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1962
IN THE JUDICIAL COMMITTEE OF THE PRIVY
COUNCIL

No.60 of 1960

ON APPEAL
FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA
THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N :-

A.R.P.L. PAJANIAPPA CHETTIAR Appellant

- and -

P.L.A.R. ARUNSALEM CHETTIAR Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
29 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

68184

GRAHAM PAGE & CO.,
41, Whitehall,
London, S.W.1.

Solicitors for the Appellant.

LAWRANCE, MESSER & CO.,
16, Coleman Street,
London, E.C.2.

Solicitors for the Respondent.

ON APPEAL
FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA
THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N :-

A.R.P.L. PALANIAPPA CHETTIAR Appellant
- and -
P.L.A.R. ARUNASALAM CHETTIAR Respondent

RECORD OF PROCEEDINGS
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IN THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL

No.60 of 1960

ON APPEAL
FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA
THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N :-

A.R.P.L. PALANIAPPA CHETTIAR Appellant
- and -
P.L.A.R. ARUNASALEM CHETTIAR Respondent

10

RECORD OF PROCEEDINGS

No. 1.

STATEMENT OF PLAINT

In the High
Court.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT AT SEREMBAN
Civil Suit No.62 of 1950

No. 1.

Statement of
Plaint.

P.L.A.R. Arunasalam Chettiar of
No.13, Main Street, Port Dickson Plaintiff

21st November,
1950.

Vs:

20

A.R.P.L.Palaniappa Chettiar son
of Arunasalam Chettiar of
Kondanoor, Hamnad District, S.India Defendant

STATEMENT OF PLAINT

The above-named Plaintiff states as follows :-

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1. The Plaintiff is a land owner residing at No. 13, Main Street, Port Dickson and the Defendant is carrying on business in Kondanoor, Ramnad District, South India.

2. That prior to 27th February 1935 the Plaintiff was the registered owner of the land held under Certificate of Title bearing No.4246 lot No.926 in extent 40 acres 2 roods and 30 poles, situated in the Mukim of Si Rusa in the State of Negri Sembilan. The said land is cultivated with rubber.

3. On 27th February 1935 the Plaintiff transferred

In the High
Court.

No. 1.

Statement of
Plaint.

21st November,
1950

- continued.

the said land to his son the Defendant on trust that the Defendant should hold the said land in trust for the Plaintiff. No trust Deed was executed in view of the relationship between the Plaintiff and the Defendant and no consideration was paid for the said transfer.

4. The title to the said land has always been in the possession of the Plaintiff, the Plaintiff has been enjoying the income from the said land and has been paying all quit rents due in respect of the said land. 10

5. That on the 4th day of October 1950 the Plaintiff made arrangement to sell the said land to one Toh See Toh of Port Dickson for a sum of \$16,000/- and received an advance of \$2,000/- undertaking to complete the sale within 40 days from the said date.

6. Thereafter on the same date viz: 4th October 1950 the Plaintiff wrote a letter to the Defendant requesting him to execute in favour of the Plaintiff a valid and proper Power of Attorney enabling him to complete the said sale. 20

A copy of the said letter is hereto attached and marked "A".

7. That the Defendant sent a letter dated 14th October 1950 to the Plaintiff refusing to comply with the Plaintiff's request. A copy of certified Translation of the letter is hereto attached and marked "B".

8. The said land was merely registered in the name of the Defendant who had no beneficial interest in the said land. The beneficial interest in the said land vested always in the Plaintiff. 30

The Plaintiff prays judgment :-

(a) For a declaration that Defendant is a Trustee of the said land holding the same in trust for the Plaintiff.

(b) That Defendant be ordered to execute a valid and registrable transfer of the said land in favour of the Plaintiff on a day to be named by this Honourable Court. 40

(c) In the alternative should Defendant fail to transfer the said land to the Plaintiff on or before the day mentioned above the Registrar of this Court be ordered to execute the necessary transfer.

In the High Court.

No. 1.

(d) Costs.

Statement of Plaintiff.

(e) For such further order as to this Honourable Court may seem meet.

21st November, 1950

- continued.

10 (Sd.) E. Joseph
Solicitor for Plaintiff.

(Sd.) in Tamil
Plaintiff.

I, P.L.A.R. Arunasalam Chettiar the above-named Plaintiff do hereby declare that the above statement is true to my knowledge except as to matters stated on information and belief and as to those matters I believe it to be true.

DATED this 21st day of November 1950.

(Sd.) in Tamil
Plaintiff.

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No.1 "A"
ANNEXURE "A"
BEING LETTER, P.L.A.R. ARUNASALAM CHETTIAR
TO A.R.P.L. PALANIAPPA CHETTIAR

Annexure "A"
being Letter,
P.L.A.R.
Arunasalam
Chettiar to
A.R.P.L.
Palaniappa
Chettiar.

This is the document marked "A" referred to in the Plaint of P.L.A.R. Arunasalam Chettiar.

(Sd.) in Tamil
Plaintiff

4th October,
1950.

P.L.A.R. Arunasalam Chettiar
Main Street,
Port Dickson
4th October, 1950

30

Mr. A.R.P.L. Palaniappa Chettiar,
s/o Arunasalam Chettiar
Kondanoor,
Ramanad District
South India.

Dear Sir,

This is to inform you that I have made an

In the High Court.

No.1 "A"

Statement of Plaintiff.

Annexure "A" being Letter, P.L.A.R. Arunasalam Chettiar to A.R.P.L. Palaniappa Chettiar.

4th October, 1950
- continued.

agreement and received part of purchase price to sell the land held under C.T.No.4246 lot No.926 Mukim of Si Rusa in the extent of 40 acres 2 roods 30 poles, which I kept as trust in your name.

Will you therefore sign the enclosed Power of Attorney before a Notary Public at your place and return same to me.

I also enclose herewith a copy of the agreement I made to sell the said land for your perusal.

Send the power without delay as otherwise I shall be liable to pay damages to the purchaser and subsequently I will have a (sic - ? to) file a claim against you for the loss suffered by me by not selling the land in question in a favourable time, due to your negligence. 10

Besides there is a card in your possession in connection with War Damage Claim in respect of the above said property issued by the War Damage Claim Office, Federation of Malaya. Will you send me back also the said card without delay. 20

Yours faithfully,
(Sd.) P.L.A.R.Arunasalam Chettiar
4.10.50.

No.1 "B"
Annexure "B" being Letter, A.R.P.L. Palaniappa Chettiar to P.L.A.R. Arunasalam Chettiar.

14th October, 1950.

No. 1 "B"
ANNEXURE "B"
BEING LETTER, A.R.P.L. PALANIAPPA CHETTIAR
TO P.L.A.R. ARUNASALAM CHETTIAR
14th OCTOBER, 1950

This is the document marked "B" referred to in the Plaintiff of P.L.A.R.Arunasalam Chettiar 30

(Sd.) in Tamil
Plaintiff

Au.

Kandanur
AR.PL.

14.10.50.

Port Dickson
PL.A.R.

AR.PL.Palaniappa writes to Mr.PL.AR.Arunasalam Chettiar. Received your letter dated 4.10.50. You know legal proceedings are going on between us regarding partition of our properties. You have raised objections. Cheated me, prevented me from acquiring my rightful claim and in conformity with these 40

you say you have made arrangements to dispose of the properties here. Your letter to me suggests that I should consent to your evil intentions. I refuse to send you Power and further I warn you that you will be held responsible for the loss incurred by your unjust actions.

In the High Court.

No.1 "B"

Statement of Plaintiff.

Sd: AR.PL.Palaniappa Chetty
14.10.50.

Annexure "B" being Letter, A.R.P.L. Palaniappa Chettiar to P.L.A.R. Arunasalam Chettiar.

14th October, 1950
- continued.

Translated by me :-

10 Sd. R. Ramaswami Iyer
14.11.50
Tamil Interpreter
Supreme Court,
Seremban.

No. 2.

WRITTEN STATEMENT OF DEFENDANT

The Defendant above-named states as follows :-

1. The Defendant does not deny the statement in paragraph 1 of the Plaintiff.
- 20 2. The Defendant admits that prior to 27th February 1935 the land held under Certificate of Title No.4246 and referred to in Paragraph 2 of the Plaintiff, stood registered in the name of the Plaintiff but states that he held the same in trust for the Hindu Joint Family known as RM.P.K.P.AR. in which the Plaintiff, the Defendant and one Lakshmanan Chettiar were co-parceners.
- 30 3. The Defendant denies that the Plaintiff transferred the said land to the Defendant on trust as alleged in paragraph 3 of the Plaintiff but states that he purchased the land from the Plaintiff for the sum of \$7,000-00.
4. The Defendant denies that the Plaintiff enjoyed the income from the said land as stated in paragraph 4 of the Plaintiff but states that the Plaintiff being the father of the Defendant was entrusted

No.2.

Written Statement of Defendant.

3rd April, 1951.

In the High Court.

No. 2.

Written Statement of Defendant.

3rd April, 1951.

- continued.

with the management of the said land. The Plaintiff is liable to account to the Defendant for the income from the estate.

5. With regard to paragraphs 5, 6 and 7 of the Plaintiff, the Defendant admits that the Plaintiff asked the Defendant for a Power of Attorney to enable him to transfer the land but the Defendant refused to authorise him to sell the land.

6. The Defendant denies the allegations in paragraph 8 of the Plaintiff and states that he is not entitled to the reliefs claimed in the Plaintiff.

10

The Defendant prays that the suit be dismissed with costs.

COUNTERCLAIM

The Defendant repeats his statements above and claims that the Plaintiff is liable to account to the Defendant for the income collected by the Plaintiff from the said land from the 27th day of February 1935 to this date.

The Defendant prays that the Court make,

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- (1) an Order that the Plaintiff render an account of the profits from the land from 27th day of February 1935 and that the Plaintiff pay to the Defendant any sum found due on taking such account.
- (2) an order for further or other relief to the Defendant, and
- (3) an order that the Plaintiff pay the costs.

(Sd.) M.N.Cumarasami
Defendant's Solicitor.

(Sd.) A.R.P.L.Palaniappa
Chettiar
Defendant.

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I, A.R.P.L.Palaniappa Chettiar son of Arunasalam Chettiar the Defendant above named, hereby declare that the above statement is true to my knowledge except as to matters stated on information and belief and as to those matters I believe it to be true.

DATED this 3rd day of April, 1951.

(Sd.) A.R.P.L.Palaniappa Chettiar,
Signature.

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No. 3.

In the High
CourtREPLY AND DEFENCE TO COUNTERCLAIM

No. 3.

The Plaintiff above named states as follows :-

Reply and
Defence to
Counterclaim.

1. The Plaintiff joins issue with the Defendant on his Defence.

3rd April, 1951.

2. And in further answer to paragraph 2 thereof the Plaintiff denies that prior to the 27th February 1935 or at any time he held the land held under Certificate of Title No.4246 in trust for a Hindu Joint Family known as RM.P.K.P.AR.

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3. And in further answer to paragraph 3 thereof the Plaintiff denies that the Defendant purchased the said land from the Plaintiff for the sum of ₹7,000-00.

4. And in further answer to paragraph 4 thereof the Plaintiff denies that he managed the said land for the Defendant and that he is liable to account for the income therefrom

5. As to the Counterclaim the Plaintiff repeats his denial that he is liable to account for the income collected by him from the said land since the 27th February 1937.

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(Sd.) Shearn Delamore & Co.
Plaintiff's Solicitors.(Sd.) in Tamil
Plaintiff's signature

I, P.L.A.R. Arunasalam Chettiar the above-named Plaintiff do hereby declare that the above statement is true to my knowledge except as to matters stated on information and belief and as to those matters I believe it to be true.

DATED this 30th day of April, 1951.

(Sd.) in Tamil
Signature.

In the High Court

No. 4.

NOTES OF SMITH, J., on APPLICATION FOR ADJOURNMENT

No. 4.

Monday, 30th June, 1958

Before Smith, J.

Notes of Smith, J., on Application for Adjournment.

Rawson for Plaintiff.
Cumarasami for Defendant.

30th June, 1958.

Cumarasami applies for adjournment.

Ramani is ill. I was Solicitor. No harm to Plaintiff. Mr. Ramani on record from 1953. Ramani ill beginning May. Fixed 29th April.

Rawson: Instructed to oppose. No sudden illness. 10
Objection known. Plaintiff here on visit.

Application refused.

Mr. Cumarasami asks leave to withdraw from case. I say I cannot grant leave but if he wishes to leave Court he is at liberty.

Defendant in person.

Defendant applies:

I apply for postponement as Counsel is ill. I have known for 2 weeks.

Application refused. 20

Defendant states he does not wish to appear. I warn him of possible result.

Adjourn at 10.25 to 10.40 a.m.

Sd. B.G. Smith
Judge.

Resume 10.45 a.m.

Defendant again applies for adjournment. States not his mistake.

Defendant leaves Court.

Rawson: 30

Plaintiff claims Defendant holds on trust. Bought 1934. Transfer 1935 for no consideration.

Resulting trust. Defence Hindu Joint Family: sold for ~~₹~~7,000.

In the High Court

Rubber Regulation was in force. This allowed these proceedings to be regarded as a small holding.

No. 4.

Resulting trust.

Notes of Smith, J., on Application for Adjournment.

30th June, 1958
- continued.

No. 5.

Plaintiff's Evidence.

EVIDENCE OF P.L.A.R. ARUNASALAM CHETTIAR

No. 5.

10 P.W.1. P.L.A.R. Arunasalam Chettiar: affirmed states in Tamil.

Evidence of P.L.A.R. Arunasalam Chettiar.

30th June, 1958.
Ex.P1.

I live at P.D. I am Plaintiff.

Defendant is son by my first wife.

In 1934 at an auction I bought some land at P.D. I paid ~~₹~~8,081.00. I produce my ledger supporting it, Ex.P1.

I kept estate in my name for 6-7 months.

I transferred it to my son because my holding of rubber would become about 139 acres and exceed 100 acres.

20 My son did not pay ~~₹~~7,000. He paid nothing.

I executed transfer to my son while we were both in India. It was registered in Malaya by my agent. I paid all the costs, Ex.P2.

Ex.P2.

I have received all income up to today. I paid wages and assessment. My son has never paid any part of assessment.

30 My son has received no part of income. Some of my ledgers touching the income are in Court, Ex. P3. Others are filed in India in a civil suit between us.

Ex.P3.

This was not joint property, it was self-acquired property. All property at P.D. is subject of a suit in India.

(Rawson states that parties have agreed to accept decision of Indian Court on other properties).

In the High Court

Plaintiff's Evidence.

No. 5.

Evidence of P.L.A.R. Arunasalam Chettiar.

30th June, 1958
- continued.

Indian Court held that firm property in P.D. was not joint family property.

In 1950 I agreed to sell property to Mr. Toh See Toh. My son was in India. I asked him to complete transfer. He sent me no P/A. Copy correspondence appears on statement of Plaintiff. I had to institute these proceedings.

Ex. P4. P4. I produce true copy of transfer to son, Ex.

Ex. P5. I produce certificate of title, Ex.P5.

P5. I had no trust deed because it was my own son. My son was 22 y.o. He was fully aware of reason. He knew he held in trust.

My agent was M.S.Perumal (recog.). He is here today.

By Court: My son did not pay me \$7,000. I was under impression I had to put amount in: it is merely mentioned for sake of registration.

Returns were not called for in respect of the land.

Benefit was that I did not send the return.

P.L.A.R. is my firm. I am sole proprietor.

Account shews that my son was trustee. Had I received \$7,000 it would appear in accounts.

I had no intention of making a present to my son. Sole object was to avoid having to disclose that I held more than 100 acres of rubber land.

No. 6.

No. 6.

Evidence of M.S.Perumal.

30th June, 1958.

EVIDENCE OF M.S. PERUMAL

P.W.2: M.S.Perumal: affirmed states in Tamil.

I live at P.D. I know Plaintiff. Before last man I was his agent. There was a firm P.L.A.R.

Plaintiff was sole member. I purchased 40 acres rubber land. This ledger, day book, of P.L.A.R. shews it was bought at auction and later transferred to A.R.P.L. Palaniappa Chettiar. I was agent. Firm had 99 acres. If firm had over 100 acres I had to go to Controller instead of to the

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Land Office to get coupon for rubber production. Easier to deal with land office. I informed Plaintiff. He told me to prepare a memorandum of transfer mentioning \$7,000. I do not know why \$7,000 was put in. He directed me to do so. I had transfer stamped. I do not know if they would accept without transfer sum.

I do not know procedure if no value.

10 I do not know if \$7,000 was paid. I was under impression land still belonged to Plaintiff. I dealt with it on that basis. In 1938 Defendant came to P.D. He made no complaint as to way this land was dealt with.

By the Court: I do not know if small estates were allowed to tap more than estates over 100 acres. I thought there would be more correspondence with larger estates.

Rawson: Case proved.

20 No defence of gift.
Either purchased or joint family.
Estoppel not pleaded.
S.92(f).

C.A.V.

Adjourn to 10 a.m.

No. 7.

NOTES OF JUDGMENT.

Tuesday, 1st July, 1958

For judgment.

Rawson for Plaintiff.

30 Defendant absent.

I deliver judgment, also reasons for not allowing adjournment.

I do further order that the caveat be deemed to be withdrawn on presentation of the transfer in favour of the Plaintiff.

I do further order that Registrar of Titles,

In the High Court

Plaintiff's Evidence.

No. 6.

Evidence of M.S.Perumal.

30th June, 1958
- continued.

No. 7.

Notes of Judgment.

1st July, 1958.

In the High Court

Plaintiff's Evidence.

No. 7.

Notes of Judgment.

1st July, 1958
- continued.

N.S. do make and endorse all such entries and memorials on the register and issue documents of title to the said land as shall be necessary or expedient to give effect to this judgment.

Books of account Pl, 2, 3 released to Plaintiff on his undertaking to produce forthwith at any time before 30th July and to produce forthwith at any time until appeal is heard if appeal is filed before 30th July and in meantime not to take them out of jurisdiction.

B.G.Smith
JUDGE.

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No. 8.

Grounds of decision on Application for Postponement of Trial.

1st July, 1958.

No. 8.

GROUND'S OF DECISION ON APPLICATION FOR POSTPONEMENT OF TRIAL

This case was set down for hearing on 30th June, 1958, by a letter dated 29th April, 1958, from the Registrar to the parties' Solicitors.

Since early 1953 the Defendant had retained Mr. Ramani as senior counsel to appear and argue the case at the trial. About the beginning of May, Mr. Ramani was taken ill and on the day of the trial was still ill. On 23rd June, 1958, the Defendant's Solicitor wrote to the Plaintiff's Solicitor informing them that an application would be made to the Court for postponement on the day of hearing, noting that the application would be opposed.

20

It is clear from the Defendant's Solicitor's letter that he had been in touch with the Plaintiff's Solicitor before 23rd June, 1958, concerning an adjournment but no application of any kind had been made to the Court. When the matter came before me it was submitted by the Plaintiff's Solicitors that this matter had been ready for trial since 1953 and that the Plaintiff wished the matter to proceed. Counsel also pointed out that the illness of Mr. Ramani had at all times been known to the Defendant's Solicitor so that there had been ample time to instruct other senior Counsel.

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In view of the Defendant's delay in not indicating that he desired an adjournment until one

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10 week before the trial and because the Defendant or his Solicitor must have known at least a month ago that Mr. Ramani might not be able to appear on 30th June, 1958, I declined to allow any further adjournment of this case. I gave as an additional reason the fact that Mr. Ramani's was not the only advice which the Defendant was able to draw upon in this suit. I therefore refused the application and allowed the trial to continue. At this stage Mr. Cumarasami asked my leave to withdraw from the case. I stated that I had no power to give him leave to withdraw but that if he wished to leave the Court he was at liberty to do so.

20 The Defendant personally then made a further application for adjournment which I refused. Mr. Cumarasami's reasons for withdrawing from the case I do not know. I did not consider that the Defendant was in the position of a person who had suddenly through no fault of his own been deprived of the services of his legal adviser.

The Defendant stated that he wished to take no further part in the proceedings and left the Court. I then called upon the Plaintiff to prove his case.

(Sd.) B.G.Smith
JUDGE,
SUPREME COURT,
FEDERATION OF MALAYA.

Kuala Lumpur,
1st July, 1958.

In the High
Court

No. 8.

Grounds of
Decision on
Application for
Postponement
of Trial.

1st July, 1958
- continued.

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No. 9.

JUDGMENT OF SMITH, J.

40 The Plaintiff seeks from the Court a declaration that certain land at Port Dickson registered in the name of the Defendant is held by the Defendant as trustee for the Plaintiff. He also seeks an order that the Defendant be ordered to execute a valid and registrable transfer of the said land in favour of the Plaintiff, and should the Defendant fail to do so the Plaintiff prays for an order that the Registrar execute the necessary transfer.

At the trial the Defendant declined to take any part in the proceedings and left the Court.

No. 9.

Judgment of
Smith, J.

1st July, 1958.

In the High
Court

No. 9.

Judgment of
Smith, J.

1st July, 1958

- continued.

The Plaintiff gave evidence that in 1934 he purchased at an auction the piece of land in question which was rubber land 40 acres 2 roods 30 poles in extent. At that time there was in force legislation supervising and restricting the production of latex, namely the Rubber Regulation Enactment. For the purpose of the legislation, owners of estates exceeding 100 acres were obliged to deal with the Controller of Rubber, owners of small estates under 100 acres with district officers. The Plaintiff who was at that time in India was told of these arrangements by his agent who informed him that it was simpler to deal with district officers rather than with the Controller. The Plaintiff therefore decided to put the property in his son's name so that his rubber land was ostensibly held by two different persons neither of whom held a holding exceeding 100 acres.

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On 27th February, 1935, the Plaintiff transferred the land to his son the Defendant. The Plaintiff gave evidence that the Defendant paid to him no consideration of any kind whatsoever. In the transfer, however, the Plaintiff acknowledges that he received from the Defendant a sum of \$7,000. The Plaintiff says that this was done for convenience in order to avoid delays in registering the transfer in the land office. A document of title was subsequently issued and is in the possession of the Plaintiff. The Plaintiff has been enjoying the income of the land since 1934 and has paid all quit rents due in respect of the land.

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The Plaintiff's agent gave evidence in support of the Plaintiff and added that in 1938 the Defendant came to Malaya but never approached him concerning the land or its management.

The Defendant's defence was, in effect, that the land was part of the property of a Hindu Joint Family and was held by the Plaintiff on trust for the Joint Family in which the Plaintiff, the Defendant and one Lakshmanan Chettiar were coparceners. The Defendant in his defence alleged that the Plaintiff had transferred this joint property to him for the sum of \$7,000. The Plaintiff's case had the ring of truth and in the absence of any evidence from the Defendant I regard it as probable. If the story of the Plaintiff is true it is quite clear that the Plaintiff

40

has practised a deceit on the public administration of the country in order to get a benefit for himself. In view, however, of the Court of Appeal decision in Sardara Ali v. Sarjan Singh, (1957) 23 M.L.J., page 165, it appears that the Plaintiff's possible turpitude is no reason for denying to him the orders which he seeks.

In the High Court

No. 9.

Judgment of Smith, J.

1st July, 1958
- continued.

10

I considered also whether the Plaintiff was estopped by the terms of the receipt in the transfer in favour of the Defendant dated 23rd February, 1935 from denying that he had received \$7,000 consideration from the Defendant for the land. In the absence of evidence from the Defendant the explanation given by the Plaintiff appears to me to be probable and to fall within proviso (f) to Section 92 of the Evidence Ordinance, 1950. I therefore make orders in the terms prayed by the Plaintiff, direct that the Defendant do execute a valid and registrable transfer of the said land in favour of the Plaintiff on or before the 29th day of July, 1958, and award to the Plaintiff his taxed costs.

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Sd. B.G.Smith
JUDGE,
SUPREME COURT,
FEDERATION OF MALAYA.

Kuala Lumpur,
1st July, 1958.

No. 10.

No.10.

ORDER

Order.

1st July, 1958.

30

Before The Honourable Mr. Justice Smith,
Judge, Federation of Malaya.

IN OPEN COURT

This 1st day of July, 1958

O R D E R

40

THIS SUIT coming on for final hearing on the 30th day of June, 1958 before this Court in the presence of Mr. D.G. Rawson, Counsel for the Plaintiff and, upon Counsel for the Defendant withdrawing in the presence of the Defendant AND UPON READING the pleadings and UPON HEARING the evidence and what was alleged by Counsel for the Plaintiff and the Defendant declining to take part in the proceedings THIS COURT DID ORDER that this suit

In the High
Court.

should stand for Judgment, and this suit standing
for judgment this day in the presence of Counsel
for the Plaintiff

No.10.
Order.

1st July, 1958
- continued.

THIS COURT DOETH declare that the Defendant is
a trustee of the land held under Negri Sembilan
Certificate of Title No.4246 for Lot No.926 in the
Mukim of Si Rusa and doth hold the same in trust
for the Plaintiff

AND THIS COURT DOETH ORDER that the Defendant
do execute and deliver to the Plaintiff a valid
and registerable transfer of the said land in fa-
vour of the Plaintiff on or before the 29th July,
1958 and that in default the Registrar of this
Court do execute a transfer of the said land in
favour of the Plaintiff.

10

AND IT IS FURTHER ORDERED that the Registrar
of Titles Negri Sembilan do make and indorse all
such entries and memorials on the register and
issue documents of title to the said land as shall
be necessary or expedient to give effect to this
judgment.

20

AND IT IS FURTHER ORDERED that the Caveat
No. 103546 Volume XXXI Folio 49 be deemed to be
withdrawn upon the presentation of a valid and
registerable transfer in favour of the Plaintiff.

AND IT IS LASTLY ORDERED that the Defendant
do pay to the Plaintiff the costs of this Suit as
taxed by the proper officer of this Court.

GIVEN under my hand and the seal of the
Court this 1st day of July, 1958.

Sd. Lee Moh Wah
Ag. Senior Asst. Registrar,
High Court,
Kuala Lumpur.

(Seal)

No. 11.

MEMORANDUM OF APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR
F.M. Civil Appeal No. 34 of 1958

BETWEEN:-

A.R.P.L. Palaniappa Chettiar
son of Arunasalam Chettiar Appellant

- and -

10 P.L.A.R. Arunasalam Chettiar of
No.13 Main Street, Port Dickson Respondent

(In the Matter of Seremban Civil Suit No.
62 of 1950

BETWEEN:

P.L.A.R. Arunasalam Chettiar
of No.13, Main Street, Port
Dickson Plaintiff

- and -

20 A.R.P.L. Palaniappa Chettiar
son of Arunasalam Chettiar Defendant)

A.R.P.L. Palaniappa Chettiar, son of Arunasalam Chettiar, the Appellant above named, appeals to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice Smith given at Kuala Lumpur on the 1st day of July, 1958 on the following grounds:

1. The learned Trial Judge was wrong in refusing the Defendant's application for an adjournment of the hearing of the suit and in doing so he has failed to exercise his discretion in a judicial and reasonable manner
2. The learned Trial Judge failed to appreciate that the granting of an adjournment of the hearing would not in any way prejudice the Plaintiff's case.
3. The learned Trial Judge was wrong in holding that the Appellant was not in a position of a person who had suddenly through no fault of his own been deprived of the services of his legal adviser.

In the
Court of Appeal

No. 11.

Memorandum of
Appeal.

15th September,
1958.

In the
Court of Appeal

No.11.

Memorandum of
Appeal.
15th September,
1958
- continued.

4. The learned Trial Judge erred in law in fail-
ing to consider that as the Defendant was the
registered proprietor of the land in question, his
title was indefeasible.

5. The learned Trial Judge was wrong in holding
that the Plaintiff's evidence was supported by the
evidence of his agent.

6. The learned Trial Judge erred in law in hold-
ing that the principles laid down in the case of
Sardara Ali v. Sarjan Singh (1957) 23 M.L.J. page
165 are applicable to this case.

10

DATED this 15th day of September, 1958

N.S.Lee & Co.,
Solicitors for the Appellant.

To,
The Senior Asst. Registrar,
Supreme Court,
Kuala Lumpur.

And to,
Messrs. Shearn Delamore & Co.,
The Embankment, Kuala Lumpur.

20

No.12.

Notes of
Argument.
13th October,
1958.

No. 12.

NOTES OF ARGUMENT

Cor: Thomson, C.J.
Rigby, J.
Ong, J.

For Appt: Ramani

For Respt: Rawson

Ramani

Father conveyed property to son in 1935. He
alleged he transferred to son as trustee.

30

Plaint dated 21.11.50.

Defence 3. 4.51.

Reply 30. 4.51.

Nothing happened till 1958.

It was bound up in the mother suit about the
rest of the property. Also the same parties were
litigating in India.

It was fit for hearing on 30.6.58. Mr. Cumarasami applied for adjournment.

J. should not have refused an adjournment in those circumstances.

The defence was a substantial one - not a frivolous one.

It is not my case that J. did not have a wide discretion to deal with matter of adjournment.

10 I do not say that Counsel's illness is by itself a conclusive ground for adjournment.

Adjournments being matters of discretion have to be granted judicially. Judicial discretion should take into cognisance surrounding circumstances and conduct of parties.

Fundamental principle was discussed in --

Maxwell v. Keun (1928) 1 K.B. 645.

Mohanlal v. Ban Guan & Co. (1956) M.L.J.13.

Here there is nothing alleged against the Deft.

20 Indian c/s are in Indian White Book II 2043 (O. XVII r.).

Shivandas v. Mangharam 1914 A.I.R. (Sind) 105.

Arunachala Iyer v. Subbaramiah 1923 A.I.R. Md. 63, 64.

Raghava Ayyar v. Ramasami Ayyar 1926 A.I.R. Md. 859.

Sarju Parshad v. Umanpatgir 1916 A.I.R. All. 138.

Appln. was not made to produce delay.

As to merits

30 1. Evidence was admitted of intention of parties in making the transfer which he said was admissible under s.92(f). It certainly did not come in under 92(f). I say it is not admissible at all.

(This must be taken as a ground of appeal).

2. Assuming the evidence is admissible the result of that admission is that Ptff. is setting up his own illegal act.

40 Law of trust not easily applied to registered land.

In the
Court of Appeal

No.12.

Notes of
Argument.

13th October,
1958

- continued.

In the
Court of Appeal

No.12.

Notes of
Argument.

13th October,
1958

- continued.

Here the Vendor claims there is a resulting trust. He had not protected his alleged equitable rights by lodging a caveat. He could have transferred to Deft. as trustee and then it would have been on the Register. No caveat was filed till this action commenced.

He said it was to avoid the effect of the Rubber Enactment.

Rubber Enactment in question was that of 1934 (17/34). 10

Property bought 28 June 1934. Transfer dated 27.2.35.

Relevant sections are 5 & 6.

Sgd. J.B. Thomson
C.J.
13.10.58.

14th October,
1958.

Ramani (Contd.)

The agent's evidence is in conflict with that of his principal (the Ptff.), & J. did not apply his mind to this conflict. He did not appreciate the date Feby. 1935. 20

Rubber Enactment came into force 1.6.34 - 4 weeks before the property was purchased. Rules published 31.5.34.

(Rawson: Not raised by G/A.

Ramani: para. 5).

In any event the object was to defeat the provisions of the law.

Contract Ord. s.10, 24.

By Ptff's own admission the object was unlawful and he should not be entitled to take advantage of his own illegality. 30

Here the consideration was provided by Ptff. Registration was taken by son. It was claimed there was thus a resulting trust. But this is only a presumption and can be rebutted.

The Ct. did not consider peculiar relationship of parties. It is a father conveying to son who did not pay the consideration. In the circumstances there is a presumption that it is a claim by way of advancement, by way of gift to son. 40

(Rawson: This was not raised below.
Nor raised in G/A.

Ramani: Wd. consent to costs against me if
adjourned to 25.11.58.

Formally ask for adjournment.

Rawson: Must oppose this appln. It is made
too late.

Ramani: I was instructed 10.10.58).

Adjourned to 24.11.58.

In the
Court of Appeal

No.12.

Notes of
Argument.

14th October,
1958
- continued.

10 All costs incurred subsequent to Ramani's in-
structions & down to date to be paid by Appt. in
any event.

Sgd. J.B.Thomson
C.J.
14.10.58.

No. 13.

ADDITIONAL GROUNDS OF APPEAL

- 20 1. The learned Judge was wrong in law in admitting
oral evidence by the Plaintiff of his intention in
making the transfer thereby contradicting the
plain meaning of the terms of the contract as re-
duced to writing in the Memorandum of Transfer.
2. The learned Judge was in any event wrong in
regarding proviso (f) to Sec.92 of the Evidence
Ordinance as enabling him to admit that evidence.
- 30 3. The learned Judge failed to have regard to the
provisions of the Land Code as to registered owner-
ship of land and the permitted methods of indica-
ting a Trust and in effect by his Judgment in fa-
vour of the Plaintiff destroyed the protection
given to registered proprietors under Sec. 42 of
the Land Code.
4. The learned Judge further failed to have regard
to the provisions of the Land Code relating to pro-
tective entries on the Register in support of a
claim to beneficial ownership of property, and was
wrong in law in making the declaration in favour
of the Plaintiff who had done nothing to protect
his interest and, against the Defendant in whom

No.13.

Additional
Grounds of
Appeal.

11th November,
1958.

In the
Court of Appeal

No.13.

Additional
Grounds of
Appeal.

11th November,
1958.

as registered proprietor both the legal and equitable or beneficial ownership of the land vested.

5. The learned Judge was wrong in accepting the argument addressed to him as to there having been a resulting trust in favour of the Plaintiff.

6. The learned Judge failed to have regard to the fact that the Defendant was the son of the Plaintiff and as such no presumption as to a Resulting Trust arose or alternatively if it did it was neutralised by the presumption of advancement which on the identical evidence arose in favour of the Defendant. 10

7. In any event the learned Judge was wrong in accepting the reason given by the Plaintiff for the transfer in favour of the Defendant because had he referred to the Rubber Regulation Enactment of 1934, he would have been satisfied that the reason given could not be true.

8. Further the learned Judge failed to have regard to the fact that the attorney who gave evidence, and at whose suggestion the transfer is alleged to have been made gave an entirely different reason for his suggestion, and that therefore the reason given by the Plaintiff was in fact untrue. 20

9. In the further alternative the learned Judge should have held that even if true it was evidence of an unlawful purpose and the Plaintiff could not obtain the reliefs he had asked for by setting up his own illegality. 30

10. The learned Judge was wrong in his application of the principle of the decision in Sardan Ali v. Sarjan Singh (1957 MLJ 165) which was in fact against the Plaintiff's claim for relief.

11. On the whole case the learned Judge ought to have held -

- (i) that the object of the transaction as stated by the Plaintiff was an unlawful object and therefore could not in law support the Plaintiff's claim; 40
- (ii) that alternatively either as an explanation or as an excuse for the transaction it was palpably untrue;

(iii) that in any event such oral evidence was not admissible to vary the terms of the written contract; and

(iv) that the allegation of the transfer being a voluntarily transaction even if accepted, at the very highest only enabled the Plaintiff to seek to obtain from the Defendant payment of the consideration and was not sufficient to obtain a re-transfer of the property having regard to the provisions of the Land Code.

In the Court of Appeal

No.13.

Additional Grounds of Appeal.

11th November, 1958

- continued.

10

DATED this 11th day of November, 1958.

Sd: Y.S.Lee & Co.,
Solicitors for the Appellant.

To,
The Court of Appeal,
Federation of Malaya,
Kuala Lumpur.

And to,
Messrs. Shearn Delamore & Co.,
Solicitors for the Respondent,
The Embankment, Kuala Lumpur.

20

Dated this 12th day of November, 1958
Sd: V. Mahadevan,
Asst. Registrar.

No. 14.

FURTHER NOTES OF ARGUMENT

Ramani (Contd.)

30

This is not a claim against an express trustee but a person who is trustee under an alleged resulting trust.

A resulting trust arises

- (a) When A purchases property in the name of B - there is a resulting trust in favour of A.
- (b) When A transfers property to B voluntarily there may be a resulting trust in favour of A.

40

As a result of S.60 of English Act of 1925 position has changed. There is an element of doubt as to the confidence with which a resulting trust was derived before 1925.

No.14.

Further Notes of Argument.

24th November, 1958.

In the
Court of Appeal

In the present c/s the conveyancing is not ex facie voluntary - ex facie it is for full consideration.

No.14.
Further Notes
of Argument.
24th November,
1958
- continued.

As to resulting trusts -

Snell on Equity (24th Ed.) p.154.

Where it says a resulting trust does not arise only from a voluntary conveyance.

Hanbury "Modern Equity" (6th Ed.) 164.

Underhill on "Trust" (9th Ed.) 168, 175.

Lewin on "Trusts" (15th Ed.) 130, 131, 151. 10

Ryall v. Ryall 1 Atk. 59 (26 E.R.39)

Young v. Peachy 2 Atk. 254 (26 E.R.557)

Position is even clearer in this country where there is registration.

Innes "Registration of Title" p.95, 126.

Adjourned to 25.11.58.

Sgd: J.B.Thomson
C.J.
24.11.58.

25th November,
1958.

Ramani (Contd.) 20

S.9 of 1898 Reg. dealt with trustees. This is now replaced by Ss.160 - 161.

There can be no personal obligation by reason of a trust which can be enforced against the land.

Ptff's case is that there is a voluntary transfer and so there is a resulting trust. I say it does not arise - even in English law. It is a transfer to a son.

J. was wrong to admit evidence that there was no consideration. 30

Sarkar (9th Ed.) 729.

Tsang Chuen v. Li Po Kwai (1932) A.C.715, 729.

Anyhow the Ptff. said he intended deliberately to avoid the obligation of the law. Contracts Ord. S.24.

Haji Abdullah v. Abdul Majid (1949) M.L.J.12.

Cottingham v. Fletcher 2 Atk.155 (26 E.R.498).

Even assuming the evidence was admissible and the object was a lawful object the books shew his

evidence as false - that he had the coupons for the 40 acres (Enactment 17/34 Ss.5 & 6).

The transfer was made in India so the local books wd. not say anything.

As to the evidence in general.

I.L.R. 7 Bom. 229.

Case for Appt.

In the
Court of Appeal

No.14.

Further Notes
of Argument.

25th November,
1958

- continued.

Rawson:

10 As to the adjournment the Judge had a discretion which I say he exercised properly.

This c/s has nothing in common with Maxwell v. Keun (supra - at p.658). Here the Appt. was present in Ct. And see -

Meyappa Chettiar v. Yin Kok Wee (1952) M.L.J. 178.

Appln. shd. be made at earliest possible stage.

Steuart v. Gladstone 7 Ch. D. 394, 397.

20 The evidence of no consideration was admissable.

Sah Lal Chand v. Inderjit 27 I.A.93; I.D. IX 1281.

As to resulting trusts, we did not plead a resulting trust but an express trust. The presumption of advancement as against trust is rebuttable and it has been rebutted.

S.42 of the Land Code does not affect any personal duty to which a proprietor may be subject.

Chang Lin v. Chong Swee Sang Innes p.102.

30 J. having found land was transferred in accordance with a trust Deft. was bound to transfer it to Ptff.

Trustee Ord. S.45(g).

It is not true that Ptff's reasons for the trust were demonstrably untrue. Rubber Enactment came into force 1.6.34 and transfer was dated 27.2.35. But it appears that 1934 Ord. was given no real effect to because there was an identical Ordinance enacted in 1936 (No.37/36).

40 All Ramani's points were raised here for the first time - they were not raised below.

In the Court of Appeal

No.14.

Further Notes of Argument.

25th November, 1958
- continued.

Owners of "Tasmania" v. Smith & Ors. 15 A.C. 223, 225.

The point in particular about the Rubber Regs. could have been elucidated if it had been raised.

Chiam Keng v. Wan Min 5 F.M.S.L.R. 4, 10.

As to the alleged illegality, there was no illegality at all. The assessment of both types of estate was the same. A man is entitled to conduct his affairs as he sees best.

Ramani in reply.

10

Sah Lal Chand only applies where consideration is a recital.

The evidence was admissible (see the passage in Snell).

C.A.V.

Sgd. J.B.Thomson
C.J.
25.11.58.

No.15.

Judgment of Thomson, C.J.

23rd April, 1959.

No. 15.

JUDGMENT OF THOMSON, C.J.

Cor: Thomson, C.J.
Rigby, J.
Ong, J.

20

This is an appeal from a decision of Smith, J., in an action relating to a piece of land in the Mukim of Si-Rusa in the State of Negri Sembilan.

Prior to 27th February, 1935, the Plaintiff (the Respondent in this Appeal) who is the father of the Defendant and who at all material times owned another piece of land which is just under 100 acres in extent was the registered proprietor of the land in question which is just over 40 acres in extent. On 27th February, 1935, he transferred this land to the Defendant. The instrument of transfer shows on the face of it a consideration of \$7,000 but the Plaintiff's case was that no money was paid and that the land was transferred to be held in trust. It is not denied that the Plaintiff retained the instrument of title and remained in possession of the land and paid all outgoings in respect of it and received all the income from it.

30

40

In 1950 the Plaintiff was desirous of selling

the land and in order that he might do so requested the Defendant to execute in his favour a power of attorney. The Defendant refused and on 21st November, 1950, the Plaintiff commenced against him the present proceedings, in which he asked for a declaration that the Defendant is a Trustee of the land holding it in trust for the Plaintiff and that the Defendant be ordered to execute a transfer of the land in his favour.

In the
Court of Appeal

No.15.

Judgment of
Thomson, C.J.

23rd April,
1959

- continued.

10 On 3rd April, 1951, the Defendant filed his defence in which he alleged that prior to 27th February, 1935, the land in question although registered in the name of the Plaintiff was held by him in trust for the Hindu Joint Family in which both the parties and one Lakshmanan Chettiar were co-parceners. He denied that the Plaintiff transferred the land to him on any sort of trust and alleged that he purchased it from the Plaintiff for 20 £7,000. He said that the Plaintiff was liable to account to him for the income from the land and counterclaimed for the taking of such an account and an order for payment of the amount found due.

There were considerable interlocutory proceedings and for reasons of which we have not been informed and of which we are not aware there was very great delay in setting the action down for trial. Ultimately, however, on 29th April, 1958, the case was set down for hearing on 30th June, 1958.

30 From the beginning the Defendant had been represented by Mr. Cumarasami, an Advocate and Solicitor, who has been in active practice in these Courts for very many years and certainly for so long as I myself can remember. In 1953, however, it would appear that Mr. Ramani, another Counsel of very great experience and eminence, was retained as leading Counsel to appear at the trial although Mr. Cumarasami remained on the record.

40 About the beginning of May, 1958, Mr. Ramani was taken ill and on 23rd June, 1958, Mr. Cumarasami wrote to the Plaintiff's Solicitors informing them that on the hearing day the Court would be asked for an adjournment on account of Mr. Ramani's illness and it is clear from this letter that he had already been informed by the Plaintiff's Solicitors that any application for an adjournment would be opposed.

When the case came on for hearing on 30th June, Mr. Cumarasami appeared for the Defendant and

In the
Court of Appeal

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- continued.

applied for an adjournment on the grounds of Mr. Ramani's illness. This was opposed on the ground that there was no question of a sudden illness and that the Plaintiff was in this country on a visit from India. The application was refused. Mr. Cumarasami then asked for leave to withdraw from the case. The Judge replied that he had no power to give him leave to withdraw but that if he wished to leave the Court he was at liberty to do so. Mr. Cumarasami then apparently left the Court and the Defendant who was present himself applied for an adjournment. This was refused. The Defendant then stated that he did not wish to appear. The Judge warned him of the possible results of such a course and adjourned for fifteen minutes to give him time for consideration. After consideration the Defendant stated that he wished to take no further part in the proceedings and then left the Court. The case then proceeded.

10

Counsel for the Plaintiff then called the Plaintiff himself and one Perumal who at all material times was his agent in Malaya.

20

The Plaintiff stated that he bought the land in 1934 for \$8,081 and kept it in his own name for six or seven months. He then transferred the land to his son for nothing. He said that his object in doing so was to avoid having to disclose that he owed more than one hundred acres of rubber land. He said that he did not acquire the land as a family property, that he bought it with his own money and that from the time he purchased it down to the present day he had paid all the outgoings and received all the income. He said that his son was fully aware of the reason for which the land was transferred to him and knew he held it in trust. He produced the instrument of transfer which showed on the face of it that the consideration for the transfer was \$7,000 but said he was under the impression that some amount had to be inserted for the sake of registration.

30

The Plaintiff's evidence was corroborated by his agent Perumal who, however, gave rather fuller reasons for the transfer. He said that if his principal had over a hundred acres of rubber he would have to go to the Controller instead of to the Land Office to get coupons for rubber production and that it was easier to deal with the Land Office. He said that he did not know if small estates were allowed to tap more than estates of over one hundred acres, but that there would be more correspondence in the case of larger estates.

40

On that evidence the trial Judge gave judgment for the Plaintiff as prayed and against that judgment the Defendant has now appealed.

The first ground of appeal is that the trial Judge was wrong in refusing the Defendant's application for an adjournment.

10 The other grounds are, in short, that the trial Judge was wrong in accepting the Plaintiff's evidence as evidence of truth because the Plaintiff and his agent gave different and conflicting reasons for making the transfer, that evidence was wrongly admitted to show that the transfer was voluntary when the instrument of transfer stated a consideration of \$7,000, that in any event the evidence did not make out that the Defendant held the land in trust for the Plaintiff, that to recognise any such trust would be to nullify the provisions of the Land Code and that even if the Appellant did hold it in trust for the Plaintiff the trust was created for an unlawful purpose and therefore the Plaintiff was not entitled to any relief.

20

With regard to the refusal to grant an adjournment, it is well settled law that the refusal of an adjournment of a trial is a matter within the discretion of the trial Judge and the Court of Appeal will be slow to interfere with his discretion unless it appears that the result of an order refusing the adjournment has been to defeat the rights of the applicant altogether and to do that which the Court of Appeal is satisfied is an injustice to him (see Maxwell v. Keun (1)). In my view there is in the present case no question of any injustice. The Defendant knew well in advance that it was unlikely that Mr. Ramani would be able to appear on 30th June and there is nothing to show that he made any effort to brief any other Counsel. He was in fact represented by Mr. Cumarasami who had had the conduct of the case from the very beginning and must have been familiar with it.

30

40 In effect the Defendant deliberately took up the attitude that if he could not be represented by one particular Counsel then he would take no part in the proceedings. He was told by the trial Judge what would happen if he took no part in the proceedings, that is to say that the matter would be decided on the evidence called for the Plaintiff, and he persisted in his attitude. In the circumstances it would in my view be wrong to interfere with the discretion of the trial Judge in refusing

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the adjournment when the Plaintiff was ready and anxious to proceed with his case. It is wrong to say, as is frequently said, that a litigant is entitled to be represented by the Counsel of his choice. The true statement is that he is entitled to be represented by the Counsel of his choice if that Counsel is willing and able to represent him. Here Counsel although no doubt willing was not able to appear. The Appellant had known for at least a week and probably longer that the Counsel of his choice would be unable to appear and he was not entitled to insist as he attempted to insist that the case should be adjourned until the Counsel of his choice was able to appear.

10

With regard to the other grounds of appeal the first of these is that the Plaintiff's evidence was demonstrably false because there was an apparent contradiction between himself and his agent as to the reason for transferring the land to the Appellant.

20

At this stage it is difficult to refrain from observing that if the substance of the Respondent's evidence was not true it is a thousand pities that the Appellant did not go into the witness box to contradict it and give his own version of the transaction. He knew from the Plaintiff that the Respondent was going to say that the land was transferred on trust and that no consideration was paid for the transfer and yet he deliberately deprived himself of the opportunity of denying that statement and he deliberately refrained from having the Respondent cross-examined on it. Now, in effect, he is trying by an ingenious analysis of the Judge's note of the Respondent's evidence to persuade us to differ from the trial Judge on a question of fact the decision of which must have depended to some extent on the Judge's view of the Respondent's credibility in relation to which he did not permit his own credibility to be assessed.

30

The argument here is based on a consideration of the provisions of the Rubber Regulation Enactment, 1934, which came into force on 28th May, 1934, that is about a month before the Plaintiff purchased the land on 27th June, 1934. Briefly the Enactment in question provided for the regulation of the production of rubber by assessing the amount allowed to be produced from individual holdings of land. It drew a distinction between holdings of one hundred acres or more and holdings of

40

less than a hundred acres. In the case of holdings of one hundred acres or more the permitted production was to be assessed by a Committee appointed under the Enactment. In the case of holdings of less than one hundred acres the permitted production was to be assessed by the local District Officer. There is nothing on the face of the legislation nor is there any evidence to show that a land holder derived any advantage from dealing with the District Officer rather than with the appointed Committee. There may have been, there may not have been. The Respondent clearly thought there was some such advantage apparently consisting in not having to make some sort of returns and his agent who after all had to act for him at the material time said there was some advantage because it was easier to deal with the Land Office (by which he clearly meant the District Officer) than with the Controller (by which he clearly meant the Committee). But, particularly when it is remembered that both witnesses were discussing the state of affairs that prevailed over twenty years ago, I cannot for myself see here any such material conflict of testimony as would justify this Court in saying that the trial Judge should have disbelieved the Respondent's evidence as a whole. In any event, as has been said, if the Respondent's evidence was untrue the Appellant could have gone into the witness box and given his own version of what happened.

The grounds of appeal that evidence was wrongly admitted to show that the transfer was voluntary, that in any event the evidence did not make out that the Defendant was a trustee for the Plaintiff and that to recognise any such trust would be in some way to disregard the provisions of the Land Code can logically be dealt with together.

The Respondent's case was not that by reason of the voluntary transfer of the land for no consideration to the Appellant there was to be presumed to be a resulting trust in his own favour and that all the time the beneficial or equitable interest in the land remained vested in him. His case was that there had been a transfer to the Appellant of the whole right title and interest in the land and that the Appellant accepted the transfer subject to the personal obligation that he should hold it in trust for the Respondent. That may or may not be true, but again the Appellant has not seen fit to go into the witness box and say that it is not true.

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Court of Appeal

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- continued.

If that be a just statement of the Respondent's case, and I think it is, then three consequences follow.

In the first place there was no question of the evidence that no consideration was in fact paid being inadmissible. It was no part of the Respondent's case that the transfer dated 27th February, 1935, was anything less than it purported to be, that is to say a complete transfer of the whole right title and interest in the land. In the circumstances there was no question of admitting evidence to vary the terms of the transfer and the case was thus entirely different from the case of Tsang Chuen v. Li Po Kwai (2) on which the Appellant relied. As was said by Lord Day in the case of Sah Lai Chand v. Indarjit (3) :-

"Their Lordships,, regard it as settled law that, notwithstanding an admission in a sale deed that the consideration has been received, it is open to the Vendor to prove that no consideration has been actually paid. The Evidence Act does not say that no statement of fact in a written instrument may be contradicted by oral evidence, but that the terms of the contract may not be varied, etc."

The truth is that the evidential value of the statement that no consideration was in fact paid was not to make out a fact from which a resulting trust could or should be presumed but to make out a fact which if it were true added probability to the statement that there was in fact an equitable obligation to hold the land in trust.

And that brings me to the second consequence which follows from the view I take of the Respondent's case, and that is that there is no question of a resulting trust being presumed from the circumstances of the transaction, that is to say from no consideration being paid and the Respondent remaining in possession. I agree that in view of the relationship of the parties these circumstances in the absence of any rebutting evidence would probably give rise to the presumption not of a resulting trust but of a gift by way of advancement.

(2) 1932 A.C. 715.

(3) XXVII I.A. 93, 97.

10 Apart from any question of rebutting evidence there is ground for grave doubt as to how far the Appellant would be able to benefit from any such presumption because of his own sworn statement made and filed under Chapter VIII of the Civil Procedure Code (which was in force at the material time) that the transfer was not voluntary at all but was made for valuable consideration. It is not, however, a question of any trust being presumed by the operation of law. It is a case of an express trust arising on the Respondent having in terms accepted the transfer on the express understanding that he held the land in trust.

In the
Court of Appeal

No.15.

Judgment of
Thomson, C.J.

23rd April,
1959
- continued.

20 In the third place I can see nothing in all this that cuts across the provisions of the Land Code. It is true that the Respondent would have been well advised to transfer the land to the Appellant as trustee under section 160 of the Code and if he had done so the present litigation might have been avoided. He did not do so and the consequences are that the right title and interest to and in the land of the Appellant are indefeasible and that, at any rate until a caveat was lodged, he could have given as good a title to any third party and that if he had done so the Respondent would not have had any claim of any sort against such party taking in good faith.

30 All that, however, is beside the point. What the Respondent is claiming is not any interest in the land, what he is claiming is that there is an equitable personal obligation on the Appellant to deal with the land as if it were the property of the Respondent and in particular to transfer it back to him now that he has been called upon to do so. Equity acts in personam and equity will always give relief against fraud. To my mind the Respondent has brought himself fairly and squarely within the following passage from the judgment of Lord Lindley in the well known case of Rochefoucauld v. Boustead
40 (4) :-

"It is a fraud on the part of a person to whom land is conveyed as a Trustee, and who knows it was so conveyed, to deny the trust and claim the land himself. Consequently, notwithstanding the statute, it is competent for a person claiming land conveyed to another to prove by parol evidence that it was so

In the
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No.15.

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Thomson, C.J.

23rd April,
1959

- continued.

conveyed upon trust for the Claimant, and that the grantee, knowing the facts, is denying the trust and relying upon the form of conveyance and the statute, in order to keep the land himself".

The reference to "the statute" in this passage is a reference to the Statute of Frauds, the relevant section of which has now been replaced in England by Section 40 of the Law of Property Act, 1925, which has no application in this country. But that does not affect the application of what is said for here if the Respondent's evidence be true the Appellant knowing the facts is clearly relying upon the form of the conveyance to keep the land himself. I am fortified in this view by a consideration of the decision of the High Court of Australia in the case of Barry v. Heider (5). That case is of course not binding on this Court but it is hardly necessary to say that any decision of the Australian Courts relating to the Torrens System is entitled to the greatest respect. In that case it was held that the bare act of registering a transfer will not affect the personal equities subsisting between the parties to it. In particular Isaacs, J., (at p.213) said that the Land Transfer Acts of the various Australian States "have long, and in every State, been regarded as in the main conveyancing enactments, and as giving greater certainty to titles of registered proprietors, but not in any way destroying the fundamental doctrines by which Courts of Equity have enforced, as against registered proprietors, conscientious obligations entered into by them".

There only remains the question of whether the Respondent is disentitled to relief by reason of the trust created by him having been created for an unlawful purpose.

This question was not pleaded and only came into the case as it were accidentally. It arose from the question which has already been discussed of the object of the transfer to the Appellant being to obtain some sort of advantage in connection with the Rubber Regulation Enactment.

When the Respondent was giving evidence he was apparently asked why he transferred the land to his son and his reply was "because my holding of rubber would become about 139 acres and exceed

(5) 19 C.L.R. 197.

100 acres". This would seem to have attracted the attention of the Judge who asked him some questions about it and the matter was taken a little further both by Counsel for the Respondent and by the Judge when the Respondent's agent gave evidence. The gist of that evidence has already been related. The Judge dealt with the matter in his judgment as follows :-

In the
Court of Appeal

No.15.

Judgment of
Thomson, C.J.

23rd April,
1959

- continued.

10 "If the story of the Plaintiff is true it is quite clear that the Plaintiff has practised a deceit on the public administration of the country in order to get a benefit for himself. In view, however, of the Court of Appeal decision in Sardara Ali v. Sarjan Singh, (1957) 23 M.L.J., page 165, it appears that the Plaintiff's possible turpitude is no reason for denying to him the orders which he seeks".

20 Now, whatever may have been his purpose there is no evidence that the Plaintiff did in fact practice any deceit on the public administration of the country. He may have intended to do so but there is nothing to show that in fact he did do so. Moreover, the bare representation that the two pieces of land were registered in the names of different proprietors even if it were made to anybody (and I repeat there is no evidence of this) would not in itself have been sufficient to have the two pieces of land treated as separate holdings for the purpose of the Enactment, for it is clear from the definitions of "holding" and "owner" in Section 2 that what mattered was not who was the registered proprietor of land but who was in charge of it and in the present case the person in charge of both holdings at all material times was the agent, Perumal.

30

In any event the Appellant was a party to the present transaction, as he had to be by reason of the provisions of the Land Code, and the question of illegality was never raised by him at any stage.

40

In the case of Haigh v. Kaye (6) it was said by Sir W.M. James, L.J.:-

"If a Defendant means to say that he claims to hold property given to him for an immoral purpose, in violation of all honour and honesty, he must say so in plain terms, and must

(6) L.R. 7 Ch. 469, 473.

In the
Court of Appeal

clearly put forward his own scoundrelism if he means to reap the benefit of it".

No.15.
Judgment of
Thomson, C.J.
23rd April,
1959
- continued.

Here, of course, the Defendant has said nothing of the sort and indeed, unless he had amended his pleadings, could not have been heard to say anything of the sort for to have said that the land was transferred to him in pursuance of some arrangement to avoid the provisions of the Rubber Regulation Enactment would have been flatly to contradict the defence which he did plead which is that he bought it for \$7,000. 10

In all the circumstances of the case I would dismiss the appeal with costs.

Kuala Lumpur,
23rd April, 1959.

Sgd. J.B.Thomson
CHIEF JUSTICE,
Federation of Malaya.

R. Ramani, Esq., for Appellant
D.G.Rawson, Esq., for Respondent

No.16.

No. 16.

Judgment of
Rigby, J.
19th February,
1959.

JUDGMENT OF RIGBY, J.

20

Coram: Thomson, C.J.
Rigby, J.
Ong, J.

I have had the advantage of reading the judgment of the learned President, with which I agree and to which I have nothing to add.

Sgd. I.C.C.Rigby
JUDGE
FEDERATION OF MALAYA.

Penang 19th February, 1959.

No. 17.

JUDGMENT OF ONG, J.

I entirely agree with the judgment of the learned President and I have nothing to add.

Sgd. H.T.Ong,
JUDGE
FEDERATION OF MALAYA.

Kuala Lumpur,
20th April, 1959.

In the
Court of Appeal

No.17.

Judgment of
Ong, J.

20th April,
1959.

10

No. 18.

ORDER OF COURT OF APPEAL

In Open Court

This 23rd day of April, 1959

O R D E R

No.18.

Order of Court
of Appeal.

23rd April,
1959.

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30

THIS APPEAL coming on for hearing on the 13th and 14th days of October 1958 and on the 24th and 25th days of November 1958 in the presence of Mr. R. Ramani (with him Mr. Y.S. Lee), Counsel for the Appellant and Mr. D.G. Rawson, Counsel for the Respondent And upon reading the Record of Appeal filed herein And upon hearing the Arguments of Counsel aforesaid IT WAS ORDERED that this Appeal should stand for judgment and this Appeal coming on for judgment this day in the presence of Mr. R. Chelliah on behalf of Mr. Y.S. Lee, Counsel for the Appellant and Mr. R.H.V. Rintoul, Counsel for the Respondent IT IS ORDERED that the Appeal herein be and is hereby dismissed AND IT IS ALSO ORDERED that the Appellant do pay to the Respondent the costs of this Appeal as taxed by the proper officer of this Court AND IT IS FURTHER ORDERED that the sum of \$500-00 deposited in Court by the Appellant be paid to the Respondent to account of his taxed costs AND LASTLY IT IS ORDERED, with liberty to apply on this last clause, that the exhibits marked P1 and P3 may be released to the Respondent's Solicitors after the expiration of 7 days from to-day's date.

GIVEN under my hand and the seal of the Court

In the
Court of Appeal

this 23rd day of April, 1959.

No.18.
Order of Court
of Appeal.
23rd April,
1959
- continued.

Sgd. Shiv Charan Singh,
Assistant Registear,
Court of Appeal,
Federation of Malaya.

No.19.

No. 19.

Order allowing
Final Leave to
Appeal to His
Majesty, The
Yang di-Pertuan
Agong.
2nd November,
1959.

ORDER ALLOWING FINAL LEAVE TO APPEAL TO
HIS MAJESTY THE YANG DI-PERTUAN AGONG

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR
F.M. CIVIL APPEAL NO. 34 of 1958

10

Between:

A.R.P.L. Palaniappa Chettiar Appellant
- and -
P.L.A.R. Arunasalam Chettiar Respondent
(In the Matter of Seremban Civil
Suit No. 62 of 1950)

Between:

P.L.A.R. Arunasalam Chettiar Plaintiff
- and -
A.R.P.L. Palaniappa Chettiar Defendant)

20

Before: THE HONOURABLE DATO SIR JAMES THOMSON,
P.M.N., P.J.K., CHIEF JUSTICE,
FEDERATION OF MALAYA:
THE HONOURABLE MR. JUSTICE HILL,
JUDGE OF APPEAL, FEDERATION OF MALAYA:
and
THE HONOURABLE MR. JUSTICE GOOD,
JUDGE OF APPEAL, FEDERATION OF MALAYA.

In Open Court

This 2nd day of November, 1959

30

O R D E R

UPON MOTION made unto the Court this day AND

UPON READING the Notice of Motion dated the 23rd day of September, 1959 and the Affidavit of A.R.P.L. Palaniappa Chettiar affirmed on the 22nd day of September, 1959 and filed herein AND UPON HEARING Mr. R. Ramani of Counsel for the above-named Appellant and Mr. D.G. Rawson of Counsel for the above-named Respondent:

10

IT IS ORDERED that final leave be and is hereby granted to the above-named Appellant to Appeal to His Majesty the Yang di-Pertuan Agong against the judgment of the Court of Appeal herein dated the 23rd day of April, 1959.

AND IT IS ORDERED that the costs of this application be costs in this Appeal.

GIVEN under my hand and the seal of the Court this 2nd day of November, 1959.

Sgd. Shiv Charah Singh,
Asst. Registrar,
Court of Appeal.

In the
Court of Appeal

No.19.

Order allowing
Final Leave to
Appeal to His
Majesty, The
Yang di-Pertuan
Agong.

2nd November,
1959
- continued.

ExhibitsE X H I B I T S

P.1.
Translation of
a Tamil Entry
in Day Book of
P.L.A.R. on
page 80.

P.1. - TRANSLATION OF A TAMIL ENTRY IN DAY BOOK
OF P.L.A.R. ON PAGE 80, 27th JUNE, 1934.

Page 80. Symbol of Invocation
13th day of Tamil month Ani in the year Bava
corresponding to English date 27-6-34.

27th June,
1934.

<u>Year</u>	<u>Month</u>	<u>Date</u>	<u>Details</u>	<u>Credit</u>	<u>Debit</u>
			x x x x		
			28. 6. 1934		10
			Debit purchase of Rubber Estate situate at 7½ Mile Coast Road comprising an area of 40a.2r.30p. in Grant C.T. 1175 for Lot No.926 in the Mukim of Si Rusa in Public Auction for \$8,081-00. Stamp fees for auction Order \$1-50, Stamp fee for Certificate \$1-50, Transfer fee \$1-50 and to Bailiff \$5-50		
				Total	\$8,091-00 20
			x x x x		

This is the True Translation of the
Original Document produced in Serial
No.180 of 1958.

Sd. W.P.Sarathy
Sen. Interpreter,
Supreme Court,
Kuala Lumpur.

17.6.58.

P.4.
Memorandum
of Transfer.
27th February,
1935.

P.4. - MEMORANDUM OF TRANSFER, 27th FEBRUARY 1935.

Stamped \$42/-
Stamped at Stamp Office,
Seremban on 8th March 1935

30

GOVERNMENT OF NEGRI SEMBILAN

Schedule XX

Vol.CXXI Folio 38.

(Under (Section 110) of "The Land Code, 1926")

MEMORANDUM OF TRANSFER

I, P.L.A.R. Arunasalam Chetty of Port Dickson
presently of Kondanoor, Ramnad District, South In-
dia being registered as the proprietor subject to

the leases charges or other registered interests stated in the document of title thereto of the whole of the land held under Certificate of Title No.1175 for Lot No.926 in the mukim of Si Rusa in the district of Port Dickson in area 40 acres 2 roods 30 poles in consideration of the sum of Dollars Seven thousand (\$7,000) only paid to me by A.R.P.L. Palaniappa Chettiar son of Arunasalam Chettiar of Kondanoor, Ramnad District, South India the receipt of which sum I hereby acknowledge do hereby transfer to the said A.R.P.L.Palaniappa Chettiar son of Arunasalam Chettiar all my right title and interest in the said land.

10

(Sd.) P.L.A.R.Arunasalam Chetty
(in Tamil)

Signature of Transferor.

I, A.R.P.L. Palaniappa Chettiar son of Arunasalam Chettiar of Kondanoor, Ramnad District, S. India accept this transfer in the terms stated.

20

(Sd.) A.R.P.L.Palaniappa Chetty

Signature of Transferee.

DATED this 27th day of February 1935.

MEMORIAL made in the register of Titles Volume CX folio 30 this 8th day of March, 1935 at 2.50 p.m.

(SEAL) (Sd.) R.L.German
Registrar of Titles,
State of N. Sembilan.

SCHEDULE XXXVIII (a)

30

(Under Section 178 of "The Land Code, 1926")

I hereby testify that the signature of the Transferor above written in my presence on this 27th day of February, 1935 is to my own personal knowledge the true signature of P.L.A.R.Arunasalam Chetty who has acknowledged to me, A.Ramamja Azengar, President, Bench of Magistrates, Karaikudi, Ramnad District, S.India, that he is of full age and that he has voluntarily executed this instrument.

40

WITNESS my hand

(Sd.) A.Ramamja Azengar
President Bench of Magistrates,
Karaikudi (Seal)
27.2.35.

Exhibits

P.4.

Memorandum
of Transfer.

27th February,
1935

- continued.

Exhibits

SCHEDULE XXXVIII (a)

P.4.

(Under Section 178 of "The Land Code, 1926")

Memorandum
of Transfer.
27th February,
1935
- continued.

I hereby testify that the signature of the Transferee above written in my presence on this 27th day of February, 1935, is to my own personal knowledge the true signature of A.R.P.L.Palaniappa Chettiar son of Arunasalam Chettiar who has acknowledged to me, A.Ramamja Azengar, President, Bench of Magistrates, Karaikudi, Ramnad Dt. South India, that he is of full age and that he has voluntarily executed this instrument.

10

WITNESS my hand

(Sd.) A.Ramamja Azengar
President Bench of Magistrates,
Karaikudi.

27.2.35.

(SEAL)

P.2.

P.2. - TRANSLATION OF A TAMIL ENTRY IN DAY BOOK OF P.L.A.R. ON PAGE 119, 8th MARCH 1935

Translation of
a Tamil Entry
in Day Book of
P.L.A.R.
on page 119.

8th March,
1935.

Symbol of Invocation

24th day of Masi in the year Bava corresponding to English date 8-3-1935

20

Year	Month	Date	Details		Credit	Debit
			x	x	x	
Debit - Rubber Estate						
					Stamp fees for Transfer 40a	₹42-00
					Petition writer Ponniah	2-00
					Other expenses	2-00
					Register charges	2-00
					Travelling expenses to Seremban and back	1-00
						49-00
			x	x	x	

30

This is the True Translation of the Original Document produced in Serial No.181 of 1958.

Sd. W.P.Sarathy
Sen. Interpreter,
Supreme Court,
Kuala Lumpur.

17.6.58.

P.5. - CERTIFICATE OF TITLE NO. 4246, 19th MARCH
1943

Exhibits

P.5.

Certificate
of Title No.
4246,
19th March,
1943.

GOVERNMENT OF THE STATE OF NEGRI SEMBILAN

CERTIFICATE OF TITLE
(Schedule VII.- Section 61 of the Land Code, Cap.138)

No.4246

Presentation No.78295 Register of certificates of
title volume XXII folio 56.

10

Annual rent \$10-30 (Dollars ten and cents
thirty)

20

A.R.P.L. Palaniappa Chettiar son of Arunasalam
Chettiar is proprietors subject to the conditions
and agreements expressed or implied in Grant 1882
and to such restrictions in interest expressed
therein and shown by memorial hereon, and to such
registered interests as are shown by memorial here-
on and to the payment of the annual rent of dollars
ten and cents thirty of all that piece of land being
lot No.926 in the Mukim of Si Rusa in the district
of Port Dickson containing by measurement 40 acres
2 roods 30 poles more or less which said piece of
land with the dimensions abuttals and boundaries
thereof is delineated on revenue survey plan No.7026
deposited in the office of the Survey Officer for
the State of Negri Sembilan being part of the land
originally alienated under the said Grant 1882 to
Abdul Sannat bin Bahir

30

IN WITNESS WHEREOF I have hereunto)
signed my name and affixed my seal)
at Seremban in the State of Negri)
Semblan this 19th day of March two)
thousand six hundred and three)
(2603) at 11.35 a.m.)

Restrictions in Interest - NIL

MAGUIRE (L.S.)

Last preceding C.T. No.1175 (now cancelled)

MAGUIRE (L.S.)

40

Examined
by me.

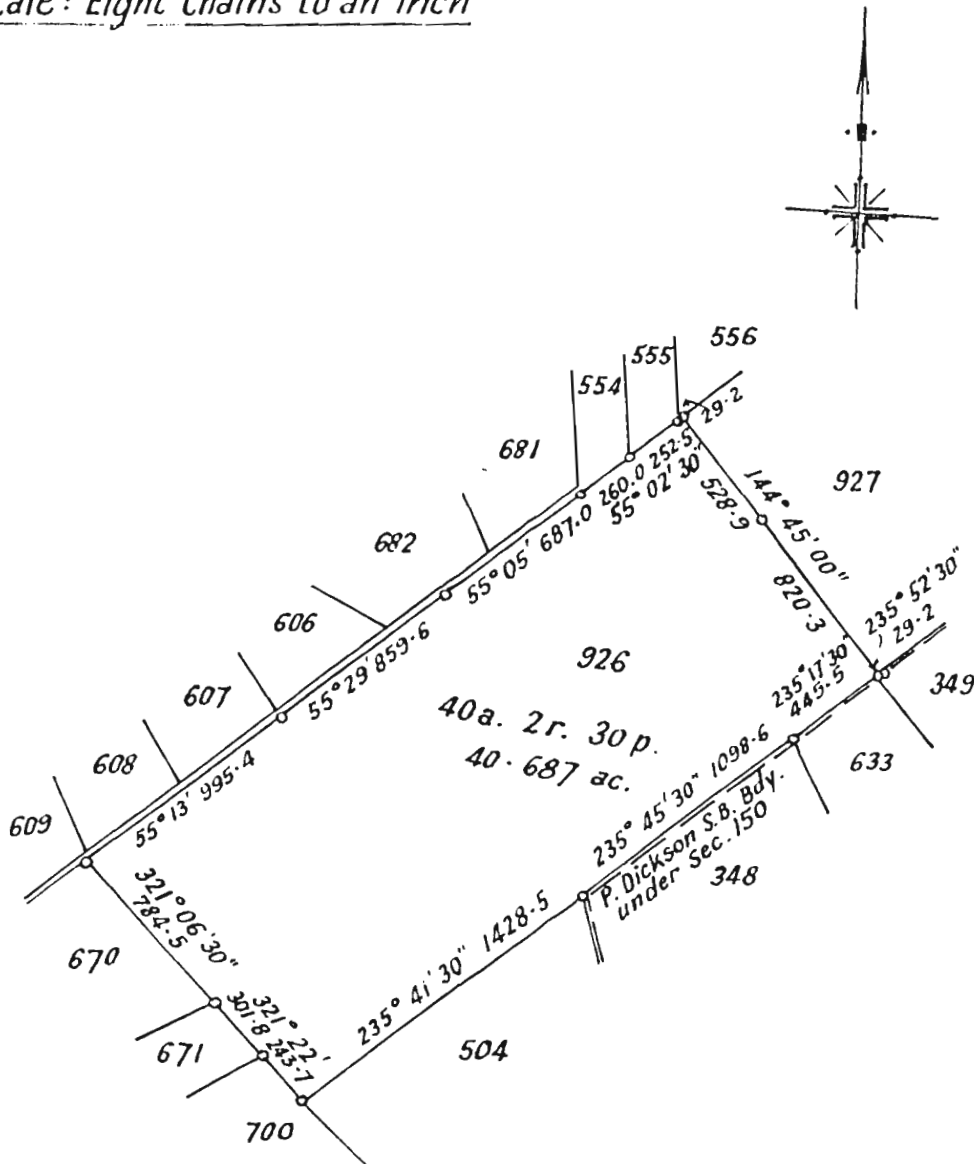
(L.S.)

S. EZUN
Registrar of Titles
State of Negri Sembilan

MAGUIRE
R.T.N.S.

LOT 926
 MUKIM OF SIRUSA
 DISTRICT OF PORT DICKSON

Scale: Eight Chains to an Inch



Revenue Survey Plan N^o 7026 Sheet N^{os} 83 A & 83 C

V. E. Jura
 Survey Officer N.S.

S. Karaga Ratnam 7. XII. 02
 Assi. Survey Officer N.S.