

Privy Council Appeal No. 9 of 1957

Keshavji Ramji - - - - - *Appellant*

v.

Mohanlal Ramji and others - - - - - *Respondents*

and

Mohanlal Ramji - - - - - *Appellant*

v.

Keshavji Ramji and others - - - - - *Respondents*

(Consolidated Appeals)

FROM

THE COURT OF APPEAL FOR EASTERN AFRICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 20TH JANUARY, 1959

Present at the Hearing:

LORD RADCLIFFE

LORD TUCKER

LORD KEITH OF AVONHOLM

[*Delivered by* LORD KEITH OF AVONHOLM]

This appeal and cross-appeal relate to two disputes: (1) Whether there existed a partnership or partnerships between Keshavji Ramji (hereafter called Keshavji) and Mohanlal Ramji (hereafter called Mohanlal) in a business carried on under the name of Keshavji Ramji, and if so what were their respective shares? (2) What are the rights of Mohanlal in seven lots of immovable property, six in Dar es Salaam and one in Nairobi? It is convenient to state the issues in this their simplest form but as will be seen a decision on these issues involves a consideration of what was the relationship of Keshavji and Mohanlal with their brother Shivji in the business and what are, or may be, the rights and interests in the said properties of Keshavji, Mohanlal, Shivji, and one Vandravan Maganlal (hereafter called Vandravan) a nephew of the three brothers, being the son of a brother who died in 1918. There is a certain relationship between the two questions, but it will be convenient to consider them, so far as possible separately.

Their Lordships find it unnecessary to deal in any elaborate detail with the facts relating to the disputed partnership. The three brothers, Keshavji, Mohanlal and Shivji, came to Africa from India at various dates prior to 1920. They have been referred to in the evidence as a joint Hindu family. About 1920 Keshavji, who had earlier been employed in Tanganyika in various occupations, started a carpentry business in Tanganyika. By the end of 1921 the three brothers were all associated in some capacity with this business. It would seem that none of them devoted himself exclusively, in the years that followed, to the business. Mohanlal and Shivji were engaged at different times in other occupations, Mohanlal for a time with the railways and later as a taxi driver, Shivji in the public works department for about three years. But they put their earnings, or their surplus earnings, into the business and they worked after hours in the business, when their place of occupation permitted. Visits were paid by all of them

from time to time to India and from 1931 to 1937 Keshavji was continuously in India. It is in evidence and is clear from correspondence that during this period Mohanlal and Shivji were looking after the business and corresponding with Keshavji about it. After Keshavji returned from India Mohanlal went to India in 1940 and stayed there till March, 1948. There he was engaged in timber cutting business, admittedly in partnership with his two brothers. He took with him machinery belonging to the business in Tanganyika which cost 50,000/- and brought it back with him on his return when it was used in the business. While in India correspondence continued between him and Keshavji with reference to the business in Tanganyika. This correspondence has a considerable bearing on the case. It includes, *inter alia*, references to an agreement come to between Keshavji and Shivji. This was an agreement made on 15th January, 1948 (hereafter referred to as the partnership agreement), which will be referred to later in greater detail, by which Shivji agreed to accept from Keshavji 28½ per cent. in the business "from the beginning till 31/12/47". Under this agreement Shivji received from Keshavji, by an arbitrator's award, the sum of 50,501/-. In March, 1950, Keshavji turned the business into a limited company with as shareholders himself, his wife, his daughter, Vandravan, and Vandravan's son.

After Mohanlal's return from India disputes arose between him and Keshavji which are the subject matter of these proceedings. A plaint was taken by Mohanlal against Keshavji and Shivji with reference both to the alleged partnership and to the properties in which, after certain procedure, Shivji became plaintiff with Mohanlal and Vandravan was joined with Keshavji as a defendant in the matter of the properties. On the partnership issue the trial judge in the High Court of Tanganyika, acting as their Lordships think on a misunderstanding of some of the evidence and documents in the case, dismissed the plaintiffs' suits, finding, *inter alia*, that prior to 15th January, 1948, Keshavji was sole owner of the business and that Mohanlal and Shivji had no partnership rights in the business. He found, however, that Shivji had held a 28½ per cent. share in the business of Keshavji since 15th January, 1948. From the judge's order on the partnership issue Keshavji appealed against the judge's finding that Shivji had a 28½ per cent. share in the business. Mohanlal cross-appealed against the finding that there had been no partnership between him and Keshavji and Shivji. There was no cross-appeal by Shivji. Vandravan joined with Keshavji as an appellant but it would appear that his interest was with reference to the properties. The position in regard to the properties will be referred to later.

The Court of Appeal for East Africa (Worley, P., Bacon, J.A., and Mahon, J.), allowed the appeals on these issues. Their Lordships set out verbatim the first five heads of their decree, which relate to the partnership.

(a) This Court declares that Mohanlal was a partner in the firm carrying on business under the style—"Keshavji Ramji" as from its commencement in or about 1920 until its dissolution as herein decreed, with a one-third share therein.

(b) This Court declares that Shivji was a partner in the said firm as from its commencement until 1st January, 1948, with a one-third share therein.

(c) This Court declares that Keshavji was a partner in the said firm with a one-third share therein as from its commencement until the 1st January, 1948, and with a two-thirds share therein as from that date until its dissolution.

(d) This Court orders that an enquiry be made as to the date in March, 1950, on which Keshavji Ramji Limited acquired the business carried on by the firm of Keshavji Ramji.

(e) This Court declares that the firm of Keshavji Ramji was dissolved as at the last mentioned date.

The Court also made orders for accounts to which it is unnecessary to refer.

From that part of the Court of Appeal's judgment dealing with the partnership Keshavji has appealed, by leave of the Court of Appeal, to their Lordships' Board, and Mohanlal has cross-appealed by special leave

of Her Majesty in Council. Keshavji appeals against the findings that the business was carried on by him and Mohanlal and Shivji in partnership with the consequential reliefs. Mohanlal cross-appeals against that part of the decree that declares that after 1st January, 1948, Keshavji had a two-third share in the business. He claims that he had an equal share with Keshavji.

Their Lordships have already narrated the broad facts relating to the business which are not really in dispute. What is in dispute is the relationship that existed between the three brothers. In their Lordships' opinion the Court of Appeal was right in the view they took upon this question. There is certain evidence that is neutral. There is some evidence that may be thought to tell against partnership, but none of it is conclusive. On the other hand there is evidence that in their Lordships' opinion points irresistibly to partnership. Mohanlal and Shivji put their savings from other occupations into the business; both worked in and for the business; all the three brothers drew upon the business for their personal needs as shown by accounts that have been produced in evidence, a facility difficult to reconcile with Mohanlal and Shivji being employees. It is said, which is true, that Mohanlal and Shivji were credited in the business accounts with monthly amounts in name of salary. But it would appear that prior to 1931 Keshavji was also credited with sums to account of salary and that he directed the bookkeeper in 1931, for some reason not explained, to discontinue these entries. It was from 1931 to 1937 that Keshavji was in India. The properties to which reference will subsequently be made were bought out of the profits of the business and some of these were registered in the names of the three brothers and the rents credited to them in third shares in the books of the business. In a letter to the Exchange Bank of India and Africa Ltd. dated 2nd May, 1947, depositing a security with the Bank for liabilities not exceeding 100,000/- Keshavji, Mohanlal and Shivji were described as carrying on business as Keshavji Ramji. Their Lordships do not attach too much importance to this letter as it seems to have been drawn up by the Bank, but it was signed by Keshavji for himself and for Mohanlal who was then in India and by Shivji. There is also the partnership agreement of 15th January, 1948, which was written in Gujarati, of which two translations have been produced. Their Lordships do not find it necessary to recite the various clauses of this agreement. Whatever the precise form of its wording they find it difficult to treat the fact that it was brought into existence at all as other than an acknowledgment by Keshavji that Shivji had been a partner in the business "from the beginning until 31st December, 1947". By it Keshavji agreed to pay to Shivji his share in the business down to that date, as settled by an arbitrator's award. The agreement included a mutual settlement of accounts between the parties. One of the translations, which does not materially differ from the other, runs "and after 1/1/48 I (Shivji) have no right in the said business and I agree to be considered as having retired from that business". At this time Keshavji and Mohanlal who was in India were writing to one another. On 1st January, 1948, Mohanlal writes to Keshavji "I am very sorry that Shivji wants to separate". On 16th January Keshavji writes to Mohanlal with reference to the partnership agreement with Shivji explaining in full detail what had happened. The letter includes this passage: "This account is from the beginning when we started the factory to 31-12-47, Savji has left us. And this is also done willingly. He will go on his way and we on ours. Everything has been settled peacefully without any quarrel. It was to be settled under any cost and it has settled now. Upon your arrival is to be made limited." There is other correspondence passing between Keshavji while he was in India from 1931 to 1937 which in their Lordships' opinion is also indicative of partnership existing at that time between Keshavji, Mohanlal and Shivji in the business in Tanganyika. The letters in both these periods and the inferences to be drawn from them seem to have been ignored by the learned trial judge and these letters along with the other evidence to which their Lordships have referred lead them to the conclusion that the Court of Appeal were right in the decision to which they came that there existed a partnership between the three

brothers. Their Lordships are content to assume that the dispute which has arisen is not due to any deliberate fraud or dishonesty of Keshavji but, as suggested by the Court of Appeal, to conceptions of the rights and powers belonging to him based on his position as the eldest member of a Hindu family. As he said in evidence, "Business in India was to be carried on in partnership but shares to be dictated by me". And again with reference to the properties: "I used my authority to give the 14½% to Vandravan on Mohanlal's behalf, I claim to be head and dictator of the family". There is no room however in this case for any such view. The case falls to be determined on the principles of partnership as laid down in the Indian Contract Act 1872 which applies in Tanganyika.

In one respect, however, the Court of Appeal have, in their Lordships' view, erred. In their decree as narrated above it will be seen that they found Mohanlal entitled to a one-third share in the partnership until its dissolution in March, 1950, and Keshavji to a two-third share from 1st January, 1948, until its dissolution. This, in their Lordships' opinion, is not in accordance with the Indian Contract Act, 1872. The relevant provisions are as follows:

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

(2) 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.

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

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

When by the partnership agreement Shivji retired from the then existing partnership that partnership was dissolved. A new partnership was then constituted between Keshavji and Mohanlal, in which, in the absence of any contract to the contrary, they shared equally in the profits and losses. The decree of the Court of Appeal thus falls to be varied accordingly.

Before leaving the question of partnership their Lordships would observe that they have not ignored the fact that the learned trial judge at various points disbelieved explanations and evidence given by Mohanlal and Shivji and regarded them as not credible witnesses. His views however were expressed not with reference to primary facts but with reference to inferences to be drawn from some of the documents in the case and explanations or want of explanation with regard to them. At one point, at least, he falls into error in thinking that a ledger for 1930, Exhibit P.1, is the only book of the business produced which shows Keshavji as being credited with a salary from the business, whereas as the Court of Appeal points out Exhibit P.2. shows such credits from 1921 to 1929. At other points he draws inferences from the conduct of the younger brothers in the business which, in their Lordships' opinion, give insufficient weight to the dominant personality of Keshavji and inferences from a Building Account and from Income Tax returns which in their Lordships' opinion do not necessarily yield conclusions unfavourable to Mohanlal and Shivji. But what is more important is that he seems to have ignored entirely a large part of the documentary evidence, to which their Lordships have referred, which, in the opinion of the Court of Appeal and of their Lordships, leads to the conclusion that a partnership existed. This is not a case, in their Lordships' view, to which the weight normally attached to the views of a trial judge on credibility can be applied. Their Lordships do not consider that the Court of Appeal were altogether justified in substituting their estimate of the credibility of the witnesses for that of the trial judge. The case turns more upon the inferences to be drawn from the documents and correspondence than upon the honesty or credibility of witnesses.

Their Lordships now turn to the question of the properties. There were seven properties which were acquired at various times out of funds provided by the business. Five of these were acquired before 1948, one in 1948, and the other in 1949. Three of these were the subject matter of what has been referred to as "the property agreement" executed on 15th January, 1948 (to be distinguished from "the partnership agreement" of the same date). It is necessary to recite the greater part of this agreement in full:

" TRANSLATION OF PROPERTY AGREEMENT

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:—

1. The leasehold property on Windsor Street together with structures thereon.
2. Freehold plot comprised in Title No. 6039 together with structure thereon.
3. Kisutu Street temporary House (Mtendeni Street) in which now the following tenants live: Velji Walji, Shantaben, Babu and Jagjiwan etc.

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

Keshavji Ramji	...	28½%	(Twenty Eight & half per cent)
Mohanlal Ramji	...	28½%	" "
Shavji Ramji	...	28½%	" "
Vandravan Maganlal	...	14½%	(Fourteen & half per cent)

1. Each one of us hereby agree to take the returns that may be derived out of the above properties in proportions above described after the expenses have been deducted therefrom.

2. The management of the above properties for the first five years shall be done by Keshavji Ramji without any payment. The management will include renting of the premises, eviction of tenants, fixing rent, taking rent, white-washing and small repairs.

Sub-paragraphs :—

3. 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.

4. To erect the buildings situate on Kisutu Street and for the purpose of the business carried on in the name of Keshavji Ramji, Mr. Keshavji Ramji has with the consent of Shavji Ramji obtained a loan facility on mortgage on the Windsor Street plot and building from the Exchange Bank of India & Africa Limited, Dar es Salaam to cover a loan facility up to Shs. 100,000/-. 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. To obtain such loan facility on the Windsor Street Plot and buildings Keshavji Ramji, Mohanlal Ramji and Vandravan Maganlal shall have a right. If it is found necessary to obtain a Mortgage on this plot and building from any other place we all the shareholders undertake to obtain such mortgage (Shavji Ramji included). But such right shall subsist up to 1st Jan. 1953.

We further declare that all the accounts of rents of the properties up to 31.12.47 have been settled and that none of us have any claim or debt against or owing to any shareholder as regards rents.

We Keshavji Ramji, Mohanlal Ramji, Shavji Ramji and Vandravan Mohanlal enter into this settlement out of our own volition and while in full possession of our sanity. On this draft deed we have set our hands and we undertake to get a proper document drawn by an Advocate on the above subject, until the proper document by a lawyer

is drawn up we agree to what is written in this document and undertake to act in accordance with this agreement. All the costs of the proper document that may be drawn up by an advocate shall be borne in proportion to the percentage of our interest. This document shall be null and void and of no effect after the proper document is drawn up and all the shareholders hereby undertake to execute the proper document when it is drawn. Keshavji Ramji has, as attorney of Mohanlal Ramji, agreed to the above as Mohanlal Ramji is now in India. The Manager of the property hereby undertakes to pay the balance of rents to each shareholder monthly at the end of each month.

SIGNED AND DELIVERED
by Keshavji Ramji, Mohanlal
Ramji by his Attorney Keshavji
Ramji, Shavji Ramji and
Vandravan Maganlal in their
own handwriting before us at
Dar es Salaam.

Sd. Keshavji Ramji
p.p. Mohanlal Ramji
Keshavji Ramji

Shavji Ramji

Vandravan Maganlal

15.1.48

Sd. Nandlal Dharamsi
Sd. Lavji Kara

Original has been stamped with Shs.
10/- Stamp.

15.1.48.”

This agreement purported to be signed by Keshavji as attorney for Mohanlal. The power of attorney relied on was executed by Mohanlal on 21st December, 1929. Their Lordships will have occasion to notice it more particularly in a moment. In the meantime they would observe that the agreement apparently emanated from the desire of Keshavji to benefit his nephew Vandravan. He says he wanted to give Vandravan a 25 per cent. interest in the properties, but Shivji would not agree. He then persuaded Shivji to agree to Vandravan receiving 14½ per cent. in return for paying him 28½ per cent. in the business “in order that brothers should not quarrel”. When asked “What benefit did Mohanlal get for giving away 14½ per cent. to Vandravan”, he replied “None”, adding the words already quoted “I used my authority to give the 14½ per cent. to Vandravan on Mohanlal’s behalf. I claim to be head and dictator of the family.” The first two of the properties referred to were properties registered in the names of the three brothers and held in undivided ownership. The third was held under a licence from the municipality of Dar es Salaam which was in the name of Keshavji, but it is clear from the documents produced that down to the end of 1948 the rents of this property were credited in the books of the business to the three brothers equally, and its inclusion in this agreement and the terms of sub-paragraph 3 would seem to point to its being, like the other two properties, the property of the three brothers.

Much argument took place on whether this was a contract in which consideration passed within the meaning of the Indian Contract Act, 1872. But in their Lordships’ view the real question is whether the agreement was one which Keshavji was authorised to make for Mohanlal under the power of attorney. It is unnecessary to recite the clauses of this document. It may be described generally as conferring a power to look after the property and manage the affairs of Mohanlal. It was common ground that unless power to make the property agreement for Mohanlal came under clause 4 of the document it could be found nowhere else. Clause 4 is as follows:

“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 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.”

Their Lordships are unable to hold that the transaction in question comes within this clause. What, in their opinion, the clause does is to confer power to deal with Mohanlal's property in the course of normal business or commercial transactions, or transactions of necessity, intended to be in his interests. It does not authorise Keshavji to give away Mohanlal's property as a gift. As Russell, J. (as he then was), said in his dissenting opinion in *Reckitt v. Barnett Pembroke & Slater Ltd.*, [1928] 2 K.B. 268 (upheld by the House of Lords ([1929] A.C. 176), "An attorney cannot, in the absence of a clear power to do so, make presents to himself or to others of his principal's property." (See also *Re Bowles' Mortgage Trust*, (1874) 31 L.T. 365.) This, in their Lordships' opinion, is what the transaction amounted to and it is how Keshavji himself, in the passage from his evidence, already quoted, regarded it. Whether some scintilla of interest can be discovered which would support an ordinary commercial transaction is irrelevant. There was here in their Lordships' opinion an *ultra vires* exercise of the power. This was the view taken by the learned trial judge and in their Lordships' view he was right. The Court of Appeal paying, as their Lordships think, too little attention to the question of the scope of the power, reversed the trial judge on this point. In this they erred.

Their Lordships now approach the question of Mohanlal's rights in the various properties, apart from the property agreement, by which as they have found he is not bound. It will be convenient to refer to the properties by the labels attached to them in the Order of the Court of Appeal as Items A, B, C, D, E, F, and G.

A. is the first of the properties included in the property agreement. It was registered down to the date of the agreement in the names of the three brothers who held it in equal undivided shares. As Mohanlal is not bound by the agreement it follows that he retains his one-third undivided share.

B. This is unbuilt on land in the Upanga area of Dar es Salaam near the Buddhist Temple and no rents seem to have accrued from it. It was acquired in 1930 and was registered in the name of Keshavji alone. There is evidence of Mohanlal, which the Court of Appeal accepts, that this property was bought out of the funds of the business, and as the business was a partnership the property *prima facie* belonged to the partners. Keshavji's evidence is that the property was bought out of his bank account. But as his bank account was just the business bank account the same position is reached. It is difficult also to think that there was any difference in this respect from the position in respect of the other properties to which reference has yet to be made. The Court of Appeal has held that Mohanlal has a one-third interest in this property and, in their Lordships' opinion, they were right in so finding.

C. is a property in Kisutu Street, Dar es Salaam, about which there is no dispute. It belongs to the three brothers equally. So Mohanlal is entitled to a one-third undivided share.

D. is the second property in the property agreement and is in the same position as A.

E. is the third of the properties in the property agreement. It differs from the other two in that it is held on a licence from the municipality in the name of Keshavji only. It seems to have been acquired in 1945 when some temporary houses were built on it. The funds for the purchase and erection of the houses came from the business. The rents from the property were credited equally to the three brothers in the books of the business prior to 1948. Mohanlal in evidence says that on returning from India he asked why the property was in Keshavji's name and Keshavji said it was immaterial whether they stood in the name of one or three, as they were in partnership. This evidence is uncontradicted. In their Lordships' opinion it is clear on the evidence and from the terms of the agreement that this property is in precisely the same position as A. and D.

F. and G. may be considered together. F., a property in Pugu Road, Dar es Salaam, was acquired in 1948, G., a property in Nairobi, was acquired in 1949, both were acquired after Shivji ceased to be a partner in the business. Like all the other properties it seems clear that these

were bought out of the funds of the business. Keshavji wrote to Mohanlal when he was in India about F., the property in Pugu Road, in terms which indicated that it was bought as a joint transaction. Both properties are registered in the name of Keshavji, but on all the evidence it would appear that they were purchases by the business. This was the view of the Court of Appeal with which their Lordships agree, but the Court of Appeal, in the opinion of the Board, have taken a wrong view on how these two properties should be shared. Shivji was now out of the partnership and there is no suggestion that he had any interest in these purchases. Keshavji and Mohanlal were, as their Lordships have said, partners in the business in equal shares. As these properties were purchased out of partnership funds it follows that the properties must be shared equally by Keshavji and Mohanlal. The Court of Appeal took the view that they shared in the proportions respectively of two-thirds and one-third, but they proceeded upon the view, with which the Board have already disagreed, that these were the shares of Keshavji and Mohanlal in the partnership.

In this appeal their Lordships are only able to deal with questions between Keshavji and Mohanlal which relate to the partnership and to the properties. The question of the partnership now resolves itself into a question of the respective interests of Keshavji and Mohanlal, for though the trial judge in the course of his judgment held that since 15th January, 1948, Shivji held a 28½ per cent. share in the business of Keshavji no such claim was ever made by Shivji, and no order was pronounced by the High Court of Tanganyika to that effect. Shivji did not appear in the Court of Appeal to support that or any other claim, and the Court of Appeal were of opinion, as are this Board, that in so holding the District Judge was clearly wrong. The position is that so far as Shivji is concerned all his interests in the business were settled by the partnership agreement and all claims for accounts discharged. Keshavji and Mohanlal must be held to have been partners in the business each to the extent of one-third down to 31st December, 1947, and to the extent of one-half from that date to the date of the dissolution. Mohanlal is entitled to a partnership accounting accordingly. The Court of Appeal has directed in its Order that in calculating the value of Mohanlal's share in the business at the dissolution date, no part of the sum of 50,501/- paid to Shivji pursuant to the partnership agreement should be treated as having been paid by the business but should be treated as having been paid by Keshavji. This was a necessary direction on the view taken by the Court of Appeal that Keshavji really bought for himself Shivji's interest in the partnership, thereafter holding a two-third's share against Mohanlal's one-third share. As in the Board's opinion this was a wrong view of the effect of the agreement this direction must go.

The position with regard to the properties is more complicated. This Board taking the view that Mohanlal is not bound by the property agreement are able to fix Mohanlal's shares of the respective properties. They are not able to decide, however, what are the interests of Keshavji, Shivji and Vandran in the properties covered by the property agreement. The proportions fixed by the property agreement clearly cannot stand when Mohanlal is restored to his original shares. Some or all of the other parties may take the view that they are no longer bound by the agreement. This is a matter with which the Board are not in a position to deal. Their Lordships in these circumstances think it appropriate that they should make a declaration only of Mohanlal's shares in the properties and leave the other parties concerned to decide what action they propose to take with regard to the property agreement. This matter should be remitted to the High Court to whom the parties, if so advised, can apply to have their rights determined. The Order of the Court of Appeal will have to be varied accordingly. As to the items not within the property agreement the Court of Appeal has made certain declarations in favour of Shivji with reference to items B. and C. with which the Board do not interfere. As regard the two properties acquired after 1947 they belonged equally in undivided shares, as the Board have held, to Keshavji and Mohanlal.

As a result of the views expressed by the Board the Order of the Court of Appeal will fall to be varied in a number of material respects.

Their Lordships will accordingly humbly advise Her Majesty to dismiss the appeal; to allow the cross-appeal; and to vary the Order and Decree of the Court of Appeal to the effect shown in the following substituted Order:—

(a) Declare that Mohanlal was a partner in the firm carrying on business under the style—"Keshavji Ramji" as from its commencement in or about 1920 with a one-third share therein until 1st January, 1948, and thereafter with a one-half share until the date of its dissolution.

(b) Declare that Shivji was a partner in the said firm as from its commencement until 1st January, 1948, with a one-third share therein.

(c) Declare that Keshavji was a partner in the said firm as from its commencement with a one-third share therein until the 1st January, 1948, and thereafter with a one-half share until the date of its dissolution.

(d) Order that an enquiry be made as to the date in March, 1950, on which Keshavji Ramji Limited acquired the business carried on by the firm of Keshavji Ramji.

(e) Declare that the firm of Keshavji Ramji was dissolved as at the last mentioned date.

(f) Declare that Mohanlal is not bound by the property agreement of 15th January, 1948, purporting to be executed by Keshavji on his behalf and is entitled to an undivided share in the following properties:—

(1) An undivided one-third share in item (A), namely Title No. 366, Plot No. 528 on Windsor Street, Dar es Salaam (together with the buildings and temporary shed built thereon) from the date of its purchase in 1926.

(2) An undivided one-third share in item (B), namely Title No. 6137, Plot Nos. 913/2 and 914/2 on the McGowan Estate in the Upanga Area, Dar es Salaam from the date of its purchase such share to be calculated on the true market value of this entire item (B) as at the date of the transfer thereof to Keshavji Ramji Ltd.

(3) An undivided one-third share in item (C), namely, Title No. 6040, Plots Nos. 1392/2; Flur III and 2066/2; Flur III, on Kisutu Street, Dar es Salaam (together with the buildings erected thereon) from the date of its purchase in 1931.

(4) An undivided one-third share in item (D), namely Title No. 6039, Plot No. 2078/2; Flur III, on Kisutu Street, Dar es Salaam (with an incomplete building thereon) from the date of its purchase in 1933.

(5) An undivided one-third share in item (E), namely, Plots Nos. 1148/16, 1149/16 and 1150/16, on Mtendeni Street, Dar es Salaam (with temporary houses built thereon) from the date of the licence in the name of Keshavji in 1944.

(6) One-half share of the true market value of items (F) and (G), namely, Plot No. 586/206 on Pugu Road in the Gerezani Industrial Area, Dar es Salaam, and Title No. P.R.7446, Plot No. 208/2875, in the Industrial Area, Nairobi as at the dates of their sale in 1950 and 1951 respectively.

(g) Remit to the High Court of Tanganyika at Dar es Salaam to determine in the absence of agreement what shares respectively Keshavji, Shivji and Vandruvan are entitled to in the above properties, items (A), (D) and (E), included in the property agreement and to direct any accounts that may be necessary with liberty to any party to claim that having regard to the fact that Mohanlal was not bound by the property agreement it is void against other parties thereto.

(h) Declare that Shivji is entitled to an undivided share in the following properties:

(1) An undivided one-third share in item (B) from the date of its purchase, such share to be calculated on the true market value of this entire item as at the date of the transfer thereof to Keshavji Ramji Ltd.

(2) An undivided one-third share in item (C) from the date of its purchase in 1931.

(i) As regards item (D), Order that if the building is to be completed and the owners all wish to retain their respective shares in the property as a whole, then each will provide his proportion corresponding with his share of the cost of finishing the work.

(j) FURTHER ORDER that the Registrar of Her Majesty's High Court of Tanganyika at Dar es Salaam should take accounts and hold enquiries hereunder specified:—

“On the taking of each account such sum or sums if any, as Keshavji may prove to have paid to Mohanlal or to Shivji, as the case may be, towards or in excess of the amount found to be payable by him (Keshavji) are to be credited to him in that account.”

Mohanlal is entitled as against Keshavji to:—

(a) a partnership account of the nett profits of the business (excluding the profits obtained from the investments in the properties) from its commencement in or about 1920 to the dissolution date and interest at 6 per cent. on the amount of Mohanlal's share of partnership assets from such last mentioned date to the date of the decree.

(b) An account of the nett profits obtained from the properties as follows:—

(i) From item (B) from the date of its purchase in 1930 until the date or dates at which Keshavji disposed of this property in 1950 or 1951.

(ii) From item (C) from the date of its purchase in 1931.

(iii) From items (A), (D) and (E) from the dates of their respective purchases or acquisitions.

(iv) From item (F) from the date of its purchase in 1948 until the date of its transfer by Keshavji to Keshavji Ramji Ltd. in 1950.

(v) From item (G) from the date of its purchase in 1949 until the date of its transfer by Keshavji in or since 1951.

(c) An enquiry as to the market value of item (B) as at the date or dates at which Keshavji disposed of it;

(d) An enquiry as to the market value of item (F) as at the date of its transfer by Keshavji to Keshavji Ramji Ltd.

(e) An enquiry as to the market value of item (G) as at the date of its transfer by Keshavji in or since 1951;

(f) An enquiry as to what date was the dissolution date;

(g) An enquiry as to the value of the assets of the business as at the dissolution date, excluding the value of any of the properties but including that of the goodwill.

Shivji is entitled to the accounts mentioned above in paragraphs (b) (i) and (b) (ii) and to the enquiry mentioned in paragraph (c) hereof.

(k) FURTHER DIRECT that the accounts of the profits from the various properties be taken up to 31st August, 1956, except where herein otherwise directed.

(l) FURTHER DIRECT that in calculating the value of Mohanlal's share in the business at the dissolution date, the sum of Shs.50,501/- paid to Shivji pursuant to the first agreement should be treated as having been paid by the business out of the funds of the business.

(m) AND FURTHER ORDER that payment be made to Mohanlal, Shivji or Keshavji as the case may be of any sum found due to any of them on the taking of each of the said accounts and on the holding of each of the said enquiries, each of such sums to be calculated with reference to the respective shares or interests to which the decree of the Court of Appeal as varied by this Order has held those parties to be entitled during the periods covered by the accounts respectively or at the respective dates as at which the values are to be ascertained, as the case may be with any appropriate set-offs of any sums so found to be due.

(n) AND FURTHER ORDER that the decree shall carry interest at 6 per cent. from the date of the decree till payment on the amounts found due and payable by Keshavji to Mohanlal on taking accounts.

(o) AND FURTHER ORDER that:—

(1) The Plaintiff, Mohanlal do receive from the first Defendant, Keshavji, his taxed costs of the proceedings up to and including the trial ; Mohanlal to receive two advocates' costs.

(2) That the Respondent, Mohanlal do have his taxed costs of the Appeal and of his Cross-Appeal (two advocates) as against the Appellants.

(p) AND FURTHER ORDER THAT any party shall have liberty to apply to Her Majesty's High Court at Dar es Salaam for directions as to the working out of the Decree of the Court of Appeal as varied by this Order including the appointment of a Receiver of the rents and profits of the aforesaid properties and as to the costs of the taking of accounts and holding of enquiries and matters incidental thereto.

The appellant must pay the costs of the appeal and the respondents in the Cross-Appeal must pay the costs of the Cross-Appeal, excepting the costs of the Petition by the appellant in the Cross-Appeal for special leave to cross-appeal which must be paid by him.

In the Privy Council

KESHAVJI RAMJI

v.

MOHANLAL RAMJI AND OTHERS

and

MOHANLAL RAMJI

v.

KESHAVJI RAMJI AND OTHERS
(CONSOLIDATED APPEALS)

DELIVERED BY
LORD KEITH OF AVONHOLM