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Supreme Court of Ceylon  
No. 174 (Final) of 1950.

District Court, Point Pedro  
No. 2761.

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

BETWEEN

SWAKINAPILLAI SAVERIMUTTU  
of Valvettiturai.....1st *Defendant—Appellant.*

AND

1. PONNAMBALAM THANGAVELAUTHAM  
of Valvettiturai.....*Plaintiff—Respondent.*
2. SAVERIMUTTU IGNATIUS THURASINGHAM
3. THOMMAIPILAI SOOSAI PILLAI and
4. Wife VIRISITHAMMA
5. SWAMINATHAR MARUSILIN and
6. Wife MARIAMUTTU
7. SAVERIMUTTU JOSEPH SELVARATNAM
8. ARUNASALAM SOMASUNDERAM and
9. Wife MANKAYATKARASI
10. RASAMAH widow of SIVAGURU RAMASAMY,  
all of Valvettiturai.....*Defendants—Respondents.*

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RECORD  
OF PROCEEDINGS

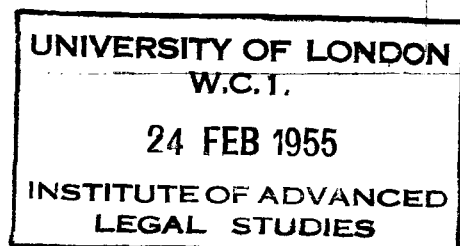
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Supreme Court of Ceylon  
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BETWEEN

SWAKINAPILLAI SAVERIMUTTU  
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AND

1. PONNAMBALAM THANGAVELAUTHAM  
of Valvettiturai.....*Plaintiff—Respondent.*
2. SAVERIMUTTU IGNATIUS THURAISSINGHAM
3. THOMMAIPILAI SOOSAIPILLAI and
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8. ARUNASALAM SOMASUNDERAM and
9. Wife MANKAYATKARASI
10. RASAMAH widow of SIVAGURU RAMASAMY.  
all of Valvettiturai.....*Defendants—Respondents.*

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RECORD  
OF PROCEEDINGS

---

**PART I.**

**No. 1.**

**Journal Entries**

No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51

IN THE DISTRICT COURT OF JAFFNA HELD AT  
POINT PEDRO

P. THANGAVELAUTHAM of Valvettiturai . . . . . *Plaintiff.*

*Vs.*

(1) S. SAVERIMUTTU and 9 Others, all of ditto . . . . . *Defendants.*

**JOURNAL**

10

The 19th day of September, 1946.

Mr. K. Ratnasingham, Proctor, files appointment and plaint together with abstract of title.

Plaint accepted and summons ordered for 17-10-46.

Intld. M. M. I. K.,  
*A.D.J*

3-10-46 Summons with copy of plaint issued with precept returnable the 17th day of October, 1946.

17-10-46 Case called. Summons served on 1st, 4th, 5th, 6th, 8th, 9th and 11th defendants. They are absent.

20

Not served on 2nd, 3rd and 7th defendants. Re-issue for 7-11-46.

Mr. Balasubramaniam files proxy of 1st, 4th, 5th and 6th defendants.

Answer for 7-11-46.

Intld. M. M. I. K.

7-11-46 Mr. K. Ratnasingham for plaintiff.

Mr. Balasubramaniam for 1st, 4th-6th defendants. Answer due-not filed-moves for a date. Allowed for 28-11-46.

Summons not re-issued on 2nd, 3rd and 7th defendants. Re-issued for 28-11-46.

Intld.....

No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued

12-11-46 Summons re-issued on 2nd defendant to Fiscal, Western Province,  
on 3rd defendant to Deputy Fiscal, Trincomalie, on 7th defendant  
to Fiscal's Marshal, Point Pedro.

28-11-46 Case called. Mr. Balasubramaniam for 1st, 4th-6th defendants.

Answer due—not filed.

Further date 9-1-47.

Summons not served on 7th defendant. Re-issued for 9-1-47 to  
return to same on 2nd and 3rd defendants. Await report and  
re-issue for 9.1-47. They are absent.

Intld. M. M. I. K. 10  
A. D. J.

28-11-46 Return to summons on 2nd and 3rd defendants—filed.

Reported served on them.

9- 1-47 Case called. Mr. Balasubramaniam for 1st, 4th-6th defendants.

Answer due—not filed. Further date 30/1.

Summons served on 2nd and 3rd defendants. They are

Summons not re-issued on 7th defendant. Re-issued for 30, . . .

10- 1-47 Summons re-issued on 7th defendant.

30- 1-47 Case called. Mr. Balasubramaniam for 1st, 4th-6th defendants.

Answer due—filed.

20

Summons served on 7th defendant. He is absent.

Trial 15/5.

Intld.....  
A. D. J

12- 5-47 Mr. K. Balasubramaniam for 1st, 4th, 5th and 6th defendants files  
an unsigned list of witnesses.

Let list be signed by Proctor for 1st, 4th, 5th and 6th defendants.

Sgd.....  
A. D. J.

13- 5-47 Proctor for 1st, 4th, 5th and 6th defendants has signed list of witnesses

No. 1,  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued

15- 5-47 Trial (1).

Mr. K. Ratnasingham, for plaintiffs.

Mr. K. Balasunbramaniam, for 1st, 4th and 6th defendants.

Trial : 26-9.

Sgd.....  
*A.D.J*

26- 9-47 Trial (2).

Appearances as on 15-5-47.

10 Lay by pending the decision in D.C. 2,625.

Intld. G. C. T. DE S.,  
*A.D.J.*

4- 3-48 Mr. K. K. Balasubramaniam for defendants moves with the consent of the Proctor for plaintiff that this case be called along with the connected case No. 2,625 P on 4-3-48 to have it fixed for trial.

Case called today.

Trial 2/7.

Intld. W. R. D. DE S.  
*D.J.*

20 24- 6-48 Proctor for plaintiff files list of witnesses and documents.

25- 6-48 Summons to witnesses (4) tendered by Proctor for defendants not issued for want of stamps.

28- 6-48 Stamps supplied, summons to witnesses not issued due to want of time.

2- 7-48 Trial (3).

Mr. K. Ratnasingham for plaintiff.

Mr. K. Balasubramaniam for 1st, 4th-6th defendants.

Refix trial for 1-10-48.

Intld. S. W. R.

No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued

14- 9-48 Mr. K. K. Balasubramaniam for 1st, 4th-6th defendants cites three witnesses through F. M., Point Pedro, F. M., Mallakam and Fiscal, Western Province.

1-10-48 Trial (4).

Mr. K. Ratnasingham, for plaintiff.

Mr. K. K. Balasubramaniam, for 1st, 4th-6th defendants.

It is 3-30. Trial proceeding.

Re-fix trial for 10-12-48.

Intld. S. R. W.,  
*D.J.* 10

4-10-48 Return to summons on witnesses filed.

29-11-48 Paying-in-voucher for Rs. 38 being batta to witnesses issued to Mr. K. K. Balasubramaniam, Proctor for 1st, 4th-6th defendants.

29-11-48 Mr. K. K. Balasubramaniam file T.R. receipt No. 140/P 47,963 for Rs. 38 and cites 6 witnesses as per list filed through Fiscal's Marshal, Point Pedro, Fiscal's Marshal, Mallakam and Fiscal, Western Province.

9-12-48 Proctor for defendants files defendants' additional list of witnesses and states that a copy has been posted to the Proctor for plaintiff.

10-12-48 Trial (5). 20

Mr. Adv. Soorasangaram instructed by Mr. K. Ratnasingham for plaintiff.

Mr. Adv. Jayakody instructed by Mr. K. K. Balasubramaniam for, 1st, 4th-6th defendants.

The other defendants absent.

(*Vide* proceedings).

Trial adjourned for 25-2-49.

Mr. Balasubramaniam states that witness Sivakolundu is absent.

Intld. S. R. W.,  
*D.J.* 30

14-12-48 Agent of the Mercantile Bank of India, Ltd., requests us to send him a voucher for Rs. 10 being batta payable to his clerk who attended Courts on the 10th in connection with this case.

No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued

Issue Requisition for Rs. 10 in favour of the Agent, Mercantile Bank of India, Jaffna, who may pay his clerk. Clerk's name is not known.

Intld. S. R. W.,  
*D.J.*

10 16-12-48 Requisition for Rs. 10 issued in favour of the Agent, Mercantile Bank of India, Jaffna, witness.

Intld. S. R. W.

18-12-48 Mr. S. Sivagnanam, Proctor, moves for a Requisition Order for Rs. 15 being amount of batta deposited in the above case for his attendance on 10-12-48 to give evidence and further moves that same be posted to him to Chankanaï.

Issue Requisition for Rs. 15.

Intld. S. R. W.,  
*D.J.*

20 4- 1-49 Requisition for Rs. 15 issued in favour of Mr. S. Sivagnanam, Proctor, Chankanaï, witness.

Intld. S. R. W.,  
*D.J.*

12- 2-49 Summons to witnesses issued (defendants) through Fiscal's Marshal, Point Pedro, and Fiscal's Marsal, Mallakam.

25- 2-49 Trial (6).

Mr. Adv. Soorasangaram, instructed by Mr. K. Ratnasingham, for plaintiff.

Mr. Adv. Ramalingam with Mr. Adv. Jayakody instructed by Mr. K. K. Balasubramaniam, for 1st, 4th-6th defendants.

30 (*Vide* proceedings).

Trial adjourned for 27-5-49.

Intld. S. R. W.,  
*D.J.*

No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued

14- 5-49 Proctor for defendants files defendants' additional list of witnesses and cites him through Fiscal's Marshal, Point Pedro.

27- 5-49 Trial (7).

Mr. K. Ratnasingham for plaintiff.

Mr. K. K. Balasubramaniam for 1st, 4th-6th defendants.

(*Vide* proceedings).

Trial adjourned for 15-7-49.

Intld. S. R. W.

*D.J.*

2- 6-49 C. S. Ponniah of Chankanai, a witness who had given evidence on 10 27-5-49 moves for a requisition in his favour for Rs. 15 being costs of batta due to him for attending Court on the above mentioned date. Identified by Proctor Sivagnanam.

Issue Requisition for Rs. 10.

Intld. S. R. W.,  
*D.J.*

4- 6-49 Requisition for Rs. 10 issued in favour of Mr. C. S. Ponnyah of Chankanai.

Intld. S. R. W.,  
*D.J.* 20

15- 7-49 Trial (8).

Mr. K. Ratnasingham for plaintiff.

Mr. K. K. Balasubramaniam for 1st, 4th-6th defendants.

No time. Trial adjourned for 21-7-49.

Intld. S. R. W.,  
*D.J.*

21- 7-49 Trial (9).

Mr. Adv. Soorasangaram, instructed by Mr. K. Ratnasingham for plaintiff.



Mr. Adv. Ramalingam and Mr. Adv. Jayakody instructed by Mr. K. K. Balasubramaniam for 1st, 4th-6th defendants.

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Entries.  
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—continued

(*Vide* proceedings).

Address tomorrow 22-7-49.

Intld. S. R. W.,  
*D.J.*

22- 7-49 Addresses.

Mr. Adv. Soorasangaram, instructed by Mr. K. Ratnasingham, for plaintiff.

10 Mr. Adv. Ramalingam and Mr. Adv. Jayakody, instructed by Mr. K. K. Balasubramaniam for 1st, 4th-6th defendants.

(*Vide* proceedings).

Documents 23-7-49.

Judgment reserved.

Intld. S. R. W.,  
*D.J.*

23- 7-49 Documents P 1 to P 10 filed.

Documents D 1 to D 35 filed.

21-12-49 Judgment.

20 Mr. K. Ratnasingham for plaintiff.  
Mr. K. K. Balasubramaniam for 1st, 4th-6th defendants.

Mr. Balakrishnan takes notice on behalf of Mr. Ratnasingham. Judgment delivered in open Court in the presence of 1st defendant and Proctor for defendants. Decree on 11-1-50.

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

5- 1-50 Proctor for plaintiff files petition of appeal of the plaintiff-appellant and tenders stamps to the value of Rs. 6 for S.C. decree and Rs. 3. 60 for certificate in appeal and also notice of tendering security and  
30 moves that the petition of appeal be accepted and notice of tender-

No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued

ing security be issued for service on the defendants and on Mr. K. K. Balasubramaniam, Proctor, for the 1st, 4th and 5th and 6th defendants.

- (1) Accept petition of appeal.
- (2) Issue notice of tendering security returnable 19-1-50.

Intld. P. SRI SKANDARAJAH.  
*D.J.*

- 6- 1-50 (1) Notice of tendering security on 2nd defendant issued to Fiscal's Marshal, Gampaha.
- (2) Notice of tendering security on 3rd defendant issued to Deputy 10 Fiscal, Trincomalee.
- (3) Notice of tendering security on 7th defendant issued to Fiscal, Western Province.
- (4) Notice of tendering security on 1st, 4th, 5th, 6th, 8th, 9th and 10th and to Proctor K. K. Balasubramaniam issued to Fiscal's Marshal, Point Pedro.

11- 1-50 Mr. K. Ratnasingham for plaintiff.

Mr. K. K. Balasubramaniam for 1st, 4th-6th defendants.

Decree due—tendered.

Check and submit for signature.

20

11- 1-50 Decree entered.

17-1-50 As the 3rd defendant who is not represented in this case has now gone to Valvettiturai and as notice of tendering security has not been served on him at Trincomalie, Proctor for plaintiff moves that a duplicate notice be issued for service on him through Fiscal's Marshal, Point Pedro. He also tenders duplicate notice and copy.

Allowed. Issue.

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

17- 1-50 Duplicate notice on 3rd defendant issued to Fiscal's Marshal, Point 30 Pedro.

19- 1-50 Mr. K. Ratnasingham for plaintiff.

Mr. K. K. Balasubramaniam for 1st, 4th-6th defendants.

Notice of tendering security served on 1st-10th defendants and on  
Mr. K. K. Balasubramaniam Proctor.

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Entries.  
19-9-46 to  
14-12-51.  
—continued

All absent.

Security fixed at Rs. 150 (cash) for each set.

The unrepresented respondents to be treated as one set.

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

19- 1-50 Two sets of paying-in-vouchers for Rs. 150 each issued to Mr. K.  
10 Ratnasingham, Proctor for plaintiffs.

20- 1-50 Mr. K. Ratnasingham, Proctor for plaintiffs files bonds to prosecute  
appeal with T.R. receipts, application for typewritten copy and  
tenders cash Rs. 10 and supplies notice of appeal and moves that  
notice of appeal be issued on the defendants and their Proctor, Mr.  
K. K. Balasubramaniam of Valvettiturai.

(1) Accept bonds.

(2) Deposit cash and comply.

(3) Issue notice of appeal returnable 17-2-50.

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

20

21- 1-50 (1) Notice of appeal issued to 1st, 4th, 5th, 6th, 8th, 9th and 10th  
and Proctor, Mr. K. K. Balasubramaniam through Fiscal's Marshal,  
Point Pedro.

(2) Notice of appeal issued to 2nd defendant through Fiscal's Marshal,  
Gampaha.

(3) Notice of appeal issued to 3rd defendant through Fiscal's Marshal,  
Point Pedro.

(4) Notice of appeal issued to 7th defendant through Fiscal, Western  
Province.

30 1- 2-50 (1) Return to notice of appeal on 2nd defendant from Fiscal's Marshal,  
Gampaha, received—served.

No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued

2- 2-50 Return to notice of appeal on 7th defendant received from Fiscal, Western Province—served.

17- 2-50 Mr. K. Ratnasingham for plaintiff.

Mr. K. K. Balasubramaniam for 1st, 4th-6th defendants.

Notice of appeal served on 1st, 2nd, 4th and 6th-10th defendants and on Proctor K. K. Balasubramaniam. Not served on 3rd and 5th defendants. 3rd defendant is reported to be at Trincomalie, and the 5th defendant at Colombuturai.

Re-issued on 3rd and 5th defendants for 10-3-50.

28- 2-50 Notice of appeal on 3rd defendant re-issued to D. F. Trincomalie. 10

Notice of appeal on 5th defendant to Fiscal, Northern Province, Jaffna.

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

6- 3-50 Return to notice on 5th defendant filed—served.

10- 3-50 Mr. K. Ratnasingham for plaintiff.

Mr. K. K. Balasubramaniam for 1st, 4-6th dependants

(1) Notice of appeal served on 3rd and 5th defendants.

(2) Forward record to S.C. in due course.

Intld. P. SRI S., 20  
*D.J.*

31- 3-50 Record with typewritten copies forwarded to the Registrar, Supreme Court.

Sgd.  
*Secretary.*

5- 9-50 Mr. D. G. Gnanapragasam files proxy for 2nd and 7th defendants-respondents.

Intld.

8- 8-51 Record received from Registrar, Supreme Court with Supreme Court judgment. 30

Judgment set aside. Writ of ejectment to issue forthwith.

Case has to be heard and award damages.

Call case on 15-8-51.

No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued

Sgd. .... ,  
A.D.J.

15- 8-51 Mr. K. Ratnasingham, Proctor for plaintiff.

Mr. K. K. Balasubramaniam for 1st, 4th-6th defendants.

Case called—*vide* J.E. of 8-8-51.

10 Mr. Vallipuram takes notice on behalf of Mr. K. Ratnasingham and  
Mr. Ramalingam takes notice on behalf of Mr. Balasubramaniam

*Order—*

Mr. Ratnasingham for plaintiff-petitioner present

Judgment of Supreme Court announced in open Court.

Inquiry *re* question of damages on 7/9.

Sgd. .... ,  
D.J.

16- 8-51 Mr. K. Ratnasingham, Proctor for plaintiff files copy decree and  
20 application for execution of decree and moves that writ of possession  
be issued to the Fiscal, Northern Province to eject the defendants  
from the said land and to place the plaintiff in peaceful possession  
thereof.

Issue writ of possession.

Sgd. ... ,  
D.J.

17- 8-51 Writ of possession issued to Fiscal, Northern Province, returned  
31-10-51.

Intld. .... ,

25- 8-51 As the 1st defendant has given due notice to the plaintiff, of his  
30 intention to apply to the Supreme Court for Conditional Leave to  
appeal to the Privy Council and as the 1st defendant has already

No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued

made his application to the Supreme Court asking for Conditional Leave to Appeal to the Privy Council against the judgment and decree of the Supreme Court in appeal in this case, pronounced on the 26th day of July, 1951, Mr. K. K. Balasubramaniam, Proctor for 1st, 4th, 5th and 6 defendants moves that the writ of possession issued in this case be recalled.

Call on Roll on 29-8-51 to be supported.

Sgd. . . . .  
D.J.

29- 8-51 Mr. K. Rathasingham, Proctor for plaintiff. 10

Mr. K. K. Balasubramaniam, Proctor for 1st, 4th-6th defendants.

Case called to be supported.

The Fiscal, Northern Province, reports that his officer at Point Pedro, who was entrusted with the execution of the above writ of possession reported that the gates of the premises were locked and as such he was unable to gain entrance to execute the writ. He therefore moves for an order to break open the gates and deliver possession.

Mr. K. K. Balasubramaniam for defendants 1st and 4th to 6th files petition and affidavit of the 1st defendant Savarimuttu in support 20 of his motion filed on 25-8-51 for recall of writ of possession.

Mr. K. K. Balasubramaniam moves that he be given a date to file proof of filing of papers for leave to appeal to the Privy Council.

Call on 31/8.

Mention *re* Fiscal's application now for 31/8.

Sgd. . . . .

30- 8-51 Plaintiff's list of witnesses filed.

Intld. . . . .

31- 8-51 Mr. K. Ratnasingham, Proctor for plaintiff.

Mr. K. K. Balasubramaniam, Proctor for 1st, 4th-6th defendants. 30

(1) Case called—*vide* Journal Entry of 29-8-51.

(2) Case mentioned *re* application of Fical to break open the gates. No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued  
 Mr. Balasubramaniam files letter addressed by Registrar, Supreme Court, to Mr. Advocate Fernandopulle, where references made to this case and the listing of the application for leave to appeal to the Privy Council.

Mr. Balasubramaniam now moves that the writ issued to Fiscal be recalled.

Re-call writ from Fiscal provisionally.

10 Issue notice of this application on plaintiff and Proctor for plaintiff for 7/9.

Sgd. . . . .  
*D.J.*

31- 8-51 Notice on plaintiff and his Proctor issued through Fiscal, Point Pedro.

Intld. . . . .

3- 9-51 Fiscal, Northern Province, return writ—*vide* order of Court dated 31-8-51.

File.

Intld. . . . .  
*A.D.J.*

20

4- 9-51 Return to notice filed. Served on plaintiff and Proctor.

Intld. . . . .

7- 9-51 Mr. K. Ratnasingham, Proctor for plaintiff.

Mr. K. K. Balasubramaniam, Proctor for 1st, 4th-6th defendants.

Notice served on plaintiff and his Proctor.

*Vide* Journal Entry of 31-8-51.

They are : Plaintiff—absent.

Proctor for plaintiff—present.

Of consent call case on 21/9.

30

Sgd. . . . .

No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued

21- 9-51 Case called—*vide* Journal Entry of 7-9-51.

Mr. Balasubramaniam says the hearing of the application for leave to Privy Council had been postponed, and moves that this case be called a month hence.

Call on 24/10.

Sgd. . . . .

24-10-51 Mr. K. Ratnasingham, Proctor for plaintiff.

Mr. K. K. Balasubramaniam, Proctor for 1st, 4th-6th defendants.

Case called—*vide* Journal Entry of 21-9-51.

As the application for Special Leave to Appeal to the Privy Council 10 in the above case has not been taken up for argument by the Supreme Court, Mr. K. K. Balasubramaniam, Proctor for defendants moves that a further calling date be given in the above case.

Of consent call on 21/11.

Sgd. . . . .  
D.J.

21-11-51 Case called—*vide* Journal Entry above.

Mr. Balasubramaniam for defendants states that D.C. 2,761 in appeal for leave to appeal to Privy Council has been heard by Supreme Court and that D.C. 2,761 record will be sent back to 20 this Court for inquiry *re* value of land.

Mr. Balasubramaniam moves that this case be called after the receipt of record in D.C. 2,761 by this Court. Call case on 5-12-51.

Sgd. . . . .  
D.J.

23-11-51 Registrar, Supreme Court, forwards copy of the order made in the application for Conditional Leave to Appeal to Privy Council in S.C. 174 and D.C. Point Pedro 2,761 (429) for information and favour of necessary action.

(The record in this case was returned to this Court on 7th August, 1951.) 30

Call case on 28-11-51, and inform Proctors for parties to be ready for inquiry as directed by Supreme Court.

Sgd. . . . .  
D.J.



24-11-51 Proctors for plaintiff and defendants informed.

Intld. . . . .

No. 1.  
Journal  
Entries.  
19-9-46 to  
14-12-51.  
—continued

28-11-51 Mr. K. Ratnasingham, Proctor for plaintiff.

Mr. K. K. Balasubramaniam, Proctor for 1st, 4th-6th defendants.

Notice served on Proctors.

They are present.

Inquiry on 14/12.

Sgd. . . . .  
*D.J.*

10 4-12-51 1st, 4th to 6th defendants' list of witnesses and documents filed and  
2 summons to witnesses issued through Fiscal, Northern Province,  
Point Pedro.

Intld. . . . .

8-12-51 Summons on 2 witnesses served.

Intld. . . . .

13-12-51 Proctor for defendants files list of documents by defendants, with  
registered receipt No. 183 of 13-12-51.

Intld. . . . .

14-12-51 Inquiry.

20 Mr. K. Ratnasingham, Proctor for plaintiff.

Mr. K. K. Balasubramaniam for 1st, 4th to 6th defendants.

*Vide* proceedings.

*D.J.*

14-12-51 Documents X 1-X 3 filed by Mr. K. K. Balasubramaniam, Proctor  
for defendants with list.

Intld. . . . .

**Plaint of the Plaintiff.**

IN THE DISTRICT COURT OF JAFFNA HELD AT POINT PEDRO  
PONNAMBALAM THANGAVELAUTHAM of Valvettiturai . . . . *Plaintiff.*

No. 2,761.

*Vs.*

1. SIVAKKINAPILLAI SAVIRIMUTTU,
2. SAVARIMUTTU IGNATIUS THURAISINGHAM,
3. THOMAIPILLAI SOOSAIPILLAI, and wife
4. VIRISIAMMAH,
5. SWAMINATHAR MARUSILIN, and wife 10
6. MARIMUTTU,
7. SAVIRIMUTTU JOSEPH SELVARATNAM, all of Valvettiturai,
8. ARUNASALAM SOMASUNDARAM and wife
9. MANAKIATKARASI,
10. RASAMMAH, widow of Sivaguru Ramasamy, all of ditto . . . . *Defendants.*

This 19th day of September, 1946.

The plaint of the abovenamed plaintiff appearing by Mr. K. Ratnasingham his Proctor states as follows :—

1. The parties reside and the subject matter of this action is situated within the jurisdiction of this Court. 20
2. The 1st defendant abovenamed and his late wife Annammah were the owners and proprietors of the land called "Pannaikaddaiyady," in extent 2 lachams and 13 28/32 kulies under and by virtue of dowry Deed No. 12,732 dated 25th day of April, 1907, and attested by V. Sinnathamby, Notary Public and more fully described in the schedule hereto annexed.
3. The 1st defendant and the said Annammah having held and possessed the said land transferred the same to certain Karthigesar Iyadurai by Deed No. 3, dated 12th day of November, 1937, and attested by S. Sivagnanam, Notary Public. 30

- No. 2.  
Plaint of the  
Plaintiff.  
19-9-46  
—continued—
4. The said Iyadurai having held and possessed the said land and conveyed the same to the plaintiff abovenamed by Deed No. 308, dated 24th day of June, 1946, and attested by P. V. Senathirajah, Notary Public.
  5. The plaintiff by his own undisturbed and uninterrupted possession and by the like possession of his predecessors in title for more than a period of 10 years and upwards next immediately preceding the date of this action by a title adverse to and independent of the defendants and all others whomsoever acquired a prescriptive right and title thereto in terms of section 3 of Chapter 55 of the Legislative Enactments of Ceylon.
  6. The defendants abovenamed who have no manner of right and title to the said land did on or about the 4th day of September, 1946, deny the right of the plaintiff to the said land and claimed the land as property of 1st, 2nd, 4th, 6th and 7th defendants and are in wrongful possession thereof.
  7. By reason of the said wrongful acts of the said defendants the plaintiff has sustained damages to the value of Rs. 50 and further continuing damages of Rs. 10 per mensem.
  8. A cause of action has accrued to the plaintiff to sue the defendants for a declaration of title to the said land to recover possession thereof and to recover damages thereof.
  9. The 3rd and 6th defendants are made parties to this action as they are husbands respectively of the 4th, and 6th defendants.
  10. The plaintiff states that the defendants are estopped from denying the title of the plaintiff as the 1st defendant and his late wife Annammah entered into possession of the said land on lease bond No. 4, dated 12th November, 1937, and attested by S. Sivagnanam, Notary Public.
  11. The land is reasonably worth Rs. 900.

Wherefore the plaintiff prays—

- (i) That he be declared entitled to the said land,

No. 2.  
Plaint of the  
Plaintiff.  
19-9-46  
—continued

- (ii) That the plaintiff be placed in peaceful possession of the said land and the defendants be ejected therefrom.
- (iii) That the 1st, 3rd, 4th, 5th, 6th and 7th defendants be ordered to pay the plaintiff the said sum of Rs. 50 as damages and further continuing damages of Rs. 10 per mensem from this date.
- (iv) For costs against 1st and 3rd to 7th defendants and such other defendants as may contest this action.
- (v) For such other and further relief as to this Court shall seem meet.

10

Sgd. K. RATNASINGHAM,  
*Proctor for Plaintiff.*

SCHEDULE REFERRED TO ABOVE.

Land at Valvettiturai within the jurisdiction of this Court, “Pannai-kaddaiyady”, in extent  $11\frac{1}{2}$  lachams varagu culture, ditto  $3\frac{5}{8}$  lachams varagu culture, but according to measurement 11 lachams varagu culture and  $1\frac{16}{32}$  kulies. Of this an extent of 1 lacham varagu culture, and  $15\frac{8}{32}$  kulies and a further extent of  $16\frac{20}{32}$  kulies aggregating to a total extent of 2 lachams varagu culture and  $13\frac{28}{32}$  kulies ; is bounded on the east by the village limit of Polikandy, north by lane, west by the land of Sellappah Muttukumar, and 20 on the south by land of the heirs of the late Kathiripillai Sivapragasam. Of the whole of the ground, old and young palmyrahs, margosa trees, and well, contained within these boundaries an undivided one-third share.

Sgd. K. RATNASINGHAM,  
*Proctor for Plaintiff.*

Memo of documents filed.

An abstract of title.

Sgd. K. RATNASINGHAM,  
*Proctor for Plaintiff.*

## ABSTRACT OF TITLE.

| Number & Date of Document | Nature of Document | From whom to whom                                   | Area or fraction of land dealt with | Boundaries  | When Registered | Consideration Rs. cts. | Original or copy | Remarks |
|---------------------------|--------------------|---|-------------------------------------|---|-----------------|------------------------|------------------|---------|
| 308 of 24.6.46            | Transfer           | Karthigesu Iyadurai to Ponnampalam Thangavelayutham | 2 Lms. V.C. and 13 28/32 kls.       | East: by Village limit of Polikandy North by Lane, West by Chellappah Muthukumar, and on the South by the heirs of Kathiripillai Sivappiragasam | 26th June 1946  | 10,000. 00             | Original         |         |

This 19th day of September 1946

Sgd. K. Ratnasingham.  
Proctor for Plaintiff.No. 2.  
Plaint of the  
Plaintiff.  
19-9-46.  
—continued.

No.3.  
Answer of the  
1st, 4th, 5th  
and 6th  
Defendants.  
28.1.47.

## No. 3.

## Answer of the 1st, 4th, 5th and 6th Defendants.

IN THE DISTRICT COURT OF JAFFNA HELD AT POINT PEDRO  
PONNAMBALAM THANGAVELAUTHAM of Valvettiturai ... *Plaintiff.*

No. 2,761/P.

Vs.

(1) SIVAKKINAPILLAI SAVARIMUTTU and 9 others, all of  
Valvettiturai ..... *Defendants.*

This 28th day of January, 1947.

The answer of the 1st, 4th, 5th and 6th defendants abovenamed appearing  
by K. K. Balasubramaniam, their Proctor, states as follows :— 10

1. Answering to paragraphs 1 and 2 of the plaint these defendants admit the truth and correctness of the averments therein contained.
2. Answering to paragraph 3 of the plaint these defendants state that the said land and 2 other lands were conveyed on the said Deed No. 3 by the 1st defendant and his late wife Annammah to Karthigesu Aiyadurai referred to therein to be held in trust for them and to be re-conveyed to them on their paying to the said Aiyadurai the sum of Rs. 2,000 with interest thereon from 12th November, 1937.
3. Answering to para 4 of the plaint these defendants state that the said 20 Aiyadurai fraudulently and collusively executed Deed No. 308 referred to therein in favour of the plaintiff who prior to its execution was aware that the said Aiyadurai was holding the lands in trust as aforesaid. The said deed was wrongfully executed to deprive the defendants 1st to 7th of their rights to the said lands.
4. Answering to paragraph 5 of the plaint these defendants deny the truth of the averments therein contained.
5. Answering to paragraph 6 of the plaint these defendants state that the 1st defendant and his late wife Annammah were in possession of all the aforesaid three lands after the execution of Deed No. 3 30 aforesaid till 31st July, 1944, and thereafter the defendants 1st to 7th are in possession of the said lands in pursuance of the said trust. These defendants deny that the plaintiff has any right to the said lands.

6. Answering to paragraphs 7 and 8 of the plaint these defendants deny all and singular the truth of the several averments therein contained.
7. Answering to paragraph 10 of the plaint these defendants while admitting the execution of the lease bond referred to therein deny the truth of the rest of the averments contained therein.
8. By way of further answer these defendants state—

No.3.  
Answer of the  
1st, 4th, 5th  
and 6th  
Defendants.  
28-1-47.  
—continued

- 10 (a) as deed No. 308 was executed after the lodging of a *caveat* under section 32 of the Registration of Documents Ordinance Chapter 101 in respect of this and the other two lands, it cannot operate to convey any right or title to the plaintiff.
- (b) that the plaintiff holds this and the other two lands if Deed No. 308 is held to be valid subject to the right of the defendants 1st-7th to pay a sum of Rs. 2,000 and such reasonable interest as may be fixed by Court from 12th November, 1937.

Wherefore these defendants pray—

- 20 (i) that the plaintiff's action be dismissed,
- (ii) that the plaintiff in the event of Deed No. 308 being held to be valid, be declared to be holding this land and the two other lands aforesaid and referred to in Deed No. 3 aforesaid, subject to the right of the defendants 1st-7th to pay the aforesaid sum of Rs. 2000 and such reasonable interest from 12th November, 1937, as the Court may order,
- (iii) that the plaintiff be ordered to execute a conveyance in favour of defendants 1st-7th on payment of the aforesaid sum as fixed by Court, on such date as the Court may fix.
- (iv) for costs and for such other and further relief as to this Court shall seem meet.

Sgd. K. K. BALASUBRAMANIAM,  
*Proctor for 1st, 4th, 5th and 6th Defendants.*

**No. 4.**

**Issues Framed.**

10-12-48

Mr. Adv. Soorasangaram, instructed by Mr. K. Ratnasingham for plaintiff.

Mr. Adv. Jeyakody instructed by Mr. K. K. Balasubramaniam for 1st, 4th, 5th and 6th defendants.

Mr. Adv. Soorasangaram suggests the following issues :—

- (1) Did the 1st defendant and his wife Annammah convey the land in question to Karthigesu Iyadurai in trust as alleged by the contesting defendants. 10
- (2) Had the plaintiff notice of the trust alleged by the contesting defendants.
- (3) If either issue (1) or (2) is answered in the negative is the plaintiff entitled to judgment.
- (4) If so, what damages is the plaintiff entitled to.
- (5) Are the defendants estopped from denying the plaintiff's title in view of lease bond No. 4 of 12-11-1937.
- (6) Is the agreement for a re-transfer alleged in para 2 of the answer enforceable in law.

Mr. Adv. Jeyakody suggests the following issues :— 20

- (7) Was the land described in the schedule to the plaint and 2 other lands conveyed on Deed No. 3 of 12-11-1937, by the 1st defendant and his late wife Annammah to Iyadurai to be held in trust for them and to be re-conveyed to them on their paying to the said Iyadurai the sum of Rs. 2,000 with interest thereon from 12-11-1937.
- (8) If so, does the plaintiff hold the land in question subject to the said trust.
- (9) Does Deed No. 308 operate to convey title to the plaintiff for the land in question in as much as the same was executed after the 1st defendant entered a *caveat* as set out in para (8a) of the answer. 30



(Mr. Advocate Soorasangaram objects to all the issues framed by Mr. Advocate Jeyakkody. In regard to issue (7) he submits that there are a number of issues incorporated into one, and he states that it be split up. Issue (8) follows from issue (7), and in regard to issue (9) he submits that it assumes that the *caveat* had been entered.)

No.4.  
Issues  
Framed.  
10.12.48  
—continued

Mr. Advocate Jeyakkody suggests in place of issue (7) the following :—

- (10) Was the land described in the schedule to the plaint and 2 other lands conveyed on Deed No. 3 of 12-11-1937 by the 1st defendant and his late wife Annammah to Iyadurai to be held in trust for them.
- 10 (11) Did Aiyadurai agree to re-convey the said land to the 1st defendant and his late wife Annammah on their paying to the said Iyadurai the said sum of Rs. 2,000 with interest thereon from 12-11-1937.
- (12) If issue (11) or (12) or both are answered in the affirmative, does the plaintiff hold the land in question subject to a trust.
- (13) Did the 1st defendant enter a *caveat* as set out in para (8a) of the answer.
- (14) If so, does Deed No. 308 of 24-6-1946 operate to convey title to the plaintiff for the land in question.

I accept the issues 1st to 6th, and 10th to 14th. I strike out issues 7th, 20 8th and 9th.

10-12-48. Sgd. S. R. WIJAYATILAKE,  
D.J.

Adjourned for lunch.

10-12-48. Intld. S. R. W.,  
D.J.

### Trial Resumed

Mr. Advocate Jeyakkody suggests further the following issues :—

- (15) Is the plaintiff entitled to the land described in the schedule to the plaint.
- 30 (16) If not, can he maintain this action.

Mr. Adv. Soorasangaram objects to these issues on these ground that they are of a frivolous nature for the reason that the defendant has not taken up this

No. 4.  
Issues  
Framed.  
10-12-48.  
—continued

position in the answer, and that they have based their whole case on the ground that the deed in question creates a trust. He further refers me to para 2 of the answer.

Mr. Adv. Jeyakkody withdraws his issues and suggests the following issues :—

(17) Are the defendants in wrongful possession of the land described in the schedule to the plaint.

(18) If not, can the plaintiff claim damages.

Mr. Adv. Soorasangaram further suggests the following issues :—

(19) Are the defendants in possession of the said land in pursuance of the 10 trust alleged in para 2 of the answer.

(20) If not, are the defendants in wrongful possession of the said land.

I therefore adopt the further issues 17, 18, 19 and 20. I strike out issues 15 and 16.

10-12-48.

Sgd. S. R. WIJAYATILAKE,  
D.J.

No. 5.  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
T. Thiru-  
chittam-  
palam.  
Examination.

### No. 5.

#### 1st, 4th, 5th and 6th Defendants' Evidence.

Mr. Adv. Jeyakkody calls :

T. THIRUCHITTAMPALAM, affirmed. Age 40, Clerk, Mercantile Bank, 20 Jaffna. One Karthigesar Iyadurai of Valveti had an account in the Mercantile Bank in 1938. (Shown a duplicate receipt (1 D 1) dated 16-11-1938). This is a receipt issued by the Mercantile Bank to S. Savarimuttu for having deposited Rs. 130 to the credit of Karthigesar Iyadurai and this was credited to his account. When any money is credited to an account we notify the person in whose name the account has been opened, and we also inform as to who deposited the money.

*Cross-examined by Mr. Adv. Soorasangaram.*

T. Thiru-  
chittam-  
palam.  
Cross-  
Examination.

(1D 1) merely shows that money is deposited to the credit of K. Iyadurai by S. Savarimuttu on 16-11-38. The address of K. Iyadurai is not mentioned 30 in (1D 1). I personally do not know whether Iyadurai was notified of this payment. I do not know Iyadurai personally.

*Re-examined by Mr. Adv. Jeyakkody.*

(1D 1) gives the full name of Iyadurai as Karthigesar Iyadurai. If there are more persons than one by the same name we give more particulars so as to specify the individual concerned by giving the full name. Each person holding an account has a separate ledger number. The names are arranged according to alphabetical order. Those in the "A" category will be in one ledger.

No. 5.  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
T. Thiru-  
chittam-  
palam.  
Re-examina-  
tion.  
—continued

10-12-48.

Sgd. S. R. WIJAYATILAKE,  
D.J.

S. SIVAGNAM affirmed, age 39, Proctor, Changanai.

10 I am also a Notary Public. I was a Notary in 1937 and 1938. (Shown a certified copy of Deed No. 3 of 12-11-37 (1D 2). This was attested by me. (Shown also a certified copy of lease bond No. 4 of the same date (1 D 3). This was also attested by me. I cannot remember the date when the deed was attested. The transferee Iyadurai is my uncle. The 1st defendant and his wife were the transferors. After the execution of the lease bond (D 3) an, informal writing was executed. The transferors wanted the land transferred on (D 2) to be re-transferred within a certain period if the consideration on the transfer was paid with interest. Iyadurai was a party to that agreement. I did not witness this writing. The deeds (D 2) and (D 3) were written at Point  
20 Pedro in a house near the Sivan temple. It is the house of one physician Kandiah. So far as I remember an informal writing was also executed simultaneously. (I ask Mr. Adv. Jeyakkody whether he is producing this agreement. He states that he is not in a position to produce this agreement as it is in the possession of one Ponniah on whom summons has been issued to produce the document, but summons has not been served on him as he was not to be found. Mr. Adv. Soorasangram objects to this witness being led regarding the contents of the document without the document being proved. I uphold Mr. Adv. Soorasangaram's objection). That informal document was handed over to the 1st defendant. These 2 deeds were attested at Point Pedro because the 1st defendant and his  
30 wife were at the physician's house at Point Pedro—one family being ill. It was my uncle the transferee who took me to Point Pedro to execute these deeds. I cannot say whether the transferors were reluctant to execute the deeds. I went in a car to Point Pedro, and returned immediately after the execution. On this occasion I was executing an out and out transfer and a lease. The informal writing was in my hand writing. When I started from Valvetty to go to Point Pedro I knew that I was taken there to execute a transfer and a lease. After the 2 deeds were executed the parties wanted an informal writing. My uncle Iyadurai is dead. When the grantors wanted an informal writing Iyadurai said that he was prepared to give it, provided there was a particular period. One  
40 Thiagarajah and Fernando were the attesting witnesses on (D 3.) Fernando was my driver from Munuwangoda. I do not know where Thiagarajah is now. The consideration of Rs. 2,000 was not handed over in my presence. No money was handed over in my presence.

S. Sivagna-  
nam.  
Examination.

No. 5.  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
S. Sivagna-  
nam.  
Cross-  
Examination.  
—continued

*Cross-examined by Mr. Adv. Soorasangaram.*

(Shown original of Deed No. 3 of 12-11-1937 (P 1)). I attested this deed. The 1st defendant Saverimuttu and his wife executed this deed. The consideration agreed upon by the parties was Rs. 2,000. I know the three lands myself. At the time of the transfer the lands were only worth Rs. 2,000. (P 1) was executed in part satisfaction of a debt. (Shown decree in mortgage bond No. 265 of this Court). The debt was in part satisfaction of this. The decree was for, in this case, Rs. 2,973.10 with further interest and costs. By that decree 3 lands are dealt with in (P 1) and 2 lands were ordered to be sold. The 1st defendant and his wife Annammah gave me instructions to draft (P 1). After (P 1) was executed I was instructed to draft the lease bond. Instructions were given by the vendors and the vendee in (P 1). That lease bond was executed because the vendee wanted to be assured of getting some rent. (Shown lease bond No. 4 of 12-11-1937) (P 3). This lease bond (P 3) was signed by K. Iyadurai and by the 1st defendant and his wife Annammah, and the parties agreed to abide by the covenants in the said deed. My father-in-law is one Ponniah. When Karthigesar Iyadurai was in Malaya, my father-in-law Ponniah was the attorney. My father-in-law used to consult me in various matters. After (P 1) and (P 3) were executed Karthigesar Iyadurai went to Malaya. I cannot remember when he returned. After the lease was executed he returned from 20 Malaya and tried to sell these lands. To my knowledge he offered these lands to various people. Finally the plaintiff has purchased these 3 lands from Iyadurai. (Shown deed No. 308 of 24-6-1946 (P 4). The signature Iyadurai on (P 4) appears to be that of my uncle.

S. Sivagna-  
nam.  
Re-examina-  
tion.

*Re-examined by Mr. Adv. Jeyakkody.*

Before Iyadurai returned from Malaya there were offers to buy this land. I do not remember going with a Surveyor to the defendant's land, nor do I remember going with the plaintiff. I knew the plaintiff before Iyadurai returned from Malaya. I have seen him at Ponniah's place. He told me that there were several offers and he was intending to sell. I remember the defendant 30 also coming, but I cannot remember the date. I think it was before Iyadurai returned from Malaya. As for the lease bond my inference was that the vendee wanted an assurance of the rent. I did not go to any of the 3 lands of the defendants.

Intld. S. R. WIJAYATILAKE,  
*D.J.*

10-12-48.

S. Savari-  
muttu.  
Examination.

SUVAKEENPILLAI SAVARIMUTTU, sworn, age 70, Trader, Val-  
vettiturai.

I am the first defendant in this case. My wife was one Annammah. She is now dead. I knew the late Karthigesar Iyadurai. I knew his parents. In 40 1919 I borrowed some money on a promissory note from the father of Iyadurai.

In 1921 also I borrowed some money on a promissory note. By 1922 I had not paid those debts. I produce mortgage bond No. 2,063 of 1929 (D 4). I mortgaged 5 lands including the 3 lands dealt with in (D 2) to the parents of Iyadurai for a sum of Rs. 1,650. I refer to the rectial which states that out of this Rs. 1,650, Rs. 1,204.50 was in settlement of the principal and interest due on the promissory note. The only amount I received on that occasion was Rs. 445.50. The mortgagees on (D 4) assigned the bond in favour of the son Iyadurai, who put the bond in suit in case No. 265, D.C., Jaffna, claiming a sum of Rs. 2,973.10 for the principal and balance interest. I had already paid a sum of Rs. 460 out of the interest. I produce the summons (D 5) and the plaint (D 6) which I received in this case. I consented to judgment in that case, and decree was obtained. I produce the decree in that case (D 7). Subsequently I got two of these lands released from Iyadurai. I produce release (D 8). Then I mortgaged another land and paid both the amounts to Iyadurai in settlement. The other land had been mortgaged for a sum of Rs. 500. The proceeds being altogether Rs. 1,037.50 was paid. I produce receipt No. 715 of 1931 (D 9). Iyadurai put the bond in suit in case No. 551 (P) of this Court. I produce the original summons (D 10) and plaint (D 11) in that case. I do not know when Iyadurai instituted his action through his attorney. There was a decree for a sum of Rs. 858 and subsequently I paid that amount to Iyadurai. I produce receipt No. 3,997 of 1946 (D 12). By (D 12) my daughter paid a sum of Rs. 1,030 in full satisfaction of the amount of the decree, legal interest, and costs in action No. 551 (P) of this Court.

No. 5.  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
S. Savari-  
muttu.  
Examination.  
—continued

I remember the time when my wife and I were in Physician Kandiah's house at Point Pedro. Prior to that Iyadurai came to me to demand a settlement of the debt. He also said that if I was not in a position to settle the debt to transfer my lands to him in trust. Before that he also promised to re-transfer the land to me provided I pay off the debt within 8 years. He also wanted me to sell one of the lands and pay off the debts. He also said that the money realised by selling one land would be sufficient to meet the debt. He suggested me to sell the land called Elumullupattai. This land adjoins my dwelling house. My dwelling house was also under mortgage. The land called Elumullupattai is bounded on the east and south by road. This land is a very valuable one. I was not prepared to sell that land at that time because I wanted to give the land Elumullupattai to my youngest unmarried daughter, and the other two lands I wanted to dowry to my other daughters. Iyadurai wanted me to settle the debt somehow or other.

Q.—When did he suggest to you that the transfer should be in trust ?

A.—He suggested in November, 1937. My wife and I were not agreeable to the suggestion because we did not want to part with this land. Subsequently we executed the transfer deed. Iyadurai is dead now. My transaction was with Iyadurai. I consented to transfer this property to Iyadurai because he said that he would re-transfer it within 8 years, and that he would hold it in trust and that he would not betray me. He also told me to deposit whatever income I get in the bank and settle the debt in instalment within that period.

No. 5,  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
S. Savari-  
muttu.  
Examination.  
—continued

The suggestion about the transfer was made in my house, and the deed was executed in the physician's house at Point Pedro. My wife refused to sign the deed, and Iyadurai told us that he would not betray us and wanted us to sign the deed. Then we signed it. He also said that a lease bond was to be executed for Rs. 20 and he did not want the money in respect of the lease bond. Besides these two deeds there was no other deed executed, and there was also an informal writing. That informal writing was handed over to me. Now it is in possession of one Ponniah. Ponniah wanted this informal writing in order that he may send it to Iyadurai to Malaya to verify whether it was a genuine document. Ponniah came to know about this document because my daughter and I went 10 to him and wanted this land to be re-transferred. I have gone to Ponniah's house on 3 or 4 occasions. I had taken this informal writing on two occasions. On the second occasion he got the informal writing from me. On the first occasion I took the informal writing to Ponniah's house in 1942. I took it to him because he was the attorney at that time of Iyadurai. I wanted Ponniah to re-transfer the land on getting the money from me. On the first occasion I brought the informal writing back home. I summoned Ponniah to attend Court today. I summoned him on the last date also. He has failed to attend Court on both the occasions.

*To Court :* To me that informal writing is a valuable document. I told 20 Ponniah and gave it to him on trust.

I do not remember whether the Japanese war was over at the time. I handed over this document to Ponniah. At that time there were communications between Malaya and Ceylon. At that time Iyadurai was away in Malaya. I was not paid any consideration when the deed was executed at Point Pedro. The deed was executed to pay off the balance debt. I refer to the recital in (D 2). Before this occasion I did not make any payment in respect of this debt before the execution of the deed at Point Pedro.

*Q.—*When Iyadurai was in Malaya did you make any payment ?

*A.—*When Iyadurai was in Malaya I made payment in respect of the 30 interest to Muttu, his brother, and to one Sinnappah and I obtained receipts in acknowledgement of these payments. The balance debt was Rs. 2,000. I deposited a sum of Rs. 130 in the bank to the credit of Iyadurai. I deposited this amount in part settlement of the debt in 1938. In 1940, Iyadurai returned from Malaya. I asked him whether he received this from the bank. He said he had received. I produce a certified copy of the Power of Attorney No. 2,742 of 8-9-1940 (D 13) by which he had appointed Ponniah as Attorney. Thereafter war broke out. In 1942, I requested the attorney Ponniah to re-transfer the property. Besides Ponniah I had approached no one else for a re-transfer of these lands. However I had informed Iyadurai's mother about this. Before I took the informal 40 writing to Ponniah I consulted legal opinion. This was about 5 or 6 months before I approached Ponniah for the first time. I consulted Proctor Velautham. My daughter and I took this informal agreement to Ponniah in 1942. When I

took this document to Ponniah on the second occasion I am not sure whether the war was over or not. I think the second occasion was after a lapse of one or two years. On the second occasion I handed over the informal writing to Ponniah. I consulted Proctor Velautham between the 1st and the 2nd occasion. After the cessation of hostilities I sent 3 or 4 letters and a telegram. The letters were written both by me and my children. Iyadurai acknowledged receipt of the telegram and the letters later on.

No. 5.  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
S. Savari-  
muttu.  
Examination.  
—continued

Adjourned for 25-2-49.

10 10-12-48.

Intld. S. R. WIJAYATILAKE,  
D.J.

25-2-49.

Trial resumed

Mr. Adv. Soorasangaram instructed by Mr. K. Ratnasingham, for plaintiff.

Mr. Adv. Ramalingam with Mr. Adv. Jeyakkody instructed by Mr. K. K. Balasubramaniam for 1st, 4th, 5th and 6th defendants.

Mr. Adv. Ramalingam calls :

SWAKEENPILLAI SAVERIMUTTU (re-called)—Re-sworn.

On the last date of trial I stated that I deposited a sum of Rs. 130 in the bank. That was the only amount I deposited in the bank. It was Iyadurai who asked me to deposit that money in the bank. I did not deposit any money thereafter because of the outbreak of war. After the war ceased I wrote to Iyadurai. I sent a telegram. I produce a certified copy of the telegram sent by me to Iyadurai (D 14). By that telegram I asked for replies to my letters. I also say that Ponniah and Sivagnanam are pressing me to sell the land at an increased price. I also stated the amount in full settlement to Ponniah in 1942. Ponniah referred to in the telegram was the attorney of Iyadurai and the father-in-law of Proctor Sivagnanam who had given evidence earlier in this case.

Q.—In reply to the telegram you received letter dated 8-3-46 ?

(Mr. Adv. Soorasangaram objects to the production of the document.)

30 A.—Iyadurai is dead.

(Mr. Adv. Soorasangaram withdraws his objection). The document is marked (D 15). Before I sent that telegram to Iyadurai I received notice to quit the land in question and other 2 lands. I produce notice dated 16-1-1946 sent to me by Proctor Sivagnanam on instructions from Iyadurai (D 16) by which I was asked to pay a sum of Rs. 160 being rent due on lease bond (D 3) granted

No. 5.  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
S. Savari-  
muttu.  
Examination.  
—continued

by me and my wife and also giving me notice to give the land called Ellumullupattai one of the 3 lands transferred by me on (D 2) and asking me to deliver possession to Thangavelautham. Thangavelautham referred to is the plaintiff in this case. I produce a certified copy of a *caveat* entered by me and dated 5-2-1946 (D 17) by which I required notice to be served on me of the presentation for registration of any instrument affecting this land and the other 2 lands. After entering this *caveat* I and the other defendants filed case No. 2,625/P in this Court on 11-3-1946 against Iyadurai as the 1st defendant, the plaintiff as the 2nd defendant, and one G. A. Nadarajah as the 3rd defendant. I produce a certified copy of the plaint, and the answer of the 1st defendant in that case 10 (D 18). In (D 18) I claimed this and the other 2 lands were held by the 1st defendant in trust for me and my children. My children became entitled to the interest through my deceased wife Annammah. I produce a certified copy of Deed No. 706 of 3-2-1946 (D 19) by which K. Iyadurai by his attorney Ponniah conveyed to the plaintiff the land called Elumullupattai for a sum of Rs. 2,000. I also produce Deed No. 708 dated 11-2-1946 (D 20) by which the plaintiff conveyed this land to G. A. Nadarajah for a sum of Rs. 5,000. G. A. Nadarajah's daughter must have married the plaintiff's son. That is how they are related. The plaintiff lives within a calling distance from my house. I also produce deed No. 308 of 24-6-1946 (D 21) by which Iyadurai himself transferred all the 3 lands 20 to the plaintiff for a sum of Rs. 10,000. I produce a certified copy extracts from the encumbrance sheet of the land Elumullupattai (D 22). In (D 22) under entry dated 6-2-1946 the *caveat* is registered, and under date 18-3-1946 my action (D 18) is registered. I also produce extract of encumbrance sheet for the land Muthiraikkadayadi (D 23). I also produce extract from the encumbrance sheet of the land in dispute in this case (D 24). In (D 23) and (D 24), (D 17) and (D 18) are registered on the same date. I also produce a certified copy of the plaint, and answer in case No. 2,762 (P) of this Court (D 25). This is an action by the plaintiff against me and the other defendants in respect of the land Muthuraikkadayadi claiming the same relief as in this case. I also produce 30 certified copy of the plaint and answer in case No. 2,772 (P) of this Court (D 26). This is an action filed by G. A. Nadarajah, the transferee on (D 20) against me and the other defendants in respect of the land Elumullupattai. In (D 26) the plaintiff in that case is seeking to eject me from that land. I also produce notice dated 25-7-1946 (D 27) by which the plaintiff through his Proctor asked me to quit the land Muthiraikkadayadi, notice of the same date (D 28) by which he asked me to quit the land in question, and notice of the same date (D 29) by which he asked me to quit the land Elumullupattai. I transferred 5 lands to Iyadurai. I did not transfer 5 lands, but I mortgaged 5 lands. Later I transferred 3 lands by (D 2) to Iyadurai. I am in possession of these 3 lands in 40 question. It is I who pay the assessment rate. Iyadurai did not possess any of these lands at any time, nor did the attorney Ponniah. I did not pay any rent to Ponniah to possess these 3 lands. I have executed a lease bond (D 3) to Iyadurai.



Q.—Why did you execute the lease bond ?

A.—I transferred these lands to Iyadurai on condition that he should re-transfer these to me within 8 years. I executed this lease bond in favour of Iyadurai because he wanted me to execute this as security. One of the 3 lands is a residing land. That is the land called Muthuraikkaddayadi. That land is in extent 3 lachams odd. At the time I transferred these lands to Iyadurai a lacham of these lands was worth over Rs. 1,000. The land Elumullupattai adjoins the residing land and abuts on the Point Pedro-Kankesanturai road. That land is in extent 4 lachams odd. I cannot definitely state the value of one 10 lacham of the land called Elumullupattai at the time of transfer to Iyadurai. The 3rd land is the land in dispute called Pannaikaddaiyadi. A lacham of the land called Pannaikaddaiyadi was worth Rs. 700 to Rs. 750 at the time of the transfer. Soon after the transfer, war broke out. After the war the value of lands went up.

No. 5.  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
S, Savari-  
muttu.  
Examination.  
—continued

Adjourned for lunch.

Sgd. S. R. WIJAYATILAKE,  
D.J.

25-2-49.

*Trial resumed :*

I effected certain improvements to my dwelling house in 1945 or 1946. I 20 spent about Rs. 1,500 for the improvements. At present besides these 3 lands I do not own any other lands. After my transfer of these lands to Iyadurai I did not possess any other lands other than those transferred to Iyadurai.

*Cross-examined by Mr. Adv. Soorasangaram.*

I do not remember whether G. A. Nadarajah's daughter married the plaintiff's son in May, 1948. The marriage must have taken place last year. My wife and I mortgaged 5 lands including the land in dispute in 1922 to one Iyadurai's parents—Karthigesu and wife Sivakolunthu. At that time I was not able to pay the money due on the bond. The bond was put in suit and decree obtained in 1931. I had some money with me and, and then I sold 2 30 lands and made up the balance. I paid only a portion of the amount on mortgage decree. At that time I was not in a position to pay off the full amount under the mortgage decree. (Shown P 1). This is the transfer deed executed by me and my wife Annammah to Iyadurai. By P 1 my wife and I transferred 3 lands for a sum of Rs. 2,000 to Iyadurai. The consideration mentioned in P 1 was Rs. 2,000. There were 5 lands which were the subject matter of the mortgage decree. Two of the lands were released. (Shown P 3). My wife and I entered into this lease bond. By P 3 I leased one of the 3 lands which I sold to Iyadurai by P 1. We only signed the document P 3, but we did not know the contents.

S. Savari-  
muttu.  
Cross-  
Examination.

*To Court :* We knew that it was a lease and that Iyadurai waived rent. 40 Notary Sivagnanam did not explain P 3 to us.

No. 5.  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
S. Savari-  
muttu.  
Cross-  
Examination.  
—continued

However we knew that P 3 was a lease bond in respect of the 3 lands sold by me on (P 1). I did not undertake by P 3 not to commit any waste on these lands nor did I undertake to repair the boundary fences in these lands. At the time I signed the bond P 3 I was not aware of any undertaking in the bond to pay assessment rates, nor was there a condition in the bond that I should quit the land if I commit any waste, or fail to pay rent. I understood that the bond P 3 was to sell one of the 3 lands and to pay off the debts. At the time of the execution of P 1 my wife expressed unwillingness to effect the transfer at one stage before the Notary. I must have instructed my lawyers regarding the lease bond and about my wife's unwillingness to execute the bond, but I do not remember. In April, 1931, my wife, my daughter, and I executed a bond in favour of Iyadurai for a sum of Rs. 500 (shown certified copy of bond No. 714 (P 5)) This is a copy of the bond for Rs. 500 in the presence of Mr. C. Subramaniam of Kopay. By this bond my wife, my daughter, and I and my daughter's husband mortgaged other shares in the land in dispute in this case and the 1st land, referred to in the mortgage decree (P 2). The mortgagee put the bond in suit and obtained a decree. At that time I did not pay all the debts and redeem the mortgage. At that time I was not in a position to redeem the mortgage. I am a trader. At present I am not doing any trade. I am 70 years old. Several years ago I ceased to be a trader. As the business was not flourishing I abandoned it. I ceased to be a trader about 2 or 3 years ago. In 1930 or 1932 I ceased to be a trader because my business was not a flourishing one at that time. Between 1931 and 1946 I wrote to Iyadurai and I got replies too. In 1941, December, the Japanese attacked Malaya. I am not sure of the date of the Japanese attack. I do not remember when I received a letter or telegram from Iyadurai for the first time. (Shown D 15).

Q.—Is this the 1st letter you received from Iyadurai ?

A.—I am unable to read this, and therefore I am unable to answer the question. I must have received 2 or 3 letters from Iyadurai after he left for Malaya. I have produced only one letter, and the others I must have lost. I went to Mr. Ponniah first in 1942. I asked him to accept the money and to re-transfer the land to me. I met him in his house. On that occasion I took about Rs. 2,000. That amount I got from my business and from my children. Even before this occasion I went to Mr. Ponniah but I did not take money on that occasion. I do not remember the date when I went to Mr. Ponniah on the first occasion. On the day I took the money to Mr. Ponniah those who were present there were his children and Proctor Sivagnanam, who gave evidence for me. I asked Mr. Ponniah to accept Rs. 2,000 and to re-transfer this land to me and that I should pay the balance if any. I had to pay interest at 10 per cent. Ponniah told me that he had no authority to re-transfer the land and he asked me to take the money. Thereafter I took no steps to get a re-transfer till I got D 16. (Shown notice D 16 dated 16-1-1946), I did not reply to D 16. After I received this notice I wrote to Iyadurai and I asked him to transfer the land to me. Having received no reply to my letters I sent the telegram D 14, dated 7-2-1946. By D 14 I say that Ponniah and Sivagnanam were about to transfer the land for an increased price.

Q.—Thereby you meant that your offer was less than the price at which they were prepared to sell.

A.—I was not concerned about their increased price because I did not make any offer. I had to pay only the principal and interest.

To Court : I sent a telegram because I received notices asking me to quit. That is why I sent a telegram to Iyadurai. I did not make any offer to buy the lands at any time. At the time I sent this telegram D 14 I knew that Pommiah, the attorney of Iyadurai, would give the land to us. He wanted to sell the land to somebody else. In my telegram I did not offer to pay back the money — the principal and interest because I expected Iyadurai to return to Ceylon and re-transfer the land. (Shown D 15). I am unable to read this.

Q.—By D 15 Iyadurai informed you that he would be prepared to sell the lands to you at a price assessed by some persons less 1/10th ?

A. —Yes. I expected to talk to Iyadurai when he returned from Malaya and pay the principal and interest. Thereafter my children and I filed case No. 2,625 against Iyadurai and others asking for a re-transfer of the lands (D 18). I think I must have instructed my Proctor Mr. Thanabalasingham that Iyadurai agreed to re-transfer within 8 years. In the present case I instructed my Proctor that the period for the conditional transfer was 8 years. I do not remember whether I instructed or not. I am short of memory. After 1942 value of lands had gone up. In Valvettiturai after 1942 value of lands had gone up even by 10 or 12 times. According to deed the land called Elumullupattai is in extent 4 lachams and 1½ kulies, but I do not know whether the land is exactly 2 lachams because it was not surveyed. In case No. 2,625 I have correctly valued the price of 3 lands. The value of the land was fixed at a nominal figure because I was sure of getting a re-transfer of the land on payment of the principal and interest. I think I gave the figure as Rs. 6,000 or Rs. 7,000 in case No. 2,625. I have not deposited any money in Court either in this case or in the last case on account of this amount due.

30 *Re-examined by Mr. Adv. Ramalingam.*

My son Selvaratnam is the 7th defendant in this case. He is employed in Colombo. He is employed for the last 5 or 6 years. He is a Government clerical servant. My eldest son Thuraisingham, the 2nd defendant in this case, was at one time a teacher. He was a teacher for about 8 or 10 years. Thereafter he was a Price Control Inspector. Now he is a Proctor practising in Negombo. My son-in-law, the 3rd defendant Soosaipillai is employed at Trincomalie Naval Yard as a lascar. He married my daughter over 10 or 12 years ago. My son-in-law Marisulin, the 6th defendant, is a clerk at the Co-operative Wholesale Establishment. He has been there from the time of the inauguration of the Department. I do not remember when he married my daughter. He must have married about 3 or 4 years ago. I sold these two lands which were released by Iyadurai. The money realised was paid to Iyadurai in payment of the debt.

No. 5.  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
S. Savari-  
muttu.  
Cross-  
Examination.  
—continued

S. Savari-  
muttu.  
Re-examina-  
tion.

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1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
S. Savari-  
muttu.  
Re-examina-  
tion.  
—continued

Besides the money I realised by selling lands I raised some other money also. I do not remember how much money I raised. After paying the amount I obtained from Iyadurai.

Sgd. S. R. WIJAYATILAKE,  
D.J.

25-2-49.

R. Kandiah.  
Examlnation.

RAMALINGAM KANDIAH affirmed, age 70, Ayurvedic Physician,  
Point Pedro.

I know the 1st defendant in this case Savarimuttu. In November, 1937. one of the grand-children of the 1st defendant was ill in my home. I kept that child in my house and treated. There were the grand-mother and grand-child's 10 mother attending on the child, and there were others also who used to visit the patient. There was a discussion about the execution of deeds between the patient's grand-mother, the 1st defendant, and others I do not remember their names. They were talking about some transfer and some trust. Later I came to know that the man who was going to F.M.S. wanted the 1st defendant to give a lease. I did not see any deeds being executed in my house. I cannot say whether any deeds were signed in my house. No notary came to my house.

*To Court :* Sometime after the discussion on the same day that I came to know about Iyadurai taking a lease from the 1st defendant.

I did not pay any special attention to the discussions. The discussion 20 took place when I was attending on the patient in a room.

*To Court :* I came to know that I had to give evidence in this case about 3 months ago. Before that I was not summoned to give evidence in any other connected case. It was only 3 months ago that I had to speak about events in 1937. I do not remember the year as 1937, but I remember the incident. Patients who suffer from slight illness come and stay in my home. There was nothing unusual for me to remember this incident in 1937.

I do not remember for how long the child was under my treatment in my house. The defendants are from Valvettiturai, and I am from Puloly.

*To Court :* The patient in question was suffering from slight dysentery. 30

R. Kandiah.  
Cross-  
Examination.

*Cross-examined by Mr. Adv. Soorasangaram.*

It was the 1st defendant who met me about 3 months ago and asked me to give evidence. He came to my house and wanted me to give evidence in this case. The 1st defendant asked me whether I could remember any events that took place in my house in 1937. Before that he did not tell me about a case between himself and the plaintiff. On that day when the 1st defendant met me for the first time he did not tell me in what type of case I had to give evidence. About 10 days later he told me about it. On the first day the 1st defendant

reminded me of the incident and asked me whether I could remember any of the events. After the patient left my house in 1937 the 1st defendant came to me for the first time 3 months ago, and the 1st defendant met me about 10 days later. I might have given a wrong period. On the second occasion too the first defendant came to my house and reminded me of the events that took place. Subsequently the 1st defendant did not meet me. I was brought to Court a short while ago by a relation of the 1st defendant. I received summons for today. I do not have the summons at the moment. If I see the persons who were discussing in the patient's room I would be able to identify them. I cannot give their names.

No. 5.  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
R. Kandiah.  
Cross-  
Examination.  
—continued

*To Court :* The discussion was during the day time.

*Re-examined by Mr. Adv. Ramalingam Nil.*

Sgd. S. R. WIJAYATILAKE,  
D.J.

25-2-49.

C. S. PONNIAH affirmed, age 66, Pensioner, Changanai East.

C. S. Ponniah.  
Examination.

My daughter is married to Proctor Sivagnanam in 1934. Mr. Sivagnanam is a son of Iyadurai's sister. Sivagnanam, his wife, and I stayed in the same house. In September, 1940, Mr. Iyadurai appointed me his attorney by D 13. After appointing me as his attorney Iyadurai left for Malaya, and he returned only in June, 1946. Before I was appointed attorney I did not know who was the attorney before me. I know the 1st defendant Saverimuttu. I came to know him one year after I was appointed attorney. I met him in the first part of 1945. In the latter part of 1945 also I met the 1st defendant. The 1st defendant met me in my house for the first time. It was in the early part of 1945 the 1st defendant met me. Before this I did not know the 1st defendant personally, nor did I go to the 1st defendant's house. I used to send persons to collect rents from the 1st defendant, but he refused to pay rents.

Q.—Did he at any time come to you and ask you to re-transfer the land to him ?

30 A.—No, he did not.

Q.—In the first part of 1945 why did he come ?

A.—I was instructed by Iyadurai to sell the lands in distant areas at an increased price. I sent a Palla man by the name of Vally to inquire from people whether they were prepared to buy the lands at high rates.

*To Court :* The 1st defendant did not ask me for a re-transfer in the early part of 1945. The 1st defendant came to me in the latter part of 1945 and asked me to leave a part of the residing land and the adjoining land where the well was situated. He undertook to purchase the land where the Pillayar temple was situated.

No. 5.  
1st, 4th, 5th  
and 6th  
Defendants'  
Evidence.  
C. S. Ponniah.  
Examination.  
—continued

He asked me not to sell the residing land and the land where the well was situated as there were intending purchasers. This was during the early part of 1945. During the latter part of 1945 also the 1st defendant met me. At that time there were already intending purchasers. During the latter part of 1945 the 1st defendant came to me and offered me Rs. 1,000 in respect of the land called Elumullupattai. I refused to accept the offer because there were already intending purchasers in respect of this land at high rates, and that I told the 1st defendant that I would sell for Rs. 1,000 because that land was given to me to be held in trust. This is the land by the road side. The other bidders were Sinnakily and 2 or 3 others. Sinnakily offered Rs. 1,500. At that time the 10 plaintiff did not make any offer. The plaintiff first offered to buy the land in November or December, 1945. After the plaintiff offered to buy the land the plaintiff and Mr. Sivagnanam went to that land. I did not go to the land. They might have gone to the land with the idea of measuring the land. After December, 1945 the 1st defendant did not come to my house.

Q.—The first defendant showed you a writing granted by Iyadurai?

A.—He did not show me any writing.

Q.—Did the 1st defendant tell you at any time that Iyadurai promised to re-transfer these lands?

A.—The 1st defendant told me that the lands were leased out conditionally 20 for a period of 3 years and that the 1st defendant further asked me not to sell the 2 lands, viz., the residing land and the land where the well was situated. He did not tell me that there was any such agreement to re-transfer the lands.

Adjourned for 27-5-49.

Sgd. S. R. WIJAYATILAKE,  
D.J.  
25-2-49.

*Trial resumed :*

27-5-49.

Mr. Adv. Soorasangaram instructed by Mr. K. Ratnasingham for plaintiff. 30

Mr. Adv. Ramalingam with Mr. Adv. Jeyakkody instructed by Mr. K. K. Balasubramaniam for 1st, 4th, 5th and 6th defendants.

Mr. Adv. Ramalingam calls :

Examination-in-chief—*contd.*

C. S. PONNIAH (re-called)—Re-affirmed.

On the last date I said that the 1st defendant came to my house in the

early part of 1945. It is true that his daughter Marimuttu and the other daughter of the 1st defendant also came to my house. The youngest son of the 1st defendant also came.

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—continued

Q.—The 1st defendant complained to you that your son-in-law Sivagnanam and the plaintiff came to one of these lands and surveyed ?

A.—No. I came to know that the plaintiff and my son-in-law Sivagnanam came to the land during the latter part of 1945. It must be in November or December, 1945. The 1st defendant told me that people have been coming to see the land. The 1st defendant on that occasion asked me to re-transfer the land by the side of the temple called Elumullupattai for a sum of Rs. 1,000. There is no well in that land. I refused to re-transfer this land because there were several others offering higher prices and this land was given to me in trust and day by day prices of land went up. I conveyed this request to my son-in-law Sivagnanam. Sivagnanam was not present at the time of this discussion. I told Sivagnanam that he should not agree to re-transfer this land because there were several others offering higher prices. Sivagnanam did not tell me that there was an understanding to re-transfer this land.

Q.—I put it to you that the 1st defendant gave you an agreement in writing given by Iyadurai ?

20 A.—No.

Q.—I also put it to you that you got that writing from the 1st defendant saying that you wanted to send it to Iyadurai to F.M.S. ?

A.—No. Iyadurai returned in June, 1946 from Malaya. I had gone to see him on several occasion at Valvetty. I went to Valvetty to give charge of all that I had. I had about Rs. 30,000. I was aware that Iyadurai had an account in the Mercantile Bank of India. I had deposited money to his account in the Mercantile Bank before the war. After the war I did not deposit any cash in his account. I ceased to deposit money because I lost faith in these Banks after the Japanese raid. I do not remember the last occasion when I deposited cash in the account of Iyadurai in the Mercantile Bank. I do not know whether the 1st defendant requested Iyadurai when he returned from Malaya to re-transfer the land, but I am sure he did not ask me. I remember the occasion when the 1st defendant, the plaintiff, Iyadurai, and I were present in the house of Iyadurai. I only said that only one of the lands was sold to the plaintiff by Iyadurai at the request of the 1st defendant. That is the land called Elumullupattai. I do not know whether the land called Elumullupattai is opposite and adjoins the residing land of the 1st defendant. The 1st defendant asked me not to sell the residing land and the land where the well was situated. I told the 1st defendant that I would not sell those lands, and I asked him to speak to Iyadurai on his return from Malaya. At that time I told Iyadurai that the land called Elumullupattai was sold by the plaintiff at the instance of the 1st defendant. The 1st defendant said that he would take an oath that he did not say so. Iyadurai did

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not ask the 1st defendant to take the oath. It was I who challenged the 1st defendant to take an oath on the Rosary and he did so. I do not know whether subsequent to that Iyadurai executed a deed for all the 3 lands in favour of the plaintiff. However the land called Elumullupattai was transferred earlier in my capacity as attorney. I only heard that Iyadurai told the 1st defendant that other people had been offering higher prices to the land, but I am not quite certain of the conversation. I do not know whether the 1st defendant asked Iyadurai for the re-transfer of all the 3 lands. I did not take notice of the conversation between them. I do not know whether Elumullupattai lies adjoining Point Pedro-Kankesanturai road. I had never been to this land. I 10 had not been to any of these 3 lands. I was in charge of cash and my son-in-law Sivagnanam was in charge of accounts. Both my son-in-law Sivagnanam and Iyadurai got me appointed as the attorney of Iyadurai. So far I have not recovered any rent from the 1st defendant in respect of these 3 lands. I had sent a man to collect the rent, but he refused to pay the rent. I had sent a man to collect rent from the 1st defendant once or twice a year. I had sent him to collect rent from others also. I did not send a letter of demand to the 1st defendant in respect of the rent, nor did I file any action against him. The 1st defendant did not pay me rent since the time I was appointed attorney in 1940. To my knowledge no rent was paid before my appointment. I remember having 20 sent in January, 1946, a letter of demand through my son-in-law Sivagnanam to the 1st defendant. (Shown D 16). This is the letter of demand in question. According to (D 16) I am claiming a rent of Rs. 160 upon lease bond No. 4. I do not remember whether the rent per year. According to (D 3) the rent agreed upon was Rs. 20 per year. I do not remember whether in (D 16) I claimed rent from the time of the execution of the lease bond. I have sent him to collect whatever rent was paid by the 1st defendant. Personally I was not aware of the actual rent payable by the 1st defendant, but the responsibility was on the Proctor, Mr. Sivagnanam. I have lent large sums of money on behalf of Iyadurai at Changanai. After the Japanese raid on Colombo, Iyadurai lent money both 30 at Valvetty and Valvettiturai, and I was the attorney in respect of those transactions. I learnt Iyadurai was donated a large number of properties by his parents. I do not know whether his parents gave him any money. Personally I do not know whether Iyadurai's father was a money-lender. (Shown certified copy of Deed No. 8,846 of 10-1-1928 (D 30).) I do not know this deed. I am seeing this deed for the first time today. Iyadurai's father was known as "Karuthar." I do not know whether he is known as Kadiripillai Karthigesu. I have come to Court direct from Changakani, I deny having come to Court in the plaintiff's car.

*To Court* : I came by bus from Changanai.

40

I deny having talked to the plaintiff today. I did not speak to him at all today.



*Cross-examined by Mr. Adv. Sooransangaram.*

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I am a resident of Changanai. I come to Point Pedro by bus. One has to come *via* Nelliady. We will have to take bus from Changanai to Jaffna and from Jaffna to Point Pedro. The distance between Changanai and Jaffna is  $7\frac{1}{2}$  miles. Valvetty is about 16 miles from Jaffna. Sivagnanam married my daughter about 15 years ago. Before my daughter's marriage I had nothing to do with Valvetty. Even after my daughter's marriage I continued to live at Changanai. Before the marriage I was not familiar with the lands or people at Valvetty. After I was appointed the attorney of Iyadurai it was my son-in-law  
10 Sivagnanam who saw that the affairs at Valvetty were attended to. My son-in-law Sivagnanam is a native of Valvetty. After I became the attorney of Iyadurai I had deposited cash on behalf of Iyadurai. In the early part of 1945 the 1st defendant came to me with 2 of his daughters and his youngest son. The 1st defendant wanted me not to sell his residing land and the other land where the well was situated, but he was agreeable to my selling the other land. Then I noticed one of his daughters whispering. He came to me on that occasion to speak to me on the matter because there were some who were inspecting the land. People went to inspect the land because they wanted to buy the land. I had informed earlier the rent collector about the intended sale. I acceded to the  
20 request of the 1st defendant and wanted him to speak to Iyadurai on his return from Malaya. I accordingly sold the other land adjoining the temple. On the 2nd occasion in 1945 the 1st defendant offered to pay me Rs. 1,000 in respect of the land which he said he had no objection to my selling. I refused to accept his offer because the prices were going up day by day. The 1st defendant did not tell me on any of these occasions that there was an agreement to re-transfer the land to him. The 1st defendant referred to his residing land and the land where the well was situated because people had already gone to see those lands too. I did not agree to sell the residing land and the land where the well was situated as it is a sin to sell a residing land. I wanted the owner of the land to  
30 deal with it.

Adjourned for lunch.

Sgd. S. R. WIJAYATILAKE,

D.J.

27-5-49.

*Trial resumed :*

Before 1945 I did not know the 1st defendant. Subsequent to 1945 the 1st defendant did not meet me. The Japanese occupied Malaya in February or about March, 1942. Thereafter prices of lands in Jaffna had gone up by five times. Iyadurai returned to Ceylon in the middle part of 1946. On his return  
40 from Malaya I rendered all the accounts to him. I sold only one land to the plaintiff. That was in the early part of February, 1946. In my examination-in-chief I admitted that it was the 1st defendant who earnestly requested me to sell one of the lands. Even otherwise I would have sold that land to the plaintiff. If I was able to sell the land with the 1st defendant's consent I would have been

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more pleased. The 1st defendant only asked me not to sell the residing land and the other land where the well was, and he asked me to dispose of the other land. The 1st defendant did not have any objection to my selling the other land. I undertook not to dispose of the residing land and the other land where the well was. I asked him to take the matter up with Iyadurai when he returned from Malaya. As regards the residing land and the land where the well was the 1st defendant said that he would write to Iyadurai. He said that he would request Iyadurai earnestly not to sell those lands.

Q.—Did the 1st defendant want those lands to be sold to him and not to others ?

10

A.—I do not know. At that time I did not inform others about his intention to sell the three lands. I intended to sell all the three lands in the latter part of 1945. Thereafter I sent people to inspect the lands, and people went and inspected the lands. There were about 4 or 5 offers to buy these three lands.

Q.—Was it thereafter the 1st defendant offered to buy one of the lands ?

A.—Yes.

C. S. Ponniah;  
Re-examina-  
tion.

*Re-examined by Mr. Adv. Ramalingam.*

It was after my daughter's marriage that I started visiting Valvetty. That was in 1934 or 1935.

20

Q.—I put it to you that the 1st defendant had gone to you in 1942 ?

A.—No. I might have been away at Vavuniya or Paranthan. I say that the 1st defendant did not come to me and ask me to re-transfer these lands.

Sgd. S. R. WIJAYATILAKE,

27-5-49.

*D.J.*

Virisith-  
ammah.  
Examination.

VIRISITHAMMAH (wife of Soosai pillai), sworn, age 34, Valvettiturai.

I am the 4th defendant in this case. I am a daughter of the 1st defendant. My mother is dead. My mother's name was Annammah. I know the land in dispute in this case. It is called Pannaikaddayadi. My residing land is called Muthuraikaddayadi. I own a land adjoining my dwelling land. It is called 30 Elumullupattai. There is a well in the land called Pannaikaddayadi. There is no well in the land called Elumullupattai. The land called Pannaikaddayadi adjoins the other lands. Pannaikaddayadi is towards the south of the other 2 lands. There is nothing separating Pannaikaddayadi and the other 2 lands. Muthuraikaddayadi and Elumullupattai are treated as one land. The northern boundary of Pannaikaddayadi is a lane. The southern boundary of Elumullupattai and Muthuraikaddayadi is mentioned as the property belonging to Mayi-

lerumperumal Kanapathipillai and others. I have been residing on this land from my infancy. Besides me, my sisters and brothers are living there. The 1st defendant, my father, is also living with me. I have 2 sisters and 2 brothers. Both my sisters are married. Besides the present house we have no other house to live in. Besides the old house on this land we have put up a stone built house with one room and one hall. The construction started in December, 1944, and it was completed in March, 1945. I have spent about Rs. 1,500 for this new house.

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Evidence.  
Virisith-  
ammah.  
Examination.  
—continued.

I know the time when my father and mother were in a physician's house at Point Pedro, and it was my child who was treated. I was also staying with them in the physician's house. We were there for about 2 weeks. I know Iyadurai. He visited us at the physician's house to get the lands transferred in his favour and my mother was not agreeable to the suggestion. Iyadurai wanted us to transfer these lands conditionally for a period of 6 years. My mother was not agreeable to this suggestion and wanted to sell the lands to somebody else, and my mother said that she would mortgage those lands and settle the debt. Iyadurai said that he was in a hurry to go to Malaya and wanted my mother to transfer the property conditionally for a period of 8 years, and he said that he wanted my mother not to misunderstand him and that he would not betray her. Iyadurai wanted a transfer of these lands.

Q.—Was it an out and out transfer, or any other form of transfer ?

A.—He promised to give an agreement. It was Iyadurai who wanted to give an agreement as it was a transfer of the property. The agreement was for a transfer of the land in trust. It was only after Iyadurai undertook to give an agreement that my mother agreed to transfer the property. The agreement was in writing. Iyadurai told us that he had brought Sivagnanam to execute the deed. My mother told me that they had set their signatures to a paper. After my parents set their signatures to a paper Iyadurai took my father home and my mother remained with me at the physician's house. At that time I was not aware of the terms of the agreement. I came to know the terms only after the recovery of my child and when we returned home. After we returned home I saw the agreement.

*To Court :* I saw the document personally. The agreement referred to was contained in a piece of paper about 5 in. by 8 in. (The witness shows the size of the paper on a paper in Court which is about 8 in. by 5 in.)

I can give a summary of the contents. The agreement was Rs. 1,200 for Elumullupattai and Rs. 800 for Pannaikaddayadi and Muthiraikaddai, and these amounts to be repaid by instalments, and Iyadurai undertook to re-transfer the lands on repaying the amount due.

Q.—Was any period laid down in the agreement ?

A.—My mother was not willing, but the period mentioned was 8 years. Subsequently I came to know that Iyadurai had gone to Malaya. Once he

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ammah.  
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—continued.

returned to Ceylon in 1940. He visited us in 1940. Iyadurai asked my father to sell one of the lands, viz., Elumullupattai, and he said that by selling that land he would be able to settle all the debts and he would have Rs. 500 in hand. My father was not agreeable to that suggestion, and he said that after having paid all interest he cannot expect him to sell those lands and that he would see about the matter in another 5 years. Before Iyadurai returned from Malaya in 1940 my father deposited cash in the Bank. My father deposited about Rs. 130 in the bank and when my father asked Iyadurai whether he had drawn that money he said that he had drawn. Subsequently I learnt that he had quarrelled with his brother and left for Malaya. Thereafter I continued to live in the land in dispute. It was we who have been taking the produce from these 3 lands. The plaintiff's Proctor Sivagnanam and the Surveyor came to the land in May, 1945. They came to survey the land Elumullupattai and they said that they had come to survey the land called Elumullupattai and they wanted me to ask my father to come out and receive them. Proctor Sivagnanam wanted to know from my father the extent of the land Elumullupattai. My father questioned him why he was asking for the extent and he said that the extent was given in the deed. Thereafter Proctor Sivagnanam told my father that he wanted to sell that land to the plaintiff. It was I who spoke to them and asked them why they were going to sell that land, and I said that we were prepared to pay the interest and settle the debt and get back the transfer. Then Sivagnanam told me that he was going to sell only the land Elumullupattai and that they were not going to sell the other 2 lands. I asked them not to enter the land, and I prevented them from surveying it. Then Sivagnanam said: "If you do not allow me to survey the land Elumullupattai I will see that you lose the residing land also. Otherwise I am not a Proctor" I told Sivagnanam that he need not re-transfer the land and I told him that it was a matter between ourselves and Iyadurai. Thereafter Sivagnanam and others went away. Thereafter Iyadurai returned to Ceylon after the cessation of hostilities. Before Iyadurai returned to Ceylon my father and sister went to Changanai to meet the witness Ponniah to make the payment and to get the re-transfer. My father went to Changanai on 4 or 5 occasions. On that occasion my father went to Changanai to make the payment and to get a re-transfer. When he went there he took money also with him. Subsequently Iyadurai returned to Ceylon. When he heard that Iyadurai had returned from Malaya my father and sister went to meet him to complain about the difficulties and my father told Iyadurai that he had sent telegrams and letters and Iyadurai said that he had received them. Even on subsequent occasions my father went to see Iyadurai. Only on one occasion I accompanied my father to Iyadurai's house. On that occasion my sister also accompanied us. On that occasion Iyadurai told us that he was not transferring the land to anybody else and he said that he would transfer these properties back to my father. When my father told Iyadurai that Sivagnanam had already sold one of those lands Iyadurai told my father that it was the work of Sivagnanam. However Iyadurai undertook to re-transfer these lands to us after settling the disputes about the appointment of the attorney. On another occasion Iyadurai sent one of his brothers asking my father to bring a Rosary to his house with Ponniah who had come to his house and he wanted to discuss the matter. My father went ahead. My sister and I followed. One of those

present in the house of Iyadurai was the plaintiff. Iyadurai told my father that he would transfer back the lands Pannaikaddaiyadi and Muthraikaddaiyadi leaving the land Elumullupattai which had already been sold. My father was not agreeable to this suggestion. My father told him that the present land was insufficient for all the children to live in and that is why he had paid interest all this time. My father wanted Iyadurai to transfer all the lands to him. Iyadurai also asked me and my sister whether we were agreeable to that suggestion. We also wanted Iyadurai to accept the money and to transfer back the lands to us. Iyadurai spoke to us in an angry mood. Then Iyadurai asked the plaintiff to give him an advance of Rs. 2,000 and that he would transfer all these three lands for a sum of Rs. 6,000 and he further told the plaintiff that it was a good bargain because of his presence there. Then I threatened saying : " You sell the lands to the plaintiff. Let him buy " The reasons given by Iyadurai for his refusal to transfer these lands to us were that we had filed an action against him, and that we threatened Sivagnanam, and the third reason was that Ponniah sold one of those lands at the request of my father.

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ammah.  
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---continued.

*To Court :* At this time the agreement was with the witness Ponniah.

That agreement was handed over to Ponniah in 1945.

*To Court* I cannot account for Ponniah's statement that the agreement was not handed over to him.

I know the retired Postmaster Arumugam Velupillai of Valvettiturai. He owns a land called Kalundamanal. I produce a certified copy of Deed No. 9,110 of 16-7-1928 (D 31) by which Arumugam Velupillai purchased Kallundanmanal from Thirugnanasambandamoorthy. That Postmaster lives in that land. I produce a certified copy of Deed No. 11,254 of 23-3-1931 (D 32) by which Thirugnanasambandamoorthy transferred a share in the land called Kallundanmanal to Muruguppillai Sanmugam for Rs. 800. I also produce a certified copy of Deed No. 13307 of 25-7-1934 (D 33) by which Murugupillai Sanmugam conveyed a share in the land called Kallundanmanal to Arumuvam Velupillai for a sum of Rs. 1,000. The land called Kallundanmanal is within 100 yards from my residing land.

*Cross-examined by Mr. Adv. Soorasangaram.*

I am not possessed of any property nor are the other defendants possessed of any property. The 8th-10th defendants Arunasalam Somasunderam and wife Mangayatkarasy and Rasammah live in the land Pannaikaddaiyadi in dispute in this case. The 1st, 2nd, 3rd, 5th and 6th defendants and myself are not living in this land in dispute, but we used to draw water from a well in that land. When my mother was alive she was running a boutique.

Virisith-  
ammah.  
Cross-  
Examination.

*To Court :* My mother died about 4 years ago.

I stated that I had to pay principal and interest to get back the land in dispute and 2 other lands. The amount we have to pay now to get a re-transfer

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—continued.

is principal Rs. 2,000 and interest thereon. At the time we requested Iyadurai to transfer the land the interest payable was Rs. 900. I have not calculated how much interest is due now. We calculated at the time when the request was made to Iyadurai and then the amount due was Rs. 900. Subsequently we did not calculate the interest due.

*To Court* : Even when we filed answer we did not calculate the interest. The only occasion when we calculated the interest was in 1942. At the time the interest was calculated at 10 per cent. That was the rate agreed upon. The rate of interest at 10 per cent. was mentioned in the agreement. We were definite about the rate of interest. The case No. 2,625 (D 18) was filed by me 10 and my father and the other defendants in this Court. We did not bring the money into Court in that case No. 2,625. At the time of the institution of the case No. 2,625 we instructed the Proctor about the period mentioned in the agreement as 8 years. In the present case we instructed the Proctor that the agreement referred to was for a period of 8 years. The Proctor asked my father why he had given the agreement to Ponniah without keeping it secure. We also instructed him to bring into the present case to the effect that we had to pay interest on the principal of Rs. 2,000 at 10 per cent.

Adjourned for 15-7-49.

Sgd. S. R. WIJAYATILAKE, 20  
D.J.  
27-5-49.

21-7-49.

Same appearance as on the last date.

*Cross-examined by Mr. Adv. Soorasangaram—contd.*

VIRISITHAMMAH (wife of Soosaipillai) re-called—sworn.

I instructed my Proctor at the time of filing answer that I and the other defendants were liable to pay Rs. 2,000 and such reasonable interest as the Court may fix. I had to pay at 10 per cent. I am able to deposit the money in Court. So far I have not deposited this amount in Court. Iyadurai sued on the 30 mortgage bond granted by my parents in case No. 265 D.C., Jaffna, and he obtained judgment in March, 1931. Soon after he obtained judgment he threatened to issue commission for sale. He only wanted us to pay the balance interest. Iyadurai put that bond in suit because my father was unable to pay the money at that time. At the time judgment was obtained by Iyadurai neither my parents nor I was in a position to discharge the bond. In 1921 prices of lands were very low. Iyadurai requested my father and my sister Mariammah to give a mortgage for Rs. 500. That is the mortgage bond (P 5). (P 5) was executed in reduction of the amount due under the mortgage decrec. We had to sell two palmyrah lands to pay that amount. My parents accepted 40 the lease bond from Iyadurai in 1937 at the time of re-transfer. Iyadurai

requested us to execute the lease bond as security and he never expected us to pay any rent. By the lease bond (P 3) my father undertook to pay a rent of Rs. 20 per year. At the time of the execution of the lease bond there were houses in the land called Muthiraikaddayadi. Even now those houses are in existence.

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Virisith-  
ammah.  
Cross-  
Examination.  
--continued.

Q.—After the execution of (P 3) no other buildings were erected in that land ?

A.—There was a room and a hall. Now we have made it into two rooms in addition to the hall. Originally there was a hall. Now we have made it into a room and a hall. At the time of the execution of (P 3) there was a mud house, not a stone built house. That house is still in existence even now. Now we have effected certain improvements to that house. After 1942 prices of lands at Valvettiturai have gone up. Prices of some lands have gone up 10 to 12 times. At present a lacham of the three lands sold to Iyadurai by my father will worth about Rs. 4,000 to Rs. 5,000. My first occasion when I visited Iyadurai at Valvetty was in June, 1946, when he returned from Malaya. Prior to that several persons from that place offered to buy that land. No people came to inspect that land. My father and I went to Iyadurai at Valvetty only after the plaintiff decided to buy this land. Subramaniam never attempted to buy this land. Elumullupattai was the land which the plaintiff first sought to purchase, and when he came to inspect the land I took objection. It was purchased without Iyadurai's authority.

Q.—In June, 1946, when you went to Iyadurai's house you knew that the plaintiff had already purchased Elumullupattai and was trying to buy the other two lands ?

A.—I was aware. At that time when the plaintiff purchased the land Elumullupattai for Rs. 2,000, I was aware that it was sold again to one G. A. Nadarajah for a sum of Rs. 5,000. Even prior to June, 1946, I had been to Iyadurai's mother's house. In June, 1946, I had gone to Iyadurai's house.

Q.—You had gone to Iyadurai's house in June, 1946, with a view to offer to 2 lands which Iyadurai had not then sold ?

A.—I went there to offer to buy all the 3 lands as already agreed upon. I did not take any cash with me because first I wanted to know whether he was agreeable to sell.

Q.—At the time you went to Iyadurai's house in June, 1946, you did not know at what price Iyadurai was going to sell the land ?

A.—No. We expected Iyadurai to re-transfer on payment of the principal and interest.

Adjourned for lunch.

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and 6th  
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Evidence.  
Virisith-  
ammah.  
Cross-  
Examination.  
—continued.

*Trial resumed :*

In June, 1946, we wanted to make the payment and get a re-transfer. The lands were transferred on trust. At that time we were ready with the money. At that time we had about Rs. 3,000. At that time we did not calculate the amount to be paid for the 3 lands.

*Q.*—You did not know at that time the amount you had to pay for the 3 lands ?

*A.*—No. After 1931 we had paid interest to Iyadurai for 6½ years. This interest was paid to Muttu and Sinnappah at the request of Iyadurai. We had also deposited money in the bank to Iyadurai's account. My father might have 10 made payments to Iyadurai. Personally I did not make any payment. I do not know how much money my father paid to Iyadurai. We do not know the exact amount we have to pay to Iyadurai in respect of these 3 lands. I did not instruct my Proctor as to the interest paid on Rs. 2,000. The 2 lands in dispute in this case are close to the eastern boundary of Valvettiturai town. I have produced 3 deeds (D 31), (D 32) and (D 33) in the name of Arumugam Velupillai. The land dealt with in these 3 deeds is in the heart of Valvettiturai town. There are stone-built houses in Arumugam Velupillai's land dealt with in (D 31)–(D 33). He put up those buildings after he purchased these lands. At the time of this purchase there were old small buildings. At that time there were stone-built 20 houses in dilapidated condition. There are coconut trees on this land.

Virisith-  
ammah.  
Re-Examina-  
tion.

*Re-examined by Mr. Adv. Ramalingam.*

My house is about 100 yards away from that of Arumugam Velupillai.

21-7-49.

Intld. S. R. W.,  
D.J.

Mr. Adv. Ramalingam closes his case reading in evidence (D 1)–(D 33).

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**No. 6.**

**Plaintiff's Evidence.**

No. 6.  
Plaintiff's  
Evidence.  
P. Thanga-  
velautham.  
Examination.

Mr. Adv. Soorasangaram calls :

PONNAMBALAM THANGAVELAUTHAM, affirmed, age 50, Trader, 30 Valvettiturai.

I am the plaintiff in this case. I purchased the 2 lands in dispute in this case on Deed No. 308 of 1946 (P 4) for Rs. 10,000. Earlier I purchased the other land called Elumullupattai on Deed No. 706 of 3-2-1946 (D 13/P 6). At the time of (P 6) I was not aware of any agreement between the defendant and



Iyadurai in regard to re-transfer, nor was I aware of any trust as alleged by the defendant. I was not aware of any trust as alleged by the defendant when I purchased the land in dispute on (P 4), but I was aware that the defendants were occupying the land on a lease bond. After my purchase of the land in dispute I had notice issued on them to quit the land in September, 1946. They have refused to quit and are in wrongful possession even now. I asked for a sum of Rs. 50 as damages up to the date of action, and Rs. 10 per month from the date of action. If the 2 lands in dispute are rented out a sum of Rs. 10 per month may be recovered as rent. I deny having gone to these lands with the Surveyor and Sivagnanam. I produce bond No. 2,653 of 1922 (P 7/D 4) by which the 1st defendant and his late wife Annammah mortgaged the 2 lands in dispute in this case, the land which I purchased on (P 6) and 2 other lands for a sum of Rs. 1,650 and interest to Karthigesu and wife Sivakolunthu. I also produce Deed No. 8,846 of 1928 (P 8/D 30) by which Karthigesu and Sivakolunthu assigned their interest on (P 7) to Iyadurai. I also produce the decree entered in case No. 265 D.C., Jaffna, (P 2/D 7). In case No. 265 D.C., Jaffna, bond (P 7) was put in suit. The decree (P 2) is dated 24-3-31. By (P 5) of 1931 the 1st defendant, his wife Annammah and the 1st defendant's daughter Mariammah mortgaged 2 other shares in the 2 lands for a sum of Rs. 500 to Iyadurai. I draw the attention of Court to a statement in the attestation in (P 5) that the consideration, viz., Rs. 500 was in part reduction of the amount due under decree in case No. 265 D.C., Jaffna. In 1931, these 3 lands would not have been worth over Rs. 1,500. The 1st defendant and his wife Annammah by (P 1) of 1937 sold the 2 lands in dispute in this case and the land called Elumullupattai to Iyadurai. Iyadurai by (P 3) of 1937 leased the 2 lands in dispute in this case and the other land called Elumullupattai to the 1st defendant and Annammah by (P 3). The 1st defendant and his wife Annammah undertook to pay Rs. 20 per annum as rent for the 3 lands. By (P 3) they further undertook not to commit any waste or damage to the buildings or plantation and agreed to fence and repair all the boundary fences and to pay the taxes. I produce a certified copy of the plaint and proceedings in case No. 5,401 of the Rural Court, Uduppiddy (P 9). I was the complainant in that case. The 1st and 2nd defendants were the accused in that case. In that case I charged the 1st and 2nd defendants with having uprooted trees which marked the southern boundary of the land called Muthirai-kaddayadi, which is the subject matter of case No. 2,762. On 22-3-1948, when the case was taken up for trial the 1st and 2nd defendants in this case agreed to re-erect the fence. At that time of the purchase by Iyadurai of the land in dispute and the other 2 lands they would have been worth within Rs. 2,000. I purchased the land in dispute and the other 2 lands for Rs. 10,000. The consideration on (P 4) was paid in the presence of the Notary. The consideration mentioned in (P 4) is the value of Muthirai-kaddayadi and Pannaikaddayadi. By (P 6) I had earlier purchased the other land called Elumullupattai for Rs. 2,000, and I paid the sum of Rs. 2,000 to the Notary at the time of the execution. (P 6) was actually executed by certain Ponniah who gave evidence in this case for the defence as attorney of K. Iyadurai. There was a rumour that Ponniah had no authority to execute. That is why the land called Elumullupattai was also included in (P 4) which was a transfer by Iyadurai himself.

No. 6.  
Plaintiff's  
Evidence.  
P. Thangu-  
velautham.  
Examination.  
—Continued.

No. 6.  
Plaintiff's  
Evidence.  
P. Thanga-  
velautham.  
Cross-  
Examination.  
—continued.

*Cross-examined by Mr. Adv. Ramalingam.*

I first purchased the land called Elumullupattai for a sum of Rs. 2,000. Before the execution of the deed in respect of Elumullupattai I had not been to the land. I never went into the land because it is by the road side. I decided to buy the land Elumullupattai. I had information about 2 or 3 months prior to the execution of the deed about the intended sale and I had a desire to purchase. Thereafter I met Ponniah, the attorney, and I met Sivagnanam. Sivagnanam and Ponniah reside in the same house. I discussed the price with both and we fixed the price. The price was fixed up 2 days prior to the execution of the deed. The day I met Sivagnanam and Ponniah I fixed the price. That was my first 10 visit to Ponniah and Sivagnanam. My purpose in buying the land Elumullupattai was to possess it myself. Eight days after my purchase I sold it to G. A. Nadarajah for a sum of Rs. 5,000 because that was a bargain. Nadarajah is related to me by marriage now. My son is married to Nadarajah's daughter. My son married Nadarajah's daughter in May, 1948. I decided to give my son in marriage to Nadarajah's daughter about a month prior to the solemnization of the marriage. Nadarajah lives about 150 yards away from my house.

Q.—I put it to you that you transferred this land to Nadarajah on (D 20) because a *caveat* had been entered.

A.—I was not aware of any such thing. The Notary who attested the 20 deed in favour of Nadarajah did not intimate to me that there was a *caveat* on the matter. I was not aware of a *caveat* even after I purchased lands from Iyadurai when he returned from Malaya. Up-to-date I am not aware of any *caveat* entered. In all I have paid Rs. 12,000 in respect of the land in dispute and the other 2 lands. Even at the time these lands would have been sold for Rs. 20,000. Even now they could be sold for that amount. At the time Iyadurai came from Malaya and executed (D 21) these 3 lands were worth Rs. 20,000. Iyadurai was not aware of the prevailing price because he returned from Malaya and he could not have known the prevailing price. After 1942 a lacham of land at Valvettiturai would have been sold for Rs. 5,000 to Rs. 10,000 and sometimes 30 even more. Before the war a lacham of the land was worth about Rs. 200 to Rs. 300. I know Postmaster Velupillai's residing land. I do not know the name of that land. He might have purchased a portion of that land from Thirugnana-sambandamoorthy and Murugupillai Sanmugam. Postmaster Velupillai is Arumugam Velupillai. My daughter is married to Arumugam Velupillai's son. Velupillai's residing land is over 150 yards away from that of the defendant. The defendant's residing land is near the Pillaiyar temple. My residing land is over 100 yards away from the defendant's land. Arumugam Velupillai lives about 50 to 60 yards away from my house. I do not know whether Arumugam Velupillai purchased a portion of the land at Rs. 1,000 a lacham, but a kuly of 40 the adjoining land was sold for Rs. 3,000 about 4 or 5 months ago. The town of Valvettiturai is very congested. There is a demand for lands for dwelling purposes. The land called Elumullupattai is closer to the road. The defendant's residing land is to the north-west of Elumullupattai. There is no well in the land called Elumullupattai and there is no well in the residing land also. There

is no well in the land called Muthuraikaddaiyadi, but there is a well in the land called Pannaikaddayadi. Pannaikaddayadi is the land in dispute in this case. There are coconut trees in the land called Pannaikaddayadi. The defendants filed case No. 2,625 (D 18) against me, Nadarajah and Iyadurai in this Court. I filed answer (D 34) in that case. I was the 2nd defendant in that case. My position in my answer was that the 2 lands were worth Rs. 10,000 at that time. By those 2 lands I referred to the land in dispute and Muthiraikaddaiyadi. If it is stated in the answer that all the 3 lands were worth Rs. 10,000 it was incorrect because I was entitled to only 2 lands. According to the plaint I have valued one land at Rs. 900. I have filed case No. 2,672 for the other land Muthiraikaddayadi. If paragraph 11 of the plaint states that the value of the land is Rs. 4,500 it is correct. It is true that G. A. Nadarajah has filed an action against the defendant in respect of the land called Elumullupattai. I do not know whether he has valued that land at Rs. 6,000. I do not know whether the attorney Ponniah issued a notice on the defendants to quit the land 20 or 25 days prior to my purchase. I was not aware of the notice issued by the attorney on the defendants, but he promised to deliver possession when he executed the deed of transfer. He promised to deliver possession when he executed the deed and he further told me that he would deliver possession within 3 months.

No. 6.  
Plaintiff's  
Evidence.  
P. Thanga-  
velautham.  
Cross-  
Examination.  
—continued,

20 Q.—Do you know that about 3 weeks before the execution of the deed in your favour Ponniah had requested the defendants to deliver possession to you?

A.—I do not know. I never informed the defendants about my intended purchase of any of these lands. I remember the occasion when the defendants came to Iyadurai's house when I was there. It is true that the defendants requested Iyadurai to re-transfer the lands for a sum of Rs. 6,000. The attorney Ponniah was also there. On that day the lands were sold to me on (P 4). The deed was executed at the house of the Proctor Notary Mr. Senathirajah at about 4 or 5 p.m. The defendants came to Iyadurai's house on that day at about 11 a.m. or 12 noon. Iyadurai refused to transfer the lands to the defendants because besides me there were other offers. I offered to buy it at a higher price. I offered to purchase 2 lands for Rs. 10,000. There was another offer for Rs. 8,000. After I purchased the land from Iyadurai I issued notice on the defendants to quit in respect of Muthiraikaddaiyadi and Pannaikaddayadi. I did not issue notice in respect of Elumullupattai. I got the notice issued by Mr. Ratnasingham Proctor. I did not know whether Mr. Ratnasingham issued notice in respect of Elumullupattai. I did not instruct him to issue notice so. (Shown D 20). I cannot account for this, but I was not entitled to Elumullupattai.

Q.—I put it to you that Nadarajah is a nominee of yours ?

A.—It was only after the marriage he became a relation of mine.

40 Q.—In (D 21) Iyadurai says that he is not prepared to warrant and defend your title ?

A.—I took to possess it on my responsibility. He was not willing because there were several bidders and I bought it at a higher price. That was the reason why Iyadurai refused to warrant and defend my title. It was Iyadurai who

No. 6.  
Plaintiff's  
Evidence.  
P. Thanga-  
velautham.  
Cross-  
Examination.  
--continued--

took me to Point Pedro to have the deed executed. In Valvettiturai there are 4 Proctor Notaries. There is another Tamil Notary at Valvettiturai. It is true that Mr. Appadurai, Proctor Notary, is closer to the house of Iyadurai. It was Mr. Ratnasingham who attested the other 2 deeds. Mr. Ratnasingham is my Proctor. The notices were issued by my Proctor, Mr. Ratnasingham. It is true that Mr. Ratnasingham lives on the way to Point Pedro from Iyadurai's house, but Iyadurai took me to Point Pedro to have the deed executed by a Notary known to him. It is true that the decree against Mariammah was assigned to me by Iyadurai by deed. That deed of assignment was attested by Mr. Ratnasingham. I do not remember whether I issued a letter of demand 10 after the deed of assignment. (Shown letter of demand dated 25-7-1946 (D 35)). This is the letter of demand by me. After I issued the letter of demand on the defendants I re-assigned that deed to Iyadurai because there were disputes over the land, and Mr. Ratnasingham attested that deed. I know Iyadurai's father Karthigesu. He was known as Karuthar in the village. He was a big money lender. He has lent money to people in Valvettiturai and Valvetty. The Rural Court case (P 9) was subsequent to the case filed by the defendant, and I filed the V.T. case as a result of the defendant uprooting the boundary fences. The boundary fences were uprooted completely. The boundary referred to in (P 9) refers to a portion of the fence between Elumullupattai and Pannaikaddayadi, 20 but the other remaining portion refers to the southern boundary belonging to Mariammah.

P. Thanga-  
velautham.  
Re-Examina-  
tion.

*Re-examined by Mr. Adv. Soorasangaram.*

I produce the decree entered in case No. 551 (P) of this Court (P 10).

Sgd. S. R. WIJAYATILAKE.

*D.J.*

21-7-49.

P. Satha-  
sivam.  
Examination.

PONNUSAMY SATHASIVAM, affirmed, age 59, Commander of Ship, Valvettiturai.

I know the parties to this action. I am one of the trustees of the Valvetti- 30 turai Anman temple. I know the 3 lands purchased by the plaintiff from Iyadurai. In 1937 the value of these three lauds would have been Rs. 1,600 to Rs. 1,700. The price of lands at Valvettiturai had gone up after 1942. Before 1942 there was no money available. After the war there was plenty of money available.

P. Satha-  
sivam.  
Cross-  
Examination.

*Cross-examined by Mr. Adv. Jeyakkody.*

I am not a broker. I have only witnessed the deed executed in favour of the plaintiff by Iyadurai. I have not witnessed any other deeds executed in favour of the plaintiff. I had served a term of 6 months imprisonment on a charge of possessing opium. Opium was found in my house. It was kept by 40 someone else.

*Re-examined.*

That was 15 to 16 years.

21-7-49.

Sgd. S. R. WIJAYATILAKE,  
*D.J.*

No. 6.  
Plaintiff's  
Evidence.  
P. Sathasivam.  
Re-Examination.  
—continued.

Mr. Adv. Soorasangaram closes his case reading in evidence (P 1)–(P 10).

Adjourned for 22 7 49.

21-7-49.

Intld. S. R. W.,  
*D.J.*

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**No. 7.**

**Addresses to Court.**

10

No. 7.  
Addresses to  
Court.

22-7-49.

TRIAL RESUMED.

Same appearances.

**Addresses :**

*Mr. Adv. Soorasangaram addresses.* Issues (1) and (10) deal with the Trust.

Section 5, Chapter 72 (i. and ii.). Transaction in (P 1) cannot be said to be a trust, nor can it be called a constructive trust. The informal writing has not been produced in this case. *31 N.L.R. 73; 46 N.L.R. 313; 45 N.L.R. 465.*

20 Mr. Sivagnanam's evidence is that the property was worth only Rs. 2,000 at that time. See mortgage (P 5) and Iyadurai's letter (D 15). Telegram (D 14) was sent after the letter of demand (D 16). (D 14) belies any question of trust. (P 3) also shows that there was no trust. Issue (11) deals with the agreement. Mr. Sivagnanam although he speaks of the agreement does not refer to the particular period mentioned in the agreement. The lease bond was for a period of 6 years, so that the period of 8 years as mentioned by the 1st and 4th defendants would appear to be anomalous. Ponniah denies that the document was handed over to him. The document, if any, has been suppressed because the period mentioned therein must be very short. Section 93. Trust Ordinance. The

30 agreement must be notarial and it must be registered, and it must be an existing contract at the time they seek to enforce. *31 N.L.R. 55.* Section 32 of the Registration Document Ordinance, Chapter 101, volume 3, at page 226. Section 32 (v) at page 101. A point was made that by (P 6) the plaintiff had obtained a transfer of the land called Elumullupattai which the plaintiff sold by deed (D 20) to one Nadarajah and thereafter in (P 4) the same is included. In the event of (P 6) becoming invalid the plaintiff will be liable to pay the consideration in (D 20) to G. A. Nadarajah.

No. 7.  
Addresses to  
Court.  
—continued.

*Mr. Adv. Ramalingam addresses :* (P 1) transfers 3 lands of which the land in dispute is one. The other 2 lands are subject to cases in (D 25) and (D 26). The evidence of Sivagnanam is clear that the land was to be re-transferred within a short period. Even if the period in the agreement was short there was no necessity for the defendants to have suppressed the agreement. It is also significant that the defendants have listed Ponniah and Aiyadurai to produce the document. The trust is supported by the bank receipt (D 1). Money was deposited by the 1st defendant in favour of Karthigesu Iyadurai, the amount being Rs. 130. It was deposited on 16-11-38, the year after the execution of (D 2) and (D 3). Although (D 3) had been executed no rent had been recovered. Section 2 of the Statute of Frauds does not apply in the case of trust. *45 N.L.R. 169*. It was affirmed by the Privy Council in *48 N.L.R. at page 289*, followed in later *49 N.L.R. at page 121*. Admittedly possession was with the defendant. Disparity of the price. The 3 lands transferred on (P 1/D 2) would amount roughly to about 7 lachams. (D 31)-(D 33) show at about this time a lacham of land in this locality fetched about Rs. 1,000. *34 Ceylon Law Weekly, at page 107, 47 N.L.R. 297*. The plaintiff has practically admitted that there was a talk between Iyadurai and the defendants in the presence of the plaintiff earlier in the day when this deed was executed. The letter of demand (D 16) supports the defendant's case. The defendant was asked to deliver possession in 1946. The first deed in favour of the plaintiff was in 1946. That Nadarajah was also a nominee was shown by the fact that (D 20) was executed in his favour a few days after (D 19). Also see (D 27)-(D 29). (D 29) was for the land in Nadarajah's name. In (D 20) Iyadurai states that he was not liable to warrant and defend title. As regards the consideration, the actual transaction is not disclosed by the figures mentioned before the Notary.

Mr. Adv. Soorasangaram further refers to section 66 of the Trust Ordinance with regard to the notice of trust. A third party cannot be fixed with notice of a trust in the manner which the defendants have sought to. Interpretation of the word "Notice."—Section 3, Trust Ordinance.

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Mr. Adv. Ramalingam further states that section 93 must be read with section 5. Exception in section 5 will also apply to section 93 as is clear from section 98.

Judgment reserved.

22-7-40.

Intld. S. R. W.,  
D.J.

## Judgment of the District Court.

## Judgment.

In this case the plaintiff is suing the defendants for a declaration of title to a land called Pannaikaddaiady referred to in the schedule to the plaint, for ejection of the defendants therefrom and for damages.

The plaintiff avers that the 1st defendant and his wife were the owners of the said land and they transferred the same to one Karthigesar Iyadurai on Deed No. 3 of 12-1-1937 (P 1/1D 2) and the said Iyadurai upon Deed No. 308 of 24-6-1946 (P 4) transferred the same to the plaintiff. The plaintiff states that the defendants without any right or title to the said land on 4-9-46 denied the rights of the plaintiff to this land and are in wrongful possession thereof. The plaintiff claims damages in Rs. 50 and continuing damages at Rs. 10 per month. The plaintiff further states that the defendants are estopped from denying the title of the plaintiff as the 1st defendant and his wife entered into possession of this land on lease bond No. 4 of 12-11-37 (P 3/1D 3). The 1st, 4th, 5th and 6th defendants in their answer state that the land in question and two other lands were conveyed on (P 1/1D 2) by the 1st defendant and his wife Annammah to Iyadurai to be held in trust for them and to be reconveyed to them on their paying to Iyadurai the sum of Rs. 2,000 with interest thereon from 12-11-37. They allege that Iyadurai has fraudulently and collusively executed deed (P 4) in favour of the plaintiff with a view to depriving the defendants of their rights to the said land. They further plead that the 1st defendant and his wife Annammah were in possession of all the three lands dealt with by Deed No. 3 till 31-7-44 and that since then 1st to 7th defendants are in possession of the lands in pursuance of the trust. They deny that the plaintiff has any right to the lands referred to.

The case went to trial on the following issues : --

1. Did the 1st defendant and his wife Annammah convey the land in question to Karthigesar Iyadurai in trust as alleged by the contesting defendants ?
2. Had the plaintiff notice of the trust alleged by the contesting defendants ?
3. If either issue No. 1 or No. 2 is answered in the negative is the plaintiff entitled to judgment ?
4. If so, what damages is the plaintiff entitled to ?

No. 8.  
Judgment of  
the District  
Court.  
21-12-49  
—continued.

5. Are the defendants estopped from denying the plaintiff's title in view of lease bond No. 4 of 12-11-37 ?
6. Is the agreement for a re-transfer alleged in paragraph 2 of the answer enforceable in law ?
10. Was the land described in the schedule to the plaint and two other lands conveyed on Deed No. 3 of 12-11-37 by the 1st defendant and his late wife Annammah to Iyadurai to be held in trust for them ?
11. Did Iyadurai agree to reconvey the said land to the 1st defendant and his late wife Annammah on their paying to the said Iyadurai the said sum of Rs. 2,000 with interest thereon from 12-11-37 ? 10
12. If issue 11 or 12 or both are answered in the affirmative does the plaintiff hold the land in question subject to a trust ?
13. Did the 1st defendant enter a *careat* as set out in paragraph 8 a of the answer ?
14. If so does Deed No. 308 of 24-6-46 operate to convey title to the plaintiff for the land in question ?
17. Are the defendants in wrongful possession of the land described in the schedule to the plaint ?
18. If not can the plaintiff claim damages ?
19. Are the defendants in possession of the said land in pursuance of the 20 trust alleged in paragraph 2 of the answer ?
20. If not are the defendants in wrongful possession of the said land ?

According to the 1st defendant he borrowed money from Iyadurai's father on promissory notes in 1919 and 1921. Thereafter he mortgaged 5 lands upon deed (D 4) of 1922 to the parents of Iyadurai for a sum of Rs. 1,650. The five lands included the three lands dealt with by Iyadurai on deed (P 1) of 1937. The mortgagees on (D 4) assigned the bond in suit in case No. 265 D.C., Jaffna (D 5), (D 6) and (D 7). At this stage the 1st defendant appears to have been in great difficulty trying to settle his debts and Iyadurai had suggested that the land called Elumullupattai (referred to in P 1) be sold and that the debts be paid 30 with the money realised. The 1st defendant had turned down this proposal as this land adjoins his residing land and he was intending to give these lands as dowry to his daughters. Then Iyadurai had suggested that the three lands Elumullupattai, Muthiraikaddaiadi and Paranaikoddayadi (the land in dispute) be conveyed to him in trust on the condition that he would re-transfer them within 8 years provided the amount due to him is settled within this period. The 1st defendant and his wife do not appear to have relished even this sugges-



tion. A few days later the 1st defendant and his wife happened to be at a physician's house at Point Pedro where their daughter's (the 4th defendant's) child was undergoing treatment. Iyadurai had come there with Proctor Sivagnanam and pursued his suggestion to take over the lands in trust. The 1st defendant's wife Annammah was reluctant, but Iyadurai had said he was in a hurry to get to Malaya and on his undertaking not to betray them, both the 1st defendant and Annammah had consented to the transaction as suggested. Then, soon after three documents were executed by the parties in the physician's house. A deed of transfer (P 1/D 2), a lease bond (P 3/D 3) and an informal agreement. P 1 and P 2 were attested by Proctor Sivagnanam. The informal writing entered into by the parties was not witnessed by Mr. Sivagnanam but it was written out by him. The deed (P 1/D 2) is on the face of it a transfer to Iyadurai of the three lands referred to in full satisfaction of the balance amount due on mortgage decree in case No. 265 D.C., Jaffna. The lease bond (P 3/D 3) is a lease of the same lands by Iyadurai to the transferors. The informal writing was to the effect that Iyadurai was to re-transfer these lands to the transferors within a period of 8 years provided the amount due is settled with interest. The 1st defendant states that the lease bond was executed merely as security and that Iyadurai waived the rent mentioned thereon. The informal agreement has not been produced and the defendants are relying on parol evidence to prove it in order to establish the trust in their favour.

Mr. Sivagnanam, the Notary, who attested (P 1/D 2) and (P 3/D 3) is a nephew of Iyadurai and he was brought by Iyadurai to Point Pedro for this transaction. In the circumstances, Mr. Sivagnanam would not fail to remember what transpired on this visit to the physician's house. He has referred to the transaction and he acknowledges having written out the informal agreement simultaneously with the two deeds attested by him. This witness who was called for the defence did not strike me as one who was inclined to help the defendants and it was with a certain amount of restraint that he disclosed to Court the true nature of this transaction. Being a nephew of Iyadurai—perhaps his position is rather embarrassing. I am satisfied that Mr. Sivagnanam's evidence as to the execution of the informal agreement and its terms is true. The 1st defendant has stated how in the absence of Iyadurai in Malaya he approached his attorney Ponniah with a view to getting a re-transfer of the lands dealt with in (P 1/D 2). On two of these visits he had taken the informal agreement with him and on the second visit Ponniah had taken it from him—presumably for reference and return. Ponniah who gave evidence for the defence denies any knowledge of this agreement and he is definite that it was not handed over to him. He further states that on the visits paid to him by the 1st defendant the question of an agreement to retransfer did not arise in their discussions. Ponniah struck me as a witness lacking in candour and it was apparent that he was trying his utmost to wreck the defendant's case. This witness created a very poor impression in the box and I have little difficulty in rejecting his evidence.

The Physician Kandiah in spite of his age tried to recollect a scene in his house on the date of the execution of the deeds but I do not think his evidence need be taken seriously. Probably he is trying to help the defendants out of their misfortunes.

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 —continued.

The 1st defendant and 4th defendant though interested parties did not appear to me to be merely relating a prepared story. In the light of Mr. Sivagnanam's evidence I think I can safely accept their evidence as to the true nature of the transaction. The telegram (D 14) and Iyadurai's letter (D 15) also indicate the truth of their version. The bank receipt (D 1) of 16-11-1938 for Rs. 130 is evidence of the payments by instalments arranged for in the informal agreement.

Then the question arises as to the effect of the transaction whatever the intentions of the parties were. The execution of the Lease bond appears to distinguish this case from the cases cited by the defendants in support of the trust, but on the evidence in this case it is patent that the 1st defendant and his wife did not pay any rent to Iyadurai and that the bond has been executed merely as a safeguard. It is evident that this Lease bond was never acted on and it was not meant to be enforced. The defendants have sought to lead evidence to show that the lands dealt with under P 1 were worth much more than the consideration on the deed. In spite of Mr. Sivagnanam's evidence on this point which really supports the plaintiff, I think the documentary and oral evidence in this case tend to show the truth of this assertion. The evidence of the plaintiff's witness Sathasivam on this point did not impress me at all. The plaintiff seeks to explain the possession of the defendants by referring to the Lease. However, as mentioned earlier, I do not think the parties ever intended to enforce this lease. All the circumstances surrounding this transaction I think point to a trust in favour of the transferors on P 1. I think the principles set out in the recent Privy Council case reported in 48 N. L. R. 289 and followed by the Supreme Court in 49 N. L. R. 121. would apply to the facts of this case, although in the present case we have the additional feature of a Lease bond being executed simultaneously. I would accordingly hold that a trust was created in favour of the 1st defendant and his wife.

Then the further question arises whether the plaintiff is a *bona fide* purchaser for value. The entering of a *caveat* D 17 on 5-2-46 and its registration D 22-D 24 would have afforded sufficient notice to any intending purchaser. The plaintiff admits that the defendants requested Iyadurai to re-transfer the lands to them on the date P 4 was executed in his (plaintiff's) favour. At this discussion the question of the 1st defendant's right to a re-transfer would have been foremost and it is not unlikely that the *caveat* was also referred to. The plaintiff was lacking in frankness and his evidence far from establishing his *bona fides* tends to show that he was fully aware of the alleged trust and the attitude of the defendants towards this transaction.

I answer the issues as follows :—

1. Yes.
2. Yes.
3. Does not arise.
4. Does not arise.
5. No.

6. Yes.  
 10. Yes.  
 11. Yes.  
 12. Yes.  
 13. Yes.  
 14. No.  
 17. No.  
 18. No.  
 19. Yes.  
 20. Does not arise.

No. 8.  
 Judgment of  
 the District  
 Court.  
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 --continued.

I accordingly dismiss the plaintiff's action with costs.

Sgd. S. R. WIJAYATILAKE.  
*D.J*

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**No. 9**

**Decree of the District Court**

Decree

IN THE DISTRICT COURT OF POINT PEDRO

No. 2,761

PONNAMPALAM THANGAVELAUTHAM of Valvettiturai ... *Plaintiff*.

20 *Vs.*

1. SIVAKINAPILLAI SAVERIMUTTU,
2. SAVERIMUTTU IGNATIUS THURAISINGHAM.
3. THOMMAIPPILLAI SOOSAIPILLAI,
4. VIRISITHAMMA (wife),
5. SWAMINATHAR MARUSILIN,
6. MARIAMUTTU (wife),
7. SAVERIMUTTU JOSEPH SELVARATNAM,
8. ARUNASALAM SOMASUNDERAM,
9. MANKAYAKARASY (wife),
- 30 10. RASAMMAH, widow of Sivaguru Ramasamy, all of ditto... *Defendants*.

This action coming on for final disposal before S. R. Wijayatilake, Esquire, District Judge, Point Pedro, on the 21st day of December, 1949, in the presence

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—continued.

of Mr. Advocate S. Soorasangaram, instructed by Mr. K. Ratnasingham, Proctor, on the part of the plaintiff and of Messrs. Advocates K. Jeyakkody and T. Ramalingam, instructed by Mr. K. K. Balasubramaniam, Proctor, on the part of the 1st, 4th, 5th and 6th defendants and the other defendants being absent and unrepresented and judgment having been delivered on the said date.

It is ordered and decreed that the plaintiff's action for a declaration of title of the land fully described in the schedule hereto be and the same is hereby dismissed with costs.

The 21st day of December, 1949.

11-1-50.

Sgd. P. SRI SKANDARAJAH, 10  
D.J.

*The Schedule Referred to above :*

Land situated at Valvettiturai within the jurisdiction of this Court called Pannaikaddaiady, in extent  $11\frac{1}{2}$  lachams varagu culture, ditto  $3\frac{5}{8}$  lachams varagu culture but according to measurement 11 lachams varagu culture and  $1\frac{1}{3}\frac{6}{2}$  kulies; of this an extent of 1 lacham varagu culture and  $15\frac{8}{3}\frac{2}{2}$  kulies and a further extent of  $16\frac{2}{3}\frac{0}{2}$  kulies aggregating to a total extent of 2 lachams varagu culture and  $13\frac{2}{3}\frac{8}{2}$  kulies ; is bounded on the east by village limit of Polikandy, north by lane, west by land of Chellappa Muthucumar, and on the south by land of the heirs of the late Kathirippillai Sivapiragasam. Of the whole of the ground old 20 and young palmyrahs, margosa trees and well contained within these boundaries an undivided  $\frac{1}{3}$  share.

11-1 50.

Sgd. P SRI SKANDARAJAH,  
D.J.

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**No. 10.**

**Petition of Appeal of the Plaintiff to the Supreme Court**

IN THE DISTRICT COURT OF POINT PEDRO

PONNAMBALAM THANGAVELAUTHAM of Valvettiturai *Plaintiff.*

No. 2761.

Vs.

1. SIVAKINAPILLAI SAVARIMUTTU,
2. SAVARIMUTTU IGNATIUS THURAISINGHAM,
3. THOMAIPPILLAI SOOSAIPILLAI and
4. VIRISITHAMMA (wife),

30

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the Supreme  
Court.  
5-1-50.

5. SWAMINATHAR MARUSILIN and
6. MARIAMUTTU (wife).
7. SAVERIMUTTU JOSEPH SELVARATNAM,
8. ARUNASALAM SOMASUNDERAM and
9. MANKAYATKARASI (wife).
10. RASAMMAH, widow of Sivaguru Ramasamy, all of Valvettiturai ..... *Defendants.*

No. 10.  
Petition of  
Appeal of the  
Plaintiff to  
the Supreme  
Court.  
5-1-50.  
—continued.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

PONNAMBALAM THANGAVELAUTHAM of Valvettiturai  
10 ..... *Plaintiff-Appellant.*

*Vs.*

1. SIVAKKINAPILLAI SAVERIMUTTU,
2. SAVERIMUTTU IGNATIUS THURAISINGHAM,
3. THOMMAIPPILLAI SOOSAIPILLAI and
4. VIRISITHAMMAH (wife),
5. SWAMINATHER MARUSILIN,
6. MARIAMUTTU (wife),
7. SAVERIMUTTU JOSEPH SELVARATNAM,
8. ARUNASALAM SOMASUNDERAM,
- 20 9. MANKAYATKARASI (wife),
10. RASAMMAH, widow of Sivaguru Ramasamy, all of Valvettiturai .. .. . *Defendants-Respondents.*

*To*

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

The 5th day of January, 1950.

The petition of appeal of the abovenamed plaintiff-appellant appearing by K. Ratnasingham, his Proctor, states as follows :—

- 30 1. The plaintiff-appellant sued the defendants-respondents to obtain a declaration of title to the land described in the schedule to the plaint, for recovery of possession thereof and to recover damages,

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2. The 1st, 4th, 5th and 6th defendants-respondents filed answer alleging that the 1st defendant-respondent and his late wife Annammah had conveyed the land and other lands to Karthigesar Aiyadurai to be held in trust and that Karthigesar Aiyadurai had to re-convey the said land to the 1st defendant and his wife on their paying to the said Aiyadurai Rs. 2,000 with interest thereon from 12th November, 1937.
3. The parties went to trial on the following issues :
- (a) Did the 1st defendant and his wife Annammah convey the land in question to Karthigesar Iyadurai in trust as alleged by the contesting defendants ? 10
- (b) Had the plaintiff notice of the trust alleged by the contesting defendants.
- (c) If either issue No. 1 or No. 2 is answered in the negative, is the plaintiff entitled to judgment ?
- (d) If so, what damages is the plaintiff entitled to ?
- (e) Are the defendants estopped from denying the plaintiff's title in view of Lease bond No. 4 of 12-11-37 ?
- (f) Is the agreement for a re-transfer alleged in paragraph 2 of the answer enforceable in law.
- (g) Was the land described in the schedule to the plaint and two other 20 lands conveyed on Deed No. 3 of 12-11-37 by the 1st defendant and his late wife Annammah to Iyadurai to be held in trust for them.
- (h) Did Iyadurai agree to re-convey the said land to the 1st defendant and his late wife Annamma on their paying to the said Iyadurai the said sum of Rs. 2000 with interest thereon from 12-11-37.
- (i) If issue No. 11 or 12 or both are answered in the affirmative does the plaintiff hold the land in question subject to a trust ?
- (j) Did the 1st defendant enter a *caveat* as set out in paragraph 8 (a) of the answer ? 30
- (k) If so, does Deed No. 308 of 24-6-46 operate to convey title to the plaintiff for the land in question ?
- (l) Are the defendants in wrongful possession of the land described in the schedule to the plaint ?

(m) If not, can the plaintiff claim damages ?

(n) Are the defendants in possession of the said land in pursuance of the said trust alleged in paragraph 2 of the answer ?

(o) If not, are the defendants in wrongful possession of the said land ?

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4. After trial the learned District Judge by his judgment dated 21st day of December, 1949, dismissed the plaintiff-appellant's action with costs.

5. Feeling dissatisfied with the said judgment and order, the plaintiff-appellant begs to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of this appeal :

(a) The said judgment is contrary to law and the weight of evidence led in the case.

(b) The appellant respectfully submits that on the evidence led in the case the learned Judge should have rejected the case of the respondents and should have entered judgment for the plaintiff-appellant as prayed for in the plaint.

(c) The appellant respectfully submits that the learned Judge should have accepted the evidence led on behalf of the appellant and the evidence of the witness Ponniah as their evidence is highly probable and quite consistent with the documentary evidence led in the case.

(d) The Appellant respectfully submits that the informal agreement referred to by witness Sivagnanam could not have been handed over to the witness Ponniah as alleged by the respondents and that the document has been probably suppressed by the respondents as the period within which they had to obtain the transfer lapsed long ago and as they had probably to pay the value of the lands at the time of the transfer. The facts that the respondents in their answer did not mention the time limit mentioned in the informal agreement or the rate of interest payable by them clearly shows that the informal agreement had ceased to be operative at the date of this action and that the agreement was to re-transfer within a particular period of time on payment of the value of the lands.

(e) The appellant respectfully submits that the evidence led in this case clearly establishes that the sale to Iyadurai by D 2 was an absolute sale and was not subject to any trust and that the

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lease bond D 3 admittedly executed by the 1st defendant and his late wife Annammah conclusively establishes the case of the appellant that D 2 was an absolute sale free from any trust.

- (f) The appellant respectfully submits that the informal writing was unenforceable in law and that in any event as the respondents had neither produced the document nor carried out its terms, the respondents are not entitled to judgment in their favour.
- (g) The appellant respectfully submits that on the evidence led in 10 the case the learned Judge could not have held that the appellant had notice of the alleged trust and/or agreement particularly in view of the fact that the agreement was neither executed nor registered as required by section 93 of the Trusts Ordinance.
- (h) The appellant respectfully submits that on the evidence led in the case the learned Judge should have held that the appellant was a *bona fide* purchaser for value and had no notice of any trust and that in any event the learned Judge could not have dismissed the plaintiff-appellant's action even on the basis of 20 his finding that the plaintiff-appellant's title is subject to a trust.

Wherefore the plaintiff-appellant prays:—

- (i) that the said judgment and order be set aside ;
- (ii) that judgment be entered for the plaintiff-appellant as prayed for in the plaint.
- (iii) for costs of this appeal and in the Court below and for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. K. RATNASINGHAM. 30  
Proctor for Plaintiff-Appellant.

**Memorandum of Documents Filed by the Plaintiff.**

- P 1. Deed No. 3 of 12-11-1937.  
P 2. Decree in D.C., Jaffna case No. 265.  
P 3. Deed No. 4 of 12-11-1937.  
P 4. Deed No. 308 of 24-6-1946.  
P 5. Deed No. 714 of 29-4-1931.



- P 6. Deed No. 706 of 3-2-1946.  
 P 7. Deed No. 1063 of 24-2-1922.  
 P 8. Deed No. 8846 of 10-1-1928.  
 P 9. Complaint, proceedings and order in R.C. Udupiddy case No. 5401.  
 P10. Decree in 551 D.C., Jaffna.

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K. RATNASINGHAM,  
*Proctor for Plaintiff-Appellant.*

**Memorandum of Documents Filed by the Defendants.**

- D 1. Duplicate Mercantile Bank receipt for Rs. 130 dated 16-11-38.  
 10 D 2. Deed of transfer No. 3 of 12-11-37 (certified copy).  
 D 3. Deed of Lease No. 4 of 12-11-37 (certified copy).  
 D 4. Certified copy of mortgage bond No. 2063 of 1922.  
 D 5. Summons in D.C. Jaffna case No. 265.  
 D 6. Copy of plaint in D.C., Jaffna, case No. 265.  
 D 7. Certified copy of decree in case No. 265 D.C., Jaffna.  
 D 8. Release of 2 lands (non-Notarial writing).  
 D 9. Receipt No. 715 of 1931.  
 D10. Original summons in D.C. Point Pedro, 551/P  
 D11. Copy of plaint in D.C. Point Pedro 551/P  
 20 D12. Receipt No. 3997 of 1946.  
 D13. Power of Attorney No. 2742 of 8-9-40.  
 D14. Telegrams to Aiyadurai from 1st defendant (certified copy).  
 D15. Reply from Aiyadurai dated 8-3-46.  
 D16. Notice sent by Proctor Sivagnanam dated 16-1-46.  
 D17. Certified copy of *caveat* dated 5-1-46.  
 D18. Plaint and answer of 1st defendant in D.C. Point Pedro, 2625.  
 D19. Certified Copy of Deed No. 706 of 3-2-1946.  
 D20. Certified Copy of Deed No. 706 of 11-2-1946.  
 D21. Certified Copy of Deed No. 308 of 24-6-1946.  
 30 D22. Certified Copy of Extracts from the Encumbrance Sheet of the land Elu-  
 mulupattai.  
 D23. Certified Copy of Extract from the Encumbrance Sheet of the land Mudu-  
 raikkaddaiyady.  
 D24. Certified Copy of Extracts from the Encumbrance Sheet of the land  
 Pannaikkaddaiydy.  
 D25. Certified Copy of Plaint and Answer in 2762/P, D.C., Jaffna.  
 D26. Certified Copy of Plaint and Answer in 2772/P, D.C., Jaffna.

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- D27. Notice dated 25-7-46 (Ejectment notice Muthuraikaddaiady).
- D28. Notice dated 25-7-46 (Ejectment notice Pannaikaddaiady).
- D29. Notice dated 25-7-46 (Ejectment notice Elumullupattaiady).
- D30. Certified Copy of Deed No. 8846 of 9-1-28 (Donation 55 lands).
- D31. Certified Copy of deed No. 9110 of 16-7-28.
- D32. Certified Copy of Deed No 11254 of 23-3-31.
- D33. Certified Copy of Deed No. 13307 of 25-7-34.
- D.4. Certified Copy of Answer of 2nd deft. in 2625 P.
- D35. Notice dated 25-7-46 issued by plaintiff through Proctor Ratnasingham.

Sgd K. RATNASINGHAM, 10  
*Proctor for Plaintiff-Appellant.*

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**No. 11.**

**Judgment of the Supreme Court.**

S.C. No. 174.

D.C., Point Pedro No. 2761.

*Present :* GRATIAEN, J. & GUNASEKARA, J.

*Argued on* July 16th and 17th, 1951.

*Delivered on* July 26th, 1951.

P THANGAVELAUTHAM . . . . . *Plaintiff-Appellant.*

*Vs.*

S. SAVERIMUTTU *et al* . . . . . *Defendants-Respondent.* 20

*Counsel.* N. E. WEERASURIYA, K.C., with H. W. THAMBIAH and  
E. R. S. R. COOMARASWAMY, for Plaintiff-Appellant.

H. W. JAYAWARDENE, for Defendants-Respondents.

GRATIAEN, J.—

The 1st defendant and his wife Annammah were admittedly the owners until 12th November, 1937 of the land which is the subject matter of this action. Annammah died before these proceedings commenced, and the 2nd to the 8th defendants are her legal heirs.

By a deed of conveyance P 1 of 12th November, 1937, attested by S. Sivaguanam, Notary Public, the 1st defendant and Annammah purported to sell the 30 land in dispute, as well as two other properties to K. Iyadurai for a consideration

of Rs. 2,000 which was stated to be the full balance amount due by the vendors to the vendee under the mortgage decree in favour of the latter in D. C. Jaffna, No. 265. Satisfaction of the decree was duly certified of record. On the face of it, the deed is an out and out transfer.

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Iyadurai was apparently arranging to leave for Malaya at this time, and immediately after the execution of P 1 he leased the property to the vendors for a period of six years at an agreed rental by D 3 of the same date. Here again, the terms of the lease afforded intrinsic evidence that the legal title as well as the beneficial interest was acknowledged to be in Iyadurai. The deed contains  
10 the usual covenants such as the covenant to keep the property in good repair. On the face of the documents P 1 and D 3, and by reason of the satisfaction of the decree in D. C., Jaffna, 265, the relationship of Iyadurai and the 1st defendant had been converted from that of creditor and debtor to that of lessor and lessee.

Some years after the expiry of the lease Iyadurai sold the land in dispute to the plaintiff by the deed of conveyance P 4 dated 24th June, 1946. The plaintiff then instituted this action complaining that the defendants were in wrongful possession of the property. He asked for a declaration that he was the lawful owner, and for ejectment and damages.

The defence is that, notwithstanding the unequivocal terms of the deed  
20 of conveyance P 1, the 1st defendant and Annammah had retained the beneficial interest in the property. Their position is that they had merely conveyed the property to Iyadurai "in trust", and subject to the terms of an informal agreement whereby Iyadurai had undertaken to re-convey the land to them within eight years on payment by them of Rs. 2,000 with interest calculated at the rate of 12% from the date of P 1. This defence was upheld by the learned District Judge, who dismissed the plaintiff's action with costs.

There can be no doubt that, if one considers the claim of the defendant apart from the alleged trust, the informal agreement relied on is by itself of no  
30 avail to them. It is obnoxious to the clear provisions of section 2 of the Prevention of Frauds Ordinance, and besides, the period of 8 years within which a reconveyance could have been demanded, on payment of the stipulated consideration, had long since elapsed. The only question which therefore remains for consideration is whether the creation of alleged "trust" has been substantiated. I shall assume, although I do not hold, that the evidence of the informal agreement is admissible for the purpose of establishing such a trust.

The case for the defendants is that before P 1 was executed Iyadurai had for some time been pressing the 1st defendant and Annammah for repayment of the balance sum due to him under the mortgage decree in his favour. Finally,  
40 according to the 1st defendant's version, he induced them to convey the properties which were bound and executable under the decree, to him "in trust" and on a promise that if they at any time within 8 years paid him the same consideration, i.e., Rs. 2,000 with interest, he would re-convey the property to them. No explanation has been forthcoming either in the pleadings or in the evidence of

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the 1st defendant as to what precisely the parties intended or understood to be the object or the purpose of this vague and nebulous "trust" which is alleged to have been created. If there was any trust at all, it was, presumably, an express trust, and I concede that section 5 (3) permits parol evidence to be led if its exclusion would otherwise operate so as to effectuate a fraud. *Valliamma Atchi vs. Abdul Majeed* (1947), 48 N. L. R. 289 P.C. Certainly the transaction as it has been explained by the 1st defendant does not introduce the notion of any resulting or constructive trust such as I understand these terms. This is not a case, for instance, where A conveys property to B for a consideration provided by C in circumstances which indicate that the beneficial interest was to 10 vest in C. Nor is it a case where A purports to convey his property to B for a non-existent or fictitious consideration with a clear intention that only the legal estate but not the beneficial interest should pass to the transferee. On the contrary, the facts here establish that the 1st defendant and his wife sold the property to Iyadurai for valuable consideration which he himself provided,—namely, the full satisfaction of the decree which he held and was entitled to execute against his vendors. The 1st defendant suggests that the consideration was in fact inadequate. Even if that were true, it must be remembered that he was at the time in no position to strike an advantageous bargain, and his remedy, if at all, would have been to claim relief under some other legal principle unconnected with the 20 law of trusts. But in truth there is to my mind little substance in his suggestion that the consideration was inadequate. In his plaint in D.C., Jaffna. 2625 instituted on 11th March, 1946 he valued all the properties conveyed in 1937 by P 1 at Rs. 7,000 (*vide* P 18). He admitted in evidence that the value of immovable property in this locality had since 1942 gone up "even by 10 or 12 times". It cannot therefore be said that the consideration of Rs. 2,000 paid in November, 1937 was too low.

It seems to me that in recent years many litigants have, through a misunderstanding of the judgment of the Privy Council in *Valliammai Atchi's case*, been encouraged to import some vague element of a "trust" into perfectly 30 normal transactions of purchase and sale. That case dealt with a conveyance to a transferee for the purpose *inter alia* of applying the income of the property in settlement of the transferor's creditors including the transferee himself. This transaction, said Sir John Beaumont, created an express trust, and parol evidence could be led to establish it so as to meet a fraudulent attempt on the part of the transferee to repudiate the trust and claim the property as his own. The present case is entirely different.

I pointed out to Mr. Jayawardene that, if the defendant's contention could be sustained, Iyadurai's position seemed, after accepting the position of a trustee with nebulous obligations imposed on him, to be very much worse than 40 it had previously been. He had, upon the execution of P 1, discharged the debt due to him under the mortgage decree. Had Iyadurai, I asked, any remedy to claim either his money or the beneficial interest in the property after the 8 years period covered by the agreement to recovery had elapsed? I understood Mr. Jayawardene to reply that some kind of mortgage was in truth created by P 1, and that it would have been open to Iyadurai to enforce this so-called

mortgage if the transferors did not claim a reconveyance within the stipulated time. This seems to me an impossible contention. I am not aware of any principle of interpretation by which an instrument which is in terms a sale can be construed as a hypothecation of immovable property. In *Perera vs. Fernando* (1914) 17 N. L. R. 486, Ennis J. and Sampayo J. held that. "where a person transferred a land to another by a notarial deed, purporting on the face of it to sell the land, it is not open to the transferor to prove by oral evidence that the transaction was in reality a mortgage, and that the transferee agreed to reconvey the property on payment of the money advanced." Their Lordships decided  
 10 in the same context that the alleged agreement, if enforceable, to reconvey the property was "not a trust but a mere contract for the purchase and sale of immovable property". The decision of the Privy Council in *Saminathan Chetty vs. Vanderpoorten* (1932) 34 N. L. R. 287 is another authority of the Judicial Committee which litigants should not misunderstand. That case was concerned with the interpretation of two contemporaneous notarial instruments the effect of which, read together, was to create "a security for moneys advanced which, in certain events, imposed upon the creditor duties and obligations in the nature of trusts."

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There is one further ruling of the Privy Council to which I desire to refer.  
 20 because it distinguishes, in clear and unambiguous terms, the facts of the present case from the type of case where a transaction creates either a trust or "something resembling a mortgage or pledge". This authority is *Adicappa Chetty vs. Caruppan Chetty* (1921) 22 N. L. R. 417. Stated shortly, it was alleged that A had arranged for the purchase of a land from B with money provided by C. The transfer from B was however executed in the name of the money lender C as the ostensible purchaser, but in fact (so A alleged) as security for the repayment by him of the consideration, upon which repayment C was to transfer the property to A. Their Lordships held that parol evidence was inadmissible to prove an agreement of this kind. "Such an agreement", said Lord Atkinson, "created  
 30 something much more resembling a mortgage or a pledge than a trust" and was of no force or avail in law if it contravened the provisions of The Prevention of Frauds Ordinance. In this context Lord Atkinson made in connection with a contemporaneous transaction, certain observations which seem to be very appropriate to the present case. "It is certainly a novel application, of the equitable doctrine of resulting trusts" he remarked, "that where an owner of property sells and conveys it to a purchaser who pays him the purchase price, all which the deeds recite in the case to have been done or to be done, the purchaser is converted into a trustee for the vendor whom he has paid". This observation perfectly fits the present transaction whereby, under P. I. Ivadurai  
 40 paid the consideration for the conveyance in his favour by releasing his vendors from their pressing obligation to pay the judgment debt in D. C. Jaffna, No. 265.

I need not refer specifically to the many decisions of this Court in which a trust has been held to be established by parol evidence. The facts with which they were concerned are readily distinguishable. Indeed even if full effect were to be given to the parol evidence tendered by the 1st defendant, no trust of any kind could in my opinion have been proved. This case is on all fours with

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*Cartholis Appuhamy vs. Saiya Nona* (1945) 46 N. L. R. 313 and I would respectfully follow the opinion there expressed by Keuneman J. with whom Soertsz J. agreed.

I would set aside the judgment appealed from, and enter a decree in favour of the plaintiff in terms of paragraphs (1) and (2) of the prayer of the complaint. Unfortunately, the learned Judge has not answered the issue as to damages. The case must therefore be remitted to the Court below so that the present District Judge of Point Pedro may, after hearing evidence, award damages to the plaintiff against the defendants for their wrongful possession of the property from 4th September, 1946 until date of ejectment. The writ of 10 ejectment should, however, be issued forthwith.

The plaintiff is entitled to the costs of this appeal and of the trial in the Court below. The other questions which were argued before us do not arise for consideration.

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

GUNASEKARA, J.—I agree.

Sgd. E. H. T. GUNASEKARA,  
*Puisne Justice.*

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**No. 12**

20

**Decree of the Supreme Court.**

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS,  
KING, DEFENDER OF THE FAITH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

PONNAMPALAM THANGAVELAUTHAM of Valvetti-  
turai . . . . . *Plaintiff-Appellant.*

*Against*

(1) SIVAKKINAPILLAI SAVERIMUTTU and 9 others, all  
of Valvettiturai . . . . . *Defendants-Respondents.* 30

Action No. 2,761.

District Court of Point Pedro.

This cause coming on for hearing and determination on the 16th, 17th and 26th days of July, 1951, and on this day, upon an appeal preferred by the plaintiff-appellant before the Hon. Mr. E. F. N. Gratiaen, K.C., Puisne Justice and the Hon. Mr. E. H. T. Gunasekera, Puisne Justice of this Court in the presence of Counsel for the appellant and respondents.

It is considered and adjudged that the judgment appealed from be and the same is hereby set aside and it is ordered that decree be entered in favour of the plaintiff in terms of paragraphs (1) and (2) of the prayer of the plaint. The case is remitted to the District Court so that the present District Judge of Point Pedro may after hearing evidence, award damages to the plaintiff against the defendants for their wrongful possession of the property from September, 1946, until date of ejection. The writ of ejection, should, however, be issued forthwith.

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And it is further ordered that the plaintiff be declared entitled to the costs of this appeal and of the trial in the Court below.

Witness the Hon. Sir Edward George Perera Jayatileke, Kt., K.C., Chief Justice, at Colombo, the 31st day of July, in the year of our Lord One thousand Nine hundred and Fifty-one and of Our Reign the Fifteenth.

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

**No. 13.**

**Application for Conditional Leave to Appeal to the Privy Council.**

IN THE SUPREME COURT OF CEYLON

No. S.C. 174. In the matter of an Application for Conditional Leave to  
20 D.C. Point Pedro appeal to His Majesty the King in Council.  
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tional Leave  
to Appeal to  
the Privy  
Council.  
23-8-51.

SWAKINAPILLAI SAVERIMUTTU of Valvettiturai *1st Defendant-Appellant.*

*Vs.*

- (1) PONNAMBALAM THANGAVELAUTHAM of Val-  
vettiturai ..... *Plaintiff-Respondent.*
- (2) SAVERIMUTTU IGNATIUS THURAISINGHAM.
- (3) THOMMAIPILLAI SOOSAI PILLAI and
- (4) VIRISITHAMMA (wife).
- (5) SWAMINATHAR MARUSILIN and
- 30 (6) MARIAMUTTU (wife).
- (7) SAVERIMUTTU JOSEPH SELVARATNAM.
- (8) ARUNASALAM SOMASUNDERAM and
- (9) MANKATKARISI (wife),
- 10 (10) RASAMMAH, widow of Sivaguru Ramasamy, all of Val-  
vettiturai ..... *Defendants-Respondents.*

No. 13.  
Application  
for Condi-  
tional Leave  
to Appeal to  
the Privy  
Council.  
23-8-51.  
—continued.

On this 23rd day of August, 1951.

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF  
THE SUPREME COURT OF CEYLON.

The humble petition of the 1st defendant-appellant abovenamed appearing by M. A. Rahiman, his Proctor, states as follows :

1. That feeling aggrieved by the judgment and decree of this Honourable Court in the above-styled action pronounced on the 26th day of July, 1951, the 1st defendant-appellant is desirous of appealing therefrom to His Majesty the King in Council.
2. That the said judgment is a final judgment. 10
3. (a) That the appeal involves directly or indirectly a claim or title to or respecting property of the value of a sum exceeding Rs. 5,000.  
 (b) That the deed P 1 dated 12th November, 1937, dealt with the land in dispute in the above-styled action and two other lands all of which are worth over Rs. 5,000 and that this Honourable Court has held that the said deed is an outright transfer and not a trust as contended by this petitioner.
4. (a) That the petitioner has given due notice to the 1st respondent abovenamed of his intention to make this application by sending to his address a copy of the petition and the notice by two letters posted 20 on 2-8-1951 and 7-8-1951 with certificates of posting obtained thereof. The said certificates of posting are annexed hereto.  
 (b) Further notice was also given to the said plaintiff-respondent by Saminathapillai Marisalinpillai, who delivered a copy of the said petition and notice to the said plaintiff-respondent on 7-8-1951, and whose affidavit is filed herewith.  
 (c) Further notice was also given by the petitioner to the plaintiff-respondent by posting to his address a registered letter containing a copy of the said notice and petition on 2-8-1951.  
 (d) Further notice was also given by the petitioner to the said plaintiff- 30 respondent by telegram sent to his address on 5-8-1951.  
 (e) Further notice was also given by the petitioner's Proctor to the said plaintiff-respondent by posting to his address a registered letter containing a copy of the said notice and petition on 6-8-1951.  
 (f) Further notice was also given by the petitioner to the plaintiff-respondent's Proctor, Mr. K. Ratnasingham, by posting to his address a registered letter containing the copy of the said notice and petition on 6-8-1951.



5. (a) That the 2nd-10th defendants-respondents are not opposite parties within the meaning of Rule 2 of the Privy Council Rules and are in fact parties who will be benefitted by the 1st defendant-appellant's appeal being allowed by His Majesty the King in Council and no such notice is necessary to them but they are all aware of this intended application.

No. 13.  
Application  
for Condi-  
tional Leave  
to Appeal to  
the Privy  
Council.  
23-8-51.  
—continued.

- (b) That there was and is no contest between this petitioner and the said 2nd-10th defendants-respondents.

Wherefore the petitioner prays :

- 10 (i) For Conditional Leave to appeal to His Majesty the King in Council against the said judgment of this Court dated 26th July, 1951.
- (ii) For costs of this application, and
- (iii) For such other and further relief as to Your Lordship's Court shall seem meet.

*Sgd. M. A. RAHIMAN,*  
*Proctor for 1st Defendant-Appellant.*

**Documents Filed with Petition :**

- 20 1. Appointment of Proctor.
2. Affidavit of Petitioner.
3. Certificate of posting dated 2-8-1951.
4. Certificate of posting dated 7-8-1951.
5. Affidavit of the person who served the notice and copy of petition on the plaintiff-respondent.

*Sgd. M. A. RAHIMAN,*  
*Proctor for 1st Defendant-Appellant.*

**No. 14.**

**Order of the Supreme Court.**

*Application for Conditional Leave to Appeal to the Privy Council in S.C. 174 D.C. Point Pedro 2761 (429).*

No. 14.  
Order of the  
Supreme  
Court.  
16-11-51.

30

*Present :* GRATIAEN, J. & CHOKSY, A.J.

- Counsel* E. B. WIKRAMANAYAKE, K.C., with C. CHELLAPPAH, for Defendant-Petitioner.
- H. W. THAMBIAH with E. R. S. R. COOMARASAMY for Plaintiff-Respondent.
- H. WANIGATUNGA, for 8th and 9th Respondents.

*Argued and Decided on 16th November, 1951.*

No 14.  
Order of the  
Supreme  
Court.  
16-11-51.  
—continued.

GRATIAEN, J.—

For the purpose of deciding whether the petitioners should be granted leave to appeal to the Privy Council it is necessary that we should ascertain the value as on 23rd August, 1951, of the land described in paragraph one of the Schedule of the document (P 1) dated 12th November, 1937, filed of record in the proceedings. Counsel are agreed that in the first instance it would be convenient that the record should be returned to the learned District Judge of Point Pedro with a request that he should hold an inquiry as to the value of this land at the relevant date. The parties will be entitled to lead evidence and to call witnesses at this inquiry. The learned District Judge should be good enough to submit a report to this Court on this issue together with a copy of the evidence led at the inquiry. When this report is furnished let this application be relisted before any Bench.

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

CHOKSY, A. J.—I agree.

Sgd. N. K. CHOKSY,  
*Acting Puisne Justice.*

No. 15.  
Inquiry and  
Report of the  
District  
Judge  
regarding  
the Value of  
the Land.  
18-12-51.

**No. 15.**

**Inquiry and Report of the District Judge Regarding the Value  
of the Land.**

20

*DC Point Pedro, No. 2,761 (429), (S.C. No. 174)*

**Inquiry : 14-12-51.**

MR. ADVOCATE SOORASANGARAM, instructed by Mr. RATNASINGHAM,  
Proctor for the plaintiff.

MR. K. K. BALASUBRAMANIAM, Proctor, for the 1st defendant.

Plaintiff and 2nd defendant present.  
Other defendants absent.

*Inquiry regarding the value of land described in paragraph 1 of Schedule of the  
document P 1 dated 12-11-37, as on 23-8-51, as directed by the Supreme Court  
by its Order made on 16-11-1951.*

Mr. Balasubramaniam, for the 1st defendant calls :

PONNAMBALAM THANGAVELAUTHAM, affirmed, age 50, Trader.  
Valvettutirai.

I am the plaintiff in this case. I gave evidence in this case on 21-7-49. I produced Deed No. 308 of 1946 marked P 4. I said on 21-7-49 that the consideration on P 4 was Rs. 10,000 for the 3 lands. I have also stated that the consideration on P 4 was paid in the presence of the Notary. I have also stated that I have paid Rs. 12,000 for the 3 lands. I might have said that the lands would have been sold for Rs. 20,000. I did not say that at the time Iyadurai purchased the lands, the lands would have been worth Rs. 20,000. Valvettiturai is a fairly populated place. There is no demand for lands there now. There are more people than land is available for them. No one is willing to buy lands in 10 Valvettiturai now. There is demand for lands but there is no money. There is not much money with the people now. The business of the people has dropped down. Since 1949 up to date, the land has depreciated in value by 50%.

No. 15.  
Inquiry and  
Report of the  
District  
Judge  
regarding  
the Value of  
the Land.  
18-12-51.

—continued.

I am not aware of the sale of a land called Vadakkuchathiranthai, in extent 2 lachams and 15 kulies in March, 1951, belonging to one Arulampalam. I know that Thevasigamany's estate was administered in D. C. Point Pedro, No. 389. In pursuance of a commission that land was sold by public auction. I do not know whether the land Vadakkuchathiranthai was sold for Rs. 24,500.

*Cross-examined by Mr. Soorasangaram, for the plaintiff.*

By Deed P 1 of 12-11-1937, Aiyathurai purchased the land which is the 20 subject matter of this action and 2 other lands for Rs. 2,000. Lands in Valvettiturai went up in price in 1944 and 1945. The increase in price was due to the large sums of money available. I purchased the 3 lands by Deed P 4 in June, 1946, for Rs. 10,000. The third land mentioned in P 4 is Elumullupattai. Land No. 1 in the schedule of P 1 is the same as the land No. 1 in the schedule of P 4. Land No. 2 in the schedule of P 2 is the same as the land No. 2 in schedule P 4. Land No. 3 in schedule of P 1 is the same as the land No. 3 in schedule of P 4. The third land in P 1 and P 4 is Elumullupattai which abuts on the Point Pedro-Kankesanturai road and is situated in Valvettiturai town. For the land No. 3 30 Elumullupattai in P 4, Rs. 8,000 was paid. When I bought the land Elumullupattai, I paid first Rs. 2,000 and then Rs. 10,000.—Prior to the execution of P 4, I paid Rs. 2,000 and when P 4 was executed I paid Rs. 10,000. In respect of Elumullupattai I paid Rs. 6,000. In respect of the first land "Muthuraikaddaiyady" and in respect of the second land "Pannaikkaddaiyady" I paid Rs. 4,000. In the plaint filed by me I valued land No. 2 Pannaikkaddaiyady at Rs. 900 and the defendants in their answer did not dispute the valuation placed by me. The land in dispute "Pannaikkaddaiyady" item 2 in P 4 does not abut the road but it abuts a lane. Land No. 1 Muthuraikaddaiyady abuts the road. Land No. 1 in P 1 "Muthuraikaddaiyady" is in extent 3½ lachams. There is no stone built house in it. The same description is contained in P 1 regarding the 40 land No. 1 Muthuraikaddaiyady as in P 4. The description in P 1 was followed in P 4. In land No. 1 of P 1 and P 4 it is mentioned that there is a stone built house, but there is no stone built house on it. There are 3 or 4 palmyrah trees on it. Elumullupattai the third land in P 1 is bounded on the east and south by road. The land in question is bounded on the east by Elumullupattai, the third land in P 1 and P 4, on the north by the property of Anthony and others; on

No. 15.  
Inquiry and  
Report of the  
District  
Judge  
regarding  
the Value of  
the Land.  
18-12-51.  
—continued.

the west by lane and on the south by the property of G. Sebastiampillai. Therefore, I say land No. 3 Elumullupattai is worth more than land No. 1 Muthuraikaddaiyady and which is also greater in extent. On 23-8-51 the price of the land "Elumullupattai" in extent 4 lachams and  $1\frac{1}{2}$  kulies was worth about Rs. 15,000 to Rs. 20,000.

*To Court :*

*Q.*—What is the value of the first land "Muthuraikaddaiyady" in extent  $3\frac{1}{8}$  lachams as on 23-8-51 ?

*A.*—The entire land is worth about Rs. 3,000.

*Re-examined :*

10

I have not gone into the land "Muthuraikaddaiyady" There is only a mud house in it. There is no stone-built house in it. I deny that there is a house partly built with stones and partly with sand. "Elumullupattai" and "Muthuraikaddaiyady" are adjoining lands. Muthuraikaddaiyady is about 60 to 70 yards from the road. I paid Rs. 10,000 as consideration for all the 3 lands on P 4.

Sgd. . . . .

*D.J*

14 12-51.

KANDIAH ARUNASALAM, affirmed, age 47. Commissioner of Sales. Valvetty.

20

I have been a Commissioner of Sales for the last 16 years for the Jaffna District. I live at Valvetty which is the adjoining village of Valvettiturai. I am familiar with the price of lands in Valvettiturai. I know the land "Muthuraikaddaiyady" in extent  $3\frac{1}{8}$  lachams. (The description of the land No. 1 in schedule of P 1 read out to witness. Witness says that he knows the land.) About 3 or 4 months back, a lacham of that land would have fetched not less than Rs. 3,000. I assess the value of the land No. 1 in P 1 at Rs. 9,000. I have been to this land. There is a house partly built with stone and partly built with mud. It is occupied. I value the house on this land at Rs. 3,000. I know that there was a sale in March, 1951, of the land Vadakkuchathiranthai belonging to one 30 K. Arulampalam. That land is about a calling distance from the land in dispute. The extent of that land is 2 lachams and 15 kulies. That land fetched Rs. 24,500.

*Cross-examined by Mr. Soorasangaram for the plaintiff.*

The land called Muthuraikaddaiyady is almost on the eastern limit of Valvetty. The land Vadukkuchathiranthai was sold for Rs. 24,500. The land Vadakkuchathiranthai is towards the Valvettiturai junction. That land is close to the Valvettiturai junction and the land in question is a calling distance from that land. There was an old house in the land. That land was purchased by

an overseer. I have had occasions to sell lands in Valvettiturai town. That was about 10 years ago. During the last 10 years, I have had no occasion to sell lands in Valvettiturai town. This morning I have been to the land " Muthurakkaddaiyady " for the first time. I was also shown the adjoining land east of Muthurakkaddaiyady. The land Muthurakkaddaiyady is bounded on the west by a lane. I did not notice palmyrah trees on this land which is in dispute. For lands at Valvettiturai, I would not consider plantations on the land to be of any value. The land Muthurakkaddaiyady with the house is worth Rs. 12,000. Lands in Valvettiturai went up in price shortly after Japan entered the last war. 10 During the war time, people of Valvettiturai did roaring business. They did smuggling. There was rivalry between people who had money to pay fabulous sums for lands on the roadside. I saw the land east of the land Muthurakkaddaiyady. That land is larger than the land in question. That land is bounded by the road on two of its sides. That is on the east and south. I would value a lacham of that land at Rs. 4,000.

No. 15.  
Inquiry and  
Report of the  
District  
Judge  
regarding  
the Value of  
the Land.  
18-12-51,  
-continued.

*Re-examined :*

The building in the land purchased by the overseer is in a dilapidated condition.

20

Sgd.

D.J.

14-12-51.

S. T. THURAISINGHAM, sworn, age 43. Proctor, S.C. and Notary Public. Gampaha.

I am the 2nd defendant in this case. I produce Deed No. 529 of 21-3-51 attested by Notary K. K. Balasubramaniam marked X1. I also produce a certified copy of the plaint in D. C. Point Pedro, No. 2,762 (same as D 25), marked X 2.

*Cross-examined by Mr. Soorasangaram for the plaintiff - Nil.*

30

Sgd.

D.J.

14-12-51.

Mr. Balasubramaniam closes the evidence on behalf of the 1st defendant, reading in evidence X 1 and X 2 and also draws the attention of the Court to the evidence of the plaintiff already had on record at the original trial a certified copy of same now marked X 3.

Mr. Advocate Soorasangaram for the plaintiff is not calling any evidence but relies on the evidence now had on record at this inquiry, and draws the attention of the Court to the plaint and answer in this case and also to P 1 and P 4. Inquiry concluded.

No. 15.  
Inquiry and  
Report of the  
District  
Judge  
regarding  
the Value of  
the Land.  
18-12-51.  
---continued.

A report will be forwarded to the Supreme Court in this matter in due course. Parties present are informed accordingly.

Sgd. . . . .  
*District Judge.*  
14th December, 1951.

**Supreme Court No. 174—Application for Conditional Leave  
to Appeal to the Privy Council.**

**District Court, Point Pedro, No. 2,761 (429)**

**REPORT**

As requested by the Supreme Court by its order made on 16th November, 10 1951, an inquiry was held on 14th December, 1951, in this Court for the purpose of ascertaining the value as on 23rd August, 1951, of the land described in paragraph one of the schedule of the document P 1 dated 12th November, 1937, filed of record with proceedings.

The land described in paragraph one of the schedule to the Deed No. 3 dated 12th November, 1937, attested by Notary S. Sivagnanam P 1 is called "Muthiraikkadaiyady", in extent  $12\frac{1}{2}$  lachams varagu culture and of that extent, an extent of  $3\frac{1}{8}$  lachams varagu culture was dealt with in P 1.

The land described in paragraph one of the schedule to Deed No. 308 dated 24th June, 1946, attested by Notary P. V. Senathirajah marked P 4 is 20 identically the same land referred to above.

From the evidence led at the inquiry it is apparent that the value of lands at Valvettiturai have now depreciated only slightly, since the purchasing power of the residents of Valvettiturai is somewhat limited now, than what it was during the period of the last war, about which time deed P 4 was executed.

The plaintiff Ponnambalam Thangavelautham who gave evidence at this inquiry fixes the value of the land under reference as on 23-8-51 at Rs. 3,000. In September, 1946, he himself has fixed the value of this same land at Rs. 4,500 as seen in paragraph 11 of the plaint in District Court, Point Pedro, 2,762/P-X 2.

The Commissioner of sales Kandiah Arunasalam a witness called by the 30 1st defendant assessed the value of the land under reference at Rs. 9,000.

To place some evidence about the price of lands at Valvettiturai at the present time, the 1st defendant put in evidence Deed No. 529 of 21-3-1951 attested by Notary K. K. Balasubramaniam marked X 1, to show that an extent of 2 lachams varagu culture and 15 kulies of land situated at Valvettiturai and close to the land under reference, was sold for Rs. 24,500 in March, 1951.

On the evidence now available at this inquiry it will be seen that the price of land at Valvettiturai is still comparatively on the high side and the value of the land described in paragraph one of the schedule of the Deed No. 3 dated 12th November, 1937—marked P 1 : as on 23rd August, 1951, can reasonably be fixed at Rs. 7,500.

A copy of the evidence led at this inquiry is annexed to this report.

District Court,  
Point Pedro, 18th December, 1951.

Sgd. . . . .  
*District Judge*

Mo. 15.  
Inquiry and  
Report of the  
District  
Judge  
regarding  
the Value of  
the Land.  
18-12-51.  
—continued.

10

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**No. 16.**

**Judgment of the Supreme Court Granting Conditional Leave to Appeal to the Privy Council.**

*Application for Conditional Leave to Appeal to the Privy Council in  
S.C. 174.D.C., Point Pedro No. 2761 (429).*

*Present : GRATIAEN, J. & PULLE, J.*

*Argued & Decided on : 1st February, 1952.*

E. B. WICKREMANAYAKE, K.C. with H. W. JAYEWARDENE and C. CHELLAPAH, for the 1st Defendant-Petitioner.

20 H. W. TAMBLAH with E. R. S. R. COOMARASWAMY for the Plaintiff-Respondent.

H. WANIGATUNGE with D. R. P. GOONETILLEKE, for the 8th and 9th Defendants-Respondents.

GRATIAEN, J.:

In view of the report of the learned District Judge which was called for by this Court, learned Counsel for the respondents now concedes that the matter raised in the appeal indirectly affects property of the value of more than Rs. 5,000. We therefore allow conditional leave to appeal to the Privy Council on the usual conditions. As the respondents in the first instance objected to this application being allowed, we order the respondents to pay to the petitioner Rs. 105 as costs 30 of this application.

Sgd. E. F. N. GRATIAEN,  
*Puisne Justice.*  
,, M. F. S. PULLE,  
*Puisne Justice.*

No. 16.  
Judgment of  
the Supreme  
Court  
granting  
Conditional  
Leave to  
Appeal to the  
Privy  
Council.  
1-2-52.

No. 17.  
Decree  
granting  
Conditional  
Leave to  
Appeal to the  
Privy  
Council,  
1-2-52.

## No. 17.

**Decree Granting Conditional Leave to Appeal to the Privy Council.**

ELIZABETH THE SECOND, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS,  
QUEEN, DEFENDER OF THE FAITH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

SWAKINAPPILLAI SAVERIMUTTU of Valvettiturai... *1st Defendant-Appellant.*

Vs.

- (1) PONNAMBALAM THANGAVELAUTHAM of Val- 10  
vettiturai .. . . . *Plaintiff-Respondent*
- (2) SAVERIMUTTU IGNATIUS THURALSINGHAM,
- (3) THOMMAIPILLAI SOOSAIPILLAI and
- (4) VIRISITHAMMA (wife),
- (5) SWAMINATHAR MARUSILIN and
- (6) MARIAMUTTU (wife),
- (7) SAVERIMUTTU JOSEPH SELVARATNAM,
- (8) ARUNASALAM SOMASUNDERAM and
- (9) MANKAYATKARASI (wife),
- (10) RASAMMAH, widow of Sivaguru Ramasamy, all of Val- 20  
vettiturai .. . . . *Defendants-Respondents.*

Action No. 2,761 (S.C. 174-L Final) District Court of Point Pedro.

In the matter of an application dated 23rd August, 1951,  
for Conditional Leave to Appeal to Her Majesty the  
Queen in Council by the 1st defendant-appellant above-  
named against the decree dated 26th July, 1951.

This matter coming on for hearing and determination on the 1st day of  
February, 1952, before the Hon. Mr. E. F. N. Gratiaen, K.C., Puisne Justice and  
the Hon. Mr. M. F. S. Pulle, K.C., Puisne Justice of this Court, in the presence of  
Counsel for the 1st defendant-petitioner and the plaintiff-respondent and the 3rd  
8th and 9th defendants-respondents.

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





No. 18.  
Application  
for Final  
Leave to  
Appeal to the  
Privy  
Council.  
6-3-52.  
—continued.

2. SAVERIMUTTU IGNATIUS THURAISINGHAM,
3. THOMMAIPILLAI SOOSAIPILLAI and
4. VIRISITHAMMA (wife),
5. SWAMINATHAR MARUSILIN and
6. MARIAMUTTU (wife),
7. SAVERIMUTTU JOSEPH SELVARATNAM.
8. ARUNASALAM SOMASUNDERAM and
9. MANKAYATKARASI (wife),
10. RASAMAH, widow of Sivaguru Ramasamy, all of Val-  
vettiturai . . . . . *Defendants-Respondents.* 10

To

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

On this 6th day of March, 1952.

The humble petition of the 1st defendant-respondent applicant above-named appearing by his Proctor M. A. Raheeman, sheweth as follows :

1. That the applicant on the 1st day of February, 1952, obtained conditional leave from this Honourable Court to appeal to His Majesty the King in Council against the judgment of this Court pronounced on the 26th day of July, 1951. 20
2. That the applicant has in compliance with the conditions on which such leave was granted deposited a sum of Rs. 3,000 (Rupees Three Thousand) with the Registrar of this Court being security for costs, on the 29th day of February, 1952, and mortgaged and hypothecated the said sum of Rs. 3,000 (Rupees Three Thousand) with the said Registrar on the 29th day of February, 1952. The applicant has further deposited with the Registrar of this Court a sum of Rs. 300 (Rupees Three Hundred) in respect of the amounts and fees mentioned in section 4 (2) (b) and (c) of the Privy Council Ordinance on the 29th day of February, 1952. 30

Wherefore the petitioner-applicant prays that he be granted Final Leave to appeal against the said judgment of this Court dated 26th July, 1951, to Her Majesty the Queen in Council, for costs and for such other and further relief as to Your Lordships' Court shall seem meet.

M. A. RAHEEMAN,  
*Proctor for Petitioner-Applicant.*

## No. 19.

**Decree Granting Final Leave to Appeal to the Privy Council.**

ELIZABETH THE SECOND, QUEEN OF CEYLON.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

SWAKINAPPILLAI SAVERIMUTTU of Valvettiturai .. *1st Defendant-Appellant.*

Vs.

1. PONNAMBALAM THANGAVELAUTHAM of Valvettiturai ... .. *Plaintiff-Respondent.*
  - 10 2. SAVERIMUTTU IGNATIUS THURAISINGHAM,
  3. TOMMAIPILLAI SOOSAIPILLAI and
  4. VIRISITHAMMA (wife),
  5. SWAMINATHAR MARUSILIN and
  6. MARIAMUTTU (wife),
  7. SAVERIMUTTU JOSEPH SELVARATNAM,
  8. ARUNASALAM SOMASUNDERAM and
  9. MANKAYATKARASI (wife),
  10. RASAMMAH, widow of Sivaguru Ramasamy, all of Valvettiturai ... .. *Defendants-Respondents.*
- 20 Action No. 2,761 (S.C. 174-L Final)                      District Court of Point Pedro.

In the matter of an application by the 1st defendant-appellant abovenamed dated 6th March, 1952, for final leave to appeal to Her Majesty the Queen in Council against the decree of this Court dated 26th July, 1951.

This matter coming on for hearing and determination on the 25th day of March, 1952, before the Hon. Mr. C. Nagalingam, q.c., Acting Chief Justice and the Hon. Mr. E. H. T. Gunasekera, Puisne Justice of this Court, in the presence of Counsel for the applicant.

The applicant having complied with the conditions imposed on him by the  
30 order of this Court dated 1st February, 1952, granting conditional leave to appeal.

It is considered and adjudged that the applicant's application for final leave to appeal to Her Majesty the Queen in Council be and the same is hereby allowed.

Witness the Hon. Mr. Chellappah Nagalingam, q.c., Acting Chief Justice, at Colombo, the 28th day of March, in the year of our Lord One thousand Nine hundred and Fifty-two and of Our Reign the First.

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

No. 19.  
Decree granting Final Leave to Appeal to the Privy Council  
25-3-52.

Exhibits

P. 7.  
Mortgage  
Bond No.  
2063.  
24-2-22.

**PART II.****EXHIBITS****P 7****Mortgage Bond No. 2,063.**

P 7.

Translation.  
Mortgage : Rs. 1,650  
Lands 5.

Duplicate bears two stamps of the  
value of Rs. 22.

No. 2,063.

Know all men by these presents that we Sivaikainapillai Savarimuttu <sup>10</sup> and wife Annammah, daughter of Innasy have executed and granted mortgage debt bond to Kathiripillai Karthigesar and wife Sivakolunthu of Valveti, to wit :—

We do hereby declare that a sum of Rs. 750 and interest Rs. 180 is due to the 1st named by a promissory note dated 23rd February, 1919 and that a sum of Rs. 250 and Rs. 24.50 being interest is due to the 2nd named by a promissory note dated 28th April, 1921, both aggregating to Rupees One thousand Two hundred and Fifty-four and Cents Fifty and a sum of Rs. 445, we have borrowed now all aggregating to Rs. 1,650. Out of the said sum we do hereby promise to pay a sum of Rs. 1,150 with interest thereon at the rate of 10 per cent. per annum <sup>20</sup> if the interest is paid annually and in default at the rate of 12 per cent. per annum and that said sum of Rs. 1,650 we do hereby promise to pay to the 1st named during her life time and if after his death to the 2nd named jointly and severally and for better securing the payment of the said sum we do hereby mortgage and hypothecate the following property by way of primary mortgage :—

Land belonging to the 2nd named of us under and by virtue of a dowry deed in her favour dated 25th April, 1907, and attested by Viravanathar Sinnathamby, Notary Public, under No. 12,732 and by possession.

(1) Land situated at Valvettiturai, in the Parish of Udupiddy, in the Division of Vadamardchy West, in the District of Jaffna, Northern Province, <sup>30</sup> called Muthiraikaddaiady, in extent  $12\frac{1}{2}$  lachams varagu culture. Of this the northern half share out of  $\frac{1}{4}$ th share being  $3\frac{1}{8}$  lachams varagu culture ; is bounded on the east by the property belonging to us, north by the property of Anthonimuttu, wife of Sepamalai and others, west by lane, and south by the property of Gnanapiragasam, Sebastampillai and others. The whole of the ground, palmyrahs and coconut trees contained within these boundaries.

(2) Land situated at ditto, called Pannaikaddaiady, in extent  $11\frac{1}{2}$  lachams varagu culture, ditto in extent  $3\frac{5}{8}$  lachams varagu culture, but according to

survey 11 lachams varagu culture and  $1\frac{1}{3}\frac{6}{2}$  kulies. Of this 1 lacham varagu culture and  $15\frac{8}{3}\frac{2}{2}$  kulies and  $19\frac{2}{3}\frac{0}{2}$  kulies forming a total extent of 2 lachams varagu culture and  $13\frac{2}{3}\frac{8}{2}$  kulies ; is bounded on the east by Polikandykurichchy, north by lane, west by the property of Sellappah Muttukumar, south by the property of Kathiripillai Sivapragasam. Of the ground, palmyrahs, vadalies, margosa trees and well an undivided  $\frac{1}{3}$  share.

Exhibits  
P 7.  
Mortgage  
Bond No.  
2063.  
24-2-22.  
—continued.

Land belonging to the 2nd named of us under and by virtue of a transfer deed dated 10th October, 1917, and attested by V Sabaratnam, Notary Public, under No. 3,081 and by virtue of a transfer deed in our favour dated 19th November, 1919, and attested by Sivapiragasam, Notary Public under No. 1,612 and by possession.

(3) Land situated at ditto, called Elumullupattai, in extent  $24\frac{1}{2}$  lachams varagu culture. Of this 4 lachams varagu culture and  $1\frac{1}{2}$  kulies on the north ; is bounded on the east and south by road, north by the property of Ponnammah, wife of Manicavasagam and others, and south by the property of the 2nd named of us and others. The whole of the ground and palmyrahs contained within these boundaries.

In witness whereof we set out hands on the 21st day of February, 1922, in Valveti.

20 Witnesses :

K. THAMBIAH  
P. SIVAGURU

Sgd. K. SAVARIMUTTU  
This is the Mark of ANNAMMAH

Sgd. KATHI SIVAPRAGASAM,  
*Notary Public.*

I, Kathiravetpillai Sivapragasam, Notary Public of Jaffna, do hereby certify and attest that the foregoing instrument was read over and explained by me to the said Suvaikkainappillai Savarimuttu and wife Annammah, daughter of Innasimuttu, in the presence of Kandavanam Thambiah of Valveti and Ponniah Sivaguru of the same place and that the said grantors and witnesses have in my presence and in the presence of one another all being present at the same time set their hands on the 21st day of February, 1922, and that the duplicate of this instrument bears stamps to the value of Rs. 22 and the original one stamp of the value of Re. 1 and that the sum of Rs. 445.50 mentioned to have paid here was paid in my presence.

Sgd. KATHI SIVAPRAGASAM,  
*Notary Public.*

24th February, 1922.

(Seal)

Exhibits

D 4.  
Mortgage  
Bond No.  
2063.  
24.2.22.

D 4.

**Mortgage Bond No 2,063.**

Translation.

Duplicate bears 2 stamps to  
the value of Rs. 22.

Mortgage : Rs. 1,650.

Lands 5.

Application No. 1045/27-6-46.

A. 85/113, E. 58/356, 35/99.

No. 2,063.

Know all men by these presents that we Swakkenapillai Savarimuttu and wife Annammah, daughter of Innasimuttu of Valvettiturai, do hereby 10 execute and grant mortgage debt bond to Kathirippillai Karthigesar and wife Sivakolundu of Valveddy, to wit :—

We do hereby declare that we have to pay to the first named of them the principal sum of Rs. 750 and interest Rs. 180 according to the promissory note granted by us on the 22nd day of February, 1919, and a further sum of Rs. 250 as principal and Rs. 24.50 as interest to the 2nd named of them according to the promissory note granted by us on the 28th day of April, 1921. Now we have received cash Rs. 445.50 as loan. The total amount we have to pay is Rs. 1,650. This Rupees One thousand Six hundred and Fifty, we do hereby agree to pay unto them on demand with interest thereon at the rate of 12 per cent. per annum 20 but if interest paid annually at the rate of 10 per cent. per annum. That we shall pay the said principal Rs. 1,650 and interest on demand unto the 1st named of them during his life time and after his death to the 2nd named of them, jointly and severally and for better securing the payment of the said debt we do hereby specially hypothecate the property described in the schedule hereto as a primary mortgage.

Lands belonging to us by possession under and by virtue of dowry Deed No. 12,732 dated 25th April, 1907, and attested by Vairavanathar Sinnathamby, Notary, in favour of the 2nd named of us.

In the Parish of Udupiddy in Vadamardchy West Division, in the 30  
District of Jaffna, Northern Province.

1. Land situated at Valvettiturai called Muhtiraikaddaiyadi, in extent  $12\frac{1}{2}$  lachams varagu culture. Of this the northern half share out of the  $\frac{1}{4}$ th share in extent  $3\frac{1}{8}$  lachams varagu culture ; is bounded on the east by the property belonging to us, north by the property of Anthoniccam, wife of Sepamalai and others, west by lane, and south by the property of Gnanapragasam Sebastiañpillai and others. The whole of the ground, palmyrahs and coconut trees contained within these boundaries.

2. Land situated at ditto called Pannaikaddaiady, in extent  $11\frac{1}{2}$  lachams varagu culture, ditto  $3\frac{5}{8}$  lachams varagu culture. This according to measurement 40

in extent 11 lachams varagu culture and  $1\frac{1}{2}\frac{6}{8}$  kulies. Of this an extent of 1 lacham varagu culture and  $15\frac{8}{2}$  kulies and also an extent of  $16\frac{2}{2}\frac{0}{2}$  kulies together from a total extent of 2 lachams varagu culture and  $13\frac{2}{2}\frac{8}{2}$  kulies; is bounded on the east by the village limit of Polikandy, north by lane, west by the property of Chellappah Muttukumaru, and south by the property of Kathiripillai Shiva-pragasam. Of the whole of the ground, palmyrahs, vadalies, margosa trees, and well contained within these boundaries an undivided  $\frac{1}{3}$  share.

Exhibits

D 4.

Mortgage  
Bond No.  
2063.

24-2-22.

—continued.

3. Land belonging to us by possession under and by virtue of transfer Deed No. 3,081 dated 10th October, 1917, and attested by V Sabaratnam Notary, in favour of the 2nd named of us and also under and by virtue of transfer Deed No. 1,612 dated 19th November, 1919, and attested by Sivapiragasam, Notary, in our favour.

3. Land situated at ditto called Elumullupattai, in extent  $24\frac{1}{2}$  lachams varagu culture. Of this an extent of 4 lachams varagu culture and  $1\frac{1}{2}$  kulies on the north; is bounded on the east and south by road, north by the property of Ponnammah, wife of Maniccavasagam and others, and south by the property of the 2nd named of us and others. The whole of the ground and palmyrahs contained within these boundaries.

Lands belonging to us by possession under and by virtue of donation Deed No. 5,983 dated 24th March, 1915, and attested by Abraham Chinniahpillai, Notary in favour of the 1st named of us.

In the Parish of Pandaitharippu, in the Division of Valikamam West, in Jaffna District, Northern Province.

4. Land situated at Mathakal called Mavilankaiyadi, in extent 11 lachams varagu culture; is bounded on the east by the property of Santhiya Pathiru and shareholders, north by the property belonging to Arasollai Pillaiyar Koil, west by the property of Sinnaccuddy, widow of Veeragathy, and south by the property of Santhiya Soosaippillai. Of the whole of the ground, palmyrahs and vadalies contained within these boundaries an undivided half share (of this excluding the life interest belonging to Murugar Santhiyapillai.)

Out of the aforesaid deed the 2nd land's share was an undivided share and the 3rd land's share was a divided one and both these shares were possessed as one lot so far.

5. Land situated at ditto called Kiyavattai *alias* Yavattai in extent  $21\frac{5}{8}$  lachams varagu culture. Of this an extent of 4 lachams varagu culture and 3 kulies; is bounded on the east by the property of Philippathai, wife of Swampillai, north by the property of Mariyachchai, daughter of Savesthy and shareholders, west by the property of Anthoniccam, wife of Soosaipillai, and south by lane and by the property of Kathirgamu Ramu. Of the whole an undivided  $\frac{1}{12}$  share together with share of the well situated in the western land right of way and water-course. (Of this excluding the life interest belonging to Murugar Saanthiappillai).

Exhibits  
 D 4.  
 Mortgage  
 Bond No.  
 2063.  
 24-2-22  
 —Continued.

We declare that we mortgage the lands described above and now we have borrowed and received Rs. 445.50 for the purpose of paying the amount due from us under the writ issued in case No. 15,182 of the District Court of Jaffna, and tender the said deeds together with this.

In witness whereof we set our signatures to this instrument at Valvettiturai on the 21st day of February, 1922.

Sgd. S. SAVARIMUTTU  
 Mark of ANNAMMAH

Witnesses :

K. THAMBIAH  
 P. SIVAGURU

10

Sgd. KATHY SHIVAPRAGASAM,  
*Notary Public.*

I, Kathiravetpillai Shivapragasam, Notary Public, within the judicial divisions of Jaffna and Point Pedro Courts, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the said Suvakkeenpillai Savarimuttu and wife, Annammah, and set her mark in the presence of Kandavanam Thambiah of Valveddy and Ponniah Sivaguru of the same place the subscribing witnesses hereto, that the said Suvakkeenpillai Saverimuttu and wife, Annammah, daughter of Innasimuttu and the witnesses 20 set their signatures to this in my presence and in the presence of one another all being present at the same time and place at Valveddy, on the 21st day of February, 1922, that I know all of them, that the original bears one stamp to the value of Re. 1 and that the duplicate bears 2 stamps to the value of Rs. 22 and that the said sum of Rs. 445.50 was passed in my presence.

× × × ×  
 × × × × × × × × × ×

24th February, 1922.

Sgd. KATHY. SHIVAPRAGASAM  
 Sgd. K. SHIVAPRAGASAM,  
*Notary Public.*

(Seal)

30

I, R. K. Arulampalam, Registrar of Lands of Jaffna, do hereby certify that the foregoing is a true copy of a deed of mortgage made from the duplicate filed of record in this office and the same is granted on the application of Mr. S. Savarimuttu of Valvettiturai.

Sgd. K. K. ARULAMPALAM.



## Deed of Donation No. 8,846.

Exhibits

P S.  
Deed of  
Donation  
No. 8846.  
10-1-28.

Translation.

Instrument : Donation.

Lands : 55.

Worth : Rs. 15,000.

No. 8,846.

Know all men by these presents that we, Kathiripillai Karthigesu and  
10 wife, Sivakolunthu of Valvetti, for and in consideration of the natural love and  
affection which we bear towards our son, Karthigesu Aiyadurai of the same place,  
do hereby give in donation set over and convey properties

## PROPERTIES

A sum of Rs. 2,345 being the balance interest and principal due on a  
mortgage bond granted by Sovaikeenappillai Savarimuttu and wife, Annammah,  
daughter of Innasimuttu of Valvettiturai for a sum of Rs. 1,650 with interest  
thereon at the rate of 10 per cent. per annum if paid annually and in default at  
the rate of 12 per cent. per annum.

## MORTGAGED PROPERTIES.

20 Land situated at Valvettiturai, in the Parish of Udupidy, in the Division  
of Vadamarachchy, in the District of Jaffna, Northern Province, called Muthu-  
raikaddaiady, in extent  $12\frac{1}{2}$  lachams varagu culture. Of this  $3\frac{1}{8}$  lachams varagu  
culture being the northern  $\frac{1}{2}$  share out of  $\frac{1}{4}$  share ; is bounded on the east by the  
property of Suvaikeenapillai Savarimuttu and wife, north by the property of  
Anthonikkam, wife of Sebamalai and others, west by lane, and south by the  
property of Gnanapragasam Sebasthiampillai and others. The whole of the  
ground, palmyrahs, cocoanut trees, stone built house, kitchen, portico and others.

2. Land situated at ditto called Panaikaddaiady, in extent  $11\frac{1}{2}$  lachams  
varagu culture, ditto  $3\frac{1}{8}$  lachams varagu culture according to survey 11 lachams  
30 varagu culture and  $1\frac{1}{2}\frac{1}{2}$  kulies. Of this 1 lacham varagu culture and  $15\frac{8}{32}$  kulies  
and  $16\frac{2}{3}\frac{2}{3}$  kulies forming a total extent of 2 lachams varagu culture and  $13\frac{2}{3}\frac{8}{32}$   
kulies ; is bounded on the east by the property of Polikandy Kurichchy, north  
by lane, west by the property of Sellappah Muttukumar, and south by the  
property of Kathirippillai Sivapiragasam. Of the ground, palmyrahs, vadaiies  
and well, an undivided  $\frac{1}{3}$  share.

3. Land situated at ditto called Elumullupattai, in extent  $24\frac{1}{2}$  lachams  
varagu culture. Of this 4 lachams varagu culture and  $1\frac{1}{2}$  kulies on the north ;  
is bounded on the east and south by road, north by the property of Suvaikeena-

Exhibits  
 P 8.  
 Deed of  
 Donation  
 No. 8846.  
 10-1-28.  
 —continued.

pillai Savarimuttu. The whole of the ground and palmyrahs contained within these boundaries.

In witness whereof we set our hands in the presence of the Notary Vairavanathar Sabaratnam, and in the presence of the Notary hereinbelow signed on the 9th day of January, 1928, in our house.

Sgd. K. KARTHIGESU,  
 „ Mark of SIVAKOLUNTHU,  
 „ AIYADURAI SIVAPRAGASAM,

Witnesses :

Sgd. Illegible  
 „ Do.

10

Sgd. V. SABARATNAM,  
*Notary Public.*

I, Vairavanathar Sabaratnam, Notary Public of Jaffna, do hereby certify and attest that the foregoing instrument was read over and explained by me to the said Kathirippillai Karthigesu and wife, Sivakolunthu, in the presence of .....

10th January, 1928.

Sgd. V. SABARATNAM,  
*Notary Public.*

(Seal)

20

This is a true copy.

26th November, 1946.

Sgd. V. SABARATNAM,  
*Notary Public.*

D 30.  
 Deed of  
 Donation  
 No. 8846.  
 10-1-28.

**D 30.**

**Deed of Donation No. 8,846.**

Translation.

Instrument : Donation.  
 Lands : 55.  
 Worth : Rs. 15,000.

No. 8,846.

30

Know all men by these presents that we, Kathiripillai Karthigesu and wife, Sivakolunthu of Valveddy, for and in consideration of the natural love and affection we have towards our son, Karthigesu Iyadurai of the same place do hereby give, grant, and convey by way of donation the property described herein below unto the said Iyadurai :

## PROPERTY.

Exhibits

We declare that the right, title and interest we have in mortgage bond No. 2,063 dated 21st February, 1922, and attested by K. Sivapragasam, Notary, for Rs. 1,550 with interest thereon at the rate of 10 per cent. per annum if paid annually in default at the rate of 12 per cent. per annum executed by Swakkenu-pillai Savarimuttu and wife Annammah, daughter of Innasimuttu, both of Valvettiturai in our favour deducting the sum of Rs. 460 paid out of the interest, the balance sum of Rs. 2,345 shall devolve on him.

D 30.  
Deed of  
Donation  
No. 8846.  
10-1-28  
—Continued.

## THE MORTGAGED PROPERTY.

10 In the Parish of Udipiddy in Vadamaraichy Division,  
Jaffna District, Northern Province.

1. Land situated at Valvettiturai called Muthuraikkaddaiyadi, in extent  $12\frac{1}{2}$  lachams varagu culture. Of this out of the  $\frac{1}{4}$  share, the northern half share in extent  $3\frac{1}{8}$  lachams varagu culture; is bounded on the east by the property of Swakkenpillai Savarimuttu and his wife, north by the property of Antho-nikkam, wife of Sepamalai and others, west by lane, and south by the property of Gnanapiragasam Sebastampillai and others. The whole of the ground, palmyrahs, coconut trees, stone built house, kitchen and mango tree contained within these boundaries.

20 2. Land situated at ditto called Pannaikkaddaiyadi, in extent  $11\frac{1}{2}$  lachams varagu culture, ditto  $3\frac{3}{8}$  lachams varagu culture. But according to survey in extent 11 lachams varagu culture and  $1\frac{1}{3}\frac{6}{2}$  kulies. Of this an extent of 1 lacham varagu culture and  $15\frac{8}{3}\frac{2}{2}$  kulies and an extent of  $16\frac{2}{3}\frac{0}{2}$  kulies together form a total extent of 2 lachams varagu culture and  $13\frac{2}{3}\frac{2}{2}$  kulies; is bounded on the east by the village limit of Polikandy, north by lane, west by the property of Chellappah Muthukumar, and south by the property of Kathirippillai Sivapragasam. Of the whole of the ground, palmyrahs, vadaiies, margosa tree and well contained within these boundaries an undivided  $\frac{1}{3}$  share.

30 3. Land situated at ditto called Ellumullupattai, in extent 4 lachams varagu culture and  $1\frac{1}{2}$  kulies; is bounded on the east and south by road, north by the property of Ponnammah, wife of Manicavasagam and others, and west by the property of Annammah, daughter of Innasimuttu and wife of Swakeen-pillai Savarimuttu and others. The whole of the ground and palmyrahs contained within these boundaries.

In the Parish of Pandaitharippu, in the Valikamam West Division,  
in Jaffna District, Northern Province.

40 4. Land situated at Mathakal called Mavilankaiyadi, in extent 11 lachams varagu culture; is bounded on the east by the property of Santhia Pethiru and shareholders, north by the property belonging to Arasollai Pillaiyar Koil, west by the property of Sinnacuddy, widow of Veeragathy, and south by

Exhibits  
D 30.  
Deed of  
Donation  
No. 8846.  
10-1-28.  
—continued.

the property of Santhiar Soosaipillai. Of the whole of the ground, palmyrahs and vadalies contained within these boundaries an undivided half share. (Of this excluding the life interest belonging to Murugesar Santhia).

5. Land situated at ditto called Kiyavattai *alias* Yanaththai, in extent  $21\frac{1}{2}$  lachams varagu culture. Of this an extent of 4 lachams varagu culture and 3 kulies; is bounded on the east by the property of Philippaththai, wife of Swampillai, north by the property of Mariyachchy, daughter of Saivaithy and shareholders, by lane, and by the property of Marippillai, wife Fernando and shareholders, west by the property of Anthonikkam, wife of Soosaippillai, and south by lane, and by the property of Kathiramu Ramu. Of the whole of the 10 ground and undivided  $\frac{5}{12}$ th share, together with share of the well appurtenant to this situated on the west and the right of way and water-course. (Of this excluding the life interest belonging to Murugesar Santhia).

II.—XIX.—These particulars are not written.

Total amount Rs. 15,000 we give as donation.

We tender together with this the said mortgage debt bonds, title deeds and the receipts.

I the said Karthigesar Iyadurai, the grantee of this donation do hereby accept this donation with gratitude.

In witness whereof we set our signatures to this and to two others of the 20 same tenor in the presence of Vairavanathar Sabaratnam, Notary, and in the presence of the subscribing witnesses hereto in the house of the grantors of this donation on the 19th day of January, 1928.

Sgd. KATHY KARTHIGESAR,  
,, SIVAKOLUNDU,  
,, K. AIYADURAI.

Witnesses :

K. SUBRAMANIAM,  
S. SELLAM.

Sgd. V. SABARATNAM, 30  
Notary Public...

I, Vairavanathir Sabaratnam, Notary Public of Vadammaradchy, Jaffna, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the said Karthigesar Kathiripillai and wife Sivakolundu, who set her mark and Karthigesar Aiyadurai who set his signature in English in the presence of Karthigesar Subramaniam of Valveddy and Sabapathy Sellam of the same place the subscribing witnesses hereto, that I know the said grantors, grantee and the witnesses. That the said grantors, grantee of this

donation and the witnesses set their signatures to this in my presence and in the presence of one another all being present at the same time and place in the house of the grantors of this donation on the 9th day of January, 1928, that the duplicate bears 14 stamps to the value of Rs. 293, that the original bears one stamp to the value of Rupee One and that the said stamps were supplied by me. That before this instrument was read over and explained by me in the duplicate 1st line in page 2, line 26 the word . . . was interpolated.

Exhibits  
D 30.  
Deed of  
Donation  
No. 8846.  
10-1-28.  
—continued.

Date of Attestation : 10th January, 1928.

10

Sgd. V SUBRAMANIAM,  
*Notary Public.*

(Seal)

I certify that the foregoing is a true copy of the extract taken by me from my protocol at the request of Sivakkeepillai Savarimuttu of Valvettiturai and that it bears a stamp to the value of Rupee One.

The 4th day of October, 1947.

Sgd. V SABARATNAM,  
*Notary Public.*

(Seal)

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**D 31.**

20

**Deed of Transfer No. 9,110.**

D 31.  
Deed of  
Transfer  
No. 9110.  
16-7-28.

Translation.

Instrument : Transfer.  
Lands : 2.  
Consideration : Rs. 2,000.

No. 9,110.

Know all men by these presents that I, Sidamparapillai Thirugnana-sambanthamoorthy of Valvettiturai, for and in consideration of the sum of Rs. 2,000 do hereby sell, transfer, set over and assure unto Arumugam Velupillai, presently of Peniverangkodai, the following property :—

30 Lands held and possessed as per transfer deed in my favour dated 6th June, 1929, and attested by this Notary under No. 9,050.

I deliver herewith the said deed and Deed No. 7,411.

I have received from his wife Rasaratnam, wife of Velupillai of Valvettiturai, who stated that it is money belonging to the said Arumugam Velupillai,

Exhibits  
 D 31.  
 Deed of  
 Transfer  
 No. 9110.  
 16-7-28.  
 —continued.

That as the land described in the said Deed No. 9,050 and described as the 2nd land hereinbelow had been partitioned in case No. 18,832 of the District Court of Jaffna, the cost of partition if any that may become payable shall be recovered from Kulandaivelu Thamotharampillai, wife Sellathangam and Thangamuththa, who sold to me in terms of the said transfer deed in my favour.

In witness whereof I do hereunto and to two others of the same tenor and date as these presents set my hand in the presence of the Notary Vairavanathar Sabaratnam, and in the presence of the subscribing witnesses thereto at the office of the said Notary at Valvettiturai, on the 16th day of July, 1928.

SCHEDULE OF PROPERTY.

10

In the Parish of Udupiddy, in the Division of Vadamaradchy,  
 in Jaffna District of the Northern Province.

1. Land situated at Valvettiturai called Kallundanmanal, in extent veedul— $7\frac{3}{8}$  lachams varagu culture. Of these the northern half share out of the southern half share of the  $\frac{1}{3}\frac{7}{8}$  share on the west is according to possession in extent 1 lacham varagu culture and  $\frac{3}{4}$  kuly; and bounded on the east by the property of Annakkandu, daughter of Ramasamy and others, north by the following 2 lands and other property, west by lane, and south by the property of Nagaratnam, wife of Athimoolam. The whole of the ground, coconut trees, mango tree and stone built house contained within these boundaries. 20

2. Land situated at ditto, called Kallundanmanal, in extent veedu 1 ditto  $7\frac{3}{8}$  lachams varagu culture. Of these the northern half share out of the  $\frac{1}{3}\frac{7}{8}$  share on the west in extent 2 lachams varagu culture and  $1\frac{3}{8}\frac{3}{8}$  kulies. Of this  $12\frac{1}{8}$  kulies on the west; is bounded on the east by the property of Murugupillai Sanmugaththinam, north by road, west by lane, and south by the aforesaid 1st land. The whole of the coconut trees, mango tree, madams contained within these boundaries together with the portion of the well contained within these boundaries.

Sgd. S. THIRUGNANASAMPATTHAMOORTHY

Witnesses :

30

V. NAVARATNAM.  
 S. MANIKKAM.

Sgd. V. SABARATNAM,  
 Notary Public.

I, Vairavanathar Sabaratnam, Notary Public of Vadamaradchy, in Jaffna, do hereby certify and attest that the foregoing instrument having been read over and explained by me to the said Sidamparapillai Thirugnanasambanthamoorthy, who signed illegibly in the presence of Velupillai Navaratnam of Valvettiturai and Sinniah Manikkam at the same place the subscribing witnesses thereto that I know the executant and the witnesses, that the said executant and the wit- 40

nesses set their signatures in my presence and in the presence of one another at my office at Valvettiturai, on the 16th day of July, 1928, that the said executant acknowledged receipt of the full consideration mentioned in the instrument that the duplicate bears 3 stamps of the value of Rs. 32 and the original one stamp of Re. 1, which said stamps were supplied by me and that in the duplicate and explained.

Exhibits  
D 31.  
Deed of  
Transfer  
No. 9110.  
16-7-28.  
—continued.

Date of Attestation : 16th July, 1928.

Sgd. V SABARATNAM,  
Notary Public.

10

(Seal)

This is a true copy.

19th December, 1928.

Sgd. V SABARATNAM,  
Notary Public.

(Seal)

D 6.

Plaint in D.C., Jaffna, Case No. 265.

D 6.  
Plaint in  
D. C. Jaffna  
Case No. 265.  
Feby. 1931.

D 6.

IN THE DISTRICT COURT OF JAFFNA.

20 KARTHIKESAR AIYATHURAI of Valveddy, presently of  
Copay South . . . . . Plaintiff.

No. 265. Vs.

- 1. SWAKKEENUPILLAI SAVERIMUTTU, and his wife
- 2. PONNAMMAH, daughter of Innasinuttu, both of Valvettiturai . . . . . Defendants.

This day of February, 1931.

The plaintiff of the abovenamed plaintiff appearing by Messrs. S. Katiresu, A. Ambalavanan and C. Subramanian, his Proctors, who are carrying on business in partnership under the name, firm and style of Sivaprakasam & Katiresu, states as follows :

- 30 1. That by a writing obligatory dated the 21st day of February, 1922, and attested by K. Sivaprakasam, Notary Public, under No. 2,063, the defendants abovenamed at Valvetty, within the jurisdiction of

Exhibits  
 D 6.  
 Plaint in  
 D. C. Jaffna  
 Case No. 265.  
 Feby. 1931.  
 —continued.

this Court, bound themselves jointly and severally to pay to a certain Kathirippillai Karthikesar and his wife, Sivacolunthu, both of Valvetty on demand the principal sum of Rs. 1,650 together with interest thereon at the rate of 12 per cent. per annum, but at the reduced rate of 10 per cent. per annum if paid annually, from the said date of writing.

2. For securing the payment of the said debt the defendants mortgaged with the said Kathirippillai Karthikesar and wife Sivacolunthu, the following properties, to wit :—

- (a) All that half share containing in extent 3 lachams varagu culture 10 with palmyrah trees, coconut trees, stone built house, kitchen and shed house on the north of all that one-fourth share of all that piece of land situated at Valvettiturai, in the Parish of Udupidy called Muthiraikaddaiady, in extent  $12\frac{1}{2}$  lachams varagu culture and the said extent of  $3\frac{1}{2}$  lachams varagu culture ; is bounded on the east by the property of Sivakinupillai Savarimuttu and his wife, north by the property of Anthonikkam, wife of Sepamalai and others, west by lane, and south by the property of Gnanapiragasam Bastiampillai and others. 20
- (b) An undivided one-third share with its appurtenances of all those extents of 1 lacham varagu culture and  $15\frac{5}{2}$  kulies and  $16\frac{2}{3}$  kulies aggregating to a total extent of 2 lachams varagu culture and  $13\frac{2}{3}$  kulies with old and young palmyrah trees, margosa trees and well, out of all that piece of land situated at ditto, called Pannay Kaddaiady ; containing in extent of  $11\frac{1}{2}$  lachams varagu culture and 3 lachams varagu culture but according to possession and measurement 11 lachams varagu culture, and  $1\frac{1}{3}$  kulies and the said extent of 2 lachams varagu culture and  $13\frac{2}{3}$  kulies ; is bounded on the east by 30 the village limit of Policandy, north by lane, west by the property of Sellappah Muttukumar, and south by the property of Kathirippillai Sivaprakasam.
- (c) All that divided extent of 4 lachams varagu culture and  $1\frac{1}{2}$  kulies with palmyrah trees on the north of all that piece of land situated at ditto, called Elumullupattai ; containing an extent of  $24\frac{1}{2}$  lachams varagu culture and the said extent of 4 lachams varagu culture and  $1\frac{1}{2}$  kulies ; is bounded on the east and south by road, north by the property of Ponnammah, wife of Manikkavasagam and others, and west by the property 40 of Annammah, wife of Swakkinpillai Savarimuttu and, daughter of Innasimuttu and others.



(d) An undivided half share with its appurtenances excluding therefrom the life interest in favour of Murugesar Santhia out of all that piece of land situated at Mathakal in the Parish of Pandatarippu, called Mavilkayady; containing an extent of 11 lachams varagu culture with old and young palmyrah trees; and bounded on the east by the property of Santhia Pethuru and shareholders, north by the property of Aracholayil Pillayar Temple, west by the property of Sinnakuddy, widow of Veeragathy, and south by the property of Santhia Soosaipillai.

Exhibits.  
D 6.  
Plaint in  
D. C. Jaffna  
Case No. 265.  
Feby. 1931.  
—continued.

10

(e) An undivided 5/12th share with its appurtenances excluding therefrom the life interest in favour of Murugar Santhia out of all that extent of 4 lachams varagu culture and 3 kulies with share of well on the western land together with the right of way and water-course out of all that piece of land situated at ditto called Kiyavattai *alias* Kavattai; containing in extent  $21\frac{3}{8}$  lachams varagu culture, and the said extent of 4 lachams varagu culture and 3 kulies; is bounded on the east by the property of Philippattai, wife of Swampillai, north by the property of Mariachy, daughter of Savaithy and shareholders and lane, and the property of Marypillai, wife of Parananthu and shareholders, west by the property of Antho-nikkam, wife of Soosaipillai, and south by lane and the property of Kathiramu Ramu.

20

3. That the said Kathirippillai Karthikesar and wife Sivakolunthu as per deed of donation dated . . ., January, 1928, and attested by V Sabaratnam, Notary Public, under No. 8,846 have assigned this bond in favour of the plaintiff recovering Rs. 460 out of the interest.
4. That there is now due and owing from the defendants jointly and severally to the plaintiff the sum of Rs. 2,973.10 for principal and balance interest on the said writing.
5. That the plaintiff demanded payment of the same but the defendants have failed to pay the same though demanded.

30

Wherefore the plaintiff prays that the Court will order the defendants to pay jointly and severally to the plaintiff the said sum of Rs. 2,973.10 with interest thereon at the rate of nine per cent. per annum from this day till payment in full and also the costs of this action on some day to be named by the Court and in default that the said premises may be sold by Mr. V. Sanmugalingam, Commissioner, Jaffna, and the proceeds applied in and towards the payment of the said principal and interest and costs and if such proceeds shall not be sufficient for the payment in full the defendants do pay to the plaintiff the amount of the deficiency and that for that purpose all proper directions may be given and accounts taken by Court, and that the said Commissioner be directed to give

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Exhibits  
 D 6.  
 Plaintiff in  
 D. C. Jaffna  
 Case No. 265.  
 Feby. 1931.  
 —continued.

credit to the plaintiff in the event of purchasing the decreed property to the extent of his claim and to execute the conveyance in favour of the purchaser. And for costs and for such other and further relief as to this Court shall seem meet.

Sgd. SIVAPRAKASAM & KATIRESU,  
*Proctors for Plaintiffs.*

**Memo of Documents Annexed :**

Mortgage bond dated the 21st day of February, 1922, and attested by K. Sivaprakasam, Notary Public, under No. 2,063.

**Memo of Documents Relied on :** 10

A deed of donation dated the 10th day of January, 1928, and attested by V. Sabaratnam, Notary Public, under No. 8,846.

Sgd. SIVAPIRAKASAM & KATIRESU,  
*Proctors for Plaintiffs.*

D 5.  
 Summons to  
 Defendant in  
 D. C. Jaffna  
 Case No. 265.  
 7-3-31.

**D 5.**  
**Summons to Defendant in D.C., Jaffna, Case No. 265.**

D 5.  
 Summons to Defendant.

IN THE DISTRICT COURT OF JAFFNA

KARTHIKESAR AIYATHURAI of Valveddy, presently of  
 Copay South ... .. *Plaintiff.* 20

No. 265. Vs.

1. SWAKKENUPPILLAI SAVERIMUTTU, and his wife
2. ANNAMMAH, daughter of Innasimuttu, both of Valvettiturai .. .. *Defendants.*

To the abovenamed 2nd defendant.

Whereas the abovenamed plaintiff has instituted an action against you in this Court for the recovery of a sum of Rs. 2,973.10 with interest thereon at 9 per cent. per annum from the date of plaint till payment in full and for costs of this action due on a mortgage bond granted by you in favour of K. Karthikesar 30

and wife Sivacolunthu and which has been assigned in favour of the plaintiff you are hereby summoned to appear in this Court either in person or by Proctor on the 24th day of March, 1931 at 10 o'clock of the forenoon to answer the above-named plaintiff and you are hereby required to take notice that in default of your appearing the action will be proceeded with and heard and determined in your absence and you bring with you or send by your Proctor which the plaintiff desires to inspect any document on which you intended to reply in support of your defence.

Exhibits  
D 5.  
Summons to  
Defendant in  
D. C. Jaffna  
Case No. 265.  
7-3-31.  
---continued

10

Jaffna, 7th day of March, 1931.

By order of Court,  
Sgd. (Illegibly),  
Secretary.

P 2.

**Decree in D.C., Jaffna, Case No. 265.**

P 2.  
Decree in  
D. C. Jaffna  
Case No. 265  
24-3-31

P 2.

No. 265.

Decree.

IN THE DISTRICT COURT OF JAFFNA.

KARTHIKESAR AIYATHURAI of Valveddy, presently of  
Kopay South .. . . . . .

*Plaintiff.*

20

*Vs.*

1. SWAKEENUPILLAI SAVERIMUTTU and his wife
2. ANNAMMAH, daughter of Innasimuttu, both of Valvettiturai .. . . . . .

*Defendants.*

This action coming on for final disposal before R. C. Villavarayan, Esq., Additional District Judge, on the 24th day of March, 1931, in the presence of Mr. C. Subramaniam, Proctor, on the part of the plaintiff and the defendant being absent.

It is ordered and decreed that the defendants jointly and severally do pay to the plaintiff the sum of Rs. 2,973.10 being aggregate amount of the principal, interest and costs due in respect of mortgage bond No. 8,846 dated the 10th day of February, 1928, and attested by V Sabaratnam, Notary Public, with interest thereon at the rate of 9 per cent. per annum from 27-2-31, till payment in full and the costs of this action as taxed by the officer of the Court on or before the 24th day of April, 1931, and it is further ordered that in default of payment of the said amount interest and costs within such time the premises mortgaged by the said bond, to wit :—

## Exhibits

P 2.  
Decree in  
D. C. Jaffna  
Case No. 265.  
24-3-31  
—continued.

1. All that half share containing in extent  $3\frac{1}{8}$  lachams varagu culture with palmyrah trees, coconut trees, stone built house, kitchen and shed house, on the north of all that one-fourth share of all that piece of land situated at Valvettiturai, in the Parish of Udupidy called Muthiraikaddaiady, in extent  $12\frac{1}{2}$  lachams varagu culture and the said extent of  $3\frac{1}{2}$  lachams varagu culture : is bounded on the east by the property of Swakinupillai Saverimuttu and his wife, north by the property of Anthonikkam, wife of Sebanalai and others, west by lane, and south by the property of Gnanapiragasam Bastiampillai and others.

2. An undivided one-third share with its appurtenances of all those extents of 1 lacham varagu culture and  $15\frac{8}{32}$  kulies and  $16\frac{2}{2}$  kulies aggregating 10 to a total extent of 2 lachams varagu culture and  $13\frac{2}{2}$  kulies with old and young palmyrah trees, margosa trees and well, out of all that piece of land situated at ditto called Pannay Kaddaiady ; containing the extent of  $11\frac{1}{2}$  lachams varagu culture and  $3\frac{1}{2}$  lachams varagu culture, but according to possession and measurement 11 lachams varagu culture and  $1\frac{6}{2}$  kulies and the said extent of 2 lachams varagu culture and  $13\frac{2}{2}$  kulies ; is bounded on the east by the village limit of Polykandy, north by lane, west by the property of Sellappah Muthucumar, and south by the property of Kathiripillai Sivaprakasam.

3. All that divided extent of 4 lachams varagu culture and  $1\frac{1}{2}$  kulies with palmyrah trees, on the north of all that piece of land situated at ditto called 20 Elumullupattai, containing in extent of  $24\frac{1}{2}$  lachams varagu culture and the said extent 4 lachams varagu culture and  $1\frac{1}{2}$  kulies ; is bounded on the east and south by road, north by the property of Ponnammah, wife of Manickavasagam and others, and west by the property of Annammah, wife of Swakeenupillai Saverimuttu and daughter of Innasimuttu and others.

4. An undivided half share with its appurtenances (excluding therefrom the life interest in favour of Murugesar Santhia,) out of all that piece of land situated at Mathakal, in the Parish of Pandaitharippu called Mavilkaiady, containing an extent of 11 lachams varagu culture with old and young palmyrah trees ; and bounded on the east by the property of Santhia Pethuru and share- 30 holders, north by the property of Aracholayil Pillayar Temple, west by the property of Sinnakuddy, widow of Veeragathy, and south by the property of Santhia Soosai pillai.

5. An undivided  $\frac{5}{12}$ th share with its appurtenances (excluding therefrom the life interest in favour of Murugar Santhia) out of all the extent of 4 lachams varagu culture and 3 kulies with share of well on the western land together with the right of way and water-course out of all that piece of land situated at ditto called Kiyavattai *alias* Kavattai, containing an extent of  $21\frac{3}{2}$  lachams varagu culture ; and the said extent of 4 lachams varagu culture and 3 kulies is bounded on the east by the property of Philipathai, wife of Swam- 40 pillai, north by the property of Mariachy, daughter of Saivaithy and shareholders and lane and the property of Marypillai, wife of Parananthu and shareholders, west by the property of Anthonikkam, wife of Soosai pillai, and south by lane and the property of Kathiramu Ramu, and all the right, title, interest and claim

whatsoever of the defendants in, to, upon or out of the said several premises mortgaged by the defendants be sold by Mr. V. Sanmugalingam, Commissioner, and the proceeds applied in and towards the payment of the said amount, interest and costs and if such proceeds shall not be sufficient for the payment in full of such amount that the defendants do pay to the plaintiff the amount of the deficiency with interest thereon at the aforementioned rate until realization.

Exhibits  
P 2.  
Decree in  
D. C. Jaffna  
Case No. 265  
24-3-31  
—continued

It is further ordered that the said Commissioner do give credit to the plaintiff in the event of his purchasing the decreed property to the extent of his claim and execute the conveyance in favour of the purchaser.

10

24th March, 1931.

Sgd. D. H. BALFOUR,  
D.J**D 32.****Deed of Transfer No. 11,254.**

Translation.

D 32.  
Deed of  
Transfer  
No. 11,254  
23-3-31.

Instrument : Transfer.

Land : 1.

Consideration : Rs. 800.

Prior Registration : Jaffna A.85/395.

No. 11,254.

Know all men by these presents that I, Sidamparapillai Thirugnana-  
20 sambanthamoorthy of Valvettiturai, for and in consideration of the sum of  
Rs. 800 paid by Murugupillai Sanmugam of the same place do hereby sell,  
transfer, set over and assure unto the said Sanmugam, the property described  
in the schedule hereinbelow.

The land described in the schedule hereinbelow held and possessed as  
per transfer deed in my favour dated 5th July, 1928, and attested by this Notary  
under No. 9,085.

I deliver herewith the said deed and title deeds. In witness whereof I  
do hereunto and to two others of the same tenor and date as these presents set  
my hand in the presence of the Notary Vairavanathar Sabaratnam, and in the  
30 presence of the subscribing witnesses thereto at the office of the said Notary at  
Valvettiturai, on the 23rd day of March, 1931.

*Schedule of Property.*

Land situated at Valvettiturai, in the Parish of Udupiddy, in the Division  
of Vadamardchy, in Jaffna District of the Northern Province called Kallundan-  
30 manal, in extent  $7\frac{3}{8}$  lachams varagu culture, Veedu 1. Of these the extent of

Exhibits  
D 32.  
Deed of  
Transfer  
No. 11,254  
23-3-31  
—continued

4 lachams varagu culture and 6 $\frac{7}{8}$  kulies on the east. Of this 11 $\frac{1}{4}$  kulies is bounded on the east by the property of Sellamuttu, wife of Muttusamy, north by road, west by the property of the vendee, and south by the property of Annappillai, daughter of Ramasamy and others. The whole of the ground, margosa tree and cocoanut tree contained within these boundaries.

Sgd. S. THIRUGNANASAMBANTHAMOORTHY.

Witnesses :

Sgd. { S. THILLAIAMPALAM.  
      { S. VEERASINGHAM.

Sgd. V SABARATNAM, 10  
      *Notary Public.*

I, Vairavanathar Sabaratnam, Notary Public of Vadammaradchy, in Jaffna, do hereby certify and attest that the foregoing instrument having been read over and explained by me to the said Sidambarapillai Thirugnanasambanthamoorthy in the presence of Chelliah Thillaiampalam of Valvettiturai and Sinniah Veerasingham of Valvetty, the subscribing witnesses thereto, I know the executant and the witnesses that the said executant and the witnesses set their signatures in my presence and in the presence of one another at my office at Valvettiturai, on the 23rd day of March, 1931, that of the said consideration Rs. 643 was paid in my presence that the balance amount in full was acknowledged by the execu- 20 tant, that the duplicate bears 2 stamps of the value of Rs. 15 and the original 1 stamp of Re. 1 which said stamps were supplied by me.

Date of Attestation : 23rd March, 1931.

Sgd. V SABARATNAM,  
      *Notary Public.*

(Seal)

This is a true copy.

19th December, 1948.

Sgd. V SABARATNAM,  
      *Notary Public.*

(Seal).

30

P 5.  
Mortgage  
Deed No. 714  
29-4-31

**P 5.**  
**Mortgage Deed No. 714.**

P 5.

Mortgage.  
Lands : 2.  
Rs. 500.

Prior Registration : Jaffna.  
1st Land A. 149/57.  
2nd Land A. 149/58.

No. 714.

Know all men by these presents that we, Swakeenupillai Saverimuttu and wife, Annammah Thommaipillai Sebastampillai and wife, Mariammah, all of Valvettiturai, are held and firmly bound and do hereby acknowledge to be 40 justly and truly indebted to Karthigesu Aiyadurai of Valveddy, in the sum of

Rs. 500 of lawful money of Ceylon which we have this day borrowed and received of and from the said Kartikesar Aiyadurai of Valveddy, and we therefore, renouncing the *beneficium non numeratae pecuniae* the meaning of which has been explained to us agree and undertake and bind ourselves and our heirs, executors and administrators to pay the said sum of Rs. 500 and interest that might accrue thereon to the said Karthikesar Aiyadurai, his heirs, executors, administrators and assigns on demand and until such payment we engage and bind ourselves and our aforewritten to pay interest on the said sum of Rs. 500 at and after the rate of 10 per cent. per annum.

Exhibits  
P 5.  
Mortgage  
Deed No. 714  
29-4-31  
—continued.

10 And for securing the due payment of the said sum of Rs. 500 and interest which might accrue thereon we the said Swakkennupillai Saverimuttu and wife, Annammah, Thommaipillai Sebastampillai and wife, Mariammah, do hereby specially hypothecate and mortgage to and with the said Karthikesar Aiyadurai and his aforewritten by way of primary mortgage the following two pieces of lands fully described in the schedule hereto.

And as further security we do herewith deliver the said deed and other connected deeds.

In witness whereof we the said Swakeenupillai Saverimuttu and wife Annammah, Thommaipillai Sebastampillai and wife Mariammah, have hereunto  
20 and to two others of the same tenor and date as these presents set our hands at Achehuvely, this 29th day of April, 1931.

*The Schedule above referred to :*

1. All that piece of land called Muthuraikadaiyadi, in extent  $14\frac{1}{6}$  kulies with margosa, house and kitchen and its other appurtenances, situated at Valvettiturai, in the Parish of Udupiddy, in the Division of Vadamaradchy, in the District of Jaffna, Northern Province ; and bounded on the east and north by the property of the 1st and 2nd named mortgagors, on the west by the property of the 4th named mortgagor, and on the south by road.

30 2. All that undivided  $\frac{1}{3}$  share with share of coconuts, palmyrahs and well, of all that piece of land called Pannaikaddaiyadi, in extent 2 lachams varagu culture, and  $13\frac{1}{6}$  kulies, situated at Valvettiturai aforesaid ; and bounded on the east by the property of Kathirkamar Periyathamby and others, on the north by lane, and on the west and south by the property of Kathiripillai Sivapiragasam.

The aforesaid two pieces of land are being held and possessed by us under and by virtue of donation deed dated the 3rd day of May, 1924, and 5th February, 1925, and attested by V. Sabaratnam and S. Subramaniam, Notaries Public, under Nos. 6,408 and 20,040 respectively.

Exhibits  
P. 5  
Mortgage  
Deed No. 714  
29-4-31  
—continued.

Signed in the presence of us who aver and declare that we are well acquainted with the parties hereof and know their proper names, occupation and residences.

Sgd. in Tamil :  
SUNA SAVERIMUTTU  
Mark of ANNAMMAH  
THOANA SEBASTIAMPILLAI  
SAENA MARIAMMAH

Sgd. in Tamil :  
THOANA ANTHONIMUTTU  
V. VINASITHAMBY

Sgd. C. SUBRAMANIAM,  
*Notary Public.* 10

I, Chanmugam Subramaniam of Jaffna, Notary Public, do hereby certify and attest that the foregoing instrument was read over and explained by me to the said Swakeenupillai Saverimuttu and wife Annammah, Thommaipillai Sebastianpillai and wife Mariammah, the 2nd of whom signed the deed with a mark all of whom are not known to me in the presence of Thommaipillai Anthonimuttu and Vairamuttu Vinasithamby, both of Valvettiturai, the subscribing witnesses hereto, both of whom are known to me the same was signed by the said several mortgagors and also by the said witnesses in my presence and in the presence of one another, all being present at the same time at Achchüvely, this Twenty-ninth day of April, One thousand Nine hundred and Thirty-one. 20

I further certify and attest that in lines 19 and 20 of page 1 of the original the words Swakeenupillai and Verimuttu were erased and re-typed in line 11 of page 2 of the same the words with margosa were erased and re-typed in line 20 of page 2 of the same the words with share of cocoanuts, palmyrahs and well were inserted and in lines 17, 18, 19 of page 2 of the same the words which is being held and possessed by the 1st and 2nd named mortgagors under and by virtue of a donation deed dated 3rd May, 1924, and attested by V. Sabaratnam, Notary Public, under No. 6,408 were cut off before the foregoing was read over and explained as aforesaid to the said several mortgagors that no money was paid in my presence but this bond was executed in part reduction of the interest due to the mortgagee on account of the decree entered in case No. 265 D.C.J., that the Duplicate of this instrument bears 3 stamps of the value of Rs. 7.50 and the Original 1 stamp of the value of Re. 1, and the stamps were supplied by me. 30

Date of Attestation : 29th April, 1931.

Sgd. C. SUBRAMANIAM,  
*Notary Public.*

(Seal)



D 8.

**Release of Two Lands.**

D 8.

Exhibits

D 8.  
Release of  
two Lands.  
2-5-31.

I, Karthikesar Aiyadurai of Valveddy, the plaintiff in case No. 265 D. C., Jaffna, do hereby release the 2 lands, viz. :-

1. An undivided half share with its appurtenances (excluding therefrom the life interest in favour of Murugesar Santhia) out of all that piece of land situated at Mathaial, in the Parish of Pandatarippu called "Mavilkayady"; containing in extent of 11 lachams varagu culture with old and young palmyrah trees and bounded on the east by the property of Santhia Pethuru and shareholders, on the north by the property of Arachollayil Pillaiyar Temple, on the west by the property of Sinnakuddy, widow of Veerakatty, and on the south by the property of Santhia Soosaipillai.

2. An undivided 5/12th share with its appurtenances (excluding therefrom the life interest in favour of Murugar Santhia) out of all that extent of 4 lachams varagu culture and 3 kulies with share of well on the western land together with the right of way and water-course out of all that piece of land situated at Mathakal, in the Parish of Pandaterippu aforesaid called "Kiyavattai alias Kavattai"; containing in extent of 21 $\frac{3}{8}$  lachams varagu culture and the said extent of 4 lachams varagu culture and 3 kulies is bounded on the east by the property of Philippattai, wife of Swampillai, on the north by the property of Mariachy, daughter of Savaithy and shareholders and lane, and the property of Marypillai, wife of Parananthu and shareholders, on the west by the property of Anthonikkam, wife of Soosaipillai, and on the south by lane and the property of Kathiramu Ramu from all liabilities in consideration of the sum Rs. 537.50 well and truly paid by Swakkenupillai Saverimuttu and wife Annammah, both of Valvettiturai, the defendants in case No. 265 of the District Court of Jaffna.

2-5-31.

Sgd. K. AIYADURAL,

Witness to the signature and identity :

30 Sgd. Illegibly.

D 9.

**Receipt No. 715.**Receipt :  
Rs. 1,037.50.

No. 715.

Know all men by these presents that I, Karthikesar Aiyadurai of Valvetty, do hereby admit and acknowledge to have received from Swakeenupillai Saverimuttu and wife Annammah, both of Valvettiturai, the defendants in case No. 265

D 9.  
Receipt No.  
715.  
2-5-31.

Exhibits.  
D 9.  
Receipt  
No, 715.  
2-5-31.  
—continued.

of the District Court of Jaffna, wherein bond dated 21st February, 1922, and attested by K. Sivapiragasam, Notary Public, under No. 2,063 which has been donated and assigned to me by deed dated 9th January, 1928, and attested by V Sabaratnam, Notary Public, under No. 8,846 has been put in suit, the sum of Rs. 537.50 and another sum of Rs. 500 secured by bond dated 29th April, 1931, and attested by the Notary attesting these presents under No. 714 in part reduction of the decreed amount in the aforesaid case No. 265 D.C.J.

In witness whereof I the said Karthikesar Aiyadurai, do hereunto and to two others of the same tenor and date as these presents set my hand at Achchuvely, this 2nd day of May, 1931.

10

Sgd. K. AIYADURAI.

Signed in the presence of us :

1. Sgd. (Illegibly)
2. .. Do.

Sgd. C. SUBRAMANIAM,  
*Notary Public.*

I, Chanmugam Subramaniam of Jaffna, Notary Public, do hereby certify and attest that the foregoing instrument having been read over by the said Karthikesar Aiyadurai, and who signed this deed as " K. Aiyadurai ", the grantor hereof, who is known to me in the presence of Sivasubramaniam *alias* Tampoe 20 Sinnappah and Appapillai Duraisingham, both of Valvetty, the subscribing witnesses hereto who are also known to me the same was signed by the said grantor and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Achchuvely, on the 2nd day of May, 1931.

I further certify and attest that a sum of Rs. 320 was paid in my presence and the balance acknowledged to have been received by the said Aiyadurai, that the original bears a stamp of the value of five cents and that the said stamp was supplied by me.

Sgd. C. SUBRAMANIAM, 30  
*Notary Public.*

Date of Attestation : 2nd May, 1931.

(Seal)

## D 33.

## Deed of Transfer No. 13,307.

Translation.

Exhibits

D 33.  
Deed of  
Transfer  
No. 13307.  
25-7-34

Instrument : Transfer.

Land : 1.

Consideration : Rs. 1,000.

No. 13,307.

Know all men by these presents that I, Murugupillai Sanmugam of Valvettiturai for and in consideration of the sum of Rs. 1,000 paid by Arumugam Velupillai of the same place do hereby sell, transfer, set over and assure unto the said Arumugam Velupillai the property described in the schedule herein below.

Land described in the schedule hereinbelow is held and possessed under and by virtue of transfer deed in my favour dated 24th October, 1923, and attested by this Notary under No. 6,178 and by virtue of final partition decree in case No. 19,822 of the District Court of Jaffna. I deliver herewith the said copy decree and plan.

In witness whereof I do hereunto and to two others of the same tenor and date as these presents set my hand in the presence of the Notary Vairavanathar Sabaratnam and in the presence of the subscribing witnesses at Valvettiturai on the 25th July, 1934.

*Schedule of Property.*

Land situated at Valvettiturai, in the Parish of Udupiddy, in the Division of Vadamara-dechy, in Jaffna District of the Northern Province, called Kallundan-manal according to plan No. 1,358 annexed to the said decree in extent 1 lacham varagu culture and  $9\frac{3}{4}$  kulies. Of this lot No. 2 in extent 1 lacham varagu culture and  $\frac{1}{2}$  kuly is bounded on the east by my property, north by road, west by lot No. 1 belonging to the vendee, and south by the property of the vendee. The whole of the ground, coconut trees, stone built house, porticos and well contained within these boundaries.

30

Witnesses :

A. KANAGASUNDARAM.

A. P. SOMASUNDARAM.

Sgd. M. SANMUGAM.

Date of Attestation : 25th July, 1934.

Sgd. V. SABARATNAM,  
*Notary Public.*

Exhibits  
D 33.  
Deed of  
Transfer  
No. 13307.  
25-7-34  
—continued.

I, Vairavanather Sabaratnam, Notary Public of Vadamardchy, in Jaffna. do hereby certify and attest that the foregoing instrument having been read over and explained by me to the said Muruguppillai Sanmugam, in the presence of Nagamuttu Kanagasundaram of Valvettiturai, who signed illegibly, and A. Ponnusamy Somasundaram of the same place the subscribing witnesses thereto. I know the executant and the witnesses that the said executant and the witnesses set their signatures in my presence and in the presence of one another at my office at Valvettiturai, on the 25th day of July, 1934, that the said executant acknowledged receipt of the full consideration mentioned in the instrument that the duplicate bears 2 stamps of the value of Rs. 15, that the original bears 1 stamp 10 of Re. 1 which said stamps were supplied by me, and that in the duplicate and explained.

Date of Attestation : 25th July, 1934.

Sgd. V. SABARATNAM,  
*Notary Public.*

This is a true copy.

19th December, 1948.

Sgd. V. SABARATNAM,  
*Notary Public.*

(Seal)

P 1.  
Deed of  
Transfer  
No. 3.  
12-11-37.

P 1.

20

**Deed of Transfer No. 3.**

P 1.

S. SIVAGNANAM,  
Proctor, S.C. & Notary Public. Jaffna.

*Vide* Transfer No. 706/3-2-46.  
Prior Registration : A. 125/258 & 259, 85/113.  
Consideration : Rs. 2,000.  
Lands : 3.

Transfer No. 3.

Know all men by these presents that we, Suvakkenupillai Saverimuttu 30 and wife Annammah, daughter of Innasimuttu, both of Valvettiturai (hereinafter sometimes called and referred to as the said vendors) in consideration of the sum of Rs. 2,000 which is justly and truly due from us in full satisfaction of the balance amount due on mortgage decree entered in case No. 265 D.C. Jaffna, in favour of Karthikesar Iyadurai of Valveddy, who is (hereinafter sometimes called and referred to as the said vendee) (the receipt whereof we do hereby admit and acknowledge) do hereby sell, assign, transfer, set over and assure unto

the said vendee his heirs, executors, administrators and assigns, all our the premises described and set forth in the schedule hereto and all the rights, privileges, easements, servitudes and appurtenances whatsoever thereunto belonging and all our estate, right, title, interest, property claim and demand whatsoever, of, in, upon or out of the same to have and to hold the said premises hereby conveyed or intended so to be unto and to the use of the said vendee and his

Exhibits

P 1. . .  
Deed of  
Transfer  
No. 3.  
12-11-37.  
—continued.

And we the said vendors do hereby for ourselves, our heirs, executors and administrators covenant with the said vendee and his aforewritten that the said premises are free from any encumbrance whatsoever, and that we and our aforewritten shall and will always warrant and defend the same unto the said vendee and his aforewritten against any person or persons and also whomsoever and that we have now full power and authority to convey and transfer the said premises in manner aforesaid and that we and our aforewritten shall and will from time to time and at all times hereafter upon the request and at the cost of the said vendee or his aforewritten do and execute or cause to be done and executed all such acts, deeds and things whatsoever for further and more perfectly assuring the said premises and every part thereof unto the said vendee and his aforewritten as shall or may be reasonably required.

In witness whereof we do set our hands hereto and to two others of the same tenor and date as these present at Point Pedro, this 12th day of November, 1937.

*The Schedule above referred to :*

1. Land at Valvettiturai, Udupidy Parish, Vadamaradehy Division, Jaffna District, Northern Province, called Muthiraikkaddaiyadi, in extent  $12\frac{1}{2}$  lachams varagu culture. Of this an extent of  $3\frac{1}{8}$  lachams varagu culture being the northern  $\frac{1}{2}$  share out of  $\frac{1}{4}$  share is bounded on the east by 3rd land, north by land of Anthoniccam, wife of Chepamalai and others, west by lane, and on the south by land of Gnanapiragasam Sebastiampillai and others. The whole of the ground, palmyrahs, cocoanut trees, stone built house, kitchen and maal contained within these boundaries.

2. Land at ditto called Pannaikkaddaiyadi, in extent  $11\frac{1}{2}$  lachams varagu culture, ditto  $3\frac{5}{8}$  lachams varagu culture but according to measurement 11 lachams varagu culture and  $1\frac{1}{3}\frac{6}{2}$  kulies. Of this an extent of 1 lachams varagu culture and  $15\frac{8}{3}\frac{2}{2}$  kulies and a further extent of  $16\frac{2}{3}\frac{0}{2}$  kulies aggregating to a total extent of 2 lachams varagu culture and  $13\frac{2}{3}\frac{8}{2}$  kulies is bounded on the east by the village limit of Polikandy, north by lane, west by land of Challappah Muttukumar, and on the south by land of the heirs of the late Kadiripillai Sivapiragasam. Of the whole of the ground, old and young palmyrahs, margosa tree and well contained within these boundaries an undivided  $\frac{1}{3}$  share.

3. Land at ditto called Elumullupattai in extent  $24\frac{1}{2}$  lachams varagu culture. Of this an extent of 4 lachams varagu culture and  $1\frac{1}{2}$  kulies towards the north is bounded on the east and south by road, north by land of Ponnammah, wife of Manickavasagam and others, and on the west by the 1st land. The whole of the ground and palmyrahs contained within these boundaries.

Exhibits.  
 P 1.  
 Deed of  
 Transfer  
 No. 3.  
 12-11-37.  
 ---continued.

(The said lands are being held and possessed by us, the 1st and 2nd lands under and by virtue of a dowry Deed No. 12,732 dated 25th April, 1907, and attested by V. Sinnatamby, Notary Public in favour of the 2nd named of us and the 3rd land under and by virtue of a transfer Deed No. 1,612 dated 19th November, 1919, and attested by K. Sivapragasam, Notary Public, in our favour, and also under a transfer Deed No. 3,081 dated 10th October, 1917, and attested by V. Sabaratnam, Notary Public, in favour of the 2nd named of us and we do hereby declare that the said title deeds are with the said vendee).

Sgd. S. SARAVANAMUTTU  
 ,, Illegibly.  
 Mark of S. ANNAMMAH.

10

Witnesses :  
 T. THIAGARAJAH.  
 Sgd. Illegibly.

Sgd. S. SIVAGNANAM.  
*Notary Public.*

I, Somasundaram Sivagnanam, Notary Public, within the judicial division of Point Pedro, by lawful authority duly admitted and sworn do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said Swakkeenappillai Saverimuttu and wife 20 Annammal, daughter of Innasimuttu, who has set her mark and left thumb impression the vendors hereof who are known to me in the presence of Thillainather of Point Pedro, and Rambukkanage Verathelis Fernando of Minuwangoda presently of Valvetty, the subscribing witnesses thereto, both of whom are known to me the same was signed by the said vendor and also by the said witnesses and by me the said Notary, in the presence of one another, all being present at the same time at Point Pedro, on the 12th day of November, in the year One thousand Nine hundred and Thirty-seven.

And I further certify and attest that the duplicate of this instrument bears 5 stamps of the value of Rs. 33 and the original of Re. 1 and that no consideration passed in my presence and that in both the duplicate and the original line 6 of page 1 "paid to by" was scored off before the foregoing instrument was read and explained as aforesaid.

Which I attest.

Sgd. SIVAGNANAM,  
*Notary Public.*

(Seal)

Date of Attestation : 12th November, 1937.

## P 3.

## Deed of Lease No. 4.

Exhibits  
 P 3.  
 Deed of  
 Lease No. 4.  
 12-11-37.

Lease : Rs. 120.

Lands : 3.

Registered : A. 125/258 & 259 and 85/113.

## No. 4.

This Indenture of Lease made at Point Pedro, this 12th day of November, 1937.

Between (1) Karthikesar Iyadurai of Valvetty hereinafter called the Lessor of the one part, and (2) Swakkeenapillai Saverimuttu and wife, (3) Annamah, daughter of Innasimuttu, both of Valvettiturai hereinafter called the Lessees of the other part witnesseth :—

1. The Lessor does hereby let and demise unto the Lessees the lands fully described in the schedule hereto for a term of six years commencing from this date and ending the 12th day of November, 1943, at the rental of Rs. 20 per annum.
2. The Lessees shall pay the rent annually before the end of every year, the 1st payment being on or before the 12th day of November, 1938.
- 20 3. The Lessees shall keep the said lands and premises in good condition, and not commit any waste or damages to the said lands and premises or plantations or hut and houses therein.
4. The Lessees shall fence all the boundary fences of the said lands and premises at their own expense.
5. The Lessees shall pay all the taxes payable now or hereafter in respect of the said lands.
6. If the Lessees fail to pay the said rent as agreed or commit any waste or damages to the said lands and premises or plantations or huts and houses therein or when this lease expires this lease shall forthwith terminate and the Lessees shall quit the said lands and premises and give up quiet possession to the Lessor.
- 30

In witness whereof the parties do hereunto and to two others of the same tenor and date as these presents set otheir hands at the time and place aforewritten.

*The Schedule referred to above.*

(1) Land at Valvettiturai, Udupidy Parish, Vadamaradchi Division, Jaffna District, Northern Province, called Muthiraikaddaiyady, in extent 12½ lachams varagu culture. Of this an extent of 3½ lachams varagu culture being the northern ½ share, out of ¼ share is bounded on the east by 3rd land, north by land of Anthonickam, wife of Chepamalai and others, west by lane, and on 40 the south by land of Gnanaprakasam Sebastiampillai and others. The whole

Exhibits  
 P 3.  
 Deed of  
 Lease No. 4.  
 12-11-37.  
 —continued.

of the ground, palmyrahs, coconut trees, stone built house, kitchen and maal contained within these boundaries.

(2) Land at ditto called Pannaikaddaiyadi, in extent  $11\frac{1}{2}$  lachams varagu culture, ditto  $3\frac{5}{8}$  lachams varagu culture but according to measurement 11 lachams varagu culture and  $1\frac{1}{3}\frac{1}{2}$  kulies. Of this an extent of 1 lacham varagu culture and  $15\frac{8}{32}$  kulies and a further extent of  $16\frac{2}{3}\frac{1}{2}$  kulies aggregating to a total extent of 2 lachams varagu culture and  $13\frac{2}{3}\frac{1}{2}$  kulies is bounded on the east by the village limit of Polikandy, north by lane, west by land of Challappah Muttukumar, and on the south by land of the heirs of the late Kadiripillai Sivapirakasam. Of the whole of the ground, old and young palmyrahs, margosa tree 10 and well contained within these boundaries an undivided one-third share.

(3) Land at ditto called Elumullupattai, in extent  $24\frac{1}{2}$  lachams varagu culture. Of this an extent of 4 lachams varagu culture and  $1\frac{1}{2}$  kulies towards the north is bounded on the east and south by road, north by land of Ponnammah, wife of Manickavasagam and others, and on the west by the 1st land. The whole of the ground and palmyrahs contained within these boundaries.

The said lands are held by the Lessor under and by virtue of a transfer deed dated this day attested by this Notary under No. 3.

Sgd. K. AIYADURAI.  
 ” S. SAVERIMUTTU. 20  
 Mark of S. ANNAMMAH.

Witnesses :

T. THIAGARAJAH.  
 R. V. FERNANDO.

Sgd. S. SIVAGNAM.  
*Notary Public.*

I, Somasundram Sivagnanam, Notary Public, within the Judicial Division of Point Pedro, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within-named Karthikesar Iyadurai, who has signed as “K. Aiyadurai”, Swakkenapillai Saverimuttu and wife, Annammah, daughter of Innasimuttu, who has set her mark and left thumb 30 impression, the parties hereof who are known to me in the presence of Thillainather Thiagarajah of Point Pedro and Rambukkanage Verathelis Fernando of Minuwangoda and presently of Valvetty, the subscribing witnesses hereto, both of whom are also known to me the same was signed by the said parties and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Point Pedro, this 12th day of November, 1937.

And I further certify and attest that no consideration passed in my presence, that the duplicate bears 2 stamps of the value of Rs. 3.

Date of Attestation : 12th November, 1937.

Sgd. S. SIVAGNAM, 40  
*Notary Public.*

(Seal)



D 11.

Plaint in D.C., Jaffna, Case No. 551.

D 11.

Exhibits

D 11.  
Plaint in  
D. C. Jaffna  
Case No 551.  
8-7-38,

## IN THE DISTRICT COURT OF JAFFNA

KARTHIKESAR AIYADURAL, presently of Hospital, Kajang  
by his attorney Kandiah Sri Kandian of 11/2, Hamer's  
Avenue, Wellawatta . . . . .

*Plaintiff.*

No.

Vs.

1. SWAKEENAPILLAI SAVARIMUTTU and wife,
- 10 2. ANNAMMAH,
3. THOMMAIPPILLAI SABESTIAMPILLAI and wife.
4. MARIAMMAH, all of Valveddy . . . . . *Defendants.*

This 8th day of July, 1938.

The plaint of the abovenamed plaintiff appearing by S. Sivagnanam, his  
Proctor, state as follows :—

1. That by a writing obligatory dated the 29th day of April, 1931, and  
attested by S. Subramaniam, Notary Public, under No. 714 the above-  
named defendants at Valvettiturai, within the jurisdiction of this  
Court bound themselves to pay to the plaintiff on demand the sum  
20 of Rs. 500 with interest thereon at the rate of 10 per cent per annum  
from the date of the said writing.
2. That for securing the payment of the said principal and interest the  
defendants mortgaged with the plaintiff the lands fully described in  
the schedule hereto.
3. There is now due and owing to the plaintiff from the defendants the  
sum of Rs.        for principal and interest on the said writing.
4. The plaintiff demanded payment of the said debt but the defendants  
have failed to pay the same.
- 30 5. Wherefore the plaintiff prays that the Court will order the defendants  
to pay to the plaintiff the said sum of Rs.        with such further  
interest on Rs. 500 at the rate of 10 per cent. per annum till date of  
decree and thereafter on the aggregate amount at the rate of 9 per  
cent. per annum till payment in full and costs of this action on some  
day to be named by the Court and in default that the said premises  
fully described in the schedule hereto may be sold by a Commissioner

Exhibits  
 D 11.  
 Plaintiff in  
 D. C. Jaffna  
 Case No. 351.  
 8-7-38.  
 —continued.

and the proceeds applied in and towards the payment of the said amount, interest and costs and that if such proceeds shall not be sufficient for the payment in full of such amount the defendants be ordered to pay to the plaintiff the amount of the deficiency and that for the purpose all proper directions may be given and accounts taken by the Court and that the Commissioner be authorized to give credit to the plaintiff to the extent of his claim in the event of his purchasing the mortgage property and to execute a deed of conveyance in favour of the purchaser and the purchaser be put in possession of the said lands.

10

6. The plaintiff also prays for such other and further relief as to this Court shall seem meet.

Sgd. S. SIVAGNANAM,  
*Proctor for Plaintiff.*

*Memorandum of Documents Annexed to the Plaintiff.*

A writing obligatory executed by the defendant in favour of the plaintiff on the 29th day of April, 1931, and attested by S. Subramaniam, Notary Public, under No. 714.

Sgd. S. SIVAGNANAM,  
*Proctor for Plaintiff.* 20

*Schedule referred to above :*

(1) All that piece of land called Muthiraikaddaiady, in extent  $14\frac{1}{6}$  kulies with margosa, house and kitchen and its other appurtenances, situated at Valvettiturai, in the Parish of Udupiddy, in the Division of Vadammarachy, in the District of Jaffna, Northern Province ; and bounded on the east and north by the property of the 1st and 2nd named mortgagors, on the west by the property of the 4th named mortgagor, and on the south by road.

(2) All that undivided  $\frac{1}{3}$  share with share of coconuts, palmyrahs and well of all that piece of land called Pannaikaddaiady, in extent 2 lachams varagu culture and  $15/16$  kulies situated at Valvettiturai aforesaid ; and bounded on the east by the property of Kathirkamar Periathamby and others, on the north by lane, and on the west and south by the property of Kathirippillai Sivapirakasam, the aforesaid 2 pieces of lands are being held and possessed by us under and by virtue of donation deeds dated 3rd May, 1924, and 5th February, 1925, and attested by V Sabaratnam and S. Subramaniam. Notaries Public under Nos. 6,408 and 20,040 respectively.

Sgd. S. SIVAGNANAM,  
*Proctor for Plaintiff.*

**D 10.**

**Summons to Defendant in D.C., Jaffna, Case No. 551.**

Summons to Defendant.

IN THE DISTRICT COURT OF JAFFNA HELD AT POINT PEDRO

KARTHIKESAR AIYADURAI, presently of Hospital, Kajang  
by his attorney Kandiah Sri Kandan of 11, 2, Hamer's Ave-  
nue, Wellawatta . . . . . *Plaintiff.*

No. 551/P . . . . . Vs.

ANNAMMAH, wife of Swakeenupillai Saverimuttu of Valveddi  
10 and 3 others . . . . . *Defendants.*

To the abovenamed 2nd defendant :

Whereas the abovenamed plaintiff has instituted an action against you  
in this Court for the recovery of the sum of Rs. 858 for principal and interest  
due by you on a mortgage bond No. 714, dated 29th day of April, 1941, with  
further interest on Rs. 500 at the rate of 10 per cent. per annum till date of  
decree and thereafter on the aggregate amount at the rate of 9 per cent. per annum  
till payment in full and costs of suit. You are hereby summoned to appear in  
this Court either in person or by Proctor on the 29th day of July, 1938, at 10  
o'clock of the forenoon to answer the abovenamed plaintiff. And you are hereby  
20 required to take notice that in default of your so appearing the action will be  
proceeded with and heard and determined in your absence. And you will bring  
with you or send by your Proctor any documents on which you intend to rely in  
support of your defence.

By order of Court,  
Sgd. S. K. SADASIVAM,

The 12th day of July, 1938. *Secretary.*

**P 10.**

**Decree in D.C., Jaffna, Case No. 551.**

P 10.

30 No. 22/A.—Form of Decree Absolute in Hypothecary Action in Default of  
Appearance of Defendant.

Section 85.

No. 551/P.

IN THE DISTRICT COURT OF JAFFNA HELD AT POINT PEDRO

KARTHIGESU AIYADURAI, presently of Hospital, Kajang,  
by his attorney Kandiah Sri Kandan of No. 312, Hamer's  
Avenue, Wellawatta . . . . . *Plaintiff.*

Exhibits  
D 10.  
Summons to  
Defendant in  
D. C. Jaffna  
Case No. 551.  
12-7-38.

P 10.  
Decree in  
D. C. Jaffna  
Case No. 551.  
24-9-38.

Exhibits

Vs.

P 10.  
Decree in  
D. C. Jaffna  
Case No. 551.  
24-9-38.  
—continued.

1. SWAKEENUPILLAI SAVERIMUTTU and wife
2. ANNAMMAH,
3. THOMMAIPILLAI SEBASTIAMPILLAI and wife
4. MARIAMMAH, all of Valvettiturai

*Defendants.*

This action coming on for disposal before C. E. A. Samarakkody, Esq., Additional District Judge, Jaffna, on the 24th day of September, 1938, being the day appointed in the summons for the defendant to appear and answer (or being the day appointed for the filing of affidavit the plaintiff appearing in person by Proctor and the defendants not appearing either in person or by Proctor or 10 Counsel although they were duly served with the summons, together with a copy of the plaint as by the affidavit of S. Simmiah, Fiscal Process Server dated the 19th day of July, 1938 appears. It is ordered and decreed that the defendants do pay to the plaintiff within one month from the date of this decree the sum of Rs. 858 being the aggregate amount of the principal and interest, due in respect of mortgage bond No. 714, dated the 29th day of April, 1931, and attested by C. Subramaniam, Notary Public, with interest on Rs. 500 at 10 per cent. per annum from 8-7-38 till this day and thereafter on the aggregate at the rate of nine per cent. annum from this date till payment in full and the costs of this 20 action as taxed by the officer of the Court, and it is further ordered that in default of payment of the said amount, interest and costs within such time the premises mortgaged by the said bond, to wit :—

1. All that piece of land called Muthiraikkaddaiyadi, in extent  $14\frac{1}{8}$  kulies with margosa, house and kitchen and its other appurtenances, situated at Valvettiturai, Udupidy Parish, Vadammaradchy Division, Jaffna District, Northern Province ; and bounded on the east and north by the property of the 1st and 2nd defendants, on the west by the property of the 4th defendant, and on the south by road. Registered A. 149/57.

2. All that undivided  $\frac{1}{3}$  share with share of coconuts, palmyrahs and well, of all that piece of land called Pannaikaddaiadi in extent 2 lachams varagu 30 culture and  $13\frac{1}{8}$  kulies, situated at Valvettiturai aforesaid ; and bounded on the east by the property of Kathirgamar Periyathamby and others, on the north by lane, and on the west and south by the property of Kathirippillai Sivapragasani. Registered A. 149/58, and all the right, title, interest and claim whatsoever of the defendant in, to, upon or out of the said several premises mortgaged by the defendant, be sold by a Commissioner and the proceeds applied in and towards the payment of the said amount, interest and costs and if such proceeds shall not be sufficient for the payment in full of such amount that the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the afore 40 mentioned rate until realization. It is further ordered that the Commissioner do allow the plaintiff or his nominee to bid for and purchase the decreed property and that he do give credit to the extent of his claim in the event of his purchasing the same and that he do execute a deed of conveyance in favour of the purchaser

or purchasers thereof. And it is further ordered that the Fiscal, Northern Province be ordered to put the purchaser or purchasers in possession of the said lands and premises on 24th day of September, 1938.

Sgd. E. WIJAYAWARDENE:  
A.D.J

Exhibit  
P 10.  
Decree in  
D. C. Jaffna  
Case No. 551.  
24-9-38.  
—continued.

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**D 1.**  
**Bank Receipt.**

D 1.  
Bank  
Receipt:  
16-11-38.

The Mercantile Bank of India Limited.

Rs. 130.

Colombo, 16th November, 1938.

10 Received to the credit of Karthikesar Aiyadurai on realization the sum of Rupees One hundred and thirty only from J.M.O., Mr. S. Saverimuttu.

The above sum will be entered in the Pass Book when it is sent in and this receipt is therefore only temporary.

(on the reverse)

*Accountant.*

SAVARIMUTTU,  
Valvettiturai.

---

**D 13.**  
**Power of Attorney No. 2,742.**

D 13.  
Power of  
Attorney  
No. 2742.  
8-9-40.

Copy

20

**Power of Attorney.**

No. 2,742.

To all to whom these presents shall come, we Karthigesar Aiyadurai and wife, Sivakolonthu of Valveddy, send Greeting :

Whereas we are about to leave the said Island of Ceylon and to remain for sometime in parts beyond the seas, and whereas we are desirous of appointing some fit and proper person as our attorney to manage and transact all our business and affairs in the said Island of Ceylon during our absence therefrom.

Now know ye and these presents witness that we the said Karthigesar 30 Aiyadurai and wife, Sivakkolonthu, have made, nominated and appointed and by these presents do make, nominate and appoint Karthikesar Sabapathy Ponniah of Changanai as our true and lawful attorney in the said Island of Ceylon to act for us and on our behalf and in our name or otherwise for all and each and every or any of the following purposes, that is to say :

Exhibits  
 D 13.  
 Power of  
 Attorney  
 No. 2742.  
 8-9-40.  
 —continued.

To superintend, manage and control the houses, lands, estates, and other landed property which we now are or hereafter may become entitled to possessed of or interested in, and to sell and dispose of or to mortgage and hypothecate or to demise and lease or freight or charter or to convey by way of exchange the houses, lands, estates and other landed property, ships, vessels, and boats which we now are or hereafter may become entitled to possessed of or interested in. To sell and dispose of or to ship and consign for sale elsewhere the crops and produce of the estates which we now are or hereafter may become entitled to possessed of or interested in and to mortgage the crops and produce of our estates, together with buildings, tools, implements, 10 machinery, live and dead stock on the said estates or thereunto belonging as security for advance, against crops or otherwise.

To call for and to give and consent to a partition of the said lands, houses, buildings, and premises or any of them between us and the other proprietor or proprietors thereof.

To purchase or take on lease for us any necessary lands, tenements or hereditaments as to our said attorney shall seem proper.

In the event of any such purchase, sale, lease, exchange, mortgage and hypothecation, partition freight, charter or for any other purpose whatsoever for us and in our names and as our act and deed to sign, execute and deliver all 20 deeds and other writings necessary for giving effect and validity to the same respectively or to any contract, agreement or promise for effecting the same respectively.

To ask, demand sue for, recover and receive of and from all persons liable now or hereafter to pay and deliver the same respectively all sum and sums of money, debts, legacies, goods, effects and things whatsoever now owing payable or belonging or which shall or may at any time hereafter be due to owing and payable coming or belonging to us and on payment or delivery thereof to give, sign and execute receipts, releases and other discharges for the same respectively and thereupon to manage employ and deal with the same as we could or might 30 lawfully do, and on non-payment or non-delivery thereof or of any part thereof to commence, carry on and prosecute any action or actions, suit or suits or other proceedings whatsoever before any Court or Courts in the said Island for receiving and compelling the payment or delivery thereof.

To state, finally settle and adjust all accounts, reckonings and demands whatsoever between us and any person or persons whomsoever and to compromise disputes and differences and to refer matters to arbitration and to sign and execute all necessary bonds, submissions and references therefore and to enforce any award.

To sell and convert into money all goods, effects or things which now 40 belong or at any time hereafter shall belong to us and invest the money which now belongs or at any time hereafter may belong to us upon such security as

our said attorney shall consider good and sufficient and Exhibits  
 from time to time to very such investments for other D 13.  
 or others of the same or like nature or to release such security. Power of  
 Attorney  
 No. 2742.  
 8-9-40.  
 —continued.

To appear for us before any Court or Courts in the said Island either as  
 plaintiff, defendant or intervenient, and to sign and grant all necessary proxy or  
 proxies to any Proctor or Proctors of the said Courts and the same from time to  
 time to recall and revoke and to prosecute or defend any suit or suits or other  
 proceedings now or hereafter to be brought by or against us and to proceed to  
 judgment thereon or to suffer judgment by way of default to be entered against  
 10 us and to admit any claim or claims which may be brought against us in such  
 Court or Courts as our said attorney.

shall think fit, and against any judgment,  
 order to decree of any of the said Courts to appeal and prosecute such appeal  
 before the Supreme Court of the said Island, and from any judgment order or  
 decree of the said Supreme Court to appeal to His Majesty the King in Council  
 and give all necessary securities and sign all necessary bonds for the prosecution  
 of such appeals.

To prove any debt or debts due to us by any person who shall be adjudged  
 an insolvent in any Court or Courts in this Island and to vote in the election of  
 20 assignees and to accept any offer of composition and otherwise to represent and  
 act for us in such insolvency proceedings.

To draw, sign, make, endorse, accept and discount any bill or bills of  
 exchange or promissory note or notes, or bills of lading and to sign and endorse  
 cheques for the purpose of drawing money out of any Banks in the said Island.

To become security to any person for any purpose whatsoever, and to  
 sign and deliver any deed or writing for the said purpose.

To enter into and execute, any covenants, bonds, assignments of bonds or  
 judgments, mortgages or other securities and warrants, and powers of attorney  
 for confessing judgment in any of the Courts in the said Island, and to sign and  
 30 deliver the same respectively, and to attend any meetings of any companies,  
 wherein we are shareholders and to vote for us on any subject, matter or question  
 that may be brought forward at any such meeting at which by the rules and  
 regulations of any such Company we can or may vote if personally present, and  
 to grant proxies to any person or persons to vote on our behalf for any of the  
 said purposes and generally, to act for us and do and execute any and every act,  
 matter or thing in respect of the liquidation or winding up of any such Company  
 or otherwise as shall or may be found necessary or expedient upon or by virtue  
 of any judgment, decree, bill, bond, pro-note account or upon any instrument  
 relating thereto, and to apply for grant or letters of administration over the estate  
 40 of any deceased person or persons in which we are interested and to prove any  
 will or any deceased person or persons on our behalf and to obtain letters of  
 administration or probate in our name.

Exhibits  
 D 13.  
 Power of  
 Attorney  
 No. 2742.  
 8-9-40.  
 —continued

To charter, lease or otherwise dispose of any ship or ships, vessels, dhonies, canoes and boats or any of them belonging to us and to appoint and remove tindals for such ships, vessels, dhonies, canoes, boats and at pleasure such appointments to revoke and others to appoint in their places.

To buy or purchase for us and in our name and behalf any movable or immovable property either under any writs of execution already issued or may hereafter be issued from any of the said courts at our instance or at any other Fiscal's sale or auction or by private contracts or deed and to accept deeds of transfer or bills of sale for such property.

Generally to do, execute and perform all such further and other acts, deeds 10 matters and things whatsoever which our said attorney shall think necessary or proper to be done in and about or concerning our business, estates, lands, houses, debts, or affairs as fully and effectually to all intents and purposes as we might or could do if we were personally present and did the same in our proper person, it being our intent and desire that all matters and things respecting the same shall be under the full management, control and direction of our said attorney.

And for more effectually doing, effecting, executing, and performing the several matters and things, aforesaid, we give and grant unto our said attorney full power and authority from time to time to 20 appoint one or more substitute or substitutes to do execute and perform all or any of the matters and things aforesaid and such substitute or substitutes at pleasure to remove and to appoint another or others in his or their places we hereby promising and agreeing to ratify, allow and confirm all and whatsoever our said attorney substitute or substitutes shall lawfully do or cause to be done in the promises by virtue hereof.

And we do hereby direct that all acts which shall be had made or done by our said attorney substitute or substitutes, before he or they shall have received notice of our death or the revocation of the authority contained in these presents, shall be as binding and valid to all intents and 30 purposes, as if the same had taken place previous to our death or before such revocation, any rule of law or equity to the contrary notwithstanding.

And it is hereby expressly declared and agreed that as against our and our said firm and any person claiming under us or our said firm every act, deed, matter or thing which the said attorneys or attorney or their or his substitute or substitutes shall execute or cause to be executed or done in relation to the premises subsequent to the revocation of the powers expressed to be hereby conferred or any of them shall be binding and conclusive in favour of every person claiming the benefits of such act deed, matter or thing who shall not prior to the execution or doing thereof received express notice of such revocation and it is 40 hereby further declared that no such person shall be bound to inquire or ascertain whether we are living or whether the said powers or any of them have or has been revoked or otherwise determined.



In witness whereof we do hereby set our hands to three of the same tenor and date as these Presents at Valvetty, this 8th day of September, in the year One thousand Nine hundred and Forty.

Exhibits  
D 13.  
Power of  
Attorney  
No. 2742.  
8-9-40.  
-- continued.

Sgd. K. AIYADURAI.

„ I. SIVAKOLUNTHU.

Witnesses :

1. M. SIVASUBRAMANIAM.

2 A. KANDIAH

Sgd. S. APPADURAI,  
*Notary Public.*

10

I, Saravanamuttu Appadurai, Notary Public within the judicial division of Point Pedro, do hereby certify and attest that the foregoing instrument having been read over and explained by me to the within-named Karthigesar Aiyadurai and wife Sivakkolunthu, the executants hereof who are known to me, in the presence of Muttukumaroo Sivasubramaniadasa and Arumugam Kandiah, who has signed illegibly, both of Valveddy, the subscribing witnesses thereto who are also known to me the same was signed by the said executants and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Valveddy, on this 8th day of September, One thousand  
20 Nine hundred and Forty.

I further certify and attest that the duplicate of this instrument bears one stamp of the value of Rs. 10 and the original one of Rupee One and that in both the duplicate and the original page 1, line 19 "to . . . or " and "or to " and line 20 "convey . . . otherwise " and line 34, "sale, mortgage " and page 3, line 38 "twenty " were deleted and page 3, line 16 "we the " was scored off and "over " was written before the foregoing instrument was read and explained as aforesaid.

Date of Attestation : 8th September, 1940.

Sgd. S. APPADURAI,  
*Notary Public.*

30

(Seal)

True copy.

25th May, 1945.

Sgd. Illegibly.  
*Notary Public.*

Exhibits  
 D 16.  
 Letter of  
 Demand,  
 16-1-46.

D 16.

**Letter of Demand.**

No. 39/2  
 Chankanai, Jaffna, 16th January, 1946.

S. SIVAGNANAM,  
 Proctor, Changanai.

To SWAKEENAPILLAI SAVARIMUTTU,  
 Nediakaddu Pillaiyar Koil,  
 Valvettiturai.

I am instructed by Mr. K. Aiyadurai of Valvetty to demand of you the immediate payment of the sum of Rs. 160 being rent due on lease bond No. 4 granted by you and your wife and for use and occupation and to give you notice and I hereby give notice to quit the land called Elumullaipattai and deliver vacant possession to P. Thagamlantham, Valvettiturai, within one calendar month's notice. 10

In default of your complying with this request within 14 days, I am further instructed to sue you at law for the recovery thereof with costs and for ejection after one calendar month's notice.

Sgd. S. SIVAGNANAM.

When remitting please include Rs. 1 75 for this letter.

20

P 6.  
 Deed of  
 Transfer  
 No. 706.  
 3-2-46.

---

 P 6.
**Deed of Transfer No. 706.**

Transfer  
 Land 1.  
 Rs. 2,000.

Prior Regn. Jaffna, A. 278/296.

**No. 706**

3-2-1946

Know all men by these presents that I, Karthigesar Aiyadurai of Valveddy, presently of the Federated Malay States, hereinafter called the vendor for and in consideration of the sum of Rs. 2,000 well and truly paid to me by Ponnambalam 30 Thangavelautham of Valvettiturai (hereinafter called the purchaser) (the receipt whereof I do hereby admit and acknowledge) do hereby grant, convey, assign, sell, transfer set over and assure unto the said purchaser his heirs, executors, administrators and assigns the land and premises fully described in the schedule

hereto together with all and singular the rights, ways, easements, advantages, servitudes and appurtenances, whatsoever thereto belonging or in any wise appertaining or usually held, occupied, used or enjoyed therewith or reputed or known as part or parcel thereof, and together with all the estate, right, title, interest, claim and demand whatsoever of me the said vendor in, to, out of, and upon the said premises and every part thereof.

Exhibits  
P 6.  
Deed of  
Transfer  
No. 706,  
3-2-46.  
—continued.

The said land is being held and possessed by me under and by virtue of Transfer Deed No. 3 dated 12th November, 1937, and attested by S. Sivagnanam, Notary Public, wherein endorsement of this transfer is made.

10

*The Schedule referred to above.*

Land situated at Valvettiturai, Udupiddy Parish, Vadamaradchi Division, Jaffna District, Northern Province, called Elumullupattai, in extent 24½ lachams varagu culture. Of this an extent of 4 lachams varagu culture and 1½ kulies towards the north is bounded on the east and south by road, north by land of Ponnammah, wife of Manicavasagam and others, and on the west by land of the vendor and others. The whole of the ground and palmyrahs contained within these boundaries.

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

And I the said vendor for myself, my heirs, executors, and administrators do hereby covenant with the said purchaser and his aforewritten that the said premises hereby sold and conveyed, are free from all encumbrances whatsoever that I now have good right to sell and convey the said premises in manner aforesaid that the said purchaser and his aforewritten may at all times hereafter quietly enter into hold and enjoy the said premises that I and my aforewritten shall and will at all times hereafter warrant and defend the said premises and every part thereof unto the said purchaser and his aforewritten against any person or persons whomsoever and that I and my aforewritten shall and will at all times hereafter at the request and cost of the said purchaser and his aforewritten do and execute or cause to be done and executed all such further acts, deeds, assurances, matters and things whatsoever for further and more perfectly assuring the said premises and every part thereof unto the said purchaser and his aforewritten as shall or may be reasonably required.

In witness whereof I the said vendor through my attorney Cathiresar Sabapathy Ponnaiya, do hereunto and to two others of the same tenor and date as these presents set my hand at Valvettiturai, this 3rd day of February, 1946.

Sgd. K. AIYADURAI,  
by his attorney,  
Sgd. Illegibly.

40

Witnesses :

1. M. SIVAKOLUNTHU.
2. V. SUBRAMANIAM.

Sgd. K. RATNASINGHAM,  
*Notary Public.*

Exhibits  
P 6.  
Deed of  
Transfer  
No. 706,  
3-2-46.  
—continued.

I, Kulandaivel Ratnasingham, Notary Public, within the judicial division of Point Pedro, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within-named Cathiresar Sabapathy Ponnaiya, the attorney of Karthigesar Ayadurai, appointed under Deed No. 2,742 dated 8th September, 1940, attested by S. Appadurai, Notary Public. the vendor hereof is known to me in the presence of Maniccam Sivaccolunthu of Valvettiturai, and Vyramuttu Subramanaiya of Koranavai North, the subscribing witnesses hereto who are also known to me the same was signed by the said C. S. Ponnaiya and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Valvettiturai, on the 3rd 10 day of February, 1946.

I further certify and attest that the said consideration was paid in my presence, that before the foregoing instrument was read and explained as aforesaid in both the duplicate and the original page 2 bottom line " and palmyrahs " interpolated, that the duplicate bears 4 stamps of the value of Rs. 31 and the original one of Re. 1.

Date of Attestation : 3rd February, 1946.

Sgd. K. RATNASINGHAM,  
Notary Public.

(Seal)

20

D 19.  
Deed of  
Transfer  
No. 706,  
3-2-46.

**D 19.**  
**Deed of Transfer No. 706.**

Transfer  
Land 1.  
Rs. 2,000.

Prior Regn. Jaffna, A. 278/296.

**No. 706.**  
3-2-1946

Know all men by these presents that I, Karthigesar Aiyadurai of Valvetty, presently of Federated Malay States (hereinafter called the vendor) for and in consideration of the sum of Rs. 2,000 well and truly paid to me by Ponnambalam 30 Thangavelautham of Valvettiturai, hereinafter called the purchaser (the receipt whereof I do hereby admit and acknowledge do hereby grant, convey, assign, sell, transfer, set over and assure unto the said purchaser, his, heirs, executors, administrators and assigns the land and premises fully described in the schedule hereto together with all and singular the rights, ways, easements, advantages, servitudes and appurtenances, whatsoever thereto belonging or in any wise appertaining or usually held, occupied, used, or enjoyed therewith or reputed or known as part or parcel thereof, and together with all the estate, right, title, interest, claim and demand whatsoever of me the said vendor in, to, out of, and upon the said premises and every part thereof.

40

The said land is being held and possessed by me under and by virtue of Transfer Deed No. 3 of 12th November, 1937, and attested by S. Sivagnanam, Notary Public, wherein endorsement of this transfer is made.

Exhibits  
D 19,  
Deed of  
Transfer  
No. 706,  
3-2-46.  
--- continued

*The Schedule referred to :*

Land situated at Valvettiturai, Udupidy Parish, Vadamardchy Division, Jaffna District, Northern Province, called Elumullupattai, in extent 24½ lachams varagu culture. Of this an extent of 4 lachams varagu culture and 1½ kulies towards the north is bounded on the east and south by road, north by land of Ponnammah, wife of Maniccavasagam and others, and on the west by land of  
10 the vendor and others. The whole of the ground and palmyrahs contained within these boundaries. To have and to hold the said premises hereby sold and conveyed or expressed so to be with all the rights, easements and appurtenances unto the said purchaser, his heirs, executors, administrators and assigns absolutely for ever.

And I, the said vendor for myself, my heirs, executors and administrators, do hereby covenant with the said purchaser and his aforewritten that the said premises hereby sold and conveyed are free from all encumbrances whatsoever that I now have good right to sell and convey the said premises in manner afore-  
20 said that the said purchaser and his aforewritten may at all times hereafter quietly enter into hold and enjoy the said premises that I and my aforewritten shall and will at all times hereafter warrant and defend the said premises and every part thereof unto the said purchaser and his aforewritten against any person or persons whomsoever and that I and his aforewritten shall and will at all times hereafter at the request and cost of the said purchaser and his afore-  
30 written do and execute or cause to be done and executed all such further acts, deeds and assurances, matters and things whatsoever for further and more perfectly assuring the said premises and every part thereof unto the said purchaser and his aforewritten as shall or may be reasonably required. In witness whereof I the said vendor through my attorney, Cathiesar Sabapathi Ponnaiya, do  
hereunto and to two others of the same tenor and date as these presents set my hand at Valvettiturai, this 3rd day of February, 1946.

Sgd. K. AIYADURAI.  
by his attorney  
C. S. PONNAIAH.

Witnesses :

1. M. SIVACCOLUNTHU.
2. V. SUBRAMANIAM.

Sgd. K. RATNASINGHAM.  
*Notary Public.*

40 I, Kulandavel Ratnasingham, Notary Public, within the judicial division of Point Pedro, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within-named Carthigesar Sabapathy Ponnaiya, the attorney of Karthigesar Aiyadurai, appointed under

**Exhibits**  
 D 19.  
 Deed of  
 Transfer  
 No. 706  
 3-2-46  
 —continued.

Deed No. 2,742, dated 8th September, 1940, and attested by S. Appadurai, Notary Public, the vendor hereof who is known to me in the presence of Maniccam Sivacolunthu of Valvettiturai and Vyramuttu Subramaniam, the subscribing witnesses hereto who are also known to me the same was signed by the said C. S. Ponnaiya, and also by the said witnesses in my presence and in the presence of one another, on the 3rd day of February, 1946.

I further certify and attest that the said consideration was paid in my presence, that before the foregoing instrument was read and explained as aforesaid in both the duplicate and the original page 2 in the bottom line " and palmyrahs " interpolated, that the duplicate bears four stamps of the value of Rs. 31 and the original 1 of Re. 1.

Date of Attestation : 3rd February, 1946.

Sgd. K. RATNASINGHAM,  
*Notary Public.*

" True Copy " :

4-3-46.

K. RATNASINGHAM,  
*Notary Public.*

D 17.  
 Caveat  
 5-2-46

**D 17.**

**Caveat.**

D 17.

Stamps 3 value of Rs. 12.50.  
 The Registrar of Lands, Jaffna.

Appln. No. 751/13-5 47. 20

Caveat.

Take notice that I, Swakeenapillai Saverimuttu of Nediakadu Road in Valvettiturai, require to be served with notice of the presentation for registration of any instrument affecting the undermentioned lands :

*Schedule.*

(1) Land at Valvettiturai in Udupidy Parish, Vadamaradchy Division, Jaffna District, Northern Province called Muthuraikkaddaiyadi, in extent  $12\frac{1}{2}$  lachams varagu culture. Of this an extent of  $3\frac{1}{8}$  lachams varagu culture, being  $\frac{30}{100}$  the northern half share out of  $\frac{1}{4}$  share is bounded on the east by the 3rd land mentioned herein below, north by land of Anthoniccam, wife of Sepamalai and others, west by lane, and on the south by land of Gnanapiragasam Sebastianipillai and others. The whole of the ground, palmyrahs, coconut trees, stone built house, kitchen and mal, contained within these boundaries, and registered in A. 125/258.

(2) Land at ditto called Pannaikkaddaiyady, in extent  $11\frac{1}{2}$  lachams varagu culture, ditto  $3\frac{5}{8}$  lachams varagu culture but according to measurement 11 lachams varagu culture and  $1\frac{1}{3}\frac{6}{2}$  kulies. Of this an extent of 1 lacham varagu culture and  $15\frac{8}{3}\frac{2}{2}$  kulies and a further extent of  $16\frac{2}{3}\frac{0}{2}$  kulies aggregating to a total extent of 2 lachams varagu culture and  $13\frac{2}{3}\frac{8}{2}$  kulies is bounded on the east by the village limit of Polikandy, north by lane, west by land of Chellappah Muthukumar, and on the south by land of the heirs of the late Kathiripillai Sivapragasam. Of the whole of the ground old and young palmyrahs, margosa trees and well contained within these boundaries an undivided  $\frac{1}{3}$  share and registered 10 in A. 125/259.

Exhibits

D 17.

Caveat.

5-2-46

—continued

3. Land at ditto called Elumullupattai, in extent  $24\frac{1}{2}$  lachams varagu culture. Of this an extent 84 lachams varagu culture and  $1\frac{1}{2}$  kulies towards the north is bounded on the east and south by road, north by land of Ponnammah, wife of Manicavasagam and others, and on the west by the 1st land mentioned above. The whole of the ground and palmyrahs, contained within these boundaries, and registered A. 85/113.

This *carcat* is to remain in force for a period of 6 months and I appoint, Swakkeenapillai Saverimuttu of Neiakadu Road in Valvettiturai as the place at which notices relating hereto be sent.

20

Sgd. S. SAVERIMUTTU,

Dated 5th February, 1946.

Signed by the abovenamed Swakeenapillai Saverimuttu, in the presence of Thampu Kanapathipillai of Thunnalai North, Karaveddy, and A. Nagalingam Velautham of Valvettiturai.

(1) T. KANAPATHIPILLAI.

(2) A. VELAYUTHAM.

D 14.

Telegram.

D 14.

D 14.  
Telegram  
7-2-46

30

CEYLON TELEGRAPHS.

Valvettiturai, 7th February, 1946.

Name : Karthigesar Aiyadurai.

Address : District Hospital, Klanelangor.

Rs. 7.

Why no reply for my three letters, Ponniah and Sivagnanam troubling me with the intention to sell lands for increased prices. I offered Ponniah full settlement in 1942, and he refused an old age much disturbed, five families will

Exhibits  
 D 14.  
 telegram.  
 7-2-46  
 —continued.

be homeless if you break agreement. Please instruct Ponniah Sivagnanam, reply immediately.

Sgd. SWAKEENAPILLAI SAVARIMUTTU.

D 20.  
 Deed of  
 Transfer  
 No. 708.  
 11-2-46

D 20.

Deed of Transfer No. 708.

D 20.

Transfer.  
 Land 1.  
 Rs. 5,000.

Prior Regn. Jaffna A. 278/296.

D 20.

10

No. 708.

11-2-1946

Know all men by these presents that I, Ponnambalam Thangavelautham of Valvettiturai hereinafter called the vendor for and in consideration of the sum of Rs. 5,000 well and truly paid to me by G. Aiyathurai Nadarajah of Valvettiturai hereinafter called the purchaser (the receipt whereof I do hereby admit and acknowledge) do hereby grant, convey, assign, sell, transfer, set over and assure unto the said purchaser, his heirs, executors, administrators, and assigns the land and premises fully described in the schedule hereto together with all and singular the rights, ways easements, advantages, servitudes and appurtenances, whatsoever thereto belonging or in any wise appertaining or usually held, occupied, used, or enjoyed therewith or reputed or known as part or parcel thereof, and together with all the estate, right, title, interest, claim and demand whatsoever of me the said vendor in, to, out of, and upon the said premises and every part thereof.

The said land is being held and possessed by me under and by virtue of transfer deed in my favour No. 706 dated 3rd day of February, 1946, and attested by the Notary attesting these presents which I do herewith deliver.

*The Schedule referred to above :*

Land situated at Valvettiturai, Udupidy Parish, Vadamalatchy Division, 30 Jaffna District, Northern Province, called Elumullupattai, in extent  $24\frac{1}{2}$  lachams varagu culture. Of this an extent of 4 lachams varagu culture and  $1\frac{1}{2}$  kulies towards the north is bounded on the east and south by road, north by land of Ponnammah, wife of Manicavasagam and others, and on the west by land of Karthigesar Aiyadurai and others. The whole of the ground contained within these boundaries.



To have and to hold the said premises hereby sold and conveyed or expressed so to be with all the rights, easements and appurtenances unto the said purchaser, his heirs, executors, administrators and assigns absolutely for ever. And I the said vendor for myself, my heirs, executors and administrators do hereby covenant with the said purchaser and his aforewritten that the said premises hereby sold and conveyed are free from all encumbrances whatsoever that I now have good right to sell and convey the said premises in manner aforesaid that the said purchaser and his aforewritten may at all times hereafter quietly enter into hold and enjoy the said premises that I and my aforewritten shall and will at all times hereafter warrant and defend the said premises and every part thereof unto the said purchaser and his aforewritten against any person or persons whomsoever and that I and my aforewritten shall and will at all times hereafter at the request and cost of the said purchaser and his aforewritten do and execute or cause to be done and executed all such further acts, deeds, assurances, matters and things whatsoever for further and more perfectly assuring the said premises and every part thereof unto the said purchaser and his aforewritten as shall or may be reasonably required.

Exhibits  
D 20.  
Deed of  
Transfer  
No. 708.  
11-2-46  
—continued.

In witness whereof I do hereunto and to two others of the same tenor and date as these presents set my hand at Valvettiturai, this 11th day of February, 20 1946.

Sgd. P. THANGAVELAUTHAM.

Witnesses

- (1) S. VYRAMUTTU.
- (2) A. KANDASAMY.

Sgd. K. RATNASINGHAM,  
*Notary Public.*

I, Kulandavel Ratnasingham, Notary Public, within the Judicial Division of Point Pedro, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within-named Ponnambalam Thangavelautham, who signed in Tamil the vendor hereof who is known to me in the presence of Subramaniam Vyramuttu and Aiyapillai Kandasamy, both of Valvettiturai, the subscribing witnesses hereto who are also known to me the same was signed by the said vendor and also by the said witnesses in my presence and in the presence of one another, all being present at the same time at Valvettiturai on the 11th day of February, 1946.

I further certify and attest that the said consideration was paid in my presence and that before the foregoing was read and explained as aforesaid in the duplicate page 2 line 3 from the bottom " the vendors and others " scored off,

Exhibits  
D 20.  
Deed of  
Transfer  
No. 708,  
11-2-46.  
—continued.

that the duplicate bears five stamps of the value of Rs. 79 and the original 1 of Re. 1.

Date of Attestation : 11th February, 1946.

Sgd. K. RATNASINGHAM,  
*Notary Public.*

“ True Copy.”

4-3-46.

Sgd. K. RATNASINGHAM,  
*Notary Public.*

D 15.  
Letter.  
8-3-46.

**D 15.**

**Letter.**

D 15.

Translation.

10

District Hospital, Klang,  
8th March, 1946.

Dear Mr. Sarawanamuttu and others,

Telegram and letters received. Everything has been realised. Humble myself, immediately I heard about the death of Savarimuttu's wife, it gives me great pain of mind. You have also been writing that I have committed breach of trust and deceived. Please do not misunderstand this like this once <sup>20</sup> again. It cannot be denied by anyone that it was well understood by all that it was fully realized that the lands were not sufficient for the principal and interest due at that time. If you are going to buy from me again, my wife and I may agree and sympathise and deduct one-tenth only from the value which any four people now may impartially assess.

Beyond this we are not willing to show any further consideration I have written letter to Ponniah and nephew Sivagnanam. It is not possible to send power till the civil government comes.

I am, Yours faithfully,  
Sgd, K. IYADURAI.

30

Translated by me:

Sgd. K. KANTHAVANAM  
*S.T., D.C.J.*

Dear Mr. Thuraisingham s/o Savarimuttu,

Received your kind letter. Please advise your people that I can favour only like this and my wife is not yielding any more. You can go and see Mr. Ponniah. I have sent him a telegram. If you want the same to take place immediately please prepare and send and we will sign in the presence of a magistrate and then send.... registration.

Exhibits

D:15  
Letter.  
8-3-46  
-continued.

Yours,  
Sgd. K. AIYADURAI

D 18.

10

Plaint and Answer of 1st Defendant in D C., Jaffna,  
Case No. 2,625.

D 18.  
Plaint and  
Answer of  
1st Defendant  
in D.C. Jaffna  
Case No. 2625  
11-3-46

D 18.

IN THE DISTRICT COURT OF JAFFNA HELD AT POINT PEDRO

(1) SIVAKKINAPILLAI SAVERIMUTTU and 4 others ..... *Plaintiffs.*

No. 2,625/P.

*Vs.*

(1) KARTHIGESAR IYADURAI of Valveddy, presently of

F.M.S. and 3 others..... *Defendants.*  
On this 11th day of March, 1946.

The plaint of the abovenamed plaintiffs appearing by C. Thanabala-  
20 singham, their Proctor, states as following :

1. The lands, mentioned in the schedule hereto are situated at Valvettiturai within the Jurisdiction of this Court.
2. The said lands were conveyed by the 1st plaintiff and his late wife, Annammah, to the 1st defendant to be held in trust for them and to be conveyed to them on their paying to the 1st defendant the sum of Rs. 2,000 with interest thereon from 12th November, 1937, on which date by Deed No. 3 of 12-11-37, the 1st plaintiff and his late wife conveyed the said lands to the 1st defendant. The plaintiff and his wife continued to be in possession of the said lands after having also executed a lease bond in favour of the 1st defendant.
3. Subsequently Annammah died and her children 2nd to 5th plaintiffs are her children and heirs and they and the 1st plaintiff are in possession of the said lands.

30

Exhibits  
 D 18,  
 Plaint and  
 Answer of  
 1st Defendant  
 in D.C. Jaffna  
 Case No. 2625  
 11-3-46  
 —continued.

4. The 1st defendant through his attorney on or about 16-1-1946 denies the title of the plaintiffs and is threatening to eject the plaintiffs.
5. A cause of action has accrued to the plaintiffs for a declaration that the 1st defendant is holding the said lands in trust subject to the payment of the said Rs. 2,000 and interest thereon.
6. The lands are reasonably worth Rs. 7,000.
7. The plaintiffs are ready and willing to pay the 1st defendant the sum of Rs. 2,000 and interest thereon at any time, but the 1st defendant is refusing to accept the same. 10
8. The 2nd defendant, though aware of the plaintiff's rights and claim in respect of the said lands, has purported to get a conveyance of the 3rd land Elumullupattai under No. 706 of 3-2-1946 attested by K. Ratnasingham, Notary Public. The 3rd defendant is a nominee of the 2nd defendant and is himself aware of the plaintiffs' rights and claim in respect of the said lands and has purported to purchase the said lands on Deed No. 708 of 11-2-1946 after the 1st plaintiff had lodged a *caveat* under the Registration of Documents Ordinance (Ch. 101 of Legislative Enactments of Ceylon).
9. The 2nd and 3rd defendants are necessary parties to this action for 20 the effectual and final determination of the cause of action set out in paras 1 to 7 above.
10. The 4th defendant is made a party to this action as he not willing to join the 3rd plaintiff his wife in this action.

Wherefore the plaintiffs pray :

- (a) That the 1st defendant be adjudged to hold the said lands in trust for the plaintiffs, that Deed No. 706 and 708 aforesaid be declared null and void, and if necessary be set aside, that the plaintiffs be declared entitled to the said lands on their depositing into Court the sum of Rs. 2,000 and interest thereon at 30 10 per cent. per annum on a date nominated by Court, that the defendants or any of them be ordered to execute such instruments as the Court may deem fit or necessary in favour of the plaintiffs, that the plaintiffs be placed in quiet possession of the said lands and for costs and for such other and further relief as to this Court shall seem meet.

Sgd. C. THANABALASINGHAM,  
*Proctor for Plaintiffs.*

*Schedule.*

Exhibits

D 18.

Plaint and  
Answer of  
1st Defendant  
in D. C.  
Jaffna Case  
No. 2625.  
11-3-46.  
*—continued.*

(1) Land at Valvettiturai in Udupidy Parish, Vadamarachy Division, Jaffna District, Northern Province, called Muthiraikkadaiyadi, in extent  $12\frac{1}{2}$  lachams varagu culture. Of this an extent of  $3\frac{1}{4}$  lachams varagu culture being the northern half share out of  $\frac{1}{4}$  share is bounded on the east by the 3rd land mentioned herein below, north by land of Anthoniccam, wife of Sepamalai and others, west by lane and on the south by land of Gnanapiragasam Sebastiampillai and others. The whole of the ground, palmyrahs, coconut trees, stone built house, kitchen and mal, contained within these boundaries, and registered in 10 A. 125/258.

(2) Land at ditto, called Pannaikkadaiyadi, in extent  $11\frac{1}{2}$  lachams varagu culture, ditto  $3\frac{5}{8}$  lachams varagu culture but according to measurement 11 lachams varagu culture and  $1\frac{1}{3}\frac{6}{8}$  kulies. Of this an extent of 1 lacham varagu culture and  $15\frac{8}{2}$  kulies and a further extent of  $16\frac{2}{3}\frac{0}{2}$  kulies aggregating to a total extent of 2 lachams varagu culture and  $13\frac{2}{3}\frac{8}{2}$  kulies is bounded on the east by the village limit of Polikandy, north by lane, west by land of Challappah Muttukumar, and on the south by land of the heirs of the late Kathirippillai Sivapragasam. Of the whole of the ground old and young palmyrahs, margosa trees and well contained within these boundaries an undivided  $\frac{1}{3}$  share, and 20 registered in A. 125/259.

(3) Land at ditto called Elumullupattai, in extent  $24\frac{1}{2}$  lachams varagu culture. Of this an extent of 4 lachams varagu culture and  $1\frac{1}{2}$  kulies towards the north is bounded on the east and south by road, north by land of Ponnammah, wife of Manicavasagam and others, and on the west by the 1st land and mentioned above. The whole of the ground and palmyrahs contained within these boundaries, and registered in A. 85/113.

Sgd. C. THANABALASINGHAM,  
*Proctor for Plaintiff.*

IN THE DISTRICT COURT OF JAFFNA HELD AT POINT PEDRO

30 (1) SIVAKKINAPILLAI SAVERIMUTTU and 4 others ..... *Plaintiffs.*

No. 2,625.

*Vs.*

(1) KARTHIGESU AIYADURAI of Valveddy, presently of  
F.M.S. and 3 others .. ... *Defendants.*

The answer on the 1st defendant abovenamed appearing by M. Esurapadham, Proctor, states as follows :

1. Answering to para 1 of the plaint this defendant admits the correctness of the averments contained therein.

Exhibits  
 D 18.  
 Plaintiff and  
 Answer of  
 1st Defendant  
 in D. C.  
 Jaffna  
 Case No. 2625  
 11-3-46.  
 —continued.

2. Answering to para 2 of the plaint this defendant while stating that the 1st plaintiff and his wife Annammah, by Deed No. 3 referred to therein transferred the said lands to this defendant for a sum of Rs. 2,000 and that the 1st plaintiff and his late wife entered into possession thereof as lessees of this defendant on bond No. 4, dated 12th day of November, 1937, and attested by S. Sivagnanam, Notary Public, denies the correctness of the other averments contained therein.
3. Answering to para 3 of the plaint this defendant while stating that the plaintiffs were in possession of the said lands as lessees of this 10 defendant and are now in wrongful possession thereof and that the said Annammah left behind the property to be inherited by her children states that he is unaware of the correctness of the other averments contained therein.
4. Answering to para 4 of the plaint this defendant while stating that by notice dated 16th day of January, 1946, requested the 1st plaintiff to deliver possession of the 3rd land in the schedule to the plaint to the 2nd defendant and to pay to this defendant the rent due in respect of the other lands denies the correctness of the other averments contained therein. 20
5. Answering to para 5 of the plaint this defendant denies the correctness of the averments contained therein.
6. Answering to para 6 of the plaint this defendant states that the said lands are reasonably worth Rs. 10,000.
7. Answering to para 7 of the plaint this defendant states that the plaintiffs are not entitled to a retransfer of the said lands and that the plaintiffs have not at any time before this action requested this defendant to accept the sum of Rs. 2,000 or any other sum.
8. Answering to para 8 of the plaint this defendant while stating that by Deed No. 706 referred to therein, this defendant through his 30 attorney sold the 3rd land described in the schedule to the plaint to the 2nd defendant, that he is not aware of the execution of the said Deed No. 706 referred to therein, that this defendant was lawfully entitled to sell the said land and that this defendant was not aware of any *caveat* lodged by the 1st plaintiff, denies the correctness of the other averments contained therein.
9. Answering to paras 9 and 10 of the plaint this defendant denies that any cause of action has accrued to the plaintiffs to sue any of the defendants.
10. This defendant further states that the action is not maintainable 40 as —

- (a) the plaint does not disclose any valid cause of action against this defendant or any of the other defendants,
- (b) there is a misjoinder of parties and causes of action,
- (c) the joinder of the reliefs prayed for in the plaint is obnoxious to the provisions of section 35 of the C.P.C.
- (d) the agreement and/or trust alleged in para 2 of the plaint if not contained in a notarially attested documents are unenforcible in law and other evidence cannot be led to prove the said agreement and trust.
- (e) the Deed No. 3 referred to in the plaint did not in law create a trust either expressed or constructive in favour of the plaintiffs.

**Exhibits**  
**D 18.**  
 Plaint and Answer of 1st Defendant in D. C. Jaffna Case No. 2625. 11-3-46.  
 —continued.

10

11. This defendant further states that the plaintiffs are estopped from denying the title of this defendant and his successors in title in view of the lease bond No. 4 referred to above.

Wherefore this defendant prays :

- (1) That the plaintiffs' action be dismissed.
- (2) For costs and for such other and further relief as to this Court shall seem meet.

20

Sgd. M. ESURAPADHAM,  
*Proctor for 1st Defendant.*

**D 34.**

**Answer of 2nd Defendant in D.C., Jaffna, Case No. 2,625.**

**D 34.**  
 Answer of 2nd Defendant in D. C. Jaffna Case No. 2625. 12-7-46.

IN THE DISTRICT COURT OF JAFFNA HELD AT POINT PEDRO

(1) SIVAKINAPILLAI SAVARIMUTTU and 4 others ..... *Plaintiffs.*

No. 2,625. Vs.

(1) KARTHIGESU IYADURAI of Valveddy, presently of F.M.S. and 3 others .. . . . . . *Defendants.*

The 12th day of July, 1946.

The answer of the 2nd defendant abovenamed appearing by K. Ratna-singham, his Proctor, states as follows :

- 1. Answering to paragraph 1 of the plaint this defendant admits the correctness of the averments contained therein.
- 2. Answering to para 2 of the plaint this defendant while stating that the 1st plaintiff and his wife, Annammah, by Deed No. 3 referred to

Exhibits  
 D 34.  
 Answer of  
 2nd Defen-  
 dant in D. C.  
 Jaffna Case  
 No. 2625.  
 12-7-46.  
 —continued.

therein transferred the said lands to the 1st defendant for a sum of Rs. 2,000 and that the 1st plaintiff and his late wife entered into possession thereof as lessees of the 1st defendant on bond No. 4 dated 12th day of November, 1937, and attested by S. Sivagnanam, Notary Public, denies the correctness of the other averments contained therein.

3. Answering to para 3 of the plaint this defendant while stating that the plaintiffs were in possession of the said lands as lessees of the 1st defendant and are now in wrongful possession thereof and that the said Annammah left behind no property to be inherited by her 10 children states that he is unaware of the correctness of the other averments contained therein.
4. Answering to para 4 of the plaint this defendant while stating that the 1st defendant by notice dated 16th day of January, 1946, requested the 1st plaintiff to deliver possession of the 3rd land in the schedule to the plaint to this defendant and to pay the rent due in respect of the other lands denies the correctness of the averments contained therein.
5. Answering to paras 5 and 7 of the plaint this defendant denies the correctness of the averments contained therein. 20
6. Answering to para 6 of the plaint this defendant states that the said lands are reasonably worth Rs. 10,000.
7. Answering to para 8 of the plaint this defendant while stating that by Deed No. 706 referred to therein this defendant purchased land No. 3 referred to in the schedule to the plaint and sold the same to the 3rd defendant by Deed No. 708 referred to therein that he is not aware of any *caveat* lodged by the 1st plaintiff and that the 1st plaintiff had no right whatsoever to enter a *caveat*, denies the correctness of the other averments contained therein.
8. Answering to para 9 of the plaint this defendant denies that any 30 cause of action has accrued to the plaintiffs to sue this defendant.
9. Answering to para 4 of the plaint this defendant states that he is not interested in the averments contained therein.
10. Further answering this defendant states that he is the present owner of the said land and is entitled to have the plaintiffs ejected therefrom. This defendant purchased the said land for valuable consideration and without notice of the alleged trust.
11. That this defendant has by his own undisturbed and uninterrupted possession and by the like possession of his predecessors in title for



more than a period of 10 years and upwards next immediately preceding the date of this action by a title adverse to and independent of the plaintiffs and all others whomsoever acquired a prescriptive right and title thereto in terms of section 3 of Chapter 55 of the Legislative Enactments of Ceylon.

Exhibits  
D 34.  
Answer of  
2nd Defen-  
dant in D. C.  
Jaffna Case  
No. 2625.  
12-7-46.  
—continued.

12. This defendant further states that the action is not maintainable as—

- (a) the plaint does not disclose a valid cause of action against this defendant or any of the other defendants,
- 10 (b) there is a misjoinder of parties and causes of action,
- (c) the joinder of the reliefs prayed for in the plaint is obnoxious to the provisions of section 35 of the Civil Procedure Code,
- (d) the agreement and/or trust alleged in para 2 of the plaint is unenforceable and oral evidence cannot be led to prove the said agreement and trust, and
- (e) the Deed No. 3 referred to in the plaint did not in law create a trust either express or constructive in favour of the plaintiffs.

13. This defendant further states that the plaintiffs are estopped from denying the title of the 1st defendant and his successors in title in view of the lease bond No. 4 referred to above.

20

Wherefore the defendant prays :

- (i) that the plaintiff's action be dismissed,
- (ii) for costs and for such other and further relief as to this Court shall seem meet.

Sgd. K. RATNASINGHAM,  
Proctor for 2nd Defendant.

P 4.

Deed of Transfer No. 308.

P 4.

P 4.  
Deed of  
Transfer  
No. 308.  
24-6-48

30 Transfer  
Lands 3.  
Consideration : Rs. 10,000.

Prior Regn. Jaffna A. 125/258,  
259 & 272/296.

No. 308.

Know all men by these presents that I, Karthikesar Iyadurai of Valveddy (hereinafter sometimes called the vendor) for and in consideration of the sum of Rs. 10,000 of lawful money of Ceylon well and truly paid to me by Ponnambalam Thangavelayutham of Valvettiturai (hereinafter sometimes called the vendee), (the receipt whereof I do hereby admit and acknowledge) do hereby grant,

Exhibits  
 P 4.  
 Deed of  
 Transfer  
 No. 398.  
 24-6-46.  
 —continued.

convey, assign, sell, transfer and set over unto the said vendee, his heirs, executors administrators and assigns the land described in the schedule hereto together with all and singular the rights, ways, easements, advantages, servitudes and appurtenances whatsoever thereto belonging or in anywise appertaining or usually held, occupied, used or enjoyed therewith or reputed or known as part or parcel thereof and together with all the estate, right, title, interest, claim and demand whatsoever of me the said vendor of, in, to, upon or out of the said premises and every part thereof which said premises belong to me and I am the owner thereof under and by virtue of purchase on Deed No. 3 dated 12th day of November, 1937, and attested by S. Sivagnanam, Notary Public. 10

To have and to hold the said premises hereby sold and conveyed with the rights, easements and appurtenances unto Thangavelayutham, the said vendee, his heirs, executors, administrators and assigns absolutely for ever.

And I the said vendor do hereby for myself and my heirs executors and administrators, covenant with the said vendee and his aforewritten that the said premises are free from any encumbrance whatsoever and I do hereby expressly declare that I shall not be liable to warrant or defend the title to the lands described in the schedule hereto.

*Schedule above referred to :*

1. Land at Valvettiturai, Udupidy Parish, Vadamaradchy Division, 20 Jaffna District, Northern Province, called Muthiraikaddaiyady, in extent  $12\frac{1}{2}$  lachams varagu culture. Of this an extent of  $3\frac{1}{8}$  lachams varagu culture being the northern  $\frac{1}{2}$  share out of  $\frac{1}{4}$  share is bounded on the east by 3rd land hereof, north by land of Anthoniccam, wife of Chempamalai and others, west by lane, and south by land of Gnanapiragasam Sebastiampillai and others. The whole of the ground, palmyrahs, coconut trees, stone built house, kitchen and maal contained within these boundaries.

2. Land at ditto called Pannaikaddaiyady in extent  $11\frac{1}{2}$  lachams varagu culture, ditto  $3\frac{5}{8}$  lachams varagu culture, but according to measurement 11 lachams varagu culture, and  $1\frac{1}{2}\frac{5}{2}$  kulies. Of this an extent of 1 lacham varagu 30 culture and  $15\frac{5}{3}\frac{5}{2}$  kulies, and a further extent of  $16\frac{2}{3}\frac{0}{2}$  kulies aggregating to a total extent of 2 lachams varagu culture and  $13\frac{2}{3}\frac{5}{2}$  kulies is bounded on the east by the village limit of Polikandy, north by lane, west by land of Chellappah Muttukumaru, and on the south by land of the heirs of the late Kadiripillai Sivapragasam. Of the whole of the ground, old and young palmyrahs, margosa trees and well, contained within these boundaries an undivided  $\frac{1}{3}$  share.

3. Land at ditto, called Elumullupattai, in extent  $24\frac{1}{2}$  lachams varagu culture. Of this an extent of 4 lachams varagu culture and  $1\frac{1}{2}$  kulies towards the north is bounded on the east and south by road, north by land of Ponnammah, wife of Manicavasagam and others, and on the west by the 1st land hereof. 40 The whole of the ground and palmyrahs contained within these boundaries.

In witness whereof I the said Karthigesar Iyadurai, do hereunto and 2 Exhibits  
 others of the same tenor and date as these presents set my hand at Point Pedro, P 4.  
 on this 24th day of June, 1946. Deed of  
 Transfer  
 No. 308.  
 24-6-46.  
 —continued.

Witnesses :

1. M. SIVAKOLUNTHU.
2. P. SADASIVAM.

Sgd. P. V SENATHIRAJASEGARAM  
*Notary Public.*

I, Punniar Veeragathipillai Senathi Rajah, of Puloly East, Notary Public,  
 10 of the Judicial Division of Point Pedro, do hereby certify and attest that the  
 foregoing instrument having been duly read and explained by me the said Notary  
 to the said Karthikesar Iyadurai, the vendor hereof who is not known to me and  
 who signed in English in the presence of Maniccam Sivacolunthu and Ponnusamy  
 Sathasivam, both of Valvettiturai, the subscribing witnesses hereto, both of  
 whom are known to me and both of whom signed in Tamil and who declared  
 that they know the executant hereof, the same was signed by the said Karthi-  
 gesar Iyadurai, the executant hereof, and also by the said witnesses in my  
 presence and in the presence of one another all being present at the same time  
 at Point Pedro aforesaid, on this Twenty-fourth day of June, One thousand Nine  
 20 hundred and .

And I further certify and attest that the consideration did pass in my  
 presence and that the duplicate of this instrument bears four stamps of the value  
 of Rs. 161 and the original one stamp of the value of Re. 1 and that before the  
 instrument was read over and explained as aforesaid in the original in page 2 line  
 14 was interpolated and in the duplicate in page 2 the 4th line interpolated and  
 the caret beneath were scored off.

Date of Attestation : 24th day of June, 1946.

Sgd. P. V. SENATHIRAJAH,  
*Notary Public.*

30

**D 27.**

**Notice to Quit the Land Muthiraikkaddaiyady.**

D 27.

D 27.  
 Notice to  
 quit the land  
 Muthiraikka-  
 ddaiyady.  
 25-7-46

No. 413.  
 Valvettiturai,  
 25-7-1946.

To,

- (1) Sivakeen Sawarimuttu,
- (2) S. Soosai pillai,
- (3) wife Virishthamma,
- (4) Swaminathar Morisiten,
- (5) wife Mariamuttu, all of Valvettiturai,

40

Exhibits Dear Sir,

D 27.  
Notice to  
quit the Land  
Muthiraikka-  
ddaiyady.  
25-7-46.  
—continued.

Under instructions from P. Thangavelautham of Valvettiturai, I do hereby give you notice to quit and hand over peaceful possession of the land and premises called Muthuraikkaddaiyady on or before 31st August, 1946.

The said land occupied and used by you belongs to my client under and by virtue of Transfer Deed No. 408 dated 24-6-46, and attested by P. V. Senathirajah, Notary Public.

Amount due by you and Rs. 1.25 for this letter of demand.

In default to comply with the above notice an action will be instituted against you to eject you therefrom.

I remain,  
Yours faithfully,  
K. RATNASINGHAM.

10

D 28.  
Notice to  
quit the land  
Pannaikkad-  
daiyady.  
25-7-46.

---

**D 28.**

**Notice to Quit the Land Pannaikkaddaiyady.**

No. 414.  
Valvettiturai,  
25-7-1946.

To  
Sivakeen Savarimuttu of Valvettiturai.

20

Dear Sir,

Under instructions from P. Thangavelautham of Valvettiturai, I do hereby give you notice to quit and hand over peaceful possession of the land and premises called Pannaikkaddaiadi on or before 31st August, 1946.

The said land occupied and used by you belongs to my client under and by virtue of Transfer Deed No. 308 dated 24-6-46 and attested by P. V. Senathirajah, Notary Public.

Amount due by you and Rs. 1.25 for this letter of demand.

In default to comply with the above notice on or before the abovementioned date an action will be instituted against you to eject you therefrom.

30

I am, Sir,  
Your obedient servant,  
Sgd. K. RATNASINGHAM.

**D 29.****Notice to Quit the Land Elumullupattai.**

No. 415.  
Valvettiturai,  
25-7-1946.

Exhibits  
D 29,  
Notice to  
quit the Land  
Elumullu-  
pattai,  
25-7-46.

*To*

- (1) Sivakeen Savarimuttu,
- (2) Thommaipillai Anthonimuttu,
- (3) wife Mariapillai,
- (4) A. S. Nadasathurai, all of Valvettiturai.

10

Dear Sir,

Under instructions from P. Thangavelautham of Valvettiturai, I do hereby give you notice to quit and hand over peaceful possession of the land and premises called Elumullupattai on or before 31st August, 1946.

The said land occupied and used by you belongs to my client under and by virtue of Transfer Deed No. 308 dated 24-6-46 and attested by P. V. Senathirajah.

Amount due by you and Rs. 1.25 for this letter of demand.

In default on or before the abovementioned date an action will be instituted against you to eject you therefrom.

Yours faithfully,  
K. RATNASINGHAM.

**D 35.****Letter Giving Notice.**

D 35.

D 35.  
Letter giving  
Notice.  
25-7-46.

Valvettiturai  
25-7-1946.

*To*

1. Sivakeenupillai Savarimuttu,
2. Thommaipillai Sebastampillai,
3. wife Mariammah, all of Valvettiturai.

30

I am instructed by Ponnambalam Thangavelautham of Valvettiturai, to give you notice that Karthigesar Aiyadurai of Valveddy, the decree holder in case No. 551/P of the District Court of Jaffna, held at Point Pedro, has assigned all his rights, title, interest, claim and demand in, to, out of and upon the hypothecary decree in the said case No. 551 to him on Deed No. 772 dated 17-7-46 and attested by K. Ratnasingham, Notary Public.

Exhibits  
D 35.  
Letter giving Notice.  
25-7-46.  
—continued.

I am further instructed to demand of you the amount due under the decree, viz., Rs. 858 with interest on Rs. 500 at 10 per cent. per annum from 8-7-38 till 24-9-38, and thereafter on the aggregate at 9 per cent. per annum till payment in full and also the costs of the said action No. 551.

I shall thank you to pay the said amount on or before the 1st day of August, 1946.

In default of your payment as such, I am further instructed to execute the decree.

Yours faithfully,  
K. RATNASINGHAM. 10

D 25.  
Plaint and Answer in D. C. Jaffna. Case No. 2762. 19-9-46 and 28-1-47.

D 25.

Plaint and Answer in D.C., Jaffna, Case No. 2,762.

D 25.

IN THE DISTRICT COURT OF JAFFNA HELD AT POINT PEDRO.  
PONNAMBALAM THANGAVELAUTHAM of Valvettiturai . . . . . *Plaintiff.* --  
No. 2,762. Vs.

(1) SIVAKEENAPILLAI SAVARIMUTTU and 6 others . . . . . *Defendants.*

This 19th day of September, 1946.

The plaint of the abovenamed plaintiff appearing by K. Ratnasingham, his Proctor, states as follows : 20

1. The parties reside and the subject matter of this action is situated within the Jurisdiction of the Court.
2. The 1st defendant abovenamed and his late wife Annammah were the owners and proprietors of the land called Muthuraikkadaiady, in extent 3½ lachams varagu culture under and by virtue of dowry Deed No. 12,732 dated the 25th April, 1907, and attested by V. Sinnathamby, Notary Public and more fully described in the schedule hereto annexed.
3. The 1st defendant and the said Annammah having held and possessed the said land transferred the same to a certain Karthikesar Iyadurai 30 by Deed No. 3 dated 12th day of November, 1937, and attested by N. Sivagnanam, Notary Public,

- Exhibits  
D 25.  
Plaint and  
Answer in  
D. C. Jaffna.  
Case  
No. 2762.  
19-9-46 and  
28-1-47.  
—continued.
4. The said Iyadurai having held and possessed the said land sold and conveyed the same to the plaintiff abovenamed by Deed No. 308 dated 24th June, 1946, and attested by P. V. Senathirajah, Notary Public.
5. The plaintiff by his own undisturbed and uninterrupted possession and by the like possession of his predecessors in title for more than a period of 10 years and upwards next immediately preceding the date of this action by a title adverse to and independent of the defendants and all others whomsoever acquired a prescriptive right and title thereto in terms of section 3 of Chapter 55 of the Legislative Enactments of Ceylon.
6. The defendants abovenamed who have no manner of right and title to the said land did on or about the 4th day of September, 1946, deny the right of the plaintiff to the said land and claimed the land as property of the 2nd, 4th, 6th and 7th defendants and are in wrongful possession thereof.
7. By reason of the said wrongful acts of the said defendants the plaintiff has sustained damages to the value of Rs. 100 and further damages of Rs. 20 per mensem.
8. A cause of action has accrued to the plaintiff to sue the defendants for declaration of title to the said land to recover possession thereof and to recover damages thereof.
9. The 3rd and 6th defendants are made parties to this action as husbands respectively of the 4th and 6th defendants.
10. The plaintiff states that the defendants are estopped from denying the title of the plaintiff as the 1st defendant and the late wife, Annammah, entered into possession of the said land on lease bond No. 4 dated 12th November, 1937, and attested by S. Sivagnanam, Notary Public.
11. The land is reasonably worth Rs. 4,500.

Wherefore the plaintiff prays :

- (i) That he be declared entitled to the said land.
- (ii) That the plaintiff be placed in peaceful possession of the said land and the defendants be ejected therefrom.
- (iii) That the 1st, 3rd, 4th, 5th, 6th and 7th defendants be ordered to pay the plaintiff the said sum of Rs. 100 as damages and further continuing damages of Rs. 20 per mensem from this date.

Exhibits  
 -----  
 D 25.  
 Plaintiff and  
 Answer in  
 D. C. Jaffna  
 Case  
 No. 2762.  
 19-9-46 and  
 28-1-47.  
 —continued.

- (iv) For costs against 1st and 3rd to 7th defendants and such other defendants as may contest this action.  
 (v) For such other and further relief as to this Court shall seem meet.

Sgd. K. RATNASINGHAM,  
*Proctor for Plaintiff.*

Memo of Documents Filed :

1. Abstract of title.

K. RATNASINGHAM,  
*Proctor for Plaintiff.*

*Schedule referred to above :*

10

Land at Valvettiturai, Udupiddy Parish, Vadamardchy Division, Jaffna District, Northern Province, called Muthuraikaddaiyadi, in extent  $12\frac{1}{2}$  lachams varagu culture. Of this an extent of  $3\frac{1}{2}$  lachams varagu culture being the northern  $\frac{1}{2}$  share out of  $\frac{1}{4}$  share is bounded on the east by land of the plaintiff, north by land of Anthoniccam, wife of Shepamalai and others, west by lane, and south by lane of Gnanapiragasam Sebastiampillai and others. The whole of the ground, palmyrahs, coconut trees, stone built house, kitchen and well contained within these boundaries.

Sgd. K. RATNASINGHAM,  
*Proctor for Plaintiff.* 20

IN THE DISTRICT COURT OF JAFFNA HELD AT POINT PEDRO.  
 PONNAMBALAM THANGAVELAUTHAM of Valvettiturai . . . . . *Plaintiff.*

No. 2,762.

*Vs.*

(1) SIVAKKINAPILLAI SAVARIMUTTU and 6 others . . . . . *Defendants.*

This 28th day of January, 1947.

The answer of the 1st, 4th, 5th and 6th defendants abovenamed appearing by K. K. Balasubramaniam, their Proctor, states as follows :

1. Answering to para 1 and 2 of the plaint these defendants admit the truth of the averments therein contained.
2. Answering to para 3 of the plaint these defendants state that the 30 said land and two other lands were conveyed on the said Deed No. 3 by the 1st defendant and his late wife Annammah to Karthigesu Aiyadurai referred to therein to be held in trust for them and to be



reconveyed to them on their paying to the said Aiyadurai the sum of Rs. 2,000 with interest thereon from 12th November, 1937.

Exhibits

D 25.

Plaint and  
Answer in  
D. C. Jaffna  
Case  
No. 2762.  
19-9-46 and  
28-1-47.  
—continued.

3. Answering to para 4 of the plaint these defendants state that the said Aiyadurai fraudulently and collusively executed Deed No. 308 referred to therein in favour of the plaintiff who prior to its execution was aware that the said Aiyadurai was holding the lands in trust as aforesaid. The said deed was wrongfully executed to deprive the defendants 1st-7th of their rights to the said lands.

10 4. Answering to para 5 of the plaint these defendants deny the truth of the averments therein contained.

5. Answering to para 6 of the plaint these defendants state that the 1st defendant and his late wife, Annammah were in possession of all the aforesaid 3 lands after the execution of Deed No. 3 aforesaid till 31st July, 1944, and thereafter the defendants 1st to 7th are in possession of the said lands in pursuance of the said trust. These defendants deny that the plaintiff has any right to the said lands.

6. Answering to paras 7 and 8 of the plaint the defendants deny all and singular the truth of the several averments therein contained.

20 7. Answering to para 10 of the plaint these defendants while admitting the execution of the lease bond referred to therein deny the truth of the rest of the averments contained therein.

8. By way of further answer these defendants state :

(a) As Deed No. 308 was executed after the lodging of a *caveat* under section 32 of the Registration of Documents Ordinance, Chapter 101 in respect of this and the other two lands, it cannot operate to convey any right or title to the plaintiff.

30 (b) That the plaintiff holds this and the other two lands if Deed No. 308 is held to be valid subject to the right of the defendants 1st-7th to pay a sum of Rs. 2,000 and such reasonable interest as may be fixed by Court from 12th November, 1937.

Wherefore these defendants pray :

- i. that the plaintiff's action be dismissed,
- ii. that the plaintiff in the event of Deed No. 308 being held to be valid be declared to be holding this land and the two other lands aforesaid, and referred to under Deed No. 3 aforesaid subject to the right of the defendants 1st to 7th to pay the aforesaid sum of Rs. 2,000 and such reasonable interest from 12th November, 1937, as Court may order.

Exhibits  
D 25.  
Plaint and  
Answer in  
D. C. Jaffna  
Case  
No. 2762  
19-9-46 and  
28-1-47,  
—continued.

- iii. that the plaintiff be ordered to execute a conveyance in favour of defendants 1st-7th on payment of the aforesaid sum as fixed by Court on such date as the Court may fix.
- iv. for costs, and for such other and further relief as to this Court shall seem meet.

Sgd. K. K. BALASUBRAMANIAM,  
*Proctor for 1st, 4th, 5th and 6th Defendants.*

D 26.  
Plaint and  
Answer in  
D. C. Jaffna  
Case  
No. 2772,  
4-10-46 and  
23-1-47.

**D 26.**

**Plaint and Answer in D.C., Jaffna, Case No. 2,772.**

IN THE DISTRICT COURT OF JAFFNA HELD AT POINT PEDRO. 10

G. AIYADURAI NADARAJAH of Valvettiturai . . . . . *Plaintiff.*

No. 2,772.

*Vs.*

(1) SWAKINAPILLAI SAVARIMUTTU and 9 others . . . . . *Defendants.*

This 4th day of October, 1946.

The plaint of the abovenamed plaintiff appearing by K. Ratnasingham, his Proctor, states as follows :

1. The parties reside and the subject matter of this action is situated within the Jurisdiction of this Court.
2. The 1st defendant abovenamed and his late wife Annammah were the owners and proprietors of the land called Elumullupattai in 20 extent 4 lachams varagu culture and 1½ kulies under and by virtue of dowry Deed No. 12,732 dated 25th April, 1907, and attested by V. Sinnathamby, Notary Public, and more fully described in the schedule hereto annexed.
3. The 1st defendant and the said Annammah having held and possessed the said land transferred the same to a certain Karthigesar Aiyadurai by Deed No. 3 dated 12th day of November, 1937, and attested by S. Sivagnanam, Notary Public.
4. The said Aiyadurai having held and possessed the said land sold and conveyed the same to a certain Ponnambalam Thangavelautham by 30 Deed No. 706 dated 3rd day of February, 1946, and attested by K. Ratnasingham, Notary Public.

5. The said Thangavelautham having held and possessed the said land sold and conveyed the same to the plaintiff abovenamed by Deed No. 708 dated 11th day of February, 1946, and attested by K. Ratnasingham, Notary Public.
6. The plaintiff by his own undisturbed and uninterrupted possession and by the like possession of his predecessors in title for more than a period of 10 years and upwards next immediately preceding the date of this action by a title adverse to and independent of the defendants and all others whomsoever acquired a prescriptive right and title thereto in terms of section 3 of Chapter 55 of the Legislative Enactments of Ceylon.
7. The defendants abovenamed who have no manner of right and title to the said land did on or about the 20th day of September, 1946, deny the right of the plaintiff to the said land and claimed the land as property of the 1st, 4th, 6th, 7th and 10th defendants and are in wrongful possession thereof.
8. By reason of the said wrongful acts of the said defendants, the plaintiff has sustained damages to the value of Rs. 250 and further continuing damages of Rs. 25 per mensem.
9. A cause of action has accrued to the plaintiff to sue the defendants for declaration of title to the said land to recover possession thereof and to recover damages thereof.
10. The 3rd, 5th and 8th defendants are made parties to this action as their husbands respectively of the 4th, 6th and 9th defendants.
11. The plaintiff states that the defendants are estopped from denying the title of the plaintiff as the 1st defendant and the late wife Annammah entered into possession of the said land on lease bond No. 4 dated 12th November, 1937, and attested by S. Sivagnanam, Notary Public.
12. The land is reasonably worth Rs. 6,000.

Exhibits

D 26.

Plaint and  
Answer in  
D. C. Jaffna  
Case  
No. 2772.4-10-46 and  
23-1-47.

—continued.

Wherefore the plaintiff prays :

- (i) that he be declared entitled to the said land,
- (ii) that the plaintiff be placed in peaceful possession of the said land and the defendants be ejected therefrom.

Exhibits  
D 26.  
Plaint and  
Answer in  
D. C. Jaffna  
Case  
No 2772.  
4-10-46 and  
23-1-47.  
—continued.

- (iii) that the 1st, 3rd, and 10th defendants be ordered to pay the plaintiff the said sum of Rs. 250 as damages and further continuing damages of Rs. 25 per mensem from this date.
- (iv) for costs against the 1st and 3rd to 10th defendants and for such other defendants as may contest this action,
- (v) for such other and further relief as to this Court shall seem meet.

Sgd. K. RATNASINGHAM,  
*Proctor for Plaintiff.*

Memo of Documents Filed :

- I. Abstract of title.

Sgd. K. RATNASINGHAM,  
*Proctor for Plaintiff.*

10

*Schedule referred to above.*

Land situated at Valvettiturai, within the Jurisdiction of this Court called Elumullaipattai, in extent  $24\frac{1}{3}$  lachams varagu culture. Of this an extent 4 lachams varagu culture and  $1\frac{1}{2}$  kulies towards the north is bounded on the east and south by road, north by the land of Ponnammah, wife of Maniccavasagam and others, and on the west by the land of Ponnampalam Thangavelautham and other, the whole of the ground contained within these boundaries.

Sgd. K. RATNASINGHAM,  
*Proctor for Plaintiff.*

20

IN THE DISTRICT COURT OF JAFFNA HELD AT POINT PEDRO.

G. AIYADURAI NADARAJAH of Valvettiturai .. . . . *Plaintiff.*

No. 2,772.

*Vs.*

(1) SWAKKEENAPILLAI SAVARIMUTTU and 9 others .. . . . *Defendants.*

This 23rd day of January, 1947.

The answer of the 1st, 2nd, 4th and 6th defendants abovenamed appearing by K. K. Balasubramaniam, their Proctor, states as follows :

1. Answering to paras 1 and 2 of the plaint these defendants admit the truth of the averments therein made.

30

- Exhibits  
D 26.  
Plaint and  
Answer in  
D. C. Jaffna  
Case  
No. 2772.  
4-10-46 and  
23-1-47.  
—continued.
2. Answering to para 3 of the plaint these defendants state that the said land and two other lands were conveyed in the said Deed No. 3 by the 1st defendant and his late wife Annammah to Karthigesu Aiyadurai referred to therein to be held in trust for them and to be reconveyed to them on their paying to the said Aiyadurai the sum of Rs. 2,000 with interest thereon from 12th November, 1937.
- 10 3. Answering to para 4 of the plaint these defendants deny that the Deed No. 706 dated 3rd February, 1946 referred to therein conveys any right, title or interest to Ponnambalam Thangavelautham in as much as the said deed was executed neither by Aiyadurai nor by any duly authorised agent of his. Further answering to the said paragraph the defendants state that the said Deed No. 706 was executed fraudulently and collusively in order to deprive the defendants 1st-7th of their rights to the said lands of which Thangavelautham was aware prior to the execution of the said deed.
- 20 4. Answering to para 5 of the plaint these defendants state that Deed No. 708 cannot convey any right or title in this land for the reasons stated in the 1st part of para 3 above and also as the plaintiff was fully aware of the rights of these defendants to the said land. Further answering to the said para these defendants state that by reason of the *caveat* lodged in the Land Registry of Jaffna on 6th February, 1946, by the 1st defendant the plaintiff was fixed with the knowledge of the claim of the defendants 1st-7th.
5. Answering to paragraphs 6th, 8th and 9th of the plaint these defendants deny all and singular the averments therein contained.
6. Answering to para 7 of the plaint these defendants deny the right of the plaintiff to the said land.
- 30 7. Answering to para 11 of the plaint these defendants while admitting the execution of the lease bond referred to therein deny the rest of the averments contained therein.

Wherefore these defendants pray :

- (1) That the plaintiff's action be dismissed with costs and that the said land be declared the property of the defendants 1st-7th subject to the payment of Rs. 2,000 and interest thereon due to Karthigesu Aiyadurai aforesaid or his heirs or assigns.
- (2) For costs, and for such other and further relief as to this Court shall seem meet....

Sgd. K. K. BALASUBRAMANIAM  
Proctor for 1st, 2nd and 6th Defendants

**Exhibits**

**D 12.**  
**Receipt**  
**No. 3997.**  
**24-12-46**

**D 12.****Receipt No. 3,997.**

D 12.

Receipt.  
 Rs. 1,030.

**No. 3,997.**

Know all men by these presents that I, Karthigesar Aiyadurai of Valveddy, the plaintiff in case No. 551/P. D.C., Jaffna, held at Point Pedro, do hereby admit and acknowledge to have received from Mariamma, wife of Thommaipillai Sebastiampillai of Valvettiturai, the 4th defendant in the said case a sum of 10 Rs. 1,030 in full satisfaction of the amount of decree and legal interest and costs in the said action No. 551, D.C., Jaffna.

In witness whereof I, . . ., do hereunto and to two others of the same tenor and date as these presents set my hand at Valveddy this 24th day of December, 1946.

Sgd. K. AIYADURAI.

Witnesses :

Sgd. S. THANGARAJAH.  
 „ K. ARULAMPALAM.

Sgd. S. APPADURAI, 20  
*Notary Public.*

Attestation : 24-12-46.

I, Saravanamuttoo Appadurai, Notary Public, within the Judicial Division of Point Pedro, in the District of Jaffna, Northern Province, do hereby certify and attest that the foregoing instrument having been read over and explained by me to the within named Kartigesar Aiyadurai, the grantor hereof who is known to me in the presence of Soosaimuttoo Peter Thangarajah of Valvettiturai, who has signed illegibly and Karthigesar Arulampalam of Valveddy, the subscribing witnesses hereto who are also are known to me the same was signed by the grantor and also by the said witnesses in my presence and in the presence of 30 one another all being present at the same time at Valveddy, on the 24th day of December, 1946.

I further certify and attest that out of the said consideration a sum of Rs. 430 was paid in my presence and the balance was acknowledged to have been received and that before the foregoing instrument was read over and explained as aforesaid in both the duplicate and the original page 1 line 4 "the " and line 5 "d" were scored off, and line 6 "T" and line 8 "P" were adjusted and that the original bears 1 stamp of the value of 6 cents.

Exhibits

D 12

Receipt

No. 3997.

24-12-46

—continued.

Date of Attestation : 24th December, 1946.

Sgd. S. APADURAI,  
*Notary Public.*

## Exhibits

## D 22.

D 22.  
Extracts from  
the Encum-  
brance Sheet  
in Respect of  
the Land  
Elumullu-  
pattai.  
1904 to 1946.

**Extracts from the Encumbrance Sheet in Respect of the Land  
Elumullupattai.**

## D 22.

Application No. 701/3-5-47.

Extract A. 45/237, 85/113, 278/296, 351/174.

Division A.—Volume 45.  
Folio 237.

Brought forward from

Name of Land : Elumullupattaiyadi, 24½ lachams varagu culture with road passing through of this 1/6th share.

Village or Town and Street : Valluvaddithurai.

Pattu : Udupiddy.

Korale : Vadamaradchu West.

District : Jaffna.

Province : Northern.

| Date of Registry Day Book No. & date. | Grantor's Names in full and residence.  | Grantee's Names in full and residence.          | Nature and particulars of alienations and Incumbrances (to be concisely and clearly stated)   |
|---------------------------------------|---|---|---|
| 19th Feb., 1904                       | Chinnatampi Culantaivelu, wife Parupathi Chinnathampi Arumugam, wife Annamuttu, daughter of Vettivelar of Valvettiturai | Kanapathipillai Kantavanam of Alvay             | Mortgage bond for Rs. 450 and interest at 16½ per cent. per annum of ¼ share of the above property with palmyrahs   |
| 2nd May, 1906<br>D.B. No. 1,914       | Innasimuttu Chimampillai of Valvettiturai   | Chittampalam Sabapathipillai of Valvettiturai   | Mortgage of 33/48 share of the above property for Rs. 80 and interest at 18 per cent. per annum   |
| 23rd Sept. 1907<br>D.B. No. 9,721     | Innasimuttu Chimampillai of Valvettiturai   | Kantaiya Vallipuram of Samarapakuthavankurichey | Transfer by sale of 33 undivided 48 shares of the above with the whole of 15 coconut trees thereon, newly planted subject to Mortgage bond No. 12,201 above regd. Cons. Rs. 200 |
| 16th Oct., 1911<br>D.B. No. 9,935     | Innasimuttu Chimampillai and wife Rosammah of Valvettiturai   | Podiyan Kanthan and wife Valli of Polikandy     | Mortgage of 17 undivided 24 shares of the above for Rs. 300 with interest at 12 per cent. per annum payable annually in default interest at 16½ per cent. per annum             |



Exhibits  
 D 22.  
 Extracts from  
 the Encum-  
 brance Sheet  
 in Respect of  
 the Land  
 Elumullu-  
 pattai.  
 1904 to 1946.  
 —continued.

Boundaries : East and south by road ; north by property of Venaiyakar Alvar ; west by property of Chantiya Innasimuttu and brothers and sisters.

| No. & Date of deed            | Name of Notary Judge &c.              | Regn. Stamp duty | Signature of Registrar | Remarks   |
|-------------------------------|---------------------------------------|------------------|------------------------|---|
| 3,430<br>28-3-1898            | C. Kathirikam-<br>tampi, Notary       | See folio<br>233 | Sgd. (Illegibly)       | Mortgaged with 4 other pro-<br>perties. See folio 233.  |
| 12,201<br>25-4-1906           | V. Chinnatambi,<br>Notary             | Rs. 1            | Sgd. D. Francis        | Boundaries : west by pro-<br>perty of Chantiyapillai,<br>Innasimuttu called Mutu-<br>raikkaddaiadi ; north by<br>property of Periyapillai,<br>wife of Muthutampi called<br>Muthuraikkaddaiadi.  |
| 12,892<br>12th Sept.,<br>1907 | V. Sinnatampi,<br>N.P.                | Rs. 2            | Sgd. D. Francis        | Name of land : Elumullu-<br>pattiadi 24½ lachams<br>varagu culture. Of this<br>4 lachams and 1½ kulies<br>being 1/6th share thereof.<br>Boundaries : north by Mut-<br>uraikkaddaiyadi belonging to Periyapillai,<br>wife of Muthutampi and others ; west by<br>Mutturaikkaddaiadi belonging to Sella-<br>muttu, wife of Nanapiragasar and sister. |
| 14,441<br>24th Nov.<br>1910   | V. Chinnatampi, See A. 67/136<br>N.P. |                  | Sgd. D. Francis        | With 2 other lands. See<br>A. 67/136. Extent and<br>boundaries : same as in<br>Deed No. 12,892 above<br>registered except the west<br>property of Annammah,<br>wife of Nanapirakasam<br>and others.   |

Carried over to volume A. 85, folio 113,

Exhibits Division A.—Volume 85.

D 22.  
Extracts from  
the Encum-  
brance Sheet  
in Respect of  
the Land  
Elumulla-  
pattai.  
1904 to 1946.  
—continued.

Folio 113.

Brought forward from volume A. 45, folio 237.

Name of Land : Elumullupattaiyadi.  
Village : Valluvedditurai.  
Pattu : Udupidy.  
Korale : Vadamaraachi West.  
District : Jaffna.  
Province : Northern.

| Date of Registry Day Book No. & date. | Grantor's Name in full and residence.                            | Grantee's Names in full and residence.                            | Nature and particulars of alienations and Incumbrances of (to be concisely and clearly stated.)  |
|---------------------------------------|--|---|--|
| 13th June, 1916<br>No. 10,048         | P. Kantan and wife Valli of Polikandi                            | C. Irathinasami of Valluveddithurai                               | Assignment of mortgage bond No. 14,441 of 24th Nov. 1910. V. Chinnatambi, Notary Public affecting 17 and of 24 shares of the above. Cons. Rs. 498 for this and 2 other lands |
| 6th July, 1918<br>D.B. No. 9,214      | Tamar Manikkavesakampillai and wife Ponnammah of Valluvedditurai | Kanakarathinam Arunasalam of Valveddithurai                       | Transfer by sale of 5 undivided 6th share of the above. Cons. Rs. 1,000  |
| 22nd Nov., 1919<br>D.B. No. 9,696     | Kanakarathinam Arunasalam of Valuvettiturai                      | Chuvikkenapillai Chaverimuthu and wife Annammah of Valveddithurai | Transfer by sale of 5 undivided 6th shares of the above. Cons. Rs. 500   |
| 3rd Mar., 1922<br>D.B. No. 3,229      | C. Chavarimuttu and wife Annammah of Valuedditurai               | K. Kathiresus and wife Chivakolunthu of Valluveddi                | Mortgage of the above for Rs. 1,650 and interest at 10 per cent. per annum payable yearly in default interest at 12 per cent. per annum                                      |

## Exhibits

D 22.  
Extracts from  
the Encum-  
brance Sheet  
in Respect of  
the Land  
Elumullu-  
pattai.  
1.04 to 1946.  
—continued.

Boundaries : East and south by road ; north by property of Vinayagar Alvar ; west property of Chantiya Innasimuttu and brothers and sisters.

Extent : 24½ lachams varagu culture. Of this 1/6th share.

| No. & Date of deed.         | Name of Notary Judge &c.    | Regn. stamp duty | Signature of Registrar | Remarks  |
|-----------------------------|-----------------------------|------------------|------------------------|--|
| 808<br>29th Māy,<br>1916.   | K. Sivaprakasam             | Rs. 5            | S. Velupillai          | With 2 other lands. See A. 67/136, 137. Extent : 4 lachams varagu culture and 1½ kulies. Boundaries : north by property or Periyapillai, wife of Muttutampi and others ; west by property of K. Kantan and others. Proprietor, I. Chimampillai and wife. |
| 94<br>3rd July,<br>1918     | K. Kanapathipillai.<br>N.P. | Rs. 4            | B. Francis             | Extent : 4 lachams varagu culture and 1½ kulies. Boundaries : north by property of Ponnammah, wife of T. Manikavasagampillai and others ; west by property of Annamma, wife of Manapirakasam and others.   |
| 1,612<br>19th Nov.,<br>1919 | K. Sivapragasam.<br>N.P.    | —                | S. Velupillai          | (1) Extent : 4 lachams varagu culture and 1½ kulies.<br>(2) Boundaries : north by land of Ponnamma, wife of T. Manikkavasagampillai and others ; west by land of Annamma, wife of Chavirimuttu and others.   |
| 2,063<br>24th Feb.,<br>1922 | K. Sivappirakasam,<br>N.P.  | —                | S. Velupillai          | With 4 other lands. See A. 125/258, 259, E. 58/356. 102/5. Extent : boundaries same as in Deed No. 1,612 above registered  |

Carried over to vol. A. 278, folio 296.

## Exhibits

D 22. Division A.—Vol. 278.

Extracts from the Encumbrance Sheet in Respect of the Land Elumullupatti. 1904 to 1946. —continued.

Folio 296.

Brought forward from volume A. 85, folio 113.

Name of Land : Elumullupattaiyadi.

Village : Valluveddithurai.

Pattu : Udupiddy.

Korale : Vadamaradchi.

District : Jaffna.

Province : Northern.

| Date of Registry Day Book No. & date. | Grantor's Name in full and residence.   | Grantee's Name in full and residence.              | Nature and particulars of alienations and Incumbrances (to be concisely and clearly stated).              |
|---------------------------------------|---|--|---|
| 22nd Nov., 1937<br>No. 17,358         | S. Chavarimuttu and wife Annammah of Valvedditurai  | K. Aiyadurai of Valveddi                           | Transfer of the above. Cons. Rs. 2,000 for this and 2 others  |
| 22nd Nov., 1937<br>No. 17,359         | K. Aiyadurai of Valveddi  | S. Chavarimuttu and wife Annammah of Valvettiturai | Lease of the above for a term of 6 years from date of deed. Total rent Rs. 120 for this and 2 other lands |
| 6th Feb., 1950<br>No. 3005            | <i>Caveat</i> under section 32 of Ordinance 23 entered by Swakkennapillai Savarimuthu of Nediakady road, Valvettiturai. The <i>Caveat</i> is in force until the 6th August, 1946. |  |   |
| 7th Feb., 1946<br>No. 3,030           | Karthigesar Aiyadurai of Valveddy, presently of F.M.S.  | Ponnambalam Than-gavelautham of Valvettiturai      | Transfer of the above Cons. Rs. 2,000   |

*Caveat* bearing D.B. No. 3,005 dated 6th February 1946 registered above is in force until 6th August, 1946.

Intld. R. K. A.

## Exhibits

D 22.  
Extracts from  
the Encum-  
brance Sheet  
in Respect of  
the Land  
Elumullu-  
pattai.  
1904 to  
1946.

—continued.

Boundaries : East and south by road ; north by property of Vinayagar Alvar ; west by property of Cantiya Innasimuttu and brothers and sister.

Extent : 24½ lachams varagu culture. Of this 1/6th share.

| No. & Date of deed.                          | Name of Notary Judge &c. | Regn. Stamp duty        | Signature of Registrar | Remarks  |
|--|--------------------------|-------------------------|------------------------|--|
| 3<br>12th Nov.<br>1937                       | S. Sivagnanam,<br>N.P.   | —                       | D. Walton              | Land : Elumullupattai ; extent : 4 lachams varagu culture and 1½ kulies ; north by Ponnamma, wife of Manikkavasagam and others ; west by land regd. in A. 125/258 with 2 others. See A. 125/258, 259.    |
| 4<br>12th Nov.,<br>1937                      | S. Sivagnanam,<br>N.P.   | —                       | D. Walton              | Land : Elumullupattai ; extent : 4 lachams varagu culture and 1½ kulies ; north by Ponnamma, wife of Manikkavasagam and others ; west by land regd. in A. 125/258 with 2 others. See A. 125/258 and 259. |
| <i>Caveat</i> dated<br>5th February,<br>1946 | —                        | Regn. duty<br>Rs. 12.50 | —                      | Differences same as in Deed No. 4 with two others in A. 125/258, etc.<br><br>R. K. ARULAMPALAM,<br><i>Registrar of Lands.</i>  |
| 706<br>3rd Feb.,<br>1946                     | K. Ratnasingham<br>N.P.  | —                       | R. K. Arulam<br>palam  | Land and extent same as in Deed No. 4 above.<br>Sgd. N. Ponnamma, wife of Manikkavasagam & others vendor and others.   |

Carried over to vol. A. 351, folio 174.

Exhibits Division A.—Vol. 351.  
Folio 174.

Brought forward from A. 278, 296.

D 22.  
Extracts from  
the Encum-  
brance Sheet  
in Respect of  
the Land  
Elumullu-  
pattai.  
1904 to 1946.  
—continued.

Name of Land : Ellumullaippattaiyadi.  
Village : Valluvedditurai.  
Pattu : Udupiddy.  
Korale : Vadamaradchi.  
District : Jaffna.  
Province : Northern.

| Date of Registry Day Book No. & date. | Grantor's Name in full and residence.   | Grantee's Names in full and residence.  | Nature and particulars of alienations and Incumbrances (to be concisely and clearly stated.) |
|---------------------------------------|---|---|--|
| 14th Feb., 1946<br>No. 3459           | Ponnampalam Thangavelautham of Valvettiturai  | G. Aiyaturai Nadarajah of Valvettiturai | Transfer of the above. Cons. Rs. 5,000   |
|                                       | <i>Caveat</i> bearing D.B. No. 3,005 dated 6th February, 1946 and registered in vol. A. 278 and folio 296 is in force until 6th August, 1946.                                     |   |  |
|                                       | Sgd. N. SABAPATHIPILLAI.<br>14-2-46   |   |  |
| 18th Nov., 1946<br>No. 5,885          | S. Savarimuttu, (2) S. I. Thuraisingham, Vristammah wife of T. Soosaipillai, (4) Mariaimuttu, daughter of S. Savarimuttu, (5) S. J. Selvaratnam, all of Valvettiturai, plaintiffs |   | An action affecting the above  |
|                                       | <i>Vs.</i>  |   |  |
|                                       | (1) K. Iyadurai of Valveti, presently of F.M.S., (2) P. Tangavelautham of Valvedditurai, (3) G. A. Nadarajah of Valvettiturai, (4) T. Soosaipillai of Valvettiturai, defendants.  |   |  |
|                                       | <i>Caveat</i> bearing D.B. No. 3,005 dated 6th February, 1946 and registered in volume A. 278 and folio 296 is in force until 6th August, 1946.                                   |   |  |
|                                       | Sgd. N. SABAPATHIPILLAI.<br>18-3-46   |   |  |
| 26th June, 1946<br>No. 12,459         | K. Aiyadurai of Valveddi  | P. Thangavelautham of Valvettiturai     | Transfer of the above Cons. Rs. 10,000 for this and 2 others                                 |
|                                       | <i>Caveat</i> bearing D.B. No. 3,005 dated 6th February, 1946 and registered in volume A. 278, folio 296 is in force until 6th August, 1946.                                      |   |  |
|                                       | Sgd. N. SABAPATHIPILLAI.<br>26-6-46.  |   |  |

## Exhibits

D22.

Extracts from  
the Encum-  
brance Sheet  
in Respect of  
the Land  
Elumullu-  
pattai.  
1904 to 1946.  
—continued.

Boundaries : East and south by road ; north by property of Venayagar Alvar ; west by property of Chantiya Innasimuttu and brothers and sister.  
Extent : 24½ lachams varagu culture. Of this 1/6th share.

| No. & date of deed             | Name of Notary Judge &c.          | Regn. Stamp duty | Signature of Registrar | Remarks   |
|--------------------------------|-----------------------------------|------------------|------------------------|---|
| 708<br>11th Feb.<br>1946       | K. Ratnasingham,<br>N.P.          | ---              | N. Sabapathipillai     | Land : Elumullupattai ;<br>extent : 4 lachams varagu<br>culture and 1½ kulies;<br>N. M. Ponnammah and<br>others, W. K. Aiyadurai<br>and others.   |
| Case<br>No. 2,625/P<br>11-3-46 | C. Thanabalasin-<br>gham, Proctor | Rs. 5            | N. Sabapathipillai     | Land : Elumullupattai ;<br>extent : 4 lachams varagu<br>culture and 1½ kulies.<br>N. M. Ponnamma and<br>Waste Land registered in<br>352/194 with 2 others in<br>A. 125/258                    |
| 308<br>24-6-1946               | P. V. Senathirajah,<br>N.P.       | ---              | N. Sabapathipillai     | Land : Elumullupattai ;<br>extent : 4 lachams varagu<br>culture and 1½ kulies.<br>N. M. Ponnammah and<br>others.<br>West Land registered in<br>A. 354/235 with 2 others<br>in A. 354/235, &c. |

I, K. Duraiappah, Registrar of Lands, Jaffna, do hereby certify that the foregoing is a true copy of the entries appearing in Land Registers A. 45/237, 85/113, 278/296 and 351/174 of this office up to and including 16th April, 1947, and the same is granted on the application of Mr. S. I. Thuraisingham.

Jaffna, 8th May, 1947.

Sgd. K. DURAIAPPAH,  
Registrar of Lands.

**Exhibits**

D 23.  
Extracts from  
the Encum-  
brance Sheet  
in Respect of  
the Land  
Muthiraik-  
kaddaiyady.  
1922 to 1946.

**D 23.**

**Extracts from the Encumbrance Sheet in Respect of the Land  
Muthiraikkaddaiyady.**

**D 23.**

Application No. 701/3-5 47.

Extract A. 125/258, 354/235.

Division A.—Vol. 125.  
Folio 258.

Name of Land : Mutirakkaddaiyadi.  
Village : Valluveddithurai.  
Pattu : Udupiddi.  
Korale : Vadamaradchi West.  
District : Jaffna.  
Province : Northern.

| Date of Registry Day Book No. & Date. | Grantor's Name in full and Residence  | Grantee's Names in full and residence                           | Nature and particulars of alienations and Incumbrances (to be concisely and clearly stated)   |
|---------------------------------------|---|---|---|
| 3rd Mar., 1922<br>No. 3,229           | Chuvakkinupillai Chavirimmuttus & wife Annamma of Valluvedditurai   | Katirippillai Kathiresar and wife Sivakolunthu of Valluveddi    | Mortgage of the above for Rs. 1,650 and interest at 10 per cent. per annum payable yearly in default interest at 12 per cent. per annum |
| 22nd Nov., 1937<br>No. 17,358         | Swakkinapillai Chavirimmuttu & wife Annamma of Valvedditurai  | Karthikesar Aiyadurai of Valveddi                               | Transfer of the above Cons. Rs. 2,000 for this and 2 others   |
| 22nd Nov., 1937<br>No. 17,359         | Karthikesar Aiyadurai of Valveddi   | Swakkeenapillai Chavarimuttu and wife Annammah of Valvettiturai | Lease of above for a term of 6 years from date of deed. Total rent Rs. 120 for this and 2 other lands                                   |
| 6th Feb., 1946<br>3005                | <i>Caveat</i> under section 32 of 623, entered by Swakkeenapillai Saverimuttupillai of Nediakadu road, Valluvettiturai. The <i>caveat</i> is in force until the 6th August, 1946.   |   |   |
| 18th Mar., 1946<br>No. 5,885          | Swakkeenapillai Savarimuttu, (2) Savarimuttu Iyammuttu Thuraisingham, (3) Vrisistammal, wife of Thommaipillai Soosapillai, (4) Mariaimuttu, daughter of Swakkinapillai Savarimuttu, (5) Savarimuthu Joseph Selvaratnam, all of Valvettiturai, plaintiffs. |   | Action affecting the above  |

*Vs.*

(1) Karthigesar Iyadurai of Valveddi, presently of F.M.S., (2) Ponnambalam Thangavelautham of Valvettiturai, (3) G. Aiyadurai Nadarajah of Valvedditurai, (4) Thommaipillai Soosaipillai of Valvettiturai, defendants.



## Exhibits

D 23.  
 Extracts from  
 the Encum-  
 brance Sheet  
 in Respect of  
 the Land  
 Muthiraik-  
 kaddaiyady.  
 1922 to 1946.  
 —continued.

Boundaries : East by property of C. Chavirimuttu and another ; north by property of Antonikkam, wife of Sebamalai and others ; west by lane ; south by property of N. Sabastiampillai and others.

Extent : 3½ lachams varagu culture.

| No. & date of deed                        | Name of Notary Judge &c.        | Regn. Stamp duty        | Signature of Registrar | Remarks  |
|---|---------------------------------|-------------------------|------------------------|--|
| 2,063<br>24th Feb.,<br>1922               | K. Sivappirakasam,<br>N.P.      | —                       | S. Velupillai          | With 4 other lands in folio 259, A. 85/113, E. 58/156 and E. 102/5                 |
| 3<br>12th Nov.,<br>1937                   | S. Sivagnanam,<br>N.P.          | —                       | D. Walton              | E. Land regd. in A. 278/296 with 2 others. See folio 259 and A. 278/296            |
| 4<br>12th Nov.,<br>1937                   | S. Sivagnanam,<br>N.P.          | —                       | D. Walton              | E. Land regd. in A. 278/296 with 2 others. See folio 259 and A. 278/296            |
| <i>Caveat</i> Dated<br>5th Feb.,<br>1946  | —                               | Regn. duty<br>Rs. 12.50 | —                      | E. same as in Deed 4 with 2 others in folio 259 278/296<br>Sgd. R. K. ARULAMPALAM. |
| Case<br>No. 2,625/P<br>11th Mar.,<br>1946 | C. Thanabalasingham,<br>Proctor | —                       | N. Sabapathipillai     | Estate land registered in A. 351/174 with 2 others in folio 259 and A. 351/174     |

*Caveat* bearing D.B. No. 3,005 of 6th February, 1946 and registered above is in force until 6th August, 1946.

Sgd. N. SABAPATHIPILLAI.  
 18-3-46.

**Exhibits**

D 23.

Extracts from  
the Encum-  
brance Sheet  
in Respect of  
the Land  
Muthiraik-  
kaddaiyady.  
1922 to 1946.  
—continued

Division A.—Volume 354.  
Folio 235.

Brought forward from volume A. 125, folio 258.

Name of Land : Mutiraikkaddaiyadi.

Village : Valluveddithurai.

Pattu : Udupiddy.

Korale : Vadamaradchi.

District : Jaffna.

Province : Northern.

| Date of<br>Registry<br>Day Book<br>No. & Date. | Grantor's Name in full and<br>Residence | Grantee's Names in full<br>and residence               | Nature and particulars of ali-<br>nations and Incumbrances<br>(to be concisely and clearly<br>stated) |
|--|---|--|---|
| 26th June,<br>1946<br>No. 12,459               | Karthikesar Iyadurai of<br>Valveddi     | Ponnampalam Thanga-<br>velautham of Val-<br>vettiturai | Transfer of the above Cons.<br>Rs. 10,000 for this and 2<br>others                                    |

*Caveat* bearing D.B. No. 3,005 dated 6th February, 1946 and registered in volume A. 125, folio 258 is in force until 6th August, 1946.

26-6-46.

Sgd. N. SABAPATHIPILLAI,  
*Registrar of Lands.*

## Exhibits

D 23  
 Extracts from  
 the Encum-  
 brance Sheet  
 in Respect of  
 the Land  
 Muthiraik-  
 kaddaiyady.  
 1922 to 1946.  
 —continued.

Boundaries : East by property of C. Chavarimuttu and another ; north by property of Antonikkam, wife of Sabamalai and others ; west by lane ; south by property of N. Sabastampillai and others.

Extent : 3½ lachams varagu culture.

| No. & date of deed        | Name of Notary Judge &c.    | Regn. Stamp duty | Signature of Registrar | Remarks   |
|---------------------------|-----------------------------|------------------|------------------------|---|
| 308<br>24th June,<br>1946 | P. V. Senathirajah,<br>N.P. | —                | N. Sabapathipillai     | E. land registered in A.351/174 with 2 others in folio 236 and A. 351/174 |

I, K. Duraiappa, Registrar of Lands, Jaffna, do hereby certify that the foregoing is a true copy of the registration entries appearing in Land Register Volumes A. 125/257 and 354/235 of this office up to and including 16th April, 1947, and the same is granted on the application of Mr. S. I. Thuraisingham.

Jaffna, 8th May, 1947.

Sgd. K. DURAIAPPAH,  
 Registrar of Lands.

## D 24.

## Exhibits

## D 24

Extracts from the Encumbrance sheet in Respect of the land Pannaikkaddaiyady, 1922 to 1946.

Extracts from the Encumbrance Sheet in Respect of the Land  
Pannaikkaddaiyady.

## D 24.

Application No. 701/3-5-47.

Extract A. 125/259, 354/236.

Division A.—Volume 125.  
Folio 259.

Name of Land : Pannaikkaddaiyady.  
Village : Valluvedditurai.  
Pattu : Udupiddy.  
District : Jaffna.  
Korale : Vadamaradchi West.  
Province : Northern,

| Date of Registry Day Book No. and date | Grantor's Name in full and residence.  | Grantee's Names in full and residence.            | Nature and particulars of alienations and Incumbrances to be concisely and clearly stated.   |
|--|--|---|--|
| 3rd Mar., 1922<br>No. 3,229            | C. Chavarimuttu and wife Annamma of Valluvedditurai  | K. Kathikesu and wife Sivakolunthu of Valveddi    | Mortgage of one undivided third share of the above for Rs. 1,650 and interest at 10 per cent. per annum payable yearly in default interest at 12 per cent. per annum |
| 22nd Nov., 1937<br>No. 1,7358          | S. Chavarimuttu and wife Annamma of Valvedditurai  | Aiyadurai of Valveddi                             | Transfer of undivided $\frac{1}{3}$ share of the above. Cons. Rs. 2,000 for this and 2 others.   |
| 22nd Nov., 1937<br>No. 17,359          | K. Aiyadurai of Valveddi   | S. Chavarimuttu and wife Annammh of Valvedditurai | Lease of undivided $\frac{1}{3}$ share of the above for a term of 6 years from date of deed Total rent Rs. 120 for this and 2 other lands                            |
| 6th Feb., 1946<br>No. 3,005            | <i>Caveat</i> under section 32 of Ordinance 23 entered by Swakeenupillai Savarimuttu of Nediakadu road, Valvettiturai. The <i>caveat</i> is in force until the 6th August, 1946            |   |  |
| 16th Mar., 1946<br>No. 5,885           | S. Savarimuttu, (2) S. I. Thuraisingham, (3) Vrissistammah, wife of T. Soosaipillai, (4) Mariaimuttu, daughter of S. Savarimuttu, (5) S. J. Selvaratnam, all of Valvettiturai, plaintiffs. |   | Action affecting undivided $\frac{1}{3}$ share of the above  |

*Vs.*

K. Iyadurai of Valveddi, presently of F.M.S., (2) P. Thangavelautham of Valvedditurai, (3) G. A. Nadarajah of Valvedditurai, (4) T. Soosaipillai of Valvettiturai

## Exhibits

D 24.  
Extracts from  
the Encum-  
brance Sheet  
in Respect of  
the Land  
Pannaik-  
ka Idaiyady.  
1922 to  
1946.  
--continued.

Boundaries : East by village limit of Polikandi ; North by lane : west by  
M. Chellappa ; south by property of K. Chivappirakasam.  
Extent : 2 lachams varagu culture and  $13 \frac{2}{3} \frac{8}{2}$  kulies.

| No. & date<br>of deed                    | Name of Notary<br>Judge &c.       | Regn.<br>Stamp<br>duty  | Signature of<br>Registrar                             | Remarks   |
|--|-----------------------------------|-------------------------|---|---|
| 2,063<br>24th Feb.,<br>1922              | K. Sivappiragasam                 | —                       | S. Velupillai   | With 4 other lands. See<br>folio 258, A. 85/113<br>E. 58/356 and 102/5                  |
| 3<br>12th Nov.,<br>1937                  | S. Sivagnanam,<br>N.P.            | —                       | D. Walton   | W. C. Muthucumar with 2<br>others. See folio 258 and<br>A. 278/296                      |
| 4<br>12th Nov.,<br>1937                  | S. Sivagnanam,<br>N.P.            | —                       | D. Walton   | W. C. Muttukumar with 2<br>others. See folio 258 and<br>A. 278/296                      |
| <i>Caveat</i> dated<br>5th Feb.,<br>1946 | —                                 | Regn. Duty<br>Rs. 12.50 | —   | W. C. Muttukumar with 2<br>others. See folio 258  |
|  |                                   |                         | Sgd. R. K. ARULAMPALAM,<br><i>Registrar of Lands.</i> |   |
| Case<br>No. 2625/P<br>11th Mar.,<br>1946 | C. Thanabalasin-<br>gham, Proctor | Rs. 5                   | N. Sabapathipillai                                    | W. C. Muttucumar, S. heirs<br>of K. Chivipirasasam with<br>2 others. See folio 258, &c. |

*Caveat* bearing D.B. No. 3,005 of 6th February, 1946, registered above is in force until  
6th August, 1946.

Sgd. N. SARAPATHIPILLAI.  
18-3-46.

Exhibits Division A.—Volume 354.

D 24.  
 Extracts from  
 the Encum-  
 brance Sheet  
 in Respect of  
 the Land  
 Pannaik-  
 kaddaiyadi.  
 1922 to 1946.  
 —continued.

Folio 236.

Brought forward from volume A. 125, folio 259.

Name of Land : Pannaikkaddaiyadi.

Village : Valluvedditurai.

Pattu : Udupiddi.

\* District : Jaffna.

Korale : Vadamaradchi West.

Province : Northern.

| Date of Registry Day Book No. and date | Grantor's Name in full and residence. | Grantee's Names in full and residence | Nature and particulars of alienations and Incumbrances to be concisely and clearly stated.)   |
|--|---------------------------------------|---------------------------------------|---|
| 26th June, 1946<br>No. 12,459          | K. Iyadurai of Valveddy               | P. Thangavelautham of Valvedditurai   | Transfer of undivided $\frac{1}{3}$ share of the above Cons. Rs. 10,000 for this and 2 others |

*Caveat* bearing D.B. No. 3,005 dated 6th February, 1946 and registered in volume A. 125, folio 259 is in force until 6th August, 1946.

26-6-46.

Sgd. N. SABAPATHIPILLAI,  
*Registrar of Lands.*

## Exhibits

D 24.  
Extracts from  
the Encum-  
brance Sheet  
in Respect of  
the Land  
Pannaik-  
kaddaiyady.  
1922 to 1946.

Boundaries : East by village limit of Polikandi ; north by lane ; west by property of M. Challappa ; south by property of K. Chivapiragasam.

Extent : 2 lachams varagu culture and  $13\frac{2}{3}\frac{8}{2}$  kulies.

| No. & date<br>of deed     | Name of Notary<br>Judge &c. | Regn.<br>Stamp<br>duty | Signature of<br>Registrar | Remarks   |
|---------------------------|-----------------------------|------------------------|---------------------------|---|
| 308<br>24th June,<br>1946 | P. V. Senathirajah,<br>N.P. | —                      | N. Sabapathipillai        | W. C. Muttucumaru, S heirs<br>of K. Sivagnanam with 2<br>others in folio 235, &c. |

I, K. Duraiappah, Registrar of Lands, Jaffna, do hereby certify that the foregoing is a true copy of the registration entries appearing in Land Register Volumes A. 125/259 and 354/236 of this office up to and including 16th April, 1947, and the same is granted on the application of Mr. S. T. Thuraisingham.

Jaffna, 8th May, 1947.

Sgd. K. DURAIAPPAH,  
Registrar of Lands.

Exhibits  
P 9.  
Proceedings  
in R. C. Udu-  
pidy, case  
No. 5,401.  
25-2-48 to  
12-4-48.

P 9.

Proceedings in R.C. Udupidy, Case No. 5.401.

P 9.

Criminal Plaint.

IN THE RURAL COURT OF UDUPIDY, NORTHERN PROVINCE  
PONNAMPALAM THANGAVELAUTHAM of Valvedditurai ... *Complainant.*

*Vs.*

SIVAKEENUPILLAI SAVERIMUTTU,  
SAVERIMUTTU IGNATIUS DURAISINGHAM of ditto ... *Accused.*

Dated 25th day of February, 1948.

10

That the accused did on or about the 21st day of October, 1947, at about 11 a.m. at Valvedditurai uproot trees which marked the complainant's southern boundary of the land Muthiraikaddaiyadi and cause damage to the extent of Rs. 40 and thereby committed an offence punishable under section 409 of the Penal Code.

Witnesses :

K. V. VALVEDDITURAI.  
P SIVASUBRAMANIAM.

Sgd. P. THANGAVELAUTHAM,  
*Complainant.* 20

Issue summons for 8/3. Sgd.. . . . .

8/3. Complainant present.  
1st and 2nd accused present.

Charged from summons. The charge is read and explained to the accused.  
They severally state—I am not guilty.

Intd.....

Trial 22-3-48.

22/3. Complainant present.  
1st and 2nd accused present.

The accused agree to re-erect the fence sticks for the southern boundary 30 line of land B in sketch filed and attach varichus. If the accused bring a report



from the Kirama Vidane that it has been done, complainant would withdraw case with liberty to claim damages after civil case between the parties is decided.

Exhibits  
P 9.  
Proceedings  
in R. C. Udu-  
pidy, case  
No. 5,401.  
25-2-48 to  
12-4-48.  
—continued—

Call on 12-4-48.

2nd accused need not appear on that date.

Sgd. Illegibly.

” ”

” ”

12-4-48, complainant present.

1st accused present.

10

2nd accused absent.

Complainant withdraws, case settled.

Read and explained.

Sgd. Illegibly.

I acquit and discharge the accused.

Intld.

Supreme Court of Ceylon  
No. 174 (Final) of 1950.

District Court, Point Pedro  
No. 2761.

*In Her Majesty's Privy Council on an Appeal from  
The Supreme Court of Ceylon.*

BETWEEN

SWAKINAPILLAI SAVERIMUTTU of  
Valvettiturai.....1st *Defendant—Appellant.*

AND

1. PONNAMBALAM THANGAVELAUTHAM of  
Valvettiturai.....*Plaintiff—Respondent.*
2. SAVERIMUTTU IGNATIUS THURAISINGHAM
3. THOMMAIPILAI SOOSÄPILLAI and
4. Wife VIRISITHAMMA
5. SWAMINATHAR MARUSILIN and
6. Wife MARIAMUTTU
7. SAVERIMUTTU JOSEPH SELVARATNAM
8. ARUNASALAM SOMASUNDERAM and
9. Wife MANKAYATKARASI
10. RASAMAH widow of SIVAGURU RAMASAMY,  
all of Valvettiturai.....*Defendants—Respondents.*

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## RECORD OF PROCEEDINGS

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