Supreme Court of Ceylon
No. 21 (Final) of 1951.

District Court, Chavakachcheri.
No. 315.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON.

BETWEEN

MANGALESWARI, daughter of VELUPILLAI SELVADURAI of Karaveddy, a minor, appearing by her next friend SINNAMMA widow of SELLAR of Chavakachcheri.....*Plaintiff—Appellant.*

VERSUS

1. VELUPILLAI SELVADURAI of Karaveddy
2. VEERAGATHIAR RAMALINGAM of Chavakachcheri
3. VALLIPURAM SUBRAMANIAM and
4. Wife SINNATHANGAM of Chavakachcheri.....*Defendants—Respondents.*

RECORD
OF PROCEEDINGS.

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Supreme Court of Ceylon
No. 21 (Final) of 1951.

District Court, Chavakachcheri.
No. 315.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON.

BETWEEN

MANGALESWARI, daughter of VELUPILLAI SELVADURAI of Karaveddy, a minor, appearing by her next friend SINNAMMA widow of SELLAR of Chavakachcheri..... *..Plaintiff—Appellant.*

VERSUS

1. VELUPILLAI SELVADURAI of Karaveddy
2. VEERAGATHIAR RAMALINGAM of Chavakachcheri
3. VALLIPURAM SUBRAMANIAM and
4. Wife SINNATHANGAM of Chavakachcheri..... *Defendants—Respondents.*

RECORD
OF PROCEEDINGS.

PART 1.

No. 1.

Journal Entries.

IN THE DISTRICT COURT OF POINT PEDRO HOLDEN AT CHAVAKACHCHERI

No. 315.
Class : II.
Amount : Rs. 1,500.
Nature : Pre-emption-- Land.
Procedure : Regular.

(1) MANGALESWARI, daughter of Veluppillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff.*

Vs.

(1) VELUPPILLAI SELVADURAI of Karaveddy,

(2) VEERAGATHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM and wife

(4) SINNATHANGAM of Chavakachcheri ..... *Defendants.*

JOURNAL :

The 30th day of August, 1950.

Mr. S. K. Thiraviyanayagam, Proctor, files appointment of next friend, plaint and *lispendens* in duplicate and abstract of title and moves that summons be ordered for service on the defendants and the *lispendens* be returned to him to be sent for registration.

Plaint accepted and summons ordered, on registered *lispendens* being filed for 9th October, 1950.

Sgd. P. SRI SKANDA RAJAH,
District Judge.

Received *lispendens* to be forwarded for registration.

Sgd. S. K. THIRAVIYANAYAGAM,
Proctor for Plaintiff.

No. 1. Journal Entries. 30 8-50 to 13-11-52. —*continued.*

2–10–50. Registered *lispendens* filed and summons issued.

Intld. S. A. V.

9–10–50. Mr. S. K. Thiraviyanayagam for plaintiff.

Summons on 1st defendant not served. Served on 2nd, 3rd and 4th.

Mr. C. R. Thambiah files proxy of 2nd defendant.

First defendant is present. Mr. Canagasabai files proxy of 3rd and 4th defendants.

Answers for 30/10.

Intld. C. R.,
A. D. J. 10

30–10–50. Mr. S. K. Thiraviyanayagam for plaintiff.

Mr. C. R. Thambiah for 2nd defendant.

Mr. V. Canagasabai for 3rd and 4th defendants.

Answer due. Filed.

Mr. C. R. Thambiah files answer of the 2nd defendant.

Trial on 21–11–50.

Intld. P. Sri S.,
D. J.

7–11–50. Second defendant's list filed and 3 cited.

Intld. S. A. V. 20

11–11–50. K. Rt. 537/41571 of 8–11–50 for Rs. 10 filed.

Intld. S. V.

Eo die.

Plaintiff's list of witnesses and documents and cites witnesses 1st and 2nd through F. M., Chavakachcheri.

Intld. S. V.

17-11-50. Plaintiff's additional list of documents filed with notice to 2nd-4th defendants.

Intld. T. K. P.

18-11-50. Third and 4th defendants' list of witnesses and documents filed.

Intld. T. K. P.

20-11-50. Return to summons on witnesses filed. Served on 2nd not served on 1st.

Intld. S. V.

Eo die.

Mr. C. R. Thambiah, Proctor for 2nd defendant moves that the summons on the 2nd defendant witness Veluppillai Sellathurai of Karaveddy North be re-issued through F. M., Chavakachcheri as the said witness Sellathurai has come to Chavakachcheri today. He is a material witness for this case.

Re-issue summons on him through F. M., Chavakachcheri.

Intld. P. Sri S.,
D. J.

Eo die.

Summons issued on 2nd witness through F. M., Chavakachcheri.

Intld. S. V.

21-11-50. Trial (1).

Mr. S. K. Thiraviyanayagam for plaintiff.

Mr. C. R. Thambiah for 2nd defendant.

Mr. V. Canagasabai for 3rd and 4th defendants.

V. Proceedings. C.A.V.

Judgment 28-11-50.

Sgd. P. Sri SKANDA RAJAH,
D. J.

No. 1. Journal Entries. 30-8-50 to 13-11-52. —*continued.*

23-11-50. (1) Plaintiffs' documents P 1 and P 2 filed with list.

(2) Documents 2D 1 to 2D 11 filed with list.

(Copies of application and inventory in 8612 Testy. are tendered by Mr. C. R. Thambiah.)

Intld. S. V.

Judgment :

28-11-50. Mr. S. K. Thiraviyanayagam for plaintiff, present.

Mr. C. R. Thambiah for 2nd defendant, absent.

Mr. V. Canagasabai for 3rd and 4th defendants, present.

Judgment delivered in open Court in the presence of the plaintiff and her next friend and the 2nd and 3rd defendants and proctors for plaintiff and 3rd and 4th defendants.

Decree 5-12-50.

Sgd. P. SRI SKANDA RAJAH,
D. J.
28-11-50.

Eo die.

Proctor for plaintiff moves for a D/N for Rs. 1,500 being the amount ordered to be deposited in Court by plaintiff before 18-12-50 to pre-empt the share of the land which is the subject matter of this action.

Issue D/N for Rs. 1,500 to plaintiff.

Sgd. P. SRI SKANDA RAJAH,
D. J.

28-11-50. D/N No. A 2254 for Rs. 1,500 being amount ordered for pre-emption issued to plaintiff.

Intld. T. K. P.

29-11-50. D/N No. A 22255 for Rs. 1,500 being compensation payable by the plaintiff to the 2nd defendant issued to plaintiff.

Intld. T. K. P.

1-12-50. K. R. No. 2078 of 29-11-50 for Rs. 1,500 filed.

Intld. T. K. P.

Eo die.

K. R. No. 2079 of 29-11-50 for Rs. 1,500 filed.

Intld. T. K. P.

5-12-50. Mr. S. K. Thiraviyanayagam for plaintiff.

Mr. C. R. Thambiah for 2nd defendant.

Mr. V. Canagasabai for 3rd and 4th defendants.

Decree due. Filed.

10 Check and submit.

Sgd. P. SRI SKANDA RAJAH,
D. J.

Eo die.

Decree entered.

Intld. T. K. P.

7-12-50. Mr. C. R. Thambiah for appellant files petition of appeal of the 2nd defendant-appellant together with notice of tendering security and stamps to the value of Rs. 15 to wit, Rs. 9 for S.C. Decree and Rs. 6 for certificate in appeal and moves that the same be
20 accepted and notice of tendering security be ordered to be issued on the respondents and their proctors. He also tenders an application for typewritten brief with costs Rs. 12.

(1) Accept petition of appeal.
(2) Issue notice of tendering security for 12-12-50.
(3) Deposit cash and issue receipt.

Sgd. P. SRI SKANDA RAJAH,
D. J.

Eo die.

Voucher for Rs. 12 with S.M.O. 1928, being appellant's fees sent to
30 G.A., N.-P.

Intld. T. K. P.

No. 1. Journal Entries. 30-8-50 to 13-11-52. —*continued.*

8-12-50. Paying-in-voucher for Rs. 18 being balance fees for typewritten brief to the appellants sent to G.A., N.-P. with S.M.O. 1970.

Intld. T. K. P.

Notice of tendering security issued.

Intld. S. A. V.
8/12

11-12-50. Notice of tendering security served on 1st, 3rd and 4th respondents and Messrs. S. K. Thiraviyanayagam and V. Canagasabai, Proctors.

Intld. S. A. V.,
Secretary. 10

12-12-50. Mr. S. K. Thiraviyanayagam for plaintiff-respondent.

Mr. C. R. Thambiah for 2nd defendant-appellant.

Mr. V. Canagasabai for 3rd and 4th respondents.

Notice of tendering security served on 1st, 3rd and 4th respondents and on Messrs. Thiraviyanayagam and V. Canagasabai.

Respondents absent. Proctors present.

Return on 2nd respondent due. Served 2nd respondent. He is absent. Security fixed at Rs. 150 cash to each set.

Mr. Canagasabai for 3rd and 4th defendants states that they waive security. 20

Sgd. P. SRI SKANDA RAJAH,
D. J.
12-12-50.

S.M.O. No. 1999 for Rs. 300 being security for costs of appeal sent to G.A., N.-P. for deposit to the credit of this case.

Intld. S. A. V.,
Secretary.

14-12-50. Paying-in-voucher with S.M.O. No. 2019 for Rs. 30 being cost of typewritten brief of the plaintiff-respondent sent to G.A., N. P.

Intld. T. K. P. 30

15-12-50. Mr. C. R. Thambiah for appellant tenders security bond duly perfected together with notice of appeal and copies of petition and moves that the said notice be ordered to be issued on the 1st and 3rd and 4th respondents' proctors and the 2nd respondent.

K. R. No. 1077 of 13-12-50 for Rs. 300 being security filed.

(1) Accept security bond.
(2) Issue notice of appeal for 16-1-51.

Sgd. P. SRI SKANDA RAJAH,
D. J.

10 Issued.

Intld. S. A. V.,
Secretary. 16/12.

9- 1-51. As he found on reference to the record that documents, viz., Petition and Inventory in D.C., Jaffna, Case No. 8,612 Testamentry had not been properly marked and produced, had been filed of record without any notice before the case was concluded, Mr. S. K. Thiraviyanayagam for plaintiff moves that the said documents be taken out of the record.

Application allowed as these documents were not produced at the
20 trial. Return them to Proctor for 1st defendant.

Sgd. P. SRI SKANDA RAJAH,
D. J.

16- 1-51. Mr. S. K. Thiraviyanayagam for plaintiff-respondent.

Mr. C. R. Thambiah for 2nd defendant-appellant.

Mr. V. Canagasabai for 3rd defendant-respondent.

Notice of appeal served on 2nd respondent. He is absent.

Notice of appeal on Messrs. Thiraviyanayagam and Canagasabai served. They are present.

Forward record without delay.

30 Sgd. P. SRI SKANDA RAJAH,
D. J.

No. 1.
Journal Entries.
30-8-50 to 13-11-52.
—*continued.*

5- 7-52. Record received from S.C. Appeal allowed and plaintiff's action dismissed with costs.

Intld. ....., *D.J.*

29- 9-52. Mr. C. R. Thambiah for 2nd defendant files copy of decree and bill of costs and moves that notice of taxation be issued on plaintiff.

Issue notice with copy of bill returnable on 20-10-52.

Intld. ....., *D.J.*

7- 10-52. Notice issued.

16- 10-52. Return filed.

20-10-52. Mr. S. K. Thiraviyanayagam for plaintiff.

Mr. C. R. Thambiah for 2nd defendant.

Mr. V. Canagasabai for 3rd and 4th defendants.

(1) Notice of taxation served on plaintiff. She is absent.
(2) *Vide* motion from Proctor for plaintiff.

The plaintiff having applied for Leave to Appeal to Privy Council and Conditional Leave to Appeal to the Privy Council having been granted by the Hon'ble the Supreme Court to the plaintiff, proctor for plaintiff moves that the taxing of the bill of costs in this case be laid by pending the decision of the Privy Council. Parties have been duly noticed regarding the conditional leave granted to the plaintiff to appeal to the Privy Council. Consideration on 21-10-52.

Intld. ....., *D.J.*

21-10-52. Consideration.

Mr. S. K. Thiraviyanayagam for plaintiff.

Mr. C. R. Thambiah for 2nd defendant.

Mr. V. Canagasabai for 3rd and 4th defendants.

(1) Case called. (Application to lay by the taxing of the bill pending decision of Privy Council.)

Mr. Thiraviyanayagam now moves to withdraw his application made under Journal Entry of 20-10-52. No. 1. Journal Entries. 30-8-50 to 13-11-52. —*continued.*

Application withdrawn and it is dismissed.

Intld. ....., *D.J.*
21/10

13-11-52. Final leave to appeal to the Privy Council having been allowed, the Registrar, S.C., requests that the record in this case together with all documents be forwarded to him to enable him to take necessary action.

Forward record with documents to S.C., Colombo.

Intld. ....., *D.J.*
17/11

No. 2.

Plaint of the Plaintiff.

No. 2. Plaint of the Plaintiff. 30-8-50.

IN THE DISTRICT COURT OF CHAVAKACHCHERI

MANGALESWARI, daughter of Velupillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff.*

No. 315. *Vs.*

(1) VELUPILLAI SELVADURAI of Karaveddy

(2) VEERAGATHTHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM, and wife

(4) SINNATHANGAM of Chavakachcheri ..... *Defendants.*

This 30th day of August, 1950.

The plaint of the plaintiff above-named appearing by S. K. Thiraviyanayagam, her Proctor, states as follows :—

1. The subject matter of this action is situated at Chavakachcheri, within the jurisdiction of this Court.

2. The parties to this action are Jaffna Tamils governed by the Law of *Thesawalamai.*

No. 2. Plaint of the Plaintiff. 30-8-50. —*continued.*

3. Certain Ratnam, wife of the 1st defendant was by virtue of the final partition decree entered in case No. 22,673 in the District Court of Jaffna, entitled to all that piece of land situated at Chavakachcheri, called " Kaddukkarny ", in extent 11 lachams varagu culture and 9 15/16 kulies represented by lot 4 in survey plan dated the 21st day of April, 1928, and prepared by Mr. P. Ponniah, Licensed Surveyor and fully described in the schedule hereto.

4. By virtue of the said Ratnam's Last Will admitted to probate in the Testamentary Case No. 8,612 in the District Court of Jaffna the plaintiff is entitled to an undivided one-half share of the said land called " Kaddukkarny ", in extent 11 lachams varagu culture and 9 15/16 kulies and the 1st defendant became entitled to the other one-half share of the said land.

5. The plaintiff has by her own undisturbed and uninterrupted possession and by the like possession of those from whom she claims title by a title adverse to and independent of that of the defendants and of all others whomsoever for a period of 10 years and upwards next immediately preceding the date of this action acquired a prescriptive right and title to the said one-half share in common of the said land in terms of section 3 of Ordinance No. 22 of 1871 the benefit whereof the plaintiff pleads in her favour.

6. The 1st defendant by Deed No. 15,268 dated the 11th day of September, 1937, and attested by V. Sabaratnam, Notary Public, transferred his undivided one-half share of the said land to the 2nd defendant.

7. The plaintiff is a minor and was a minor at the time of the said sale by the 1st defendant to the 2nd defendant and was neither given notice nor was she aware of the said sale.

8. The 2nd defendant was neither a co-owner nor an heir and nor an adjacent land owner having a mortgage right over the said land qualified under the Law of *Thesawalamai* to purchase the said half share in preference to the plaintiff.

9. The reasonable market value of the said one-half share is Rs. 1,500 which is also the consideration mentioned in the Deed No. 152,668 and the plaintiff is ready and willing to pay the said sum of Rs. 1,500 or any other reasonable sum which the Court might fix for the said one-half share of the said land.

10. The 2nd defendant has subsequently sold by Deed No. 10,610 dated the 19th day of August, 1947, and attested by V. S. Karthigesu, Notary Public an undivided one-half share of an extent of 6 lachams varagu culture purporting to treat his undivided share as a divided extent to the 4th defendant.

11. The 4th defendant is made a party to this action to have her bound by the decree sought for in this action.

12. The 3rd defendant is made a party to this action as the husband of the 4th defendant.

13. For the purpose of instituting and maintaining this action Sinnammah, widow of Sellar of Chavakachcheri was appointed by an order of this Court as next friend over the minor Mangaleswari, daughter of Veluppillai Selladurai. No. 2. Plaint of the Plaintiff. 30-8-50. —continued.

Wherefore the plaintiff prays :—

(1) That the said Deed No. 15,268 dated the 11th day of September, 1937, and attested by V. Sabaratnam, Notary Public be set aside.

(2) That the 1st defendant be ordered to execute a deed of transfer in favour of the plaintiff for the said undivided one-half share of the land fully described in the schedule hereto on payment into Court by the plaintiff for the sum of Rs. 1,500 or any other reasonable sum which the Court might fix on a day to be fixed by Court.

(3) That on failure of the 1st defendant to execute the said transfer on or before a day fixed by Court the Court be pleased to execute such conveyance in favour of the plaintiff.

(4) For costs, and

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

Sgd. S. K. THIRAVIYANAYAGAM,
Proctor for Plaintiff.

THE SCHEDULE OF PROPERTY REFERRED TO ABOVE :

All that piece of land situated at Chavakachcheri in Chavakachcheri Parish in Thenmaradchy division in Jaffna District, in Northern Province called " Kaddukkarny ", in extent 11 lachams varagu culture and 9 15/16 kulies and represented by lot 4 in plan dated the 21st day of April, 1928, and prepared by Mr. P. Ponniah, Licensed Surveyor, and filed in Case No. 22,673 in the District Court of Jaffna ; and bounded on the east by road, north by the property of Sinnammah, widow of Sellar ; west by road ; and on the south by the property of the heirs of the late Kanthar Vallipuram.

Sgd. S. K. THIRAVIYANAYAGAM,
Proctor for Plaintiff.

Memo of Documents annexed to the Plaint :

(1) *Abstract of title.*

Sgd. S. K. THIRAVIYANAYAGAM,
Proctor for Plaintiff.

ABSTRACT OF TITLE.

Land situated at Chavakachcheri called "Kaddukarny" in extent 11 Lms. V.C. and $9\frac{15}{16}$ Kls.

Name of Instrument	No. and date of Deed	From whom	To whom	Extent and boundaries	Regd. No.	Consideration if any	Original, Duplicate or Copy
Transfer	No. 15268 dated the 11th September 1937.	V. Selladurai	V. Ramalingam	An undivided one half share of the above East by road and by the property of Kanthar Vallipuram North by the property of Sinnammah wife of Sellar, West by Road and South by the property of Kanthar Vallipuram and by Road.	F. 180/256.	Rs. 1500/-	Copy
Transfer	No. 10610 dated the 19th August 1947.	V. Ramalingam	Sinnathangam wife of Subramaniam	An undivided one half share of a divided extent of 6 Lms. V. C. on the Eastern side of the above. This 6 Lms. V. C. is bounded on the East by Road and by the property of the heirs of Kanthar Vallipuram, North by the property of Sinnammah wife of Sellar West by Rail Road and on the South by the property of the heirs of Kanthar Vallipuram.	—	Rs. 2500/-	Copy

This 30th day of August 1950.

Sgd. S. K. Thiraviyanayagam,
Proctor for Plaintiff.

No. 3.

No. 3. Answer of the 2nd Defendant. 30-10-50.

Answer of the 2nd Defendant.

IN THE DISTRICT COURT OF CHAVAKACHCHERI

MANGALESWARI, daughter of Veluppillai Selladurai of Karaveddy, a minor appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff.*

No. 315. *Vs.*

(1) VELUPPILLAI SELVADURAI of Karaveddy,

(2) VEERAGATHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM and wife

(4) SINNATHANGAM of ditto ..... *Defendants.*

This 30th day of October, 1950.

The answer of the 2nd defendant above-named appearing by C. R. Thambiah, his Proctor, states as follows :—

1. Answering to paragraphs 1, 2, 3, 4, 5 and 6 of the plaint, the 2nd defendant who is hereinafter called this defendant admits the averments contained therein.

2. Answering to paragraph 7 of the plaint, this defendant while stating that the plaintiff was and is a minor living under the care and guardianship of her father the 1st defendant, that the plaintiff had and has no means to buy the share sought to be pre-empted and that the plaintiff was fully aware of the sale of the said share, denies the other averments contained therein.

3. Answering to paragraph 8 of the plaint, this defendant states that the said half-share was sold by the 1st defendant to the 2nd defendant by Deed No. 15,268 of 11th September, 1937, to pay off a debt due from the 1st defendant and the estate of Ratnam (the mother of the plaintiff) that as the plaintiff was aware of the said sale and/or was not in a position either to pay the said debt or purchase the said share, the 1st defendant was entitled to transfer the said half-share to the 2nd defendant.

4. Answering to paragraph 9 of the plaint, this defendant states that he purchased the said half share for Rs. 1,500 which was its market value at that time, that thereafter this defendant improved the said land by raising its level and erecting buildings thereon at a cost of about Rs. 3,000 and that the plaintiff and her next friend have been set up by the 1st defendant to file this frivolous

No. 3. Answer of the 2nd Defendant. 30-10-50. —*continued.*

and malicious action as the price of the land has gone up considerably, denies the other averments contained therein.

5. Answering to paragraph 10 of the plaint, this defendant states that in or about August, 1947, he required money for the purpose of buying another piece of land for residential purposes that he offered to sell an extent of 3 lachams out of the said land to the plaintiff and her father the 1st defendant who declined to buy, and that thereafter, the 2nd defendant sold an undivided extent of 3 lachams out of the bare land on the east to the 3rd and 4th defendants for a sum of Rs. 2,500 and denies the other averments contained therein.

6. Answering to paragraphs 11 and 12 of the plaint, this defendant states that no cause of action has been disclosed against the 3rd and 4th defendants.

7. Answering to paragraph 13 of the plaint, this defendant states that the 1st defendant has put forward Sinnammah to file this action.

8. Further answering this defendant states that the said half-share exclusive of the improvements effected by this defendant is now reasonably worth Rs. 6,500 that the improvements effected by the defendant are now reasonably worth Rs. 4,000 and that the market value of the half-share along with the improvements is Rs. 10,500.

9. For a matter of law this defendant states, that the claim if any is prescribed in law in as much as this action was not instituted within three years of the date of the awareness of the plaintiff of the sale by the 1st defendant to the 2nd defendant.

Wherefore this defendant prays :—

(1) that the plaintiff's action be dismissed,

(2) that in the event of the Court holding that the plaintiff is entitled to pre-empt the said half-share, the plaintiff be ordered to deposit in Court Rs. 10,500 being the market value of the said half-share and the said improvements, and

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

Sgd. C. R. THAMBIAH,
Proctor for 2nd Defendant.

No. 4. Answer of the 3rd and 4th Defendants. 30-10-50.

No. 4.

Answer of the 3rd and 4th Defendants.

IN THE DISTRICT COURT OF CHAVAKACHCHERI

MANGALESWARI, daughter of Veluppillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff.*

No. 4.
Answer of the 3rd and 4th Defendants.
30-10-50.
—*continued.*

No. 315. Vs.

(1) VELUPPILLAI SELVADURAI of Karaveddy,

(2) VEERAGATHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM and wife

(4) SINNATHANGAM of Chavakachcheri ..... *Defendants.*

On this 30th day of October, 1950.

The answer of the above-named 3rd and 4th named defendants appearing by Mr. V. Canagasabai, their Proctor, states as follows :—

1. Answering to paragraphs 1, 2, 3, 4, 5 and 6 of the plaint these defendants admit the averments contained therein.

2. Answering to paragraph 7 of the plaint these defendants while stating that the plaintiff was and is a minor living under the care and guardianship of her father the 1st defendant that the plaintiff had and has no means to buy the share sought to be pre-empted, that the plaintiff was fully aware of the sale of the said share, deny the other averments contained therein.

3. Answering to paragraph 8 of the plaint these defendants while stating that the said half-share was sold by the 1st defendant to the 2nd defendant by Deed No. 15,268 of 11th September, 1937, to pay off a debt due from the 1st defendant and the estate of Ratnam, the mother of the plaintiff, that as the plaintiff was aware of the said sale and/or was not in a position either to pay the said debt or purchase the said share, the 1st defendant was entitled to transfer the said half-share to the 2nd defendant.

4. Answering to paragraph 9 of the plaint these defendants while stating that the 2nd defendant purchased the said half-share for Rs. 1,500 which was its market value at that time, that thereafter the 2nd defendant improved the said land by raising its level and erecting buildings therein at a cost of about Rs. 3,000 and that the plaintiff and her next friend have been set up by the 1st defendant to file this frivolous and malicious action as the price of the land has gone up considerably deny the other averments contained therein.

5. Answering to paragraph 10 of the plaint these defendants state that in or about August, 1947, the 2nd defendant required money for the purpose of buying another piece of land for residential purpose, that he offered to sell an extent of 3 lachams out of the said land to the plaintiff and her father the 1st

No. 4. Answer of the 3rd and 4th Defendants. 30–10–50. —*continued.*

defendant who declined to buy and that thereafter the 2nd defendant sold an undivided extent of 3 lachams out of the bare land on the east to these defendants for a sum of Rs. 2,500 and deny the other averments contained therein.

6. Answering to paragraphs 11 and 12 of the plaint these defendants state that the plaint does not disclose any cause of action against these defendants that the plaintiff had notice and was otherwise aware of the sale to these defendants and that the extent of 3 lachams purchased by these defendants is reasonably worth Rs. 2,500. These defendants further state that the plaintiff cannot in any event maintain this action as she has neither the means to pre-empt nor has expressed her willingness to pay the market value.

7. Answering to paragraph 13 of the plaint these defendants state that the 1st defendant has put forward Sinnammah to file this action.

8. Further answering these defendants state that the said half-share exclusive of the improvements effected by the 2nd defendant is now reasonably worth Rs. 6,500, that the improvements effected by the 2nd defendant are now reasonably worth Rs. 4,000 and that the market value of the half-share along with the improvements is Rs. 10,500.

Wherefore these defendants pray :—

(1) That the plaintiff's action be dismissed.

(2) That in the event of the Court holding that the plaintiff is entitled to pre-empt the said half-share, the plaintiff be ordered to deposit in Court Rs. 10,500 being the market value of the said half-share and the said improvements and for costs and for such other and further relief as to this Court shall seem meet.

Sgd. V. CANAGASABAI,
Proctor for 3rd and 4th Defendants.

No. 5. Issues Framed.

No. 5.

Issues Framed.

21–11–50. Trial.
D.C. No. 315.
Plaintiff present.
Next friend also present.
2nd and 3rd defendants present.

Mr. Adv. K. K. Subramaniam instructed for plaintiff.

Mr. Thambiah for the 2nd defendant,

Mr. Kanagasabai for 3rd and 4th defendants.

No. 5.
Issues Framed.
—*continued.*

Issues. (Mr. Thambiah suggests) :

(1) Was the 1st defendant, the plaintiff's father, the natural guardian of the plaintiff ?

(2) If so, was the 1st defendant aware of the sale of half-share of the land mentioned in paragraph 3 of the plaint to the 2nd defendant ?

(3) If issue No. 2 is answered in the affirmative, is the action barred by prescription ?

(4) Was the plaintiff herself aware of the sale by the 1st defendant to the 2nd defendant ?

(5) Was the half-share of the land mentioned in the Schedule to the plaint sold to pay off debts incurred by the 1st defendant and his wife Ratnam ?

(6) If so, can the plaintiff maintain this action against the 2nd defendant a *bona fide* purchaser for value ?

(7) Has the 2nd defendant improved the land by erecting buildings ?

(8) What is the present value of the half-share of the land with the improvements ?

(9) Is the plaintiff a *bona fide* pre-emptor having funds to pay for the purchase of this half share ?

(10) Is the action instituted maliciously and collusively at the instigation of a 3rd party ?

(11) If so, can the plaintiff maintain this action for pre-emption ?

(12) What amount is payable to the 2nd defendant in the event of the plaintiff succeeding ?

Mr. Adv. Subramaniam suggests :

(13) Is the 2nd defendant a *bona fide* possessor ?

(14) If not, is 2nd defendant entitled to compensation for improvements ?

(15) In any event, is the plaintiff entitled to pre-empt the shares sold by the 1st defendant to the 2nd defendant ?

Burden is on the defendants.

No. 6.
2nd Defendant's Evidence.
V. Ramalingam.
Examination.

No. 6.

2nd Defendant's Evidence.

Mr. Thambiah calls :

VEERAGATHTHIER RAMALINGAM, affirmed, 49, Manager, Sri Vallipuram Mills, Chavakachcheri.

I know the plaintiff's mother Ratnam. Ratnam was entitled to lot 4 in the Plan No. 22,673 attached to final partition decree (2 D 1). Ratnam is dead. She died in the year 1935. Before her death she made a Will. That Will was proved in 8,612 Testy. D.C., Jaffna. The date of the Will was 15th March, 1933. By that Will she bequeathed a half-share to her daughter Mangaleswari (plaintiff), and the other half to her husband Veluppillai Sellathurai (1st defendant).. Veluppillai Sellathurai sold that half-share to me by Deed No. 15,268 of 11th September, 1937 (2D 2). I paid him Rs. 1,500. I produce mortgage bond No. 25,454 of 21st July, 1936 (2D 3). This mortgage bond was executed by the 1st defendant in favour of Kanapathiar Muthu. This mortgage bond recites that a sum of Rs. 860 was due on account of principal and interest due on a promissory note granted by the 1st defendant and his late wife Ratnam. In 2D 3 the period of time of the note was mentioned. I bought half-share of the lot for a sum of Rs. 1,500. The bond was executed. This mortgage bond also bears an endrosement " receipt granted by Deed No. 15,267 of 11th September, 1937 ". This is the receipt which is immediately earlier in number to 2D 2. 2D 2 and the receipt bears the same date and consecutive numbers. The mortgage creditor and I were present at the time of the execution of my transfer deed. In fact Kanapathipillai Muthu has signed as witness to the transfer deed. The 1st defendant was working as a labourer at the Vallipuram Mills. Besides the half-share conveyed to me the 1st defendant has some properties at Vadamaradchy worth about 2 to 3 hundred rupees. The plaintiff at the time of my purchase was 7 or 8 years old. She was at Chavakachcheri. Now she is at Karavanai North. She was living with her father at Chavakachcheri. The next friend of the plaintiff is Sinnammah. She is the eldest sister of the plaintiff's mother's mother. Sinnammah is the owner of lot 3. Sinnammah was aware of my purchase. I am producing a writing dated 23-10-41 between me and Sinnammah the next friend of the plaintiff (2D 4) by which Sinnammah and I agreed to build a wall between the 2 lands. The expenses to be borne proportionately. This minor was never in the habit of living with Sinnammah. She used to be on visiting terms. I have put up three buildings. One building has two rooms. Another building is used as a boutique and the other one is under construction. It was a low lying land which has to be raised. I spent Rs. 4,000. I had also built a latrine. The cost of my latrine is also included in the 4,000 rupees. The value of the land has increased by reason of my raising the land and building on it. I know the land sold by Mr. Thiruchelvam, son-in-law of Mr. Kanagaratnam. This land is about 30 or 40 yards from that land. I produce Deed No. 115 dated 26-10-47 (2D 5). By this deed he has sold 5 lachams

No. 6.
2nd Defendant's Evidence.
V. Ramalingam.
Examination.
—*continued.*

for Rs. 7,250. There were no buildings on that land at the time of sale. That works at Rs. 1,450 per lacham. I produce Deed No. 261 of 12 5 50 (2D 6). This was sold by one Mohideen Mohamed and his wife. About 7 lachams and 16 *kulies were sold for* Rs. 13,805. *That works at about* Rs. 1,726 a lacham. This land is on the north of lot 1. I also produce Deed No. 221 dated 3 7–50 (2D 7). This was a sale by Ratnam to Ledchumipillai and her husband. An extent of 1¼ lachams was sold for Rs. 2,000. That works to Rs. 1,600 per lacham. This was part of the land sold on 2D 5. I produce a chit dated 3 5–48 (2D 8) signed by the 1st defendant by which 1st defendant on behalf of the plaintiff leased the half-share to the 3rd defendant for one year. That is from May, 1948, to May, 1949, at Rs. 15 per year. This portion of the land is on the eastern side of the Railway line. I have sold it to the 3rd and 4th defendants. The half-share of the eastern share of lot 4 is an undivided half-share. That is on the eastern side of the Railway line. After I sold that, 3rd and 4th defendants brought an action No. 241P. By Deed No. 10,610 of 19th August, 1947 (2D 9) I sold 3 lachams for Rs. 2,500. I produce certified copy of journal entries in partition case No. 241P (2D 10). 241P is an action instituted by the 3rd and 4th defendants as plaintiffs against the plaintiff as defendant and 1st defendant as *guardian ad litem*. The action was brought on the footing that 6 lachams formed a divided lot. By the journal entry of 9–5–50 the 1st defendant was appointed *guardian ad litem* of the minor plaintiff. The plaintiff did not say that her father's interests were hostile to her. Plaintiff's action 241P was withdrawn because the action was for a fraction of the larger land. Proceedings were started for the entire land of 11 lachams. I produce certified copy of the entries made in case No. A 33. That is for the purpose of appointing a *guardian ad litem*. Now its number is D.C. 332. This is for the partition of lot 4. In that case the 1st defendant was sought to be appointed as *guardian ad litem* of this plaintiff. Mangaleswari was the 1st respondent and Sellathurai the 1st defendant was the 2nd respondent. *Order Nisi* was entered and made returnable on 25th September, 1950. On that day the 1st and 2nd respondents were present. That is the father and the daughter. The girl said that she was not willing to have the father appointed. On that day Sinnammah also came. She has filed this action for pre-emption. This case was filed on 30–8–1950. The date of withdrawal of case No. 241P (2D 10) was 3–7–50, and the institution of pre-emption case was 30th August, 1950. On that day Sinnammah was present in Court though not noticed, and then she was appointed *guardian ad litem*. At that time when I sold the half-share of eastern portion of lot 4 to the 3rd and 4th defendants, I went to the 1st defendant. I went there to inform him that I am going to dispose of the eastern portion. I went to Karavanai North. Plaintiff was also present. When I asked the 1st defendant, the 1st defendant told me that he had no money to buy and wanted me to sell. It was after that I sold. Plaintiff has filed this action on the instigation of a third party. One Ambalam Kandiah and the plaintiff's father are hand in glove. Ambalam Kandiah is a man of means. He is worth over Rs. 20,000. He is a trader in cocoanut, copra and straw. He has got a bullock cart. Ambalam Kandiah had occupied a portion of the eastern land for stacking straw and selling. At the time when he was carrying on business in straw, there was some unpleasantness between him and the 3rd defendant. Ambalam Kandiah lived to the north of lot 1. He

No. 6. 2nd Defendant's Evidence. V. Ramalingam. Examination. —*continued.*

tried to take his lorry after destroying the fence. Third defendant objected to it. So he made a complaint to the Kirama Vidhane and the Police. This happened in December, 1949. After that Ambalam Kandiah went to the 1st defendant and got a lease of the plaintiff's share. Third defendant Ramu Kandiah, and myself went to the 1st defendant's house, and asked him that it should be leased out to the 3rd defendant. He refused and said that he had already promised to lease it to Ambalam Kandiah and that he cannot go back on his promise.

Sgd. P. SRI SKANDA RAJAH,
21-11-50. *D. J.*

Adjourned for lunch.

Resumed after lunch.

Veeragaththiar Ramalingam—Re-called, affirmed.

I cited the minor plaintiff as a witness. I issued summons. I experienced trouble in serving the summons on her. Summons was issued some days earlier and up to Friday last summons was reported not served. I had to go personally and on the road, when the plaintiff was returning from school, I got it served. The Fiscal could not serve the summons on the 1st defendant. I made a special application for summons to be served on the 1st defendant. Still he kept away. I saw him last night at the Proctor's house with the minor plaintiff. He returned home only in the morning. I sent a man to see him. But he was evading.

V. Ramalingam. Cross-Examination.

Cross-examined by Mr. Kanagasabai—Nil.

Cross-examined by Adv. Subramaniam.

I am a person from Vathiri in Vadamaradchy. I came and settled down at Chavakachcheri about 20 or 25 years ago. After I came here I brought some of my relations from there. I was working under Mr. Vallipuram. Even the 1st defendant was working under Mr. Vallipuram, for some time. The 1st defendant and I are children of two sisters. I am not the person who was looking after the affairs of the 1st defendant. I deny that I arranged the marriage of the 1st defendant. His wife Ratnam died in 1935, and the 1st defendant got married again. That was somewhere in 1938. This marriage was not arranged by me. He got married among my relations. The bond 2D 3 was in favour of Kanapathy Muthu. I do not know whether that was written after the 2nd marriage. Kanapathy Muthu was my father-in-law. He was not a very poor man. All along he lived in my house. But I did not maintain him. He died in my house. This bond was executed in favour of Kanapathy Muthu and I deny that I gave the money to him. I was not investing monies in my father-in-law's name. I was aware of the partition case filed by Sinnammah in respect of this land. I don't remember the earlier partition case that was filed by Sinnammah in D.C., Jaffna. I know this land since I came to Chavakachcheri. When this land was partitioned originally, *i.e.*, somewhere in 1928, there were

No. 6. 2nd Defendant's Evidence. V. Ramalingam. Cross-Examination. —*continued.*

buildings. There was only one house when I bought. There was a small shed also. That house is still there. No improvements were made to that house. I did not improve that house. (Shown 2D 1). I deny there was also a big house (*Thalaivasal*) in common on the boundary of lots 3 and 4. I do not know whether half this house belongs to Ratnam and half belongs to Sinnammah. I do not know whether the 3rd defendant had to pay compensation to Sinnammah to remove the house. (Shown decree in that case P 1). This is the decree in case No. 22,673 D.C., Jaffna. According to this decree, that 3rd defendant will have to remove that portion of the *Thalaivasal* in lot 3. I had to spend about 5 to 6 thousand rupees for raising the land, and in building on it. The old house had to be dismantled. A building is under construction in place of the Thalaivasal. I put up brick walls for the building. I deny that the walls were put up with bricks and concrete. I can't definitely say how much I spent in all. I deny that I bought second-hand tiles from the principal, Drieberg College. I bought new tiles. I spent about Rs. 1,400 for the tiles. That was in the year 1941. The floor work was done after my purchase. It took me about two to three years to effect all improvements. I raised the land. The present level of the land is higher than the adjoing lots. The tea boutique building is a low building of a moderate height. The tax I pay to the Town Council is about Rs. 3.60 or 3.70 per quarter. I can't tell you exactly. The annual value given by the Town Council is about Rs. 260 or Rs. 280. That is for all the buildings on the land and the land. I know the partition case filed by the 3rd and 4th defendants in this case. I came to know about it later only. When that case was filed, they never made the minor a party. (Shown certified copy of the original plaint in that case No. 241P). According to the plaint, 1st defendant is the only party. The 1st defendant is shown as entitled to half-share of the land. (Shown P 2). By this deed he purported to sell an undivided half-share of an divided extent of 6 lachams. When the 1st defendant sold it to me in 1937, this girl was 7 or 8 years old. I cannot say if the plaintiff was 5 years old at the time. First defendant sold the land to me. Ramu Kandiah and Kanapathippillai Muthu and Veluppillai Thambu arranged the sale. Ramu Kandiah is a lorry driver employed in the mills where I was working. That lorry was owned by me at one time and Ramu Kandiah was a driver working under me. At the time when the sale was arranged I knew that the plaintiff was entitled to half-share. I deny that except the 1st defendant, no one was aware of the sale. When I sold 3rd and 4th defendants and I went and told the 1st defendant. I went alone and nobody accompanied me.

V. Ramalingam. Re-examination.

Re-examined :

I said that Kanapathippillai Muthu is my father-in-law. He is the maternal uncle of the 1st defendant. I erected about three buildings. There was a house in the land. One Thambirajah is living and paying rent to Sellathurai. It is a mud house. I have nothing to do with that mud house. I have not improved the house. Sellathurai has rented out this house to Thambirajah for about Rs. 10 or 15.

Sgd. P. SRI SKANDA RAJAH,
D. J.

21-11-50.

No. 6. 2nd Defendant's Evidence. Mangaleswari. Examination.

MANGALESWARI, daughter of Sellathurai—Affirmed, 18, Karaveddy.

I am 20 years old. I was born in 1930. My father is the 1st defendant Sellathurai. My father and mother were living at Chavakachcheri. I don't know when my mother died. About a year ago I went to Karaveddy. Before that I was in Jaffna, and Trincomalee. I was with my father at Trincomalee. My father worked at Trincomalee. So I went and lived with him for about one year. I lived in Jaffna for about one year. I am in the Tamil S. S. C. class. I know arithmetic. I have spent several years at Chavakachcheri. At Chavakachcheri I live at Sinnammah's house. When I was small I used to visit my father's boutique very frequently. I can't say whether I visited once a week. When I used to go there, there were buildings. I don't know about that. I did not ask my father even for curiosity about the buildings. I have seen Ramalingam coming to this building and going. He was supervising the buildings. I did not ask anybody about these buildings. I do not know whether these buildings were erected about 10 years ago. This is the only land. I have cash in my name. It is with my next friend. My mother entrusted the money to her. In the Testamentary case the money is not stated. The amount of money that was entrusted to Sinnammah was Rs. 1,000. She told me. I can't say definitely when she told me. She told me after I attained age. I attained age about 5 years ago. It was about that time she told me. I did not tell this to my father. My father did not accompany me to go to the Proctor's house last night. I am telling the truth. My next friend will supply me the balance money. I received notice in the 1st case. My father and I came to Court and I consented to my father being appointed *guardian ad litem*. At that time when my father was *guardian ad litem* I knew that it was for the purpose of a partition case. Then I received a 2nd notice for a partition action. On that date also my father was present. Then I was questioned by Court whether I would have any objection to my father being appointed *guardian ad litem* and I objected. Sinnammah was also present. I told the Court that father was against me. I told Court that Ramalingam and father are acting in collusion against me. When I sought legal advice, my Proctor said my father's interests were adverse to mine. My Proctor said that my father is against me. My Proctor asked me to bring Sinnammah. I asked her to help me and she came. I told Court to appoint Sinnammah as *guardian ad litem*. I consulted my Procter and he advised me to file this pre-emption case. I went to the Proctor along with my next friend Sinnammah. My father did not go with me. I do not know if the Fiscal Process Server came to my house several times. I go to Karanavai Vidiyasalai in the morning and return home in the evening. I don't know anything about it. Summons was served on me on the road when I was returning from school. I was pointed out by Ramalingam. My father lives in his house. He is a cultivator.

Mangaleswari. Cross-Examination.

Cross-examined by Kanagasabai—Nil.

Cross-examined.

I became aware of the sale by my father to the 2nd defendant only after

the partition case No. 241. I sought legal advice to file a pre-emption action. I knew the 2nd defendant Ramalingam very well. I used to call him " Periya-Aiyah ". In 1947, " Periya-Aiyah " did not come and tell me that he is going to sell a portion of the land to the 3rd defendant. I did not know of any such intention to sell. Second defendant was looking after the affairs of my father at Chavakachcheri. I have not taken any produce. Second defendant never gave me any produce. I did not know anything about the sale of my father's share to the 2nd defendant.

No. 6. 2nd Defendant's Evidence. Mangalesswari. Cross-Examination. —*continued.*

Re-examined Nil.

Sgd. P. SRI SKANDA RAJAH,
D. J.
21-11-50.

VAITHILINGAM NAMASIVAYAM—Affirmed, 32, Village Headman, Chavakachcheri South.

V. Namasivayam. Examination.

I know the land in dispute. Second defendant Ramalingam has a boutique in that land. He has put up one building. There is a building with 2 rooms. Attached to that 2 room building, there is also a kitchen. There is a shed. There are no foundations put up. I knew this land before. I know the land for about 10 years. As far as I know this land was not raised. The house was erected by him. The buildings would have cost him about Rs. 1,500. The land is worth Rs. 2,000 a lacham. That is the land to the west of the Railway line. I remember going to settle a dispute between the 3rd defendant and Ambalam Kandiah. It was 3rd defendant who made the complaint. The complaint was that Ambalam Kandiah cut down the fence which the 3rd defendant had put up, to drive a lorry through that. The complaint was made to me. I do not know whether a complaint was made to the Police. I do not know whether as a result of that Ambalam Kandiah got the lease of the land from plaintiff's father. Ambalam Kandiah is worth about Rs. 10,000. He is a coconut trader. He is not possessed of any lands in my area. He is doing business on a large scale.

Cross-examined :

V. Namasivayam. Cross-Examination.

The price of the land has gone up after the war. After the Town Council came into being price of land at Chavakachcheri has gone up. In 1937, the price of land was low. The shop in this land is low roofed. It is only one building partitioned with planks. There are 3 walls and they are brick walls and the floor is very low. Kitchen is only a shed worth about Rs. 100. The level of this land is the same as that of the adjoining land. To my knowledge it was not filled.

Cross-examination : Mr. Canagasabai—Nil.

No. 6.
2nd Defendant's Evidence.
—*continued.*

Re-examination—Nil.

Sgd. P. SRI SKANDA RAJAH,
D. J.
21–11–50.

Mr. Thambiah closes his case reading in evidence 2D 1 to 2D 11.

Sgd. P. SRI SKANDA RAJAH,
D. J.
21–11–50.

No. 7.
3rd and 4th Defendants' Evidence.

No. 7.

Third and 4th Defendants' Evidence.

Mr. Kanagasabai calls no evidence.

Sgd. P. SRI SKANDA RAJAH,
D. J.
21–11–50.

No. 8.
Plaintiff's Evidence.

No. 8.

Plaintiff's Evidence.

Mr. Adv. Subramaniam calls no evidence. He reads in evidence P 1 and P 2.

Sgd. P. SRI SKANDA RAJAH,
D. J.
21–11–50.

C.A.V.

Judgment on 28–11–50.

Sgd. P. SRI SKANDA RAJAH,
D. J.
21–11–50.

No. 9.

Judgment of the District Court.

No. 9. Judgment of the District Court. 28-11-50.

JUDGMENT

28-11-50.
D.C. 315.

This is an action for pre-emption. The relevant facts are as follows :—

Ratnam, the mother of the plaintiff and wife of the 1st defendant, was entitled to lot 4 in Plan 2D 1. By a Will of 1933, she bequeathed a half-share of lot 4 to the plaintiff and the other half to the 1st defendant. Ratnam died in 1935. The 1st defendant sold his undivided half-share to the 2nd defendant on Deed 2D 2 of 11-9-1937 for Rs. 1,500. At that time this plaintiff, who is still a minor, was about 7 or 8 years old. She is 20 now. Second defendant has effected some improvements. He has also sold a portion of his share to the 3rd and 4th defendants on Deed 2D 9 of 19-8-1947.

Plaintiff being a co-owner of the land is entitled to pre-empt the share sold by her father (1st defendant) to the 2nd defendant on payment of Rs. 1,500, the actual price paid.

As plaintiff was only 7 or 8 years old at the time of the sale on 2D 2 the 2nd defendant does not plead that the plaintiff was given notice. But he takes up the position that the 1st defendant was her natural guardian and, therefore, the plaintiff should be imputed with the knowledge of the sale on 2D 2. The 1st defendant acted against the interests of the minor (plaintiff) in selling his share to the 2nd defendant. Therefore he would have been anxious to hide that fact from the girl. (Plaintiff). That being so it would be unreasonable to hold that plaintiff was aware of the sale on 2D 2 because the 1st defendant is her natural guardian.

The plaintiff says that she did not become aware of the sale on 2D 2 till the partition case D.C. 241 (2D 10). That case was filed on 10-1-50. I have no reason to doubt her evidence on this point.

Even if she was aware of the sale on 2D 2 her right of action would be barred only after the lapse of three yesrs after she attains majority. She is still a minor. Therefore, this action is not barred by limitation.

2D 3 of 21-7-1936 is a mortgage bond in favour of the 2nd defendant's father-in-law Muttu, who was living with the 2nd defendant. Reference is made in it to a promissory note granted by 1st defendant and his wife Ratnam on 26-4-1933 to Muttu for a sum of Rs. 8.0. This bond was receipted on the same day as 2D 2. So the 2nd defendant says that the 1st defendant sold his half-share to pay the debt due from him and his late wife and that he (2nd defendant) is a *bona fide* purchaser.

No. 9. Judgment of the District Court. 28-11-50. —*continued.*

First and 2nd defendants are children of two sisters. Second defendant is the manager of a mill and the 1st defendant was working in that mill. Therefore, he must have been aware that an undivided half of the land belongs to the plaintiff. He cannot, therefore, be considered a *bona fide* purchaser, *i.e.*, purchaser without knowledge of the plaintiff's rights.

Let us assume that the 2nd defendant is a *bona fide* purchaser for value. Even then the plaintiff is entitled to step into his shoes. For, an action for pre-emption is one to assert the right to be substituted in place of the vendee. *Karthigesu et al vs. Parupathy et al* (1945)—46 *N. L. R.* 162.

The 2nd defendant has improved the land by building on it. He tries to make out that he raised the level of this land to a higher level than that of the adjoining lands. But the headman says that this land is of the same level as the adjoining lands. The Plan (2D 1 or P 1) shows that there were buildings on this land even in 1928 (the year the plan was made). Therefore, it is not likely that this was a low lying land. I do not believe that the 2nd defendant spent anything for filling up the land.

He has certainly improved the land by improving the buildings and putting up some building. He tries to make out that a building is under construction. But, the Village Headman contradicts him on that point. Second defendant says that he spent about Rs. 500 for filling up the land and estimates the total cost of the improvements at about Rs. 4,000. That includes the alleged cost of filling up the land. But the Village Headman says that the buildings would have cost the 2nd defendant Rs. 1,500. It should be remembered that the Headman is the 2nd defendant's own witness.

Second defendant is a *bona fide* possessor and he would be entitled to compensation for improvements. The amount of such compensation is either the improved value of the land or the costs he incurred in effecting the improvements whichever is less—22 *N. L. R.* 286.

Evidence was led to prove the improved value of the land. We may assume that it is much more than the costs incurred in effecting the improvements. So the 2nd defendant would be entitled to Rs. 1,500, the costs he incurred, as compensation for improvements. He would have jus retentionis.

The plaintiff says that her next friend has a sum of Rs. 1,000 in her hands and that she will find the balance amount for pre-empting.

It is likely that the story that the next friend has Rs. 1,000 entrusted to her by plaintiff's mother is an invention. Plaintiff may still be able to find the funds to pre-empt this share by mortgaging her own share. Therefore, I would say that she has the means to pre-empt this share.

It may be that she has been put up by the 1st defendant to file this action because the price of lands now is high. Since she has the right to pre-empt nothing can be done about it.

Second defendant says that the 1st defendant and one Ambalam Kandiah "are hand in glove". This Ambalam Kandiah had trouble with the 3rd defendant in regard to that portion of the land occupied by the 3rd defendant. On this evidence it is impossible to hold that this action is "instituted maliciously and collusively with a 3rd party". Collusion means the joining together of two parties in a common trick. It carries with it the implication of something underhand. 23 *N. L. R.* at p. 147, 35 *N. L. R.* at p. 432. The evidence is insufficient to establish collusion.

I may add that a large number of issues which, in my opinion, are not really relevant have been raised. I allowed them as, strictly speaking, they arise from the pleadings.

I would answer the issues as follows :—

1. Yes.
2. No.
3. Does not arise.
4. No.
5. May be.
6. Yes.
7. Yes.
8. Not necessary to answer this issue.
9. Yes.
10. No.
11. Does not arise.
12. Rs. 1,500 for pre-empting and Rs. 1,500 as compensation for improvements.
13. Yes.
14. Does not arise.
15. Yes.

In the result, I enter judgment for plaintiff as prayed for with costs payable by the 2nd defendant. This amount of Rs. 1,500 should be deposited on or before 18–12–1950. If the plaintiff fails to do so her action will stand dismissed with costs payable to 2nd, 3rd and 4th defendants. If the plaintiff deposits the Rs. 1,500 on or before 18–12–50 the 2nd defendant will continue in possession till he is compensated in Rs. 1,500 and the deed in favour of the 3rd and 4th defendants will stand set aside.

Enter decree accordingly.

Sgd. P. SRI SKANDA RAJAH,
District Judge.
28–11–50.

No. 9. Judgment of the District Court. 28-11-50. —*continued.*

Judgment delivered in open Court in the presence of Proctors for plaintiff and 3rd and 4th defendants and plaintiff and 2nd and 3rd defendants.

Decree on 5-12-50.

Sgd. P. SRI SKANDA RAJAH,
D. J.
28-11-50.

No. 10. Decree of the District Court. 28-11-50.

No. 10.

Decree of the District Court.

Decree

IN THE DISTRICT COURT OF POINT PEDRO HELD AT CHAVAKACHCHERI

MANGALESWARI, daughter of Veluppillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff.*

No. 315/L. *Vs.*

(1) VELUPPILLAI SELVADURAI of Karaveddy,

(2) VEERAGATHTHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM, and wife

(4) SINNATHANGAM of Chavakachcheri ..... *Defendants.*

This action coming on for final disposal before P. Sri Skanda Rajah, Esq., District Judge, Chavakachcheri, on the 28th day of November, 1950, in the presence of Mr. Adv. K. K. Subramaniam, instructed by Mr. S. K. Thiraviyanayagam, Proctor, on the part of the plaintiff, and the 1st defendant being absent and unrepresented although he was duly served with summons together with copy of plaint, and of Mr. C. R. Thambiah, Proctor, on the part of the 2nd defendant, and of Mr. V. Canagasabai, Proctor, on the part of the 3rd and 4th defendants.

It is ordered and decreed that the transfer Deed No. 15,268 dated the 11th day of September, 1937, and attested by V. Sabaratnam, Notary Public, and granted by the 1st defendant in favour of the 2nd defendant be and the same is hereby set aside.

No. 10. Decree of the District Court. 28-11-50. —*continued.*

It is further ordered and decreed that the 1st defendant do execute a deed of transfer in favour of the plaintiff for the undivided one-half ($\frac{1}{2}$) share of the piece of land situated at Chavakachcheri called " Kaddukkarny ", in extent 11 lachams varagu culture and 9 15/16 kulies and more fully described in the Schedule hereto, on a day to be fixed by Court on the plaintiff depositing a sum of Rs. 1,500 in Court, being the market value of the said undivided half-share sought to be pre-empted on or before the 18th day of December, 1950, and that in the event of the 1st defendant failing to execute the said transfer on or before a day fixed by Court, the Court do execute such conveyance in favour of the plaintiff.

It is further ordered and decreed that if the plaintiff fails to deposit the said sum of Rs. 1,500 on or before the 18th day of December, 1950 the plaintiff's action will stand dismissed with costs payable by her to the 2nd, 3rd and 4th defendants.

It is further ordered and decreed that if the plaintiff deposits the said sum of Rs. 1,500 the 2nd defendant will continue in possession of the said undivided one half share of the land described in the said Schedule till the 2nd defendant is compensated in a sum of Rs. 1,500 and the deed No. 10610 dated 19th August, 1947 attested by V. S. Karthigesu, Notary Public, granted by the 2nd defendant, in favour of the 3rd and 4th defendants be and the same is also hereby set aside.

And it is further ordered that the 2nd defendant do pay to the plaintiff her costs of this action as taxed by the Officer of this Court.

The Schedule referred to above :

Land situated at Chavakachcheri, in the Parish of Chavakachcheri, in the division of Thenmaradchy, in the District of Jaffna, Northern Province, called " Kaddukkarny ", in extent 11 lachams varagu culture and 9 15/16 kulies and represented by lot 4 in plan dated the 21st day of April, 1928, and prepared by Mr. P. Ponniah, Licensed Surveyor, and filed of record in case No. 22,673 of the District Court of Jaffna ; and bounded on the east by road, north by the property of Sinnammah, widow of Sellar, west by road, and on the south by the property of the heirs of the late Kanthar Vallipuram and registered in F 180/256 in the Jaffna District Land Registry.

The 28th day of November, 1950.

Sgd. P. SRI SKANDA RAJAH,
District Judge.

No. 11.. Petition of Appeal to the Supreme Court. 7-12-50.

No. 11.

Petition of Appeal to the Supreme Court.

IN THE DISTRICT COURT OF CHAVAKACHCHERI

MANGALESWARI, daughter of Veluppillai Selvadurai of Karaveddy a minor appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff.*

No. 315/Pre-emption. *Vs.*

(1) VELUPPILLAI SELVADURAI of Karaveddy,

(2) VEERAGATHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM and wife

(4) SINNATHANGAM, both of ditto ..... *Defendants.*

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

VEERAGATHIAR RAMALINGAM of Chavakachcheri

..... *2nd Defendant-Appellant.*

D.C. (F) 21L/451.

(1) MANGALESWARI, daughter of Velupillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri, (plaintiff),

(2) VELUPPILLAI SELVADURAI of ditto (1st defendant),

(3) VALLIPURAM SUBRAMANIAM (3rd defendant), and wife

(4) SINNATHANGAM, both of Chavakachcheri (4th defendant)... *Respondents.*

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

This 7th day of December, 1950 :

The humble petition of Appeal of the 2nd Defendant-Appellant appearing by his Proctor C. R. Thambiah states as follows :—

1. The 1st respondent (plaintiff) a minor instituted the above action for pre-empting a half share of a piece of land called " Kaddukkarny ", situated at

Chavakacheheri, in extent 11 lachams varagu culture and 9 5/16 kulies sold by her father the 2nd respondent (1st defendant) to the appellant (2nd defendant) by Deed No. 15,268 dated September 11th, 1937 (2D 2), alleging that she was neither given notice of the said sale, nor was aware of the same. The 1st respondent (plaintiff) also alleged that the appellant (2nd defendant) had sold an undivided one-half share of an extent of 6 lachams (portion east of the Railway line of lot 4 in 2D 1) to the 4th respondent (4th defendant) treating the said extent of 6 lachams varagu culture as a divided extent on Deed No. 10,610 dated August 19th, 1947 (2D 9). The 1st respondent also prayed in her plaint that (*a*) Deed 2D 2 be set aside, (*b*) the appellant be ordered to execute a deed of transfer in favour of the 1st respondent on payment into Court a sum of Rs. 1,500 (value mentioned in 2D 2), or any other reasonable sum, which the Court might fix, and (*c*) on failure of the appellant to execute the deed, the Court to execute the said deed and for costs.

2. The appellant filed answer stating that the 1st respondent was and is still a minor, having no funds of her own to purchase the said share, that her natural guardian her father the 2nd respondent with whom she lived and is living at the moment, was aware of the said sale, as he was the vendor on 2D 2, that the half-share sold by 2D 2 was a sale to pay off a debt that was due and owing from the 2nd respondent and his late wife Ratnam (parents of the 1st respondent) on a note made by both of them, that the appellant had improved the said land by filling up and raising the level of it and erecting buildings at a cost of about Rs. 3,000, that this action was filed maliciously by the 1st respondent having been set up by her father the 2nd respondent, and that the action was barred by prescription and prayed for a dismissal of the plaintiff's action or in the alternative if the Court held that the 1st respondent was entitled to pre-empt, to order her to deposit Rs. 10,500 as market value and for costs.

3. The said case came up for trial on the 21st November, 1950, and the following issues were framed at the trial :—

(*a*) Was the 1st defendant the plaintiff's father the natural guardian of the plaintiff ?

(*b*) If so, was the 1st defendant aware of the sale of half-share of the land mentioned in paragraph 3 of the plaint, to the 2nd defendant?

(*c*) If issue No. 2 is answered in the affirmative, is the action barred by prescription ?

(*d*) Was the plaintiff herself aware of the sale by the 1st defendant to the 2nd defendant ?

(*e*) Was the half-share of the land mentioned in the Schedule to the plaint, sold to pay off debts incurred by the 1st defendant and his late wife Ratnam ?

No. 11.
Petition of Appeal to the Supreme Court.
7-12-50.
—*continued.*

(*f*) If so, can the plaintiff maintain this action against the 2nd defendant a *bona fide* purchaser for value ?

(*g*) Has the 2nd defendant improved the land by erecting buildings ?

(*h*) What is the present value of the half-share of the land with the improvements ?

(*i*) Is the plaintiff a *bona fide* pre-emptor having funds to pay for the purchase of the half-share ?

(*j*) Is the action instituted maliciously and collusively at the instigation of a 3rd party ?

(*k*) If so, can the plaintiff maintain this action for pre-emption ? 10

(*l*) What amount is payable to the 2nd defendant in the event of the plaintiff succeeding ?

(*m*) Is the 2nd defendant a *bona fide* possessor ?

(*n*) If not is 2nd defendant entitled to compensation for improvements ?

(*o*) In any event is the plaintiff entitled to pre-empt the share sold by the 1st defendant to the 2nd defendant ?

4. After hearing, the learned District Judge, entered judgment on the 28th November, 1950, in favour of the plaintiff as prayed for with costs, and further made order that a sum of Rs. 1,500 to be deposited by the plaintiff on or 20 before the 18th December, 1950, and that the 2nd defendant to continue in possession till he was compensated in a further sum of Rs. 1,500.

5. Being dis-satisfied with the judgment of the learned District Judge the appellant (2nd defendant) begs to appeal therefrom to Your Lordships' Court on the following among other points of law and facts which may be urged by Counsel at the hearing of this appeal :

(*a*) The judgment is contrary to law and the weight of evidence adduced at the trial.

(*b*) The most important issue which concludes the case is whether the 2nd respondent, he being the natural guardian of the 1st 30 respondent and the vendor on 2D 2 to the appellant, could be said to be not aware of the sale, for the learned District Judge has answered the issue " no " in the sense that his interests were adverse to the 1st respondent, as he himself was the vendor. It is submitted that the 2nd respondent, has acted in the best

interests of his minor daughter (1st respondent) for had he allowed the creditor to sue upon the promissory note made by him and his late wife, and realise the amount by sale, the entire property inclusive of the half-share which belongs to the 1st respondent would have been sold up, and the retention of her share which is the spring board from which she makes her claim to pre-empt today, would have been denied to her.

It is submitted that it would be sufficient in the eyes of the law, to prove that the natural guardian of a minor was aware at the time of sale, of such a sale, and if the action to pre-empt was not availed of by the minor within 3 years of such sale, then such minor is debarred from filing action thereafter to pre-empt. 2D 8 clearly proves that the 2nd respondent acted both as her natural guardian and manager of her properties.

(*c*) The learned District Judge makes a point that the appellant as he had knowledge of the plaintiff's rights to a half-share, cannot be considered a *bona fide* purchaser because he and the 2nd respondent are children of two sisters and that the appellant was the manager of a mill in which the 2nd respondent was employed as a worker. It is submitted that, examining from the same angle, these very facts strengthen the position of the appellant as a *bona fide* purchaser, for he should have been equally well credited with knowledge, that the 1st respondent (minor) had no means to buy, and that the father, the 2nd respondent was selling up his share on account of poverty to pay up a debt due from him and the 1st respondent (minor) as heir of her mother Ratnam, and that it was very safe to make a purchase, with the further knowledge, that the natural guardian was aware of the sale.

(*d*) The learned District Judge very rightly rejects the evidence of the 1st respondent (plaintiff) as an invention on the point of her mother Ratnam paying into the hands of the next friend of the minor plaintiff before she died, for safe custody a sum of Rs. 1,000. The 1st respondent has said in her evidence, that the balance sum of Rs. 500 would be found by her next friend. The two versions are packed with falsehood and it is clear that the 1st respondent (plaintiff) is not a *bona fide* pre-emptor and that the present action is filed in collusion with the 2nd respondent her father and Ambalam Kandiah on a speculative basis to cause loss to the appellant.

(*e*) The compensation awarded for improvements is too small and upon the evidence a larger sum should have been allowed.

No. 11. Petition of Appeal to the Supreme Court. 7-12-50. —*continued.*

Wherefore the appellant prays that Your Lordships' Court may be pleased to set aside the judgment and decree of the Court below with costs and make such other order as to Your Lordships' Court shall seem meet.

Sgd. C. R. THAMBIAH,
Proctor for Appellant.

No. 12. Judgment of the Supreme Court. 25-6-52.

No. 12.

Judgment of the Supreme Court.

D.C. (F) 21 *L./D.C., Chavakachcheri, No.* 315.

MANGALESWARI, daughter of Velupillai Selvadurai, a minor by her next friend Sinnammah ..... *Plaintiff-Respondent.*

VELUPILLAI SELVADURAI, 1st defendant-respondent and 3rd and 4th defendants-respondents,

VEERAGATHIAR RAMALINGAM ..... *2nd Defendant-Appellant.*

Present : GRATIAEN, J. & GUNASEKERA, J.

H. W. THAMBIAH & C. MANOHARA, for 2nd Defendant-Appellant.

N. E. WEERASOORIYA, Q.C., with C. RENGANATHAN and K. BALASUNDARAM, for Plaintiff-Respondent.

Argued : 16th May, 1952.
Decided : 25th June, 1952.

GUNASEKERA, J.—

The second defendant appeals against the judgment given for the plaintiff in this action to enforce a right of pre-emption under the *Thesavalamai*. The plaintiff and her father the first defendant were co-owners of a piece of land which they had inherited in equal shares under her mother's Last Will in 1935. The subject of the action is the share inherited by the first defendant. This he mortgaged in July, 1936, as security for a debt of Rs. 1,000 and in September, 1937, sold to the second defendant for Rs. 1,500. The mortgage bond which was discharged on the occasion of the sale, describes the debt of Rs. 1,000 as being made up of a sum of Rs. 860 due from the first defendant and his wife (the plaintiff's mother) on a promissory note of April, 1933, and a further sum of Rs. 140 borrowed by him later. A fraction of the share bought by the second defendant was sold in August, 1947, to the fourth defendant who is the wife of the third. The learned District Judge holds that the plaintiff was entitled to notice of the sale to the second defendant but had no notice of it, and he has

accordingly made order setting aside the two deeds of sale and directing that the half share in question should be conveyed to the plaintiff for Rs. 1,500, which he holds was its market value. A condition of the order, that the plaintiff should deposit this sum in Court on or before the 18th December, 1950, has been complied with. The learned Judge has also awarded to the second defendant a sum of Rs. 1,500 as compensation for improvements made by him as a *bona fide* possessor, and this sum too has been deposited in Court by the plaintiff.

The plaintiff, who was born in 1930, and was still a minor when this action was instituted in August, 1950, was only seven years old at the time of the sale to the second defendant. It is contended in support of the appeal that her natural guardian, who was the first defendant, was necessarily aware of the sale to the second defendant and that in any event she had no sufficient means to pre-empt the share, and that therefore she is not entitled to have the sale set aside on the ground of want of notice.

The second defendant averred in his answer that " the plaintiff had and has no means to buy the share sought to be pre-empted ", and one of the issues tried was as to whether the plaintiff was "a *bona fide* pre-emptor having funds to pay for the purchase of this half-share ". The learned Judge answered this issue in the affirmative for the reason that she " may still be able to find the funds to pre-empt this share by mortgaging her own share ", which he finds has appreciated in value. He holds that it " may be that she has been put up by the first defendant to file this action because the price of lands now is high ". The event proved that she was able to raise the necessary funds by the 18th December, 1950, but it seems to be clear from the evidence that her estate was insufficient for the purpose at the time of the sale by the first defendant to the second in 1937. Her father, the first defendant, was a labourer employed at a mill, and it is unlikely that this seven year old daughter was possessed of any property other than the half-share of this piece of land that she had inherited from her mother. According to her own evidence, she had no other landed property but she had been told by Sinnammah, her next friend in this action, that her mother had entrusted to Sinnammah a sum of Rs. 1,000 in cash to be held for her. Sinnammah herself did not give evidence and there is no evidence from any other source to prove the truth of the information that she is alleged to have given the plaintiff. The learned Judge's own view is that " it is likely that the story that the next friend has Rs. 1,000 entrusted to her by the plaintiff's mother is an invention."

As it appears that the plaintiff had no sufficient means to pre-empt the share in 1937 it is immaterial whether she had notice of the first defendant's intention to sell it. As was observed by my brother Gratiaen in the case of *Velupillai vs. Pulendra et al.*1 " it is fundamental to the cause of action such as is alleged to have arisen in this case that the pre-emptor should establish by positive proof that, had he in fact received the requisite notice, he would and could have purchased the property himself within a reasonable time rather than permit it to be sold to a stranger."

No. 12. Judgment of the Supreme Court. 25-6-52. —*continued.*

I would allow the appeal and dismiss the plaintiff's action with costs in this Court and the Court below.

Sgd. E. H. T. GUNASEKERA,
Puisne Justice.

1. S. C. 462, D. C. Vavuniya 831;
Supreme Court Minutes of 26-7-51.

GRATIAEN, J.—I agree.

Sgd. E. F. N. GRATIAEN,
Puisne Justice.

No. 13. Decree of the Supreme Court. 25-6-52.

No. 13.

Decree of the Supreme Court.

ELIZABETH THE SECOND, QUEEN OF CEYLON.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

V. RAMALINGAM of Chavakachcheri ..... *2nd Defendant-Appellant.*

Vs.

MANGALESWARI, daughter of Veluppillai Selvadurai of Karaveddy, a minor appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff-Respondent.*

V. SELVADURAI of ditto and others of Chavakachcheri ..... *Defendants-Respondents.*

Action No. 315. District Court of Chavakachcheri.

This cause coming on for hearing and determination on the 16th May and 25th day of June, 1952, and on this day, upon an appeal preferred by the 2nd defendant-appellant, before the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice and the Hon. Mr. E. H. T. Gunasekera, Puisne Justice of this Court, in the presence of Counsel for the 2nd defendant-appellant and plaintiff-respondent.

It is considered and adjudged that this appeal be and the same is hereby allowed and plaintiff's action is dismissed with costs in this Court and the Court below.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q. C., Chief Justice, at Colombo, the 30th day of June, in the year of our Lord One Thousand Nine Hundred and Fifty Two, and of Our Reign the First.

Sgd. W. G. WOUTERSZ
Dy. Registrar, S. C.

No. 14.

No. 14. Application for Conditional Leave to Appeal to the Privy Council. 22-7-52.

Application for Conditional Leave to Appeal to the Privy Council.

IN THE DISTRICT COURT OF CHAVAKACHCHERI

MANGALESWARI, daughter of Velupillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff.*

No. 315/Pre-emption. *Vs.*

(1) VELUPILLAI SELVADURAI of Karaveddy,

(2) VEERAGATHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM, and wife

(4) SINNATANGAM, both of ditto ..... *Defendants*

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

S.C. No. 21/L.
D.C., Chavakachcheri
No. 315—Pre-emption.

In the matter of an application for conditional leave to appeal to Her Majesty the Queen in Council.

MANGALESWARI, daughter of Velupillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff-Appellant.*

Vs.

(1) VELUPILLAI SELVADURAI of Karaveddy,

(2) VEERAGATHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM and wife

(4) SINNATANGAM, both of Chavakachcheri... *1st-4th Defendants-Respondents.*

On this 22nd day of July, 1952.

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON,

No. 14. Application for Conditional Leave to Appeal to the Privy Council. 22-7-52. —*continued.*

The humble petition of the plaintiff-appellant abovenamed appearing by Rasapillai Namasivayam, practising under the name, style and firm of Kanagasundaram and Namasivayam and his assistant Muthucumaran Ranganathan, her Proctors, states as follows :—

(1) That feeling aggrieved by the judgment and decree of this Honourable Court in the above styled action pronounced on 26th June, 1952, the plaintiff-appellant is desirous of appealing therefrom to Her Majesty the Queen in Council.

(2) That the said judgment is a final judgment.

(3) That the appeal involves directly or indirectly a claim or question to or respecting property or a civil right of the value of a sum exceeding Rupees Five Thousand (Rs. 5,000).

(4) That the petitioner has given due notice to the respondents abovenamed of her intention to make this application.

Wherefore the petitioner prays for conditional leave to appeal to Her Majesty the Queen in Council against the said judgment of this Court, dated 26th June, 1952, and for such other and further relief as to this Court shall seem meet.

KANAGASUNDARAM & NAMASIVAYAM,
Proctors for Plaintiff-Appellant.

DOCUMENTS FILED WITH THE PETITION :

(1) Appointment of Proctors.
(2) Affidavit of Petitioner.

KANAGASUNDARAM & NAMASIVAYAM,
Proctors for Plaintiff-Appellant.

No. 15.

No. 15. Decree Granting Conditional Leave to Appeal to the Privy Council. 9-9-52.

Decree Granting Conditional Leave to Appeal to the Privy Council.

ELIZABETH THE SECOND, QUEEN OF CEYLON

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

MANGALESWARI, daughter of Velupillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff-Appellant.*

No. 15. Decree Granting Conditional Leave to Appeal to the Privy Council. 9-9-52. —*continued.*

Against

(1) VELUPILLAI SELVADURAI of Karaveddy,

(2) VEERAGATHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM and wife

(4) SINNATANGAM, both of Chavakachcheri. . . *1st-4th Defendants-Respondents.*

Action No. 315/Pre-emption. (S.C. 21).

District Court of Chavakachcheri.

In the matter of an application dated 23rd July, 1952, for Conditional Leave to Appeal to Her Majesty the Queen in Council, by the plaintiff-appellant above-named, against the decree dated 26th June, 1952.

This matter coming on for hearing and determination on the 9th day of September, 1952, before the Hon. Sir Alan Edward Percival Rose, KT., Q.C., Chief Justice, and the Hon. Mr. E. H. T. Gunasekera, Puisne Justice of this Court, in the presence of Counsel for the petitioner, and there being no appearance for the respondents.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :—

(1) Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 and hypothecate the same by bond or such other security as the Court in terms of Section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

(2) Deposit in terms of provisions of Section 8 (*a*) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300 in respect of fees mentioned in Section 4 (*b*) and (*c*) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon. for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Sir Alan Edward Percival Rose, KT., Q.C., Chief Justice, at Colombo, the 15th day of September, in the year of our Lord One thousand Nine hundred and Fifty-two, and of Our Reign the First.

Sgd. W. G. WOUTERSZ.
Deputy Registrar, S.C.

No. 16. Application for Final Leave to Appeal to the Privy Council. 7-10-52.

No. 16.

Application for Final Leave to Appeal to the Privy Council.

In the matter of an application for Leave to Appeal under the Provisions of the Appeals (Privy Council) Ordinance Chap. 85.

MANGALESWARI, daughter of Velupillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff.*

Vs.

(1) VELUPILLAI SELVADURAI of Karaveddy,

(2) VEERAGATHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM and wife

(4) SINNATANGAM, both of Chavakachcheri ..... *Defendants.*

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

S.C. No. 21-L.
D.C., Chavakachcheri, No. 315—Pre-emption.

In the matter of an application for Final Leave to Appeal to Her Majesty the Queen in Council.

MANGALESWARI, daughter of Velupillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff-Appellant.*

Vs.

(1) VELUPILLAI SELVADURAI of Karaveddy,

(2) VEERAGATHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM and wife

(4) SINNATANGAM, both of Chavakachcheri... 1*st*-4*th Defendants-Respondents.*

On this 7th day of October, 1952.

The petition of the plaintiff-appellant abovenamed appearing by Rasapillai Namasivayam, practising under the name, style and firm of Kanagasundaram & Namasivayam and his assistant Muthucumaran Ranganathan, her Proctors, states as follows ;—

No. 16. Application for Final Leave to Appeal to the Privy Council. 7-10-52. —*continued.*

1. That the plaintiff-appellant on the 9th day of September, 1952, obtained Conditional Leave from this Honourable Court to appeal to Her Majesty the Queen in Council against the judgment of this Court pronounced on the 26th June, 1952.

2. That in order granting Conditional Leave to Appeal no conditions were imposed under Rule 3 (*b*) of the Schedule Rule of the Appeals (Privy Council) Ordinance Chapter 85 other than the usual conditions.

3. That the plaintiff-appellant has :—

(*a*) On the 4th day of October, 1952, deposited with the Acting Registrar of this Court the sum of Rs. 3,000 being the security for costs of appeal under Rule 3 (*a*) of the Schedule Rules and hypothecated the said sum of Rs. 3,000 by bond dated 6th October, 1952, for the due prosecution of the appeal and the payment of all costs that may become payable to the defendant appellant not obtaining an order granting her final leave to appeal or of this appeal being dismissed for non-prosecution or of Her Majesty the Queen in Council ordering the plaintiff-appellant to pay the defendants-respondents costs of appeal ; and

(*b*) On the 4th day of October, 1952, deposited the sum of Rs. 300 in respect of the amounting fees as required by paragraph 3 (*a*) of the Appellate Procedure (Privy Council) Order, 1921, made under Section 4 (1) of the aforesaid Ordinance.

Wherefore the plaintiff-appellant prays that she be granted Final Leave to appeal against the said judgment of this Honourable Court dated 26th June, 1952, to Her Majesty the Queen in Council.

KANAGASUNDARAM & NAMASIVAYAM,
Proctors for Plaintiff-Appellant.

No. 17.

No. 17. Decree Granting Final Leave to Appeal to the Privy Council. 29-10-52.

Decree Granting Final Leave to Appeal to the Privy Council.

ELIZABETH THE SECOND, QUEEN OF CEYLON

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

MANGALESWARI, daughter of Velupillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnammah, widow of Sellar of Chavakachcheri ..... *Plaintiff-Appellant,*

No. 17. Decree Granting Final Leave to Appeal to the Privy Council. 29-10-52. —*continued.*

Against

(1) VELUPILLAI SELVADURAI of Karaveddy,

(2) VEERAGATHIAR RAMALINGAM of Chavakachcheri,

(3) VALLIPURAM SUBRAMANIAM and wife

(4) SINNATANGAM, both of Chavakachcheri . . . 1*st-4th Defendants-Respondents.*

Action No. 315/Pre-emption (S.C. No. 21) — District Court of Chavakachcheri

In the matter of an application by the plaintiff above-named dated 8th October, 1952, for Final Leave to Appeal to Her Majesty the Queen in Council against the decree of this Court dated 26th June, 1952.

This matter coming on for hearing and determination on the 29th day of October, 1952, before the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice, and the Hon. Mr. V. L. St. C. Swan, Puisne Justice of this Court, in the presence of Counsel for the applicant and respondents.

The applicant having complied with the conditions imposed in him by the order of this Court dated 9th September, 1952, granting Conditional Leave to Appeal.

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

Witness the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice, at Colombo, the 4th day of November, in the year of our Lord One thousand Nine hundred and Fifty-two, and of Our Reign the First.

Sgd. W. G. WOUTERSZ,
Deputy Registrar, S.C.

PART II.

EXHIBITS.

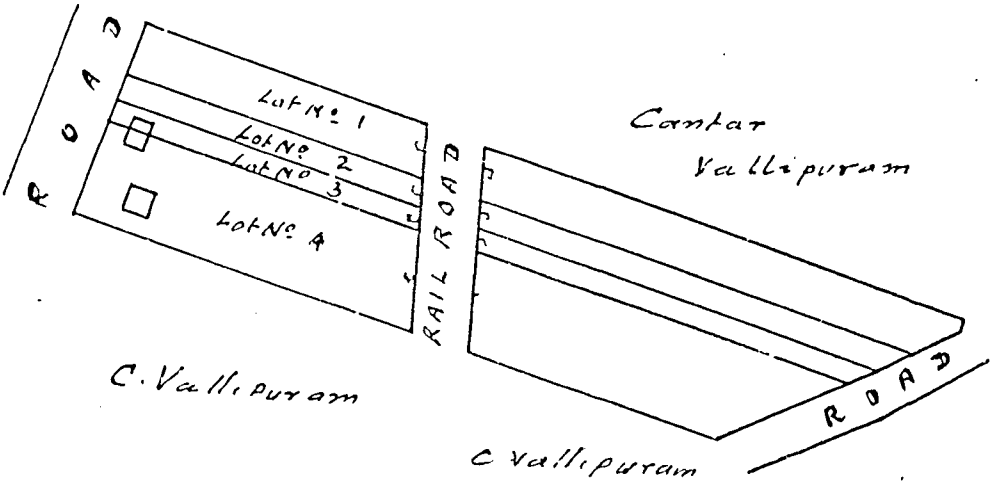
Exhibits.

2 D1.
Plan No.
22673.
21-4-28.

2 D1.

Plan No. 22673. No. 22673 D.C.J.

V.Cumaraswamy



Scale 2 Chains to an Inch.

PLAN OF A PIECE OF LAND CALLED KADDUKKANY SITUATE AT THE VILLAGE OF CHAVAKACHCHERY THENMARADCHY DIVISION, JAFFNA DISTRICT, N.P.

Lot No.	1	Containing in extent		7	Lms.	(V.C.)	9 15/16	Kls.
,, ,,	2	,,	,, ,,	3	,,	(V.C.)	9 15/16	,,
,, ,,	3	,,	,, ,,	2	,,	(V.C.)	9 3/16	,,
,, ,,	4	,,	,, ,,	11	,,	(V.C.)	9 15/16	,,
				25	Lms.	(V.C,)	3	Kls

True Copy
Sgd. K. A. Alvapillai
Secretary.
24. 2.

Chavakachcheri, 21.4.1928.

Sgd. P. Ponniah
Licensed Surveyor

Exhibits.

P 1-
Decree in
D.C. Jaffna
Case No.
22673.
18-6-28.

P 1.

Decree in D.C., Jaffna, Case No. 22,673.

Final Partition Decree

IN THE DISTRICT COURT OF JAFFNA

INNAMMAH, wife of Sellar of Chavakachcheri South ..... *Plaintiff.*

No. 22,673. *Vs.*

(1) VELUPILLAI AIYATHURAI of Amman Kovilady, Suthumalai,

(2) VELUPPILLAI VALLIPURAM of Chavakachcheri,

(3) RATNAM, daughter of Nagalingam, appearing by G. A. L. Murugesu Nagalingam cf ditto, 10

(4) KARTHIGAYAR CHELLAR of Vannarponnai West ..... *Defendants.*

This action coming on for disposal before J. C. W. Rock, Esquire District, Judge, on this 18th day of June, 1928, in the presence of Mr. V. Canagaratnam, Proctor, on the part of the plaintiff and the defendants being represented by Mr. P. K. Somasunderam, Proctor :

It is ordered and decreed that of the land situated at Chavakachcheri called " Kaddukkany ", in extent 25 lachams varagu culture and 3 kulies with its appurtenances including houses ; and bounded on the east by road, on the north by the property of V. Kumaraswamy and Kanthar Vallipuram, on the west by road, and on the south by the property of C. Vallipuram, and described 20 by lots marked 1, 2, 3 and 4 in the survey plan dated the 21st day of April, 1928, and prepared by Mr. P. Ponniah, Licensed Surveyor and Commissioner appointed by this Court to partition the said land and filed of record in this case :

(1) The lot marked 1 in extent 7 lachams varagu culture and 9 15/16 kulies with its appurtenances ; and bounded on the east by road, on the north by the property of Kanthar Vallipuram and Vannithamby Kumaraswamy, on the west by road, and on the south by lot No. 2 be and the same is hereby declared to be the absolute property of the 2nd defendant.

Exhibits.

P 1.
Decree in D.C. Jaffna Case No. 22673. 18-6-28
—*continued*

(2) The lot marked 2 in extent 3 lachams varagu culture and 9 15/16 kulies with its appurtenance ; and bounded on the east by road, on the north by lot No. 1, on the west by road, and on the south by lot No. 3 be and the same is hereby declared to be the absolute property of the 1st defendant.

(3) The lot marked 3 in extent 2 lachams varagu culture and 9 3/16 kulies with its appurtenances excluding a portion of the *Thalaivasal* abutting into the lot ; and bounded on the east by road, on the north by lot 2, on the west by road, and on the south by lot No. 4, be and the same is hereby declared to be the absolute property of the plaintiff ; and it is further ordered that the 3rd defendant do remove the portion of *Thalaivasal* abutting into the lot.

(4) The lot marked 4 in extent 11 lachams varagu culture and 9 5/16 kulies with its appurtenances including the exclusive right to the buildings save the portion of *Thalaivasal* abutting into lot 3 ; and bounded on the east by road, on the north by lot 3, on the west by road, and on the south by property of C. Vallipuram, be and the same is hereby declared to be the absolute property of the 3rd defendant.

It is further decreed that to adjust the difference in the value of the appurtenances in the respective lots of the said land allotted to the parties as aforesaid the 3rd defendant do pay to the plaintiff Rs. 14.42, to the 2nd defendant Rs. 161.30, and to the 1st defendant Rs. 64.48.

It is further decreed that the costs of this action and of partition be borne by the parties in proportion to their shares in the said land.

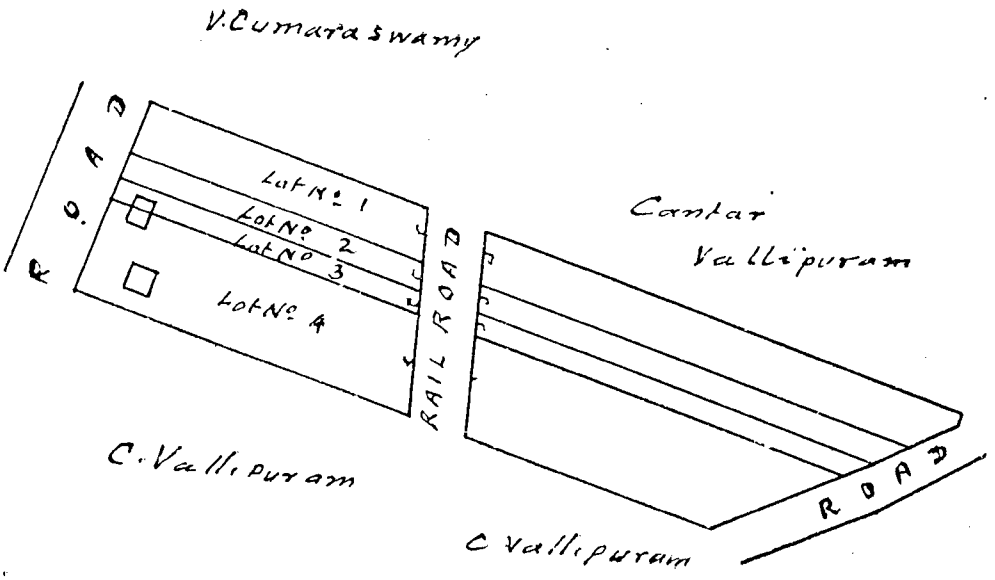
The 18th day of June, 1928.

Sgd. J. C. W. ROCK,
District Judge.

Exhibits.

P 1.
Decree in
D.C. Jaffna
Case No.
22673.
18-6-28.
—*continued*-

No. 22673 D. C. J.



True Copy Annexed to Certified Copy of Decree in Case No. 22673
Sgd. T. Sivasubramaniam.

Scale 2 Chains to an Inch

PLAN OF A PIECE OF LAND CALLED KADDUKKANY SITUATE AT THE VILLAGE OF CHAVAKACHCHERI THENMARADCHY DIVISION IN THE DISTRICT OF JAFFNA NORTHERN PROVINCE

Lot No.	1	Containing in Extent			7	Lms.	(V.C.) &	9	15/16 Kls
,, ,,	2	,,	,,	,,	3	,,	(V.C.) ,,	9	15/16 ,,
,, ,,	3	,,	,,	,,	2	,,	(V.C.) ,,	9	3/16 ,,
,, ,,	4	,,	,,	,,	11	,,	(V.C.) ,,	9	15/16 ,,
					25	Lms.	(V.C.) ,,	3.	Kls

Chavakachcheri
21-4-1928

Sgd. J. Ponniah
Licensed Surveyor.

True Copy.
Sgd. J. D. Veerasingham
Licensed Surveyor,
22-3-50

Exhibits.

2D 3.
Mortgage Bond No. 25,454
21-7-36.

2D 3.

Mortgage Bond No. 25,454.

2D 3

TRANSLATION

Mortgage : Rs. 1,000.
Land : 1.
Receipt granted : 15,267/11-9-37.

Registered F. 180/256
Jaffna, 29th July, 1936

Sgd. D. WALTON,
R. L.

No. 25,454

I, Veluppillai Sellathurai of Chavakachcheri, do execute mortgage bond in favour of Kanapathiyar Muttu of Karaveddy North.

A sum of Rs. 860 is due to him for principal and interest on promissory note granted by me and my wife the late Ratnam in his favour on the 26th day of April, 1933, I now borrowed from him Rs. 140 making a total sum of Rs. 1,000. I promise to pay him on demand the sum of Rs. 1,000 with interest thereon at 12 per cent. per annum but at ten per cent. per annum in the event of the interest being paid yearly and for security the payment thereof mortgage the property described in the following schedule :

In witness whereof I set my signature hereto in the Notary's office at Chavakachcheri.

The 20th day of July, 1936.

Schedule of Property.

The property that was allotted to my wife Ratnam by the decree in partition case No. 22,673 of the District Court of Jaffna, dated the 18th June, 1928, and described in the Inventory filed in the Last Will Case No. 8,612 of the District Court of Jaffna and devolved on me by the Last Will, situated at Chavakachcheri, in the Parish of Chavakachcheri, in the division of Thenmaradchy, in the District of Jaffna, Northern Province called " Kaddukkany ", in extent 25 lachams varagu culture and 3 kulies. Of which the lot represented by No. 4 in the survey plan in the said case No. 22,673, in extent 11 lachams varagu culture and 9 15/16

Exhibits.

2D 3. Mortgage Bond No. 25,454 21-7-36. —*continued.*

kulies ; and bounded on the east by road, north by the property of Sinnammah, wife of Sellar, west by road and south by property of Kanthar Vallipuram. Of the whole of the land with coconut, jak and mango trees and other plantations, and house and well contained within these boundaries an undivided one-half share.

Sgd. V. SELLATHURAI.

Witnesses :

(1) Sgd. V. MURUGESU,
Vairamuttu Murugesu of Chavakachcheri.

(2) ,, E. CHELLIAH,
Eramu Chelliah of ditto.

Sgd. S. CANTHAR,
Notary Public.

I, Sinnathamby Kanthar, Notary Public of the division of Thenmaradchy, Pachilappali, Jaffna, do hereby attest and certify that I read over and explained the foregoing instrument to the said Veluppillai Sellathurai in the presence of the subscribed witnesses Vairamuttu Murugesu and Eramu Chelliah of Chavakachcheri, that they are well known to me that the said Sellathurai and the witnesses set their signatures at the same time in my presence and in the presence of each of them on the 21st July, 1936, in my office at Chavakachcheri, that of the consideration of Rs. 1,000 a sum of Rs. 140 which is said to have been now paid was paid in my presence that the duplicate hereof bears a stamp of the value of Rs. 10 and the original one stamp of the value of Re. 1 and that before this deed was read over and explained "சி" was corrected in line 31 on the 1st page of the original.

Attested : 21st July, 1936.

Sgd. S. KANTHAR,
Notary Public.

Translated by :

Sgd. R. VELUPPILLAI,
Sworn Translator.

Exhibits.

2D 2.
Deed of Transfer No. 15,268
11-9-37.

2D 2.

Deed of Transfer No. 15,268.

2D 2

TRANSLATION

Document : Transfer.
Land : 1.
Value : Rs. 1,500.

Prior Registration.
Jaffna, F. 180/256.
Registered F. 186/256.
Jaffna, October, 1937.

Sgd. D. WALTON,
R. L.

10

No. 15,268

Know all men by these presents that I, Veluppillai Sellathurai of Chavakachcheri, for and in consideration of Rs. 1,500 received from Veeragathiar Ramalingam of the same place do hereby transfer and deliver over unto the said Veeragathiar Ramalingam the property described in the following Schedule :—

The property described in the following schedule was allotted to my wife Ratnam by the Decree in the Partition Case No. 22,673 of the District Court of Jaffna, dated the 18th June, 1928, and described in the Inventory filed in the Last Will Case No. 8,612 of the District Court of Jaffna and devolved on me by
20 Last Will and possessed by me.

I do hereby declare that I have full right and power to transfer the property described in the following schedule that I shall clear any dispute, objection or claim that may arise therein that in the event of this deed becoming invalid on any ground or other, I shall execute another deed or writing in lieu of it if requested by the transferee that he and his heirs, administrators, executors and assigns shall have proper and full right and power to possess it as their own property from today and that I do transfer this property to pay off the debt due on the mortgage bond executed by me on the 20th July, 1936, in the presence of the Notary S. Kanthar, under No. 45,454 in favour of Kanapathippillai Muttu
30 of Karavaddy North.

In witness whereof I set my signature hereto and two otliers of the same tenor in the presence of the Notary Vairavanathar Sabaratnam, and of the undersigned witnesses on the 11th September, 1937, in the office of the said Notary at Polikandy.

Schedule of Property.

Land situated at Chavakachcheri in the Parish of Chavakachcheri, in the division of Thenmaradchy, in the District of Jaffna, Northern Province, called " Kaddukkany ", in extent 25 lachams varagu culture and 3 kulies of which the lot represented by No. 4 in survey plan filed in the said case No. 22,673 in extent

Exhibits.

2D 2.
Deed of Transfer No. 15,268.
11-9-37.
—*continued.*

11 lachams varagu culture and 9 15/16 kulies (rail road passes through this land) ; and bounded on the east by road, and the property of Kanthar Vallipuram, north by the property of Sinnammah, wife of Sellar, west by road, and south by the property of Kanthar Vallipuram and road. Of the whole of the land with cocoanut, jak, mango and margosa trees and other cultivated and other spontaneous plantations and houses and well contained within these boundaries an undivided half-share.

Sgd. V. SELLATHURAI.

Witnesses :

Sgd. K. MUTTU.
,, K. KATHIRGAMATHAMBY.

Sgd. V. SABARATNAM,
Notary.

I, Vyravanathar Sabaratnam, Notary Public of Vadamaradchy, in Jaffna, do hereby attest and certify that I read over and explained the foregoing instrument to the said Veluppillai Sellathurai in the presence of the subscribed witnesses Kanapathiar Muttu of Karaveddy North, and Kandiah Kathirgamathamby of Karaveddy North, that the executant and the witnesses are known to me that the executant and the witnesses set their signatures at the same time in my presence and in the presence of each of them in my office at Polikandy, on the 11th day of September, 1937, that the whole of the consideration was paid in my presence, that the duplicate hereof bears three stamps of the value of Rs. 23 and the original one stamp of the value of Re. 1, that the stamps were supplied by me and that before this deed was read over and explained by me the letter " " in the 30th line of the 1st page and the letter " " in the 6th lines of the 2nd page of the duplicate were corrected.

Sgd. V. SABARATNAM,
Notary Public.

Attested : 11th September, 1937.

Translated by :

Sgd. R. VELUPPILLAI,
Sworn Translator.

2D 2.
Deed of Transfer No. 15,268. 11-9-37. —*continued.*

Endorsement :

Out of the 6 lachams varagu culture on the east of the railway that passes through an undivided half transferred—10,610 of 19-8-47.

Sgd. V. S. KARTHIGESU,
N. P.

18,167/20-11-41—Mortgaged.

Sgd. K. S. SIVAGURU,
N. P.

Redeemed—6,723/1-2-43.

Redeemed.

Sgd. V. S. KARTHIGESU,
N. P.

2D 4.

Agreement.

2D 4.
Agreement 23-10-41.

2D 4

TRANSLATION

Chavakachcheri.
23rd of October, 1941.

I, Veeragaththiar Ramalingam of Chavakachcheri on the one part and Sinnammah, widow of Sellar of the same place on the other part do enter into the following contract. We do hereby declare that we shall of consent put up a stone wall of the dimensions of 27 feet in length, 18 feet in height and ½ foot in breadth on the nothern boundary of the 1st named person's land called "Kadduk-kany" and on the southern boundary of the 2nd named person's land called "Kaddukkany" that we shall place wall-plates thereon and put up houses in our respective lands that we shall pay the cost of building the said wall, viz., Rs. 180 in equal shares to Kanapathippillai Kandiah of Chavakachcheri and get the said wall built that in the event of making necessary repairs on the said wall, we or our heirs shall bear the expenses therefor equally and the miscellaneous repairs such as plastering, white-washing, etc., shall be done at our separate expenses and the rights in the said wall shall belong to us equally.

Sgd. V. RAMALINGAM.
,, S. SINNAMMAH.

Witnesses :
(1) K. KANDIAH.
(2) M. VAIRAMUTTU.

Translated qy :
Sgd. R:VELUPPILLAI,
Sworn Translator.

Exhibits.

2D 9.
Deed of Transfer No. 10,610.
19-8-47.

2D 9.

Deed of Transfer No. 10,610.

2D 9

TRANSLATION

Transfer.
Land : 1.
Rs. 2,500.

Prior Registration.
Jaffna, F. 180/256.
Registered F. 241/13.
Jaffna, Sept. 24th 1947

Sgd. K. DURAIAPPAH,
Registrar.

No. 10,610

I, Veeragathiar Ramalingam of Chavakachcheri, do execute and grant, transfer deed to Sinnathangam, wife of Subramaniam of the same place.

For and in consideration of the sum of Rupees Two thousand and Five hundred (Rs. 2,500) received from her husband the said Vallipuram Subramaniam who stated that it is her dowry money, I do hereby sell in transfer and convey unto the said Sinnathangam, wife of Subramaniam the land described in the schedule hereto and make endorsement in the title deed.

I do hereby declare that I have sold the land described in the schedule hereto, that it is not in any way encumbered or alienated, that I shall be responsible for any dispute arising thereto and deliver over possession thereof.

Schedule of Property :

Land belongs to me by right of purchase and possession as per transfer deed executed in my favour on the 11th September, 1937, in the presence of the Notary S. Sabaratnam under No. 15,268.

Land situated at Chavakachcheri in the Parish of Chavakachcheri, in the division of Thenmaradchy, in the District of Jaffna, Northern Province called " Kaddukkarni ", in extent 25 lachams varagu culture and 1 kuly. The extent of lot 4 in plan filed in case No. 22,673 D.C., Jaffna, is 11 lachams varagu culture and 9 15/16 kulies. Of this an extent of 6 lachams varagu culture on the east of the rail road that passes through this land ; is bounded on the east by road and the property of the heirs of Kanthar Vallipuram, north by the property of Sinnammah, wife of Chelliah, west by rail road, and south by the property of the heirs of Kanthar Vallipuram and road. The whole of the house built by me and standing on this land and an undivided half-share of the remaining land, palmyrahs, cocoanut trees, jak trees and other plantations.

Exhibits.

2D 9.
Deed of Transfer No. 10,610.
19-8-47.
—*continued.*

Witness hereto are Thambipillai Sinniah of Chavakachcheri and Muttu Rasiah of the same place. These being witnesses this deed was executed in the office of the Notary at Chavakachcheri, on this 19th day of August, One thousand Nine hundred and Forty-seven.

We the undersigned witnesses do hereby declare that we are well acquainted with the said executant and know well his proper name, residence and occupation.

Sgd. V. RAMALINGAM.

Witnesses :

(1) Sgd. T. SINNIAH.
(2) ,, M. RASIAH.

Sgd. V. S. KARTHIGESU,
Notary Public.

I, Vairamuttu Sithamparappillai Karthigesu, Notary Public, of the division that lie within the jurisdiction of the Courts of Point Pedro and Chavakachcheri, in the District of Jaffna, do hereby certify and attest that the foregoing instrument was read over and explained by me to the said Veeragathiar Ramalingam, in the presence of Thambipillai Sinniah of Chavakachcheri, and Muttu Rasiah of the same place, the subscribing witnesses hereto, that I know all of them, the same was signed by the said executant and the witnesses in my presence and in the presence of one another all being present at the same time in my office at Chavakachcheri, on the 19th August, 1947, that out of the consideration of Rs. 2,500 a sum of Rs. 1,575 was paid in my presence, and the balance was acknowledged to have been received, that the duplicate of this deed bears 5 stamps of the value of Rs. 39 and the original one of Re. 1.

Date of Attestation : 19th August, 1947.

Sgd. V. S. KARTHIGESU,
Notary Public.

(Seal)

Translated by me :
Sgd. M. SUBRAMANIAM,
S.T., D.C., Jaffna.

Exhibits.

2D 5.
Deed of Transfer No. 115. 26-10-47.

2D 5.

Deed of Transfer No. 115.

2D 5

Application No. 2169/16-11-50.
Duplicate copy bears one stamp : Value : Re. 1.
Transfer ; 1 land
Rs. 7,250.

No. 115

To all to whom these presents shall come, Murugesu Thiruchelvam and wife Punithavathy of Chavakachcheri presently of Wellawatte, hereinafter sometimes called and referred to as the vendors send greetings :

Whereas under and by virtue of a dowry donation deed No. 26875 dated the 9th day of April, 1938 and attested by C. Kanthar, Notary Public, the second named of the said vendors was seized and possessed of all that piece of land situated at Chavakachcheri called " Kaddukkany " in 28 lachams varagu culture but according to survey at present 24 lachams varagu culture and 8 kulies and depicted as lots 1, 2, 3, 4 and 5 in plan No. 2401 dated the 18th day of August, 1947, prepared by Mr. J. D. Veerasingham ,Licenced Surveyor.

And whereas the said vendors have already sold and transferred the lots 1, 2, 3 and 4 of the said land and are now seized and possessed of lot 5 in extent 5 lachams varagu culture together with all appurtenances thereto and together with right of water in and right of way and water course to the well in lot 4 belonging to Veeragaththiar Ramalingam and also the right of drawing water of the said well by means of mechanical pump worked in any manner and the right of entering the said lot 4 for purposes of fixing or removing or repairing or working any machinery necessary for the purpose of working and maintaining the aforesaid mechanical pump as reserved in favour of the said vendors by Deed No. 688 dated the 19th day of August, 1947, and attested by S. K. Thiraviyanayagam, Notary Public of Chavakachcheri.

And whereas the said vendors have agreed for the sale, assignment to Nagendram Rathinam of Chavakachcheri (hereinafter sometimes called and referred to as the purchaser) of the said premises intended to be hereby granted and conveyed free from encumberance at the price or sum of Rs. 7,250.

Now know ye and these presents witness that the said vendors in pursuance of the said agreement and in consideration of the said sum of Rupees Seven thousand Two hundred and Fifty (Rs. 7,250) (the receipt whereof the said vendors hereby admit and acknowledge) do hereby grant, convey, assign, transfer, set over and assure unto the said purchaser, his heirs, executors, administrators and assigns all the right, title and interest in the said lot 5 in extent 5 lachams varagu

culture as per the said Plan No. 2,401 excluding the right of drawing water by means of mechanical pumps and fully described and set forth in the schedule to these presents together with its appurtenances whatsoever to the said premises belonging or in anywise appertaining or usually held and enjoyed therewith or reputed to belong or be appurtenant thereto and all the estate, right, title, interest, claim and demand whatsoever of the said vendors in, to, out of and upon the said premises and every part thereof.

To have and to hold the said premises hereby granted and conveyed or expressed so to be unto the said Nagendram Rathenam (purchaser) his heirs, executors, administrators, and assigns absolutely for ever.

And the said vendors, their heirs, executors, administrators, covenant and agree with the said purchaser, his heirs, executors, administrators and assigns that the said premises hereby conveyed are free from all encumbrances whatsoever made or suffered by the said vendors or any person or persons lawfully claiming from under or in trust for the said vendor and that the said vendors now have a good right to grant and convey the said premises in manner aforesaid and that the said purchaser, his heirs, executors, administrators, and assigns may at all times hereafter quietly enter into, hold and enjoy the said premises without any eviction or interruption by the said vendors or any person or persons claiming through or in trust for them and that the said vendors their heirs, executors and administrators shall and will warrant and defend the said premises and every part thereof unto the said purchaser, his heirs, executors, administrators and assigns against any person or persons whomsoever. And that the said vendors, their heirs, executors, administrators and every person having or claiming any estate, right, title or interest in the said premises hereby granted and conveyed or any part thereof from under or in trust for the said vendors shall and will from time to time and at all times hereafter at the request and cost of the said purchaser his heirs, executors and administrators or assigns do and execute or show cause to be done and executed all such acts and things whatsoever for the further and more perfectly assuring the said premises and every part thereof unto the said purchaser, his heirs, executors, administrators and assigns in manner aforesaid as shall or may be reasonably required.

In witness whereof the said Murugesu Thiruchelvam and wife Punithavathy (vendors) have hereunto and to two others of the same tenor and date as these presents set their hands at Wellawatte, this Twenty-sixth day of October, One thousand Nine hundred and Forty-seven.

The Schedule of Property referred to above :

Land situated at Chavakachcheri, in Chavakachcheri Parish, in Thenmaradchy division in Jaffna District, in Northern Province, called " Kaddukkany ", in extent 28 lachams varagu culture but according to survey at present 24 lachams varagu culture and 8 kulies and depicted as lots 1, 2, 3, 4 and 5 in Plan No. 2,401 dated the 18th day of August, 1947, and prepared by Mr. J. D. Veerasingham, Licensed Surveyor. Of these five lots, the lot No. 5

Exhibits.

2D 5.
Deed of Transfer No. 115. 26-10-47. —*continued.*

in extent 5 lachams varagu culture. This lot 5 in extent five lachams varagu culture is bounded on the east by road, north by lane, west by lot 4 belonging to Veeragaththiar Ramalingam, and on the south by the property of the heirs of the late Nallammah, wife of S. Nagalingam. The whole of this lot 5 in extent 5 lachams varagu culture together with all the appurtenances thereto including the right of water in and right of way and water-course to the well in lot 4 belonging to Veeragaththiar Ramalingam excluding the right of drawing water of the said well by means of mechanical pumps worked in any manner and the right of entering the said lot 4 for purposes of fixing or removing or repairing or working any machinery necessary, for the purpose of working and maintaining the aforesaid mechanical pumps as reserved in favour of the said vendors by Deed No. 688 dated the 19th day of August, 1947, and attested by S. K. Thiraviyanayagam of Chavakachcheri, Notary Public.

Witnesses :

(1) Sgd. R. CANAGASABAI.
(2) ,, B. PAULIS.

Sgd. M. THIRUCHELVAM.
,, PUNITHAVATHY THIRUCHELVAM.

Sgd. T. NADARAJAH,
N. P.

I, Thampoe Nadarajah of Colombo, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over by Murugesu Thiruchelvam and Punithavathy, who signed as M. Thiruchelvam and Punithavathy Thiruchelvam, respectively, and who are known to me in the presence of Ramanathar Canagasabai of Jaffna Hostel, St. Sebastian Hill, Colombo and Baddadurage Paulis of 29/2, Station Road, Wellawatte, Colombo, who signed as R. Canagasabai and B. Paulis, respectively the subscribing witnesses thereto the same was signed by the said executants and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Colombo this 26th day of October, One thousand Nine hundred and Forty-seven.

I further certify and attest that in the duplicate in page 1, lines 24, 27, 28 were scored off in line 29 some printed words were scored off, page 3 line 16 the words " and also " were scored off, and the word " excluding " was interpolated, line 17 the letters " y ", in, " any " was typed over and in the original on page 1, lines 24, 27, 28 were scored off, line 29 some printed words were scored off, page 3, line 14 " off " was scored off, line 16 the words " and also " were scored off and the word " excluding " was interpolated before the foregoing instrument was read over and signed as aforesaid and that of the consideration a sum of Rs. 7,000 was paid by Bank of Ceylon Draft No. 4,995 dated the 24th

October, 1947, and the balance sum of Rs. 250 was acknowledged to have been received by the vendors prior to the execution of these presents and that the duplicate of this instrument bears six stamps of the value of Rs. 119 and the original a stamp of Re. 1 which I attest.

Exhibits.
2D 5.
Deed of Transfer No. 115. 26-10-47
—*continued.*

Sgd. T. NADARAJAH,
Notary Public.

(Seal)

Date of Attestation : 26-10-47.

True copy on a stamp of Re. 1.

Sgd. T. NADARAJAH,
Notary Public.

(Seal)

I, K. Duraiyappah, Registrar of Lands, Jaffna, do hereby certify that the foregoing is a true copy of a deed of transfer made from the duplicate filed of record in this office and the same is granted on the application of Mr. V. Canagasabai of Chavakachcheri.

Land Registry,
Jaffna, 17-11-1950.

Sgd. K. DURAIYAPPAH,
Registrar of Lands.

2D 8.

2D 8
Receipt.
3-5-48.

Receipt.

2D 8

TRANSLATION

3-5-48.

I, Veluppillai Sellathurai of Karaveddy North, have received from Vallipuram Subramaniam of Chavakachcheri, the sum of Rs. 15 being lease money for the period ending May, 1948 to May, 1949, in respect of a portion of the land on the east of the rail road called Kaddukarni, and belonging to my daughter Mangaleswari, and set my signature hereto.

Sgd. V. SELLATHURAI.

Translated by me :

Sgd. M. SUBRAMANIAM,
S.T., D.C., Jaffna.

Exhibits.

P 2.
Plaint in D.C. Chavakachcheri, Case No. 241. 10-1-50.

P 2.

Plaint in D.C., Chavakachcheri Case No. 241.

P 2

Partition

IN THE DISTRICT COURT OF CHAVAKACHCHERI

J.E. 9-5-50.

(1) VALLIPURAM SUBRAMANIAM and wife

(2) SINNATHANGAM, both of Chavakachcheri ..... *Plaintiffs.*

No. 241. *Vs.*

(1) VELUPPILLAI SELLATHURAI of Karaveddy North, Point Pedro, 10

J.E. of 9-5-50.

(2) MANGALESWARI by her guardian *ad litem* the 1st defendant... *Defendants.*

On this 10th day of January, 1950.

The plaint of the plaintiffs above-named appearing by V. Canagasabai, their Proctor, states as follows :

1. That the parties hereto reside and the cause of action hereinafter averred arose at Chavakachcheri within the jurisdiction of this Court.

2. That the plaintiffs seek to partition the land called " Kaddukkany ", in extent six (6 lachams) varagu culture with its appurtenances, situated at 20 Chavakachcheri, within the jurisdiction of this Court and more fully described in the schedule hereto.

3. That of the land certain Veeragathiyar Ramalingam was the original owner and proprietor and was seized and possessed of an undivided half-share with its appurtenances by right of purchase as per deed of transfer dated 11th day of September, 1937, and attested by S. Sabaratnam, Notary Public, under No. 15,268.

4. That the said V. Ramalingam by virtue of the deed of transfer, dated the 19th day of August, 1937 and attested by V. S. Kathirgesu, Notary Public, under No. 10,610, sold and transferred the said half-share in common of the said 30 land to the 2nd plaintiff abovenamed and the plaintiffs are in possession of the same.

5. That the plaintiffs by their own undisturbed and uninterrupted possession and by the like possession of those from whom they claim title by a title adverse to and independent of that of the defendant and of all others whomsoever for a period of ten years and upwards next immediately preceding the date of filing this action have acquired a prescriptive right and title to the said half-share in common of the said land *in terms of section 3 of Ordinance* No. 22 of 1871 the benefit whereof the plaintiffs plead in their favour.

6. That the defendant is in possession of the remaining half-share in common of the said land.

7. That as possession in common of the said land is found inconvenient and impracticable it has become necessary that the said land should be partitioned in terms of the *Partition Ordinance.*

8. That the said entire land is reasonably worth Rs. 3,000.

9. That to the best of the plaintiffs' knowledge, information and belief there are no others interested in the said land except themselves and the defendants.

Wherefore the plaintiffs pray—

(*a*) that the said land be declared the property of the plaintiffs and the defendants in common,

(*b*) that the said land be decreed to be partitioned and divided shares allotted to the plaintiff and the defendant in lieu of their present undivided shares,

(*c*) that in the event of partition being found impracticable the said land be sold and the proceeds divided among them,

(*d*) that the costs of this action, partition or of sale as the case may be ordered to be borne by the parties *pro rata,*

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

Sgd. V. CANAGASABAI,
Proctor for Plaintiffs.

Exhibits.

P 2.
Plaint in D.C. Chavakachcheri.
Case No. 241.
10-1-50.
—*continued.*

Memo of Documents Filed.

1. Abstract of title.
2. Pedigree.

Memo of Document Relied on.

The deeds referred to in paragraphs 3 and 4 hereof.

Sgd. V. CANAGASABAI,
Proctor for Plaintiffs.

Schedule Referred to above :

Land situated at Chavakachcheri, in the Parish of Chavakachcheri, in the division of Thenmaradchy, in Jaffna District, Northern Province, called "Kaddukkany", in extent 6 lachams varagu culture with its appurtenances which is the eastern portion of the rail road running through are in extent 11 lachams varagu culture and 9 15/16 kulies and represented by lot No. 4 in the plan in case No. 22,673 D.C., Jaffna, out of an extent of 25 lachams varagu culture ; and the said 6 lachams varagu culture is bounded on the east by road and the property of Kanthar Vallipuram's heirs, north by the property of Sinnammah, wife of Sellappah, west by rail road, and south by the property of Kanthar Vallipuram's heirs and road. The whole of the said 6 lachams varagu culture with stone built houses and cocoanuts and palmyrah trees, jak trees and other plantations. Out of this the plaintiffs are entitled to half-share in common of the said land with absolute right to the stone built houses and half-share in common of the other appurtenances and the defendant is entitled to the remaining half-share.

Sgd.
Proctor for Plaintiffs.

True copy.

Sgd. S. VELAYUTHAR,
Secretary.

2D 10.
Journal Entries and Notice issued to the Respondent in D.C., Chavakachcheri, Case No. 241.
January to May, 1950

2D 10.

Journal Entries and Notice Issued to the Respondent in D.C., Chavakachcheri, Case No. 241.

2D 10

IN THE DISTRICT COURT OF POINT PEDRO HELD AT CHAVAKACHCHERI

VALLIPURAM SUBRAMANIAM and wife of Chavakachcheri .... *Plaintiff.*

Vs.

VELUPPILLAI SELLATHURAI of Karaveddy North ..... *Defendants.*

Exhibits.

2D 10. Journal Entries and Notice issued to the Respondent in D.C., Chavakachcheri. Case No. 241. January to May, 1950. —*continued*

No. 241.
Class : III.
Amount : Rs. 3,000.
Nature : Partition.
Procedure : Regular.

Journal

The 10th day of January, 1950.

Mr. V. Canagasabai, Proctor, files appointment and plaint together with an abstract of title and pedigree and moves for summons on registered *lis pendens* being filed.

Plaint accepted. Registered *lis pendens* for 6–2–50.

Sgd. P. Sri SKANDA RAJAH,
District Judge.

6–2–50—Registered *Lis pendens* due.
Same on 13–2–50.

Intld. P. Sri S.,
D. J.

13–2–50—Mr. V. Canagasabai for plaintiffs.
Registered *Lis pendens* due.
Not filed.
Same on 27–2–50.

Intld. P. Sri S.,
D. J.

17–2–50—Proctor for plaintiff files registered *lis pendens* Surveyor's receipt and moves that commission be issued to Mr. J. D. Veerasingham, Licensed Surveyor, Jaffna.

He also moves that summons be issued on the defendant.

(1) Issue summons for 28–3–50.
(2) Issue commission for 28–3–50.
(3) Case need not be called on 27/2.

Sgd. P. Sri SKANDA RAJAH,
D. J.

Issued.

Intld. S. A. V.,
C. C.

Exhibits.

2D 10, Journal Entries and Notice issued to the Respondent in D.C., Chavakacheri, Case No. 241. January to May, 1950. —*continued.*

28–3–50—Summons served on defendant.
Defendant is absent. Proxy filed.
Return to commission due. Since received, filed with Plan 2,647, report, bill, etc.

Balance fees 26/6.
Amended plaint, *re* on 25–4–50.

Intld. P. SRI S.,
D.J.

25–4–50—Mr. V. Canagasabai for plaintiffs.
Mr. S. K. Thiraviyanayagam for defendant.

(1) Balance fees for 26/36 due on 9–5–50.
(2) Amended plaint due. Not filed.

Steps for appointment of guardian *ad litem* for 9–5–50.

Intld. P. SRI S.,
D.J.

27–4–50—Mr. V. Canagasabai for petitioners files petition and affidavit of the petitioners and for reasons stated therein moves for a notice on the respondents to show cause why the 2nd respondent should not be appointed guardian *ad litem* of the 1st respondent and thereafter the 1st respondent be made a party defendant in this action.

Issue notice for 9–5–50.

Sgd. P. SRI SKANDA RAJAH,
D.J.

Issued.

Intld. S. A. V.
27/4

9–5–50—Mr. V. Canagasabai for plaintiff.
Mr. S. K. Thiraviyanayagam for defendant.
Notice to appoint guardian *ad litem* to be added a party served on respondents.

Respondents 1 and 2 present.
They consent.

Exhibits.

2D 10.
Journal Entries and Notice issued to the Respondent in D C., Chavakachcheri, Case No. 241. January to May, 1950.
—*continued.*

Application allowed. Add.
Amended plaint 15 5 50.

Intld. P. SRI S.,
D. J.

Added.

Intld. T. K. P.

15-5-50 —Amended plaint due. Filed.
Answer 6-6-50.

Intld. P. SRI S.,
D. J.

6-6-50 —Answer due. Not filed.
Proxy filed.
Answer 20-6-50.

Intld. P. SRI S.,
D. J.

20-6-50—Mr. V. Canagasabai for plaintiffs.
Mr. S. K. Thiraviyanayagam for defendants.
Answer due. Filed.
S. R. and commission to survey the larger land at joint expense on 3-7-50.

Intld. P. SRI S.,
D. J.

26-6-50—Proctor for plaintiff files plaintiff's Surveyor's receipt and commission and moves that commission be issued on defendant filing his Surveyor's receipt in this case.

File. Defendant to file Surveyor's receipt.

Intld. P. SRI S.,
D. J.

3-7-50—(1) S.R. from defendants due.
(2) Commission due. Already filed.
Mr. Thiraviyanayagam for defendants.
Mr. Canagasabai moves to withdraw case with a view to filing a partition case for the 11 lachams land. Allowed. Of consent action dismissed without costs.

Decree on 10-7-50.

Intld. P. SRI S.,
D. J.
3-7-50

Exhibits.

2D 10. Journal Entries and Notice issued to the Respondent in D.C., Chavakachcheri. Case No. 241. January to May, 1950. —*continued.*

10-7-50—Mr. V. Canagasabai for plaintiffs.
Mr. S. K. Thiraviyanayagam for defendants.
Decree due.
Same on 11-7-50.

Intld. P. SRI S.,
D. J.

11-7-50—Mr. V. Canagasabai for plaintiffs.
Decree due. Filed and signed.

Intld. P. SRI S.,
D. J. 10

Notice

IN THE DISTRICT COURT OF CHAVAKACHCHERI

VALLIPURAM SUBRAMANIAM and another of Chavakachcheri . . *Petitioners.*

No. 241/P. *Vs.*

(1) MANGALESWARY (minor) daughter of Sellathurai, appearing by her guardian *ad litem* the 2nd respondent,

(2) VELUPPILLAI SELLADURAI, both of Karaveddy ..... *Respondents.*

To the above-named Respondents :

You are hereby required to appear before this Court, on the 9th day of May, 1950, at 10 a.m., and show cause if any why the 2nd named of you should 20 not be appointed guardian *ad litem* over the 1st named of you and thereafter to substitute you in place of the defendant for the purpose of proceeding on with this case. The 2nd named of you are further required to produce the 1st respondent in Court on the said date and in default an attachment will be issued against you.

This 27th day of April, 1950.

By Order

Sgd. .....,
C. C.

Exhibits.

Journal Entries and Notice issued to the Respondent in D.C., Chavakachcheri, Case No. 241. January, to May, 1950. —*continued.*

Fiscal's Report to Precept

(*Personal Service*)

By virtue hereof I have caused to be noticed the 2nd respondent personally and guardian *ad litem* of the first respondent in Case No. 241 by causing to be delivered to him the notice marked A, as will appear from the affidavit marked B of the server hereunder referred to.

Sgd. .....,
Fiscal Marshal.

Fiscal's Office, Point Pedro,
6th May, 1950.

Affidavit B referred to :

I, A. Ponniah, Process Server, solemnly, sincerely and truly declare and affirm :

(1) That I am personally known to, and am acquainted with the 2nd respondent in the said case.

(2) That I served the notice marked A on the person of (2) V. Selladurai personally and guardian *ad litem* of the 10th respondent in the said case, by delivering to him thereof on the 6th day of May, 1950, at Karaveddy North.

Process Server.

The foregoing affidavit was duly read over to the declarant and he appearing to understand the contents thereof wrote his signature thereto and was affirmed to at Point Pedro this 6th day of May, 1950.

Before me :

Sgd. .....,
Fiscal Marshal.

True copy of J.EE. notice dated 27–4–1950 and Fiscal's report dated 6–5–1950 in D.C., Chavakachcheri Case No. 241.

Sgd. S. VELAUTHAR,
Secretary, D.C., Chavakachcheri.

Exhibits.

2D 6.
Deed of Transfer No. 261.
12-5-50.

2D 6.

Deed of Transfer No. 261.

2D 6

Application No. 2,169/16-11-50.
Prior Registration : Jaffna, F. 154/22.
Transfer : One Land.
Rs. 13,805.

No. 261

To all to whom these presents shall come Mohammadu Mohideen Mohammadu Ismail and wife Ayusha Umma, both of Vannarponnai, in Jaffna (hereinafter sometimes called and referred to as the vendors) send greetings :

Whereas under and by virtue of transfer deed dated the 9th day of November, 1942, and attested by C. C. Somasegaram, Notary Public, under No. 2,272 the said first named vendor is the owner and proprietor and is seized and possessed of all that piece of land situated at Chavakachcheri called "Kaddukkanni", in extent 9 lachams varagu culture and 15 kulies but according to survey plan No. 99 dated the 17th day of April, 1950, and prepared by John Manuel, Licensed Surveyor, found to contain an extent of 7 lachams varagu culture and 16 kulies and more fully described in the schedule to these presents :

And whereas the said vendors have agreed for the absolute sale and assignment to the Thenmaradchy Co-operative Stores Societies Union Limited, Chavakachcheri, duly registered under Ordinance No. 16 of 1936, and bearing Registered No. 872 of 17-7-1944 (hereinafter sometimes called and referred to as the purchasers) of the said premises intended to be hereby granted and conveyed free from encumbrances at the price or sum of Rupees Thirteen thousand Eight hundred and Five (Rs. 13,805).

Now know ye and these presents witness that the said vendor in pursuance of the agreement and in consideration of the sum of Rupees Thirteen thousand Eight hundred and Five (Rs. 13,805) (receipt whereof the said vendors do hereby admit and acknowledge) hereby grant, convey, assign, transfer, set over and assure unto the said purchaser, heirs, executors, administrators, and assigns all that piece of land situated at Chavakachcheri called " Kaddukkanni", in extent 9 lachams varagu culture and 15 kulies but according to Survey Plan No. 496 dated 17th April, 1950, and prepared by John Manuel, Licensed Surveyor, found to contain in extent 7 lachams varagu culture and 16 kulies more particularly described and set forth in the schedule to these presents together with the appurtenances whatsoever to the said premises belonging or in anywise appurtaining or usually held and enjoyed therewith or reputed to belong or be appurtenant thereto, and all the estate, right, title, interests, claim, and demand whatsoever of the said vendors in, to, out and upon the said premises and every part thereof,

To have and to hold the said premises hereby granted and conveyed or expressed so to be with all the rights, easements and appurtenances unto the said purchaser, its heirs, executors, administrators and assigns absolutely for ever.

And the said vendors for themselves, their heirs, executors and administrators, do hereby covenant with the said purchasers, its heirs, executors, administrators and assigns that the said premises hereby sold and conveyed are free from all encumbrances whatsoever. And that the said purchaser and its aforewritten may at all times hereafter quietly enter into hold and enjoy the said premises, without any eviction or interruption and that the said vendors and their aforewritten shall and will at all times hereafter warrant and defend the said premises and every part thereof unto the said purchaser and its aforewritten against any person or persons whomsoever and also shall and will at all times hereafter at the request and cost of the said purchaser and its aforewritten do and execute or cause to be done and executed all such further and other acts, deeds, assurances, matters and things whatsoever for further and more perfectly assuring the premises and every part thereof unto the said purchaser and its aforewritten in manner aforesaid as shall or may be reasonably required.

The Schedule referred to.

Land situated at Chavakachcheri, in the Parish of Chavakachcheri, in the division of Thenmaradchy, in the District of Jaffna, Northern Province called "Kaddukkanni", in extent ten lachams varagu culture and fifteen kulies (10 lachams v.c. and 15 kulies). Of this on the southern side an extent of nine lachams varagu culture and fifteen kulies (9 lachams v.c. and 15 kulies) but according to Survey Plan No. 496 dated the 17th day of April, 1950, and prepared by John Manual, Licensed Surveyor and represented in the said plan as lot 2 found to contain an extent 7 lachams varagu culture and 16 kulies ; and the said 9 lachams varagu culture and 15 kulies bounded on the east by rail road, north by the property belonging to Vallipuram Ponnuchamy, west by road, and south by the property belonging to the Northern Theatres Limited, Chavakachcheri, the whole hereof together with the house, well and all other appurtenances therein contained.

In witness whereof the said vendors Mohammadu Mohideen Mohammadu Ismail and wife Ayasha Umma, both of Vannarponnai, Jaffna, hereunto and to two others of the same tenor and date as these presents set their hands at Chavakachcheri, on this Twelfth day of May, One thousand Nine hundred and Fifty.

Exhibits.

2D 6.
Deed of Transfer No. 261. 12-5-50.
—*continued.*

Signed and delivered in the presence of us and we declare that we are well acquainted with the executants and know their proper names, occupations and residence.

Sgd. M. M. ISMAIL,
,, M. AYUSHA.
This is the signature of Ayusha Umma.

Witnesses :

(1) Sgd. K. THAMBIPILLAI.
(2) ,, R. KANAGARATNAM.

Sgd. S. SIVARAJAH,
Notary Public.

I, Sivaguru Sivarajah of Chavakachcheri, in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the said executants Mohammadu Mohideen Mohammadu Ismail and wife Ayusha Umma, who have signed as Mr. M. M. Ismail and மு. ஆயிசா respectively, both of whom are known to me in the presence of Kathirithamby Thambipillai of Chavakachcheri North and Ramalingam, Kanagaratnam of Chavakachcheri, the subscribing witnesses hereto both of whom are also known to me the same was signed by the said executants and also by the said witnesses and by me the said Notary in the presence of and in the presence of one another all being present at the same time at Chavakachcheri, on this Twelfth day of May, One thousand Nine hundred and Fifty.

I further certify and attest that the consideration mentioned in this instrument as sum of Rs. 13,795 was paid in my presence by cheque drawn on the Jaffna Co-operative Central Bank Limited, Jaffna, dated 12-5-50 and bearing No. 020036 and the balance sum of Rs. 10 was acknowledged and have been received earlier by the vendors.

And I further certify and attest that this instrument bears no stamp as the same is exempted from stamp duty under Section 29 of the Co-operative Societies Ordinance, Chapter 107 of the Legislative Enactments of Ceylon.

Date of Attestation : 12th May, 1950.

Sgd. S. SIVARAJAH,
Notary Public.

I, K. Duraiyappah, Registrar of Lands of Jaffna, do hereby certify that the foregoing is a true copy of a deed of transfer made from the duplicate filed of record in this office and the same is granted on the application of Mr. V. Canagasabai of Chavakachcheri.

Sgd. K. DURAIYAPPAH,
Registrar of Lands.

Land Registry,
Jaffna, 17-11-1950.

Exhibits.

2D 7.
Deed of Transfer No. 221. 3-7-50

2D 7.

Deed of Transfer No. 221.

2D 7

The duplicate bears 3 stamps of Rs. 31.
Application 2169/16-11-50.
Transfer : One Land.
Rs. 2,000.

No. 221

To all to whom these presents shall come Nagendram Rathinam of Chavakachcheri (hereinafter sometimes called and referred to as the vendor) send greetings :

Whereas under and by virtue of transfer deed dated 26th October, 1947, and attested by T. Nadarajah, Notary Public, Colombo, under No. 115, the said vendor is the owner and proprietor of all that piece of land called "Kaddukkanny", in extent 1¼ lachams varagu culture, situated at Chavakachcheri and more fully described in the schedule to these presents :

And whereas the said Nagendram Rathinam of Chavakachcheri agreed for the absolute sale and assignment to Kathirkamar Aiyadurai. and wife Ledchumi, both of Chavakachcheri (hereinafter sometimes called and referred to as the purchaser) of the said premises intended to be hereby granted and conveyed free from encumbrance at the price or sum of Rupees Two thousand (Rs. 2,000).

Now know ye and these presents witnesses that the said vendor in pursuance of the said agreement and in consideration of the sum of Rupees Two thousand (Rs. 2,000) (receipt whereof the said vendor does hereby admit and acknowledge) hereby grant, convey, assign, transfer, set over and assure unto the said purchaser, heirs, executors, administrators, and assigns all that piece of land called "Kaddukkanny", situated at Chavakachcheri, in extent 1¼ lachams varagu culture and more particularly described and set forth in the schedule to these presents together with the appurtenances whatsoever to the said premises belonging or in anywise appertaining or usually held and enjoyed there with or reputed to belong or be appurtenant thereto and all the estate, right, title, interest, claim and demand whatsoever of the said vendor Nagendram Rathinam in, to, out of and upon the said premises and every part thereof.

To have and to hold the said premises hereby granted and conveyed or expressed so to be with all the right, easements, and appurtenances unto the said purchaser Kathirgamar Aiyathurai and wife Ledchumy, heirs, executors,, administrators and assigns absolutely for ever and the vendor for himself, his heirs, executors and administrators do hereby covenant with the said purchasers, their heirs, executors, administrators and assigns that the said premises hereby sold and conveyed are free from all encumbrances whatsoever.

Exhibits.

2D 7.
Deed of Transfer No. 221. 3-7-50.
—*continued.*

And that the said purchasers and their aforewritten may at all times hereafter quietly enter into, hold and enjoy the said premises without any eviction or interruption and that the said vendor and his aforewritten shall and will at all times hereafter warrant and defend the said premises and every part thereof unto the said purchasers and their aforewritten against any person or persons whomsoever and also shall and will at all times hereafter at the request and cost of the said purchasers and their aforewritten do and execute or cause to be done and executed all such further and other acts, deeds, assurances, matters and things, whatsoever for further and more perfectly assuring the premises and every part thereof unto the said purchasers and their aforewritten in manner aforesaid as shall or may be reasonably required.

In witnesses whereof the said vendor Nagendram Rathinam of Chavakachcheri has hereunto and to two others of the same tenor and date as these presents set his hand at Chavakachcheri, on this 3rd day of July, One thousand Nine hundred and Forty-nine.

The Schedule above referred to.

The land situated at Chavakachcheri, in the Parish of Chavakachcheri, in Thenmaradchy division, in Jaffna District, in Northern Province, called "Kaddukkanny", in extent 5 lachams varagu culture and marked as lot 5 in Plan No. 2401 dated the 18th day of August, 1947, and prepared by J. D. Veerasingham, Licensed Surveyor, and of the said 5 lachams varagu culture exclusive of an extent of $2\frac{1}{2}$ lachams varagu culture in the northern side and another $1\frac{1}{4}$ lachams varagu culture on the southern side, the remaining divided extent of $1\frac{1}{4}$ lachams varagu culture in the middle ; which $1\frac{1}{4}$ lachams varagu culture is bounded on the east by road, north by the property of Sinnathamby Nagamany, west by the property of Veeragathiar Ramalingam, and south by the property of Kathirgamar Aiyathurai and wife Ledchumy the vendors, the whole hereof together with all appurtenances thereto including the right of water in and right of way and water-course to the well in lot 4 belonging to Veeragathiar Ramalingam, excluding the right of drawing water of the said well by means of mechanical pumps worked in any manner and right of entering the said lot 4 for purpose of fixing or removing or repairing or working any machinery necessary for the purpose of working, and maintaining the aforesaid pump.

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

Sgd. N. RATNAM.
This is the signature of Nagendra ı Rathinam.

(1) Sgd. R. CANAGARATNAM.
(2) ,, S. NADARAJAH.

Sgd. S. SIVARAJAH,
Notary Public.

Exhibits.

2D 7.
Deed of Transfer No. 221. 3-7-50. —*continued.*

I, Sivaguru Sivarajah of Chavakachcheri, in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the said executant Nagendram Rathinam of Chavakachcheri, who has signed in Tamil as "ந. இரத்தினம்" and who is known to me in the presence of Sinniah Nadarajah and Ramalingam Canagaratnam, both of Chavakachcheri, the subscribing witnesses hereto both of whom are also known to me the same was signed by the said executants and also by the said witnesses and by me the said Notary in my presence and in the presence of one another, all being present at the same time at Chavakachcheri on the 3rd day of July, One thousand Nine hundred and Forty-nine.

I further certify and attest that the consideration was paid in my presence and that the duplicate of this instrument bears four stamps of the value of Rs. 31 and the original bears one stamp of the value of Re. 1.

Date of Attestation : 3rd July, 1950.

(Seal)

Sgd. S. SIVARAJAH,
Notary Public.

I, K. Duraiyappah, Registrar of Lands of Jaffna, do hereby certify that the foregoing is a true copy of a deed of transfer made from the duplicate filed of record in this office and the same is granted on the application of Mr. V Canagasabai of Chavakachcheri.

Sgd. K. DURAIYAPPAH,
Registrar of Lands.

Land Registry,
Jaffna, 17-11-1950.

2D 11.

Journal Entries, Order Nisi and Fiscal's Report in D.C., Chavakachcheri, Case No. 332.

2D 11.
Journal Entries, *Order Nisi* and Fiscal's Report in D.C. Chavakachcheri, Case No. 332. August to Sept. 1950.

2D 11

IN THE DISTRICT COURT OF CHAVAKACHCHERI

(1) VALLIPURAM SUBRAMANIAM and wife,

(2) SINNATHANGAM, both of Chavakachcheri ..... *Petitioners.*

No. 1. 33/332. *Vs.*

(1) MANGALESWARI, daughter of Selladurai, a minor by her guardian *ad litem*,

(2) VELUPPILLAI SELLATHURAI of ditto ..... *Respondents.*

Exhibits.

2D 11. Journal Entries, *Order Nisi* and Fiscal's Report in D.C. Chavakachcheri, Case No. 332. August to Sept. 1950. —*continued.*

This 21st day of August, 1950.

Mr. V. Canagasabai, Proctor, files proxy, affidavit and petition of the petitioner and for reasons stated therein moves for an *Order Nisi* on the respondents to show cause why the 2nd respondent should not be appointed guardian *ad litem* over the minor the 1st respondent for the purpose of partitioning the land called " Kaddukkanny ", in extent 11 lachams varagu culture and 9 15/16 kulies to protect her interest and of representing her in this case.

Enter *Order Nisi* for September 25, 1950.

Sgd. P. SRI SKANDA RAJAH,
District Judge.

Order Nisi entered and issued.

Intld. S. A. V.

22–9–50—Return to *Order Nisi* filed. Served.

Intld. S. A. V.

25–9–50—*Order Nisi* served on respondents.
Respondent 1
,, 2—present.
They don't consent.

Sinnammah, widow of Kathirgamar Sellar of Chavakachcheri, present. The minor and the consent to her being appointed guardian *ad litem.*

I appoint her as guardian *ad litem.*

Sgd. P. SRI SKANDA RAJAH,
25–9–50. *District Judge.*

Appointment filed.
Intld. S. A. V.

Appointment of Guardian *ad litem.*

IN THE DISTRICT COURT OF CHAVAKACHCHERI

(1) VALLIPURAM SUBRAMANIAM and wife

(2) SINNATHANGAM, both of Chavakachcheri ..... *Petitioners.*

No. A. 33/332. *Vs.*

(1) MANGALESWARI, daughter of Selladurai, a minor by her guardian *ad litem*

(2) VELUPPILLAI SELLATHURAI,

(3) SINNAMMAH, widow of Kathirgamar Sellar of Chavakachcheri ..... *Respondents.*

Exhibits.

2D 11.
Journal Entries, *Order Nisi* and Fiscal's Report in D.C. Chavakachcheri, Case No. 332. August to Sept. 1950. —*continued.*

On the motion of Mr. V. Canagasabai, Proctor, for petitioner, and on reading the affidavit and petition of the petitioner it appearing to this Court that the said Sinnammah, widow of Kathirkamar Sellar of Chavakachcheri, is a fit and proper person to be appointed as a guardian *ad liten* over the minor 1st respondent and the said 1st and 2nd respondents and Sinnammah appearing in person and consenting to her being appointed as such guardian *ad liten* over the minor of the 1st respondent.

It is ordered that the abovementioned Sinnammah, widow of Kathirgamar Sellar be and she is hereby appointed guardian *ad litem* over the minor 1st respondent for the purpose of partitioning the land called Kaddukany in extent 11 lachams varagu culture and 9 15/6 kulies situated at Chavakachcheri and to recover costs.

This 25th day of September, 1950.

Sgd. P. SRI SKANDA RAJAH,
D. J.

Original

Order Nisi

IN THE DISTRICT COURT OF CHAVAKACHCHERI

(1) VALLIPURAM SUBRAMANIAM and wife

(2) SINNATHANGAM, both of Chavakachcheri ..... *Petitioners.*

No. A. 33/332. *Vs.*

(1) MANGALESWARI, daughter of Sellathurai, a minor by her guardian

(2) VELUPPILLAI SELLATHURAI, both of Karaveddy, Point-Pedro..... *Respondents.*

This matter coming for disposal before P. Sri Skanda Rajah, Esquire, District Judge, Chavakachcheri, on the 21st day of August, 1950, in the presence of V. Canagasabai, Proctor, for petitioners, and the affidavit and petition of the petitioner having been read.

It is ordered that the above-named 2nd respondent be appointed guardian *ad litem* over the minor 1st respondent for the purpose of protecting her interest and of representing her in the action to be instituted by the petitioner for the partition of the land called " Kaddukkanny ", in extent 11 9/15 kulies and to

Exhibits.

2D 11. Journal Entries, *Order Nisi* and Fiscal's Report in D.C Chavakachcheri. Case No. 332, August to Sept. 1950. —*continued.*

recover costs, unless the said respondents or any other person shall appear before this Court on the 25th day of September, 1950, and show sufficient cause to the satisfaction of this Court to the contrary.

The 21st day of August, 1950.

Sgd. P. SRI SKANDA RAJAH,
District Judge.

Fiscal's Report to Precept

By virtue hereof I have caused to be noticed the 1st and 2nd respondents in Case No. A. 33 D.C., Chavakachcheri, by causing to be delivered to each of them a duplicate of the *Order Nisi* marked A with a copy of the petition as will appear from the affidavit marked B of the Server hereunder referred to.

Sgd.....,
Deputy Fiscal.

Fiscal's Office, Point Pedro,
21st September, 1950.

Affidavit B referred to :

A. 33.

A. Ponniah, Process Server, solemnly, sincerely and truly declare and affirm :

That I am personally known to, and am acquainted with the 1st and 2nd respondents in the said case.

That I served the *Order Nisi* marked A on the person of 1st and 2nd respondents in the said case by delivering to each of them a duplicate together with a copy of the petition thereof on the 21st of September, 1950.

Sgd. A. PONNIAH,
Process Server.

The foregoing affidavit was duly read over to the declarant and he appearing to understand the contents thereof wrote his signature thereto and was affirmed at Point Pedro.

21st day of September, 1950.

Before me :

Sgd. .....,
Fiscal Marshal.