlier decision.

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(1) 17 N.L.R. 279

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 5.9.57—  
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In *Livera v. Abeysinghe* (2) this Court held that a purchaser from a fiduciary heir cannot claim compensation for useful improvements from the *fidei commissarii*, but upon appeal to the Privy Council (reported in 19 N.L.R. 492), the question of law was left undecided because Their Lordships preferred to act upon the finding of fact that the improver was not acting *bona fide* and had to be treated as a mere trespasser. The same point arose again in *Dassanaike v. Tillekeratne* (3) where without much discussion this Court admitted the right of a *bona fide* possessor, who was a grantee from a fiduciary, to claim compensation for improvements. *Wijetunge v. Duwalage Rossie* (4), was a decision of Wijewardena and Jayatilleke, JJ., to the same effect and the Court there relied on certain Roman-Dutch authorities. These decisions are not to my mind a modification of the principle stated in *Soysa v. Mohideen*, but only gave effect to a principle recognised in that case, namely that a person who in good faith has the *possessio civilis* is entitled to compensation as against the true owner.

In *Appuhamy v. Dolosbage Tea and Rubber Co.* (5) one Clarke had purchased the land and subsequently leased it to the defendant Company which had planted up the land during the pendency of the lease. The true owners of an undivided share subsequently claimed their share, and the right to compensation for the improvements was set up *not by the defendant Company but by their lessor, Clarke*. This Court held that Clarke had purchased the land in good faith in ignorance of the title of the plaintiffs. Clarke himself was an added defendant and he claimed compensation for the plantations made by the defendant Company. The question of difficulty which the Court had to decide was whether Clarke was entitled to claim compensation having regard to the fact that the improvements were made not by Clarke himself but by his lessee, the Company. Garvin, J. observed that the question had to be decided on first impression, and in so considering it, stated very forcibly his reasons for holding that a *bona fide* possessor "cannot be denied the rights of an improver merely because it was not his hand or the hand of his agent that made or erected the improvement." In reaching this conclusion the learned Judge took account of the fact that the defendant Company in that case was a lessee who would under the terms of his lease have been entitled to receive compensation from Clarke. But the question whether the Company itself (the lessee-improver) could have claimed compensation from the true owner was not decided for the reason that the Company in that case was, to use the language of Jayawardene, A.J. "satisfied to let the lessor obtain compensation for the improvements." The decision is authority only for the proposition that a *bona fide* possessor is entitled as against the true owner to compensation notwithstanding that the improvements are effected not by himself but by his lessee. I should add that Jayawardena, A.J.

(2.) 18 N.L.R. 57. (3.) 20 N.L.R. 89. (4.) 47 N.L.R. 361. (5.) 25 N.L.R. 267.



in the judgment to which I have just referred, cited, as authority for the view that a lessee can assert a right to compensation against the true owner for improvements made in good faith in the belief that his lessor had title, the case of *Hewavitarne v. Dungan Rubber Co.* (6.) That case, although decided only a few months before *Soysa v. Mohideen*, is not referred to in the Full Bench decision which should, in my view, be followed in preference. This would be particularly so upon the present facts where the dispute, as in the Full Bench decision, is between a lessee and persons claiming under a *fidei commissum*.  
 10 In the *Dungan Rubber Company* case the question whether a lessee's claim for compensation can be maintained against *fidei commissary* claimants did not arise. The view that the decision in that case is not applicable upon the present facts is considerably strengthened by the circumstance that Walter Pereira, J. who in that case upheld the claim for compensation did not think fit to refer to it in his subsequent judgment in *Soysa v. Mohideen*.

*Silva v. Banda* (7) was a case of a claim for compensation by a lessee against his lessor and the real ground of the decision as stated by Bertram, C.J. was that the lessee is not restricted in his right to  
 20 recover compensation by the terms of his covenant and that his right is a general one entitling him to compensation for improvements acquiesced in by the lessor. There was no question of any claim by a lessee against a true owner. *Nugapitya v. Joseph* (8) was a case where the owner of a land had by a non-notarial instrument purported to lease the land to the lessee "to build a tiled boutique thereon." The claim for compensation was preferred by the lessee against a transferee from the original owner but, for reasons which it is not necessary to discuss, the claim was considered in all respects as though  
 30 it had been preferred against the original owner, and that claim was determined in favour of the lessee on the ground of acquiescence, namely that the owner had stood by and allowed the improvements to be made. The principle applied by Garvin, J. in this case was not that the lessor is deemed to be a *bona fide* possessor, but that an owner who acquiesces is estopped by his own fraud from pleading the *mala fides* of the possessor in order to take the benefits of the improvements without compensation. There was no question in  
 40 this case of recognising the rights of a lessee as such because the lease was clearly null and void. Nor was there any determination of the rights of a lessee as against a "third party" who turned out to be the true owner, because that question was never raised, and further because in any event the plaintiff was not a "third party" but a successor in title to the person who let the lessee into occupation. *Wijesekera v. Meegama* (9) is also a decision only to the effect that where a person who is in the position of a lessee makes improvements with the consent of the owner he is entitled to compensation as against the heirs of the owners.

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(6.) 17 N.L.R. 49. (7.) 26 N.L.R. 97. (8.) 28 N.L.R. 140. (9.) 40 N.L.R. 340.

No. 20  
Judgment of the  
Supreme Court.  
5.9.57—  
Continued

The rights of a lessee *as against his lessor* were considered somewhat exhaustively in *Jafferjee v. De Zoysa* (10) by Gratiaén, J., the real effect of whose opinions is that under the general law and in the absence of express covenants to the contrary the only right of an improving tenant is the option either of removing the materials of the improvement or of receiving of compensation for the loss of materials which otherwise passed to the lessor. The argument that a lessee has any claim to compensation against a true owner claiming adversely to the lessor receives no assistance whatever from this judgment.

Having considered many of the subsequent cases I would hold 10 that none of them have in any way qualified the principle laid down in *Soysa v. Mohideen* (1) that the rights, if any, arising from a contract between a lessor and lessee cannot be enforced by the lessee as against *fidei commissary* owners who were not parties to the contract. Some attempt was made to set up the ground of acquiescence upon the following evidence of the plaintiff:—

Q. "The 5th defendant put up all the buildings on this land?"

A. "Yes."

Q. "In 1949.?"

A. "Yes."

20

The plea of acquiescence was in the teeth of the position taken up in the answer which was a complete denial of the *fidei commissum* and of the title of the plaintiff and the other claimants, and in any event the learned trial Judge was not invited to hold, and in my opinion could surely not have held, on such slender evidence, even that the plaintiff himself, let alone his brothers, sisters and nephews, had "stood by while the 5th defendant improved the property." The contesting defendants have therefore failed to establish right to compensation and have failed *a fortiori* to establish a *jus retentionis*.

There are two further matters to which reference has to be made. 30 In their statement of claim, the contesting defendants prayed for a refund from the 1st defendant of the rent already paid by them for the unexpired portion of the fifteen-year period for which rent had been paid in advance to the 1st defendant. In regard to this matter, however, no point of contest was framed at the trial nor was there any evidence from the plaintiff's side to prove the payment to the first defendant. In the circumstances I do not feel called upon to consider this claim, which is for quite a small amount and would appear to have been abandoned at the time of the trial.

There is also the question whether the declaration in the decree 40 that the land is to be sold subject to the rights of the lessee can be permitted to stand. In *Samaraweera v. Cunjimooosa* (11) which purports to be a decision of a Full Bench it was held that a lease

(1.) 17 N.L.R. 279. (10.) 55 N.L.R. 124. (11.) 18 N.L.R. 408.

was not an encumbrance within the meaning of section 8 of the former Partition Ordinance (Cap. 56) and that when a land is sold under the Ordinance a lease is extinguished "and the lessee can only get his interest assessed and an equivalent in money in the distribution of proceeds out of the share of his lessor." It may well be that the law is now different because Section 48 of the new Partition Act of 1951 under which the present action was brought defines "encumbrance" to include a lease and empowers a Court in entering decree for sale to preserve the interests of a lessee in entering the decree. But even  
 10 if there has been such a change in the law I doubt whether the power of the Court can be exercised in circumstances such as those existing in this case. At the best the contesting defendants can only claim that the half share of the property to which the 1st defendant is entitled is subject to the lease and that therefore the decree should be for the sale of the entire property subject to the leasehold interests in that half share, but considering that the half share is itself subject to a *fidei commissum* and will pass free of the lease to the *fidei commissaries* upon the death of the 1st defendant, it would be gravely prejudicial to the interests of the latter if such a reservation were to  
 20 be made in the decree for sale. In any event the point is only academic because the contesting defendants did not ask in their prayer for such a reservation in the event of a sale. The connected question whether the value of the lessee's interest should be paid to the contesting defendants out of the proceeds of sale also does not arise for the same reason.

I would accordingly allow this appeal holding that the 6th and 7th defendants are not entitled as against the plaintiff to any rights. The decree for sale entered by the District Judge is amended by striking out all the directions which follow the order for the sale of  
 30 the property under the Partition Act and the bringing into Court of the proceeds thereof to abide the further orders of the Court. The 6th and 7th defendants will pay to the plaintiff Rs. 105/- as the costs of contest in the District Court and will also pay the costs of this appeal.

(Sgd.) H. N. G. FERNANDO,  
*Puisne Justice.*

T. S. FERNANDO, J.

I Agree.

(Sgd.) T. S. FERNANDO,  
*Puisne Justice.*

No. 21  
Decree of the  
Supreme Court.  
5.9.57.

No. 21.

Decree of the Supreme Court

D.C. (F.) 619/L.  
1955.

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

Mohamed Muheeth Mohamed Cassim of Darley  
Road, Maradana, in Colombo.....*Plaintiff*

*vs.*

10

A. R. Zaneera Umma of Darley Road, Maradana,  
in Colombo and others..... *Defendants.*

Mohamed Muheeth Mohamed Cassim of Darley  
Road, Maradana, in Colombo.....  
.....*Plaintiff-Appellant*

*vs.*

A. R. Zaneera Umma of Darley Road, Maradana,  
in Colombo and others.....

.....*Defendants-Respondents.*

Action No. 6759/P.

20

District Court of Colombo

This cause coming on for hearing and determination on the 2nd, 3rd, 4th July and 5th September, 1957, and on this day, upon an appeal preferred by the Plaintiff-Appellant before the Hon. H. N. G. Fernando, Puisne Justice and the Hon. T. S. Fernando, Q. C., Puisne Justice of this Court, in the presence of Counsel for the appellant, 6th and 7th defendants-respondents.

It is considered and adjudged that this appeal be and the same is hereby allowed holding that the 6th and 7th defendants are not entitled as against the plaintiff to any rights. The decree for sale entered by the District Judge is amended by striking out all the directions which follow the order for the sale of the property under the Partition Act and the bringing into Court of the proceeds thereof to abide the further orders of the Court.

It is further decreed that the 6th and 7th defendants do pay to the plaintiff Rs. 105/- as the costs of contest in the District Court and also do pay the costs of this appeal.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 13th day of September, in the year One thousand Nine hundred and Fifty-seven and of Our Reign the Sixth.

40

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

## No. 22.

Application for Conditional Leave to Appeal  
to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Mohamed Muheeth Mohamed Cassim of Darley  
Road, Maradana, in Colombo. . . . . *Plaintiff*

S.C. No. (F.) 619L.

D.C. Colombo

No. 6759/PN.

10 Value : Rs. 50,000/-/

*vs.*

1. Abdul Rahiman Zaneera Umma of Darley Road, Maradana, in Colombo.
2. Mohamed Muheeth Mohamed Fausz.
3. Mohamed Muheeth Abdul Majeed.
4. Mohamed Muheeth Ayunul Wadooda, all of Darley Road, Maradana, in Colombo.
5. (Dead) Akbarally Abdulhussen Davoodbhoy of 50, Dam Street, Colombo.
6. Hussenabai Hassanally.
7. Yahyabhai Akbarally—substituted in place of the 5th defendant deceased.
8. Abdul Hameed Sitty Hajira.
9. Abdul Hameed Mohamed Muheeth.
10. Abdul Hameed Ummu Shiffa, all are minors by their Guardian-*ad-litem* the 4th defendant. . . . . *Defendants*

*and*

Mohamed Muheeth Mohamed Cassim of  
Darley Road, Maradana, in Colombo. . . . .  
. . . . . *Plaintiff-Appellant*

*vs.*

1. Abdul Rahiman Zaneera Umma of Darley Road, Maradana, in Colombo.
2. Mohamed Muheeth Mohamed Fausz.
3. Mohamed Muheeth Abdul Majeed.
4. Mohamed Muheeth Ayunul Wadooda, all of Darley Road in Colombo.
5. Akbarally Abdulhussen Davoodbhoy of 50, Dam Street, Colombo (dead).
6. Hussenabai Hassanally.
7. Yahyabhai Akbarally, substituted in place of the 5th defendant deceased.
8. Abdul Hameed Sitty Hajira.
9. Abdul Hameed Mohamed Muheeth.
10. Abdul Hameed Ummu Shiffa, all are minors by their Guardian-*ad-litem* the 4th defendant-respondent. . . *Defendants-Respondents.*

No. 22

Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council.  
28.9.57.

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No. 22  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council.  
28.9.57—  
Continued

1. Hussenabai Hassenally.
2. Yahyabhai Akbarally, both of Wellawatte,  
Colombo, (substituted in place of the 5th  
defendant deceased).....  
.....6th and 7th Defendants.  
.....Petitioners-Appellants

vs.

1. Mohamed Muheeth Mohamed Cassim of  
Darley Road, Maradana, in Colombo.....  
.....Plaintiff-Respondent. 10
2. Abdul Rahiman Zaneera Umma of Darley  
Road, Maradana, in Colombo.....  
.....1st Defendant-Respondent.
3. Mohamed Muheeth Mohamed Fausz of  
Darley Road, Maradana, Colombo.....  
.....2nd Defendant-Respondent.
4. Mohamed Muheeth Abdul Majeed of Darley  
Road, Maradana, Colombo.....  
.....3rd Defendant-Respondent.
5. Mohamed Muheeth Ayunul Wadooada of 20  
Darley Road, Maradana, Colombo.....  
.....4th Defendant-Respondent.
6. Abdul Hameed Sitty Hajira.
7. Abdul Hameed Mohamed Muheeth.
8. Abdul Hameed Umma Shiffa, minors by  
their Guardian-*ad-litem* the 4th defend-  
ant-respondent.....  
.....8th, 9th and 10th Defendants-  
Respondents. 30

To :

The Honourable the Chief Justice and the Justices of the Honour-  
able the Supreme Court of the Island of Ceylon.

On this 28th day of September, 1957.

The humble petition of:—

1. Hassanabai Hassanally.
2. Yahyabhai Akbarally, both of Wellawatte in Colombo (substi-  
tuted in place of the 5th defendant deceased).

6th and 7th Defendants-Petitioners-Appellants above-  
named (appearing by their Proctor, S. R. Ameresekere).

Showeth as follows:—

1. That feeling aggrieved by the judgment and decree of this  
Honourable Court pronounced on the 5th day of September, 1957,  
the Appellants (1) Hassanabai Hassannally and (2) Yahyabhai

Akbarally (substituted in place of the 5th defendant deceased) are desirous of appealing therefrom.

2. That the said judgment is a final judgment and the matter in dispute on the appeal amounts to and is over Rs. 5,000/- in value.

3. By Order of Your Lordships' Court dated 11th September, 1957, on the petition of the petitioners-appellants—dated 10th September, 1957, allowed substituted service of Notice intending to apply for leave to appeal to Her Majesty in Privy Council by publication of such Notice in the *Ceylon Daily News* and such notice was published in the morning edition of the *Ceylon Daily News* of the 13th September, 1957, as appearing in the said morning edition annexed hereto.

4. The petitioners-appellants have also sent notice of intention to apply for conditional leave by ordinary post as well as registered post to the respondents on the 10th September, 1957. The postal receipts for the said letters were filed along with the petition in S.C. Application No. 438 of 1957.

Wherefore the petitioners-appellants pray for conditional leave to appeal against the said judgment of this Court, dated the 5th day of September, 1957, to Her Majesty the Queen in Council.

(Sgd.) S. R. AMERESKERE,  
*Proctor for 6th and 7th Defendants-Petitioners-Appellants.*

No. 22  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council.  
28.9.57—  
*Continued.*

**No. 23.**

**Decree Granting Conditional 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

In the matter of an application by the 6th and 7th Defendants,  
dated 28th September, 1957, for Conditional Leave to appeal to Her  
Majesty the Queen in Council against the Judgment and Decree dated  
5th September, 1957.

Hussénabai Hassanally of Wellawatte,  
Colombo, and another.....  
.....*6th and 7th Defendants-Petitioners*

*vs.*

M. M. Mohamed Cassim of Darley Road,  
Maradana, Colombo.....  
.....*Plaintiff-Appellant-Respondent.*

No. 23  
Decree Granting  
Conditional  
Leave to Appeal  
to the Privy  
Council.  
7.11.57.

No. 23  
Decree Granting  
Conditional  
Leave to Appeal  
to the Privy  
Council.  
7.11.57—  
*Continued*

A. R. Zancera Umma of Darley Road,  
Maradana, Colombo, and others.....  
.....1st, 2nd, 3rd, 4th, 8th, 9th and 10th  
*Defendants- Respondents- Respondents.*

Action No. 6759/PN. (S.C. 619)

District Court of Colombo

This cause coming on for hearing and determination on the 7th day of November, 1957, before the Hon. K. D. De Silva, Puisne Justice and the Hon. T. S. Fernando, Q.C., Puisne Justice of this Court, in the presence of Counsel for the Petitioner. 10

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 1921 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 1921 with the Registrar a sum of 20 Rs. 300/- in respect of amounts and 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. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 13th day of November, in the year One thousand Nine hundred and Fifty-seven and of Our Reign the Sixth.

(Sgd.) W. G. WOUTERSZ, 30  
*Deputy Registrar, S.C.*

No. 24  
Application for  
Final Leave to  
Appeal to the  
Privy Council.  
28.11.57.

No. 24.

Application for Final Leave to Appeal to the Privy Council  
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Mohamed Muheeth Mohamed Cassim of  
Darley Road, Maradana, in Colombo....  
.....*Plaintiff*



S.C. No. (F.) 619 L.  
D. C. Colombo  
No. 6759/PN.  
Value : Rs. 50,000/-/  
Nature : Partition

*vs.*

No. 24  
Application for  
Final Leave to  
Appeal to the  
Privy Council.  
28.11.67—  
*Continued*

10

1. Abdul Rahiman Zaneera Umma of Darley Road, Maradana, in Colombo.
2. Mohamed Muheeth Mohamed Fausz.
3. Mohamed Muheeth Abdul Majeed.
4. Mohamed Muheeth Ayunul Wadooda.
5. (Dead) Akbarally Abdulhussan Davoodbhoy of 50, Dam Street, Colombo.
6. Hussenabai Hassanally.
7. Yahyabhai Akbarally—substituted in place of the 5th defendant deceased.
8. Abdul Hameed Sitty Hajira.
9. Abdul Hameed Mohamed Muheeth.
10. Abdul Hameed Ummu Shiffa, all are minors by their Guardian-*ad-litem* the 4th defendant..... *Defendants*

*and*

Mohamed Muheeth Mohamed Cassim of 289, Darley Road, Maradana, Colombo.....  
..... *Plaintiff-Appellant*

20

*vs.*

30

1. Abdul Rahiman Zaneera Umma of 289, Darley Road, Maradana, in Colombo.
2. Mohamed Muheeth Mohamed Fausz.
3. Mohamed Muheeth Abdul Majeed.
4. Mohamed Muheeth Ayunul Wadooda, all of 289, Darley Road, in Colombo.
5. Akbarally Abdulhussan Davoodbhoy of 50, Dam Street, Colombo (dead).
6. Hussenabai Hassannally.
7. Yahyabhai Akbarally substituted in place of the 5th defendant deceased.
8. Abdul Hameed Sitty Hajira.
9. Abdul Hameed Mohamed Muheeth.
10. Abdul Hameed Ummu Shiffa, all are minors by their Guardian-*ad-litem* the 4th defendant-respondent.....  
..... *Defendants-Respondents.*

40

1. Hussenabai Hassanally.
2. Yahyabhai Akbarally, both of Wellawatte, Colombo (substituted in place of the 5th defendant (deceased).....  
..... *6th and 7th Defendants-Petitioners-Appellants*

No. 24

Application for  
Final Leave to  
Appeal to the  
Privy Council.  
28.11.57—  
*Continued*

*vs.*

1. Mohamed Muheeth Mohamed Cassim of 289,  
Darley Road, Maradana, in Colombo . . . .  
..... *Plaintiff-Respondent.*
2. Abdul Rahiman Zaneera Umma of 289,  
Darley Road, Maradana, in Colombo . . . .  
..... *1st Defendant-Respondent.*
3. Mohamed Muheeth Mohamed Fausz of 289,  
Darley Road, Maradana, in Colombo . . . .  
..... *2nd Defendant-Respondent.* 10
4. Mohamed Muheeth Abdul Majeed of 289,  
Darley Road, Maradana, in Colombo . . . .  
..... *3rd Defendant-Respondent.*
5. Mohamed Muheeth Ayunul Wadooda of 289,  
Darley Road, Maradana, Colombo . . . . .  
..... *4th Defendant-Respondent.*
6. Abdul Hameed Sitty Hajira.
7. Abdul Hameed Mohamed Muheeth.
8. Abdul Hameed Ummu Shiffa, minors by  
their Guardian-*ad-litem* the 4th Defendant-20  
respondent . . . . . *8th, 9th and 10th*  
*Defendants-Respondents.*

To :

The Honourable the Chief Justice and the Justices of the Honourable the Supreme Court of the Island of Ceylon.

On this 28th day of November, 1957.

The humble petition of (1) Hussenabai Hassanally and (2) Yahyabhai Akbarally, both of Wellawatte in Colombo, substituted in place of the 5th Defendant deceased.

The 6th and 7th defendants-petitioners-appellants abovenamed appearing by their Proctor, S. R. Ameresekere, showeth as follows :— 30

1. That the appellants on the 7th day of November, 1957, 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 5th day of September, 1957.

2. The appellants in compliance with the conditions on which such leave was granted have deposited Rs. 3,000/- with the Registrar of the Supreme Court as security for costs of such appeal and have deposited a further sum of Rs. 300/- with the Registrar of the Supreme Court as his fees and the bond was duly signed on the 25th November, 1957. 40

3. The appellants have given notice of this application together with a copy of their petition to the respondents by registered post. Registered postal receipts are annexed.

Wherefore the appellants pray that they may be granted final leave to appeal against the said judgment of this Court, dated 5th September, 1957, to Her Majesty the Queen in Council.

(Sgd.) S. R. AMERESEKERE,

*Proctor for 6th and 7th Defendants-Petitioners-Appellants.*

## No. 25.

**Decree Granting Final Leave to Appeal to the  
Privy Council**

No. 25  
Decree Granting  
Final Leave to  
Appeal to the  
Privy Council.  
12.12.57.

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

In the matter of an application by the 6th and 7th Defendants, dated 28th November, 1957, for Final Leave to appeal to Her Majesty the Queen in Council against the Judgment and Decree of this Court 10 dated 5th September, 1957.

Hussenabai Hassanally of Wellawatte,  
Colombo, and another.....6th and 7th  
*Defendants-Petitioners*

*vs.*

M. M. Mohamed Cassim of Darley Road,  
Maradana, Colombo.....  
..... *Plaintiff-Appellant-Respondent.*

A. R. Zaneera Umma of Darley Road,  
Maradana, Colombo, and others.....  
.....1st, 2nd, 3rd, 4th, 8th, 9th and 10th  
*Defendants-Respondents.*

20

Action No. 6759/PN. (S.C. 619 (F.) of 1955).

District Court of Colombo

This cause coming on for hearing and determination on the 12th day of December, 1957, before the Hon. H. N. G. Fernando, Puisne Justice and the Hon. N. Sinnatamby, Puisne Justice, of this Court, in the presence of Counsel for the Petitioners.

The applicants have complied with the conditions imposed on them by the order of this Court, dated 7th November, 1957, granting 30 conditional leave to appeal.

It is considered and adjudged that the applicants' application for Final Leave to appeal to Her Majesty the Queen in Council be and the same is hereby allowed.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice, at Colombo, the 18th day of December, in the year One thousand Nine hundred and Fifty-seven and of Our Reign the Sixth.

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



PART II

EXHIBITS

P1 (a)

Deed No. 943

Exhibits.

P1 (a)

Deed No. 943.  
22.7.1871.

P1A.

Application No. L 4778.

A 145/243.

No. 943

To All to Whom These Presents shall come, I, Ibrahim Lebbo Ahamado Lebbo Marikar of New Moor Street in Colombo, send Greeting.

10 Whereas in consideration of my love and affection for my daughter, Candoo Umma who is about to be married I am desirous of making some provision for her by giving and granting unto her, amongst other, the premises hereinafter mentioned and described under the conditions and restrictions hereinafter set forth. Now know ye and these presents witness that I the said Ibrahim Lebbo Ahamado Lebbo Marikar in consideration of the premises do hereby give, grant, assign and set over, by way of gift absolute and irrevocable unto her the said Candoo Umma, her heirs, executors, administrators and assigns the said premises which are of the value of three hundred and fifty  
20 Pounds (£350/-) to wit:—All that house and ground bearing assessment number 47 situate and lying at New Moor Street within the Gravets of Colombo bounded on the North by the garden of Soka Marikar, on the East by the house of Assen Lebbo, on the South by the New Moor Street and on the West by the house of Tangatchy Umma containing in extent fourteen square perches together with all deeds and writings relating thereto; which said premises have been held and possessed by me the said Ibrahim Lebbo Ahamado Lebbo Marikar under and by virtue of the annexed Title Deed No. 13408 bearing date the twelfth day of December one thousand eight  
30 hundred and sixty-two and attested by the late John Driberg, Notary Public. To have and to hold the said premises with all and singular the appurtenances thereunto belonging unto her the said Candoo Umma, her heirs, executors, administrators and assigns for ever, subject however to the following conditions and restrictions, to wit:—

That she the said Candoo Umma shall not sell, alienate, mortgage or encumber the same or any part thereof or the issues, rents and profits thereof or of any part thereof but shall possess and enjoy the same during her natural life and that after her death the same  
40 shall devolve on her children share and share alike or if there be but one child on such child and thereafter on the child or children of such her child or children and so from generation to generation under the *Fidei Commissum* Law of Inheritance.

Exhibits.  
 P 1 (a)  
 Deed No. 943.  
 22.7.1871—  
 Continued

And further that the said premises or any part thereof, or the issues, rents and profits thereof or of any part thereof shall not be liable for any debt or default of the said Candoo Umma or of any person or persons lawfully claiming by, from or under her; and that in the event of her dying without leaving any issue surviving her the same shall devolve on her heirs under the same conditions and restrictions as aforesaid according to the Mohamedan Law of Inheritance provided however that she the said Candoo Umma, her child or children or the person or persons so lawfully claiming as aforesaid may transfer her, his or their interest in the said premises 10 by way of gift or dowry to her, his or their lawful heir or heirs but under the same conditions and restrictions as aforesaid. And I the said Ibrahim Lebbe Ahamado Lebbe Marikar do hereby for myself, my heirs, executors, and administrators covenant with the said Candoo Umma, her heirs, executors, administrators and assigns that the said premises are free from any incumbrance and that I shall and will always warrant and defend the same unto her and them against any person whomsoever.

And these presents further witness that I, Ahamado Lebbe Marikar Ibrahim Lebbe of Messenger Street in Colombo do hereby for 20 and on behalf of my sister the said Candoo Umma who is a minor accept the said Gift hereinbefore made under the conditions and restrictions aforesaid.

In witness whereof we the said Ibrahim Lebbe Ahamado Lebbe Marikar and Ahamado Lebbe Marikar Ibrahim Lebbe do set our hands and seals to three of the same tenor as these presents at Colombo aforesaid this twenty second day of July one thousand eight hundred and seventy-one.

*Witnesses :—*

(Sgd.) In Tamil.

(Sgd.) In Tamil (SEAL).

30

(Sgd.) In Tamil.

(Sgd.) In Tamil (SEAL).

I, John Ferdinand Prins of Colombo in the Island of Ceylon, Notary Public, do hereby certify that the foregoing deed having been read over and explained by me unto Ibrahim Lebbe Ahamado Lebbe Marikar and Ahamado Lebbe Marikar Ibrahim Lebbe therein named in the presence of Ahamado Lebbe Uduma Lebbe Marikar residing at Messenger Street and Meya Neyna Marikar Ismail Lebbe Marikar residing at New Bazaar both of Colombo aforesaid the subscribing witnesses thereto, all of whom are known to me was signed by the said Ibrahim Lebbe Ahamado Lebbe Marikar and Ahamado Lebbe 40 Marikar Ibrahim Lebbe, and witnesses in my presence and in the presence of one another at Colombo aforesaid this 22nd day of July, 1871.

Which I attest.

(Sgd.) JOHN F. PRINS,  
 Notary Public.

I, M. S. Fernando, Additional Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of a deed of Gift made from the duplicate filed of record in this office and the same is granted on the application of Mr. L. Senaratna of Colombo.

(Sgd.) M. S. FERNANDO,  
Addl. Registrar of Lands.

Land Registry,  
Colombo, Jany. 2nd, 1952.

Exhibits.  
P 1 (a)  
Deed No. 943.  
22.7.1871—  
Continued

**P2.**

10

**Petition Filed in D.C., Colombo, Case No. 846 Special**

**IN THE DISTRICT COURT OF COLOMBO**

In the matter of the petition of Mohammed Yoosoof Rahamat Umma, widow of Samsideen Mudaliyar Abdul Raheman of Wellawatta in Colombo, under the Ordinance No. 11 of 1876.

Special Case  
No. 846.

Mohammed Yoosoof Rahamat Umma, widow of Samsideen Mudaliyar Abdul Raheman of Wellawatta, Colombo..... *Petitioner.*

20 On this 11th day of August, 1919.

The Petition of the Petitioner abovenamed appearing by Noordeen Hadjar Mohammed Abdul Cader, his Proctor, sheweth as follows :—

1. The petitioner is the 1st defendant in cases Nos. 46977, 46980, 46998 and 46617 of the District Court of Colombo which were respectively instituted for the partition of the following properties by the plaintiffs therein, namely :—

- 30
- (1) No. 12, Chatham Street, Fort, Colombo.
  - (2) Nos. 45 to 57, 62 and 28 situate in 2nd Cross Street, Maliban Street and Norris Road respectively.
  - (3) No. 38, New Moor Street, Colombo.
  - (4) No. 30, Siripina Lane, Colombo.

2. Rabia Umma and her husband, Samsideen Sherifdeen are 1st and 2nd plaintiffs, Ramina Umma and A. L. Anver are the 2nd and 3rd defendants to the action No. 46977 the said Rabia Umma and her husband Samsideen Sherifdeen the 1st and 2nd plaintiffs, and Ramina Umma and A. L. Anver are the 2nd and 3rd defendants and Abdul Cader Mohammed Nauf is the intervenient in cases Nos. 46980, 46998 and 46617 of this Court.

P2  
Petition filed in  
D.C. Colombo.  
Case No. 846  
Special.  
11.8.1919.

Exhibits.  
 P 2.  
 Petition filed in  
 D. C. Colombo,  
 Case No. 846  
 Special.  
 11.8.1919—  
 Continued

3. By its decrees dated the 5th December, 1917, and 18th March, 1918, respectively entered in the aforesaid cases this Court declared the petitioner entitled to an undivided  $\frac{1}{2}$  share of each of the abovementioned premises and the 1st plaintiff and the 2nd and 3rd defendants to the remaining undivided  $\frac{1}{2}$  share of premises No. 12, Chatham Street, Fort, Colombo, and the 1st plaintiff and the 2nd and 3rd defendants and the intervenients to the remaining undivided  $\frac{1}{2}$  share of the remaining three premises subject to *Fidei Commissum* in favour of their descendants and further ordered that the properties be sold.

10

4. Thereafter the said properties were duly sold by the Commissioner appointed by Court and at the said sales the following prices were realised, namely :—

No. 1. Premises No. 12, Chatham Street, Colombo, were sold for Rs. 75,600/-.

No. 2. Premises Nos. 45 to 57, 62 and 28, 2nd Cross Street, Maliban Street and Norris Road, Colombo, respectively sold for Rs. 55,000/-.

No. 3. Premises No. 38, New Moor Street, Colombo, were sold for Rs. 8,700/-.

20

No. 4. Premises No. 30, Siripina Lane, Colombo, were sold for Rs. 8,700/- making a total sum of Rs. 148,000/-.

5. The costs of the four actions abovementioned the petitioner is advised will not exceed Rs. 15,445.55.

6. There is therefore a balance sum of approximately Rs. 132,554.45 remaining to be divided between the petitioner and the said 1st plaintiff, 2nd and 3rd defendants and the Interveniient out of which a sum of Rs. 66,277.22 would represent the share of the petitioner.

7. The petitioner purchased the premises Nos. 45 to 57, 62 and 28 30 2nd Cross Street, Maliban Street and Norris Road, Pettah, Colombo, respectively and the premises No. 30, Siripina Lane, Colombo, through her Proctor Mr. N. H. M. Abdul Cader, at the sales held on the 21st and 22nd days of July, 1919, respectively, and the premises No. 38, New Moor Street, Colombo, through her cousin Mr. S. M. Meera Lebbe Marikar of Messenger Street, Colombo, at the sale held on the 22nd day of July, 1919, in terms of the decrees for sale entered in cases Nos. 46980, 46617 and 46998 abovementioned for the respective prices or sums of Rs. 55,000/-, Rs. 8,700/- and Rs. 8,700/-, making a total sum of Rs. 724,000/- and paid Rs. 8,952.25 to wit Rs. 7,240/- 40 being 1/10 share of all the three properties purchased and Rs. 1,712.25 being for Commission, advertisement and other charges.

8. As shown above, the petitioner's one half share of the proceeds sales of all four properties with the 1/10 purchase amounts already deposited by the petitioner, making a total sum of Rs. 73,517.22



less the commission, advertisement charges, etc., already paid by her out of which the petitioner humbly submits the Commission must be refunded to her by the Commissioner as she understands the practice is that the Commission must be paid to the Commissioner by purchase money and not by her, exceed in value the sum of Rs. 72,400/- mentioned in the preceding paragraph hereof.

9. The title to all these premises purchased by the petitioner as aforesaid is clear as being based on three decrees for such sales entered in three partition actions.

10 10. The prices for which the three premises were purchased by the petitioner were fair and reasonable.

11. The aforesaid sales were by public auctions and the said prices represent the true market values of the said three premises purchased as aforesaid by the petitioner.

12. The petitioner is willing that the said three premises (1) Nos. 45-57, 62 and 28 situate in 2nd Cross Street, Maliban Street, and Norris Road respectively, (2) No. 38, New Moor Street and (3) No. 30, Siripina Lane purchased by her as aforesaid should be impressed with *fidei commissa* respectively in favour of her descendants 20 and that the transfers of the said properties to her should be made subject to such *fidei commissa*.

Wherefore the petitioner prays that the Commissioner be ordered to give credit for the balance sum of Rs. 65,160/- being part of her  $\frac{1}{2}$  share of the entire purchase amount of the four properties above-mentioned.

(2) That the Court do order in terms of Section 7 of Ordinance No. 11 of 1876 that the properties Nos. 45-47, 62 and 28 situate in 2nd Cross Street, Maliban Street and Norris Road respectively, No. 38, New Moor Street and No. 30, Siripina Lane, Colombo, 30 purchased as aforesaid by the petitioner be transferred to the petitioner subject to *fidei commissa* in favour of her descendants.

(3) For costs and for such other and further relief as to the Court shall seem meet.

(Sgd.) N. H. M. ABDUL CADER,  
*Proctor for Petitioner.*

#### IN THE DISTRICT COURT OF COLOMBO

In the matter of the petition of Mohammed Yoosoof Rahamath Umma, widow of Samsideen Mudaliyar Abdul Rahiman of Wellawatta in Colombo under the Ordinance No. 11 of 1876.

Mohammed Yoosoof Rahamath Umma, widow of Samsideen Mudaliyar Abdul Raheman of Wellawatta, Colombo.....*Petitioner.*

Exhibits

P 2.

Petition filed in  
D. C. Colombo,  
Case No. 840  
Special.  
11.8.1919—  
*Continued*

Exhibits

P 2.

Petition filed in  
D. C. Colombo,  
Case No. 846  
Special.  
11.8.1919—  
Continued

I present my appointment as Proctor for petitioner abovenamed together with her petition duly supported by affidavit and move that the Court may be pleased to order the Commissioner to give credit to the petitioner to the sum of Rs. 65,160/- being part of her  $\frac{1}{2}$  share of the entire purchase amount of the four properties sold, and that the properties Nos. 45 to 57, 62 and 28, 2nd Cross Street, Maliban Street and Norris Road, Pettah, Colombo, respectively and No. 30, Siripina Lane, Colombo, purchased by the petitioner be transferred to her subject to a *fidei commissa* in favour of her descendant.

Colombo, 12th August, 1919. 10

(Sgd.) N. H. M. ABDUL CADER,

*Proctor for Petitioner.*

## IN THE DISTRICT COURT OF COLOMBO

In the matter of the petition of Mohammed Yoosuf Rahamath Umma widow of Samsideen Mudaliyar Abdul Rahaman of Wellawatta, Colombo, under the Ordinance No. 11 of 1876.

The Probable Schemes of distribution having been filed in Partition Cases No. 46977, 46617, 46980 and 46998 of this Court as suggested by Court copies whereof are hereto annexed. The sums of 20 money Rs. 24,014.26, Rs. 5,304.24 and Rs. 5,117.61 $\frac{1}{2}$  aggregating to Rs. 34,436.11 $\frac{1}{2}$  necessary to bring into Court in the three different partition actions out of the sum of money Rs. 3,555 . . . (torn) lying to the credit of the 1st defendant in Case No. 46977 D.C., Colombo, as shown in the annexed schemes are less than the amount in Court to the credit of the 1st defendant in Case No. 46977 aforesaid I move that my motion of the 13th August, 1919, be allowed.

Colombo, 21st August, 1919.

(Sgd.) N. H. M. ABDUL CADER,

*Proctor for Petitioner. 30*

“ TRUE COPIES ” of Petition dated 11.9.1919, motions dated 12.8.1919, and 21. 8.1919, filed in D.C., Colombo, Case No. 846/Spl.

(Sgd.).....,

*Asst. Secretary, D.C., Colombo,  
28.7.53.*

Typed by : (Intd.).....

Compared by : (Intd.).....

## P1.

## Certificate of Title in D.C., Colombo, Case No. 46998

Certificate of Title.

GEORGE THE FIFTH by the Grace of God of the United  
Kingdom of Great Britain and Ireland and of the  
British Dominions beyond the seas, King,  
Defender of the Faith.

## IN THE DISTRICT COURT OF COLOMBO

10  
No. 46998.

1. Rabia Umma, and her husband,
2. Samsudeen Sharifdeen, both of No. 47, Urugoda-  
watta Road, Colombo.....*Plaintiffs*

*vs.*

1. Mohamed Yoosof Rahimath Umma, widow of  
S. Abdul Raheman of Dematagoda, Colombo.
2. Ramina Umma, and
3. A. L. Enver both of No. 47, Urugodawatta  
Road, Colombo.....*Defendants*.

Whereas the above styled action was instituted for the partition  
or sale in terms of Ordinance No. 10 of 1863 of the premises hereinafter  
20 mentioned and more particularly described.

And Whereas this Court by its Decree dated the 18th day of  
March, 1919, entered in the above styled action ordered and decreed  
that the said premises be sold in terms of Ordinance No. 10 of 1863  
and the proceeds brought into Court.

And Whereas this Court by its order dated, the 19th day of May,  
1919, appointed Mr. C. E. Karunaratne of Colombo, Commissioner,  
to carry out the Decree pronounced as aforesaid for the sale of the  
said premises and this Court further on the 30th day of May, 1919,  
issued its Commission to the said C. E. Karunaratne accordingly  
30 directing him in conformity with the said Decree of the 18th day of  
March, 1919, and with the Provisions of the said Ordinance No. 10  
of 1863 to sell the aforesaid premises and the proceeds realised by  
such sale to bring into and deposit in Court within one month from  
the date of such sale.

And Whereas the said Commissioner having valued the said  
premises at the sum of Rupees Fifteen thousand (Rs. 15,000/-) and  
having submitted for the approval of this Court conditions of sale  
and a statement setting out the manner in which he proposed to carry  
such sale with due notice of sale and the same were on the 5th day  
40 of June, 1919, approved by this Court and the plaintiffs, defendants  
and intervenient.

Exhibits

P1

Certificate of  
Title in D.C.,  
Colombo, Case  
No. 46998.  
2.9.20.

Exhibits.

P 1.

Certificate of  
Title in D. C.,  
Colombo, Case  
No. 46998.  
2.9.20—

Continued

And Whereas the said Commissioner did on the 29th day of July, 1919, make return to the said Commission issued to him as aforesaid reporting that pursuant to notice duly given he did put up for sale on the 22nd day of July, 1919, the said premises under the said conditions amongst the Co-owners thereof in the first instance at the upset price of Rupees Fifteen thousand (Rs. 15,000/-), and at such sale none of the Co-owners put in a bid in advance of the said appraised value, the same was immediately put up for sale among the public and at such sale Mohamed Yoosoof Rahamath Umma the 1st defendant in the above case being the highest bidder through her 10 cousin, I. L. M. Mohamed Meera Lebbe Marikar of Colombo, was declared the purchaser of the said premises for the price or sum of Rupees Eight thousand seven hundred (Rs. 8,700/-) and that the said purchaser had paid into the hands of the said Commissioner the sum of Rupees Eight hundred and seventy (Rs. 870/-), being one-tenth of the purchase money payable by her in terms of the said Conditions of Sale.

And Whereas in Special Case No. 846 of the District Court of Colombo the said Mohamed Yoosoof Rahimath Umma the purchaser hereof did in terms of Ordinance No. 11 of 1876 apply to the said 20 District Court of Colombo for an Order on the said Commissioner to give to the said Mohamed Yoosoof Rahimath Umma credit for the balance sum of Rupees Two thousand four hundred and eighteen and cents sixty-six and a half (Rs. 2,418·66½), and to order in terms of Section 7 of Ordinance No. 11 of 1876 that the said premises purchased as aforesaid by the said Mohamed Yoosoof Rahimath Umma be transferred to her subject to a *fidei commissum* in favour of her descendants.

And Whereas the said District Court of Colombo by its order dated the 25th day of August, 1919 (a true copy whereof is hereto 30 annexed), hath ordered the said Commissioner to give credit to the said Mohammed Yoosoof Rahimath Umma for the said sum of Rupees two thousand four hundred and eighteen and cents sixty-six and half (Rs. 2,418·66½).

And Whereas the said Mohamed Yoosoof Rahimath Umma has brought into Court the balance sum of Rupees six thousand two hundred and eighty-one and cents thirty-three and a half (Rs. 6,281·33½), and having thus accounted to this Court for the full purchase money has become entitled to a certificate of title or Sale of the said premises under the hand of the Judge of this Court as 40 provided for by the said Ordinance No. 10 of 1863 subject to a *fidei commissum* created by Deed No. 943 of 22nd July, 1871, attested by John Prins, N.P., in favour of her descendants.

Now Know Ye and these Presents Witness that I, William Wadsworth, Judge of the District Court of Colombo, do by this Certificate under my hand certify that the aforesaid premises, to wit : All that house and garden bearing assessment No. 47 situate and lying at New Moor Street within the Gravets of Colombo, bounded on the North by the garden of Satta Marikar, on the East by the house of Assen Lebbe on the South by the New Moor Street and on the West by the house of Tangatchy Umma containing in extent fourteen square perches ; which said premises is now described as : All that house  
 10 and garden bearing assessment No. 38 situated at New Moor Street within the Municipality of Colombo and bounded on the North by the premises bearing assessment No. 30 in Siripina Lane on the East by premises bearing assessment No. 392, on the South by the New Moor Street and on the West by premises bearing assessment No. 37 containing in extent fourteen and 47/100 perches according to the Survey Plan No. 963 dated 8th December, 1916, made by M. G. de Silva, Licensed Surveyor, has been sold under the Order of this Court and that the Purchaser thereof is Mohammed Yoosoof Rahimath Umma the 1st defendant and the Purchase Money has been duly  
 20 accounted to this Court and I do declare that this certificate shall be and is evidence of the title of the said Mohammed Yoosoof Rahimath Umma to the said premises subject to the aforesaid *fidei commissum* created by deed No. 943 of 22nd July, 1871, attested by John Prins, N.P., without any deed or transfer from the previous owner or owners thereof.

Signed under my hand and Seal of the District Court of Colombo this Second day of September, 1920.

(Sgd.) W. WADSWORTH,  
*District Judge.*

Exhibits.

P 1.

Certificate of  
 Title in D. C.,  
 Colombo, Case  
 No. 46998.  
 2.9.20—  
*Continued*

80

P8.

**Certificate of Birth**

**CERTIFICATE OF BIRTH**

Application No. 321.

This certificate is solely for the purposes of the Education Code, and is not available as a legal document for general use. It should be retained by the authorities of the School to which it is presented.

Province : Western.  
 District : Colombo.  
 Division : No. 2B.

No. 3764.

P 8.

Certificate of  
 Birth.  
 11.4.19.

Exhibits.  
P 8.  
Certificate of  
Birth.  
11.4.19—  
Continued

- |                               |   |
|-------------------------------|---|
| 1. Date and place of Birth .. | .. Eleventh April, 1919, "Consiston," Ridge-way Place                 |
| 2. Name and Surname ..        | .. Ayinul Wadudah (daughter of Cassim Lebbe Marikkar Mohamed Muheeth) |
| 3. Sex ..                     | .. Female   |
| 4. Name of Mother ..          | .. Ummu Shifa   |
| 5. When Registered ..         | .. Twenty-second April, 1919  |

I, E. A. Jayasekara, 3rd Asst. Registrar-General of Marriages, Births and Deaths in the Island of Ceylon do hereby certify that the foregoing is a true extract from the register of births of K.D. Peter, 10 Registrar of No. 2B, Colombo Town, filed in this Office and the same is granted on the application of Mr. C. L. M. M. Muheeth.

(Sgd.) E. A. JAYASEKERA,  
3rd Asst. Registrar-General.

Registrar-General's Office,  
Colombo, 25th January, 1926.

True Copy of the Birth Certificate No. 3764 filed of record in D.C. Colombo Case No. 3733/Guardian.

(Sgd.).....  
Asst. Secretary. 20

District Court,  
Colombo, 22nd June, 1954.

P 6.  
Certificate of  
Birth.  
16.2.20.

**P6.**  
**Certificate of Birth**

Application No. B 23667.  
No. 18345.

**CEYLON**  
**CERTIFICATE OF BIRTH**

Western Province, Colombo District,  
Slave Island, Kollupitiya 2A Division.

- |  |   |    |
|--|---|----|
| 1. Date and place of Birth ..  | .. Sixteenth February, 1920, Kollupitiya, 197A.                       |    |
| 2. Name ..   | .. Mohamadu Fausz.  |    |
| 3. Sex ..  | .. Male.  |    |
| 4. Name and Surname of father ..   | .. Cassim Lebbe Marikkar Mohamadu Muheeth.                            |    |
| 5. Name and maiden name of mother and race ..                                    | .. Ummu Shifa, Moor.  |    |
| 6. Rank or profession and race of father ..                                      | .. General Merchant, Moor.  |    |
| 7. Were parents married? ..  | .. Yes.   | 40 |
| 8. Name and residence of Informant, and in what capacity he gives information .. | .. Cassim Lebbe Marikkar Mohamadu Muheeth, Kollupitiya, 197A, Father. |    |
| 9. Informant's signature ..  | .. Sgd. : Illegibly in English  |    |
| 10. When registered ..   | .. Twenty-seventh March, 1920.  |    |
| 11. Signature of Registrar ..  | .. Sgd. : A. S. P. Fernando.  |    |
| 12. Name, if added or altered after registration of birth ..                     | .. —  |    |
| 13. Date of addition or alteration ..  | .. —  | 50 |

I, G. A. Jayawardhane, Assistant Registrar-General of Births, Marriages and Deaths in the Island of Ceylon do hereby certify that the foregoing is a true extract from the Duplicate Register of Births of A. S. P. Fernando, Registrar of Slave Island filed in this office and the same is granted on the application of Mr. M. H. M. Fawz.

Registrar-General's Office. (Sgd.) G. A. JAYAWARDHANE,  
Colombo, October 19, 1948. *Asst. Registrar-General.*

True copy of the Certificate of Birth No. 18345 filed of record in D.C., Colombo, Case No. 3733/Guardian.

10 District Court,  
Colombo, 22nd June, 1954.

(Sgd.).....  
*Asst. Secretary.*

Exhibits.  
P 6.  
Certificate of  
Birth.  
18,2,20—  
*Continued*

**P3.**  
**Certificate of Death**

Application No. A 4352.

**CEYLON**

**CERTIFICATE OF DEATH**

No. 21576.

Western Province, Colombo District,  
Slave Island and Kollupitiya 2A Division

P 3.  
Certificate of  
Death.  
2.8.21.

20	1. Date and Place of Death .. .. .	Second August, 1921, Kollupitiya, "Tre-vine," 197A3. The residence of C. L. M. M. Muheeth.
	2. Name in Full .. .. .	Rahamath Umma.
	3. Sex and Race .. .. .	Female, Moor.
	4. Age .. .. .	Fifty years.
	5. Rank and Profession .. .. .	_____
	6. Names of Parents .. .. .	F. Mohamadu Yusup. M. Not known.
	7. Cause of Death, and Place of Burial or Cremation .. .. .	Phthisis. Dr. A. de Boer.
30	8. Name and Residence of Informant, and in what capacity he gives information	Cassim Lebbe Marikkar Mohamed Saleem, Kollupitiya, 197 A1. Person present at death.
	9. Informant's Signature .. .. .	(Sgd.) illegibly.
	10. When Registered .. .. .	Third August, 1921.
	11. Signature of Registrar .. .. .	(Sgd.) A. S. P. Fernando.

Exhibits.

P 3.

Certificate of  
Death.  
28.21—  
Continued

I do hereby certify that the foregoing is a true copy of a Death  
Registration entry filed of record in this office.

Registrar-General's Office,  
Colombo I.  
24th June, 1954.

(Sgd.) L. M. de SILVA,  
Assistant Registrar-General.

P 7.

Certificate of  
Birth.  
27.2.22.

P7.

## Certificate of Birth

Application No. 23668.  
No. 20291.

10

CEYLON  
CERTIFICATE OF BIRTH

Western Province, Colombo District,  
Slave Island and Kollupitiya, 2A Division.

1. Date and place of Birth .. .. .	Twenty-seventh February, 1922. Kollupitiya, "Trevine."	
2. Name .. .. .	Abdul Majeed.	
3. Sex .. .. .	Male.	
4. Name and surname of father .. .. .	Cassim Lebbe Marikkar Mohamadu Muheeth.	20
5. Name and Maiden name of mother and race .. .. .	Abdul Rahaman Ummu Shiffa, Moor.	
6. Rank or profession and race of father .. .	Merchant, Moor.	
7. Were parents married .. .. .	Yes.	
8. Name and residence of Informant and in what capacity he gives information	Cassim Lebbe Marikkar Mohamadu Muheeth, Kollupitiya, "Trevine." Father.	
9. Informant's Signature .. .. .	(Sgd.) C. L. M. M. Muheeth.	
10. When Registered .. .. .	Ninth April, 1922.	
11. Signature of Registrar .. .. .	(Sgd.) A. S. P. Fernando.	30
12. Name, if added or altered after registra- tion of Birth .. .. .	—	
13. Date of addition or alteration	—	



I, G. A. Jayawardhane, Assistant Registrar-General of Births, Marriages and Deaths, in the Island of Ceylon, do hereby certify that the foregoing is a true extract from the Duplicate Register of Births of A. S. P. Fernando, Registrar of Slave Island and Kollupitiya 2A, filed in this Office, and the same is granted on the application of Mr. M. M. A. Majeed.

*Exhibits.*  
P 7.  
Certificate of  
Birth.  
27.2.22—  
Continued

(Sgd.) G. A. JAYAWARDHANE,  
*Asst. Registrar-General.*

Registrar-General's Office,  
10 Colombo, October 19, 1948.

TRUE COPY of Birth Certificate No. 20291, filed of record in D.C. Colombo Case No. 3733/Guardian.

(Sgd.).....  
*Asst. Secretary.*

District Court,  
Colombo, 22nd June, 1954.

P5.

**Certificate of Birth**

Application No. B 23666.  
20 No. 22890.

P 5.  
Certificate of  
Birth.  
13.4.25.

**CEYLON**

**CERTIFICATE OF BIRTH**

Western Province, Colombo District,  
Slave Island and Kollupitiya, 2A Division.

1. Date and Place of Birth .. ..	Thirteenth April, 1925, Kollupitiya, "Tre-vine."
2. Name .. ..	Mohamedo Cassim.
3. Sex .. ..	Male.
4. Name and Surname of father ..	Cassim Lebbe Marikkar Mohamado Muheeth.
5. Name and Maiden Name of Mother and Race .. ..	Mrs. Umma Shiffa Mohamedo Muheeth. Miss Abdul Rahaman Umma Shiffa. Ceylon Moor.

Exhibits.  
 P 5.  
 Certificate of  
 Birth.  
 13.4.25—  
 Continued

6. Rank or Profession and Race of Father	General Merchant and Landed proprietor, Ceylon Moor.
7. Were Parents Married .. ..	Yes.
8. Name and Residence of Informant and in what capacity he gives information	Cassim Lebbe Marikkar Mohamedo Muheeth, Kollupitiya, "Trevine." Father.
9. Informant's Signature .. ..	Registered on the declaration of the above informant under Section 12.
10. When Registered .. ..	Twenty-fourth May, 1925.
11. Signature of Registrar .. ..	(Sgd.) A. S. P. Fernando. 10
12. Name, if added or altered after Regis- tration of Birth .. ..	—
13. Date of addition or alteration ..	—

I, G. A. Jayawardhane, Assistant Registrar-General of Births, Marriages and Deaths in the Island of Ceylon, do hereby certify that the foregoing is a true extract from the Duplicate Register of A. S. P. Fernando, Registrar of Slave Island filed in this office and the same is granted on the application of Mr. M. S. Akbar.

(Sgd.) G. A. JAYAWARDHANE,  
*Asst. Registrar-General.* 20

True copy of the Certificate of Birth No. 22890 filed of record in D.C. Colombo, Case No. 3733/Guardian.

District Court,  
 Colombo, 22nd June, 1954.

(Sgd.).....  
*Asst. Secretary.*

P 4.  
 Certificate of  
 Death.  
 24.3.38.

P4.  
**Certificate of Death**

Application No. A 4351.

**CEYLON**  
**CERTIFICATE OF DEATH**  
 Western Province, Colombo District,  
 No. 5, New Bazaar Division.

No. 6534. 30

1. Date and Place of Death .. ..	Twenty-fourth March, 1938, 32, Messenger Street, New Bazaar Ward West.
2. Name in Full .. ..	Abdul Rahaman Umma Shiffa.

3. Sex and Race .. .. .	Female, Ceylon Moor.
4. Age .. .. .	Thirty-eight years.
5. Rank and Profession .. .. .	Landed proprietor's wife.
6. Names of Parents .. .. .	Father: Samsudeen Abdul Rahuman, Mother: Mohamed Yusuf Rahumath Umma.
7. Cause of Death, and Place of Burial or Cremation .. .. .	Tuberculosis of the lungs. Certified by Dr. D. Gandevia.
8. Name and Residence of Informant, and in what capacity he gives Information	Cassim Lebbe Marikkar Mohamed Moheeth 32, Messenger Street. Husband present at death.
9. Informant's Signature .. .. .	(Sgd.) Illegibly. This is the signature of Cassim Lebbe Marikkar Mohamed Moheeth.
10. When Registered .. .. .	Twenty-fourth March, 1938.
11. Signature of Registrar .. .. .	(Sgd.) D. P. Kitulgoda.

Exhibits.

P 4.

Certificate of  
Death.  
24.3.38—  
Continued

I do hereby certify that the foregoing is a true copy of a Death Registration entry filed of record in this office.

(Sgd.) C. M. de SILVA,  
*Asst. Registrar-General.*

20 Registrar-General's Office,  
Colombo 1, 24th June, 1954.

6D2.

Deed No. 737

A. C. M. ABDUL CADER,  
*Proctor and Notary,*  
Colombo.

Prior Registration.

Colombo A145/243 and 174/281.

No. 737

This Indenture of Lease made and entered into on this eleventh  
30 day of December one thousand nine hundred and forty-five between  
Abdul Rahman Zaneera Umma, widow of Periya Tamby Mohamed  
Hashim of No. 289, Darley Road, Maradana, in Colombo in the Island

6D2

Deed No. 737.  
11.12.45.

Exhibits.  
6D2.  
 Deed No. 737.  
 11.12.45—  
 Continued

of Ceylon (hereinafter called and referred to as the Lessor which expression used shall where the context so requires or admits mean and include her, her heirs, executors, administrators and assigns) of the one part and Akbarally Abdulhussan Davodbhoy of 50, Dam Street, in Colombo aforesaid (hereinafter called and referred to as the Lessee which expression herein used shall where the context so requires or admits mean and include him, his heirs, executors, administrators and permitted assigns) of the other part.

Witnesseth :—

That in consideration of the sum of Rupees two thousand seven hundred (Rs. 2,700/-), of lawful money of Ceylon, well and truly paid to the Lessor by the Lessee at or before the execution of these presents (the receipt whereof the Lessor doth hereby admit and acknowledge) being the aggregate rental of the period of fifteen years at the rate of Rupees fifteen a month and in further consideration of the rents hereby reserved and of the covenants and conditions hereinafter contained and on the part of the Lessee to be paid, done, observed and performed, the Lessor doth hereby let, lease and demise unto the Lessee All that allotment of land bearing assessment No. 75 situated at Siripina Lane and No. 113 situated at New Moor Street within the Municipal Limits and District of Colombo more particularly described in the schedule hereto.

To hold the said premises hereby demised unto the Lessee from the first day of January One Thousand Nine Hundred and Forty-six for and during the terms of thirty years to be fully completed and ended ; yielding and paying unto the Lessee at the yearly rental of rupees one hundred and eighty (Rs. 180/-) for the first fifteen years of the said Lease commencing from the aforesaid first day of January one thousand nine hundred and forty-six aggregating to the said sum of Rupees Two Thousand Seven Hundred (Rs. 2,700/-) and thereafter at the yearly rental of Rupees Two Hundred and Forty (Rs. 240/-) commencing from the first day of January One Thousand Nine Hundred and Sixty-one for the remaining period of the fifteen years of the said term aggregating to Rupees Three Thousand Six Hundred (Rs. 3,600/-) payable in advance to the Lessor on the first day of January One Thousand Nine Hundred and Sixty-one by the Lessee without deduction of any kind whatever the Lessee undertaking to pay all rates, taxes and other connected charges.

It is hereby further agreed as follows :—

(1) The Lessee shall within a reasonable time lay out and expend at his own expense in erecting and completing fit for habitation with proper materials of all sorts upon the said ground dwelling houses, tenements, shops, boutiques or factories in compliance with the building and other Regulations of the Colombo Municipality and shall not hold the Lessor liable for payment of any such sums or payments.

(2) The Lessee completing the erection of all such buildings and on obtaining the certificate of occupation from the Municipal Council continue to exercise, use and enjoy the rights, benefits, interest, income on the premises and the buildings erected thereon during the pendency of thirty years demised under and by virtue of this Indenture of Lease.

(3) The Lessee shall pay the said rent in manner aforesaid, and all the rates, taxes, and outgoings from time to time to become payable in respect of the said premises respectively during the said 10 term.

(4) The Lessee shall keep and preserve the said buildings thereof in proper order and condition and at the termination of the said term peaceably deliver up the whole of the said premises to the Lessor or to such person or persons as she shall appoint in such good tenantable repair, order, and conditions as hereinafter mentioned free of payment of any kind whatever as aforesaid.

(5) The Lessee shall keep and leave the said premises respectively, together with all the fixtures and fittings, locks, and fastenings thereon and thereto in good and substantial repair and condition at the end 20 or sooner termination of the said term wear and tear excepted.

This agreement shall and will operate as an actual demise and create a leasehold interest and tenancy of the entire premises and buildings hereafter erected or any part thereof and shall confer on the said Lessee all rights to enter upon the premises for all purposes and all rents and income from the buildings erected shall be recoverable and the Lessor has no right to demand any occupying or any right to any income save and except that she can take possession of the land and the buildings thereon free of any encumbrances or charge monies expended on the buildings on the date, time and year 30 immediately after the expiration of the 30 years demised herein.

That the Lessee duly paying the rent hereby reserved in manner aforesaid and observing and performing the several covenants and conditions herein contained and on the part of the Lessee to be paid, done, observed and performed shall and may peaceably and quietly hold and enjoy the said premises hereby demised without any interruption from or by the Lessor or any person rightly claiming from or under her.

Provided always and it is hereby agreed that if the said rent hereby reserved or any part thereof shall be in arrears and unpaid 40 for a period of one month after the dates on which the same ought to be paid as aforesaid whether the same shall not have been legally demanded or in case of the breach or non-performance of any of the covenants and conditions herein contained and on the part of the Lessee to be paid, done, observed and performed then and in any such

Exhibits.

612.

Deed No. 737.

11.12.45—  
Continued

Exhibits.

6D2.

Deed No. 737.  
11.12.45—  
Continued

case it shall be lawful for the Lessor (if she so desires), thereupon or at any time thereafter into and upon the said demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess and to cancel and determine this lease.

In Witness whereof the parties hereto have set their respective hands to these presents and to two others of the same tenor and date at Colombo aforesaid on this eleventh day of December One Thousand Nine Hundred and Forty-five.

*The Schedule above Referred To*

1. All that allotment of land with building bearing assessment 10 No.38, formerly No.47, presently bearing assessment No.113, situated at New Moor Street within the Municipality and District of Colombo, Western Province, presently bounded on the North by premises bearing assessment No.30, on the East by premises bearing assessment No. 39 belonging to the wife of O. L. M. Zainudeen, on the South by New Moor Street and on the West by premises bearing assessment No. 37 belonging to W. M. Ahamado Lebbe, containing in extent Fourteen Fifty hundredths square perches (A0. R0. P14 50/100), according to the annexed survey and description thereof No. 24 dated the 12th day of September, 1912, made by James W. Ameresekere, 20 Licensed Surveyor.

2. All that garden situated at Siripina Modoku or Siripina Lane or Mosque Lane bearing assessment No. 30, presently bearing assessment No. 75, situated in Siripina Lane within the Municipality of Colombo and bounded on the North by Siripina Lane, on the East by premises bearing assessment Nos. 4 to 19 in First Mosque Lane, on the South by the premises bearing assessment Nos. 40, 39, 38 and 37 in New Moor Street and on the West by assessment No. 31 containing in extent one rood and fifteen 48/100 perches according to the survey plan No. 964 dated 7th day of December, 1916, made by 30 M. G. de Silva, Licensed Surveyor, which two allotments of land now forming one property are now described as an allotment of bare land bearing assessment No. 75 situated at Siripina Lane and No. 113 situated at New Moor Street within the Municipal Limits and Districts of Colombo, Western Province, bounded on the North by Siripina Lane, on the East by premises bearing assessment Nos. 51/11 and 45/11 (Mosque Lane) Nos. 119, 117 and 115 (New Moor Street), on the South by New Moor Street and on the West by premises bearing assessment No. 111 (New Moor Street) and Nos. 85/5 to 18 (Siripina Lane), containing in extent only Rood one, Perches Sixteen and eight 40 tenths of a perch (A0. R1. P16'8), according to recent Survey bearing No. 3070 dated 15th November, 1945, made by M. I. L. Marikar, Licensed Surveyor and Leveller.

Witnesses who declare that they are well acquainted with the within named Executants and that they know her proper name and residence.....

} These are the cross mark and left thumb impression of Abdul Raheman Zaneera Umma. (Sgd.) Akbarally Abdulhussan Davoodbhoy by his attorney, Alibhoy A. Davoodbhoy.

Exhibits. 6D2. Deed No. 737. 11.12.45— Continued

(Sgd.) M. M. A. MAJID. (Sgd.) M. M. CASSIM.

10

(Sgd.) A. C. M. ABDUL CADER, Notary Public.

I, Ahmed Cassim Mohamed Abdul Cader of Colombo in the Island of Ceylon, Notary Public by lawful authority duly admitted do hereby certify and attest that the foregoing Indenture of Lease having been duly read over and explained by me the said Notary to the therein named executants Abdul Raheman Zaneera Umma (who has signed in Cross mark and left thumb impression) and Alibhoy A. Davoodbhoy (who has signed as Alibhoy A. Davoodbhoy) in the presence of Mohamed Muheeth Abdul Majid (who has signed as M. M. A. Majid and Mohamed Muheeth Cassim (who has signed as " M. M. Cassim " both of 289, Darley Road in Colombo aforesaid the subscribing witnesses thereto all of whom are known to me, the same was signed by the said Abdul Raheman Zaneera Umma and by the said Alibhoy A. Davoodbhoy as the act and Deed of Akbarally Abdulhussan Davoodbhoy therein named duly authorised thereto by a power of attorney bearing No. 575 dated 17th June, 1931, and attested by S. Sivasubramaniam of Colombo, Notary Public (true copies of which are annexed to the duplicate and Protocol of this Deed), and also by the said witnesses and 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 aforesaid on this eleventh day of December One Thousand Nine Hundred and Forty-Five.

I further certify and attest that the consideration mentioned in this deed namely a sum of Rs. 2,700/- was paid in Currency notes in my presence and that in the original on page 1 line 3 the word " Five " was typed on erasure, on page 2 in line 14 the letter " S " in the word " Sixty " was typed on erasure, on page 4 line 9 the word " done " was interpolated and on the same page in line 21 the word " bare " was deleted and on the same line the words " with building " were interpolated, on page 5 in line 6 the words " or Siripina Lane or Mosque Lane " were interpolated, in line 16 the word " now " was interpolated and the word " of " was deleted on erasure and in line 17 the word " bare " was interpolated and in the Duplicate on page 2 in line 4 the letter " g " in the word " during " was typed on erasure, on page 3 in line 20 the word " can " was typed on erasure, on page 4

Exhibits.  
6D2.  
Deed No. 737.  
11.12.45—  
Continued

line 3 the word "done" was interpolated, in lines 7, 10 and 12 the words "repossess," "hands," "five," were typed on erasure respectively, in line 14 the words "with building" were interpolated and in line 26 the words "or Siripina Lane or Mosque Lane" were interpolated and on page 5 in line 6 the word "now" was interpolated and in line 7 the word "of" was deleted on erasure and the word "bare" was interpolated and that the duplicate of this bears one stamp of the value of Rupees twenty and the original a stamp of Rupee one which stamps were supplied by me.

Date of Attestation :

10

11th December, 1945.

Which I attest.

(Sgd.) A. C. M. ABDUL CADER,

*Notary Public.*

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## Extract of Encumbrances

Division A. Volume III. Folio 101. Name of Land : Assessment No. 38, formerly assessment No. 47, New Moor Street, Gravets, District, Colombo. Province: Western. Boundaries: N. Garden of Seka Marikar. E. House of Assen Lebbe. S. New Moor Street. W. House of Tangatchy Umma. Extent: 14 Sq. Perches.

Date of Registry (Day Book No. and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances (To be concisely and clearly stated)	No. and date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
18094 3 April, 1912	Mohamadu Yusuf Rahamath Umma of New Moor St.	(1) Peria Tamby Mohamed Hashim of New Moor St. (2) Abdul Rahman Zancera Umma also of New Moor St.	An agreement to gift the above with the house thereon in consideration of the marriage arranged between the 1st and the 2nd grantees	168 28/29 March, 1912	N. H. M. Abdul Cader N.P.	17-50	(Sgd.) S. D. Ekanayake	With silver jewellery and brass utensils valued at Rs. 650/- with the land in folio 102
6901 15 April, 1913	Do.	Abdul Rahaman Zancera Umma of New Moor St.	Gift of the above with the buildings thereon value Rs. 10,000/-	269 11 April, 1913	Do.	10/-	(Sgd.) S. D. Ekanayake	Otherwise described as bounded on the N. by premises bearing Asst. No. 30. E. Premises bearing Asst. No. 39 of the wife of O. L. M. Zainudeen. S. by New Moor St. and W. by premises bearing Asst. No. 37 of W. M. Alhamado Lebbe. Extent A0. R0. P14.50/100
1913 26 April, 7501	Mahamadu Yusuf Rahamath Umma and Casie Lebbe Marikar Mudaliyar Mohamadu Yusuf	Mohamed Yusuf Rahimath Umma	Conveyance of the above with a renunciation of the 2 grantors' right title and interest in and to the above subject to the conditions set forth in the deed. Value Rs. 15,000/- for this and 2 others	4215 26 June, 1910	Arthur Alwis N.P.	22/-	(Sgd.) F. W. M. Karunaratne	With lands in fol. 102, 104, 287 and 288

Carried over to Volume A 127, Folio 2

Division A. Volume 127. Folio 2. Brought forward from Volume 111. Folio 101. Name of Land: Asst. No. 38, formerly Asst. No. 47, New Moor Street. District: Colombo. Province: Western. Boundaries: North—Garden of Seka Marikar. E—House of Assen Lebbe. S—New Moor Street. W—House of Tangatchy Umma. Extent: 14 Sq. Perches.

Date of Registry (Day Book No. and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and particulars of Alienations and Incumbrances (To be concisely and clearly stated)	No. and date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
16723 17 Sept., 1917	O. L. M. Yuhya Beebe of 43B, New Urugoda- watta Rd.	S. M. Mohamed Cassim Hadjir Colpetty	Conveyance of the rights or interests which will be allotted or decreed into the grantor under the decrees which will eventually be entered in partition cases Nos. 46977, 46980, 46617 and 46998 D.C., Colombo, in respect of the above with the house thereon or in case the above property be sold under the said actions, all sums of money that may be payable to the grantor out of the money that may be realized on the sale thereof. Cons. Rs. 2,000/- for this and 3 others	3 30 April, 1917	S. D. M. Buhari N.P.	8/-	(Sgd.) E. F. Dias	Also described as house and ground presently bearing Asst. No. 38 situated at New Moor St. N. Asst. No. 30, Siripina Lane. E. Asst. No. 392. S. New Moor St. W. Asst. No. 37. Extent 14 sq. perches with lands in fols. A126/400 A111/288
33260 19 Nov., 1919	Walter de Livera Deputy Fiscal	M. Mohideen Pillai	Transfer of the life interest of the defendants in and to the above. Cons. Rs. 100/-	12273 12 Nov., 1919	W. de Livera Deputy Fiscal	—	(Sgd.) D. R. Kan- nangara	Asst. No. 38, N. by Siripina Lane. E. by property of Sopina Umma. W. by property of Pattu Muthu. Extent 15 50/100 Sq. Perches. Rahamatto Ummah, Abdul Rahman, Mohammadu Samsudeen, both of No. 38, New Moor St. are judgment debtors in D.C. Case No. 48471 whose interests are hereby sold to the grantee
11696 22 Mar., 1920	Meran Pullai Mohideen Pullai of Malignakanda	Mohammed Usoof Rahamath Umma of Grandpass	Transfer of the grantor's right title and interest in and to the above. Cons. Rs. 100/-	1016 16 Mar., 1920	N. H. M. Abdul Cader N.P.	—	(Sgd.) D. R. Kan- nangara	Difference as per above Deed No. 12273

Division A. Volume 145. Folio 243. Brought forward from Volume 127. Folio 2. Name of Land: Asst. No. 38, formerly No. 47, New Moor Street. Gravets. District: Colombo. Province: Western. Boundaries: N. Garden of Seka Marikar. E. House of Assen Lebbe. S. New Moor Street. W. House of Tangatchy Umma. Extent: 14 sq. perches.

This with another forming one property is regd. in A 298/93. Intd. . . . R.L. 20.12.45.

Date	Grantors	Grantees	Nature and Particulars of Alienation and Incumbrances	No. and Date of Deed	Name of Notary and Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
22101 15 July, 1921	(1) Mohamado Yoosuff Rahamath Umma, widow of Samsudeen Mudaliyar Abdul Rahman of Grandpass, party of the 1st part; (2) Abdul Rahaman Samsudeen and Abdul Rahaman Zancera Umma, widow of Periathamby Mohamedue Hashim, both of Grandpass, parties of the 2nd part; (3) Abdul Rahman Umma Sheefa, wife of C. L. M. Mohamado Muheeth, both of Colpetty, party of the third part and (4) Madima Marikar Hadjiar Cassim Lebbe Marikar of Colpetty, party of the fourth part.	Mohamedo Yoosuff Rahimath Umma Abdul Rahiman Samsudeen and Abdul Rahiman Zancera Umma	Agreement by the party of the 1st part to mortgage the above and another land with the house thereon, for Rs. 5,000/- to the party of the fourth part with a promise to enjoy the rent and income of premises No. 38 in lieu of interest	Nos. 985 and 296 of 11 Jany., and 29 Jany, 1920	N. H. M. Abdul Cader N.P. and G. E. G. Weerasinghe N.P.	---	(Sgd.) J. S. de S. Jayawardene	Boundary N. Garden of Satta Marikar also described as follows: Asst. No. 38, North Asst. No. 30 in Siripina Lane, East Asst. No. 392. South New Moor Street. West Asst. No. 37. Extent 14 47/100 perches, with land in A 130/238. This deed affects lands registered in A131/176.
27301 11 Aug. 1926	Abdul Rahiman Umma Sheefa and Casim Lebbe Marikar Mohamado Muheeth of Colpetty	Mohamedo Yoosuff Rahimath Umma Abdul Rahiman Samsudeen and Abdul Rahiman Zancera Umma	Deed renouncing all interest, etc., in and to above by the grantors	316 4 Sept., 1920	G. E. G. Weerasinghe N.P.	12/50	(Sgd.) M. P. Diyagama	House and ground bearing Asst. No. 38 formerly No. 47 with the land in A 174/281. Boundaries and extent as per above deeds Nos. 985 and 296 by two notaries.
23091 28 June, 1951	Abdul Rahiman Zancera Umma of 289, Darley Road, Colombo	Al Haj Mohamed Muheeth Mohamed Fany of 289, Darley Road, Colombo.	Gift of the above with house thereon Value Rs. 25,000/-	101 25 June, 1951	L. L. P. de Silva Seneviratne N.P.	—	(Sgd.) M. S. Fernando	Description as per plan No. 943/12.5.1917 Land—Block of land with buildings thereon bearing Asst. No. 1325/38, New Moor Street in St. Paul's Ward. N. Property of Sinne Abdul Rahiman bearing Asst. No. 1221-1222/30, Mosque Lane. E. Property of A. L. M. Idroos Lebbe bearing Asst. No. 1324/39. S. New Moor Street. W. Property of I. L. Abdul Cader bearing Asst. No. 1326/37 Extent A0 R0 P13.

Exhibits.  
6D1.  
Extract of  
Encumbrances.  
14.6.54  
Continued

Division A. Volume 342. Folio 269. Brought forward from A. Volume 145. Folio 243. Name of Land: Asst. No. 38, formerly No. 47, New Moor Street, Gravets. District: Colombo. Province: Western. Boundaries: N. Garden of Seku Marikar. E. House of Assen Lebbe. S. New Moor Street. W. House of Tangatchy Umma. Extent: 14 sq. perches.

Date of Registry Day Book No. and date	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances. (To be concisely and clearly stated)	No. and date of Deed	Name of Notary, Judge, etc.	Signature of Registrar	Remarks
3614 24 Jan., 1953	Mohamed Muhith Mohamed Cassim of Darley Road, Colombo,  Abdul Rahiman Zaneera Umma, Mohamed Muhith Mohamed Fausz, Mohamed Muheeth Abdul Majeed, Mohamed Muhith Ayanul Wadooda, All of Darley Road, Akberally Abdulhussan Davoodbhoy of 50, Dam Street, Colombo.	Cassim of Darley Road, Colombo, <i>Plaintiff</i>  <i>vs.</i> Mohamed Muhith Mohamed Fausz, Mohamed Muheeth Abdul Majeed, Mohamed Muhith Ayanul Wadooda, All of Darley Road, Akberally Abdulhussan Davoodbhoy of 50, Dam Street, Colombo. <i>Defendants.</i>	Partition action affecting the above and the house thereon	D.C. Colombo Case No. 6759/PN	K. Rasana- than, Proctor for Plaintiff	(Sgd.) L. Ratnaike	Present Asst. No. 113. N. Garden of Sitta Marikar. Otherwise described:—N. Premises bearing Asst. No. 30, Siripina Lane. E. Premises bearing Asst. No. 392. S. New Moor Street. W. Premises bearing Asst. No. 37. Ext: 14, 47/100 perches. Application dated 19 January, 1953

I, R. M. W. Ranasinghe, Addl. Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of the registration entries appearing in the Land Registers A 111/101, 127/2, 145/243, 342/269 of this office up to and including the 2.6.54, and the same is granted on the application of S. R. Amerasekera, Esq.

(Sgd.) R. M. W. RANASINGHE,  
Addl. Registrar of Lands.

Land Registry,  
Colombo, 14 June, 1954.

Division A. Volume 49, Folio 331. Name of Land : All that garden with the house bearing Asst. No. 30, Siripina Modokoc, Colombo. Gravets. District : Colombo. Province : Western. Boundaries : N.E. by the garden of different persons. S.E. by the garden of Samisic Lebbe and Ibrahim Lebbe. S. W. by the garden of Kandiyar Tamby. N.W. by Siripina Modokoc Street. Extent : A0. R1. P14 S6/100.

Date of Registry Day Book No. and date	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations Incumbrances (To be concisely and clearly stated)	No. and date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
1895 23 Dec.	Mohamado Yoo-soof Abdul Cader	Henry Stephens Schubert	Lease of one undivided half part of the above for a term of three years to commence from 1 Nov. 1895. Rent Rs. 500/.	No. 1782 3 Oct. 1895	Charles Peiris N.P.	See A10/103	(Sgd.) A. Abewick-reme	See A10/103
1896 24 Mar., 3896	Mohamadu Yoo-soof Abdul Cader and Henry Stephen Schubert		Cancellation of the above lease No. 1782 dated 3rd Oct. 1895 C. Peiris, Notary	1901 20 March 1896	Charles Peiris Notary	See A10/103	(Sgd.) A. Abewick-reme	See A10/103
1896 12 Aug., 8952	Mohamado Yoo-soof Abdul Cader of Maradana	Ibrahim Saibo Abdul Raha- man of Wella- watte	Lease of an undivided half part of the above for a term of ten years commencing from 1st Jan. 1897 at an annual rental of Rs. 60/-	2916 11 Aug. 1896	W. B. de Fry Notary	Rs. 3/-	(Sgd.) R. G. Antho-nisz	

For subsequent transactions see A11/288.

Exhibits.  
—  
6D1.  
Extract of  
Encumbrances,  
14.0.54—  
Continued

Division A. Volume 111. Folio 288. Name of Land : Asst. No. 30, Siripina Lane or Mosque Lane, Gravets, District : Colombo, Province : Western. Boundaries : N.E. Garden of different persons. S.E. Garden of Samsi Lebba and Ibrahim Lebba. S.W. Garden of Kandyan Tamby. N.W. Siripina Mudukku Street. Extent: A0. Ri. P14 86/100.

Date of Registry and Day and Book No.	Grantors (Names in full and residence)	Grantees (Names in full and residence.)	Nature and Particulars of Alienations and Incumbrances (To be concisely and clearly stated)	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
1913 26 April 7501	Mohamadu Yusoof Abdul Cader and Casi Lebba Marikar Madaliyar Mohamadu Yusoof	Mohamadu Yusoof Rahimath Umma	Conveyance of the above with a renunciation of the 2 grantors' right title and interest in and to the above subject to the conditions set forth in the deed. Value Rs. 15,000/- for this and 2 other lands.	4215 26 June 1910	Arthur Alwis N.P.	24/-	(Sgd.) F. W. M. Karunaratne	For previous transactions see A49/331. With lands in fol. 104, 102, 101, 287.
16723 17 Sept. 1917	O. L. M. Yalya Beebee of 43B, New Urugodawatte Road	S. M. Mohamed Cassim Hadjjar of Colpetty	Conveyance of the rights or interest which will be allotted or decreed unto the grantor under the decrees which will be eventually be entered in partition cases Nos. 46977, 46980, 46617 and 46938 D.C. Colombo, in respect of the above or in case the above property be sold under the said actions all sums of money that may be payable to the grantors out of the money that may be realized in the sale thereof. Cons. Rs. 2,000/- for this and 3 others	3 30 Aug. 1917	S. D. M. Burhan N.P.	8/-	(Sgd.) E. F. Dias	Also described as Garden with the house Asst. No. 30 situated at Siripina Lane. N. Siripina Lane. E. Asst. No. 4 to 19, Mosque Lane. S. Asst. Nos. 40, 39, 38 and 37, New Moor Street. W. Asst. No. 31. Extent: 1 rood 15 48/100 perches with lands in A126/400, 127/1, 2

Division A. Volume 130. Folio 238. Brought forward from A Volume. 111. Folio 288. Name of Land : Asst. No. 38, Siripina Lane or Mosque Lane, Gravets. District : Colombo. Province : Western. Boundaries : N.E. Garden of different persons. S.E. Garden of Samsi Lebbe and Ibrahim Lebbe. S. W. Garden of Kandyan Tamby. N.W. Siripina Mudukku Street. Extent : A.O. R.I. P. 14 86/100.

Date of Registry	Grantors	Grantees	Nature and Particulars of Alienations and Incumbrances	No. and date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
19100 22 Oct. 1918	Samsudeen Sheriff. Unuma of Maligakande	Suleima Lebbe Junaida Umma, wife of Meera Lebbe Marikar Abdul Hamid of Southerland Road	Lease of undivided one sixth share of the house above with the house thereon for a term of ten years commencing from 1 Oct. 1918. Rent Rs. 3,000/- for the full term with a mortgage of the same as security for the payment of Rs. 5,000/- paid in advance to the Lessee to be kept as security for the performance of the covenants contained in the deed.	467 20 Oct. 1918	S. Ratnaswamy N.P.	15/-	(Sgd.) D. R. Kanangara	—
22101 15 July 1921	(1) Mohamado Yousuff Rahamath Umma, widow of Samsudeen Mudaliyar Abdul Rahaman of Grandpass party of the 1st part; (2) Abdul Rahaman Samsudeen and Abdul Rahaman Zaneera Umma, widow of Periyatamby Mohamedo Hashim, both of Grandpass, parties of the second part; (3) Abdul Rahaman Umma Sheefa wife of Cassim Lebbe Marikar Mohamado Moheth, both of Colpetty, party of the 3rd part and (4) Madina Marikar Hadjar Cassim Lebbe Marikar of Colpetty, party of the fourth part		Agreement by the party of the 1st part to mortgage the above and another land with the houses thereon for Rs. 5,000/- to the party of the 4th part, the party of the 4th part to enjoy the rent, income of premises No. 38 till payment in lieu of interest.	Nos. 985 and 296 11th and 29 1920	N. H. M. Abdul Cader and G. E. C. Weerasinghe N.P.		(Sgd.) J. S. de S. Jayawardena	Situated at Siripina Muduku with land in A145/243. This deed affects land in A131/176

Exhibits.  
6D1.  
Extract of  
Encumbrances.  
14.8.54—  
Continued

Exhibits.  
 6D1.  
 Extract of  
 Encumbrances.  
 14.B.54—  
 Continued

Division A. Volume 174. Folio 281. Brought forward from A Volume 130. Folio 238. Name of Land Asst. No. 30, Siripina Lane or Mosque Lane, Gravets. District: Colombo. Province: Western. Boundaries: N.E. Garden of different persons. S.E. Garden of Samsi Lebbe and Ibrahim Lebbe. S.W. Garden of Kandyam Tamby. N.W. Siripina Muddukku Street. Extent A0. R1. P14 86/100. This with another forming one property is regtd. in A298/93. Intd. . . . R.L. 20.12.45.

Date of Registry	Grantors	Grantees	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
27301 11 Aug. 1926	Abdul Rahiman Umma Sheefa and Cassim Lebbe Mari- kar Mohamado Mu- heeth of Colpetty	Mohamado Yoosuf Raha- math Umma Abdul Rahiman Samsudeen and Abdul Rahiman Zaneera Umma	Deed renouncing all interest, etc.; in and to the above by the gran- tors	316 4 Sept. 1920	G. E. C. Weera- singhe N.P.	Rs. 12.50	(Sgd.) M. P. Diya- gama	The land is now de- scribed as House and ground bearing Asst. No. 30, situated at Siripina Lane. E. Asst. No. 46019 in 1st Mos- que Lane. S. Asst. Nos. 40, 39, 38 and 37 in New Moor Street. W. Asst. No. 31. Extent A0. R1. P15, 48/100 with the land in A174/281

Carried over to Volume A344. Folio 20.



Division A. Volume 344. Folio 20. Brought forward from Volume 174. Folio 281. Name of Land : Asst. No. 30, Siripina Lane or Mosque Lane, Gravets. Colombo. Province : Western. Boundaries : N.E. Garden of different persons. S.E. Garden of Samsi Lebbe and Ibrahim Lebbe. S. W. Garden of Kandyan Tamby. N.W. Siripina Mudukku Street. Extent : A0. R1. P14 86/100.

Date of Registry	Grantors	Grantees	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
12010 21 Mar. 1953	M. M. Cassim of Darley Road, Maradana, <i>vs.</i> 1. Zaneera Umma 2. M. Mohamed Fausz 3. M. M. Mohamed Majced 4. M. Aynool Waduda, all of Darley Road, Maradana 5. Akberally Abdulhussen Davoodbhoy of Dam St., Colombo	<i>Plaintiff</i>	Partition action effecting the above together with the house thereon	6806/PN D.C. Colombo	K. Rasanathan Proctor Applicant		(Sgd.) M. S. Fernando do	Extent 1 sq. rood and 14, 80/100 sq. perches presently described as Asst. No. 75. N. by Siripina Lane. E. by Asst. Nos. 1-19 in 1st Mosque Lane. S. by Asst. Nos. 40, 39, 38, 37 in New Moor Street. W. by Asst. No. 31. Extent: A0. R1. P15. 48/100. Application dated 16th March, 1953. Situated in Siripina Motokoe

I, R. M. D. Ranasinghe, Addl. Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of the registration entries appearing in the Land Registers A 49/331, 111/288, 130/238, 174/281, 344/20 of this office up to and including the 2.6.54 and the same is granted on the application of S. R. Amerasekera, Esq.

(Sgd.) R. M. D. RANASINGHE,  
Addl. Registrar of Lands.

Land Registry,  
Colombo, 14th June, 1954.

Exhibits.  
6D1.  
Extract of  
Incumbrances.  
14.6.54—  
Continued

Exhibits.  
8D1.  
Extract of  
Encumbrances.  
14.6.54  
—Continued

Division A. Volume 298. Folio 93. Name of Land: Asst. No. 75, Siripina Lane and No. 113, New Moor Street. Village or Town and street, Siripina Lane and New Moor Street, Gravets, District, Colombo Province; Western Boundaries: N. Siripina Lane, E. Asst. Nos. 51/11 and 45/11 (Mosque Lane), Nos. 119, 117 and 115 (New Moor Street). S. New Moor Street. W. Asst. No. 111, New Moor Street and Nos. 85/5 to 18, Siripina Lane. Extent: A0. R1. P16.8.

This is comprised of the lands regtd. in A.145/243 and A174/281. Intd..... R.L. 20.12.45.

Date of Registry (Day Book No. and Date)	Grantors (Names in full and residence)	Grantees Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
37058 20 Dec. 1945	Abdul Rahaman Zaneera Umma of 289 Darley Road, Maradana	Akberally Ab- dulhussan Da- woodhoy of 50, Dam Street, Colombo	Lease of the above with the buildings thereon for a term of thirty years from 1st January, 1946, Annual rent Rs. 180/-	737 11 Dec. 1946	A. C. M. Abdul Cader N.P.		(Sgd.) D. C. Jaya- manne	Subject to conditions in the deed

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I, R. M. D. Ranasinghe, Additional Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of the registration entries appearing in the Land Registers A 298/93 of this office up to and including the 2.6.54 and the same is granted on the application of S. R. Amerasekera, Esq.

(Sgd.) R. M. D. RANASINGHE,  
Addl. Registrar of Lands.

Land Registry,  
Colombo, 14th June, 1954.

## 6D4.

## Estimate of Buildings

T. DURAISINGHAM,  
L.M.I.A.A., A.F.S. (Eng.), A.M.I.S.E.

**DURAISINGHAMS**  
*Architects & Engineers.*

450, Kollupitiya Road,  
Colombo 3. 9.3.1954.

Exhibits.

6D4.

Estimate of  
Buildings.  
9.3.54.

Premises No. 113, New Moor Street, Colombo.

10 January, 1949.

## GENERAL BUILDING.

Item	Qty.	Unit	Description of Work	Rate	Amount
1	17.30	Cubes	Excavation in foundation ..	6.00	103.80
2	19.02	Cubes	Brickwork in foundations in lime 2 : 5 ..	185.00	3,518.70
3	4.30	Sqres.	D.P.C. $\frac{3}{4}$ " thick 1 : 2 ..	45.00	193.50
4	21.25	Cubes	Dry earth filling under floor ..	20.00	425.00
5	13.16	Sqres.	Brick paved in lime and $\frac{1}{2}$ " cement rendered 1 : 2 floors ..	85.00	1,118.60
6	0.63	Sqres.	3" conc. 1 : 3 : 5- $1\frac{1}{2}$ " cement rendered 1 : 2 floors in bath and W.C. ..	110.00	69.30
7	22.72	Cubes	Brickwork in superstructure in lime 2 : 5 ..	190.00	4,316.80
8	8.85	Sqres.	Half brick in superstructure in cement 1 : 5 ..	85.00	752.25
9	110.0	L'ft.	4 $\frac{1}{2}$ " $\times$ 6" R.C.C. Lintols 1 : 2 : 4- $\frac{3}{4}$ " reinforced with 5/8" dia. rods ..	2.50	275.00
10	30.0	L'ft.	9" $\times$ 6" dia. rods ..	3.00	90.00
11	21.0	L'ft.	9" $\times$ 9" dia. rods ..	3.50	73.50
12	21.0	L'ft.	9" $\times$ 14" dia. rods ..	4.50	94.50
13	128.0	S'ft.	Jak framed 5" $\times$ 3" and 1 and 1/8" thick jak panelled sashes with $\frac{1}{2}$ " dia. rods fixed to styles complete ..	6.50	832.00
14	234.0	S'ft.	Do. panelled doors complete ..	6.00	1,404.00
15	16 $\frac{1}{2}$ .0	S'ft.	Do. batten and ledged doors complete ..	5.50	90.75
16	48.0	S'ft.	Do. panelled doors complete fixed back in boundary parapet wall ..	6.00	288.00
17	73 $\frac{1}{2}$ .0	S'ft.	Panelled windows complete ..	6.00	441.00
18	36 $\frac{1}{2}$ .0	S'ft.	Do. batten and ledged windows complete ..	5.50	200.75
19	11 $\frac{1}{2}$ .0	S'ft.	Do. glazed fanlights complete ..	6.00	67.50
20	24 $\frac{1}{2}$ .0	S'ft.	Cement ordinary grilles 1 : 2 ..	3.50	85.75
					14,440.70
21	17.74	Sqres.	Roofing—Hardwood beams, wall and ridge plates, king posts etc. with coconut rafters and imported flat Calicut tiles ..	185.00	3,281.90
22	68.0	L'ft.	Jak valance boarding 8" $\times$ $\frac{3}{4}$ " ..	2.00	132.00

Exhibits.  
6D4.  
Estimate of  
Buildings.  
9.3.54—  
Continued

Item	Qty.	Unit	Description of Work	Rate	Amount
23	4.04	Sqres.	3½" R.C.C. Flat Roof 1 : 2 : 4-¾ complete	300.00	1,212.00
24	154.0	L'ft.	Box guttering to roof in No. 24 BWG sheets and ½" thick jak boarding ..	5.00	770.00
25	32.04	Sqres.	Lime plastering internally complete ..	27.50	881.10
26	22.40	Sqres.	Lime/cement/sand plaster externally ..	30.00	672.00
27	120.0	L'ft.	Brick parapet walling in cement 1 : 5 above roof 3' high ..	1.50	180.00
28	164.0	L'ft.	Down piping in No. 24 BWG sheets ..	2.25	369.00
29	2.08	Sqres.	Cement plastering 1 : 2-½" thick to bath and W.C. internal walls ..	37.50	78.00
30	185.0	S'ft.	2" R.C.C. 1 : 2 : 4-¾ slabs to cover drains inside building ..	1.75	323.75
31	70.0	L'ft.	Steps. Brickbuilt in cement 1 : 5 and grey cement rendered ..	1.75	122.50
32	56.0	L'ft.	Half round asbestos gutter fixed surface drains ..	2.50	140.00
33	69.0	L'ft.	Half round brick built in cement 1 : 5 and cement ½" rendered 1 : 2 surface drains ..	2.50	172.50
34	Item	—	Colour washing, varnishing, solignum to walls and timberwork ..	Allow	600.00
35	Item	—	Allow to cut groove lines on facade wall	—	130.00
(a) Total for Building ..				Rs.	23,505.45
<b>Drainage and Water Service</b>					
1	1	No.	High Level squatting seat complete ..		185.00
2	1	No.	Tap and shower complete ..		30.00
3	1	No.	Brick built floor sink and tap ..		40.00
4	1	No.	200 Glns. water storage tank ..		200.00
5	Item	—	G.S.W. Piping, G.I. water piping C.I. Vent Piping and labour complete ..	Allow	650.00
(b) Total for Drainage and Water Service				Rs.	1,105.00
<b>Electric Installation</b>					
1	13	No.	Electric pendant lights complete with rubber insulated wires for the circuit twin twisted flexible pendant wires, switches, shades and bulbs ..	24.00	312.00
2	2	No.	Wall sockets complete ..	25.00	50.00
3	Item	—	Departmental charges for connection ..		150.00
(c) Total for Electric Installation				Rs.	512.00
<b>General Summary</b>					
A.	General Building ..		..	Rs.	23,505.45
B.	Drainage and water service ..		..	..	1,105.00
C.	Electrical Installation ..		..	..	512.00
TOTAL ..				Rs.	25,122.45

## 6D5.

## Estimate of Buildings.

T. DURAISINGHAM,  
L.M.I.A.A., A.F.S. (Eng.), A.M.I.S.E.

**DURAISINGHAMS**  
*Architects & Engineers.*

450, Kollupitiya Road,  
Colombo 3, 7.3.1954.

Exhibits.  
6D5.  
Estimate of  
Buildings.  
9.3.54.

Premises No. 113, New Moor Street, Colombo.  
10 September, 1953.  
GENERAL BUILDING.

Item	Qty.	Unit	Description of Work	Rate	Amount
1	17.30	Cubes	Excavation in foundation .. ..	6.00	103.80
2	19.02	Cubes	Brickwork in foundations in lime 2 : 5 ..	210.00	3,994.20
3	4.50	Sqres.	D.P.C. $\frac{3}{4}$ " thick 1 : 2. ..	55.00	236.50
4	21.25	Cubes	Dry earth filling under floor ..	20.00	425.00
5	13.16	Sqres.	Brick paved in lime and $\frac{1}{2}$ " cement rendered 1 : 2 floors ..	110.00	1,447.60
6	0.63	Sqres.	3" conc. 1 : 3 : 5-1 $\frac{1}{2}$ " and $\frac{1}{2}$ " cement rendered 1 : 2 floors in bath and W.C. ..	130.00	81.90
7	22.72	Cubes	Brickwork in superstructure in lime 2 : 5 ..	215.00	4,884.80
8	8.85	Sqres.	Half brickwork in superstructure in cement 1 : 5 ..	93.00	840.75
9	110.0	L'ft.	4 $\frac{1}{2}$ " $\times$ 6" R.C.C. Lintols 1 : 2 : 4- $\frac{3}{4}$ " re- inforced with M.S. Rods 5/8" dia. ..	3.00	330.00
10	30.0	L'ft.	9" $\times$ 6" R.C.C. Lintols 1 : 2 : 4- $\frac{3}{4}$ " re- inforced with m.s. rods 5/8" dia. ..	4.00	120.00
11	21.0	L'ft.	9" $\times$ 9" Do. ..	5.00	105.00
12	21.0	L'ft.	14" $\times$ 9" Do. ..	7.50	157.50
13	128.0	S'ft.	Jak framed 5" $\times$ 3" and 1 and 1/8" thick jak panelled sashes with $\frac{1}{2}$ " dia. rods fixed to styles complete ..	6.50	832.00
14	234.0	S'ft.	Do. panelled doors complete ..	6.00	1,404.00
15	16 $\frac{1}{2}$	S'ft.	Batten and ledged doors complete ..	5.50	90.75
16	48.0	S'ft.	Panelled door complete fixed in back boundary parapet wall ..	6.00	288.00
17	73 $\frac{1}{2}$	S'ft.	Do. panelled windows complete ..	6.00	441.00
18	36 $\frac{1}{2}$	S'ft.	Do. batten and ledged windows complete ..	5.50	200.75
19	11 $\frac{1}{4}$	S'ft.	Do. glazed fanlights complete ..	6.00	67.50
20	24 $\frac{1}{2}$	S'ft.	Cement ordinary grilles 1 : 2 mix ..	3.50	85.75
21	17.74	Sqres.	Roofing-hardwood timber beams, wall and ridge plates king posts with coconut rafters and imported Calicut tiles ..	185.00	3,281.90
22	66.0	L'ft.	Jak valance boarding 8" $\times$ $\frac{3}{4}$ " ..	2.00	132.00
					19,550.70

Exhibits.							
6D5.		Item	Qty.	Unit	Description of Work	Rate	Amount
Estimate of Buildings. 9.3.54— Continued					Brought forward ..		19,550.70
		23	4.04	Sqres.	3½" R.C.C. Flat roof 1 : 2 : 4-¾" complete ..	300.00	1,212.00
		24	154.0	L'ft.	Box guttering to roof in No. 24 BWG sheets and ½" thick jak boarding ..	3.00	770.00
		25	32.04	Sqres.	Lime plastering internally complete ..	30.00	961.20
		26	22.40	Sqres.	Lime/cement/sand plastering externally ..	35.00	784.00
		27	120.0	L'ft.	Brick parapet walling in cement 1 : 5 above roof 3ft. high ..	2.00	240.00
		28	164.0	L'ft.	Down piping in No. 24 BWG sheets complete ..	2.50	410.00
		29	2.08	Sqres.	Cement plastering 1 : 2-½" thick to bath and lav. internal walls ..	45.00	93.60
		30	185.0	S'ft.	2" R.C.C. 1 : 2 : 4-¾" slabs to cover drains inside building ..	2.00	370.00
		31	70.0	L'ft.	Steps brick built in cement 1 : 5 and grey cement rendered ..	2.00	140.00
		32	56.0	L'ft.	Half round asbestos gutter fixed surface drain ..	2.50	140.00
		33	69.0	L'ft.	Half round brick built in cement 1 : 5 and cement ½" rendered 1 : 2 surface drain ..	2.50	172.50
		34	Item	—	Colour washing, varnishing solignum to walls and timber work ..	Allow	650.00
		35	Item	—	Allow to cut groove line to facade wall ..		150.00
(a) Total for building ..						Rs.	25,644.00
<b>Drainage and Water Service</b>							
		1	1	No.	High level squatting seat complete ..	185.00	185.00
		2	1	No.	Tap and shower complete ..	30.00	30.00
		3	1	No.	Brick built floor sink and tap ..	40.00	40.00
		4	1	No.	200 gallons water storage tank ..	200.00	200.00
		5	Item	—	G.S.W. Piping, G.I. water piping G.I. vent piping and labour complete ..		650.00
(b) Total for drainage and water service ..						Rs.	1,105.00
<b>Electrical Installation</b>							
		1	13	Nos.	Electric pendant lights complete with rubber insulated wires, for the circuit twin twisted flexible pendant wires, switches, shades, and bulbs ..	25.00	325.00
		2	2	Nos.	Wall sockets complete ..	27.50	55.00
		3	Item	—	Departmental charges for connections ..		175.00
(c) Total for Electrical Installation ..						Rs.	555.00
<b>General Summary</b>							
		A.	General Building ..			Rs.	25,644.00
		B.	Drainage and water service ..			"	1,105.00
		C.	Electrical Installation ..			"	555.00
Total ..						Rs.	27,304.00

P9.  
Valuation Report

Exhibits.  
P9.  
Valuation  
Report.  
18.6.54.

PERERA & PERERA,  
*Architects, Surveyors, Consulting Engineers  
and Arbitrators (Buildings).*

Mathew Buildings,  
23, Canal Row, Fort,  
Colombo 1, 18th June, 1954.

A. Richard B. Perera.  
10 Engine F. B. Perera.  
Phone : 6881.

Valuation Report of Premises No. 113, New Moor Street,  
Colombo

At the request of K. Rasanathan, Esq., Proctor S.C., Colombo, we visited the above premises with a view to make a Valuation Report of same.

The following is a detailed list of items based on the depreciated value :—

20	(a) The front portion of the building is nearly ten years old containing in extent 990 S'ft. approximately 12'0" high, is presently used as Stores, built in brick in lime with grey cemented floor and tiled roof @ 13/- .. .. .	Rs. 12,870·00
	(b) Living quarters behind Stores built at the same time as the Stores. The outer wall of these Living quarters seems not to have been built newly and average height being about 10'0" cemented floor and tiled roof. Approximately 466 S'ft. @ 10/- .. .. .	,, 4,660·00
30	(c) The Lavatory block consisting of the Bath and W.C. in extent 83 S'Ft. built at the same time as the Stores is provided with water service and soil drainage and 200 gallon storage tank (Rate includes drainage and water service fittings) @ 25/- .. .. .	,, 2,075·00
	(d) Electric lighting with connection fees @ .. .. .	,, 450·00
	(e) Land value 14·07 perches @ Rs. 1,800/- per perch (Extent as given by the licensed Surveyor) @ .. .. .	,, 25,326·00
	Total value of Property .. .. .	Rs. <u>45,381·00</u>

(Sgd.) EUGINE F. B. PERERA,  
*Architect.*