

G.L.L. 28, 1961

IN THE PRIVY COUNCIL

No. 34 of 1960

ON APPEAL FROM  
THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N :

LEELAWATHY SELLATHURAI wife of  
Karthigesu Sundara Rajah and  
KARTHIGESU SUNDARA RAJAH  
(Plaintiffs) Appellants

UNIVERSITY OF SRI LANKA  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

63530

- and -

10 ANNALEDCHUMY widow of Nallathamby  
Sellathurai (Defendant) Respondent

CASE FOR THE APPELLANTS

Record

1. This is an appeal from a judgment and order of the Supreme Court of the Island of Ceylon dated the 30th October 1958 setting aside the judgment of the District Court of Colombo dated the 20th June 1957 and ordering that the Appellants' action against the Respondent be dismissed with costs.

p.45.  
p.28.

20 2. The principal questions arising in this Appeal are:

(i) Whether on a true construction of a Dowry Deed No. 2496 of the 10th September 1949 (Pl) the Respondent thereby agreed and promised to pay to the Appellants, inter alia, a cash dowry of Rs. 30000/-;

p.55.

30 (ii) Whether the Respondent's obligation to pay a sum of Rs. 15000/-, the unpaid balance of the cash dowry agreed to be paid to the Appellants, was conditional on a transfer by the Appellants to the Respondent and her husband of certain lands owned by the 1st Appellant or whether the Appellants undertook to transfer the lands only on payment of the said balance by the Respondent and her husband within one year of the execution of Pl;

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(iii) Whether the Appellants' claim for Rs. 15000/- was based on an unwritten promise, contract, bargain or agreement and was barred by prescription.

p.10.  
pp.11-12.

3. By their Plaint dated the 8th/10th August 1955 as amended on the 12th/14th October 1955 the Appellants pleaded that, on the occasion of the marriage of the 1st Appellant to the 2nd Appellant, the Respondent and her husband (now deceased) agreed and promised to pay a cash dowry of Rs. 30000/- under and by virtue of the Dowry Deed No. 2496 of 1949; that Rs. 15000/- was paid to the Appellants and the balance sum of Rs. 15000/- was agreed to be paid to the Appellants within one year of the date of execution of the said Deed; that the Respondent had failed to pay the said balance; and that the Appellants were entitled to the said balance and interest. 10

pp.13-14.

4. By her Answer the Respondent admitted the execution of the said Deed but denied that it was thereby agreed or promised to pay a cash dowry of Rs. 30000/-; admitted that a cash dowry of Rs. 15000/- was paid to the Appellants but denied that payment was made under or by virtue of or on account of any promise made or agreement entered into by the said deed; denied that she agreed by the said deed or otherwise to pay a balance cash down of Rs.15000/- or any sum or to pay the same within one year of the execution of the said deed; and further pleaded that the Appellants' claim if any was prescribed and that in any event the Appellants were not entitled to claim from the Respondent any sum in excess of a one-third share of the alleged balance of Rs.15000/-. 20 30

5. The Dowry Deed No. 2496 of 1949 (P1) provided inter alia -

pp.55, 11.23-28.

"Whereas a marriage had been arranged between Karthigesu Sunthera Rajah and Leelavathy daughter of Nallathamby Sellathurai of Tinnevely (hereinafter called and referred to as the Dowry grantee).

"Whereas it was agreed that a cash dowry of Rs. 30,000/- and Jewels worth of Rs. 5,000/- should be given to the dowry grantee by the 1st and 2nd named Dowry grantors. 40

x x x x x x

"And whereas it was agreed between the dowry grantors and the dowry grantee that when the balance cash dowry of Rupees Fifteen Thousand (Rs. 15,000/-) was paid within a period of one year then the dowry grantee undertake and agree to effect a transfer of the said lands in favour of the 1st and 2nd named dowry grantors.

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pp.56, 11.4-8.

X X X X X X

10 "Now know all men by these presents that we Nallathamby Sellathurai and wife Annaledchumy of Tinnevely for and in consideration of the natural love and affection which we have and bear unto our daughter Leelavathy and for and in consideration of the marriage of my said daughter Leelavathy with the said Sunthera Rajah do hereby by way of dowry give, convey, make over, transfer and assign, unto the said Leelavathy wife of Sunthera Rajah, her heirs, executors, administrators and assigns the said cash dowry and jewels."

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pp.56, 11.11-18.

6. Evidence was given on behalf of the Appellants by the 2nd Appellant, inter alia, that he received Rs. 15000/- in cash; that the Appellants wanted to buy a house in Colombo where the 2nd Appellant was practising; that he asked the Respondent and her husband to pay the balance money and that "as an inducement to pay the balance sum of Rs. 15000/- within one year I said I would give the lands which belonged to my wife"; that the 1st Appellant wrote asking for the balance but received no reply; and that he sold the lands set out in the Schedule of P1 in 1956.

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pp.17-20.

7. Evidence was given by the Respondent inter alia that the dowry arranged was Rs. 15000/- in cash and that the 1st Appellant was also to get all the lands left to her by her mother and the Respondent's husband's share of one of the lands; that the 2nd Appellant demanded cash only; and that the Respondent's husband had said he would make up the balance of Rs. 15000/- after selling these lands.

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pp.20-21.

8. The Prescription Ordinance provides, inter alia, as follows:-

"6. No action shall be maintainable upon any deed for establishing a partnership, or upon

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any promissory note or bill of exchange, or upon any written promise, contract, bargain, or agreement, or other written security not falling within the description of instruments set forth in section 5, unless such action shall be brought within six years from the date of the breach of such partnership deed or of such written promise, contract, bargain, or agreement, or other written security, or from the date when such note or bill shall have become due, or of the last payment of interest thereon. 10

7. No action shall be maintainable for the recovery of any movable property, rent, or mesne profit, or for any money lent without written security, or for any money paid or expended by the Plaintiff on account of the defendant, or for money received by defendant for the use of the plaintiff, or for money due upon an account stated, or upon any unwritten promise, contract, bargain, or agreement, unless such action shall be commenced within three years from the time after the cause of action shall have arisen. 20

9. On the 20th June 1957 judgment was entered by District Judge Thalgodapitiya for the Appellants against the Respondent for Rs. 15000/- and costs.

The learned District Judge held that by the Deed (Pl) it was agreed inter alia that a cash dowry of Rs. 30000/- should be given to the 1st Appellant by the Respondent and her husband. He further held that the Deed provided that when the balance cash dowry of Rs. 15000/- was paid within one year the 1st Appellant was to transfer her share of the lands mentioned in the Schedule to the Respondent and the Respondent's husband; that the word "when" was synonymous with the word "if"; and that since the Respondent and her husband had not paid the balance of Rs. 15000/- within one year, no obligation arose on the Appellants to transfer the 1st Appellant's share of the lands to the Respondent or her husband. 30 40

10. The Respondent appealed against this judgment to the Supreme Court of Ceylon which on the 17th March 1958 rejected the appeal with costs on the grounds that the petition of appeal did not satisfy the requirements of S.755 of the Civil Procedure Code and that the notice of appeal had not been given

to the Appellants personally as required by S.756 of the Civil Procedure Code. However on the 30th October 1958 the Supreme Court dealing with the case in revision under S.753 of the Civil Procedure Code allowed the Respondent's application with costs, set aside the judgment of the learned District Judge and made an order dismissing the Appellants' action with costs.

10 Basnayake C.J., who delivered the judgment of the Court, held that the clause in Pl which stated -

"And whereas it was agreed between the dowry grantors and the dowry grantee that when the balance cash dowry of Rupees Fifteen thousand (Rs. 15,000/-) was paid within a period of one year then the dowry grantee undertake and agree to effect a transfer of the said lands in favour of the 1st and 2nd named dowry grantors."

20 referred to an oral agreement made before the execution of Pl. He held that an action based on such oral agreement was statute barred and further that, even if the disputed clause contained a promise to pay Rs. 15000/-, the Appellants were not entitled to enforce specific performance of the promise without at the same time offering to perform their part of the obligation to transfer the lands referred to in Pl. As the Appellants had put themselves in a position in which they were unable to perform their part of the contract they were not entitled to enforce specific performance.

30 11. The Appellants were granted conditional leave to appeal to Her Majesty in Council by the Supreme Court of the Island of Ceylon on the 22nd January 1959 and were granted final leave on the 19th March 1959.

40 12. The Appellants respectfully submit that on a true construction of Pl the operative part of the Deed contained a promise by the Respondent and her husband to hand over the entirety of the cash dowry of Rs. 30000/- referred to in the recital to the Deed. The agreement set out in the recital that when the balance cash dowry of Rs. 15000/- was paid within one year the dowry grantee undertook and agreed to effect a transfer of the lands described in the Schedule in favour of the dowry grantors should be construed as imposing on the Appellants a duty to transfer the lands only if the Respondent

and her husband paid the balance of Rs. 15000/- within one year of the execution of P1.

Since the balance of Rs. 15000/- was not paid within one year there was no obligation on the Appellant to transfer the lands to the Respondent and her husband.

13. The Appellants further submit that the obligation of the Respondent to pay the balance of Rs. 15000/- arose under and by virtue of an agreement in writing and that the Appellants' claim was not prescribed by S.7 of the Prescription Ordinance. By virtue of S.6 of the Prescription Ordinance the limitation period in this case was six years. 10

14. The Appellants respectfully submit that this Appeal should be allowed with costs throughout for the following among other

#### R E A S O N S

1. BECAUSE by virtue of P1 the Respondent promised to pay to the Appellants a cash dowry of Rs. 30000/-. 20
2. BECAUSE the Appellants' obligation to transfer the lands described in the Schedule to P1 was conditional on payment of the balance cash dowry of Rs. 15000/- within one year of the execution of P1.
3. BECAUSE the Respondent's obligation to pay the balance cash dowry of Rs. 15000/- arose by virtue of an agreement in writing and was not barred by prescription.
4. BECAUSE the judgment of the learned District Judge was right. 30

WALTER JAYAWARDENA.

DICK TAVERNE.

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Sellathurai (Defendant) Respondent

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CASE FOR THE APPELLANTS

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Lodged the 5<sup>th</sup> December 1960

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Solicitors & Agents for Appellants.