



No. **33** OF 1969

Supreme Court of Ceylon,  
No. 215 (Final) of 1963.

District Court of Kandy,  
Case No. L/6642.

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

**BETWEEN**

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
- 7 APR 1972  
25 RUSSELL SQUARE  
LONDON, W.C.1.

**CARUPPIAH SANDANAM of Gondennawa Estate, Nawalapitiya.**

*(Plaintiff - Respondent)*

**APPELLANT**

**AND**

1. **MOHAMED ISMAIL MOHAMED JAMALDEEN** of 60, Grandpass Road, Colombo, also of 42, Kawdana Road, Dehiwala.
2. **MOHAMED ISMAIL MOHAMED HANIFFA** of 200, Galle Road, Mount Lavinia, also of 42, Kawdana Road, Dehiwala.
3. **UMMU RAZEENA** wife of S. M. M. Mohideen of 111, Kandy Road, Gampola, presently of 60, Grandpass Road, Colombo, also of 42, Kawdana Road, Dehiwala.

*(Defendants - Appellants)*

**RESPONDENTS**

---

**RECORD  
OF PROCEEDINGS**

---

7, 1971

No. 33 OF 1969

Supreme Court of Ceylon,  
No. 215 (Final) of 1963.

District Court of Kandy,  
Case No. L/6642.

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

BETWEEN

CARUPPIAH SANDANAM of Gondennawa Estate, Nawalapitiya.

(Plaintiff - Respondent)  
**APPELLANT**

AND

1. MOHAMED ISMAIL MOHAMED JAMALDEEN of 60, Grandpass Road, Colombo, also of 42, Kawdana Road, Dehiwala.
2. MOHAMED ISMAIL MOHAMED HANIFFA of 200, Galle Road, Mount Lavinia, also of 42, Kawdana Road, Dehiwala.
3. UMMU RAZEENA wife of S. M. M. Mohideen of 111, Kandy Road, Gampola, presently of 60, Grandpass Road, Colombo, also of 42, Kawdana Road, Dehiwala.

(Defendants - Appellants)  
**RESPONDENTS**

---

---

**RECORD  
OF PROCEEDINGS**

---

---

**INDEX — PART I**

Serial No.	Description of Document	Date	Page
1	Journal Entries .. .. .	8-12-61 to 3-2-69	1
2	Plaint of the Plaintiff .. .. .	8-12-61	7
3	Answer of the Defendants .. .. .	23-5-62	9
4	Replication of the Plaintiff .. .. .	4-6-62	12
5	Proceedings before the District Court .. .. .	26-7-62	13
6	Amended Plaint of the Plaintiff .. .. .	23-8-62	14
7	Amended Replication of the Plaintiff .. .. .	23-8-62	16
8	Proceedings before the District Court .. .. .	4-9-62	17
9	Order of the District Court .. .. .	17-9-62	18
10	Issues Framed .. .. .	—	19
11	Plaintiff's Evidence .. .. .	—	21
12	Addresses to Court .. .. .	—	25
13	Judgment of the District Court .. .. .	10-5-63	26
14	Decree of the District Court .. .. .	10-5-63	30
15	Petition of Appeal to the Supreme Court .. .. .	22-5-63	31
16	Judgments of the Supreme Court .. .. .	14-2-67	34
17	Decree of the Supreme Court .. .. .	12-5-67	42
18	Application for Conditional Leave to Appeal to the Privy Council .. .. .	13-3-67	43
19	Judgment of the Supreme Court granting Conditional Leave to Appeal to the Privy Council .. .. .	19-9-68	44
20	Minute of Order granting Conditional Leave to Appeal to the Privy Council .. .. .	10-10-68	50
21	Application for Final Leave to Appeal to the Privy Council .. .. .	18-10-68	51
22	Minute of Order granting Final Leave to Appeal to the Privy Council .. .. .	20-1-69	53

**INDEX — PART II****EXHIBITS****Plaintiff's Documents**

<b>Exhibit Mark</b>	<b>Description of Document</b>	<b>Date</b>	<b>Page</b>
P 1	Agreement No. 7052 attested by M. W. R. de Silva, Notary Public .. .. .	18-7-56	57
P 2	Final Decree in District Court Kandy/Gampola Case No. 1119	18-12-57	64
P 2a	Plan No. 2285A made by H. D. G. Rodrigo, Surveyor ..	26-11-57	63
P 3	Promissory Note for Rs. 500/- .. .. .	28-8-56	61
P 4	Letter sent to the Plaintiff by Proctor M. W. R. de Silva ..	5-2-57	62
P 5	Letter sent to Proctor M. W. R. de Silva by M. I. Jamaldeen ..	3-2-57	61
P 6	Receipt for Rs. 500/- given by M. I. M. Haniffa ..	10-2-57	62
P 7	Letter sent to M. I. M. Jamaldeen by Proctors Beven and Beven	30-10-61	70
P 8	Letter sent to Ummu Razeena by Proctors Beven and Beven ..	30-10-61	71
P 9	Letter sent to M. I. M. Haniffa by Proctors Beven and Beven	30-10-61	72
P 10	Deed of Transfer No. 1914 attested by C. E. Alexander de Silva, Notary Public .. .. .	9-9-60	67

**JOURNAL ENTRIES****IN THE DISTRICT COURT OF KANDY**

**CARUPPIAH SANDANAM of Gondennawa  
Estate in Nawalapitiya.**

*Plaintiff*

No. L.6642.

Class: 3.

Amount: Rs. 3,000/-.

10 Nature: Land Case  
(Specific performance)  
Procedure: Regular.

*Vs.*

1. **MOHAMED ISMAIL JAMALDEEN of 60, Grandpass  
Road, Colombo AND TWO OTHERS.**

*Defendants.***JOURNAL**

The ..... day of December, 1961.

Messrs. Beven and Beven Proctors file appointment and Plaint.

20 Plaint accepted and Summons ordered for 7-2-1962.

Sgd. V. MANICAVASAGAR  
14-12

(2)

19-12-61

Summons on 1-2 defendants issued to Fiscal Colombo returnable 2-2-62.  
Summons on 3rd defendant issued to Fiscal, Central Province returnable  
2-2-62.

Intld.

30

(3)

7-2-62

Messrs. Beven and Beven for Plaintiff.  
Summons not served on Defendants.  
Reissue 14-3-62.

Intld.

7-2

(4)

21-2-62

Summons on Defendants reissued to Fiscal, Western Province returnable  
11-3-62.

No. 1  
Journal Entries,  
8.12.61 to  
3.2.69  
—Continued

(5)  
14-3-62  
Summons not served on Defendants—not known to Fiscal.  
Reissue 18-4-62.

Sgd. ....  
14-3

(6)  
29-3-62  
Summons on Defendants reissued to Fiscal, Western Province returnable  
15-4-62. 10

Intld.

(7)  
18-4-62  
Summons served on 1st Defendant M. I. Jamaldeen.  
2nd Defendant M. I. Mohamed Haniffa.  
Summons not served on 3rd Defendant as she is not residing at the given  
address.  
Mr. Musthapa files proxy of all defendants.  
Answer 23-5-62.

Sgd. V. SIVA SUPRAMANIAM 20  
18-4-62

(8)  
23-5-62  
Messrs. Beven and Beven for Plaintiff.  
Mr. Musthapha for Defendants.  
Answer due—Filed.  
Trial 26-7-62.

Sgd. V. SIVA SUPRAMANIAM  
23-5-62

(9)  
4-6-62 30  
Proctor for Plaintiff with notice to Proctor for Defendants file replication.  
Mention on 7-6-62.

Mention on 7-6-62

Sgd. V. SIVA SUPRAMANIAM  
5-6-62

(10)  
7-6-62  
Journal Entry (9) mentioned.

..... 40  
Trial date to stand.

Sgd. ...  
Additional District Judge  
7-6-62

(11)  
13-6-62  
Proctors for Plaintiff with notice to Proctors for Defendant file list of witnesses and documents and moves for summons.  
Allowed.

Sgd. V. SIVA SUPRAMANIAM  
14-6-62

(12)  
19-6-62  
10 Messrs. Beven and Beven for Plaintiff.  
Mr. Musthapha for Defendant.  
Summons on 1st witness of Plaintiff issued to Fiscal, Gampola-returnable 21-7-62.  
Kachcheri Receipt 1485 of 18-6-62 for Rs. 25/- filed.

Intld.

(13)  
26-7-62  
**Trial**  
*Vide* proceedings.  
20 Amended plaint and application to amend to be filed before District Judge on 23-8-62.

Sgd. ....  
26-7-62

(14)  
26-7-62  
Requisition for Rs. 25/- issued in favour of Mr. M. W. A. de Silva, Proctor, S.C., Gampola.

Intld.

(15)  
23-8-62  
30 Amended plaint Journal Entry (13).  
Amended plaint and amendment to the replication filed with notices.  
Mr. Musthapha objects. Inquiry 4-9-62.

Sgd. P. S. W. ABEYWARDENA

(16)  
4-9-62

**Inquiry**

*Vide* proceedings. Order 18-9-62.

Sgd. P. S. W. ABEYWARDENA

No. 1  
Journal Entries,  
12.61 to  
3.2.69  
—Continued

(17)  
17-9-62

**Order**

Order delivered—*vide* order.  
Amended plaint and amended replication accepted. Amended answer  
if any 25-9-62.

Sgd. P. S. W. ABEYWARDANA  
*District Judge*  
17-9-62

(18)  
25-9-62

10

Amended answer if any.  
Amended answer 16-10-62.

Sgd. P. S. W. ABEYWARDANA

(19)  
16-10-62

Amended answer-not filing.  
Trial—21-2-63 before District Judge.

Sgd. ....  
16-10-62 20

(20)  
29-1-63

Summons on 1st witness of Plaintiff issued to Fiscal, Gampola, return-  
able 19-2-63.

Intld.

(21)  
21-2-63

**Trial (2)**

*Vide* proceedings.  
Further Hearing 9-4-63.

30

Sgd. V. SIVA SUPRAMANIAM  
21-2-63



(22)

9-3-63

Summons on 1st witness of Plaintiff issued to Fiscal Gampola returnable 4-4-63.

No. 1  
Journal Entries,  
8.12.61 to  
3.2.69  
—Continued

Intld. ....

(23)

Messrs. Beven and Beven for Plaintiff.  
Mr. Musthapha for Defendant.

18-3-63

10

Proctors for Plaintiff file list of documents.

Proctor for defendants has received notice and he objects as the trial has commenced.

File, subject to any objections that may be raised at the hearing.

Sgd. V. SIVA SUPRAMANIAM  
18-3-63

(24)

9-4-63

**Further Hearing (3)**

*Vide* proceedings.

20

Judgment 3-5-63.

Sgd. V. SIVA SUPRAMANIAM  
9-4-63

(25)

18-4-63

Documents marked P1 to P10 filed.

Intld. ....

(26)

3-5-63

Judgment refiled for 10-5-63.

30

Sgd. V. SIVA SUPRAMANIAM  
3-5-63

(27)

10-5-63

Judgment delivered in open Court.

*Vide* proceedings.

Sgd. V. SIVA SUPRAMANIAM  
10-5-63

No. 1  
Journal Entries,  
8.12.61 to  
3.2.69  
—Continued

(28)  
23-5-63  
Decree entered.

Sgd. V. SIVA SUPRAMANIAM  
23-5-63

(29)  
23/22-5-63

Proctor for 1st to 3rd Defendants files petition of appeal from 1st to 3rd Defendant together with—

- (i) Kachcheri Receipt for Rs. 24/- being appeal brief charges. 10
- (ii) Stamps in Rs. 18/- for Supreme Court Decree.
- (iii) Stamps in Rs. 9/- for Secretary's Certificate in appeal.
- (iv) Application for typewritten copies and
- (v) Consent from Proctors for Plaintiff dispensing with costs of security and Notice of Appeal.
  - (i) File.
  - (ii) Of consent Security for costs in appeal and Notice of Appeal dispensed with.
  - (iii) Forward record to Supreme Court in due course.

Sgd. V. SIVA SUPRAMANIAM 20  
*District Judge.*  
23-5-63

(30)  
3-6-67

Registrar Supreme Court returns Record in this case with Supreme Court decree and copies of Supreme Court Judgment.

Appeal is allowed and the Plaintiff's action is dismissed with costs in both courts.

File.

Sgd. .... 30  
*District Judge*  
5-6-67

(31)  
3-2-69

Registrar Supreme Court requests that the record in Case No. 6642/L be forwarded to him.

Forward record.

Sgd. ....  
*District Judge*

## PLAINT OF THE PLAINTIFF

Land Case  
(Specific performance)  
Value Rs. 3,000/00  
Class 3.

IN THE DISTRICT COURT OF KANDY

CARUPPIAH SANDANAM of Gondennawa Estate in Nawalapitiya.  
*Plaintiff.*

10 No. L.6642.

*Vs.*

1. MOHAMED ISMAIL JAMALDEEN of 60, Grandpass Road, Colombo.
2. MOHAMED ISMAIL MOHAMED HANIFFA of 200, Galle Road, Mount Lavinia.
3. UMMU RAZEENA wife of S. M. M. MOHIDEEN of 111, Kandy Road, Gampola.

*Defendants.*

This 8th day of December, 1961.

20 The Plaintiff of the Plaintiff abovenamed appearing by his Proctors Charles Edward Alexander de Silva carrying on business under the name and style of "Beven and Beven" and his Assistant Prathiraja Mahanama Dias de Singhe states as follows:—

1. By deed of agreement No. 7052 dated 18th July, 1956, attested by Mr. M. W. R. de Silva Notary Public of Gampola Defendants and their mother Natchia Umma (wife of A. M. Mohamed Ismail) entered into an agreement with Plaintiff whereby (interalia)

- 30
- (a) Defendants and their mother aforesaid agreed to sell to Plaintiff and Plaintiff agreed to purchase whatever divided share or shares was or were allotted to them in D.C. Kandy Holden at Gampola Partition Case No. 1119 (which was then pending) in the land called Konakahena situate at Nawalapitiya within the jurisdiction of this Court.
  - (b) The consideration for the said purchase was agreed on by the said parties as Rs. 3,000/- out of which Rs. 2,000/- was paid at the execution of the said Deed No. 7052 by Plaintiff to Defendants and their mother.
  - (c) It was agreed that the balance Rs. 1,000/- should be paid by Plaintiff at the execution of the transfer in his favour.

2. By Final Partition Decree dated 18th December, 1957 Defendants and their mother, who were the 11th to 14th Defendants in D.C. Gampola No. 1119 (P) were declared entitled to the divided lot marked "E" in Partition Plan No. 2285A dated 31st October, 1957 made by H. D. G. Rodrigo Licensed Surveyor more fully described in the schedule at foot, hereof, subject to Plaintiff's right to repurchase the same on the said agreement No. 7052.

3. Defendants mother died in 1958, leaving Defendants her children as her heirs-at-law and entitled to the said property subject to the terms of Deed No. 7052.

4. At Defendants special request Plaintiff paid to them the balance 10 sum of Rs. 1,000/- and Defendants also acquiesced in Plaintiff constructing buildings on the said land at considerable expense from 1959-1960.

5. Defendants thus rendered themselves liable to transfer to Plaintiff the land described in the Schedule to the Plaint when called upon to do so, the whole consideration having been paid and the conditions to claim liquidated damages by Plaintiff having become inoperative in view of Plaintiff having built on the land with Defendants acquiescence on the footing that the land would be transferred to Plaintiff.

6. Plaintiff called on Defendants to attend the Office of Plaintiff's Proctors (Messrs. Beven and Beven) on 9th November 1961 between 9 and 20 10 a.m. to sign the transfer of the land described in the Schedule hereof in favour of Plaintiff; but Defendants failed and neglected to do so.

7. Plaintiff values his rights in this case at Rs. 3,000/- the amount of consideration agreed on for the transfer.

Wherefore Plaintiff prays:—

- (a) for a declaration by Court that Plaintiff is entitled to claim specific performance of the agreement No. 7052 of 18-7-56 by Defendants executing a transfer of the said land to Plaintiff at Plaintiff's expenses.
- (b) That a date be fixed for Defendants to sign the said transfer in favour of Plaintiff and in the event of Defendants failing to do so 30 that the Secretary of the District Court be authorised to sign the said transfer which should be valid as though Defendants had signed the same.
- (c) For costs.
- (d) For such other relief as to this Court shall seem meet.

Sgd. Beven and Beven  
 Proctors for Plaintiff.

**The Schedule referred to above**

All that divided lot marked "E" in Plan No. 2285A dated the 31st day of October, 1957 made by Mr. H. D. G. Rodrigo Licensed Surveyor out of the said land and premises called Konakahena situate within the Urban Council limits of Nawalapitiya in the Kandy District Central Province of the Island of Ceylon and the said lot "E" being bounded on the North and North-East by Railway land East by Railway land, South by Road Reservation and West by Lot D containing in extent No Acres One Rood nought one point one Perches (0A—1R—01.1P).

No. 2  
Plaint of the  
Plaintiff—  
8.12.61  
—Continued

10

Sgd. Beven and Beven  
*Proctors for Plaintiff.*

**Documents relied on by Plaintiff**

1. Letter dated 3rd February, 1957 by 1st Defendant to Mr. M. W. R. de Silva N.P.
2. Letter dated 5th February, 1957 by Mr. M. W. R. de Silva to Plaintiff.
3. Receipt dated 10th February, 1957.
4. Promissory Note dated 28th August, 1956 by the Defendants.

Sgd. Beven and Beven  
*Proctors for Plaintiff.*

20

**No. 3****ANSWER OF THE DEFENDANTS****IN THE DISTRICT COURT OF KANDY**

CARUPPIAH SANDANAM of Gondennawa Estate in Nawalapitiya.  
*Plaintiff.*

No. 3  
Answer of the  
Defendants—  
23.5.62

No. L.6642.

*Vs.*

30

1. MOHAMED ISMAIL JAMALDEEN of 60, Grandpass Road, Colombo.
2. MOHAMED ISMAIL MOHAMED HANIFFA of 200, Galle Road, Mount Lavinia.
3. UMMU RAZEENA wife of S. M. M. MOHIDEEN of 111, Kandy Road, Gampola.

*Defendants.*

On this 23rd day of May, 1962.

The answer of the 1st, 2nd and 3rd Defendants abovenamed appearing by their Proctor Seyad Mohamed Musthapha states as follows:—

1. The defendants deny all and singular the averments in the plaint save as hereinafter specially admitted.

2. Answering to paragraph 1 of the plaint these defendants while admitting the execution of the agreement referred to therein state the said agreement *inter alia* provided—

(a) The Vendor shall by a valid and effectual deed of conveyance which shall be prepared and executed at the cost and expense of the purchaser till the transfer unto the purchaser whatever divided 10 share or shares (together with the buildings plantations and everything thereon) the vendors will be allotted in the said partition action together with all and singular the rights ways advantages servitudes and appurtenances whatsoever thereto belonging or in any wise appurtenant or usually held occupied used or enjoyed therewith or reputed or known as part and parcel thereof together with any compensation costs and all other benefits and privileges that will be awarded or may accrue to the vendor in the said partition action and together with all the Estate rights title interest property claim and demand whatsoever of the vendors into upon or out of the said 20 premises and every part thereof for the price or sum of Rupees Three Thousand (Rs. 3,000/-) at any time within three months of the entering of the Final Decree in the said Partition Action No. P 1119 of the District Court of Kandy Holden at Gampola.

(b) In the event of the purchaser failing or neglecting to complete the said purchase in terms of these presence the vendors being ready and willing to perform their part of the contract in these presence contained the sum of Rupees Two Thousand (Rs. 2,000/-) paid as advance this day shall be forfeited to the vendors as liquidated 30 damages and not as penalty.

(c) In the event of the vendors failing or neglecting to complete the said conveyance in terms of these presence the vendors shall refund to the purchaser the sum of Rupees Two Thousand (Rs. 2,000/-) paid as advance as aforesaid together with a further sum of Rupees Two Thousand (Rs. 2,000/-) as liquidated damages and not as penalty.

3. The defendants deny the averments in paragraph 2 of the plaint and state that final decree was entered in the said case No. P.1119 on 30th January, 1958 by virtue of the said decree the defendants became entitled to the land described in the schedule to the plaint.

4. The defendants deny the averments in paragraph 3 of the plaint and 40 state that the defendants mother died on 15th August, 1958.

5. The defendants deny the averments in paragraphs 4, 5, 6 and 7 of the plaint.

6. Further answering these defendants state that in any event the plaintiff cannot have and maintain this action as (a) There is misjoinder of parties and causes of action. (b) The plaint has not been properly constituted in that the plaintiff has not pleaded to the jurisdiction of this court. (c) The agreement No. 7052 has become inoperative and discharged by reason of the plaintiff's failure to pay the balance consideration and purchase the said premises within three months of the Final Decree in the said case 10 No. P.1119 in accordance with the terms of the said agreement. (d) In view of the provisions of clauses 3 and 4 of the said agreement. (e) The defendant's mother is dead and clause 5 of the said agreement binds only the immediate parties to the said agreement.

7. Still further answering the defendants state that the plaintiff having failed to obtain the conveyance in terms of the said agreement No. 7052 since 30th April, 1958 wrongfully disputing defendants' title to the said premises described in the schedule to the plaint is in wrongful possession of same to defendants' loss and damage in a sum of Rs. 2,800/-.

8. A cause of action has thus accrued to the defendants to claim in 20 reconvention a declaration of title against the plaintiff in respect of the said land described in the said schedule to the plaint for damages and ejection.

9. Further answering the defendants state that in any event the plaintiff's claim if any is prescribed.

Wherefore the 1st, 2nd and 3rd Defendants pray—

- (a) That the plaintiff's action be dismissed.
- (b) That the defendants be declared entitled to the said land and premises described in the said schedule to the plaint and the plaintiff be ejected therefrom.
- 30 (c) For judgment against the plaintiff in a sum of Rs. 2,800/- being damages already sustained with further damages at Rs. 50/- per month from date hereof till the plaintiff is ejected from the said premises, and
- (d) For costs and for such other and further relief as to this court shall seem meet.

Sgd. ....  
Proctor for 1st, 2nd and 3rd  
Defendants.

REPLICATION OF THE PLAINTIFF  
IN THE DISTRICT COURT OF KANDY

CARUPPIAH SANDANAM of Gondennawa Estate in Nawalapitiya.  
*Plaintiff.*

No. L.6642.

*Vs.*

1. MOHAMED ISMAIL JAMALDEEN of 60, Grandpass Road,  
Colombo, and two others.

*Defendants.* 10

This 4th day of June, 1962.

The Replication of the Plaintiff abovenamed appearing by his Proctors Charles Edward Alexander de Silva carrying on business under the name and style of "Beven and Beven" and his Assistant Prathiraja Mahanama Dias Desinghe states as follows:—

1. Plaintiff denies that the answer discloses any causes of action for Defendants to make the alleged claims in re-convention referred to in paragraph 8 of the answer and in the prayer thereto.

2. Plaintiff further states that para 2(a) of the answer is unintelligible that the answer makes several incorrect allegations both as to averments in 20 the Plaintiff and the terms of the Notarial agreement No. 7052 including the question of jurisdiction which is pleaded in paragraph 1 (a) of the Plaintiff, and the liability of the heirs, executors and administrators of the parties to the deed, provided for in the said agreement.

3. Plaintiff states that in view of the allegations in the Plaintiff and the terms of the deed, Defendants are legally bound to carry out specific performance as claimed in the Plaintiff. Plaintiff further states that Defendants having acquiesced in the construction of buildings at considerable expense by Plaintiff, on the footing that the land would be transferred to Plaintiff are estopped from denying Plaintiff's right to specific performance, and in no 30 event are Defendants entitled to make any claim to the land without (a) refund the consideration paid to by Plaintiff (b) compensating Plaintiff in full for the buildings he has constructed, which right Plaintiff reserves in the alternative.

4. Plaintiff further states that Defendants on several occasions during 1958 to 1961 requested Plaintiff to defer the execution of the transfer to



Plaintiff, and finally in November 1961 Plaintiff's Proctors wrote to Defendants to execute the same and therefor plaintiff's claim is not barred by prescription.

No. 4  
Replication of  
the Plaintiff—  
4.6.62  
—Continued

Wherefore Plaintiff prays that Defendants' claims in reconvention be dismissed with costs, that Plaintiff be given Judgment as prayed for in the Plaint, in the alternative that Plaintiff's claim to compensation be reserved and for such other relief as to the Court seems meet.

Sgd. Beven and Beven  
*Proctors for Plaintiff.*

No. 5

No. 5  
Proceedings  
before the  
District Court—  
26.7.62

**PROCEEDINGS BEFORE THE DISTRICT COURT**

10

26th July, 1962

Plaintiff present.  
1st and 2nd Defendants present.  
3rd Defendant absent.

Mr. Advocate Dias Desinghe instructed by Messrs. Beven and Beven for plaintiff.

Mr. Mustapha for Defendants.

20 Mr. Dias Desinghe opens his case and refers me to his plaint and now states that as an alternative he has not prayed in the plaint for the return of the consideration paid by him to the defendants and liquidated damages. He now states that before the case proceeds to trial, he will be moving that he be given an opportunity to amend his plaint. He also states that he will be pleading a trust as plaintiff has already been put in possession and has put up substantial structures on the land.

Mr. Mustapha has no objection to a date being granted to make formal application, but he states that when the application is made, if there are objections, he will specify the objections to Court.

30 Take case off trial roll. Call case before District Judge on 23rd August, 1962 for formal application to amend with draft copy of amended plaint sought to be filed.

Costs of today will be costs in the cause. Plaintiff will not be entitled to costs of today in any event.

Sgd.....  
*Additional District Judge*  
26-7-62

**AMENDED PLAINT OF THE PLAINTIFF**

**IN THE DISTRICT COURT OF KANDY**

CARUPPIAH SANDANAM of Gondennawa Estate in Nawalapitiya.  
*Plaintiff.*

No. L.6642

*Vs.*

1. MOHAMED ISMAIL JAMALDEEN of 60, Grandpass Road, Colombo.
2. MOHAMED ISMAIL MOHAMED HANIFFA of 200, Galle Road, 10 Mount Lavinia.
3. UMMU RAZEENA wife of S. M. M. MOHIDEEN of 111, Kandy Road, Gampola.

*Defendants.*

This 23rd day of August, 1962.

The Amended Plaintiff of the Plaintiff abovenamed appearing by his Proctors Charles Edward Alexander de Silva carrying on business under the name and style of Beven and Beven and his Assistant Prathiraja Mahanama Dias Desinghe states as follows:—

1. By deed of agreement No. 7052 dated 18th July, 1956, attested by 20 Mr. M. W. R. de Silva, Notary Public of Gampola Defendants and their mother Natchia Umma (wife of A. M. Mohamed Ismail) entered into an agreement with the Plaintiff whereby (*inter alia*)—

- (a) Defendants and their mother aforesaid agreed to sell to Plaintiff and Plaintiff agreed to purchase whatever divided share or shares was or were allotted to them in D.C. Kandy Holden at Gampola Partition Case No. 1119 (which was then pending) in the land called Konakahena situate at Nawalapitiya within the jurisdiction of this Court.
- (b) The consideration for the said purchase was agreed on by the said 30 parties as Rs. 3,000/- out of which Rs. 2,000/- was paid at the execution of the said deed No. 7052 by Plaintiff to Defendants and their mother.
- (c) It was agreed that the balance Rs. 1,000/- should be paid by Plaintiff at the execution of the transfer in his favour.

2. By Final Partition Decree dated 18th December, 1957 Defendants and their mother, who were the 11th to 14th Defendants in D.C. Kandy Holden at Gampola No. 1119(P) were declared entitled to the divided lot marked "E" in partition Plan No. 2285A dated 31st October, 1957 made by H. D. G. Rodrigo Licensed Surveyor morefully described in the Schedule at 40 foot, hereof, subject to Plaintiff's right to repurchase the same on the said agreement No. 7052.

3. Defendants' mother died in 1958, leaving Defendants her children as her heirs-at-law and entitled to the said property subject to the terms of Deed No. 7052.

No. 6  
Amended Plaintiff  
of the Plaintiff—  
23.8.62  
—Continued

4. At Defendants' special request Plaintiff paid to them the balance sum of Rs. 1,000/- and Defendants also acquiesced in Plaintiff constructing buildings on the said land at considerable expenses from 1959-1960.

5. Defendants thus rendered themselves liable to transfer to Plaintiff the land described in the Schedule to the Plaint when called upon to do so, the whole consideration having been paid and the conditions to claim liquidated damages by Plaintiff having become inoperative in view of Plaintiff  
10 having built on the land with Defendants' acquiescence on the footing that the land would be transferred to Plaintiff.

6. Plaintiff called on Defendants to attend the office of Plaintiff's Proctors (Messrs. Beven and Beven) on 9th November, 1961 between 9 and 10 a.m. to sign the transfer of the land described in the Schedule hereof in favour of Plaintiff; but Defendants failed and neglected to do so.

6A. As a matter of law Plaintiff states that Final Decree in D.C. Kandy Holden at Gampola case No. 1119 having been entered and Plaintiff having paid the full consideration for the execution of the transfer of lot "E"  
20 in Partition Decree and plan by defendants to plaintiff as stipulated in the said deed of agreement defendants must be decreed under the Trusts Ordinance to be holding title thereto in trust for Plaintiff, and are liable in law to execute the transfer of the said lot to Plaintiff and Defendants not entitled to maintain that Plaintiff's action is barred by prescription.

7. Plaintiff values his rights in this case at Rs. 3,000/- the amount of consideration agreed on for the transfer.

Wherefore Plaintiff prays:—

- 30
- (a) For a declaration by Court that Plaintiff is entitled to claim specific performance of the agreement No. 7052 of 18-7-1956 by Defendants executing a transfer of the said land to Plaintiff at Plaintiff's expenses.
  - (b) That a date be fixed for Defendants to sign the said transfer in favour of Plaintiff and in the event of Defendants failing to do so that the Secretary of the District Court be authorised to sign the said transfer which should be valid as though Defendants had signed the same.
  - (c) For costs.
  - (d) For such other relief as to this Court shall seem meet.

Sgd. Beven and Beven  
*Proctors for Plaintiff*

No. 6  
Amended Plaintiff  
of the Plaintiff—  
23.8.62  
—Continued

**The Schedule referred to above**

All that divided lot marked "E" in Plan No. 2285A dated the 31st day of October, 1957 made by Mr. H. D. G. Rodrigo Licensed Surveyor out of the said land and premises called Konakahena situate within the Urban Council limits of Nawalapitiya in the Kandy District Central Province of the Island of Ceylon and the said lot "E" being bounded on the North and North-East by Railway land, East by Railway Land, South by Road Reservation and West by lot D containing in extent No Acres One Rood nought one point one Perches (0A—1R—01.1P).

Sgd. Beven and Beven 10  
*Proctors for Plaintiff*

**Documents relied on by Plaintiff**

1. Letter dated 3rd February, 1957 by 1st Defendant to Mr. M. W. R. de Silva, N.P.
2. Letter dated 5th February, 1957 by Mr. M. W. R. de Silva to Plaintiff.
3. Receipt dated 10th February, 1957.
4. Promissory Note dated 28th August, 1956 by the Defendants.

Sgd. Beven and Beven  
*Proctors for Plaintiff*

No. 7  
Amended Repli-  
cation of the  
Plaintiff—  
23.8.62

**No. 7**

20

**AMENDED REPLICATION OF THE PLAINTIFF**

**IN THE DISTRICT COURT OF KANDY**

CARUPPIAH SANDANAM of Gondennawa Estate in Nawalapitiya.  
*Plaintiff.*

No. L.6642

*Vs.*

1. MOHAMED ISMAIL JAMALDEEN of 60, Grandpass Road, Colombo and two others.

*Defendants.*

This 23rd day of August, 1962.

30

The Amended Replication of the Plaintiff abovenamed appearing by his Proctors Charles Edward Alexander de Silva carrying on business under the name and style of Beven and Beven and his Assistant Pratoraja Mahanama Dias Desinghe states as follows:—

1. Plaintiff denies that the answer discloses any causes of action for Defendants to make the alleged claims in re-convention referred to in paragraph 8 of the answer and in the prayer thereto.

2. Plaintiff further states that para 2(a) of the answer is unintelligible that the answer makes several incorrect allegations both as to averments in the Plaint and the terms of the Notarial Agreement No. 7052 including the question of jurisdiction which is pleaded in paragraph 1(a) of the plaint, and the liability of the heirs, executors and administrators of the parties to the deed, provided for in the said agreement.

No. 7  
Amended Repli-  
cation of the  
Plaintiff—  
23.8.62  
—Continued

3. Plaintiff states that in view of the allegations in the Plaint and the terms of the deed, Defendants are legally bound to carry out specific performance as claimed in the plaint. Plaintiff further states that defendant having  
10 acquiesced in the construction of buildings at considerable expense by Plaintiff, on the footing that the land would be transferred to Plaintiff are estopped from denying Plaintiff's right to specific performance, and in no event are Defendants entitled to make any claim to the land without  
20 (a) refund the consideration paid to by Plaintiff (b) compensating Plaintiff in full for the buildings he has constructed, which right Plaintiff reserves in the alternative.

4. Plaintiff further states that Defendants on several occasions during 1958 to 1961 requested Plaintiff to defer the execution of the transfer to Plaintiff, and finally in November 1961 Plaintiff's Proctors wrote to Defendants  
20 to execute the same and therefor Plaintiff's claim is not barred by prescription.

Wherefore Plaintiff prays that Defendants claims in reconvention be dismissed with costs, that Plaintiff be given Judgment as prayed for in the Plaint, in the alternative that Plaintiff is entitled to a refund of the consideration paid (Rs. 3,000/-) and payment of the sum of Rs. 2,000/- liquidated damages and for such other relief as to the Court shall seem meet.

Sgd. Beven and Beven  
*Proctors for Plaintiff*

No. 8

**PROCEEDINGS BEFORE THE DISTRICT COURT**

4th September, 1962

No. 8  
Proceedings  
before The Dis-  
trict Court—  
4.9.62

30

Mr. Advocate Desinghe instructed by Messrs. Beven and Beven for the Plaintiff.

Mr. Musthapha for the Defendant.

Mr. Desinghe states that the suggested amendment is contained in paragraph 6(a) of the amended Plaint. Mr. Desinghe states that paragraph 6(a) is intended to meet the plea of prescription raised by the defendant in his answer, and that he is not seeking to alter the scope of the action or to introduce new causes of action. Mr. Desinghe cites  
63 *New Law Reports* page 188,

40

60 *New Law Reports* page 457,  
18 *Ceylon Law Weekly* 18,  
20 *New Law Reports* page 60.

No. 8  
Proceedings  
before the Dis-  
trict Court—  
4.9.62  
—Continued

Mr. Musthapha states that the proposed amendment would work to the prejudice of the defendant in that his defence of prescription will be affected. It also alters the scope of the action. Mr. Musthapha cites 58 *New Law Reports* page 169, 54 *New Law Reports* page 185, at page 186.

Order on 18th September, 1962.

Sgd. P. S. W. ABEYWARDENA  
*Acting District Judge*  
4-9-62

No. 9  
Order of the  
District Court—  
17.9.62

No. 9

ORDER OF THE DISTRICT COURT

10

17th September, 1962

O R D E R

This is an application to amend the plaint by the insertion of paragraph 6(a) and the replication by claiming in the alternative the sum of Rs. 3,000/- as a refund of consideration and the payment of a sum of Rs. 2,000 as liquidated damages. The application is resisted on the ground that paragraph 6(a) of the amended plaint seeks to alter the scope of the action and that the defendant is prejudiced in his plea of prescription. Paragraph 6(a) of the amended plaint seeks to meet the defence of prescription by an attempt to prove a constructive trust. I do not think this in any way is prejudicial to the defence in that the plaintiff is entitled to meet the plea of prescription with whatever defence he has. He is not seeking to change the nature of his action. The cases cited by the learned counsel for the plaintiff gives this Court wide discretionary powers to amend the pleadings if necessary. This application is made *bona fide* and there is no reason why it should not be allowed. 20

With regard to the application to amend the replication Mr. Musthapha has said that the plaintiff is not entitled to amend the replication. The replication is part of the pleadings and Section 93 of the Civil Procedure Code is wide enough to cover the amendment of replications. Moreover, the plaintiff is merely seeking to add a further relief that he is entitled to make. I allow both applications. 30

Sgd. P. S. W. ABEYWARDENA  
*District Judge*  
17-9-62

Order delivered in open Court in the presence of their proctors.

Sgd. P. S. W. ABEYWARDENA  
*District Judge*  
17-9-62

## ISSUES FRAMED

21st February, 1963

Mr. Advocate Dias Desinghe instructed by Messrs. Beven and Beven for the plaintiff.

Mr. Advocate Marikar instructed by Mr. Musthapha for the defendants.

The following are the admissions:—

- (1) the execution of deed of agreement 7052 dated 18th of July, 1956;
- 10 (2) that Natchiya Umma referred to in the plaint, died in 1958 leaving the defendants as her heirs;
- (3) that the sum of Rs. 2,000/- referred to in the agreement has been paid by the plaintiff;
- (4) that final decree was entered in Partition case No. 1119/P of the District Court of Kandy holden at Gampola on the 18th of December, 1957;
- (5) that the defendants and Natchiya Umma were the 11th to the 14th defendants in the said Partition case and were allotted and declared entitled to lot E in the said final decree.

Mr. Dias Desinghe raises the following issues:—

- 20 (1) Did the plaintiff pay to the defendants a sum of Rs. 1,000/- balance consideration due on agreement 7052 prior to the entering of the final decree in P. 1119 ?
- (2) Did the defendants become liable after the entering of the said final decree, to effect a conveyance in favour of the plaintiff when called upon to do so by the plaintiff ?
- (3) If issues 1 and 2 are answered in favour of the plaintiff, is the plaintiff entitled to the reliefs prayed for in prayers (a) and (b) of the amended plaint ?
- 30 (4) After the entering of the final decree, has the plaintiff been in possession of and built on the said lot referred to in the Partition decree ?
- (5) Did the plaintiff do so with the knowledge and acquiescence of the defendants ?

- (6) Does the conduct of the defendants in acquiescing in the plaintiff's possession and erecting buildings estop the defendants from denying the plaintiff's right to have a conveyance of the said property ?
- (7) In the event of the Court not granting specific performance to the plaintiff, is the plaintiff entitled—
- (a) to the return of the full consideration paid by the plaintiff to the defendants;
- (b) to liquidated damages in a sum of Rs. 2,000/- ?
- (8) After the entering of the final decree in P. 1119, did the defendants hold the said property in trust for the plaintiff ? 10
- (9) If so, is the plaintiff entitled to the reliefs claimed in paragraphs (a) and (b) of the prayer to the amended plaint ?

Mr. Dias Desinghe states that in the event of the Court not granting the plaintiff specific performance of the agreement, the plaintiff reserves to himself the right to claim compensation for improvements in a separate action.

Mr. Marikar states that he objects to the plaintiff reserving the right to institute a separate action in regard to the compensation for improvements effected by him on the land.

### Order

I do not see any prejudice caused to the defendants by the plaintiff<sup>20</sup> reserving the right to institute a separate action in regard to the compensation for improvements effected by him on the land. Indeed, it will be most inconvenient for the Court to try the question of improvements in this action. I hold that the plaintiff is entitled to reserve the right to make that claim in separate proceedings.

Signed V. SIVA SUPRAMANIAN  
District Judge  
21-2-63

Mr. Marikar suggests:

- (10) Does the said agreement No. 7052 provide for the payment of<sup>30</sup> a sum of Rs. 4,000/- by the defendants by way of substituted performance ?
- (11) If so, is the plaintiff entitled to claim specific performance ?
- (12) Has the plaintiff failed to obtain the conveyance in respect of the said land within three months of the entering of the final decree in the Partition case No. P.1119 ?



- (13) If so, can the plaintiff have and maintain this action ?
- (14) Is the plaintiff in wrongful and unlawful possession of the said land since April, 1958 ?
- (15) If so, are the defendants entitled to—
- (a) a declaration of title to the said land;
  - (b) an order for ejectment; and
  - (c) damages ?
- (16) If so, what damages ?

I accept the issues.

No. 10  
Issues Framed  
—Continued

10

### No. 11

#### PLAINTIFF'S EVIDENCE

**Plaintiff's Case.**—Mr. Dias Desinghe calls:—

**Caruppiah Sandanam.**—Affirmed—52—Planter and Landed Proprietor—Gondennawa Estate, Nawalapitiya.

No. 11  
Plaintiff's  
Evidence

Evidence of  
Caruppiah  
Sandanam—  
Examination

I am the plaintiff. I entered into an agreement No. 7052 of the 18th of July, 1956, with the three defendants and their mother. I produce that agreement No. 7052 (P1). This agreement provides for the conveyance by the defendants and their mother of an allotment of land that would be allotted to them in Partition action P. 1119 of the District Court of Kandy holden at Gampola. I paid the defendants and their mother a sum of Rs. 2,000/- at the execution of this agreement, and at the time of the execution of the agreement there was a balance of Rs. 1,000/- that I had to pay. I paid that Rs. 1,000/- in two instalments. I paid both those instalments before the conclusion of the Partition action. I produce the final decree in Partition action No. P.1119 (P2). I draw the attention of the Court to the fact that the decree was entered on the 18th of December, 1957.

On the 28th of August, 1956, I was given a promissory note for a sum of Rs. 500/-, which promissory note I produce (P3). This promissory note was a note made in favour of M. I. M. Haniffa, the 2nd defendant. Haniffa endorsed this note to me on the 28th of August, 1956, as would be seen from the endorsement on the rear of the note. I draw the attention of the Court to the fact that this note was also signed by Natchiya Umma, Jamaldeen and Razeena, the other parties to the agreement P1. After the payment of that sum of money, a further demand was made for the balance Rs. 500/- by Mr. M. W. R. de Silva, Proctor, Gampola. I produce letter dated 5th February, 1957, written by Mr. de Silva to me (P4). I also produce letter dated 3rd February, 1957, written to Mr. de Silva by M. I. Jamaldeen, the 1st defendant in

20

30

No. 11  
Plaintiff's  
Evidence

Evidence of  
Caruppiah  
Sandanam—  
Examination  
Continued

this case (P5). On the 10th of February, 1957, in pursuance of Mr. de Silva's letter to me and the request by the defendants, I paid that Rs. 500/-, and I obtained a receipt. I produce a stamped receipt dated 10th of February, 1957 (P6). I draw the attention of the Court to the fact that the receipt refers to the fact that the full consideration of Rs. 3,000/- has been paid and accepted by the defendants.

I was the plaintiff in Partition action No. 1119 and I draw the attention of the Court to the fact that in page 2 of the Partition decree I was representing the 11th to the 14th defendants at the surveys and partition. The extent of the entire property that was the subject matter of the 10 Partition case was nearly two acres. I was entitled to 2/6ths. I was entitled to 1/6th on an earlier deed of transfer. It is for the division of that 1/6th that I instituted that Partition suit. The 11th to the 14th defendants, namely, the defendants in this case and their mother, were also declared entitled to 1/6th, and the lot that was allotted to them is lot E. I am aware of the fact that the defendants' mother died in 1958, and the three defendants are her heirs at law. I cannot remember what was the valuation of the whole land in that Partition action. Some old buildings were standing on the land. I was present when the surveyor went to prepare the final plan. I was there when he staked out and 20 divided the land into the separate lots. I took possession of my lot, namely, the 1/6th that I was entitled to, that is lot A with the house. I also took possession of lot E, that is the portion that was allotted to the 11th to the 14th defendants. That is the last portion.

Q. Were the defendants aware of the fact that you were representing them at the survey ?

A. Yes.

Q. Had you communicated that fact to the defendants ?

A. When the receipt P6 was given, they told me to take possession of the land and do whatever I liked. 30

Q. Did anyone of them present themselves at the final survey ?

A. No.

Q. Did any of the defendants come and ask you for possession of this lot E after the final decree was entered ?

A. No.

After the final decree was entered I submitted to the Urban Council Nawalapitiya, plans for building on this land. It took three to four months for the Urban Council to approve those plans and to allow me permission. After that, I commenced building on this land. The building construction went on for about six or seven months. I spent on the buildings on 40 the land more than Rs. 25,000/-. The value of the buildings standing on lot E is more than Rs. 30,000/- today.

Q. Were the defendants aware of the fact that you were constructing this building ?

A. Yes.

Q. Did you have occasion at any time to meet them anywhere, or speak to them ?

A. I have met many times Haniffa, the 2nd defendant.

I did not recover *pro rata* costs in that Partition action from the 11th to the 14th defendants. On the 30th of October, 1961, I wrote to the defendants through Messrs. Beven and Beven. I produce letter dated 30th of October, 1961 (P7). I wrote separately to each of the defendants through Messrs. Beven and Beven. P7 is one of the letters, that is the one addressed to M. I. M. Jamaldeen. I also produce the letter dated 30th of October, 1961, written to Ummu Razeena (P8).

No. 11  
Plaintiff's  
Evidence

Evidence of  
Caruppiah  
Sandanam—  
Examination  
—Continued

Prior to my instructing my lawyers, Messrs. Beven and Beven, I wrote to the defendants calling upon them to come and execute this conveyance. I met Mr. Haniffa. I spoke to him about this conveyance.

Q. Did he consent ?

A. He said he will come.

He said he was very busy; he will come. He consented to do so. But when he failed to do so I wrote through my lawyers.

I claim specific performance of the agreement to sell No. 7052, and in the event of the Court not allowing me specific performance, I claim a refund of the Rs. 3,000/- which I have paid to the defendants together with liquidated damages Rs. 2,000/-, referred to in paragraph 4 of the agreement. I also reserve to myself the right to claim compensation for the improvements I have effected.

Signed V. SIVA SUPRAMANIAM  
District Judge  
21-2-63

Further hearing on 9th April, 1963.

Signed V. SIVA SUPRAMANIAM  
District Judge  
21-2-63

9th April, 1963

**Hearing resumed.**

Mr. Adv. Desinghe instructed for Plaintiff.

Mr. Musthapha for Defendants.

**Karuppiah Sandanam:—**Recalled, Affirmed.

**Examination-in-Chief** continued by Mr. Desinghe:—

10

20

30

No. 11  
Plaintiff's  
Evidence

Evidence of  
Caruppiah  
Sandanam—  
Examination  
—Continued

In addition to P7 and P8 I produced on the last date I now produce as P9 a letter sent to M. I. M. Haniffa, the other defendant in this case, dated 30th October, 1961. I purchased interests in this property on 9-9-60. I produce as P10 deed No. 1914 of 9-9-60, on which I purchased 46 perches out of lot C in the same decree in P1119. The consideration is Rs. 3,500/-. Lot E, in the agreement, was 41 perches and the consideration was Rs. 3,000/-.

I produce as P2A the final plan, attached to P2.

**Cross - Examined :** by. Mr. Musthapha:

Evidence o  
Caruppiah  
Sandanam—  
Cross-exami-  
nation

I agreed to purchase a portion of land that was to be allotted in the partition case together with certain building owned by all the defendants in that partition case. There was no house on lot E which was allotted to the defendants. All the defendants were owners of interests in the houses standing on the land. In that partition action there was no compensation payable to any of the defendants in respect of the house. The houses have been allotted to me as the plaintiff in that case. I was personally entitled to 1/6th share and I was allotted lot A together with some houses. Lot B also has certain houses on it and they were allotted to some ladies who were defendants. Prior to the partition action, on completion of the agreement, I did not take possession of the 1/6th share. It was only after the determination of the partition case that I entered into possession of lot E. After I took possession of lot E, I have put up three houses on it. There were no plantations on that lot. It was a grass land. There were no tea either. I do not know whether tea coupons were issued in respect of any tea on the land. I was not in possession of the 1/6th share. I have not obtained coupons. No one will take a lease of lot 3 which is in extent 1 rood and 1.1 perches. It is only good as a building block. I have put up buildings and rented them out. I collect nearly Rs. 180/- from the houses in lot E which are buildings which I have put up. I completed the buildings in 1960 or so. When I entered into agreement P1, the defendants and their mother were the owners of 1/6th share together with plantations and buildings standing on the land sought to be partitioned. I knew that I could not get an outright deed executed because of the pending partition action and that was why I entered into agreement P1.

**Q.** You knew that until you got the deed of transfer from the defendants, the defendants would be owners subject to the agreement ?

**A.** As I had paid the consideration in full, they asked me to take possession and do whatever I want.

They said that once I paid the full amount, I could take the land and make use of it and that they would transfer it to me. The defendants are now in Colombo. When the transaction took place, they were living in Gampola—Haniffa, the lady and their mother were in Gampola. Jamaldeen was working in Colombo, I think. I obtained P3 the promissory note to ensure that if the Rs. 500/- was not paid back to me, I could recover in that note. I got security for the payment of that Rs. 500/-. For the payment of the Rs. 500/-, I have obtained a receipt.

**Re-Examined:** by Mr. Desinghe:

I said that lot E has no value except as a building block. P3 is in favour of Haniffa, 3rd defendant in this case. It was endorsed to me. P3 amounted to a payment of Rs. 500/- in my favour.

Signed V. SIVA SUPRAMANIAM  
District Judge  
9-10-1963

No. 11  
Plaintiff's  
Evidence

Evidence of  
Caruppiah  
Sandanam—  
Re-examination

**Manikawadu Richard de Silva:**—Affirmed—62, *Proctor and Notary*, Gampola.

Evidence of  
M. R. de Silva—  
Examination

10 I am a member of the Gampola Bar and I was also the Crown Proctor there. (Shown P4). This is in my handwriting and the signature is also mine. I say in P4 that "the deed of transfer in your favour will be signed as soon as the final decree is entered." On that condition I called for some money on behalf of my clients the defendants, from the plaintiff. The three defendants in this case—Jamaldeen, Haniffa and Mohideen are my clients and I was acting for them in the partition action. The 11th, 12th and 13th defendants in the petition signed apart from the mother who is now dead. I do not think that they really contested the case. They did not want to contest as they were getting their share.  
20 I was aware of the fact that they had entered into an agreement with the plaintiff in this case (Shown P5). This is a letter signed by Jamaldeen addressed to me. I sent P5 along with P4 to the plaintiff. Agreement P1 was attested by me.

**Cross-Examined:**—Nil.

Signed V. SIVA SUPRAMANIAM  
District Judge  
9-4-1963

Mr. Desinghe closes his case reading in evidence P1 to P10.

Signed V. SIVA SUPRAMANIAM  
District Judge  
9-4-1963.

30

## No. 12

### ADDRESSES TO COURT

No. 12  
Addresses to  
Court

Mr. Musthapha states that he is not calling any evidence. He says that there is no case of estoppel in this case. The plaintiff was aware that the defendants and their mother were the owners of this property until the plaintiff purchased it. There is also no evidence of any trust. There is expressed provision in P1 where one side or the other failed to implement the terms of the contract. In view of the provision for damages in the event of a breach  
40 on either side, plaintiff is not entitled to specific performance. Cites 59 *N.L.R.*

No. 12  
Addresses to  
Court  
—Continued

385. Also cites 44 *N.L.R.* 373. Submits that the only relief that will be available to the plaintiff will be damages as provided for in P1 and not specific performance.

Mr. Desinghe addresses the court and states that the failure in this case is on the part of the defendant and not the plaintiff. They ask the court to give them the advantage of their own failure. In this case the plaintiff asks for specific performance in the first instance, failing which liquidated damages. Defendants cannot, on their own, ask the plaintiff to take liquidated damages. Cites 37 *C.L.W.* 109 which is reported in 50 *N.L.R.* 177. Cites also 17 *N.L.R.* 238. On estoppel Mr. Desinghe states that the uncontradicted evidence is 10 that the plaintiff paid the money long before the entering of final decree, entered into possession, with the knowledge and acquiescence of the defendants and constructed buildings on the land worth Rs. 30,000/- now.

Judgment 3-5-1963.

Signed V. SIVA SUPRAMANIAM  
District Judge  
9-4-1963

No. 13  
Judgment of the  
District Court—  
10.5.63

No. 13

### JUDGMENT OF THE DISTRICT COURT

10th May, 1963. 20

#### JUDGMENT

By a notarial agreement No. 7052 of 18th July, 1956 (P1) one Natchia Umma and the defendants bound themselves to transfer to the plaintiff the divided extent of land which may be allotted to them in lieu of their undivided interest in Partition Case No. P.1119 of the District Court of Kandy which was then pending. The plaintiff was himself the owner of an undivided interest in the same land and was the plaintiff in the partition suit. Under the Final Decree entered in the said Partition Case on 18th December, 1957 Natchia Umma and the Defendants, who were the 11th to 14th Defendants in the Partition suit, were jointly declared entitled to the divided lot depicted 30 as E on plan No. 2285A of 31st October, 1957 (P2A). Natchia Umma died subsequently leaving as her heirs the three defendants who, accordingly, became entitled to the said lot E subject to the rights of the plaintiff on the agreement P1.

Under the agreement P1, the defendants and Natchia Umma undertook to convey to the plaintiff within a period of three months of the date of the final decree in the partition case for a consideration of Rs. 3,000/- the divided share which may be allotted to them in the said case. Under clause 2 of the said agreement, they acknowledged the receipt from the plaintiff of a sum of Rs. 2,000/- out of the said consideration. It was provided that the balance 40

sum of Rs. 1,000/- should be paid at the time of the execution of the deed of conveyance in favour of the plaintiff. Clauses 3 and 4 of the said agreement were in the following terms:—

No. 13  
Judgment of the  
District Court—  
10.5.63  
—Continued

“3. In the event of the purchaser failing or neglecting to complete the said purchase in terms of these presents the vendors being ready and willing to perform their part of the contract in these presents contained, the sum of Rs. 2,000/- paid as advance this day shall be forfeited to the vendors as liquidated damages and not as a penalty.

10 4. In the event of the vendors failing or neglecting to complete the conveyance in terms of these presents the vendors shall refund to the purchasers the sum of Rs. 2,000/- paid as advance as aforesaid together with the further sum of Rs. 2,000/- as liquidated damages and not as a penalty.”

The defendants failed to execute a conveyance in favour of the plaintiff in respect of the divided lot E when called upon to do so and the plaintiff has instituted this action to enforce specific performance of the said Agreement. The principal defence is that the plaintiff's right to demand specific performance is excluded by Clause 4 of the agreement referred to above which constitutes a substituted obligation and the sole obligation upon them in the event of  
20 the failure to execute a deed of conveyance. It is settled law that where the contract entered into between two parties provides for a transfer of property by one to the other, and in default for a substituted obligation to pay a specified sum of money as damages, specific performance cannot be enforced against the recusant party, and the only relief which the other party can obtain is to enforce his claim for damages (*Vide* Judgment of the Privy Council in the case of *Abdeen Vs. Thahir* in 59 *N.L.R.* 385).

In the present case, however, the plaintiff seeks to enforce his claim for specific performance on the ground that subsequent to the deed of agreement P1 further events have occurred which have modified the contract in so far as  
30 the provision for substituted is concerned and that the defendants are not entitled to contend that the only obligation enforceable against them is the substituted one.

While the partition action was still pending the defendants and Natchia Umma applied for and obtained from the plaintiff on 28th August, 1956 a sum of Rs. 500/- out of the balance consideration of Rs. 1,000/- which would have been payable by the plaintiff to them on the execution of the deed of transfer. Natchia Umma and the 1st and 3rd defendants executed a promissory note (P3) in favour of the 2nd defendant in a sum of Rs. 500/- and the 2nd defendant endorsed that note in favour of the plaintiff and handed it to  
40 him as security for the sum of Rs. 500/- received by them. On 5th February, 1957 the defendants, through their Proctor Mr. M. W. R. de Silva, applied to the plaintiff for a further sum of money as they were in urgent need of money to meet the wedding expenses of the 2nd defendant. In the course

of the letter (P4) sent by Mr. De Silva to the plaintiff he stated "You might arrange to give them the money. The deed of transfer in your favour would be signed as soon as the final decree is entered. As you know we are not contesting the case." The letter of the 1st defendant addressed to Mr. De Silva in that connection stated *inter alia*, "Therefore I most kindly request your good self to be so good as to kindly influence Mr. Sandanam Pillai to pay Haniffa the balance amount due on the deed. A Pro Note could be furnished to Mr. Sandanam Pillai if necessary". The plaintiff complied with the request of the defendants and paid them the balance sum of Rs. 500/- that would have been payable to the defendants on the execution of the deed. The 10 receipt granted by the 2nd defendant Haniffa on behalf of himself and the other defendants dated 10th February, 1957 (P6) was in the following terms:—

"Received the sum of Rs. 500/- being balance due to us for land referred to in the agreement dated 8th July, 1956 attested by Mr. M. W. R. de Silva of Gampola. We undertake to give a transfer to Mr. Sandanam the 1/6th share of the land named Konakkahena as per partition case No. 1119 D.C. Gampola without any consideration as we received the full consideration of Rs. 3,000/-".

The uncontradicted evidence of the plaintiff, which I accept, is that after the sum of Rs. 3,000/-, which was the full consideration payable for the 20 transfer, was received by the defendants they took no further interest in the partition action and they requested him to represent them at the final partition and he did so. In fact, the final partition decree (P2) expressly states that the final partition was effected in the presence, *inter alia*, of the plaintiff representing himself as well as the 11th to 14th defendants. The decree also expressly refers to the fact that the share allotted to the 11th to 14th defendants was subject to plaintiff's right to purchase their share on deed P1. The plaintiff also stated that the defendants informed him after the final partition, to take possession of the lot and to do whatever he liked with it, and accordingly he took possession of that lot and, with the knowledge and acquiescence 30 of the defendants, he put up buildings thereon at a cost of over Rs. 25,000/-. The evidence of the plaintiff that he took possession of the divided lot allotted to the defendants at the request of the defendants and that he put up buildings thereon at a cost of over Rs. 25,000/- with the knowledge and acquiescence of the defendants has not been contradicted by the defendants. I accept that evidence of the plaintiff. In my opinion, the defendants by reason of their conduct referred to, are now estopped from contending that they are not liable to execute a conveyance in favour of the plaintiff of the title to the divided lot E, and that the only obligation which they are bound to perform is the substituted obligation contained in Clause 4 of the agreement P1. 40 Under Clause 4 the defendants are liable to refund to the plaintiff only a sum of Rs. 2,000/- which they had received prior to the date of that agreement in addition to the payment of damages assessed at Rs. 2,000/-. That clause does not refer to the refund of any sum received by them subsequent



to the date of the agreement, and if that clause is to be given effect to, the defendants would be liable to refund only Rs. 2,000/- although they have in fact received Rs. 3,000/- from the plaintiff. That, certainly, could not have been the intention of the parties. For the above reasons, I hold that the substituted obligation contained in Clause 4 has become inapplicable, and the plaintiff is entitled to enforce specific performance of the obligation on the defendants to execute a transfer of the property.

No. 13  
Judgment of the  
District Court—  
10.5.63  
—Continued

It was also submitted on behalf of the defendants that the plaintiff should have obtained a transfer within three months of the date of the final decree, and having failed to do so he is not entitled to ask for a transfer thereafter. Under the agreement the obligation was on the part of the defendants to execute a transfer within a period of three months of the final decree, and the plaintiff's right to enforce that obligation was not limited to the period of three months.

I answer the issues as follows:—

1. Yes.
2. Yes.
3. Yes.
4. Yes.
- 20 5. Yes.
6. Yes.
7. Does not arise.
- 8 and 9. Though the question of a trust was raised in these issues, it was not argued at the trial.
10. Yes; but that provision became inapplicable by reason of the subsequent circumstances.
11. Does not arise.
12. The obligation was on the defendants to effect the transfer within a period of three months of the decree.
- 30 13. Does not arise.
14. No.
15. Does not arise.
16. Does not arise.

I give judgment for plaintiff as prayed for with costs and direct the defendants to execute a deed of transfer in favour of the plaintiff at the expense of the plaintiff on 31st May, 1963 at 10-00 a.m. at the office of the Notary nominated by the plaintiff, or on such other date and time as may be agreed upon between the defendants and the plaintiff. In the event of the defendants failing to execute the deed as directed, the Secretary of this Court is authorised  
40 to execute a transfer.

Signed V. SIVA SUPRAMANIAM  
District Judge  
10-5-1963

**DECREE OF THE DISTRICT COURT**

**D E C R E E**

In the District Court of Kandy

CARUPPIAH SANDANAM of Gondennawa Estate in Nawalapitiya.

*Plaintiff.*

*Vs.*

No. L.6642.

1. MOHAMED ISMAIL JAMALDEEN of 60, Grandpass Road, Colombo.
2. MOHAMED ISMAIL MOHAMED HANIFFA of 200, Galle Road, 10 Mount Lavinia.
3. UMMU RAZEENA wife of S. M. M. MOHIDEEN of 111, Kandy Road, Gampola.

*Defendants.*

This action coming on for final disposal before V. Siva Supramaniam Esquire, District Judge, Kandy on the 10th day of May, 1963 in the presence of Messrs. Beven & Beven Proctors on the part of the Plaintiff and of Mr. S. M. Musthapha, Proctor on the part of the Defendants:

It is ordered and decreed that the defendants do execute a deed of transfer in favour of the Plaintiff for the land described in the Schedule 20 at foot at Plaintiff's expenses on 31st May, 1963 at 10 a.m. at the Office of the Notary nominated by the Plaintiff, or on such other date and time as may be agreed upon between the Defendants and the Plaintiff.

It is further ordered and decreed that in the event of the defendants failing to execute the deed as directed, the Secretary of this Court be and he is hereby authorised to execute the transfer.

And it is further ordered and decreed that the Defendants do pay to the Plaintiff his costs of this action as taxed by the Officer of the Court.

**The Schedule above referred to:—**

All that divided lot marked "E" in Plan No. 2285A dated the 30 31st day of October, 1957 made by Mr. H. D. G. Rodrigo, Licensed Surveyor out of the land and premises called Konakahena situate within the Urban Council Limits of Nawalapitiya in the Kandy District Central Province of the Island of Ceylon and the said lot "E" being bounded on

the North and North-East by Railway land, East by Railway land, South by Road Reservation and West by Lot D containing in extent No Acres One Rood nought one point perches (0A—1R—01.1P).

No. 14  
Decree of the  
District Court—  
10.5.63  
—Continued

Signed V. SIVA SUPRAMANIAM  
*District Judge*

This 10th May, 1963.

Drawn by:  
Beven & Beven,  
*Proctors for Plaintiff.*

10

No. 15

**PETITION OF APPEAL TO THE SUPREME COURT  
IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

No. 15  
Petition of  
Appeal to the  
Supreme Court,  
22.5.63

CARUPPIAH SANDANAM of Gondennawa Estate  
in Nawalapitiya.

*Plaintiff.*

*Vs.*

No. 6642 (L)

1. MOHAMED ISMAIL JAMALDEEN of  
60, Grandpass Road, Colombo.
2. MOHAMED ISMAIL MOHAMED HANIFFA of  
200, Galle Road, Mount Lavinia.
3. UMMU RAZEENA wife of S. M. M.  
MOHIDEEN of 111, Kandy Road, Gampola.

*Defendants.*

20

- 
1. MOHAMED ISMAIL JAMALDEEN of  
60, Grandpass Road, Colombo.
  2. MOHAMED ISMAIL MOHAMED HANIFFA of  
200, Galle Road, Mount Lavinia.
  3. UMMU RAZEENA wife of S. M. M.  
MOHIDEEN of 111, Kandy Road, Gampola.

*Defendants-Appellants.*

30

S.C. 215 (F)  
1963

*Vs.*

CARUPPIAH SANDANAM of Gondennawa Estate  
in Nawalapitiya.

*Plaintiff-Respondent.*

No. 15  
 Petition of  
 Appeal to the  
 Supreme Court,  
 22.5.63  
 —Continued.

Before,  
 HIS LORDSHIP THE CHIEF JUSTICE and the other HONOURABLE JUSTICES  
 of the Supreme Court of the Island of Ceylon.

On this 22nd day of May, 1963.

The petition of appeal of the defendants-appellants abovenamed appearing by their proctor Seyad Mohamed Musthapha state as follows:—

1. The plaintiff-respondent sued the defendants-appellants in Case No. L.6642 of the District Court of Kandy praying for a specific performance of an agreement No. 7052 dated 18th July, 1956 by executing a transfer of the land and premises described in the schedule to the plaintiff.
2. The plaintiff-respondent averred *inter alia* that by the said deed, the defendants-appellants agreed to sell whatever divided share that would be allotted to appellants in Case No. P.1119 of the District Court of Kandy and that defendants-appellants had failed to transfer same.
3. The defendants-appellants filed answer stating that agreement No. 7052 became inoperative and discharged by plaintiff-respondent's failure to purchase the said premises within three months of the said agreement and in accordance with the terms contained therein and counter claimed a declaration in favour of the defendants-appellants.
4. The plaintiff-respondent amended the plaint and thereafter the case was fixed again for trial.
5. The trial was held on 21st February and 9th April respectively on the following issues:—
  - (1) Did the plaintiff pay to the defendants a sum of Rs. 1,000/- balance consideration due on agreement 7052 prior to the entering of the final decree in P.1119 ?
  - (2) Did the defendants become liable after the entering of the said final decree, to effect a conveyance in favour of the plaintiff when called upon to do so by the plaintiff ?
  - (3) If issues 1 and 2 are answered in favour of the plaintiff, is the plaintiff entitled to the reliefs prayed for in prayers (a) and (b) of the amended plaint ?
  - (4) After the entering of the final decree, has the plaintiff been in possession of and built on the said lot referred to in the Partition Decree ?
  - (5) Did the plaintiff do so with the knowledge and acquiescence of the defendants ?

- (6) Does the conduct of the defendants in acquiescing in the plaintiff's possession and erecting buildings, stop the defendants from denying the plaintiff's right to have a conveyance of the said property ?
- (7) In the event of the court not granting specific performance to the plaintiff, is the plaintiff entitled:
- (a) to the return of the full consideration paid by the plaintiff to the defendants,
- (b) to liquidated damages in a sum of Rs. 2,000/-.
- (8) After the entering of the Final Decree in P.1119, did the defendants hold the said property in trust for the plaintiff ?
- (9) If so, is the plaintiff entitled to the reliefs claimed in paragraphs (a) and (b) of the prayer to the amended plaint ?

6. Judgment in the said action was delivered on 10-5-63. By the said Judgment and decree, the plaintiff-respondent has been granted the relief claimed by him. Aggrieved by the Judgment and decree, the appellant begs to appeal therefrom to Your Lordships court on the following amongst other grounds that may be urged by counsel at the hearing of this appeal.

- (i) The said order is wrong, contrary to law and against the weight of evidence led in the said case.
- (ii) It is respectfully submitted that the learned District Judge has mis-directed himself on the facts and on the law in the said case.
- (iii) The Learned District Judge has erred in the interpretation of the case reported in 59 *NLR* 385. The decision reported in 59 *NLR* 385 lend support to the facts in this action that specific performance cannot be enforced in as much as there was provision for the recovery of liquidated damages.
- (iv) The events that have been referred to in the evidence of the plaintiff and the findings of the learned District Judge thereon it is respectfully submitted, cannot operate to vary or modify the terms of a formal contract. It is submitted that in any event the promissory note created a different obligation and the rights of the plaintiff-respondent on the promissory note were merged in the promissory note. It is submitted on a careful scrutiny of the promissory note it would appear that the plaintiff-respondent was a holder of rights on the promissory note and there was no justification for the learned District Judge to connect up the 1st and 3rd defendants-appellants with the obligations on the said deed.
- (v) It is respectfully submitted that the learned District Judge has erred in the interpretation of the said Agreement in regard to the obligations of the appellants and respondent respectively.

No. 15  
Petition of  
Appeal to the  
Supreme Court,  
22.5.63  
—Continued

- (vi) It is respectfully submitted that the learned District Judge has mis-directed himself on the pith and substance of the agreement and the principles of law applicable thereto and the principles of law on time being the essence of the contract.
- (vii) It is respectfully submitted that the plaintiff has made reservations to claim compensation for improvements if any. Accordingly the rights of parties on the question of improvements could have been determined in separate proceedings and in so far as the action on the deed was concerned, the defendants-appellants were entitled to succeed. 10
- (viii) The evidence of the plaintiff-respondent is improbable and unworthy of credit.

Wherefore the Defendants-Appellants pray that Your Lordships Court to:

- (I) set aside the judgment and decree of the learned District Judge,
- (II) dismiss plaintiff-respondent's action and enter judgment and decree as prayed for by the defendants-appellants and
- (III) for costs and for such other and further relief as to their Lordships Court shall seem meet.

Sgd. S. M. MUSTHAPHA,  
*Proctor for Defendants-Appellants.* 20

## No. 16

### JUDGMENTS OF THE SUPREME COURT

*Present:*— H. N. G. FERNANDO, Senior Puisne Justice and G. P. A. SILVA, J.

*Counsel:*— C. RANGANATHAN, Q.C., with M. S. M. NAZEEM and M. T. M. SIVARDEEN for the Defendants-Appellants.

H. W. JAYAWARDENE, Q.C. with N. R. M. Daluwatte for the Plaintiff-Respondent.

*Argued on:*— 27th June, 11th and 12th July and 9th November, 1966.

*Decided on:*— 14th February, 1967. 30

H. N. G. FERNANDO, C. J.

This is an appeal against a decree ordering specific performance of an Agreement for the sale of land. By the Agreement dated 18th July, 1956 the three defendants agreed to sell and transfer to the plaintiff the divided share of land to be allotted to the defendants in a pending partition action D.C.

No. 16  
Judgments of  
the Supreme  
Court—  
14.2.67

1119 of the same court. The purchase price specified in the Agreement was Rs. 3,000/-, of which Rs. 2,000/- had already been received by the defendants, and the agreement of the defendants was to convey the land upon payment by the plaintiff of the balance Rs. 1,000/- within the period of three months succeeding the entry of final decree in action No. 1119. The present plaintiff was also plaintiff in the partition action, and the three defendants were among the parties in that action.

Clause 3 of the Agreement provided that in the event of the failure or neglect of the purchaser to pay the balance sum of Rs. 1,000/- within the stipulated period of three months, the sum of Rs. 2,000/- already paid would be forfeited as liquidated damages.

Clause 4 of the Agreement was as follows:—

“In the event of the Vendors failing or neglecting to complete the conveyance in terms of these presents the Vendors shall refund to the Purchaser the sum of Rupees Two thousand (Rs. 2,000/-) paid as advance as aforesaid together with a further sum of Rupees Two thousand (Rs. 2,000/-) as liquidated damages and not as a penalty.”

For purposes of construction, the Agreement in this case is identical with that construed in *Thaheer v. Abdeen* (57 N.L.R. 1), where also there was provision for payments of specified sums as liquidated damages by the purchaser, or the vendor, as the case may be, in the event of default in the performance of the obligation to complete the purchase or the sale. The law governing such transactions is so admirably stated in the judgment of Gratiaen, J. (as subsequently approved in toto by the Privy Council—59 N.L.R. 385), that I need make only one brief citation:—

“It is only in the absence of agreement to the contrary that the Roman-Dutch law confers on a purchaser under an executory contract the right to select one or two alternative legal remedies under the Roman-Dutch law, namely, specific performance or damages. But we have here a categorical stipulation that if the primary obligation is not fulfilled for any reason whatsoever, two specified sums shall immediately become due. To my mind, the stipulated return of the deposit, being part of the purchase price, necessarily implies that the primary obligation to sell is then to be regarded as having come to an end. This negatives an intention that the purchaser could still demand, if he so chose, specific performance.”

Clearly then, the Agreement in the present case excluded the right of the purchaser to specific performance, and the only obligation of the vendor, in default of his conveying the property was the substituted obligation to refund the advance payment and to pay Rs. 2,000/- as liquidated damages. But the learned trial Judge has held that specific performance can nevertheless be claimed because of certain subsequent transactions and their legal consequences.

After the execution of the Agreement, but before entry of the partition decree, one of the defendants-vendors was apparently in need of money in view of his impending marriage. At the request of the vendors, the plaintiff

lent to the defendants a sum of Rs. 500/- in August 1956, and a promissory note for that amount was delivered to the plaintiff by the defendants. Again, in February 1957 the proctor for the defendants requested the plaintiff to pay a further sum of Rs. 500/- stating in a letter (P4) that “the Deed of transfer could be signed as soon as final decree is entered”. Thereupon, the plaintiff paid a further Rs. 500/- to the defendants, receiving from them a written, *but non-notarial*, acknowledgment (P6) in which they undertook “to give the transfer (to the plaintiff) . . . without any consideration as we have received the full consideration of Rs. 3,000/-”.

In his evidence at the trial, the plaintiff stated that after entry of the 10 partition decree in December 1957 he entered into possession of the divided share allotted to the three defendants by the partition decree. The defendants made no objection to this, and indeed the plaintiff had represented them when the surveyor executed his commission to divide the land. Thereafter the plaintiff erected buildings on the land and rented them out. In October 1961, the plaintiff wrote to the defendants directly and through his Proctor requesting them to execute the formal conveyance in terms of the original Agreement, but they had failed to do so.

The finding of fact, which has not been challenged in appeal, is that the 20 plaintiff took possession of the defendants’ divided lot and erected buildings thereon with their knowledge and acquiescence; the finding of law is that they are estopped by their conduct from contending that they are not liable to execute the conveyance.

I shall first refer to an argument of Mr. Jayawardene in which he sought to justify the grant of the remedy of specific performance by different considerations. When it was argued, the defendants requested the plaintiff to pay them Rs. 500/- in February 1957 and received that payment, having earlier (in August 1956) received a loan of Rs. 500/- on a promissory note, and when they acknowledged by P6 that the full consideration of Rs. 3,000/- had been received, an event occurred which had not been provided for in the 30 original Agreement. This event, it was said, was a matter on which the Agreement was silent, and therefore evidence of a separate oral agreement relating to that matter is admissible under Proviso (2) to s.92 of the Evidence Ordinance. In considering this argument, I must first state what precisely is the matter upon which the Agreement is said to have been silent, namely, the rights and obligations of the parties in the event of the balance consideration of Rs. 1,000/- being paid and accepted *before* the time of payment mentioned in the Agreement. If Proviso (2) to s.92 does render evidence as to that matter admissible, then the argument must succeed; but I shall briefly state my reasons why it must be rejected:—

40

- (a) The alleged oral agreement is not a prior or contemporaneous collateral agreement, and neither Counsel’s researches, nor mine (in *Phipson*, 10th edition, Chapter 46), have revealed any case where the exception to the rule of exclusion embodied in s.92, with respect to contracts required by law to be in writing, has been regarded as permitting parol evidence of a *subsequent* agreement of the kind here alleged.



(b) The alleged oral agreement is inconsistent with the terms of the original Notarial Agreement P1, and is therefore not one contemplated in Proviso (2). The terms of P1, in creating the obligation to pay liquidated damages in the event of non-performance by either party of the respective primary obligations, by necessary implication established their intention to exclude the remedy of specific performance (per Gratiaen, J., 57 *N.L.R.* P1, at P3). That being so, a parol agreement that the contract will be specifically performed, which perhaps is clearly expressed in the document P6, is inconsistent with the contrary intention established by the original Agreement.

(c) Let me take the case of the common form of agreement for the sale of land, where A agrees to sell and B to purchase the land at a fixed price within a specified future period, and which provides for the payment of liquidated damages for the failure of either party to complete the sale or purchase. If B tenders and A accepts payment of the price before the commencement of the specified period, then certainly B will have performed his primary obligation, and A will by acceptance of the premature payment be unable to maintain that B failed to perform his primary obligation. But can it be said, in these circumstances, that the agreement is silent as to their consequences? It seems to me, on the contrary, that in terms of the document two consequences clearly arise; the first that A becomes liable to convey the land if called upon to do so within the period specified in the Agreement; the second that, if A fails to execute the conveyance within that period, he will become liable to perform what Gratiaen, J. described as the “substituted obligation” to pay liquidated damages. In such circumstances, the evidence of the premature payment, and of its acceptance, is only evidence of a subsequent fact (*i.e.* payment of the purchase price) which must always be proved when a purchaser seeks to enforce whatever remedy may be available to him in terms of a contract for a future sale.

I hold for these reasons that the parol evidence of an alleged agreement that the Agreement P1 would be specifically performed is not admissible under Proviso (2) to s.92.

The writing P6 may well be regarded as a distinct subsequent written agreement to modify the Agreement P1. But the Agreement P1 was required by s.2 of the Prevention of Frauds Ordinance (Cap. 70) to be notarially executed. *Phipson* (10th Edn. para 1806) states that a deed may be *wholly* discharged by parol, but that it is still doubtful whether a deed can be *varied* by parol. Whatever may be the position in England, s.2 of our Prevention of Frauds Ordinance does not in my opinion permit the terms of a notarial instrument to be *varied* by a subsequent parol agreement. I hold therefore that the subsequent agreement alleged in this case cannot be proved under Proviso (4) to s.92 of the Evidence Ordinance.

I pass now to consider the conclusion of the trial Judge that “the defendants are estopped from contending that they are not liable to execute a conveyance.”

A summary of the evidence as to the conduct of the defendants upon which the plea of estoppel rests is here necessary. Firstly there is the evidence (already mentioned) that the defendants did in February 1957 agree that they would execute a conveyance of the land. They took no active part thereafter in the Partition Action and acquiesced in the plaintiff taking all steps to secure that the decree would entitle them to their proper divided share of the land. After the decree was entered, they permitted the plaintiff to possess their divided share, and they acquiesced in the erection and letting of buildings by the plaintiff. These facts can well justify a finding that the plaintiff was induced to his actual course of action in the belief that the defendants would not refuse to execute a conveyance of the land. 10

But there is one important circumstance which does not appear to have been considered in the trial Court. The principal clause in the Agreement P1 provided that "the vendor shall by a valid and effectual deed of conveyance which shall be prepared and executed at the cost and expense of the purchaser sell and transfer (the divided share) at any time within three months of the entering of the Final Decree in the Partition Action No. 1119".

The documents bear out the plaintiff's evidence that requests for the conveyance were made in writing in October 1961. But there is neither evidence, nor even a bare allegation in the plaint, that any request was made in terms of clause 1 of the Agreement, namely within the specified period of three months. That being so, it would be wrong to read the plaintiff's statement, that he had orally asked one of the defendants for a conveyance, as establishing that a formal request had been made within the specified period and that a deed had then been duly tendered for signature. 20

The simple fact which thus emerges is that the plaintiff did not exercise his right under the Agreement to demand a conveyance. If such a demand had been made and refused, the plaintiff could not have regarded the defendants' acquiescence in his occupation and development of the land as being a representation that they would execute a conveyance at some later time. The plaintiff cannot now claim that his failure to demand a conveyance at the proper time must be turned to his advantage. 30

This action is quite clearly one for the enforcement of the Agreement P1, and that is made obvious in the plaint. The failure of the plaintiff to demand performance of the Agreement in terms of Clause 1 disentitled him from maintaining the action unless he could show that the failure on his part had been induced by the conduct of the defendants. That has not been the position taken in the issues, nor is that position supported in any way by the evidence. Indeed the plaintiff made no attempt in his evidence to relate his failure to demand a conveyance within the stipulated period to any conduct of the defendants. 40

The resulting position in law is that upon the termination of the period of three months succeeding the entry of the Partition Decree, *i.e.* on the 18th March, 1958, the plaintiff had no right to seek performance of the Agreement, either from the defendants directly or through the Court. He had no cause of action, depending upon any refusal of the defendants to perform their obligation under the Agreement, either for a decree of specific performance or for the recovery of liquidated damages.

Any parole agreement or representation of the defendants prior to 18th March, 1958 might perhaps have been related to their obligations under the Agreement P1. But any such parole agreement or representation made after 18th March, 1958 cannot be related to obligations which had then lapsed. As already stated, it was not the conduct of the defendants that induced the plaintiff to desist from demanding a conveyance at the proper time. Nor can the plaintiff claim that their conduct constituted a representation, either that the obligations under the Agreement would be performed after the stipulated time, or that the land would be conveyed independently of the obligations under the Agreement. Any such claim is untenable in view of the Prevention of Frauds Ordinance.

Counsel for the plaintiff at the trial reserved his right to claim compensation for improvements made on the land. No adjudication as to that right is therefore necessary in the present action.

For the reasons stated, the plaintiff has no right to a decree for specific performance of the Agreement dated 18th July, 1956. The appeal is allowed, and the plaintiff's action dismissed with costs in both Courts.

Signed: H. N. G. FERNANDO,  
*Chief Justice.*

20 G. P. A. SILVA, J.

I agree.

Signed: G. P. A. SILVA,  
*Puisne Justice.*

*Present:*— H. N. G. Fernando, C.J. and G. P. A. Silva, J.

*Counsel:*— C. RANGANATHAN, Q.C. with M. S. M. NAZEEM and M. T. M. SIVARDEEN for the Defendants-Appellants.

H. W. JAYAWARDENE, Q.C. with N. R. M. DALUWATTE for the Plaintiff-Respondent.

*Argued on:*— 21st March, 1967.

30 *Decided on:*— 12th May, 1967.

H. N. G. FERNANDO, C.J.

After our judgment in this appeal was delivered on 14th February, 1967, the Defendants-Appellants' counsel brought to our notice our omission to deal with the counter-claim of the Defendants for a declaration of title to the land which is the subject of the action, and for the ejectment of the Plaintiffs from the land. We thereupon heard further argument on this matter.

The Plaintiffs had entered into possession of the land with the consent of the Defendants, and had erected valuable improvements on the land with the knowledge of the Defendants. Accordingly, although (as we have held)

the Plaintiffs' action for specific performance of the agreement to convey the land to them must fail, they would probably have been entitled to continue in possession of the land by virtue of a *ius retentionis* until they are compensated for the value of the improvements made in good faith and with the Defendants' knowledge.

Unfortunately for the Plaintiffs, however, their replication of 23rd August, 1962 did not set up a claim of a *ius retentionis*, nor even a claim for compensation for improvements. All that was sought in the replication, was "that the plaintiffs' claim for compensation be reserved." This attitude was maintained at the stage when issues were framed, as is shown by the following 10 statement made by the Plaintiffs' proctor:—

"Mr. Dias Desinghe states that in the event of the Court not granting the plaintiff specific performance of the agreement, the plaintiff reserves to himself the right to claim compensation for improvements in a separate action."

The following matters are then entered of record:—

"Mr. Marikar states that he objects to the plaintiff reserving the right to institute a separate action in regard to the compensation for improvements effected by him on the land.

#### Order

20

I do not see any prejudice caused to the defendants by the plaintiff reserving the right to institute a separate action in regard to the compensation for improvements effected by him on the land. Indeed, it will be most inconvenient for the Court to try the question of improvements in this action. I hold that the plaintiff is entitled to reserve the right to make that claim in separate proceedings.

Signed

*District Judge*  
21-2-63

Thereafter the Defendants' Counsel framed (*inter alia*) the following 30 issues:—

- "Is the plaintiff in wrongful and unlawful possession of the said land since April, 1958? If so, are the defendants entitled to—
- (a) a declaration of title to the said land;
  - (b) an order for ejectment; and
  - (c) damages ?"

In the result, these two issues were set down for trial without there being put in issue any matter which might disentitle the Defendants (who undoubtedly have legal title) from obtaining the reliefs of a declaration of their title and of the ejectment of the plaintiff, or any matter which might qualify or post- 40 pone the operation of a decree for ejectment entered against the Plaintiffs.

Indeed issue No. 7, framed in anticipation of the failure of the claim for specific performance, manifests an intention not to seek any adjudication as to any right of the plaintiffs to compensation and a *ius retentionis*.

No. 16  
Judgments of  
the Supreme  
Court—  
12.5.67  
—Continued

There have been many decisions<sup>1</sup> upon s.146 of the Civil Procedure Code as to the duty of the Court to record issues “on which the right decision of the case appears to the court to depend.” And I had hoped that even in appeal we would have power to enable the plaintiffs to set up their claim to compensation and to a *ius retentionis*, and thus to avoid the hardship of the position in which they are now placed. Unfortunately, however, those  
10 decisions do not appear to be applicable in a case where a party has deliberately reserved for a future action a claim which could have been set up in this action.

Sub-section (3) of s.146 of Civil Procedure Code provides that “Nothing in this section requires the court to frame and record issues when the defendant makes no defence.” In the instant case, the defendants have counterclaimed for ejection; and by reason of paragraph (e) of s.75 of the Civil Procedure Code that claim has the same effect as “a plaint in a cross  
20 action”, in which the plaintiffs are the defendants. As such defendants, the plaintiffs have not in their replication set up the defences of compensation and of the *ius retentionis*. In these circumstances, s.146 (3) prevents the Court from framing issues based upon such defences—all the more because of the position taken up by the proctor at the trial.

I am unable to distinguish the position in this case from that which can arise in a simple action for declaration of title and ejection in which the defendant omits to plead and put in issue a claim he might have for compensation as a *bona fide* improver. If in such an action the plaintiff establishes his title and the fact of wrongful possession, then decree will be entered as prayed for, and the claim for compensation will have to be maintained  
30 separately. *A fortiori* would that be the position when the defendant expressly reserves his claim for compensation.

Our judgment delivered on 14th February, 1967 must accordingly be completed so as to deal with the counterclaims of the defendants. The defendants are declared entitled to a declaration of title to the land described in the plaint and to a decree for the ejection of the plaintiffs therefrom.

Signed: H. N. G. FERNANDO,  
*Chief Justice.*

G. P. A. SILVA, J.

I agree.

Signed: G. P. A. SILVA,  
*Puisne Justice.*

40

1. 20 New Law Report 289
- 24 New Law Report 97
- 64 New Law Report 25

**DECREE OF THE SUPREME COURT**

**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**

**CARUPPIAH SANDANAM of Gondennawa Estate  
in Nawalapitiya.**

*Plaintiff*

*Vs.*

**MOHAMED ISMAIL JAMALDEEN of  
60, Grandpass Road, Colombo and others.**

10

*Defendants*

**MOHAMED ISMAIL JAMALDEEN of  
60, Grandpass Road, Colombo and others.**

*Defendants-Appellants*

*Against*

**CARUPPIAH SANDANAM of Gondennawa Estate  
in Nawalapitiya.**

*Plaintiff-Respondent.*

Action No. 6642/L

District Court of Kandy

20

This cause coming on for hearing and determination on the 27th June, 1966, 11th, 12th July, 1966, 9th November, 1966, 14th February, 1967, 21st March, 1967 and 12th May, 1967, upon an appeal preferred by the Defendants-Appellants before the Honourable Hugh Norman Gregory Fernando, Chief Justice and the Honourable Gardiye Punchedewage Amara-seela Silva, Puisne Justice of this Court, in the presence of Counsel for the Defendants-Appellants and the Plaintiff-Respondent.

It is considered and adjudged that the plaintiff has no right to a decree for specific performance of the Agreement dated 18th July, 1956 and the appeal be and the same is hereby allowed and the plaintiff's action is dismissed with costs in both Courts. The defendants are declared entitled to a declaration of title to the land described in the plaint and to a decree for the ejection of the plaintiff therefrom.

*(Vide copies of Judgments attached).*

**The land described in the plaint referred to above**

All that divided lot marked 'E' in Plan No. 2285A dated the 31st day of October, 1957 made by Mr. H. D. G. Rodrigo Licensed Surveyor out of the said land and premises called Konakahena situate within the Urban Council

Limits of Nawalapitiya in the Kandy District Central Province of the Island of Ceylon, and the said lot 'E' being bounded on the North and North-East by Railway land, East by Railway land, South by Road Reservation and West by Lot D containing in extent No Acres One Rood nought one point one perches (0A. 1R.01.1P.).

No. 17  
Decree of the  
Supreme Court,  
12.5.67  
—Continued

Witness the Honourable Hugh Norman Gregory Fernando, Chief Justice at Colombo, the 29th day of May, in the year One thousand Nine hundred and Sixty Seven and of Our Reign the Sixteenth.

Signed B. F. PERERA,  
*Deputy Registrar, Supreme Court.*

10

**No. 18**

**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 HER MAJESTY THE QUEEN IN COUNCIL UNDER  
THE APPEALS (PRIVY COUNCIL) ORDINANCE.**

No. 18  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council—  
13.3.67

District Court of Kandy.  
L/6642.

20 S.C. No. 215/63.

CARUPPIAH SANDANAM of Gondennawa Estate  
in Nawalapitiya.

*Petitioner-Appellant.*

*Vs.*

1. MOHAMED ISMAIL MOHAMED JAMALDEEN of  
60, Grandpass Road, Colombo.
2. MOHAMED ISMAIL MOHAMED HANIFFA of  
200, Galle Road, Mount Lavinia.
3. UMMU RAZEENA wife of S. M. M. MOHIDEEN  
of 111, Kandy Road, Gampola presently of  
60, Grandpass Road, Colombo.

30

*Respondents.*

**TO HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER JUDGES  
OF THE SUPREME COURT OF THE ISLAND OF CEYLON.**

On this 13th day of March, 1967.

No. 18  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council—  
13.3.67  
—Continued

The Petition of the Petitioner-Appellant abovenamed who is Plaintiff in this case, appearing by his Proctors Charles Edward Alexander de Silva carrying on business under the name and style of Beven and Beven and his Assistant Pratriraja Mahanama Dias Desinghe states as follows:—

1. That feeling aggrieved by the judgment, order and decree of this The Honourable the Supreme Court of the Island of Ceylon pronounced on the 14th February, 1967 in S.C. Appeal No. 215/63 the petitioner-appellant is desirous of appealing therefrom to Her Majesty the Queen in Council.

2. The said Judgment is a final judgment and the matter in dispute in the appeal amounts to or is of the value of Rs. 5,000/- or upwards and for the appeal involves directly or indirectly a claim or question to or respecting property or a civil right amounting to or of the value of Rs. 5,000/- or upwards and/or the question involved in the appeal is one which by reason of its great public importance or otherwise ought to be submitted to Her Majesty in Council for decision.

3. On the 25th day of February, 1967 the Petitioner-Appellant has in terms of Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance given due notice of the petitioner's intended application for leave to appeal to Her Majesty in Council.

4. The said notices were sent to each of the Respondents by post and 20 by Telegrams.

Wherefore the Petitioner-Appellant prays that Your Lordship's Court be pleased to grant:—

- (a) Conditional leave to appeal against the judgment, order and decree of this Court dated 14th February, 1967 to Her Majesty, the Queen in Council.
- (b) Costs and such other or further relief as this Court shall seem meet.

Signed: BEVEN AND BEVEN,  
*Proctors for Petitioner-Appellant.*

No. 19

30

**JUDGMENT OF THE SUPREME COURT GRANTING  
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. 215/63 (FINAL)  
DISTRICT COURT OF KANDY CASE No. 6642.

S.C. Application No. 93/67.

No. 19  
Judgment of the  
Supreme Court,  
granting Condi-  
tional Leave to  
Appeal to the  
Privy Council—  
19.9.68



*Present:*— H. N. G. FERNANDO, Chief Justice, and SIRIMANE, J.

*Counsel:*— H. W. JAYAWARDENA, Q.C. with N. R. M. DALUWATTE for the Plaintiff-Petitioner-Appellant.

C. RANGANATHAN, Q.C. with M. T. M. SIVARDEEN and M. S. AZEEZ for the Defendant-Respondents.

*Argued on:*— 1st, 6th and 7th June, 1968.

*Decided on:*— 19th September, 1968.

H. N. G. FERNANDO, Chief Justice:

No. 19  
Judgment of the  
Supreme Court,  
granting Condi-  
tional Leave to  
Appeal to the  
Privy Council—  
19.9.68  
—Continued

This is an application for leave to appeal to the Privy Council from a judgment of this Court in a civil action. The action was one for the conveyance to the plaintiff of the interests allotted to the defendants in a former partition action. For reasons which it is not necessary to discuss here, the value of the subject-matter involved in the proposed appeal is higher than the amount at which the action was valued at the time of its institution. The only objection of substance which has been taken by the respondents to the present application has been that the application for leave to appeal was insufficiently stamped. The appellant does not now contest the fact of insufficient stamping, but it is perfectly clear that this arose because of a *bona fide* error as to the amount of the stamp duty properly payable.

The respondents have quite correctly relied on the decision of this Court in *Usoof V. Nadarajah Chettiar* (58 New Law Report 436), rejecting an application for conditional leave in a case where the application was insufficiently stamped, and where the deficiency was not supplied within the period of 30 days specified in Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance (Cap. 100). Although that decision has been subsequently followed, I regret that I have to disagree with it, because in my opinion that decision was reached without consideration of relevant matters which have come to light during the argument of the instant case.

A very early case regarding the question of stamping in appeal proceedings was that of *Cornalie V. Ukkuwa* (1867 Ram. 278). In that case, a petition of appeal to the Supreme Court from the judgment and decree of a lower Civil Court had been duly stamped, but there had been a failure to supply the stamps required to be furnished for the judgment of the Supreme Court in appeal and for the certificate in appeal. The Court in that case observed that the omission to furnish stamps for the judgment in appeal and for the certificate in appeal would cause injustice to the respondent by his being kept out of his judgment. The decision gave effect to a specific statutory requirement as to the time of the delivery of the proper stamps which must accompany a petition of appeal to the Supreme Court. The requirement that such stamps be furnished *together with the petition of appeal* is now specified in the Schedule to the Stamp Ordinance (Volume VIII at page 755).

In *Salgado V. Peiris* (12 New Law Report 379), a petition of appeal to the Supreme Court bore no stamp at all, and the appeal was rejected on that ground, the Court holding that it had never been the practice to allow a

petition of appeal to be stamped subsequent to the date of its presentation. This was a decision of the Full Bench, and it must therefore be regarded as settled law that a *petition of appeal to the Supreme Court* will be rejected if it is not sufficiently stamped, on the day of its presentation. Similarly, the 1867 decision was followed by a Full Bench in *Bandara V. Babun Appu* (1892, 1 Matara Case 203), and accordingly a *petition of appeal to the Supreme Court* must be rejected if the proper stamps for the judgment and certificate in appeal are not furnished at the time of the presentation of the petition.

The legal ground for the decision in *Salgado V. Peiris* was subsequently explained by Macdonnell, C.J. in *British Ceylon Corporation V. The United Shipping Board* (36 New Law Report 225). He referred to S.755 of the Civil Procedure Code, which specifies the two modes of preferring an appeal to the Supreme Court, *either* that a petition of appeal is drawn by an Advocate or Proctor, *or* that a party states his grounds of appeal to the Secretary or Clerk of the original Court, which grounds are taken down by that officer in the form of a petition of appeal. But this second mode is only available to a party upon his producing the proper stamp for the petition of appeal. Macdonnell, C.J. pointed out that since S.755 requires a party to produce the proper stamp if he wishes to prefer his appeal by this second mode, the section implicitly requires that a petition of appeal drafted by an Advocate or Proctor must be properly stamped at the time of presentation. The same point was made, though not so clearly, by Grenier, J. when he referred to S.755 in his judgment in *Salgado V. Peiris*.

It will be seen therefore that there are express statutory provisions which prescribe the time for due stamping of petitions of appeal to the Supreme Court, and the time for the furnishing of the proper stamps to accompany such petitions.

It is useful now to consider the case of a plaint which is unstamped, or insufficiently stamped. S.46 of the Civil Procedure Code (Sub-section 2 (h)) requires the Court to reject a plaint if it is “written on paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamps within a time to be fixed by the Court, fails to do so”. This means that the Court is bound to afford to the plaintiff an opportunity to supply the deficiency in stamping. There is the high authority of Pereira J. for the proposition that if the Court does accept a plaint which is insufficiently stamped, the insufficiency will not be a ground on which the opposing party can ask for a dismissal of the plaintiff’s action. I cite from the judgment in *Jayawickrema V. Amarasuriya* (17 New Law Report 174):—

“So that when, in the case of a plaint under Section 46 of the Code and in the case of an answer under Section 77, the Judge does not reject the pleading, but accepts it, the presumption is that he has adjudicated in favour of the party who has tendered the document the question of the sufficiency of the stamp thereon, and I doubt that the adjudication in such a case can be interfered with by anybody. In the case, however, of a plaint or answer being accepted per incuriam that is to say, as the result of an inadvertent omission on the part of the Court to consider the question of the sufficiency of the stamp thereon, it may be that

10 before any step in the regular course of procedure is taken by the opposite party the Court may return the pleading to be properly stamped; but this question need not be considered on this appeal, because we have no information from the District Judge that the plaint in this case was accepted by him per incuriam, and no order returning the plaint was, in fact, made before the filing of the answer. When a Judge, having considered the question of the sufficiency of stamp duty, has accepted a plaint or answer, or has accepted it having inadvertently omitted to consider the question, the remedy, if indeed any exists, can only be by means of such action as the Attorney-General, as representing the Crown, to which all stamp duties are a debt, may be deemed to be entitled to take. It will be embarrassing to both the parties to any action and lead to disastrous results, if for instance, at a very late stage of the action a pleading can be thrown out for default of either party to make good any deficiency in stamp duty. Anyway, the sufficiency of the stamp on a plaint cannot be called in question as a matter of defence in an answer, any more than the fact that the plaint has not been “distinctly written on good and suitable paper”, as required by Section 40 of the Code.”

20 Pereira J. pointed out that the only provision of law in force relating to stamps on plaints appears to be s.46, and his conclusion clearly was that a plaint cannot be rejected on the ground of insufficient stamping except in the manner and at the stage specified in that section. I find myself in respectful agreement with the principle here enunciated that the right of a party to maintain a proceeding cannot be denied to the party on the ground of insufficient stamping of a document, unless the law provides for such a denial. That principle was not violated in the decisions regarding the stamping of petitions of appeal to the Supreme Court because statutory provisions explicitly or implicitly regulate the time of due stamping.

30 The matter of the stamping of applications for leave to appeal to the Privy Council was considered in the case of *Ussoof V. Nadarajah Chettiar* (58 New Law Report, 436). Weerasoorya J., in holding that a deficiency in the stamping of such an application cannot be supplied after the presentation of the application, appears to have thought that the decisions regarding petitions of appeal to the Supreme Court must apply also in the case of such applications. With respect, the judgment did not take account of the existence of provisions of law which are applicable to appeals to this Court, and which justify the rejection of such appeals on the ground of deficiencies in stamps. Neither that judgment, nor the later one in the case of *Thenuwara V. Thenuwara* 40 (62 New Law Report 501), gave consideration to the question whether there is any statutory provision, applicable to appeals to the Privy Council, which resembles the statutory provisions (in s.755 of the Code and in the schedule to the Stamp Ordinance) relating to stamping in cases of appeals to the Supreme Court. That being so; it is open to me to consider afresh the point whether a deficiency in the stamping of an application for leave to appeal to the Privy Council is curable.

There is in fact no special statutory provision concerning the time of stamping of such an application. I need only consider, therefore, the general provisions of the Stamp Ordinance. Section 14 provides that “all instruments

No. 19  
Judgment of the  
Supreme Court,  
granting Condi-  
tional Leave to  
Appeal to the  
Privy Council—  
19.9.68

—Continued

chargeable with duty and executed by any person in Ceylon shall be stamped before or at the time of execution”, and s.41 provides that “no instrument chargeable with duty shall be acted upon, registered or authenticated” by any public officer “unless such instrument is duly stamped”. These provisions apply to all applications, (e.g. for summons, for Writ of Execution, for service of interrogatories) made in Court proceedings. If then any such application to a Court is in fact stamped, but insufficiently stamped, I much doubt whether a breach of s.14 is thereby established; if stamps, though of insufficient value, are affixed at the time when such an application is signed by a Proctor it cannot be said that the instrument was not stamped at that time. Section 14 10 does not provide, (as does s.7(2) in a different context), that an insufficiently stamped instrument is deemed to be unstamped.

Section 41 of the Stamp Ordinance precludes a Court from acting upon an insufficiently stamped application. But must the Secretary of the Court necessarily reject such an application when it is filed? Section 7 provides that a stamp must be cancelled at the time when it is affixed on an instrument, and if the deficiency in stamping cannot be supplied by affixing additional stamps, the consequence will be that the value of the original stamps is lost to the party and fortuitously gained by the State. Taxing Statutes cannot in my opinion be interpreted in a manner so unfavourable to the tax-payer. 20 The Secretary of the Court is an officer referred to in s.41, and he is constituted an agent of the revenue authorities for the purpose of the collection of the proper stamp duties. He must not *act upon* an insufficiently stamped application. But s.41 does not declare that such an application is valueless and must be rejected as such. Would not the proper course be for the Secretary instead to call upon the party to supply the deficiency in stamps, and if the deficiency is in fact supplied, would not the Court thereafter *act upon* the applications? I am satisfied, on the authority of *Jayewickrema V. Amarasooriya*, that this course should be adopted, for there would otherwise ensue “disastrous results” of the nature contemplated by Pereira J. or a 30 miscarriage of justice as contemplated by Lord Goddard in the judgment of the Privy Council in *Karunapejjalage Bilindi V. Wellawa Attadassi Thero* (47 New Law Report 7).

It is useful to consider what the Legislature intended by the provision in s. 41 that an instrument, particularly an application in a civil proceeding, should not be *acted upon*. In one sense, the petition for leave to appeal in this case was in fact acted upon several weeks ago, when the Registrar accepted it and when it was considered by this Court which issued notice thereof to the respondents. Such a situation closely resembles that which Pereira J. envisaged in the judgment already cited: “when . . . the Judge does not 40 reject the pleading, but accepts it, the presumption is that he has adjudicated in favour of the party who has tendered the document the question of the sufficiency of the stamp thereon, and I doubt whether the adjudication in such a case can be interfered with by anybody”. I do not need however, to go so far as to hold that this Court has no power to call upon the petitioner in this case now to supply the deficiency in stamps, although the judgment of Pereira J. does support even that conclusion.

Alternatively, if the petition in this case has not thus far been *acted upon*, then the point of time at which the Court will *act upon* the petition for leave is the time when the Court grants the leave. If this be so, s.41 prevents the 50

Court from granting the leave upon a petition insufficiently stamped. But if the Court now orders the deficiency to be supplied, and it is supplied, then the Court can thereafter duly act upon a sufficiently stamped petition and grant the leave accordingly.

I must point out also that this Court, in entertaining applications for leave to appeal to the Privy Council, is in substance acting as a delegate of the Privy Council. That being so, I think it proper to heed the observations made by Lord Goddard in the case of *Karunapejjalage Bilindi V. Wellawa Attadassi Thero* (47 New Law Report 7):—

No. 19  
Judgment of the  
Supreme Court,  
granting Condi-  
tional Leave to  
Appeal to the  
Privy Council—  
19.9.68  
—Continued

10 “ . . . their Lordships do not propose to express any opinion as to whether it is open to the Supreme Court, once the petition has been accepted by the Court of first instance, to take or give effect to an objection as to the sufficiency of the stamp, nor as to whether by the combined effect of ss.756 and 839 it may not be possible for a *bona fide* mistake as to the stamp required to be remedied and thus perhaps avoid a miscarriage of justice. They say no more than that both points appear susceptible of considerable argument and that it would be an unfortunate and probably unintended result of the Stamp Ordinance if  
20 a litigant should be debarred from an appeal on a ground which is from a practical point of view capable of easy remedy without injustice to anyone.”

These observations, though made with reference to insufficient stamping of petitions of appeal to the Supreme Court, are a strong indication of the attitude which their Lordships would wish this Court to adopt in the case of proposed appeals to the Judicial Committee. They lead me to the opinion that the somewhat technical objection taken in this case should not stand in the way of a conclusion which will further the ends of justice.

I hold for these reasons that the considerations which require or justify the rejection, on the ground of insufficient stamping, of a petition of appeal  
30 to the Supreme Court, do not apply in the case of applications for leave to appeal to the Privy Council. This for the reason that there is not, in the latter case, any special provision of law which expressly or by implication prevents a deficiency in the stamping of applications for such leave from being supplied upon an order of the Court. I direct the present petitioner to supply the deficiency in stamps before 1st October, 1968, and make order that the application for conditional leave be allowed if the deficiency is duly supplied.

I make no order for costs.

Signed: H. N. G. FERNANDO,  
*Chief Justice*

40

SIRIMANE, J.

I agree.

Signed: A. L. S. SIRIMANE,  
*Puisne Justice*

## No. 20

**MINUTE OF ORDER GRANTING 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 UNDER THE RULES SET OUT  
IN THE SCHEDULE TO THE APPEALS (PRIVY COUNCIL) ORDINANCE.

S.C. Application  
No. 93/67  
(Conditional Leave)

10

CARUPPIAH SANDANAM of Gondennawa Estate  
in Nawalapitiya.

*Plaintiff-Respondent-Petitioner.*

S.C. No. 215 (F)/'63  
D.C. Kandy, Case  
No. 6642/L.

*Vs.*

1. MOHAMED ISMAIL MOHAMED JAMALDEEN of  
60, Grandpass Road, Colombo, also of  
42, Kawdana Road, Dehiwala.
2. MOHAMED ISMAIL MOHAMED HANIFFA of  
200, Galle Road, Mount Lavinia,  
also of 42, Kawdana Road, Dehiwala.
3. UMMU RAZEENA wife of S. M. M. MOHIDEEN of  
111, Kandy Road, Gampola presently of  
60, Grandpass Road, Colombo, also of  
42, Kawdana Road, Dehiwala.

20

*Defendants-Appellants-Respondents.*

The application of Caruppiyah Sandanam of Gondennawa Estate, Nawalapitiya, 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 14th day of February, 1967 in S.C. 215 (F)/'63 —District Court Kandy Case No. 6642/Land, having been listed for hearing and determination before the Honourable Hugh Norman Gregory Fernando, Chief Justice and the Honourable Samarappilimudalige Ratnapala Wijayatilake, Puisne Justice, in the presence of H. W. Jayawardena Esquire, Q.C., with N. R. M. Daluwatte Esquire, Advocates for the Plaintiff-Respondent-Petitioner and C. Ranganathan Esquire, Q.C., with M. T. M. Sivardeen Esquire and M. S. Azeez Esquire, Advocates for the Defendants-Appellants-Respondents, order has been made by Their Lordships on the 10th day of October, 1968 allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty the Queen in Council.

Signed: N. NAVARATNAM,  
*Registrar of the Supreme Court.*

## No. 21

APPLICATION FOR FINAL LEAVE TO  
APPEAL TO THE PRIVY COUNCILNo. 21  
Application for  
Final Leave to  
Appeal to the  
Privy Council—  
18.10.68

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

IN THE MATTER OF AN APPLICATION FOR FINAL  
LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL IN  
S.C.215/'63 (F)—D.C. KANDY CASE No. L.6642.

1. MOHAMED ISMAIL MOHAMED JAMALDEEN of  
No. 60, Grandpass Road, Colombo, also of  
No. 42, Kawdana Road, Dehiwala.
2. MOHAMED ISMAIL MOHAMED HANIFFA of  
No. 200, Galle Road, Mount Lavinia, also of  
No. 42, Kawdana Road, Dehiwala.
3. UMMA RAZEENA, wife of S. M. M. MOHIDEEN of  
No. 111, Kandy Road, Gampola, presently of  
No. 60, Grandpass Road, Colombo, also of  
No. 42, Kawdana Road, Dehiwala.

S.C. Application

No. 93/67 (C.L.A.)

20 S.C. No. 215/63 (F)

D.C. Kandy, Case No. L.6642.

*Defendants-Appellants.**Vs.*CARUPPIAH SANDANAM of Gondennawa Estate,  
Nawalapitiya.*Plaintiff-Respondent.*CARUPPIAH SANDANAM of Gondennawa Estate,  
Nawalapitiya.*Plaintiff-Respondent-Petitioner.**Vs.*

1. MOHAMED ISMAIL MOHAMED JAMALDEEN of  
No. 60, Grandpass Road, Colombo, also of  
No. 42, Kawdana Road, Dehiwala.
2. MOHAMED ISMAIL MOHAMED HANIFFA of  
No. 200, Galle Road, Mount Lavinia, also of  
No. 42, Kawdana Road, Dehiwala.
3. UMMU RAZEENA, wife of S. M. M. MOHIDEEN of  
No. 111, Kandy Road, Gampola, presently of  
No. 60, Grandpass Road, Colombo, also of  
No. 42, Kawdana Road, Dehiwala.

*Defendants-Appellants-Respondents.*

No. 21  
Application for  
Final Leave to  
Appeal to the  
Privy Council—  
18.10.68  
—Continued

TO: THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER  
HONOURABLE JUDGES OF THE SUPREME COURT OF THE  
ISLAND OF CEYLON.

On this 18th day of October, 1968.

The Petition of CARUPPIAH SANDANAM, the Plaintiff-Respondent-Petitioner abovenamed appearing by CHARLES EDWARD ALEXANDER DE SILVA, carrying on business under the name and style of BEVEN AND BEVEN and his Assistant PRATHIRAJA MAHANAMA DIAS DE SILVA his Proctors, states as follows:—

1. The Plaintiff-Respondent-Petitioner on the 10th day of October, 1968 obtained Conditional Leave from this Honourable Court to appeal to Her Majesty the Queen in Council against the judgment of this Court pronounced on 14th February, 1967 and completed on 12th May, 1967.

2. The Plaintiff-Respondent-Petitioner in compliance with the conditions on which such leave was granted—

- (a) has deposited with the Registrar of this Honourable Court a sum of Rs. 3,000/- as security for the due prosecution of the said appeal and the payment of all such costs as may become payable to the Defendants-Appellants-Respondents in the event of the Plaintiff-Respondent-Petitioner not obtaining an order granting Final Leave to Appeal or of the Appeal being dismissed for non-prosecution or of Her Majesty the Queen in Council ordering this Plaintiff-Respondent-Petitioner to pay the Defendants-Appellants-Respondents costs (as the case may be);
- (b) has duly hypothecated the said sum of Rs. 3,000/- by Bond dated the 16th October, 1968, to and in favour of the said Registrar;
- (c) has deposited with the said Registrar a sum of Rs. 300/- in respect of the amount and fees mentioned in Section 4(2)(b) and (c) of Ordinance 31 of 1909 (Cap. 100) and
- (d) has lodged with the said Registrar the stamps for the duty payable in respect of the Registrar's Certificate in appeal to the Queen in Council at the same time at which he gave security for the prosecution of his appeal.

3. That the Plaintiff-Respondent-Petitioner has given written notice of this application for Final Leave to Appeal to Her Majesty in Council by sending the same on 18-10-1968 to each of the Defendants-Appellants-Respondents by registered post and by delivering the same to the Defendants-Appellants-Respondents' Proctor, Mr. M. M. A. Raheem by sending the same on 18-10-1968 by Registered Post.

WHEREFORE the Plaintiff-Respondent-Petitioner prays that Your Lordships' Court be pleased to grant him Final Leave to Appeal to Her Majesty in Council against the said judgment of this Court pronounced on 14th February, 1967 and completed on 12th May, 1967.

Signed: BEVEN AND BEVEN,  
*Proctors for Plaintiffs-Respondents-Petitioners.*



**MINUTE OF ORDER GRANTING FINAL LEAVE  
TO APPEAL TO THE PRIVY COUNCIL**

No. 22  
Minute of Order  
granting Final  
Leave to Appeal  
to the Privy  
Council—  
20.1.69

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

**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.**

**CARUPPIAH SANDANAM of Gondennawa Estate  
in Nawalapitiya.**

10

*Plaintiff-Respondent-Petitioner.*

S.C. No. 215(F)/63  
D.C. Kandy Case  
No. 6642/L.

S.C. Application  
No. 93/67  
(Conditional Leave)

*Vs.*

S.C. Application  
No. 542/68.  
20 (Final Leave)

1. MOHAMED ISMAIL MOHAMED JAMALDEEN of  
60, Grandpass Road, Colombo, also of  
42, Kawdana Road, Dehiwala.
2. MOHAMED ISMAIL MOHAMED HANIFFA of  
200, Galle Road, Mount Lavinia, also of  
42, Kawdana Road, Dehiwala.
3. UMMU RAZEENA wife of S. M. M. MOHIDEEN of  
111, Kandy Road, Gampola presently of  
60, Grandpass Road, Colombo, also of  
42, Kawdana Road, Dehiwala.

30

*Defendants-Appellants-Respondents.*

No. 22  
Minute of Order  
granting Final  
Leave to Appeal  
to the Privy  
Council—  
20.1.69  
—Continued

The application of Caruppiah Sandanam of Gondennawa Estate, Nawalapitiya, 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 14th day of February, 1967 in S.C. 215/(F)/63 District Court of Kandy Case No. 6642/Land, having been listed for hearing and determination before the Honourable George Terrence Samerawickrame, Q.C., Puisne Justice and the Honourable Christopher Gregory Weeramantry, Puisne Justice, in the presence of N. R. M. Daluwatte Esquire, Advocate for the Plaintiff-Respondent-Petitioner and M. T. M. Sivardeen Esquire, Advocate for the Defendants-Appellants-Respondents, order has been made by Their 10 Lordships on the 20th day of January, 1969 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council.

Signed: N. NAVARATNAM,  
*Registrar of the Supreme Court.*

## **PART II — EXHIBITS**

**Agreement No. 7052 attested by M. W. R. de Silva, Notary Public**

P 1  
 Agreement  
 No. 7052  
 attested by  
 M. W. R. de  
 Silva, Notary  
 Public—  
 18.7.56

Prior Registration:—L.28/13. 21/246.

No. 7052

This Agreement made and entered into by and between 1. Natchiya Umma wife of Amala Marikkar Mohammadu Ismail 2. Mohammadu Ismail Jamaldeen 3. Mohammadu Ismail Mohamed Haniffa and 4. Ummu Razeena daughter of Amala Marikkar Mohamadu Ismail all of No. 360, Kahatapitiya in Gampola in Udapalata in the District of Kandy Central Province (here-  
 10 inafter called and referred to as the Vendors (which expression shall where the context so permits or requires mean and include the said Natchiya Umma wife of Amala Marikkar Mohammadu Ismail 2. Mohammadu Ismail Jamaldeen 3. Mohammadu Ismail Mohamed Haniffa and 4. Ummu Razeena daughter of Amala Marikkar Mohammadu Ismail and their and each of their respective heirs executors and administrators) of the one part Caruppiah Sandanam of Gondennawa Estate Nawalapitiya (hereinafter called and referred to as the Purchaser which expression shall where the context so permits or requires mean and include the said Caruppiah Sandanam and his heirs executors administrators and assigns) of the other part.

20 Whereas the Vendors are seized and possessed of or otherwise well and sufficiently entitled to certain undivided shares of the lands and premises fully described in the Schedule hereof.

And whereas Partition Action No. P.1119 of the District Court of Kandy holden at Gampola is pending in respect of the said land and premises.

And whereas the Vendors have agreed to sell to the Purchaser and the Purchaser has agreed to purchase from the Vendors whatever divided share or shares that will be allotted to them in the said partition case for the price and subject to the terms and conditions hereinafter contained.

Now this agreement witnesseth that it is hereby agreed by and between  
 30 the said parties of the first and second parts as follows:—

1. The Vendor shall by a valid and effectual deed of conveyance which shall be prepared and executed at the cost and expense of the Purchaser sell and transfer unto the Purchaser whatever divided share or shares (together with the buildings plantations and everything thereon) the Vendors will be

P 1  
 Agreement  
 No. 7052  
 attested by  
 M. W. R. de  
 Silva, Notary  
 Public—  
 18.7.56  
 —Continued

allotted in the said partition action together with all and singular the rights ways easements advantages servitudes and appurtenances whatsoever thereto belonging or in any wise appertaining or usually held occupied used or enjoyed therewith or reputed as known as part and parcel thereof together with any compensation costs and all other benefits and privileges that will be awarded or may accrue to the Vendors in the said partition action and together with all the estate right title interest property claim and demand whatsoever of the Vendors in to upon or out of the said premises and every part thereof, for the price or sum of Rupees Three Thousand (Rs. 3,000/-) at any time within three months of the entering of the Final Decree in the said partition action 10 No. P.1119 of the District Court of Kandy holden at Gampola.

2. Out of the purchase price of Rupees Three Thousand (Rs. 3,000/-) a sum of Rupees Two Thousand (Rs. 2,000/-) shall be paid by the Purchaser to the Vendors at or before the execution of these presents (the receipt whereof is hereby admitted and acknowledged by the Vendors) and the balance sum of Rupees One Thousand (Rs. 1,000/-) shall be paid at the time of executing the Deed of conveyance in favour of the Purchaser.

3. In the event of the Purchaser failing or neglecting to complete the said purchase in terms of these presents the Vendors being ready and willing to perform their part of the contract in these presents contained the sum of 20 Rupees Two Thousand (Rs. 2,000/-) paid as advance this day shall be forfeited to the Vendors as liquidated damages and not as a penalty.

4. In the event of the Vendors failing or neglecting to complete the conveyance in terms of these presents the Vendors shall refund to the Purchasers the sum of Rupees Two Thousand (Rs. 2,000/-) paid as advance as aforesaid together with a further sum of Rupees Two Thousand (Rs. 2,000/-) as liquidated damages and not as a penalty.

5. The Vendors and the Purchaser bind themselves of the one to the other for the due performance of the covenants and conditions herein contained.

30

#### **The Schedule Above Referred to:**

1. All that divided South-Eastern portion of two acres (2A. 0R. 0P) in extent from and out of all that divided entire land called Konakahena situate at Nawalapitiya in Pasbage Korale of Udabulatgama in the District of Kandy Central Province aforesaid and which said divided South-Eastern portion is bounded on the North by the land called Bridgend Estate and a portion of the land called Konakahena East by a portion of the land called Konakahena South by the road called Baily Road and on the West by the Estate called Bridgend Estate together with the building and everything 40 thereon.

2. All that divided portion of the land called Konakahena situate at Nawalapitiya aforesaid and which said divided portion is of the extent of one acre and eight perches (A1. 0R. 8P) and is bounded on the North by wire fence of the land of Messrs. Brown and Company East by the limit of Gorakahenawatta and on the South and West by the boundary of the Estate called Bridgend Estate together with everything thereon.

P 1  
No. 7052  
attested by  
M. W. R. de  
Silva, Notary  
Public—  
18.7.56  
—Continued

3. All that house and premises formerly bearing Assessment No. 17 presently bearing No. 37, Gampola Road, Nawalapitiya aforesaid containing in extent one hundred and eleven feet in length and twenty two feet in breadth  
10 situate in the Town of Nawalapitiya within the Urban Council Limits thereof in Pasbage Korale aforesaid and bounded on the east by the high road south by the house belonging to Meeyanna Cader Saibo West by the road running by the side of the playground and on the North by the big drain.

IN WITNESS WHEREOF the Vendors and the Purchaser hereto have hereunto and to two others of the same tenor and date as these presents set their hands at Gampola on this Eighteenth day of July, One thousand nine hundred and fifty six.

WITNESSES:

20 Signed and delivered in the presence of us and we declare that we are well acquainted with the Executants and know their proper names occupations and residences. } This is the signature of Natchiya Umma wife of Amala Marikkar Mohammodu Ismail.  
Sgd./in Tamil  
Sgd./ M. I. Jamaldeen  
Sgd./ M. I. Haniffa  
Sgd./ M. S. V. Razeena

Sgd./ D. S. Amarasinghe  
This is the signature of  
Kottalbadde Vidanelagegedera  
Ratnapala Ariyaratne

30 Sgd./ in Sinhalese.

Sgd. M. W. R. DE Silva,  
*Notary Public.*

I, MANIKKU WADU RICHARD DE SILVA of Gampola in the Island of Ceylon 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 Natchiya Umma wife of Amala Marikkar Mohammodu Ismail

P 1  
 Agreement  
 No. 7052  
 attested by  
 M. W. R. de  
 Silva, Notary  
 Public—  
 18.7.56  
 —Continued

2. Mohammodu Ismail Jamaldeen 3. Mohammodu Ismail Mohamed Haniffa  
 4. Umma Razeena daughter of Amala Marikkar Mohammodu Ismail and  
 Caruppiah Sandanam of whom the 2nd 3rd and 5th are known to me and  
 the 1st and 4th are not known to me and the 1st signed this Deed in Tamil  
 the 2nd as "M. I. Jamaldeen" the 3rd as "M. I. Haniffa" the 4th as "M. S.  
 V. Razeena" and the 5th as "C. Sandanam" in the presence of Don Sirisena  
 Amarasinghe and Kottalbadde Vidanelagegedera Ratnapala Ariyaratne both  
 of Botalapitiya and the former of whom signed this deed as "D. S. Amara-  
 singhe" and the latter in Sinhalese the subscribing witnesses thereto both of  
 whom are known to me the same was signed by the said Executants and also 10  
 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 Gampola on  
 this Eighteenth day of July One Thousand Nine Hundred and Fifty Six.

And I do further certify and attest that in page 1 line 1 "e" in "between"  
 in line 3 "m" in "Mohammodu" in page 2 line 16 "a" in "thousand" in  
 line 27 "e" in "event" in line 30 "h" in "together" in page 3 line 4 "i" in  
 "situate" the same line "s" in "Pasbage" in line 11 "i" in "portion" in line 17  
 "u" in "house" were rectified in page 1 line 22 "to the Purchaser" in page 2  
 line 10 "and" were interpolated in page 1 line 23 "so" in "whatsoever" in  
 page 2 line 9 "to the Vendors" in line 28 "Sg" in line 32 "li" in "themselves" 20  
 in page 3 line 15 "k" in line 20 "at" were struck off in both the original and  
 duplicate before the foregoing instrument was read over and explained by me  
 as aforesaid and that the sum of (Rs. 2,000/-) referred to in this agreement  
 was paid in my presence in cash and that the duplicate of this instrument  
 bears one Stamp of the value of Rupees Ten and the Original a Stamp of  
 One Rupee and that the said Stamps were supplied by me.

Date of Attestation:

18th July, 1956.

Seal.

Sgd. M. W. R. DE SILVA  
 Notary Public

30

True Copy.

Sgd. M. W. R. DE SILVA  
 N.P.

21st October, 1961.

## Promissory Note for Rs. 500/-

P 3  
Promissory  
Note for  
Rs. 500/-  
28.8.56

Signed on six cents stamp.

Gampola,  
28th August, 1956.

1. Capital sum borrowed  
Rs. 500/-
- 10 2. Interest premium or  
charges deducted or  
paid in advance.  
Rs. Nil.
3. Rate of interest per  
centum per annum.  
18%

On demand, we the undersigned jointly and severally promise to pay to M.I. M. Haniffa 360, Kahatapitiya, Gampola or order the sum of Rupees Five Hundred only Currency for value received with interest thereon at the rate of 18 per centum per annum from the date hereof.

මෙය කියවා තේරුම් ගෙන අත්සන් කළුවෙමි.

WITNESSESS:

Sgd. in Tamil  
Sgd. M. I. Jamaldeen  
Sgd. M. I. U. Razeena

Sgd. in Tamil  
Sgd. M. I. Jamaldeen  
Sgd. M. I. U. Razeena

## Letter sent to Proctor M. W. R. de Silva by M. I. Jamaldeen

P 5  
Letter sent to  
Proctor M.W.R.  
de Silva by M.I.  
Jamaldeen.—  
3.2.57

Nanda Theatre,  
Ja-Ela,  
3rd Feb., 1957.

M. W. R. de Silva Esqr.,  
J.P.U.M.,  
Proctor S.C. & N.P.  
Gampola.

My Dear Sir,

30 Brother Haniffa's wedding which had been postponed for the last 1 1/2 years, could not be delayed any more owing to pressure from the bride's party. The final auspicious day arranged for the wedding is on the 17th (Arabic date) which falls on the 17th or 18th instant.

understand Haniffa is short of money for the preparations connected with his wedding.



P 5  
Letter sent to  
Proctor M.W.R.  
de Silva by M.I.  
Jamaldeen—  
3.2.57  
—Continued

Therefore, I most kindly request your good-self to be so good as to kindly influence Mr. Sandanam Pillai to pay Haniffa the balance amount due on the deed. A Pro Note could be furnished to Mr. Sandanam Pillai, if necessary.

With respectful salutations to you, Sir,

Yours sincerely,

Sgd. M. I. Jamaldeen

*N.B.*

Please excuse me for troubling you.

Intld.

10

P 4  
Letter sent to  
the Plaintiff by  
Proctor M.W.R.  
de Silva—  
5.2.57

**P4**

**Letter sent to the Plaintiff by Proctor M. W. R. de Silva**

M. W. R. de Silva, J.P.U.M.,  
Proctor & Notary.

“NADEE MAAL”,  
Gampola.

5th Feb. 1957.

My Dear Sandanam,

I am sending herewith a letter I have received from M. I. Jamaldeen, brother of bearer. They are badly in need of some money for bearer's wedding. You might arrange to give them the money. The Deed of Transfer in your favour could be signed as soon as a Final Decree is entered. As you know, we are not contesting the case.

Yours sincerely,

Sgd. M. W. R. de Silva.

P 6  
Receipt for  
Rs. 500 - given  
by M.I.M.  
Haniffa—  
10.2.57

**P6**

**Receipt for Rs. 500/- given by M. I. M. Haniffa**

Phone No. 326.

Gondennawa Estate,  
Nawalapitiya,  
10th Feb., 1957.

Received the sum of Rupees five hundred (Rs. 500/-) being balance due to us for land referred to in the Agreement dated 18th July, 1956 attested by Mr. M. W. R. de Silva of Gampola. We undertake to give the transfer to

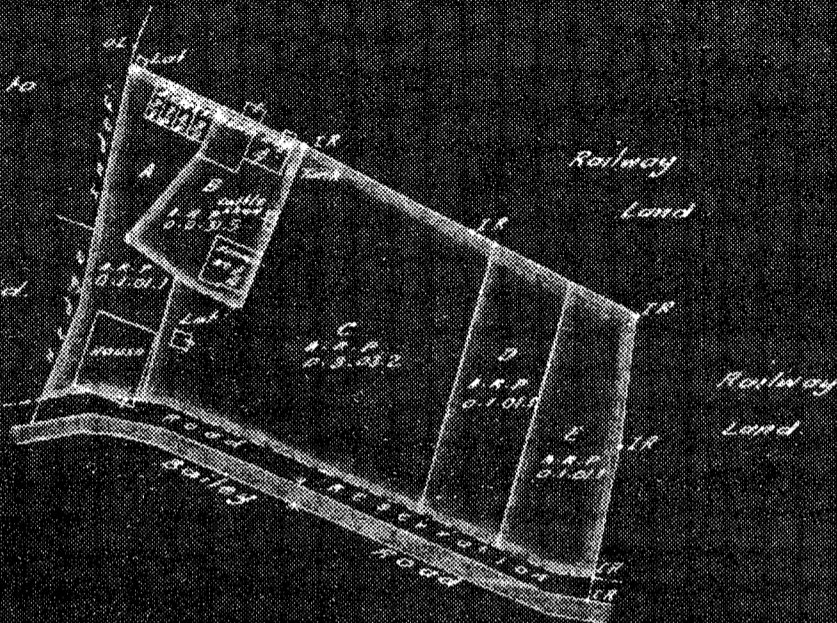
H. D. G. RODRIGO, F.S.I.,  
SURVEYOR,  
GAMPOLA.

Plan No. 2285A  
D.C. Gampola Case No. 1119  
Sheet No. 226

114

Land belonging to  
C. Sandanam  
Plaintiff

U.C. Land.



Note:-  
CR - Iron Rail.  
OL - Old Landmark

Scale of 2 Chains to an inch

# PLAN

OF

Konakahena

SITUATED AT

within U.C. limits of Nawalapitiya.

KANDY DISTRICT,  
CENTRAL PROVINCE,

Boundaries as described above.

Partitioned in terms of the interlocutory Decree and allotted as follows:-

- | Lot No | Area    | Share                 | Allotted to                    |
|--------|---------|-----------------------|--------------------------------|
| A      | 0 1 011 | 1/4 less 2/100        | Plaintiff                      |
| B      | 0 0 315 | 30/100 plus 2/100 per | 1st Defendant                  |
| C      | 0 3 032 | 2/100 plus 2/100 per  | 4th & 5th Defendants jointly   |
| D      | 0 1 011 | 1/4 less 2/100 per    | 3rd Defendant                  |
| E      | 0 1 011 | 1/4 less 2/100 per    | 11th & 12th Defendants jointly |
| Total  |         |                       | 2 38 0                         |

Surveyed on 25.1.55, Notified in writing by head of Tom Tom & affixing  
Notice on land on 16.10.57. Date fixed for partition & partitioned on 31.10.57 Present - Plaintiff  
representing also the 11th to 12th defendants, the 1st defendant, the 2nd Defendant, M. Lajinath Perera  
representing the 4th the 5th & the 6th Defendants, P. M. Abeyaratne the husband of the 3rd Defendant  
representing her, Thahir the husband of the 6th Defendant representing her, Kizach the husband  
of the 7th Defendant representing her, 10th Defendant

CONTAINING IN EXTENT AS ABOVE

Subscribed to before me on this  
26th day of November 1957  
Sgd: T. B. Yalawana  
J.P.

Surveyed and partitioned on 31.10.1957.  
I affirm to the correctness of this plan & attached  
report

by Sgd. H. D. G. Rodrigo.

"TRUE COPY"

H. D. G. Rodrigo

Reg. Licensed Surveyor & Fiscal's Surveyor

Reg. Licensed Surveyor & Fiscal's Surveyor,  
26.11.57

P 6  
 Receipt for  
 Rs. 500/- given  
 by M. I. M.  
 Haniffa—  
 10.2.57  
 —Continued

Mr. Sandanam the 1/6th share of the land, named Konakkahena as per partition case No. 1119 D.C. Gampola, without any consideration as we received the full consideration of Rs. 3,000/- (Three Thousand).

Sgd. on six cents stamp.  
 M. I. M. Haniffa.

Sgd. M. I. M. Haniffa  
 for M. I. Jamaldeen  
 Mrs. Ismail Sithi Fareeda.

P 2  
 Final Decree in  
 District Court  
 Kandy/Gampola, Case  
 No. 1119—  
 18.12.57

P2

**Final Decree in District Court Kandy/Gampola Case No. 1119**

10

**FINAL DECREE**

**IN THE DISTRICT COURT OF KANDY HOLDEN AT GAMPOLA**

**C. SANDANAM of Gondennawa Estate  
 in Nawalapitiya.**

*Plaintiff.*

No. 1119

*Vs.*

- |                                      |  |    |
|--------------------------------------|--|----|
|                                      | 1. SALIMA NATCHI of Nawalapitiya.  |    |
|                                      | 2. MOHAMMADU ISMAIL of Nawalapitiya. (Dead)  |    |
|                                      | 3. SAHUL HAMEED ABUBAKKAR of Nawalapitiya.   |    |
|                                      | 4. SAHOOR UMMA of Nawalapitiya.  | 20 |
|                                      | 5. UMMU RAZEENA of Colombo Street, Kandy.  |    |
|                                      | 6. HUSSAIN UMMA of Baily Road, Nawalapitiya.   |    |
|                                      | 7. NOOR NAZEEHA of King Street, Kandy.   |    |
| Minors by<br>G.A.L. 4th<br>Defendant | 8. JAWAHIRA UMMA of King Street, Kandy.  |    |
|                                      | 9. YAKEENA UMMA of Baily Road, Nawalapitiya.   |    |
|                                      | 10. NIZAMDEEN of Baily Road, Nawalapitiya.   |    |
|                                      | 11. MOHAMMADU ISMAIL'S widow PATHUMUTTU  |    |
|                                      | 12. M. M. HANIFFA  |    |
|                                      | 13. M. M. JAMALDEEN  |    |
|                                      | 14. UMMU RAZEENA by her G.A.L. the<br>1st Defendant all of Ambagamuwa Road,<br>Nawalapitiya. | 30 |
|                                      | 15. M. T. M. BUHARI of Nawalapitiya.   |    |

*Defendants.*

Whereas by a Decree of this Court dated the 22nd day of February, 1957 the parties to this action were declared entitled to all that land called Konakkahena situated within the U.C. Limits of Nawalapitiya in the District of Kandy Central Province and bounded on the North by Railway land, East by Railway land, South by Baily Road and West by lands belonging to C. Sandanam and U.C. Nawalapitiya, containing in extent One Acre, Two Roods 40

and Thirty Eight Perches (1A—2R—38P) according to the plan bearing No. 2285 dated 25th January, 1955 made by Mr. H. D. G. Rodrigo Licensed Surveyor and filed of record in this case marked "X" in the following shares to wit:—

P 2  
Final Decree in  
District Court  
Kandy/Gampola, Case  
No. 1119—  
18.12.57  
—Continued

1st Defendant . . . 30" x 24" represented by the two buildings on the North of Lot 2.

Plaintiff . . . 1/6th of balance of land with right to purchase a further 1/6 of balance on Agreement to sell P6, less 9, 1/3rd perches.

10

3rd Defendant . . . 1/6th of balance less 9, 1/3 perches.

4th to 10th Defendants jointly . . . 3/6th from balance 9, 1/3rd perches.

11th to 14th Defendants jointly . . . 1/6th less 9, 1/3 perches subject to Plaintiff's right to purchase on Deed P6.

1st Defendant . . . 28 perches.

And whereas it was further ordered and decreed that all buildings on lot 2 be allotted to 1st Defendant, other buildings and plantations in common except the 1st Defendant.

20

And whereas it was further ordered and decreed that the said land and premises be partitioned amongst the said parties in the aforesaid shares in terms of Partition Act No. 16 of 1951 and that a Commission be issued to Mr. H. D. G. Rodrigo Licensed Surveyor to carry out the said partition.

And whereas it was further ordered and decreed that the costs of this action and of the partition be borne by the parties Pro-Rata.

And whereas this Court did on the 12th day of September, 1957 issue its commission to the said H. D. G. Rodrigo Licensed Surveyor to carry out the said partition as aforesaid.

30 And whereas the said Commissioner in pursuance of the said Commission issued to him as aforesaid did on the 27th day of November, 1957 make his return thereto suggesting a Partition with plan thereof bearing No. 2285A dated 31st October, 1957 reporting at the same time that he did partition the said land and premises after due notice to the said parties and to the public as required by Section 30 of Ordinance No. 16 of 1951 and in the presence of the Plaintiff representing also the 11th to 14th Defendants, the 1st Defendant, 3rd Defendant, M. Zainul Abdeen representing the 4th, 8th and 9th Defendants, P. M. Shahabdeen representing the 5th Defendant, Thahir husband of the 6th Defendant and Razak husband of the 7th Defendant representing her and the 10th Defendant.

40 And whereas this Court did on the 27th day of November, 1957 make order that the Scheme of Partition prepared by the Commissioner be set down for consideration.

P 2  
Final Decree in  
District Court  
Kandy Gam-  
pola, Case  
No. 1119—  
18.12.57  
—Continued

And whereas this Court did on the 18th day of December, 1957 after due consideration order that the said Scheme of Partition be confirmed.

It is ordered and decreed that the said Scheme of partition as prepared by the said Commissioner be and the same is hereby confirmed and Final Decree entered accordingly.

In accordance with the said Scheme of partition, it is hereby further ordered and decreed that the parties be and they are hereby declared entitled to the said several lots marked A, B, C, D and E in the said Plan No. 2285A dated 31st October, 1957 out of all that land and premises called Konakahena situated within the U.C. Limits of Nawalapitiya in the Kandy District of the Central Province and bounded on the North and East by Railway land, South by Baily Road and West by lands belonging to C. Sandanam and U.C. Limits of Nawalapitiya containing in extent One Acre Two Roods and Thirty Eight Perches (1A—2R—38P) in the manner fully described and set forth in the Schedule hereto. 10

It is further ordered and decreed that the following payments be made by way of compensation:—

3rd Defendant to pay Plaintiff	..	Rs. 13.95	
3rd Defendant to pay 1st Defendant	..	Rs. 4.60	
4th and 5th Defendants to pay 1st Defendant	..	Rs. 5.96	20
4th and 5th Defendants to pay 11th to 14th Defendants		.45	

It is further ordered and decreed that the costs of this action and of the partition be borne by the parties Pro-Rata.

#### The Schedule above referred to:

*The Plaintiff* to all that divided lot marked "A" in the said Plan No. 2285A dated the 31st October, 1957 made by Mr. H. D. G. Rodrigo Licensed Surveyor out of the said land and premises called Konakahena situate within the U.C. Limits of Nawalapitiya Kandy District Central Province the said lot "A" being bounded on the North and North-East by Railway land, East by lots B and C., South by Road Reservantion and West by land belonging to C. Sandanam (Plaintiff) and U.C. Land and containing in extent No Acres, One Rood, Nought one point one Perches (0A. 1R. 01.1P). 30

*The 1st Defendant* to all that divided lot marked "B" in the said Plan No. 2285A dated the 31st October, 1957 made by Mr. H. D. G. Rodrigo Licensed Surveyor out of the said land and premises called Konakahena situate within the U.C. Limits of Nawalapitiya the said lot "B" being bounded on the North and North-East by Railway land, East by lot C, South by lots "C" and "A" and North-West by lot "A" containing in extent No Acres No Roods Thirty One point fiev Perches (0A. 0R. 31.5P). 40

*The 4th to 5th Defendants jointly* to all that divided lot marked "C" in the said Plan No. 2285A dated the 31st day of October, 1957 made by Mr. H. D. G. Rodrigo Licensed Surveyor out of the said land and premises

called Konakahena situate within the U.C. Limits of Nawalapitiya aforesaid the said lot "C" being bounded on the North and North-East by Railway land, East by lot D, South by Road Reservation, West by lots A and B and containing in extent No Acres Three Roods and nought three point two Perches (0A. 3R. 03.2P.).

P. 2  
Final Decree in  
District Court  
Kandy/Gampola, Case  
No. 1119—  
18.12.57  
—Continued

*The 3rd Defendant* to all that divided lot marked "D" in the said Plan No. 2285A dated 31st October, 1957 made by Mr. H. D. G. Rodrigo Licensed Surveyor out of the said land and premises called Konakahena situate within the U.C. Limits of Nawalapitiya aforesaid the said lot "D" being bounded  
10 on the North and North-East by Railway land, East by lot E, South by Road Reservation and West by lot "C" containing in extent (0A. 1R. 01.1P.).

*The 11th to 14th Defendants jointly* to all that divided lot marked "E" in the said Plan No. 2285A dated the 31st day of October, 1957 made by Mr. H. D. G. Rodrigo Licensed Surveyor out of the said land and premises called Konakehena situate within the U.C. Limits of Nawalapitiya aforesaid the said lot "E" being bounded on the North and North-East by Railway land, East by Railway land, South by Road Reservation and West by lot D containing in extent No Acres One Rood Nought One point One Perches  
20 (0A. 1R. 01.1P.).

Sgd. A. M. F. SIRIWARDENA  
*Additional District Judge*

This 18th day of December, 1957.

Drawn by

Sgd. BEVEN AND BEVEN  
*Proctors for Plaintiff.*

True copy of Final Decree in District Court  
Kandy Holden at Gampola Case No. 1119.

Sgd. ....  
*Secretary District Court Kandy  
Holden at Gampola.*

30

**P10**

**Deed of Transfer No. 1914 attested by C. E. Alexander de Silva, Notary Public**

PRIOR REGISTRATION L.71/40

TRANSFER

Rs. 3,500.00  
Lands I.

No. 1914

P 10  
Deed of Trans-  
fer No. 1914  
attested by C.E.  
Alexander de  
Silva, Notary  
Public—  
9.9.60.

Know all men by these presents that (1) Ummu Razeena, with the consent and concurrence of my husband (2) Peer Madar Shabdeen both of  
40 Colombo Street, Kandy in the District of Kandy, Central Province of the

P 10  
Deed of Trans-  
fer No. 1914  
attested by C.E.  
Alexander de  
Silva, Notary  
Public—  
9.9.60.

—Continued

Island of Ceylon (3) Noor Nazeeha *alias* Noor Najeeba, with the consent and concurrence of my husband (4) Mohamed Mohideen Abdul Razak both of King Street, Kandy aforesaid and (5) Jawahira Umma with the consent and concurrence of my husband (6) Ahamed Saibo Jainulabdeen both of St. Lenard's Estate, Ragala in the District of Nuwara Eliya in the said Central Province (hereinafter called and referred to as the Vendors) for and in consideration of the sum of Rupees Three Thousand Five Hundred (Rs. 3,500.00) of lawful money of Ceylon well and truly paid to us by Caruppiyah Sandanam of Gondennawa Estate, Nawalapitiya in Pasbage Korale of Uda Bulathgama in the District of Kandy aforesaid (hereinafter 10 called and referred to as the Vendee) the receipt whereof we do hereby admit and acknowledge—have granted bargained, sold, assigned, transferred set over and assured and do by these presents, grant bargain sell, assign, transfer, set over and assure unto the said Vendee his heirs, executors, administrators and assigns the Premises in the schedule hereto fully described together with all and singular the rights, ways easements, advantages, servitudes and appurtenances whatsoever thereto belonging or in any wise appurtenant or usually held occupied used, or enjoyed therewith or reputed or known as part or parcel thereof together with all the estate, right title interest, property, claim and demand whatsoever of the Vendor in to upon or out of the said 20 premises and every part thereof together with all the title deeds vouchers and other writings therewith held or relating thereto which said premises have been held and possessed by the said Vendor in the manner hereinafter mentioned.

To have and to hold the said premises hereby sold and conveyed with and rights the appurtenances thereto belonging unto the said Vendee and his aforewritten absolutely for ever.

And we the said Vendors for ourselves and our heirs, executors and administrators and assigns do hereby covenant, promise and declare with and to the said Vendee his heirs, executors, administrators and assigns that 30 the said premises hereby sold and conveyed are free from any encumbrances whatsoever and that we have not at any time heretofore made done or committed or been party or privy to any act, deed, matter or thing whatsoever whereby or by reason whereof the said premises or any part thereof are, is can shall or may be impeached or encumbered in title charge, estate or otherwise howsoever and that we and our aforewritten shall and will at all times hereafter warrant and defend the same or any part thereof unto him and his aforewritten against any person or persons whomsoever and further also 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 40 all such further and other acts, deeds, matters, assurances and things whatsoever for the further and more perfectly assuring the said premises hereby sold and conveyed and every part thereof, unto him or his aforewritten as by him or his aforewritten as may be reasonably required.

In Witness Whereof we the said Vendors hereunto and to two others of the same tenor and date as these presents set our hand at Kandy on this Ninth day of September One thousand Nine hundred and Sixty.

**The Schedule above Referred to:**

P 10  
Deed of Transfer No. 1914  
attested by C.E. Alexander de Silva, Notary Public—  
9.9.60.  
—Continued

All our right title and interest in and to all that divided Lot marked “C” in Plan No. 2285A dated 31st October, 1957 made by Mr. H. D. G. Rodrigo Licensed Surveyor, from and out of the land and premises called KONKAHENA situated within the Urban Council Limits of Nawalapitiya in Pasbage Korale of Uda Bulathgama in the District of Kandy Central Province and which said divided lot marked “C” is bounded on the North and North-East by the limit of Railway land, on the East by the limit of Lot “D” of the same land, on the South by the Road Reservation and on the  
10 West by the limits of Lots “A” and “B” of the same land and containing in extent THREE ROODS AND THREE DECIMAL TWO PERCHES (0A. 3R. 03.2P.) together with (all the buildings, plantations and) everything standing thereon and bearing Assessment No. 5, Baily Road, Nawalapitiya.

Which said premises have been held and possessed by us the said 1st, 3rd and 5th vendors abovenamed under and by virtue of the Final Decree entered in Partition Action No. 1119 of the District Court of Kandy Holden at Gampola.

**WITNESSES:**

Signed in the presence of us and we do  
20 hereby declare that we are well acquainted  
with the Executants and know their proper  
names occupations and residences. } Ummu Razeena by her attorney.  
Sgd. P. M. Sahabdeen  
Sgd. P. M. Sahabdeen  
Sgd. U. M. Noor Najeeba  
Sgd. M. M. A. Razak

1. Sgd. W. M. Wijeratne
2. Sgd. M. M. V. Munasinghe

This is the signature  
Sgd. in Tamil of Jawahira Umma

Sgd. Illegibly

Sgd. CHARLES E. A. DE SILVA  
N. P.

I, Charles Edward Alexander de Silva of Kandy in the Island of Ceylon,  
30 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  
Peer Madar Sahabdeen the 2nd named vendor (who signed his name in  
English firstly as the attorney and in the name and as the act and deed of  
Ummu Razeena the 1st named vendor thereto lawfully authorised by a Power  
of Attorney No. 6124 dated 19th January, 1949 attested by M. Ameen Notary  
Public, and secondly for himself personally) to the said Noor Nazeeha *alias*  
Noor Najeeba and Mohamed Mohideen Abdul Razak the 3rd and 4th named  
Vendors (who signed respectively in English); to the said Jawahira Umma  
the 5th named vendor (who signed in Tamil as “Jawahira Umma” and to  
40 the said Ahamed Saibo Jainulabdeen the 6th named Vendor (who signed  
illegibly in English) of whom the 2nd and 4th named Vendors only are known  
to me, in the presence of Weeraseskera Mudiyansele Wijeratne and Muna-  
singhe Mudiyansele Victor Munasinghe both of No. 23/1/6, Deva Vidiya,  
Kandy (who signed respectively in English) the subscribing witnesses hereto  
both of whom are known to me the same was signed by the said executant



P 10  
Deed of Trans-  
fer No. 1914  
attested by C.E.  
Alexander de  
Silva, Notary  
Public—  
9.9.60  
—Continued

and also 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 Kandy aforesaid on this Ninth day of September One Thousand Nine Hundred and Sixty.

I do further certify and attest that out of the consideration a sum of Rs. 200/- was acknowledged to have been previously received, and the balance Rs. 3,300/- was paid by three cheques bearing Nos. 447970, 44791 and 44792 all dated 9th September, 1960 and drawn on the Bank of Ceylon Kandy by the vendee for Rs. 1,100/- each in favour of 2nd, 4th and 6th named Vendors respectively.

10

And I do further certify and attest that in the Duplicate in page 1 line 10 the word "said" was deleted before the foregoing Instrument was read over and explained by me as aforesaid, and that the Duplicate of this instrument bears three Stamps of the value of Rupees Fifty Six and the Original a Rupee Stamp, supplied by me.

WHICH I ATTEST

Sgd. CHARLES E. A. DE SILVA,  
*Notary Public.*

Date of attestation this Ninth day of September, 1960.

(Seal)

20

True Copy on a Rupee Stamp made from my protocol.

Sgd. CHARLES E. A. DE SILVA,  
*Notary Public.*

**P7**

P 7  
Letter sent to  
M.I.M. Jamal-  
deen by Proctors  
Beven & Beven,  
30.10.61

**Letter sent to M. I. M. Jamaldeen by Proctors Beven and Beven**

BEVEN AND BEVEN  
*Proctors and Notaries.*

Pavilion Street,  
(Deva Vidiya)  
Kandy  
30th October, 1961.

M. I. M. Jamaldeen Esqr.,  
No. 60, Grandpass Road,  
Colombo 14.

30

Dear Sir,

In terms of Agreement No. 7052 dated 18th July, 1956 executed by Mr. M. W. R. de Silva Proctor and Notary Public you have undertaken to sell your interest in the land called Konakahena situate at Nawalapitiya which was partitioned in D.C. Kandy Holden at Gampola Case No. 1119 after the final Decree is entered in the said case to Mr. C. Sandanam of Gondennawa Estate, Nawalapitiya.

Mr. Sandanam has given us instructions to prepare a deed of transfer in his favour for your interest and the deed is now ready for your signature.

We shall thank you to attend our office on the 9th November, 1961 between 9-30 and 10-30 a.m. to sign the deed.

Please confirm the date and time.

Yours faithfully,  
Sgd. BEVEN AND BEVEN.

P 7  
Letter sent to  
M. I. M. Jamal-  
deen by Proctors  
Beven & Beven,  
30.10.61  
—Continued

P8

Letter sent to Ummu Razeena by Proctors Beven and Beven

P 8  
Letter sent to  
Ummu Razeena  
by Proctors  
Beven & Beven,  
30.10.61

01 BEVEN AND BEVEN  
*Proctors and Notaries*

Pavilion Street,  
(Deva Vidiya)  
Kandy,  
30th October, 1961.

Ummu Razeena now Mrs. Farida Mohideen,  
C/o. S. M. M. Mohideen,  
111, Kandy Road,  
Gampola.

Dear Madam,

In terms of Agreement No. 7052 dated 18th July 1956 executed by  
20 Mr. M. W. R. de Silva Proctor and Notary Public you have undertaken to  
sell your interest in the land called Konakahena situate at Nawalapitiya which  
was partitioned in D.C. Kandy Holden at Gampola Case No. 1119 after the  
Final Decree is entered in the said case to Mr. C. Sandanam of Gondennawa  
Estate, Nawalapitiya.

Mr. Sandanam has given us instructions to prepare a deed of transfer  
in his favour for your interest and the deed is now ready for your signature.

We shall thank you to attend our office on the 9th November, 1961  
between 9-30 and 10-30 a.m. to sign the deed.

Please confirm the date and time.

Yours faithfully,  
Sgd. BEVEN AND BEVEN.

P 9  
Letter sent to  
M. I. M. Haniffa  
by Proctors  
Beven & Beven,  
30.10.61

**Letter sent to M. I. M. Haniffa by Proctors Beven and Beven**

**BEVEN AND BEVEN**  
*Proctors and Notaries.*

Pavilion Street,  
(Deva Vidiya)  
Kandy  
30th October, 1961.

M. I. M. Haniffa Esqr.,  
200, Galle Road,  
Mt. Lavinia.

Dear Sir,

10

In terms of Agreement No. 7052 dated 18th July 1956 executed by Mr. M. W. R. de Silva Proctor and Notary Public you have undertaken to sell your interest in the land called Konakahena situate at Nawalapitiya which was partitioned in D.C. Kandy Holden at Gampola Case No. 1119 after the Final Decree is entered in the said case to Mr. C. Sandanam of Gondennawa Estate, Nawalapitiya.

Mr. Sandanam has given us instructions to prepare a deed of transfer in his favour for your interest and the deed is now ready for your signature.

We shall thank you to attend our office on the 9th November 1961 between 9-30 and 10-30 a.m. to sign the deed.

20-

Please confirm the date and time.

Yours faithfully,  
Sgd. BEVEN AND BEVEN.

Supreme Court of Ceylon,  
No. 215 (Final) of 1963.

District Court of Kandy,  
Case No. L/6642

*In Her Majesty's Privy Council  
on an Appeal  
from The Supreme Court of Ceylon*

BETWEEN

CARUPPIAH SANDANAM of Gondennawa Estate,  
Nawalapitiya..... (Plaintiff - Respondent)  
*Appellant*

AND

1. MOHAMED ISMAIL MOHAMED JAMALDEEN  
of 60, Grandpass Road, Colombo, also of 42,  
Kawdana Road, Dehiwala.
2. MOHAMED ISMAIL MOHAMED HANIFFA of  
200, Galle Road, Mount Lavinia, also of 42,  
Kawdana Road, Dehiwala.
3. UMMU RAZEENA wife of S. M. M Mohideen of  
111, Kandy Road, Gampola, presently of 60, Grand-  
pass Road, Colombo, also of 42, Kawdana Road,  
Dehiwala..... (Defendants - Appellants)  
*Respondents*

---

## RECORD OF PROCEEDINGS

---