

C. 1162

12, 1952

31131

In the Privy Council.

No. 17 of 1951.

ON APPEAL FROM THE SUPREME COURT  
OF THE ISLAND OF CEYLON

UNIVERSITY OF LONDON  
W.C.1.  
21 JUL 1953  
INSTITUTE OF LEGAL STUDIES  
APPELLANT

BETWEEN

THE ATTORNEY-GENERAL OF CEYLON (*Defendant*)

AND

VALLIYAMMAI ATCHI, Executrix of the last Will and  
Testament of K.M.N.S.P. Natchiappa Chettiar,  
deceased ... .. (*Plaintiff*) RESPONDENT.

CASE FOR THE APPELLANT

RECORD

1.—This is an Appeal from a Judgment and Decree of the Supreme Court of the Island of Ceylon, dated the 24th June, 1949, dismissing an Appeal against a Judgment of the District Court of Colombo, dated the 7th May, 1947, whereby, on a petition of appeal filed by the present Respondent under Sections 34 and 38 of the Estate Duty Ordinance, No. 1 of 1938 (Chapter 187, Legislative Enactments of Ceylon) praying, *inter alia*, for a Declaration that estate duty was not payable in respect of the estate of one K.M.N.S.P. Natchiappa Chettiar, deceased (of whose will the Petitioner was Executrix) and for an Order directing the present Appellant, as representing the Crown, to repay to the Petitioner the sum of Rs. 293,330.89 which had been paid as estate duty on the said estate, together with interest at 9 per cent. per annum, it was held that the said estate was not liable to estate duty (being owned jointly by an undivided Hindu family within the meaning of Section 73 of the said Ordinance) but that as the Court had no jurisdiction to make the order for repayment prayed for, the Petitioner was entitled only to a decree declaring that no estate duty was payable in respect of the said estate.

pp. 345-357

p. 320

p. 342

As stated above, the Supreme Court dismissed the appeal, but, on cross-objections which the Petitioner had filed against that part of the Judgment of the District Court which had refused her a decree for repayment the Supreme Court directed that a decree should be entered in her favour against the Crown for payment to her of the sum of Rs. 285,308.42 overpaid as estate duty, together with legal interest thereon at 5 per cent. per annum.

pp. 351-352

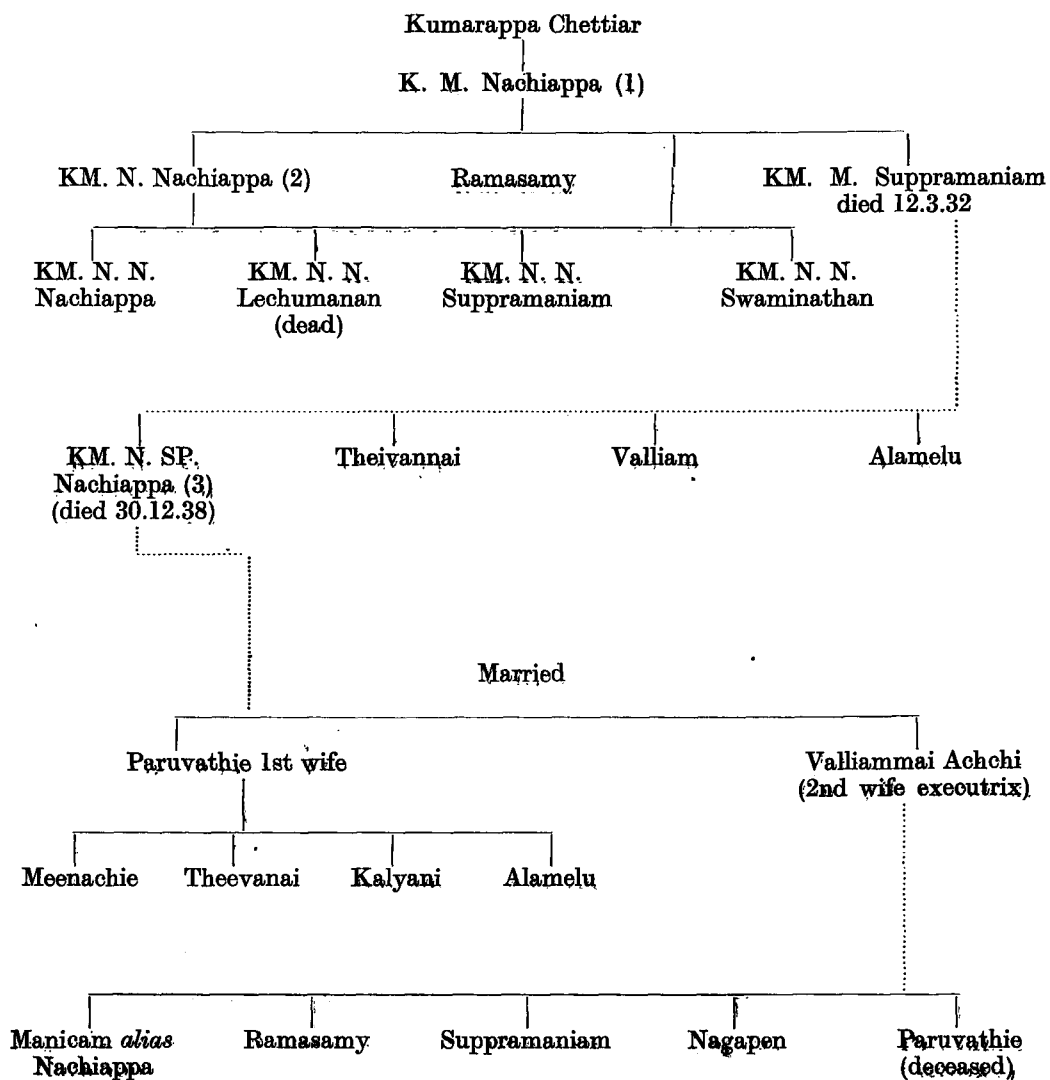
RECORD

2.—The main questions that arise on this appeal are concerned with the finding of the Courts below that the said estate was jointly owned by an undivided Hindu family (and therefore, under the said Section 73, not liable to payment of estate duty)—whether or not the said finding was arrived at with due regard to the laws of evidence, after a proper appraisal of all the documentary and oral evidence in the case and, further, upon a true and proper appreciation of the relevant Ceylon and Hindu law.

3.—Portions of Ordinances relevant to this appeal will be found in an Annexure hereto.

p. 323

4.—The following pedigree of the family concerned in this appeal was 10 established in the Courts below :—



5.—The introductory facts were thus stated by Gratiaen, J., in his Judgment in the Supreme Court (hereinafter referred to greater detail):—

“The deceased belonged to a South Indian trading family of Nattucottai Chettiars whose male members for at least three successive generations had also been engaged in business in Ceylon. The deceased’s grandfather was K. M. N. Natchiappa (who for convenience will be called ‘Natchiappa 1’). Natchiappa 1 had 2 sons, K. M. N. Suppramaniam (the deceased’s father) and K. M. N. Natchiappa (who for convenience will be called ‘Natchiappa 2’). Natchiappa 1 and his two sons lived, after the fashion of a Hindu undivided family, in a common home with common worship and a common mess, and the family, as an undivided unit, owned property which, in India at any rate, admittedly possessed all the characteristics of ‘joint property’ as understood in the system of law obtaining in that country. After Natchiappa 1’s death, his two sons and their respective families continued to live in the ancestral home as an undivided family and to possess the Indian property belonging to the family as joint property. (As the position with regard to the property in Ceylon remains controversial, I shall for the time being leave the facts relating to it out of my narrative.) After some years the two brothers Suppramaniam and Natchiappa 2 agreed that there should be a separation of the respective branches of their family, and, in accordance with the recognised usage in such cases, a deed of partition—A 8 of 1912—was drawn up by arbitrators selected for the purpose. The legal effect of such a partition is not in dispute. The severance of the two branches from the original undivided family becomes final and complete, but the ancestral property which passes to each branch under the partition remains joint property in the hands of that branch which now assumes, as a fresh unit, the character of a Hindu undivided family.”

p. 347, l. 22 to  
p. 348, l. 1

Translation of  
Ex. A 8, p. 380

6.—A translation of the said Deed A 8, dated the 22nd January, 1912, is printed as Ex. A 8a on pp. 380 to 383 of the Record and the third paragraph thereof (pp. 380–381 of the Record) runs as follows:—

“After paying off in full the liabilities of your common firm of Koona Mana Nawanna of Colombo as per account rendered during the agency of Nachiappan and Mayendi up to the 6th day of June, 1911, and after excluding the debits made by Nachiappan and Suppramaniam at native place and Colombo up to the said date and all the expenditure incurred during the said agency, the aggregate cash—collections being Rs. 206,949.38—Rs. 103,474.69 due to the half share of Nachiappan was paid in equal proportions to his five children on his order as per particulars of the Colombo Day Book of the 6th day of June, 1911, and Rs. 103,474.69 due to the half share of Suppramaniam paid to him as per particulars of the said Day Book.”

pp. 380–383

## RECORD

Other paragraphs of the Deed were concerned with the division of villages or portions thereof, the construction, etc. of a temple, and other rights relating to immovables.

p. 240, ll. 8, 9  
p. 261, l. 14

According to the Hindu law experts which both sides called the Deed was consistent not only with the partition of a Hindu undivided family but also with the dissolution of a partnership.

7.—Natchiappa (1) had carried on a money-lending business in Ceylon under the *vilasam*\* of “K.M.N.” and, later, his two sons, Natchiappa (2) and Suppramaniam did likewise until the said partition or partnership dissolution in 1912. 10

p. 385

Subsequently Suppramaniam carried on a money-lending business under the firm name of Kuna Mana Navenna Suna Pana (K.M.N.S.P.), as is apparent from a Certificate, dated the 19th August, 1919, issued under the Business Names Ordinance (Cap. 120).

pp. 389–390

8.—On the 3rd April, 1925, the following was recorded as a Statement of Change in Particulars under Section 7 of the said Business Names Ordinance :—

p. 390

“Natchiappa Chetty” [i.e. Natchiappa (3)] “son of  
“Suppramaniam Chetty of . . . has been admitted as a partner  
“in the business.” 20

p. 390

The said Statement was supported by an Affidavit sworn by the father (Suppramaniam) on the 8th April, 1925.

p. 391

On the 16th April, 1925, a Certificate of Registration of the firm was issued in which both father and son appear as partners.

p. 421

p. 422

9.—The partnership between father (Suppramaniam) and son (Natchiappa (3)) continued until the 24th March, 1926, when the father “ceased to be a member of the firm” as is recorded in a Statement of Change, issued under the said Section 7, and dated the 31st March, 1926.

p. 502

On the 9th April, 1926, a Certificate issued under the said Ordinance made clear that the son (Natchiappa (3)) had become sole owner of the firm, 30  
and further evidence of this, and of the son’s other commercial activities, is to be found in a further Statement of Change, dated the 18th October, 1935, made under the same Ordinance.

p. 477, l. 24

10.—The father, Suppramaniam, died in India on the 12th March, 1932.

p. 476, ll. 20–25

p. 477, l. 25

On the 28th September, 1932, Ramanathan Chettiar, Attorney for the son Natchiappa (3), in answer to a notice, informed the Commissioner of Stamps, Colombo, that Suppramaniam, who had died intestate, “left no  
“property whatsoever at the time of his death.” On the 5th October, 1932, in a Declaration and Statement of Property, under the Estate Duty 40  
Ordinance No. 8 of 1919, the said Ramanathan stated that the property

\* A *vilasam* is a firm name composed of the initials of two or more ancestors.

left by the deceased (who was domiciled in India at the time of his death) was exempt from estate duty apparently upon the ground that the property had been given by the father to his son (Natchiappa (3) ) over three years before his (the father's) death.

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p. 478, ll. 37-40  
p. 479, ll. 1-19

11.—Natchiappa (3) died on the 30th December, 1938, leaving him surviving several sons and daughters by two wives (see the pedigree in paragraph 4 *supra*). His second wife, as executrix of his Will, is the present Respondent.

p. 525, l. 34

10 Probate of his Will, dated the 3rd December, 1938, was granted to the Respondent by the District Court of Colombo on the 17th April, 1940.

p. 555

12.—In paragraph 3 of his Will, the testator (Natchiappa (3)) said *inter alia* :—

“ I have at Colombo a money-lending firm under the name, style and firm or *vilasam* of ‘ Kuna Mana Nawanna Soona Pana ’ and the properties thereof belong to me alone as sole proprietor.”

p. 522, ll. 5-7

In paragraph 4 thereof he said, *inter alia* :—

20 “ I have at Sembanur ” [in the Rammad District of South India where the family had its origin and domicile] “ a new house belonging to me alone and the northern half part or share due to my half share belonging to me alone of the adjoining southern big house excluding the half share due to my paternal elder uncle and others.”

p. 522, ll. 22-25

And, in paragraph 5 thereof, he said :—

30 “ I have made my said four sons and the sons who would hereafter be born to me entitled to own, possess and enjoy all the movable and immovable properties which belong to me as aforesaid and which may hereafter belong to me, money-lending firms, my shares in partnership firm, sums of cash in hand and banks and all the sums due to me . . . . ; and they and their heirs shall equally own, possess and enjoy my (said) properties for ever as hereinbelow mentioned.”

p. 522, ll. 29-38

13.—On the 30th March, 1939, one Sambamurti (an accountant employed by Natchiappa (3) deceased) wrote to the Commissioner of Stamps informing him of Natchiappa (3)'s death and, on the allegation that the deceased was a member of a Hindu undivided family, asked for a Certificate that the estate was not, by virtue of Section 73 of the Estate Duty Ordinance No. 1 of 1938 (Cap. 187), liable to estate duty.

p. 518

40 On the 27th June, 1939, the Assessor, Estate Duty, replying to Sambamurti, requested him to complete and return the form of declaration of the property of the deceased which, under Section 29 of the said Ordinance, the Executrix was bound to do within six months of the death of the deceased.

pp. 532-533

The declaration was subsequently made on the 4th August, 1939, by an attorney of the Respondent and was forwarded in duplicate to the

p. 533

p. 535

## RECORD

p. 506, ll. 29-40 Assessor with a covering letter of the same date in which an attempt appears to have been made by the said Sambamurti to undo the effect of a solemn affirmation made on the 19th August, 1937, whereby for income-tax purposes Nachiappa (3) had disclaimed any manner of right or interest in certain substantial sums of money which, on the 26th March, 1931, he had transferred to his minor sons. The writer of the said covering letter now alleged that the said transfers, being of family assets which the deceased, as the managing male member of the family, had no power to enter into, were void and the deceased's affidavit in connection therewith had therefore "no legal force." 10

p. 168, ll. 24-33 14.—On the subject of income tax, it is convenient to state here that following his death, the Income-Tax Department reassessed Natchiappa's income for three years immediately prior to his death on the basis that his property was his own and not that of a member of an undivided Hindu family. This reassessment followed investigations which the said Department had made regarding the said transfers of funds by Natchiappa (3) to his sons. For reasons which appear in the Judgment of the Income Tax Board of Review, printed at pages 573 *et seq* of the Record, the reassessment was confirmed on appeal.

p. 572, ll. 29-33 15.—By his letter, dated the 30th January, 1940, the Commissioner of Estate Duty informed the Respondent (through her Proctor) of his opinion that on the evidence it was clear that the estate of Natchiappa (3) was not exempt from estate duty under the said Section 73 and that, accordingly, it would be assessed for duty. 20

p. 19, ll. 8-21  
p. 535, ll. 1-5 On the 3rd February, 1940, the Commissioner made a provisional assessment on the estate and fixed the amount of the duty at Rs. 278,021.70 which was paid on the 30th March, 1940. By an additional assessment, dated the 7th November, 1940, the Commissioner fixed the amount of the duty at Rs. 290,784.12.

p. 568  
p. 570 16.—Notices of Objection to the said assessments were filed on the 23rd February, 1940, and on the 26th November, 1940, and in both Notices the case of the Executrix was that Natchiappa (3) was a member of a Hindu undivided family, that the property left by him was the joint property of the said family, and that, consequently, by virtue of the said Section 73, no estate duty was payable. 30

p. 577 17.—By his letter, dated the 11th March, 1941, the Commissioner of Estate Duty informed the Executrix that, subject to certain variations, he had decided to maintain the assessment.

p. 18 18.—On the 2nd April, 1941, the Executrix commenced

## THE PRESENT PROCEEDINGS

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in the District Court of Colombo by a Petition of Appeal under Sections 34 and 38 of the said Estate Duty Ordinance against the said Notice of

Assessment, dated the 3rd February, 1940, and the Additional Notice of Assessment, dated the 7th November, 1940, which, as already stated, had been maintained in part by the Commissioner on the 11th March, 1941. p. 568  
p. 570  
p. 577

(It is conveniently stated here that under Section 40 of the said Ordinance an appeal against the assessment is deemed to be, and may be proceeded with as an action between the Appellant as Plaintiff and the Crown as Defendant.)

19.—In her Petition of Appeal (to which she made the Attorney-General of Ceylon a respondent) the Executrix set out the two assessments and maintained that no estate duty was payable by virtue of the provisions of the said Section 73. She prayed for, *inter alia* : (1) a declaration that she was not liable to pay estate duty ; and (2) an order for re-payment of Rs. 293,330.89 (already paid by her) with interest. p. 18  
Annexure

20.—On the 9th July, 1941, the Executrix petitioned for a Commission to take the evidence of certain witnesses in South India, but this was not proceeded with, and subsequently, at least one of the witnesses referred to in the application gave evidence in person before the District Judge of Colombo. p. 24, seq.

21.—On the 22nd October, 1942, the Attorney-General raised certain preliminary objections to the said petition. In his Statement of Objections and in arguments advanced in support thereof, it was contended on his behalf that, on the question of property being, or not being, the joint property of a Hindu undivided family, no appeal lies against the Commissioner's decision under the said Section 73 ; that in view of the deceased's own declaration that his father had left no property at his death (by which he had induced the Commissioner of Estate Duty not to levy estate duty on the death of his father) the Executrix was estopped from alleging that the deceased had inherited property from his father ; that the decision of the Income Tax Board of Review, referred to in paragraph 14 hereof, was *res judicata* on the question whether the property of Natchiappa (3) was the joint property of a Hindu undivided family ; and that the Executrix, having obtained probate and paid duty, was precluded in these proceedings from saying that the deceased had no right to dispose of the property which he had disposed of by his will. pp. 30, 32, 42-45  
pp. 476, 477

22.—By his Order, dated the 15th December, 1942, the learned District Judge dismissed the said objections and an appeal therefrom was dismissed by the Supreme Court on the 1st May, 1944. It was the view of both Courts that, under Section 34 of the Ordinance, an appeal lies to the appropriate District Court from a decision of the Commissioner of Estate Duty under the said Section 73. And, both Courts were of opinion that the said decision of the Income Tax Board of Review was not *res judicata* in these proceedings. p. 54  
pp. 64-74  
p. 59, ll. 1-27  
p. 60, ll. 10-12  
p. 71, ll. 21-23  
p. 73, ll. 17-19

23.—Further proceedings in the case were then continued in the District Court. The learned District Judge, after recording further oral and p. 320

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p. 17, l. 2  
pp. 341-342

documentary evidence, delivered Judgment on the 7th May, 1947. He held that the property sought to be assessed was the joint property of a Hindu undivided family within the said Section 73, and that, therefore, it was not liable to estate duty.

p. 342, ll. 7-22

It was his view however, that he had no jurisdiction to order the Commissioner of Estate Duty to refund to the Executrix the duty already paid by her, and, consequently, he did not direct such repayment.

p. 251-293  
pp. 198-253

24.—Among the witnesses called before the learned District Judge were two experts on Hindu Law, one for the Crown (the then Advocate General of Madras), and one for the Executrix (the former Advocate General of Madras). These experts arrived at opposite conclusions mainly as a result of the inferences they drew from the documents produced on either side. 10

The decisions of both Courts below also rested mainly on the inferences they drew from the said documents.

The Appellant respectfully submits that had these inferences been correctly drawn, both Courts would have arrived at the conclusion that the property sought to be assessed to estate duty was not the joint property of a Hindu undivided family.

p. 41, l. 18

25.—Dealing with the objection advanced on behalf of the Attorney-General that the further evidence taken before him was inadmissible and that he was confined to the evidence which was before the Commissioner, the learned District Judge held that in view of the provisions of Section 40 of the Estate Duty Ordinance it was open to the Executrix to lead in the District Court evidence which had not been placed before the Commissioner. 20

p. 321, l. 10  
Annexure

p. 324, l. 18  
pp. 363, 368/9, 366

26.—On the merits of the case, the learned District Judge referred to the Documents, A23, A24, and A25, as showing that a money-lending business was carried in Ceylon under the *vilasam* of K. M. N. by Natchiappa (1). This finding is not disputed but the Appellant respectfully submits that the said Documents throw no light on the question whether the business was the property of a Hindu undivided family or of an individual or of individuals in partnership. 30

p. 380

27.—The learned District Judge thought that there was corroboration of his view that Natchiappa (2) and his brother Suppramaniam carried on the Ceylon business under the same *vilasam* of K. M. N. in the said Deed of Partition (or dissolution of partnership) dated the 22nd January, 1912. In this connection he referred also to the evidence of Natchiappa Chetty, son of Vyravan Chetty, who had said that Suppramaniam and his son Natchiappa (2) carried on business under the *vilasam* K. M. N. S. P. It should be noted, however, that this witness had admitted in cross-examination that he did not know anything about either the Ceylon business of K. M. N. or the business of K. M. N. S. P. 40

p. 52, l. 40

p. 78, l. 5



28.—The learned District Judge then dealt with the Document A35—  
 a Deed of Sale of immovable property in India executed by two Debtors  
 in favour of Natchiappa (2) in satisfaction of a debt contracted “ in Colombo  
 “ with your firm.” He said :—

“ The Deed A35 makes it clear that Natchiappa (2) was a member  
 “ of a firm which was being carried on in Colombo, and A 8 makes it  
 “ clear that Natchiappa (2) and Suppramaniam were carrying on  
 “ business under the *vilasam* of K. M. N. Taking into consideration  
 “ the system that exists among the Nattukottai Chettiar trading  
 10 “ families according to which father and son trade together often  
 “ under the same *vilasam*, it would, I think, in view of the established  
 “ facts, be not unreasonable to infer that the business carried on by  
 “ the two sons Natchiappa and Suppramaniam under the *vilasam* of  
 “ K. M. N. was the same business that was carried on by the father  
 “ Natchiappa (1) under that *vilasam*.”

It is respectfully submitted that the said Deed A35 is no more than  
 a conveyance from two persons to “ Natchiappa Chetty, son of Koona  
 “ Mana Natchiappa Chettiar ” and that by itself it throws no light upon  
 the present dispute.

20 29.—Further, on the subject of the said Document A35, the learned  
 District Judge said :—

“ It was contended by the learned Attorney General that the firm  
 “ referred to in A35 may have been a separate firm carried on by  
 “ Natchiappa (2) quite independently of the family. If this were so,  
 “ why is it that this property which has been transferred personally  
 “ to Natchiappa (2) was brought into the partition which was effected  
 “ by A8 ? If it was Natchiappa 2’s own separate property there was  
 “ no need for him to divide it with his brother unless of course the  
 “ consideration was out of monies which belonged to both brothers.”

30 It is respectfully submitted that here, as in other parts of his Judgment,  
 the learned District Judge overlooked, or did not sufficiently appreciate,  
 the fact that the evidence of the Hindu law experts on both sides was that  
 the Document A8 was consistent also with the dissolution of a partnership  
 in which event no question of partitioning joint family property could arise.

30.—Dealing specifically with the said Document A8, dated the  
 22nd January, 1912, the learned District Judge said :—

“ The ” [Executrix] “ contends that A8 is the Document by which  
 “ the final partition of the joint family property of Natchiappa and  
 “ Suppramaniam was effected between the two branches of which they  
 40 “ were the heads. The learned Attorney-General on the other hand  
 “ contends that A8 is nothing more than a document by which two  
 “ partners divided their partnership assets. Taking the Document  
 “ as a whole I do not think it possible to come to that conclusion. To  
 “ begin with paragraph 1 refers to a partition between Natchiappa

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“ and his younger brother Suppramaniam. If it was a partnership  
 “ the words ‘ younger brother ’ are hardly likely to be used. Instead  
 “ the word ‘ partner ’ would more probably have been used. It was  
 “ executed on the 22nd January, 1912. It recites an earlier partition  
 “ of certain credit transactions, village, jewelleries and other sundry  
 “ things of the native place; the division of jewelleries would also  
 “ seem to indicate that it is family property and not partnership  
 “ property that is being divided.”

With regard to the use of the words “ younger brother ” as indicating  
 a division of joint family property only and having no relation to a partner- 10  
 ship, it is respectfully submitted that the learned District Judge was in  
 error to draw the said inference, for it is neither unusual nor unnatural  
 nor wholly irregular for brothers who are partners to be described as  
 “ brothers ” instead of as “ partners,” and in any event neither expert in  
 Hindu Law had given any evidence as to the use, or significance, of this  
 phrase.

With regard to the division of jewellery the Appellant submits that  
 there is no reason to suppose that this is an unusual incident on the dissolution  
 of a Chettiar partnership.

31.—As to the documents produced by the Crown (see as to some of 20  
 these Documents, paragraphs 7 to 10 of this Case *supra*), the learned District  
 Judge said :—

p. 344, ll. 26-30

“ Had these Documents stood alone, they would certainly be  
 “ proof of the fact that the firm of K. M. N. S. P. was originally owned  
 “ by Suppramaniam Chettiar, that Natchiappa ‘ [3] ’ was admitted  
 “ as a partner in 1925 and that Suppramaniam left the firm and  
 “ Natchiappa ‘ [3] ’ became the sole owner in 1926.”

pp. 334-335

He referred however to the cases of *Chetty v. Thomas Cooks*, (1930)  
 31 N.L.R. 385, and *Ramaswamy Chettiar v. The Attorney-General* (1937)  
 38 N.L.R. 313, as illustrating the difficulties in which Chettiars of Hindu 30  
 undivided families found themselves under the Business Names Registration  
 Ordinance (Cap. 120), and he was not therefore inclined to attach significance  
 to statements as to status which were made in the said documents produced  
 by the Crown.

The Appellant respectfully submits that if Suppramaniam and  
 Natchiappa (3) constituted a Hindu undivided family and the Colombo shop  
 was the joint property of that family, the admission of Natchiappa (3) as  
 a partner in 1925 is unintelligible.

p. 521

32.—As to the Will of Natchiappa (3), dated 3rd December, 1938, the  
 salient provisions of which have been set out in paragraph 11 of this Case, 40  
*supra*, the learned District Judge said as follows :—

p. 337, l. 45 to  
p. 338, l. 1

“ While it is true that R17 ” [the said Will] “ is consistent with  
 “ the position that the property left therein is the sole property of

“Natchiappa as an individual one must construe that Will in the light of the other evidence in the case.”

And thereupon the learned Judge proceeded to negative the testator's assertion that the money-lending business in Colombo belonged to himself alone, by referring to, and interpreting, the language of the said Deed A8. p. 380

The Appellant respectfully submits that this is only another instance of the reasoning of the learned District Judge throughout, whereby he has arrived at a particular conclusion, viz., that the family was an undivided family in all respects and in respect of all its properties, and has unconsciously allowed that conclusion to affect the appreciation of any evidence in conflict with it, without fully weighing alternative possibilities.

33.—A decree in accordance with the Judgment of the learned District Judge was entered on the 7th May, 1947, and against the said Judgment and decree the Crown appealed to the Supreme Court of Ceylon. p. 17, l. 2  
p. 342

The Executrix cross-appealed against the part of the Judgment of the District Court which refused her a decree for the return of the sum paid by her under protest. p. 346, l. 39

34.—By their Judgments, dated the 24th June, 1949, the learned Judges of the Supreme Court (Wijeyewardene, C.J., and Gratiaen, J.) dismissed the appeal, with costs, and allowed the cross-appeal of the Executrix. pp. 345-353

35.—In the course of his Judgment, Gratiaen, J. (who delivered the main Judgment in which Wijeyewardene, C.J., concurred) after setting out the relevant facts, said :—

“The learned” [District] “Judge enjoys the advantage of professional experience of the usages of Chetty traders in Ceylon and after an exhaustive analysis of the oral and documentary evidence in the case he arrived at the conclusion that the Ceylon assets dealt with by A8 were the joint property of a Hindu undivided family in exactly the same way as the Indian assets admittedly had been. I find the reasons for arriving at this conclusion irresistible, and I do not consider it necessary to refer in detail to the evidence which admittedly tends to support the case for the [Executrix].” p. 348, ll. 37-45

He concluded on the facts as follows :—

“I am in complete agreement with the learned” [District] “Judge that the evidence in the case convincingly establishes that the business carried on in Ceylon by Natchiappa (2) and Suppramaniam under the *vilasam* K. L. M. [*sic* ‘K.M.N.’] was the joint property of the undivided family of which they were both members, and that after the division in 1912 of the property by the Deed A8 Suppramaniam continued to carry on the identical business under the new *vilasam* ‘K.L.M.S.P.’ [*sic* ‘K.M.N.S.P.’] not on his own p. 349, ll. 32-44

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“ account but as the joint property of the new undivided family of  
 “ which he was now the head. When Suppramaniam retired to India  
 “ and later died, the business remained in the hands of his son, the  
 “ deceased, as joint family property and not as separate property  
 “ possessed by him for his own benefit to the exclusion of the family.”

The learned Judge thus completely identified himself with the reasoning and conclusions of the learned District Judge on which matters the Appellant has already made his submissions.

p. 352, l. 1

36.—On the cross-appeal the learned Supreme Court Judge (Gratiaen, J.) held that the District Judge had jurisdiction to order a refund of the estate duty paid by the Executrix, and, accordingly, he allowed the cross-appeal. 10

p. 354

37.—A decree in accordance with the Judgment of the Supreme Court was entered on the 24th June, 1949, and against the said decree this appeal to His Majesty in Council is preferred, the Appellant having obtained leave to do so by decrees of the Supreme Court, dated the 20th July, 1949, and the 21st September, 1949.

p. 362

The Appellant humbly submits that the appeal should be allowed, that the Judgments and decrees of both Courts below should be set aside, with costs, and that appropriate directions should be given for the dismissal of these proceedings for the following, among other 20

### REASONS

- (1) BECAUSE the evidence in the case does not establish that the property in Ceylon in respect of which estate duty was claimed is the joint property of an undivided Hindu family within the meaning of Section 73 of the Estate Duty Ordinance (Cap. 187).
- (2) BECAUSE the Respondent has failed to discharge the onus (which was upon her) of proving that the said property was the joint property of an undivided Hindu family. 30
- (3) BECAUSE both Courts below erred in their appreciation and assessment of the said evidence and of the relevant Hindu law in relation thereto.
- (4) BECAUSE the Supreme Court disposed of the appeal without a true and independent examination of the said evidence.

- (5) BECAUSE both Courts below failed to attach sufficient weight to the finding of the Board of Review of Income Tax that the said property is not the joint property of a Hindu undivided family.
- (6) BECAUSE the decision of the Commissioner of Estate Duty, under the said Section 73, that the said property has not been proved to be the property of a Hindu undivided family was final and no appeal lay therefrom under Section 34 of the said Ordinance.
- 10 (7) BECAUSE if the Appellant be not right in contending that no appeal lay (as set out in the preceding Reason), nevertheless the appeal authorised by the said Section 34 was, on a true construction of Sections 73 and 34, limited to the question as to whether the Commissioner of Estate Duty had misdirected, himself and should on the evidence before him have been satisfied and the Appellate Courts were in error in admitting further evidence and in determining the appeal as if it were a new trial before them.
- 20 (8) BECAUSE the findings of both Courts below are wrong and ought to be set aside.

C. S. REWCASTLE.  
R. K. HANDOO.  
GILBERT DOLD.

Kindly take notice that we propose on the argument in this Appeal to rely upon the following Additional Reason :—

BECAUSE the Respondent by contending that the property in question is joint family property is by necessary implication denying the validity of the will from which document alone she derives her title and *locus standi* in the suit.

ANNEXURE.

THE ESTATE DUTY ORDINANCE (Cap. 187).

(No. 1 of 1938.)

Sections :

3.—In the case of every person dying on or after the first day of April, nineteen hundred and thirty-seven, there shall, save as hereinafter expressly provided, be levied and paid upon the value of his Ceylon estate, a duty called estate duty :

Provided that no estate duty shall be payable where the value of the total estate of any such person does not exceed twenty thousand rupees.

\* \* \* \* \*

7.—Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition enforceable at law not made by the deceased, or under a disposition enforceable at law made by the deceased more than three years before his death, where possession and enjoyment of the property was bona fide assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

\* \* \* \* \*

29.—(1) The executor of every deceased person shall, within six months after the date of the death of the deceased deliver to the Commissioner in the prescribed form a declaration of property containing a full and true statement of particulars relating to the total estate of the deceased including the value thereof ; and together with such declaration of property he shall deliver to the Commission as certified copy of the Will, if any, of the deceased.

(2) Where the executor is not liable to pay estate duty in respect of any property passing on the death of a deceased person, the person liable to pay such duty shall, within six months after the date of the death of the deceased, deliver to the Commissioner in the prescribed form a declaration of property containing a full and true statement of particulars relating to such property including the value thereof.

(3) An Assessor may, in his discretion, extend the period hereinbefore prescribed for delivering any declaration of property.

\* \* \* \* \*

34.—Any person aggrieved by the amount of any assessment of estate duty made under this Ordinance, whether on the ground of the value of any property included in such assessment or the rate charged or his liability to pay such duty or otherwise, may appeal to the appropriate District Court in the manner hereinafter provided.

\* \* \* \* \*

38.—(1) At any time within thirty days after the date of the notification by the Commissioner of his determination, the Appellant may proceed with his appeal by filing a petition of appeal in the appropriate District Court, naming the Attorney-General as respondent to his petition. A copy of such petition shall be served on the Attorney-General through the court. Sections :

(2) Where the Appellant having filed a petition of appeal fails to serve a copy thereof on the Attorney-General within thirty days of the date on which such petition was filed, the Commissioner may proceed under this Ordinance as though no such petition had been filed.

\* \* \* \* \*

10 40.—Upon the filing of the petition of appeal, and the service of a copy thereof on the Attorney-General, the appeal shall be deemed to be and may be proceeded with as an action between the Appellant as plaintiff and the Crown as defendant ; and the provisions of the Civil Procedure Code, and the Stamp Ordinance, shall, save as hereinafter provided, apply accordingly :

Provided that no pleading other than the petition of the Appellant shall be filed in any action unless the Court by order made in that action otherwise directs ;

20 Provided, further, that the decree entered in any action shall specify the amount, if any, which the Appellant is liable to pay as estate duty under this Ordinance.

\* \* \* \* \*

\*73.—Where a member of a Hindu undivided family dies, no estate duty shall be payable—

- (a) on any movable property which is proved to the satisfaction of the Commissioner to have been the joint property of that family ; or
- (b) on any immovable property, where it is proved to the satisfaction of the Commissioner that such property, if it had been movable property, would have been the joint property of that family.

\* \* \* \* \*

30 77. . . . .  
“ Ceylon estate ” means—

- (a) in the case of a deceased person who was at the time of his death domiciled in Ceylon, all property settled or not settled which passes on his death wherever situate, except immovable property not situate in Ceylon ; and
- (b) in the case of a deceased person who was not domiciled in Ceylon, all property in Ceylon, settled or not settled, which passes on his death.

\* As substituted by s. 5 of the Estate Duty (Amendment) Ordinance (Ordinance No. 76 of 1938) for the original Section 73 which ran as follows :—

“ Where a member of a Hindu undivided family dies, no estate duty shall be payable on any property proved to the satisfaction of the Commissioner to be the joint property of that Hindu undivided family.”

## ANNEXURE.

## THE BUSINESS NAMES ORDINANCE (Cap. 120).

Sections :

2.—Subject to the provisions of this Ordinance—

- (a) every firm having a place of business in Ceylon and carrying on business under a business name which does not consist of the true full names of all partners who are individuals and the corporate names of all partners who are corporations without any addition ;
- (b) every individual having a place of business in Ceylon and carrying on business under a business name which does not consist of his true full names without any addition ; and 10
- (c) every individual or firm having a place of business in Ceylon who, or a member of which, has either before or after the passing of this Ordinance changed his name, except in the case of a woman in consequence of marriage,

shall be registered in the manner directed by this Ordinance :

Provided that—

- (i) where the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary ; 20 and
- (ii) where the business is so carried on by the assignee of an insolvent's estate, or a receiver or manager or curator appointed by any court, registration shall not be necessary ; and
- (iii) a purchase or other acquisition of property by two or more persons is not of itself to be deemed carrying on a business, whether or not the owners share any profits arising from the sale thereof.

3.—Where a firm, individual, or corporation having a place of business 30 within Ceylon carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons, or another corporation, or acts as agent for any foreign firm for the general purposes of the business of such foreign firm in Ceylon, the first-mentioned firm, individual or corporation, shall be registered in manner provided by this Ordinance, and in addition to the other particulars required to be furnished and registered, there shall be furnished and registered the particulars mentioned in the Schedule, or such other particulars as the Governor, by notification in the Government Gazette, may require :



Provided that where the business is so carried on by the assignee of Sections :  
 an insolvent estate, or a receiver or manager or curator appointed by any  
 court, registration under this section shall not be necessary.

4.—(1) Every firm or person required under this Ordinance to be  
 registered shall furnish, by sending by post or delivering to the Registrar  
 at the register office in that part of Ceylon in which the principal place of  
 business of the firm or person is situated, a statement in writing in the  
 prescribed form containing the following particulars :—

- 10 (a) the business name ;
- (b) the general nature of the business ;
- (c) the principal place of business ;
- (d) where the registration to be effected is that of a firm, the  
 present name (in full), any former name (in full), the  
 nationality, and where that nationality is not the nationality  
 of origin, the nationality of origin, the usual residence, and  
 the other business occupation, if any, of each of the individuals  
 who are partners, and the corporate name and registered or  
 principal office of every corporation which is a partner ;
- 20 (e) where the registration to be effected is that of an individual,  
 the present name (in full), any former name (in full), the  
 nationality, and if that nationality is not the nationality of  
 origin, the nationality of origin, the usual residence, and the  
 other business occupation, if any, of such individual ;
- (f) where the registration to be effected is that of a corporation,  
 its corporate name and registered or principal office and the  
 names and nationalities of its directors ;
- (g) if the business is commenced after the passing of this  
 Ordinance, the date of the commencement of the business.

30 (2) Where a business is carried on under two or more business  
 names, each of those business names must be stated.

5.—The statement required for the purpose of registration must in the  
 case of an individual be signed by him, and in the case of a corporation  
 by a director or secretary thereof, and in the case of a firm either by the  
 individuals who are partners, and by a director or the secretary of all  
 corporations which are partners, or by some individual who is a partner,  
 or a director or the secretary of some corporation which is a partner, and  
 in either of the last two cases must be verified by an affidavit made by the  
 signatory :

40 Provided that no such affidavit stating that any person other than the  
 declarant is a partner, or omitting to state that any person other than as  
 aforesaid is a partner, shall be evidence for or against any such other person

Sections :

in respect of his liability or non-liability as a partner, and that the appropriate District Council may on application of any person alleged or claiming to be a partner direct the rectification of the register and decide any question arising under this section.

\* \* \* \* \*

7.—Whenever a change is made or occurs in any of the particulars registered in respect of any firm or persons, such firm or person shall, within fourteen days after such change, or such further period as the Registrar may on application allow, furnish, by sending by post or delivery to the Registrar in that part of Ceylon in which the aforesaid particulars are registered, a statement in writing in the prescribed form specifying the nature and date of the change, signed and, where necessary, verified, in like manner as the statement required on registration. 10

\* \* \* \* \*

12.—On receiving any statement or affidavit made in pursuance of this Ordinance, the Registrar shall cause the same to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering, and the certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual and if not kept so exhibited, every partner in the firm or the person, as the case may be, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding three hundred rupees. 20

In the Privy Council.

No. 17 of 1951.

ON APPEAL FROM THE SUPREME COURT OF  
THE ISLAND OF CEYLON.

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BETWEEN  
THE ATTORNEY-GENERAL OF  
CEYLON ... (*Defendant*) APPELLANT  
AND  
VALLIYAMMAI ATCHI, Executrix  
of the last Will and Testament of  
K.M.N.S.P. Natchiappa Chettiar,  
deceased ... (*Plaintiff*) RESPONDENT.

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CASE FOR THE APPELLANT

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BURCHELLS,  
9 Bishopsgate,  
London, E.C.2,  
*Solicitors for the Appellant.*