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(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

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

RECORD OF PROCEEDINGS

74036

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Respondent.

(i)

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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EXHIBITS TRANSMITTED BUT NOT  
REPRODUCED

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Mark	Description	Date
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D3 ) D3A )	Plan by W.F.Rajagopal	15th August 1955
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D5	Estimate by W.F.Rajagopal	1955

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

10

RECORD OF PROCEEDINGS

No.1 PLAINT

IN THE DISTRICT COURT OF JAFFNA

In the  
District Court

PONNUPILLAI, Widow of Velauther  
Kathirgamar of Chunnakam,

Plaintiff

No.1  
Plaint  
2nd June 1955

Vs.

CHELLAPPAH KUMARAVETEPILLAI  
of Chunnakam,

Defendant

On this 2nd day of June 1955.

20

The Plaintiff of the Plaintiff abovenamed  
appearing by her proctor Mr. V. Selvadurai  
states as follows :-

1. The subject matter of this action is the  
piece of land called "Kalakkokkan Kodiyapulam  
and Kalakkokkan" in extent 20Lms.V.C. situated  
at Chunnakam within the jurisdiction of this  
Court and more fully described in the Schedule  
of this Plaintiff.

2. The Plaintiff was the owner of the said



In the  
District Court

No.1

Plaint  
2nd June 1955  
continued

land and by deed of dowry dated 22nd October 1928 and attested by Mr. A. Ponnampalam Notary Public under No.11583 dowried the same to her daughter Sivapackiam wife of Chellappah Kumaragulasingham.

3. The said Sivapackiam died on or about 6th May 1955 without issue and the Plaintiff has become entitled to the said land.

4. That by her undisturbed and uninterrupted possession and by the like possession of her predecessors in title for a period over well over ten years immediately preceding the date of this action the Plaintiff has acquired prescriptive right and title to the said land in terms of Section 12 of Ordinance No.22 of 1871 and pleads the benefits of the same in her favour. 10

5. That the said Kumaragulasingham was at all times material to this action of unsound mind and the Defendant who is a brother of the said Kumaragulasingham is in wrongful possession of the said land since the death of the said Sivapackiam claiming title to the same on deed No. 206 of 2nd June 1954 and attested by A.Thirugnanasothy Notary Public, purported to have been executed by the said Sivapackiam. 20

6. The Plaintiff pleads (a) that the said Sivapackiam being a married woman and governed by the Law of Thesawalamai has no contractual capacity to execute the said deed without the consent of her husband in writing who is still alive and therefore the said deed was null and void. 30

(b) that the order of Court applied for and obtained in case No.D/236 of this Court could not in law vest the late Sivapackiam with the authority to execute the said deed without the consent in writing of the said Kumaragulasingham as:

(1) the said order was obtained without the said Kumaragulasingham being duly represented in the said case in the way a Lunatic should in law be represented as the application itself alleged that the said Kumaragulsingham himself is a lunatic. 40

(2) that the said order was not applied for

in the petition or affidavit filed in the said case and

In the  
District Court

No.1

Plaint  
2nd June 1955  
continued

- (3) as the said order was not specifically obtained for the purpose of executing deed No.206 aforesaid and
- (4) as the permission if any granted in case No.D/236 D.C.Jaffna had been already availed of by Sivapackiam to execute mortgage bonds and the permission had been exhausted

10

The said deed No.206 was null and void for the grounds set out in (a) and (b) above.

7. The Plaintiff further pleads that the said deed No.206 was not executed in accordance with Section 2 of Ordinance No.7 of 1840 (Cap.57) (the Frauds Ordinance) and is therefore null and void.

20

8. The Plaintiff still further pleads that the said deed No.206 was executed by the exercise of undue influence and/or fraud and/or coercion by the said Defendant and the said deed should be set aside.

30

9. The said deed was executed without any consideration and the transaction embodied therein was not in reality a sale and the said Sivapackiam had no authority to execute the said deed without the consent in writing of the said Kumara-  
ragulasingham or even under the order of Court obtained in case No.D/236 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.

10. Thus a cause of action has accrued to the Plaintiff to sue the Defendant for a declaration of title to the said land on the ground that the said deed No.206 was null and void for the reasons set out above and for damages at Rs.500/- per mensem till possession is delivered to the Plaintiff.

40

11. The Plaintiff out of abundance of caution begs leave of Court under provisions of Section 35 of the Civil Procedure Code to claim the several reliefs in this action.

In the  
District Court

No.1

Plaint  
2nd June 1955  
continued

The said land is reasonably worth Rs.80,000/-.

Wherefore the Plaintiff prays:-

(a) That the Deed No.206 dated 2.6.54 and attested by A. Thirugnanasothy Notary Public be set aside,

(b) That the Plaintiff be declared entitled to the said land called "Kalakkokkan Kodiyapulam and Kalakkokkan" in extent 20 lms.V.C. and described in the schedule hereto,

(c) That the Plaintiff be placed in possession thereof and the Defendant be ejected from the said land,

10

(d) That the Defendant be decreed to pay damages at the rate of Rs.500/- per mensem till possession is delivered to the Plaintiff,

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

Sgd. V.Selvadurai

Proctor for Plaintiff.

Schedule of property.

20

All that piece of land situated at Channakam in Uduvil Parish Valigamam North Division Jaffna District Northern Province called "Kalakkokkan Kodiyapulam and Kalakkokkan" in extent 20 lms. V.C. with godowns, sheds, well, spontaneous and cultivated crops and bounded on the East by the property of Annaluxumi wife of Sivasangarappillai north and south by the property of the Plaintiff and on the west by road.

Sgd. V.Selvadurai

30

Proctor for Plaintiff.

---

No.2. PEDIGREE AND ABSTRACT OF TITLEIn the  
District CourtP E D I G R E E

No.2

Ponnupillai Widow of Velauther Kathirgamar entitled to 20 Lms.V.C. of the land called "Kalakkokkan Kodiyapulam and Kalakkokkan under deed No.8280 attested by A.Seevaratnam N.P. and deed No.765 attested by T.K. Changarapillai.

Pedigree and  
Abstract of  
Title  
2nd June 1955.

10 By deed No.11583 of 22nd October 1928 dowries to Sivapackiam wife of Chellapah Kumaragulasingham.

Dies issueless.

Plaintiff is entitled to the same.

Sgd. V.Selvadurai

Proctor for Plaintiff.

-----  
In the District Court of Jaffna.

## Abstract of Title

Notary Public

Grantee

20 Deed No.765 ) T.C.  
of 9th June ) Changarapillai  
1908 ) Ponnupillai  
Widow of  
V.Kathirgamar.

Deed No.8280 )  
of 17th July ) A.Seevaratnam " " " "  
1913 )

Deed No.11583 )  
of 22nd ) Sivapackiam  
October, ) Wife of S.  
1928 ) A.Ponnampalam Kumaragulasing-  
ham.

Sgd. V.Selvadurai

30 Proctor for Plaintiff.

This 2nd day of June 1955.

In the  
District Court

No.3. AMENDED PLAINT

No.3  
Amended Plaint  
23rd June 1955

In the District Court of Jaffna

PONNUPPILLAI, Widow of Velauther  
Kathirgamar of Chunnakam                      Plaintiff

Vs

No.L 78  
CHELLAPPAH KUMARAVETPILLAI  
of Chunnakam                                      Defendant

On this 23rd day of June 1955.

The amended plaint of the Plaintiff above-named appearing by her proctor Mr.V.Selvadurai states as follows:

10

1. The subject matter of this action is the piece of land called "Kalakkokkan Kodiyapulam and Kalakkokkan" in extent 20 lms. V.C. situated at Chunnakam within the jurisdiction of this Court and more fully described in the schedule of this Plaint.

2. The Plaintiff was the owner of the said land and by deed of dowry dated 22nd October 1928 and attested by Mr.A.Ponnampalam Notary Public under No.11583 dowried the same to her daughter Sivapackiam wife of Chellappah Kumara-  
gulasingham.

20

3. The said Sivapackiam died on or about 6th May, 1955 without issue and the Plaintiff as sole heir has become entitled to the said land.

4. That by her undisturbed and uninterupted possession and by the like possession of her predecessors in title for well over ten years immediately preceding the date of this action the Plaintiff has acquired prescriptive right and title to the said land in terms of Section 2 of Ordinance No.22 of 1888 and pleads the benefits of the same in her favour.

30

5. That the said Kumaragulasingham was at all times material to this action of unsound mind

and the Defendant who is a brother of the said Kumaragulasingham is in wrongful possession of the said land since the death of the said Sivapackiam claiming title to the same on deed No. 206 of 2nd June, 1954 and attested by A. Thirugnanasothy, Notary Public, purporting to have been executed by the said Sivapackiam.

In the  
District Court

No.3

Amended Plaint  
23rd June 1955  
continued

10 6. By reason of the said wrongful act of the Defendant the Plaintiff has sustained damages of Rs.500/- per mensem and is continuing to suffer damages of Rs.500/- per mensem from date hereof.

20 7. The Plaintiff pleads (a) that the said Sivapackiam being a married woman and governed by the Law of Thesawalamai had no contractual capacity to execute the said deed without the written consent of her husband who is still alive and therefore the said deed is null and void (b) that the order of Court applied for and obtained in case No.D/236 of this Court could not in Law vest the late Sivapackiam with the authority to execute the said deed without the consent in writing of the said Kumaragulasingham as -

30 (1) The said order was obtained without the said Kumaragulasingham being duly represented in the said case in the way a lunatic should in law be represented as the application itself alleged that the said Kumaragulasingham himself is a lunatic

(2) That the said order was not applied for in the petition or affidavit filed in the said case and

(3) As the said order was not specifically obtained for the purpose of executing deed No.206 aforesaid and

40 (4) As the permission if any granted in case No.D/236 D.C.Jaffna had been already availed of by Sivapackiam to execute mortgage bonds and the permission had been exhausted

The said Deed No.206 was null and void for the reasons set out in (a) and (b) above.

In the  
District Court

                      
No.3

Amended Plaint  
23rd June 1955  
continued

8. The Plaintiff further pleads that the said deed No. 206 was not executed in accordance with Section 2 of Ordinance No.7 of 1840 (Cap.57) (the Frauds Ordinance) and was therefore null and void.

9. The Plaintiff still further pleads that the said Deed No.206 was executed by the exercise of undue influence and/or fraud and/or coercion by the said Defendant and the said Deed should be set aside.

10

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

20

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.

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.

30

13. The Plaintiff out of abundance of caution begs leave of Court under Provisions of Section 35 of the Civil Procedure Code to claim the several reliefs in this action.

40

14. The said land is reasonably worth  
Rs.80,000/-

In the  
District Court

Wherefore the Plaintiff prays:-

No.3

(1) That the Plaintiff be declared  
entitled to the said land or in the alter-  
native

Amended Plaint  
23rd June 1955  
continued

(2) That the said Deed No.206 be set  
aside.

10 (3) That the Plaintiff be placed in  
possession of the said land and the Defend-  
ant be ejected therefrom

(4) That the Defendant be decreed to  
pay damages of Rs.500/- per mensem and fur-  
ther continuing damages of Rs.500/- per men-  
sem till the Plaintiff is placed in possess-  
ion of the said land.

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

20

Sgd. V. Selvadurai

Proctor for Plaintiff.

#### Schedule of Property

30

All that piece of land situated at Chunnakam  
in Uduvil Parish Valigamam North Division  
Jaffna District Northern Province called  
"Kalakkokkan Kodyiapulam and Kalakkokkan" in  
extent 20 lms.V.C. with godowns, sheds, well,  
spontaneous and cultivated crops and bounded  
on the East by the property of Annaluxumi  
wife of Sivasangarappillai, North and South  
by the property of the Plaintiff and on the  
West by road and the whole thereof.

Sgd. V.Selvadurai  
Proctor for Plaintiff.



In the  
District Court

No.4 ANSWER

IN THE DISTRICT COURT OF JAFFNA

No.4

Answer  
15th August 1955

PONNUPPILLAI Widow of Velauther  
Kathirgamar of Chunnakam Plaintiff

No.L/78. Vs.

CHELLAPPAH KUMARAVETPILLAI  
of Chunnakam Defendant

This 15th day of August, 1955.

The Answer of the Defendant above named  
appearing by his Proctor S. Visuvalingham 10  
states as follows :

1. Answering to paragraph 1 and 2 of the Plaint  
the Defendant admits the averments contained  
therein.

2. Answering to paragraph 3 of the Plaint the  
Defendant while admitting the death of the said  
Sivapakkiam intestate and issueless on 6.5.55  
states that the Plaintiff became the sole heir  
of her other dowry properties which the said  
Sivapakkiam had not disposed of at the time of 20  
her death. The Defendant denies that the Plain-  
tiff became entitled to the land in suit.

3. Answering to paragraph 4 of the Plaint the  
Defendant denies the averments contained therein.

4. Answering to paragraph 5 of the Plaint the  
Defendant states that he (the Defendant) has been  
and is in lawful possession of the said land  
since the execution of the said Deed No.206 of  
2nd June, 1954. The Defendant states that the  
said Deed was duly executed by the said Sivapak- 30  
kiam. The Defendant states that he is lawfully  
entitled to the said land.

5. Answering to paragraph 6 of the Plaint the  
Defendant denies the averments contained therein.

6. Answering to paragraphs 7,8,9 and 10 of the

Plaint, the Defendant denies the averments contained therein.

In the  
District Court

                      
No.4

7. Further answering the Defendant states that the said Order in Case No.D/236 of this Court is valid in law and that the said Sivapakkiam had authority to execute the said Deed of Sale without the consent of her husband.

Answer  
15th August  
1955  
continued

10 8. Answering to paragraph 11 of the Plaintiff the Defendant states that the said land was not worth more than Rupees Twenty thousand (Rs. 20,000.00) at the time of execution of Deed No.206. The said Sivapakkiam was aware of the value of the said land at the time of the said sale and the Plaintiff is not entitled to have the said Deed No.206 set aside on the ground of laesio enormis.

9. Answering to paragraph 12 of the Plaintiff, the Defendant denies the averments contained therein.

20 10. Answering to paragraph 14 of the Plaintiff the Defendant states that the land and buildings constructed by the Defendant are at present worth Rupees One hundred and twenty thousand (Rs. 120,000.00).

30 11. Answering further the Defendant states that the Plaintiff was fully aware of the proceedings had in the said Case No.236 of this Court and that it was at the Plaintiff's instance that the Plaintiff's son filed objections, and that the Plaintiff is accordingly estopped from questioning the validity of the order made in the said case.

40 12. Further answering the Defendant states that after execution of the said Deed of Sale No.206 the Defendant erected shop buildings and appurtenances thereto to the value of more than Rupees One hundred thousand (Rs.100,000.00) and the Defendant effected the said improvements or erected the said buildings as bona fide possessor and is in any event entitled to value of the said improvements or buildings and to Jus Retentionis or to remain in possession of the said land and premises until the said sum of Rupees One hundred and twenty thousand (Rs.120,000.00) is paid.

In the  
District Court

                      
No.4

Answer  
15th August  
1955  
continued

13. For a matter of law, the Defendant pleads that the said Sivapakkiam would not have been entitled after the sale by her to the Defendant on the footing of the Order made in Case No.D/236 of this Court to question the validity of that sale and that the Plaintiff claiming as the sole heir of the said Sivapakkiam is similarly precluded from questioning the validity of the said sale.

WHEREFORE the Defendant Prays:

10

(1) That the Plaintiff's action be dismissed with costs,

(2) (a) That in the alternative, in the event of the Plaintiff being declared entitled to the land in dispute, the Plaintiff be adjudged and decreed and ordered to pay to the Defendant Rupees Twenty thousand (Rs.20,000.00) being purchase price and further sum of Rupees One hundred thousand (Rs.100,000.00) being the value of the improvements effected by the said Defendant in the said land.

20

(b) That the Defendant do remain in possession of the said land and buildings till the Plaintiff pays and settles the said sum of Rupees One hundred and twenty thousand (Rs. 120,000.00).

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

Sgd. S. Visuvalingham

Proctor for Defendant.

30

No.5

No.5 ISSUES FRAMED

Issues framed  
14th September  
1955

D.C.L/78

Plaintiff absent.

Defendant present.

Mr.Advocate S.Nadesan, Q.C., with Messrs. Advocates Soorasangaran and Vanniasingham instructed for the Plaintiff.

Mr. Advocate Ponnambalam with Mr. Advocate Kanaganayagam instructed for the Defendant.

In the  
District Court

No.5

Mr. Nadesan suggests the following issues:-

Issues framed  
14th September  
1955  
continued

1. Is the Plaintiff as sole heir of the deceased Sivapakkiam entitled to the land the subject matter of this action?

10 (It is admitted that the deceased Sivapakkiam was a married woman subject to the Thesawalamai and that her husband is still alive and that she married him in October, 1928).

2. (a) Had the deceased capacity to execute deed No.206 of 2.6.54 without the written consent of her husband?

(b) If issue 2(a) is answered in the negative, is the said deed null and void?

3. Was Kumarakulasingham, the husband of the deceased, duly represented in case No.D/236 D.C. Jaffna?

20 4. (a) Did the deceased Sivapakkiam in case No. D/236 apply for permission to sell the land in dispute?

(b) If not, was that part of the order granting permission to sell invalid and of no force or avail in law?

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 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?

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?

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

In the  
District Court

                      
No.5

Issues framed  
14th September  
1955  
continued

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?

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

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

(b) Is the said Deed in fact a donation of the said property?

10

11. If issue No.10(a) is answered in the negative and issue No.10(b) in the affirmative, had Sivapakkiam any authority to execute deed No.206 even if a valid order for sale had been made in case No.D/236?

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/-?

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

20

13. Has the Defendant been in wrongful possession of the land in dispute from 6.5.55?

14. If so, what damages, if any, is the Plaintiff entitled to?

15. Had the Court jurisdiction to make the order it made in case No.D/236 of 8.9.49?.

Mr.Ponnambalam objects to issue No.10(b) as it is not pleaded.

So, Mr.Nadesan amends issue No.10(b) to read as follows:

30

10(b) Was the transaction in question in reality a sale.

He also amends issue No.11 to read as follows:-

11. 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?

In the  
District Court

Mr.Ponnambalam suggests the following further issues :-

No.5

16. Was the order dated 8.9.49 in case No. D/236 valid in law?

Issues framed  
14th September  
1955  
continued

17. Did Sivapakkiam have authority to execute Deed No.206?

18. If issues 16 and/or 17 are answered in the affirmative, is this action maintainable?

10 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.236 entitled to question the validity of the said Order and/or Sale?

20. Was the said Sivapakkiam aware of the actual value of the said land at the time of the said sale?

21. If so, can the plea of laesio enormis prevail in any event?

20 22. In the event of the Court holding against the Defendant on the question of title to the land

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

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

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

23. If issue No.22 is answered in favour of the Defendant

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

(b) Is the Defendant entitled to jus retentionis?

The case goes to trial on the above issues.

I rule that the onus is on the Plaintiff.

In the  
District Court

PLAINTIFF'S EVIDENCE

Plaintiff's  
Evidence

No.6. S. KANAGASABAPATHY

No.6

S. Kanagasabapathy, affirmed, 52, Proctor, S.C.  
and Notary Public.

S. Kanagasaba-  
pathy  
14th September  
1955

Examination

I am in practice as Proctor for the last 27 years. I live at Uduvil. I also practise in the Mallakam and Jaffna Courts. I have been to the Chunnakam market very often. I know the land the subject matter of this action. I know the Defendant from his childhood. I also knew the late Sivapakiam. I also know her relatives. I live about  $\frac{1}{4}$  of a mile away from the house of the Defendant. I have attested a number of Deeds for the Defendant as well as for the members of his family. The Defendant is a trader in textiles. He is also known as an ayurvedic physician, but he does not practise much. The deceased Sivapakiam got married about the year 1928. She married the Defendant's brother. After her marriage she lived in the Defendant's house. The Defendant and his wife and children and his father also lived in that house. The deceased had no children. Kumarakulasingham is the husband of the deceased. The Defendant has no other brothers or sister. The Defendant's parents were possessed of considerable property. They have disposed of a good portion of them. At one time the Defendant also owned a certain amount of property. I think he has sold one of those lands. Three of his lands are under mortgage now. I have been attesting a number of Deeds for the Defendant. (Shown Deed No.727 of 20.6.49 marked P1). P1 was attested by me. By P1 the Defendant transferred a portion of his land called Ampilivalai and Thikkiri in extent 10 lms for Rs.2,000/-. On the same day another portion of that land was sold on Deed No.728 for a sum of Rs.1,000/- and another portion on Deed No.729 of the same day also for a sum of Rs. 1,000/-. I attested these two Deeds also. I produce them marked P2. and P3. On the same day the Defendant mortgaged another land belonging to him for Rs.1,500/- I produce a certified copy of mortgage bond No.726 attested by me marked P4. He utilised the proceeds of these transfers of the lands as well as the mortgage

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30

40

P1.

P2. P3.

P4.

to pay off an earlier debt of Rs.5,180/50. I  
 P5. produce marked P5 a certified copy of notarial  
 receipt No.725 of 20.6.49 for Rs.5,180/50. P5  
 was also attested by me. On 14.7.50 the  
 Defendant mortgaged some other land belonging  
 to him for a sum of Rs.5,000/-. I produce  
 P6. marked P6 a certified copy of mortgage bond  
 No.916 which was attested by me. On 2.10.50  
 the Defendant raised a further sum of Rs.4,000/-  
 10 on a mortgage of another land. I produce mark-  
 P7. ed P7 a certified copy of bond No.948 which was  
 attested by me. I also produce the original  
 P8. mortgage bond No.781 of 26.9.49 marked P8. P8  
 was also attested by me. By P8 the Defendant  
 raised a sum of Rs.2,500/- by mortgaging a land  
 belonging to him. The Defendant was doing  
 business in textiles. But he is not doing  
 that business now. He started to trade in tex-  
 20 tiles about seven years ago. At the time of  
 the transfers and mortgages he was carrying on  
 business in textiles. He shifted his business  
 in textiles from Chunnakam to Jaffna about two  
 years ago. Thereafter he sold that business  
 to one P.K. Thamotherampillai. Apart from the  
 transfer deeds and mortgage bonds I have attest-  
 ed for the Defendant I have also attested trans-  
 fer deeds and mortgage bonds to which his  
 parents were parties. His parents have execut-  
 ed about 5 or 6 deeds. My father himself was a  
 30 notary. Before I started to practise as a  
 notary the Defendant and his parents got their  
 deeds and mortgage bonds attested by my father.  
 For a short period before I started to practise  
 as a notary the Defendant and his parents got  
 their deeds etc., attested by the late Mr.Aboob-  
 40 ucker. I became a notary only after my  
 father's death in 1944. I became a notary in  
 1943 or 1944. I acted for the deceased Siva-  
 pakkiam to make an application to this Court in  
 Case No.D/236. It was the Defendant who ap-  
 proached me in respect of that application made  
 by Sivapakkiam.

Q. Who gave instructions to you in connection  
 with that application?

(Mr.Ponnambalam objects to this question under  
 Section 126 of the Evidence Ordinance. Objec-  
 tion overruled).

The Defendant gave me instructions in

In the  
 District Court

Plaintiff's  
 Evidence

No.6

S. Kanagasaba-  
 pathy  
 14th September  
 1955  
 Examination  
 continued



In the  
District Court

Plaintiff's  
Evidence

No.6

S. Kanagasaba-  
pathy  
14th September  
1955  
Examination  
continued

respect of that application. I have had occasion to meet the deceased Sivapakkiam a number of times. She came to court in connection with her application. She also gave evidence in that case. The Defendant was present in court on the day she gave evidence. I produce marked P9 a certified copy of the petition I filed in case No. D/236 on 24.3.49 along with the affidavit. In the petition I have asked for permission to mortgage or otty mortgage all or any of the lands described in the schedule and to lease them. This prayer was put in at the request of Sivapakkiam.

(Mr.Ponnambulam objects to the last answer.  
Objection upheld)

I produce marked P10 the order made by the District Judge on 8.9.49 in respect of the application contained in P9. Thereafter acting on the basis of the order made by the District Judge on 8.9.49 I attested mortgage bond No.1207 of 3.12.51 for a sum of Rs.2,000/- a certified copy of which I produce marked P11. The name of the land mortgaged by P11 is Lokkayan and Kathirivalai in extent  $34\frac{3}{8}$  lms. This is a garden land where there are also some palmyrah trees. This land is worth about Rs.200/- a lachcham. Thereafter I attested mortgage Bond No.1579 of 10.10.53 marked P12 for a sum of Rs.7,000/-. By P12 this garden land Lokkayan and Kathirivalai and two paddy fields Pullandi and Saththiavalai were mortgaged. The amount due on the bond P11, viz. Rs.2,000/-, must have been paid out of the sum of Rs.7,000/- raised on the Bond P12. The three lands referred to in P12 are the 2nd, 3rd and 4th lands which appear in the schedule to the petition P9 in case No.D/236. The extent of these two paddy fields is  $37\frac{1}{2}$  lms. I know these two paddy fields. The paddy field Saththiavalai in extent 13 lms is worth about Rs.250/- a lachcham and the other paddy field Pullandi in extent  $24\frac{1}{2}$  lms is worth about Rs.150/- per lachcham. In paragraph 2 of the petition P9 I have stated that the four lands described in the Schedule were given to Sivapakkiam by her mother as her dowry. I have also stated in the petition that the property described as item 1 is situated near the Chunnakam market and with a few godowns built on that land Sivapakkiam could maintain

herself for the rest of her life and also that there was a great demand for godowns in that area. The land described as item 1 in P9 is a land of 20 lms near Chunnakam market. This land borders the Jaffna - Kankasanturai Road. It is situated in the market area itself. On 2.6.54 item 1 in P9 was worth about Rs.3,000/- per lachcham. Even now it is worth that figure.

In the  
District Court

Plaintiff's  
Evidence

No.6

10 Q. In 1953 and 1954 had you occasion to pass this land on your way to Uduvil?

A. Yes.

S.Kanagasaba-  
pathy  
14th September  
1955  
Examination  
continued

My wife and children reside at Mallakam. At least twice every day I used to pass this land. The sum of Rs.7,000/- was raised for the purpose of putting up buildings on this land. The building operations on this land must have commenced after the raising of the loan of Rs. 7,000/-.

20 (Mr.Ponnambalam objects to the evidence regarding the raising of the sum of Rs.7,000/- for the purpose of putting up buildings on this land. Objection upheld.)

Pl2 The mortgage bond Pl2 was attested by me on 10.10.53. The building operations commenced on this land after about one or two months of the execution of Pl2. The building consists of godowns meant for shops. There are 9 shops in that godown. At the time of the death of Sivapakkiam the building had been completed. 30 She died in May, 1955. The building was completed about 7 or 8 months or a year prior to her death. Subsequent to my attesting Pl2 Sivapakkiam raised a further sum of Rs.1,500/- on a secondary mortgage. I attested the Secondary mortgage. I produce a certified copy of that Pl3 bond No.1598 of 21.11.53 marked Pl3. Subsequent to the attestation of Pl2 and Pl3 I tried to raise a loan for Sivapakkiam on the security of the land in dispute for Rs.25,000/- I was 40 unable to raise this sum of Rs.25,000/- for her because the mortgagee wanted the interest to be paid to him periodically. On account of this difficulty the transaction did not go through. The Defendant came and saw me in connection with this land. He came and saw me

In the  
District Court

Plaintiff's  
Evidence

No.6

S.Kanagas- Pl3a  
abapathy  
14th September  
1955  
Examination  
continued

after about 4 or 5 months of his request to raise a loan of Rs.25,000/- for Sivapakkiam. I did not attest any deed of donation in his favour after he came and saw me. I am now aware that the deceased Sivapakkiam has by deed No.206 of 2.6.54 attested by Thirugnanasothy, Notary Public transferred the 1st land mentioned in P9 and which is also the subject matter of this action to the defendant in this case (Deed No.206 of 2.6.54 is marked Pl3a). (Deed No.206 is admitted by the defence). I know Thirugnanasothy. He is practising as a notary in Valikamam East. He is from Kaithady and his wife is from Urumpirai. He is a Proctor and Notary. His office is at Urumpirai.

10

Q. Did the Defendant or anybody else see you at any time with regard to the attestation of a deed of transfer in respect of the property the subject matter of this action?

A. Yes.

Q. When was it?

20

A. That was 3 or 4 months after the attempt to raise the loan of Rs.25,000/- had failed.

The Defendant came and asked me to attest a deed. I did not want to attest the Deed because Sivapakkiam's mother was alive and in the event of Sivapakkiam's death the property would go to her mother.

Cross-  
examination

Cross-examined:

The Petition P9 and the affidavit were drawn by me. The Affidavit is dated 14.3.49 and the Petition 10 days later. The Affidavit was drafted by me. I cannot remember whether I drafted the caption on the affidavit also. I do not have the drafts with me. I had it typed by my clerk and filed it in court. I had the affidavit affirmed to by Sivapakkiam before a Justice of the Peace. I was present in Court when Sivapakkiam gave evidence. Before the matter came up for inquiry her brother Kathirgamar Sellathurai had intervened and filed a statement of objections on 3.8.49 marked D1. Sellathurai and the present Plaintiff lived together in their house at Chunnakam. Sivapakkiam lived in the house of her

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D1.

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husband's father Chellappah. As far as Sellathurai and Sivapakiam were concerned their relationship was not cordial. (The evidence given D2. by Sivapakiam in case No.D/236 is marked D2). In that case Sellathurai's Proctor cross-examined Sivapakkiam. Mr.Advocate Pennambalam led evidence on behalf of Sivapakkiam. I retained Mr.Ponnambalam for the inquiry at which the permission was granted by Court. Sivapakiam's 10 brother Sellathurai challenged the soundness of mind of Sivapakkiam. Sivapakkiam's husband was a lunatic at that time. He was also made a Respondent. Sellathurai is referred to in the Order P10 as the Second Respondent. I instructed Counsel in connection with case No. D/236 on the morning of 8.9.49 itself. Sivapakkiam gave evidence on 8.9.49 asking for permission of 20 Court to mortgage or sell the properties mentioned one by one. The first land is situated close to Chunnakam market. The intervenient Sellathurai does not own a land close to the first land. Sivapakkiam's mother (i.e. the Plaintiff in this case) had a land close to the first land. Sivapakiam also stated in that case that the produce from the first land was appropriated by the intervenient. Sivapakkiam succeeded in her application in Case No.D/236.

To Court

30 Q. The application did not include an application for sale?

A. No.

Cross-examined continued

In the petition and affidavit I have set out the circumstances of Sivapakkiam for the application she made to Court.

Q. Some time after the application was allowed did you know that she was ill for some time?

A. She used to suffer from fits now and then.

40 I do not know whether she fell ill soon after she made the application case No.D/236. In the Court itself my Counsel moved for a sale. I wanted to get an order from Court profitable

In the  
District Court

Plaintiff's  
Evidence

No.6

S. Kanagas-  
abapathy  
14th September  
1955  
Cross-  
examination  
continued

To Court

Cross-  
examination  
continued

In the  
District Court

Plaintiff's  
Evidence

No.6

S. Kanagas-  
abapathy  
14th September  
1955  
Cross-  
examination  
continued

To Court

Cross-  
examination  
continued

to Sivapakkiam. The Court made that order. Some-  
times Counsel do not act on the instructions of  
Proctors. I cannot definitely say whether I in-  
structed my Counsel to ask for a sale. I cannot  
give the details at this distance of time.  
Sellathurai wanted to prevent a sale of the land  
in dispute.

Q. You are a man of that place?

A. Yes.

The Plaintiff and her son live about three  
quarters of a mile away from my house. I did  
not want to offend the Plaintiff. So I refused  
to attest the deed the Defendant wanted me to  
attest.

10

To Court:

Q. In this instance why did you not want to  
offend?

A. Because the Defendant wanted me to attest a  
Deed of donation.

(I put this question because Counsel is trying  
to show that this witness is biassed and it  
would not be fair by this witness unless he is  
given an opportunity to explain).

20

Cross-examined continued

The subject matter of this action is situ-  
ated about 50 yards away from the Chunnakam  
market square.

Q. You have not given evidence before this in  
Court with regard to land valuation?

A. No.

30

As a notary I am an expert on land valua-  
tion. The land in dispute is worth about Rs.  
3,000/- a lachcham. I have not attested any  
deeds for lands close to the land in dispute in  
1954. It is difficult to purchase lands in that  
area. Land values are declining in respect of  
paddy fields. But there is no decline in values  
for roadside properties and dwelling lands.  
Sivapakkiam had plenty of income from her

10 properties. There were 10 or 12 sheds on this land and each of which fetched a rent of about Rs.10/- per mensem. Sivapakiam never said that Sellathurai was appropriating the income derived from these sheds. She said that he was taking all the produce from the land in dispute. She also stated that her mother and brother had taken her jewels and were not returning them. I am not aware whether they were making it difficult for her to take the income from her lands.

Re-examined: Nil.

Sgd. P.Sri Skanda Rajah  
District Judge.

No.7 E. ARULAMPALAM

E. Arulampalam, affirmed. 62, pensioner, Mallakam.

20 I was an Inspector of Schools under the Ceylon Government. I know Mr. Kanagasabapathy, Proctor and Notary. I remember lending to the deceased Sivapakiam a sum of Rs.7,000/- on a Mortgage Bond. By that Bond (P12) two paddy fields and a garden were mortgaged. The Defendant came to see me in connection with that bond. I was not present at the time of the execution of the Bond. The Defendant came and negotiated the loan with me. He told me that he was going to put up some shop buildings at Chunnakam. I saw the shop buildings coming up about ten days after I gave the money on the Bond. Thereafter the Defendant approached me and wanted a further sum of Rs.1,500/- on the lands already mortgaged and I gave another Rs. 1,500/- on a secondary mortgage on P13. On that occasion he said that he wanted the money to buy cement for laying the foundation. He said

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In the  
District Court

Plaintiff's  
Evidence

No.6

S. Kanagasabapathy  
14th September  
1955  
Cross-examination  
continued

No.7

E. Arulampalam  
14th September  
1955  
Examination

In the  
District Court

that he wanted the money urgently. Accordingly  
I gave Sivapakkiam Rs.1,500/-.

Plaintiff's  
Evidence

Cross-examined: Nil.

No.7

Sgd. P.Sri Skanda Rajah  
District Judge.

E. Arulampalam  
14th September  
1955  
Examination  
continued

No.8

No.8. S. MANDALANAYAGAM

S. Mandalana-  
yagam  
14th September  
1955  
Examination

S. Mandalanayagam, affirmed. 46, Village Head-  
man of Chunnakam.

I know the Plaintiff in this case. She  
lives about a quarter of a mile away from my  
house. The Defendant lives about three quarters  
of a mile away from my house. I knew the de-  
ceased Sivapakkiam. She married the Defendant's  
brother Kumarakulasingham. I know the land the  
subject matter of this action for the last 20  
years.

10

Q. Prior to 1949 were there any sheds or other  
structures on this land?

A. There were about ten sheds. But I am not  
quite sure of the number.

20

I am not quite sure of the rent that each  
shed fetched. Each shed must have brought an  
income of Rs.5/- a month. The land in dispute  
is about 50 to 60 yards from the Chunnakam  
market. It is by the side of the Kankesanturai  
Road. It has a fairly large road frontage. In  
June, 1954, a lachcham of bare land would have  
been worth about Rs.2,500 to Rs.3,000/-. I do  
not think that owners of lands near the Chunna-  
kam market would be prepared to part with their  
properties. Sivapakkiam and her husband lived  
in the Defendant's parental home where the De-  
fendant also lived. Sivapakkiam's father was

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not alive in 1954. At that time her mother was alive. For about ten years Sivapakkiam and her brothers and sisters were not getting on well with each other. I am not quite sure of the period. There were disputes between Sivapakkiam and her brothers and mother. Those disputes have come to my knowledge in the discharge of my official duties. In November, 1954, the Defendant complained to me. He told me that his brother's wife Sivapakkiam wanted to see me regarding the cutting of a margosa tree on the land in dispute to which Sivapakkiam's mother and brothers objected. I did not reduce that complaint into writing. On receipt of that complaint I went and saw Sivapakkiam and spoke to her. I told her that I would speak to her brother and let her know. That was in respect of a complaint made by her.

10

20

Q. On that occasion did the Defendant tell you that he had purchased this land and that he was the owner of it?

A. No.

Sivapakkiam died in May, 1955. Prior to her death I did not become aware that the Defendant had purchased this land from her. For some time the Defendant was carrying on business in textiles at Chunnakam.

Q. Do you know the time when new buildings were put up on this land?

30

A. Yes.

Q. When did the buildings commence to be put up?

A. In April, 1954, four of the shop buildings had been completed and the work on the rest was in progress.

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Nine shops have been completed now. The whole building work was over in July or August, 1954. I had been to the Defendant's house after the death of Sivapakkiam. The Plaintiff made a complaint to me about the movable properties left behind by Sivapakkiam. When I questioned the Defendant he told me that she did not leave behind any cash but that she left behind a thaliki and a pair of earstuds. He told me that

In the  
District Court

Plaintiff's  
Evidence

No.8

S. Mandalana-  
yagam  
14th September  
1955  
Examination  
continued



In the  
District Court

Plaintiff's  
Evidence

No.8

S. Mandalana-  
yagam  
14th September  
1955  
Examination  
continued

Cross-  
examination

he had sold the thalikodi and the pair of ear-  
studs to meet the medical and funeral expenses  
of the deceased.

Cross-examined:

I know the Nalawa man Valli who worked for  
Sivapakkiam. I do not know whether Sivapakkiam  
wanted Valli to cut down a margosa tree on the  
land in dispute. I cannot be certain when the  
complaint about the cutting of the margosa tree  
was made to me. I do not know anything about  
any complaint made to the Police. The margosa  
tree was not cut down. I do not know whether  
Sellathurai appropriated the income from the  
lands belonging to the deceased. I do not know  
whether he was recovering the income from the  
land in dispute. Sivapakkiam had no children.  
She told me that one of her brothers Sinñadurai  
was cultivating a garden land belonging to her  
without paying any rent. There must have been  
similar disputes between them about the fencing  
of the lands, etc. Adjoining the land in dis-  
pute there is a land belonging to the Plaintiff.  
The paddy lands of Sivapakkiam are situated at  
Uduvil. I do not know who recovers the rents  
and profits from those paddy fields. I have  
seen the Defendant putting up the shop buildings  
on the land in dispute. He was supervising the  
work on the buildings. I did not entertain any  
complaint or go into the question of the owner-  
ship of this land at any time. In 1954 the  
land in dispute was dug up for putting up the  
buildings. I do not know when the foundation  
was laid. Almost every day I go towards the  
Chunnakam market. I know that the building was  
in progress in 1954. The building has a flat  
roof of concrete. The flat roof was put up  
last year. I cannot give the dimensions of the  
shop buildings. I do not think that land values  
have declined during the last two or three years.  
Usually if relations quarrel among themselves  
over the ownership of lands outsiders will not  
think of buying them. Most of the properties  
in Chunnakam belong to members of the Vaniva and  
Vellala communities.

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Re-examined: Nil.

Sgd. P.Sri Skanda Rajah  
District Judge.

No.9. M. KANAGARAYARIn the  
District CourtM. Kanagarayar, affirmed. 40, Ayurvedic  
Physician, Chunnakam.Plaintiff's  
EvidenceNo.9

10 I know the land in dispute. I purchased a property in 1950 which adjoins the land in dispute. I also bought another land in 1952. Both the lots of land I purchased are a little further away from the Chunnakam market than the land in dispute. My lands lie between the land in dispute and Kankesanturai. The Chunnakam market is towards the Jaffna side of the land in dispute. I produce marked "P14" Deed of Transfer in my favour No.3048 attested by P. Eliathamby by which I purchased 1 lm and 4 kls on 1.3.50 for a sum of Rs.3,000/-. I produce marked P15 Deed No.4489 of 4.10.52 also

M.Kanagarayar  
14th September,  
1955  
Examination

P14

P15

20 To Court:

My lands are about 50 yards away from the land in dispute.

Cross-examined:

Cross-  
examination

30 My lands are close to the petrol sheds. There is one petrol shed to the East of the road and the other to the West of the road. When I bought them they were bare lands. I have put up shop buildings on my lands and the Co-operative Union has taken those buildings in rent. I have not mortgaged my lands. When I bought the land on P14 I paid Rs.800/- and gave a promissory note for Rs.1,000/-. I wanted to make use of these lands for commercial purposes. I deny that the consideration mentioned in my deeds is fictitious. I have paid and settled the money due on the promissory note. I gave Rs.700/- to the Vendor on an otty bond. In March, 1950, I paid Rs.800/- in the presence of the Notary P. Eliathamby.

40 At this distance of time I cannot remember the details as to how the consideration was paid. I have no other lands besides these two lands. The consideration mentioned in the Deed P15 is Rs.3,500/-. The petrol sheds are in

P15

In the  
District Court

Plaintiff's  
Evidence

No.9

M. Kanagarayar  
14th September,  
1955

Cross-  
examination  
continued

Re-examination

existence for well over 10 years. I do not know whether in a business area where a party wants to buy a small bit of land he will have to pay a fancy price for it.

Re-examined:

My land is about 10 yards away from the Socony petrol shed and about 20 yards away from the Caltex petrol shed. I do not do any business in petrol. My shops are near the Chunnakam market on the Northern side.

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Sgd. P.Sri Skanda Rajah  
District Judge.

No.10

No.10. P.K.THAMOTHERAMPILLAI

P.K.Thamother-  
ampillai  
14th September  
1955  
Examination

P.K.Thamotherampillai, affirmed, 46, Trader, Alaveddy.

I trade in textiles and grocery. In November, 1954, I bought the Defendant's textile business for Rs.11,100/-. I am paying that money in instalments. In November, 1954, I paid him only Rs.4,500/- or Rs.5,000/- I am still continuing to pay the balance. I have not yet paid up the full amount. I still owe him Rs.1,750/-. He sold his business to me as he was in need of money. At present I am occupying one of the shops belonging to the Defendant. I pay him a rent of Rs.70/- per mensem for that shop. In all there are 9 shops (rooms) About four of the nine shops have been rented out. In August, 1954, I went into occupation of two shops. In July, 1954, I paid the Defendant Rs.2,000/- by way of advance. I spoke to the Defendant in April, 1954 about going into occupation of the shops. In April, 1954 when I negotiated for the booking of the two shops three or four shops had been nearly completed. The other shops were in the course of construction.

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Cross-examined:

In the  
District Court

Plaintiff's  
Evidence

No.10

P.K.Thamother-  
ampillai  
14th September  
1955  
Cross-  
examination

10 At present I occupy the shop nearest the market. I went into occupation in August, 1954. That was about one or one and a half months after the flat roof was put up. I do not know whether the Defendant spent the Rs.2,000/- I gave him by way of advance for putting up the buildings. The Defendant has promised to re-  
turn the advance when the shop. He  
got advances from the other tenants also. The  
Defendant was continuing to put up the rest of  
the shops. He has bought a large quantity of  
cement from me. He bought the cement for the  
shop buildings. He bought the last consignment  
of cement from me in January or February, 1955.  
On that occasion he may have bought about 150  
packets of cement. He has been buying cement  
from me from July, 1954, for putting up the  
building on this land. He sold his textile  
20 business to me in November, 1954. I used to  
pay him whenever it was possible for me to do  
so. I bought the textiles for Rs.11,100/-.  
I did not buy the furniture and fittings from  
him. He sold them for Rs.1,500/-. At present  
five of the shops are untenanted. The Defend-  
ant would have bought from me about 400 to 500  
bags of cement.

Re-examined:

Re-examination

30 I cannot remember exactly how many bags of cement he bought from me. He may have bought cement from others also. He started to buy cement from me after August, 1954. Even before that the building was in progress. It was only after I went into occupation of the shops that the Defendant started to buy cement from me.

Sgd. P.Sri Skanda Rajah.

District Judge.

In the  
District Court

No.11. V. NADARAJAH

Plaintiff's  
Evidence

No.11

V. Nadarajah  
14th September  
1955  
Examination

V. Nadarajah, affirmed, 39, trader, Chunnakam.

I am at present carrying on my business at Station Road, Chunnakum. I know the land in dispute. Formerly I occupied one of the shops on that land. I paid Sivapakkiam an advance of Rs.1,000/- in respect of that shop. I obtained a receipt from her. I produce receipt dated 19.5.54 marked P16. I agreed to take that room on a monthly rental of Rs.70/-. It was the Defendant who made the arrangement with regard to the payment of the advance. At the time I paid the advance for one of the rooms the buildings were above the level of the ground. As I was asked to quit the shop I occupied earlier I paid the advance so that he might complete the building. I went into occupation of the room after about 8 months of the payment of the advance. I went to occupy the room in question in December, 1954.

P16  
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Cross-  
examination

Cross-examined:

I occupied room No.3. Rooms 1 and 2 were in the occupation of P.K.Thamotherampillai. Till three months ago I occupied that room.

Re-examined: Nil.

Sgd. P.Sri Skanda Rajah.  
District Judge.

No.12

No.12. R.N.SIVAPRAGASAM

R.N.Sivapra-  
gasam  
14th September  
1955  
Examination

R.N.Sivapragasam, affirmed, 49, Proctor, S.C.  
and Notary Public, Jaffna.

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I am in practice since May, 1949. I know the land in dispute which is situated at Chunnakam. There are shops in that building. I attested a mortgage bond in respect of this property for a sum of Rs.15,000/-. That bond was executed by Sivapakkiam on 17.12.53. I produce marked P17 a certified copy of the mortgage

P17

In the  
District Court

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Plaintiff's  
Evidence

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No.12

R.N.Sivapra-  
gasam  
14th September  
1955  
Examination  
continued

10 P17 bond No.526 attested by me. In the schedule I have referred to the land and the buildings on it. Stone built shops were being put up at the time I attested the Bond P17. The buildings were about the foundation stage. I met the Defendant at his residence in connection with the attestation of the Bond P17. Before that he came and saw me in connection with this mortgage. I think I must have attested one Deed for the Defendant earlier. He was the Mortgagor. I produce marked P18 a certified copy of mortgage bond No.264 of 1.5.52 for a sum of Rs.8,000/-. This is a bond by which the Defendant raised a sum of Rs.8,000/-. I think the Defendant came and saw me when the mortgage debt was about to be settled.

Cross-examined:

Cross-  
examination

20 I do not know whether the mortgage for Rs.15,000 by Sivapakkiam was settled on 3.7.54. The Mortgagee wanted me to discharge the bond.

Re-examined: Nil.

Sgd. P.Sri Skanda Rajah  
District Judge.

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No.13. V. SUBRAMANIAM

No.13

V. Subramaniam, affirmed. 26, trader, Erlalai.

V.Subramaniam  
14th September  
1955  
Examination

30 P19 I am occupying one of the rooms on the land in dispute. On 21.6.54 I paid an advance of Rs.1,000/- and I was given the receipt P19 in respect of the advance paid by me. P19 has been signed by the Defendant and Sivapakkiam. P19 was handed to me by the Defendant.

Cross-examined:

Cross-  
examination

I went into occupation of one of the rooms in January, 1955. I am occupying the 4th room from the south. I went into occupation in January this year as it was not fully complete before that. I have been paying the rents to the Defendant. Sivapakkiam was present when P19

In the  
District Court

Plaintiff's  
Evidence

No.13

V. Subramaniam  
14th September  
1955  
Cross-  
examination  
continued

To Court

was handed to me by the Defendant. Before I paid the advance of Rs.1,000/- I had come to know that V. Nadarajah too had paid a similar advance. I asked Nadarajah how much he paid by way of advance. He said that he paid the advance to Sivapakkiam. Before I obtained the receipt P19 I talked to Sivapakkiam and the Defendant about the room which I am now occupying.

To Court:

Q. Why did you want the receipt from Sivapakkiam? 10

A. Because the land was in her name.

Cross-  
examination  
continued

Cross-examined Continued

Then the Defendant said that if I wanted the receipt he would get Sivapakkiam's signature also.

Q. Did you find out from Nadarajah whether he obtained a receipt from Sivapakkiam?

A. No.

It was only after I obtained P19 that I came to know that the land had been transferred. I learnt about it one month after I got the receipt P19. I wanted the receipt P19 from both Sivapakkiam and the Defendant. 20

Re-examined. Nil.

Sgd. P.Sri Skanda Rajah  
District Judge.

No.14

No.14 COURT NOTES

Court Notes  
17th September  
1955.

Trial (continued). Plaintiff absent.  
Defendant present. Same appearances as on the last date.

No.15 V. SINNATHAMBYIn the  
District Court

V. Sinnathamby, affirmed. 68, Mason, Udupiddy.

Plaintiff's  
Evidence

No.15

V.Sinnathamby  
17th September  
1955  
Examination

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I know the Defendant in this case. I put up some shop buildings near the Chunnakam market. The Defendant asked me to put up those buildings. He asked me to put up nine shop buildings. The building operations commenced in August, 1953. The foundation was laid at an auspicious hour in August, 1953. The building operations commenced in October - November (Atpasi) 1953. The foundation was laid in At-pasi and completed up to the damp proof course. The foundation was laid for the entire building and completed up to the damp proof course in Atpasi. Thereafter further building operations commenced in November-December (Karthikai). In April, 1954, the building for the entire nine shops was completed up to the top of the wall. After that we went to our village for the Hindu New Year and returned. Between April and June we laid the concrete roof for four of the rooms. The door and window frames in respect of the four rooms were erected in January, 1954. The shutters were completed before Aavani, 1954, because they had to be finished in time for the house-warming ceremony. The house-warming ceremony in respect of the four rooms that had been completed took place in Aavani. The floors had been cemented by Aavani. The rest of the buildings were completed later. I did the work according to certain specifications. The materials were supplied by the Defendant. The concrete mixture was one of cement, 4 sand and 6 of metal. Even the mixture for the walls was the same. The rubble for masonry was 1 is to 6. I gave the correct specifications to the architect Mr. Senagaratnam.

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Cross-examined

Cross-  
examination

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I have no record of the evidence I have now given as it was work which was done daily. I remember everything that I did on this building and therefore, I am giving this evidence. I am very definite about the dates and months.

Q. In fact, your son was in charge of the building?



In the  
District Court

Plaintiff's  
Evidence

No.15

V. Sinnathamby  
17th September  
1955

Cross-  
examination  
continued

A. I was in charge of the building.

I was discontinued under the following circumstances:- The Defendant objected to my doing work for his sister-in-law's brother Sellathurai. I said that I would have to work for him also. He then said that if I did Sellathurai's work I would have to clear out and so I left the place. I left after the house-warming ceremony in respect of the four rooms. I deny that I left the Defendant's services in April, 1954.

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Q. It was your son who was in charge of the building?

A. No.

In fact the Defendant brought a car to my house in search of me and fetched me to put up these buildings. I got my son to lay the foundation for this building because I am a widower and an auspicious thing like this cannot be done by a widower. I was in charge of the entire building. I am not very literate. So, everything that was to be reduced into writing was done for me by my son. I admit that I do take drinks because I work in the hot sun. I deny that I am quarrelsome after drinks. I deny that I was dismissed by the Defendant because I got drunk. I am working in Chunnakam for the last thirty years and so far nobody has made such an allegation against me. I have no ill-feeling against the Defendant. At present I am working for Sellathurai. I cannot remain unoccupied for the sake of the Defendant. I must work to earn my living. I am not speaking from memory as regards the concrete mixture. We always use the same proportion of mixture I have spoken of already. I must have put up hundreds of buildings. I have also worked on a number of houses for relations of the Defendant. Those houses were built of lime and stone. Now buildings are done in cement concrete and so I remember the concrete mixture very well. Concrete bricks have been used on this building. I can remember all the mixture.

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Re-examined. Nil.

Sgd. P.Sri Skanda Rajah  
District Judge.

No.16. M.SENAGARATNAMIn the  
District CourtM.Senagaratnam, affirmed. 62, Pensioner,  
Urumpirai.Plaintiff's  
Evidence

No.16

M.Senagaratnam  
17th September,  
1955  
Examination

10 I am now practising as an architect. I  
was employed in Malaya for over thirty years.  
I was employed as a technical assistant. I  
served in the P.W.D., Railway and Sanitary  
Board. I am an Associate Member of the Facul-  
ty of Architects and Surveyors (London). I  
have considerable experience as an architect.  
I was employed under the North-Ceylon Build-  
ers and Contractors and was in charge of the  
housing scheme at Karayoor on behalf of the  
contractors. I was also in charge of the de-  
sign and supervision of the Jaffna Co-opera-  
tive Bank building at Main Street. I am now  
in charge of the building of the Jaffna Col-  
lege Sports Pavilion. I prepared an estimate  
for the sports pavilion and tenders were call-  
20 ed. I inspected the building in question at  
Chunnakam and took measurements and I have  
made my own observations in regard to this  
building. I did that about two weeks ago. I  
have a plan of this building. I produce mark-  
P20 ed P20 a plan drawn to scale of the nine shops,  
which, I say in the sketch, have been partly  
completed. On the Northern side of the build-  
ing the kitchens have not been completed.  
The outside plastering has not been done.  
30 Some of the windows in the main building have  
no shutters. The kitchen windows have no  
shutters. Many of the doors on the back ver-  
andah are without shutters. A portion of the  
plastering on the top of the concrete roof  
has not been done. I took the actual measure-  
ments of the quantity of work done. I obtain-  
ed the specifications from the last witness  
Sinnathamby. To the best of my ability I  
checked up to see whether those specifications  
40 were correct: On that basis I have prepared a  
statement setting out what in my opinion is  
the maximum amount that would have to be spent  
P21 to complete the building. (Shown P21) This  
is that statement. The maximum amount that  
would have been spent is Rs.51,439/80. That  
is the total that should have been spent if a  
really good job was done. The work on this

In the  
District Court

Plaintiff's  
Evidence

No.16

M.Senagaratnam  
17th September,  
1955  
Examination  
continued

building has not been very satisfactorily done. I noticed cracks in the walls and in the concrete flat roof. The cracks on the concrete flat roof cannot be repaired. A new concrete flat roof has to be put up in place of the existing one. I found cracks in the roof in 12 places. In my opinion this building will not last the normal life of a well constructed building. It will last very much less. I should reduce about 20% of the value as the actual cost of the building. I have given the estimated cost at the stage when the foundation of the shops had reached the damp proof course level at Rs.8,375/80. I have also given the estimated costs at the stage when the walls of the shops had reached reinforced roof level with door and window frames inserted in the walls at Rs.6,842/8 and the estimated cost at completion of the building at Rs.36,221/20. In my opinion at the most the real value to the owner of this building is Rs.41,151/84.

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Cross-  
examination

Cross-examined.

I returned from Malaya in 1947. I was the only architect that the North-Ceylon Builders and Contractors had. One Mr. Smith was their engineer for the Karayoor Housing Scheme. As a Technical Assistant in Malaya I was in charge of designs and buildings. I won two prizes in architectural designs, one conducted by the Malayan Government and the other by the Municipal Council of Singapore. I have considerable experience in building operations, cost of buildings etc. (Shown sketch D3). As it is D3 is not a proper plan of the building. The building is not completed as per this plan D3. This plan shows an additional top floor. (Shown D4 drawn to scale). D4 is in order. The bottom portion of D3 is the plan for the existing building. But D3 gives a top floor and a roof on the top floor. (The bottom portion of D3 shown in red is marked D3A) (Shown D4). As I see it today the 9" beam shown in D4 is not in the building. The bath rooms that have been built are smaller than those shown in the plan D4. Otherwise the measurements shown in plan D4 are correct. In P21 the excavation for the foundation has been given as 43 cubes. I measured it and found to be 43 cubes. Anyone can take the quantities from P20. I have given the rate

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of excavation for the foundation at Rs.5/- per cube. This rate will be approved even by the Loan Board. The rate of excavating ranges from Rs.3/- to Rs.8/- per cube, depending on the nature of the ground. For very hard ground the rate will be about Rs.10/- per cube. I consider the soil on this land as moderate. I got the soil on this land excavated and had a look at it. (Shown P20). I measured and found out that the foundation was 2 feet deep and 2 feet broad and not 2'6" x 2'6". The mixture for item 2 in P21 is one of cement and six of sand. I got this information from the last witness Sinnathamby. The quantity for items 2 in P21 is 123 cubes at the rate of Rs.110/- per cube. One cube is 100 cubic feet. The rates given in P21 are mine. The specifications were given by the mason and the quantities were measured by me. I am not interested in the P.W.D. rates because I am getting work done at the rates given by me in P21. I do not know anything about PWD rates. The rates depend on the price of materials. The price of materials depends from where they are transported. The rates are based on Paranthan and Paliaru sand, stones for concrete from Kaithady, Achchuvely, etc. and rubble from Punnalaikadduvan. At present I am getting some work done at Kaithady. The rates for the building at Kaithady and many other buildings in the villages are the same as those in item 2 of P21. I have charged the same rates as item 2 of P21 even for the Jaffna College Sports Pavilion. The area of the reinforced concrete roof is 74.80 squares. A square is 100 square feet and I have charged Rs.160/- for a square. I am getting similar work done at this rate. I do not know the rates prevailing in Kalutara for similar work. I do not know whether the rate for Kalutara Housing Scheme for such work is Rs.300/- per square. The rate for item 26 in P21 is Rs.130/- a square. I consider Rs.150/- per square for such work too high. I am getting such work done even for Rs.125/- a square. I have lately completed the roof of a ward at the Inuvil Hospital at Rs.125/- a square. I can guarantee that I can get the work done at the rates given by me in P21. I made the measurements myself. The Plaintiff's Proctor took me and got me to take the measurements of this building. I have estimated the cost of the entire building. I have given different

In the  
District Court

Plaintiff's  
Evidence

No.16

M.Senagaratnam  
17th September  
1955  
Cross-  
examination  
continued

In the  
District Court

Plaintiff's  
Evidence

No.16

M.Senagaratnam  
17th September  
1955  
Cross-  
examination  
continued

Re-  
examination

rates per square foot for items 9 to 16 of P21. Apart from the door and window frames Rs.8/- per square foot is not a reasonable rate. The average rate is Rs.5/50 to 6/50 per square foot for such work. (A similar statement like P21 prepared by the Defendant's engineer is marked D5). D5

(D5 objected to. Allowed subject to proof).

According to D5 the value of the work done is Rs.86,341/70. There is a 15% contingency included in D5. I have not allowed for such contingencies. I do not agree with the rates given in D5 at all. 10

Re-examined.

In respect of my statement P21 the actual measurements were done by me and the rates given are mine. The specification for the mixture and the concrete work was obtained by me from mason Sinnathamby. In the Statement D5 I find that there is considerable discrepancy in the specifications. Item 8 in D5 corresponds to item 19 in P21. In D5 it is stated that the cement concrete roof is 4" thick. The thickness which I have given in item 19 of P21 is  $2\frac{1}{2}$  inches. I actually measured the thickness of the roof. The actual thickness of the roof is  $2\frac{1}{2}$  inches and not 4 inches. In item 6 of P21 I have given the particulars of the cement blocks and the mixture. No particulars are given in item 4 of D5 regarding the cement blocks and the mixture. Also the specifications are not mentioned in item 4 of D5. 20 30

Sgd. P.Sri Skanda Rajah

District Judge.

No.17

No.17. N.K.AMBALAVANAR

N.K.Ambalavanar  
17th September,  
1955  
Examination

N.K.Ambalavanar, affirmed. 64, retired surveyor.

At present I am the chairman of the village committee of Uduvil. I know the land in dispute. I know of instances where lands have been sold

recently. The land in dispute is within my area. I know of a plot of land in extent one lachcham which was bought by one Thambiah. I surveyed that lot for Thambiah to enable him to purchase it. The land in dispute is worth about Rs.2,600/- to Rs.3,000/- per lachcham. If it is sold in small lots one lachcham may fetch over Rs.3,000/- As chairman of the village committee I have been putting up a number of buildings. The village committee has put up shop buildings in the Chunnakam market itself. By putting up shop buildings within the Chunnakam market square we get a return of over 12% a year. If large sums of money are lent the interest will be 8% and on smaller sums 10%. Persons who invest on shop buildings as a business proposition would get more return than by way of interest. Estimates for the village committee are prepared by the Superintendent of Village Works. In some cases we prepare and submit them to him. I count 20 to 25 years' service in the village committee both as member and chairman. I have prepared estimates for four or five buildings. (Shown P21). I consider the rates given in P21 fair and reasonable.

Cross-examined.

The village committee has erected shop buildings in the Chunnakam market square. We spent about Rs.6,000/- or Rs.7,000/- on one of the shops. A building consisting of six rooms with a tiled roof can be constructed for about Rs.6,000/- or Rs.7,000/-. These buildings are inside the market square. We get about Rs.5/- or Rs.6/- a month for each stall. I have not valued any lands. As Chairman I approve of the estimates. I go through the estimates prepared by the Superintendent of Village Works. I depend on him for buildings put up by the village committee. The Defendant supported me for chairman in the village committee elections when he was a member. He did not contest me. One Ilankayar was my opponent. The Defendant was not even a member of the village committee when Ilankayar contested me. When the Defendant was a member of the village committee he supported me for the chairmanship. I received summons in this

In the  
District Court

Plaintiff's  
Evidence

No.17

N.K.Ambalavanar  
17th September,  
1955  
Examination  
continued

Cross-  
examination

In the  
District Court

Plaintiff's  
Evidence

No.17

N.K.Ambalavanar  
17th September,  
1955  
Cross-  
examination  
continued

case. The rent for the shop buildings put up by the village committee in the market square is about Rs.6/- per mensem for each shop.

Re-examined. Nil.

Sgd. P.Sri Skanda Rajah

District Judge.

No.18

Court Notes  
17th September,  
1955

No.18. COURT NOTES

Mr.Nadesan closes his case reading in evidence P1 to P21.

Sgd.P.Sri Skanda Rajah

District Judge.

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Defendant's  
Evidence

No.19

A.Thirugnana-  
sothy  
17th September,  
1955  
Examination

DEFENDANT'S EVIDENCE

NO.19. A. THIRUGNANASOTHY

Mr.Ponnambalam calls :-

A.Thirugnanasothy, affirmed. 37, Proctor S.C. and Notary Public, Jaffna.

(Shown P13A) I attested this Deed P13A at Chunnakam. I have my office at Urumpirai. Subramaniam, one of the attesting witnesses to this Deed came to my office and said that there was a deed to be attested at Chunnakam and so I went there. He took me to Sivapakkiam's house about three or four days prior to the attestation of this deed.

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Q. Did Sivapakkiam give you instructions?

A. She gave me certain particulars, i.e.,

regarding a mortgage to which this land was subject and the number of the case where she got permission from Court to sell.

She wanted me to transfer the land to the Defendant. After that I did the necessary search. Thereafter I attested the transfer deed according to the instructions. The mortgage was for a sum of Rs.15,000/- and interest.

10 Cross-examined.

I have not attested any deeds for Sivapakkiam either before or after the attestation of Pl3A. I have not done any work for the Defendant either before or after this. Neither the Defendant nor his relations ever consulted me in regard to their legal matters. The person who informed me that there was a deed to be attested was one Subramaniam of Kopay. He is related to the Defendant. He said that he was a cousin of the Defendant. Subramaniam came and talked to me in my office about three or four days prior to the attestation of Pl3A. The Defendant did not come to my office I met him at his house at Chunnakam three or four days prior to the attestation of this deed. Earlier too he had come to me. He had come to me about one year earlier. On that occasion he wanted to raise some money on a mortgage of his parents' land. I did not raise the money for him on that occasion. I cannot remember whether that was the only occasion prior to this that he spoke to me or met me. Prior to the attestation of Pl3A Sivapakkiam had not come to my office. She had nothing to do with me prior to the attestation of Pl3A. I had seen Sivapakkiam in this house about a year previously when I went to inspect the land that was to be mortgaged by the Defendant's parents. The land that was to be mortgaged is the present dwelling land of the Defendant. On that occasion I saw two ladies. I did not speak to them. The Defendant told me that one of them was his wife and the other was his sister-in-law. The Defendant was there on the day I went to receive instructions for the attestation of Pl3A. The Defendant told me that he wanted to purchase the land belonging to

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In the  
District Court

Defendant's  
Evidence

No.19

A. Thirugnana-  
sothy  
17th September,  
1955  
Examination  
continued

Cross-  
examination



In the  
District Court

Defendant's  
Evidence

No.19

A.Thirugnana-  
sothy  
17th September,  
1955  
Cross-  
examined  
continued

Sivapakkiam. He said that he wanted to purchase it for Rs.20,000/-. The Defendant spoke to me first and wanted me to have the transfer deed ready. He also told me that Sivapakkiam had already obtained permission from the District Court. I then spoke to Sivapakkiam. I asked her for the particulars of the land, etc. I was taken there by Subramaniam. The Defendant was also there. The deceased lady was also there. The Defendant was the person who first said that he wanted to buy the land. The lady gave me a piece of paper containing the number of the mortgage bond and the number of the case in which she obtained permission. I did not ask the Defendant for the particulars. I knew that the lady was his brother's wife. The Defendant told me that the particulars were with the lady. It did not strike me to ask for the particulars from the Defendant. They were all living in the same house. I asked the Defendant for the particulars and he said that the lady would give them. The Defendant did not give me the particulars.

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Re-examined. Nil.

Sgd. P.Sri Skanda Rajah  
District Judge.

No.20

No.20. S.KANDIAH

S. Kandiah  
17th September  
1955  
Examination

S.Kandiah, affirmed. 56, Malayan Pensioner,  
13, Chetty Street Nallur, Jaffna.

D6.

I know the Defendant. I also know the land the subject matter of this action. I lent some money on a mortgage of this property to the Defendant. I lent a sum of Rs.35,000/- on Bond No.2648 of 3.7.54 marked D6. I invite the attention of court to the attestation clause in D6 as regards the consideration. I inspected the land and premises before I lent the money. I am from Tellipallai, but I am settled down at Nallur. My brothers reside in Tellipallai. I go to Chunnakam and Tellipallai very often. I inspected the land and premises in the middle

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of June, 1954. At that time the building had come up to damp-proof course level. I inspected the land even on the day money was lent. On that occasion I saw three of the shops about 5 feet above the damp-proof course level. I also saw building materials on the site. The Defendant said that he was going to complete the building as early as possible and wanted the money urgently. I also saw a good number of workmen working there. From there I went to the office of Mr.S.Visuvalingam, Proctor and Notary. After going there both of us went to the bank. I withdrew money from two banks and along with the Rs.400/- I had I handed the money to Mr.Visuvalingam. I produce the counterfoil of cheque drawn on the Mercantile Bank dated 3.7.54 for Rs.28,000/- marked D7. I also produce the counterfoil of cheque drawn on the Bank of Ceylon dated 2.7.54 for Rs.6,600/- marked D8. Out of this sum of Rs.35,000/- Mr. Visuvalingam took a sum of Rs.15,000/- and went to Mallakam to get the bond discharged. I produce discharged bond No.526 of 17.12.53 marked D9. The Defendant approached me again on 13.10.54 for further monies to complete the building. On that occasion I gave him Rs.7,000/-. I produce mortgage bond No.2756 of 13.10.54 marked D10 by which I lent Rs.7,000/- to the Defendant on the security of the same land. I also invite the attention of court to the attestation clause in D10. At first I was reluctant to give him Rs.7,000/-. I had decided to give him only Rs.5,000/- but as he pressed me I decided to give him another Rs.2,000/-. I did not care to go and inspect the building again because I was satisfied that the building was progressing well. On the first occasion I went to the land with two of my brothers. My brothers told me the average value of lands. Small pieces of land will fetch a higher price. The average price of a large land is less than that of a small land. The length of the road frontage for this land is 280 feet. The rear portion of the land in dispute is low-lying and rocky. The rear portion is worth about Rs. 1,000/- lachcham. The front portion is worth about Rs.2,000/- per lachcham. I own lands at Tellipallai and Mallakam. I know the value of lands at Tellipallai and Mallakam. The land in dispute is about two miles away from my nearest land.

In the  
District Court

Defendant's  
Evidence

No.20

S. Kandiah  
17th September  
1955  
Examination  
continued

In the  
District Court

Defendant's  
Evidence

No.20

S. Kandiah  
17th September  
1955  
Cross-  
examination

Cross-examined.

When I first saw this building it was up to the damp-proof course level. On that occasion I valued the work that was done including the materials found at the site at Rs.10,000/- I valued the building at that stage at Rs.8,000/- exclusive of the materials I found there. I valued the entire bare land at Rs.30,000/-. As a prudent investor I valued the land at that time at Rs.38,000/-. I have not lent monies on mortgages before. This was the first venture on investments. I did not lend any monies on mortgages in Malaya. I used to remit monies to my brothers when I was in Malaya to be invested on mortgages, etc. They must have invested those monies in about half a dozen properties. I returned to Ceylon in May, 1954. I did not discuss the value of this land with my Proctor. I knew the Defendant was possessed of considerable property. I thought that the property in question would be sufficient security for the money I invested. The Defendant wanted Rs.35,000/- in June, 1954. After inspecting the land I decided to give him the Rs.35,000/-. I would have sued the Defendant if he had not continued to erect the buildings after getting the money. I saw three shops above the damp-proof course level. I saw the workmen working and the building in progress. A sum of Rs. 42,000/- is still due to me from the Defendant. So far I have not received anything by way of interest.

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Re-examined. Nil.

Sgd. P.Sri Skanda Rajah  
District Judge.

No.21

No.21. C.KUMARAVETPILLAI

C. Kumaravet-  
pillai  
17th September,  
1955  
5th October  
1955

C.Kumaravetpillai, affirmed. 44, Ayurvedic  
Physician, Chunnakam, Defendant.

I am practising as an ayurvedic physician for the last 25 years. The house in which I reside belongs to my parents. My father is a landed proprietor possessed of several lands.

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My elder brother Kumarakulasingham was married to the deceased Sivapakkiam. They too lived in my parental house. My brother is alive. Sivapakkiam died this year. My brother is of unsound mind for a fairly long time. Large sums of money were spent on his illness. My parents and his wife Sivapakkiam spent on his illness. Sivapakkiam was given certain lands as dowry by her parents. After my brother became insane the produce from Sivapakkiam's garden lands was taken by her brothers and sisters. The income from the sheds that stood on the land in dispute was also appropriated by her brothers and sisters. There were about ten sheds on the land in dispute. The rent for those sheds were paid to Sivapakkiam as well as to me. On some occasions she used to get about Rs. 50/- per mensem by way of rent from those sheds. Sometimes she used to get Rs. 40/- a month. The land to the south of the land in dispute belongs to the Plaintiff. The produce from the southern land must have been taken by either the Plaintiff or her son Sellathurai. On one occasion there was a dispute between Sivapakkiam and her brother Sellathurai. That was about 15 years ago. For about six or seven years the relationship between Sivapakkiam and her mother and brothers and sisters was strained. Sivapakkiam used to give presents to my children, spend on charity and also on the fulfilment of vows, etc. She made an application in case No. D/236 of this Court. Her brother filed objections. Sivapakkiam retained Mr. Kanagasabapathy in that case. She fell ill after the order was made in that case to deal with or dispose of her properties. In 1951 she entered the Moolai Hospital for treatment. She executed bond P11 for Rs. 2,000/- to pay and settle her debts. In 1953 she settled the mortgage debt on P11. She settled that debt by obtaining a loan. By P12 she raised a sum of Rs. 7,000/- by mortgaging three of her lands. Out of this money she got the Bond P11 discharged. She incurred expenses while she was an inmate of the Moolai Hospital. She also donated some jewels to my children worth about Rs. 1,000/-. She also paid and settled some of her sundry debts. I deny that out of the Rs. 7,000/- some money was utilised for the building on the land in dispute. By P13 she raised a loan of

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Rs.1,500/- . Out of this sum of Rs.1,500/- raised in November, 1953, she wanted to build on this land and for that purpose she got down three lorry loads of rubble and two lorry loads of sand. She also got an iluppai tree cut down and also got the ground levelled. Before November, 1953, the rear portion of the land in dispute was low-lying and rocky. She also got the fences cut down. On an auspicious day in 1954 she got the foundation laid. That was in the early part of January. The land was excavated and the foundation was laid in the Tamil month of January (Thai). She also bought some building materials in January. No work was done in February. The work on the building started in March, 1954. The foundation for the main block, that is, for the shop buildings in March or April, 1954. In April, 1954 the building had come up to damp-proof course level. The work on the building started again in June, 1954, after the Hindu New Year. Further work on the building was done after the transfer in my name. I purchased the land on deed No.206 of 2.6.54 marked P13A. At the time of the transfer in my favour the building had come up to damp-proof course level. I bought this land subject to a mortgage for a sum of Rs.15,000/- and interest. I settled the mortgage of Rs. 15,000/- by mortgaging the land in dispute for Rs.35,000/- to Kandiah. I produce the discharged bond marked D9. The building had come up to a height of 6 feet at the time I raised the loan of Rs.35,000/- from Kandiah. Between 2.6.54 and 3.7.54 the door frames had been erected and the building was in progress. I started to build from the southern end. On 3.7.54 the walls were about 5 or 6 feet high along the southern side of the building. After that I continued to build the 9 shop rooms. The kitchen was also in progress at that time. In addition to the loan of Rs.35,000/- I also raised a further sum of Rs.7,000/- from Kandiah in October, 1954. In addition to these monies I had to utilise other monies also to complete the building. To complete this building I got more than Rs.20,000/- from my father. On 10.6.54 I got from him Rs.15,000/- and in October I got from him more than Rs.7,000/-. I was also trading in textiles for about five or six years before I transferred my business to

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P.K.Thamotherampillai. I sold my business to him for Rs.11,100/-. I sold my furniture and fittings for Rs.1,500/-. The 9 shop buildings are not yet fully completed. They are ready for occupation. For some of the shops the kitchens have not yet been completed. The house warming ceremony took place in August, 1954. P.K. Thamotherampillai was the first to occupy two of the shops. In August, 1954. only two shops were ready for occupation. The third shop was occupied by V. Nadarajah in January, 1955. Shop No.4 was occupied by V.Subramaniam in December, 1954. At present Thamotherampillai is occupying one of the two shops. Shop No.2 has not been given to anyone yet.

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Sgd. P.Sri Skanda Rajah  
District Judge

Trial adjourned for 5.10.55.

Sgd. P.Sri Skanda Rajah  
District Judge

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5.10.55. Plaintiff absent. Defendant present. Appearances as before. Mr.Ponnambalam calls :-

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C.Kumaravetpillai, recalled, affirmed.

Examination-in-chief continued.

I was asked on the last date about the monies spent by me in building the shops. I raised the money from Kandiah on a mortgage. I also got monies from my parents. They had money at that time.

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To Court

My father is alive.

Examination-in-chief continued.

My parents sold certain lands. (Mr. Kanaganayagam moves to produce 3 deeds executed by the parents of the witness. Mr. Nadesan objects

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to the production of the deeds unless the execu-  
tants are called as witnesses. Mr. Kanaganaya-  
gam undertakes to prove the documents).

I was one of the attesting witnesses to the  
3 deeds. These deeds were attested by Proctor  
Kanagasabapathy. I produce a certified copy of  
deed No.1676 of 19th April, 1954, marked D1.  
(As the originals are not produced this witness  
cannot identify his signature on the documents.  
I disallow the documents to be produced. Mr. 10  
Kanaganayagam now states that he is not produc-  
ing the documents). I was present at the sale  
of 3 lands and I have attested these deeds as a  
witness.

To Court:- I am not producing the original  
deeds.

Examination-in-chief continued.

I saw my parents receiving the consideration  
mentioned in those deeds. I cannot give the 20  
actual consideration they received. They must  
have received approximately Rs.16,000/- or  
17,000/-. They received the consideration on  
two occasions. My parents gave me the money  
which they realised by the sale of their lands.  
I got this money from them to be utilised on  
the building of the shops. Besides this amount,  
I also received a further sum of Rs.3,000/-  
from my parents. I also borrowed about Rs.7,000/-  
to Rs.8,000/- from Gunaratnam, Vaithilingam,  
Ambalavanar and Thambiah. After purchasing the 30  
land in June, 1954, I spent about Rs.75,000/- on  
the building of the shops. There are 9 shops in  
that building. Behind the 9 shops there are  
small rooms. There is also a courtyard and 5  
kitchens in a row. I spent more than Rs.1,500/-  
on each of the kitchens. I have filled up and  
cemented the portion of land that lies between  
the rear portion of the buildings and the  
kitchen. The roof of the shop building is of  
concrete and is flat. I put up the concrete 40  
roof with a view to putting up a storeyed build-  
ing. The mason who was in charge of the build-  
ing operation was Nadarajah and not his father  
Sinnathamby. Sinnathamby worked on the build-  
ing for some time and I had to discontinue his

services on account of some trouble he gave me. He was never in charge of the building operation. I discontinued him because he used to drink and fight with the labourers. He was also in the habit of stealing rice that was given to him for preparing meals for the workmen. After this case was filed I had the buildings valued by Engineer Rajagopal. Sellathurai, brother of Sivapakkiam created considerable trouble in regard to this property. I remember the dispute about cutting down a margosa tree on this land. A complaint was made to the police regarding the cutting of the margosa tree by Kandan Vally. I produce a certified copy of the statement of Kandan Vally dated 22.12.53. (Mr.Nadesan objects to the statement being produced unless Kandan Vally is called as a witness. Mr. Kanaganayagam states that he is unable to call him and alleges that Kandan Vally has been made to disappear. He states that he has cited the police. Objection upheld).

The dispute in regard to the cutting down the margosa tree took place in December, 1953.

To Court:-

I was not present at the time of the dispute.

Examination-in-chief continued.

The Village Headman in his evidence said that the dispute in regard to the Margosa tree took place in November, 1954. It is not true. The margosa tree is still there. After I bought the land Sellathurai attempted to encroach on a portion of the building. Part of my building has been encroached on by him. I have filed an action against this plaintiff in case No.L/90 of this Court. In that case I have valued the damage at Rs.400/-. There are buildings on the portion encroached on by him. I remember my sister-in-law making an application to this Court to deal with this land and her other lands. She retained the services of Proctor Kanagasabapathy for that case. This Proctor has given evidence in this case on

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behalf of the Plaintiff. I accompanied Sivapak-  
kiam for the preparation and conduct of that  
case. I was present at the consultation with  
Counsel. Sivapackiam, in support of her appli-  
cation gave evidence. She said that she had no  
money for her expenses and to look after her  
sickly husband. She moved for permission of  
Court to mortgage her lands or to sell them.

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To Court:-

I was present when she gave evidence. 10

Examination-in-chief continued

I listened to the evidence of Proctor Kanagasa-  
bapathy. After her application was allowed by  
Court she mortgaged some of her lands. Proctor  
Kanagasabapathy attested 3 deeds for her, name-  
ly P.11, P.12 and P13. There were some dispute  
between Sivapackiam and Kanagasabapathy during  
the time these deeds were attested by him. He  
charged exorbitant fees and she disputed that.  
For the Rs.2,000/- raised on P11 he charged Rs. 20  
200/-; for the Rs.7,000/- raised on P12 he  
charged Rs.300/- and for Rs.1,500/- raised on a  
secondary mortgage he charged Rs.200/-

Q. Did you or Sivapakiam engage the services of  
Proctor Kanagasabapathy before P11 to P13  
were attested by him?

A. No.

The discharge bond No.526 of 17.12.53 was at-  
tested by Proctor R.N.Sivapirakasam in the  
following month. It is not true that I request-  
ed Proctor Kanagasabapathy to attest a donation  
deed. I bought this land from Sivapakkiam for  
Rs.20,000/-. The extent of this land is 20  
lachchams. It abuts the Kankesanturai road. At  
the time I bought the land it was low-lying and  
stony. Damp-proof course level had been reach-  
ed at the time I bought the land. During rainy  
season this land used to be flooded. When I  
bought the land foundation for the 9 shops had  
already been laid. I bought the land for Rs. 40  
20,000/- subject to mortgage. The Rs.20,000/-  
included the amount on the mortgage Bond D9.

Q. Before she sold the land to you did she try to sell it to anybody else?

A. No; she tried to sell only her garden land.

10 She could not sell the garden land because Sellathurai prevented it being sold. She then told me that she was unable to raise money or sell the land and asked me to give her Rs. 20,000/- to complete the building. At that time the land was worth only Rs.20,000/-. A lachcham of this land was worth Rs.1,000/- at that time. It was after the death of Sivapak-  
 20 kiam that her mother filed this action. No one else was interested in buying this land. It is not correct to say that Sivapak~~kiam~~ gave me this land for no consideration. The timber used for door and window shutters is mahogany and for the frames is palai. The thickness of the walls of the 9 shops is 1 foot. The flat roof is reinforced and is 3" thick, and the  
 30 plastering is  $\frac{1}{2}$ ". Most of the buildings has been plastered in front and inside rooms except the wall facing the kitchens and the northern wall. The lintel above the window frames and door frames is 9" thick. I was supervising the construction of the buildings ever since I bought the land. I bought the materials myself and made payments to labourers. I also got assistance to supervise the work. I did not charge anything for my supervision. I paid my assistants.

To Court:-

I have not included in my account the payments made to my assistants for supervising the work.

Examination-in-chief continued.

40 Out of the 9 shops 5 rooms remain unoccupied. The Plaintiff has prevented the would be tenants from occupying the shops. She has driven away two tenants.

Cross-examined.

My father has two sons, namely, myself and my brother, who is of unsound mind. My father

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had given me monies prior to 1948. I do not remember how much he gave me. Whenever I was in need of money he used to give me. He had given me Rs. 5,000/- to Rs.6,000/- prior to 1948. He gave me that money for the maintenance of my family. He gave me that money by selling some of his lands. He also had money, saved out of the income derived from his lands. He also spent for my insane brother. I also spent for him. Sometime Sivapakkiam objected to my father helping my insane brother. She said that she would look after him.

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Q. Is it correct to say that your father never spent any money on your insane brother?

A. No he has given him moneys.

Sivapakkiam and we cooked separately. My father occasionally had his meals with Sivapakkiam. Sivapakkiam was in receipt of a monthly income from the boutiques. I was in charge of collecting the rent for her. Both my father and I looked after her interests. Whenever she was in need of money she used to get money from my father and from others also. She was not on good terms with her mother and brother. She was on good terms with me. She never sought my advice on any matter. I did not suggest to her the idea of making the application to Court to deal with her property. It was she who suggested to me that she wanted to make an application to Court. She knew about the procedure. I saw my father accompanying her to the Proctor's office. Whenever she fell ill I got her treated. In regard to the application she made to Court to deal with her property I did not render her any assistance. Certainly she would have preferred to give her property to me than giving it to anyone else, because I have rendered her considerable assistance during her life-time. I started my textile business 6 or 7 years ago. I do not remember when and in what year I started the business. At the start I invested about Rs. 12,000/- on my business. The other partner of the business was Ponnambalam. He contributed Rs. 4,500/-. I do not remember whether it was in 1948 that I started the textile business. I mortgaged some of my lands and raised money for my business. I also sold some lands. I must

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10 have sold the land called "Thikiri" after I  
started the textile business. I do not remem-  
ber for how much I sold that land. Ponnamba-  
lam was a partner of my business for 4 or 5  
years. I did not either make profit or incur  
loss in the textile business. I maintained  
books of account in respect of the textile  
business. The account books which I maintain-  
ed at Chunnakam have been destroyed. The books  
of account which I maintained in respect of the  
textile business at Jaffna are with me. I have  
not brought them to Court. I have already said  
that I raised monies on mortgages for my tex-  
tile business. I deny that my father raised  
monies by mortgaging his lands and gave me mon-  
ies for my textile business. I sold my textile  
business because I incurred loss. I had money  
at the time the building operation was going on.  
I sold the textile business in November, 1954.  
20 Out of the money realised by the sale of my  
textile business in November, 1954, I settled  
the debts incurred on account of the building  
construction. Ponnambalam, the other partner  
of my business, did not pay his contribution of  
the capital in a lump sum. He paid that in  
small instalments. I maintained an account of  
the monies spent on the shop buildings. I have  
not brought it to Court. The account book  
would show the actual amount I spent on the  
30 building. I showed the account book to my law-  
yers. I showed that to them after the institu-  
tion of this action. I did not bring the  
account book on any of the trial dates. The  
account is written in Tamil. I did not have it  
translated for the purpose of this case. By  
Pll Sivapakkiam borrowed Rs.2,000/- and settled  
her debts. She obtained the permission of  
Court to deal with her property in 1949. She  
had also borrowed monies from several others.  
40 I did not advance her any money in connection  
with her application which she made to Court.  
I cannot assign any reason why I did not give  
her any money. She must have paid her Proctor.  
She must have got the money from my father for  
payment for stamps and the lawyers' fees. I  
did not ask her from where she got the money.  
I did not give any instructions to her Proctor  
in connection with the application she made to  
50 Court. She gave the instructions herself. I  
deny that I spoke to the Proctor anything about

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the case. I did not give him the particulars of deeds. I did not render her any help in regard to her case except that I accompanied her to the Proctor's office. I arranged the loan of Rs. 2,000/- for her through Proctor Kanagasabapathy. I do not remember the name of the mortgagee. I do not remember whether the Rs.2,000/- was borrowed from Thambiah. It was Proctor Kanagasabapathy who arranged that loan. When she asked me to raise for her Rs.2,000/- I sent her to the Proctor and he arranged the loan for her. She said that she wanted Rs.2,000/- to clear her debts. It was I who went and told the Proctor to arrange the loan for her. After 1949, Sivapakkiam raised Rs.7,000/- from Arulampalam on 10th October, 1953. I spoke to Arulampalam in regard to this land. I deny that I told Arulampalam that I required this amount for the purpose of putting up buildings. I listened to the evidence of Arulampalam.

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Q. For what reason did you ask Arulampalam for Rs.7,000/-?

A. To pay off the previous debts incurred on account of Sivapakkiam's illness.

She was ill in the Moolai hospitel. I am not calling anyone to prove that she was ill in the Moolai hospital. I am not calling anyone to prove the payment of bills rendered by the Moolai hospital. She borrowed Rs.2,000/- on 3rd December, 1953 and again within a period of 2 years she borrowed Rs.7,000/-. I do not know how much money she would have spent on account of her illness.

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To Court:-

She was in the Moolai hospital for 45 days.

Cross-examined continued

Q. How long before the loan of Rs.7,000/- was raised was she in the Moolai hospital?

A. She was there 1 or 1½ years before that. I paid her medical bills at the Moolai hospital I do not remember how much I paid. After the

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Rs.7,000/- was borrowed, the following month I asked Arulampalam for a loan of Rs.1,500/-. I deny I told him that I required this amount for the purchase of cement. I deny that any portion of the Rs.7,000/- was utilised for the purpose of the shop buildings. Out of the Rs.7,000/- she spent some money on my children and also returned the monies she had borrowed from me. She spent over Rs.1,000/- on my children. She paid the Rs.1,000/- in currency notes. Besides the Rs.1,000/- she also presented some jewels to my children worth Rs.1,000/-

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Q. In other words, she mortgaged her lands and out of the money raised on the mortgage she presented jewellery and clothes to your children?

A. Yes.

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I have two children. They are 15 and 8 years old. The eldest is a girl. She would have been 13 years old in 1953. She gave the Rs. 1,000/- worth of jewellery to my daughter out of affection towards her. I arranged another loan for Sivapakkiam and raised Rs.15,000/- on 17th December, 1953. I deny that the entirety of this amount was utilised for the purpose of building the shops. I raised the Rs.1,500/- in November, 1953 after putting up the buildings. The Rs.15,000/- raised on the mortgage was in the custody of Sivapakkiam. I arranged the building operation. I purchased the materials myself. I personally arranged to get down the masons and labourers and I supervised their work. Right from the inception of the building operation all work was done by me. I arranged the loan of Rs.15,000/- at the request of Sivapakkiam. She wanted more money, but only Rs. 15,000/- was available and it was taken. The Rs.15,000/- was not enough to complete the building. I wanted more money, but the mortgagee was not prepared to give me more than Rs.15,000/- The entire Rs.15,000/- was not utilised for the building. She wanted to raise more money, but Sellathurai prevented the people from lending money to her. She then stopped raising more money. Out of the Rs.15,000/-

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Rs.6,000/- to Rs.7,000/- was spent for the building. She had the balance Rs. 8,000/- with her. I deny that I utilised that amount for the building.

To Court:-

She could have spent the balance Rs. 8,000/- for the building without raising a further loan.

Cross-examined continued

If she could not complete the building with the balance Rs.8,000/- she wanted to sell some of her lands, but the buyers were prevented by Sellathurai. I did not tell any third party that this land was for sale. I did not try to sell this land to anyone. It is not correct to say that I tried to sell this land to somebody. I tried to sell her garden land. She did not tell me that she was going to sell this land. She asked me to give her Rs.20,000/- for this land. I have not purchased any other land in my life time. When she sold the land to me the huts were there. After she sold the land to me she lost all sources of income. The huts are still there.

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To Court:-

Q. Did you allow her to make use of the income derived from the huts?

A. No.

Cross-examined continued

Q. What did she do with the Rs.8,000/- which she had with her?

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A. She may have lent that amount.

She died without leaving a cent. She left behind only a pair of ear-studs and the thalikody. I paid Rs.4,500/- on the transfer deed I paid

that a week prior to the execution of the deed. In the petition filed by her in 1949 she had stated that if permission was granted she may be able to put a few go-downs on this land, so that she could maintain herself for the rest of her life.

Q. Notwithstanding this fact she transferred the land to you?

A. Yes.

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The sum of Rs.1,500/- raised on Pl3 was utilised for buying building materials. The building materials that were bought out of this amount were 3 lorry loads of metal and 2 lorry loads of sand. 3 lorry loads of metal and 2 lorry loads of sand would have cost Rs.140/-. I have documents to prove the number of labourers employed by me and the wages paid to them. I have not brought them to Court. I purchased timber for the carpentry work on the building.

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I do not have receipts for the purchase of timber. I purchased the timber from Sinnadurai's timber depot. Sinnadurai is not a witness for me.

To Court:-

I am not calling anyone from whom I purchased the timber, nor am I calling anyone from whom I purchased the building materials. Cross-examined continued.

In all I spent Rs.75,000/- on this building.

Q. Have you got a note of the amount you spent?

30

A. It is in the account book.

Q. Have you noted down the monies which you borrowed from others?

A. I have written the names of the persons and the dates on which I borrowed the monies.

I have not brought that note to Court. I have not cited anyone from whom I borrowed monies. All those from whom I borrowed monies are alive.

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examination  
continued

I got the buildings valued by Engineer Rajagopal. I gave him the various measurements and the mixtures. I did not show him the book where I have noted down the measurements and the mixtures. I filed action against the Plaintiff in case No. L/90 of this Court on 6th July, 1955, stating that the Defendant had encroached on my land by one kuly and had cut foundation by the side of my wall. I valued the one kuly encroached upon at Rs.400/-. (The plaint in case No.L/90 D.C. Jaffna is marked D2). The building operation was stopped at damp-proof course level in March, 1954. Between March and 2nd of June, 1954 no building operation was done though Sivapakkiam had Rs.8,000/- in hand. Between 2nd June, and 3rd July, building operation was done. The wall and the door frames were put up in one month.

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To Court

To Court:-

Between 2nd June and 3rd July Rs.6000/- to Rs.7,000/- was spent.

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Cross-  
examination  
(continued)

Cross-examined continued

I got this money from my father. He had money at that time realised by the sale of his lands.

Re-examined. Nil.

Sgd. P.Sri Skanda Rajah  
District Judge.

No.22

No.22. W.F.RAJAGOPAL.

W.F.Rajagopal  
5th October  
1955  
Examination

W.F.Rajagopal, affirmed. 70 Retired Engineer, Jaffna. I retired from the Ceylon Government 10 years ago. Before that I was employed in the Malayan Government. During the past 4 years I have been practising as Engineer and Architect. I have been employed by several local bodies in the Island. I was employed in the Municipal Council, Jaffna, P.W.D. Ratmalana,

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Urban Council, Moratuwa and Urban Council, Kalutara. I have practical knowledge of specifications for buildings here besides my professional experience. The Defendant wanted me to inspect the buildings, the subject matter of this action and to submit my valuation. I produce the sketch prepared by me marked D3, the bottom portion of D3 shown in red marked D3A, the report marked D4 and the estimate marked D5. I estimated the building at Rs.86,341.70. The quantities given there are approximately correct. In my opinion this is a reasonable valuation for the building. According to me the life of this building would be 40 to 50 years the minimum. I have seen the report submitted by Mr.Senagaratnam on behalf of the Plaintiff. There are certain differences in regard to the rates between my estimate and his estimate (P21). With regard to the rubble masonry wall I have rated at Rs. 140/- per cube. There is also a difference in mixtures between my estimate and the estimate (P21). According to P21 the ratio is given as 1:6. As technicians we value the different materials at current prices for rubble masonry and the value for labour is added on. With regard to the finished work I have included 15 per cent overhead charges, i.e., for supervision and contingencies. I have included plastering in my rate, but have not stated so. For items 23 and 24 in P21 Senagaratnam has given the rate as Rs.16/- per square, but I have rated at Rs. 121/- for masonry and Rs.19/- for plastering, i.e., Rs.140/- per cube including plastering.

Q. What do you mean by "supervision and contingency"?

A. If good work is to be done supervision is necessary. To cover up unforeseen things that may happen something is added on as contingency, such as handling of materials at the site, dismantling, scaffoldings and moulds are necessary.

Cross-examined

The data regarding specifications was given to me by the Defendant. I was able to see the 3/16" iron rod reinforcement. Item 8 of D5

In the  
District Court

Defendant's  
Evidence

No.22

W.F.Rajagopal  
5th October  
1955  
Examination  
continued

Cross-  
examination

In the  
District Court

Defendant's  
Evidence

No.22

W.F.Rajagopal  
5th October  
1955  
Cross-  
examination  
continued

reads "4" thick cement concrete roof 1:2:4 ( $\frac{3}{4}$ ) top rendered  $\frac{1}{2}$ " cement mortar 1:3 reinforced palu girders". I have not set out the reinforced iron rods in my estimate. Item 8 of D5 corresponds to item 19 in P21.

Q. Why have you not set out the size of the reinforcement in D5?

A. It is not necessary.

In estimating the value of the building the concrete roof is one of the factors. One of the factors is the size of the iron rod. If the iron rod varies, the value of it also varies.

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Q. By looking at the report no one can say what the size of the iron rod which you have taken into account is?

A. No.

I have not stated in my report D5 the size of the iron rod reinforcement. I have calculated the size of the iron rod according to my discretion.

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Q. Did you take into account the size of the iron rod reinforcement as being  $3/16$ "?

A. No.

I do not have a note as to the size of the iron rod. I do not have in my notes as to how the iron rods were centered. I have made a note of the iron rods as being 6" apart. I have noted the cement concrete roof 4" top rendered cement mortar.

Q. What you say is that 4" thick cement concrete top rendered  $\frac{1}{2}$ " cement mortar, does not mean that 4" concrete and  $\frac{1}{2}$ " plastering would make  $4\frac{1}{2}$ "?

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A. The 4" thick cement concrete includes  $\frac{1}{2}$ " cement rendering.

To Court

To Court:-

I did not measure the thickness of the roof.

The total thickness of the reinforcement according to P21 is 3". According to me it is 4". The Defendant did not tell me anything about the dimensions. He gave me the measurements and specifications. Item 4 of D5 refers to cement block and masonry wall. The size of the cement blocks that were used was 6". I have not mentioned that in D5. The notes are not with me. Item 6 of P21 reads that there are 6" thick blocks as well as 4" thick blocks. I have calculated on the basis that all blocks were 6" blocks. I do not know whether they were 6" blocks or 4" blocks. The calculation was made according to cubes and whatever size they may be it makes no difference. Whether the size of concrete blocks are 6" or 4", it does not affect the estimate when it is calculated in cubes.

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To Court:-

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Q. For smaller concrete blocks the cost of labour would be more and for larger blocks such cost would be less?

A. If the calculation is made in cubes it does not make any difference.

Item 10 of D5 refers to doors in shops and houses (front) with 1" plank and 1" battens including hinges and locks. There is a difference regarding this estimate between D5 and P21. The rates which I have given are prevalent in the P.W.D.

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Q. Are you aware of the fact that the P.W.D. rates are considerably higher than the rates at which work is done by private contractors?

A. They are.

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I was in charge of the Karaiyoor scheme and Senagaratnam was Architect employed by the Contractor. In respect of that scheme the rates were considerably lower than the P.W.D. rates. If I were to put up a building I would not take into account the P.W.D. rates. I would prefer to get the work done at the lowest rates. I have not mentioned the details in D5 in regard to the iron rods. I do not have the details with me. When I prepared the estimate I allowed certain percentage for supervision and contingency.

In the  
District Court

Defendant's  
Evidence

No.22

W.F.Rajagopal  
5th October  
1955  
Cross-  
examination  
continued

To Court

In the  
District Court

Defendant's  
Evidence

No.22

W.F.Rajagopal  
5th October  
1955  
Cross-  
examination  
continued

Q. Why do you allow contingency for a finished building?

A. For the reason that they must have incurred cost of supervision and contingency during the course of construction.

To Court:-

I did not ask the Defendant how much he spent for the building. I did not ask him to show me the account of the money he spent on the building.

Re-examined: Nil.

Sgd. P.Sri Skanda Rajah  
District Judge.

To  
Court

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No.23

Court Notes  
5th October  
1955

No.23. COURT NOTES.

Mr.Ponnambalam closes his case for the Defendant reading in evidence D1-D8.

Mr.Nadesan also tenders in evidence P22.

Court adjourns for lunch.

2 p.m. Court reassembles after lunch.

I invite the Counsel on both sides to address me.

Mr.Ponnambalam states that he is not addressing.

Mr.Nadesan addresses Court.

In the course of his address he says that whatever the legal position may be, if the Plaintiff succeeds, the Plaintiff is prepared to pay compensation for actual improvements to the extent that the land has benefited by the improvements effected by the Defendant himself, i.e. not taking into account the improvements effected by the deceased Sivapakkiam or out of her monies.

C.A.V.

Judgment on 18.10.55.

Sgd.P.Sri Skanda Rajah  
District Judge.

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No.25 JUDGMENTIn the  
District CourtJ U D G M E N TNo.24Judgment  
18th October  
1955

10 This action relates to a land belonging to one Sivapakkiam, late wife of Kumarakulasingham. Admittedly she was a woman to whom the law of Thsawalamai applied. Sivapakkiam was the daughter of the Plaintiff. Her husband is a brother of the Defendant. Kumarakulasingham is of unsound mind for a long time. Sivapakkiam left no children. Obviously as she had fallen out with her mother and her brothers, she lived with her husband in the husband's parental home where the Defendant and his wife also live. The Defendant's parents were old. Naturally, therefore the Defendant must have been looking after Sivapakkiam's interests also. She made an application to the District Court of Jaffna in case No.D/236. According to Mr.Kanagasabapathy, who was her Proctor in that case, it was the Defendant who approached him in respect of that application and it was the Defendant who gave instructions regarding that application. A certified copy of that application dated 24.3.49 has been produced as P9.

30 It may, at this stage, be stated that Sivapakkiam made this application as she could not get her husband's consent, because of his mental condition, to deal with her property. Under the Matrimonial Rights and Inheritance (Jaffna) Ordinance (Cap.48) a Thsawalamai wife cannot deal with her property except with the written consent of her husband or, if the husband was incapable of giving his consent, as in this case, on an order of this Court.

40 In paragraph 5 of her application she has stated that she gets no income except from the properties described in the schedule and that that income was insufficient for her expenses for even a period of three months in the year. In paragraph 6 she has stated as follows :-  
"The property described in item 1 of the Schedule is situated adjoining the Chunnakam market and if the petitioner built a few godowns in the said land the Petitioner can maintain herself for the rest of her life and pay all the

In the  
District Court

No.24

Judgment  
18th October  
1955  
continued

debts which the Petitioner has incurred". In paragraph 7 she has stated "There is a great demand for godowns in that area and the Petitioner is credibly informed that if she erected a few godowns in a few years' time the petitioner can save some money also". In paragraph 8 she asked for permission to deal with her property. She alleged that her husband cannot give a valid consent to deal with her property. In paragraph 9 she has stated "Therefore, it is necessary that this Court should give permission to mortgage or otty mortgage the lands described in the schedule hereto without the permission of the Respondent". The prayer itself runs as follows:- "That this Court be pleased to grant the necessary permission under Section 8 of Chapter 48 to mortgage or otty mortgage all or any of the lands described in the schedule hereto and to lease them and for costs and for such other and further relief as to this Court shall seem meet".

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It should be emphasised that in the petition she did not make an application for selling any of the four lands mentioned in the Schedule to the petition. It is clear from this petition that by mortgaging or leasing any one or more of the four lands she intended to put up godowns on the land which is the subject matter of this case so that a steady income to maintain herself throughout her life could be secured. It is, therefore, clear that her intention was not to sell this land. It, no doubt, appears that in her evidence P10 she has stated that she moved for permission to mortgage or sell the properties one by one and that she wanted to sell this land also. The Court made order giving her general permission either to mortgage or sell her properties without the concurrence of her husband, whichever is more profitable.

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It would appear that no particular lease or mortgage was in view at the time this application was made. That is to say, there was nothing to indicate that there was any arrangement with anybody either to sell or to mortgage or to lease any one of the lands. This order was made on 8.9.49. In pursuance of this order, she mortgaged one of the lands by P11 of 3.12.51 for Rs.2,000/-. Then on 10.10.53 she mortgaged another land for Rs.7,000/- by P12. Out of this

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Rs.7,000/- she paid and settled the earlier mortgage. By Pl2 she dealt with the 2nd 3rd and 4th lands mentioned in P9.

In the  
District Court

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18th October  
1955  
continued

10 Then we have the evidence of Mr.Kanagasabapathy, which I would unhesitatingly accept, that the sum of Rs.7,000/- was raised for putting up shop buildings on the land in dispute and that the building operations on the land commenced soon after the loan was raised on 10.10.53. The fact that this money was raised for the purpose of putting up the buildings on this land is admitted by the Defendant in his evidence. Then on 21.11.53 by Pl3 she raised a further sum of Rs.1,500/- on a secondary mortgage. It is also clear from the evidence of Arulampalam, who lent Rs.7,000/- and Rs.1,500/- respectively on Pl2 and Pl3, that the Defendant made him understand that shop buildings were going to be put up on this land with those monies. After the execution of Pl3 Mr.Kanagasabapathy tried to raise a loan of Rs.25,000/- on the security of the land in dispute. By Pl7 of 17.12.53 Sivapakiam raised a loan of Rs.15,000/- on a mortgage of this land. In that bond reference is made to the land and the buildings on it. Mr. R.N.Sivapragasam, Proctor and Notary, who attested this bond, says that at that time stone built shops were being put up on this land.

30 It would also appear that deed No.206 of 2.6.54 Pl3A was attested by Mr.Thirugnanasothy, Proctor and Notary. This is the only deed attested by this notary. He is a person from Urumpirai. Most of the deeds of the members of this family were attested by Mr.Kanagasabapathy and before him by his late father.

40 There is evidence that this land is in extent 20 lms and that in June, 1954, a lachcham of this land was worth about Rs.2,500/- to Rs. 3,000/-. The village headman Mandalanayagam speaks about the value of this land. There is also the evidence of one Kanagarayar who purchased lands in the neighbourhood on Deeds Pl4 and Pl5 in 1950 and 1952 respectively. Those lands are even further away than this land from Chunnakam Market. Mr.Ambalavanar, a retired surveyor, also supports this valuation. He is in addition, chairman of the village committee



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continued

of Uduvil in whose area this land is situated. It is, therefore clear that the consideration of Rs.20,000/- mentioned in Pl3A is much less than half the value of the land at the time of the alleged sale in Pl3A. Defendant has valued one kuly of bare land at Rs.400/- in D.C.90 (P22)

We have the evidence of Sinnathamby, the mason, who admittedly worked on this building and who claims to have been the mason in charge of the building operations, that the foundation was laid at an auspicious hour in August, 1953, and that in April or June, 1954, the concrete roof had been laid for four of the nine rooms. It was suggested to him that it was his son who was in charge of the building operations. The Defendant also says in his evidence. But the son has not been called. I was impressed by Sinnathamby and I would accept his evidence that he was the mason who was in charge of the building. The evidence of the village headman Mandalanayagam also goes to support mason Sinnathamby's evidence.

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We have also other evidence which indicates that the land was worth much more than Rs.20,000/-. Kandiah, the Malayan pensioner, who is a defence witness, lent a sum of Rs. 35,000/- on the security of this land on 3.7.54, i.e., a month after the deed Pl3A was executed. Unless the land was worth very much more than Rs.50,000/- he would not have lent Rs.35,000/-. It is difficult to believe that within one month of Pl3A improvements would have been effected so as to increase the value of the land to that extent. Again by D10 of 13.10.54 Kandiah gave another sum of Rs. 7,000/- on a secondary mortgage of this property. This witness would have the Court believe that at the time he lent Rs.35,000/- on the primary mortgage he valued the entire bare land at Rs.30,000/- and the land with the buildings at Rs.38,000/-. He is interested in supporting the Defendant because if the Defendant fails the chances are that he will not be able to recover the Rs.42,000/- which he invested on this land.

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The Defendant had a textile business. He

In the  
District Court

No.24

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continued

is also an ayurvedic physician. It would appear that by P1, P2 and P3 of 20.6.49 the Defendant sold a land and on that same day he mortgaged another land for Rs.1,500/-. Mr. Kanagasabapathy's evidence would show that he utilised these amounts to pay off an earlier debt of Rs.5,180/50. This evidence is supported by the receipt P5 of the same date. On 14.7.50 the Defendant mortgaged another land for Rs.5,000/- by P6. By P7 of 2.10.50 he raised a sum of Rs.4,000/- on another mortgage. By P8 of 26.9.49 the Defendant raised a loan of Rs.2,500/-. Besides, he had to sell off his textile business. Also by P18 of 1952 the Defendant raised a sum of Rs.8,000/- on a Mortgage. All this would go to show that the Defendant was in financial difficulties. It is, therefore, hardly likely that the Defendant would have had any money with him. Even the proceeds of the sale of the textile business were not paid to him in a lump sum. They were paid in instalments. In November, 1954, Thamotherampillai, who purchased the textile business for Rs.11,100/-, paid him only Rs. 4,500/- or Rs.5,000/-.

But the Defendant tries to make out that his parents gave him money and that he had other monies also. But he is unable to say how much was given to him by them. He has not produced any account book to show that monies were given to him by his parents. His father is alive. But he has not called him. I do not believe the Defendant when he says that his parents gave him money. It is also significant that in P13A it is stated in the attestation that the consideration mentioned therein did not pass in the presence of the notary. I would, therefore, hold that the Deed P13A, which purports to be a deed of sale, was not in fact a sale.

Now as regards the value of the building. The retired architect Senagaratnam was called by the Plaintiff. He actually took the measurements of the building and made calculations. According to him, the real value to the owner of this building is Rs.41,151/84. He further says that the maximum that could

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continued

have been spent on this building is Rs.51,439/80 if the job was really good (vide P20 and P21). But in his opinion this building is badly constructed. Senagaratnam's estimate is based on rates at which he is actually getting work done on other buildings. The evidence of the defence witness Rajagopal, who is a retired engineer and who values this building at Rs. 86,343/70, cannot be accepted. He himself admits that he did not take measurements and that his valuation is based on the rates which are prevalent in the Public Works Department. He further admits that the P.W.D. rates are considerably higher than the rates at which work is being done by private contractors. Even the data regarding the specifications were given to him by the defendant and he did not verify or check them. He has not taken into account the size of the iron rods used for the reinforcement. I would accept Senagaratnam's evidence in preference to that of Rajagopal.

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The Defendant tries to make out that he spent Rs.75,000/- on this building. He has not produced any accounts.

It would appear that on P12, P13 and P17 Sivapakkiam raised loans amounting to Rs.23,500/- out of which she settled a debt of Rs.2,000/- due on P11. Then a sum of Rs.2,000/- was received from Thamotherampillai as advance for the two shops occupied by him. On P16 and P19 two further sums of Rs.1,000/- each were received as advance from the tenants Nadarajah and Subramaniam - It is significant that P19 is dated 21.6.54 and Sivapakkiam has also signed this receipt along with the Defendant. If in fact Sivapakkiam had sold the land to the Defendant on P13A there was no necessity for the Defendant to get Sivapakkiam also to sign P19. This again would show that Sivapakkiam did not intend to sell the land on P13A to the Defendant.

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It would, therefore, appear that Sivapakkiam had Rs.25,500/- to spend on the building. The value of the building is Rs. 41,151/84. Therefore, what must have been spent by the Defendant is Rs.15,651/84. If the Defendant is entitled to compensation he will be entitled to this sum less the rents he has recovered.

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 even if she intended to sell the land.

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continued

10 As I have stated earlier, in the petition P9 Sivapak did not ask for the Court's permission or consent or authority to sell any of the lands. Before making an order for the sale the petition was not amended. The Court cannot grant anything more than what is asked for unless the petition is amended - Ambalavanar vs. Perian Ayengen et al 2 Lorenz's Reports 38.

20 At page 1348 of Chitaley's Commentary on the Code of Civil Procedure (1908), 2nd Edition, Volume II, the following passage appears:-  
"But a Court cannot grant a larger relief than that claimed, even if the Plaintiff is really entitled to it, unless the Plaintiff gets the plaint amended with the leave of the Court".

30 At pages 1267 to 1269 the following passages appear:- "He will not be allowed to succeed on a case not so set up by him and cannot be allowed at the trial, to change his case, or set up a case inconsistent with what he has alleged in his pleading, except by way of amendment of the pleading". In the case of Eshenchunder Singh vs. Shamacharan Lord Westbury in delivering the judgment of the Board (Privy Council) observed as follows:- "The case is one of considerable importance, and their Lordships desire to take advantage of it, for the purpose of pointing out the absolute necessity that the determinations in a cause should be founded upon a case either to be found in the pleadings or involved in, or consistent with, the case thereby made.....It will introduce

40 the greatest amount of uncertainty into judicial proceedings if the final determination of causes is to be founded upon inferences at variance with the case that the Plaintiff has pleaded, and, by joining issue in the cause, has undertaken to prove.....They desire to have the rule observed that the state of facts, and the equities and ground of relief originally alleged and pleaded by the Plaintiff, shall not be departed from".

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The evidence asking for a sale was inconsistent with what was alleged in the petition P9. Therefore, the Court had no jurisdiction to order a sale. Any sale in pursuance of that Order of 8.9.49 would be null and void. Therefore, the alleged sale on Pl3A is null and void.

In this connection it would be useful to consider the cases decided under the corresponding Section, viz., Section 8 of the General Matrimonial Rights and Inheritance Ordinance. The two sections are in identical terms. In the case of Wickramaratne vs. Dingiri Baba 2 Court of Appeal Cases 132 at page 133 Wood Renton J. stated ".....the marital consent required....is a consent with special reference to the particular disposition, the validity of which is in question". At page 135 Perera J. stated ".....I have no hesitation in saying that this provision implies that a disposition of immovable property by a married woman is ineffectual unless the consent of her husband is given to the disposition of the particular property dealt with.....". If the husband's consent should be with reference to a particular transaction the order of the Court which, for the limited purpose of granting consent, steps into the shoes of the husband must also be with reference to a particular transaction. Here what the Court has done was, in effect, to make Sivapakiam a femme sole, which I do not think the Court had the power to do.

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It is to be noticed that the Court's order was dated 8.9.49. Then in pursuance of that order she acted for the first time by mortgaging on Pl1 of 3.12.51 and next by mortgaging on Pl2 of 10.10.53. This alleged sale is dated nearly five years after the alleged permission was obtained.

Even if the order on P9 was correct and was made with jurisdiction, I would hold that the permission granted was exhausted by the execution of Pl1 and Pl2. In the case of S.A. Publina Silva Hamine vs. J.A. Don Egonis Appuhamy 2 Browne's 362 at page 363 Bonser C.J. said ".....The object of requiring her husband's consent is to protect the married woman, and

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prevent her being inveigled into some foolish disposition of the property, and perhaps cheated out of it. It is supposed that the husband would protect the interests of his wife and see that she does not do anything foolish..... The Court is, therefore, substituted as the protector of the wife."

In the  
District Court

No.24

Judgment  
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1955  
continued

10 By making the order which was made in P9 the Court failed to protect Sivapakkiam's interests and to see that she did not do anything foolish. In this case it is obvious that Sivapakkiam acted, at the lowest, very foolishly. In order to see that a married woman who seeks the permission of the Court to authorise a sale does not act in a foolish manner it is the duty of the Court to ascertain the value of the land. If this is not done, a married woman in the position of Sivapakkiam, could be duped. In the case of Silva Hamine vs. Agonis Appuhamy 4 N.L.R.101 it was held that a married woman living separately from her husband, if she desires to lease a portion of her immovable property without his consent and concurrence, the proper course is not to apply for a general order empowering her to lease without her husband's consent and concurrence, but to bring the proposed lease before the Court and ask that her husband's concurrence in it should be dispensed with. That was not done in this instance and, therefore, the order made in case D/236 was not a proper order. In the case of Fradd vs. Fernando 36 N.L.R.124 at page 127 Dalton J. expressed himself as follows:- "The authorities I think would go to support the conclusion that such a general consent is not sufficient for the purpose for which it was presumably intended...." It was held in the case of Naganathar vs. Velautham et al 55 N.L.R. 319 under Section 6 of the Matrimonial Rights and Inheritance (Jaffna) Ordinance a conveyance executed by the wife without the proper consent was void ab initio. The same principle was decided under the general Matrimonial Rights and Inheritance Ordinance in the case of Perera vs. Perera 49 N.L.R. 254.

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For these reasons, I would answer the issues as follows :-

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1. Yes.
- 2a. No.
- 2b. Yes.
3. Need not be answered
- 4a. No.
- 4b. Yes.
5. No.
6. Yes.
7. Yes.
8. No.
9. Yes.
- 10a. No.
- 10b. as amended. No.
11. as amended. No.
- 12a. Yes.
- 12b. Yes.
13. Yes.
14. Rs.300/- per mensem from 6.5.55.
15. No.
16. No.
17. No.
18. Does not arise.
19. Yes.
20. No.
21. Does not arise.

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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 :-

In the  
District Court

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continued

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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 about 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/-.

In the result, I enter judgment for the Plaintiff as prayed for with three-fourths costs but fixing the damages at Rs.300/- per mensem. I would also order the Plaintiff to pay Rs.13,500/- as compensation to the Defendant. Enter decree accordingly.

Sgd. P.Sri Skanda Rajah

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District Judge.

18.10.55.

Judgment delivered in open court in the presence of Defendant and his proctor.

Decree on 24.10.55.

Sgd. P.Sri Skanda Rajah

District Judge.

18.10.55.

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In the  
District Court

No.25 DECREE

No.25

DECREE

Decree  
18th October  
1955

IN THE DISTRICT COURT OF JAFFNA.

PONNUPILLAI Widow of Velauther  
Kathirgamar of Chunnakam Plaintiff

vs.

Land No.78.

CHELLAPPAH KUMARAVETPILLAI of  
Chunnakam Defendant

This action coming on for final disposal before P.Sri Skanda Rajah Esquire, District Judge, Jaffna on the 18th day of October 1955 in the presence of Messrs. advocates S. Nadesan, Q.C., S.Soorasangaram and C.Vanniyasingham instructed by Mr. V. Selvadurai Proctor on the part of the Plaintiff and of Messrs. advocates C. Ponnampalam and S.R.Kanaganayagam instructed by Mr.S.Visuvalingam Proctor on the part of the Defendant. 10

It is ordered and decreed that the Plaintiff be and she is hereby declared entitled to the land described in the schedule hereto and the Deed No.206 dated 2nd June 1954 and attested by A. Thirugnanasothy declared set aside; 20

It is further ordered and decreed that the Plaintiff be and she is hereby placed in peaceful possession of the land mentioned in the Schedule hereto and the Defendant be ejected from the said land and premises.

It is further ordered and decreed that the Defendant do pay to the Plaintiff damages at Rs.300/- per mensem from 2nd June 1955 till the Plaintiff is placed in peaceful possession of the said land and premises, 30

It is further ordered and decreed that the Plaintiff do pay to the Defendant the sum of rupees thirteen thousand and five hundred (rs.13,500/-) as compensation.

In the  
District Court

No.25

And it is further ordered and decreed that the Defendant do pay to the Plaintiff three fourths ( $\frac{3}{4}$ ) costs of this action as taxed by the Officer of this Court.

Decree  
18th October  
1955  
continued

Sgd.

10

District Judge, Jaffna

Jaffna.

18th October, 1955.

Schedule referred to

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All that piece of land situated at Chunnakam in the Parish of Uduvil in the Division of Valigamam North in the District of Jaffna of the Northern Province called "Kalakkokkan Kodyiapulam and Kalakkokkan" in extent 20 lms. V.C. with godowns, sheds, well, spontaneous and cultivated crops and bounded on the East by the property of Annaluxume wife of Sivasangarapillai, North and South by the property of the Plaintiff and on the West by road the whole thereof.

Sgd.

District Judge, Jaffna.

Drawn by

Sgd. V.Selvadurai

Proctor for Plaintiff.

In the  
Supreme Court

No.26 PETITION OF APPEAL

No.26

IN THE DISTRICT COURT OF JAFFNA.

Petition of  
Appeal  
21st October,  
1955

PONNUPILLAI Widow of Velauthar  
Kathirkamar of Chunnakam Plaintiff

Vs.

No.L/78

CHELLAPPAH KUMARAVELPILLAI of  
do. Defendant

In the Supreme Court of the Island of Ceylon

Chellappah Kumaravelpillai of  
Chunnakam Defendant-Appellant 10

Vs.

Ponnupillai Widow of Velauthar  
Kathirkamar of do. Plaintiff-Respondent

To,

The Hon'ble the Chief Justice and other  
Judges of the Hon'ble the Supreme Court  
of the Island of Ceylon.

On this 21st day of October 1955

The Petition of Appeal of the Defendant  
Appellant abovenamed appearing by Mr.S.Visuvalingam his Proctor states as follows :- 20

1. That certain Sivapakkiam wife of Kumarakulasingham obtained permission from Court under provision of Chapter 48 of the Legislative Enactments of Ceylon in Case No.D/236 of the District Court of Jaffna to mortgage or sell her dowry properties without the consent or concurrence of her husband who was of unsound mind. In accordance with the said order the said Sivapakkiam by Deed P13A transferrred the land described in the plaint in this action in favour of the Defendant-Appellant. The said 30

Sivapakkiam died and the Plaintiff-Respondent her mother instituted this action No.L/78 in the District Court of Jaffna as heir of the said Sivapakkiam to have the said deed set aside on the ground that the said order in the said Case No.D/236 did not vest the said Sivapakkiam with authority to execute the said deed.

In the  
Supreme Court

No.26

Petition of  
Appeal  
21st October,  
1955  
continued

- 10 2. That the Defendant-Appellant filed answer stating that the said Order in the said Case No.D/236 was valid in law and that in any event he (the Defendant-Appellant) to compensation for improvements effected by him amounting to Rs.100,000/- and to further sum of Rs.20,000/- being the purchase price paid by him.
3. That the case came up for trial on 14.9.55 on the following issues:-
- 20 1. Is the Plaintiff as sole heir of the deceased Sivapakkiam entitled to the land the subject matter of this action.
2. (a) Had the deceased capacity to execute Deed No.206 of 2.6.54 without the written consent of her husband?
- (b) If issue 2(a) is answered in the negative; is the said deed null and void?
- 30 3. Did Kumarakulasingham, the husband of the deceased duly represented in Case No. D/236 D.C. Jaffna?
4. (a) Did the deceased Sivapakkiam in Case No.D/236 apply for permission to sell the land in dispute?
- (b) If not, was that part of the order granting permission to sell invalid and of no force or avail in law?
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?
- 40 6. Was the permission, if any granted in

In the  
Supreme Court

No.26

Petition of  
Appeal  
21st October,  
1955  
continued

Case No.D/236 availed of by Sivapakkiam by the execution of mortgage bonds in respect of her properties?

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?
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 the Deed No.206 without the consent in writing of her husband? 10
9. If issue No.8 is answered in the negative is the said Deed No.206 void ab initio?
10. (a) Was any consideration paid by the Defendant in respect of the said property?  
  
(b) Is the said Deed in fact a donation of the said property? 20
11. If issue No.10(a) is answered in the negative and issue No.10(b) in the affirmative, had Sivapakkiam any authority to execute Deed No. 206 even if a valid order for sale had been made in Case No.D/236.
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/-?  
  
(b) If so, is the said Deed liable to be set aside on the ground of laesio enormis? 30
13. Has the Defendant been in wrongful possession of the land in dispute from 6.5.55?
14. If so what damages, if any, is the Plaintiff entitled to?
15. Had the Court jurisdiction to make the Order it made in Case No.D/236 of 8.9.49?  
  
10(b) Was the transaction in question in reality a sale.

In the  
Supreme Court

                      
No.26

Petition of  
Appeal  
21st October,  
1955  
continued

11. 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.
16. Was the Order dated 8.9.49 in case No. D/236 valid in law?
17. Did Sivapakkiam have authority to execute Deed No.206?
- 10 18. If issues 16 and/or 17 are answered in the affirmative, is this action maintainable?
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?
- 20 20. Was the said Sivapakkiam aware of the actual value of the said land at the time of the said sale?
21. If so, can the plea of laesio enormis prevail in any event?
22. In the event of the Court holding against the Defendant on the question of title to the land -
- (a) Did the Defendant effect improvements to the said land after the sale or transfer to him?
- 30 (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 the Defendant -
- (a) Is the Defendant entitled to the value of the said improvements?

In the  
Supreme Court

No.26

Petition of  
Appeal  
21st October,  
1955  
continued

(b) Is the Defendant entitled to jus  
retentionis?

4. That the learned District Judge delivered judgment on 18.10.55 in favour of the Plaintiff-Respondent with damages at Rs.300/- per mensem and with  $\frac{3}{4}$  costs but ordered the Plaintiff-Respondent to pay Rs.13,500/- to the Defendant-Appellant as compensation for improvements, effected by him (the Defendant-Appellant)

5. Being dissatisfied with the said judgment the Defendant-Appellant begs to appeal therefrom on the following among other grounds that may be urged at the hearing of this appeal 10

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

(b) the learned Judge says "the Court cannot grant anything more than what is asked for unless the petition is amended".- In this case there was no Respondent to the petition as the husband was undoubtedly of unsound mind and nobody else has any status to object and the said Sivapakkiam in her evidence wanted permission to sell. Thus the said Sivapakkiam claimed the relief for permission to sell. There was no necessity to claim this relief in the petition. The cases cited by the learned Judge do not apply to the facts of this case. 20 30

(c) that in the petition itself in the prayer, the said Sivapakkiam "for such other and further relief as to this court shall seem meet" and in her evidence she prayed for permission to sell and the Court considered the evidence and granted her permission to sell.

(d) that the learned Judge has erred in holding that the Court cannot grant anything more than what is asked for unless the petition is amended. If the Court thinks that under the circumstances of the case, something more than what is asked for should be granted, it can do so. The 40

cases cited by the learned Judge are cases in which objections had been filed. In cases when valid objections had not been filed Court has discretion to grant any equitable relief as may be required under the circumstances.

In the  
Supreme Court

No.26

Petition of  
Appeal  
21st October,  
1955  
continued

10 (e) that the learned Judge states in the course of his judgment that the evidence asking for sale was inconsistent with what was alleged in the Petition P9 and therefore the Court had no jurisdiction to order a sale. He says further any sale in pursuance of that order will be null and void and therefore Pl3A was null and void. The Court acts on the evidence and relief claimed in the evidence. On the evidence and relief claimed in the evidence the court has made valid order. The learned Judge has erred in making the aforesaid findings which are not justified by evidence or law.

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(f) The Court seems to have arrived at an erroneous conclusion when it says that "Here what the Court has done was in effect to make Sivapakkiam a femme sole which I do not think the Court had the power to do". The Defendant-Appellant begs to submit the Court can give consent or authority for particular disposition of property or for general disposition of all properties. The section does not make any particular restriction as contemplated by the learned Judge.

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(g) That the learned Judge has also erred in holding that permission granted had been exhausted by execution of Pl1 and Pl2. The order was a general authority to mortgage or sell and there cannot be exhaustion of such order.

40 (h) the Defendant-Appellant begs to submit that the learned Judge seems to have acted without jurisdiction when he says "by making the order which was made in P9 the Court failed to protect Sivapakkiam's interests and to see that she did not do anything foolish".



In the  
Supreme Court

No.26

Petition of  
Appeal  
21st October,  
1955  
continued

- (i) that the learned Judge seems to think that because the Court failed to get a valuation of the lands the order P9 was not a proper Order. The Defendant-Appellant begs to submit that the learned Judge seems to have erred in forming this view.
- (j) that the learned Judge has erred in holding that the transfer P13A is void ab initio. The prayer in the plaint is that the deed P13A be set aside. The learned Judge has granted a relief not prayed for in the plaint. 10
- (k) Section 8 of Chapter 48 lays down the procedure for application to Court for authority. The substantive law is the authority granted by Court and such authority has been granted by P9.
- (l) that the Defendant-Appellant begs to submit that there was valid authority P9 to sell and the said Sivapakkiam executed a valid deed of transfer P13A. 20
- (m) that the learned Judge seems to have erred in awarding compensation.
- (n) that the learned Judge does not seem to have taken into consideration the sum of Rs. 15,000/- raised on mortgage and spent on the building which was paid off by the mortgage for Rs.35,000/-
- (o) that the learned Judge seems to have not calculated the compensation correctly even on the basis of principles laid down by him. 30
- (p) that the Defendant-Appellant is undoubtedly a bona fide possessor and effected improvements as bona fide possessor and is entitled to jus retentionis.
- (q) that the evidence of Mr.Rajagopal should have been accepted and compensation awarded on the basis of Mr.Rajagopal's evidence.
- (r) that the learned Judge has erred in accepting the evidence led on behalf of the Plaintiff-Respondent about the value of the land. Thus the learned Judge has erred in 40

holding that the principle of laesio enormis applied.

In the  
Supreme Court

- (s) that the Defendant-Appellant begs to submit that the learned Judge has no jurisdiction to question the validity of an order made by the District Court and that the said judgment is highly inequitable.

No.26

Petition of  
Appeal  
21st October,  
1955  
continued

10 Wherefore the Defendant-Appellant prays the aforesaid judgment be set aside and the Plaintiff-Respondent's action be dismissed, for costs of appeal and the Court below and for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. S.Visuvalingam

Proctor for Defendant-Appellant.

No.27. JUDGMENT

No.27

S.C.No.739

D.C.Jaffna No.L/78.

Judgment  
23rd November,  
1959

Kumaravetpillai v. Kathirkamar

Present: Basnayake, C.J., and Pulle, J.

20 Counsel: H.W.Jayawardene, Q.C., with E.R.S.R. Coomaraswamy and N.R.M.Daluwatte for Defendant-Appellant.

S.Nadesan, Q.C., with C.Ranganathan for Plaintiff-Respondent.

Argued on: June 9, 10 and 11, 1959.

Decided on: November 23, 1959.

Basnayake, C.J.

30 The question that arises for decision on this appeal is whether Deed No.206 of 2nd June 1954 attested by Notary Arumugam Thirugnanasothy (hereinafter referred to as PL3A) is of no effect in law. By that Deed

In the  
Supreme Court

No.27

Judgment  
23rd November,  
1959  
continued

Sivapakkiam the daughter of the Plaintiff sold the land which is the subject-matter of this action to her husband's brother the Defendant Chellappah Kumaravetpillai.

Shortly the facts are as follows:-

On 24th March 1949 Sivapakkiam made an application to the District Court of Jaffna under Section 8 of the Jaffna Matrimonial Rights and Inheritance Ordinance for an Order authorising her to "mortgage or otty mortgage", without her husband's consent, the land in dispute and three other lands which were given to her by her mother the Plaintiff as dowry. The ground she urged in support of her application was the lunacy of her husband. Her younger brother intervened and opposed the application alleging that the Petitioner herself was of unsound mind. But this allegation was not substantiated.

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Although in her Petition she asked for authority to "mortgage or otty mortgage", in her evidence she stated: I move for permission of Court to mortgage or sell the properties mentioned by me one by one. I want to sell the first land described in the plaint. The first land is situated close to the Chunakam market just adjoining the land of the intervenient." At the inquiry held on 8th September 1949 learned Counsel submitted that Sivapakkiam's application was to mortgage or sell her dowry property without the consent of her husband, because her husband was of unsound mind and incapable of expressing his consent. After hearing the proctor for the intervenient the learned District Judge made order allowing the application. In his order he said: "I allow the application of the Petitioner. The Petitioner may either mortgage or sell her properties without the concurrence of her husband whichever is more profitable." On 17th December 1953 Sivapakkiam by Deed No.526 attested by Notary Rampillai Namasivayam Sivapiragasam (Pl7) mortgaged the subject-matter of this action to Arumugam Sivasambu as security for a loan of Rs.15,000/-. That Deed contained the following recital:-

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I further declare that this land belonging to me by right of dowry and possession as per dowry deed executed in my favour dated

the 22nd day of October 1928 and attested by A.Ponnambalam Notary Public. Further I declare that as per Judgment entered in Case No.D/236 of the District Court of Jaffna dated the 8th September 1949 I am entitled to execute and grant this mortgage bond without the signature of my husband Sellappah Kumarakulasingham."

In the  
Supreme Court

No.27

Judgment  
23rd November,  
1959  
continued

10 On 2nd June 1954 by Pl3A she sold the land to the Defendant for a sum of Rs.20,000/- subject to that mortgage. That deed too referred to the authority granted by the District Court. It was also expressly stated therein that the purchase price included the amount due on the mortgage. On 6th May 1955 Sivapakkiam died and on 23rd June 1955 the Plaintiff instituted this action.

20 The learned District Judge has held that Pl3A is null and void. He states: "The evidence asking for a sale was inconsistent with what was alleged in the Petition P9. Therefore, the Court had no jurisdiction to order a sale. Any sale in pursuance of that order of 8.9.49 would be null and void. Therefore the alleged sale on Pl3A is null and void." The learned District Judge is wrong in holding that the Court had no jurisdiction to order a sale. It clearly had jurisdiction to do so under Section 8 of the Jaffna Matrimonial

30 Rights and Inheritance Ordinance, the material portion of which reads -

40 "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

In the  
Supreme Court

No.27

Judgment  
23rd November,  
1959  
continued

to the District Court of the district in which she resides or in which the property is situated for an order 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 conditions of such order, become no longer necessary for the valid disposition of or dealing with such property by such woman." 10

The orders the Court may make under the above provisions are not limited by or restricted to the prayer in the Petition of the Petitioner. It may refuse an application. It may grant authority to mortgage or lease where authority to sell is asked. It may grant authority to sell, as in the instant case, where the Petitioner prays authority to mortgage. The Court has a discretion which it may exercise according as it deems fit. In the instant case the proceedings show that that discretion was exercised after a summary inquiry as prescribed. The words of the section are very wide. They empower the Court to "make such order.....as the justice of the case may require." The fact that the Court gave an authority to sell when the authority asked for in the Petition was to mortgage does not render its order one made without jurisdiction, because it was within its competence to make it. 20 30

The Privy Council decision on which the learned District Judge has formed the conclusion that the Court had no power to grant more than the Petitioner had asked for in her Petition does not apply to the instant case. Eshenchunder Singh's case (11 Moore Indian Appeals 7) deals with a decree of the High Court of Calcutta founded on an assumed state of facts, contradictory to the case alleged in the plaint and of the evidence adduced in support of it. In a Petition under Section 8 a petitioner is not in law bound to specify the manner in which she means to deal with or dispose of 40

her property without her husband's consent. It is sufficient if she asks for authority to dispose of or deal with her property without her husband's consent. It is the Court that is empowered to decide the extent and nature of the authority it will grant having regard to the circumstances of each case. It may be limited or unlimited as to time. It may give absolute authority for disposal or fetter the authority by restrictions and conditions as in the case of Silva Hamine v. Agonis Appuhamy (4 N.L.R.101). It may authorise a particular method of dealing with or disposing of the property, such as lease for a period, mortgage or sale or any combination of those methods.

In the  
Supreme Court

No.27.

Judgment  
23rd November,  
1959  
continued

The discrepancy between her request in the petition "to mortgage or otty mortgage" and her oral application "to mortgage or sell" does not invalidate the order of the District Court which it had power to make regardless of the prayer in the Petition. The fact that the Court imposed no conditions or restrictions or limitations as to the duration of the authority although the statute empowers it to do so does not affect the validity of its order. The learned District Judge is mistaken in thinking that the order had no application to a transfer made in 1954 nearly five years after it. He is also wrong in holding that the authority was exhausted by her execution of mortgages P11 and P12, the former on 3rd December 1951 for Rs.2,000/- in respect of "Kokkayan Kathiravalai" and the latter on 10th October 1953 for Rs.7,000/- in respect of all her land save the land in dispute. The order imposes no restrictions on the mortgage or sale of the lands in respect of which authority has been given. By virtue of the Court's Order Sivapakkiam had authority to mortgage any number of times or sell if need be or both mortgage and sell. She was authorised "to sell or mortgage". Such an authority does not exclude a mortgage first and afterwards a sale of the same property. There is no question of the authority to sell being exhausted by the exercise of the authority to mortgage.

None of the cases on the Matrimonial Rights

In the  
Supreme Court

No.27

Judgment  
23rd November,  
1959  
continued

and Inheritance Ordinances cited by the learned District Judge have any application to the one before us. In Wickremaratne v. Dingiri Baba (2 Court of Appeal Cases 132 at 133) the wife who was living in separation from her husband by mutual agreement sold a land belonging to her without his consent. It was held that as the bond of matrimony subsisted though they were living in separation the consent prescribed in Section 9 (now Section 8) of the Matrimonial Rights and Inheritance Ordinance was necessary. The case of S.A. Publina Silva Hamine v. J.A. Don Egonis Appuhamy (2 Browne 362) is one in which the wife who was living in separation sought the authority of the Court under Section 12 (now Section 11) of the Matrimonial Rights and Inheritance Ordinance, which corresponds to Section 8 of the Jaffna Matrimonial Rights and Inheritance Ordinance, to lease a land of hers. The husband opposed the application on the ground that he was residing on it and that the lease would inconvenience him personally. The Court granted the wife the authority she sought and in appeal the order was affirmed. In Silva Hamine v. Agonis Appuhamy (4 N.L.R.101) the wife who was living in separation from her husband applied to the District Court for an Order authorising her to deal with one of her lands without her husband's consent. The District Judge made Order giving the wife power to lease one-fourth of her separate immovable property without the husband's consent but ordered her to file in Court a Statement showing what property she wished to lease out, to whom, and upon what terms, and intimated that upon that information being submitted the Court would make a definite order in respect of the lease. The wife appealed against that order. The Court dismissed that appeal on the ground that the order was one the Court had power to make. Fradd v. Fernando (36N.L.R.124 at 127) holds that the consent signified by the husband who was abroad by letters written by him to his wife's attorney satisfied the requirements of Section 9 (now Section 8) of the Matrimonial Rights and Inheritance Ordinance. Perera v. Perera (49 N.L.R.254) decides that a woman married before July 1, 1924, to whom the Matrimonial Rights and Inheritance Ordinance applies is not free to dispose of or deal with her

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immovable property without the consent of her husband by a woman to whom the Jaffna Matrimonial Rights and Inheritance Ordinance applies is null and void.

In the  
Supreme Court

No.27

Judgment  
23rd November,  
1959  
continued

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For the above reasons the judgment of the learned District Judge declaring that Deed P13A is null and void on the ground that the Order of the Court authorising Sivapakkiam to sell the land in dispute is one made without jurisdiction is reversed, and the Plaintiff's action is dismissed with costs. The Appellant is declared entitled to the costs of Appeal.

The opinion I have formed on the validity and scope of the order of the District Court authorising Sivapakkiam to mortgage or sell her lands makes it unnecessary for me to refer to the other questions discussed by the learned Judge.

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Sgd. Hema H. Basnayake, Chief Justice.

Pulle J. I agree.

Sgd. M.F.S. Pulle, Puisne Justice.

No.28 DECREE

No.28

S.C.739/'56(F)

Decree  
23rd November,  
1959

Elizabeth The Second, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth

In the Supreme Court of the Island of Ceylon

30

Ponnuppillai Widow of V.  
Kathirgamar of Chunnakam                      Plaintiff

Vs.

C.Kumaravetepillai of Chunnakam              Defendant

C.Kumaravetepillai of Chunnakam              Defendant-  
Appellant

against

Ponnuppillai Widow of V.  
Kathirgamar of Chunnakam                      Plaintiff-  
Action No.L/78                                      Respondent

District Court of Jaffna

This cause coming on for hearing and



In the  
Supreme Court

No.28

Decree  
23rd November,  
1959  
continued

determination on the 9th, 10th & 11th June and 23rd November, 1959 and on this day, upon an appeal preferred by the Defendant-Appellant before the Hon.H.H.Basnayake, Q.C., Chief Justice and the Hon.M.F.S.Pulle, Q.C., Puisne Justice of this Court, in the presence of Counsel for the Defendant-Appellant and Plaintiff-Respondent.

It is considered and adjudged that the judgment of the learned District Judge declaring that Deed P13A is null and void on the ground that the Order of the Court authorising Sivapakkiam to sell the land in dispute is one made without jurisdiction be and the same is hereby reversed and that the Plaintiff's action is dismissed with costs.

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And it is further decreed that the Plaintiff-Respondent do pay to the Defendant-Appellant the taxed costs of this Appeal.

(Vide copy of judgment attached)

Witness the Hon.Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 27th day of November, in the year One thousand Nine hundred and fifty-nine and of Our Reign the Eighth.

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(Seal of the Supreme Court  
of the Island of Ceylon)

Sgd/ W.G.Woutersz

Deputy Registrar, S.C.

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No.29. DECREE GRANTING FINAL LEAVE  
TO APPEAL TO HER MAJESTY IN  
COUNCIL.

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In the  
Supreme Court

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No.29

S.C.Application No.61/'60.

Decree grant-  
ing Final  
Leave to Appeal  
to Her Majesty  
in Council.  
22nd July,1960.

Elizabeth the Second, Queen of Ceylon and of  
Her other Realms and Territories, Head of the  
Commonwealth.

In the Supreme Court of the Island of Ceylon.

10 In the Matter of an Application dated 11th  
February, 1960 for Final Leave to appeal to  
Her Majesty the Queen in Council by the  
Plaintiff-Respondent against the decree dated  
23rd November, 1959.

Ponnupillai, Widow of Velauthar  
Kathirkamar of Chunnakam  
Plaintiff-Respondent  
APPELLANT

against

20 Chellappah Kumaravetpillai  
of Chunnakam Defendant-Appellant  
RESPONDENT

Action No.L/78 (S.C.739/'56(F))

District Court of Jaffna.

This cause coming on for hearing and

In the  
Supreme Court

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No.29

Decree grant-  
ing Final  
Leave to Appeal  
to Her Majesty  
in Council.  
22nd July, 1960  
continued

determination on the 22nd day of July, 1960  
before the Hon. Hema Henry Basnayake, Q.C.  
Chief Justice, and the Hon. Miliani Claude  
Sansoni, Puisne Justice, of this Court, in  
the presence of Counsel for the Plaintiff-  
Respondent-Appellant.

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

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Witness the Hon. Hema Henry Basnayake, Q.C.,  
Chief Justice at Colombo, the 29th day of  
July in the year One thousand Nine hundred  
and Sixty and of Our Reign the Ninth.

Sgd. B.F. Perera

Deputy Registrar, S.S.

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P.9. PETITION AND AFFIDAVIT OF  
SIVAPAKKIAM IN D.C.JAFFNA CASE  
No.D/236.

Exhibits

(Plaintiff's)

P9

IN THE DISTRICT COURT OF JAFFNA.

In the Matter of application for permission to mortgage, otty mortgage and to lease the lands mentioned without the consent of the husband under Section 8 of Chapter 48.

Petition and  
Affidavit of  
Sivapakkiam in  
D.C.Jaffna  
Case No.D/236  
14th and 23rd  
March 1949

10 Sivapakkiam Wife of Chellappah  
Kumarakulasingham of Chunnakam Petitioner

No.D/236

Vs.

Chellappah Kumarakulasingham of  
Chunnakam Kathirgamar Selva-  
durai of Chunnakam, Jaffna. Respondent

On this 24th day of March 1949.

The Petition of the Petitioner above-named appearing by S.Kanagasabapathy, her Proctor states as follows :-

- 20 1. That the Respondent abovenamed is the lawful husband of the Petitioner and both the Petitioner and the Respondent are residing at Chunnakam within the jurisdiction of this Court and are governed by the Law of Thesawalamai.
2. That the Petitioner married the Respondent in or about the month of October 1928 and properties described in the Schedule hereto, was given to the Petitioner and her husband by the Petitioner's mother as her dowry.
- 30 3. That for the last seven or eight years the Respondent abovenamed is of unsound mind and is a lunatic and is unable to maintain himself and the Petitioner.
4. The Petitioner has treated the Respondent medically and there is no prospect of curing

Exhibits  
(Plaintiff's)  
P9

Petition and  
Affidavit of  
Sivapakkiam  
in D.C.Jaffna  
Case No.D/236  
14th and 23rd  
March 1949

him from his illness and as a result of it, the Petitioner had incurred debts to the value of about Rs.2000/- both for his medical expenses and for the maintenance of the Petitioner and for her illness.

5. The Petitioner do not get any income at present except from the properties described in the Schedule hereto and the income that the Petitioner from the same is hardly sufficient to meet her expenses for a period of three months in a year. 10

6. The property described in Item(1) of the schedule is situated adjoining the Chunnakam market and if the Petitioner build a few go-downs in the said land, the Petitioner can maintain herself for the rest of her life and pay all the debts which the Petitioner has incurred.

7. There is a great demand for go-downs in that area and the Petitioner is credibly informed that if she erect few go-downs that in a few years time, the Petitioner can save some money also. 20

8. The Respondent abovenamed in view of his mental condition is unable to give valid consent to the Petitioner to deal with her property for the abovesaid purpose.

9. Therefore it is necessary that this Court should give permission to mortgage, or otty mortgage or lease the lands described in the Schedule hereto without the permission of the Respondent. 30

Wherefore the Petitioner prays that this Court be pleased to grant the necessary permission under Section 8 of Chapter 48 to mortgage or otty mortgage all or any of the lands described in the Schedule hereto and to lease them and for costs and for such other and further relief as to this Court shall seem meet

Sgd. S.Kanagasapathy 40

Proctor for Petitioner.

The Schedule above referred to:Exhibits

(Plaintiff's)

P9

Petition and  
Affidavit of  
Sivapakkiam  
in D.C.Jaffna  
Case No.D/236  
14th and 23rd  
March 1949  
continued

1. Land called Kalakokkanum Koddiyappulamum situated at Chunnakam in the Parish of Uduvil in extent 20 Lms.V.C. with its appurtenances and bounded on the East, North and South by the property of Ponnupullai (myself) and on the west by road.

10 2. Land called Lokkyanan Kathiravalai situated at do in extent  $34\frac{5}{8}$  Lms.V.C. and bounded on the East by the property belonging to Velupillai Subramaniam North by front lane and property belonging to the Sanscrit School, and to Swaminathar Ponnampalam and to temple, west by lane and on the south by the property belonging to Ponnupillai Widow of Thiravempalam and to Kasinathar Arumugam and others.

20 3. Land called "Pullanthu" situated at Uduvil in extent  $24\frac{1}{2}$  Lms.V.C. and bounded on the East by the property of Kathirgamar Arulampalam and to Ponnupillai (myself) North by the property belonging to Velupillai Chellappah and wife Mankainayagi and to Nallapillai wife of Thembipillai and to Theivanaipillai wife of Moothapper and damp and on the South by Kuddipillai widow of Ponnampalam.

30 4. Land called Saththivalavu" situated at Uduvil in extent 13 Lms.V.C. and bounded on the East by Sithamparanather Sinnuppu, North by Singamapaner Rasakulasooriyar and south by damp.

Sgd. S.Kanagasabapathy

Proctor for Petitioner.

(Title as Petition)

I, Sivapakkiam wife of Chellappah Kumarasingham of Chunnakam do hereby solemnly sincerely and truly affirm and declare as follows:-

40 1. That the above named Respondent is my lawful husband and we reside at Chunnakam within the jurisdiction of this Court and we are governed by the Law of Thesawalamai.

Exhibits

(Plaintiff's)

P9

Petition and  
Affidavit of  
Sivapakkiam  
in D.C.Jaffna  
Case No.D/236  
14th and 23rd  
March 1949  
continued

2. I married the Respondent abovenamed in or about the month of October 1928 and properties described in the Schedule hereto was given to me as dowry by my mother.

3. For the last seven or eight years the Respondent is of unsound mind and is a lunatic and is unable to maintain himself or me.

4. I have treated him medically and there is no prospect of curing him from his illness and as a result of it, I have incurred debts to the value of about Rs.2,000/- both for his medical expenses and my maintenance and for my illness.

10

5. I do not get any income at present except from the properties described in the schedule hereto annexed and income that I get from the same is hardly sufficient to meet the expenses for a period of three months in the year.

6. The property described in item (1) of the Schedule is situated adjoining the Chunnakam Market and if I build a few godowns in the said land I can maintain myself for the rest of my life and pay all the debts which I have incurred from the rents of the said godowns.

20

7. There is a great demand for godowns in that area and I am credibly informed that if I erect few godowns that in a few years time I can save some money also.

8. The Respondent above-named in view of his mental condition is unable to give me valid consent to deal with my property for the abovesaid purposes by raising a loan either by way of mortgage or otty mortgage or by lease.

30

9. I therefore pray that this Court will be pleased to grant me the necessary permission under Section 8 of Chapter 48 to mortgage or otty mortgage all or any of the lands described in the Schedule hereto and to lease them.

The Schedule referred to above

Land called "Kalakkokkanum Koddiyapulamum" situated at Chunnakam in the Parish of Uduvil in extent 20 Lms.V.C. with its appurtenances and bounded on the East, North and South by the property of Punnupillai (myself) and on the West by road.

40

10 2. Land called "Lokkaiyan Kathirvalai" situated at Do. in extent  $34\frac{5}{8}$  Lms.V.C. and bounded on East by the property belonging to Velupillai Subramaniam, North by front lane and property belonging to the Sanscrit School and to Suwaminathar Pennambalam and to the temple, West by lane and on the south by the property belonging to Punnuppillai Widow of Thiruvampalam and to Kasinathar Arumugan and others.

20 3. Land called "Pullanthu" situated at Uduvil in extent  $24\frac{1}{2}$  Lms.V.C. and bounded on the East by the property of Kathirgamar Arulampalam and to Punnuppillai (myself) North by property belonging to Veluppillai Chellappah and wife Mankainayagi and to Nallappillai Wife of Thambippillai and to Theivanaippillai Wife of Moothapper and on the West by damp and on the south by Kuduppillai Widow of Ponnampalam.

4. Land called "Saththiavalai" situated at Uduvil in extent 13 Lms.V.C. and bounded on the East by Sithamparanather Sinnappu, North by Singamappaner Rasakulasoorier, West by Singa Mappaner Rasakulasoorier and South by damp.

30 The foregoing Affidavit was )  
 read over and explained to )  
 the Deponent and who ap- )  
 pears to understand the same ) Sgd. K.Siva-  
 well set her signature to ) parkkaim  
 the truth and correctness ) (in Tamil)  
 hereof at Uduvil on the 14th )  
 day of March 1949. )

Before me,

Sgd. illegibly

Justice of the Peace.

Drawn by:

Sgd. S.Kanagasabapathy.

40 Proctor for Petitioner.

Exhibits  
 (Plaintiff's)  
 P9  
 Petition and  
 Affidavit of  
 Sivapakkiam  
 in D.C.Jaffna  
 Case No.D/236  
 14th and 23rd  
 March 1949  
 continued



Exhibits  
(Plaintiff's)

P9 (Part) D2 (part). AFFIDAVIT OF  
SIVAPAKKIAM IN SUIT D.236.

P9. (Part)  
Defendant's  
D2. (Part)  
Affidavit of  
Sivapakkiam  
in Suit D.236  
14th March  
1949

IN THE DISTRICT COURT OF JAFFNA.

In the Matter of an application for permission to sell, or mortgage or otty mortgage or lease the lands mentioned without the consent of the husband under Section 8 of Chapter 48.

Sivapakkiam Wife of Chellappah  
Kumarakulasingam of Chunnakam                      Petitioner

No.D/236

Vs.

10

Chellappah Kumarakulasingam of  
Chunnakam    Respondent

I, Sivapakkiam Wife of Chellappah Kumarakulasingam of Chunnakam do hereby solemnly, sincerely and truly affirm and declare as follows :

1. That the abovenamed Respondent is my lawful husband and we reside at Chunnakam within the jurisdiction of this Court and we are governed by the Law of Thesavalamai.

20

2. I married the Respondent abovenamed in or about the month of October, 1928 and properties described in the schedule hereto was given to me as dowry by my mother.

3. For the last seven or eight years the Respondent is of unsound mind and is a lunatic and is unable to maintain himself or me.

4. I have treated him medically and there is no prospect of curing him from his illness and as a result of it, I have incurred debts to the value of Rs.2000.00 both for his medical expenses and my maintenance and for my illness.

30

5. I do not get any income at present except from the properties described in the Schedule hereto annexed and income that I get from the same is hardly sufficient to meet the expenses for a period of three months in the year.

6. The property described in item (1) of the schedule is situated adjoining the Chunnakam

Market and if I build a few go-downs to the said land, I can maintain myself for the rest of my life and pay all debts which I have incurred from the rents of the said go-downs.

7. There is a great demand for go-downs in that area and I am credibly informed that if I erect a few go-downs that in a few years time I can save some money also.

10

8. The Respondent abovenamed in view of his mental condition is unable to give valid consent to deal with my property for the above said purpose by raising a loan either by way of mortgage or otty mortgage or by lease.

20

9. I therefore pray that this Court will be pleased to grant me the necessary permission under Section 8 of Chapter 48 to mortgage or otty mortgage all or any of the lands described in the schedule hereto and to lease them.

The Schedule.

30

The foregoing affidavit was )  
read over and explained to )  
the Deponent who appears to )  
understand the same well )  
set her signature to the )  
truth and correctness here- )  
to at ..... )  
on the 14th day of March, )  
1949. )

Sgd. Kuna Siva-  
pakkiam

Before me,

Sgd. ....

J.P.

Drawn by:

Sgd. S.Kanagasabapathy  
Proctor for Petitioner.

Exhibits

(Plaintiff's)  
P9. (Part)  
Defendant's  
D2. (Part)  
Affidavit of  
Sivapakkiam  
in Suit D.236  
14th March  
1949  
continued

Exhibits

P9 (part) and D2 (part). PETITION IN  
SIVAPAKKIAM v. KUMARAKULASINGHAM

(Plaintiff's  
and Defendant's)  
P9. (Part) and  
D2. (Part)  
Petition in  
Sivapakkiam v.  
Kumarakulasingham  
24th March 1949.

\_\_\_\_\_

IN THE DISTRICT COURT OF JAFFNA.

In the Matter of an application for  
permission to mortgage, otty mortgage  
and to lease the lands mentioned with-  
out the consent of the husband under  
Section 8 of Chapter 48.

Sivapakkiam Wife of Chellappah  
Kumarakulasingam of Chunnakam      Petitioner      10

Vs.

D/236

Vide J.E.  
7.7.49.

Chellappah Kumarakulasingham  
of Chunnakam.  
Kathirgamar Selvadurai of  
Chunnakam, Jaffna.      Respondent

\_\_\_\_\_

On this 24th day of March, 1949.

The Petition of the Petitioner abovenamed  
appearing by S.Kanagasabapathy, her Proctor  
states as follows:

1. That the Respondent abovenamed is the lawful husband of the Petitioner and both the Petitioner and the Respondent are residing at Chunnakam within the jurisdiction of this Court and are governed by the law of Thesawalamai. 20
2. That the Petitioner married the Respondent in or about the month of October, 1928 and properties described in the Schedule hereto was given to the Petitioner and her husband by the Petitioner's mother as her dowry. 30
3. That for the last seven or eight years the Respondent abovenamed is of unsound mind and is a lunatic and is unable to maintain himself and the Petitioner.

4. The Petitioner has treated the Respondent medically and there is no prospect of curing him from his illness and as a result of it, the Petitioner had incurred debts to the value of about Rs.2000.00 both for his medical expenses and for the maintenance of the Petitioner and for her illness.

Exhibits

(Plaintiff's and Defendant's)  
P9. (Part) and  
D2. (Part)  
Petition in  
Sivapakkiam v.  
Kumarakula-  
singham  
24th March 1949.  
continued

10 5. The Petitioner do not get any income at present except from the properties described in the schedule hereto and the income that the Petitioner from the same is hardly sufficient to meet her expenses for a period of three months in a year.

20 6. The property described in item (1) of the schedule is situated adjoining the Chunnakam market and if the Petitioner build a few go-downs in the said land, the Petitioner can maintain herself for the rest of her life and pay all debts which the Petitioner has incurred.

7. There is a great demand for go-downs in that area and the Petitioner is credibly informed that if she erect a few go-downs that in a few years time the Petitioner can save money also.

8. The Respondent abovenamed in view of his mental condition is unable to give valid consent to the Petitioner to deal with the property for the abovesaid purpose.

30 9. Therefore it is necessary that this Court should give permission to mortgage, or otty mortgage or lease the lands described in the schedule hereto without the permission of the Respondent.

40 Wherefore the Petitioner prays that this Court be pleased to grant the necessary permission under Section 8 of Chapter 48 to mortgage or otty mortgage all or any of the lands described in the schedule hereto and to lease them and for costs, and for such other and further relief, as to this Court shall seem meet.

Sgd. S.Kanagasabapathy  
Proctor for Petitioner.

ExhibitsThe Schedule above referred to:

(Plaintiff's  
and Defendant's)  
P9. (Part) and  
D2. (Part)  
Petition in  
Sivapakiam v.  
Kumarakula-  
singham  
24th March 1949  
continued

1. Land called "Kalakkonam Koddipulam" situated at Chunnakam within the Parish of Uduvil, in extent 20 Lms.V.C. with its appurtenances and bounded on the East, North and South by the property of Ponnupillai (myself) and on the West by Road.

2. Land called "Lokkayan Kathiravalai" situated at do. in extent  $34\frac{3}{8}$  Lms.V.C. and bounded on the East by the property belonging to Velupillai Subramainam, North by front lane and property belonging to Sanskrit School and to Swaminathar Ponnambalam and temple. West by lane and on the South by the property belonging to Ponnupillai Widow of Thiravempalam and to Kasinathar Arumugam and others.

10

3. Land called "Pullanthu" situated at Uduvil in extent,  $24\frac{1}{2}$  Lms.V.C. and bounded on the East by the property of Kathirgamar Arulampalam and to Ponnupillai (myself) North by the property belonging to Velupillai Chellappah and wife Manainayagi and to Nallapillai wife of Thambipillai and to Theivanaipillai wife of Moorhappar and damp and on the South by Kuddipillai widow of Ponnampalam.

20

4. Land called "Saththia Valavu" situated at Uduvil in extent 13 Lms.V.C. and bounded on the East by Sithamparanathar Sinnappu, North by Sinagmappanar Rasekulasooriar and South by Damp.

30

Sgd. S.Kanagasabapathy

Proctor for Petitioner.

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P1. DEED OF TRANSFER NO.727 (ABSTRACT)Exhibits

(Plaintiff's)

Vendor Sellappah Kumaravetpillai

Purchaser Nagammah Wife of Saravanamuttu  
Sellathurai

Price 2,000 rupees

10 Land All that piece of land situated at  
Uduvil in Uduvil Parish Valikamam  
North Division Jaffna District  
Northern Province called "Ampiya-  
valai and Thikkiri" in extent 26  
Lms. V.C. lent by Survey 17 $\frac{3}{4}$  Lms.  
V.C. Out of this a divided extent  
of 10 Lms. V.C. on the Southern  
side with palmyrahs and well. The  
said extent of 10 Lms.V.C. is bound-  
ed on the East by the property of  
Murugesu Sinnathamby and others  
North by the remaining land West by  
lane and South by the property of  
20 Eliathamby Sellappah and share-  
holders. The whole extent hereof  
but exclusive of the share of well  
way and water course belonging to  
the remaining land.

P1.

Deed of  
Transfer No.727  
20th June 1949  
(Abstract)

Notarial Certificate by S.Kanagasabapathy

P2. DEED OF TRANSFER NO.728 (ABSTRACT)

(Plaintiff's)

Vendor Sellappah Kumaravetpillai

Purchaser Saravanamuththu Karthigesu

Price 1,000 Rupees

30 Land All that piece of land situated at  
Uduvil in Uduvil Parish Valikāman  
North Division Jaffna District  
Northern Province called "Ampiya-  
valai and Thikkiri" in extent 17 $\frac{3}{4}$

P2.

Deed of  
Transfer No.728  
(Abstract)  
20th June 1949

Exhibits  
 (Plaintiff's)  
 P2.  
 Deed of  
 Transfer No.728  
 (Abstract)  
 20th June 1949  
 continued

Lms.V.C. Out of this already disposed of 10 Lms.V.C. on the Southern side. The balance in extent  $7\frac{3}{4}$  Lms.V.C. Out of this a divided extent of  $4\frac{3}{4}$  Lms.V.C. on the Southern side with share of well situated in the Southern boundary land and way and water course. The said extent of  $4\frac{3}{4}$  Lms.V.C. with palmyrahs is bounded on the East by the properties of Sethupillai wife of Sinnathamby and others North by the remaining land West by lane and South by the property of Nagammah wife of Selladurai.

10

Notarial Certificate by S. Kanagasabapathy.

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(Plaintiff's)  
 P3.

P3. DEED OF TRANSFER No.729 (ABSTRACT)

Deed of  
 Transfer No.729  
 (Abstract)  
 20th June 1949

Vendor Chellappah Kumaravetpillai  
 Purchasers Thambappillai Gunam and Gunam  
 Navaratnam

Price 1,000 Rupees

20

Land All that piece of land situated at Uduvil in Uduvil Parish Valikamam North Division Jaffna District Northern Province called "Ampiyavalai and Thikkiri" in extent  $17\frac{3}{4}$  Lachchams V.C. out of this already disposed of  $14\frac{3}{4}$  Lachchams V.C. The balance in extent 3 Lachchams V.C. together with share of well situated in the land belonging to Nagammah wife of Chelladurai and way and water course from the said well through the Southern boundary land and is bounded on the East by the property of Murugesu Sinnathamby North by the property of Sothy wife of Swami Nathan West by lane and South by the property of Saravanimuthu Karthigesu.

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Notarial Certificate by S.Kanagasabapathy

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P4. MORTGAGE BOND No.726 (ABSTRACT)Exhibits

(Plaintiff's)

Mortgagor Chellappah Kumaravelpillai  
Mortgagee Eliathamby Palanyvel  
Loan 1,500 Rupees at 8% p.a. reducible  
to 7% p.a.  
Land All that piece of land situated at  
Chunnakam in Uduvil Parish Valika-  
man North Division Jaffna District  
Northern Province called Thoranak-  
kadavai in extent 10 Lachchams V.C.  
with house cultivated and spontane-  
ous plantations and bounded on the  
East by the property of K.Thampiah  
North by lane West by road and  
South by the property of Ratnammah  
Widow of Appurthurai.

P4.

Mortgage Bond  
No.726  
(Abstract)  
20th June 1949

10

Notarial Certificate by S.Kanagasabapathy.

P5. RECEIPT NO.725

(Plaintiff's)

Receipt  
Rs.5187.50

P5

Receipt No.725  
20th June 1949

No. 725  
20.6.49

20

30

Know all men by these presents that I Eli-  
athamby Palanyvel of Mallakam do hereby admit  
and acknowledge to have received from  
Chellappah Kumaravelpillai of Chunnakam the  
sum of Rupee Five thousand one hundred and  
eighty seven and cents fifty in full satisfac-  
tion of the principal and interest due on  
mortgage bond dated 6th November 1948 and at-  
tested by the notary attesting these presents  
under No.635.

In witness whereof I the said Eliatham-  
by Palanyvel do hereunto and to two others of  
the same tenor and date as these presents set  
my hand at Chunnakam on this Twentieth day of



Exhibits

June One thousand nine hundred and forty nine.

(Plaintiff's)

P5

Signed in the )  
presence of us ) Sgd. E.Palanyvel

Receipt No.725  
20th June 1949  
continued

1. Sgd. S.Sivasithamperam
2. Sgd. K. Kandiah (in Tamil)

Sgd. S.Kanagasabapathy

Notary Public.

I, Sabapathipillai Kanagasabapathy of Uduvil Jaffna Notary Public do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the executant Eliathamby Palanyvel who is known to me in the presence of Sellappah Sivasithamparam and Kasinathar Kandiah both of Inuvil and of whom the 2nd name signed in Tamil the subscribing witnesses hereto both of whom are also known to me the same was signed by the said executant and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at Uduvil this Twentieth day of June One thousand nine hundred and forty nine.

10

20

I further certify and attest that the consideration expressed on this instrument passed in my presence and that the original of this instrument bears a stamp of the value of 6 cents.

Sgd. S.Kanagasabapathy

Notary Public.

30

(S E A L)

Date of attestation  
20th June 1949.

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DL and D2 (PART) OBJECTIONS OF K.  
SELVADURAI IN SUIT NO. D/236.

Exhibits  
(Defendant's)

DL and D2  
(part)

Objections of  
K.Selvadurai  
in Suit No.  
D/236  
3rd August 1949

IN THE DISTRICT COURT OF JAFFNA

In the matter of the application for  
permission to mortgage, otty mortgage  
and to lease the lands mentioned with-  
out the consent of the husband under  
Section 8 of Chapter 48. Sivapakkiam  
Wife of Chellappah Kumarakulasingham  
of Chunnakam

Petitioner

Vs.

Chellappah Kumarakulasingham  
of Chunnakam

Respondent

And

Kathirgamar Selvadurai of  
Chunnakam

Interveniient

On this 3rd day of August, 1949.

The Statement of Objection by the Inter-  
venient abovenamed appearing by S. Cumarasu-  
rier, his Proctor states as follows:

1. Referring to paragraph 1 and 2 of the  
said Petition the intervenient admits the  
averments contained therein.

2. Referring to paragraphs 3 to 9 of the said  
Petition, the Interveniient denies all the aver-  
ments therein except those facts which are re-  
cited in these objections.

3. The Interveniient states that he filed  
papers in this Court under Case No.G L 35 on  
the 3rd February, 1949 and applied to this  
Court to hold an inquiry into the mental con-  
dition of his sister, the Petitioner above-  
named and to appoint him as manager to take

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Exhibits

(Defendant's)

D1 and D2  
(part)Objections of  
K. Selvadurai  
in Suit No.  
D/236  
3rd August 1949  
continued

charge and preserve the properties of this petitioner as the income of her properties are being utilised by the relations of the Respondent above-named who is of unsound mind and is behaving abnormally as stated in the Petition filed by him (intervenient) in case No.G.L.34 of this Court.

4. It is absolutely necessary that the Petitioner as well as her husband (the Respondent abovenamed) should appear in Court and be examined by a competent Medical Officer in order to find out their mental conditions and their fitness to manage their own affairs.

10

5. This Intervenient states that the paddy from her (Petitioner's) fields and incomes and rents collected from her (Petitioner's) lands are quite sufficient to maintain both the Petitioner and Respondent according to their status in society. The Respondent's relations are collecting these incomes from the year 1930 and are not utilising these incomes for the benefit and use of the Petitioner or her husband. The Intervenient had been incurring all medical and other expenses on two occasions when the Petitioner took ill.

20

6. The intervenient states that there were about 20 jak trees and 40 coconut trees on the Chunnakam land and were yielding incomes in the past. Now there are about 12 coconut trees and one jak tree alive on this land. All these timbers were utilised by the relations of the Respondents. One margose tree had been also removed by them. All these timbers are reasonably worth over Rs.500.00. The annual income of these lands are assessed at Rs.1320.00. The income of the land on the market Road is about Rs.770.00 per annum.

30

7. The Intervenient states that the Thalikodi of the Petitioner which is worth over Rs.1530.00 was pawned by the Respondents' relations.

40

8. The Intervenient states that the Petitioner and her husband the Respondent are not fit persons to manage their own affairs and that it is unsafe to entrust any matter in their hands and that they are incapable of managing their properties and of looking after their persons.

9. The Intervenient submits that this application is an attempt to deprive the Petitioner of her properties by the relations of the Respondents and that it is unnecessary to mortgage or lease any of the Petitioner's lands as such a liability cannot be redeemed by them.

Exhibits  
(Defendant's)

D1 and D2  
(part)

Objections of  
K. Selvadurai  
in Suit No.  
D/236  
3rd August 1949  
continued

10

Wherefore the Intervenient prays that this Court be pleased to order the Petitioner and Respondent to be examined by the Judicial Medical Officer, Jaffna and to report on their mental conditions and to hold an inquiry about their fitness to look after their persons, and properties and to appoint the intervenient manager and guardian over the properties and persons and to order costs of inquiry to the Intervenient, and for such other and further relief as to this Court shall seem meet and that the application of the Petitioner may be dismissed.

20

Sgd. S.Cumarasuriar

Proctor for Intervenient.

P10 and D2 (Part) PROCEEDINGS AND  
ORDER IN SUIT NO.D/236.

Plaintiff's  
P10  
Defendant's  
D2 (part)

IN THE DISTRICT COURT OF JAFFNA.

Sivapakkiam Wife of C.Kumarakulasingham of Chunnakam

Petitioner

Proceedings and  
Order in Suit  
D.236  
8th September  
1949

Vs.

No.D/236

Chellappah Kumarakulasingham  
of Chunnakam

Respondent

30

I N Q U I R Y

Mr.Adv.C.Ponnampalam instructed by Mr.Kanagasabapathy for the Petitioner.

Mr.S.Cumarasurier for the 2nd Respondent.

Intervenient K.Sellathurai.

Mr.Ponnampalam submits that this is an

Exhibits

Plaintiff's  
P10  
Defendant's  
D2 (part)  
Proceedings and  
Order in Suit  
N.236  
8th September  
1949  
continued

application by the Petitioner to mortgage or sell her dowry property without the consent of her husband because the latter is of unsound mind and is incapable of expressing his consent.

Mr.Cumarasurier submits that his client the intervenient takes up his position that even the Petitioner is not of sound mind and capable of managing her own affairs and that the intervenient has taken steps as early as 3/2/49 to have the present petitioner's mental condition inquired into and to have manager appointed over her person. The 2nd Respondent is absent. Mr.Cumarasurier submits that the mental condition of the Petitioner may be ascertained by the Court issuing a commission to a medical man and having her examined.

10

If I am satisfied that there is any queer-ness or any other matter in the behaviour of the Petitioner which makes me suspect that she is incapable of managing her own affairs, I will consider the application of Mr.Cumarasurier to have the Petitioner examined medically.

20

Sgd.S.S.J.Goonesekera.

8.9.49. District Judge.

Petitioner's case.

Mr.Ponnampalam calls:

Sivapakkiam wife of Chellappah Kumarasulasingham affd. 33, Chunnakam, Petitioner.

I married my husband about 22 years ago. At the time of my marriage my husband was a cultivator. I was given a dowry at the time of my marriage. I was given two paddy fields, one residing land and a garden land. I lived with my husband for about 12 years. After that he became of unsound mind. Even now he is residing in my house and I am also living with him. He does not take any interest in the family affairs. I am unable to bring him to court as he will not consent to come to court. It is very difficult for me to bring him to court. Sometimes he takes his food and sometimes he does not. Sometimes he sleeps

30

40

well and sometimes he does not. He bathes now and then. I have had him treated by Ayurvedic physicians but of no avail. I have no children by him. I got him treated by a physician at Karanavai. No children were born to me by him. I have no way of maintaining myself and my husband. I move for permission of Court to mortgage or sell the properties mentioned by me one by one. I want to sell the first land described in the Schedule to the plaint. The first land is situated close to the Chunnakam market just adjoining the land of the intervenient. There are coconut and jak trees on the 1st land in the schedule to the plaint. The produce from the 1st land is appropriated by the intervenient. The 1st land just mentioned had a share of well in the intervenient's well and that right has been denied to me. I borrowed some money and sank a well on the 1st land. The 2nd land is a garden land which is being cultivated by one Poothar and the intervenient. Poothar pays me the ground rent whereas the intervenient does not do so. The 3rd and 4th lands are paddy fields. I am unable to get any income from them. I have spent large sums of money on the maintenance of my husband and myself. At the time of my marriage I was given jewels by my parents. My mother and the intervenient borrowed my jewels and have not returned them to me so far.

Cross-examined: I was not ill for about 4 or 5 years. I deny that I was ill about 4 or 5 years ago. I was not ill at all. I was not drugged by my husband's people. My sister drugged my husband and as a result of that he is in this condition today. There are about 20 coconut trees on the 1st land. I deny that there were 40 coconut and 20 jak trees on the 1st land. I get about Rs.50/- or 55/- per mensem by way of rent. I deny that last year some of the jak trees were felled and sold for timber for Rs.500/-. There is no income from the other lands. It is not true that the income from all the lands would be about Rs.1300/- a year.

Re-examined. Nil.

8.9.49. Sgd. S.S.J.Goonesekera  
District Judge.

Exhibits

Plaintiff's  
P10  
Defendant's  
D2 (part)  
Proceedings and  
Order in Suit  
N.236  
8th September  
1949  
continued

Exhibits

Mr.Ponnambalam closes his case.

Plaintiff's  
P10

Mr.Cumarasurier says he is not calling any evidence.

Defendant's  
D2 (part)

8.9.49.

Sgd. S.S.J.Goonesekera.  
District Judge.

Proceedings and  
Order in Suit  
N.236  
8th September  
1949  
continued

O R D E R

This is an application by the Petitioner, who is the wife of Chelappah Kumarakulasingham the 1st named Respondent to her Petition, to mortgage or sell the property that she (the Petitioner) got by way of dowry at the time of her marriage with her husband without the concurrence of her husband on the ground that the latter is of unsound mind incapable of giving his consent.

10

It appears that the Petitioner and her husband have been married for about 22 years. and they have no children and about ten years ago her husband went off his head and the Petitioner has found it very difficult to maintain herself as well as get her husband treated. The Petitioner's younger brother who appears to be enjoying the income from some of her properties and not paying the Petitioner any rent for the portion of her high land which he (the 2nd Respondent) is planting in tobacco is objecting to the granting of the application of the Petitioner on the ground that the Petitioner herself is of unsound mind and is incapable of managing her own affairs. She gave her evidence before me in a very coherent manner and if anybody is of sound mind she is. The second Respondent is objecting to the Petitioner mortgaging or selling her property without the consent of her husband because he would stand to benefit if the Petitioner dies without disposing of her property. An attempt to forestall these proceedings appears to have been made by the second Respondent in that he initiated proceedings to have the Petitioner adjudged a person of unsound mind. I allow the application of the Petitioner. The Petitioner may either mortgage or sell her properties without the concurrence of her husband whichever is more profitable.

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8.9.49.

Sgd. S.S.J.Goonesekera  
District Judge.

P.8. MORTGAGE BOND No.781 (ABSTRACT)

Exhibits  
(Plaintiff's)  
P8.  
Mortgage Bond  
No.781  
(Abstract)  
26th September  
1949.

Mortgagor Chellappah Kumaravetpillai  
Mortgagee Parupillai Wife of Kathirkamu  
Thambia  
Loan 2,500 Rupees at 8% p.a.  
Land All that piece of land situated at  
10 Uduvil in Uduvil Parish Valikaman  
North Division Jaffna District  
Northern Province called Thumpakai  
Vayal in extent 30 Lachchams V.C.  
and bounded on the East by the pro-  
perty of Kangasabai Kandiah North  
by the Village limit of Chunnakam  
West by the property of Ponnupil-  
lai wife of Ponnampalam and South  
by the property of Thanaiechchumy  
wife of Thamothersampillai.

Notarial Certificate by S.Kanagasabapathy.

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P.14. DEED OF TRANSFER No.3048 (ABSTRACT)

P.14.

20 Vendor Rukmany daughter of Kander  
Purchaser Muttu Kanagarayar  
Price 3,000 Rupees  
Land Land situated at Chunnakam in Uduvil  
30 Parish Valigamam North Division  
Jaffna District Northern Province  
called Varikkaladdy 2 Lms.V.C. ac-  
cording to Deed and 2 Lms.V.C. 8  
Kls. according to measurement and  
bounded on the East by the proper-  
ties of Vannithemby Appudurai and  
wife Rasam and Maheswary wife of  
Thambithurai North by lane West by  
road and South by the property of  
Ponnuppillai Widow of Kathirkamar.  
Out of the whole hereof an undivid-  
ed half share.

Deed of Trans-  
fer No.3048  
(Abstract)  
1st March 1950

Notarial Certificate by P. Eliathamby.

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ExhibitsP.6. MORTGAGE BOND No.916 (ABSTRACT)

(Plaintiff's)

P.6

Mortgage Bond  
No.916  
(Abstract)  
14th July 1950

Mortgagor. Sellappah Kumaravetpillai

Mortgagee Eliathamby Palany Velu

Loan 5,000 Rupees at 8% p.a.

Land. Land situated at Chunnakam in the Parish of Uduvil in the division of Valigamam North Jaffna District Northern Province called "Thoranak-kadavai" in extent 10 Lachcham V.C. with cultivated and spontaneous plantations stone built house and well and bounded on the east by the property of Kathirgamu Thambiah North by lane West by road and on the South by the property of Retnamah Widow of Appurthurai. The whole of the land contained within these boundaries.

10

Notarial Certificate by S.Kanagasabapathy.

P.7.

P.7. MORTGAGE BOND No.948 (ABSTRACT)

20

Mortgage Bond  
No.948.  
(Abstract)  
2nd October  
1950

Mortgagor Sellappah Kumaravetpillai

Mortgagee Selliah Thuraisingham and Nallamah Widow of Selliah

Loan 4,000 Rupees at 5% p.a.

Land Land situated at Chunnakam in the Parish of Uduvil in the division of Valigamam North Jaffna District Northern Province called "Therisiddy", in extent 31 Lachchams V.C. with well and the machinery used to draw water from the well and cultivated and spontaneous plantations and this extent of 31 Lachchams V.C. is bounded on the East by the property of Assaipillai Nadarajah and shareholders North by the property of Sinnachchipillai Wife of

30

Thuraiappah and on the West by water-course and path and by the land of Kanagamani wife of Gnanasegaram and on the South by the property of the heirs of the late Nannipillai wife of Sinnappu and by the property of the heirs of Kathirgamar Muthalithamby. The whole of the land contained within these boundaries.

Exhibits  
(Plaintiff's)  
P.7.  
Mortgage Bond  
No.948  
(Abstract)  
2nd October  
1950  
continued

10 Notarial Certificate by S.Kanagasabapathy.

P.11. MORTGAGE BOND No.1207 (ABSTRACT)

P.11  
Mortgage Bond  
No.1207  
(Abstract)  
3rd December  
1951

Mortgagor Sivapakkiam Wife of Sellappah  
Kumarakulasingham.

Mortgagee Thambiah Retnam

Loan £2,000 Rupees at 8% p.a.

Land Land belonging to Mortgagor by right of dowry and possession as per dowry deed dated 22nd October 1928 namely:-

20 Land situated at Chunnakam in the Parish of Uduvil in the Division of Valigamam North Jaffna District Northern Province called "Kokkayan Kathiravalai" in extent  $34\frac{3}{8}$  Lms. V.C. with young palmyrahs margosa trees and share of margosa trees standing on the southern boundary and the right of using the way and watercourse and with share of water of the well lying herein belonging hereto, and in extent of  $34\frac{5}{8}$  Lms.

30 V.C. is bounded on the east by the property of Wallippillai Wife of Subramaniam and north by front of lane and the charity land belonging to Sanskrit School and by the land of Swaminather Ponnampalam and temple charity land and temple yard west by lane and on the south by the property of Vivekasinthamani

Exhibits  
(Plaintiff's)  
P.11

Wife of Mudallar and Muttar Ponnabalam and Arumugam Retnasingham and shareholders. The whole of the land contained within these boundaries.

Mortgage Bond  
No.1207  
(Abstract)  
3rd December  
1951  
continued

Notarial Certificate by S. Kanagasabapathy.

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P.18, MORTGAGE BOND No.264. (ABSTRACT)

P.18  
Mortgage Bond  
No.264  
(Abstract)  
1st May, 1952

Mortgagor Sellappah Kumaravetpillai

Mortgagee Sivanayagi Wife of Senathirajam

Loan 8,000 Rupees at 6% p.a.

Land Land situated at Chunnakam in the Parish of Uduvil in the division of Valigamam North Jaffna District Northern Province called "Thoranakkadavai" in extent 10 Lms.V.C. with cultivated and spontaneous plantations and palmyrah, stone built house and well and this extent of 10 Lms. is bounded on the east by the property of Kathirgamu Thambiah North by lane West by road and on the south by the property of Retnammah Widow of Apputhurai. The whole hereof contained within these boundaries.

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Notarial Certificate by N.R.Sivapiragasam.

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P.15

P.15. DEED OF TRANSFER NO.4489. (ABSTRACT)

Deed of Transfer Vendor  
No.4489  
(Abstract)  
4th October 1952

Vendor Sellammah Widow of Henry Philip

Purchaser Muttu Kanagarayar

Price The margin of this document states 3,500 rupees, the body of it 500 rupees and the Notarial Certificate 3,000 rupees.

30

Land Land situated at Chunnakam in the Parish of Uduvil in the division of

	Valigam North Jaffna District Northern Province called "Varikal-addi" in Extent according to Deed 2 Lms.V.C. but according to measurement in extent 2 Lms.V.C. and 8 Kls. and bounded on the East by the properties of Kandar Nannithamby Thambithurai Navaratnam and shareholders North by path West by road and on the South by the property of Ponnupillai Widow of Kathirgamar. Of the whole hereof an undivided one half share.	<u>Exhibits</u> (Plaintiff's) P.11 Deed of Transfer No.4489 (Abstract) 4th October 1952 continued
10		
	Notarial Certificate by P. Eliathamby.	
	<hr/>	
	<u>P.12. MORTGAGE BOND No.1579 (ABSTRACT)</u>	P.12
	Mortgagor. Described in the head of the Bond as Sellapah Kumarakulasingham but executed by "K.Sivapalkiyam" described in the Notarial Certificate as Sivapakki- am Wife of Kumarakulasingham.	Mortgage Bond No.1579 (Abstract) 10th October 1953.
20		
	Mortgagees Parameswary daughter of Arulampalam and Ellathamby Arulambalam.	
	Loan. 7000 rupees at 9% p.a. reducible to 8% money belonging to Parameswary paid by Arusampalam.	
	Land Land belonging to the Mortgagor by right of dowry and possession as per dowry deed No.11583 dated 22nd October 1928 namely	
30		
	Land situated at Chunnakam in the Parish of Uduvil in the division of Valigamam North Jaffna District Northern Province called "Lokkaiyan Kathiravalai" in extent $34\frac{3}{8}$ Lms.V.C. with young palmyrahs and margosa trees and share of margosa trees standing on the southern boundary and with share of well lying in the eastern boundary and belonging hereto and the right of the use of way and water course and this extent of $34\frac{3}{8}$ and	
40		

Exhibits

(Plaintiff's)

P.12

Mortgage Bond  
No.1579  
(Abstract)  
10th October  
1953  
continued

bounded on the East by the property of Wallippaillai Wife of Subramainam North by lane and by the land of Sanskrit School and land belonging to Shivan temple and temple yard West by lane and on the South by the properties of Vivekasinthamani wife of Muthaliyar and Muttar Ponnambalam and Arumugam Retnasingham and shareholders. The whole of the land contained within these boundaries.

10

2. Land situated at Uduvil in the Parish aforesaid called "Pullanthi" in extent  $24\frac{1}{2}$  Lms.V.C. and bounded on the East by the property of Kathirgamar Arulampalam and Ponnupillai Widow of Kathiran North by the property of Veluppillai Sellappah and others West by damp and South by the property of PonnampalamMinikkam. The whole hereof.

20

3. Land situated at Uduvil called "Saththiyawalai" in extent 13 Lms. V.C. and bounded on the east by the property of Sinnappu Ponnampalam North by the property of Singhamappanar Rasakulasooriyar West by the property of Singhamappanar Rasakulasooriyar and Sinnappillai Widow of Veluppillai and Singamappanar Rasakulasoori and on the South by path dam. The whole of the land contained within these boundaries.

30

Notarial Certificate by S.Kanagasabapathy.  
(One of the two witnesses was Sellappah Kumara-  
vetpillai).

P.13

Mortgage Bond  
No.1598  
(Abstract)  
21st November  
1953

P.13. MORTGAGE BOND No.1598 (ABSTRACT)

Mortgagor	Sellappah Kumarakulasingham's Wife Sivapakkiam.	
Mortgagees	Ellathamby Arulampalam and Parames- wary daughter of Arulampalam.	40
Loan	1,500 Rupees at 9% p.a. reducible to	

	8%. Money belonging to Parameswary paid by Arulampalam.	<u>Exhibits</u>
		(Plaintiff's)
	Land belonging to the Mortgagor by right of dowry and possession as per dowry deed dated 22nd October 1928 No.11583 by the same description in essentials as the description of the 3 parcels of land in P.12.	P.13
	Notarial Certificate by S.Kanagasabapathy. (One of the two witnesses was Sellappah Kumara-vetpillai).	Mortgage Bond No.1598 (Abstract) 21st November 1953 continued
10		
<hr/>		
	P.17 and D9, MORTGAGE BOND No.526 (ABSTRACT)	(Plaintiff's) D.17 (Defendant's) D.9
		Mortgage Bond No.526 (Abstract) 17th December 1953
	Mortgagor Sivapakiam Wife of Sellappah Kumarakulasingham.	
	Mortgagee Cowmugam Sivasambie	
	Loan 15,000 Rupees at 10% p.a. reducible to 7% p.a.	
20	Land belonging to Mortgagor by right of dowry and possession as per dowry Deed dated the 22nd October 1928, which by judgment entered in No.D/236 of the District Court of Jaffna dated the 8th September 1949 she was entitled to Mortgage without the signature of her husband and described as :-	
30	Land situated at Chunnakam in the Parish of Uduvil in the division of Valikamam North Jaffna district Northern Province called "Kalakkokkan Koddiyapulam, Kalakkokkan" in extent 20 Lms. V.C. with cultivated and spontaneous plantations and buildings and well and bounded on the East by the property of Annaledchumy Wife of Sangarappillai north and south by the property of Ponnuppillai Widow of Kathirgamar West by road The whole	
40	hereof together with its appurtenances.	
	Notarial Certificate by R.N.Sivaprakasam not knowing the executant.	
<hr/>		

Exhibits

P.16. RECEIPT TO V.NADARASAH  
BY K. SIVAPAKKIAM.

(Plaintiff's)

Translation

P.16

Chunnakam  
19.5.54.

Receipt to  
V.Nadarasah by  
K.Sivapakkiam  
19th May 1954

I the undersigned Sivapakkiam. Wife of  
Kumarakulasingham of Chunnakam have given on  
rent my third shop in the shop buildings owned  
by me, the said room being the third one from  
the southern centre of the said buildings, unto  
Vairamuttu Nadarasah for a monthly rental of  
Rs.70/- and I have received one thousand rupees  
as advance.

10

I do hereby declare that this advance money  
will paid to him when he leaves the shop.

The rent money will be recovered from the  
date that keys were handed to him.

1. Sgd. S.Kumaravetpillai.
2. Sgd. N.Suppiah.

Sgd. K.Sivapakkiam  
19.5.54 on Re.1/- stamp.

20

Translated by me,  
Sgd.  
Sworn Translator,  
District Court of Jaffna.  
16.9.55.

P.13A

P.13A. DEED OF TRANSFER No.206

Deed of  
Transfer  
No.206  
2nd June 1954

Prior Registration.  
Jaffna H 126/205.

Transfer  
Land One.  
Rs.20,000/-

30

No.206.

To all to whom these presents shall come  
Sivapakkiam Wife of Chellappah Kumarakulasingam  
of Chunnakam (hereinafter sometimes called and

referred to as the Vendor) send Greeting :-

Exhibits

(Plaintiff's)

P.13A

Deed of  
Transfer  
No.206  
2nd June 1954  
continued

10

Whereas the said Vendor is seized and possessed of or otherwise well and sufficiently entitled to the land and premises more fully described in the Schedule hereto under and by virtue of the Deed of Dowry No.11583 dated 22nd October 1928 and attested by A. Ponnampalam N.P. whereas the said Vendor's husband was adjudged a lunatic and permission was granted to her in case No.D/236 of the District Court of Jaffna to encumber or alienate her properties without the consent of her husband.

20

And Whereas the said Vendor has agreed for the absolute sale and assignment to Chellappah Kumaravetpillai of Chunnakam (hereinafter sometimes called and referred to as the Purchaser) of the said premises intended to be hereby granted and conveyed subject to mortgage at the price or sum of Rupees Twenty Thousand (Rs.20,000/-) which includes the amount due on the mortgage Bond No.256 of 17.12.1953 and attested by R.N.Sivapirgasam N.P. for Rs.15,000/- and interest at 10% per annum but if interest is paid yearly then at seven per cent per annum.

30

Now Know Ye and these presents witness that the said Sivapakkiam wife of Chellappah Kumarakulasingham in pursuance of the said agreement and in consideration of the sum of Rupees Twenty Thousand (Rs.20,000/-) of lawful money aforesaid well and truly paid to the Vendor by the Purchaser (the receipt whereof the said Vendor do hereby expressly admit and acknowledge) do hereby give grant convey transfer set over assure and assign unto the said Purchaser, his heirs executors administrators and assigns the land and premises more particularly described and set forth in the Schedule hereto together with all rights privileges easements servitudes and appurtenances whatsoever to the said premises belong or in anywise appertaining or held used or enjoyed therewith or reputed or known as part and parcel thereof, and all the estate, right, title, interest claim and demand whatsoever of the said Vendor into out of and upon the said

40



Exhibits

(Plaintiff's)  
No.13A  
Deed of  
Transfer  
No.206  
2nd June 1954  
continued

premises and every part thereof

To have and to hold the said premises here-  
by granted and conveyed or expressed or intended  
so to be with all and singular the rights ease-  
ments and appurtenances unto the said Purchaser,  
his heirs executors, administrators and assigns  
absolutely for ever.

And the Vendor do hereby for herself, her  
heirs executors administrators covenant and agree  
with the Purchaser and his aforewritten that  
the Purchaser and his aforewritten shall and may  
at all times hereafter peaceably and quietly  
possess and enjoy the said land and premises in  
the said schedule hereto particularly described  
without any interruption or disturbance by the  
Vendor or her aforewritten or any other person  
or persons whomsoever lawfully claiming any  
right or title thereto and that the Vendor has  
good right to convey and assign the said land  
and premises in manner aforesaid and that the  
Vendor and her aforewritten shall and will at  
all times hereafter warrant and defend the title  
to the said land and premises and every part or  
portion thereof unto the said Purchaser and his  
aforewritten against any and every person or  
persons whomsoever and shall and will at all  
times hereafter at the request cost and expenses  
of the Purchaser or his aforewritten do and  
execute or cause to be done and executed all  
such further and other acts deeds assurances  
and things as the Purchaser or his aforewritten  
shall or may reasonably require for more per-  
fectly and effectually conveying and assuring  
the said land and premises or any part or por-  
tion thereof unto the Purchaser and his afore-  
written.

10

20

30

In witness whereof the said Vendor Sivapak-  
kiam wife of Chellappah Kumarakulasingam have  
hereunto and to two others of the same tenor and  
date as these presents set her hand at Chunnakam  
this Second day of June One thousand nine hun-  
dred and fifty four.

40

The Schedule above referred to:

All that piece of land situated at

Chunnakam in the Parish of Uduvil Valigamam North Division Jaffna District, Northern Province called Kalakkokkan Koddiyappulam and Kalakkokkan in extent Twenty Lachchams Varagu Culture (20 Ims.V.C.) with the new buildings but not completed but built up to the Damp Proof Course (D.P.C.) level, well cultivated and spontaneous plantations and bounded on the East by the property of C.Annaledchuni and others North and South by the property of Pon-nuppillai widow of Kathirgamar and West by road. The whole hereof

10

Exhibits  
(Plaintiff's)  
No.13A  
Deed of  
Transfer  
N.206  
2nd June 1954  
continued

Signed in the presence of us )  
and we declare that we know ) Sgd.K.Sivapakkiam  
the executant hereof and ) (in Tamil)  
her name occupation and ad- ) Signature of K.  
dress. ) Sivapakkiam

Witnesses:

1. Sgd. S.Subramaniam
- 20 2. Sgd. S.Vanniyasingam.

Sgd. A.Thirugnanasothy.  
Notary Public.

30

I, Arumugam Thirugnanasothy of Jaffna Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the said Vendor Sivapackiam wife of Chellappah Kumarakulasingham who is known to me and who signed this instrument in Tamil in presence of Swaminathar Subramaniam of Kopay and Sivasampu Vanniyasingam of Chunnakam the subscribing witnesses hereto who are also known to me the same was signed by the said Vendor and also by the said witnesses and by the said Notary in my presence and in the presence of one another all being present together at the same time at Chunnakam this Second day of June One thousand nine hundred and fifty four.

40

I further certify and attest that the consideration expressed herein did not pass in my presence and that before the foregoing instrument was read over and explained by me to the

Exhibits  
 (Plaintiff's)  
 N.13A  
 Deed of  
 Transfer  
 N.206  
 2nd June 1954  
 continued

said Vendor on page 1 of both duplicate and original the words free from encumbrances in line 17 and "at the ...of Rupees" in line 22 and on page 2 "and that the from encumbrances in line 20 "and it was" in line 42 all were deleted and on page one of the original the word 'the' in line 18 was interpolated and that the original of this instrument bears one stamp of Re.1/- and the duplicate bears seven stamps to the value of Rs.319/- and that the said stamps were supplied by me.

10

Date of attestation: Sgd.A.Thirugnanasothy  
 2nd June 1954 Notary Public

( S E A L )

P.19  
 Receipt to V.  
 Subramaniam  
 by S.Kumara-  
 vetpillai and  
 K.Sivapakkiam  
 21st June 1954

P.19. RECEIPT TO V.SUBRAMANIAM  
 BY S.KUMARAVETPILLAI AND K.  
 SIVAPAKKIAM.

21.6.54

Chunnakam.

We the undersigned Sellappah Kumaravetpillai and Sivapakkiam wife of Kumarakulasingham of Chunnakam have granted the fourth room from the Southern side in the godown belonging to us situated in the land called "Kalakkokkan Koddiyappulam" unto Vairamuttu Subramaniam of Erlalai together with the kitchen for a monthly rental of Rs.70/- and have received a sum of Rupees one thousand (Rs.1000/-) as advance.

20

We do hereby declare that the said sum of Rupees one thousand being the advance money will be paid by us to the said Vairamuttu Subramaniam whenever he leaves the shop.

30

The rent money shall be paid before the 10th of the succeeding month and receipt obtained. We declare that no fire should be used in

front of the godown and in the room.

We also declare that no improvements shall be effected without our authority.

Witnesses:

1. Sgd. A.Sivakkolunthu.

2. Sgd.S.Vanniyasingham.

Sgd. S.Kumaravetpillai

Sgd.K.Sivapakkiam on  
Re. 1/-

Translated by me,

Stamp

10 Sgd.

Sworn Translator

District Court, Jaffna. 16.9.1955.

D.6. MORTGAGE BOND NO. 2648

(Defendant's)

D.6

PRIOR REGISTRATION

Mortgage.

H. 126/205.

Land One.

Rs.35,000.00

No.2648

Mortgage

Bond No.2648

3rd July 1954

20

Know All Men By These Presents That I; Chel-  
lappah Kumaravetpillai of Chunnakam, Jaffna, (here-  
inafter called the Mortgagor) am held and firmly  
bound and do hereby acknowledge to be justly and  
truly indebted to Sathasivam Kandiah of Nallur,  
Jaffna (hereinafter called the Mortgagee) in the  
sum of Rupees Thirty five thousand only (Rs.  
35,000.00) of lawful money of Ceylon which I  
have this day borrowed and received of and from  
the said Mortgagee, I therefore renouncing the  
Beneficium non numeratae pecuniae, the meaning  
of which has been explained to me agree and  
undertake and bind myself and my heirs execu-  
tors and administrators to pay the said sum of  
Rs.35,000.00 and interest that might accrue

30

Exhibits

(Plaintiff's)

P.19

Receipt to V.  
Subramaniam  
by S.Kumara-  
vetpillai and  
K.Sivapakkiam  
21st June 1954  
continued

Exhibits

(Defendant's)

D.6

Mortgage  
 Bond No.2648  
 3rd July 1954  
 continued

thereon to the said mortgagee, his heirs, executors, administrators and assigns on demand and until such payment I engage and bind myself and my aforewritten to pay interest on the said sum of Rs.35,000.00 at and after the rate of ten (10) per centum per annum but if the interest is paid annually then such interest shall be payable at the reduced rate of eight (8) per centum per annum.

And for securing the due payment of the said sum of Rs.35,000.00 and interest which might accrue thereon at and after the rate aforementioned I the said Mortgagor do hereby specially hypothecate and mortgage to and with the said Mortgagee by way of primary mortgage free from all encumbrances the property described in the schedule these presents and all the estate right title interest claim and demand whatsoever of me into upon or out of the said premises which said premises have been held and possessed by me under Transfer Deed dated 2.6.1954 and attested by A.Thirugnanasothy, Notary Public under No.206 and more fully described in the schedule to these presents. 10 20

THE SCHEDULE above referred to:

All that piece of land situated at Chunnakam, in the Parish of Uduvil, Valigamam North Division, Jaffna District Northern Province called "Kalakkokkan Koddiyappulam and Kalakkokkan" in extent (20 Lms.V.C.) Twenty Lachams varagu culture with new buildings but not completed, well, plantations and bounded on the East by the property of C.Annaledchumi and others, NORTH and SOUTH by the property of Ponnuppillai widow of Kathirgamar and WEST by Road. 30

And I the said Mortgagor do hereby covenant and declare with the said Mortgagee and his aforewritten that I have good and legal right to mortgage the said premises in manner aforesaid, and that the said premises are free from all encumbrances whatsoever. 40

And that I shall and will at all times during the continuance of these presents do and

execute or cause to be done and executed all such further and other acts deeds matters and things which may be necessary or expedient for the better or more perfectly assuring the said premises or any part thereof by way of mortgage unto the said Mortgagee and his aforewritten as may be reasonably required

Exhibits  
(Defendant's)  
D.6  
Mortgage  
Bond No.2648  
3rd July 1954  
continued

10 And I do declare further to engage and bind myself and my heirs executors and administrators for the true performance of this obligation.

IN WITNESS whereof I the said Mortgagor do hereunto and to two others of the same tenor and date as these presents set my hand at Nallur, Jaffna this Third day of July One thousand Nine hundred and Fifty four.

20 Signed and delivered in the presence of us and we declare that we are well acquainted with the executor and know his proper name occupation and residence. } Sgd. S.Kumaravetpillai

Witnesses:-

- 1. Sgd. S.Subramaniam
- 2. Sgd. S.Aiyathurai (in Tamil)

Sgd. S.Visuvalingam  
Notary Public.

30 I, Sittampalam Visuvalingam of Nallur North, Jaffna, Notary Public, do hereby certify and attest the foregoing instrument having been duly read over and explained by me to the said Mortgagor who is known to me in the presence of Swamynathar Subramaniam of Kopay and Suppiah Ayathurai of Nallur, Jaffna the subscribing witnesses hereto both of whom are also known to me the same was signed by the said Mortgagor and also by the said witnesses and by me the said Notary in my

Exhibits  
(Defendant's)  
D.6

Mortgage  
Bond No.2648  
3rd July 1954  
continued

presence and in the presence of one another all being present at the same time at Nallur, Jaffna on this Third day of July, One thousand nine hundred and fifty four.

I further certify and attest that the consideration expressed herein passed in my presence and before the same was read over and explained by me as aforesaid that in Page 1, in the Original and Duplicate of this instrument hereof the words "or" was typed over "ee2" and that the duplicate of this instrument bears six stamps of the value of Rs.282/- and the Original one of Re.1/-.

10

Date of attestation }  
3.7.1954. } Sgd. S.Visuvalingam.  
Notary Public.

(S E A L)

D.7.

D.7. CHEQUE COUNTERFOIL NO.645594

Cheque  
Counterfoil  
No.645594  
3rd July 1954.

No.645594  
3.7.1954

Rs.28000/XX

20

(On reverse) Balance 87/20 only  
19.7.54.

D.8

D.8. CHEQUE COUNTERFOIL NO.64335

Cheque  
Counterfoil  
No.64335  
3rd July 1954

No.64335  
Bank of Ceylon.  
Jaffna 3.7.1954.

Rs.6600/-.

D.10. MORTGAGE BOND NO.2756Exhibits

## PRIOR REGISTRATION

(Defendant's)  
D.10

Mortgage

Land One.

Rs.7,000.00

H. 281/182.

Mortgage Bond  
No.2756  
13th October  
1954

No.2756.

Know All Men by These Presents That I, Chel-  
lappah Kumaravepillai of Chunnakam, Jaffna  
(hereinafter called the Mortgagor) am held and  
firmly bound and do hereby acknowledge to be  
10 justly and truly indebted to Sathasivam Kandiah  
of 13, Chetty Street, Nallur, Jaffna, (herein-  
after called the Mortgagee) in the sum of Rupees  
Seven Thousand only (Rs.7,000.00) of lawful  
money of Ceylon which I have this day borrowed  
and received of and from the said Mortgagee, I  
therefore renouncing the beneficium non numeratae  
pecuniae the meaning of which has been ex-  
plained to me agree and undertake and bind my-  
self and my heirs executors and administrators  
20 to pay the said sum of Rs.7,000.00 and interest  
that might accrue thereon to the said mortgagee,  
his heirs, executors, administrators and assigns  
on demand and until such payment I engage and  
bind myself and my aforewritten to pay interest  
on the said sum of Rs.7,000.00 at and after the  
rate of ten (10) per centum per annum but if the  
interest is paid annually then such interest  
shall be payable at the reduced rate of nine (9)  
per centum per annum.

30 And for securing the due payment of the  
said sum of Rs.7,000.00 and interest which might  
accrue thereon at and after the rate aforemen-  
tioned I the said Mortgagor do hereby specially  
hypothecate and mortgage to and with the said  
Mortgagee by way of Secondary Mortgage free from  
all encumbrances the property described in the  
Schedule these presents and all the estate  
right title interest claim and demand whatsoever  
of us into upon or out of the said premises which  
30 said premises have been held and possessed by me  
under and by virtue of Transfer Deed dated 2.6.1954



Exhibits  
(Defendant's)

D.10

Mortgage Bond  
No.2756  
13th October  
1954  
continued

and attested by A.Thirugnanasothy. N.P. under No.206 and more fully described in the Schedule to these presents.

THE SCHEDULE above referred to

All that piece of land situated at Chunnakam, in the Parish of Uduvil, in the Division of Valigamam North, in the District of Jaffna, Northern Province called "Kalakkokkam Koddipulam and Kalakkokkan" in extent (20 Lms. V.C.) Twenty lachchams varagu culture with new buildings, well plantations and bounded on the EAST by the property of C.Annaledchumi and others, NORTH and SOUTH by the property of Ponnuppillai Widow of Kathirgamar and WEST by Road.

10

And I the said Mortgagor do hereby covenant and declare with the said Mortgagee and his afore-written that I have good and legal right to mortgage the said premises in manner aforesaid, and that the said premises are free from all encumbrances whatsoever

20

And that I shall and will at all times during the continuance of these presents do and execute or cause to be done and executed all such further and other acts deeds matters and things which may be necessary or expedient for the better or more perfectly assuring the said premises or any part thereof by way of mortgage unto the said Mortgagee and his aforewritten as may be reasonably required

And I do declare further to engage and bind myself and my heirs executors and administrators for the true performance of this obligation.

30

IN WITNESS whereof I the said Mortgagor do hereunto and to two others of the same tenor and date as these presents set my hand at Nallur, Jaffna this Thirteenth day of October, One

thousand nine hundred and fifty four.

Signed and delivered in the presence of us and we declare that we are well acquainted with the executant and know his proper name occupation and residence.

} Sgd. S.Kumara-  
vetpillai

Exhibits  
(defendant's)  
D.10  
Mortgage Bond  
No.2756  
13th October  
1954  
continued

Witnesses:

- 1. Sgd. S.Aiyathurai (in Tamil)
- 2. Sgd.T.R.Somanathan.

10

Sgd. S.Visuvalingam

Notary Public.

I, Sittampalam Visuvalingam of Nallur North Jaffna, Notary Public, do hereby certify and attest the foregoing instrument having been duly read over and explained by me to the said Mortgagor who is known to me in the presence of Suppiah Ayathurai And Thampu Ratnam Somanathan both of Nallur, Jaffna the subscribing witnesses hereto both of whom are also known to me the same was signed by the said Mortgagor and also by the said Witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at Nallur, Jaffna on this Thirteenth day of October, One thousand nine hundred and fifty four.

20

I further certify and attest that out of the consideration expressed herein only Rupees Five thousand Rs.5,000.00) passed in my presence and that the duplicate of this instrument bears four stamps of the value of Rs.58/- and the Original one of Re.1/-.

30

Date of Attestation) (Seal) Sgd.S.Visuvalingam  
13.10.1954. ) Notary Public.



Exhibits  
(Plaintiff's)

P.22

Plaint and  
Affidavit of  
S.Kumaravet-  
pillai, in  
D.C.Jaffna  
Case No.L/90  
5th and 26th  
July 1955.

P.22. PLAINT AND AFFIDAVIT OF  
S.KUMARAVETPILLAI, IN D.C.  
JAFFNA CASE NO.L/90.

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IN THE DISTRICT COURT OF JAFFNA.

No.L/90	Chellappah Kumaravetpillai of Chunnakam  Vs.  Ponnuppillai Widow of Kathir- gamar of Chunnakam	Plaintiff.   Defendant.
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This 5th day of July, 1955.

10

The Plaintiff of the Plaintiff abovenamed appearing by S.Visuvalingam, his proctor states as follows:

1. The parties reside and the subject matter of this action is situated within the jurisdiction of this Court.

2. Certain Sivapakkiam Wife of Chellappah Kumarakulasingam was the owner and proprietress of a piece of land called "Kalekkoan Koddipayulam and Kalakkoan" in extent 20 lms.V.C. situated at Chunnakam under and by virtue of Dowry Deed dated 22nd October 1928 and attested by A. Ponnambalam, Notary Public under No.11583 and more fully described in the Schedule "A" hereto.

20

3. The said Sivapakkiam having held and possessed the said land sold and conveyed the same to Plaintiff abovenamed by Deed No.206 dated 2nd June, 1954 and attested by A.Thirugnanasothy, Notary Public.

4. The Plaintiff abovenamed by his undisturbed and uninterrupted possession and by the like possession of his predecessors in title has acquired prescriptive right and title to the said land for a period of ten years and upwards prior to this action by a title adverse to and independent of all others whomsoever acquired

30

prescriptive right and title to the said land in terms of Section 5 of Chapter 55 of Volume 2 of the Legislative Enactments of Ceylon.

Exhibits  
(Plaintiff's)

P.22

Plaint and  
Affidavit of  
S.Kumaraveg-  
pillai, in  
D.C.Jaffna  
Case No.L/90  
5th and 26th  
July 1955  
continued

10 5. The Defendant abovenamed is the owner of the land to the South of the said land is putting up a building in her said land and has on the 2nd day of July, 1955 wrongfully got her workmen to cut a trench encroaching into the Plaintiff's land to an extent of about one kuly and is since claiming the said extent as part of her land. The said extent of one (1) kulies is described in the Schedule "B" hereto.

20 6. The Defendant is further threatening to erect a wall in the said extent of one kulies and if the Defendant is not restrained by an Interim Injunction from putting up the said building, the erection of the building would cause injury and irreparable loss to the plaintiff and would be a violation of the Plaintiff rights respecting the subject matter of this action and would tend to render the judgment ineffectual.

7. A cause of action thus accrued to the Plaintiff to sue the Defendant to obtain a declaration of title to the said extent of one Kuly.

8. An affidavit verifying the above fact is herewith filed.

30 9. The subject matter of this action is reasonably worth Rs.400.00.

WHEREFORE the Plaintiff prays:

- 40 (a) that the Plaintiff be declared entitled to the said extent of one Kuly described in the Schedule "B" hereto as part of the land described in the Schedule "A" hereto,
- (b) the Plaintiff be placed in peaceful possession thereof.
- (c) that an Interim Injunction restraining the Defendant from erecting any building in the said

Exhibits  
(Plaintiff's)  
P.22

Plaint and  
Affidavit of  
S.Kumaravet-  
pillai, in  
D.C.Jaffna  
Case No.L/90  
5th and 26th  
July 1955  
continued

extent of kulies pending the action,  
be issued,

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

Sgd. S.Visuvalingam.

Proctor for Plaintiff.

SCHEDULE "A" referred to.

All the piece of land situated at Chunnakam  
in the Parish of Uduvil, in the Valigamam North  
Division Jaffna District, Northern Province  
called "Karakkokan Koddiyapulam and Kalakkokkan  
in extent 20 Lms.V.C. but according to Survey  
Plan No.203 dated 11th day of June, 1955 and  
prepared by N.Thamboo, Licensed Surveyor found  
to contain in extent 19 Lms.V.C. and 1 $\frac{1}{2}$ th kulies  
with shop buildings, kitchen, well plantations,  
and bounded on the East by the property of C.  
Annaeledchumy and others, North and South by  
the property of the Defendant and West by Road.

10

20

Sgd. S.Visuvalingam.

Proctor for Plaintiff.

SCHEDULE "B" referred to

An extent of one (1) kulies on the South  
out of the land described in the Schedule "A"  
hereto situated as aforesaid and bounded on the  
East and North by the remaining portion of the  
land of the Plaintiff, West by Road and South  
by the property of the Defendant.

Sgd. S.Visuvalingam.

Proctor for Plaintiff.

30

Memo of documents annexed herewith

(1) Abstract of title,

(2) Pedigree.

- (3) Plan No.203 dated 11th June, 1955 and prepared by N.Thamboo, Licensed Surveyor and
- (4) Transfer Deed No.206 dated 2nd June 1954 and attested by A.Thirugnanasothy, N.P.

Sgd. S.Visuvalingam.  
Proctor for Plaintiff.

IN THE DISTRICT COURT OF JAFFNA

10 Chellappah Kumaravetpillai of  
Chunnakam Plaintiff

No.L/90 vs.

Ponnuppillai Widow of Kathir-  
gamar of Chunnakam Defendant

Exhibits  
Plaintiff's)  
P.22  
Plaint and  
Affidavit of  
S.Kumaravet-  
pillai, in  
D.C.Jaffna  
Case No.L/90  
5th and 26th  
July 1955  
continued

I, Chellappah Kumaravetpillai of Chunnakam do hereby solemnly, sincerely and truly declare and affirm as follows:

1. I am the Plaintiff abovenamed.
2. Certain Sivapakkiam wife of Chellappah Kumarakulasingam was the owner and proprietress of a piece of land called "Kalakkoan Koddiyapulam and Kalakkokan" in extent 20 Lms.V.C. situated at Chunnakam under and by virtue of Dowry Deed dated 22nd October, 1928 and attested by A.Ponnambalam N.P. under No.11583 and more fully described in the Schedule "A" hereto.
3. The said Sivapakkiam having held and possessed the said land sold and conveyed the same to me by Deed No.206 dated 2nd June, 1954 and attested by A.Thirugnanasothy, N.P.
- 30 4. I have been in the undisturbed and uninterrupted possession and by the like possession of my predecessors in title have acquired prescriptive right and title to the said land for a period of ten years and upwards prior to this action by a title adverse to and independent of

Exhibits

(Plaintiff's)

P.22

Plaint and Affidavit of S.Kumaravetpillai, in D.C.Jaffna Case No.L/90 5th and 26th July 1955 continued

all others whomsoever acquired prescriptive right and title to the said land in terms of Section 5 Chapter 55 of Volume 2 of the Legislative Enactments of Ceylon.

5. The Defendant abovenamed is the owner of the land to the South of the said land is putting up a building in her said land and has on the 2nd day of July, 1955 wrongfully got her workmen to cut a trench encroaching into my land to an extent of about kulies and is since claiming the said extent of about one kuly as part of her land. The said extent of one kuly is described in the Schedule "B" hereto.

10

6. The Defendant is further threatening to erect a wall in the said extent of one kuly and if the Defendant is not restrained by an interim Injunction from putting up the said building the erection of the building would cause injury and irreparable loss to me and would be a violation of my rights respecting the subject matter of this action and would tend to render the judgment ineffectual.

20

7. A cause of action has thus accrued to me to sue the Defendant to obtain a declaration of title to the said extent of one kuly.

8. The subject matter of this action is reasonably worth Rs.400.00.

Schedule "A" referred to

All the piece of land situated at Chunnamkam in the Parish of Uduvil, in the Valigamam North Division, Jaffna District, Northern Province called "Kalakkokkan Koddipayulam Kalakkokkan" in extent 20 Lms.V.C. but according to Survey Plan No.203 dated 11th June, 1955 and prepared by N.Thamboo, Licensed Surveyor found to contain in extent 19 Lms.V.C. and 1<sup>1</sup>/<sub>2</sub>th kulies with shop buildings, kitchen, well plantations and bounded on the East by the property of C.Annaledchumy, and others, North and South

30

by the property of the Defendant and West by Road.

Exhibits

(Plaintiff's)

Schedule "B" referred to:

P.22

An extent of one Kuly on the South out of the land described in the Schedule "A" hereto situated as aforesaid and bounded on the East and North by the remaining portion of the land of the Plaintiff (Chellappah Kum- aravetpillai) West by Road and South by the property of the Defendant.

Plaint and Affidavit of S.Kumaravetpillai, in D.C.Jaffna Case No.L/90 5th and 26th July 1955 continued

10

The contents of the foregoing )  
Affidavit was read over and )  
explained by me to the within )  
named deponent who appeared to )  
understand the same perfectly )  
well affirmed to its truth and ) Sgd. S.Kuma-  
correctness hereof and set his ) ravetpillai  
signature in my presence at )  
Jaffna on this 26th day of )  
July, 1955. )

20

Before me, Sgd. A.V.Kulasingham,N.P.

Drawn by Sgd. S.Visuvalingam,  
Proctor for Plaintiff.





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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RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,  
53 Victoria Street,  
LONDON, S.W.1.  
Solicitors and Agents for the  
Appellant.

LEE & PEMBERTONS,  
11 South Square,  
Gray's Inn, W.C.1.  
Solicitors and Agents for the  
Respondent.