

39/82

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN :

PL. AR. LETCHUMANAN CHETTIAR @
AR. LAKSHMANAN @
ANA RUNA LAKSHMANAN CHETTIAR Appellant

- and -

AR. PL. PALANIAPPA CHETTIAR Respondent

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CASE FOR THE APPELLANT

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1. This is an appeal from the judgment dated the 1st day of October 1980 of the Federal Court of Malaysia (Appellate Jurisdiction) at Kuala Lumpur (Raja Azlan Shah Ag. Lord President, Syed Othman, Salleh Abbas J.J.) whereby the said Federal Court granted the Respondents' Appeal from the order of Mr. Justice Adjaib Singh dated 22nd day of August 1979 ordering the removal and cancellation of the Caveat Presentation No. 102806 Vol. XXXI Folio 40 registered in the Land Registry on the 27th day of March 1958. pp. 26 - 27
2. The Appellant is the Executor of the Estate of his late father PL. AR. Arunasalam Chettiar s/o Palaniappa Chettiar who prior to his death was the Karta or Manager of the Hindu Joint Family of PL. AR. Firm at Port Dickson. The Firm consisted of the late father, the Appellant and the Respondent. p. 19
p. 3
3. The Respondent claimed to be a member of the said Joint Family and was in dispute with his late father, as to his said status, the subject matter of Seremban High Court Civil Suit No. 34 of 1951, and in the course thereof, the Respondent had caveated all the lands of the said family until disposal of the said suit, to protect his said claim of 1/3 share, in the said Joint p. 3
p. 17

property

pp. 11 - 12 Thereafter by a consent Order of the said High Court of Malaya dated 17th day of March 1958, all the said caveats in respect of the said lands had been withdrawn leaving only 5 of them still covered by the said caveat, to protect his alleged claim of $\frac{1}{3}$ share therein.

p. 11 The said Order ordered "that the said caveat do
p. 7 remain registered until further Order of the Court".
The caveat Presentation No. 102806 Vol. XXXI Folio 40
was registered on 27th day of March 1958. 10

p. 3 4. On the 22nd day of January 1971 after Seremban High Court Probate Suit No 1 of 1973 the learned Judge ordered that Probate of his late father's will be granted to the Appellant except that the testator's one-third share in the Joint Hindu Family of PL. AR. of Port Dickson be excluded.

p. 3 The learned Judge further Ordered that this one-third share form part of the deceased's estate as part of intestacy.

pp. 3 - 4 5. The Appellant appealed to the Federal Court in Malaysia and by an order dated 24th day of September 1977 the Court ordered that probate be granted to the Appellant in respect of the whole of the said Estate subject to a proviso that before disposing of or distributing any property bequeathed under the Will or the proceeds of such property there should be a further Court Order. 20

p. 4

pp. 1 - 2 6. In compliance with the said Order of 24th day of September the Appellant applied by Originating Summons 126 of 1978 to the High Court in Malaya in Seremban for leave to sell the land held under Grant for Land No. 8457 Lot 533, in the Town & District of Port Dickson of area 16a. 1+01p or 708,122 sq. ft. at a minimum sale price of \$1.75 per sq. ft. 30

pp. 5 - 6 7. By a Consent Order dated 5th day of February 1979 the Court (Ajaib Singh J.) granted leave to sell the said land by private treaty at a minimum sale price of \$1.75 per sq. ft. giving a total sale price of \$1,239.213.50 and further ordered that after the settlement of certain dues the proceeds of the sale be divided in the ratio $\frac{2}{3}$ to the Appellant and $\frac{1}{3}$ to the Respondent. 40

p. 6 The said Court also ordered that for purpose of effecting registration of the transfer in favour of the Purchaser the Receiver named T. Chellapah should release the document of title to the Appellant or his Solicitors and that the costs of the application be taxed

and paid out of the proceeds of sale.

8. By a Summons dated 30th day of June 1979 the Appellant applied to a Judge in Chambers for the removal and cancellation of Caveat presentation No 102806 Vol. XXXI Folio 40 from the Register of the said land and for the costs of the application to be paid out of the proceeds of sale. p. 7

10 9. In his Affidavit in support of the Application, the Appellant stated that when he was going to apply for transmission of the land to him as Executor, he discovered that the Respondent in the course of his litigation with the late father in Seremban High Court Civil Suit No. 34 of 1951 had caveated the land until judgement in his action. p. 8
p. 9

20 The Appellant stated further that at the time of the making and the hearing of his Originating Summons on 5th day of February 1979 neither himself nor his Counsel nor the Defendants Counsel were aware of the existence of the Caveat on the Land Register as extended by Order of Court by consent and that only the deceased father and the Respondent would have known of the consent. p. 9

10. The Appellant caused a letter to be written to the Respondent's solicitors requesting them to give their consent to the withdrawal of the said Caveat. pp. 12 - 13

30 11. In reply the Respondent's Solicitors stated *inter alia* that their client was alleging mismanagement of the properties by the late father during his Kartaship and that he would only agree to the withdrawal of the Caveat provided the Karta's 1/3 share of the proceeds of sale was kept in a bank on Fixed Deposit until final accounts were taken by the Respondent, which alleged allegations of the alleged mismanagement by the said Karta, were never part of the original suit i.e. No. 34 of 1951 aforesaid and so decreed by the Privy Council vide PL. AR. Arunasalam Chettiar & Ors. v. AR. PL. Palaniappa Chettiar (1974) 2 M.L.J. PP. 133 - 134. p. 13
p. 14

12. In his Affidavit dated 19th day of June 1979 the Appellant stated:-

40 (i) that the stand taken by the Respondent was counter to the contents of the Consent Order of the Court dated 5th day of February 1979, giving the Appellant leave to sell the said land subject to the payment of 1/3rd share of the proceeds of the sale to the Respondent. p. 9

(ii) that the Respondent was putting obstacles in the way of the late father's Will in order to pursue his claim on alleged intestacy pp. 9 - 10

- p. 10 (iii) that by imposing the condition upon him to pay share of the Karta into Fixed Deposit the Respondent was tying his hands in the management of his property.
- p. 10 (iv) that the Accounts as ordered by the Privy Council had long been filed and that the Respondent had failed and refused to take the same or to challenge the same in Court.
- p. 10 (v) that there are 4 other titles of lands still caveated by the Respondent. 10

13. In reply in an affidavit dated 13th day of July 1979. The Respondent stated :-

- p. 16 (i) that the Order of Court dated 5th day of February 1979 could not affect the Caveat entered in Seremban High Court Civil Suit No. 34 of 1951 on 17th day of March 1958.
- p. 17 (ii) that initially, caveats had been lodged in respect of 35 titles of land but the Respondent had consented to the removal of all of these except 5. 20
- p. 17 (iii) that the Grants which remained caveated were Grant No. 8457 for Lot No. 538, Grants No. 381, 377 and 457 for lots 97, 16 and 107 in Port Dickson Town and Grant No. 552 for Lot 32 in Seremban Town.

p. 17 14. The Respondent considered that these were sufficient security for the amounts which he was claiming in Seremban High Court Civil Suit No. 34 of 1951 and that the land held under Grant No. 8457 for Lot 538 was the most valuable.

pp. 17 - 18 15. The Respondent repeated the orders he had sought in the said Civil Suit and made further allegations with regard to sales of properties belonging to the PL. AR. Firm and to the use of the Firm's money. These allegations related to both the late father and the Appellant and these allegations were never part of his said original claim. 30

p. 18 16. The Respondent stated that the whole of the assets of the Firm were not sufficient at that time to cover the amounts due to him when accounts were to be taken. 40

p. 18 17. The Respondent alleged further that the Appellant had colluded with the father and was equally liable to pay the Appellant what is due to him and that it was premature to order the removal of the caveat before the final accounts were taken and all debts of the firm settled.

18. The Respondent further stated that the application for removal of the caveat could not be made in those proceedings. p. 18
19. After reading the affidavits and hearing argument by Counsel, by Order dated 22nd day of August 1979 it was ordered that the Registrar of Titles Negri Sembilan remove and cancel the Caveat Presentation No. 102806 Vol. XXXI Folio 40 registered on 27th day of March 1958. Costs to be met out of the proceeds of sale. p. 19
- 10 20. The Learned Judge gave his reasons for making the order in a judgement dated 27th day of September 1979. pp. 22 - 23
21. The Learned Judge considered that the Respondent's refusal to vacate the caveat was not justifiable and that he was placing obstacles to frustrate the Order to which he had consented. p. 23
- 20 22. With regard to the argument that any application for the removal of the caveat should have been made in Civil Suit No 34 of 1951 because the caveat was lodged in relation to that suit, the learned judge did not consider that it had any substance as the subject matter was the same land in the Suit as in the Summons. p. 23
23. The Respondent appealed to the Federal Court in Malaysia (Appellate Jurisdiction) against this decision and by an Order dated 1st October 1980 with reasons dated 30th March 1981. (Delivered by Syed Othman bin Ali J.) the appeal was allowed. pp. 24 - 25
pp. 26 - 27
pp. 28 - 31
- 30 24. The Appeal Court considered that the only reason given for removing the caveat was that the consent given to sell the land should be taken also as consent to the removal of the caveat, without the need to consider the grounds for which the caveat had originally been lodged. p. 30
25. The Court considered that the judge should have considered those grounds as it was agreed that when the consent was given neither the parties nor the Courts minds were directed to the caveat. The consent therefore should be treated as being subject to the legal limitations and encumbrances under the title. p. 30
- 40 26. The Court also considered that the trial judge should have dealt specifically with the Respondents offer to withdraw the caveat if the Karta's $\frac{1}{3}$ share of the proceeds of sale be kept in a bank on fixed deposit until accounts were taken. p. 30
- The Appellant had not shown how he was going to dispose of the Karta's share nor did he show what were p. 30

his objections to depositing the Karta's share in the bank until the Civil Suit was disposed of. There was nothing to show that he was entitled to the Karta's share.

p. 31 Inquiry should also have been made as to whether it would have been sufficient to deposit in the bank a portion of the Karta's share instead of the whole.

p. 31 27. The Appeal Court accepted that the Appellant had rendered accounts and that the Respondent might be at fault for delaying the taking of the accounts.

p. 31 The Appellant had not shown whether the accounts were in favour of the Respondent or not, nor whether he had taken steps to expediate the taking of the accounts. 10

p. 31 There appeared to be no dispute that the piece of land concerned was the most valuable piece.

p. 31 28. The Appeal Court considered that there were many factors concerning the caveat which were not considered by the trial judge and that the considerations in favour of maintaining the caveat outweighed those in favour of removing it.

p. 31 29. The Court reminded the parties that the Appellant could make a renewed application for removal if he had good grounds. 20

p. 27 30. The Appeal Court also ordered that the Appellant pay the costs of the appeal to the Respondent and that the \$500 (Ringgit Five Hundred only) paid into Court be refunded to the Respondent. p. 27

p. 36 31. On 17th Day of November 1980 the Federal Court in Malaysia at Kuala Lumpur (Appellate Jurisdiction) made an Order granting leave to the Appellant to appeal to His Majesty the Yang di-Pertuan Agong against the said decision of the Federal Court (Appellate Jurisdiction). 30

The Court further ordered :-

p. 37 (i) that the Appellant enter good and sufficient security in the sum of \$5000 (Ringgit Five Thousand only) with the Court for the due prosecution of the Appeal and payment of all costs which may become payable to the Respondent.

p. 37 (ii) that the Appellant prepare the record written 3 months from the date of the order. 40

and that

p. 37 Stay of execution of the Order of 1st October 1980 be refused

and that

costs of the proceedings be costs in the cause.

p. 37

32. The Appellants respectfully submit that the Order of the Federal Court (Appellate Jurisdiction) dated 1st day October 1980 was wrong and ought to be set aside and this appeal ought to be allowed with costs for the following (among other)

p. 26

R E A S O N S

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BECAUSE the Respondent had consented to the Order permitting the sale of the land held under Grant No. 8457 for lot 538 in the Town of Port Dickson and the Disposal of proceeds as set out in the Order and the removal of the caveat is essential to effect that sale.

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BECAUSE by seeking to impose new conditions in return for the removal of the caveat, the Respondent is in effect seeking to frustrate the Order to which he consented and further sought to reopen the matters in dispute in Seremban High Court Civil Suit 34 of 1951, which had finally determined in terms of the earlier Orders of Court.

BECAUSE the trial Judge was correct in ordering the removal of the caveat as the Respondents consent to the sale of the land and the disposal of the proceeds superceded the reasons for imposing the caveat.

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BECAUSE by accepting $\frac{1}{3}$ share of the proceeds of the sale of the land before appealing to the Federal Court (Appellate Jurisdiction) the Respondent has accepted the removal of the caveat and waived his rights to reimpose it.

BECAUSE it would not be just and equitable to retain such a share while denying the Appellant the use of his proper share.

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BECAUSE the Appellant has fulfilled all the conditions laid down by the Courts in relation to the furnishing of accounts, the seeking of Orders before the disposal of property and the disposal of the proceeds of sale while the Respondent has sought to frustrate the Orders of the Courts by refusing to take up the Accounts and by in effect going back on a consent previously given and thus abusing the procedures of the Courts.

BECAUSE the decision of the Federal Court in
Malaysia (Appellate Jurisdiction) was wrong.

PARAM S GILL

FRANCIS McWILLIAMS

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N

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Appellant

- and -

AR. PL. PALANIAPPA CHETTIAR

Respondent

CASE FOR THE APPELLANT

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