

GL C 2

23/1963

IN THE PRIVY COUNCIL

No. 5 of 1961

ON APPEAL FROM
THE SUPREME COURT OF CEYLON

B E T W E E N:

PONNUPILLAI, Widow of
Velauther Kathirgamar
(Plaintiff) Appellant

- and -

CHELLAPPAH KUMARAVETPILLAI
(Defendant) Respondent

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CASE FOR THE APPELLANT

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
19 JUN 1964
25 RUSSELL SQUARE
LONDON, W.C.1.

74035

Record

pp.83-90.

pp.63-75.

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1. This is an appeal from a Judgment and Decree of the Supreme Court of Ceylon, dated the 23rd November, 1959, setting aside a Judgment and Decree of the District Court of Jaffna, dated the 18th October, 1955, whereby, in an action for the recovery of certain land and premises in the Jaffna District, it was ordered and decreed, inter alia, that the Plaintiff be declared entitled to the said land and premises and be placed in possession thereof and that a deed purporting to be a deed of transfer and sale executed by the Plaintiff's (the present Appellant's) daughter (who was governed by the Law of Thesawalamai) conveying the said property to the Defendant (the present Respondent) should be set aside.

2. The main questions for determination on this appeal are:-

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A. Whether a deed purporting to be a deed of transfer and sale of certain land and premises executed by the Appellant's daughter (since deceased) in pursuance of an Order of Court made under Section 8 of the Jaffna Matrimonial

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Rights and Inheritance Ordinance (C.48) is valid and effective in law?

- B. Whether the decision of the Supreme Court in favour of the validity of the said Order of Court is correct?
- C. Whether the Supreme Court could have lawfully come to its decision to allow the appeal and to dismiss the Plaintiff's action without first adjudicating upon or even examining the findings of the District Court (which are based upon its assessment of the evidence before it) that - 10
- (a) the said deed was not a genuine deed of transfer and sale; and
- (b) even if it was a genuine deed the sum stated therein as the consideration for the sale was substantially less than half the true value of the property at the date of the sale and the transaction should therefore be set aside on the ground of laesio enormis. 20

3. Relevant Sections of the Jaffna Matrimonial Rights and Inheritance Ordinance (C.48) (hereinafter also referred to as "the Ordinance") are included in an Annexure hereto.

4. The facts are as follows:-

p.93, 11.19-23.
p.7, 11.14-18.

Annexure.

The parties to these proceedings are admittedly governed by the Thesawalamai or Customary Laws of the Tamils of Jaffna and by the said Ordinance. Under the Ordinance it is essential for a married woman to whom the Ordinance applies to obtain her husband's written consent to the disposal by her of immovable property which she owns; if, however, the husband's consent cannot be obtained because of, inter alia, his lunacy, its want may be supplied by the District Court. 30

Annexure.

p.6, 11.19-24.

On the marriage of her daughter Sivapakkiam to one Chellappah Kumarakulasingham in October, 1928, the Appellant gave to her said daughter, as

- her dowry, certain lands included among which was the land now in dispute. In about 1940 or 1941 Sivapakkiam's said husband became of unsound mind and a lunatic; and, on the 14th March, 1949, Sivapakkiam, alleging that she was in need of funds, applied to the District Court of Jaffna for permission to mortgage or lease all or any of the said lands without her husband's consent. Giving evidence in support of her application at the subsequent inquiry, Sivapakkiam said that she moved for permission of the Court to mortgage or sell the lands one by one.
- This was not of course in accordance with her petition but nevertheless the District Court, by its Order, dated the 8th September 1949, granted the Application in the following terms: "The Petitioner may either mortgage or sell her properties without the concurrence of her husband which-ever is more profitable".
5. In pursuance of the said Order, Sivapakkiam, on the 3rd December, 1951, mortgaged one of the four parcels of land to which the Order related for Rs.2,000/-; and on the 10th October, 1953, she mortgaged another of the said lands for Rs.7,000/-, discharging from this sum the earlier mortgage and using the balance for erecting shops on the land now in dispute. On the 21st November, 1953, Sivapakkiam raised a further sum of Rs.1,500/- on a second mortgage which sum she also used for the erection of shops. On the 17th December, 1953, she mortgaged the land and premises now in dispute for Rs.15,000/-; and on the 2nd June, 1954, she executed Deed of Transfer No. 206 purporting thereby to transfer and sell to her husband's brother (the present Respondent) the said land and premises for a consideration of Rs.20,000/-. In the attestation clause to the said deed, the Notary made it clear that the consideration had not passed in his presence.
6. Sivapakkiam died without issue on the 6th May, 1955. In the words of the present Respondent, in cross-examination, "She died without leaving a cent". The land and premises which she purported to sell and transfer to the Respondent by the said Deed of
- Record
p.93, 11.29-32.
pp.93-95.
p.94, 11.6-11.
p.94, 11.33-39.
p.111, 11.7-9.

p.112, 11-41-45.

P11, pp.115-116.
P12, pp.117-118.
p.64, 1.45 to
p.65, 1.14.
P13, pp.118-119.
p.65, 11.15-20.
P17, p.119.
P13A, pp.120-
124.

p.123, 11.38-40.

p.6, 11.25-27.
p.56, 1.33.

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Annexure.

Transfer No. 206 would, in the absence of any valid alienation, have devolved upon her mother (the present Appellant) by the Law of Thesawalamai and under Section 24 of the Ordinance. The Appellant (hereinafter also referred to as "the Plaintiff") was not satisfied that there had been any valid alienation of the said land and premises and she therefore instituted the present Suit against the Respondent (hereinafter also referred to as "the Defendant") in the District Court of Jaffna for recovery of the property.

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pp. 6-8.
p.6, 11.19-27.

7. In her Amended Plaintiff, dated the 23rd June, 1955, the Plaintiff said inter alia that: on the death of Sivapakkiam on the 6th May, 1955, without issue, she, as sole heir, had become entitled to the said land which she had given to her daughter as part of her dowry; she had acquired a prescriptive title to the said land by undisturbed possession of herself and her predecessors-in-title; the Defendant's possession of the said land was wrongful; and that the said Order of Court, dated the 8th September, 1949, was ineffective because, inter alia it "was not applied for in the petition or affidavit filed in the said case" and because it "was not specifically obtained for the purpose of executing Deed No. 206". Alternatively the Plaintiff said "the permission if any granted..... had been already availed of by Sivapakkiam to execute mortgage bonds and the permission had been exhausted".

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p.6, 11.28-35.

p.7, 11.1-7.

p.7, 11.32-34.

p.7, 11.34-37.

p.7, 11.38-42.

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p.8, 11.1-5.

8. In her said Amended Plaintiff, the Plaintiff said, further, that "the said deed No. 206 was not executed in accordance with Section 2 of Ordinance No. 7 of 1840 (C.57) (the Frauds Ordinance) and was therefore null and void"; and that it "was executed by the exercise of undue influence and/or fraud and/or coercion by the said Defendant".

p.8, 11.6-9.

Paragraphs 10, 11 and 12 of the Amended Plaintiff were as follows:-

p.8, 11.11-20.

"10. The said Deed was executed without any consideration and the transaction embodied therein was not in reality a sale and the said Sivapakkiam had no authority to execute the said Deed without the consent in writing of the said Kumarkulasingham or even under the Order of Court obtained in Case No.D/236

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aforesaid. The said Deed No. 206 was executed as a Deed of Sale in order to circumvent the Order made by the Court in Case No. D/236.

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"11. The Plaintiff further states that at the time the said Deed No. 206 was executed the said land was worth Rs. 60,000/- and that in the event of the Court holding that the said Deed No. 206 was valid in law and did operate to convey the said land to the said Defendant the said transaction is liable to be set aside on the ground of laesio enormis.

p.8, 11.21-28.

"12. Thus a cause of action has accrued to the Plaintiff to sue the Defendant to obtain a declaration of title to the said land on the ground that the said Deed No. 206 is null and void for any of the reasons set out in paragraphs 7, 8, 9 and 10 above or in the alternative to have the said Deed No. 206 set aside on the ground of laesio enormis and to recover possession of the said land and damages aforesaid."

p.8, 11.29-37.

9. Denying all material averments in the Amended Plaintiff, the Defendant, in his Answer, dated the 15th August, 1955, said, inter alia, "that the said Order in Case No. D/236 of this Court is valid in law and that the said Sivalakkiam had authority to execute the said deed of sale without the consent of her husband"; that the land in question was not worth more than Rs. 20,000/- at the time of execution of deed No. 206 of which fact Sivapakkiam was aware and that the Plaintiff was not entitled to have the said deed set aside on the ground of laesio enormis. The Defendant said further that the land and buildings thereon constructed by him together were worth Rs. 120,000/-; and that after execution of the said deed he had erected shops etc. on the land to the value of more than Rs. 100,000/- to which sum he was in any event entitled. He claimed also a jus retentionis or to remain in possession until payment of the said sum of Rs. 120,000/-. He prayed for a dismissal of the action, or, in the alternative, that if the Plaintiff was declared entitled to the land in dispute she should be ordered to pay to him the sum of Rs. 120,000/-.

pp.10-12.

p.11, 11.4-7.

p.11, 11.8-16.

p.11, 11.20-24.

p.11, 11.33-45.

p.12.

10. Of the 23 Issues framed in the action, the

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learned District Judge, after examining the evidence adduced by both sides, and applying the relevant law to the facts as found by him, answered Issues 1 to 9 as follows:-

- p.13, 11.5-7. "1. Is the Plaintiff as sole heir of the deceased Sivapakkiam entitled to the land the subject matter of this action?"
- p.72. Answer: "Yes".
- p.13, 11.12-16. "2. (a) Had the deceased capacity to execute deed No. 206 of 2.6.54 without the written consent of her husband? 10
- (b) If issue 2(a) is answered in the negative, is the said deed null and void?"
- p.72. Answer: 2(a): "No."
2(b): "Yes."
- p.13, 11.17-19. "3. Was Kumarakulasingham, the husband of the deceased, duly represented in Case No. D/236 D.C. Jaffna?"
- p.72. Answer: "Need not be answered."
- p.13, 11.20-25. "4. (a) Did the deceased Sivapakkiam in Case No. D/236 apply for permission to sell the land in dispute? 20
- (b) If not was that part of the Order granting permission to sell invalid and of no force or avail in law?"
- p.72. Answer: 4(a): "No."
4(b): "Yes."
- p.13, 11.26-28. "5. Was the Order to sell in Case No. D/236 specifically obtained for the purpose of executing deed No. 206 of 2.6.54?" 30
- p.72. Answer: "No."
- p.13, 11.29-32. "6. Was the permission, if any, granted in Case No. D/236 availed of by Sivapakkiam by the execution of mortgage bonds in respect of her properties?"
- p.72. Answer: "Yes."

"7. If Issue No. 6 is answered in the affirmative, was the said permission, if any, exhausted by the execution of the said mortgage bonds?"

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p.13, ~~11.33~~-35.

Answer: "Yes."

p.72.

10 "8. If Issue No. 3 or 5 is answered in the negative, or if Issue No. 4(b) or 7 is answered in the affirmative, did the Order of Court applied for and obtained by the late Sivapakkiam in Case No. D/236 vest her with authority to execute deed No. 206 without the consent, in writing, of her husband?"

p.13, 1.36 to
p.14, 1.4.

Answer: "No."

p.72.

"9. If issue No. 8 is answered in the negative, is the said deed No. 206 void ab initio?"

p.14, 11.5-7.

Answer: "Yes."

p.72.

11. Issues 10 to 12 were, after a close examination of all the relevant evidence, answered thus by the learned District Judge:-

20 "10. (a) Was any consideration paid by the Defendant in respect of deed No. 206?

p.14, 11.7-8.

(b) (as amended) Was the transaction in question in reality a sale?"

p.14, 11.31-32.

Answer: 10(a): "No."
10(b)(as amended): "No."

p.72.

"11.(as amended). If Issues 10(a) and 10(b) are answered in the negative had Sivapakkiam any authority to execute deed No. 206 even if a valid Order for sale had been made in Case No. D/236?"

p.14, 1.35 to
p.15., 1.1.

30 Answer: to Issue 11 as amended: "No."

p.72.

"12. (a) Was the value of the land in dispute and its appurtenances at the time of the execution of Deed No. 206 more than Rs.40,000?

p.14, 11.16-20.

(b) If so, is the said deed liable to be set aside on the ground of laesio enormis?"

Answer: 12(a): "Yes."
12(b): "Yes."

- Record 12. Issues 13 to 21 were answered thus by the learned District Judge:-
- p.14, 11.21-22. "13. Has the Defendant been in wrongful possession of the land in dispute from 6.5.55?"
- p.72. Answer: "Yes."
- p.14, 11.23-24. "14. If so, what damages, if any, is the Plaintiff entitled to?"
- p.72. Answer: "Rs.300/- per mensem from 6.5.55."
- p.14, 11.25-26. "15. Had the Court jurisdiction to make the Order it made in Case No. D/236 of 8.9.49?" 10
- p.72. Answer: "No."
- p.15, 11.4-5. "16. Was the Order dated 8.9.49. in Case No.D/236 valid in law?"
- p.72. Answer: "No."
- p.15, 11.6-7. "17. Did Sivapakkiam have authority to execute Deed No. 206?"
- p.72. Answer: "No."
- p.15, 11.8-9. "18. If Issues 16 and/or 17 are answered in the affirmative, is this action maintainable?"
- p.72. Answer: "Does not arise." 20
- p.15, 11.10-14. "19. Is the Plaintiff as sole heir of Sivapakkiam after the sale by the said Sivapakkiam on the footing of the said Order in Case No. D/236 entitled to question the validity of the said Order and/or Sale?"
- p.72. Answer: "Yes."
- p.15, 11.15-17. "20. Was the said Sivapakkiam aware of the actual value of the said land at the time of the said sale?"
- p.72. Answer: "No." 30
- p.15, 11.18-19. "21. If so can the plea of laesio enormis prevail in any event?"
- p.72. Answer: "Does not arise."

13. To issues 22 and 23, the learned District Judge's answers were as follows :-

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"22. In the event of the Court holding against the Defendant on the question of title to the land - p.15, 11.20-30.

(a) Did the Defendant effect improvements to the said land after the sale or transfer to him?

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(b) If so, did the Defendant effect the said improvements as a bona fide possessor?

(c) What is the value of the said improvements?"

"23. If Issue No. 22 is answered in favour of Defendant - p.15, 11.31-36.

(a) Is the Defendant entitled to the value of the said improvements?"

(b) Is the Defendant entitled to jus retentionis?"

Answer to Issues 22 and 23:

p.73, 11.1-12.

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The Plaintiff has agreed to give compensation to the Defendant for the improvements effected by him regardless of whether he is a bona fide possessor or not. Therefore I would answer Issues 22 and 23 as follows:-

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The Defendant is entitled to Rs.15,651/84 less the rents received at the rate of Rs.70/- per mensem from each of the rooms which would amount to Rs.2,160/-. He would not be entitled to jus retentionis. I would fix the amount of compensation payable to the Defendant at Rs.13,500/-.

14. By his Judgment, dated the 18th October, 1955, incorporating the said Answers to Issues, the learned District Judge held that the Plaintiff was entitled to a declaration that she owned the said land, that the Defendant was liable to be ejected therefrom but that he was entitled to receive from the Plaintiff the sum of Rs.13,500/- as compensation for improvements effected by him.

pp.63-73.

p.74.

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15. Referring to Sivapakkiam's application for permission to mortgage or lease her lands without her husband's written consent and to the wide terms of the Order made thereon which, in his view, rendered it invalid and ineffective, the learned District Judge drew attention to the following facts:-

- p.63, ll.17-25.
p.17, l.40 to
p.18,l.1. A. The Proctor (Kanagasabapathy) who had acted in the making of the said application had testified to his having been instructed to do so not by Sivapakkiam but by her husband's brother (the present Respondent) who, in consequence of her husband's lunacy, had charge of her interests. 10
- p.63, l.36 to
p.64, l.30. B. The application was for permission to mortgage, and not to sell, the lands specified, and it was made clear therein that the object was to provide the applicant with an income for life which it was hoped to achieve by using the sums advanced on mortgage for the building of godowns (warehouses) and subsequently letting them. 20
- p.64, ll.31-35.
p.69, ll.8-14.
p.70, ll.1-4. C. At the enquiry on the application Sivapakkiam had said in evidence that she "moved" for permission to mortgage or sell her lands but her petition had not been amended to include the power of sale and, in face of this conflict, the Court could not validly give her a power of sale while her petition for permission to mortgage or lease remained unamended. 30
- p.70, ll.10-32.
p.71, ll.13-45. D. Section 8 of the Ordinance, under which the application was made, contemplates the disposition of, or dealing with, a particular property and the Court's jurisdiction thereunder, which should be exercised only after a valuation of the property concerned, cannot be validly extended to the grant of a general consent in terms as wide as those contained in the said Order dated the 8th September, 1949, and which, in effect, conferred upon the applicant, a married woman, all the powers of a feme sole. 40
- p.70, ll.33-43. 16. As to the transactions which had taken place after the said Order had been made, the learned District Judge referred to the said mortgages of

the 3rd December, 1951, and the 10th October, 1953, which Sivapakkiam had executed (see paragraph 5 hereof) and expressed the view that even if the said Order was valid the permission granted to Sivapakkiam thereunder to mortgage or sell without her husband's written consent was exhausted by her execution of the said mortgages.

10 17. As to the said deed No. 206 by which Sivapak-
kiam purported to transfer the land and premises to
the Defendant in consideration of a sum of RS.20,000/-
the learned District Judge, after a careful scrutiny
of the evidence before him, found that the said
deed was not a deed of sale at all. He drew
attention also to the fact that it was not
attested by the Notary who usually acted for the
family but by a Proctor and Notary who practised
in another district, who had not previously
attested any other deed of the family, and who had
stated in the attestation clause that the consid-
20 eration had not passed in his presence.

p.67, 11.38-41.
p.65, 11.30-36.

p.67, 11.35-38.

A further factor which affected the genuine-
ness of the deed was the low state of the Defen-
dant's finances at the date of its execution, the
2nd June, 1954. On the evidence before him the
learned District Judge was satisfied that at the
said date the Defendant was not in a position to
have paid the consideration of Rs.20,000/- stated
in the deed and his testimony as to financial
30 assistance received by him from his parents was
not worthy of belief. He had not produced any
accounts to support this testimony, he was unable
to say how much assistance he had received from
his parents and he had not called his father as a
witness in support of his case.

p.67, 11.1-26.

p.67, 11.27-35.

18. As to the true value of the land which by the
said deed Sivapakkiam purported to transfer and
sell to the Defendant, the learned District Judge,
on the evidence before him, found that the con-
sideration of Rs. 20,000/- mentioned in the deed
40 was substantially less than half the value of the
land at the date of the execution of the deed (2nd
June, 1954). In addition to the evidence which
the Plaintiff had adduced on this aspect of her
case there was, also, the evidence of the
Defendant's witness, Kandiah, who had testified to
an advance of Rs.35,000/- which he had made on the
security of the land in question a month after the

p.67, 1.37 to
p.68, 1.23.

p.67, 11.24-46.

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execution of the said purported deed of sale; and to a further sum of Rs.7,000/- which he had subsequently advanced on a second mortgage of the same land. In the opinion of the learned District Judge the first of the said advances would not have been made had the land not been worth substantially more than Rs.50,000/-. As to Sivapakkiam's knowledge or otherwise of the value of the land, the learned District Judge said :-

- p.69, 11.1-7. "Sivapakkiam's husband is mentally unsound. She was living in the same house as the Defendant. She must have been looking up to the Defendant for help. It is not likely that she would have been aware of the actual value of the land at the time of P13A" (i.e. Deed of Transfer No. 206) "even if she intended to sell the land." 10
- pp.74-75. 19. A Decree in accordance with the Judgment of the learned District Judge was drawn up on the 18th October, 1955 and against the said Judgment and Decree, the Defendant appealed to the Supreme Court of Ceylon upon the grounds stated in his petition of appeal, dated the 21st October, 1955. 20
- pp.76-83. 20. The appeal was heard in the Supreme Court by a Bench consisting of Basnayake, C.J. and Pulle J. on the 9th, 10th and 11th June, 1959.
- p.83, 1.25. By their Judgment, dated the 23rd November, 1959, the learned Judges of the Supreme Court set aside the Judgment and Decree appealed from and dismissed the Plaintiff's action, with costs. 30
- pp.83-89. 21. Delivering the main Judgment of the Supreme Court, Basnayake C.J. (with whom Pulle J. agreed) expressed the opinion that the District Court which, on Sivapakkiam's petition under Section 8 of the Ordinance, for permission to mortgage and lease her lands without her husband's consent, had, on the 8th September, 1949, made an Order giving her permission to mortgage or sell the said lands, had jurisdiction to do so and the District Court in the present proceedings was in error in holding to the contrary. In his view the Court had, under the said Section 8, a discretion which it could exercise as it deemed fit and which was not limited or restricted to the prayer in the petition; it could grant an authority to mortgage where an 40
- p.85, 11.28-30.
- p.86, 11.16-35.

authority to sell was prayed for and an authority to sell where an authority to mortgage was asked for. The validity of the said Order was not, in his view, affected by the discrepancy between the prayer in the petition and the relief granted; nor was it affected because the Court had not imposed any conditions or restrictions as to the duration of the authority which was granted thereby. Further, he expressed the opinion that the Court below was in error in its view that the said Order (made on the 8th September 1949) could not apply to a transfer and sale in 1954 and in holding that the authority under the Order was exhausted by Sivapakkiam's execution of the said mortgages on the 3rd December, 1951 and the 10th October, 1953. In his opinion, under the said Order, Sivapakkiam had authority "to mortgage any number of times or sell if need be, or both mortgage and sell."

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p.87, 11.17-26.

p.87, 11.27-39.

p.87, 11.39-42.

22. Having pronounced in favour of the validity of the said Order, dated the 8th September, 1949, the learned Chief Justice had next to consider the findings of fact of the Court below on the basis of which that Court had come to the clear conclusion that: (a) the said deed No. 206, purporting to be a deed of transfer and sale, did not truly represent the nature of the transaction between Sivapakkiam and the present Respondent; and (b) even if the said deed could be regarded as a true deed of transfer and sale it was nevertheless invalid and ineffective on the ground of laesio enormis.

The learned Chief Justice did not however consider these questions. Instead he concluded his Judgment with the following words:-

"The opinion I have formed on the validity and scope of the Order of the District Court" (made on the 8th September, 1949) authorising Sivapakkiam to mortgage or sell her lands makes it unnecessary for me to refer to the other questions discussed by the learned Judge."

p.89, 11.14-19.

23. A Decree in accordance with the Judgment of the Supreme Court was drawn up on the 23rd November, 1959, and against the said Judgment and Decree this appeal to Her Majesty in Council is

pp.89-90.

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p.91.

now preferred, the Appellant having been granted Final Leave to Appeal by a Decree of the Supreme Court, dated the 22nd July, 1960.

In the Appellant's respectful submission the Appeal should be allowed, the Judgment and Decree of the Supreme Court should be set aside and the Judgment of the District Court restored, with costs throughout, for the following among other

R E A S O N S

1. BECAUSE on the evidence adduced by both sides at the trial it was established to the satisfaction of the District Court that the said deed No. 206 which purports to be a deed of transfer and sale was not in fact a genuine deed of sale at all. 10
2. BECAUSE even if the said deed be regarded as a deed of transfer and sale the consideration for the sale was, on the evidence before the District Court, correctly found to be considerably less than half the real value of the property sold and the Plaintiff's plea of laesio enormis was thus substantiated. 20
3. BECAUSE the Supreme Court was in serious error in its view that its pronouncement in favour of the validity of the Order of Court in pursuance of which the said deed purports to have been executed made it unnecessary for it to consider questions relating to the genuineness and validity of the deed itself and to the plea of laesio enormis, issues as to which had been framed and adjudicated upon in the Court below. 30
4. BECAUSE even if it be held that the said Order of Court was valid the permission granted thereunder was exhausted at the date of the purported transfer and sale.
5. BECAUSE the Order of Court in pursuance of which the said deed purports to have been executed was, insofar as it gave to the Applicant relief which was not expressly prayed for in the application, invalid and ineffective. 40
6. BECAUSE an Order made by a Court under Section 8

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of the Ordinance must relate to a particular transaction or transactions in the contemplation of the Applicant and cannot lawfully be made in general terms for an indefinite period and whether or not any particular transaction or transactions are contemplated at the date of the application.

7. BECAUSE the Judgment of the Supreme Court was wrong and, for reasons stated therein, the Judgment of the District Court was right.

E.F.N. GRATIAEN.

R.K. HANDOO.

A N N E X U R E

THE JAFFNA MATRIMONIAL RIGHTS AND
INHERITANCE ORDINANCE

(C. 48).

(17th July, 1911)

2. This Ordinance shall apply only to those Tamils to whom the Tesawalamai applies, and it shall apply in respect of their movable and immovable property wherever situate.

5. The respective matrimonial rights of every husband and wife married after the commencement of this Ordinance in, to or in respect of movable or immovable property shall, during the subsistence of such marriage, be governed by the provisions of this Ordinance. 10

6. All movable or immovable property to which any woman married after the commencement of this Ordinance may be entitled at the time of her marriage or which she may during the subsistence of the marriage acquire or become entitled to by way of gift or inheritance or conversion of any property to which she may have been so entitled or which she may so acquire or become entitled to shall, subject and without prejudice to the trusts of any will or settlement affecting the same, belong to the woman for her separate estate..... Such woman shall, subject and without prejudice to any such trusts as aforesaid, have as full power of disposing of and dealing with such property by any lawful act inter vivos without the consent of the husband in case of movables, or with his written consent in the case of immovables, but not otherwise, or by last will without consent, as if she were unmarried. 20 30

8. If in any case in which the consent of a husband is required by this Ordinance for the valid disposition of or dealing with any property by the wife, the wife shall be deserted by her husband or separated from him by mutual consent, or he shall have lain in prison under a sentence or order of

any competent Court for a period exceeding two years, or if he shall be a lunatic or idiot, or his place of abode shall be unknown, or if his consent is unreasonably withheld, or the interest of the wife or children of the marriage require that such consent should be dispensed with, it shall be lawful for the wife to apply by petition to the District Court of the district in which she resides or in which the property is situated for an order
 10 authorising her to dispose of or deal with such property without her husband's consent; and such Court may, after summary inquiry into the truth of the petition, make such order, and that subject to such conditions and restrictions as the justice of the case may require, whereupon such consent shall, if so ordered and subject to the terms and condition of such order, become no longer necessary for the valid disposition of or dealing with such
 20 property by such woman..... Such order shall be subject to appeal to the Supreme Court.....

18. Property received.....in dowry.....is said to be property derived from the mother's side.

24. The whole of the property the deceased derived from the mother's side and one-half of the remainder of the estate of the deceased (exclusive of the property derived from the father's side) the mother, if surviving, shall inherit.

No. 5 of 1961

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME
COURT OF CEYLON

B E T W E E N :-

PONNUPILLAI

Appellant

- and -

CHELLAPPAH KUMARAVETPILLAI

Respondent

CASE FOR THE APPELLANT

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Appellant.