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INSTITUTE OF ADVANCED  
LEGAL STUDIES  
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LONDON, W.C.1.

IN THE PRIVY COUNCIL

No. 9 of 1957

ON APPEAL  
FROM HER MAJESTY'S COURT OF APPEAL  
FOR EASTERN AFRICA AT DAR ES SALAAM

55552

B E T W E E N

KESHAVJI RAMJI (Defendant) Appellant

- and -

MOHANLAL RAMJI and  
SHIVJI RAMJI (Plaintiffs) Respondents

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VANDRAVAN MAGANLAL  
(Defendant) Pro Forma Respondent

A N D B E T W E E N

MOHANLAL RAMJI (Plaintiff) Appellant

- and -

KESHAVJI RAMJI and VANDRAVAN  
MAGANLAL (Defendants) Respondents

SHIVJI RAMJI  
(Plaintiff) and Pro Forma Respondent

(CONSOLIDATED APPEALS)

C A S E FOR MOHANLAL RAMJI

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The First Respondent on the Appeal and the  
Appellant on the Cross-Appeal

RECORD

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1. These are an appeal and a cross-  
appeal by the first Defendant and the  
first Plaintiff respectively from a  
judgment of the Court of Appeal for Eastern  
Africa at Dar es Salaam dated the 22nd June  
1956, allowing an appeal and a cross-appeal  
from a judgment of the High Court of  
Tanganyika delivered on the 5th October  
1954. The appeal is brought by leave of  
the Court of Appeal for Eastern Africa, and  
the cross-appeal is by special leave of Her  
Majesty in Council.

pp.106-151

pp.81-92

p.159

RECORD

p.58 11.32-37

2. The parties to these appeals are members of a Hindu family. The Appellant and the first and second Respondents are brothers, and they are hereinafter referred to respectively as "Keshavji", "Mohanlal" and "Shivji". Keshavji is the oldest brother, Mohanlal, on whose behalf this case is submitted, the next, and Shivji the youngest. The third Respondent (hereinafter referred to as "Vandravan") is their nephew, being the son of a deceased brother, Maganlal, who died in 1918.

p.60 1.3  
p.63 1.14

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3. The principal question involved in these appeals is whether an industrial undertaking (hereinafter referred to as "the business") concerned with the manufacture of furniture, car-bodies and other products, and carried on under the name of "Keshavji Ramji" from about 1920 to about the 11th March 1950, was carried on by Keshavji as sole proprietor, or by Keshavji, Mohanlal and Shivji in partnership, and if so, in what shares.

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4. In the High Court of Tanganyika the trial of the action lasted five days and a number of witnesses gave oral evidence relating to the management of the business since its beginning in 1920. The principal witnesses for the plaintiffs were the two plaintiffs themselves, Mohanlal and Shivji. For the defence the principal witnesses were the first defendant, Keshavji, and the firm's book-keeping clerk Amratlal Chatrabhuj Shah (hereinafter referred to as "Shah"). In addition a large number of documents were admitted in evidence on both sides.

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pp.108-111

5. The oral evidence was in conflict on the question whether Mohanlal and Shivji were partners or employees, but the following facts appear not to be in dispute. The business was started in Dar es Salaam about 1920. During the early years Mohanlal was employed on the railways and Shivji was employed in the Public Works Department, but the former at least worked after hours in the business, and both paid their salaries into the business account, drawing from the business money for living expenses and other purposes.

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10 From about 1927 to 1937 Mohanlal ran a taxi, which was bought out of the assets of the business, and at the same time continued to work in the business workshop. From about 1931 to the end of 1937 Keshavji was in India and Mohanlal was in charge of the business in Dar es Salaam. While in India Keshavji put up some buildings for the joint family, and money for this purpose was sent to him from the assets of the business; otherwise he did no business in India. In 1940 Mohanlal went to India, taking with him machinery from the workshop at Dar es Salaam and set up a timber-cutting concern there, and it is not disputed that this concern was carried on in partnership between the three brothers. While in India Mohanlal was supplied with about Shs.50,000 from the funds of the business. In 1948 20 Shivji decided to sever his connections with the business, and on his doing so he entered into an agreement, dated the 15th January 1948 (hereinafter referred to as "the retirement agreement"), under which Keshavji agreed to pay him a 28½% share in the assets of the business, the value of which was assessed by two of Keshavji's friends at Shs.50,501. In March 1948 30 Mohanlal returned from India bringing with him the machinery which he had been using in the concern in India, and this machinery was thereafter used again in the business at Dar es Salaam. For a time Mohanlal and Keshavji carried on as before, but in 1949 Keshavji asked Mohanlal to sign a partnership agreement under which he and Keshavji would each have a 40% interest and Vandravan a 20% interest in the business, but which 40 prescribed a date in 1948 as the date of the commencement of the partnership. Mohanlal would not agree to sign this agreement, and Keshavji thereupon excluded him from further participation in the business, and when asked to render an account of the business refused to do so. The plaint in this action was accordingly issued on the 4th September 1950. Meanwhile, in March 1950, Keshavji had formed a limited company, to which he transferred the business in consideration of the issue of 50 shares to the value of Shs.200,000.

RECORD

6. The documentary evidence falls into four categories:

- pp.206-208 (a) The accounts of the business. The earliest accounts produced by Keshavji were dated 1932 and showed Mohanlal and Shivji as drawing a monthly salary, but no such salary as payable to Keshavji. However Mohanlal produced day books for the years from 1922 to 1930 in which all three brothers were credited with a monthly salary, and Shah testified that when he was first employed to keep the accounts in 1930 he credited each brother with a salary, but that Keshavji had ordered him to change the system in 1931, without consulting Mohanlal or Shivji. 10
- p.11 11.34-37 (b) The correspondence between Keshavji and his brothers. While this contains no express admission of a partnership it is not inconsistent with the existence of a partnership, and three letters in particular, dated the 1st January, 16th January and 21st February 1948, support the view that Keshavji and Mohanlal were equal partners rather than employer and employee. 20
- pp.192-201 (c) The correspondence with third parties. Most of this correspondence is carried on in the name of Keshavji Ramji, the business name, but a letter to the Exchange Bank of India and Africa dated the 2nd May 1947 is as follows:- 30
- p.202 "We, Keshavji Ramji, Mohanlal Ramji and Savji Ramji, carrying on business as Keshavji Ramji, do hereby deposit Title No.366 with you by way of security for any liabilities not exceeding the sum of shillings one hundred thousand (Shg.100,000/-) for which we may now or hereafter be indebted to you.  
Yours faithfully,  
Keshavji Ramji pp. Mohanlal Ramji  
Keshavji Ramji  
Shivji Ramji " 40
- pp.26-27 and 29-31 (d) The retirement agreement, whereby Keshavji agreed to give Shivji 28½% of the assets of the business, and Shivji agreed,

inter alia, in the following terms:

10 "Nor shall I have any interest in the business affairs running in the name of Mr. Keshavji Ramji on or after 1st January 1948. Nor shall I have any concern with assets and liabilities standing in business affairs of Keshavji Ramji thereafter. Whereby I shall be considered to be free from business affairs of Mr. Keshavji Ramji."

p.26 ll.37-43

20 7. Additional evidence, partly oral and documentary, adduced at the trial, and partly in the form of an agreed Schedule prepared at the request of the Court of Appeal while the Court was considering its judgment, concerned seven properties, on some of which were erected residential buildings, and on others workshops and offices used by the business. It is not disputed that these properties were bought out of the profits of the business, or that the rents obtained from the residential properties were paid into the business account. Three of the properties were registered in the names of the three brothers (nos. 1, 2 and 3 in the agreed Schedule, bought in 1926, 1931 and 1935 respectively); three were registered in the name of Keshavji Ramji (nos. 5, 6 and 7, bought in 1930, 1948 and 1949 respectively); and one (no.4) is held under a licence in the name of Keshavji Ramji (commencing in 1944).

pp.103-104

30 8. With regard to the question whether Mohanlal and Shivji were partners or employees, Mohanlal testified:

p.49 ll.14-16

40 "When business started in 1920, it was discussed and agreed in Zanzibar that shares should be equal."

Shivji confirmed the substance of Mohanlal's evidence, and claimed:

"My true share in the business is one-third from beginning we were together."

RECORD

Keshavji, on the other hand, said:

"Arrangement was that Shivji and Mohanlal worked for me like any other employee."

9. The law relating to partnership is contained in the Indian Contract Act, 1872, which applies in Tanganyika. Sections 239 and 253 of the Act provide, inter alia, as follows:

"239: "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them. 10

253. In the absence of any contract to the contrary the relations of the partners to each other are determined by the following rules:-

(a) all parties are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership. 20

(7) if from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all other members. 30

(8) unless the partnership has been entered into for a fixed term, any partner may retire from it at any time. "

10. The contentions submitted on behalf of Mohanlal are as follows:

(a) The evidence shows that from its commencement in 1920 the business was carried on in partnership between the three brothers, and this is the only conclusion that can be drawn from the facts. 40

(b) There is evidence to support and no evidence to displace the presumption implied by section 253(2) of the Act that the three brothers were entitled to share equally in the profits of the partnership before Shivji's retirement.

10 (c) On the 15th January 1948 Shivji retired from the partnership with effect from the 1st January 1948, in accordance with section 253(8) of the Act.

(d) The partnership was thereupon dissolved as between Mohanlal and Keshavji in accordance with section 253(7).

(e) A new partnership thereupon came into existence between Mohanlal and Keshavji, in which they held equal shares in accordance with section 253(2).

20 11. In the High Court of Tanganyika Edmonds Ag.J. found that prior to the 15th January 1948 Keshavji was the sole proprietor of the business; and that since the 15th January 1948 Shivji had held a 28½% share in the business, the remaining share being held by Keshavji. The learned judge gave the following, among other, reasons for his judgment:

p.92 11.13-20

30 (a) With the exception of the said letter of the 2nd May 1947, all letters and other documents addressed to outside persons showed that the business was that of one man.

p.85 11.16-26

(b) Although at one time the three brothers were all shown in the business accounts as credited with a monthly salary, Mohanlal and Shivji made no objection when Keshavji ordered the accounts clerk to stop crediting himself with a salary.

p.86 11.9-11  
p.86 11.21-25

40 (c) Expressions in the correspondence between the three brothers such as "we" and "our business" were not evidence of a partnership.

p.87 11.15-37

(d) The fact that the assets of the business were used to start another business

p.87 1.38-  
p.88 1.3.

RECORD

in India, which was admittedly carried on in partnership between the three brothers, "paled into (in)significance in the light of all the other evidence".

p.88 11.41-47

(e) If the business had fallen on hard times and Keshavji had sought to make his two brothers share his liabilities, he would have had a hopeless task to establish that they were partners.

pp.26-27 and  
pp.29-31.

12. The learned judge's finding that Shivji became a partner with effect from the 15th January 1948 was based on his construction of the property agreement. It is submitted that the learned judge's finding that this agreement for the first time constituted Shivji a partner shows that he misunderstood its effect, and he ignored the importance of the agreement as evidence supporting the previous existence of a partnership between the three brothers. Moreover he failed to attach any weight to the correspondence passing between Mohanlal and Keshavji at the time of Shivji's retirement from the business, which it is submitted shows conclusively that at that time the brothers regarded themselves as partners.

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pp.192-201

p.114 11.21-29

13. From the decision of the High Court of Tanganyika Keshavji appealed and Mohanlal cross-appealed to the Court of Appeal for Eastern Africa; Shivji was not a party to the cross-appeal. The Court allowed both the appeal and (in part) the cross-appeal, and declared that Mohanlal was a partner in the business from its commencement in 1920 until its dissolution in March 1950 with a one-third share, that Shivji was a partner from the commencement until the 1st January 1948 with a one-third share, and that Keshavji was a partner with a one-third share from the commencement until the 1st January 1948, and with a two-thirds share thereafter.

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p.147 11.1-16

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14. Bacon J.A., who delivered the leading judgment of the Court, with which Worley P.

and Mahon J. concurred, gave the following among other reasons for his findings on these points:-

RECORD

(a) The accounts for 1922 to 1930 showed that each of the brothers drew a salary from the business, but in 1931 Keshavji, without his brothers appreciating what was happening, introduced a change in the book-keeping which he desired. In his opinion

p.115 1.25

p.117 11.6-9

10 "neither the books as kept by Shah from 1931 onwards nor Shah's opinion of what they prove as against Mohanlal are a safe guard (sc. guide) to the legal relationship of the brothers."

(b) The oral testimony of the three brothers, though not conclusive, tended to show that Mohanlal was a partner from the beginning.

p.117 11.10-15

20 (c) The correspondence as a whole contained a number of admissions by Keshavji that Mohanlal and Shivji were in partnership with him, and nothing said or written or done by Keshavji prior to the commencement of the suit amounted to a contradiction of his admissions or appreciably detracted from their value.

p.125 11.10-24

30 On this issue, accordingly, bearing in mind all the evidence as to material events between 1920 and 1949 he came to the conclusion that Mohanlal was speaking the truth when he testified:

p.125 11.28-35

"When business started in 1920, it was discussed and agreed in Zanzibar that shares should be equal."

p.49 11.14-16

40 (d) The effect of the retirement agreement was that Keshavji purchased Shivji's share in the partnership. Mohanlal never suggested that he and Keshavji together had bought Shivji out, and accordingly from then onwards Keshavji's and Mohanlal's interests were two-thirds and one-third respectively.

p.137 11.1-29

RECORD

15. On Keshavji's appeal it will be contended on behalf of Mohanlal that the judgment of the Court of Appeal is right in so far as it held that the business was carried on in partnership between Keshavji, Shivji and himself from its commencement in 1920 until the 1st January 1948, and between Keshavji and himself from the 1st January 1948 until its dissolution on or about the 11th March 1950, and that the Appeal should be dismissed for the following amongst other 10

R E A S O N S

- (1) BECAUSE the accounts of the business from 1922 to 1930 show that the three brothers stood on an equal footing in relation to the business.
- (2) BECAUSE by the said letter dated the 2nd May 1947 Keshavji, Mohanlal and Shivji acknowledged that they were carrying on business as Keshavji Ramji. 20
- (3) BECAUSE the correspondence between the three brothers shows that the three brothers were in partnership.
- (4) BECAUSE by entering into the retirement agreement Keshavji recognised that Shivji, and by implication Mohanlal, was a partner in the business.
- (5) BECAUSE the evidence taken as a whole proves conclusively that the three brothers had agreed to combine their property, labour and skill in the business and to share the profits thereof between them, and such a relationship constitutes a partnership within the meaning of the Indian Contract Act, 1872. 30
- (6) BECAUSE the reasons given by the Court of Appeal for holding that a partnership existed were right. 40

16. Mohanlal's cross-appeal arises on three

10 questions subsidiary to the principal appeal but closely related thereto. The first question is whether, after the retirement in 1948 of Shivji from the business, Mohanlal held a one-third share in the business, as was held by the Court of Appeal, or a one-half share, as was contended on his behalf, in accordance with the provisions of section 253(2) of the Indian Contract Act, 1872.

17. It is submitted that the learned Justices of Appeal erred in law in holding that from the 1st January 1948 the shares of Keshavji and Mohanlal in the business were unequal. Section 253 of the Indian Contract Act, 1872, which applies to Tanganyika is set out, so far as relevant in paragraph 9 above.

20 It is submitted that the true effect of the events which took place early in 1948 is as follows:-

(1) Shivji retired from the partnership in accordance with section 253(8) of the Act.

(2) The partnership was thereupon dissolved as between Keshavji and Mohanlal in accordance with section 253(7).

30 (3) A new partnership came into existence between Keshavji and Mohanlal in which they held equal shares in accordance with section 253(2).

40 It is submitted that the Court of Appeal did not give sufficient weight to the evidence which supported this interpretation of the events and in particular to the proposal made by Keshavji in 1949 that Mohanlal should execute a new partnership deed whereby, as from January 1948, he and Keshavji should each have a 40% share (the remaining 20% to go to Vandnavan) and that in any event there was no evidence to displace the presumption (section 253(2) of the Indian Contract Act) that the partners were entitled to share equally in the profits of the business.

p.42 11.22-40

RECORD

18. The second question concerns Mohanlal's interest in the properties which were bought out of the assets of the business and registered in the name of Keshavji Ramji alone. Both Edmonds Ag.J. in the High Court of Tanganyika, and the Court of Appeal, based their finding on this question on the assumption that if the three brothers were partners in the business, it followed that they had equal interests in the properties which were bought out of the profits of the business. It is submitted that this is correct, and consequently that if the cross-appeal on the first question is allowed and Mohanlal is held to have had a one-half share in the business from the 1st January 1948 to the date of dissolution, it follows that he also had a one-half share in two of the properties (nos. 6 and 7 in the agreed Schedule) which were bought during this period.

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p.104

19. The third question arising on the cross-appeal is whether a second agreement dated the 15th January 1948, and purporting to be made between Keshavji, Mohanlal, Shivji and Vandravan (hereinafter called "the property agreement") which was executed by Keshavji as attorney for Mohanlal, is binding on Mohanlal. This question depends on the construction of the property agreement and of the power of attorney dated the 21st December 1929 under which Keshavji purported to execute it. The following is a translation of part of the property agreement:-

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pp. 164-167

"We the undersigned Keshavji Ramji, Mohanlal Ramji, Shavji Ramji and Vandravan Maganlal hereby agree and confirm that we have the following properties in Dar es Salaam as tenants in common:-

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(There follows a description of four properties, one of which was not in fact acquired by the parties, the others being nos. 1, 3 and 4 in the agreed Schedule)

In the above-described properties we confirm that we have the following shares:-

10 Keshavji  
Ramji 28½% (Twenty-eight & half p.c.)  
Mohanlal  
Ramji 28½% " "  
Shavji  
Ramji 28½% " "  
Vandravan  
Maganlal 14½% Fourteen & half per cent.

By clause 2 of the agreement Keshavji agreed to undertake the management of the properties for five years without any payment.

By sub-clause 3 it was provided as follows:-

20 "The above-mentioned properties are in the names of Keshavji Ramji, Mohanlal Ramji and Shavji Ramji and we all hereby agree to include the name of Vandravan Maganlal in the said properties."

Sub-clause 4, after reciting that one of the properties was mortgaged to secure an overdraft up to Shs.100,000/- continued:

"For this loan facility the whole responsibility will be of Keshavji Ramji, Mohanlal Ramji and Vandravan Maganlal and with which Shavji Ramji has no concern."

30 The clause of the power of attorney on which Keshavji relied as authorising the execution of the property agreement is as follows :- pp.160-163

40 "4. To sell mortgage lease or otherwise dispose of or deal with any real or personal property (whether in possession or reversion) now or hereafter belonging to me or which I have or shall have power to dispose of or as mortgagee or otherwise and to sell either by public auction or private contract and subject to any condition as to title or otherwise

RECORD

with liberty to buy in at any sale either by auction or otherwise to rescind or vary any contract for sale or resell without being answerable for any loss arising thereby."

20. The contentions submitted on behalf of Mohanlal are as follows:-

(a) The words "or otherwise dispose of or deal with" in clause 4 of the power of attorney must be construed ejusdem generis with the preceding words, and only authorise a business dealing with the properties for valuable consideration.

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(b) The transaction purported to be effected by the property agreement constituted a gift of part of the share of each of the three brothers to Vandravan and not a business dealing.

(c) Accordingly the property agreement was not a transaction within the scope of the authority conferred by the power of attorney, and is not binding on Mohanlal.

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pp.89-90

21. In the High Court of Tanganyika, Edmonds Ag. J. accepted the above contentions and held that the property agreement was not binding on Mohanlal, who remained entitled to a one-third share in the properties affected by it. In the Court of Appeal Bacon J.A. held that consideration moved from Vandravan in that he assumed a liability to repay the loan secured on the properties in place of Shivji, and that Mohanlal took the benefit of this promise, and also of the promise by Keshavji to manage the properties for five years; and accordingly the transaction effected by the property agreement was a contract and not a gift, and was therefore binding on Mohanlal. In the course of his judgment the learned Justice of Appeal said :-

p.132 11.35-45

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p.135 11.24-31

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"The donor of a power of attorney must rely on the judgment, good, bad or indifferent, of the donee. It by no

means follows that a merely unwise disposition of the donor's property is made in excess of the authority he has given. I think Keshavji had the power to bind Mohanlal by "disposing of" or "dealing with" his share as he did."

10 It is submitted that the transaction purported to be effected by the property agreement was not merely an "unwise disposition" of Mohanlal's property, and an "indifferent exercise" of Keshavji's judgment, but a transaction of a totally different nature from those within the scope of the authority.

20 22. On the cross-appeal it will be contended on behalf of Mohanlal that the judgment of the Court of Appeal is wrong in so far as it held that from the 1st January 1948 he held only a one-third share (and not a half share) in the business, that he held only a one-third share (and not a half share) in the properties numbered 6 and 7 in the agreed Schedule of properties, and that the property agreement was binding upon him, and that his cross-appeal should be allowed and the judgment of the Court of Appeal reversed or varied in these respects, for the following amongst other

R E A S O N S

- 30 (1) BECAUSE in accordance with the provisions of Section 253 of the Indian Contract Act, 1872, on the retirement of Shivji a new partnership came into existence between Keshavji and Mohanlal, in which in the absence of agreement to the contrary they held in equal shares.
- 40 (2) BECAUSE there was no evidence to show that after the 1st January 1948 Keshavji and Mohanlal held unequal shares in the business.
- (3) BECAUSE, since Mohanlal held a one-half share in the business after the 1st January 1948, he also held a one-half share in the two properties which were bought out of the profits of the business after that date.

RECORD

- (4) BECAUSE the power of attorney under which Keshavji executed the property agreement did not authorise him to deal with Mohanlal's property by way of gift.
- (5) BECAUSE, in the alternative, if the transaction purported to be effected by the property agreement did not constitute a gift, it was not within the scope of the authority conferred on Keshavji by the power of attorney. 10
- (6) BECAUSE Edmonds Ag. J. was right in holding that the property agreement was no binding on Mohanlal.
- (7) BECAUSE the judgment of the Court of Appeal in the respects now appealed from was wrong and ought to be reversed.

R.O. WILBERFORCE

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E.G. NUGEE.

No. 9 of 1957

IN THE PRIVY COUNCIL

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O N A P P E A L  
FROM HER MAJESTY'S COURT OF APPEAL  
FOR EASTERN AFRICA AT DAR ES SALAAM

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B E T W E E N

KESHAVJI RAMJI (Defendant) Appellant  
- and -  
MOHANLAL RAMJI and  
SHIVJI RAMJI (Plaintiffs) Respondents  
VANDRAVAN MAGANLAL  
(Defendant) Pro Forma Respondent

AND B E T W E E N

MOHANLAL RAMJI (Plaintiff) Appellant  
- and -  
KESHAVJI RAMJI and VANDRAVAN  
MAGANLAL (Defendants) Respondents  
SHIVJI RAMJI  
(Plaintiff) and Pro Forma Respondent

(CONSOLIDATED APPEALS)

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C A S E FOR MOHANLAL RAMJI

The First Respondent on the Appeal and  
the Appellant on the Cross-Appeal

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