

43, 1948

No. 9 of 1947.

# In the Privy Council.

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-9 OCT 1956

## ON APPEAL

FROM THE SUPREME COURT OF PALESTINE, SITTING AS A COURT OF APPEAL, JERUSALEM.

INSTITUTION FINANCED  
LEGAL STUDIES

BETWEEN

44475

NUZHA BINT EL-HAJ SULEIMAN ABU KHADRA

*Appellant*

AND

1. HAJ IBRAHIM SALEH EL-HELOU
2. HASHEM ABU KHADRA
3. NAJATI ABU KHADRA
4. THE EXECUTION OFFICER, District Court, Jaffa

*Respondents.*

# RECORD OF PROCEEDINGS.

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ON APPEAL  
FROM THE SUPREME COURT OF PALESTINE, SITTING AS  
A COURT OF APPEAL, JERUSALEM.

BETWEEN  
NUZHA BINT EL-HAJ SULEIMAN ABU KHADRA *Appellant*

AND

- 1. HAJ IBRAHIM SALEH EL-HELOU
- 2. HASHEM ABU KHADRA
- 10 3. NAJATI ABU KHADRA
- 4. THE EXECUTION OFFICER, District Court, Jaffa *Respondents.*

RECORD OF PROCEEDINGS.

*Before the  
Land Court,  
Jaffa.*

No. 1.  
STATEMENT OF CLAIM.

(Translation from Arabic.)

IN THE DISTRICT COURT OF JAFFA.  
Sitting as a Land Court.

EL-HAJ IBRAHIM son of the late Haj Saleh El-Helou  
of Gaza, Land owner, represented by Said Zein Eddin,  
Jaffa

20

Plaintiff

*versus*

- 1. NUZHA, daughter of the late Haj Suleiman Abu Khadra of Gaza and residing at Jaffa, Abu Jabin Street
- 2. HASHEM EFF. the son of the late Ramadan Abu Khadra of Jaffa, Abu Jabin Street, Jaffa
- 3. NAJATI EFF. HASHEM ABU KHADRA, of Jaffa, Abu Jabin Street, Jaffa
- 4. EXECUTION OFFICER, District Court, Jaffa -

Defendants.

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Nature of action : ownership.

Value of claim : LP.500.

No. 1.  
Statement  
of Claim  
(Transla-  
tion from  
Arabic),  
16th  
October  
1943.

*Before the  
Land Court,  
Jaffa.*

This action falls within your jurisdiction as the lands the subject matter of the claim fall within the jurisdiction of your Court.

No. 1.  
Statement  
of Claim  
(Translation from  
Arabic),  
16th  
October  
1943,  
*continued.*

*Claim :*

1. On 15.2.40 a contract was concluded between the Plaintiff and first Defendant wherein she stated that she owned and possessed six shares out of seven shares in the following plots of land :—

<i>Block</i>	<i>Parcel</i>	
955	2, 9, 17, 24	
956	1, 8.	
957	9, 17, 30 of Beit Lahia lands Gaza Sub-District.	10

She undertook to sell to the Plaintiff five shares out of seven shares in all these parcels in consideration of LP.159.500 mils. She received the said price from the Plaintiff in cash and in advance when the contract was signed. She also undertook to remove any encumbrance which might obstruct the execution of the said contract, and she undertook to deliver the subject-matter of the sale to the Plaintiff after the said agreement was signed. She undertook to pay all the taxes imposed till the year 1939 and to execute the said sale at the official departments. All these undertakings appear clearly on perusing the deed of agreement produced and marked "A."

20

2. These parcels were consolidated and registered in the name of first Defendant in the Land Registry Gaza under :—

<i>Block</i>	<i>Parcel</i>
955	1, 2
956	4
967	7, 8, as will appear from the perusal of the Tapu Extracts produced and marked "B."

3. Second Defendant undertook to execute the undertakings of first Defendant, in his capacity as guarantor, as shown by his signing the above-mentioned contract.

30

4. Relying on the authority vested in the Plaintiff by the said contract he took possession of the said shares and began to hold them independently without interference or dispute. He improved the land and ploughed it with a tractor, and the land became worth LP.500 at present.

5. First Defendant is the aunt of second Defendant. First, second and third Defendants colluded together in order to obtain the said shares to which the Plaintiff had acquired an equitable title. This collusion was induced by the increase in prices of lands under the present circumstances. The third Defendant as a result of the collusion obtained a judgment against the first Defendant and attached the said parcels as belonging to the first Defendant, although in fact they are the property of the Plaintiff who had paid their price and taken possession thereof in a legal manner.

40

6. Whereas the final order of sale in respect of the said parcels has not been issued as yet, the Plaintiff prays as follows :—

*Before the  
Land Court,  
Jaffa.*

(A) In the first place that an order be issued cancelling the provisional attachment on all the shares registered in the name of first Defendant in respect of the parcels in dispute shown above, and that a memorandum with respect to the said attachment be served on the Registrar of Lands at Gaza.

No. 1.  
Statement  
of Claim  
(Transla-  
tion from  
Arabic),  
16th  
October  
1943,  
*continued.*

(B) That the execution proceedings in respect of the said parcels in Execution File No. 456/42 Jaffa be stayed.

10 (C) That a copy of these papers and annexures be served on the Defendants.

(D) That the case be tried and a judgment be given declaring the ownership of the Plaintiff in five shares out of seven shares in the said parcels now registered in the name of first Defendant and ordering the registration thereof in the name of the Plaintiff at the Land Registry and preventing the Defendants from interfering with Plaintiff's right in said shares, relying on the equitable principal of specific performance.

20 (E) That the execution proceedings pending before the fourth Defendant in respect of the said parcels be cancelled, the proceedings having been started on the application of third Defendant.

(F) That the first three Defendants be ordered to pay costs, fees and advocate fees.

(Sgd.) SAID ZEIN EDDIN,  
Attorney for Plaintiff.

15.10.43.

**AFFIDAVIT.**

I the undersigned El Haj Ibrahim Saleh El-Helou of Gaza state on oath that the contents of the above statement are correct.

30 (Sgd.) IBRAHIM EL-HELOU.

Sworn before me. 16.10.43.

(Sgd.) W. SALAMEH.

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**No. 2.**

**ORDER granting provisional attachment.**  
(Translation from Arabic.)

I order provisional attachment of all the shares registered in the name of first Defendant in the parcels in dispute and stay of execution proceedings in respect of these parcels in the Execution File No. 456/42. Execution Office District Court Jaffa.

No. 2.  
Order  
granting  
provisional  
attachment  
(Transla-  
tion from  
Arabic),  
19th  
October  
1943.

40 (Sgd.) W. SALAMEH. 19.10.43.

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*Before the  
Land Court,  
Jaffa.*

No. 3.  
Statement  
of Reply  
(Transla-  
tion from  
Arabic),  
26th  
October  
1943.

**No. 3.**

**STATEMENT OF REPLY.**

(Translation from Arabic.)

1. This Court has no jurisdiction to hear this case in view of the value of the contract in question.

2. Alternatively, Defendants deny what Plaintiff stated in his statement of claim, specially clause 4 and 5.

3. Second Defendant cannot be a party in such a case for he is a guarantor, and cannot be asked to perform what he cannot do as the land is not registered in his name and he cannot register it in the name 10 of the Plaintiff or others.

4. Third Defendant is also not a party. He has only attached the land before the action was brought. Such action cannot be brought against him.

5. Alternatively, Plaintiff is not entitled to ask for specific performance of the contract, for the requirements of specific performance are lacking in this case. The only remedy available for the Plaintiff in case of breach is to ask for damages as provided in clause 4 of the contract.

It is therefore prayed that the claim of Plaintiff be dismissed with costs and fees, including advocate fees. 20

(Sgd.) ABDEL RUHMAN SIKSIK,  
Attorney for Defendants  
Nos. 1, 2 and 3.

No. 4.  
Issues  
(Transla-  
tion from  
Arabic),  
16th  
December  
1943.

**No. 4.**

**ISSUES.**

(Translation from Arabic.)

IN THE DISTRICT COURT OF JAFFA.

16.12.43. Before His Honour Judge AZIZ BEY DAOUDI.

*Hearing of 16.12.43.*

After perusal of the Statements of Claim and Reply the following 30 issues were agreed :—

1. Is this case, having regard to its value, within the jurisdiction of the District Court of Jaffa sitting as a Land Court, or is the Magistrate Court the proper Court seized with jurisdiction ?

2. Are the second and third Defendants parties in the case or not ?

3. Is the Plaintiff entitled to claim specific performance in this case or not ?

(Sgd.) Judge AZIZ BEY DAOUDI.  
16.12.43.

**No. 5.  
PROCEEDINGS.**

(Translation from Arabic.)

*Hearing of Saturday 4.3.44.*

Attorney for Plaintiff : Said Eff. Zein Eddin.

Attorney for Defendants : Abdel Ruhman Siksik.

Statement of Claim. Statement of Reply.

*Attorney for Defendants :* I ask that the question of jurisdiction be determined first. The value of the contract does not exceed LP.160 and the Plaintiff claims specific performance and so the Magistrate Court is seized with jurisdiction.

*Attorney for Plaintiff :* This Court is seized with the case having regard to the value of the land when action brought as provided under section 9 of the Courts Fees Ordinance. Prepared to prove that value of land at time of action brought LP.500. The amount mentioned in the contract does not prevent the re-valuation of the land at the transfer by the Tapu Official. I am prepared to bring evidence that the value of the land is LP.500.

*Attorney for Defendants :* I object, as the value of the contract i.e. the land mentioned therein does not exceed LP.160, although at the time of action brought the value may be more. Regard is had to the value of the contract as stated therein.

*Court :* There is *prima facie* evidence, the affidavit submitted, to show that the value of the land is LP.500. I hold that regard is had to the value of the land at the time of action brought, for the Plaintiff prays for an order of registration in his name by specific performance. For this and as its value is LP.500 this Court has jurisdiction.

(Sgd.) AZIZ BEY DAOUDI,

Judge.

*Attorney for Plaintiff :* We take the second point : are second and third Defendants parties ? I say that they are. For first Defendant is the aunt of second Defendant and the third Defendant is the son of the second Defendant and they all live in one house as one family ; and as the second Defendant was a guarantor for the performance of the contract the attachment by the third Defendant was a result of collusion among the three. I shall prove this to the Court, viz., that there was no consideration for it, that the first Defendant did not appear before the Registrar nor object to it or the proceedings before the Execution Officer. Their purpose was to prevent the Plaintiff from claiming ownership. For this we asked the Court to cancel the attachment on the land which the Defendants wanted to dispose of in the name of the third Defendant or others relying on Article 115 of the Execution Law. I am prepared to produce evidence to establish these facts, with the knowledge that Rule 62 of the Procedure permits joining any person as a defendant. Nevertheless I do not insist that second Defendant should be a party, and I leave it to the Court. I shall call second Defendant as a witness.

*Before the  
Land Court,  
Jaffa.*

-----  
No. 5.  
Proceedings  
(Translation  
from  
Arabic),  
4th March  
1944 to  
28th May  
1944.

*Before the  
Land Court,  
Jaffa.*

No. 5.  
Proceedings  
(Translation  
from  
Arabic),  
4th March  
1944 to  
28th May  
1944,  
*continued.*

*Attorney for Defendants :* Second Defendant is not a party in this case, being a case for specific performance. If a judgment is given against him he would not be able to execute it as he owns no land himself which he should specifically transfer. He is a guarantor for the payment of a certain sum.

*Court :* I do not find it necessary keeping the second Defendant as a party, for the case is for specific performance in respect of a land registered in the name of first Defendant. Second Defendant is no more than a guarantor for a sum of money. There is no connection of money guarantee with specific performance. His name should be struck out. 10

(Sgd.) A. DAOUDI.

*Plaintiff's  
Evidence.*

**PLAINTIFF'S EVIDENCE.**

(a) Plaintiff. (A) The witness THE PLAINTIFF, Sworn :

I am the Plaintiff and I know the first Defendant. I bought from her 105 dunums by virtue of a contract M/1. She signed it in my presence and I paid her the full price LP.159.500 mils. At the same time I made a "wakaleh dawriyeh" at the Notary Public Gaza.

*Attorney for the Defendants :* There is no need to discuss this in detail for we admit the execution of such document No. M/1 and also writing the "wakaleh Dawriyeh" on the subject. We agree to all the facts except the question of the improvements to the land and the payment of the whole price and the right to claim specific performance. The matter can be determined on legal points, with the knowledge that we do not admit the question of collusion. 20

*Examination in Chief continued :* Yes, I paid the whole price of the land to the first Defendant, and she admitted this in the document M/1 and also before the Notary Public in the "wakaleh dawriyeh." Yes, this is the "wakaleh dawriyeh" M/2. Yes, I took delivery of the land between the end of the year 1941 and the beginning of 1942. I ploughed it with a tractor. The man who ploughed it for me was Mohammad Hassan Ghazal of Gaza. I paid him all his wages, 250 mils in respect of each dunum, in addition to his food and tobacco. I leased it to Mahmoud Named El Zeituneh. I took my share of the "dura" (oats) on a cheque in accordance with the orders of the Government, viz. my partner and I were paid the price of the oats, about LP.128. I received half of this sum and my partner the other half, and we had some oats for home. In 1943 I sowed the land wheat and barley through the same cultivator and this year also it was sowed with barley and wheat. Hasham Eff. Abu Khadra introduced the first Defendant and guaranteed her. I do not know his son Najati. I know that first Defendant is a spinster living at her nephew's house. There was a case between me and the said Hasham for specific performance of a contract of sale of land which he sold to me. The price of the land between the date of contract and now has gone high and is still on the increase. There was an objection connected with the land at the Settlement when bought but such objection was removed later. The third Defendant attached this land for a sum which he alleged to have advanced to the first Defendant. This attachment was notified to the Settlement Department and then to the Tapu. This prevented the guarantors from executing 30 40



the transfer in the manner the first Defendant authorised them to do. The attachment took place in 1943. I referred the matter of the attachment to Hashem Eff. but I did not refer it to first Defendant.

*Before the  
Land Court,  
Jaffa.*

*XXd. by Attorney for Defendants.* Yes, I paid all the price LP.159.500. I did not retain LP.20 to pay to the lessee of the land. The land when bought was leased to Mahmoud El Zeituneh for LP.18 for three years 1940, 1941, 1942. For this the vendor deducted in my favour the amount of the said rent already paid to her by the said lessee, viz. LP.18. So what I paid to her from the price of the contract was LP.141.500 mils. It may  
10 be that I took delivery of the land three months after the beginning of the year 1942. I know that first Defendant lives with her nephew Hashem Eff. for when I visited her before the contract and after I understood from the negress servant that Defendant lived at the house of her nephew Hashem.

*Plaintiff's  
Evidence.*  
---  
No. 5.  
Proceedings  
(Translation from  
Arabic),  
4th March  
1944 to  
28th May  
1944,  
(a) Plaintiff,  
*continued.*

*Re-xxd. :* Yes, I paid to Mahmoud El Zeituneh the amount of the rent for 1942 when I took delivery of it from him and ploughed it with a tractor. So what I paid in respect of this land was LP.141 to first Defendant and LP.6 to the cultivator on the land. The transaction took place by agreement and consent of first Defendant. Zeituneh had actually paid as per contract in my possession the rent of this land for the period of three years ;  
20 it being the amount deducted from the contract first. I then paid the rent in respect of the third year LP.6 when I bought the land in 1942.

*Court :* When Hashem Eff. showed me and informed me a deed of lease from first Defendant to Mahmoud Zeituneh when we entered into the contract. The deed was for three years for LP.18. He asked me to deduct this amount from the price. Hasham Eff. and Nimer Eff. Abu Khadra entered inside the room and came back and said that she consented to the deduction of this sum. She used to hear our conversation as she was in the hall which had a window opening on our room, and I was hearing the voice of a lady but did not see her face.

30 Case adjourned to 2.4.44.

*Hearing of 2.4.44.*

Plaintiff's witness MOHAMMAD HASSAN GHAZAL, Sworn :

(b) Moham-  
mad  
Hassan  
Ghazal.

I know Plaintiff and the land of Wad Ezzeit situated at Gaza within the lands of Beit Lahia village. I ploughed this land for Plaintiff in 1941 between the 9th and 10th months. Its area which I ploughed is 133 dunums, the wage for each dunum being 250 mils. I was paid the full wages.

*XXn. :* None.

Plaintiff's witness, MATAR IBN MOHAMAD MATAR of Gaza, Sworn :  
40 I am Mukhtar of Daraj Quarter at Gaza. I know the land of Wad Ezzeit, and it is situated within the lands of Beit Lahia village, on the asphalt road. I bought some lands in these parts this year from Rushdi Shawa, LP.10 per dunum, about three months ago. A dunum there is worth more than LP.10.

(c) Matar  
Ibn  
Mohamad  
Matar.

No XXn.

Before the  
Land Court,  
Jaffa.

Plaintiff's witness MAHMOUD ZEITUNAH, Sworn :—

Plaintiff's  
Evidence.

No. 5.  
Proceedings  
(Translation from  
Arabic),  
4th March  
1944 to  
28th May  
1944,

I am a cultivator and know the land called Wad Ezzeit situated within the lands of Beit Lahia. I took on lease a share an area 150 dunums from Nuzha bint Haj Abu Khadra, for a period of three years beginning 1939. I cultivated it for two years on my own account and in the third year after being ploughed by Mohammad Ghazal with a tractor on the application of the Plaintiff Haj Ibrahim Helou I cultivated it in partnership with Haj Ibrahim Helou after he delivered to me the rent of the third year LP.6. For when I took it on lease for three years I paid the rent in advance to the lessor LP.18, i.e. LP.6 for each year. The land now is 10 in the possession of the Plaintiff.

No XXn.

continued.

(d) Mah-  
moud  
Zeitunah.  
(e) Hashem  
Abu  
Khadra.

Plaintiff's witness HASHEM ABU KHADRA, Sworn :—

I know the land in dispute. I know the two parties. First Defendant is my aunt and she lives in my house. I know the agreement concluded with the Plaintiff and I was present and I guaranteed the Defendant. The agreement took place at Gaza. The area of the land is between 100 and 110 dunums mashaa. Yes, this is the same contract (he pointed to Exh. M/1) which was made between the litigants. My signature is on it. The contents of the contract are true. The price of the land is 20 now between LP.8 and LP.14, having regard to situation, and to demand of purchasers. I do not know why the contract was not performed by Defendant. I did not ask her why. Najati is my son. He lives at my house. He is about 20 years old, still a student at school. My aunt Nuzha borrowed from my son LP.1000 in my presence and gave a promissory note in the said sum. My son has property registered in his name worth LP.10,000. He has also in cash, but I do not know whether he keeps this at home or at the bank. I supervise his property. The amount of the LP.1000 was kept with him. Nuzha has property 30 "hawakir" at Gaza called "hawakir" Haj Salim Abu Khadra and she owns shares in them. She manages her said property herself. I do not know how many shares she owns in the said "hawakir" nor the income she gets. She owns a share in Wad Ezzeit, of 150 or 160 dunums. She agreed with the Plaintiff to sell him of this 100 or 110 dunums as stated in the contract. She retained the remainder for herself i.e. did not include it in the agreement. The loan from my son to her as far as I remember took place after the agreement for sale between her and the Plaintiff. I do not know who wrote the promissory note. But I know that my aunt received in my presence the sum of LP.1000 from my son and he called me to witness. The sum was actually paid by my son to my aunt. 40 It was not returned to my son and I do not know what my aunt did in this connection. I do not know whether my aunt was indebted to others and I do not know if she gave part of this sum to others or bought any property with it. May be she does not want me to know what she does. She lives at my house and she has no husband. We eat together and I bring what is required for food. Sometimes I bring her clothing and sometimes she buys articles for herself. She has a private room to keep her things and to sleep in it. My son brought the case for the LP.1000 with my knowledge, and I did not ask my aunt why she did not repay this sum to my son. I do not remember who represented my aunt in 50

the case. My son appointed an advocate to conduct the case. I said that I managed his property and I mean by that his property and his lands. As to his moneys he keeps them. They amount to LP.4000. He bought lands i.e. an orange grove and paid about LP.4,000 for it. He bought land at Salmeh and paid its value more than LP.3000. All this sum was in his possession. I do not know whether the sum was in his room or at the bank. This sum my son paid as price for the lands out of his own property and I had nothing to do with it. Nothing of my property entered in the price paid. I have property inherited from my father and I did not buy anything new and register it in my name. I have no cash account in the bank. Yes, my bankruptcy was declared unlawfully in the lower Court but this was cancelled on appeal and the case was closed in 1930. Yes, I am still indebted to others. The transaction between my aunt and my son was not by collusion to my knowledge.

*Before the  
Land Court,  
Jaffa.*

*Plaintiff's  
Evidence.*

No. 5.  
Proceedings  
(Translation  
from  
Arabic),  
4th March  
1944 to  
28th May  
1944,  
(e) Hashem  
Abu  
Khadra,  
*continued.*

*XXd.* : Plaintiff did not pay to the Defendant all the price of the land agreed to be sold. He kept the sum of LP.20 with him in order to pay to the lessee of the land known as Zeituneh. Yes, I have debts against others and others have debts against me. The property registered in my name is worth LP.30,000, and I am not in need in order to make collusion to increase my wealth. The debts against me do not exceed LP.5000 and my debts against others are about LP.1500.

*Re-xxd.* : I do not work in the orange trade and do not buy oranges from Abu Shukri or others, either directly or indirectly.

Plaintiff's witness YOUSEF GHALAYINI, Sworn :—

(f) Yousef  
Ghalayini.

Execution clerk. I have in my hand file 456/42. Judgment debtor is Najati Hashem Abu Khadra against Nuzha Abu Khadra, in the sum of LP.1,000. Date of the judgment is 19.11.42. District Court file is 110/42.

When the witness was asked to produce the judgment it was explained that it was not the proper procedure and that a certified copy was necessary. Case adjourned and the rest of the witnesses to be called on 30.4.44.

*The hearing of 30.4.44.* Plaintiff's witness Yousef Ghalayini : it was explained to him that he was still under oath : he said : I have file 456/42. This paper is a certified copy of the judgment produced in the said file marked M/3. Nuzha the judgment-debtor was summoned and served (the notarial notice in 13.1.43). The judgment produced for execution is endorsed at the bottom that it was served on the judgment-debtor in person on 2.12.42, but this statement did not appear in M/3 now produced. The judgment-debtor did not object to the execution of the judgment. Her property in Gaza at Beit Lahia was attached Block 955 parcels 1 and 2 ; Block 957 parcels 7 and 8 ; Block 956 parcel 4. (He pointed to the kushans viz. copy of the extracts produced M/4, M/5, M/6.) The share of the judgment-debtor in these lands was attached on 14.2.44. The debt has not been paid and possession has not been taken as no fees were paid and the execution transaction stopped at this stage.

No XXn.

*Before the  
Land Court,  
Jaffa.*

*Plaintiff's  
Evidence.*

No. 5.  
Proceedings  
(Translation  
from  
Arabic),  
4th March  
1944 to  
28th May  
1944.  
(g) Nimer  
Shaaban  
Abu  
Khadra.

Plaintiff's witness NIMER SHAABAN ABU KHADRA, Sworn :—

I know Nuzha, she is a cousin, and I know the Plaintiff. They contracted for the sale of a share belonging to her in the land Wad Ezzeit of Beit Lahia Gaza. As far as I remember the area involved in the sale is 105 dunums equivalent to 6 out of 8 shares of the said land. I was present at the agreement for the sale, which was registered at the Notary Public Gaza. I know the land in dispute. A dunum now is worth LP.30. Defendant agreed to sell a dunum for LP.1.500 which at the time 1940, was the price. She had to sell to spend on her nephew Nihad Hashem Abu Khadra as he was sick. (When asked by advocate for Plaintiff she said that the person sick was Najati and not Nihad, which was mentioned by mistake.) The agreement took place at our house in Gaza and I was present. Then another agreement was executed before the Notary Public Gaza. I do not know if on the same day or the day after. Hashem Eff. Abu Khadra was present at this agreement. The money was paid when the deed was registered at the Notary Public and not when the contract was concluded at the house. Defendant has been living with her nephew Hashem for at least 25 years. He pointed to Exh. M/1 and said : this contract was concluded at my house and the statement written at the bottom is my signature ; and he pointed to Exh. M/2 and said : this document was certified before the Notary Public and my signature is on it. Najati the son of Hashem lives together with his father and in one house. He is a student at school and is not working. Najati did not inherit from his mother during the lifetime of her parents. I do not know if his mother owned property or money personally. Najati has a brother called Nihad from his mother. I do not know that Nihad has property or money. Nihad lives like Najati with his father. Defendant lives with her nephew and sons in one house and eat at one table. I do not know the financial condition of Hashem Abu Khadra, but when he agreed to sell Defendant's share in the said land in 1940 he had no money. The said Hashem sold in that year a share in the land of Wad Ezzeit which had come to him by inheritance from his aunt Labibeh, and he sold this share to the Plaintiff.

*XXd.* : Our relationship i.e. between Hashem and me is ordinary, but since four years he did not enter my house nor I his house. Before that he used to come to my house. The agreement for the sale of the land in dispute took place in my house. What I mentioned as to the price of the land is based on my own personal knowledge and I do not work as broker in lands and I do not have licence for valuation. A dunum in the land in dispute was sold about two months ago for LP.14 or 15 as mashaa. I do not know who is older, Najati or Nihad. Defendant told me when I asked her why she sold her share, that she sold to spend on the sick Najati. I know that Defendant lives and dwells with her nephew since I used to visit them and it is only since four years that I have stopped visiting them. So I do not know their situation now exactly. I knew of the death of Najati's mother, Hashem's wife as I sent my condolences in a telegram and then visited them personally. Hashem asked me to sell the share inherited from his aunt in El Arab land and that is why I knew that he was in need of money.

Case adjourned for summoning the other witnesses to 28.5.44.

Plaintiff's witness NUZHA BINT HAJ SALIM ABU KHADRA, Sworn :—

*Before the  
Land Court,  
Jaffa.*

I know the Plaintiff. Yes, I sold him a land in Wad Ezzeit. I received from him about LP.130. I paid to the cultivator LP.25 from this, the cultivator had been on the land three years. I had received the rent from him in advance. The Plaintiff deducted the sum of LP.25 from the LP.130 which I said were received by me. Yes, I made a deed of agreement and a power of attorney in Court. I went myself to the Court and the Notary Public and the power of attorney was read to me and I confirmed it.

*Plaintiff's  
Evidence.*

*No. 5.  
Proceedings  
(Translation from  
Arabic),  
4th March  
1944 to  
28th May  
1944,  
continued.*

- 10 (The power of attorney was read to her by the attorney for the Plaintiff Exh. M/2.) She said : the Plaintiff wrote what he liked and I confirmed it. I do not know the amount of shares which I sold. All I know is that I sold 102 dunums out of 150 dunums. The land is in the possession of the Plaintiff since I sold it to him. Plaintiff does not owe me money and I have no claim for money against him. I have no objection to the sale of the land. The attachment on the land was by Najati Hashem Abu Khadra as I was indebted to him for LP.1000. My liability in respect of this debt arose partly before the sale and partly after it, i.e., I took from him LP.500 before the sale and LP.500 after the sale. The sum I took from him in the presence of my sister Im Hafiz Murshed. When I borrowed the
- 20 said sum from Najati I gave him a promissory note. The person who wrote the promissory note is Hafiz Murshed. I do not know now whether he wrote it or did it through another. The sum was received by me in presence of Murshed at Jaffa in our house. It was autumn. I do not know the period of the promissory note. Then when I took the second instalment the promissory note was torn and I gave him a promissory note in the sum of LP.1000 in presence of Hafiz Murshed. I do not know who wrote this second promissory note. The second promissory note was written at our house in Jaffa in my presence and that of Najati and Hafiz Murshed. In both cases the amount was paid in cash, viz. in ten-pound notes and
- 30 one-pound notes. I spent the whole amount, nothing remained with me of it. I inherited other property situated in Zeitun Quarter at Gaza, "hawakir" about 45 "Minah." I have also one share out of seven shares, and as regards this share I have not bound myself to sell it to anybody. I have a shop at Gaza viz. I own 1 share out of 7 shares (consisting of a yard (hosh) and stores). I do not know the number of the stores in the power of attorney. I do not take anything from the house, neither from the power of attorney nor from the lands, and they are in the name of my grandfather. The sum I spent when I was not well and I went to the dentist for three months. I paid him LP.200. I still go to
- 40 doctors and spend for my clothing and other expenditure. I live at Hashem's house about ten years. I eat from his house but the expenses for my health are from me, as also my other expenses. Before this I used to spend from what I received from the produce of Wad Ezzeit land. The sum I received from the Plaintiff I spent on myself. Najati was not sick at the date of this sale. Najati paid me the money because his mother left him jewellery and cash to the value of LP.4000. I saw this sum with my own eyes. The value of his mother's jewellery amounted to more than LP.4000. His mother did not leave other property but money and jewellery. She left three sons and a daughter, the share of each being
- 50 LP.2000. The money and the jewellery were kept with his mother. Part of the jewellery was sold and part still remains. Najati bought property to the value of LP.3000. It may be that he took the share of his brothers

*(h) Nuzha  
Bint Haj  
Salim Abu  
Khadra.*

and sister. His mother died 8 years ago. I am prepared to pay the Plaintiff what I took from him, and if the Court should order me to pay liquidated damages I shall borrow and pay him. It is not true that Najati did not pay me money. Hasham Eff. was not present when Najati paid me the money. I did not defend the case brought against me by Najati for I had actually received the money which he lent me.

*XXd.* : My share in the power of attorney, in the hawakir, and in the remaining land of Wad Ezzeit is worth LP.3000.

Plaintiff's witness NAJATI ABU KHADRA, Sworn :—

I am second Defendant. The first Defendant is my father's aunt. 10  
She lives at our house since a long time. I am 19 years of age, a student  
at school, third secondary Jaffa. I know that my father's aunt owns  
lands in Wad Ezzeit. I do not know that she sold them to others but  
after I had attached them and this case was brought. It was then that  
I knew she had bound herself to sell the land. At the date of the sale  
I was not at Jaffa but the St. Georges School. I do not know the date  
of the sale. Defendant had been in our house since I began to understand.  
She eats with the family. She buys what she needs herself, and sometimes  
my father buys them for her. Four years ago I was not well, in the French  
Hospital. I do not know who spent for me, as I was then 13 years old. 20  
I attached the land the subject matter of this case. I do not know that  
she has other property. The attachment took place through Advocate  
Goldberg and to the knowledge of my father. I do not know how much  
my father paid for this. My father manages my affairs. The debt for  
which I attached the land of the Defendant was advanced to the Defendant  
by me at our house. The amount consisted of five-pound notes, in the  
presence of my father. No one was present except my father. She  
received the money after she made a promissory note. The amount of  
the LP.1000 was paid to her in one instalment. I and my brothers  
inherited from my mother the amount of LP.4000 in addition to the 30  
jewellery. My father worked with the money and they increased and so  
he bought for us a grove at Salmeh 23 dunums for LP.3000. He then  
bought for us another grove at Yebna 33 dunums for LP.4000. Our  
father is negotiating for the purchase from Abu Ghabn a land at Battani  
for about LP.3000. Part of this property was registered in my own  
name, viz. the Salmeh grove, while the Yebna grove in my name and  
that of my brothers. The contract in respect of Al Battani land was  
made in my name and LP.500 were paid in advance. My father used to  
trade in the money in our names. I do not know whether my father  
trades in his own name or not. Yes, this signature is my father's and 40  
the handwriting on the paper is my father's—Exh. M/3. I do not know  
what my father's aunt did with the money she borrowed from me. I am  
prepared to remove the attachment in the event she pays back the amount  
of the judgment-debt. Before I brought the case against her I demanded  
the money but as she failed to pay I brought the case and attached her  
property (the land). She asked me to lend her LP.1000 and I did for  
I knew that she owned lands in Wad Ezzeit. The period of the debt  
was for one year. The money was kept with me at home, and the amount  
of them was LP.4000. I lend her LP.1000. I have now LP.4000. I  
have no bank account. I used to pay the purchase price at the Tapu, 50

and so also the advance to Abu Ghabn. I buy with the knowledge of my father, viz. when he tells me to buy I do with his knowledge. I do not know whether my father guaranteed the contract in question in this case. I do not know whether my father has money of his own.

*XXd.* : It may be that when I fell sick it was six years ago. I was young then.

Case for Plaintiff closed.

*Attorney for Defendant* : I do not wish to produce evidence.

*Before the Land Court, Jaffa.*

*Plaintiff's Evidence.*

No. 5.  
Proceedings (Translation from Arabic), 4th March 1944 to 28th May 1944, (i) Najati Abu Khadra, *continued.*

No. 6.  
Written Pleadings by Plaintiff (Translation from Arabic), 6th June 1944.

No. 6.

10 **WRITTEN PLEADINGS** submitted by Attorney for Plaintiff by Order of the Court. (Translation from Arabic.)

Whereas the evidence has been closed in this case and written pleadings were ordered to be submitted I hereby submit these pleadings in accordance with the rules.

*Precis of Facts.*

*The agreement to sell.*

1. On 15.2.40 the Plaintiff agreed with the Defendant that she will transfer into his name in the Land Registry, Gaza, 5 out of 7 shares in the following parcels :—

20	<i>Block</i>	<i>Parcel</i>	
	955	2, 9, 17, 24	
	956	1, 8	
	957	9, 17, 30	of Beit Lahia lands in the locality of Wad Ezzeit, the aggregate area of all these parcels being 147 dunums 191 square metres, and therefore the area of the land sold is 106 dunums and 30 square metres for a sum of LP.159.500. The whole of this sum had been paid to the Defendant upon the signature of the agreement and she permitted Plaintiff to take possession of the said land from that date as will appear upon perusal of the agreement marked M/1.

30 2. On the same day, the Defendant executed a Power of Attorney before the Notary Public, Gaza, registered under No. 20/40, by virtue of which she appointed Hussein Muhamed Khas and Haj Ibrahim el-Helou of Gaza jointly or severally to transfer the five shares agreed upon to be sold to Plaintiff.

This will appear from perusal of the Power of Attorney, Exhibit M/2.

3. All the said parcels were consolidated and registered in the name of the first Defendant at the Land Registry of Gaza as follows :—

	<i>Block</i>	<i>Parcel</i>	
	955	1, 2	
40	956	4	
	957	2, 8.	

This appears from perusal of the Extract of the Register of Lands attached to the Statement of Claim and marked (B).

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No. 6.

Written  
Pleadings  
by  
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(Translation from  
Arabic),  
6th June  
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*continued.*

4. The second Defendant Hashem Abu Khadra was the mediator in this agreement and undertaking and was the guarantor for the carrying out of the undertakings in the said two agreements, as appears from the last part of the agreement M/1.

5. On the strength of the said two agreements the Plaintiff took possession of the land and ploughed it deeply by tractor and improved it so that its value became at the date of the commencement of this action, LP.500.

6. While the Plaintiff was trying to register the shares sold to him, he was surprised when the land was attached by the third Defendant, 10  
Najati Abu Khadra, the son of the second Defendant, by collusion between him and his aunt, the first Defendant, in order to obstruct the transfer proceedings so that the land could not be registered in the name of Plaintiff, as will appear from the Extract of the Register of Lands and the *ex-parte* judgment obtained by the third Defendant against the first Defendant marked M/3 and dated 2.12.42, which is approximately two years after the date of the agreement. This was done because of the great rise in prices of land during this period as a result of present conditions.

Plaintiff brought this action on 16.10.43 praying for a judgment for the specific performance of the said agreement ordering the registration 20  
of the said land in the name of the Plaintiff in accordance with the doctrine of specific performance which is followed by the Palestinian Courts.

#### *Legal Proceedings.*

During the proceedings, three issues were framed in order to settle this case and they are :—

(1) Is this case, having regard to its value, within the jurisdiction of the Jaffa District Court sitting as a Land Court, or is the Magistrate's Court seized with jurisdiction ?

(2) Are the second and third Defendants proper parties in the case or not ?

(3) Is the Plaintiff entitled to claim specific performance or not ?

30

And therefore I say as follows :—

(1) The Court, after short pleadings, decided that with regard to the value of the claim, this case is within its jurisdiction.

(2) The Court considered that the second Defendant, Hashem Abu Khadra, is not a proper party to this action, and that he is only a guarantor for the payment of a sum of money.

(3) But as regards the third issue the Attorney of the Defendants declared at the sitting of 4.3.44 at page 3 of the record 40  
as follows :—

“ It is unnecessary to discuss that extensively as we admit to have drafted this document marked M/1 and to have prepared the Power of Attorney in this respect and we agree to all the facts except that any improvements were made in the land, that payment of the full purchase price was effected and that he has a right to claim specific performance. This question can be disposed of by legal argument, bearing in mind that we do not agree with him on the question of the alleged collusion.”



In accordance with this statement, the issues are reduced to the following :—

- (1) Were there any improvements introduced to the land ?
- (2) Payment of the full purchase price.
- (3) Was there any collusion or not ?
- (4) Has Plaintiff any right to claim specific performance or not ?

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Pleadings  
by  
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In fact all these four points raised by Defendants' Attorney are covered by the last fourth point which is, whether the Plaintiff has a right to claim specific performance having regard to the circumstances of this case but for the sake of avoiding argument we had evidence on all these facts during the proceedings.

*Improvements in the Land.*

We proved by the evidence of Plaintiff and his two witnesses, (1) Mohamad Hassan Ghazal who ploughed the land by tractor, and (2) Mahmoud Zeituneh who cultivated the land, that the Plaintiff introduced improvements to this land by ploughing it deeply by means of a tractor. This is the improvement that could be introduced to arable land at present, that is by ploughing it scientifically according to modern cultivation methods, although the introduction of improvements to the land is not a necessary ingredient for the claim of ownership to land as we shall see from what follows :

*Payment of the full purchase price.*

Plaintiff had proved by his evidence and the evidence of the cultivator Mahmoud Zeituneh and the evidence of the Defendant herself that the full purchase price had been paid and that there are no arrears of the purchase price owing to Defendant. (See her evidence.) This in itself is sufficient to prove this point.

*Is there collusion between first Defendant and Najati, the third Defendant ?*

Collusion between the first, second and third Defendants transpires from the fact that the third Defendant brought a pro forma case against the first Defendant through the second Defendant and with his knowledge, when this second Defendant is in fact the guarantor of the said first Defendant. It also appears from the fact that an attachment was levied on the land agreed to be sold thus rendering its transfer by the agents of the first Defendant impossible.

In fact this conspiracy was woven with disgraceful clear skill in order to deprive the Plaintiff of his recognised rights to this land, and in bad faith by obstructing the course of justice in this case. The strange facts of this case which are contrary to law and justice and opposed to honesty appear also from the following :—

(A) The three Defendants are very near relatives. The first Defendant is the aunt of the second Defendant and the third Defendant is the son of the second Defendant.

(B) All the three Defendants have lived and fed in one house together for a period exceeding 25 years.

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Pleadings  
by  
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1944,  
*continued.*

(c) The third Defendant is a school student and a youngster who does not manage his own affairs. His affairs are managed by his father Hashem. (See his evidence.)

(d) Hashem who denied all knowledge of the case brought by the third Defendant against the first Defendant, is the only person who briefed Counsel and who brought this action and incurred expenditure on it. In other words, he is the one who attached this land for the sale of which to Plaintiff he himself mediated. Thus, Hashem was the hero of the story of this strange case. He rode two horses and was in two fields, but God has his own reasons in 10 his creation.

*Strange Contradictions.*

The Court heard the evidence of all Defendants. From that evidence Plaintiff's claim of collusion and conspiracy to deprive him of his legal rights became clear and in no way is it doubtful or arguable because :

(A) Hashem said that payment of the LP.1000 was made in his presence whereas his aunt, the Defendant, contradicted him absolutely and said that he was not present at all.

(B) He said that he did not instruct the advocate who brought this action against the lady Defendant claiming the LP.1000 while 20 his son the third Defendant contradicted him and said that he was the one who instructed the advocate to bring that action.

(C) He said he does not know anything about his son's property while his son said that he is managing his movable and immovable property for him ; further that he was able to recover the sum of LP.4000 alleged to have been inherited by him from his mother, the total exceeding LP.10,000, and that he bought with this money for his son and his brothers some properties without being engaged in commercial or any other business. (God forbid except by 30 chemistry which has power in creating money by means of scientific hatching at this the end of time.)

(D) The first Defendant said that she received the sum of money on two different occasions extending over a period exceeding two years, while the Defendant Najati says that the sum was paid to her on the date of the contract in one lump sum.

(E) She says that the bank notes paid to her were one and ten pound bank notes, and Najati says that the whole amount was paid in five pound notes.

(F) Hashem says that he was not engaged in orange trade and that he did not buy the oranges of Hallawa's grove either 40 personally or through others, but we have produced to Court a letter in his own handwriting and attested by his son, from which it appears and should be taken into consideration that he bought the oranges of the Hallawa's grove together with a Jew.

(G) Hashem says that he owns property worth LP.30,000 while he sold his share in Wad Ezzeit lands, i.e. in the same locality in which his aunt, the Defendant, sold her land, for a sum equal to that at which she sold her share. This shows that at that date he was in distress and in extreme poverty as shown by the evidence of his cousin Nimr Abu Khadra. 50

(H) The first Defendant says that at the date of the sale to Plaintiff Najati was not ill, while Najati says that he was ill and was in the French hospital. This corroborates the evidence of Nimr Abu Khadra, Plaintiff's witness, who says that the sum received by the first Defendant as the purchase price was spent upon the said Najati. Please consider all that.

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Pleadings  
by  
Plaintiff  
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*continued*

10 (I) Najati says that the attachment was levied with the knowledge of his father. His father knows that his aunt owns other property from Gaza worth LP.3,000.— If so, why did he attach this particular land, which was sold, and left the other properties worth LP.3,000, that is properties the value of which exceeds thrice the debt in respect of which the land was attached? Is not this proof of conspiracy against justice, righteousness, made in bad faith, on purpose and with premeditation?

*Is it reasonable :*

(1) That this debt was made between persons living in the same house and eating at the same table?

20 (2) That the first Defendant would agree to sell her land to Plaintiff, a stranger, at the time when she had borrowed from Najati, according to her story, a sum of LP.500 before the sale, and while Najati had a sum of LP.3,000 and could have lent her another sum very easily.

(3) That this sum had been paid in fact to first Defendant by third Defendant, and such irreconcilable contradictions appear in the evidence of the three Defendants as to the time, place, kind of notes, witnesses to the debt, and other strange contradictions.

(4) That Hashem would bring this action against his aunt without asking her why did she not repay him the sum of LP.1000 allegedly lent to her.

30 (5) That the attachment was levied upon this land in good faith, while according to the allegations of Hashem and his son and of herself, she owns other property in Gaza worth more than LP.3,000, or did all this happen merely by chance.

*This Fictitious attachment should be removed because :*

(1) It was levied in bad faith and in order to obstruct the transfer of the land to Plaintiff.

(2) There are some other properties the value whereof exceeds LP.3,000 and which belongs to Defendant according to herself and to Hashem.

40 (3) Plaintiff has an equitable title to the part of the land sold to him, namely five shares out of seven, as from the date of the agreement to sell.

(4) The remaining shares in the land amount to 40 dunams and their value calculated at LP.15 per dunam is LP.560 according to Hashem's estimation, which is the lowest, and according to the estimation of Nimr Abu Khadra, the value is LP.1200.— which exceeds the sum claimed.

(5) This fictitious debt was incurred about two years after the sale according to both parties, and this is proved of bad faith.

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No. 6.

Written  
Pleadings  
by  
Plaintiff  
(Translation  
from  
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*continued.*

*The legal points in this case :*

(1) This document is a legal agreement and it does not conflict with the provisions of Section 10 of the Land Transfer Ordinance, 1920, and should be executed.

(2) The purchase price was in fact paid and the Plaintiff does not owe Defendant any sum of money (see her evidence).

(3) Possession of the land was entered into on the date of the agreement as admitted by the Defendant and by her evidence.

(4) The first Defendant when giving evidence declared that she does not want to repudiate the agreement and desires to execute it were it not for the attachment on the land. 10

(5) Since the first Defendant to this day is willing to carry out her obligations, and the attachment was levied as a result of a conspiracy, by a collusion, without consideration, and is fictitious as it is still possible to secure his rights by attaching other properties belonging to Defendant as stated by her and by Hashem in Court, and since Plaintiff has acquired an equitable right to the land, and as this case is on all fours with Civil Appeal No. 195/40 and Civil Appeal No. 182/43 and numerous other judgments, copies of which I enclose herewith, this agreement should be put into effect in law and in equity. 20

*Probabilities :*

Attorney for the Defence may contend the following :

1. Plaintiff has an alternative remedy, namely, compensation. My answer to that is :—

(A) The sum of LP.300 mentioned in the agreement as damages is not sufficient to compensate for all hardships suffered by Plaintiff and the profits lost by him, as the value of the land at present is LP.1470, as testified by Hashem who stated the price per dunam to be at present LP.14, while the whole purchase price paid by Plaintiff is a little over LP.159. Therefore, the amount of damages mentioned in the agreement is not adequate compensation. 30

In its decision in Case No. 182/43 the Court pointed out that the rise in the prices of land encourages vendors to repudiate their contracts and it is the duty of the Court to teach such persons a lesson so that they should fulfil their obligations even though the period of possession is a short one.

(B) Further, there are no merits in such allegation, as Defendant herself declared herself willing to carry out her obligations under the agreement were it not for this fictitious attachment.

(C) Attorney for Defendants did not produce any evidence to contradict Plaintiff's claim, and moreover he even admitted the authenticity of the agreement, delivery and possession. He only argued the point of the purchase price, but the first Defendant admitted to have received the full purchase price and that no balance remained unpaid to her. He only argued that Plaintiff is not entitled to claim specific performance. This contention also fails after the first Defendant has declared that she is ready to effect the transfer. He only argued the point as to the existence of 40

collusion between all the Defendants. Nevertheless he represents all the Defendants although their defence is not the same and although no legal connection between the allegations of each of them. Since the existence or non-existence of collusion is a question of fact and not of law, and since he did not contradict Plaintiff as to that in any way, he should be presumed to have admitted all that Plaintiff alleges.

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Pleadings  
by  
Plaintiff  
(Translation  
from  
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1944,  
*continued.*

*The only Point to be discussed :*

- (1) Was execution levied as a result of conspiracy or not ?
- 10 (2) Having proved that Plaintiff has acquired an equitable title to the land, can the attachment be removed or not ?
- (3) Since Defendant owns some other property, is it not possible, assuming the attachment and the action in respect of which it was levied to have been proper, to secure the debt by attaching the remaining shares in the same land and other properties owned by her in Gaza the value thereof had been said to be LP.3000.

We leave this question to the conscience and absolute discretion of the Court as it has the exclusive power to weigh all the facts of this case. We trust the judgment will be given :—

- 20 (1) Ordering specific performance of the agreement reduced, by registering the land claimed in the name of Plaintiff ;
- (2) Ordering the removal of the attachment only from the shares sold ;
- (3) Ordering first and third Defendants to pay the costs and advocate's fees of this action.

(Sgd.) SAID ZEIN ED-DIN,

Attorney for Plaintiffs.

No. 7.

**WRITTEN PLEADINGS by Defendants Nos. 1-3.**

(Translation from Arabic.)

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1. The Statement of Claim as filed by Plaintiff is misconceived as in clause 6 (D) thereof he asks for a judgment declaring him owner of a plot of land when there is no dispute as to ownership. It is clear from his action that he claims specific performance of an agreement dated 15.2.40, but he did not ask for such specific performance, and therefore did not comply with the provisions of Rule 7 (H) of the Civil Procedure Rules, 1938.

No. 7.  
Written  
Pleadings  
by  
Defendants  
Nos. 1-3  
(Translation  
from  
Arabic),  
11th June  
1944.

2. Alternatively, an Order for specific performance cannot be given in this action because of the attachment levied upon this land long before this action was instituted, as laid down in Civil Appeal No. 95/41, reported in Annotated Supreme Court Judgments, 1941, Vol. 2, page 520, to the effect that an order of specific performance could not be given if attachment has been levied upon the land, the subject matter of the dispute, before the action was commenced. It is not disputed in this case that there

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Land Court,  
Jaffa.*

No. 7.  
Written  
Pleadings  
by  
Defendants  
Nos. 1-3  
(Transla-  
tion from  
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11th June  
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*continued.*

is an attachment on the land in favour of the third Defendant, as is evident from the Statement of Claim, the evidence tendered by Plaintiff and his pleadings. The only point he relies on in attacking this attachment is collusion, but not only did he fail to prove it but by his evidence and especially by that of his witnesses Nuzha Abu Khadra, Hashem Abu Khadra and Najati Abu Khadra he established the contrary of his allegations. Their evidence was against him, and they explained to the Court that there was no collusion and that the attachment was levied in the ordinary legal way, and whatever they may have said, Plaintiff is bound by it since they are his witnesses and he is bound by everything 10 stated by each one of them according to the English principle "each party is bound by the evidence of his witnesses."

3. Further, the remedy of specific performance is discretionary and not obligatory. The Court has power to exercise his discretion by ordering specific performance or by declining to do so upon considering the circumstances of each case; but there are certain elements that should exist in order that such an order could be given. The Supreme Court of Palestine have laid down that the doctrine of specific performance applies in Palestine if the following elements exist simultaneously :

- (a) If the whole purchase price was paid, 20
- (b) if the contract was executed by entering into possession and a considerable period has elapsed since such entry,
- (c) if a claim for damages would not be sufficient compensation for the party agreed,
- (d) if there is no express stipulation in the contract as to the payment of damages in a sum agreed upon in advance in case of breach.

C.A. No. 201/42 Annotated Supreme Court Judgments 1942, vol. 2, page 737.

C.A. No. 167/43 Annotated Law Reports, 1943, p. 482. 30

This principle was applied by the District Court of Jaffa, sitting as a Land Court in Land Case No. 6/43, *Muzbah Abu Khadra vs. Abdel Wahhab and Others*, and in the case of *Bader Mousa vs. Zarzar*.

In the present case there exists one element only, namely, payment of the full purchase price, but there is no possession for a long period, and a claim for damages is a sufficient remedy for Plaintiff especially in view of the fact that he did not make any improvements to the land as claimed by him, since he did not erect a building nor planted trees; the only thing he did was to plough the land and this he did for his own ends because he sold it and took its crops for two years, and I am unable to 40 see the improvement made by Plaintiff. As regards the last but not least element, namely stipulation for damages in the contract itself, Plaintiff had chosen at the time of signing the contract to fix in advance a sum of money as the assessed damages he may suffer in case of breach viz. LP.300, and he cannot now go back on that and say that this sum is not sufficient compensation, as he is estopped from that by his consent and by his agreeing in advance to this estimation.

*Briefly* : (1) Plaintiff did not ask in the Statement of Claim for the putting into effect of the contract by way of specific performance ;

(2) Further an attachment was made on the land, the subject matter of the contract before the commencement of the action and no order of specific performance can be made so long as the attachment is in force.

(3) Further, the elements necessary for specific performance do not exist in this case.

I pray that the action be dismissed with costs and advocate's fees.

(Sgd.) ABDEL RAHMAN ES SIKSIK,  
Attorney for Defendants.

10

*Before the  
Land Court,  
Jaffa.*  
---  
No. 7.  
Written  
Pleadings  
by  
Defendants  
Nos. 1-3  
(Translation  
from  
Arabic),  
11th June  
1944,  
*continued.*

**No. 8.  
JUDGMENT.**

(Translation from Arabic.)

The Plaintiff claims :

1. That on 15.2.40 an agreement was concluded between him (the Plaintiff) and the first Defendant for the sale to him 5 shares out of 7 shares in the following plots of land :—

<i>Block</i>	<i>Parcels</i>
955	2, 9, 17, 24
956	1, 8
957	9, 17, 30

20

of the lands of Beit Lahia in the sub-District of Gaza for the sum of LP.159.500 mils and that she (Defendant) received the whole price. These parcels were consolidated and registered in the name of the Defendant in the Land Registry of Gaza as :—

<i>Block</i>	<i>Parcels</i>
955	1, 2
956	4
957	7, 8.

30 The second Defendant undertook to execute the undertaking of the first Defendant in his capacity as guarantor.

2. That relying on the authority granted to the Plaintiff in the contract he took possession of the said shares and began to hold them independently with no interference and to improve the land by ploughing it with a tractor, and that the land became to be worth the sum of LP.500.

3. That the first Defendant is the aunt of the second Defendant, and the third Defendant is the son of the second Defendant ; that these three Defendants, owing to the increase in prices, colluded together to obtain these shares to which Plaintiff had acquired equitable title ; and  
40 that the third Defendant obtained a judgment against the first Defendant by collusion and attached the said parcels as being the property of the first Defendant although her ownership in them had been divested by the said contract and the possession of the Plaintiff.

No. 8.  
Judgment,  
23rd July  
1944  
(Transla-  
tion from  
Arabic).

*Before the  
Land Court,  
Jaffa.*

No. 8.  
Judgment  
(Translation from  
Arabic),  
23rd July  
1944,  
*continued.*

The Plaintiff therefore asks for attachment of what is registered in the name of the first Defendant and for stay of the execution proceedings in respect of these parcels, in Execution File No. 456 '42; and he prays that a judgment be given declaring his ownership to five shares out of seven shares in the said parcels and for non-interference by first Defendant in the said shares, having regard to the equitable principle of specific performance, and setting aside of the proceedings opened by the fourth Defendant in his capacity as Execution Officer on the application of the third Defendant etc. . . .

The reply of the attorney for the first, second and third Defendants 10 amounted to this: that this court has no jurisdiction to hear this case in view of the value of the contract for which an application for specific performance is submitted; that, alternatively, they deny the facts mentioned in the statement of claim regarding possession of the land and the matter of the collusion; that the second Defendant is not a party in this case and so also the third Defendant who attached the land before this case was brought; that the elements of specific performance did not exist and that the only remedy was to ask for damages as provided in the contract.

Three points were fixed for discussion and solution in this case:— 20

1. Having regard to the value of the case, has the Magistrate Court jurisdiction to hear it or does it fall within the jurisdiction of the District Court of Jaffa sitting as a Land Court?

2. Are the second and third Defendants parties to the case brought by the Plaintiff?

3. Is the Plaintiff entitled for specific performance in this case?

On this basis the trial was proceeded with and the Court decided with regard to the first point that it had jurisdiction to hear the case, as regard is had to the value of the land at the time of action brought and not to its value at the time of the contract. With regard to the second point the 30 Court decided that the second Defendant was not a party as he was merely a guarantor of the contract in respect of substance, and the case was for specific performance and he was not connected with the land itself. The Court considered that the litigation was limited as against the first Defendant, as party to the contract for the sale of the land and the third Defendant who has attached the said land.

The Court heard the evidence of the Plaintiff consisting of eight witnesses. The Defendants did not bring any evidence. From the evidence heard it appeared:—

1. That the first Defendant received the whole price of the land 40 agreed to be sold to the Plaintiff by virtue of a document Exhibit No. M/1 which is an agreement to sell and Exhibit No. M/2 which is a power of attorney certified by the Notary Public Gaza for the execution of the said agreement at the Tapu to the knowledge of agents appointed in this power of attorney. Both these two documents were made and signed on the same day viz. 15.2.40.



2. The deed of agreement contains a clause fixing the sum of LP.300 as liquidated damages to be paid in case of breach of the contract, in addition to the refund of the sum LP.159 admitted to have been received as per the said two deeds, with all the expenses incurred by the Plaintiff.

*Before the  
Land Court,  
Jaffa.*

No. 8.

Judgment  
(Translation from  
Arabic),  
23rd July  
1944,  
*continued.*

3. The first Defendant, before she contracted with the Plaintiff for the sale of the land the subject matter of this case, had leased it for the last period of three years for the sum of LP.18, viz. for LP.6 per year, which she received in advance. This sum was deducted from the agreed price. This land remained with the lessee and he put it to use for a period of two  
10 years. In the third year the Plaintiff refunded to the lessee the rent of the third year viz. LP.6 and took it (land) back and ploughed it with a tractor deep ploughing and planted it in 1941 and is still in his possession since then.

4. The price of the land increased considerably since the date of the contract. Whereas the price of a dunam at the date of the contract was LP.1.500 mils, it now exceeds LP.10. Some of the witnesses, Nimer Abu Khadra a relative of the Defendants, a cousin of theirs, stated that the price of a dunam in the land in dispute is worth now LP.30.

5. The second Defendant who was struck out of the case is the  
20 person who manages the affairs of the first Defendant. She is his aunt living in his family and has been a member thereof for a period exceeding 20 years. He provides her with food and some clothing from his own pocket as stated by the first and second Defendants themselves in their evidence. This relationship is also shown by the fact that the agreement entered into between the Plaintiff and the first Defendant took place through the second Defendant who was a witness to the deed and guaranteed its performance. The second Defendant was also managing the affairs of his son, the third Defendant, who is still a student at school; this relationship is also proved by the evidence of both second and third  
30 Defendants to the effect that the former was managing the affairs of the latter.

All this shows clearly that the first and third Defendants are represented by the person of the Second Defendant; and yet the second Defendant states in his evidence that he was present when his son paid to the aunt, the first Defendant, the sum of LP.1000 but he does not say that the agreement for this loan took place with his knowledge and consent; and he was supported in this respect by his son, the third Defendant. What is more strange is the fact that when the said debt falls due the second Defendant is appointed to represent his son, the third Defendant, to bring  
40 a case against his aunt, the first Defendant, before he asked her, though she was all the time in his house, why she did not repay the debt due to his son. Then there are contradictions in the evidence of the three Defendants as to the way the amount of the debt was advanced. The first Defendant states in her evidence that the said sum was advanced to her in two instalments of LP.500 each, the first instalment being advanced two years before the contract with the Plaintiff, and the second instalment three years after the said contract; that what she received in both cases were paper money of one-pound and ten-pound notes, in the presence of her sister Um Hafiz and her son Hafiz and that her nephew, the second

*Before the  
Land Court,  
Jaffa.*

No. 8.  
Judgment  
(Translation  
from  
Arabic),  
23rd July  
1944,  
*continued.*

Defendant, was not present. The second Defendant, however, states in his evidence that the advance from his son, the third Defendant, to the first Defendant took place in his presence only and that he did not know what his aunt did in respect thereof. As to the third Defendant he (third Defendant) states in his evidence that he advanced the said sum of LP.1000 to the first Defendant in one instalment and in the presence of his father only and in five-pound notes. All this shows clearly that the loan transaction was made by the first and third Defendants with the intention of obstructing the performance of the power of attorney which the Plaintiff had obtained from the first Defendant, or rather to make it impossible for the contract to be performed. For the third Defendant brought an action against the first Defendant and obtained a judgment by default against her, which judgment he served upon her and in the result attached only the lands, the subject matter of this case ; he did not attach other land property which the first Defendant owned in other parts. 10

The Court found it necessary to go into the matter of the attachment and the sources of the debt in so far as this had bearing on the subject-matter of this case. This, however, does not mean that it is intended to annul the judgment obtained by the third Defendant against the first Defendant, as its annulment is dependent on bringing an independent case by the person who finds himself prejudiced by such judgment directly. The intention of the Court is to determine the case before it in the light of the attachment laid on the land, the subject-matter of the case. The rights of the third Defendant, however, are not affected having regard to the right acquired by him by the consent of the first Defendant and by her offering no objection to the said proceedings, and having regard to the other property belonging to the first Defendant including the rest of the parcels, not involved in the agreement of sale to the Plaintiff, comprising an area of 50 dunams, and the other land property situated at Gaza and which was not attached like the land in dispute. The remaining property of the first Defendant is valued at considerably more than the amount of the judgment-debt against the first Defendant in favour of the third Defendant. All that the present Court can do with respect to the attachment by the third Defendant in the light of the circumstances surrounding the case is to decide that it (attachment) has no effect on the rights acquired by the Plaintiff in the land, the subject-matter of this case. The Court therefore orders the removal of the attachment in so far as the rights of the Plaintiff are concerned only. 30

There remains the question of the equitable rights acquired by the Plaintiff as a result of the said contract. 40

It is true that a fixed sum viz. LP.300 was stipulated as liquidated damages in the event of a breach of the contract ; and that it may be said that what is vested in the Plaintiff is a right to claim this sum, in addition to what he paid and expended in respect of the land in accordance with the terms of the contract, but whereas the Plaintiff took delivery of the land and is still in possession thereof, and has somewhat improved it by deep ploughing, after he paid the price of the whole land agreed to be sold as per the said contract, and after the price thereof has gone considerably high, the liquidated damages stipulated for no longer represent the amount of the damage which would result to the Plaintiff by reason of the default of the 50

first Defendant to perform the contract. All this is sufficient to induce the Court to regard the Plaintiff as having acquired an equitable title to the land, for all the requirements for the grant of specific performance are existent in this case, specially when the first Defendant showed her desire to perform the contract had it not been for the attachment on the land.

*Before the  
Land Court,  
Jaffa.*

No. 8.  
Judgment  
(Translation  
from  
Arabic),  
23rd July  
1944,  
*continued.*

Wherefore we order the specific performance of the contract and the registration of 5 shares out of 7 shares of first Defendant in parcels 1 & 2 (Block 955) & 4 (Block 956) & 7 & 8 (Block 957) in the name of the Plaintiff, with costs, fees and LP.10 advocate's fees, for all the proceedings in this  
10 case.

Judgment delivered on 23.7.44 in presence of the Plaintiff in person and absence of the attorney for the Defendants, who did not appear but sent his clerk.

(Sgd.) AZIZ DAOUDI,  
Judge.

No. 9.

**NOTICE AND GROUNDS OF APPEAL.**

**BEFORE THE SUPREME COURT.**

Sitting as a Court of Appeal.

*Before the  
Supreme  
Court  
sitting as  
a Court of  
Appeal.*

20 NUZHA BINT EL HAJ SULEIMAN ABU KHADRA  
of Jaffa

*Appellant*

*versus*

1. HAJ IBRAHIM SALEH EL HILOU, of Gaza
2. HASHEM ABU KHADRA, of Jaffa
3. NAJATI ABU KHADRA, a student, of Jaffa
4. EXECUTION OFFICER, District Court, Jaffa

*Respondents.*

No. 9.  
Notice and  
Grounds of  
Appeal,  
26th  
August  
1944.

On 23.7.44 the Land Court of Jaffa constituted of Judge Aziz Bey Daoudi sitting alone delivered its judgment in the absence of the Appellant in Case No. 45/43 brought by first Respondent against the Appellant and the other Respondents asking for specific performance of the contract  
30 made between the Appellant and the first Respondent on 15.2.40. The judgment orders specific performance of the contract and the registration of 5 shares out of 7 shares of Appellant's land, the subject-matter of the agreement and the action, in the name of the first Respondent with costs, fees and advocate's fees.

Whereas the said judgment is prejudicial to the rights of the Appellant and contrary to law, an appeal is hereby made against it within the legal period on the following grounds :—

1. The District Court of Jaffa sitting as a Land Court had no jurisdiction to hear this case in view of the value of the contract to be performed  
40 specifically. The value as it appears in the contract is LP.159.500 mils. In action for specific performance regard is had to the value expressed in the contract and not to the value of the property at the time of action brought, for the Plaintiff claims specific performance of the contract in its literal sense.

*Before the  
Supreme  
Court  
sitting as  
a Court of  
Appeal.*

No. 9.  
Notice and  
Grounds of  
Appeal,  
26th  
August  
1944,  
*continued.*

2. Alternatively, a District Court Judge sitting alone cannot constitute a Land Court (vide, Land Courts (Amendment) Ordinance, 1942, Official Gazette No. 1204 Ordinance No. 14 p. 58 Vol. 1).

3. Alternatively, the Court erred in giving judgment for specific performance of the contract, for the Plaintiff did not ask in his statement of claim for specific performance of the contract contrary to Rule 7 (h) of the Civil Procedure Rules, 1938.

4. Alternatively, the Court erred in granting specific performance of the contract for two reasons :—

(A) The contract provides for the payment of damages in case of breach of revocation, and both parties have accepted this for themselves in case of breach of revocation, and therefore no specific performance can be granted ;

(B) Alternatively, the amount of the said damages mentioned in the contract, added to the sum which first Respondent received as price for the produce of the land during the period of three years, is equivalent to LP.600, which is a sufficient remedy in case of breach, when we know that the first Respondent in his statement of claim says that the land was worth LP.500 when action was brought and when we also know that the first Respondent did not effect any improvements in the land and did not erect any building or plant any trees. The statement of the Land Court that deep ploughing improves the land is a wrong statement.

Wherefore it is prayed that this appeal be accepted, the judgment of the Land Court to be set aside and the claim of first Respondent be dismissed with costs, fees and advocate fees, here and below.

(Sgd.) thumbprint of Appellant.

NUZHA BINT SULEIMAN ABU  
KHADRA.

No. 10.  
Judgment,  
30th  
January  
1945.

No. 10.  
JUDGMENT.

30

Civil Appeal No. 367/44.

Before : THE CHIEF JUSTICE (Sir William Fitzgerald) and  
MR. JUSTICE FRUMKIN.

For Appellant : Mr. E. Georges Elia.

For Respondents : No. 1—Muhammad Nimer Eff. el-Hawari.

Nos. 2-4 absent, served.

A preliminary point has been taken by the Respondent that this appeal is out of time. It is admitted that the appeal was not filed within thirty days from the date of the delivery of judgment in accordance with Rule 321 of the Civil Procedure Rules, 1938.

Mr. Elia contends that the date does not run from the date (23.7.44) upon which Judge Daoudi delivered judgment, because he argues that judgment was not delivered in the presence of the parties or their advocates, in accordance with the said Rule 321.

In regard to this the last sentence of the judgment reads:—

“ Judgment delivered on 23.7.44 in presence of the plaintiff in person, and absence of the attorney for the defendants, who did not appear but sent his clerk.”

From this we infer that the Judge satisfied himself that the clerk was authorised to represent the attorney for the purpose of hearing judgment, and in accordance with the usual courtesy extended by the District Court Bench to a busy lawyer, who was probably engaged in another Court, he accepted that representation.

*Before the Supreme Court sitting as a Court of Appeal.*

No. 10.  
Judgment,  
30th  
January  
1945,  
*continued.*

10 We are satisfied that the Rule was sufficiently complied with. It follows that the appeal is out of time and must be dismissed. We make no order as to costs.

Delivered this 30th day of January, 1945.

(Sgd.) W. J. FITZGERALD,

Chief Justice.

(Sgd.) G. FRUMKIN,

Puisne Judge.

No. 11.  
Application  
for Leave to  
Appeal to  
His  
Majesty's  
Privy  
Council,  
28th  
February  
1945.

No. 11.

**APPLICATION for Leave to Appeal to His Majesty's Privy Council.**

[*Not printed.*]

20

No. 12.

**ORDER granting Conditional Leave to Appeal.**

[*Not printed.*]

No. 12.  
Order  
granting  
Conditional  
Leave to  
Appeal,  
26th March  
1945.

No. 13.

**APPLICATION for Final Leave to Appeal to His Majesty's Privy Council.**

[*Not printed.*]

No. 13.  
Application  
for Final  
Leave to  
Appeal to  
His  
Majesty's  
Privy  
Council,  
4th May  
1945.

No. 14.

**ORDER granting Final Leave to Appeal.**

Before : THE CHIEF JUSTICE (Sir William FitzGerald),  
MR. JUSTICE FRUMKIN and  
MR. JUSTICE ABDULHADI.

30

**ORDER.**

WHEREAS by Order of this Court dated 26th March, 1945, the applicant was granted conditional leave to appeal to His Majesty in Council subject to the following conditions:—

(i) That the Appellant do enter within six weeks of the date of this order into a bank guarantee from one of the three banks, Barclays, Ottoman or Anglo-Palestine, in a sum of LP.300 effective

No. 14.  
Order  
granting  
Final Leave  
to Appeal,  
6th June  
1945.

*Before the  
Supreme  
Court  
sitting as  
a Court of  
Appeal.*

No. 14.  
Order  
granting  
Final Leave  
to Appeal,  
6th June  
1945,  
*continued.*

for three years or more, for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondents in the event of the Appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellant to pay the Respondents' costs of the appeal (as the case may be);

(ii) That the Appellant do take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within six weeks of the date of this order. 10

WHEREAS applicant has fulfilled the said conditions in that she filed a guarantee in this Court in the sum of LP.300 as a security and prepared a list of documents to be despatched to His Majesty in Council the Court therefore orders, and it is hereby ordered, in pursuance of Article 21 of the Palestine (Appeal to Privy Council) Order-in-Council, 1924, that final leave to appeal to His Majesty in Council be granted.

Given this 6th day of June, 1945.

(Sgd.) W. J. FITZGERALD,  
Chief Justice.

(Sgd.) G. FRUMKIN,  
Puisne Judge. 20

(Sgd.) M. ABDULHADI,  
Puisne Judge.

No. 15.  
Bond,  
28th April  
1945.

No. 15.  
BOND.

[*Not printed.*]

*Exhibits  
and  
Documents.*

**EXHIBITS AND DOCUMENTS.**

P/1 (M/1).

**AGREEMENT.**

P/1.  
Agreement,  
15th  
February  
1940.

On the date under-mentioned an agreement has been concluded 30  
between Nuzha Bint Haj Suleiman Abu Khadra of Gaza (First Party)  
and Haj Ibrahim El Helou of Gaza (Second Party) as follows:—

1. The first party owns and possesses 6 shares out of 7 shares in the following parcels . . . comprising an area of 147 dunams and 191 sq. metres in all, situated at Wad Ezzeit locality, within Beit Lahia lands, Gaza sub-District. These have been registered in the name of the first party.

2. The first party undertakes to sell 5 shares out of 7 shares in the said parcels, comprising an area of 106 dunams and 35 metres for LP.195.500 mils. The whole price has been received by the first party from the second party in advance and cash on the signing of this contract. 40  
The signature of the first party on the contract is equivalent to a receipt in respect of the sum thus received. .

3. The first party undertakes to remove encumbrances, pay the taxes, deliver the land and the kushans etc. to enable the second party to effect the transfer.

4. The first party undertakes to execute the sale at the proper place, and admits the receipt of the whole price ; the execution of the transaction to be complete within 6 months from the date of the contract. In the event of the first party making a default she will be liable to pay LP.300 to the second party as liquidated damages fixed and agreed upon between the parties in advance, without any need for a notarial notice. The first party, in addition to her liability to refund the price already received by her viz. the sum of LP.159.500 mils together with the expenses incurred by the second party, is under an obligation to pay the liquidated damages.

*Exhibits  
and  
Documents.*

P/1.  
Agreement,  
15th  
February  
1940,  
*continued.*

10 5. A stipulation as to guarantee.

6. Second party accepts to purchase, having paid the whole price.

7. The contract concluded by offer and acceptance and written for reference in case of need.

(Sgd.) NUZHA ABU KHADRA.

(Sgd.) IBRAHIM EL HELOU.

60 mils Revenue Stamp. (Sgd.) HASHEM ABU KHADRA, guarantor.

Witnesses : NIMER ABU KHADRA.

15.2.40.

P/2 (M/2).

**POWER OF ATTORNEY.**

(Translation from Arabic.)

I, Nuzha, daughter of Haj Suleiman Abu Khadra, of Gaza, have this day appointed Messrs. Hussein Muhammad Khas and Saleh Haj Ibrahim el-Helou, of Gaza, jointly or severally to be my attorneys and authorised to act on my behalf and in my stead, for the purpose of effecting the final transfer and renunciation of my rights in five shares out of seven shares in all the following parcels, i.e. No. 2, 9, 17, 24 in Block 955, Nos. 1, 8 in Block 956 and Nos. 9, 17, 30 in Block 957 in the lands of Beit Lahia in Wadi Ez-Zeit locality, into the name of Haj Ibrahim Haj Saleh el-Helou

30 of Gaza, at the Land Registry of Gaza or at any other department authorised to effect, transfer, in consideration of the sum of LP.159.550 received by me personally in cash in advance, and I have authorised the said attorneys to transfer to the purchaser or to whomsoever he may order, and to make in my name the necessary admissions and confirmations as to the receipt of the said consideration, and to sign in my name all the necessary papers for the transfer, and to prepare the transaction of transfer and to

and to submit the transaction to the Land Registry Office for registration, and to register the lands i.e. the shares sold in the name of the said purchaser

40 or in the name of whom he may order.

This is a special power of attorney giving absolute discretion and executed pursuant to the agreement made between us.

I undertake not to dismiss the said attorneys and if I do dismiss them, they would still be my attorneys in this respect, and if I do dismiss them for any reason whatsoever, I shall be under a duty to repay to the purchaser the said purchase price together with an amount of LP.300 as

P/2.  
Power of  
Attorney  
(Transla-  
tion from  
Arabic),  
15th  
February  
1940.

*Exhibits  
and  
Documents.*

liquidated damages assessed and agreed upon without the necessity of sending any notices, and I do hereby request the Notary Public of Gaza to register this power of attorney accordingly.

P/2.  
Power of Attorney (Translation from Arabic), 15th February 1940, *continued.*

Dated 15.2.40.

Witness and identifier  
NIMER ABU KHADRA

Witness and identifier  
HAFEZ AHMAD NURSHAD

The Principal

Thumbprint of NUZHA over 507 mils stamp.

The principal, Nuzha daughter of el-Haj Suleiman Abu Khadra, appeared before me and after she was made known to me by the two witnesses and identifiers, this power of attorney was read over to her and she admitted and confirmed its contents word by word, and I therefore have put this note. 10

Dated 15.2.40.

(Sgd.) ?  
Magistrate Gaza.

No. 20/40.

The thumbprint affixed hereinbefore is the thumbprint of the principal, Nuzha, daughter of el-Haj Suleiman Abu Khadra, of Gaza, and she affixed it in my presence and in the presence of the two witnesses and identifiers i.e., Hafez Ahmad Nurshad and Nimer Shaban Abu Khadra of Gaza. 20 After the said principal have admitted and confirmed the contents of this document word by word in the presence of His Worship the Magistrate, myself, and the two said witnesses and identifiers, this power of attorney was certified by me and registered in the proper register accordingly this 15th day of February, 1940.

15.2.40.

Seal of the Magistrate Court  
of Gaza.

(Sgd.) ?  
Notary Public, Gaza.

P/3.  
Judgment of District Court, Jaffa, in C.C.110/42, 19th November 1942.

P/3.

30

**JUDGMENT of District Court, Jaffa, in C.C. 110/42.**

Civil Case No. 110/42.

Before :—His Worship the Registrar, SHUKRI MUHTADI.

In the Case of :—

NAJATI ABOU KHADRA - - Plaintiff

*vs.*

NUZHA SULEIMAN ABU KHADRA - Defendant.

*Nature of Claim :* Claim for LP.1,000 in accordance with a promissory note, plus interest, costs and advocate's fees.

Judgment (*ex-parte*) :—

40

Upon reading the statement of claim filed in this court on the 16th October, 1942, by Advocate Mr. M. Goldenberg, and upon hearing said advocate; and



Upon reading the evidence of service along with the affidavit by the process-server who effected service, and the promissory note, marked "A," and

*Exhibits and Documents.*

Upon being satisfied that no application for leave to appear and defend has been filed by the Defendant,

P/3.  
Judgment of District Court, Jaffa, in C.C. 110/42, 19th November 1942, continued.

Judgment (*ex-parte*) is hereby entered against the Defendant, by default for the sum claimed, viz. LP.1,000 (one thousand Palestine Pounds), with interest thereon at the rate of 6% from date of action to full settlement, and costs—amounting to LP.22.996 mils and advocates' fees assessed at 10 LP.10 (ten Palestine Pounds).

Judgment entered as above in accordance with rule 242 of the Civil Procedure Rules, and is subject to being set aside under rule 250 of the Civil Procedure Rules, this 19th day of November, 1942.

Registrar  
(Sgd.) SH. MUHTADI.

P/4, P 5 and P 6 (M/4, M/5 and M/6).

**TABU EXTRACTS.**

[*Not printed.*]

P/4 (M/4),  
P/5 (M/5)  
and  
P/6 (M/6).  
Tabu  
Extracts.

**POWER OF ATTORNEY from Nuzha Suleiman Abu Khadra to Abdul Rahman Siksik.**

Power of Attorney from Applicant to Abdul Rahman Siksik, 24th October 1943.

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(Translation from Arabic.)

We the undersigned, Hashem Abu Khadra, Najati Abu Khadra and Nuzha Abu Khadra have this day appointed advocate Abdul Rahman Siksik to represent us before the Land Court of Jaffa in connection with the action brought against us by El-Haj Ibrahim El-Helou under No. 45/43,

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And to defend and plead until the last stage of the proceedings in the first instance and on appeal, to file, effect and accept service of all papers, applications, pleadings, notices, letters, summonses and judgments, to apply for provisional attachments and for attachments in course of execution, to cause such attachments to be confirmed and removed, to appoint experts, arbitrators and umpires, to accept or to object to any award given or which may be given against our rights and to apply to Court for the confirmation of such award, to inspect, peruse, to lead, remit and reject evidence and to abstain from leading evidence, to execute the judgment given in our favour in the Execution Office or any department that may act as an Execution Office and to proceed with all execution proceedings, to receive monies collected from the Judgment Debtor directly or through the Execution Office, to give receipts for same, to ask for the imprisonment of the Debtor, to levy attachments, to sell 40 his movable and immovable property, to plead before the Chief Execution Officer, to appeal to the proper Court against any order of the Execution

*Exhibits  
and  
Documents.*

Power of  
Attorney  
from  
Applicant  
to Abdul  
Rahman  
Siksik,  
24th  
October  
1943,  
*continued.*

Officer that may be given against us in execution of the Judgment, to sign all papers and do all acts necessary for the execution, to participate in the option in our name and at the price he deems fit, and to do anything he deems fit to protect our rights in this respect, to appoint and delegate to any other person or any of the matters aforesaid in this special power of attorney.

Dated 24th of October, 1943.

500 mils revenue stamp.

(Sgd.) HASHEM ABU KHADRA.

(Sgd.) NAJATI ABU KHADRA.

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Thumbprint of NUZHA SULEIMAN ABU KHADRA.

I confirm this power of attorney.

(Sgd.) ABU RAHMAN SIKSIK,  
Advocate.