

**In the Privy Council.**

**ON APPEAL**  
*FROM THE SUPREME COURT OF CEYLON.*      9 - NOV 1956

UNIVERSITY OF LONDON  
 W.C.1.  
 INSTITUTE OF ADVANCED  
 LEGAL STUDIES

APPELLANTS CASE

THAIALPARGAR SELVAGURU of Valvettiturai .

*Petitioner-  
 Appellant*

V.

1. GNANASEGARAMPILLAI THAIALPAGAR of  
 Valvettiturai

10 2. KANDASAMY PARAMAKURU of Valvettiturai . *Respondents-  
 Respondents.*

## Case for the Appellant

RECORD.

1. This is an appeal by special leave from a judgment of the Supreme Court of the Island of Ceylon (Soertsz S.P.J. and Nagalingam J.) dated the 10th December 1947 reversing a judgment of the District Court of Jaffna (Wijeyewardene A.D.J.) dated the 10th December 1946. p. 73. p. 65.

20 2. The Appellant is the brother of Arudchelvam (hereinafter called "the deceased"), widow of Kumarakuru, who died on the 3rd July 1943. The First Respondent is the father of the Appellant and the deceased and the second Respondent is the only child of a sister of the deceased who predeceased her. The Appellant and the Respondents are the only persons entitled to any property as to which the deceased died intestate.

30 3. The action was brought by the Appellant on the 18th February 1944 by petition in the District Court of Jaffna (held at Point Pedro) for a declaration that he was entitled to take out Probate as Executor of the Will of the deceased dated the 28th June 1943 whereby she devised and bequeathed all her property to the Appellant and appointed him executor thereof. To this petition the present Respondents were respondents, the second Respondent being a minor appearing by the first Respondent as his guardian-ad-litem. p. 20

4. The first Respondent duly lodged objections to the making of the order prayed by the Appellant on the ground that the said Will was a forgery, that the signature of the deceased thereto was forged and that neither the attesting notary nor any of the witnesses were present at the house of the deceased on the 28th June 1943. p. 27.

5. The said petition was heard on the 15th February 1945, 29th June 1945, 26th October 1945, 5th April 1946 and 9th May 1946.

pp. 30-42.

6. Evidence in support of the petition was given by the Appellant, Sabaratnam the attesting notary and Chelliah one of the attesting witnesses. The evidence of the Appellant was to the following effect.

pp. 30-37.

p. 30, l. 32-p. 31,  
l. 5.

p. 31, l. 15.

After the Appellant's marriage in 1941 there was a disagreement between the deceased and the first Respondent over a proposal for her remarriage and in January 1943 the deceased started proceedings against the first Respondent for the recovery of a sum of Rs.5200/- commuted pension and Rs.360/- being the value of certain jewels entrusted by her to him in April 1943. The deceased, the Appellant and the second Respondent also sued the first Respondent claiming a half share of certain land. In June 1943 the deceased fell ill and being in need of money for medical attention asked the Appellant to find a purchaser for a portion of her land. On the 27th June 1943 she agreed to sell two lachams for Rs.780/- to one Chelliah. On the night of the 27th June the deceased became seriously ill and desired to execute a deed of transfer of the said land as soon as possible as there were proceedings pending in respect thereof. At 1 a.m. on the 28th June 1943 the deceased told the Appellant that if she died while the proceedings were pending the first Respondent would eject him and she therefore wished to make a will before the morning. The Appellant went to his father-in-law and together they went to the house of the notary Sabaratnam and gave instructions for the deed of transfer to be drafted. They then returned with the notary and his clerk to the house of the deceased and the deed of transfer was executed and the purchase money paid. After executing the transfer deed the deceased gave instructions to the notary to draw up her will which she subsequently executed and which was attested by Chelliah and Ramalingam. The deceased died in hospital on the 3rd July 1943. The notary Sabaratnam and Chelliah also gave evidence in support of the will and confirmed the evidence of the Appellant.

p. 31, l. 24.

p. 31, l. 30.  
p. 31, l. 40.  
p. 31, l. 41.

p. 31, l. 45.

p. 32, l. 1.

p. 32, l. 8.

p. 32, l. 9.

p. 32, l. 11.

p. 32, l. 14.

p. 32, l. 18.

p. 37, l. 8.

pp. 37-45.

pp. 46-65.

7. For the Respondents evidence was given by E. T. MacIntyre, Velupillai, Iyengar, Sethulingam, the first Respondent and Thedchanamoorthy.

pp. 46-47.

8. MacIntyre a handwriting expert gave evidence that in his opinion the signatures of the deceased on the Will and the deed of transfer were not written by the same person who wrote the signatures on certain documents agreed to have been signed by the deceased and that the signatures were forgeries. He admitted in cross-examination that he had written the report and made his examination on the morning on which he received the documents, that he had predated his report in error by one month and that his report was a preliminary report only made without examination of photographs.

p. 47, l. 33-p. 48,  
l. 4.

p. 53, l. 3.

p. 53, l. 36.

9. Velupillai stated that Selvadurai was staying at his house in Vavuniya for about a week until the 30th June 1943 but admitted in cross-examination that he was unable to remember seeing Selvadurai on the 28th June 1943, and that the first Respondent had requested him to give evidence that Selvadurai was at Vavuniya till the 30th June 1943.

10. Iyengar, principal of the College of which the first Respondent was manager stated that he lived in the school compound in a house sixty yards distant from the house of the deceased and knew the deceased and the first Respondent. He, Iyengar, used to get up between 3 and 4 a.m. to prepare his meals and did not hear or see any of the persons alleged to have been present in the room of the deceased on the morning of the 28th June 1943. The school compound was generally kept locked at night and only the first Respondent and the watcher had a key. pp. 54-58.  
p. 54, l. 10.  
p. 54, l. 19.  
p. 54, l. 30.
11. Sethulingam stated that Selvadurai the father-in-law of the Appellant was no longer in his village and that he believed him to be in India. p. 58.
12. The first Respondent stated that he and his family lived in the room next to that occupied by the deceased, that the gates of the school compound were kept locked from 6.30 p.m. to 6.30 a.m. the only keys to the gate being in the possession of himself and the caretaker and that anyone wishing to enter the compound at night would have to summon either the caretaker or him. He usually rose at 3 a.m. being subject to catarrh and he would have heard if anyone had come to the room of the deceased in the early morning of the 28th June 1943. At the time there were a lot of things on the verandah leading to the room of the deceased. He also produced certain letters purporting to have been written by Selvadurai to the Appellant which he claimed to have found in the room of the deceased after her death. p. 59-64.  
p. 59, l. 12.  
p. 59, l. 18.  
p. 59, l. 20.  
p. 59, l. 29.  
p. 59, l. 34.  
p. 60, l. 12.  
p. 60, l. 41-p. 61,  
l. 6.
13. On the 10th December 1946 the learned District Judge gave a reserved judgment in favour of the Appellant holding that the Will was the act and deed of the deceased and was duly proved and awarding the Appellant the costs of the Inquiry. The learned Judge accepted the evidence of the Appellant and his witnesses and rejected the evidence of the first Respondent Iyengar and Velupillai. He also rejected the evidence of the handwriting expert and came to the conclusion that any discrepancies between the disputed and the admitted signatures were accounted for by the illness of the deceased and the way she had signed the documents in bed. pp. 65-69.  
p. 67, l. 34.  
p. 68, l. 9.  
p. 68, l. 40.
14. On the 25th January 1947 the first Respondent filed a petition of appeal to the Supreme Court of the Island of Ceylon to have the said judgment set aside. The said appeal was heard on the 2nd December 1947 and on the 10th December 1947 the Supreme Court (Soertsz S.P.J. and Nagalingam J.) gave judgment allowing the appeal and dismissing the petition for probate of the Will of the deceased with costs in both courts. pp. 69-73.  
pp. 73-76.
15. The reasons of Soertsz S.P.J. in which Nagalingam J. concurred were that the trial Judge had lost his grasp of the evidence which the Court proceeded to re-examine, and concluded that both the Will and the deed of transfer were written elsewhere than in the room of the deceased and that Selvadurai was in Vavuniya on the 28th June 1943. The learned Judge further held that the evidence of the handwriting expert which the trial judge had seen fit to disregard tended to emphasize the doubts p. 74, l. 6.  
p. 75, l. 26.  
p. 75, l. 42.

p. 75, l. 39.

as to the evidence in support of the will particularly in the absence of any evidence that the Appellant had a key to gain access to the school compound.

p. 76, l. 5.

16. Soertsz S.P.J. concluded his judgment with the following remark. "This appears to me to be a matter for the Criminal Investigation Department." The District Judge accordingly caused the will of the deceased and the said deed of transfer and the other documents which had been examined by Mr. MacIntyre to be sent to the Criminal Investigation Department which referred them to the Government Examiner of Questioned Documents for comparison and report. The said Examiner reported that in his opinion the signature of the deceased on all the documents were made by one and the same person and this opinion was conveyed to the District Judge. 10

p. 90.

17. By an Order in Council dated the 21st December 1949 your Petitioner was granted special leave to appeal from the said judgment of the Supreme Court.

18. The Appellant submits that the judgment of the Supreme Court should be reversed and the petition for probate of the Will granted for the following among other

## REASONS.

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- (1) BECAUSE the Supreme Court was wrong in its conclusion that the District Judge had lost his grasp of the evidence. In fact the Supreme Court misdirected itself in that in the judgment it was stated that Ramalingam was sitting in a culvert in front of the house of the deceased whereas the only evidence given was that he was sitting in front of Selvadurai's house, a difference of one mile.
- (2) BECAUSE the evidence of Velupillai was clearly unreliable and prompted by the first Respondent and therefore tended to cast doubt on the genuineness of the letters alleged to have been written by Selvadurai and found by the first Respondent. 30
- (3) BECAUSE the Court assumed that the sum of Rs.780/- was not paid by Chelliah because it did not appear in the inventory of the estate of the deceased when no questions were put to the Appellant suggesting that the sum had not been paid or requiring him to explain the disappearance of the said sum.
- (4) BECAUSE the Court declined to believe that the Appellant had a key to the school compound on the night 27th/28th June 1943 since he did not produce it at the hearing when the Appellant's statement that he had a key at that time was not disputed in his cross-examination. 40

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- (5) BECAUSE the Court disregarded the evidence of the notary Sabaratnam without giving adequate reasons for rejecting such evidence.
- (6) IN so far as the Supreme Court relied on Documents D.1 to D.4 (inclusive) such documents were inadmissible. Counsel for the Respondents undertook to call the writers thereof but failed to do so.
- (7) BECAUSE the District Judge had an opportunity of observing the demeanour of the witnesses and was in a better position than the Supreme Court of determining the reliability of the evidence given at the trial.
- (8) BECAUSE there was ample evidence on which the District Judge could hold that the Will of the deceased had been duly proved.
- (9) BECAUSE in the opinion of the Government Examiner of Questioned Documents the signatures to the Will of the deceased and the said deed of transfer and the signatures to the admitted documents were made by one and the same person.
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- (10) FOR the reasons appearing in the judgment of the District Judge.

GEORGE HESKETH.

Settled,

GEORGE HESKETH,

Lincoln's Inn,

22nd October, 1951.

In the Privy Council.

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**ON APPEAL**

*from the Supreme Court of Ceylon.*

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BETWEEN

**THAIALPARGAR SELVAGURU**  
of Valvettiturai - *Petitioner-*  
*Appellant*

AND

(1) **GNANASEGARAMPILLAI**  
**THAIALPAGAR** of  
Valvettiturai

(2) **KANDASAMY PARAMAKURU**  
of Valvettiturai *Respondents-*  
*Respondents.*

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**Case for the Appellant.**

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