16/83

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 31 of 1980

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

BETWEEN:

KANDASAMI S/O KALIAPPA GOUNDER — Appellant (Plaintiff)

- and -

MOHD MUSTAFA S/O SEENI MOHD — Respondent (Defendant)

# RECORD OF PROCEEDINGS

GASTERS
44 Bedford Row,
London WC1R 4LL
Solicitors for the Appellants

COWARD CHANCE
Royex House,
Aldermanbury Square,
London EC2 7LD
Solicitors for the Respondent.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 31 of 1980

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

BETWEEN:

KANDASAMI S/O KALIAPPA GOUNDER — Appellant (Plaintiff)

and

MOHD MUSTAFA S/O SEENI MOHD — Respondent (Defendant)

RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
No.31 of 1980

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ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

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BETWEEN:

KANDASAMI S/O KALIAPPA GOUNDER — Appellant (Plaintiff)

- AND -

MOHD MUSTAFA S/O SEENI MOHD — Respondent (Defendant)

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RECORD OF PROCEEDINGS

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In the High Court of Malaysia at Penang

No.1
Writ of Summons
11th September 1971.

No.1

WRIT OF SUMMONS

Between Kandasami s/o Kaliappa Gounder Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd. Defendant

Tan Sri Ong Hock Thye, P.S.M., D.P.M.S., Chief Justice of the High Court in Malaya, in the name and on behalf of His Majesty the Yang di-Pertuan Agong.

To: Mohd. Mustafa s/o Seeni Mohd.
No.4 Pier Road,
Butterworth.

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 Kandasami s/o Kaliappa Gounder of No.43 Penang Street, Penang.

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

WITNESS, Nihrumala Segara, Senior Assistant Registrar of the High Court in Malaya at Penang, this 11th day of September, 1971.

In the High Court of Malaysia at Penang

Sd. Sharma & Co.
Plaintiff's Solicitors

Sd. K.N. Segara (L.S.)
Senior Assistant Registrar, High Court, Penang

No.1
Writ of Summons
11th September 1971 (contd.)

N.B. This Writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of last renewal, including the day of such date and not afterwards.

The Defendant (or Defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the High Court at Penang.

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 Penang.

INDORSEMENT OF CLAIM

The Plaintiff's claim against the Defendant is as follows:-

(1) Compensation for loss and damage suffered by the Plaintiff by the Defendant's illegal acts of obtaining Warrant of Distress dated 8th day of March, 1971 and Defendant's wrongfully acting thereon to the detriment of the Plaintiff.

(2) Damages for breach of terms of oral agreements made in or about the early part of May, 1970 and written agreement dated 31st day of July and made between the Plaintiff of the one part and Defendant of the other.

(3) A declaration that the Plaintiff is a tenant of the Defendant entitled to protection of his tenancy under the provisions of the Control of Rent Act, 1966 in respect of such parts of the premises No.43 Penang Street, Penang as are rented to the Plaintiff by the Defendant, i.e.,

(a) The whole of the ground floor of premises No.43 Penang Street, Penang.

(b) A room on the first floor of the said premises including the right to common use of the hall and other convenience on the first floor by the Plaintiff, the members of his family and his customers of the eating shop.

(4) An Order that the Defendant do refund to the Plaintiff all sums of monies received by the Defendant in excess of the rent which may lawfully be recovered by the

Defendant under the provisions of Control of Rent Act, 1966, in respect of said portion of the premises referred to in paragraph (3) above, rented to the Plaintiff by the Defendant.

(5) An Injunction:

(a) to restrain the Defendant from interfering with the use and quiet enjoyment of the Plaintiff of his aforesaid monthly tenancy.

(b) to restrain the Defendant from doing or suffering to be done in or upon the premises No.43 Penang Street, Penang or such parts thereof that are comprised in Plaintiff's aforesaid monthly tenancy any act or thing which shall or may become a nuisance damage annoyance or inconvenience to the Plaintiff, his members of family and his eating shop customers.

(6) Return of the Plaintiff's account loaned to the Defendant for perusal.

(7) Such further or other relief as this Honourable Court may deem just and expedient.

(8) Costs.

Sd. Sharma & Co.
Plaintiff's Solicitors

This Writ was issued by Messrs. Sharma & Co., of and whose address for service is at No.4-A Beach Street, Penang, Solicitors for the said Plaintiff of No.43 Penang Street, Penang.

This Writ was served by me at No.4 Pier Road, Butterworth on the Defendant, Mohd. Mustafa s/o Seeni Mohd. on the day of 1971 at the hour of

(Signed) .....

(Address) .....

.....

.....

In the High Court of Malaysia at Penang

No. 2

STATEMENT OF CLAIM

No.2
Statement of Claim
24th November 1971

Between

Kandasami s/o Kaliappa Gounder
Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd.
Defendant

STATEMENT OF CLAIM

1. In or about the month of March, 1970, the Plaintiff orally agreed to take and the Defendant agreed to let to the Plaintiff the whole of the ground floor of premises No.43 Panang Street, Penang as a monthly tenant. The said tenancy was orally agreed to commence on the 1st of April, 1970.

2. By an oral agreement, the Plaintiff at the request of the Defendant further inter alia agreed to acquire a right to the use and benefit of the Defendant's eating shop licence upon consideration hereinafter mentioned (hereinafter called the said Licence).

3. At all material times the Defendant was and is the chief tenant of the whole of the premises No.43 Penang Street, Penang (hereinafter called the said Premises) paying therefor a rent of $174.25 per month to his landlord.

4. The said premises is a controlled premises within the provision of Rent Control Act, 1966.

5. The rent and consideration (hereinafter called the fee) for the oral agreements referred to in paragraphs 1 and 2 hereof were aggregated at the request of the Defendant to a sum of $230/- and were payable in arrears. The Plaintiff agreed to pay the said rent and consideration.

6. It was also a term of the aforesaid agreements that the Plaintiff would deposit and did later deposit a sum of $460/- being aggregate sum constituting two months' rent for the said tenancy and the fee for the said licence granted to the Plaintiff by the Defendant.

7. Pursuant to the aforesaid agreements the Plaintiff entered into exclusive possession of the whole of the ground floor of the said premises and carried on his business at the ground floor of the said premises.

8. In or about the month of May, 1970 at the insistence of the Defendant the Plaintiff further orally agreed to

increase the rent of the whole of the ground floor of the said premises by $70/- per month, making a total of $300/- per month as from the 1st of May, 1970 in consideration of the Defendant further agreeing to:-

a) sublet an additional space, i.e. a room on the first floor of the said premises in order to enable the Plaintiff to live there with his family.

b) the common use of the hall on the first floor of the said premises by the Plaintiff and his customers.

9. On or about the 31st day of July, 1970, in addition to the oral agreements referred to in paragraphs 1, 2 and 8 hereof the Defendant insisted and caused the Plaintiff to execute a document purported to be a lease (hereinafter called the said Lease) containing:-

a) some of the terms of the aforesaid oral agreements.

b) other oral terms subsequently agreed upon.

c) other additional terms.

10. One of the terms of the said oral tenancy included in the said Lease was that the Plaintiff shall have an option to carry on his eating shop business under the licence issued to the Defendant by the City Council of Georgetown for carrying on such eating shop business. The Plaintiff craves leave to refer to the said term for its full effect.

11. The Plaintiff did exercise his option and continued to carry on an eating shop business for his own use and benefit.

12. By the said Lease the Defendant for the first time acknowledged in writing, an earlier deposit of $460/- paid by the Plaintiff to the Defendant.

13. Further pursuant to the terms of the said oral agreements the Defendant had undertaken:-

a) to take all requisite steps to renew the said eating shop licence on its expiry.

b) to permit the Plaintiff to affix his photograph on the eating shop licence or cause the photograph of some other person nominated by the Plaintiff to be affixed thereto.

c) to paint and white-wash the said premises as may be required.

d) not to do anything or omit to do anything whereby the said eating shop licence issued to the Defendant in respect of the said premises may be cancelled or not renewed.

The Plaintiff avers that the said terms were also incorporated in the said Lease.

14. The Plaintiff avers that the Defendant in breach of the obligations referred on paragraph 13 hereof notwithstanding Plaintiff's request in respect thereof:

a) did not allow the Plaintiff to affix his photograph to the said eating shop licence.

b) did not white-wash the premises which is required as a step precedent to renewal of the eating shop licence by the City Council Authority, Penang.

c) did not renew the eating shop licence after its determination by effluxion of time on 31st December, 1970.

whereby the Plaintiff suffered loss and damage.

15. The Plaintiff further avers that on the 6th day of March, 1971 the Defendant falsely swore an Affidavit in support of an Application made by the Defendant for a Warrant of Distress to be issued against the Plaintiff alleging that the Plaintiff was justly indebted to him in the sum of $300/- for arrears of rent of premises No.43 Penang Street, Penang due for one month from 1.1.71 to 31.1.71 at the rate of $300/- per mensem payable in arrear on the 1st day of each month.

16. Pursuant to the aforesaid false allegations hereinafter particularised the Defendant through his Solicitors, Messrs. Subbiah & Co., caused an Order for Warrant of Distress to be extracted with a view to cause wrongful loss to the Plaintiff's business and reputation and whereby the Defendant also expected the Plaintiff to abandon his aforesaid tenancy and close down his eating shop business as a cover for the Defendant's failure to renew the said eating shop licence.

Particulars of False Allegations Contained in Defendant's said Affidavit

a) The Plaintiff was not justly indebted as alleged since no such rent was in arrears and the Defendant had in fact already received the monthly rent and fee amounting to $300/- for the month of January, 1971 before he swore the said Affidavit.

b) The rent payable by the Plaintiff was not payable on the last day of each month as alleged.

c) The rent of premises No.43 Penang Street, Penang was a sum of $174.25 per month and not $300/- as sworn.

d) The aggregate amount of $300/- per month payable to the

Defendant by the Plaintiff consisted of rent of Plaintiff's said tenancy and said fee for granting the said licence to the Plaintiff to make use of the Defendant's eating shop licence.

e) The Plaintiff was not the tenant of the whole of the premises as impliedly alleged but only a part thereof which approximately constituted one third part of the said premises.

17. The Plaintiff avers that the Defendant had full knowledge of the manner in which the Plaintiff carried on his business by obtaining credit from the market and replying on such knowledge the Defendant did:-

a) wrongfully publicised the said Warrant of Distress.

b) wrongfully acted thereon in such manner that the Plaintiff's business virtually closed down and the Plaintiff suffered loss and damage thereby.

18. The Plaintiff further states that in breach of the Agreement referred to in paragraph 8 hereof, the Defendant failed and neglected to provide a room on the first floor of the said premises despite several requests therefor, whereby the Plaintiff and the members of his family suffered great discomfort and inconvenience and embarrassment since the Plaintiff was forced to accommodate himself and his family pending fulfilment of the Defendant's obligations in respect thereof. The Defendant still fails to fulfil his said obligations.

19. In or about the month of June, 1971 the Defendant further wrongfully demanded an increase of rent of the Plaintiff's said tenancy in order not to interrupt the Plaintiff's business on the ground floor of the said premises under the pretence that the Plaintiff's said tenancy has determined by effluxion of time whereby Plaintiff is not entitled to any statutory protection of his tenancy any further.

20. At the request of the Defendant the Plaintiff had then submitted his books of accounts to the Defendant to satisfy him that the business did not warrant any further increase of rent which said books the Defendant is still wrongfully holding and refuses to return to the Plaintiff.

21. The Plaintiff avers that upon the Plaintiff's refusal to pay further increased rent the Defendant wrongfully created a lot of trouble for the Plaintiff at the said premises by various means inter alia:-

a) Acts of threats of physical violence.

b) Acts of nuisance through his servants and agents

c) Failing to collect rent since the month of June, 1971.

d) Putting wrongful pressure on the Plaintiff to abandon his tenancy through his (Defendant's) father's intervention.

e) Acts calculated to interfere with the quiet enjoyment of Plaintiff's tenancy.

f) Wrongful removal of furniture from the ground floor of the said premises.

22. In the premises the Plaintiff claims against the Defendant:-

1) A declaration that the Plaintiff is a tenant of the Defendant entitled to protection of his tenancy under the provision of the Control of Rent Act, 1966, in respect of such parts of the premises No.43 Penang Street, Penang as are rented to the Plaintiff by the Defendant, i.e.

   a) the whole of the ground floor of premises No.43 Penang Street, Penang.

   b) a room on the first floor of the said premises including the right to common use of the hall and other convenience on the first floor by the Plaintiff, the members of his family and his customers of the eating shop.

2) Damages for breach of terms of oral agreements made in or about the early part of May, 1970 and written agreement dated 31st day of July and made between the Plaintiff of the one part and Defendant of the other.

3) Compensation for loss and damage suffered by the Plaintiff by the Defendant's illegal acts of obtaining Warrant of Distress dated 8th day of March, 1971 and wrongfully acting thereon to the detriment of the Plaintiff.

4) An order that the Defendant do refund to the Plaintiff all sums of monies received by the Defendant in excess of the rent which may lawfully be recovered by the Defendant under the provisions of Control of Rent Act, 1966, in respect of said portion of the premises rented to the Plaintiff by the Defendant.

5) An Injunction:-

   a) to restrain the Defendant from interferring with the use and quiet enjoyment of the Plaintiff of his aforesaid monthly tenancy.

   b) to restrain the Defendant from doing or suffering

to be done in or upon the premises No.43 Penang Street, Penang or such parts thereof that are comprised in Plaintiff's aforesaid monthly tenancy any act or thing which shall or may become a nuisance, damage, annoyance or inconvenience to the Plaintiff, his members of family and his eating shop customers.

6) Return of the Plaintiff's account books loaned to the Defendant for perusal.

7) Such further or other relief as this Honourable Court may deem just and expedient.

8) Costs.

Delivered the 24th day of November, 1971.

Sd. Sharma & Co.
Plaintiff's Solicitors

The address for service of the Plaintiff above-named is at the office of his Solicitors, Messrs. Sharma & Co., of No.4-A Beach Street, Penang.



No.3

AMENDED AMENDED DEFENCE AND COUNTERCLAIM

Between Kandasami s/o Kaliappa Gounder
Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd.
Defendant

AMENDED AMENDED DEFENCE AND COUNTERCLAIM

1. Save that the Defendant leased his eating shop business known as "Nava India Restaurant and Cafe" to the Plaintiff together with the furniture and fittings therein contained and carried on at the ground floor of premises No.43 Penang Street, Penang **under a written agreement of lease of coffee shop business carrying on at the ground floor of premises No. 43 Penang Street, Penang, dated the 30th day of July 1970,** for a period of one (1) year from the 1st day of August 1970 to the 31st day of July 1971 at an agreed ~~rental~~ **monthly sum** of $230/- plus a further sum of $70/- to defray for water and electric charges used by the Plaintiff for the said business making a total payment of $300/- per mensem, the Defendant denies each and every allegation contained in paragraphs 1, 2 and 5 of the State-

Amended 30th day of January 1975 pursuant to Order of Court dated the 24th day of January, 1975.
Sd. Tengku Baharuddin Shah (L.S.)
Senior Assistant Registrar,
High Court, Penang.

No.3
Amended Amended Defence and Counterclaim 18th January 1977 (Contd.)

ment of Claim and puts the Plaintiff to strict proof thereof.

2. The Defendant ~~further denies admits~~ denies the allegations contained in paragraph 3 of the Statement of Claim ~~and also puts the Plaintiff to strict proof thereof~~.

At all material times and until 28th February, 1973 the tenant of premises No.43 Penang Street, Penang was one S.K. Seeni Mohamed, the father of the Defendant at a rental of $174.25 per month, and from 1st March, 1973 the Defendant became tenant thereof at the same rental.

2a. By licence of the said S.K. Seeni Mohamed the Defendant at all material times was in possession of the ground floor of premises No.43 Penang Street, Penang, thereat the Defendant carried on a business under the style of "Nava India Restaurant and Cafe", and by the said agreement dated 30th July, 1970 the Defendant leased the said business with furniture and fittings thereat to the Plaintiff for a term of one year ending 31st July, 1971.

3. Paragraphs 4 ~~and 6~~ of the Statement of Claim ~~are~~ is admitted.

3a. As to paragraph 6 of the Statement of Claim the Defendant admits that it was a term of the aforesaid agreement of lease dated 30th July 1970 that the Plainriff would deposit and did later deposit a sum of $460/- being the aggregate sum of licence fees for two months as deposit for the aforesaid lease of the said business and not rent for any tenancy at all as alleged.

4. The Defendant denies that the Plaintiff was ever given possession of the said ground-floor of premises No.43 Penang Street, Penang pursuant to the alleged oral agreements contained in paragraphs 1, 2 and 5 of the Statement of Claim and as alleged in paragraph 7 thereof (which oral agreements are emphatically denied) but avers that the Plaintiff was allowed to commence the said business on the 1st day of August 1970 after he executed the Agreement of lease of the said business on the 30th day of July 1970.

5. The Defendant denies the allegations contained in paragraphs 8, 9 and 10 of the Statement of Claim and avers that no oral agreement was ever entered between the Plaintiff and the Defendant except the terms of the said Agreement of Lease dated the 30th day of July, 1970, and made between the Defendant (as Lessor) of the one part and the Plaintiff (as Lessee) of the other part.

6. As to paragraphs 11, 12 and 13 of the Statement of Claim the Defendant repeats the foregoing paragraphs hereof and avers that he (the Defendant) has complied and fulfilled the terms of the said Lease and is therefore not liable to the Plaintiff for any breaches thereof.

7. The Defendant further denies the allegations contained

(L.S.)

Re-Amended the 18th day of January 1977 pursuant to Order of Court dated the 13th day of December, 1976.
Sd. .....
Senior Assistant Registrar, High Court, Penang.

in paragraph 14 of the Statement of Claim and avers that the aforesaid Lease having expired on the 31st day of July, 1971, the Plaintiff is therefore not entitled to carry on the said business nor to remain in the said portion of the said premises and in doing so, the Plaintiff has committed a breach of the terms of the said Lease.

8. Paragraphs 15, 16 and 17 of the Statement of Claim are not admitted.

9. As to paragraph 18 of the Statement of Claim the Defendant states that there was never any agreement or provision to provide the Plaintiff with any room in any part of the said premises and would refer to the said Lease dated the 30th day of July, 1970, for the fuller terms thereof at the trial herein.

10. The Defendant further denies the allegations contained in paragraphs 19, 20 and 21 of the Statement of Claim and puts the Plaintiff to strict proof thereof.

11. As to paragraph 22 of the Statement of Claim the Defendant repeats the foregoing paragraphs of this Amended Defence and states that as the Plaintiff has committed breaches of the said Lease he (the Plaintiff) is not entitled to any of the reliefs set out therein and prays that the Plaintiff's claim herein be dismissed with costs.

12. Save as hereinbefore expressly admitted the Defendant denies each and every allegation contained in the Statement of Claim as if the same were set forth herein seriatim and specifically traversed.

COUNTERCLAIM

13. The Defendant repeats paragraphs 1 to 12 of the Amended Defence herein.

14. The Defendant is the Chief Tenant of the whole of premises No.43 Penang Street, Penang at a monthly rental of $174.25 and has been so at all material times and is in possession of the monthly relevant rent receipts issued out to him in his name up to date.

15. The Plaintiff is in occupation of the ground floor of the said premises without payment to the Defendant of any licence fees or other fees of any kind, since June 1971.

16. The Defendant craves the indulgence of this Honourable Court to refer to an Agreement of Lease, a photostat copy of which is annexed hereto marked "M.1" and dated 30th July 1970 made between the Plaintiff as Lessee and the Defendant as Lessor whereby only the business known as "Nava India Restaurant" carried on at the ground floor of premises No.43 Penang Street, Penang (hereinafter referred to as the said business) was leased to the Plaintiff by the Defendant and which said licence does not include the

lease of the ground floor of premises No.43 Penang Street, Penang. In order to enable the Plaintiff to carry on the business he was given licence to occupy and use the ground floor of premises No.43 Penang Street, Penang during the continuation of the lease of the said business.

17. Pursuant to the aforesaid agreement dated 30th July 1970 the said business together with all the furniture fittings and utensils was licensed to the Plaintiff by the Defendant under the terms of the said agreement for a term of one (1) year only commencing from 1.8.1970 up till 31.7.1971 at a monthly payment of $300/- being licence fees inclusive of water and electric charges.

18. One month prior to the expiry of the aforesaid lease the Defendant through his own then Solicitors gave due notice in writing to the Plaintiff by letter dated 17th June 1971 and required the Plaintiff to hand over possession of the said business together with all the furniture fittings and utensils and quit the premises by the 31st day of July 1971.

19. The Plaintiff upon receipt of the said letter defaulted in the payment of licence fees for the month of June and July 1971 amounting to $600/- and the Plaintiff also failed to pay any fees since then up to-date.

20. The Defendant again by letter dated 28th July 1971 addressed to the Plaintiff, through Defendant's then Solicitors referred the Plaintiff to the terms of the Agreement of Lease dated 30th July 1970 and required the Plaintiff to hand over the said business to the Defendant on the 31st day of July 1971 upon expiry of the said lease.

21. The Defendant again still further by letter dated 31st July 1971 addressed to the Plaintiff through his then Solicitors referred to the said Agreement of Lease and set off the deposit sum of $460/- against the sum of $600/- being arrears of payment due for June and July 1971 and there is still a balance of $140/- due and owing to the Defendant; the Defendant also required the Plaintiff to forthwith hand over the said business to the Defendant which the Plaintiff refused to do so and is still retaining possession of said business in the premises.

22. The Plaintiff by his refusal to make the payment for June and July 1971 and by his refusal to hand over the said business to the Defendant upon expiry of the said lease of one (1) year on 31st July, 1971, has committed a breach of the said Agreement dated 30th July 1970.

23. The Plaintiff further committed a breach of the said agreement by bringing his whole family to reside in the premises whereby the Defendant was exposed to penalty forfeiture or fine.

24. The said period of lease of one (1) year expired on 31.7.1971 but the Plaintiff in contravention and in violation of the terms and conditions of the aforesaid Agreement dated 30.7.1970 continued to unlawfully occupy the said ground floor of premises No.43 Penang Street, P enang with his family and is unlawfully carrying on a similar eating shop business thereat.

25. The Plaintiff has also in contravention of the aforesaid Agreement and in defiance of any constituted law has put up his own sign under the name of "SRI KALIAMMAN VILAS, 43 PENANG STREET, PRO. K.KANDASAMY".

The Defendant therefore counterclaim against the Plaintiff for:-

(a) Delivery of possession of the said eating shop and restaurant business known as "Nava India Restaurant" at No.43 Penang Street, Penang and recovery of possession of ground floor of the said premises.

(b) Arrears of rent of the business for $140/- being balance due for July 1971.

(c) Mesne profits at the rate of $300/- per month from August 1971 till delivery of possession of the said business.

(d) Damages for breach of agreement.

(e) An injunction restraining the Plaintiff from carrying on the eating shop business or any other business on the ground floor of premises No.43 Penang Street, Penang.

(f) An order requiring the Plaintiff to take down the said sign containing the words "SRI KALIAMMAN VILAS, 43 PENANG STREET, PRO. K.KANDASAMY".

(g) Such further or other order as the Court thinks fit.

Dated the 30th day of January, 1975.

Sd. Lee Cheng Keat
Solicitor for the Defendant

Re-delivered this 18th day of January, 1975.

Sd. Thillaimuthu & Phock Kin
Solicitors for the Defendant

In the High Court in Malaysia at Penang

No.4

AMENDED REPLY TO AMENDED DEFENCE AND DEFENCE TO COUNTERCLAIM

No.4
Re-Amended Amended Reply to Amended Defence and Defence to Counterclaim 8th February 1977

Between Kandasami s/o Kaliappa Gounder Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd. Defendant

Amended this 30th day of April 1975 pursuant to Order of Court dated the 24th day of April 19

AMENDED RE-AMENDED REPLY TO AMENDED DEFENCE AND DEFENCE TO COUNTERCLAIM

R E P L Y

1. Save in so far as the same consists of admissions, the Plaintiff joins issue with the Defence on his Re-Amended Amended Defence And Counterclaim (hereinafter called the Defence) delivered on the 18th day of January, 1977 herein.

Re-amended this 9th day of February 1977 pursuant to Order of Court dated the 13th day of December 1978

2. As to paragraph 1 of the Amended Defence the Plaintiff denies that the increased rental of $70/- per month was to defray electricity and water charges as alleged or at all but avers were for an additional room and facilities as alleged in paragraph 8 of the Statement of Claim since water and electricity charges were pursuant to oral agreements referred to in paragraphs 1 and 2 of the Statement of Claim included in the aggregate sum of $230/- initially and later $300/- agreed to be paid by the Plaintiff. Further the Defendant had a lot of sub-tenants and lodgers living on the first, second and third floor of premises No.43 Penang Street, Penang and as such wanted a lump sum rent. The Plaintiff further avers that the additional document dated the 30th of July 1970 was in fact requested by the Defendant to be made for specific purpose of circumventing the Rent Control Act and other laws and was for his protection.

2A. As to paragraphs 2 and 2A of the said Defence the Plaintiff:-

(i) denies that S.K. Seeni Mohamed the father of the Defendant was in fact the tenant of premises No.43 Penang Street, Penang at the material time.

(ii) avers that S.K. Seeni Mohamed and the Defendant had represented and confirmed to the Plaintiff that the business known as "Nava India Restaurant and Cafe" including the tenancy of premises No.43 Penang Street, Penang was assigned to the Defendant.

(iii) avers that he (the Plaintiff) acted on the said representations and entered into oral tenancy for the ground floor of the said premises initially as alleged in paragraphs 1 to 7 (both inclusive) of the Statement of Claim.

(iv) avers that during early negotiations in the month of March, 1970 the Defendant has notified the Plaintiff in the presence of his father that a former tenant was paying $500/- for the entire premises but on Plaintiff's offer only to rent the ground floor of the premises the Defendant agreed to rent out the same at a rental of $230/- per month as alleged in paragraph 5 of the Statement of Claim.

(v) avers that the Defendant is estopped by the recitals contained in Agreement of Lease dated 30th July, 1970 from alleging that he is a mere licencee of his said father.

(vi) avers that he (the Plaintiff) is the tenant by estoppel.

(vii) further avers that the Defendant's admission in the Defence that he is a tenant feeds the estoppel.

(viii) avers that the Defendant having obtained an Order of Distress for alleged arrears of rent against the Plaintiff is further estopped by conduct from alleging that he was not the tenant.

(ix) avers that only after the death of the Defendant's father the Defendant is now for the first time fraudulently alleging that he is the licencee of his father by suppressing evidence which is known to him.

(x) avers that the Defendant had commenced proceedings in the Sessions Court at Penang for alleged arrears of rent against the Plaintiff.

and say that the Defendant's allegations are mis-conceived and intended to pervert the course of justice.

3. As to paragraph 3(a) of the ~~Amended~~ Defence, the Plaintiff avers that $460/- was paid in two instalments during the month of March 1970 after finalisation of the oral agreements referred to in paragraphs 1 and 2 of the Statement of Claim and the same sum was carried forward and confirmed as deposit. The Plaintiff further avers that the Defendant (on demand being made by the Plaintiff therefor) refused to give any receipt therefor saying that it was not his practice to do so, nor has he given any receipt to any of his several sub-tenants living at No.43 Penang Street, Penang.

DEFENCE TO COUNTERCLAIM

4. In reply to paragraph 13 of the Defendant's Counterclaim, the Plaintiff reiterates his allegations contained in the Statement of Claim and the Re-Amended Reply filed herein and further avers that:-

(a) no proper notice to determine the Plaintiff's tenancy has been given. If it is held that proper notice has been given (which is denied) then upon determination of the tenancy the Plaintiff became a ~~statutory~~ protected tenant entitled to protection of his tenancy under the Control of Rent Act, 1966, Section 16.

(b) by the Defendant committing a fundamental breach of the terms of various agreements made with the Plaintiff, the Plaintiff's right to use eating shop licence was frustrated whereby the said agreement of Lease was terminated thereby entitling the Plaintiff to claim damages therefor.

(c) due to non-renewal of the eating shop licence by the Defendant after the 31st December 1970 the said licence ipso facto extinguished together with right to do business thereunder and as such no business thereunder existed nor was the Defendant after the said date entitled to any rent or fee for use of the business name.

5. The Plaintiff denies the allegations of non-payment of rents as alleged in the Counterclaim and further avers that:-

(a) The Defendant has collected rents in excess of lawful rent for the ground floor of premises No.43 Penang Street, Penang.

(b) The Plaintiff has offered to pay lawful rent of the ground floor but the Defendant has failed to duly demand or collect the same.

(c) the Plaintiff is entitled to a set-off of the following amounts:-

(i) rents in excess of lawful rents paid in respect of the whole of the ground floor of the said premises,

(ii) refund of $70/- per month from the 1st of ~~April~~ August 1970 to the 31st of May 1971 at the rate of $70/- per month, being the rent of a room of the first floor of the said premises collected (as the Defendant failed to carry out the agreed terms referred to in paragraph 8 of the Statement of Claim) together with damages for the breach of the said term,

(iii) apportioned rentals in respect of furniture and fittings (of which the Defendant has already taken possession of since the 31st of July, 1971) from January 1, 1971 to May 31, 1971.

(iv) apportioned charges in respect of water and electricity disconnected by the Defendant since the 3rd of October, 1974 or damages in lieu therefor.

(v) apportioned sum as shall represent fee or rent for using the Defendant's name relative to eating shop business.

6. The Plaintiff avers that he is presently paying an ~~average of about $18/- per month~~ for his separate water consumption at the said premises which includes the use of water for his eating shop business carried on under City Council of Georgetown Penang Licence No.1701 pending renewal and Business Registration No.338722 under the name of Sri Kaliamman Vilas of which he (the Plaintiff) is the sole proprietor.

7. The Plaintiff also claims a set-off of $1,850.10 being the assessments paid by him under Warrant of Distress to the City Council, Penang, in order to save distress being levied on the Plaintiff's goods being a tenant which the Defendant was obliged to pay against up to date rent liability of the Plaintiff.

~~8. As to paragraph 11 of the Counterclaim, the Plaintiff requires the Defendant to prove his allegations strictly owing to the directions of one of the registered proprietors of the said premises who avers that the~~ Defendant is not the tenant of the said premises and any rent paid by the Plaintiff would be at his own risk to pay the same over again to the registered owners.

8.~~9.~~ Save that the Plaintiff admits that he is in exclusive possession of the ground floor where he carries on his own business under his own name the ~~The~~ Plaintiff does not admit the allegations made in paragraphs 15 to 22 (both inclusive) and requires strict proof from the Defendant.

9. ~~10.~~ As to paragraph 23 of the Counterclaim, the Plaintiff avers that pending giving possession of a room as averred in paragraph 18 of the Statement of Claim, the Defendant consented and in fact never objected at all and had full knowledge of the facts whereby the Plaintiff's family was accommodated at the ground floor of the said premises.

10. ~~11.~~ Save as hereinbefore expressly admitted, the Plaintiff does not admit the allegations or each and every one of them made in the Counterclaim and requires strict proof thereof as if the same has been set out and

specifically traversed seriatim.

11. ~~12.~~ In the premises the Plaintiff prays that the Counterclaim be dismissed with costs particularly when

(a) Defendant's coffee shop licence was extinguished due to his own default by not applying for the renewal thereof, on 31st December, 1970.

(b) Furniture and fittings has been already taken possession of by the Defendant,

(c) No business de facto exists under the alleged name of Nava India Restaurant as admitted by the Defendant.

(d) Defendant has received rents in excess of lawful rent as hereinbefore averred.

(e) The document alleged to be a lease dated the 30th July 1970 was a cloak to circumvent law and a deceit on public administration of justice owing to the Control of Rent Act, 1966 in particular notwithstanding the schedule of furniture having been surreptitiously included by the Defendant to strengthen his case in the said document by forging Plaintiff's signature thereon,

(f) The Plaintiff is a monthly tenant upon terms specified in paragraph 1 of the Statement of Claim in respect of the ground floor of the aforesaid premises and has been in continuous possession of the said portion since March 1970 up to date. Further the Plaintiff was also a monthly tenant of such portion as is mentioned in paragraph 8 of the Statement of Claim upon terms therein mentioned since May 1970 up to date. The Plaintiff avers that in the premises the Plaintiff is entitled to protection under the provisions of Section 16 of the Rent Control Act, 1966 ~~which the Plaintiff~~ (since January, 1971) hereby pleads particularly having paid rents for the premises and water and electricity owing to the fact that the liberty to use the licenee etc., of the Defendant's Eating Shop i.e. Licence No.1407 had been extinguished due to the Defendant's own breach of terms of the agreement therefor made with the Plaintiff.

(g) The Plaintiff is not in possession of alleged eating shop and restaurant business known as Nava India Restaurant since it would be illegal to carry on eating shop business in that name owing to non-renewal by the Defendant of licence.

Delivered at Penang this 20th day of February 1975

Re-delivered at Penang this 30th day of April 1975.

Re-delivered at Penang this 8th day of February 1977.

Sd. Sharma & Co.
Solicitors for the Plaintiff.

The address for service of the Plaintiff above-named is at the office of his solicitors, Messrs. Sharma & Co., of No.4A Beach Street, Penang.



No. 5

NOTES OF EVIDENCE



Between Kandasami s/o Kaliappa Gounder
Plaintiff

And

Mohd. Mustafa s/O Seeni Mohd.
Defendant

NOTES OF EVIDENCE OF GUNN CHIT TUAN, J.

In Open Court,
This 24th day of March,
1977.
Before me,
Gunn Chit Tuan Judge.

Mr. R.K. Sharma and Encik Abu Haniffa for Plaintiff.

Mr. S. Thillaimuthu for Defendant.

Agreed Bundle of Documents - marked "A".

Disagreed " " " - marked "B".

Mr. Sharma opens his case. States defence disputes there was oral agreement. Refers to para 9 of Statement of Claim, and states the lease was a sham and meant to circumvent the Control of Rent Act. Various breaches of agreements pleaded, see para 14. Para 15 alleges a tort and damages pleaded in para 17. Refers to para 20 regarding return of books of accounts. Refers to para 21 regarding disturbance of quiet enjoyment of tenancy.

Refers to para 2 of Amended Defence and Counterclaim and points out that Defendant then admitted allegations in para 3 of Statement of Claim. Refers to Defendant's Counterclaim - paras 2, 4(a), (b) and (c),5. States that

if Court finds Plaintiff a tenant, then under section 21 of Control of Rent Act, 56/66, it might be necessary to refer to Rent Tribunal to find the fair rent of premises.

Refers to paras 6 and 7 of Reply to Amended Defence - the prayers in para 12 therein.

Refers to paras 2 and 29 of Amended Amended Defence and Counterclaim.

Refers to deletion of para 14 of Counterclaim.

Refers to Re-Amended Amended Reply to Amended Defence etc. - para 2A. Plaintiff is pleading a set-off.

Refers to para 11 of above and states that Defendant never applied for renewal of the licence. Therefore Defendant cannot ask Court for return of business.

Court adjourns to 2.20 p.m.

Sd. Gunn Chit Tuan.
24.3.77 @ 12.47 p.m.

Parties as before.

Kandasami
Examination
Plaintiffs called

P.W.1 Kandasami s/o Kaliappa Gounder affirmed states in Tamil:-

Age 44. Eating shop proprietor residing at 43, Penang Street, Penang. My shop is called Sri Kaliamman Vilas. I have a licence to run the said business at 43, Penang Street. This is my licence - photostat copy produced and marked P1. These are my certificates of registration of business - marked P2A - C.

I first entered above premises on 1.4.1970 to carry on business there. Prior to that date I had eating shop in Chettiar's Hall, China Street, which was only opened to Chettiars.

One day I was discussing with one Karuppiah that my period of lease in Chettiar Hall would end soon and that I had to get new premises. I asked him to look for a place and I myself found No.43 Penang Street was vacant - the ground floor. On enquiry I discovered a man called Koori living on one of the top floors of that shop. I asked him about the ground floor and he told me that the chief tenant lived in Butterworth. Koori was the agent of the Defendant - identified. Both of us went to see him sometime in March, 1970. I was introduced to Defendant in an eating shop at Butterworth. An old man sitting at the counter was introduced to me as the father of Defendant and the proprietor of that shop. I have never met them before. When Koori asked Defendant whether he would rent it out to

me, he agreed. I said I wanted the ground floor. Defendant said he had originally rented out the whole premises for $500/- to a certain person, and I could rent the whole premises at the same rent. I did not accept that offer and said I only needed the ground floor. He asked me for $250/- for the ground floor. I did not accept and at last we agreed on $230/-.

At this stage, Mr. Thillaimuthu objects to admissibility of further oral evidence in view of para 9 of Statement of Claim. He refers to Sarkar on Evidence (11th Ed.) on section 91 on proper time to object when evidence is tendered in contravention of this section.

Refers to section 92 Evidence Act.

Mr. Sharma states objection misconceived.

Refers to lease dated 30th July, 1970 in page 2 of "A". States that Plaintiff was only giving evidence of oral contract in April.

Court rules that Plaintiff may continue giving evidence relating to circumstances under which he entered into occupation in April, 1970.

Adjourned to date to be fixed. Two continuous days required.

Sd. Gunn Chit Tuan.
24.3.77 @ 4.15 p.m.

This 21st day of April, 1977.

Parties as before.

P.W.1 affirmed continues:-

When it was agreed that the ground floor be rented to me for $230/- p.m. I was asked for 2 months' deposit, i.e. $460/-. Duration of tenancy was not discussed but I was told I could remain as long as I pay the rent. The rent was $230/- included light, water, furniture, white-washing of ground floor together with the eating shop licence which was in defendant's name. He did not show me the licence, but told me that he had a licence. I did not ask to see the licence because I trusted him. I was told by defendant that he was the chief tenant of the whole premises. I learnt from Koori that the restaurant belonged to the defendant. Koori was defendant's agent and collected rent for him. When I took over business, defendant allowed me to use the name of his restaurant, i.e. "Nava India Restaurant". The father of defendant died in 1972. His father was called Seeni Mohamed. His father did not take part in the discussions.

Defendant wanted the deposit that day. I paid him $230/- that day and told him that I would pay the other $230/- before 15th March. On 15th March defendant went to the shop and sent for me. I went and paid him. I asked him for receipt and he said I could trust him to issue it later.

Defendant's father did tell me that he had given up the whole of the premises and business to his son. That was on 31.3.70. There was also a sort of temporary lodging house business carried on by the defendant, whereby people in transit to and from India lodged in rooms upstairs. I believed what defendant's father said.

At this stage, counsel for plaintiff puts in a Further Supplementary Bundle of Disagreed Documents - marked "C". No objections by defence counsel.

Counsel for plaintiff refers to page 6 of "C". Another Disagreed Bundle of Supplementary Documents - "D". By consent of counsel, page 6 of "C" now marked "P3".

There was no discussion about my paying the City Council assessment. Defendant said he would pay it.

On 15.3.70 defendant told me that the furniture on the ground floor would be my responsibility and I would have to pay for any loss, including loss of any item of cooking utensil. After that I left Karuppiah there to look after things. Karuppiah brought along his personal effects and stayed on the premises for about 2 - 2½ months. He slept near the staircase.

Defendant has come to shop on many occasions after I took over. He never objected to Karuppiah staying there.

After shop opened on 1.4.70, my wife and children came to stay with me. There were two screens and they were used to cover the portion occupied by them. Anyone coming to shop could see the screens. Defendant never objected to their presence. My family moved in on 15.4.70. It was not convenient for my family to stay there, but I carried on there. Subsequently I did approach defendant for a room upstairs. $70/- was agreed for a room upstairs. Building is a four-storey building,

At this stage, counsel for plaintiff applies under section 21 of Control of Rent Act, 56/66, for reference to Rent Tribunal to apportion or determine fair rent for the premises in question.

Counsel for defendant objects on ground that plaintiff is claiming that there is landlord and tenant relationship, but defendant claims there is no such relationship and that there is only a licence.

No order on above application.

These are house rent receipts - "P4A - D".

Court adjourns to 2.30 p.m.

Sd. Gunn Chit Tuan
21.4.77 @ 12.40 p.m.

Parties as before.

P.W.1 affirmed continues:

When I took over, there was a tailor who paid me $10/- p.m.

Defendant also asked me for two months' rent as deposit for the room upstairs and I have paid him $140/-. I cannot remember the date but I remember it was in June that year. Defendant did approach me for increase of rent of ground floor. He said I had obtained the premises without paying any coffee-money and that I should therefore pay a higher rent. My business had improved. Increase of rent was asked for after July. I started paying rent for the room in July. I did not get any receipts. I believed that he would have given me the room which he has not done so. It was agreed that I paid rent in arrears. Relationship between us became estranged in February 1971. Cause of strained relationship was because I threatened not to pay rent in future unless he gave me a receipt.

Page 13 of "A" referred to witness.

It was not true that I was in arrears with rent. Page 14 of "A" referred to witness. He brought Warrant of Distress with him one day and threatened to attach certain things in the shop. I told him I only owed him rent for February. There was a crowd and defendant spoke loudly. From that time my business went down.

I buy provisions by paying cash and on credit. Defendant knew that. I lost $300/- - $500/- permonth, since 1.3.71 to 1.8.71. Furniture was taken away by force in August and doors of shop were closed. I did now leave the shop. Defendant and I discussed. I said I would pay rent for February if he would give me a receipt. He agreed and he gave me receipt for months of February - May 1971. He did not ask me for January rent thereafter. I had already paid January rent in February.

Court adjourns to 22.4.77.

Sd. Gunn Chit Tuan
21.4.77

This 22nd day of April, 1977

Parties as before.

P.W.1. reaffirmed states further:-

A couple of days after the day he brought the Warrant of Distress, he came again and said that we should forget the past. He also said if I paid rent he would issue receipts and also give me the room upstairs. Ex. P4A shown to witness. This was the first receipt I received. I have not received any receipts before.

When he came in February to ask for January rent, I told him he had not kept his promise. I paid the January rent in February and at that time I told him that unless he issued receipts I would not pay rent in future.

Witness referred to p.19 of "A". I received this and wrote letter at p.20 of "A" to City Council. I received reply at p.21 of "A". It was the responsibility of defendant to pay licence fees.

Witness referred to p.25 of "A". July rent not due on 31st July.

Witness referred to p.26 of "A". Yes, this letter was written on my instructions. As regards the last paragraph thereof, I instructed my solicitor that I anticipated trouble.

On 3.10.71 at 4.00 p.m. defendant and a group of persons came and forcefully took away chattels and furniture. I went and instructed our lawyer to write letter at p.27 of "A" - identified.

Letter at p.33 of "A" referred to witness. Yes, I received that letter.

Court adjourns to 2.30 p.m.

Sd. Gunn Chit Tuan
22.4.77 @12.25 p.m.

Parties as before.

P.W.1. reaffirmed states further:-

At this stage, counsel for plaintiff tenders original copy of Summons served on plaintiff in Sessions Court Civil Action No.118 of 1972 - marked "P5".

That proceedings was settled by defendant withdrawing summons.

These are receipts of money paid by me for the restaurant licence fee - marked "P6".

These are receipts for payment of water and electricity and rates by me - marked "P7" and "P8" - to settle the Warrant of Distress taken by the City Council.

I do maintain accounts of my business. Defendant took all those books. At one time defendant thought I had good income and asked for more rent. I allowed him to take my books away. He has not returned them.

The original rent of $230/- was inclusive of water and light. It is not true that a further $70/- was payable for water and light. That further $70/- was for a room.

The sum of $460/-, being two months' deposits referred to in para 2(c) of the lease - see p.3 of "A". No money was paid when the lease was signed.

Pages 25 and 26 of Bundle of Pleadings shown to witness. - Yes, I signed this on page 25, but the signature on p.26 is not mine.

There was no schedule attached to the agreement. The defendant wanted the agreement drawn up because he wanted protection under the Rent Control law as he was collecting excessive rent. He was collecting about $600/- - $700/- for rooms upstairs. Defendant told me so and also that he would get into trouble with income tax if one reported to the revenue authorities. Agreement was entered into for benefit of defendant who told me that I need not worry about it. Defendant told me that though the lease does not refer to the room upstairs, their oral agreement regarding it stood. It was not intended that the written agreement should be binding on me.

To 2nd and 3rd June for continued hearing.

Sd. Gunn Chit Tuan
22.4.77 @ 4.12 p.m.

TRUE COPY,
Sd. Low Hock Chuan
Ag. Secretary to the Judge,
High Court, Malaya,
Penang.

Date 23rd May, 1977

IN THE HIGH COURT IN MALAYA AT PENANG

CIVIL SUIT NO. 252 of 1971

Between Kandasami s/o Kaliappa Gounder
Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd.
Defendant

In the High Court in Malaysia at Penang

NOTES OF EVIDENCE

In Open Court,
This 30th day of May, 1977.
Before me,
GUNN CHIT TUAN,
Judge

No.5
Notes of Evidence
Kandasami
Examination
Plaintiffs called
(Contd.)

Mr. R.K. Sharma and Encik Aby Haniffa for Plaintiff.

Mr. S. Thillaimuthu for Defendant.

P.W.1 Kandasami s/o Kaliappa Gounder a/s. in Tamil:-

Cross-examination

I now claim as pleaded in my Statement of Claim. XXed.: I was at one time running an eating shop in Chettiar's Hall. It was not registered. It need not be registered as it was only open to Chettiars. It was a verbal lease for two years. No written agreement. I did not pay income tax.

Put: I was not a cook. Business was mine. I cooked and had assistants. Karuppiah was my friend. I do not know that defendant carried on his business since 1967. I cannot remember exact date I first went to Butterworth. The $230/- was for the ground floor, furniture, water and light, whitewashing of building and use of eating shop licence. Yes, I paid him $230/- that day. That day it was also agreed that I could carry on as long as I liked. We discussed the verbal agreement. Yes, he accepted me. It was agreed that I was to take over on 1st April. On that day no inventory of furniture was taken, but it was agreed whatever furniture was in the Nava India Restaurant. When I said use of licence, it included use of the name "Nava India Restaurant".

I started business on 1.4.70. The second $230/- was paid on 15.3.70 at the Nava India Restaurant.

Put: I was never his cook on 1.4.70 until 31.7.70.

Put: Not true I started business on 31.7.70. I started business on 1.4.70.

When I took over business I received a letter from Labour Office. I gave it to defendant who said he would prepare a letter for my signature. I did sign a letter but I do not know its contents. Yes, this is my signature on this letter - marked D9. I do not know, about anything that is written in D9.

Put: Not true my family only came to premises in February 1971. No permanent partitions were erected after they came. They only slept behind movable screens. Yes, people could pass between the screens. There were no doors as the screens were movable.

Defendant never objected to my family staying there. I do not know whether City Council refused to renew his licence because of my family staying on the premises.

Plaintiff referred to p.11 of "A" - para 4. No one from City Council came to the premises to object.

Plaintiff referred to p.17 of "B". I was not shown that notice and defendant never informed me. Yes, eating shop licence renewable each year on 1st January. Yes, it must be white-washed. He did not send anyone to white-wash the house in March. Arumugam s/o Sreerangam called. He did not come in March but he only came in August 1971 with a gang to remove furniture, etc. from the shop.

Put: He never came in March or again in April. My wife told me he came in October.

Put: Not true he came in September and my wife turned him away.

Witness referred to p.6, para 8(b) of Consolidated Bundle of Pleadings. I did not mention that because I forgot about it. I asked for a room on first floor in May, 1970. I paid the $140/- in June 1970 and have since been paying room rent till June 1971. Every time I paid him rent he said he would give the room the next month.

Witness referred to p.15. When I received that receipt, defendant said he had already written out the receipt but would include the room in the following month's receipt. Rent receipts up to June were given to my wife whilst I was in India. After I came back, the room was still not given to me. I kept on paying $300/- because I had nowhere else to go. There were rooms falling vacant but defendant used them for transit lodgers going to and from India.

Yes, there is no reference to a room in the agreement.

Witness referred to p.22 of "A". I asked a petition writer to write this letter for me and I do not know whether he mentioned the room.

Although there is no mention of $140/- in the agreement, defendant told me he would abide by word. Yes, I signed the agreement by lawyer Subbiah. I did not discuss with lawyer because I trusted defendant.

Witness referred to p.4 of "A". Yes, I could have used the name "Nava India Restaurant" to obtain loans.

My family is no longer staying on premises, i.e. after removal of screen.

From August 1971 to 15.7.74, no business was carried

on in premises. Until then my family stayed there. It took 3 years to get business licence in my name.

Court adjourns to 31.5.77 @ 2.15 p.m., i.e. after Criminal Trial No.13/76.

Sd. Gunn Chit Tuan
30.5.77 @ 12.40 p.m.

No.5
Notes of Evidence
Kandasami
Examination
Plaintiffs called (Contd.)

TRUE COPY,
Sd. Low Hock Chuan
Secretary to the Judge,
High Court, Malaya,
Penang.

Date 27/6/77.

IN THE HIGH COURT IN MALAYA AT PENANG

CIVIL SUIT NO. 252 OF 1971

Between

Kandasami s/o Kaliappa Gounder — Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd. — Defendant

NOTES OF EVIDENCE OF GUNN CHIT TUAN, J.

In Open Court,
This 29th day of August, 1977.
Before me,
GUNN CHIT TUAN
Judge

Parties as before.

Mr. Thillaimuthu refers to p.42 of Consolidated Bundle of Pleadings and applies to amend prayer (a) by adding the words "and recovery of possession of the ground floor".

Mr. Sharma does not object provided he is given right to amend his pleadings later on, if necessary. P.W.1 Kandasami s/o Kaliappa Gounder re-affirmed states further under cross-examination:-

I did not apply for licence prior to 15.7.74. When I applied for licence, I was told that they would issue it if my family was not staying on premises. No, the screens on the premises were not fixed.

Two photographs shown to witness - 1D 10A & B. Those screens cannot be moved but they were not put up by me.

They were there when I moved in. We had two other movable screens. Those fixed screens are still there. Yes, door shown in 1D 10A is door leading to kitchen.
Put: No, I did not put those fixed screens up.

My family was still on premises when City Council officials inspected the restaurant. They advised me that my family should not be resident there.

The Defendant came alone with the Warrant of Distress. Bailiff did not come. Yes, one Hyduruce also came. He threatened to seize the shop and close it. I had paid the January rent. Not true they went away only after I promised to pay the rent.

Put: Not true I only paid the rent before going to lawyer Suppiah's office.

I did not write to Registrar, Sessions Court. Letter from Plaintiff to Registrar shown to witness - marked 1D 11. Yes, I wrote this letter to get certified copy of Warrant of Distress.

Original copy of agreement of 30.7.70 shown to witness - D12 and schedule - 1D 13. The signature on the schedule is not mine. I agree I signed the agreement proper. I cannot read nor write Tamil. I can only write my name. I did not read the agreement.

Put: No, the schedule was not prepared earlier nor did I sign it. Hyduruce might say I signed it but I did not. Yes, it was agreed that lease included furniture and utensils. Yes, when I took over, the furniture and utensils belonged to him. I prepared and signed a list for Perumal, who used to live upstairs. All his furniture and utensils have been taken back by him. I had a list, but when he removed my till box, the list went with it.

Put: Not true I put his furniture on five-foot-way. He came and took them whilst I was not here. How could I take some of his furniture to his restaurant in Bishop Street? In August they took some and in October they came and took away show-case which they sold to someone else.

Put: Not true I wanted to get rid of furniture as I was only interested in the tenancy of premises. Yes, all the furniture were used prior to my occupation. When I took over premises, I did not know the defendant's landlord. I have not seen this man before. K.P.M. Abdul Kader called and not identified. Hyduruce called. I have seen this man before.

Yes, defendant was to pay assessment. Yes, the notices for payment of assessment were sent to 43, Penang Street, From 1973 I have paid assessment. In fact, I paid for arrears of assessment for second half of 1972.

The owners of the house, who are in India, asked me to pay the assessment. Abdul Kader Merican and three others are the owners. No, I did not refer the notices to the defendant.

Defendant had to pay water and electricity charges, but I paid since 1975. Bills are still in the name of defendant. Now, there are separate meters for the ground floor - since 1975. I applied for it because defendant applied for my water and electricity to be cut off.

Put: Not true, I applied for separate meters because I got licence. I applied for them because defendant had water and electricity cut off.

Yes, I have been carrying on business under the name of Sri Kaliamman Vilas - since 1974. Since defendant did not get the new licence, I did not continue business under the name of Nava India Restaurant.

I gave account books to defendant either in June or July, 1971. He promised to bring them back, but has never done so. I have informed Income Tax Department that my 1971 accounts have been taken away.

Put: I did hand him the books and after that he never saw me about the rent.

I agree thereis no back door to premises. Yes, entry from the front.

Re-examination

Ex-XXed.: Furniture taken away on two separate occasions, viz. August and October.

P8 shown to witness. I said water and electricity were in name of defendant.

P7 shown to witness. Since separate meters were installed in 1974 - I made a mistake earlier - I have been paying water and electricity charges in my name.

1D 10A shown to witness. That photograph must have been taken sometime after the shop was closed in 1971 and before I reopened in 1974. Door of screen could be opened, but it has been removed now. Staircase over bed without a pillow.

In bundle marked P8, there is a Warrant of Attachment. I was forced to pay the assessment. When I said owners, I meant the beneficiaries of the registered owners of the house. They asked me to pay in 1972. I was worried that if I did not pay assessment, my things would be auctioned.

Court adjourns to 2.15 p.m.

Sd. GUNN CHIT TUAN
29.8.77 @ 12.55 p.m.

Parties as before.

P.W.2 Dr. V. Thiruvengadam a/s. in English:-

No.5
Notes of Evidence Plaintiffs evidence Dr. V. Thiruvengadam Examination

I am Deputy Director of Health Services, Municipal Council, Penang. Premises No.43 Penang Street was granted an eating-shop licence in 1970. A licence startson date of issue and ends on 31st December that year. In 1971 there was no application for a licence from the same person, Mustafa. Next application by Mustafa was in 1974. In the interim period, there was no application by him. This was the application in 1974 - marked P14. No other application by him in 1974 in my file.

When the licence granted in 1970 expired on 31.12.70, it was not legal to carry on business.

Cross-examination

XXed.: For renewal of licences, you do not have to apply. Yes, we inspect premises from the health point of view to find out whether there are any health hazards noticeable. Not necessary on 31st December; inspection may be 10 days earlier or 10 days later. Yes, the proprietor can carry on until the licence is renewed, and Council does not take any action. I did not visit 43 Penang Street personally. Yes, we issued this notice - D15 - and renewal of licence was subject to compliance with it. Yes, we issued this notice - D16. I do not know who was using the premises. Yes, if conditions were fulfilled, defendant would be entitled to renewal of licence.

P1 shown to witness. Yes, licence was approved for issue to that man in May, 1974 for the first time. Yes, condition regarding non-user of premises for residence was then fulfilled. Defendant was also appealing in 1974 for issue of licence in his name. Licence could not be issued in 1971 - 1974 because of non-compliance with condition. No, he was not required to white-wash premises.

Re-examination

Re-XXed.: D16 shown to witness. Yes, routine to issue such notices before expiration of licences. For renewal, apply verbally. There was no valid licence for 1971. It would appear that D16 was issued in error. No evidence in my file to show what action was taken after D15. Yes, on 26.3.71, there was no valid eating-shop licence. D15 was not related to renewal of licence. I really do not know why this licence was not renewed in 1971. No record why licence was not renewed in 1971.

Plaintiffs evidence Loo Ewe Choon Examination

P.W.3 Loo Ewe Choon a/s. in Hokkien:-

Age 57. Sundry shop-keeper residing at 197, Cintra Street, Penang. I am the proprietor of Chop Eng Hong. I know the plaintiff - identified. He buys rice, cooking oil and mild from me. When I dealt with him, I used to frequent his premises on the ground floor of 43 Penang Street. I dealt with him sometime in April, 1970, and sold

goods to him on credit. He bought about 8 - 10 bags of rice. He started on 1.4.70. I remember one day in March, 1971 when I saw many people in the plaintiff's shop. There was a commotion and I saw Court officers. I enquired and discovered there was an attachment of the shop. As a result of that, I stopped supplying him goods on credit because I was afraid he might be insolvent.

XXed.: I used to go to his place to take orders or collect money. Plaintiff did not have a telephone then. I did not know plaintiff before I started business with him on 1.4.70. I have seen defendant, but I do not know him. I did not know the amount involved with the Warrant of Attachment. Not I give him credit. I started business with him again a few months ago. Yes, I had accounts and issued receipts to him.

Re-XXed.: Accounts were kept and receipts were issued by me in 1970. Yes, this receipt was issued by me in April, 1970 when I first started business with him - marked P17 and 17T.

Counsel through Court: P17 was issued to him at 43, Penang Street when he was doing business there.

Court adjourns to 9.30 a.m. tomorrow.

Sd. Gunn Chit Tuan.
29.8.77 @ 4.25 p.m.

This 30th day of August, 1977

Parties as before.

P.W.4. Uthirapathy s/o Govindasamy a/s. in Tamil:-

Age 63. Milk Vendor residing at 35, PTS - 5 Green Lane, Penang. I know Plaintiff - identified. I know him since he was cooking at 124 Penang Street because I used to supply him with milk. Later he opened a shop - I am not sure about the number, but the name was Nava India Restaurant and Coffee Shop. In 1970 I was selling milk to him. I think I supplied him with milk from the month of April. Milk was supplied on credit.

As far as I remember, I went there in March, 1971 and found the shop closed. I was informed that it was seized. I did not supply milk from that day for quite a long time - about 5 or 6 months. Thereafter I started supplying milk again until today.

XXed.: No, I did not start supplying in August, 1970. No, I do not have written records. I made a note, but it is not available now.

When I went there that day in March, 1971, I was told

the shop had been sealed. Later on I found it was about arrears of rent. There was a crowd outside - about 20 people on the five-foot way and more on the road watching. I do not know what they were doing and did not notice commotion because I was not there for a long time.

I did not supply milk after that because I was doubtful whether he could pay me. I went back after plaintiff sent someone to call me.

No Re-XXn.

By Court: The restaurant called Nava India Restaurant was opened by him after he left the Chettiars' place at 124 Penang Street.



P.W.5 Harbans Singh s/o Bishan Dass a/s. in Punjabi:-

Age 57. Tailor carrying on business at 99, Penang Street. I have known plaintiff for 20 years. I have seen him working at a Chettiars' place at 120, Penang Street. He is running a restaurant at Penang Street - No.43 Penang Street. I first went there in April, 1970 to eat "thosai". Shop belonged to plaintiff. I went there on an Indian festival day and was there for 2 - 3 hours. I have been there frequently since then. After some tables there is a flight of stairs on the left. Near the flight of stairs there is a partition. There is a gap through the partition leading to the kitchen.

1D 10A shown to witness. Behind that partition is the kitchen.



XXed.: Yes, plaintiff, his wife and one or two assistants used to cook in April, 1970. He was collecting the money then and prior to his removal there from China Street, he told me he was opening a new shop in Penang Street. I used to have meals at 120 Penang Street when he was cooking there. I have also taken meals at China Street when he was there. It was a Chettiars' hall. I did not go there frequently. As far as I can remember, there was a textile shop in the premises. I do not know when it became a restaurant.



P.W.6 Karuppiah s/o Kodaikumari Ambalam a/s. in Tamil:-

Age 54. Accounts clerk residing at Lot 9834, Jalan Hj. Mond. Ali, Sitiawan. I know plaintiff - identified He was looking for premises for an eating shop. He told me so between 7th and 10th March, 1970. On 15.3.70 he told me he had found a shop and asked me to come and look after things by residing there. I moved in there. I know there were tables, chairs and cooking utensils kept on shelves in the kitchen. I did not note details of the utensils.

Plaintiff told me the shop belonged to nne Mustafa.

Plaintiff opened the shop on 1.4.70. I have seen defendant when he came to the shop to talk to plaintiff, but I do not know what they discussed. I know plaintiff paid defendant rent. I was on premises for 2 - 2½ months.

1D 10A shown to witness. That partition was already there when I arrived. Partition to entrance of shop about 40 - 50 feet. From where staircase starts to where partition stands is not part of dining hall. There were movable partitions from where the staircase starts.

XXed.: I can and do remember dates. He started the business on 1.4.70. The movable partitions were beside the stairs. Of course, I would not know what happened after I left. When I was there, his family was not there. I do not know when his family came. Plaintiff slept on a camp bed.

Re-XXed.: Yes, camp bed was folded during the day and kept along the fixed partition.

Case for Plaintiff.



D.W.1 Mohd. Mustafa s/o Seeni Mohd. a/s. in Tamil:-

Age 35. Businessman living at 3166 Bagan Dalam, Butterworth. I have a food stall and a cycle park at the said address. Landlord of 43, Penang Street is Penang Civil Storage Co. Ltd. Managing Director of Abd. Kareem. I became tenant in March, 1973.

This was my first receipt - marked D18. Rent - $174 p.m. and I am a monthly tenant. Prior to that, my father was the tenant. He was called Seeni Mohd. These two receipts were issued to my father - marked D19 & D20. Until I took over tenancy, my father was the tenant at the same rent. My father was carrying on business there under the name of Nava India Restaurant. My father had assigned the business to me in July, 1967, and I carried on thereafter. This was the deed of assignment - marked D21. After assignment, I had business registered in my name - P3 identified. My father passed away in 1972. Business was carried on ground floor of shop-house. My father had two other restaurants, one of them is called Selamat Restaurant, Bishop Street, and the other called Iqbal Restaurant in Butterworth. I carried on business until July, 1970. Then I leased business to plaintiff for one year.

D12 shown to witness and identified. Because my father was ill and asked me to look after the Butterworth restaurant, I had to lease out this business to plaintiff. In April, he came and joined me as a cook. I had closed the restaurant for some time for repairs. Four of us went to see father, i.e. Koori, Hyduruce and the two of us - in June, 1970. Father was not in favour at first. Plaintiff

asked again in July and once again four of us went to see father who was quite ill. It was agreed that he paid $230/- for the licence and $70/- for water and light. All four of us went to the solicitor and we signed agreement on 30.7.70. $460/- was paid to me by Hyduruce below the lawyer's office. Plaintiff was present. After that we went upstairs to see solicitor. He said he would pay me $460/- comprising two months' use of licence as advance as deposit as he has not used any water and electricity.

Page 1 of "A" shown to witness. That was my licence under which plaintiff was to carry on.

List of furniture was not attached on the day D12 was signed. It was attached about a fortnight later. Two days before agreement was signed, a list of furniture was taken. After D12 was signed, I informed Hyduruce that list was not there and he informed lawyer. Hyduruce had list prepared and brought it to plaintiff. It was found out that one item was missing and he deleted it and initialled the list, which was signed in Nava India.

1D 13 identified and now marked D13. We were all present. Not true plaintiff took over business on 1.4.70.

D9 shown to witness. I did not ask him to sign it. I did not agree to give plaintiff a room upstairs for $70/- p.m. or the common use of hall. I did not take $140/- deposit for the room.

Court adjourns to 2.15 p.m.

Sd. Gunn Chit Tuan
30.8.77 @12.50 p.m.

Parties as before.

<u>D.W.1</u> re-affirmed states further:-

Before 30.7.70, I did not receive rent from plaintiff. Upstairs was used for lodgers, i.e. those who go on voyage by steamers.

I acknowledged tenancy of 43, Penang Street on 27.4.73. Page 5 of "C" identified as copy of document to be produced later.

Licence was due for renewal at end of December, 1970. I did not renew it in 1971. When the Health Inspector found plaintiff's family living there, he said licence could not be renewed. I told plaintiff. He agreed to move family, but he did not.

D15 shown to witness. Plaintiff told me D15 had no connection with him. I wrote to plaintiff through solicitor.

Page 11 of "A" shown to witness. That is copy of letter.

Page 12 of "A" shown to witness. That is copy of the reply.

D16 shown to witness. I saw the Health Officer personally. Licence was subsequently not renewed. His family came to premises about end of January, 1971.

D10 A shown to witness. They were sleeping anywhere in front of the screen shown in photograph. I only had movable screens to cover the kitchen so that it cannot be seen. The fixed screens were erected by plaintiff.

I came to know later that plaintiff applied for licence in 1974. He did not consult me. When my licence expired, I was trying to renew it. I did not know that he had also obtained a business registration licence. The name "Nava India Restaurant" was printed on the chick in front of the shop. He has repainted it and printed the name "Sri Kaliamman Vilas" on it. The board above the chick still shows "Nava India Restaurant" on it.

I did give him consent to affix his photograph on the eating-shop licence, but no licence was issued in 1971. There was a condition that building should be white-washed prior to renewal of licence. There was no written notice sent to me, but I had covenanted to do so in the agreement. I asked a man to go and white-wash the premises in April, 1971. The name of that man is Arumugam. He went there and came back and reported that he did not allow him to do so. The next month I asked him to go again, but on the second occasion they refused to allow him to do so again. After the expiry of the lease, I sent the man there again to white-wash the premises. He came back and said the lady there had abused him and wanted to assault him. I advised him to go and make a Police report.

Page 13 & 14 of "A" shown to witness. I went several times for rent. He said that unless I brought receipts, he would not pay rents. I went and informed Hyduruce because he had introduced him to me. He told Hyduruce that if receipts were issued to him, he would pay rents. When I went to see him, he said he had already paid the rent for January and because of that I took out the Warrant of Distress. When I went with the Bailiff, I thought I would demand the rent first, and if he paid I would not execute. Hyduruce was present that day. The Bailiff asked for rent and plaintiff agreed and paid after the Bailiff had gone. Plaintiff said he would go and get money. There were some people eating in the shop. There was no crowd gathered outside and no noise. No voice was raised. I did not give receipts to plaintiff because it was with the Bailiff who had asked for it. I do not know what happened to that receipts.

Court adjourns to 9.30 a.m. on 1.9.77.

Sd Gunn Chit Tuan.
30.8.77 @ 4.00 p.m.

This 1st day of September, 1977.

Parties as before.

D.W.1 reaffirmed states further:-

43, Penang Street has only one entrance from the front. People upstairs use that entrance. There is a collapsible door which is controlled by plaintiff and Koori, who decide when to shut it. Plaintiff, Koori and some of the occupants upstairs have a key each. I leased the premises with the furniture. I did not remove furniture. Koori complained to me that plaintiff had removed some of the furniture upstairs and some outside. That was about 2 days after the end of lease. The showcase was outside. As some of the furniture were causing obstruction upstairs. I made a ceiling upstairs to store them. As the show-case was bulky, I sold it to a secondhand dealer. I did not remove the furniture.

I did not ask for plaintiff's account books nor was I given them. In the beginning, there was one bill for electricity and for water. Later he got separate meters in 1974. Until then I paid the bills.

The owners of the building paid the rates. Previously when the assessment bills came to 43, Penang Street, I took them to my immediate landlord. After 1971, plaintiff did not hand those assessments bills to me.

Warrant of Attachment in bundle marked P8 shown to witness. I was not informed about it.

P4 D shown to witness. That was the last rent paid to me.

Page 19 of "A" shown to witness. I sent that through lawyer.

Page 24 of "A" shown to witness. Yes, I also sent that letter.

Page 25 of "A" shown to witness. I now claim arrears of rent amounting to $140/-.

Page 27 of "A" referred to witness. I did not reply to it in detail because this suit had already started.

Page 42 of Bundle of Pleadings referred to witness. I counterclaim as set out therein.

XXed.: In March 1970, I was not tenant of whole premises Yes, I knew it. Yes, I remember applying to this Court on 15.1.75 through lawyer Lee Chong Keat to amend the Statement of Defence and serve a counter-claim. Yes, I swore an affidavit. Yes, I said in answer to solicitor that I was chief tenant of the whole premises at that time.

Para 3 of Statement of Claim referred to witness. Yes, I admit that para 3 of the said Affidavit referred to para 3 of the Statement of Claim. Yes, I understood contents of my affidavit. Yes, Statement of Defence was amended on 30.1.75.

Cross-examination

Page 17, para 14 of Bundle of Pleadings referred to witness. I might have given my consent to the facts pleaded by lawyer. It is correct that lawyer then drafted the counter-claim. He was a Chinese lawyer and might not have understood me. If only it had been translated to me as it is done now, the mistake would not have been made.

Original Statement of Defence was filed by M/s. Daljit & Vijaya. I instructed Vijaya. He cannot speak Tamil as well as this interpreter.

Para 3 of p.12 of Bundle of Pleadings referred to witness. Yes, my then counsel might have admitted paras 4 and 6 of Statement of Claim. It is a long time and I cannot remember whether I instructed counsel about those admissions. I agree counsel did not know the facts of this case until I spoke to him. I was not satisfied with that lawyer. Yes, I then changed to lawyer Lee Cheng Keat. Even that lawyer did not render satisfactory service. I have no difficulty in conversing with my present lawyer. Yes, I filed an affidavit of documents dated 11.9.75 stating that I have the documents referred to in the first part of the schedule. They were in my possession when I swore the affidavit.

D20 shown to witness. There is an error in item 3 of the affidavit of documents. The lawyer's clerk has typed stating that receipt was issued to me.

Put: Not true I altered the receipts to suit my case.

Yes, I filed an affidavit on 28.3.75, but I did not understand what was meant when I deposed that I was the chief tenant at all material times because the affidavit was not explained fully to me. Yes, I can read English, but I would not know what the words mean.

Put: I did not understand contents of my affidavit.

D12 shown to witness. I agree I signed it. I do not know line by line, but I know what it meant. I was not asked by lawyer whether I was tenant of premises. I only told him I wanted to lease the business only. Now

I say I did tell lawyer I wanted to lease the premises too.

Court adjourns to 2.15 p.m.

Sd. Gunn Chit Tuan.
1/9.77 @ 12.45 p.m.

Parties as before.

D.W.1 re-affirmed states further under XXn. :-

In 1972, I did not hold myself out as landlord to plaintiff. I did not claim rent from him.

P5 shown to witness. I did not instruct lawyer Mr. Karpal Singh to plead as in para 1. I did not say to lawyer what is pleaded in para 6. I might have asked lawyer to pray for possession of premises. I might have instructed lawyer to terminate plaintiff's tenancy before the action.

Witness referred to p.33 of "A". I might not have received it.

Witness referred to p.13 of "A". Para 2 of affidavit is correct.

Witness then referred to para 1 on p.3 of "A". My affidavit was not correct and should have stated first day of each month. I should have also stated $300/- for "licence fees" and not for "arrears of rent". I was advised by lawyer and listened to him. I did not determine tenancy first. Lawyer might have told me that that was necessary.

I went to plaintiff's shop 2 or 3 days after obtaining Warrant of Distress. Bailiff had some other work and left earlier. The next day I went and informed Bailiff that I had received rent. Yes, plaintiff paid me rent a second time in March after the 20th.

Put: That is the truth.

I signed P4 A-D. I received payment of P4 A on 10.3.71. Now I say when I write a receipt, I date it but I might have given it later.

Put: If he had paid his January rent, I would not have levied distress.

Page 9 of "A" referred to witness. I did not reply to it because it contained an untruth in that I knew the plaintiff's family was still in Nava India.

Page 10 of "A" referred to witness. I deny receiving that letter.

Page 11 of "A" referred to. I am forgetful. Now I say I received notice of 22.2.71.

Para 3 of p.11 of "A" referred again to witness. Lawyer did not tell me that it was an offence not to issue receipts when receiving rent.

Page 12 of "A" referred to witness. Contents not true.

Put: I was not using pressure on plaintiff.

Put: I say that when I went with Warrant of Distress, he paid the January rent. I say the $300/- is for the use of ground floor of premises, to carry on the business, the right to use furniture and use of water and light. Yes, he could use the name of Nava India Restaurant to carry on the business.

Court adjourns to 9.30 a.m.

Sd. Gunn Chit Tuan.
1.9.77 @ 4.30 p.m.

This 2nd day of September, 1977

Parties as before.

One Tamil interpreter on leave and two others on sick leave.

Court adjourns to Monday, 5.9.77 @ 9.30 a.m.

Sd. Gunn Chit Tuan.
2.9.77 @ 10.00 a.m.

This 5th day of September, 1977

Parties as before.

D.W.1 re-affirmed states further under XXn.:-

I am not calling any of my previous lawyers to prove that they have taken wrong instructions.

D12 shown to witness. It was prepared by Hyduruce. Father only transferred business and not the premises. I have been assisting my father in carrying on his business Business at Butterworth is bigger. I do not know whether area in Penang restaurant bigger. I started assisting my father in 1966 and carried on until July, 1967.

Put: Not true that prior to plaintiff taking over business, it was leased to someone else.

Is P3 shown to witness. Yes, business mentioned therein in the same business as that mentioned in D21. It became mine on 10.3.66. Yes, building is a four-floor building and some of the sub-tenants have been there for a long time. After my father's death, I collected rent. No, I did not give them receipts. Some of my accounts are missing. I had them when case started in 1971, but however careful you are, some are bound to be misplaced. I have no other documents other than those disclosed in my affidavit of documents.

Yes, I also have experience in running business at Selamat Restaurant at Bishop Street. Yes, I know I have to keep an employment register under the law. No, I did not maintain register in respect of plaintiff. No, I did not maintain register in respect of 43, Penang Street because I had old people who did not pay E.P.F. I had only two employees. Gross sale about $60 - below $100 per day.

Put: I had plaintiff as a cook in April, 1970.

I pay rent to Abdul Kadeer. I started paying after father's death in 1972. When my father fell ill, I began paying rent for about 6 - 7 months.

P3 shown to witness. No, I have not terminated the business on 3.12.75. I did not make that entry. It was the Business Registry that cancelled my registration for not paying the fees.

Put: I never sent them any Form C.

Yes, water and electricity supplies ceased when plaintiff had separate meters installed. It is not that plaintiff ceased to enjoy benefit of eating-shop licence after January, 1971, but it was because I was unable to get one for the premises. Of course, after that he only had use of premises.

Page 26 of "A" referred to witness. Yes, that letter must have come. Yes, I have not demanded for rent because I have asked him to get out. Yes, after he took over business, I cut the water supply. Yes, I supplied the others by installing new pipes.

Yes, plaintiff wrote to me to renew the eating-shop licence. I say I took steps in January or February, 1971. No, I did not white-wash the building. That is only done after inspection by City Council. Although licence expired on 31.12.70, one could carry on until it was renewed.

Yes, before I met plaintiff I was proprietor of business.

Put: I say plaintiff, Koori, myself and Hyduruce went to see my father and not plaintiff and Koori came to see us.

Put: I say there was a second visit by four of us to father. Not true my previous tenant had left in December, 1969, and I was anxiously looking for someone else.

I cannot remember what we talked about for one hour with father. The first time we discussed that business was to be leased for one year from August, 1970; business to be leased for $230 p.m. and water and light for $70. List of furniture was to be drawn up. Plaintiff agreed with the terms. He made some counter-proposals, but I cannot remember them. I did not agree to them.

Since you say plaintiff is illiterate, I now know he is so. In the presence of father, we did not discuss in detail as set out in agreement which is drafted as advised by lawyer. Agreement was not to circumvent the Rent Act about which I did not know then.

Witness referred to para 3(b) of agreement. Either I or my father could pay rent.

1D 10A shown to witness. No, partition was not there when plaintiff went into premises. Yes, I objected to them.

Put: It is up to him whether he could have then constructed another room. I say in addition to that partition, there were removable screens.

Put: Plaintiff did not move into premises in March, 1970. Not agreed then that rent was to be $230, including water and light.

Witness referred to agreement - para 2(c). It could be the deposit. I agree deposit is usually agreed upon with reference to the rent. I cannot say why the figure "$460/-" was agreed upon if the rent was $300/-.

Not true plaintiff was the sole and exclusive occupant of premises. Not true a higher rent was agreed upon because plaintiff has not paid "tea-money".

Put: I neither took nor asked for his account books. In 1970 I did not have trouble with the Labour Office. I wrote to E.P.F.

D9 shown to witness. No, I did not ask plaintiff to sign it.

Put: The chick in front of the shop may or may not be mine. In August, 1971, I did not go to the premises with a crowd. I only went there with Hyduruce.

Put: No, I did not go with a crowd. There was a crowd already there.

Put: No, i did not go there with a crowd and forcibly take away the furniture.

Court adjourns to 2.30 p.m.

Sd. Gunn Chit Tuan.
5.9.77 @ 1.07 p.m.

No.5
Notes of Evidence Defendants Evidence Mohd. Mustafa Cross-examination (Contd.)

Parties as before.

D.W.1 re-affirmed states in re-examination :-

Re-examination

P3 shown to witness. Although I have stated that my business started on 1.1.66, it actually started in July, 1967, i.e. after father assigned business to me. I did not make that entry on pp.2-3 relating to cessation of business.

Plaintiff carried on business until August, 1971, notwithstanding non-renewal of the eating-shop licence.

I think I paid for water and electricity until end of 1974. Because he had business in his name, I did not want to pay for his use of water and electricity. I did not receive rent for period April - July, 1970. The big board bearing the name "Nava India Restaurant" is still there.

Notes of Evidence Defendants Evidence Thangaswaran examination

D.W.2 Thangaswaran s/o Ramasamy a/s. in Tamil :-

Age 30. Lab. assistant residing at 3457, Jalan Bagan Dalam, Butterworth. On instructions of defendant - identified - I took 3 photographs in February, 1971 of ground floor of 43, Penang Street. These are two of the photographs - now marked D10 A & B. These are the negatives - D10 AN & BN.

Cross-examination

XXed:- I do not remember date, but I remember time.

No Re-XXn.

Notes of Evidence Defendants Evidence Hussain bin Harun

D.W.3 Hussain bin Harun a/s. in English:-

Bailiff attached to Sessions Court, Penang. In 1971, I was also a bailiff. I know Warrant of Distress issued in Distress Application 1/77. I was taken to 43, Penang Street, Penang by defendant - identified - sometimes in March, 1971. Defendant pointed out Kandasami to me. He looked fatter than plaintiff. I explained purpose of my visit. After some conversation in Tamil between them, defendant told me not to execute because plaintiff would pay the next day. I went back. There were 4 - 5 people there. They were seated there. The next day defendant came and told me that the plaintiff has paid. Receipt is with me - produced and marked D22. Normally for distress, rent receipt should be made. Yes, this is copy of a letter I received - now marked D11. There was no commotion there when I went there. No raised voices.

In the High Court in Malaysia Penang

XXed: The man I saw was fatter than plaintiff is now. Yes, they spoke in a language I could not understand. That man said he would pay the next day.

Notes of Evidence Defendants Evidence
Hussain bin Harun
Cross-examination

Re-XXed. Plaintiff understood me.

Plaintiff's counsel through Court: I went after lunch.

Re-examination

By Court: Receipt kept in Court's file unless applicant asked for it. I went there on 9.3.71. I left the scene before 2.30 p.m.

Notes of Evidence Defendants Evidence
Arumugam
Examination

D.W.4 Arumugam s/o Sree Rangam a/s. in Tamil:-

Age 55. Carpenter residing at 3011, Bagan Dalam, Butterworth. In 1971, I did go to 43, Penang Street, Penang on instructions of defendant and his father - defendant identified. I went there to paint and do some repairs. When I went there, the person in the shop said I could not do anything there. It was a lady. I went there once in March, once in April and again 5 or 6 months later. I was again sent away. I have been painting the said premises since 1962.

Cross-examination

XXed.: Defendant did not tell me premises had been rented out to one Kandasami. I was not asked to see any specific person. I last went there in 1970. I do not know how the lady is related to plaintiff. I remember it was March because I was sent away. I do not know about any commotion.

No Re-XXn.

By Court: Lady did not abuse me or assult me. Defendant told me to make a report. Police took down my report.

Court adjourns to Wednesday, 7.9.77 at 10.00 a.m.

Sd. Gunn Chit Tuan.
5.9.77 @ 4.15 p.m.

This 7th day of September, 1977

Parties as before.

Notes of Evidence Defendants Evidence
Abdul Kader
Examination

D.W.5 K.P.M. Abdul Kader s/o K.P. Mohd. Kassim a/s. in English:-

Age 48. Businessman residing at 33, Edgecumbe Lane, Penang Civil Storage Co. Ltd. is the chief tenant of 43, Penang Street, Penang. I am the governing director of the company. In 1963, S.K. Seeni Mohd. was the tenant. Defendant was his son. I know Seeni Mohd. died. He was tenant for about 18 years and I have been issuing receipts to him.

D19 & 20 shown to witness. They were signed by me. Last receipt issued to him was March, 1973, although he died in 1972.

From 1.3.73, defendant became tenant.

D18 shown to witness. That was the first receipt issued to him. From then on receipts were issued in his name. Seeri Mohd. did acknowledge his tenant in a document.

At this stage, Mr. Sharma objects to admissibility of that document on the ground that the document is not stamped and should be impounded. In any case, the terms of the late Seeni Mohd.'s tenancy are irrelevant and not pleaded.

Mr. Thillaimuthu: Document need not be stamped. Document admissible by virtue of para 2 of Amended Amended Defence and Counter-claim. (see page 37 of bundle of pleadings).

Ruling: Inadmissible.

At this stage, Mr. Sharma states that plaintiff admits with qualifications that Penang Civil Storage had given tenancy to Seeni Mohd.

When I accepted defendant as tenant, he did acknowledge the tenancy. This is it - marked D23. It was signed by him.

We were to pay the assessment and paid assessment up to first half of 1973. After that I went to City Council and they told me assessment had been paid. I did not receive any bills after that. Bills were sent to 43, Penang Street. No one asked me to pay assessment after 1973, nor was I aware of any Warrant of Attachment for non-payment of assessment.

Bills were in the name of Hameed Oli Marican.

Cross-examination

XXed.: My company became tenant for the first time in 1954. Tenancy obtained from Hameed Oli Marican, administrator of estate of K.E. Mohd. Sultan Maricar (deceased). I did not negotiate tenancy in 1954.

D23 shown to witness. It contains all the terms. No other terms. No, rent is not stated in D23. Yes, I can claim a specific amount - $174.25. Yes, that would be outside scope of D23. Yes, I agree some of the terms outside D23. For the last ten years we have not paid rent to our landlord.

Put: It was prepared on date stated therein.

D18 shown to witness. It did not occur to me to refer to D23 in it. I did not ask defendant who had paid

assessment. Yes, after defendant's father died, I continued to receive rent from defendant. I do not think the receipts were freshly prepared for this trial. Yes, it was agreed between us and our landlord that I paid the assessment. When our company got the tenancy, we did not sign or acknowledgment of it.

Re-XXed.: Since death of landlord, no one has claim the rent.



D.W.6 Hyduruce s/o Abd. Kader a/s. in English:-

Age 48. Income Tax consultant. I know defendant - identified - and also knew his father. I first knew plaintiff when he was a cook in Chettiars' hall in 1968. After that he went to Nava India Restaurant in April, 1970. He was a cook there. Defendant was running the restaurant I have seen him there. Defendant was there until July, when plaintiff saw me and asked me to go and see defendant's father. In June, plaintiff, defendant and one person went with me. Defendant's father did not want to give. At that time restaurant was run by defendant and owned by defendant's father.

D21 shown to witness. I was the witness. Now I say in 1970 it was owned by defendant. We had to go and see his father because he had to get his consent. Plaintiff persuaded me to go and see defendant's father a second time. This time he agreed. Four of us went, i.e., defendant, plaintiff, Koori and myself. Only rental of $230/- was agreed plus $70/- for water and electricity. Terms were noted and given to lawyer. Next day we made a list of furniture and then went to see lawyer Suppiah in the last week of June. Deposit of $460/- was given to me by plaintiff before going to lawyer. Agreement was signed. D12 identified. $460/- was paid to defendant, before going to lawyer's office. After stamping agreement, we found list of furniture missing. I took back list and typed in my office. After checking it - D13 identified - one item was deleted and document signed.

I attended opening ceremony of restaurant by plaintiff in August. Defendant also attended.

Furniture was let under agreement. In 1971, I was called by Koori and told furniture was thrown upstairs and on five-foot way. Defendant took show-case away because it was on five-foot way. Stools and benches were upstairs.

D15 shown to witness. Defendant brought this to me. Plaintiff said he was not going to go. Defendant said he would go and see his lawyer.

XXed.: I am not a professional land broker. Sometimes I accept brokerage. I have no income tax qualifications. I last went to the shop in 1971. After signing of the agreement, I did go there in 1970. Yes, he had some people working for him. Yes, he was not only cook but also managing the business in August, 1970.

Put:- No, situation not the same in April, 1970. I have not been defendant's tax consultant nor have I done his accounts. I prepared D21. I know defendant was proprietor before date of the deed. Sometimes defendant consults me. Yes, plaintiff knew where defendant lived. I was only sitting there when defendant came with Warrant of Distress Defendant asked me to go and sit there because he was afraid plaintiff might disturb or threaten him with broom-sticks. I went there to assist.

In October, I was there but the furniture was already outside.

I did not know plaintiff's salary. Yes, I know a lot about this matter. Not correct I introduced plaintiff as a cook.

Put: Yes, I provided list of furniture to solicitor.

Put: I say there was a list and solicitor's clerk made a mistake by not including it.

Agreement was explained to defendant. I agreed the words "Lessor hereby lets to the Lessee the ground floor" are there. Yes, premises are rent-controlled. I do not know about tenants upstairs.

Court adjourns to 2.15 p.m.

Sd. Gunn Chit Tuan.
7.9.77 @ 1.15 p.m.

Parties as before.

D.W.6 re-affirmed states further under XXn.:-

I did not draw attention of solicitor to fact that schedule was not attached. I thought it was not necessary for solicitor to sign the schedule.

I witnessed D21. I did not witness D13 because both of them had asigned. D13 was signed before me. I deny D12 & 13 were meant to protect defendant under the Rent Control Act.

No Re-XXn.

Case for Defence.
To 20.9.77 for further hearing at 9.30 a.m.

In the High Court in Malaysia Penang

Sd. Gunn Chit Tuan.

TRUE COPY,
Sd. Low Hock Chuan
Ag. Secretary to the Judge,
High Court, Malaya,
Penang.

Dated 17/9/77

No.5
Notes of Evidence
Defendants Evidence
Hyduruce
Cross-examination
(Contd)

In the High Court in Malaysia at Penang

No.6

Grounds of Judgment of Gunn Chit Tuan J.

Between

Kandasami s/o Kaliappa Gounder — Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd. — Defendant

No.6
Grounds of Judgment of Gunn Chit Tuan J.
30th June 1978

GROUNDS OF JUDGMENT OF GUNN CHIT TUAN, J.

This action by the plaintiff was commenced by a writ of summons dated 11th September 1971. In the Statement of Claim dated 24th September, 1971 he claimed against the defendant for:-

(1) A declaration that the Plaintiff is a tenant of the Defendant entitled to protection of his tenancy under the provision of the Control of Rent Act, 1966, in respect of such parts of the premises No.43 Penang Street, Penang as are rented to the Plaintiff by the Defendant, i.e.

(a) the whole of the ground floor of premises No.43 Penang Street, Penang.

(b) a room on the first floor of the said premises including the right to common use of the hall and other conveniences on the first floor by the Plaintiff, the members of his family and his customers of the eating shop.

(2) Damages for breach of terms of oral agreements made in or about the early part of May, 1970 and written agreement dated 31st day of July (sic) and made between the Plaintiff of the one part and Defendant of the other.

(3) Compensation for loss and damage suffered by the

Plaintiff by the Defendant's illegal acts of obtaining Warrant of Distress dated 8th day of March, 1971 and wrongfully acting thereon to the detriment of the Plaintiff.

(4) An order that the Defendant do refund to the Plaintiff all sums of monies received by the Defendant in excess of the rent which may lawfully be recovered by the Defendant under the provisions of Control of Rent Act, 1966, in respect of said portion of the premises rented to the Plaintiff by the Defendant.

(5) An injunction:-

a) to restrain the Defendant from interfering with the use and quiet enjoyment of the Plaintiff of his aforesaid monthly tenancy.

b) to restrain the defendant from doing or suffering to be done in or upon the premises No.43 Penang Street, Penang or such parts thereof that are comprised in Plaintiff's aforesaid monthly tenancy any act or thing which shall or may become a nuisance, damage, annoyance or inconvenenience to the Plaintiff, his members of family and his eating shop customers.

(6) Return of the Plaintiff's account books issued to the Defendant for perusal.

(7) Such further or other relief as this Honourable Court may deem just and expedient.

(8) Costs.

The trial of the action finally began before me on 24th March 1977. It could not be completed within the various periods allocated for the hearing and had to be continued from time to time until 3rd May 1978. On that day counsel informed me that by consent the claims in the above-mentioned paragraphs 1(b), (2), (3), (4) and (5) were withdrawn as well as the following claims in the Amended Amended Defence and Counterclaim:-

(b) Arrears of rent of the business for $140.00 being balance due for July 1971.

(c) Mesne profits at the rate of $300.00 per month from August 1971 till delivery of possession of the said business.

(d) Damages for breach of agreement.

(e) An injunction restraining the Plaintiff from carrying on the eating shop business or any other business on the ground floor of premises No.43 Penang Street, Penang.

(f) An order requiring the Plaintiff to take down the said sign containing the words "SRI KALIAMMAN VILAS, 43 PENANG STREET, PRO. K. KANDASAMY".

No.6
Grounds of Judgment of Gunn Chit Tuan J. 30th June 1978 (Contd.)

The parties had come to an amicable settlement on those claims and it was agreed that a sum of $8,500.00 was due to the defendant from the plaintiff being mesne profits up to 31.5.78 and that there should by consent be judgment accordingly without prejudice to the plaintiff's right to claim from the defendant's superior landlord arrears of assessment amounting to $5,020.63 paid by him in respect of 43, Penang Street for the year 1972 up to and including the first half of 1978. The only issues which therefore remained for the Court's decision were whether there was a tenancy or a licence granted in this case and whether there should be an order for the return of the plaintiff's books of accounts.

In so far as the two remaining issues were concerned, the plaintiff's evidence was that he was carrying on the business of an eating shop at Chettiars' Hall in China Street before he started his present shop called Sri Kaliamman Vilas at 43, Penang Street, Penang (P1, 2A - C). His lease at the Chettiars' Hall was about to expire when he looked around and discovered that the ground floor of 43, Penang Street was vacant. He made enquiries and found a man called Koori, now deceased, living on one of the top floors of that shophouse. He asked the said Koori about No.43 Penang Street and was informed by him that the chief tenant was living in Butterworth. Some time in March 1970, Koori brought him to an eating shop in Butterworth where he was introduced to the defendant. After some negotiations the defendant agreed to rent out the ground floor of 43 Penang Street (hereinafter referred to as "the said premises") to him for $230.00 per month. The duration of the tenancy was not discussed but he was asked to pay two months' rent as deposit i.e. $460.00 and told that he could remain there as long as he paid the rent. The rental of $230.00 was to include light, water, the use of furniture and fittings on the said premises, the use of the defendant's eating shop licence and his business name i.e. Nava India Restaurant. On that day he paid the defendant $230.00 and paid the balance of the deposit of $230.00 on 15th March, 1970, after which he appointed one Karuppiah s/o Kodaikumari Ambalam (P.W.6) to look after the furniture and fittings in the said premises.

The Plaintiff also said that he maintained accounts of his business. The defendant took away all the account books either in June or July 1971. At one time the defendant thought that he had a good income and asked for more rent and that was why he allowed him to take away his books of accounts which have not been returned to him. Finally, the Plaintiff told the Court that the defendant wanted the agreement dated 30th July 1970 (D12) to be drawn up because he needed protection under the rent control law

as he was collecting excessive rent. The defendant also told him that he would get into trouble with the income tax authorities if some-one reported him to them. The agreement was signed for the benefit of the defendant who had told him that he need not worry about it and that it was not intended that the said agreement would be binding on him.

Under cross-examination the plaintiff denied that he was a cook and that he was working for the defendant at 43, Penang Street, from 1.4.70 until 31.7.70. He asserted that he started his own business in the said premises on 1.4.70 and it was agreed that he could carry on there as long as he liked.

When he was shown the original copy of the agreement dated 30th July 1970 (D12), the plaintiff confirmed that he had signed the agreement proper but not the schedule (D13). He could not however read or write and, being illiterate, he could only write his name and did not read the said agreement.

The evidence of the plaintiff that he was given possession of the said premises in April 1970 as a result of an oral agreement between him and the defendant in March 1970 was to some extent corroborated by the evidence of a Chinese sundry shopkeeper (P.W.3) who said that he knew the plaintiff and has been to the said premises. He started doing business with the plaintiff some time in April 1970 and sold him goods such as rice, cooking oil and milk on credit. The plaintiff used to buy about 8 to 10 bags of rice from him and he started business with him from 1st April 1970. Under cross-examination this witness said that he used to go to the said premises to take orders from the plaintiff as the latter did not have a telephone in his shop at that time. P.W.3 appeared to me and I found him to be a truthful witness and he was also able to produce a receipt (P17 & 17T) issued by him in April 1970 to confirm his evidence that he had been to the said premises to do business with the plaintiff in April 1970.

Besides P.W.3 there were two other witnesses for the plaintiff namely a milk vendor called Uthirapathy s/o Govindasamy (P.W.4) and a tailor called Harbans Singh s/o Bishan Dass (P.W.5) both of whom remembered that the plaintiff has been doing business in the said premises since April 1970. In the case of the former he used to sell the plaintiff milk on credit and he remembered that he supplied him with milk from the month of April 1970. The latter said that he knew the plaintiff since he was working at a Chettiars' place and he too remembered that he first patronised the plaintiff's new shop at the said premises in April 1970 when he went there to eat "thosai" on an Indian festival day. Under cross-examination P.W.5 confirmed that the plaintiff, his wife and one or two assistants used to cook on the said premises in April 1970 but it was the plaintiff himself who was collecting money from the

customers.

The defendant in his evidence said that he became the tenant of 43 Penang Street in March 1973 and paid a monthly rental of $174.00. Prior to March 1973, his father called Seeni Mohamed was the tenant and carried on business there under the name of Nava India Restaurant. His father assigned the business to him in July 1967 by a deed of assignment (D21). After the said assignment the business was registered in his name (P3) and he carried on the business there until July 1970 when he leased it to the plaintiff for one year. He claimed that the Plaintiff had come to join him as a cook in April 1970 and that four of them, namely, Koori, one Hyduruce, the plaintiff and himself went to see his father in June 1970 but his father was not in favour of his leasing out the business. The plaintiff asked him a second time in July and once again the four of them went to see his father and it was agreed that the plaintiff should pay him $230.00 per month for the licence of the business and $70.00 for water and light. The four of them then went to a solicitor and the plaintiff and he signed that agreement (D12) on 30.7.70 $460.00 was paid to him by Hyduruce below the lawyer's office in the presence of the plaintiff. He denied that the plaintiff took over the business on 1.4.70 and also said that he had not asked the plaintiff for his account books nor did the plaintiff give them to him.

Under cross-examination the defendant admitted that he knew that he was not the tenant of 43 Penang Street in March 1970. He also admitted that he had told his then solicitor Mr. Lee Cheng Keat in 1975 that he was the chief tenant of the whole of 43 Penang Street at all material times. When he was referred to paragraph 14 of his counter-claim on page 17 of the bundle of pleadings wherein it was averred that "he is the chief tenant of the whole of the premises No.43 Penang Street, Penang at the monthly rental of $174.25 and has been so at all material times and is in possession of the monthly relevant rent receipts issued out to him in his name up to date", he said that he might have given his consent to the facts pleaded by the lawyer, who then drafted the counterclaim. But he also said that his then solicitor Mr. Lee Cheng Keat was a Chinese laywer and might not have understood him and had made a mistake, When questioned further the defendant admitted that the original statement of defence was filed for him by Messrs. Daljit and Vijaya. He also admitted that he had instructed Mr. Vijaya then but said further that the lawyer, Mr. Vijaya, could not speak Tamil as well as the court interpreter.

When referred to paragraph 3 of his statement of defence on page 12 of the bundle of pleadings the defendant said that his then solicitor might have admitted paragraph 6 of the statement of claim in which it has been averred that "it was also a term of the aforesaid (oral) agreements

that the Plaintiff would deposit and did later deposit a sum of $460.00 being the aggregate sum constituting two months' rent for the said tenancy and the fee for the said licence granted to the Plaintiff by the Defendant". When he was asked to explain why his original statement of defence admitted the averment in the said paragraph 6 of the statement of claim he said that it was a long time ago and he could not remember whether he had instructed his then solicitor about those admissions. When pressed further he agreed that his then solicitor did not know the facts of the case until he had instructed him, but he then went further and said that he was not satisfied with his first lawyer and discharged him in order to instruct laywer Mr. Lee Cheng Keat. He claimed that even his second lawyer, Mr. Lee Cheng Keat did not render him satisfactory service and he therefore changed to his present solicitors.

After the agreement (D12) was shown to him the defendant agreed that he had signed it but said that he did not know what it meant line by line. He claimed that he was not asked by the lawyer who drafted that agreement whether he was the tenant of No.43 Penang Street. He also claimed that he only told that lawyer that he wanted to lease the business, but then to my surprise, the defendant changed his evidence and said that he did tell the lawyer that he wanted to lease the premises too.

The defendant was also referred to his affidavit appearing on page 13 of the agreed bundle of documents which he had sworn when he applied for distress against the plaintiff. He first replied that paragraph 2 of the said affidavit was correct. After reading it he again changed his evidence and said that it was not correct and that he should have stated that the $300.00 was for "licence fee" and not for "arrears of rent". He said that he was advised by the lawyer who drafted the affidavit and had listened to him.

When he was referred to page 10 of the agreed bundle of documents marked 'A' the defendant denied having received the plaintiff's letter or notice dated 22nd February 1971 although it was included in the said agreed bundle of documents. When he was referred to his reply dated 24th February, 1971 to the said letter or notice appearing on page 11 of the said agreed bundle 'A' he said he was forgetful and then changed his evidence and admitted that he had received the said letter or notice of 22nd February 1971. When asked whether he was calling any of his previous lawyers, the defendant said that he was not subpoenaing any of them to come and prove that they had taken wrong instructions for him.

The defendant was then referred to paragraph 2(c) of the agreement (D12) and he agreed with plaintiff counsel that a deposit was usually fixed with reference to rent but he could not give any explanation why the figure

$460.00 was agreed upon if the rent was $300.00 as claimed by him. Finally, when he was shown the entries in respect of his business under the Registration of Business Ordinance, 1956 (P3) wherein it was recorded that he had commenced his business on 1.1.66, the defendant claimed that he actually started his business in July, 1967, that is, after his father had assigned the business to him. When questioned further about the inconsistency he said that the entries on pages 2 and 3 of P3 were not made by him. After watching and listening to the defendant for nearly three days during his examination-in-chief, cross-examination and re-examination. I had no doubts and found him to be a most untruthful witness. Apart from the instances cited above, there were many other instances when he changed his testimony and was shown to have told lies.

Among the witnesses called by the defendant was one K.P.M. Abdul Kader s/o K.P. Mohd. Kassim (D.W.5) who said that he was the governing director of the Penang Civil Storage Company Limited which is the chief tenant at 43 Penang Street, Penang. When this witness was shown the rent receipts marked D19 & 20 he said that they were signed by him and that the last receipt was issued to the defendant's father, S.K. Seeni Mohamed in March 1973 although he had died in 1972. The defendant became his tenant with effect from 1st March 1973. He said that the receipt dated 27.4.73 (D18) was the first receipt issued to the defendant who had acknowledged the tenancy in the document produced and marked D23. Although the document marked D23 is dated 27th April 1973 it must be noted that it was not stamped until 9th September 1977.

Another witness called by the defendant was Hyduruce s/o Abdul Kader (D.W.6) who claimed that he knew the plaintiff when he was a cook in the Chettiars' hall in 1968 after which he went to Nava India Restaurant in April 1970 to be a cook there whilst the defendant was running the restaurant. This witness first said that it was the plaintiff who had asked him to go and see the defendant's father in June 1970 when the restaurant was run by the defendant and owned by the defendant's father. But when he was shown the deed of assignment marked (D21) by defendant's counsel he changed his evidence and said that in 1970 the business was owned by the defendant. Although this witness stated that it was the plaintiff who had persuaded him to go and see the defendant's father this was never put to the plaintiff in cross-examination. Be that as it may, this witness stated that it was the plaintiff who had persuaded him to go and see the defendant's father this was never put to the plaintiff in cross-examination. Be that as it may, this witness claimed that it was agreed that the rental was $230.00 per month plus $70/- for water and electricity. The terms, he said, were noted and given to the lawyer. D.W.6 also claimed that he attended the opening ceremony of the plaintiff's restaurant with the

defendant in August 1970 but here again this was never put to the plaintiff in cross-examination. Under cross-examination D.W.6 conceded that the plaintiff was not only cooking but was also managing his business in the said premises in August 1970, but he denied that the situation was the same in April 1970. Lastly this witness claimed that the agreement was explained to the defendant though he agreed with plaintiff's counsel that the words "Lessor hereby lets to the Lessee the ground floor" are in the said agreement.

On the evidence adduced by both parties I found, on the balance of probabilities, that in the month of March 1970 there was an oral agreement between the plaintiff and the defendant whereby the former was allowed to enter and occupy the said premises for an indefinite period after paying the defendant a deposit of $460.00 being two months' rental of $230.00 per month which was agreed to include light, water, use of furniture and fittings and the use of the defendant's eating shop licence and business name. However, on or about 30th July 1970 the defendant managed to induce the plaintiff, an illiterate person, to sign a written agreement which was produced and marked D12. The said agreement does not contain all the terms which the parties had negotiated previously and agreed upon and was not intended to be binding upon them.

In his submission, Mr. Thillaimuthu, counsel for the defendant, stated that it was not disputed that the premises in question were controlled premises. He submitted that the main issue in this case was the nature of the interest granted by the defendant to the plaintiff pursuant to the agreement marked D12. On this issue, the plaintiff's contention was that he had acquired tenancy rights whereas the defendant has contended that the plaintiff was merely granted the rights of a licensee for a term of one year only.

During the trial, counsel for the defendant objected when the plaintiff sought to give parol evidence of the negotiations between the parties which the plaintiff had alleged were conducted between them in March 1970, on the ground that the terms of their agreement having been reduced to writing cannot be contradicted, varied, added to or substracted from, having regard to sections 91 and 92 of the Evidence Act. With respect I did not agree with the contention of counsel for the defendant and had overruled his objection and allowed the plaintiff to adduce oral evidence relating to the circumstances under which he was allowed to enter into occupation of the said premises on 1st April 1970. In any case, section 92 of the Evidence Act only excludes oral evidence to vary the terms of a written contract and has no reference to the question whether the parties had agreed to contract on the terms set forth in the document. Section 91 of the Evidence Act also only excludes oral evidence as to the terms of a written contract. Oral evidence is admissible however to

No.6
Grounds of Judgment of Gunn Chit Tuan J. 30th June 1978 (Contd.)

show that a document executed by a person was never intended to operate as an agreement but was brought into existence solely for the purpose of creating evidence about some other matter (See Tyagaraja Mudaliyar and another v. Vedthanni (1)

On the issue as to whether there was a tenancy or a licence, counsel submitted that to determine whether the interest granted constituted a tenancy or a licence, one must not look so much to the words of the agreement as to the substance of the agreement and each case must be decided on its own merits and in the light of the circumstances disclosed. He referred to the cases of Cobb v. Lane, (2) Errington v. Errington (3) Booker v. Palmer, (4) Isaac v. Hotel de Paris Ltd., (5) Pong Kwee Kwei v. Tan Sai Kuy, (6) Chin See Lian v. Ng Wan Pit, (7) and submitted that in the present case the circumstances and conduct of the parties showed that all that was intended was that the defendant should have a personal privilege as licensee to run the restaurant on the said premises for a term of one year from 1st August 1970 under the said agreement (D12) with no interest in the land. He pointed out that the Court should consider in particular the fact that the defendant himself had been carrying on an eating shop business in the said premises from 1967 to 1970 under the name of Nava India Restaurant and Cafe and he only desired to lease the business with the furniture and utensils for one year to enable him to look after his father's other restaurants. He also urged the Court to consider certain covenants in the said agreement which he contended were consistent with the grant of a licence rather than a tenancy and also to consider the fact that the plaintiff did not have exclusive possession of the said premises because 43, Penang Street has only one entrance and people residing on the top floors use that entrance which has a collapsible door controlled by the plaintiff and the said Koori who decide when to shut it. Finally, he pointed out that at the time of the granting of the lease the defendant was not the tenant of the said premises the tenancy of which was still held by his father. He referred to the case of Mayor, Aldermen and Burgesses of the Borough of Southgate v. Watson (8)

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(1) (1936) MLJ 79; A.I.R.23,1936 P.C.70
(2) (1952) 1 A.E.R. 1201, 1202
(3) (1952) 1 A.E.R. 149, 155B
(4) (1942) 2 A.E.R. 674, 677C (C.A.)
(5) (1960) 1 A.E.R. 348 C.A. 352
(6) (1972) 2 MLJ 48
(7) (1973) 1 MLJ 115
(8) (1944) 1 A.E.R.603

and contended that the defendant could not grant the lease or create any legal interest in the land in favour of any other person because he had himself no estate in the land out of which he could crave any interest.

Mr. Sharma, counsel for the plaintiff, in his submission stated that the principal claim of the plaintiff was for a declaration that he was a tenant of the whole of the ground floor of 43 Penang Street. He pointed out that the plaintiff was an illiterate person but was consistent in his conduct and submitted that he only wanted the ground floor of 43 Penang Street and not a running business as he had his own business. He also referred to page 33 of the agreed bundle of documents marked 'A' and pointed out that the defendant had instructed one of his previous lawyer's M/s Karpal Singh & Co. to terminate the plaintiff's monthly tenancy and argued that the plaintiff was therefore a protected tenant under the Control of Rent Act. As regards the defendant's claim that the plaintiff was his cook in April 1970, counsel contended that it was an afterthought as it was never pleaded at any time that the plaintiff was the defendant's cook. In any case, he pointed out that there was no evidence adduced of any salary having been paid to the plaintiff.

Counsel for the plaintiff then referred to the case of Methani v. Perianayagam (9) in which Wee Chong Jin J. (as he then was) held, after referring to the judgment of Harman J in the English Court of Appeal case of E.H. Lewis and Son Ltd. v. Morelli (10), that the doctrine of tenancy by estoppel is that a tenant may not question his landlord's title and conversely a landlord having by his offer of a tenancy induced a tenant to enter into or remain in occupation and to pay rent, cannot deny the validity of the tenancy by alleging his own want of title to create it. Where the facts justify the creation of a tenancy by estoppel, it follows that a relationship of landlord and tenant is created between the parties to the estoppel. Methani's case was quoted by counsel for the plaintiff in answer to the contention of counsel for the defendant that the defendant could not grant a lease or create any legal interest in the land in favour of the plaintiff because he himself had no estate in the land out of which he could crave an interest. Here I would refer to the following dictum of His Lordship in that case:-

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(9) (1961) 27 MLJ 5

(10) 1948 (2) A.E.R. 1023 & 1024

"I understand counsel's argument to be that the doctrine of tenancy by estoppel cannot apply to a case such as this where the grantor had himself no estate or interest in the land and so could not in law create a tenancy but in my opinion the short answer to it is that in such a case the doctrine does apply and that the law is that in such a case the grantor notwithstanding he had no estate or interest in the land is estopped by intendment of law from denying that he had created a tenancy."

With respect, I follow His Lordship's decision and therefore considered that the defendant, who himself became the tenant of 43 Penang Street, Penang, in March 1973, could not, having allowed the plaintiff to enter upon the said premises and to pay rent, later or deny the validity of any tenancy created in 1970 by alleging his own want of title then to create it.

Mr. Sharma then referred to various clauses in the agreement marked D12 and argued that the draftsman of the document knew that once a tenancy was granted the premises could not be recovered except under section 16 of the Control of Rent Act and was, therefore, trying to circumvent the said Act. He then referred to the following clause in the said agreement:-

> "3(a) That the Lessee paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on his part contained shall peaceably hold and enjoy the demised premises during the said term without any interruption by the Lessor or any person rightfully claiming under him".

and contended that there was no such thing as the quiet enjoyment of a business. He also referred to another clause in the said agreement relating to the right of the defendant "to re-enter upon the demised premises or any part thereof" and pointed out that the covenant only referred to re-entry upon land as one could not physically re-enter a business. He then compared some of the clauses of the said agreement D12 with the clauses of the agreements referred to in the case of Indo-Australian Trading Co. Ltd. v. Krishnasamy (11) and argued that even the said agreement (D12) did not support the claim of the defendant that a licence and not a tenancy had been created. Reference was then made by counsel to the following passage of Lord Justice Denning in the case of Facchini v. Bryson (12) where His Lordship said as follows:-

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(11) (1973) 1 MLJ 87 & 89
(12) (1952) 1 Times Law Report 1386 & 1389

"We had had many cases lately where an occupier has been held to be a licensee and not a tenant. In addition to those which I mentioned in Errington v. Errington (1952) 1 T.L.R. 231 we have recently had three more, Gorham (Contractors) Ltd. v. Field (unreported), Forman v. Rudd (unreported), and Cobb v. Lane (1952) 1 T.L.R. 1037. In all the cases where an occupier has been held to be a licensee there has been something in the circumstances, such as a family arrangement, an act of friendship or generosity, or such like, to negative any intention to create a tenancy. In such circumstances it would be obviously unjust to saddle the owner with a tenancy, with all the momentous consequences that that entails, nowadays, when there was no intention to create a tenancy. In the present case, however, there are no special circumstances."

Counsel then pointed out that the absence of special circumstances in this case showed that a tenancy was intended.

Another argument of counsel for the plaintiff was that a tenancy had been created because a warrant of distress had been taken out by the defendant in 1971 against the plaintiff. He pointed out that such warrant was only available against a tenant and he referred to section 4 of the Distress Ordinance 1951 which reads as follows:-

"No landlord shall distrain for rent except in the manner provided by this Ordinance".

He argued that when the defendant took out the warrant of distress against the plaintiff he confirmed the status of the plaintiff as his tenant and had also in the affidavit in his application for distress affirmed that rent of the premises was in arrears. Even the receipts which are shown at pages 15 to 18 of the agreed bundle of documents marked 'A' clearly stated that the rent was for the ground floor of the premises No.43 Penang Street, Penang, and there was no mention of any business licence whatsoever.

Finally, Mr. Sharma sought to distinguish the said case of Chin See Lian v. Ng Wan Pit (7) by contending that that case was decided on the peculiar facts of that case, that is, because the plaintiff in that case continued to have a share in the profits of the business. He then referred to the case of Goh Gok Hoon v. Abdul Hamid and another (13) in which a tenant carrying on a business at No.2 Wolferstan Road, Malacca under the name and style of K. Abdul Hamid Restaurant had agreed to lease out the

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(13) (1967) 1 MLJ 36 & 40

said business, furniture and fittings and utensils to a third party. It was argued in that case that the third party was not a tenant but was only a licensee but Ismail Khan J (as he then was) was heard the case said as follows:-

> "I cannot understand how the business could be severable from the premises. The very fact that the ingenuity of an experienced advocate and solicitor has not proved successful in separating the business from the premises as two distinct entitles demonstrates that the lease of the business necessarily included the premises in which the business was carried on."

Counsel, of course, quoted that case to show that in this case there could similarly be no lease of the business without the premises and that the plaintiff was therefore not a licensee but a tenant.

The principles applicable in resolving the question whether a transaction has created a tenancy or a licence have been discussed in many cases, and it is clear from the authorities that in determining whether the relationship of landlord and tenant or merely that of licensor and licensee has been created between the parties, the intention of the parties is the paramount consideration. The intention of the parties must be sought not from the words of an agreement, but from its substance and from the conduct of the parties and the surrounding circumstances. Even if there is a written agreement, the Court has to look at the substance and reality of the transaction and not its form, because a document may be executed with no intention that it should be acted upon and the real intention may be otherwise.

In the present case in finding the true relationship of the parties, it was not necessary, in my view, to consider in detail the terms of the document marked D12 which was not intended to be binding on the parties but was signed by the plaintiff at the request of the defendant for the purpose of some other matter and also in all probabilities after the defendant realised that he had granted a tenancy and tried rather late in the day to salvage the situation by creating a document to attempt to circumvent rent control legislation. What the Court therefore had to consider in this case were the surrounding circumstances and the conduct of the parties both before and after the plaintiff was let into exclusive occupation of the said premises on 1st April, 1970 subject only to a right of way for the people residing on the top floors of 43 Penang Street, through the front and only entrance. As Somervell L.J. has said in Cobb v. Lane. (2)

> "But the modern cases (by which we are bound)

establish that, if there is evidence as to the circumstances in which the person claiming to be a tenant at will went into occupation, those circumstances must be considered in deciding what the intention of the parties was".

Here the Plaintiff, after having negotiated an oral agreement with the defendant was let into occupation of the said premises by the latter on payment of a deposit equivalent to two months' rental amounting to $460.00 and has been managing since 1st April 1970 his own eating shop business there for his own benefit and to the exclusion of the defendant. He has been paying a rental of $230.00 per month until June 1970 when he started paying a rental of $300.00 per month in consideration of a promise by the defendant to let him have a room upstairs. After the plaintiff was induced to sign the document dated 30.7.70 (D12) he was allowed to continue in peaceful and exclusive occupation of the said premises until March 1971 when the defendant applied for a warrant of distress against him on the alleged ground that one month's rent was in arrears. The said warrant of distress was not executed. Considering the evidence of the conduct of the parties and of the surrounding circumstances in this case it was my judgment that a relationship of landlord and tenant had been created. Even if the various clauses of the document D12 were to be considered, it would be seen that the majority therein are covenants such as those for quiet enjoyment and re-entry, which are normally found in standard tenancy agreements. In my opinion, therefore, the true relationship between the parties as revealed by their conduct and the surrounding circumstances was that of the landlord and a tenant and not that of a licensor and a licensee. The plaintiff was originally granted a monthly tenancy of the said premises for an indefinite period. When the said tenancy was terminated by the notice dated 26th May 1972 (see page 33 of the agreed bundle of documents 'A') he became a protected tenant under the provisions of the Control of Rent Act, 1966. (see Carter v. S.U. Carburetter Company; (14) Mancroft Wagons Ltd. v. Smith; (15) United India Fire & General Insurance Co. Ltd. v. Jaffnese Co-operative Society Ltd. (16) In the circumstances of this case I therefore made an order declaring that the plaintiff was a tenant entitled to protection under the provisions of the Control of Rent Act 1966 in respect of the said premises. As I had accepted the evidence of the plaintiff to be more credible and had rejected that of the defendant, I also found that the latter had taken away the former's books of accounts. I therefore also ordered that he, the defendant, do return the Plaintiff those books of accounts taken away by him in 1971 as well as pay the plaintiff 75% of the costs of this action. As indicated above, I also made a consent order that the plaintiff do pay the defendant an agreed sum of $8,500.00 being mesne profits up to 31.5.78 without

(14) (1942) 2 K.B. 288, 291
(15) (1951) 2 K.B. 496, 501
(16) (1971) 1 MLJ 118, 122

In the High Court in Malaysia at Penang

No.6
Grounds of Judgment of Gunn Chit Tuan J. 30th June 1978 (Contd.)

prejudice to his right of claim from the defendant's superior landlord arrears of assessment amounting to $5,820.63 paid by him in respect of 43 Penang Street, Penang for the year 1972 up to and including the first half of the year 1978.

GUNN CHIT TUAN
(GUNN CHIT TUAN)
JUDGE

PENANG.
30th June, 1978.

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NOTES:

Dates of hearing: 24.3.77, 30.5.77, 29.8.77, 30.8.77, 1.9.77, 2.9.77, 5.9.77, 7.9.77, 20.9.77, 21.9.77, 1.2.78 & 3.5.78

Counsel:

Mr. R.K. Sharma with Mr. Abu Haniffa for plaintiff.
Solicitors: M/s Sharma & Co., Penang.

Mr. Thillaimuthu for defendant.
Solicitors: M/s Thillaimuthu & Phock Kin, Penang.

SALINAN YANG SAH

Sd. M. Sarjit Singh
(M. SARJIT SINGH)
Setiausaha kepada Hakim
4/7/78

In the High Court in Malaya at Penang

No. 7
Judgment 30th June 1978

NO. 7

JUDGMENT

Between

Kandasami s/o Kaliappa Gounder
Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd.
Defendant

No.7
Judgment 30th June 1978 (Contd.)

J U D G M E N T

BEFORE THE HONOURABLE MR. JUSTICE GUNN CHIT TUAN THIS 30TH DAY OF JUNE, 1978. IN OPEN COURT

This suit coming for trial on the 24th day of March, 1977, the 30th day of May, 1977, the 29th day of August 1977, the 30th day of August, 1977, the 1st day of September 1977, the 2nd day of September 1977, the 5th day of September 1977, the 7th day of September 1977, the 20th day of September 1977, the 21st day of September 1977, the 1st day of February 1978 and the 3rd day of May 1978 in the presence of Mr. R.K. Sharma of Counsel for the Plaintiff and Mr. Thillaimuthu of Counsel for the Defendant and upon reading the pleadings and Upon hearing the evidence adduced herein and Upon hearing what was alleged by Counsel as aforesaid IT WAS ORDERED that this action do stand for judgment and this action standing for judgment this day in the presence of Counsel for the Plaintiff and for the Defendant THIS COURT DOTH DECLARE that the Plaintiff was tenant of the ground floor of premises No.43 Penang Street, Penang and entitled to protection of the Control of Rent Act, 1966 AND IT IS ORDERED that the Defendant do return to the Plaintiff those books taken away by the Defendant in 1971 AND BY CONSENT IT IS ORDERED that the Plaintiff do pay to the Defendant the sum of $8,500.00 being mesne profits calculated up to the 31st day of May, 1978 without prejudice to the Plaintiff's right to claim from the Defendant's superior landlord arrears of assessment amounting to $5,820.63 paid by the Plaintiff in respect of No.43 Penang Street, Penang for the year 1972 up to and including the first half of the year 1978 AND IT IS LASTLY ORDERED that the Defendant do pay to the Plaintiff 75% of the costs of this action to be taxed.

By the Court,

Senior Assistant Registrar,
High Court, Penang

Entered No.162/78 This 30th day of June, 1978.

In the Federal Court of Malaysia

No.8
Notice of Appeal
28th July 1978

NO. 8

NOTICE OF APPEAL

Between Mohd. Mustafa s/o Seeni Mohd. Appellant

And

Kandasami s/o Kaliappa Gounder Respondent

(In the matter of Civil Suit No.252 of 1971 in the High Court in Malaya at Penang

Between

Kandasami s/o Kaliappa Gounder Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd. Defendant

NOTICE OF APPEAL

TAKE NOTICE that Mohd. Mustafa s/o Seeni Mohd. the Appellant abovenamed being dissatisfied with the decision of the Honourable Mr. Justice Gunn Chit Tuan given at Penang on the 30th day of June, 1978, hereby appeals to the Federal Court against the whole of the said decision except such part of the said decisions as decides that by Consent the Plaintiff/Respondent do pay to the Defendant/Appellant an agreed sum of $8,500.00 being mesne profits up to 31.5.78, without prejudice to his (the Plaintiff/Respondent's) right to claim from the Defendant/Appellant's superior landlord arrears of assessment amounting to $5,820.63 paid by him in respect of 43 Penang Street, Penang for the year 1972 up to and including the first half of the year 1978.

Dated this 28th day of July, 1978.

Sd. Thillaimuthu & Phock Kin
Solicitors for the Appellant
abovenamed.

To:

The Registrar,
Federal Court of Malaysia,
Kuala Lumpur.

And to:

The Senior Assistant Registrar,
The High Court,
Penang.

And to:

Kandasami s/o Kaliappa Gounder
or his Solicitors
Messrs. Sharma & Co.,
4A Beach Street,
Penang.

This Notice of Appeal is lodged by Messrs Thillaimuthu & Phock Kin, Solicitors for the Appellant abovenamed, on behalf of the Appellant whose address for service is No.8-B Beach Street, Penang.

RECEIVED this 28th day of July, 1978 the deposit of $500.00 lodged in Court this 28th day of July, 1978.

Entered in the List of Civil Appeals this 28th day of July, 1978.

Sd. Tengku Mohd. Ariff bin
Tengku Mohd. Maasum
Senior Assistant Registrar
(L.S.) High Court, Penang.



NO.9

MEMORANDUM OF APPEAL

CIVIL APPEAL NO.126 OF 1978

Between Mohd. Mustafa s/o Seeni Mohd. Appellant

And

Kandasami s/o Kaliappa Gounder
Respondent

(In the matter of Civil Suit No.252 of 1971 in the High Court in Malaya at Penang)

Between Kandasami s/o Kaliappa Gounder Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd. Defendant

MEMORANDUM OF APPEAL

Mohd. Mustafa s/o Seeni Mohd. the Appellant above-named appeals to the Federal Court against the whole of

the decision of the Honourable Mr. Justice Gunn Chit Tuan given at Penang on the 30th day of June, 1978 except such part of the said decision as decides that by Consent the Respondent do pay to the Appellant an agreed sum of $8,500.00 being mesne profits up to 31st May 1978 without prejudice to his (Respondent's) right to claim from the Appellant's superior landlord arrears of assessment amounting to $5,820.63 paid by him in respect of 43 Penang Street, Penang for the year 1972 up to and including the first half of the year 1978, on the following grounds:

1. The learned trial Judge erred in law in admitting parol evidence of negotiations between the parties in March and May 1970 where the terms of the agreement had been reduced to writing dated 30th July 1970 (Ex. D12) having regard to sections 91 and 92 of the Evidence Act.

2. The learned trial Judge was wrong in law and in fact in finding that the Defendant induced the Plaintiff to sign the said agreement in writing when there was no or sufficient evidence of the alleged inducement, and when the Plaintiff had not pleaded inducement or otherwise that it was not binding on the parties.

3. The learned trial Judge was wrong in law and in fact that the said agreement in writing was not intended to be binding on the parties when they had themselves adopted the said agreement by their pleadings.

4. The learned trial Judge was wrong in law and in fact in finding that the Plaintiff was originally granted a monthly tenancy for an indefinite period having regard to the said agreement in writing.

5. The learned trial Judge failed to direct his mind to the Plaintiff's letter dated 14th August 1970 (Ex. D9) to the Labour Office that he commenced business on 1st August, 1970 in coming to the finding that the Plaintiff was let into possession of the said premises on 1st April 1978.

6. The learned trial judge erred in law and in fact in finding that even if the said agreement in writing was binding on the parties a tenancy in favour of the Plaintiff was created and should have found that the said agreement in writing was in fact binding on the parties and that all that was intended was to create a licence in favour of the Plaintiff to use the said premises as an eating shop for a term of one year, and ought to have granted an Order for possession against the Plaintiff upon the Defendant's counterclaim.

7. The learned trial Judge erred in law and in fact in ordering the Defendant to return the alleged books of account allegedly taken away by the Defendant in 1971 when there was no evidence of the number and nature of the alleged accounts books or any identification thereof.

Dated this 30th day of August, 1978.

Sd. Thillaimuthu & Phock Kin
Solicitors for the Appellant

To:

The Chief Registrar,
Federal Court of Malaysia,
Kuala Lumpur.

And to:

The Senior Assistant Registrar,
High Court in Malaya at Penang
Penang.

And to:

The Respondent abovenamed or his
Solicitors Messrs. Sharma & Co.
of No.4-A Beach Street, Penang.

This Memorandum of Appeal is lodged by Messrs. Thillaimuthu & Phock Kin, Solicitors for the Appellant whose address for service is No.8-B Beach Street, Penang.



NO.10

JUDGMENT

Between Mohd. Mustafa s/o Seeni Mohd. Appellant

And

Kandasami s/o Kaliappa Gounder Respondent

(In the matter of Civil Suit No.252 of 1971 in the High Court of Malaya at Penang)

Between Kandasami s/o Kaliappa Gounder Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd. Defendant

Coram: Raja Azlan Shah, F.J.
Chang Min Tat, F.J.
Syed Othman, F.J.

JUDGMENT OF THE COURT

The short question for determination in the action

and in the appeal is whether the respondent held a licence or a lease from the appellant. The premises in question came under the protection of the Control of Rent Act 1966 and the tenure of the respondent, if a tenant, would be protected and the appeal just fail.

But the determination of this question which is a relatively simple matter of the proper construction of the agreement in writing which is in existence was complicated by a fairly extensive body of oral evidence and by an attempt made by the respondent to establish a tacit oral agreement between the parties to treat the written agreement as a dead letter. The trial lasted 12 days spread over some 14 months.

On the oral evidence, the learned trial Judge made no bones about his distrust of the appellant as a witness. He scanned through his evidence, noted the discrepancies and rejected his evidence as being anything approaching the truth. Mr. Hepworth for the appellant who did not appear in the Court below, did not seek to persuade us against the finding, though he did suggest that the reasons for dismissing the evidence outright were not altogether sound as, in some cases at least, the apparent discrepancies could be explained if a more human regard was paid to the type and class of witness to which the appellant belongs. But what he said was this: the evidence of the respondent was similarly riddled with inconsistencies and contradictions, which he was at some pains to instance to this Court, but in contrast to his attitude to the appellant, not merely did the learned Judge not pay sufficient regard to such inconsistencies and contradictions but he paid no regard to them at all. If the learned Judge had considered the evidence of the respondent and had noted these inconsistencies and contradictions and had then for good and sufficient reasons expressed himself as being satisfied with his evidence, Mr. Hepworth said he would not be complaining. But he asked us to read through the judgment and to find, if we can, where in that judgment the learned Judge had tested the evidence of the respondent, who was the plaintiff in the Court below and on whom lay the onus of proving his tenancy, as critically or even as nearly critically as he had the evidence of the appellant.

We need only say that in the course of hearing him, we had not been unimpressed with the exposition of Mr. Hepworth's arguments and the apparent validity of his complaint. Another Judge by merely reading the record might well have come to a different view of the respondent but of course he would not have the advantages of seeing and hearing the respondent in the witness box. Neither have we. Such advantages may well be decisive where the evidence consists entirely of proof by word of mouth but as has been noted there is in this case an agreement in writing incorporating the contractual relationship between the parties which subject to a

finding of its validity must determine their real relationship, in this case whether what was created by the agreement in writing was a tenancy or a licence.

Judicial assessment of evidence in a trial cannot be said to have been correctly conducted if the same emphasis is not placed on both sides of the encounter. Where the evidence is entirely oral, then it may well be that the issue of credibility as determined by the trial Judge is decisive, if regard is had to the burden of proof on the issues raised at the trial, and if he had tested the evidence he is prepared to accept against the whole of the case and for consistency. Where the evidence, however, is partly oral and partly documentary, then in our view and with respect, the documentary is perhaps to be preferred to the oral, especially where the evidence is at variance and in the absence of any allegation and evidence supporting it of invalidity by reason of fraud, intimidation, illegality or want of due execution, the evidentiary rules for the exclusion of oral by the documentary evidence, statutorily laid down in Chapter VI of our Evidence Act 1950, must be applied according to the provisions of the several sections in this Chapter. It then becomes largely, if not entirely, a matter of construction.

Here the learned Judge set guide-lines for himself expressed in these words: "The principles applicable in resolving the question whether a transaction has created a tenancy or a licence have been discussed in many cases, and it is clear from the authorities that in determining whether the relationship of landlord and tenant or merely that of licensor and licensee has been created between the parties, the intention of the parties is the paramount consideration. The intention of the parties must be sought not from the words of an agreement, but from its substance and from the conduct of the parties and the surrounding circumstances. Even if there is a written agreement, the Court has to look at the substance and reality of the transaction and not its form, because a document may be executed with no intention that it should be acted upon and the real intention may be otherwise."

Insofar as the intention of the parties is to be garnered from the document itself, the right law has in our view and with respect been stated. But with respect we would for ourselves adopt these words of Jenkins L.J. in Addiscombe Garden Estates Ltd. v. Crabbe (1) at p.522 and p.565 respectively, as stating the right approach:

> ".....the principles applicable in resolving a question of this sort are, I apprehend, these. It

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(1) (1958) 1 Q.B. 513; (1957) 3 All E.R.563.

does not necessarily follow that a document described as a licence is, merely, on that account, to be regarded as amounting only to a licence in law. The whole of the document must be looked at; and if, after it has been examined, the right conclusion appears to be that, whatever label may have been attached to it, it in fact conferred and imposed on the grantee in substance the rights and obligations of a tenant and on the grantor in substance the rights and obligations of a landlord, then it must be given the appropriate effect, that is to say, it must be treated as a tenancy agreement as distinct from a mere licence."

And later, at p.258 and pp. 570-571 of the respective reports:

> ".....the important statement of principle is that the relationship is determined by law and not by the label which parties choose to put on it and that it is not necessary to go so far as to find the document a sham. It is simply a matter of ascertaining the true relationship of the parties."

On an examination of the document in writing between the parties, the learned Lord Justice came to a finding that what was granted was a tenancy and not a licence. The point is that the determination was arrived at by an examination of the document.

So in fact should the document before us have been examined by the trial Court. But the learned Judge found on the evidence that the document "was not intended to be binding on the parties but was signed by the plaintiff at the request of the (appellant) for the purpose of some other matters and also in all probabilities after the (appellant) realised that he had granted a tenancy and tried rather late in the day to salvage the situation by creating a document to attempt to circumvent rent control legislation." He therefore considered the surrounding circumstances and the conduct of the parties both before and after the plaintiff was let into exclusive possession which he found was on April 1, 1970.

The agreement was dated July 1, 1970 but the respondent alleged and the learned Judge found as a fact that the respondent was actually let into occupation on an oral agreement of lease three months earlier. The respondent did aver this oral agreement and this going into occupation earlier than July 1 in his statement of claim. He led evidence which the learned Judge accepted. The appellant contended, however, that the respondent in April 1970 was a cook in the business then run by him on the premises and his status was that of an employee and not a tenant. But the learned Judge rejected this evidence as he did also the evidence of D.W.6 Hydruce s/o Abd. Kader,

a tax-consultant and someone who was of a somewhat (one is tempted to say, considerably) better education than the litigants, who corroborated the evidence of the appellant on this point and who further added that it was only in June 1970 that approach was made to the appellant's father to transfer the business of the eating house to the respondent for one year, just because he had a faulty recall of the date of the transfer of the business from the appellant's father to the appellant when he had absolutely no reason to lie and nothing to gain by lying in the matter; one fault and his evidence goes down the drain entirely. But it is to be remarked that except for one instance, nowhere in the correspondence between the parties was this allegation of an earlier tenancy made and that it made its first appearance in the statement of claim filed on behalf of the respondent.

Insofar as the alleged oral tenancy commencing on April 1 can be said to be a fact found by the learned Judge on the oral testimoney of the respondent, Mr. Hepworth did not seek to persuade us to upset it and to come to our own finding that it was wrong or could not be supported by the evidence considered as a whole. But he argued that if the parties subsequently and voluntarily agreed to enter into another agreement, then it is this subsequent agreement that must be looked at to determine their relationship. Quilibet protest renunciare juri pro se introducto - a person may renounce a right for his own use or benefit. The determining factor is voluntariness. The respondent in paragraph 9 of his statement of claim averred that the defendant "insisted and caused" him to sign the agreement. This falls, of course, considerably short of duress which will avoid the agreement and which has to be pleaded and in respect of which particulars have to be given. No question of fraud or misrepresentation was raised. This agreement was said by the respondent to contain (a) some of the terms of the previous oral agreement (b) other oral terms subsequently agreed upon and (c) other additional terms.

Giving the words used in this particular paragraph of the statement of claim their ordinary meaning and applying the general import of these words in their context, the conclusion is inevitable that in the contention of the respondent, the agreement as finally executed contains all the terms of the agreement between the parties.

We must now deal with the finding of the learned Judge that the agreement was not to be binding for the reasons given by him in that part of his judgment which has in this been earlier quoted. What the respondent said in evidence is this: "The (appellant) wanted the agreement drawn up because he wanted protection under the

rent control law as he was collecting excessive rent. He was collecting about $600-$700 for rooms upstairs. (Appellant) told me so and also that he would get into trouble with income tax if one reported to revenue authorities. Agreement was entered into for benefit of (appellant) who told me that I need not worry about it. (Appellant) told me that though the lease does not refer to the room upstairs, their oral agreement regarding it stood. It was not intended that the written agreement should be binding on me" (p.63 Record).

If those are the reasons why the agreement was required by the appellant, it will be readily seen how unsubstantial and unfounded they are. Protection under the Control of Rent is afforded to tenants and not to landlords. So far as excessive rents are concerned the appellant, by collecting $300 p.m. (though this includes the use of the furniture and utensils for the eating house and the licence) for the ground floor only of premises for which his father paid $174.25 to the superior landlord, was already collecting excessive and illegal rents for this part of the premises. Since this rent was stated in the agreement and was afterwards confirmed in the receipts, there could be no protection for the appellant as chief tenant. Evidence for the rooms upstairs was available not from the agreement but from the tenants. And if the appellant wanted to avoid disclosure to the tax authorities, the last thing he should do was to commit the actual (excessive) rents he received on paper. Finally, there is not the slightest suggestion for the probability which occurred to the learned Judge's mind of an attempt to evade the tentacles of the Control of Rent Act. The respondent did not claim that this was the purpose of the agreement either in his statement of claim or in his evidence. In fact, he relied on the written agreement to establish his claim of a tenancy. In so doing and at the same time by saying that his tenancy was an oral one, he was embarking on the familiar but not permissible course of approbating and reprobating see Lissenden V.C.A.V. Bosch Ltd. (2)

The examination of the document which must be conducted must clearly be within the provisions of the Evidence Act. If it is correct that on the pleadings and having regard to the testimony of the respondent himself, the document is the reduction of the transaction between him and the appellant by consent and agreement, then under section 91 of the Evidence Act it must be regarded as the appropriate and only evidence of the terms of their agreement and no other evidence

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(2) (1940) A.C. 412

can be substituted for it. And, under section 92, it is conclusively presumed between the parties that they intended the document to contain a full and final statement of their intention and the parties may not therefore give extrinsic evidence to contradict, vary, add to or subtract from its terms. On this examination at law, the relationship between the parties will be ascertained.

It is now necessary to set out the document in some detail. The parties are referred to as lessor and lessee, words, be it noted, more appropriate to a tenancy than a licence. The first rectial states that the appellant was the tenant of and the owner of the business of an eating shop carried on the ground floor of premises No. 43, Penang Street (the premises). He was also the holder of the Eating Shop Licence. The second recital is in these words:

> "And whereas the Lessor wishes to lease to the lessee the said business of an eating house together with the use of the ground floor only of the said premises in which the same is now carried on for a term of one year from the 1st day of August 1970 on the terms and conditions hereinafter appearing."

If this recital correctly expressed the extent of the grant which was offered to and accepted by the respondent, then what was created was clearly a lioence. But as so often happens, when particular care has not been exercised in drafting an instrument to set out correctly and precisely the intention of the parties or the terms of their agreement, then inevitably a dispute arises and the Court is given the task of resolving the difficulty and unravelling the real purport of the document.

The habendum says that

> ".....the Lessor hereby lets to the Lessee the ground floor only of the said premises together with the full right and liberty to the Lessee to carry on the business of an eating house on the said premises, under the aforesaid licence....."

This is an obvious inversion of the second recital and what was let was expressed to be the ground floor. Rent was payable in arrears.

Under clause 2 are the usual obligations on the part of the lessee to be performed, including one, (e), not to assign, underlet or otherwise part with possession of the said premises or any part thereof, without the consent in writing of the Lessor. But there are two additional obligations more commonly found in a licence of a business. Under (d), the Lessee was not to change the nature of the

business; under (i) he was to observe all the health rules and conditions imposed by the City Council of Penang on such business.

Clause 3 contains the usual Lessor's obligations, among others, to give quiet and peaceable enjoyment and to pay the superior landlord the rent of the whole house. But it includes at least two which are peculiar:

> "(d) To take all requisite steps and sign all forms and documents as may be necessary or required for the renewal of the Eating House Licence in the name of the Lessor and to permit the photograph of the Lessee or any other person nominated by the Lessee to be affixed to the said Eating House Licence as Manager, or the person in charge or in any other capacity of the said premises. Provided that the Lessor shall not be liable for any debt incurred by the Lessee during the course of running the said business.
>
> (g) To do all minor and major repair and painting or white washing as may be required."

Clause 4 is the usual provision for re-entry if the rents reserved are unpaid or for breach of any of the Lessee's covenants.

Then comes Clause 5. It reads:

> "5. It is expressly agreed and understood that the right of tenancy whatsoever of the said premises or any portion thereof is intended to be passed to the Lessee by the Lessor and that the relationship of Landlord and Tenant does not exist between the Lessor and Lessee as regards the said premises or any part thereof."

The "the" in the first line is clearly a typing error for "no". In Facchini v. Bryson (3) the agreement between the parties contained a clause that "nothing in it should be construed to create a tenancy" but this did not prevent the Court construing the agreement as a whole, from coming to a conclusion that the agreement operated as a tenancy agreement. Clause 5 therefore by itself is not decisive of the issue.

It is necessary at this stage to diverge and consider the contention that what was let was the ground floor. The use of the adverb "only" both in the recital and in the habendum put this beyond argument. Nowhere in the agreement is there any mention of any rooms upstairs.

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(3) (1952) 1 T.L.R. 1386

The respondent claimed that a room on the first floor was also let to him. The ground floor was used as an eating shop and City Council regulations prohibit any part of the eating shop from being used for sleeping purposes. There is therefore no provision in the agreement for use of the premises as a home, though of course a lease of premises strictly and entirely for business purposes is still a lease if the clear intention of the parties is to create a tenancy. Despite the absence of any prohibition in the agreement against sleeping on the ground floor, the respondent could not because of health regulations use the ground floor for sleeping purposes. Nevertheless he did so so for himself and his family. On March 26, 1971, a notice was issued by the City Health Officer to the appellant as the eating shop licensee and operator requiring him to desist. It was meant for the respondent. It established beyond argument that up to this date, the respondent was not in occupation of any room on the first floor and had no common use of the hall and other convenience in this floor, as he claimed in his writ. But on his own admission, he had used the ground floor for sleeping purposes earlier and as far back as December 12, 1970 (see letter at page 144 Record), the City Council had objected. In this letter to the appellant, he "would beg of you to let me have the room upstairs as agreed so as to house my family." The "as agreed" is intriguing, and is the only pre-trial reference to this alleged leased of a room. In his testimony, the respondent claimed to have at first refused the offer of the tenancy of the entire 4-storeyed house and to have accepted only the ground floor and later, when his family came and stayed on the premises, against City Council regulations, he screened off portions of the ground floor for sleeping purposes. This admission must be a denial of any lease of a room. But he found it inconvenient and he decided to ask the appellant for a room upstairs, and the appellant agreed subject to his paying a further $70/- per month, making $300/- in all. This was said to be in May 1970. If there had been this agreement, then clearly he would have moved into and occupied this room on the first floor, rent being payable in arrears; the written document would in all probabilities had stated that this room was included in the letting and there would have been no necessity for him tooffend regulations in such a way as to obstruct a renewal of the eating shop licence. Or, if he had been denied the room agreed to be let to him, he would, as one could reasonably expect, have objected. It is, in our view, reasonably clear therefore that whatever was agreed between the parties in July 1970, there was no agreement and no evidence supporting it with respect to this or any room on the first floor or any use of any part thereof and that when the respondent needed this room and was refused, the trouble between them that had lasted so many years now, then started.

To return to the document itself: though drafted by a practitioner, there is obviously a conflict between the second rectial and the habendum. On this point, the agreement stands of course to be construed on the habendum. And apart from the use of terms and the imposition of obligations on both parts that are more usual in a lease than a licence, the respondent was obviously given exclusive possession of the ground floor, subject to the right of entry and passage for the other occupiers of the remaining portions of the house.

This Court has, in Federal Court Civil Appeal No.64 of 1978, between Woo Yew Chee and Yong Yong Hoo (unreported) decided that exclusive possession is no longer a decisive test to determine that a tenancy has been created. Hill and Redman's Law of Landlord and Tenant (15th Edition) at page 17 puts it this way: Firstly, if there is no right of exclusive possession the transaction cannot be a lease. Secondly, if there is a right of exclusive possession the transaction may be either a lease or a licence depending on all the relevant circumstances. The test that this Court in Woo Yew Chee's case, supra, applied is "the nature and quality of the occupancy: whether it is intended that the occupier should have a stake in the premises sub-let or whether he should have only a personal privilege" and applying this test, it came to the conclusion that the respondent Yong Yong Hoo's interest in a half-portion of the ground floor was a tenancy. The same conclusion was reached in Addiscombe Garden Estates Ltd. v. Crabbe, supra. Each case must of course be considered on the facts pertinent to it.

Shell-Mex v. Manchester Garages (4) is an interesting case, concerning the use of a petrol filling station. It falls on the other side of the line. Sachs L.J. speaks of the dominant objective of the contractual relationship between the parties which he finds to be the promotion of the sale of Shell-Mex Company's products on the site. He considers that the terms used to achieve this purpose and the name of promotion were of a special character rarely to be found outside contracts relating to petrol stations and that the document should be and is in substance a licence rather than a tenancy, for a licence. best fits into the character of the transaction as a whole.

> Lord Denning M.R. has this to say generally:
> "It seems to me that when the parties are making arrangements for a filling station, they can agree either on a licence or a tenancy. If they agree on a licence, it is easy enough for their agreement to be put into writing, in which case the licence has no protection under the Landlord and Tenant Act 1954. But if they agree upon a tenancy and so express it, he is protected."

The sad fact, however in this case is that the

(4) (1971) 1 W.L.R. 612 C.A.

agreement did not match the high standard of draftsmanship in the Shell-Mex's case. It is not as clear cut or as unequivocably stated, save that in Clause 5, supra, it was expressed to be a licence. Terms are used and provisions have been made as in a tenancy. But in our judgment, it is reasonably clear that what was given in the document was a licence. The appellant had not given up the ground floor to the respondent for him to use as he liked. The exclusive possession that appeared to have been given was only as to the physical part of the user. The ground floor was to continue to be used as an eating-shop and no other, the licence was to remain and to be renewed in the name of the appellant except that the respondent or his nominee might be named as the manager or person in charge of the business and have his photo affixed to the relevant document. The appellant was to carry out all minor and major repairs and painting or white washing as might be required which though not expressly stated, must reasonably be as required by the City Council Authorities for the purpose of the eating-house business. In the circumstances, the dominant intention of the parties is, in our view, to give a licence to run the appellant's business of an eating-house as the respondent's own for the term with necessarily the use of the ground floor for this purpose. Clause 5 becomes decisive of the special relationship between the parties and the habendum must be seen to be an error of drafting.

Into this category of mistake must ee placed the unfortunate exercise which the appellant's then solicitors carried out in distraining on the respondent's goods for arrears of rent. Distress is only available to a landlord against a tenant and in the circumstances of the case wrongful but we do not think it quite correct to contend that the distress levied would have converted what was in our view clearly a licence into a tenancy.

In our view, it is not really necessary to say that such a licence is not "contracting out of the statute" which as has been held in Rajenback v. Mamon (5) and in a number of local cases which have followed this accepted authority, a landlord should be prevented from exploiting. It is not a case of any promise extracted by someone with superior bargaining power that the tenant will give up a protected tenancy at the end of the term or that he will not rely on the protective provisions of the law; Johnson & Anor v. Moreton (6) It is the case of parties agreeing to a transaction which from its inception lies outside the purview of the relevant ordinance. The legislation protects a tenancy but not a licence. As Geoffrey Lane, L.J. said in Aldrington Garages v. Fielder (7)

(5) (1955) 1 Q.B.283; (1955) 1 All E.R.12.
(6) (1978) 3 W.L.R. 538, H.L.(E).
(7) (1978) 247 E.G. 557.

says at p.559: "If there was here only a licence and not a tenancy dressed up in the verbiage and trappings of a licence, the landlord was entitled to succeed." See also the passage cited earlier from Lord Denning M.R. in Shell-Mex's case.

For these reasons we allow the appeal with costs here and in the Court below. The respondent's claim stands dismissed and there will be judgment on the counterclaim in favour of the appellant. The amount, as we understand, has been agreed. The respondent will give up possession within two months from the date of this judgment. In the event there are any loose ends to be tied up, there shall be liberty to apply to the High Court.

CHANG MIN TAT

Kuala Lumpur,
2nd February, 1979.

(TAN SRI DATUK CHANG MIN TAT)
JUDGE,
FEDERAL COURT, MALAYSIA.

Dates of Hearing: 5th & 6th December, 1978.

Encik T.R. Hepworth (Encik V. Thevendran with him) for Appellant.
Solicitors: Messrs. Allen & Gledhill.

Encik R.K. Sharma for Respondent.
Solicitors: Messrs. Sharma & Co.

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Certified true copy

Sd. illegible

Secretary to Judge
Kuala Lumpur
2/5/79

No.11

ORDER

Between Mohd. Mustafa s/o Seeni Mohd. Appellant

And

Kandasami s/o Kaliappa Gounder Respondent

(In the matter of Civil Suit No.252 of 1971 in the High Court in Malaya at Penang

Between

Kandasami s/o Kaliappa Gounder Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd. Defendant

CORAM: RAJA AZLAN SHAH, JUDGE, FEDERAL COURT, MALAYSIA:
CHANG MIN TAT, JUDGE, FEDERAL COURT, MALAYSIA:
SYED OTHMAN, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 2ND DAY OF FEBRUARY, 1979

O R D E R

THIS APPEAL coming on for hearing on the 6th and 7th days of December, 1978 in the presence of Mr. T.R. Hepworth (Mr. V. Thevendran with him) of Counsel for the Appellant and Mr. R.K. Sharma of Counsel for the Respondent AND UPON READING the Record of Appeal herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for Judgment AND the same coming on for Judgment this day in the presence of Mr. V. Thevendran of Counsel for the Appellant and Mr. R.K. Sharma of Counsel for the Respondent IT IS ORDERED that this Appeal be and is hereby allowed AND IT IS ORDERED that the Respondent's claim in the Court below be and is hereby dismissed and the Appellant's counter claim be allowed and that:

(1) The Respondent do deliver vacant possession of the ground floor of premises No.43 Penang Street, Penang, and the eating shop and restaurant business known as "Nava India Restaurant" at No.43 Penang Street, Penang, within two months from the date of this Order.

(2) The Respondent do pay to the Appellant the sum of $8,500/- as agreed being mesne profits calculated

In the Federal Court (Appellate Jurisdiction)

No.11
Order 2nd February 1979 (Contd.)

up to the 31st day of May, 1978, without prejudice to the Respondent's right to claim from the Appellant's superior landlord arrears of assessment amounting to $5,820.63 paid by the Respondent in respect of No.43 Penang Street, Penang, for the year 1972 up to and including the first half of the year 1978,

(3) That the Respondent do pay to the Appellant further mesne profits at the rate of $300.00 per month from the 1st day of June, 1978, until delivery of possession.

AND IT IS ORDERED that the Appellant's costs of the Appeal and of the Court below be taxed and when taxed be paid by the Respondent to the Appellant AND IT IS FURTHER ORDERED that the deposit of $500.00 (Ringgit Five hundred only) paid into Court by the Appellant as security for costs of this Appeal be paid out to the Appellant AND IT IS LASTLY ORDERED that thereshall be liberty to apply to the High Court.

GIVEN under my hand and the seal of the Court this 2nd day of February, 1979.

(L.S.)

Sd. Illegible
Deputy Registrar,
Federal Court, Malaysia

In the Federal Court of Malaysia at Kuala Lumpur

No.12

ORDER

No.12
Order granting Conditional leave to appeal 20th March 1979

Between Mohd. Mustafa s/o Seeni Mohd. Appellant

And

Kandasami s/o Kaliappa Gounder Respondent

(In the matter of Civil Suit No.252 of 1971 in the High Court in Malaya at Penang

Between Kandasami s/o Kaliappa Gounder Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd. Defendant

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT, BORNEO ;

WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA ;

ABDUL HAMID, JUDGE, HIGH COURT, MALAYA

IN OPEN COURT

THIS 20TH DAY OF MARCH 1979

O R D E R

UPON MOTION made unto the Court on the 19th day of March 1979 by Mr. R.R. Chelliah (Mr. R.K. Sharma with him) of Counsel for the Respondent abovenamed and Mr. T.R. Hepworth (Mr. V. Thevendran with him) of Counsel for the Appellant abovenamed AND UPON READING the Notice of Motion dated the 7th day of March 1979, the Affidavit of Kandasami son of Kaliappa Gounder affirmed on the 6th day of March 1979 and filed herein, the Affidavit of Mohd. Mustafa s/o Seeni Mohd. affirmed on the 14th day of March 1979 and filed herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that the same be adjourned to 20th day of March 1979 for Judgment AND the same coming for Judgment this day IT IS ORDERED that leave be and is hereby granted to the Respondent to appeal to His Majesty the Yang Di-Pertuan Agong against the Order of the Federal Court made on the 2nd day of February 1979 upon the following conditions :-

(a) that the Respondent do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia, in the sum of $5,000.00 (Ringgit Five Thousand Only) for the due prosecution of the Appeal, and the payment of all costs as may become payable to the Appellant in the event of the Respondent not obtaining an Order granting final leave to appeal or if the Appeal being dismissed for non-prosecution, or if His Majesty the Yang di-Pertuan Agong ordering the Respondent to pay the Appellant's costs of the Appeal as the case may be; and

(b) that the Respondent do within the said period of three (3) months from the date hereof take necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England.

AND IT IS ORDERED that execution thereof be stayed until the Appeal is heard and disposed of AND IT IS FURTHER ORDERED that there be no stay of execution of

In the Federal Court of Malaysia at Kuala Lumpur

No.12

Order granting Conditional leave to appeal 20th March 1979

that part of the Judgement of this Court in respect of the sum of $8,500.00 mesne profit for the period up to 31st May 1978 and the Order for mesne profit at the rate of $300.00 per month with effect from 1st June 1978 AND IT IS LASTLY ORDERED that the costs of this application be costs in the Appeal.

GIVEN under my hand and the seal of the Court this 20th day of March, 1979.

(L.S.) Sd. Illegible
.....
DEPTY REGISTRAR,
FEDERAL COURT, MALAYSIA

In the Federal Court (Appellate Jurisdiction)

No. 13

Order granted Final Leave to Appeal 9th July 1979

No. 13

ORDER

Between

Mohd. Mustafa s/o Seeni Mohd.

Appellant

And

Kandasami s/o Kaliappa Gounder

Respondent

(In the matter of Civil Suit No. 242 of 1971 in the High Court in Malaya at Penang

PR. No.1B23685/99
FEE PAID IN STAMPS
20/ /
15/8
Clerk

Between

Kandasami s/o Kaliappa Gounder

Plaintiff

and

Mohd. Mustafa s/o Seeni Mohd.

Defendant)

CORAM: RAJA AZLAN SHAH, CHIEF JUSTICE, HIGH COURT, MALAYA;

SALLEH ABAS, JUDGE, FEDERAL COURT, MALAYSIA;

EUSOFFE ABDOOLCADER, JUDGE, HIGH COURT, MALAYA.

IN OPEN COURT

THIS 9TH DAY OF JULY 1979

In the Federal Court (Appellate Jurisdiction)

No. 13

Order granted Final leave to appeal 9th July 1979

O R D E R

UPON MOTION made unto the Court this day by Mr. Raj Kumar Sharma of Counsel for the Respondent abovenamed in the presence of Mr. U. Harcharn Singh of Counsel appearing on behalf of Counsel for the Appellant abovenamed AND UPON READING the Notice of Motion dated the 15th day of June 1979 and the Affidavit of Raj Kumar Sharma affirmed on the 15th day of June 1979 and filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that final leave be and is hereby granted to the Respondent to appeal to His Majesty the Yang Di-Pertuan Agong against the Order of the Federal Court made on the 2nd day of February 1979 except that part of it as requires the Respondent to pay to the Appellant the sum of $8,500/- as agreed mesne profits in the above Federal Court Civil Appeal No. 126 of 1978 AND IT IS LASTLY ORDERED that the costs of and incidental to this application be costs in the cause.

GIVEN under my hand and the seal of the Court this 9th day of July 1979.

DEPUTY REGISTRAR,
FEDERAL COURT, MALAYSIA.

# PART II

Deed of Assignment 29th July 1967

## D21 - DEED OF ASSIGNMENT

### TRANSFER AND ASSIGNMENT OF BUSINESS

I, S.K. SEENI MOHAMED son of KUPPAI MOHAMED, holder of Identity Card No. 0978043, residing at No. 4, Pier Road, Butterwoth P.W. do hereby assign and transfer fully the business presently a running concern under the name and style of "NAVA INDIA RESTAURANT" 43, PENANG STREET, PENANG with its furnitures, fixtures, fittings and utensils etc., to my own and legal son MOHAMED MUSTAFA son of SEENI MOHAMED, holder of Identity Card No. 0304465 and presently residing at No. 43, Penang Street, Penang. I am the owner of the said restaurant and give this free to my son MOHAMED MUSTAFA to do business at his own free will without any encumbrances from me or from my creditors. From the date of this assignment my son MOHAMED MUSTAFA son of SEENI MOHAMED shall responsible for the for the profit and loss of the said business. Hereafter I have no claim or whatsoever on this business and MOHAMED MUSTAFA son of SEENI MOHAMED has the full right to enjoy the benefits from this business.

Stamp Office Penang 24 x 67

Stamp Office Penang 26 viii 67

Signature of Assignee .....

Witness :- .....

.....

Butterworth

29th day of July, 1967.

ACCOUNTANTS
36 Penang Street,
PENANG.

High Court. Penang
C.S./ O/S No. 252/71
Exhibit number D21
DW1
Date 30th August 1972

D19

Rent Receipt
31st March 1970

## D19 - RENT RECEIPT

Without prejudice to our claim under the Control of Rent Act 1966 for fair rent as from 1st January, 1967 wherever and however determined.

Stamp
13/70m

31st March 1970

Received from Mr. S.K. Seeni Mohamed, 4 Pier Road, B. Worth the sum of Dollars One hundred and seventy four and Ch.25 only being rent of house No. 43 Penang Street, Penang from 1st February to 28th February 1970 being one month.

E. & O. E.

Received Payment.

$174 25

Signed.

High Court. Penang
C.S./ O/S No. 252/71
Exhibit number D19
DW1
Date 30th August 1977

Sr. Asst. Registrar.

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P17

Translation of Bill issued by Chop Eng Hong

## P.17 - TRANSLATION OF BILL ISSUED BY CHOP ENG HONG

ENG HONG

109, Cintra Street, Penang.

Bill No. 2921
Date 9/4/70

Mr./Messrs. Kandasamy

| | | | | |
|---|---|---|---|---|
| To | 9/4/70 | Siamese parboiled rice | .. | $ 98.70 |
| | 24/4/70 | " | .. | 55.00 |
| | 29/4/70 | " | .. | 52.00 |
| | | Total | .. | $205.70 |

PAID 3/5/70

Translation No. 83/T1 Folio 1 Fees $2.00

P17

Translation of Bill issued by Chop Eng Hong (Continued)

Translated by

A Sworn Interpretation,
Supreme Court, Penang. 30/8/77

---

D20 - RENT RECEIPT

Without prejudice to our claim under the Control of Rent Act 1966 for fair rent as from 1st January, 1967 wherever and however determined.

No.

Stamp
30/ / 70m

30th April 1970

Received from Hon. S. K. Seeni Mohamed, 4 Pier Road, B. Worth the sum of Dollars One hundred and seventy four five only being rent of house No. 43, Penang Street, Penang from 1st March to 31st March 1930 being one month.

E. & O. E. Received Payment.

$174.25

High Court. Penang
C.S./ O/S. No. 252/71
Exhibit number D20
DW1
Date 30th August 1977.

Sr. Asst. Registrar.

A1
Eating House
Licence No.1407
26th May 1970

## Translations

CITY COUNCIL, GEORGE TOWN, PENANG.

## Eating Shop Licence for 1970

Licence No.1407

Under the By-Laws, with regard to Bread Shop, Eating Shop and places where food or drinks are sold or prepared for sale, licence is hereby issued to MOHAMED MUSTAFA s/o SEENI MOHAMED (I.C.No. 0304465) to use house No. 43, Penang Street (Nava India Restaurant) as an EATING SHOP for the year ending 31st December, 1970, subject to the conditions stipulated in the By-Laws and the conditions in the Municipality Laws (Chapter 133).

Photograph

On Behalf of City Council.

Previous Licence No.:873
Licence Fees :$20/-

City Health Officer.
Date: 26.5.70

$20/-
26941
22.5.70

Renewal

| Year | Renewal | Year | Renewal |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

This is the true translation of the original document produced to me
Translation No. 319/84

SITI FATIMAH BT. DAUD,
Malay Interpreter,
High Court,
Penang, Malaysia.

Receipt No. 74/1
Amount $2/-
Date 6/12/84

Senior Assistant Registrar,
High Court,
Penang

D12 - AGREEMENT FOR LEASE

D 12

Agreement for Lease 30th July 1970

THIS LEASE is made the 30th day of July, 1970 Between MOHD. MUSTAFA S/O SEENI MOHD. (NRIC. NO: 0304465) of No. 4, Pier Road, Butterworth, P.W. (hereinafter called "the Lessor") of the other part.

WHEREAS the Lessor is the owner of the business carried on at premises No. 43 Penang Street, Penang, under the name and style of "NAVA INDIA RESTAURANT AND CAFE" and under Business Registration Certificate No. 118833 and also holds an Eating House Licence bearing No. 1407 and the Lessor is also the tenant of premises No. 43, Penang Street, Penang (hereinafter referred to as "the said premises").

High Court Penang C.S./O/S. No. 252/71 Exhibit number D12 PW1 Date 29th August 1971

Sr. Asst. Registrar.

AND WHEREAS the Lessor wishes to lease to the Lessee the said business of an eating house together with the use of the ground floor only of the said premises in which the same is now carried on for a term of one (1) year from the 1st day of August 1970 on the terms and conditions hereinafter appearing.

NOW THIS INDENTURE WITNESSETH as follows :

1. In consideration of the rents and covenants hereinafter reserved and contained and on the Lessee's part to be performed and observed the Lessor hereby lets to the Lessee the ground floor only of the said premises together with the full right and liberty to the Lessee to carry on the business of an eating house on the said premises, under the aforesaid licence issued to the Lessor and the right of use of all the furniture (a list of which is annexed hereto) and fittings therein TO HOLD same unto the Lessee for a term of one (1) year from 1st day of August 1970 termi terminable on the 31st day of July, 1971. Paying therefore the monthly rental of Dollars Three Hundred ($300/=) only by monthly payments on the 1st day of each and every month, the first of such payment to be made on the 1st day of September, 1970.

2. The Leassee for himself and his successors in title and to the intent that the obligation may continue throughout the terms hereby created covenants with the Lessor as follows :-

(a) To pay the reserved rent on the dates and in manner aforesaid.

(b) To keep the exterior and interior of the demised property and all additions thereto and the drains oil and other pipes and sanitary and water apparatus thereof and the electric and sanitary installation and all fixtures

(d) Not to change the nature of the said leased business.

(e) Not at any time during his occupation, assign under-let or otherwise part with possession of the said premises or any part thereof wherein the leased business is carried on to any person without the consent in writing of the Lessor.

(f) To pay the Provident Fund of his Employees (if any) and be responsible for the Income Tax during the term of this Lease.

(g) To purchase any further furniture, fitting and utensils required at his own costs with the consent of the Lessor.

(h) To pay all his creditors regularly to avoid any encumbrances to the leased business or the Lessor.

(i) To observe all the health rules, and conditions of the City Council, Penang.

(j) Not to use the name or shop of "NAVA INDIA RESTAURANT AND CAFE" to obtain loans, credit, bills or to sign receipts and is not empowered to do any transactions of any nature for and on behalf of the said restaurant and cafe or in the name of the Lessor.

3. The Lessor hereby covenants with the Lessee as follows :-

(a) That the Lessee paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on his part contained shall peaceably hold and enjoy the demised premises during the said term without any interruption by the Lessor or any person rightfully claiming under him.

(b) To pay to the Landlord of the said premises the monthly rental of $174.25 promptly and without fail.

(c) Not to do anything or omit to do anything whereby the eating house licence issued to the Lessor in respect of the said premises may be cancelled or not renewed or whereby the tenancy of the said premises to be terminated.

(d) To take all requisite steps and sign all forms

and documents as may be necessary or required for the renewal of the Eating House Licence in the name of the Lessor and to permit the photograph of the Lessee or any other person nominated by the Lessee to be affixed to the said Eating House Licence as Manager, or the person in charge or in any other capacity of the said premises. Provided that the Lessor shall not be liable for any debt incurred by the Lessee during the course of running the said business.

(e) On the termination of this lease to refund to the Lessee the deposit of sum of ₹460/= which has been deposited by the Lessee to the Lessor on execution of these presents as referred to in clause 2(c) hereof.

(f) To pay and discharge all existing and future charges in respect of night soil and/or for the supply of water and electricity payable in respect of the demised premises.

(g) To do all minor and major repair and painting or white washing as may be required.

4. Provided Always and it is expressly agreed as follows :-

(i) If the rents hereby reserved or any part thereof shall be unpaid for fourteen (14) days after becoming payable (whether formally demanded or not) or if any covenant on the Lessee's part herein contained shall not be performed or observed then and in any of the said cases it shall be lawful for the lessor at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall be absolutely determined but Without Prejudice to the right of action of the Lessor in respect of any breach of the Lessee's covenants therein contained.

5. It is expressly agreed and understood that the right of tenancy whatsoever of the said premises or any portion thereof is intended to be passed to the Lessee by the Lessor and that the relationship of Landlord and Tenant does not exist between the Lessor and Lessee as regards the said premises or any part thereof.

6. It is hereby expressly agreed that the Lessee shall be solely entitled to and be responsible for all the profits and losses in the conduct of the leased business during the term of this lease and shall

D 12

Agreement for Lease 30th July 1970

keep the Lessor indemnified in respect of the same and that the Lessor shall not in any way be bound by or for any commitments of the Lessee in respect of his conduct and management of the Leased business.

7. The Terms "Lessor" and "Lessee" shall mean and include their respective assigns, Executors and Administrators.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands at Penang the day and year first abovewritten.

SIGNED and DELIVERED by the LESSOR in the presence of :-

Sd.

T. SUBBIAH
Advocate & Solicitor,
No. 111, Penang Street,
Penang.

SIGNED and DELIVERED by the LESSEE in the presence of :-

T. SUBBIAH
Advocate & Solicitor,
No. 111, Penang Street,
Penang.

D 13 - SCHEDULE - INVENTORY

D 13

Schedule/ Inventory.

The Schedule hereinbefore referred to :-

| | | |
|---|---|---|
| 1. | Glass show-case for food things | (1) |
| 2. | Glass show-case (4) partitioned-set | (4) |
| 3. | Display show-case | (2) |
| 4. | Wooden door show-case. | (2) |
| 5. | Bench wood | (2) |
| 6. | Mess tables | (4) |
| 7. | - do - square | (3) |
| 8. | Iron chairs | (24) |
| 9. | Ceiling fan | (3) |
| 10. | Cashier table | (1) |
| 11. | Electric grinder | (1) |
| 12. | Hot-water boiler | (1) |
| 13. | Aluminium - carry big pan | (10) |
| 14. | Brass pans and pots | (3) |
| 15. | Haliva-iron pan | (1) |
| 16. | Iron oil pan | (1) |
| 17. | Flour wood drum | (2) |
| 18. | Rani padi wood | (1) |
| 19. | Rice drum | (1) |
| 20. | Benatta - stone table | (1) |
| 21. | Curry table | (1) |
| 22. | Cashier's chair | (1) |
| 23. | Mercury tube light | (9) |
| 24. | Food plates | (10) |
| 25. | Phillips radio | (1) |
| 27. | G.E.C. Refrigerator (6 cubic ft.) | (1) |
| 28. | Horse wall clock | (1) |

Sgd.

High Court. Penang
C.S./O/S. No. 252/71
Exhibit number D13
DW1
Date 30th August 1977

Sr. Asst. Registrar

A 2

## A 2 - LEASE

Lease
30th July 1970

Stamp $15.00
3 VIII 70

THIS LEASE is made the 30th day of July, 1970 Between MOHD. MUSTAFA S/O SEENI MOHD. (NRIC. NO. 0304465) of No. 4 Pier Road, Butterworth, P.W. (hereinafter called "the Lessor") of the one part AND KANDASAMI S/O KALIAPPA GOUNDER (NRIC. NO. 7566581) of No. 43 Penang Street, Penang (hereinafter called "the Lessee") of the other part.

WHEREAS the Lessor is the owner of the business carried on at premises No. 43 Penang Street, Penang under the name and style of "NAVA INDIA RESTAURANT AND CAFE" and under Business Registration Certificate No. 118833 and also holds an Eating House Licence bearing No. 1407 and the Lessor is also the tenant of premises No. 43 Penang Street, Penang (hereinafter referred to as "the said premises").

AND WHEREAS the Lessor wishes to lease to the Lessee the said business of an eating shop together with the use of the ground floor only of the said premises in which the same is now carried on for a term of one (1) year from the 1st day of August, 1970 on the terms and conditions hereinafter appearing.

NOW THIS INDENTURE WITNESSETH as follows :

1. In consideration of the rents and covenants hereinafter reserved and contained and on the Lessee's part to be performed and observed the Lessor hereby lets to the Lessee the ground floor only of the said premises together with the full right and liberty to the Lessee to carry on the business of an eating house on the said premises, under the aforesaid licence issued to the Lessor and the right of use of all the furniture (a list of which is annexed hereto) and fittings therein TO HOLD same unto the Lessee for a term of one (1) year from 1st day of August, 1970 terminable on the 31st day of July, 1971. Paying therefore the monthly rental of Dollars Three Hundred ($300/-) only by monthly payments on the 1st day of each and every month, the first of such payment to be made on the 1st day of September, 1970.

2. The Lessee for himself and his successors in title and to the intent that the obligation may continue throughout the terms hereby created hereby covenants with the Lessor as follows:-

(a) To pay the reserved rent on the dates and in manner aforesaid.

(b) To keep the exterior and interior of the demised property and all additions thereto and the drains soil and other pipes and sanitary and water apparatus thereof and the electric and sanitary installation and all fixtures and fittings in and upon the demised premises in good and tenantable repair and good condition.

(c) To deposit with the Lessor the sum of Dollars Four Hundred and Sixty ($460/-) only on or before the execution of this lease (the receipt whereof the Lessor hereby acknowledges).

(d) Not to change the nature of the said leased business.

(e) Not at any time during his occupation, assign under-let or otherwise part with possession of the said premises or any part thereof wherein the leased business is carried on to any person without the consent in writing of the Lessor.

(f) To pay the Provident Fund of his Employees (if any) and be responsible for the Income Tax during the term of this Lease.

(g) To purchase any further furniture, fitting and utensils required at his own costs with the consent of the Lessor.

(h) To pay all his creditors regularly to avoid any encumbrances to the leased business of the Lessor.

(i) To observe all the health rules, and conditions of the City Council, Penang.

(j) Not to use the name or chop of "NAVA INDIA RESTAURANT AND CAFE" to obtain loans, credit, bills or to sign receipts and is not empowered to do any transactions of any nature for and on behalf of the said restaurant and cafe or in the name of the Lessor.

3. The Lessor hereby covenants with the Lessee as follows :-

(a) That the Lessee paying the rent hereby reserved and obscuring and performing the several covenants and stipulations herein on his part contained shall peaceably hold and enjoy the demised premises during the said term without any interruption by the Lessor or any person rightfully claiming under him.

A 2

Lease
30th July 1970

(b) To pay to the Landlord of the said premises the monthly rental of $174.25 promptly and without fail.

(c) Not to do anything or omit to do anything whereby the eating house licence issued to the Lessor in respect of the said premises may be cancelled or not renewed or whereby the tenancy of the said premises may be terminated.

(d) To take all requisite steps and sign all forms and documents as may be necessary or required for the renewal of the Eating House Licence in the name of the Lessor and to permit the photograph of the Lessee or any other person nominated by the Lessee to be affixed to the said Eating House Licence as Manager, or the person in charge or in any other capacity of the said premises. Provided that the Lessor shall not be liable for any debt incurred by the Lessee during the course of running the said business.

(e) On the termination of this Lease to refund to the Lessee the deposit of sum of $460/- which has been deposited by the Lessee to the Lessor on execution of these presents as referred to in clause 2(c) hereof.

(f) To pay and discharge all existing and future charges in respect of night soil and/or for the supply of water and electricity payable in respect of the demised premises.

(g) To do all minor and major repair and painting or whitewashing as may be required.

4. Provided Always and it is expressly agreed as follows :-

(i) If the rents hereby reserved or any part thereof shall be unpaid for fourteen (14) days after becoming payable (whether formally demanded or not) or if any covenant on the Lessee's part herein contained shall not be performed or observed then and in any of the said cases it shall be lawful for the Lessor at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall be absolutely determined but Without Prejudice to the right of action of the Lessor in respect of any breach of the Lessee's covenants therein contained.

5. It is expressly agreed and understood that the right of tenancy whatsoever of the said premises or any portion thereof is intended to be passed to the Lessee by the Lessor and that the relationship of Landlord and Tenant does not exist between the Lessor and Lessee as regards the said premises or any part thereof.

6. It is hereby expressly agreed that the Lessee shall be solely entitled to and be responsible for all the profits and losses in the conduct of the leased business during the term of this lease and shall keep the Lessor indemnified in respect of the same and that the Lessor shall not in any way be bound by or for any commitments of the Lessee in respect of his conduct and management of the Leased business.

7. The Term "Lessor" and "Lessee" shall mean and include their respective assigns, Executors and Administrators.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands at Penang the day and year first above written.

SIGNED and DELIVERED by the )
LESSOR in the presence of : ) SD. M. Mustafa

Sd. T. Subbiah

T. SUBBIAH
Advocate & Solicitor,
No. 111 Penang Street, Penang.

SIGNED and DELIVERED by the )
LESSEE in the presence of :) Sd. In Tamil Characters

Sd. T. Subbiah

T. SUBBIAH
Advocate & Solicitor.
No. 111 Penang Street, Penang.

A 2

Lease
30th July 1970
(Continued)

The Schedule hereinbefore referred to:

| | | |
|---|---|---|
| 1. | Glass show-case for food things | (1) |
| 2. | Glass show-case (4) partitioned-set | (4) |
| 3. | Display show-case | (2) |
| 4. | Wooden door show case | (2) |
| 5. | Bench wood | (2) |
| 6. | Mess tables | (4) |
| 7. | - do - square | (3) |
| 8. | Iron chairs | (24) |
| 9. | Ceiling fan | (3) |
| 10. | Cashier table | (1) |
| 11. | Electric grinder | (1) |
| 12. | Hot-water boiler | (1) |
| 13. | Aluminium - carry big pan | (10) |
| 14. | Brass pans and pots | (3) |
| 15. | Maliva-iron pan | (1) |
| 16. | Iron oil pan | (1) |
| 17. | Flour wood drum | (2) |
| 18. | Rani padi wood | (1) |
| 19. | Rice drum | (1) |
| 20. | Benatta - stone table | (1) |
| 21. | Curry table | (1) |
| 22. | Cashier's chair | (1) |
| 23. | Mercury tube light | (9) |
| 24. | Food plates | (10) |
| 25. | Philips radio | (1) |
| 27. | G.E.C. Refrigerator (6 cubic ft). | (1) |
| 28. | Horse wall clock | (1) |

Sd. In Tamil Characters

Sd. M. Mustafa.

D 9 - LETTER FROM PLAINTIFF TO LABOUR OFFICE

D 9

Letter from Plaintiff to Labour office 14th August 1970

Civil Suit 252/71
Marked D9
PW1
day of May 1977
Sr. Asst. Registrar

KANDASAMI son of KALIAPPA GOUNDER,
43, PENANG STREET, PENANG
14th day of August, 1970.

Officer,
Office,

Re: NAVA INDIA RESTAURANT AND CAFE - 43, Penang Street, PENANG,

With effect from 1st day of August, 1970, I have taken Lease of the above referred restaurant for a period of one year from the owner MOHAMED MUSTAFA son of Seeni Mohamed.

Please note that at present I am running the above restaurant with the assistance of my family and I am doing the cooking. In future if I employ any workers I will inform your accordingly.

Any E.P.F. due or any other correspondences prior to 1-8.1970 shall have to be referred to Mohamed Mustafa, 4, Pier Road, BUTTERWORTH, P.W.

Thanking you Sir,

Yours faithfully,

Sd.

Kandasami s/o Kaliappa Gounder.

A 3

Letter from Plaintiff to Defendant 12th December 1970

## A 3 - LETTER FROM PLAINTIFF TO DEFENDANT

Kandasami s/o K. Gounder,
43, Penang Street,
Penang.

12th December, 1970.

Mr. Mohd. Mustafa s/o Seeni Mohd.
No. 4 Pier Road,
Butterworth.

Sir,

re: Premises No. 43 Penang Street, Penang

I would be grateful if you will, as agreed, have the abovementioned premises painted to the satisfaction of the City Council so as to enable me to be prepared with all documents for your signature in having the licence renewed and also have my photograph affixed to the said eating house licence as Manager.

I would further beg of you to let me have the room upstairs as agreed so as to house my family. The City Council authorities have objected to my family and myself living downstairs on the ground floor.

Please treat this as urgent.

Signed : K. Kandasamy.

D 22

Rent Receipt
1st January 1971

NOTICE.

*Tenant should give one calendar month's notice of his intention to vacate the premises failing which he is liable to pay one month's rent.*
*Tenant must first obtain our consent and approval before he is permitted to transfer his tenancy.*
*No alterations can be made to the premises without first obtaining our consent in writing.*
*Sub-letting not permitted without our prior consent.*

租 單

# HOUSE RENT RECEIPT.

Date. 1st/1/ 1971

茲收到 *Received* from Kandasami s/o Kaliappa Goundar

未 收 the sum of Dollars Three Hundred only —

係 爲 being payment for rent of No. Ground floor of premises 46 43 Penang Road being together with the eating shop premises with fixtures, fittings and sanitary accessories including fluid electricity etc. from 1-1-71 to 31-1-1971 for one (1) month

$300/=

Collector 收租人

A 4

Notice from Plaintiff to Defendant 22nd February 1971

## A 4 - NOTICE FROM PLAINTIFF TO DEFENDANT

Kandasami s/o Kaliappa Gounder,
43, Penang Street, Penang.

22nd February, 1971.

Encik Mohd. Mustafa s/o Seeni Mohd.,
4, Pier Road,
Butterworth.

Sir,

N O T I C E

This is to inform you that in accordance with the Agreement inforce over the ground floor of the premises No. 43 Penang Street, Penang, I have made prompt payments regarding the rents for the perod ending 31st January, 1971 and on all occasions when you come to collect the rent, I have repeatedly asked you for all rent receipts, but you did not abide with such request.

It was only when January, 1971 was paid that I revealed that I will not part with the Feb. 1971 rent until you produce all the rent receipts paid as rent for the entire period ending January '71.

I refer you to the law in connection with the receipts for rents and the penalty for not doing so.

You have not in accordance with Para 3(d) of the agreement taken any step in the renewal of the licence whereby my Photograph was arranged to be affixed in such licence as Manager and as such, you have committed a breach of the Agreement. Hence please arrange all in accordance with the said Agreement.

.....

A 5 - LETTER FROM DEFENDANT'S SOLICITORS TO THE PLAINTIFF

A 5

Letter from Defendant's Solicitors to the Plaintiff 24th February 1971

Out Ref.: G.491

Subbiah and Company,
Advocates & Solicitors,
111, Penang Street,
Penang.

24th February, 1971.

Kandasami s/o Kaliappa Gounder,
No. 43, Penang Street,
Penang.

Dear Sir,

We act for Enche Mohd. Mustafa s/o Seeni Mohd. of No. 4 Pier Road, Butterworth who has handed us your "Notice" dated 22nd February, 1971 with instructions to reply thereto.

Our client says that the reserved monthly rental of $300/- is payable in arrears on the 1st day of the following month and accordingly you have paid the rental up to the month of December, 1970, the December rental having been paid in January, 1971. You are now in arrears of rental from 1.1.1971 and despite repeated demands have not paid the same.

You have at no time asked for receipts. If you had asked for the same our client would have issued the receipts.

You have committed breach of condition of lease agreement by (a) not paying the rental promptly and (b) by living with your family at the place of business as a result of which the City Council Health Authorities are not prepared to renew the licence.

In the circumstances, you are to pay the rental for the month of January, 1971 and to remove your family from the ground floor of the said premises on or before 28th February, 1971 failing which our client shall exercise his rights under clause 4(i) of the Lease Agreement dated 30th July, 1970 and re-enter the said premises and take appropriate action against you for damages.

You are also to cease business forthwith as the licence has not been renewed yet failing which you shall be liable for the consequences.

Yours faithfully,

Sd. Subbiah & Co.

A 6

Letter from Plaintiff to Defendant's Solicitor 27th February 1971

## A 6 - LETTER FROM PLAINTIFF TO DEFENDANT'S SOLICITOR

Registered

Kandasamy s/o Kaliappa Gounder,
43, Penang Street,
Penang.

27th February, 1971.

M/s. Subbiah & Company,
Advocates & Solicitors,
111, Penang Street,
Penang.

Dear Sir,

re: G. 491

I am in receipt of your letter dated 24th February, 1971 and am surprised at your client's version of his false allegation. I have definitely paid the January, 1971 rent some time in the beginning of February, 1971 in conjunction with all other rents accepted by your said client.

Vide para 3 of your said letter, I have, practically every month, when payments of rents were paid, made requests for such receipts. Your client has always turned a deaf ear to this and his reasons for not so doing was to cheat the income tax. He is also bound by law to issue such receipts as it is laid down thus: "Every landlord or his agent or any other person to whom a payment on account of rent is made shall immediately deliver to the person making such payment a receipt thereof signed by, such landlord, agent or person receiving same." Your client should also be aware of the facts that there is a penalty for going against this.

Your client's reason for not taking out the licence is simply vague and meaningless.

Hence I will not quit from the premises as requested by you and I leave you to take out such intended action if you please.

Will you therefore let me have the rent receipts without fail.

Yours faithfully,

(Kandasamy s/o Kaliappa Gounder)

A 7 - PENANG MAGISTRATES COURT DISTRESS APPLICATION No. 1 OF 1971

A 7

Penang Magistrates Court Distress Application No. 1 of 1971 6th March 1971

IN THE MAGISTRATE'S COURT AT GEORGETOWN, PENANG

DISTRESS APPLICATION NO. 1 OF 1971

BETWEEN

Mohd. Mustafa s/o Seeni Mohd.

APPLICANT

AND

Kandasami s/o Kaliappa Gounder

RESPONDENT

AFFIDAVIT ON APPLICATION FOR DISTRESS

I, MOHD. MUSTAFA S/O SEENI MOHD. (NRIC NO. 0304465) of No. 4 Pier Road, Butterworth, P.W., of full age, property owner hereby make affirmation and say as follows :-

1. I am the Applicant herein.

2. The Respondent abovenamed is justly indebted to me in the sum of $300/- for arrears of rent of premises No. 43 Penang Street, Penang due for one (1) month from 1.1.1971 to 31.1.1971 at the rate of $300/- per mensem payable in arrears on the last day of each month.

AFFIRMED At Penang this 6th day of March, 1971 by the abovenamed Deponent in the presence of me:

Sd. Mohd. Mustafa

Di-terangkan oleh saya di-dalam dialek bahasa Tamil

Sd. S. Vadivelu.
Jurubahasa,
Mahkamah Tengah/Rendah
Pulau Pinang

Before me,

Sd. Mohamed Isa
Magistrate,
Penang.

The address for service of the Applicant abovenamed is at the office of his Solicitors Messrs. Subbiah and Company, of No. 111, Penang Street, Penang.
SALINAN YANG TELAH DI-SAHKAN

Signed.

Magistrate, Penang.

A 9

House Rent Receipt 10th March 1971

## A 9 - HOUSE RENT RECEIPT

HOUSE RENT RECEIPT

Date: 10.3.1971

Received from Mr. Kandasami s/o Kaliappa Gounder the sum of Dollars Three hundred only. Being payment for rent of ground floor of premises No. 43 Penang Street, Penang together with the eating shop business with furniture and fittings thereof including of water and electricity rates from 1/2/71 to 28/2/1971 for one month (February).

$300/- 10/3/71 Sd: Collector

D 11

Letter from Plaintiff to Registrar of Sessions Court, Penang. 26th March 1971

## D 11 - LETTER FROM PLAINTIFF TO REGISTRAR OF SESSIONS COURT

Kandasami s/o Kaliappa Gounder
43, Penang Street,
Penang.

26th March, 1971.

The Registrar,
Session Court,
Penang.

Dear Sir,

Re: Warrant of Distress - No. 1 of 1971

1. I shall be very grateful if you will kindly permit me to have a certified true copy of warrant of Distress in the above matter.

2. I need it for my file because I am the Respondent in that matter and I also wish to state that the warrant was not executed because the claim of the Applicant was paid before the Applicant execute by belongings.

3. I undertake to pay the necessary fees on hearing from you.

Thank you,

Yours faithfully,

Sd. in Tamil
K. Kandasami

Mr. Jayer

2 p.m.
26th March 1971

D 15 - COUNCIL NOTICE TO DEFENDANT

High Court, Penang.
C.S./O.S. No. 252-71
Exhibit number D 15
P.W. 2.
Date 29th August 1977
Asst. Registrar

211

# Council Notice. № B 2708

Mohamed Hashim s/o Seeni Mohamed of No. 43 Penang St. 71

Take Notice that the Councillors being satisfied of the contravention of the Municipal By-laws with reference to Eating Houses at your premises No. 43 Penang Street hereby give you notice to do the following works within three clear (3) days after service of this notice, *viz:*—

to cease using part of the dining hall for sleeping purposes

If you make default in complying with the requisitions of this notice a Summons will be issued requiring your attendance before a Magistrate to answer a complaint which will be made for the purpose of enforcing the requirements of the By-laws.

Dated this 26th day of March 1971.

City Health Officer,
Penang.

Date of Service 2/4/71
Served by Chelvam on

I certify that this is a true copy of the original.

DIRECTOR OF HEALTH SERVICES
MUNICIPAL COUNCIL
PENANG ISLAND

A 8

Order for Warrant of Distress

## A 8 - ORDER FOR WARRANT OF DISTRESS

IN THE MAGISTRATE'S COURT AT GEORGETOWN, PENANG

DISTRESS APPLICATION NO. 1 OF 1971

BETWEEN

Mohd. Mustafa s/o Seeni Mohd.

APPLICANT

AND

Kandasami s/o Kaliappa Gounder

RESPONDENT

ORDER FOR WARRANT OF DISTRESS

To:

The Bailiff,
Sessions Court,
PENANG.

IT IS ORDERED that you do distrain the moveable property legally liable to a distress for rent and found in the ground floor of premises No. 43 Penang Street, Penang for the sum of $300/- being the amount of one (1) month's rent due to the abovenamed Applicant for the same on the 31st day of January, 1971 last (being the rent for January 1971) together with costs amounting to $18/- and the prescribed fees and expenses of executing this warrant, according to the Provisions of the Distress Ordinance, 1951.

Dated this 8th day of March, 1971.

(L.S.) Sgd. Mohamed Isa,
MAGISTRATE,
PENANG.

The address for service of the Applicant above-named is at the office of his Solicitors, Messrs. Subbiah and Company, of No. 111 Penang Street, Penang.

SALINAN YANG TELAH DI-SAHKAN

Sgd.

Pengadil

Mahkamah Rendah

Pulau Pinang

30th March, 1971.

A 10 - HOUSE RENT RECEIPT

A 10

House Rent Receipt 17th April 1971

HOUSE RENT RECEIPT

Date: 17.4.1971

Received from Mr. Kandasami s/o Kaliappa Gounder the sum of Dollars Three Hundred Only being payment for rent of Ground floor of Premises No. 43 Penang Street, Penang together with eating shop business with furniture and fittings and electricity and etcs.

from 1/3/71 to 31/3/71 for one month (March)

$300/- 17/4/71 Sd: Collector

A 11 - HOUSE RENT RECEIPT

A 11

House Rent Receipt 1st May 1971

HOUSE RENT RECEIPT

Date: 1/5/71

Received from Mr. Kandasamy s/o Kaliappa Gounder the sum of Dollars Three Hundred Only being payment for rent of Ground rent in premises of No. 43 Penang Street, Penang including furniture and fittings, electricity etc. from 1/4/71 to 30/4/71 for April month.

$300/- 1/5/71 Sd: Collector

A 12 - HOUSE RENT RECEIPT

A 12

House Rent Receipt 1st June 1971

HOUSE RENT RECEIPT

Date: 1/6/71

Received from Mr. Kandasamy s/o Kaliappa Gounder the sum of Dollars Three Hundred only being payment for rent of Ground floor of premises No. 43 Penang Street, Penang including furniture, fittings, water and electricity etc. from 1/5/71 to 30/5/71 for May, 1971.

$300/- 1/6/71 Sd: Collector

A 13

Letter from Defendant's Solicitors to Plaintiff. 17th June 1971

## A 13 - LETTER FROM DEFENDANT'S SOLICITORS TO PLAINTIFF

A. R. REGISTERED

Subbiah & Company,
Advocates & Solicitors,
111, Penang Street,
Penang.

17 th June, 1971.

Our ref: G 441

Mr. Kandasamy s/o Kaliappa Gounder,
No. 43 Penang Street,
PENANG.

Dear Sir,

We are instructed by Mohd. Mustafa s/o Seeni Mohd. of No. 4 Pier Road, Butterworth to refer you to the lease agreement dated 30th July, 1970 which lease expires on 31st July, 1971.

Kindly note that you are to hand over possession of the ground floor of premises No. 43 Penang Street, Penang, together with the furniture fittings therein and the business carried thereon on 31.7.1971 to our Client.

Yours faithfully,

Sd: Subbiah and Company.

c.c.

Mohd. Mustafa s/o Seeni Mohd.
No. 4, Pier Road,
Butterworth,
P.W.

A 14 - LETTER FROM PLAINTIFF TO CITY HEALTH OFFICER PENANG

A 14

Letter from Plaintiff to City Health Officer Penang. 6th July 1971

Kandasamy s/o Kaliappa Gounder,
43 Penang Street, Pg.

6th July, 1971.

The City Health Officer,
City Council,
Penang.

Sir,

re: 43, Penang Street, Penang
(Nava India Restaurant)

I would be very grateful if you will inform me as to whether the eating-shop licence of the abovementioned premises has been renewed for the year 1971.

I need this confirmation for a pending Court action.

I undertake to pay any charges if there be any.

Thanking you in anticipation.

Yours faithfully,

A 15

Letter from City Health Officer Penang to Plaintiff. 13th July 1971

## A 15 - LETTER FROM CITY HEALTH OFFICER PENANG TO PLAINTIFF

The City Health Dept.,
City Hall,
Penang.

13th July, 1971.

Our ref: C/P.50/71

Inche Kandasamy s/o Kaliappa Gounder,
No. 42, Penang Street,
Penang.

Tuan,

Re: Licensed Eating House at
No.43, Penang Street

With reference to your letter dated 6th July, 1971, I have to inform you that the above licence has not yet been renewed for the current year.

Bill No. 30204 for $2/- search fee is enclosed.

Yang benar,

Sd: Dr. J.R. Shortland
Pegawai Kesihatan Bandaraya

FC/lks

A 16 - LETTER FROM PLAINTIFF TO DEFENDANT'S SOLICITOR

A 16

Letter from Plaintiff to Defendant's Solicitor 16th July 1971

Kandasamy s/o Kaliappa Gounder,
No. 43, Penang Street, Penang.

16th July, 1971.

Messrs. Subbiah & Co.,
Advocates & Solicitors,
111, Penang Street,
Penang.

Sirs,

re: Premises No. 43, Penang Street, Penang.

1. I am in receipt of your letter dated the 17th day of June, 1971, and have noted its contents.

2. Your client, the lessor of an agreement drawn on the 30th day of July, 1970, has from the very beginning acted against the said agreement as to get me out before the expiry of the said agreement for reasons best known to himself. He has caused unreasonable trouble to myself this :-

(a) The said agreement reveals that the lessor is also the tenant of the premises, No. 43 Penang Street, Penang. The agreement states that the word "PREMISES" appearing thereafter in the said agreement, would refer to the entire building No. 43 Penang Street, Penang, in which the lessor is the Chief Tenant. Hence the word "PREMISES" appearing in the agreement would mean the entire premises and if it refers to the ground floor of the PREMISES, it would only mean the ground floor of the said PREMISES.

(b) Vide para 1 of the said agreement it states thus :-

"The Lessor hereby lets to the lessee only the ground floor of premises No. 43 Penang Street, Penang together with the full right and liberty to the lessee to carry on the business of an eating shop on the said premises".

Hence the right and liberty to carry on the business does not at all confine itself to the ground floor of the premises but to the premises. It is undoubted fact that the lessor agreed with me (Lessee) to allow the liberty and right of use of the hall upstairs together with the show-case alike the one on the ground floor and also the use of the toilet and bathroom upstairs for my said business as some of my customers may prefer to dine upstairs. This the lessor and his associates living upstairs deprived me from having the

A 16

Letter from Plaintiff to Defendant's Solicitor 16th July 1971 (Continued)

right of such use.

(c) The lessor further agreed in Para 3(c) of the said agreement that he would not do anything or omit to do anything whereby the eating house licence would be cancelled or not renewed. On various occasions before the expiry of the licence, I reminded the lessor about the painting of the premises which was the first stepping-stone for the renewal of the licence. I was made to understand that without such painting being done first, the City Health Officer would not grant such renewal. The said licence expired on the 31st of December, 1970, and from thence the lessor made no attempt to paint the premises as stipulated in the said Para 3(c) of the said agreement. My letter dated 22.2.71 will speak for itself.

(d) In addition to these obstacles, the lessor swore an affidavit to the effect that I, the lessee, did not pay the January, 1971 rent amounting to $300.00 when such amount was already paid. It is a fact that the lessee refused to pay rent as from February, 1971, as evidenced by lessee's letter, because the lessor never gave any receipt for such previous amounts paid. Moreover the amount of $300.00 was not for the rent of the ground floor alone but for water, light and rent of the said groundfloor together with the use of the hall, showcase, closet and bathroom upstairs.

3. I will not therefore abide with your request to quit on the 31st day of July, 1971, as your client has committed a breach of agreement firstly by depriving me the use of the hall, show-case, toilet and bathroom from the beginning. Secondly he has intentionally not done anything or has intentionally committed to do anything whereby I was unable to renew the licence as from the 1st of January, 1971. Thirdly the lessor falsely swore an affidivait that I was in arrears of rent for January, 1971. He publicly did things to show that my business was unsteady and would be seized by Court for being in arrears of rent. He did take out a Distress Warrant and went with the Bailiff to my place but later withdrew the seizure. On the said day a crowd consisting of your client's friends, employees and public stood in front of my buisness-shop in expectation of my shop being seized. Rumours that my shop was seized spread around to which the lessor and his friends were responsible. My creditors, on hearing this, came to the shop and demanded their dues immediately which I settled and thereafter these creditors were afraid to deal with me on credit. Most of my customers went elsewhere for their food owing to this.

4. Hence please note that I will be instituting action for damages as I may be advised and I will remain this place till the Court of Justice makes its decision over the dispute in the said agreement.

Lessee

A 17 - LETTER FROM DEFENDANTS SOLICITOR TO THE PLAINTIFF

A 17

Letter from Defendants Solicitor to the Plaintiff. 28th July 1971.

DALKIT & VIJAYA
ADVOCATES & SOLICITORS
PEGUAMBELA DAN
PEGUAMCARA

ROOM 6-B, 2ND FLOOR,
OVERSEAS UNION BANK BUILDING,
33-C, BEACH STREET,
PENANG.

DALJIT SINGH AHLUWALIA
K. VIJAYANATHAN

TEL. NO. 21707
PENANG 28TH JULY, 1971.

OUR REF: KV/JT/M22/71

YOUR REF:

Kandasami s/o Kaliappa Gounder,
No. 43, Penang Street,
Penang.

Dear Sir,

re: Premises No. 43, Penang Street, Penang

We act for Enche Mohamed Mustafa s/o Seeni Mohamed of No. 4 Pier Road, Butterworth, Province Wellesley.

On our client's instructions, we refer you to the Lease made on the 30th day of July, 1970 between our client on the one part and you on the other part wherein our client as Lessor leased the business carried on at premises No. 43, Penang Street, Penang carried on under the name and style of Nava India Restaurant and Cafe. The said Lease was for a period of one year beginning from the 30th July, 1970. As the lease will expire on the 31st day of July, 1971, our client's instructions are to give you notice, which we hereby do, to hand back the said business to our client at the expiry of the existing Lease.

We would also refer you to your undated letter to M/S. Subbiah & Co., our client's previous solicitors wherein you stated that the whole of the premises were leased to you. You would only have to peruse the Lease to discover that only the ground floor of the said premises were in fact leased to you. Reference is made to clause one of the said lease.

Yours faithfully,

Sd:

c.c.
Mohamed Mustafa s/o Seeni Mohamed,
No. 4 Pier Road,
Butterworth, P.W.

A 18

Letter from Defendant's Solicitors to the Plaintiff 31st July 1971

## A 18 - LETTER FROM DEFENDANTS' TO THE PLAINTIFF

DALJIT & VIJAYA
ADVOCATES & SOLICITORS
PEGUAMBELA DAN
PEGUAMCARA
DALJIT SINGH AHLUWALIA
K. VIJAYANATHAN

ROOM 6-B, 2ND FLOOR,
OVERSEAS UNION BANK BUILDING,
33-C, BEACH STREET,
PENANG.

TEL: NO. 21707

OUR REF: DS/ST/M22/71
YOUR REF:

PENANG 31ST JULY, 1971

Kandasami s/o Kaliappa Gounder,
No. 43, Penang Street,
Penang.

Dear Sir,

re: Premises No. 43 Penang Street, Penang

Further to our letter dated 28th July, 1971, we are instructed by our client that you have not paid rent for the months of June and July, 1971 amounting to $600/-.

The sum of $460/- paid by you as deposit under clause 2(c) of the agreement dated 30th day of July, 1970 is hereby forfeited by our client as payment towards the aforesaid arrears of rent, leaving a balance sum of $140/- still owing and due to our client, as balance rent for the month of July, 1971.

Our client has now leased the said business to Koorie s/o Marjan and on instructions from our client, you are requested to hand over the said business to him.

Yours faithfully,

Sd:

Copies to -

(1) Mohamed Mustapha s/o Seeni Mohamed,
No. 43 Penang Street,
Penang.

(2) Koorie s/o Marjan,
No. 43 Penang Street,
Penang.

A 19 - LETTER FROM PLAINTIFFS SOLICITORS TO DEFENDANT'S SOLICITORS

A 19

Letter from Plaintiffs Solicitors to Defendant's Solicitors 15th September 1971

RKS/SS/JL/K145-71 15th September, 1971

Messrs. Daljit & Vijaya,
Advoates & Solicitors,
Room 6-B, 2nd Floor,
Overseas Union Bank Building,
33-C, Beach Street,
Penang.

Dear Sirs,

re: High Court Civil Suit No. 252 of 1971

Between

Kandasamy s/o Kaliappa Gounder

Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd.

Defendant

Reference our Mr. Sharma's telephone conversation with your Mr. Vijayanathan, we enclose herewith the sealed copy of the Writ of Summons together with the duplicate copy thereof by way of service on you pursuant to your undertaking to accept service on behalf of your client, the defendant abovenamed. Kindly return us the sealed copy of the Writ. Regarding your costs in respect of Civil Suit No. 205/71, we will advise our client to pay you $75/- in lieu of taxation as agreed by you.

Could you please let us know the amount of rent that is due and payable in respect of our client's monthly tenancy of the whole of the ground floor and a room at the first floor up to date. Since your client has defaulted in demanding rents it is only fair that lawful rents should be tendered to your client irrespective whether he accepts the same or not. On hearing from you we will advise our client accordingly.

We are instructed by our client that your client by his servants or agents or persons claiming through him is going to disturb the peaceful enjoyment of our client's tenancy and as such we shall be obliged if you will advise your client to refrain from any such contemplated action, otherwise our client will be forced

A 19

Letter from Plaintiffs Solicitors to Defendant's Solicitors 15th September 1971 (Continued)

to apply for necessary relief from the Honourable Court.

Kindly acknowledge receipt.

Yours faithfully,

Sd: Sharma & Co.

c.c. to:

Mr. Kandasami
43 Penang Street, Penang.

Encls.: 2 copies of Writ of Summons.

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A 20

Letter from the Plaintiff's Solicitor to the Defendant's Solicitors 5th October 1971

## A 20 - LETTER FROM THE PLAINTIFF'S SOLICITORS TO THE DEFENDANT'S SOLICITORS

RKS/SS/LS/K145-71 5th October, 1971.

Messrs. Daljit & Vijaya,
Advocates & Solicitors,

Penang.

Dear Sirs,

re: Penang High Court Civil Suit
No. 252 of 1971

Between

Kandasami s/o Kaliappa Gounder

.. Plaintiff

And

Mohd. Mustafa s/o Seeni Mohd.

.. Defendant

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We are instructed by our client, the Plaintiff abovenamed, to write to you as under in connection with the above matter. On the 3rd of October, 1971 since 4 p.m. or so, your client, the Defendant abovenamed together with a group of persons employed by him trespassed on the ground floor of Premises No. 43 Penang Street with intention to insult and/or annoy and/or intimidate our client and to wrongfully carry away the chattels hired out to our client together with an intention to physically throw out of the premises our client's wife and children. The said intention of your

client was manifested in their open declarations of their intention as aforesaid by shouting it out at the said premises and unlawfully and forcibly carrying away the furniture and fittings comprised in our client's tenancy (against the protest made by our client's wife).

Our instructions are that your client has chosen a very appropriate moment in the afternoon on Saturday, the 3rd of October, 1971, when police aid also was difficult to obtain, and furthermore your client and persons taking instructions from him arranged to commit the aforesaid crime in such a manner that as soon as the police was gone (which was summoned) they carried out their threats into action. Somehow or other it had then dawned on your client not to physically assault our client's wife and children in absence of our client. Our client says that but for the police patrol, opportune moment would have offered itself to your client to carry out his unlawful object. Under the aforesaid circumstances, we are instructed to warn your client through you, which we hereby do, that he should refrain from his unlawful acts especially involving violence against our client, his wife and children of tender age. If your client desires to take the law into his own hand (as our instructions are that he will) we would be compelled to advise our client to apply for an injunction although a complaint for criminal trespass will be laid in due course. As to summons for criminal trespass we will write for police reports made in the above matter so that necessary information could be laid before the Magistrate, Penang, but as to injunction we are prepared to refrain from filing proceedings if your client through you undertake not to interfere with the possession of the whole of the ground floor of Premises No. 43 Penang Street, Penang which inter alia comprises a part of the tenancy of our client.

Your immediate attention hereto and reply shall be very much appreciated so that action can be taken without wasting time. Alternatively, if your client agrees not to further take the law into his hand, without prejudice to our client's right against him, we will advise our client not to make an application to the Court and thereby save costs.

Kindly acknowledge receipt.

Yours faithfully,

Sd: Sharma & Co.

c.c. to:

Mr. Kandasami s/o Kaliappa Gounder,
No. 43 Penang Street,
Penang.

A 21

Letter from Defendant's Solicitors to Plaintiff's Solicitor 7th October 1971

## A 21 - LETTER FROM DEFENDANT'S SOLICITORS TO THE PLAINTIFF'S SOLICITORS

Daljit & Vijaya
Advocates & Solicitors

Room 6-B, 2nd Floor,
Overseas Union Bank Building,
33-C, Beach Street,
Penang.

7th October, 1971.

OUR REF: KV/JT/M23/71

YOUR REF: RKS/SS/LS/K145/71

Messrs. Sharma & Co.,
Advocates & Solicitors,
Penang.

Dear Sirs,

re: Penang High Court Civil Suit No. 252/71

We thank you for your letter dated 5th October, 1971.

In view of the various matters that have been raised in your letter under reply, we feel that we shall have to take our client's instructions before replying to you. We are now making efforts to take such instructions and will revert to you in due course.

Yours faithfully,

Sd: Daljit & Vijaya

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A 22

Letter from Plaintiff Solicitor to Defendant's Solicitors 8th October 1971

## A 22 - LETTER FROM PLAINTIFF'S SOLICITOR TO DEFENDANT'S SOLICITORS

8th October, 1971.

RKS/SS/JL/K145/71
Messrs. Daljit & Vijaya,
Advocates & Solicitors,
33-C, Beach Street,
Penang.

Dear Sirs,

U R G E N T

re: Penang High Court Civil Suit No. 252 of 1971

We thank you for your letter dated 7th October, 1971,

received by us this morning. Our instructions are that breach of peace is likely to take place by virtue of acts of criminal tresspass by the Defendant, Mohd. Mustafa s/o Seeni Mohd. or his servants or agents on the 9th of October 1971, and all the threats, intimidations and insults are again going to be levied against our client's wife so as to provoke her to commit breach of peace. Our client and his wife have remained calm notwithstanding provocation by your client and under the circumstances, our client regrets to note that your client is still willing to be non-committal in respect of violence anticipated to be used for physical ejectment of our client and his family from the ground floor of premises No. 43 Penang Street, Penang.

We have advised our client to give you further time in view of your letter under reply stating that you will take instructions from your client and will revert to the subject in due course.

Under the aforesaid circumstances, we are specifically instructed by our client to impress upon your client the need of the following:-

(a) Breach of peace should not take place under any circumstances.

(b) No assault should be made on our client, his wife and minor children.

(c) Our client's goods should not be thrown away as threatened.

(d) Your client should not steal any march pending your reply hereto.

We are also instructed by our client to request your client through you, which we hereby do, to let us know the fair rent due and payable in respect of our client's tenancy because he has so far conveniently failed to demand any rent. On hearing from you we shall advise our client to tender rent which is accumulating owing to your client's default, so that there is no allegation in future otherwise.

We trust that you will use your good offices to notify the contents of this letter to your client forthwith and kindly impress upon him the importance of committing no violence whatsoever any wise.

Yours faithfully,

Sd: SHARMA & CO.

A 22

Letter from Plaintiff's Solicitor to Defendants Solicitors 8th October 1971 (Continued)

c.c.

Mr. Kandasamy s/o Kaliappa Gounder,
43, Penang Street,
Penang.

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A 23

Letter from Defendant's Solicitor to Plaintiffs Solicitors 9th October 1971

## A 23 - LETTER FROM DEFENDANT'S SOLICITORS TO PLAINTIFFS SOLICITOR

DALJUT & VIJAYA
ADVOCATES & SOLICITORS

Room 6-B, 2nd Floor,
Overseas Union Bank Building,
33-C, Breach Street,
Penang.

Tel: No. 21707

9th October, 1971.

OUR REF: KV/ST/M23/71

YOUR REF:

Messrs. Sharma & Co.,
Advocates & Solicitors,
Penang.

Dear Sirs,

re: Penang High Court Civil
Suit No. 252 of 1971

We thank you for your letter of the 8th instant.

In view of the contents of your said letter, would it not be better for you to advise your client to lodge a police report instead of asking us for assurances.

Yours faithfully,

Sd. Daljit & Vijaya.

D 16 -- COUNCIL NOTICE TO DEFENDANT

D 16

Council Notice to Defendant 27th December 1971

High Court. Penang
C.S./O.S. No. 252/71
Exhibit number D16
Put in by PW2
This 29th day of August 1971

Sd:

Sr. Asst. Registrar.

NOTIS MAJLIS BANDARAYA No. 3275
CITY COUNCIL NOTICE

LESEN PERNIAGAAN
TRADE LICENCES

Kapada
To

Penghuni Rumah Mr. Mohamed Mustapha s/o Seeni,
The Occupier of Premises Mohamed, No.43, Penang St,

SILA AMBIL PERHATIAN bahawa
TAKE NOTICE that the Eating House
Lesen yang di-perkenankan kapada tuan bagi tahun 1971, luput tempoh-nya 31 hb Discember, 1971.
licence granted to you for the year 19 , expires on the 31st day of December, 19 .

Dengan hal yang demikian, sekarang tuan di-kehendaki membuat sebarang kerja yang perlu untok menyelamatkan, Pembaharuan lesen tersebut, dan membuat permintaan untok pembaharuan tersebut di-Pejabat Kesihatan Bandaraya pada atau sa-belom 14hb. Januari, 1972.

Now, therefore, you are required to do any works that may be necessary to secure a renewal of the said licence, and make application for such renewal at the City Health Office on or before the 14th day of January, 19 .

Jika tuan membuat kesalahan di-dalam menunaikan keperluan2 sebagaimana di-nyatakan di-belakang notis ini, tuan akan membenarkan diri bertanggong jawab terhadap denda sebagaimana di-nyatakan oleh Undang2 Perbandaran (Bab. 133).

If you make default in carrying out the requirements, as stated at the back of this notice, you will render yourself liable to the penalties prescribed by the Municipal Ordinance (Chapter 133).

Bertarikh pada haribulan 20 Dec. 1971

A 16

Council Notice to Defendant 27th December 1971 (Continued)

Dated this ..... day of ..... 19 ...

.....
Pegawai Kesihatan Bandaraya,
Pulau Pinang.
City Health Officer, Penang.

Di-hantar oleh
Served by

Tarikh perkhidmatan
Date of Service 27/12/71

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A 24

Letter from Defendants Solicitors to the Plaintiff 26th May 1972

## A 24 - LETTER FROM DEFENDANTS SOLICITOR TO THE PLAINTIFF

KARPAL SINGH, WONG & CO.,
Advocates & Solicitors

Public Bank Building (1st Floor)
87, Bishop Street,
Penang, Malaysia.

OUR REF: KS/JT/285/72

YOUR REF:

A.R. REGISTERED

26th May, 1972.

Mr. Kandasami s/o Kaliappa Gounder,
43, Penang Street,
Penang.

Dear Sir,

re: Premises No. 43, Penang Street, Penang

We act for Inche Mohamed Mustapha s/o Seeni Mohamed of No. 4, Pier Road, Butterworth, Province Wellesley.

We are instructed that you are the monthly tenant of our client in respect of the abovesaid premises.

We are instructed by our client to give you notice, which we hereby do, to quit and deliver up possession of the said premises to our client within one(1) month from the date of receipt hereof or one (1) month from the end of the current month of your tenancy.

TAKE NOTICE that unless you comply with the above

notice to quit within the time stipulated, our instructions are to commence legal proceedings against you without any further reference.

A 24

Letter from Defendants Solicitors to the Plaintiff 26th May 1972 (Continued)

Dated this 26th day of May, 1972.

Sd: Karpal Singh, Wong & Co.

Advocates & Solicitors

c.c.
Inche Mohamed Mustapha s/o Seeni Mohamed,
4 Pier Road, Butterworth,
Province Wellesley.

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## A 25 - LETTER FROM PLAINTIFFS SOLICITORS TO DEFENDANT'S SOLICITORS

A 25

Letter from Plaintiffs Solicitors to Defendant's Solicitors 21st June 1972

SHARMA & CO.
Advocates & Solicitors.

4-A, Beach Street,
Penang, Malaysia.

21st June, 1972.

OUR REF: RKS/OCS/K45/71

YOUR REF: KS/JT/285/72

Messrs. Karpal Singh, Wong & Co.,
Advocates & Solicitors,
87, Bishops Street,
Penang.

Dear Sirs,

re: 1) Premises No. 43 Penang Street, Penang.

2) Your Notice dated 26th May 1972

We are instructed by Mr. Kandasami son of Kaliappa Gounder of No. 43 Penang Street, Penang, to acknowledge receipt of your letter dated the 26th May 1972, on the above subject.

We wish to point out that our client cannot accept the responsibility of being a tenant for the whole of premises No. 43 Penang Street, Penang, since he is only a tenant of such parts of the premises as are alleged in the Statement of Claim filed in the Civil Suit No.252 of 1971 in the High Court of Penang. In the said Suit your client is Defendant and our client is the Plaintiff.

As the premises is a controlled premises under

A 25

Letter from Plaintiffs Solicitors to Defendant's Solicitors 21st June 1972 (Continued)

the provisions of the Rent Control Act 1966 we shall be obliged if your client will agree to the apportionment of the rent in respect of our client's tenancy by mutual agreement or alternatively if your client disagrees then we will have to advise our client to refer the matter to the Rent Officer for determination of fair rent.

Kindly acknowledge receipt and let us hear from you in respect of the above.

Yours faithfully,

Sd: SHARMA & CO.

c.c. to:

1) Mr. Kandasami s/o Kaliappa Gounder,
No. 43 Penang Street,
Penang.

2) Messrs. Daljit & Vijaya,
Advocates & Solicitors,
Beach Street,
Penang.

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A 26

Letter from Plaintiffs Solicitor to Defendant's Solicitor 4th July 1972

## A 26 - LETTER FROM PLAINTIFFS SOLICITOR TO DEFENDANT'S SOLICITOR

SHARMA & CO.
Advocates & Solicitors

4-A, Beach Street,
Penang, Malaysia.

4th July, 1972.

OUR REF: RKS/SS/GK/K45/71

YOUR REF: KS/JT/285/72

Messrs. Karpal Singh, Wong & Co.,
Advocates & Solicitors,
87, Bishop Street,
Penang.

Dear Sirs,

Re: Tenancy of Parts of the Premises
No. 43, Penang Street, Penang

We shall be obliged if you will kindly let us have a reply to our letter dated 21st June 1972, so that further action could be taken in respect of apportionment of the rent.

An early reply hereto shall be very much appreciated.

A 26

Letter from Plaintiffs Solicitor to Defendant's Solicitor 4th July 1972

Yours faithfully,

Sd. SHARMA & CO.

c.c. to:

Mr. Kandasami s/o Kaliappa Gounder,
No. 43 Penang Street, Penang.

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A 27 - LETTER FROM DEFENDANTS SOLICITORS TO PLAINTIFFS SOLICITORS

A 27

Letter from Defendants Solicitors to Plaintiffs Solicitors 15th July 1972

KARPAL SINGH, WONG & CO.
Advocates & Solicitors.

Public Bank Building (1st Floor),
87, Bishops Street,
Penang, Malaysia.

OUR REF: KS/S/285/72

YOUR REF: RKS/SS/GK/K145/71

15th July, 1972.

M/s. Sharma & Co.,
Advocates & Solicitors,
4-A, Beach Street,
Penang.

Dear Sirs,

Re: Tenancy of Parts of the Premises
No. 43, Penang Street, Penang.

We acknowledge receipt of your letter dated 21st ultime and 4th instant, in above regard.

Our client has terminated your client's tenancy by notice dated 26th May, 1972.

We have instructions to commence legal proceedings against your client for recovery of vacant possession of the abovementioned premises.

Your client will be served with the summons in due course.

Yours faithfully,

Sd: Karpal Singh, Wong & Co.

P 5 - SUMMONS IN SESSION COURT
18th JULY 1972

193

FEDERATION OF MALAYA

High Court, Penang
C.S. (O.S.) No. 312/71
Exhibit number P5
Put in by Pltf.
This 22nd day of April 1977
Sr. Asst. Registrar

# SUMMONS

IN THE SESSIONS / MAGISTRATES' COURT AT Penang

CIVIL ACTION No. 118 of 1972

BETWEEN

Mohamad Kurtorhin s/o Seeni Mohamed

Plaintiff

- AND -

Kandasami s/o Kaliappa Gounder

Defendant

To

Kandasami s/o Kaliappa Gounder

the above-named Defendant

residing (or having his place of business or employed) at No. 43, Lenang Street, Penang.

You are hereby summoned to appear either in person or by your advocate and solicitor before the above-named Court at 9.00 o'clock of the forenoon on the 23rd day of August 1972 to answer a claim against you by the above-named Plaintiff particulars whereof are set out in the statement of claim endorsed hereon.

TAKE NOTICE that in default of such appearance judgment may be given against you.

AND TAKE NOTICE that if you desire to defend the said claim, you must, not less than two days before the date above-mentioned, file in Court and serve on the Plaintiff a defence in due form.

Dated this 18th day of July 1972.

(S.L. Mohamed Hashim Haji Yunus)
Registrar.
Magistrate.

The address for service of the Plaintiff is care-of Messrs. Karpal Singh, Ong & Company at Public Bank Building, No. 87, Bishop Street, Penang.

# STATEMENT OF CLAIM

P 5
Summons in Sessions Court
18th July 1972
(continued)

THE PLAINTIFFS CLAIM is:-

The defendant is the plaintiff's monthly tenant in respect of the ground floor of premises No. 43, Penang Street, Penang (hereinafter referred to as "the said premises"). The said premises are subject to the Control of Rent Act 1966.

The defendant has been in arrears of rents due from January 1971 and despite repeated demands being made by the plaintiff the defendant has refused and/or failed to settle same.

The defendant has further committed breach of the condition contained in the agreement of lease of the plaintiff's business to the defendant dated 30th July, 1970 by residing with his family at the said premises. Further the defendant has by residing with his family at the said premises exposed the plaintiff to penalty, forfeiture or fine.

By notice dated 26th May, 1972, the plaintiff terminated the defendant's tenancy but the defendant has refused to deliver vacant possession of the said premises to the plaintiff.

Therefore the plaintiff prays for the following orders:-

(1) Possession of the said premises;

(2) Arrears of rents from January 1971 to date of surrender of vacant possession of the said premises;

(3) Costs and

(4) Any further or other relief deemed fit and proper by this Honourable Court.

Dated this 15th day of July, 1972.

Solicitors for the Plaintiff

P 5

Summons in Sessions Court 18th July 1972 (Continued)

STATES OF MALAYA

IN THE SESSIONS COURT AT PENANG

CIVIL ACTION NO: OF 1972

BETWEEN

Mohamed Mustapha s/o Seeni Mohamed

Plaintiff

AND

Kandasami s/o Kaliappa Gounder

Defendant

MEMORANDUM OF RETAINER OF SOLICITORS

To:

The Registrar,
Sessions Court, Penang.

And To:

Kandasami s/o Kaliappa Gounder,
43, Penang Street,
Penang

Messrs. Karpal Singh, Wong & Company have been appointed by the abovenamed Plaintiff to act on his behalf in these proceedings. Address for service is at Public Bank Buildings, No. 87 Bishops Street, Penang.

Dated this 15th day of July, 1972.

Solicitors for the Plaintiff abovenamed.

Plaintiff's Signature

A 28 - LETTER FROM DEFENDANT'S SOLICITORS TO PLAINTIFF'S SOLICITORS

A 28

Letter from Defendant's Solicitors to Plaintiff's Solicitors 18th August 1972

KARPAL SINGH, WONG & CO.
Advocates & Solicitors
Public Bank Building (1st Floor),
87, Bishop Street,
Penang, Malaysia.

OUR REF: KS/S/285/72

YOUR REF: RKS/SS/GK/K160/72

18th August, 1972.

M/s. Sharma & Company,
Advocates & Solicitors,
4-A, Beach Street,
Penang.

Dear Sirs,

Re: Sessions Court Penang Civil Action 118/72

Mohamed Mustapha s/o Seeni Mohamed

vs.

Kandasami s/o Kaliappa Gounder

We acknowledge receipt of your letter dated 10th instant.

In reply thereto we state as follows :-

Paragraph 3 of the Statement of Claim

(1) The monthly rent of $300/- is due as stated in paragraph 3 from January, 1971.

(2) Your request for particulars of the demands made amounts to fishing for evidence. We are of the opinion that evidence should not be pleaded.

Paragraph 5

Your client, by residing at the premises has placed our client in jeopardy in that the City Council authorities could cancel our client's restaurant licence under the Council bye-laws.

Yours faithfully,

Sd: Karpal Singh, Wong & Co.

c.c. to:
Inche Mohamed Mustapha
s/o Seeni Mohamed,
43 Penang Street, Penang.

A 29

Letter from Defendant's Solicitors to Plaintiff's Solicitors 2nd February 1973

## A 29 - LETTER FROM DEFENDANT'S SOLICITORS TO PLAINTIFF'S SOLICITORS

Daljit & Vijaya
Advocates & Solicitors

33, Beach Street,
Penang.

2nd February, 1973.

OUR REF: KV/A/M23/71

YOUR REF: RKS/SS/GK/K145/71

Messrs. Sharma & Co.,
Advocates & Solicitors,
Penang.

Dear Sirs,

Re: Penang High Court Civil Suit No. 252 of 1971

We refer you to the above Civil Suit and also to your Client's affidavit affirmed on 22nd January, 1973.

We shall be obliged if you would kindly let us know the following information to enable our client to reply to the above affidavit:-

(a) When your client left for India?

(b) How long he stayed in India?

(c) A list of names and addresses of the beneficiaries whom your client is purported to have seen.

Kindly acknowledge receipt and please let us have the above information early to enable us to file our client's affidavit in reply.

Yours faithfully,

Sd. Daljit & Vijaya

.....

A 30 - LETTER FROM PLAINTIFFS SOLICITOR TO DEFENDANT'S SOLICITORS

A 30

Letter from Plaintiff's Solicitors to Defendant's Solicitors 7th February 1972 (sic)

SHARMA & CO.
Advocates & Solicitors

4A, Beach Street,
Penang, Malaysia.

7th February, 1972.

OUR REF: RKS/SS/IN/K145/71

YOUR REF: KV/A/M23/71

Messrs. Daljit & Vijaya,
Advocates & Solicitors,
No. 33 Beach Street,
Penang.

Dear Sirs,

Re: Penang High Court Civil Suit No. 252 of 1971

We acknowledge receipt of your letter dated 2nd February, 1973.

There is no precedent or authority for your asking for particulars in detail of the allegations made in the Affidavit. We do not see the relevance of your query.

All that your client need show in answer to the alternative defence is that he is a tenant of a person who is either the owner of premises No. 43, Penang Street, Penang, or has been granted a tenancy by a chief tenant who has lawful authority to do so.

Yours faithfully,

Sd. SHARMA & CO.

c.c. to:

Mr. Kandasami s/o Kaliappa Gounder,
43, Penang Street,
Penang.

D 18

Rent Receipt
27th April 1973

## D 18 - RENT RECEIPT

Stamp
10c

27.4.1973

Received from Mohamed Mustafa s/o Seeni Mohamed I/c No. 0304465 the sum of Dollars One hundred and seventy four & ch. twenty two only being rent of house No. 43 Penang Street, Penang from 1st March to 31st March 1973 being one month.

E. & O. E.

Received Payment.

Sd:

174 $\frac{25}{xi}$

High Court. Penang.
C.S./O.S. No. 252/71
Exhibit number D18
Put in by DW1
This 20th day of August 1977.

Sd:

Sr. Asst. Registrar.

---

D 23

Acknowledgement of Tenancy
27th April 1973

## D 23 - ACKNOWLEDGEMENT OF TENANCY

I, Mohamed Mustafa S/O Seeni Mohamed, I/C No. 0304465 of No. 85, Bishops Street, Penang do hereby agree to accept the tenancy of No. 43, Penang Street, Penang from M/S. Penang Civil Storage Co., Ltd., subject to the following conditions :-

1. The rent to be paid during the first week of every month.

2. All expenses such as municipal rates and taxes and other dues payable shall be borne and paid by me.

3. No power for tenant to transfer or sublet this house or any part thereof without the written consent of Messrs. Penang Civil Storage Co., Ltd., 200, Beach Street, Penang. Any breach of these conditions will terminate the tenancy

and render the occupier liable to ejectment.

4. Any damage caused to the building by the tenant during the tenancy period will be set right at his own expenses.

5. If any alteration is required by the tenant, he shall get the written consent from Messrs. Penang Civil Storage Co., Ltd., 200, Beach Street, Penang. As witness my hand the 27th

As witness my hand the 27th day of April 1973.

Sd:
I.C. 0304465

Witness:
(I.C. No. 3897095)
110 Penang Street, Penang

Witness:

I.c. No. 7566525
200, Beach Street, Penang.

| | |
|---|---|
| Chukai Setem | $ 1.00 |
| Penuh | $26.00 |

Sd:

Timbalan Pemungut Chukai Setem
Pulau Penang.

- 9 SEP 1977

P 14
Letter from
Defendant's
Solicitors to
Health Officer
of Penang
City Council
11th June 1974

P 14 - LETTER FROM DEFENDANT'S SOLICITORS TO HEALTH OFFICER OF PENANG CITY COUNCIL

LEE CHENG KEAT
PEGUAM MEMBELA DAN PEGUAMCARA
李清吉大狀師
TELEPHONE: PG. 24435

35, PENANG STREET,
(2nd Floor)
PENANG.

PLEASE QUOTE:
MY REF: L/CA 34/74
YOUR REF: B.5272

Date: 11th June, 1974.

City Health Officer,
City Council,
Penang.

13/6

High Court, Penang
C.S. No. 252/71
Exhibit number P14
P.W. 2
Date 29th August 1977
Sr. Asst. Registrar

Dear Sir,

re: 43, Penang Street, Penang.

I am in receipt of your copy of letter dated the 7th of June, 1974 addressed to my client Encik Mohd. Mustapha s/o Seeni Mohamed.

It is noted that your Council cannot take the pending Civil Suit into consideration in the granting of an eating House licence in the ground floor of the above premises. As my client is the Chief Tenant and as well as the original licencee in respect of NAVA INDIA RESTAURANT I am now instructed by my client to apply to you herewith for an eating House licence in respect of my client's Nava India Restaurant. Kindly give this matter your immediate attention.

Yours faithfully,

c.c.
Encik Mohd. Mustapha s/o Seeni Mohamed.

JABATAN KESIHATAN BANDARAYA
Diterima: 12/6/74
Pendaftaran No:
Akuan penerimaan: PKD

P 6(d) - RECEIPT FOR LICENCE FEES PAID TO LOCAL COUNCIL

P. 6(d)

Receipt for Licence Fees paid to Local Council 15th July 1974

2080 1 555519 15-JUL-74

DITERIMA ... BENDAHARI BANDAR RAYA

Diterima oleh Kampulan Wang Bandaraya jumlah yang ditunjukkan di atas seperti angka-angka bercap dengan Mesin Majlis Bandaraya.

Received by the City Fund the amount shown above in City Council printed figures.

Nama ... Kandasami @ Taliappa Gounder, ... No. P 1075

Alamat ... 45 Penang Street, Penang.

**MAJLIS BANDARAYA GEORGE TOWN, PULAU PINANG.**
**THE CITY COUNCIL OF GEORGE TOWN, PENANG.**

| | |
|---|---|
| Bayaran bagi lesen Kedai Makan di No.45 Penang Street (ground floor) untuk 1974 | 20.00 |
| (Ringgit Dua puloh sahaja). | |
| | $ 20.00 |

PLEASE PRODUCE RECEIPT AND LICENCE FOR ENDORSEMENT.

Sila kemukakan resit dan lesen untuk disahkan

Tarikh 15 JUL 1974

Pegawai Kesihatan Bandaraya.
City Health Officer.

SILA AMBIL perhatian bahawa jika bayaran lesen yang tersebut di atas tidak dijelaskan dalam tempoh seminggu dari tarikh notis ini, tindakan undang-undang akan diambil terhadap diri anda (kerana menjalankan perniagaan tanpa lesen) tanpa memberi sebarang amaran lagi.

TAKE NOTICE that unless the licence fee mentioned above is paid within one week from the date hereof legal proceedings for trading without a licence will be instituted without any further warning.

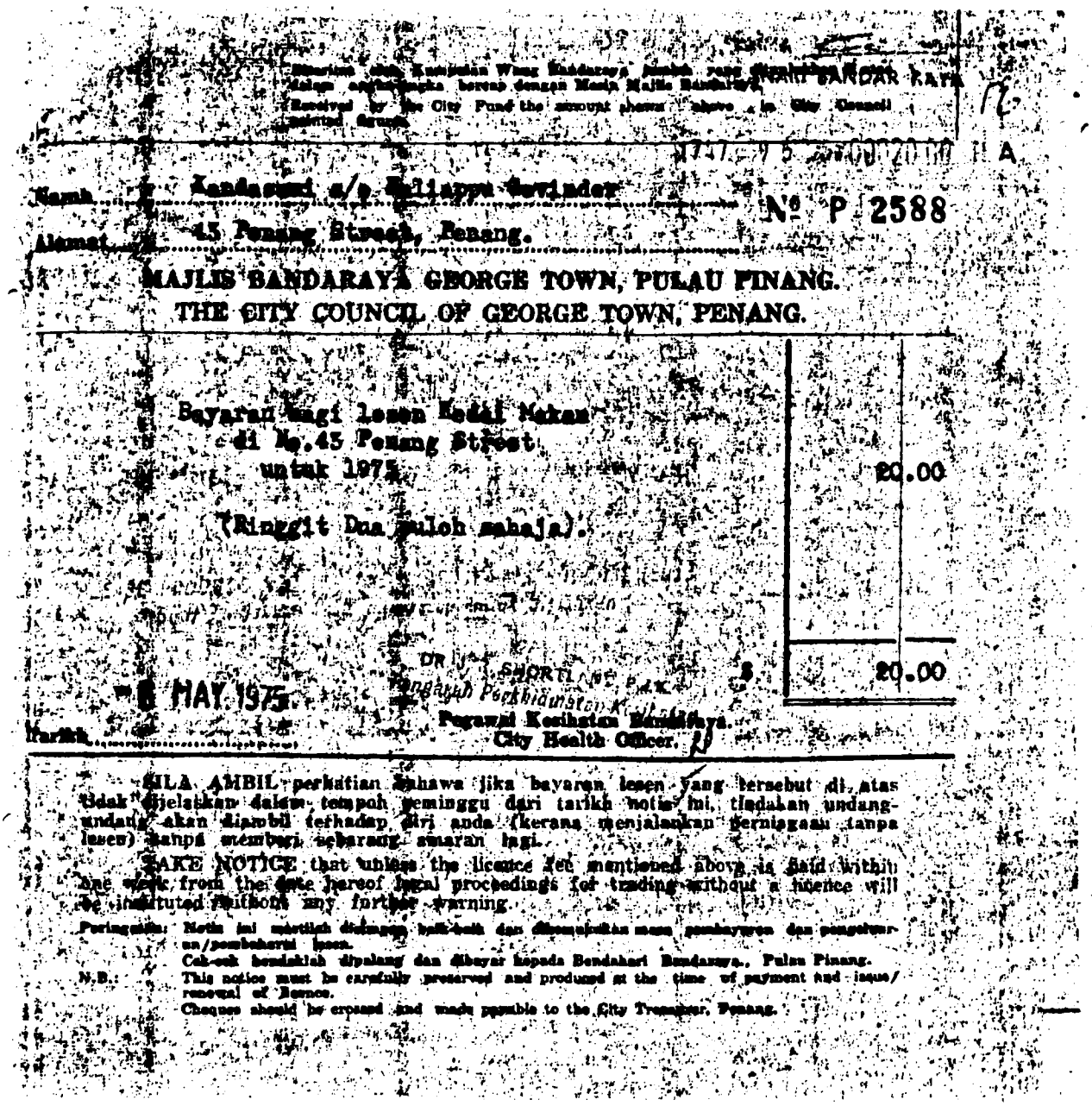
Peringatan: Notis ini mestilah disimpan baik-baik dan dikemukakan masa pembayaran dan pengeluaran/pembaharui lesen.
Cek-cek hendaklah dipalang dan dibayar kepada Bendahari Bandaraya., Pulau Pinang.

N.B.: This notice must be carefully preserved and produced at the time of payment and issue/renewal of licence.
Cheques should be crossed and made payable to the City Treasurer, Penang.

P 6(c)

Receipt for Licence fee paid to Local Council May 1975

## P 6(c) - RECEIPT FOR LICENCE FEE PAID TO LOCAL COUNCIL



Received by the City Fund the amount shown above in City Council Printed Forms.

A

Nama Kandasami a/l Muliappa Govinder No. P 2588

Alamat 45 Penang Street, Penang.

MAJLIS BANDARAYA GEORGE TOWN, PULAU PINANG.
THE CITY COUNCIL OF GEORGE TOWN, PENANG.

Bayaran bagi lesen Kedai Makan di No.45 Penang Street untuk 1975 — $ 20.00

(Ringgit Dua puluh sahaja).

DR SHORTLAND P.A.K. $ 20.00

Tanggah Perkhidmatan Kesihatan Bandaraya.
City Health Officer.

Tarikh 6 MAY 1975

SILA AMBIL perhatian bahawa jika bayaran lesen yang tersebut di atas tidak dijelaskan dalam tempoh seminggu dari tarikh notis ini, tindakan undang-undang akan diambil terhadap diri anda (kerana menjalankan perniagaan tanpa lesen) tanpa memberi sebarang amaran lagi.

TAKE NOTICE that unless the licence fee mentioned above is paid within one week from the date hereof legal proceedings for trading without a licence will be instituted without any further warning.

Peringatan: Notis ini mestilah disimpan baik-baik dan dikemukakan masa pembayaran dan pengeluaran/pembaharui lesen.

Cek-cek hendaklah dipalang dan dibayar kepada Bendahari Bandaraya., Pulau Pinang.

N.B.: This notice must be carefully preserved and produced at the time of payment and issue/renewal of licence.

Cheques should be crossed and made payable to the City Treasurer, Penang.

P 1
Eating Shop
Licence No. A0587
16th May 1975

## Translations

BOARD OF MANAGEMENT, LOCAL GOVERNMENT, PENANG

EATING SHOP LICENCE FOR 1975

Hereby, licence is issued to KANDASAMI s/o KALIAPPA GOUNDER (I.C. No.7566581) to use house No. 43 Penang Street (Groundfloor) as an eating shop for the year ending 31st December 1975, subject to the conditions stipulated in the By-Laws and the conditions of Municipality Laws (Chapter 133)

Licence No. 0587

Photograph

On Behalf of Board of Management, Local Government, Penang.

Previous Licence No.: 1701
Licence Fees: $20/-

(Initialled)
Director of Health Services.

Date: 16th May 1975.

$20/-
P.2588
9/5/75

Renewals

| Year | Renewal | Year | Renewal |
|---|---|---|---|
| 1976 | $20/-<br>4977<br>13.2.76 | | |
| 1977 | $20/-<br>8201<br>16/3/77 | | |
| | | | |
| | | | |

This is the true translation of the original document produced in Translation No. 320/87

SITI FATIMAH BT. DAUD,
Malay Interpreter,

Receipt No. A 741
Amount paid $2/-
Date 6/1/82

P 2(a)

Certificate of Business Registration

# P 2(a) - CERTIFICATE OF BUSINESS REGISTRATION

CATITAN: SURAT INGATAN TIDAK AKAN DIKELUARKAN UNTUK MEMBAHARUI SURAT PERAKUAN INI

(P.N.A. 29—Pin. 3/74)

**PERAKUAN PENDAFTARAN/CERTIFICATE OF REGISTRATION**

ORDINAN PENDAFTARAN PERNIAGAAN, 1956/*THE REGISTRATION OF BUSINESSES ORDINANCE, 1956*

SRI KALIAMMAN VILAS,
No. 43, Penang Street,
Penang.

**BORANG D**

**BORANG D (KAEDAH 13)**
*FORM D (RULE 13)*

Pendaftaran No./*Registration No.*
38792

adalah dengan ini diperakui bahawa Perniagaan yang dijalankan dengan nama
*is to certify that the Business carried on under the name*
SRI KALIAMMAN VILAS.

ah didaftarkan dari hari ini hingga 16.7.75 19 menurut peruntukan-peruntukan Ordinan Pendaftaran Perniagaan, 1956,
*this day been registered until the* *in accordance with the provisions of the Registration of Businesses Ordinance, 1956*

engan nombor yang ditunjukkan di sini dan dengan *tempat/tempat utama perniagaannya di
*der the number shown hereon and with its *place/principal place of business at*

dan cawangan-cawangan di
*and branches at*

Jenis Perniagaan Cutting shop.
*Nature of Business*

Bertarikh di Kuala Lumpur, pada 17 haribulan Julai 19 71
*Dated at Kuala Lumpur, this* *day of* *19*

sgd/- h.p.

*Potong mana yang tidak dipakai/*Delete whichever is not applicable.*

Pendaftar Perniagaan, Semenanjung Malaysia
*Registrar of Businesses, Peninsular Malaysia*

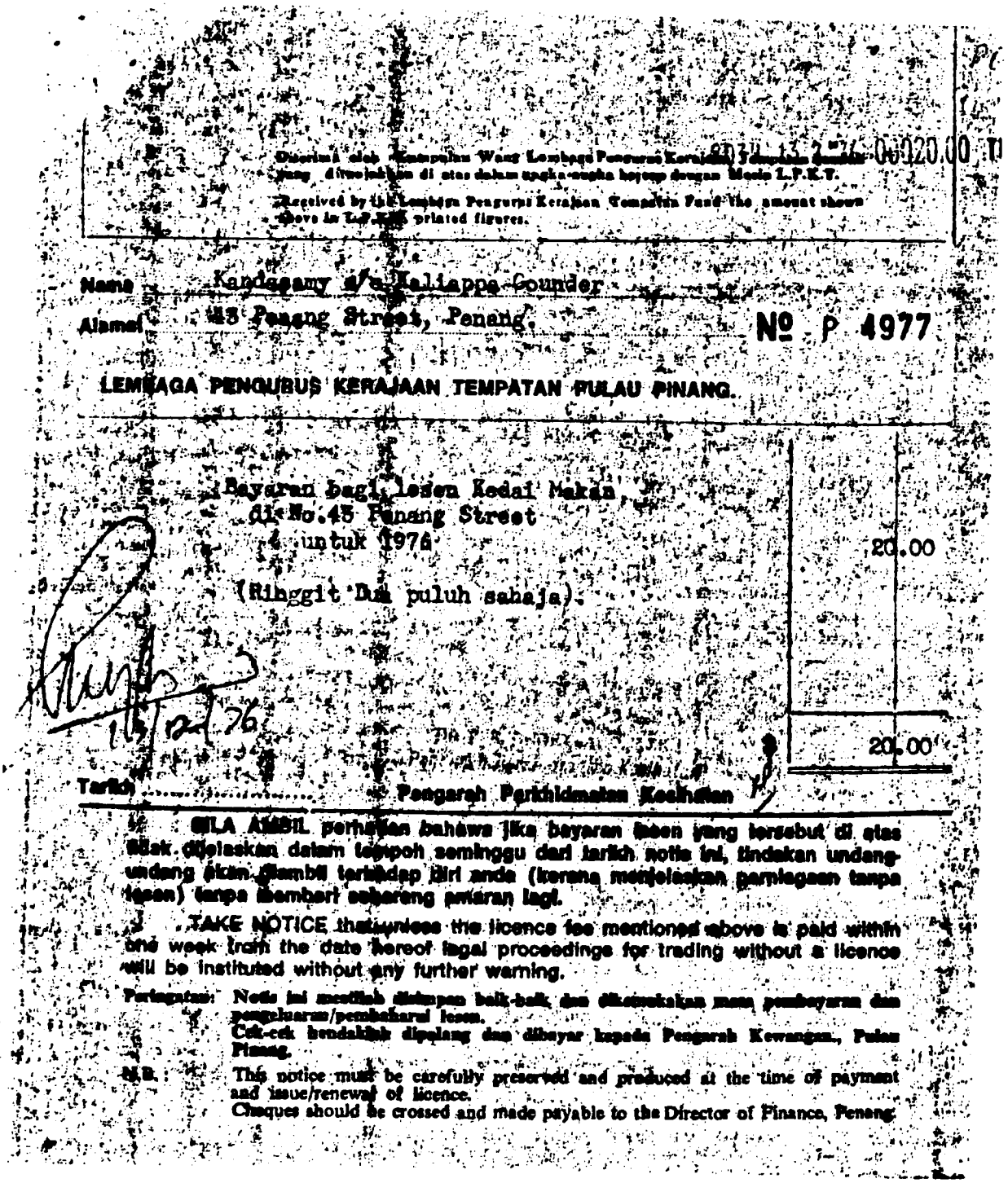
(Diterjemahkan oleh Peguam Negara, Malaysia menurut Pemberitahu Undangan No. 12 tahun 1964—PN. 3470/3; IR. 59/6 Pt. II)

K.C.K., K.L.

P 6(b) - RECEIPT FOR LICENCE FEES PAID TO LOCAL COUNCIL

P 6(b)

Receipt for Licence fees paid to Local Council 13th February 1976



Diterima oleh Kumpulan Wang Lembaga Pengurus Kerajaan Tempatan Pulau Pinang yang tersebutlah di atas dalam angka-angka bejamp dengan Mesin L.P.K.T.

Received by the Lembaga Pengurus Kerajaan Tempatan Fund the amount shown above in L.P.K.T. printed figures.

13 2 76 0120.00

Nama Kandasamy a/l. Kaliappa Gounder

Alamat 43 Penang Street, Penang.

No. P 4977

LEMBAGA PENGURUS KERAJAAN TEMPATAN PULAU PINANG.

Bayaran bagi lesen Kedai Makan di No.45 Penang Street untuk 1976 20.00

(Ringgit Dua puluh sahaja). 20.00

13/2/76

Tarikh .....

Pengarah Perkhidmatan Kesihatan

SILA AMBIL perhatian bahawa jika bayaran lesen yang tersebut di atas tidak dijelaskan dalam tempoh seminggu dari tarikh notis ini, tindakan undang-undang akan diambil terhadap diri anda (kerana menjelaskan perniagaan tanpa lesen) tanpa memberi sebarang peringatan lagi.

TAKE NOTICE that unless the licence fee mentioned above is paid within one week from the date hereof legal proceedings for trading without a licence will be instituted without any further warning.

Peringatan: Notis ini mestilah disimpan baik-baik dan dikemukakan masa pembayaran dan pengeluaran/pembaharui lesen.
Cek-cek hendaklah dipalang dan dibayar kepada Pengarah Kewangan., Pulau Pinang.

N.B. This notice must be carefully preserved and produced at the time of payment and issue/renewal of licence.
Cheques should be crossed and made payable to the Director of Finance, Penang.

P 2(b)

Certificate of Business Registration 17th July 1976

P 2(b) - CERTIFICATE OF BUSINESS REGISTRATION

(P.N.A. 39 Pin. 10/71)

MALAYSIA

**PERAKUAN PENDAFTARAN**
*CERTIFICATE OF REGISTRATION*

BORANG D
FORM D

(KAEDAH 13)
(*RULE 13*)

SURAT INGATAN TIDAK AKAN DI-KELUARKAN UNTOK MEMBAHARUI SURAT AKUAN

NO REMINDER WILL BE ISSUED FOR RENEWAL OF CERTIFICATE OF REGISTRATION

Pendaftaran No. *Registration No.* 338/22

ORDINAN PENDAFTARAN PERNIAGAAN, 1956
*THE REGISTRATION OF BUSINESSES ORDINANCE, 1956*

P2 (b)

Sri Kalyanagar Clinic
43 Penang Street
Penang

Adalah dengan ini di-perakui bahawa Perniagaan yang di-jalankan dengan nama
*This is to certify that the business carried on under the name*
Sri Kalyanagar Clinic

telah di-daftarkan pada hari ini sa-hingga 17 / 7 / 1976
*has this day been registered until the*

menurut peruntukan2 Ordinan Pendaftaran Perniagaan, 1956, dengan nombor yang di-terioh-kan di-sini dan dengan tempat utama perniagaan nya di 43 Penang Street
*in accordance with the provisions of the Registration of Businesses Ordinance, 1956, under the number shown hereon and with its principal place of business at*

*dan chawangan2 di
*and branches at*

Bertarikh di-Kuala Lumpur, pada 18 haribulan 7 1976
*Dated at Kuala Lumpur, this day of*

HAJI ABDULLAH GHAZALI
Pendaftar Perniagaan, Semenanjung Malaysia.

PERAKUAN INI HANYA SAH JIKA TELAH DI-PERIKSA DI-PAWAH INI
*THIS CERTIFICATE IS VALID ONLY WHEN RECEIPTED BELOW*

| Tarikh *Date* | Resit No *Receipt No* | Pendaftaran No. *Registration No.* | Jumlah *Amount* |
|---|---|---|---|
| 16.7.76 | 50.[illegible] | 338/22 | [illegible] |

(PNA. 23—Pin. 7/63)

Registration of Business Form "A" 17th December 1976

UNDANG² PENDAFTARAN PERNIAGAAN, 1956
*THE REGISTRATION OF BUSINESSES ORDINANCE, 1956*

SALINAN
SALINAN YANG SAH

COPY
CERTIFIED COPY

# BAGI BUTIR² KENYATAAN BERKAITAN DENGAN PERNIAGAAN YANG TERSEBUT DI-BAWAH, DI-KELUARKAN MENURUT SHARAT UNDANG² PERATORAN 14 (b)

# OF THE ENTRIES IN RESPECT OF THE UNDER-MENTIONED BUSINESS ISSUED UNDER THE PROVISION OF RULE 14 (b)

| | |
|---|---|
| 1. Nama Perniagaan *The business name* | Nava India Restaurant & Cafe. |
| 2. No. Surat Akuan *No. of Certificate* | 118833 |
| 3. Bentuk Perniagaan *Constitution of business* | Sole proprietorship |
| 4. Jenis² Perniagaan *The general nature of the business* | food & drinks. |
| 5. Pangkalan Perniagaan *The Principal place of the business* | 43, Penang Street, Penang. |
| 6. Tarikh Permulaan *The date of commencement* | 1.1.66 |
| 7. Chawangan Perniagaan *Branches of the business* | tiada. |
| 8. Sebutkan jika ada membuat surat perjanjian berkenaan dengan sharat² perkongsian itu. Jika ada, nyatakan tarikh-nya dan kembarkan sa-keping salinan-nya yang telah di-sahkan dengan tandatangan². *State whether there is a written agreement as to the term of the partnership. If so, give date and attach a copy of the agreement verified by signatures.* KD/ | Salinan benar yang sah bagi butir butir kenyataan dalam borang A bertarikh pada 17 hb Disember 19 76<br>(LEE KAN JOO)<br>*Penolong Pendaftar Perniagaan Semenanjung Malaysia.*<br>17-12-76 |

P 3

Registration of
Business Form
"A"
17th December
1976
(Continued)

187

| Nama rakan perkongsian *Name of associate* | Huruf China *Chinese characters* | Nama² yang lain *Other names* | Huruf China *Chinese characters* | Tarikh di-lahir *Actual date of birth* | Laki² atau perempuan *Sex Male or Female* | Bangsa dan kaum *Nationality and race* |
|---|---|---|---|---|---|---|
| Mohamed Mustaffa son of Seeni Mohamed<br>ic No.0304465 | | | | 1.12.41 | male | Fe.Citizen |
| | | | NOTE: Perniagaan ini telah ditamatkan | | | |

P 5

Registration of Business Form "A" 17th December 1976 (Continued)

188

| Tarikh masuk perniagaan *Date of entry into business* | Tarikh keluar dari perniagaan *Date of withdrawal from business* | Tarikh pendaftaran *Date of Registration* | Tarikh Undang² Peraturan 8 (i) di-sempurnakan *Date rule 8 (i) complied with* | Jawatan tertentu di-pegang atau chara perkaitan dengan perniagaan *Particular Office held in or nature of association with the business* | Alamat biasa *Usual address* | Catatan *Remarks* |
|---|---|---|---|---|---|---|
| 1.66 | - | 29.3.66 | 10.3.66 | Sole proprietor | 4, PierRoad, Butterworth. | |
| Tarikh: 3.12.75 | | | | | | |

Salinan benar yang sah bagi butir-butir kenyataan dalam borang A bertarikh pada 17 hb Disember, 1976

(A.B. KAMJOO)
*Penolong Pendaftar Perniagaan Semenanjung Malaysia.*

17-12-76

P 6(2)

Receipt for Licence Fees paid to Local Council. 16th March 1977

## P 6(a) - RECEIPT FOR LICENCE FEES PAID TO LOCAL COUNCIL

197

* 20.00 F 5 675312 16-MAR-77

Diterima oleh Kumpulan Wang Lembaga Pengurus Kerajaan Tempatan jumlah yang ditunjukkan di atas dalam angka-angka bercap dengan Mesin L.P.K.T.

Received by the Lembaga Pengurus Kerajaan Tempatan Fund the amount shown above in L.P.K.T. printed figures.

DI-TERIMA — TANDA BAYARAN

MAJLIS PERBANDARAN PULAU PINANG

Nama Kandasamy a/e Kaliappan Gounder

Alamat 43 Penang Street

No P 8291

LEMBAGA PENGURUS KERAJAAN TEMPATAN PULAU PINANG.

| | | |
|---|---|---|
| Bayaran bagi lesen Kedai Makan di alamat atas untuk 1977 | | 20.00 |
| (Ringgit Dua puluh sahaja). | | |
| | $ | 20.00 |

17/3/77

DR. J. R. SHORTLAND P.J.K.
Pengarah Perkhidmatan Kesihatan

Tarikh ..... Pengarah Perkhidmatan Kesihatan

SILA AMBIL perhatian bahawa jika bayaran lesen yang tersebut di atas tidak dijelaskan dalam tempoh seminggu dari tarikh notis ini, tindakan undang-undang akan diambil terhadap diri anda (kerana menjelaskan perniagaan tanpa lesen) tanpa memberi sebarang amaran lagi.

TAKE NOTICE that unless the licence fee mentioned above is paid within one week from the date hereof legal proceedings for trading without a licence will be instituted without any further warning.

Peringatan: Notis ini mestilah disimpan baik-baik dan dikemukakan masa pembayaran dan pegeluaran/pembaharui lesen.
Cek-cek hendaklah dipalang dan dibayar kepada Pengarah Kewangan, Pulau Pinang.

N.B. This notice must be carefully preserved and produced at the time of payment and issue/renewal of licence.
Cheques should be crossed and made payable to the Director of Finance, Penang.

P 2(c) - CERTIFICATE OF BUSINESS REGISTRATION

P 2(c)
Certificate of Business Registration
6th July 1977

(P.N.A. 30 Pin. 10/71)

MALAYSIA

**PERAKUAN PENDAFTARAN**
*CERTIFICATE OF REGISTRATION*

BORANG FORM **D**

(KAEDAH 13)
*(RULE 13)*

SURAT INGATAN TIDAK AKAN DI-KELUARKAN UNTUK MEMBAHARUI SURAT AKUAN

NO REMINDER WILL BE ISSUED FOR RENEWAL OF CERTIFICATE OF REGISTRATION

Pendaftaran No./*Registration No.* 33672D

ORDINAN PENDAFTARAN PERNIAGAAN, 1956
*THE REGISTRATION OF BUSINESSES ORDINANCE, 1956*

M/s Kalimuthu Vilas.
43, Penang Street
Penang.

Adalah dengan ini diperakui bahawa Perniagaan yang di-jalankan dengan nama
*This is to certify that the Business carried on under the name*
M/s Kalimuthu Vilas.

telah di-daftarkan pada hari ini sehingga 14.7.1977
*has this day been registered until the*

menurut peruntukan2 Ordinan Pendaftaran Perniagaan, 1956, dengan nombor yang di-tunjuk-kan di-sini dan dengan tempat utama perniagaan-nya di 5/6 diatas
*in accordance with the provisions of the Registration of Businesses Ordinance, 1956, with the number shown hereon and with its principal place of business at*

*dan chawangan2 di-
*and branches at*

Bertarikh di-Kuala Lumpur, pada 6 haribulan 7 1976
*Dated at Kuala Lumpur, this* *day of*

HAJI ABDULLAH GHAZALI
Pendaftar Perniagaan, Semenanjung Malaysia.

PERAKUAN INI HANYA SAH JIKA TELAH DI-RESITKAN DI-BAWAH INI
*THIS CERTIFICATE IS VALID ONLY WHEN RECEIPTED BELOW*

| Tarikh *Date* | Resit No *Receipt No.* | Pendaftaran No. *Registration No.* | Jumlah *Amount* |
|---|---|---|---|

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 31 of 1980

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

BETWEEN:

KANDASAMI S/O KALIAPPA GOUNDER — Appellant (Plaintiff)

- and -

MOHD MUSTAFA S/O SEENI MOHD — Respondent (Defendant)

RECORD OF PROCEEDINGS

GASTERS
44 Bedford Row,
London WC1R 4LL
Solicitors for the Appellants

COWARD CHANCE
Royex House,
Aldermanbury Square,
London EC2 7LD
Solicitors for the Respondent.