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28, 1961

34 1960

Supreme Court of Ceylon
No. 309 (Final) of 1955

District Court, Colombo
No. 36064

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

UNIVERSITY OF LONDON
W.C.1.
16 FEB 1962
INSTITUTE OF ADVANCED
LEGAL STUDIES

63529

BETWEEN

Mrs. K. S. RAJAH,
374, Biyagama Road, Kelaniya 1st Plaintiff

K. S. RAJAH,
374, Biyagama Road, Kelaniya 2nd Plaintiff

vs

Mrs. A. SELLADURAI,
No. 59, Wall Street, Kotahena Defendant.

R E C O R D
OF
P R O C E E D I N G S

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No. 1.
Journal Entries
10.8.55 to
1.4.59—
Continued

(5) 30.9.55.
Plaintiffs in person.
Summons served.
Defendant's Proxy filed by Mr. W. D. N. Selvadurai.
Answer on 28.10.55.
(Sgd.).....
D.J.

(6) 13.10.55.
Mr. A. M. M. Thassim, Proctor, files proxy as proctor for
plaintiffs and moves that same be filed of record. 10
File.
(Sgd.)
D.J.

(7) 17.10.55.
Proctor for plaintiffs files amended plaintiff and moves that
same be filed of record.
Proctor for defendant received notice.
File.
(Sgd.)
D.J. 20

(8) 18.10.55.
In view of the amended plaintiff filed, Proctor for defendant moves
that defendant be allowed to file his answer on 11.11.1955.
Proctor for plaintiffs consents.
Allowed for 11.11.55.
Case need not be called on 28.10.
(Sgd.).....
D.J.

(9) 11.11.55.
Mr. A. M. M. Thassim for plaintiffs. 30
Mr. W. D. N. Selvadurai for defendant.
Answer not filed.
Proctor for defendant moves for reasons stated in the motion
for further time till 25.11.55 to file answer of defendant.
Proctor for plaintiffs consents on condition that no more appli-
cations for time be made.
Answer on 25.11.55. Finally.
(Sgd.).....
D.J.

(10) 25.11.55.
Mr. A. M. M. Thassim for plaintiffs.
Mr. W. D. N. Selvadurai for defendant.
Answer filed.
Call in "C" Court 29.11.55.

No. 1.
Journal Entries
10.8.55 to
1.4.59
Continued

(Sgd.).....
D.J.

(11) 29.11.55.
Case called *vide* (10).
10 Mr. A. M. M. Thassim for plaintiffs.
Mr. W. D. N. Selvadurai for defendant.
Trial on 22.6.56.

(Intd.).....

(12) 7.12.56.
As 22.6.56 is a Public Holiday the trial of this case is re-fixed
for 19.7.56.
Notify proctors.

(Sgd.).....

(13) Proctor informed.

20 (14) 28.5.56.
19.7.56 being a Public Holiday, the trial of this case is fixed for
10.7.56.
Office : Notify proctors today by registered post.

(Sgd.).....

(15) Proctors informed. 28.5.

(16) 25.6.56.
Proctor for defendant files list of witnesses and moves to issue
summons.

Proctor for plaintiffs received notice.
30 Allowed.

(Sgd.).....
D.J.

(17) 29.6.56.
Summons on one witness issued by defendant, Anuradhapura.
Summons on three witnesses by defendant, Jaffna.

No. 1.
Journal Entries
10.8.55 to
1.4.59—
Continued

(18) 4.7.56.

Proctor for plaintiffs files list of witnesses and documents and moves to issue summons.

Proctor for defendant received notice.

Allowed.

(Sgd.).....

D.J.

(19) 10.7.56.

Trial (1) *Vide* (11).

Mr. A. M. M. Thassim for plaintiffs.

10

Mr. W. D. N. Selvadurai for defendant.

Vide proceedings (19) filed.

Trial 6.12.56.

(Sgd.).....

D.J.

Submit Medical Certificate on receipt.

(Sgd.).....

(20) 22.11.56.

2 subpoenas issued by defendant, Jaffna.

1 subpoena issued by defendant, Anuradhapura.

20

(21) 6.12.56.

Trial (2) *Vide* (19).

Mr. A. M. M. Thassim for plaintiffs.

Mr. W. D. N. Selvadurai for defendant.

Medical Certificate Not filed by the proctor for defendant.

No time. Trial 3.4.57.

(Sgd.).....

A.D.J.

(22) 21.3.57.

Proctor for plaintiffs files additional list of documents and 30 witnesses.

Proctor for defendant received notice.

File.

(Sgd.).....

A.D.J.

(23) 30.3.57.

Proctor for defendant files letter from Dr. J. R. Blaze,
re Medical Certificate sent by an error to Magistrate's Court, Colombo.
He also tenders stamps for Rs. 5/10.
File.

No. 1.
Journal Entries
10.8.55 to
1.4.59—
Continued

(Sgd.).....
A.D.J.

(24) 3.4.57.

Trial (3) *vide* (21).

10 Mr. A. M. M. Thassim for plaintiffs.
Mr. W. D. N. Selvadurai for defendant.
Vide proxys filed.
Trial adjourned for 6.6.57.
If not concluded the case will be called on the following day.

(Sgd.).....
A.D.J.

Proxy filed.
4.5.

(25) 3.4.57.

20 The 2nd plaintiff moves to revoke the proxy granted to Mr. A.M.
M. Thassim, proctor.
Mr. A. M. M. Thassim, proctor, consents.
Allowed.
Vide proceedings too.

(Sgd.).....
A.D.J.

(26) 6.6.57.

Trial (4) *vide* (24).

30 Mr. A. M. M. Thassim for 1st plaintiff instructing Mr. E. B. Wick-
remanayake, Q.C., Mr. N. Samarakoon and Mr. Sharavananda.
Mr. W. D. N. Selvadurai for defendant instructing Mr. P. A.
Kandiah.

No. 1.
Journal Entries
10.8.55 to
1.4.59—
Continued

Vide proceedings (26) filed Judgment 20.6.57.
(Submit 13.6.57).

(Intld.).....

Proxy filed.

7.6.

(27) 7.6.57.

P1 filed.

(28) 20.6.57.

Judgment delivered in open Court.

Vide Judgment.

10

(Sgd.).....

D.J.

(29) 20.6.57.

Decree entered.

(30) 20.6.57.

As his proctor is out of the Island the defendant-appellant files Petition of Appeal against the order and judgment of this Court 20th June, 1957, together with stamps to the value of Rs. 27/- for Supreme Court Judgment, which were cancelled and kept in Secretary's safe and also stamps to the value of Rs. 13.50 for Secretary's certificate 20 in appeal which were affixed and cancelled.

He further tenders Notices of tendering security and moves that the notices may be issued on the Respondents through Court.

Accept.

Issue notice for 5.7.

(Sgd.).....

D.J.

(31) Notices of security issued, Western Province, returnable forthwith.

(Intld.)..... 30

21.6.

(32) 28.6.57.

Defendant applies for typewritten copies of record as per particulars in the motion.

He also applies for a paying in voucher for Rs. 20/-.

Issue.

(Sgd.).....

D.J.

(33) Paying in Voucher for Rs. 20/- and Rs. 200/- issued.

(Intld.).....
2.7.

No. 1.
Journal Entries
10.8.55 to
1.4.59—
Continued

(34) 5.7.57.

Mr. A. M. M. Thassim for plaintiffs-respondents.

Mr. W. D. N. Selvadurai for defendant-appellant.

Notice of tendering Security served on proctor for plaintiffs-respondents and on 2nd plaintiff-respondent. 2nd plaintiff is absent.

Correct amount of Security is Rs. 400/-.

10 Call 12.7.57.

(Sgd.).....
D.J.

(35) 5.7.57.

Defendant-appellant tenders security bond 2 Kachcheri Receipts for Rs. 400/- being security, Kachcheri Receipt for Rs. 20/- being copying fees and notice of appeal.

Mention 12.7.

(Sgd.).....
D.J.

20 (35a) K.R. 0/10 No. 049023/257 of 3.7.57 for Rs. 200/- filed.

(Intld.).....

(35c) K.R. 0/14 No. 049024/258 of 3.7.57 for Rs. 20/- filed.

(Intld.).....

(35d) K.R. 0.14 No. 049404/638 of 5.7.57 for Rs. 20/- filed.

(Intld.).....

(36) 12.7.57.

Mr. A. M. M. Thassim for plaintiff-respondents.

Mr. W. D. N. Selvadurai for defendant-appellant.

30 Case called *vide* Journal Entries (34) and (35) amount offered as security is accepted.

Perfected Bond filed.

No. 1.
Journal Entries
10.8.55 to
1.4.59—
Continued

Issue notice of appeal for 30.8.
Forward Record to Supreme Court.

(Sgd.).....
D.J.

(37) 2 Notices of appeal issued to Western Province returnable 28.8.

(Intld.).....
15.7.

(38) 5.8.57.

Appeal branch calls for additional fees as the brief consists of
45 pages. 10

Mr. A. Sellathurai Rs. 10/-.

Mr. A. M. M. Thassim Rs. 30/-.

Call for them by registered post.

(Sgd.).....
D.J.

(40) 6.8.57.

Fees called for from the parties by registered post.

(41) 13.8.57.

Mr. A. M. M. Thassim, proctor returns paying in voucher for
Rs. 30/- and states he has not received notice of appeal nor has he 20
made any application for typewritten briefs.

(42) 20.8.57.

K.R. 0/14 No. 1692/056016 of 15.8.57 for Rs. 10/- filed.

(Intld.).....

(43) 30.8.57.

(1) Notice of appeal not served on 2nd plaintiff-respondent.

Re-issue for 4.10.57.

(2) Notice of appeal served on proctor for 1st plaintiff-respondent.

(Sgd.).....
D.J. 30

(44) 4.10.57.

Notice of appeal served on 2nd plaintiff-respondent.
He is absent.
Forward Record to Supreme Court.

No. 1.
Journal Entries
10.8.55 to
1.4.59--
Continued

(45) K.R. 0/14 No. 1245/068792 of 12.11.57 for Rs. 30/- filed.

(Intld.).....

(46) 7.12.57.

Record forwarded to Registrar, Supreme Court, with two briefs for the Judges, and cancelled stamps to the value of Rs. 27/- for the
10 Supreme Court Decree.

(Sgd.).....
Assistant Secretary.

(47) 9.1.59.

Registrar, Supreme Court, returns record with Supreme Court Judgment. Appeal rejected. Defendant-appellant to pay 1st plaintiff-respondent her taxed costs of appeal.

Proctors to note.

(Sgd.).....
D.J.

20 (48) 9.1.59.

Registrar, Supreme Court, returns record with Supreme Court judgment. Judgment of trial judge is set aside and it is ordered that plaintiffs' action be dismissed with costs. Respondents to pay petitioner her costs of the application.

Proctors to note.

(Sgd.).....
D.J.

(49) 1.4.59.

Registrar, Supreme Court calls for the case record as Final Leave
30 to Appeal to Privy Council has been allowed.

Forward.

(Sgd.).....
D.J.

No. 2.
Plaint of the
Plaintiff
8/10.8.55

No. 2.

Plaint of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

No. 36064/M. Mrs. K. S. Rajah, 374, Biyagama Road,
Kelaniya.....1st Plaintiff
K. S. Rajah, 374, Biyagama Road, Kelaniya
.....2nd Plaintiff
vs.
Mrs. A. Selladurai, No. 59, Wall Street, Kota-
hena.....Defendant. 10

This 8th/10th day of August, 1955.

The plaint of the plaintiffs abovenamed, appearing by themselves states as follows :—

1. The parties abovenamed reside within the jurisdiction of this Court.

2. On the occasion of the marriage of the 1st plaintiff to the 2nd plaintiff the defendant and her husband (now deceased) agreed and promised to pay a cash dowry of Rs. 30,000/- under and by virtue of the Dowry Deed No. 2496 dated 10.9.49 and executed by A. V. Sathasivam, Notary Public, Jaffna (a certified copy of which is 20 annexed herewith as part and parcel of this plaint).

3. Out of the promised and agreed cash dowry of Rs. 30,000/- a sum of Rs. 15,000/- was paid and the balance sum of Rs. 15,000/- was to be paid within one year of the date of the execution of the Dowry Deed and Agreement.

4. The defendant has failed and neglected to pay the said balance sum of Rs. 15,000/- though often demanded.

5. Therefore a cause of action has arisen to sue the defendant for the recovery of the said sum of Rs. 15,000/-.

Wherefore the plaintiffs pray that the Court be pleased to enter 30 judgment for the plaintiffs in the said sum of Rs. 15,000/-.

For costs of suit and for such other and further reliefs which to this Court shall seem meet.

No. 2.
Plaint of the
Plaintiff
8/10.8.55
Continued

(Sgd.) LEELAWATHY SELLATHURAI,
wife of K. S. Rajah,
1st Plaintiff.

(Sgd.) K. S. RAJAH,
2nd Plaintiff.

(Sgd.) LEELAWATHY SELLATHURAI,
wife of K. S. Rajah,
1st Plaintiff.

10

(Sgd.) K. S. RAJAH,
2nd Plaintiff.

Colombo, 25th August, 1955.

Signed in my presence.

(Sgd.) J. H. FORBES,
Secretary,
25.8.55.

No. 3.

Amended Complaint of the Plaintiff

No. 3.
Amended
Plaint
of the Plaintiff
12/14.10.55

20

IN THE DISTRICT COURT OF COLOMBO

Mrs. K. S. Rajah, 374, Biyagama Road,
Kelaniya.....*1st Plaintiff*

No. 36064/M.

K. S. Rajah, 374, Biyagama Road, Kelaniya
.....*2nd Plaintiff*

vs.

Mrs. A. Selladurai, No. 59, Wall Street,
Kotahena..... *Defendant.*

On this 12th/14th day of October, 1955.

30

The amended complaint of the plaintiffs abovenamed, appearing by A. M. M. Thassim, their proctor, states as follows:—

I. The parties abovenamed reside within the jurisdiction of this Court.

No. 3.
Amended Plaint
of the Plaintiff
12/14.10.55—
Continued

2. On the occasion of the marriage of the 1st plaintiff to the 2nd plaintiff the defendant and her husband (now deceased) agreed and promised to pay a cash dowry of Rs. 30,000/- under and by virtue of the Dowry Deed No. 2496 dated 10.9.49 and executed by A. V. Sathasivam, Notary Public, Jaffna (a certified copy of which is annexed herewith as part and parcel of this plaint).

3. Out of the promised and agreed cash dowry of Rs. 30,000/- a sum of Rs. 15,000/- was paid to the plaintiffs and the balance sum of Rs. 15,000/- was agreed to be paid to the plaintiffs within one year of the date of the execution of the said Dowry deed and agreement. 10

4. The defendant has failed and neglected to pay the said balance sum of Rs. 15,000/- though often demanded.

5. A cause of action has therefore accrued to the plaintiffs to sue the defendant—

- (a) for the recovery of the sum of Rs. 18,687.50 to wit :
Rs. 15,000/- being the balance amount of principal and
Rs. 3,687.50 being legal interest from 10.9.1950, date of
Dowry Deed, to 10.8.1955, date of filing plaint; and
- (b) for further legal interest on the said principal amount of
Rs. 15,000/- from 10.8.1955 to date of decree; and 20
- (c) for legal interest on the aggregate amount of decree from
date of decree till payment in full.

Wherefore the plaintiff prays that the Court be pleased to enter judgment for plaintiffs as follows :—

- (a) For the said sum of Rs. 18,687.50.
- (b) Legal interest on the said balance principal amount of
Rs. 15,000/- from 10.8.1955 to date of decree and there-
after legal interest on the aggregate amount of decree
from date of decree till payment in full and costs of suit;
- (c) For costs of suit; and 30
- (d) For such other and further reliefs as would seem meet to
Court.

(Sgd.) A. M. M. THASSIM,
Proctor for Plaintiffs.

No. 4.

Answer of the Defendant

No. 4.
Answer of the
Defendant
25.11.55

IN THE DISTRICT COURT OF COLOMBO

1. Mrs. K. S. Rajah.
2. K. S. Rajah, both of 374, Biyagama Road,
Kelaniya.....*Plaintiffs*
No. 36064/M. *vs.*
Mrs. A. Selladurai of No. 59, Wall Street,
Kotahena.....*Defendant.*

10 This 25th day of November, 1955.

The answer of the defendant abovenamed appearing by William Dharmaratnam Nevins Selvadurai, her proctor, states as follows : —

1. The defendant admits the averments in paragraph 1 of the plaintiff.

2. Answering paragraph 2 of the plaintiff the defendant states that Sellammah, widow of Suppiah Nallathamby Sellathurai (defendant's husband deceased) and the defendant jointly executed deed No. 2496 dated 10th September, 1949, and attested by A. V. Sathasivam; Notary Public. Save and except as hereinafter admitted
20 the defendant denies the averments in paragraph 2 of the plaintiff.

3. Answering paragraph 3 of the plaintiff, the defendant —

(a) denies that by the said deed No. 2496 a cash dowry of Rs. 30,000/- was promised or agreed to be paid to the plaintiffs;

(b) admits that a cash dowry of Rs. 15,000/- was paid to the plaintiffs but denies that the said payment was made under or by virtue of or on account of any promise made or agreement entered into by the said deed.

30 (c) denies that by the said deed or otherwise the defendant agreed to pay Rs. 15,000/- or any sum whatsoever as balance cash dowry or to pay the same within one year of the execution of the said deed.

4. The defendant denies the averments in paragraph 4 of the plaintiff. The defendant specially denies that she was or is under any obligation or liability to pay the plaintiff the sum of Rs. 15,000/-.

No. 4.
Answer of the
Defendant
25.11.55—
Continued

5. The defendant denies the averments in paragraph 5 of the
plaint.

6. Further answering the defendant states :

(a) that the plaintiffs' claim if any against the defendant is
prescribed;

(b) that the plaintiff is not entitled, in any event to claim from
the defendant any sum in excess of a one-third share
of the alleged balance of Rs. 15,000/-.

Wherefore the defendant prays:

(a) that the plaintiffs' action be dismissed; 10

(b) for costs; and

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

(Sgd.) W. D. N. SELVADURAI,
Proctor for Defendant.

Settled by :

Mr. C. RANGANATHAN,
Advocate.

No. 5.
Proceedings in
the District
Court
10.7.56

No. 5.

Proceedings in the District Court

D.C. 36064/M.

10th July, 1956. 20

Mr. Advocate Sharvananda instructed for plaintiffs.

Mr. Advocate Ranganathan instructed for defendant.

Mr. Ranganathan moves for a date on the ground that the defend-
ant is ill; he states that a medical certificate from the General Hospital
was posted yesterday; the defendant is an inmate of Ward No. 31 of
the General Hospital. He states that the medical certificate has not
been received yet.

Mr. Sharvananda consents to a date.

By consent defendant to pay the plaintiffs the taxed costs of today.

Trial postponed for 6th December, 1956.

30

(Sgd.).....
A.D.J.

No. 6.

Proceedings in the District Court

No. 6.
 Proceedings in
 the District
 Court
 3.4.57

D.C. Colombo Case No. 36064/M.

3rd April, 1957.

Mr. Thassim for the 1st plaintiff.

Mr. Advocate K. S. Rajah, 2nd plaintiff, in person.

Mr. Advocate Kandiah instructed for defendant.

The 2nd plaintiff states that due to a mistake his counsel Mr. Sharavanandan has taken tomorrow as the date of this trial. He states this is the third date of trial and he is anxious that the hearing of the case should begin today. In the absence of his counsel he moves for permission to conduct his case whilst the proctor on record will conduct the case of the 1st plaintiff. He moves that the proxy granted by him to his proctor, Mr. Thassim, be revoked.

Mr. Thassim consents. Let the revocation be made in writing with the consent of Mr. Thassim, proctor on record.

Mr. Thassim tenders revocation of proxy granted by him to which his proctor consents.

Issues Framed

20 Mr. Rajah suggests the following issues:—

- (1) Did the defendant and her husband agree and promise to pay the plaintiff under and by virtue of deed No. 2496 dated 10th April, 1949, executed by V. A. Sathasivam a cash dowry of Rs. 30,000/-?
- (2) Is the sum of Rs. 15,000/- still due and owing to the plaintiffs on this deed.

Mr. Thassim states that he will abide by the issues suggested by the 2nd plaintiff and he raises no further issues.

Mr. Kandiah suggests—

- 30 (3) Was it agreed between the parties that when the balance cash dowry of Rs. 15,000/- was paid within a period of one year the dowry grantees undertakes and agree to effect the transfer of the said lands in favour of the 1st and 2nd named dowry grantors?
- (4) Has the plaintiffs sold the said three lands referred to in the said deed No. 2496?

No. 6.
Proceedings in
the District
Court
3.4.57—
Continued

(5) If issue 4 is answered in the affirmative can the plaintiffs maintain this action?

(6) In any event is the claim of the plaintiffs prescribed?

Mr. Thassim objects to issues 3 and 4, on the ground that they are not pleaded in the answer.

Mr. Rajah objects to issues 3 and 4, on the ground that they do not arise on the pleadings.

He refers to the answer filed by the defendant. I point out to him that the issue is based on a recital in the agreement which he himself has pleaded.

10

I accept issues 1 to 6.

Mr. Thassim calls —
K. S. RAJAH.

At this stage on a suggestion made by me Mr. Rajah agrees to have this case heard on another date in order to enable him to retain counsel.

Mr. Kandiah at whose suggestion I made this request to Mr. Rajah states that he will not be asking for any costs of today. Neither side will be entitled to costs of today. I adjourn this case for 14.6.57.

Mr. Kandiah states that the three properties which have been referred to in the schedule have been sold by the 1st and 2nd plaintiffs. The vendees are persons from distant places like Mannar and Jaffna. He desires to know whether the plaintiffs would accept these deeds without the vendees being called.

Mr. Rajah and Mr. Thassim both state that they are unable to make a decision just now.

(Sgd.).....

A.D.J.

No. 7.
Plaintiffs' and Defendant's Evidence

No. 7.
Plaintiffs'
Evidence
K. S. Rajah
Examination
6.6.57

D.C. 36064/M.

6th June, 1957.

Mr. E. B. Wikramanayake, Q.C., with Messrs. Neville Samarakoon and Sharvananda for 1st plaintiff instructed.

Second plaintiff present in person.

Mr. V. A. Kandiah for 2nd defendant instructed.

Vide proceedings of 3rd April, 1957.

Mr. Samarakoon calls :—

10 K. S. RAJAH. Affirmed. Advocate, Colombo. 2nd plaintiff.

I have been practising in this Court for about 12 years. I married the 1st plaintiff sometime in 1949. The question of dowry was discussed before the marriage. Subsequently it was incorporated in a notarially executed deed. I produce deed No. 2496 of 10th September, 1949, P1. The deed shows that the dowry agreed upon was Rs. 30,000/- in cash and Rs. 5,000/- worth of jewellery. I have received that jewellery. I also received a sum of Rs. 15,000/- in cash. It was paid at or about the time P1 was executed. At that time my wife was also entitled to certain undivided shares of lands
20 which are described in the schedule to P1 by way of inheritance. The balance sum of Rs. 15,000/-, according to P1, was to be paid within one year of the execution of P1.

I was very much concerned with the negotiations which led up to the execution of this deed. My father-in-law did not have the balance Rs. 15,000/- to pay at that time.

Q. Why was it agreed that a period of one year should be placed for the payment of the balance Rs. 15,000/- and a transfer of land when paid within one year ; what was the purpose ?

30 A. I was practising in Colombo, and as I had no house, we wanted to buy a house in Colombo. I asked them to pay the balance money, and as an inducement to pay the balance sum of Rs. 15,000/- within one year, I said I would give the lands which belonged to my wife.

Q. Were you agreeable to transfer these lands even if the one year had elapsed ; suppose the money was not paid within one year, but paid within two years, were you prepared to transfer the lands? .

A. I was not agreeable.

No. 7.
 Plaintiffs'
 Evidence
 K. S. Rajah
 Examination
 6.6.57—
Continued

At that time these lands were not worth a sum of Rs. 15,000/-. The total value of all the lands was not worth Rs. 5,000/-. The lands are all in Jaffna, and they give no produce. I married the 1st plaintiff.

Q. During the course of that year, did you make any endeavour to get this sum of Rs. 15,000/- from your father-in-law ?

A. Yes, my wife wrote to them.

We did not receive any replies. The defendant in this case is a sister of my wife's mother. She is her step-mother. The relationship between my wife and her step-mother were cordial at the time of 10 our marriage.

My father-in-law died subsequently. I think he died in 1952, January or March. After my father-in-law died, the relationship between my wife and her step-mother were cordial.

These shares that are set out in the schedule to P1 have not been sold. I sold them in 1956, about 1½ years after I filed plaint, and about one year after answer was filed in this case. I realised about Rs. 16,000/-.

The value of property in Jaffna went up with the passing of the Sinhalese Bill and as a result of the politics of the Federal Party. 20 There was a rush back of people to Jaffna. Everybody in Colombo was trying to buy land in Jaffna. As a result of that there was a rush of purchasers for land.

I have read the terms of this deed at the time it was executed. I also signed this deed expecting to get the cash dowry that was offered.

Q. At the time you signed this deed, did you consider these terms in paragraph 6 of P1 ; what did you understand by that at the time you signed this deed ?

A. That they should pay the Rs. 15,000/-, which is the balance 30 cash due, and if that balance sum of Rs. 15,000/- was paid within a period of one year of the execution of deed P1, then I was to transfer the property.

Q. Did you understand at that time to mean, that irrespective of the period of one year, if they paid the money any time thereafter you were bound to transfer the property ?

A. I did not understand it that way ; nor has the defendant understood it that way according to the answer she has filed.

The one year was incorporated in the deed with my acquiescence. There was a discussion as to what period should be put in. There was no disagreement about it. With the consent of parties, this period of one year was included in the deed.

No. 7.
Plaintiffs'
Evidence
K. S. Rajah
Cross-
examination

Cross-examined.

I was present at the discussion with regard to the dowry. The late Mr. Selladurai, my father-in-law, was also present. Miss Selladurai, my wife, was also present.

Q. First they offered Rs. 15,000/- cash and these lands ?

10 A. No. I wanted Rs. 30,000/- in cash.

Q. You were not interested in lands in the village which belonged to your wife ?

A. Not that I was not interested.

Q. You did not want to be bothered with them ?

A. Why should I be not worried when these lands belonged to my wife ?

The dowry agreed upon was Rs. 30,000/-. The question of the lands did not arise, because my wife owned these lands. I do not know if 1/4th share of one of these lands belonged to my father-in-law.

20 Q. Do you know that by this very deed he has transferred a 1/4th share of these very lands ?

A. I do not know.

The lands had been bought after selling some jewellery of my wife's mother. That was acquired property. The deed says 1/4th share belongs to my father-in-law. I do not know if he transferred that also to my wife by deed.

Q. This dowry deed says that 1/4th share was transferred by your father-in-law to your wife ?

A. If it is so stated, it must be correct.

30 Q. If this Rs. 15,000/- was given to you and your wife, you were prepared to transfer these three lands within one year ?

A. Yes.

Q. In the first and second lands, they were undivided shares that belonged to your wife ?

A. Yes.

No. 7.
Plaintiffs'
Evidence
K. S. Rajah
Cross-
examination—
Continued

There were other co-owners of those lands. One co-owner was my wife's mother's sister.

Q. Another co-owner was a cousin of your wife ?

A. I do not know.

Q. Your father-in-law told you that he would sell these lands and pay you the money ?

A. No, there was no agreement like that.

The balance Rs. 15,000/- cash was not given, because he had no money at that time.

Q. The dowry deed is described on the top as " cash 10 Rs. 15,000/- "; the agreement is for Rs. 15,000/- ?

A. Yes, on the top I find that.

Agreement means, agreement to pay Rs. 15,000/- later.

All these three lands were sold by me last year. I sold one land for Rs. 10,000/-, one for Rs. 3,000/-, and the other for Rs. 3,300/-. Altogether they fetched a sum of Rs. 16,300/-.

Re-examined. Nil.

(Sgd.)

D.J.

6.6.57. 20

Mr. Samarakoon closes his case reading in evidence P1.

Mr. Kandiah calls :

Defendant's
Evidence
Mrs. A. Selladurai
Examination

Mrs. A. SELLADURAI. Affirmed. 39. Widow of N. Selladurai, of Kotahena, Colombo.

I had two sisters, of whom one is dead. The sister who is alive is married to Mr. Thambiaiayah. The other sister of mine is the mother of the 1st plaintiff. My other sister was married to my husband, and after her death my husband married me. That sister had only one child, the plaintiff. When the plaintiff's mother died, the plaintiff was only 2½ years old. It was I who brought up this 30 child. I have three children now; two daughters and a son. I had in all five children. On the day of the wedding of the plaintiffs, two of the girls got drowned in Singapore. A nephew of mine also died among others. My husband and I were in Jaffna at that time.

I remember the negotiations that took place in connection with the marriage of my niece to the 2nd plaintiff, Mr. Advocate Rajah. The dowry arranged was Rs. 15,000/- in cash, and she was also to get

all the lands that were left to her by her mother. My husband was also entitled to a share of one of the lands. He agreed to transfer that share also to the 1st plaintiff.

At the time of the marriage the value of those three lands was over Rs. 15,000/-. The 2nd plaintiff said that he did not want the lands, and he demanded cash only. At that time my husband did not have any cash besides the Rs. 15,000/-. He was the Superintendent on an estate in Singapore. Rs. 15,000/- was all that he was able to save after he married me.

No. 7.
Defendant's
Evidence
Mrs. A. Selladurai
Examination—
Continued

10 Q. When the 2nd plaintiff wanted everything in cash, what did you do ?

A. My deceased husband said that he would make up the balance Rs. 15,000/- after selling these lands.

Q. Did you also take part in the negotiations ?

A. I too was there, and after that I attended to the work in the house.

I discussed the question of the dowry with my step-daughter. I told her that the 2nd plaintiff says that he does not want land, but wants the dowry in cash. I told her "would it not be better to keep
20 the lands, because, at least, you will be able to remember your mother." I also told her "you can do what you feel is correct". The 1st plaintiff herself told me that she felt sad to dispose of the lands that belonged to her mother and preferred to keep them to herself. I told her that the 2nd plaintiff did not want the lands.

Q. Then did you tell her about the arrangement ?

A. Yes.

I told her that the 2nd plaintiff was adamant about this and was pressing for the money, and that the other share-holders will have to be consulted and the lands sold to them, and after the money is
30 recovered it will be given to the 2nd plaintiff. She agreed to that.

The 2nd plaintiff did not even know where these lands were situated. On the very day these negotiations took place, the date for the registration was also arranged. The 2nd plaintiff is not from the same place as ourselves.

My deceased husband undertook to sell these lands and give the 2nd plaintiff the money.

Two of my daughters died on the day of the wedding. The wedding took place on that day. A cousin of mine also died on that

No. 7
 Defendant's
 Evidence
 Mrs. A. Sella-
 durai
 Examination—
 Continued

day. I left for Singapore about nine months after the wedding. My husband left for Singapore about six months after the wedding.

(To Court :

My brother was in Singapore at the time, and he attended to the funeral rites in connection with the dead children.)

From the day my husband landed in Singapore, he was ill, and he was in hospital. He died on 10th January, 1952. He did not return to Ceylon after he went to Singapore after the wedding. I returned to Ceylon in December, 1952. I do not get any pension.

Mrs. A. Sella-
 durai
 Cross-
 examination

Cross-examined by Mr. SAMARAKOON :

10

Q. Did you take part in the negotiations for the settling of the dowry at this marriage ?

A. I agreed to the terms that my husband had laid down.

Q. It was your husband who did everything in connection with this marriage and the dowry ?

A. Yes.

Q. And he came back and told you what he had agreed upon ?

A. Yes.

Q. What he told you was incorporated in a deed ?

A. Yes.

20

Q. There was no question of your disagreeing with your husband ?

A. No.

Q. There was no question of your being consulted before the agreement was reached by your husband ?

A. No.

Q. You left everything to your husband ?

A. Yes.

Q. And merely signed that document P1 when you were asked to sign ?

A. Yes.

30

Q. The 2nd plaintiff was very much interested in the dowry that he was to get ?

A. He wanted money.

Q. The dowry that was suggested was very much higher than this ?

A. No.

Q. Whatever dowry that was effected was accepted by the 2nd plaintiff ?

A. Yes.

Q. On the part of the 2nd plaintiff or his people, there was no suggestion of any sum ?

A. The 1st plaintiff said " After all you have come to marry me for the sake of the cash dowry." Then the 2nd plaintiff got hold of the 2nd plaintiff by her hand and said " I only want you and not the dowry."

10 Q. Is it your custom in Jaffna to allow the two parties to settle the dowry between them ?

A. This incident happened after the registration ceremony at home.

The question of dowry was settled long before the registration. The terms were agreed upon long before the registration.

Q. Your position now is that only cash Rs. 15,000/- was promised, and a further sum of Rs. 15,000/- if the property was transferred ?

20 A. The balance was to be made up by the sale of the lands that she was entitled to from her mother.

Q. A cash dowry of Rs. 30,000/- is mentioned in the deed ?

A. The Rs. 30,000/- cash dowry was to be there to the exclusion of the lands.

Q. Did P1 mention the fact that you and your husband agreed to give a cash dowry of Rs. 30,000/- ?

A. Yes.

Q. You were prepared to pay that Rs. 30,000/- in cash ?

A. Yes, because he refused to have the lands, we were prepared to give cash.

30 Q. You were in fact taking her lands, and paying her something for the lands ?

A. Yes.

Q. Is that the dowry that you were talking about ?

A. Yes.

Q. You were giving her a dowry of her own lands, or in lieu of it cash ?

A. Yes.

Q. What necessity was there to give her a dowry of her own lands ?

40 A. How could we have given Rs. 30,000/- ; we were not so very rich ?

No. 7.
Defendant's
Evidence
Mrs. A. Selladurai
Cross-examination
Continued

No. 7.
 Defendant's
 Evidence
 Mrs. A. Sella-
 durai
 Cross-
 examination—
 Continued

Q. Were you giving her a dowry of her own lands ?

A. Those lands together with Rs. 15,000/- in cash.

Q. The Rs. 30,000/- cash dowry mentioned in P1 is not correct ?

A. As he refused to have the lands, that was why a sum of Rs. 30,000/- was put down in the deed.

Q. Of the Rs. 30,000/-, Rs. 15,000/- was first paid in cash ?

A. Yes, and we undertook to sell the lands and make up the balance Rs. 15,000/-.

The balance Rs. 15,000/- was to be paid within a year.

Q. That period of a year was given to your husband to pay 10 Rs. 15,000/- in cash for a particular purpose ?

A. Yes.

Q. That purpose being, that if the money was paid within one year, the undivided shares of these lands would then be transferred to your husband ?

A. Yes.

My husband was not able to pay that Rs. 15,000/- within one year, because he was ill. I was not able to do it myself. So the lands remained with the 1st plaintiff. She still kept on writing to me and asking for the balance dowry of Rs. 15,000/-. 20

There was a time when letters of demand were sent by the plaintiff to me.

Q. You did not reply to any of the letters of demand, although several were sent ?

A. I was ill at the time, and I was unable to attend to them.

Q. In fact you know nothing about what your husband agreed to in regard to this dowry ?

A. Yes.

Q. And you also say that if your husband agreed to pay Rs. 30,000/- in cash, that is wrong ? 30

A. He promised to give the balance after selling these lands.

Q. Is it your position that the dowry was Rs. 15,000/- in cash, and lands ?

A. Yes.

Q. There was never an agreement to pay Rs. 30,000/- in cash ?

A. If the lands were not to be given, then he was to be given Rs. 30,000/- in cash.

I was asked to sign the deed P1, and I signed it. I cannot read and understand the contents of the deed.

Q. It was only when the action was filed that you thought of looking into the deed?

A. Yes.

Cross-examined by 2nd plaintiff.

I filed answer in this case. I gave instructions to my proctor.

Re-examined.

When my husband was seriously ill he received a letter from the plaintiff, and he decided not to send any reply.

(Sgd.)

10

D.J.
6.6.57.

M. THAMBIAIYAH. Affirmed. 57. Government Surveyor, Anuradhapura.

No. 7.
Defendant's
Evidence
Mrs. A. Selladurai
Cross-examination—
Continued

Mrs. A. Selladurai
Re-examination

M. Thambaiyah
Examination

I married an elder sister of the defendant. The 1st plaintiff is a daughter of another sister of my wife. My wife was entitled to a half share of certain property. The other half belonged to the 1st plaintiff's mother.

I remember signing as a witness the dowry deed P1.

Q. At that time was there any talk of your buying the other half share; did Mr. Selladurai speak to you about your buying the other half share?

A. No.

The value of the other half share was about Rs. 10,000/-. My wife and I bought the other half share in 1956 for Rs. 10,000/-. The price of land did not rise high between 1949 and 1956 in those parts.

Cross-examined by Mr. SAMARAKOON :

The land was worth Rs. 10,000/- in 1949, and it was worth Rs. 10,000/- in 1956. There was no appreciation or depreciation.

Q. You know that as a result of the political situation since last 30 year, people rushed back to Jaffna ?

A. No.

I did not go back to Jaffna. I was at Anuradhapura. I have been in Anuradhapura for the last four years. I go to Jaffna occasionally.

Q. You do not know whether value of land in Jaffna rose or not during the last ten years?

A. I know.

M. Thambaiyah
Cross-examination

No. 7.
Defendant's
Evidence
M. Thambai-
yah
Cross-
examination—
Continued

I have property in Jaffna.

Q. You did not offer your land for sale ?

A. I wanted to sell a land.

Q. When ?

A. If I want cash, I will sell, but now there is no necessity for me to sell.

During 1949 and 1956 I was not anxious to sell land.

Q. You did not try to sell any land; so that you do not know what land values were then?

A. I cannot say that I do not know the value of land in Jaffna. 10

Q. You can say that you know the values?

A. Yes.

Cross-examined by 2nd plaintiff.

Q. The price of land in Jaffna is high now than in 1949?

A. No.

Q. You know that after the Sathyagraha movement and the passing of the Sinhalese Act, there is a big demand for land in Jaffna?

A. I have no idea.

Q. You have not gone to Jaffna for the last five years ?

A. I have been going there occasionally. 20

Re-examined.

The share that I bought in 1956 was worth Rs. 10,000/- in 1949 also. In 1949 also I would have paid Rs. 10,000/- and bought that share.

D.J.
6.6.57.

M. Thambai-
yah
Re-
examination

P. Supra-
maniam
Examination

PERIYATHAMBY SUPRAMANIAM. Affirmed. 49. Telephone Linesman, of Kankesanturai.

I am the brother-in-law of Mr. Selladurai. My wife was a co-owner with the plaintiff's mother of a certain land. My wife and I 30 bought a share of that land in 1956 from the plaintiff for Rs. 3,300/-. In 1949 also this land was worth about the same amount.

Q. Would you have bought that land in 1949 also for Rs. 3,300/-?

A. That was the amount it was worth even at that time.

Cross-examined by Mr. SAMARAKOON :

Q. Did you try to buy it in 1949 ?

A. My brother-in-law talked to me about it.

P. Supra-
maniam
Cross-
examination

I do not know if my brother-in-law had bought that land for Rs. 400/-.

No. 7.
Defendant's
Evidence
P. Supra-
matium
Cross-
examination—
Continued

Q. In 1949 you made no estimate of the value of the land?

A. There was a talk in the village that about that time the price of land in that area had gone up as a result of the acquisition of land by the Military in the Palaly area.

That is a talk I heard.

Q. You made no estimate of its value in 1949?

A. No; it was then owned by my brother-in-law, and I did not
10 care to find out what it was worth then.

Q. Since 1949 and 1956 land values have risen considerably in that area?

A. Yes.

Cross-examined by 2nd plaintiff. Nil.

Re-examined. Nil.

(Sgd.)
D.J.
6.6.57.

Mr. Kandiah closes his case.

20 Mr. Kandiah says he leaves it to the Court to decide what construction is to be given to the wording of P1.

Addresses to
Court

Mr. Samarakoon cites *Henson vs. Graham* 6 Vesey Junior Reports, 238, at page 243. There is a condition precedent in P1, namely, to pay within one year. That period has elapsed, and they have not taken advantage of the concession granted. Nobody would agree to get a dowry of one's own lands. The operative part of P1 is for a cash dowry of Rs. 30,000/-. It is given and accepted as a cash dowry. No meaning could be given to the contract on the construction placed on it by the Counsel for the 1st plaintiff.

30 Second plaintiff addresses Court : In the answer filed the position that Rs. 30,000/- had to be paid in cash is not denied. It is not pleaded in the answer that the lands were to be transferred on payment of the Rs. 15,000/-.

Judgment on 20.6.57.

(Sgd.)
D.J.
6.6.57.

No. 8.
Judgment of the District Court

D.C. 36064/M.

20th June, 1957.

JUDGMENT

The plaintiffs, who are wife and husband, sue the defendant to recover a sum of Rs. 15,000/- and legal interest said to be due on dowry agreement No. 2496 of 10th September, 1949, P1.

One Nallathamby Sellathurai, who was employed in Malaya, was married to the sister of the defendant. By her he had a daughter Leelavathy, the 1st plaintiff. The wife died, and after that Sella- 10 thurai married the wife's sister, the present defendant.

In 1949 there was a proposal of marriage between the 1st and 2nd plaintiffs, and the question of the dowry arose for discussion. After discussion, deed No. 2496, P1, was entered into between the plaintiffs, Sellathurai the father of the proposed bride, the defendant, and one Sellammah widow of Suppiah. By this agreement P1 it was agreed that a cash dowry of Rs. 30,000/- and jewels worth Rs. 5,000/- should be given to the 1st plaintiff by her father Sellathurai and her step-mother the defendant. On the date the deed was executed Rs. 15,000/- in cash and jewellery to the value of Rs. 5,000/- were 20 given to the 1st plaintiff. This is not denied by the parties. The 1st plaintiff was entitled to undivided shares in three allotments of land described in the schedule to P1. As regard the balance Rs. 15,000/- due, it was agreed in the deed P1 as follows : —

“ And whereas it was agreed between the dowry grantors (Sellathurai and the defendant) and the dowry grantee (1st plaintiff) that when the balance cash dowry of Rupees Fifteen thousand (Rs. 15,000/-) was paid within a period of one year then the dowry grantee undertake and agree to effect a transfer of the said lands in favour of the 1st and 2nd named dowry 30 grantors.”

The sum of Rs. 15,000/- balance due out of the dowry was not paid within one year as agreed in P1. Thereafter the plaintiffs have sold the shares of the lands which the 1st plaintiff had agreed to transfer by P1, and which are described in the schedule to P1, for a sum of Rs. 16,300/-. The father of the 1st plaintiff, Sellathurai, is now dead, and the plaintiffs claim the balance Rs. 15,000/- due on P1 and legal interest from the widow of Sellathurai, the defendant. The position of the defendant, in short, is that the plaintiffs, having sold the lands mentioned in the deed P1 at Rs. 16,300/-, cannot now claim 40 the Rs. 15,000/- balance due on P1.

The condition in P1 quoted above by me provided that when the balance cash dowry of Rs. 15,000/- was paid within a period of one year from the date of execution of P1, the 1st plaintiff was to transfer her shares of the lands mentioned in P1 to her father and the step-mother. From the authorities cited it is clear that the word "when" is synonymous with the word "if". Both words import contingency. So that, in the agreement P1 the word "when" should be interpreted as if it was the word "if". Placing that interpretation on the agreement, it seems to me that the defendant cannot succeed in her contention. Admittedly the balance Rs. 15,000/- was not paid within one year, and no obligation, therefore, arose on the part of the plaintiffs to transfer the 1st plaintiff's shares of the lands to the defendant or her husband. If the plaintiffs have taken advantage of that breach of the condition and sold the lands and obtained money, yet I do not think they are precluded, in law, from claiming the balance Rs. 15,000/- due on the agreement P1.

The plaintiffs also claim legal interest on the Rs. 15,000/- from the date of P1. There is no agreement in P1 to pay legal interest, and I do not think they are entitled to claim any legal interest as claimed in the plaint.

I answer the issues as follows :—

- (1) Yes.
- (2) Yes.
- (3) Yes.
- (4) Yes.
- (5) Yes.
- (6) No.

I accordingly enter judgment for plaintiffs against the defendant in a sum of Rs. 15,000/- and costs.

30

(Sgd.) W. THALGODAPITIYA,
District Judge.

20th June, 1957.

Judgment delivered in open Court in the presence of parties and their lawyers.

(Sgd.)
D.J.
20.6.57.

No. 9.
Decree of the
District Court
20.6.57

No. 9.
Decree of the District Court

DECREE

Class : No. 36064/M.

IN THE DISTRICT COURT OF COLOMBO

- 1. Mrs. K. S. Rajah.
- 2. K. S. Rajah both of 374, Biyagama Road, Kelaniya....
.....*Plaintiffs*

against

Mrs. A. Selvadurai of No. 59, Wall Street, Kotahena..... 10
.....*Defendant.*

This action coming on for final disposal before W. Thalgodapitiya, Esq., District Judge, Colombo, on the 20th day of June, 1957, in the presence of proctor on the part of the plaintiff and of proctor on the part of defendant, it is ordered and decreed that the defendant do pay to the plaintiff the sum of Rs. 15,000/- and costs of suit.

(Sgd.) W. THALGODAPITIYA,
District Judge, Colombo.

The 20th day of June, 1957.

No. 10
Petition of
Appeal to the
Supreme Court
20.6.57

No. 10.
Petition of Appeal to the Supreme Court

20

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Mrs. A. Sellathurai of 59, Wall Street, Kotahena,
Colombo..... *Defendant-Appellant*

No. 36064/M.

vs.

- 1. Mrs. K. S. Rajah of 374, Biyagama Road, Kelaniya.
- 2. K. S. Rajah, Advocate, Law Library, Colombo....
.....*Plaintiffs-Respondents.*

To,

His Lordship, The Chief Justice and the other Justices of the 30
Supreme Court of the Island of Ceylon.

On this 20th day of June, 1957.

The petition of appeal of the defendant-appellant states as follows : ---

No. 10.
Petition of
Appeal to the
Supreme Court
20.6.57—
Continued

1. The plaintiffs sued the defendant for the recovery of a sum of Rs. 15,000/- on the basis of Deed No. 2486 of 10th September, 1949, attested by A. V. Sathasivam, Notary Public, of Jaffna.

2. The defendant denied liability to pay the said amount claimed on various grounds set out in the answer.

3. The case was taken for trial on two days and the learned District Judge by his order and Judgment of the 20th June, 1957, 10 entered judgment for plaintiffs for Rs. 15,000/- and costs.

4. Being aggrieved with the said order and judgment the defendant-appellant appeals to Your Lordships' Court to have the said judgment and order set aside on the following among other grounds that may be urged by Counsel at the hearing.

(a) That the said judgment is contrary to law and the weight of evidence in the said case.

20 (b) On the evidence it is clear that the dowry was Rs. 15,000/- and lands and in the alternative only Rs. 30,000/- cash. When the amount was not paid within one year it was open to the plaintiffs to sell the said lands and realise the amount.

(c) On the basis of a breach of contract the plaintiffs could have claimed as damages only the difference, if any between the value realised by sale and the said sum of Rs. 15,000/-.

(d) It is respectfully submitted that the dowry deed is for Rs. 15,000/- and an agreement; that there is no promise in the dowry deed to pay Rs. 15,000/- the alleged balance of the dowry and that therefore the plaintiffs cannot maintain this action.

30 (e) That the claim, if any, is prescribed in law.

(f) That in any event the plaintiffs cannot claim the entirety of the balance from this defendant; that the plaintiffs cannot rely on the agreement filed for the relief prayed for in the plaint.

(g) That the plaintiffs have not suffered any damages and hence cannot maintain this action; that having realised and received more than Rs. 30,000/- the plaintiffs cannot maintain this action.

No. 10.
Petition of
Appeal to the
Supreme Court
20.6.57—
Continued

Wherefore the defendant-appellant prays that Your Lordships' Court be pleased to set aside the order and judgment of the learned District Judge and to order dismissal of the plaintiffs' action with costs here and Court below, and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) A. SELLATHURAI,
Defendant Appellant.

Signed in my presence.

E. SANGARAPILLAI,
Asst. Secretary, D.C. Colombo
20.6.57.

10

Witness to the signature and identity of the defendant-appellant.

T. NADARAJAH,
Proctor, S.C.

No. 11.
Judgment of
the Supreme
Court
17.3.58

No. 11.

Judgment of the Supreme Court

S.C. No. 309.

D.C. Colombo. No. 36064/M.

Sellathurai v. Raja and Another

Present : Basnayake, C.J., and de Silva, J.

Counsel : H. V. Perera, Q.C., with V. A. Kandiah for defendant-20
appellant.

E. B. Wikramanayake, Q.C., with S. Sharvananda for 1st
plaintiff-respondent.

2nd plaintiff-respondent in person.

Argued on : March 14 and 17, 1958.

Decided on : March 17, 1958.

BASNAYAKE, C.J. :

A preliminary objection to the hearing of this appeal has been taken on the following two grounds : -

- (1) That the petition of appeal does not satisfy the requirements 30
of section 755 of the Civil Procedure Code ; and
- (2) that the notice of appeal has not been given to the 1st
plaintiff-respondent personally.

The first objection is sound and must be upheld. A petition of appeal cannot be received unless it is drawn and signed by an advocate or proctor, or in the manner prescribed by the proviso to section 755 of the code. The present petition of appeal does not satisfy the requirements of either that section or its proviso, and should not have been received.

No. 11.
Judgment of
the Supreme
Court
17.3.58—
Continued

The second objection is that notice of appeal has not been addressed to the 1st respondent but to her proctor. Learned counsel for the 1st respondent submits that section 756 of the Civil Procedure
10 Code requires that notice of appeal must be addressed to the respondent personally but that it may be served on his proctor. He relies on the case of *Sivagurunathan v. Doresamy et al*, 52 N.L.R. 207. This objection too is entitled to succeed for the reasons given in the judgment cited by learned counsel. We therefore reject the appeal with costs.

Learned counsel for the appellant has invited us to deal with this case by way of revision. He submits that important questions of law arise in the appeal and that in the interests of justice this Court should satisfy itself as to the legality of the judgment and has invited
20 us to proceed to do so at this hearing itself. He cites the case of *Abdul Cader v. Sittinisa et al*, 52 N.L.R. 536, in support of his submission. We are not disposed to accede to the learned counsel's request for an immediate hearing. But in view of the submissions of learned counsel that important questions of law are involved in this appeal we are prepared to deal with the case in revision under section 753 of the Civil Procedure Code after the party dissatisfied with the judgment of the learned District Judge has lodged proper papers with the Registrar of this Court.

(Sgd.) HEMA H. BASNAYAKE,
Chief Justice.

30

De SILVA, J. :
I agree.

(Sgd.) K. D. de SILVA,
Puisne Justice.

No. 12.
Decree of the
Supreme Court
17.3.58

No. 12.

Decree of the Supreme Court

D.C. (F) 309.
1957.

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

Mrs. K. S. Rajah of No. 374, Biyagama Road, Kelaniya
and another..... *Plaintiff* 10

vs.

Mrs. A. Selladurai of No. 59, Wall Street, Kotahena,
Colombo..... *Defendant*.

Mrs. A. Selladurai of No. 59, Wall Street, Kotahena
Colombo..... *Defendant-Appellant*

vs.

1. Mrs. K. S. Rajah of No. 374, Biyagama Road,
Kelaniya.

2. K. S. Rajah, Advocate, Law Library, Colombo....
..... *Plaintiffs- Respondents*. 20

Action No. 36064/M.

District Court of Colombo

This cause coming on for hearing and determination on the 14th and 17th March, 1958, and on this day, upon an appeal preferred by the defendant-appellant before the Hon. Hema Henry Basnayake, Q.C., Chief Justice and the Hon. K. D. de Silva, Puisne Justice of this Court, in the presence of Counsel for the defendant-appellant, 1st plaintiff-respondent and 2nd plaintiff-respondent in person.

It is considered and adjudged that this appeal be and the same is hereby rejected. 30

It is further ordered that the defendant-appellant do pay to the 1st plaintiff-respondent her taxed costs of this appeal.

(*Vide* copy of judgment attached.)

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 1st day of April, in the year One thousand Nine hundred and Fifty-eight and of Our Reign the Seventh.

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

No. 13.**Journal of the Application in Revision**

No. 13.
Journal of the
Application in
Revision
31.3.58 to
30.10.58
No. 134.

SUPREME COURT MINUTE PAPER ON APPLICATIONS

Subject : Revision in D.C. Colombo 36064/M.

Date : 31.3.58.

Papers filed in the Registry, Supreme Court.

Mr. Advocate H.V. Perera, Q.C., for defendant-petitioner.

Mr. Advocate H. W. Jayawardene, Q.C., for the 2nd plaintiff-
10 respondent.

Mr. Advocate E. B. Wikramanayake, Q.C., for the 1st plaintiff
respondent.

ORDER

Date

1.3.58 .. List on 2.4.58.

2.4.58 .. Before : Basnayake, C.J. and de Silva, J.

H. V. Perera, Q.C. with V. A. Kandiah in support.

Notice to issue.

(Sgd.).....

Clerk of Appeal,

Court No. 1.

20

7.4.58 .. Record and copies called for.

8.4.58 .. Notice to Fiscal, Colombo for 5.5.

30.4.58 .. Report etc. returned to Fiscal, Colombo.

5.5.58 .. Proctor for respondent files proxy of 1st and 2nd
respondents.

7.5.58 .. Fiscal reports notices served on 1st and 2nd respondents
notices served and may be listed please.

28.5.58 .. *Present* : Pulle, J., and Sinnethamby, J.

30 To be listed before His Lordship the Chief Justice and
K. D. de Silva, J.

(Sgd.).....

Clerk of Appeal.

No. 13.
Journal of the
Application in
Revision
31.3.58 to
30.10.58—
Continued

- 5.7.58 .. List on 5.8.58.
1.9.58 .. List on 1.9.58.
1.9.58 .. Before : Basnayake, C.J. and Sinnethamby, J.
H. V. Perera, Q.C., with R. Manikkavasagar and Miss
Maureen Seneviratne for defendant-petitioner.
H. W. Jayawardene, Q.C., with S. Sharvananda for 2nd
plaintiff-respondent.

To be listed on 1.10.58 in Final Court No. 1.

(Sgd.).....
Clerk of Appeal, 10
Court No. 1.
1.9.58.

30. 9.58 .. List on 1.10.58.
27.10.58 .. List on 28.10.58.
28.10.58 .. Before : Basnayake, C. J., and Pulle, J.
H. V. Perera, Q.C., with V. A. Kandiah, R. Manik-
kavasagar and Miss M. Seneviratne for defendant-
petitioner.
H. W. Jayawardene, Q.C., with S. Sharvananda for 1st
plaintiff-respondent. 20
E. B. Wikramanayake, Q.C., with S. Sharvananda for
2nd plaintiff-respondent.

To be resumed tomorrow.

(Sgd.).....
Clerk of Appeal.

- 29.10.58 .. Before : Basnayake, C.J., and Pulle, J.
Same counsel as before.
To be resumed tomorrow.

(Sgd.).....
Clerk of Appeal. 30

- 30.10.58 .. Before: Basnayake, C.J. and Pulle, J.
Same counsel as before.
(Dictated): The application is allowed with costs and
the plaintiff's action is dismissed with costs.

No. 14.

Application for Revision

No. 14.
Application for
Revision
21.3.58

IN THE SUPREME COURT OF THE ISALND OF CEYLON

Mrs. Annaledchumy Sellathurai of 59, Wall Street,
Colombo..... *Defendant-Petitioner*

No.

vs.

1. Mrs. K. S. Rajah of 374, Biyagama Road, Kelaniya,
presently of Sanchiaratchi's Garden, Hulfts-
dorp.

10

2. K. Sundara Rajah, Advocate, Law Library,
Colombo..... *Plaintiffs- Respondents.*

I file proxy, petition and affidavit from the petitioner and for the reasons stated therein move that Your Lordships' Court be pleased, in revision, to set aside the order and judgment entered in Case No. 36064/M of the District Court of Colombo and to order dismissal of the said action with costs and to grant such other and further relief as to Your Lordships' Court shall seem just and fair.

Colombo, 21st March, 1958.

(Sgd.) W. D. N. SELVADURAI,

20

Proctor for Defendant-Petitioner,

Proctor S.C.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Petition in
Revision

Mrs. Annaledchumy Sellathurai of 59, Wall Street,
Colombo *Defendant-Petitioner*

No.

vs.

1. Mrs. K. S. Rajah of 374, Biyagama Road, Kelaniya,
presently of Sanchiaratchi's Garden, Hulfts-
dorp,

2. K. Sundara Rajah, Advocate, Law Library,
Colombo..... *Plaintiffs- Respondents.*

30 To

His Lordship, the Chief Justice and other Justices of the Supreme Court of the Island of Ceylon.

On this 21st day of March, 1958.

The petition of the defendant-petitioner abovenamed appearing by William Dharmaratnam Nevins Selvadurai, her Proctor, states as follows :—

No. 14.
Petition in
Revision—
Continued

1. The petitioner is a widow of the late Nallathamby Sellathurai; the 1st respondent is a daughter of her late husband by his 1st wife, who was her elder sister; the 2nd respondent is the husband of the 1st respondent.

2. The respondents instituted action No. 36064/M of the District Court of Colombo for the recovery of the sum of Rs. 15,000/- against the petitioner alleged as due to them on a dowry deed filed of record in the said case; plaint is in record in the said case.

3. The petitioner filed answer denying liability to pay the said amount; answer is in record in the said case. 10

4. On the trial date, the petitioner and the 2nd respondent gave evidence, and the learned District Judge by his judgment and order of the 20th June, 1957, gave judgment for plaintiffs as prayed for with costs.

5. Being aggrieved with the said judgment; the defendant petitioner appealed to Your Lordships, Court; on appeal Your Lordships rejected the appeal with costs and were pleased to allow the petitioner's counsel to argue the case by way of revision and directed the Registry to retain the record.

6. The petitioner makes this application and begs of Your 20 Lordships' Court to have the said judgment set aside and to order dismissal of the said action on the following among other grounds that may be urged by counsel at the hearing.

- (a) That the said judgment is contrary to law and the weight of evidence in the said case.
- (b) On the evidence it is clear that the dowry was Rs. 15,000/- and lands and in the alternative only Rs. 30,000/- cash. When the amount was not paid within one year it was open to the plaintiffs-respondents to sell the lands and realise the amount. 30
- (c) On the basis of a breach of contract the plaintiffs-respondents could have claimed as damages only the difference if any between the value realised by sale and the said sum of Rs. 15,000/-.
- (d) It is respectfully submitted that the dowry deed is for Rs. 15,000/- and an agreement; that there is no promise in the dowry deed to pay Rs. 15,000/- the alleged balance of the dowry and that therefore the plaintiffs-respondents cannot maintain this action.
- (e) That the respondents having realised Rs. 15,000/- by the 40 sale of the three lands had no cause of action to claim any sum from the petitioner on any basis.

(f) That in any event the respondents cannot claim the entirety of the balance from the petitioner; that this petitioner was one of the three parties on the face of the deed and the liability, if any was limited to 1/3rd of the amount.

No. 14.
Petition in
Revision—
Continued

(g) That the claim, if any, of the respondents is prescribed.

Wherefore the petitioner prays that Your Lordships' Court be pleased to set aside the judgment and to order dismissal of the respondents' action with costs and for such other and further relief as to Your Lordships' Court shall seem meet.

10

(Sgd.) W. D. N. SELVADURAI.
Proctor for Defendant-Petitioner.
Proctor S.C.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Affidavit in
Revision

Mrs. Annaledchumy Sellathurai of 59, Wall Street,
Colombo.....*Defendant-Petitioner*

No.

vs.

1. Mrs. K. S. Rajah of 374, Biyagama Road, Kelaniya, presently of Sanchiaratchi's Garden, Hulftsdorp.
2. S. Sundara Rajah, Advocate, Law Library, Colombo.....*Plaintiffs- Respondents.*

20

I, ANNALEDCHUMY SELLATHURAI of 59, Wall Street, Colombo, not being a Christian, do hereby solemnly, sincerely and truly declare and affirm as follows : —

1. I am the petitioner abovenamed.

2. I am a widow of the late Nallathamby Sellathurai; the 1st respondent is a daughter of my late husband by his 1st wife, who is my elder sister; the 2nd respondent is the husband of the 1st respondent.

3. The respondents instituted action No. 36064/M of the District Court of Colombo for the recovery of the sum of Rs. 15,000/- against me alleged as due to them on a dowry deed filed of record in the said case; plaint is in record in the said case.

4. I filed answer denying liability to pay the said amount; answer is in record in the said case.

5. On the trial date, I and the 2nd respondent gave evidence, and the learned District Judge by his judgment and order of the 20th June, 1957, gave judgment for plaintiffs as prayed for with costs.

No. 14.
Affidavit in
Revision—
Continued

6. Being aggrieved with the said judgment, I appealed to Your Lordships' Court; on appeal your Lordships rejected the appeal with costs and were pleased to allow my Counsel to argue the case by way of revision and directed the Registry to retain the record.

7. I make this application and beg of Your Lordships' Court to have the said judgment set aside and to order dismissal of the said action on the following among other grounds that may be urged by Counsel at the hearing.

- (a) That the said judgment is contrary to law and the weight of evidence in the said case. 10
- (b) On the evidence it is clear that the dowry was Rs. 15,000/- and lands and in the alternative only Rs. 30,000/- cash. When the amount was not paid within one year it was open to the plaintiffs-respondents to sell the land and realise the amount.
- (c) On the basis of a breach of contract the plaintiffs-respondents could have claimed as damages only the difference if any between the value realised by sale and the said sum of Rs. 15,000/-.
- (d) It is respectfully submitted that the dowry deed is for 20 Rs. 15,000/- and an agreement; that there is no promise in the dowry deed to pay Rs. 15,000/- the alleged balance of the dowry and that therefore the plaintiffs-respondents cannot maintain this action.
- (e) That the respondents having realised Rs. 15,000/- by the sale of the 3 lands had no cause of action to claim any sum from me on any basis.
- (f) That in any event the respondents cannot claim the entirety of the balance from me; that I am one of the three parties on the face of the deed and the liability, if any, is limited 30 to 1/3rd of the amount.
- (g) That the claim if any, of the respondents is prescribed.

The foregoing affidavit having been duly
read over and explained by me to the
affirmant in Tamil and she appearing } (Sgd.) A. SELLATHURAI.
to understand the contents thereof
signed and affirmed to at Colombo on
this 21st day of March, 1958. }

Before me.

(Sgd.) T. NADARAJAH,
Commissioner for Oaths.

No. 15.**Judgment of the Supreme Court in Application in Revision**

Application for Revision in D.C. Colombo, No. 36064/M.

(Application No. 134).

No. 15.

Judgment of
the Supreme
Court in
Application in
Revision
30.10.58*Present* : Basnayake, C.J., and Pulle, J.*Counsel* : H. V. Perera, Q.C., with V. A. Kandiah, R. Manikkavasagar
and Miss Maureen Seneviratne for defendant-petitioner.H. W. Jayawardena, Q.C., with S. Sharvananda for 1st
plaintiff-respondent.10 E. B. Wikramanayake, Q.C., with S. Sharvananda for 2nd
plaintiff-respondent.*Argued on* : October 28, 29 and 30, 1958.*Decided on* : October 30, 1958.

BASNAYAKE, C.J. :

This is an action by two plaintiffs, who are husband and wife, against the defendant, who is the aunt and the step-mother-in-law of the 1st plaintiff. The plaintiffs claim from the defendant a sum of Rs. 15,000/-. They allege that on the occasion of the marriage of the 1st plaintiff to the 2nd plaintiff the defendant and her husband, 20 now deceased, agreed, and promised to pay a cash dowry of Rs. 30,000/- under and by virtue of deed No. 2496 of the 10th September, 1949, a certified copy of which is annexed to the plaint which they plead as part and parcel of it. They further allege that out of the promised and agreed cash dowry of Rs. 30,000/- a sum of Rs. 15,000/- was paid and that the balance sum of Rs. 15,000/- was to be paid within one year of the date of the execution of the deed.

The defendant denies that by the deed referred to by the plaintiffs in their plaint (hereinafter referred to as P1) a promise to pay Rs. 30,000/- as cash dowry was made. She admits that a sum of 30 Rs. 15,000/- was paid as cash dowry but denies that that payment was made in pursuance of any agreement contained in deed P1. She also denies that by that deed she and the other parties to the deed (described therein as the dowry grantors) undertook to pay a sum of Rs. 15,000/- or any sum whatever as balance cash dowry within one year of its execution. She also pleads that the plaintiffs' claim is prescribed and that in any event the plaintiffs are not entitled to claim from her any sum in excess of one-third of the sum of Rs. 15,000/-.

At the trial the following issues were settled by the learned 40 District Judge : —

No. 15.
 Judgment of
 the Supreme
 Court in
 Application in
 Revision
 30.10.58—
 Continued

- “ 1. Did the defendant and her husband agree and promise to pay the plaintiffs under and by virtue of deed No. 2496 dated 10th September, 1949, executed by V. A. Sathasivam a cash dowry of Rs. 30,000/- ?
2. Is the sum of Rs. 15,000/- still due and owing to the plaintiffs on this deed?
3. Was it agreed between the parties that when the balance cash dowry of Rs. 15,000/- was paid within a period of one year the dowry grantees undertake and agree to effect the transfer of the said lands in favour of the 1st and 2nd named dowry grantors?
4. Has the plaintiffs sold the said three lands referred to in the said deed No. 2496?
5. If issue 4 is answered in the affirmative can the plaintiffs maintain this action?
6. In any event is the claim of the plaintiffs prescribed? ”

The learned District Judge has answered issues Nos. 1, 2, 3, 4 and 5 in the affirmative and issue No. 6 in the negative, and entered judgment for the plaintiffs as prayed for with costs.

From that decision there was an appeal to this Court. but at the hearing of the appeal an objection was taken to it on the ground that the petition of appeal did not satisfy the requirements of section 755 of the Civil Procedure Code, and that the notice of appeal had not been given to the 1st plaintiff-respondent personally. The objection was upheld and the appeal was rejected, but in rejecting the appeal this Court made order that in view of the submissions made by learned counsel for the appellant, and in the interests of justice this Court should satisfy itself as to the legality of the order made by the learned District Judge. We stated that we were prepared to deal with the case in revision under section 753 of the Civil Procedure Code after the party dissatisfied with the judgment of the learned District Judge had lodged proper papers with the Registrar of this Court. The matter has now come up before us on the petition of the defendant whose appeal had been rejected.

The main point of appeal is whether the deed P1 contains a written promise to pay a balance sum of Rs. 15,000/- to the plaintiffs. The deed is in the following terms. After the formal paragraphs which describe the petitioner and the two others who were associated with her as the dowry grantors and the plaintiffs as the dowry grantees, it proceeds —

“ Whereas it was agreed that a cash dowry of Rs. 30,000/- and jewels worth Rs. 5,000/- should be given to the dowry grantee by the 1st and 2nd named grantors.

And whereas in consideration of the said agreement the dowry grantors do hereby give a cash Rs. 15,000/- and jewels to the value of Rs. 5,000/- to the dowry grantee.

And whereas the dowry grantee is entitled to by virtue of mudusom and inheritance from her late mother Maheswary the 1st and 2nd lands and an undivided $\frac{1}{4}$ share of the 3rd land and the remaining $\frac{1}{4}$ share of the 3rd land by the 1st named dowry grantor for his acquisition share, described in the schedule hereto and the same is being administered in case No. 102 of the Testamentary of the District Court of Jaffna.

10

And whereas it was agreed between the dowry grantors and the dowry grantee that when the balance cash dowry of Rs. 15,000/- was paid within a period of one year then the dowry grantee undertake and agree to effect a *transfer* of the said lands in favour of the 1st and 2nd named dowry grantors."

It was successfully contended by the plaintiffs before the learned trial judge that the last paragraph quoted above contains a promise to pay the balance cash dowry of Rs. 15,000/- within one year of the execution of the deed and that the plaintiffs were obliged to transfer the lands referred to in the schedule to the deed to the dowry grantors only upon payment of that sum within the year stipulated. We are unable to read the clause in question as containing a promise to pay Rs. 15,000/-. The document taken as a whole leaves no room for doubt that this clause refers to an oral agreement which was made before the execution of P1, for, no other document has been produced in this case.

20

It is contended that plaintiffs' right of action is barred by the provisions of section 7 of the Prescription Ordinance which provides that "no action shall be maintainable for the recovery of any movable property . . . or upon any unwritten promise, contract, bargain, or agreement, unless such action shall be commenced within three years from the time after the cause of action shall have arisen." This action was instituted on 8th August, 1955. P1 was executed on 10th September, 1949. The prior promise referred to therein must necessarily be before that date. In the absence of any evidence as to the date of the oral agreement assuming that it was made on the very day on which P1 was executed the cause of action arose on 11th September, 1950, and the action was statute barred after 11th September, 1953. On this ground alone the petitioner is entitled to succeed, and the judgment of the learned District Judge must be set aside.

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It was also argued by learned counsel for the petitioner that, even assuming that the action is not barred by section 7 of the Prescription Ordinance and even if the disputed clause contains a promise to pay Rs. 15,000/- in law, the plaintiffs are not entitled to enforce

No. 15.
Judgment of
the Supreme
Court in
Application in
Revision
30.10.58—
Continued

No. 15.
 Judgment of
 the Supreme
 Court in
 Application in
 Revision
 30.10.58—
Continued

specific performance of the promise without at the same time offering to perform their part of the obligation to transfer the lands referred to in PI. It is established in this case that the plaintiffs sold the three lands after the institution of this action but before its trial. We think that learned counsel's contention on this point too is entitled to succeed. The remedy of specific performance is an equitable remedy which is not granted by the courts as a matter of course. A person who seeks to enforce the performance of a contract by a party whom he alleges has defaulted must at the same time offer to perform any obligations which, according to the terms of the contract, fall to be performed by him. The plaintiffs having put themselves in a position in which they are unable to perform their part of the contract are not entitled to enforce the performance of the contract by the defendant. It was also argued by counsel for the petitioner that, even if the defendant was liable, she was not liable to the extent of Rs. 15,000/-. In view of the decision we have arrived at on the main points discussed above, it is unnecessary to deal with this aspect of the matter.

There remains one more question argued by learned counsel for the respondent in regard to the powers of this Court to deal with this case under the provisions of section 753 of the Civil Procedure Code. That section reads as follows : —

“ The Supreme Court may call for and examine the record of any case, whether already tried or pending trial, in any Court, for the purpose of satisfying itself as to the legality or propriety of any judgment or order passed therein, or as to the regularity of the proceedings of such Court, and may upon revision of the case so brought before it pass any judgment or make any order which it might have made had the case been brought before it in due course of appeal instead of by way of revision.”

30

In our opinion the section confers a wide power which enables this Court to make by virtue thereof any order which it might have had the case been brought before it in due course of appeal. In this case it was brought to the notice of this Court that an illegal order had been made and that the person affected by that order was prevented from having it corrected because she had failed to comply with the requirements of the Code in regard to the preliminary steps prescribed for the purpose of lodging an appeal to this Court. It has been said over and over again that a discretion vested in a Court by Statute should not be limited or restricted by laying down rules within which alone the discretion is to be exercised or by placing greater fetters upon the Court than the legislature has thought fit to impose.

We are unable to accede to the contention that section 753 of the Civil Procedure Code does not enable this Court to grant relief in

bo

a case such as this. Whether or not this Court should exercise its powers under that section would depend on the circumstances of each case. We accordingly, for the reasons stated above, set aside the judgment of the learned trial Judge and make order dismissing the plaintiffs' action with costs. The petitioner is entitled to the costs of this application.

No. 15
Judgment of
the Supreme
Court in
Application in
Revision
30.10.58—
Continued

(Sgd.) HEMA H. BASNAYAKE,
Chief Justice.

PULLE, J.:
10 I agree.

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

No. 16.

Decree of the Supreme Court in Application in Revision

S.C. Application No. 134.

No. 16.
Decree of the
Supreme Court
in Application
in Revision
30.10.58.

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

20 In the matter of an application for revision of proceed-
ings had in this case.

Mrs. Annaledchumy Sellathurai of 59, Wall Street,
Colombo.....*Defendant-Petitioner*
against

1. Mrs. K. S. Rajah of 374, Biyagama Road, Kelaniya,
presently of Sanchiaratchie's Garden, Hulftsdorp,
Colombo.
2. K. Sundara Rajah, Advocate, Law Library, Colombo
.....*Plaintiffs-Respondents.*

30 Action No. 36064/M.

District Court of Colombo

This cause coming on for hearing and determination on th 28th,
29th and 30th days of October, 1958, before the Hon. H. H. Basnayake,
Q.C., Chief Justice, and the Hon. M. F. S. Pulle, Q.C., Puisne Justice
of this Court, in the presence of Counsel for the defendant-petitioner,
1st plaintiff-respondent and 2nd plaintiff-respondent.

It is considered and adjudged that the judgment of the Trial
Judge be and the same is hereby set aside and it is ordered that the
plaintiffs' action be dismissed with costs.

No. 16.
Decree of the
Supreme Court
in Application
in Revision
30.10.58—
Continued.

And it is further decreed that the respondents do pay to the petitioner her costs of this application.

(Vide copy of order attached.)

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice, at Colombo, the 4th day of December, in the year One thousand Nine hundred and Fifty-eight, and of Our Reign the Seventh.

(Sgd.) B. F. PERERA,
Deputy Registrar, S.C.

No. 17.
Application for
Conditional
Leave to
Appeal to the
Privy Council
21.11.58.

No. 17.

**Application for Conditional Leave to Appeal to the
Privy Council**

10

IN THE SUPREME COURT OF THE DOMINION OF CEYLON

In the matter of an Application for conditional leave to appeal to Her Majesty the Queen in Council.

S.C. Revision
Application No. 134
of 1958
S.C. 309(F) of 1957
D.C. Colombo
No. 36064/M.

1. Mrs. K. S. Rajah of No. 374, Biyagama Road, Kelaniya, presently of Main Road, Mavidapuram, Tellipallai.
2. K. S. Rajah of No. 374, Biyagama Road, Kelaniya, presently of Main Road, Mavidapuram, Tellipallai..... *Plaintiffs.*

vs.

Mrs. Annaledchumy Sellathurai of No. 59, Wall Street, Colombo..... *Defendant.*

and

1. Mrs. K. S. Rajah of No. 374, Biyagama Road, Kelaniya, presently of Main Road, Mavidapuram, Tellipallai.
2. K. S. Rajah of No. 374, Biyagama Road, Kelaniya, presently of Main Road, Mavidapuram, Tellipallai..... *Plaintiffs- Respondents- Appellants*

vs.

Mrs. Annaledchumy Sellathurai of No. 59, Wall Street, Colombo..... *Defendant- Petitioner- Respondent.*

To

The Honourable The Chief Justice and the other Judges of the Honourable The Supreme Court of the Dominion of Ceylon.

On this 21st day of November, 1958.

The humble petition of Mrs. K. S. Rajah and K. S. Rajah, the plaintiffs-respondents-appellants abovenamed, appearing by their Proctor, A. M. M. Thassim, sheweth as follows :—

1. That feeling aggrieved by the judgment and decree of the Honourable The Supreme Court pronounced on the 30th day of October, 1958, in the above matter the plaintiffs-respondents-appellants are desirous of appealing therefrom to Her Majesty The Queen in Council.

10 2. That the said judgment is a final judgment and the matter in dispute in the appeal is of the value of over Rupees Five Thousand (Rs. 5,000/-).

3. That notice of the intended application for leave to appeal as required by Rule 2 of the Schedule to the Privy Council Appeals Ordinance No. 31 of 1909 Chapter 85 of the New Legislative Enactments was duly given to the defendant-petitioner-respondent abovenamed on the 6th day of November, 1958, by registered, by ordinary Post under Certificate of Posting and by telegram. Further the petitioner caused a copy of such notice to be served on the defendant-
20 petitioner-respondent personally on the 7th day of November, 1958, by A. M. M. Thassim, Proctor, Nos. 258 and 260. Hulftsdorp Street, Colombo.

Wherefore the plaintiffs-respondents-petitioners pray for Conditional Leave to appeal against the said judgment and decree of this Court dated 30th October, 1958. to Her Majesty the Queen in Council.

(Sgd.) A. M. M. THASSIM,

Proctor for Plaintiffs-Respondents-Petitioners.

No. 17.
Application for
Conditional
Leave to
Appeal to the
Privy Council
21.11.58—
Continued.

No. 18.

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

30

S.C. Application No. 476.

**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 dated 21st November, 1958, for Conditional Leave to appeal to Her Majesty the Queen in Council by the Plaintiffs-Appellants against the decree dated 30th October, 1958.

No. 18.
Decree granting
Conditional
Leave to
Appeal to the
Privy Council
22.1.59.

No. 18.
Decree granting
Conditional
Leave to
Appeal to the
Privy Council
22.1.59—
Continued

1. Mrs. K. S. Rajah,
2. K. S. Rajah, both of No. 374, Biyagama Road,
Kelaniya, presently of Main Road, Mavidda-
puram, Tellipallai.....
..... *Plaintiffs-Respondents-Appellants*
against
Mrs. Annaledchumy Sellathurai of No. 59, Wall Street,
Colombo..... *Defendant-Petitioner-Respondent.*

Action No. 36064/M (S.C. Application No. 134 and S.C. 309 F.)

District Court of Colombo 10

This cause coming on for hearing and determination on the 22nd day of January, 1959, before the Hon. H. W. R. Weerasooriya and the Hon. K. D. de Silva, Puisne Justices of this Court, in the presence of Counsel for the Petitioners.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicants 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 Rs. 300/- in respect of fees mentioned in Section 4 (b) and (c) of the Appeals (Privy Council) Ordinance (Chapter 85).

Provided that the applicants may apply in writing to the said Registrar stating whether they intend 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 29th day of January, in the year One thousand Nine hundred and Fifty-nine and of Our Reign the Seventh.

(Sgd.) B. F. PERERA,
Deputy Registrar, S.C.

No. 19.

Application for Final Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE DOMINION OF CEYLON

No. 19.
Application for
Final Leave to
Appeal to the
Privy Council
18.2.59

In the matter of an application for Final Leave to appeal to Her Majesty The Queen in Council from the judgment of this Court dated the 30th day of October, 1958, in S.C. Revision application No. 134 of 1958, S.C. No. 309 (F) of 1957 D.C. Colombo No. 36064/M.

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S.C. Application
No. 476 (1958)
for leave to
appeal to Her
Majesty the
Queen in Council.

1. Mrs. K. S. Rajah of No. 374, Biyagama Road, Kelaniya, presently of Main Road, Maviddapuram, Tellipallai.
 2. K. S. Rajah of No. 374, Biyagama Road, Kelaniya, presently of Main Road, Maviddapuram, Tellipallai.....*Plaintiffs*
- vs.*
- Mrs. Annaledchumy Sellathurai of No. 59, Wall Street, Colombo.....*Defendant.*

and

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1. Mrs. K. S. Rajah of No. 374, Biyagama Road, Kelaniya, presently of Main Road, Maviddapuram, Tellipallai.
 2. K. S. Rajah of No. 374, Biyagama Road, Kelaniya, presently of Main Road, Maviddapuram, Tellipallai.....
.....*Plaintiffs-Respondents-Appellants*
- vs.*

Mrs. Annaledchumy Sellathurai of No. 59, Wall Street, Colombo.....
.....*Defendant-Petitioner-Respondent.*

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This 18th day of February, 1959.

The humble petition of Mrs. K. S. Rajah and K. S. Rajah, showeth as follows : —

1. That the appellants on the 22nd day of January, 1959, 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 30th day of October, 1958.

No. 19.
Application for
Final Leave to
Appeal to the
Privy Council
18.2.59—
Continued

2. That the appellants have in compliance with the conditions on which such leave was granted

(a) Deposited a sum of Rs. 3,000/- at the General Treasury and hypothecated same to and with the Registrar of the Supreme Court by bond dated the 14th day of February, 1959.

(b) Deposited a sum of Rs. 300/- at the General Treasury in terms of Section 8 (a) of the Appellate Procedure (Privy Council) order 1921 in respect of fees mentioned in Section 4(b) and (c) of the Privy Council appeals Ordinance 10 Chapter 85 of the New Legislative Enactments.

3. That the appellants have given due notice of this application by registered post as required under Rule 22 of the Schedule to the Privy Council's Ordinance, in the following terms :—

“ Take notice that the appellants, having already complied with the conditions under which Conditional Leave was granted, in this case, will, on the 18th day of February, 1959, apply to the Supreme Court for final leave to appeal to Her Majesty the Queen in Council from the judgment of the Supreme Court dated 30.10.1958 in S.C. Revision application No. 134 of 1958, 20 S.C. No. 309 (F) of 1957, D.C. Colombo case No. 36064/M.”

in proof of which the appellants produce herewith registered posted article receipt No. 2026 dated 14th February, 1959, sent from Colombo Courts Post Office.

Wherefore the appellants pray that they be granted final leave to appeal against the said judgment of this Court dated the 30th day of October, 1958, to Her Majesty the Queen in Council.

(Sgd.) A. M. M. THASSIM,
Proctor for Plaintiffs- Respondents-Appellants.

No. 20.

Decree Granting Final Leave to Appeal to the Privy Council

S.C. Application No. 103.

No. 20.
Decree granting
Final Leave to
Appeal to the
Privy Council
19.3.59

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

10 In the matter of an application dated 18th February,
1959, for Final Leave to appeal to Her Majesty the
Queen in Council by the Plaintiffs-Appellants against
the decree dated 30th October, 1958.

1. Mrs. K. S. Rajah.
2. K. S. Rajah, both of No. 374, Biyagama Road,
Kelaniya, presently of Main Road, Maviddapuram,
Tellipallai..... *Plaintiffs- Respondents-Appellants*
against
Mrs. Annaledchumy Sellathurai of No. 59, Wall Street,
Colombo..... *Defendant-Petitioner- Respondent.*

Action No. 36064/M (S.C. Application No. 134 and S.C. 309 F.)

20 District Court of Colombo

This cause coming on for hearing and determination on the 19th
day of March, 1959, before the Hon. K. D. de Silva and the Hon.
H. N. G. Fernando, Puisne Justices of this Court, in the presence of
Counsel for the petitioners.

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

30 Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice, at
Colombo, the 25th day of March, in the year One thousand Nine
hundred and Fifty-nine and of Our Reign the Eighth.

(Sgd.) B. F. PERERA,
Deputy Registrar, S.C.

PART II

EXHIBITS

PART II

P1.

Deed No. 2496

P1.
Dowry and
Agreement
Deed No. 2496
10.9.49

Dowry and Agreement.

Lands 3.

Cash Rs. 15,000/-.

Agreement for Rs. 15,000/-.

Jewels Rs. 5,000/-.

Seal

10 Land Registry.

17874.

26 Sept., 1949.

Jaffna.

No. 2496

10.9.49

To all to whom these presents shall come we Nallathamby Sellathurai and wife Annaldechumy and Sellammah widow of Suppiah all of Tinnevely North, Jaffna (hereinafter called and referred to as the Dowry Grantors) send Greetings :—

20 Whereas a marriage had been arranged between Karthigesu Sunthera Rajah and Leelavathy daughter of Nallathamby Sellathurai of Tinnevely (hereinafter called and referred to as the Dowry grantee).

Whereas it was agreed that a cash dowry of Rs. 30,000/- and Jewels worth of Rs. 5,000/- should be given to the dowry grantee by the 1st and 2nd named Dowry grantors.

And whereas in consideration of the said agreement the dowry grantors do hereby give a Cash Rs. 15,000/- and Jewels to the value of Rs. 5,000/- to the dowry grantee.

30 And whereas the dowry grantee is entitled to by virtue of mudusom and inheritance from her late mother Maheswary the 1st and 2nd lands and an undivided $\frac{1}{4}$ share of the 3rd land and the remaining $\frac{3}{4}$ Share of the 3rd land by the 1st named dowry grantor

P1.
Dowry and
Agreement
Deed No. 2496
10.9.49—
Continued

for his acquisition share, described in the schedule hereto and the same is being administered in case No. 102 of the Testamentary of the District Court of Jaffna.

And whereas it was agreed between the dowry grantors and the dowry grantee that when the balance cash dowry of Rupees Fifteen Thousand (Rs. 15,000/-) was paid within a period of one year then the dowry grantee undertake and agree to effect a transfer of the said lands in favour of the 1st and 2nd named dowry grantors.

And whereas Karthigesu Sunthera Rajah and wife Leelavathy are willing to accept the said dowry. 10

Now know all men by these presents that we Nallathamby Sellathurai and wife Annaledchumy of Tinnevely for and in consideration of the natural love and affection which we have and bear unto our daughter Leelavathy and for and in consideration of the marriage of my said daughter Leelavathy with the said Sunthera Rajah do hereby by way of dowry give, convey, make over, transfer and assign, unto the said Leelavathy wife of Sunthera Rajah, her heirs, executors, administrators and assigns the said cash dowry and jewels.

To have and to hold the same unto the said dowry grantee and her aforewritten for ever. 20

And now know all men by these presents that we the said Sunthera Rajah and wife Leelavathy do hereby thankfully accept this dowry.

In witness whereof we the said Dowry grantors and the dowry grantee do hereunto and to two others of the same tenor and dates as these presents set our hands at Tinnevely this 10th day of September, One thousand Nine hundred and Forty-nine.

The Schedule referred to above

1. An undivided half share of all that piece of land called "Arumakkaladdy" situated at Tinnevely in the parish of Nallore in the District of Jaffna, Valikamam North Jaffna District Northern 30 Province in extent 1 lm. v.c. and 14 kls. with houses and kitchen and cultivated plantations and bounded on the East by Kanagasabai Kandiah, North by Road, West by Karthilingam Thillampalam and on the South by lane and Achikkuddy wife of Kailayer and others, inclusive of share of well lying on the Southern boundary land with way and watercourse.

All that piece of land situated at Kopay South in the Parish of Kopay Valikamam East aforesaid called "Kunchanadaipum" Virathamudithanum in extent 3 and 15/16 lms. v.c. cultivated and spontaneous plantations and bounded on the North by Appukkuddy 40 Ariacuddy and wife Valliachy, East by Road, West by Visuvalingam Thambipillai and on the South by Arunasalem Thambiah and wife

Suntheram, inclusive of share of well lying in the Southern boundary land with way and watercourse belonging to the Northern boundary land.

3. An undivided half share of all that piece of land called "Manthappai" situated at Pallai in Tellipallai Parish Valikamam North aforesaid in extent 6 lms. v.c. with unfinished building and cultivated and spontaneous plantations and bounded on the East and South by Parupathy wife of Periathamby, North by lane West by Revathyppillai wife of Vallipuram and Navamany wife of Soma-
 10 sundaram. The unfinished building belongs to this share absolutely inclusive of share of water in the well lying in the South-East with way and watercourse.

Signed in the presence of us.

Witnesses :

1. (Sgd.) S. KANDIAH
2. (Sgd.) M. THAMBIAH

1. (Sgd.) N. SELLATHURAI
2. (Sgd.) ANNALEDCHUMY
3. (Sgd.) S. CHELLAMMAH
4. (Sgd.) K. S. RAJAH
5. (Sgd.) R. LEELAWATHY

(Sgd.) A. V. SATHASIVAM,
Notary Public.

20 I, Arumugam Vallipuram Sathasivam of Kankesanturai, Jaffna, Notary Public do hereby certify and attest that the foregoing instrument having been read over and explained by me the said Notary to the Dowry Grantors Nallathamby Sellathurai and wife Annaledchumy, and Sellammah, widow of Suppiah all of Tinnevely North and the Dowry Grantees Karthigesu Suntherarajah and wife Leelawathy of Tinnevely who are known to me in the presence of Suppiah Kandiah of Maviddapuram and Mailvaganam Thambiah of Tinnevely, the
 30 subscribing witnesses hereto both of whom are also known to me, the same was signed by the said executants and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Tinnevely this Tenth day of September, 1949.

I further certify and attest that the duplicate of this instrument bears stamps to the value of Rs. 212/ and the original bears Re. 1/-.

And I further certify and attest that two cheques bearing Nos. 07/34-23088 and 07/34-23087 for Rs. 15,000/ were issued on the Imperial Bank of India.

(Sgd.) A. V. SATHASIVAM,
Notary Public.

40 Date of attestation.
 10.9.49.

P1.
 Dowry and
 Agreement
 Deed No. 2496
 10.9.49—
Continued