Judgment 4) 1958 Appeal 2 D.7

Supreme Court of Ceylon
No. 1 (Final) of 1954.

District Court, Kurunegala
No. 6639.

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

BETWEEN

TENNEKOON MUDIYANSELAGE TIKIRI BANDA AMUNUGAMA of Amunugama in Recopattu Korale in Dambadeni Hat Pattu, Kurunegala District .. .. *Plaintiff-Appellant*

AND

HERATH MUDIYANSELAGE TIKIRI BANDA HERATH of Ambahera in Recopattu Korale in Dambadeni Hat Pattu, Kurunegala District .. .. *Defendant-Respondent.*

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No. 1

Journal Entries

IN THE DISTRICT COURT OF KURUNEGALA

Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama in Recopattu Korale....
..... *Plaintiff*

vs.

Herath Mudiyanselage Tikiri Banda Herath of Ambahera in Recopattu Korale.... *Defendant.*

JOURNAL

25.7.50.

Mr. R. E. de S. Jayasundera, proctor for plaintiff, files appointment and plaint, and moves that the Court be pleased to accept the same and that the summons on the defendant do issue and reissue until service.

Plaint accepted and summons ordered for 5.9.50.

(Sgd.) .....
District Judge.

17.8.50.

Summons issued with Precept returnable the 4th day of September, 1950, to Fiscal, N.W.P.

5.9.50.

Mr. R. E. de S. Jayasundera for plaintiff.

Messrs. Gomis & Gomis for defendant.

Summons served on defendant (personal). Absent.

Ex parte Trial 22.11.

(Sgd.) .....
D. J.

11.9.50.

Messrs. Gomis & Gomis file proxy from the defendant and move that the order fixing this case for *ex parte* trial be vacated and that defendant be allowed to file answer.

Of consent allowed.

Take case off *ex parte* Roll. Answer on 28.9.

(Intd.).....
D. J.

No. 1
Journal Entries
25.7.50 to
3.6.55.—
Continued

28.9.50.

Answer by Messrs. Gomis & Gomis 19.10.

(Intd.).....
D. J.

19.10.50.

Answer due from Messrs. Gomis & Gomis filed. Call on 2.11. to fix date of trial.

(Intd.).....
D. J.

2.11.50. 10

Called to fix trial. Trial 28.2.

(Sgd.) .....
D. J.

27.2.51.

Mr. R. E. de S. Jayasundera for plaintiff.
Messrs. Gomis & Gomis for defendant.

As the plaintiff is ill and unable to attend Court on the 28th instant, Mr. Jayasundera for plaintiff moves that the case fixed for trial on 28th instant be refixed for another date.

Medical certificate annexed. 20

Messrs. Gomis & Gomis for defendant consent on payment of costs.

By consent, allowed. Mention before me tomorrow.

(Intd.).....
D. J.

23.2.51.

Case called.
Mr. R. E. de S. Jayasundera for plaintiff.
Mr. C. R. Gunaratne for defendant.

By consent, plaintiff will pay defendant Rs. 157·50 to defendant 30 as costs.

Trial refixed for 27.8.

(Intd.).....

20.8.51.

Proctor for plaintiff files list of documents and witnesses and takes out three subpoenas.

(Intd.).....

(1) 23.8.51.

Messrs. Gomis & Gomis file defendant's list of witnesses.

(Intd.).....

(2) 24.8.51.

Mr. Jayasundera for plaintiff.
Messrs. Gomis & Gomis for defendant.
Mr. Jayasundera files plaintiff's additional list of witnesses and takes out one subpœna.

(Intd.).....

(3) 27.8.51.

Mr. R. E. de S. Jayasundera for plaintiff.
Messrs. Gomis & Gomis for defendant.
Trial. *Vide* proceedings. Further trial 25.1.52 and 28.1.52.

(Intd.).....
D. J.

(4) 21.1.52.

Proctor for plaintiff takes out four subpœnas.

(Intd.).....

(5) 22.1.52.

Mr. R. E. de S. Jayasundera for plaintiff moves to raise the following additional issue at the hearing of this case, to wit :—

43. Are the order and decree in D.C. Kurunegala 3137 *res judicata* in plaintiff's favour and binding on defendant that Somawathie was the sole heir.

(*a*) of Edward Banda Korala

(*b*) of Bandara Menika.

Messrs. Gomis & Gomis for defendant objects as there is insufficient time for defendant to meet this issue.

Support in open Court.

(Sgd.) E. W.,
D. J.

(6) 25.1.52.

Mr. Jayasundera for plaintiff.
Messrs. Gomis & Gomis for defendant.
Trial 21st and 22nd July.

(Intd.).....

No. 1
Journal Entries
25.7.50 to
3.6.55—
Continued.

(7) 1.7.52.

Mr. Jayasundera for plaintiff.
Messrs. Gomis & Gomis for defendant.
Proctor for plaintiff takes out two subpœnas.

(Intd.).....

(8) 3.7.52.

Summons on plaintiff's witnesses issued to Fiscal, N.W.P.

(Intd.).....

(9) 11.7.52.

Proctor for defendant files list of witnesses and takes out one subpœna—Fiscal, N.W.P.

(Intd.).....

(10) 12.7.52.

Vide J.E. (9) K.R. 711 for Rs. 10.50 filed.

(Intd.).....

(11) 14.7.52.

Proctor for defendant files defendant's additional list of witnesses and takes out one subpœna.

(Intd.).....

(12) 21.7.52.

Mr. Jayasundera for plaintiff.
Messrs. Gomis & Gomis for defendant.
Trial. Further hearing. *Vide* proceedings. Further trial to-morrow.

(Intd.).....

(13) 22.7.52.

Mr. Jayasundera for plaintiff.
Messrs. Gomis & Gomis for defendant.

Further hearing. *Vide* proceedings. Further trial 11th and 12th September.

(Intd.).....

(14) 23.7.52.

Requisition for Rs. 10.50 issued to Mr. T. B. Amunugama.

(Intd.).....

(15) 21.8.52.

Messrs. Gomis & Gomis for defendant file additional list of witnesses.

(Intd.).....

(16) 28.8.52.

Mr. Jayasundera for plaintiff.
Messrs. Gomis & Gomis for defendant.
Summonses on plaintiff's witnesses issued to Fiscal, N.W.P.

(Intd.).....

(17) 29.8.52.

Summonses on defendant's witnesses issued to Fiscal, N.W.P.

(Intd.).....

(18) 4.9.52.

Proctor for plaintiff files additional list of witnesses and takes out three subpœnas.

(Intd.).....

(19) 11.9.52.

Mr. Jayasundera for plaintiff.
Messrs. Gomis & Gomis for defendant.
Trial. Further hearing. *Vide* proceedings.
Trial concluded. Documents on 18/9. Addresses 15/10.

(Intd.).....

(20) 12.9.52.

Requisition for Rs. 21/- issued to Mr. T. B. Amunugama.

(Intd.).....

(21) 18.9.52.

Documents. Documents of plaintiff's filed. Further date for defendant's documents 25/9. Addresses on 15/4.

(Intd.).....

(22) 25.9.52.

Defendant's documents. D1—D37 tendered. Addresses 15/10.

(Intd.).....

(23) 15.10.52.

Mr. Jayasundera for plaintiff.
Messrs. Gomis & Gomis for defendant.
Addresses heard ; to be continued tomorrow.

(Intd.).....

(24) 16.10.52.

Mr. Jayasundera for plaintiff.
Messrs. Gomis & Gomis for defendant.
Addresses heard ; to be continued on 22/10.

(Intd.).....

No. 1
Journal Entries
25.7.50 to
3.6.55—
Continued.

(25) 22.10.52.

Addresses concluded.

Call Case 28/10 in connection with another matter connected with Case No. 1052. Judgment in this case is reserved for 28/10.

(Intd.).....

(26) 28.10.52.

Case called. Call 30/10.

(Intd.).....

(27) 30.10.52.

Case called. *Vide* consent motion filed. Minutes in record. Judgment 27/11.

(Intd.).....

Mr. R. E. de S. Jayasundera for plaintiff and Messrs. Gomis & Gomis for defendant submit that the parties hereby agree that in the event of the defendant ultimately succeeding in this action that the plaintiff be decreed to pay damages to the defendant as from 25th July, 1947, fixed at Rs. 500/- per annum till the defendant is restored to and placed in possession of the premises described in the schedule B to the plaint.

(Intd.).....

(28) 27.11.52.

Judgment not ready. Call on 12/1/53 for judgment.

(Intd.).....

(29) 12.1.53.

Judgment not ready. Call 10/2 for judgment.

(Intd.).....

(30) 10.2.53.

Judgment delivered in open Court in the presence of plaintiff's proctor and defendant's proctor. Messrs. Perera & Perera take notice for plaintiff's proctor.

(Intd.).....

(31) 19.2.53.

Messrs. Gomis & Gomis file petition of appeal from the defendant appellant together with the following documents and stamps and move that the same be accepted and a date be fixed to issue notice of security.

S.C. Judgment	Rs.	24.00
Certificate in appeal	,,	12.00
Notice of Security	,,	4.80
Schedule	,,	2.40

Accept. Issue notice of security for 26.2.53.

(Intd.).....

(32) 20.2.53.

Notices of security issued to Fiscal, N.W.P.

(Intd.).....

(33) 26.2.53.

Mr. Jayasundera for plaintiff.

Messrs. Gomis & Gomis for defendant.

Notice on T. B. Amunugama served on Mr. R. E. de S. Jayasundera, proctor (personal).

Security tendered and accepted.

Issue Notice of Appeal for 31.3.53.

(Intd.).....
A. D. J.

(34) 26.2.53.

Notice of Appeal issued to Fiscal, N.W.P.

(Intd.).....

(35) 31.3.53.

Notice of Appeal served on Mr. Jayasundera. Forward Record.

(Intd.).....

(36) 23.3.55.

Registrar S.C., returns record with S.C. decree and Judgment. Appeal is allowed and the respondant's action is dismissed with costs in both Courts. Proctors to note.

(Intd.).....
D. J.

(37) 2.6.55.

As the defendant's appeal was allowed with costs in both Courts Mr. Makalande for defendant moves for a p/o in favour of the defendant for Rs. 500/- with all documents thereon being amount of security. He certifies to the identity of defendant. Issue Requisition for Rs. 500/- in favour of defendant.

(Intd.).....
D. J.

(38) 3.6.55.

Requisition for Rs. 500/- issued to defendant.

(Sgd.) .....
D. J.

No. 2
Plaint of the
Plaintiff
25.7.50

No. 2.

Plaint of The Plaintiff

IN THE DISTRICT COURT OF KURUNEGALA

Tennekoon Mudiyanselage Tikiri Banda Amunugame of Amunugama in Recopattu Korale, Dambadeni Hatpattu, Kurunegala District....

No. 6639. ..... *Plaintiff*

Nature : Land.

vs.

Value : Rs. 7,000/-
Class :

Herath Mudiyanselage Tikiri Banda Herath of Ambahera in Recopattu Korale, Dambadeni Hatpattu, Kurunegala District.... *Defendant.*

On this 25th day of July, 1950.

The plaint of the plaintiff abovenamed appearing by R. E. de S. Jayasundera, his proctor, states as follows :—

1. The defendant resides and the land the subject-matter of this action is situate within the jurisdiction of this Court.

2. One Edward Banda Korala was the original owner and seized and possessed of the entirety of the land called Peelagawawatta fully described in the Schedule " A " hereto.

3. The said Edward Banda Korala died on 3.3.29 leaving him surviving his widow Bandara Menika and his sole heir their adopted daughter Somawathie Kumarihamy, a minor.

4. The estate of the said Edward Banda Korala was administered in Testamentary Case No. 3714 of this Court and Letters of Administration were issued to Bandara Menika the widow. Decree was entered on 21.8.44 in Case No. 3714 declaring Somawathie Kumarihamy the sole heir of the said Edward Banda Korala and in Testamentary Case No. 4402 of this Court declaring Somawathie Kumarihamy the sole heir of Bandara Menika.

5. The said Somawathie died on 27.9.45 leaving a Last Will bearing No. 3320 dated 25th May, 1941, attested by F. B. P. Seneviratne, Notary Public, whereby she bequeathed all her property movable and immovable to her husband Tikiri Banda Amunugama the plaintiff abovenamed. The estate of the said Somawathi was administered and her Will proved in Testamentary Case No. 4630 of this Court.

6. The said Bandara Menika well knowing that she and her husband had adopted the said Somawathie to inherit their property and though she was bound in a fiduciary capacity to protect the interest of the said Somawathie, who was then a minor and living with her, took advantage of her fiduciary position and acting in fraud and collusion with the guardian *ad litem*, of the said Somawathie in Case No. 3714, viz., Wijesundera Mudiyanselage Appuhamy entered into a fraudulent and collusive agreement with the guardian *ad litem*, Kuma Kumarihamy and Ran Menika Kumarihamy and made an application to divide the estate of the said Edward Banda Korala among herself, Somawathie Kumarihamy, Kuma Kumarihamy and Ran Menika Kumarihamy in the proportion of a quarter ($\frac{1}{4}$) share each. No decree was entered on this application and no sanction of Court was obtained for a compromise as required by Section 500 of the Civil Procedure Code.

7. Thereafter purporting to act on the basis of the alleged compromise the said Ran Menika by deed No. 1494 dated 10.4.34 and attested by M. B. Wanduragala, Notary Public, conveyed *inter alia* 1/12th share of the said land to the said Bandara Menika who by deed No. 1700 dated 2.12.36 and attested by M. B. Wanduragala, Notary Public, gifted the shares claimed by her on the said compromise and the said deed No. 1494 of 10.4.34 amounting to a one-third share, to her nephew the defendant who was fully aware of and had notice of the facts hereinbefore set out.

8. The defendant thereafter instituted partition action No. 1052 in the District Court of Kurunegala for a partition of the land described in the said Schedule "A" and final decree was entered allotting lot 1 in plan No. 3523 dated 25th February, 1945, and made by G. A. de Silva to the defendant. The said lot 1 is fully described in Schedule B hereto and is reasonably worth the sum of Rs. 7,000/-.

9. The plaintiff says that by reason of the facts hereinbefore set out the said Bandara Menika held whatever legal title she had to 1/3rd share of the land described in the said Schedule "A" in trust for the said Somawathie Kumarihamy and that the defendant held the said 1/3rd share and holds the said lot 1 subject to the said trust.

10. The plaintiff says that by reason of the premises a cause of action has accrued to the plaintiff to sue the defendant for a declaration that the defendant holds the said lot 1 in the trust for the plaintiff and for a decree directing the defendant to execute a conveyance of the said lot in plaintiff's favour and for damages in the sum of Rs. 75/- a month from date hereof until the execution of the said conveyance and until the plaintiff is placed and quieted in possession of the said lot.

No. 2
Plaint of the Plaintiff
25.7.50—
Continued

Wherefore plaintiff prays :—

(i) For a declaration that the defendant holds the land described in Schedule " B " hereto in trust for the plaintiff.

(ii) For a decree directing the defendant to execute a conveyance of the said land in favour of the plaintiff and that the plaintiff be quieted in possession of the said land.

(iii) For damages in the said sum of Rs. 75/- a month until the plaintiff is quieted as aforesaid.

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

(Sgd.) R. E. De S. JAYASUNDERA,
Proctor for Plaintiff.

Drawn and settled by Mr. N. E. Weerasuriya, K.C.,
and Mr. W. Gunaratne, Advocate.

Schedule " A "

All that land called Peelagawawatta of about thirty acres in extent with the buildings, plantations and everything thereon situated at Nakolagamuwa in Tiragandahe Korale of Weuda Willi Hatpattu in the Kurunegala District, North-Western Province, and bounded on the North by the wire fence of the land belonging to Punchirala and others, East by the village limit of Matawa, South by the wire fence of Degalehena and West by Habawela, fence of the Pillewa belonging to Punchirala and Lindakumbura and registered in A423/217.

Schedule " B "

Lot 1 from and out of the land called Peelagawawatta situated at Nakolagamuwa in Tiragandahe Korale aforesaid registered in A423/217 and the said lot 1 according to partition plan No. 3523 dated 25th February, 1945, made by G. A. de Silva, licensed Surveyor, is bounded on the North by the land of the late Banda Korala and the land of Mrs. Gunatilaka and others, East by the land of Mrs. Gunatilaka and others, South by lot 2 of this land and on the West by Ela and the land of Punchirala and others and the late Banda Korala containing in extent eight acres and twenty perches. (A8-R0-P20).

(Sgd.) R. E. De S. JAYASUNDERA,
Proctor for Plaintiff.

No. 3

Answer of the Defendant

No. 3
Answer of the Defendant
19.10.50

IN THE DISTRICT COURT OF KURUNEGALA

Tennekoon Mudiyanselage Tikiri Banda Amunugama of Amunugama..... *Plaintiff*

vs.

Herath Mudiyanselage Tikiri Banda Herath of Ambahera ..... *Defendant.*

On this 19th day of October, 1950.

The answer of the defandant abovenamed appearing by E. H. A. Gomis, his Proctor practising under the name, style and firm of Gomis & Gomis, states as follows :—

1. This defendant admits the averments in paragraphs 1, 2, and 5 of the plaint and denies all the averments in the remaining paragraphs save such as are hereinafter expressly admitted.

2. This defendant while admitting that Bandara Menika referred to in the plaint was the widow of Edward Banda Korala specially denies that Somawathie Kumarihamy was adopted by Edward Banda Korala for the purpose of inheritance or that Somawathie was the sole heir of Edward Banda.

3. This defendant while admitting that Edward Banda's estate was administered in Testamentary Case No. 3714 specially denies that the decree or order dated 21.8.44 and entered in the said case was valid and effectual in law to declare or constitute Somawathie the sole heir of Edward Banda inasmuch as—

(*a*) All parties affected had not been noticed of the application.

(*b*) A settlement dated 9.10.30 had been arrived at between all parties including Somawathie to which the Court had given its approval and which the Court had allowed whereby the question of the heirs of Edward Banda's estate had been determined and decided and which settlement partook of the effect and validity of a judicial settlement.

(*c*) The Testamentary Case No. 3714 must in law have been deemed closed and at an end long before the year 1944, and it was not competent to the Court to have set aside the settlement of 9.10.30 and the Court had no jurisdiction to enter the order of 21.8.44 pleaded in the plaint, and the said order is of no force or avail.

No. 3
Answer of the Defendant 19.10.50.—
Continued

(*d*) The settlement of 9.10.30 could have validly been set aside only by the Supreme Court on proper application.

(*e*) Even if it were competent to the District Court of Kurunegala to exercise jurisdiction in the year 1944 over the matter of determining the heirs of Edward Banda, such jurisdiction could not have been exercised by settlement among the parties and without proof of the material averments of the application made by the petitioner Somawathie, namely, that she Somawathie had been adopted by Edward Banda for purposes of inheritance and that the settlement dated 9.10.30 had been obtained in collusion and by the suppression of facts.

(*f*) The averments made in the application made by Somawathie to set aside the settlement of 9.10.30 did not entitle her (Somawathie) to such relief.

(*g*) Even if the order dated 21.8.44 had been properly made it is not binding on defendant inasmuch as defendant was not a party thereto and had obtained rights by Deed of Gift No. 1700 dated 2.12.36 long prior to the order of 21.8.44 *bona fide* and without notice of any defect in the settlement of 9.10.30 and while the settlement of 9.10.30 was in force and was being acted upon and was recognised as valid by all parties including Somawathie and the plaintiff in this action.

(*h*) The said decree dated 21.8.44 has been obtained by Somawathie fraudulently and in collusion with the other parties thereto and not as provided by law.

4. Somawathie aforesaid is estopped by her conduct as set out below in impeaching the validity of the settlement dated 9.10.30 and defendant is entitled to plead such estoppel.

(*a*) The rights obtained by Ran Menika Kumarihamy by virtue of settlement dated 9.10.30 were put up for sale by public auction and the said Somawathie bid for the same along with Kuma Kumarihamy and Bandara Menika the other parties to the settlement of 9.10.30 and the said Somawathie along with Kuma Kumarihamy and Bandara Menika purchased the 1/4th share allotted to Ran Menika in the said settlement, and for her 1/12th share she the said Somawathie obtained deed No. 500 dated 22.2.34 attested by S. A. Yatawara, Notary Public, which deed No. 500 conveyed 1/12th share of the land the subject-matter of this action.

(*b*) The aforesaid Somawathie being thus entitled to an undivided 1/3rd share of all the lands of Edward Banda's estate, inclusive of the land the subject-matter of suit, by her mortgage bond No. 501 dated 22.2.34 attested by S. A. Yatawara, Notary Public, mortgaged the same to the aforesaid Ran Menika.

(*c*) On the death of Bandara Menika aforesaid her estate, which consisted of an undivided 1/4th share of Edward Banda's estate obtained by virtue of the settlement of 9.10.30 and an undivided 1/12th share obtained by purchase of Ran Menika's interests on deed No. 1494 dated 10.4.34 less the rights gifted to this defendant by Bandara Menika, was administered by Somawathie in the District Court of Kurunegala Testamentary Case No. 4402 and this defendant was a respondent in Case No. 4402 and claimed a share of the said estate as an heir-at-law of Bandara Menika.

5. This defendant specially denies the averments in paragraphs 6, 7, 9 and 10 of the plaint.

6. Further answering this defendant states that Bandara Menika by virtue of the settlement in District Court No. 3714 (Testamentary) Kurunegala of date 9.10.30 and by virtue of deed No. 1494 aforesaid was entitled to an undivided 1/3rd share of the land described in Schedule A to the plaint and the said Bandara Menika having gifted the same to this defendant on deed No. 1700 dated 2.12.36 this defendant became entitled to the same.

7. This defendant pleads that this defendant instituted partition action No. 1052 in the District Court of Kurunegala for declaration of title to and undivided 1/3rd share of the said land and for a partition thereof and Somawathie who was a party to the said action had the right and the opportunity to plead the trust alleged by plaintiff in the plaint in this case, and the said Somawathie not having pleaded the same and not having obtained a declaration thereto in the said action and defendant having been declared entitled absolutely to the divided allotment described in Schedule B of the plaint in this action, plaintiff is barred thereby from obtaining the declarations sought by him in this action regarding the said divided allotment and the interlocutory decree and the final decree in the said action No. 1052 are *res judicata* on the plea of trust averred by plaintiff.

This defendant further avers that Somawathie had the right and the opportunity to set up title on the decree dated 21.8.44 in Case No. 1052 of this Court and it was incumbent on Somawathie to set up the same if she was claiming the benefits thereof, and the said

No. 3
Answer of the Defendant 19.10.50—*Continued*

Somawathie not having claimed the same—the interlocutory decree dated 20.10.44 entered in the said action No. 1052 is *res judicata* on the question whether Bandara Menika was entitled to an undivided 1/3rd share on the title now pleaded by defendant.

By way of a plea alternative to the averments in para 8 hereof defendant states that Somawathie did in action No. 1052 plead that Bandara Menika had no right to convey to this defendant in deed No. 1700 and the interlocutory decree dated 20.10.44 is therefore *res judicata* on the plea set up by this defendant that the said deed did convey 1/3rd share of the said land to this defendant.

10. As an alternative answer this defendant pleads that Somawathie in District Court Case No. 1052 did set up the plea that by virtue of decree dated 21.8.44 Somawathie was entitled to the entire land in dispute and the said claim not having been granted therein the interlocutory decree and partition decree entered in the said case debar plaintiff from now claiming title thereon.

11. This defendant further states that plaintiff herein made an application in District Court Case No. 1052 that the share allotted to Kuma Kumarihamy the 1st defendant therein who was one of the parties to the settlement of 9.10.30, be set aside and now allotted to plaintiff on the footing that the settlement of 9.10.30 had been set aside and that Somawathie had been declared sole heir of Edward Banda, and no application having been made regarding the rights now claimed by this defendant—plaintiff is estopped now from claiming the rights allotted to defendant in action No. 1052.

12. Defendant avers that plaintiff expressly and impliedly and by his conduct acquiesced in the entering of the final decree in District Court Case No. 1052 allotting the land in Schedule B to defendant and plaintiff made no claim thereto and it would amount to fraudulent conduct on the part of plaintiff if plaintiff did not challenge defendant's rights in that action and had the plan of bringing this action for a declaration of trust.

13. In view of plaintiff's conduct in acquiescing in the entering of final decree in District Court Case No. 1052 and in even categorically stating that plaintiff was making no claim in respect of the rights decreed to this defendant in the interlocutory decree in District Court Case No. 1052 plaintiff is not entitled to ask for a declaration of trust.

14. Inasmuch as the decree dated 21.8.44 specifically excludes claims against Ran Menika aforesaid and Somawathie had agreed by that decree to ratify all acts done or deeds executed by the said Ran Menika, plaintiff is not entitled to impeach an undivided 1/12th share out of the 1/3rd share gifted to defendant on deed No. 1700.

15. The order made by the District Court in District Court Testamentary Case No. 4402 between Somawathie and this defendant, upheld in appeal by the Hon. the Supreme Court whereby Somawathie was declared entitled to the estate of Bandara Menika as heir of Bandara Menika is conclusive and *res judicata* on the question whether Bandara Menika was entitled to an undivided 1/4th share of Edward Banda's estate.

No. 3 Answer of the Defendant 19.10.50— *Continued*

16. Plaintiff is not entitled to damages as plaintiff from date of plaint is in wrongful possession of the land in Schedule B of the plaint.

Wherefore this defendant prays that plaintiff's action be dismissed with costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) GOMIS & GOMIS,
Proctors for Defendant.

No. 4.

No. 4 Issues Framed

Issues Framed

D.C. 6639. 27.8.51.

Mr. N. E. WEERASOORIYA, K.C., with Mr. W. D. GUNASEKERA instructed by Mr. JAYASUNDERA for Plaintiff.

Mr. C. R. GUNARATNE instructed by Messrs. GOMIS & GOMIS for the Defendant.

Mr. Weerasooriya, K.C., opens his case and suggests the following issues :—

1. Was Somawathie Kumarihamy adopted by Edward Banda Korala as his daughter for the purpose of inheritance ?

2. Was Somawathie Kumarihamy the sole heir of Edward Banda Korala ?

3. Are the order and decree dated 21.8.44 in D.C., Kurunegala, Case No. 3714 Testamentary declaring Somawathie the sole heir of Edward Banda Korala, *res judicata* and binding on the defendant?

4. Was Somawathie Kumarihamy adopted by Bandara Menika as her daughter for the purpose of inheritance ?

5. Was Somawathie Kumarihamy the sole heir of Bandara Menika ?

6. Are the order and proceedings in D.C., Kurunegala, Case No. 4402 Testamentary *res judicata* and binding on the defendant ?

No. 4
Issues Framed
—*Continued*

(*a*) on the question of heirship of Edward Banda and Bandara Menika, and

(*b*) in respect of the properties comprising the estate of Edward Banda Korala and Bandara Menika ?

7. Is the plaintiff the sole heir of Somawathie Kumarihamy ?

8. Was the division of the estate of Edward Banda purported to have been made on 9.10.30 in the said Case No. 3714 between Bandara Menika, Somawathie Kumarihamy, Kuma Kumarihamy and Ran Menika a fraudulent and collusive arrangement entered into between Bandara Menika, Kuma Kumarihamy, Ran Menika and Appuhamy the G.A.L. of the said Somawathie ?

9. Was Bandara Menika acting in the said Testamentary Case No. 3714 in—

(*a*) a fiduciary capacity to Somawathie ; and

(*b*) did she take advantage of her fiduciary position ?

10 If issues 8 and 9 or either of them are answered in the affirmative, did the said Bandara Menika hold a 1/4th share of the property in question, allotted to her ; and Ran Menika the 1/4th share allotted to her at the alleged settlement in trust for Somawathie ?

11. Is the alleged division dated 9.10.30 in Case No. 3714 binding on the plaintiff inasmuch as—

(*a*) no decree was entered in pursuance thereof ;

(*b*) sanction of the Court was not obtained under section 500 therefor ;

(*c*) the alleged division was not on the footing that Somawathie was not adopted by Edward Banda Korala for the purpose of inheritance ?

It is admitted that Somawathie Kumarihamy was born on 7.9.12.

12. Was the defendant—

(*a*) a party to the said fraudulent and collusive arrangement to divide the estate of Edward Banda ?

(*b*) Had the defendant notice of the said fraudulent and collusive arrangement ; and

(*c*) Has the defendant better rights than Bandara Menika, if any, inasmuch as he is a donee from Bandara Menika ?

13. If either issues 12 (*a*), (*b*) or (*c*) is answered in the affirmative, does the defendant hold the share of the land in question conveyed to him by Bandara Menika on deed No. 1700 dated 2.12.36, in trust for Somawathie Kumarihamy and her successor-in-title ?

14. Was lot 1 in plan No. 3253 dated 25.2.46 made by Mr. G. A. de Silva, Licensed Surveyor, allotted in D.C., Kurunegala, Case No. 1052 partition to the defendant for and in lieu of his interest on the said deed No. 1700 ?

15. If so, does the defendant hold the said lot 1 in trust for Somawathie and her successor-in-title ?

16. Is the plaintiff entitled to a decree directing the defendant to convey the said lot 1 to the plaintiff ?

Mr. Advocate Gunaratne suggests :—

17. Do the averments pleaded in paragraphs 1 to 8 in the plaint entitle the plaintiff to the declaration sought in—

(*a*) paragraph 9 of the plaint ?

(*b*) paragraph 10 of the plaint ?

18. Was the agreement dated 9.10.30 valid, to confer a 1/4th share of the estate of Edward Banda on Bandara Menika and on Ran Menika, *inter alia* ?

19. Was the order dated 21.8.44 valid and effectual to declare Somawathie the sole heir of Edward Banda for all or any of the following reasons :—

(*a*) All parties sought to be affected by the said order not having due notice of the said application ;

(*b*) the said settlement of 9.10.30 not having been validly set aside by the Supreme Court ;

(*c*) the said order having been made by settlement among the parties mentioned therein, and without proof of the material averments of the application made by the petitioner Somawathie and dated 22.10.43.

(*d*) the averments made in the said application dated 22.10.43 not entitling Somawathie to such relief ?

20. Was the order dated 21.8.44 binding on the defendant inasmuch as the defendant was not a party thereto and had obtained rights by deed of gift No. 1700 dated 2.12.36 prior to the said application dated 22.10.43 ?

21. Had the said order dated 21.8.44 been obtained by Somawathie fraudulently and in collusion with the other parties thereto :

22. Had the District Court of Kurunegala jurisdiction to enter the order dated 21.8.44 ?

No. 4
Issues Framed
—*Continued*

23. Was the then Administrator in D.C., Kurunegala, Case No. 3714 Testamentary a necessary party to the application dated 22.10.43 ?

24. If so, was the order made and dated 21.8.44 valid ?

25. Did the settlement dated 9.10.30 have the effect and validity of a judicial settlement ?

26. Were the rights accorded to Ran Menika Kumarihamy by virtue of settlement dated 9.10.30 put up for sale by public auction and did Somawathie bid for the same along with Kuma Kumarihamy and Bandara Menika and did Somawathie purchase 1/12th share on deed No. 500 dated 22.2.34.?

27. Did Somawathie execute mortgage bond No. 501 dated 22.3.34 dealing with the said 1/12th share ?

28. Were the rights accorded to Bandara Menika by settlement dated 9.10.30 in the estate of Edward Banda and/or the rights purchased by Bandara Menika at the auction sale above referred to administered by Somawathie in D.C., Kurunegala, Case No. 4402 Testamentary, viz., the estate of Bandara Menika.

29. Did Somawathie claim the said interests in Testamentary Case No. 4402 as an heir-at-law of Bandara Menika ?

30. If issues 26 to 29 or any of them are answered in the affirmative, does it amount to a ratification by Somawathie of the settlement of 9.10.30 ?

31. Did the order dated 21.8.44 pleaded by the plaintiff exclude claims against Ran Menika and did Somawathie by the said order agree to ratify all acts done or deeds executed by the said Ran Menika ?

32. If so, is the plaintiff entitled to impeach title to an undivided 1/12th share out of the 1/3rd share gifted to defendant on deed No. 1700.

33. Is the interlocutory decree in D.C., Kurunegala, Case No. 1052 Partition *res judicata* between plaintiff and defendant —

(*a*) on the question of trust pleaded by plaintiff in this action ;

(*b*) on the question of adoption pleaded by plaintiff in this action ;

(*c*) on the question whether the settlement dated 9.10.30 conferred rights as pleaded by defendant ;

(*d*) on the question whether order dated 21.8.44 was valid to grant rights as stated by plaintiff.

34. Was the final decree in D.C., Kurunegala, Case No. 1052 *res judicata* on the question whether the defendant obtained absolute and indefeasible title to the land described in the Schedule B to the plaint free of any trust as alleged ?

35. Did the plaintiff herein make an application in D.C., Kurunegala, Case No. 1052 dated 22.2.49 claiming that the share allotted to Kuma Kumarihamy the first defendant therein be set aside and allotted to the plaintiff ?

36. Did the plaintiff expressly and by his conduct acquiesce in the entering of final decree in D.C., Kurunegala, Case No. 1052 allotting the land in Schedule B to the defendant ?

37. Did the plaintiff make any claim to the said land in Schedule B in the said action No. 1052 ?

38. (1) Did the plaintiff in this case categorically state in D.C. 1052 that he is not making any claim against the plaintiff in that case but only against Kuma Kumarihamy ?

38. (2) In view of the plaintiff's conduct as averred in issues 36, 37 and 38 (1), is plaintiff now entitled to the relief claimed in this case ?

39. Is the plaintiff now in possession of the land in Schedule B?

40. If so, is the plaintiff entitled to damages ?

41. Is the decree in D.C. Testamentary 4402 *res judicata* between the parties on the question whether Bandara Menika and Ran Menika were entitled to a 1/4th share each of Edward Banda Korala's estate ?

Mr. Weerasooriya points out that issue 30 raises the question whether Somawathie had ratified the settlement. He points out that the question raised in the answer is really one of estoppel and he points out further that on the question of estoppel, the defendant would have had to prove that as a result of the act of Somawathie the defendant had done certain acts on that representation whereas in the case of ratification it is not necessary for the defendant to prove that. He states therefore he had not considered the case from that view. But he says he does not object to the issues so long as the defendant does not lead evidence today on these issues and so long as the plaintiff is allowed to list documents or call other witnesses who have not been listed in regard to these issues.

Mr. Weerasooriya says that he does not claim damages. Issues 39 and 40 will therefore not arise.

No. 4
Issues Framed
—*Continued*

Mr. Weerasooriya raises the following further issue in view of issues 23 and 24.

42. Is it open to the defendant to canvas the order of 21.8.44 in these proceedings ?

I accept issues 1 to 38, (2), 41 and 42.

At this stage the trial is adjourned for the 25th and 28th of January, 1952.

(Sgd.) E. WIJEYEWARDENE,
D.J., 27.8.51.

No. 5
Plaintiff's
Evidence

No. 5.

Plaintiff's Evidence.

No. D.C. 6639 L. 25.1.52.

Appearances as before.

H. M. Ukku
Banda
Examination

Mr. Weerasooriya calls :

Herath Mudiyanselage Ukku Banda. Affirmed, 50 years, cultivator, Nakolagama.

I live at Nakolagama from birth. Edward Banda Korala is not related to me. He was at Nakolagama and I knew him all my life. I live in the land adjoining his. He was living in Walawwewatte. He was Korala and had much property. I knew Bandara Menika. Edward Banda Korala died about March, 1929. Bandara Menika died on 31.7.40. They had no children. I knew Somawathie Kumarihamy. She died on 27.9.45. I have spoken to her when alive and also to Bandara Menika.

(It is noted that Mr. Weerasooriya suggested the dates to the witness. Mr. Gunaratne has no objection).

It is noted Mr. Weerasooriya suggested the dates to the witness.

Mr. Gunaratne has no objection.

Somawathie died about 8 to 10 years ago, Bandara Menika about 12 years ago, and Koralemahatmaya about 20 to 21 years ago. Somawathie was living at Nakolagama in Edward Banda Korala's house. When I saw her there she was about 8 to 10 months old. She was married in *binna*. The husband settled in this house, when Edward Banda had died and Bandara Menika was living. She lived here until her death. Koralemahatmaya had no children. He treated Somawathie as her daughter. Edward Banda brought her there because they had no children. She was brought up and adopted for the purpose of inheritance.

No. 5
Plaintiff's Evidence
H. M. Ukku Banda Examination —*Continued*

(At this stage Mr. Gunaratne wishes it to be noted that he does not cross-examine the witnesses who are called to prove the issue of adoption nor does he intend leading evidence on that issue as he is relying on the issues of law raised by him). Somawathie was the daughter of Bandara Menika's Evassa cousin. I knew Somawathie's parents. Koralemahatmaya has spoken to me about the reason for their adoption of her. About 7 to 8 times he has been telling me that because he had no children they were adopting Somawathie to inherit. Even Bandara Menika has said the same to me. Her father was living at the time. Her father died when she was very young.

H. M. Ukku Banda Cross-examination

Cross-examined. Somawathie's natural father came to live in Edward Banda's house about one year after Somawathie's death. He lived there till his death. He died about 8 years ago. Somawathie died before Appuhamy. I was not a witness in Case D.C. 4402 of this Court. Edward Banda Korala had a large estate. I do not know how he acquired them.

H. M. Ukku Banda Re-examination

Re-examined. I have given evidence in Case No. D.C. 3137 of this Court, which was a partition action. Somawathie was originally a witness and thereafter her husband was a witness in 1949. I gave evidence in favour of U. B. Ambahera to prove the adoption. Ballelle Korala contested. Ambahera succeeded in that contest.

(Sgd.) E. WIJEYEWARDENE,
D.J., 25.1.52.

K. Sri Sumangala Examination

K. Sri Sumangala, 76 years, Incumbent of Thiragama Temple. Affirmed.

I am the high priest of Thiragama Temple and Weuda Willi Hatpattu. I knew Edward Banda Korala well and also his wife, Bandara Menika. He owned a large number of lands. He and Bandara Menika came to my temple many a time. About a thousand times. They came until they died. They had no children. I knew Somawathie Kumarihamy. Somawathie was brought to Edward Banda Korala's house as a child when she was about 8 to 10 months old. She was also known as Sittamma. I do not remember when she died. I think about 7 years ago. Somawathie also has come to my temple as a child when Bandara Menika came to observe sil. Edward Banda treated her as his child and Bandara Menika also in the same way. Koralemahatmaya and Bandara Menika had no children.

She was the Evassa cousin's daughter. Edward Banda has spoken to me about Somawathie. He told me why she was adopted, viz., when he became old and infirm to get assistance and get her married in *binna*. He said he would give her his property. I have given evidence earlier in two other cases on this same question as to

No. 5 Plaintiff's Evidence K. Sri Sumangala Examination —*Continued*

whether Somawathie was adopted for inheritance. I remember after Bandara Menika died there was a testamentary case. There were other cases also, the details of which I do not know. I came to give evidence regarding the adoption of this child.

K. Sri Sumangala Cross-examination

Cross-examined. Bandara Menika was married to Edward Banda in *diga*. She was from Arambepola about 2½ miles from Nakolagama. About 10 years ago I came to support the case that Somawathie was adopted by Bandara Menika, when there was a dispute as to whether Somawathie, Ambahera and Herath should possess the properties. Edward Banda had a lot of property worth about 2 lakhs. He had property both inherited and acquired. He had also loaned large sums of money on mortgages. I do not know whether Bandara Menika had any property of her own.

(Sgd.) E. WIJEYEWARDENE,
D.J., 25.1.52.

T. B. Amunugama Examination

T. B. Amunugama: Affirmed. 45 years, landed proprietor, Amunugama.

I have brought this action for a declaration that the property in Schedule B was held in trust for me by the defendant. This is lot 1 in plan No. 3523, dated 25th February, 1945, 8 A. 0 R. 20 P. I claim to be the heir of Somawathie Kumarihamy. I married her in 1932. She died on 27th September, 1945, leaving a Last Will No. 3320 of 25.5.41, P1 which I proved in Testamentary Case No. 4630 of this Court and probate was issued to me—marked P2. I was the sole heir under the Will. The property in question originally belonged to Edward Banda Korala. He had married Bandara Menika and they had no children. Edward Banda died on 3rd March, 1929, and his estate was administered in Case No. 3714 of this Court. At the date of Edward Banda's death Somawathie was a minor. She was born on 7th September, 1912. Bandara Menika applied for administration and Somawathie was the first respondent and Appuhamy, her father, was the second respondent. I produce affidavit dated 11th June, 1929, P3 filed in Testamentary Case No. 3714 by Bandara Menika where she stated that she was the widow and the first respondent was the adopted child and she asked that Appuhamy be appointed guardian. I also produce the affidavit dated 8th July, 1929, P4 given by Bandara Menika filed in the Testamentary Case. In that also she makes the same statement that she is the widow and the first respondent the adopted child. She also filed a petition on 9th July, 1929, P5 and there too she makes the same statement. She had also made a statement to the Government Agent on 5th/8th June, 1929. This was taken by the Government Agent and had been signed. This has been filed in Case No. 4402. Mr. Gunaratne objects on the following grounds :—

(1) Whether, in fact, this statement was made to the Government Agent ?

(2) Even if it had been recorded by the Government Agent there is nothing to show in what circumstance and for what purpose this statement had been admissible.

(3) That it must be produced from proper custody.

(4) That a public officer in the course of his duties makes various records and minutes and whether this would be a public record.

Mr. Weerasooriya states that it is a public record within the meaning of section 74.

I shall make my order later.

(*Evidence Continued*).

T. B. Amunugama, affirmed, recalled.

Subsequently in Testamentary Case No. 3714 a motion was filed, dated 9th October, 1930, P6. This states that in lieu of a judicial statement the movable property of the estate should be divided equally between the petitioner, Bandara Menika—first respondent Somawathie, third respondent Kuma Kumarihamy, and the fourth respondent Ran Menika in 1/4th share each. I see that no consent under section 500 of the Court has been obtained by the second respondent, Appuhamy to be G.A.L. of the minor, Somawathie.

(Sgd.) E. WIJEYEWARDENE,
D. J.

Adjourned for lunch.

Trial resumed.

Mr. Weerasooriya states that he moves to mark the statement of Bandara Menika made to the Government Agent, which he moved to mark earlier when he calls the Secretary to produce the record of 4402, Mr. Gooneratne consents to the application.

Tennekoon Mudiyanselage Tikiri Banda Amunugama ; Affirmed, recalled.

I produce the inventory produced in Testamentary Case No. 4630, P2A where the whole of this property is listed. I also produce letters of administration issued to Bandara Menika in Edward Banda's Testamentary Case No. D.C. 3714, P7 and the inventory marked P8. Pihillagawawatta is the third land in the inventory. Bandara Menika died on 31.7.40 and her estate was administered in Case No. 4402 of this Court. Somawathie applied for letters of administration.

No. 5
Plaintiff's Evidence
T. B. Amunugama
Examination
—*Continued*

I produce the affidavit dated 13th November, 1940, P9 and the petition dated 16th November, 1940, P10. She claimed as her sole heir, her adopted daughter. The application was opposed by Ambahera and the present defendant who filed a petition P11 dated 22.1.41 and affidavit dated 22.1.41, P12 where they denied that Somawathie was the adopted daughter of Bandara Menika and claimed to be the sole heirs and applied for letters of administration. Ambahera was the husband of Ran Menika who got 1/4th share on the alleged settlement P6. Edward Banda Korala had a sister, Kiri Menika who had two children Kuma Kumarihamy and Ran Menika. They are the two persons who are referred to in the Settlement P6. The conflict in heirship and letters of administration in No. 4402 was inquired into. I produce the proceedings P13 of 15th May, 1942, where the issues and points in dispute are recorded. I also mark the judgment of the trial P14.

(Mr. Gooneratne objects to the entirety of the judgment being produced. He states that only such portions relevant of the judgment are necessary and that points in dispute and issues will be irrelevant. Mr. Weerasooriya points out that in the judgment the points in dispute and issues have not been separately answered. Mr. Weerasooriya further states that the question of *res judicata* is raised and he has to produce the judgment in its entirety).

Mr. Gooneratne points out that the issues raised were—

(1) Is Somawathie the adopted daughter of the petitioner ?

(2) If so, was she adopted for the purpose of inheritance ?

He points out that the judgment contains the following : " I have come to conclusion that the petitioner has proved that she had been adopted by Bandara Menika, the deceased for the purpose of inheritance of the property. I hold that the petitioner is the sole heir and is entitled to hold letters of administration." I allow it).

The appeal was decided by a Bench of three Judges. The Decree of the Supreme Court dismissed the appeal. I produce the Decree of the District Court dated 24.8.42, P15, and the judgment of the Supreme Court dated 5th August, 1943. My wife then obtained letters of administration, P16 as sole heir of Bandara Menika and filed P16 and P17. I mark P18, the list of witnesses filed for the inquiry in Case No. 4402. The priest who gave evidence today, Sumangala Abidana, on the question of adoption of Somawathie gave evidence in Case No. 4402. On 22.10.43 my wife filed a petition P19 in Case No. 3714 and affidavit P20 and prayed that the alleged settlement P6 of 9th October, 1930, be set aside and that Edward Banda's estate

be distributed on the footing that she was the sole heir. I produce the journal entries in respect of the application P21 up to the 21st August, 1944, from the 26th October, 1943, and the decree in respect of that application. I also produce the consent motion of the third respondent, Ran Menika, Ambahera, her husband has signed as a witness.

I acted for my wife in Case No. 3714. I also produce the decree entered P23 dated 21.8.44. In terms of that decree I became entitled to the entirety of Edward Banda Korala's estate. Somawathie waived her claims to certain rights of Ran Menika. The journal entries from 26.10.43 show that notices were issued on all respondents, viz., Appuhamy (father of Somawathie) first respondent, U. M. Kumarihamy, the second respondent and Ran Menika, the third respondent. Notices were served on all three. On 17th January, 1944, notices were reported served. All were absent so that Appuhamy and Kuma Kumarihamy had notice of my application and took no objection. The defendant claims the entirety of the land in Schedule B on a final decree in partition Case No. 1052 of this Court, and claims that he was allotted the land in question in lieu of his rights on a deed of gift from Bandara Menika. I refer to paragraphs 6 and 7 of the answer filed by the defendant in this case.

I married in 1932. Somawathie was living in Edward Banda Korala's house with Bandara Menika and I continued to live there till she died, and I settled down in *binna*. I am Chairman, V.C., Potuhera, and Inquirer into Sudden Deaths. I knew Somawathie's father. He died about 3 or 4 years ago. I knew him very well. He lived with Bandara Menika. He was addicted to liquor. I knew the present defendant. I knew him from 1925. When I first came to know him he was a proctor's clerk under Mr. Ernest Wanduragala. He continued to be a clerk for about 6 years, till 1931. On the date of the alleged settlement he was a clerk there. I knew Ambahera, Ran Menika's husband before I got married. He was at first a vaccinator, then a cultivator and then he was a proctor's clerk. After Bandara Menika's death my wife applied for administration of her estate. I acted on behalf of my wife in regard to that application. For that purpose I filed papers and I came to know of the alleged settlement which I considered to be irregular. My wife, I do not think knew it. In fact she was a minor when I married her. She became a major in 1933. A few months after my marriage I came to know that there was a settlement in Edward Banda's estate. When Bandara Menika died papers were filed saying that my wife was the sole heir and I succeeded in that application. Bandara Menika was in possession of the property till her death. She was administering her husband's estate at the time of her death. The secretary was appointed Administrator of Edward Banda's estate. After Bandara Menika's death I am in possession of the estate. Although the settle-

No. 5
Plaintiff's Evidence
T. B. Amunugama Examination —*Continued*

ment was that the parties were to get into possession, Bandara Menika possessed the property until her death and I am now in possession. The alleged settlement was in 1930 and was a fraudulent one. My wife was then a minor and was deprived of the rights of Edward Banda's estate and I have alleged that there was fraudulence and collusion between the guardian and the parties to that settlement and the defence was aware of that and I claim that the rights given to Bandara Menika were held by her in trust. I produce the journal entries in Case No. 3714 from 30.10.40 up to 30.3.43 P24 which show that after Bandara Menika's death that the letters of administration was issued to the Secretary of this Court in respect of Edward Banda's estate.

T. B. Amunugama Cross-examination

Cross-examined. I was 25 years when I married. I had my own property then, which I inherited from my father. My father's estate was administered. I got property from my mother. After I married, my father died. I do not know whether my mother's property was administered. My mother had 5 children. When I was six my mother died. She had properties at Pamunuwa and Amunugama. She had about 12 acres for all five of us. I went and settled down in *binna* with Somawathie and interested myself in managing Edward Banda's estate. Edward Banda had considerable extent of property, both acquired and inherited. He had also lent large sums on mortgages. My mother-in-law, Bandara Menika, was not much educated. So I took upon myself what Herath the defendant was managing. He was not in possession. He was keeping accounts. After the death of Bandara Menika I managed. I did not help Bandara Menika to manage. I was managing Appuhamy's, my father-in-law's property and not Edward Banda's. Edward Banda's land was managed by Bandara Menika and Herath was keeping accounts. Appuhamy's estate was not administered. He had about 10 or 12 different bits of land, about 18 acres of coconut. Appuhamy transferred to me whatever he had. I lived continually in Bandara Menika's house and as a member of that house from the date of my marriage. I did not take any interest in the administration Case of Edward Banda's estate. Bandara Menika did not call me to assist. I received my education at Ananda College. I am giving evidence in English. I told the Mudaliyar that I like to give evidence in Sinhalese. Nakolagamuwa is six miles from Kurunegala. I always go to Kurunegala. All my lands are two miles from Nakolagamuwa. With regard to the administration Bandara Menika used to go to Courts by herself or else she was accompanied by Herath. Bandara Menika preferred to take Herath because he knew all the particulars of the case. I owned about 12 acres at the time of my marriage. I made inquiries as to how much Somawathie was worth before my marriage. I learned that she owned 1/4th of this estate. It was only after Bandara Menika's death that I knew the settlement was wrong. Earlier I knew that an adopted child should get the entire estate. I knew it definitely

only when administering Bandara Menika's estate. I knew that Edward Banda had no children. I admit that I told my Counsel that a few months after my marriage I knew that the settlement was wrong. When I said that I learnt that the settlement was wrong. I understood that it was morally wrong. I did not inquire from any lawyer till I was administering Bandara Menika's estate. This settlement was also legally wrong. According to custom I should get the entire share. I did not know directly whether according to law she could claim the entire land. Up to 1940 I was on visiting terms with Appuhamy, my father-in-law. I was on affectionate terms with Bandara Menika also. After understanding that the settlement was wrong, I decided to try to get the settlement set aside *re* Edward Banda's estate and to claim the entire estate of Bandara Menika. It was after my deciding to claim the entire estate of Bandara Menika that I decided to get a settlement *re* Edward Banda's estate set aside as Somawathie was not given her lawful share. She was given less than what she was entitled to.

Q. It was after Bandara Menika's death and when her estate was administered in D.C. Case No. 4402 that you came to know that there had been fraud and collusion in the settlement of Edward Banda's estate ?

A. I knew from the beginning that the settlement was a fraudulent one. I did not make any inquiries from any lawyer as to what action I should take.

I was not related to Edward Banda, but I knew him. I also knew Appuhamy. Somawathie was 20 years when I married her. Ballalle and Herath jointly obtained the connivance of Bandara Menika. What I heard was that Appuhamy was brought under the influence of liquor. It was Somawathie who told me this. As I was living in the same house I did not like to cause friction.

(Sgd.) E. WIJEYEWARDENE,
D.J., 25.1.52.

(Further trial on 21.7 and 22.7).

(Sgd.) E. WIJEYEWARDENE,
D.J.

Trial Continued. 21.7.52.

Appearances as before.

Tikiri Banda Amunugama. Recalled. Affirmed.

Cross-examination—(Continued). I am Tennakoon Mudiyanselage Tikiri Banda Amunugama. I married Somawathie in the year 1932.

No. 5
Plaintiff's Evidence
T. B. Amunugama
Cross-examination
—*Continued*

I married in *binna*. I took up residence in Edward Banda's mulgedare. In that house also lived Appuhamy, Somawathie's natural father, and Bandara Menika.

I think Bandara Menika had property of her own. I do not know how much that property was worth. I do not know what property she had. I knew that she had property. I do not know the names of the land. I do not know the extent of any of the properties. What I have heard is that those properties were situated in Arambepola. Her village was Arambepola, which was about 3 miles away from this village by a short cut.

Bandara Menika had a brother. I do not know if Bandara Menika was married in *diga*. She was living in Edward Banda's house. Bandara Menika herself looked after her property. Bandara Menika could read and write. Her daughter Somawathie was illiterate. Somawathie was only 20 years old when she married me. I did not look after her affairs after I married her. It was Bandara Menika who looked after her affairs. I married in *binna*. I married Somawathie partly because she was wealthy. I studied in Ananda College up to the Junior form.

At the time I married, I was in possession of my property, I got those properties from my parents. At the time of my marriage, my parents were dead. Neither the estate of my father nor that of my mother was administered.

On the last occasion I said that I busied myself looking after my father-in-law Appuhamy's property. It was not that I was unwilling to look after my wife's property but the Administrator was in charge and as there were disputes I did not look after the lands.

There was a settlement in 1930 of the disputes. It was Bandara Menika who looked after the properties. I deny that the persons who became entitled to shares under the settlement in 1930 entered into possession of the lands. I began to look after the properties of Somawathie after the death of Bandara Menika in the year 1940.

Q. Is it not a fact that when you began looking after her properties, you possessed only the share Somawathie got under the settlement of 1930?

A. No. The entire estate.

Auctioneer Amunugama is my brother. I knew that my brother, the Auctioneer, put up the rights which Ran Menika got by the settlement of 1930 in the year 1934 for sale. It was not at the sale that the interests were purchased but in settlement of a debt due to the estate of Somawathie, some lands were given. Ran Menika gave the lands to the estate. I am aware of it.

Q. Your wife purchased to your knowledge a share which had been given to Ran Menika under the settlement ?

A. Bandara Menika told me that it was so done. At that time I was the husband of Somawathie, I would not have known of it if Bandara Menika did not inform me. It was Bandara Menika who attended to these affairs. I do not know that these interests which Ran Menika sold were mortgaged back to Ran Menika. I am not Tennakoon Banda Amunugama. He is my elder brother. I am Tikiri Banda Amunugama. I signed the mortgage bond by which Somawathie mortgaged all the rights she purchased from Ran Menika to Ran Menika.

(Shown duplicate of deed No. 501 dated 22.2.34 attested by S. A. Yatawara).

I have signed this as one of the attesting witnesses. The other is Ambahera. This is a mortgage bond executed by my wife Somawathie in favour of Ran Menika Kumarihamy where she gives her title as " held and possessed by virtue of terms of settlement in D.C. Testamentary 3714 " and by transfer deed No. 500 of 22.2.34.

(Mr. Gunaratne marks as D1 a certified copy of deed No. 501 of 22.2.34).

(Shown deed No. 500 of 22.2.34 attested by the same Notary).

My wife has by this deed taken a transfer from Ran Menika Kumarihamy, one of the respondents in D.C. Testamentary Case No. 3714, of a 1/12th share of certain lands, including the land in dispute Pillagawawatta. That is according to the deed. Otherwise I do not know. In the deed the title of the vendor is said to be by settlement in D.C. Testamentary Case No. 3714 wherein she was declared entitled to a 1/4th share of the estate of Edward Banda. The deed further proceeds to say that the lands were sold by T. B. Amunugama, Auctioneer, and that Somawathie was the highest bidder of the shares transferred on that deed. I was not present at the sale. I do not know if my brother put up for sale certain interests of the estate of Edward Banda. These lands were less than 1/4th of a mile from my father-in-law's house.

(Mr. Gunaratne produces as D2 a certified copy of deed No. 500).

Deed 501, D1, deals with a 1/3rd share of Pillagawawatta. That is the land in dispute. My wife recites her title as by virtue of the terms of settlement in Testamentary Case No. 3714 and by deed No. 500.

I was not aware of the transfer in my wife's name. My wife did not go to the Notary's office. The Notary came to her house in Nakolagamuwa and I signed as a witness there. My wife put her thumb impression on the mortgage bond D1.

No. 5
Plaintiff's Evidence
T. B. Amunugama
Cross-examination
—*Continued*

My brother is in Court today . I know Ran Menika Kumarihamy. Amunugama is about 4 miles from Ambahera. The deed was drafted and brought to Amunugama to my elder brother's residence. The mortgage bond, which I have attested as a witness, refers to the earlier deed. I did not inquire what it was.

There was a debt due to the estate of Edward Banda from U. B. Ambahera. Ran Menika was Ukku Banda Ambehera's wife. For the purpose of realising that debt to the estate of Edward Banda, U. B. Ambahera agreed to Ran Menika's interests granted to her in the case, being sold. There were several auction sales. There were a number of sales for the sale of interests of the estate of Edward Banda. There were several auction sales in regard to the debts. Bandara Menika also purchased certain lands. I do not know the mortgage bond D1 was sued upon in this Court. I do not know if in the year 1943 Ran Menika sued my wife Somawathie to recover the amount secured on the bond D1 in case No. 1541. Action was not filed. In 1943 I was living with my wife in Nakolagamuwa. I am now residing at Amunugama. Even before Somawathie died, I was living with Somawathie in Amunugama after the death of Bandara Menika. Bandara Menika died in 1940. I have forgotten of such a case. There may have been such a case. I remember bringing my wife to Mr. Jayasundera's office to sign a proxy.

(Shown D3 journal entries, D4 plaint and D5 answer of defendant and D6 decree in D.C., Kurunegala, Case No. 1541).

That action was dismissed with costs.

Shown P19.—This is dated 27.10.43. On the same date as P23, viz., 21.8.44, this settlement in D.C., Kurunegala, Case No. 1541 was arrived at. Ran Menika and her husband Ambahera had consented to the earlier settlement being set aside. I do not know if all the lands of Ran Menika had been sold by my brother at auctions. Ran Menika consented to the action being dismissed. I came to Court on the occasion of P22 and P23. My wife Somawathie agreed to waive her claims against Ran Menika and to ratify all acts done by her and her husband. Case No. 1541 was dismissed without costs. Ran Menika sued on the bond. My wife filed answer. Ran Menika consented to the action being dismissed without costs.

Q. Did she consent to that without getting anything from your wife in return ?

A. Yes.

Q. On the same day, did your wife not convey to Ambahera a 1/4th share out of the rights she got ?

A. In lieu of the amount due on the mortgage bond she gave 1/4th share out of the share decreed to her under the second settlement.

It was in favour of Ran Menika's husband Ambahera. (Shown deed No. 2134 dated 21.8.44, attested by Mr. Jayasundera, N.P., marked D7).

My wife conveyed to U. B. Ambahera, husband of Ran Menika, a 3/4th share of a number of lands which belonged to Edward Banda's estate. The consideration was the amount due on the mortgage bond No. 501, D1.

Q. The mortgage was given to Ran Menika because Somawathie could not pay the consideration for Ran Menika's shares of the lands ?

A. For the lands purchased by Somawathie.

According to the settlement of 1944, the rights that Ran Menika got by the earlier settlement were wiped out. Somawathie transferred a 3/4th share of some lands and a 3/8th share of some lands. The consideration is given as Rs. 5,000/-. The lands were worth Rs. 5,000/-. The amount due on the bond was Rs. 2,000/- plus interest.

(Shown deed No. 1017 dated 6.6.35, a certified copy of which is marked D8.)

This is a deed by which my wife Somawathie Kumarihamy describing herself as the wife of Tikiri Banda Amunugama of Amunugama, transferred to one Tikiri Banda Ramanayaka a 1/4th share of a number of lands claiming them by virtue of settlement in Testamentary Case No. 3714. I have signed this as a witness. The other witness is my brother. My wife received the consideration on this deed.

(Shown deed No. 2040 dated 4.3.40 attested by Mr. Wanduragala, N.P., a copy of which is marked D9.)

By this deed Bandara Menika, my mother-in-law, Kuma Kumarihamy, Ran Menika Kumarihamy and Somawathie all four of them transferred to one Tennakoon of Nakolagamuwa shares of certain lands reciting their title as their being heirs of Edward Banda of Nakolagamuwa. I am aware of this sale. This was done at the instance of Bandara Menika because she wanted money for some fees in the Testamentary case. My wife executed this deed.

(Sgd.) E. WIJEYEWARDENE,
D.J., 21.7.52.

No. 5
Plaintiff's Evidence
T. B. Amunugama
Cross-examination
—*Continued*

D1, D2, D7, D8 and D9 are certified copies of the duplicates shown to the witness, viz., the duplicate copies.

Mr. Weerasooriya consents to D1, D2 and D7 to D9 being admitted without the duplicates being formally produced.

Further hearing tomorrow.

(Sgd.) E. WIJEYEWARDENE,
D.J., 21.7.52.

D.C. 6639 L. 22.7.52.

Trial Continued

Appearances as before. 10

Tikiri Banda Amunugama. Recalled. Affirmed.

Cross-examination—(Continued). Shown P17 Inventory in Testamentary Case No. 4402. This shows lands in Nakolagamuwa, Olupaliyawa, Wanduragala and Kidapola. But there are no lands in Arambepola.

This defendant is Bandara Menika's brother's son. I do not know if he is in possession of the lands in Arambepola which belonged to his father. I do not know if Bandara Menika's father was from Arambepola. Bandara Menika's village is Arambepola. Arambepola is Bandara Menika's father's village. I do not know how Bandara 20 Menika get lands in Arambepola, but it was stated that she had lands at Arambepola.

According to me the sole heir of Bandara Menika was Somawathie. The sole heir of Somawathie is myself. I am not in possession of any lands. Bandara Menika owned in Arambepola. I made inquiries about the lands but I have not been successful in finding the lands. I do not know if the defendant is in possession of lands which belonged to Bandara Menika's father.

I have produced a number of documents and I am conversant with them. I have read them. I am a Coroner and V.C. Chairman. 30 I have been V.C. Chairman for about 12 years. I have been Coroner for about 12 years. As a Coroner I keep my records in Sinhalese. I take down the evidence in Sinhalese and the order is also made in Sinhalese. When I correspond with Government there are occasions when I write in English. The forms are in English.

I have had a number of consultations with my Counsel in the presence of his junior and my proctor. I have spoken to them in Sinhalese on those occasions.

My brother T. B. Amunugama is an Auctioneer. I met him after I gave evidence yesterday. I questioned him whether he had sold the rights of Ran Menika accorded to her under the settlement of 1930. My brother is also Basnayaka Nilame. After I gave evidence, I had a further consultation with my lawyers. My brother the Auctioneer was not present at the time. He is the person who conducted the sale of Ran Menika's lands. My brother was not present at the resthouse this morning in consultation with the lawyers. He has been summoned by the defendant. He is in Court today. I can swear and say that he was not present at the resthouse this morning. I saw the defendant speaking to his lawyer on the road. Defendant was not in the resthouse in consultation with his lawyer. When the defendant stopped his car, I saw his Counsel coming from the bungalow of his proctor. I did not see the defendant going into the resthouse.

Auctioneer Amunugama's initials are T. B. T. B. stands for Tennakoon Banda. I am now aware that Ran Menika's interests were auctioned at a public auction by my brother. The auctioneers issue printed notices advertising sales. My brother also adopts that practice.

(Shown D10. Notice advertising a public auction).

Q. This notice purports to be a handbill advertising a public auction for the sale to be made in connection with Testamentary Case No. 3714, viz., a 1/4th share of the lands mentioned therein alleged to be that of the wife of U. B. Ambehera by virtue of settlement in that case ?

A. Yes.

(Mr. Weerasooriya objects to the handbill unless the printer is called to prove that this is a handbill.

I allow the document subject to proof).

D10 purports to advertise the sale on 10.10.31 commencing from 1 p.m. and it states that the sale will take place on the third land. The third land happens to be the land in dispute in this case—Pillagahawatta.

The marriage between me and Somawathie was an arranged one. It was arranged by my father. The marriage was arranged with Bandara Menika. Appuhamy was also consulted. Appuhamy was living with Somawathie in the same house. At the time I went there, Appuhamy had been in residence in Nakolagamuwa in Edward Banda's house. I came to know that he had come there 3 or 4 years before that. I do not know if he had come there during the lifetime of Edward Banda. I do not know of which village he was but he was residing in Torawatura. I do not know personally of

No. 5
Plaintiff's Evidence
T. B. Amunugama
Cross-examination
—*Continued*

his living in Torawatura village. According to my information, before coming to Edward Banda's house, Appuhamy was in Torawatura. Appuhamy had property in Torawatura which I looked after. These were paraveni as well as acquired property. Torawatura is about 1½ miles from Nakolagamuwa. My marriage was registered under the Kandyan law. Appuhamy did not sign the register as the father of Somawathie. The name of Appuhamy was given as the father of Somawathie but he did not sign. I was about 25 years old when I got married. At the time of my marriage, I knew that Somawathie was the adopted daughter of Edward Banda. My village is close to Nakolagamuwa about four miles away. Edward Banda was reputed to be a rich man. He had no children. At the time of my marriage I believed that Somawathie had been adopted for the purpose of inheritance. Appuhamy, father of Somawathie, was a relation of Edward Banda. He was his cousin. When I came to know Appuhamy, his (Appuhamy's) wife was dead. During his lifetime, Appuhamy's properties were transferred to me. After Bandara Menika's death I began to manage the business affairs of Somawathie and did so up to the time of her death. Even now I am looking after her business.

Edward Banda died on 3.3.29 and Bandara Menika died on 31.7.40.

After Bandara Menika died I got into possession of my wife's interests. This defendant charged me in the M.C., Kurunegala, with appropriating the produce of a 1/3rd share of Pillagahawatta, this land. He claimed to be the owner of a 1/3rd share. I appeared in Court. The case was No. 6603, M. C., Kurunegala, filed on 21.7.42. The matter was settled. I gave security and it was agreed that I should possess the land till the decision in the partition case which the defendant in this case had instituted for that land.

(Mr. Gunaratne marks as D11 the complaint, journal entries and the settlement in M.C., Kurunegala, Case No. 6603).

On the very day of the settlement in the M.C. case the defendant had filed the partition action for the very same land. The defendant had filed action No. 1052 for the partition of this land on 21.7.42. He named as defendants Kuma Kumarihamy, Somawathie, Ran Menika and the Chairman of the U.C., Kurunegala, with whom the defendant had lodged this property as security for his post of cashier. At that time Bandara Menika was dead. My wife received summons. I attended to the matters relating to that case on behalf of my wife with my wife's knowledge and consent.

(Mr. Gunaratne marks as D12 the plaint in D.C., Kurunegala, Case No. 1052).

In that case this defendant who was the plaintiff claimed title by virtue of the settlement P6 in D.C. 3714. (Shown D13). D13 is the statement filed by my wife Somawathie who was represented by Messrs. Perera & Perera, (D13 read to witness).

(Shown D14). D14 is the statement of the first defendant in that case Kuma Kumarihamy and D15 are the journal entries. Before the trial date in that case my wife moved that the case be taken off the trial roll and that she be allowed to file amended answer. (*Vide* journal of 19.10.44). That was refused by the learned Judge. The case proceeded to trial. D16 are the proceedings on trial date 20.10.44. D17 is the Interlocutory decree. Thereafter my wife moved to set aside that decree in that case. That was refused and an appeal was preferred to the Supreme Court. The petition of appeal was filed by Messrs. Perera & Perera. D18 is the petition of appeal filed by my wife asking that the interlocutory decree be set aside. That appeal was dismissed.

(Mr. Gunaratne marks as D19 the Supreme Court order dated 8.12.48).

My wife Somawathie died on 27.9.45. After my wife died, I was substituted on her behalf in Case No. 1052. On 18.5.46 I gave a proxy to Mr. Jayasundera and I became a party as the heir of my wife. My proctor filed my proxy on 12.6.48. On 22.2.49 by motion, marked D20, I moved that the 1/3rd share allotted to Kuma Kumarihamy be allotted to me who was substituted in place of Somawathie and that the interlocutory decree be amended accordingly. The journal entry of 6.5.49 in D15 shows that Mr. Gunaratne for the plaintiff and Mr. Ballalle for the first defendant objected but no written objections were filed. When the matter, *i.e.*, the matter to amend the interlocutory decree was fixed for inquiry Mr. Gunaratne appeared for the plaintiff in that case and Mr. Weerasooriya, K.C., appeared for me in that case. After inquiry my application was allowed. D21 is the order of the learned Judge who allowed my application. On that day final decree was entered. D22 is the final decree dated 16.6.50. In that case I made an application asking that the share allotted to Kuma Kumarihamy be allotted to me as successor of Somawathie. I do not know if I made no similar application in regard to the share allotted in the interlocutory decree to this defendant, who was the plaintiff in that case. But I was present in Court. I had instructed my lawyers in that case. Shown D23—The record made by the District Judge on 16.6.50—I do not know if this record follows my instructions to my lawyers.

Q. Do you say that your lawyers acted within your instructions or not in that application ?

A. They acted in accordance with my instructions.

No. 5
Plaintiff's Evidence
T. B. Amunugama
Cross-examination
—*Continued*

Q. After Mr. Weerasooriya made that statement, defendant in this case withdrew his objection and final decree was entered ?

A. Yes.

In D11 in the criminal case I have agreed to abide by the decision in the civil action. But after the partition case I continued to possess the land. I am possessing the portion allotted to this defendant in the Case No. 1052. On 25.7.50 I filed this action pleading a trust. I was acting for my wife in this case.

Q. The amendment of the answer that your wife sought was to plead the second settlement of 21.8.44 ?

A. No.

It must have been because the original answer was not quite correct.

Q. Your wife sought to amend the answer in view of the order made in the Testamentary Case ?

A. Yes.

That was disallowed. Thereafter she made an application to set aside that and it was refused by this Court. D24, dated 12.6.45, is the petition made by my wife to set aside the interlocutory decree and D25, dated 12.6.45, is the order disallowing the application to set aside the interlocutory decree. It was on that order that the appeal D18 was preferred. The partition was not effected on the land in Case No. 1052. The surveyor did not go and peg out the different lots. Final decree was entered. But lot 1 in that plan was not allotted to this defendant.

(Para 8 of the plaint read to witness).

Q. Do you deny that Surveyor, G. A. de Silva, went to the land and pegged out the land in accordance with the final partition plan ?

A. No. He surveyed the land but he did not peg it into lots.

No pegs were fixed on the land. I am asking for declaration that the lot allotted to this defendant be allotted to me. I am continuing to possess the lot that was allotted to the defendant.

(Para 10 of the plaint read to witness).

By deed No. 1494 of 10.4.34, D26, Bandara Menika got a share of this land, and she by deed No. 1700 of 2.12.36, D27 gifted a 1/3rd share of this land to the defendant. On these deeds the defendant obtained a partition decree.

Bandara Menika's estate was administered by my wife, Somawathie. Bandara Menika's estate was not closed when Somawathie died. That case is not closed as yet. I am appointed administrator in place of Somawathie in that case.

In D.C. 3714 my wife, Somawathie, caused the earlier order of 1930 to be set aside and a fresh order was obtained on 21.8.44. In Case No. 3714 Bandara Menika filed application for administration and she obtained letters of administration. N. M. Kumarihamy and N. M. Ran Menika Kumarihamy were the third and fourth defendants in that case. They filed statement stating that they were the sole heirs of Edward Banda's estate. Shown D28 dated 1.10.29. On 9.9.30 application was made to settle the dispute between Somawathie who claimed to be the adopted child and entitled to the entire estate on the one hand and the third and fourth defendants who claimed to be the sole heirs on the other. Somawathie was represented by Appuhamy who was her father. That is the settlement which is bad. Shown D29. These are the proceedings of 9.9.30 relating to the settlement which was arrived at between Somawathie on one side and Ran Menika, Kuma Kumarihamy and Bandara Menika on the other side. D30 shows the consent of the parties. (This is the same as P6). D30 are the papers of settlement referred to in D29.

I have myself endeavoured to get the journal entries in D.C. 3714.

(Sgd.) E. WIJEYEWARDENE,
D.J., 22.7.52.

Adjourned for lunch.

After adjournment.

T. M. Tikiri Banda Amunugama. Recalled. Affirmed.

Shown record No. 3714 Testamentary. The journal entries prior to 18.9.30 are missing from the record. (The record is old and the paper appears to be crumbling. In vol. 11 of 3714 the pieces of the pages of the record which have perished have been collected and bound together in a parcel). I have produced as P8 the inventory in D.C. 3714. Shown D31. This is the amended inventory and Pillagahawatta is the third land and it has been valued at Rs. 29,775/- by Bandara Menika. D31 is dated 11.6.31. This is the most valuable land possessed by Edward Banda. I do not know if certain shares in that land had been purchased by Edward Banda. I am not aware that a share of that land originally belonged to defendant's father.

(Shown D32 a certified copy of the journal entries in D.C. 3714 from 1.10.40 to 21.8.44).

No. 5
Plaintiff's Evidence
T. B. Amunugama
Cross-examination
—*Continued*

According to D32 notice to set aside the earlier order had been served on Appuhamy, Kumarihamy and Ran Menika. Kumarihamy is the same as Kuma Kumarihamy. According to the journal entry of 30.3.43 Mr. Jayasundera for Somawathie filed proxy, petition and affidavit and moved to set aside the settlement of 1930 and also moved for notice on Appuhamy, Kumarihamy and Ran Menika. Later the journal entry of 12.2.44 shows that Mr. Jayasundera had acted for my wife without having obtained a revocation of the proxy given by my wife to Messrs. Perera & Perera. Thereafter that state of affairs was remedied. If it is recorded that no notice was taken out or served on the then Official Administrator, I accept it.

Q. Can you point to any order or document that the then Official Administrator consented to the earlier settlement being set aside ?

A. I cannot.

I assisted my wife in the Testamentary Case of Bandara Menika. At the date of my filing Case No. 4402 my wife and I had taken up residence in Amunugama. P17 shown to witness. P17 was prepared by me on behalf of Somawathie. All the immovable property inventorised are all the immovable property that earlier belonged to Edward Banda. I have inventorised as the intestate property of Bandara Menika, the right she got on the settlement of 1930. There is no date on the first page of P17. There is no date on the second, third and 4th pages also. On the fifth page at the bottom the affidavit is dated 13.10.4... The date in the certified copy is obscured by the Crown Seal. (Shown the original record in 4402). The original of the document shows that the date of the affidavit is 13.10.44. (Shown the original in Case No. 4402 a certified copy of which was produced as P17 by plaintiff). This would show that in the middle of the last page there is an affidavit prepared and dated " December, 1943," and the jurat clause has been cut off in ink and thereafter a further list of properties has been included. Thereafter a jurat clause appears in P17. Shown D33 dated 13.11.40. This was the schedule filed with the petition for letters in D.C. 4402. That was also prepared by me. That schedule does not contain the properties which had been added to the inventory P17 as a further list of properties. In Case No. 4402 my wife claimed to be the sole heir of Bandara Menika as her adopted daughter. My wife did not make any one respondent to her application. U. B. Ambahera and the present defendant intervened in that case, and stated that they were the sole heirs of the deceased and denied that my wife was the adopted daughter or any near relation of Bandara Menika. (*Vide* P11). Ukku Banda Ambahera is, in fact, the son of Bandara Menika's full sister. This defendant T. B. Herath is the son of Bandara Menika's full brother. The issue as to whether Somawathie was the adopted child

of Bandara Menika and as such was the sole heir of Bandara Menika was tried in this Court. This Court held in my wife's favour and by Supreme Court decree and judgment P15, the judgment declaring Somawathie the adopted daughter of the deceased for the purpose of inheritance was upheld. That was on 5.8.43. After the decision in that case I added a list of further property to the inventory.

Q. What you added were the lands gifted to this defendant on deed D27 ?

A. Yes.

Q. Before that you had not included those properties either in the schedule or in the inventory ?

A. I cannot say at what period of time the property was added.

Q. It was only after the decision in Case No. 4402 in regard to the contest between your wife on the one hand and Ambahera and this defendant on the other that you decided to claim the interests gifted by Bandara Menika to the defendant ?

A. I do not know whether it was before the decision or after the decision in that case.

Q. It was after the decision of the Supreme Court that Somawathie made an application to the District Court in D.C. 3714 to set aside the settlement of 1930 ?

A. Yes.

Q. I put it to you that after the settlement of 1930 until the decision in D.C. 4402 your wife did not attempt to claim as the adopted daughter of Edward Banda ?

A. Up to that she did not claim as she did not know.

In Case No. 4402 in the contest between my wife Somawathie and this defendant the question was whether Somawathie was adopted for the purpose of inheritance.

(P15 judgment of Supreme Court read to witness). D34 represents the journal entries in D.C. 4402 from 16.11.40 to 1.7.52. There it is minuted under date 1.3.43 that a motion dated 29.2.44, D35, was filed for amending the original schedule by adding certain properties which, it is stated, had been omitted.

Q. Was Bandara Menika entitled to any share of the property which had belonged to Edward Banda at the time that Bandara Menika died, whether by inheritance or in any way whatsoever ?

A. I cannot say.

No. 5
Plaintiff's Evidence
T. B. Amunugama
Cross-examination
—*Continued*

Q. Who do you say was the heir of Edward Banda ?

A. Somawathie.

Q. To the entirety ?

A. Yes.

Q. If that answer of yours is correct, Bandara Menika would not be entitled to any share of the estate of Edward Banda ?

A. Yes.

Q. But you and your wife for 12 years, from 1940 to 1952, continued to administer the property as belonging to Bandara Menika on the footing that that property had devolved on Bandara Menika through Edward Banda ?

(Mr. Weerasooriya objects to this question as he says the question pre-supposes facts which are not correct.

I allow the question.)

Q. The immovable property that was inventorised as part of Bandara Menika's estate was the property that at one time belonged to Edward Banda ?

A. Yes.

Q. Did your wife and after her, you administer that property till 1952 ?

A. Yes.

I am unable to say what amount was paid as estate duty on the estate of Bandara Menika. Estate duty and stamp fees and lawyers' fees were paid. I do not know if no contention was set up between Somawathie and this defendant that Somawathie had been adopted by Edward Banda.

Q. You became aware that Bandara Menika had gifted a number of lands to the defendant on the footing of the settlement of 1930 and by purchase at the auction sale of Ran Menika's rights ?

A. In the year 1930 I was not married. Somawathie attacked the rights of the defendant. Defendant filed action saying that he had a deed. That was a partition action. In the answer filed by my wife in that case, I do not know if my wife, Somawathie, has stated that she was adopted by Edward Banda for the purpose of inheritance. (D13). When answer was filed in Case No. 1052 Bandara Menika was dead. At that time I was helping my wife in her matters. I went to Messrs. Perera & Perera to file that statement for my wife. Messrs. Perera & Perera even at that time were senior practitioners. The plaint in that case filed by this defendant specially pleaded the

settlement in the testamentary case of 1930. Neither I nor my wife stated that that settlement had been obtained collusively or fraudulently or while being in a fiduciary capacity.

Bandara Menika was a Kandyan. She was Edward Banda's wife. On Edward Banda's death, Bandara Menika would have become entitled to a life interest in her husband's property. Pihillagahawatta is a coconut land in productivity. The plantation is now about 40 years old. I cannot say whether that was Edward Banda's paraveni or acquired property. I was living with Bandara Menika up to the time of her death. The relations between the two of us were cordial. Appuhamy died about 10 years ago. Bandara Menika predeceased Appuhamy. About 2 or 3 years after the death of Bandara Menika, Appuhamy died. When Bandara Menika died she was about 60 years old. She died of old age. She died of fever.

There was no complaint by Bandara Menika to the Police stating that I had stolen her jewellery. It is true that she lost some jewellery but there was no allegation against me. Police came and held an inquiry. I deny I was taken to the Police Station. I deny I had to furnish bail. In fact, some jewellery was stolen when she had gone to observe ata sil. Police questioned me. That happened in 1934. I have considerable debts. The debts were incurred in order to buy some properties. I owe Rs. 25,000/- to one Seneviratne of Kandy and Rs. 5,000/- to a proctor of this Court. I do not owe Rs. 3,500/- to Ran Menika or Ambahera. I deny I have been sued in Case No. 4592 by a Chettiar for the recovery of Rs. 10,575/-. I do not know who W. S. M. Kumarihamy is.

I know Kuma Kumarihamy, who is a niece of Edward Banda. She was a daughter of Kiri Menika, sister of Edward Banda. Her son Jayasena is married to my sister's daughter. He is married about 10 years ago.

Re-examined. I made an application to Court to mark the statement made by Bandara Menika to the Government Agent. I have a certified copy of it which I now produce marked P25.

(I allow this to be marked on Mr. Weerasooriya undertaking to produce the original through the Secretary as mentioned in the first day's proceedings).

I was questioned in regard to the proceedings of 9.9.30, D29. D29 states : " Let papers of settlement be filed in the case." It does not state what the proposed settlement is. After recording evidence of Appuhamy and Bandara Menika, the learned Judge says : " Let papers of settlement be filed in the case." I point to the fact that there are no papers filed prior to evidence being led. In D29 there is no reference to any appearances on behalf of any party. Prior to that, viz., 9.9.30, Bandara Menika had given security on 15.2.30, P26,

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—*Continued*

and taken the oath of office on 14.7.30, P27, and also made declaration in respect of the estate on 8.7.29, P28.

Prior to my marriage in 1932, I had nothing to do in respect of the estate of Edward Banda. At the time I got married, Bandara Menika was in possession of the properties of Edward Banda and she possessed them until she died. As a Kandyan widow she would have had a life interest. Even if Somawathie was the adopted daughter, Bandara Menika would have had a life interest in respect of the paraveni property of Edward Banda. If there was any acquired property she would have had a life interest over that also.

Bandara Menika died in 1940. From the time I married up to the time of Bandara Menika's death, I did not interest myself in the Testamentary Case of Edward Banda. When Bandara Menika died, my wife applied for letters of administration in respect of Bandara Menika's estate as Bandara Menika's adopted daughter and sole heir. That application was opposed by the present defendant and Ambahera. That was in Testamentary Case No. 4402. Somawathie succeeded in the trial Court as well as in the Supreme Court. The Supreme Court decision was on 5.8.43. I took an interest in the proceedings in regard to that dispute in the Testamentary Case No. 4402. Somawathie applied for administration to her mother's estate. For that purpose inventory had to be filed. I was acting for Somawathie in that case. I consulted my lawyers for that purpose. The Testamentary Case of Edward Banda was examined before that.

Shortly after the Supreme Court decision on 5.8.43, my wife filed a petition and affidavit in Case No. 3714, P19, and P20, in October, 1943. I point to para 5 of my wife's affidavit, P20, in which she says, " I am taking steps . . .," I also point to para 6.

Q. Were you the person who assisted your wife ?

(Mr. Gunaratne objects to this question).

(Mr. Weerasooriya withdraws it).

I assisted my wife in the Testamentary Case.

Q. Did you assist your wife in the preparation of the affidavit and petition P20 and P19 ?

A. Yes.

After perusing the record in the Testamentary Case I took further steps in regard to the settlement. Papers were filed and certain other steps were taken and I have produced certain documents in regard to the other steps taken. In consequence of the steps I took on 21.8.44, P23, a decree was entered. At that time Bandara Menika was dead.

The journal entry of 3714, D32, was produced in cross-examination. On 13.12.40 there is a minute to show that the Secretary of the Court was to be appointed Administrator, and on 20.12.40 letters were issued. But up to the last entry on 21.8.44 the Secretary has taken no steps in the case.

There are no further journal entries after 21.8.44. As far as Edward Banda's estate goes, the journal entries do not show any steps taken by the official administrator. In fact the Secretary did nothing after Bandara Menika's death in the Testamentary Case. I was cross-examined in respect of Case No. 1052 in which the entirety of Pihillagahawatta was partitioned. Document D20 of 22.2.40 was put to me. It was a motion filed on my behalf that the share allotted to Kuma Kumarihamy be allotted to me. That matter came up for inquiry on 16.6.50. I gave evidence and order was made in my favour. My application was in respect of a 1/3rd share which was allotted to Kuma Kumarihamy and that 1/3rd share was allotted to me and I was given lots 2 and 3 in Plan No. 3523 of 25.2.45 in lieu of Kuma's share. I am in possession of that. I did not make application for the 1/3rd share of Mr. Herath. That order was made on 16.6.50. I filed this action on 25.7.50. I consulted my lawyers for the purpose of that inquiry and for the purpose of this case and in pursuance of their advice I filed action.

I was questioned with regard to P17 inventory filed in Case No. 4402.

(At this stage Mr. Gunaratne undertakes to mark a certified copy of P17 as D36.)

Shown the original of P17. The original jurat clause had been prepared as in December, 1943. It has been struck off and a further list of property included and had actually been sworn to on 13.10.44. This inventory was prepared by my lawyers. I acted on their advice in including the property. The inclusion was made after the decree of 21.8.44, P23. According to the decree P23, Somawathie was declared the sole heir of Edward Banda. So that the inventory was amended on that basis. The first three lands in the further list are the lands conveyed on the deed D27 by Bandara Menika to the defendant. Then I have included two other lands. These two lands I had failed to include in the earlier list. In the assets side I gave the value of the estate and the increase by official valuation of Pihillagahawatta. So that there was no fraud that I was committing. I was merely making a correction.

On 9.6.42 defendant charged me in the M.C. On 21.6.42 I agreed to give security and possess the land till the decision in the partition case. Subsequent to that agreement, my wife filed papers to have

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the settlement in 3714 set aside and she succeeded. So that if that order was right, my wife would have been the sole heir and Bandara Menika could not have conveyed any interest to the defendant. Subsequently I filed this case on 25.7.50.

(Intd.) E. W.
D.J., 22.7.52.

Further hearing on 11th and 12th September, 1952.

(Intd.) E. W.
D.J., 22.7.52.

Trial Continued 11.9.52.

D.C. 6639L. Appearance as before

Plaintiff's Case—(Contd.)

Tikiri Banda Amunugama. Recalled. Affirmed.

Re-examination—(Continued). I said that Somawathie had made a Last Will according to which I was her sole heir. Somawathie has a child by me. He is 7 years old. The Will was made before the birth of that child. Somawathie died on the day of the birth of that child. The child is alive and is attending the Montessori College, Colpetty.

I was questioned about some of my debts. I owe Rs. 25,000/- to one Seneviratne. I borrowed that money to purchase shares of lands of my elder brother situated in the village of Amunugama. The balance shares belong to me. I bought those shares for Rs. 30,000/-. I still own these properties. I said that I owed Rs. 5,000/- to a proctor of this Court. That was also taken to purchase some property in the village. I purchased these properties in Amunugama for Rs. 9,000/-. I still own those properties. No Chetty has sued me. I owe nothing to Ran Menika, I am indebted only on these bonds. I have no unsecured debts. I own properties to the value of more than a lakh.

There is no truth in the suggestion that I stole my mother-in-law's jewellery. I was cross-examined in regard to certain sales of the alleged interests of Ran Menika in the estate of Edward Banda. Ambahera was Ran Menika's husband. According to the Inventory of Edward Banda's estate, Ambahera owed Rs. 13,000/- odd to the estate. I point to P8, item 137, where there is a sum of Rs. 9,330/- due as principal on a mortgage bond and Rs. 4,368·75 as interest. Ran Menika executed three deeds D2 of 22.2.34 in favour of my wife Somawathie for a 1/12th share, deed D26 of 10.4.34 for a 1/12th share in favour of Bandara Menika and she also executed deed No. 49 of 23.4.34, P29 for a 1/12th share in favour of Kuma Kumarihamy. In

that manner she disposed of a 1/4th share reciting that she owned it on the settlement of 1930. In regard to deed D2 in favour of my wife, the consideration is stated to be Rs. 420 but no consideration has passed before the Notary. The deed D1, which is a mortgage executed on the same date as D2, is a bond for a sum of Rs. 2,715/-. D1 was supposed to be a different transaction from D2.

I was cross-examined in regard to D8 of 6.6.35 by which my wife transferred a 1/4th share to Ramanayake. The others had sold their shares and therefore my wife also transferred her share on that deed for consideration. That was on the footing that the settlement was correct at that time.

I was cross-examined in regard to D9 of 4.3.40 by which Bandara Menika, Kuma Kumarihamy, Ran Menika and my wife Somawathie transferred certain shares of lands to one Tennekoon. That was in order to raise money for stamps.

The consideration was Rs. 300/-.

I was aware of the transactions on D1, D2, D8 and D9 at the time they were made. I knew about the execution of the deeds but I did not know about title. At that time I did not know really the rights of my wife Somawathie to the estate of Edward Banda. I came to know of the real rights that my wife had in the estate of Edward Banda when I began to administer the estate of Bandara Menika after her death. My wife applied for administration of the estate of Bandara Menika.

Q. Who acted for her ?

(The question is withdrawn).

Somawathie applied for administration of the estate of Bandara Menika. Certain papers were filed in Court. She attended to the matters of administration together with me.

Subsequently an order was made setting aside the decree of 1930. It was on the same day that deed D7 of 21.8.44 was executed. That deed was for a 3/4th share. With regard to the balance 1/4th share the owner was myself. When Somawathie was alive, she was the owner of that 1/4th share. Deed D7 was for a 3/4th share. On that day the balance 1/4th share was claimed by Somawathie.

Q. That is to say that the entirety 4/4 the entirety of the land was owned by Somawathie ?

A. Yes.

That land was a land originally belonging to Edward Banda in its entirety. Subsequently in respect of that land of which 3/4th share was transferred to Ambahera, there were proceedings in Court,

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It was a partition action brought by U. B. Ambahera. Somawathie was given a 1/4th share in that case and Ambahera got 3/4th share. I produce the journal entries with the caption in D.C. Case No. 3137 marked P30 and the decree in that case marked P31. I was present in Court when that case was heard.

I stated in cross-examination that Bandara Menika possessed all the properties until she died. After her death, I am possessing the properties up to date. Ambahera is in possession of a 3/4th share transferred to him. Apart from the share of these lands transferred on D7, Ambahera does not possess any other lands. After Bandara Menika died, Ran Menika did not possess any property at any time. After Bandara Menika died, Kuma Kumarihamy did not possess any property. The present defendant, Herath, did not possess any property after Bandara Menika died.

(Intd.) E. W.
D.J., 11.9.52.

K. M. A.
Karunanayake
Examination

K. M. Ausadahamy Karunanayake. Affirmed. 50 years, proctor's clerk to Mr. Markus, Kurunegala.

I am now a clerk under Mr. Markus from 1942. Before that I was clerk to Mr. M. B. Wanduragala, proctor from 1924 up to 1935. Mr. Wanduragala is now dead. I have come to give evidence in this case from the first date of trial. On the first day Mr. Wanduragala came to give evidence. I cannot say exactly when Mr. Wanduragala died. He died about 6 months ago. I was summoned originally to give evidence in this case. I went to meet Mr. Jayasundera in that connection. At that time Mr. Wanduragala was also present speaking to Mr. Jayasundera in connection with the case.

When I was working under Mr. Wanduragala, there were other clerks under him. The defendant Herath was employed under Mr. Wanduragala. A person called Gooneratne was also employed under. A person called Ratnayake was also employed. In that office I did notarial work. The defendant attended to Court work. In the office, the defendant used to work about 5 to 6 feet from me. We had tables close to each other in the same room.

I knew the late Edward Banda Korala and his wife Bandara Menika. I have met Somawathie but I do not know her well. Somawathie's father was Appuhamy. I knew him. Edward Banda is dead. After he died, Bandara Menika came to Mr. Wanduragala's office. Appuhamy also came to the office. They came to entrust the testamentary case to Mr. Wanduragala. Mr. Wanduragala filed his proxy in the case. The clerk who attended to the Court work in connection with that case, as far as I can remember, is this defendant.

Originally when I went to work under Mr. Wanduragala, this defendant was residing in his village Arambepola. Later he resided in the office itself. There was a separate room for him to reside. He stayed in the office itself for about 3 years. After that he married from Ambahera and went to take up residence at Ambahera. That was about 5 or 6 years after I came to work under Mr. Wanduragala. After he gave up his room in the office, the defendant used to come occasionally and render some assistance but he did not come to the office regularly. He used to come in the morning at about 8 a.m. In connection with the testamentary case of Edward Banda, he gave assistance to the other clerks. Bandara Menika and others used to speak to the defendant in my presence in the office. They spoke to me in connection with the case also. Bandara Menika was appionted the administratrix in that case. As far as the rights in that case were concerned, I know that there was a discussion that the estate should be divided into four. That discussion took place in the office of Mr. Wanduragala. At that time Appuhamy, Bandara Menika, Mr. Ambahera, Mr. Herath the defendant were present. There were no other lawyers present at the time. The defendant Herath was present on the occasions the matter was discussed. He also took part in the discussions and said, "let us divide in this way." There was ultimately a division.

While I was present Mr. Wanduragala was against the proposal.

(Mr. Gunaratne objects to the statement made by Mr. Wanduragala, going in).

Mr. Wanduragala took part in the discussion.

(Mr. Weerasooriya argues that what Mr. Wanduragala stated is admissible under Section 32 (2) as it was made in the course of professional duties).

On the first day I came to give evidence Mr. Wanduragala also came to give evidence. But neither the evidence of Mr. Wanduragala nor mine were recorded on that day. Mr. Wanduragala died after that.

(Mr. Gunaratne argues :

1. That under Section 32 (2) an oral statement is admissible only if it is in the ordinary course of business but where it is in the discharge of professional duties there should be an entry or memorandum kept in a book.

2. Further he states that according to the evidence his statement of Mr. Wanduragala was not made in the course of professional duty because Mr. Wanduragala's professional duty in connection with this case was to present Bandara Menika's case to Court and that this was a discussion between Bandara Menika and certain other parties.

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—*Continued*

ORDER

The earlier part of Section 32 provides that statements, written or verbal, of relevant facts made by a person who is dead,.....are themselves relevant facts for the following reasons, etc.:"

Later it provides that such statements are relevant whether the person, who made them was or was not at the time that they were made under expectation of death and whatever may be the nature of the proceedings in which the case of his death comes into question.

(2) When a statement made by such person . . . by him.

This would include statements, both written and verbal. I do not think the distinction sought to be drawn between statements made by a person in the ordinary course of business and in the discharge of professional duties, is good. Further if Mr. Wanduragala was the proctor in the case, it certainly would have been his duty to advise the parties with regard to the proposed settlement of the matter in dispute. In view of this I allow the statement.

(Intd.) E. W.
D.J., 11.9.52.

Examination-in-Chief—(*Continued*). Mr. Wanduragala was against the settlement but in fact there was a settlement on the basis of a 1/4th share each.

I have been to the house of Edward Banda Korala. I knew him very well. Defendant was related to Bandara Menika. Defendant is the nephew of Bandara Menika. Bandara Menika was defendant's father's younger sister.

I have been to the house of Bandara Menika together with Herath, the defendant. After the death of Edward Banda I have been to his house once. On some days defendant used to go and stay with Bandara Menika in her house.

I left Mr. Wanduragala's services in 1935. Until the defendant was appointed Scavenging Overseer in the U.C., defendant worked under Mr. Wanduragala. That was about 1929. He was really working up to 1929 and even after 1929 on some days he used to come to Mr. Wanduragala's office and work there. He worked in that manner for about 3 years. At that time I came to know Appuhamy well. He used to take liquor. He used to take a little over the limit. I have seen him in that condition.

Q. Did you see him in the office in that condition ?

A. Yes.

Shown the original of P28.—This is a document in the hand-writing of this defendant. This is the declaration of estate duty.

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Shown the original of P26.—This is also in the handwriting of the defendant. This is the security bond. Shown the original of P27.—This is also in the handwriting of the defendant. This is the oath of office. Shown P27.—There is a signature overleaf. It is Bandara Menika's signature. P27 is in part printed. The handwriting I referred to is the portions filled up in ink. Similarly P26 is part printed and the blanks in the body are filled up in the handwriting of this defendant. There are three signatures overleaf. They are the signatures of Bandara Menika, Kiri Banda and Ukku Banda. Similarly P28 is filled in by the defendant while part of it is printed and Bandara Menika has signed it.

K. M. A. Karunanayake Cross-examination

Cross-examined. I now draw a salary of Rs. 40/- per month. I am a proctor's clerk for about 20 years. I started work in 1924 but for some time I was not employed, *i.e.*, from 1936 to 1942. Up to 1936 I did work in the Kurunegala Kachcheri. I did work in connection with the compiling of voters' lists. I was under Mr. Wanduragala from 1924 to 1935. During 1935 and 1936 I did some temporary work. From 1936 to 1942 I was unemployed. I am now 50 years old. I am possessed of immovable property. I have property worth about Rs. 5,000/-. That property is both high and low land. I have three acres of high land and 2 acres of paddy land. The high land is planted in coconuts. All these lands are unencumbered.

I have not given evidence in connection with the estate of Edward Banda earlier. I have not given evidence in connection with the heirship to the estate of Bandara Menika. I do not remember if Mr. Wanduragala gave evidence in any of those cases. I cannot say whether he gave evidence.

I am speaking now of events that took place 22 years ago. I had nothing to do as clerk in Edward Banda's estate. In all there were three clerks. The other clerk is alive. He is one Walakulpola. There was one Ratnayake who is now employed under Mr. Perera. Walakulpola did Court work. At that time he was not experienced. Now he is not employed. He lives on Dambulla Road about 8 miles from town. He served Mr. Wanduragala for about 6 years. He continued to work under Mr. Wanduragala after I left. Ratnayake did not do Court work. He also did notarial work. Walakulpola used to ask different persons how the work was to be done and carried on the work. He was the person who did Court work getting advice from others. At about this time Mr. Wanduragala was a senior practitioner of this Court. At that time he was in practice for about 12 years. He was a Kandyan of this District. He had a large practice at the time. He was a person who was thoroughly honest in his dealings. He would not have countenanced anything inequitable. He used to examine every proposition closely before

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—*Continued*

he gave advice. He had a large notarial practice. I did not do a stroke of work in connection with Edward Banda's testamentary case. I actually heard the conversation that took place in the office but I was not a party to that conversation. I was engaged in my own work. I cannot remember the month in which this conversation took place. Nor can I give the year. It was not unusual for clients to come to the office and converse with regard to their cases. I was not interested in the dispute in that case. Ratnayake was not with Mr. Wanduragala at the time. Walakulpola was present. Walakulpola was in charge of the Court work.

I cannot now remember what work I was doing at the time the discussion took place. The conversation took place in the presence of Mr. Wanduragala in front of his table. Bandara Menika, Appuhamy and Ambahera and the defendant were present. I cannot remember if Kuma Kumarihamy was present. Her son Jayasena was there. Jayasena is alive today. I cannot remember if Ran Menika was present. It was about 1½ years after the testamentary case was filed that this discussion took place. At that time certain people were contesting the rights claimed by Somawathie. Ran Menika, Bandara Menika and Kuma Kumarihamy all claimed rights. They were stating that Somawathie was not the adopted child. I cannot remember if at the time the discussion took place in the office, the matter of contest was fixed for inquiry. The people who had come that day had come to discuss the settlement. I do not know if by that time Somawathie had filed a list of witnesses to prove her case.

Mr. Wanduragala questioned the people who had come before him. Mr. Wanduragala was appearing for Bandara Menika. It may be that Somawathie and Appuhamy were represented by another proctor. I do not know if a proctor appeared for Somawathie. I do not know if a proctor appeared for Kuma Kumarihamy. At the time I was about 2 fathoms from Mr. Wanduragala's table. The parties were in front of Mr. Wanduragala's table, between me and Mr. Wanduragala. I did not follow the entire conversation. I picked up scraps. I can remember some portions of Mr. Wanduragala's conversation and can give them verbatim. Mr. Wanduragala was not agreeable to the settlement. Parties went away without reaching a settlement. I know that subsequently that a settlement was reached. I do not know under what circumstances that happened. The very same day that the parties came to town and went back to the office. In the morning they came and discussed and after that they came back to town and went again to the office. Then in the course of discussion Mr. Wanduragala said "I cannot go to jail." They came twice or thrice after that consultation and before the final terms were entered. The discussion was about the settlement of the case. On a subsequent date they arrived at a settlement in Mr. Wanduragala's office. They agreed to the settlement and then

they came towards the Court. Mr. Wanduragala himself filed the motion of settlement. It took about 2 or 3 weeks from the time of the first talk to the final settlement to be arrived at. I do not know if at that time Somawathie was represented by M/s. Perera & Perera. I do not know if at that time Kuma Kumarihamy was represented by Mr. Gomis. I do not know which proctors represented which parties. I do not know whether Appuhamy and the other parties consulted their respective parties or not. I know the person who came to the final settlement in the office. Appuhamy was present. Somawathie was not present. I remember only the males who came. Ambahera came on behalf of Ran Menika. Ambahera is alive. He is in Court today. Jayasena represented Kuma Kumarihamy. I did not see him in Court today. I did not see him in Court on previous occasions in connection with this case. Mr. Wanduragala ascertained the wishes of the parties to the case. I do not remember who put the motion. I do not know or remember who typed the motion. I cannot say whether the motion was typed or written. I had nothing to do as Mr. Wanduragala's clerk with any of the parties who came on the various occasions in connection with that case. First the parties came to town from Mr. Wanduragala's office. About an hour later they went back to the office. Finally when the parties left Mr. Wanduragala's office, I do not follow them. Appuhamy, Jayasena, Bandara Menika and Herath this defendant came from the office. I was not in Court when the motion was filed. The parties left Mr. Wanduragala's office at about 11 a.m. I cannot say whether the motion was filed on the same day or not. That day they came in the direction of Court saying that they wanted to file a motion but I cannot say whether they filed the motion that day or not. The parties were Appuhamy, Jayasena and Bandara Menika. Neither Kuma Kumarihamy nor Ran Menika were present. I did not see the motion being drawn up. They came to Court saying that they wanted to file a motion. To my knowledge no motion was prepared in Mr. Wanduragala's office. I do not know who signed that motion. I did not see Ran Menika and Kuma Kumarihamy that day.

(Sgd.) E. W.
D.J., 9.9.52.

Adjourned for Lunch.

— — —

After adjournment.

K. M. Ausadahamy Karunanayaka. Recalled. Affirmed.

Cross-examination—(*Continued*). Walakulpola was later clerk under Mr. Colin de Soysa. He is not working under any proctor now. He

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—*Continued*

is in Talgodapitiya about 9 miles from town. He did not work under Mr. A. E. O. de Silva for some time. The person who works under Mr. de Silva is another person. He is a relation of that Walakulpola.

I know the reason for which the parties came to Mr. Wanduragala's office first. They came to discuss a settlement in respect of the case. I do not know if they did not come to the office with a settlement prepared. The discussion was that they should divide the estate into 4 parts. I do not know whose suggestion it was at first. The parties came with the proposal to Mr. Wanduragala. I know the reason why Mr. Wanduragala objected to the proposal. Because Mr. Wanduragala worked in Bandara Menika's Testamentary case he was unwilling to divide the estate into 4 parts.

I did not listen to the conversation from start to finish, but I heard it from time to time. From where I was if I wanted to I could have listened to the conversation from start to finish. Walakulpola listened to the conversation. Wanduragala inquired from Appuhamy whether he could prove that Somawathie had been adopted by Edward Banda. The other parties there disputed that she had been adopted as a child. Even in Mr. Wanduragala's office there was a dispute. Mr. Wanduragala therefore said that he could not consent to the matter being settled. He refused to file a motion. I said that Mr. Wanduragala said that he would have to go to jail when I was questioned on the matter.

Q. Did Mr. Wanduragala say that he would have to go to jail if he accepted a settlement by all parties ?

A. He said he would get into trouble if he agreed to a division of the estate into 4 parts.

When he said that the parties did not agree to the settlement.

Q. Why did Mr. Wanduragala say that there was danger of his going to jail ?

A. It may be it struck him that he would get into some trouble if he consented.

I do not know why he said so. Nothing fraudulent was suggested in my hearing. Nor did anything suspicious take place in my presence. Appuhamy said that Somawathie should get the whole inheritance. Mr. Wanduragala did not want to enforce the settlement. I cannot say whether he was not willing to the settletment because the parties were not agreed. Mr. Wanduragala in my hearing did not accuse anybody of doing anything unfair.

I did not report this conversation to anybody. Up to date I have not conveyed it to anybody. Up to the time I gave this evidence in Court now that Mr. Wanduragala said he

would go to jail, I did not convey it to anybody. There was no necessity for me to do so. I have been to Counsel with the plaintiff for consultation 3 times. On none of these occasions did I mention that Mr. Wanduragala said he would have to go to jail. I met Mr. Wanduragala at these conferences. I listened to what Mr. Wanduragala told the proctors. I did not remind Mr. Wanduragala that he had said that he would have to go to jail. I have known the plaintiff for a very long time. After this case was filed, he came and asked me whether I knew anything about the matter of the settlement. I did not tell him then that Mr. Wanduragala would know more about it than myself. I did not tell the plaintiff that Jayasena was present at the first talk of settlement. He asked me what I knew about the matter. I told him that I listened to parts of the conversation. I did not tell him about what Mr. Wanduragala said regarding his going to jail.

I do not know if Kuma Kumarihamy is alive. I do not know if Ran Menika is alive. I do not know that this settlement was the subject-matter of actions between this plaintiff and the Ballalles. I do not know that the settlement was attacked in an action brought by Ambehera against Kuma Kumarihamy. I do notarial work and I do not come to Court frequently. I was not questioned in any case about the settlement.

I have seen Kuma Kumarihamy. I do not know to whom she was married. I knew Ran Menika. I do not know to whom she was married. There were Mr. Ambehera and Jayasena at the discussion in the office of Mr. Wanduragala but I do not know on whose behalf they appeared. I was not interested in finding out. I do not know if Ambahera was the husband of Ran Menika. I do not know which woman was Ran Menika and which was Kuma Kumarihamy.

Mr. Wanduragala spoke angrily and loudly when he said he would have to go to jail and I listened carefully. I did not tell anybody that there was an objectionable proposal and Mr. Wanduragala flared up. The other clerks also heard it. Parties came more than three times. Mr. Wanduragala did not drive them away. He advised them. Ultimately he agreed to present a motion but not readily. I do not know if he filed the motion reluctantly. The parties came to Court saying that they wanted to file a motion and Mr. Wanduragala also came. I do not know what they did outside. Mr. Wanduragala would not have consented to anything that was wrong. When Mr. Wanduragala left the office that day, I do not know if he had agreed to the suggestion of the parties. I do not know if a motion was filed in terms of that settlement. Whether the motion filed in Court was in accordance with the settlement discussed in the office of Mr. Wanduragala, or not, I do not know. I do not know how the matter was settled up to date.

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K. M. A. Karunanayake
Cross-examination
—*Continued*

Mr. Wanduragala had a file in connection with the case. When he came to give evidence in this case he did not come with that file. Mr. Wanduragala himself did not know what had happened to the file. Mr. Wanduragala left Kurunegala in about 1937. I was not in the town at the time of the other case and I do not know whether Mr. Wanduragala gave evidence in connection with the estate of Edward Banda. I heard it being said that a settlement had been arrived at and a motion had been filed. I heard Mr. Wanduragala and the other people in the office saying that a motion had been filed. I do not know the persons who had subscribed to that motion. I have seen Somawathie. I think she has come to Mr. Wanduragala's office not more than once.

K. M. A. Karunanayake
Re-examination

Re-exmined. I knew Edward Banda Korala. He was a very wealthy man. He was one of the richest in the District. After he died Bandara Menika applied for administration. When she first applied for letters of administration, I do not know on what basis she applied and who the heirs were. Later I came to know that a settlement was proposed on the basis of a 1/4th share to each of the persons I have mentioned. Ambahera was indebted to the estate of Edward Banda in a sum of Rs. 3,000 of Rs. 4,000 and wanted to give a land to that value.

Q. Was Somawathie to give up anything ?

A. No.

She was small at the time. I said I do not remember the year or the month of the settlement.

Q. Do you remember the fact of this arrangement well ?

A. Yes.

(Sgd.) E. W.
D.J., 11.9.52.

V. Keppetipola
Examination

V. Keppetipola. Affirmed, Record-keeper, D.C., Kurunegala.

I am the record-keeper of this Court. In the record in D.C. No. 4402 there is a statement made by Bandara Menika to the Government Agent dated 5.6.29. I produce it marked P25 (*a*). P25 is a certified copy of it.

V. Keppetipola
Cross-examination

Cross-examined. In D.C. Case No. 3714 the journal entries have been badly mutilated by reason of the record having been handled badly. The journal entry under date 23.8.37 shows that the final accounts had been filed by the Administrator.

I produce a certified copy of it marked D37.

Re-exermined. Nil.

(Sgd.) E. W.
D.J., 11.9.52.

Mr. Weerasooriya, Q.C., closes the case for the plaintiff reading in evidence P1 to P31.

No. 6.

Defendant's Evidence

No. 6
Defendant's Evidence
J. M. M. Jayawardana Examination

DEFENDANT'S CASE

Mr. Gunaratne calls :—

J. M. Malhamy Jayawardana. Affirmed, 48 years.—Printer, Kurunegala.

I am now the Proprietor of the Riviresa Press. That is a printing establishment in Kurunegala. In the year 1931 I was a partner of this establishment. I was also the Manager then.

Shown D10—

Q. This is a notice of a public auction printed at your printing press ?

A. Yes.

Q. It purports to be signed by T. B. Amunugama ?

A. Yes.

I know this T. B. Amunugama. He is an auctioneer and is still an auctioneer. He is in Court today. He is the brother of this plaintiff. I do not have the register relating to this order. Printing work is taken up after registering in the book. But some work is not so entered. I cannot say whether this work was done after entering in the book. Mr. Amunugama was in the habit of bringing his work to our printing works.

Cross-examined. There is nothing in D10 to show the date on which this was printed. I have not brought any book or document to show the date on which D10 was printed. At my press the compositor takes one day to compose a notice of this type. Personally I cannot speak to this notice. Our name is on it indicating that it was printed at our office. Because the name is on the paper I can say that it was printed at our works. Otherwise I cannot say where it was printed. The name of our press appears on D10. Any other printer also can have printed our name. I cannot find out from the type of letters if this has been printed at my works. The type that I used in 1931 is no longer there.

J. M. M. Jayawardena Cross-examination

Re-examined. In 1931 I had used this type of letters. D10 gives the date of sale as 10.10.31. In some documents we insert the date of printing and in some others we do not. I have no reason to doubt that this was not printed at my works. There is no other Riviresa printing works in Kurunegala.

J. M. M. Jayawardena Re-examination

(Sgd.) E. W.
D.J., 11.9.52.

No. 6
Defendant's Evidence
—*Continued*

Mr. Gunaratne closes the case of the defendant reading in evidence D1 to D37.

Documents on 18.9.52 and addresses on 15.10.52.

(Sgd.) E. W.
D.J., 11.9.52.

No. 7
Agreement Between Plaintiff and Defendant
30.10.52

No. 7.

Agreement between Plaintiff and Defendant

IN THE DISTRICT COURT OF KURUNEGALA

No. 6639

The parties hereby agree that in the event of the defendant ultimately succeeding in this action that the plaintiff be decreed to pay damages to the defendant as from 25th July, 1947, fixed at Rs. 500/- per annum till the defendant is restored to and placed in possession of the premises described in the schedule B to the plaint.

(Sgd.) R. E. De S. JAYASUNDERA,
Proctor for Plaintiff.

Kurunegala, 30th October, 1952.

(Sgd.) GOMIS & GOMIS,
Proctor for Defendant.

No. 8
Judgment of the District Court
10.2.53

No. 8.

Judgment of the District Court

D.C. 6639/L. 10.2.1953.

JUDGMENT

The plaintiff has brought this action to have it declared that the defendant holds the land described in the schedule B to the plaint in trust for the plaintiff and for a decree directing the defendant to convey the same to the plaintiff and to be quieted in possession of the said land.

The case for the plaintiff is that Edward Banda Korala and his wife, Bandara Menika, had adopted Somawathie, who was the daughter of a cousin of Edward Banda, for the purpose of inheritance. Edward Banda and his wife had no children of their own.

In March, 1929, Edward Banda had died possessed of considerable property. Thereupon Bandara Menika had made an application to Court for letters of administration to the estate of her late husband on the footing that she, the widow, and the first resdondent Somawathie, the adopted child, were the heirs.

In the affidavit P3 dated 11.6.29 and P4 dated 8.7.29 she states : " The said Edward Banda, Korala, died intestate on the 3rd day of March, 1929, at Nakolagomuwa, within the jurisdiction of this Court, leaving as heirs myself, his widow, and the first respondent, who is the adopted child of the said deceased." On 9.7.29 there are two petitions filed by Bandara Menika through her proctor—one for the purpose of getting a guardian *ad litem* appointed over Somawathie and the other is the application for letters which have been marked P5 and P5 (*a*) respectively. In P5 (*a*) she repeats that Edward Banda left as heirs the petitioner, his widow, and the first respondent, who is the adopted child of the deceased. But in P5 she says that he died leaving as heirs the petitioner, his widow, and the first respondent, " who is the adopted child of the deceased but as to whose adoption the petitioner is unaware whether it is in accordance with the requirements of the Kandyan law for the purpose of inheritance." And in paragraph 3 of P5 she says : " The third and fourth respondents are the children of Edward Banda, Ex-Korala's sister and are made parties as they claim an interest in the estate."

The third and 4th respondents had filed a statement (D28) in Case No. 3714 admitting the claim of the petitioner to letters but claiming to be the sole heirs of the deceased and denying the claim of Somawathie to any share of the estate.

It should be noted that Somawathie was born on 7.9.12 and was a minor at the time of the death of Edward Banda in March, 1929. The guardian *ad litem* appointed for Somawathie was Appuhamy, the father of Somawathie.

On 9.10.30 a consent motion, P6, had been filed by Mr. M. B. Wanduragala, proctor for Bandara Menika, in which he asks that the property of the estate be divided equally between Bandara Menika, the petitioner, Somawathie Kumarihamy the first respondent, Kuma Kumarihamy the third respondent and Ran Menika Kumarihamy the fourth respondent ; each party getting an undivided 1/4 share ; the parties to possess from 1st January, 1931, in equal shares the immovable property inventorised in the case. This motion had been signed by Appuhamy as the guardian *ad litem* of Somawathie. There is an endorsement alleged to have been made by Messrs. Perera & Perera which states : " We consent, but special leave of Court has to be obtained under Section 500 of the C.P.C." The motion has been signed by the District Judge on 9.10.30 but no order appears to have been made thereon by the Judge.

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—*Continued*

Earlier on 9.9.1930 the record of the proceedings in Case No. 3714 (D29) show that Appuhamy and Bandara Menika had given evidence. Appuhamy has said that he knew that if he succeeded in proving that the child was adopted, she would be entitled to the whole estate, but he had said : " I cannot say if I can prove the adoption. I can prove that the child was adopted but I am not sure of proving the adoption. I think it will be to the advantage of the minor if I settle the matter." Bandara Menika had also given evidence saying that the first respondent was brought up by her husband and herself. She has said : " My husband wanted to give the child also some property. He never wanted to give the entire property to the first respondent."

Thereupon the learned District Judge has said : " Under the circumstances I think the proposed settlement may be allowed. Let the papers of settlement be filed in the case." But there is nothing to show what the settlement proposed on this day was. No appearances for the parties have been noted. Later on 9.10.30 the consent motion gives the terms of a proposed settlement for the first time and the proctors for Somawathie, while expressing their consent, have definitely stated that the sanction of Court should be obtained. No express sanction in terms of Section 500 appears to have been given on this day to these particular terms of settlement.

It is quite clear and admitted by both sides in this case that whether Somawathie was an heir or not, that Bandara Menika, as the widow, would have been entitled to the life interest of the entire estate of Edward Banda as a Kandyan widow. But by the settlement she was allotted a 1/4th share as absolute owner of the entire estate and further the evidence of the plaintiff, which is uncontradicted in this case, is that she remained in possession of the entire estate.

On the date of the alleged settlement P6, Somawathie was only 18 years old living in the house of Bandara Menika.

The plaintiff has produced a statement made by Bandara Menika to the Government Agent on 24.4.42, where she says that her husband had adopted Somawathie and that the Korala had told her during his lifetime that the girl would inherit a share of his lands.

In 1932 the plaintiff married Somawathie and settled down in *binna* with her in the same house in which Bandara Menika was living. The plaintiff's evidence is that at that time Bandara Menika was still engaged in administrating the estate of Edward Banda Korala and that she was in possession of the entire estate. He says that he did not assist Bandara Menika in managing Edward Banda's estate, during the lifetime of Bandara Menika. The defendant used to keep the accounts for Bandara Menika and the defendant used to accompany Bandara Menika to the Courts in connection with the

Case No. 3714. He said he felt that the settlement dividing the estate into four was morally wrong, but he had not at that stage consulted any lawyers nor did he do so until he began administering the estate of Bandara Menika.

He also said it was only after Bandara Menika's death that he knew that the settlement was definitely wrong and that Somawathie should have got the entire estate of Bandara Menika who died on 31.7.40.

On the death of Bandara Menika, Somawathie had applied for letters of administration as the sole heir of Bandara Menika, as her adopted daughter, in Case No. 4402. In that case Ukku Banda Ambahera and Tikiri Banda Herath, the children of a brother and sister of Bandara Menika, had opposed the claim of Somawathie. They filed petition P11 on 22.1.41 denying that Somawathie was an adopted daughter and claiming to be next of kin of Bandara Menika.

After the inquiry on 24.8.42, it was held that Somawathie was the adopted daughter of Bandara Menika and that she was the sole heir of Bandara Menika. After that there was an appeal to the Supreme Court which was dismissed on 5.8.43.

Thereafter on 22.10.43 Somawathie had filed petition P19 and affidavit P20 in Case No. 3714 Testamentary. In P20 she says that Bandara Menika and her guardian *ad litem*, alleging that they were not in a position to prove that she was the adopted daughter of the late Edward Banda came to a settlement on 9.10.30 with the original third and fourth respondents by which Bandara Menika, she and the third and fourth respondents each took a 1/4th share of the estate. She further says that on the death of Bandara Menika, when she was taking steps to apply for letters of administration she discovered for the first time that it had been alleged that she was not an adopted daughter of Edward Banda and that a settlement had been made on that basis and that that settlement had been concealed from her by the parties concerned. She therefore by petition P19 filed on 26.10.43 moved to set aside that settlement entered into on 9.10.30. Notice of this application was served on Appuhamy, and the third and fourth respondents, viz. Kumarihamy and Ran Menika, who objected. On 19.8.44 a consent motion was filed, the contesting respondent having arrived at a settlement and having agreed that the petitioner being the adopted daughter of the late Edward Banda Korala and his sole heir, for the settlement entered into on 9.10.30 to be set aside and the petitioner to be entitled to succeed to the entirety of the estate of the said Edward Banda Korala ; the petitioner undertaking and agreeing to waive all her claims, if any as such sole heir, against the third respondent and her husband, Ukku Banda Ambahera, and to ratify all acts and deeds done, executed or performed

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—*Continued*

by the third respondent and her husband in accordance with the settlement entered on 9.10.30. The settlement was accordingly set aside and a decree was entered in terms of this settlement (P23).

Somawathie had died on 27.9.45 leaving a Last Will according to which the plaintiff was her sole heir. The evidence is that she died the day after the birth of her child.

The land which is the subject-matter in this case, belonged to the estate of Edward Banda Korala and after the settlement in that case, Ran Menika had put up for sale her 1/4th share of certain lands including the land in question and a 1/12th share had been purchased by Somawathie on D2 and a 1/12th share had been purchased by Bandara Menika on D26. Thus Bandara Menika by virtue of the alleged settlement and the transfer D26 claimed to be the owner of a 1/3rd share and it is admitted that Bandara Menika had gifted this 1/3rd share to the present defendant on 2.12.36 by deed No. 1700 D27.

The defendant filed a partition case in respect of the land in question in D.C. Kurunegala Case No. 1052 on 21.7.42. Somawathie was the second defendant in that case. On 9.10.44 Messrs. Perera & Perera, on behalf of the second defendant, moved that the case be taken off the roll and that they be allowed to file amended answer in view of the order made on 20.9.44 in Case No. 3714. This was refused and Interlocutory Decree was ordered on 20.10.44. Evidently the date 20.9.44 refers to the decree P23 entered on 21.8.44.

There was an application made by the 2nd defendant to set aside the Interlocutory Decree, and to refix the case for hearing in view of her absence due to illness. This was refused. She had appealed to the Supreme Court, but her appeal was dismissed. In the meantime the decree P23 had been entered of consent in Case No. 3714, namely, Somawathie was declared the sole heir of Edward Banda and she waived her rights as against Ran Menika in the case.

On 23.2.49 the Journal Entries in Case No. 1052 (D15) show that a motion had been filed on 23.2.49 by Mr. Jayasundera to amend the Interlocutory Decree. This motion is marked D20 and the application is that the 1/3rd share of the land, which was allotted to the first defendant, namely, Kuma Kumarihamy on the basis of the original settlement in Case No. 3714, be now allotted to T. B. Amunugama, who had been substituted in place of Somawathie deceased. The order made was " Notice parties for 4.4.49." On 6.5.49 Mr. Gomis for the plaintiff and Mr. Ballalle for the first defendant in that case objected. Eventually the inquiry into this application took place on 16.6.50. A part of the proceedings was marked D23 where Mr. Weerasooriya appearing for the present plaintiff had stated that in the present application he was not making any claim against the plaintiff or contesting the right to the shares allotted to the plaintiff

in the Interlocutory Decree but that he was only asking that the share allotted to Kuma Kumarihamy the first defendant be given to the 2A defendant. Mr. Gooneratne, who appeared for the defendant, thereupon did not oppose the application. The Journal Entry shows that the amendment was allowed and final decree was ordered to be entered. This Final Decree is D22.

The plaintiff's case is that from the time that Bandara Menika, the petitioner, and Appuhamy had made the original application on 9.9.30 and eventually got the settlement entered on 9.10.30, they had been acting fraudulently and collusively to defeat the rights of Somawathie and in breach of their duty to protect the interests of Somawathie while occupying a fiduciary position towards the latter. It is alleged that the rights which Bandara Menika and the other respondents, who benefited by this agreement, obtained on the footing of this settlement, were held in trust for the plaintiff. The present defendant received his interests in the land in question on a Deed of Gift D27 and therefore as a volunteer would stand in no better position than did Bandara Menika.

The defendant points out that Somawathie herself had, after the settlement, acted on the footing of that settlement when Ran Menika put up for sale on 10.10.31 and the following days certain lands which were advertised by the notice D10. Somawathie herself had become the purchaser of a 1/12th share of a number of lands including the land in dispute. The deed of conveyance after the sale is deed No. 500 of 22.2.34.

It will be observed that on the date of the sale itself Somawathie was a minor, though the conveyance was executed when she was a major.

The plaintiff points out that in the original inventory filed in Case No. 3714 P8 it was shown that U. B. Ambahera owed Edward Banda on a mortgage bond a sum of Rs. 9,330 by way of principal and a sum of Rs. 4,368.75 as interest. The plaintiff says that it was for the payment of this debt due to the estate that Ran Menika allowed the 1/4th share, which she received under the settlement, to be put up for sale. Somawathie had become the purchaser of a 1/12th share according to the deed of conveyance for the sum of Rs. 420/-.

On the same day that D2 was executed Somawathie had executed a mortgage bond D1 bearing No. 501, in favour of Ran Menika for a sum of Rs. 2,715/- of all the lands which were transferred to her on D2. It is significant that Somawathie had executed this deed by affixing her left thumb impression showing that she was an illiterate person. Counsel for the defendant pointed out that the plaintiff himself has been a witness but it is clear from the evidence that

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—*Continued*

Somawathie was in no position to object to the execution of this deed. Nor could the plaintiff have been, in 1934 (two years after his marriage), fully conversant with all the circumstances to have advised her at that stage. It must be remembered he was a *binna* married husband living in Bandara Menika's house.

The suggestion of the plaintiff is that although originally these lands were put up for sale to satisfy a debt due to Edward Banda's estate from Ambahera, the husband of Ran Menika, Somawathie had been induced to execute her mortgage bond for Rs. 2,715/- not only for the interests which she purchased at the sale, but also for the 1/4th share which she got under the settlement. According to the mortgage bond D1 her entire 1/3rd share, that is the 1/4th share which she received under the settlement as well as the 1/12th share which she purchased at the sale, had been mortgaged to Ran Menika. Ran Menika sued Somawathie on this bond.

The plaint in that action has been marked D4. Somawathie filed answer D5 on 23.12.43 in which she says that Bandara Menika and Somawathie's own guardian *ad litem*, had fraudulently entered into the settlement in D.C. No. 3714 and that Ran Menika, her husband, Bandara Menika and the guardian *ad litem* acting at the instance of Ran Menika's husband collusively arranged without sanction of Court to sell plaintiff's (*i.e.*, Ran Menika's) 1/4th share of some of the lands held under the settlement to the other heirs and thereby set off the amount due to the estate on mortgage bond No. 49332 which is referred to above as item No. 137 in P8. In this answer Somawathie sets out her real legal position which had been earlier foreshadowed in the affidavit P9 which she filed in her application for letters to Bandara Menika's estate.

Somawathie also alleged that about three years after the sale Ran Menika's husband, the defendant's guardian *ad litem* and Bandara Menika induced the defendant to sign this mortgage bond sued upon alleging that a sum of Rs. 2,715/- was due to Ran Menika being the excess in value of the properties purchased. She also said that after the death of Bandara Menika it was found necessary to continue the administration of Edward Banda's estate and it was at that stage that she found out the true state of affairs.

This case has been settled on 21.8.44 by the plaintiff's action on this mortgage bond No. 501 being dismissed without costs. But it will be noted that this date 21.8.44 is also the date of P23 which was the settlement entered into in Case No. 3714, ordering that the terms of settlement entered into on 9.10.30 should be set aside and that Somawathie should waive her claims against Ran Menika and her husband Ambahera.

The defendant also points out to the deed No. 2134 D7 also dated 21.8.44 whereby she had transferred a 3/4th share of certain lands other than the land in dispute in this case to Ambahera in consideration of a sum of Rs. 5,000/-. But this appears to be a part of the settlement entered into by Somawathie, Ambahera and Ran Menika.

The plaintiff points out that Somawathie had been allotted a 1/4th share which was later allotted to the plaintiff who was substituted in place of the deceased Somawathie in Partition Case No. 3137 D.C., Kurunegala. It was the remaining 3/4th share that was conveyed to Ambahera. D8 is a transfer of a land, 1/4th share of which had been transferred by Somawathie on 6.6.35 to one Ramanayaka. The plaintiff says that the other co-owners had transferred their interests in this land and that Somawathie had also transferred her share.

With regard to the deed D9 which was also a transfer of a 1/4th share of certain lands, which Somawathie had dealt with on the footing of the settlement P6, the plaintiff states that it was for the purpose of raising money to pay stamp duty in the Testamentary Case.

It is also pointed out that in Case No. 4402 Somawathie had applied for letters even though she claimed to be the sole heir of Bandara Menika on the footing that Bandara Menika was entitled to a 1/4th share of the estate of Edward Banda, that is to say, on the footing of the settlement on 9.10.30.

On the other hand, for the plaintiff, it was contended that it was during the administration of Bandara Menika's estate that Somawathie for the first time became aware of the real facts and realized that Bandara Menika, Appuhamy, Ran Menika and Kuma Kumarihamy acting fraudulently and collusively had entered into this settlement depriving her of her rightful share. After the judgment of the Supreme Court declaring her the sole heir of Bandara Menika she had included the further lands on the basis that she was the sole heir of Edward Banda.

The main point in the case for the plaintiff is that when the settlement of 9.10.30 was entered into, in Case No. 3714, between Bandara Menika, Somawathie and Kuma Kumarihamy, the only two persons whose duty it was to protect the interests of Somawathie, had fraudulently and collusively entered into that arrangement dividing the estate among these four persons. The two persons referred to above being Bandara Menika and Appuhamy, Somawathie's own father and guardian *ad litem*.

The evidence shows that Somawathie was living in the house of Bandara Menika. She had been adopted by Bandara Menika for

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—*Continued*

the purpose of inheritance. The decision of the Supreme Court P15, holds that Somawathie was the adopted daughter of Bandara Menika, but does not decide the question as to whether Somawathie had also been adopted by Edward Banda, for the purpose of inheritance.

But the uncontradicted evidence led in this case, of the witnesses Ukku Banda and Sri Sumangala Thero, the High Priest of Tiragama Temple, supported by the evidence of the plaintiff himself, places beyond doubt, the fact that Somawathie had been adopted by both Edward Banda and Bandara Menika for the purpose of inheritance.

The defendant apparently relying on the legal position he took up chose not to lead any evidence beyond calling the printer of D10 and marking his documents, or he did not have any other evidence to contradict the convincing testimony of the plaintiff and his witnesses that Somawathie had, in fact, been adopted by both Edward Banda and Bandara Menika for the purpose of inheritance. It is true the plaintiff is an interested party in the case, and I had to consider his evidence with the greatest caution. But considering his evidence and that of Karunanayaka with the greatest care and also in fairness to the plaintiff taking into account the fact that the defendant who was present in Court throughout the trial, did not elect to contradict that evidence, I have no hesitation in accepting the evidence of the plaintiff.

Thus considering the question as to whether the settlement entered into in the Testamentary Case No. 3714 was good, there is no doubt that Bandara Menika, the foster-mother of Somawathie, originally applied for letters on the footing that she and Somawathie were the only heirs. Thereafter Ran Menika and Kuma Kumarihamy, two nieces of Edward Banda had intervened. Ran Menika was married to Ambahera, a cousin of the present defendant.

The defendant was a clerk under Mr. M. B. Wanduragala, proctor, who acted for Bandara Menika in the Case No. 3714. On 11.6.29 Bandara Menika had sworn an affidavit P3 where she had said the first respondent was the adopted child of the deceased. For the first time after the intervention of Kuma Kumarihamy and Ran Menika in the case, she filed the affidavit P5 where she says that she is unaware whether the adoption is in accordance with the requirements of the Kandyan Law, for the purpose of inheritance.

The plaintiff on being shown the documents P26, P27 and P28 which had been filed by Mr. Wanduragala, recognised the handwriting of this defendant. It is significant that the document P28, the Decalration and Statement of Property under the Estate Duty Ordinance, is dated 8.7.29. P5 the petition where Bandara Menika says that she is unaware whether the adoption of Somawathie is in accord-

ance with the requirements of Kandyan law for the purpose of inheritance is dated 9.7.29—the day after P28 was prepared by the defendant in the office of Mr. Wanduragala.

Further it must be remembered that the defendant is the son of a brother of Bandara Menika. Ambahera, who was married to Ran Menika, is a son of Bandara Menika's sister.

The plaintiff further stated that when he married Somawathie he found that Bandara Menika used to visit the Courts for the purpose of Edward Banda's Testamentary case in the company of the defendant. The plaintiff also said, without any contradiction from the defence, that despite the settlement of 9.10.30, dividing the estate into 4 equal shares with the right of possession from 1.1.31 of each of these shares, Bandara Menika had remained in possession of the entire estate right up to her death. It is also in evidence that at the time that the plaintiff married Somawathie in 1932, Appuhamy, the father of Somawathie, was residing in the house of Bandara Menika. The plaintiff says that Appuhamy was a man addicted to liquor.

In these circumstances, to my mind, there is not the slightest doubt that when Bandara Menika and Appuhamy came to the Courts and filed the consent motion P6 on 9.10.30 they were not acting in the interests of Somawathie. Somawathie was at that time a minor living in the house of Bandara Menika and was her adopted daughter. Bandara Menika was undoubtedly in a fiduciary capacity to Somawathie.

The proceedings of 9.9.30 D29 and P6 do not show that the District Judge had expressly addressed his mind to and sanctioned the particular terms of settlement which had been proposed.

For the defendant it was contended that the Interlocutory Decree and Final Decree in the Partition Case No. 1052 is conclusive with regard to the rights of this defendant to Lot 1 which is described in schedule B annexed to the plaint and which is the subject-matter in this case.

It is further argued that it was only the Supreme Court that would have the jurisdiction to set aside that decree on the ground of fraud. Similarly it was argued that the order of 9.10.30, P6, could only be set aside by order of the Supreme Court.

The next point taken by the defendant was that the beneficiary is barred from seeking this remedy by his long acquiescence in the settlement of 1930 and the dealing by the parties on that footing.

With regard to the first of these contentions, viz. that the Partition decree is conclusive, it was argued by Counsel for the plaintiff that in a partition action the Court is only concerned with the legal

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title to the property as distinguished from any equitable rights of the parties. In the case of Galgamuwa *vs.* Weerasekera reported in 21 New Law Reports, page 108, which was cited by Counsel for the defendant, de Sampaya, J., held that parties were entitled to establish a trust in a partition case. But de Sampaya, J., himself had in the case of Marikar *vs.* Marikar, agreeing with Bertram, C.J., over-ruled his previous decision and stated that he agreed that a trust, express or constructive, will not be extinguished by a decree for partition. Counsel for the defendant tried to distinguish this decision in Marikar *vs.* Marikar from the facts of the present case by pointing to the answer D13 filed by Somawathie, which showed that Somawathie challenged the transfer to the defendant on the ground that Bandara Menika had no title to the interests which she purported to transfer. But I do not agree with this contention. It is in the very nature of a trust that a legal title and an equitable interest in another person in the same property can exist side by side. The very definition of a trust implies this and the case of Marikar *vs.* Marikar has decided that in a partition action, the Court is only concerned with the legal title. Where a party claims to be interested only as a beneficiary of a trust, section 9 of the Partition Ordinance will not shut the beneficiary out from claiming that the trustee holds the lot which was allotted to him in the partition decree in trust for him.

In the case of Appuhamy *vs.* Appuhamy, Jayawardena, J., held that when a trust was admitted, it would be futile to refer the plaintiff to a separate action to obtain a conveyance to support a title which is admitted to be in him and the plaintiff in that case was allowed to prove the trust in the partition action because it was admitted by all the parties.

The second point which was taken by the defendant was that it was only the Supreme Court which could set aside either the partition decree or the settlement in Case No. 3714. The simple answer of Counsel for the plaintiff to this argument was that the plaintiff is not seeking to set aside the orders made by this Court but was claiming that Somawathie (and therefore the plaintiff) was entitled to maintain this action to have it declared that Bandara Menika and the other parties to the settlement obtained whatever rights they did in trust for the plaintiff. The defendant being only a donee would be in the same position as Bandara Menika. Counsel for plaintiff therefore contends that his admission in Case No. 1052 on 16.6.50 (*Vide* D23) that he was " not making any claim against the plaintiff or contesting the rights to the share allotted to the plaintiff " will not bar him from making his claim in the present case.

I agree that this contention is correct as I hold that Bandara Menika and therefore her volunteer, the present defendant, holds the property in trust for the present plaintiff. This would follow directly from the decision of Marikar *vs.* Marikar referred to above.

Counsel for the defendant contended that in any event the 1/12th share which was purchased by Bandara Menika on D26 would be excluded from the trust in view of the plaintiff undertaking, in the settlement, P23, that she would waive all her claims, if any, as the sole heir of Bandara Menika against the third respondent Ran Menika and her husband Ambahera and that she ratifies all acts and deeds done, executed or performed by Ran Menika and her husband. This was a point to which I have given special thought. Counsel for the plaintiff has referred me to the case of Keech *vs.* Sandford, commonly called The Rumford Market Case. This case is referred to in Lewin on Trust (XIV Edition, page 106).

" A lessee of the profits of a market had devised the lease to a trustee for an infant, and the trustee applied for a renewal on behalf of the infant, which was refused on the ground that there could be no distress of the profits of a market but the remedy must rest singly in covenant of which an infant was incapable.

" Upon this the trustee took a lease for the benefit of himself, but Lord King said :

' I very well see if a trustee on the refusal to renew might have a lease to himself, few trust estates would be renewed to *cestui quesuse*. This may seem hard that the trustee is the only person of all mankind who might not have the lease, but it is very proper that the rule should be strictly pursued, and not in the least relaxed.'

" So he decreed the lease to be assigned to the infant."

Similarly Counsel for the plaintiff contends that according to the settlement P23 the plaintiff would have been bound to ratify any act or deed executed by the third respondent in favour of any other person in the world, till the moment she transferred this 1/12th share back to Bandara Menika, who stood in a fiduciary position towards Somawathie, the property became subject to the constructive trust again and the defendant who is only a donee would stand in no better position than Bandara Menika. I agree with this contention of the plaintiff.

I answer the issues as follows :—

No. 1. Yes.
No. 2. Yes.
No. 3. Yes.
No. 4. Yes.
No. 5. Yes.

No. 6. With regard to issue No. 6 it was contended by Counsel for defendant that D26 was dated 2.12.36 and the Supreme Court decree in Case No. 4402 was only in 1942; but as I have already

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—*Continued*

referred to above that Bandara Menika was a constructive trustee and held the property in trust for Somawathie, the defendant being a volunteer under Bandara Menika, would also be under that trust.

I therefore answer issue 6A and 6B the affirmative.

No. 7. Yes.

No. 8. Yes.

No. 9 (A). Yes. (B) Yes.

No. 10. Yes, but the 1/4th share of Bandara Menika and only the 1/12th share of Ran Menika which came back to Bandara Menika would be subject to this trust.

No. 11 (A). It is not necessary to answer this. (B) No. (C) No.

No. 12 (A). Yes. The evidence of the witness Karunanayaka is that the defendant was present in the office of Mr. Wanduragala at the time of the decision of the settlement P6. (B) The circumstances show that the defendant was fully aware of all the facts which prove the settlement P6 was a fraudulent and collusive one. (C) No.

No. 13. Yes.

No. 14. Yes.

No. 15. Yes.

No. 16. Yes.

No. 17. Yes. Subject to the agreement noted on 30.10.52 in the journal entries. It is in evidence that after Bandara Menika the plaintiff has been in possession of the land throughout.

No. 18. Whatever interests were conferred in Bandara Menika and Ran Menika were held in trust for Somawathie because it was an agreement entered into to defraud Somawathie who was a minor and towards whom Bandara Menika stood in a fiduciary position.

No. 19 (A). All the surviving parties to the agreement of 9.10.30 had been made a party and had noticed before the order of 21.8.44 was entered. (B) Yes. It was not necessary for the Supreme Court to set aside the order, the parties to the settlement having given their consent. (C). It is open to the parties to the previous settlement to dispense with proof of material averments which they admitted.

(D). Yes.

No. 20. The defendant being a volunteer under Bandara Menika is in the same position as Bandara Menika was and is therefore bound by the order of 21.8.44.

No. 21. No. It may be noted that the defendant was present right throughout the trial and had led no evidence whatsoever in proof of any fraud on the part of Somawathie or the plaintiff. The documents produced do not support this allegation.

No. 22. Yes.

No. 23. No. There is no evidence that the official administrator had taken any steps in the action although he had been formally appointed as such. An administrator's duty is to administer and distribute the estate among the heirs according to their several rights. The settlement between the several claimants would determine their rights *inter se*. If the respondents who were parties to the settlement, desired to change the adjustment effected earlier, the Administrator would not be a necessary party though he could not be held responsible if he had made a disposition or payment which would be inconsistent with the later settlement without notice of the same. In this case the later settlement was entered into by the parties in recognition of the undoubted rights of Somawathie which had been fraudulently and collusively ignored in the earlier settlement.

No. 24. Does not arise, in view of answer to 23.

No. 25. No.

No. 26. Yes, but the sale was held at the time that Somawathie was a minor though the transfer deed No. 500 was executed later. The circumstances surrounding this transaction show that it was a very suspicious one and I do not think it can be regarded as evidence of ratification.

No. 27. Yes.
No. 28. Yes.
No. 29. Yes.

No. 30. No. In the case of Perera *vs.* Tissera (35 N.L.R., page 257, at 284 and 285) Akbar, J., states :

" In determining whether there has been such delay as to amount to laches the chief points to be considered are (1) acquiescence on the plaintiff's part, (2) any change on the defendant's part.

" Acquiescence in this sense does not mean standing by while a violation of a right is in progress, but assent after the plaintiff has become aware of the violation." He further went on to say : " It appears from this passage that in order to constitute acquiescence or ratification by acquiescence, there must not only be assent, but assent after the plaintiff became aware of the violation of her rights. Knowledge of the violation of her rights does not mean mere knowledge of the facts of the transaction which she has entered into but knowledge that that transaction was in violation of her rights, in short that it was invalid."

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—*Continued*

In this case there is clear evidence that such knowledge came to the possession of Somawathie and the plaintiff only when they began to administer the estate of Bandara Menika. The execution of the deeds D8 and D9 should be considered in this light from the time they really became aware of the true facts, Somawathie and after her, the plaintiff, had at every step fought to retrieve the rights of which they had been deprived by the fraudulent agreement P6. I accordingly answer this issue in the negative.

No. 31. No. In view of the fact that Bandara Menika stood in a fiduciary position, all the property of Edward Banda which came into her possession would be subject to the constructive trust.

No. 32. Yes.

No. 33 (A). No. (B) No. (C) No. (D) The order of 21.8.44 can be relied upon by plaintiff to prove the trust which he asserts in this action. The plaintiff is not seeking to set aside the final decree but is asking that the benefits conferred by the final decree on the defendant are held in trust for him.

No. 34. *Vide* my answer to 33.

No. 35. Yes.

No. 36. The plaintiff could not assert and prove a trust which was denied in partition proceedings. I therefore answer this issue in the negative.

No. 37. No.

No. 38 (1) Yes. Legal rights as distinguished from equitable rights. (2) Yes.

Nos. 39 and 40 have been withdrawn.

No. 41. No.

I accordingly enter judgment for the plaintiff declaring that the defendant holds the land described in the Schedule B of the plaint in trust for the plaintiff and order that decree be entered accordingly. I do further direct the defendant to execute a conveyance of the said land in favour of the plaintiff and that the plaintiff be quieted in possession of the same. The plaintiff will be entitled to all costs of this action.

(Sgd.) E. WIJEYEWARDENE,
D.J., 10.2.53.

Judgment delivered in open Court in the presence of Messrs. Perera & Perera on behalf of plaintiff and Messrs. Gomis & Gomis for defendant.

(Sgd.) E. WIJEYEWARDENE,
D.J., 10.2.53.

No. 9.

No. 9
Decree of the
District Court
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Decree of the District Court

DECREE

IN THE DISTRICT COURT OF KURUNEGALA

Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama in Recopattu Korale, Dambadeni Hatpattu, Kurunegala District... ..... *Plaintiff*

No. 6639

vs.

Herath Mudiyanselage Tikiri Banda Herath of Ambahera in Recopattu Korale aforesaid.... .....*Defendant.*

This action coming on for disposal before Earle Wijeyewardena, Esquire, District Judge of Kurunegala, on the 10th day of February, 1953, in the presence of Mr. Advocate N. E. Weerasuriya, Q.C., with Mr. Advocate W. D. Gunasekera, instructed by Mr. R. E. de S. Jayasundera, proctor on the part of the plaintiff and of Mr. Advocate C. R. Gunaratne, instructed by Messrs. Gomis & Gomis, proctors on the part of the defendant.

It is ordered and decreed that the defendant holds the land described in the Schedule " B "of the plaint in trust for the plaintiff.

It is further ordered and decreed (1) that the defendant to execute a conveyance of the said land in favour of the plaintiff or in the alternative that the said conveyance be executed by the Secretary of this Court (2) that the plaintiff be placed and quieted in possession thereof and (3) that the defendant do pay to the plaintiff all costs of this action. This 10th day of February, 1953.

District Judge.

Schedule " B " above referred to.

Lot 1 from and out of the land called Peelagawawatta situated at Nakolagamuwa in Tiragandahe Korale of Weuda Willi Hatpattu, Kurunegala District, North Western Province and registered in A423/217 and the said lot 1 according to partition plan No. 3523 dated 25th February, 1945, made by G. A. de Silva, licensed Surveyor is bounded on the North by the land of the late Banda Korala and the land of Mrs. Gunatillaka and others, East by the land of Mrs. Gunatillaka and others, South by Lot 2 on this land and on the West by Ela and the land of Punchirala and others and the late Banda Korala, containing in extent Eight Acres and Twenty perches (8A-0R-20P)
This 10th day of February, 1953.

(Sgd.) E. WIJEYEWARDENE,
District Judge.

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No. 10.

Petition of Appeal to the Supreme Court

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama in Recopattu Korale, in Dambadeni Hatpattu, Kurunegala District.....

..... *Plaintiff*

D.C. Kurunegala
Case No. 6639

vs.

Herath Mudiyanselage Tikiri Banda Herath of Ambahera in Recopattu Korale, in Dambadeni Hatpattu, Kurunegala District..... *Defendant.*

Herath Mudiyanselage Tikiri Banda Herath of Ambahera in Recopattu Korale, in Dambadeni Hatpattu, Kurunegala District.....

..... *Defendant-Appellant.*

vs.

Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama in Recopattu Korale, in Dambadeni Hatpattu, Kurunegala District....

.....*Plaintiff-Respondent.*

On this 19th day of February, 1953.

To His Lordship the Chief Justice and the other Justices of the Honourable The Supreme Court of the Island of Ceylon.

The humble petition of appeal of the Defendant-Appellant abovenamed appearing by E. H. A. Gomis, his proctor practising in partnership under the name, style and firm of Gomis & Gomis respectfully states as follows :—

1. Respondent sued Appellant in this action for a declaration that a certain divided allotment held by Appellant by virtue of a Final Partition Decree in Case No. 1052 of the District Court of Kurunegala was in trust for the respondent on the footing that the divided allotment represented undivided interests in a larger land claimed by one Ran Menika and one Bandara Menika who had obtained these interests by virtue of a settlement dated 9th October, 1930, in a certain Testamentary suit, which settlement was fraudulent and in violation of the interests of one Somawathie whose interests the said Bandara Menika was under an obligation to protect and which interests therefore the respondent as the heir of the said Somawathie claimed was held in trust for himself.

2. Respondent further averred that a decree dated 28th August, 1944, was entered in the said Testamentary suit some years subsequent to the settlement referred to setting aside the same and instituting Somawathie the sole heir to the said estate as the adopted daughter of Edward Banda, whose estate was being administered in the said Testamentary suit by his widow the said Bandara Menika.

3. Appellant in his answer contended, *inter alia*, (*a*) that the alleged Decree dated 21st August, 1944, was of no avail against respondent.

(*b*) that the settlement of 9th October, 1930, was valid, had the consent and approval of the Court as required by law, was entered into by virtue of a compromise between all claimants to the estate at a time that parties, including Somawathie, were not aware whether or not they would be able to prove their respective claims, that Bandara Menika the predecessor of Appellant had a just claim to the life interest of the bulk of the estate which she compromised for a 1/4th share, that parties for a long period of time acquiesced in and acted on the footing of the settlement, that Somawathie was properly represented by her natural father at the settlement and that therefore Bandara Menika, who had her own interests to protect, was under no fiduciary relationship towards Somawathie, that no fraud or collusion was practised and that, therefore, no trust resulted.

(*c*) Appellant also pleaded that this action was belated, was speculative, and was thought of after the result of a contest between Somawathie and Appellant in regard to the question of inheritance to Bandara Menika, in which Somawathie proved an adoption by Bandara Menika, and in which it was incidentally suggested that the adoption was on the part of both Bandara Menika and Edward Banda.

(*d*) Appellant also established at the trial of this action that Somawathie had administered the rights obtained by Bandara Menika at the settlement of Edward Banda's estate, which rights according to the claim set up in this suit were only a legal title, the equitable estate being in her.

(*e*) Appellant also pleaded that Somawathie had agreed in the proceedings held on 21st August, 1944, to give validity to all acts of Ran Menika arising out of the said settlement and that in any event Appellant had a good title to a 1/4th share of the interests in suit.

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—*Continued*

(*f*) Appellant set up further various acts of acquiescence in the said settlement on the part of Somawathie after attaining majority and acts done in pursuance thereof, Appellant established that several of such acts were after her marriage, with the help and assistance of her husband the plaintiff-respondent.

(*g*) Appellant also urged the *mala fides* of the respondent as evidenced in the Partition Case No. 1052 of the District Court of Kurunegala instituted by Appellant.

(*h*) Appellant finally set up the Decrees and proceedings in the said Action 1052 as *res judicata* of Appellant's claim.

4. After several days of trial the learned Judge reserved his judgment, and after the lapse of several months did on the 10th day of February, 1953, deliver his judgment awarding plaintiff-respondent relief as prayed for in this action with costs.

5. Being dissatisfied with the said judgment and decree the Appellant begs to appeal therefrom for the following among other reasons that may be urged by Counsel on his behalf at the hearing of the appeal :—

(i) the said judgment and decree is contrary to law and against the weight of evidence led.

(ii) It is respectfully urged that the learned Judge has not sufficiently dealt with the manifold points urged by Appellant, especially the pleas based on waiver, acquiescence, and delay.

(iii) It cannot but be held that Somawathie and her husband, plaintiff-respondent, came to know of the fact of the settlement of 9th October, 1930, at that time.

(iv) No fraud was established such as would entitle plaintiff to the relief sought, and certainly not in the circumstances evidenced by the proceedings in this action.

(v) The evidence of the witness Karunanayake was artificial and not worthy of credit, but evaluating it at its best, it does not support a story of fraud and collusion, but rather an attempt by a proctor to compose a conflict between parties who were relatives and were anxious to arrive at a settlement.

(vi) The said settlement of 9th October, 1930, was arrived at in Court and was accepted by Court after hearing evidence and was approved of as being in the interests of the minor, in the presence of parties and their proctors, and it is important to note that the minor Somawathie and her

guardian *ad litem* had their own proctor and therefore legal advice independent of Bandara Menika who was represented by another practitioner.

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Continued

(vii) No occasion arose for the Appellant to get into the witness box and testify, as it is respectfully submitted that in the light of the facts established, no trust resulted and certainly no action for a declaration of trust could be sustained—

Wherefore the Defendant-Appellant prays :—

(1) that the judgment and decree entered in this case be set aside;

(2) that plaintiff-respondent's action be dismissed with costs ;

(3) and for such other and further relief as to Your Lordship's Court shall seem meet.

(Sgd.) GOMIS & GOMIS,
Proctors for Defendant-Appellant.

Drawn and settled by C. R. Guneratna, Advocate.

No. 11.

Judgment of the Supreme Court.

No. 11
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15.2.55

S.C. (F) 1/L of 1954. D.C., Kegalle, No. 6639.

H. M. Tikiri Banda Herath..... *Defendant-Appellant*

vs.

T. M. Tikiri Banda Amunugama.... *Plaintiff-Respondent.*

Present : Gratiaen, J., and Sansoni, J.

Counsel : Sir Lalita Rajapakse, Q.C., with C. R. Gunaratne and G. D. C. Weerasinghe for Defendant-Appellant.

N. E. Weerasooriya, Q.C., with W. D. Gunasekere for the Plaintiff-Respondent.

Argued on : 1st and 2nd February, 1955.

Delivered on : 15th February, 1955.

GRATIAEN, J.

A Kandyan landowner named Edward Banda Korala died issueless and intestate on 3rd March, 1929, leaving a substantial estate valued for purposes of duty at Rs. 129,918·09. His widow Bandara Menika was duly appointed administratrix of the estate in Testa-

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mentary Action No. 3714 of the District Court of Kurunegala, and it is common ground that under the Kandyan Law she was his heir to the extent of a life interest in the entire property. She was about 49 years old at the time of her husband's death.

In or about the year 1913 Edward Banda and Bandara Menika had adopted as their child Somawathie Kumarihamy who was the infant daughter of a kinsman of Edward Banda. She was 16½ years old when Edward Banda died. Bandara Menika disclosed the fact of the adoption in her application for letters of administration, but her petition P5 dated 9th July, 1929, expressed ignorance as to whether the adoption complied with " the requirements of the Kandyan Law for the purpose of inheritance."

Somawathie's natural father Appuhamy was appointed guardian *ad litem* to protect her interests in the testamentary action. Shortly afterwards, two persons named Kumarihamy and Ran Menika (the children of Edward Banda's sister) intervened and claimed that they were the sole intestate heirs of the deceased (subject to the widow's admitted life interest). They denied that the " adoption " of Somawathie was of a kind which entitled to her to claim the status of an intestate heir.

Had this dispute as to heirship proceeded to a judicial investigation, *either* Somawathie alone or Kumarihamy and Ran Menika jointly would have been declared entitled (subject to Bandara Menika's life interest) to Edward Banda's estate to the complete exclusion of the contesting group or individual (as the case may be). This appears to have been the context in which negotiations took place for a settlement of the dispute, and in due course the (then) District Judge of Kurunegala, having given consideration to the circumstances placed before him and to the special interests of the minor Somawathie, gave his judicial approval on 9th October, 1930, to a settlement in the following terms :

(1) Somawathie, Kumarihamy and Ran Menika each received absolute title to a 1/4th share of the state free of a life interest in favour of Bandara Menika ;

(2) Bandara Menika thus waived her undisputed and indisputable life interest in 3/4th of the estate, and agreed to accept instead absolute title to a 1/4th share (in which she already enjoyed a life interest).

This settlement was acted upon by all the parties and was assumed to be valid even after Somawathie (who married the respondent in 1932) attained majority under the Kandyan Law on 7th September, 1933. Bandara Menika died on 31st July, 1940, and it was only after her death that Somawathie and the respondent took steps to revive Somawathie's claim to have inherited the entirety of Edward

Banda's estate. In the meantime, Bandara Menika had in 1936 donated to the appellant (her nephew) the undivided 1/4th share of some of the properties which passed to her under the settlement of 1930 together with an additional 1/12th share which she had subsequently purchased from Ran Menika (who had similarly acquired those interests under the same settlement). There was no evidence, however, that this subsequent donation was in anybody's contemplation in 1930.

On 21st July, 1942, the appellant, claiming title to the shares gifted to him by Bandara Menika in 1936, instituted Action No. 1052 in the District Court of Kurunegala for a partition of the property between himself, Somawathie, Kumarihamy and Ran Menika on the basis of a common title proceeding from the terms of the settlement previously referred to. In paragraph 4 of the plaint he pleaded that the settlement was *res adjudicata* between himself and his co-owners. Somawathie, on the other hand, had by then taken steps, in concert with her husband, to challenge the validity of the settlement of 1930 and she filed answer in the partition action denying all the material averments in the plaint. She specially denied that Bandara Menika had " any right or title to convey to the appellant.")

Before the trial of the partition action commenced, Somawathie, in pursuance of a compromise privately arrived at with Kumarihamy and Ran Menika, had obtained an order in the testamentary action on 20th September, 1944, purporting to set aside the earlier settlement of 1930 and to substitute in its place a declaration that Somawathie as the adopted child of Edward Banda was in truth his sole heir. (It is now conceded that this compromise does not bind the appellant). On 6th October, 1944, she applied in the partition action for leave to amend her pleadings " owing to the order made on 20.9.44 in D.C. Testamentary No. 3714." The application was (rightly or wrongly) refused, and no appeal was preferred against this decision.

On 20th October, 1944, an interlocutory decree for partition was entered declaring the parties entitled to shares on the basis of the settlement of 1930. Somawathie was not present at the trial, and her lawyers stated that they had received no instructions to appear for her. Her later application to re-open the proceedings was unsuccessful. In due course, a final decree for partition was passed in terms of which the appellant was declared the owner of a divided allotment of land (described in Schedule " B " annexed to the present plaint) in lieu of his former undivided interests in the larger land (described in Schedule " A ").

Similarly, Somawathie and the other co-owners received other divided allotments. The title created by the settlement of 1930 clearly provided the foundation for the adjudication as to the rights of the parties in the partition action.

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Judgment of the Supreme Court 15.2.55. — *Continued*

Somawathie herself died on 27th February, 1945, leaving a last will whereby she appointed the respondent her sole heir. He instituted this action on 25th July, 1950, for a declaration that the plaintiff held the property described in Schedule " B " in trust for him. He alleged that Bandara Menika, " well knowing that Somawathie was the adopted child of Edward Banda for purposes of inheritance under the Kandyan Law, and although bound in a fiduciary capacity to protect the interests of Somawathie, took advantage of her fiduciary position and, acting in fraud and collusion with the guardian *ad litem* of Somawathie in Case No. 3714, entered into a fraudulent and collusive agreement with the said guardian *ad litem* and Kumarihamy and Ran Menika to divide the estate of Edward Banda to the detriment of Somawathie." Accordingly, it was pleaded, the benefits which Bandara Menika improperly derived from this unconscionable compromise were held by her in trust for Somawathie ; the appellant's rights in the property as Bandara Menika's donee were impressed with the same constructive trust.

The learned District Judge held in favour of the respondent that Bandara Menika had fraudulently abused her fiduciary position in entering into the settlement of 1930 and accordingly became a constructive trustee for Somawathie to the extent of the improper benefits which passed to her thereunder. He held that the appellant, being a mere volunteer, also held the property in trust ; indeed he took the view that the appellant had himself been a party to the fraud, but Mr. Weerasooriya very properly did not invite us to adopt that fanciful theory (based as it was on extremely flimsy material). Finally, the learned Judge rejected the plea that the decree in the partition action operated in any event as *res adjudicata* and precluded Somawathie's successor in interest from reagitating any question relating to the validity or propriety of the settlement.

I have come to the conclusion that the judgment under appeal must be set aside because the respondent wholly failed to establish his allegation that Bandara Menika was guilty of express fraud or that (even on a slightly low plane of criticism) she had abused her fiduciary position and thereby derived a pecuniary advantage at the expense of her beneficiary.

Let us consider first the allegation of express fraud. When this action commenced, twenty years had elapsed since the settlement of 1930 was reached in the testamentary proceedings. During this long interval of time, Bandara Menika had died and could not give her version of the motives that induced her to agree to its terms ; Mr. Wanduragala (who acted as her proctor in the litigation) and Mr. V. I. V. Gomis (who acted for the rival claimants) are also admittedly dead ; so are Somawathie and her guardian *ad litem* who consented to the settlement on independent legal advice. In the absence,

therefore, of most of the principal parties to the compromise, it is incumbent upon us to scrutinise the very belated allegation of frand with considerable caution.

The only direct evidence on which the learned Judge based his inference of express fraud was the testimony of a proctor's clerk who claimed in 1952 to have overheard parts of certain vague conversations 23 years earlier in Mr. Wanduragala's office. To my mind, this evidence (even if true) was quite inadequate to establish fraud against a woman who had since died. As for the circumstantial evidence referred to in the judgment under appeal, it only proves that Bandara Menika knew (as she had herself always admitted) that her husband in fact regarded Somawathie as their adopted child; it does not justify the further inference that she did not entertain a genuine doubt as to the chances of convincing a Court of Law in a contested litigation that the adoption was of a kind which constituted Somawathie the sole heir of her adoptive father under the Kandyan Law. The entire evidence is quite consistent with the more charitable theory that, in her honest opinion, which was shared by honest lawyers, a settlement of the dispute was in the best interests of the minor whom she too regarded as her daughter.

The difficulty of establishing adoption for purposes of inheritance under the Kandyan Law by oral evidence (*i.e.*, before the legislature enacted section 7 of Ordinance No. 39 of 1938) is a matter of common knowledge, and the law on the subject was even more controversial in 1930 than it is now. *Hayley's Law and Customs of the Sinhalese*, published in 1923, state at page 203 that there must be proof of " an intention on the part of the adopter to make the adopted person his child, and constitute him or her his successor, coupled with acts of adoption and, according to the authorities, *an open declaration of the adoption.*" The learned author adds at page 207 that " *the numerous cases in which the Courts have refused to recognise adoption, although the intention to adopt seems to have been established, have apparently settled the law that there must be a public declaration, but what constitutes such a declaration has not been defined.*" The uncertainty was not removed at the time of the settlement which is now impugned, and could not but have been prominently before the minds of the experienced lawyers who represented the parties at the relevant time. Indeed, the controversy continued even after this Court pronounced in November, 1937, that " the declaration need not be made on a formal occasion"—*Tikirikumarihamy* vs. *Niyarapola* (1937), 44 N.L.R. 476. For instance, this conflict of authority as to the requirements of " a public declaration " was again emphasised six years later, when a Bench of three Judges was constituted to decide the question authoritatively in *Ukku Banda* vs. *Somawathie* (1943), 44 N.L.R. 457, where the same Somawathie successfully established her adoption by the widow, Bandara Menika. It is therefore quite wrong to infer

No. 11
Judgment of the Supreme Court
15.2.55.—
Continued

that the settlement of 1930 was necessarily prompted by any other motive than to avoid the risks of a protracted and uncertain litigation which, if unsuccessful, would have completely disentitled Somawathie to any rights in her adoptive father's estate.

Has the evidence established a constructive trust against Bandara Menika even though there was insufficient proof of express fraud ? That she stood in a fiduciary position towards Somawathie, is clear enough. But did she abuse that position in order to gain some personal advantage at the beneficiary's expense ? And, above all, did she in fact derive any demonstrable advantage from the settlement ? For then only can the plaintiff invoke the well-settled principle of law which has been incorporated in section 90 of the Trusts Ordinance in the following terms :

> " When a person bound in a fiduciary capacity to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage . . . he must hold for the benefit of such other person the advantage so gained."

When Somawathie's adoption for purposes of inheritance was challenged by the rival claimants to heirship, she was represented by her natural father who had recourse to independent legal advice. In addition, her interests as a minor were protected by a very experienced Judge who approved the settlement. (The suggestion that he had perhaps sanctioned some different compromise seems to be quite fanciful ; the subsequent transactions negative this theory, and on this point at least the later partition decree places the matter beyond all controversy).

I am very far from satisfied (even if one reconsiders the matter retrospectively) that Bandara Menika herself did gain any demonstrable pecuniary advantage from the settlement. Her own claim to a life interest in the entire estate was certainly not in jeopardy. How then could it have been argued at the relevant date that she necessarily benefited by taking an absolute interest in a 1/4th share of the estate in exchange for a life interest in the entirety ? She had waived in favour of Somawathie and the other claimants her legal right to receive and assured immediate income during her lifetime from the outstanding 3/4th share of a valuable estate ; at the same time, Somawathie herself had gained some immediate benefit by being assured of the title to and the income from 1/4th of the estate in exchange for the bare possibility (let us even call it the probability) of becoming owner of the entirety, *but without any right to any income until Bandara Menika's death.* It would indeed have required an actuary to predict the financial advantages and disadvantages which would flow from the compromise agreed upon ; and, as to the greater risks presented by a contested litigation on the issue of heirship, no lawyer jealous of his reputation would, I fancy, have hazarded

any confident opinion in 1930. Indeed it was in recognition of these risks that the Kandyan law of adoption for purposes of inheritance was amended in 1938. In this situation, one would hesitate to pronounce even now that the settlement of 1930 was in fact unwisely reached.

The learned District Judge has emphasised the fact that, according to the evidence, Bandara Menika appropriated her income of the entire property during her lifetime. Even if that be true, it has no relevancy to the present cause of action, because such appropriation was contrary to and not a consequence of the terms of the impugned settlement. Similarly, no constructive trust could be imposed by law on Bandara Menika in respect of the benefits derived by Ran Menika and Kumarihamy. Indeed, I see no reason for assuming that she was in any way improperly concerned to promote their interests to her adopted daughter's prejudice.

For all these reasons, I am satisfied that the provisions of section 90 of the Trusts Ordinance do not apply. In addition, I am inclined to the view that the decree in the partition action No. 1052 instituted in 1942 precludes the plaintiff from attacking the validity of the settlement of 1930 on which that decree was based. It has no doubt been authoritatively decided that section 9 of the Partition Ordinance does not necessarily extinguish constructive trusts,—*Marikar* vs. *Marikar* (1920), 22 N.L.R. 137. But in action No. 1052 Somawathie, as she was entitled to do, expressly put in issue the validity of any rights which the appellant (as Bandara Menika's successor in title) claimed by virtue of the settlement. She also attempted unsuccessfully to set up the subsequent rescission of the settlement as a bar to the appelant's title. In that situation, I would have been prepared to hold, if necessary, that the decree in favour of the appellant operates as *res adjudicata* against the respondent. In *Marikar's case* (supra) the beneficiary (although a party) had not put in issue the bare legal estate of the constructive trustee. In action No. 1052, by way of contrast, the alleged beneficiary asked for a dismissal of the action because she virtually denied that the alleged trustee had " any right or title " in the property sought to be partitioned. I would allow the appeal and dismiss the respondent's action with costs in both Courts.

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

SANSONI, J.

I agree.

(Sgd.) M. C. SANSONI,
Puisne Justice.

No. 12
Decree of the Supreme Court
15.2.55

No. 12.

Decree of the Supreme Court

ELIZABETH THE SECOND, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama in Rekopattu Korale, in Dambadeni Hatpattu, Kurunegala District ..... *Plaintiff-Respondent*

against

Herath Mudiyanselage Tikiri Banda Herath of Ambahera in Rekopattu Korale, in Dambadeni Hatpattu, Kurunegala District..... ..... *Defendant-Appellant.*

Action No. 6639/L

IN THE DISTRICT COURT OF KURUNEGALA

This cause coming on for hearing and determination on the 1st, 2nd and 15th days of February, 1955, and on this day, upon on an appeal preferred by the Defendant-Appellant before the Hon. E. F. N. Gratiaen, Q.C., Puisne Justice and the Hon. M. C. Sansoni, Puisne Justice of this Court, in the presence of Counsel for the appellant and respondent.

It is considered and adjudged that this appeal be and the same is hereby allowed and the respondent's action is dismissed with costs in both Courts.

(*Vide* copy of judgment attached).
1st April, 1955.

Before : The Hon. M. F. S. Pulle, Q.C., Puisne Justice.
The Hon. H. W. R. Weerasooriya, Puisne Justice.

Counsel : C. R. Gunaratne for Appellant.
W. D. Gunasekera for Respondent.

Of consent it is ordered the plaintiff be decreed to pay damages to the defendant as from 25th July, 1947, at Rs. 500/- per annum till the defendant is restored to and placed in possession of the premises described in the Schedule B to the plaint.

(*Vide* consent motion dated 30th October, 1952, filed of record).

(Sgd.) W. G. WOUTERSZ,
Dy. Registrar, Supreme Court,
1st April, 1955.

Witness the Hon. E. F. N. Gratiaen, Q.C., Puisne Justice at Colombo, the 28th day of February, in the year of our Lord One thousand Nine hundred and Fifty-five and of Our Reign the Fourth.

No. 12
Decree of the Supreme Court
15.2.55.—
Continued

(Sgd). W. G. WOUTERSZ.
Registrar, S.C.

No. 13.

No. 13
Application for Conditional Leave to Appeal to the Privy Council
7.3.55

Application for Conditional Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF CEYLON

In the matter of an Application for Conditional Leave to Appeal to Her Majesty in Council.

Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama in Rekopattu Korale, in Dambadeni Hatpattu, Kurunegala District...

.... *Plaintiff-Appellant*

vs.

S.C. No. 1 Final/1954

D.C. Kurunegala, No. 6639

Herath Mudiyanselage Tikiri Banda Herath of Ambahera in Rekopattu Korale, in Dambadeni Hatpattu, Kuruneg la District.....

.....*Defendant-Respondent.*

To the Honourable Chief Justice and the other Judges of the Supreme Court.

On this 7th day of March, 1955.

The petition of Tennakoon Mudiyanselage Tikiri Banda Amunugama plaintiff-appellant abovenamed appearing by Royston Edmund de Silva Jayasundera, his proctor, states as follows :—

1. That feeling aggrieved by the Judgment and Decree of the Supreme Court in the Appeal No. S.C. 1 (Final of 1954) D.C., Kurunegala, No. 6639, pronounced on the 15th day of February, 1955, the plaintiff-appellant is desirous of appealing therefrom.

2. That the said Judgment is a final judgment and the matter in dispute in this appeal amounts to or is of the value of Rupees Seven thousand (Rs. 7,000/-).

No. 13
Application for Conditional Leave to Appeal to the Privy Council 7.3.55—*Continued*

3. Due notice of intention to appeal to Her Majesty in Council was served personally on the defendant-respondent on 22nd February, 1955, and the plaintiff-appellant annexes hereto marked " X " proof on such service of the said notice.

Wherefore the appellant prays for conditional leave to appeal against the said judgment on this Court dated 15th February, 1955, to Her Majesty in Council.

(Sgd.) R. E. De S. JAYASUNDERA,
Proctor for Plaintiff-Appellant.

No. 14.

No. 14
Decree Granting Conditional Leave to Appeal to the Privy Council 1.4.55

Decree Granting Conditional Leave to Appeal to the Privy Council.

ELIZABETH THE SECOND, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama in Rekopattu Korale, in Dambadeni Hatpattu, Kurunegala District.....*Plaintiff-Appellant*

against

Herath Mudiyanselage Tikiri Banda Herath of Ambahera in Rekopattu Korale, in Dambadeni Hatpattu, Kurunegala District .... *Defendant-Respondent.*

Action No. 6639 (S.C.1 (Final)/1954).

District Court of Kurunegala

In the matter of an application for Conditional Leave to Appeal to the Privy Council dated 8th March, 1955, by the Plaintiff-Appellant abovenamed against the decree dated 15th February, 1955.

This cause coming on for hearing and determination on the 1st day of April, 1955, before the Hon. M. F. S. Pulle, Q.C., Puisne Justice and the Hon. H. W. R. Weerasooriya, Puisne Justice of this Court, in the presence of Counsel for the petitioner and respondent.

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

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

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

No. 14 Decree Granting Conditional Leave to Appeal to the Privy Council 1.4.55.— *Continued*

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

Witness the Hon. E. H. T. Gunasekara, Puisne Justice, at Colombo, the 5th day of April, in the year of our Lord One thousand Nine hundred and Fifty-five and of Our Reign the Fourth.

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

No. 15.

No. 15 Application for Final Leave to Appeal to the Privy Council 25.4.55

Application for Final Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF CEYLON

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

Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama in Rekopattu Korale, in Dambadeni Hatpattu, Kurunegala District..... *Plaintiff-Appellant*

vs.

Herath Mudiyanselage Tikiri Banda Herath of Ambahera in Rekopattu Korale, in Dambadeni Hatpattu, Kurunegala District .... *Defendant-Respondent.*

To the Honourable the Chief Justice and the other Judges of the Supreme Court.

On this 25th day of April, 1955.

The Petition of Tennakoon Mudiyanselage Tikiri Banda Amunugama, the plaintiff-appellant, abovenamed appearing by Royston Edmund de Silva Jayasundera, his proctor, states as follows :—

1. That the appellant on the 6th April, 1955, obtained Conditional Leave from Your Lordships' Court to Appeal to Her Majesty the Queen in Council against the Judgment of this Court pronounced on the 15th day of February, 1955.

No. 15
Application for Final Leave to Appeal to the Privy Council 25.4.55—
Continued

2. That the appellant has in compliance with the conditions on which such leave was granted deposited with the Registrar of the Supreme Court a sum of Rs. 3,000/- as Security in terms of Rule 3 of Chapter 85 and hypothecated the said sum with him. The appellant has also deposited with the Registrar a sum of Rs. 300/- as his fees.

Wherefore the appellant prays :—

That he be granted Final Leave to appeal against the said judgment of this Court dated 15th February, 1955, to Her Majesty the Queen in Council.

(Sgd.) R. E. de S. JAYASUNDERA, 10
Proctor for Plaintiff-Appellant.

No. 16
Decree Granting Final Leave to Appeal to the Privy Council 23.6.55

No. 16.

Decree Granting Final Leave to Appeal to the Privy Council.

ELIZABETH THE SECOND, Queen of Ceylon and of Her other

Realms and Territories, Head of the Commonwealth

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama in Rekopattu Korale, in Dambadeni Hatpattu, Kurunegala District..... *Plaintiff-Appellant*

against 20

Herath Mudiyanselage Tikiri Banda Herath of Ambahera in Rekopattu Korale, in Dambadeni Hatpattu, Kurunegala District ..... *Defendant-Respondent.*

Action No. 6639 (S.C.1 (Final)/1954).

District Court of Kurunegala

In the matter of an application by the plaintiff-appellant dated 25th April, 1955, for Final Leave to Appeal to Her Majesty the Queen in Council against the decree of this Court dated 15th February, 1955.

This cause coming on for hearing and determination on the 23rd 30 day of June, 1955, before the Hon. E. H. T. Gunasekera, Puisne Justice and the Hon. K. D. de Silva, Puisne Justice, of this Court, in the presence of Counsel for the petitioner.

No. 16
Decree Granting Final Leave to Appeal to the Privy Council 23.6.55.—*Continued*

The applicant having complied with the conditions imposed on him by the order of this Court dated 1st April, 1955, 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. Hema Henry Basnayake, Q.C., Acting Chief Justice at Colombo, the 12th day of August, in the year One thousand Nine hundred and Fifty-five and of Our Reign the Fourth.

10 (Sgd.) W. G. WOUTERSZ,
Deputy Registrar, S.C.

PART II

EXHIBITS

PART II

EXHIBITS

Exhibits
D2
Deed of
Transfer
No. 500
22.2.34

D. 2.

Deed of Transfer No. 500

No. 500

Transfer Rs. 420.00

Application No. 623/11.8.43.

To all to whom these presents shall come Narayana Mudiyanselage Ram Menika Kumarihamy of Ambahera in Recopattu Korale sends greetings :—

Whereas Edward Banda ex-Korala of Nakolagamuwa in Tiragandahe Korale died intestate on or about the 3rd March, 1929, at Nakolagamuwa.

And whereas his estate is administered in Case No. 3714 of the District Court of Kurunegala.

And whereas by settlement in the said administration Case No. 3714, it is ordered and decreed that the respondent be declared and were declared entitled each to an undivided one-fourth share of all the estate and effects of the said Edward Banda ex-Korala subject to estate duty and expenses of administration.

And whereas the said Ran Menika Kumarihamy of Ambahera being one of the respondents in the said testamentary case is entitled to an undivided one-fourth share of all the estate and effects of the late Edward Banda ex-Korala as aforesaid.

And whereas by virtue of an order to sell directed by the said Ran Menika Kumarihamy to Mr. T. B. Amunugama the auctioneer the lands and premises in the schedule hereto were sold by public auction on the 10th October, 1931.

And whereas Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama being the highest bidder of the shares of the lands mentioned the schedule hereto was declared the purchaser for the sum of Rupees Four hundred and twenty and condition Nos. 1268, 1269, 1270, 1271, 1272, 1273 and 1274 dated 10th October, 1931, were signed by the said Wijesundera Mudiyanselage Appuhamy on behalf of the said Somawathie Kumarihamy.

And whereas it is now necessary to execute a deed of transfer for the said lands for the said sum of Rupees Four hundred and twenty which is now paid up in full in order to perfect the said sales of the said lands in the said schedule.

Exhibits.
D2
Deed of Transfer No. 500 22.2.34.—*Continued*

Now these presents witness that the said Narayana Mudiyanselage Ran Menika Kumarihamy the vendor in consideration of the said sum of Rupees Four hundred and twenty doth hereby sell, convey, assign and set over unto the said Wijesundera Mudiyanselage Somawathie Kumarihamy the purchaser the shares of the lands and premises as described in the said schedule together with a like share of everything standing thereon.

To have and to hold the said premises with their appurtenances unto the said Somawathie Kumarihamy heirs, executors, administrators and assigns for ever and that the said vendor and her aforewritten shall and will always warrant and defend the said premises and every part thereof unto the said purchaser and her aforewritten against any person or persons whomsoever.

In witness whereof the said Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera aforesaid set her hand to these presents and to two others of the same tenor and date at Ambahera on this twenty-second day of February, One thousand Nine hundred and Thirty-four.

The Schedule referred to

1. An undivided one-twelfth share of Pellegawawatta of about thirty acres in extent together with everything thereon situated at Nakolagamuwa in Tiragendahe Korale of Weuda Hatpattu in the District of Kurunegala, North-Western Province, and the entirety of which is bounded on the North by wire fence of the land of Punchirala and others, East by village limit of Matawa, South by wire fence of Degalehena, West by Hebawela of Punchirala and by Lindakumbure.

2. An undivided one-twelfth share of the lands called Bulukumburewatta of ten acres in extent and of its adjoining Andiyagodawatta of three lahas kurakkan sowing extent and of its adjoining Kotuwe Kumbura and Goda Kumbura both of five pelas paddy sowing extent all forming one property which could be included in one survey, together with everything thereon situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by village limits of Matawa and Tiragama, East by cart road and land of Kasi Tamby and others, South by field and land of Ausadahamy and others, West by Bulukumburewela and lands of Ausadahamy and others and exclusive of the paddy fields within the said boundaries.

3. An undivided one-twelfth share of Hitinawatta or about three lahas kurakkan sowing extent together with everything thereon situated at Nakalagamuwa aforesaid and the entirety of which is bounded on the North by Habawela, East by Habawela, South by the gardens of Kalu Banda and Banda, West by the lands belonging to the estate.

4. An undivided one-twelfth share of Habawela alias Ihalawela of about twelve lahas paddy sowing extent situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by the fields on the North by the fields of Malhamy and others, East by Pellewatta, South by Aramba and West by Hitinawatta.

5. An undivided one-twelfth share of Galahitiyawa of one amunam of paddy sowing extent situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by Ambegahamula Kumbura, East by Bogahapitiya Kumbura, South by field of Ausadahamy, West by field of Ausadahamy and others.

6. An undivided one-twelfth share of Rupewatta of about one laha kurakkan sowing extent together with everything thereon situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by the lands of Dingiri Amma and Tikiri Banda, East by lands of P. B. Tennekoon and others, South by land of Punchi Banda and others, West by fields.

7. An undivided one-twelfth share of Lindakumbure of about five pelas paddy sowing extent situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by limitary ridge of Ambagahamulaweepela, East by Pillewatta, South by Habawela, West by the land belonging to the estate.

This is the left thumb impression of RAN MENIKA KUMARIHAMY.

We do hereby declare that we are well acquainted with the executions and know her proper name, occupation and residence.

(Sgd.) T. B. AMUNUGAMA.

(Sgd.) Illegibly in English.

(Sgd.) S. A. YATAWARA,
N.P.

I, Sylius Augustus Yatawara of Kurunegala, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained to the withinnamed executant who is known to me and who signed with her thumb impression in the presence of Tennekoon Banda Amunugama of Kurunegala who signed as T. B. Amunugama, and Ukku Banda Ambahera of Ambahera who signed as U. B. Ambahera the subscribing witnesses hereunto both of whom are known to me the same was signed by the said executant and also by the said witnesses and by me in my presence and in the presence of one another all being present at the same time at Ambahera on this twenty-second day of February, One thousand Nine hundred and Thirty-four.

Exhibits.
D2
Deed of Transfer No. 500 22.2.34.—*Continued*

And I further certify and attest that the duplicate of this instrument bears three stamps of the value of Rs. 16/- and the original bears one stamp of the value of Re. 1/- and that the stamps were supplied by me and that no consideration was paid by me.

Which I attest.

(Sgd.) S. A. YATAWARA,
Notary Public.

Date of attestation :

This 22nd day of February, 1934.

T. de S. Abeywickrema, Registrar of Lands, Kurunegala, do hereby certify that the foregoing is a true copy of a deed of transfer made from the duplicate filed of record in this office and the same is granted on the application of H. Bede Perera, Esquire, proctor and Notary of Kurunegala.

(Sgd.).....
Registrar of Lands.

Land Registry, Kurunegala,
13th August, 1943.

D1
Mortgage Bond No. 501 22.2.34

D1.

Mortgage Bond No. 501.

No. 501.

Application No. 623/11.8.43. Deed of Mortgage Rs. 2,715/-.

Know all men by these presents that Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama (hereinafter called and referred to as the obligor) held and firmly bound unto Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera (hereinafter called and referred to as the obligee) in the sum of Rupees Two thousand Seven hundred and Fifteen only (Rs. 2,715/-) of lawful money of Ceylon for money borrowed and received by the obligor from the said obligee (the receipt whereof the said obligor do hereby admit and acknowledge). Therefore hereby renouncing the Beneficium non numerate pecuniae the said obligor do hereby engage and bind herself, her heirs, executors and administrators to pay on demand unto the said obligee or to her heirs, executors, administrators or assigns the said sum of Rupees Two thousand Seven hundred and fifteen and until the repayment of the said principal sum the obligor undertakes to pay interest at the rate of twelve per centum per annum, and for securing unto the obligee and her aforewritten the payment of the said sum of money and other sums of money payable under

by virtue or in respect of these presents the obligor do hereby specially mortgage and hypothecate to and with the said obligee and her aforewritten as a primary mortgage the premises described in the schedule annexed hereto and all the estate right title interest claim and demand whatsoever of into upon or out of the said premises and the obligor do hereby covenant and declare with and to the said obligee and her aforewritten that she has good right and full power to mortgage the said premises in the manner aforesaid, and that the said premises are free from any charge or encumbrance whatsoever and that the obligor and her heretofore written shall and will at all times hereafter during the continuance of these presents at her cost and expense do and execute or cause to be done and executed all such further and other acts, deeds, matters and things which may be necessary or expedient for the better or more perfectly assuring the said premises or any part thereof by way of mortgage unto the said obligee and her aforewritten as by him or them may be reasonably required. In witness whereof the obligor do hereunto and to two others of the same tenor and date as these presents set her hand at Amunugama on this twenty-second day of February One thousand Nine hundred and Thirty-four.

Schedule referred to

1. An undivided one-third share of Peelagawawatta of about thirty acres in extent together with everything thereon situated at Nakolagamuwa in Tiragandahe Korale of Weudawilli Hatpattu in the District of Kurunegala, North Western Province, and bounded on the North by wire fence of the land of Punchirala and others, East by village limit of Mathawa, South by wire fence of Degalehena, and on the West by Hapawela and fence of the Pillewa of Punchirale and by Lindakumbura.

2. An undivided one-third share of the lands called Bulukumburewatta of ten acres in extent and its adjoining Andiyagodawatta of three lahas Kurakkan sowing extent and of its adjoining Koyuwekumbura and Godakumbura both of five pelas paddy extent all forming one property which could be included in one survey together with the buildings, plantations and everyting thereon situated at Nakolagamuwa aforesaid and entirety of which is bounded on the North by village limits of Mathawa and Tiragama, East by Cart Road and Land of Casi Thamby and others, South by field and by land of Ausadahamy and others and on the West by Bulukumburewela and lands of Ausadahamy and others and exclusive of the paddy fields within the said boundaries.

3. An undivided one-third share of Hitinawatta of about three lahas kurakkan sowing extent together with the buildings, plantations and everything thereon situated at Nakolagamuwa aforesaid and

Exhibits.
D 1
Mortgage Bond No. 501 22.2.34—
Continued

entirety of which is bounded on the North by Habawela, East by Habawela, South by gardens of Kalu Banda and Banda, and on the West by the land belonging to the estate.

4. An undivided one-third share of Habawela *alias* Ihalawela of about twelve lahas paddy sowing extent situated at Nakclagamuwa aforesaid and the entirety of which is bounded on the North by the fields of Malhamy and others, East by Pullewatta, South by Aramba, and on the West by Hitinawatta.

5. An undivided one-third share of Galahitiyawa of one amunam paddy sowing extent situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by Ambagahamula Kumbura, East by Bogahapitiya Kumbura, South by field of Ausadahamy, and on the West by field of Ausadahamy and others.

6. An undivided one-third share of Ruppewatta of about one laha kurakkan sowing extent together with everything thereon situated at Nakolagamuwa aforesaid and the entirety which is bounded on the North by lands of Dingiri Amma and Tikiri Banda, East by lands of P. B. Tennakoon and others, South by land of Punchi Banda and others ; on the West by field.

7. An undivided one-third share of Lindakumbura of about five pelas of paddy sowing extent situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by limitary ridge of Ambahamulla Weepela, East by Peellewatta, South by Habawela, and on the West by the land belonging to the estate held and possessed by the said obligor under and by virtue of terms of settlement entered of record in Kurunegala in D.C. Testamentary Case No. 3714 and condition of sale Nos. 1268, 1269, 1270, 1271 and 1272 and 1273 and 1274 of 10th October, 1931, attested by M. B. Wanduragala, N. P. and by Deed of transfer No. 500 of 22nd February, 1934, attested by S. A. Yatawara, Notary Public.

We are well acquainted with the executant and know her proper name, occupation and residence.

This is the left thumb impression of Somawathie Kumarihamy.

(Sgd.) Illegibly.
(Sgd.) Illegibly.

(Sgd.) S. A. YATAWARA,
N.P.

I, Silvius Anquotus Yatawara of Kurunegala, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained to the withinnamed executant who is known to me and who signed with her left thumb impression in the presence of Ukku Banda Ambahera of Ambahera who signed as "U. B. Ambahera" and Tikiri Banda Amunugama of Amunu-

gama who signed as " T. B. Amunugama, Jnr., " the subscribing witnesses hereunto both of whom are known to me the same was signed by the said executant and also by the said witnesses and by me in my presence and in the presence of one another all being present at the same time at Amunugama on this twenty-second day of February One thousand Nine hundred and Thirty-four.

Exhibits.
D1
Mortgage Bond No. 501 22.2.34—*Continued*

And I further certify and attest that the duplicate of this instrument bears four stamps of the value of Rupess 32/- and that the original bears one stamp of the value of Rupee One and that the stamps were supplied by me and that the full consideration of Rs. 2,715/- was paid in my presence.

Date of attestation: Seal.

This 22nd day of February, 1934. (Sgd.) S. A. YATAWARA,
Notary Public.

T. de Abeywickrama, Registrar of Lands, Kurunegala, 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 H. Bede Perera, Esq., Proctor and Notary of Kurunegala.

13.8.43. (Sgd.).....

Copied by .....

Examined by.....

13.8.43.

D26.
Deed of Transfer No. 1494

D26
Deed of Transfer No. 1494 11.4.34

Copy

Application No. 1308.
15.9.52.

Prior Registration. Search Dispensed with.

No. 1494. Transfer Rs. 4,767.

To all to whom these Presents shall come Narayana Mudiyanselage Ran Manika Kumarihamy of Ambahera in Recopattu Korale sends greetings whereas Edward Banda ex-Korala of Nakolagamuwa in Tiragandahe Korale died intestate on or about the 3rd March, 1929, at Nakolagamuwa and whereas his estate is administered in Case No. 3714 of the District Court of Kurunegala and whereas by a settlement dated 9th October, 1930, in the said administration Case No. 3714 it is ordered and decreed that the respondents be declared and were declared entitled each to an undivided one-fourth share of all

Exhibits.
D 26
Deed of Transfer No. 1494 11.4.34—*Continued*

the estate and effect of the said Edward Banda ex-Korala subject to estate duty and expenses of administration and whereas the said Ran Menika Kumarihamy of Ambahera being one of the respondents in the said testamentary case is entitled to an undivided one-fourth share of all estate and effects of the late Edward Banda ex-Korala as aforesaid and whereas by virtue of an order to sell directed by the said Ran Menika Kumarihamy to Mr. T. B. Amunugama, auctioneer, the lands and premises in the schedule hereto together with some other lands were sold by public auction on the 10th, 12th, 13th, 14th, and 15th October, 1931 and whereas Herath Mudiyanselage Bandara Menika of Nakolagamuwa aforesaid being the highest bidder of the shares of the lands mentioned in the schedule hereto was declared the purchaser for the sum of Rupees Four thousand Seven hundred and Sixty-seven (Rs. 4,767/-) and conditions Nos. 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1290, and 1293 dated 10th and 12th respectively were signed by the said Bandara Menika.

And whereas it is now necessary to execute a deed of transfer for the said lands for the said sum of Rupees Four thousand Seven hundred and Sixty-seven (Rs. 4,767/-) which is now paid up in full in order to perfect the said sales of the said lands in the said schedule now these presents witness that the said Narayana Mudiyanselage Ran Menika Kumarihamy the vendor in consideration of the said sum of Rupees Four thousand Seven hundred and Sixty-seven (Rs. 4,767/-) doth hereby convey, sell, assign and set over unto the said Herath Mudiyanselage Bandara Menika the purchaser the shares of the lands and premises as described in the said schedule together with a like share everything standing thereon to have and to hold the said premises with their appurtenances unto the said Bandara Menika, her heirs, executors, administrators and assigns for ever. And that the vendor and her aforewritten shall and will always warrant and defend the said premises and every part thereof unto the said purchaser and her aforewritten against any person or persons whomsoever. In witness whereof the said Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera aforesaid set her hand to these presents and to two others of the same tenor and date at Ambahera on the tenth day of April, One thousand Nine hundred and Thirty-four.

The Schedule referred to

1. An undivided one-twelfth share of Peellagawawatta of about thirty acres in extent together with everything thereon situated at Nakolagamuwa in Tiragandahe Korale in Weuda Willi Hatpattu in the District of Kurunegala North-Western Province and the entirety of which is bounded on the North by wire fence of the land of Punchirala and others, East by village limit of Mathawa, South by wire fence of Degalehena, West by Habawela and fence of Pillewa of Punchirala and by Lindakumbura.

2. An undivided one-twelfth share of the lands called Bulukumburewatte of ten acres in extent and of its adjoining Andiyagodawatta of three lahas kurakkan sowing extent and of its adjoining Katuwekumbura and Godakumbura both of five pelas paddy sowing extent all forming one property which could be included in one survey together with everything thereon situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by village limit of Mathawa and Tiragama East cart road and land of Cassi-Tamby and others, South by field and by land of Ausadahamy and others, West by Bulukumburewela and lands of Ausadahamy and others and exclusive of the paddy fields within the said boundaries.

3. An undivided one-twelfth share of Hitinawatta of about three lahas kurakkan sowing extent together with everything thereon situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by Habawela, East by Habawela, South by garden of Kalu-Banda and Banda, West by the land belonging to the estate.

4. An undivided one-twelfth share of Habawela *alias* Ihalawela of about twelve lahas paddy sowing extent situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by the fields of Malhamy and others, East by Peellewatta, South by Aramba, and West by Hitinawatta.

5. An undivided one-twelfth share of Galahitiyawa of one amunam paddy sowing extent situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by Ambagahamulakumbura, East by Bogahapitiyakumbura, South by field of Ausadahamy, West by field of Ausadahamy and others.

6. An undivided one-twelfth share of Ruppewatta of about one laha kurakkan sowing extent together with everything thereon situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by lands of Dingiri Amma and Tikiri Banda, East by land of P. B. Tennekoon and others, South by land of Punchi Banda and others, West by fields.

7. An undivided one-twelfth share of Lindakumbura of about five pelas paddy sowing extent situated at Nakolagamuwa aforesaid and entirety of which bounded on the North by limitary ridge of Ambagahamulaweepela, East by Peelewatta, South by Habawela, West by the land belonging to the estate.

8. An undivided one-fourth share Nilehena of about two seer of kurakkan sowing extent together with everything thereon situated at Nakolagamuwa aforesaid and entirety of which is bounded on the North by land of Kiri Banda and others, East by Diggalahena, South by Bulugahamulahena, West by Galeruwehena.

Exhibits.
D26
Deed of Transfer No. 1494 11.4.34—
Continued

9. An undivided one-fourth share of Balahapitiyewatte of about half a seer kurakkan sowing extent together with everything thereon situated at Nakolagamuwa aforesaid and entirety of which is bounded on the North and East by Lindakumbura, South by Bogahapitiyekumbura, West by Siyambalakumbura.

10. An undivided one-sixteenth share of Hitinawatta of about three seers kurakkan sowing extent together with everything thereon situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the East and South by Peellewatta, West by Gansabawa Road, North by land of Malhamy and others.

11. An undivided one-fourth share of Usgalamaragahemulahena of about six seers kurakkan sowing extent together with everything thereon situated at Nakolagamuwa aforesaid and entirety of which is bounded on the East by stone fence of the chena of Soma and by Kathumbaha, South by Chena of Punchi Menika, West by Gansabawa Road, North by endaru fence of the chena of Cassi-Lebbe.

12. An undivided one-fourth share of Angunuwawekumbura of fifteen lahas paddy sowing extent situated at Nakolagamuwa aforesaid and entirety of which is bounded on the South by Bulukumbura, West and North by ela, East by field of Dingiri Amma and others.

13. An undivided one-fourth share of Akuranawatta of about two seers kurakkan sowing extent together with everything thereon situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the East by garden of Kiri Banda Vedarala, South by ela, West by Dangaspitiyawatta and by Gansabawa Road, North by Dangaspitiyawatta.

14. An undivided one-fourth share of Akuranwela of sixteen lahas paddy sowing extent situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the East and South by field of Kiribanda Vederala, West by Akuranwela, North by ela.

15. An undivided one-fourth share of Welikumbura Nilekumbura of two pelas paddy sowing extent situated at Nakolagamuwa aforesaid and entirety of which is bounded on the East by field of Ausadahamy, South by field of Ausadahamy and others, West by Welikumbura, North by ela.

16. An undivided one-fourth share from and out of Meegahamulahena of two seers kurakkan sowing extent and of its adjoining Bakmigahamulahena of one laha of kurakkan sowing extent together

with everything thereon situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by Galagawahena, East by Nilehena, South by Nilehena and the land of Tikiri Banda, West by land of Punchi Banda and others.

Left thumb print of RAN MENIKA KUMARIHAMY.

(Sgd.) M. B. WANDURAGALA, *N.P.*

17. An undivided one-fourth share of Galagawahena of two lahas kurakkan sowing extent together with everything thereon situated at Nakclagamuwa aforesaid and the entirety of which is bounded on the North by Gala, East by Nilehena, South by Meegahamulahena, West by land of Punchi Banda and others.

18. An undivided one-fourth share of Dehigahakumbura now watta of three seers kurakkan sowing extent together with everything thereon situated at Torawatura in Tiragandahe Korale aforesaid and the entirety of which bounded on the East by fence of garden of Punchi Naide Aratchi, South by Kohambagahamula Watta, West by garden of Kawrala, North by field of Punchirala Korala.

19. An undivided one-eighth share of Dehigahakumbura of three pelas paddy sowing extent situated at Torawatura aforesaid and the entirety of which is bounded on the East by ela vella of the field of Dingirihamy, South by limitary ridge of the field called Weweiyadda of Punchi Naide, West by fence of the garden of Kiriya, North by field of Mudiyanse.

Witnesses. Left thumb print of RAN MENIKA KUMARIHAMY.

1. (Sgd.) Illegibly in English
2. (Sgd.) Illegibly in English.

(Sgd.) M. B. WANDURAGALA,
N.P.

I, Malala Banda Wanduragala of Kurunegala, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the withinnamed Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera aforesaid the executant who has signed with a left thumb print and who is known to me in the presence of Maya Bandaralage Ukku Banda Ambahera of Ambahera aforesaid and Herath Mudiyanselage Tikiri Banda Herath of Arambepola in Udapola Medalasse Korale who have signed in English characters the subscribing witnesses

Exhibits.
D 26
Deed of Transfer No. 1494 11.4.34—*Continued*

hereto both of whom are known to me the same was signed by the said executant 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 Ambahera on the tenth day of April, One thousand Nine hundred and Thirty-four. And I further certify and attest that in the original and duplicate in page 1 in line 29 the words " and " were interpolated and in the same line the words " 13th, 14th and 15th " and in the duplicate in page 2 in line 22 the word " Two " and in page 4 in line 5 the letters " situate " were struck off before the foregoing instrument was read over and explained by me as aforesaid and that the said consideration was acknowledged beforehand and the original of this instrument bears a Rupee stamp and the duplicate bears twelve stamps of the value of ninety-seven rupees and that the said stamps were supplied by me.

Date of attestation — Which I attest.

11th April, 1934. — (Sgd.) M. B. WANDURAGALA,
Notary Public.

I, W. A. Nelson, Acting Registrar of Lands, Kurunegala, do hereby certify that the foregoing is a true copy of a deed of transfer made from the duplicate filed of record in this office and the same is granted on the application of Mr. T. B. Herath of Kurunegala.

Land Registry, Kurunegala. — (Sgd.).....
17.9.52. — *Acting Registrar of Lands.*

D8
Deed of Transfer No. 1017 6.6.35

D8.
Deed of Transfer No. 1017.

Prior Registration A.404/246. — Application No. 627/11.8.43

No. 1017—Transfer Rs. 725/-

To all to whom these presents shall come I, Wijesundera Mudiyanselage Somawathie Kumarihamy, wife of Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama in Recopattu Korale (hereinafter referred to as " the said vendor ") send greetings.

Whereas I the said Wijesundera Mudiyanselage Somawathie Kumarihamy the lawful absolute owner and proprietor and possessed of or otherwise well and sufficiently entitled to the divided 1/4th share of the land and in the schedule hereto more fully described.

And whereas I have agreed with Ran Manika Samarakoon Mudiyanselage Tikiri Banda Ramanayake of Karalegama in Kudagalvada Korale (hereinafter referred to as " the said vendee ") for

the absolute sale and conveyance to him of the said premises free from encumbrances at or for the price or sum of Rupees Seven hundred and Twenty-five (Rs. 725)/-).

Now know ye and these presents witness that I the said Wijesundera Mudiyanselage Somawathie Kumarihamy in pursuance of the said agreement and in consideration of the said sum of Rupees Seven hundred and Twenty-five (Rs. 725/-) of lawful money of Ceylon well and truly paid to me by the said Ramanayake Samarakoon Mudiyanselage Tikiri Banda Ramanayake (the receipt whereof I do hereby admit and acknowledge do hereby grant, sell, assign, convey, set over and assure unto the said vendee, his heirs, executors, administrators and assigns a divided 1/4th share of the land in the schedule hereto more fully described together with all rights, liberties, privileges, easements, servitudes and appurtenances whatsoever to the said premises belonging or with the same now or heretofore held, used occupied or enjoyed or reputed or known as part or parcel thereof and all the estate right, title, interest, property claim and demand of me the said vendor into, out of or upon the said premises and every part thereof.

To have and to hold the said premises with all and singular their rights, members and appurtenances unto the said vendee, his heirs, executors, administrators and assigns for ever.

And I the said vendor do hereby for myself and my heirs, executors and administrators covenant with the said vendor, his heir, executors, administrators and assigns that notwithstanding anything by me done, omitted or knowingly or willingly suffered, I now have good right, full power and absolute authority to grant, convey and assure all the aforesaid premises and that the said premises are free from all encumbrances and charges whatsoever and that I and my aforewritten shall and will always warrant and defend the said premises and every part thereof unto the said vendee and his aforewritten against any person or persons whomsoever.

And further that I and my aforewritten shall and will from time to time and at all times hereafter at the request and cost of the said vendee and his aforewritten make, do and execute or cause to be made, done and executed all such further and other acts, deeds, assurances, matters and things for the further more effectually or satisfactorily conveying and assuring the said premises or any part thereof as by the said vendee or his aforewritten shall or may be reasonably required or be tendered to be so made, done and executed.

In witness whereof I the said Wijesundera Mudiyanselage Somawathie Kumarihamy, wife of Tennekoon Mudiyanselage Tikiri Banda Amunugama, have to these presents and to two others of the same tenor and date set my hand at Amunugama on this Sixth day of June One thousand Nine hundred and Thirty-five.

Exhibits.
D8
Deed of Transfer No. 1017 6.6.35—*Continued*

The Schedule above referred to:

An undivided 1/4th share of the allotments of lands called Minipitiyehena *alias* Aluthwewahena and of its adjoining Kongahamulahena and of its adjoining Tawallekumbura and of its adjoining Kongahamulahena and of its adjoining Mahawathehena and of its adjoining Dangahamulahena and of its adjoining Mahawathehena now garden of about thirty acres more or less in extent and all now forming one property together with everything thereon situated at Mapegamuwa in Kudagalkoda Korale of Weudawilli Hatpattu in the district of Kurunegala, North-Western Province, and the entirety of which is bounded on the North by the land of Mr. Keertiratne, West by Galkanda, South by Wela and garden of Herathamy Korala, East by Gane Mukalana which said entire land is now bounded according to Plan No. 405 dated 25th January, 1935, made by G. A. de Silva, licensed Surveyor, on the North by land of Mr. Keertiratne, East by Crown forest, South by chena of Herathamy Korala, field of Herath Appuhamy Korala, land of Herath Appuhamy Korala and cemetery and West by chena of Mr. Kotalawala and chena of Pinhamy containing in extent twenty-six acres and sixteen perches (26a. 0r. 16p.). The said undivided 1/4th share is now divided and marked lot Y in the said Plan No. 405 of six acres two roods and four perches (6a. 2r. 4p.) in extent situated at Mapegamuwa aforesaid and bounded according to Plan No. 405 on the North and East by Crown forest (Gane Mukalana), South by land of Herathamy Korala, field of Herathamy Korala, footpath and cemetery and West by lot X in the said plan belonging to Mr. Keertiratne. Held and possessed by me the Somawathie Kumarihamy under and by virtue of the settlement filed of record of Testamentary Case No. 3714 of the District Court of Kurunegala.

Signed in the presence of us and we do hereby declare that we are well acquainted with the executant and know her proper name, residence and occupation.

(Sgd.) Illegibly.

(Sgd.) Illegibly.

Left thumb impression of SOMAWATHIE KUMARIHAMY.

I, Royston Edmond de Silva Jayasundera of Kurunegala, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the withinnamed Wijesundera Mudiyanselage Somawathie Kumarihamy who has signed with her left thumb impression and is not known to me in the presence of Tennekoon Mudiyanselage Tikiri Banda Amunugama and

Exhibits.
D8
Deed of Transfer No. 1017 6.6.35—*Continued*

Tennekoon Banda Amunugama both of Amunugama in Recopattu Korale and who have signed illegibly in English characters the subscribing witnesses hereto both of whom are known to me the same was signed by the said executant by the said witnesses and also by me notary the said in my presence and in the presence of one another all being present at the same time at Amunugama on this sixth day of June, One thousand Nine hundred and Thirty-five.

I further certify and attest that the duplicate of this instrument bears two stamps of Rs. 15/- and the original bears a stamp of Re. 1/- which were supplied by me and that the full consideration was paid in my presence. That in the duplicate of page 3 in line 15 the word " Mahawathehena " and in the original of page 4 in line 5 the letter " f " were typed over erasures before the deed was so explained.

Which I attest,

(Sgd.) R. E. de S. JAYASUNDERA,
N.P.

Date of attestation :
6th June, 1935.

T. D. S. Abeywickrema, Registrar of Lands, Kurunegala, do hereby certify that the foregoing is a true copy of a deed of transfer made from the duplicate filed of record in this office and the same is granted on the application of H. Bede Perera, Esqr., of Kurunegala.

(Sgd.) Illegibly
Registrar of Lands.

The Land Registry,
Kurunegala.
16.8.43.

D27.

D27
Deed of Gift No. 1700 2.12.36

Deed of Gift No. 1700.

Prior Registration : Application No. 1308/15.9.52.

A.406/174. A.410/284.

Gift Rs. 2,500/-

Know all men by these presents that Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale (hereinafter called the donor) in consideration of the natural love and affection which I bear unto my nephew, Herath Mudiyanselage Tikiribanda Herath of Arambepola in Udapola Medalasse Korale (hereinafter called

Exhibits.
D27
Deed of Gift
No. 1700
2.12.36.—
Continued

the donee) and for divers other good causes and considerations hereunto specially moving to hereby grant, convey, assign, transfer, set-over and assure unto the donee as a gift absolute and irrevocable the undermentioned premises together with all easements, servitudes, rights and advantages whatsoever appertaining or reputed to appertain thereto or any part thereof occupied or enjoyed with or reputed or known as part or parcel of or appurtenants to the same or any part thereof and all the estate right, title, interest, claim and demand whatsoever of the donor into, unto or out of the said premises which said premises have been held and possessed by the donor as herein- 10
after stated in the schedule hereto annexed to have and to hold the said premises hereby granted or intended so to be which are of the value of Rupees Two thousand and Five hundred (Rs. 2,500/-) unto to the donee, his heirs, executors, administrators and assigns.

The Schedule referred to :

1. An undivided one-third share of all that land called and known as Peellagahawatta containing in extent about thirty acres (30A. 0R. 0P.) together with everything thereon situated at Nakolagamuwa in Tiragandahe Korale in Weudawilli Hatpattu in the District of Kurunegala, North-Western Province and the entirety of 20
which is bounded on the East by the village limit of Matawa, South by wire fence of Degalahena, West by the Habawela fence of the Pillewa belonging to Punchirala and Lindakumbura, and on the North by wire fence of the lands belonging to Punchirala and others and which is registered under A.406/174.

2. An undivided one-third share of Lindakumbura of about five pelas paddy sowing extent situated at Nakolagamuwa aforesaid and bounded on the North by the limitary ridge of Ambagahamullaweepela, East by Peellawatta, South by Habawela and on the West by the land belonging to the estate. 30

3. An undivided one-fourth share of Gangodahena of about two lahas kurakkan sowing extent together with everything thereon situated at Nakolagamuwa aforesaid and bounded on the North by the land of Dingiri Amma, East by Rasekanehena, South by village limit of Attanapitiya, and West by land of Bandirala and others and which is registered under A.410/284. The shares of the said lands Nos. 1 and 2 are owned and possessed in terms of the order of settlement in Testamentary Case No. 3714 of the District Court of Kurunegala and by deed of sale No. 1494, dated 10th April, 1934, and attested by the Notary attesting these presents and land No. 3 40
of the order of settlement aforesaid and the donor do hereby for herself, her heirs, executors and administrators covenant and declare with and to the donee that the donor and aforewritten shall and will at all time hereafter at the request but at the cost and charges of the donee and his aforewritten do and execute or cause to be done

or executed all such further and other acts, deeds, matter and things which may be necessary or expedient for the better or more perfectly assuring the said premises or any part thereof unto the donee as may be reasonably required and that the said premises are free from encumbrances whatsoever. That the said donee for himself and his aforewritten doth hereby thankfully accept the said donation as aforesaid in witness whereof the said donor and the said donee do set their hands hereunto and to two others of the same tenor and date as these present at Kurunegala on this first day of December, One thousand Nine hundred and Thirty-six.

We do hereby declare that we are well acquainted with the executant of this deed and know her proper name, occupation and residence.

(Sgd.) (in Sinhalese).

1. (Sgd.) Illegibly in English.
2. ,, ,, ,,

(Sgd.) M. B. WANDURAGALA,
N.P.

I, Malala Bandara Wanduragala of Kurunegala, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the within-named Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale and Herath Mudiyanselage Tikiri Banda Herath of Arambepola in Udapola Medalasse Korale the executants first of whom has signed in Sinhalese characters and the second of whom has signed in English characters and both of whom are known to me in the presence of Coomaravail Pillai Selvanayagam Pillai and Hope Wilmot Gunasekera both of Kurunegala who have signed in English characters, the subscribing witnesses hereto both of whom are known to me the same was signed by the said executants and by me the said Notary in the presence of one another all being present at the same time at Kurunegala on the first day of December, One thousand Nine hundred and Thirty-six and I further certify and attest that in the original in page 1 in line 6 the word " and " and in the line 19 the words " under and by virtue of " and in page 3 in line 17 the word " twenty " were struck off and in the duplicate in page 1 in line 6 the word " and " and in line 19 the words" under and by virtue of " and in page 3 in line 17 the word " twenty " were struck off before the foregoing instrument was read over and explained by me as aforesaid and that the original bears a rupee stamp and the duplicate of this instrument bears nine stamps of the value of Rupees Forty-one and that the stamps were supplied by me.

Which I attest.

Date of attestation :
This 2nd day of December, 1936.

(Sgd.) M. B. WANDURAGALA,
N.P.

Exhibits.
D27
Deed of Gift
No. 1700
2.12.36—
Continued

I, W. A. Nelson, Acting Registrar of Lands, Kurunegala, do hereby certify that the foregoing is a true copy of a deed of gift made from the duplicate filed of record of this office and the same is granted on the application of Mr. T. B. Herath of Kurunegala.

Land Registry,
Kurunegala, 16.9.1952.

(Sgd.).....
Acting Registrar of Lands.

D9.

Deed of Transfer No. 2040

D9
Deed of
Transfer
No. 2040
4.3.40

Application No. 180/22.2.44.

Prior Registration : A156/139 ; 129/65 ; 117/47 ; 129/66 ; 111/124 ; 133/221 ; 112/14.

Transfer Rs. 300/-.

Know all men by these presents that Herath Mudiyanselage Bandara Menika of Nakolagamuwa and Narayana Mudiyanselage Kuma Kumarihamy of Nakolagamuwa in Tiragandahe Korale of Weuda Willi Hatpattu and Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera in Recopattu Korale and Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale (hereinafter called the vendors) for and in consideration of the sum of Rupees Three hundred (Rs. 300/-) of lawful money of Ceylon well and truly paid to the said vendors by Tennakoon Mudiyanselage Dharmadasa Tennakoon of Nakclagamuwa in Tiragandahe Korale (hereinafter called the purchaser) (the receipt whereof the said vendors do hereby admit and acknowledge) do hereby grant convey assign transfer set over and assure unto the said purchaser his heirs, executors, administrators and assigns the premises described in the schedule annexed hereto, together with all easements rights servitudes and advantages whatsoever appertaining or reputed to appertain thereto or occupied or enjoyed with or reputed or known as part or parcel of or appurtenant to the same or any part thereof and all the estate, right, title, interest, claim, demand whatsoever of the said vendors into upon or out of the said premises which said premises have been held and possessed by the said vendors.

To have and to hold the said premises hereby sold and conveyed with the rights and appurtenances unto the said purchaser and his aforewritten absolutely forever and the vendors do hereby for themselves, their heirs, executors and administrators covenant and declare with and to the said purchaser and his aforewritten that the said

premises are free from encumbrances whatsoever and that the vendors and their aforewritten shall and will always warrant and defend the title to the said premises and every part thereof unto the said purchaser and his aforewritten against any person or persons whomsoever and that the vendors and their aforewritten shall and will at all times hereafter at the request but at the cost and charges of the said purchaser and his aforewritten do and execute or cause to be done and executed all such further and other acts, deeds, assurances, matters and things which may be necessary or expedient for the better or more perfectly assuring the same or any part thereof unto the said purchaser and his aforewritten as by him or them may be reasonably required.

In witness whereof the said Bandara Menika and Kuma Kumarihamy both of Nakolagamuwa aforesaid do set their hands hereunto and to two others of the same tenor and date as these presents on this fourth day of March, One thousand Nine hundred and Forty at Kurunegala.

Schedule referred to

1. An undivided one-eighth (1/8th) share of Siyambalagaha Kumbura of about one amunam paddy sowing extent situated at Tiragama in Tiragandahe Korale of Weudawilli Hatpattu in the District of Kurunegala, North Western Province, and bounded on the East by the endaru fence of Pinkumbura Pillewa, South by the limitary dam of Siyambalagaha Kumbura of Kiri Naide, West by Pincumbura and on the North by the limitary ridge of Damunugowwawe Kumbura of Sonuthara Unnanse.

2. An undivided one-eighth (1/8th) share of Pahala Damunugowwawe Kumbura of about two pelas paddy sowing extent situated at Tiragama aforesaid and the entirety of which is bounded on the East by Pattawaliye Kumbura, South by limitary dam of Siyambalagaha Kumbura, West by pillewa, North by Punchage Kumbura.

3. An undivided one-eighth (1/8th) share of Damunugowwawe Kiyana Kumbura of about one pela paddy sowing extent situated at Tiragama aforesaid and bounded on the East by Dingirage Kumbura, South by Aratchilage Kumbura, West by Ungage Kumbura and North by Aratchilage Kumbura.

4. An undivided one-eighth (1/8th) share of Damunugawwawe Kiyana Kumbura of about two pelas paddy sowing extent situated at Tiragama aforesaid and bounded on the East by the limitary dam of the field of Pula and others, South by the limitary dam of the field of Unga and others, West by Pillewa and North by the limitary dam of the field of Kiri Naide.

Exhibits.
D9
Deed of Transfer No. 2040 4.3.40.—*Continued*

5. An undivided one-eighth (1/8th) share of Galahitiyawe Kumbura of about three pelas and five lahas paddy sowing extent situated at Tiragama aforesaid and bounded on the East by limitary dam of the field of Kalunaide Veda and others, South by the fence of the garden of Kalu Naide Veda, West by the limitary ridge of the field of Kawwa and others, North by Moragollewatta.

6. An undivided one-eighth (1/8th) share of Galahitiyawe Kumbura of three pelas and five lahas paddy sowing extent situated at Tiragama aforesaid and bounded on the East by Rambe Kumbura of Veda, South by Vedagehena, West by the field of Ukku, North by the garden of Mr. Peiris.

7. An undivided one-eighth (1/8th) share of Gederawella Kiyana Kumbura of one pela paddy sowing extent situated at Tiragama aforesaid and bounded on the East by the field of Punchi Etana now belonging to Ukkurala and others, South by land of Dingiri Banda and others, West by Dewata and North by the land of Kadar Lebbe.

The said shares of the said lands are owned and possessed by the vendors as heirs of the late Edward Banda of Nakolagamuwa.

Signature of Juwanis. Signature of Bandara Menika

(1) .....

(2) (Sgd.) (in English) (Sgd.) .....

X mark and left thumb print of Kuma.

(Sgd.) M. B. WANDURAGALA,
N.P.

I, Malala Banda Wanduragala of Kurunegala, Notary Public, do hereby certify and attest the foregoing instrument having been duly read over and explained by me the said Notary to the within-named Herath Mudiyanselage Bandara Menika and Narayana Mudiyanselage Kuma Kumarihamy both of Nakolagamuwa aforesaid the executants, first of whom has signed in Sinhalese characters and the second of whom has signed with a mark and left thumb print and who are known to me in the presence of Jayasooriya Mudiyanselage Juwanis Appuhamy of Tiragama in Tiragandahe Korale who has signed in Sinhalese characters and Hurukgamuwe Herath Mudiyanselage Jayasena Herath of Nakolagamuwa aforesaid who has signed as H.T.Herath the subscribing witnesses hereto both of whom are known to me the same was signed by the said executants and also by the said witnesses and by me in my presence and in the presence of one another all being present at the same time at Kurunegala on this Fourth day of March, One thousand Nine hundred and Forty.

And I further certify and attest that the stamps of value of Rupees Nine which were supplied by me were affixed to the duplicate and the original bears a rupee stamp which was also supplied by me and in the original in page 3 in line 10 the word ' Kiyana ' and in the duplicate page 3 in line 29 the words " the garden of " and in line 33 the words " and five lahas " and in line 44 the words " the late " were interpolated before the foregoing instrument was read over and explained by me as aforesaid and a sum of Rupees One hundred and Fifty was paid to the said executants in equal shares.

Which I attest.

(Sgd.) M. B. WANDURAGALA,
Notary Public.

Date of attestation :

This Fourth day of March, 1940

In witness whereof the said Ran Menika Kumarihamy of Ambahera aforesaid doth set her hand hereto and to two others of the same tenor and date as these presents on this Fourth day of March, One thousand Nine hundred and Forty at Ambahera.

X Mark and left thumb imprint of

RAN MENIKA KUMARIHAMY.

Witnesses :

(Sgd.) Illegibly.

(Sgd.) Illegibly.

(Sgd.) M. B. WANDURAGALA,
N.P.

I, Malala Banda Wanduragala of Kurunegala, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the within-named Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera aforesaid the executant who has signed with a mark and left thumb print and who is not known to me in the presence of Maya Bandaralage Ukku Banda Ambahera of Ambahera aforesaid and Tennakoon Mudiyanselage Tikiri Banda Amunugama, Coroner of Amunugama aforesaid who have signed in English characters the subscribing witnesses hereto both of whom are known to me the same was signed by the said executant 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 Ambahera on this Fourth day of March, One

Exhibits.
D9
Deed of Transfer No. 2040 4.3.40—
Continued

thousand Nine hundred and Forty-one a sum of Seventy-five Rupees was paid to the said executant.

Date of attestation :
This 4th day of March, 1946.

Seal.
Which I attest,

(Sgd.) M. B. WANDURAGALA,
Notary Public.

In witness whereof the said Somawathie Kumarihamy of Amunugama aforesaid doth set her hand hereunto and to two others of the same tenor and date as these presents on this Fourth day of March, One thousand Nine hundred and Forty at Amunugama.

Mark and left thumb print of
SOMAWATHIE KUMARIHAMY.

Witnesses :

(1) (Sgd.) Illegibly.
(2) (Sgd.) Illegibly.

(Sgd.) M. B. WANDURAGALA,
N.P.

I, Malala Banda Wanduragala of Kurunegala, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the within-named Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama aforesaid the executant who has signed with a mark and left thumb print and who is known to me in the presence of Maya Bandaralage Ukku Banda Ambahera of Ambahera aforesaid and Tennakoon Mudiyanselage Tikiri Banda Amunugama, Coroner of Amunugama aforesaid who have signed in English characters the subscribing witnesses hereto both of whom are known to me the same was signed by the said executant 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 Amunugama on this Fourth day of March, One thousand Nine hundred and Forty and a sum of Seventy-five Rupees was paid to the said executant.

Date of attestation :
This 4th day of March, 1940.

Seal.
Which I attest,

(Sgd.) M. B. WANDURAGALA,
Notary Public.

Exhibits.
D9
Deed of Transfer No. 2040 4.3.40—
Continued

I, T. de S. Abeywickrema, Registrar of Lands, Kurunegala, do hereby certify that the foregoing is a true copy of transfer made from the duplicate filed in this office and the same is granted on the application of H. Bede Perera, Esq., of Kurunegala.
Land Registry.

Kurunegala. 24th February, 1944.

(Sgd.) T. De S. ABEYWICKREMA,
Registrar of Lands.

P1.

P1
Last Will of W. M. Somawathi Kumarihamy
25.5.41

Last Will of W. M. Somawathie Kumarihamy

No. 3320

This is the Last Will and Testament of me Wijesundera Mudiyanselage Somawathie Kumarihamy formerly of Nakolagamuwa now of Amunugama in Rekawapattu Korale.

I hereby revoke all Last Wills and testaments and writings of a testamentary nature, if any, heretofore made by me.

I give, devise and bequeath all my property, of what kind or nature soever, movable as well as immovable, wherever found or situate, in possession or expectancy, in remainder or reversion nothing excepted to my husband Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama aforesaid, whom I hereby appoint the executor of this my last will and testament.

In witness whereof I do hereunto and to another of the same tenor and date as these presents set my hand at Kurunegala on this twenty-fifth day of May, One thousand Nine hundred and Forty-one.

Left thumb impression of
SOMAWATHIE KUMARIHAMY.

Signed by the abovenamed testatrix as and for her last will and testament in the presence of us both being present at the same time who in her presence and in the presence of each other have hereunto subscribed our names as witnesses and we hereby declare that we are well acquainted with the executant and know her proper name, occupation and residence.

(Sgd.) M. B. ALGAMA.

(Sgd.) M. JAYAWARDENA.

(Sgd.) F. B. P. SENEVIRATNE,
N.P.

Exhibits.
P1
Last Will of W. M. Somawathie Kumarihamy 25.5.41—*Continued*

I, Francis Basil Perera Seneviratne of Kurunegala, Notary Public, do hereby certify and attest that the foregoing instrument having been read over and explained by me to the withinnamed Wijesundera Mudiyanselage Somawathie Kumarihamy who has signed this deed with left thumb impression in the presence of Attapattu Mudiyanselage Menik Banda Algama of Algama and Jayawardena Mudiyanselage Malhamy Jayawardena of Kurunegala who have signed this deed as " M. B. Algama " and " M. Jayawardena " respectively the subscribing witnesses thereto all of whom are known to me the same was signed by the said executant and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Kurunegala on this Twenty-fifth day of May, One thousand Nine hundred and Forty-one.

Which I attest.

(Sgd.) F. B. P. SENEVIRATNE,

(Seal) *Notary Public.*

Date of attestation :
25th May, 1941.

D7
Deed of Transfer No. 2134 21.8.44

D7.
Deed of Transfer No. 2134.

Prior Registration : (*See Schedule*) Application No. 1308/15.9.52.

No. 2134—Transfer Rs. 5 000/-

To all to whom These Presents shall come I, Wijesundera Mudiyanselage Somawathie Kumarihamy presently of Amunugama in Recopattu Korale (hereinafter referred to as " the said vendor ") send greeting whereas I the said vendor am the lawful absolute owner and proprietor and possessed of or otherwise well and sufficiently entitled to the share of the lands and in the Schedule hereto more fully described and—whereas I have agreed with Mayabandaralage Ukku Banda Ambahera of Ambahera in Recopattu Korale (hereinafter referred to as " the said vendee ") for the absolute sale and conveyance to him of the said premises free from encumbrances at or for the price or sum of Rupees Five thousand (Rs. 5,000/-). Now know ye and These presents witness that I the said Wijesundera Mudiyanselage Somawathie Kumarihamy in pursuance of the said agreement and in consideration of the said sum of Rupees Five thousand (Rs. 5 000/-) of lawful money of Ceylon well and truly paid to me by the said Mayabandaralage Ukku Banda Ambahera (the receipt whereof I do

hereby admit and acknowledge do hereby grant, sell, assign, convey, set over and assure unto the said vendee, his heirs, executors, administrators and assigns the shares of lands in the schedule hereto more fully described together with all rights, liberties, privileges, easements, servitudes and appurtenances whatsoever to the said premises, belongings or with the same now or heretofore held used occupied or enjoyed or reputed or known as part or parcel thereof and all the estate rights, title interest, property claim and demand of me the said vendor into out of or upon the said premises and every part thereof to have and to hold the said premises with all and singular their rights, members and appurtenances unto the said vendee, his heirs, executors, administrators and assign for ever and I the said vendor do hereby for myself and my heirs, executors and administrators covenant with the said vendee, his heirs, executors and administrators and assigns that notwithstanding anything by me done omitted or knowingly or willingly suffered I now have good right full power and absolute authority to grant, convey and assure all the aforesaid premises and that the said premises are free from all encumbrances and charges whatsoever and that I and my aforewritten shall and will always warrant and defend the said premises and every part thereof unto the said vendee and his aforewritten against any persons or whomsoever and further that I and our aforewritten shall and will from time to time and at all times thereafter at the request and the cost of the said vendee and his aforewritten make, do, execute or cause to be made, done and executed all such further and other acts, deeds, assurances, matters and things for the furthermore effectually or satisfactorily conveying and assuring the said premises or any part thereof as by the said vendee or his aforewritten shall or may be reasonably required or be tendered to be so made, done and executed in witness whereof I the said Wijesundera Mudiyanselage Somawathie Kumarihamy have to these presents and to two others of the same tenor and date set my hand at Kurunegala on this Twenty-first day of August, One thousand Nine hundred and Forty-four.

The Schedule above referred to :

1. All that undivided three-fourth shares of Karandekumbura of fourteen lahas of paddy sowing extent and its adjoining Karandewatta of four kurunies kurakkan sowing extent both forming one land situated at Godawita in Recopattu Korale of Dambadeni Hatpattu in the Kurunegala District, North-Western Province, and bounded on the North by Punchitana's garden, East by garden of Appuhamy and Punchihamy's field, South by field of Ranhamy and Mudalihamy, West by field and chena of Punchirala. Registered in F.173/104.

2. All that undivided three-fourth shares of Widiyawatte of about two lahas kurakkan sowing extent situated at Godawita

Exhibits.
D7
Deed of Transfer No. 2134 21.8.44.—*Continued*

aforesaid and bounded on the North by the fence of Punchirala Vedarala's garden, East by the fence of Appuhamy's garden, South by Appu's chena, and West by land of Appuhamy. Registered in F.173/105.

3. All that undivided three-fourth shares of Karandekumbura of twelve lahas of paddy sowing extent situated at Godawita aforesaid and bounded on the North by Appuhamy's field, East by limitary dam of Punchirala's field, South by Awusadahamy Aratchi's field, West by field of Awusadahamy Aratchi's and others. Registered in F.173/106.

4. All that undivided three-fourth shares of Galahitiyawa Kumbura of two pelas paddy and two lahas paddy sowing extent situated at Godawita aforesaid and bounded on the North by Appuhamy's field now belonging to Bandara Menika and others and Ukku Banda's pillewa, East by field, and Galapitiyawe Kumbura Pillewa, South by field of Appuhamy now belonging to Edward Banda Korala, and West by Reco-Ela. The above is registered with a Pillewa of three seers kurakkan sowing in F.173/107.

5. All that undivided three-eighth shares of Galahitiyawa Kumbura Pillewa of three seers kurakkan sowing extent situated at Godawita aforesaid and bounded on the North by garden of Punchi Banda and others, East by Indigollewatta of Mr. Ekanayake of Diulapitiya, South by Galahitiyawe Kumbure Pillewa, and West by Galhitiyawa Kumbura. The above is registered with Galahitiyawa Kumbura. The fourth lands above in F.173/107.

6. All that undivided three-fourth shares of Galahitiyawe Kumbura of two pelas paddy sowing extent situated at Godawita aforesaid and bounded on the North by Appuhamy's field and Ranhamy Vidane's Pillewa. Presently by Galahitiyawe Kumbura belonging to Edward Banda Korala, East by Galahitiyawe Kumbure Pillewa of one laha kurrakan sowing, South by Appuhamy's hena and limitary dam of Ranhamy's fields. Presently by the field of Dingiri Banda, West by Reco-Ela. The above is registered with a Pillewa of one laha kurakkan sowing in F.173/108.

7. All that three-eighth shares of Galahitiyawe Kumbure Pillewa of one laha kurakkan sowing extent situated at Godawita aforesaid and bounded on the North by the Pillewa of Edward Banda Korala, East and South by Indigallawatta of Mr. Ekanayake of Diulapitiya, West by Galahitiyawe Kumbure. The above is registered with Galahitiyawe Kumbura the 6th land above in F.173/108.

8. All that undivided three-fourth shares of Karandehena of two acres one rood and twelve perches (2a. 1r. 12p.) in extent situated at Godawita aforesaid and bounded on the North by Lot 88 and 99

in P.P. 1489, East by Lot 103 and 88 in P.P. 1489, South by Lot 102, P.P. 1489, West by Lot 101 and 88 in P.P. 1489. Registered in F.130/163.

9. All that undivided three-fourth shares of Pallekarandehena of two acres one rood and nineteen perches (2a. 1r. 19p.) in extent situated at Godawita aforesaid and bounded on the North by Lot 88 in P.P. 1489, East by Lot 102 in P.P. 1489 and T.P. 306691, South by Lot 109 in P.P. 1489, West by Lot 109 in P.P. 1489 and Reco-Ela. Registered in F.177/34.

( )

Signed in the presence of us : (Sgd.) Left thumb impression of

1. (Signed) Illegibly in English. SOMAWATHIE.

2. (Signed) Illegibly in English.

(Sgd.) R. E. de S. JAYASUNDERA,
Notary Public.

I, Royston Edmond de Silva Jayasundera, Kurunegala, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the withinnamed Wijesundera Mudiyanselage Somawathie Kumarihamy who has signed with her left thumb impression and is known to me in the presence of Pathiege Louis Perera and Geekiyanage Don Piyasena, both of Esplanade Street, Kurunegala, who have signed illegibly in English characters the subscribing witnesses hereto both of whom are not known to me the same was signed by the said executant by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Kurunegala on this Twenty-first day of August, One thousand Ninehundred and Forty-four. I further certify and attest that the duplicate of this instrument bears ten stamps of Rs. 87/- and the original a stamp of Re. 1/- which were supplied by me and that the consideration was set off in full settlement of the claim due to vendee's wife, Ran Menika Kumarihamy, from the said vendor upon mortgage Bond No. 501, dated 22nd February, 1934, attested by S. A. Yatawara, Notary Public. That both in the duplicate and original of page 1 in line 4 " S " in " vendors " erased in line 5 " I " typed over and an erasure in line 6 " am " over typed and in the same line " S " in " owners " and " Proprietors " erased in lines 9 and 15 " I " typed over an erasure of page 2 in line 2 " me " in line 4 " I " in line 12 " me " in line 17 " myself " and " my " in line 20 " me " and " I " in lines 24 and 27 " I " and " my " of page 3 in line 4 " I " in line 7 " my " and in the same line " D " in " hand " were typed over an

Exhibits.
D7
Deed of Transfer No. 2134 21.8.44—
Continued

erasures only in the original of page 1 in line 1 " we " erased in the duplicate of page 1 in line 7 " lands and " deleted of page 3 in line 22 " aforesaid " interpolation in line 41 " undivided " interpolated and of page 4 in line 16 " twelve " typed over an erasure in line 17 " 12P " typed over an erasure and in lines 18 and 99 interpolated before the deed was so explained.

Date of attestation : (Sgd.) R. E. de S. JAYASUNDERA,
21st August, 1944. *Notary Public.*
Seal.

I, W. A. Nelson, Acting Registrar of Lands, Kurunegala, do hereby certify that the foregoing is a true copy of a deed of transfer made from the duplicate filed of record in this office and the same is granted on the application of Mr. T. B. Herath of Kurunegala.

Land Registry, (Sgd.).....
Kurunegala, 16.9.1952. *Acting Registrar of Lands.*

P3
Affidavit of Bandara Menika filed in D.C. Kurunegala Case No. 3714 11.6.29

P3.

Affidavit of Bandara Menika Filed in D.C., Kurunegala, Case No. 3714

IN THE DISTRICT COURT OF KURUNEGALA

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda ex-Korala of Nakolagamuwa in Tiragandahe Korale .....*Deceased.*

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale .....*Petitioner*

vs.

No. 3714.

1. Wijesundera Mudiyanselage Somawathie Kumarihamy,
2. Wijesundera Mudiyanselage Appuhamy, both of Nakalagamuwa aforesaid.....
.....*Respondents.*

I, Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale not being a Christian do solemnly truly and sincerely declare and affirm as follows :—

1. That the late Herath Mudiyanselage Edward Banda ex-Korala of Nakolagamuwa was my husband.

2. That the said Edward Banda ex-Korala died intestate on or about the 3rd day of March, 1929, at Nakolagamuwa, within the jurisdiction of this Court leaving as heirs myself his widow and the 1st respondent who is the adopted child of the said deceased.

Exhibits.

P3
Affidavit of Bandara Menika filed in D.C. Kurunegala Case No. 3714 11.6.29—*Continued*

3. That the said deceased has left property within the jurisdiction of this Court the nature and value whereof appear in the schedule which will be filed in the Testamentary case.

4. That for the purpose of testamentary proceedings it is necessary to appoint a fit and proper person guardian over the 1st minor respondent.

5. That the above-named 2nd respondent who is the father of the said minor respondent is a fit and proper person to be appointed, her guardian.

Affirmed to at Kurunegala on this 11th day of June, 1929.

(Sgd.) C. COOMARASWAMY, *D.J.* (Sgd.) BANDARA MENIKA, *Affirmant.*

Explained by me. (Sgd.) Illegibly,
Interpreter Mudaliyar.

True copy of affidavit dated 11.6.1929 filed in D.C., Kurunegala Testamentary Case No. 3714.

15.5.51. (Sgd.).....
Secretary, D.C., Kurunegala.

P4.

P4
Affidavit of Bandara Menika filed in D.C. Kurunagala Case No. 3714 8.7.29

Affidavit of Bandara Menika Filed in D.C., Kurunegala, Case No. 3714

IN THE DISTRICT COURT OF KURUNEGALA

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda ex-Korala of Nakolagamuwa in Tiragandahe Korale..... *Deceased.*

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale.....*Petitioner.*

No. 3714.

1. Wijesundera Mudiyanselage Somawathie Kumarihamy.

2. Wijesundera Mudiyanselage Appuhamy both of Nakolagamuwa in Tiragandahe Korale .....*Respondents.*

I, Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale not being a Christian, do solemnly truly and sincerely declare and affirm as follows :—

1. That the late Herath Mudiyanselage Edward Banda ex-Korala of Nakolagamuwa was my husband.

Exhibits.
P4
Affidavit of Bandara Menika filed in D.C. Kurunegala Case No. 3714 8.7.29—*Continued*

2. That the said Edward Banda ex-Korala died intestate on or about the 3rd day of March, 1929, at Nakolagamuwa within the jurisdiction of this Court leaving as heirs myself his widow and the 1st respondent who is the adopted child of the said deceased.

3. That the said deceased has left property within the jurisdiction of this Court the nature and value whereof appear in the schedule hereto annexed " A."

4. That for the purpose of testamentary proceedings it is necessary to appoint a fit and proper person guardian over the 1st minor respondent.

5. That the above-named 2nd respondent who is the father of the said minor respondent is a fit and proper person to be appointed her guardian.

6. That I claim to have Letters of Administration of the intestate estate of the said deceased issued to me as his widow.

(Sgd.) BANDARA MENIKA.

Affirmed to at Kurunegale, on this 8th day of July, 1929, before me:

(Sgd.) P. A. C. EKNELIGODA,
J.P.

True copy of affidavit dated 8th July, 1929, filed in D.C., Kurunegala Testamentary Case No. 3714.

(Sgd.) .....
15.5.51. *Secretary, D.C., Kurunegala.*

P28
Declaration Under Estate Duty Ordinance filed in D.C. Kurunagala Case No. 3714 8.7.29

P28.

Declaration under Estate Duty Ordinance Filed in D.C., Kurunegala, Case No. 3714.

Estate No. 18326.

" The Estate Duty Ordinance, No. 8 of 1919."

Form A—Declaration and Statement of Property for the Commissioner of Stamps prescribed under Rule 3, *Section* 21, *of Ordinance No.* 8 *of* 1919.

Name and address of accountable parties and for Proctor where notice may be served.	C/o M. B. WANDURAGALA, Esq., *Proctor, S.C., & N.P., Kurunegala.*

Exhibits.

P28
Declaration Under Estate Duty Ordinance filed in D.C. Kurunegala Case No. 3714 8.7.29—
Continued

District Court of Kurunegala.

Testamentary Case No. 3714.

In the estate of Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa, in Tiragandahe Korale.

I, Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale being the executor, administrator do solemnly sincerely and truly declare and affirm as follows :—

The Statement A hereto annexed is a full and true statement of all the property in respect of which duty has, subject to the proper deductions, become payable on the death of the abovenamed Edward Banda, ex-Korala of Nakolagamuwa, who died on the 3rd day of March, 1929, at Nakolagamuwa, domiciled in Nakolagamuwa.

The deceased left no will.

The Statement B hereto annexed is a true statement of the deceased's funeral expenses ; and of the debts or encumbrances incurred or created by him *bona fide* for full consideration in money or moneys worth wholly for the deceased's own use and benefit, which debts were due from the deceased at the time of his death, without any right of reimbursement from any other estate or person.

The valuation set out opposite to the several items in Statement A fully and fairly represent to the best of my knowledge information and belief the values of the said items respectively at the date of the death of the deceased and aggregates R.s. 129,918·09.

The aggregate amount of the deductions as shown in the Statement B is Rs. 500/- to the best of my knowledge, information and belief.

I have truly and faithfully made answer to the questions in Statement D.

Declared by the abovenamed at Kurunegala, this 8th day of July, 1929, before me :

(Sgd.) (in Sinhalese).

(Sgd.) P. A. C. EKNELIGODA.

True extract from Declaration filed in D.C., Kurunegala, Testamentary Case No. 3714.

(Sgd.).....

Secretary, D.C., Kurunegala.

Exhibits.
P5
Petition of Bandara Menika filed in D.C. Kurunagala Case No. 3714 9.7.29

P5.

Petition of Bandara Menika Filed in D.C., Kurunegala,

Case No. 3714.

IN THE DISTRICT COURT OF KURUNEGALA.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa in Tiragandahe Korale..... *Deceased.*

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale..... *Petitioner*

vs.

1. Wijesundera Mudiyanselage Somawathie Kumarihamy,
2. Ditto Appuhamy,
3. Narayana Mudiyanselage Kumarihamy, all of Nakolagamuwa,
4. Ditto Ran Menika Kumarihamy of Ambahera in Recopattu Korale..... *Respondents.*

This 9th day of July, 1929.

The petition of the abovenamed petitioner appearing by Malala Banda Wanduragala, his proctor, states as follows :—

1. That the late Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa, was the husband of the petitioner abovenamed.

2. That the said Edward Banda, ex-Korala, died intestate on or about the 3rd day of March, 1929, at Nakolagamuwa, within the jurisdiction of this Court leaving as heirs the petitioner, his widow and the 1st respondent who is the adopted child of the said deceased but as to whose adoption the petitioner is unaware whether it is in accordance with the requirements of the Kandyan law for the purpose of inheritance.

3. The 3rd and 4th respondents, the children of Edward Banda, ex-Korala's sister, are made parties to this case as they claim an interest in the estate.

4. That the said deceased has left property within the jurisdiction of this Court the nature and value whereof appear in the schedule hereto annexed marked " A."

5. That the petitioner claims to have Letters of Administration of the intestate estate of the said deceased issued to the petitioner as his widow.

Exhibits.
P5
Petition of Bandara Menika filed in D.C. Kurunegala Case No. 3714 9.7.29 — *Continued*

Wherefore the petitioner submitting an affidavit in support of the above facts prays for an order declaring that she be appointed Administratrix over the estate of the said deceased and that Letters of Administration do issue to her accordingly, for costs and for such other and further relief as to this Court shall deem meet.

(Sgd.) M. B. WANDURAGALA,
Proctor for Petitioner.

True copy of petition dated 9.7.1929, filed in D.C., Kurunegala. Testamentary Case No. 3714.

(Sgd.).....
Secretary, D.C., Kurunegala.

15.5.51.

P5(*a*)

P5(*a*)
Petition of Bandara Menika filed in D.C. Kurunegala Case No. 3714 9.7.29

Petition of Bandara Menika Filed in D.C., Kurunegala, Case No. 3714.

IN THE DISTRICT COURT OF KURUNEGALA.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa in Tiragandahe Korale.....*Deceased.*

Testamentary No. 3714.

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale.....*Petitioner*

vs.

1. Wijesundara Mudiyanselage Somawathie Kumarihamy,
2. Ditto Appuhamy both of Nakolagamuwa in Tiragandahe Korale ..... *Respondents.*

This 9th day of July, 1929.

The petition of the abovenamed petitioner appearing by Malala Banda Wanduragala, her proctor, states as follows :—

1. That the late Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa, was the husband of the petitioner abovenamed.

2. That the said Edward Banda, ex-Korala, died intestate on or about the 3rd day of March, 1929, at Nakolagamuwa, within the jurisdiction of this Court leaving as heirs the petitioner, his widow, and the 1st respondent, who is the adopted child of the said deceased.

Exhibits.

P5(*a*) Petition of Bandara Menika filed in D.C. Kurunegala Case No. 3714 9.7.29— *Continued*

3. That the said deceased has left property within the jurisdiction of this Court the nature and value whereof appear in the schedule hereto annexed marked " A."

4. That for the purpose of testamentary proceedings it is necessary to appoint a fit and proper person guardian over the said 1st minor respondent.

5. That the abovenamed 2nd respondent who is the father of the said minor respondent is a fit and proper person to be appointed her guardian.

Wherefore the petitioner submitting an affidavit in support of the above facts prays that an *order nisi* be entered appointing the 2nd respondent guardian over the 1st minor respondent for the purpose of Testamentary proceedings for costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) M. B. WANDURAGALA,
Proctor for Petitioner.

True copy of petition dated 9.7.1929, filed in D.C., Kurunegala, Testamentary Case No. 3714.

(Sgd.).....
Secretary, D.C., Kurunegala.

22.10.52.

D28 Statement of the 3rd and 4th Respondents in D.C. Kurunegala Case No. 3714 1.10.29

D28.

Statement of the 3rd and 4th Respondents in D.C., Kurunegala, Case No. 3714.

IN THE DISTRICT COURT OF KURUNEGALA.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda, Korala of Nakclagamuwa, in Tiragandahe Korale .....*Deceased.*

Testamentary Jurisdiction No. 3714.

(Dead) Bandara Menika of Nakolagamuwa.....*Petitioner.*

3. Narayana Mudiyanselage Kumarihamy,

4. Ditto Ran Menika Kumarihamy of Ambahera and others
.....*Respondents.*

The 1st day of October, 1929.

The statement of the 3rd and 4th respondents abovenamed appearing by V. I. V. Gomis, their proctor, states as follows :—

1. The 3rd and 4th respondents admit the claim of the petitioner to Letters of Administration as widow of the deceased but they claim to be the sole heirs at law of the deceased and as such entitle to his estate. In particular they deny the claim to any share or interest in this estate of the 1st and 2nd respondents.

Exhibits.
D28
Statement of the 3rd and 4th Respondents in D.C. Kurunegala Case No. 3714
1.10.29—
Continued

Wherefore the 3rd and 4th respondents pray that they may be declared the sole heirs of above estate.

(2) For costs of suit ; and

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

(Sgd.) V. I. V. GOMIS,
Proctor for 3rd and 4th Respondents.

P26

Security Bond Filed in D.C., Kurunegala, Case No. 3714

P26
Security Bond filed in D.C. Kurunegala Case No. 3714
14.2.30

Security Bond by Administrator

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary Jurisdiction No. 3714.

In the matter of the property and estate rights and credits of the late Herath Mudiyanselage Edward Banda ex-Korala of Nakolagamuwa.

Know all men by these Presents that we Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa as Principal and Mape Mudiyanselage Kiri Banda ex-Arachchi of Torawatura and Jayasundara Mudiyanselage Ukku Banda of Nakolagamuwa as sureties are held and firmly bound unto Mr. B. Emmanuel, Secretary of the District Court of Kurunegala or to the Secretary of that Court for the time being the said sum of Rs. 30,000/-, viz. Rs. 23,000/- being half share of the movable property by me the said principal and Rs. 7,000/- by us the said sureties for which payment well and truly to be made to the said Mr. B. Emmanuel, Secretary of the District Court of Kurunegala or to the said Secretary for the time being we and each of us do hereby bind ourselves, our Heirs, Executors and Administrators firmly by these Presents hereby renouncing the benefits to which we as sureties are by law entitled.

Whereas by order of this Court of the 20th day of December, 1929, it is ordered that Letters of Administration of the property and

Exhibits.
P26
Security Bond filed in D.C. Kurunegala Case No. 3714 14.2.30—
Continued

Estate, Rights and Credits of the said Edward Banda, ex-Korala, be granted to the said Bandara Menika on his giving security for the due administration there. And whereas the estate of the said deceased has been appraised and valued at the sum of Rupees One Hundred and twenty-nine thousand four hundred and eighteen and cents nine (Rs. 129,418·09).

Now the condition of this Obligation is, that if the above bounden Bandara Menika do render into this Court a true and perfect Inventory of all the property and estate rights and credits of the said deceased which have or shall come to the possession or knowledge of the said Bandara Menika or of any other person for him on or before the 16th day of May, 1930, and shall well and truly administer the same according to law ; and further shall render to this Court a true and just account of his said administration on or before the 11th day of July, 1930, and shall deliver and pay over the rest and residue of the said property and estate rights and credits which shall be found remaining upon the said administration to the person or persons lawfully entitled to the same ; then this obligation to be void and of none effect, otherwise to remain in full force.

Signed, sealed and delivered in Court this 14th day of February, 1930, before me.

Explained by

(Sgd.) C. COOMARASWAMY,
District Judge.

(Sgd.) S. D. MUTUCUMARANA,
Interpreter Mudaliyar.

(Sgd.) 1. (In Sinhalese)

2. ,,

3. ,,

Explained by

(Sgd.) S. D. MUTUCUMARANA,
Interpreter Mudaliyar.

True copy of Security Bond filed in D.C. Kurunegala Testamentary Case No. 3714.

(Sgd.).....
Secretary, D.C., Kurunegala.

4th September, 1952.

P8.

Exhibits.
P8
Inventory filed in D.C. Kurunegala Case No. 3714 27.6.30

Inventory Filed in D.C., Kurunegala, Case No. 3714.

Inventory.

IN THE DISTRICT COURT OF KURUNEGALA

In the matter of the intestate of the late Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa .....*Deceased.*

Kind of Property

Lands at Nakolagamuwa in Tiragandahe Korale

			Value Rs.	Cts.
1.	Hitinawatta of 3 lahas kurakkan sowing with the building.. ..		1,500	00
2.	Habawela *alias* Ihalawela of 12 lahas paddy sowing extent ..		350	00
3.	Peelagahawatta of about 30 acres in extent		29,775	00
4.	Habawelawatta of about 2 lahas kurakkan sowing extent .. .		750	00
5.	Lindakumbura of 5 pelas paddy sowing extent		1,500	00
6.	1/2 share of Degalehena of 3 lahas kurakkan sowing .. .		500	00
7.	Bulugahamulahena of 2 lahas kurakkan sowing extent		600	00
8.	3/4 share of Hitinawatta of 3 seers kurakkan sowing extent ..		100	00
9.	Ratmalagahamulahena of 3 lahas kurakkan sowing extent.. ..		25	00
10.	1/2 share of Gangoda Aramba of 1 laha kurakkan sowing		150	00
11.	Ruppewatta of 1 laha kurakkan sowing extent..		250	00
12.	Ruppepahalawatta of 1 seer kurakkan sowing extent		250	00
13.	1/2 share of Rasakonehena of 2 lahas kurakkan sowing		100	00
14.	Gangodahena of 1 laha kurakkan sowing extent		100	00
15.	Gangodahena of 1 laha kurakkan sowing extent		100	00
16.	Nilehena of 2 seers kurakkan sowing extent		50	00
17.	1/2 share of Talegodewatta of 1 laha kurakkan sowing		250	00
18.	Talegodehengahamulahena of 1 seer kurakkan sowing . ..		200	00
19.	Talegodehena of 3 seers kurakkan sowing extent		600	00
20.	Bogahapitiyekumbura of 12 lahas paddy sowing extent		300	00
21.	Bogahapitiyekumbura now garden of 1/2 a seer kurakkan		120	00
22.	Galahitiyawakumbura of 1 amunam paddy sowing extent		1,200	00
23.	Asseddumegodakumbura and its adjoining Bogahamulapillewa now field of 12 lahas paddy sowing extent		400	00
24.	4/5 share Pothulekumbura of 3 pelas paddy sowing		300	00
25.	Pothulekumbura of 2 pelas paddy sowing extent		250	00

Exhibits.

P8
Inventory filed in D.C. Kurunegala Case No. 3714 27.6.30.—*Continued*

		Value Rs.	Cts.
26.	Talgodenilehena of 2 seers kurakkan sowing extent	50	00
27.	Potuwekumbura of 3 pelas paddy and its adjoining pillewa of one seer kurakkan sowing extent	925	00
28.	Kotanawekumbura of 3 pelas paddy sowing extent	900	00
29.	Godapitiyekumbura of 1 amunam paddy sowing extent	1,000	00
30.	1/2 share of Medatawelakumbura of 8 lahas paddy sowing ..	120	00
31.	1/4 share of Hitinawatta of 3 seers kurakkan sowing	25	00
32.	Usgalemaragahamulahena of 6 seers kurakkan sowing	1,000	00
33.	3/4 share of kotuwekumbura Pitanganekahatagamulahena now garden of 2 lahas kurakkan sowing extent	500	00
34.	Bulukumburewatta of about 10 acres in extent together with the building thereon	15,000	00
35.	Bulukumbura of 2 amunams paddy sowing extent	2,800	00
36.	Angonuwawekumbura of 15 lahas paddy sowing extent	450	00
37.	Bulukumburegoda of 12 lahas paddy sowing extent	250	00
38.	Kotuwekumbura and Godakumbura of 5 lahas paddy sowing ..	1,250	00
39.	Andiyagodawatta of about 3 lahas kurakkan sowing extent ..	2,000	00
40.	Meddegodakumbura and its adjoining Wepelakumbura of two pelas paddy sowing extent	545	00
41.	Welikumbura of one amunam paddy sowing and its adjoining pillewa of 3 seers kurakkan sowing extent	850	00
42.	Welikumbura and Nilekumbura of 2 pelas paddy sowing	450	00
43.	Hittaragewela of 8 lahas paddy sowing extent	55	00
44.	Akuranawela of 3 pelas and 8 lahas paddy sowing extent	1,150	00
45.	Akuranawelawatta of 2 seers kurakkan sowing extent	350	00
46.	Akauranawela of 16 lahas paddy sowing extent	450	00
47.	1/10 share of Kongahamulahena of 2 seers kurakkan sowing ..	10	00
48.	1/10 share of Imbulgahamulahena of 1½ seers kurakkan	25	00
49.	2/3 share of Dewatagawawatta *alias* Hitinawatta of 3 seers kurakkan sowing extent	300	00
50.	1/2 share of Hitinawatta of 2 seers kurakkan sowing	30	00
51.	Migahamulahena of 2 seers kurakkan sowing extent	200	00
52.	Galagawahena of 2 lahas kurakkan sowing	50	00
53.	Bakmigahamulahena of 1 laha kurakkan sowing	25	00

Lands at Torawatura in Tiragandahe Korale

54.	Dehiyagahakumbura Pillewa now garden of 3 seers kurakkan ..	600	00
55.	Mahakumbura of 1½ amunams paddy sowing extent and its adjoining Wagollehena now garden of 3 lahas kurakkan	2,800	00
56.	Dehiyagahakotuwewatta of 1 timba kurakkan sowing extent ..	1,000	00

			Value Rs.	Cts.	Exhibits.
					P8 Inventory filed in D.C. Kurunegala Case No. 3714 27.6.30.— *Continued*
	57.	Dehiyagahakumbura of 3 pelas paddy sowing extent	1,000	00	
	58.	Dehiyagahakumbura of 2 pelas and 5 lahas paddy sowing	750	00	
	59.	Matayawegodakumbura of 1 pela paddy sowing extent	300	00	
	60.	Migahamulawatta of 1 seer kurakkan sowing extent	200	00	
	61.	3/5 share of Hitinawatta of 6 lahas kurakkan sowing	2,250	00	
		Lands at Olupeliyawa in Tiragandahe Korale			
10	62.	Kumbukgetekumbura puranpela being lot A in extent 1R and 11P together with the building thereon	9,500	00	
	63.	The divided southern portion of Medakumbura now garden of 1 pela paddy sowing extent together with the building	4,000	00	
	64.	The southern portion of Medakumburewetiya *alias* Malpitiyewatta of 1R. 29P. in extent together with the building thereon	3,000	00	
		Lands at Godawita in Recopattu Korale			
	65.	Karandawatta, Weediyawatta, Pallekarendehena, Karandehena all forming one property called Kambarewatta of about 11 acres in extent	4,430	00	
	66.	Karandakumbura of 14 lahas paddy sowing extent	350	00	
20	67.	Karandakumbura of 12 lahas paddy sowing extent	300	00	
	68.	Galahitiyawekumbura of 2 pelas and 2 lahas paddy sowing extent and 1/2 share of its adjoining pillewa of 3 seers kurakkan sowing extent..	588	00	
	69.	Galahitiyawekumbura of 2 pelas paddy sowing extent and 1/2 share of its adjoining pillewa of 1 laha kurakkan sowing extent	550	00	
	70.	The western portion of Galahitiyawahena of 2 roods	50	00	
	71.	1/3 share of Kamatagawa Kahatagahamulawatta of 2 lahas kurakkan sowing	125	00	
		Lands at Kanumale in Recopattu Korale			
30	72.	An undivided 1/3 share from and out of an undivided 2/3 share of Oyagawawatta of about 4 lahas kurakkan sowing extent ..	415	00	
		Lands at Kumbalpola in Tiragandahe Korale			
	73.	1/3 share of Godaliyaddakumbura of 15 lahas paddy . ..	100	00	
		Lands at Wanduragala in Tiragandahe Korale			
	74.	Godaweepela of 1 pela paddy sowing extent	200	00	
	75.	Medaweepelakumbura of 2 pelas paddy sowing extent	500	00	
	76.	Cetekumbura of 2 pelas paddy sowing extent	500	00	
		Lands at Mepegamuwa in Kudagalboda Korale			
	77.	Kumbahitiyawekumbura of 3 pelas paddy sowing extent	450	00	
	78.	Wewakumbura of 1 amunam paddy sowing extent	500	00	
40	79.	Dehigomuralagekumbura *alias* Ambalamagahakumbura of 15 lahas paddy sowing extent	170	00	

Exhibits.

P8
Inventory filed in D.C. Kurunegala Case No. 3714 27.6.30.—*Continued*

		Value Rs.	Cts.
80.	Pahalakumbehitiyawekumbura of 9 lahas paddy sowing	75	00
81.	1/2 share of Pelapolwatta of about 1 laha kurakkan sowing ..	125	00
82.	Minipitiyehena *alias* Alutwewa of about 5 acres	250	00
83.	Kongahamulahena of 19A. 1R. 16P. in extent	5,000	00
84.	Thawallakumbura of 7 lahas paddy sowing extent	35	00
	Lands at Kidapola in Kudagalboda Korale		
85.	Kongahamulahena of 1A. 2R. 35P. in extent	50	00
86.	Mawatehena of about 3 lahas kurakkan sowing extent	150	00
87.	Dangahamulahena of about 2 seers kurakkan sowing	10	00
88.	1/2 share of Mawatehena of about 2 lahas kurakkan sowing ..	50	00
	Lands at Nelawa		
89.	Batapothamullekumbura of 16 lahas paddy sowing extent.. ..	400	00
	Lands at Mapegamuwa in Kudagalboda Korale		
90.	Homkombawawatte of about 10 acres in extent	4,000	00
	Lands Nos. 1, 8, 31 and 50 increased by official valuation	1,345	00
	Lands Nos. 24 and 25 increased by official valuation	700	00
	Lands Nos. 34 and 39 increased by official valuation	1,500	00
	Movable Property		
91.	One elephant	4,000	00
92.	Two benches..	2	00
93.	One easy chair	2	00
94.	Three chairs	3	00
95.	Two almirahs	40	00
96.	Three tables	9	00
97.	One pigeon hole	4	00
98.	One camp bed	1	00
99.	One wooden box (big size)	2	50
100.	Sawn rafters	15	00
101.	Two barns	20	00
102.	One barn (big size)	50	00
103.	Ten amunams paddy	125	00
104.	One double bullock cart	50	00
105.	One buggy cart	10	00
106.	Five buffaloes	75	00
107.	Thirteen bulls and cows	200	00
108.	One waist chain	50	00
109.	One spittoon	2	50
110.	Thirty thetties	15	00

		Value Rs.	Cts.	Exhibits.
				P8 Inventory filed in D.C. Kurunegala Case No. 3714 27.6.30.— *Continued*
111.	Two betel trays	5	00	
112.	Three coconut oil lamps..	12	00	
113.	Twenty chembus	10	00	
114.	Cash	800	00	
	Household furniture and cattle increased by official valuation ..	25	00	
	Debts Due to Deceased			
115.	Usufructuary Mortgage Bond No. 37020 dated 29th May, 1908, from Jayasundera Mudiyanselage Ukkurala of Nakolagamuwa ..	100	00	
116.	Usufructuary Mortgage Bond No. 4136 dated 20th February, 1914, from T. M. Banda of Nakolagamuwa	130	00	
117.	Mortgage Bond No. 44925 of 10th March, 1922, from W. P. M. Horatala of Messagammana	250	00	
118.	Mortgage Bond No. 44586 dated 18th June, 1921, from Kirihonda and Naide of Indulgodakanda	130	00	
	Recoverable interest thereon at the rate of 20 cents per Rs. 10/- per mensem from date of bond to date of death	130	00	
119.	Mortgage Bond No. 4577 of 10th August, 1914, from Elandi, Tikka and Horatala of Talampitiya	55	00	
	Balance interest at the rate of 8½ bushels of paddy from 10th August, 1914, to date of death	53	00	
120.	Mortgage Bond No. 43483 dated 24th April, 1919, from Hetuhamy Vidane and Dingiri Banda of Nakolagamuwa. Interest paid to deceased annually	120	00	
121.	Mortgage Bond No. 50971 of 7th December, 1925, from M. M. Ukku Banda Aratchila of Maditiyawala	150	00	
	Interest at 15 cents per Rs. 10/- per mensem from date of bond ..	87	50	
122.	Usufructuary Mortgage Bond No. 42830 of 26th November, 1917 ..	150	00	
123.	Mortgage Bond No. 53642 of 8th March, 1928, from M. M. Ukku Banda Aratchi of Maditiyawala	350	00	
	Interest at 15½ cts. per Rs. 10/- per mensem from date of bond to date of death	65	16	
124.	Mortgage Bond No. 54352 of 19th November, 1928, from J. M. Banda of Kadurukumbura	400	00	
	Interest at 25 cts. per Rs. 10/- per mensem from date of bond to date of death	35	00	
125.	Mortgage Bond No. 54258 of 23rd October, 1928, from Kiri Menika, Punchi Banda and Kirihamy of Bamunawala Interest paid quarterly	800	00	
126.	Mortgage Bond No. 54538 of 28th February, 1929, of Dingiriya of Walpolakanda	700	00	
127.	Interest at 25 cts. per Rs. 10/- per mensem from date of bond to date of death	2	91	

Exhibits.

P8
Inventory filed in D.C. Kurunegala Case No. 3714 27.6.30.—*Continued*

		Value Rs.	Cts.
127.	Usufructuary Mortgage Bond No. 53970 of 10th July, 1928, from Ran Menika of Mapegomuwa	60	00
128.	Mortgage Bond No. 54300 of 2nd November, 1928, from Punchi Ridi and Rana of Gammana	600	00
	Interest at the rate of 25 cts. per Rs. 10/- per mensem from date of bond to date of death	60	00
129.	Mortgage Bond No. 53881 of 18th June, 1928, from Kalu Banda of Maditiyawala	150	00
	Interest at the rate of 20 cts. per Rs. 10/- per mensem from date of bond to date of death	25	00
130.	Mortgage Bond No. 54185 of 11th Spetember, 1928, from Tikiri Banda of Meditiyawala	100	00
	Interest at 20 cts. per Rs. 10/- per mensem from date of bond to date of death	10	00
131.	Mortgage Bond No. 53880 of 18th June, 1928, from Don Brampi Perera Appuhamy and his wife Victoriahamy of Weuda	300	00
	Interest at 20 cts. per Rs. 10/- per mensem from date of bond to date of death	57	00
132.	Usufructuary Mortgage Bond No. 53971 of 10th July, 1928, from Naide of Tiragama	120	00
133.	Usufructuary Mortgage Bond No. 37316 of 22nd August, 1928, from Kaithan Perera Appuhamy *alias* Kaithan Perera Appuhamy of Malpitiya	1,000	00
134.	Usufructuary Mortgage Bond No. 38171 of 7th February, 1929, from Kawwa of Tiragama	120	00
135.	Usufructuary Mortgage Bond No. 2328 of 18th September, 1923, from Tikiri Banda of Nakolagamuwa	100	00
136.	Mortgage Bond No. 53822 of 5th June, 1928, from Wijesundera Banda, Katupitiya Aratchi and Nanduwa Veda *alias* Nanda Veda of Belgodakanda	600	00
	Interest at 18 cts. at Rs. 10/- per mensem from date of bond to date of death	97	20
137.	Balance Principal on Mortgage Bond No. 49332 of 28th August, 1924, from U.B. Ambahera of Ambahera	9,330	00
	Balance interest at 12 per cent. per annum from date of bond to date of death	4,368	75
138.	Mortgage Bond No. 6094 of 23rd February, 1929, from David Singho of Koralagedera	100	00
	Interest at 25 cts. per Rs. 10/- per annum from date of bond to date of death	1	83

		Value Rs.	Cts.	Exhibits.
				P8 Inventory filed in D.C. Kurunegala Case No. 3714 27.6.30.— *Continued*
139.	Usufructuary Mortgage Bond No. 4015 of 5th June, 1920. from Punchirala, Punchi Banda, Kiri Banda, Mudiyanse, Appuhamy and Malhamy of Nakolagamuwa	155	00	
140.	Mortgage Bond No. 54435 of 11th December, 1928. from Nanhonda of Werawella	250	00	
141.	Interest at 25 cts. per Rs. 10/- per mensem from date of bond to date of death	17	08	
141.	Mortgage Bond No. 27327 of 9th June, 1920, from Salatial ex-Mahaduraya of Talampitiya Kuranpola	700	00	
	Recoverable interest at 15 cts. per Rs. 10/- per mensem from date of bond to date of death	700	00	
142.	Usufructuary Mortgage Bond No. 35697 of 1st August, 1927. from Bandirala of Nakolagamuwa	80	00	
143.	Mortgage Bond No. 38168 of 7th February. 1929. from Mohammadu Lebbe of Nelawa. Interest paid to deceased	—		
144.	Usufructuary Mortgage Bond No. 37482 of 28th September, 1928. from Punchirala and Ranmalhamy of Nakolagamuwa	80	00	
145.	Mortgage Bond No. 54000 of 16th July, 1928. from Kira Veda of Nailiya.	125	00	
	Interest at 25 cts. per Rs. 10/- per mensem from date of bond to date of death	23	00	
146.	Usufructuary Mortgage Bond No. 40832 of 9th January, 1919, from Ran Menika of Mohottawa	300	00	
147.	Mortgage Bond No. 53735 of 23rd April, 1929, from Dingiri Banda ex-Aratchi of Dorataiyawa	250	00	
	Interest at 15 cts. per Rs. 10/- per mensem from date of bond to date of death	38	75	
148.	Usufructuary Mortgage Bond No. 43484 of 24th April, 1919, from Ran Menika and Punchi Banda of Nakolagamuwa	120	00	
149.	Mortgage Bond No. 30666 of 17th November, 1921, from Ausadahamy of Bambaragahapelessa	600	00	
	Recoverable interest at 15 cts. per Rs. 10/- from date of bond to date of death	600	00	
150.	Mortgage Bond No. 7362 of 9th August, 1923, from Lassama of Indulgoda..	300	00	
	Recoverable interest at 15 cts. per Rs. 10/- per mensem from date of bond to date of death	300	00	
151.	Mortgage Bond No. 48006 of 10th July, 1928, from Horatala and Pools of Nailiya	100	00	
	Interest at 25 cts. per Rs. 10/- per mensem from date of bond to date of death	20	00	
152.	Usufructuary Mortgage Bond No. 51876 of 15th November, 1926, Punchirala Ranmalhamy of Nakolagamuwa	184	00	

Exhibits.

P8
Inventory filed in D.C. Kurunegala Case No. 3714 27.6.30.—*Continued*

		Value Rs.	Cts.
153.	Mortgage Bond No. 53590 of 16th February, 1928, from Don Lassaman Appuhamy and Babun Appuhamy of Olupeliyawa	300	00
	Interest at 25 cts. per Rs. 10/- per mensem from date of bond to date of death	93	75
154.	Mortgage Bond No. 45861 of 10th November, 1921, from Livinis Perera Appuhamy and his wife Poralentina Perera Hamine of Olupeliyawa..	1,300	00
	Recoverable interest at 15 cts. per Rs. 10/- per mensem from date of bond to date of death	1,300	00
155.	Mortgage Bond No. 6097 of 23rd February, 1929, from Victoriahamy and her husband Don Brampy Perera Appuhamy	150	00
	Interest at 20 cts. per Rs. 10/- per mensem from date of bond to date of death	1	00
156.	Mortgage Bond No. 54249 of 22nd October, 1928, from Ana Sara Umma and Savul Hamidu of Bamunawale. Interest paid to deceased ..	500	00
157.	Mortgage Bond No. 541/47 of 30th August, 1928, from Punchi Duraya *alias* Sakcrabedi Dharmasena of Messagammana	500	00
	Interest at 20 cts. per Rs. 10/- per mensem from date of bond to date of death	60	00
158.	Mortgage Bond No. 53821 of 5th June, 1928, from Appuhamy of Walpolakande	600	00
	Interest at 20 cts. per Rs. 10/- per mensem from date of bond to date of death	108	00
159.	Usufructuary Mortgage Bond No. 51216 of 15th February, 1926, from Ukkuwa of Nelawa	300	00
160.	Mortgage Bond No. 44890 of 11th April, 1921, from Lassama of Indulgodakanda and Kira Velduraya of Katupitiya	500	00
	Recoverable interest at 18 cts. per Rs. 10/- per mensem from date of bond to date of death	500	00
161.	Usufructuary Mortgage Bond No. 47291 of 19th September, 1922, from Tikiri Menika of Katupitiya and Ukku Amma of Bewilgomuwa and Kiri Banda of Nakolagamuwa	350	00
162.	Assignment of Mortgage Bond No. 37483 of 28th February, 1928, from Ausadahamy of Wawalpola	425	00
	Interest from date of assignment to date of death	31	25
163.	Usufructuary Mortgage Bond No. 7431 of 7th July, 1903, from Appuhamy of Kanumala	83	00
164.	Promissory Note dated 20th September, 1928, from Punchi Banda ex-Vidane of Nakolagamuwa	50	00
	Interest at the rate of 15 cts. per Rs. 10/- per mensem from date of note to date of death	4	12
165.	Promissory Note dated 10th July, 1928, from Sasira Ganduraya of Nailiya	25	00

		Value Rs.	Cts.	Exhibits.
	Interest at the rate of 15 cts. per Rs. 10/- per mensem from date of bond to date of death	2	89	P8 Inventory filed in D.C. Kurunegala Case No. 3714 27.6.30.— *Continued*
166.	Promissory Note dated 26th March, 1928, from H. M. Punchi Banda of Nalawa	50	00	
	Interest at the rate of 18 cts. per Rs. 10/- per mensem from date of note to date of death	9	00	
167.	Promissory Note dated 5th April, 1928, from H. M. Mohammadu Saibo and I. M. M. Mohammadu Mohideen of Alpitiya	500	00	
	Interest at the rate of 12½ cts. per Rs. 10/- per mensem from date of note to date of death..	68	75	
168.	Promissory Note dated 25th February, 1926, from H. Sinna Lebbe of Nawala	10	00	
	Interest at the rate of 25 cts. per Rs. 10/- per mensem from date of note to date of death	9	00	
169.	Promissory Note dated 19th September,1927, from L. V. D. Kira of Indulgodakanda and R. D. Kira Velduraya of Katupitiya ..	100	00	
	Interest at the rate of 10 cts. per Rs. 10/- per mensem from date of bond to date of death	17	50	
170.	Promissory Note dated 9th February, 1928, from B. A. Tisera Appuhamy of Gonno and his wife Jayakody Aratchige Marihamine ..	50	00	
	Interest at the rate of 15 cts. per Rs. 10/- per mensem from date of note to date of death	9	62	
171.	Promissory Note dated 9th March, 1928, from K. D. Abdul Wahidu Marikkar of Nakolagamuwa	100	00	
	Interest at the rate of Rs. 20/- per mensem of the whole amount ..	20	00	
172.	Promissory Note dated 19th November, 1927, from K.C. Abdul Wahidu Abdul Marikkar of Nakolagamuwa	100	00	
	Interest at the rate of 10 per cent. per annum from date of note to date of death	12	50	
173.	Promissory Note dated 13th December, 1928, from T. W. M. Appuhamy of Maditiyawala	50	00	
	Interest at the rate of 15 cts. per Rs. 10/- per mensem from date of note to date of death	2	20	
174.	Promissory Note dated 19th August, 1924, from H. M. Kiri Banda and H. M. Punchi Banda of Nakolagamuwa	35	00	
	Recoverable interest at the rate of 25 cts. per Rs. 10/- per mensem from date of bond to date of death	35	00	
175.	Promissory Note dated 19th August, 1923, from E. M. Dingiri Amma of Nakolagamuwa	30	00	
	Interest at 25 cts. per Rs. 10/- per mensem from date of note to date of death	30	00	

Exhibits.

P8
Inventory filed in D.C. Kurunegala Case No. 3714 27.6.30.—*Continued*

		Value Rs.	Cts.
176.	Mortgage Bond No. 51117 dated 4th January, 1926	5,000	00
	Interest thereon at the rate of 18 per cent. per annum from date of bond to date of death	2,812	50
177.	In Ceylon Saving Bank	2,905	99
178.	In Imperial Bank of India Ltd., Colombo	944	31
	Rs.	169,913	74
	Debts Due to the Deceased		
179.	Funeral expenses	500	00
	Rs.	169,413	74

I Mohottallege *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale, not being a Christian do solemnly, truly and sincerely declare and affirm as follows :—

1. To the best of my knowledge, information and belief the above written Inventory contains a full true and correct account of all the property movable and immovable and rights and credits of the said Edward Banda ex-Korala, deceased so far as I have been able with the diligence to ascertain the same.

2. I have made a careful estimate and valuation of all the property the particulars of which are set forth and contained in the said Inventory fully and fairly represent values of the items to which they are so respectively set opposite.

Affirmed to at Kurunegala, on this 27th day of June, 1930.

(Sgd.) BANDARA MENIKA,

Before me. *Affirmant.*

(Sgd.) FRANK MARKUS,
J.P.

True copy of Inventory filed in D.C. Kurunegala Testamentary Case No. 3714.

(Sgd.) .....
Secretary, D.C., Kurunegala.

15th May, 1951.

Exhibits.
P7
Letters of Administration issued to Bandara Menika in D.C. Kurunegala Case No. 3714 25.8.30

P7

Letters of Administration issued to Bandara Menika in D.C., Kurunegala, Case No. 3714

Nett Value of Estate Rs. 170,131·24
Estate Duty Rs. 8,506·56

Letters of Administration with the Bill annexed and otherwise.

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary
Jurisdiction
No. 3714.

To Mohotallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa.

Whereas Herath Mudiyanselage Edward Banda ex-Korala of Nakolagamuwa, deceased lately departed this life without leaving any will you are therefore duly empowered and authorised by these Presents to administer and faithfully dispose of the property and estate, rights and credits of the said deceased and to demand and recover whatever debts may belong to his estate and to pay whatever debts the said deceased did owe so far as such property and estate rights and credits shall extend, you having been already affirmed well and faithfully to administer the same and to render a true and perfect Inventory of all the said property and estate, rights and credits to this Court on or before the 27th day of June, 1930, next and also a true and just account of your administration thereof on or before the 28th day of November, 1930. And you are therefore by these Presents deputed and constituted Administrator of all the property and estate, rights and credits of the said deceased.

(You are nevertheless, hereby prohibited from selling any immovable property of the estate unless you shall be specially authorised by the Court so to do.)

And it is hereby certified that the Declaration and Statement of Property under the Estate Duty Ordinance have been delivered and that the value of the said estate on which estate duty is payable as assessed by the Commissioner of Stamps amounts to Rs. 170,131·24. And it is further certified that it appears by a certificate granted by the Commissioner of Stamps and dated the 25th day of August, 1930, that Rs. 8,506·56 on account of Estate duty (and interest on such duty) has been paid.

Given under my hand and the Seal of the Court this 25th day of August, 1930.

(Sgd.) C. COOMARASWAMY,
District Judge.

Exhibits.

P7
Letters of administration issued to Bandara Menika in D.C. Kurunegala Case No. 3714 25.8.30.—*Continued*

True copy of Letters of Administration issued to the Administratrix in D.C. Kurunegala Testamentary Case No. 3714.

(Sgd.) .....

30th June, 1952. Secretary, D.C., Kurunegala.
1.7.52.

P27
Oath of Office filed in D.C. Kurunegala Case No. 3714 14.7.30

P27.

Oath of Office Filed in D.C., Kurunegala, Case No. 3714.

Executor's or Administrator's Oath of Office.

IN THE DISTRICT COURT OF KURUNEGALA.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa.

Testamentary Jurisdiction No. 3714.

You affirm that you will administer and faithfully dispose of the property and estate rights and credits of the said Edward Banda, ex-Korala, deceased, by paying the debts of the deceased as far as the property will extend and the law bind, and by demanding and recovering whatever debts may belong to his estate.

That you will exhibit into this Court a true, full and perfect Inventory of all the property movable and immovable and all the rights and credits of the deceased on or before the 16th day of May, 1930, and that you will file a true account of your administration on or before the 11th day of July, 1930.

(Sgd.) (in Sinhalese).

Affirmed before me this 14th day of July, 1930.

(Sgd.) C. COOMARASWAMY,

D.J. Explained by :

(Sgd.) S. D. MUTUCUMARANA,
Interpreter Mudaliyar.

True copy of oath of office filed in D.C., Kurunegala, Testamentary Case No. 3714.

(Sgd.).....
Secretary, D.C., Kurunegala.

4.9.52.

D29.

Proceedings of 9.9.30 in D.C., Kurunegala, Case No. 3714.

Exhibits.
D29
Proceedings of 9.9.30 in D.C. Kurunegala Case No. 3714 9.9.30

IN THE DISTRICT COURT OF KURUNEGALA.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa, in Tiragandahe Korale..... *Deceased.*

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale.....*Petitioner*

vs.

Wijesundara Mudiyanselage Somawathie Kumarihamy and three others ..... *Respondents.*

9th September, 1930.

Wijesundara Mudiyanselage Appuhamy, affirmed. I am the father of the minor, Somawathie Kumarihamy, 1st respondent. She was adopted by the deceased for purposes of inheritance. She was 18 months old when she was adopted by the deceased. There was no deed or writing. Ever since that time the 1st respondent was living with the deceased. I know that if I succeed in proving that the child was adopted she will be entitled to the whole of the immovable subject to the life interest of the widow and to half of the movables. I cannot say if I can prove the adoption.

I can prove that the child was adopted. But I am not sure of proving the adoption. I think it will be to the advantage of the minor if I settle the matter.

(Sgd.) C. COOMARASWAMY,
D.J.

Bandara Menika, affirmed. I am the widow of the deceased. The 1st respondent was brought up by my husband and by myself. My husband wanted to give the child also some property. He never wanted to give the entire property to the 1st respondent.

(Sgd.) C. COOMARASWAMY,
D.J.

The father of the minor consents to the settlement as he thinks it is to the advantage of the minor. He is not sure of proving the adoption by the deceased.

Exhibits.

D29
Proceedings of 9.9.30 in D.C. Kurunegala Case No. 3714 9.9.30.—*Continued*

Under the circumstances I think the proposed settlement may be allowed.

Let the papers of settlement be filed in the case.

(Sgd.) C. COOMARASWAMY,
D.J.

True copy of proceedings on 9th September, 1930, and order in D.C. Testamentary Case No. 3714.

(Sgd.).....
Secretary, D.C.

24.8.51.

D30
Consent Motion filed in D.C Kurunegala Case No. 3714 9.10.30

D30.

Consent Motion Filed in D.C., Kurunegala, Case No. 3714.

IN THE DISTRICT COURT OF KURUNEGALA.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa, in Tiragandahe Korale.....*Deceased.*

Testamentary Jurisdiction No. 3714.

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale.....*Petitioner*

vs.

1. Wijesundera Mudiyanselage Somawathie Kumarihamy,
2. Ditto Appuhamy,
3. Narayana Mudiyanselage Kumarihamy all of Nakolagagamuwa,
4. Ditto Ran Menika Kumarihamy of Ambahera in Recopattu Korale..... *Respondents.*

After deducting the expenses of administration the parties agree in line of a Judicial settlement that the movable and immovable properties of the above estate be divided equally between the petitioner Bandara Menika, the 1st respondent, Somawahie Kumarihamy, the 3rd respondent, Kuma Kumarihamy and the 4th respondent, Ran Menika Kumarihamy, each party getting an undivided one-fourth (1/4th) share. The parties to possess from 1st January, 1931, on equal shares the immovable property inventorised in the case.

Kurunegala, 9th October, 1930.

Exhibits.
D30
Consent Motion filed in D.C. Kurunegala Case No. 3714 9.10.30.—*Continued*

Left (X) thumb mark of
Kuma Kumarihamy.

Left (X) thumb mark of Ran Menika.

I consent.

(Sgd.) BANDARA MENIKA,
Petitioner.

„ APPUHAMY,

1*st Respondent.*

Left (X) thumb print of Kumarihamy,

10 3*rd Respondent.*

Left (X) thumb print of Ran Menika Kumarihamy,

4*th Respondent.*

(Sgd.) GOMIS & RATNAYAKE,
Proctors for 3*rd Respondent.*

We consent but special leave of Court has to be obtained under section 500, C.P.C.

(Sgd.) PERERA & PERERA,
Proctors for 1*st Respondent.*

Explained by me.

20 (Sgd.) S. D. S. MUTUCUMARANA,
Interpreter Mudaliyar, D.C., Kurunegala.

(Sgd.) C. COOMARASWAMY,
D.J.

Sir,

Submitted.

The G.A.L. of the 1st Respondent (Minor) consents on her behalf *vide* remarks of Messrs. Perera & Perera, Proctors for 1st Respondent.

(Sgd.) B.E.
Secy., 9.10.30.

30 (Sgd.) C. COOMARASWAMY,
D.J.

True copy of Consent Motion filed in D.C., Kurunegala, Testamentary Case No. 3714.

(Sgd.) EDMUND GUNAWARDENE,
Secretary, D.C., Kurunegala.

23.1.1944.

Exhibits.

D31
Amended Inventory filed in D.C. Kurunegala Case No. 3714 11.6.31

D31.

Amended Inventory Filed in D.C., Kurunegala, Case No. 3714.

Amended Inventory.

IN THE DISTRICT COURT OF KURUNEGALA.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa....

.....*Deceased.*

Testamentary Jurisdiction No. 3714.

	Kind of Property	Value Rs.	Cts.
	Lands at Nakolagamuwa in Tiragandahe Korale		
1.	Hitinawatta of 3 lahas kurakkan sowing extent with the buildings ..	1,500	00
2.	Habawela *alias* Ihalawela of 12 lahas paddy sowing extent ..	350	00
3.	Peelagawatta of about 30 acres in extent	29,775	00
4.	Habawelawatta of about 2 lahas kurakkan sowing extent	750	00
5.	Lindakumbura of 5 lahas paddy sowing extent	1,500	00
6.	1/2 share of Degalehena of 3 lahas kurakkan sowing	500	00
7.	Bulugahamulahena of 2 lahas kurakkan sowing extent	600	00
8.	3/4 share of Hitinawatta of 3 seers kurakkan sowing	100	00
9.	Ratmalagahamulahena of 3 seers kurakkan sowing	25	00
10.	1/2 share of Gangoda Aramba of 1 laha kurakkan sowing	150	00
11.	Ruppewatta of 1 laha kurakkan sowing extent	250	00
12.	Ruppe Pahalawatta of 1 seer kurakkan sowing extent	250	00
13.	1/2 share of Rasakenehena of 2 lahas kurakkan sowing	100	00
14.	Gangodahena of 1 laha kurakkan sowing	100	00
15.	Gangodahena of 1 laha kurakkan sowing	100	00
16.	Nelehena of 2 seers kurakkan sowing extent	50	00
17.	1/2 share of Talegodewatta of 1 laha kurakkan sowing ..	250	00
18.	Talegodekongahamulahena of 1 seer kurakkan sowing	200	00
19.	Talegodehena of 3 seers kurakkan sowing extent	600	00
20.	Bogalapitiyakumbura of 12 lahas paddy sowing extent	300	00
21.	Bogahapitiyakumbura now garden 1/2 seer kurakkan	120	00
22.	Galahitiyawakumbura of 1 amunam paddy sowing extent ..	1,200	00
23.	Asseddume Godakumbura and its adjoining Deigahamule Pillewa now field of 17 lahas paddy sowing extent	400	00
24.	4/5th share of Pothgulakumbura of 3 pelas paddy sowing ..	300	00
25.	Pothgulekumbura of 2 pelas paddy sowing extent	250	00
26.	Talagodawilehena of 2 seers kurakkan sowing extent	50	00

			Value Rs.	Cts.	Exhibits.
	27.	Pokunekumbura of 3 pelas paddy and its adjoining Pillawa of 1 seer kurakkan sowing extent	925	00	D31 Amended Inventory filed in D.C. Kurunegala Case No. 3714 11.6.31.— *Continued*
	28.	Kotanewekumbura of 3 pelas paddy sowing extent	900	00	
	29.	Godapitiyakumbura of 1 amunam paddy sowing extent	1,000	00	
	30.	1/2 share of Madathewalakumbura of 8 lahas paddy sowing ..	120	00	
	31.	1/4 share of Hitinawatta of 3 seers kurakkan sowing	25	00	
	32.	Usgale Maragahamullahena of 6 seers kurakkan sowing	1,000	00	
10	33.	3/4 share of Kotuwekumbura Pitangane Kahatagahamulahena now garden of 2 lahas kurakkan sowing extent	500	00	
	34.	Bulukumburewatta of about 10 acres in extent together with the building thereon	15,000	00	
	35.	Bulukumbura of 2 amunums paddy sowing extent	2,800	00	
	36.	Anguruwewekumbura of 15 lahas paddy sowing extent	450	00	
	37.	Bulukumburegoda of 12 lahas paddy sowing extent	250	00	
	38.	Kotuwekumbura and Godakumbura of 5 pelas paddy sowing extent ..	1,250	00	
	39.	Andiyagodewatta of about 3 lahas kurakkan sowing extent ..	2,000	00	
20	40.	Meddegodakumbura and its adjoining Walpolakumbura of 2 pelas paddy sowing extent	545	00	
	41.	Welikumbura of 1 amunam paddy sowing and its adjoining Pillewa of 3 seers kurakkan sowing extent	850	00	
	42.	Welikumbura Nilekumbura of 2 pelas paddy sowing extent ..	450	00	
	43.	Hittaragewela of 8 lahas paddy sowing extent	355	00	
	44.	Akurawela of 3 pelas and 8 lahas paddy sowing extent	1,150	00	
	45.	Akuranwelawatta of 2 seers kurakkan sowing extent	350	00	
	46.	Akuranwela of 16 lahas paddy sowing extent	450	00	
	47.	1/10th share of Kongahamulahena of 2 seers kurakkan sowing ..	10	00	
	48.	1/10th share of Imbulgahamulahena of 1½ seers kurakkan sowing ..	25	00	
30	49.	2/3 share of Dewatagawatta *alias* Hitinawatta of 3 lahas kurakkan sowing extent	300	00	
	50.	1/2 share of Hitinawatta of 2 seers kurakkan sowing extent ..	30	00	
	51.	Migahamulehena of 2 seers kurakkan sowing extent	200	00	
	52.	Elagawahena of 2 lahas kurakkan sowing extent	50	00	
	53.	Bakmigahamulahena of 1 laha kurakkan sowing extent	25	00	
		Lands at Torawatura in Tiragandahe Korale			
	54.	Dehiyagahakumbura Pillawa now a garden of 3 seers kurakkan ..	600	00	
	55.	Madakumbura of 1½ amunams paddy sowing extent and its adjoining Wegollehena now garden of 3 lahas kurakkan	2,800	00	
40	56.	Dehiyagahakotuwewatta of 1 timba kurakkan sowing extent ..	1,000	00	
	57.	Dehiyagahakumbura of 3 pelas paddy sowing extent	1,000	00	

Exhibits.

D31
Amended Inventory filed in D.C. Kurunegala Case No. 3714 11.6.31.—*Continued*

		Value Rs.	Cts.
58.	Dehiyagahakumbura of 2 pelas and 5 lahas paddy sowing ..	750	00
59.	Matawayegodakumbura of 1 pela paddy sowing extent	300	00
60.	Migahamulawatta of 1 seer kurakkan sowing extent	200	00
61.	3/5th share of Hitinawatta of 6 lahas kurakkan sowing	2,250	00
	Lands at Olupiliyawa in Tiragandahe Korale		
62.	Kumbukgetekumbura Puranpela being lot A in extent 1 rood and 11 perches together with the buildings thereon	9,500	00
63.	The divided southern portion of Medakumbura now garden of 1 pela paddy sowing extent together with the buildings	4,000	00
64.	The southern portion of Medakumburapitiya *alias* Malpitiyawatta of 1 rood and 29 perches in extent together with the buildings thereon..	3,000	00
	Lands at Godarita in Recopattu Korale		
65.	Karandewatta Weediyewatte Pellekasandehena Karandehena all forming one property called Hambarewatte of about 11 acres ..	4,430	00
66.	Karandekumbure of 14 lahas paddy sowing extent	350	00
67.	Karandekumbura of 12 lahas paddy sowing extent	300	00
68.	Galahitiyawekumbura of 2 pelas and 2 lahas paddy sowing and 1/2 share of its adjoining Pillewa of 2 seers K.K.	588	00
69.	Galahitiyawekumbura of 2 pelas paddy sowing extent and 1/2 share of its adjoining Pillewa of 1 laha kurakkan sowing extent	550	00
70.	The western portion of Galahitiyawehena of 2 roods	50	00
71.	1/3 share of Kamatagawa Kahatagahamulwatta of 2 lahas kurakkan sowing extent	128	00
	Lands at Kanuwale in Recopattu Korale		
72.	An undivided 1/3rd share from and out of an undivided 2/3rd share of Oyagawawatta of about 4 lahas kurakkan sowing extent ..	415	00
	Lands at Kumbalpola in Tiragandahe Korale		
73.	1/3 share of Godaliyaddakumbura of 15 lahas paddy sowing ..	100	00
	Lands at Wanduragala in Tiragandahe Korale		

			Value Rs.	Cts.	
80.	Pahala kumbahitiyanekumbura of 9 lahas paddy sowing extent	..	75	00	Exhibits.
81.	1/2 share of Pelapolwatta of about 1 laha kurakkan sowing	..	125	00	D31 Amended
82.	Minipitiyehena *alias* Alutwewehena of about 5 acres ..	..	250	00	Inventory filed
83.	Kongahamulahena of 19A. 1R. 16P. in extent ..	..	5,000	00	in D.C. Kurunegala Case
84.	Tawallkumbura of 7 lahas paddy sowing extent ..	..	35	00	No. 3714 11.6.31.— *Continued*
	Lands at Kidapola in Kudagalboda Korale				
85.	Kongahamulehena of 1A. 2R. 35P. in extent	..	50	00	
86.	Mawatahena of about 3 lahas kurakkan sowing extent ..	..	150	00	
87.	Dangahamulahena of about 2 seers kurakkan sowing extent	..	10	00	
.88	1/2 share of Mawatahena of about 2 lahas kurakkan sowing	..	50	00	
	Lands at Nelawa				
89.	Batapotamullekumbura of about 6 lahas paddy sowing extent	..	400	00	
	Lands at Mapegomuwa in Kandagalboda Korale				
90.	Homkanbowawatta of about 10 acres in extent ..	..	4,000	00	
	Lands Nos. 1, 8, 31 and 50 increase by official valuation ..	..	1,345	00	
	Lands Nos. 24 and 25 increase by official valuation ..	..	700	00	
	Lands Nos. 34 and 39 increase by official valuation ..	..	1,500	00	
	Movable Property				
93.	One elephant	..	4,000	00	
94.	Two benches	..	2	00	
95.	One easy chair	..	2	00	
96.	Three chairs	..	3	00	
97.	Two almirahs	..	40	00	
98.	Three tables	..	9	00	
99.	One pigeon hole	..	4	00	
100.	One camp bed	..	1	00	
101.	One wooden box (big size)	..	2	50	
102.	Sawn rafters	..	15	00	
103.	Two barns	..	20	00	
104.	One barn (big size)	..	50	00	
105.	Ten amunams paddy	..	125	00	
106.	One double bullock cart	..	50	00	
107.	One buggy cart	..	10	00	
108.	Five buffaloes	..	75	00	
109.	13 bulls and cows	..	200	00	
110.	One waist chain	..	50	00	

Exhibits.
D31
Amended Inventory filed in D.C. Kurunegala Case No. 3714 11.6.31—*Continued*

		Value Rs.	Cts.
111.	One spittoon	2	50
112.	30 thetties	15	00
113.	Two betel trays	5	00
114.	Three coconut oil lamps	12	00
115.	Twenty chembus	10	00
116.	Cash	800	00

Debts Due to the Deceased

117.	Usufructuary mortgage bond No. 37020 dated 29.5.1908 from Jayasundara Mudiyanselage Ukkurala of Nakolagamuwa	100	00
118.	Usufructuary mortgage bond No. 4136 dated 20.2.1914 from T. M. Banda of Nakolagamuwa	130	00
119.	Mortgage bond No. 44925 of 1.3.1922 from W. P. N. Horatala of Messagammana	250	00
	Recoverable interest thereon at the rate at 20 cents per Rs. 10/- per mensem from date of bond to date of death	250	00
120.	Mortgage bond No. 44586 dated 18.6.1921 from Kiribanda and Naide of Indulgodakanda	130	00
	Recoverable interest thereon at the rate of 20 cents per Rs. 10/- per mensem from date of bond to date of death	130	00
121.	Mortgage bond No. 4577 of 10.8.1914 from lands Tikka and Horatala of Talampitiya	55	00
	Balance interest at the rate of 8½ bushels of paddy from 10.8.26 to date of death	55	25
122.	Mortgage bond No. 43483 dated 24.4.1919 from Hetuhamy Vidane and Dingiri Banda of Nakolagamuwa	120	00

Interest Paid to Deceased Annually

123.	Mortgage bond No. 50971 of 7.12.25 from M. M. Ukku Banda Aratchie of Maditiyawala	150	00
	Interest at 15 cents per Rs. 10/- per mensem from date to bond to date of death	87	50
124.	Usufructuary mortgage bond No. 42830 of 26.11.17	150	00
125.	Mortgage bond No. 53642 of 8.3.28 from M. M. Ukku Banda Aratchi of Meditiyawala	350	00
	Interest at 15½ cents per Rs. 10/- per mensem from date of bond to date of death	65	16
126.	Mortgage bond No. 54352 of 19.11.28 from J. M. Banda of Kadurukumbura	400	00
	Interest at 25 cents per Rs. 10/- per mensem from date of bond to date of death	35	00
127.	Mortgage bond No. 54258 of 23.10.28 from Kiri Menika, Punchi Banda and Kirihamy of Bamunawala	800	00

		Value Rs.	Cts.	Exhibits.
	Interest Paid Quarterly			
128.	Mortgage bond No. 54538 of 28.2.29 from Dingiriya of Walpolakanda..	700	00	D31 Amended Inventory filed in D.C. Kurunegala Case No. 3714 11.6.31.— *Continued*
	Interest at 25 cents per Rs. 10/- per mensem from date of bond to date of death	2	91	
129.	Usufructuary mortgage bond No. 53970 of 10.7.28 from Ran Menika of Mapegamuwa	60	00	
130.	Mortgage bond No. 54300 of 2.11.28 from Punchiridi and Rana of Ganuma	600	00	
	Interest at the rate of -/25 cents per Rs. 10/- per mensem from date of bond to date of death	60	00	
131.	Mortgage bond No. 53881 of 18.6.28 from Kalu Banda of Maditiyawala..	250	00	
	Interest at the rate of 20 cents per Rs. 10/- per mensem from date of bond to date of death	25	50	
132.	Mortgage bond No. 54185 of 11.9.28 from Tikiri Banda of Maditiyawala	100	00	
	Interest at 20 cents per Rs. 10/- per mensem from date of bond to date of death	10	00	
133.	Mortgage bond No. 53880 of 18.6.28 from Brampi Perera Appuhamy and his wife, Victoria Hamy of Weuda	300	00	
	Interest at 20 cents per Rs. 10/- per mensem from date of bond to date of death	57	00	
134.	Usufructuary mortgage bond No. 53971 of 10.7.28 from Naida of Tiragama	120	00	
135.	Usufructuary mortgage bond No. 37316 of 22.8.28 from Kaithanu Perera Appuhamy of Malpitiya	1,000	00	
136.	Usufructuary mortgage bond No. 38171 of 7.2.29 from Kawwa of Tiragama	120	00	
137.	Usufructuary mortgage bond No. 2328 of 18.9.23 from Tikiri Banda of Nakolagamuwa	100	00	
138.	Mortgage bond No. 53822 of 5.6.28 from Wijesundera Banda Katupitiya Aratchi and Nanduwa Veda *alias* Nanda Veda of Belgodakanda ..	600	00	
	Interest 18 cents per Rs. 10/- per mensem from date of bond to date of death	97	20	
139.	Balance principal on mortgage bond No. 49332 of 28.8.24 from U. B. Ambahera of Ambahera	9.330	00	
	Balance interest at 12 per cent. per annum from date of bond to date of death	4,368	75	
140.	Mortgage bond No. 6094 of 23.2.29 from Daniel Singho of Koralegedera	100	00	
	Interest at 25 cents per Rs. 10/- per mensem from date of bond to date of death	1	83	
141.	Usufructuary mortgage bond No. 4015 of 5.6.20 from Punchirala Punchi Banda, Kiri Banda, Mudiyanse Appuhamy and Malhamy of Nakolagama	155	00	

Exhibits.
D31
Amended Inventory filed in D.C. Kurunegala Case No. 3714 11.6.31—
Continued

		Value Rs.	Cts.
142.	Mortgage bond No. 54435 of 11.12.28 from Nanhonda of Werewella ..	250	00
	Interest at the rate of 25 cents per Rs. 10/- per mensem from date of bond to date of death	17	08
143.	Mortgage bond No. 27327 of 9.6.20 from Salatiel X. Mahaduraya of Talampitiya Kurenpola	700	00
	Recoverable interest at 15 cents per Rs. 10/- per mensem from date of bond to date of death	700	00
144.	Usufructuary mortgage bond No. 35697 of 1.8.37 from Bandirala of Nakolagamuwa	80	00
145.	Mortgage bond No. 38168 of 7.2.39 from Mohamadu Lebbe of Nelawa.. Interest paid to deceased.	250	00
146.	Usufructuary mortgage bond No. 37482 of 28.9.28 from Punchirala and Ranamalhamy of Nakolagamuwa	80	00
147.	Mortgage bond No. 54000 of 16.7.28 from Kiriya Veda of Nailiya ..	125	00
	Interest at 25 cents per Rs. 10/- per mensem from date of bond to date of death	23	43
148.	Usufructuary mortgage bond No. 40832 of 9.1.19 from Ran Menika of Mohottawa	300	00
149.	Mortgage bond No. 53735 of 23.4.29 from Dingiri Banda ex-Aratchi of Doratiyawa	250	00
	Interest at 15 cents per Rs. 10/- per mensem from date of bond to date of death	38	75
150.	Usufructuary mortgage bond No. 43484 of 24.4.19 from Ran Menika and Punchi Banda of Nakolagamuwa	120	00
151.	Mortgage bond No. 30666 of 17.11.21 from Ausadhamy of Bambaragahapelassa	600	00
	Recoverable interest at 15 cents per Rs. 10/- per mensem from date of bond to date of death	600	00
152.	Mortgage bond No. 7362 of 9.8.23 from Lassama of Indulgoda ..	300	00
	Recoverable interest at 15 cents per Rs. 10/- per mensem from date of bond to date of death	300	00
153.	Mortgage bond No. 48006 of 10.7.28 from Horatala and Poola of Nailiya	100	00
	Interest at 25 cents per Rs. 10/- per mensem from date of bond to date of death	20	00
154.	Usufructuary mortgage bond No. 51876 of 15.11.26 from Punchirala Ranamalhamy of Nakolagamuwa	184	00
155.	Mortgage bond No. 53590 of 16.2.28 from Don Lassama Appuhamy and Babun Appuhamy of Olupeliyawa	300	00
	Interest at 25 cents per Rs. 10/- per mensem from date of bond to date of death	93	75

		Value Rs.	Cts.	
156.	Mortgage bond No. 45861 of 10.11.21 from Livinis Perera Appuhamy and his wife, Porlentina Perera Hamine of Olupeliyawa	1,300	00	Exhibits. D31 Amended Inventory filed in D.C. Kurunegala Case No. 3714 11.3.31.— *Continued*
	Recoverable interest at 15 cents per Rs. 10/- per mensem from date of bond to date of death	1,300	00	
157.	Mortgage bond No. 6098 of 23.2.29 from Victoria Hamy and her husband, Don Brampi Perera Appuhamy	150	00	
	Interest at 20 cents per Rs. 10/- per mensem from date of bond to date of death	1	00	
158.	Mortgage bond No. 54249 of 22.10.28 from Ana Saranna and Saul Hamidu of Bamunawala	500	00	
	Interest paid to deceased.			
159.	Mortgage bond No. 54147 of 30.8.28 from Punchi Duraya *alias* Sakrabedi Dharmasena of Messagama	500	00	
	Interest at 20 cents per Rs. 10/- per mensem from date of bond to date of death	60	00	
160.	Mortgage bond No. 53821 of 5.6.28 from Appuhamy of Walpolakanda ..	600	00	
	Interest at 20 cents per Rs. 10/- from date of bond to date of death ..	108	00	
161.	Usufructuary mortgage bond No. 51216 of 15.2.26 from Ukkuwa of Nilawa	300	00	
162.	Mortgage bond No. 44890 of 11.4.21 from Lassana of Indulgodakanda and Kira Vel Duraya of Katupitiya	500	00	
	Recoverable interest at 18 cents per Rs. 10/- from date of bond to date of death	500	00	
163.	Usufructuary mortgage bond No. 47291 of 19.9.22 from Tikiri Menika of Kiripotta and Ukku Amma of Bewilgamuwa and Kiri Banda of Nakolagamuwa	100	00	
164.	Assignment of mortgage bond No. 37483 of 28.2.28 from Ausadahamy of Wewelpola	425	00	
	Interest thereon from date of assignment to date of death ..	31	25	
165.	Usufructuary mortgage bond No. 7431 of 7.7.1903 from Appuhamy of Kanumale	83	00	
166.	Promissary note dated 20.9.28 from Punchi Banda, ex-Vidane of Nakolagamuwa	50	00	
167.	Interest at 15 cents per Rs. 10/- per mensem from date of note to date of death	4	12	
168.	Promissory note dated 10.7.28 from Sasira Ganduraya of Nailiya ..	25	00	
	Interest at 15 cents per Rs. 10/- per mensem from date of note to date of death	2	89	
169.	Promissory note dated 26.3.28 from H. M. Punchi Banda of Welawa ..	50	00	
	Interest at 18 cents per Rs. 10/- per annum from date of note to date of death	9	00	

Exhibits.

D31 Amended Inventory filed in D.C. Kurunegala Case No. 3714 11.6.31— *Continued*

		Value Rs.	Cts.
170.	Promissory note dated 5.4.28 from H. M. Mohamada Saibo and I.M.M. Mohammadu Mohideen of Malpitiya	500	00
	Interest at 12½ cents per Rs. 10/- per mensem from date of note to date of death	87	75
171.	Promissory note dated 25.2.26 from A. Suna Lebbe of Nelawa ..	10	00
	Interest at the rate of 25 cents per Rs. 10/- per mensem from date of note to date of death	9	00
172.	Promissory note dated 19.9.27 from L. V. D. Kira of Indulgodakanda and R. D. Kiri Vel Duraya of Katupitiya	100	00
	Interest at 10 cents per Rs. 10/- per mensem from date of note to date of death	17	50
173.	Promissory note dated 9.2.28 from B. A. Thomas Tissera Appuhamy and Eonno and his wife, Jayakodi Aratchige Mariyahamine ..	50	00
	Interest at the rate of 15 cents per Rs. 10/- per mensem from date of note to date of death	9	62
174.	Promissory note dated 9.3.28 from K. D. Abdul Wahidu Marikkar of Nakolagamuwa	100	00
	Interest at the rate of Rs. 20/- per mensem from date of note to date of death	20	00
175.	Promissory note dated 19.11.27 from K. L. Abdul Wahidu Marikkar of Nakolagamuwa	100	00
	Interest at the rate of 10 per cent. per annum from date of note to date of death	12	50
176.	Promissory note dated 13.12.28 from T. E. M. Appuhamy of Maditiyawala	50	00
	Interest at the rate of 15 cents per Rs. 10/- per mensem from date of note to date of death	2	50
177.	Promissory note dated 19.8.24 from H. M. Kiri Banda and H. M. Punchi Banda of Nakolagamuwa	35	00
	Recoverable interest at the rate of 25 cents per Rs. 10/- per mensem from date of note to date of death	35	00
178.	Promissory note dated 19.8.23 from E. M. Dingiri Amma of Nakolagamuwa	30	00
	Interest at 25 cents per Rs. 10/- per mensem from date of note to date of death	30	00
179.	Mortgage bond No. 51117 dated 14.1.26	5,000	00
	Interest thereon at the rate of 18 per cent. per annum from date of bond to date of death	2,812	50

		Value Rs.	Cts.	
180.	In Ceylon Savings Bank	2,905	99	Exhibits.
181.	In Imperial Bank of India, Ltd., Colombo	944	31	D31 Amended Inventory filed in D.C. Kurunegala Case No. 3714 11.6.31.— *Continued*
	Debts due by the estate	170,631	24	
	Funeral expenses	500	00	
		170,131	24	

Additional Property

1.	Midellagahapitiyahena now garden of 3 kurakkan sowing extent situated at Nakolagamuwa	470	00
2.	Syambalagahakumbura of about 16 lahas paddy sowing extent situated at Tiragama in Tiragandahe Korale)		
3.	Mortgage bond No. 48184 of 26.6.23 from E. M. Ausadahamy of Bambaragahapelassa	200	00
	Recoverable interest thereon from date of bond to date of death ..	200	00
	Rs.	171,001	24

I, Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale, not being a Christian do solemnly, truly and sincerely declare and affirm as follows :—

1. To the best of my knowledge, information and belief the abovewritten inventory contains a full, true and correct account of all the property movable and immovable and rights and credits of the said Edward Banda, ex-Korala, deceased, so far as I have been able with the diligence to ascertain the same.

2. I have made a careful estimate and valuation of all the property the particulars of which are set forth and contained in the said inventory and to the best of my judgment and belief the sums respectively set opposite to the several items in the said inventory fully and fairly represent values of the items to which they are so respectively set opposite.

Affirmed to at Kurunegala, this
11th day of June, 1931. (Sgd.) (in Sinhalese),
Affirmant.

Before me :

(Sgd.) P. A. C. EKNELLIGODA,
J.P.

Exhibits.
D10
Auction Sale Notice in D.C. Kurunegala Case No. 3714 (undated)

D10

Auction Sale Notice in D.C., Kurunegala, Case No. 3714

AUCTION SALE (*Translation*)

In accordance with the terms of settlement arrived at between the heirs of the late Herath Mudiyanselage Edward Banda ex-Korala of Nakolagamuwa in Testamentary Case No. 3714 D.C., Kurunegala, the undivided one-fourth share belonging to Mrs. U. B. Ambahera of the entire estate and described in the schedules hereto, will be sold by Public Auction at their respective villages and on the dates therein mentioned.

The following lands will be sold on Saturday, the 10th October, 1931, at 1 p.m. at the 3rd land :—

1. Hitinawatte with the houses, buildings of one laha of kurakkan sowing and situated at Nakolagamuwa in Tiragandahe Korale.
2. Habawela *alias* Ihalawela of 12 lahas of paddy sowing and situated at the aforesaid village.
3. Pillagawawatte of 30 acres in extent and situated at the aforesaid village.
4. Habawelawatte of two lahas of kurakkan sowing and situated at the aforesaid village.
5. Linda Kumbura of five pelas of paddy sowing and situated at the said village.
6. 2/3 share of Degalehena of three lahas of kurakkan sowing and situated at the aforesaid village.
7. Bulugahamulahena of two lahas of kurakkan sowing.
8. 3/4 share of Hitinawatte of three seers of kurakkan sowing and situated at the said village.
9. Ratmalagahamulahena of three seers of kurakkan sowing and situated at the aforesaid village.
10. 1/2 share of Gangode Arambe of one laha of kurakkan sowing.
11. Ruppewatte of one laha of kurakkan sowing and situated at the said village.
12. Ruppepahalawatte of one seer of kurakkan sowing and situated at the said village.
13. 1/2 share of Rasakonehenna of two lahas of kurakkan sowing and situated at the said village.
14. Gangodehena of one laha of kurakkan sowing and situated at the said village.
15. Gangodehena of one laha of kurakkan sowing and situated at the said village.
16. Nilhena of two seers of kurakkan and situated at the said village.
17. 1/2 share of Talgodawatte of one laha of kurakkan sowing and situated at the said village.
18. Talegodabonagahamulahena of one seer of kurakkan sowing and situated at the said village.
19. Talagodahena of three seers of kurakkan sowing and situated at the said village.
20. Bogahapitiya Kumbura of twelve lahas of paddy sowing and situated at the said village.
21. Bogahapitiya Kumbura now a garden of half a seer of kurakkan sowing and situated at the said village.
22. Galahitiyawe Kumbura of one amunam paddy sowing and situated at the aforesaid village.
23. Asseddume Goda Kumbura and its Migahamula Pillewa (field) of 17 lahas of paddy sowing and situated at the said village.
24. 4/5 share of Pothgule Kumbura of three pelas of paddy sowing.

Exhibits.

D10
Auction Sale Notice in D.C. Kurunegala Case No. 3714 (undated).—*Continued*

25. Pothgule Kumbura of two pelas of paddy sowing.
26. Talegodenilehena of two seers of kurakkan sowing and situated at the aforesaid village.
27. Pokune Kumbura of three pelas of paddy sowing and its adjoining Pillewa of one seer of kurakkan sowing.
28. Kotanawe Kumbura of three pelas of paddy sowing and situated at the said village.
29. Godapitiye Kumbura of one amunam paddy sowing and situated at the aforesaid village.
30. 1/2 share of Madatawela Kumbura of eight lahas of paddy sowing and situated at the aforesaid village.
31. 1/4 share of Hitinawatte of three seers of kurakkan sowing and situated at the said village.
32. Usgalamaragahamulahena of six seers kurakkan sowing and situated at the said village.
33. 3/4 share of Kotuwe Kumbura Pitangane Kahatagahamulahena now a garden of two lahas of kurakkan sowing and situated at the said village.
34. Bulu Kumburewatte with the buildings thereon of ten acres in extent and situated at the said village.
35. Bulu Kumbura of two amunams paddy sowing and situated at the said village.
36. Anguruwewe Kumbura of 15 paddy and situated at the said village.
37. Bulukumburegoda of 12 paddy and situated at the said village.
38. Kotuwe Kumbura and Goda Kumbura of five pelas of paddy sowing.
39. Andiyagodewatte of 3 lahas of kurakkan sowing and situated at the said village.
40. Meddegoda Kumbura and its adjoining Walpola Kumbura of two pelas of paddy sowing.
41. Weli Kumbura of one amunam paddy sowing and its adjoining Pillewa of three seers of kurakkan sowing.
42. Welikumbure nile Kumbura of two pelas of paddy sowing and situated at the said village.
43. Hittaragewela of eight lahas of paddy sowing and situated at the said village.
44. Akuranawela of paddy sowing and situated at the aforesaid village.
45. Akuranawatte of 2 seers of kurakkan sowing and situated at the aforesaid village.
46. Akuranewela of 16 lahas of paddy sowing and situated at the said village.
47. 1/10 share of Kongahamulahena of two seers of kurakkan sowing and situated at the said villages.
48. 1/10 share of Imbulgahamulahena of one and half seers of kurakkan sowing and situated at the said village.
49. Dewatagawawatte *alias* Hitinawatte of three lahas of kurakkan sowing.
50. 1/2 share of Hitinawatte of two seers of kurakkan sowing and situated at the said village.
51. Migahamulahena of two seers of kurakkan and situated at the said village.
52. Galagawahena of two lahas of kurakkan sowing and situated at the aforesaid village.
53. Bakmigahamulahena of one laha of kurakkan sowing and situated at the aforesaid village.
54. Batapethamula Kumbura of six lahas of paddy sowing and situated at Nelawa aforesaid.

Exhibits.

D10
Auction Sale Notice in D.C. Kurunegala Case No. 3714 (Undated).—*Continued*

The following lands will be sold at the 65th land at 1 p.m. on Monday, the 12th of this month.

55. Dehigaha Kumbura now a Pillewa now a garden of three seers of kurakkan sowing situated at Thorawatura in Tiragandahe Korale.
56. Mada Kumbura of one and half amunams paddy sowing and its adjoining Wagollehena of three lahas of kurakkan sowing now a garden and situated at the said village.
57. Dehigahakatuwewatte of one timba of kurakkan sowing.
58. Dehigahakumbura of three pelas of paddy sowing and situated at the aforesaid village.
59. Dehigaha Kumbura of two pelas of paddy sowing and situated at the aforesaid village.
60. Mataweyegoda Kumbura of one pela of paddy sowing and situated at the aforesaid village.
61. Migahamulawatte of one seer of kurakkan sowing and situated at the said village.
62. 3/5 share of Hitinawatte of six lahas of kurakkan sowing.
63. Kumbukgetepuranpola Kumbura with the houses thereon and marked letter A and containing in extent one rood and 11 perches and situated at Olupeliyawa in Tiragandahe Korale.
64. Mada Kumbura now a garden with the houses thereon of one pela paddy sowing and situated at the aforesaid village.
65. Meda Kumbura piliya *alias* Malpitiyewatte with the buildings thereon of one rood and twenty-nine perches and situated at the aforesaid village.

The lands described below will be sold at the 73rd land at 1 p.m. on Tuesday, the 13th of the said month :—

66. All that Karandawatte, Widiyewatte, Pallekarandehena and Karandehena all forming one property and known as Habarawatte of 11 acres in extent and situated at Godawita in Recopattu Korale.
67. Karande Kumbura of 14 lahas of paddy sowing and situated at the said village.
68. Karande Kumbura of 12 lahsa of paddy sowing and situated at the said village.
69. Galahitiyawe Kumbura of two pelas and two lahas of paddy sowing and its adjoining Pillewa of one half share of Pillewa of three seers of kurakkan sowing and situated at the said village.
70. Galahitiyawe Kumbura of two pelas of paddy sowing and a one-half share of its adjoining Pillewa of one laha of kurakkan sowing and situated at the said village.
71. Galahitiyawehena of two roods in extent and situated at the said village.
72. 1/3 share of Kamatagawa Kahatagahamulawatte of two lahas of kurakkan sowing and situated at the said village.
73. 1/3 share of half of Oyagawawatte of four lahas of kurakkan sowing situated at Kanumale in Recopattu Korale.

The following lands will be sold at the 75th land at 1 p.m. on Wednesday, the 14th of this month :—

74. 1/3 share of Godaliyadde Kumbura of fifteen lahas of paddy sowing situated at Kumbalpola in Tiragandahe Korale situated at Kumbalpola in Tiragandahe Korale.
75. Godaweepola of one pela of paddy sowing at Wanduragala in Tiragandahe Korale.
76. Medawipola of two pelas paddy sowing.
77. Gete Kumbura of two pelas paddy sowing.

Exhibits.

D10
Auction Sale Notice in D.C. Kurunegala Case No. 3714 (Undated — *Continued*

The following lands will be sold at the 84th land at 1 p.m. on Thursday, the 15th of this month :—

78. Kumbahitiyawe Kumbura of three pelas of paddy sowing situated at Mapegomuwa in Kudagalbode Korale.

79. Wewe Kumbura of one Amunam paddy sowing and situated at the said village.

80. Dahigemuralage Kumbura *alias* Ambalawagawa Kumbura of 15 lahas of paddy sowing and situated at the aforesaid village.

81. Pahala Kumbahitiyawe Kumbura of nine lahas of paddy sowing and situated at the aforesaid village.

82. An undivided 1/2 share of Pelapolwatte of one laha of kurakkan sowing and situated at the aforesaid village.

83. Minipitiyehena *alias* Alutwewehena of five acres in extent and situated at the aforesaid village.

84. Kongahamulahena of 19A. 1R. 16P. and situated at the aforesaid village.

85. Thawalle Kumbura of seven lahas of paddy sowing and situated at the said village.

86. Kongahamulahena of 1A. 2R. 35P. and situated at Kidapola in Kudagalboda Korale.

87. Mawatahena of three lahas of kurakkan sowing and situated at the aforesaid village.

88. Dangahamulahena of two seers of kurakkan sowing and situated at the aforesaid village.

89. 1/2 share of Mawatahena of two lahas of kurakkan sowing and situated at the said village.

The 1/4 share of the elephant belonging to the said ex-Korala will also be sold.

Further particulars can be had from me.

To which effect.,

T. B. AMUNUGAMA,
Auctioneer.

D37.

D37
Journal Entry in D.C. Kurunegala Case No. 3714 23.8.37

Journal Entry in D.C., Kurunegala, Case No. 3714.

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary No. 3714.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa in Tiragandahe Korale..... *Deceased.*

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale.....*Petitioner*

vs.

1. Wijesundera Mudiyanselage Somawathie Kumarihamy.

2. Ditto Appuhamy.

Exhibits.
D37
Journal Entry in D.C. Kurunegala Case No. 3714 23.8.37—*Continued*

3. Narayana Mudiyanselage Kumarihamy, all of Nakolagamuwa.

4. Ditto Ran Menika Kumarihamy of Ambahera in Recopattu Korale..... *Respondents.*

Mr. M. B. Wanduragala for Administratrix.

Messrs. Perera & Perera for Respondent.

23.8.37.

Final Account.

Filed. Notice respondents for 22.9.37.

(Sgd.) V.J.,
D.J.

True copy of Journal Entry dated 23.8.35 in D.C., Kurunegala, Testamentary Case No. 3714.

(Sgd.).....
19.9.52.
Secretary, D.C., Kurunegala.

D32
Journal Entries in D.C. Kurunegala Case No. 3714 1.10.40 to 21.8.44

D32.

Journal Entries in D.C., Kurunegala, Case No. 3714.

In the matter of the intestate estate of the late A. M. Edward Banda, ex-Korala of Nakolagamuwa..... *Deceased.*

M. A. H. M. Bandara Menika..... *Petitioner*

vs.

W. M. Somawathie Kumarihamy and three others.....
..... *Respondents.*

Testamentary Case No. 3714.

1.10.1940.

Inquiry.

Administratrix is dead. Steps for 31.10.1940.

(Intd.) V.J.,
D.J.

Exhibits.
D32
Journal Entries in D.C. Kurunegala Case No. 3714 1.10.40 to 21.8.44.—*Continued*

Mr. Wanduragala for Administratrix.

Messrs. Perera & Perera for second respondent.

Mr. V. I. V. Gomis for third and fourth respondents.

31.10.40.

Administratrix dead. Steps for 13.11.40.

(Intd.) V. J.,
D.J.

13.11.40.

Steps. Notice respondents for 13.12.1940.

(Intd.) V. J.,
D.J.

13.12.1940.

Respondents not noticed.

Of consent the Secretary of this Court is appointed administrator *de bonis non.*

Oath of Office for 20.12.1940.

(Intd.) V. J.,
D.J.

20.12.1940.

Oath of Office.

Filed. Issue letters *de bonis non.*

(Intd.) V. J.,
D.J.

29.8.41.

Deposit order No. 04187 for Rs. 150/- issued to H. P. Eusina of Talampitiya, purchaser of mortgaged premises under bond No. 42834 of 26.11.17.

2.9.41.

Kachcheri receipt No. 1148 of 29.8.41 for Rs. 150/- filed.

30.3.43.

Letters issued.

The official administrator.

Mr. R. E. de S. Jayasundera for petitioner, first respnodent.

Messrs. Perera & Perera for second respondent.

Mr. V. I. V. Gomis for third and fourth respondents.

Exhibits.

D32
Journal Entries in D.C. Kurunegala Case No. 3714 1.10.40 to 21.8.44—*Continued*

Mr. Jayasundera for petitioner, W. M. Somawathie Kumarihamy, files proxy, petition and affidavit of the petitioner and on the facts contained therein move that the Court be pleased to set aside the said settlement and direct that the said estate be distributed on the footing that the petitioner is the sole heir on notice to the respondents, W. M. Appuhamy, N. M. Kumarihamy and N. M. Ran Menika.

Notice respondents for 30.11.1943.

(Intd.).....
D.J.

26.10.43.

Notice respondents for 30.11.43.

(Sgd.) H. A. De SILVA,
D.J.

20.11.43.

Notice issued to Fiscal, N.W.P.

30.11.43.

Notice not served. No time.

Extend and re-issue for 20.12.43.

(Intd.) H. A. De S.,
D.J.

3.12.43.

Re-issued.

Mr. R. E. de S. Jayasundera for petitioner.

20.12.43.

Notice not served. Not found.

Extend and re-issue for 17.1.44.

(Intd.) H. A. De S.,
D.J.

28.12.43.

Re-issued.

17.1.44.

Notice served on (1) W. M. Appuhamy, (2) N. M. Kumarihamy, (3) N. M. Ran Menika—Absent.

Mr. Gomis will file objections of third respondent on 1.3.44.

(Intd.) H. A. De S.,
D.J.

Exhibits.

D32
Journal Entries in D.C. Kurunegala Case No. 3714 1.10.40 to 21.8.44—
Continued

12.2.44.

As Messrs. Perera & Perera state that Mr. Jayasundera purporting to act as proctor for first respondent for whom they appear has filed certain papers on her behalf without notice to them, they move that the same may be rejected as he has no status in this case.

Mention on Bench; call on 1.3.44.

(Sgd.) H. A. De SILVA,
D.J.

1.3.44.

Objections of third respondent filed.

Consideration of motion of Messrs. Perera & Perera dated 14.2.44.

Mr. Jayasundera files revocation of proxy granted by first respondent to Messrs. Perera & Perera. Messrs. Perera & Perera say that their application does not arise now.

Their application is dismissed.

Inquiry on 21.8.44.

(Sgd.) H. A. De SILVA,
D.J., 1.3.44.

21.8.44.

Inquiry. First and second respondents in default.

Vide consent motion filed. Enter order accordingly.

(Sgd.) S. S. J. GUNASEKERA,
D.J., 21.8.44.

Decree entered.

P21.

P21
Journal Entries in D.C. Kurunegala Case No. 3714 22.10.43 to 21.8.44

Journal Entries in D.C., Kurunegala, Case No. 3714.

IN THE DISTRICT COURT OF KURUNEGALA.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda, Korala of Nakolagamuwa in Tiragandahe Korale..... *Deceased*

Mohottallage *alias* Herath Miudiyanselage Bandara Menika of Nakolagamuwa aforesaid..... *Petitioner*

vs.

1. Wijesundera Mudiyanselage Somawathie Kumarihamy.
2. Ditto Appuhamy.
3. Narayana Mudiyanselage Kumarihamy, all of Nakolagamuwa aforesaid.

Exhibits.
P21
Journal Entries in D.C. Kurunegala Case No. 3714 22.10.43 to 21.8.44—
Continued

4. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera in Recopattu Korale..... *Respondents.*

Wijesundara Mudiyanselage Somawathie Kumarihamy presently of Amunugama ..... *Petitioner*

vs.

1. Wijesundera Mudiyanselage Appuhamy.
2. Narayana Mudiyanselage Kumarihamy, both of Nakolagamuwa aforesaid.
3. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera aforesaid..... *Respondents.* 10

I file proxy, petition and affidavit of the petitioner abovenamed Somawathie Kumarihamy and on the facts contained therein move that the Court be pleased to set aside the said settlement, and (2) Direct that the said estate be distributed on the footing that the petitioner is the sole heir on notice to the respondents abovenamed.

Kurunegala, this 22nd day of October, 1943.

(Sgd.) R. E. De S. JAYASUNDERA,
Proctor for Petitioner.

26.10.43.

Notice respondents for 30.11.43. 20

(Sgd.) H. A. De SILVA,
D.J.

20.11.48.

Notice issued to Fiscal, N.W.P.

30.11.43.

Notice not served. No time. Extend and reissue for 20.12.43.

(Sgd.) H. A. De SILVA,
D.J.

3.12.43.

Reissued. 30

20.12.43.

Notice not served—not found. Extend and reissue for 17.1.44.

(Sgd.) H. A. De SILVA.
D.J.

28.12.43.

Reissued.

17.1.44.

Notice served on (1) W. M. Appuhamy, (2) N. M. Kumarihamy, (3) N. M. Ran Menika—All absent.

Mr. Gomis will file objections of third respondent for 1.3.44.

(Sgd.) H. A. De SILVA,
D.J.

14.2.44.

As Messrs. Perera & Perera state that Mr. Jayasundera purporting to act as proctor for first respondent for whom they appear has filed certain papers on her behalf without notice to them, they move that the same be rejected as he has no status in this case.

Mention on Bench. Call on 1.3.44.

(Sgd.) H. A. De SILVA,
D.J.

1.3.44.

Objections of third respondent filed.

Consideration of motion of Messrs. Perera & Perera dated 14.2.44.

Mr. Jayasundera files revocation of proxy filed by first respondent to Messrs. Perera & Perera.

Messrs. Perera & Perera say that their application does not arise now.

Their application is dismissed. Inquiry on 21.8.44.

(Sgd.) H. A. De SILVA,
D.J., 1.3.44.

21.8.44.

Inquiry. First and second respondents in default. *Vide* Consent motion filed. Enter order accordingly.

(Sgd.) S. S. J. GOONESEKERA,
D.J., 21.8.44.

Decree entered.

Exhibits.
P19
Petition of W. M. Somawathie Kumarihamy filed in D.C. Kurunegala Case No. 3714 22.10.43

P19.

Petition of W. M. Somawathie Kumarihamy Filed in D.C., Kurunegala, Case No. 3714.

IN THE DISTRICT COURT OF KURUNEGALA.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda, ex-Korala of Nakolagamuwa, in Tiragandahe Korale..... *Deceased.*

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa aforesaid ..... *Petitioner.*

Testamentary Case No. 3714. 10

1. Wijesundera Mudiyanselage Somawathie Kumarihamy.
2. Ditto Appuhamy.
3. Narayana Mudiyanselage Kumarihamy, all of Nakolagamuwa aforesaid.
4. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera in Recopattu Korale..... *Respondents.*

Wijesundera Mudiyanselage Somawathie Kumarihamy presently of Amunugama..... *Petitioner*

vs.

1. Wijesundera Mudiyanselage Appuhamy. 20
2. Narayana Mudiyanselage Kumarihamy, both of Nakolagamuwa aforesaid.
3. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera aforesaid..... *Respondents.*

This 22nd day of October, 1943.

The petition of the petitioner abovenamed appearing by R. E. de S. Jayasundera, her proctor, showeth as follows :—

1. The late Edward Banda, ex-Korala, whose estate is being administered in this case died leaving a widow, Bandara Menika, abovenamed and the petitioner, Somawathie Kumarihamy, who was 30 his adopted daughter, as his sole heir.

2. The said Bandara Menika was the original petitioner for administration and was appointed administratrix. The petitioner was the original first respondent and as she was then a minor her father the original second respondent who is the present first

Exhibits.

P19
Petition of W. M. Somawathi Kumarihamy filed in D.C. Kurunegala Case No. 3714 22.10.43—*Continued*

respondent was appointed her guardian *ad litem*. The original third and fourth respondents who are the present second and third respondents claimed to be heirs of the late Edward Banda, Korala, and were therefore made parties to these proceedings.

3. The said Bandara Menika, the guardian *ad litem* of the petitioner, alleging that there were not in a position to prove that the petitioner was the adopted daughter of the late Edward Banda, Korala, came to a settlement on 9th October, 1930, with the original third and fourth respondents by which it was agreed that the said Bandara Menika, the petitioner and the third and fourth respondents should take a quarter share each of the said estate.

4. The said Bandara Menika subsequently died and the petitioner was appointed the Administratrix of her estate and declared to be her sole heir in D.C., Kurunegala, Testamentary Case No. 4402.

5. Upon the death of the said Bandara Menika it was found necessary to continue the administration of the estate of the late Edward Banda, Korala, in these proceedings and thereafter on the petitioner taking steps to apply for letters of administration she discovered for the first time that it had been alleged that she was not an adopted daughter of the late Edward Banda, Korala, and that a settlement had been made on that basis which fact had been concealed from her by the parties to the said settlement.

6. The petitioner says that she is, in fact, the adopted daughter of the late Edward Banda, Korala, and was as such his sole heir and that the parties to the said settlement acting in collusion have concealed and suppressed from Court this fact and thereby induced the Court to approve of the said settlement that it has now become necessary in the interests of the justice and in order to enable a proper distribution of the estate of the said Edward Banda, Korala, to be made and that the said settlement should be set aside and the estate distributed on the footing that the petitioner was the sole heir of the said Edward Banda.

Wherefore the petitioner prays :—

(1) that the Court be pleased to set aside the said settlement,

(2) direct that the said estate be distributed on the footing that the petitioner is the sole heir,

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

(Sgd.) R. E. De S. JAYASUNDERA,
Proctor for Petitioner.

Drawn and settled by :

(Sgd.) S. R. WIJETILLEKE
" N. E. WEERASOORIYA, K.C. } *Advocates.*

Exhibits.

P19
Petition of W. M. Somawathie Kumarihamy filed in D.C. Kurunegala Case No. 3714 22.10.43.—*Continued*

True copy of petition dated 22.10.43 filed in D.C., Kurunegala, Testamentary Case No. 3714.

(Sgd.).....
Secretary, D.C., Kurunegala.
15.5.51.

3714 T.

The Official Administrator.

Mr. R. E. de S. Jayasundera for petitioner, first respondent.

Messrs. Perera & Perera for second respondent.

Mr. V. I. V. Gomis for third and fourth respondents. 10

26.10.43.

Mr. Jayasundera for petitioner, W. M. Somawathie Kumarihamy, files proxy, petition and affidavit of the petitioner and on the facts contained therein moves that the Court be pleased to set aside the said settlement and direct that the said estate be distributed on the footing that the petitioner is the sole heir on notice to the respondents W. M. Appuhamy, N. M. Kumarihamy and N. M. Ran Menika.

Notice respondents for 30.11.43.

(Sgd.) H. A. De SILVA,
D.J. 20

True copy of Journal Entry dated 26.10.43 in D.C., Kurunegala, Testamentary Case No. 3714.

(Sgd.).....
Secretary, D.C., Kurunegala,
15.5.51.

P20
Affidavit of W. M. Somawathie Kumarihamy filed in D.C. Kurunegala Case No. 3714 22.10.43

P20.

Affidavit of W. M. Somawathie Kumarihamy Filed in D.C., Kurunegala, Case No. 3714.

IN THE DISTRICT COURT OF KURUNEGALA.

Testamentary Case No. 3714. 30

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda, Korala, of Nakolagamuwa in Tiragandahe Korale.....*Deceased.*

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa aforesaid ..... *Petitioner*

vs.

1. Wijesundera Mudiyanselage Somawathie Kumarihamy.
2. Ditto Appuhamy.

3. Narayana Mudiyanselage Kumarihamy, all of Nakolagamuwa aforesaid.

4. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera in Recopattu Korale..... *Respondents.*

Exhibits.

P20
Affidavit of W. M. Somawathie Kumarihamy filed in D.C. Kurunegala Case No. 3714
Continued

Wijesundera Mudiyanselage Somawathie Kumarihamy presently of Amunugama..... *Petitioner*

vs.

1. Wijesundera Mudiyanselage Appuhamy.

2. Narayana Mudiyanselage Kumarihamy, both of Nakolagamuwa aforesaid.

3. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera aforesaid..... *Respondents.*

I, Wijesundera Mudiyanselage Somawathie Kumarihamy presently of Amunugama in Recopattu Korale not being a Christian do hereby solemnly, sincerely and truly affirm, declare and say as follows :—

1. The late Edward Banda, ex-Korala, whose estate is being administered in this case died leaving a widow, Bandara Menika, abovenamed and myself the petitioner abovenamed who was his adopted daughter as his sole heir.

2. The said Bandara Menika was the original petitioner, for administration and was appointed administratrix. I was the original first respondent and as I was then a minor my father the original second respondent who is the present first respondent was appointed my guardian *ad litem*. The original third and fourth respondents who are the present second and third respondents claimed to be the heirs of the late Edward Banda Korala and were therefore made parties to these proceedings.

3. The said Bandara Menika and my guardian *ad litem* alleging that they were not in a position to prove that I was the adopted daughter of the late Edward Banda Korala came to a settlement on the 9th of October, 1930, with the original third and fourth respondents by which it was agreed that the said Bandara Menika, myself and the third and fourth respondents should take a quarter share each of the said estate.

4. The said Bandara Menika subsequently died and I was appointed the administratrix of her estate and declared to be her sole heir in D.C., Kurunegala, Testamentary Case No. 4402.

Exhibits.
P20
Affidavit of W. M. Somawathie Kumarihamy filed in D.C. Kurunegala Case No. 3714—*Continued*

5. Upon the death of the said Bandara Menika it was found necessary to continue the administration of the estate of the late Edward Banda Korala in these proceedings and thereafter on my taking steps to apply for letters of administration I discovered for the first time that it had been alleged that I was not an adopted daughter of the late Edward Banda Korala and that a settlement had been made on that basis which fact had been concealed from me by the parties to the said settlement.

6. I say that I am, in fact, the adopted daughter of the late Edward Banda Korala and was as such his sole heir and that the parties to the said settlement acting in collusion have concealed and suppressed from Court this fact and thereby induced the Court to approve the said settlement, that it has become now necessary in the interests of justice and in order to enable a proper distribution of the estate of the said Edward Banda Korala to be made and that the said settlement should be set aside and the estate distributed on the footing that I was the sole heir of the said Edward Banda.

7. I therefore beg that the Court be pleased to set aside the said settlement and to direct that the said estate be distributed on the footing that I am the sole heir.

The foregoing affidavit having been read over and explained by me to the affirmant abovenamed and she appearing to understand the contents thereof set her signature hereto at Kurunegala on this 22nd day of October, 1943.

( )
This is the left thumb impression of Somawathie Kumarihamy, Affirmant.

Before me :

(Sgd.) W. L. MAURICE FERNANDO,
J.P.

True copy of affidavit dated 22.10.43 filed in D.C., Kurunegala, Testamentary Case No. 3714.

(Sgd.).....
1.7.52.
Secretary, D.C., Kurunegala.

P24

Exhibits.
P24
Journal Entries in D.C. Kurunegala Case No. 3714 6.3.40 to 26.10.43

Journal Entries in D.C., Kurunegala., Case No. 3714

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary Case No. 3714.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda ex-Korala of Nakolagamuwa in Tiragandahe Korale..... *Deceased.*

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa in Tiragandahe Korale.....*Petitioner*

vs.

1. Wijesundera Mudiyanselage Somawathie Kumarihamy.
2. Wijesundera Mudiyanselage Appuhamy. both of Nakolagamuwa in Tiragandahe Korale..... *Respondents.*

6.3.40.

Inquiry. Settlement is likely postponed for 14.5.40.

(Sgd.) V. JOSEPH,
D.J.

6.3.40.

Messrs. Perera & Perera file minute of consent from the first respondent and move for an order of payment for Rs. 213/- in their favour.

Allowed.

(Sgd.) V. JOSEPH,
D. J.

6.3.40.

P.O. 01371 for Rs. 213 - issued.

(Sgd.) V. JOSEPH,
D. J.

14.5.40.

Inquiry. A settlement is not likely. Inquiry postponed for

1.10.40.

(Sgd.) V. JOSEPH,
D. J.

Exhibits.

P24
Journal Entries in D.C. Kurunegala Case No. 3714 6.3.40 to 26.10.43—
Continued

1.10.40.

Inquiry. Administratrix is dead. Steps for 31.10.40.

(Sgd.) V. JOSEPH,
D. J.

31.10.40

Administratrix dead. Steps for 13.11.40.

(Sgd.) V. JOSEPH,
D. J.

13.11.40.

Steps. Notice respondents for 13.12.40.

(Sgd.) V. JOSEPH,
D. J.

13.12.40.

Respondents not noticed. Of consent the Secretary of this Court is appointed Administrator.

20.12.40.

Oath of office filed. Issue letters.

29.8.41.

Deposit Order No. 04187 for Rs. 150/- issued to H. P. Eusina of Talampitiya, purchaser of mortgaged premises under Bond No. 42830 of 26.11.17.

2.9.41.

Kachcheri receipt No. 1148 of 29.8.41 for Rs. 150/- filed.

(Sgd.) H. A. De SILVA,
D. J

30.3.43.

Letters issued.

26.10.43.

Mr. Jayasundera for petitioner W. M. Somawathie Kumarihamy files proxy. petition and affidavit of the petitioner and on the facts contained therein moves that the Court be pleased to set aside the said settlement and direct that the said estate be distributed on the footing that the petitioner is the sole heir on notice to respondents W. M. Appuhamy, N. M. Kumarihamy and N. M. Ran Menika.

Notice respondents for 30.11.43.

(Intd.) H. A. De S.,
D. J.

True copy of journal entries from 6.3.40 to 26.10.43 in D.C. Kurunegala Testamentary Case No. 3714.

(Sgd.) .....
15.5.51.
Secretary, D.C., Kurunegala.

P22

Exhibits.
P22
Consent Motion filed in D.C. Kurunegala Case No. 3714 19.8.44

Consent Motion Filed in D.C., Kurunegala, Case No. 3714

Consent Motion

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary Jurisdiction No. 3714.

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda Korala of Nakolagamuwa..... *Deceased.*

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa.....
10 ..... *Petitioner*

vs.

1. Wijesundara Mudiyanselage Somawathie Kumarihamy.
2. Wijesundara Mudiyanselage Appuhamy.
3. Narayana Mudiyanselage Kumarihamy, all of Nakolagamuwa.
4. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera.. *Respondents.*

Wijesundara Mudiyanselage Somawathie
20 Kumarihamy presently of Amunugama
..... *Petitioner.*

1. Wijesundara Mudiyanselage Appuhamy.
2. Narayana Mudiyanselage Kumarihamy, both of Nakolagamuwa.
3. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera aforesaid....
..... *Respondents.*

The petitioner Wijesundara Mudiyanselage Somawathie Kumarihamy and the third Respondent Narayana Mudiyanselage Ran Menika
30 Kumarihamy the contesting respondents to the petitioners application having arrived at a settlement and having agreed that the petitioner being the adopted daughter of the late Edward Banda Korala and his

Exhibits.
P22
Consent Motion filed in D.C. Kurunegala Case No. 3714 19.8.44—*Continued*

sole heir the settlement entered into on 9th October, 1930, be set aside and the petitioner be entitled to succeed to the entirety of the estate of the said Edward Banda Korala, the petitioner undertaking and agreeing to waive all her claims if any as such sole heir against the third Respondent and her husband Mayabandaralage Ukku Banda Ambahera and to ratify all acts or deeds done, executed or performed by the third respondent and her husband in consequence of or in accordance with the settlement entered on 9th October, 1930, I move that the Court be pleased to set aside the said settlement entered on 9th October, 1930, and direct that the present settlement be entered of Record and the petitioner be declared entitled to the said estate as sole heir and that decree be entered accordingly. Each party to bear its own costs.

Kurunegala, 19th August, 1944.

We consent.
(Sgd.) V. I. V. GOMIS.
GOMIS & GOMIS.
Third Respondent,
( ) left thumb impression
of Ran Menika.
Proctor for 3rd Respondent.

(Sgd.) R. E. De S. JAYASUNDERA.
Proctor for Petitioner.

left thumb impression ( )
of Somawathie.
Petitioner.

True copy of consent motion dated 19.8.44, filed in D.C. Kurunegala Testamentary Case No. 3714.

(Sgd.) .....
15.5.51. *Secretary, D.C., Kurunegala.*

P23
Decree of the District Court in D.C. Kurunegala Case No. 3714 21.8.44

P23

Decree of the District Court in D.C., Kurunegala, Case No. 3714

IN THE DISTRICT COURT OF KURUNEGALA

In the matter of the intestate estate of the late Herath Mudiyanselage Edward Banda Korala of Nakolagamuwa..... *Deceased.*

Testamentary Case No. 3714.

Mohottallage *alias* Herath Mudiyanselage Bandara Menika of Nakolagamuwa.....
..... *Original Petitioner.*

Exhibits.

P23
Decree of the District Court in D.C. Kurunegala Case No. 3714 21.8.44— *Continued*

vs.

1. Wijesundera Mudiyanselage Somawathie Kumarihamy.

2. Wijesundera Mudiyanselage Appuhamy.

3. Narayana Mudiyanselage Kumarihamy, all of Nakolagamuwa.

4. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera.....
.....*Original Respondents.*

10 Wijesundera Mudiyanselage Somawathie Kumarihamy presently of Amunugama
.....*Present Petitioner.*

1. Wijesundera Mudiyanselage Appuhamy.

2. Narayana Mudiyanselage Kumarihamy, both of Nakolagamuwa.

3. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera aforesaid....
.....*Present Respondents.*

This matter coming on for disposal before S. S. J. Gunasekera, 20 Esquire, District Judge of Kurunegala, on the 21st day of August, 1944, in the presence of Mr. R. E. de S. Jayasundera, proctor on the part of the petitioner Somawathie Kumarihamy abovenamed and Mr. V. I. V. Gomis, proctor on the part of Ran Menika Kumarihamy the third respondent abovenamed and first and 2nd respondents Appuhamy and Kumarihamy having filed no objection to this application and being in default it is ordered in terms of the settlement filed of record dated 19th day of August, 1944, that the settlement entered into on the 9th day of October, 1930, be and the same is hereby set aside and the petitioner Somawathie Kumarihamy above- 30 named being the adopted daughter of the late Edward Banda Korala and his sole heir be declared entitled to succeed to the entirety of the estate of the said Edward Banda Korala.

It is also agreed that the petitioner do waive all her claims if any as such sole heir against the third respondent Ran Menika and her husband Mayabandaralage Ukku Banda Ambahera and do ratify all acts or deeds done, executed or performed by the third respondent Ran Menika Kumarihamy and her husband in consequence of or in accordance with the settlement entered on 9th day of October, 1930.

Exhibits.

P23
Decree of the District Court in D.C. Kurunegala Case No. 3714 21.8.44—*Continued*

Each party to bear its own costs.

(Sgd.) S. S. J. GUNASEKERA,
District Judge.

This 21st day of August, 1944.

True copy of order dated 21.7.44 in D.C. Kurunegala Testamentary Case No. 3714.

(Sgd.) .....,
15.5.51. *Secretary, D.C., Kurunegala.*

P25
Motion filed in D.C. Kurunegala Case No. 4402 5.6.29

P25

Motion Filed in D.C., Kurunegala, Case No. 4402

5th June, 1929.

Herath Mudiyanselage Bandara Menika, Nakolagamuwa. Affirmed.

I am widow of late Edward Banda Korala. He had no children, but he adopted the girl Somawathie Kumarihamy, the daughter of the late Korala's first cousin Wijesundara Mudiyanselage Appuhamy of Tiragama. My husband died without leaving a Will. Steps are now being taken to administer the estate. The Korala in his life-time had told me that the girl Somawathie would inherit a share of his lands on his death.

Once he took me and the girl to the R. M.'s Walawwa and told the R. M. that this girl was his adopted daughter.

The other claimants to my husband's estate look upon this girl as an heir to my husband's property.

The others who claim to be my late husband's heirs are his sister's children, namely, Narayana Mudiyanselage Kumarihamy of Nakolagamuwa and Narayana Mudiyanselage Ran Menika of Ambahera.

I have taken steps to make application to Court for letters of administration.

(Sgd.) CARL E. ARNDT,
for Government Agent, N.W.P.

Kurunegala Kachcheri,
24th April, 1942.

True copy.

Exhibits.
P25
Motion filed in D.C. Kurunegala Case No. 4402 5.6.29—
Continued

(Sgd.) Signature illegible.
for Government Agent.

True copy of Minute dated 5th June, 1929, filed in D.C. Kurunegala Testamentary Case No. 4402.

(Sgd.) .....,
16.9.52.
Secretary, D.C., Kurunegala.

P9

P9
Affidavit of W. M. Somawathie Kumarihamy filed in D.C. Kurunegala Case No. 4402 13.11.40

Affidavit of W. M. Somawathie Kumarihamy Filed in D.C., Kurunegala, Case No. 4402

IN THE DISTRICT COURT OF KURUNEGALA

No. 4402.

In the matter of the intestate estate and effects of the late Herath Mudiyanselage Bandara Menika of Nakolagamuwa..... *Deceased.*

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale..... *Petitioner.*

I, Wijesundare Mudiyanselage Somawathie Kumarihamy of Amunugama not being a Christian do hereby, solemnly, sincerely truly declare and affirm to and state as follows :—

1. I am the petitioner abovenamed.

2. The abovenamed Herath Mudiyanselage Bandaramenika of Nakolagamuwa died intestate at Nakolagamuwa within the jurisdiction of this Court on or about 31st July, 1940, leaving as her heirs and next of kin myself being her adopted daughter.

3. Full and true particulars of the property left by the deceased so far as I have been able to ascertain the same are contained in the Schedule given below.

Exhibits.
P9
Affidavit of W. M. Somawathi Kumarihamy filed in D.C. Kurunegala Case No. 4402 13.11.40—*Continued*

4. The said property is reasonably worth the sum of Rs. 5,578·59

5. I claim letters of Administration of the intestate estate of the said deceased as her adopted daughter and the sole heir.

Schedule

Schedule A.—Immovable property as per schedule hereto annexed	Rs.	3,698·00
Schedule B.—Movable property, debts due to deceased as per schedule hereto annexed..	,,	1,800·00
Schedule B1.—Household property, etc. As per schedule hereto annexed	,,	264·25
	Rs.	5,762·30

Deductions—

Book Accounts due to K. M. Mohartoom Saibo & Co. boutique, Malpitiya ..	Rs.	58·71	
Funeral expenses and for almsgiving ..	,,	125·00	
			183·71
Total ..	Rs.		5,578·59

The foregoing affidavit was read over and explained by me to the affirmant in Sinhalese who appeared to understand the contents thereof signed on this 13th day of November, 1940, at Kurunegala.

Before me. This is the left thumb ( ) impression of Somawathie Kumarihamy.

(Sgd.) FRED DANIELS,
J. P.

Affirmant.

True copy of Affidavit dated 13.11.40, filed in D.C. Kurunegala Testamentary Case No. 4402.

(Sgd.) .....,
1.7.52.
Secretary, D.C., Kurunegala.

D33

Exhibits.
D33
Schedule to the Affidavit of Petitioner in D.C. Kurunegala Case No. 4402
13.11.40

Schedule to the Affidavit of Petitioner in D.C., Kurunegala, Case No. 4402

Schedule "A"

D.C. Kurunegala.

Testamentary Case No. 4402.

Immovable Property

			Rs.	Cts.
		Lands Situated at Nakolagamuwa in Tiragandahe Korale		
10	1.	1/3 share of Hitinawatta with the buildings of 3 lahas kurakkan sowing ..	230	00
	2.	1/3 share of Habawela *alias* Ihalawela of 12 lahas paddy sowing extent ..	40	00
	3.	1/3 share of Habawelewatta of 2 lahas kurakkan sowing	60	00
	4.	1/8 share of Degalehena of 3 lahas kurakkan sowing	45	00
	5.	1/4 share of Bulugahamulahena of 2 lahas kurakkan	45	00
	6.	1/2 of 3/4 of Hitinawatta of 3 seers kurakkan	10	00
	7.	1/4 share of Ratmalagahamulahena of 3 seers kurakkan	5	00
	8.	1/8 share of Gangoda Aramba of 1 laha kurakkan sowing	11	00
	9.	1/3 share of Ruppewatta of 1 laha kurakkan sowing	30	00
	10.	1/8 share of Rasakonehena of 2 lahas kurakkan sowing	10	00
20	11.	1/2 share of Nilehena of 2 seers kurakkan sowing	10	00
	12.	1/4 share of Talegoda Kongahamulahena of 1 seer kurakkan	2	50
	13.	1/2 share of Bogahapitiyakumbura now garden of ½ seer	5	00
	14.	1/3 share of one amunam paddy sowing extent	130	00
	15.	1/4 share of Asseddume Godakumbura and its adjoining Meeghamula pillessa of 17 lahas paddy sowing extent	42	00
	16.	1/4 of 4/5 of Potgulekumbura of 3 pelas paddy sowing extent.. ..	20	00
	17.	1/4 share of Potgulekumbura of 2 pelas paddy sowing extent	25	00
	18.	1/4 of Talegodenilehena of 2 seers kurakkan	5	00
30	19.	1/4 share of Pokunekumbura and its adjoining Pillewa. (1) 3 pelas paddy and (2) 1 seer kurakkan	30	00
	20.	1/4 share of Kotanawekumbura of 3 pelas paddy	30	00
	21.	1/4 share of Godapitiyekumbura of 1 amunam paddy	50	00
	22.	1/8 share of Madathawela of 8 lahas paddy sowing	5	00
	23.	1/8 share of Hitinawatta of 3 seers kurakkan sowing	2	50
	24.	1/2 share of Urgalamaragahamulehena of 6 seers kurakkan	30	00
	25.	1/4 of 3/4 of Kotuwekumbura Pitangane Katagahamulahena now garden of 2 lahas kurakkan sowing	12	00
	26.	1/3 share of Bulukumburawatta with the building..	500	00
	27.	1/4 share of Bulukumbura of 2 amunams paddy sowing .. .	200	00
40	28.	Share of Anguruwewekumbura of 15 lahas paddy	32	50
	29.	1/4 share of Bulukumburegoda (high land) of 12 lahas Paddy	15	00

Exhibits.
D33
Schedule to the Affidavit of Petitioner in D.C. Kurunegala Case No. 4402 13.11.40—*Continued*

		Rs.	Cts.
30.	1/3 share of Kotuwekumbura and Godakumbura of 5 pelas paddy sowing extent	80	00
31.	1/3 share of Andiyagodawatta of 3 lahas kurakkan	100	00
32.	1/4 share of Meddegodakumbura and adjoining Walpeelekumbura of 2 pelas paddy sowing	25	00
33.	1/4 share of Welikumbura and adjoining Pillewa of 1 amunam paddy and (2) 3 seers kurakkan sowing	60	00
34.	1/2 share of Welikumbura Nilekumbura of 2 pelas paddy	50	00
35.	1/4 share of Kettaragewela of 8 lahas paddy sowing	10	00
36.	1/4 share of Akuranwela of 3 pelas and 8 lahas paddy ..	47	50
37.	1/2 share of Akuranwelawatta of 2 seers kurakkan	10	00
38.	1/2 share of Akuranwela of 16 lahas paddy sowing..	40	00
39.	1/40 share of Kongahamulahena of 2 seers kurakkan	5	00
40.	1/40 share of Imbulgahamulahena of 1½ seers kurakkan	5	00
41.	1/6 share of Dewatagawawatta *alias* Hitinawatta of 3 lahas .. .	20	00
42.	1/8 share of Hitinawatta of 2 seers kurakkan sowing	5	00
43.	1/2 share of Meegahamulahena of 2 seers kurakkan sowing	10	00
44.	1/2 share of Galagawahena of 2 lahas kurakkan sowing	20	00
45.	1/4 share of Bakmigahamulahena of 1 laha kurakkan	5	00
46.	1/2 share of Dehigahakumbura Pillewa now garden of 3 seers kurakkan sowing in extent	40	00
47.	1/4 share of Madakumbura and adjoining Wagooehena now garden (1) 1½ amunam paddy (2) 3 lahas kurakkan	125	00
48.	1/4 share of Deheiyagahakumbura of 3 pelas paddy	37	00
49.	1/4 share of Deheiyagahakumbura of 2 pelas and 5 lahas	32	00
50.	1/4 share of Mawatayagodakumbura of 1 pela paddy	5	00
51.	1/2 share of Meegahamulwatta of 1 seer kurakkan sowing	10	00
52.	1/4 of 3/5 of Hitinawatta of 6 lahas of kurakkan	10	00
	Lands at Olupeliyawa in the said Korale		
53.	1/4 of Kumbukgetekumbura, Buranpela divided southern portion of Medakumburapitiya *alias* Malpitiyewatte together with buildings all forming one property in extent one acre and I rood with the buildings thereon	750	00
	Lands at Godavita in Recopattu Korale		
54.	1/4 share of Hambarewatta of 11 acres in extent	275	00
55.	1/4 share of Karandekumbura of 14 lahas paddy	35	00
56.	1/4 of do of 12 lahas paddy sowing	30	00
57.	1/4 share of Galahitiyawekumbura and Pillewa of 2 pelas and 2 lahas paddy and (2) 3 seers kurakkan	65	00
58.	1/4 share of Western portion of Galahitiyawehena of 2 roods in extent ..	10	00

Exhibits.

D33
Schedule to the Affidavit of Petitioner in D.C. Kurunegala Case No. 4402 13.11.40—*Continued*

		Rs.	Cts.
	Lands at Godawita in Recopattu Korale		
59.	1/12 share of Kamatagawa Kahatagahamulewatte of 2 lahas kurakkan sowing in extent	8	00
	Lands at Kanumale in the said Korale		
60.	1/4 of 1/3 of 2/3rd share of Oyagawawatta of 4 lahas kurakkan sowing in extent	2	50
	Lands at Kumbalpola in Tiragandahe Korale		
61.	1/12 share of Godaliyadde kumbura of 15 lahas paddy	7	50
	Lands at Wanduragala in the said Korale		
62.	1/4 share of Godaweepele of 1 pela paddy	12	50
63.	1/4 share of Medaweepele of 2 pelas paddy	25	00
64.	1/4 share of Getekumbura of 2 pelas paddy	25	00
	Lands at Kidapola in Kadagalboda Korale		
65.	1/4 share of Kongahamulahena of 1A. 3R. 35P.	10	00
66.	1/4 share of Mawatahena of 3 lahas kurakkan	20	00
67.	1/4 share of Dangahamulahena of 2 seers kurakkan	2	00
68.	1/8 share of Mawatahena of 2 lahas kurakkan sowing	5	00
	Lands at Nakalagamuwa Aforesaid		
69.	1/8 share of Talagodewatta of 1 laha kurakkan	5	00
70.	1/3 share of Galahitiyakumbura and its adjoining Pillawa of (1) 2 pelas paddy and (2) 1 laha kurakkan	35	00
		3,698	00

True copy of schedule attested to affidavit of Petitioner dated 13th November, 1940, filed in D.C. Kurunegala Case No. 4402.

(Sgd.) Illegibly.
Secretary, D.C., Kurunegala.
23.2.44.

D34

Journal Entries in D.C., Kurunegala, Case No. 4402

D34
Journal Entries in D.C. Kurunegala Case No. 4402 16.11.40 to 1.7.52

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary Jurisdiction No. 4402.

In the matter of the estate of the late Herath Mudiyanselage Bandaramenika of Nakolagamuwa..... *Deceased.*

Between

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama....*Petitioner.*

This 16th day of November, 1940.

Exhibits.
D34
Journal Entries in D.C. Kurunegala Case No. 4402 16.11.40 to 1.7.52.—*Continued*

Messrs. Perera & Perera file proxy, affidavit and a petition of the petitioner praying for letters of administration to the estate of the above named deceased and move that an Order Nisi be entered declaring the status of petitioner and right to take out Letters of Administration to the estate of the intestate.

The motion is allowed and it is hereby ordered that an Order Nisi be entered declaring that the petitioner is entitled to Letters of Administration to the estate of the said intestate and that a copy of the said Order be published in the Government Gazette and Dinamina.

Forward declaration, 10

(Sgd.) V. JOSEPH,
D. J.

19.11.40.

Declaration forwarded. Order Nisi entered for 19.12.40.

28.11.40.

Commissioner acknowledges receipt of declaration and states that the estate is numbered Ed/263 B.

Messrs. Perera & Perera for petitioner. Mr. V. I. V. Gomis for opposing petitioner.

19.12.40. 20

Proof of publication filed. Deficiency Rs. 10/- for 22.1.40.
Mr. Gomis will file objections for same day.

(Intd.) V. J.

8.1.41.

Commissioner sends certificate dated 4.1.41 estate valued at Rs. 4,968/-. Estate Duty nil.

22.1.41.

Certificate filed. Value of estate Rs. 4,968/-. No deficiency. Objections by Mr. Gomis.

Proxy, petition and affidavit by Mr. Gomis filed. Inquiry for 30 29.5.41.

(Intd.) V. J.

16.5.41.

Refund application for Rs. 20/- duly authorised for payment handed to Mr. K. C. C. W. Perera.

(Sgd.) .....

Exhibits.

D34
Journal Entries in D.C. Kurunegala Case No. 4402 16.11.40 to 1.7.52.—*Continued*

26.5.42.

Messrs. Perera & Perera file petitioner's list of witnesses.

Messrs. Perera & Perera for petitioner. Mr. V. I. V. Gomis for opposing petitioner.

27.5.41.

The petitioner in the above case being unable to attend Court on the 28th instant, the day fixed for inquiry, as she is in a delicate state of health, Messrs. Perera & Perera move that this case be postponed for some other date. Postponed for 14.8.51.

(Intd.) V. J.,
D. J.

14.8.41.

Inquiry *vide* consent motion for postponement. *Vide* medical certificate. Inquiry is refixed for 31.10.41.

(Intd.) .....

15.8.41.

Deposit Note 04181 of 15.8.41 for Rs. 80/- issued to T. M. Banda of Nakolagamuwa for amount due on usufructuary Bond No. 1465 of 20.11.33.

18.8.41.

K.R. No. 601 of 15.8.41 for Rs. 80/- filed.

(Intd.) .....
D. J.

18.8.41.

Messrs. Perera & Perera for petitioner file Bond No. 1465 of 20.11.33 and move that the same may be discharged by Court as the monies due on the same had been deposited to the credit of this case. The title deeds are also attached.

Accept the money. Discharge the bond.

(Intd.) .....

27.10.41.

Mr. Gomis filed opposing petitioner's list of witnesses and additional list.

Messrs. Perera & Perera for petitioner.

Mr. V. I. V. Gomis for opposing petitioner.

Exhibits.
D34
Journal Entries in D.C. Kurunegala Case No. 4402 16.11.40 to 1.7.52.—*Continued*

29.10.41.

Messrs. Perera & Perera for petitioner move that the inquiry be postponed as the petitioner is ill and taking treatment in the Civil Hospital, Kurunegala. (Medical certificate annexed).

Inquiry is refixed for 20.3.42.

(Intd.) .....

6.3.42.

Messrs. Perera & Perera file petitioner's list of witnesses. Takes out 5 subpoenas.

20.3.42.

Inquiry.

Messrs. Perera & Perera for petitioner.

Mr. V. I. V. Gomis for opposing petitioner.

Mr. Perera asks for a date on the ground that a very important document, a certified copy of which has been applied for, has not been issued by the Kachcheri because the G.A. is away. He asks for a date.

Mr. Gomis has no objection and ask Rs. 25/- as costs. Later he asks for Rs. 7·50 as witnesses batta. Inquiry is of consent refixed finally for 15.5.42. Mr. Perera's client to pay Rs. 7·50 to Mr. Gomis's client as witnesses batta.

(Intd.) .....

11.5.42.

Messrs. Perera & Perera files list of documents and take out 3 subpoenas.

12.5.42.

Mr. Gomis for opposing petitioner files additional list of witnesses.

14.5.42.

Messrs. Perera & Perera file additional list of witnesses and documents and take out one subpoena.

15.5.42.

Inquiry.

Messrs. Perera & Perera for petitioner.

Mr. V. I. V. Gomis for opposing petitioner.

Further inquiry for 3.6.42 *vide* proceedings.

(Intd.) .....

3.6.42.

Inquiry. *Vide* proceedings.

(Intd.) .....

24.8.42.

Order delivered in open Court in the presence of Messrs. Perera & Perera and Mr. Gomis. Call case on 25.8.42.

(Intd.) .....
24.8.42.

25.8.42.

Call. Order Nisi made absolute. Oath and bond for 17.9.42.

(Intd.) .....
17.9.42.

10 O/A entered.

Messrs. Perera & Perera for petitioner.

Mr. V. I. V. Gomis for opposing petitioner.

4.9.42.

Mr. Gomis for counter petitioner files petition of appeal from the counter petitioners for letters. Appellants in the above case and moves that the same may be accepted and that notice of security be allowed to issue forthwith.

Accept and issue notice of security.

(Intd.) .....

20 Eo die. Notice of security issued returnable 10.9.42.

10.9.42.

Notice served on Messrs. Perera & Perera, Proctors. Security tendered is accepted. Perfected Bond filed. Notice of Appeal for 8.10.42.

Eo die. Notice of appeal issued.

17.9.42.

1. Oath—not.

2. Bond due (appeal filed). Await decision in appeal.

(Intd.) .....

30 8.10.42.

Notice of appeal. Messrs. Perera & Perera take notice of appeal.

Forward record to S.C.

(Intd.) .....

Messrs. Perera & Perera for petitioner.

Mr. V. I. V. Gomis for opposing petitioner.

Exhibits.
D34
Journal Entries in D.C. Kurunegala Case No. 4402 16.11.40 to 1.7.52—
Continued

17.11.42.

One copy of the brief issued to opposing petitioner appellants and two copies of the brief issued to petitioner respondents.

(Intd.) .....

16.8.43.

Record received from Supreme Court. Order of this Court dated 24.8.42 is affirmed and the appeal is dismissed with costs. Proctors take notice. Oath and bond for 15.11.43.

(Sgd.) .....,
D. J.

15.11.43.

Oath filed. Bond not filed.

Messrs. Perera & Perera move that bond be discharged with as the administrator has been held to be the sole heir.

Bond is dispensed with. Issue letters. Inventory for 22.12.43.

(Intd.) .....

Letters issued.

22.12.43.

Inventory not filed. Inventory for 10.2.44.

17.1.44.

Messrs. Perera & Perera for administratrix files administratrix bill of costs and move that the same may be accepted and taxed. Tax Bill.

(Intd.) .....

Messrs. Perera & Perera for petitioner.

Mr. V. T. V. Gomis for opposing petitioner.

28.1.44.

Messrs. Perera & Perera for respondents file respondent's Supreme Court bill of costs for 513/25 payable by the appellant as per Supreme Court judgment dated 5.8.42.

Taxed at Rs. 240·25.

10.2.44.

Inventory not filed. Inventory finally for 23.3.44.

Exhibits.

D34
Journal Entries in D.C. Kurunegala Case No. 4402 16.11.40 to 1.7.52— *Continued*

1.3.44.

Messrs. Perera & Perera for petitioner move to amend the original schedule of immovable property by adding the following omitted property thereto. A list of which they state that they have forwarded to the Commissioner of Estate Duty for valuation.

1.	1/3 share of Peelawatta about 30 acres	Rs.	2,000/-
2.	1/3 share of Lindakumbura of 5 pelas paddy ..	,,	500/-
3.	1/4 share of Gangodahena of 1 laha kurakkan ..	,,	25/-
4.	1/4 share of Gangodahena of 1 laha kurakkan ..	,,	25/-
5.	1/4 share of Telegedehena *alias* watta of 1 laha and 6 acres kurakkan sowing extent	,,	275/-
		Rs.	2,825/

Allowed amend schedule accordingly.

Await Commissioner's amended certificate for 23.3.44.

(Intd.) .....

23.3.44.

Inventory not filed. Commissioner's amended certificate due await for 15.5.44. Inventory thereafter.

(Intd.) .....

3.4.44.

Commissioner sends amended certificate dated 27.3.44. Estate valued at Rs. 10,793/-. Estate Duty nil.

24.4.44.

Messrs. Perera & Perera for petitioner file his bill of costs and move that same may be accepted and taxed. Tax bill on obtaining a certified copy of decree.

(Intd.) .....

27.4.44.

Copy of decree obtained by Messrs. Perera & Perera. Bill taxed.

(Intd.) .....

Messrs. Perera & Perera for administratrix (W. M. Somawathie Kumarihamy.

Mr. V. I. V. Gomis for opposing petitioner.

Exhibits.

D34
Journal Entries in D.C. Kurunegala Case No. 4402 16.11.40 to 1.7.52—
Continued

5.5.44.

Messrs. Perera & Perera for petitioner respondent applies for issue of writ by seizure and sale of appellants' property. Allowed Issue.

(Intd.) ....., *D. J.*

15.5.44.

Inventory not filed. Inventory for 19.6.44.

Commissioner's amended certificate due—already received.

Value of the estate is Rs. 10,793/-. Deficiency of stamp duty also for 19.6.44.

(Intd.) .....

24.5.44.

Writ issued returnable 30.12.44.

31.5.44.

The respondent having paid to Messrs. Perera & Perera a sum of Rs. 100/- out of the costs due to the administratrix they move that the same may be certified of record. They consent to allow the respondent one month's time to pay the balance due. The Fiscal be directed not to seize land for one month. Allowed. The payment of Rs. 100/- is certified of record. The Fiscal is directed to stay execution of the writ for one month from today on recovery of his fees from the respondent.

(Intd.) .....

13.6.44.

Messrs. Perera & Perera's client supplies Rs. 79·80 worth of stamps—*vide* stamp sheet.

Messrs. Gomis & Gomis' client has to supply Rs. 44·30 worth of stamp.

Messrs. Perera & Perera, Proctors for W. M. Somawathie.

Mr. V. 1. V. Gomis for opposing petitioner.

19.6.44.

Inventory. Deficiency due from Messrs. Perera & Perera's client was supplied on 13.6.44 Rs. 79·80 worth of stamps.

Mr. Gomis' clients have to pay Rs. 46·30 worth of stamps as follows :—

Rs. 11/- due on Proxy (page 125) ; 10·90 due on s/s (page 132) ; 1·20 due on Precept (page 138) ; 11/- Order Nisi (page 136) ; 1·20 Precept (page 140) ; and 11/- notice (page 141).

1, 2 and 3 not attended to. Issue notices for 21/7 *re* all matters.

7.7.44.

Messrs. Gomis for respondents move deposit in Court the sum of Rs. 361·87 being balance cost due to the administratrix in full satisfaction as per S.C. bill and D.C. bill taxed and move that the Fiscal be directed to return the writ against the respondents unexecuted.

Issue deposit Note for Rs. 361·87 and mention case on Bench.

(Intd.) .....

7.7.44.

Deposit Note 49641 for Rs. 361·87 issued. Mention case on Bench.

10.7.44.

Case called. Await K.R. for 14/7.

11.7.44.

Fiscal, N.W.P., sends notice under section 232 of C.P.C. in 1052 to seize Rs. 227·87 out of the money in deposit.

Messrs. Perera & Perera for W. M. Somawathie Kumarihamy.

Mr. V. I. V. Gomis for opposing petitioner.

14.7.44.

Receipt No. 357 of 7.7.44 for Rs. 361·87 filed. Deficiency Rs. 46·30 to be supplied as shown *vide* 19.6.44 not supplied. Trial 25.7.

(Intd.) .....

Later deficiency of stamp supplied.

18.7.44.

Case called *re* journal entry dated 7.7.44. Inquiry for 25.7.

(Intd.) .....

21.7.44.

Inventory due for 1.9. Deficiency supplied.

(Intd.) .....

25.7.44.

Inquiry. For proceedings see separate sheet.

(Intd.) .....

27.7.44.

Order delivered in open Court. Messrs. Perera & Perera and Messrs. Gomis & Gomis take notice.

(Intd.) .....

Exhibits.

D34
Journal Entries in D.C. Kurunegala Case No. 4402 16.11.40 to 1.7.52—
Continued

27.7.44.

Copy of journal entry issued to Fiscal, N.W.P.

16.8.44.

Messrs. Perera & Perera for petitioner move for an order of payment in their favour for Rs. 361·87.

Allowed. Issue P.O. for Rs. 361·87 in favour of Messrs. Perera & Perera.

(Intd.) .....

17.8.44.

P.O. 65054 for Rs. 361·87 issued to Messrs. Perera & Perera, Proctors.

(Intd.) .....
D. J.

Messrs. Perera & Perera for W. M. Somawathie.

Messrs. Gomis & Gomis for opposing petitioner.

19.8.44.

It has now been brought to my notice that the money in deposit is under seizure. Plaintiff in D.C. Kurunegala No. 1052 may be noticed. Order for issue of P.O. made on 16.8.44. is cancelled.

(Intd.) .....
D. J.

1.9.44.

Journal entry 21.7.44. Inventory due not ready. Inventory 13.10.

(Intd.) .....

13.10.44.

Inventory filed. Final account 15.12.

(Intd.) .....

15.12.44.

Final account—not ready on 26.1.

(Intd.) .....

26.1.45.

Final account—not ready for 16.3.

(Intd.) .....

Exhibits.
D34
Journal Entries in D.C. Kurunegala Case No. 4402 16.11.40 to 1.7.52 — *Continued*

16.3.45.

Final account—not ready for 20.4.

(Intd.) .....

Messrs. Perera & Perera for W. M. Somawathie.

Messrs. Gomis & Gomis for petitioner.

20.4.45.

Final account filed. Secretary's report for 11.5.

(Intd.) .....

11.5.45.

Secretary's report filed. For compliance on 15.6.45.

(Intd.) .....

13.6.45.

As the Deputy Fiscal has reported to Court in D.C. Kurunegala 1052 that he has seized a sum of Rs. 227·87 out of the moneys lying in deposit to the credit of the administratrix in this case, Messrs. Gomis & Gomis move that the said sum be transferred to the said case 1052 to enable the plaintiff to draw the same in the said case No. 1052 wherein the administratrix is the second defendant and the writ has been issued against her by the plaintiff. Administratrix objects.

Inquiry for 9.7.

(Intd.) .....

9.7.45.

Inquiry. For proceedings see separate sheet.

(Intd.) .....

27.5.46.

Messrs. Perera & Perera file their bill of costs recoverable from the estate as their fees and move that the same be accepted and taxed.

Tax Bill.

(Intd.) .....

27.5.46.

Messrs. Perera & Perera submits with reference to the order of Court dated 9.7.44 they file their bill of costs and move that their application for an order of payment dated 16.8.44 be allowed. Let bill be taxed first.

(Intd.) .....

Exhibits.

D34
Journal Entries in D.C. Kurunegala Case No. 4402 16.11.44 to 1.7.52—
Continued

Messrs. Gomis & Gomis receive notice of motion.

30.5.46.

Issue payment order for Rs. 361·87.

(Intd.) .....

31.5.46.

P.O. Box 87395 for Rs. 361·87 issued in favour of Messrs. Perera & Perera, Proctors, Kurunegala.

(Intd.) .....

1.7.52.

Copies of petition issued—Stamp Rs. 16/-.

True copy of Journal entries in D.C. Kurunegala Testamentary Case No. 4402 up to 1.7.52.

(Sgd.).....
Secretary, D.C., Kurunegala.
19.9.52.

P10
Petition of W. M. Somawathie Kumarihamy filed in D.C. Kurunegala Case No. 4402 16.11.40

P10

Petition of W. M. Somawathie Kumarihamy Filed in D.C., Kurunegala, Case No. 4402

IN THE DISTRICT COURT OF KURUNEGALA

No. 4402.

In the matter of the intestate estate and effects of the late Herath Mudianselage Bandaramenika of Nakolagamuwa.....*Deceased.*

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Amunugama in Recopattu Korale.....*Petitioner*

On this 16th day of November, 1940.

The petition of the petitioner abovenamed appearing by Charles Laurence Weerasekera Perera and K. C. C. W. Perera and K. A. C. Amerasinghe his Proctors practising in partnership under the name, style and firm of Perera & Perera, states as follows :—

1. The abovenamed Herath Mudiyanselage Bandaramenika of Nakolagamuwa died intestate at Nakolagamuwa within the jurisdiction of this Court on or about 31st July, 1940, leaving perfectly

property particulars of which so far as the petitioner has been able to ascertain are contained in the Schedule annexed to the affidavit appended hereto.

Exhibits.
P10
Petition of W. M. Somawathie Kumarihamy filed in D. C. Kurunegala Case No. 4402 16.11.40—
Continued

2. The said Herath Mudiyanselage Bandaramenika of Nakolagamuwa left her surviving as her heirs and next of kin the petitioner her sole heir who is her adopted daughter.

3. The petitioner claim Letters of Administration as the adopted daughter the sole heir of the said deceased.

Wherefore the petitioner prays for an order declaring the petitioner entitled to have letters of administration to the estate of the late Herath Mudiyanselage Bandaramenika of Nakolagamuwa deceased.

For costs and for such further and other acts as to this Court may seem meet.

(Sgd.) PERERA & PERERA,
Proctors for Petitioner.

True copy of the petition dated 16.11.40 filed in D.C. Kurunegala Testamentary Case No. 4402.

(Sgd.) .....,
1.7.52.
Secretary, D.C., Kurunegala.

P11

Petition of Opposing Petitioners Filed in D.C., Kurunegala, Case No. 4402

P11
Petition of Opposing Petitioners filed in D.C. Kurunegala Case No. 4402 22.1.41

IN THE DISTRICT COURT OF KURUNEGALA

In the matter of the intestate estate and effects of the late Herath Mudiyanselage Bandaramenika of Nakolagamuwa.....*Deceased.*

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale..... *Petitioner*

vs.

Testamentary Jurisdiction

No. 4402.

1. Maya Bandaralage Ukku Banda Ambahera of Ambahera.

2. Herath Mudiyanselage Tikiri Banda Herath of Arambepola.....*Opposing Petitioner.*

The 22nd day of January, 1941.

Exhibits.
P11
Petition of Opposing Petitioners filed in D.C. Kurunegala Case No. 4402 22.1.41—*Continued*

The petition of the opposing petitioners abovenamed appearing by V. I. V. Gomis, their Proctor, states as follows :—

1. The opposing petitioner deny that the applicant for Letters of Administration is an adopted daughter of any near relation of the deceased Bandara Menika.

2. The said U. B. Ambahera is the son of the deceased full sister Kuma and the said T. B. Herath is the son of the deceased's full brother Banda.

3. The opposing petitioners are the nearest heirs of the deceased and as such are entitled to Letters of Administration.

4. The opposing petitioners deny that the said applicant has any claim to any share of the deceased's estate.

Wherefore the opposing petitioners pray that Letters of Administration over the said estate be granted to them for costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) V. I. V. GOMIS,
Proctor for Opposing Petitioners.

True copy of petition dated 22.1.41 filed in D.C. Kurunegala Testamentary Case No. 4402.

(Sgd.).....
Secretary, D.C., Kurunegala.

30.6.52. 1.7.52.

P12
Affidavit of Opposing Petitioners filed in D.C. Kurunegala Case No. 4402 22.1.41

P12

Affidavit of Opposing Petitioners Filed in D.C., Kurunegala, Case No. 4402

IN THE DISTRICT COURT OF KURUNEGALA

In the matter of the intestate estate of the late Herath Mudiyanselage Bandaramenika, deceased, of Nakolagamuwa.

Testamentary Jurisdiction No. 4402.

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama....*Petitioner*

vs.

1. Maya Bandaralage Ukku Banda Ambahera of Ambahera.

2. Herath Mudiyanselage Tikiri Banda Herath of Arambepola....*Opposing Petitioners.*

Exhibits.

P12
Affidavit of Opposing Petitioners filed in D.C. Kurunegala Case No. 4402 22.1.41—
Continued

We (1) Maya Bandaralage Ukku Banda Ambahera of Ambahera and (2) Herath Mudiyanselage Tikiri Banda Herath of Arambepola in Udapola Medalasse Korale not being Christians do hereby solemnly, sincerely and truly declare affirm as follows :—

1. We deny that the applicant for Letters of Administration is an adopted daughter or any near relation of the deceased Bandara Menika.

2. I the said U. B. Ambahera and the son of the deceased's full sister Kuma and I the said T. B. Herath am the son of the deceased's full brother Banda.

3. We are the nearest heirs of the deceased and as such are entitled to Letters of Administration.

4. We deny that the said applicant has any claim to any share of the deceased's estate.

The foregoing affidavit have been duly read over and truly explained by me to the within named affirmants and they having understood the contents thereof signed and affirmed to at Kurunegala on this 22nd day of January, 1941.
Before me.

(Sgd.) FRANK MARKUS,

J. P.

True copy of Affidavit dated 22.1.41 by the opposing petitioners in D.C. Kurunegala Testamentary Case No. 4402.

(Sgd.) .....,
1.7.52.

30.6.52. *Secretary, D.C., Kurunegala.*

P13

P13
Issues Framed in D.C. Kurunegala Case No. 4402 15.5.42

Issues Framed in D.C., Kurunegala, Case No. 4402

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary Jurisdiction 4402	In the matter of the estate of the late Herath Mudiyanselage Bandaramenika of Nakolagamuwa..... *Deceased.* Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama....*Petitioner.*

15.5.42

Exhibits.

P13
Issues Framed in D.C. Kurunegala Case No. 4402 15.5.42—*Continued*

Inquiry

Petitioner present.

Messrs. Perera & Perera for her.

Counter-petitioners Ambahera and Herath are present.

Mr. Gomis for them.

Petitioner claims administration as sole heir. She claims as the adopted daughter of the deceased. She and petitioners who oppose her claim to be the nephew of the deceased.

Mr. Perera considers that of the petitioner's claim is rejected the counter-petitioners or either of them will be the heirs. 10

Issues

1. Is Somawathie Kumarihamy, the petitioner, the adopted daughter of the deceased ?

2. If so, was she adopted for the purpose of inheritance ?

True copy of the Issues framed in the above case on 15.5.42 at the inquiry (D.C. Kurunegala Testamentary Case No. 4402).

(Sgd.) ....., 1.7.52.

30.6.52. *Secrtary, D.C., Kurunegala.*

P18
List of Witnesses filed in D.C. Kurunegala Case No. 4402 24.5.41

P18 20

List of Witnesses Filed in D.C., Kurunegala, Case No. 4402

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary
No. 4402.

Petitioners' List of Witnesses

1. Mr. M. B. Wanduragala, Proctor and N.P., Teldeniya.
2. Tilakaratne Banda Korala of Boyagane.
3. T. B. Herath, U.D.C. Office, Kurunegala.
4. Rev. Sri Sumangala Nayake Thero of Tiregama Temple.
5. M. M. Kiri Banda ex-Arachchi of Torawatura. 30

Exhibits.
P18
List of Witnesses filed in D.C. Kurunegala Case No. 4402 24.5.41—*Continued*

6. U. B. Ambahera of Ambahera.
7. H. B. Balalla ex-Korala of Rekawa.
8. Kuma Kumarihamy of Nakolagamuwa.

Kurunegala,
24th May, 1941.
Received copy.

(Sgd.) PERERA & PERERA,
Proctors for Petitioner.

Received copy.

(Sgd.) V. I. V. GOMIS,
Proctor for Opposing Petitioners.

True copy of the list of witnesses filed by Messrs. Perera & Perera for petitioner dated 24.5.41 in D.C. Kurunegala Testamentary Case No. 4402.

(Sgd.) .....,

30.6.52. *Secretary, D.C., Kurunegala.*

P14

P14
Order in D.C. Kurunegala Case No. 4402 24.8.42

Order in D.C., Kurunegala, Case No. 4402

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary Jurisdiction

No. 4402.

In the matter of the estate of the late Herath Mudiyanselage Bandaramenika of Nakolagamuwa..... *Deceased*

Between

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama.... *Petitioner.*

Order

Petitioner W. M. Somawathie Kumarihamy applies for Letters of Administration to the estate of the deceased H. M. Bandaramenika as the sole heir.

The two respondents M. B. Ukku Banda and H. M. Tikiri Banda Herath oppose the application of the petitioner for letters on the ground that the petitioner is not an heir of the deceased, and claim letters for themselves alleging that they are the heirs of the deceased.

Exhibits.
P14
Order in D.C. Kurunegala Case No. 4402 24.8.42—
Continued

The two respondents were not made respondents to the application by the petitioner. They intervened in the case. It is not denied by the petitioner that first respondent is a child of deceased's full sister Kuma and that the second respondent is a son of deceased's full brother, Banda..... Deceased left no children of her own. Petitioner bases her claim as the adopted daughter of the deceased. If it is held by Court that petitioner was adopted by the deceased for the purpose of inheritance, then the two respondents will have no share of the estate of the intestate. . . . Deceased was married to Edward Banda, Korala, who predeceased her. They had no children of their own. The inquiry proceeded in two issues framed and adopted.

The burden of proving adoption for the purposes of inheritance is on the petitioner.

The law relating to adoption among the Kandyan Sinhalese is clearly laid down in T. P. W. Tikiri Kumarihamy *vs.* B. B. A. Niyarapola and 2 others reported in 2 Ceylon Law Journal, page 222.

Their Lordships Puisne Justices Maartensz and Hearne have in the case mentioned, considered most of the cases dealing with the law of adoption and have laid down the following principles.

1. That to constitute a valid adoption under the Kandyan law the parties should be of the same caste.

2. That the adoptive parent should declare and acknowledge that he or she adopted the child in order that it may inherit his or her property.

3. That the intestate statement to the school master that she was bringing up the children (added respondent) and that she intended to give them her property was a declaration that she had adopted the children in order that they should inherit her property.

4. That adoption need not be formally declared, that is to say there are no prescribed formalities or ceremonies to be gone through for the purpose.

The above principles have been arrived at after a consideration of the earlier authorities.

Let me now apply the above principles to the facts proved in this case.

The parties to this suit are Kandyan Sinhalese. As I said before the deceased and her husband Edward Banda had no children of their own.

Edward Banda left a considerable estate at his death which took place on 3.3.29. He died intestate. His estate was administered by

his widow, Bandaramenika in D.C. Testamentary Kurunegala 3714. It is her estate that is sought to be administered in the present case. When applying for Letters in D.C. 3714 Bandaramenika made only Somawathie, the present petitioner, respondent. Her Proctor in the Testamentary Case was Mr. M. B. Wanduragala. It would appear that Bandaramenika has filed two affidavits in the case affirmed to by her dated 11.6.29 and 8.7.29 respectively *vide* P6 and P1. Affidavit of 8.7.29 (P1) has been affirmed to before Mr. Ekneligoda, J.P. The affidavit dated 11.6.29 (P6) has been affirmed to before the District Judge of Kurunegala.

In both those affidavits Bandaramenika states that the heirs of deceased Edward Banda were herself the widow and the petitioner in the present suit who was the first respondent in that case—she says that the first respondent is the adopted daughter of the deceased Edward Banda.

It is very clear from these two affidavits that Bandaramenika recognised Somawathie to be the sole heir to her husband's estate as his adopted daughter. She as the widow claimed a life interest. On the 9th of July Bandaramenika's Proctor filed a petition together with the affidavits P1 and P6 signed by him as Proctor *vide* certified copy P2 of the said petition.

In this petition too Somawathie the first respondent in that case is stated to be the adopted child of the deceased Edward Banda.

On the 9th of July, 1929, another petition appears to have been filed signed by Mr. M. B. Wanduragala, Proctor. This petition has not been signed by Bandaramenika. This petition has a very significant statement—in the second para. the following words occur.—

" Leaving as heirs the petitioner his widow and the first respondent who is the adopted child of the said deceased but as to whose adoption the petitioner is unaware whether it is in accordance with the requirements of Kandyan Law for purposes of inheritance." How this petition came to be filed in the record baffles me. In the two affidavits signed by Bandaramenika and one petition signed by her Proctor it is stated unequivocally that Somawathie the first respondent in that case was the adopted daughter and heir of the deceased but in this petition being the same date (P5) further statements are embodied expressing a doubt as to the heirship of Somawathie.

Second respondent in D.C. 3714 was the G.A.L. of Somawathie who was then a minor. The third respondent and fourth respondent in that case were two nieces of Edward Banda. They filed a statement *vide* D1 claiminig to be the heirs of Edward to the exclusion of Somawathie. Ranmenika the fourth respondent in that case is married to Ukku Banda Ambahera the first respondent in the present

Exhibits.
P14
Order in D.C. Kurunegala Case No. 4402 24.8.42.—
Continued

case. Ukku Banda has been at one time a Proctor's clerk. Second respondent in the present case (Herath) was a clerk of Mr. M. B. Wanduragala who was Proctor for Bandaramenika in the old Testamentary case.

I think it is a safe inference to draw that Herath, the second respondent had a hand in filing the petition (P5) which clearly was unauthorised by Bandaramenika. It is in evidence that after Edward Banda's death Herath the second respondent managed his estate. 4th respondent in D.C. Testamentary 3714 is the wife of Ukku Banda Ambahera. There was a contest thus created in the old Testamentary Case between Bandaramenika and Somawathie on the one side, and Kuma Kumarihamy and Ran Menika on the other. The matter was settled as follows :—

The estate was divided into four parts :—

Bandaramenika	..	..	.. 1/4
Somawathie	..	..	.. 1/4
Kuma Kumarihamy		..	.. 1/4
Ran Menika	..	..	.. 1/4

It will be observed that according to this settlement Bandaramenika who should have got only a life interest got an absolute one-fourth (1/4) share.

Somawathie whose relationship to Edward, but for the adoption was not such as to entitle her to any share got (1/4). Kuma Kumarihamy and Ranmenika who got between them 1/2 share should have got the entire estate if they had succeeded in proving in that case that Somawathie was not adopted for the purpose of inheritance. Somawathie, as I said before, was a minor then. Her natural father Appuhamy as G.A.L. would appear to have consented to the settlement. Somawathie being a minor, the parties had to obtain the Court's permission before the settlement could be made effective. In order to satisfy the Court that the settlement was in the interest of the minor. Appuhamy her G.A.L. and Bandaramenika the petitioner in that case gave evidence *vide* certified copies of their evidence (D2 and D3). In Appuhamy's evidence he clearly says that the deceased adopted Somawathie for the purpose of inheritance. He says that he could not say if he could prove the adoption.

Bandaramenika in her evidence says this :—

" First respondent was brought up by my husband and myself. My husband wanted to give the child also some property. He never wanted to give the entire property to the first respondent."

Contrast this evidence with the statement she made to the Assistant Government Agent, Kurunegala, on 5.6.29 (P2) before she applied for letters.

In this she says that her husband adopted Somawathie and that husband told her that Somawathie would inherit a share of his lands on his death. Once the (Edward Banda) took her and the (Somawathie) to the R.M.'s Walawwa and told the R.M. that the girl was his adopted daughter.

She further says that the others who claim to be her late husband's heirs were his sister's children. N. M. Kumarihamy and N. M. Ranmenika. She does not say in this statement that she admits their claim.

It is pretty clear on an examination of the documentary evidence that both Appuhamy G.A.L. and Bandaramenika gave the evidence in D.C. Testamentary Case No. 3714 in order to satisfy Court that the settlement was not prejudicial to the girl. When one reads through the lines it is obvious that neither Appuhamy nor Bandaramenika gave her rights away completely. Whilst asserting that she was the adopted daughter they did not want to risk an inquiry the result of which nobody could have foreseen. In Bandaramenika's evidence she says that she and her husband brought up Somawathie. Bandaramenika apparently had no property except what she obtained from the estate of her first husband. We are concerned with the estate of Bandaramenika. Bandaramenika in her statement to the A.G.A. (P3) says that the other claimants to her husband's estate look upon this girl as an heir to her husband's property.

To my mind even this statement would appear to have been made by Bandaramenika on the advice and guidance of somebody. It was pretty well known that Somawathie was adopted by Bandaramenika and her husband. This statement leaves a loophole for other persons claiming to come in. Bandaramenika and her husband would have adopted if they adopted any, jointly. Whatever was done by Edward was done for himself and on behalf of his wife.

The petitioner is a daughter of Appuhamy a cousin of Edward Banda. She is of the same caste as Edward Banda and Bandaramenika. One of the requirements of law has been satisfied. It is in evidence that the petitioner was brought up by Edward Banda and his wife from her infancy. Her father Appuhamy lived in Bandaramenika's house. He is still living there. It is in evidence that her mother too lived in their house. There is the evidence of a Buddhist monk Sangarakkita who is a Nayake priest that Edward Banda used to bring the infant to the temple and tell him that he was bringing up the child to inherit him. There is the evidence of Kiri Banda ex-Arachchi who says that Edward Banda told him that he was bringing up the girl for the purpose of inheriting him. This Kiri Banda has undoubtedly been clearly associated with the family, it was he who stood surety for Bandaramenika in her husband's Testamentary Case. There is of course the evidence of Kuma

Exhibits.
P14
Order in D.C. Kurunegala Case No. 4402 24.8.42—
Continued

Kumarihamy who at one time contested petitioner's rights. Even if the Court ignores her evidence, the evidence of the Buddhist Monk and the ex-Aracchi definitely proves that petitioner was adopted by Edward Banda and his wife to inherit their property. Of course during the lifetime of Edward Banda, Bandaramenika had no property of her own. Petitioner was married in Binna to Amunugama by Bandaramenika. She and her husband lived in Bandaramenika's house. They left her house only after Amunugama became V.C. Chairman and Registrar of Potuhera. At Bandaramenika's death-bed she entrusted the keys to the petitioner. It is no doubt true that Edward Banda and his wife fed and clothed very many of their poor relations. None of them came forward and claim a share of this estate. Bandaramenika in her own affidavits and petitions has stated and acknowledged that the petitioner was adopted by her husband and that she was his heir. Edward Banda's adoption is Bandamenika's adoption as well. The adoption was done during their joint lives and during the subsistence of their marriage. One cannot dissociate the wife from the husband and say that it was only Edward Banda who adopted her and not his wife. I have no hesitation in accepting the evidence of petitioner, Sangarakkita Thero and Kiri Banda ex-Arachchi. Applying the principles laid down in the case reported in 2 Ceylon Law Journal I have come to the conclusion that the petitioner has proved that she has been adopted by Bandaramenika the deceased for the purpose of inheriting her property. I hold that the petitioner is the sole heir and is entitled to obtain Letters of Administration. The two objecting respondents will pay the petitioner the costs of this inquiry.

The order in this case was delayed owing to my having gone on leave from the 21st June up to the end of July owing to ill-health. The Court vacation lasted from the 1st of August up to the 10th August.

(Sgd.) H. A. De SILVA,
D. J.
24.8.42.

Order delivered in open Court in the presence of Messrs. Perera & Perera and Mr. Gomis.

(Sgd.) H. A. De SILVA.
24.8.42.

True copy of order in D.C. Kurunegala Testamentary Case No. 4402.

(Sgd.) .....,
Secretary, D.C., Kurunegala.

P15

Exhibits.
P15
Judgment and Decree of the Supreme Court in D.C. Kurunegala Case No. 4402
5.8.43

Judgment and Decree of the Supreme Court in D.C., Kurunegala, Case No. 4402

GEORGE THE SIXTH by the Grace of God of Great Britain, Ireland and the British Dominions Beyond the Seas, King, Defender of the Faith, Emperor of India.

D.C. (Inty.) 116/1942.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama.... *Respondent*

Against

Mayabandaralage Ukku Banda Ambahera and another..... *Appellants.*

Action No. 4402 (Testamentary).

District Court of Kurunegala.

This action coming on for hearing and determination on the third and fifth day of August, 1943, and on this day upon an appeal preferred by the appellants before the Hon. Mr. F. A. Moseley, The Hon. Mr. H. H. Hearne and the Hon. Mr. E. A. L. Wijeyewardene, K.C., Puisne Justice of this Court in the presence of Counsel for the appellants and respondents.

It is considered and adjudged that the order made in this action by the District Court of Kurunegala and dated the 24th day of August, 1942, be and the same is hereby affirmed and this appeal is dismissed. And it is further ordered and decreed that the appellants do pay to the respondent her taxed costs of this appeal.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice at Colombo the 5th day of August, in the year of our Lord one thousand Nine hundred and forty-three and of our Reign the seventh.

(Sgd.) Signature illegible,

Deputy Registrar, S.C.

The following is the Judgment of the Supreme Court on the same date pronounced by the Court :—

S.C. No. 116.

D.C. (Inty) Kurunegala.
No. 4402.

Exhibits.

P15
Judgment and Decree of the Supreme Court in D.C. Kurunegala Case No. 4402 5.8.43—*Continued*

Present : Mosley, J., Hearne, J. and Wijeyewardene, J.

Argued on : 3rd August, 1943.

Counsel : H. V. Perera, K.C., with E. B. Wickramanayake for the appellants.

N. E. Weerasooriya, K.C., with S. R. Wijeyetilleke for the respondent.

Delivered on : 5th August, 1943.

MOSLEY, J.

This appeal involves a point of Kandyan Law in regard to the adoption of children for the purpose of inheritance. The parties went to trial on the following issues :—

(1) Is Somawathie Kumarihamy, the petitioner, the adopted daughter of the deceased ?

(2) If so, was she adopted for the purpose of inheritance ?

The learned District Judge in addressing his mind to the answering of these questions remarked that the law relating to the matter is clearly laid down in the case of T. P. W. Tikiri Kumarihamy *vs.* M. B. A. Niyarepola and two others (2 C.L.J. 222). In that case an exhaustive review of existing authorities was made and I am in respectful and full agreement with the conclusion at which the Court arrived. In the light of that judgment the District Judge answered each of the issues in the affirmative. There is, in my view, ample evidence to support the finding in each case.

Ex abundanti cautela perhaps, the District Judge went on to hold that an adoption by a husband, during their joint lives and during the subsistence of the marriage, is the adoption of the wife as well. Without expressing an opinion as to the correctness or otherwise of that view, I would merely say that such a finding is superfluous to the requirements of the present case.

The appeal is dismissed with costs.

(Sgd.) F. A. MOSELEY,
Puisne Justice.

HEARNE, J.,
I agree.

(Sgd.) H. H. HEARNE,
Puisne Justice.

WIJEYEWARDENE, J.
I agree.

(Sgd.) E. A. L. WIJEYEWARDENE,
Puisne Justice.

Exhibits.

P15
Judgment and Decree of the Supreme Court in D.C. Kurunegala Case No. 4402 5.8.43—
Continued

True Copy.

(Sgd.) Signature illegible.
Deputy Registrar, S.C.

True copy of S.C. Judgment in D.C. Kurunegala Testamentary Case No. 4402.

(Sgd.) .....,
1.7.52.

30.6.52. *Secretary, D.C., Kurunegala.*

P16

P16
Letters of Administration Issued to W. M. Somawathie Kumarihamy in D.C. Kurunegala Case No. 4402 15.11.43

Letters of Administration Issued to W. M. Somawathie Kumarihamy in D.C., Kurunegala, Case No. 4402

Nett value of Estate Rs. 4,968/-
Estate Duty Rs. Nil.

Letters of Administration with the Will annexed and otherwise

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary
Jurisdiction No. 4402.

To : Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale.

Whereas Herath Mudiyanselage Bandaramenika of Nakolagamuwa deceased, lately departed this life without leaving a Will you are therefore fully empowered and authorised by these presents to administer and faithfully dispose of the property and estate, rights and credits of the said deceased, and to demand and recover whatever debts may belong to her estate and to pay whatever debts the said deceased did owe.

So far as such property and estate rights and credits shall extend, you having been already affirmed well and faithfully to administer the same and to render a true and perfect Inventory of all the said property and estate, rights and credits to this Court on or before the

Exhibits.

P16
Letters of Administration Issued to W. M. Somawathie Kumarihamy in D.C. Kurunegala Case No. 4402 15.11.43—*Continued*

22nd day of December, 1943, next and also a true and just account of your administration thereof on or before the 24th day of January, 1944. And you are therefore by these Presents deputed and constituted Administrator of all the property and estate rights and credits of the said deceased. (You are nevertheless hereby prohibited from selling any immovable property of the estate unless you shall be specially authorised by the Court so to do).

And it is hereby certified that the Declaration and Statement of property under the Estate Duty Ordinance have been delivered and that the value of the said estate as assessed by the Commissioner of Stamps amounts to Rs. 4,968/-.

And it is further certified that it appears by a certificate granted by the Commissioner of Stamps and dated the 4th day of January, 1941, that no Estate Duty is payable.

Given under my hand and the Seal of the Court this 15th day of November, 1943.

(Sgd.) H. A. De SILVA,
District Judge.

(Seal)

True copy of Letters of Administration in D.C. Kurunegala Testamentary Case No. 4402.

(Sgd.) Illegibly.

Secretary, D.C., Kurunegala.
1.7.52.

D35
Motion filed in D.C. Kurunegala Case No. 4402 29.2.44

D 35.

Motion Filed in D.C., Kurunegala, Case No. 4402

IN THE DISTRICT COURT OF KURUNEGALA

In the matter of the intestate estate and effects of the late Herath Mudiyanselage Bandaramenika of Nakolagamuwa.....*Deceased.*

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale.....*Petitioner.*

Exhibits.

D35
Motion filed in D.C. Kurunegala Case No. 4402 29.2.44—*Continued*

We move to amend the original Schedule of Immovable property by adding the following omitted property thereto, a list of which we have this day forwarded to the Commissioner of Estate Duty for valuation :—

(1) One-third share of Peellawatte of about 30 acres in extent..	Rs.	2,000·00
(2) One-third share of Lindakumbura of 5 pelas paddy sowing	,,	500·00
(3) One-fourth share of Gangodahena of 1 laha kurakkan sowing	,,	25·00
(4) One-fourth share of Gangodahena of 1 laha kurakkan sowing	,,	25·00
(5) One-fourth share of Talegodahena alias watta of 1 laha and seers kurakkan sowing extent	,,	275·00
	Rs.	2,825·00

Kurunegala, 29th February, 1944.

(Sgd.) PERERA & PERERA,
Proctors for Petitioners.

True Copy of motion dated 29th February, 1944, filed in D.C., Kurunegala, Testamentary Case No. 4402.

(Sgd.) .....
Secretary, D.C., Kurunegala.
19.9.52.

P17.

P17
Inventory filed in D.C. Kurunegala Case No. 4402 13.10.44

Inventory Filed in D.C., Kurunegala, Case No. 4402

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary Case No. 4402.

In the matter of the intestate estate and effects of the late Herath Mudiyanselage Bandaramenika of Nakolagamuwa..... *Deceased.*

Wijesundara Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale

.....*Petitioner.*

Exhibits.
P17
Inventory filed in D.C. Kurunegala Case No. 4402 13.10.44.—*Continued*

Immovable Property

Schedule A1.

Lands Situated at Nakolagamuwa in Tiragandahe Korale

		Value Rs.	Cts.	
1.	1/3rd share of Hitinawatta with the buildings of three lahas kurakkan sowing	230	00	
2.	1/3rd share of Habawela *alias* Iahalawela of 12 lahas paddy sowing ..	40	00	
3.	1/3rd share of Habawelawatta of two lahas kurakkan sowing ..	60	00	
4.	1/8th share of Degalehena of three lahas kurakkan sowing	45	00	10
5.	1/4th share of Bulugahamulahena of 2 lahas kurakkan	45	00	
6.	1/2 of 3/4th of Hitinawatta of 3 seers kurakkan	10	00	
7.	1/4th share of Ratmalagahamulahena of 3 seers kurakkan ..	5	00	
8.	1/8th share of Gangoda Aramba of 1 laha kurakkan	11	00	
9.	1/3rd share of Ruppewatta of 1 laha kurakkan	30	00	
10.	1/8th share of Rsakonhena of 2 lahas kurakkan	10	00	
11.	1/2 share of Nelahena of 2 seers kurakkan	10	00	
12.	1/4th share of Talegodahena Kongahamulahena of one seer kurakkan..	2	50	
13.	1/2 share of Bogahapitiyekumbura now garden of 1/2 seer kurakkan ..	5	00	
14.	1/3rd share of one amunam paddy sowing	130	00	20
15.	1/4th shrae of Esseddumegodakumbura and its adjoining Meegahamulapillewa of 17 lahas paddy sowing	42	00	
16.	1/4th of 4/5th of Potgulecumbura of 3 pelas paddy	20	00	
17.	1/4th share of Potgulecumbura of 2 pelas paddy	25	00	
18.	1/4th share of Talegodanilehena of 2 seers kurakkan	5	00	
19.	1/4th share of Pokunecumbura and its adjoining pillewa (1) 3 pelas paddy (2) one seer kurakkan	30	00	
20.	1/4th share of Kotanawekumbura of 3 pelas paddy	30	00	
21.	1/4th share of Godapitiyecumbura of 1 amunam paddy	50	00	
22.	1/8th share of Madalawala of 8 lahas paddy	5	00	30
23.	1/8th share of Hitinawatta of 3 seers kurakkan	2	50	
24.	1/2 share of Usgalamaragahamulahena of 6 seers kurakkan ..	30	00	
25.	1/4th of 3/4th share of Kotuwecumbura Pitangane Kahatagahamulahena now garden of 2 lahas kurakkan	12	00	
26.	1/3rd share of Bulucumburewatta with the buildings	500	00	
27.	1/4th share of Bulucumbura of 2 amunams paddy	200	00	
28.	1/2 of Anguruwawecumbura of 15 lahas paddy	32	50	
29.	1/4th share of Bulukumburegoda (highland) 12 lahas paddy ..	15	00	
30.	1/3rd share of Kotuwecumbura and Godacumbura of five lahas paddy sowing extent	80	00	40
31.	1/3rd share of Andiyagodawatta of 3 lahas kurakkan	100	00	

		Value. Rs.	Cts	Exhibits.
32.	1/4th share of Meddegodakumbura and adjoining Walpolecumbura of 2 pelas paddy sowing	25	00	P17 Inventory filed in D.C. Kurunegala Case No. 4402 13.10.44.— *Continued*
33.	1/4th share of Welikumbura and adjoining pillewa of one amunam paddy and 2 seers kurakkan	60	50 00	
34.	1/2 share of Welicumbura of 2 pelas paddy	50	00	
35.	1/4th share of Hittarwela of eight lahas paddy	10	00	
36.	1/4th share of Akuranwela of three pelas and eight lahas paddy ..	47	50	
37.	1/2 share of Akuranwelawatta of two seers kurakkan	10	00	
38.	1/2 share of Akuranwela of 16 lahas paddy sowing	40	00	
39.	1/40th share of Kongahamulahena of 2 seers kurakkan		50	
40.	1/40th share of Imbulgahamulahena of 1½ seers kurakkan		50	
41.	1/6th share of Dewatagawawatta *alias* Hitinawatta of three lahas kurakkan	20	00	
42.	1/8th share of Hitinawatta of 2 seers kurakkan	5	00	
43.	1/2 share of Meegahamulahena of 2 seers kurakkan	10	00	
44.	1/2 share of Galagawahena of two lahas kurakkan	20	00	
45.	1/4th share of Bakmigahamulahena of one laha kurakkan	5	00	
46.	1/2 share of Dehigahakumbura pillewa now garden of three seers kurakkan sowing	40	00	
47.	1/4th share of Medacumbura and adjoining Wagollehena now garden (1) 1½ amunams paddy (2) 3 lahas kurakkan	125	00	
48.	1/4th share of Dehiyagahakumbura of 3 pelas paddy	37	50	
49.	1/4th share of Dehigahakumbura of 2 pelas and 5 L.	32	00	
50.	1/4th share of Mawatayagodakumbura of 1 pela paddy	5	00	
51.	1/2 share of Meegahamulawatta of one seer kurakkan	10	00	
52.	1/4th share of 3/5th share of Hitinawatta of 6 lahas kurakkan ..	10	00	
	Lands at Olupeliyawa in the said Korale			
53.	1/4th of Kumbukgetecumbura, Puranpela, divided southern portion of Medacumbura now garden and southern portion of Medacumburepitiya *alias* Halpitiyawatta together with the buildings all forming one property in extent one acre one rood with the buildings thereon ..	750	00	
54.	1/4th share of Habawatta of 11 acres in extent	275	00	
55.	1/4th share of Karandecumbura of 14 lahas paddy sowing .. .	35	00	
56.	1/4th do. 12 lahas paddy sowing	30	00	
57.	1/4th share of Galahitiyawecumbura pillewa of two pelas and two lahas paddy and three seers kurakkan	65	00	
58.	1/4th share of the western portion of Galahitiyawehena of 2 roods in extent	10	00	
	Lands at Godawita in Recopattu Korale			
59.	1/12th share of Kamatagawakahatagahamulawatta of 2 lahas kurakkan sowing in extent	8	00	

Exhibits.
P17
Inventory filed in D.C. Kurunegala Case No. 4402 13.10.44.—*Continued*

		Value Rs.	Cts.
	Lands at Kanumale in Recopattu Korale		
60.	1/4th of 1/3rd of 2/3rd share of Oyagawawatta of four lahas kurakkan sowing in extent	2	50
	Lands at Kumbalpola in Tiragandahe Korale		
61.	1/12th share of Godaliyaddekumbura of 15 lahas paddy	7	50
	Lands at Wanduragala		
62.	1/4th share of Godaweepela of one pela paddy	12	50
63.	1/4th share of Medaweepela of 2 pelas paddy sowing	25	00
64.	1/4th share of Getkumbura of 2 pelas paddy	25	00
	Lands at Kidapola in Kudagalboda Korale		
65.	1/4th share of Kongahamulahena of 1A. 3R. 35P.	10	00
66.	1/4th share of Nawatehena of 3 lahas kurakkan	20	00
67.	1/4th share of Dangahamulawatta of 2 seers kurakkan	2	00
68.	1/8th share of Mawatehena of 2 lahas kurakkan	5	00
	Lands at Nakolagamuwa aforesaid		
69.	1/8th share of Talagodawatta of one laha kurakkan	5	00
70.	1/3rd share of Galahitiyawacumbura and its adjoining pillewa of (1) 2 pelas paddy and (2) 1 laha kurakkan	35	00

Schedule B

Movable Property

Debts Due to Deceased

1.	Due on usufructuary mortgage bond No. 1165 of 10.11.36	80	00
2.	1/4th of the amount due in decree in D.C., Kurunegala, Case No. 16840 with costs	300	00
3.	1/4th share of balance due in decree in D.C., Kurunegala, Case No. 15522 about	50	00
4.	1/4th share of the balance due in decree in D.C., Kurunegala, Case No. 15824 about	50	00
5.	1/4th share of do. in Case No. 15551 about	100	00
6.	1/4th share of do. Case No. 16465 about	105	00
7.	1/4th share of balance due in decree in D.C., Kurunegala, Case No. 15513 about	60	00
8.	1/4th share of the balance in D.C., Kurunegala, Case No. 15507 about ..	30	00
9.	1/4th share of the balance due in decree in A.C.R., Case No. 7760 (Kurunegala) about	65	00

Exhibits.
P17
Inventory filed in D.C. Kurunegala Case No. 4402 13.10.44—*Continued*

			Value Rs.	Cts.
10.	1/4th share of the amount due in Decree in Kurunegala A.C.R., Case No. 662 about		45	00
11.	1/4th share of the balance amount due under decree in A.C.R., Case No. 7569 (in Kurunegala) about		50	00
12.	1/4th share of decree 7720 A.C.R. about		50	00
13.	1/4th share of decree 7715 A.C.R. about		25	00
14.	1/4th share due under decree in C.R., Kurunegala, Case No. 15513 about..		30	00
15.	1/4th share in C.R. 12778 about		35	00
16.	1/4th share in C.R. 12964 about		35	00
17.	1/4th share in C.R. 15225 about		30	00
18.	1/4th share in C.R. 12472 about		21	80
19.	1/4th share in C.R. 12472 about		25	00
20.	1/4th share of in A.C.R. 6691 about		40	00
21.	1/4th share of in A.C.R. 5595		40	00
22.	1/4th share of A.C.R. 7699 about		50	00
23.	1/4th share in A.C.R. 8335 about		40	00
24.	1/4th share of the monies due in mortgage bond No. 42830 of 26.11.17.		37	50
25.	1/4th share of the monies due on mortgage bond No. 5425		200	00
26.	1/4th share of the monies due on usufructuary mortgage bond No. 53970 of 10.7.28		15	00
27.	1/4th share of the monies due in usufructuary mortgage bond No. 35697 of 1.8.27		20	00
28.	Do. 37482 of 28.9.28		20	00
29.	Do. 49832 of 9.1.19		75	00
30.	Do. 43884 of 24.4.19		30	00
31.	Do. 47291 of 19.9.22		25	00
32.	Do. 7431 of 7.7.23		20	75
			1,800	00

Schedule B1

				Rs.	Cts.
1.	1/4th share of an elephant	Rs.	250·00		
2.	6 bushels of paddy	,,	7·50		
3.	1 old double bed	,,	3·00		
4.	1 four-legged box, big box	,,	3·00		
5.	One old trunk	,,	0·75	264	25

Deductions—Debts Due

Book account due to Mahtoon Habibu & Co., Malpitiya	58	71
Carried forward ..	58	71

Exhibits.

P17
Inventory filed in D.C. Kurunegala Case No. 4402 13.10.44— *Continued*

			Value Rs.	Cts.
		Brought forward ..	58	71
	Funeral Expenses, etc.			
Shroud, coffin, firewood for cremation, etc.	.. ..		75	00
For seven days' almsgiving	.. ..		50	00
			183	71

	Assets			Rs.	Cts.
Money out in bills	.. ..			1,800	00
Immovable property, executor's valuation	..	Rs. 3,698·00			
Reliefs (1) Section 20 (3)	.. ..	Rs. 269·00			
(2) ,, 20 (4)	.. ..	,, 342·00	,, 611·00	3,087	00
Household goods, etc.	.. ..			264	00
				5,151	00
Deductions as per items 37 and 39 of the declaration	.. .. ..			183	00
				4,968	00

	Further Properties Included	Rs.	Cts.
1.	1/3rd of Peelawatta of thirty acres in extent	5,000	00
2.	1/3rd of Lindakumbura of five pelas paddy	500	00
3.	1/4th share of Gangodahena of one laha kurakkan	25	00
4.	1/4th share of Gangodahena of one laha kurakkan	25	00
5.	1/4th share of Talagodahena *alias* watta of one laha and six seers kurakkan	275	00
		5,825	00

	Assets		
Nett value of estate as per assessment of 4.1.1941	4,968	00
Value of omitted property disclosed as per statement of 28.2.44	2,825	00
Increased by official valuation Pellawatta	3,000	00
	10,793	00

I, Wijesundara Mudiyanselage Somawathie Kumarihamy of Amunugama not being a Christian do hereby solemnly, sincerely, truly declare and affirm as follows :—

I am the Administratrix and the sole heir of the above estate.

2. To the best of my knowledge information and belief the abovewritten Inventory contains a full, true and correct valuation of the property movable and immovable as per Commissioner's valuation.

Thumb impression of
SOMAWATHIE KUMARIHAMY.

The foregoing affidavit was duly read over and explained by me to the within named affirmant in Sinhalese and he having appeared to understand the nature and contents thereof signed at Kurunegala on this 13th day of October, 1944.

Exhibits.
P17
Inventory filed in D.C. Kurunegala Case No. 4402 13.10.44—*Continued*

Before me :

(Sgd.) W. L. M. FERNANDO,
J.P.

True copy of Inventory in D.C., Kurunegala, Case No. 4402 Testamentary.

(Sgd.).....
Secretary, D.C., Kurunegala.

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10 **P29.**

P29
Deed No. 491 filed in D.C. Kurunegala Case No. 1052 10.4.34

Deed No. 491 Filed in D.C., Kurunegala, Case No. 1052

No. 491.

DEED OF TRANSFER—Rs. 2,500/-.

To all to whom these presents shall come that Narayana Mudiyanselage Ranmenika Kumarihamy of Ambahera in Recopattu Korale of Dambadeni Hatpattu—Send Greetings.

Whereas Herath Mudiyanselage Edward Banda ex-Korala of Nakolagamuwa in Tiragandahe Korale of Weudawilli Hatpattu having died intestate on or about the third day of March, 1929, at Nakola-
20 gamuwa, aforesaid his estate was duly administered in Testamentary Case No. 3714 of the District Court of Kurunegala.

And whereas by a settlement arrived at on the 9th day of October, 1930, in the said Testamentary Case No. 3714 it was agreed that the said estate should devolve in equal quarterly shares on the administratrix. Herath Mudiyanselage Bandaramenika, the first respondent Wijesundara Mudiyanselage Somawathie Kumarihamy, the third respondent Narayana Mudiyanselage Kuma Kumarihamy and the 4th respondent Narayana Mudiyanselage Ranmenika Kumarihamy who were declared the sole owners of the said estate. And whereas by
30 virtue of the said settlement made in the said Testamentary Case No. 3714 the said Herath Mudiyanselage Bandara Menika, Wijesundara Mudiyanselage Somawathie Kumarihamy, Narayana Mudiyanselage Kuma Kumarihamy and Narayana Mudiyanselage Ran Menika Kumarihamy have each now become the absolute owners of or otherwise well and sufficiently entitled to an undivided one-fourth share of all the estate and affects of the said late Herath Mudiyanselage Edward Banda ex-Korala subject to the estate duty and expense of administration.

Exhibits.
P29
Deed No. 491 filed in D.C. Kurunegala Case No. 1052 10.4.34—
Continued

And whereas upon authority granted to Mr. T. B. Amunugama Licensed Auctioneer of Kurunegala by the said Narayana Mudiyanselage Ranmenika Kumarihamy her undivided one-fourth share of the lands and premises described in the schedule hereto among other lands belonging to the said estate were sold by public auction on the 10th and 12th days of October, 1931, and whereas the said Narayana Mudiyanselage Kuma Kumarihamy of Nakolagamuwa aforesaid at such sale being the highest bidder of the shares of lands and premises described in the schedule was declared the purchaser for the sum of Rs. 2,500/- and conditions of sale Nos. 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1282, 1283, 1284, 1285, all dated the tenth day of October, 1931, and No. 1293 dated the 12th day of October, 1931, respectively and all attested by M. B. Wanduragala, Notary Public of Kurunegala, were duly signed by the said Narayana Mudiyanselage Kuma Kumarihamy and whereas it has now become necesaary to execute a Deed of Transfer for the said shares of lands and premises for the said sum of Rupees 2,500/-, which has been paid up in full in order to perfect the said sale of the said shares of lands and premises. Now know ye and these presents witness that the said Narayana Mudiyanselage Ranmenika Kumarihamy in pursuance of the said conditions of sale and in consideration of the said sum of Rs. 2,500/- lawful money of Ceylon well and truly paid by the said Narayana Mudiyanselage Kuma Kumarihamy (and the receipt of which payment is hereby acknowledged by her) doth hereby sell transfer convey assign and set over unto the said Narayana Mudiyanselage Kuma Kumarihamy the said shares of lands and premises as described in the said schedule together with a like share of everything standing thereon.

To have and to hold the said shares, lands and premises with everything appertaining thereunto the said Narayana Mudiyanselage Kuma Kumarihamy and her heirs executors administrators and assigns absolutely for ever together with all the right title interest claim and demand whatsoever of the said Narayana Mudiyanselage Ranmenika Kumarihamy or her heirs executors administrators in to upon or out of the same.

And the said Narayana Mudiyanselage Ranmenika Kumarihamy for herself and heirs, administrators and executors doth hereby covenant to and with the said Kuma Kumarihamy and her heirs executors administrators and assigns that the said Ranmenika Kumarihamy and her aforewritten shall and will always warrant and defend the said premises and every part thereof unto the said Kuma Kumarihamy and her aforewritten against any person or persons whomsoever.

In witness whereof the said Narayana Mudiyanselage Ranmenika Kumarihamy doth hereunto and to two others of the same tenor and date as these presents set her hand at Kurunegala on this tenth day of April, One Thousand Nine hundred and thirty-four.

The Schedule referred to —

Exhibits.

P29
Deed No. 491 filed in D.C. Kurunegala Case No. 1052 10.4.34.— *Continued*

1. An undivided one-twelfth (1/12th) share of the land called Peellegawawatte situate at Nakolagamuwa, Tiragandahe Korale of Weudawilli Hatpattu in the District of Kurunegala of North Western Province and bounded on the North by wire fence of the land of Punchirala and others, East by the village limit of Mathawa, South by wire fence of Degalahena, and on the West by Habawela fence of the pillewa of Punchirala and Lindakumbura containing within these boundaries about thirty acres (30A.OR.0P) in extent and everything standing thereon.

2. An undivided one-twelfth (1/12th) share of the lands called Bulucumburewatte of ten acres in extent and its adjoining Andiyagodewatte of three lahas kurakkan sowing extent and its adjoining Kotuwekumbura and Godakumbure both of about five pelas paddy sowing extent all forming one property situated at Nakolagamuwa aforesaid and bounded on the North by the village limit of Mathawa and Tiragama, East by cart road and lands of Casi Tambi and others, South by field and by land of Ausadahamy and others and on the West by Bulukumburawela and lands of Ausadahamy and others.

3. An undivided one-twelfth (1/12th) share of the land called Hitinawatta situated at Nakalagamuwa aforesaid and bounded on the North by Habawela, East by Habawela, South by gardens of Kalu Banda and Banda, and on the West by the land belonging to the estate of the said late Edward Banda ex-Korala containing within these boundaries about three lahas kurakkan sowing in extent with the buildings and everything standing thereon.

4. An undivided one-twelfth (1/12th) share of the field called Habawela alias Ihalawela situated at Nakolagamuwa aforesaid and bounded on the North by the fields of Malhamy and others, East by Peellewatte, South by Aramba and on the West by Hitinawatte containing within these about twelve lahas paddy sowing in extent.

5. An undivided one-twelfth (1/12th) share of the field called Galahitiyawa situated at Nakolagamuwa aforesaid and bounded on the North by Ambagahamulakumbura, East by Bogahapitiya Kumbura, South by field of Ausadahamy, and on the West by field of Ausadahamy and others and containing within these boundaries about one amunam paddy sowing in extent.

6. An undivided one-twelfth (1/12th) share of the land called Ruppewatte situated at Nakolagamuwa aforesaid and bounded on the North by lands of Dingiri Amma and Tikiri Banda, East by lands of P. B. Tennakoon and others, South by land of Punchi Banda and others, and on the West by fields containing within these boundaries about one laha kurakkan sowing in extent with everything standing thereon.

7. An undivided one-twelfth (1/12th) share of the field called Lindakumbura situated at Nakolagamuwa aforesaid and bounded on the North by the limitary ridge of Ambagahamulaweepela, East by Peellewatte, South by Habawela, and on the West by land belonging to the estate of the said late Edward Banda ex-Korala containing within these boundaries about five pelas paddy sowing in extent.

8. An undivided one-fourth (1/4th) share of the land called Thalegodawatta situated at Nakolagamuwa aforesaid and bounded on the North by field, East by land of Bandirala and others, South by land of Ranmenika, and on the West by wela containing within these boundaries about two lahas kurakkan sowing in extent with everything standing thereon.

9. An undivided one-fourth (1/4th) share of the land called Thalegodanilehena situated at Nakolagamuwa aforesaid and bounded on the North by Thalegodahena, East by Thalegodewatte, South by land of L. B. Tennakoon and on the West by land of Banda containing within these boundaries about two seers kurrakkan sowing in extent with everything standing thereon.

Exhibits.
P29
Deed No. 491 filed in D.C. Kurunegala Case No. 1052 10.4.34.—
Continued

10. An undivided one-fourth share (1/4th) of an undivided two-third share of the land called Degalehena situated at Nakolagamuwa aforesaid and bounded on the North by Peellewatta, East by the village limit of Mathawa, South by Nilehena, and on the West by Ratmalagahamulahena containing within these boundaries about three lahas kurakkan sowing in extent with everything standing thereon.

11. An undivided one-fourth (1/4th) share of the land called Bulugahamulahena situated at Nakolagamuwa aforesaid and bounded on the North by Nelehena, East by the village limit of Mathawa, South by the village limit of Attanapitiya, and on the West by Katuwehena containing within these boundaries about two lahas kurakkan sowing in extent with everything standing thereon.

12. An undivided one-fourth (1/4th) share of undivided three-fourth share of the land called Hitinawatte situated at Nakolagamuwa aforesaid and bounded on the North by Lindakumbura, East by Gederawatta of the said late Edward Banda ex-Korala, South by garden of Punchirala, and on the West by the field of Dingiri Banda officer containing within these boundaries about three seers kurakkan sowing in extent with everything standing thereon.

13. An undivided one-fourth (1/4th) share of the land called Ratmalagahamulawatte situated at Nakolagamuwa aforesaid and bounded on the North by Peellewatte, East by Degalehena, South by Galoruwehena and on the West by Galenda containing within these boundaries about three seers kurakkan sowing in extent with everything standing thereon.

14. An undivided one-fourth (1/4th) share of undivided half-share of the land called Gangoda Aramba situated at Nakolagamuwa aforesaid and bounded on the North by Habawela, East by land of Appuhamy and others, South by land of Appuhamy and others, and on the West by land of Appuhamy and others, containing within these boundaries about one laha kurakkan sowing in extent with everything standing thereon.

15. An undivided one-fourth (1/4th) share of an undivided three-fourth share of the land called Kotuwecumbura Pitangane Kahatagamulahena now garden situated at Nakolagamuwa aforesaid and bounded on the North by Galweta of the chena of Punchirala, East by village limit of Mathawa, South by Galweta of the chena of Ukkumenika, and on the West by Endaru fence of the chena of Appuhamy Arachchy containing within these boundaries about two lahas kurakkan sowing in extent with everything standing thereon.

16. An undivided one-fourth share of the field called Meddegodakumbura and it adjoining Walapelacumbura both of two pelas paddy sowing in extent situated at Nakolagamuwa aforesaid and bounded on the East by Walapela of Ukkurala, land on the South West and North by Ela.

17. An undivided one-eighth (1/8th) share of the field called Dehigahakumbura of three pelas paddy sowing extent situated at Thorawatura in Tiragandahe Korale aforesaid and bounded on the East by Elawella of the field of Dingirihamy, South by limitary ridge of the field called Wewliyadda of Punchinaide, West by fence of the garden of Kiriya and on the North by the field of Mudiyanse.

(Left thumb impression of Ranmenika Kumarihamy)

We the witnesses hereto do hereby declare that we are well acquainted with the executant hereof and that we know her name in full, occupation and residence.

(Sgd.) Illegibly.
,, Illegibly.

(Sgd.) R. B. BALALLA,
N.P.

Exhibits.
P29
Deed No. 491 filed in D.C. Kurunegala Case No. 1052 10.4.34—*Continued*

I, Ran Banda Balalla of Kurunegala Notary Public do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary unto Narayana Mudiyanselage Ranmenika Kumarihamy who has signed the same by affixing her left thumb impression and who is known to me in the presence of Herath Mudiyanselage Tikiri Banda Herath of Arambepola in Udapola Medalasse Korale and Maya Bandaralage Ukku Banda Ambahera of Ambahera in Recopattu Korale both of whom have signed the same in English and the subscribing witnesses hereto both of whom are known to me the same was signed by the said executant and also by the said witnesses in my presence in the presence of one another all being present at the same time at Kurune-
10 gala on this 10th day of April One Thousand Nine Hundred and thirty-four and I further certify and attest that the consideration was said to have been previously received and acknowledged and that before the deed was read over and explained in the original in page 4 in line 6 the word " with " in line 7 the words " standing the tiled house standing thereon " were struck off and in line 8 the words " its adjoining " were interpolated and in duplicate in line 6 the words " with the tiled house standing thereon " were struck off and in line 7 the words " its adjoining " were interpolated and that the original hereof bears stamp of the value of rupees one and the duplicate of this instrument bears two of the value of Rupees fifty-five procured by me.

Date of attestation,
20 10th day of April, 1934.

(Sgd.) R. B. BALALLA,
Notary Public.

(Seal)

I, T. De S. Abeywickrama, Registrar of lands, Kurunegala, do hereby certify that the foregoing is a true copy of a deed of transfer made from the duplicate filed of record in this office and the same is granted on the application of H. Bede Perera, Esq., Proctor and Notary Public of Kurunegala.

(Seal) (Sgd.) T. De S. ABEYWICKRAMA,
Registrar of Lands.

13.8.1943.

True copy of deed of transfer No. 491 dated 10th day of April, 1934, attested by R. B.
30 Balalla, Notary Public, and filed of record in D.C. Kurunegala, Case No. 1052.

(Sgd.) Illegibly.
16.9.52.
Secretary, D.C., Kurunegala.

15th September, 1952.

D15.

D15
Journal Entries in D.C. Kurunegala Case No. 1052 21.7.42 to 14.7.50

Journal Entries in D.C., Kurunegala, Case No. 1052

IN THE DISTRICT COURT OF KURUNEGALA

No. 1052.
40 Class : II.
Amount : Rs. 6,000/-.
Nature : Land Partition.

Herath Mudiyanselage Tikiri Banda Herath of Nakclagamuwa in Udapola Medalasse Korale.....*Plaintiff*

vs.

Narayana Mudiyanselage Kuma Kumarihamy of Nakolagamuwa and three others.....*Defendants.*

Exhibits.

D15
Journal Entries in D.C. Kurunegala Case No. 1052 21.7.42 to 14.7.50—
Continued

Journal

The 21st day of July, 1942.

Mr. H. Bede Perera files appointment and plaint together with plaintiff's pedigree and abstract of title and moves that the same be accepted and summons on defendants do issue and reissue until service.

Plaint accepted and summons and commission to issue for 3.9.42.

(Sgd.) .....
D.J.

29.7.42.

Summons issued with precept returnable 2nd day of September, 1942.

Commission issued.

3.9.42.

Mr. H. Bede Perera for plaintiff.

Messrs. Perera & Perera for 2nd defendant.

(1) Summons on defendants served (personal). All Absent.

(2) Plan not filed. Begs for time. Extend and reissue commission for 7.10.42.

Messrs. Perera & Perera file proxy of 2nd defendant.

Mr. Balalla will file proxy and statement of 1st defendant for 7.10.42 ; other statements for same date.

(Intd.) H. A. De S.

7.10.42.

Plan due. *Vide* letter from Surveyor asking for time.

Statement of 2nd defendant by Messrs. Perera & Perera. Not filed.

Proxy and statement of 1st defendant by Mr. Balalla. Proxy filed by Mr. Balalla.

Extend commission for 29.10.42. Statement after plan.

(Intd.) H. A. De S.

29.10.42.

Mr. Bede Perera for plaintiff.

Mr. Balalla for 1st defendant.

Messrs. Perera & Perera for 2nd defendant.

Plan due. *Vide* letter from him. Extend Commission for 1.12.42.

(Intd.) H. A. De S.
D.J.

1.12.42.

Plan due. Surveyor asks for further time. Extend finally 8.1.43.

(Intd.) H. A. De S.

8.1.43.

Plan due. Surveyor asks for further time. Extend for 24.2.43.

(Intd.) H. A. De S.

24.2.43.

Plan due. Filed. Statement for 15.3.43.

(Intd.) H. A. De S.

15.3.43.

Statement of 1st, 2nd defendants. Filed. Trial for 18.8.43.

(Intd.) H. A. De S.

16.8.43.

The 2nd defendant in this case being unable to attend Court and get ready for trial on the 18th instant, Messrs. Perera & Perera move that this case be refixed for some other date. Medical report filed in Case No. 1057.

17.8.43.

Case called. *Vide* order in D.C. 1057. Call on 18.8.43.

(Intd.) H. A. De S.

8.8.43.

Call.

Mr. Bede Perera does not ask for costs. Trial is refixed for 23.2.44.

(Intd.) H. A. De S.

26.8.43.

Mr. Bede Perera files list of witnesses and list of documents.

9.2.44.

Mr. Bede Perera issues one sub.

22.2.44.

Mr. Bede Perera for plaintiff files additional list of witnesses and documents.

Exhibits.

D15
Journal Entries in D.C. Kurunegala Case No. 1052 21.7.42 to 14.7.50.—*Continued*

23.2.44.

Trial.

Mr. Bede Perera for plaintiff.

Mr. Balalla for 1st defendant.

Messrs. Perera & Perera for 2nd defendant.

Mr. Adv. Gunaratne instructed by Mr. Bede Perera for plaintiff.

Mr. Balalla for 1st defendant.

Mr. Perera for 2nd defendant submits a medical certificate signed by a physician with a report from the headman that 2nd defendant is ill and not fit to attend Court today. 10

Mr. Gunaratne objects to a date.

Mr. Gunaratne asks for taxed costs of the day for his client in this case in the event of the case being postponed.

Mr. Balalla does not want costs of the day.

Order

Trial is postponed for 20th October, 1944.

2nd defendant to pay the plaintiff taxed costs of the day.

(Intd.) H. A. De S.
D.J., 23.2.44.

27.4.44. 20

Mr. Bede Perera for plaintiff files plaintiff's bill of costs of the day (23.2.44) payable by the 2nd defendant and moves that the same be taxed.

Tax bill.

(Intd.) H. A. De S.
D.J.

26.5.44.

Day's costs incurred taxed at Rs. 178·50 and P.C. 49-32.

(Intd.) .....

3.7.44. 30

Mr. H. B. Perera for plaintiff applies for issue of writ against the 2nd defendant's property for the recovery of day's cost due to plaintiff. Allowed. Issue writ on obtaining a certified copy of order of 23.2.44.

(Intd.) S. S. J. G.,
D.J.

7.7.44.

Writ issued to F.N.W.P. returnable 7.10.44.

(Intd.) .....

28.9.44.

D.F. Kurunegala reports that at the request of the proctor for plaintiff a notice under section 232 C.P.C. to the D.J., Kurunegala, seizing a sum of Rs. 227·87 out of the moneys in deposit in D.C. Kurunegala Testamentary Case No. 4402 has been issued by him on 10.7.44.

(Intd.) S. S. J. G.,
D.J.

29.9.44.

Mr. Bede Perera files list of witnesses and issues 3 subs.

29.10.44.

As an amendment of the answer has become necessary owing to the order made on 20.9.44 in D.C. Testamentary Case No. 3714 Messrs. Perera & Perera move that the case be taken off the trial roll and date allowed to file amended answer.

Vide Administration 1057 D.C.

Mr. Bede Perera objects. I refuse application.

(Intd.) S. S. J. G.,
D.J.

20.10.44.

Trial.

Mr. Bede Perera for plaintiff.
Mr. Balalla for 1st defendant.
Messrs. Perera & Perera for 2nd defendant.
For proceedings see separate sheet.

(Intd.) S. S. J. G.,
D.J.

Draft Interlocutory decree 2.11.44.

2.11.44.

Draft Interlocutory decree filed and signed.
Issue Commission returnable 18.1.45.

(Intd.) S. S. J. G.,

2.11.44.

Mr. Bede Perera for plaintiff.
Mr. Balalla for 1st defendant.
Messrs. Perera & Perera for 2nd defendant.

Exhibits.
D15
Journal Entries in D.C. Kurunegala Case No. 1052 21.7.42 to 14.7.50—*Continued*

As the Deputy Fiscal, Kurunegala, has reported to Court that on the writ issued against 2nd defendant in this case who is the sole heir and administratrix in D.C. 4402 Testamentary he has seized a sum of Rs. 227·87 lying in deposit in the said Testamentary 4402, Mr. Bede Perera for plaintiff moves that the Court be pleased to transfer the said Rs. 227·87 to this case to enable plaintiff to draw the same.

Notice 2nd defendant for 18.1.45.

(Intd.) S. S. J. G.,
D.J.

8.11.44.

Notice issued.

17.11.44.

Commission issued to Mr. G. A. de Silva, Surveyor.

(Intd.) .....

18.1.45.

Plan due. Surveyor begs for extension. Extend commission for 15.3.45.

Notice served on 2nd defendant. Somawathie Kumarihamy absent.

I refuse application.

Application if any has to be made in the Testamentary Case with notice to interested parties.

(Intd.) S. S. J. G.,
D.J.

15.3.45.

Plan due. 2nd date. Surveyor begs for extension. Extend commission for 15.5.45.

(Intd.) S. S. J. G.

19.3.45.

Messrs. Perera & Perera file petition and affidavit from the petitioner and on the material therein contained move for a notice on the respondent to show cause why the Interlocutory decree entered of record in this case should not be set aside and refix the same for hearing.

Mention in Court.

(Intd.) S. S. J. G.,
D. J.

Exhibits.
D15
Journal Entries in D.C. Kurunegala Case No. 1052 21.7.42 to 14.7.50.
Continued

20.3.45.

Called. Issue notice on affected parties for 8.5.

(Intd.) S. S. J. G.,
D. J.

6.4.45.

Notice issued.

8.5.45.

Notice to set aside I/D. Served on plaintiff. T. B. Herath has cause to show.

Inquiry 12.6 before D.J.

(Intd.) .....

15.5.45.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.
Messrs. Perera & Perera for 2nd defendant.

Plan of partition No. 3523 and report filed by G. A. de Silva *Vide* J.E. of 19.3.45 paper filed to set aside Interlocutory decree and the matter is fixed for inquiry on 12.6.45.

Call on that date.

(Intd.) S. S. J. G.,
D.J.

11.6.45.

Messrs. Perera & Perera for 2nd defendant file list of witnesses and take out one subpoena.

12.6.45.

Inquiry.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.
Messrs. Perera & Perera for 2nd defendant.

For proceedings see separate sheet.

(Intd.) S. S. J. G.,
D.J.

20.6.45.

Notice issued. Fiscal, N.W.P.

26.6.45.

Messrs. Perera & Perera file petition of appeal from 2nd defendant appellant together with S.C. judgment and Secretary's certificate in appeal and application for typewritten copy and Kachcheri receipt and move that the same be accepted. They also tender notice of security and move that same be issued forthwith.

Exhibits.
D15
Journal Entries in D.C. Kurunegala Case No. 1052 21.7.42 to 14.7.50.—*Continued*

Accepted. Appeal within time. Issue notice of security for 29.6.45.

(Intd.) S. S. J. G.,
D.J.

26.6.45.

Notice of security issued to F.N.W.P.

28.6.45.

Appellant obtained Deposit order for Rs. 400/- security.

(Intd.) .....

29.6.45. 10

Notice of security served on Messrs. Gomis & Gomis and Mr. Balalla.

3rd respondent Ran Menika Kumarihamy and 4th respondent Chairman U.C. Kurunegala—Absent.

Security is accepted. Issue notice of appeal returnable forthwith. Call on 31.7.

(Intd.) S. S. J. G.,
D.J.

K.R. No. 1244 for Rs. 400/- filed.

(Intd.) S. S. J. G. 20

12.7.45.

Messrs. Gomis & Gomis apply for typewritten copy and annex Kachcheri Receipt for Rs. 12/-.

(Intd.).....

25.7.45.

Notice of confirmation served on 1st-4th defendants.

Appeal filed. Await decision.

(Intd.) S. S. J. G.,
D.J.

31.7.45. 30

Notice of appeal served on Messrs. Gomis & Gomis and Mr. Balalla.

Chairman, U.C. Kurunegala and Ran Menika Kumarihamy—Absent.

Forward record to S.C. in due course.

(Intd.) .....

23.10.45.

The 2nd defendant in this case having died on 6.10.45, Messrs. Perera & Perera move that the plaintiff be ordered to take steps to substitute her heirs before the case is forwarded to the S.C.

Call tomorrow in open Court.

(Intd.) .....
D.J.

24.10.45.

Messrs. Gomis & Gomis for plaintiff.

Messrs. Perera & Perera for 2nd defendant.

Case called. *Vide* order of 23.10 Plaintiff respondent for steps 15.11.

(Intd.) .....

15.11.45.

Steps *re* 2nd defendant—dead—not taken.

For 29.11.

(Intd.) S. S. J. G.,
D.J.

29.11.45.

Steps *re* 2nd defendant dead. Papers filed.

Notice for 20.12.

(Intd.) S. S. J. G.,
D.J.

17.12.45.

Notice not issued to Fiscal, N.W.P. Tendered late.

20.12.45.

Notice tendered late.

Issue now for 6.2.

(Intd.) S. S. J. G.,
D.J.

10.1.46.

Notice issued to Fiscal, N.W.P.

6.2.46.

Notice not served, not to be found. Re-issue on them for 6.3.46.

(Intd.) S. S. J. G.,
D.J.

Exhibits.
D15
Journal Entries in D.C. Kurunegala Case No. 1052 21.7.42 to 14.7.50—*Continued*

6.3.46.

Notice not reissued. Reissue now for 2.4.

(Intd.) S. S. J. G.,
D.J.

21.3.46.

Messrs. Gomis & Gomis file affidavit from the plaintiff and upon the material therein contained move that notice on the respondents be reissued to be affixed to the last known place of abode. Allowed. But it would be difficult to make the appointment unless the proposed guardian *ad litem* appears in Court and the application is allowed only on the chance that 2nd respondent might appear.

(Sgd.) T. F. C. ROBERTS,
D.J.

2.4.46.

Case called.

Notice not issued. Issue now for 8.5.46.

(Sgd.) T. F. C. ROBERTS,
D.J.

4.4.46.

Notice issued to N.W.P.

8.5.46.

Messrs. Gomis & Gomis for plaintiff.
Messrs. Perera & Perera for respondent.
Notice served on 1st and 2nd respondents. They are absent.

Mr. Jayasundera files proxy for 2nd respondent and states 2nd defendant before she died left a will leaving her estate to 2nd respondent. If this is so Executor will have to take testamentary proceedings. Call to see if testamentary proceedings have been taken on 29.5.46.

(Sgd.) T. F. C. ROBERTS,
D.J.

29.5.46.

Messrs. Gomis & Gomis for plaintiff.
Messrs. Perera & Perera for 2nd defendant (deceased).
Mr. Balalla for 1st defendant.
Case called. *Vide* J.E. of 8.5.46.

Testamentary Case *re* estate of 2nd defendant deceased pending. Call case 31.7.

(Intd.) T. P. P. G.

31.7.46.

Called. Call 16.10 with 1057.

(Intd.) T. P. P. G.

16.10.46.

Case called.
Probate not issued yet. Call 25.11.

(Intd.) T. P. P. G.

25.11.46.

Messrs. Gomis & Gomis for plaintiff pt.
Messrs. Perera & Perera for 2nd defendant (deceased) pt.
Mr. R. B. Balalla for 1st defendant pt.
Called.

Steps are being taken in Testamentary Case D.C. 4630 to prove a will of 2nd defendant by Mr. Jayasundera. Mr. Gomis that this case be called two months hence.

Call 19.2.

(Intd.) A. J.

19.2.47.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.

Called. Mr. Gomis & Gomis says that probate has not been issued yet.

Call 19.3.47.

(Intd.) A. J.,
D.J.

19.3.47.

Called. Probate not granted yet. Call 7.5.

(Intd.) A. J.

7.5.47.

Called. Call 4.6.

(Intd.) A. J.

4.6.47.

Called. See J.E. of 19.3. Call 30.7.

(Intd.) A. J.

30.7.47.

Called. Call 8.9.

(Intd.) A. J.

Exhibits.

D15
Journal Entries in D.C. Kurunegala Case No. 1052 21.7.42 to 14.7.50—
Continued

8.9.47.

Called. Call 14.10.

(Intd.) A. J.

14.10.47.

Called.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.
Call 19.11.

(Intd.) A. J.

19.11.47.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.
Call on 10.12.47 for subpoenas of 2nd defendant's heir.

(Intd.) S. R.,
D.J., 19.11.47

10.12.47.

Called. Call 7.1 for steps.

(Intd.) A. J.

7.1.48.

Called. Call on 22.1.48.

(Intd.) W. G. S.

22.1.48.

Called for substitution of 2nd defendant's heirs.
Call on 18.2

(Intd.) W. G. S.

18.2.48.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant
Called for substitution of 2nd defendant's heirs.
Plaintiff for steps. Call on 10.3.

(Intd.) W. G. S.

10.3.48.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.
Called. Substitution papers filed.
Notice respondents for 12.4.

(Intd.) W. G. S.

12.4.48.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.
Notice not issued on respondent.
Issue now for.

Mr. Jayasundera files proxy for respondent and consents to substitution.

Substitute respondent.
Call on 7.5.

(Intd.) W. G. S.

2A defendant substituted in room of 2nd defendant.

(Intd.) .....

7.5.48.

Called. Forward record to S.C.

(Intd.) W. G. S.

30.10.48.

Record forwarded to S.C.

(Sgd.) A. E. M. PERERA,
Secretary.

23.12.48.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.
Mr. Jayasundera for 2A defendant.
Record received from Registrar S.C. with S.C. decree.
Appeal dismissed with costs. Proctors to take notice.
Issue notice on all parties to confirm scheme for 23.2.49.

(Intd.) W. G. S.,
D.J.

12.2.49.

Notice issued to Fiscal, N.W.P.

23.2.49.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.
Mr. Jayasundera for 2A defendant.
Notice to confirm partition served on all defendants. All absent.

Vide motion filed by Mr. Jayasundera to amend the Interlocutory decree. Notice parties for 4.4.49.

(Intd.) W. G. S.

Exhibits.

D15
Journal Entries in D.C. Kurunegala Case No. 1052 21.7.42 to 14.7.50—*Continued*

2.3.49.

Notice issued to Fiscal, N.W.P.

4.4.49.

Messrs. Gomis & Gomis for plaintiff.

Notice to amend Interlocutory decree served on 1st, 2A, 3rd and 4th defendants.—Absent.

Mr. Balalla for 1st defendant to file objections for 6.5.

Plaintiff's objections if any for 6.5.

(Intd.) W. G. S.

6.5.49.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.
Mr. Jayasundera for 2A defendant.

Objection by 1st defendant and plaintiff to the amendment of the Interlocutory Decree.

Mr. Gomis for plaintiff and Mr. Balalla for 1st defendant object to the amendment of the Interlocutory Decree, no written objections are filed.

Inquiry 22.6.

(Intd.) A. S. P.

22.6.49.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.
Mr. Jayasundera for 2A defendant.
Inquiry 12.9.

(Intd.) A. S. P.

12.9.49.

Messrs. Gomis & Gomis for plaintiff pt.
Mr. Balalla for 1st defendant pt.
Mr. Jayasundera for 2A defendant pt.
Inquiry.

Call on 29.11.49 on the application of parties.
After 3137 is decided.

(Intd.) S. R.,
D.J., 12.9.49.

29.11.49.

Messrs. Gomis & Gomis for plaintiff.
Mr. Balalla for 1st defendant.
Mr. Jayasundera for 2A defendant.
Called. *Vide* J.E. of 12.9.49.
Call on 13.12.49.

(Intd.) S. R.,
D.J., 29.11.49.

13.12.49.

Called. Call 23.12.

(Intd.) A. S. P.

23.12.49.

Called. Call 27.1.

(Intd.) A. S. P.

27.1.50.

Called. Inquiry 25.4.

(Intd.) A. S. P.

21.4.50.

Mr. Jayasundera for substituted defendant moves that the inquiry be postponed as Mr. N. E. Weerasooriya, Counsel for substituted defendant, is unable to attend Court on 25.4.50. Proctor for plaintiff and 1st defendant consent. Of consent allowed. Mention on 25.4.50 to refix enquiry.

(Intd.) S. R.,
D.J.

25.4.50.

Messrs. Gomis & Gomis for plaintiff. Mr. Balalla for 1st defendant. Mr. Jayasundera for 2A defendant. Called to re-fix date of inquiry postponed for 16.6.50.

(Intd.) S. R.,
D.J., 25.4.50.

15.6.40.

Messrs. Gomis & Gomis file plaintiff's list of documents.

(Intd.) .....

16.6.50.

Messrs. Gomis & Gomis for plaintiff. Mr. Balalla for 1st defendant.
Mr. Jayasundera for 2A defendant.
Inquiry. *Vide* proceedings.
Amend Interlocutory decree. Final decree on 30.6.50.

(Intd.) S. R.,
D.J., 16.6.

30.6.50.

Final decree 14.7.

(Intd.) A. S. P.

14.7.50.

Draft decree filed.

(Intd.) .....,
23.2.51.

Exhibits.
D12
Plaint in D.C. Kurunegala Case No. 1052 21.7.42

D12.

Plaint in D.C., Kurunegala, Case No. 1052.

IN THE DISTRICT COURT OF KURUNEGALA

Herath Mudiyanselage Tikiri Banda Herath of Arambepola in Udapola Medalasee Korale.....*Plaintiff*

No. 1052.

vs.

1. Narayana Mudiyanselage Kuma Kumarihamy of Nakolagamuwa in Tiragandahe Korale
2. Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale 10
3. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera in Recopattu Korale
4. The Chairman, Urban Council, Kurunegala.....

.....*Defendants.*

This 21st day of July, 1942.

The plaint of the plaintiff abovenamed appearing by H. Bede Perera, his Proctor, states as follows :—

1. The parties to this action reside at the respective places abovementioned and the land sought to be partitioned is situated at Nakolagamuwa within the jurisdiction of this Court. 20

2. The person called Edward Banda ex-Korala was the original owner and in possession of the land called Peellagawawatta more particularly described in the schedule hereto and of the reasonable value of Rs. 6,000/-.

3. The said Edward Banda ex-Korala died leaving as his heirs Bandara Menika, Kuma Kumarihamy the 1st defendant, Somawathie Kumarihamy the 2nd defendant and Ran Menika Kumarihamy the 3rd defendant and an estate which was administered in Testamentary Case No. 3714 of the District Court of Kurunegala.

4. At a settlement of the said estate in the said Testamentary 30 case the said four persons were declared entitled to an undivided one-fourth share each of the said estate and entered into possession thereof accordingly and the plaintiff pleads the said settlement as *res judicata* between plaintiff and 1st to 3rd defendants.

5. The said Ran Menika Kumarihamy as she lawfully might sold and conveyed her 1/4th share in equal shares to the said Bandara

Menika, Kuma Kumarihamy the 1st defendant and Somawathie Kumarihamy the 2nd defendant on deeds No. 1494 dated 10th April, 1934, and attested by M. D. Wanduragala, Notary Public, No. 491, dated 10th April, 1934, and attested by R. B. Balalla, Notary Public, and No. 500, dated 22nd February, 1934, and attested by S. A. Yatawara, Notary Public, respectively.

6. The said Bandara Menika being thus entitled to and in possession of an undivided 1/3rd share of the said land gifted the same on deed No. 1700 dated 2nd December, 1936, and attested by M. B. Wanduragala, Notary Public, to plaintiff who entered into possession thereof.

7. The said Bandara Menika as Surety and the plaintiff as Principal by deed No. 295 dated 15th February, 1932, and attested by J. A. V. de Silva, Notary Public, mortgaged an undivided 1/4th share of the said land to and with the Chairman of the Urban Council of Kurunegala the 4th defendant as security for the due fulfilment by the plaintiff of his duties as Cashier of the said Council.

8. The said 2nd defendant being entitled to and in possession of an undivided 1/3rd share of the said land mortgaged and hypothecated the same by deed No. 501 dated 22nd February, 1934, and attested by S. A. Yatawara, Notary Public, to and with the said 3rd defendant.

9. The parties are thus entitled to the said land in the following shares :—

Plaintiff to an undivided 1/3rd share—1/4th share being subject to the said security bond No. 295 in favour of 4th defendant.

1st defendant to an undivided 1/3rd share.

2nd defendant to an undivided 1/3rd share subject to the said mortgage bond No. 501 in favour of 3rd defendant.

10. The plaintiff and his predecessors in title have been in the undisturbed and uninterrupted possession of an undivided 1/3rd share of the said land by a title adverse to and independent of that of the defendants and all others for a period of over ten years and in respect of such possession pleads and claims the benefit of Section 3 of Ordinance No. 22 of 1871.

11. It is inconvenient and impracticable to possess the said land in common and it is desirable that a partition of the said land should be effected in terms of the Partition Ordinance No. 10 of 1863.

12. The plantations and buildings on the said land belong to the plaintiff and 1st and 2nd defendants in common.

Exhibits.

D12
Plaint in D.C. Kurunegala Case No. 1052 21.7.42—
Continued

Wherefore the plaintiff prays :

(*a*) that he be declared entitled to an undivided 1/3rd share of the said land made up as follows :—*i.e.*, an undivided 1/4th share subject to the aforesaid Security Bond and a further 1/12th share free of encumbrances ;

(*b*) that the said land be partitioned in terms of Ordinance No. 10 of 1863;

(*c*) that he be allotted a divided and specific 1/4th share of the said land subject to the said Security Bond No. 295, and a further specific 1/12th share free of encumbrances and that he be placed in quiet possession thereof ;

(*d*) for costs of contest if any and for costs *pro rata* and for such other and further relief as to this Court shall seem meet.

(Sgd.) H. BEDE PERERA,
Proctor for Plaintiff.

Schedule above referred to :

All that land called Peellagawawatta of about thirty acres in extent with the buildings, plantations and everything thereon situated at Nakolagamuwa in Tiragandahe Korale of Weuda Willi Hat Pattu Kurunegala District, North Western Province, and bounded on the North by wire fence of the lands belonging to Punchirala and others, East by the village limit Matawa, South by wire fence of Degalehena and West by Habawela, fence of the Pillawa belonging to Punchirala and Lindakumbura and registered in A.423/217.

(Sgd.) H. BEDE PERERA,
Proctor for Plaintiff.

D13
Answer in D.C. Kurunegala Case No. 1052 15.3.43

D13.

Answer in D.C., Kurunegala, Case No. 1052.

IN THE DISTRICT COURT OF KURUNEGALA

Herath Mudiyanselage Tikiri Banda Herath of Arambepola in Udapola Medalasse Korale..... *Plaintiff*

No. 1052.

vs.

1. Narayana Mudiyanselage Kuma Kumarihamy of Nakolagamuwa,
2. Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama
3. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera
4. The Chairman, Urban Council, Kurunegala.....

..... *Defendants.*

Exhibits.
D13
Answer in D.C. Kurunegala Case No. 1052 21.7.42—*Continued*

On this 15th day of March, 1943.

The answer of the 2nd defendant abovenamed appearing by C. L. W. Perera, K. C. C. W. Perera and K. A. C. Amerasinghe, Proctors, practising in partnership under the name, style and firm of Perera & Perera state as follows :—

1. This defendant admits the jurisdiction of this Court to hear and determine this action and denies all and singular the rest of the averments in the plaint which are inconsistent with this answer.

2. This defendant denies that Bandara Menika the vendor to plaintiff had any right or title to convey to plaintiff.

3. In the alternative this defendant pleads that the said Bandara Menika did not convey her interests in the land sought to be partitioned to plaintiff.

4. As a matter of law the plaintiff has no status to have and maintain this action.

Wherefore the 2nd defendant prays that plaintiff's action be dismissed with costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) PERERA & PERERA,
Proctors for 2nd Defendant.

D14.

D14
Statement of 1st Defendant in D.C. Kurunegala Case No. 1052 15.3.43

Statement of 1st Defendant in D.C., Kurunegala, Case No. 1052.

IN THE DISTRICT COURT OF KURUNEGALA

T. B. Herath of Arambepola.....*Plaintiff*

No. 1052. *vs.*

Kuma Kumarihamy and others of Nakolagamuwa.....*Defendants.*

On this 15th day of March, 1943.

The statement of the 1st defendant abovenamed appearing by Ran Banda Balalla, her proctor, states as follows :—

1. This defendant admits the averments in paragraphs 1, 2 and 3 of the plaint and denies the rest in so far as they are inconsistent with the answer.

Exhibits.
D14
Statement of 1st Defendant in D.C. Kurunegala Case No. 1052 15.3.43—*Continued*

2. Answering paragraph 4 this defendant states that Bandara Menika was only the widow and was not a legal heir of Edward Banda Korala and as such she had only a life interest in the property mentioned in the schedule annexed to the plaint.

3. Answering paragraph 6 this defendant states that Bandara Menika was only entitled to a 1/12th share and not 1/3rd share as stated in the plaint.

4. Further answering this defendant states that the parties are entitled to the following shares :—

Plaintiff to 1/12th share

1st defendant to 1/12th share

2nd defendant to 4/12th share subject to mortgage bond No. 501.

3rd defendant to 3/12th share

4th defendant to 3/12th share.

Wherefore this defendant prays :—

(*a*) That she be declared entitled to a specific 1/12th share of the said premises ;

(*b*) for costs *pro rata* ; and

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

(Sgd.) R. B. BALALLA,
Proctor for 1st Defendant.

D16
Proceedings of 20.10.44 and Order in D.C. Kurunegala Case No. 1052 20.10.44

D16.

Proceedings of 20.10.44 and Order in D.C., Kurunegala, Case No. 1052

IN THE DISTRICT COURT OF KURUNEGALA

Herath Mudiyanselage Tikiri Banda Herath of Nakolagamuwa in Udapola Medalasee Korale.....
..... *Plaintiff*

vs.

1. Narayana Mudiyanselage Kuma Kumarihamy of Nakolgamuwa and 3 others.....
..... *Defendants.*

20.10.44. D.C. 1052.

Exhibits.

D16
Proceeings of 20.10.44 and Order in D.C. Kurunegala Case No. 1052 20.10.44—*Continued*

Present : Plaintiff only.

Mr. Advocate Guneratne instructed by Mr. Bede Perera for plaintiff.

Messrs. Balalla and Perera submit that they have no instructions from their clients who are also absent.

T. B. Herath. Affirmed, Cashier, U.C., Kurunegala.

I am the plaintiff in this case. I seek to partition the land called Peellagawawatte as depicted in plan No. 2660 of Mr. G. A. de Silva, Licensed Surveyor, filed of record and marked " X."

The original owner was one Edward Banda ex-Korala. He died some years ago. His estate was administered in D.C. Kurunegala Testamentary Case No. 3714 by his widow Bandara Menika. There were several claimants to his estate but a settlement was arrived at between the various claimants. A judicial settlement was entered into with the consent of Court and contesting claimants were parties to that judicial settlement and by that settlement which I produce marked P1 dated 9th October, 1920, the widow was declared entitled to 1/4th of Edward Banda's estate. Kuma Kumarihamy 1st defendant in this case to 1/4th, Somawathie Kumarihamy 2nd defendant to a 1/4th and Ranmenika Kumarihamy 3rd defendant to a 1/4th.

3rd defendant by deed No. 1494 of 1934 (P2) conveyed a 1/12th to Bandaramenika the widow and by deed No. 491 of 1934 (P3) conveyed a further 1/12th to the 1st defendant, and deed No. 500 of 1934 (P4) conveyed the balance 1/12th to the 2nd defendant. So that Bandaramenika became entitled to 1/3rd and the 1st and the 2nd defendants to 1/3rd each.

Bandaramenika by deed No. 1700 of 1936 (P5) gifted her 1/3rd to me. I have by deed No. 295 of 1932 (P6) hypothecated 1/4th share with the 4th defendant in a sum of Rs. 4,000/- for the due performance of my duties as Cashier of the U.C. of Kurunegala.

2nd defendant by mortgage bond No. 501 of 1934 (P7) mortgaged her 1/3rd share in favour of the 3rd defendant.

Those are the only co-owners of the land and they have acquired a prescriptive title to it. Common possession is impracticable and inexpedient.

All the improvements on the land will go according to soil shares.

Cross-examined. No questions.

(Sgd.) S. S. J. GOONESEKERA,
D.J. 20.10.44.

No other evidence is being led.

Exhibits.

D16
Proceedings of 20.10.44 and Order in D.C. Kurunegala Case No. 1052 20.10.44—*Continued*

Judgment

I find title to the land called Peellagawawatta as depicted in plan No. 2660 of Mr. G. A. de Silva filed and marked " X " proved as in the evidence of the plaintiff and I order interlocutory decree for partition of same allotting 1/3rd to the plaintiff and 1/3rd to the 1st defendant and 1/3rd to the 2nd defendant.

A. 1/4th out of the plaintiff's 1/3rd share will be subject to the rights created by bond No. (P6) in favour of the 4th defendant who is the Chairman of the Urban Council, Kurunegala.

The rights of the 2nd defendant will be subject to the rights created by (P7) in favour of the 3rd defendant.

All the improvements on the land will go according to soil shares.

The plaintiff will also be entitled to recover his costs of contest from the 1st and 2nd defendants who raised in their pleadings a contest regarding the title of the plaintiff. Plaintiff's costs of partition will be paid *pro rata* by the parties.

Draft interlocutory decree for 2nd November, 1944.

(Sgd.) S. S. J. GOONESEKERA,
D.J. 20.10.44.

True copy of order and proceedings of 20.10.44 in D.C. Kurunegala Case No. 1052 Partition.

(Sgd.).....
19.9.52.

17.9.52 *Secretary, D.C., Kurunegala.*

D17
Interlocutory Decree in D.C. Kurunegala Case No. 1052 20.10.44

D17.

Interlocutory Decree in D.C., Kurunegala, Case No. 1052

IN THE DISTRICT COURT OF KURUNEGALA

Herath Mudiyanselage Tikiri Banda Herath of Arambepola in Udapola Medalesse Korale..... ....
..... *Plaintiff*

vs.

1. Narayana Mudiyanselage Kuma Kumarihamy of Nakolagamuwa in Tiragandaha Korale.
2. Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale.

3. Narayana Mudiyanselage Ranmenika Kumarihamy of Ambahera in Recopattu Korale.

4. The Chairman, Urban Council, Kurunegala.....

.....*Defendants.*

This action coming on for disposal before S. S. J. Goonesekera, Esquire, District Judge of Kurunegala on the 20th day of October, 1944, in the presence of Mr. Advocate Gooneratne instructed by Mr. Bede Perera for Plaintiff and of Messrs. Perera & Perera Proctors on the part of the 2nd defendant and of Mr. R. B. Balalla, Proctor on the part of the 1st defendant.

It is ordered and decreed that the plaintiff, 1st defendant, 2nd defendant, are the lawful owners and proprietors of the land called Peellagawawatte situated in the village of Nakolagamuwa in Tiragandahe Korale of Weuda Willi Hatpattu in the District of Kurunegala, N.W.P., as depicted in Plan No. 2660 dated 3rd January, 1943, made by Mr. G. A. de Silva, Licensed Surveyor, filed of record marked " X " and that they are entitled to the said premises in the following shares :—

1/3 to plaintiff.

1/3 to 1st defendant.

1/3 to 2nd defendant.

1/4th out of the plaintiff's 1/3rd share will be subject to the rights created by Bond (P6) in favour of the 4th defendant who is the Chairman of the Urban Council, Kurunegala.

The rights of the 2nd defendant will be subject to the rights created by (P7) in favour of 3rd defendant. All the improvements of land will go according to soil shares.

The plaintiff will also be entitled to recover his costs of contest from the 1st and 2nd defendants who raised in their pleadings a contest regarding the title of the plaintiff.

Costs of Partition *pro-rata*.

It is further ordered and decreed that the said premises be partitioned under the provisions of the Partition Ordinance allotting to the parties specific shares as aforesaid.

(Sgd.) S. S. J. GOONESEKERA,
District Judge.

20th October, 1944.

Exhibits.

D24
Petition of W. M. Somawathie Kumarihamy filed in D.C. Kurunegala Case No. 1052 14.3.45

D24.

Petition of W. M. Somawathie Kumarihamy Filed in D.C., Kurunegala, Case No. 1052

IN THE DISTRICT COURT OF KURUNEGALA

Herath Mudiyanselage Tikiri Banda Herath of Ambahera in Udapola Medalasse Korale..... ..... *Plaintiff*

No. 1052.

vs.

1. Narayana Mudiyanselage Kuma Kumarihamy of Nakolagomuwa in Tiragandahe Korale.
2. Wijesundera Mudaiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale.
3. Narayana Mudiyanselage Ranmenika Kumarihamy of Ambahera in Recopattu Korale.
4. The Chairman, Urban Council, Kurunegala.... .....*Defendants.*

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama aforesaid..... *Petitioner*

vs.

Herath Mudiyanselage Tikiri Banda Herath of Nakolagomuwa.....*Respondent.*

This 14th day of March, 1945.

The petition of the petitioner abovenamed appearing by Messrs. Perera & Perera, her Proctors, states as follows :—

1. The plaintiff-respondent abovenamed instituted the above styled action for a partition of the land called Peellagawawatta more particularly described in the plaint filed in the said action.

2. When the said case was taken up for trial on the 20th October, 1944, the petitioner's proctor informed the Court that the petitioner was absent and that he had no instructions from the petitioner. Whereupon this Court proceeded with the trial *ex-parte* and interlocutory decree was entered ordering a partition of the said land seriously prejudicing the petitioner's rights.

3. On the day of the trial and for several weeks before and after the said date the petitioner was seriously ill with severe anaemia and malaria and it was physically impossible for the petitioner to pay any attention to the conduct of this case or attend Court.

Exhibits.

D24
Petition of W. M. Somawathie Kumarihamy filed in D.C. Kurunegala Case No. 1052 14.3.45—*Continued*

4. The petitioner was taking treatment from the Medical Officer of Health, Narammala, and the petitioner produces a medical certificate from the said Doctor marked X.

5. On account of petitioner's serious illness the petitioner was unable to give due instructions to her lawyer.

6. In petitioner's statement she denied that plaintiff's vendor had any right or title to convey to the plaintiff and in the alternative the petitioner pleaded that the said vendor did not convey her interest in the land sought to be partitioned to the plaintiff.

7. The said decree of Court has caused serious prejudice to the petitioner.

8. When this case was called on 16th August, 1943, as petitioner was unable to attend Court and get ready for trial an application for a postponement was allowed on a medical report being filed.

Wherefore the petitioner prays :—

(*a*) For an order setting aside the said interlocutory decree and for an order refixing the case for hearing, (*b*) for costs and (*c*) for such other and further relief as to this Court shall seem meet.

(Sgd.) PERERA & PERERA,
Proctor for Petitioner.

D25.

D25
Proceedings of 12.6.45 in D.C. Kurunegala Case No. 1052 12.6.45

Proceedings of 12.6.45 in D.C., Kurunegala, Case No. 1052

12.6.45. D.C. 1052.

Present : Plaintiff and the 2nd defendant.

Mr. Gomis (Snr.) for plaintiff.

He files fresh proxy and revocation of the proxy granted to Mr. Bede Perera. It is accepted.

Mr. K. C. C. W. Perera for 2nd defendant.

Chairman, U.C. Kurunegala, is present in person.

Mr. Perera submits the 2nd defendant who was a party to the interlocutory decree and who was in default is now seeking to have the interlocutory decree vacated.

2nd defendant says that she was ill and she produces a medical certificate.

Exhibits.
D25
Proceedings of 12.6.45 in D.C. Kurunegala Case No. 1052 12.6.45—
Continued

Mr. Gomis draws the attention of Court to the journal entry of the 19th October, 1944.

The date for trial was the following day and the 2nd defendant was absent.

He cites 33 N.L.R. 217.

This application should be made to the Supreme Court.

Mr. Perera submits that he has got to call evidence. He calls :—

Somawathie Kumarihamy. Affirmed.

I am the 2nd defendant in this case. This case was fixed for trial on the 20th October, 1944. I did not attend Court on that day. I was not well. I had got fever. I had fever for a long time. I was three or four months down with fever. I produce a medical certificate from the Medical Officer of Health, Polgahawela.

He is not here today.

(Mr. Gomis objects. I reject this document).

In case No. 3714 of this Court I have been declared the sole owner of Edward Banda Korala. I produce a certified copy of that order 2 D 1.

Cross-examined. I cannot remember if I came and saw my proctors on the day before the trial date. My husband attends to all these matters, I do not attend to them. I go and instruct my proctors. I informed my proctors that I was ill. No. I came to Court on the date previous to the trial date and instructed my proctors. I cannot remember if I instructed my proctor to get another date to amend my answer. I was ill on that day. I did not come the previous day to the trial date to Kurunegala.

(Sgd.) S. S. J. GUNASEKERA,
D.J., 12.6.45.

Case for the 2nd defendant closed.

2D1 filed.

Order

This case came up for trial on the 20th October, 1944, and on that date the title was inquired into and interlocutory decree was ordered allotting 1/3 of the land to the plaintiff and 1/3 each to the 1st and 2nd defendants.

Exhibits.
D25
Proceedings of 12.6.45 in D.C. Kurunegala Case No. 1052 12.6.45—*Continued*

The day previous to the date on which the trial took place, *i.e.*, on the 19th October, 1944, there is a journal entry to the effect that the 2nd defendant's proctor, Mr. Perera, moved to have the case taken off the trial roll as an amendment to the answer of the 2nd defendant had become necessary, and a date be given to file the amended answer. A similar application appears to have been made in Case No. 1057 of this Court. Proctor for plaintiff Mr. Bede Perera, objected to this application and it was refused.

The present application is an attempt to circumvent this order of the 19th October, 1944, and I am not satisfied that it is an application made *bona fide*. I do not believe that the 2nd defendant was ill on the date of trial. 2nd defendant is bound by the interlocutory decree entered in this case and I refuse her application with costs.

Issue notice to confirm partition on the parties returnable 25th July, 1945.

(Sgd.) S. S. J. GUNASEKERA,
D.J., 12.6.45.

D18.

D18
Petition of Appeal in D.C. Kurunegala Case No. 1052 26.6.45

Petition of Appeal in D.C., Kurunegala, Case No. 1052

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Herath Mudiyanselage Tikiri Banda Herath of Arambepola in Udapola Medalasse Korale.....
..... *Plaintiff*

vs.

1. Narayana Mudiyanselage Kuma Kumarihamy of Nakolagamuwa in Tiragandahe Korale.

D.C. Kurunegala Case No. 1052
Nature : L.P.

2. Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale.

Value : Rs. 6,000.

3. Narayana Mudiyanselage Ranmenika Kumarihamy of Ambahera in Recopattu Korale.

4. The Chairman, Urban Council, Kurunegala....
.....*Defendants.*

Exhibits.
D18
Petition of Appeal in D.C Kurunegala Case No. 1052 26.6.45—
Continued

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale....
..... *Petitioner-Appellant*

vs.

1. Herath Mudiyanselage Tikiri Banda Herath of Arambepola in Udapola Medalasse Korale.
2. Narayana Mudiyanselage Kuma Kumarihamy of Nakolagamuwa in Tiragandahe Korale.
3. Narayana Mudiyanselage Ranmenika Kumarihamy of Ambahera in Recopattu Korale. 10
4. The Chairman, Urban Council, Kurunegala....
..... *Respondents-Respondents.*

On this 26th day of June, 1945.

To Their Lordships The Chief Justice and the other Justices of the Hon'ble the Supreme Court of the Island of Ceylon.

The petition of appeal of the Petitioner-appellant abovenamed appearing by Charles Laurence Weerasekera Perera, Kalpege Charles Chetananda Weerasekera Perera and Kalpege Albert Clarence Amerasinghe proctors practising in partnership under the name, style and firm of Perera & Perera states as follows :— 20

1. The plaintiff abovenamed instituted the above styled action for a partition of a land called Peellawatta more particularly described in the plaint filed in the said case.

2. When the said case was taken up for trial on the 20th October, 1944, the petitioner's proctor informed the Court that the petitioner was absent and that he had no instructions from the petitioner. Whereupon the said Court proceeded with the trial *ex-parte* and interlocuroty decree was entered ordering a partition of the said land seriously prejudicing the rights of the petitioner.

3. The petitioner on 19th March, 1945, filed a petition in the 30 District Court of Kurunegala setting out that the petitioner could not be present in Court on the 20th October, 1944, as she was ill and physically unfit to attend Court or give instructions to her proctors and she prayed that the interlocutory decree entered by the Learned District Judge be set aside and that the case be refixed for hearing.

4. The inquiry into the said petition was heard on the 12th June, 1945, and the Learned District Judge after hearing the evidence of the petitioner rejected the application with costs.

5. The petitioner being aggrieved with the said order begs to appeal to Your Lordships on the following among other grounds that 40 may be adduced at the hearing of this appeal.

(*a*) The said order and decree are contrary to law and the weight of evidence adduced in the case.

(*b*) The Learned District Judge was wrong in rejecting the Medical Certificate from the Medical Officer of Health, Naramalla, which was produced by the petitioner to show that she was physically unfit to attend Court on the 20th of October, 1944.

(*c*) The petitioner humbly submits that the Learned District Judge should have admitted the said document and acted on it in view of the fact that the said certificate is from a recognised Government Medical Officer who is duly qualified to issue such certificates.

(*d*) The fact that the Medical Officer concerned was not present in Court is immaterial as the genuineness of the document was not questioned. It is submitted that in circumstances such as this it is the invariable practice in Courts to admit medical certificates from duly qualified medical practitioners and it is not usual for the person issuing the certificate to be called to admit such document.

(*e*) It is respectfully submitted that the petitioner at the time she was cross-examined was in a weak state of health and she was confused by the relevant cross-examination and she has given replies which are not quite coherent. The petitioner begs to state that she was ill for quite a long time and she had no opportunity of giving due instructions to the proctor.

(*f*) The Learned District Judge has not appreciated the fact that this is an action for partition and it is submitted that he should have given every opportunity to the petitioner to present her case.

(*g*) The Learned District Judge has not inquired into the merits of the application of the petitioner who has substantial rights in the subject-matter of the action. She having been declared the sole heir of Edward Banda Korala by Your Lordships' Court. It is respectfully submitted that the petitioner's rights in the said property being of such a substantial nature she would not under normal circumstances have defaulted and the learned District Judge should have inquired into the merits more exhaustively instead of perfunctorily rejecting the application of the petitioner.

Exhibits.
D18
Petition of Appeal in D.C. Kurunegala Case No. 1052 26.6.45—*Continued*

Wherefore the petitioner prays :—

(1) That the order of the Learned District Judge confirming the Interlocutory Decree be set aside.

(2) That this case be refixed for hearing.

(3) For costs and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) PERERA & PERERA,
Proctors for Appellant-Petitioner.

D19
Decree of the Supreme Court in D.C. Kurunegala Case No. 1052 8.12.48

D19.

Decree of the Supreme Court in D.C., Kurunegala, Case No. 1052.

GEORGE the SIXTH by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith.

D. C. (Inty.) 192/1948.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

W. M. Somawathie Kumarihamy.....
.....*Petitioner-Appellant*

Action No. 1052. Against

H. M. Tikiri Banda Herath and 3 others.....
.....*Respondents.*

District Court of Kurunegala.

This cause coming on for hearing and determination on the 8th day of December, 1948, and on this day, upon an appeal preferred by the Appellant before the Hon. Mr. E. G. P. Jayatileke, K.C., Puisne Justice, and the Hon. Mr. A. R. H. Canekeratne, K.C., Puisne Justice, of this Court in the presence of Counsel for the respondent and there being no appearance for the Appellant.

It is considered and adjudged that this appeal be and the same is hereby dismissed with costs.

Witness the Hon. Sir John Curtis Howard, Kt., K.C., Chief Justice, at Colombo, the 8th day of December, in the year of Our Lord One Thousand Nine hundred and Forty-eight, and of Our Reign the Twelfth.

(Sgd.).....
Registrar, S.C.

D20.

Exhibits.
D20
Motion filed in D.C. Krunegala Case No. 1052
22.2.49

Motion Filed in D.C., Kurunegala, Case No. 1052.

IN THE DISTRICT COURT OF KURUNEGALA

Herath Mudiyanselage Tikiri Banda Herath of Arambepola ..... *Plaintiff*

No. 1052. *vs.*

1. Narayana Mudiyanselage Kuma Kumarihamy of Nakolagamuwa.

2. Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama (*deceased*).

3. Tennakoon Mudiyanselage Tikiri Banda Amunugama of Amunugama (*substituted*).

3. Narayana Mudiyanselage Ranmenika Kumarihamy of Ambahera.

4. The Chairman, Urban Council, Kurunegala.....

.....*Defendants.*

This action for partition having been brought on the footing that Edward Banda Korala was the owner of the land in question and that by a settlement arrived at in his Testamentary Case No. D.C. 3714 the first defendant, second defendant, Bandaramenika and Ranmenika became entitled as his heirs each to a one-fourth share of the said property but during the pendency of these proceedings the said settlement of 1920 having been set aside and second defendant having been declared the sole heir of Edward Banda Korala by the order of this Court dated 21.8.1944 in the said Case No. 3714 I move that the one-third share of the land in question which was allotted to the first defendant on the basis of the original settlement be now allotted to Tennakoon Mudiyanselage Tikiri Banda Amunugama substituted in room of Somawathie Kumarihamy the deceased second defendant and the interlocutory decree be amended accordingly on notice to parties.

(Sgd.) R. E. De S. JAYASUNDERA,
Proctor for Substituted Defendant.

Kurunegala, 22nd February, 1949.

Exhibits.

D21
Extract from Order in D.C. Kurunegala Case No. 1052 16.6.50

D21.

Extract from Order in D.C., Kurunegala, Case No. 1052.

IN THE DISTRICT COURT OF KURUNEGALA

No. 1052 Herath Mudiyanselage Tikiri Banda Herath of Nakolagamuwa in Udapola Medalasse Korale.....
..... *Plaintiff*

vs.

1. Narayana Mudiyanselage Kuma Kumarihamy of Nakolagamuwa and 3 others..... *Defendants.*

Order

I allow the application of the 2A defendant to amend the Interlocutory Decree and allot to him the share that was allotted by that Interlocutory Decree to the 1st defendant . . .

D23
Proceedings of 16.6.50 in D.C. Kurunegala Case No. 1052 16.6.50

D23.

Proceedings of 16.6.50 in D.C., Kurunegala, Case No. 1052

16.6.50.

2A Defendant present.

Mr. Advocate Gunaratne instructed by Messrs. Gomis & Gomis for plaintiff.

Mr. Balalla for the 1st defendant.

Mr. Advocate N. E. Weerasooriya, K.C., with Advocate W. D. Gunasekera instructed by Mr. Jayasundera for 2A defendant.

Mr. Weerasooriya calls :—

T. M. T. B. AMUNUGAMA. Affirmed ; 43 years, Chairman of V.C., Amunugama.

Edward Banda Korala's estate was administered in Case No 3714 Testamentary of this Court. Originally an application was made in Case No. 3714 on 9.10.30 marked 2A D1 that the estate be divided equally between the Petitioner for letters Bandara Menika, 1st respondent Somawathie Kumarihamy, 3rd respondent Kuma Kumarihamy who is the present 1st respondent and the 4th respondent Ran Menika Kumarihamy.

I married Somawathie Kumarihamy. Subsequently in the Testamentary Case it was held that Somawathie Kumarihamy was the adopted daughter of Edward Banda Korala. In another Testamentary Case No. 4402 on the estate of Bandara Menika it was held that Somawathie was the adopted daughter of Bandara Menika also. In view of those two orders the application 2AD2 was made in Testamentary Case No. 3714 on 22.10.43 that the original arrangement of 9.10.30 be set aside and decree was entered on 21.8.44 marked 2A D3 by which Somawathie as the adopted daughter was declared entitled to succeed to the estate of Edward Banda Korala. Somawathie the 2nd defendant in this case died on 27.9.45 and I have been appointed as the sole heir to represent her estate. I say that the rights of the 1st defendant should really come to Somawathie and I, as her heir, am entitled to it.

Cross-examined : by Mr. Balalla :—Nil.

(Mr. N. E. Weerasooriya says that in the present application he is not making any claim against the plaintiff or contesting the rights to the share allotted to the plaintiff in the Interlocutory decree in this case, but he is only asking that the share allotted to Kuma Kumarihamy, the first defendant, be given to the 2A defendant.

In view of this statement of Mr. Weerasooriya, Mr. Goonaratne does not oppose this application and he is not asking any questions.

(Sgd.) S. RAJARATNAM,
D.J.

16.6.50.

Mr. Balalla, addresses Court and draws the attention to the journal entry of 19.10.44 wherein the 2nd defendant moved to file an amended answer and the plaintiff objected to that and it was refused. The case went to trial on 20.10.44 and the order was delivered. There was an appeal on that order by the 2nd defendant and that appeal was dismissed. This Court has no power to vary the order that has already been made and entered of record. He cites 23 N.L.R. page 346 and 8 C.W.R. page 850.

Mr. Weerasooriya in his reply states that only the interlocutory decree has been entered and not the final decree. He says that the principle laid down in the cases mentioned above does not apply to this case. The 1st defendant cannot ask that our rights be allotted to her in that decree because . . .

(Intd.) .....
23.2.51.

Exhibits.

D22
Final Decree in D.C. Kurunegala Case No. 1052
16.6.50

D22.

Final Decree in D.C., Kurunegala, Case No. 1052.

Final Decree.

IN THE DISTRICT COURT OF KURUNEGALA.

Herath Mudiyanselage Tikiri Banda Herath of Arambepola in Udapola Medalesse Korale.....*Plaintiff*

No. 1052.

vs.

1. Narayane Mudiyanselage Kuma Kumarihamy of Nakolagamuwa in Tiragandahe Korale
2. Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale (dead)
3. Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera in Recopattu Korale
4. The Chairman, Urban Council, Kurunegala..... .....*Defendants.*

2A. Tennekoon Mudiyanselage Tikiri Banda Amunugama of Amunugama .....*Added-Defendant.*

This action coming on for final disposal before Spencer Rajaratnam, Esquire, District Judge of Kurunegala, on the 16th day of June, 1950, in the presence of Mr. Adv. C. R. Gooneratne instructed by Messrs. Gomis & Gomis, Proctors, on the part of the plaintiff, Mr. R. B. Balalla, Proctor, on the part of the 1st defendant and of Mr. Adv. N. E. Weerasooriya, K.C., with Mr. Adv. W. D. Gunesekera instructed by Mr. R. E. de S. Jayasundera, Proctor, on the part of the 2A defendant.

It is ordered and decreed that the partition of the land called Peellagawawatte situated in the village of Nakolagamuwa in Tiragandahe Korale of Weuda Willi Hat Pattu in the District of Kurunegala, North Western Province, more fully described in the schedule hereto made by Mr. G. A. de Silva, Licensed Surveyor, *vide* his plan of partition No. 3523 dated 25th day of February, 1945, and the connected schedule of appraisement both filed of record be and the same is hereby confirmed subject to the modification that lots 2 and 3 in the said plan be allotted to the 2A substituted defendant.

It is further ordered and decreed that lot 1 in the said plan of the said land containing in extent 8A. 0R. 20P. and bounded on the North by the land of late Banda Korala and the land of Mrs. Goonetilleke and others, East by the land of Mrs. Goonetilleke and others, South by lot 2 of this land, and on the West by Ela and the lands of Punchirala and others and the late Banda Korala be and the said lot 1 is hereby allotted to the plaintiff abovenamed.

Exhibits.
D22
Final Decree in D.C. Kurunegala Case No. 1052 16.6.50—
Continued

It is further ordered and decreed that lot 2 in the said plan of the said land containing in extent 8A. 0R. 20P. and bounded on the North by lot 1 of this land, East by the lands of Mrs. Goonetilleke and Valliyadasa, South by lot 3 of this land and on the West by the land and the field of Punchi Banda Vel Vidane, and

Lot 3 in the said plan of the said land containing in extent 8A. 0R. 20P. and bounded on the North by lot 2 of this plan, East by Matawa village and the land of Diulgaspitiya Walauwe, South by the land of Jayasena and others, and on the West by the land of Punchi Banda and field of Punchi Banda Vel Vidane be and the said lots 2 and 3 are hereby allotted to the 2A defendant abovenamed.

It is further ordered and decreed that plaintiff do pay the sums of Rs. 307·00 and Rs. 204·00 to the 2A defendant being the difference of valuation of plantations in common and that 2A defendant do pay to plaintiff his costs of contest.

Costs *pro rata*.

(Sgd.) A. S. PONNAMBALAM,
District Judge.

16th June, 1950.

The Schedule.

All that land called Peellagawawatta of about thirty acres in extent with the buildings, plantations and everything thereon situated at Nakolagomuwa in Tiragandahe Korale of Weuda Willi Hat Pattu, Kurunegala District, North Western Province and bounded on the North by wire fence of the lands belonging to Punchirala and others, East by the village limit of Matawa, South by wire fence of Delagehena, and West by Habawela, fence of the Pillewa belonging to Punchirala and Lindakumbura and registered in A423/217, which said land as depicted in plan of partition No. 3523 dated 25.2.45, containing in extent 24 acres 1 rood and 20 perches and made by Mr. G. A. de Silva, Licensed Surveyor, and bounded on the North by the land of late Banda Korala, and the land of Mrs. Goonetilleke and others East by the lands of Valliyadasa and Matawa village and the land of Diulgaspitiya Walawwa, South by the land of Jayasena and others, and on the West by the land of Punchirala and others, Punchi Menika, land in D.C. 1057 and the lands and fields of Punchi Banda Vel Vidane.

(Sgd.) A. S. PONNAMBALAM,
District Judge.

16th June, 1950.

Drawn by :

(Sgd.) GOMIS & GOMIS,
Proctors for Plaintiff.

Exhibits
D11
Proceedings in M.C. Kurunegala Case No. 6603 9.6.42 to 2.9.42

D11.

Proceedings in M.C., Kurunegala, Case No. 6603.

IN THE MAGISTRATE'S COURT OF KURUNEGALA

T. B. Herath of Kurunegala.....*Complainant*

Case No. 6603. *vs.*

T. B. Amunugama (Jnr.) of Amunugama.

On this 9th day of June, 1942, T. B. Herath, affirmed, 42 years, Cashier, U.C., Kurunegala. I am the owner of a 1/3rd share of Pillawatta. The accused's wife owns a 1/3rd share, and one Kirihamy owns the other 1/3rd. On 1.6.42, 7,000 coconuts were lying on the land. The accused sold all the nuts to T. B. Olupeliyawa and appropriated the proceeds for himself. He refused to give my share. I charge the accused with criminal misappropriation of Rs. 51/-.

(Sgd.) T. B. HERATH. (Sgd.) G. M. De SILVA.
Read over, etc. 9.6.42.

(Sgd.) T. A. JAYASUNDERA.
Summons on accused for 16.6.42.

16.6.42.
Complainant : T. B. Herath.
Accused : T. B. Amunugama.
Summons served. Charged from summons. He states, "I am not guilty." Trial 30.6.42.

(Sgd.) G. M. De SILVA.

30.6.42.
Complainant : T. B. Herath
Accused : T. B. Amunugama
Mr. C. L. W. Perera for complainant. } Present.
Mr. Balalla for accused.
Of consent trial 21.7.42.

(Intd.) R. R.

21.7.42.
Complainant : T. B. Herath
Accused : T. B. Amunugama } Present.

Mr. C. L. W. Perera for complainant. Mr. Balalla for accused. The accused denies that the complainant is entitled to a 1/3rd share

of the land. This is a dispute about land. Parties agree that the accused should give security in Rs. 300/- and possess the land till the decision of the partition case which the plaintiff has instituted for the land. Call on 26.8.42 for security.

(Sgd.) G. M. De SILVA.
22.8.42.

26.8.42.

Complainant : T. B. Herath.
Accused : T. B. Amunugama.
Security for 2.9.42.

(Sgd.) G. M. De SILVA.

2.9.42.

Complainant : T. B. Herath.
Accused : T. B. Amunugama.

Security tendered. Complainant moves to withdraw the case. I acquit the accused.

(Sgd.) G. M. De SILVA.

True copy of proceedings in M. C., Kurunegala, Case No. 6603.

(Sgd.).....
Chief Clerk,
M.C., Kurunegala.
11.2.44.

D3.

Journal Entries in D.C., Kurunegala, Case No. 1541

IN THE DISTRICT COURT OF KURUNEGALA

No. 1541.

Class IV.

Amount : Rs. 5,430/-.

Nature : Money M.B.

Procedure : Regular.

Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera.....*Plaintiff*

vs.

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale..... *Defendant.*

Exhibits.

D3
Journal Entries in D.C. Kurunegala Case No. 1541 27.5.43 to 31.10.44—
Continued

Journal

The 27th day of May, 1943.

Messrs. Gomis & Gomis proctors for plaintiff file appointment and plaint together with document marked P1 and move that the same may be accepted and that summons do issue and re-issue on the defendant until service.

Plaint accepted and summons ordered for.

(Sgd.) .....
District Judge, 2.7.43.

Summons issued with Precept Returnable the day of 10

3.6.43.

Summons issued N.W.P.
Messrs. Gomis & Gomis for plaintiff.
Mr. R. E. De S. Jayasundera for defendant (22.10.43).

2.7.43.

Summons not served on defendant.
Not to be found. Re-issue for 17.8.43.

(Intd.) .....
D.J.

7.7.43. 20

Re-issued.

17.7.43.

Summons not served on defendant. Not to be found. Re-issue for 21.9.43.

18.8.43.

Re-issued.

(Intd.) .....

21.9.43.

Summons served on defendant. Personal—absent. Mr. Jayasundera will file her proxy and answer on 22.10.43. 30

(Intd.) .....

22.10.43.

Proxy and answer by Mr. Jayasundera. Proxy filed. Answer for 22.11.43.

(Intd.) .....

22.11.43.

Answer not filed. Settlement or answer finally for 23.12.43.

(Intd.) .....

Exhibits.
D3
Journal Entries in D.C. Kurunegala Case No. 1541 27.5.43 to 31.10.44—
Continued

Messrs. Gomis & Gomis for plaintiff.
Mr. R. E. De S. Jayasundera for defendant.

23.12.43.

Settlement or answer finally. Answer filed. Trial for 18.9.44.

(Intd.) .....

21.8.44.

The parties having arrived at a settlement Mr. Jayasundera moves that this action be dismissed with costs and that the mortgage bond P1 filed of record be cancelled and discharged and returned to the defendant to enable her to have the discharge registered and return same to Court.

Motion allowed.

Plaintiff's action is dismissed without costs that the Mortgage Bond be discharged and returned to the Proctor for defendant. Enter decree accordingly. Call case on 31.10.44 for the Reg. Discharged Bond to be filed.

(Intd.) .....
D.J.

D/entered.

31.10.44.

Registered. Discharged bond filed.

(Intd.) .....
D.J.

D.4

D4
Plaint in D.C. Kurunegala Case No. 1541 27.5.43

Plaint in D.C., Kurunegala, Case No. 1541

IN THE DISTRICT COURT OF KURUNEGALA

Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera..... *Plaintiff*

vs.

No. 1541.

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale..... *Defendant.*

This 27th day of May, 1943.

The plaint of the plaintiff abovenamed appearing by V. I. V. Gomis and E. H. A. Gomis, her proctors, practising in partnership under the name, style and firm of Gomis & Gomis states as follows :—

Exhibits.
D4
Plaint in D.C. Kurunegala Case No. 1541 27.5.43—*Continued*

1. The defendant abovenamed resides and the cause of action hereinafter set forth arose within the jurisdiction of this Court.

2. By her bond No. 501 dated 22nd February, 1934, herewith filed marked P1, the defendant abovenamed bound herself her heirs executors and administrators at Amunugama within the jurisdiction of this Court to pay to the plaintiff or her heris executors administrators and assigns the principal sum of Rs. 2,715/- on demand with interest thereon at the rate of 12 per cent. per annum till repayment thereof.

3. For securing the due repayment of the amount borrowed on the said bond and all monies payable thereunder, the defendant mortgaged and hypothecated with the plaintiff and her aforewritten as a first and primary mortgage, free from all encumbrances the premises described in the schedule annexed hereto.

4. There is now due and owing on the said bond a sum of Rs. 5,430/- to wit Rs. 2,715/- as principal and Rs. 2,715/- as recoverable interest which sum or any portion of which the defendant has failed and neglected to pay although thereunto often requested.

Wherefore the plaintiff prays :—

(1) For judgment against the defendant for the said sum of Rs. 5,430/- with further interest on Rs. 2,715/- at 12 per cent. per annum from date hereof till date of decree, and thereafter with legal interest on the aggregate sum till payment thereof in full.

(2) For costs incurred in this behalf.

(3) In default thereof that the said premises may be sold and the proceeds applied in and towards the payment of the amount of the said principal interest and costs and that if such proceeds shall not be sufficient the defendant to pay to the plaintiff the deficiency with legal interest until realisation and that for that purpose all proper directions may be given and accounts taken by Court. The plaintiff further prays :—that she be allowed to bid for and purchase the property that may be sold and she be given credit up to the extent of her claim and costs in the event of her becoming the purchaser of the property that may be sold, and

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

(Sgd.) GOMIS & GOMIS,
Proctors for Plaintiff.

The schedule above referred to

Exhibits.
D4
Plaint in D.C. Kurunegala Case No. 1541 27.5.43— *Continued*

1. An undivided one-third share of Peellagawawatta of about thirty acres in extent together with everything thereon situated at Nakolagomuwa in Tiragandaha Korale of Weuda Willi Hatpattu in the District of Kurunegala North Western Province and bounded on the North by wire fence of the land of Punchirala and others, East by village limit of Mathawa, South by Wire fence of Degalahena and on the West by Habawela and fence of the Pillewa of Punchirala and by Lindakumbura.

2. An undivided one-third share of the lands called Bulukumburewatta of ten acres in extent and of its adjoining Andiyagodawatta of three lahas kurakkan sowing extent and of its adjoining Kotuwekumbura and Godakumbura both of five pelas paddy sowing extent all forming one property which could be included in one survey together with the buildings, plantations and everything thereon situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by village limits of Mathawa and Thiragama, East by cart road and land of Casi Thamby and others, South by field and by land of Ausadahamy and others and on the West by Bulakumbura Wela and lands of Ausadahamy and others, and exclusive of the paddy fields within the said boundaries.

3. An undivided one-third share of Hitinawatta of about three lahas kurakkan sowing in extent together with the buildings, plantations and everything thereon situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by Habawela, East by Habawela, South by gardens of Kalu Banda and Banda and on the West by the land belonging to the estate.

4. An undivided one-third share of Habawela alias Ihalawela of about twelve lahas paddy sowing extent situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by the fields of Malhamy and others, East by Peellawatta, South by Aramba and on the West by Hitinawatta.

5. An undivided one-third share of Galahitiyawa of one amunam paddy sowing extent situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by Ambagahamulakumbura, East by Bogahagapitiya Kumbura, South by field of Ausadahamy and on the West by field of Ausadahamy and others.

6. An undivided one-third share of Ruppewatta of about one laha kurakkan sowing extent together with everything thereon situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by lands of Dingiri Amma and Tikiri Banda, East by land of P. B. Tennekoon and others, South by land of Punchi Banda and others and on the West by field.

7. An undivided one-third share of Lindakumbura of about five pelas paddy sowing extent situated at Nakolagamuwa aforesaid and the entirety of which is bounded on the North by limitary ridge of Ambagahamulaweepela, East by Peellewatta, South by Habawela and on the West by the land belonging to the estate.

(Sgd.) GOMIS & GOMIS,

Proctors for Plaintiff.

19.9.52.

Exhibits.
D5
Answer in D.C.
Kurunegala
Case No. 1541
23.12.43

D5.

Answer in D.C., Kurunegala, Case No. 1541

IN THE DISTRICT COURT OF KURUNEGALA

No. 1541 Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera ..... *Plaintiff*

vs.

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama..... *Defendant.*

On this 23rd day of December, 1943.

The answer of the abovenamed defendant appearing by Royston Edmund De Silva Jayasundara her proctor states as follows :— 10

1. The defendant admits the averments in paragraph 1 of the plaint and denies all the other averments except so far as is herein, after expressly admitted.

2. Answering to paragraph 2 of the plaint this defendant admits the mere execution of the Bond at which time she was a minor but specially denies that she received the consideration mentioned therein or any portion of it whatsoever.

3. The defendant further states that the plaintiff's husband was indebted on Mortgage Bond No. 49332 of 28th August, 1924, to 20 the late Edward Banda Korala whose estate is being administered in Testamentary Case No. 3714 of this Court and that the principal and interest on the said Bond amounting to about Rs. 15,000/- is still due and owing to the said estate.

4. The late Edward Banda Korala died leaving a widow, Bandara Menika, who was appointed Administratrix in the said Testamentary Case No. 3714 and this defendant who was his adopted child as his sole heir.

5. The said Bandara Menika and this defendant's Guardian *Ad Litem* alleging that they were not in a position to prove that this 30 defendant was the adopted daughter of the late Edward Banda Korala came to a settlement by which Bandara Menika, this defendant, the plaintiff abovenamed and one Kumarihamy should take a quarter share of each of the said estate.

Exhibits.
D5
Answer in D.C. Kurunegala Case No. 1541 23.12.43— *Continued*

6. The defendant further states that she is in fact the adopted daughter of the late Edward Banda Korala and as such his sole heir and that the parties to the said settlement acting in collusion concealed and suppressed this fact from Court and thereby induced the Court to approve of the said settlement and this defendant has now applied to Court to have the said settlement set aside.

7. The plaintiff and more especially her husband have made every conceivable attempt to fraudulently deprive the estate of the amount due on the said Bond No. 49332.

8. Further answering the defendant states that the plaintiff, her husband, Bandara Menika and the G.A.L. of this defendant acting at the instance of the plaintiff's husband collusively arranged without the sanction of the Court to sell plaintiff's 1/4th share of some of the lands secured under the alleged settlement to the other heirs and thereby set off the amount due to the estate on the said Bond No 49332.

9. The defendant further states that about three years after the alleged sale of plaintiff's share of some of the lands as aforesaid, the plaintiff's husband, the defendant's G.A.L. and Bandara Menika induced defendant to sign the Bond sued upon in this Case alleging that a sum of Rs. 2,715/- was due to plaintiff being the excess in value of the properties purchased.

10. Further answering the defendant states that upon the death of Bandara Menika it was found necessary that to continue the administration of the estate of the late Edward Banda Korala in the said Testamentary Case No. 3714 and thereafter on the defendant taking steps to apply for letters of administration she discovered the facts for the first time.

11. Further answering this defendant states that the plaintiff cannot in Law maintain the present action.

Wherefore this defendant prays :—

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

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

(Sgd.) R. E. De S. JAYASUNDERA,

Proctor for Defendants.

19.9.52.

Exhibits.

D6
Decree of the District Court in D.C. Kurunegala Case No. 1541 21.8.44

D6.

Decree of the District Court in D.C., Kurunegala, Case No. 1541

Decree

Class : No. 1541.

IN THE DISTRICT COURT OF KURUNEGALA

Narayana Mudiyanselage Ran Menika Kumarihamy of Ambahera ..... *Plaintiff*

Against

Wijesundera Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale..... *Defendant.*

This action coming on for final disposal before S. S. J. Goonasekera, Esquire, district Judge of Kurunegala, on the 21st day of August, 1944, in the presence of Messrs. Gomis & Gomis, Proctors, on the part of the plaintiff and of Mr. R. E. De S. Jayasundera, Proctor on the part of the defendant, and the case having been settled it is ordered and decreed that plaintiff's action for the recovery of a sum of Rs. 5,430 with further interest and costs in respect of Mortgage Bond No. 501 dated 22.2.1934, attested by S. A. Yatawara, Notary Public, be and the same is hereby dismissed without costs.

The 21st day of August, 1944.

(Sgd.) S. S. J. GOONESEKERA,
District Judge.

P30
Journal Entry in D.C. Kurunegala Case No. 3137 Showing Date of Plaint Sept., 1945

P30.

Journal Entry in D.C., Kurunegala, Case No. 3137 Showing Date of Plaint.

IN THE DISTRICT COURT OF KURUNEGALA

25th September, 1945.

Maya Bandaralage Ukku Banda Ambahera of Ambahera in Recopattu Korale..... *Plaintiff*

No. 3137.

vs.

1. Wijesundera Mudiyanselage Somawathie Kumarihamy presently of Amunugama.
2. Nayakaratna Bandaralage Herath Banda Balalla Koralamahatmaya of Rekawa.
3. Narayana Mudiyanselage Kumarihamy of Nakolagamuwa.
4. Ran Bandara Balalla, Proctor, S.C., Kurunegala..... .....*Defendants.*

Journal.

Exhibits.

P30
Journal Entry in D.C. Kurunegala Case No. 3137 Showing Date of Plaint Sept., 1945—*Continued*

The day of September, 1945.

Messrs. Ratnayake & Perera, Proctors for plaintiff, file appointment and plaint together with abstract of title and move that the same may be accepted and that summons do issue and reissue on the defendants until service.

1. Plaint accepted.
2. Lispendens to be filed.
3. Also summons, receipt and commission for 6.11.45.

(Sgd.) M. C. SANSONI,
District Judge.

True copy of J.E. in D.C., Kurunegala, Case No. 3137.

(Sgd.) Illegibly,
Secretary, D.C., Kurunegala.

16.9.52.

P31.

P31
Decree of the District Court in D.C. Kurunegala Case No. 3137 10.1.51

Decree of the District Court in D.C., Kurunegala, Case No. 3137.

Final Decree.

IN THE DISTRICT COURT OF KURUNEGALA

Maya Bandaralage Ukku Banda Ambahera of Ambahera in Recopattu Korale..... *Plaintiff*

No. 3137.

vs.

1. Wijesundera Mudiyanselage Somawathie Kumarihamy presently of Amunugama in Recopattu Korale (dead).
2. Nayakaratne Bandaralage Herath Banda Balalla, Koralemahatmaya of Recawa in the said Korale.
3. Navaratne Mudiyanselage Kumarihamy of Nakolagamuwa in Tiragandahe Korale.
4. Ran Banda Balalla, Proctor, S. C., Kurunegala.....

.....*Defendants.*

Exhibits.
P31
Decree of the District Court in D.C. Kurunegala Case No. 3137 10.1.51.—*Continued*

1A. Tikiri Banda Amunugama, Chairman, V.C., Pothuhera. Substituted in room of 1st defendant.

Herath Mudiyanselage Mekamma Kumarihamy of Recawa in Recopattu Korale.....*Intervenient.*

This action coming on for final disposal before S. Rajaratnam, Esquire, District Judge of Kurunegala, on the 19th day of December, 1950, in the presence of Mr. Advocate Guneratne instructed by Messrs. Ratnayake & Perera, Proctors, on the part of the Plaintiff. Mr. Advocate Jayakody instructed by Mr. R. E. De S. Jayasundera, Proctor, on the part of the 1A substituted defendant and of Mr. Kodagoda, Proctors, on the part of the Intervenient.

It is ordered and decreed that the partition of the lands called Karandawatte, Karandehena and Pallekarandehena and Widiyawatta marked lots A and B, Karanda Kumbura marked Lots C. and D, Galahitiyawekumbura marked lots E and F, situated at Godawita in Recopattu Korale of Dambadeni Hatpattu in the District of Kurunegala, North Western Province, made by J. Wright, Licensed Surveyor, *vide* his plan of partition No. 2862A, dated 16th September, 1950, and the connected schedule of appraisement both filed of record be and the same is hereby confirmed. It is further ordered that lot B in the said plan of the said land called Karandewatte, Karandehena and Pallekarandehena and Widiyawatte containing in extent 5A. 3R. 08½ P. and bounded on the North by lot A of these lands, East by land of Appuhamy, now of 2nd defendant, land of Mudiyanse, South by land Appuwa, land of Godawita Aratchi, land of Samarakoon, land of Ukku Amma and lots C and D of the land called Karandekumbura and West by Wella and lot D in the said plan of the said land called Karandekumbura containing in extent 1A. 0R. 18½P. and bounded on the North by lot B of the land called Karandewatta, Karandahena and Pallekarandehena and Widiyawatte, East by ridge and field of Ranhamy and Mudalihamy, South Wella and West by lot C of this land and

Lot E in the said plan of the said land called Galahitiyawekumbura containing in extent 1A. 2R. 04½P. and bounded on the North by the field of Appuhamy, now of Bandaramenika and others, East by Galahitiyawekumbura pillewa, South by lot F of this land and West by road and the said lots B and E of the said lands are hereby allotted to the plaintiff.

It is further ordered that lot A in the said plan of the said lands called Karandewatta, Karandehena and Pallekarandehena and Widiyawatta containing in extent 1A. 3R. 29½P. and bounded on the North by wire fence and land of Ausadahamy and others, land of Mutumenika and land of Ausadahamy Aratchi and others, East by Gansabhawa Road, South by lot B of this land, West by Wella.

Lot C in the said plan of the said land called Karandekumbura containing in extent 0A. 1R. 19½P. and bounded on the North by lot B of the lands called Karandewatta, Karandehena and Pallekarandehena and Widiyawatta, East by lot D of this land called Karandekumbura, South by Palamagawakumbura of C. B. Rewaca and Wella, West by Wella.

Lot F in the said plan of the said land called Galahitiyawakumbura containing in extent 0A. 2R. 01½P. and bounded on the North by lot E of this land, East by Galahitiyawekumbura pillewa, South by ridge and field of Dingiri Banda and West by road B and the said lots A, C and F are hereby allotted to the 1A substituted defendant. It is further ordered that the application of the Intervenient is dismissed with costs.

It is further ordered that the costs of this case be borne by the parties *pro rata*.

(Sgd.) L. W. De SILVA,
District Judge.

This 19th day of December, 1950.

Schedule

1. All that land called Karandekumbura of fourteen lahas of paddy sowing in extent and its adjoining Karandawatta of four Kurunies Kurakkan sowing in extent both forming one land situated at Godawita in Recopattu Korale of Dambadeni Hatpattu in the District of Kurunegala, North-Western Province and bounded on the North by Punchi Etana's garden, East by the garden of Appuhamy and Punchihamy's field ; South by field of Ranhamy and Mudalihamy, West by field and chena of Punchirala—registered in F. 173/104.

2. All that Widiyawatta of about two lahas kurakkan sowing extent situated at Godawita aforesaid and bounded on the North by fence of Punchirala Vedarala's garden, East by the fence of Appuhamy's garden, South by Appuhamy's chena and West by land of Appuhamy ; registered in F. 173/105.

3. All that Karandekumbura of twelve lahas of paddy sowing in extent situated at Godawita aforesaid and bounded on the North by Appuhamy's field, East by the limitary dam of Punchirala's field, South by Ausadahamy's field, West by field of Ausadahamy Aratchi and others ; registered in F. 173/106.

4. All that Galahitiyawekumbura of two pelas and two lahas paddy sowing in extent situated at Godawita aforesaid and bounded on the North by Appuhamy's field now belonging to Bandaramenika and others and Ukku Banda's pillewa, East by field of Galapitiyawa kumbura pillewa. South by the field of Appuhamy now belonging to Edward Banda Korala, West by Reco-Ela ; registered in F. 420/123.

5. All that Galahitiyawekumbura of two pelas paddy sowing in extent situated at Godawita aforesaid and bounded on the North by Appuhamy 's field and Ranhamy (Vidane's pillewa presently of Galahitiyawe kumbura belonging to Edward Banda Korala, East by Galahityawe kumbura Pillewa of one laha kurakkan sowing, South by Appuhamy's hena and limitary dam of Ranhamy's field presently field of Dingiri Banda, West by Reco-Ela ; registered in F. 420/125.

Exhibits.
P31
Decree of the District Court in D.C. Kurunegala Case No. 3137 10.1.51—*Continued*

6. All that Karandehena of two acres one rood and twelve perches in extent situated at Godawita aforesaid and bounded on the North by lots 88 and 99 in P.P. 1489, East by lots 88 and 103 in P.P. 1489, South by lot 102 in P.P. 1489, and West by lots 101 and 88 in P.P. 1489 ; registered in F. 130/163.

7. All that Pallekarandehena of two acres one rood and nineteen perches in extent situated at Godawita aforesaid and on the North by lot 88 in P.P. 1489, East by lot 102 in R.P. 1489 and T.P. 306691, South by lot 109 in P.P. 1489, West by lot 109 in 1489 and Reco-Ela and registered in F. 177/34.

(Sgd.) L. W. De SILVA,
District Judge. 10
10.1.51.

Drawn by us
(Sgd.) RATNAYAKE and PERERA,
Proctors for Plaintiff.

Compared by

True copy of Final Decree in D.C. Kurunegala Case No. 3137.

(Sgd.).....
24.1.52.
Secretary, D.C., Kurunegala.

P2(*a*)
Inventory filed in D.C. Kurunegala Case No. 4630 12.12.47

P 2(*a*) 20

Inventory Filed in D.C., Kurunegala, Case No. 4630

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary Jurisdiction No. 4630

In the matter of the Last Will and Testament of Wijesundara Mudiyanselage Somawathie Kumarihamy of Amunugama in Recopattu Korale.

Inventory

Immovable Property—Schedule A

Lands at Nakalagamuwa in Tiragandahe Korale

		Rs.	Cts.
1.	Hitinawatte of 3 Lahas kurakkan sowing	1,800	00
2.	Habawwela alias Ihalawela of 12 lahas paddy	250	00
3.	Peelagawawatta of 30 acres in extent	9,000	00
4.	Habawelawatta of 3 lahas kurakkan	200	00
5.	Lindakumbura of 5 pelas paddy	1,500	00
6.	1/2 share of Degalehena of 3 lahas kurakkan	150	00
7.	Bulugahamulahena of 2 lahas kurakkan	150	00
8.	3/4th share of Hitinawatta of 3 seers kurakkan	100	00
9.	Ratmalagahamulahena of 3 seers kurakkan	250	00
10.	1/2 share of Gangoda Araba of 1 laha	150	00

30 40

		Rs.	Cts.	Exhibits.
11.	Ruppewatta of one laha kurakkan..	75	00	P2(*a*) Inventory filed in D.C. Kurunegala Case No. 4630 12.12.47.— *Continued*
12.	Ruppeahalawatta of 1 seer kurakkan	100	00	
13.	1/2 share of Rasakonehena of 2 lahas kurakkan	100	00	
14.	Gangodahena of 1 laha kurakkan	200	00	
15.	Nelehene of 1 laha kurakkan	200	00	
16.	Talegodewatta and Talegalekongahamulahena 1 laha and 1 seer ..	400	00	
17.	Talegodehena 3 seers kurakkan	50	00	
18.	Bogahapitiyekumbura of 12 lahas paddy	50	00	
19.	Bogahapitiyecumbura now garden of 1/2 seer kurakkan	50	00	
20.	Galahitiyawacumbura of one amunum paddy	1,200	00	
21.	Asseddumegodacumbura and its adjoining Meegahamulapillewa of 17 lahas	250	00	
22.	4/5th share of Potgulecumbura of 3 pelas paddy	750	00	
23.	Pothgulecumbura of 2 pelas paddy sowing	500	00	
24.	Talagedenilehena of 2 seers kurakkan	75	00	
25.	Pokunecumbura and pillewa 3 pelas and 1 seer	1,000	00	
26.	Kotanawecumbura of 3 pelas paddy	300	00	
27.	Godapitiyacumbura of 3 pelas paddy	300	00	
28.	1/2 of Madatawalacumbura of 8 lahas	150	00	
29.	1/4th Hitinawatta of 3 seers kurakkan	50	00	
30.	Usgalamaragahamulahena 6 seers kurakkan	60	00	
31.	3/4th share Kotuwecumbura Pitangane Kahatagahamulahena now garden 2 lahas kurakkan	200	00	
32.	Bulucumburewatta of 10 acres	10,000	00	
33.	Bulucumbara of 2 amunams of paddy	3,500	00	
34.	Anguruwewecumbura of 15 lahas paddy	200	00	
35.	Bulucumburegoda of 12 lahas paddy	200	00	
36.	Kotuwecumbura of Godacumbura of 5 pelas	500	00	
37.	Andiyagodewatta of 3 lahs kurakkan	500	00	
38.	Meddegodacumbura and its adjoining Walpelacumbura 2 pelas ..	500	00	
39.	Welicumbura of 1 amunum and pillewa of 3 seers	1,600	00	
40.	Welicumbura Nilecumbura 2 pelas paddy	500	00	
41.	Hittaragewela of 8 lahas paddy	200	00	
42.	Akuranwela of 3 pelas and 8 lahas paddy	450	00	
43.	Akuranwelewatta of 2 seers kurakkan	250	00	
44.	Akuranwela of 16 lahas paddy	300	00	
45.	1/10th of Kongahamulahena 2 seers kurakkan	15	00	
46.	1/10th of Imbulagahamulahena of 1½ seers kurakkan	150	00	
47.	2/3rd share of Dewatagawawatta alias Hitinawatta of 3 seers lahas ..	30	00	
48.	1/2 Hitinawatta of 2 seers kurakkan	20	00	
49.	Meegahamulahena of 2 seers kurakkan	200	00	
50.	Galagawahena of 2 lahas kurakkan	90	00	
51.	Bakmeegahamulahena of 1 laha kurakkan	10	00	

Exhibits.

P2(*a*) Inventory filed in D.C. Kurunegala Case No. 4630 12.12.47—*Continued*

		Rs.	Cts.
	Lands at Talawatura in Tiragandahe Korale		
52.	Dehigahakumburepillewa now garden of 3 seers kurakkan	50	00
53.	3/4th share of Mahacumbura of 1½ amunams and Wagollehena now garden of 3 lahas kurakkan	400	00
54.	Dehigahakotuwewatta 1 tumba kurakkan	250	00
55.	Dehigahacumbura of 3 pelas paddy	2,500	00
56.	Dehigahacumbura of 2 and 5 lahas	100	00
57.	Mawatawayegodacumbura of 1 pela paddy	50	00
58.	Migahamulawatta of 1 seer kurakkan	2,000	00
59.	3/5th share of Hitinawatta 6 lahas kurakkan	500	00
	Lands at Olupeliyawa in Korale aforesaid		
60.	3/4th share of Kubukgetecumbura puranpela 1 rood and 11 perches together with buildings	5,500	00
61.	3/4th share of Medacumbura now garden of 1 pela together with buildings	1,500	00
62.	3/4th share of Medacumbrepitiya alias Malpitiye watta 1 rood and 39 perches together with buildings	4,500	00
	Lands at Godawita in Recopattu Korale		
63.	1/4th share of Karandawatta Weediyewatta Pallekarande hena all forming one property called Hambarewatte 11 acres.	800	00
64.	1/4th share of Karandecumbra of 14 lahas paddy	104	00
65.	1/4th share of Karandecumbura of 12 lahas paddy	35	00
66.	1/4th share of Galahitiyawacumbura of 2 pelas ..	200	00
67.	1/4th share of Galahitiyawecumbura of 2 pelas	67	00
68.	1/4th share of Galahitiyawehena one laha kurakkan	50	00
69.	1/3rd of Kamatagawakahatagahamulawatta 2 lahas kurakkan ..	50	00
	Lands at Kanumale Aforesaid		
70.	1/3rd share of Oyagawawatta of 4 lahas kurakkan	30	00
	Lands at Kumbalpola in Tirangandahe Korale		
71.	1/3rd share of Godaliyaddecumbura of 15 lahas paddy	200	00
	Lands at Wanduragala aforesaid		
72.	Godaweepela of 1 pela paddy sowing	250	00
73.	Medaweepelacumbura of 2 pelas paddy	500	00
74.	Getecumbura of 2 pelas paddy	500	00
	Lands at Kidapola in Kudagalboda Korale		
75.	Koongahamulahena 1A. 2R. 35P in extent	75	00
76.	Mawatehena of about 3 lahas kurakkan	45	00
77.	Dangahamulahena of about 2 seers kurakkan ..	20	00
78.	1/2 share of Mawatahena of about 2 lahas kurakkan ..	15	00
	Lands at Nelawa in Tiragandahe Korale		
79.	Batapottemullecumbura of 6 lahas paddy	200	00
	Rs.	59,326	00

Exhibits.

P2(a)
Inventory filed in D.C. Kurunegala Case No. 4630 12.12.47—*Continued*

Movable Properties—Schedule B

		Rs.	Cts.
1.	One elephant	1,500	00
2.	One bench	1	50
3.	One easy chair	5	00
4.	Three chairs	3	00
5.	One almirah	30	00
6.	Two tables	10	00
7.	One bed	10	00
8.	One wooden box	5	00
9.	One barn	20	00
10.	One buggy cart	50	00
11.	One bull and one cow	75	00
12.	One spittoon	2	00
13.	Two betel trays	2	50
14.	10 theties	10	00
15.	4½ bushels of paddy	27	00
		1,751	00

	Rs.	Rs.	Rs.	Rs.
Declarant's valuation	21,335			
Increase by office valuation	37,991	59,326		
Less allowance under section 20 (3)	3,867			
Less allowance under section 20 (4)	1,519	5,386	53,940	
Less mortgage bond debts items 1	5,000			
Less mortgage bond debts items 2	2,550		7,550	46,390
Household goods				1,751
				48,141
Deductions—				
Funeral expenses allowed				200
Nett value of estate			Rs.	47,941

I Tennekoon Mudiyanselage Tikiri Banda Amunugama of Amunugama, not being a Christian, do hereby solemnly, sincrely and truly declare and affirm as follows :—

1. I am the petitioner in the above case.

2. The foregoing Inventory contains a full, true and correct account of all the property movable and immovable and rights and credits of the said deceased to the best of my knowledge and information.

The foregoing instrument having been duly read over and explained by me to the affirmant abovenamed and he appears to understand the contents thereof set his signature at Kurunegala on this 12th day of December, 1947.

(Sgd.) T. A. AMUNUGAMA,
Affirmant.

Before me.

(Sgd.) H. K. T. de ZYLVA,
J.P.

Exhibits.
P2
Probate in D.C.
Kurunegala
Case No. 4630
8.1.48

P2.

Probate in D.C., Kurunegala, Case No. 4630

Nett Value of Estate, Rs. 47,941/-.

Estate Duty, Rs. 479·41.

Probate

IN THE DISTRICT COURT OF KURUNEGALA

Testamentary	In the matter of the estate of the late Wije-
Jurisdiction	sundara Mudiyanselage Somawathie
No. 4630.	Kumarihamy of Amunugama.....*Deceased.*

Be it known to all men that on the twenty-first day of May, 1946, the Last Will and Testament of deceased, a copy of which is hereunto annexed, was exhibited, read, and proved before this Court, and administration of all the property and estate rights, and credits of the deceased was and is hereby committed to Tennekoon Mudiyanselage Tikiri Banda Amunugama of Amunugama the Executor in the said last Will and Testament named ; the said Tennekoon Mudiyanselage Tikiri Banda Amunugama of Amunugama being first affirmed faithfully to execute the said Will by paying the debts and legacies of the deceased Testator as far as the property will extend and the law will bind, and also to exhibit into this Court a true, full, and perfect Inventory of the said property on or before the 28th day of November, 1947, and to file a true and just account of executorship on or before the 19th day of December, 1947.

And it is hereby certified that the Declaration and Statement of Property under the Estate Duty Ordinance have been delivered, and that the value of the said estate on which estate duty is payable, as assessed by the Commissioner of Stamps, amounts to Rs. 47,941/-.

And it is further certified that it appears by a certificate granted by the Commissioner of Stamps, and dated the 10th day of September, 1947, that Rs. 479·41 on account of Estate Duty (and interest on such duty) has been paid.

Given under my hand and the Seal of this Court this Eighth day of January, 1948.

(Sgd.) .....
District Judge.