

2/82

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

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B E T W E E N :

1. GAN KHAY BENG
  2. BEE CHUAN RUBBER FACTORY SDN.BHD.
  3. FELIXIA d/o Varnakulasinghe
- Appellants

- and -

1. NG LIT CHENG alias NG YAM CHEE
  2. E.P.E. ANANDA
  3. JOSEPH JACOB DAVID also known  
as JACOB JOSEPH as Administrator  
with Will annexed of the Estate  
of John David deceased
- Respondents

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RECORD OF PROCEEDINGS

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PHILIP CONWAY THOMAS & CO.  
61 Catherine Place,  
London, SW1E 6HB

Solicitors for the Appellants

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SMILES & CO.  
15 Bedford Row,  
London, WC1R 4EF

Solicitors for the First  
Respondent

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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FROM THE FEDERAL COURT OF MALAYSIA

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JACOB JOSEPH as Administrator  
with the Will annexed of the  
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RECORD OF PROCEEDINGS

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E X H I B I T S

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Exhibit Mark	Description of Document	Date
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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA

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B E T W E E N :

1. GAN KHAY BENG  
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- and -

10 1. NG LIT CHENG alias NG YAM CHEE  
2. E.P.E. ANANDA  
3. JOSEPH JACOB DAVID also known as  
JACOB JOSEPH as Administrator  
with the Will annexed of the  
Estate of John David deceased Respondents

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RECORD OF PROCEEDINGS

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No.1

EX-PARTE ORIGINATING SUMMONS

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
ORIGINATING SUMMONS NO. 79 OF 1974

20 In the matter of the estate of  
JOHN DAVID, deceased

- and -

In the matter of Seremban High Court  
Petition No.128 of 1970

- and -

In the matter of Order 55 Rule 3(1)(f)  
of the Rules of the Supreme Court

JOSEPH JACOB DAVID also known as  
JACOB JOSEPH

APPLICANT

In the  
High Court

No.1  
Ex-parte  
Originat-  
ing  
Summons

11th  
November  
1974



In the  
High Court

EX-PARTE ORIGINATING SUMMONS

No.1  
Ex-parte  
Originating  
Summons  
11th November  
1974

LET ALL PARTIES concerned attend the Judge in Chambers at the High Court, Seremban on Monday, the 25th day of November 1974 at 9.30 o'clock in the forenoon, on the hearing of an application on the part of the Applicant above-named for an Order that :

(continued)

- (1) Pursuant to the Agreement dated the 2nd day of September, 1974 entered into by the Applicant of the one part AND one NG LIT CHENG @ NG YAM CHEE of the other part the whole of the land held under Grant No.953 for Lot No.368 in the Mukim of Rasah in area 3 acres 3 roods 16 poles registered in the Applicant's name as personal representative be sold to the said NG LIT CHENG @ NG YAM CHEE at a price of \$110,000/- (Dollars one hundred and ten thousand only) in accordance with the provisions of the said Agreement; and

- (2) THERE be no Order as to costs.

Dated this 11th day of November, 1974

Sd: Chan & Chia  
Solicitors for the  
abovenamed Applicant

Sd: Illegible  
Senior Assistant  
Registrar  
High Court, Malaya,  
Seremban.

( S E A L )

This Originating Summons was taken out by Messrs. Chan & Chia, Solicitors for the above-named Applicant whose address for service is at Tingkat Satu, No.87 Jalan Birch, Seremban.

This Originating Summons will be supported by the Affidavit of E.P.E. Ananda affirmed at Seremban this 9th day of November, 1974.

It is not intended to serve this Summons on any one.

AFFIDAVIT OF E.P.E.ANANDA  
WITH 7 EXHIBITS THERETO

---

No.2  
Affidavit of  
E.P.E.Ananda  
with 7 exhibits  
thereto

9th November  
1974

I, E.P.E. ANANDA (Identity Card No. 1762384) of No.277, Jalan Rasah, Seremban, N.S. of full age solemnly affirm and say as follows :-

1. I am the duly appointed Power of Attorney of JOSEPH JACOB DAVID also known as JACOB JOSEPH DAVID the personal representative of the estate of JOHN DAVID, deceased. A copy of the said Power of Attorney is now produced and shown to me marked Exhibit "A".
2. The said JOHN DAVID, deceased (hereinafter referred to as "the said deceased") died on the 29th day of June, 1920 having executed a Will on the 13th day of April, 1920.
3. The Grant of Letters of Administration with the Will annexed to the estate of the said deceased was on the 22nd day of September, 1970 granted out of the Registry of the High Court at Seremban vide Petition No.128 of 1970 to the said JOSEPH JACOB DAVID also known as JACOB JOSEPH DAVID. A copy of the said Grant of Letters of Administration with the Will annexed is now produced and shown to me marked Exhibit "B".
4. The said deceased bequeathed all his property to -
- (a) FRANCIS DANIEL DAVID - Brother - 5/16 share
- (b) BENJAMIN DAVID - Brother - 4/16 share
- (c) JACOB JOSEPH - Godson - 3/16 share
- (d) R.SINNAPPAN -(brought up in the family) - 1/32 share
- (e) ELIZABETH MUTTAMA - Sister - 1/16 share
- (f) MARY BEATRICE THANGKUTTI VARNAGULASINGHE - Wife - 1/16 share
- (g) MISS RASAMMA -(Caretaker and house-keeper) - 3/32 share
5. I am informed and I verily believe that :-
- (i) FRANCIS DANIEL DAVID died intestate leaving behind the following :

In the  
High Court

No.2  
Affidavit of  
E.P.E.Ananda  
with 7  
exhibits  
thereto  
9th November  
1974  
(continued)

- (a) CHARLOTTE MARGARET DAVID - Widow  
(b) JOSEPH BAPTIST DAVID - Son  
(c) JOSEPH JACOB DAVID  
alias JACOB JOSEPH - Son  
(d) JAMES NICHOLAS DAVID - Son
- (ii) BENJAMIN DAVID died intestate leaving  
behind :  
BENEDICT GERARD STANISLAUS  
DAVID - Only son
- (iii) R. SINNAPPAN died intestate and his 10  
beneficiaries are not known to the  
Applicant.
- (iv) ELIZABETH MUTTAMA died intestate and  
her beneficiaries are not known to the  
Applicant.
- (v) MARY BEATRICE THANGKUTTI VARNAGULASINGHE  
died intestate leaving no issues.
- (vi) MISS RASAMMA died intestate leaving no  
issues.
- (vii) JACOB JOSEPH is the sole surviving bene- 20  
ficiary of the estate of JOHN DAVID,  
deceased and also the Applicant herein.
6. The only asset of the said deceased is a  
piece of land comprised in Negri Sembilan Grant  
No.953 for Lot No.368 Mukim of Rasah (herein-  
after referred to as "the said land").
7. On the 26th day of August 1974 the said  
land was transmitted to JOSEPH JACOB DAVID also  
known as JACOB JOSEPH DAVID as personal represen- 30  
tative of the said deceased pursuant to section  
346 of the National Land Code Act of 1965.
8. An Agreement was executed on the 2nd day  
of September 1974 between JOSEPH JACOB DAVID  
also known as JACOB JOSEPH of the one part and  
NG LIT CHENG @ NG YAM CHEE of the other part  
for of the said land at the price of  
\$110,000/- (Dollars one hundred and ten thousand  
only). A copy of the said Agreement is now  
produced and shown to me marked Exhibit "C".
9. The beneficiaries of the estate of FRANCIS 40  
DANIEL DAVID one of the beneficiaries of the  
estate of JOHN DAVID, deceased have no objection  
to the sale of the said land. Their Letters of  
Consent are now produced and shown to me marked  
Exhibits "D1", "D2" and "D3".

10. The sole beneficiary of the estate of BENJAMIN DAVID has no objection to the sale of the said land. His Letter of Consent is now produced and shown to me marked Exhibit "E".

In the  
High Court

No.2  
Affidavit of  
E.P.E.Ananda  
with 7  
exhibits  
thereto

11. The Applicant is presently residing at SRI LANKA and is unable to attend this Honourable Court at the hearing of this Summons.

9th November  
1974

10 12. The Applicant herein is desirous of selling the said land for the following reasons :-

(continued)

(i) The estate of the said deceased of which the said land is the only asset has been unadministered since 1920;

(ii) The said land is a small piece of vacant land producing no income to the estate of the said deceased;

20 (iii) The Applicant is unable to administer the said land as he resides in Sri Lanka.

13. The estate of the said deceased, I am informed and verily believe is free from all liabilities.

14. Therefore, I humbly pray to this Honourable Court for an Order in terms of my Application.

30 AFFIRMED by the said E.P.E. ANANDA at Seremban this 9th day of November, 1974 at 10.30 a.m. } Sd: E.P.E.Ananda

Before me,

Sd: R.Purushothman, P.J.K.,  
Commissioner for Oaths,  
High Court, Seremban.

Filed by Messrs. Chan & Chia, Solicitors for the Applicant abovenamed whose address for service is at Tingkat Satu, No.87 Jalan Birch, Seremban.

In the  
High Court

No.2  
Exhibit "A"  
Power of  
Attorney,  
Joseph Jacob  
David to E.P.E.  
Ananda

5th August  
1974

EXHIBIT "A"

POWER OF ATTORNEY, JOSEPH  
JACOB DAVID TO E.P.E.ANANDA

KNOW ALL MEN BY THESE PRESENTS that I  
JOSEPH JACOB DAVID also known as JACOB JOSEPH  
DAVID of "Bloomfield" BATTICALOA, SRI LANKA,

SEND GREETINGS :-

WHEREAS I am the personal representative  
of the deceased JOHN DAVID and representation  
to Administer the said estate of the deceased  
situated at Seremban in the Mukim of Rasah  
(Grant No.953 Lot 368) was granted by the  
High Court at Seremban, Negri Sembilan on the  
15th day of October, 1973 (Probate No. 128/70)  
to my lawful attorney Dato Athi Nahappan  
Power of Attorney No.330/1968.

10

AND WHEREAS the Power of Attorney No.330  
of 1968 granted by me to the said Dato Athi  
Nahappan was revoked by me on the 8th day of  
July 1974 vide No. Rev.68/74.

20

NOW KNOW YE AND THESE PRESENTS WITNESS  
THAT I THE SAID JOSEPH JACOB DAVID ALSO KNOWN  
AS JACOB JOSEPH DAVID being unable to proceed  
to MALAYSIA I desire and do hereby nominate  
and appoint E.P.E.ANANDA (NRIC NO: 1762384) of  
277 RASAH ROAD, SEREMBAN, to be my true and  
lawful Attorney for me and in my name to do  
the following acts and things within the States  
of Malaya that is to say :-

1. To state, settle, adjust, compound and  
compromise all accounts, claims demands and  
differences between myself and any other person  
or persons and if advisable to refer any such  
matters to arbitration and for that purpose  
to sign, seal and execute any agreement of  
reference or any instrument necessary.

30

2. To pay and settle all my lawful debts and  
obtain full and effectual receipts and releases  
for the same.

3. To appear before any Judge, Magistrate  
or any Public Officer in connection with any  
of the matters herein contained. To appeal from  
any order or judgment given against me.

40

4. To manage and conduct my business in the  
State of Malaya, and to do and perform all acts  
or things in the execution of the said business  
as fully and completely as I might do were I

personally present.

In the  
High Court

No.2  
Exhibit "A"  
Power of  
Attorney,  
Joseph Jacob  
David to E.P.E.  
Ananda

5th August  
1974

(continued)

5. To sell and transfer to any person or persons the land comprised in Grant NS.No. 953 Lot 368 in extent 3 Acres - 3 Roods - 16 Perches at Rahang Road in Seremban and for that purpose to sign and execute the transfer and other instruments necessary.

10 6. To nominate Mr. P.S.Maniam Advocate and Solicitors of 6 Cameron Street Seremban as my Lawyer for all purposes and to deposit with him in the firm of P.S.Maniam and Co., 6 Cameron Street Seremban the proceeds of the Sale, and the same to be drawn by my Attorney from Mr. Maniam on written instructions from me and also reserving the right for me to draw the amount so deposited from time to time or in a lump sum.

20 7. To concur in doing any of the acts and things herein contained with any person or persons interested in the premises.

8. To have this Power registered and whenever such Registration may be legally required necessary or convenient for the said purpose and to execute and if legally required cause to be registered all documents and do all other acts which may be necessary to give effect to this Deed according to the law applicable to the premises.

30 9. And generally to do all acts and things and sign and execute all such documents as may be necessary for effectuating any of the purposes aforesaid as fully and completely as I myself could do if I were personally present.

And I hereby agree to ratify and confirm all and whatsoever my said Attorney shall lawfully do in the premises by virtue of these presents.

40 IN WITNESS WHEREOF I have hereunto set my hand and seal this Fifth day of August in the year One thousand nine hundred and seventy-four (1974)

SIGNED, SEALED AND DELIVERED )  
by the said JOSEPH JACOB )  
DAVID also known as JACOB ) Sd: J.J.David  
JOSEPH DAVID in the presence )  
of :-

Sd: K.V.M.Subramaniam  
NOTARY PUBLIC

Sd: Illegible  
Sd; Illegible

In the  
High Court

No.2  
Exhibit "A"  
Power of  
Attorney,  
Joseph Jacob  
David to E.P.E.  
Ananda

5th August  
1974

(continued)

I, Kasinader Vythilingam M. Subramaniam  
a Notary Public of Batticaloa Sri Lanka do  
hereby certify that the Signature of the donor  
abovenamed was written in my presence on this  
FIFTH day of AUGUST 1974 and is to my own  
personal knowledge the true Signature of JOSEPH  
JACOB DAVID also known as JACOB JOSEPH DAVID  
who has acknowledged to me that he is of full  
age and that he has voluntarily executed this  
instrument.

10

Witness my hand at Batticaloa this FIFTH  
day of AUGUST One thousand nine hundred and seventy-  
four

( S E A L )

Sd: K.V.M.Subramaniam  
Notary Public

Registered Power of Attorney No.  
201/74 True copy deposited in the  
High Court Registry this 12th day  
of August 1974.

Compared by me  
Clerk.

Sd: Illegible  
Senior Assistant  
Registrar

20

Sd: Illegible

High Court, Malaya,  
Seremban

Exhibit "B"  
Letters of  
Administra-  
tion with  
Will annexed  
of John David

15th October  
1973

EXHIBIT "B"

LETTERS OF ADMINISTRATION  
WITH WILL ANNEXED OF JOHN  
DAVID

This is the Exhibit marked  
"B" referred to in the  
affidavit of E.P.E.Ananda  
affirmed at Seremban this  
9th day of November 1974

30

IN THE HIGH COURT IN MALAYA  
STATE OF NEGERI SEMBILAN

PETITION NO.128 OF 1970

IN THE ESTATE OF DAVID JOHN DECEASED

Before me,

GRANT OF LETTERS OF ADMINISTRATION WITH THE  
WILL ANNEXED

40

BE IT KNOWN THAT JOHN DAVID OF Seremban died on the 29th day of June, 1920 having duly made and executed his last Will dated the 13th day of April, 1920 a copy whereof is hereunto annexed.

In the High Court  
No.2  
Exhibit "B"  
Letters of Administration with Will annexed of John David  
15th October 1973  
(continued)

10 AND BE IT FURTHER KNOWN THAT ON the 22nd day of September, 1970 the said Will was proved and registered in this Court and administration of all the movable and immovable property in Malaysia which by law devolves to and vests in the personal representative of the said deceased was granted by this Court

To Joseph Jacob David also known as Jacob Joseph by his attorney Dato Athi Nahappan (Power of Attorney No.380/1965) of No.45 Jalan Melayu, Kuala Lumpur.

that (a) Legatee named in the said Will  
(b) A nephew of the said Deceased

20 AND BE IT FURTHER KNOWN THAT ON the day hereunder written those letters of administration were issued to the said administrator he having given the security required by this Court for the due administration of the said property a schedule whereof is hereunto annexed.

GIVEN under my hand and the seal of the Court at this 15th day of October, 1973.

P.D.H.P. B 21/70

Form No.12

HARTA PESAKA John David

Si-mati

30 ESTATE OF

DECEASED

PEJABAT PENDAFTARAN  
THE

DI SEREMBAN  
REGISTRY AT

PERMONONAN NO.128  
PETITION NO.

TAHUN 1970  
of 19

(Affidavit diserahkan pada 5 haribulan September, 1970)  
(Affidavit delivered the day of 19 )

Jadual hart simati yang tersebut namanya di atas:  
Schedule of the property of the above-named deceased:

A S S E T S

40 NILAI BESAR  
GROSS VALUE-

§ c.

1. Gross 953 Lot 368 Mukim of Rasah,  
Seremban



In the  
High Court

TANGGONGAN  
LIABILITIES

Nil

§ c.

No.2  
Exhibit "B"  
Letters of  
Administration  
with Will  
annexed of  
John David

NILAI BERSIH

-

PERAKUAN BAYARAN  
CERTIFICATE OF

15th October  
1973  
(continued)

DENGAN INI SAYA MEMPERAKUI bahawa tidak ada  
duit kerana bayaran duti harta pasaka yang  
kena dibayar mengenai harta yang tersebut die  
atas telah dibayar atau bahawa saya telah  
membenarkan bayaran duti harta pasaka  
mengenai harta yang tersebut di atas itu  
ditempohkan.

10

I HEREBY CERTIFY THAT § being the  
estate duty payable in respect of the property  
aforesaid has been paid  
or that I have allowed payment of the estate  
duty payable in respect of the property  
aforesaid to be postponed.

DATED at PETALING JAYA this 4 day of MEI, 1972.

THIS IS THE LAST WILL AND TESTAMENT of  
me John David of No.133, Paul Street, Seremban  
whereby I make the following disposition of  
all my property real and personal whatsoever  
and wheresoever situate :-

20

1. I appoint my brother Francis Daniel  
David to be the executor and trustee of this  
my Will.

2. I direct that all my property as above-  
described shall be distributed by him among my  
Legatees to be hereinafter mentioned in such  
portions as described below.

30

3. I bequeath to my brother Francis Daniel  
David the Executor herein 5/16 (five-sixteenth)  
to my brother Benjamin David 4/16 (Four-  
sixteenth) to my Godson Jacob Joseph 3/16 (three-  
sixteenth) to R.Sinnappan who was brought up  
in our family 1/32 (one-thirty-second) to my  
sister Elizabeth Muttama 1/16 (one-sixteenth)  
to my wife Mary Beatrice Thangkutti Varnagul-  
asinghe 1/16 (one-sixteenth) and to Miss  
Rasamma who was my caretaker and housekeeper  
3/32 (three-thirty-second) of my whole property  
as above described.

40

In Witness Whereof I have set my hand to this my Will the 13th day of April, in the year One thousand nine hundred and twenty (1920)

In the High Court

No.2  
Exhibit "B"  
Letters of Administration with Will annexed of John David

15th October 1973

(continued)

10 Signed by the abovenamed John David of No.133, Paul Street, Seremban, as his last Will in the presence of us both being present at the time who in his presence and in the presence of each other have hereunto subscribed our names as witnesses: } Sd: John David

Sd: T.Armstrong  
Sd: S.Gubriel

EXHIBIT "C"

AGREEMENT, JOSEPH JACOB DAVID AND NG LIT CHENG

Exhibit "C"  
Agreement,  
Joseph Jacob David and Ng Lit Cheng

2nd September 1974

A G R E E M E N T

20 AN AGREEMENT made this 2nd day of September 1974 BETWEEN JOSEPH JACOB DAVID @ JACOB JOSEPH of c/o 277, Rasah Road, Seremban (hereinafter referred to as "the Vendor") of the one part and NG LIT CHENG @ NG YAM CHEE (Identity Card No.1639057) of 37-38, Birch Road, Seremban (hereinafter referred to as "the Purchaser") of the other part

30 WHEREAS the Vendor is the registered proprietor of the land held under Grant No. 953 for Lot No.368 situate in the Mukim of Rasah in area 3 acres 3 roods 16 poles (hereinafter referred to as "the said land").

AND WHEREAS the said land is presently charged vide Charge Presentation No.37493 Volume XXXVII Folio 30.

AND WHEREAS the Vendor is presently not in possession of the issue document of title in respect of the said land

40 AND WHEREAS the Vendor has agreed to sell and the Purchaser has agreed to purchase the said land at the price of \$110,000/- (Dollars

In the  
High Court

No.2  
Exhibit "C"  
Agreement,  
Joseph Jacob  
David and Ng  
Lit Cheng  
2nd September  
1974  
(continued)

one hundred and ten thousand only) upon the terms and conditions hereinafter appearing.

NOW THIS AGREEMENT WITNESSETH as follows:

1. The Vendor will sell and the Purchaser will purchase the said land at the price of \$110,000/- (Dollars one hundred and ten thousand only) whereof the Vendor has on the execution of this Agreement received the sum of \$25,000/- (Dollars twenty-five thousand only) by way of deposit and in part payment of the purchase price. 10

2. Upon the execution of this Agreement the Vendor shall at the cost and expense of the Purchaser diligently and expeditiously do all necessary acts and use his best endeavours to:-

(i) obtain an Order of Court approving the dealing in the said land in accordance with the provisions of this Agreement;

(ii) obtain a Discharge of Charge on the said land; 20

(iii) secure possession of the issue document of title in respect of the said land failing which to apply to the relevant authorities for a new copy thereof.

3. The transfer of the said land shall be effected at the office of Messrs. Chan & Chia, Advocates and Solicitors, Tingkat Satu, No.87 Jalan Birch, Seremban within one (1) month of receipt of notice in writing that the Vendor is able to execute and deliver a valid and registrable transfer of the said land in favour of the Purchaser or his nominee/nominees. 30

4. Upon the execution of the Memorandum of Transfer referred to in Clause 3 hereof the Purchaser shall deposit the balance of the purchase price amounting to \$85,000/- (Dollars eighty-five thousand only) to the Vendor's Solicitors as stakeholders upon the latter's undertaking not to release the same until registration of the transfer to the Purchaser or his nominee/nominees. 40

5. Notwithstanding anything herein contained the Vendor shall when required by the Purchaser apply to the relevant authorities for the sub-division of the said land and execute all documents and do all deeds and acts in connection therewith but any costs/expenses

incurred in connection therewith shall be borne exclusively by the Purchaser.

In the  
High Court

6. Notwithstanding anything herein contained the Purchaser shall upon the execution of this Agreement be entitled to enter upon the said land for the purpose of developing the said land.

No.2  
Exhibit "C"  
Agreement,  
Joseph Jacob  
David and Ng  
Lit Cheng

10 7. In the event of the Purchaser failing to pay the balance sum in the manner provided in Clause 4 hereof, the Vendor shall be entitled to forfeit all sums received under Clause 1 hereof as liquidated damages for breach of contract and this Agreement shall become null and void.

2nd September  
1974

(continued)

20 8. In the event of the Vendor failing to execute a registrable transfer of the said land in favour of the Purchaser or his nominee/nominees inspite of the Purchaser having complied with the terms of this Agreement as embodied herein, the Purchaser shall be entitled to take all recourse for specific performance of this Agreement.

9. All quit rents rates and other outgoings in respect of the said land up to and including the date of transfer shall be apportioned between the parties hereto as at the date of transfer.

30 10. In the event of the Government or any other authority having power in that behalf acquiring the said land or any part thereof for any purposes whatsoever between the date of this Agreement and the date of transfer such acquisition shall not vitiate or annul the sale evidenced by this Agreement nor shall the Purchaser be entitled to any refund of the purchase price reserved herein. The Vendor shall immediately notify the Purchaser of any such acquisition and shall also  
40 immediately notify the Government or other acquiring authority of the Purchaser's interests in the said land and the terms of this Agreement. Any compensation awarded to the Vendor shall be paid to the Purchaser having regard to the Purchaser's shares in the said land.

11. Time wherever mentioned herein shall be deemed to be the essence of this Agreement.

50 12. The stamp fees registration fees and other expenses of and in connection with the transfer and this Agreement and all the Solicitors' charges in connection therewith

In the  
High Court

No.2  
Exhibit "C"  
Agreement,  
Joseph Jacob  
David and Ng  
Lit Cheng  
2nd September  
1974  
(continued)

shall be borne by the Purchaser.

13. Any notice required to be served pursuant to this Agreement shall be deemed to be served on the party if sent by registered post to the address of that party given in this Agreement. A notice by post shall be deemed to be served at the time when the registered letter would be delivered in the ordinary course of post.

14. This Agreement shall be binding upon the heirs personal representatives and assigns of the parties hereto.

10

WITNESS WHEREOF the parties hereto have hereunto set their hands on the day and year first above written

SIGNED by the said Joseph Jacob )  
David @ Jacob Joseph by his )  
duly appointed Attorney E.P.E. ) Sd: E.P.E. Ananda  
Ananda in the presence of : )

Sd: John Chia Sin Tet  
Advocate & Solicitor,  
Seremban

20

SIGNED by the said Ng Lit Cheng )  
@ Ng Yam Chee in the presence ) Sd: Ng Lit  
of : ) Cheng

Sd: John Chia Sin Tet  
Advocate & Solicitor,  
Seremban

EXHIBIT "D1"  
LETTER OF CONSENT

In the  
High Court

No.2  
Exhibit "D1"  
Letter of  
Consent

9th October  
1974

IN THE HIGH COURT OF SEREMBAN

RE THE ESTATE OF JOHN DAVID  
Deceased

Probate No.128/70

LETTER OF CONSENT

10 We the undersigned CHARLOTTE MARGARET  
DAVID (Widow) JOHN BAPTIST DAVID (Son) two  
of the heirs of the late FRANCIS DAVID,  
DAVID being of full age do hereby consent to  
the sale of the land held under Grant No.953  
Lot No.369 Mukim of Rasah in the Estate of  
Negari Sembilan to one NG LIT CHENG @ NG YAM  
CHEE for the price of Dollars 110,000/-  
(Malaysia Currency) pursuant to the Agreement  
dated 2nd day of September 1974 made between  
JOSEPH JACOB DAVID alias JACOB JOSEPH of the  
one part and the said NG LIT CHENG alias  
20 NG YAM CHEE of the other part.

Dated at Wattala this 9th day of October, 1974  
Ceylon

Witness:

Witness to the identity  
and signatures of Charlotte  
Margaret David and John  
Baptist David

In the  
High Court

No.2  
Exhibit "D2"  
Letter of  
Consent

19th October  
1974

EXHIBIT "D2"  
LETTER OF CONSENT

IN THE HIGH COURT OF SEREMBAN

RE ESTATE OF JOHN DAVID

Deceased

Probate No.128/70

LETTER OF CONSENT

I the undersigned JOSEPH JACOB DAVID  
alias JACOB JOSEPH of Bloomfield Batticoloa  
Sri Lanka one of the Beneficiaries and  
also one of the sons and of the heirs of  
the late FRANCIS DANIEL DAVID being of full  
age do hereby consent to the Sale of the  
Land held under Grant No.953 Lot No.365  
Mukim of Rasah in the State of Negri  
Sembilan to one Ng Lit Cheng alias Ng Yam  
Chee for the price of Dollars 110,000/-  
(Malaysian Currency) pursuant to the Agree-  
ment dated the 2nd day of September 1974 made  
between me and the said NG LIT CHENG alias  
NG YAM CHEE.

10

20

Signed at Batticoloa  
This 19th day of October, 1974

Witness:-

I certify to the identity and  
signature of Joseph Jacob alias  
Jacob Joseph David

Sgd.

Attorney-at-Law & Notary Public

EXHIBIT "D3"  
LETTER OF CONSENT

In the  
High Court  
No.2  
Exhibit "D3"  
Letter of  
Consent  
3rd October  
1974

IN THE HIGH COURT OF SEREMBAN

RE THE ESTATE OF JOHN DAVID  
Deceased

Probate No.128/79

LETTER OF CONSENT

10 I the undersigned JAMES NICHOLAS DAVID  
of Hulftsdorf Colombo 2 one of the Sons and  
one of the heirs of the late FRANCIS DANIEL  
DAVID, being of full age do hereby consent to  
the sale of the land held under Grant No.953  
Lot No.368 Mukim of Rasah in the State of  
Negri Sembilan to one Ng Lit Cheng @ Ng Yam  
Chee for the price of Dollars 110,000/-  
(Malaysian Currency) pursuant to the Agreement  
dated 2nd day of September 1974 made between  
20 JOSEPH JACOB DAVID alias JACOB JOSEPH of the  
one part and the said NG LIT CHENG alias NG  
YAM CHEE of the other part

Dated at Colombo this third day of October, 1974

Witness:-

30 I certify and attest that the  
foregoing Letter of Consent was  
signed by the abovenamed James  
Nicholas David who is known to  
me in my presence and in the  
presence of the witness herein  
named at Colombo on this third  
day of October, 1974



In the High  
Court

No.2  
Exhibit "E"  
Letter of  
Consent

2nd October  
1974

EXHIBIT "E"

LETTER OF CONSENT

IN THE HIGH COURT OF SEREMBAN

RE THE ESTATE OF JOHN DAVID

Deceased

Probate No.128/70

LETTER OF CONSENT

I the undersigned BENEDICT GERARD  
STANISLAUS DAVID of 677 Alutmawatte Road  
Mut wal Colombo 15 being the Sole Heir of  
the late Benjamin David aged 64 yrs, and a  
beneficiary do hereby consent to the sale  
of the land held under Grant No.953 Lot No.  
368 Mukim of Rasah in the State of Negri  
Sembilan to one Ng Lit Cheng @ Ng Yam Chee  
for the price of Dollars 110,000/- (Malaysian  
Currency) pursuant to the Agreement dated  
2nd day of September 1974 made between JOSEPH  
JACOB DAVID alias JACOB JOSEPH of the one  
part and the said NG LIT CHENG alias NG  
YAM CHEE

10

20

Dated at Colombo this 2nd day of October, 1974

Witness :-

No. 3

ORDER

In the  
High Court

No.3  
Order

25th November  
1974

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
ORIGINATING SUMMONS NO.79 OF 1974

IN the matter of the Estate of  
John David, deceased

And

In the matter of Seremban High  
Court Petition No.128 of 1970

10

And

In the matter of Order 55 Rule  
3(1)(f) of the Rules of the Supreme  
Court

JOSEPH JACOB DAVID also known  
as JACOB JOSEPH

Applicant

BEFORE THE HONOURABLE MR. JUSTICE  
AJAIB SINGH, JUDGE, MALAYA

IN CHAMBERS

THIS 25TH DAY OF NOVEMBER 1974

20

O R D E R

UPON HEARING Mr. John Chia Sin Tet of  
Counsel for the Applicant AND UPON READING the  
Ex Parte Originating Summons dated the 11th  
day of November 1974 and the Affidavit of  
E.P.E. Ananda affirmed at Seremban this 9th  
day of November 1974, the relevant Exhibits  
attached thereto and filed in support thereof  
IT IS ORDERED that :

30

- (1) Pursuant to the Agreement dated the  
2nd day of September 1974 entered  
into by the Applicant of the one part  
and one Ng Lit Cheng @ Ng Yam Chee of  
the other part the whole of the land  
held under Grant 953 for Lot No.368  
in the Mukim of Rasah in area 3 roods  
16 poles registered in the Applicant's  
name as personal representative be  
sold to the said Ng Lit Cheng @ Ng Yam  
Chee at a price of \$110,000/- (Dollars  
one hundred and ten thousand only)  
in accordance with the provisions of

40

In the  
High Court

No.3  
Order

25th November  
1974

(continued)

the said Agreement; and

(2) IT IS FURTHER ORDERED that there  
be no order as to costs.

GIVEN under my hand and the Seal of the  
Court this 25th day of November 1974

(SEAL)

Sd: Illegible  
Senior Assistant Registrar,  
High Court, Malaya,  
Seremban.

No.4  
Notice  
of Motion  
7th February  
1975

No. 4

10

NOTICE OF MOTION

---

TAKE NOTICE that the Court will be moved  
on Monday, the 10th day of March, 1975 at  
9.30 o'clock in the forenoon or so soon  
thereafter as Counsel can be heard on behalf  
of Felixia d/o Varnakulasinghe for an Order  
that the Order of this Honourable Court  
dated 25th day of November 1974 be set aside  
and that the costs of and incidental to this  
application be taxed and paid by the Applicant 20  
and or the Attorney of the Applicant  
personally.

Dated this 7th day of February, 1975

Sd: Chellappah Thambiah & Co.  
Solicitors for Felixia d/o  
Varnakulasinghe

Sd: Illegible  
Senior Assistant Registrar,  
High Court, Seremban

This Notice of Motion is taken out by  
Messrs. Chellappah Thambiah & Co., Solicitors 30  
for Felixia d/o Varnakulasinghe and whose  
address for service is 3rd Floor, Bangunan  
Persatuan Yap Selangor, No.102, Jalan Bandar,  
Kuala Lumpur.

This Notice of Motion will be supported by the Affidavit of Felixia d/o Varnakulasinghe sworn on the 31st day of January, 1975 and filed herein.

In the  
High Court

No.4  
Notice  
of Motion  
7th February  
1975

(continued)

This Notice of Motion is intended to be served on :

10

The Applicant abovenamed  
and/or his Solicitors,  
Messrs. Chan & Chia,  
Tingkat Satu,  
No.87, Jalan Birch,  
Seremban.

No.5

AFFIDAVIT OF FELIXIA  
VARNAKULASINGHE WITH 3  
EXHIBITS THERETO

No.5  
Affidavit  
of Felixia  
Varnakula-  
singhe with  
3 exhibits  
thereto

31st January  
1975

20

I, FELIXIA D/O VARNAKULASINGHE  
(N.R.I.C. No.2909190) residing at No.7,  
Jalan 5/6A, Petaling Jaya, hereby affirm and  
say as follows :-

30

1. I am one of the five children born of Josephine Varnakulasinghe nee Ah Mooi alias Ng Fee Yin to the late Alfred Nicholas Varnakulasinghe who died on 29th January, 1970.
2. From the records and correspondence kept by my late father, I am informed and verily believe that my father was the son of Elizabeth Muttama.
3. I am advised by my Solicitors that the said Elizabeth Muttama was entitled to one sixth share in the land held under Grant No.953 for Lot No.368, Mukim of Rasah belonging to the estate of John David under his Will dated 13th April, 1920.
4. I beg to refer to the Affidavit of E.P.E. Ananda the attorney of the Applicant affirmed on the 9th November, 1974 and filed herein and more particularly to paragraph 5(iv) thereof and say that the Applicant and the

40

In the  
High Court

No.5  
Affidavit  
of Felixia  
Varnakula-  
singhe with  
3 Exhibits  
thereto

31st January  
1975

(continued)

attorney ought to have been aware of my late father's interest in the above said land. The said Applicant and my late father were cousins and were often corresponding in respect of the management and sale of the said land. A copy of a letter from the Applicant to Dato Athi Nahappan dated 20th November, 1967 is annexed hereto, marked "F1". The said Applicant and the said Attorney ought to have disclosed my father's interest in the said Affidavit and ought to have made the latter's beneficiaries a party to his application. 10

5. I am also advised and verily believe that it is not enough merely to affirm that the devisees under the Will of the said John David have died leaving no issue. I beg to say that the Applicant must satisfy this Honourable Court :

(a) As to the steps taken by him to ascertain the beneficiaries of the devisees, their whereabouts the dates and places of the death of the devisees duly supported by Certificates of Death. 20

(b) of the reasons or the basis as to why the Applicant thinks or believes that the devisees died intestate or died leaving no issue.

6. I am also advised and verily believe that it is not sufficient merely to state the reasons for the sale of the said land. The Applicant must satisfy this Honourable Court that it is in the best interest of the devisees and beneficiaries of the said estate of the said John David (a) to sell the land and (b) at the price contracted for by the said Attorney of the Applicant. 30

7. I beg to say that the said Attorney ought to and is duty bound in the interest of the estate to have satisfied this Honourable Court that the offer of \$110,000/- at which he proposed to sell the land was the best price available for the said land either : 40

(a) by showing to the Court and giving full particulars of other offers for the said land, and

(b) by having the said sale price supported by a qualified valuer's report.

8. I am further advised and verily believe 50

that the only practical and certain basis on which this Honourable Court could be satisfied that the sale price of the land reflected the best market value of the land was by having the said land valued by a qualified appraiser and valuer. I am advised that the Applicant has failed and did not produce a valuation report in support of his application.

In the  
High Court

No.5  
Affidavit  
of Felixia  
Varnakula-  
singhe with  
3 exhibits  
thereto

31st January  
1975

(continued)

10 9. I am advised by my Solicitors that  
sometime before the present Attorney of the  
Applicant entered into a contract to sell  
the said land, the previous Attorney of the  
Applicant, Dato Athi Nahappan had already  
contracted with one Gan Khay Beng to sell  
the said land at a price to be valued by a  
qualified valuer but subject nevertheless  
to the same being approved by this Honour-  
able Court. I annex hereto copies of two  
20 letters from Dato Athi Nahappan dated 15th  
April, 1974 and marked "F2" and "F3"  
respectively.

10. I am advised and verily believe that  
the present Attorney ought (a) to be bound  
by what was contracted by the previous  
Attorney and (b) to have disclosed the same  
to this Honourable Court.

30 11. I verily believe that the value of  
the said land even at the time of the  
Applicant entering into the said Agreement  
dated 2nd September, 1974 to sell the said  
land was in the region of about \$150,000/-.

40 12. I crave leave to refer to paragraph 5  
of the said Affidavit of E.P.E. Ananda and  
more particularly sub-paragraphs (iii), (v),  
(vi); I am advised by my Solicitors that in  
such an event, the respective interest of  
the said devisees should under the law pass  
to the Crown as bona vacantia. I beg to say  
therefore that the Crown should have been  
made a party to this application and served  
with the copy of the same.

I therefore pray for an order in terms  
of the application herein.

AFFIRMED by the said FELIXIA )  
D/O VARNAKULASINGHE at Kuala ) Sd: Felixia  
Lumpur this 31st day of ) Varnakulasinghe  
January 1975 at 10.30 a.m. )

Before me,

50 Sd: W.P. Sarathy P.P.N.,  
Commissioner for Oaths

In the  
High Court

No.5  
Affidavit  
of Felixia  
Varnakula-  
singhe with  
3 exhibits  
thereto

31st January  
1975

(continued)

This Affidavit is filed by Messrs.  
Chellappah Thambiah & Co., Solicitors for  
the abovenamed deponent, Felixia d/o  
Varnakulasinghe and whose address for service  
is, 3rd Floor, Bangunan Persatuan Yap  
Selangor, No.102, Jalan Bandar, Kuala Lumpur.

Exhibit "F1"  
Letter, J.  
David to  
Athi Nahappan

20th November  
1967

EXHIBIT "F1"

LETTER, J. DAVID TO ATHI  
NAHAPPAN

Registered Airmail

10

Jos. J.David, J.P., U.M.  
Crown Proctor & Notary Public.

82 Bazaar Street,  
Batticaloa,  
Ceylon

Residence: "BLOOMFIELD"  
Telephone:No.217

20th November 1967

My ref: PS 310/67

Dato Athi Nahappan Esq.,  
Athi Nahappan & Co.,  
Advocates & Solicitors,  
Jalan Mountbatten,  
Kuala Lumpur,  
MALAYSIA.

20

Sir,

My cousin Mr. A.N.V.Singhe of 5,  
Kasipillay Road, Kuala Lumpur has arranged  
the sale of a land belonging to use situated  
at Rahang Road, Seremban, and as it is not  
possible for the beneficiaries to proceed to  
Malaya, we would desire to know whether you  
would act as our attorney and effect the  
necessary sale.

30

The land referred to is comprised in  
Grant N.S.No.953 Lot 368 in the Mukim of  
Rasah, District of Seremban and had originally

belonged to my uncle the Late John David.  
My father since dead was the Administrator  
in Administration Suit No.68 of 1920 in  
the Court of the Judicial Commissioner  
at Seremban.

Mr. Singhe will meet you and discuss  
matters. On hearing from you, we will  
forward the Power of Attorney.

Yours faithfully,  
Sgd. J.David

10

In the  
High Court  
No.5  
Exhibit "F1"  
Letter, J.  
David to  
Athi Nahappan  
20th November  
1967  
(continued)

EXHIBIT "F2"  
CONFIRMATION BY ATHI  
NAHAPPAN

---

Dato Athi Nahappan

15th April 1974

Exhibit "F2"  
Confirmation  
by Athi  
Nahappan  
15th April  
1974

TO WHOM IT MAY CONCERN

Re: Land held under Grant for Land  
No.953 for Lot No.368 in the  
Mukim of Rasah, District of  
Seremban

20

This is to confirm that Messrs. Bee  
Chuan Rubber Factory Sdn.Bhd. owners of the  
lands formerly known as Lot Nos.341 and 1502  
adjoining to the aforesaid land belonging  
to the Estate of John David (deceased)  
have been permitted by me in my capacity as  
the Attorney of the Administrator of the  
aforesaid Estate to fill, construct road,  
drainage, retention walls and connect water  
and electricity supply through the aforesaid  
land at their own expense and have a right of  
way through the aforesaid land to their own  
land on the understanding that Messrs. Bee  
Chuan Rubber Factory Sdn.Bhd. would have  
the first preference to purchase the aforesaid  
land at the price to be valued by a qualified  
valuer and subject to the Order of the High  
Court, Seremban.

30

DATO ATHI NAHAPPAN  
Attorney for the Administrator of the  
Estate of John David (deceased)



In the  
High Court

No.5  
Exhibit "F3"  
Letter, Athi  
Nahappan & Co.  
to Gan Khay  
Beng

15th April  
1974

EXHIBIT "F3"

LETTER, ATHI NAHAPPAN & CO.  
TO GAN KHAY BENG

ATHI NAHAPPAN & CO.

P.O.Box 287, Bangunan Safety, 3rd Floor,  
45 Jalan Melayu, Kuala Lumpur 01-03, Malaysia  
Telephone: 24436/7 Telegram: ATHICO

AN/3139/67

15th April, 1974

Mr.Gan Khay Beng,  
Messrs. Bee Chuan Rubber Factory Sdn.Bhd., 10  
No.46 Jalan Tunku Hassan,  
Seremban.

Dear Sir,

re: Estate of John David (deceased)  
Land held under Grant for Land  
No.953 for Lot No.368 in the  
Mukim of Rasah, District of  
Seremban

We are writing this on the instructions  
of Dato Athi Nahappan, Attorney of the 20  
Administrator of the above Estate.

We have instructions to confirm the  
earlier oral permission given to you by our  
client that you could at your own cost clear,  
fill, construct road, drainage, retention walls  
and connect water and electricity supply  
through the aforesaid land.

In consideration of the development of  
the aforesaid land as stated above and of the 30  
consequent improved value thereof we further  
confirm that our client had agreed to give  
you first preference to purchase the aforesaid  
land subject to the price of the aforesaid land  
being valued by a qualified valuer and subject  
to the approval of the sale in your favour by  
the Court.

We also confirm that as soon as the issue  
document of title to the aforesaid land is  
obtained an agreement for the sale thereof 40  
will be made with you subject to the above  
conditions.

Yours faithfully,  
Athi Nahappan & Co.

AFFIDAVIT OF E.P.E. ANANDA  
WITH EXHIBIT THERETO

---

In the  
High Court

No.6  
Affidavit of  
E.P.E. Ananda  
with exhibit  
thereto

1st April  
1975

I, E.P.E. Ananda (Identity Card No. 1762384) of full age of No.277 Jalan Rasah, Seremban, affirm and say as follows :-

- 10 1. I am the duly appointed Attorney of Joseph Jacob David also known as Jacob Joseph David the personal representative of the estate of John David deceased pursuant to a Power of Attorney dated the 5th August 1974 registered in the High Court at Seremban as No.201/74.
- 20 2. I crave leave to refer to the application filed by Felixia d/o Varnakulasinghe on the 7th February 1975 to have the Order of this Court made on the 25th November 1974 set aside and to the affidavit affirmed by her on the 31st January 1975 and filed in support of that application.
3. Neither my principal nor I have any knowledge of the matters set out in paragraph 1 of the Applicant's Affidavit but we are prepared to admit the facts therein alleged for the purpose of these proceedings.
- 30 4. Paragraph 2 of the Applicant's Affidavit is admitted. The Applicant's father was not, however, the only son of Elizabeth Muttama as she had three sons. The Applicant's father was, therefore, entitled to a one third share only in his mother's estate. Elizabeth Muttama died intestate.
- 40 5. With reference to paragraph 3 of the Applicant's Affidavit I crave leave to refer to the Will of John David a copy whereof is annexed marked "B" to the Affidavit affirmed by me on the 9th November 1974 and filed herein. In terms of the Will Elizabeth Muttama was bequeathed a one sixteenth share in the deceased's estate and not a one sixth share as is alleged.
6. With reference to paragraph 4 of the Applicant's Affidavit I repeat what was said in paragraph 5(iv) of my Affidavit affirmed on the 9th November 1974 namely that the beneficiaries of Elizabeth Muttama are not known to my principal or myself save and except the Applicant who has become known to us by

In the  
High Court

No.6  
Affidavit of  
E.P.E.Ananda  
with exhibit  
thereto

1st April  
1975

(continued)

reason of her Affidavit. Her late father was known to my principal as being a beneficiary but he died in 1970 before this Originating Summons was filed. His only known address was No.5, Jalan Kasipillay, Kuala Lumpur. I personally called at that address before affirming my affidavit on the 9th November 1974 but no member of the family was then residing at that address and there was no person living there who could give any information as to the family's whereabouts. At no time has my principal or myself ever attempted to suggest that Elizabeth Muttama left no heirs or to suggest that her heirs had no interest in the land the subject matter of these proceedings as is apparent when one reads paragraphs 5(iii) and 5(iv) of my affidavit affirmed on the 9th November 1974 in contract with paragraphs 5(v) and 5(vi) of that same Affidavit. 10 20

7. With reference to paragraph 5 of the Applicant's Affidavit I say that it is framed in such a way as to suggest that my principal has been attempting to obtain the whole of the deceased's estate for himself. There is nothing in my Affidavit affirmed on the 9th November 1974 to indicate this. As administrator of the deceased estate, my principal is responsible for distributing to the persons beneficially entitled thereto their respective shares in the estate of the deceased. Before doing this he must advertise for claimants to and creditors of the deceased's estate. When this is done, all the beneficiaries will be able to claim and be paid their shares on establishing their legal title to them while any monies unclaimed will have to be deposited in Court until a claim to them is established. They cannot simply be appropriated by my principal. The Applicant's contentions are based upon the mistaken view that the present proceedings are proceedings to settle the allocation and distribution of the deceased's estate but they are not. They are merely proceedings to obtain leave to convert immovable property belonging to the estate into money leaving open the question of the proper distribution of that money. 30 40

8. With reference to paragraph 6 of the Applicant's Affidavit I say that the reasons set out in paragraph 12 of my Affidavit affirmed on the 9th November 1974 are more than sufficient to show that it is in the best interest of the devisees and beneficiaries that the land should be sold. The land produces no 50

income but annual outgoings have to be met. The Applicant has never contributed any part of the outgoings. If the outgoings are not met, forfeiture proceedings can be taken by the State and the land would then be lost to the devisees and beneficiaries who would get no benefit from it at all. I also say that for reasons hereinafter appearing the price contracted for was a fair and proper price.

In the  
High Court

No.6  
Affidavit of  
E.P.E.Ananda  
with exhibit  
thereto

1st April  
1975

(continued)

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9. With reference to paragraph 7 of the Applicant's Affidavit I say that one Gan Khay Beng had made an offer to me to purchase the land at a price of \$15,000/- per acre representing a total price of \$56,250/-. This was so much below the contracted price that I saw no point in disclosing it. It was also below the valuation I obtained on the 29th August 1974 from Tunku Mohamed Jamil bin Tunku Besar Burhannudin a First Class Appraiser. That valuation, a copy whereof is now produced and shown to me marked "EPEA.1" valued the land at \$75,000/-. The contracted price was in excess of that valuation. I did not produce this to the Court since all known beneficiaries of the estate consented in writing to a sale of the land at the contracted price and it was in excess of the valuation.

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10. With reference to paragraph 8 of the Applicant's Affidavit I repeat the contents of paragraph 9 hereof.

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11. With reference to paragraph 9 of the Applicant's Affidavit I say that neither my principal nor I have any knowledge of the alleged prior contract. I verily believe from correspondence received by the Solicitors acting for me and my principal that the purported claim based upon a prior sale is to be the subject of separate proceedings before this Court. My principal denies that any such contract was ever made and alternatively contends that if any such contract was made it is null and void and of no legal effect. These matters will be dealt with and settled in other litigation if the purported claimant in fact files the proceedings he is threatening to file.

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12. With reference to paragraph 10 of the Applicant's Affidavit I repeat the contents of paragraph 11 hereof in answer to sub-paragraph (a) and in answer to sub-paragraph (b) say that neither my principal nor I had any knowledge of the alleged prior sale when the application

In the  
High Court

No.6  
Affidavit of  
E.P.E.Ananda  
with exhibit  
thereto

1st April  
1975

(continued)

to this Court was made.

13. With reference to paragraph 11 of the Applicant's Affidavit I deny that the value of the land at the material time was about \$150,000/- and repeat the contents of paragraph 9 hereof.

14. In answer to paragraph 12 of the Applicant's Affidavit I repeat the contents of paragraph 7 hereof.

15. In relation to the application to have the Order of this Court dated the 25th November 1974 set aside, I say that the reasons given in paragraph 12 of my Affidavit affirmed on the 9th November 1974 and the matters referred to in paragraph 8 of this Affidavit make a sale of the land both desirable and proper. The Applicant's interest in the land is as one of her father's five children and her father's interest as a one third share in the interest devised to Elizabeth Muttama. This gives the Applicant a 1/240 interest in the land and this interest is so small that any desire on the part of the Applicant that the land be retained as an asset in the estate of the deceased cannot possibly prevail over the desires of other interested persons holding for greater interests that the land should be sold. The Applicant's only real interest can be in the sum of money she is to receive upon it being sold. Paragraphs 9 and 10 of her Affidavit show she is not opposed to a sale. If the land is sold for the contracted sum of \$110,000/- the maximum sum the Applicant can receive is \$458.33 while if it is sold for \$151,000/- the maximum sum the Applicant can receive is \$629.17. This gives a difference of \$170.84. I am advised and verily believe that the Court does not concern itself with trifles of this kind but in any event my principal is quite content personally to pay this small additional sum to the Applicant if the Court should so order in order to avoid litigation costs which would be out of all proportion to the sum of money involved. The sum of \$170.84 is more than the Applicant is entitled to because it is calculated without reference to the Applicant bearing a proportionate share of the costs and expenses of the administration of the deceased's estate, outgoings payable in respect of the land till a sale is completed and the costs and expenses of the application to this Court for leave to sell and of the sale itself. If these and other expenses and outgoings are taken into

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account, the Applicant's claim for additional monies would be infinitesimal.

In the  
High Court

AFFIRMED at Seremban )  
this 1st day of April ) Sd: E.P.E. Ananda  
1975 at 11.55 a.m. )

No.6  
Affidavit of  
E.P.E. Ananda  
with exhibit  
thereto

Sd: S. Manickavasagar  
Commissioner for Oaths

1st April  
1975

(continued)

10 This Affidavit is filed by Messrs. Skrine & Co., Straits Trading Building, No.4, Leboh Pasar Besar, Kuala Lumpur, Solicitors for the said E.P.E. Ananda herein.

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EXHIBIT "EPEA 1"  
VALUATION

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Exhibit  
"EPEA 1"  
Valuation

29th August  
1974

1st Class Appraiser for Office: 1st Floor  
State of Negeri Sembilan - Yusof Building  
Malaka - Selangor Seremban,  
Negeri Sembilan  
Tel. 72261

Date: 29.8.74

20 The particulars of Title

Title-Grant for land No.953  
Lot No.368  
Mukim - Rasah  
Area - 3A. 3R. OOP.

Applicant:- E.P.A. Ananda  
277 Jalan Rasah,  
Seremban

30 The above land shown outlined in RED on the attached photostate copy, comprised of an area of 3A. 3R. OOP is situated at the 2nd Mile Stone Seremban-Tampin Road frontage. It is about 2 miles away from the Town of Seremban.

2. This land is on the whole flat in nature partly still under light blukar and partly has been levelled and cleared; a small portion of the area about  $\frac{1}{4}$  of an acre at the centre is being utilised by Chinese Coffin Makers for

In the  
High Court

No.6  
Exhibit  
"EPEA 1"  
Valuation  
29th August  
1974

(continued)

making of Chinese Coffins and stacking of logs in small scale.

3. This land also has irregular shapes and would not be feasible turn it into housing lots unless amalgamated with the adjoining lot 335, 341 and 367 to form into regular shapes for necessary steps into sub-divisional housing lots, etc.

4. It is bounded as follows :-

The North	- Seremban-Tampin Road	10
The South	- Lots 341 and 367, Rubber trees of which partly has been felled.	
The East	- Lot 335 Rubber Trees	
The West	- Lot 367 Rubber Trees of which partly has been felled.	

Valuation

As such is the nature and the situation of the land concerned it is valued at \$20,000/- per acre.

The total valuation of the whole area of 3A. 3R. OOP is at \$75,000/- (Dls. Seventy-five thousand only). 20

No.7  
Affidavit of  
Gan Khay Beng  
with 3  
exhibits  
thereto

2nd December  
1975

No. 7

AFFIDAVIT OF GAN KHAY BENG  
WITH 3 EXHIBITS THERETO

I Gan Khay Beng, holder of N.R.I.C. No. 2473928 of full age and of No.47, Butler Road, Seremban, make oath and say as follows :-

1. I am the First named Plaintiff in Seremban High Court Civil Suit No.45 of 1975. 30

2. The Second named Plaintiff in the said Suit is Bee Chuan Rubber Factory Sdn.Bhd. and I am duly authorised to affirm this Affidavit on its behalf.

3. The said Suit is between me and the said Bee Chuan Rubber Factory Sdn.Bhd. as Plaintiffs against Joseph Jacob David @ Jacob Joseph (sued as the Administrator of the Estate of John David deceased) as Defendant in the said Suit who is the Applicant in this 40

Originating Summons.

In the  
High Court

4. I annex hereto a copy of the Bundle of Pleadings in the said suit and marked "Exhibit GKB 1".

No.7  
Affidavit of  
Gan Khay Beng  
with 3  
exhibits  
thereto

10 5. We the Plaintiffs in Seremban High Court Civil Suit No.45 of 1975 have a proprietary interest in the land held under Grant No.953 for Lot No.368 in the Mukim of Rasah, District of Seremban which is the subject of dispute in this Originating Summons and we are claiming among other things in our said Civil Suit the right to purchase this said land.

2nd December  
1975

(continued)

6. We have a registrable and caveatable interest in the said land for the following reasons :-

20 (i) Dato Athi Nahappan, the previous Attorney of Joseph Jacob David @ Jacob Joseph the Administrator of the Estate of John David deceased, in which is comprised the said land held under Grant No.953 Lot No.368 in the Mukim of Rasah, District of Seremban had through his Solicitors made a written offer to me and or Messrs. Bee Chuan Rubber Factory Sdn. Bhd. (of which I am the Managing Director) granting the first  
30 preference to me to buy the said land. A copy of the said letter is annexed hereto and marked "Exhibit GKB.2";

40 (ii) I and Messrs. Bee Chuan Rubber Factory Sdn. Bhd. have expended a great sum of money developing the said land and in anticipation of and in consideration of being granted the first preference to buy the said land as per the terms and conditions in the said letter;

(iii) I am advised and verily believe that I have an equitable interest in the said land and am entitled to the first preference to purchase the said land.

7. I respectfully contend that the Order of Court dated 24.11.74 approving the sale of the said land to the First Respondent herein is bad in law and irregular because :-

(i) Our prior proprietary interest which



In the  
High Court

No.7  
Affidavit of  
Gan Khay Beng  
with 3  
exhibits  
thereto

2nd December  
1975

(continued)

the Applicant herein is estopped from denying was not disclosed to the Honourable Court by on E.P.E. Ananda the appointed Attorney of the Applicant when the said Order of Court for the said sale was applied for;

(ii) No proper valuation was obtained or put before the Court;

(iii) The sale price of \$110,000/- is far below the market price. 10

8. The Applicant herein and his Attorney were at all times fully aware of the agreement and undertaking given by the previous Attorney and the fact that a great deal of money has been expended by me and Messrs. Bee Chuan Rubber Factory Sdn.Bhd. to improve the said land and that we are entitled to first preference to purchase the said land.

9. If the Order of Court dated 24.11.74 approving the sale of the said land to the First Respondent herein is not set aside my proprietary interest in the said land will be jeopardised and furthermore my right to damages will far exceed the value of the land. 20

10. On 10.12.74 I forwarded a cheque for \$15,100/- representing 10% of the price of the land as valued by a qualified valuer to the said Attorney requesting him to proceed with the sale to me. 30

A copy of the Valuer's report which was extended to the Attorney is attached hereto and marked "Exhibit GKB.3". However, I am advised and verily believe that the said cheque was returned by or on behalf of the Administrator and indicating that he would not honour his committment.

11. The Third Respondent herein and I are ready able and willing to fulfil our obligation with regard to purchasing the said land. 40

We therefore humbly support the Motion of Felixia d/o Vernakulasinghe dated 7.2.75 in this Originating Summons

AFFIRMED by the said  
Gan Khay Beng at Serem- }  
ban this 2nd day of } Sd: Gan Khay Beng  
December 1975 at 2.20 pm)

Before me,

Sd:

Commissioner for Oaths

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This Affidavit is filed by Messrs.  
Augustin-Negrin & Co., Solicitors for Gan  
Khay Beng and Bee Chuan Rubber Factory  
Sdn.Bhd., whose address for service is at  
Room 209, 2nd Floor, Lee Yan Lian Building,  
Jalan Tun Perak, Kuala Lumpur 01-21

In the  
High Court

No.7  
Affidavit of  
Gan Khay Beng  
with 3  
exhibits  
thereto

2nd December  
1975

(continued)

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EXHIBIT "GKB 1"  
PLEADINGS, SUIT NO.45  
of 1975

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Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

10 IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO. 45 OF 1975

BETWEEN

1. Gan Khay Beng
2. Bee Chuan Rubber Factory Sdn.Bhd.

Plaintiffs

AND

20 Joseph Jacob David @  
Jacob Joseph (Sued as the  
Administrator of the Estate  
of John David deceased)

Defendants

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BUNDLE OF PLEADINGS

Prepared by:

AUGUSTIN-NEGRIN & CO.  
ADVOCATES & SOLICITORS,  
ROOMS 462-3, 4TH FLOOR,  
KWONG YIK BANK BUILDING,  
75 JALAN BANDAR  
KUALA LUMPUR 01-20.

Filed this 9th day of June, 1975

30

Sd: Augustin-Negrin & Co.

In the  
High Court

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO: 45 of 1975

BETWEEN

1.Gan Khay Beng  
2.Bee Chuan Rubber Factory Sdn.Bhd.

Plaintiffs

AND

Joseph Jacob David @  
Jacob Joseph (Sued as the  
Administrator of the Estate  
of John David deceased)

Defendants

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I N D E X

<u>Nos:</u>	<u>Nature of Documents</u>	<u>Pages</u>
1.	Writ of Summons	1 - 3
2.	Statement of Claim	4 - 9
3.	Statement of Defence	10 - 16
4.	Reply & Defence to Counterclaim	17 - 19

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO: 45 OF 1975

In the  
High Court

BETWEEN:

1. G&n Khay Beng
2. Bee Chuan Rubber Factory Sdn.Bhd.

Plaintiffs

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

AND:

10 Joseph Jacob David @  
Jacob Joseph (Sued as the  
Administrator of the Estate  
of John David deceased),

Respondent

GENERAL FORM OF WRIT OF SUMMONS

THE HONOURABLE Tan Sri Barwan Singh Gill,  
P.S.M., the Chief Justice of the High Court in  
Malaya in the name and on behalf of His Majesty  
the Yang di-Pertuan Agong.

To:

20 Joseph Jacob David @ Jacob Joseph  
by his attorney K.P.K. Ananda of            sic  
277 Rasah Road, Seremban.

WE COMMAND YOU, that within eight (8) days  
after the service of this Writ on you, inclusive  
of the day of such service, you do cause an  
appearance to be entered for you in an action  
at the suit of the Plaintiffs.

AND TAKE NOTICE that in default of your  
so doing, the Plaintiffs may proceed therein  
and judgment may be given in your absence.

WITNESS KANG HWEE GEE

30 Senior Assistant Registrar of the High Court in  
Malaya the 5th day of March, 1975.

Sd: Augustin-Negrin & Co.  
Plaintiffs' Solicitors

Sd:            ?  
Senior Assistant  
Registrar,  
High Court, Seremban

This Writ is to be served within twelve (12)  
months from the date thereof, or, if renewed,  
within six (6) months from date of last renewed,  
including the day of such date, and not afterwards.

40 The Defendant (or Defendants) may appear hereto  
by entering an appearance (or appearances) either

In the  
High Court

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

(continued)

personally or by Solicitor at the Registry  
of the High Court at Seremban.

A Defendant appearing personally, may if he  
desires enter his appearance by post, and the  
appropriate forms may be obtained by sending  
a Postal Order for \$3.00 with an addressed  
envelope to the Registrar of the High Court  
at Seremban

The Plaintiffs claims:

1. For an Order that the Order of approval of sale dated 25.11.74 and obtained from this Honourable Court for the Defendant to sell and transfer the land held under Grant for land No.953 for Lot No.368 in the Mukim of Rasah, District of Seremban be set aside. 10
2. An injunction to restrain the Defendant whether by himself or by his attorney or his agents or servants or otherwise howsoever from registering or causing to be registered with the Registrar of Titles the transfer of title to the said land held under Grant for Land No.953 pursuant to the said Order of approval of sale. 20
3. An injunction to restrain the Defendant whether by himself or by his attorney or his agents or servants or otherwise howsoever from selling or attempting to sell or disposing or attempting to dispose the said land held under Grant for land No.953 to any person other than Plaintiffs. 30
4. For a declaration that the Plaintiffs have an equitable interest in the said land held under Grant for land No.953 and have the first preference/option to purchase the said land from the Defendant.
5. For specific performance of the sale of the said land by the Defendant to Plaintiffs on such terms as contained in the letter dated 15.4.74 from the Defendant's then attorney to the Plaintiffs or on such terms as this Honourable Court deems fit and proper. 40
6. Damages for breach of contract.
7. Further or other relief.
8. Costs.

Dated this 4th day of March, 1975.

Sd: Augustin-Negrin & Co.  
Plaintiffs Solicitors

This Writ was issued by Messrs. Augustin-Negrin & Co. Advocates & Solicitors, Kwong Yik Bank Building, (4th floor) 75, Jalan Bandar, Kuala Lumpur, Solicitors for the Plaintiffs abovenamed whose address is at No.46, Jalan Tunku Hussan, Seremban.

In the High Court

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

10 This Writ was served by me at.....  
.....on the Defendant on  
day the day of , 197 at  
the hour of a.m./p.m.

(continued)

Indorsed this day of , 197 .

(Signed).....

(Address).....

.....

.....

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO: 45 OF 1975

BETWEEN:

- 20 1. Gan Khay Beng  
2. Bee Chuan Rubber Factory Sdn.Bhd.

Plaintiffs

AND:

Joseph Jacob David @  
Jacob Joseph (Sued as the  
Administrator of the Estate  
of John David deceased)

Defendants

STATEMENT OF CLAIM

30 1. The First Plaintiff is the Managing Director of Bee Chuan Rubber Factory Sendirian Berhad and the Second Plaintiff is a Company Limited with liability in Peninsular Malaysia and having its registered office and place of business at No.46 Jalan Tunku Hussan, Seremban.

2. The Defendant is the personal representative and Administrator of the Estate of one John David deceased vide Grant of Letters of

In the  
High Court

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

(continued)

Administration de bonis non with Will annexed in Petition No.128 of 1970 granted to his lawful Attorney Dato Athi Nahappan on the 15th day of October 1973 by the Seremban High Court.

3. The Defendant was at all material times and still is resident in the Republic of Sri Lanka.

4. The property of the estate of the said deceased which remained as belonging to his Estate on 15.10.73 consisted of one parcel of land held under issue Document of Title Negri Sembilan. Grant No.953 for Lot No.368 in area 3 acres, 3 roods and 16 poles in the Mukim of Rasah, District of Seremban, State of Negri Sembilan. 10

5. The said land was and is still situated adjacent to land belonging to the Second Plaintiff.

6. Since the year 1964 the Second Plaintiff was interested in purchasing the land of the said Estate which had been badly neglected. 20

7. In or about April 1974 Dato Athi Nahappan who was then still the Attorney of the Defendant offered on behalf of the Defendant the said land to the Plaintiffs for sale.

It was agreed between the parties the price for the land would be that as valued by a qualified valuer and the sale would be subject to the approval of the Court. 30

It was agreed between Dato Athi Nahappan as the then Attorney of the Defendant that acceptance of the said offer would be completed by the Plaintiffs developing the land at their own cost by among other things clearing and filling it and constructing a road drainage and retention wall, and connecting water and electric supplies for the land.

8. The Plaintiffs immediately entered upon the said land and carried out the aforesaid development to the full satisfaction of the Defendant. 40

The Plaintiffs have expended a considerable sum of money time and labour in so doing whereby the value of the said land has been greatly enhanced thus entitling them to an equity in it.

9. On or about the 5th day of July 1974 by a

Deed of Revocation signed by the Defendant he revoked the Power of Attorney granted by him to Dato Athi Nahappan.

In the  
High Court

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

(continued)

On or about the 5th day of July 1974 the Defendant in the Republic of Sri Lanka nominated and appointed one K.P.K. Ananda holder of N.R.I.C. No.1762384 of No.277 Rasah Road, Seremban as his Attorney instead.

10. On the 9th day of October 1974 the First Defendant in order to protect the interests of both Plaintiffs lodged a Private Caveat on the said land vide Serial No. Jilid 38 Folio 71 of the Pendaftar Geran, Negri Semdilan.

11. On the 25th day of November 1974 the Defendant obtained from the Seremban High Court an Order granting him liberty to sell and transfer the said Lot No.368 to a third person other than the Plaintiffs at the sale price of \$110,000/- without a proper valuation being obtained for the consideration which price was far below the market price.

No proper and reasonable attempt was made to ascertain if there were any beneficiaries entitled to a share/s in the Estate of the said deceased.

The said property was valued by a 1st Class Licenced Appraiser on the 15th of November 1974 at \$150,935.40¢.

12. The plaintiffs were not aware of the action of the Administrator by his Attorney the said E.P.E.Ananda applying for an Order of Sale from the Court to sell and transfer the said land to a third party.

As soon as they were made aware of the action the First Plaintiff immediately lodged the Caveat mentioned.

13. The Defendant and his Attorney E.P.E. Ananda have at all times being fully aware of the agreement and undertaking given to the Plaintiffs by the Defendant's previous Attorney Dato Athi Nahappan concerning the sale of the land to them and that the Plaintiffs have expended a considerable amount of money to improve the land and the subsequent enhancing of its value thereby.

They are also aware that the Plaintiffs are entitled to first preference to purchase the said land.



In the  
High Court

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975  
(continued)

14. The Plaintiffs say that the Defendant and his Attorney the said E.P.E.Ananda are perpetrating a fraud on them in endeavouring to sell the said land to someone else.

15. On the 10th of December the Plaintiffs forwarded a cheque for \$15,000/- representing approximately 10% of the price of the said land to the previous Attorney of the Defendant in part payment of the sale of the land to them.

The said cheque was returned by and on behalf of the Defendant and indicating that the Defendant would not sell the land to the Plaintiffs.

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16. The Plaintiffs are ready able and willing to pay to the Defendant the price of the land as assessed by a Licenced Appraiser for the transfer of the property to them.

WHEREFORE the Plaintiffs claim :-

(1) For an Order that the Order of Approval of sale dated 25.11.74 and obtained from this Honourable Court for the Defendant to sell and transfer the land held under Grant for Land No.953 for Lot No.368 in the Mukim of Rasah, District of Seremban be set aside;

20

(2) An injunction to restrain the Defendant whether by himself or by his Attorney or his agents or servants or otherwise howsoever from registering or causing to be registered with the Registrar of Titles the transfer of title to the said land held under Grant for land No.953 pursuant to the said Order of approval of sale;

30

(3) An injunction to restrain the Defendant whether by himself or by his Attorney or his agents or servants or otherwise howsoever from selling or attempting to sell or disposing or attempting to dispose the said land held under Grant for land No.953 to any person other than to the Plaintiffs;

40

(4) For a declaration that the Plaintiffs have an equitable interest in the said land held under Grant for Land No.953 and have the first preference/option to purchase the said land from the Defendant;

(5) For specific performance of the sale of the said land by the Defendant to the Plaintiffs on such terms as contained in

the letter dated 15.4.74 from the Defendant's then attorney to the Plaintiffs or on such terms as this Honourable Court deems fit and proper;

- (6) Damages for breach of contract;
- (7) Further or other relief;
- (8) Costs.

In the  
High Court

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

(continued)

Dated this 17th day of April, 1975

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Sd: Augustin-Negrin & Co.  
Solicitors for the Plaintiffs

This Statement of Claim is filed by Messrs. Augustin-Negrin & Co. Solicitors for the Plaintiffs and whose address for service is at 402-3, 4th Floor, Kwong Yik Bank Building, 75 Jalan Bandar, Kuala Lumpur 01-20

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IN THE HIGH COURT IN MALAYA AT SEREMBAN  
Civil Suit No. 45 of 1975

BETWEEN

1. Gan Khay Beng
2. Bee Chuan Rubber Factory Sdn.Bhd.

20

Plaintiffs

AND

Joseph Jacob David @ Jacob Joseph  
(Sued as the Administrator of the  
Estate of John David deceased) Defendants

STATEMENT OF DEFENCE

1. The Defendant has no knowledge of paragraph 1 of the Statement of Claim.

30

2. The Defendant admits paragraph 2 of the Statement of Claim. By a deed of revocation dated the 2nd July 1974 the Defendant revoked the appointment of Dato Athi Nahappan and By a Power of Attorney dated the 5th August 1974

In the  
High Court

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975  
(continued)

duly registered in the High Court at Seremban under No.201/74 the Defendant appointed E.P.E. Ananda as his attorney.

3. The Defendant admits paragraphs 3 and 4 of the Statement of Claim.

4. With reference to paragraph 5 of the Statement of Claim the Defendant has no knowledge as to who the adjacent land belongs to.

5. The Defendant has no knowledge of the matters referred to in paragraph 6 of the Statement of Claim. 10

6. With reference to paragraph 7 of the Statement of Claim the Defendant :-

(a) does not admit that in or about April 1974 or at any other time Dato Athi Nahappan offered the said land to the Plaintiffs or either of them for sale and puts the Plaintiffs to strict proof of the alleged offer;

(b) does not admit that it was agreed that the price would be that as valued by a qualified valuer or that the sale would be subject to the approval of the Court and puts the Plaintiffs to strict proof of the alleged terms; 20

(c) does not admit that acceptance of the offer would be completed in the manner alleged in the Statement of Claim or in any other manner and puts the Plaintiffs to strict proof of the alleged terms; 30

(d) Contends that since any sale of the land required the prior approval and consent of the Court and no such approval or consent had been given in April 1974 it was not possible in law for acceptance of the offer to be completed in the manner alleged in the Statement of Claim;

(e) Contends that the alleged offer and acceptance were and are void for what of consideration; 40

(f) contends that the alleged offer and acceptance were and are void for uncertainty;

(g) contends that the alleged offer and acceptance were void since no period

of time was fixed within which performance should take place;

In the  
High Court

- (h) contends that the alleged offer and acceptance do not in law give rise to a contract capable of being specifically enforced.

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

7. With reference to paragraph 8 of the Statement of Claim the Defendant :-

(continued)

- 10 (a) denies that the Plaintiffs or either of them entered on the said land immediately upon the alleged offer and acceptance and alleges that the Plaintiffs illegally broke and entered upon the said land in or about the year 1968 and continued and continue to trespass therein;
- 20 (b) denies that the alleged or any development was carried out after April 1974 and contends that any such development was carried out prior to April 1974 by the Plaintiffs illegally entering upon and trespassing upon the said land;
- 30 (c) denies that the alleged or any developments were carried out for the purpose of benefitting the said land and contends that all such developments were carried out with a view to obtaining access to and egress from the adjacent lands and with a view to obtaining the supply of essential services to the adjacent lands. The said adjacent lands were in the process of development as a housing estate and it was essential that access and service should be available;
- 40 (d) denies that the Defendant has ever expressed any satisfaction with the alleged development and denies he has ever been in any way consulted at any time in relation to the alleged development;
- (e) contends that any money time and labour expended on the said lands was expended without any form of right or title to enter upon the said lands and solely for the purposes and benefit of the adjacent lands;
- 50 (f) denies that the Plaintiffs or either of

In the  
High Court

No.7  
Exhibit  
"GKB 1"  
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(continued)

them are entitled to any form of  
equity whatsoever in the said lands;

(g) contends that the Plaintiffs having  
illegally entered upon and trespassed  
on the said lands are incapable of  
showing the clean hands required of  
a party intending to rely upon equity.

8. With reference to paragraph 9 of the  
Statement of Claim the Defendant repeats the  
contents of paragraph 2 hereof for the correct  
particulars of the matters referred to. 10

9. With reference to paragraph 10 of the  
Statement of Claim the Defendant contends that  
the alleged caveat was lodged by the first  
Plaintiff and not the Defendant. The Defendant  
has no knowledge as to any interests the  
said caveat was intended to protest and  
denies that the Plaintiffs or either of them  
had any interest in the said land whatsoever.

10. With reference to paragraph 11 of the  
Statement of Claim the Defendant contends a  
proper valuation had been obtained prior to  
the date of the Order referred to and that  
the price fixed by the said Order was in  
excess of the valuation figure and was also  
in excess of the market price. The Defendant  
further contends that the Plaintiffs have  
no to maintain any of the  
matters referred to in this paragraph and  
that the allegations in this paragraph must be  
struck out. 20 30

11. The Defendant has no knowledge of the  
matters referred to in paragraph 12 of the  
Statement of Claim and contends that in any  
event they are not relevant.

12. With reference to paragraph 13 of the  
Statement of Claim the Defendant denies that  
either he or his attorney E.P.E.Ananda were  
aware of the alleged agreement and undertaking  
until after the Order of Court referred to in  
paragraph 11 of the Statement of Claim had  
been obtained and repeats the contents of  
paragraphs 6 and 7 hereof in answer to the  
Plaintiffs contentions. 40

13. The Defendant in answer to paragraph 14  
of the Statement of Claim denies that he or  
his said Attorney are perpetrating or at any  
time have perpetrated fraud on the Plaintiffs  
or either of them.

14. The Defendant admits paragraphs 15 of the Statement of Claim have and except that he does not admit \$15,000/- represented at the material time approximately 10% of the price of the said land.

15. The Defendant has no knowledge as to paragraph 16 of the Statement of Claim.

In the  
High Court

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

C O U N T E R C L A I M

(continued)

10 And by way of Counterclaim the Defendant :-

1. Repeats the contents of paragraphs 6 and 7 hereof and contends that Plaintiffs or either of them have no interest whatsoever in the said lands and no right or title whatsoever to obtain any order of court in relation thereto. In consequence thereof the Plaintiffs or either of them have no right, title or interest entitling them to register against the said lands the caveat referred to in paragraph 10 of the Statement of Claim and they or either of them have no right, title or interest whatsoever to maintain the said caveat against the said lands. By reason of the said caveat the Defendant is prevented from registering the transfer of the said lands to the purchaser thereof and is thereby prevented from obtaining for the state the use and benefit of the purchase monies. The Defendant and the estate of deceased have in consequence suffered and continue to suffer loss and damages. The Plaintiffs have further trespassed upon the said lands and have thereby caused loss and damage to the Defendant and have further derived for themselves gain or profit for which they are accountable to the Defendant.

The Defendant accordingly prays :-

- 40 (a) An Order that the Plaintiffs do forthwith give notice to the Registrar of Titles, Negeri Sembilan of the withdrawal of the said caveat;
- (b) An Order that in the event of the failure of the Plaintiffs to give such notice of withdrawal within a period of seven days from the date of the Order made pursuant to sub-paragraph (a) the Assistant Registrar High Court, Seremban be authorised to sign such notice of withdrawal for them
- 50 and on their behalf;

In the  
High Court

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

(continued)

- (c) Damages for illegal use and occupation of the said lands for a period of 6 years prior to the date of this Counterclaim and continuing;
- (d) An injunction to restrain the Plaintiffs or either of them and any person claiming through or under them or either of them from entering upon the said lands for any purpose whatsoever;
- (e) Damages for wrongfully interfering with and preventing the transfer of the said lands from the Defendant to the purchaser thereof; 10
- (f) An account of all gain and profit derived by the Plaintiffs from their illegal entry upon and user of the said lands and an Order that the Plaintiffs do pay to the Defendant the sum found due upon the taking of such account;
- (g) Interest upon all monetary sums awarded to the Defendant at the rate of 6 per centum per annum from the date of judgment to the date of realisation; 20
- (h) Costs.

Dated this 23rd day of April, 1975.

Sgd.

Defendant's Solicitors

This Defence and Counterclaim is filed by  
Messrs. Skrine & Co., Straits Trading Building,  
No.4, Leboh Pasar Besar, Kuala Lumpur,  
Solicitors for the Defendant abovenamed.

30

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO: 45 OF 1975

In the  
High Court

BETWEEN:

1. Gan Khay Beng
2. Bee Chuan Rubber Factory Sdn.Bhd.  
Plaintiffs

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975  
(continued)

AND

- 10 Joseph Jacob David @  
Jacob Joseph (Sued as the  
Administrator of the Estate  
of John David deceased) Defendants

REPLY AND DEFENCE TO COUNTERCLAIM

R E P L Y

1. The Plaintiffs join issue with the Defendant on his Defence save insofar as same consists of admissions.
- 20 2. And in further answer to paragraph 6 (d), (e), (f), (g) and (h) of the Defendant's Defence the Plaintiffs say that there was a valid offer duly accepted by the Plaintiffs for the sale of the said land and which offer and acceptance constituted a legal binding contract specifically enforceable.
- 30 3. And in further answer to paragraph 7 of the Defendant's Defence the Plaintiffs deny that they were or are trespassing on the said land and will contend that the Plaintiffs substantially improved and caused the value of the said land to appreciate for the benefit of the said land through their own money time and labour in performance of their obligations.

DEFENCE TO COUNTERCLAIM

4. (1) The Plaintiffs by way of Defence to the Counterclaim repeat paragraphs 2 and 3 of the Reply and further :-
  - 40 (a) say that there was a caveatable interest in the said land entitling them to lodge a caveat and they rightfully lodged the said caveat to prevent the disposal of the said land pending the disposal of the Plaintiffs' claims in respect of the said land to them and until sale of the said land to the Plaintiffs;



In the  
High Court

No.7  
Exhibit  
"GKB 1"  
Pleadings,  
Suit No.45  
of 1975

(continued)

(b) deny they are trespassers or have trespassed on the said land and will contend that they were and are in lawful use of the said land or a portion of the said land;

(c) deny the loss and damage alleged by the Defendants.

(ii) The Plaintiffs further aver that if the Defendant is prevented from registering the transfer of the said land to the purported purchaser thereof and is thereby prevented from obtaining for the Estate the use and benefit of the alleged purchase money then it was caused by and brought about by the acts or misdeeds of the Defendant and/or his agent in attempting to dispose of and sell the said land to a third person when it was known to the Defendant and/or his agent of the Plaintiffs prior right in law and in equity to purchase the said land. 10 20

5. The Plaintiffs contend that the said caveat ought to remain until the sale of the said land to the Plaintiffs.

6. Save insofar as same consists of admissions the Plaintiffs deny each and every allegation in the Counterclaim as if the same were specifically set out and traversed seriatim.

WHEREFORE the Plaintiffs pray that the Counterclaim be dismissed with Costs. 30

Dated this 21st day of May, 1975.

Sd. Augustin-Negrin & Co.  
Solicitors for the Plaintiffs

This Reply and Defence to Counterclaim is filed by Messrs. Augustin-Negrin & Co. Solicitors for the Plaintiffs abovenamed and whose address for service is at 402-3 Kwong Yik Bank Building, 75 Jalan Bandar, Kuala Lumpur 01-20

EXHIBIT "GKB 2"  
LETTER, ATHI NAHAPPAN & CO.  
TO GAN KHAY BENG

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In the  
High Court  
No.7  
Exhibit  
"GKB 2"  
Letter, Athi  
Nahappan & Co.  
to Gan Khay  
Beng  
15th April  
1974

ATHI NAHAPPAN & CO.  
ADVOCATES & SOLICITORS  
P.O.Box 287, Bangunan Safety, 3rd Floor,  
45 Jalan Melayu, Kuala Lumpur 01-03 Malaysia  
Telephone: 24436/7 Telegram: ATHICO

AH/3139/67

15th April, 1974

10 Gan Khay Beng,  
Messrs. Bee Chuan Rubber Factory Sdn.Bhd.  
No.46 Jalan Tunku Hassan,  
Seremban

Dear Sir,

re: Estate of John David (deceased)  
Land held under Grant for Land  
No.953 for Lot No.368 in the  
Mukim of Rasah, District of  
Seremban

20 We are writing this on the instructions  
of Dato Athi Nahappan, Attorney of the Administra-  
tor of the above Estate.

We have instructions to confirm the earlier  
oral permission given to you by our client that  
you could at your own cost clear, fill, construct  
road, drainage, retention walls and connect water  
and electricity supply through the aforesaid land.

30 In consideration of the development of the  
aforesaid land as stated above and of the  
consequent improved value thereof we further  
confirm that our client had agreed to give you  
first preference to purchase the aforesaid land  
subject to the price of the aforesaid land being  
valued by a qualified valuer and subject to the  
approval of the sale in your favour by the Court.

We also confirm that as soon as the issue  
document of title to the aforesaid land is  
obtained an agreement for the sale thereof will  
be made with you subject to the above conditions.

40

Yours faithfully,  
Athi Nahappan & Co.

In the  
High Court

No.7  
Exhibit  
"GKB 3"  
Report and  
Valuation  
15th November  
1974

EXHIBIT "GKB 3"

REPORT AND VALUATION

---

FRANCIS A. MARSH  
First Class Licensed Appraiser and Auctioneer

REPORT AND VALUATION

of

LOT NO. 368 SEREMBAN

---

NEGRI SEMBILAN

DISTRICT OF: SEREMBAN  
MUKIM OF RASAH (2nd MILE TAMPIN ROAD) 10  
GRANT 953  
LOT NO. 368  
ACREAGE 3a. 3r. 16p  
Or 167,706 SQUARE FEET

15th November 1974

---

FRANCIS A. MARSH  
First Class Appraiser &  
Auctioneer

561-2½ Batu,  
Jalan Rasah,  
Seremban, N.S.

15th November 1974

(82) in GKB/1974

20

REPORT AND VALUATION  
OF  
LOT NO. 368

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INTRODUCTION :-

Acting on verbal instruction from

Mr. Gan Khay Beng, on 15th November 1974 I have visited and inspected the undermentioned property with a view to determine the current market value, and for the purpose of preparing a Valuation Report, which is as follows :-

In the  
High Court

No.7  
Exhibit  
"GKB 3"  
Report and  
Valuation

15th November  
1974

(continued)

TERMS OF REFERENCE AND  
PARTICULARS OF TITLE:-

10

State of Negri Sembilan  
District of Seremban  
Mukim of Rasah  
Grant No.953  
Lot No. 368  
  
Acreage:- 3a. 3r. 16p  
or 167,706 Square Feet

SITUATION AND  
GENERAL DESCRIPTION:-

a) Situation :-

20

For the purpose of identification, the above property is edged red in the attached Location Plan, Appendix "A". It will be seen that the property is situated in the Mukim of Rasah, in the District of Seremban, Negri Sembilan.

b) Location :-

30

The above property is a large piece of land, comprising an acreage of 3a. 3r. 16p. or 167,706 Square Feet, is located at the 2nd mile, Seremban - Tampin Road, which is the Main Road from Seremban towards the South. It is on the right hand side of the road, having approximately 18 chains of Road Frontage, and abuts to the rear to about 6 chains.

40

The property is in the midst of several housing developments, such as, the Starlight Park, Nadchitiram Housing Development, the South East Asia Gardens and on the opposite side of the road is the Ranang Gardens and The Seremban Gardens. In the vicinity are several semi-detached and Detached Bungalows and Terrace Houses. Further up the road, nearer to Seremban Town and at the junction of Loop Road are several rows of two-storey Shop Houses, which were recently completed and fully occupied for commercial purposes.

In the  
High Court

No.7  
Exhibit  
"GKB 3"  
Report and  
Valuation  
15th November  
1974

c) Topography

The terrain of the land is generally on elevated ground. It is about 3 feet above the level of the Main Road, and rises to higher ground towards the rear of the property, therefore there is no need for filling up of the whole area, and it is suitable for building development.

d) Services :-

Water and electricity supplies from the respective Authorities' Mains are readily available for connection to the property. Transport facilities are available at all times. There is a special Bus Service running from Seremban Town to the surrounding Housing Developments and the Ranang New Village, at regular intervals up till midnight. Besides, there are several Bus Services and Taxis along this route, from Seremban to Tampin, Malacca and the South and back.

e) Sub-Division :-

I am made to understand that the property is ready for Sub-Division for Building Developments, for the construction of Detached and Semi-detached bungalow and Terrace Houses, with provision for a row of two-storey Shop Houses, in front of the property facing the Main Road. As this property lies within the Town Council Limits, there is no need for conversion.

VALUATION :-

In order to assess the value of the property, I have taken into consideration all the foregoing factors and its location, having close proximity to Seremban Town, and in comparison to similar properties recently transacted in the vicinity, it is my professional opinion that the value of Lot No.368 - 3a. 3r. 16p or 167,706 Square Feet at 90 cents per Square Foot.

167,706 Square Feet x 90 cents = \$150,935.40  
say \$151,000.00

(Dollars One Hundred and Fifty One Thousand only)

Sd. Francis A. Marsh  
FRANCIS A. MARSH  
1st Class Licenced Appraiser  
and Auctioneer, Seremban N.S.



In the  
High Court

No. 8

AFFIDAVIT OF E.P.E. ANANDA  
WITH 2 EXHIBITS THERETO

No.8  
Affidavit of  
E.P.E. Ananda  
with 2  
exhibits  
thereto

2nd January  
1976

A F F I D A V I T

I, E.P.E. Ananda (Identity Card No.1762384)  
of full age of No.277 Jalan Rasah, Seremban,  
affirm and say as follows :-

1. I am the duly appointed attorney of Joseph  
Jacob David also known as Jacob Joseph David  
the personal representative of the estate of 10  
John David deceased pursuant to a Power of  
Attorney dated the 5th August 1974 registered in  
the High Court at Seremban as No.201/74.

2. I crave leave to refer to the affidavit  
of Gan Khay Beng affirmed on the 2nd December  
1974 and filed herein. In reply thereto I  
say :-

- (i) The contents of paragraph 1 thereof  
are admitted.
- (ii) That I have no knowledge whether 20  
the deponent is duly authorised to  
affirm the affidavit on behalf of  
Bee Chuan Rubber Factory Sdn.Bhd. as  
is alleged in paragraph 2 which is  
otherwise admitted.
- (iii) The contents of paragraphs 3 and 4  
thereof are admitted.
- (iv) So far as paragraph 5 thereof is  
concerned, that it is denied that 30  
the deponent and his co-Plaintiff  
have a proprietary or any interest in  
the land referred to.
- (v) So far as paragraph 6 thereof is  
concerned that it sets out a number of  
alleged facts as if those facts were  
undisputed. Reference to the defence  
and counterclaim filed in Civil Suit  
No.45 of 1975 shows the alleged facts  
to be disputed. It is disputed that 40  
Dato Athi Nahappan ever made the  
alleged or any written offer and the  
making of the alleged offer will have  
to be proved by the deponent producing  
Dato Athi Nahappan to give sworn  
testimony. Assuming the offer to have

been made, its validity in law is contested upon a number of grounds which appear in the defence. In addition thereto, the power of attorney granted to Dato Athi Nahappan, a copy whereof is now produced and shown to me marked "EA.1", did not give him power to sell so even if he purported to exercise such a power, he could not legally and validly do so. It is disputed that the deponent and his co-plaintiff spent money on the land after the date of the alleged contract and it is contended that the money was spent before that date by the deponent and his co-plaintiff as trespassers for their own personal use and benefit. The alleged equitable interest and alleged first preference to purchase are contested on factual and legal grounds. The deponent asks the Court to assume that the alleged facts he relies on have been found proved in his favour but there are no grounds whatever for the Court to make any such assumption.

In the  
High Court

No.8  
Affidavit of  
E.P.E.Ananda  
with 2  
exhibits  
thereto

2nd January  
1976

(continued)

10

20

30

(iv) So far as paragraph 7 is concerned:-

40

50

(a) that sub-paragraph (1) assumes there is a prior proprietary interest but that is in issue. An allegation of estoppel is made but no grounds whatever are shown which could make this principle applicable to the facts. An allegation of non-disclosure by myself is made which is false. The application for leave to sell was filed on the 9th November 1974. The deponent could not have made me the offer he alleges prior to that date since the valuation on which he relies was only made on the 15th November 1974. He had lodged a private caveat on the 9th October 1974 but he did not inform me of that fact and the first information I received was the formal notification issued to me by the Land Office dated 9th November 1974 already filed in Court as Exhibit "B". On the 10th December 1974 he wrote to Messrs. Athi Nahappan & Co. the letter now



In the  
High Court

No.8  
Affidavit of  
E.P.E. Ananda  
with 2  
exhibits  
thereto

2nd January  
1976

(continued)

produced and shown to me marked "EA.2" and nowhere in that letter did he refer to any discussions with me. The client referred to in the first paragraph of that letter is Dato Athi Nahappan. The purported deposit was sent with that letter which was written after the date on which this Court made the order granting leave to sell. The Order was made on the 25th November 1974. On the date it was made I had no knowledge of the alleged contract the deponent and his co-plaintiff purport to rely on. 10

(b) That a proper valuation was obtained although it was not put before the Court when the application for leave to sell was heard. It is now before the Court being annexed as Exhibit "EPEA.1" to my affidavit affirmed on the 1st April 1975 and filed herein. 20

(c) that it is denied that the sale price was, at the relevant date, below the market price.

(vii) So far as paragraph 8 is concerned, that it is not true that either the applicant or myself were at any relevant time prior to the date of the Order giving leave to sell aware of the alleged agreement and undertaking given by Dato Athi Nahappan. Moreover, the legality and validity of that alleged agreement and undertaking are in issue as is the allegation that the deponent and his co-plaintiff are entitled to first preference to purchase the land. The allegation as to expenditure incurred is also in issue along with the question of when and on whose behalf the expenditure was incurred. 30 40

(viii) So far as paragraph 9 is concerned, that it proceeds on the unwarranted assumption that the deponent and his co-plaintiff have a proprietary interest and have a right to damages. Both these propositions are disputed in fact and in law. 50

(ix) That the allegation contained in

10 paragraph 10 that the cheque  
for \$15,100/- was forwarded to me  
is shown by Exhibit "EA.2" to be  
false. So far as the valuer's  
report is concerned, it contains  
a material error in law on its  
face which renders it of no value  
since it states that, because the  
property lies within the Town  
Council limits, there is no need  
for conversion. It also suffers  
from the defects that it nowhere  
takes into account the extremely  
irregular and awkward shape of the  
land which is a most material  
factor for valuation purposes and  
which is brought out in the  
valuation which I obtained.

In the  
High Court

No.8  
Affidavit of  
E.P.E.Ananda  
with 2  
exhibits  
thereto

2nd January  
1976

(continued)

20 (x) That I have no knowledge as to  
paragraph 11 of the Affidavit.

30 3. I contend that a comparison of the  
issues raised in the affidavit of Gan Khay  
Beng with the issues raised in Civil Suit  
No.45 of 1975 shows that they are identical  
and that comparison of the remedies Gan  
Khay Beng asks for in the two proceedings  
shows that the remedies asked for are  
identical. I am advised by my solicitors  
and verily believe that this amount to  
vexation and oppression of my principal  
and is an abuse of the process of the Court.  
I am further advised by my solicitors and  
verily believe that in such cases, the Court  
will stay one or other of the pending  
proceedings unless the Plaintiff either  
consolidates his actions or elects as between  
his actions since the Plaintiff cannot be  
permitted to litigate the same issues twice.  
40 The issues of fact and law raised between  
Gan Khay Beng and his co-plaintiff on the  
one hand and my principal on the other are  
such that they cannot be satisfactorily  
disposed of in proceedings where evidence  
is taken by affidavit. Oral evidence and  
full opportunity of cross-examination is  
essential. My principal is not opposed to  
the early disposal of all outstanding issues  
involving all interested parties and would  
not oppose a consolidation of the hearing  
50 of this Summons with the hearing of Civil  
Suit No.45 of 1975 but he does object to being  
exposed to the need to defend himself twice  
as against the same person and asks that the  
Court may be pleased to stay the proceedings  
in this Summons as between himself and Gan  
Khay Beng and his co-plaintiff unless Gan

In the  
High Court

No.8  
Affidavit of  
E.P.E.Ananda  
with 2  
exhibits  
thereto

2nd January  
1976

(continued)

Khay Beng and his co-plaintiff either have their suit consolidated with and heard simultaneously with these proceedings or unless Gan Khay Beng and his co-plaintiff elect to abandon their participation in these proceedings in favour of continuing with the hearing of Civil Suit No.45 of 1975.

AFFIRMED at Seremban )  
this 2nd day of January } Sd: E.P.E. Ananda  
1976 at m. )

10

Sd: Illegible  
Commissioner for Oaths

This Affidavit is filed by Messrs. Skrine & Co., Straits Trading Building No.4, Leboh Pasar Besar, Kuala Lumpur, Solicitors for the said E.P.E.Ananda herein.

Exhibit  
"EA1"  
Power of  
Attorney,  
Joseph Jacob  
David to  
Athi Nahappan

18th March  
1968

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EXHIBIT "EA1"

POWER OF ATTORNEY, JOSEPH  
JACOB DAVID TO ATHI  
NAHAPPAN

---

20

P O W E R O F A T T O R N E Y

A POWER OF ATTORNEY granted the Eighteenth day of MARCH, ONE THOUSAND NINE HUNDRED AND SIXTY EIGHT by me JOSEPH JACOB DAVID also known as JACOB JOSEPH of "Bloomfield" BATTICALOA (CEYLON)

W H E R E A S :

1. John David late of 133, Paul Street, Seremban, Male died on the 25th day of June, 1920 at Seremban, Malaya, having made and duly executed his Last Will and Testament dated the 13th day of April, 1920, and thereof appointed the mother Francis Daniel David his executor and trustee.

30

2. The said Francis Daniel David proved the said Will and obtained the relevant Grant of Probate of will of the said John David, deceased, from the Court of the Judge and Commissioner at Seremban, State of Negeri Sembilan in administration Suit No.68 of 1920 on the 28th day of April, 1922.

40

3. The said Francis Daniel David not having fully administered the estate of the said John David deceased, died intestate at Wuttala Ceylon in or about the year 1944, leaving no administration estate in Ceylon.

In the  
High Court

No.8  
Exhibit  
"EAL"  
Power of  
Attorney,  
Joseph Jacob  
David to  
Athi Nahappan  
18th March  
1968

10 4. I am one of the legatees named in the said Will and by the land applicable to the estate of the said John David deceased, I am entitled to administer his property.

5. Being myself unable to proceed to Malaysia I desire to appoint an Attorney to take out Letters of Administration de bonis non with the Will annexed in respect of the Estate of John David (deceased).

(continued)

20 NOW THIS DEED WITNESSETH that I the said JOSEPH JACOB DAVID also known as JACOB JOSEPH hereby appoint DATO ATHI NAHAPPAN, Advocate and Solicitor, 45 Jalan Malaya, Kuala Lumpur, Malaysia of Messrs. Athi Nahappan & Co., Kuala Lumpur Malaysia to be my lawful attorney for me and in my name of in his own name or otherwise as the law may require to do all the following note deeds and things or any of them, that is to say :-

sic  
sic

30 1. To apply for and obtain from the proper Court or other authority having jurisdiction in the premises a Grant of Letters of Administration de bonis non with the Will annexed of the estate of the said John David deceased.

2. To enter into such obligations undertake such liabilities and execute such deeds as may be legally required for that purpose.

40 3. To apply for an order of Court to sell and transfer the land comprised in Grant N.R.No.953 Lot 368 in area 3 Acres 3 Roods and 16 Poles in the Mukim of Rasah District of Seremban to any purchaser or purchasers and to execute any document or documents for that purpose.

50 4. To realize the purchase money in respect of the sale of the said land and to distribute the sale money to the persons entitled under the Will of the said deceased and under the law applied to the distribution of the deceased estate less all lawful expenses

In the  
High Court

No.8  
Exhibit  
"EA1"  
Power of  
Attorney,  
Joseph Jacob  
David to  
Athi Nahappan  
18th March  
1968  
(continued)

in respect of the foregoing matters.

5. Generally to do all the acts which my attorney may find it necessary or desirable to do with a view to obtaining such grant and being constituted the legal representative of the said John David deceased and administrator of the said estate.

6. To procure the registration of this deed whenever such registration may be legally required necessary or convenient for the said purpose and to execute and if legally required cause to be registered all documents and do all other acts vehicle which may be necessary to quite effect to this deed according to the few applicable to the premises. 10 sic sic sic

And I hereby undertake to ratify and confirm whatever my said attorney on his substitute or substitutes shall lawfully do or cause to be done in the premises. 20

IN WITNESS WHEREOF I have hereunto set my hand at BATTICALOA THIS EIGHTEENTH DAY OF MARCH, ONE THOUSAND NINE HUNDRED AND SIXTY EIGHT (1968).

Signed and delivered by )  
the said Joseph Jacob )  
David also known as ) Sgd.  
Jacob Joseph in the )  
presence of :- )

W I T N E S S E S: 30

- 1. Sgd.
- 2. Sgd.

I, Nellinather Thillanathan, a Notary Public by lawful authority duly constituted, of Batticaloa in the Island of Ceylon, hereby certify that the signature of the above-named Joseph Jacob David also known as Jacob Joseph was written in the presence of Tharmalingam Karunairatnam, Advocate, Gnanasuriyam Square, Batticaloa and Gopal Shanmuganathan of No.5/1, Olive Road, Batticaloa, the attesting witnesses all of whom are known to me on this Eighteenth day of March, One thousand nine hundred and 40

sixty eight and is to my person knowledge the true signature of Joseph Jacob David also known as Jacob Joseph who has acknowledged to me that he is of full age and said he has voluntarily executed this instalment.

Witness my hand on this Eighteenth day of March, One thousand nine hundred and sixty eight (1968), at Battocaloa in the Island of Ceylon.

10

Sgd.  
NOTARY PUBLIC

In the  
High Court

No.8  
Exhibit  
"EA1"  
Power of  
Attorney,  
Joseph Jacob  
David to  
Athi Nahappan

18th March  
1968

(continued)

---

EXHIBIT "EA2"

LETTER, BEE CHUAN RUBBER  
FACTORY SDN.BHD. TO ATHI  
NAHAPPAN & CO.

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Exhibit "EA2"  
Letter, Bee  
Chuan Rubber  
Factory Sdn.Bhd  
to Athi Nahappan  
& Co.

BEE, CHUAN RUBBER FACTORY SDN.BHD.

10th December  
1974

Office JALAN TUNKU  
HASSAN  
Seremban

20

10th December 1974

Messrs. Athi Nahappan & Co.  
Advocates & Solicitors,  
45, Jalan Melayu,  
KUALA LUMPUR

Sirs,

Re: Estate of John David (deceased)  
Land held under Grant for Land  
No.953 for Lot No.368 in the  
Mukim of Rasah, District of  
Seremban

---

30

We refer to the various discussions with your client and the letters confirming the sale of the above to us.

Please note your client, Y.B.Dato Athi Nahappan, the Attorney of the above estate has agreed to sell the above to me upon obtaining the issue document of Title to the

In the  
High Court

No.8  
Exhibit "EA2"  
Letter, Bee  
Chuan Rubber  
Factory Sdn.  
Bhd. to Athi  
Nahappan & Co.  
10th December  
1974  
(continued)

above from one Mr. Ramasamy Chettiar after the discharge subject to the price of the aforesaid land being valued by a qualified valuer and subject to the approval of the sale in our favour by the Court.

Our search at the Registry of Title reveals that you have successfully obtained the discharge of charge in respect of the above from the aforesaid Chettiar.

Please note that our valuer has valued the above at the price of \$181,000.00. 10

We further understand that it is valued at \$151,000.00 as it is certainly your client is aware that we have spent a lot of money to develop the above with your client's assurance that the above will be sold to us.

In the circumstances we are enclosing herewith a cheque for \$15,100.00 being the deposit and we are ever ready and willing to pay the balance of the purchase price to you as solicitors of your client upon obtaining the order of sale in our favour. 20

In the circumstances kindly expedite the matter.

Thanking you,

Yours faithfully,

Gan Khay Beng  
(GAN KHAY BENG)

No. 9

ORDER

In the  
High Court

No.9  
Order

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
ORIGINATING SUMMONS NO.79 OF 1974

8th January  
1976

In the Matter of the Estate of  
John David, deceased.

In the Matter of Seremban High  
Court Petition No.128 of 1970

10 In the Matter of Or. 55 Rule  
31 (f) of the Rules of Supreme  
Court

Joseph Jacob David also  
known as Jacob Joseph

Applicant

And

1. Felixia Varnakulasinghe
2. Ng Lit Cheng @ Ng Yam Chee
3. Gan Khay Beng
4. Bee Chuan Rubber Factory Sdn.Bhd. Respondents

BEFORE THE HONOURABLE MR. JUSTICE AJAIB SINGH

20

IN OPEN COURT

THIS 8TH DAY OF JANUARY 1976

O R D E R

THIS MOTION coming on for hearing previously  
on 19th May, 1975, 7th June, 1975 and 29th August,  
1975 respectively and finally on this day in the  
presence of Mr. Chellappah Thambiah of Counsel  
for the Applicant/Respondent, Felixia d/o  
Varnakulasinghe, Mr. S.D.K.Peddie of Counsel for  
30 the Respondent/Applicant Joseph Jacob David @  
Jacob Joseph, Mr. Leow Shin Fong of Counsel for  
the Respondent Ng Lit Cheng @ Ng Yam Chee and Mr.  
Sidney Augustin of Counsel for the Respondents  
Gan Khay Beng and Bee Chuan Rubber Factory Sdn.Bhd.  
AND UPON READING the Notice of Motion dated 7th  
day of February 1975, the Affidavit of Felixia d/o  
Varnakulasinghe affirmed on the 31st day of January,  
1975, the Affidavits of E.P.E.Ananda affirmed on  
the 1st day of April, 1975 and the 2nd day of  
40 January 1976, the Affidavit of Ng Lit Cheng @ Ng  
Yam Chee affirmed on the 27th day of September,  
1975 and the Affidavit of Gan Khay Beng affirmed on



In the  
High Court  
No.9  
Order  
8th January  
1976  
(continued)

the 2nd day of December, 1975 all filed herein AND UPON HEARING the arguments of Counsel aforesaid IT IS ORDERED that the Order of Court dated the 25th day of November, 1974 be and is hereby set aside AND IT IS FURTHER ORDERED that the costs of and incidental to this application be taxed and paid personally by E.P.E.Ananda, the attorney of Joseph Jacob David to Felixia d/o Varnakulasinghe, Gan Khay Beng and Bee Chuan Rubber Factory Sdn.Bhd. AND IT IS LASTLY ORDERED that Ng Lit Cheng @ Ng Yam Chee do pay costs of the proceedings from the date of his having been made a party to the proceedings to Felixia d/o Varnakulasinghe. 10

GIVEN under my hand and the Seal of the Court this 8th day of January, 1976.

(S E A L) Sd: Illegible  
Senior Assistant Registrar,  
High Court, Seremban. 20

No.10  
Proceedings  
19th May  
1975

No. 10

PROCEEDINGS

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
ORIGINATING SUMMONS NO. 79 OF 1974

In the Matter of the Estate of  
John David (deceased)

And

In the Matter of Seremban High  
Court Petition No.128 of 1970

In the Matter of Order 55 Rule 31(f) 30  
of the Rules of Supreme Court

Joseph Jacob David also known  
as Jacob Joseph Applicant

NOTES OF EVIDENCE

In Open Court

This 19th day of May, 1975

Coram: AJAIB SINGH J.

C.Thambiah for Applicant  
S.D.K.Peddie for Respondent

Thambiah: Have sent notice to cross-examine Mr. Ananda on his affidavit dated 1st April, 1975

In the  
High Court  
No.10  
Proceedings  
19th May 1975  
(continued)

No. 11

E.P.E. ANANDA

Applicant's  
Evidence

No.11  
E.P.E. Ananda  
Cross-  
examination

19th May 1975

E.P.E. Ananda, affirmed, states in English:

I live at 277 Rasah Road, Seremban, pensioner, retired teacher, aged 63.

(Referred to para.4 of affidavit)

10 I was informed by my principal Joseph Jacob David that Elizabeth Muttama had three sons. He told me about this in one of his letters that he wrote to me from Ceylon. He also told me that these three beneficiaries were dead according to his information. I do not have letter with me.

Q. What was the basis of his saying that they were dead?

A. In order to make the affidavit.

20 I would not know how he knew that they were dead. I enquired from him. He told me that A.M. Singhe the father of the applicant had been in correspondence with him and from him he got the information. This is the letter my principal wrote to me.  
(Witness reads parts of the letter)  
Letter is dated 18.10.74 and 25.10.74 - marked Exhibit "A"

30 He wrote this letter to me when I was filing my affidavit in my application. I have other letters too. He had been giving information to me. I had information that Mr. Singhe had two other brothers. (Referred to para.6 of affidavit)

I did not get information from my principal regarding other children of Mr. Singhe.

Q. Did you know that your principal knew one

In the  
High Court

of the children of Mr. Singhe, the  
father of my client?

Applicant's  
Evidence

A. No - I did not know.

No.11  
E.P.E.Ananda  
Cross-  
examination  
19th May 1975  
(continued)

My principal was here last month.  
(Referred to a letter)

It is not in the handwriting of my principal.  
I knew that there were three sons of Madam  
Muttama. Mr. Singhe was one of them.

Q. Why did you not state this in your first  
affidavit of 9.11.74?

10

Peddie: Wrong to say that this fact was not  
stated.

Order: Question allowed.

Answer: I have stated that in para.5(iv) of  
my earlier affidavit of 9.11.74.  
"Singhe, one of the beneficiaries  
died in 1970".

This was known to my principal but we did  
not know who the beneficiaries of Singhe were.  
I had a solicitor in my application. I  
declared to my solicitors regarding the death  
of Mr. Singhe.

20

(Referred to para.8 of affidavit of 1.4.75)

Q. Who met the annual outgoings of the  
land?

A. The chargee on the estate.

Q. Has the principal contributed any part  
of the outgoings?

A. Not to my knowledge over the past few  
months.

30

I cannot say of the earlier period.

From extracts taken I noticed that there  
were several rumours when the land was gazetted  
for sale for non-payment of quit rents. I  
came to know about this only from the extracts  
from the land office. This is a copy sent  
to me from my principal from Ceylon. He  
sent a typewritten copy - not the land office  
extract. On all these occasions the chargee  
had met the expenses in order to avoid the  
sale.

40

(Referred to para.12 of first affidavit dated  
9.11.74)

Q. Of the reasons you gave for the sale of  
land in para.8 of the second affidavit  
of 1.11.74 do not appear in the earlier  
affidavit of 9.11.74?

Peddie: Object - see para.12 (ii) of affidavit

of 9.11.74. Same reasons given in later affidavit of 1.4.74.

Order: Question allowed.

Answer: There were no new reasons. The same things were said there.

10 I was saying that the land brought no revenue and we were incurring expenses. Now that the charge has been discharged the chargee is not going to pay anything on the outgoings. Also, the other beneficiaries are in Ceylon.  
(Referred to para.11 of affidavit of 1.4.75)

Q. Do you know that one Gan Khay Beng was interested in the land?

A. No - I did not.

My principal never told me about this.

Q. You know Mr. Gan filed caveat on the land?

A. I did know about the caveat before agreeing to sell the land. The caveat was served on me - notice of caveat - Exhibit B.

20

(Referred to last line in para.11 - affidavit of 1.4.75)

An action has been filed by Mr. Gan against the estate - C.S.45/75. Caveat has been extended by order of Court in O.S.19/75 dated 7.3.75.

Q. Did you take any action to remove the caveat?

A. Action has been taken.

30

(Adjourned to 7.6.75 at 10.00 a.m.)

Sd: Ajaib Singh J.

IN OPEN COURT

This 7th day of June, 1975

Parties as before.

E.P.E.Ananda affirmed, states in English:

(Cross-examination continued)

Q. Your principal was aware that Mr.Gan Khay Beng was in occupation of this land?

A. Mr. Singhe had informed my principal by letter dated 15.8.68. He also said in

In the  
High Court

Applicant's  
Evidence

No.11  
E.P.E.Ananda  
Cross-  
examination

19th May 1975

(continued)

7th June  
1975

E.P.E.Ananda  
Cross-  
examination

(continued)

In the  
High Court

Applicant's  
Evidence

No.11  
E.P.E.Ananda  
Cross-  
examination

7th June 1975

(continued)

that letter that he had written to Mr. Gan to quit the land - letter to Mr. Gan was dated 10.8.68 by registered post.

On 11.8.68 Mr. Singhe also wrote to Dato' Athi Nahappan informing him of the trespass and asked him to request Mr. Gan to quit the land. By these letters my principal had come to know about this matter.

Elizabeth Muttama had three sons altogether. My principal knew this. 10

Mr. Peddie: No questions.

By Court:

The land has not yet been sold. There is an agreement to sell entered into before the order of Court. There is a caveat on the land.

Mr. Thambiah:

Notice was served on my client on 21.5.75 to cross-examine my client.

Deponent, Felixia is not in Court for two reasons - 20

(1) For the purpose of these proceedings the facts have been admitted by the other party.

(2) Solicitors on record are Chan & Chia and not Messrs. Skrine & Co. Notice served by Messrs. Skrine & Co.

No change of solicitors filed.

Mr. Peddie:

I intend to cross-examine the deponent. Nothing in the deponent's affidavit that the deponent's parents were ever married. 30

Order: Adjourned to 11th and 12th July, 1975.

IN OPEN COURT

This 29th day of August 1975

Coram: AJAIB SINGH J.

Parties as before.

Felixia Varnakulasinghe, affirmed, states in  
English:

Cross-examination:

10 I am now married to Mr. J.D.Laws.

Q. What is your purpose of bringing these proceedings?

A. My father was a beneficiary of part of a piece of land. He died so my mother is next-of-kin.

20 I am not objecting to the land being sold, I am only objecting to the price. My father's share would be 1/3 or 1/16. The figure in my affidavit of 1/6 is wrong. My mother is still alive. She knows she will get her share. I am the eldest of 5 children of my parents.

Q. Do you know how much money is involved in your share?

A. Very little.

I have worked it out at about \$2,000.

Q. If sold for \$110,000 you get \$305.50 and if sold for \$151,000 you get \$419.44?

A. I thought it was about \$2,000.

30 Q. You have any proof that your parents were married to each other?

A. Yes, this is a marriage certificate, Exhibit 1. This is my birth certificate, Exhibit D.

My father was a government clerk. My mother is not receiving a government pension.

Q. Why not?

A. They were living together but were married after my father retired.

40 I am aged 35. I agree that at the time of birth they were not married.

By Thambiah:

I would give my share to my mother - however

In the  
High Court

Nol2  
Evidence of  
Felixia  
Varnakula-  
singhe  
Cross-  
examination  
29th August  
1975

(continued)

small my share is. I would give it to her if she wants the money. My parents were married in church - Catholic church. I did not witness the ceremony.

I know the Parish Priest Father D'Croque. My mother gave this marriage certificate to me. Jacob David and Mr. Ananda visited me during these proceedings. Their purpose was to come to a compromise I suppose. They came to talk terms about this matter. I was asked to change my lawyer - by my uncle Jacob David.

10

Q. Why?

A. No reason was given and I asked him to speak to my lawyer. I cannot remember if any sum was mentioned.

Peddie (with leave)

I remember the name Chellappah was mentioned. My father was very friendly with Chellappah and my father used to teach Latin to my lawyer Mr. Thambiah. Mr. Chellappah is Mr. Thambiah's father. My father contacted Mr. Chellappah about the land and because his son was a lawyer.

20

Peddie:

Legitimation by subsequent marriage - whether it applies here in Malaysia.

Thambiah:

Refer to Legitimacy Act 1961 section 3 and section 6 Civil Marriage Ordinance 1952 section 3.

30

Peddie: Refer to written submissions -

Ganapathy Chettiar (1962) MLJ 207.

Subsequently discovered that there were two other beneficiaries - Was not known that applicant's mother was still alive. Refer to para.15 of Ananda's affidavit of 1.4.75. The figures - share of applicant to be amended.

Thambiah:

The figures put up by my client first are based on the assumption that there are 2 other beneficiaries - 2 sons of Elizabeth Muttama.

40

Adjourned to 20.9.75

Sd: Ajaib Singh J.

No. 13  
PROCEEDINGS

In the  
High Court  
No.13  
Proceedings

IN CHAMBERS

This 20th day of September 1975

Coram: AJAIB SINGH J.

20th  
September  
1975

Summons-in-Chambers dated 11th September 1975.  
S.F.Leow for Ng Lit Cheng  
Peddie for Joseph Jacob David  
Thambiah for Felixia

10 Thambiah: Object

1. Learned counsel makes application
2. His application should be against the administrators of the estate.
3. There was a caveat on the land.

Contractor's notice to purchase - Caveat lodged on 7.10.75. Agreement for sale made on 2.9.74. Order for sale made by court on 25.11.74.

S.F.Leow: Application under Order 16 rule 1.

20 Order: Order-in-terms of application. Costs of today's proceedings to be paid by Ng Lit Cheng to the other parties - fixed at \$75 each.

Originating Summons adjourned to 2nd October 1975.

Sd: Ajaib Singh J.  
20.9.75

ORIGINATING SUMMONS NO: 79 OF 1974  
SUMMONS-IN-CHAMBERS DATED 29TH SEPTEMBER 1975

29th  
September  
1975

30 IN CHAMBERS

This 2nd day of October 1975

Coram: AJAIB SINGH J.

Sydney Augustin .. for applicant in Summons-in Chambers  
S.F.Leow .. for Ng Lit Cheng @ Ng Yam Chee



In the  
High Court  
No.13  
Proceedings  
29th September  
1975  
(continued)

Thambiah .. for Felixia  
John Chia .. for applicant in O.S.79/74

Augustin:

Order 16 rule 1 and 11. Annual Practice 1966  
page 233. "Chancery Actions" - Refer to  
applicant's affidavit and exhibits. Delay -  
we came to know about it late.

Thambiah:

I support this application. If application  
is approved it will then touch on two points 10  
which I had made earlier.

1. Value of land by applicant in O.S.79/74  
not the best value.
2. Applicant's right of pre-acquisition.  
This was not disclosed when the order of  
sale was made on 25.11.74.

Submit this present application is very  
material. The question is why the two matters  
were not disclosed to the court when the  
order for sale was made. 20

John Chia:

Opposing the applicant - submit applicant's  
affidavit does not show he has any adverse  
interest in the O.S. Early date has been  
approved in O.S.43/75. The applicant's  
grievances will be heard in that suit.

S.F.Leow:

Relevant rule is Order 16 rule 11.  
Affidavit of applicant - does not say he is  
a necessary party to the proceedings. 30  
Proceedings here are to set aside the order  
of sale. Any decision on this O.S. will not  
affect his interest.

Annual Practice 1963 page 324 - Intention  
by persons not parties.

Amon v. Raphael Tuck & Sons Ltd. - (1956)  
1 Q.B. 357 @ 380.

The result  
(1958) P.174.

Refer to my affidavit - para.4. 40

Submit - court's jurisdiction to allow  
intervention cannot be invoked on what has  
been disclosed in applicant's affidavit.

Applicant's presence is not necessary in the application to set aside the order of sale. Applicant could not be bound by the result. O.S.43/75 would still be in existence. Joinder would entail delay and unnecessary costs.

In the  
High Court  
No.13  
Proceedings  
29th  
September  
1975

Augustin:

10 Felixia has an objection - why should the other parties object - we are appearing as defendants.

(continued)

Order:

Order in terms as in Summons-in-Chambers dated 29th September 1975.

Costs - \$75 each to the three respondents in the present application.

Adjourned to 8th January 1976. Any affidavit to be filed by end of November.

Sd: Ajaib Singh J.

20 IN THE HIGH COURT IN MALAYA AT SEREMBAN  
ORIGINATING SUMMONS No.79 OF 1974

8th January  
1976

IN CHAMBERS

This 8th day of January 1976

Coram: AJAIB SINGH J.

Summons-in-Chambers dated 31st December 1975

S.F.Leow for applicant - First respondent  
Ng Lit Cheng

Sydney Augustine for Second and Third Respondents

Sydney Augustine: Affidavit defective

S.F.Leow: Withdraw Summons-in-Chambers.

30 No order.

Sd: Ajaib Singh J.

In the  
High Court  
No.13  
Proceedings  
8th January  
1976  
(continued)

IN OPEN COURT  
This 8th day of January 1976

Notice of Motion dated 7th February 1975  
to set aside order of sale dated 25th November  
1974.

Coram: Ajaib Singh J.

C.Thambiah for applicant  
S.D.K.Peddie for respondent  
Joseph Jacob David  
S.F.Leow for respondent 10  
Ng Lit Cheng  
Sidney Augustine for respondents  
Gan Khay Beng and Bee Chuan  
Rubber Factory Sdn.Berhad.

Thambiah:

Written submissions have been sent by  
Mr. Peddie and myself and reply by Mr.Peddie.

Have subpoenaed Mr. Periasamy to give  
evidence on certain matters regarding the  
purchase price. 20

No.14  
Evidence of  
S.Periasamy  
Examination  
8th January  
1976

No. 14  
S. PERIASAMY  

---

S.Periasamy, affirmed, states in English:

Advocate & Solicitor, practising with  
Nahappan, Muthu & Peri, Seremban.

Our firm took over the office of  
Messrs. Nahappan & Co. at the beginning of  
last year.

I have the file relating to the affairs  
of the estate of John David. The file is  
in my custody. We are no more the solicitors  
for this estate although we have not been  
discharged formally. Joseph Jacob David  
did not to my knowledge come to our office  
to make any search. 30

Q. In 1968 a certain letter was written  
to you from Ceylon stating that a  
certain gentleman was prepared to

- purchase the land for \$98,000.
- A. Yes, this is the letter, Exhibit A, dated 5.1.1968.

In the  
High Court  
No.14  
Evidence of  
S.Periasamy  
Examination  
8th January  
1976  
(continued)

The letter is written by Jos. J. David 82 Bazaar Street, Batticaloa, Ceylon. I have one letter here dated 2.1.69 written by the same person addressed to Messrs. Athi Nahappan & Co., Exhibit B.

Cross-examination (Mr. Peddie)

- 10 Q. Is there a reply to Exhibit A?
- A. There is no reply - but there is a letter of 8.3.68 which talks about the sale, Exhibit C.
- Q. Exhibit B - dated 22.1.69 - Mr. David gave information regarding certain beneficiaries. Do you find anything in the file to indicate that Dato Athi Nahappan made any inquiries to trace the beneficiaries particularly Mr. Singhe?
- 20 A. Yes, there is direct correspondence with Mr. Singhe - Letter dated 1.3.1969 sent by the firm, Exhibit D and a reminder, Exhibit E dated 3.4.69.
- Q. Anything in the file to show if Mr. Singhe disclosed the existence of any brothers of his?
- A. No, there is no letter in the file.
- I believe Messrs. Chan & Chia are now acting for the deceased's estate.
- 30 Q. Have you got a letter dated 18.12.74 from Messrs. Chan & Chia to Messrs. Athi Nahappan & Co. in the file?
- A. I do not have the letter but there is a reply to the letter of 18.12.74. The reply is dated 19.2.75.
- The letter of 18.12.74 might have been misplaced.
- (Referred to letter dated 18.12.74 marked Exhibit F)
- 40 Q. Yes, I remember reading this letter. This is the reply letter dated 18.12.74 - marked Exhibit G.
- Q. Did you consult Dato' Athi Nahappan before sending this reply?
- A. No.
- Q. Did you consult Dato' Nahappan at all

Cross-  
examination

In the  
High Court

No.14

Evidence of  
S.Periasamy  
Cross-  
Examination

8th January  
1976

(continued)

regarding Exhibit F? There was an allegation that the whole thing was bogus - Did you reply to that allegation?

- A. No I did not. My reply was confined to circumstances with which we took possession of the file and also that as a matter of courtesy our consent to  
c change of solicitors should have been filed. I did not go into the substance of the sale.

10

Q. There has never been a reply to the allegation?

A. No, we were no more solicitors. In fact we received a reply to my letter, Exhibit E.

This is the reply letter Exhibit H - dated 22nd March 1975.

I did not reply any more. If there was any appointment stated in Exhibit H it must have been with Messrs. Dato' Athi Nahappan. I have no personal knowledge.

20

Yes, we did ask \$5,000 as fees.

After seeing the file and the amount of work done my partner and I thought that the sum of \$5,000 was fair and reasonable. This sum has not been paid and we intend to tax our bill.

Q. It is over a year and you have done nothing?

A. I was looking into it.

30

Everything material to the proceedings had in fact occurred before we took over. I agree that the file is not arranged as it should have been but I am not in a position to say if documents are missing except one. I recall now that there was a discussion in our office that the file was received from Dato' Athi Nahappan's office by an unauthorised person and subsequently returned. This was mentioned by a staff member of Dato' Athi Nahappan's firm.

40

Cross-examination: (S.F.Leow)

After taking over the file I just had a perusal of the file.

Q. Is there anything in the file to show if Madam Muthammah was ever married and if so to whom?

A. No.

Cross-examination: (Sidney Augustine) -  
No questions.

In the  
High Court

Re-Examination:

No.14  
Evidence of  
S.Periasamy  
Cross-  
Examination

When we took over Dato' Nanappan's firm Dato' Athi Nahappan had ceased practice - ceased well before that. Yes, I agree Dato' Athi Nahappan would know the details of the sale and estate. He was the attorney of the estate.

8th January  
1976

(continued)

Re-examination

10

No. 15

PROCEEDINGS

No.15  
Proceedings

8th January  
1976

Thambiah:

Insufficiency of sale price - no valuation of the land was submitted to the Court at the time of the sale although it is admitted that such a report did exist.

20

Refer to letters produced in Court today. Exhibit A - a purchaser for \$98,000 - in 1968 whereas in 1974 - sold for only \$110,000 - a difference of only \$12,000. The land was improved considerably by Gan. In the course of 5 years price would be very much higher than an addition of a mere \$12,000.

Inflation set in in 1974.

Singhe's position as a beneficiary was not stated in the first affidavit of counsel.

Peddie: Written submissions

S.F.Leow:

30

Submit the purchase of the land would be injuriously affected if the order for sale is set aside. Refer to affidavit of Felixia - Para. 2. Applicant has not proved that she is related by blood to Elizabeth Muttamma. Also that Muttamma had 3 sons also not supported by evidence.

My client is a bona fide purchaser for value. Would adopt Mr. Peddie's written submissions insofar as it supports my client.

Refer to affidavit of Ng Lit Cheng - 11.9.75.

In the  
High Court

No.15  
Proceedings  
8th January  
1976

(continued)

Sidney Augustine: Support the application.

ORDER:

Order of Court dated 25th November 1974  
ordering the sale of land is set aside.

Costs of and incidental to these  
proceedings to be paid personally by E.P.E.  
Ananda to Felixia Varnakulasinghe and to Gan  
Khay Beng and Bee Chuan Rubber Factory Sdn.  
Berhad.

Ng Lit Cheng to pay costs of the  
proceedings from the date of his having been  
made a party to the proceedings to Felixia  
Varnakulasinghe.

10

Sd: Ajaib Singh J.  
8.1.76.

In the  
Federal Court

No.16  
Notice of  
Appeal of Ng  
Lit Cheng  
3rd February  
1976

No. 16

NOTICE OF APPEAL OF  
NG LIT CHENG

IN THE FEDERAL COURT IN MALAYSIA  
(APPELLATE JURISDICTION)

20

CIVIL APPEAL NO. OF 1976

BETWEEN

Ng Lit Cheng @ Ng Yam Chee Appellant

AND

1. Felixia d/o Varnakulasinghe  
(Applicant in Notice of Motion  
dated 7th February 1975)

2. Joseph Jacob David also  
known as Jacob Joseph Respondents

In the matter of Seremban High Court  
Originating Summons No.79 of 1974

30

In the Matter of the Estate  
of John David, deceased

and

In the matter of Seremban  
High Court Petition No.128 of  
1970

and

In the matter of Order 55 Rule  
3(1)(f) of the Rules of Supreme  
Court, 1957

In the  
Federal Court

No.16  
Notice of  
Appeal of Ng  
Lit Cheng

3rd February  
1976

(continued)

BETWEEN

10 Joseph Jacob David also  
known as Jacob Joseph Applicant

AND

1. Ng Lit Cheng @ Ng Yam Chee  
2. Gan Khay Beng  
3. Bee Chuan Rubber Factory  
Sdn. Bhd. Respondents

20 TAKE NOTICE that Ng Lit Cheng @ Ng Yam  
Chee of Nos.37-38 Jalan Birch, Seremban, the  
Appellant being dissatisfied with the decision  
of the Honourable Mr. Justice Ajaib Singh  
given at the High Court at Seremban on the 5th  
day of January, 1976 appeals to the Federal  
Court against the whole of the said decision.

Dated this 3rd day of February 1976

Sgd. Illegible  
Appellant

Sgd. Illegible  
Solicitor for the Appellant

To:-

- 30 1. The Chief Registrar,  
Federal Court,  
KUALA LUMPUR
2. The Senior Assistant Registrar,  
High Court,  
SEREMBAN

This Notice of Appeal is taken out by M/s. Stanley  
Ponniah, Ng & Soo, Solicitors for the Appellant  
whose address for service is at No.30, Jalan  
Tunku Hassan, Seremban.



In the  
Federal Court

No.17  
Notice of  
Motion of  
E.P.E.Ananda

16th February  
1976

No. 17

NOTICE OF MOTION OF  
E.P.E. ANANDA

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

FEDERAL COURT CIVIL APPLICATION NO.1 OF 1976

In the Matter of Seremban High  
Court Originating Summons No.79  
of 1974

E.P.E.Ananda                   ...                   Applicant                   10

NOTICE OF MOTION

TAKE NOTICE that on Monday, the 5th day of April 1976 at 9.30 o'clock in the forenoon or as soon thereafter as he can be heard Mr. S.D.K. Peddie of Counsel for the abovenamed Applicant will move the Court for an order that the Applicant E.P.E. Ananda be granted leave to appeal from that part of the Order made by the High Court at Seremban on the 8th day of January 1976 in Originating Summons No.79 of 1974 in terms of which the Applicant was ordered personally to pay the costs of the proceedings and for an order that the Applicant be granted leave to bring such appeal by filing notice of appeal within a period of 14 days from the date of the order made herein. 20

AND TAKE NOTICE that the Applicant on the hearing of this Motion intends to use the Affidavit of E.P.E. Ananda affirmed on the 12th day of February 1976 and filed herein. 30

Dated this 16th day of February, 1976.

Sd: Skrine & Co.  
Solicitors for the Applicant

Dated at Kuala Lumpur this 11th day of March 1976.

Sd: Illegible  
Deputy Registrar,  
Federal Court, Malaysia,  
Kuala Lumpur. 40

This Notice of Motion was taken out by Messrs. Skrine & Co., Straits Trading Building,

No.4, Leboh Pasar Besar, Kuala Lumpur,  
Solicitors for the Applicant abovenamed.

In the  
Federal Court

Filed at Kuala Lumpur, this 16th day  
of February 1976.

No.17  
Notice of  
Motion of  
E.P.E.Ananda

Sd: Illegible  
Deputy Registrar,  
Federal Court, Malaysia,  
Kuala Lumpur

16th February  
1976  
(continued)

No. 18

10

AFFIDAVIT OF E.P.E. ANANDA

No.18  
Affidavit of  
E.P.E.Ananda

12th February  
1976

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

FEDERAL COURT CIVIL APPLICATION NO.1 OF 1976

In the Matter of Seremban High Court  
Originating Summons No.79 of 1974

E.P.E.Ananda       ....       Applicant

A F F I D A V I T

20 I, E.P.E. Ananda (Identity Card No.  
1762384) of full age residing at No.277 Jalan  
Rasah, Seremban, affirm and say as follows :-

1. Joseph Jacob David also known as Jacob  
Joseph David is the personal representative  
in Malaysia of the estate of John David deceased.  
A copy of the Grant of Letters of Administration  
with the Will annexed issued to him by the  
High Court at Seremban on the 15th October 1973  
in Petition No.128 of 1970 is produced and  
shown to me marked "EA 1". The said Joseph  
Jacob David is resident in Ceylon.

30 2. By a Power of Attorney dated the 5th  
August 1974 registered in the High Court at  
Seremban as No.201 of 1974 the aforementioned  
Joseph Jacob David appointed me his true and  
lawful attorney to do the acts and things set  
out in the said Power of Attorney. A copy of

In the  
Federal Court

No.18  
Affidavit of  
E.P.E.Ananda

12th February  
1976

(continued)

the said Power of Attorney is now produced and shown to me marked "EA.2".

3. Amongst the powers conferred upon me were the powers :-

(a) to appear before any Judge in connection with any of the matters in the Power of Attorney contained (clause 3);

(b) to sell and transfer to any person or persons the land comprised in Grant NS No.953 Lot 368 in extent 3 acres 3 roods 16 perches at Rahang Road in Seremban and for that purpose to sign and execute the transfer and other instruments necessary (clause 5);

(c) generally to do all acts and things and sign and execute all such documents as might be necessary for effectuating any of the purposes of the Power as fully and completely as the donor could do if he were personally present (clause 9).

4. Acting pursuant to the powers conferred upon me by clause 5 of the Power of Attorney I, as attorney for the aforementioned Joseph Jacob David, entered into a conditional contract for the sale of the land referred to in clause 5 of the Power of Attorney (hereinafter referred to as "the said land"). The sale was conditional upon the approval of the High Court in Seremban being given pursuant to Section 60(4) of the Probate and Administration Act 1959. In entering into this Contract I acted solely as agent for Joseph Jacob David and I had no personal interest whatever in the contract nor in the land the subject matter of it nor in any proceeds of sale of that land save and except to the extent necessary to indemnify me against any expenses I might incur in relation to the interim preservation of the land and the sale thereof. Such expenses were the liability of my principal and not of myself.

5. Pursuant to Section 60(4) of the Probate and Administration Act 1959 I, as attorney for Joseph Jacob David, applied to the High Court at Seremban in Originating Summons No.79 of 1974 for leave to sell the said land and obtained an order in terms of the application on the 25th November 1974. The application was made upon information supplied to me

by Joseph Jacob David as I had no personal knowledge whatever of John David deceased nor of his estate or the beneficiaries of his estate. I had no personal interest in the outcome of the application except to the extent set out in paragraph 4 hereof.

In the  
Federal Court

No.18  
Affidavit of  
E.P.E.Ananda

12th February  
1976

(continued)

10 6. One of the beneficiaries of the estate of John David, namely Felixia Varnakula-singhe, applied to the Court by Notice of Motion in Originating Summons No.79 of 1974 to have the Court order dated 25th November 1974 set aside. The application was made on the 7th February 1975. A copy of the Notice of Motion is produced and shown to me marked "EA.3". Her application was supported by an Affidavit affirmed by her on the 31st January 1975 a copy whereof now shown to me marked "EA.4".

20 7. The grounds on which the said beneficiary asked that the order be set aside were first that she had not been served with a copy of the application for leave to sell although she was a beneficiary of the estate and second that the sale price was below the true value of the land.

30 8. With the knowledge and on the instructions of my principal Joseph Jacob David I, as attorney, opposed the application to set aside the order. I affirmed an affidavit in reply on the 1st April 1975 a copy whereof is now produced and shown to me marked "EA.5". As appears from paragraph 1 of the said affidavit, I affirmed it as attorney for Joseph Jacob David and not on my own personal behalf.

40 9. The proceedings in the High Court continued for several months. While they were still continuing, three further persons applied to be joined as parties, these persons being Ng Lit Cheng also known as Ng Yam Chee who was the purchaser under the conditional contract referred to in paragraph 4 hereof and Gan Khay Beng and Bee Chuan Rubber Factory Sdn. Bhd. who claimed to be entitled to purchase the said land by reason of certain documents and transactions which from the subject matter of Seremban High Court Civil Suit No.45 of 1975 which is pending between the said persons and Joseph Jacob David as administrator of the estate of John David deceased. The Court granted  
50 the application and joined these persons as parties to the proceedings.

10. At no time did I, in my personal capacity, ever apply to be made a party to the proceedings

In the  
Federal Court

No.18  
Affidavit of  
E.P.E. Ananda  
12th February  
1976

(continued)

and no order was ever made in terms of which I was made a party to the proceedings. The proceedings were throughout directed against Joseph Jacob David as administrator of the estate of John David deceased and my position thereon was never more than that of attorney for the said administrator. I was throughout an agent only.

11. On the 8th January 1976 the learned Judge granted Felixia Varnakulasinghe's application to set aside the order dated 25th November 1974 and made an order for costs in terms of which I was personally ordered to pay all the costs of Felixia Varnakulasinghe, Ng Lit Cheng, Gan Khay Beng and Bee Chuan Rubber Factory Sdn. Bhd. The order was not made against the administrator who was the party to the proceedings nor against the estate he represented but against me although I had no personal interest whatever and had no personal participation in the proceedings. A copy of the order is not yet available because it has not yet been extracted but the order was made in open court.

10

20

12. I am aggrieved by the order for costs which has been made but I am advised by my solicitors and verily believe that because I was never a party to the proceedings, I have no right to appeal against the order unless this Honourable Court grants me leave to do so. I therefore pray that the Court may be pleased to grant me leave.

30

AFFIRMED at Seremban )  
this 12th day of ) Sd: E.P.E. Ananda  
February 1976 at 11.45 )  
a.m.

Before me,

Sd: K. Purushothman

This Affidavit is filed by Messrs. Skrine & Co. Straits Trading Building, No.4, Leboh Pasar Besar, Kuala Lumpur, Solicitors for the said E.P.E. Ananda herein.

40

No. 19

ORDER

In the  
Federal Court

No.19  
Order

5th April 1976

IN THE FEDERAL COURT OF MALAYSIA HOLDEN  
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPLICATION NO.1 OF 1976

(In the Matter of Originating  
Summons No.79 of 1974 in the  
High Court in Malaya at Seremban)

10 E.P.E. Ananda ..... Applicant

CORAM: GILL, AG. LORD PRESIDENT, FEDERAL COURT,  
MALAYSIA;  
ALI, AG. CHIEF JUSTICE, HIGH COURT IN  
MALAYA;  
WAN SULEIMAN, JUDGE, FEDERAL COURT,  
MALAYSIA

IN OPEN COURT

THIS 5TH DAY OF APRIL, 1976

O R D E R

20 UPON MOTION made unto this Court this  
day by Mr. Thayalan Kanapathippillai of Counsel  
for the Applicant AND UPON READING the  
Notice of Motion dated the 11th day of March  
1976 and the Affidavit of E.P.E. Ananda affirmed  
on the 12th day of February, 1976 both filed  
herein AND UPON HEARING Counsel as aforesaid  
IT IS ORDERED that the Applicant E.P.E. Ananda  
be and is hereby granted leave to appeal from  
30 that part of the Order made by the High Court  
at Seremban on the 8th day of January 1976 in  
Originating Summons No.79 of 1974 in terms of  
which the Applicant was ordered personally to  
pay the costs of the proceedings AND IT IS  
ORDERED that the Applicant be and is hereby  
granted leave to bring such appeal by filing  
Notice of Appeal within a period of fourteen (14)  
days from the date of this Order.

Given under my hand and the seal of the  
Court this 5th day of April, 1976.

40

Sd: Illegible  
Chief Registrar,  
Federal Court, Malaysia.

In the  
Federal Court  
No.20  
Notice of  
Appeal of  
E.P.E.Ananda  
15th April  
1976

No. 20  
NOTICE OF APPEAL OF  
E.P.E. ANANDA

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.48 OF 1976

Between

E.P.E. Ananda

Appellant

And

10

1. Felixia Varnakulasinghe
2. Ng Lit Cheng @ Ng Yam Chee
3. Gan Khay Beng
4. Bee Chuan Rubber Factory  
Sdn. Bhd.

Respondents

(In the matter Seremban High Court  
Originating Summons No.79 of 1974)

Between

Joseph Jacob David also  
known as Jacob Joseph

Applicant

20

And

1. Felixia Varnakulasinghe
2. Ng Lit Cheng @ Ng Yam Chee
3. Gan Khay Beng
4. Bee Chuan Rubber Factory  
Sdn. Bhd.

Respondents

NOTICE OF APPEAL

TAKE NOTICE that E.P.E. Ananda, the  
Appellant abovenamed being dissatisfied with  
the decision of the Honourable Mr. Justice  
Ajaib Singh given at the High Court at  
Seremban on the 8th day of January 1976 appeals  
to the Federal Court against such part only  
of the said decision as decides that the  
Appellant was personally ordered to pay all  
the costs of the Respondents.

30

Dated this 15th day of April 1976.

Sd: Skrine & Co.  
Appellant's Solicitors.

40

To:-

In the  
Federal Court

1. The Chief Registrar,  
Federal Court,  
Kuala Lumpur.
2. The Senior Assistant Registrar,  
High Court,  
Seremban.
3. Messrs. Chellappah Thambiah & Co.  
Bangunan Persatuan Yap Selangor,  
3rd Floor, Jalan Bandar,  
Kuala Lumpur, Solicitors for  
the 1st Respondent.
4. Messrs. Shearn Delamore & Co.  
Chartered Bank Building,  
Seremban, Solicitors for the  
2nd Respondent.
5. Messrs. Augustin-Negrin & Co.,  
Lee Yan Lian Building (2nd Floor)  
Jalan Tun Perak,  
Kuala Lumpur, Solicitors for the  
3rd and 4th Respondents.

No.20  
Notice of  
Appeal of  
E.P.E.Ananda

15th April  
1976

(continued)

10

20

The Address for service of the Appellant  
is c/o Messrs. Skrine & Co., Straits Trading  
Building, No.,4 Leboh Besar, Kuala Lumpur,  
Solicitors for the Appellant abovenamed.



In the  
High Court

No. 21

\_\_\_\_\_  
GROUNDS OF JUDGMENT

No.21  
Grounds of  
Judgment  
27th October  
1976

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
ORIGINATING SUMMONS NO. 79 OF 1974

In the Matter of the Estate of  
John David, deceased.

In the Matter of Seremban High  
Court Petition No.128 of 1970

In the Matter of Order 55 Rule  
31(f) of the Rules of Supreme Court. 10

Joseph Jacob David also  
known as Jacob Joseph                      Applicant

GROUNDS OF JUDGMENT

On 25th November 1974 the Applicant  
obtained an order under an ex parte originat-  
ing summons dated 11th November 1974 that  
pursuant to an agreement dated 2nd September  
1974 entered into by the Applicant with  
one Ng Lit Cheng alias Ng Yam Chee the whole  
of the land held under Grant 953 Lot No.368                      20  
in the Mukim of Rasah consisting of 3 acres  
3 roods 16 poles and registered in the  
Applicant's name as personal representative  
be sold to Ng Lit Cheng alias Ng Yam Chee  
at a price of \$110,000. An affidavit in  
support of the application was filed by one  
E.P.E. Ananda wherein he described himself  
as the attorney of the Applicant who in turn  
was the personal representative of the estate  
of John David, deceased. The deponent said                      30  
that the deceased died intestate on 29th  
June 1920 and that the Grant of Letters of  
Administration with Will annexed was given on  
22nd September 1970 to the Applicant and that  
the deceased had bequeathed all his property  
to :-

- (a) Francis Daniel David .. Brother .. 5/16  
share
- (b) Benjamin David                      .. Brother .. 4/16  
share                      40
- (c) Jacob Joseph                      .. Godson .. 3/16  
share
- (d) R. Sinnappan                      ..(brought in 1/32  
the family) share

- |  |                                     |
|--|-------------------------------------|
| (e) Elizabeth Muttama .. Sister .. 1/16 share                      | In the<br><u>High Court</u>         |
| (f) Mary Beatrice Thangkutti Varnagulasinghe .. Wife .. 1/16 share | No.21<br>Grounds of<br>Judgment     |
| (g) Miss Rasamma .. (Caretaker and house-keeper) 3/32 share        | 27th October<br>1976<br>(continued) |

10 The attorney further stated in paragraph 5 of his affidavit that he verily believed that -

(i) Francis Daniel David died intestate leaving behind the following:

- (a) Charlotte Margaret David .. Widow
- (b) Joseph Baptist David .. Son
- (c) Joseph Jacob David alias Jacob Joseph .. Son
- (d) James Nicholas David .. Son

20 (ii) Benjamin David died intestate leaving behind :

Benedict Gerard Stanislaus David .. only son.

(iii) R. Sinnappan died intestate and his beneficiaries are not known to the Applicant.

(iv) Elizabeth Muttama died intestate and her beneficiaries are not known to the Applicant.

30 (v) Mary Beatrice Thangkutti Varnagulasinghe died intestate leaving no issues.

(vi) Miss Rasamma died intestate leaving no issues.

(vii) Jacob Joseph is the sole surviving beneficiary of the estate of John David, deceased and also the Applicant herein.

40 He further stated that the only asset of the deceased was a piece of land comprised in Negri Sembilan Grant No.953 Lot No.368 Mukim of Rasah. On 26th August 1974 the land was transmitted to the Applicant as personal representative of the deceased pursuant to section 346 of the National Land Code 1965. On 2nd September 1974 an agreement was executed between the Applicant and Ng Lit Cheng alias Ng Yam Chee for the sale

In the  
High Court

No.21  
Grounds of  
Judgment

27th October  
1976

(continued)

of the said land at a price of \$110,000. The beneficiaries of the estate of Francis Daniel David (deceased) one of the beneficiaries of the estate of John David had no objection to the sale of the said land and their letters of consent were exhibited with the affidavit. The sole beneficiary of the estate of Benjamin David (deceased) also had no objection and his letter of consent was also exhibited with the affidavit. The attorney further stated that the Applicant was residing in Sri Lanka and was unable to attend the hearing of the originating summons and that the Applicant was desirous of selling the land for the following reasons :-

- (i) the estate of the said deceased of which the said land was the only asset had been unadministered since 1920; 10
- (ii) the said land was a small piece of vacant land producing no income to the estate of the said deceased; and 20
- (iii) the Applicant was unable to administer the said land as he resided in Sri Lanka.

The attorney then stated that he was informed and which information he verily believed that the estate was free from all liabilities and he prayed for an order in terms of his application which was duly made by the court on 25th November 1974. 30

On 10th March 1975 one Felixia d/o Varnakulasinghe moved the court for an order that the order for the sale of land made on 25th November 1974 be set aside and that the costs of and incidental to the application be taxed and paid by the Applicant or by the attorney of the Applicant personally. In support of her application Felixia filed an affidavit stating that she was one of the five children born of Josephine Varnakulasinghe Ah Mooi alias Ng Fee Yin and the late Alfred Nicholas Varnakulasinghe who died on 29th January 1970. She stated that from the records and correspondence kept by her father she believed that her father was the son of Elizabeth Muttama who was entitled to one sixth share in the land. She referred to the affidavit of the Applicant's attorney and stated that the Applicant and the attorney ought to have 40 50

10 been aware of her late father's interest in the said land. The Applicant and her late father were cousins and were often corresponding in respect of the management and sale of this land. In support of this she exhibited a copy of a letter dated 20th November 1967 to the late Dato' Athi Nahappan. She said that the Applicant and the attorney ought to have disclosed her father's interest in the affidavit in support of the originating summons and ought to have made her father's beneficiaries parties to the application in the summons.

In the  
High Court  
No.21  
Grounds of  
Judgment  
27th October  
1976  
(continued)

20 She also stated that it was insufficient merely to have said in the attorney's affidavit that the devisees under the Will of John David had died leaving no issue and she said that the Applicant ought to satisfy the court as to the steps taken by him to ascertain the beneficiaries of the devisees, their whereabouts, their dates and places of death and the reasons or the basis as to why the Applicant thought or believed that the devisees died intestate or died leaving no issue. She further stated that it was not sufficient merely to state the reasons for the sale of the land. The Applicant must satisfy the court that it was in the best interest of the  
30 devisees and beneficiaries of the estate to sell the land and to sell it at the price contracted for by the said attorney. She said that the attorney ought to have shown to the court all other offers to purchase the land and ought to have supported the sale price by a qualified valuer's report which he had failed to do. She further said that the previous attorney of the Applicant the  
40 late Dato' Athi Nahappan had already contracted with one Gan Khay Beng to sell the land at a price to be valued by a qualified valuer subject to the approval of the court and in support of this she exhibited two letters from Dato' Athi Nahappan dated 15th April 1974 and she said that the present attorney ought to have been bound by what was contracted by the previous attorney and to have disclosed the same to the court. She said that she believed that at  
50 the time of the Applicant entering into the agreement dated 2nd September 1974 the land was worth about \$150,000. With reference to paragraph 5(iii), (v) and (vi) of the attorney's affidavit she stated that the respective interest of those devisees stated therein should under the law pass to the Crown as bona vacantia and that the Crown should have been made a party in the originating summons.

In the  
High Court

No.21  
Grounds of  
Judgment

27th October  
1976

(continued)

The application of Felixia to have the order for the sale of land set aside was opposed by E.P.E. Ananda and he filed an affidavit dated 1st April 1975. Referring to the affidavit of Felixia he stated that neither his principal nor he himself had any knowledge of the matters set out in the first paragraph of the affidavit of Felixia but they were prepared to admit the facts therein alleged for the purpose of these proceedings. 10  
He further stated in his affidavit that Felixia's father was not the only son of Elizabeth Muttama as she had three sons and therefore the Applicant's father was entitled to a one-third share only in his mother's estate. He further stated that the beneficiaries of Elizabeth Muttama were not known to himself or to his principal except the Applicant who had become known to them by reason of her affidavit. He said that her late father was known to his principal as a beneficiary. He had personally called at the address of the Applicant's late father but no member of the family was then residing at that address and no person living there could give any information as to the family's whereabouts. With reference to paragraph 7 of Felixia's affidavit he said that one Gan Khay Beng did make an offer to him to purchase the land at a price of \$15,000 per acre representing a total price of \$56,250 and as this price was so much below the contracted price he saw no point in disclosing this to the court. It was also below the valuation he had obtained on 29th August 1974 from a first class appraiser Tunku Mohamed Jamil bin Tunku Besar Burhanuddin wherein the land had been valued at \$75,000. He denied that the value of the land at the material time was about \$150,000. He said that the Applicant's interest in the land was as one of her father's five children and her father's share was a one-third in the interest devised to Elizabeth Muttama which gave the Applicant a 1/240 interest in the land. Therefore he said if the land was sold at a price of \$110,000 the maximum sum the Applicant would receive was \$458.33 while if it was sold for \$151,000 the maximum sum the Applicant would receive was \$629.17 a difference of \$170.84. He said that 40 50  
the court should not concern itself with trifles of this kind but in any event his principal was quite content personally to pay this small additional sum to the Applicant if the court should so order in order to avoid litigation costs which would be out of all proportion to the sum of money involved.

10 By summons-in-chambers dated 11th September 1975 one Ng Lit Cheng @ Ng Yam Chee applied for an order that the originating summons in the action be amended by adding his name as a respondent. In support of his application he said that he was the purchaser of the whole land in question under a written agreement dated 2nd September 1974 and he said that in the event that the application by Felixia to set aside the order of court made on 25th November 1974 be approved his proprietary rights would be directly affected and as such he applied to be allowed to intervene in these proceedings as a respondent so that he may be given an opportunity to oppose it. This application was allowed by the court on 20th September 1975.

In the  
High Court  
No.21  
Grounds of  
Judgment  
27th October  
1976  
(continued)

20 By yet another summons-in-chambers dated 29th September 1975 one Gan Khay Beng and Bee Chuan Rubber Factory Sdn. Berhad also applied to be made respondents in this originating summons. In support of their application Gan Khay Beng stated that he and Bee Chuan Rubber Factory Sdn. Berhad were plaintiffs in Seremban High Court Civil Suit No.45 of 1975 wherein they had sued Joseph Jacob David @ Jacob Joseph as the Administrator of the estate of John David deceased as defendant. The Civil Suit 45 of 1975 was exhibited in this affidavit and it showed that the plaintiffs in that suit sued Joseph Jacob David @ Jacob Joseph for specific performance of an agreement for the sale of the land to themselves. Also exhibited was a valuation report on the land prepared by one Francis A. Marsh a licensed appraiser and auctioneer wherein the value is stated to be \$151,000. This report is dated 15th November 1974. The Writ of Summons in Civil Suit 45 of 1975 was served on the attorney on 15th January 1975. This application was also allowed by the court on 2nd October 1975 making these two applicants respondents to the originating summons.

50 Thereafter further affidavits were filed in the proceedings. Ng Lit Cheng @ Ng Yam Chee filed an affidavit dated 27th September 1975 opposing the application of Felixia. In his affidavit he stated that he was the purchaser of the land in question under a written agreement dated 2nd September 1974 and he had paid a deposit of \$25,000 upon signing of the agreement. He said he had also incurred other costs and expenses in connection with this matter and he was now ready and willing to complete the terms

In the  
High Court

No.21  
Grounds of  
Judgment

27th October  
1976

(continued)

of the agreement. He further stated that he was a bona fide purchaser for value without notice of the equity claimed by Felixia. He said that the affidavit of Felixia did not disclose any or any sufficient ground to justify the court to exercise its discretion in favour of her motion. He also stated that Felixia did not disclose that Elizabeth Muttama was ever lawfully married in her lifetime.

Gan Khay Beng also filed an affidavit dated 2nd December 1975 wherein he stated that he was duly authorised by Bee Chuan Rubber Factory Sdn. Berhad to affirm the affidavit on their behalf as well. In his affidavit Gan Khay Beng stated that he and the company had a proprietary interest in the land the subject-matter of dispute in the originating summons and that they had a registrable and caveatable interest in the said land. They had set out reasons for their interest, first that the previous attorney of Joseph Jacob David @ Jacob Joseph the late Dato' Athi Nahappan had made a written offer to himself and the company of which he was the Managing Director granting them first preference to buy the land. A copy of the letter was exhibited with the affidavit. Secondly he and the company had expended a great sum of money in developing the land in anticipation of and in consideration of being granted the first preference to buy the land. Thirdly they had thereby acquired an equitable interest in the land.

Gan Khay Beng further stated in his affidavit that the order of court dated 25th November 1974 was bad in law and irregular because their prior proprietary interest was not disclosed to the court by E.P.E. Ananda, the attorney of Joseph Jacob David @ Jacob Joseph. Secondly no proper valuation was obtained or put before the court. Thirdly the sale price of \$110,000 was far below the market price. It was further stated that Joseph Jacob David @ Jacob Joseph and his attorney E.P.E. Ananda were at all times fully aware of the agreement and undertaking given by the previous attorney and that a great deal of money had been expended by Gan Khay Beng and Bee Chuan Rubber Factory Sdn. Berhad to improve the land and that they were entitled to first preference to purchase the said land. On 10th December 1974 he had forwarded a cheque for \$15,100 representing 10% of the price of the land as valued by a qualified valuer requesting the attorney to proceed with the sale. A copy of the valuer's report was attached to the

affidavit wherein the value of the land was shown as \$150,935.40 which was rounded up to \$151,000. However he said that the cheque was returned by or on behalf of Joseph Jacob David @ Jacob Joseph indicating that he would not honour his commitment. Gan Khay Beng and his company were able and willing to fulfil their obligation with regard to purchase of the land.

In the  
High Court  
No.21  
Grounds of  
Judgment  
27th October  
1976  
(continued)

10 Mr. E.P.E.Ananda was cross-examined  
on his affidavit of 1st April 1975 out of  
which nothing much was brought out to add to  
what had already been stated in the various  
affidavits which were filed in these proceed-  
ings. He did however deny that one Gan Khay  
Beng was interested in the land and he said  
that his principal had never told him about  
this. He said that he knew about the caveat  
before he agreed to sell the land Notice of  
20 Caveat was served on him and he knew that  
Gan Khay Beng had filed Civil Suit No.45 of  
1975 against the estate and that the caveat  
had been extended by order of court. He said  
that action had been taken to remove the  
caveat. In answer to a question that his  
principal was aware that Gan Khay Beng was in  
occupation of the land Ananda said that Mr.  
Singhe had informed his principal by letter  
dated 15th August 1968. He said in that letter  
30 that he had written to Gan Khay Beng to quit  
the land. Mr. Singhe had also written to the  
late Dato' Athi Nahappan informing him of the  
trespass on the land and requested him to ask  
Gan Khay Beng to quit the land. By these  
letters his principal had come to know about  
this matter.

40 Felixia Varnakulasinghe was also cross-  
examined on her affidavit. She said she was  
not objecting to the land being sold but only  
objecting to the price. According to her  
calculation her share would be about \$2,000.  
In answer to a question whether her parents  
were married to each other she produced a  
marriage certificate of her parents and her  
own birth certificate. Felixia was born on  
29th November 1939 and her parents were married  
in the Church of St.Joseph, Sentul, Kuala Lumpur  
on 19th July 1968. The legitimacy or otherwise  
of Felixia was not pursued any further in the  
50 proceedings because under section 4 of the  
Legitimacy Act 1961 she became the legitimate  
child of her parents by subsequent marriage.

The last affidavit to be filed in the  
proceedings was one more by the attorney E.P.E.  
Ananda dated 2nd January 1976. He denied that



In the  
High Court

No.21  
Grounds of  
Judgment

27th October  
1976

(continued)

Dato' Athi Nahappan ever made an offer to sell the land as alleged by Felixia and stated that even assuming the offer was made its validity in law was contested upon several grounds. He stated further that the power of attorney granted to Dato' Athi Nahappan did not enable him to sell the land. The attorney also denied that there has been any equitable interest in favour of the purchaser. A caveat was lodged on 9th October 1974 and he was formally informed 10 of it on 9th November 1974 by the Land Office. He said that on the date of the order to sell dated 25th November 1974 he had no knowledge of the alleged contract between Dato' Athi Nahappan and Gan Khay Beng. He further denied that on the date of the order the value of the land was below the market price. He stated that his principal was not opposed to the early disposal of all outstanding issues involving all interested parties and would not 20 oppose a consolidation of the hearing of the originating summons with the hearing of Civil Suit No.45 of 1975.

After hearing the submissions of counsel for the various parties in this case I set aside the order of court dated 25th November 1974 ordering the sale of the land. I also ordered that the costs of and incidental to these proceedings be paid personally by the attorney of the Applicant to Felixia Varnakul- 30 asinghe and Gan Khay Beng and Bee Chuan Rubber Factory Sdn. Berhad. Ng Lit Cheng @ Ng Yam Chee was ordered to pay the costs of the proceedings to Felixia Varnakulasinghe from the date of his having been made a party to the proceedings.

I was satisfied from the evidence before me that the Applicant through his attorney had failed to bring to the notice of the court all the material and relevant facts. The present attorney ought to have known through 40 his principal that a prior offer for the sale of land had existed but this fact was not disclosed to the court. At any rate the Applicant knew about this offer and it was his duty to bring this to the notice of the court. Also no valuation of the land was produced before the court although one existed which was that of Tunku Mohamed Jamil. The reason for not disclosing this valuation was that it was less than that of the purchase price 50 of \$110,000 and therefore the attorney saw no need to disclose the valuation of Tunku Mohamed Jamil. This cannot be accepted as a valid reason. It was incumbent upon the attorney to disclose the valuation report to the court whether it was more or less than the contracted

price. The attorney had denied any knowledge of a prior offer to sell the land to one Gan Khay Beng but he admitted that he was aware of a caveat on the land before he himself obtained the order for sale. The caveat was lodged on 9th October 1974 and the notification thereof by the Land Office was served on the attorney on 9th November 1974. This should have put the attorney on inquiry as to the extent of the caveator's interest in the land and he should have disclosed this fact to the court before obtaining the order for the sale of the land. The attorney also admitted that he was aware that Gan Khay Beng was in occupation of the land and that he had in fact written to him about this. The attorney also agreed that Gan Khay Beng had made an offer to purchase the land at \$15,000 per acre representing \$56,250 but as this price was so much below the contracted price for sale he saw no point in disclosing this to the court. This offer to purchase by Gan Khay Beng should have been disclosed to the court for then upon learning that a sum of \$56,250 had been offered some time previously the court would most certainly have enquired as to the present value of the land when the order for sale was made.

In the  
High Court  
No.21  
Grounds of  
Judgment  
27th October  
1976  
(continued)

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30  
I came to the conclusion that the attorney made no real attempts to locate all the beneficiaries to the estate and particularly in the case of Elizabeth Muttama he failed to disclose that there were other beneficiaries of Elizabeth Muttama although on his own admission he said that he knew that she had three sons.

40  
50  
In all the circumstances of this case I was of the view that the attorney's application was not made in good faith and that he had failed to disclose all the material and relevant particulars as to the value of the land and as to the beneficiaries of the estate. I was of the view therefore that this was a fit and proper case where I ought to set aside the order of sale made on 25th November 1974. As attorney it was E.P.E. Ananda's duty to see that he carried out his powers in the best interests of the estate and of the beneficiaries. Having known material facts of this case as to the value of the land and the beneficiaries involved and not disclosing the same to the court he was clearly negligent in his conduct as an attorney and I ordered the costs of the proceedings to be paid personally by him. There was no reason why on account of the defaults of

In the  
High Court

No.21  
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Judgment  
27th October  
1976  
(continued)

the attorney the estate or the beneficiaries  
should be punished by way of costs.

With regard to the position of Ng Lit  
Cheng @ Ng Yam Chee who was made a respondent  
in the originating summons all that can be  
said is that his remedy might well lie in  
damages against the attorney and/or the  
Applicant.

Dated this 27th day of October 1976.

Sgd: Ajaib Singh  
(Ajaib Singh)  
Judge,  
High Court, Malaya,  
SEREMBAN

10

S.D.K.Peddie, Esq. .. for E.P.E.Ananda-  
Attorney

Solicitors for Joseph Jacob  
David also known as Jacob Joseph -  
Messrs. Chan & Chia, Seremban.

Chellappah Thambiah, Esq. for Felixia d/o.  
Varnakulasinghe

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Solicitors:

Messrs. Chellappah Thambiah & Co.,  
Kuala Lumpur.

Leow Shin Fong, Esq. .. for Ng Lit Cheng  
@ Ng Yam Chee

Solicitors:

Shearn Delamore & Co., Seremban

Augustin-Negrin, Esq. .. for Gan Khay Beng  
and Bee Chuan  
Rubber Factory  
Sdn. Berhad.

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Solicitors:

Augustin-Negrin & Co.,  
Kuala Lumpur.

No. 22

MEMORANDUM OF APPEAL  
OF E.P.E. ANANDA

In the  
Federal Court

No.22  
Memorandum  
of Appeal of  
E.P.E.Ananda

16th November  
1976

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.48 OF 1976

Between

E.P.E.Ananda

Appellant

And

- 10
1. Felixia Varnakulasinghe
  2. Ng Lit Cheng @ Ng Yam Chee
  3. Gan Khay Beng
  4. Bee Chuan Rubber Factory  
Sdn. Bhd.

Respondents

(In the matter of Seremban  
High Court Originating Summons  
No.79 of 1974

Between

- 20
- Joseph Jacob David  
also known as  
Jacob Joseph

Applicant

And

1. Felixia Varnakula-  
singhe
2. Ng Lit Cheng @  
Ng Yam Chee
3. Gan Khay Beng
4. Bee Chuan Rubber  
Factory Sdn.Bhd.

Respondents)

30 MEMORANDUM OF APPEAL

E.P.E. Ananda, the Appellant abovenamed,  
appeals to the Federal Court against part of  
the decision of the Honourable Mr. Justice  
Ajaib Singh given at Seremban on the 8th day  
of January 1976 on the following grounds :-

- 40
1. The learned Judge was wrong in law in  
ordering that the Appellant do personally pay  
the costs of the proceedings since the Appellant  
was attorney and consequently agent of a disclosed  
principal and was not even the Administrator of

In the  
Federal Court

No.22  
Memorandum  
of Appeal of  
E.P.E.Ananda

16th November  
1976

(continued)

the estate of the deceased.

2. The learned Judge's grounds for ordering the Appellant to pay the costs failed to distinguish between the position of an attorney who is also administrator and that of the attorney who is not.

3. The facts found by the learned Judge to support his order are contrary to and inconsistent with the evidence before him. In particular :-

10

(a) The learned Judge, having noted in his judgment that the Appellant had to derive his information from his principal, nevertheless held the Appellant personally responsible for obtaining and divulging information.

(b) The learned Judge held that the Appellant knew about the prior offer to purchase the land when he applied for the Order for leave to sell although the Appellant specifically denied this on oath in the affidavits he filed and under cross-examination and although the documents produced in evidence negatived this conclusion.

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(c) the learned Judge held that the reason for non-disclosure of the valuation report of Tunku Mohamed Jamil was not valid and that it was incumbent upon the Appellant to disclose the report to the Court but there is no law which makes it incumbent to produce a report so far below the selling price that the court could not fail to discount it as being of no value in the circumstances. The duty imposed by the Judge was applicable to the case where the valuation was considerably above the selling price but not to the case where it was considerably below it.

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(d) The learned Judge held that the notice of caveat was served on the Appellant on the 9th November, 1974 but there was no evidence led to substantiate that finding. The evidence only established that the notice was dated 9th November 1974 but not that it was served on that date.

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The Appellant had stated on oath that, on the date the Order for sale was made, he had no knowledge of the alleged prior contract for sale.

In the  
Federal Court

No.22  
Memorandum of  
Appeal of  
E.P.E.Ananda  
16th November  
1976

(continued)

- 10 (e) The learned Judge referred to the knowledge possessed by the Appellant that Gan Khay Beng was in possession of the land but failed to consider the fact that the documents produced to establish such knowledge all placed Gan Khay Beng in occupation as a trespasser and none of them placed him in possession under any form of legal title.
- 20 (f) The learned Judge held that the prior very low offer by Gan Khay Beng ought to have been disclosed to the Court and advanced as reasons for so holding grounds which do not stand up to scrutiny and are not tenable.
- 30 (g) The learned Judge held that the Appellant had made no real attempts to locate all the beneficiaries but in doing so he failed to appreciate that the Appellant had no personal knowledge whatever as to who might be beneficiaries or where they might be found and had to rely entirely upon such information as was given to him by his principal.
- 40 (h) The learned Judge held the Appellant admitted he knew Elizabeth Muttama had three sons although the evidence led showed that he had no personal knowledge but had merely been given information to that effect by his principal. The evidence further showed that his principal had informed him all three sons were already dead and that he had not been given any other information in relation to possible beneficiaries of any of the three sons nor any information to enable him to take steps to ascertain their possible whereabouts save and except that he was provided with the last known address of Mr. Singhe.
- 50 (i) The learned Judge held the Appellant's Application was not made in good faith although the evidence showed he had disclosed all relevant facts of which he had knowledge derived either personally or from his principal and proved

In the  
Federal Court

No.22  
Memorandum of  
Appeal of  
E.P.E.Ananda

16th November  
1976

(continued)

conclusively that, when the application was made, the Appellant had no knowledge whatever of the claim which Gan Khay Beng sought to advance.

- (j) The learned Judge held the Appellant had failed to disclose all material and relevant particulars as to value of the land and beneficiaries of the estate but in doing so he failed to appreciate that the only evidence as to value which the Appellant is alleged not to have disclosed was neither material nor relevant and failed to appreciate that the Appellant had made complete disclosure of all information as to beneficiaries which he possessed. 10
- (k) The learned Judge held it was the Appellant's duty to see that he carried out his powers in the best interests of the estate and beneficiaries without realising that the duty he was imposing was a duty applicable to the position of an administrator which the Appellant never was. As attorney of a principal the Appellant's sole duty was to his principal and was to carry out his principal's instructions in accordance with information given to him by his principal. 20
- (l) The learned Judge held the Appellant was negligent in his conduct as attorney without appreciating that the evidence did not disclose any such negligence and without appreciating the nature of the duty owed by the Appellant and to whom the duty was owed. 30
- (m) The learned trial Judge held that there had been personal defaults by the Appellant which made it proper that he should personally pay costs without appreciating that there was no evidence of any such defaults and without appreciating the nature and extent of any duty owed by an attorney who is not an administrator. 40
4. The learned Judge failed to appreciate that the Appellant in his personal capacity was not a party to any of the proceedings before the Court. 50

Dated this 16th day of November 1976

Sd: Skrine & Co.  
Appellant's Solicitors

To:-

1. The Registrar,  
Federal Court,  
Kuala Lumpur.
2. The Senior Assistant Registrar,  
High Court,  
Seremban.
- 10 3. M/s. Chellappah Thambiah & Co.  
Bangunan Persatuan Yap Selangor,  
3rd Floor, Jalan Bandar,  
Kuala Lumpur, Solicitors for  
the 1st Respondent.
4. M/s. Stanley Ponniah, Ng & Soo,  
30 Jalan Tunku Hassan,  
(1st Floor), Seremban,  
Solicitors for the 2nd Respondent.
- 20 5. M/s. Augustin-Negrin & Co.  
Lee Yan Lian Building (2nd Floor)  
Jalan Tun Perak, Kuala Lumpur,  
Solicitors for the 3rd & 4th  
Respondents.

In the  
Federal Court

No.22  
Memorandum of  
Appeal of  
E.P.E.Ananda  
16th November  
1976

(continued)

No. 23

MEMORANDUM OF APPEAL OF  
NG LIT CHENG

No.23  
Memorandum of  
Appeal of  
Ng Lit Cheng

18th December  
1976

IN THE FEDERAL COURT IN MALAYSIA  
(APPELLATE JURISDICTION)

CIVIL APPEAL NO: 19 OF 1976

BETWEEN

Ng Lit Cheng @ Ng Yam Chee Appellant

AND

- 30 1. Felixia d/o Varnakulasinghe  
(Applicant in  
Notice of Motion  
dated 7th  
February, 1975)
2. Joseph Jacob David  
also known as Jacob  
Joseph Respondents



In the  
Federal Court

No.23  
Memorandum of  
Appeal of  
Ng Lit Cheng  
18th December  
1976  
(continued)

In the Matter of Seremban High Court  
Originating Summons No.79 of 1974

In the matter of the Estate  
of John David, deceased

and

In the matter of Seremban  
High Court Petition No.  
128 of 1970

and

In the matter of Order 55  
Rule 3(1)(f) of the Rules  
of Supreme Court, 1957

10

**BETWEEN**

Joseph Jacob David also  
known as Jacob Joseph

Applicant

**AND**

1. Ng Lit Cheng @ Ng Yam Chee
2. Gan Khay Beng
3. Bee Chuan Rubber Factory  
Sdn. Bhd.

Respondents 20

MEMORANDUM OF APPEAL

NG LIT CHENG @ NG YAM CHEE, the  
Appellant abovenamed appeals to the Federal  
Court against the decision of the Honourable  
Mr. Justice Ajaib Singh, delivered at  
Seremban on the 8th day of January, 1976  
on the following grounds :-

1. The Honourable Judge erred in law in  
failing to consider that Felixia d/o  
Varnakulasinghe had not shown to the Court  
that she had locus standi in applying to  
set aside the Order of Court approving the  
sale to the Appellant dated the 25th day  
of November, 1974 in that :-

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(a) She had not proved that Elizabeth  
Muttama was ever lawfully married  
and that the said Elizabeth Muttama  
begatted three sons one of whom  
was alleged to be her father.

(b) All evidence that she adduced was  
mere belief based on records and  
correspondence kept by her father  
which is not sufficient in law to  
prove blood relationship.

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(c) The records and correspondence kept by the father were not produced to the Court.

In the  
Federal Court

No.23

Memorandum of  
Appeal of  
Ng Lit Cheng

18th December  
1976

(continued)

10 2. The Honourable Judge erred in law in setting aside the Order of Court dated the 25th day of November, 1974 without considering the proprietary rights of the Appellant in the land held under Grant 953 Lot 368 in the Mukim of Rasah measuring in area 3 acres 3 roods 16 poles.

20 3. The Honourable Judge erred in law in failing to consider that upon the making and perfecting of the Order of Court dated the 25th day of November, 1974 approving the sale of the said land to the Appellant the Appellant's rights in the land crystalized and the applicant E.P.E. Ananda thereafter held the land in trust for him. The Honourable Judge ought to have held that such proprietary rights could not be taken away on the application filed by Felixia d/o Varnakulasinghe except by way of a fresh suit instituted for that purpose.

4. The Honourable Judge erred in fact in failing to hold that the Appellant was a bona fide purchaser for value without Notice of the equity, if any of Felixia d/o Varnakulasinghe.

30 5. The Honourable Judge failed to consider that the Appellant had expended a great deal of money in improving the land before and after the Order of Court dated the 25th day of November, 1974.

6. The Honourable Judge erred in holding that the prior offer of \$56,250.00 was a material fact and ought to have been disclosed by E.P.E. Ananda.

40 7. The Honourable Judge erred in holding that the valuation report of Tunku Mohamed Jamil was relevant and material and the non-production of it was serious enough to merit the Order of Court dated 25th day of November, 1974 being set aside.

Wherefore the Appellant prays that the Appeal be allowed.

Dated this 18th day of December, 1976.

Sd:  
Appellant's Solicitors

In the Federal  
Court

No.24  
Judgment of  
Gill, C.J.  
F.C.C.A. No.19  
of 1976  
7th July 1977

No. 24

JUDGMENT OF GILL, C.J.  
F.C.C.A. No.19 of 1976

THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: 19 of 1976

Between

Ng Lit Cheng @ Ng Yam Chee  
and

1. Felixia d/o Varnakulasinghe 10  
(Applicant in Notice of Motion  
dated 7th February, 1975)
2. Joseph Jacob David also  
known as Jacob Joseph Respondents

In the matter of Seremban High  
Court Originating Summons No.  
79 of 1974

In the matter of the Estate  
of John David, deceased

and 20

In the matter of Seremban  
High Court Petition No.  
128 of 1970

and

In the matter of Order 55  
Rule 3(1)(f) of the Rules  
of Supreme Court, 1957

BETWEEN

Joseph Jacob also  
known as Jacob Joseph Applicant 30

AND

1. Ng Lit Cheng @ Ng Yam Chee
2. Gan Khay Beng
3. Bee Chuan Rubber Factory  
Sdn. Bhd. Respondents

CORAM: Gill, Chief Justice, Malaya  
Ong Hock Sum, Judge, Federal  
Court  
Raja Azlan Shah, Judge,  
Federal Court.

JUDGMENT OF GILL, CHIEF JUSTICE

In the  
Federal Court

No.24  
Judgement of  
Gill,C.J.  
F.C.C.A. No.19  
of 1976

7th July 1977

(continued)

10 This is an appeal from an order made by Ajaib Singh J. on 8th January, 1976 setting aside his earlier order of 25th November, 1974 whereby leave was granted to Joseph Jacob David alias Jacob Joseph as the Administrator with will annexed of the Estate of John David deceased to sell and transfer to one Ng Lit Cheng alias Ng Yam Chee for the sum of \$110,000/- the land comprised in Grant 953 for Lot 368 in the Mukim of Rasah, Seremban which was the only property belonging to the said estate. The said Ng Lit Cheng as the purchaser is the appellant in these proceedings.

20 The deceased John David died on 29th June, 1920, having made a will on 13th April, 1920 by which he bequeathed all his property as follows : (a) 5/16 share to his brother Francis Daniel David, (b) 4/16 share to his brother Benjamin David, (c) 3/16 share to his godson Jacob Joseph, (d) 1/32 share to R. Sinnappan brought up in the family, (e) 1/16 share to his sister Elizabeth Muttama, (f) 1/16 share to his wife Mary Beatrice Thangkutti Varnakulasinghe and (g) 3/32 share to Miss Rasamma caretaker and housekeeper.

30 Letters of Administration with will annexed were granted to the Administrator by his attorney Dato Athi Nahappan by the High Court at Seremban on 22nd September, 1970. On 5th August 1974 the Administrator, having earlier discharged his original attorney, appointed one E.P.F.Ananda as his attorney in Malaysia (hereinafter referred to as "the Attorney") by a duly registered power of attorney. On 26th August 1974 the said land was transmitted to the Administrator as  
40 personal representative of the said deceased pursuant to section 346 of the National Land Code 1965. On 2nd September 1974 the Administrator by his Attorney executed an agreement to sell the land to Ng Lik Cheng alias Ng Yam Chee at the price of \$110,000/-.

50 In pursuance of the agreement of 2nd September 1974 the Administrator by his Attorney took out an ex parte originating summons in the High Court at Seremban on 11th November 1974 for leave to transfer the land to the purchaser. The originating summons was supported by a short affidavit of the Attorney exhibiting thereto letters from the beneficiaries of the estate of Francis Daniel David, deceased

In the  
Federal Court

No.24  
Judgment of  
Gill, C.J.  
F.C.C.A. No.19  
of 1976

7th July 1977

(continued)

and the sole beneficiary of the estate of Benjamin David deceased consenting to the proposed sale. The Attorney further stated in his affidavit that the land was a small piece of vacant land producing no income and that the Administrator was unable to administer the land as he resided in Sri Lanka. As I have already stated, the order granting leave to sell was made on 25th November 1974.

10

The application to set aside the order of sale was made by way of notice of motion dated 7th February 1975 in the same proceedings by Felixia d/o Varnakulasinghe (hereinafter referred to as "the Applicant"), who in her affidavit in support of her motion said that she was one of the five children born of Josephine Varnakulasinghe nee Ah Mooi alias Ng Fee Yin and the late Alfred Nicholas Varnakulasinghe, the son of Elizabeth Muttama who was entitled to one-sixth share in the land. Referring to the affidavit of the attorney in support of the order for sale, she stated that both the Administrator and the Attorney ought to have been aware of her late father's interest in the land as the Administrator and her late father were cousins and had often corresponded with each other in relation to the management and sale of the land. In support of this statement she exhibited a copy of letter dated 20th November 1967 purported to have been written by the Administrator to the late Dato Athi Nahappan in which the Administrator had referred to Mr. A.N.V.Singhe of 5 Kasipillay Road, Kuala Lumpur as his cousin who had arranged the sale of the land and in which he had asked Dato Athi Nahappan whether he would act as his attorney to effect the necessary sale. She said that the Administrator and the Attorney ought to have disclosed in the affidavit in support of the originating summons her father's interest and ought to have made her father's beneficiaries parties to the application.

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She also said that it was insufficient for the Attorney merely to have said in the affidavit that the devisees under the will of John David had died leaving no issue; he ought to have satisfied the court as to the steps he had taken to ascertain the beneficiaries of the devisees, their whereabouts, their dates and places of death and the reasons or the basis for the Attorney's

50

belief that the deceased beneficiaries died intestate or died leaving no issue. She further stated that it was not sufficient merely to state the reasons for the sale of the land as it was the duty of the applicant to satisfy the court that it was in the best interest of the devisees and beneficiaries of the estate to sell the land at the price contracted for by the Attorney.

In the  
Federal Court  
No.24  
Judgment of  
Gill, C.J.  
F.C.C.A. No.19  
of 1976  
7th July 1977  
(continued)

10 She next said that the Attorney ought to have stated whether there were other offers to purchase the land and should have supported the sale price by a qualified valuer's report. In this connection she stated that the previous attorney of the applicant had contracted with one Gan Khay Beng to sell the land at a price to be fixed by a qualified valuer subject to the approval of the court. In support of  
20 this she exhibited to her affidavit two letters dated 17th April, 1974 from Dato Athi Nahappan. She further said that she believed that at the time the Attorney entered into the agreement dated 2nd September, 1974 the land was worth about \$150,000/-. Lastly, she stated that the interests of some of the devisees would under the law pass to the Crown as bona vacantia so that the Crown should have been made a party to the Originating Summons.

30 In opposing the notice of motion to have the order of sale set aside, the Attorney filed an affidavit dated 1st April, 1975 the contents of which may be summarised as follows. He was prepared to admit for the purpose of these proceedings that Felixia was the daughter of one of the three sons of Elizabeth Muttama, although neither he nor his principal had any knowledge of it until it became known to them when she filed her affidavit. Her late father was known to his principal as a beneficiary.  
40 He had personally called at the address of the applicant's late father, but no member of the family was then residing at that address and no person living there could give any information as to the family's whereabouts. As administrator of the estate his principal was responsible for distributing to the persons beneficially entitled thereto their respective shares in the estate of the deceased. Before such distribution he would advertise for claimants to and creditors  
50 of the deceased's estate, after which the claims of those establishing their legal title to them would be paid and any unclaimed money would be deposited in court until a claim to them was established. His principal could not simply appropriate the whole money. The Applicant's contentions were based upon the mistaken

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view that the present proceedings were proceedings for the distribution of the estate. They were merely proceedings to obtain leave to convert immovable property belonging to the estate into money for the purpose of subsequent distribution. It was in the best interests of the devisees and beneficiaries that the land should be sold as it produced no income and outgoings had to be met. One Gan Khay Beng made an offer to purchase the land at a price of \$15,000/- per acre making a total of \$56,250/- for the whole land. As this was much below the contracted price he saw no point in disclosing it in his affidavit in support of the application for the order of sale. As regards the sale price of the land, he had obtained a certificate from Tunku Mohamed Jamil bin Tunku Besar Burhanudin, a first class appraiser, who had valued the land at \$75,000/-. He did not produce the certificate in court as the contract price was far in excess of that valuation and because all the known beneficiaries of the estate had consented in writing to sell all the land at the contracted price.

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As regards the alleged contract with Gan Khay Beng, the Attorney said that neither he nor his principal had any knowledge of it. He denied that the value of the land at the material time was \$150,000/-. The applicant's interest in the estate as one of her father's five children gave her 1/240 share in the land, so that he desire could not possibly prevail over the desires of the known beneficiaries who were entitled to 12/16 share of the estate. The applicant herself had stated in her affidavit that she was not opposed to the sale. Assuming that the land was sold at \$150,000/- her share would be \$629/17 as opposed to \$458/33 if the land were sold at \$110,000/-, a difference of \$170/84 which was a trifling sum.

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On 11th September 1971 the purchaser Ng Lit Cheng alias Ng Yam Chee applied to intervene in the proceedings as a respondent so that he might be given an opportunity to oppose Felixia's application. By an order dated 20th September 1975 he was added as a respondent. He filed an affidavit to say that he carried out negotiations for the purchase of the land with the attorney in August 1974, that a formal agreement was executed on 2nd September 1974, that he made

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an initial deposit of \$25,000/- on signing the agreement and that he spent a further sum of approximately \$18,000/- in having the land surveyed and developed.

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10 Gan Khay Beng and Bee Chuan Rubber Sdn. Berhad were also allowed to intervene in the proceedings and added as second and third respondents to the proceedings Gan Khay Beng filed an affidavit wherein he stated that the previous attorney of the administrator, the late Dato Athi Nahappan, had made a written offer to him and the company of which he was the managing director, granting them first preference to buy the land. The letter, a copy of which was exhibited to the affidavit, reads as follows :

" 15th April, 1974

20 Mr. Gan Khay Beng,  
Messrs. Bee Chuan Rubber Factory  
Sdn. Bhd.,  
No.46 Jalan Tunku Hassan,  
Seremban.

Dear Sir,

re: Estate of John David (deceased)  
Land held under Grant for Land  
No.953 for Lot No.368 in the  
Mukim of Rasah, District of Seremban

30 We are writing this on the instructions of Dato Athi Nahappan, Attorney of the Administrator of the above Estate.

We have instructions to confirm the earlier oral permission given to you by our client that you could at your own cost clear, fill, construct road, drainage, retention walls and connect water and electricity supply through the aforesaid land.

40 In consideration of the development of the aforesaid land as stated above and of the consequent improved value thereof we further confirm that our client had agreed to give you first preference to purchase the aforesaid land subject to the price of the aforesaid land being valued by a qualified valuer and subject to the approval of the sale in your favour by the Court.

We also confirm that as soon as the issue document of title to the aforesaid land is obtained an agreement for the sale thereof will be made with you subject to the above conditions."

He said that he and the company had expended a



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large sum of money in developing the land in anticipation of and in consideration of being granted the first preference to buy the land, so that they had acquired an equitable interest in the land.

He also said that the order of sale dated 25th November 1974 was bad in law and irregular because (a) their prior proprietary interest was not disclosed to the court by the Attorney, (b) no proper valuation was obtained or put before the court, (c) the sale price of \$110,000/- was far below the market price and (d) the administrator and his attorney were at all times fully aware of the undertaking given by the previous attorney. He further said that on 10th December 1974 he forwarded a cheque for \$15,000/- representing 10% of the price of the land as valued by a qualified valuer named Francis A. Marsh, a copy of such report being exhibited to the affidavit.

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The Attorney was cross-examined on his affidavit. In the course of his cross-examination he denied that his principal had ever told him about Gan Khay Beng being interested in the land, but he agreed that Gan Khay Beng had lodged a caveat against the land on 9th October 1974, a notice of which was sent to him before the order of sale was made and that Gan Khay Beng had filed Civil Suit No. 45/75 against the estate and the caveat had been extended by order of the court. In answer to a question that his principal was aware that Gan Khay Beng was in occupation of the land, the Attorney said that Mr. Singhe had informed his principal about it by letter dated 15th August 1968 in which he had further said that he had written to Gan Khay Beng to quit the land. He further said that Mr. Singhe had also written to Dato Athi Nahappan informing him of the trespass on the land and requesting him to ask Gan Khay Beng to quit the land.

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The Applicant was also cross examined on her affidavit. She said she was not objecting to the land being sold but only objecting to the price. She said her father's share would be 1/3 of 1/16 as the figure of 1/6 in her affidavit was wrong. As her mother was still alive she also would get her share and she herself would get her share as the eldest of the five children of her parents. When told that

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her share would be \$305/50 if the land was sold at \$110,000/- and \$419/04 if it was sold for \$150,000/-, she said that she had worked out her share at about \$2,000/-.

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10 The Attorney filed yet another affidavit dated 2nd January 1976 in which he denied that Dato Athi Nahappan ever made an offer to sell the land as alleged by Felixia, and stated that even assuming that the offer was made its validity in law was contested on the ground that the power of attorney granted to Dato Athi Nahappan gave him no authority to sell the land. He also denied that there had been any equitable interest in favour of Gan Khay Beng or the Company. The caveat by Gan Khay Beng was lodged on 9th October 1974 about which he was formally informed by the land office on 9th November 1974, but on the date of the order of sale he had no knowledge of the alleged contract between Dato Athi Nahappan and Gan Khay Beng. He further denied that on the date of the order the value of the land was below the market price. And he lastly stated that his principal was not opposed to the early disposal of all outstanding issues involving all interested parties and would not oppose a consolidation of the hearing of the Applicant's application with the hearing of Civil Suit No.45 of 1975.

20 I would pause here to observe that this offer by the Attorney for the consolidation of Felixia's application with the Civil Suit should have been seriously considered by the learned Judge before he decided to set aside the order of sale. The alternative perhaps was for the Civil Suit to be heard first and Felixia's application to be disposed of later, so that the question of priority of the right, if any, of Gan Khay Beng under the alleged contract over the right of Ng Lit Cheng under his duly executed contract could have been adjudicated upon. In the final analysis it was perhaps desirable for the question of priority of the alleged equitable interest of Gan Khay Beng in the land over that of Ng Lit Cheng under his contract with the Administrator, which had in fact been approved by the Court, to be decided upon.

40 It is to be observed that the first prayer in the Civil Suit is for the sale to be set aside.

50 In the event, however, the learned Judge chose to set aside his own order. I think it would be desirable for me to set out in full

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the learned Judge's reasons for making that order, instead of paraphrasing them. This is what the learned Judge has stated in his grounds of judgment.

" I was satisfied from the evidence before me that the applicant thought his attorney had failed to bring to the notice of the court all the material and relevant facts. The present attorney ought to have known through his principal that a prior offer for the sale of land had existed but this fact was not disclosed to the court. At any rate the applicant knew about this offer and it was his duty to bring this to the notice of the court. Also no valuation of the land was produced before the court although one existed which was that of Tunku Mohamed Jamil. The reason for not disclosing this valuation was that it was less than that of the purchase price of \$110,000 and therefore the attorney saw no need to disclose the valuation of Tunku Mohamed Jamil. This cannot be accepted as a valid reason. It was incumbent upon the attorney to disclose the valuation report to the court whether it was more or less than the contracted price. The attorney had denied any knowledge of a prior offer to sell the land to one Gan Khay Beng but he admitted that he was aware of a caveat on the land before he himself obtained the order for sale. The caveat was lodged on 9th October 1974 and the notification thereof by the Land Office was served on the attorney on 9th November 1974. This should have put the attorney on inquiring as to the extent of the caveator's interest in the land and he should have disclosed this fact to the court before obtaining the order for the sale of the land. The attorney also admitted that he was aware that Gan Khay Beng was in occupation of the land and that he had in fact written to him about this. The attorney also agreed that Gan Khay Beng had made an offer to purchase the land at \$15,000 per acre representing \$56,250 but as this price was so much below the contracted price for sale he saw no point in disclosing this to the court. This offer to purchase by Gan Khay Beng should have been disclosed to the court for then upon learning that a sum of \$56,250 had been offered some time previously the

court would most certainly have enquired as to the present value of the land when the order for sale was made.

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10 With regard to the beneficiaries also I came to the conclusion that the attorney made no real attempts to locate all the beneficiaries to the estate and particularly in the case of Elizabeth Muttama he failed to disclose that there were other beneficiaries of Elizabeth Muttama although on his own admission he said that he knew that she had three sons.

20 In all the circumstances of this case I was of the view that the attorney's application was not made in good faith and that he had failed to disclose all the material and relevant particulars as to the value of the land and as to the beneficiaries of the estate. I was of the view therefore that this was a fit and proper case where I ought to set aside the order of sale made on 25th November 1974. As attorney it was E.P.F. Ananda's duty to see that he carried out his powers in the best interests of the estate and of the beneficiaries. Having known material facts of this case as to the value of the land and the beneficiaries involved and not disclosing the same to the court he was clearly negligent in his conduct as an attorney and I ordered the costs of the proceedings to be paid personally by him. There was no reason why on account of the defaults of the attorney the estate or the beneficiaries should be punished by way of costs.

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40 With regard to the position of Ng Lit Cheng @ Ng Yam Chee who was made a respondent in the originating summons all that can be said is that his remedy might well lie in damages against the Attorney and/or the applicant."

I regret to say, with all respect to the learned Judge, that even without considering the grounds on which this appeal has been brought I find myself in complete disagreement with his reasoning.

50 To take first the question of the Attorney making no real attempts to locate all the beneficiaries of the estate, the attorney stated in his affidavit that he was informed and verily believed that Mary Beatrice Thankutti

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Varnakulasinghe and Miss Rasamah had died intestate leaving no issues, and that R. Sinnappan and Elizabeth Muttama had died intestate and their beneficiaries were not known to him. He further said that Jacob Joseph, the Administrator, was the sole surviving beneficiary from amongst the beneficiaries named under the will. He also said that at no time had his principal or himself even attempted to suggest that Elizabeth Muttama left no heirs or to suggest that her heirs had no interest in the land. He further said that as regards the applicant, her late father was known to his principal as being a beneficiary but he had died in 1970 before the originating summons for the sale of the land was filed. He had personally called at No.5 Jalan Kasipillay, Kuala Lumpur, the last known address of the applicant's father, but no member of the family was then residing at that address and there was no person living there who could give any information as to the family's whereabouts.

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It is to be observed that the beneficiaries of the deceased estate entitled to 12/16 share of the estate had signed letters of consent for the land to be sold at \$110,000/-. With respect, what the learned Judge apparently overlooked was the fact that the application by the administrator was for the sale of the only asset belonging to the estate and not for distribution of the estate which is an entirely different matter. As the Attorney stated in his affidavit in opposing the application for the setting aside of the order of sale, the question of ascertaining the whereabouts of the beneficiaries would only arise when the time came for the estate to be distributed and that in the event of any of the beneficiaries being untraced their shares would be deposited in court.

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I do not think there is any stringent rule of law or procedure that all beneficiaries must be served, especially if they are descendants of the beneficiaries named in the will and their whereabouts are unknown, when an application is made to court for leave to convert land into money for purposes of distribution. The applicant Felixia after all is entitled to only 1/360th share in the estate which at its highest value comes to nothing more than \$400/-. In my judgment it was unjust to

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set aside the order on her application in view of the fact that the purchaser had made a deposit of \$25,000/- even before the order had been perfected.

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As regards the failure of the Attorney to disclose the offer made by Gan Khay Beng to purchase the land for \$56,250/- I do not see how such non-disclosure was either relevant or material. The offer was a little more than half the price which the appellant agreed to pay. This offer was made not long before the order for sale was applied for. It came from a man who after the order for sale had been made and perfected, came along with an offer of \$150,000/-. It is true that he produced a valuer's certificate but obviously he obtained this certificate solely for the purpose of these proceedings in an attempt to get the land at any price, as he had been making use of the land, as a trespasser according to the administrator and his Attorney, but by virtue of an alleged contract according to his contention. The court was here faced on the one hand with the claim of a purchaser who had paid a deposit and had had his contract approved by the court and a man who relied on some sort of undertaking allegedly given to him by the previous attorney of the administrator for sale of the land to him. Whether this previous attorney had the power to give an undertaking or to enter into any contract for sale of the land was gravely in doubt. At any rate, even assuming that there was this so-called contract, at the highest it was no more than an undertaking to enter into a conditional contract.

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The land in question was valued by Tunku Mohamed Jamil at \$75,000/-- on 29th August 1974. The contract for the sale of the land to the appellant was entered into five days later. The application to the court for the order of sale was made on 11th November, 1974. In the circumstances can it be said that the non-disclosure of the valuation certificate was in any way material. I do not think so, considering the fact that the land was agreed to be sold at \$35,000.00 more than the amount at which it was valued by a first class appraiser only five days earlier. Clearly the Attorney had no personal interest in the matter. In all the circumstances of the case I do not think I can agree with the learned Judge's view that the Attorney's application was not made in good faith.

In view of what I have stated above I do

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(continued)

not think it necessary to consider in detail the grounds on which the purchaser as appellant has brought this appeal. The order setting aside the sale was made on the application of Felixia whom I have referred to so far as the applicant, but she has been cited as the first respondent to this appeal and the administrator had been cited as the second respondent.

One of the grounds of appeal is that the learned Judge erred in fact in failing to hold that the appellant was bona fide purchaser for value without notice of any equity in the land. I think there is considerable merit in this ground. It is also to be remembered that the appellant had paid the deposit of \$25,000/- even before the order of sale was approved and his story that he had expended a great deal of money in improving the land before and after the order of sale was not challenged. I am also inclined to agree with the contention on behalf of the appellant that upon the approval by the court of the sale agreement the appellant's rights in the land crystallised and that the administrator thereafter held the land in trust for him. It was further contended on behalf of the appellant that the proprietary rights which he had thus acquired could not be taken away except by way of a fresh suit instituted for that purpose. Gan Khay Beng and Bee Chuan Rubber Factory Sendirian Berhad, who were allowed to intervene in the proceedings, had in fact filed a civil suit for that purpose before the order setting aside the sale was made. I am therefore of the opinion that the order appealed from should not have been made pending the trial of that civil suit.

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Gan Khay Beng and Bee Chuan are not parties to these proceedings. Counsel for the first respondent to this appeal handed in written submissions. I do not think I need consider such submissions in detail. The two authorities relied upon by counsel for the respondent are the cases of Che Ah and Che Yang Kelsom v. Che Ahmad <sup>(1)</sup> and Haji Saud v. Haji Ahmad & Anor. <sup>(2)</sup> In the first case it was held that it was not for the court to consider the interest of the purchaser who should be well aware of the risks he runs in entering into a conditional contract. In the second case it was held that an administrator can enter into an agreement for the sale of immoveable

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10 property but the agreement is unenforceable unless the permission of (1) (1941) M.L.T. 126 (2) (1957) M.L.J. 50 the court is obtained. I do not think these cases are relevant in this case because they speak of the position of a purchaser before the court has made the order. There must be a clear distinction between the position of a potential purchaser from the estate of an  
10 intestate deceased whose contract can only be conditional until the court approves the sale and the position of a purchaser whose contract has already been confirmed by a court order.

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20 I need hardly say that the intervention by Gan Khay Beng and Bee Chuan Rubber Factory Sendirian Berhad in the proceedings for the setting aside of the sale would by itself have been of no consequence. I am therefore compelled to say that the learned Judge  
20 misdirected himself in taking into consideration the non-disclosure by the Attorney of their offer to purchase the land at \$56,250/- and their alleged contract with the previous attorney for the setting aside the order of sale. I must assume that the only ground on which the order of sale could have been  
30 possibly set aside was that the originating summons was not served on Felixia. It is to be observed that she herself produced no evidence whatsoever as to the value of the land being higher than \$110,000/-. The offer of a much higher price by Gan Khay Beng after the order of sale had been passed and perfected was wholly irrelevant. (See In re Bartlett  
30 1880-1 16 Ch. D. 561).

40 In Ganapathy Chettiar v. Periakaruppan Chettiar & Anor. (3) Lord Radcliffe in delivering the judgment of their Lordships of the Privy Council said :

"A breach of the rules affecting service  
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of parties does not automatically render  
(3) (1962) M.L.J. 207, 211.

void an order made in the proceedings in which it occurs and it is necessary for the Court subsequently passing upon it to consider the circumstances and consequences to which it relates. "

50 Bearing that principle in mind and having regard to the circumstances of this case and the consequences of the order appealed from, I am of the opinion that the order of sale was wrongly set aside. I would therefore allow this appeal



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(continued)

setting aside the order appealed from the restoring the order of sale. The first respondent must pay the appellant's costs of this appeal. She must also pay the costs of the second respondent who is but a nominal party to these proceedings and has not contested the appeal.

As regard the order of costs made in the court below there is a separate appeal, being appeal No.48 of 1976. They will therefore be considered separately in determining that appeal.

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SGD.  
S.S. GILL  
CHIEF JUSTICE  
MALAYA

Kuala Lumpur,  
7th July, 1977.

Tan Sri Ong Hock Sim and Tan Sri Raja  
Azlan Shah Federal Judges concurred.

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Encik Stanley Ponniah with Encik S.F.Leow  
for the appellant.

Solicitors: M/s Stanley Ponniah, Ng & Soo.

Encil Thambiah for the first respondent,  
Solicitors: M/s Chellappah Thambiah.

Encik John Chia for second respondent  
Solicitors: M/s Chen & Chia.

TRUE COPY  
G.E. TAN  
SECRETARY/CHIEF JUSTICE  
HIGH COURT  
MALAYA.

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No. 25  
ORDER, F.C.C.A. No.19  
of 1976

In the  
Federal Court  
No.25  
Order, F.C.C.A.  
No.19 of 1976  
7th July 1977

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: 19 OF 1976

Between

Ng Lit Cheng @ Ng Yam Chee Appellant

10 And

1. Felixia d/o Varnakulasinghe  
(Applicant in Notice of Motion  
dated 7th February, 1975)

2. Joseph Jacob David also  
known as Jacob Joseph Respondents

(In the Matter of Seremban High Court Originating  
Summons No.79 of 1974

In the matter of the Estate  
of John David, deceased

20

and

In the matter of Seremban  
High Court Petition No.  
128 of 1970

and

In the matter of Order 55  
Rule 3(1)(f) of the Rules  
of Supreme Court 1957)

BETWEEN

30 Joseph Jacob David also  
known as Jacob Joseph Applicant

AND

1. Ng Lit Cheng @ Ng Yam Chee  
2. Gan Khay Beng  
3. Bee Chuan Rubber Factory  
Sdn. Bhd.

Respondents

CORAM: GILL, CHIEF JUSTICE, HIGH COURT IN MALAYA  
ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA  
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT, MALAYSIA

In the  
Federal Court

No.25  
Order, F.C.C.A.  
No.19 of 1976

7th July 1977  
(continued)

IN OPEN COURT

THIS 7TH DAY OF JULY, 1977

O R D E R

THIS APPEAL coming on for hearing on the 26th day of May, 1977 before Encik Stanley Ponniah (Encik Leow Shin Fong with him) of Counsel for the Appellant Encik Chellappah Thambiah of Counsel for the First Respondent and Encik John Chia of Counsel for the Second Respondent AND UPON READING the Record of Appeal AND UPON HEARING Counsel as aforesaid.

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IT WAS ORDERED that this Appeal do stand adjourned for Judgment AND the same coming on for judgment this day in the presence of Counsel as aforesaid.

IT IS ORDERED that the Appeal be and is hereby allowed AND IT IS ALSO ORDERED that the Order of the High Court, Seremban dated the 8th day of January, 1976 in Originating Summons No.79 of 1974 be and is hereby set aside and that the Order of Sale dated the 25th day of November, 1974 in the same proceedings be and is hereby restored AND IT IS FURTHER ORDERED that the costs of this appeal and in the Court below be taxed and paid by the First Respondent Felixia d/o Varnakulasinghe to the Appellant and the Second Respondent AND IT IS LASTLY ORDERED that the deposit of \$500/- (Dollars five hundred only) be refunded to the Appellant.

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GIVEN UNDER my hand and seal of the Court this 7th day of July, 1977.

SGD.  
CHIEF REGISTRAR  
FEDERAL COURT, MALAYSIA

This Order is filed by Messrs. STANLEY PONNIAH, NG & SOO, Solicitors for the Appellant abovenamed, whose address for service is at No.30, Jalan Tunku Hassan, Seremban.

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IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 48 of 1976

Between

E.P.E. Ananda ... Appellant

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And

- 1. Felixia Vernakulasinghe
- 2. Ng Lit Cheng @ Ng Yam Chee
- 3. Gan Khay Beng
- 4. Bee Chuan Rubber Factory Sdn.  
Bhd. Respondents

(In the matter of Seremban  
High Court Originating  
Summons No.79 of 1974

Between

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Joseph Jacob David also  
known as Jacob Joseph Applicant

And

- 1. Felixia Varnakulasinghe
- 2. Ng Lit Cheng @ Ng Yam Chee
- 3. Gan Khay Beng
- 4. Bee Chuan Rubber Factory  
Sdn. Bhd. Respondents)

Coram: Gill, Chief Justice, Malaya  
Ong Hock Sim, Judge, Federal Court  
Raja Azlan Shah, Judge, Federal Court.

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JUDGMENT OF GILL, CHIEF JUSTICE

This appeal is connected with Civil Appeal  
No. 19 of 1976 to this court. That was an  
appeal from an order of Ajaib Singh J. dated  
18th January 1976 setting aside his earlier  
order of 25th November 1974 whereby leave was  
granted for the sale to the second respondent  
to this appeal of land belonging to the estate  
of John David deceased. The application for sale  
was made by the appellant as the attorney of the

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In the  
Federal Court

No.26  
Judgment of  
Gill, C.J.  
F.C.C.A. No.48  
of 1976

7th July 1977

(continued)

administrator of the estate of Joseph Jacob David @ Jacob Joseph. The order to set aside the sale was made on the application of the first respondent to this appeal as the grand-daughter of Elizabeth Muttama who was entitled to 1/16th share under the deceased's will. The third and fourth respondents to this appeal had intervened in the proceedings to support the application of the first respondent.

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This appeal is confined to the order which the learned Judge made as regards the costs of and incidental to the application made by the first respondent for the setting aside of the order of sale. The order appealed from is that the costs be taxed and paid personally by E.P.E.Ananda, the attorney of Joseph Jacob David to Felixia daughter of Varnakulasinghe, Gan Khay Beng and Bee Chuan Rubber Factory Sendirian Berhad, and that Ng Lit Cheng @ Ng Yam Chee do pay costs of the proceedings from the date of his having been made a party to the proceedings to Felixia d/o Varnakulasinghe.

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The appeal is made on numerous grounds, the main ground being that the learned Judge was wrong in law in ordering the appellant personally to pay the costs as he was the attorney and consequently the agent of a disclosed principal and was not even the administrator of the estate of the deceased.

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As we have allowed appeal No.19 of 1976 with costs I do not think it is necessary for me to consider any of the grounds in support of this appeal. Even if the other appeal was dismissed the order of costs personally against the present appellant could not possibly stand on the one ground of appeal which I have referred to in the last paragraph. As it is, the other appeal having been allowed, I can see no alternative but that this appeal should also be allowed.

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I would therefore set aside the order appealed from and substitute in its place an order that the first respondent, who was the applicant in the court below, and the third and fourth respondents, who had intervened to support the first respondent's application, do pay the costs of the appellant and of the second respondent who certainly

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had a better right to intervene in the proceedings than the third and fourth respondents. The first, third and fourth respondents must also pay the costs of the appellant and the second respondent in so far as this appeal is concerned.

S.S. GILL  
CHIEF JUSTICE  
MALAYA

In the  
Federal Court

No.26  
Judgment of  
Gill, C.J.  
F.C.C.A.No.48  
of 1976

7th July 1977  
(continued)

10 Kuala Lumpur,  
7th July 1977

Tan Sri Ong Hock Sim and Tan Sri Raja Azlan Shah, Federal Judges, concurred.

Mr. S.D.K.Peddie for the Appellant.  
Solicitors: Messrs. Skrine & Co.

En. C.Thambiah for 1st Respondent,  
Solicitors: Messrs. Chellappah Thambiah.

Encik Stanley Ponniah for 2nd Respondent.  
Solicitors; Messrs. Stanley Ponniah, Ng & Soo

20 Encik Sydney Augustine for 3rd & 4th Respondents  
Solicitors: Messrs. Augustine-Negrin & Co.

In the  
Federal Court  
No.27  
Order F.C.C.A.  
No.48 of 1976  
dated  
7th July 1977

No. 27  
IN THE FEDERAL COURT  
ORDER F.C.C.A. No.48 of  
1976 dated 7th July 1977

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR  
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL No. 48 OF 1976

BETWEEN

E.P.E. Ananda Appellant 10

AND

1. Felixia Varnakulasinghe  
2. Ng Lit Cheng @ Ng Yam Chee  
3. Gan Khay Beng  
4. Bee Chuan Rubber Factory  
Sdn. Bhd. Respondents

(In the matter of Seremban  
High Court Originating  
Summons No. 79 of 1974

Between 20

Joseph Jacob David  
also known as Jacob  
Joseph Applicant

And

1. Felixia Varnakulasinghe  
2. Ng Lit Cheng @  
Ng Yam Chee  
3. Gan Khay Beng  
4. Bee Chuan Rubber  
Factory Sdn. Bhd. Respondents 30

CORAM: GILL, CHIEF JUSTICE, HIGH COURT,  
MALAYA. ONG HOCK SIM, JUDGE, FEDERAL  
COURT, MALAYSIA, RAJA ASLAN SHAH,  
JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT.

THIS 7TH DAY OF JULY, 1977.

O R D E R.

THIS APPEAL coming on for hearing on the 26th day of  
1977 in the presence of Mr.S.D.K.Peddie of Counsel

40

10 for the Appellant, Mr. C.Thambiah of Counsel  
for the 1st Respondent, Mr. S. Ponniah of  
Counsel for the 2nd Respondent and Mr. Sidney  
Augustin of Counsel for the 3rd and 4th  
Respondents AND UPON READING the Record of  
Appeal AND UPON HEARING the submissions of  
Counsel as aforesaid IT WAS ORDERED that the  
Appeal do stand adjourned for Judgment AND  
the same coming on for Judgment on this day  
in the presence of Mr. T. Thomas of Counsel  
for the Appellant, Mr. C. Thambiah of Counsel  
for the 1st Respondent and also mentioning  
on behalf of Counsel for the 3rd and 4th  
Respondents and Mr. S. Ponniah of Counsel for  
the 2nd Respondent IT IS ORDERED that this  
Appeal be and is hereby allowed AND IT IS  
20 ORDERED that the Order of Costs in the Court  
below is set aside and there is substituted  
in its place an Order that the 1st, 3rd and  
4th Respondents do pay to the Appellant and  
the 2nd Respondent the costs in the Court  
below AND IT IS FURTHER ORDERED that the  
1st, 3rd and 4th Respondents do pay to the  
Appellant and the 2nd Respondent the costs in  
this appeal AND IT IS LASTLY ORDERED that  
the sum of \$500/- (Ringgit Five Hundred)  
paid in Court by the Appellant as security  
for the costs of the Appeal be refunded to  
the Appellant.

30 GIVEN under my hand and the Seal of the  
Court this 7th day of July, 1977.

SGD.  
CHIEF REGISTRAR,  
FEDERAL COURT, MALAYSIA.

In the  
Federal Court  
No.27  
Order F.C.C.A.  
No.48 of 1976  
dated  
7th July 1977  
(continued)



In the  
Federal Court

No. 28

No.28  
Notice of  
Motion of Gan  
Khay Beng and  
Another for  
Conditional  
Leave to Appeal  
18th October  
1977

NOTICE OF MOTION OF GAN  
KHAY BENG AND ANOTHER FOR  
CONDITIONAL LEAVE TO APPEAL

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.19 AND 48  
OF 1976

BETWEEN

10

1. Gan Khay Beng
2. Bee Chuan Rubber Factory  
Sdn. Bhd.

Applicants

AND

1. Ng Lit Cheng @ Ng Yam Chee
2. Joseph Jacob David also  
known as Jacob Joseph as  
Administrator with the Will  
annexed of the estate of  
. John David, deceased
3. E.P.E. Ananda
4. Felixia d/o Varnakulasinghe

20

Respondents

(In the matter of Federal Court  
Civil Appeal No.19 of 1976

Between

Ng Lit Cheng @ Ng Yam  
Chee

Appellant

And

1. Felixia d/o Varnakula-  
singhe
2. Joseph Jacob David also  
known as Jacob Joseph

30

Respondents

(In the matter of Seremban High  
Court Originating Summons No.79  
of 1974

In the matter of the Estate  
of John David, deceased

and

In the matter of Seremban  
High Court Petition No.  
128 of 1970

40

and  
In the matter of Order 55  
Rule 3(1)(f) of the Rules  
of the Supreme Court, 1957  
Dated this 17th day of August  
1977

Sgd: Sen.Asst. Registrar  
Federal Court Malaysia  
Kuala Lumpur

In the  
Federal Court

No.28  
Notice of  
Motion of Gan  
Khay Beng and  
Another for  
Conditional  
Leave to  
Appeal

10

Between

Joseph Jacob David also  
known as Jacob Joseph Applicant

18th October  
1977

(continued)

and

1. Ng Lit Cheng @  
Ng Yam Chee
2. Gan Khay Beng
3. Bee Chuan Rubber  
Factory Sdn.Bhd. Respondents

NOTICE OF MOTION

20

TAKE NOTICE that the Court will be moved 9.30 o'clock in the forenoon on Monday the 14th day of November, 1977 or so soon thereafter as Counsel can be heard, by Counsel for Gan Khay Beng and Bee Chuan Rubber Factory Sdn. Bhd., the Applicants abovenamed for an Order :-

30

(a) that conditional leave be granted to the Applicants abovenamed to appeal to His Majesty the Yang Dipertuan Agung against the two judgments and Orders of the Federal Court of Malaysia dated the 7th day of July 1977 allowing Federal Court Civil Appeals Nos. 19 and 48 of 1976 against the Order of the High Court in Malaya at Seremban dated the 8th day of January, 1976 and restoring the Order of the High Court in Malaya at Seremban dated the 25th day of November, 1974;

40

(b) that execution of the said Orders of the Federal Court of Malaysia dated the 7th day of July, 1977 and of the said Order of the High Court in Malaya at Seremban dated the 25th day of November, 1974 stayed pending the appeal to His Majesty the Yang Dipertuan Agung;

(c) that the costs of these proceedings be costs in the cause;

(d) for liberty to apply; and

(e) for such other and further relief as this

In the  
Federal Court

No.28  
Notice of  
Motion of Gan  
Khay Beng and  
Another for  
Conditional  
Leave to Appeal  
18th October  
1977  
(continued)

Honourable Court may deem fit.

Sd Augustin-Negrin & Co.  
Solicitors for Applicants

Dated at Kuala Lumpur this 18th day  
of October, 1977

Sd:

Chief Registrar,  
Federal Court of Malaysia

This Notice of Motion is taken out on  
behalf of the Applicants abovenamed by  
their Solicitors Messrs. Augustin-Negrin &  
Co., whose address for service is Room  
209, Lee Yan Lian Building (2nd Floor)  
Jalan Tun Perak, Kuala Lumpur.

10

This Notice of Motion will be supported  
by the Affidavit affirmed to by Gan Khay  
Beng on the 17th day of August, 1977 and  
filed herein.

To: (1) Ng Lit Cheng @ Ng Yam Chee  
c/o: his Solicitors,  
Messrs. Stanley Ponniah, Ng & Soo,  
No.30, Jalan Tunku Hassan,  
Seremban, Negri Sembilan.

20

(2) Joseph Jacob David also known  
as Jacob Joseph as Administrator  
with the Will annexed of the  
Estate of John David, deceased.

(3) E.P.F. Ananda  
c/o: Their Solicitors,  
Messrs. Skrine & Co.,  
Straits Trading Building,  
No.4, Leboh Pasar Besar,  
Kuala Lumpur.

30

(4) Felixia d/o Varnakulasinghe,  
c/o: her Solicitors,  
Messrs. Chellappah Thambiah & Co.,  
Bangunan Persatuan Yap Selangor,  
No.102, Jalan Bandar,  
Kuala Lumpur.

No. 29

NOTICE OF MOTION OF  
FELIXIA d/o VARNAKULASINGHE  
FOR CONDITIONAL LEAVE TO  
APPEAL

In the  
Federal Court

No.29  
Notice of  
Motion of  
Felixia d/o  
Varnakulasinghe  
for Conditional  
Leave to  
Appeal  
18th October  
1977

IN THE FEDERAL COURT OF MALAYSIA HOLDEN  
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

10 FEDERAL COURT CIVIL APPEAL NOS.19 AND 48  
OF 1976

BETWEEN

Felixia d/o Varnakulasinghe Applicant

AND

1. Ng Lit Cheng @ Ng Yam Chee  
2. Joseph Jacob David also known  
as Jacob Joseph as Administrator  
with the Will annexed of the  
Estate of John David deceased  
3. E.P.E. Ananda  
20 4. Gan Khay Beng  
5. Bee Chuan Rubber Factory  
Sdn. Bhd. Respondents

(In the matter of Federal Court  
Civil Appeal No.19 of 1976

BETWEEN

Ng Lit Cheng @ Ng Yam Chee Appellant

AND

1. Felixia d/o Varnakulasinghe  
2. Joseph Jacob David also  
30 known as Jacob Joseph Respondents)

(In the matter of Seremban High  
Court Originating Summons No.79  
of 1974

In the matter of the Estate  
of John David, deceased

and

In the matter of Seremban  
High Court Petition No.128  
of 1970

In the  
Federal Court

No.29  
Notice of Motion  
of Felixia d/o  
Varnakulasinghe  
for Conditional  
Leave to Appeal  
18th October  
1977  
(continued)

and

In the matter of Order 55 Rule  
3(1)(f) of the Rules of the  
Supreme Court, 1957

Between

Joseph Jacob David also  
known as Jacob Joseph Applicant

And

1. Ng Lit Cheng @ Ng Yam Chee
2. Gan Khay Beng
3. Bee Chuan Rubber Factory  
Sdn. Bhd. Respondents)

10

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved at 9.30 o'clock in the Forenoon on 14th day of November 1977, or so soon thereafter as counsel can be heard, by counsel for Felixia d/o Varnakulasinghe the Applicant abovenamed for an Order :-

(a) that conditional leave be granted to the Applicant abovenamed to appeal to His Majesty the Yang Dipertuan Agung against the two judgments and the two Orders of the Federal Court of Malaysia dated the 7th day of July 1977 allowing Federal Court Civil Appeals Nos. 19 and 48 of 1976 against the Order of the High Court in Malaya at Seremban dated the 8th day of January 1976 and restoring the Order of the High Court in Malaya at Seremban dated the 25th day of November 1974;

20

30

(b) that execution of the said Orders of the Federal Court of Malaysia dated the 7th day of July 1977 and of the said Order of the High Court in Malaya at Seremban dated the 25th day of November 1974 be stayed pending the appeal to His Majesty the Yang Dipertuan Agung;

(c) that the costs of the proceedings be costs in the cause;

40

(d) for liberty to apply; and

(e) for such other and further relief as this Honourable Court may deem fit.

Sd: C & C  
Solicitors for Applicant

Dated at Kuala Lumpur this 18th day of  
October, 1977.

Sd: Illegible  
Chief Registrar  
Federal Court of Malaysia.

In the  
Federal Court

No.29  
Notice of  
Motion of  
Felixia d/o  
Varnakula-  
singhe for  
Conditional  
Leave to  
Appeal

18th October  
1977

(continued)

10 This Notice of Motion is taken out on behalf  
of the Applicant abovenamed by her Solicitors  
Messrs. Chellappah Thambiah & Co. whose  
address for service is Bangunan Persatuan Yap  
Selangor (3rd Floor) No.102C, Jalan Bandar,  
Kuala Lumpur.

This Notice of Motion will be supported by  
the Affidavit of Chellappah Thambiah affirmed  
on the 17th day of August 1977 and filed  
herein.

To:-

- 20 1. NgLit Cheng @ Ng Yam Chee  
c/o his Solicitors Messrs.  
Stanley Ponniah, Ng & Soo,  
No.30 Jalan Tunku Hassan,  
Seremban,  
Negeri Sembilan
2. Joseph Jacob David also known  
as Jacob Joseph as Administrator  
with the Will annexed of the  
Estate of John David deceased
- and
- 30 3. E.P.E. Ananda  
c/o their Solicitors Messrs.  
Skrine & Company,  
Straits Trading Building,  
No.4 Leboh Pasar Besar,  
Kuala Lumpur.
4. Gan Khay Beng
- and
- 40 5. Bee Chuan Rubber Factory Sdn.Bhd.  
c/o their solicitors Messrs.  
Augustine-Negrin & Co.,  
Room 209, Lee Yan Lian Building  
(2nd Floor), Jalan Tun Perak,  
Kuala Lumpur.

In the  
Federal Court

No.30  
Order granting  
Final Leave to  
Appeal to H.M.  
the Yang Di-  
pertuan Agung  
13th November  
1978

No. 30

ORDER GRANTING FINAL LEAVE  
TO APPEAL TO H.M. THE  
YANG DIPERTUAN AGUNG

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR  
(APPELLATE JURISDICTION)  
FEDERAL CIVIL APPEALS NOS.19 AND 48 OF 1976

10

BETWEEN

1. Gan Khay Beng
2. Bee Chuan Rubber Factory Sdn. Bhd.
3. Felixia d/o Vernakulasinghe Applicants

AND

1. Ng Lit Cheng @ Ng Yam Chee
2. Joseph Jacob David also known  
as Jacob Joseph as Administrator  
with the Will annexed of the  
estate of John David, deceased
3. E.P.E. Ananda Respondents

20

(In the Matter of Federal Court  
Civil Appeal No.19 of 1976)

Between

Ng Lit Cheng @ Ng Yam Chee Appellant

And

1. Felixia d/o Varnakulasinghe
2. Joseph Jacob David also  
known as Jacob Joseph Respondents

(And in the matter of Federal  
Court Civil Appeal No.48 of  
1976)

30

Between

E.P.E. Ananda Appellant

And

1. Felixia Varnakulasinghe
2. Ng Lit Cheng @ Ng Yam Chee
3. Gan Khay Beng
4. Bee Chuan Rubber Factory Sdn.  
Bhd. Respondents

40

(In the matter of Seremban High Court  
Originating Summons No.79 of 1974)

In the matter of the Estate  
of John David, deceased

and

In the matter of Seremban  
High Court Petition  
No. 128 of 1970

and

50

In the matter of Order  
55 Rule 3(1)(f) of the  
Rules of the Supreme  
Court, 1957

In the  
Federal Court

No. 30

Order granting  
Final Leave to  
Appeal to H.M.  
the Yang Di-  
pertuan Agung

13th November  
1978  
(continued)

Between

10 Joseph Jacob David also  
known as Jacob Joseph

Applicant

And

1. Ng Lit Cheng @ Ng Yam Chee  
2. Gan Khay Beng  
3. Bee Chuan Rubber Factory  
Sdn. Bhd.

Respondents

20 CORAM: RAJA AZLAN SHAH, JUDGE, FEDERAL  
COURT, MALAYSIA  
WAN SULEIMAN, JUDGE, FEDERAL COURT,  
MALAYSIA  
SYED OTHMAN, JUDGE, FEDERAL COURT,  
MALAYSIA

IN OPEN COURT

THIS 13TH DAY OF NOVEMBER, 1978

O R D E R

30 UPON MOTION made unto Court this day  
by Mr. V.K.Palasantharam (Mr. Sidney  
Augustin with him) of Counsel for Gan Khay  
Beng and Bee Chuan Rubber Factory Sdn. Bhd.  
the First and Second Applicants abovenamed  
AND UPON READING the Notice of Motion on  
their behalf dated the 14th day of October  
1978 and the Affidavit affirmed to by Gan  
Khay Beng on the 14th day of August 1978  
AND UPON MOTION made unto Court this day by  
Mr. C.Thambiah of Counsel for Felixia d/o  
Varnakulasinghe the Third Applicant above-  
named AND UPON READING the Notice of Motion  
40 on her behalf dated the 16th day of October  
1978 and the Affidavit affirmed to by Felixia  
d/o Varnakulasinghe on the 18th day of  
October, 1978 AND UPON HEARING Mr. V.K.  
Palasantharam (Mr. Sidney Augustin with him)  
of Counsel for Gan Khay Beng and Bee Chuan



In the  
Federal Court

No.30

Order granting  
Final Leave to  
Appeal to H.M.  
the Yang Di-  
pertuan Agong

13th November  
1978

(continued)

Rubber Factory Sdn. Bhd. the First and  
Second Applicants abovenamed, Mr. C.Thambiah  
of Counsel for Felixia d/o Varnakulasinghe  
the Third Applicant abovenamed, Mr. N.  
Ramachandra (Mr. James Ponniah with him) of  
Counsel for Ng Lit Cheng alias Ng Yam Chee  
the First Respondent abovenamed, and Mr.  
S.D.K. Peddie of Counsel for E.P.E. Ananda  
the Third Respondent abovenamed, Joseph  
Jacob David also known as Jacob Joseph as  
Administrator with the Will annexed of the  
estate of John David deceased the Second  
Respondent abovenamed not being present in  
person or by Counsel though his Solicitors  
had been served with the said Notice of  
Motion

10

IT IS ORDERED :-

(i) that final leave be and is hereby  
granted to Gan Khay Beng and Bee Chuan Rubber  
Factory Sdn. Bhd. the First and Second  
Applicants abovenamed to appeal to His Majesty  
the Yang Dipertuan Agung against the two  
judgments and Orders of the Federal Court of  
Malaysia dated the 7th day of July 1977  
allowing Federal Court Civil Appeals Nos.19  
and 48 of 1976 against the Order of the High  
Court in Malaya at Seremban dated the 8th day  
of January, 1976 and restoring the Order of  
the High Court in Malaya at Seremban dated the  
25th day of November 1974

20

30

(ii) that the costs of and incidental to  
the said Motion pursuant to the said Notice  
of Motion dated the 14th day of October 1978  
be costs in the cause

(iii) that final leave be and is hereby  
granted to Felixia d/o Varnakulasinghe the Third  
Applicant abovenamed to appeal to His Majesty  
the Yang Dipertuan Agung against the two  
judgments and Orders of the Federal Court of  
Malaysia dated the 7th day of July 1977 allowing  
Federal Court Civil Appeals Nos.19 and 48 of  
1976 against the Order of the High Court in  
Malaya at Seremban dated the 8th day of January  
1976 and restoring the Order of the High Court  
in Malaya at Seremban dated the 25th day of  
November 1974, and

40

(iv) that the costs of and incidental to  
the said Motion pursuant to the said Notice of  
Motion dated the 16th day of October 1978 be  
costs in the cause

50

GIVEN under my hand and the Seal of the Court  
this 13th day of November 1978

SGD.

CHIEF REGISTRAR, FEDERAL COURT, MALAYSIA.

EXHIBIT A  
LETTER, JOSEPH JACOB DAVID  
TO MR. ANANDA

---

EXHIBITS  
A  
Letter, Joseph  
Jacob David to  
Mr. Ananda

18th October,  
1974

Jos. J. David "Bloomfield"  
Advocates Road,  
Batticaloa

Your ref.  
My ref. P.S.170/74

18th October, 1974

10 Dear Mr. Ananda,

I am forwarding to you four consent motions. The delay was due to one party failing to send the order in time till I had to remind them. Sorry for the delay.

Thanks for your Telephone Call. The line was not clear on our side. I do not know how much of the conversation you would have heard.

20

The position of the heirs are as follows: My father was Francis D. David entitled to 5/16 shares. His heirs are my mother, myself and my two brothers, my uncle Benjamin is survived by an only son B.G. David entitled to 4/16th shares.

I am entitled to 3/16th shares according to the Last Will. In all 12/16th shares.

30

My uncle's wife Thankakutty died intestate and issueless, her heirs will have to be traced. The caretaker Rasamma died intestate issueless. As far as I know she left no heirs. She was an Indian woman. The other party Sinnappan died intestate and the whereabouts of his heirs are not known. The other heir Elizabeth Muthamma, my Aunt was in Malaya and is dead. I am unable to state anything definitely. Her son was living in Kuala Lumpur and has since died.

40

If you can make inquiries, you may be able to find the details. I have already sent you the wife's address.

Yours sincerely,  
Sgd. J.J. David.

EXHIBITS

A

Statement  
re Estate  
of John  
David

25th October  
1974

EXHIBIT A

STATEMENT re ESTATE OF  
JOHN DAVID

"Bloomfield"  
Advocates Road  
Batticaloa

Your ref.  
My ref. PS 175/74

25th October, 1974

Probate No. 128/70

According to the LAST WILL of John David  
deceased, my father Francis D. David was  
entitled to 5/16 share. He died intestate, and  
the Letters of Consent from my mother myself  
and my two brothers are forwarded herewith.

10

My uncle Benjamin David who was entitled  
to a 4/16 share died intestate and the only  
surviving heir is his son, whose Letter of  
Consent is forwarded herewith.

I am further entitled to a 3/16 share my  
Consent Letter is forwarded herewith.

20

My aunt Tharkakutty the wife of the late  
John David was entitled to 1/16 share. She  
died intestate and issueless several years ago.

Rasamma who was entitled to a 3/22 share  
died several years ago intestate and issueless.  
As far as I am aware she left no heirs.

Elizabeth Muthamma entitled to 1/16 share  
died intestate. The whereabouts of her heirs  
are not known. As far as I am aware one of  
her sons was residing at 5 Kasipillai Road,  
Sentul, Kuala Lumpur, but he is now dead.

30

Sgd: ?

Administrator

I certify to the Identity and )  
signature of Joseph Jacob alias )  
Jacob Joseph David who is known )  
to me and signed in my )  
presence this Twenty Fifth day )  
of October 1974 )

Sgd. ?

40

Attorney-at-law

Registrar  
District Court, Batticaloa.

EXHIBITS

C

CERTIFICATE OF MARRIAGE ALFRED N.  
VARNAKULASINGHE and NG AH MOI  
JOSEPHINE dated 19th July 1968

## Certificate of Marriage.

solemnized in the Church of St JOSEPH SENTUL on the 19<sup>th</sup> JULY 1968

and Surname of Parties	Age	Condition	Profession	Residence	Parent's Names
ALFRED NICHOLAS VARNAKULASINGHE 69300	59		Teacher	5, JALAN KASIPILLAY	1 JOSEPH FRANCIS 2
JOSEPHINE NG MOI 9704	50		Housewife	5, JALAN KASIPILLAY	1 NG AH KIM 2 CHONG CHIN THYE

undersigned officiating in the Church of St JOSEPH SENTUL town

KUALA LUMPUR have solemnly joined the above parties in Holy Matrimony

being asked and given me in word in the presence of ELIAS REBEIRA

SWEET CHAN and have imparted to them the Nuptial Blessing according to

the Holy Mother the Church.

At whereof, the wedded parties and witnesses have hereunto together with me set their hands

ALFRED NICHOLAS

VARNAKULASINGHE

JOSEPHINE

NG AH MOI

By P. DECARRE

Witnesses

DR. E. REBEIRA

DR. ONG SWEET CHAN

DR. DECARRE

DR. DECARRE

Vicar of the Church of the St. Joseph do hereby certify

the above extract translated from the Original in Latin from the Register of Marriage kept in

St. Joseph, Sentul, Kuala Lumpur.

28-7-1968

St. Joseph's Church

Signature of Vicar

SENTUL PASAR

KUALA LUMPUR

Tel. No. 69167



EXHIBIT C

LETTER, JOSEPH JACOB DAVID  
TO ATHI NAHAPPAN

EXHIBITS

C  
Letter, Joseph  
Jacob David to  
Athi Nahappan

5th January  
1978

82 BAZAAR STREET  
BATTICALOA

Your ref: AN/N/3139/67  
My ref. PS 3/68

5th January 1968

10 Dato Athi Nahappen Esq.,  
Messrs. Athi Nahappan & Co.,  
Advocates & Solicitors,  
Kuala Lumpur

Dear Sir,

Re Land held under Grant N.S. No.953  
Mukim of Rasah District of Seremban

I thank you for your letter of the 5th  
of December, 1967.

20 I am enclosing a Draft Power of Attorney  
for your perusal. If there are any amendments  
necessary please make the necessary alterations  
and forward the same to me. As one of the  
legatees I will be entitled to ask for Letters  
of Administration, unless the law in Malaysia  
is otherwise.

I have in the Draft mentioned that the  
money is to be deposited in Court. Please  
consider whether this is feasible.

30 My cousin Mr. Singhe wrote to me that he  
had discussed the matter with you. If any  
further particulars are required you can  
obtain the same from him. He is the son of  
one of the legatees Elizabeth Muthammah  
Varnagulasinghe.

He informs me that one Mr. Pereira is  
prepared to purchase the land for \$98,000/00.  
Please verify this from him and get the  
necessary particulars.

Yours faithfully,

Sgd. J.J. David

EXHIBITS

B  
Letter, Joseph  
Jacob David  
to Athi  
Nahappan & Co.

22nd January  
1969

EXHIBIT B

LETTER, JOSEPH JACOB DAVID  
TO ATHI NAHAPPAN & CO.

JOS. J. DAVID

Your ref. AN/N/3139/67  
My ref. PS 22/69

22nd January 1969

Athi Nakappan & Co.,  
Advocates & Solicitors,  
45 Jalan Malaya,  
Kuala Lumpur,  
MALAYSIA

10

Sirs,

Re: Estate of John David, deceased

With reference to your letters of the 2nd  
and the 18th instant, addressed to my brother  
J.N.David, with copy to me the following are the  
particulars available.

Benjamin David is dead and the sole heir is:

B.G.S.David,  
Chief Magistrate,  
Colombo

20

R.Sinnappan is dead and it is difficult  
to trace the whereabouts of his heirs.

Elizabeth Muthammah Varunagulasinghe is  
also dead. Mr. A.N.V.Singhe of 5, Kasipillay  
Road, Kuala Lumpur is the only known heir.

Mary Beatrice Thangakutty and Rasamma  
are both dead. They left no children.

It would be very difficult to obtain the  
Death Certificates of these beneficiaries as most  
of them died several years ago and at different  
places. As far as I am aware there had been no  
Testamentary actions filed.

30

I would earnestly request you to expedite  
the filing of the action as you would appreciate  
more than a year has lapsed since the matter  
was entrusted to you. The prospective buyer would  
be discouraged and may abandon the prospect of  
purchasing the land.

Please expedite this and let me know at your  
earliest what progress has been made.

40

JJD/GS.

Yours faithfully,  
Sd. J.J.David

EXHIBIT C  
LETTER, ATHI NAHAPPAN & CO.  
TO JOSEPH JACOB DAVID

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EXHIBITS

C  
Letter, Athi  
Nahappan & Co.  
to Joseph Jacob  
David

8th March, 1978

8th March 1968

Mr. Jos. J. David, J.P. U.I.,  
Crown Proctor & Notary Public,  
82 Bazaar Street,  
Batticaloa,  
Ceylon.

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Dear Sir,

re; Estate of John David dec'd

Further to our letter to you dated 27th  
February, 1968, we enclose herewith a draft  
Power of Attorney.

20

As regards paragraph 4 of your draft  
Power, the normal practice is for the  
purchase price to be deposited with the  
Solicitors and to distribute it to the  
beneficiaries.

We would therefore suggest that the  
purchase money be deposited in our firm as  
Solicitors for the Estate and we will distribute  
the same in accordance with the Will and the  
law of the country. As such, we have amended  
the clause 4 of the draft power to include  
the foregoing.

30

If the enclosed draft is agreeable to  
you, kindly have a fair copy engrossed,  
executed, stamped and registered in Ceylon  
after which please forward it to us at your  
earliest convenience for due registration in  
this country.

Thereafter, we shall proceed to apply  
for Administration with the Will annexed and  
to take steps to sell the above land.

Yours faithfully,

Sgd. Illegible

Enc:  
TSK/S



EXHIBITS

D  
Letter, Athi  
Nahappan & Co.  
to A.N.V.  
Singhe  
1st March  
1969

EXHIBIT D

LETTER, ATHI NAHAPPAN & CO.  
TO A.N.V. SINGHE

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AN/N/3139/67

1st March, 1969

Mr.A.N.V.Singhe,  
No.5 Kasipillay Road,  
Kuala Lumpur.

Dear Sir,

Re: Estate of John David, deceased

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With regard to the above matter we require either a Death Certificate of Elizabeth Muthumamah Varunagulasinghe or a Statutory Declaration made by her heir that the said Elizabeth Muthammah is a deceased, to take the Letters of Administration.

Mr. Jos. J.David of Batticaloa has informed us that he could not obtain the Death Certificate and you are the only known heir of the said Elizabeth. So we shall be thankful to you if you can call on us to make the necessary arrangements to sign the said Statutory Declaration.

20

Yours faithfully,

Sgd. A.N. & Co.

M/JN

EXHIBIT E  
LETTER, ATHI NAHAPPAN  
& CO. TO A.N.V. SINGHE

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AN/A/3139/67

3rd April, 1969

Mr. A.N.V.Singhe,  
No.5 Kasipillay Road,  
Kuala Lumpur.

Dear Sir,

10

re: Estate of John David  
deceased

With reference to our letter dated 1st  
March, 1969 in respect of the above matter,  
we shall be much obliged if you will kindly  
let us have an early reply thereto.

Yours faithfully,

Sgd. A.N. & Co.

/sk

EXHIBITS

E  
Letter, Athi  
Nahappan & Co.  
to A.N.V.  
Singhe

3rd April 1969

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA

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B E T W E E N :

1. GAN KHAY BENG
2. BEE CHUAN RUBBER FACTORY SDN.BHD.
3. FELIXIA d/o Varnakulasinghe Appellants

- and -

1. NG LIT CHENG alias NG YAM CHEE
2. E.P.E. ANANDA
3. JOSEPH JACOB DAVID also known  
as JACOB JOSEPH as Administrator  
with Will annexed of the Estate  
of John David deceased Respondents

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RECORD OF PROCEEDINGS

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PHILIP CONWAY THOMAS & CO.  
61 Catherine Place,  
London, SW1E 6HB

Solicitors for the Appellants

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SMILES & CO.  
15 Bedford Row,  
London, WC1R 4EF

Solicitors for the First  
Respondent

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