

## O N A P P E A L

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :THE SINHALESE FILM INDUSTRIAL CORPORATION  
LIMITED(Plaintiff-Respondent) Appellant

- and -

- 10 1. HERATHMUDIYANSELAGE CHANDRAWATHIE  
MADANAYAKE, also called and known as  
HERATH MUDIYANSELAGE CHANDRAWATHIE  
in her personal capacity as well as  
the Administratrix of the intestate  
estate of Mudaliyar Jayasena Madanayake  
also called and known as Madanayake  
Jayasena
2. SIRINATHA KUMARADASA MADANAYAKE
3. DHARMAWANSA SIRIPALA MADANAYAKE
- 20 4. IRANGANI HEMAMALI WIJewardena  
(nee Madanayake)
5. UPALI GOTABHAYA MADANAYAKE and
6. MALINI SOMAKUMARI KOTAGAMA  
(nee Madanayake)  
(Defendants-Appellants) Respondents

C A S E F O R T H E R E S P O N D E N T S

- 30 1. This is an Appeal from the Judgment and  
Decree of the Supreme Court of Ceylon, dated the  
10th May, 1969, allowing an appeal from the  
Judgment and Decree of the District Court of  
Colombo, dated the 25th August 1965, whereby, in  
an action instituted by the Appellant (herein-  
after also referred to as "the Plaintiff-Company")

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against the Respondents (hereinafter also referred to as "the Defendants") praying for (1) specific performance of a Notarially executed Agreement of sale, dated the 2nd March, 1959, (2) in the alternative, a sum of Rs.400,000/- as compensation for improvements and (3) costs, it was held that judgment should be entered for the Plaintiff-Company declaring, inter alia, that the Plaintiff-Company should be entitled to specific performance of the agreement to sell and further that the Plaintiff-Company be entitled to a permanent injunction restraining the Defendants from interfering with possession of the land in question with costs.

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In allowing the appeal the Supreme Court directed that the Plaintiff-Company's action should be dismissed with costs in both Courts and further directed that the case should be remitted back to the District Court of Colombo for the purpose of assessing compensation in respect of certain improvements effected by the Plaintiff-Company on the land in question.

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2. The Plaintiff-Company instituted this action in the District Court of Colombo against the Defendants who are the administratrix and heirs of the late Mudaliyar Madanayake, inter alia, praying (1) for specific performance of an agreement to sell and convey the land described in the Plaint (2) for a permanent injunction restraining the Defendants from interfering with the Plaintiff-Company's possession of the said land (3) in the alternative, for a sum of Rs.400,000/- by way of compensation for certain improvements claimed to have been effected on the said land and for a right of retention of the land until compensation was paid to the Plaintiff-Company by the Defendants.

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3. The Plaintiff-Company was formed in 1957, its principal object being to carry on the business of manufacturers, producers, dealers, exhibitors and distributors of cinematographic, talkie and television films and pictures. The late Mudaliyar Madanayake was one of the founder

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members and directors of the Plaintiff-Company and later became its Managing Director. The Chairman of the Plaintiff-Company then was Mr. D.L. Gunasekera who was a senior partner of the firm practising under the name of "Gunasekera & Perera". The Memorandum and Articles of Association are Exhibits D 13 and D 14 respectively.

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10 4. At a meeting of the Directors of the Plaintiff-Company held on the 27th February 1959, the following resolution was passed:-

20 "Resolved to enter into an Agreement with Mudaliyar J. Madanayake to purchase the proposed Studio site at Dalugama, Kelaniya comprised of all those allotments of land as depicted in the Plan No. 496 of January 1956 and in the Plan No. 506 of 26.3.56 by S.H. Fernando, Esquire, Licensed Surveyor for the sum of Rupees Forty Thousand (Rs.40,000/-) according to the terms and conditions of the Agreement and Mudaliyar J. Madanayake further agreed to invest 4,000 Ordinary shares of the Corporation after signing of the Transfer and further it was resolved to effect the signing of the Agreement on 2.3.59 and hand over possession of the said entire site on the same day to the Chairman Mr. D.L. Gunasekera".

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This resolution has been produced as Exhibit D 4.

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30 5. In accordance with the resolution Exhibit D 4, the Agreement No. 342, Exhibit P1, was signed on 2nd March, 1959, by the late Mudaliyar Madanayake as Vendor and by the Plaintiff-Company as the Purchaser by which the parties, inter alia, agreed as follows.

" (1) The Vendor shall sell and the Purchaser Company shall purchase the said property and premises within a period of eighteen (18) months from the date hereof.

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40 (2) The consideration for the said sale shall be the sum of Rupees Forty Thousand (Rs.40,000/-) of lawful money of Ceylon.

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- (3) The vendor undertakes to perfect the title of the said property and premises before the expiration of the said period at the cost and expense of the Vendor and the Purchaser-Company accepts the title of the Vendor when perfected as agreed upon between the Vendor and the Purchaser-Company.
- (4) The Purchase shall be completed by the Purchaser-Company on or before the expiration of the said period of 18 months by tendering to the Vendor for completion a deed of conveyance of the said premises in favour of the Purchaser-Company and paying to the Vendor the said purchase price of Rupees Forty Thousand (Rs.40,000/-). 10
- (5) The Purchaser-Company shall be in possession of the said property and premises from the date hereof. 20
- (6) The Purchaser-Company can put up any buildings of any kind permanent or temporary for the purpose of the Purchaser-Company.
- (7) The Purchaser-Company shall pay to the Vendor at the execution of these premises a sum of Rupees Fifteen Thousand (Rs.15,000/-) as part payment of the consideration mentioned herein. 30
- (8) In the event of the Purchaser-Company failing refusing or neglecting to purchase the said property and premises when the title has been duly perfected by the Vendor as agreed upon the Vendor shall be entitled to forfeit the said sum of Rupees Fifteen Thousand (Rs.15,000/-) as and by way of liquidated damages and not by way of penalty. 40

(9) The Purchaser-Company shall bear and pay all expenses stamp duties and other costs of and incidental to the preparation execution and registration of the Transfer in its favour and the expenses stamp duty and other costs of and incidental to the preparation execution and registration of these Presents shall be borne by the parties hereto in equal shares. "

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6. In part payment of the consideration on the said Agreement, a sum of Rs.15,000/- had been paid by the Plaintiff-Company to the late Mudaliyar Madanayake leaving a balance of Rs.25,000/- to be paid at the stage when the conveyance was to be finally executed. Possession of the land was given to the Plaintiff-Company and it commenced building operations on the land almost immediately.

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7. Under paragraph (3) of the Agreement (Pl) of the 2nd March, 1959, the late Mudaliyar Madanayake undertook to perfect the title of the property and the explanation revealed in the evidence for this undertaking was that the title held by the Vendor was what was commonly called "village title" which depended upon the conveyance of undivided interests in several small lands by many small holders, and that it was accordingly necessary to institute several partition actions with a view to obtaining partition decrees which would then confer clear title on the Vendor.

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A series of partition actions were instituted, the foundation for them having been laid by the device that on the 23rd March, 1959, the late Mudaliyar Madanayake transferred a one-eighth share of his interests to one Herat. By the employment of this device the Vendor was able to institute partition actions with Herat as the 1st Defendant, and against the Plaintiff-Company's Agreement, Pl. The plaintiffs in all these partition actions were filed by the firm of Gunasekera and Perera as Proctors for the late Mudaliyar Madanayake who was the Plaintiff in every one of the partition actions. The plaintiffs

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in these actions are Exhibits P 3 to P 9 respectively.

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8. The financial position of the Plaintiff-Company had begun to deteriorate considerably during this period. The Plaintiff-Company's balance sheet for the year ended 31st March 1960, Exhibit P 36, showed that by that date the Plaintiff-Company had expended over Rs.36,000/- in the erection of buildings on the land, and had purchased machinery and equipment at a cost of over Rs.220,000/-. The Plaintiff-Company's total capital expenditure and preliminary expenses was in excess of the amount realised at that stage by the issue of shares.

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The minutes of the Directors' meeting held on the 10th August 1963, of the Plaintiff-Company, Exhibit D 36, show that it was resolved to accept, for the purpose of the Plaintiff-Company's business, a loan from the late Mudaliyar Madanayake of about Rs.10,000/- and smaller loans from other Directors. The Minutes of the meetings of the 9th September, 1960 and of the 7th October, 1960, Exhibits D 37, and D 38, respectively, show that further loans were obtained from the same three Directors.

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9. The Board of Directors of the Plaintiff-Company held a meeting on the 9th November, 1960, the Minutes of which are Exhibit P 10, and which contained a paragraph, set out below, the meaning and construction of which is of the utmost importance for the purpose of this case. The paragraph from the Minutes, Exhibit P 10, is as follows:-

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"The question of settling the Studio site at Dalugama was taken up and after a lengthy discussion the Board decided to switch on to a long lease of 50 years (fifty years) instead of Purchasing outright, because the Board finds it not possible to pay the purchase price the balance being Rs.25,000/- at this juncture owing to the non-availability of Company's fund. The Board further

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10 decided that a long lease of 50 years as good as proprietary holding and placed the entire matter of drawing up the necessary legal documents in the hands of the Chairman Mr. D.L. Gunasekera. Mudaliyar J. Madanayake also agreed that he will co-operate to the utmost by providing ample scope and facilities embodied in the Notarial document or documents for the lease of the property of ten acres at Dalugama on which the Kalyani Studio is being built now. "

The Chairman of the Plaintiff-Company at the meeting held on the 9th November 1960, was Mr. D.L. Gunasekera who was present and presided at this meeting. Also present at the meeting and participating in the discussions that lead to the decisions and agreement recorded in Exhibit P 10, and reproduced above, was Mudaliyar Madanayake, the Vendor himself.

20 10. Nine days after the meeting referred to in Exhibit P 10 in consequence of the decision and agreement arrived at on the 9th November 1960, referred to above, Messrs. Gunasekera & Perera, the Proctors for the Vendor, filed motions on the 18th November, 1960, to withdraw the partition actions in consequence of which motions the several partition actions were dismissed on the 18th November, 1960, on the 14th December, 1960 and on the 18th December, 1960. The Journal entries in these partition actions are Exhibits D 5 to D 11 respectively.

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40 11. The annual Balance Sheet of the Plaintiff-Company as at 31st March 1960, Exhibit P 36, shows that after the Agreement (P1) of 2nd March 1959, the Studio site was reflected in the Balance Sheet, Exhibit P 36, at cost as a fixed asset of the value of Rs.40,000/- being the consideration in terms of the Agreement, Exhibit P 1. The Balance sum of Rs. 25,000/- payable to Mudaliyar Madanayake was shown in the Balance Sheet Exhibit P 36, as due to Mudaliyar Madanayake as a creditor of the Plaintiff-Company.

After the decisions arrived at on the 9th

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- p. 345 November 1960, the Balance Sheet of the Plaintiff-Company for the next financial year ending on 31st March, 1961, as approved by the shareholders at their Annual General Meeting, Exhibit P 37, shows that the Studio site has been deleted from the fixed assets in the Balance Sheet P 37, as also the debt due on the Agreement P 1, to Mudaliyar Madanayake in a sum of Rs.25,000/- on Exhibit P 1. Instead, the advance on the Studio site paid to Mudaliyar Madanayake, namely, Rs.15,000/- is shown as a current asset. These entries are repeated in the Balance Sheet for the year ending on 31st March, 1962 Exhibit P 38. The amounts shown in Exhibits P 37 and P 38 as due to Mudaliyar Madanayake on loan accounts are independent loan transactions. These entries in the Balance Sheets, Exhibits P 37 and P 38, as confirmed by the shareholders, clearly show that the Plaintiff-Company and its shareholders confirmed the actions of the Directors on the 9th November, 1960, and regarded the Agreement Exhibit P 1, and the rights that the Plaintiff-Company was entitled under that Agreement as no longer in existence after the 9th November, 1960. 10
- p. 370
12. Meanwhile the financial situation of the Plaintiff-Company was becoming more acute and irretrievable. The Directors of the Plaintiff-Company held a meeting on the 28th November, 1960, the Minutes of which are Exhibit D 40, and which show that the Board of Directors on that day sanctioned a payment of Rs.105/- as legal fees to Messrs. Gunasekere & Perera. Paragraph 7 of Exhibit D 40 records a resolution to raise a loan to pay off advances received from the following Directors:- 20
- |                      |      |              |
|----------------------|------|--------------|
| Mr. D.L. Gunasekere  | .... | Rs. 11,750/- |
| Mr. T. Liyanage      | .... | Rs. 19,000/- |
| Mudaliyar Madanayake | .... | Rs. 30,949/- |
- p. 334
- However the subsequent Balance Sheets, Exhibits P 36, P 37 and P 38, clearly show that these advances were not repaid and were still outstanding when the present action was commenced. 40



13. The Minutes of the Directors' meeting of the 24th February 1961, Exhibit P 11, reads thus :-

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- "1. At this meeting the Board considered the present position of the Corporation and decided to recommend to the shareholders to wind up the Corporation, then Mr. Gilbert Hewavitarane the Manager of the Corporation requested the Board to grant him time to bring more shareholders with sufficient capital to carry out the balance work of the Corporation and this request was considered by the Board and the Manager was granted time till end of 31st July 1961 to make a report of his attempt and call a meeting after that.
2. After this discussion the meeting was adjourned till 4th July 1961 at 5 p.m."

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At the adjourned meeting of Directors held on 4th July 1961, the Minutes of which are Exhibit P 11A, it was decided that in view of the financial position of the Plaintiff-Company, its Manager, Mr. Gilbert Hewavitarne, should cease to function, and that from the 1st August, 1961, Mudaliyar Madanayake would be Managing Director in an honorary capacity, and the former Manager was requested to hand over all the books and assets of the Plaintiff-Company to the new Managing Director.

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This meeting was adjourned for the 12th July, 1961, the Minutes of this subsequent meeting, being Exhibit P 11B, which show that it was resolved to request the Colombo Agencies Limited to store the water cooling plant in the stores of the Agencies upon Mudaliyar Madanayake's personal guarantee to pay for and take over the plant within a year. The Minutes of the meeting of the Directors held on 20th June 1961, Exhibit P 13, show that it was resolved to call for tenders for the water cooling plant. The Plaintiff-Company's principal witness at the trial has admitted that the water cooling plant, which

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- p. 69 had been purchased for a sum of Rs.56,000/- had in fact been sold, and that the machinery which had been installed was as late as the 25th February 1965 (during the pendency of the trial in this case) "unused" and "untouched". This showed that the project had been abandoned and with it the proposed purchase of the property.
- p. 119 14. The Minutes of the meeting of Directors held on 18th August 1961, Exhibit P 12, indicate that the Studio site and keys were handed over to Mudaliyar Madanayake on that date and from the 18th August Mudaliyar Madanayake enjoyed and took the produce of the property as its owner. 10
15. Mudaliyar Madanayake died in March 1963 up to which time the Plaintiff-Company had neither commenced any business nor had made any further mention of the proposed purchase of the land nor had it taken any steps to complete the purchase on the said Agreement, Exhibit P 1. Mudaliyar Madanayake left as his heirs his wife, the 1st Defendant, and his children who are the 2nd to 6th Defendants. 20
- p. 372 16. Shortly after the death of Mudaliyar Madanayake, steps were taken to activate what was a dormant Company, and on the 11th July, 1963, at a meeting of the Directors of the Plaintiff-Company, Exhibit P 15, Mr. Gilbert Hewavitarne, the principal witness for the Plaintiff-Company in this case who had ceased to have anything to do with the Plaintiff-Company from the 31st July, 1961 because the Board had resolved to wind up the Plaintiff-Company, was elected Secretary Pro-tem and a Director of the Plaintiff-Company to fill the vacancy created by the death of Mudaliyar Madanayake. 30
- pp. 64 and 70
- pp. 109 and 110 Subsequent events indicate that this was part of a plan by which Mr. Dharmadasa Wijemanne, head of a firm called "House & Property Trades", which blocked up lands and auctioned them for building purposes was to get substantial control of the Plaintiff-Company with a view to acquiring the property in pursuance of the Agreement, Exhibit P 1, at the low figure which 40

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Mudaliyar Madanayake had agreed to sell it, whereas the value of the land had by then appreciated by more than one hundred per cent. The Minutes of the meetings held on 24th December, 1963, and the 28th January, 1964, Exhibits P16 and P 17 respectively, show how Mrs. Sirima Wijemanne, wife of Mr. Dharmadasa Wijemanne, acquired substantial shares in the Plaintiff-Company and also show that Mr. Dharmadasa Wijemanne was appointed Managing Director of the Plaintiff-Company, entrusted with the keys and books of the Plaintiff-Company, and authorised, inter alia, "to proceed with the land matter pertaining to the "Kalyani Studio land property."

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17. On 27th January, 1964, Messrs. Dharmadasa Wijemanne & Company, a firm of Proctors of which Mr. Dharmadasa Wijemanne is himself the senior partner, purporting to act for the Plaintiff-Company, wrote the letter Exhibit P 18 to Mrs. Madanayake, the 1st Defendant, referring to the Agreement Exhibit P 1 and offered to pay the balance consideration of Rs.25,000/- referred to in the Agreement and demanded a conveyance of the land.

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After subsequent correspondence between the parties, the Plaintiff-Company through their Proctors, Messrs. Dharmadasa Wijemanne & Co. filed the present action against the Defendants claiming specific performance of the Agreement, Exhibit P 1, and claiming in the alternative a sum of Rs.400,000/- as compensation for improvements.

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The Plaint, dated 22nd May 1964, is at page 15 of the Record.

The Answer of the Defendants, dated 16th September 1964, is at page 40 of the Record.

18. Issues framed in the action were answered thus by the learned District Judge :-

1. Did Mudaliyar Jayasena Madanayake now deceased hereinafter referred to as the Vendor, by deed of Agreement No. 342, dated 2nd March 1959 and

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attested by H.C. Perera, Notary Public agree to sell and convey to the Plaintiff-Company the property and premises more fully described in the Schedule to the plaint on the terms and conditions set out in the said deed at the price of Rs.40,000/-?

Yes.

2. Was a sum of Rs.15,000/- out of the purchase price duly paid to the Vendor in pursuance of the said Agreement leaving a balance of Rs.25,000/- payable at the execution of the conveyance in favour of the Plaintiff-Company? 10

Yes.

3. Did the Vendor undertake to perfect the title of the said property and premises before the period of 18 months for the completion of the purchase? 20

Yes.

4. Was it agreed between the parties to the agreement at the time of execution that in order to perfect the title to the said land and premises that a decree under the provisions of the Partition Act No. 16 of 1951 be obtained and that the Vendor should take all necessary steps thereto? 30

Yes.

5. Did the Plaintiff-Company in pursuance of the provisions of the said agreement and, with the full knowledge, acquiescence and approval of the Vendor

(a) duly enter into possession of the said property and premises?

Yes.

(b) at its own cost and expense erect permanent buildings thereon and equip the same for the purpose of his business as contemplated by the parties to the agreement?

Yes.

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6. What is the present value of the said buildings and equipment? As in the Balance Sheet P 38, Rs.379,162/29.

7. Did the Vendor die on or about 13th March 1963 without having perfected the title of the said land and premises as agreed?

Yes.

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8. Did the Defendants as heirs of the Vendor become entitled to the said land and premises subject to the said Agreement No. 342 ?

Yes.

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9. Did the Plaintiff-Company thereafter express its readiness and willingness to pay to the Defendants the balance purchase price of Rs.25,000/- and call upon the Defendants to execute a valid conveyance of the said property and premises in favour of the Plaintiff-Company ?

Yes.

10. The Defendants having refused to comply with the said request, is the Plaintiff-Company entitled to compel the Defendants to a specific performance of the said Agreement No.342 and to execute a valid conveyance in favour of the balance sum of Rs.25,000/-?

Yes.

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11. Were the aforesaid buildings and other improvements effected by the Plaintiff-Company during the life-time of the said Mudaliyar Madanayake in pursuance of an agreement between him and the Plaintiff-Company, that the Plaintiff-Company would be entitled to the use and enjoyment of the said property and premises with the buildings thereon for the purpose of its business ? 10

Yes.

12. If Issue 11 is answered in the affirmative, and in the event of the Plaintiff-Company not being entitled to a decree for specific performance, is it entitled to recover from the Defendants;
- (a) Compensation for the said improvement ? 20
- (b) Damages for breach of the said agreement referred to in Issue No. 11 ?

Does not arise in view of the answer to Issue 10.

13. What is the amount of such
- (a) compensation ?
- (b) damages ?

Does not arise

14. If Issue No. 12 is answered in the affirmative, is the Plaintiff-Company entitled to a Jus Retentionis ? 30

Does not arise.

15. If Issues No. 10 or Issue No. 12 and Issue No. 14 are answered in favour

of the Plaintiff is the Plaintiff entitled inter alia to the reliefs claimed for in prayer (c) to the Plaintiff ?

10 In view of the answer to Issue 10 to the effect that the Plaintiff-Company is entitled to compel the Defendants to specific performance of the Agreement No. 342 the Plaintiff-Company will be entitled to the reliefs mentioned in parts (a) and (c) and (d).

16. Even if Issues Nos. 9 and 10 are answered in the affirmative, do the facts stated therein entitle the Plaintiff-Company to maintain this action claiming the reliefs claimed therein ?

Yes.

20 17. Did the Defendants wrongfully and unlawfully refuse to execute a valid conveyance of the premises described in Schedule to the plaint in favour of the Plaintiff-Company on the Plaintiff-Company paying to the Defendants a sum of Rs.25,000/- ?

Yes.

30 18. Was the said Agreement No. 342 entered into as part and parcel of an Agreement entered into on the 27th February 1959 between the Plaintiff-Company and the said Mudaliyar Madanayake ?

(a) that the Plaintiff-Company should buy the proposed studio site from the late Mudaliyar Madanayake paying Rs.40,000/- ?

Yes.

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- (b) That Mudaliyar Madanayake should invest in a further 4,000 shares of the value of Rs.10/- per each share in the Plaintiff-Company ?

The investing in shares to be only after the signing of the Deed.

19. After the execution of the said Agreement No. 342 was the Plaintiff-Company in financial difficulties and in lack of funds ?

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Yes.

20. Did the Plaintiff-Company on or about 9th November, 1960 resolve:

- (a) to rescind the said Agreement No. 342 and/or

No.

- (b) waive and/or abandon its rights under the said Agreement No. 342 and/or

No.

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- (c) negotiate with the said Mudaliyar Madanayake for a lease of the said premises?

Yes but the matter was not proceeded with.

21. If the Issues No. 20(a) or 20(b) are answered in Defendant's favour did the said Mudaliyar Madanayake agree to rescind the said agreement and accept the said waiver and abandonment?

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Does not arise.

22. Did the Plaintiff-Company in view of its financial difficulties:



- (a) abandon its project to lease out the said premises from the said Mudaliyar Madanayake ?

No it appears that the project of a long lease was also abandoned by both the parties.

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- (b) Were partition actions brought by the said Mudaliyar Madanayake withdrawn on 18th November 1960 by him in agreement with and/or with the knowledge and acquiescence of the Plaintiff-Company?

Yes.

23. Did the Plaintiff-Company prior to the death of Mudaliyar Madanayake

- (a) Decide to abandon the project of establishing a film studio and engage in the business of film production?

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No.

- (b) Take steps to sell the plant and machinery?

No.

- (c) Liquidate the Plaintiff-Company?

No.

24. Were

- (a) Buildings erected on the said premises?

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- (b) Equipment installed in the said premises by the Plaintiff-Company equipped and/or installed with the permission of Mudaliyar Madanayake and at the request of the Plaintiff-Company on the

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footing that the Plaintiff-Company would perform and fulfil its obligations on the said agreement?

The buildings and equipment thereon were put up and installed in terms of the agreement filed of record marked 'A'.

25. Has the Plaintiff-Company failed and neglected: 10

(a) to fulfil the terms and conditions and obligations on its part contained in the said Agreement No. 342?

No.

(b) and/or enable the said Mudaliyar Madanayake to invest in a further 4,000 shares in the Plaintiff-Company?

No. As the deed of transfer had not been signed for the investing in shares by Mudaliyar Madanayake. 20

26. If issues No. 18 to 25 or any one of them are answered in Defendants' favour, is the Plaintiff-Company entitled to any of the reliefs prayed for in the action?

Does not arise.

27. (a) Did the Plaintiff-Company represent to the late Mudaliyar Madanayake that it had abandoned and/or waived and/or rescinded the said agreement No. 342? 30

No.

(b) If so, did the said Mudaliyar Madanayake act on such representations to his prejudice?

No.

(c) If Issue No. 27 (a) and or (b) are answered in Defendant's favour is the Plaintiff-Company estopped from claiming the reliefs prayed for?

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Does not arise.

28. (a) Has the Plaintiff-Company made false representations?

No.

and/or

(b) Suppress from Court material facts?

No.

29. If so, has the Court been thereby induced

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(a) To issue an enjoining order?

(b) To issue notice of an injunction on the Defendants?

Does not arise.

30. Has the Plaintiff-Company under cover of the said enjoining order and notice of injunction entered into forcible and unlawful possession of the said premises?

No.

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31. Is the Plaintiff putting up extensions and new buildings and/or preparing to install further equipment

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and/or interfering with the possession of the Defendants?

No.

32. (a) Are the Defendants entitled to judgment for ejecting the Plaintiff-Company and its Agents and servants from the said land and premises as prayed for in paragraph 3(b) of the prayer.

No.

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33. Were the premises described in the schedule to the plaint.

(a) Much over Rs.40,000/- in value?

No.

(b) Worth two lakhs of rupees more or less?

No.

34. If Issue No. 33 is answered in defendants' favour is the Agreement No. 342 unenforceable on the ground of laesic enormis?

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Does not arise.

35. Did the Plaintiff-Company enter into wrongful and unlawful possession of the said land and premises on or about 30th May 1964?

No. The Company entered into possession on the basis of the agreement marked 'A'.

36. (a) Did Mudaliyar Madanayake at various times lend and advance to the Plaintiff-Company a sum amounting to Rs.35,922/61 ?

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Yes.

(b) If so, is the said sum due from the Plaintiff-Company to the estate of the late Mudaliyar Madanayake?

Yes.

37. Are the Defendants entitled to recover the said sum of Rs. 35,922/61 with legal interest from 16th September 1964 from the Plaintiff-Company?

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No. Steps will have to be taken to recover this sum in the Testamentary Action in which the estate of Mudaliyar Madanayake is being administered.

38. Vide proceedings of 24th May 1965 there is no issue raised under that number (38). After Issue 37 next issue is (39).

39. (a) Was the time of 18 months specified in the agreement of the essence of the contract?

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No.

(b) Was the failure to complete the sale within the said period of 18 months imputable to default on the part of Mudaliyar Madanayake in that he failed in the perfection of the title of the said property as aforesaid?

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Yes.

40. Is the relief of Laesio Enormis canvassed in Issue No. 34 barred by Prescription?

Yes.

41. In any event are the Defendants not entitled to impeach Agreement No. 342

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on the ground of Laesio Enormis for all or any of the reasons set out in paragraph 2 of the replication?

Yes.

42. Can the claim in reconvention for the sum of Rs.35,922/61 be sued upon and/or joined and/or maintained by the Defendants in this action?

No.

43. Is the Plaintiff's claim if any barred by prescription? 10

No.

p. 156 19. By his Judgment, dated 25th August 1965, incorporating his Answers to the Issues framed in the action, the learned District Judge held that the Plaintiff-Company had established its claim and entered Judgment in its favour and declared that the Plaintiff-Company was entitled to specific performance of the Agreement, Exhibit P 1, and further awarded the Plaintiff-Company a permanent injunction restraining the Defendants and/or their servants and/or their agents from interfering with the Plaintiff-Company's possession of the said land. 20

p. 171 20. A Decree in accordance with the Judgment of the learned District Judge was drawn up on the 6th September 1965, and against the said Judgment and Decree the present Respondents appealed to the Supreme Court of Ceylon on grounds stated in their Petition of Appeal, dated 6th September 1965, which contained the usual reservation of other grounds being urged at the hearing of the appeal. 30

21. The main points for determination in this case are:-

- (a) whether or not, in the circumstances of this case the Plaintiff-Company had expressly and/or impliedly abandoned, and/or rescinded and/or

repudiated the Agreement P 1 to purchase the said land.

- 10 (b) whether the Plaintiff-Company had represented to the Vendor at the Directors' meeting of 9th November 1960, that it decided not to purchase the said land on the said Agreement, Exhibit P 1, and would take a long lease instead and thereby abandoning and/or repudiating the said Agreement.
- 20 (c) whether the Board of the Plaintiff-Company and Mudaliyar Madanayake the Vendor, had not at the meeting on the 9th November 1960, mutually agreed to regard the Agreement, Exhibit P 1, as being no longer operative because it was incapable of implementation by the Plaintiff-Company due to its financial condition and the said Agreement was therefore by mutual arrangement abandoned.
- (d) whether the late Mudaliyar Madanayake had got the partition actions withdrawn having acted on the faith of the action and decision taken by the Directors at the said meeting of the 9th November 1960.
- 30 (e) whether the intention to retain the right to complete the purchase of the studio site could be attributed to the Plaintiff-Company after the 9th November 1960.
- (f) whether after the 9th November 1960 the Plaintiff-Company evinced an intention to continue and/or to complete the said purchase during the lifetime of the Vendor.
- 40 (g) whether after the 18th August 1961 the Plaintiff-Company continued to retain possession of the said land and/or to enjoy the produce thereof.

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- (h) whether after the 9th November 1960 the Plaintiff-Company continued to regard the said land as one of its assets and possessions.
- (i) whether the Plaintiff-Company was estopped in fact and in law from denying the abandonment and/or waiver and/or rescission and/or repudiation of the said contract.
- (j) whether the Plaintiff-Company was entitled in fact and/or in law to the equitable remedy of specific performance especially on account of its delay to complete the said purchase. 10

22. The appeal came up for hearing before a Bench consisting of H.N.G. Fernando C.J. and de Kretser J. who heard the arguments of both sides on the 7th, 8th and 21st December, 1968, and on the 8th and 9th of March 1969. 20

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23. By their Judgment, dated 10th May 1969, the learned Judges of the Supreme Court allowed the appeal with costs in both Courts and set aside the Decree of the District Court of Colombo, and further remitted the case to the District Court for the trial and determination of the questions relating to compensation for improvements and jus retentionis namely, issues Nos. 12, 13 and 14.

24. Arguments for the present Respondents at the hearing of the appeal included submissions on the points raised by Issue No. 27 at the trial on the question as to whether the Plaintiff-Company was estopped from claiming the reliefs prayed for because it had abandoned and/or rescinded and/or waived the said Agreement, Exhibit P 1. 30

Further submissions were also made on behalf of the present Respondents at the hearing of the appeal on the point as to whether the Plaintiff-Company was entitled to the equitable 40



remedy of specific performance on account of its abandonment and/or waiver and/or delay to perform the said contract and/or its conduct in respect thereof.

The Judgment of the Supreme Court does not unfortunately refer to these points of estoppel and specific performance and the arguments presented thereon.

10 25. Delivering the main Judgment of the Supreme Court, H.N.G. Fernando C.J. (with whom de Kretser J. agreed) referred to the main points of abandonment, rescission and repudiation of the said Agreement, Exhibit P 1, and stated:-

20 "The opinion of the learned Judge, concerning the matter of the withdrawal of the partition actions, is "it may well be that the parties thought of having the transactions of sale or lease without the title being perfected." With respect, it was unreasonable to attribute to the Company's Directors an intention to retain the right to purchase the property while at the same time waiving its right to a clear title. But if the intention of the Directors was only to take a lease, the pendency of the partition actions could have created a doubt as to the validity of such lease, thus the motions to withdraw those actions are fairly referable to the object of avoiding an anticipated objection to the validity of a lease of the property.

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40 I agree with the argument of Counsel for the Company that Mr. Gunasekera's action in withdrawing the partition action does not in law bind the Company by reason of the fact that he was the Chairman of the Board. But as a matter of fact, the conduct of Gunasekera and Madanyake, both of whom were obviously acting in the best interests of the Company, renders it highly probable that the Directors no longer intended to implement the sale Agreement. While there

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is no evidence to show positively that the Directors were aware of the withdrawal of the partition actions there is on the other hand no reason to suppose that the withdrawal was done behind the backs of the Directors or with any intention to prejudice the Company's rights. I must point out in this connection that the Sale Agreement was attested by the Junior Partner of the Firm of Gunasekera and Perera a fact which might justify the inference that the firm then acted on behalf of the Purchaser-Company. Again the minutes of the meeting of 28th November 1960 show that the same firm acted at that stage as Proctors for the Company. These two matters might well have justified a finding that the Company's lawyers were aware of the withdrawal of the Partition Actions. At the least, it is clear that the actions were withdrawn by the firm of Proctors, the Senior Partner of which was Mr. Gunasekera, to whom the Directors had given a mandate by the decision of November 9th 1960 to negotiate a lease.

Consideration of the financial position of the Company in November 1960 lends much support for the opinion that the decision of November 1960 meant just what its terms state namely that the directors resolved not to complete the sale Agreement and instead to take a lease of the property. The Vendor Madanayake was present at this meeting and acquiesced in the sale Agreement, and Madanayake accepted the repudiation and although the issues do not specifically raise the defence of repudiation, the grounds of waiver, rescission and abandonment are in my opinion wide enough to include the ground of a repudiation in fact. Madanayake was informed in sufficiently clear terms that the Company did not intend to carry out its obligation under the Agreement to pay the balance purchase price of

Rs.25,000/- or to claim its right to a conveyance of the property. The fact that all this took place amicably and with Madanayake's consent does not alter the legal effect of what took place. Madanayake's acquiescence only had the consequence that he lost his right to enforce the forfeiture claim in the Agreement in respect of the advance of Rs.15,000/- which had been paid to him in March 1959. "

26. On the question as to whether the Plaintiff-Company continued to evince an intention to retain the right to purchase and complete the contract. The learned Chief Justice continued:-

" The Company's Balance Sheet for the year ending 31st March 1959 shows a fixed asset of a sum of Rs.15,000/- as "Advance on the Studio Site," and an explanatory note refers to the sale Agreement for the purchase of the site for Rs.40,000/- of which Rs.15,000/- had been paid in advance. The position was presented differently in the Balance Sheet for the year ending 31st March 1960; here the Studio site at cost Rs.40,000/- is shown as a fixed asset, and the balance of the purchase price is shown as liability to Mudaliyar Madanayake Rs.25,000/- whether this be correct accounting practice or not, this Balance Sheet indicates that the Studio Site was then regarded as Company asset, subject to the liability to pay the balance purchase price. Yet the next Balance Sheet, for the year ending 31st March 1961, does not show the Studio Site as an asset, but instead shows the Rs.15,000/- advance as a current asset held by Madanayake. There is thus confirmation of the Defendants case that after November 1960, the Directors did not regard the sale as being effective to entitle the Company to a conveyance of the property. "

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27. Referring to the distressing financial position of the Plaintiff-Company the learned

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Chief Justice said:-

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"The deterioration of the Company's financial position after 1960 is shown by the Director's consideration of a winding up by the discontinuance of the paid Manager, by the inability to pay for the water-cooling plant and the subsequent decision to sell it, and by the decision to close the share list.

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It is further shown by the fact that the Company, even while evidence in this action was being recorded, had not yet commenced any operations connected with the Film Industry, and was forced to allow equipment and buildings which had cost over Rs.250,000/- to remain idle for many years. Debts of about Rs.60,000/- to former Directors, and of Rs.91,000/- to the French firm, remain yet unpaid. It is easy to understand why in these circumstances no step was taken by Mr. Gunasekera to proceed with the execution of the proposed lease, which itself would have involved the Company in further financial liabilities. The repeated assertions in evidence by the former Manager that Directors never abandoned the idea of purchasing the property appear quite absurd in the face of the fact that during the entire period preceding Madanayake's death the Company never had the funds necessary to complete the purchase. "

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28. The learned Chief Justice next referred to the possession of the property by the late Mudaliyar Madanayake and state:

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"Counsel also relied on the finding that since March 1959, and up to the time of Madanayake's death the Company had been in possession of the property which it had agreed to buy. This possession, it was argued, is referable to the continued intention of the parties even after

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10 November 1960 that the Company retained the right to purchase the property. But the possession is referable equally to an intention to take a lease. Moreover, there is evidence, not rejected by the trial Judge, that the produce of the property was taken by Madanayake and the Company's Accounts do not show that the Company ever received any income from the sale of this produce. While there can be no doubt this was referable to his position as Managing Director of the Company his possession of the land itself (10 acres in extent) and his taking of the product is easily referable to his own ownership of the property. "

20 29. Finally, the learned Chief Justice referred to the overriding principle of law regarding the claims against the estate of a deceased person and stated:-

30 " In all the circumstances of this case, it is scarcely necessary to remind oneself of the principle that a claim against the estate of a deceased person must be considered with "great care" and "Jealousy" (Murugappa Chettiar V Muththal Achy 58 N.L.R. 25). It suffices to observe in the present context that t Madanayake could in perfect good faith have considered himself competent to convey a valid title to this property, despite the fact that the said Agreement P 1 had not been formally cancelled. "

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He concluded the judgment thus:-

"I hold for those reasons that the action for specific performance of the contract must fail on the ground that the Plaintiff-Company repudiated the sale Agreement. "

40 30. A Decree in accordance with the judgment of the Supreme Court was drawn up on 26th May 1969 and, against the said Judgment and Decree, this appeal to Her Majesty in Council is now

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preferred, the Appellant-Company having obtained leave to appeal by two Decrees of the Supreme Court dated 4th October 1969 and 30th October 1969 respectively.

In the Respondents' respectful submission this appeal should be dismissed with costs throughout, for the following among other

R E A S O N S

1. BECAUSE in the circumstances of this case, it is manifestly clear that the Plaintiff-Company had on the 9th November, 1960, decided not to complete the purchase of the said land on the Agreement, Exhibit P 1, and has thereafter adhered to its decision. 10
2. BECAUSE the Plaintiff-Company had made it clear, after the 9th November, 1960, that it had abandoned and/or rescinded and/or waived and/or repudiated the right to purchase the said land and further had ceased to consider the land and premises as among its assets. 20
3. BECAUSE the Plaintiff-Company and Mudaliyar Madanayake had mutually agreed to regard the Agreement, Exhibit P 1, as no longer in force on the 9th November, 1960, and the Plaintiff-Company at its request had been relieved from its obligations to purchase the property by Mudaliyar Madanayake agreeing to give a lease of the property, which the Plaintiff-Company due to its further financial difficulty was also not in a position to accept. 30
4. BECAUSE the late Mudaliyar Madanayake, acting on the faith of the representations and conduct of the Plaintiff-Company that it could not and would not complete the proposed purchase of the said land, withdrew the several partition actions through his Proctor, Mr. D.L.Gunasekera, 40

who was also the Chairman of the Plaintiff-Company.

5. BECAUSE the financial predicament of the Plaintiff-Company compelled it to abandon and/or rescind and/or waive and/or repudiate the proposed purchase of the said land.
- 10 6. BECAUSE the Plaintiff-Company clearly showed that it had ceased to consider the said land and premises as one of its assets as indicated in the Balance Sheets, Exhibits P 37 and P 38 respectively, and abandoned its project.
7. BECAUSE the Plaintiff-Company, after August 1961, ceased to be in possession of the land and premises and because the Vendor and later his heirs, the Defendants, enjoyed and took the produce of the said land.
- 20 8. BECAUSE the Plaintiff-Company is estopped in fact and in law from maintaining this claim for specific performance and from denying the abandonment and/or waiver and/or rescission and/or repudiation of the Agreement, Exhibit P 1.
9. BECAUSE the equitable remedy of specific performance of a contract is not available to a person who had abandoned and/or waived and/or rescinded and/or repudiated the contract.
- 30 10. BECAUSE the equitable remedy of a specific performance of a contract is not available to a person who has delayed to perform his part of the contract.
11. BECAUSE the defences of abandonment and/or waiver and/or rescission are sufficiently wide in fact and in law to include repudiation.
- 40 12. BECAUSE Section 92 of the Evidence Ordinance of Ceylon does not require repudiation and/or waiver and/or rescission of a written

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contract to be in writing.

13. BECAUSE this is a claim against the estate of a deceased person and must be considered with great care and "jealousy" as set out in Murugappa Chattiar Vs: Muththal Achy in 58 New Law Reports, page 25.
14. BECAUSE the Judgment of the Supreme Court in favour of the Defendants was right and ought to be affirmed.

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H.W. JAYAWARDENA.

B. ELIYATAMBY.



No. 42 of 1970

IN THE PRIVY COUNCIL

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O N     A P P E A L  
FROM THE SUPREME COURT OF CEYLON

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B E T W E E N

THE SINHALESE FILM INDUSTRIAL  
CORPORATION LIMITED  
(Plaintiff-Respondent)  
Appellant

- and -

HERATHMUDIYANSELAGE CHANDRAWATHIE  
MADANAYAKE and OTHERS  
(Defendants-Appellants)  
Respondents

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C A S E   F O R   T H E   R E S P O N D E N T S

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