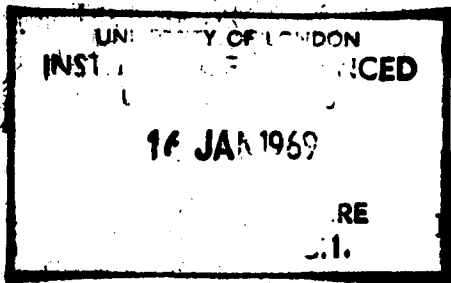


4



3 OF 1967

SUPREME COURT OF CEYLON,  
No. 573 (Final) of 1961.

DISTRICT COURT OF COLOMBO,  
Case No. 8603/P.

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

*Between*

**Ceylon Theatres Limited** of Parsons Road, Colombo.

*(1st Defendant - 1st Respondent)*  
*Appellant*

*And*

1. **Cinemas Limited** of 117, New Chetty Street, Colombo.

*(Plaintiff - Appellant)*

2. **Eugene Seneviratne** of "Kenilworth" No. 231,  
Dematagoda Road, Colombo.

3. **Gwendeline Dora Jayakoddy** of Balagalle, Divulapitiya,  
appearing by her Guardian-ad-litem and Curator the  
4th Defendant.

4. **Joseph de Abrew Wijesinghe** of No. 24,  
Tichborne Passage, Colombo.

*(2nd, 3rd & 4th Defendants - Respondents)*  
*Respondents.*

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**RECORD OF PROCEEDINGS**

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No. 1

**Plaint of Cinemas Limited**

**IN THE DISTRICT COURT OF COLOMBO**

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

*Plaintiff.*

No. 8608/P.

*Vs.*

Nature : Partition.

Value : Rs. 350,000/-

10

1. Ceylon Theatres Limited of Parsons Road,  
Colombo.

2. Eugene Seneviratne of "Kenilworth"  
No. 231, Dematagoda Road, Colombo.

3. Gwendoline Dora Jayakoddy of Balagalle,  
Divulapitiya, appearing by her Guardian-  
ad-litem.

4.

20

5. Joseph De Abrew Wijesinghe of 24, Tichborne  
Passage, Colombo, Manager of the Estate  
of the 3rd Defendant a person adjudged  
to be of unsound mind.

*Defendants.*

On this 26th day of May, 1958.

The plaintiff of the plaintiff above-named appearing by T. Devarajan  
its Proctor states as follows :—

1. The Plaintiff is a Company incorporated under the Companies  
Ordinance of No. 51 of 1938 and having its Registered Office at No. 117,  
30 New Chetty Street, Colombo.

2. The allotment of land and premises which form the subject matter  
of this action, and fully described in the 1st schedule hereto are situated  
in Colombo within the local limits of the jurisdiction of this Court.

3. Don David de Livera Wijewickrema Seneviratne Muhandiram  
and his wife, Dona Nathalia de Livera Lama Etany were the original  
owners of the land and premises in the second schedule hereto fully  
described.

4. By their Joint Will dated the 18th October, 1855, the said  
D. D. de Livera Wijewickrema Seneviratne Muhandiram and his wife Dona  
40 Nathalia De Livera Lama Etany devised the said land and premises in the  
second schedule hereto fully described to their grand-son, Dr. Edwin De  
Livera.



5. The said Dona Nathalia De Livera Lama Etany died on the 10th November, 1855, and the said D. D. de Livera Wijewickrema Seneviratne Muhandiram died on the 22nd September, 1857, and the said Last Will was proved in the District Court of Colombo and Probate was granted to Francis De Livera and Mathew De Livera the Executors under the Will.

6. Under and by virtue of Indenture No. 1754 of the 10th June, 1876, Managey Dona Maria Perera became entitled to Lot A in Plan, dated the 14th May, 1876, containing in extent  $4\frac{1}{2}$  Perches and in the third schedule hereto fully described, and Managey Dona Agoda Perera became entitled to Lot B in the said Plan containing in extent  $4\frac{1}{2}$  Perches and in the fourth schedule hereto fully described. 10

7. By Fiscal's Transfer No. 960 dated 7th July, 1882 (in pursuance of a Mortgage Bond No. 2542 of the 28th November, 1878, executed by the said Maria Perera) the said Lot A was conveyed to A. F. Parke.

8. The said A. F. Parke by Deed No. 2117 dated the 18th January, 1884, attested by W. P. Ranasinghe, N.P., the said A. F. Parke conveyed the said Lot A to J. R. V. de Livera.

9. By Fiscal's Transfer No. 1822 of the 21st January, 1884, the said Lot B was conveyed to M. L. C. Bawa.

10. The said M. L. C. Bawa, by Deed No. 4585 of the 24th November, 1894, transferred the said Lot B to Tamby Mustapha Lebbe, who, by Deed No. 842 of the 18th December, 1896, transferred the said Lot to the said J. R. V. de Livera. 20

11. The said J. R. V. de Livera, who was thus entitled to the said Lot A and B in the third and fourth schedule hereto fully described died on or about the 9th March, 1903, leaving a Joint Last Will dated the 10th April, 1882, which was duly proved in *Case No. 1855* of this Court.

12. The said Lot A and B were thereafter consolidated into one property by a plan dated the 23rd January, 1904, made by C. A. O. Buyzer, Licensed Surveyor, now containing in extent 14.42 Perches as described in the fifth schedule hereto. 30

13. Mary Teresa de Livera, as Executrix of the said Last Will of J. R. V. de Livera, put the said property up for sale for the payment of debts and the said property was purchased by Dr. Edwin De Livera under Deed No. 722 dated the 28th November, 1905, attested by C. P. S. Gunatilleke, N.P.

14. The said Dr. Edwin de Livera had the said allotments of land in the second and fifth schedules hereto fully described consolidated into one block, according to Plan dated 10th October, 1906, made by George De Saram and the said block is the subject matter of the present action. 40

15. The said Dr. Edwin De Livera sold the said land by Deed No. 5493 dated the 27th September, 1907, attested by F. C. Loos, N.P., to G. A. Don Hendrick Appuhamy (alias D. H. Seneviratne) who erected the building called and known as "Tower Hall" on the said land.

16. The said Don Hendrick Appuhamy died in or about 1929, leaving a Last Will No. 125 dated the 7th April, 1929, attested by P. C. Seneviratne, N.P., which was duly proved in *Case No. 4914/Testy* of this Court.

17. It was provided by the said Last Will No. 125 that the said land, in the first schedule hereto fully described, should devolve on his three sons, Granville, Irwin, and Edmund, in equal shares, subject to the following conditions and restrictions :—

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*Continued*

(a) That no child of mine shall mortgage, sell or otherwise alienate or encumber save as hereinafter provided any one or more of the immovable properties or any part or portion thereof or any share in such immovable properties but such child shall only be entitled to take, receive and enjoy the rents and profits and income thereof during his or her lifetime. Any  
10 such mortgage or such alienation shall be absolutely null and void but this restriction shall not prevent such child of mine from leasing to any person or persons any of the said immovable properties for a period not exceeding two years at a time and I hereby direct that a lease executed by a majority of my said children of any immovable properties held by them in common shall be good and valid and shall be binding on any of the children who shall refuse or neglect to execute the same when requested thereto by the majority of them without prejudice however to the right of dissenting minority to their respective shares of the rent reserved by such lease. Provided however that any lease executed during the continuance of an  
20 existing lease shall be absolutely null and void.

(b) On the death of any child of mine the immovable properties and all properties and all share therein devised to him or her hereunder shall devolve on his or her issue or any one or more of them as such child by Last Will appoint and subject to such conditions as such child shall deem fit and proper or without any condition or restriction whatsoever and in the event of any child of mine dying intestate without such appointment as aforesaid then the same shall devolve absolutely on his or their issue equally between them or more than one subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided.

(c) In the event of the death of any child of mine without leaving  
30 issue living at the time of his or her death such immovable properties and shares therein devised to him or hereunder shall devolve equally on any of my other children and the issue of any other deceased children of mine such issue taking by substitution per stripes and equally between them if more than one the share which his or her or their parent would have taken had such parent been alive at the time of the death of any such parent been alive at the time of the death of any such child of mine. Provided however that any child of mine dying without issue shall have the right to give and grant any such immovable properties and shares therein or any of them  
40 by Last Will only to any one or more of my other children upon the same conditions and restrictions as are herein contained or to any one or more of the issue of any deceased child of mine upon such conditions and restrictions as her or she shall deem fit and proper without any condition or restriction whatsoever but subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided.

(d) If any child of mine shall die leaving his or her surviving, his or her spouse and his or her issue then such surviving spouse shall be entitled to a just one-half of the nett income of the said immovable properties and shares therein devised to such deceased child hereunder but if  
50 any child of mine shall die leaving him or her surviving, his or her spouse

only and no issue then the surviving spouse shall be entitled during his or her life time to the whole of the nett income of the immovable properties and shares therein devised to such deceased child subject however to the condition that the surviving spouse shall forfeit his or her right to the just one-half of the nett income or to the whole of the nett income as the case may be on such surviving spouse contract a subsequent marriage.

(e) I declare that if any child of mine or any person claiming through him or her shall at any time dispute the validity of this my Last Will or any of the dispositions herein or in any Codicil hereto contained then all such dispositions herein or in any Codicil hereto contained in favour of such child of mine shall cease and be void to alienate and purposes, whatsoever and be hereby revoked and as to all the immovable and movable property and shares therein so forfeited as aforesaid I give and devise the same in equal shares unto my other children and the issues of any deceased child of mine as the case may be such immovable and the shares therein to be held by my said other children in the same manner and subject to the same conditions and restrictions hereinbefore declared and provided as if the same had been devised to them hereunder in the first instance. 10

18. The said Don Hendrick Appuhamy left six children namely the said Granville, Irwin and Edmund, and Vincent, Adeline and Florence. 20

19. The said Florence died in the year 1931.

20. The said Edmund who was entitled to one-third (1/3rd) share in the said land, died in 1944, whereupon the said one-third (1/3rd) share devolved as aforesaid, (in as much as he left no issue, but only his widow, the 2nd defendant).

The 2nd defendant only life interest in the 1/3 share.

The said Irwin a further 1/12th share subject to the aforesaid life interest.

The said Granville a further 1/12th share subject to the aforesaid life interest. 30

The said Vincent 1/12th share subject to the aforesaid life interest.

The said Adeline 1/12th share subject to the aforesaid life interest.

21. The said Granville who was now entitled to five one twelfth (5/12) share (*viz.* 4/12 being entitled absolutely 1/12 being entitled subject to life interest aforesaid) died on the 7th March, 1944, and his shares devolved as follows : (as he left no issues or widow).

The said Irwin a further 5/36th share (*viz.* 4/36 being absolutely entitled and 1/36 subject to the life interest).

The said Vincent a further 5/36 share (*viz.* 4/36 being absolutely entitled and 1/36 subject to the life interest. 40

The said Adeline a further 5/36 share (*viz.* 4/36 being absolutely entitled and 1/36 subject to the life interest).

22. The said Adeline, who was now entitled to two-ninth (2/9th) shares, (*viz.* 1/9th being absolutely entitled and 1/9th subject to life interest of 2nd Defendant) died on or about the year 1945, leaving two children, Phoebe Lilian Rodrigo and Gwendoline Jayakoddy the 3rd Defendant, who thereupon became entitled to 1/9th share each, subject

to the life interest of the 2nd Defendant as widow of the said Edmund in one half of each 1/9th share, that is 1/9th share.

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Continued

23. By Deed No. 4459 of the 17th December, 1952, attested by C. Sevapragasam, N.P., the said Phoebe Lilian Rodrigo sold her unfettered one-eighteen (1/18th) share to the said Vincent.

24. The said Vincent who was now entitled to five one eighteen (5/18th) shares (*viz.* 3/8th being absolutely entitled and 2/18th subject to life interest of 3rd defendant) died in or about 24th November, 1955, leaving one son, Vernon Seneviratne, who inherited the said shares, and a widow, Jane Seneviratne.

25. The said Irwin who was entitled to five ninth (5/9th) shares died in or about 6th January, 1953, leaving a widow, Irene and four sons, Tissa, Ananda, Nalin and Gamini. The said sons became entitled to their father's (5/9th) shares, subject to the life interest on the 2nd Defendant in 1/9th share, and their mother Irene in one-half of the share of the said Irwin that devolved on him in terms of the said Last Will No. 125.

26. By Deed No. 465 of the 16th August, 1959, attested by T. Devarajan, N.P., the said Tissa, Ananda, Nalin and Gamini the sons and Irene Seneviratne, widow respectively of the said Irwin Seneviratne, sold and conveyed their unfettered four one-ninth (4/19th) share to the Plaintiff.

27. By Deed No. 466 of the 16th August, 1957, the said Tissa, Nalin, Gamini and Irene Seneviratne sold and conveyed their remaining one-ninth (1/9th) share to the plaintiff, subject to the life interest of the 2nd defendant therein and subject to the restrictions contained in the said Last Will No. 125.

28. By Deed No. 470 of the 25th September, 1957, attested by T. Devarajan, N.P., the said Phoebe Lilian Rodrigo and her husband, Edmund Rodrigo sold and conveyed their remaining one-eighteenth (1/18th) share to the plaintiff subject to the life interest of the 2nd defendant therein.

29. By Deed No. 1091 of the 5th August, 1957, attested by J. Wilson, N.P., the said Vernon Seneviratne and Jane Seneviratne as son and widow respectively of the said Vincent Seneviratne sold and conveyed all their shares and their right, title and interests to the 1st defendant.

30. The 5th defendant is the manager duly appointed of the Estate of the 3rd defendant who is a person of unsound mind.

31. The following encumbrances relating to the said land have been registered.

40 Indenture of Lease No. 1042 of the 13th March, 1957, attested by J. Wilson, N.P., by the 2nd defendant to the 1st defendant of six-eighteen (6/18) shares.

Indenture of Lease No. 1045 of the 19th March, 1957, attested by J. Wilson, N.P., of the unfettered one-eighteen (1/18) share of the 3rd defendant to the 1st defendant.

Indenture of Lease No. 1041 of the 14th March, 1957, attested by J. Wilson, N.P., whereby the said Vernon and Jane Seneviratne leased to

*Continued*

the 1st defendant (which may now have been superceded by the said Deed No. 1091, referred to in paragraph 29 hereof.

Mortgage Bond No. 952 of the 10th June, 1940, by J. E. L. Wira-singhe, N.P., in favour of one H. D. Pedrick in respect of which Lis Pendens in Case No. 946/MB of D.C., Colombo (erroneously mentioned as No. 948) is registered but which no longer effects the said land, in as much as under the terms of the said Last Will No. 125, the mortgagor had power to mortgage only his life interest and the mortgagor died on 7th March, 1944.

There are some mortgages and transfers effected by Edmund and Granville and Vincent several years ago but they do not affect the land and premises in question as they held their shares subject to the *fidei commissum* and on their death the mortgages and transfers had no effect whatsoever. 10

32. In the result, legal ownership in the said land is vested as follows :

The Plaintiff to 8/18 share (unfettered)

3/18 shares (subject to the life interest of the 2nd Defendant)

The 1st Defendant to 3/18 share (unfettered) 2/18 share subject to the life interest of the 2nd Defendant.

The 2nd Defendant life interest in 6/18th shares.

The 3rd Defendant 1/18th shares (unfettered) 1/18th share (subject to the life interest of the 2nd Defendant) 20

33. The right to possess the said land and premises by virtue *inter alia* of the leases mentioned in paragraph 31 is now vested as follows :

The Plaintiff to 8/18 shares.

The 1st Defendant to 10/18 shares.

35. The Plaintiff states that it is impracticable to partition the said land, and that it would be more expedient to have the said land sold under the provisions of the Partition Act, No. 16 of 1951.

36. The said land and buildings are reasonably of the value of Rs. 350,000/- which are held in common.

Wherefore the plaintiff prays :— 30

(a) that the Court be pleased to declare that the said land described in the first schedule hereto belongs in common to the plaintiff and the defendants in the shares set forth in paragraph 32 hereof.

(b) that a sale, or a partition be ordered of the said land in accordance with the provision of Partition Act No. 16 of 1951.

(c) that, in the event of a sale being ordered that the property be sold freed from the life interest of the 2nd defendant.

(d) for costs, and

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

(Sgd.) T. DEVARAJAN, 40  
*Proctor for Plaintiff.*

#### The First Schedule above referred to

All that allotment of land and those the buildings and premises called "Tower Hall" formerly bearing assessment Nos. 40, 41, 42 and 42A, presently bearing assessment No. 93 situated at Panchikawatte Road between Skinners Road South and Pichaud's Lane within the Municipality

of Colombo in the District of Colombo Western Province and bounded on the North by a lane, and the property of Zainudeen on the East by premises bearing assessment No. 43, the property of Zainudeen and Skinners Road South on the South by Premises No. 39 and property of Mr. Weerasinghe and West by Pichaud's Lane containing in extent one rood and twenty-eight perches (A0. R1. P28) exclusive of the Lot "A" acquired by the Government.

No. 1  
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*Continued*

#### **The Second Schedule above referred to**

10 All that garden called Meringhigewatte alias Talpawatte situated and lying at Maradana within the Municipal Limits of Colombo and District of Colombo, Western Province bounded on the South by a portion of the garden belonging to the estate of the late Don Johanis Goonetillake Muhandiram and the portion of land belonging to David Appu on the South by the portion of the garden belonging to Juwanis Appu, West by a small lot and by a portion of this garden and on the North by the small lot and by the premises in which Omar Lebbe resides and by the premises of Isan Appu.

#### **The Third Schedule above referred to**

20 All that allotment of land marked Lot "A" in Plan dated 14th May, 1877, made by P. Fonseka, Licensed Surveyor in and out of the premises called Meringhigewatte situated at Dematagoda within the Municipal Limits of Colombo bounded on the North by Lane, East by Lot marked B in the said Plan, South by another part of the Garden Meringhigewatte, West by ground of David Appuhamy and containing in extent  $4\frac{1}{2}$  perches.

#### **The Fourth Schedule above referred to**

30 All that allotment of land marked Lot B in the Plan dated 14th May, 1877, made by P. Fonseka, Licensed Surveyor in and out of the premises called Meringhigewatte, situated at Dematagoda within the Municipal Limits of Colombo bounded on the North by Lane, East by Lot marked C in the said Plan, South by another portion of Meringhigewatte West by Lot marked "A" in the said Plan and containing in extent  $4\frac{1}{2}$  square perches.

#### **The Fifth Schedule above referred to**

40 All that two allotments of land bearing assessment Nos. 42 and 42A situated at Pichaud's Lane in Maradana Ward within the Municipal Limits of Colombo and in the District of Colombo, Western Province, now forming one property together with the buildings and the trees and plantations thereon and bounded on the North-East by the property bearing assessment No. 43 and the North-West by a land on the South-East by assessment No. 40 and on the South-West bearing assessment No. 41 and containing in extent fourteen and forty two one hundredth perches as per Plan, dated 23rd January, 1904, made by C. A. O. Buyzer, Licensed Surveyor.

(Sgd.) T. DEVARAJAN,  
*Proctor for Plaintiff.*

## No. 2

## Formal Order of The District Court

## FORMAL ORDER

In the District Court of Colombo.

In the matter of an application under Chapter XXXV  
 and section 501 of the Civil Procedure Code.

Cinemas Limited of 117, New Chetty Street,  
 Colombo.

*Petitioner.* 10

*Vs.*

1. Gwendoline Dora Jayakoddy of Balagalle, Divulapitiya.

No. 2714/C.G. 2. Joseph De Abrew Wijesinghe of 24, Tichborne Passage,  
 Colombo, Manager of the Estate of the 1st Respondent  
 and Guardian-ad-litem.

*Respondents.*

This matter coming on for disposal before A. L. S. Sirimane Esquire,  
 Additional District Judge of Colombo, on the 16th day of July, 1958, in  
 the presence of Mr. T. Devarajan, Proctor on the part of the Petitioner ;  
 it is ordered that the abovenamed Joseph De Abrew Wijesinghe be and he  
 is appointed Guardian-ad-litem over Gwendoline Dora Jayakoddy for the  
 purpose of proceeding the proposed partition action in respect of the land  
 and premises referred to. 20

(Sgd.) A. L. S. SIRIMANE,  
*Additional District Judge.*

The 16th day of July, 1958.

*Drawn by :* (Sgd.) T. DEVARAJAN,  
*Proctor for Petitioner.*

## No. 3

## Journal Entries

30

Amount : Rs. 350,000/-                      Cinemas Ltd.,                      *Plaintiff.*  
 Nature : Partition  
 Procedure : Regular    *Vs.*

G. Dora Jayakoddy & another,  
*Defendants.*

## JOURNAL

- (1) The 21st day of August, 1958.  
 Mr. T. Devarajan, Proctor, files appointment (1a) and Plaint (1b)

together with Documents marked Pedigree (1c) abstract of title (1d) together with Lispendens in Duplicate.

No. 3  
Journal Entries  
21-8-58 to  
11-1-66

Plaint accepted.

*Continued*

- (1) Forward Lispendens to Registrar of Lands for Registration and return on or before 5-11-58.
- (2) Deposit Survey Fees estimated at Rs. 125/-, on or before 4-11-58.
- (3) Call Case on 5-11-58.

(Sgd.) A. L. S. SIRIMANE,  
*Additional District Judge.*

10 (2) 27-8-58.

Lispendens forwarded to Registrar of Lands for Registration and return on or before 5-11-58.

*Intld. ....*  
*Assistant Secretary.*

(3) 16-9-58.

Registrar of Lands returns Lispendens duly Registered.  
No. A 385/289 of 29-8-58.  
File

*Intld. ....*  
*Assistant Secretary.*

20 (4) 24-10-58.

Kachcheri Receipt P/14 No. 307/014942 of 8-10-58, for Rs. 125/-  
Filed.

*Intld. ....*

(5) 5-6-58.

Mr. T. Devarajan for Plaintiff.  
(Torn).....(4) Kachcheri Receipt filed.  
(Torn).....comply with Section 12 of the Partition Act.  
(Torn).....on 28-1-59.

*Intld. ....*  
*Additional District Judge.*

30 (6) 28-1-59.

(Torn).....comply with Section 12 — filed.  
(Torn).....Issue for 1-4-59.

*Intld. ....*  
*Additional District Judge.*

(7) 29-1-59.

Proctor for Plaintiff files papers under Section 12 of the Partition Act.

- 1. Issue Summons, Notices and Commission Returnable 22-4-59.
- 2. Publish Notice of Action in "Ceylon Daily News" and tender proof of Publication on the same date.

*Intld. ....*  
*Additional District Judge.*

(8) 18-2-59

Commission with a copy of Plaintiff issued to Mr. S. Rajendra,  
Licensed Surveyor.

*Intld. ....*

40



No. 8  
Journal Entries  
21-8-58 to  
11-1-66  
Continued

(9) 19-2-1959.

Add parties disclosed in the Declaration filed by Proctor for Plaintiff as 5th and 6th Defendants and issue notice on them for 22-4-59.

*Intld.* .....  
*Additional District Judge.*

(10) 4-8-1959.

Summons tendered. Translations of the plaint not certified by Proctor.

Not issued. *Intld.* .....

(11) 9-8-59.

10

Summons issued on 1st, 2nd and 5th Defendants. Notice to Fiscal & Village Headman issued.

(12) 14-3-59.

Notice issued on 5th and 6th Defendants.

*Intld.* .....

(13) 20-4-1959.

Commissioner files return to Commission together with Plan No. 1493, Copy of Field Notes, Report and Bill and moves to withdraw the amount in deposit.

1. No parties disclosed.
2. Tax and pay.
3. Mention on 22-4-59.

20

*Intld.* .....  
*Additional District Judge.*

(14) 20-4-1959.

Bill taxed at	...	Rs. 129.10
In deposit	...	Rs. 125.00

Balance Survey Fees	...	Rs. 4.10
---------------------	-----	----------

Valuation fees Rs. 2807/50 at 1%

*Intld.* ..... 30

(15) 20-4-1959.

Requisition No. 1646 for Rs. 125/- issued in favour of Mr. S. Rajendran, Surveyor, Vide Journal Entry (13).

*Intd.* .....  
*Assistant Secretary.*

*Intld.* .....  
*Administrative Secretary.*

(16) 22-4-1959.

Mr. T. Devarajan for Plaintiff

- |   |                |
|---|----------------|
| (a) Balance Survey Fees Rs. 4/10  | } File on 10-6 |
| (b) Valuation fees Rs. 2807/50 at 1%<br>Valuation fees at scale approved by me.                   |                |
| (c) Summons on 1st, 2nd and 5th defendants —<br>Served on 5th defendant. 5th defendant is absent. |                |

40

No return on 1st and 2nd defendants  
They are — Re-issue for 10-6.

(d) Notice to Fiscal —  
No return. Re-issue for 10-6.

(e) Notice to Village Headman  
No return — Re-issue for 10-6.

Proxy of 5th and 6th defendants filed by Mr. B. J. St. V.  
Perera.

Statement of Claim on 10-6.

10 Proxy of 4th defendant filed.

Statements of Claim on 10-6.

Proxy of 2nd defendant filed.

Statement of Claim on 10-6.

Proof of Publication filed.

*Intld.* .....

(17) 28-4-1959.

Proctor for Plaintiff moves that Valuation fees be fixed by Court.  
Valuation fees fixed at Rs. 414/- according to approved scale.

*Intld.* .....

20 *Additional District Judge.*

(18) 5-5-1959.

Mr. John Wilson files his appointment as Proctor for 1st Defendant Company and moves for leave of Court to file answer on 10-6-59.  
Proctor for Plaintiff consents.

1. Accept Proxy.
2. File answer on 10-6-1959.

*Intld.* .....

*Additional District Judge.*

(19) 1-6-1959.

80 Proctor for Plaintiff files receipt from Mr. S. Rajendra, Surveyor, for Rs. 418/10 in full settlement of balance Survey Fees and valuation fees.

Note and file.

*Intld.* .....

*Additional District Judge.*

(20) 2-6-1959.

40 Proctor for 5th and 6th Defendants states that he has been instructed to withdraw the seizure effected on the subject matter of this action in execution of the Decree entered and writ issued in 2542/MB of this Court and does not propose to file any statement and therefore moves that the 5th and 6th Defendants be discharged from this case.

Their names should remain in the caption.

The rights of the parties will not be made subject to the mortgage in the event of a lease being granted.

*Intld.* .....

(21) 10-6-1959.

Mr. T. Devarajan for Plaintiff.

- |    |  |   |
|----|--|---|
| 50 | <ol style="list-style-type: none"> <li>(a) Balance Survey Fees Rs. 4/10</li> <li>(b) Valuation Fees Rs. 414/-</li> </ol> | { Receipt filed,<br>Vide Journal Entry (19) |
|----|--|---|

No. 3  
Journal Entries  
21-8-58 to  
11-1-66  
Continued

- (c) Summons already served on 2nd Defendant for 22/4.  
Journal Entry (18) 1st Defendant's Proxy filed.
- (d) Notice to Village Headman & Fiscal already served.
- (e) Statements of Claim due of 1st Defendant — filed  
4th Defendant — filed.  
Proxy of one Interveniens S. D. V. Seneviratne. Add him.  
His Statement of Claim on 26-8.

*Intld.* .....  
*Additional District Judge.*

(22) 26-8-1959. 10

Statement of Claim due of 2nd Defendant. Filed.  
Statement of Claim of 7th Defendant on 23-9.

*Intld.* .....  
*Additional District Judge.*  
26-8-59.

(23) 23-9-1959.

Statement of Claim due  
7th Defendant filed.  
Trial on 10-3-1960.

*Intld.* ..... 20

(24) 12-2-1960.

Proctor for Plaintiff files list of witnesses and documents in this case.

Proctors for 1, 2, 4 & 7 Defendants received notice.  
File.

*Intld.* .....  
*Additional District Judge.*  
12-2-1960.

(25) 10-3-1960.

Mr. T. Devarajan for Plaintiff instructing Mr. Cooray. 30  
 Mr. John Wilson for 1st Defendant instructing Mr. Eddussuriya.  
 Mr. J. A. R. Perera for 2nd Defendant instructing Mr. Jayamanne.  
 Mr. J. B. Puvimanasinghe for 4th Defendant instructing Mr. Adv.  
 Martyn.  
 Mr. P. C. Seneviratne for 7th Defendant instructing Mr. Adv.  
 Vithanage  
 Vide Journal Entry (23).

There appears to have been some confusion in regard to the trial date in this case as to whether it is today or the 15th. It has in fact been fixed for the 15th in the Trial Roll. 40  
That date will stand.

(Sgd.) A. L. S. SIRIMANE,  
10-3-60.

(26) 15-3-1960.

Mr. T. Devarajan for Plaintiff.  
Mr. John Wilson for 1st Defendant.  
Mr. J. A. R. Perera for 2nd Defendant.

Mr. J. B. Puvimanasinghe for 4th Defendant.  
Mr. P. C. Seneviratne for 7th Defendant.  
Vide Journal Entry (25).  
Trial.  
Vide Proceedings.  
Trial 20-9-1960.

No. 3  
Journal Entries  
21-8-53 to  
11-1-66  
*Continued*

*Sgd.* A. L. S. SIRIMANE,  
*Additional District Judge.*  
15-3-60.

(27) 20-9-1960.

10 Mr. T. Devarajan for Plaintiff.  
Mr. John Wilson for 1st Defendant.  
Mr. J. A. R. Perera for 2nd Defendant.  
Mr. J. B. Puvimanasinghe for 4th Defendant.  
Mr. P. C. Seneviratne for 7th Defendant.  
Vide Journal Entry (26).  
Trial.  
Vide Proceedings.  
Call 4-10-60.

20 (27a) Proceedings filed.  
*Intld.* .....  
30-9-60.

(28) 4-10-60.

Mr. T. Devarajan for Plaintiff.  
Mr. John Wilson for 1st Defendant.  
Mr. J. A. R. Perera for 2nd Defendant.  
Mr. J. B. Puvimanasinghe for 4th Defendant.  
Mr. P. C. Seneviratne for 7th Defendant.  
Vide Journal Entry (27).  
Case called.  
30 Motion filed seeking to amend answer.  
The application is allowed. Amended answer filed.  
Trial 30-3-61.

*Sgd.* A. L. S. SIRIMANE,  
*Additional District Judge.*  
4-10-60.

(29) 25-3-1961.

Vide Journal Entry (28).  
Date of trial fixed (30-3-61) falls during the Court vacation.  
40 1. Call case on 28-3-1961 to fix another date of trial.  
2. Inform Proctors.

*Intld.* .....  
*Additional District Judge.*  
25-3-61.

(30) 28-3-1961.

Mr. T. Devarajan for Plaintiff.  
Mr. John Wilson for 1st Defendant.  
Mr. J. A. R. Perera for 2nd Defendant.

No. 8  
Journal Entries  
21-8-58 to  
11-1-66  
Continued

Mr. J. B. Puvimanasinghe for 4th Defendant.  
Mr. P. C. Seneviratne for 7th Defendant.  
Journal Entry (29).  
Case called.  
Trial on 12-9-1961.

*Intld.* .....  
*Additional District Judge.*  
28-8-61.

(81) 12-9-1961.

Vide Journal Entry (80).  
Trial.

10

Mr. Adv. Coomaraswamy instructed by Mr. T. Devarajan for Plaintiff.  
Mr. Adv. Jayamanne instructed by Mr. J. A. R. Perera for 2nd  
Defendant.

Mr. Adv. Eddussuriya instructed by Mr. John Wilson for 1st Defendant.  
Mr. Adv. Martyn instructed by Mr. Puvimanasinghe for 3rd Defendant.  
Vide Proceedings.

Documents P1 to P24 filed.

1D1 filed.

Judgment for 18-10-1961.

20

Documents filed without a list P1 to P23 and 1D1.

*Intld.* .....

*Intld.* .....

12-9-61.

Proceedings filed. 20-9-61.

(82) 18-10-1961

Mr. T. Devarajan for Plaintiff.

Mr. John Wilson for 1st Defendant.

Mr. J. A. R. Perera for 2nd Defendant.

Mr. J. B. Puvimanasinghe for 4th Defendant.

30

Mr. P. C. Seneviratne for 7th Defendant.

Vide Journal Entry (81).

Judgment.

Delivered in open Court in presence of Mr. T. Devarajan for  
Plaintiff and Mr. J. A. R. Perera for 2nd Defendant.

Enter Interlocutory Decree for sale accordingly (vide judgment)  
for 22-11-1961.

*Intld.* .....  
*Additional District Judge.*

(83) 30-10-1961.

40

Mr. T. Devarajan for Plaintiff tenders Petition of Appeal against  
the judgment dated 18-10-1961. He moves for a Paying-in-Voucher  
for Rs. 50/- being fees for type-written copies.

1. Petition of Appeal accepted.

2. Issue Paying-in-Voucher for Rs. 50/-.

*Intld.* .....  
*Additional District Judge.*  
30-10-61.

(34) 30-10-1961.

Proctor for Plaintiff-Appellant tenders notice of security in appeal to be served on defendants-respondents. He moves that this case be called on 8-11-1961.

1. Issue notice of Security for 8-11-1961.
2. Call case on 8-11-1961.

*Intld.* .....  
*Additional District Judge.*  
31-10-61.

10 (35) 31-10-1961.

Notice of Security issued on 1st Respondent, 2nd Respondent and on Mr. J. B. Puvimanasinghe — Fiscal W.P.

*Sgd.* .....

(36) 8-11-1961.

Mr. T. Devarajan for Plaintiff-Appellant.  
Mr. John Wilson for 1st Defendant-Respondent.  
Mr. J. A. R. Perera for 2nd Defendant-Respondent.  
Mr. J. B. Puvimanasinghe for 4th Defendant-Respondent.

Vide Journal Entry (34).

20 Notice of Security served on

Mr. John Wilson — Absent.  
Mr. J. A. R. Perera — Present.  
Mr. J. B. Puvimanasinghe — Absent.

Issue Paying-in-Voucher for Rs. 750/-. Perfect Bond.  
Issue Notice of Appeal for 22-11-1961.

*Intld.* .....

Vide Journal Entry 32 — next date on 22-11-1961

Paying-in-Voucher issued.

*Intld.* .....

30 (37) 9-11-1961.

Application for type-written copies of the record tendered with Kachcheri Receipt for Rs. 50/-.  
Note and file.

*Intld.* .....  
*Additional District Judge.*  
9-11-61.

(38) 9-11-1961.

Bond to prosecute appeal filed with Kachcheri Receipt for Rs. 750/-. Notice of Appeal also tendered.

40

*Intld.* .....

(39) 13-11-1961.

Notice of Appeal issued on Messrs. John Wilson, J. A. R. Perera and J. B. Puvimanasinghe.

*Intld.* .....

(40) 22-11-1961.

Mr. T. Devarajan for Plaintiff-Appellant. Vide Journal Entry (36).

1. Notice of Appeal served on  
Mr. John Wilson — Absent.

No. 3  
Journal Entries  
21-8-58 to  
11-1-66  
*Continued*

Mr. J. A. R. Perera — Absent.  
Proctors for Respondents.

2. Notice of Appeal not served on  
Mr. J. B. Puvimanasinghe, Proctor.
3. Vide Journal Entry (32)  
Interlocutory Decree not yet entered.
  1. —
  2. He is present and accepts notice.
  3. Proctor for the Plaintiff will file this, before the Appeal is forwarded.

10

*Intld.* .....

(41) 23/27-11-1961.

Proctor for plaintiff-appellant, tenders Interlocutory Decree and moves :

1. that the same be signed,
2. to forward the record to Supreme Court.
  1. Decree for sale entered of record.
  2. Forward record to Supreme Court.

*Sgd.* .....  
*Additional District Judge.* 20  
27-11-61.

(42) 6-2-1962.

Record forwarded to the Supreme Court for the hearing of the Appeal.

*Sgd.* .....  
*Assistant Secretary.*

(48) 7-5-1965.

Record received from Supreme Court with Supreme Court Decree. Supreme Court has adjudged that the part of the Interlocutory Decree entered by this Court which states that " the said premises will be put up for sale subject to the life interest of the 2nd Defendant in respect of 1/3rd share of the soil and 1/3rd share of the building " be deleted and the following words be substituted :—" the said premises will be put up for sale."

30

Supreme Court has further decreed that the rest of the order of this Court in the Interlocutory decree do stand.

It has further decreed that the interests awarded to the 2nd Defendant be valued and he be paid the estimated value of his usufruct out of the proceeds of sale.

Appellant is entitled to Costs of Appeal and Costs of Inquiry.

40

Call case on Bench on 26-5-65. Office to notice Proctors for parties.

*Sgd.* .....  
*Additional Disrtict Judge.*  
7-5-65.

(44) 13-5-1965.

Notices issued on Proctors.

*Intld.* .....

(45) 26-5-1965.

Mr. T. Devarajan for Plaintiff.  
Case called — vide Journal Entry (43).  
Amended Decree for Sale.  
Call on 16-6-65.

*Sgd.* .....

(46) 16-6-65.

Mr. T. Devarajan for Plaintiff.  
Case called — vide Journal Entry (45).

10 This is now an Appeal to the Privy Council. Proctors desire that  
the case be called on 30-6-65, to consider what steps should be taken.  
Call on 30-6-65.

*Sgd.* .....

(47) 25-6-1965.

Proctor for Plaintiff tenders Amended Decree in terms of the  
Supreme Court Order and moves Court to accept same.  
Mention on 30-6-65.

*Sgd.* .....  
*Additional District Judge.*  
28-6-65.

20

(48) 30-6-1965.

Case called.  
Amended Interlocutory Decree filed. (Vide Journal Entry (47)).  
Mr. Advocate Sivagurunathan for Plaintiff instructed.  
Mr. Advocate Subasinghe for 1st Defendant instructed.  
They desire that this be taken up after the application for leave  
to Privy Council is dealt with.  
Forward record to Supreme Court.

*Sgd.* .....

80 (49) 27-12-1965.

Registrar, Supreme Court calls for record as there is an Appeal  
to the Privy Council that has been allowed in this case.  
Forward record to Supreme Court.

*Sgd.* .....  
*Additional District Judge.*  
27-12-65.

(50) 11-1-1966.

Record forwarded to the Registrar, Supreme Court. Vide his  
letter No. B. 120/65 of 24-12-65.

*Sgd.* .....  
*Assistant Secretary.*

40



No. 4  
Plaint of the  
Plaintiff  
21-8-58

No. 4

**Plaint of the Plaintiff with Pedigree  
and Abstract of Title**

IN THE DISTRICT COURT OF COLOMBO

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

*Plaintiff.*

*Vs.*

No. 8603/P.

*Nature* : Partition.

*Value* : 850,000

*Procedure* : Regular.

1. Ceylon Theatres Limited of Parsons Road,  
Colombo.
2. Eugene Seneviratne of " Kenilworth " No. 231,  
Dematagoda Road, Colombo.
3. Gwendoline Dora Jayakoddy of Balagalle,  
Divulapitiya, appearing by her *Guardian-  
ad-litem* and Curator, the 4th Defendant.
4. Joseph De Abrew Wijesinghe of 24, Tichborne  
Passage, Colombo.

10

*Defendants.*

5. J. R. Gomes.

6. Joseph Gabriel Gomes, of Bambalapitiya, &

7. S. D. V. Seneviratne of Horana.

20

On this 21st day of August, 1958.

The Plaintiff of the Plaintiff abovenamed appearing by T. Devarajan, its  
Proctor, states as follows :—

1. The Plaintiff is a Company incorporated under the Companies  
Ordinance No. 51 of 1938 and having its registered office at No. 117, New  
Chetty Street, Colombo.

2. The 4th Defendant the manager of the estate of the 3rd Defendant  
appointed as such in D.C. Negombo, Case No. 1151, and has been appointed  
*Guardian-ad-litem* in this case by its Order dated 16th July, 1958.

30

3. The allotment of land and premises, which form the subject matter  
of this action, and fully described in the 1st Schedule hereto are situated  
in Colombo, within the local limits of the jurisdiction of this Court.

4. Don David de Livera Wijewickrema Seneviratne Muhandiram and  
his wife, Dona Nathalia de Livera Lama Etany were the original owners of  
the land and premises in the 2nd Schedule hereto fully described.

5. By their Joint Will dated the 18th October, 1855, the said D. D.  
de Livera Wijewickrema Seneviratne Muhandiram and his wife, Dona  
Nathalia de Livera Lama Etany devised the said land and premises in the  
2nd Schedule hereto fully described to their grand-son, Dr. Edwin de Livera.

40

6. The said Dona Nathalia de Livera Lama Etany died on the 10th  
November, 1855, and the said D. D. de Livera Wijewickrema Seneviratne  
Muhandiram died on the 22nd September, 1857, and the said Last Will

was proved in the District Court of Colombo and Probate was granted to Francis de Livera and Mathew de Livera the Executors under the Will.

No. 4  
Plaint of the  
Plaintiff  
21-8-58

*Continued*

7. Under and by virtue of Indenture No. 1754 of the 10th June, 1876, Managey Dona Maria Perera became entitled to Lot A in Plan dated the 14th May, 1876, containing in extent  $4\frac{1}{2}$  perches and in the third schedule hereto fully described, and Managey Dona Agida Perera became entitled to Lot B in the said Plan containing in extent  $4\frac{1}{2}$  perches and in the fourth schedule hereto fully described.

10 8. By Fiscal's Transfer No. 960, dated the 7th July, 1882 (in pursuance of a mortgage Bond No. 2542 of the 28th November, 1878, executed by the said Maria Perera) the said Lot A was conveyed to A. F. Parke.

9. The said A. F. Parke, by Deed No. 2117, dated the 18th January, 1884, attested by W. P. Ranasinghe, N.P., the said A. F. Parke conveyed the said Lot A to J. R. V. de Livera.

10. By Fiscal's Transfer No. 1822, of the 21st January, 1884, the said Lot B was conveyed to M. L. C. Bawa.

20 11. The said M. L. C. Bawa by Deed No. 4585 of the 24th November, 1894, transferred the said Lot B to Thamby Mustapha Lebbe, who, by Deed No. 842 of the 18th December, 1896, transferred the said Lot to the said J. R. V. de Livera.

12. The said J. R. V. de Livera, who was thus entitled to the said Lots A and B in the third and fourth schedule hereto fully described, died on or about the 9th March, 1903, leaving a Joint Last Will dated the 10th April, 1882, which was duly proved in Case No. 1855 of this Court.

13. The said Lot A and B were thereafter consolidated into one property by a Plan, dated the 23rd January, 1904, made by C. A. O. Buyzer, Licensed Surveyor, now containing in extent 14.42 perches as described in the fifth schedule hereto.

30 14. Mary Teresa de Livera as Executrix of the said Last Will of J. R. V. de Livera, put the said property up for sale for the payment of debts and the said property was purchased by Dr. Edwin de Livera, under Deed No. 722, dated the 28th November, 1905, attested by C. P. S. Gunatilleke, N.P.

15. The said Dr. Edwin de Livera had the said allotments of land in the second and fifth schedules hereto fully described consolidated into one block, according to Plan dated 10th October, 1906, made by George De Saram and the said block is the subject matter of the present action.

40 16. The said Dr. Edwin de Livera sold the said land by Deed No. 5493 dated the 27th September, 1907, attested by F. C. Loos, N.P., to G. A. Don Hendrick Appuhamy (alias D. H. Seneviratne) who erected the buildings called and known as "Tower Hall" on the said land.

17. The said Don Hendrick Appuhamy died in or about 1929, leaving a Last Will No. 125, dated the 7th April, 1929, attested by P. C. Seneviratne, N.P., which was duly proved in Case No. 4914/Testy. of this Court.

18. It was provided by the said Last Will No. 125 that the said land in the first schedule hereto fully described should devolve on his three sons, Granville, Irwin, and Edmund in equal shares, subject to the following conditions and restrictions:—

No. 4  
Plaint of the  
Plaintiff,  
21-8-58.

*Continued*

(a) That no child of mine shall mortgage, sell or otherwise alienate or encumber, save as hereinafter provided any one or more of the immovable properties or any part or portion thereof or any share in such immovable properties but such child shall only be entitled to take, receive and enjoy the rents and profits and income thereof during his or her life time. Any such mortgage or such alienation shall be absolutely null and void but this restriction shall not prevent such child of mine from leasing to any person or persons any of the said immovable properties for a period not exceeding two years at a time and I hereby direct that a lease executed by a majority of my said children of any immovable properties held by them in common shall be good and valid and shall be binding on any of the children who shall refuse or neglect to execute the same when requested thereto by the majority of them without prejudice however to the right of dissenting minority to their respective shares of the rent reserved by such lease. Provided however that any lease executed during the continuance of an existing lease shall be absolutely null and void.

10

(b) On the death of any child of mine the immovable properties and all properties and all share therein devised to him or her hereunder shall devolve on his or her issue or any one or more of them as such child by Last Will appoint and subject to such conditions as such child shall deem fit and proper or without any condition or restriction whatsoever and in the event of any child of mine dying intestate without such appointment as aforesaid then the same shall devolve absolutely on his or their issue equally between them or more than one subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided.

20

(c) In the event of the death of any child of mine without leaving issue living at the time of his or her death such immovable properties and shares therein devised to him or her hereunder shall devolve equally on any of my other children and the issue of any other deceased children of mine such issue taking by substitution per stripes and equally between them if more than one the share which his or her or their parent would have taken had such parent been alive at the time of the death of any such parent been alive at the time of the death of any such child of mine. Provided however that any child of mine dying without issue shall have the right to give and grant any such immovable properties and shares therein or any of them by Last Will only to any one or more of my other children upon the same conditions and restrictions as are herein contained or to anyone or more of the issue of any deceased child of mine upon such conditions and restrictions as her or she shall deem fit and proper without any condition or restrictions whatsoever but subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided.

30

40

(d) If any child of mine shall die leaving his or her surviving his or her spouse and his or her issue then such surviving spouse shall be entitled to a just one-half of the nett income of the said immovable properties and shares therein devised to such deceased child hereunder but if any child of mine shall die leaving him or her surviving his or her spouse only and no issue then the surviving spouse shall be entitled during his or her life time to the whole of the nett income of the immovable properties and shares therein devised to such deceased child subject however to the condition that the surviving spouse shall forfeit his or her right to the just

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one-half of the nett income or to the whole of the nett income as the case may be on such surviving spouse contract a subsequent marriage.

No. 4  
Plaint of the  
Plaintiff  
21-8-58

Continued

(e) I declare that if any child of mine or any person claiming through him or her shall at any time dispute the validity of this my Last Will or any of the dispositions herein or in any Codicil hereto contained then all such dispositions herein or in any Codicil hereto contained in favour of such child of mine shall cease and be void to alienate and purposes whatsoever and be hereby revoked and as to all the immovable and movable property and shares therein so forfeited as aforesaid, I give and devise the same in equal shares unto my other children and the issues of any deceased child of mine as the case may be such immovable and the shares therein to be held by my said other children in the same manner and subject to the same conditions and restrictions hereinbefore declared and provided as if the same had been devised to them hereunder in the first instance.

19. The said Don Hendrick Appuhamy left six children, namely, the said Granville, Irwin and Edmund and Vincent, Adeline and Florence.

20. The said Florence died in the year 1931.

21. The said Edmund who was entitled to one-third (1/3) share in the said land, died in 1944, whereupon the said one-third (1/3) share devolved as aforesaid: (in as much as he left no issue, but only his widow, the 2nd Defendant.)

The 2nd Defendant only life interest in the 1/3 share.

The said Irwin a further 1/12th share subject to the aforesaid life interest.

The said Granville a further 1/12th share subject to the aforesaid life interest.

The said Vincent 1/12th share subject to the aforesaid life interest.

The said Adeline 1/12th share subject to the aforesaid life interest.

22. The said Granville who was now entitled to five one twelfth (5/12) share (*viz.* 4/12th being entitled absolutely 1/12th being entitled subject to life interest aforesaid) died on the 7th March, 1944, and his shares devolved as follows: (as he left no issues or widow).

The said Irwin a further 5/36th share (*viz.* 4/36 being absolutely entitled and 1/36 subject to the life interest).

The said Vincent a further 5/36 share (*viz.* 4/36 being absolutely entitled and 1/36 subject to the life interest).

The said Adeline a further 5/36 share (*viz.* 4/36 being absolutely entitled and 1/36 subject to the life interest).

23. The said Adeline who was now entitled to two-ninth (2/9th) shares (*viz.* 1/9th being absolutely entitled and 1/9th subject to life interest, of 2nd defendant) died in or about the year 1945, leaving two children, Phoebe Lilian Rodrigo and Gwendoline Jayakoddy the 3rd Defendant, who thereon became entitled to 1/9th share each, subject to the life interest of the 2nd Defendant as widow of the said Edmund in one-half of each 1/9th share, that is 1/9th share.

24. By Deed No. 4459 of the 17th December, 1952, attested by C. Sevaprakasam, N.P., the said Phoebe Lilian Rodrigo sold her unfettered one-eighteen (1/18th) share to the said Vincent.

25. The said Vincent who was now entitled to five one eighteenth (5/18th) shares (*viz.* 3/18th being absolutely entitled and 2/18th subject to life interest of 3rd Defendant) died in or about 24th November, 1955, leaving one son, Vernon Seneviratne, who inherited the said shares, and a widow, Jane Seneviratne.

26. The said Irwin, who was entitled to five-ninth (5/9th) shares, died in or about 6th January, 1953, leaving a widow, Irene and four sons, Tissa, Ananda, Nalin and Gamini. The said sons became entitled to their fathers (5/9th) shares, subject to the life interest of the 2nd Defendant in 1/9th share, and their mother Irene in one-half of the share of the said Irwin that devolved on him in terms of the said Last Will No. 125. 10

27. By Deed No. 465 of the 16th August, 1957, attested by T. Devarajan, N.P., the said Tissa, Ananda, Nalin and Gamini, the sons of Irene Seneviratne, widow, respectively of the said Irwin Seneviratne, sold and conveyed their unfettered four-ninth (4/9th) shares to the Plaintiff.

28. By Deed No. 466 of the 16th August, 1957, the said Tissa, Ananda, Nalin, Gamini and Irene Seneviratne, sold and conveyed their remaining one-ninth (1/9th) share to the Plaintiff subject to the life interest of the 2nd Defendant therein and subject to the restrictions contained in the said Last Will No. 125. 20

29. By Deed No. 470 of the 25th September, 1957, attested by T. Devarajan, N.P., the said Phoebe Lilian Rodrigo and her husband, Edmund Rodrigo, sold and conveyed their remaining one-eighteenth (1/18th) share to the plaintiff subject to the life interest of the 2nd Defendant therein.

30. By Deed No. 1091 of the 5th August, 1957, attested by J. Wilson, N.P., the said Vernon Seneviratne and Jane Seneviratne as son and widow respectively of the said Vincent Seneviratne, sold and conveyed all their shares and their right title and interests to the 1st Defendant.

31. The 4th Defendant is the manager duly appointed of the Estate of the 3rd Defendant, who is a person of unsound mind. 30

32. The following encumbrances relating to the said land have been registered.

Indenture of Lease No. 1042 of the 13th March, 1957, attested by J. Wilson, by the 2nd Defendant to the 1st Defendant of six-eighteenth (6/18th) share.

Indenture of Lease No. 1045 of the 19th March, 1957, attested by J. Wilson, N.P., of the unfettered one-eighteenth (1/18th) share of the 3rd Defendant to the 1st Defendant.

Indenture of Lease No. 1041 of the 14th March, 1957, attested by J. Wilson, N.P., whereby the said Vernon and Jane Seneviratnc, leased to the 1st Defendant (which may now have been superceded by the said Deed No. 1091, referred to in paragraph 30 hereof). 40

Mortgage Bond No. 952 of the 10th June, 1949, attested by J. E. L. Weerasinghe, N.P., in favour of one, H. D. Pedris in respect of which Lis Pendens in Case No. 946/MB of D.C. Colombo (erroneously mentioned as No. 948), is registered but which no longer effects the said land, in as much as under the terms of the said Last Will No. 125, the mortgagor had power to mortgage only his life interest and the mortgagee died on 7th March, 1944.

There are some mortgages and transfers effected by Edmund and Granville and Vincent several years ago but they do not affect the land and premises in question as they held their shares subject to the *fidei commissum* and on their death the mortgages and transfers had no effect whatsoever.

No. 4  
Plaint of the  
Plaintiff  
21-8-58  
Continued

33. In the result, legal ownership in the said land is vested as follows :—

The Plaintiff to 8/18 share (unfettered)

3/18 share (subject to the life interest of the 2nd Defendant).

The 1st Defendant to 3/18 share (unfettered)

2/18 share (subject to the life interest of the 2nd Defendant).

The 2nd Defendant life interest in 6/18 shares.

The 3rd Defendant 1/18 share (unfettered)

1/18 share (subject to the life interest of the 2nd Defendant).

34. The right to possess the said land and premises by virtue *inter alia* of the leases mentioned in paragraph 32 is now vested as follows :—

The Plaintiff to 8/18 shares.

The 1st Defendant to 10/18 shares.

35. The Plaintiff states that it is impracticable to partition the said land and that it would be more expedient to have the said land sold under the provisions of the Partition Act No. 16 of 1951.

36. The said land and premises are reasonably of the value of Rs. 850,000/- and are held in common.

WHEREFORE THE Plaintiff prays :—

(a) that the Court be pleased to declare that the said land described in the first schedule hereto belongs in common to the Plaintiff and the Defendants in the shares set forth in paragraph 33 hereof,

(b) that a sale, or a partition be ordered of the said land in accordance with the provisions of Partition Act No. 16 of 1951,

(c) that in the event of a sale being ordered that the property be sold freed from the life interest of the 2nd Defendant.

(d) for costs and

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

*Proctor for Plaintiff.*

#### The First Schedule above referred to

All that allotment of land and those the buildings and premises called "Tower Hall" formerly bearing assessment Nos. 40, 41, 42 and 42A, presently bearing assessment No. 93, situated at Panchikawatte Road, between Skinner's Road South and Piachaud's Lane, within the Municipality of Colombo, in the District of Colombo Western Province, and bounded on the North by a lane and the property of Zainudeen on the East by premises bearing assessment No. 43, the property of Zainudeen and Skinner's Road South, on the South by premises No. 39 and property of Mr. Weerasinghe and West by Pichaud's Lane, containing in extent one rood and twenty-eight perches (A0. R1. P28.) exclusive of Lot "A" acquired by the Government.

No. 4  
Plaint of the  
Plaintiff  
21-8-58  
Continued

### The Second Schedule above referred to

All that garden called Meringhigewatte alias Talpewatte situated and lying at Maradana within the Municipal limits of Colombo and District of Colombo Western Province bounded on the South by a portion of the garden belonging to the estate of the late Don Johanis Goonetilleke Muhandiram and the portion of land belonging to David Appu on the — — by the portion of the garden belonging to Juwanis Appu, West by a small lot and by a portion of this garden and on the North by the small lot and by the premises in which Omer Lebbe resides and by the premises of Issan Appu.

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### The Third Schedule above referred to

All that allotment of land marked Lot "A" in Plan, dated 14th May, 1877, made by P. Fonseka, Licensed Surveyor, or in and out of the premises called Meringhigewatte situated at Dematagoda within the Municipal Limits of Colombo, bounded on the North by Lane, East by Lot marked B in the said Plan, South by another part of the garden Meringhigewatte, West by ground of David Appuhamy and containing in extent  $4\frac{1}{2}$  perches.

### The Fourth Schedule above referred to

All that allotment of land marked Lot B in the Plan, dated 14th May, 1877, made by P. Fonseka, Licensed Surveyor, in and out of the premises called Meringhigewatte, situated at Dematagoda, within the Municipal Limits of Colombo, bounded on the North by Lane, East by Lot marked C in the Plan, South by another portion of Meringhigewatte, West by Lot marked A in the said Plan and containing in extent  $4\frac{1}{2}$  perches.

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### The Fifth Schedule above referred to

All that two allotments of land bearing assessment Nos. 42 and 42A, situated at Piachaud's Lane in Maradana Ward, within the Municipal Limits of Colombo and in the District of Colombo, Western Province, now forming one property together with the buildings and the trees and plantations thereon and bounded on the North East by the property bearing assessment No. 42 and the North West by a Lane, on the South East by assessment No. 40 and on the South West bearing assessment No. 41, containing in extent fourteen and forty-two one-hundredth perches as per Plan, dated 23rd January, 1904, made by C. A. O. Buyzer, Licensed Surveyor.

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(Sgd.) T. DEVARAJAN,  
*Proctor for Plaintiff.*

#### Documents Filed with the Plaintiff :

1. Pedigree.
2. Abstract of Title.
3. Appointment.

(Sgd.) T. DEVARAJAN,  
*Proctor for Plaintiff.*

40

#### Documents relied on by the Plaintiff :

Deeds referred to in the Plaintiff.

(Sgd.) T. DEVARAJAN,  
*Proctor for Plaintiff.*

# PEDIGREE

Premises called Tower Hall in extent A0. R1. P28.

No. 4  
Plaintiff of the  
Plaintiff  
21-8-58  
Pedigree

*Original Owner* : David de Livera Wijewikreme Seneviratne  
Muhandiram and his wife Dona Nathalia  
de Livera Lama Etana

Both died leaving a Last Will  
devised to  
Edwin de Livera.

Under Deed No. 1754  
10-6-1876

M. Maria Perera  
Lot A in extent 4½ perches  
3rd Schedule

M. Agida Perera  
Lot B in extent 4½ perches  
4th Schedule

Fiscal Deed No. 960  
7-7-1882

Fiscal Deed No. 1822  
21-1-1884

to  
A. F. Parke  
2117  
18-1-1884  
J. R. V. de Livera

M. L. C. Bawa  
4585  
24-11-1884  
Tamby Mustapa Lebbe  
842  
18-12-1896  
J. R. V. de Livera

A. B. formed one property  
5th Schedule  
722  
28-11-1905 Edwin de Livera

5493  
27-9-1907

G. A. Don Hendrick Appuhamy  
Died Testy. Case No. 4914, D.C. Colombo

Granville  
Died  
No Children

Irwin

Edmund

Died leaving widow, no children

Granville  
Died

Irwin

\*Vincent

Adeline

Tissa

Ananda

Nalini

Gamini

Irene (widow)

465 & 466  
16-8-1957 16-8-1957

*Plaintiff*

Widow  
Jane Seneviratne

Vernon Seneviratne

1091  
5-8-57  
*1st Defendant*

P. Rodrigo  
470  
25-9-57  
*Plaintiff*

G. Jayakody  
*3rd Defendant*

\*Vincent

Colombo, 21st August, 1958

(Sgd.) T. DEWARAJAN,  
*Proctor for Plaintiff.*



# ABSTRACT OF TITLE

No. of Deed	Date and Name of Notary	From Whom	To Whom	Number of Premises	Share Whole or Portion dealt with	Original or Copy	Consideration Rs. cts.	Remarks
1754	10-6-1876 C. C. Wathivale	—	Managey Dona Maria Perera Managey Dona Agida Perera	A. R. P. Lot A in extent 0.0.4½	Whole	Copy	—	
960	7-7-1882 Fiscals Transfer	—	A. F. Parke	Lot B " 0.0.4½	do	Copy	—	
2117	18-1-1884 W. P. Ranasinghe	—	J. R. V. de Livera	Lot A " 0.0.4½	do	Copy	—	
1822	21-1-1884 Fiscals Transfer	A. F. Parke	J. R. V. de Livera	Lot A " 0.0.4½	do	Copy	250/-	
4585	24-11-1894 D. J. Kulasinga	Fiscal	M. L. C. Bawa	Lot B " 0.0.4½	do	Copy	200/-	
842	18-12-1896 P. D. A. Mack	M. L. C. Bawa	Tamby Mustapha Lebbe	Lot B " 0.0.4½	do	Copy	500/-	
722	28-11-1905 C. P. S. Gunatilleke	Tamby Mustapha Lebbe	J. R. V. de Livera	Lot B " 0.0.4½	do	Copy	325/-	
5498	27-9-1907 F. C. Loos	Mary Thirisa de Livera	Dr. Edwin de Livera	Lots A & B 0.0.14.42	do	Copy	—	
4459	17-12-1952 C. Sivapragasam	Dr. Edwin de Livera	G. A. Don Hendrick Appuhamy (alias D. H. Seneviratne)	Lots A & B 0.0.14.42	1/18	Copy	20,000/-	
465	16-8-1957 T. Sevarajan	Phoobe Lilian Rodrigo Tissa, Ananda, Nalin & Gamini Irene Seneviratne	Vincent Cinemas Ltd. (Plaintiff)	do	4/9	Original	150,000/-	
466	16-8-1957 T. Devarajan	do	do	do	1/9	Original	37,500/-	
470	25-9-1957 T. Devarajan	Phoobe Lilian Rodrigo Edmund Rodrigo Vernon Seneviratne, Jane Seneviratne	do	do	1/18	Original	12,500/-	
1091	5-8-1957 John Wilson	Jane Seneviratne	Ceylon Theatres Limited	do	Right title & interest	Copy	—	

Colombo, 21st August, 1958.  
(Sgd.) T. DEVARAJAN,  
Proctor for Plaintiff.

No. 5  
Commission  
Issued to  
S. Rajendra,  
Licensed  
Surveyor,  
17-2-59.

No. 5  
Commission Issued to S. Rajendra,  
Licensed Surveyor

T. DEVARAJAN,  
*Proctor for Plaintiff.*

COMMISSION

IN THE DISTRICT COURT OF COLOMBO.

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

*Plaintiff.* 10

No. 8603/P.

*Vs.*

1. Ceylon Theatres Limited of Parsons Road,  
Colombo.
2. Eugene Seneviratne of "Kenilworth"  
No. 281, Dematagoda Road, Colombo.
3. Gwendoline Dora Jayakoddy of Balagalla,  
Divulapitiya, appearing by her *Guardian-ad-litem* and Curator, the 4th  
Defendant.
4. Joseph De Abrew Wijesinghe of 24,  
Tichbourne Passage, Colombo.

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*Defendants.*

To: MR. S. RAJENDRA,  
Licensed Surveyor,  
99, Hultsdorp Street, Colombo.

You are hereby authorized and empowered and directed to proceed to and enter all that allotment of land and those the buildings and premises called "Tower Hall" formerly bearing assessment Nos. 40, 41 and 42A presently bearing assessment No. 98, situated at Panchikawatte Road, between Skinner's Road South and Piachaud's Lane, within the Municipality of Colombo, in the District of Colombo, Western Province and bounded on the North by a Lane, and the property of Zainudeen, on the East by premises bearing assessment No. 43, the property of Zainudeen and Skinner's Road South, on the South by Premises No. 39 and property of Mr. Weerasinghe and West by Piachaud's Lane, containing in extent, one rood and twenty-eight perches (A0. R1. P28.) exclusive of Lot A acquired by the Government, and referred to in the plaint, a copy whereof is annexed hereto and survey the property as shall be pointed out to you by the parties after such notice to them as provided by Section 17 of the Partition Act No. 16 of 1951. And if any of the defendants named in the plaint point out to you a larger land than that described in the plaint as the land which should be the subject matter of this partition action, you are hereby authorised and empowered to enter and survey such larger land as well, and make a due return to this Court as provided by Section 18(1) of the Partition Act before the 22nd April, 1959.

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The bill of costs for the survey of such larger land shall be separately shown.

You are hereby further ordered not to stay the execution of this Commission except on an order made by this Court.

A sum of Rs. 125/- as estimated costs is in deposit.

By Order of Court,  
*Sgd.* .....  
*Secretary.*

No. 5  
 Commission  
 Issued to  
 S. Rajendra,  
 Licensed  
 Surveyor,  
 17-2-59.

The 17th day of February, 1959.

**No. 6**

**Report of the Commissioner and  
 Licensed Surveyor, with Plan No. 1495**

No. 6  
 Report of the  
 Commissioner &  
 Licensed  
 Surveyor,  
 17-4-59.

**IN THE DISTRICT COURT OF COLOMBO**

10

Cinemas Limited of  
 No. 117, New Chetty Street, Colombo.  
*Plaintiff.*

No. 8603/P.

*Vs.*

1. Ceylon Theatres Limited of  
 Parsons Road, Colombo,  
 and 3 others.

*Defendants.*

1. Pursuant to the Commission issued to me in the above action I issued notices to the parties in writing (by Registered Post) on the 28th day of February, 1959, a notice on the land and had tom tom beaten thereon on the 2nd day of March, 1959, proceeded to the land on the 20th day of March, 1959, and surveyed it.

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2. Mr. M. Ram Iswara of No. 117, New Chetty Street, Colombo, represented the Plaintiff.

Mr. B. K. Billimoria of Ceylon Theatres Ltd., Parsons Road, Colombo, represented the 1st Defendant.

The 4th Defendant was present and also represented the 3rd Defendant.

The 2nd Defendant was absent.

3. The boundaries were pointed out by those present which I surveyed and is depicted on my Plan No. 1495, dated 30th March, 1959, which is submitted herewith.

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4. Mr. B. K. Billimoria who represented the 1st Defendant claimed a 3/18 shares of the entire land and premises.

**5. Valuation**

The land is situated in the best business area of Maradana, Colombo. I value the bare land in extent 0A. 1R. 24.50P. @ Rs. 3,500/- per perch.

... Rs. 225,750.00

The building that stands on the land is a " Theatre Hall " is solidly constructed of masonry with a Clock Tower, 6 Water Closets, Bath Rooms, etc., I value entire building at ,, 55,000.00

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Total Value ... .. Rs. 280,750.00

No. 6  
Report of the  
Commissioner &  
Licensed  
Surveyor,  
17-4-59.  
*Continued*

**It contains no cultivations**

6. I, Supramaniam Rajendra, Licensed Surveyor of 99, Hultsdorf Street, Colombo, not being a Christian, do hereby solemnly sincerely and truly declare, affirm and state as follows :—

I am the Commissioner appointed in the above case.

I executed the Commission issued to me in the above case in accordance with the directions made therein, and to the best of my information and knowledge, the foregoing particulars relating to my survey of the property described in my Plan No. 1495, dated 30th March, 1959 and certified copy of my field notes are true and accurate and my said Plan and particulars mentioned therein embody the particulars prescribed by Section 18(1) of the Partition Act No. 16 of 1951.

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(Sgd.) S. RAJENDRA,  
*Commissioner and Licensed Surveyor,*  
99, Hultsdorf Street,  
Colombo, 17th April, 1959.

Signed and affirmed to at  
Colombo on this 17th day  
of April, 1959 }

Before me.

Sgd. AUSTIN DE ROSAIRO  
*Commissioner of Oaths.*

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No. 8  
Answer of the  
4th Defendant  
(Joseph de  
Abrew Wijesinghe),  
10-6-59.

No. 8

**Answer of the 4th Defendant  
(Joseph de Abrew Wijesinghe)**

IN THE DISTRICT COURT OF COLOMBO

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

*Plaintiff.*

*Vs.*

No. 8603/P.

4. Joseph De Abrew Wijesinghe of 24, Tichborne Passage, Colombo, and  
3 others. 10

*Defendants.*

On this 10th day of June, 1959.

The Answer of the 4th Defendant abovenamed appearing by Joseph Bertram Puvimanasinghe, his Proctor, states as follows :—

1. This Defendant admits the averments contained in the plaint.
2. Further answering this Defendant states that a partition of the premises in question is impracticable.
3. Wherefore this Defendant prays that the Court be pleased to order a sale of the said premises in accordance with the provisions of Partition Act No. 16 of 1951, for costs and for such other and further relief as to this Court shall seem meet. 20

*Sgd. J. B. PUVIMANASINGHE  
Proctors for 4th Defendant.*

No. 9  
Answer of the  
2nd Defendant  
(Eugene  
Seneviratne),  
20-8-59.

No. 9

**Answer of the 2nd Defendant  
(Eugene Seneviratne)**

IN THE DISTRICT COURT OF COLOMBO

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

30

*Plaintiff.*

No. 8603/P.

*Vs.*

2. Eugene Seneviratne of Dematagoda, and others.

*Defendants.*

On this 26th day of August, 1959.

The answer of the 2nd Defendant abovenamed appearing by Joseph Augustus Robert Perera her Proctor states as follows :—

1. This Defendant admits the shares allotted to her as stated in paragraph 33 of the Plaint. 40

No. 7

**Statement of Claim of 1st Defendant  
(Ceylon Theatres Limited)**

No. 7  
Statement of  
Claim of  
1st Defendant  
(Ceylon Thea-  
tres Ltd.)  
10-6-59.

IN THE DISTRICT COURT OF COLOMBO

Cinemas Limited of No. 117,  
New Chetty Street, Colombo.

*Plaintiff.*

No. 8608/P.

Vs.

16

1. Ceylon Theatres Limited of Parsons Road, Colombo.
2. Eugene Seneviratne of "Kenilworth" No. 281, Dematagoda Road, Colombo.
3. Gwendoline Dora Jayakoddy of Balagalla, Divulapitiya, appearing by her *Guardian-ad-litem* and Curator, the 4th Defendant.
4. Joseph De Abrew Wijesinghe of 24, Tichborne Passage, Colombo.

*Defendants.*

On this 10th day of June, 1959.

20

The statement of claim of the 1st Defendant abovenamed appearing by John Wilson and his assistants Sydney Rienzie Dharmaratna and Cecil Emmanuel Swamipillai, its Proctors states as follows :—

1. This Defendant admits the truth of the several averments in the plaint.

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2. Further answering to the plaint this Defendant states that in addition to the Indenture of Lease enumerated in paragraph 82 of the plaint (i) the 2nd Defendant by Indenture No. 109, dated the 19th November, 1958 and attested by C. E. Swamipillai, Notary Public, leased an undivided 6/18 share of the said land and (ii) the 4th Defendant as Manager of the Estate of the 3rd Defendant by Indenture No. 1852, dated the 17th November, 1958 and attested by John Wilson, Notary Public, leased an undivided 1/18 share of the said land, for a period of two years from the 1st day of February, 1959.

Wherefore the 1st Defendant prays :—

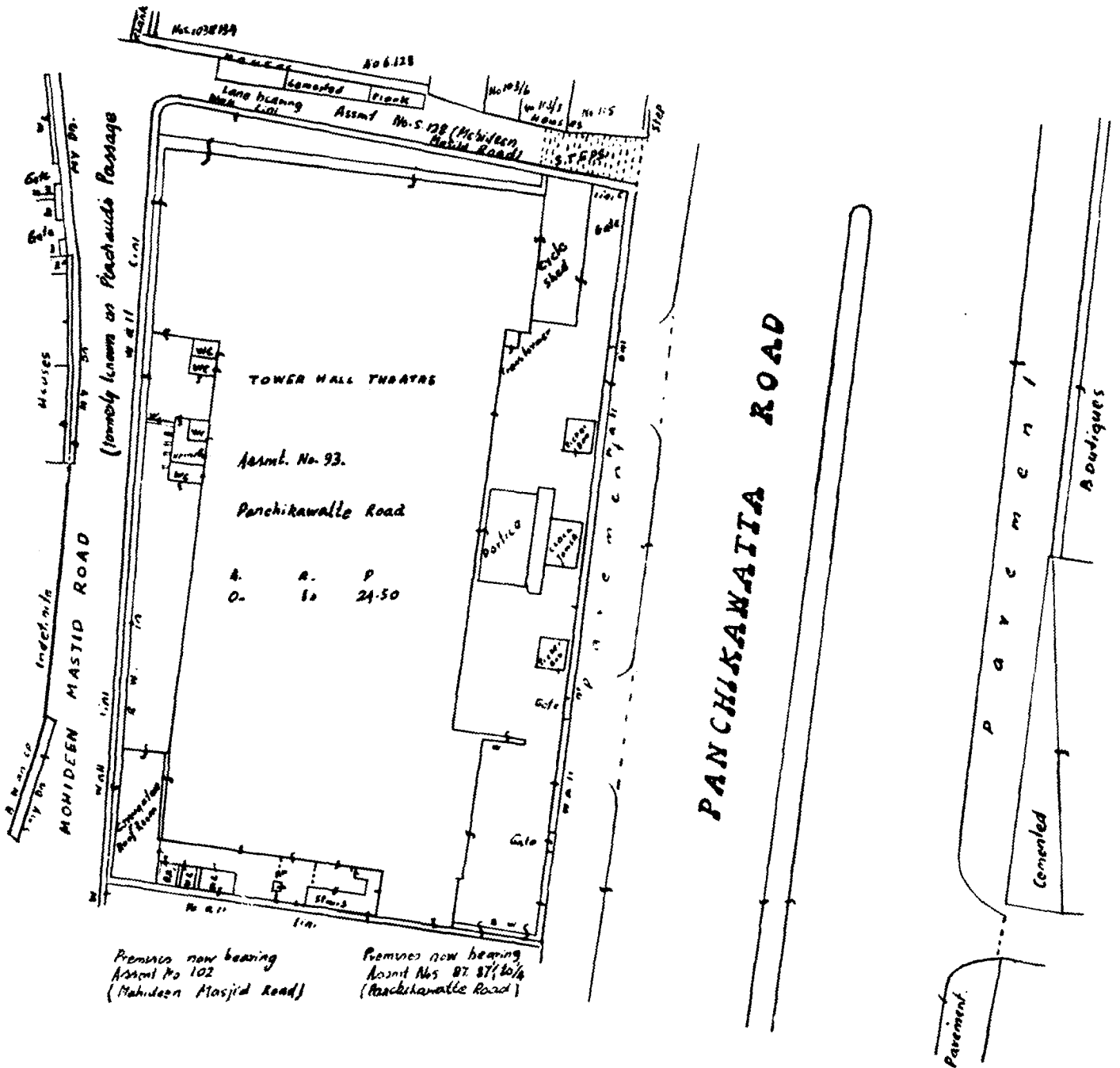
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- (a) that it be declared entitled to an undivided 5/18 share of the said land ;
- (b) that a sale of the said land be ordered in terms of the partition Act ;
- (c) for costs ; and
- (d) for such other and further relief as to this Court shall seem meet.

(Sgd.) C. E. SWAMIPIILLAI,  
*Proctor for 1st Defendant.*

*Settled by :*

Mr. D. L. Eddussuriya, Advocate.



Scale of 1/2 Chain to an Inch

**S. RAJENDRA, A.S.I (CEYLON)**  
LICENSED SURVEYOR  
132 1/1, HULTSDORF STREET,  
COLOMBO.

**No. 1495**

D.C. Colombo Case No. 8603/p.

Please see Overleaf for Figure of Survey.

Reference.

W = Wall  
B.W. or CP = Barbed Wire or Concrete Posts  
M.D. = Masonry Drain  
Assm. = Assessment  
WC = Water-Closet  
B.R. = Bath Room

Scale of 1/2 Chain to an Inch

**Plan**

of an allotment of land with the buildings standing thereon called 'Tower Hall' now bearing Assessment

No. 93, Panchikawatta Road, situated along Panchikawatta Road & Mohideen Masjid

Road (formerly known as Panchaud's Lane) in Maradana Ward within the

Municipality & District of

**COLOMBO**

**Western Province**

Bounded as follows:-

On the North by Lane bearing Assessment No. 6128 (Mohideen Masjid Road)

East by Panchikawatta Road.

South by Premises now bearing Assessment Nos. 87, 87 1/2, to 1/2 Panchikawatta Road and No. 102, (Mohideen Masjid Road)

West by Mohideen Masjid Road, (formerly known as Panchaud's Lane)

Containing in Extent 

A.	R.	P.
0-	1-	24-50

  
(Acreo Nil Roodo One Parchoo Twenty Four point Five Naught)

True Copy.

*S. Rajendra*  
Licensed Surveyor.  
132 1/1, Hultsdorf Street, 22/3/66

Surveyed on the 20<sup>th</sup> day of March 1959.

Colombo, 22<sup>nd</sup> March 1966.

Sgd. (S. Rajendra)  
30/3/59

Commissioner & Licensed Surveyor.

99, Hultsdorf Street,  
Colombo, 30<sup>th</sup> March 1959.



2. By way of further statement this Defendant states that the premises the subject matter of this action according to preliminary Plan filed of record is in extent A0. R1. P24.50 but has been valued at only Rs. 280,700/-.
3. That the said premises is worth far more than the appraised value of the said Commissioner.
4. That the said 2nd Defendant in lieu of the life interest at present is in receipt of a sum of Rs. 666/56 per month which forms the major part of her income, but if the premises are sold at the appraised value this sum will be appreciably decreased.
5. That the appraised value be increased.

No. 9  
Answer of the  
2nd Defendant  
(Eugene  
Seneviratne),  
26-8-59.

*Continued*

Wherefore the 2nd Defendant prays :—

- (a) that she be allotted her shares in terms of this statement
- (b) for costs and for such other and further relief in the premises as to this Court shall seem meet.

*Sgd. J. A. R. PERERA,  
Proctor for 2nd Defendant.*

**No. 10**

**Statement of Claim of 7th Defendant  
(G. D. Vernon Seneviratne)**

No. 10  
Statement of  
Claim of  
7th Defendant  
(G. D. Vernon  
Seneviratne),  
28-9-59.

**IN THE DISTRICT COURT OF COLOMBO**

Cinemas Limited, New Chetty Street, Colombo.

*Plaintiff.*

No. 8603/P.  
Class (1)

*Vs.*

1. Ceylon Theatres Limited and others.

*Defendants.*

7. G. D. Vernon Seneviratne, of Colombo.

*Defendant.*

On this 23rd day of September, 1959.

The statement of the 7th Defendant G. D. Vernon Seneviratne by his Proctor, Paulus Cornelis Seneviratne, states as follows :—

1. This Defendant admits the averments contained in paragraph 1 to 25 of the Plaintiff.
2. Save as hereinafter admitted this Defendant denies the averments contained in the remaining paragraphs of the Plaintiff.
3. By way of further answer this Defendant states that on the death of the said Edmund Seneviratne referred to in paragraph 21 of the Plaintiff, his one-third share devolved equally on his surviving brothers and sisters, *viz.*, Irwin Seneviratne, Vincent Seneviratne and Adeline Dias, each being entitled to an undivided 1/9th share.

No. 10  
Statement of  
Claim of  
7th Defendant  
(G. D. Vernon  
Seneviratne),  
28-9-59.

*Continued*

4. This Defendant is entitled to an undivided 1/9 share out of this 1/3rd share, and this share devolves on him after the death of the 2nd Defendant. This Defendant has not divested himself of this share as he is not legally competent to do so.
5. This Defendant is unaware of the averments contained in paragraphs 26, 27, 28, 29, 30 and 33.

Wherefore this Defendant prays :—

That he be allotted the said 1/9 share of the said premises subject to the life interest of the 2nd Defendant, for costs and for such other and further relief as to this Court shall seem meet.

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(Sgd.) P. C. SENEVIRATNE,  
*Proctor for 7th Defendant.*

No. 11  
Proceedings  
before the  
District Court  
15-8-60

No. 11

**Proceedings before the District Court**

15-8-1960.

D.C. 8603/P.

Mr. Devarajan for the Plaintiff.

Mr. Adv. Eddussuriya instructed for the 1st Defendant.

Mr. Adv. Jayamanne instructed for the 2nd Defendant.

Mr. Adv. Martin instructed for the 4th Defendant.

Mr. Adv. Vithanage instructed for the 7th Defendant.

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Mr. Devarajan states that his Counsel Mr. Kumaraswamy is engaged in the Supreme Court today. He had made a mistake with regard to the trial date and though he made every effort to come he is still on his feet at that Court. It is nearly 3 p.m. now. He begs for an adjournment.

The other Counsel consent to the application.

Trial is re-fixed for 20th September, 1960.

(Sgd.) A. L. S. SIRIMANE,  
*Additional District Judge.*

No. 12  
Proceedings  
before the  
District Court  
20-9-60

No. 12

**Proceedings before the District Court**

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8603/P.

Mr. Adv. E. R. S. R. Coomaraswamy for Plaintiff instructed by Mr. T. Devarajan.

20-9-1960.

Mr. Adv. D. L. Eddussuriya for the 1st Defendant instructed by Mr. John Wilson.

Mr. Adv. J. M. Jayamanne for 2nd Defendant instructed by Mr. J. A. R. Perera.

Mr. Adv. J. Martyn for 4th Defendant instructed by  
Mr. Puvimanasinghe.  
Mr. Adv. Vithanage for 7th Defendant instructed by  
Mr. P. C. Seneviratne.

No. 12  
Proceedings  
before the  
District Court  
20-9-60

*Continued*

Mr. Vithanage states that he is not raising any contest against the 1st Defendant and concedes that all his interests have now passed to the 1st Defendant.

Mr. Jayamanne wishes to raise a new point of contest, viz., that even if the land is sold the land itself should be made subject to a life interest as far as the share of the 2nd Defendant is concerned.

Messrs. Coomaraswamy and Eddussuriya object.

Mr. Coomaraswamy points to para (c) of the prayer to the plaint where he has asked that the property be sold free of the life interest of the 2nd Defendant and the 2nd Defendant has filed answer where she only objected to the appraised value.

Mr. Jayamanne moves for a date to amend his statement of claim.

Messrs. Coomaraswamy, Eddussuriya and Martyn move for costs.

Let a motion be filed by the 2nd Defendant setting out the manner in which he proposes to amend his statement of claim on 4-10.

2nd Defendant will pay Rs. 105/- as costs to the Plaintiff and similar sums to each of the 1st and 4th Defendants.

(Sgd.) A. L. S. SIRIMANE,  
*Additional District Judge.*

**No. 13**

**Amended Answer of the 2nd Defendant  
(Eugene Seneviratne)**

**IN THE DISTRICT COURT OF COLOMBO**

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

*Plaintiff.*

No. 8603/P.

*Vs.*

2. Eugene Seneviratne of Dematagoda in Colombo  
and others.

*Defendants.*

On this 4th day of October, 1960.

The Amended Answer of the 2nd Defendant abovenamed appearing by Joseph Augustus Robert Perera her Proctor states as follows:—

1. This Defendant admits the shares allotted to her as stated in paragraph 33 of the Plaint.
2. By way of further statement this Defendant states that the premises the subject matter of this action according to preliminary plan filed of record is in extent A0. R1. P24.50, but has been valued at only Rs. 280,700/-.

No. 13  
Amended Answer  
of the  
2nd Defendant  
(Eugene  
Seneviratne)  
4-10-60

No. 18  
Amended  
Answer of the  
2nd Defendant  
(Engene  
Seneviratna)  
4-10-60  
Continued

3. That the said premises is worth far more than the appraised value of the said Commissioner.
4. That the said 2nd Defendant in lieu of the life interest at present is in receipt of a sum of Rs. 666/66 per month which forms the major part of her income.
5. The Plaintiff or any other party in this case has no right to have the land in suit sold free from the life interest of this Defendant.

Wherefore the 2nd Defendant prays :—

- (a) that she be allotted her shares in terms of this statement.
- (b) For costs and for such other and further relief in the premises as to this Court shall seem meet. 10

*Sgd.* J. A. R. PERERA  
*Proctor for 2nd Defendant.*

No. 14  
Proceedings  
before the  
District Court  
and Plaintiff's  
Evidence  
12-9-61

**No. 14**  
**Proceedings before the District Court**  
**and Plaintiff's Evidence**

8603/P.

12-9-1961.

Mr. Gunaratnam on behalf of Plaintiff Company.  
Mr. Adv. Coomaraswamy instructed for the Plaintiff.  
4th Defendant present.  
Mr. Adv. Martyn instructed for the 4th Defendant. 20  
Mr. Sellamuttu on behalf of the 1st Defendant Company.  
Mr. Adv. Eddussuriya instructed for the 1st Defendant.  
Mr. Adv. Jayamanne instructed for the 2nd Defendant.

In this case there is no dispute to the soil right and improvements. The question however arises regarding the life interest claimed by the 2nd Defendant.

It is conceded by the parties that the 2nd Defendant is entitled to the life interest over 1/3rd share of the premises sought to be partitioned in this case.

Mr. Adv. Jayamanne states that in the event of a partition, the life interest holder's right should be conserved and in the event of a sale, the sale be held subject to the life interest holder's right in a 1/3rd share. 30

Mr. Adv. Coomaraswamy states that he is entitled to ask for a decree for a sale free of the life interest holder's rights which he contends should be attached to only, the proceeds of such sale.

Argument on this question after evidence is led.

Mr. Adv. Coomaraswamy calls :—

*K. Gunaratnam*, affirmed 42 years Managing Director of Plaintiff Company, Colombo.

Evidence of  
K. Gunaratnam—  
Examination

I am the Managing Director of Plaintiff Company. I seek to partition or sell the premises called "Tower Hall", bearing assessment No. 93, Panchikawatta Road, situated along Panchikawatta Road and Mohideen 40

Masjid Road, formerly known as Peachaud's Lane in Maradana Ward and depicted in Plan No. 1495, made by Surveyor, Rajaratna filed of record marked X, in extent 1R. 24. 5P. The Northern boundary will be the wall abutting the Lane. The Eastern boundary will be the wall abutting the pavement. The Southern boundary will be the wall and the Western boundary will be the wall abutting Mohideen Masjid Road.

No. 14  
Plaintiff's  
Evidence  
—  
Evidence of  
K. Gunaratnam—  
Examination  
Continued

The original owners of the land described in the 2nd Schedule to the plaintiff were Don David De Livera Wijewickrema Seneviratna and his wife, Dona Nathaniel de Livera, who by their joint Will dated 18-10-1855, marked P1 devised their interests to their grand son, Dr. Edwin de Livera. The said Dona Nathaniel De Livera and Don David De Livera executed the joint Will P1. The Last Will was proved in District Court, Colombo, Case No. 2036/T. I produce the probate in that case marked P2 and the inventory marked P3. The said premises is referred to in the inventory.

By indenture No. 1754 of 10-6-1876, marked P4, one Managey Dona Maria Perera became entitled to Lot A containing in extent  $4\frac{1}{2}$  perches referred to in the 3rd schedule to the plaintiff and Managey Dona Agida Perera became entitled to Lot B in extent  $4\frac{1}{2}$  perches referred to in the 4th schedule to the plaintiff. By Fiscal Transfer No. 960 of 1882, marked P5 the said Lot A was conveyed to A. F. Parke. The said A. F. Parke by Deed No. 2117 of 1884, marked P6 conveyed his rights to J. R. V. de Livera. The rights of Agida Perera were purchased by M. I. C. Bawa upon Fiscal Transfer No. 1822 of 1884, marked P7. Bawa by Deed No. 4584 of 1894, marked P8, conveyed the property to Tamby Mustapha Lebbe, who by Deed No. 842 of 1896, marked P9, transferred the property to the said J. R. V. de Livera, who consolidated the said Lots A and B. The combined Lots A and B are described in schedule 5 to the plaintiff.

The said J. R. V. de Livera died on 9-3-1903, leaving a Last Will dated 10-4-1882, marked P10 which was admitted to probate in District Court, Colombo, Case No. 1855. The executrix under P10 put up the property for sale for payment of debts of the testator and the property was purchased on Deed No. 722 of 1905, marked P11 by Dr. Edwin De Livera, who devised on P1 referred to earlier. Dr. Edwin De Livera had the allotments of lands described in the schedule 2 to 5 consolidated into one, which now forms the premises in the Plan X filed of record.

The said Dr. Edwin De Livera sold the land by Deed No. 5493 of 1907, marked P12 to Don Hendrick Appuhamy alias D. H. Seneviratna. The said Don Hendrick Appuhamy alias D. H. Seneviratna erected the building called and known as the Tower Hall. Don Hendrick Appuhamy alias D. H. Seneviratna died on or about 1929, leaving a Last Will No. 125 of 7-4-1929, marked P13 which was proved in Testamentary Case No. 4914 of this Court. I produce the Petition in that case marked P14, the probate marked P15 and the inventory marked P16. On P13 he devised the said property to his 3 children, Granville, Irwin and Edmund, in equal shares subject to however the restrictions not to devise, mortgage or encumber the said premises. The Last Will was proved *inter alia* with the devises mentioned above not to alienate, mortgage or encumber the said premises but that on their death it should pass to their lawful children. In the event of the death of any one of the devisees without lawful issue, prohibition was made in P13 that the said devise should devolve on the lawful children of Don

No. 14  
Plaintiff's  
Evidence

—  
Evidence of  
K. Gunaratnam—  
Examination

*Continued*

Hendrick Appuhamy. Provision was also made in the Last Will that in the event of any of the devisees dying without a lawful issue, the share of such devisee so dying should accrue as stated above but subject to the life interest in favour of the widow of the said deceased devisee. (Mr. Coomaraswamy states that the Last Will provides for other conditions all of which have been set out in the plaint. He also states that all conditions in the Last Will have been fulfilled, entitling the sale of the premises free of any encumbrances or charge, except the life interest now claimed by the 2nd Defendant).

Don Hendrick Appuhamy left 6 children, Granville, Irwin, Edmund, Vincent, Adeline and Florence. Florence died in 1931. I produce the petition filed in Testamentary Case No. 6066 of this Court marked P17. Florence did not acquire any interest in these premises because she predeceased the other devisees. Edmund referred to earlier died without lawful issue but leaving his widow the 2nd Defendant, who was entitled to his interest in terms of the Last Will P13 subject to the life interest over a 1/3rd share. The interests of Edmund subject to the life interest devolved on Granville, Irwin, Vincent and Adeline. Thereafter Granville died unmarried and without issue leaving as his heirs at law his surviving brothers and sister Irwin, Vincent and Adeline. I produce the affidavit filed in Testamentary Case No. 1089, marked P18. 10 20

Adeline died in or about the year 1945, leaving two children: P. Rodrigo and the 3rd Defendant in this case, who became entitled to the rights of Adeline, by Deed No. 4459 of 1952, marked P19, the said P. Rodrigo sold her unfettered 1/18th share to Vincent. The remaining interests of P. Rodrigo by Deed No. 470 of 1957, marked P20 was transferred to the Plaintiff.

Vincent died in the year 1955, leaving his widow, Jane and a son, Vernon, who by Deed No. 1191 of 5-8-57, marked 1D1 conveyed their rights to the 1st Defendant. 30

Irwin died on 6-1-53, leaving as his heirs his widow, Irene and 4 children, Tissa, Ananda, Malini and Gamini. I produce the petition filed in Testamentary Case No. 1537 of this Court marked P21. Upon Deed No. 465 of 16-8-57, marked P22 and Deed No. 466 of 16-8-57, marked P23, Irwin's children and the widow namely, Tissa, Ananda, Maline, Gamini and Irene, conveyed their interests to the Plaintiff.

These are all the co-owners. I have known these premises for the last 23 years and during this time the parties mentioned by me possessed these premises. I produce action No. 946/M.B. of this Court, marked P24 in proof of the fact of Mortgage Bond No. 952 of 10-6-40, attested by Notary, Weerasingha. All the buildings belong to the parties in the proportion they are entitled to the soil interest, subject to the life interest in respect of the 1/3rd share of the buildings in favour of the 2nd Defendant. 40

The parties are entitled to the said premises in the following shares:—  
Plaintiff to 11/18 of which 3/18 is subject to the life interest in favour of the 2nd Defendant.

1st Defendant to 5/18 of which 2/18 is subject to the life interest in favour of the 2nd Defendant.

3rd Defendant to 2/18 of which 1/18 is subject to the life interest in favour of the 2nd Defendant.

I ask for a sale of these premises as it is not possible with advantage to partition these premises among the co-owners.

No. 14  
Plaintiff's  
Evidence

Evidence of  
K. Gunaratnam -  
Examination

*Continued*

(Sgd.) A. L. S. SIRIMANE,  
*Additional District Judge.*  
12-9-61.

Mr. Coomarasamy closes his case in respect of the soil rights and improvements reading in evidence P1 to P23.

10 The other parties in this case desire to lead no evidence. The 1st Defendant however files 1D1.

The only matter now outstanding is the question of, in the event of decree being entered for a sale, whether the 2nd Defendant is entitled to have her rights as life interest holder conserved.

Mr. Adv. Jayamanne argues that the interest of the 2nd Defendant, namely, the life interest in respect of 1/3rd share of the soil and 1/3rd share of the buildings must be conserved to her in the decree to be entered in this case. That in the event of a sale the 2nd Defendant will still be entitled to a life interest in respect of her interest. He also states that the sale will not operate to wipe out the interests of the 2nd Defendant, the life interest holder. He states that the plaintiff in the plaint has prayed for an Order that the premises be sold free of any life interest. He states that the party affected by this will be only the 2nd Defendant, who is the only life interest holder. The life interest holder's interest can be equated to a mortgagee or lessee and that it is a right which passes with the land. In the case of a mortgagee or lessee their interests are limited to the proceeds of the sale. Mr. Jayamanne states that the life interest is in the nature of a real right. He states that the position is analogous to the interest of a fiduciary. He states that the life interests of the holder is limited to only such interests in the premises and the title to the premises is vested in someone else. In a fiduciary, title and usufructuary are in the fiduciary until the happening of certain event. He cites Section 50(2) and states that section was really as a result of a decision in 30 N.L.R.—100.

Mr. Coomaraswamy replies and cites Section 5 of the New Partition Act. He cites 5(a)(1) where provision is made to join a life interest holder in every partition action. He draws the Court's attention to the proviso of Section 48 where mention is made of life interest in the definition of the word 'encumbrance.' He states that Section 50 does not limit the operation to only mortgages and leases. He also refers to Section 50 and argues that Section 52 provides for delivery of possession on sale.

(Sgd.) A. L. S. SIRIMANE,  
*Additional District Judge.*  
12-9-61.

## Judgment of the District Court

### J U D G M E N T

The Plaintiff brings this action for the partition or sale of the land called Tower Hall, bearing assessment No. 93, Panchikawatta Road, situated along Panchikawatta Road and Mohideen Masjid Road, formerly known as Piachaud's Lane in Maradana Ward within the jurisdiction of this Court and more fully described in Plan No. 1495, made by Surveyor, Rajaratna, filed of record marked X. The said premises depicted in the plan is enclosed by walls on all sides. 10

According to the evidence of witness Gunaratnam the Managing Director of the Plaintiff Company, supported by the documents, I hold that the original owners of these premises was Don David De Livera Wijewickrema Seneviratna, who married in community, Dona Nathania de Livera. The 1st named died leaving a Last Will P1 of 1855. The probate and the inventory are respectively produced marked P2 and P3. The said Don David de Livera Wijewickrema Seneviratna was the owner of the premises described in the 2nd schedule to the plaint. Don David de Livera Wijewickrema Seneviratna and his wife, Dona Nathania de Livera, both died and their interests devolved upon the said Last Will P1 on their grand son, Dr. Edwin de Livera, whose rights will be dealt with later. 20

Upon P4 the premises, namely :  $4\frac{1}{2}$  perches in the 3rd schedule and  $4\frac{1}{2}$  perches in the 4th schedule, shown as Lots A and B were owned respectively by Managey Dona Maria Perera and Dona Agida Perera. Managey Dona Maria Perera's  $4\frac{1}{2}$  perches of Lot A described in the 3rd schedule was passed upon P5 to A. F. Parke, whose rights on P6 were conveyed to J. R. V. de Livera. Dona Agida Perera's rights of  $4\frac{1}{2}$  perches in Lot B described in the 4th schedule passed on P7 to M. I. C. Bawa whose rights on P8 and P9 passed on to the said J. R. V. de Livera. J. R. V. de Livera died leaving a Last Will produced in this case marked P10. His executrix to pay his debts sold Lots A and B which at this time was consolidated into one block and described in the 3rd schedule to the plaint. At such sale Dr. Edwin de Livera referred to earlier as devisee on P1, acquired these interests on P11. Dr. Edwin de Livera thereafter consolidated the entire premises which is now shown in the Plan X filed of record. He on P12 transfers the said premises described in Plan X to Don Hendrick Appuhamy alias D. H. Seneviratna. 30

Don Hendrick Appuhamy alias D. H. Seneviratna thereafter constructed all the buildings standing on the said premises. Don Hendrick Appuhamy alias D. H. Seneviratna died and his Estate was administered in Testamentary Case No. 4914 of this Court. He died leaving a Last Will P13. The petition and the probate in the said testamentary case are respectively marked P14 and P15. The inventory in the said case is also marked P16. By this Last Will he created a Fidei Commission and also imposed conditions on the beneficiaries of this Last Will. These premises under the Last Will were devised to his 3 children, Granville, Irwin and Edmund. Upon the Last Will P13 it was provided that in the event of the 40



death of any of the said three devisees without lawful issue, the share of the devisee so dying shall devolve upon the other children of Hendrick Appuhamy alias D. H. Seneviratna. Provision was further made in P18 that in the event of any devisee dying without lawful children but leaves a spouse, such spouse shall be entitled to the life interest over 1/3rd share which belonged to the devisee.

No. 15  
Judgment of the  
District Court  
18-10-61

*Continued*

Hendrick Appuhamy alias D. H. Seneviratna died leaving 6 children : Granville, Irwin, Edmund, Vincent, Florence and Adeline. Florence however predeceased the other brothers and sister and she acquired nothing and transmitted nothing. Edmund died leaving his widow the 2nd Defendant who accordingly became entitled to the life interest in respect of a 1/3rd share of the soil rights as well as the buildings. The rights of Edmund subject to the aforesaid life interest passed to his surviving brothers and sister : Granville, Irwin, Vincent and Adeline. Granville thereafter died leaving as his heirs at law his surviving brothers and sister : Irwin, Vincent and Adeline. Irwin thereafter died on 6-1-53, leaving a Last Will which was proved in Case No. 1537. Irwin died intestate leaving a widow, Irene and 4 children : Tissa, Ananda, Malini and Gamini, all of whom on P23 and P24 sold their interests to the Plaintiff. Adeline died in 1945, leaving 2 children : P. Rodrigo and the 3rd defendant. P. Rodrigo on P19 conveyed his rights to Vincent whose rights will be dealt with later. 1/18 share. This will be free of life interest. The remaining rights of Rodrigo passed on P20 to the Plaintiff.

Vincent died in the year 1955, leaving a widow, Jane and a son, Vernon who on Deed 1D1 conveyed their interests to the 1st Defendant.

(Mr. Coomaraswamy draws my attention to the fact that there appears to be in the encumbrances the Mortgage Bond No. 952 of 10-6-40 attested by Notary, Weerasingha. He states that the mortgagee on this bond was Granville. He states that the extract of encumbrances do not know that this bond has been discharged. He states that this bond was sued upon in M.B. 946 of this Court. He draws my attention to the fact, that on the death of Granville no interest will pass to anyone bar his legal heirs. He also states that the number of the mortgage bond is typed as 946 by a clerical error and that the number of the Bond is 948 and not 946. He states that this mortgage bond will be of no force now, as the premises hypothecated passed to the heirs of Granville absolutely).

I accordingly hold that the Plaintiff is entitled to 11/18 of which 3/18 is subject to the life interest in favour of the 2nd Defendant, the 1st Defendant is entitled to 5/18 of which 2/18 is subject to the life interest in favour of the 2nd Defendant and the 3rd Defendant to 2/18 of which 1/18 will be subject to the life interest in favour of the 2nd Defendant.

All the buildings will belong to the co-owners in the proportion to their soil rights. The 2nd Defendant will be entitled to the life interest in respect of 1/3rd share of the soil and 1/3rd share of the buildings.

No. 15  
Judgment of the  
District Court  
18-10-61

*Continued*

The premises the subject-matter of this action consist of a Theatre Hall called the Tower Hall. Plan X filed of record shows that the Theatre Hall covers almost the entire ground space. A partition of the premises is neither advantageous nor of practical benefit to the Co-owners. I therefore order that interlocutory decree for sale be entered of the said premises. It is admitted by all the parties to this action that 2nd Defendant is entitled to a life interest over 1/3 share of the soil and 1/3 share of the buildings. The 2nd Defendant takes up the position that in the event of a decree for sale being entered it should be subject to her said life interest and that such decree would not operate to wipe out her life interest which would remain attached to a 1/3 share. The Plaintiff on the contrary contends that the effect of a decree for sale would be to best title to the premises in the purchaser free of such life interest and that the life-interest holder's right will be limited to a 1/3 share of the proceeds of such sale. In order to arrive at a decision on this question it will be necessary to examine the relevant sections of the Partition Act No. 16 of 1951, touching this matter. There is no doubt that a life-interest holder is a necessary party to a partition action. Section 5(a) (1) of the Act imposes upon a Plaintiff the duty to bring before Court a person claiming to be entitled to such a life-interest. Under Section 26 the Court is empowered to order interlocutory decree for sale to be entered. Section 48 of the Act contains special provisions relating to decrees which are deemed to be conclusive against all persons, whatever right title or interest they have notwithstanding any omission or defect of procedure or proof of title. This section proceeds to state that the share or interest awarded by such decree shall be free from all encumbrances other than those specified in that decree. An "encumbrance" is defined in Section 48 to mean mortgage, lease, usufruct, servitude, fidei-commissum, life interest, etc. It is clear, therefore, according to Section 48, that if such decree contains no reference to a mortgage, lease, usufruct, servitude, *fidei commissum* or life interest such mortgage, lease, usufruct, servitude, *fidei commissum* or life interest would be wiped out.

We are here concerned with the legal consequence of such decree making special mention of the existence of a mortgage, lease, usufruct, servitude, *fidei commissum* or life interest.

The Partition Act in Section 50(1) deals with this question in so far as it only affects a mortgage or lease. It provides that when an interlocutory decree for partition is subjected to a mortgage or lease the rights of the mortgagee or lessee will be confined at the partition to the share allotted to the mortgagor or lessor.

Section 50(2) further stipulates that in the event of an interlocutory decree for sale reserving a mortgage or lease the rights of the mortgagee or lessee shall be limited to the mortgagor's or lessor's share of the proceeds of the sale. Section 50 is completely silent as regards the right of a party entitled to an usufruct, servitude, *fidei commissum* or life interest which has been conserved in the interlocutory decree.

The case for plaintiff is that the life-interest holder would have after decree for sale is entered to confine himself to the proceeds of the sale to satisfy his life-interest. The 2nd Defendant on the other hand states that in the absence of provision in the Partition Act restricting his life interest to the proceeds of sale, the premises sold under the interlocutory decree

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should be subject to his life interest over 1/3 share of the soil and 1/3 share of the building and that the purchaser's title would be subject to this life interest. When Section 48 states that the decree entered shall be free from all encumbrances other than those specified in the decree it contemplates a decree being entered subject to any of the "encumbrances" specified in this section. Section 50 makes provision in the case of a decree for partition that the mortgage or lease should attach to the divided portion allotted to the mortgagor or lessor and in the event of a decree for sale to the proceeds of sale belonging to the mortgagor or lessor. But there is an absence of a similar provision to cover an usufruct, servitude, fidei commissum or life interest. If the legislature contemplated that the right of a life interest holder reserved in the interlocutory should be converted into a right over the proceeds of the sale of the land it should have stated so unambiguously as it has done in the case of a lessee or mortgagee. In the absence of such provision I am of opinion that a life interest over the land will continue. The plaintiff and 1st defendant when they purchased rights in the subject matter from the successors of Edmund Seneviratne were well aware of the existence of a life interest over 1/3 share in favour of 2nd Defendant the widow of Edmund Seneviratne. The 3rd Defendant is a niece of Edmund through him she acquires rights. In my view, plaintiff is not entitled to deprive 2nd Defendant of her life interest over the land in the absence of provision in the Partition Act to the contrary.

Special reference in Section 50 to a mortgage and lease, two only if "encumbrances" referred to in the sub-section to Section 48 appears to expressly exclude the other "encumbrances" from any limitation.

I direct that interlocutory decree for sale of the above mentioned premises be entered allotting rights to parties as follows :—

Plaintiff to 11/18 of which 3/18 is subject to a life interest in favour of 2nd Defendant.

1st Defendant to 5/18 of which 2/18 is subject to a life interest in favour of 2nd Defendant.

3rd Defendant to 2/18 of which 1/18 is subject to a life interest in favour of 2nd Defendant.

2nd Defendant to a life interest over 6/18 share.

The buildings or the land will belong to the above parties in the same proportion as their soil rights stated above. The 2nd Defendant will also be entitled to a life interest in respect of 1/3 share of the buildings. The said premises will be put up for sale subject to the life interest of 2nd Defendant in respect of 1/3 share of the soil and 1/3 share of the buildings.

The Plaintiff will be entitled to the costs of this action including survey fees to be borne by the parties *pro-rata*. Plaintiff has failed in the contest to have the premises sold free of the life interest of 2nd Defendant. I order Plaintiff to pay to the 2nd Defendant a sum of Rs. 105/- as costs of this contest.

(Sgd.) A. L. S. SIRIMANE,  
Additional District Judge.  
18-10-61.

No. 16  
Decree for Sale

IN THE DISTRICT COURT OF COLOMBO

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

*Plaintiff.*

No. 8603/P.

*Vs.*

1. Ceylon Theatres Limited of Parsons Road,  
Colombo.
2. Eugene Seneviratne of "Kenilworth"  
No. 231, Dematagoda Road, Colombo. 10
3. Gwendoline Dora Jayakoddy of Balagalle,  
Divulapitiya, appearing by her *Guardian-  
ad-litem* and Curator.
4. Joseph De Abrew Wijesinghe of 24, Tichborne  
Passage, Maradana, Colombo.
5. J. N. Gomes.
6. Joseph Gabriel Gomes, both of  
Bambalapitiya, Colombo.
7. S. D. V. Seneviratne of Horana. 20

*Defendants.*

This action coming on for disposal before A. E. Buultjens Esquire, Additional District Judge of Colombo, on the 18th day of October, 1961, in the presence of Mr. Advocate E. R. S. R. Coomaraswamy, instructed by Mr. T. Devarajan, Proctor, on the part of the Plaintiff, Mr. Advocate D. L. Edussuriya, instructed by Mr. John Wilson, Proctor, on the part of the 1st Defendant, Mr. Advocate J. M. Jayamanne, instructed by Mr. J. A. R. Perera, Proctor, on the part of the 2nd Defendant, Mr. Advocate J. Martyn instructed by Mr. J. B. Puvimanasinghe, Proctor, on the part of the 4th Defendant, Mr. B. James St. V. Perera, Proctor, on the part of the 5th and 6th Defendants having already withdrawn from the contest, and Mr. Advocate Vithanage, instructed by Mr. P. C. Seneviratne, Proctor, on the part of the 7th Defendant having withdrawn from the contest; It is ordered and decreed that the parties to this action hereinafter mentioned be and they are hereby declared entitled to all that allotment of land with the buildings standing thereon called "Tower Hall" now bearing assessment No. 93, Panchikawatte Road, situated along Panchikawatte Road, and Mohideen Masjid Road (formerly known as Piachaud's Lane) in Maradana Ward within the Municipality and District of Colombo, Western Province, bounded on the North by Lane bearing assessment No. G 128 (Mohideen Masjid Road), on the East by Panchikawatte Road, on the South by premises now bearing assessment Nos. 87, 87 1/1 to 1/4, Panchikawatte Road and No. 102 (Mohideen Masjid Road) and West by Mohideen Masjid Road (formerly known as Piachaud's Lane), containing in extent One Rood and Twenty-four decimal five nought Perches (A0. R1. P24.50), according

to Preliminary Plan No. 1495, dated the 30th day of March, 1959, made by S. Rajendra, Licensed Surveyor, filed of record marked X in the following shares to wit :—

No. 16  
Decree for Sale  
18-10-61  
*Continued*

Plaintiff to an undivided 11/18 share  
of which 3/18 share is subject to the life interest in favour of  
the 2nd Defendant.

The 1st Defendant to an undivided 5/18 share  
of which 2/18 share is subject to the life interest in favour of  
the 2nd Defendant.

10 The 3rd Defendant to an undivided 2/18 share  
of which 1/18 share is subject to life interest in favour of the  
2nd Defendant.

All the buildings will belong to the parties in the same proportion as their soil rights above-mentioned, and the 2nd Defendant also will be entitled to the life interest in respect of 1/3 share of soil and 1/3 share of the buildings.

20 It is further ordered and decreed that the said land and premises be sold by Public Auction in conformity with Partition Act No. 16 of 1951 subject to the life interest in favour of the 2nd Defendant in respect of 1/3 share of the soil and 1/3 share of the buildings, and the proceeds thereof be entitled to the parties according to their proportionate shares.

It is further ordered and decreed that the Plaintiff be and is entitled to *pro-rata* costs fixed at Rs. 1,500/- plus the costs of Survey, and the Plaintiff do pay to the 2nd Defendant a sum of Rs. 105/- being costs of contest.

The 18th day of October, 1961.

(Sgd.) A. E. BUULTJENS,  
*Additional District Judge.*  
27-11-61.

30 Drawn by :  
(Sgd.) T. Devarajan,  
*Proctor for Plaintiff.*

No. 17

Petition of Appeal to the Supreme Court

IN THE HONOURABLE THE SUPREME COURT OF  
THE ISLAND OF CEYLON

No. 17  
Petition of  
Appeal to the  
Supreme Court  
30-10-61

Cinemas Limited of No. 117, New Chetty Street, Colombo.

*Plaintiff.*

D.C. Colombo No. 8603/P.

*Vs.*

1. Ceylon Theatres Limited of Parsons Road, Colombo.

No. 17  
Petition of  
Appeal to the  
Supreme Court  
80-10-61

*Continued*

2. Eugene Seneviratne of "Kenilworth" No. 231, Dematagoda Road, Colombo.
3. Gwendoline Dora Jayakoddy of Balagalle, Divulapitiya, appearing by her *Guardian-ad-litem* and Curator, the 4th Defendant.
4. Joseph De Abrew Wijesinghe of 24, Tichborne Passage, Colombo.

*Defendants.*

Cinemas Limited of No. 117, New Chetty Street, Colombo.

10

*Plaintiff - Appellant.*

S.C. No. 573(F)/1961.

*Vs.*

1. Ceylon Theatres Limited of Parsons Road, Colombo.
2. Eugene Seneviratne of "Kenilworth" No. 231, Dematagoda Road, Colombo.
3. Gwendoline Dora Jayakoddy of Balagalle, Divulapitiya, appearing by her *Guardian-ad-litem* and Curator, 4th Defendant.
4. Joseph De Abrew Wijesinghe of No. 24, Tichborne Passage, Colombo.

20

*Defendants - Respondents.*

**T O :**

**THE HONOURABLE THE CHIEF JUSTICE AND OTHER JUDGES  
OF THE SUPREME COURT OF THE ISLAND OF CEYLON**

On this 30th day of October, 1961.

The Petition of Appeal of the Plaintiff-Appellant above-named appearing by T. Devarajan, its Proctor, states as follows :—

1. The Plaintiff-Appellant sued the Defendant-Respondents for sale or partition of the land called "Tower Hall" bearing assessment No. 93, Panchikawatte Road, situated along Mohideen Masjid Road, formerly known as Piachaud's Lane in Maradana Ward and more fully described in Plan No. 1495, made by Surveyor Rajendra, filed of record marked X. The said premises depicted in Plan is enclosed by walls on all sides.

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2. The 1st Defendant filed answer and admitted the shares as set out in the Plaint.

3. The 2nd Defendant admitted the several averments in the Plaint but contended that in the event of a decree for sale being entered that such sale be subject to her life interest and that such decree should not operate to wipe out her life interest.

4. The 3rd Defendant by her *Guardian-ad-litem* and Curator, 4th Defendant admitted the averments contained in the plaint and stated that a partition of the premises in question is impracticable and that

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Court should order sale of the said premises in accordance with the provisions of Partition Act No. 16 of 1951.

No. 17  
Petition of  
Appeal to the  
Supreme Court  
30-10-61  
Continued

5. The parties went to trial on the following point of contest :—

“ The Plaintiff contents that the effect of a decree for sale would be to vest title to the premises in the purchaser free of life interest on the contrary, 2nd Defendant takes up the position that in the event of the decree for sale being entered that it should be subject to her said life interest and that such decree should not operate to wipe out her life interest which would remain attached to a 1/3 share.”

10 6. After trial the learned District Judge by his Judgment dated 18-10-1961, made Order as follows :—

“ I direct that interlocutory decree for sale of the above-mentioned premises be entered allotting rights to parties as follows :—

Plaintiff to 11/18 of which 3/18 is subject to a life interest in favour of 2nd Defendant.

1st Defendant to 5/18 of which 2/18 is subject to a life interest in favour of the 2nd Defendant.

3rd Defendant to 2/18 of which 1/18 is subject to a life interest in favour of the 2nd Defendant.

20 2nd Defendant to a life interest over 6/18 share.

The buildings on the land will belong to the above parties in the same proportion as their soil rights stated above. The 2nd Defendant will also be entitled to a life interest in respect of 1/3 share of the buildings. The said premises will be put up for sale subject to the life interest of 2nd Defendant in respect of 1/3 share of the soil and 1/3 share of the buildings.

The Plaintiff will be entitled to the costs of this action including Survey fees to be borne by the parties *pro rata*.

30 Plaintiff had failed in the contest to have the premises sold free of the life interest of 2nd Defendant. I order the Plaintiff to pay to the 2nd Defendant a sum of Rs. 105/- as costs of contest.”

7. Feeling dissatisfied with the said Judgment and order, the Appellant begs to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of the Appeal :—

(a) The said Order is contrary to law and the evidence led in the case.

(b) There is no dispute as to the respective rights, shares and interests of the parties in this action.

40 (c) The learned District Judge has misdirected himself and is wrong in directing a sale subject to the life interest of the 2nd Defendant over 1/3 share of the soil and 1/3 share of building.

(d) The relevant provisions of the Partition Act No. 16 of 1951, do not give the power to the learned District Judge to place

such limitation on the decree for sale and to order that the sale should be subject to the life interest aforesaid of the 2nd Defendant.

- (e) It is respectfully submitted that the learned District Judge has misconstrued the effect of Section 48 and 50 of the Partition Act and has wrongly held "that in the absence of provision in the Partition Act restricting her life interest to the proceeds of the Sale, the premises sold under interlocutory decree should be subject to her life interest of her 1/3 share of the soil and 1/3 share of the buildings and that the purchaser's title would be subject to this life interest." 10
- (f) The object of proceedings under the Partition Act being to put an end to undivided interests in the land and to common possession, the decree entered should be sold to give the purchaser title to the land free of such undivided interests and to any right in others to common possession; the imposition of the condition that the sale should be subject to life interests aforesaid of the 2nd Defendant is contrary to the objects of the Partition Act.
- (g) The learned District Judge should have directed sale of the premises free of the life interest of the 2nd Defendant and reserved to the 2nd Defendant her right to the proportionate share of the proceeds of the sale only. 20
- (h) The limitation imposed in the said order will prejudicially affect the sale price of the premises; it is just lawful and proper that the sale of the said premises should not be subject to the 2nd Defendant's life interest.

Wherefore the Plaintiff-Appellant prays:—

- (i) that the said Order be set aside;
- (ii) that interlocutory decree be entered for the sale of the premises free of encumbrances inclusive of the life interest of the 2nd Defendant-Respondent; 30
- (iii) for Costs of Appeal and of the Court below;
- (iv) and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) T. DEVARAJAN,  
*Proctor for Plaintiff-Appellant.*

*Settled by :*

Mr. D. H. Keerthisinghe, and  
Mr. C. Renganathan,  
*Advocates.*



**Judgment of the Supreme Court**  
**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

S.C.578/61 (F)

*District Court, Colombo, No. 8603/P.*

Cinemas Limited, No. 117, New Chetty Street,  
Colombo.

*Plaintiff-Appellant.*

*Vs.*

Ceylon Theatres Limited, Parsons Road, Colombo,  
and Three others.

*Defendants-Respondents.*

*Present :* T. S. Fernando, J., H. W. Tambiah, J., and  
Manicavasagar, J.

*Counsel :* S. Nadesan, Q.C., with C. Renganathan for  
Plaintiff-Appellant.

H. V. Perera, Q.C., with N. E. Weerasooriya (Junior)  
for 1st Defendant-Respondent.

H. W. Jayawardena, Q.C., with L. C. Seneviratne &  
S. S. Basnayake for 2nd Defendant-Respondent.

*Argued on :* December 8 and 9, 1964 ; January 25 and 26, 1965.

*Decided on :* 25 - 3 - 1965.

*Tambiah, J. :*

This appeal raises an important question of law regarding the effect of an order for sale of the land in an interlocutory decree entered under the provisions of Section 26 of the Partition Act No. 16 of 1951, which will hereinafter be referred to as the Act. As there was disagreement between Abeyundere, J. and Sri Skanda Rajah, J., this matter has been referred to a Divisional Court.

The short point for decision in this case is whether a certificate of sale of a land under Section 46 of the Act gives title to the purchaser free from any usufruct which may be declared in favour of a person in an interlocutory decree entered under Section 26 of the Act.

In the interlocutory decree entered in this case the learned District Judge declared the Plaintiff entitled to 11/18th share of the land of which 3/18th was subject to the life interest in favour of the 2nd Defendant. He declared the 1st Defendant entitled to 5/18th share of the land, of which 2/18th was subject to the life interest in favour of the 2nd Defendant ; and the 3rd Defendant to 2/18th share of the land of which 1/18th is subject to the life interest in favour of the 2nd Defendant. In the result he gave the 2nd Respondent life interest over 6/18th or 1/3rd share of the land and the buildings standing thereof and ordered that the sale shall be subject to the life interest of the 2nd Defendant over 1/3rd share of the land and building.

The Act was intended to give conclusive title to the land which a person buys under a decree of Court.

In the objects and reasons contained in the Bill presented to Parliament, it is stated as follows :--

“ The essence of a partition decree is that persons declared entitled under it obtain title good against all the world. Various decisions of the Supreme Court have tended to eat away the indefeasibility of the title. The commission appointed by the Government in 1918, to enquire into and report on the question of providing a more speedy and less expensive method of partitioning land than that provided in Ordinance 10 of 1863 (Sessional Paper I of 1921), the Land Commission appointed in 1927 (Sessional Paper XVIII of 1929) and the Judicial Service Commission appointed in 1935 (Sessional Paper VI of 1936) have all expressed their opinions as to the unsuitability of the existing Ordinance.”

It is however unnecessary to look into the objects and reasons of this Bill in view of the clear and unambiguous provisions of the Partition Act which deal with this matter. Although a partition action is not based on a cause of action (vide *Sinchi Appu v. Wijegunasekera*, (1902) 6 N.L.R. 1 at 6; *Abeyundere v. Babuna et al*, 6, Ceylon Law Recorder, 92 at 94), the purpose of the Act is no doubt to put an end to inconvenience of possession arising out of common ownership and common interests (vide *Abeyundere v. Babuna et al* (ibid)). It is for this reason that the view has been taken that a person must have the right to possess to entitle him to bring a partition action (vide *Charles Appu v. Dias Abeyasinghe*, (1935) 35 N.L.R. 323; *Kuda Etana v. Ran Etana*, 15 N.L.R. 154; The Law of Partition in Ceylon by Jayawardena, p. 44).

It was submitted by the Counsel for the Appellant that the order made by the learned District Judge defeats the objects and purposes of the Act and perpetuates the inconvenience of possession which the Act sought to put an end to, and the order made was contrary to the spirit and express provisions of the Act.

After a careful examination of the relevant provisions of the Act, I agree with the submissions made by the Counsel for the Appellant. A plaintiff who brings a partition action under the provisions of the Act is required to give the description of the *land* which is the subject matter of the partition case by reference to metes and bounds or by reference to a sketch or map appended to the plaint (vide Section 4 of the Partition Act). It is incumbent on him to make as parties all persons, who to his knowledge, are entitled to any right, share or interest to, of, or in the *land* to which the action relates whether vested or contingent, and whether by way of mortgage, lease, usufruct, servitude, trust, fidei commissum, life-interest or otherwise, or any improvements made or effected to the *land* or are in actual possession of the *land* or any part thereof, (vide Section 5 of the Act).

When the Court orders the issue of summons to the Fiscal for service on a Defendant, it should also issue a commission to survey the *land* to which the action relates (vide Section 16 of the Act). Thereupon the surveyor to whom the commission is issued is under a duty to execute the commission in terms of Section 18 of the Act.

On the summons returnable date, or a later date fixed by the Court for the purpose, every defendant or other party to the action may file or cause to be filed in Court a statement of the claims setting out the nature and extent of his right, share or interest to, of, or in the *land* over it. Any party to the action whose rightful share or interest to, of, or in the land mortgaged or leased by an instrument registered under the Registration of Documents Ordinance should disclose or cause to be disclosed to the Court the existence of mortgage or lease and the name of the mortgagee or lessee (vide Section 19 of the Act).

10 The Court is empowered to decide disputes regarding the corpus of the land in case of any claim that the corpus should be enlarged or restricted (vide Section 23 of the Act).

At the trial the Court should examine the title of each party to the action and after hearing evidence, determine all questions of law and fact arising in that action as regards the *right, share or interest* of each party to or in the *land* to which the action relates ; and thereafter make any one of the orders set out in Section 26 of the Partition Act as long as they are not inconsistent with one another.

20 The interlocutory decree entered under Section 26 of the Act must contain not only an adjudication regarding rights, shares or interests of any party to the action but also may contain, *inter alia*, an order for the *partition of the land or for the sale of the land in whole or in parts*.

When a Court orders a partition of the land under Section 26 (2) *a*, there can be no question that the meaning to be attached to the word "land" is what is set out in the interpretation clause which defines it as "land or lands constituting the subject matter of that action." There is no reason why a different meaning should be given to the word "land" when the Court orders the sale of the *land* under Section 26 (2) *b*, and the certificate of sale confers title to the land purchased under the provisions of  
30 Section 46 of the Act.

Counsel for the 1st Defendant-Respondent contended that under Section 26 (2) *b* of the Act when a Court orders the sale of a land, in whole or in parts, it is a convenient way of stating that the Commissioner should proceed to the land and sell the right, title and interest of the shareholders, but the effect of a certificate of sale is that only the shares of the shareholders pass to the purchaser, subject to all the encumbrances stated in the interlocutory decree and the interests such as constructive or charitable trust, a lease at will for a period not exceeding one month and the rights of  
α proprietor of a nindagama, in view of the provisions of Section 48 of the Act.

40 The effect of a certificate of sale is set out in Section 46 of the Act which enacts as follows :—

" Upon the confirmation of the sale of the land or any lot, the Court shall enter in the record a certificate of sale in favour of the purchaser and the certificate so entered under the hand of a Judge of the Court shall be conclusive evidence of the *purchaser's title to the land or lot* as on the date of the certificate. The Court may on the application of the purchaser, attach to the certificate a plan of the land or lot prepared at the cost of the purchaser and authenticated by the Court."

In view of the definition of the term "land" given in the Act, on a literal interpretation of Section 46 of the Act there is no question that a purchaser on a certificate of sale gets title to the land which is described by physical metes and bounds or by referring to a plan. But it is contended by Counsel for Respondent that, in the absence of the words "free from all encumbrances" the title to the land in Section 46 must be construed as title to the shares of the co-owners and the title the purchaser gets is subject to the encumbrances set out in Section 48 of the Act and the unspecified interests such as tenancy at will or for a period not exceeding one month, constructive or charitable trust, and the rights of a proprietor of a nindagama. 10

It is a cardinal rule of interpretation that if the words of a statute are precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such a case best declaring the intention of the Legislature (vide *Commissioners for Special Purposes of Income Tax v. Pemsel*, (1891) A.C. 534, 543; Maxwell on The Interpretation of Statutes, 9th Edition, p. 2). A Court should not usurp the functions of a legislature by introducing words which are not found in a statute. On a proper construction of Sections 46, 48 and other relevant provisions of the Partition Act, it is clear that a purchaser under a certificate of sale gets title to the land, subject of course to the rights of a nindagama proprietor, if the land had been subject to such tenure, and such title is conclusive evidence against the whole world. 20

Section 48 (1) and (2) of the Act which applies to both interlocutory decrees entered under Section 26, as well as the final decrees entered under Section 36, enacts as follows:—

"(1) Save as provided in sub-Section (3) of this section, the interlocutory decree entered under Section 26 and the final decree of partition entered under Section 36 shall, subject to the decision on any appeal which may be preferred therefrom, be good and sufficient evidence of the title of any person as to the right, share or interest awarded therein to him and be final and conclusive for all purposes against all persons whomsoever, whatever right, title or interest they have or claim to have, to or in the land to which such decrees relate and notwithstanding any omission or defect of procedure or the proof of title adduced before the Court or the fact that all persons concerned are not parties to the partition action; and the right, share or interest awarded by any such decree shall be free from all encumbrances whatsoever other than those specified in that decree. 30

In this sub-section "encumbrance" means any mortgage, lease, usufruct, servitude, fidei commissum, life interest, trust, or any interest whatsoever, howsoever arising except a constructive or charitable trust, a lease at will or for a period not exceeding one month, and the rights of a proprietor of a nindagama. 40

(2) The interlocutory decree and the final decree of partition entered in a partition action shall have the final and conclusive effect declared by sub-section (1) of this section notwithstanding the provisions of Section 44 of the Evidence Ordinance, and accordingly such provisions shall not apply to such decrees."

It is necessary to state the distinction between *plenum dominium* and a bare title burdened with encumbrances. Under the Roman Dutch Law, by the term *plenum dominium* is meant full rights of ownership. In common parlance and in legal phraseology, when a person has full rights of an owner, he is said to own the land or have title to the land. The rights of an owner have been summed up in the Latin phrases *jus utendi fruendi* and *jus abutendi* (vide *The Institutes of South African Law* by Maasdoorp, Vol. II, 6th Edition, p. 100; *An Introduction to Roman Dutch Law* by R. W. Lee, 5th Edition, p. 121). This definition was adopted by the Privy Council in the case of *The Attorney-General and Herath*, (1960) 62 N.L.R. 145. Certain interests which may be vested in others may be deducted from the *plenum Dominium*. When these interests over the land could be asserted against the whole world the Glossators and Commentators, who developed the Roman Law during the medieval period, coined the phrase *jura in re aliena* to describe them. Some of the interests defined as "encumbrances" in the Partition Act are *jura in re aliena*. When the *plenum dominium* is denuded of all the beneficial interests of the owner, a person is said to have *nuda proprietas* or bare title to the property.

If the contention of the counsel for the respondent is upheld a purchaser at a sale held under the Partition Act would only get *nuda proprietas*, if the property has been burdened with encumbrances in such a way that shareholders get only the bare title.

It was contended by counsel for the 2nd Respondent that where an interlocutory decree for sale of a land specifically mentioned certain encumbrances, any sale is subject to such encumbrances in view of the provisions of Section 48 of the Act. Section 48 deals with the contents of an interlocutory decree and a final decree. In the case of a final decree for partition, no doubt the encumbrances stated in the decree would attach either to the whole land or to the lots allotted to the various shareholders as the case may be. The effect of a sale is not set out in Section 48 but in Section 46 of the Act which states in unambiguous language that the certificate of sale in favour of the purchaser is conclusive evidence of the purchaser's title to the land or lot as at the date of the certificate.

In support of his contention, Counsel for the 2nd Respondent relied on the dictum of Gratiaen, J., in *Mrs. Britto v. Heenatigala* (1956) 57 N.L.R. 327, where it was held that the statutory protection of a tenant under the Rent Restriction Act is not automatically extinguished if the leasehold premises are purchased either by a co-owner or third party in terms of a decree for sale under the Partition Ordinance. In that case Gratiaen, J., adopted the dictum of Garvin, J., in *Fernando et al v. Cadiravelu* (1927) 28 N.L.R. 492 at 498, which is as follows :—

" Upon the issue of the certificate of sale to the purchaser under a decree for sale, *the title declared to be in the co-owner is definitely passed to the purchaser.*"

But it should be noted that Section 8 of the repealed Partition Ordinance emphasises that the certificate of sale operates to pass the co-owners' title to the purchaser as effectively as if they themselves had executed a conveyance in his favour.

The dictum of Garvin, J., which was relied on by Gratiaen, J., in *Fernando et al v. Cadiravelu* (ibid) was obiter. In that case the Court had to consider the question whether in a decree for sale under the repealed Partition Ordinance, Courts could give an order for possession to a purchaser. The main ground on which that decision was made was that the repealed Partition Ordinance was silent on this matter and the provisions of the Civil Procedure Code, which applied only to orders of possession being given when a sale took place under the provisions of the Civil Procedure Code, had no application to sales under the Partition decree.

Section 9 of the repealed Partition Ordinance enacts that the decree for partition or sale is good and conclusive evidence against all persons whomsoever, whatever right or title they have or claim to have in the said property, although all persons concerned are not named in any of the said proceedings, nor the title of the owners nor any of them truly set forth and shall be good and sufficient evidence of such partition and sale, and of the titles of the parties to such shares or interests as have been thereby awarded in severalty. It is further provided that the certificate of sale under the hand of a Judge is conclusive evidence that the said property had been sold under the order of the Court. The certificate issued is evidence in any court of the *purchaser's title without any deed or transfer from the former owners* (vide Section 8 of the Ordinance). Therefore, there is some justification for holding that the purchaser under a certificate of sale issued under the repealed Partition Ordinance obtained title to the shares of the shareholders. But similar words are not found in the Act. A certificate of sale under Section 46 of the Act confers on the purchaser the title to the land. It is unsafe to act on the decisions of the Supreme Court which interpreted Sections 2 and 9 of the repealed Partition Ordinance when one is called upon to construe Section 46 of the Act. 10 20

The Partition Ordinance was defective in many respects and made no provisions to meet various situations which arose when a land was partitioned or sold under the Ordinance. Thus, no express provisions are found in the Partition Ordinance stating the effects of a decree for partition or sale on fidei commissa or trusts. 30

Earlier the view was taken that such a property could not be the subject matter of a partition action under the Partition Ordinance (vide Ramanathan Reports (1877) page 307). After a period of uncertainty during which the Courts were doubtful as to whether a property subject to a fidei commissum could be partitioned, the Privy Council expressed the view that such a course could be adopted (vide the obiter dictum of the Privy Council in *Tillekeratne v. Abeyesekera* (1897) 2 N.L.R. 313 at 317 and 318). Subsequently the Supreme Court held that such lands could be the subject matter of a partition action (vide *Abeyesundere v. Abeyesundere* (1909) 12 N.L.R. 373). 40

In the case of a sale under the Partition Ordinance, difficulties arose as to the effect of a decree for sale on a fidei commissum. The view was taken that a sale under the Partition Ordinance should be regarded as a sale under the Entail and Settlement Ordinance and therefore the fidei commissum attached to the proceeds of the sale (vide *Sathiananden v. Matthes Pulle* (1897) 3 N.L.R. 200). But in taking this view, apart from its artificiality it was not appreciated that to invoke the jurisdiction of the Court under 50

the Entail and Settlement Ordinance an application should be made by a person interested in the land, which is the subject matter of the fidei commissum, and reasons should be adduced for the Court to order a sale. Further it was not realized that in a partition action brought in the Courts of Requests the Court has no jurisdiction to act under the provisions of the Entail and Settlement Ordinance. Yet, the ruling in *Sathiananden v. Matthes Pulle* (ibid) was followed in a series of decisions and the principle laid down in that case is firmly entrenched in our legal system.

10 In *Marikar v. Marikar* (1920) 22 N.L.R. 137, the Divisional Court was confronted with the question whether a decree for partition extinguishes an express or constructive trust. In the absence of any provisions in the Partition Ordinance on this matter, the Court sought a solution to this difficult problem by interpreting Sections 2 and 9 of the Partition Ordinance.

20 Bertram, C. J., by a process of reasoning which with respect, I have shown to be untenable (vide *Duraya v. Elandi*, S.C. 116/63, D.C. Kurungala 804/L, S.C. Minutes of 11-2-65 ; decided after judgment was reserved in the present appeal), came to the conclusion that trusts attached to the proceeds of the sale when a land was sold under an order of Court in an action brought under the Partition Ordinance. In arriving at this conclusion, Bertram, C. J., took the view that "title to the parties to such shares or interest means, title to the legal ownership and that the words "right or title" are not intended to include obligations of an equitable nature, which although originally binding on the conscience, have subsequently come to be enforceable in law on the persons vested with legal ownership." He also took the view that the rights in the nature of a *jus in re aliena* were wiped out unless specially preserved in the decree (vide 22 N.L.R. at 140). This view is clearly contrary to the submission made by Counsel for the respondent who urged that despite a sale under the Partition Ordinance, interest in the nature of *jus in re aliena* attached to the land. This view is also in conflict with the dictum of Garvin, J., and Gratiaen, J., in the cases cited earlier.

40 The Partition Ordinance merely provided for the partition or sale of a land held in common by a co-owner and the complex questions which the Courts were called upon to decide were never contemplated by the framers of this piece of legislation. The Courts, in their anxiety to give relief and do justice, sought to give various interpretations to Sections 2 and 9 of the Partition Ordinance and it is unsafe to rely on casual dicta in such cases to elucidate the meanings of the words found in Sections 2 and 9 of the Partition Ordinance. It is too late to differ from the principles laid down in those cases which dealt with such difficult questions but they cannot be unduly extended.

In the case of *Quinn v. Leathem* (1901) A.C. 495 at 506, Lord Halsbury said as follows:—

"There are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the

particular facts of the case in which such expressions are to be found.”

The Partition Act of 1951 was enacted to clarify the law and settle many points in dispute which arose under the repealed Partition Ordinance. When interpreting the provisions of the new Act, resort should not be had to the dicta of judges on the interpretation of Sections 2 and 9 of the Partition Ordinance particularly when there is a conflict of views.

Counsel for the 1st Respondent submitted that the word “title” in Section 46 of the Act means title to the shares of the co-owners. As stated by Coleridge, J. in *Adey and another v. The Deputy Master of the Trinity House* (1852) 22 Law Journal, Q.B.4, the word “title” has different meanings. In one sense it may mean that one has a right to a thing which is admitted to exist, or it may mean something that does in fact exist. In the case of title to land, the question is to whom does the land belong. When one examines the provisions of Section 25 of the Act, the word “title” does not have the meaning suggested by the Counsel for the 1st Respondent. The word “title” is used in different senses in the Act. Thus, in Section 25 of the Act, it is stated that the Court shall examine the title of each of the parties to the land. So that persons who claim interests in the nature of encumbrances also should prove their title to such interests. The word “title” there in common parlance as well as in legal language does not mean title only to the share of the land of the previous co-owners but also a claim to any interest. 10 20

A further examination of a few relevant sections of the Act makes it clear that what is sold under an order for sale made under Section 26 of the Act is the land and the purchaser gets title to the land.

Section 42 of the Act makes it obligatory on the part of the Commissioner, who is responsible for the sale, to make his return to Court informing the Court of the amount to which the land, or where the land was sold in lots, each lot is sold and the name and address of the purchaser thereof and to pay into Court the money deposited with him by the purchaser. Section 43 of the Act enables the purchaser of the land or if the land was sold in lots, the purchaser of each lot, to pay into Court the money realized by the sale of the land or of that lot in conformity with the conditions prescribed and the orders issued by Court under Section 39 of the Act. 30

On the date specified in the notice referred to in Section 40 of the Act, the person who is entrusted with the sale had to first put up the land, or when the land is sold in lots, to put up each lot, to auction among the co-owners and if the highest bid of a co-owner is not less than the value of a land or of such lot, determined by the Court under Section 38 of the Act, then he shall be declared the purchaser of the land or of the lot. 40

What is valued under Section 38 of the Act is the land and not the interest of the shareholders subject to the encumbrances over them. So that it is clear that the purchaser could only purchase the land at a price above the valuation of the land. It cannot be contended that the word “land” there means the title of the shareholders. One can conceive of a case where the shareholders only had a bare title and all the beneficial interests in the land were in the hands of other persons who hold en-



cumbrances. In such a case, if the construction sought to be placed by counsel for the respondent on Section 46 of the Act is to be adopted, then a co-owner has to buy the land at the appraised value of the land but in fact he would buy only the bare title of the land shorn of all beneficial interests which would be in the hands of others who are entitled to encumbrances, such as leases, usufructs, mortgages, etc. Such a result was never intended by the Legislature. Therefore when an order for sale is made under the Act, what is valued and sold is the land and the title which passes to the purchaser is the title to the land.

10 An examination of some of the further provisions of the Act confirms the view that what is sold under a decree for sale is the land and not the shares of the co-owners subject to the encumbrances. Section 47 of the Act provides for the distribution and withdrawal of monies deposited in the Court which form the proceeds of sale when the *land* is sold under a partition decree. It is significant to note that the Court is empowered to Cause to be prepared by a party a schedule of distribution showing the amount which *each party* is entitled to withdraw out of the monies deposited in Court. The parties to a partition case are not only the shareholders but also those who have other interests and encumbrances. Therefore  
20 provision is made for the distribution of monies not only to shareholders but also to the parties who have encumbrances and also interests according to the valuation which is to be placed on such encumbrances or interests. Therefore it must follow that the purchaser under a decree for sale gets title free from all encumbrances save the interests of a proprietor of a nindagama which is specially preserved (vide Section 54 of the Act).

Section 45 of the Act deals with confirmation of sales and the circumstances in which a sale could be set aside. This section enacts that when the amount realized by the sale of the land or any lot is less than the value of the land or the lot, the Court may set aside the sale and re-issue commission for the sale of the land or the lot. This provision again shows that  
30 what is sold is not the title of the shareholder but the land. If it were otherwise, the Legislature would have said in clear words that the Court could set aside the sale if the value of the title of the shareholders is less than the amount for which it was bought.

Section 54 of the Act enacts that the rights of a proprietor of a nindagama are in no way affected by the sale or partition of a panguwa under the Act. Despite the sale, where it was intended that the interests of the nindagama proprietor should be preserved, the Legislature stated so in unequivocal language. If it was intended to preserve the rights of persons  
40 who have encumbrances or other interests the Legislature would have made similar provisions preserving such rights when a sale takes place under the Partition Act.

Counsel for the 2nd Respondent contended that if it is held that a sale under an interlocutory decree entered under Section 26 of the Act passes title to purchaser free from encumbrances, then valuable servitudes such as a right of way over the land which had been sold, or the right to insert a beam into a building in such a land would be extinguished and irreparable loss would be caused to the owner of the dominant tenement. The answer to this contention is that however valuable a servitude may be to the owner

of a dominant tenement, its value cannot exceed the value of the *plenum dominium* over the land. Therefore, the persons who lose such servitudes will be compensated and would be paid its money equivalent out of the proceeds of the sale of the land. But the Court is not powerless in a fit case to grant a right of servitude over a narrow strip of land which the Court may for that purpose allot in common.

Counsel for the 2nd Respondent also contended that where the land is subject to a charitable or constructive trust, then the title of the trustee would be wiped out, if a certificate of sale under Section 46 of the Act confers title to the purchaser free from such trusts. The trust in such cases would no doubt attach to the money which has now replaced the corpus of the trust after the property had been sold on a decree for sale. This was the legal effect of the sale even under the repealed Partition Ordinance (vide 22 N.L.R. at 137). If the contention of the Counsel for the 2nd Respondent is given effect to, one would have the anomalous position of the trustee having the title to such property as well as the purchaser of the property having title to the land. Since the same title cannot remain in two different persons, such a result is untenable.

If the contention of the 2nd Respondent's Counsel on the effect of a sale on a partition decree is accepted, then there can be encumbrances over shares of the former co-owners when the undivided shares over which they existed have been wiped out by the partition decree. Thus one can conceive of a case where there are three co-owners each having an undivided one-third share. There may be an encumbrance in the nature of life interest over each of these shares. When the title to undivided shares is wiped out by the partition decree and the purchaser gets title under a certificate of sale, the life interest holders would still have the life interest over one-third share of the property. Indeed the facts of the present case creates this difficulty. Thus a common possession between the life interest holders would be perpetuated despite the sale under a partition decree of the property which put an end to the divided interest of the shareholders. Such a result would militate against the object and purposes of the Partition Act.

Counsel for the 2nd Respondent also submitted that even under the provisions of the Civil Procedure Code the Fiscal can seize and sell the houses, lands and goods of the judgment creditor (vide Section 225 (3) of the Civil Procedure Code read along with Section 43 of the First Schedule). But the Fiscal sells only the right, title and interest of the judgment debtor. He urged, by way of analogy, that when the Court orders a sale of a land under Section 26 of the Act, the Commissioner is empowered only to sell the title of the shareholders of the land which is the subject matter of the action. But under the provisions of the Civil Procedure Code, what the Fiscal is excepted to seize and sell is the property of the judgment debtor (vide Section 226 (2) of the Civil Procedure Code) and by way of contrast what a Commissioner is empowered to sell under Section 26 of the Partition Act, is the land. The certificate of sale under Section 46 of the Act confers title to the land on the purchaser of the land.

The learned District Judge based his decision, with respect, on the mistaken assumption that since Section 50 of the Act makes provision that in a decree for partition, the mortgage or lease should attach to the divided

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portion allotted to the mortgagor or the lessor, and in the event of a decree for sale, to the proceeds of the sale belonging to the mortgagor or the lessor, in the absence of similar provision to cover, usufruct, servitude, fidei commissum or life interest, one must necessarily come to the conclusion that these interests attach to the land in the hands of the purchaser.

No. 18  
Judgment of the  
Supreme Court  
25-3-65  
*Continued*

Section 50 of the Act is not an enabling section but a restrictive provision. Under the repealed Partition Ordinance, in the absence of specific provisions, there was a conflict of opinion on the vexed question whether the interest of lessees and mortgagees subsisted when the property was sold under a decree for sale. One view was that leases and mortgages attached to the land even after the sale (vide the Law of Partition in Ceylon by Jayawardena, pp. 244 and 247; for mortgages, vide *Fernando v. Silva* (1898) 2, Tambyah Reports, 111; *De Silva v. Rosinahamy et al* (1939) 41 N.L.R. 56; for leases see *Soysa v. Soysa* (1913) 17 N.L.R. 67). The other view was that the land was sold free from leases and the lessee had to look to the monies allotted to the lessor in claiming his interests (vide *Peiris v. Peiris* (1906) 9 N.L.R. 237). Therefore it became necessary to enact specific provisions to end this controversy. Hence Section 50 of the Act provides that in the case of a sale under the Act the interest of a mortgagee or a lessee is restricted to the share of the proceeds of the sale which would be allotted to the mortgagor or the lessor, respectively.

The learned District Judge failed to note that Section 47 of the Act makes specific provisions for distribution of monies to parties who have interests in the land, and that mortgagees or lessees are persons who have interests over the land.

For these reasons I order that the part of that interlocutory decree entered by the learned District Judge which states that "the said premises will be put up for sale subject to the life interest of the 2nd Defendant in respect of one-third share of the soil and one-third share of the building," be deleted and the following words be substituted: "the said premises will be put up for sale." The rest of the order of the learned District Judge in the interlocutory decree will stand. The interests awarded to the 2nd Defendant will be valued and he will be paid the estimated value of his usufruct out of the proceeds of the sale.

The Appellant is entitled to costs of Appeal and costs of inquiry.

(Sgd.) H. W. TAMBIAH,  
*Puisne Justice.*

*T. S. Fernando, J.*

I agree.

(Sgd.) T. S. FERNANDO,  
*Puisne Justice.*

*Manicavasagar, J.*

I agree.

(Sgd.) V. MANICAVASAGAR,  
*Puisne Justice.*

## Decree of the Supreme Court

S.C. 573/'61 (F)

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF  
HER OTHER REALMS AND TERRITORIES,  
HEAD OF THE COMMONWEALTH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

*Plaintiff.* 10

*Vs.*

Ceylon Theatres Limited of Parsons Road, Colombo  
and others.

*Defendants.*

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

*Plaintiff-Appellant.*

*Against*

Ceylon Theatres Limited of Parsons Road, Colombo  
and others.

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*Defendants-Respondents.*

Action No. 8603/P.

*District Court of Colombo.*

This cause coming on for hearing and determination on the 8th and 9th December, 1964, 25th and 26th January, 1965, 25th March, 1965, upon an appeal preferred by the Plaintiff-Appellant before the Hon. Thusew Samuel Fernando, Q.C., Puisne Justice, the Hon. Henry Wijayakone Tambiah, Q.C., Puisne Justice and the Hon. Vaitilingam Manicavasagar, Puisne Justice of this Court, in the presence of Counsel for the Plaintiff-Appellant, the 1st Defendant-Respondent and the 2nd Defendant-Respondent.

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It is considered and adjudged that the part of that Interlocutory Decree entered by the District Judge which states that "the said premises will be put up for sale subject to the life interest of the 2nd Defendant in respect of one-third share of the soil and one-third share of the building" be deleted and the following words be substituted: "the said premises will be put up for sale."

It is ordered and decreed that, the rest of the Order of the District Judge in the Interlocutory Decree will stand.

It is further ordered and decreed that the interest awarded to the 2nd Defendant be valued and he be paid the estimated value of his usufruct out

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of the proceeds of the sale. It is also ordered that the Appellant is entitled to costs of appeal and costs of inquiry.

(Vide Copy of Judgment attached)

Witness, The Honourable Miliani Claude Sansoni, Chief Justice, at Colombo, the 24th day of April, in the year One thousand nine hundred and sixty-five and of Our Reign the Fourteenth.

( S E A L )

(Sgd.) B. F. PERERA,  
*Deputy Registrar, S.C.*

No. 19  
Decree of the  
Supreme Court  
25-3-65  
*Continued*

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No. 20

**Application for Conditional Leave to Appeal  
to the Privy Council**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for conditional leave to Appeal to the Privy Council in S.C. No. 573/61 (F) D.C. Colombo, No. 8603/P.

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

D.C. Colombo

*Plaintiff.*

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No. 8603/P.

S.C. No. 573/61 (F)

*Vs.*

S.C. Application No. 169/65

1. Ceylon Theatres Limited of Parsons Road, Colombo.
2. Eugene Seneviratne of "Kenilworth" No. 231, Dematagoda Road, Colombo.
3. Gwendeline Dora Jayakoddy of Balagalle, Divulapitiya, appearing by her *Guardian-ad-litem* and Curator the 4th Defendant.
4. Joseph de Abrew Wijesinghe of 24, Tichborne Passage, Colombo.

*Defendants.*

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Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

*Plaintiff-Appellant.*

*Vs.*

1. Ceylon Theatres Limited of Parsons Road, Colombo.
2. Eugene Seneviratne of "Kenilworth" No. 231, Dematagoda Road, Colombo.

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No. 20  
Application for  
Conditional  
Leave to Appeal  
to the  
Privy Council  
12-4-65

No. 20  
Application for  
Conditional  
Leave to Appeal  
to the  
Privy Council  
12-4-65

*Continued*

3. Gwendeline Dora Jayakoddy of Balagalle,  
Divulapitiya, appearing by her *Guardian-ad-*  
*litem* and Curator the 4th Defendant.

4. Joseph de Abrew Wijesinghe of 24, Tichborne  
Passage, Colombo.

*Defendants-Respondents.*

Ceylon Theatres Limited of Parsons Road,  
Colombo.

*(1st Defendant-1st Respondent)*

PETITIONER

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*and*

1. Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

*(Plaintiff-Appellant)*

2. Eugene Seneviratne of "Kenilworth" No. 231,  
Dematagoda Road, Colombo.

3. Gwendeline Dora Jayakoddy of Balagalle,  
Divulapitiya, appearing by her *Guardian-ad-*  
*litem* and Curator the 4th Defendant.

4. Joseph de Abrew Wijesinghe of No. 24, Tichborne  
Passage, Colombo.

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*(2nd, 3rd and 4th Defendants-*  
*Respondents)*

RESPONDENTS

To : The Honourable the Chief Justice and the other Judges of the  
Honourable The Supreme Court of the Island of Ceylon.

On this 12th day of April, 1965.

The petition of Ceylon Theatres Limited the Petitioner above-named  
appearing by John Wilson and his assistants Hugo Wilfred Joseph Muttu-  
kumaru and Kalpage Dennis Lakshman Weerasekara Perera, its Proctors  
sheweth as follows :—

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1. That feeling aggrieved by the judgment and decree of Your  
Lordships' Honourable Court pronounced on the 25th day of  
March, 1965, the 1st Defendant-1st Respondent Petitioner is  
desirous of appealing therefrom to Her Majesty the Queen in  
Council.

2. Due notice of the Petitioner's intention to apply to this Honour-  
able Court for Conditional Leave to Appeal to Her Majesty in  
Council has been given to the Respondents within 14 days of the  
judgment of your Lordships' Court abovementioned, the said  
notice having been sent to the Plaintiff-Appellant and the 2nd,  
3rd and 4th Defendants-Respondents by Registered Post on  
3rd day of April, 1965.

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3. The said judgment of Your Lordships' Honourable Court is a final judgment and the matter in dispute in Appeal exceeds the value of Rs. 5,000/- and is also one that involves directly or indirectly a claim or question to or respecting property or a civil right amounting to or of the value of Rs. 350,000/-.

No. 20  
Application for  
Conditional  
Leave to Appeal  
to the  
Privy Council  
12-4-65

*Continued*

WHEREFORE the Petitioner prays on the grounds aforesaid for Conditional Leave to Appeal against the said judgment of this Court, dated the 25th day of March, 1965, to Her Majesty the Queen in Council.

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(Sgd.) JOHN WILSON,  
*Proctor for Petitioner.*

*Settled by :*

Mr. N. E. Weerasooria (Jnr.),  
Advocate.

### No. 21

### Minute of Order granting Conditional Leave to Appeal to the Privy Council

No. 21  
Minute of Order  
granting Condi-  
tional Leave to  
Appeal to the  
Privy Council  
31-8-65

### IN THE SUPREME COURT OF THE ISLAND OF CEYLON

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S.C. Application  
No. 169 of 1965.

In the matter of application for Conditional Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

S.C. Appeal  
No. 573/61 (F)

Ceylon Theatres Limited of Parsons Road, Colombo.  
*1st Defendant-1st Respondent*  
PETITIONER

D.C. Colombo  
No. 8603/P.

*Vs.*

30

1. Cinemas Limited of No. 117, New Chetty Street, Colombo.

*Plaintiff-Appellant*  
RESPONDENT.

2. Eugene Seneviratne of "Kenilworth," No. 231, Dematagoda Road, Colombo.
3. Gwendeline Dora Jayakoddy of Balagalle, Divulapitiya, appearing by her *Guardian-ad-litem* and Curator the 4th Defendant.
4. Joseph de Abrew Wijesinghe of No. 24, Tichborne Passage, Colombo.

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*2nd, 3rd and 4th Defendants-Respondents*  
RESPONDENTS.

No. 21  
Minute of Order  
granting Condi-  
tional Leave to  
Appeal to the  
Privy Council  
31-8-65  
*Continued*

The application of Ceylon Theatres Limited of Parsons Road, Colombo, for Conditional Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 25th day of March, 1965, in S.C. 573 (Final) of 1961, District Court, Colombo, Case No. 8603/P, having been listed for hearing and determination before the Honourable Hugh Norman Gregory Fernando, Acting Chief Justice, and the Honourable Vaitilingam Manicavasagar, Puisne Justice, in the presence of H. V. Perera Esquire, Q.C., with N. E. Weerasooria (Jnr.) Esquire, Advocates, for the Petitioner, A. Sivagurunathan Esquire, Advocate for the Plaintiff-Appellant-Respondent and Vernon Martyn for the 4th Defendant-Respondent-Respondent and there being no appearance for any other party, order has been made by Their Lordships on the 31st day of August, 1965, allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty the Queen in Council.

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(Sgd.) N. NAVARATNAM,  
*Registrar of the Supreme Court.*

No. 22  
Application for  
Final Leave to  
Appeal to the  
Privy Council  
9-9-65

## No. 22

### Application for Final Leave to Appeal to The Privy Council

#### IN THE SUPREME COURT OF THE ISLAND OF CEYLON

20

In the matter of an application for Final Leave to  
Appeal to the Privy Council in S.C. No. 573/61 (F),  
D.C. Colombo, No. 8603/P.

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

D.C. Colombo,  
No. 8603/P.  
S.C. No. 573/61 (F)

*Plaintiff.*

*Vs.*

- S.C. Application,  
No. 350/65.
1. Ceylon Theatres Limited of Parsons Road,  
Colombo.
  2. Eugene Seneviratne of "Kenilworth," No. 231,  
Dematagoda Road, Colombo.
  3. Gwendeline Dora Jayakoddy of Balagalle,  
Divulapitiya, appearing by her *Guardian-ad-  
litem* and Curator the 4th Defendant.
  4. Joseph de Abrew Wijesinghe of No. 24, Tichborne  
Passage, Colombo.

30

*Defendants.*

Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

*Plaintiff-Appellant.*

40

*Vs.*



1. Ceylon Theatres Limited of Parsons Road, Colombo.
2. Eugene Seneviratne of "Kenilworth," No. 231, Dematagoda Road, Colombo.
3. Gwendeline Dora Jayakoddy of Balagalle, Divulapitiya, appearing by her *Guardian-ad-litem* and Curator the 4th Defendant.
4. Joseph de Abrew Wijesinghe of No. 24, Tichborne Passage, Colombo.

No. 22  
Application for  
Final Leave to  
Appeal to the  
Privy Council  
9-9-65

*Continued*

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*Defendants-Respondents.*

Ceylon Theatres Limited of Parsons Road, Colombo.  
(*1st Defendants-1st Respondent*)  
PETITIONER

*and*

1. Cinemas Limited of No. 117, New Chetty Street, Colombo.

*(Plaintiff-Appellant).*

2. Eugene Seneviratne of "Kenilworth," No. 231, Dematagoda Road, Colombo.
3. Gwendeline Dora Jayakoddy of Balagalle, Divulapitiya, appearing by her *Guardian-ad-litem* and Curator the 4th Defendant.
4. Joseph de Abrew Wijesinghe of No. 24, Tichborne Passage, Colombo.

*(2nd, 3rd and 4th Defendants- Respondents),*  
RESPONDENTS.

20

To : The Honourable The Chief Justice and the other Judges of the Honourable the Supreme Court of the Island of Ceylon.

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On this 9th day of September, 1965.

The Petition of Ceylon Theatres Limited, the (1st Defendant-1st Respondent) Petitioner abovenamed appearing by John Wilson and his assistants Hugo Wilfred Joseph Muttukumaru and Kalpage Dennis Lakshman Weerasekara Perera, its Proctors states as follows :—

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1. The (1st Defendant-1st Respondent) Petitioner, on the 31st day of August, 1965, obtained Conditional Leave from this Honourable Court to Appeal to Her Majesty the Queen in Council against the judgment of this Court pronounced on the 25th day of March, 1965.
2. The (1st Defendant-1st Respondent) Petitioner has in compliance with the conditions on which such leave was granted, given security by deposit of Rs. 3,000/- with the Registrar of this Court and the hypothecation thereof to and with this Honourable

No. 22  
Application for  
Final Leave to  
Appeal to the  
Privy Council  
9-9-65

*Continued*

Court by Bond on the 7th day of September, 1965, and has also deposited the sum of Rs. 300/- as fees payable to the Registrar of this Honourable Court and complied with all the conditions imposed by this Honourable Court by its order dated the 31st day of August, 1965.

3. The (1st Defendant-1st Respondent) Petitioner has given written notice of this application for Final Leave to Appeal to Her Majesty the Queen in Council by delivering same to the (Plaintiff-Appellant) 1st Respondent's Proctor on record, to the (2nd Defendant-2nd Respondent) 2nd Respondent's Proctor on record and to the (4th Defendant-4th Respondent) 4th Respondent's Proctor on record and sending same on the 7th day of September, 1965, to the (Plaintiff-Appellant) 1st Respondent, (2nd Defendant-2nd Respondent) 2nd Respondent and (4th Defendant-4th Respondent) 4th Respondent as *Guardian-ad-litem* of the (3rd Defendant-3rd Respondent) 3rd Respondent by Registered Post and Ordinary Post.

10

WHEREFORE the (1st Defendant-1st Respondent) Petitioner prays :—

- (a) that it be granted Final Leave to Appeal against the said judgment of this Court, dated the 25th day of March, 1965, to Her Majesty the Queen in Council ;
- (b) for costs ; and
- (c) for such other and further relief as to this Court shall seem meet.

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(Sgd.) JOHN WILSON  
*Proctor for (1st Defendant-1st Respondent)*  
PETITIONER.

### No. 23

#### Minute of Order Granting Final Leave to Appeal to the Privy Council

No. 23  
Minute of Order  
granting Final  
Leave to Appeal  
to the Privy  
Council  
4-11-65

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

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In the matter of an Application for Final Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

Ceylon Theatres Limited of Parsons Road, Colombo.

*1st Defendant-1st Respondent,*  
PETITIONER.

S.C. Application  
350 of 1965.  
(Final Leave)

*Vs.*

1. Cinemas Limited of No. 117, New Chetty Street,  
Colombo.

40

S.C. Application  
No. 169 of 1965.  
(Conditional  
Leave)

*Plaintiff-Appellant*  
RESPONDENT.

2. Eugene Seneviratne of "Kenilworth," No. 231,  
Dematogoda Road, Colombo.

D.C. Colombo  
No. 8603/P.

3. Gwendeline Dora Jayakoddy of Balagalle, Divulapitiya, appearing by her *Guardian-ad-litem* and Curator the 4th Defendant.
4. Joseph de Abrew Wijesinghe of No. 24, Tichborne Passage, Colombo.

*2nd, 3rd and 4th Defendants-Respondents*

RESPONDENTS.

No. 23  
Minute of Order  
granting Final  
Leave to Appeal  
to the Privy  
Council  
4-11-65  
*Continued*

10 The application of Ceylon Theatres Limited of Parsons Road, Colombo, for Final Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon, pronounced on the 25th day of March, 1965, in S.C. 573 (Final) of 1961, D.C. Colombo, Case No. 8603/P, having been listed for hearing and determination before the Honourable Thusew Samuel Fernando, Q.C., Puisne Justice, and the Honourable Albert Lionel Stanley Sirimane, Puisne Justice, in the presence of H. V. Perera Esquire, Q.C., with N. E. Weerasooria (Jnr.) Esquire, Advocates for the Petitioner, and there being no appearance for any other party, order has been made by Their Lordships on the Fourth day of November, 1965, allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council.

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(Sgd.) N. NAVARATNAM,  
*Registrar of the Supreme Court.*

PART II

**EXHIBITS**

**P 1**  
**Last Will**

P 1  
Last Will  
18-10-1855

*The Last Will* and Testament which has been written on the 10th and 18th day of October, in the year 1855, is as follows to wit :—

We, Don David De Livera Wijewickreme Seneviratne Muhandiram of the Hewagam Korale, residing at Marandahn in Colombo, Dona Nathalia de Livera Lama Ettaney being now old and infirm, and altho' the death of man is certain yet as the time at which it takes place cannot be known and as we are at present of sound mind, memory and understanding we have  
10 considered it expedient to lay down, by a Will, the mode in which our moveable and immoveable property should be disposed of and for that purpose we do with our free will and mutual consent declare this our Last Will and Testament, in manner following :—

1st. We do hereby revoke all writings of a testamentary nature which we or either of us may have herebefore revealed.

2nd. We do give and desire unto our son Mr. Mathew de Livera a portion of the garden called Meringawatta alias Tappawatta belonging to us, situate and lying at Marandahn, he having planted and improved the same which portion is abutted as follows to wit :—

20 On the East by the garden of Payagalegey David Appoo, and by the garden of Juanis Appoo, on the South by the ditch of the garden Tappawatta, on the West by the portion of garden the property of Cottigode Mohandiram, and on the North by a path or lane and by a portion of the same garden as a gift to be appropriated by him after our death.

3rd. That the boundaries of the premises or portion (on which Mr. Franciscus de Livera Mohandiram has built a house) of the garden called Walawwewatta belonging to us in like manner situate and lying at Marandahn are as follows to wit :— On the East by the portion of the same garden Walawwewatta, on the South by the high road, on the West  
30 by the portion of this garden and on the North by the ditch and that the premises within these boundaries containing 36 cubit in breadth towards the street is hereby bequeathed and given as a gift to the said Mr. Franciscus de Livera Mohandiram to be appropriated by him after our death.

4th. That the boundaries of the portion of garden called Merangawatta alias Tappawatte belonging to us in like manner situate and lying at Marandahn are as follows to wit :— On the East by the portion of garden belonging to the Estate of the late Mr. Don Thomas Goonetilleke Mohandiram and by the portion of garden belonging to David Appoo. On the South by the portion of garden belonging to the widow of the late David Appoo  
40 and by the piece of garden belonging to Juanis Appoo, on the West by a small road and by two portions of the garden, and on the North by the small road and by the premises on which Omer Lebbe resides and by the premises of Issan Appoo and that the premises within these boundaries is hereby bequeathed and given as a gift to our grandson, Mr. Edwin de Livera to be appropriated by him after our death.

5th. It is ordained and appointed that after the departure of any one of us from this world the survivor shall be entitled to all the Rest immov-

P 1  
Last Will  
18-10-1855

Continued

able and moveable property of such deceased person and shall possess the same at his or her free will and pleasure.

6th. That if the amount which we two persons owe to the loan board and also the interest due thereon could not be paid and settled by us during our lives, one or more of our landed property shall after our death, be sold and the said debt shall be settled, and that all the residue landed property shall be equally divided by and amongst our four sons and one daughter namely, Mr. Frederick de Livera Mohandiram, Mr. Abraham de Livera, Mr. Mathew de Livera, Mr. Franciscus de Livera Mohandiram, and Justina de Livera Hamine and from and out of the immoveable property the lands situate and lying at Tammitte in the Dasia Pattu of the Allot Cor Corle and also the real property situate and lying at Colombo shall be possessed by them upon the conditions hereinafter mentioned — *viz.*, that neither the above-mentioned five persons nor any of their descendants shall sell, mortgage, or otherwise alienate the same but they shall possess the same from generation to generation. 10

7th. That in naming the heirs, our five children, Mr. Frederick de Livera Mohandiram, Mr. Abraham de Livera, Mr. Mathew de Livera, Mr. Franciscus de Livera Mohandiram and Justina de Livera Hamine are hereby nominated and appointed as our real and sole heirs. 20

8th. That for the due performance of what is stated in the Last Will we have hereby nominated and appointed two of our sons. *viz.*, Mr. Franciscus de Livera Mohandiram and Mr. Mathew de Livera as executors to whom due authority is hereby given as by law provided.

9th. That we have hereby reserved to ourselves the right of cancelling or altering this Last Will.

10th. That we have thus declared, this to be our Last Will and have set our hands and seals at Colombo, in the presence of the witnesses, Mr. Alfred de Livera of Hill Street, Colombo, and Ketteluwearatchigey Carolis Perera, on this day and year aforesaid. 30

(Sgd.) D. D. Livera,

(Sgd.) X. Nathalia de Livera.

Witnesses : (Sgd.) Alfred de Livera.

(Sgd.) C. Perera.

After the above writing was read over by me the undersigned Notary Public to the said Don David de Livera Wijewickreme Seneviratne Mohandiram and Dona Nathalia de Livera Lama Ettany the undersigned as their Last Will in the presence of the above-mentioned witnesses that is to say the said Don David de Livera Mohandiram hath signed on the said 8th day of October and the said Nathalia de Livera on the 18th day of the same 40

month in the presence of the said Mohandiram and witnesses and I as well as the witnesses have in the presence of each other, also signed at Colombo, on the said 18th day of October, 1845.

P 1  
Last Will  
18-10-1855  
Continued

In Testimonium Veritatis,  
(Sgd.) D. S. DISSANAIKE,  
Notary Public.

Translated by :  
(Sgd.) Illegibly.  
District Court Sworn Translator.

10 True copy of translation of Last Will  
in D.C. Colombo, Case No. 2036 of 1857.

Sgd.....  
Secretary.  
19-7-51.

P 2

Probate in Testamentary Case No. 2036

PROBATE

P 2  
Probate in  
Testamentary  
Case No. 2036  
15-2-1858

Testamentary  
Jurisdiction  
No. 2036.

In the District Court of Colombo.

20 Be it known to all men that on the 6th day of November, in the year 1857, the Last Will and Testament of Don David de Livera Wijewickreme Seneviratne Mohandiram and Dona Nathalia de Livera Lama Ettana, both of Colombo, deceased, a copy of which is hereunto annexed, was exhibited, read and proved before the Court and administration of all the property and estate, rights and credits of the deceased was and is hereby committed to Franciscus de Livera Mohandiram and Mathew de Livera the Executors in the said Last Will and Testament named ; that they being first sworn faithfully to execute the said Will by paying the debts and legacy of the deceased as far as the property will extend and the law will bind, and also  
30 to exhibit into this Court a true, full and perfect Inventory of the said property on or before the fifth day of May next and to file a true and just account of their executorship on or before the fourth day of August next.

Given under the seal of the District Court of Colombo, this fifteenth day of February A.D., 1858.

(Sgd.) GEORGE LAWSON,  
Acting District Judge.

True copy of Probate in D.C. Colombo,  
Case No. 2036/T of 1857.

40

Sgd. ....  
Secretary.  
19-7-51.

P 3  
Inventory in Testamentary Case No. 2036

*In the District Court of Colombo.*

In the matter of the Last Will and Testament of  
Don David de Livera Wijewickreme Seneviratne  
Mohandiram and his wife, Dona Nathalia de Livera  
Lama Ettina.

Testamentary  
Jurisdiction  
No. 2036.

*Deceased.*

10

A true just and perfect inventory of all the property and estate rights and credits of the said deceased in as far as the said estate hath come into the hands possession or knowledge of us the undersigned executors.

	£	s.	d.	
Part of a garden called Tappey Watte at Marandahn	120	0	0	
Part of a garden called Walawwe Watte, Marandahn	400	0	0	
Do do do	100	0	0	
Do Paddy field called Tappey Cumbura and the Owiti ground attached to it	10	0	0	
Do Maha Cumbura at Dematagoda	3	0	0	
A paddy field called Muttatewe Cumbure at Tanmitta in the Dasia Pattu of Aloomoor Korle	60	0	0	20
Do Mihitiyawa Cumboore do	30	0	0	
Do Talgas Owitte do	30	0	0	
Do Bogaha Dalupotte do	5	0	0	
Do Radagodeyawa do	7	10	0	
Do Ellukkotuwa do	7	10	0	
Do Gas Owite do	5	0	0	
Do Kirilimedey do	6	0	0	
An Owitty land called Ellengodde Owita and the high ground attached to it	7	10	0	30
A part of paddy field called Willey Cumbure do do	5	0	0	
Owitty ground called Wellelanga Owitte do do	1	10	0	
Do Low ground called Congaha Delupotta do	0	10	0	
Do Amunadille do	0	10	0	
Do Wewalangadalupota do	0	10	0	
A low land called Paragodayaya langa Pillawwe	0	10	0	40
Garden called Congahawatta do	15	0	0	
Part of a garden called Meegahawatta at Madille in the Palle Pattu of Salpity Korale	6	0	0	
Part of a garden called Hickgahawatta alias Gamegeywatta at do	11	5	0	
Do do do	11	5	0	



			£	s.	d.	P 3 Inventory in Testamentary Case No. 2036 11-3-1859 <i>Continued</i>
	Field called Collure Cumbure or Cottuwe Owitte at Collure Cumbure	do	...	1	10	0
	Part of a garden called Miriswatte at Allott Ambalama in the Oodogaha Pattu of Hewagam Korle		...	2	0	0
	1/10 part of a garden called Everywatta at Navagamuwa in the Palle Pattu of	do	...	0	3	0
	1/40 part of Ellemullewatta in	do	...	1	8	4
10	1/40 part of Wallawe watte in	do	...	0	4	6
	1/40 part of Collupitiyewatta or Totapollewatta in	do	...	0	0	7
	1/40 part of Okkiriya-watta in	do	...	0	0	6
	1/40 part of Watte Owita in	do	...	0	1	2
	1/40 part of Mawelle Owitte in	do	...	0	1	6
	1/40 part of Allagolley Owitte	do	...	0	3	1
	1/40 part of Field Totupolley Cumbura	do	...	0	1	0
	1/40 part of Garden Pillewatta	do	...	0	5	1
	1/40 part of Walakedde watte	do	...	0	1	3
20	1/40 part of field called Delgahacumbure	do	...	0	2	0
	1/40 do Ditugahacumbure	do	...	0	0	10
	1/40 do Ratembalagaha	do	...	0	0	6
	1/40 do Indigaha Owitte	do	...	0	0	6
	1/40 do Pandeigey Owitte	do	...	0	2	0
	1/40 do Allagolle Cumbore	do	...	0	0	6
	1/40 do Gorekagaha Cumbure	do	...	0	0	6
	1/40 part of land called Meegaha Owitte	do	...	0	1	6
	1/40 part of field called Nuggewella Cumbure	do	...	0	6	3
30	1/40 part of Owittey field Panduwewete- watte & Ockkarayawatta	do	...	0	0	6
	1/40 part of the field called Ocrapolle Cumbura at Diketene in the Gangaboda Pattu of	Cina Corle		4	16	0
	1/40 part of the garden called Depawagey- watta alias Nitulgahawatta at Mapitigama in	do	...	1	3	6
	1/40 do field called Mavanelle Cumbure or Diahondi Ella					
40	at Attengalle in the Oodoogaha Pattoo of Cine Corle		...	0	15	0
	1/40 share of a tract of Owitty land at Attanagalla	do	...	1	0	0
	1/40 share of field at Makewatta in the Ragama Pattu of Alootcooru Corle		...	0	10	0
	1/5 from 1/4 share of the garden called Walawwewatta at Bellantooduwa in the Munawattebage Pattoo at Raygam Corle		...	2	0	0
	1/5 part of the field Pottey Cumbore at Kudayale or Yale in	do	...	0	10	0

P 3  
Inventory in  
Testamentary  
Case No. 2036  
11-3-1859  
Continued

				£	s.	d.	
1/5	part of Khaleliye Liadda	do	do	...	0	10	0
1/5	part of Pahalaherey Liadde	do	do	...	0	10	0
1/5	part of Owitty Cumbore	do	do	...	2	0	0
1/5	part of Meegaha Liadde Cumbore or Meegaha Liadde			...	1	0	0
1/5	part of Ahelemaddehena or Kudamaddehena at Mahale or Yale	do	do	...	0	10	0
1/5	do Pahalamaddehena or Maha- madehena in	do	do	...	1	10	0 10
1/5	do Gorakgoda Aswedduma in	do	do	...	0	10	0
1/5	do Lankayalney Cumbure in	do	do	...	0	15	0
1/5	do Halpandure in	do	do	...	0	10	0
1/5	do Pittemulley Cumbure in	do	do	...	0	10	0
1/5	do Rukmale Cumbure in	do	do	...	0	10	0
1/5	do Yalle Owita — Yale	do	do	...	0	5	0
1/5	do Yalle Cumbura — Yale	do	do	...	0	6	0
1/5	do Garden called Walleboda Owittewatta	do	do	...	1	0	0
1/5	do Mahawatte	do	do	...	1	0	0 20
1/5	do Depasariyawatta	do	do	...	1	0	0
1/5	do Wetanageywatta	do	do	...	2	0	0
1/5	do garden called Dommelayawatta	do	do	...	0	10	0
1/5	do land Embillagaha Owitte	do	do	...	0	3	0
1/5	do land Owitty Cumbure Owitte	do	do	...	0	3	0
1/5	do land Meeyankote Owitte	do	do	...	0	1	6
1/5	do garden called Condewelegodella	do	do	...	1	10	0
					877	13	6
	Debts due by the deceased	...	...	£	180	0	0
	Total	...	...	£	697	13	6 30

We swear the above to be a true, just and perfect inventory of the Estate of Don David de Livera Mohandiram and Dona Nathalia de Livera Lama Ettany, deceased.

(Sgd.) Franciscus de Livera

(Sgd.) Mathew de Livera.

*Explained by me*

(Sgd.) *Illegibly.*

Sworn to this 11th day of March, 1859 :

*Before me :*

(Sgd.) *Illegibly.*

40

True copy of inventory in D.C. Colombo,  
Case No. 2036 of 1857. Testy.

Sgd. ....  
Secretary.  
19-7-51.

## Indenture No. 1754

P 4  
 Indenture  
 No. 1754  
 10-6-1876

No. 1754.

APPLICATION NO. L 2353.

The Indenture made this Tenth day of June, One Thousand Eight Hundred and Seventy-six, Between Managey Dona Maria Perera, Managey Dona Agida Perera, Wanny Aratchegey Martina Perera Haminey and her husband, Gammanavidane Aratchegey Adrian Peiris Appuhami and Managey Manohamy Perera, widow of Kottiriaratchegey Singho Appuhami all of Marandahn in Colombo.

10 Whereas under and by virtue of three Deeds of gift, viz., one bearing No. 36, dated Fifteenth February, 1873, the other bearing No. 66, dated Twenty-seventh August 1873, the other bearing No. 102, dated Sixteenth September, 1874, all attested by Don Joseph Kuletoonge, Notary Public and under and by virtue of two Deeds bearing even date with these presents and attested by the undersigned Notary, Managey Dona Maria Perera Managey Dona Agida Perera Wanny Aratchegey Martina Perera Haminey and her husband, Gammane Vidane Aratchegey Adrian Peiris Appuhami and Managey Manohamy Perera, widow of Kattiniaratchegey Singho Appuhami, all jointly seized and possessed in undivided shares in the  
 20 manner following that is to say the said Managey Dona Maria Perera, an undivided one-sixth share the said Managey Dona Agida Perera, an undivided one-sixth share, the said Wanny Aratchegey Martina Perera Haminey and her husband, Gammanavidane Aratchegey Adrian Peiris Appuhamy, an undivided one-third share and the said Managey Manohamy Perera, widow of Katteriaratchegey Singho Appuhami, an undivided one-third share of all that part of a garden called Merunjigewatta, situated at Demattegodde, within the Gravets of Colombo, bounded on the North by the lane, on the East by a passage, on the South by the other part and on the West by the ground of David Appoo Hamy, containing in  
 30 extent 27 square perches and registered in Lr. A 5/86.

And whereas the said Managey Dona Maria Perera Managey Dona Agida Perera, Wanny Aratchegey Martina Perera Haminey and her husband, Gammanavidane Aratchegey Adrian Peiris Appuhami and Managey Manohamy Perera, widow of Kattiri Aratchegey Singho Appuhami, have now agreed to make a partition and division of the said hereinbefore described premises and have accordingly divided the said premises into four portions as follows to wit : the portion marked Lr. A in the plan, situated at Dematagoda, within the Municipality of Colombo, bounded on the North by a lane, on the East by another part marked Lr. B, in the above Plan on the  
 40 South by another part of the same garden and on the West by the ground of David Appuhami and containing in extent, four and one-half square perches, according to the annexed Figure of Survey, dated Fourteenth May, 1876, and made by Mr. P. Fonscka, Land Surveyor, is allotted to the said Managey Dona Maria Perera as and for the share to be held in severally by her. The portion marked Lr. B in the Plan, situated at Dematagoda, within the Municipality of Colombo, bounded on the North by a lane, on the East by another part marked Lr. C in the above Plan, on the South by another part of the same property and on the West by another part marked

P 4  
 Indenture  
 No. 1754  
 10-6-1876

*Continued*

Lr. A and containing in extent four and one-half square perches, according to the annexed Figure of Survey, dated Fourteenth May, 1876, also made by the said Surveyor is allotted to the said Managey Dona Agida Perera as and for her share to be held in severalty by her. The portion marked Lr. C in the Plan, situated at Dematagoda, within the Municipality of Colombo, bounded on the North by a lane, on the East by another part marked Lr. D in the above Plan, on the South by another part and on the West by another part marked Lr. B in the above Plan and containing in extent nine square perches, according to the annexed Figure of Survey, dated Fourteenth May, 1876, also made by the said Surveyor is allotted to the said Wanny Aratchehey Martina Perera Haminey and her husband Gammanavidane Aratchehey Adrian Peiris Appuhamy, as and for their share to be held in severalty by them. The portion marked Lr. D in the Plan, situated at Dematagoda, within the Municipality of Colombo, bounded on the North by a lane, on the East by a passage, on the South by the other part and on the West by the other part marked Lr. C and containing in extent nine square perches according to the annexed Figure of Survey, dated Fourteenth May, 1876, also made by the said Surveyor is allotted to the said Manegey Manohammy Perera, widow of Kattiriaratchehey Singho Appuhamy, as and for her share to be held in severalty by her.

10

20

Now this Indenture witnesseth that in pursuance of the said agreement and in order to perfect the said partition and division made as aforesaid and to the end that each of the said parties and his or her heirs and assigns may hold and enjoy for ever hereafter in severalty and distinct from each other the said premises allotted to them respectively the said Manegey Dona Agida Perera Wanny Aratchehey Martina Perera Haminey and her husband Gammanavidane Aratchehey Adrian Peiris Appuhami and Manegey Mano Hammy Perera, widow of Kattiriaratchigey Singho Appuhami do by these presents fully and absolutely grant bargain alien release and confirm unto the said Manegey Dona Maria Perera and to her heirs, executors, administrators and assigns all that aforesaid one-sixth part marked Lr. A of the said part of garden with the Appurtenances thereof hereinbefore fully described.

30

To have and to hold the same unto the said Manegey Dona Maria Perera her heirs, executors, administrators and assigns for ever.

And in further pursuance of the said agreement the said Manegey Dona Maria Perera Wanny Aratchehey Martina Perera Haminey and her husband, Gammanavidane Aratchehey Adrian Peiris Appuhami and Manegey Mano Hamy Perera, widow of Kattiriaratchehey Singho Appuhami, do by these presents fully and absolutely grant bargain, alien release and confirm unto the said Manegey Dona Agida Perera and to her heirs, executors, administrators and assigns all that aforesaid one-sixth part marked Lr. B of the said part of garden with the appurtenances thereof also hereinbefore fully described.

40

To have and to hold the same unto the said Manegey Dona Agida Perera, her heirs, executors, administrators and assigns for ever.

And in further pursuance of the said agreement the said Manegey Dona Maria Perera, Manegey Dona Agida Perera and Manegey Mano Hamy Perera, widow of Kattiriaratchigey Singho Appuhami do by these presents

fully and absolutely grant bargain alien release and confirm unto the said Wanny Aratchegey Martina Perera Haminey and her husband, Gammanavidane Aratchegey Adrian Peiris Appuhamy and to their heirs, executors, administrators and assigns all that aforesaid one-third part marked Lr. C of the said part of garden with the appurtenances thereof also hereinbefore fully described.

P 4  
Indenture  
No. 1754  
10-6-1876  
Continued

To have and to hold the same unto the said Wanny Aratchegey Martina Perera Haminey and her husband, Gammanavidane Aratchegey Adrian Peiris Appuhami, their heirs, executors, administrators and assigns for ever.

10 And in further pursuance of the said agreement the said Manegey Dona Maria Perera, Manegey Dona Agida Perera, and Wanny Aratchegey Martina Perera Haminey and her husband, Gammanavidane Aratchegey Adrian Peiris Appuhami do by these presents fully and absolutely grant bargain alien release and confirm unto the said Manegey Mano Hammy Perera, widow of Kattiriaratchegey Singho Appuhami and to her heirs, executors, administrators and assigns all that aforesaid one-third part marked Lr. D of the said part of garden with the appurtenances thereof herein before fully described.

20 To have and to hold the same unto the said Manegey Mano Hamy Perera, widow of Kattiriaratchegey Singho Appuhami, her heirs, executors, administrators and assigns for ever.

30 And each of the said parties hereto doth hereby for himself and herself and his and her aforewritten covenant promise and agree to and with the other of their them and his and her aforewritten that they have not hereto or made done or committed any act whereby the premises hereby granted bargained, alined, released and confirmed respectively may or can in any manner be impeached or incumbered in title charge estate or otherwise howsoever and each of them and his and her, aforewritten Will at all times warrant and defend the same to the other of them and his and her aforewritten against any other person or persons whomsoever.

In witness whereof the said parties have set their hands respectively to six of the same tenor as these presents at Colombo, on the day and in the month and year in the beginning hereof written.

(Sgd.) Maria Perera,  
(in Sinhalese) (SEAL)

Witnesses : (Sgd.) P. Fonseka.  
(Sgd.) K. T. Alvis.

Mark of Manegey Dona Agida Perera (SEAL)

Mark of Wanny Aratchegey Martina Perera Haminey (SEAL)

40 (Sgd.) Adrian Peiris (in Sinhala) (SEAL)

Mark of Manegay Mano Hamy Perera (SEAL)

I Coomarandy Chettiar Wattiwale of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said Manegey Dona Maria Perera Manegey Dona Agida Perera Wanny Aratchegey Martina Perera

P 4  
 Indenture  
 No. 1754  
 10-6-1878  
 Continued

Haminey and her husband, Gammanavidane Aratchegey Adrian Peiris Appuhamy and Manegey Mano Hammy Perera, widow of Kattiriaratchegey Singho Appuhami in the presence of Panbus Fonseka of Armour Street in Colombo and Kodepulle Aratchegey Don Felanis Alvis Appuhami of Dematagoda in Colombo, the subscribing witnesses hereto both of whom are known to me was signed by them and by the said witnesses in my presence and in the presence of one another at Colombo, aforesaid this tenth day of June, in the year One Thousand Eight Hundred and Seventy-six.

I do hereby further certify that four stamps of the value of Two rupees and Fifty cents have been affixed to this counterpart of this Instrument which I attest. 10

(Sgd.) C. C. WATTIWALE,  
*Notary Public.*

I, D. W. Wickremasinghe, Additional Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of a Deed of Partition made from the duplicate filed of record in this office and the same is granted on the application of Mr. E. Rodrigo of Colombo.

(Sgd.) D. W. WICKREMASINGHE, 20  
*Addl. Registrar of Lands.*

Land Registry,  
 Colombo, 8-7-1952.

**P 10**  
**Last Will**

P 10  
 Last Will  
 10-4-1882

This is the Last Will and Testament of us, John Richard Vincent de Livera and Mary Teresa de Livera, both of Colombo, husband and wife.

We hereby give devise and bequeath to the Survivor of us absolutely all and singular the property moveable and immoveable in possession reversion or expectancy which the first dying of us may be possessed or entitled to, and we appoint the survivor of us, sole executor or executrix of this our Last Will. 30

In witness whereof we the said John Richard Vincent de Livera and Mary Teresa de Livera have to this our Last Will and Testament hereunder set our respective hands this Tenth day of April, One thousand Eight hundred and Eighty-two.

Signed by the said Testator and Testatrix as and for their Last Will and Testament in our presence, who at their request in their presence and in the presence of one another all being present at the same time have subscribed our names hereunder as attesting witnesses. } (Sgd.) J. Richard V. de Livera. 40  
 (Sgd.) Mary Teresa de Livera.

(Sgd.) Walter de Livera.  
 (Sgd.) *Illegibly.*  
 (Sgd.) *Illegibly.*  
*Notary Public*

I, Peter Daniel Anthonisz Mack of Colombo, Notary Public, do hereby certify and attest that the foregoing Last Will having been read over by John Richard Vincent de Livera and Mary Teressa de Livera, the Testator and Testatrix therein named, in the presence of Messrs. Arnold Eugene Walter de Livera, residing at Grandpass Road, and Henry de Livera, residing at Barber Street, both of Colombo, the subscribing witnesses thereto, all of whom are known to me, was signed by the said Testator and Testatrix and by the Witnesses and by me the said Notary in the presence of one another, all being present at the same time at the residence of the said Testator in Grandpass Road aforesaid, on this Tenth day of April, One thousand Eight hundred and Eighty-two.

P 10  
Last Will  
10-4-1882  
Continued

Date of Attestation : 10th April, 1882.

(Sgd.) P. D. A. MACK,  
Notary Public.

True Copy of Last Will filed of record in D.C. Colombo,  
Case No. 1855/T of 1904.

20

Sgd. ....  
Assistant Secretary,  
D.C., Colombo.

**P 5**

**Fiscal's Transfer No. 960/1882**

No. 960/1882.

P 5  
Fiscal's Transfer  
No. 960/1882  
7-7-1882

Whereas Manegay Dona Maria Perera became under and by virtue of Deed No. 1754, dated the 10th day of June, 1876 and attested by Coomarandy Wattivale of Colombo, Notary Public, seised and possessed of all that divided portion marked Lr. A being one-sixth of all that garden called Merinjegewatta, situated at Demettegodde, containing in extent  $4\frac{1}{2}$  square perches, Registered in Title A, Vol. 24, folio 146 and hereinafter more fully described.

And Whereas the said Manegey Dona Maria Perera and her husband, Weddegey Henderick Rodrigo did in and by a certain Mortgage Bond No. 2542, dated the 28th day of November, 1878 and attested by H. G. Kelaart of Colombo, Notary Public, mortgage the aforesaid portion marked Lr. A to and with Arnoldus Frederick of Colombo to secure to him the due repayment of the sum of Rupees two hundred and twenty-five and interest.

And Whereas judgment having been obtained by the said Arnoldus Frederick Parke upon the said Bond of the 28th day of November, 1878, in Case No. 82428 of the District Court of Colombo, against the said Manegey Dona Maria Perera, her husband the said Weddegey Henderick Rodrigo and their security, Manegey Don Cornelis Appu the Defendants

P 5  
Fiscal's Transfer  
No. 000/1882  
7-7-1882

in the said suit, the said premises mortgaged as aforesaid were sold in execution by the Fiscal of Colombo at which sale the said Arnoldus Frederick Parke became the purchaser thereof.

*Continued*

And Whereas it has been ascertained that instead of the entirety of the said portion marked Lr. A being conveyed and assigned to the said Arnoldus Frederick Parke by Deed No. 190/1881, dated the 28th day of March, 1881, under the hand of W. Hall, the then Acting Fiscal for the Western Province, one undivided half of a land with the buildings standing thereon bearing assessment No. 642, containing in extent  $4\frac{1}{2}$  square perches alleged to have been held under the said Deed No. 1754 of the 10th day of June, 1876, was by error or inadvertence expressed to have been sold and assigned. 10

And Whereas upon the above circumstances being brought to the notice of the Fiscal of the Western Province and the said Manegey Dona Maria Perera having also duly declared before him at an investigation held by him in that behalf that the premises owned by her and mortgaged with the said Arnoldus Frederick Parke and which had been sold in execution and purchased by him as aforesaid was the said Lot A, the said Fiscal has agreed to rectify the said error and to enter into these presents.

Now know ye and these Presents Witness that the Fiscal of the Western Province, Louis Frederick Leisching Esquire, in consideration of the premises and rectification and relief of the said error and inadvertence doth hereby grant release convey assign and assure unto the said Arnoldus Frederick Parke, his heirs, executors, administrators and assigns all the right, title and interest of the said Manegey Dona Maria Perera the said, Weddegey Hendrick Rodrigo and of the said Manegey Don Cornelis Appu the Defendants in the said Case No. 82428 in and to the following premises to wit :— The portion marked Lr. A in the Plan, situated at Demettegodde within the Municipality of Colombo, bounded on the North by a lane, on the East by another part marked Lr. B in the above Plan, on the South by another part of the same garden and on the West by the ground of David Appuhamy and containing in extent four and one-half square perches according to the figure of Survey thereof, dated the 14th day of May, 1876, made by P. Fonseka, Surveyor and held and possessed under the said Deed No. 1754 of the 10th day of June, 1876, hereunto annexed for the correctness of which said figure of Survey, the Fiscal is in no way bound or responsible. 20 30

To have and to hold the said premises with their and every of their appurtenances unto him the said Arnoldus Frederick Parke, his heirs, executors, administrators and assigns for ever. 40

In witness whereof the said Fiscal hath hereunto subscribed his name at Colombo, this seventh day of July, One thousand Eight hundred and Eighty-two.

Stamps of the value of Ten Rupees and One Rupee have been respectively affixed to the counter part and original of this instrument.

Witnesses :

1. (Sgd.) *Illegible.*
2. (Sgd.) *Illegible.*

(Sgd.) L. F. LIESCHING,  
*Fiscal.*



Certified copy of Fiscal's Transfer No. 960/1882,  
copy of 7th July, 1882.

Sgd. ....  
for Fiscal, W.P.  
5-7-62.

P 5  
Fiscal's Transfer  
No. 960/1882  
7-7-1882

P 6

Deed No. 2117

Registered in A 24/145.

Application No. L 2143.

No. 2117.

P 6  
Deed No. 2117  
18-1-1884

10 Know all men by these presents that I, Arnoldus Frederick Parke of Colombo, for and in consideration of the sum of Rupees Two hundred and fifty (Rs. 250/-) of lawful money of Ceylon well and truly paid to me by Mr. John Richard Vincent De Livera of Grandpass in Colombo (the receipt whereof I do hereby acknowledge) Have granted bargained sold assigned transferred and set over as I do hereby grant, bargain, sell assign transfer and set over unto the said John Richard Vincent de Livera his heirs executors administrators and assigns all that portion of the land marked letter A in the plan, situated at Dematagoda within the Municipality of Colombo, bounded on the North by a lane, on the East by another part marked  
20 letter B in the above Plan, on the South by another part of the same garden and on the West by the ground of David Appuhamy and containing in extent four and one-half square perches according to the figure of Survey dated the 14th day of May, 1876, made by P. Fonseka, Surveyor, annexed to the Deed No. 1754, dated 10th June, 1876, together with all title deeds vouchers and writings respecting the same which said premises have been held and possessed by me the said Arnoldus Frederick Parke, under and by virtue of the Deed No. 960, dated 7th July, 1882, granted by L. Lieshing, Esqr., Fiscal, which is hereunto annexed.

30 To have and to hold the said premises with all and singular the appurtenances thereto belonging unto him the said John Richard Vincent de Livera, his heirs executors administrators and assigns for ever.

And I the said Arnoldus Frederick Parke for myself, my heirs, executors and administrators, covenant promise and agree to and with the said John Richard Vincent de Livera his heirs, executors, administrators and assigns that the said premises are free from any encumbrance and that I shall always warrant and defend the same unto him against any person whomsoever.

40 In witness whereof I, Arnoldus Frederick Parke do set my hand to three of the same tenor as these presents at Colombo, on this eighteenth day of January, in the year of our Lord, One thousand eight hundred and eighty-four.

(Sgd.) A. F. Parke.

Witnesses :

*Signed in Tamil.*

Sgd. W. P. Jayanetti.

P 6  
Deed No. 2117  
18-1-1884

*Continued*

I, William Perera Ranasinghe of Colombo, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said Arnoldus Frederick Parke who is known to me in the presence of the witnesses Meera Lebbe Segoe Madarsa of Panchikawatte and William Peter Jayanetti of Grandpass in Colombo who are known to me, the same was signed by him and by the said witnesses in my presence and in the presence of one another all being present at the same time at Colombo on this eighteenth day of January in the year of Our Lord, One thousand eight hundred and eighty-four.

I further certify and attest that Rs. 250/- the consideration was paid in my presence and that the duplicate of this Deed bears two stamps amounting to Rs. 1/50, supplied by me the said Notary. 10

Dated 18th January, 1884.

(Sgd.) W. P. RANASINGHE,  
*Notary Public.*

( S E A L )

I, M. S. Fernando, Addl. Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of a Deed of transfer made from the duplicate filed of record in this office and the same is granted on the application of E. Rodrigo, Esqr. 20

Land Registry,  
Colombo, 19-6-1952.

(Sgd.) M. S. FERNANDO,  
*Registrar of Lands.*

P 7  
Fiscal's Transfer  
No. 1882/1884  
21-1-1884

P 7

Fiscal's Transfer No. 1822/1884

No. 1822/1884

### TRANSFER

Whereas by virtue of a Writ of Execution No. 81897 issued from the District Court of Colombo, bearing date the Fifteenth day of September, 1880, directed to the Fiscal of the Western Province, whereby he was directed to recover from (1) Manage Agida Perera, (2) Manage Cornelia Perera and (3) Manage Gabriel Perera the Defendants in the above case the sum of Three Hundred Rupees with interest, costs and poundage. 30

And whereas the Fiscal of the said Province did cause to be seized and taken the property hereinafter described, which after due notice, was exposed to public sale on the 20th April, 1883, at the premises by Don Samuel Aratchy acting under the authority of the said Fiscal, and sold to Meera Lebbe Assen Lebbe for and on behalf of Meera Lebbe Catoobawa as the highest bidder at the said sale for the sum of Two hundred Rupees.

And Whereas the said Meera Lebbe Catoobawa hath paid to the Fiscal the whole of the said purchase amount and thus became entitled to the said property and to all the right, title, and interest of the said Defendant in and to the same. 40

*Continued*

Now these presents witness that the Fiscal of the said Province in consideration of the said sum of Two Hundred Rupees so paid by the said Meera Lebbe Catoobawa as aforesaid the receipt whereof the said Fiscal doth hereby acknowledge, hath sold and assigned, and by these presents doth sell and assign unto the said Meera Lebbe Catoobawa his heirs, executors, administrators and assigns, the said property and all the right, title, and interest of the said Defendants in and to the same which were specially mortgaged to the plaintiff in the aforesaid suit by the said Defendants by Bond, dated 20th October, 1876, namely all that portion of  
 10 land marked letter B in the Plan with the buildings (not mortgaged) standing thereon situated at Dematagoda within the municipality of Colombo, adjoining the property bearing assessment No. 42 and bounded or reputed to be bounded on the North by the lane, on the East by the other part of the same land marked C, on the South by the other part of the same land and on the West by the other part of the same land marked A, containing or reputed to contain in extent four and half square perches more or less as described in the Diagram or Map annexed hereto, dated 15 August /83, tendered by the purchaser aforesaid (for the correctness of which the Fiscal is in no way responsible).

20 To have and to hold the said premises with their and every of their appurtenances to him, the said Meera Lebbe Catoobawa, his heirs, executors, administrators and assigns, for ever.

In Witness Whereof the said Fiscal hath hereunto subscribed his name at Colombo, this twenty first day of January, in the year of Our Lord, One thousand eight hundred and eighty-four.

A stamp of One Rupee is affixed to the duplicate transfer.

(Sgd.) W. HALL,  
*for Fiscal.*

Witnesses :

- 30 1. (Sgd.) *Illegible.*  
2. (Sgd.) *Illegible.*

Certified copy of Fiscal's transfer No. 1822/1884  
copy of 21st January, 1884.

Sgd. ....  
*for Fiscal, W.P.*  
4-7-52.

P 8

Deed No. 4585

P 8  
Deed No. 4585  
24-11-1894

40 Prior Registration A/ 37/28.

Appl. No. L 2142.

No. 4585.

Know all men by these presents that Meera Lebbe Catoobawa of Panchikawatta in Colombo in consideration of the sum of Rupees Five Hundred (Rs. 500/-) of lawful money of Ceylon well and truly paid to me by Tamby Mustapha Lebbe of Panchikawatta in Colombo (the receipt

P 8  
Deed No. 4585  
24-11-1894

*Continued*

whereof I do hereby admit and acknowledge) do hereby sell, assign, transfer, set over and assure unto the said Tamby Mustapha Lebbe his heirs, executors, administrators and assigns, all that portion of land marked letter B in the Plan with the buildings standing thereon and situated at Dematagoda within the gravets of Colombo, adjoining the property bearing assessment No. 42 and bounded on the North by the lane, on the East by the other part of the same land marked C on the South by the other part of the same land and on the West by the other part of the same land marked letter A, containing in extent four and half square perches, more or less as per Fiscal's Transfer thereof No. 1822/1884, dated 21st day of January, 1884, attested by W. Hall Esquire, Acting Fiscal of the Western Province, Colombo, which is annexed hereto, together with all title, deeds, vouchers and writings relating thereto and the buildings, erections, fixtures, ditches, trees, ways, rights, easements, advantages and appurtenances whatsoever to the said premises belonging or appertaining or usually held or enjoyed therewith or reputed to belong or be appurtenant thereto together with all the estate, right, title, interest, claim and demand whatsoever of me the said Meera Lebbe Catoow Bawa, in and to the said premises; which said premises have been held and possessed by me under and by virtue of the said Deed No. 1822/1884.

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To have and to hold the said premises hereby conveyed or intended so to be unto the said Tamby Mustapha Lebbe, his heirs, executors, administrators and assigns for ever and I the said Meera Lebbe Catoow Bawa do hereby for myself, my heirs, executors, and administrators, covenant promise and agree to and with the said Tamby Mustapha Lebbe, heirs, executors, administrators and assigns that the said premises are free from any encumbrance whatsoever and that I and my aforewritten shall and will always warrant and defend the same unto him and his aforewritten against any person or persons whomsoever.

In witness whereof, I the said Meera Lebbe Catoow Bawa do hereunto and to two others of the same tenor and date as these presents set my hand at Colombo, on this twenty fourth day of November, One thousand eight hundred and ninety four.

30

*Sgd. in Tamil.*

Witnesses :

*Sgd. in Tamil.*

*Sgd. in Tamil.*

(*Sgd.*) D. J. KULATUNGA,  
*Notary Public.*

I, Don Joseph Kulatunga of Colombo in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said Meera Lebbe Catoow Bawa who is known to me in the presence of Ana Laina Alliar Marikar of St. Sebastian and Wawanna Abdul Carim of Panchikawatta, both in Colombo, the subscribing witnesses thereto both of whom are known to me, the same was signed by the said Meera Lebbe Catoow Bawa and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Colombo aforesaid on this twenty-

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fourth day of November in the year of Our Lord, One thousand eight hundred and ninety four.

P 8  
Deed No. 4585  
24-11-1894

*Continued*

I further certify and attest that a sum of Rupees One Hundred of the above consideration was paid in my presence and the balance was acknowledged to have been received and that the duplicate of this Deed bears stamps to the value of Two Rupees and Fifty Cents supplied by me.

Which I attest.

(Sgd.) D. J. KULATUNGA,  
*Notary Public.*

Date of Attestation :

10 24th November, 1894.

S E A L

I, M. S. Fernando, Addl. Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of a Deed of Transfer made from the duplicate filed of record in this office and the same is granted on the application of Mr. E. Rodrigo.

(Sgd.) M. S. FERNANDO,  
*Registrar of Lands.*

Land Registry, Colombo.  
20-6-1952.

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P 9

Deed No. 842

P 9  
Deed No. 842  
18-12-1896

Prior Registration  
Colombo A 37/28.

Appl. No. 2113.

No. 842.

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Know all men by these presents that I, Tamby Mustapha Lebbe of Panchikawatta in Colombo, in consideration of the sum of Rupees three hundred and twenty five (Rs. 325/-) of lawful money of Ceylon, well and truly paid to me by John Richard Vincent de Livera of No. 206, Grandpass Road in Colombo, the receipt whereof I do hereby admit and acknowledge do hereby grant, sell, assign, transfer, set over and assure unto the said John Richard Vincent de Livera, his heirs, executors, administrators and assigns. All that portion of land marked B in the Plan, with the buildings standing thereon, situated at Dematagoda within the gravets of Colombo, adjoining the property bearing assessment No. 42 and bounded or reputed to be bounded on the North by the lane, on the East by the other part of the same land marked C, on the South by the other part of the same land and on the West by the other part of the same land marked letter A, containing in extent four and a half square perches, more or less as per bill of sale No. 4585, dated the 24th day of November, 1894, attested by Don Joseph Kulatunga, Notary Public of Colombo, which is annexed hereto together with Fiscals transfer thereof No. 1822/1884, dated 21st day of January, 1884, attested by W. Hall Esquire, Acting Fiscal of Western Province, Colombo, which is also annexed hereto together with all title, deeds, vouchers and writings relating thereto and the buildings, erections, fixtures,

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Deed No. 842  
18-12-1896  
Continued

ditches, trees, ways, rights, easements, advantages and appurtenance whatsoever to the said premises belonging or appertaining or usually held or enjoyed therewith or reputed to belong or be appurtenant thereto together with all the estate, right, title, interest, claim and demand whatsoever of me the said Tamby Mustapha Lebbe in and to the said premises. which said premises have been held and possessed by me under and by virtue of the said Deed No. 4585, dated the 24th day of November, 1894.

To have and to hold the said premises hereby conveyed or intended so to be unto the said John Richard Vincent de Livera, his heirs, executors, administrators and assigns for ever. 10

And I the said Tamby Mustapha Lebbe do hereby for myself, my heirs, executors and administrators covenant promise and agree to and with the said John Richard Vincent de Livera, his heirs, executors, administrators and assigns that the said premises are free from incumbrance and that I and my aforewritten shall and will always warrant and defend the same unto him and his aforewritten against any person or persons whomsoever.

In witness whereof I the said Tamby Mustapha Lebbe do hereunto and to two others of the same tenor and date as these presents set my hand at Colombo on this eighteenth day of December, One thousand eight hundred and ninety six. 20

(Sgd.) T. Musthafa Lebbe.

Witnesses :

(Sgd.) *In Tamil.*

(Sgd.) *In Tamil.*

(Sgd.) P. D. ANTHONY MARK,  
*Notary Public.*

I, Peter Daniel Anthony Mark of Colombo, Notary Public, do hereby certify and attest that the foregoing instrument having been read over and explained by me to Tamby Mustapha Lebbe therein named in the presence of Muthusamy Muttu Carter, residing at Maradana and Meera Lebbe Seyd Madarsah, residing at Panchikawatta, both of Colombo, the subscribing witnesses thereto all of whom are known to me the same was signed by the said Tamby Mustapha Lebbe and by the said witnesses and by me the said Notary in the presence of one another, all being present at the same time at Colombo aforesaid this 18th day of December, 1896. 30

I further certify and attest that a stamp of Rs. 2/- supplied by John Richard Vincent de Livera in the said instrument named is affixed to the duplicate of the said instrument.

I also certify and attest that the consideration of the said instrument was paid by a cheque drawn this day on the Bank of Madras, Colombo by the said John Richard Vincent de Livera in my favour and by me endorsed to the said Tamby Mustapha Lebbe. 40

Date of Attestation :  
18th December, 1896.

(Sgd.) P. D. A. MARK,  
*Notary Public.*

S E A L

I, M. S. Fernando, Addl. Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of a Deed of Transfer, made from the duplicate filed of record in this office and the same is granted on the application of E. Rodrigo Esqr.

P 9  
Deed No. 842  
18-12-1896  
Continued

(Sgd.) M. S. FERNANDO,  
*Registrar of Lands.*

Land Registry,  
Colombo, 18-6-1952.

P 11

Deed No. 722

P 11  
Deed No. 722  
28-11-1905

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Registered A 24/145 and A 37/28.

Application No. 2112.

No. 722

To all to whom these presents shall come. I, Mary Teresa de Livera of Grandpass Road, presently of Borella in Colombo, widow of the late John Richard Vincent de Livera and executrix of his Last Will and Testament. Send Greeting.

Whereas under and by virtue of Deed No. 2117, dated the eighteenth day of January, One thousand eight hundred and eighty four (1884) and attested by William P. Ranasinghe of Colombo, Notary Public (which said Deed is annexed to the original hereof) the said John Richard Vincent de Livera was during his life time seized and possessed of or otherwise well and sufficiently entitled to the following property described in the said Deed as follows to wit:— All that portion of land marked letter A in the Plan, situated at Dematagoda within the Municipality of Colombo, bounded on the North by a lane, on the East by another part marked letter B in the above Plan, on the South by another part of the same garden and on the West by the ground of David Appuhamy, containing in extent four and one-half square perches and whereas under and by virtue of a certain other Deed No. 842, dated the eighteenth day of December, One thousand eight hundred and ninety six and attested by P. D. A. Mack of Colombo, Notary Public (which said Deed is also annexed to the Original hereof) the said John Richard Vincent de Livera was during his life time seized and possessed of or otherwise well and sufficiently entitled to the following property described in the said Deed as follows to wit, all that portion of land marked letter B in the Plan, with the buildings standing thereon situated at Dematagoda within the gravets of Colombo, adjoining the property bearing assessment No. 42 and bounded or reputed to be bounded on the North by the lane, on the East by the other part of the same land marked C, on the South by the other part of the same land and on the West by the other part of the same land marked letter A, containing in extent four and a half square perches more or less. And whereas the said John Richard Vincent de Livera being so seized and possessed of the said two properties with the appurtenances thereof as aforesaid Deed, on the ninth day of March, One thousand nine hundred and three, leaving a Last Will and Testament, dated the 10th day of April, One thousand eight hundred and eighty two, executed by him jointly with his wife, me

P 11  
Deed No. 722  
28-11-1905  
Continued

the said Mary Teresa de Livera and attested by Peter Daniel Anthonisz Mack of Colombo, Notary Public, whereby he appointed me the Executrix of his said Will and sole heiress of his estate and whereas upon his death the said Last Will and Testament was duly proved in the Testamentary proceedings No. c1855 of the District Court of Colombo and Probate thereof was obtained by me the said Mary Teresa de Livera as the executrix therein named (copies of which said Last Will and Testament and of the Probate are also annexed to the original hereof) and the said two properties and the appurtenances thereof thereunto vested in me the said Mary Teresa de Livera in terms of the said Will as the executrix and the sole heirs as aforesaid and whereas the said two properties being adjacent to each other now forming one property, I caused the same to be surveyed into one lot by Charles A. O. Buyzer, Licenced Surveyor, on the twenty third day of January, One thousand nine hundred and four and the said lot (herein after called the said premises) as per figure or Plan of Survey thereof, date the said twenty third day of January, One thousand nine hundred and four, made by the said Charles A. O. Buyzer and annexed to the original hereof is more fully described in the schedule hereto, and whereas at having become necessary to sell the said premises in the said schedule hereto fully described for the purpose of paying the debts due by the said Testator. I caused the same to be put up for sale by Public Auction on the sixth day of February, One thousand nine hundred and four, by Annesly Young Daniel, a Licensed Auctioner and at such sale Dr. Edwin de Livera of Kurunegala, did bid for the same, the sum of three hundred and sixty rupees (Rs. 360/-) and being the highest bidder was declared the purchaser of the said premises for the said price or sum of three hundred and sixty rupees (Rs. 360/-) as on reference to the conditions of the sale (which is also annexed to the original hereof) well more fully appear, and whereas the said Edwin de Livera having paid the whole of the said sum of three hundred and sixty rupees (Rs. 360/-) the purchased amount aforesaid and having otherwise completed with the said conditions of sale hath become entitled to a conveyance in his favour of the said premises and I have agreed with him to execute these presents.

Now know ye and these presents, witness that I the said Mary Teresa de Livera in my own behalf and as executrix as aforesaid in pursuance of the said agreement and in exercise of every interest power and authority vested in me the said Mary Teresa de Livera as widow executrix and sole heiress as aforesaid or in anywise enabling me in that behalf and in consideration of the premises of the said sum of Three hundred and sixty Rupees (Rs. 360/-) of lawful money of Ceylon, well and truly paid to me by the said Edwin de Livera (the receipt whereof I do hereby admit and acknowledge) do hereby give, grant, sell, assign, transfer, set own and assure with him the said Edwin de Livera, his heirs, executors, administrators and assigns the said premises in the said schedule hereto fully described together with all and singular the rights,.....and easements thereto in anywise belonging or used or enjoyed therewith or reputed or known as part or parcel thereof and all the estate, right, title and interest claim and demand whatsoever of the said John Richard Vincent de Livera, deceased and of me the said Mary Teresa de Livera individually and as the widow executrix and sole heiress aforesaid of in and to the said premises and every part thereof and all Deeds and writings relating thereto :



to have and to hold the said premises unto him the said Edwin de Livera his heirs, executors, administrators and assigns absolutely for ever.

P 11  
Deed No. 722  
28-11-1905

*Continued*

And I the said Mary Teresa de Livera for myself, my heirs, executors and administrators covenant with the said Edwin de Livera and his aforewritten that the said premises hereby conveyed are free from any encumbrance whatsoever and that I and my aforewritten shall and will always and at all times hereafter warrant, defend same and every part thereof unto him the said Edwin de Livera and his aforewritten against any person or persons whomsoever and shall and will further at all times hereafter at the request but at the cost and expense of the said Edwin de Livera and his aforewritten do and execute or cause to be done and executed all such further and other acts, deeds, matters and things for the better or more, perfectly assuming and vesting the said premises and every part thereof unto and in him the said Edwin de Livera and his aforewritten as by him, them or any of them shall or may be reasonably required.

In witness whereof I the said Mary Teresa de Livera do hereunto and to two others of the same tenor and date as these presents, set my hand at Colombo, on this twenty eighth day of November, in the year of Our Lord, One thousand nine hundred and five.

The Schedule above referred to

All these two allotments of land bearing assessment Nos. 42 and 42A, situated at Piachaud's Lane in Maradana ward, within the Municipal limits and in the District of Colombo, Western Province, now forming one property together with the buildings and the trees and plantation thereon and bounded on the North East by the property bearing assessment No. 43, on the North-west by a lane, on the South East by the property bearing assessment No. 40 and on the South West by the property bearing assessment No. 41 and containing in extent fourteen and forty two one hundredth (14 42/100) perches as per Plan or figure of Survey thereof, dated the 23rd day of January, 1904 and hereinbefore referred to.

Signed and delivered in the presence of us :

(Sgd.) Victor R. de Livera.  
(Sgd.) Andrew B. Cramer.

(Sgd.) Mary de Livera.

(Sgd.) CHARLES PERERA,  
*Notary Public.*

I Charles Perera Seneviratne Gunatilaka of Colombo, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary unto the thereinnamed Mary Teresa de Livera who is known to me in the presence of Victor Richard de Livera of Borella and Andrew Berenger Cramer of the Pettah, both of Colombo, the subscribing witnesses thereto both of whom are known to me, the same was signed by the said Mary Teresa de Livera (who signed as Mary de Livera) and by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at Colombo, on this twenty eighth day of November, in the year of Our Lord, One thousand nine hundred and five.

P 11  
Deed No. 722  
28-11-1905  
Continued

I further certify and attest that in the 22nd line of the 6th page of the Duplicate of the said instrument some ink mark in the word in was erased before the said instrument was read over and explained by me the said Notary unto the said part aforesaid, that no consideration was paid in my presence that the Duplicate of the said instrument bears a stamp of Rs. 2/- and that the said stamp was supplied by me the said Notary.

Date of Attestation :  
28th November, 1905.

(Sgd.) CHARLES PERERA,  
Notary Public. 10

S E A L

I, M. S. Fernando, Addl. Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of a Deed of Transfer, made from the duplicate filed of record in this office and the same is granted on the application of Mr. E. Rodrigo.

(Sgd.) M. S. FERNANDO,  
Addl. Registrar of Lands.

Land Registry,  
Colombo, 18-6-1952.

P 12  
Deed No. 5498  
27-9-1907

P 12  
Deed No. 5493

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Registered  
A 24/155 37/28 39/192.

Application No. L 2111.

No. 5493

To all to whom these presents shall come, Doctor Edwin de Livera of Kandy in the Central Province of the Island of Ceylon sends greetings.

Whereas Don David de Livera Wijewickrama Seneviratna Muhandiram and his wife, Dona Nathalia de Livera Lama Etany late of Maradana in Colombo, were in their life time seized and possessed amongst other property of a portion of garden called Meringawatta alias Talpewatta, situate and lying at Maradana, within the Municipality and District of Colombo, Western Province, bounded on the East by a portion of a garden belonging to the estate of the late Don Johannes Gunatillaka Mohandram and by the portion of garden belonging to David Appoo, on the South by the portion of garden belonging to Juanis Appoo, on the West by a small road and by the portion of this garden and in the North by the small road and by the premises on which Omer Lebbe resides and by the premises of Isan Appoo.

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And whereas the said Don David de Livera Wijewickrema Seneviratna and his wife the said Dona Nathalia de Livera Lama Etaniya on the 18th day of October, 1855, made and published their joint Last Will and Testament copy whereof is hereunto annexed, whereby they gave and bequeathed the said portion of garden called Meringawatta alias Teppewatta to their grandson, Edwin de Livera and appointed two of their sons, Franciscas

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or Francis de Livera and Mathew de Livera as executors — And the said Dona Nathalia de Livera Lama Etany died on the tenth day of November, 1855 and the said Don David de Livera died on the twenty second day of September, 1857, without having in any manner revoked or altered the said Will and the District Court of Colombo, on the fifteenth day of February, 1857, granted probate thereof to the said Francis de Livera and Mathew de Livera as on reference to a true copy of the probate hereunto annexed will morefully appear.

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Deed No. 5498  
27-9-1907  
Continued

10 And whereas the said Edwin de Livera soon after the death of his grandfather, entered into possession of the said portion of garden called Meringawatta alias Tappewatta and hath continued and still is in the peaceable and undisturbed and sole and exclusive possession thereof by a title adverse to and independent of that of all persons but he inadvertantly omitted to obtain a transfer thereof from the said executors both of whom are now dead.

20 And whereas the said Edwin de Livera subsequently to wit on the Twenty eighth day of November, One thousand nine hundred and five, by Deed No. 722 and attested by Charles Perera, Notary Public, purchased two portions of land adjoining the said portion of garden called Meringawatta alias Tappewatta and all of which said three portions now form one property and is described in the survey thereof, dated the Tenth October, One thousand nine hundred and six, made by George de Saram, Licensed Surveyor, as follows to wit :— All those houses and grounds bearing assessment Nos. 40, 41, 42 and 42A, situated at Skinners Road South and Piachauds Lane, within the Municipality and District of Colombo, Western Province, bounded on the North by a lane and by premises bearing assessment No. 43, the property of Zainu Deen, on the East by premises bearing assessment No. 43, the property of Zainu Deen and by Skinners Road South, on the South by premises bearing assessment No. 39, the property of Mr. Weerasinghe and on the West by Piachauds Lane, containing in extent (exclusive of Lot A coloured green which has been acquired by Government, One rood and twenty eight perches.

30 And whereas the said Edwin de Livera hath agreed with Ganegoda Appuhamillage Don Hendrick Appuhamy of Maradana aforesaid for the absolute sale and conveyance to him of the said premises at or for the price or sum of Rupees twenty thousand (Rs. 20,000/-).

40 Now know ye and these presents witness that the said Edwin de Livera in pursuance of the said agreement and in consideration of the said sum of Rupees Twenty thousand (Rs. 20,000/-) lawful money of Ceylon well and truly paid to him by the said Ganegoda Appuhamillage Don Hendrick Appuhamy (the receipt whereof is hereby acknowledged) doth hereby grant, sell, assign, convey, set over and assure unto the said Ganegoda Appuhamillage Don Hendrick Appuhamy, his heirs, executors, administrators and assigns, all that and those the said houses and ground bearing assessment Nos. 40, 41, 42 and 42A, situated at Skinners Road South and Piachauds Lane, within the Municipality and District of Colombo aforesaid, bounded on the North by a lane and by premises bearing assessment No. 43, the property of Zaina Deen, on the East by premises bearing assessment No. 43, the property of Zaina Deen and by Skinners Road South, on the South by premises bearing assessment No. 39, the

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P 12  
Deed No. 5498  
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Continued

property of Mr. Weerasinghe and on the West by Piachauds Lane, containing in extent (exclusive of Lot A coloured green which has been acquired by Government) One rood and twenty eight perches, according to the figure of survey thereof, dated Tenth October, One thousand nine hundred and six, made by George C. de Saram, Licensed Surveyor, together with all the buildings, rights, privileges, easements, servitudes, advantages and appurtenances whatsoever to the said premises belonging or in anywise appertaining or accepted taken known held occupied or enjoyed as part parcel or encumbrances of the same and all the estate, right, title, interest, property, claim and demand whatsoever or howsoever of the said Edwin de Livera of in to out of or upon the said lands, hereditments and the premises and every part thereof and all deeds, writings and muniments of title concerning the said premises. 10

To have and to hold the said hereditments and premises with their appurtenances unto the said Ganegoda Appuhamillage Don Hendrick Appuhami, his heirs, executors, administrators and assigns for ever.

And the said Edwin de Livera doth hereby for himself, his heirs, executors and administrators covenant with the said Ganegoda Appuhamillage Don Hendrick Appuhamy, his heirs, executors, and administrators and assigns that the said premises are free from all encumbrances and that he hath not at any time heretofore made, done or committed or been party or privy to any act, deed, matter or thing whereby or by reason or means whereof he is in anywise prevented or hindered from granting and conveying the said premises hereby conveyed or intend so to be or whereby the same or any part thereof are is can shall or may be impeached charged encumbered or effected in title, charge, estate or otherwise howsoever and that he and his aforewritten shall and will always warrant and defend the title to the same and every part thereof against any other person or persons whomsoever and further that he and his aforewritten from time to time and at all times hereafter shall at the request and behest of the said Ganegoda Appuhamillage Don Hendrick Appuhamy or his aforewritten make do and execute or cause or procure to be made done and executed all such further and other acts deeds conveyances assurances matters and things whatsoever for the better more perfectly or satisfactorily assuring the said premises hereby conveyed or intended so to be unto the said Ganegoda Appuhamillage Don Hendrick Appuhamy and his aforewritten as by him them or any of them shall or may be reasonably required. 20 30

In witness whereof the said Edwin de Livera hath hereunto and to two others of the same tenor and date set his hand at Colombo aforesaid on this 27th day of September, One thousand nine hundred and seven. 40

(Sgd.) Edwin de Livera.

Witnesses : (Sgd.) M. D. S. S. Wijesinghe  
(Sgd.) B. C. Pereira.

(Sgd.) F. C. LOOS,  
Notary Public.

I, Frederick Charles Loos of Colombo in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing instrument having been duly read over by the within

named Edwin de Livera in my presence and in the presence of Manuel de Silva Siriwardana Wijeyesinghe of Dematagoda and Benjamin Leopold Perera of Wellawatta, both of Colombo, the subscribing witnesses thereto all of whom are known to me the same was signed by the said Edwin de Livera and also by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid on this 27th day of September, One thousand nine hundred and seven.

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Deed No. 5493  
27-9-1907  
Continued

10 I do further certify that two stamps of the value of One Hundred Rupees and a stamp of One Rupee which were supplied by me were affixed respectively to the counter part and original of this instrument and that the consideration within mentioned was paid in my presence.

I also certify that before the said instrument was so read over the following alterations were made in the original namely in sheet 1, page 1, line 10, the word "of" was deleted.

Date of Attestation :  
27th September, 1907.

(Sgd.) F. C. LOOS,  
Notary Public.

S E A L

20 I, M. S. Fernando, Addl. Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of a Deed of Transfer made from the duplicate filed of record in this office and the same is granted on the application of Mr. E. Rodrigo.

(Sgd.) M. S. FERNANDO,  
Addl. Registrar of Lands.

Land Registry,  
Colombo, 18-6-1952.

P 13  
Last Will

P 13  
Last Will  
7-4-1929

80 LAST WILL

This is the identical Will referred to in my affidavit.

(Sgd.) L. A. D. Edmund Seneviratne.

Before me,  
Sgd.....  
J.P.

No. 125

This is the Last Will and Testament of me, Ganegoda Appu Hamilage Don Hendrick Seneviratne of "Sylvan Villa" Dematagoda in Colombo.

40 I hereby revoke all former Wills and Testamentary Writings or dispositions made by me and declare this to be my Last Will and Testament.

P 13  
Last Will  
7-4-1929

Continued

I hereby appoint Alutduradewage Simon Fernando Wijegoonaratne Mohandiram of Kynsey Road, Colombo, to be the Executor of this my Will.

I hereby direct and authorise my Executor to enable him to pay and satisfy all my just debts, funeral and testamentary expenses if necessary to sell and dispose of by Public Auction or private contract as to him shall seem most advantageous any one or more of my immovable properties forming part of my residuary estate hereinafter referred to the property and premises bearing assessment No. 99, Cotta Road, is to be sold in the first instance and if there be any surplus funds after the payment of all my just debts, funeral and testamentary expenses the same shall be employed by my Executor for the purchase at his own discretion of any immovable property or properties which shall form part of the residuary estate of this my Will and be dealt with accordingly.

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#### I GIVE DEVISE AND BEQUEATH :—

(a) To my daughter Adeline, wife of Charles Dias, Proctor, three-fourth (3/4) share of the property and premises bearing assessment No. 114/1230, called and known as "Sylvan Villa", situated at Dematagoda in Colombo, held by me under Deed No. 4469, dated the 15th December, 1900 and attested by W. B. de Fry of Colombo, Notary Public.

(b) To my son Granville the following properties to wit :— (1) the property and premises bearing assessment Nos. 117(1)/803 and 117/805 (being the bathing well, buildings and ground appertaining thereto) situated at Dematagoda in Colombo and held by me under Deed No. 739 dated 10th August, 1904, attested by G. A. F. Seneviratne, Notary Public and Certificate of Title dated 11th January, 1917, issued in partition action No. 42937 of the District Court of Colombo, (2) Property and premises bearing assessment Nos. 107/797 - 797A, situated at Dematagoda in Colombo, held by me under Deed No. 2906 of 17th December, 1889, attested by D. S. Lewis, Notary Public, and under Deed No. 469 of 16th August, 1918, attested by N. J. S. Cooray, Notary Public, and (3) all that and those the lands, buildings and sheds bearing assessment Nos. 105/796 and 101/793 and the ground covered by the two garages, the bathing well and the bare land appertaining thereto bearing assessment No. 103(3-4), situated at Dematagoda aforesaid held by me under the aforesaid Deed No. 2906 and Deed No. 2958, attested by D. S. Lewis and G. A. F. Seneviratne respectively, Notaries Public, Colombo. Provided however that in the event of any buildings being put up or erected in the aforesaid bare land the said buildings shall devolve in equal shares to my two daughters, Adeline and Florence and my two sons, Granville and Vincent together with the right of way to the buildings.

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(c) To my son Irwin all that property and premises bearing assessment No. 121/246 - 248, situated at First Division, Maradana, Colombo, held by me under Deed No. 164 of 5th March, 1913, attested by M. R. Akbar, Notary Public.

(d) To my son Edmund the following properties to wit :— (1) All that house and ground bearing assessment No. 133/836, situated at Dematagoda aforesaid and held by me under Deed No. 1314 of 23rd February, 1925, attested by S. A. Wijetilake of Kandy, Notary Public,

and (2) all that house and the ground appertaining thereto in extent about thirty perches, now forming part of the premises No. 131/833, Dematagoda in Colombo, held by me under Deed No. 3046 of 9th July, 1890 and attested by D. S. Lewis, Notary Public.

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Last Will  
7-4-1929

*Continued*

(e) To my daughter Florence the following properties to wit:—  
 (1) All that allotment of land with the buildings thereon bearing assessment No. 17/530 situated at Drieburg's Lane, Maradana aforesaid held by me under Deed No. 668 of 11th May, 1904, attested by G. A. F. Seneviratne, Notary Public, Deed No. 3141, dated 18th October, 1912 and 4403, dated 24th October, 1900, attested by C. F. Wijesinghe and W. B. de Fry respectively, Notaries Public, (2) All that allotment of land called Gonawela with the sheds and bathing well standing thereon, bearing assessment No. 1/562, situated at Maligawatte in Colombo, held by me under Deed No. 6262 of 3rd August, 1900, attested by D. G. M. Wickremasinghe, Notary Public, and (3) all that remaining one-fourth part (1/4) or share of the property and premises bearing No. 114/1230, called and known as "Sylvan Villa", situated at Dematagoda aforesaid and held and possessed by me as described aforesaid.

(f) To my son Vincent the following properties to wit:— (1) all that allotment of land with the buildings thereon bearing assessment No. 237/1320, situated at 2nd Division, Maradana in Colombo, held by me under Deed No. 7690 of 7th July, 1891 and attested by W. P. Ranasinghe, Notary Public, (2) a portion of land in extent ten (10) perches and the bathing well thereon presently bearing assessment No. 103 (1), situated at Dematagoda aforesaid held by me under Deed No. 3130 of 18th June, 1895 and attested by M. C. P. Gunawardena, Notary Public, together with the right of way and passage to the said land and well in through and along the property and premises No. 89, Dematagoda aforesaid and (3) all those several allotments of land comprising the property now called and known as "Eriyawetiya Estate", situated at Talawathuhentipitiya and Eriyawetiya in the Adicari Pattu of Siyane Korale which premises are held by me under Deed No. 1419 of 5th May, 1922 attested by N. J. S. Cooray, Notary Public.

(g) To my children Irwin, Granville and Edmund, all that and those the lands and buildings and premises called and known as "Tower Hall" bearing assessment No. 43, situated at Panchikawatte Road in Maradana aforesaid and held by me under Deed No. 5493 of 27th September, 1907, attested by F. C. Loos of Colombo, Notary Public. Provided however that any debts that may be due by me at the time of my death on the mortgage of this property the same shall be paid and settled by my son Edmund.

(h) To my children Adeline, Florence and Vincent, all that and those the land, buildings and premises called and known as "Passenger Union" bearing assessment No. 20, Panchikawatte Road, Maradana aforesaid and held by me under Deed No. 1526 of 20th October, 1906, attested by G. A. F. Seneviratne, Notary Public.

(i) To my daughter Adeline and Florence, all that grass land bearing assessment No. 103 (1 & 2), situated at Dematagoda aforesaid excluding however therefrom a portion in extent about ten perches and the

P 13  
Last Will  
7-4-1929

*Continued*

bathing well thereon bearing assessment No. 103 (1), which I have hereinbefore bequeathed to my son Vincent and which premises are held by me under Deed No. 3130 of 18th June, 1895, attested by M. C. P. Gunawardene, Notary Public and Deed No. 1083 of 3rd December, 1920, attested by N. J. S. Cooray, Notary Public, together with the right of way and passage to the said grass land in through and along my property and premises No. 89, Dematagoda, Colombo.

(j) To my grandson, Vernon (Son of my son, Vincent) all that house and ground appertaining thereto in extent about four and a half perches (4½), situated at Dematagoda aforesaid (now) forming part of the premises No. 131/833, Dematagoda) together with the right of way and passage to and from the high road thereto belonging and now used therewith-held by me under Deed No. 573 of 27th January, 1904, attested by G. A. F. Seneviratne, Notary Public. 10

I hereby devise and bequeath all the rest and residue of my property and estate real and immovable and personal and movable whatsoever and wheresoever of every kind and description whether in possession expectancy reversion remainder or otherwise to my six children, Adeline, Granville, Irwin, Edmund, Florence and Vincent, share and share alike.

I hereby Will and direct that my son Granville shall redeem the mortgage presently existing on Siyambalape Estate, situated at Siyambalape in Salpiti Korale for the sum of Rs. 10,000.00 and the same property shall vest on my son Granville forthwith after the payment of all sums due on mortgage bond aforesaid. Provided however that on failure of my son Granville to redeem the aforesaid mortgage bond the said Siyambalape Estate shall devolve in equal shares to my six children aforesaid to share and share alike subject however to the mortgage bond. 20

I hereby Will and direct that my six children, Adeline, Granville, Irwin, Edmund, Florence and Vincent shall have and hold all the immovable properties and the shares in the immovable properties hereby specifically bequeathed to them and the share in the immovable properties bequeathed to them and under the residuary clause hereof and which they or anyone of them may inherit in any other manner under this my Will subject expressly to the conditions and restrictions following that is to say :— 30

1. That no child of mine shall mortgage, sell or otherwise alienate or encumber save as hereinafter provided anyone or more of the immovable properties or any part or portion thereof or any share in such immovable properties but such child shall only be entitled to take, receive and enjoy the rents and profits and income thereof during his or her life. Any such mortgage or other alienation shall be absolutely null and void but this restriction shall not prevent such child of mine from leasing to any person or persons any of the said immovable properties for a period not exceeding two years at a time and I hereby direct that a lease executed by a majority of my said children of any immovable properties held by them in common shall be good and valid and shall be binding on any of the children who shall refuse or neglect to execute the same when requested thereto by the majority of them without prejudice however to the right of the dissenting minority to their respective shares of the rent reserved by such lease. 40



Provided however that any lease executed during the continuance of an existing lease shall be absolutely null and void.

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Last Will  
7-4-1929

*Continued*

2. On the death of any child of mine the immovable properties and all properties and all shares therein devised to his or her hereunder shall devolve on his or her issue or any one or more of them such child by Last Will appoint and subject to such conditions and restrictions as such child shall deem and proper or without any conditions or restriction whatsoever and in the event of any child of mine dying intestate without such appointment as aforesaid then the same shall devolve absolutely on his or her issue equally between them if more than one subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided.

3. In the event of the death of any child of mine without leaving issue living at the time of his or her death such immovable properties and shares therein devised to him or her hereunder shall devolve equally on any of my other children and the issue of any other deceased child of mine such issue taking by substitution per stirpes and equally between them if more than one of the share which his or her or their parent would have taken had such parent been alive at the time of the death of any such child of mine. Provided however that any child of mine dying without issue shall have the right to give and grant any such immovable properties and shares therein or ANY of them by Last Will only to anyone of my other children upon the same conditions and restrictions as are herein contained or to any one or more of the issue of any deceased child of mine upon such conditions and restrictions as he or she shall deem fit and proper or without any condition or restriction whatsoever but subject expressly to the rights or the surviving spouse of such deceased child of mine as hereinafter provided.

4. If any child of mine shall die leaving his or her surviving his or her spouse and his her issue then such surviving spouse shall be entitled to a just one-half of the nett income of the said immovable properties and shares therein devised to such deceased child hereunder but if any child of mine shall die leaving him or her surviving, his or her spouse only and no issue then the surviving spouses shall be entitled during his or her life time to the whole of the nett income of the immovable properties and shares therein devised to such deceased child subject however to the condition that the surviving spouse shall forfeit his or her right to the just one-half of the net income as the case may be on such surviving spouse contracts a subsequent marriage.

5. I declare that if any child of mine or any person claiming through him or her shall at any time dispute the validity of this my Will or any of the dispositions herein or in any codicil hereto contained then all such dispositions herein or in any codicil hereto contained in favour of such child of mine shall cease and be void to all intents and purposes whatsoever and be hereby revoked and as to all the immovable and movable property and shares therein so forfeited as aforesaid, I give and devise the same in equal shares unto my other children and the issue of any deceased child of mine as the case may be — such immovable and the share therein to be held by my said other children in the same manner and subject to the same conditions and restrictions hereinbefore declared and provided as if the same had been devised to them hereunder in the first instance.

P 13  
Last Will  
7-4-1929  
Continued

In Witness Whereof, I the said Ganegoda Appuhamillage Don Hendrick Seneviratne have set my hand to this my Last Will and Testament at Waragoda in Kelaniya, on this Seventh day of April, One thousand nine hundred and twenty-nine.

Signed by the abovenamed Testator, Ganegoda Appuhamillage Don Hendrick Seneviratne as his Last Will and Testament in the joint presence of himself and us who at his request and in such joint presence have hereunto subscribed our names as witnesses,

- 1. (Sgd.) K. D. A. Perera. (Sgd.) G. A. D. S. Hendrick 10
- 2. (Sgd.) P. P. Albert.

(Sgd.) P. C. SENEVIRATNE,  
Notary Public.

I, Paulus Cornelis Seneviratne of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing Last Will and Testament having been duly read over and explained by me to the withinnamed Ganegoda Appuhamillage Don Hendrick Seneviratne, who appeared to be of sound mind, memory and understanding and fully capable of any act requiring thought judgment and reflection in the presence of Korallage Don Albert Perera and Paronavithanage Peter Albert, both of Hultsdorf in Colombo, the subscribing witnesses hereto all of whom are known to me the same was signed by the said Ganegoda Appuhamillage Don Hendrick Seneviratne (who signed his name as "G. D. Hendrick" and also by the said witnesses who signed their names respectively as "K. D. A. Perera" and "P. P. Albert" in my presence and in the presence of one another, all being present at the same time at Waragoda in Kelaniya, on this seventh day of April, one thousand nine hundred and twenty-nine (1929).

I further certify that before the Last Will was read over and explained and signed the following alterations were made, viz., In sheet 1, page 2, line 24 the word Dematagoda was typed over erasure on page 4, line 5, the words "tested to at" and on sheet 2, page 2, line 14, the words "of . . . me" were interpolated, in line 24 and 26, the words "Siyambalape" "pay" were respectively written over erasure, in sheet 2, page 1, lines 21 and 31, the words "two" and "devised" were typed over erasure, on page 2, lines 5, 8, 9 and 10, the words "Mine had 'were' typed over erasure, on page 3 the words "immovable" and "Movable" were typed over erasure.

Which I attest.

(Sgd.) P. C. SENEVIRATNE,  
Notary Public.

Date of Attestation : 7th April, 1929.

" True Copy " of Last Will No. 125, filed of record  
in D. C. Colombo, Case No. 4914/Testy.

Sgd.....  
Asst. Secretary,  
D.C., Colombo.

Certified this 23rd day of February, 1960 .

**P 14**  
**Petition in Testamentary Case No. 4914**  
**IN THE DISTRICT COURT OF COLOMBO**

**P 14**  
**Petition in**  
**Testamentary**  
**Case No. 4914**  
**28-1-1930**

In the matter of the Last Will and  
 Testament of Ganegoda Appuhamillage Don  
 Hendrick Seneviratne.

*Deceased.*

Ganegoda Appuhamillage Don Edmund  
 Seneviratne.

*Petitioner.*

10 Testamentary  
 Jurisdiction  
 No. 4914.

On this 28th day of January, 1930

The petition of the petitioner abovenamed appearing by Paulus Cornelis Seneviratne, his Proctor states as follows :—

1. The Petitioner is a son of the abovenamed deceased and knew and was well acquainted with the said deceased.

2. The deceased abovenamed died on the 12th day of December, 1929, at "Sylvan Villa" Dematagoda, leaving a Last Will bearing No. 125, dated 7th April 1929, and attested by P. C. Seneviratne, Notary Public and the said Last Will is appended hereto.

3. Full and true particulars of the property left by the deceased so far as the petitioner has been able to ascertain appear in the schedule annexed herewith.

4. The Executor nominated under the said Last Will which has not been revoked is Aluturadewage Simon Fernando Wijegoonaratne Mohandiram, Kynsey Road, but as he has declined to act in such capacity the Petitioner as son of the deceased and a Legatee under the Will claims to have Letters of Administration issued to him.

5. The Petitioner herewith annexes a letter marked "B" from the Executor, wherein he states that he is not willing to act as Executor.

6. The Petitioner is a person of full age, sound mind, memory and understanding and does not apprehend any opposition whatsoever to his application for administration of the said Estate with the Will annexed.

7. The Petitioner also herewith annexes a minute of consent from all the children of the deceased who are also legatees under the Will requesting him to take out Letters of Administration and consenting thereto.

Wherefore the Petitioner prays :—

- 40 (a) for an Order declaring the Last Will and Testament thereto proved and that the Petitioner as son be entitled to have Letters of Administration cum Testamento annexo thereof issued to him accordingly.
- (b) for costs incurred in this behalf, and
- (c) for such other and further relief as to this Court shall seem meet.

(Sgd.) P. C. SENEVIRATNE,  
*Proctor for Petitioner.*

P 14  
Petition in  
Testamentary  
Case No. 4914  
28-1-1980

THE SCHEDULE ABOVE REFERRED TO

<i>Immovable Properties</i>	<i>A. R. P.</i>	<i>Rs.</i>	<i>cts.</i>
1. Assessment Nos. 114, Dematagoda, "Sylvan Villa" in extent of ...	1.1.4.80	30,000.00	
2. Assessment Nos. 117(1) 803 & 117 (805) 107 (797) & 105 (796) to 103 a (3-4), Dematagoda, etc., being the property opposite to Sylvan Villa, in extent ...	1.3.25	20,000.00	
3. Assessment Nos. 121/246-248, 1st Division Maradana, in extent ...	0.1.5.75	25,000.00	10
4. (a) Assessment Nos. (a) 133/836, Dematagoda ...	0.1.13.97	20,000.00	
4. (b) Assessment Nos. (b) 131/833, Dematagoda ...			
5. Assessment No. 17/530, Dreiberg's Lane (1 - 6) ...	0.2.32	12,000.00	
6. Assessment, Maligawatta ...	0.2.38.50	5,000.00	
7. Assessment No. 237/1320, 2nd Division, Maradana ...	0.0.11	7,000.00	
8. Assessment No. 103 (1 & 2), Dematagoda ...	1.0.8.6.	5,000.00	20
9. Dalugama Irriyawattiya, situated at Irriyawattiya in Adikaripattu of Siyane Korale	19.0.39.32	15,000.00	
10. Assessment No. 43, Panchikawatta (Tower Hall) ...	0.1.24.8.5	70,000.00	
11. Assessment No. 20, Panchikawatta ...	0.3.1.50	60,000.00	

**Residuary Estate**

12. Assessment No. 99, Cotta Road, (1 - 3) in extent ...	3.3.25	75,000.00	
13. Assessment No. 89 (1, 2 & 3), extent ...	0.1.25	10,000.00	
14. Gonagahawatta, Kahatagahawatte, and Welawatta, forming one property in extent 8 Bushels, situated at Heiyantuduwa in the Adikari Pattu of Siyane Korale ...	...	2,000.00	
(b) Gorakagahawatte, in extent 4 Bushels, situated at Heiyantuduwa excluding 9 Kurunies	...	500.00	
(c) Dombagahakumbura and Hirikumbura, in extent 6 Bushels excluding 10 Kurunies	...	500.00	
(d) Hirikumbura and Boruwala, situated at Heiyantuduwa, in extent 7 Bushels excluding 6 Bushels ...	...	500.00	40
(e) Undivided 1/2 of Millagaha Kumbura, in extent 6 Bushels, Gorakagaha Kumbura in Eliyawattiya aforesaid R 2 - P 32 ...	...	200.00	

**LIST OF MOVABLE PROPERTIES**

Money in the National Bank (roughly) ...	...	20,000.00
Money in the Imperial Bank (roughly) ...	...	48,000.00

**MORTGAGE BOND**

P 14  
Petition in  
Testamentary  
Case No. 4914  
28-1-1980

*Continued*

	Principal ... ..	10,000.00
	Interest from 20-11-1926 — 12-12-1929 (Not to be recalled till 20-11-1925) —	307.00
	Cash at home ... ..	330.37
	Cheque ... ..	12.20
	Rents due up till date of Death (December 15th)	2,299.50
	<b>Furniture, etc.</b>	
	1. Fiat Car No. C 7079 ... ..	750.00
10	2. Cart and Bull ... ..	60.00
	Value of Household Furniture, etc. ... ..	1,076.00
	Personal belongings set of Gold Shirt Buttons ... ..	15.00
	1 Gold Watch and Chain ... ..	40.00
	5 Pinchbeck Coat Buttons ... ..	10.00
	2 Gold Rings set with Stones ... ..	50.00
	Wearing apparel ... ..	30.00
		<hr/>
		441,180.07
	<b>Debts due from the Estate</b>	
	To Mortgage Bond on Tower Hall ... ..	50,000.00
20	„ Interest for the 4th quarter ... ..	1,000.00
	„ Mohamed Haniffa ... ..	2.12
	„ Coonji Moosa rice curry stuff, etc. ... ..	202.91
	„ Do ... ..	16.50
	„ Bakers, Ceylon Bakery, Nov. A/c. ... ..	7.93
	„ Bakery, Perera & Sons, ... ..	7.65
	„ Electric Coy., Nov. A/c. ... ..	100.60
	„ Do Dec. A/c. ... ..	108.20
	„ Gas Coy. Nov. A/c. ... ..	62.00
	„ Do Dec. A/c. ... ..	51.00
30	„ William Pedris & Co. ... ..	55.25
	„ Mukthar & Ghouse ... ..	34.60
	„ Milk supplied during November ... ..	22.95
	„ Do December ... ..	18.60
	„ Telephone rental for 1st quarter, 1213 ... ..	33.00
	„ Do 1st & 2nd quarters, 2627 ... ..	87.93
	„ For typing two copies of the Last Will ... ..	7.80
	„ D. N. Hapugala for contract to repair house No. 237 2nd Division Maradana ... ..	1,600.00
	„ W. A. Ranhamy, Blacksmith ... ..	18.80
40	„ Tax for the 4th quarter ... ..	1,500.00
	„ Abdul Jalil, Tinker ... ..	30.45
	„ Dr. Hector Fernando ... ..	56.00
	„ Amaris Appu, Attendant, 15 days of Dec. ... ..	37.50
	<b>Salary and wages due to the Employees</b>	
	Daily paid workmen upto	
	week ending 14th Dec. ... ..	29.15
	Do 21st Dec. ... ..	46.45
	Do 28th Dec. ... ..	42.95
	Do 3rd Jan. ... ..	44.30

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*Continued*

To	Motor car driver, December	...	...	40.00	
,,	Motor car driver in lieu of Notice	...	...	40.00	
,,	Marthelis, Bill Contractor, December	...	...	27.50	
,,	Do in lieu of Notice	...	...	27.50	
,,	James Appu, December	...	...	40.00	
,,	Do in lieu of Notice	...	...	40.00	
,,	Latrine Cooly, December	...	...	10.00	
,,	Watcher, Eriyawattiya Estate, December	...	...	20.00	
,,	Do Tower Flats	...	...	20.00	
,,	Gardener, Sylvan Villa	...	...	18.00	10
,,	Do in lieu of Notice	...	...	18.00	
,,	House boy, December	...	...	10.00	
,,	Do in lieu of Notice	...	...	10.00	
,,	Cook, December	...	...	17.50	
,,	Do in lieu of Notice	...	...	17.50	
,,	Cookwoman (1st) December	...	...	7.00	
,,	Do (2nd) December	...	...	6.00	
,,	Do (1st) in lieu of Notice	...	...	7.00	
,,	Do (2nd) do	...	...	6.00	
,,	Clerk, December	...	...	85.00	20
,,	Clerk, January, 1930	...	...	85.00	
,,	Watcher, Cotta Road, December	...	...	12.50	

#### Funeral Expenses

To	Notices in local Papers	...	...	45.00	
,,	Printing Chits	...	...	5.00	
,,	Notepapers and envelopes	...	...	9.00	
,,	Telegrams	...	...	8.40	
,,	Cigarettes, Cigars, etc.	...	...	14.82	
,,	Cart Hire and Petrol	...	...	11.20	
	<b>Total</b>	...	...	<b>55,882.56</b>	<b>30</b>

To	Decorations of the Pyre	...	...	175.00	
,,	Tissue and Twine for Flags	...	...	11.50	
,,	Petrol	...	...	3.90	
,,	Sundry Expenses	...	...	13.16	
,,	Do	...	...	7.68	
,,	One box Cigars	...	...	10.00	
,,	Advertisement in Papers	...	...	7.50	
,,	Sundry Expenses	...	...	7.61	
,,	Biscuits, Cigarettes, etc.	...	...	40.44	
,,	" Pirikara " taken to Cemetary	...	...	145.13	40
,,	Car, High Priest	...	...	10.00	
,,	Cemetery Expenses	...	...	6.00	
,,	Lamp hire	...	...	5.00	
,,	Sundries (food stuffs)	...	...	9.65	
,,	Wreath	...	...	30.00	
,,	Rickshaw hire for Priests	...	...	3.50	
,,	Sundry Expenses	...	...	4.00	
,,	" Pawada "	...	...	35.00	
,,	Hire for chairs	...	...	38.50	

To " Pirikara " for arms giving ...	394.77	
„ Travelling expenses for Priests	4.66	
„ Fish, meat, etc., for alms giving	72.32	
„ Advertisement in Papers ...	27.50	
„ Fruits for almsgiving ...	3.55	
„ Undertakers (Raymond Bros.)	1,480.00	
„ Purchase of rice, curry stuffs, etc.	71.50	
	<hr/>	
	2,629.39	58,508.95
10 Total value of Estate		441,180.07
Deductions (debts from the Estate)		50,808.95
Nett Value ...	382,671.12	

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Petition in  
Testamentary  
Case No. 4914  
28-1-1930  
*Continued*

(Sgd.) P. C. SENEVIRATNE,  
*Proctor for Petitioner.*

“ True copy ” of Petition, filed of record in D.C., Colombo,  
Case No. 4914/Testy.

Sgd.....  
*Asst. Secretary.*

Certified this 23rd day of February, 1960.

20 P 15  
Probate in Testamentary Case No. 4914  
Nett Value of Estate Rs. 387,283.46  
Estate Duty Rs. 26,877.47

P 15  
Probate in  
Testamentary  
Case No. 4914  
27-2-1930

PROBATE

IN THE DISTRICT COURT OF COLOMBO

Testamentary Jurisdiction No. 4914.

In the matter of the Estate of the late Ganegoda Appuhamilage Don Hendrick Seneviratne, deceased of Dematagoda in Colombo.

20 Be it known to all men that on the 6th day of February, 1930, the Last Will and Testament of Ganegoda Appuhamilage Don Hendrick Seneviratne of Colombo, deceased, a copy of which is hereunto annexed, was exhibited, read and proved before this Court, and administration of all the property and estate rights, and credits of the deceased was and is hereby committed to Ganegoda Appuhamilage Don Edmund Seneviratne of Colombo, the executor in the said Last Will and Testament named the said Ganegoda Appuhamilage Don Edmund Seneviratne being first affirmed faithfully to execute the said Will by paying the debts and legacies of the deceased Testator as far as the property will extend and the law will bind, and also to exhibit into this Court a true full, and perfect Inventory of the said property on or before the 15th day of May, 1930, and to file a true and just account of his executorship on or before the 7th day of August, 1930.

40

P 15  
 Probate in  
 Testamentary  
 Case No. 4914  
 27-2-1980

*Continued*

And it is hereby certified that the declaration and statement of property under the Estate Duty Ordinance have been delivered, and that the value of the said estate on which estate duty is payable, as assessed by the Commissioner of Stamps, amounts to Rs. 387,283.46.

And it is further certified that it appears by a certificate granted by the Commissioner of Stamps, and dated the 22nd day of February, 1930, that Rs. 26,877.47 on account of Estate Duty (and interest on such duty) has been paid.

GIVEN under my hand and the Seal of the Court, this 27th day of February, 1930.

10

(Sgd.) O. L. DE KRETZER,  
*District Judge.*

“ True Copy ” of PROBATE filed of record in D. C., Colombo,  
 Case No. 4914/Testy.

*Intld.....*  
*Asst. Secretary.*

Certified this 23rd day of February, 1960.

**P 16**  
**Inventory in Testamentary Case No. 4914**

**IN THE DISTRICT COURT OF COLOMBO**

20

P 16  
 Inventory in  
 Testamentary  
 Case No. 4914  
 6-10-1980

Testamentary  
 Jurisdiction  
 No. 4914.

In the matter of the Last Will and  
 Testament of Ganegoda Appuhamilage  
 Don Hendrick Seneviratne.

**INVENTORY**

ASSETS		Rs.	Cts.
Money in Bank with interest upto date of death	... ..	71,363.51	
Cash at home	... ..	330.31	
Cheque	... ..	12.20	
Money out on Mortgages :			
Principal	... ..	10,000.00	
Interest	... ..	307.00	30
Rents	... ..	2,299.50	
<b>Household Goods</b>			
Furniture	... ..	1,076.00	
Fiat Car (C 7079)	... ..	750.00	
Cart and Bull	... ..	60.00	
Personal belongings of the deceased	... ..	145.00	
		<hr/>	
		86,342.51	
Immovable property (Administrator's valuation)	... ..	358,200.00	
Increase of official valuation	... ..	177,465.00	40



*Deductions :*

Funeral expenses (on a/c of Raymond Bros.)	1,480.00	
Other debts (D. N. Hapugala) ...	900.00	
Estate duty (Provisional assessment) ...	26,877.47	29,251.47
<hr/>		
Mortgage of Tower Hall ...	51,000.00	
Other debts ...	4,061.79	55,061.79
<hr/>		
Salaries to employees ...	727.35	727.35
<hr/>		
		85,046.61
<hr/>		

P 16  
Inventory in  
Testamentary  
Case No. 4914  
6-10-1930  
*Continued*

10 I, Ganegoda Appuhamilage Don Edmund Seneviratne of Dematagoda Road, Colombo, do solemnly, sincerely and truly declare and affirm as follows :—

1. To the best of my knowledge, information and belief the above-written inventory contains a full, true and correct account of all the properties movable and the rights and credits of the said deceased as far as I have been able with due diligence to ascertain the same.

2. I have made a careful estimate and valuation of all the properties particulars of which are set forth and contained in the said Inventory and the several items in the said Inventory fully and fairly represent the present value of the items to which they are respectively set opposite.

20 Signed and affirmed to at Colombo, on this 6th day of October, 1930.

(*Sgd.*) G. A. D. Edmund Seneviratne.

Before me : *Sgd. Illegibly*  
*J.P.*

“ True Copy ” of Inventory filed of record in D.C., Colombo, Case No. 4914/Testy.

*Intld.* .....  
*Assistant Secretary,*  
*District Court.*

30 Certified this 23rd day of February, 1960.

P 17

**Petition in Testamentary Case No. 6066**  
**IN THE DISTRICT COURT OF COLOMBO**

P 17  
Petition in  
Testamentary  
Case No. 6066  
2-5-1962

In the matter of the Last Will and Testament of Ganegoda Appuhamilage Dona Florence Seneviratne of “ Sylvan Villa,” Dematagoda in Colombo.  
*Deceased.*

P 17  
Petition in  
Testamentary  
Case No. 6066  
2-5-1932

*Continued*

Testamentary  
Jurisdiction

1. Chas Dias Proctor of "Sylvan Villa," Dematagoda in Colombo.
2. Ganegoda Appuhamilagey Don Granville Seneviratne of "Hill House," Dematagoda in Colombo.

*Petitioners.*

a n d

1. Ganegoda Appuhamilagey Helen Adeline Dias nee Seneviratne (wife of Chas Dias, the 1st Petitioner).
2. Ganegoda Appuhamilagey Don Edmund Seneviratne.
3. Ganegoda Appuhamilagey Vincent Seneviratne, all of Dematagoda in Colombo.
4. Ganegoda Appuhamilagey Don Irvin Seneviratne of Blake Road, Borella in Colombo.

10

*Respondents.*

On this 2nd day of May, 1932.

The Petition of the Petitioners above-named appearing by Nawalagey John Stephen Cooray, their Proctor, states as follows:—

20

1. The said Ganegoda Appuhamilagey Dona Florence Seneviratne died on the 29th day of November, 1931, at "Hill House," Dematagoda in Colombo, within the Jurisdiction of this Court.

2. The said Ganegoda Appuhamilagey Dona Florence Seneviratne deceased, duly executed her Last Will and Testament No. 189, dated 15th February, 1930, attested by P. C. Seneviratne of Colombo, Notary Public and the said Will is appended hereto marked letter "A".

3. Full and true particulars of the properties left by the said deceased so far as the Petitioners have been able to ascertain the same are contained in the schedule of the affidavit dated 2nd day of May, 1932.

30

4. The Petitioners claim probate as Executors of the said Last Will and Testament to Administer the Estate of the said deceased.

5. The heirs of the deceased are the 2nd Petitioner and the Respondents who are the sister and brothers of the deceased.

Wherefore the Petitioners pray:—

- (1) For an Order Nisi declaring that the Petitioners as Executors appointed under the said Last Will and Testament are entitled to have probate thereof to administer the Estate of the said deceased and that such probate be issued to them accordingly.
- (2) For costs incurred in this behalf and
- (3) For such other and further relief in the premises as to this Court shall seem meet.

40

(Sgd.) N. J. S. COORAY,  
*Proctor for Executors.*

True Copy of the Petition dated 2-5-1932, filed of record in D. C., Colombo, Case No. 6066/N.T.

P 17  
Petition in  
Testamentary  
Case No. 6066  
2-5-1932

District Court, Colombo.

Sgd. ....  
Assistant Secretary.

Continued

P 18

**Affidavit of G. A. D. Vincent Seneviratne  
in Testamentary Case No. 10898**

P 18  
Affidavit of  
G. A. D. Vincent  
Seneviratne in  
Testamentary  
Case No. 10898  
1-5-44

**IN THE DISTRICT COURT OF COLOMBO**

10

In the Matter of the Estate of Ganegoda Appuhamillage Don Granville Seneviratne, deceased of "Hill House," Dematagoda, Colombo.

No. 10898  
Testamentary  
Jurisdiction.

*Between*

Ganegoda Appuhamillage Don Vincent Seneviratne, Vandale, Dematagoda. *Petitioner.*

and

20

1. Ganegoda Appuhamillage Dona Adeline Dias nee Seneviratne of "Sylvan Villa," Dematagoda, Colombo.
2. Ganegoda Appuhamillage Don Irvin Seneviratne, a Lunatic, appearing by his Manager, Seneviratne.
3. Eugene Seneviratne, widow of Ganegoda Appuhamillage Don Edmund Seneviratne.

Deceased

*Respondents.*

30

I, Ganegoda Appuhamillage Don Vincent Seneviratne of Vandale Dematagoda, Colombo, not being a Christian, do hereby solemnly, sincerely and truly declare and affirm as follows:—

- (1) I am the Petitioner above-named.
2. Ganegoda Appuhamillage Don Granville Seneviratne of "Hill House," Dematagoda, Colombo, died at Colombo intestate on the 6th day of March, 1944, leaving property within the jurisdiction of this Court of the nature and value shown in the schedule hereto annexed.
3. To the best of my knowledge and information the heirs and next of kin of the said intestate are the 1st and 2nd Respondents and I are his brothers and the 3rd Respondent widow of his

P 18  
Affidavit of  
G. A. D. Vincent  
Seneviratne in  
Testamentary  
Case No. 10898  
1-5-44

deceased brother Ganegoda Appuhamilage Don Edmund Seneviratne.

4. I claim for Letters of Administration as the brother of one of the heirs of the estate of the deceased.

*Continued*

**THE SCHEDULE ABOVE REFERRED TO**

**Immovables**

	Rs.	Cts.
1. Somitulawa Estate, situated at Syyalape in the Adicari Pattu of Siyane Korale in extent A 17. R 0. P 23. ...	10,000.00	
2. Talwatte property valued at ...	5,000.00	10
3. Premises bearing Assessment No. 117, Dreiberge's Lane, Maradana ...	3,000.00	
	<hr/>	
	18,000.00	
4. Properties held by the deceased subject to the terms of Last Will No. 125, attested by P. C. Seneviratne, N.P. :		
(a) Property bearing Assessment Nos. 185, 187, 189 and 189 2 - 7, situated at Dematagoda Road ...	12,000.00	
(b) Undivided 4/9th share of the Tower Hall. Assessment No. 43, Panchikawatte Road ...	20,000.00	
(c) Undivided 1/6th share of Assessment Nos. 52, 54 and 53, Panchikawatte Road, known as Tower Flats ...	10,000.00	20
(d) Assessment Nos. 129, 129/1, 129/2, 129/3, 129/4, 129/5, 129/6, situated at Drieberg's Lane ...	10,000.00	
(e) Assessment Nos. 141, 28, 143, 145 & 151, at Dematagoda Road, extent A 0. R 1. P 35. ...	5,000.00	
	<hr/>	
	75,000.00	
<b>Movable Property : Car No. X 7079 ...</b>	<b>200.00</b>	
	<hr/>	
	75,200.00	
Amount due by the deceased in D.C., Case No. 946/M.B., Colombo ...	24,639.90	
<i>Deductions :</i>		30
Funeral Expenses ...	500.00	
	<hr/>	
	25,139.90	
	<hr/>	
	25,139.90	
	<hr/>	
	50,060.10	
	<hr/>	
	50,060.10	

The foregoing Affidavit was duly read over and explained by me to the affirmant in his own language in Sinhalese and he appearing to understand the nature and contents thereof signed and affirmed to at Colombo, on this First day of May, 1944.

(Sgd.) G. A. D. V. 40  
Seneviratne

Before me : (Sgd.) W. H. W. Perera,  
Commissioner of Oaths.

True Copy of the Affidavit, dated 1st May, 1944,  
filed of record in D.C., Colombo, Case No. 10898/Testy.

P 18  
Affidavit of  
G. A. D. Vincent  
Seneviratne in  
Testamentary  
Case No. 10898  
1-5-44  
Continued

Sgd. ....  
Assistant Secretary.

District Court, Colombo.

10

P 19

Deed No. 4459

P 19  
Deed No. 4459  
17-12-1952

Prior Registration : A333/267.

No. 4459.

To All To Whom these presents shall come, Phoebe Lilian Rodrigo with the consent and concurrence of her husband Edmund Rodrigo testified by his being a party to and signing These Presents, of No. 67, Barnes Place, Colombo (hereinafter sometimes called and referred to as the Vendor).

SENDS GREETINGS :-

Whereas under and by virtue of Deed bearing No. 5493, dated the 27th day of September, 1907, and attested by F. C. Loos of Colombo, Notary Public, Ganegoda Appuhamilage Don Hendrick Seneviratne was seised and possessed of or otherwise well and sufficiently entitled to the property and premises fully described in the first Schedule hereto.

And Whereas the said Ganegoda Appuhamilage Don Hendrick Seneviratne, whilst so seised and possessed of the said property and premises fully described in the First Schedule hereto made and executed his Last Will bearing No. 125, dated 7th April, 1929, attested by P. C. Seneviratne of Colombo, Notary Public, whereby he gave and bequeathed the said property and premises *inter alia* to his children Irwin Seneviratne, Granville Seneviratne and Edmund Seneviratne, subject to the restrictions and conditions as follows :— “ I hereby will and direct that my six children, Adeline, Granville, Irwin, Edmund, Florence and Vincent shall have and hold all the immovable properties and the shares in the immovable properties hereby specifically bequeathed to them and the shares in the immovable properties bequeathed to them and under the residuary clause hereof and which they or any one of them may inherit in any other manner under this my Will subject expressly to the conditions and restrictions following that is to say :— (1) That no child of mine shall mortgage, sell or otherwise alienate or encumber or encumbers save as hereinafter provided any one or more of the immovable properties or any part or portion thereof or any share in such immovable properties but such child shall only be entitled to take, receive and enjoy the rents and profits and income thereof during his or her life. Any such mortgage or such alienation shall be absolutely null and void but this restriction shall not prevent such child of mine from leasing to any person or persons any of the said immovable properties for a period not exceeding two years at a time and I hereby direct that a lease executed by a majority of my said children of any immovable properties held by them in common shall be good and valid and shall be binding

P 19  
Deed No. 4459  
17-12-1952  
*Continued*

on any of the children who shall refuse or neglect to execute the same when requested thereto by the majority of them without prejudice however to the right of the dissenting minority to their respective shares of the rent reserved by such lease. Provided however that any lease executed during the continuance of an existing lease shall be absolutely null and void. (2) On the death of any child of mine the immovable properties and all properties and all share therein devised to him or her hereunder shall devolve on his or her issue or any one or more of them as such child by Last Will appoint and subject to such conditions as such child shall deem fit and proper or without any conditions or restriction whatsoever and in the event of any child of mine dying intestate without such appointment as aforesaid then the same shall devolve absolutely on his or her issue equally between them of more than one subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided. (3) In the event of the death of any child of mine without leaving issue living at the time of his or her death such immovable properties and shares therein devised to him or hereunder shall devolve equally on any of my other children and the issue of any other deceased children of mine such issue taking by substitution per stirpes and equally between them if more than one the share which his or her their parent would have taken has such parent been alive at the time of the death of any such child of mine. Provided however that any child of mine dying without issue shall have the right to give and grant any such immovable properties and shares therein or any of them by Last Will only to any one or more of my other children upon the same conditions and restrictions as are hereincontained or to anyone or more of the issue of any deceased child of mine upon such conditions and restrictions as her or she shall deem fit and proper without any condition or restriction whatsoever but subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided. (4) If any of mine shall die leaving his or her surviving his or her spouse and his or her issue then such surviving spouse shall be entitled to a just one-half of the nett income of the said immovable properties and shares therein devised to such deceased child hereunder but if any child of mine shall die leaving him or her surviving his or her spouse only and no issue then the surviving spouse shall be entitled during his or her life time to the whole of the nett income of the immovable properties and shares therein devised to such deceased child subject however to the condition that the surviving spouse shall forfeit his or her right to the just one-half of the nett income or to the whole of the nett income as the case may be on such surviving spouse contract a subsequent marriage."

AND Whereas the said Ganegoda Appuhamilage Don Hendrick Seneviratne died in Colombo on or about the 29th September, 1929, without having revoked or in any way altered his said Last Will and Testament.

AND Whereas the said Last Will bearing No. 125, dated 7th April, 1929, attested by P. C. Seneviratne of Colombo, Notary Public, was duly proved in Testamentary Proceedings No. 4914 of the District Court of Colombo.

AND Whereas the said Granville Seneviratne whilst so seized and possessed of the 1/3rd share of the said property and premises died unmarried and issueless in Colombo on or about the 6th March, 1944, and

his Estate was administered in Testamentary Case No. 10898/T of the District Court of Colombo and leaving him surviving as his heirs, his brothers and sister the said Irwin, Vincent and Adeline, each of whom thereupon became entitled to 1/9th share of the said property and premises but subject to the restrictions and conditions in terms of the said Last Will No. 125.

P 19  
Deed No. 4459  
17-12-1952  
Continued

10 AND Whereas during the pendency of the said Testamentary Case No. 10898/T of the District Court of Colombo, the said Adeline died and her only daughters Phoebe Lilian Rodrigo (the said Vendor) and Gwendeline Jayakody were substituted in the place of the said Adeline, thus each of the said Phoebe Lilian Rodrigo and Gwendoline Jayakody became entitled to 1/18th share of the said property and premises but free from the restrictions and conditions in terms of the Last Will No. 125 as grandchildren of the said Ganegoda Appuhamilage Don Hendrick Seneviratne.

20 AND Whereas under and by virtue of the aforesaid Last Will No. 125, dated 7th April, 1929, attested by P. C. Seneviratne of Colombo, Notary Public, the said Ganegoda Appuhamilage Don Hendrick Seneviratne gave and bequeathed to his son Granville Seneviratne *inter alia* the properties and premises fully described in the Second Schedule hereto subject to the same restrictions and conditions in part recited as aforesaid.

AND Whereas the said Ganegoda Appuhamilage Don Hendrick Seneviratne died and his Estate was administered in D.C. Colombo, Testamentary Case No. 4914 as aforesaid.

30 AND Whereas the said Granville Seneviratne whilst so seised and possessed of the said properties and premises described in the said Second Schedule hereto died as aforesaid and his Estate was administered in Testamentary Case No. 10898/T of the District Court of Colombo, leaving him surviving as his heirs, his brothers and sister the said Irwin, Vincent and Adeline each of whom thereupon became entitled to 2/6th of the said properties and premises described in the Second Schedule hereto but subject to the restrictions and conditions in terms of the said Last Will No. 125.

AND Whereas an action was filed for the Partition of the said properties and premises fully described in the Second Schedule hereto in Case No. 5467/P of the District Court of Colombo and under the Decree entered in the said case the said properties and premises were sold and the proceeds of the sale were deposited in the case.

40 AND Whereas in terms of the scheme of Distribution filed in the said Partition Case No. 5467/P of the District Court of Colombo, the said Ganegoda Appuhamilage Don Vincent Seneviratne was allotted Rupees Twenty four thousand nine hundred and five (Rs. 24,905/-) for his 2/6th share, subject to the fidei commissum created by the said Last Will No. 125.

AND Whereas an application was made in Entail Case No. 746/E of the District Court of Colombo, to transfer the said sum of Rupees Twenty four thousand nine hundred and five (Rs. 24,905/-) lying in the said Partition Case No. 5467/P to the said Entail Case No. 746/E of the said Court.

AND Whereas the said Ganegoda Appuhamilage Don Vincent Seneviratne applied for leave of Court in the said Entail Case No. 746/E of the District Court of Colombo to purchase the 1/18th share of the property and

P 19  
Deed No. 4459  
17-12-1952

*Continued*

premises described in the First Schedule hereto belonging to the said Phoebe Lilian Rodrigo for the sum of Rupees Twelve thousand (Rs. 12,000/-) subject to the fidei commissum created by the said Last Will No. 125, partly recited above in these presents and the Court by its Order made in the said Entail Case No. 746/E, dated the 16th day of December, 1952, granted permission to purchase the said share of the said premises.

Now Know Ye and These Presents Witness that the said Vendor in consideration of the said sum of Rupees Twelve thousand (Rs. 12,000/-) well and truly paid by Ganegoda Appuhamilage Don Vincent Seneviratne of Colombo (hereinafter called and referred to as the Vendee) (the receipt whereof the said Vendor doth hereby admit and acknowledge) Doth hereby grant convey assign transfer set over and assure unto the said Vendee an undivided one-eighteenth part or share of the property and premises fully described in the First Schedule hereto together with all easements rights and advantages whatsoever appertaining or reputed to appertain to the said property and premises or any part thereof or occupied or enjoyed therewith or reputed or known as part or parcel of or appurtenant to the same or any part or portion thereof and all the estate right title interest property claim and demand whatsoever of the said Vendor in to upon or out of the same.

To Have and To Hold the said undivided one-eighteenth part or share of the property and premises fully described in the schedule hereto hereby sold and granted or intended so to be unto the said Vendee subject however to the restrictions, conditions and fidei commissum created by the said Last Will No. 125, dated 7th April, 1929, attested by P. C. Seneviratne of Colombo, Notary Public.

AND the said Vendor for herself, her heirs, executors and administrators doth hereby covenant and declare with and to the said Vendee and his successors in title their and each of their heirs, executors, administrators and assigns that she the said Vendor shall and will at all times hereafter warrant and defend the title to the said undivided one-eighteenth part or share of the property and premises fully described in the First Schedule hereto or any part thereof against any person or persons whomsoever and she the said Vendor and all persons having or claiming any right or interest in the said property and premises and every part thereof from under or in trust for her the said vendor shall and will at all times hereafter at the request and cost of the said Vendee or his aforewritten do and execute or cause to be done and executed all such further and other acts, deeds assurances, matters and things whatsoever as shall or may be reasonably required for further and more perfectly assuring the said property and premises and every part thereof unto the said Vendee and his aforewritten.

In Witness Whereof the said Phoebe Lilian Rodrigo and Edmund Rodrigo doth hereunto and to two others of the same tenor and date as These Presents set their hands at Colombo, on this Seventeenth day of December, One thousand nine hundred and fifty-two.

#### THE FIRST SCHEDULE ABOVE REFERRED TO

All that allotment of land called Tower Hall, bearing Assessment Nos. 40, 41, 42 and 42A, presently bearing Assessment No. 93, situated at



Panchikawatte Road, between Skinner's Road South and Pichaud's Lane within the Municipality of Colombo in the District of Colombo, Western Province and bounded on the North by a Lane and by premises bearing Assessment No. 43 the property of Zaina Deen, on the East by premises bearing Assessment No. 43 the property of Zaina Deen, Skinner's Road South, on the South by premises bearing Assessment No. 39 property of Mr. Weerasinghe and West by Pichaud's Lane, containing in extent one rood and twenty-eight perches (A 0-R 1-P 28), exclusive of Lot A acquired by Crown.

P 19  
Deed No. 4459  
17-12-1952  
Continued

10                   **THE SECOND SCHEDULE ABOVE REFERRED TO**

All that land called Kammalawatte with the buildings and plantations thereon, formerly bearing Assessment Nos. 117(1) 803 and 117/803, 107/797-797A, 105/79B, 101/793 and 103(3-4), presently bearing Assessment Nos. 185, 187, 189, 189(1-17, 20, 21-26, 32, 48, 61 and 71), situated at Dematagoda Road, within the Municipality and District of Colombo, Western Province and bounded on the North-East by a path and premises now bearing Assessment Nos. 217/4, 5 and 6 G205 and G207/1 and 2 (Dematagoda Road), on the South-East by Dematagoda Road, on the South-West by land belonging to the Ceylon Government Railway, shown in P.P. 11227  
20 Lot 2 and on the North-West by land belonging to Ceylon Govt. Railway shown in P.P. 10770, Lots R.758 and K.758 and containing in extent, one acre, two roods and twenty decimal four four perches (A1. R2. P.20.44) as per figure of Survey thereon bearing No. 859, dated the 10th day of February, 1949, made by Mr. V. Karthigesu, Licensed Surveyor.

(Sgd.) P. L. Rodrigo  
*by her Attorney*

Witnesses :

M. C. M. Saly  
R. B. Norman

(Sgd.) E. Rodrigo  
(Sgd.) C. Sevaprakasam  
*Notary Public.*

30           I, Cander Sevaprakasam of Colombo, in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been read over by Edmund Rodrigo (who has signed as "E. Rodrigo" for himself and as the Attorney of Phoebe Lilian Rodrigo) the executant therein-named, who is known to me in the presence of Mohamed Cassim Mohamed Saly and Raigam Bandarage Norman (who have signed as "M. C. M. Sally" and "R. B. Norman" respectively), both of Dam Street, Colombo, the subscribing witnesses thereto both of whom are also known to me, the same was signed by the said Edmund Rodrigo for himself and as the Attorney for and on behalf of and as the act and deed of the  
40 said Phoebe Lilian Rodrigo, he being thereto authorised by Power of Attorney, bearing No. 572, dated 23rd February, 1952 and attested by G. E. de Livera of Colombo, Notary Public (certified copies whereof are affixed to the Duplicate and Protocol hereof) and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo on this Seventeenth day of December, One thousand nine hundred and fifty-two.

P 19  
Deed No. 4459  
17-12-1952  
Continued

I further certify and attest that in the Original of the said instrument, on page 2, line 24, the word "absolutely" was typed over, on page 5, line 31, the word "an" was typed over, on page 6, line 7, the word "Twelve" was typed on erasure and line 30 the letters "att" were deleted, on page 7, line 10, the word "cause" was typed on erasure and on page 8, line 10, the word "four" was deleted and in the duplicate of the said instrument on page 2, line 2, the word "sell" was typed over, on page 5, line 18, the word "made" was typed over, line 23, the word "Hendri" was deleted and line 25, the figures and letter "1/8th" were deleted, on page 6, line 9, the words "or appurtenant" were typed on erasure and on page 7, line 30, the word "four" was interpolated before the foregoing instrument was read over as aforesaid and that no consideration was paid in my presence and that the Original of this instrument bears a stamp of the value of Rupee One (Rs. 1/-) and the duplicate five stamps of the value of Rupees One hundred and ninety-two (Rs. 192/-) which said stamps were supplied by me.

10

Which I Attest,  
(Sgd.) C. SEVAPRAKASAM,  
*Notary Public.*

Date of Attestation :  
17th December, 1952.

20

S E A L

True Copy to which I affixed a stamp to the value  
of Re. 1/- :

C. Sevaprakasam,  
*Notary Public.*

Date : 15th February, 1960.

P 21  
Affidavit of Irene  
Seneviratne in  
Testamentary  
Case No. 15357  
18-2-58

P 21  
**Affidavit of Irene Seneviratne in  
Testamentary Case No. 15357**

IN THE DISTRICT COURT OF COLOMBO

30

In the matter of the Intestate Estate of  
Ganegoda Appuhamilage Don Irvin Seneviratne  
of Heiyantudduwa, Gonawala, in the District of  
Colombo.

No. 15357  
Testamentary  
Jurisdiction.

*Deceased.*

Irene Seneviratne of "The Chalet" Baga-  
telle Road, Colombo.

*Petitioner.*

A n d

40

1. Tissa Seneviratne, presently of 2, Sherwood Avenue, Stafford, England.
2. Ananda Seneviratne, A.S.P., Mannar.

3. Nalin Seneviratne, presently of Royan Military Academy, Shandhurst, Camberley Survey, England, and
4. Gamini Seneviratne of Bagatelle Road, Colpetty, a minor appearing by his guardian ad litem,
5. Edmund Rodrigo of Flower Road, Colpetty.

P 21  
Affidavit of Irene  
Seneviratne in  
Testamentary  
Case No. 15357  
18-2-58

*Continued*

*Respondents.*

10 I, Irene Seneviratne of "The Chalet" Bagatelle Road, Colpetty in Colombo, not being a Christian, do hereby solemnly, sincerely and truly declare and affirm as follows:—

1. I am the petitioner above-named.

2. Ganegoda Appuhamilage Don Irwin Seneviratne of Heiyantuduwa in Gonawala in the District of Colombo, departed this life intestate on the 6th day of January, 1953, at Heiyantuduwa aforesaid within the local limits of the jurisdiction of this Court.

3. The said Don Irwin Seneviratne has left him surviving, as his only heirs, his four sons the 1st to 4th Respondents abovenamed and myself (his widow).

20 4. To the best of my information and belief the said deceased has left property of the value and description set forth in the schedule hereto annexed and of the aggregate nett value of Rs. 6,178/18.

5. The 4th Respondent is a minor of the age of 20 years and it is necessary that a guardian ad litem should be appointed over him for the purpose of these proceedings.

6. The 5th Respondent abovenamed, who is the maternal uncle of the said minor, is a fit and proper person to be appointed such guardian ad litem and he has no interest adverse to that of the said minor.

30 7. I do not know of any person interested in the subject matter of the application which this affidavit supports or in the persons sought to be effected by the order prayed for therein, who are likely to entertain any objection thereto other than the Respondents abovenamed.

8. I claim to be entitled to a grant of Letters of Administration of the intestate estate of the said deceased as his widow and I do not apprehend any opposition thereto.

9. THE SCHEDULE ABOVE REFERRED TO

**Assets (Movable) :**

	Rs.	cts.
1. Amount lying at the Post Office Savings Bank (A/c. No. K 178997) ... ..	2,100.00	
40 2. Interest declared by the Commissioners of Loan Board for the half year ending 30-6-52, on the sum of Rs. 1,333.33 lying to the credit of Case No. 459 Entail and presently transferred to Case No. 738 of this Court ...	194.55	

P 21  
Affidavit of Irene  
Seneviratne in  
Testamentary  
Case No. 15357  
18-2-53

*Continued*

3.	Interest declared by the Commissioners of Loan Board for the half year ending 30-6-52, on the sum of Rs. 5,312.45 lying to the credit of Case No. 380/Entail and presently transferred to Case No. 738/Entail of this Court	...	...	...	...	743.68	
4.	Interest declared by the Commissioners of Loan Board for the half year ending 30-6-52, on the sum of Rs. 8,748.78 lying to the credit of Case No. 450/Entail and presently transferred to Case No. 738/Entail of this Court	...	...	...	...	1,228.72	10
5.	Interest declared by the Commissioners of Loan Board for the half year ending 30-6-52 on the sum of Rs. 24,904/- lying to the credit of Case No. 5467/P, presently transferred to the credit of Case No. 738/E of this Court	...	...	...	...	498.00	
6.	Interest declared by the Commissioners of Loan Board for the half year ending 30-6-52, on the sum of Rs. 10,339.98 lying to the credit of Case No. 5411/P and presently transferred to the credit of Case No. 738/E of this Court	...	...	...	...	206.79	20
7.	Interest declared by the Commissioners of Loan Board for the half year ending 30-6-52, on the sum of Rs. 7,013.33 lying to the credit of Case No. 5455/P, presently transferred to the credit of Case No. 738/E of this Court	...	...	...	...	95.19	
8.	Interest declared by the Commissioners of Loan Board on the amount lying to the credit of the aforesaid cases for the half year ending 31-12-52 (approximately) figures not yet available	...	...	...	...	2,966.93	
						<u>8,033.86</u>	30

#### Liabilities :

1.	Arrears of Income Tax due to the Income Tax Department	...	...	...	306.11	
2.	Fees and Disbursements due to Messrs. De Silva & Mendis, Proctors, Colombo, in D.C. Colombo, 21729	...	...	...	60.20	
3.	Balance Fees and Disbursements due to Messrs. De Silva & Mendis, Proctors, Colombo, in D.C. Colombo, No. 2713/Lunacy	...	...	...	34.71	
4.	Balance Fees and Disbursements due to Messrs. De Silva & Mendis, Proctors, Colombo, in D.C. Colombo No. 4574/L	...	...	...	42.00	40
5.	Fees and Disbursements due to Messrs. De Silva & Mendis, Proctors, Colombo, in D.C. Colombo 738/Entail	...	...	...	242.66	
6.	Funeral expenses	...	...	...	1,170.00	1,855.68
	Nett Value of Estate	...	...	...	...Rs.	<u>6,178.18</u>

Read over, signed and affirmed to  
at Colombo, this 13th day of February, 1953 } (Sgd.) Irene Seneviratne.

P 21  
Affidavit of Irene  
Seneviratne in  
Testamentary  
Case No. 15857  
13-2-53

*Continued*

Before me :

(Sgd.) Felix de Silva,  
*Justice of Peace.*

True Copy of the Affidavit dated  
13-2-1953, filed of record in D.C. Co-  
lombo, Case No. 15357/N.T.

Sgd. ....  
*Asst. Secretary.*

10

District Court, Colombo.

**1 D 1**

**Deed No. 1091**

**1 D 1**  
**Deed No. 1091**  
**5-8-1957**

**JOHN WILSON,**  
*Proctor and Notary, Colombo.*

20

Prior Registration : Colombo, A 373/273.

Regtd. A 374/113.  
Colombo, 6th August, 1957.

Sgd. ....  
*R.L.*

No. 1091.

30

TO ALL TO WHOM THESE PRESENTS SHALL COME we Jane Seneviratne  
of Gonagala, Induruwa and Ganegoda Appuhamilage Don Vernon Stanley  
Seneviratne of Kananwila Estate, Horana (hereinafter calling ourselves  
and referred to as "the said Vendors" which term as herein used shall  
where the context so requires or admits mean and include us the said Jane  
Seneviratne and Ganegoda Appuhamilage Don Vernon Stanley Senevi-  
ratne, our and each of our respective heirs, executors and administrators)

SEND GREETING

WHEREAS we the said Vendors are entitled to certain undivided shares  
and interests in the premises in the Schedule hereto particularly described.

40

AND WHEREAS we the said Vendors have agreed with Ceylon Theatres  
Limited, a Company duly incorporated under the Ceylon Joint Stock  
Companies Ordinance and having its registered office in Colombo (herein-  
after called and referred to as "the said Vendee" which term as herein used  
shall where the context so requires or admits mean and include the said  
Ceylon Theatres Limited, its successors and assigns) for the absolute sale

1 D 1  
Deed No. 1091  
5-8-1957

*Continued*

and transfer to the said Vendee of all our undivided shares and all our right title and interest whatsoever of and in the premises in the said Schedule hereto particularly described for the price or sum of Rupees Sixty Thousand (Rs. 60,000/-) free from any encumbrance whatsoever.

NOW KNOW YE AND THESE PRESENTS WITNESS that we the said Vendors do hereby in pursuance of the said Agreement and for and in consideration of the said sum of Rupees Sixty Thousand (Rs. 60,000/-) of lawful money of Ceylon well and truly paid to us the said Vendors by the said Vendee (the receipt whereof we the said Vendors do hereby expressly admit and acknowledge) sell, grant, convey, assign, transfer, set over and assure unto the said Vendee all our undivided shares of and all our right, title and interest, present or contingent whatsoever in the premises in the said schedule hereto particularly described together with the buildings standing thereon and all rights, ways, privileges, easements, servitudes and appurtenances whatsoever to the said premises belonging or in anywise appertaining or usually held, used, occupied or enjoyed therewith or reputed or known to be part parcel or member of the same and all the estate right, title, interest, property, claim and demand whatsoever of us the said Vendors and each of us in to upon or out of the said premises.

TO HAVE AND TO HOLD the said undivided shares of and all our right, title and interest in the premises in the said Schedule hereto particularly described hereby conveyed, transferred or expressed or intended so to be together with all and singular the appurtenances thereto belonging or appertaining unto the said Vendee absolutely for ever.

AND we the said Vendors do hereby covenant and declare to and with the said Vendee that we the said Vendors have good right and title and full power to assign, transfer and convey the said undivided shares and all our right, title and interest in the premises in the said Schedule hereto particularly described and that the same are free from any encumbrance whatsoever and shall and will at all times hereafter warrant and defend the title thereto unto the said Vendee against any person or persons whomsoever and also shall and will at all times hereafter at the request and cost of the said Vendee make, do and execute or cause to be made, done and executed all such further and other acts, deeds, assurances and things whatsoever for the more perfectly and effectually assuring and vesting the same unto the said Vendee as by it shall or may be reasonably required.

IN WITNESS WHEREOF we the said Jane Seneviratne and Ganegoda Appuhamilage Don Vernon Stanley Seneviratne have set our respective hands hereunto and to two others of the same tenor and date as these presents at 365, Dam Street, Colombo, on this fifth day of August, one thousand nine hundred and fifty-seven.

#### THE SCHEDULE ABOVE REFERRED TO :

All that and those the buildings and premises called the "Tower Hall," bearing Assessment No. 93, Panchikawatte Road, situated between the road called Skinners Road South and Piachauds Lane at Maradana, within the Municipality and District of Colombo, Western Province, bounded on the North by a Lane and the property of Zainu Deen, on the

on the South by premises bearing Assessment No. 39 and on the West by Piachauds Lane and containing in extent exclusive of the portion acquired by the Crown, one rood and twenty-eight perches (A 0. R 1. P 28) according to the Survey Plan, dated 10th October, 1906, made by Geo de Saram, Licensed Surveyor.

1 D 1  
Deed No. 1091  
5-8-1957  
Continued

10 Signed in the presence of us by the  
said Jane Seneviratne and Ganegoda  
Appuhamilage Don Vernon Stanley  
Seneviratne and we do hereby declare  
that we are well acquainted with the  
executants hereof and know their  
proper names, occupations and  
residences.

(Sgd.) Jane Seneviratne,

(Sgd.) G. D. S. Seneviratne.

(Sgd.) JOHN WILSON, Jr.,  
Notary Public.

Witnesses : 1. (Sgd.) N. Sambandan,  
2. (Sgd.) W. F. Perera.

No. 1091

20 I, John Wilson (Junior) of Colombo, Notary, do hereby certify and  
attest that the foregoing instrument having been duly read over and  
explained by me to the within-named Jane Seneviratne and read over by  
the within-named Ganegoda Appuhamilage Don Vernon Stanley Senevi-  
ratne the executants therein-named who are not known to me and who  
have signed as "Jane Seneviratne" and "G. D. S. Seneviratne" respect-  
ively in the presence of Navaratnam Sambandan of 124, Hultsdorf Street,  
Colombo and Vithanage Francis Perera of 174/24, Dematagoda, Colombo,  
the subscribing witnesses thereto both of whom are known to me and who  
have signed as "N. Sambandan" and "W. F. Perera" respectively, the  
same was signed by the said executants and by the said witnesses and by  
30 me the said Notary in my presence and in the presence of one another all  
being present together at the same time at 365, Dam Street, Colombo, on  
this Fifth day of August, One thousand nine hundred and fifty-seven.

I further certify and attest that the consideration Rs. 60,000/- was  
paid in my presence by two cheques of this date drawn by the Vendee in  
favour of the Vendors on the Bank of Ceylon, Nos. 929803 and 929806  
for Rs. 4,499.98 and Rs. 55,500.02 respectively and that the Duplicate  
bears nine Stamps of the value of Rs. 959/- and the Original a Stamp of  
Re. 1/-.

Which I attest,

40

(Sgd.) JOHN WILSON,  
Notary Public.

Date of Attestation : 5th August, 1957.

S E A L

I D 1  
Deed No. 1091  
5-8-1957

*Continued*

**MUNICIPAL COUNCIL OF COLOMBO**

Reference No. MA. 4748/57.

ASSESSOR'S DEPARTMENT,  
TOWN HALL,  
Colombo, 24th October, 1957.

**Premises No. 93, Panchikawatte Road.**

Dear Sir,

With reference to the abstract of Title forwarded with your letter dated 12th August, 1957, I have to inform you that the name of : "CEYLON THEATRES LIMITED." has been registered in our records as reputed co-owner of the above mentioned premises. 10

Yours faithfully,  
(Sgd.) D. W. G. RANASINGHE,  
*Municipal Assessor.*

John Wilson (Jr.), Esqr.,  
Proctor & Notary,  
165, Dam Street, Colombo 12.

P 22  
Deed No. 465  
16-8-1957

**P 22**  
**Deed No. 465**

Prior Registration : A 350/142.

Registered : A 377/123.  
Colombo, 22nd August, 1957.

(Sgd.) M. S. FERNANDO,  
*R. L.*

No. 465

TO ALL TO WHOM THESE PRESENTS SHALL COME, (1) Ganegoda Appuhamilage Tissa Seneviratne, (2) Ganegoda Appuhamilage Ananda Seneviratne, (3) Ganegoda Appuhamilage Nalin Seneviratne, (4) Ganegoda Appuhamilage Gamini Seneviratne, and (5) Irene Seneviratne, all of No. 2, 33rd Lane off Bagatelle Road, Colombo, (the sons and the widow of Ganegoda Appuhamilage Don Irwin Seneviratne). 30

SEND GREETING :—

WHEREAS under and by virtue of Deed No. 5493 of 27th September, 1907, and attested by F. C. Loos of Colombo, Notary Public Ganegoda Appuhamilage Don Hendrick Seneviratne of Heiyantuduwa Gonawala, was seized and possessed of or otherwise well and sufficiently entitled to the land and premises together with the buildings known as "Tower Hall" and fully described in the Schedule hereto.

AND WHEREAS the said Ganegoda Appuhamilage Don Hendrick Seneviratne, while being so seized and possessed of the said land and pre- 40



mises as aforesaid made and executed his Last Will and Testament bearing No. 125, dated 7th April, 1929 and attested by P. C. Seneviratne of Colombo, Notary Public, whereby he devised and bequeathed among other devises the said land and premises with the building known as "Tower Hall" to his children Irwin Seneviratne, Granville Seneviratne and Edmund Seneviratne, subject to the following restrictions and conditions, to wit :—

P 22  
Deed No. 465  
16-8-1957

Continued

10       “(a) I hereby Will and direct that my six children Adeline, Granville, Irwin, Edmund, Florence and Vincent shall have and hold all the immovable properties and the shares in the immovable properties hereby specifically bequeathed to them and the shares in the immovable properties bequeathed to them under the residuary clause hereof and which they or any of them may inherit in any other manner under this my Will subject expressly to the conditions and restrictions following that is to say :

20       (a) That no child of mine shall mortgage, sell or otherwise alienate or encumber save as hereinafter provided any one or more of the immovable properties or any part or portion thereof or any share in such immovable properties but such child shall only be entitled to take, receive and enjoy the rents and profits and income thereof during his or her life time. Any such mortgage or such alienation shall be absolutely null and void but this restriction shall not prevent such child of mine from leasing to any person or persons any of the said immovable properties for a period not exceeding two years at a time and I hereby direct that a lease executed by a majority of my said children of any immovable properties held by them in common shall be good and valid and shall be binding on any of the children who shall refuse or neglect to execute the same when requested thereto by the majority of them without prejudice however to the right of dissenting minority to their respective shares of the rent reserved by such lease. Provided however that any lease executed during the continuance of any existing lease shall be absolutely null and void.

30       (b) On the death of any child of mine the immovable properties and all properties and all share therein devised to him or her hereunder shall devolve on his or her issue or any one or more of them as such child by Last Will appoint and subject to such conditions as such child shall deem fit and proper or without any condition or restriction whatsoever and in the event of any child of mine dying intestate without such appointment as aforesaid then the same shall devolve absolutely on his or their issue equally between them or more than one subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided.

40       (c) In the event of the death of any child of mine without leaving issue living at the time of his or her death such immovable properties and shares therein devised to him or hereunder shall devolve equally on any of my other children and the issue of any other deceased children of mine such issue taking by substitution per stirpes and equally between them if more than one the share which his or her or their parent would have taken had such parent been alive at the time of the death of any such child of mine. Provided however that any child of mine dying without issue shall have the right to give and grant any such immovable properties and shares therein or any of them by Last Will only to any one or more of my other children upon the same conditions and restrictions as are herein contained  
50       or to any one or more of the issue of any deceased child of mine upon such

P 22  
Deed No. 465  
16-8-1957

*Continued*

conditions and restrictions as her or she shall deem fit and proper without any condition or restriction whatsoever but subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided.

(d) If any child of mine shall die leaving his or her surviving his or her spouse and his or her issue then such surviving spouse shall be entitled to a just one-half of the nett income of the said immovable properties and shares therein devised to such deceased child hereunder but if any child of mine shall die leaving him or her surviving his or her spouse only and no issue then the surviving spouse shall be entitled during his or her life time to the whole of the nett income of the immovable properties and shares therein devised to such deceased child subject however to the condition that the surviving spouse shall forfeit his or her right to the just one-half of the nett income or to the whole of the nett income as the case may be on such surviving spouse contract a subsequent marriage. 10

(e) I declare that if any child of mine or any person claiming through him or her shall at any time dispute the validity of this my Last Will or any of the dispositions herein or in any Codicil hereto contained then all such dispositions herein or in any Codicil hereto contained in favour of such child of mine shall cease and be void to alienate and purposes, whatsoever and be hereby revoked and as to all the immovable and movable property and shares therein so forfeited as aforesaid, I give and devise the same in equal shares unto my other children and the issues of any deceased child of mine as the case may be such immovable and the shares therein to be held by my said other children in the same manner and subject to the same conditions and restrictions hereinbefore declared and provided as if the same had been devised to them hereunder in the first instance. 20

AND whereas the said Ganegoda Appuhamilage Don Hendrick Seneviratne died at Colombo on or about the 12th December, 1929, without having revoked or in anyway altered his said Last Will and Testament No. 125. 30

AND whereas the said Last Will No. 125 duly proved in Testamentary Proceedings No. 4914 of the District Court of Colombo and Letters of Administration with the Will annexed were granted to Edmund Seneviratne, one of the sons, as the Executor named in the said Last Will declined to act.

AND whereas the said Edmund Seneviratne, one of the devisees died in the year 1944 intestate and without issue but leaving a widow as will be seen in the Affidavit filed in the Testamentary Proceedings No.10898 of the District Court of Colombo. 40

AND whereas the one-third share in the premises described in the schedule hereto, belonging to the said Edmund Seneviratne according to the conditions of the said Will No. 125 devolved on his surviving brothers and sister the said Vincent, Granville, Irwin and Adeline, the other sister Florence having died earlier unmarried and intestate on or about the 23rd November, 1931, as will be seen in the Testamentary Proceedings No. 6066 of the District Court of Colombo, thus the said Vincent, Granville, Irwin and Adeline became each entitled to one-twelfth of the said premises described in the schedule hereto subject to the life interest of Eugene Seneviratne, the widow of Edmund Seneviratne, deceased. 50

AND whereas the said Granville Seneviratne, being possessed of one-third share of the premises described in the schedule hereto under the said Last Will No.125 and also of an undivided one-twelfth share thereof, which devolved on him on the death of his brother Edmund Seneviratne as aforesaid, died intestate unmarried and issueless as will be seen in the Testamentary Proceedings No. 10898 of the District Court of Colombo, where the estate of the said Granville Seneviratne was administered, leaving as his heirs his brothers Irwin and Vincent and his sister Adeline and thus Irwin Seneviratne, Vincent Seneviratne and Adeline Seneviratne became entitled each to one-third of one-third share thereof (as also confirmed by Order of Court made in D.C., Colombo, Case No. 3382/Land) subject to the restrictions in the said Will No. 125 together with a further one-thirty-sixth (1/36th) share subject to the restrictions contained in the Last Will No. 125 and to the life interest of Eugene Seneviratne aforesaid.

AND whereas Irwin Seneviratne thus became possessed of one-third share of the premises described in the said schedule hereto under the said Will No. 125 (subject to the restriction and conditions in the said Last Will No. 125 contained) together with one-ninth share devolving on him on the death of Granville Seneviratne as aforesaid subject to the same restrictions as aforesaid together with a one-twelfth (1/12th) and a one-thirty sixth (1/36th) share thereof which devolved on him on the death of Edmund Seneviratne subject to the life interest of Eugene Seneviratne aforesaid and subject to the same conditions and restrictions in the said Will No. 125 contained.

AND whereas Irwin Seneviratne while thus being entitled to and possessed of a four-ninth share of the said premises (described in the schedule hereto) subject to the restrictions in the said Will No. 125, contained together with one-ninth share thereof subject to the life interest of the said Eugene Seneviratne and subject to the restrictions and conditions as aforesaid, died intestate on 6th day of January, 1953, leaving as his heirs, his four sons, the said Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne and Ganegoda Appuhamilage Gamini Seneviratne and his widow the said Irene Seneviratne as would be seen in the Testamentary Proceedings No. 15357/T of the District Court of Colombo.

AND whereas the said four sons Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne and Ganegoda Appuhamilage Gamini Seneviratne of the deceased became entitled to an undivided four-ninth (4/9th) share of the said premises (described in the schedule hereto) absolutely subject however to the life interest of Irene Seneviratne in a half of four-ninth (1/2 of 4/9th) share of the said premises (described in the schedule hereto) and to a further one-ninth share of the premises, subject to the life interest of Eugene Seneviratne and to the restrictions contained in the said Will.

AND whereas by an Indenture bearing No. 575/257, dated 30th July, 1957 and 1st August, 1957 and attested by T. Nadarajah of Colombo and D. C. Atapattu of Tangalla, Notaries Public, respectively entered into by and between the said Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne and Ganegoda Appuhamilage Gamini Seneviratne and Irene

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Continued

Seneviratne of the one part and Cinemas Limited (a Company duly incorporated under the Ceylon Companies Ordinance No. 51 of 1938 and having its registered office at No. 117, New Chetty Street, Colombo), of the other part, it was covenanted and agreed *inter alia* that they the said Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne, Ganegoda Appuhamilage Gamini Seneviratne and Irene Seneviratne shall sell and convey unto the said Cinemas Limited undivided four-ninth (4/9th) shares of the said premises which they hold absolutely and a further undivided one-ninth (1/9th) share thereof which they hold subject to the life interest of Eugene Seneviratne and to the restrictions contained in the said Last Will at or for the price or sum of Rupees One hundred and eighty seven thousand five hundred (Rs. 187,500/-) free from all encumbrances save and except as aforesaid on or before the Twenty-second day of August, One thousand nine hundred and fifty-seven, and that the said Cinemas Limited may at its discretion have the said premises conveyed and transferred by two separate Deeds — one for the transfer of the said four-ninth shares they hold absolutely and other one for the transfer of the said one-ninth share they hold subject to the life interest of Eugene Seneviratne and to the restrictions contained in the said Last Will No. 125.

10

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AND whereas the said Cinemas Limited has called upon the said Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne, Ganegoda Appuhamilage Gamini Seneviratne and Irene Seneviratne to execute in its favour two separate Deeds in respect of the said four-ninth share and one-ninth share of the said premises respectively and they have agreed to do so.

NOW KNOW YE AND THESE PRESENTS witness that the said Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne, Ganegoda Appuhamilage Gamini Seneviratne and Irene Seneviratne (hereinafter sometimes called and referred to as the said Vendors) in pursuance of the aforesaid agreement and in consideration of the sum of Rupees One hundred and fifty thousand (Rs. 150,000/-) of lawful money of Ceylon well and truly paid to them by the said Cinemas Limited (hereinafter sometimes called and referred to as the said Purchaser Company) (the receipt whereof the Vendors do and each of them doth hereby admit and acknowledge) do and each of them doth hereby sell, assign, grant, convey, transfer, set over and assure unto the said Cinemas Limited its successors and assigns all that undivided four-ninth parts or shares of the property and premises with the buildings known as "TOWER HALL" fully described in the schedule hereto together with all easements, servitudes, rights, advantages and appurtenances whatsoever appertaining or reputed to appertain to the said premises or any part and portion thereof or occupied or enjoyed therewith or reputed or known as part and parcel of or appurtenant thereto and all the estate right, title, interest, property, claim and demand whatsoever of the said Vendors in to out of or upon the same.

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TO HAVE AND TO HOLD the said undivided four-ninth share of the land and premises with the buildings known as "TOWER HALL" fully described in the schedule hereto and all appurtenances thereto belonging sold and conveyed or granted or intended so to be unto the said Purchaser Company its successors and assigns absolutely for ever.

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*Continued*

AND the said Vendors for themselves their respective heirs, executors and administrators do hereby covenant and declare with and to the said Purchaser Company and its successors and assigns that the said premises are free from any encumbrances or charges whatsoever and that the said Vendors and each of them shall and will at all times hereafter warrant and defend the title to the said premises and every part or portion thereof, against any person or persons whomsoever and that they have good and legal right to sell and convey the same in manner aforesaid and that the said Vendors and each of them and their aforewritten shall and will hereafter at the request and cost of the said Purchaser Company or its successors or assigns do execute or cause to be done and executed all such further and other acts, deeds, assurances, matters and things whatsoever as shall or may be reasonably required for further and more perfectly assuring the said property and premises sold under these presents and every part thereof unto the Purchaser Company and its aforewritten.

IN WITNESS whereof the said Vendors : (1) Ganegoda Appuhamilage Tissa Seneviratne, (2) Ganegoda Appuhamilage Ananda Seneviratne, (3) Ganegoda Appuhamilage Nalin Seneviratne, (4) Ganegoda Appuhamilage Gamini Seneviratne, and (5) Irene Seneviratne do set their respective hands hereunto and to two others of the same tenor and date as these Presents at Colombo, on this Sixteenth day of August, One thousand nine hundred and fifty-seven.

#### THE SCHEDULE ABOVE REFERRED TO

ALL that allotment of land and those the buildings and premises called "Tower Hall" formerly bearing Assessment Nos. 40, 41, 42 and 42A, presently bearing Assessment No. 93, situated at Panchikawatte Road, between Skinners Road South and Piachaud's Lane, within the Municipality of Colombo, in the District of Colombo, Western Province and bounded on the North by a Lane and the property of Zainudeen, on the East by premises bearing Assessment No. 43, the property of Zainudeen and Skinners Road South, on the South by premises No. 39, and property of Mr. Weerasinghe and West by Piachaud's Lane, containing in extent one rood and twenty-eight perches (A 0. R 1. P 28), exclusive of the Lot A acquired by the Government.

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(Sgd.) G. D. T. Seneviratne,  
G. A. A. Seneviratne,  
(*Illegibly*)  
G. D. G. Seneviratne,  
Irene Seneviratne.

T. THEVARAJAN,  
*Notary Public.*

Witnesses : (Sgd.) *Illegibly.*  
C. J. Orloff

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Continued

I, Tambeyayah Devarajan of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing Instrument having read over by the within-named executants: (1) Ganegoda Appuhanilage Tissa Seneviratne, (2) Ganegoda Appuhamilage Ananda Seneviratne, (3) Ganegoda Appuhamilage Nalin Seneviratne, (4) Ganegoda Appuhamilage Gamini Seneviratne and (5) Irene Seneviratne, who have respectively signed as "G. D. T. Seneviratne," "G. A. A. Seneviratne," "Illegibly" "G. D. G. Seneviratne" and "Irene Seneviratne" who are all known to me in the presence of John Samuel Paranavitane, Proctor S.C. of Messrs. De Silva & Mendis, Proctors, Colombo and Charles Joseph Orloff, Proctor S.C. of Messrs. Abrahams, Proctors, Colombo, who have respectively signed illegibly and "C. J. Orloff" the subscribing witnesses thereto, all of whom are known to me the same was signed by the said executants by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo on this Sixteenth day of August, One thousand nine hundred and fifty-seven.

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I further certify and attest that before the foregoing Instrument was read over as aforesaid that in the duplicate in page 1, lines 7 and 23, page 2, line 2, page 3, line 13, page 5, lines 14 and 33, page 6, line 24 "Irwin," "Irwin," "Irwin," "parent" "Devolved" "Vincent," "Ganegoda" were respectively typed over erasure and page 2, line 28, page 6, line 12, page 7, lines 10 and 22 the words "executed", to "lease", "a", "Ganegoda Appuhamilage" and "two" were respectively interpolated and in page 2 line 28 and 35 and in page 7 line 32, and in page 10, lines 7 and 19 "such", "to impose", "way" "presently" and "and" were respectively deleted and in the Original in page 1, lines 7 and 23 and page 2, line 2, page 5, lines 15, 19, 32 and 33 and page 6, line 5, the words "Irwin" was typed over erasure, and in page 7, line 20 "sell" was typed over erasure and in page 3, line 1 "to impose" was deleted, and the consideration mentioned herein was paid as follows:—

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By Cheque No. D/4 22601, dated 22-7-57, drawn on the Bank of Ceylon Foreign Department, Colombo, by Cinemas Ltd. in favour of Irene Seneviratne, the 5th named Vendor and acknowledged by them	...	50,000.00
By Cheque No. D/4 22624, dated 15-8-57 and drawn on the Bank of Ceylon Foreign Department. Colombo, in favour of Irene Seneviratne, the 5th named Vendor by Cinemas Ltd. and paid today	... ..	100,000.00
		<u>150,000.00</u>

and that the Duplicate of this Instrument bears 11 impressed stamps to the value of Rs. 2,399/- and the Original an impressed stamp of Re. 1/-.

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Date of Attestation : 16th August, 1957.

(Sgd.) T. DEVARAJAN,  
Notary Public.

S E A L

**P 23**  
**Deed No. 466**

P 23  
Deed No. 466  
16-8-1957

Prior Registration : A 350/142.

Regd. : A 377/123.

Colombo, 22nd August, 1957.

*Sgd.* M. S. FERNANDO  
*R. L.*

No. 466

10 TO ALL TO WHOM THESE PRESENTS SHALL COME : (1) Ganegoda Appuhamilage Tissa Seneviratne, (2) Ganegoda Appuhamilage Ananda Seneviratne, (3) Ganegoda Appuhamilage Nalin Seneviratne, (4) Ganegoda Appuhamilage Gamini Seneviratne and (5) Irene Seneviratne, all of No. 2 33rd Lane off Bagatelle Road, Colombo (the sons and the widow of Ganegoda Appuhamilage Don Irwin Seneviratne).

SEND GREETING :

20 WHEREAS under and by virtue of Deed No. 5493 of 27th September, 1907, and attested by F. C. Loos of Colombo, Notary Public, Ganegoda Appuhamilage Don Hendrick Seneviratne of Heiyantuduwa Gonawala was seized and possessed of or otherwise well and sufficiently entitled to the land and premises together with the buildings known as "Tower Hall" and fully described in the Schedule hereto.

AND WHEREAS the said Ganegoda Appuhamilage Don Hendrick Seneviratne while being so seized and possessed of the said land and premises as aforesaid made and executed his Last Will and Testament bearing No. 125 dated 7th April, 1929 and attested by P. C. Seneviratne of Colombo, Notary Public, whereby he devised and bequeathed among other devisees the said land and premises with the building known as "Tower Hall" to his children Irwin Seneviratne, Granville Seneviratne and Edmund Seneviratne subject to the following restrictions and conditions, to wit :—

30 " (a) I hereby will and direct that my six children Adeline, Granville, Irwin, Edmund, Florence and Vincent, shall have and hold all the immovable properties and the shares in the immovable properties hereby specifically bequeathed to them and the shares in the immovable properties bequeathed to them under the residuary clause hereof and which they or any of them may inherit in any other manner under this my Will subject expressly to the conditions and restrictions following that is to say :

40 (a) That no child of mine shall mortgage, sell or otherwise alienate or encumber save as hereinafter provided any one or more of the immovable properties or any part or portion thereof or any share in such immovable properties but such child shall only be entitled to take, receive and enjoy the rents and profits and income thereof during his or her life time. Any such mortgage or such alienation shall be absolutely null and void but this restriction shall not prevent such child of mine from leasing to any person or persons any of the said immovable properties for a period not exceeding Two years at a time and I hereby direct that a lease executed by a majority of my said children of any immovable properties held by them in common

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*Continued*

shall be good and valid and shall be binding on any of the children who shall refuse or neglect to execute the same when requested thereto by the majority of them without prejudice however to the right of dissenting minority to their respective shares of the rent reserved by such lease. Provided however that any lease executed during the continuance of an existing lease shall be absolutely null and void.

(b) On the death of any child of mine the immovable properties and all properties and all share therein devised to him or her hereunder shall devolve on his or her issue or any one or more of them as such child by Last Will appoint and subject to such conditions as such child shall deem fit and proper or without any condition or restriction whatsoever and in the event of any child of mine dying intestate without such appointment as aforesaid then the same shall devolve absolutely on his or their issue equally between them or more than one subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided.

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(c) In the event of the death of any child of mine without leaving issue living at the time of his or her death such immovable properties and shares therein devised to him or hereunder shall devolve equally on any of my other children and the issue of any other deceased children of mine such issue taking by substitution per stirpes and equally between them if more than one the share which his or her or their parent would have taken had such parent been alive at the time of the death of any such child of mine. Provided however that any child of mine dying without issue shall have the right to give and grant any such immovable properties and shares therein or any of them by Last Will only to any one or more of my other children upon the same conditions and restrictions as are herein contained or any one or more of the issue of any deceased child of mine upon such conditions and restrictions as her or she shall deem fit and proper without any condition or restriction whatsoever but subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided.

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(d) If any child of mine shall die leaving his or her surviving his or her spouse and his or her issue then such surviving spouse shall be entitled to a just one-half of the nett income of the said immovable properties and shares therein devised to such deceased child hereunder but if any child of mine shall die leaving him or her surviving his or her spouse only and no issue then the surviving spouse shall be entitled during his or her life time to the whole of the nett income of the immovable properties and shares therein devised to such deceased child subject however to the condition that the surviving spouse shall forfeit his or her right to the just one-half share of the nett income or to the whole of the nett income as the case may be on such surviving spouse contract a subsequent marriage.

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(e) I declare that if any child of mine or any person claiming through him or her shall at any time dispute the validity of this my Last Will or any of the dispositions herein or in any Codicil hereto contained then all such dispositions herein or in any Codicil hereto contained in favour of such child of mine shall cease and be void to alienate and purposes, whatsoever and be hereby revoked and as to all the immovable and movable property and shares therein so forfeited as aforesaid, I give and devise the same in equal shares unto my other children and the issues of any deceased child of mine as the case may be such immovable and the shares therein

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to be held by my said other children in the same manner and subject to the same conditions and restrictions hereinbefore declared and provided as if the same had been devised to them hereunder in the first instance.”

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*Continued*

AND WHEREAS the said Ganegoda Appuhamilage Don Hendrick Seneviratne died at Colombo, on or about the 12th December, 1929, without having revoked or in anyway altered his Last Will and Testament No. 125.

AND WHEREAS the said Last Will No. 125 was duly proved in Testam-  
mentary Proceedings No. 4914 of the District Court of Colombo and Letters  
of Administration with the Will annexed were granted to Edmund Senevi-  
10 ratne, one of the sons, as the Executor named in the said Last Will declined  
to act.

AND WHEREAS the said Edmund Seneviratne, one of the devisees  
died in the year 1944, intestate and without issue but leaving a widow as  
will be seen in the Affidavit filed in the Testamentary Proceedings No. 10898  
of the District Court of Colombo.

AND WHEREAS the one-third share in the premises described in the  
schedule hereto, belonging to the said Edmund Seneviratne according to  
the conditions of the said Will No. 125 devolved on his surviving brothers  
and sister the said Vincent, Granville, Irwin and Adeline, the other sister  
20 Florence having died earlier unmarried and intestate on or about the 23rd  
November, 1931, as will be seen in the Testamentary Proceedings No. 6066  
of the District Court of Colombo, thus the said Vincent, Granville, Irwin and  
Adeline became each entitled to one-twelfth of the said premises described  
in the schedule hereto subject to the life interest of Eugene Seneviratne,  
the widow of Edmund Seneviratne deceased.

AND WHEREAS the said Granville Seneviratne being possessed of  
one-third share of the premises described in the schedule hereto under the  
said Last Will No. 125 and also of an undivided one-twelfth share thereof,  
which devolved on him on the death of his brother Edmund Seneviratne  
30 as aforesaid, died intestate unmarried and issueless as will be seen in the  
Testamentary Proceedings No. 10898 of the District Court of Colombo, where  
the Estate of the said Granville Seneviratne was administered, leaving  
as his heirs his brother Irwin and Vincent and his sister Adeline and thus  
Irwin Seneviratne, Vincent Seneviratne and Adeline Seneviratne, became  
entitled each to one-third of one-third share thereof (as also confirmed by  
Order of Court made in D.C. Colombo, Case No. 3382/Land) subject to the  
restrictions in the said Last Will No. 125, together with a further one-thirty-  
sixth (1/36th) share subject to the restrictions contained in the said Last  
Will No. 125 and to the life interest of Eugene Seneviratne aforesaid.

40 AND WHEREAS Irwin Seneviratne thus became possessed of one-third  
share of the premises described in the said schedule hereto under the said  
Will No. 125 (subject to the restrictions and conditions in the said Last  
Will No. 125 contained) together with one-ninth share devolving on him  
on the death of Granville Seneviratne as aforesaid subject to the same  
restrictions as aforesaid together with a one-twelfth (1/12th) and one-thirty-  
sixth (1/36th) share thereof which devolved on him on the death of Edmund  
Seneviratne subject to the life interest of Eugene Seneviratne aforesaid and sub-  
ject to the same conditions and restrictions in the said Will No. 125 contained.

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AND WHEREAS Irwin Seneviratne while thus being entitled to and possessed of a four-ninth share of the said premises (described in the Schedule hereto) subject to the restrictions in the said Will No. 125, contained together with one-ninth share thereof subject to the life interest of the said Eugene Seneviratne and subject to the restrictions and conditions as aforesaid, died intestate on 6th day of January, 1953, leaving as his heirs his four sons the said Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne, and Ganegoda Appuhamilage Gamini Seneviratne and his widow the said Irene Seneviratne as would be seen in the Testamentary Proceedings No. 15337/T of the District Court of Colombo. 10

AND WHEREAS the said four sons, Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne and Ganegoda Appuhamilage Gamini Seneviratne of the deceased became entitled to an undivided four-ninth (4/9th) share of the said premises (described in the schedule hereto) absolutely subject however to the life interest of Irene Seneviratne in a half of four-ninth (1/2 of 4/9th) share of the said premises (described in the schedule hereto) and to a further one-ninth share of the premises, subject to the life interest of Eugene Seneviratne and to the restrictions contained in the said Will. 20

AND WHEREAS by an Indenture bearing No. 575/257, dated 30th July, 1957 and 1st August, 1957, and attested by T. Nadarajah of Colombo and D. C. Atapattu of Tangalla, Notaries Public, respectively entered into by and between the said Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne and Ganegoda Appuhamilage Gamini Seneviratne and Irene Seneviratne of the One part and Cinemas Limited (a Company duly incorporated under the Ceylon Companies Ordinance No. 51 of 1938 and having its Registered Office at No. 117, New Chetty Street, Colombo), of the Other part, it was covenanted and agreed *inter alia* that they the said Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne, Ganegoda Appuhamilage Gamini Seneviratne and Irene Seneviratne shall sell and convey unto the said Cinemas Limited undivided four-ninth (4/9th) shares of the said premises which they hold absolutely and a further undivided one-ninth (1/9th) share thereof which they hold subject to the life interest of Eugene Seneviratne and to the restrictions contained in the said Last Will at or for the price or sum of Rupees One hundred and eighty seven thousand five hundred (Rs. 187,500/-) free from all encumbrances save and except as aforesaid on or before the Twenty-second day of August, One thousand nine hundred and fifty-seven, and that the said Cinemas Limited may at its discretion have the said premises conveyed and transferred by two separate deeds — one for the transfer of the said four-ninth shares they hold absolutely and other one for the transfer of the one-ninth share they hold subject to the life interest of Eugene Seneviratne and to the restrictions contained in the said Last Will No. 125. 30 40

AND WHEREAS the said Cinemas Limited has called upon the said Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne, Gane- 50

goda Appuhamilage Gamini Seneviratne and Irene Seneviratne to execute in its favour two separate Deeds in respect of the four-ninth share and one-ninth share of the said premises respectively and they have agreed to do so.

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10 NOW KNOW YE AND THESE PRESENTS WITNESS that the said Ganegoda Appuhamilage Tissa Seneviratne, Ganegoda Appuhamilage Ananda Seneviratne, Ganegoda Appuhamilage Nalin Seneviratne, Ganegoda Appuhamilage Gamini Seneviratne and Irene Seneviratne (hereinafter sometimes called and referred to as the said Vendors) in pursuance of the aforesaid agreement and in consideration of the sum of Rupees Thirty seven thousand  
20 five hundred (Rs. 37,500/-) of lawful money of Ceylon, well and truly paid to them by the said Cinemas Limited (hereinafter sometimes called and referred to as the said Purchaser Company (the receipt whereof the Vendors do and each of them doth hereby admit and acknowledge) do and each of them doth hereby sell grant convey assign transfer set over and assure unto the said Cinemas Limited its successors and assigns, all that undivided one-ninth (1/9th) parts or shares of the property and premises together with the buildings known as "Tower Hall" fully described in the schedule hereto together with all easements, servitudes, rights, advantages and appurtenances whatsoever appertaining or reputed to appertain to the  
30 said premises or any part and portion thereof or occupied or enjoyed therewith or reputed or known as part and parcel thereof or appurtenant thereto and all the estate right, title, interest, property, claim and demand whatsoever of the said Vendors which they now have or hereafter become entitled to in any manner whatsoever in to out of or upon the same subject however to the life interest of Eugene Seneviratne and to the restrictions contained in the said Will No. 125.

80 TO HAVE AND TO HOLD the said undivided one-ninth (1/9th) part or share of the land and premises with the buildings known as "Tower Hall" fully described in the schedule hereto and all appurtenances thereto belonging sold and conveyed or granted or intended so to be unto the Purchaser Company its successors and assigns absolutely and for ever but subject however to the life interest of Eugene Seneviratne and to the restrictions contained in the said Will No. 125.

40 AND the said Vendors for themselves, their respective heirs, executors and administrators do hereby covenant and declare with and to the said Purchaser Company and its successors and assigns that the said premises are free from any encumbrances or charges whatsoever except as aforesaid and that the said Vendors and each of them shall and will at all times hereafter warrant and defend the title to the said premises and every part or portion thereof against any person or persons whomsoever and that they have good and legal right to sell and convey the same in manner aforesaid and that the said Vendors and each of them and their aforewritten shall and will hereafter at the request and cost of the said Purchaser Company or its successors and assigns do execute or cause to be done and executed all such further and other acts, deeds, assurances, matters and things whatsoever as shall or may be reasonably required for further and more perfectly assuring the said property and premises hereby sold under these presents and every part thereof unto the Purchaser Company and its aforewritten.

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IN WITNESS WHEREOF the said Vendors: (1) Ganegoda Appuhamilage Tissa Seneviratne, (2) Ganegoda Appuhamilage Ananda Seneviratne, (3) Ganegoda Appuhamilage Nalin Seneviratne, (4) Ganegoda Appuhamilage Gamini Seneviratne, and (5) Irene Seneviratne, do set their respective hands hereunto and to two others of the same tenor and date as these presents at Colombo, on this Sixteenth day of August, One thousand nine hundred and fifty-seven.

THE SCHEDULE ABOVE REFERRED TO :—

ALL that allotment of land and those the buildings and premises called "Tower Hall" formerly bearing assessment Nos. 40, 41, 42 and 42A presently bearing Assessment No. 93, situated at Panchikawatte Road, between Skinners Road South and Piachaud's Lane, within the Municipality of Colombo, in the District of Colombo, Western Province and bounded on the North by a Lane and the property of Zainudeen, on the East by premises bearing Assessment No. 43, the property of Zainudeen and Skinners Road South, on the South by premises No. 39, and property of Mr. Weerasinghe and West by Piachaud's Lane, containing in extent, one rood and twenty-eight perches (A 0 . R 1 . P 28) exclusive of the Lot A acquired by the Government.

(Sgd.) G. D. T. Seneviratne,  
G. A. A. Seneviratne,  
Illegible  
G. D. G. Seneviratne,  
Irene Seneviratne.

Witnesses : (Sgd.) *Illegibly*  
(Sgd.) C. J. Orloff.

(Sgd.) T. DEVARAJAN,  
*Notary Public.*

I, Tambeyayah Devarajan of Colombo, in the Island of Ceylon, Notary Public do hereby certify and attest that the foregoing Instrument having been read over by the within named executants: (1) Ganegoda Appuhamilage Tissa Seneviratne, (2) Ganegoda Appuhamilage Ananda Seneviratne, (3) Ganegoda Appuhamilage Nalin Seneviratne, (4) Ganegoda Appuhamilage Gamini Seneviratne and (5) Irene Seneviratne, who have respectively signed as "G. D. T. Seneviratne," "G. A. A. Seneviratne," "Illegibly," "G. D. G. Seneviratne," and "Irene Seneviratne" who are all known to me in the presence of John Samuel Paranavitana, Proctor S.C. of Messrs. De Silva & Mendis, Proctors, Colombo, and Charles Orloff. Proctor S.C. of Messrs. Abrahams, Proctors, Colombo, who have respectively signed "Illegibly" and "C. J. Orloff," the subscribing witnesses thereto, all of whom are known to me the same was signed by the said executants by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo, on this Sixteenth day of August, One thousand nine hundred and fifty-seven.

I further certify and attest that before the foregoing Instrument was read over as aforesaid that in the Original in page 1, lines 7 and 23, and page 2, line 2 "W" in the words "IRWIN" was typed over erasure, and in page 2, line 36, page 7, line 19 "To impose" and "sene" were deleted and in the duplicate, in page 1, lines 7 and 23, page 2, line 2 and

page 3, line 13, page 5, line 16, page 7, line 27 " Irwin," " Irwin," " parent," " Florence " and " EIGHTY " were typed over erasures and in page 7, line 10, page 8, line 16 " Ganegoda Appuhamilage " and " RUPEES " were interpolated, and in page 2, line 36, page 7, line 27 and in page 10, line 1 " to impose," " AN " and " wit " were deleted and in pages 1, 5 and 9 in the Number of the Deed " 6 " of " 466 " was written over ink, and that the consideration herein mentioned was paid in my presence by Cheque No. D/O 22625, dated 15th August, 1957 and drawn on the Bank of Ceylon Foreign Department, Colombo, by Cinemas Limited in favour of Irene Seneviratne the 5th named Vendor and that the duplicate of this Instrument bears 7 impressed stamps to the value of Rs. 599/- and the original an impressed stamp of Re. 1/-.

P 28  
Deed No. 466  
16-8-1957  
Continued

Date of Attestation : 16th August, 1957.

S E A L

(Sgd.) T. DEVARAJAN,  
Notary Public.

P 20  
Deed No. 470

P 20  
Deed No. 470  
25-9-1957

Prior Registration : A 350/142.

Registered : A 378/230.  
Colombo, 30th September, 1957.

(Sgd.) M. S. FERNANDO,  
Registrar.

No. 470

TO ALL TO WHOM THESE PRESENTS SHALL COME, Phoebe Lilian Rodrigo with the consent and concurrence of her husband, Edmund Rodrigo testified by his being a party to and signing these presents both of No. 4, Flower Terrace, Colombo (hereinafter sometimes called and referred to as the Vendor).

SENDS GREETING :—

WHEREAS under and by virtue of Deed bearing No. 5493, dated the 27th day of September, 1907 and attested by F. C. Loos of Colombo, Notary Public, Ganegoda Appuhamilage Don Hendrick Seneviratne of Heiyantuduwa Gonawala was seized and possessed of or otherwise well and sufficiently entitled to the property and premises together with the building known as " Tower Hall " and fully described in the schedule hereto.

AND WHEREAS the Ganegoda Appuhamilage Don Hendrick Seneviratne whilst being so seised and possessed of the said property and premises fully described in the schedule hereto made and executed his Last Will bearing No. 125, dated 7th April, 1929, attested by P. C. Seneviratne of Colombo, Notary Public, whereby he devised and bequeathed the said property and premises *inter alia* to his children Irwin Seneviratne, Granville Seneviratne and Edmund Seneviratne, subject to the restrictions and conditions as follows :—

P 20  
Deed No. 470  
25-9-1957  
Continued

" I hereby will and direct that my six children, Adeline, Granville, Irwin, Edmund, Florence and Vincent, shall have and hold all the immovable properties and the shares in the immovable properties hereby specifically bequeathed to them and the shares in the immovable properties bequeathed to them under the residuary clause hereof and which they or any of them may inherit in and other manner under this my Will subject expressly to the conditions and restrictions following that is to say :

(a) That no child of mine shall mortgage, sell or otherwise alienate or encumber save as hereinafter provided any one or more of the immovable properties or any part or portion thereof or any share in such immovable properties but such child shall only be entitled to take, receive and enjoy the rents and profits and income thereof during his or her life time. Any such mortgage or such alienation shall be absolutely null and void but this restriction shall not prevent such child of mine from leasing to any person or persons any of the said immovable properties for a period not exceeding two years at a time and I hereby direct that a lease executed by a majority of my said children of any immovable properties held by them in common shall be good and valid and shall be binding on any of the children who shall refuse or neglect to execute the same when requested thereto by the majority of them without prejudice however to the right of dissenting minority to their respective shares of the rent reserved by such lease. Provided however that any lease executed during the continuation of an existing lease shall be absolutely null and void. 10 20

(b) On the death of any child of mine the immovable properties and all properties and all share therein devised to him or her hereunder shall devolve on his or her issue or any one or more of them as such child by Last Will appoint and subject to such conditions as such child shall deem fit and proper or without any condition or restriction whatsoever and in the event of any child of mine dying intestate without such appointment aforesaid then the same shall devolve absolutely on his or their issue equally between them or more than one subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided. 30

(c) In the event of the death of any child of mine without leaving issue living at the time of his or her death such immovable properties and shares therein devised to him or hereunder shall devolve equally on any of my other children and the issue of any other deceased children of mine such issue taking by substitution per stirpes and equally between them if more than one, the share which his or her or their parent would have taken had such parent been alive at the time of the death of any such child of mine. Provided however that any child of mine dying without issue shall have the right to give and grant any such immovable properties and shares therein or any of them by Last Will only to any one or more of my other children upon the same conditions and restrictions as are herein contained or any one or more of the issue of any deceased child of mine upon such conditions and restrictions as her or she shall deem fit and proper without any condition or restriction whatsoever but subject expressly to the rights of the surviving spouse of such deceased child of mine as hereinafter provided. 40

(d) If any child of mine shall die leaving his or her surviving his or her spouse and his or her issue then such surviving spouse shall be entitled 50

to a just one-half of the nett income of the said immovable properties and shares therein devised to such deceased child hereunder but if any child of mine shall die leaving him or her surviving his or her spouse only and no issue then the surviving spouse shall be entitled during his or her life time to the whole of the nett income of the immovable properties and shares therein devised to such deceased child subject however to the condition that the surviving spouse shall forfeit his or her right to the just one-half share of the nett income or to the whole of the nett income as the case may be on such surviving spouse contract a subsequent marriage.

10 (e) I declare that if any child of mine or any person claiming through him or her shall at any time dispute the validity of this my Last Will or any of the dispositions herein or in any Codicil hereto contained then all such dispositions herein or in any Codicil hereto contained in favour of such child of mine shall cease and be void to alienate and purposes, whatsoever and be hereby revoked and as to all the immovable and movable property and shares therein so forfeited as aforesaid, I give and devise the same in equal shares unto my other children and the issues of any deceased child of mine as the case may be such immovable and the shares therein to be held by my said other children in the same manner and subject to the same conditions and restrictions hereinbefore declared and provided as if the same had been devised to them hereunder in the first instance.”

20

AND WHEREAS the said Ganegoda Appuhamilage Don Hendrick Seneviratne died at Colombo, on or about the 12th December, 1929, without having revoked or in any way altered his said Last Will and Testament No. 125.

AND WHEREAS the said Last Will No. 125, duly proved in Testamentary Proceedings No. 4914 of the District Court of Colombo and Letters of Administration with the Will annexed were granted to Edmund Seneviratne, one of the sons, as the Executor named in the said Last Will declined to act.

30

AND WHEREAS the said Edmund Seneviratne, one of the devisees died in the year 1944, intestate and without issue but leaving a widow as will be seen in the Affidavit filed in the Testamentary Proceedings No. 10898 of the District Court of Colombo.

AND WHEREAS the one-third share in the premises described in the schedule hereto, belonging to the said Edmund Seneviratne according to the conditions of the said Will No. 125, devolved on his surviving brothers and sister the said Vincent, Granville, Irwin and Adeline, the other sister Florence having died earlier unmarried and intestate on or about the 23rd November, 1931, as will be seen in the Testamentary Proceedings No. 6066 of the District Court of Colombo, thus the said Vincent, Granville, Irwin and Adeline, became each entitled to one-twelfth of the said premises described in the schedule hereto subject to the life interest of Eugene Seneviratne, the widow of Edmund Seneviratne, deceased.

40

AND WHEREAS the said Granville Seneviratne, being possessed of one-third share of the premises described in the schedule hereto under the said Last Will No. 125 and also of an undivided one-twelfth share thereof, which devolved on him on the death of his brother Edmund Seneviratne as

P 20  
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aforesaid, died intestate unmarried and issueless as will be seen in the Testamentary Proceedings No. 10898 of the District Court of Colombo, where the Estate of the said Granville Seneviratne was administered, leaving as his heirs, his brother Irwin and Vincent and his sister Adeline and thus Irwin Seneviratne, Vincent Seneviratne and Adeline Seneviratne, became entitled each to one-third of one-third share thereof (as also confirmed by Order of Court made in D.C. Colombo, Case No. 3382/Land) subject to the restrictions in the said Will No. 125, together with a further one-thirty-sixth (1/36th) share subject to the restrictions contained in the Last Will No. 125 and to the life interest of Eugene Seneviratne aforesaid. 10

AND WHEREAS Adeline Seneviratne thus being possessed of one-twelfth (1/12th) share of the said premises hereto subject to life interest of the said Eugene Seneviratne (the said share devolving on her on the death of Edmund Seneviratne) together with further one-ninth (1/9th) share of the said premises subject to the restriction in the said Will No. 125, together with a further one-thirty-sixth (1/36th) share of the said premises subject to the restriction in the Will and subject to the life interest of Eugene Seneviratne (the said one-ninth (1/9th) share and one-thirty-sixth (1/36th) share devolving on her by the death of her brother Granville Seneviratne) died intestate as will be seen in the Testamentary Proceedings No. 10898, in the District Court of Colombo, leaving as her heirs, Phoebe Lilian Rodrigo (the said Vendor) and Gwendiline Dora Jayakody each of whom became entitled to one-eighteenth (1/18th) of the said premises subject to the life interest of Eugene Seneviratne and to a further one-eighteenth (1/18th) of the share, free from the restriction of the Will No. 125, as grand children of the said Ganegoda Appuhamilage Don Hendrick Seneviratne. 20

AND WHEREAS the said Vendor had already sold one-eighteenth (1/18th) of the premises, she became entitled to absolutely free from restrictions of the said Will No. 125, under Deed No. 4459, dated 17th December, 1952 and attested by C. Sevapragasam of Colombo, Notary Public. 30

AND WHEREAS the said Vendor had agreed with Cinemas Limited, a Company duly incorporated under the Ceylon Companies Ordinance No. 51 of 1938 and having its Registered Office at No. 117, New Chetty Street, Colombo (hereinafter sometimes called and referred to as the said Purchaser Company) for the absolute sale and assignment unto the said Purchaser Company of an undivided one-eighteenth (1/18th) part or share of the land and premises together with the buildings known as "Tower Hall" fully described in the schedule hereto free from encumbrances or charge whatsoever but subject however to the life interest of Eugene Seneviratne at or for the price or sum of Rupees Twelve thousand five hundred (Rs. 12,500/-) lawful money of Ceylon. 40

NOW KNOW YE AND THESE PRESENTS WITNESS that the said Vendor in consideration of the said sum of Rupees Twelve thousand five hundred (Rs. 12,500/-) well and truly paid by the said Purchaser Company (the receipt whereof the said Vendor doth hereby admit and acknowledge) doth hereby grant, convey, assign, transfer, set over and assure unto the said Purchaser Company its successors and assigns all that undivided one-eighteenth (1/18th) part or share of the property and premises together 50



with the buildings known as "Tower Hall" and fully described in the schedule hereto together with all easements, rights and advantages whatsoever appertaining or reputed to appertain to the said property and premises or any part thereof or occupied or enjoyed therewith or reputed or known as part or parcel of or appurtenant to the same or any part or portion thereof and all the estate right, title, interest, property, claim and demand whatsoever of the said Vendor in to upon or out of the same.

10 TO HAVE AND TO HOLD the said undivided one-eighteenth (1/18th) part or share of the property and premises together with the buildings known as "Tower Hall" fully described in the schedule hereto hereby sold and granted or intended so to be unto the said Purchaser Company its successors and assigns absolutely and for ever but subject however to the life interest of Eugene Seneviratne.

20 AND the said Vendor for herself, her heirs, executors and administrators doth hereby covenant and declare with and to the said Purchaser Company and its successors and assigns that the said premises are free from any encumbrances or charge whatsoever except as aforesaid and that the said Vendor shall and will at all times hereafter warrant and defend the title to the said premises and every part or portion thereof against any person or persons whomsoever and that she has good and legal right to sell and convey the same in manner aforesaid and that the said Vendor and her aforewritten shall and will hereafter at the request and cost of the said Purchaser Company or its successors and assigns do execute or cause to be done and executed all such further and other acts, deeds, assurances, matters and things whatsoever as shall or may be reasonably required for further and more perfectly assuring the said property and premises hereby sold under these presents and every part thereof unto the Purchaser Company and its aforewritten.

30 IN WITNESS WHEREOF the said Phoebe Lilian Rodrigo do hereunto and to two others of the same tenor and date as these presents set their respective hands at Colombo, on this Twenty-fifth day of September, One thousand nine hundred and fifty-seven.

**THE SCHEDULE ABOVE REFERRED TO :**

40 ALL that allotment of land and those the buildings and premises called "Tower Hall" formerly bearing Assessment Nos. 40, 41, 42 and 42A, presently bearing Assessment No. 93, situated at Panchikawatte Road, between Skinners Road South and Piachauds Lane, within the Municipality of Colombo in the District of Colombo, Western Province, and bounded on the North by a Lane and the property of Zainudeen, on the East by premises bearing assessment No. 43, the property of Zainudeen and Skinners Road South, on the South by premises No. 39 and property of Mr. Weerasinghe and West by Piachauds Lane, containing in extent one rood and twenty-eight perches ( A 0. R 1. P 28 ) exclusive of the Lot A acquired by the Government.

(Sgd.) P. Rodrigo (Mrs. E.)  
E. Rodrigo.

Witnesses : W. Weerasuriya,  
E. G. Punchi Singho.

(Sgd.) T. DEVARAJAN,  
Notary Public.

*Continued*

I, Tambeyayah Devarajan of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing Instrument having been read over by the within-named executants, Phoebe Lilian Rodrigo and Edmund Rodrigo, who have respectively signed as "P. Rodrigo (Mrs. E.)" and "E. Rodrigo" both of whom are known to me in the presence of Wester Weerasuriya of 225, Magalle, Galle and Egodapitiyagedera Punchi Singho of No. 4, Flower Terrace, Colombo, both of whom are also known to me who have respectively signed as "W. Weerasuriya" and "E. G. Punchi Singho" the subscribing witnesses thereto the same was signed by the said executant by the said witnesses and by me the said Notary in my presence and in the presence of one another, all being present together at the same time at Colombo, on this Twenty-fifth day of September, One thousand nine hundred and fifty-seven. 10

I further certify and attest that before the foregoing instrument was read over as aforesaid that in the Original in page 4, lines 20 and 26, and in page 7, line 3, "1944", "according" and "appurtenant" were respectively typed over erasure and in the Duplicate in page 4, line 24, "1944" was typed over erasure and in page 7, in line 30, the words "all sec" and the entire line 31 were deleted and that the consideration mentioned herein was paid as follows:— 20

By Cheque No. V 142649, dated 16-8-57, drawn on the Mercantile Bank of India Ltd., in favour of Mr. Edmund Rodrigo	... ..	1,250.00
By Cheque No. V 169825, dated 23-9-57, drawn on the Mercantile Bank of India Ltd., in favour of Mr. Edmund Rodrigo	... ..	11,250.00
		<hr/>
		12,500.00

and that the Duplicate of this Instrument bears seven stamps to the value of Rs. 199/- and the Original, a stamp to the value of Re. 1/-. 30

S E A L

(Sgd.) T. DEVARAJAN,  
*Notary Public.*

Date of Attestation : 25th September, 1957.