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4 1962

Appeal No.13 of 1961

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL
FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR

IN THE ESTATE of P.N.ST. SITHAMBARAM CHETTIAR
alias PR.A. Sithambaram Chettiar alias
Sithambaram Chettiar alias P.N.ST.Sithamparam
Chettiar son of Nallakaruppan Chettiar
deceased.

B E T W E E N

P.N.CT. GANAPATHY CHETTIAR Appellant
- and -

PR.SP. PERIAKARUPPAN CHETTIAR and
P.N.ST. NALLAKARUPPAN CHETTIAR Respondents

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

68225

GRAHAM PAGE & CO.,
Whitehall House,
41, Whitehall,
London,
S.W.1.
Solicitors for the Appellant.

LIPTON & JEFFERIES,
39, Jermyn Street,
London, S.W.1.
Solicitors for the Respondents

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

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IN THE ESTATE of P.N.ST. SITHAMBARAM CHETTIAR
alias PR.A. Sithambaram Chettiar alias
Sithambaram Chettiar alias P.N.ST.Sithamparam
Chettiar son of Nallakaruppan Chettiar
deceased.

B E T W E E N

P.N. CT. GANAPATHY CHETTIAR Appellant

- and -

PR.S.P. PERIAKARUPPAN CHETTIAR and
P.N.ST. NALLAKARUPPAN CHETTIAR Respondents

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Appeal No.13 of 1961

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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IN THE COURT OF APPEAL AT KUALA LUMPUR

IN THE ESTATE of P.N.ST. SITHAMBARAM CHETTIAR
alias PR.A. Sithambaram Chettiar alias
Sithambaram Chettiar alias P.N.ST.Sithamparam
Chettiar son of Nallakaruppan Chettiar
deceased.

10

B E T W E E N

P.N. CT. GANAPATHY CHETTIAR

Appellant

- and -

PR.S.P. PERIAKARUPPAN CHETTIAR and
P.N.ST. NALLAKARUPPAN CHETTIAR

Respondents

RECORD OF PROCEEDINGS

No. 1

LETTERS OF ADMINISTRATION,
P.N.ST. SITHAMBARAM CHETTIAR deceased.

In the
High Court at
Kuala Lumpur

No. 1

Letters of
Administration,
P.N.ST.
Sithambaram
Chettiar,
deceased.

30th April,
1957.

20

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

PETITION NO. 275 of 1954

IN THE ESTATE of P.N.ST.SITHAMBARAM CHETTIAR
alias PR.A. Sithambaram Chettiar
alias Sithambaram Chettiar alias
P.N.ST. Sithamparam Chettiar s/o
Nallakaruppan Chettiar, Deceased

GRANT OF LETTERS OF ADMINISTRATION

30

BE IT KNOWN that P.N.ST. Sithambaram Chettiar
alias PR.A.Sithambaram Chettiar alias Sithambaram

In the
High Court at
Kuala Lumpur

Chettiar alias P.N.ST. Sithamparam Chettiar s/o
Nallakaruppan Chettiar of 6 Main Street, Kajang,
Ulu Langat died on the 8th day of March, 1954, in-
testate

No. 1

Letters of
Administration,
P.N.ST.
Sithambaram
Chettiar,
deceased.

30th April,
1957

- continued.

AND BE IT FURTHER KNOWN THAT on the 16th day
of November, 1954, administration of all the movable
and immovable property in the Federation of Malaya
which by law devolves to and vests in the personal
representative of the said intestate was granted by
this Court to P.N.C.T. Ganapathy Chettiar s/o Sitham- 10
baram Chettiar of No.234, High Street, Kuala Lumpur,
a natural and lawful son and one of the next-of-kin
of the said intestate.

AND BE IT FURTHER KNOWN THAT on the date here-
under written these Letters of Administration were
issued to the said administrator, he having given
the security required by this Court for the due ad-
ministration of the said property a schedule whereof
is hereunto annexed.

GIVEN under my hand and the seal of the Court 20
at Kuala Lumpur this 30th day of April, 1957.

(SEAL) Sd. Yap Yeok Siew
Senior Assistant Registrar.

No.26 in E.D.O.F. 2141/54.

ESTATE OF P.N.ST. Sithambaram Chettiar
aliases PR.A. Sithambaram Chettiar and
Sithambaram Chettiar s/o Nallakaruppan
Chettiar Deceased.

The Registry at Kuala Lumpur.

PETITION NO. 275 OF 1954. 30

(Affidavit delivered the 28th day of
October, 1954)

SCHEDULE OF THE PROPERTY OF THE ABOVE-NAMED
DECEASED:

GROSS VALUE:-	ASSETS	₹	cts.	
1. C.T.10847 Lot 1803,	Semenyih	1,950.	00	
2. " 10848 " 1804	"	2,500.	00	
3. E.M.R. 2575 " 334	Ulu Semenyih	1,000.	00	
4. Amount due by A.N.A. Nallakaruppan Chettiar		553.	82	40

	\$	cts.	
5. Deceased's 1/6th of \$37,362.99 in the firm of P.R.A. Kajang, as per schedule "B" shown overleaf	4,639.	22	In the High Court at Kuala Lumpur <hr/> No. 1
6. Cash in hand		7. 94	
<u>Trust Property:</u>			Letters of Administration, P.N.ST. Sithambaram Chettiar, deceased.
7. Grant 5558 Lot 990 Mukim of Cheras - 19/24 share	-	-	
10 8. Grant 6468 Lot 1308 Mukim of Cheras 19/24 share	-	-	
	<hr/>	<hr/>	30th April, 1957 - continued.
	\$10,650.	98	

LIABILITIES

1. N.R.M.A.L.S. Firm, Kajang	\$1,050.00	
2. P.R.A. Firm, Kajang	2,112.50	
3. -do-	5,329.71	
20 4. 1/6th of \$59802.94 in N.P.R. Firm, Kajang, as per Schedule "A" attached	<hr/> 2,230.81	<hr/> 10,723. 02
NETT VALUE	-	-
	<hr/>	<hr/>

CERTIFICATE OF PAYMENT

I HEREBY CERTIFY that no estate duty is payable in respect of the property aforesaid (Insolvent)

Dated at Kuala Lumpur this 2nd day of March, 1957.

Sgd. Lee Kuan Yew
Collector of Estate Duty,
Federation of Malaya.

In the
High Court at
Kuala Lumpur

SCHEDULE "B"

P.R.A. Firm, Kajang

No. 1

Letters of
Administration,
P.N.ST.
Sithambaram
Chettiar,
deceased.
30th April,
1957
- continued.

ASSETS

		₹	cts.	
1.	A.P.R.	24,073.	63	
2.	- do - interest	1,649.	31	
3.	P.N.S.T. with interest	2,112.	50	
4.	P.N.S.T.	5,329.	71	
5.	P.N.P.	4,697.	84	
		<u>₹37,862.</u>	<u>99</u>	10

LIABILITIES

1.	PR.SP. Ramasamy Chettiar	₹5,725.93		
2.	A.P.R. Periakaruppan Chettiar	<u>4,301.72</u>	<u>10,027.65</u>	
			<u>₹27,835.34</u>	

Deceased's 1/6th share = ₹4,639.22

Sgd. Lee Kuan Yew
Collector of Estate Duty
Federation of Malaya.

F.2141/54

SCHEDULE "A"N.P.R. Firm, KajangIn the
High Court at
Kuala LumpurA S S E T S

	₹	cts.	No. 1
1. PR.SP.	406.	30	Letters of Administration, P.N.ST. Sithambaram Chettiar, deceased.
2. Fees to Shearn, Delamore & Co.	250.	00	
3. A.P.R.'s case	53.	20	
4. Business Registry (Deposits)	150.	00	
5. Wooden box	15.	00	
10 6. A.N.A.	500.	00	
7. PR.S.	3,900.	00	
8. Grant 5558 Lot 990 Mukim of Cheras 19/24 share	18,412.	43	30th April, 1957
9. Grant 6468 Lot 1308 " "	9,653.	00	- continued.
10. E.M.R. 3688 Lot 2556 Mukim of Kajang 67/92 share	546.	20	
11. C.T. 6921 Lot 79 Section 4 Kajang - 7/12 share	5,250.	00	
20 12. C.T. 3608 Lot 29 Section 1 Salak Village 5/6	1,500.	00	
13. C.T. 6467 Lot 13 Semenyih - 4/10th share	2,475.	00	
14. E.M.R. Nos.4105, 4106 & 4136 Lot Nos.1313, 1315 & 1314, Petaling - 1/4 share	400.	00	
15. Cash in hand	<u>1,379.</u>	<u>39</u>	
	₹44,890.	52	

LIABILITIES

30 1. PR.SP.M.Muthuraman Chettiar	₹13,908.64	
2. - do - interest for 15 months	1,042.50	
3. A.PR.Periakaruppan Chettiar with in- terest for 15 months	<u>43,324.22</u>	<u>58,275.36</u>
Liabilities exceed assets		<u>₹13,384.84</u>

Deceased's 1/6th share of loss ₹2,230.81

40

Sgd. Lee Kuan Yew
Collector of Estate Duty,
Federation of Malaya.

In the
High Court at
Kuala Lumpur

No. 2

LETTER, P.N.ST. NALLAKARUPPAN CHETTIAR to SENIOR
ASSISTANT REGISTRAR, Supreme Court.

No. 2

Letter, P.N.ST.
Nallakaruppan
Chettiar to
Senior
Assistant
Registrar,
Supreme Court.
12th April,
1960.

P.N.ST. Mallakaruppan Chettiar,
6, Main Street,
Kajang.

12th April, 1960.

The Senior Asst. Registrar,
Supreme Court,
Kuala Lumpur.

10

Sir,

Petition No.275 of 1954
Estate of P.N.ST. Sithambaram Chettiar,
deceased.

I beg to inform you that I am a beneficiary
entitled for share in the Estate of the abovenamed
deceased.

I understand that the administrator is trying
to sell some of the properties of the above estate
without consulting me.

I shall therefore be grateful if you will be
good enough to direct the administrator under order
55 Rule 5A (a) of the Rules of the Supreme Court
1957 to effect service on me as a beneficiary of the
above estate of any application by him to sell the
lands of the deceased including the lands held by
the deceased in trust for the N.PR. Firm of which
firm the deceased is a partner and the beneficiaries
of the above estate have an interest in the trust
properties aforesaid.

20

I shall also be grateful if you will serve a
notice on the administrator calling upon him to file
an inventory and an account which he has not done
since 1954.

30

Thanking you.

I beg to remain,
Sir,

Your obedient servant,

Sgd. P.N.ST. Nallakaruppan Chettiar.

No. 3

AFFIDAVIT of P.N.CT. GANAPATHY CHETTIAR
in support of Originating Summons

In the
High Court at
Kuala Lumpur

No. 3

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

Originating Summons No.68 of 1960.

(Petition No.275 of 1954)

Affidavit of
P.N.CT.
Ganapathy
Chettiar in
support of
Originating
Summons.

14th April,
1960.

10

IN THE ESTATE of P.N.ST. SITHAMBARAM CHETTIAR
alias PR.A. Sithambaram Chettiar
alias Sithambaram Chettiar alias
P.N.ST.Sithamparam Chettiar son of
Nallakaruppan Chettiar deceased

P.N.CT. GANAPATHY CHETTIAR Applicant

A F F I D A V I T

I, P.N.CT. Ganapathy Chettiar son of Sitham-
baram Chettiar of full age of Indian Nationality
residing at A.H.3 Municipal Flats, Batu Road, Kuala
Lumpur, affirm and say as follows:-

20

1. I am the administrator of the Estate of the
deceased abovenamed.

2. Prior to and at the time of his death the de-
ceased was a partner in the moneylending Firm of
N.P.R. carried on at No.6 Main Street, Kajang in
which the other partners were P.N.P. Nallakaruppan
Chettiar, P.N.P. Vairavan Chettiar, S.P.Krishnappa
Chettiar and P.R.S.P. Periakaruppan Chettiar. The
firm is now being carried on by one Sockalingam
Chettiar as the agent of all the partners.

30

3. At the time of his death the deceased had regis-
tered in his name an undivided 19/24 share in each
of the lands held under Selangor Grants Nos.5558 and
6468 for Lots Nos.990 and 1308 in the Mukim of Cher-
as in the District of Ulu Langat containing a total
area of 153 acres 3 roods 20 poles.

The deceased was so registered as a partner in
the said firm of N.P.R. and not as the full bene-
ficial owner of the said lands.

In the
High Court at
Kuala Lumpur

No. 3

Affidavit of
P.N.CT.
Ganapathy
Chettiar in
support of
Originating
Summons.

14th April,
1960
- continued.

4. In or about September, 1959 when P.R.S.P. Periakaruppan Chettiar one of the partners above-named and the agent Sockalingam Chettiar approached me with a view to giving an option for the sale of the said lands, I informed them that I would be willing to do so if all the other three partners who are resident in India will concur and instruct me to do so. In consequence thereof the said three partners wrote to me from India and by their letter of the 7th day of October, 1959 gave me authority to sell the said lands at any price in excess of \$850/- an acre with the consent of the other partner P.R.S.P. Periakaruppan Chettiar.

10

A certified translation of the said Tamil letter is now produced and shown to me marked "A".

5. Having then on or about the 20th day of October, 1959 obtained the oral consent of the said P.R.S.P. Periakaruppan Chettiar, I have now entered into an Agreement with one Low Hock Peh of No.8, Mendaling Street, Kajang, Low Cheng Lim of No.30, Mendaling Street, Kajang and Ng Tow Poo of No.7, Keng Hooi Road, Kuala Lumpur, to sell to them or to their nominee or nominees the said undivided 19/24 share in the said lands at the price of \$900/- an acre.

20

A copy of the said Agreement is now produced and shown to me marked "B".

6. I am advised and verily believe that the price of \$900/- per acre for the said lands is a very good price from the point of view of the sellers.

30

AFFIRMED by the abovenamed)
P.N.CT. Ganapathy Chettiar) Sgd. P.N.CT. GANAPATHY
at Kuala Lumpur this 14th) CHETTIAR.
day of April 1960 at 11.45)
a.m.)

Before me

Sgd. W.P. Sarathy
Commissioner for Oaths.

No. 4

EX PARTE ORIGINATING SUMMONSIn the
High Court at
Kuala Lumpur

No. 4

Ex parte
Originating
Summons.20th April,
1960.

LET all parties concerned attend the Judge in
Chambers at the High Court at Kuala Lumpur on Mon-
day the 25th day of April, 1960 at 10.00 o'clock in
the forenoon, on the hearing of an application on
the part of P.N.C.T. Ganapathy Chettiar son of Sith-
amparam Chettiar the administrator of the estate of
the deceased abovenamed for an Order that he be at
liberty to sell and transfer an undivided 19/24
share of the lands held under Selangor Grants Nos.
5558 and 6468 for Lots Nos. 990 and 1308 in the
Mukim of Cheras in the District of Ulu Langat to
Low Hock Peh of No.8, Mendaling Street, Kajang, Low
Cheng Lim of No.30, Mendaling Street, Kajang, and
Ng Tow Foo of No.7, Keng Hooi Road, Kuala Lumpur or
their nominee or nominees at the price of \$900/- an
acre and that the costs of this application shall
be paid out of the proceeds of sale or from the
Funds of N.P.R. Firm.

Dated this 20th day of April, 1960.

Sd. Gunn Chit Tuan
Senior Assistant Registrar,
High Court, Kuala Lumpur.

This Summons was taken out by Messrs. Braddell
& Ramani, Solicitors for the applicant and whose
address for service is Hongkong Bank Chambers, Kuala
Lumpur.

This application will be supported by the affi-
davit of P.N.C.T. Ganapathy Chettiar son of Sitham-
param Chettiar affirmed on the 14th day of April,
1960 and filed herein.

No. 5

No. 5

LETTER, SENIOR ASSISTANT REGISTRAR, Supreme Court
to P.N.ST. NALLAKARUPPAN CHETTIAR.

Letter, Senior
Assistant
Registrar,
Supreme Court
to P.N.ST.
Nallakaruppan
Chettiar,

No.5 in O.S. 68/60.

Selangor Registry,
Supreme Court,
Kuala Lumpur.

21st April, 1960.

21st April,
1960.

P.N.ST. Nallakaruppan Chettiar,
6, Main Street,
Kajang.

Sir,

Estate of P.N.ST. Sithamparam Chettiar, deceased

I have the honour to acknowledge receipt of

In the
High Court at
Kuala Lumpur

No. 5

Letter, Senior
Assistant
Registrar,
Supreme Court
to P.N.ST.
Nallakaruppan
Chettiar,

21st April,
1960

- continued.

your letter dated 12th April 1960 and confirm that the Administrator of the abovenamed Estate has through his Solicitors Messrs. Braddell & Ramani filed an Ex-parte Originating Summons in order to obtain an order of the Court that he be at liberty to sell and transfer an undivided 19/24 share of the lands held under Selangor Grants Nos.5558 and 6468 for lots Nos.990 and 1308 in the Mukim of Cheras in the District of Ulu Langat to Low Hock Peh of No.8 Mendaling Street, Kajang, Low Cheng Lim of No.30 Mendaling Street, Kajang and Ng Tow Foo of No.7 Keng Hooi Road, Kuala Lumpur or their nominee or nominees at the price of \$900/- an acre and that the costs of the application to be paid out of the proceeds of sale or from the Funds of N.PR. Firm. The said Ex-parte Originating Summons has been registered as Originating Summons No.68/60 and will be heard by the Judge in Chambers on Monday the 25th day of April 1960 at 10.00 o'clock in the forenoon.

10

2. I regret that I do not have the power to direct the Administrator or his Solicitors under Order 55 Rule 5A (a) of the Rules of the Supreme Court 1957 to serve you with the said Originating Summons.

20

3. Your letter has, however, been filed by me and will be placed before the Hon'ble Judge for His Lordship's perusal.

I have the honour to be,

Sir,

Your obedient servant

Sd. GUNN CHIT TUAN.

30

Senior Assistant Registrar,
Supreme Court, Kuala Lumpur.

Sent by post on
21/4 at 4.25 p.m.

No. 6

Judge's Notes
on Hearing of
Originating
Summons.

25th April,
1960.

No. 6

JUDGE'S NOTES on HEARING of ORIGINATING SUMMONS

O.S. 68/60.

Mr. Ramani
Read affidavit.
Read letter from P.N.ST. Nallakaruppan Chettiar.
O.55 r.5A has no application.

40

Order in terms.

Sd. J.G. Adams
25.4.60.

(NOTE: This Document is Exhibit A to the Affidavit of PR.SP. Periakaruppan Chettiar dated 7th December 1960, Document No.26)

No. 7

MINUTES in the COURT FILE of HEARING of
ORIGINATING SUMMONS

Minutes in the File.

25.4.60

Cor: Mr. Justice Adams

Mr. Ramani for applicant

P.N.ST. Nallakaruppan Chettiar present.

Order 55 r.5(a) has no application

Order in terms.

10

In the
High Court at
Kuala Lumpur

No. 7

Minutes in the
Court File of
Hearing of
Originating
Summons.

25th April,
1960.

No. 8

REGISTRAR'S NOTES ON HEARING of ORIGINATING
SUMMONS

Cor: Mr. Justice Adams

Mr. Ramani for applicant

P.N.ST. Nallakaruppan Chettiar present

Letter of Nallakaruppan Chettiar read

Order 55 r.5 (a) has no application

Order in Terms.

No. 8

Registrar's
Notes on
Hearing of
Originating
Summons.

25th April,
1960.

In the
High Court at
Kuala Lumpur

No. 9

ORDER GRANTING LEAVE TO SELL

No. 9

BEFORE THE HONOURABLE MR. JUSTICE ADAMS,

JUDGE, FEDERATION OF MALAYA

IN CHAMBERS

Order granting
Leave to Sell.

25th April,
1960.

This 25th day of April, 1960.

O R D E R

UPON HEARING Mr. R. Ramani of Counsel for the Applicant herein AND UPON READING the Originating Summons dated the 20th day of April, 1960, and the Affidavit of P.N.C.T. Ganapathy Chettiar s/o Sithambaran Chettiar affirmed on the 14th day of April, 1960 and filed in support thereof

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IT IS ORDERED that P.N.C.T. Ganapathy Chettiar s/o Sithambaran Chettiar, as administrator of the Estate of P.N.S.T. Sithambaran Chettiar deceased be and is hereby at liberty to sell and transfer an undivided 19/24 share of the lands held under Selangor Grants Nos.5558 and 6468 for Lots Nos.990 and 1308 in the Mukim of Cheras in the District of Ulu Langat to Low Hock Peh of No.8, Mendaling Street, Kajang, Low Cheng Lim of No.30, Mendaling Street, Kajang and Ng Tow Poo of No.7, Keng Hooi Road, Kuala Lumpur or their nominee or nominees at the price of \$900/- an acre.

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AND IT IS ORDERED that the costs of the application be paid out of the proceeds of sale or from the funds of N.P.R. Firm.

GIVEN under my hand and the seal of the Court this 25th day of April, 1960.

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Sd. Gunn Chit Tuan

Senior Assistant Registrar,
High Court, Kuala Lumpur.

No. 10

AFFIDAVIT of PR.SP. PERIAKARUPPAN CHETTIAR in
SUPPORT of MOTIONIn the
High Court at
Kuala Lumpur

No. 10

I, PR.SP. PERIAKARUPPAN CHETTIAR son of Subramanian Chettiar of full age of Indian nationality residing at No.6 Main Street, Kajang affirm and say as follows:-

Affidavit of
PR.SP.
Periakaruppan
Chettiar in
Support of
Motion.

12th May, 1960.

10 1. I crave leave to refer to the Affidavit of the Applicant dated the 14th day of April 1960 and in particular to paragraph 2 thereof. I am the person named in the said paragraph as P.R.S.P.Periakaruppan Chettiar and am a partner in the Firm of N.P.R. I deny the allegation in the said paragraph that Sockalingam Chettiar is carrying on the said Firm as the agent of all the partners.

20 2. I admit the contents of paragraph 3 of the said Affidavit and state that by reason of the fact I am a partner in N.P.R. Firm and that the deceased was registered as proprietor of the lands the subject matter of this application as a partner in the said Firm and not as beneficial owner. I have an interest in the lands the subject matter of this application and in the proceeds of any sale thereof. I have also an interest to ensure that any sale of these lands is made for the best possible price obtainable.

30 3. I admit the contents of paragraph 4 of the Affidavit but I contend that the Applicant has not disclosed to the Court the contents of a further letter dated the 29th March 1960. On the 29th day of February 1960 the Applicant's Solicitors advised my Solicitors that the Applicant had received an offer to purchase the said lands at a price of \$900/- per acre and asked myself and the other partners to consent to an agreement being entered into for sale at this price. The said letter is now produced and shown to me marked "A". My Solicitors duly advised Sockalingam Chettiar of this offer on the 1st March 1960 and requested him to obtain the instructions of the partners. Sockalingam Chettiar duly referred the matter to the three partners P.N.P. Nallakaruppan Chettiar, P.N.P. Vairavan Chettiar and SP. Krishnappa Chettiar who were in India and received from them the aforesaid letter of the 29th March 1960 in which the three partners instructed that the offer of \$900/- per acre be

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In the
High Court at
Kuala Lumpur

No. 10

Affidavit of
PR.SP.
Periakaruppan
Chettiar in
Support of
Motion.

12th May, 1960

- continued.

referred to PL.M. Venkatachalam Chettiar of No. 9 Jalan Maharani, Muar and myself and that the Applicant should act in accordance with our instructions. The said letter is now produced and shown to me marked "B". I verily believe that the contents of this letter were conveyed to the Applicant but he did not comply with the instructions contained in it as appears from paragraph 5 of his Affidavit where he relies on an alleged consent given orally by me on or about the 20th October 1959 or prior to the letter of the 29th March 1960. I deny having given any consent to the sale of the lands at a price of \$900/- per acre on the 20th October 1959 either orally or otherwise and deny having given such consent on any other date.

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4. I crave leave to refer to the fact that the Originating Summons herein was set down to be dealt with ex parte although the Applicant was aware that I was present in the Federation of Malaya at the time it was filed and had an interest in the subject matter of the application. A copy of the Summons and Affidavit in support was sent to me under cover of a letter from the Applicant's Solicitors dated the 22nd April 1960 which was posted in Kuala Lumpur on the 23rd April 1960 (which was a Saturday) and did not reach Kajang until Monday the 25th April 1960. On receiving the copy of the said application I at once proceeded to Kuala Lumpur to this Honourable Court where the application was to be heard with the intention of opposing it but was advised I could not appear on the hearing of the application because I was not a party to it. I was informed of this by the member of the Court staff who was supervising the Honourable Judge's Chamber list.

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5. On being informed that the application had been heard and the order prayed for had been made I consulted my Solicitors who advised me that no useful purpose could be served in having the order set aside unless I was in a position to obtain a price better than \$900/- per acre for the said lands.

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6. I have obtained a purchaser who is willing to pay a price of \$1,000/- per acre for the said lands. I am unable to enter into any contract for the sale of the said lands to the said purchaser because I have no registered interest in the said lands but the said purchaser has deposited with my Solicitors a sum of \$15,000/- to account of the purchase price and has undertaken to pay the balance of the purchase money within one month of this Court making

an order approving the sale of the land at the price of \$1,000/- per acre. I am prepared to and hereby give my undertaking to this Honourable Court that I will myself purchase the said lands at a price of \$1,000/- per acre so that none of the other interested parties will lose financially in the event of the purchase I have obtained failing to complete.

In the
High Court at
Kuala Lumpur

No. 10

Affidavit of
PR.SP.
Periakaruppan
Chettiar in
Support of
Motion.

12th May, 1960

- continued.

10 7. In his application to this Honourable Court the Applicant has not disclosed the fact that he is not the sole beneficiary of the estate of the deceased. He has a brother named P.N.ST.Nallakaruppan Chettiar who has a beneficial interest in the proceeds of the sale of the said lands and who is interested in ensuring that the best possible price is obtained. No notice of the application was served on the said brother nor was he made a party to the application and he has never given his consent to a sale at a price of \$900/- per acre or any other price.

20 8. I am advised and verily believe that application of the nature of that made by the Applicant should not be made ex-parte but should be served on beneficiaries of the estate of the deceased which the administrator represents and should be served on persons with a beneficial interest in the properties derived otherwise than through the deceased.

30 9. I am advised and verily believe that this Honourable Court will always act to ensure that lands are sold for the best possible price in order to ensure the maximum benefit to the estate of the deceased. The price of \$900/- per acre is not the best possible price and the said lands can be sold for at least \$1,000/- per acre.

10. I therefore pray that the order of this Honourable Court approving a sale of the lands for a price of \$900/- per acre may be set aside or alternatively that it be varied to provide for sale of the said lands for a price not less than \$1,000/- per acre.

40 AFFIRMED at Kuala Lumpur) Sd. PR.SP. Periakaruppan
this 12th day of May,) Chettiar.
1960 at 3.10 p.m.)

Before me,
Sd. Majid Khan
Commissioner for Oaths.

I hereby certify the above affidavit was read,

In the
High Court at
Kuala Lumpur

No. 10

Affidavit of
PR.SP.
Periakaruppan
Chettiar in
Support of
Motion.

12th May, 1960

- continued.

translated and explained in my presence to the deponent, who seemed perfectly to understand it, declared to me that he did understand it, and made his signature in my presence.

Sd. Majid Khan
Commissioner for Oaths.

This affidavit is filed by Messrs. Bamnon & Bailey on behalf of P.N.ST. Nallakaruppan Chettiar and PR.SP.Periakaruppan Chettiar.

No. 11

Affidavit of
P.N.ST.
Nallakaruppan
Chettiar in
Support of
Motion.

12th May, 1960.

No. 11

AFFIDAVIT of P.N.ST. NALLAKARUPPAN CHETTIAR
in SUPPORT of MOTION

I, P.N.ST. NALLAKARUPPAN CHETTIAR son of Sithambaram Chettiar of full age of Indian nationality residing at No.6 Main Street, Kajang affirm and say as follows:-

1. I am the brother of the Applicant and a son of P.N.ST.Sithambaram Chettiar alias PR.A.Sithambaram Chettiar alias Sithambaram Chettiar alias P.N.ST. Sithamparam Chettiar son of Nallakaruppan Chettiar the deceased whose estate the Applicant is administering. I am beneficially entitled to a share in that estate.

2. I have been advised by PR.SP. Periakaruppan Chettiar of this application and of the order made on the 25th April 1960. I have not been served with any notice of this application.

3. I have at no time been consulted by the Applicant as to whether I would agree to a sale of the lands the subject matter of the application for a price of \$900/- per acre or any other price. Had I been consulted I would not have given my consent because the lands are worth more than \$900/- per acre.

4. I am aware of an offer which PR.SP.Periakaruppan Chettiar has obtained of a price of \$1,000/- per acre for the sale of the said lands. I am prepared to and do hereby consent to a sale of the

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said lands for a price not less than \$1,000/- per acre.

In the High Court at Kuala Lumpur

No. 11

5. I am advised and verily believe that application of the nature of that made by the Applicant should not be made ex-parte but should be served on beneficiaries of the estate of the deceased which the administrator represents and should be served on persons with a beneficial interest in the properties derived otherwise than through the deceased.

Affidavit of P.N.ST. Nallakaruppan Chettiar in Support of Motion.

10 6. I am advised and verily believe that this Honourable Court will always act to ensure that lands are sold for the best possible price in order to ensure the maximum benefit to the estate of the deceased. The price of \$900/- per acre is not the best possible price and the said lands can be sold for at least \$1,000/- per acre.

12th May, 1960

- continued.

20 7. I therefore pray that the order of this Honourable Court approving a sale of the lands for a price of \$900/- per acre may be set aside or alternatively that it be varied to provide for sale of the said lands for a price not less than \$1,000/- per acre.

AFFIRMED at Kuala Lumpur) Sd. P.N.ST.NALLAKARUPPAN
this 12th day of May,) CHETTIAR.
1960 at 3.20 p.m.)

Before me,

Sd. Majid Khan
Commissioner for Oaths.

30 I hereby certify the above affidavit was read, translated and explained in my presence to the deponent who seemed perfectly to understand it, declared to me that he did understand it, and made his signature in my presence.

Sd. Majid Khan
Commissioner for Oaths.

This affidavit is filed by Messrs. Bannan & Bailey on behalf of P.N.ST.Nallakaruppan Chettiar and PR.SP. Periakaruppan Chettiar.

In the
High Court at
Kuala Lumpur

No. 12

NOTICE OF MOTION

No. 12

Notice of
Motion.

23rd May, 1960.

TAKE NOTICE that the Court will be moved on Monday the 20th day of June 1960 at 10 o'clock in the forenoon or as soon thereafter as Counsel can be heard by Mr. S.D.K. Peddie Counsel for PR.SP. Periakaruppan Chettiar and P.N.ST. Nallakaruppan Chettiar both of No.6 Main Street, Kajang for an order that the order made herein on the 25th day of April 1960 be set aside or alternatively that the said order may be varied to provide for liberty to the Applicant to sell and transfer an undivided 19/24 share of the lands held under Selangor Grants Nos.5553 and 6468 for Lots Nos.990 and 1308 in the Mukim of Cheras in the District of Ulu Langat to any person or persons at a price of not less than \$1,000/- per acre and that PR.SP.Periakaruppan Chettiar and P.N.ST. Nallakaruppan Chettiar be at liberty to appear and answer the application by the Applicant on such terms as the Court may deem just and for an order that the Applicant do pay the costs of this motion.

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Dated this 23rd day of May, 1960.

Sd. Gunn Chit Tuan
Senior Assistant Registrar,
High Court, Kuala Lumpur.

Sd. Bannon & Bailey
Advocates & Solicitors for
PR.SP. Periakaruppan Chettiar
and P.N.ST.Nallakaruppan Chettiar.

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NOTE: This Notice of Motion was taken out by Messrs. Bannon & Bailey, Solicitors for PR.SP. Periakaruppan Chettiar and P.N.ST. Nallakaruppan Chettiar.

The affidavits of PR.SP. Periakaruppan Chettiar and P.N.ST. Nallakaruppan Chettiar affirmed on the 12th day of May 1960 and filed herein will be read in support of this application.

This Notice of Motion is intended to be served on:-

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P.N.C.T. Ganapathy Chettiar or his
Solicitors Messrs. Braddell & Ramani,
Hongkong Bank Chambers, Kuala Lumpur.

No. 13

AFFIDAVIT of P.N.CT. GANAPATHY CHETTIAR in
OPPOSITION to MOTION.

In the
High Court at
Kuala Lumpur

No. 13

I, P.N.CT. GANAPATHY CHETTIAR son of Sitham-
baram Chettiar of full age of Indian Nationality
residing at A.H.3 Municipal Flats, Batu Road, Kuala
Jampur, affirm and say as follows:-

Affidavit of
P.N.CT.
Ganapathy
Chettiar in
Opposition to
Motion.

18th June, 1960

1. I am the Applicant herein and I have read the
affidavit of FR.SP. Periakaruppan Chettiar affirmed
on the 12th day of May, 1960 and filed in support
of his application to set aside the order of this
Honourable Court made on the 25th day of April,
1960.

2. In answer to para.1 of the said affidavit deny-
ing that Sockalingam Chettiar is carrying on the
said Firm as the agent of all the partners I wish
to state that

(a) the only remaining asset of the Firm of
N.P.R. is this 19/24 share in the rubber estate and
Sockalingam Chettiar manages the estate by having
the rubber tapped, by maintaining the estate, by
paying the wages, by selling the rubber and by re-
ceiving the proceeds of such sale. Even the owner
of the remaining 5/24 share receives his share of
the income from Sockalingam Chettiar;

(b) all my dealings with the firm such as they
have been are only with Sockalingam Chettiar;

(c) on or about the 20th day of March, 1959 my
Solicitors wrote to "The Agent" N.P.R. Firm
without mentioning any name asking for an
account of the deceased's share in the Firm and re-
minded him about it on the 9th day of May. Not
having received any reply they wrote again on the
15th day of May the letter copy of which is now
produced and shown to me marked "A".

To this letter "The Agent of the N.P.R. Firm"
replied through Dato Sir Clough Thuraisingham a
copy of whose reply is now produced and shown to me
marked "B".

The Books of the Firm referred to in the said
reply "B" were in fact produced to the Arbitrator

In the
High Court at
Kuala Lumpur

No. 13

Affidavit of
P.N.C.T.
Ganapathy
Chettiar in
Opposition to
Motion.

18th June, 1960
- continued.

A.M. Alagappa Chettiar by Sockalingam Chettiar and in his Report to the Court the Arbitrator has stated that Sockalingam Chettiar had produced the Books to him;

(d) in his own affidavit PR.SP. Periakaruppan Chettiar has stated in para. 3 thereof that when my Solicitors wrote to Messrs. Bannon and Bailey regarding the possibility of sale at \$900/- per acre the person to whom Messrs. Bannon and Bailey conveyed the information was Sockalingam Chettiar;

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(e) in the Writ caused to be issued by me in Civil Suit 546 of 1959 claiming partnership accounts against the surviving partners of the Firm service on the Firm was effected by serving Sockalingam Chettiar as the person having control and management of the Firm; and in his application to set aside the Writ he did not deny that he was the person having control and management of the Firm but based his application on the fact that he had no Power of Attorney from any of the three absent partners to accept service of process on their behalf and that the absent partners should have been served in India with the leave of the Court, and

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(f) it is significant that Sockalingam Chettiar himself has not dared to state on oath in support of this application that he is not managing the Firm, i.e. the rubber estate.

3. In answer to para. 3 of the said affidavit where it is complained that I did not disclose to the Court the contents of the letter of the 29th March, 1960 I wish to say that that letter is addressed not to me but to Sockalingam Chettiar by the three partners in India. A copy of that letter was enclosed in a letter to me from an Advocate in India which letter was dated the 29th day of April, 1960 and was received by me on or about the 2nd day of May, 1960.

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A copy of the said letter from the Indian Advocate is now produced and shown to me marked "C" and as the date on it shows it was in fact written in India four days after the order had been made.

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I also crave leave to refer to para. 2 of the said letter of the 29th day of March 1960 which is inconceivable if the management of the Firm was not in the hands of Sockalingam Chettiar.

4. In further answer to para. 3 of the said affidavit I wish to invite attention to the fact that from the moment the offer to purchase was received my Solicitors have kept Messrs. Bannon and Bailey informed of every step in the proceedings.

In the
High Court at
Kuala Lumpur

No. 13

The documents now produced and shown to me marked D1, D2, D3, D4, D5, D6 and D7 are copies of all the correspondence that passed between my Solicitors and Messrs. Bannon and Bailey.

Affidavit of
P.N.C.T.
Ganapathy
Chettiar in
Opposition to
Motion.

10 5. If in fact as it is now claimed a letter of the 29th day of March 1960 had been received it should have been received by Sockalingam Chettiar in the first days of April and there was nothing to prevent him instructing Messrs. Bannon and Bailey to oppose the sale at \$900/- per acre either because a better price can be obtained or because we did not have time to consult P.L.M. Venkatachalam Chettiar referred to in para. 3 of the letter.

18th June, 1960
- continued.

20 But the application was allowed to be proceeded with and order obtained.

30 6. In answer to para. 4 of the said affidavit I say that the application was made ex parte because the other partners had consented to a sale at any price in excess of \$850/- per acre. I am personally aware that on every occasion Sockalingam Chettiar calls at the office of Messrs. Bannon and Bailey he is invariably accompanied by P.R.SP. Periakaruppan Chettiar and in any event both of them live in Kajang and it is inconceivable that P.R.SP. Periakaruppan Chettiar was not kept informed of developments by Sockalingam Chettiar from time to time.

7. In answer to para. 6 of the said affidavit and the availability of purchasers at \$1,000/- per acre I wish to invite attention to the fact that on the 31st day of March 1960 the day the Agreement for Sale was entered into the price of rubber was \$1.21½ per lb. and on the 12th day of May 1960 the date of P.R.SP. Periakaruppan Chettiar's affidavit it was \$1.35 per lb.

40 8. In answer to paras. 7 and 8 of the said affidavit I am advised that they state propositions of law erroneous in themselves and also in the context of the application made by me.

9. In answer to paras. 9 and 10 of the said

In the High Court at Kuala Lumpur

No. 13

Affidavit of P.N.CT. Ganapathy Chettiar in Opposition to Motion.

18th June, 1960 - continued.

affidavit I am advised that though a Court should and would always be anxious to ensure that the best price is obtained in respect of sales of property over which it has control, it is no less incumbent upon the Court to uphold its own orders where there is no allegation of fraud or other misrepresentation and not too readily agree to set aside its own order the direct consequence of which would be to procure a breach of contract with the purchasers which contract has been approved by the Court after full disclosure to all appropriate parties.

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AFFIRMED by the abovenamed)
P.N.CT. Ganapathy Chettiar) Sd. P.N.CT. Ganapathy
at Kuala Lumpur this 18th) Chettiar.
day of June, 1960 at 10.55)
a.m.)

Before me,

Sd. W.P. Sarathy
Commissioner for Oaths.

No. 14
Judge's Notes of Arguments on Motion.
20th June, 1960.

No. 14

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JUDGE'S NOTES OF ARGUMENTS ON MOTION

20th June, 1960

Before Mr. Justice Adams

Mr.S.D.K. Peddie for applicant.

Mr. R. Ramani for respondent.

Peddie: Application supported by two affidavits of 12th May.

Respondent's affidavit filed on 18th June.

Para 2 irrelevant.

Para. 8.

See Afft. at Encl. (9) para. 7. Not denied in the affidavit of reply.

30

Affidavit at Encl. (8) not replied to at all.

Order of 25th April made under O.55 r.3(1).

See O.55 r.5(a) sets out the people requiring to be served.

C.P.C. 1918 Sec.481 (f) identical as is 483 (a).

6. F.M.S. L.R. 154. In the Estate of Haji Fatimah binti Haji Abdul Samat.

The application of 25th April was headed ex parte.

10 Sec. 94 Probate & Administration Ordinance 1959 and Sec.60(4) are identical.

Cap. 8. Therefore law still the same as it was under F.M.S. Cap. 8 when Haji Fatimah's case was decided. Therefore as the beneficiary was not served the applicant is entitled to have the order set aside.

Summons is entitled in the estate and was ex parte and therefore no one has been served let alone the beneficiary.

20 The contract already entered into.

Che Ah and Che Yang Kelsom vs. Che Ahmad,
(1941) 10 M.L.J. 126.

No independent valuation.

Contract must be conditional. If his order goes the contract goes.

Personal undertaking by Periakaruppan Chettiar to buy at \$1000.

30 If not set aside then it should be varied under O.70 r.1. so that the property ordered to be sold at not less than \$1000

Ramani: (9) 2 grounds.

(a) para.3. Non disclosure of a material fact.

(b) That he had not been served as a beneficiary.

Nothing has been said about non disclosure?

Peddie: See para. 3. last sentence but one in the affidavit of reply.

40 Respondent admits receiving the letter but not until after the order of 25th April. This is accepted.

In the
High Court at
Kuala Lumpur

No. 14
Judge's
Notes of
Arguments on
Motion.

20th June, 1960.

- continued.

In the
High Court at
Kuala Lumpur

Ramani: It is clear that the letter was not in my knowledge or that of my client. I have no wish that it be thought that I misled the Court.

No. 14
Judge's
Notes of
Arguments on
Motion.
20th June, 1960
- continued.

Service. Fundamental error is that Peddie inviting Court to deal with the matter as if this is property forming part of an estate. But this is partnership property registered in the name of a deceased partner.

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See affidavit Encl. (1) para.3.

Partnership property belongs to all the partners.

Partners came and asked for sale at best price then obtaining.

That property was registered in the deceased partner's name and that is why his administrator applied.

Property not valued in the valuation for J.A. and is included under Trust property in Schedule of property.

20

Deceased partner's share in firm only is valued for Estate Duty purposes.

Administrator was acting on advice of partners to sell in excess of \$850.

Para. 4 of affidavit in reply.

Was keeping the partnership informed the whole time. - See letters exhibited there-
to.

30

Rubber selling at \$1.21 $\frac{1}{2}$ at the time of contract.

See para. 7.

Rubber price increased to \$1.35. It was a fair price at that time and the purchaser is entitled to the increased value. If rubber had fallen he would either have lost his deposit or had to complete the purchase irrespective of the reduced value of the property.

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Peddie: Original procedure under O.55 r.3, therefore Administrator must comply with Order 55 r.5 (a).

Deceased had an interest in the partnership property.

If the property is sold at the higher price it will enhance the value of the estate by increasing the assets of the partnership.

Application dismissed with costs.

Sd. J.G. Adams.
Judge.

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No. 15

ORDER dismissing APPLICATION on MOTION
BEFORE THE HONOURABLE MR. JUSTICE ADAMS,
JUDGE,
FEDERATION OF MALAYA

IN OPEN COURT,

This 20th day of June, 1960.

In the
High Court at
Kuala Lumpur

No. 15

Order dismiss-
ing Application
on Motion.

20th June, 1960.

10 UPON HEARING Mr. S.D.K. Peddie of Counsel for
PR.SP.Periakaruppan Chettiar and P.N.ST.Nallakarup-
pan Chettiar the Applicants herein and Mr. R.Ramani
of Counsel for P.N.CT. Ganapathy Chettiar, the Ad-
ministrators of the estate of the abovenamed deceased
AND UPON READING the Notice of Motion dated the
23rd day of May, 1960 and the affidavits of PR.SP.
Periakaruppan Chettiar s/o Subramaniam Chettiar and
P.N.ST. Nallakaruppan Chettiar s/o Sithambaram
Chettiar both affirmed on the 12th day of May, 1960
and the affidavit of P.N.CT.Ganapathy Chettiar s/o
20 Sithambaram Chettiar affirmed on the 18th day of
June, 1960 all filed herein IT IS ORDERED that the
said application made by the said PR.SP.Periakarup-
pan Chettiar and P.N.ST. Nallakaruppan Chettiar
dated the 23rd day of May, 1960 be and is hereby
dismissed AND IT IS ORDERED that the said PR.SP.
Periakaruppan Chettiar and P.N.ST. Nallakaruppan
Chettiar do pay to P.N.CT. Ganapathy Chettiar the
costs of this application as taxed by the proper
officer of this Court.

30 Given under my hand and the seal of the Court
this 20th day of June, 1960.

Sd. Gunn Chit Tuan
Senior Assistant Registrar,
Supreme Court,
Kuala Lumpur.

In the
High Court at
Kuala Lumpur

No. 16

GROUNDS OF JUDGMENT ON MOTION

No. 16

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

Grounds of
Judgment on
Motion.

IN THE HIGH COURT AT KUALA LUMPUR

Originating Summons No.68 of 1960.

28th June, 1960.

(Petition No.275 of 1954)

IN THE ESTATE of P.N.ST. Sithambaram Chettiar
alias PR.A. Sithambaram Chettiar
alias Sithambaram Chettiar alias
P.N.ST. Sithamparam Chettiar son
of Nallakaruppan Chettiar deceased.

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P.N.CT. GANAPATHY CHETTIAR Applicant

This was a notice of motion in which Mr.S.D.K. Peddie, Counsel for PR.SP. Periakaruppan Chettiar and P.N.ST. Nallakaruppan Chettiar, sought for an Order that the order made by me on the 25th of April, 1960 be set aside or alternatively that the said order be varied to provide for liberty for the applicant to sell and transfer an undivided 19/24 share of the lands held under Selangor Grants Nos. 5558 and 6468 for Lots Nos.990 and 1308 in the Mukim of Cheras in the District of Ulu Langat to any person or persons at a price of not less than \$1,000/- per acre and that the said PR.SP. Periakaruppan Chettiar and P.N.ST. Nallakaruppan Chettiar be at liberty to appear and answer the application by the applicant on such terms as the Court may deem just. Mr. R. Ramani who acts for the administrator opposed the motion.

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The motion arose in this way. One P.N.CT. Ganapathy Chettiar (hereinafter referred to as the administrator) is the administrator of P.N.ST. Sithambaram Chettiar who was a partner in the money lending firm known as N.P.R. which carried on business at 6 Main Street, Kajang (hereinafter referred to as the firm). At the time of his death the deceased had registered in his name an undivided 19/24 share in each of the lots held under Selangor Grants 5558 and 6468 for lots 990 and 1308 in the Mukim of Cheras in the District of Ulu Langat (hereinafter referred to as the land) which comprised a total acreage of a little more than 153 acres. The land

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was in fact part of the partnership assets. The deceased was the registered proprietor of the land as partner and he held the land in trust for himself and his partners.

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10 At the present time the only remaining asset of the firm which by virtue of the death of the deceased was dissolved, is this 19/24 share in the land. The land is cultivated as a rubber estate, which is managed by one Sockalingam Chettiar who supervises its running and who pays the wages of the labourers, sells the rubber and receives the proceeds of sale.

20 At all material times the other partners were P.M.P. Mallakaruppan Chettiar, P.M.P. Vairavan Chettiar, SP. Krishnappa Chettiar and PR.SP. Periakaruppan Chettiar. The first three of these are in India and are hereinafter referred to as Indian partners. The facts have been taken from the affidavit of P.N.CT. Ganapathy Chettiar affirmed on the 14th of April, 1960 (hereinafter referred to as Encl.1), the affidavit of P.N.ST. Mallakaruppan Chettiar affirmed on the 12th day of May, 1960 (hereinafter referred to as Encl.8), the affidavit of PR.SP. Periakaruppan Chettiar affirmed on the 12th day of May, 1960 (hereinafter referred to as Encl.9) and the further affidavit of P.N.CT. Ganapathy Chettiar affirmed on the 18th day of June, 1960 (hereinafter referred to as Encl.12).

30 In support of the originating summons dated 20th of April, 1960 the administrator, who was seeking leave of the Court to sell the land in accordance with the provisions of the Probate and Administration Ordinance (35/59) Section 60, deposed that he had been approached by the said PR.SP. Periakaruppan Chettiar the agent of the firm, with a view to giving option for the sale of the said land. As a result of correspondence the Indian partners gave their authority to give an option for the sale of the land at \$1,000 per acre or to sell the said land at a price of excess of \$850 per acre with the consent and approval of PR.SP. Periakaruppan Chettiar. The administrator further deposed that he obtained the oral consent of the said PR.SP. Periakaruppan Chettiar on or about 20th October, 1959 (see Encl. 1 paragraphs 4 and 5) for such sale. This is however denied by PR.SP. Periakaruppan Chettiar in the last line of paragraph 3 of Encl.9.

The deceased proprietor of the land had

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apparently two sons, the administrator and the said P.M.ST. Nallakaruppan Chettiar who has deposed in Encl. 8 that he is entitled to a share in the estate of the deceased and that he was not served with any notice of the ex parte application heard on the 25th April made to the Court for leave to sell the land.

At the time of the application an agreement had been entered into subject to the approval of the Court between the administrator as vendor on the one part and one Loh Hock Peh of No.8, Mendaling Street, Kajang and 2 others of the other part to purchase the land at the price of \$900 an acre and a sum of \$10,000 has been deposited with the vendor's solicitors. At that time the price of rubber was \$1.21½ per pound (Encl. 12 paragraph 7).

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At the hearing of the ex parte application Mr. Ramani explained that he proceeded ex parte because the administrator was selling not the property which formed part of the estate but property which the deceased held in trust for himself and his partners namely partnership property. He also said that all the partners had agreed to the sale. That being the case having read affidavit in support and the documents exhibited thereto I gave leave for the sale of the property in accordance with the terms of the contract in Exhibit 'B' to Encl. 1.

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FR.SP. Periakaruppan Chettiar and PN.ST. Nallakaruppan Chettiar now seek to have this order set aside. They base their application on two grounds. The first ground was that the administrator had failed to disclose to the court a letter dated 29th of March, 1960 (Exhibit 'B' to Encl.9) which purports to vary the instructions given in the letter of the 7th of October, 1959 (Exhibit 'A' to Encl.1). In paragraph 3 of the letter of the 29th March which was addressed to Sockalingam Chettiar, the addressee was instructed to consult one Venkatachalam Chettiar of Muar and FR.SP. Periakaruppan Chettiar who lives with him at 6, Main Street, Kajang, over the question of the sale of the land. The answer to this allegation is contained in the administrator's affidavit (Encl.12, paragraphs 3, 4 and 5). It is clear that the administrator and his solicitors were unaware of this letter until after the making of the order of the 25th of April and Mr. Peddie very properly did not pursue this ground. The second ground was that none of the partners for whom the land was held in trust nor PN.ST. Nallakaruppan Chettiar who is a beneficiary in the estate

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of the deceased were served under provisions of order 55 r.5(a) with copies of the proceedings.

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Mr. Peddie argued that this was a fatal defect and therefore that the order must be set aside. He cited in support of this In the Estate of Haji Patimah binti Haji Abdul Samat, VI. F.M.S. L.R.154. But in the present case Mr. Ramani pointed out that it must be appreciated that what was being dealt with here was partnership property and that, although the beneficiaries to the deceased's estate, that is to say, the administrator and his brother the said PN.ST. Nallakaruppan Chettiar would eventually benefit indirectly from the sale when the assets of the partnership come to be distributed among the surviving partners and the administrator of the deceased partner, what the administrator was seeking to do was to sell a piece of partnership property to enable the partnership to be wound up for the benefit of the surviving partners for whom and for himself the deceased held the land in trust. On this ground I do not think that PN.ST. Nallakaruppan Chettiar has any immediate right or interest in this property at all, and any right he has is contingent on the result of the winding up of the partnership. I do not think that he should have been served with a copy of the originating summons under O.55 r.5(a). It is quite obvious that there is some family differences between PN.ST.Nallakaruppan Chettiar and his brother the administrator. Exhibit 'B' to Encl. 9 and Exhibit 'A' to Encl. 12 make that clear. The only question therefore remains is whether or not the said Periakaruppan Chettiar as the only partner in this country and therefore a beneficiary of the trust under which the land is held should have been served.

It is abundantly clear that the said PR.SP. Periakaruppan Chettiar who lives with Sockalingam Chettiar must have been fully aware of all the negotiations leading up to making of the agreement (Exhibit 'B' to Encl. 1). I would draw the inference from his affidavit (Encl. 9) that he is trying to make things as difficult as possible for the administrator. He denies for example that Sockalingam Chettiar is carrying on the firm as agent of all the partners yet it is to Sockalingam Chettiar that the partners in India write on this matter. P.N.S. Sockalingam Chettiar's position is set out in Exhibit D.2 to Encl.12 by his own solicitors. The allegations contained in paragraph 3 of Encl. 9 are

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- continued.

quite unfounded since the letter to which he refers is not even addressed to the administrator but to P.L.S. Sockalingam Chettiar himself. In my opinion this application is motivated to a certain extent by spite.

However on my reading of Order 55 r.3 and r.5 I am of the opinion that although all the partners including P.R.SP. Periakaruppan Chettiar were well aware of what was going on and that although I am satisfied that P.R.SP. Periakaruppan Chettiar had already given his consent verbally to the sale of the property to the purchasers at \$900 an acre pursuant to the instructions contained in the letter dated 7th October, 1959 (Exhibit "A" to Encl.1), technically he should have been served under O.55 r.5(a) with the summons.

The question therefore arose whether or not I should set the order of the 25th April aside or vary it as Mr. Peddie asked me. Mr. Peddie cited the case of Che Ah and Che Yang Kelsom vs. Che Ahmad reported in (1941) 10 M.L.J. 126. Mr. Peddie pointed out there had been no independent valuation in this case and that when the purchaser made the contract he well knew that it was subject to the approval of the Court. However the facts in Che Ah's case are very different from the present one. It may be noted that in that case before the application was heard two of the beneficiaries brought to the notice of the Court that they had received an offer of \$14,000 as against the sum of \$12,777.50 for which the approval was asked. In this case, although the only partner in this country and the agent of the firm were well aware of the proposed sale, no steps at any time were taken to notify the administrator's solicitors that the price was too low. It is obvious that at the time that the contract was made and at the time the order was made the price was a fair one, the price of rubber being what it was at that time. As Terrell, J.A. said in Che Ah's case:

" In all these cases the duty of the Court is to protect the rights of the parties who have an interest in the property to be sold, and it is a matter for the discretion of the Judge whether the sale should be by public auction or whether the Court is satisfied that, in a private sale, the highest price can be obtained. Where in an application under the Federated Malay States procedure all the beneficiaries are sui juris and have consented the Court will be entitled to assume that the price offered is the best obtainable."

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and I do not think that this is a proper case in which to interfere with the order of the 25th of April. The Indian partners agreed to a sale at a figure of over \$850. The partners in the Federation are sui juris and were fully aware, through their solicitors of what was happening and took no steps to protest. The contract was already entered into at a time when the price of rubber was lower than it was at the time of the subsequent offer. I was satisfied that the original offer was a fair one made by someone willing and able to complete. By the provisions of O.70 the order made on the 25th April is not void, and taking all the circumstances of this case into consideration a fair bargain was struck and I do not think that the duty of the Court to protect the interests of the beneficiaries extends to setting aside an order which will have the effect of setting aside a perfectly fair contract because now owing to an enhanced price of rubber the value of the estate has risen.

I therefore dismissed the application with costs.

Sd. J.G. Adams
Judge,
Supreme Court,
Federation of Malaya.

Kuala Lumpur,
28th June, 1960.

In the
High Court at
Kuala Lumpur

No. 16

Grounds of
Judgment on
Motion.

28th June, 1960
- continued.

No. 17

NOTICE OF APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR

F.M. Civil Appeal No.50 of 1960

PR.SP. PERIAKARUPPAN CHETTIAR
P.N.ST.NALLAKARUPPAN CHETTIAR Appellants

versus

P.N.CT. GANAPATHY CHETTIAR Respondent

(In the matter of the Kuala Lumpur Originating Summons No.68 of 1960 - Petition No.275 of 1954

In the Estate of P.N.ST.Sithambaram Chettiar alias PR.A. Sithambaram Chettiar alias Sithambaram Chettiar alias P.N.ST.Sithamparam Chettiar son of Nallakaruppan Chettiar deceased

P.N.CT. GANAPATHY CHETTIAR (Applicant)

In the
Court of Appeal
at Kuala Lumpur

No. 17

Notice of
Appeal.

21st June, 1960

In the
Court of Appeal
at Kuala Lumpur

No. 17

Notice of
Appeal.

21st June, 1960
- continued.

TAKE NOTICE that PR.SP. Periakaruppan Chettiar and P.N.ST. Nallakaruppan Chettiar, the Appellants abovenamed, being dissatisfied with the decision of the Honourable Mr. Justice Adams given at Kuala Lumpur on the 20th day of June 1960 appeal to the Court of Appeal against the whole of the said decision.

Dated this 21st day of June, 1960.

Sd. Bannon & Bailey
Solicitors for the
Appellants.

1. Sd. PR.SP. Periakaruppan
Chettiar. In Tamil
2. Sd. P.N.ST. Nallakaruppan
Chettiar

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Signatures of Appellants.

To:

P.N.CT. Ganapathy Chettiar or his
Solicitors Messrs. Braddell & Ramani,
Hongkong Bank Chambers,
Kuala Lumpur.

The address for service of the Appellants is c/o
Messrs. Bannon & Bailey, Advocates & Solicitors,
Laidlaw Building, Mountbatten Road, Kuala Lumpur.

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No. 18

No. 18

Memorandum of
Appeal.

MEMORANDUM OF APPEAL

27th July, 1960.

PR.SP. Periakaruppan Chettiar and P.N.ST. Nallakaruppan Chettiar the Appellants abovenamed appeal to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice Adams given at Kuala Lumpur on the 20th day of June, 1960 on the following grounds :-

1. That the Learned Judge was wrong in law in holding that as the Second Appellant had not any immediate right or interest in the property but only a right contingent on the result of the winding up of the partnership he need not have been served with the Originating Summons under Order 55 Rule 5 A (a). The Learned Judge should have held that as the Second Appellant had a right or interest sought to be affected by the proposed order to be made he must be served under Order 55 Rule 5 A (a) and that

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an ex parte Originating Summons was an inappropriate form of procedure for that purpose in the circumstances.

In the
Court of Appeal
at Kuala Lumpur

No. 18

Memorandum of
Appeal.

27th July, 1960.

- continued.

2. That the Learned Judge was wrong in holding that the First Appellant's application was motivated by a desire to make things difficult for the administrator. There was nothing contained in his affidavit to justify such inference drawn from it by the Learned Judge.

10 3. That the Learned Judge was wrong in holding the application was motivated by spite. There was no evidence to support such finding.

20 4. That the Learned Judge was wrong in holding that the First Appellant had consented to a sale at a price of \$900/- per acre. The evidence supported the contention that there was a dispute as to whether such consent had been given. In any event the letter of the 29th March 1960 from the Indian partners shewed that their consent to the proposed sale was subject to consultation with and advice of Sri PL.M.Venkatachalam Chettiar and Sri PR.SP. Periakaruppan Chettiar which had neither been sought nor obtained.

5. That the Learned Judge was wrong in holding that the price of \$900/- per acre was a fair one at the time the contract was made. There was no evidence to support this finding. No independent valuation was adduced in evidence.

30 6. That if the Learned Judge was entitled to consider the ruling price of rubber from time to time then the Learned Judge should also have taken into account the price of rubber ruling on the date the alleged consent to the sale was given by the First Appellant and should have taken into account any increase in the price of rubber between the date of the alleged consent and the date of the contract of sale in order to determine whether the alleged consent continued operative at the date of the hearing of the application.

40 7. That the Learned Judge failed to take into account the fact that there was no evidence before him relating to the date on which the offer of \$1,000/- per acre was made nor of the date in which the offer of \$900/- per acre was made and that there was, therefore, no yardstick available by which he

In the
Court of Appeal
at Kuala Lumpur

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Memorandum of
Appeal.

27th July, 1960
- continued.

could determine the rubber prices prevailing upon the dates of the respective offers in order to determine whether these offers represented a fair and proper valuation of the property.

8. The Learned Judge was wrong in holding that this was not a proper case in which to interfere with his order of the 25th April, 1960. He should have reversed his order having referred to (a) the fact that at the time when the motion for reversal or variation of such order was heard there was a firm offer of \$1,000/- per acre for the said land contained in paragraph 6 of the First Appellant's affidavit dated 12th May, 1960 and (b) the duty of the Court to protect the rights of parties having an interest in the property to be sold.

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9. That in all the circumstances the Learned Judge was wrong in exercising his discretion under Order 70 Rule 1 in favour of the Respondent.

Dated this 27th day of July, 1960.

Sd. Bannon & Bailey,
Solicitors for the Appellants.

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To:- The Registrar,
Supreme Court, Kuala Lumpur.

and

P.N.C.T. Ganapathy Chettiar or his Solicitors,
M/s. Braddell & Ramani, Kuala Lumpur.

The address for service of the Appellants is care of Messrs. Bannon & Bailey, Laidlaw Building, Mountbatten Road, Kuala Lumpur.

No. 19
Thomson, C.J's.
Notes of
Arguments on
Appeal.
5th October,
1960.

No. 19

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THOMSON, C.J'S NOTES OF ARGUMENTS ON APPEAL

Cor: Thomson, C.J.
Hill, J.A.
Ong, J.

5th October, 1960

For Appellants: Seth & Peddie.
For Respondent: Ramani.

Seth:

Land belonged to N.P.R. Registered owner was

one of the partners. He is the deceased. He held as trustee for partners and self.

Administration granted to Respondent who asked approval of proposed contract of sale @ \$900 per acre and J. granted leave to sell.

20.6.60 J. refused to vary order granting leave to sell.

Original order was made on ex parte O.S.

10 Alleged consent given in October 59. Application for sale was made 20.4.60. Conditional contract dated 31.3.60. Administrator relied on consent made 6 months previously. Application made ex parte. Persons having rights or interests should have been served. O.S. filed 20.4.60. 22.4.60 copy sent to Bannon & Bailey & letter sent to Periakaruppan dated 22.4.60. Posted 23.4.60. He received it 25.4.60 the date of hearing. He came to Court but was told he was not a party and could not be heard.

20 Nallakaruppan wrote to Registrar on 12.4.60 & said he wished to be served. 21.4.60 Registrar replied saying he had no power to direct Administrator to serve him but his letter would be put before the Judge.

Nevertheless application was heard ex parte.

There was no evidence of independent valuation.

Daniel's Chancery Forms (7th Ed.) p.572.

Application should not have been heard ex parte.

30 23.5.60 N/M filed for Periakaruppan and Nallakaruppan to set aside or vary Order. That was based on offer of \$1,000 per acre i.e. \$15,000 in all.

G.A. 1.

Application by Administrator was made under s.60(4) of Ordinance 35 of 1959. Procedure set out in O.55 r.3, 5. R.5 is mandatory.

Here the property was partnership property.

Deceased was r. p. but held interest for himself

In the
Court of Appeal
at Kuala Lumpur

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Thomson, C.J's.
Notes of
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- continued.

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Appeal.
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- continued.

and other partners. In so far as deceased was a partner his share in the firm was held by administrator in trust for beneficiaries of estate.

O.S. should have been served on at least one of the beneficiaries of each of the trusts i.e. on a partner and on a beneficiary of deceased's estate Nallakaruppan as a beneficiary.

If in doubt administrator could have asked for directions of Court as to service - 0.55 r.6.

Haji Fatimah 6 F.M.S.L.R. 154.

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What was being sold included deceased's beneficial interest in the property. 0.55 r.5 applies to all rights - immediate or contingent.

G.A. 2 & 3.

No question of spite etc. Nothing in the affidavits to support anything of the sort.

G.A. 4.

Judge should not have held appellant consented to sale at \$900 per acre. There was a conflict of testimony on this point. Appellant denied he gave any form of consent.

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G.A. 5.

There was no evidence of valuation.

G.A. 6 & 7.

If Judge was going to consider rubber price at all he should have considered it on all material dates.

G.A. 8.

There was a firm offer of \$1,000 per acre for the land.

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Che Ah & anor v. Che Ahmad (1941) M.L.J. 126, 127. It is not for the Court to consider the interest of the purchaser. Judge should have considered the higher offer he had before him.

Case for Appellant.

Ramani:

Question is whether order of 25.4.60 was properly made on the grounds available at that date.

Non-disclosure was abandoned before Adams, J. Only point was whether or not there was necessary service, and if not, what was the effect of the defect.

There was litigation going on between the 2 brothers.

10 Bannon & Bailey were acting for the firm
(Peddie: Our only instructions were from Sockalin-
gam).

If it was partnership property registered in name of a living party there was no necessity to go to Court. But under Land Code Administrator cannot convey (Land Code. s.155).

The property was the property of the partners. No partner can say he has any share in any identifiable portion of the partnership property.

20 Lindley "Partnership" (11th Ed.) 426.

In reply to Court:

R.P. was Sithambaram Chettiar - solus.

S.P. got I/A.

Then he went on the Register "as representative",

Ramani continues:

Situation similar to present one arose in:
In re Sethuramaswamy Chettiar (1950) M.L.J. 300.
White Book (1960) 1502.

30 In re King (1907) 1 Ch. 72.

As far as the beneficiary is concerned, as far as the estate might have a future claim that would be entirely a contingent claim.

The land was not property of the estate of Sithambaram.

In the
Court of Appeal
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No. 19
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Arguments on
Appeal.

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In the
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Application not made under 0.55 r.3. It is
made under an omnibus provision of the old procedure
s.472 C.P.C. which is 0.72 r.2.

No. 19
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Notes of
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Appeal.

5th October,
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On this story the 2 C/A c/s relied on by Seth
are not in point.

They have been remiss. They had time to act
before we perfected the order, see:

In re Thomas (1911) W.N. 143

Before Adams, J., the estate was fully repre-
sented by the Administrator.

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Sudeley v. A-G. (1897) A.C. 11, 15.

As to position of trustee:

Harper v. Hayes 45 E.R. 731.

Case for Respondent.

Seth:

Ramani has raised the question of 0.72 r.2.
This has been raised for the first time. In fact
application was made under 0.55 r.3. 0.72 r.2 is
an afterthought.

"Property" under 0.35/59 includes "any inter-
est".

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The facts in (1950) M.L.J. 300 were different
from the present facts.

On the question of "interest":

Mason v. Schuppisser 81 LT. 147.

Material before Judge in first instance were
insufficient to justify his finding that \$900 was
a fair price.

0.70 r.1.

Ramani:

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As to Mason v. Schuppisser.

C.A.V.

6th October, 1960

Judgment for Appellant. Order of 25.4.60 set aside.
Costs against administrator personally.

Sgd. J.B. Thomson

C.J.

6.10.60.

No. 20

JUDGMENT ON APPEAL
(THOMSON, C.J.)

Cor: Thomson, C.J.
Hill, J.A.
Ong, J.

In the
Court of Appeal
at Kuala Lumpur

No. 20

Judgment on
Appeal.
(Thomson, C.J.)

6th October,
1960.

The respondent to this appeal is a son and the administrator of the estate of one Sithambaram Chettiar, deceased.

10 Up to the time of his death the deceased carried on a moneylending business in this country under the name of N.P.R. in partnership with three persons residing in India and one Periakaruppan Chettiar residing in this country. Since the death of the deceased the business known as N.P.R. has been carried on by one Sockalingam Chettiar as agent for the surviving partners. The partners owned undivided 19/24 shares in two pieces of land which were registered in the name of the deceased.

20 On obtaining administration the administrator had himself registered as proprietor of the land "as representative" by virtue of section 155 of the Land Code. This may not have been the only course which could have been taken but it is the course he took and nobody has complained of his taking it. The result was that he had then incurred obligations of a fiduciary nature in connection with the land to two sets of persons, the beneficiaries of the estate and the former partners of the deceased. It is not
30 clear who all the beneficiaries are but one of them is one P.N.ST. Mallakaruppan, a son of the deceased, who is one of the present appellants. The partners have already been mentioned.

40 It was apparently agreed that as a step towards discharging his fiduciary obligations the administrator should take steps to sell the land and in the event the partners resident in India agreed that, subject to the agreement of Periakaruppan, it should be sold for not less than \$850 an acre. In pursuance of this the administrator negotiated a contract with prospective purchasers for sale at \$900 an acre, subject to the approval of the Court. The administrator has said that Periakaruppan agreed orally to this agreement but this

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Court of Appeal
at Kuala Lumpur

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Judgment on
Appeal.
(Thomson, C.J.)

6th October,
1960.

- continued.

has later been denied by Periakaruppan, both the assertion and the denial having been made in affidavits on which the deponents have not been cross-examined.

In accordance with this agreement the administrator proceeded to apply to the Court for approval of the sale and, although I will return to the point later, on the face of it he did so as if he were applying under the provisions of section 60(4) of the Probate and Administration Ordinance (No.35 of 1959) for permission to transfer the land to the proposed purchasers.

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What he did was to take out an Originating Summons which bore to be issued in the matter of Petition No.275 of 1960, which was his original application for administration. This Summons was issued on 20th April, 1960, which was a Wednesday and was returnable on 25th April, which was a Monday. It was entitled to be ex parte and was served on nobody although Periakaruppan and the solicitors for Seckalingan, the manager of the partnership firm, were informed in writing that it had been issued. The letter to Periakaruppan was not posted till 23rd April and he says he did not receive it till 25th which was the return day.

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On the return day Periakaruppan appeared outside the Judge's Chambers with a view to opposing the application but was denied access to the Judge on the ground that he was not joined as a party. The Judge, who I hasten to add, was wholly ignorant of the presence of the rejected suppliant outside his Chamber door, proceeded to make the order prayed for giving the administrator permission to sell at \$900 an acre.

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Had the administrator taken immediate steps to act in accordance with this order the present proceedings would not have arisen, at least not in their present form. But he did not do so and on 23rd May Periakaruppan and P.N.ST.Nallakaruppan filed a Notice of Motion for an order setting aside the Judge's Order of 25th April or alternatively varying that Order so as to allow a sale at a price of not less than \$1,000 an acre. Their grounds, as set out in their affidavits, were briefly that P.N.ST. Nallakaruppan as a beneficiary of the estate of the deceased had not been served with the Originating Summons, that Periakaruppan

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had not as alleged by the administrator agreed to a sale at \$900 an acre, that such a price was below the true value of the land and that they had in fact a prospective purchaser at \$1,000 an acre. That application was dismissed by Adams, J., and against that decision Periakaruppan and P.N.ST. Mallakaruppan have now appealed.

10 Before proceeding further I would like to say that if Periakaruppan stood alone his case would require very careful scrutiny. There has to be some finality in human affairs and once the Court has approved a sale at a certain price on an application made in good faith by an administrator in my opinion it should be very chary indeed to upset that arrangement simply on the ground that an offer of a better price could have been had.

But the case of P.N.ST. Mallakaruppan, the beneficiary, warrants much more careful consideration.

20 The law of this country brings administrators much more strictly under the control of the Court than does the law of England. In particular section 60(4) of the Probate and Administration provides as follows :-

"An administrator may not, without the previous permission of the Court --

- 30 (a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property situate in any State other than the States of Penang and Malacca and for the time being vested in him, or
- (b) lease any such property for a term exceeding five years."

40 No doubt that section has in view the virtual impossibility under our land laws of attacking the position of a purchaser for value who acts in good faith. The wording of the section is worthy of note. It does not speak of the property of the deceased or anything of that sort. It speaks of "any immovable property for the time being vested" in the administrator. And that expression to my mind catches fairly and squarely the land in the present case. Rightly or wrongly the administrator

In the
Court of Appeal
at Kuala Lumpur

No. 20

Judgment on
Appeal.
(Thomson, C.J.)
6th October,
1960
- continued.

In the
Court of Appeal
at Kuala Lumpur

had acted under section 155 of the Land Code and in consequence the land had become vested in him as administrator.

No. 20

Judgment on
Appeal
(Thomson, C.J.)
6th October,
1960
- continued.

In my opinion it follows that any application to the Court for approval of a sale was an application within the scope of Order 55 rule 3(f) as being an application by an administrator for approval of a sale. It has been argued that by virtue of Order 72 rule 2 the application should have been treated as having been made under section 472 of the now repealed Civil Procedure Code (F.M.S. Cap.7). But to my mind that argument is without substance. Order 55 rule 3 contains nothing new, it merely re-enacts the provisions of section 467 of the old Code and section 472 of the Code only had application where section 467 did not apply.

10

It would then seem to follow that the question of service was governed by the provisions of Order 55 rule 5.A(a) which reads as follows :-

"5. The persons to be served with the summons under the last two preceding rules in the first instance shall be the following; (that is to say,

20

A. Where the summons is taken out by an executor or administrator or trustee, -

(a) for the determination of any question, under sub-sections (a), (e), (f) or (g) of rule 3, the persons, or one of the persons, whose rights or interests are sought to be affected:"

30

The question then arises whether in all the circumstances of the present case P.M.ST. Nallakuruppan was a person whose "rights or interests" were "sought to be affected".

In my view he was. It is true that the beneficiary of the estate of a deceased person has no "interest" in any specific piece of property which is vested in the administrator in the sense that he has no real interest in any such piece of property. (See Lord Sudeley v. The Attorney-General (1897) A.C. 11.) But I do not think the word in the rule can be interpreted in the strictly technical sense of a real interest. To my mind the word is used in a less technical sense, in the sense that he should have a pecuniary and patrimonial interest in

40

that he will in due course become entitled to a share in the ultimate net product of the estate, in what is left after the assets have been realised and the liabilities discharged. On any other interpretation it would never be necessary to serve any beneficiary for no beneficiary in an intestacy could have any other sort of right.

In the
Court of Appeal
at Kuala Lumpur

No. 20

Judgment on
Appeal
(Thomson, C.J.)

6th October,
1960

- continued.

10 After all any step taken by the administrator by way of administering the estate will affect the ultimate amount of each beneficiary's ultimate share, particularly where that step consists in selling any property it cannot but affect that result. In the present case the former partners of the deceased had no doubt an interest that was much greater in value than that of the beneficiary. Nevertheless the price for which the land was sold was something which would affect the amount which ultimately came to him and thus the question of sale was something that did affect his interests within the meaning of the rule. Perhaps in view of the reference that has been made to the cases of Re King (1907) 1 Ch. 72. and Sethuramaswamy 1950 M.L.J. 300. I should add that there was nothing contingent about that interest. No doubt the value of what was to come to him was subject to all sorts of chances and contingencies but the fact that something was to come was not subject to any contingency.

30 In the circumstances I am of the opinion that Adams, J., should have followed the decision of this Court in the case of Haji Fatimah binti Haji Abdul Samat 6 F.M.S.L.R. 154 and set his original order aside. As I said ten years ago in the case of Sethuramaswamy (Supra) the report of Fatimah's case is not very satisfactory. Nevertheless the effect of that decision has been known to the profession and followed by Judges for thirty years and it would be a great misfortune if anything were done now to weaken its force. At this stage any question as to its being wrongly decided will have to be taken elsewhere.

40 I would then allow the appeal and in the light of the case of Craig v. Kanseen (1943) 1 A.E.R. 108 I think the proper course would be simply to say that the Order of 25th April, 1960, is a nullity and to set it aside. As regards costs I consider these should be borne by the administrator personally.

Sgd. J.B. Thomson
CHIEF JUSTICE,
FEDERATION OF MALAYA.

Kuala Lumpur
6th October, 1960.

50 Messrs. K.A. Seth & S.D.K. Peddie for appellants.
R. Ramani, Esq., for respondent.

Hill, J.A. concurred.

Ong, J. concurred.

In the
Court of Appeal
at Kuala Lumpur

No. 21

ORDER ALLOWING APPEAL

No. 21

Order allowing
Appeal.

6th October
1960

BEFORE: THE HONOURABLE DATO SIR JAMES THOMSON,
P.M.N., P.J.K., Chief Justice, Federation
of Malaya.
THE HONOURABLE MR. JUSTICE HILL, B.D.L.,
Judge of Appeal, and
THE HONOURABLE MR. JUSTICE ONG.

IN OPEN COURT,

This 6th day of October, 1960.

10

THIS APPEAL coming on for hearing on the 5th day of October, 1960 in the presence of Mr. Kenneth A. Seth (with him Mr. S.D.K. Peddie) of Counsel for the Appellants and Mr. R. Ramani of Counsel for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING the arguments of Counsel aforesaid IT WAS ORDERED that this Appeal do stand adjourned for Judgment to the following day and the same coming on for Judgment this day in the presence of Counsel as aforesaid IT IS ORDERED that this Appeal be and is hereby allowed and that the Order made on the 25th day of April, 1960 in ex parte Originating Summons No.68 of 1960 be set aside AND IT IS ORDERED that the costs of this Appeal be taxed by the proper Officer of this Court and be paid by the Administrator, that is, P.N.C.T. Ganapathy Chettiar, the Respondent herein, personally, to the Appellants.

20

Given under my hand and the seal of the Court
this 6th day of October, 1960.

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Sd. Shiv Charan Singh

ASSISTANT REGISTRAR,
COURT OF APPEAL,
FEDERATION OF MALAYA.

No. 22

AFFIDAVIT of R. RAMANI in SUPPORT of MOTION for
REVIEW

In the
Court of Appeal
at Kuala Lumpur

No. 22

I, RADHAKRISHNA RAMANI, an Advocate and Solicitor of this Honourable Court, do hereby affirm and say as follows:

Affidavit of
R. Ramani in
Support of
Motion for
Review.

10th October,
1960.

1. My firm are the Solicitors for the Respondent herein and I appeared as Counsel in this appeal as well as in the proceedings in the Court below.

10 2. Having listened to the oral judgment of the President of the Court of Appeal, I consider it to be my duty to correct what appears to be an error that has crept into the consideration of the matter by the Court of Appeal.

20 3. At the hearing of the application in Chambers on the 25th day of April, 1960 before His Lordship Mr. Justice Adams the 2nd Appellant did appear before him and mentioned to His Lordship that he was a beneficiary of the estate of Sithambaram Chettiar deceased and that he wanted that upon the proceeds of the sale of the land being realised the Administrator should not be permitted to receive the share due to the Estate without reference to him.

30 His Lordship informed him through the interpreter that he had read the letter that he (the 2nd Appellant) had written to the Registrar, that at the moment he was dealing with the sale of Partnership property and that as and when the share belonging to the estate is ascertained he could apply to the Court for any necessary reliefs. He also informed him that that stage had not arrived and there was nothing he could do to help him at that stage.

The letter mentioned by His Lordship and the reply received by the 2nd Appellant from the Registrar were referred to by counsel in the course of his argument in support of the appeal.

I personally understand the Tamil language in which the 2nd Appellant made known his attitude to the Judge and Judge's reply as interpreted to him.

40 4. On the 20th day of June, 1960 in the course of Mr. Peddie's argument in support of his application

In the Court of Appeal at Kuala Lumpur

to set aside the order of the 25th day of April, 1960 His Lordship interrupted counsel to inform him that his client the 2nd Appellant had in fact appeared before him and had been heard.

No. 22

Affidavit of R. Ramani in support of Motion for Review.

10th October, 1960
- continued.

5. The order of the Court of Appeal not having yet been drawn up and entered the Respondent is anxious to have the matter brought to the notice of the Court.

6. The Respondent desires further to submit that having regard to the context of his original application the order for costs against him personally should also be varied so as not to deny to the Respondent his rights to be indemnified as administrator both against the Estate of the deceased and the Partnership, there having been no allegation whatever against him of any misconduct.

10

AFFIRMED at Kuala Lumpur }
this 10th day of October, } Sgd. R. Ramani.
1960. }

Before me,
Sgd. S.S. Gill,
Magistrate,
Federation of Malaya.

20

No. 23

Notice of Motion for Review.

11th October, 1960.

No. 23

NOTICE OF MOTION FOR REVIEW

TAKE NOTICE that on Monday the 12th day of December 1960 at 10.00 o'clock in the forenoon, or as soon thereafter as he can be heard Mr. R. Ramani of counsel for the abovenamed Respondent will move the Court for an order that the Judgment delivered by the Court on the 6th day of October, 1960 be reviewed and varied on the grounds and for the reasons stated in the Affidavit of Radhakrishna Ramani affirmed on the 10th day of October, 1960 and filed in support hereof.

30

(SEAL) Sd. Braddell & Ramani.
Solicitors for the Respondents.

Dated at Kuala Lumpur this 11th day of

October, 1960.

Filed this 10th day of October 1960.

Sd. Shiv Charan Singh
Asst. Registrar,
Court of Appeal,
Kuala Lumpur.

To

The Appellants abovenamed
or their solicitors,
M/s. Bannon & Bailey,
KUALA LUMPUR.

10

In the
Court of Appeal
at Kuala Lumpur

No. 23

Notice of
Motion for
Review.

11th October,
1960
- continued.

This Notice of Motion was filed by M/s. BRADDELL & RAMANI, Hongkong Bank Chambers, Kuala Lumpur, Solicitors for the Respondent and is supported by the Affidavit of Radhakrishna Ramani affirmed on the 10th day of October, 1960 and filed.

No. 24

AFFIDAVIT of P.N.CT. GANAPATHY CHETTIAR in support of NOTICE OF MOTION for CONDITIONAL LEAVE to APPEAL

No. 24

Affidavit of
P.N.CT.
Ganapathy
Chettiar in
support of
Notice of
Motion for
Conditional
Leave to
Appeal.

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I, P.N.CT. GANAPATHY CHETTIAR son of Sithambaram Chettiar of full age of Indian nationality and residing at No.A.H.3 Municipal Flats, Batu Road, Kuala Lumpur, do hereby affirm and say as follows:

10th November,
1960.

30

1. I am the abovenamed Respondent and the Administrator of the Estate of my late father, P.N.ST. Sithambaram Chettiar alias PR.A. Sithambaram Chettiar alias Sithambaram Chettiar alias P.N.ST. Sithambaram Chettiar son of Nallakaruppan Chettiar deceased (hereinafter called the said Sithambaram Chettiar deceased).

2. At the time of his death the said deceased was the registered proprietor of an undivided 19/24 share of the lands held under Selangor Grants Nos. 5558 and 6463 for lots 990 and 1308 in the Mukim of Cheras in the District of Ulu Langat (hereinafter referred to as the said lands).

In the Court of Appeal at Kuala Lumpur

No. 24

Affidavit of P.N.CT. Ganapathy Chettiar in support of Notice of Motion for Conditional Leave to Appeal.

10th November, 1960
- continued.

3. On the 31st day of March, 1960 I as such administrator entered into an agreement for the sale of the said 19/24 undivided share in the said lands subject to an order of Court being obtained in that behalf to Low Hock Peh, Low Cheng Lim and Ng Tow Foo at the price of \$900/- per acre.

4. The ex parte Originating Summons caused to be issued by me on the 20th day of April, 1960 as such administrator for permission to sell the said lands was heard on the 25th day of April, 1960 and by an Order of Court of that date such permission was given to me.

10

5. The Appellants applied to set aside that order and having been unsuccessful before the Judge who made the order appealed against the said order and by its decision delivered on the 6th day of October, 1960 this Honourable Court allowed the Appeal and set aside the said Order of Court dated the 25th day of April, 1960.

6. I am desirous of appealing against the said Order of the Court of Appeal to the Yang di-Pertuan Agong.

20

7. The matter in dispute in the Appeal amounts to or is of the value of upwards of Four thousand Five hundred dollars.

8. I am willing to undertake as a condition for the grant of leave to appeal to enter into good and sufficient security to the satisfaction of the Court in any sum that may be prescribed and to conform to any other conditions that may be imposed.

30

AFFIRMED at Kuala Lumpur) Sgd. P.N.CT.Ganapathy
this 10th day of November,) Chettiar.
1960 at 10.30 a.m.)

Before me,

Sgd. K.S. Gopala Iyer
Commissioner for Oaths.



No. 25

NOTICE OF MOTION for CONDITIONAL LEAVE to APPEAL

In the
Court of Appeal
at Kuala Lumpur

No. 25

10 TAKE NOTICE that the Court will be moved on Monday, the 12th day of December, 1960 at 10.00 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Mr. R. Ramani of Counsel for the abovenamed Respondent for an Order that conditional leave to appeal to the Yang di-Pertuan Agong be given to the Respondent against the Order of the Court of Appeal on the 6th day of October, 1960.

Notice of Motion
for Conditional
Leave to Appeal
10th November,
1960.

Dated this 10th day of November, 1960.

Sd. Shiv Charan Singh
Asst. Registrar,
Court of Appeal,
Kuala Lumpur.

Sd. Braddell & Ramani
Solicitors for the
above-named
Respondent.

20 This Notice of Motion was taken out by Messrs. BRADDELL & RAMANI, Advocates and Solicitors, Hong Kong Bank Chambers, Solicitors for the abovenamed Respondent.

This Application is supported by the Affidavit of P.N.C.T. Ganapathy Chettiar son of Sithambaram Chettiar affirmed on the 10th day of November, 1960 and filed herein.

To,
Asst, Registrar,
Court of Appeal, Kuala Lumpur.

30 And to,
Messrs. Bannon & Bailey,
Solicitors for the Appellants,
Kuala Lumpur.

In the
Court of Appeal
at Kuala Lumpur

No. 26

AFFIDAVIT of PR.SP. PERIAKARUPPAN CHETTIAR
in OPPOSITION to MOTION for REVIEW.

No. 26

Affidavit of
PR.SP.
Periakaruppan
Chettiar in
Opposition to
Motion for
Review.

7th December,
1960.

I, PR.SP. PERIAKARUPPAN CHETTIAR son of Subramaniam Chettiar of full age and of Indian nationality residing at No.6 Main Street, Kajang, affirm and say as follows :-

1. I am the First Appellant abovenamed and a Respondent to the Motion notice whereof and the Affidavit of Radhakrishna Ramani in support thereof affirmed on the 10th of October 1960 have been read over, translated and explained to me. 10

2. I am informed by my solicitors Messrs. Bannon & Bailey and verily believe that the judgment of the Court of Appeal was a written judgment and was read in Court by the President on the 6th day of October 1960.

3. I object to paragraphs 3 and 4 of the said Affidavit as they purport to adduce evidence which could have been made available by Mr. Ramani to the Court of Appeal when he addressed the Court on the 5th day of October 1960. If this Honourable Court should hold that such evidence is admissible then I crave leave to refer to the exhibit now produced and shown to me and marked "A" which is a certified copy of the notes of Mr. Justice Adams on the hearing of the Originating Summons in Chambers on the 25th day of April 1960. 20

4. As regards paragraph 5 of the said Affidavit, I am informed by my said solicitors and verily believe that they submitted a draft Order of the Court of Appeal for approval by Messrs. Braddell & Ramani but approval was refused and this explains the reason for the delay in entering and filing the Order giving effect to the Judgment of the Court of Appeal. 30

5. Insofar as the Notice of Motion and paragraph 6 of Mr. Ramani's said Affidavit purport to achieve a reversal of the Order of this Honourable Court, I submit that only a higher authority or tribunal can grant the relief sought therein and I pray that the Motion should be dismissed. 40

In the
Court of Appeal
at Kuala Lumpur

No. 26

Affidavit of
PR.SP.
Periakaruppan
Chettiar in
Opposition to
Motion for
Review.

7th December,
1960
- continued.

6. There is on the record a Notice of Motion dated the 10th day of November 1960 for conditional leave to appeal to the Yang di-Pertuan Agong against the Order of the Court of Appeal made on the 6th day of October 1960. The said Notice of Motion is supported by an Affidavit of P.N.C.T. Ganapathy Chettiar son of Sithanbaram Chettiar affirmed on the 10th day of November 1960. I oppose the same but if this Honourable Court should be disposed to accede to it I pray that the following consideration inter alia may be taken into account in determining the conditions, if any, for granting the leave sought. There is now available a purchaser of the rubber estate belonging to the partnership business of the firm of N.P.R. who is willing to pay the sum of \$1,000/- per acre. This is referred to in paragraph 6 of my Affidavit affirmed in these proceedings on the 12th day of May 1960. I have also in such Affidavit undertaken to pay the same price for the said estate in the event of such purchaser failing to complete. I am informed by my said solicitors and verily believe that a period of at least one year and probably eighteen months may well elapse before this Appeal comes on for hearing before the Judicial Committee for report and recommendation and by that time the value of the rubber estate in question may undergo a substantial change.

30 AFFIRMED at Kuala Lumpur) Sd. PR.SP.
this 7th day of December,) PERIAKARUPPAN
1960.) CHETTIAR.

Before me:-

Sd. S. Ramanathan

A Commissioner for Oaths.

I hereby certify that the above Affidavit was read translated and explained by me to the deponent who seemed perfectly to understand it, declared to me that he did understand it, and made his signature in my presence.

40 Sd. S. Ramanathan
A Commissioner for Oaths.

This Affidavit is filed by Messrs. Bannon & Bailey on behalf of PR.SP. Periakaruppan Chettiar.

In the
Court of Appeal
at Kuala Lumpur

No. 27

THOMSON, C.J.'s. NOTES OF ARGUMENTS on MOTION for REVIEW

No. 27

Thomson, C.J.'s.
Notes of
Arguments on
Motion for
Review.

Cor: Thomson, C.J.
Hill, J.A.
Ong, J.

12th December, 1960.

12th December,
1960.

Appln. to review judgment.

For Appellant : Ramani

For Respondent : Seth & Lim

Ramani:

10

Ct. has power.

Halsbury XXII p. 784.

Order has not been drawn up.

In re Harrison's Settlements (1955) Ch.260, 267,
275, 283.

This is a case where Ct. shd. exercise its
powers.

The person who claimed to be served was present
in Ct.

Marsh v. Marsh (1945) A.C. 271, 283.
(wh. was not mentioned on 5.10.60) deals with ques-
tion of opportunity of being heard.

20

Then there is the question of costs. There was
no question of bad faith. In regard to an Adminis-
trator's costs Ct. has no discretion.

In re Sarah Knights Will 26 Ch. D. 82, 90.

Turner v. Hancock 20 Ch. D. 303.

Case for Appt:

Seth:

The whole thing has already been discussed.

30

The Ct. relied on Haji Fatimah - not as Ramani has argued on Craig v. Kanseen.

No cause has been shown to review the order of the Ct.

Ramani:

Kofi Porfie v. Seifah 1958 A.C. 59.

Appln. dismissed with costs against appt. personally.

Sgd. J.B. Thomson
C.J.
12.12.1960.

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In the Court of Appeal at Kuala Lumpur

No. 27

Thomson, C.J's.
Notes of Arguments on Motion for Review.

12th December, 1960
- continued.

No. 28

No. 28

ORDER DISMISSING MOTION for REVIEW

BEFORE: THE HONOURABLE DATO SIR JAMES THOMSON, P.M.N., P.J.K., Chief Justice, Federation of Malaya.

THE HONOURABLE MR. JUSTICE HILL, B.D.L.,
Judge of Appeal:

And

THE HONOURABLE MR. JUSTICE ONG.

20

Order dismissing Motion for Review.

12th December, 1960.

IN OPEN COURT,

This 12th day of December, 1960

UPON MOTION made unto the Court this day by Mr. R. Ramani of Counsel for the above-named Respondent in the presence of Mr. Kenneth A. Seth (with him Mr. Iin Sun Hoe) of Counsel for the above-named Appellants AND UPON READING the Notice of Motion dated the 11th day of October, 1960, the affidavit of Radhakrishna Ramani affirmed on the 10th day of October, 1960, and filed in support thereof, and the affidavit of P.R.SP.Periakaruppan Chettiar s/o Subramaniam Chettiar, affirmed on the 7th day of December, 1960 AND UPON HEARING the Arguments of Counsel aforesaid IT IS ORDERED that this Motion be and is hereby dismissed AND IT IS FURTHER ORDERED that the abovenamed appellants' costs of

30

In the Court of Appeal at Kuala Lumpur this application be taxed by the proper officer of this Court and paid by the abovenamed Respondent personally.

No. 28

Given under my hand and the seal of the Court this 12th day of December, 1960.

Order dismissing Motion for Review.

Sd. illegible.

12th December, 1960

Assistant Registrar,
Court of Appeal,
Federation of Malaya.

- continued.

No. 29

No. 29

10

Order granting Conditional Leave to Appeal.

ORDER granting CONDITIONAL LEAVE to APPEAL

12th December, 1960.

BEFORE: THE HONOURABLE DATO SIR JAMES THOMSON,
P.M.N., P.J.K. Chief Justice, Federation of Malaya;

THE HONOURABLE MR. JUSTICE HILL, B.D.L.,
Judge of Appeal; And

THE HONOURABLE MR. JUSTICE ONG.

IN OPEN COURT

This 12th day of December, 1960

(Here follows an Order in common form granting leave to Appeal against the Judgment of the Court of Appeal dated the 6th October 1960, upon Conditions)

20

Not printed.

No. 30

No. 30

Affidavit of P.N.C.T. Ganapathy Chettiar in support of Second Notice of Motion for Conditional Leave to Appeal.
21st January, 1961.

AFFIDAVIT of P.N.C.T. GANAPATHY CHETTIAR in SUPPORT of SECOND NOTICE OF MOTION for CONDITIONAL LEAVE to APPEAL.

I, P.N.C.T. GANAPATHY CHETTIAR son of Sithambaram Chettiar of A.H.3 Municipal Flats, Batu Road, Kuala Lumpur, do hereby affirm and say as follows:

30

1. I am the Respondent abovenamed.
2. On the 6th day of October, 1960 this Honourable

Court allowed the Appeal of the Appellants and set aside the Order of His Lordship Mr. Justice Adams made on the 25th day of April, 1960.

In the
Court of Appeal
at Kuala Lumpur

No. 30

3. On the 11th day of October, 1960 I applied to this Honourable Court for a review and variation of the said Order of the 6th day of October, 1960 and the application was fixed for hearing on the 12th day of December, 1960.

Affidavit of
P.N.C.T.
Ganapathy
Chettiar in
support of
Second Notice
of Motion for
Conditional
Leave to
Appeal.

10 4. On or about the 10th day of November, 1960 I applied to this Honourable Court for conditional leave to appeal to the Yang di-Pertuan Agong against the said Order of the 6th day of October, 1960, which application was also fixed for hearing on the 12th day of December, 1960.

21st January,
1961
- continued.

5. The said application for Review was duly heard before this Honourable Court on the 12th day of December, 1960 and was dismissed.

20 6. On the same day after the said dismissal of my application for Review, my application for leave to appeal to the Yang di-Pertuan Agong came on for hearing and conditional leave to appeal was granted.

My solicitors are now in the process of preparing the Record.

30 7. I am advised that as the application to review and vary the order of this Honourable Court related to the Order made on the 6th day of October, 1960, it is necessary to have a formal order granting conditional leave to appeal from the order dismissing my application for Review, so as to permit the inclusion in the same Record of the Proceedings subsequent to the Order of the 6th day of October, 1960 leading to such dismissal.

AFFIRMED at Kuala Lumpur) Sgd. P.N.C.T.Ganapathy
this 21st day of January,) Chettiar.
1961 at 9.00 a.m.)

Before me,

Sgd. W.P. Sarathy,
Commissioner for Oaths,
Supreme Court, Kuala Lumpur.

In the
Court of Appeal
at Kuala Lumpur

No. 31

SECOND NOTICE OF MOTION for CONDITIONAL LEAVE
to APPEAL

No. 31

Second Notice
of Motion for
Conditional
Leave to
Appeal.

21st January,
1961.

TAKE NOTICE that the Court will be moved on Monday the 6th day of February 1961 at 10.00 o'clock in the forenoon or as soon thereafter as Counsel can be heard by Mr. R. Ramani of Counsel for the abovenamed Respondent for an Order that conditional leave to appeal to the Yang di-Pertuan Agong be given to the Respondent against the Order of the Court of Appeal made on the 12th day of December, 1960 and that this appeal be consolidated with the appeal to the Yang di-Pertuan Agong by the same Respondent against the Order of the Court of Appeal dated the 6th day of October, 1960.

10

Dated this 21st day of January, 1961.

Sd. Shiv Charan Singh
Asst. Registrar,
Court of Appeal,
Kuala Lumpur.

Sd. Braddell & Ramani
Solicitors for the
abovenamed Respond-
ent.

20

This Notice of Motion was taken out by Messrs. BRADDELL & RAMANI, Advocates and Solicitors, Hongkong Bank Chambers, Solicitors for the abovenamed Respondent.

This application is supported by the affidavit of P.N.C.T. Ganapathy Chettiar son of Sithambaram Chettiar affirmed on the 21st day of January, 1961 and filed herein.

To,
Asst. Registrar,
Court of Appeal, Kuala Lumpur.

30

And to,
Messrs. Bannon & Bailey,
Solicitors for the Appellants,
Kuala Lumpur.

No. 32

SECOND ORDER granting CONDITIONAL LEAVE to APPEAL
and for CONSOLIDATION

In the
Court of Appeal
at Kuala Lumpur

No. 32

UPON MOTION made unto the Court this day by
Mr. R. Ramani of Counsel for the abovenamed Respon-
dent in the presence of Mr. Lim Sun Hoe of Counsel
for the above-named Appellants AND UPON READING
the Notice of Motion dated the 21st day of January,
1961 and the affidavit of P.W.C.T. Ganapathy Chettiar
son of Sithambaram Chettiar affirmed on the 21st day
of January, 1961 and filed in support of the Motion
AND UPON HEARING Counsel as aforesaid:

Second Order
granting
Conditional
Leave to Appeal
and for con-
solidation.

7th February,
1961.

IT IS ORDERED that Leave be and is hereby
granted to the abovenamed Respondent to appeal to
His Majesty the Yang di-Pertuan Agong from the
Order of the Court of Appeal dated the 12th day of
December, 1960 dismissing the abovenamed Respond-
ent's Motion to review and vary the judgment deliv-
ered by the Court of Appeal on the 6th day of Octo-
ber, 1960 UPON CONDITION that the Respondent do
within one month from the date hereof take the
necessary steps for the purpose of procuring the
preparation of the Record and the despatch thereof
to England:

AND IT IS ORDERED that this Appeal to His
Majesty the Yang di-Pertuan Agong be consolidated
with the Appeal of the abovenamed Respondent to His
Majesty the Yang di-Pertuan Agong against the order
of the Court of Appeal dated the 6th day of October,
1960:

AND IT IS ORDERED that the abovenamed Respond-
ent do pay to the abovenamed Appellants their costs
of this Motion in any event.

GIVEN under my hand and the seal of the Court
this 7th day of February, 1961.

Sd. Shiv Charan Singh.

Assistant Registrar,
Court of Appeal,
Federation of Malaya.

(SEAL)

10

20

30

In the
Court of Appeal
at Kuala Lumpur

No. 33

ORDER granting FINAL LEAVE to APPEAL

No. 33

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

FEDERATION OF MALAYA CIVIL APPEAL No. 50 of 1960

Order granting
Final Leave to
Appeal.

17th April,
1961.

BETWEEN

- 1. PR.SP.PERIAKARUPPAN CHETTIAR
 - 2. P.N.ST.NALLAKARUPPAN CHETTIAR
- Appellants

And

P.N.CT. GANAPATHY CHETTIAR Respondent 10

(In the matter of Kuala Lumpur Originating Summons
No.68 of 1960 (Petition No.275 of 1954)

In the Estate of P.N.ST. Sithambaram Chettiar
alias PR.A. Sithambaram Chettiar alias
Sithambaram Chettiar alias P.N.ST.Sithambaram
Chettiar son of Nallakaruppan Chettiar dec'd.

P.N.CT. Ganapathy Chettiar Applicant)

BEFORE: THE HONOURABLE DATO SIR JAMES THOMSON
P.M.N.,P.J.K., Chief Justice, Federation
of Malaya 20

THE HONOURABLE MR. JUSTICE HILL, B.D.L.,
Judge of Appeal; and

THE HONOURABLE MR. JUSTICE GOOD, Judge of
Appeal.

IN OPEN COURT

This 17th day of April, 1961.

UPON MOTION made unto the Court this day by
Mr. R. Ramani of Counsel for the abovenamed Respond-
ent in the presence of Mr. Lim Sun Hoe of Counsel
for the abovenamed Appellants AND UPON READING the 30
Notice of Motion dated the 7th day of March 1961 and
the affidavit of P.N.CT. Ganapathy Chettiar son of
Sithambaran Chettiar affirmed on the 7th day of

March 1961 and filed herein AND UPON HEARING Counsel as aforesaid:

In the Court of Appeal at Kuala Lumpur

IT IS ORDERED that final leave be and is hereby granted to the abovenamed Respondent to Appeal to His Majesty the Yang di-Pertuan Agong in respect of the two orders of the Court of Appeal of the 6th day of October 1960 and the 12th day of December 1960.

No. 33

Order granting Final Leave to Appeal.

10 AND IT IS ORDERED that the costs of this application be costs in the appeal.

17th April, 1961

GIVEN under my hand and the seal of the Court this 17th day of April 1961.

- continued.

Sgd. Shiv Charan Singh.
Assistant Registrar,
Court of Appeal,
Federation of Malaya.

EXHIBITS

Exhibits

Exhibit D."A" (2) - LETTER, Braddell & Ramani to The Agent, N.P.R. Firm, 15th May, 1959

D."A"(2)

20 1932/59

RR/VT.

15th May, 1959.

The Agent,
N.P.R. Firm,
6, Main Street,
Kajang.

A.R. REGISTERED

Letter,
Braddell &
Ramani to The
Agent, N.P.R.
Firm.
15th May, 1959.

N.P.R. Firm

P.N.ST. Sithambaram Chettiar decd.

We refer you to our letters of the 20th March and 9th May, 1959.

30

Today the High Court at Kuala Lumpur has appointed A.R. Alagappa Chettiar of No.38, Ampang Street, as Arbitrator to arbitrate in the disputes between our client Ganapathy Chettiar and his

Exhibits

D."A"(2)

Letter,
Braddell & Ramani to The
Agent, N.P.R.
Firm.

15th May, 1959
- continued.

brother Hallakaruppan Chettiar and to submit his Award to the Court within one month from today.

The Court has also made an order that both parties do hand over all their accounts to the said Arbitrator within two days from today.

As you are in possession of the account books of the above Firm in which the deceased is still a partner and it will facilitate the Arbitrator to arrive at his decision as to the total value of the Estate if you will hand over or otherwise make available to him all the relevant account books of the Firm without any delay.

10

Yours faithfully,

Sd. Braddell & Ramani

c.c. Messrs. Lovelace & Hastings,
Advocates & Solicitors.
Kuala Lumpur.

The Arbitrator,
A.R. Alagappa Chettiar,
No. 38, Ampang Street,
Kuala Lumpur.

20

This is the exhibit marked "A" referred to in the affidavit of P.N.C.T. Ganapathy Chettiar affirmed before me this 18th day of June 1960 in O.S. No. 68 of 1960.

Sd. W.P. Sarathy

Commissioner for Oaths.

Exhibit D."B" (2) - LETTER, E.E.C. Thuraisingham to
Braddell & Ramani, 21st May, 1959.

Exhibits

D."B" (2)

E.E.C. THURAI SINGHAM,
ADVOCATE & SOLICITOR.

71, Ampang Street,
Kuala Lumpur.

21st May, 1959.

Letter, E.E.C.
Thuraisingham
to Braddell
& Ramani.

21st May, 1959.

Reference No. AN/125/59

Your Ref: 1932/59.

Messrs. Braddell & Ramani,
Advocates & Solicitors,
Kuala Lumpur.

10 Dear Sirs,

N.P.R. Firm
P.N.ST. Sithambaram Chettiar decd.

Your letter addressed to the Agent of N.P.R.
Firm Kajang has been handed to me with instructions
to reply.

20 The account books of the above Firm have been
with the Auditor of the Firm for the past three
months in connection with income-tax returns. The
auditor has promised to return the books sometime
in the middle of next week upon completing his work.
Therefore our client would request you to give him
time until then to make available to the Arbitrator
the relevant account books of the Firm.

Yours faithfully,

Sd. E.E.C. Thuraisingham.

30 This is the exhibit marked "B"
referred to in the affidavit of P.N.C.T.
Ganapathy Chettiar affirmed before me
this 18th day of June 1960 in O.S. No.
68 of 1960.

Sd. W.P. Sarathy

Commissioner for Oaths.

Exhibits

D."A"(1)

Exhibit D."A"(1) - LETTER, Partners in Kajang N.P.R. Firm to P.N.CT. Ganapathy Chettiar, 7th October, 1959

Letter,
Partners in
Kajang N.P.R.
Firm to P.N.CT.
Ganapathy
Chettiar.

7th October,
1959.

OMNIPRESENCE

7.10.59

Vikari year, Purattasi Month 21st day =
(7.10.59)

P.N.P. Nallakaruppan Chettiar of Natchandupatti
(1) P.N.P. Vairavan Chettiar (2) S.P. Krishnappa
Chettiar (3) all three being partners of Kajang
N.P.R. Firm write to P.N.CT. Ganapathy Chettiar ad-
ministrator of the Estate of P.N.S.T. Sithambaram
Chettiar deceased of Kajang.

10

We three having agreed that you after consult-
ing PR.SP. Periakaruppan Chettiar one of the part-
ners of N.P.R. Firm, as he is at present in Kajang,
to give option for the sale of Sungei Gantham rubber
estate of Kajang N.P.R. Firm at the rate of \$1,000/-
an acre and we three write this letter sign and
send it to PR.SP. Periakaruppan Chettiar to hand
over to you.

20

After seeing this letter, think it over well
and give option to sell the estate without any im-
pediments as the estate is administration property
and make arrangements for the sale and let three of
us know the result of final offer made by intending
purchasers, by letter or by cable and we (three)
will let you know our opinion forthwith.

Other matters afterwards.

With the help of

Signed in Tamil	P.N.P. Nallakaruppan Chettiar.	30
" " "	P.N.P. Vairavan Chettiar.	
" " "	S.P. Krishnappa Chettiar.	

(2) We three agree to sell the Sungei Gantham rub-
ber estate of the above N.P.R. Firm of Kajang in
excess of eight hundred and fifty dollars an acre
with the consent and approval of PR.SP.Periakarup-
pan Chettiar.

Signed in Tamil	P.N.P. Nallakaruppan Chettiar	
Signed in Tamil	P.N.P. Vairavan Chettiar	
Signed in Tamil	S.P. Krishnappa Chettiar	40

40

This is the True Translation of the Original

Document produced in Serial No.236 of 1960.

Exhibits

Sd. Sarathy
Senior Interpreter,
Supreme Court,
Kuala Lumpur.

D."A"(1)

12/4/60.

This is the exhibit marked "A" referred to in the affidavit of P.N.C.T. Ganapathy Chettiar affirmed before me this 14th day of April, 1960.

Letter,
Partners in
Kajang N.P.R.
Firm to P.N.C.T.
Ganapathy
Chettiar.

7th October,
1959

- continued.

10

Sd: W.P. Sarathy
Commissioner for Oaths.

Exhibit P. "A" - LETTER, Braddell & Ramani to
Bannon & Bailey, 29th February, 1960

P."A"

BRADDELL & RAMANI
Ref: 562/60
RR/SK.

Hongkong Bank Chambers,
Kuala Lumpur.

29th February, 1960.

Letter,
Braddell &
Ramani to
Bannon &
Bailey.

29th February,
1960.

20

Messrs. Bannon & Bailey,
Advocates & Solicitors,
Kuala Lumpur.

Dear Sirs,

Civil Suit No. 546 of 1959
Est. of P.N.ST. Sithambaram Chettiar Dec'd.

Re the rubber estate about which we have written to you separately today, we are instructed to put to your clients an offer of purchase received by our client at the rate of \$900 per acre. This, our client is advised, is very good value and we shall be glad to have your clients' consent to an agreement being entered into in advance of the appropriate order being applied for.

30

Yours faithfully,

Sd. Braddell & Ramani.

This is the Exhibit marked "A" referred to in the Affidavit of PR.SP. Periakaruppan Chettiar affirmed before me this 12th day of May, 1960.

40

Sd. Majid Khan
Commissioner for Oaths.

(NOTE: This Exhibit P."A" is the same as Exhibit D.1. to the Affidavit of P.N.C.T. Ganapathy Chettiar dated 18th June 1960.)

Exhibits

Exhibit D.2. - LETTER, Bannon & Bailey to Braddell & Ramani, 1st March, 1960.

D.2.

Letter,
Bannon &
Bailey to
Braddell
& Ramani.
1st March,
1960.

BANNON & BAILEY

Laidlaw Building,
Kuala Lumpur.

1st March, 1960.

Your ref. RR/SK/561 and 562/60.
Our Ref. P/TLH/18923/59.

Messrs. Braddell & Ramani,
Advocates & Solicitors,
Kuala Lumpur.

10

Dear Sirs,

Civil Suit No. 546 of 1959

Estate of P.M.S.T. Sithambaram Chettiar, deceased.

We acknowledge receipt of your two letters of the 29th February 1960 and have referred their contents to P.L.S. Sockalingam Chettiar.

You will appreciate that P.L.S. Sockalingam Chettiar is in an extremely difficult position because of a complete lack of powers vested in him by the partners. He cannot give undertakings since he has no power to refuse to hand over any monies which come to his hands to the partners and he cannot consent to the sale of the lands. He has placed his position before the partners and, we understand, has suggested that power be given to him or to somebody else to deal with matters arising without having always to refer to India. If this power is given, as we hope it will be, then the settlement of this matter can proceed with greater rapidity.

20

Yours faithfully,

30

Sd. Bannon & Bailey.

This is the exhibit marked "D.2" referred to in the affidavit of P.N.C.T. Ganapathy Chettiar affirmed before me this 18th day of June, 1960 in O.S. No. 68 of 1960.

Sd. W.P. Sarathy

Commissioner for Oaths.

Exhibit D.3. - LETTER, Braddell & Ramani to Bannan
& Bailey, 2nd March, 1960

Exhibits

D.3.

562/60
RR/SK

2nd March, 1960.

Letter,
Braddell &
Ramani to
Bannan &
Bailey.

Messrs. Bannan & Bailey,
Advocates & Solicitors,
Kuala Lumpur.

2nd March,
1960.

Dear Sirs,

Civil Suit No. 546 of 1959

10 1st. of P.N.ST. Sithambaram Chettiar, Dec'd.

We have your letter P/TLH/18923/59 of the 1st
inst.

We cannot see that Sockalingam Chettiar is in
any more difficult position than any other Chettiar
in such a situation.

20 We confirm having informed you yesterday that
in a letter dated the 7th October, 1959 and handed
to our client through Periakaruppan Chettiar who
received it, the three partners in India have
authorised him (our client) to sell the property
for any price in excess of \$850/- per acre. The
only condition that is mentioned in the letter is
that our client should also take the consent of
FR.S.P. Periakaruppan Chettiar. Our client has
spoken to the latter and secured his consent.

30 We therefore feel that the offer now received
should be accepted and if we do not hear from you
further, we shall advise the administrator to enter
into the necessary agreement for the sale of the
property.

As your client has himself received and read
the letter to which we refer before he handed it
over to our client, we have not thought it necessary
to let you have a copy of the same. If you require
a copy, please let us know.

Yours faithfully,

Sd. Braddell & Ramani.

40 This is the exhibit marked "D.3"
referred to in the affidavit of P.N.C.T.
Ganapathy Chettiar affirmed before me
this 18th day of June, 1960 in O.S. 68
of 1960.

Sd. W.P. Sarathy
Commissioner for Oaths.

Exhibits

Exhibit D.4. - LETTER, Bannon & Bailey to Braddell & Ramani, 4th March, 1960.

D.4.

Letter,
Banner &
Bailey to
Braddell &
Ramani.

4th March,
1960.

BANNON & BAILEY
ADVOCATES, SOLICITORS
COMMISSIONERS FOR OATHS

Laidlaw Building,
Kuala Lumpur
MALAYA.

4th March, 1960.

Your Ref. RR/SK/592/60
Our Ref. P/M/18923/59

Messrs. Braddell & Ramani,
Advocates & Solicitors,
Kuala Lumpur.

10

Dear Sirs,

re: Civil Suit No.546 of 1959
Estate of P.N.S.T. Sithambaram Chettiar
deceased

We thank you for your letter of the 2nd instant
and are taking immediate instructions, if we can
get them.

As we have never seen the letter of the 7th
October 1959 which you refer to, we would very much
appreciate a copy.

20

Yours faithfully,

Sd. Bannon & Bailey.

This is the exhibit marked "D4"
referred to in the affidavit of P.M.C.T.
Ganapathy Chettiar affirmed before me
this 18th day of June, 1960 in O.S.No.
68 of 1960.

Sd. W.P. Sarathy
Commissioner for Oaths.

30

Exhibit D.5. - LETTER, Braddell & Ramani
to Bannon & Bailey, 8th March, 1960

Exhibits

D.5.

636/60
RR/SK

8th March, 1960.

Letter,
Braddell &
Ramani to
Bannon &
Bailey.

8th March,
1960.

Messrs. Bannon & Bailey,
Advocates & Solicitors,
KUALA LUMPUR.

Dear Sirs,

Civil Suit No. 546 of 1959

10 Est. of P.N.S.T.Sithambaram Chettiar Dec'd.

We are in receipt of your letter P/M/18923/59
of the 4th instant.

We set out hereunder a free translation of the
passage in the letter of the 7th October, 1959 that
we referred to :

20 "2. Re the estate belonging to N.P.R. Firm at
Sungei Gantam, we agree to its sale at a rate
in excess of \$850/- per acre provided you se-
cure the consent of PR.SP. Periakaruppan
Chettiar also.

Sd. P.N.P.Nallakaruppan Chettiar
Sd. P.N.P.Vairavan Chettiar
Sd. S.P. Krishnappa Chettiar."

The original tamil letter may be inspected at
this office at any time.

Yours faithfully

Sd. Braddell & Ramani

30 This is the exhibit marked "D5"
referred to in the affidavit of P.N.CT.
Ganapathy Chettiar affirmed before me
this 18th day of June, 1960 in O.S. No.
68 of 1960.

Sd. W.P. Sarathy
Commissioner for Oaths.

Exhibits

P."B"

Exhibit P."B" - LETTER, P.N.P.Nallakaruppan Chettiar
P.N.P. Vairavan Chettiar and S.P. Krishnappa
Chettiar to PL.S. Sockalingam Chettiar.

Letter, P.N.P
Nallakaruppan
Chettiar,
P.N.P.Vairavan
Chettiar and
S.P.Krishnappa
Chettiar to
PL.S.
Sockalingam
Chettiar.

29th March,
1960.

P.N.P. Nallakaruppan Chettiar,
P.N.P. Vairavan Chettiar,
SP. Krishnappa Chettiar.

Nachandupatti,
Tiruchirapalli
Dist.,
Madras - India.

To
Sri PL.S. Sockalingam Chettiar,
No.6 Main Street, Kajang. (Malaya)

29th March 60.

10

Sir,

P.N.CT. Ganapathy Chettiar.

Letters d/24-2-60 and 1-3-60 addressed to you
by M/S.Bannon & Bailey, Advocates, Kuala Lumpur.

1. Partner Nallakaruppan Chettiar and/or partner
Vairavan Chettiar would be going there by the
end of May, 1960.
2. You need not send to any of us any remittance.
At the same time you should not pay any amount
to partner Ganapathy Chettiar. This does not
apply to the firm debts or to the Income-tax
payable by the partners.
3. Re: the firm offer to purchase the rubber lands,
contact Sri PL.M. Venkatachalam Chettiar of
No.9, Jalan Maharani, Muar and Sri PR.SP.
Periakaruppan Chettiar of No.6, Main Street,
Kajang and act accordingly.
4. We have no objection to Sri AR. Alagappa
Chettiar and Sri.K.V.AL.M. Alagappa Chettiar
acting as arbitrators. As soon as partners
Nallakaruppan Chettiar and/or partner Vairavan
Chettiar arrives there, two more arbitrators
will be suggested, who along with the two
Alagappa Chettiars may arbitrate.

20

30

Yours faithfully,
(Sd.) P.N.P. Nallakaruppan Chettiar.
(Sd.) P.N.P. Vairavan Chettiar
(Sd.) SP. Krishnappa Chettiar.

This is the Exhibit marked "B"
referred to in the Affidavit of PR.SP.
Periakaruppan Chettiar affirmed before
me this 12th day of May, 1960.

40

Sd. Majid Khan
Commissioner for Oaths.

Exhibit D."B" (1) - AGREEMENT FOR SALE, P.N.C.T.
GANAPATHY CHETTIAR (1) and LOW HOCK PEH and OTHERS
(2), 31st March, 1960.

Exhibits

D."B"(1)

THIS AGREEMENT is made this 31st day of March, 1960, Between P.N.C.T. GANAPATHY CHETTIAR son of P.N.S.T. Sithambaram Chettiar of A.H.3, Municipal Flats Batu Road, Kuala Lumpur, administrator of the Estate of P.N.S.T. Sithambaram Chettiar (hereinafter referred to as the Vendor) of the one part and LOW HOCK PEH of No.8 Mendaling Street, Kajang and LOW CHENG LIM of No.30 Mendaling Street, Kajang and NG TOW BOO, 7 Keng Hooi Road, Kuala Lumpur (hereinafter called the Purchasers) of the other part

Agreement for Sale, P.N.C.T. Ganapathy Chettiar (1) and Low Hock Peh and Others (2)

31st March, 1960.

WHEREAS one P.N.S.T. Sithambaram Chettiar alias P.R.A. Sithambaram Chettiar son of Nallakaruppan Chettiar (hereinafter referred to as the said deceased) was at all material times prior to his death the registered proprietor of an undivided 19/24 share of a rubber estate comprised in Selangor Grants Nos.5558 and 6468 for Lots Nos.990 and 1308 in the Mukim of Cheras in the District of Ulu Langat containing a total area of 153 acres 3 roods 20 poles (hereinafter referred to as the said lands).

AND WHEREAS the said deceased died on the 8th day of March, 1954, intestate and Letters of Administration to his estate on the 16th day of November, 1954 granted to the Vendor.

AND WHEREAS at the time of his death the said deceased was a partner in the moneylending Firm of F.P.R. and held the said lands in trust for the partnership in which the other partners are P.N.P. Nallakaruppan Chettiar, P.M.P. Vairavan Chettiar, S.P. Krishnappa Chettiar and P.R.S.P. Periakaruppan Chettiar

AND WHEREAS the business of the said firm has been carried on after the death of the said deceased, as if no dissolution by death had taken place and the Estate of the deceased was a partner therein

AND WHEREAS the Vendor with the consent of the remaining partners of the said Firm has agreed, subject to the approval of the Supreme Court at Kuala Lumpur being obtained, to sell the said 19/24

Exhibits

D."B"(1)

Agreement for
Sale, P.N.C.T.
Ganapathy
Chettiar (1)
and Low Hock
Peh and Others
(2)

31st March,
1960
- continued.

undivided share of the said lands at the price of
\$900/- an acre

NOW IT IS HEREBY AGREED by and between the
parties as follows :-

1. In consideration of the sum of \$10,000/- de-
posited by the Purchasers with Messrs. Braddell &
Ramani as Solicitors for the Vendor, the Vendor
hereby agrees subject to the order of court to be
obtained as hereinafter stated to sell and the
Purchasers to purchase the said undivided 19/24 of
the said rubber estate subject to the approval of
the said Supreme Court being obtained at the price
of \$900/- an acre

10

2. Upon the execution of this Agreement, the
Vendor undertakes forthwith to apply to the Supreme
Court at Kuala Lumpur for the approval of the sale

Upon such approval being obtained the Vendor
shall cause a notice to be addressed to the Pur-
chasers calling upon them to accept the Transfer of
the said lands in their own name or in the name or
names of any nominees of theirs within two (2)
months from date thereof at the office of Messrs.
Braddell & Ramani, Hongkong Bank Chambers, Kuala
Lumpur.

20

4. All legal fees and costs of the application to
the Supreme Court for approval of such sale shall
be borne by the Vendor; and all subsequent costs
for the preparation and completion of the transfer
of the said lands to the Purchasers shall be borne
by the Purchasers.

30

5. The quit rent for the year 1960 shall be ap-
portioned between the Vendor and the Purchasers as
at the date of the execution of the transfer.

6. In the event of the Purchasers failing to com-
plete the purchase when called upon to do so within
the time stipulated the sum of \$10,000/- deposited
with the Vendor's Solicitors shall be forfeited to
the Vendor absolutely and this agreement shall be
null and void.

6a. In the event of the Supreme Court refusing to
approve such sale then the sum of \$10,000/- deposit-
ed shall be refunded to the Purchasers without any
deductions therefrom whatsoever.

40

7. Time wherever stipulated shall be deemed to be of the essence of this contract.

8. This agreement shall be binding upon the parties hereto their administrators and assigns.

AS WITNESS the hands of the parties hereto the day and year first above written

10 SIGNED by the abovenamed P.N.CT.)
Ganapathy Chettiar as adminis-) Sd. P.N.CT.
trator of the Estate of P.N.ST.) Ganapathy
Sithambaram Chettiar deceased) Chettiar.
in the presence of :-)

Sd: K.A. Menon,
Advocate & Solicitor,
Kuala Lumpur.

SIGNED by the abovenamed LOW) Sd. Low Hock Peh
HOCK PEH and LOW CHENG LIM in) (In Chinese)
the presence of :-) Sd. Low Cheng Lim
(In Chinese)

20 Sd: K.A. Menon,
Advocate & Solicitor,
Kuala Lumpur.

SIGNED by the abovenamed NG TOW) Sd. Ng Tow Foo.
FOO in the presence of :-)

Sd: K.A. Menon,
Advocate & Solicitor,
Kuala Lumpur.

This is the exhibit marked "B"
referred to in the affidavit of P.N.CT.
Ganapathy Chettiar affirmed before me
this 14th day of April, 1960.

30 Sd. W.P. Sarathy
Commissioner for Oaths.

Exhibits

D."B"(1)

Agreement for
Sale, P.N.CT.
Ganapathy
Chettiar (1)
and Low Hock
Peh and Others
(2)

31st March,
1960

- continued.

Exhibits

D.6.

Letter,
Braddell &
Ramani to
Bannon &
Bailey.
4th April,
1960.

Exhibit D.6. - LETTER, Braddell & Ramani to
Bannon & Bailey, 4th April, 1960

902/60
RR/LKL

4th April, 1960.

Messrs. Bannon & Bailey,
Advocates & Solicitors,
Laidlaw Building,
Kuala Lumpur.

Dear Sirs,

Civil Suit No. 546 of 1959
Estate of P.N.S.T. Sithambaram
Chettiar deceased.

10

Further to our letter of the 2nd March, we
send you herewith a copy of the agreement entered
into by our client for the sale of the above pro-
perty.

Yours faithfully,

Sd. Braddell & Ramani.

ENCL: 1 copy agreement.

This is the exhibit marked "D6"
referred to in the affidavit of P.N.CT.
Ganapathy Chettiar affirmed before me
this 18th day of June, 1960 in O.S.No.
68 of 1960.

20

Sd. W.P. Sarathy
Commissioner for Oaths.

Exhibit D.7. - LETTER, Braddell & Ramani to
Bannon & Bailey, 22nd April, 1960

Exhibits

D.7.

1988/60

22nd April, 1960.

Letter,
Braddell &
Ramani to
Bannon &
Bailey.

Messrs. Bannon & Bailey,
Advocates & Solicitors,
Laidlaw Building,
Kuala Lumpur.

22nd April,
1960.

Dear Sirs,

re:- Civil Suit No.546/59

N.P.R. Firm

Originating Summons No.68/60

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We send you herewith for your information copy
of the application for leave to sell with Affidavit
in support.

Yours faithfully,

Sd. Braddell & Ramani.

This is the exhibit marked "D7"
referred to in the affidavit of P.N.CT.
Ganapathy Chettiar affirmed before me
this 18th day of June, 1960 in O.S.No.
68 of 1960.

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Sd. W.P. Sarathy

Commissioner for Oaths.

Exhibits

Exhibit D."C"(2) - LETTER, A. Venkatarama Ayyar to
P.N.CT. Ganapathy Chettiar, 29th April, 1960.

D."C"(2)

Letter,
A.Venkatarama
Ayyar to
P.N.CT.
Ganapathy
Chettiar

A. R. REGISTERED

A. Venkatarama Ayyar,
B.A., B.L.,
Advocate and Notary.

East Main Street,
Pudukkottai,
Trichirappalli District,
Madras - India.

29th April,
1960.

29.4.60.

Per pro

Sri P.N.P. Nallakaruppan Chettiar and
Sri P.N.P. Vairavan Chettiar
(of Nachandupatti)
C/O M/S Karpagam Stores,
East Main Street,
Pudukkottai, Trichirappalli District,
Madras - India.

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To
Sri P.N.CT. Ganapathy Chettiar,
C/O Registry of Trade Unions and Societies,
Government Office,
Batu Road,
Kuala Lumpur,
MALAYA.

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Sir,

Petition No. 275 of 1954 on the file of the
High Court at Kuala Lumpur, In re the estate
of P.N.ST. Sithambaram Chettiar, deceased

Sri P.N. Nallakaruppan Chettiar, your brother,
has written to my clients on April 12, 1960 to the
effect you not having filed the inventory and ac-
counts of the estate of the deceased, of which you
are the administrator, and you having appropriated
the income of the Estate yourself, without refer-
ence to him, he will hold my clients, as sureties
to the administration bond, responsible for all
your acts of commission and omission. Copy of the
letter is herewith enclosed for your reference. My
clients would like to draw your attention in this
connection to the letter of Indemnity dated May 3,
1957 executed by you in their favour wherein you
have undertaken to indemnify them against all loss
or damage which they might suffer by any mismanage-
ment on your part. My clients are now informed

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that you have obtained an order from Court to sell the rubber lands at $\text{₹}900/-$ per acre. My clients and Sri SP. Krishnappa Chettiar, as partners of the N. Pr. Firm, have written to Sri PL.S. Sockalingam Chettiar of No. 6, Main Street, Kajang, on March 29, 1960 asking him to contact Sri PL.M. Venkatachalam Chettiar of No.9, Jalan Maharani, Muar and partner Sri PR.SP. Periakaruppan Chettiar of No.6, Main Street, Kajang, in the matter of the sale. This letter or a copy of it should have come to your notice in the normal course. I am enclosing a copy of that letter also for your reference. My clients would therefore like you to proceed as intimated in that letter. They would also like you to deposit all income and profits from out of the estate of the deceased in Banks or Lawyer's offices. They would like you not to sell any of the properties of the deceased without reference to them. Any disregard of my clients' above letter, and the Indemnity in their favour, and their above suggestions will compel them to withdraw their suretyship in the administration proceedings of which please take notice.

Yours faithfully,

Sd. A. Venkatarama Ayyar,
ADVOCATE.

Enclosures:- Two.

This is the exhibit marked "C" referred to in the affidavit of P.N.C.T. Ganapathy Chettiar affirmed before me this 18th day of June 1960 in O.S. No. 68 of 1960.

Sd. W.P. Sarathy
Commissioner for Oaths.

Exhibits

D."C"(2)

Letter,
A.Venkatarama
Ayyar to
P.N.C.T.
Ganapathy
Chettiar

29th April,
1960
- continued.