

39/82

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

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B E T W E E N:-

PL. AR. Letchumanan Chettiar  
@ AR. Lakshmanan @ Ana Runa  
Leyna Lakshmanan Chettiar

Appellant

- and -

AR. PL. Palaniappa Chettiar

Respondent

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RECORD OF PROCEEDINGS

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KINGSFORD DORMAN  
14 Old Square,  
Lincoln's Inn,  
London WC2A 3UB

Solicitors for the Appellant

BULCRAIG & DAVIS  
4 John Street,  
London, WC1N 2EX

Solicitors for the Respondent

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

B E T W E E N:-

PL. AR. Letchumanan Chettiar  
@ AR. Lakshmanan @ Ana Runa  
Leyna Lakshmanan Chettiar

Appellant

- and -

AR. PL. PALANIAPPA CHETTIAR

Respondent

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

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B E T W E E N :

PL. AR. Letchumanan Chettiar @  
AR. Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar Appellant

- AND -

AR. PL. Palaniappa Chettiar Respondent

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RECORD OF PROCEEDINGS

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NO. 1

SUMMONS IN CHAMBERS

In the High Court  
of Malaya at  
Seremban

IN THE HIGH COURT OF MALAYA AT SEREMBAN

ORIGINATING SUMMONS NO.126 of 1978

No.1  
Summons in  
Chambers 25th  
November 1978.

In the Matter of Probate Suit No.1 of 1973

And

20

In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased.

BETWEEN

PL.AR. Letchumanan Chettiar @ AR.  
Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar Plaintiff

AND

AR.PL. Palaniappa Chettiar Defendant

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SUMMONS IN CHAMBERS

LET ALL PARTIES concerned appear before the Judge in

In the High Court  
at Malaya at  
Seremban

No.1  
Summons in  
Chambers 25th  
November 1978  
(Contd)

o'clock in the forenoon on the hearing of an application on the part of the Plaintiff, as Executor of the Estate of the above-named deceased that he be granted leave to sell the land held under Grant for land No.8457 for Lot No.538 in the Town and District of Port Dickson in area 16a 1r 0lp or 708,122 sq. ft. by private treaty at a minimum price of \$1.75 per sq. ft. making a total of the sale price to \$1,239,213.50 and that the said proceeds of sale after settling the dues to the Inland Revenue, in respect of the Real Property Gains Tax Act 1976, be divided into two-third (2/3rd) thereof to the Plaintiff herein and one-third (1/3rd) thereof to the Defendant herein and that for purposes of effecting registration of the said transfer in favour of the Purchaser, the issue document of title to the said land, in the event that by the time of the order herein the same was still in the hands of the Receiver named T. Chellappah, the said Receiver shall release the same to the Plaintiff and or his Solicitors upon demand by them in writing, and that the costs of and incidental to this application be taxed and paid out of the proceeds of sale as a first charge thereto and that there be liberty to apply.

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Dated the 25th day of November, 1978.

Sd:  
Senior Assistant Registrar  
High Court  
Seremban.

To:

The Defendant and/or his Solicitors  
M/s Lovelace & Hastings  
57, Jalan Klyne  
Kuala Lumpur 01-21.

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This Summons was taken out by M/s GILL & TANG, Solicitors for the Plaintiffs of and whose address for service is at No.1, Jalan Tunku-Hassan, Seremban.

This Summons will be supported by the Affidavit of PL.AR. Letchumanan Chettiar affirmed on this 21st day of November 1978.

NOTE - If the Defendant does not attend either in person or by his Solicitors at the place and time above-mentioned and such order will be made by proceedings taken as the Judge may think just and equitable.

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NOTE - Where entry of appearance is required an application shall be entered within 12 days from the date of service.

NO. 2

AFFIDAVIT OF PL.AR. LETCHUMANAN CHETTIAR  
21st November 1978.

In the High Court  
of Malaya at  
Seremban

No.2  
Affidavit of PL.  
AR. Letchumanan  
Chettiar 21st  
November 1978

IN THE HIGH COURT OF MALAYA AT SEREMBAN

ORIGINATING SUMMONS NO.126 of 1978

10 In the Matter of Probate Suit No.1 of 1973

And

In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased

BETWEEN

PL.AR. Letchumanan Chettiar @ AR.  
Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar

Plaintiff

AND

AR.PL. Palaniappa Chettiar

Defendant

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A F F I D A V I T

I, PL.AR. Letchumanan Chettiar @ AR.Lakshmanan @ Ana  
Runa Leyna Lakshmanan Chettiar, of full age, an Indian  
citizen make oath and say as follows:-

1. I am the duly constituted Executor of the Estate of my  
late father, who prior to his death was the Karta or  
Manager of the Hindu Joint Family of the PL.AR. firm  
at Port Dickson, which consisted of the said deceased,  
myself and the Defendant herein.
- 30 2. I applied for the grant of Probate, which the  
Defendant had objected and which became a contested  
suit, entitled Seremban High Court Probate Suit No.1  
of 1973 in which on 22nd day of January 1977, the  
learned Judge inter alia ordered "that the Probate of the  
said Will be and is hereby granted to the Plaintiff  
except that the testator's one-third share therein  
in the Joint Hindu Family of PL.AR. of Port Dickson  
be excluded AND IT IS ORDERED that this one-third  
share shall form part of the deceased's estate as part  
of intestacy..."
- 40 3. As I was dissatisfied with the said Judgment, I took  
it up on appeal to the Federal Court in Malaysia,  
wherein my said Appeal was allowed on 24th day of  
September 1977 inter alia as follows:-

"Probate granted subject to the proviso that before disposing of or distributing any property bequeathed under the Will or the proceeds of such property, there shall be an Order to that effect".

No.2

Affidavit of PL. 4.  
AR. Letchumanan  
Chettiar 21st  
November 1978  
(Contd)

4. In order to comply with the said condition, I hereby apply for leave to sell the land held under Grant for Land No.8457, Lot 538 in the Town and District of Port Dickson in area 16a 1r 0lp at a minimum sale price of \$1.75 per sq. ft. 10
5. The said land was valued for Estate Duty purposes as at 19th day of August 1972 at 68.84 cents per sq. ft. which works out to \$487,471.18.
6. At a minimum price of \$1.75 per sq. ft. I will be able to get \$1,239,213.50. If I can get a higher price then it will be beneficial for all concerned but I undertake to draw up a proper sale and purchase agreement, before the said sale is completed.
7. In the event of my getting a successful buyer, I undertake to settle the payment of the Real Property Gains Tax Act 1976 and all other outgoings thereto in respect of my own 1/3 share and also for 1/3 share for the said estate plus a further 1/3 share thereto from the share of the Defendant herein named AR.PL. Palaniappa Chettiar, Upon settlement of the said outgoing I hereby undertake to pay the 1/3 share of the proceeds of sale to the said Defendant and or his duly authorised Solicitors for onward transmission to him. 20
8. Alternatively if the said AR.PL. Palaniappa Chettiar refused to accept his said share, then I hereby undertake to pay the same into Court and or to the Public Trustee, to be held in trust for him, as the Court may direct. 30
9. I do not have to give any reasons for my application for leave to sell herein, but wish to explain that ever since the landed property in Malaya, from which property alone the family received its income for subsistence, had been seized and put into the hands of the Receiver, as from later part of 1964, whereafter my late father, in his life time had lived on borrowed money at very high rates of interest which is accumulating over the years and which remains unpaid including the Principal thereto. 40
10. After my father's demise on 19th day of November 1972, I also had to resort to borrowing monies for my aged mother's subsistence and that of myself and my family consisting of 2 wives and 9 children. Before these uums go out of hand due to the said high rate of interest, I would like to sell the said land and settle the same and invest the balance on better 50

yielding investments, as the said land though potentially developable in the Town of Port Dickson, is a liability with the current annual Quit Rent payable to the Government at more than \$7000.00 per year plus further Town Council Assessment thereto, with very low income therefrom.

In the High Court of Malaya at Seremban

No.2  
Affidavit of PL. AR. Letchumanan Chettiar 21st November 1978 (Contd)

10 Affirmed by the said PL.AR.Letchumanan Chettiar @ AR.Lakshmanan @ Ana Runa Leyna Lakshmanan Chettiar at Seremban on this 21st day of November 1978 at 11.00 a.m. } Sd.AR.Lakshmanan

Before me,

Sd: K.Purushothman, PJK  
Pesurohjaya Sumpah  
High Court, Seremban.

This Affidavit will be used in support of the Plaintiff's leave for an Order for sale of a piece of land in the estate of PL.AR. Arunasalam Chettiar, deceased.

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NO. 3

No.3  
Order by Consent  
5th February 1979

ORDER BY CONSENT

IN THE HIGH COURT OF MALAYA AT SEREMBAN

ORIGINATING SUMMONS NO.126 OF 1978

In the Matter of Probate Suit No.1 of 1973

And

In the Matter of the Estate of PL.AR. Arunasalam Chettiar s/o Palaniappa Chettiar, deceased.

BETWEEN

30

PL.AR.Letchumanan Chettiar @ AR. Lakshmanan @ Ana Runa Leyna Lakshmanan Chettiar Plaintiff

AND

AR.PL. Palaniappa Chettiar Defendant

BEFORE MR. JUSTICE AJAIB SINGH,  
JUDGE, HIGH COURT, MALAYA, SEREMBAN

IN CHAMBERS

In the High Court  
of Malaya at  
Seremban

THIS 5TH DAY OF FEBRUARY 1979

O R D E R

No.3  
Order by Consent  
5th February 1979  
(Contd)

THIS APPLICATION coming up for disposal this day in the presence of Mr. Atma Singh Gill of Counsel for the Plaintiff/Executor and Mr. N.A. Marjoribanks of Counsel for the Defendant AND UPON READING the Summons in Chambers dated the 25th day of November 1978 and the supporting Affidavit affirmed by the Plaintiff PL.AR. Letchumanan Chettiar on 21st day of November 1978 and UPON HEARING both Counsel as aforesaid BY CONSENT IT IS ORDERED that the Plaintiff as Executor of the Estate of PL.AR. Arunasalam Chettiar s/o Palaniappa Chettiar deceased is hereby granted leave to sell the land held under Grant for Land No.8457 for Lot No.538 in the Town and District of Port Dickson, in area 16a 1r 0lp or 708,122 sq. ft. by private treaty at a minimum price of \$1.75 per sq. ft. making a total of the sale price of \$1,239,213.50 and that the said proceeds of sale after settling the dues to the Inland Revenue in respect of the Real Property Gains Tax Act 1976, be divided into two-third (2/3rd) thereof to the Plaintiff herein and one-third (1/3rd) thereof to the Defendant herein and that for purpose of effecting registration of the said transfer in favour of the Purchaser, the issue document of title to the said land, in the event that by the time of the order herein the same was still in the hands of the Receiver named T.Chellappah, the said Receiver shall release the same to the Plaintiff and or his Solicitors upon demand by them in writing, and that the costs of and incidental to this application be taxed and paid out of the proceeds of sale as a first charge thereto and that there be liberty to apply.

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GIVEN under my hand and the Seal of the Court this 5th day of February, 1979.

Sd: Illegible

Senior Assistant Registrar  
High Court  
Seremban.

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No.4  
Summons in  
Chambers 30th  
June 1979.

NO. 4

SUMMONS IN CHAMBERS

IN THE HIGH COURT IN MALAYA AT SEREMBAN

ORIGINATING SUMMONS NO.126 OF 1978

In the Matter of Probate Suit No.1 of 1973  
AND

In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased.

In the High Court  
of Malaya at  
Seremban

BETWEEN

PL.AR. Letchumanan Chettiar @ AR.  
Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar

Plaintiff

No.4  
Summons in  
Chambers 30th  
June 1979 (Contd)

AND

10 AR.PL. Palaniappa Chettiar

Defendant

SUMMONS IN CHAMBERS

20 LET ALL PARTIES concerned appear before the Judge in  
Chambers on Monday the 6th day of August 1979 at 9.30 o'  
clock in the forenoon on the hearing of an application on  
the part of the Plaintiff, as Executor of the Estate of  
the abovenamed deceased, for an Order that the Registrar of  
Titles, Negri Sembilan, do remove and cancel the Caveat  
Presentation No.102806 Vol. XXXI Folio 40 registered in the  
Land Registry on 27th day of March 1958 vide Order of Court  
dated the 17th day of March 1958, from the Register of the  
said land at his Registry and that the costs of and  
incidental to the application herein be costs in these  
proceedings and paid out of the proceeds of sale as a first  
charge thereto.

Dated this 30th day of June, 1979.

Sd: Illegible

Senior Assistant Registrar  
High Court  
Seremban.

30 TO:  
The Defendant and/or his Solicitors  
M/s Lovelace & Hastings  
57 Jalan Klyne  
Kuala Lumpur 01-21.

This Summons was taken out by M/s GILL & TANG,  
Solicitors for the Plaintiff of and whose address for  
service is at No.1, Jalan Tunku Hassan, Seremban.

40 This Summons will be supported by the Affidavit of PL.  
AR. Letchumanan Chettiar affirmed on this 19th day of June,  
1979.

In the High Court  
of Malaya at  
Seremban

NO. 5

AFFIDAVIT OF PL.AR. LETCHUMANAN CHETTIAR  
AND EXHIBITS THERETO 19TH JUNE 1979

No.5  
Affidavit of PL.  
AR.Letchumanan  
Chettiar and  
Exhibits thereto  
19th June 1979

IN THE HIGH COURT OF MALAYA AT SEREMBAN

ORIGINATING SUMMONS NO.126 OF 1978

In the Matter of Probate Suit No.1 of 1973

10

AND

In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased

BETWEEN

PL.AR. Letchumanan Chettiar @ AR.  
Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar

Plaintiff

AND

AR.PL. Palaniappa Chettiar

Defendant

A F F I D A V I T

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I, PL.AR. Letchumanan Chettiar @ AR. Lakshmanan @ Ana  
Runa Leyna Lakshmanan Chettiar of full age, an Indian  
Citizen make oath and say as follows:-

1. On 25th day of November 1978 I applied to this  
Honourable Court by the said Originating Summons, as  
Executor of the Estate of the above deceased for leave  
to sell the land held under Grant for land No.8457 for  
Lot No.538 in the Town and District of Port Dickson  
(hereinafter called "the said land").
2. My said Application was supported by the Affidavit  
affirmed by me on 21st day of November 1978 and filed  
herein. I crave leave to refer to the said Originating  
Summons and the said supporting Affidavit, contents of  
which I hereby repeat and also refer for the purposes  
of my application herein. 30
3. Although I am the Executor as aforesaid, I had to apply  
for leave of this Honourable Court, to sell as  
aforesaid, by reason of the condition placed by Order  
of the Federal Court, Malaysia dated 24.9.77 and  
embodied in the Grant of Probate extracted by me,  
which required of me to apply for leave of Court before  
I could sell or dispose of any properties of the said  
Estate. 40

4. My said Application was duly served on the Respondent's Solicitors and on 5.2.79 the Order prayed for by me was made by this Honourable Court by consent given through our respective Counsel as stated in the said Order, I crave leave to refer to the said Order. In the High Court of Malaya at Seremban
5. After the said Order, when I was going to apply for transmission of the said land to me as Executor, I discovered that the Plaintiff in the course of his litigation with our late father in Seremban High Court Civil Suit No.34 of 1951, had inter alia then caveated the said land until judgment in his action, which caveat Presentation No.102806 Volume XXXI Folio 40 had been extended against the said land by a consent Order of this Honourable Court dated 17th day of March 1958 until further Order of Court. I am now shown a photocopy of the said Order of Court which is hereto annexed and marked "ARL 1". No.5 Affidavit of PL. AR.Letchumanan Chettiar and Exhibits thereto 19th June 1979 (Contd)
6. At the time of the making and the hearing of my said Originating Summons on 5th day of February 1979, neither myself nor my Counsel Mr. Atma Singh Gill nor even for that matter, the Defendant's Counsel Mr. Marjoribanks were aware of the existence of the said Caveat on the Land Register, as extended by Order of Court by consent, of which consent only our deceased father, the Defendant as Plaintiff in the said suit would have known.
7. Upon the said discovery of the said Caveat, I caused a letter to be written to Messrs. Lovelace & Hastings on 19.4.79 requesting them to give their consent to withdraw the said Caveat. I am now shown a photocopy of the said letter which is hereto annexed and marked "ARL 2".
8. My said Solicitors received a reply dated 24th day of April 1979 in which they stated inter alia that their client was alleging mismanagement of the properties by the late father, during his Kartaship (which allegations are all unfounded and not true), and that he would only agree to the withdrawal of the said Caveat provided the Karta's 1/3 share of the proceeds of sale was kept in a Bank on Fixed Deposit until final accounts are taken by him. I am now shown a photocopy of the said letter dated 24.4.79 which is hereto annexed and marked "ARL 3".
9. The said stand taken by the Defendant now was counter to the contents of the said consent Order of Court, dated 5th day of February 1979, giving me leave to sell the said land, subject to his 1/3rd share of the proceeds of sale being payable to the Defendant herein. He appears to have changed his mind, in another attempt to put obstacles in the way of our late father's Will and consequential Grant of Probate to

In the High Court  
of Malaya at  
Seremban

No.5  
Affidavit of PL.  
AR.Letchumanan  
Chettiar and  
Exhibits thereto  
19th June 1979  
(Contd)

me, in order to pursue his alleged claim on alleged intestacy. I then caused my Solicitor to write in terms of their letter dated 7.5.79 a photocopy whereof is now shown to me and hereto annexed and marked "ARL 4".

10. My said Solicitors received a reply dated 23.5.79 repeating their client's original stand. I am now shown a photocopy of the said letter which is hereto annexed and marked "ARL 5". 10
11. By insisting to impose the said condition upon me, to pay the 1/3 share of the Karta into a Fixed Deposit as aforesaid, is tantamount to tie up my hands in the management of my property of which I am beneficially entitled, on his said wishful and unfounded allegations of mismanagement against our late father as Karta, when even the Privy Council in its decision had held otherwise.
12. The Defendant had from the very beginning pursued his claim for 1/3 share of the said Joint Hindu Family Property against our late father, for which he succeeded quite sometime back. 20
13. The Accounts as ordered by the Privy Council have long been filed and the Defendant has failed and refused and still refused to take the same or to challenge the same in Court, even though he is in Malaya now.
14. Since the Defendant had through his Counsel initially given his unconditional consent for the sale of the said land and out of the proceeds of sale I was to pay him his 1/3 share of the proceeds of sale, his present demand is to say the least, vicious unreasonable and illogical because he has no such claims whatsoever and besides there are 4 other titles of lands, still under another Caveat, caveated by the Defendant before. I therefore pray that the Order prayed for be made by this Honourable Court. 30

Affirmed by the said PL.AR. )  
Letchumanan Chettiar at ) Sd: AR.Lakshmanan  
Seremban on this 19th day of )  
June 1979 at 3.30 p.m. ) 40

Before me,

Sd: K.Purushothman, PJK  
Commissioner for Oaths  
High Court, Seremban.

This Affidavit is filed by M/s GILL & TANG,  
Solicitors for the Plaintiff of and whose address for  
service is at No.1, Jalan Tunku Hassan, Seremban.

EXHIBIT "ARL 1" TO AFFIDAVIT OF  
PL.AR.LETCHUMANAN CHETTIAR.

In the High Court  
of Malaya at  
Seremban

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT OF SEREMBAN

Civil Suit No.34 of 1951

No.5  
Exhibit "ARL 1"  
to Affidavit of  
PL.AR.Letchumanan  
Chettiar.

BETWEEN

10 Ana Runa Pana Lana Palaniappa Chettiar Plaintiff

AND

1. Pena Lana Ana Runa Arunasalam Chettiar  
2. Ana Runa Leyna Lakshmanan Chettiar  
3. Meenakshi Achi (f) Defendants

Before the Honourable Mr. Justice Smith, Judge, Federation  
of Malaya.

IN CHAMBERS

This 17th day of March 1958

O R D E R

20 UPON HEARING Mr. J.A.B. Lang of Counsel for the  
Defendants and on behalf of Mr. M.N. Cumarasami of Counsel  
for the Plaintiff AND UPON READING the Summons in Chambers  
dated the 5th day of February, 1958 and the affidavit of  
Ana Runa Pana Lana Palaniappa Chettiar affirmed on the 4th  
day of February 1958, and filed herein, BY CONSENT IT IS  
ORDERED that the Caveat Presentation No.102806 Volume XXXI  
Folio 40 against the lands held under Negri Sembilan Grants  
30 Nos. 9823 for Lot No.819 in the Mukim of Port Dickson, 8457  
for Lot No.538 in the Town of Port Dickson, 9615, 9884 and  
9960 for Lots No.528, 828 and 486 in the Mukim of Jimah,  
Certificate of Title No.4249 for Lots 1029 and 1211 and an  
undivided half share of Certificate of Title No.4252 for  
lots 905 and 906 in the Town of Port Dickson, Certificates  
of Title No.4251 for Lot No. 862 in the Mukim of Port  
Dickson, Certificate of Title No. 4254 for Lots No. 382 to  
384 in the Mukim of Si Rusa and Certificate of Title No.4250  
for lot No. 1685 in the Town of Seremban be withdrawn with  
the exception of Grant No. 8457 for Lot No. 538 AND BY  
CONSENT IT IS ORDERED that the said caveat do remain  
40 registered until further order of the Court against the  
said Grant No. 8457 for lot No.538, AND BY CONSENT IT IS  
FURTHER ORDERED that the Caveat Presentation No.3314  
against the land held under Entries in the Mukim of  
Register Nos. 59, 60, 61, 63, 95, 96, 200, 235 for lots  
Nos. 227, 228, 229, 231, 348, 404, 297 and 296 in the Mukim

In the High Court of Jimah, Entries in the Mukim Register Nos. 643, 644, 641, of Malaya at 640 for lots Nos. 606, 607, 1323 and 888 in the Mukim of Seremban Port Dickson and Entries in the Mukim Register Nos. 674, 677, 678, 679, 675, 230, 676 for lots Nos. 380, 463, 493, 494, 395, 496 and 393 in the Mukim of Si Rusa be withdrawn.

No.5  
Exhibit "ARL 1"  
to Affidavit of  
PL.AR.Letchumanan  
Chettiar. (Contd)

Given under my hand and the Seal of the Court this  
17th day of March, 1958.

Sd. Lee Moh Wah  
Asst. Registrar, Supreme Court,  
Seremban.

10

Certified true copy

Sd: Lee Moh Wah  
Assistant Registrar  
Supreme Court  
Seremban.  
31.10.58.

This is the Exhibit marked ARL 1 referred to the  
Affidavit of PL.AR. Letchumanan Chettiar @ AR. Lakshmanan  
@ Ana Runa Leyna Lakshmanan Chettiar affirmed on this 19th  
day of June 1979.

20

Sd; K. Purushothman, PJK  
Commissioner for Oaths  
High Court, Seremban.

Exhibit "ARL 2"  
to Affidavit of  
PL.AR.  
Letchumanan  
Chettiar.

EXHIBIT "ARL 2" TO AFFIDAVIT OF PL.AR.  
LETCHUMANAN CHETTIAR.

Messrs. Lovelace & Hastings  
Advocates & Solicitors  
No.57 Jalan Klyne  
Kuala Lumpur.

19th April 1979

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Dear Sirs,

Re: Seremban High Court Civil  
Suit No.34 of 1951

We refer to the Order of Court dated 5.2.79 for sale  
of land held under Grant for land No.8457 for lot No.538  
in the Town of Port Dickson in the District of Coast.

We have now obtained the title to the said land from  
Mr. T. Chellappah and after preparation of the transmission  
papers, when we were about to submit the same for

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registration we observed that there was a Caveat on the said land vide Consent Order of Court dated 17.3.58 ordering the Caveat that had been registered earlier to remain registered until further Order of Court.

Exhibit "ARL 2"  
to Affidavit of  
PL.AR.  
Letchumanan  
Chettiar. (Contd)

Under the circumstances, we shall be pleased to know whether you will give your consent to withdraw the said Caveat or do we have to apply to Court for an Order of Court for withdrawal or cancellation thereto.

10

Yours faithfully,

Sgd: Gill & Tang.

c.c.  
Client,

This is the Exhibit marked "ARL 2" referred to the Affidavit of PL.AR. Letchumanan Chettiar @ AR. Lakshmanan @ Ana Runa Leyna Lakshmanan Chettiar affirmed on this 19 day of June, 1979.

Sd: K.Purushothman, PJK  
Commissioner for Oaths  
High Court, Seremban.

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EXHIBIT "ARL 3" TO AFFIDAVIT OF PL.AR.  
LETCHUMANAN CHETTIAR.

Exhibit "ARL 3"  
to Affidavit of  
PL.AR.Letchumanan  
Chettiar.

Exhibit ARL "3"

24th April 1979

30

Messrs. Gill & Tang  
Advocates & Solicitors  
No.1 Jalan Tunku Hassan  
Seremban, N.S.

Dear Sirs,

Re: Seremban High Court Civil Suit  
No.34 of 1951

We have received your letter dated 19th April 1979 and taken our client's instructions thereon. It is our client's contention that the Karta has sold many valuable properties belonging to the PL.AR. firm and mismanaged the firm before or after this action has been filed.

A considerable sum of money is due from the Karta's

Exhibit "ARL 3"  
to Affidavit of  
PL.AR.Letchumanan  
Chettiar (Contd)

estate to our client, our client will agree to withdraw the said caveat provided the Karta's share of the proceeds of the sale of the land held under Grant for land No.8457 for lot No.538 in the Town of Port Dickson is not released to the Estate and is put in fixed Deposit in say the Chartered Bank till final accounts are taken in this case and it is ascertained as to how much is due from the Karta's Estate to our client. The Karta's share is to be held as part security for whatever sum may be due from his estate to our client.

10

Please let us have your reply.

Yours faithfully,

Sgd: Lovelace & Hastings.

This is the Exhibit marked "ARL 3" referred to the Affidavit of PL.AR.Letchumanan Chettiar @ AR. Lakshmanan @ Ana Runa Leyna Lakshmanan Chettiar affirmed on this 19th day of June 1979.

Sgd: K. Purushothman, PJK  
Commissioner for Oaths  
High Court, Seremban.

20

Exhibit "ARL 4"  
to Affidavit of  
PL.AR.  
Letchumanan  
Chettiar

EXHIBIT "ARL 4" TO AFFIDAVIT OF PL.AR.  
LETCHUMANAN CHETTIAR.

Exhibit ARL "4"

M/s Lovelace & Hastings  
Advocates & Solicitors  
57 Jalan Klyne  
Kuala Lumpur 01-21

7th May 1979

Dear Sirs,

30

Re: S'ban High Court Civil  
Suit No.34/1951

Further to our letter of the 30th ultimo informing you that we were in the course of taking instructions from our client on your letter dated 24th ultimo, which we have now done.

Your client's allegations in paragraph 2 of your letter under reply are unfounded as regards his alleged claims due from the Karta's estate.

Our client does not agree to your client's said proposal.

Exhibit "ARL 4"  
to Affidavit of  
PL.AR. Letchumanan  
Chettiar (Contd)

Our instructions are to apply to Court for the relevant order, because there are 23 other titles of valuable lands belonging to the said joint family and your client's alleged claims (if at all there are any) will be well protected.

10 Should we fail to receive your client's consent to withdraw the said Caveat within the NEXT SEVEN DAYS, our instructions are to apply to Court without any further reference to your client.

Yours faithfully,  
Sgd: Gill & Tang.

c.c.  
Client.

20 This is the Exhibit marked "ARL 4" referred to the Affidavit of PL.AR.Letchumanan Chettiar @ AR. Lakshmanan @ Ana Runa Leyna Lakshmanan Chettiar affirmed on this 19 day of June 1979.

Sd: K. Purushothman, PJK  
Commissioner for Oaths  
High Court, Seremban.

EXHIBIT "ARL 5" TO AFFIDAVIT OF PL.AR.  
LETCHUMANAN CHETTIAR

Exhibit ARL "5"

Exhibit "ARL 5"  
to Affidavit of  
PL.AR.Letchumanan  
Chettiar.

30 M/s Gill & Tang  
Advocates & Solicitors  
No.1 (1st floor)  
Jalan Tunku Hassan  
Seremban.

23rd May, 1979.

Dear Sirs,

Re: S<sup>e</sup>ban High Court Civil Suit  
No.34/1951

We refer to your letter dated 7th May 1979 and state that unless the Karta's 1/3rd share is deposited as security, our client will object to the removal of the Caveat.

40

Yours faithfully,  
Sd: Lovelace & Hastings

Exhibit "ARL 5"  
to affidavit of  
PL.AR.  
Letchumanan  
Chettiar (Contd)

This is the Exhibit marked "ARL 5" referred to the  
Affidavit of PL.AR. Letchumanan Chettiar @ AR. Lakshmanan  
@ Ana Runa Leyna Lakshmanan Chettiar affirmed on this 19th  
day of June 1979.

Sd: K. Purushothman, PJK  
Commissioner for Oaths  
High Court, Seremban.

In the High Court  
of Malaya at  
Seremban.

NO. 6

10

AFFIDAVIT OF AR.PL. PALANIAPPA CHETTIAR  
13TH JULY 1979

No.6  
Affidavit of AR.  
PL.Palaniappa  
Chettiar 13th  
July 1979.

Affidavit in Reply dated  
13.7.79

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT SEREMBAN

(FAMILY AND PROPERTY DIVISION)

20

CIVIL SUIT NO.34 of 1951

Ana Runa Pana Lana Palaniappa Chettiar          Plaintiff

versus

1. Pana Lana Ana Runa Arunasalam Chettiar  
2. Ana Runa Leyna Lakshmanan Chettiar  
3. Meenakshi Achi (f)                                  Defendants

AFFIDAVIT IN REPLY

I, AR.PL. Palaniappa Chettiar of full age, an Indian  
Citizen make oath and say as follows:-

1. I am the Defendant herein and crave leave to refer to  
the Plaintiff's Summons-in-Chambers dated 30th June  
1979. 30
2. I have read the Plaintiff's Affidavit dated 19th June  
1979 in support of the said Summons-in-Chambers.
3. The Order of Court dated the 5th day of February 1979  
cannot in any way affect the caveat entered in  
Seremban High Court Civil Suit No.34 of 1951 on the  
17th day of March, 1958.

4. On or about the 20th and 21st days of March 1951, prior to the commencement of Seremban High Court Civil of Suit No.34 of 1951. I lodged caveats on the 35 titles to land being Grants for land Nos. 381, 457, 377, 9823, 8457, 9615, 9884, 9960 and Certificate of Title No.4249, one-half share of 4252, 4251 and 4254 for lots Nos. 97, 107, 16, 819, 538, 528, 828, 486, 1209 and 1211, 905, 906, 616, 862, 382, 383 and 384 in the district of Coast and Grant for Land No.552 for Lot 32 and Certificate of Title No. 4250 for Lot 1685 in the district of Seremban and also E.M.R.s Nos. 59, 60, 61, 63, 95, 96, 200, 235 for Lots 227, 228, 229, 231, 348, 404, 297, 296 in the Mukim of Jimah, in the district of Coast, E.M.Rs. Nos. 643, 644, 641, 640 for Lots Nos. 606, 607, 1323, 888 in the Mukim of Port Dickson in the district of Coast, E.M.Rs. 674, 677, 678, 679, 230, 676 for Lots 380, 463, 493, 494, 395, 496 and 393 in the Mukim of Si Rusa in the district of Coast.
- In the High Court of Malaya at Seremban  
No.6  
Affidavit of AR.  
PL. Palaniappa  
Chettiar 13th  
July 1979 (Contd)
- 10
5. I consented to the removal of caveats on the numerous properties mentioned in the Order of Court dated the 17th day of March, 1958 because the land held under Grant No.8457 for Lot No. 538 was the most valuable of all properties and the caveat on it together with the caveats in respect of 4 Grants for Land viz. No.381, 377 and 457 for Lots 97, 16 and 107 in Port Dickson Town and Grant 552 for Lot 32 in Seremban Town were considered sufficient securities for the amounts due to me in Seremban High Court Civil Suit No.34 of 1951.
- 20
6. In the Plaintiff in the said Civil Suit dated the 2nd day of April, 1951, I have inter alia prayed for the following orders:-
- 30
- (a) declare that all properties, movable and immovable, held by or in the name of PL.AR. Arunasalam Chettiar, my father or Meenakshi Achi (f) my stepmother belong to the said joint family.
- (b) Order that an account be taken of the amounts due to me from the said joint family estate or from my father.
- 40
- (c) Order that an inquiry be held to ascertain what part of the amounts found due to me shall be paid from the said joint family estate and what part thereof shall be paid by my father.
7. After the institution of this action my father and brother have sold properties belong to the PL.AR. FIRM to my detriment. I crave leave to refer my Affidavit dated 15th day of April, 1977 filed in the said civil suit No.34 of 1951. I am entitled to be compensated for my loss due to the said wrongful sales at the current market value which is considerable. Further may other (sic)
- 50

In the High Court  
of Malaya at  
Seremban

No.6  
Affidavit of AR.  
PL. Palaniappa  
Chettiar 13th  
July 1979 (Contd)

properties have been sold by my father before filing  
of the action.

8. The Karta has after the institution of Seremban High Court Civil Suit No.34 of 1951 wrongfully spent considerable sums of money out of the assets of PL.AR. firm and has thereby caused me loss.
9. Ana Runa Leyna Lakshmanan Chettiar has borrowed large sums of money from the PL.AR. firm after 1950 which he should account to me for. I am entitled to be paid what is due to me. 10
10. The whole of the assets of the PL.AR. firm as at present is not sufficient to cover the amounts due to me when accounts are taken.
11. I am 67 years old and have remained unmarried for want of money. I deny that I have delayed the proceedings in this matter. Because of this litigation, I have been deprived of enjoying what is due to me and am anxious to conclude all proceedings. 20
12. Ana Runa Leyna Lakshmanan Chettiar has colluded with my father the Karta in causing me wrongful loss and he is liable to compensate me. Further since he has not separated from the Joint Hindu Family he is equally liable like my father to pay me what is due to me.
13. I humbly state that it will be premature to order the removal of the caveat before the final accounts are taken, and all debts of the firm settled.
14. In any event the application for removal of this caveat cannot be made in this proceedings. 30

Sworn to at Kuala Lumpur )  
this 13th day of July, ) AR.PL. Palaniappa Chettiar  
1979 at 3.15 p.m. )

Before me,

Sgd: Yee Soon Kwong  
Pesurchjaya Sumpah  
Commissioner for Oaths.

This Affidavit in Reply is filed by Messrs. Lovelace  
& Hastings, Solicitors for the Plaintiff whose address for  
service is at No.57 Jalan Klyne, Kuala Lumpur. 40

NO. 7

In the High Court  
of Malaya at  
Seremban

ORDER FOR REMOVAL OF THE CAVEAT

IN THE HIGH COURT IN MALAYA AT SEREMBAN

ORIGINATING SUMMONS NO.126 of 1978

In the Matter of Probate Suit No.1 of 1973

And

10 In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased.

BETWEEN

PL.AR. Letchumanan Chettiar @ AR.  
Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar Plaintiff

AND

AR.PL. Palaniappa Chettiar Defendant

BEFORE MR. JUSTICE AJAIB SINGH,  
JUDGE, HIGH COURT, MALAYA, SEREMBAN

20

IN OPEN COURT

THIS 22ND DAY OF AUGUST 1979

O R D E R

30

THIS APPLICATION coming up for hearing in Chambers on the 6th day of August 1979 in the presence of Mr. P.S.Gill of Counsel for the Plaintiff/Executor and Mr. A.D. Rajah of Counsel for the Defendant AND UPON READING the Summons in Chambers dated the 30th day of June 1979 and the supporting Affidavit affirmed by the Plaintiff PL.AR. Letchumanan Chettiar @ AR. Lakshmanan @ Ana Runa Leyna Lakshmanan Chettiar on the 19th day of June 1979 and filed herein AND UPON HEARING Counsel as aforesaid AND UPON APPLICATION for further argument under Order 54 rule 22A by the Defendant abovenamed coming up for hearing this day in the presence of Mr. P.S. Gill of Counsel for the Plaintiff/Executor and Mr. A.D. Raja of Counsel for the Defendant AND UPON HEARING further argument of Counsel as aforesaid IT IS ORDERED that the Registrar of Titles, Negri Sembilan, do remove and cancel the Caveat Presentation No.102806 Vol. XXXI Folio 40 registered in the Land Registry on the 27th day of March 1958 vide Order of Court dated 17th day of March 1958 and that the costs of and incidental to this Application be taxed and paid out of the proceeds of sale

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In the High Court as a first charge thereto.  
of Malaya at  
Seremban

GIVEN under my hand and the Seal of the Court this  
22nd day of August, 1979.

No.7  
Order for Removal  
of the Caveat  
22nd August 1979  
(Contd)

Sd: Illegible

Senior Assistant Registrar  
High Court  
Seremban.

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No.8  
Notes of  
Proceedings in  
Chambers 6th  
August 1979 and  
in Open Court  
22nd August 1979

NO. 8

NOTES OF PROCEEDINGS IN CHAMBERS (6TH AUGUST 1979)  
AND IN OPEN COURT (22ND AUGUST 1979).

IN THE HIGH COURT IN MALAYA AT SEREMBAN

ORIGINATING SUMMONS NO.126 OF 1978

In the Matter of Probate Suit No.1 of 1973

20

And

In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased.

BETWEEN

PL.AR. Letchumanan Chettiar @  
AR. Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar

Plaintiff

AND

AR.PL. Palaniappa Chettiar

Defendant

IN CHAMBERS

30

This 6th day of August 1979

Coram: AJAIB SINGH J.

Paramjit Singh Gill .. for Plaintiff  
A.D. Rajah .. for Defendant

Order in terms of Summons-in-Chambers dated 30.6.1979.

Sd: Ajaib Singh J.  
6.8.79.

IN OPEN COURT

In the High Court  
of Malaya at  
Seremban

This 22nd day of August, 1979

Coram: AJAIB SINGH J.

Paramjit Singh Gill .. for Plaintiff  
A.D. Raja .. for Defendant

No.8  
Notes of Pro-  
ceedings in  
Chambers 6th  
August 1979 and  
in Open Court  
22nd August 1979  
(Contd)

10

Summons in Chambers dated 30.6.79  
Order in terms was made on 6.8.79.

Upon application by defendant the Summons in Chambers  
is now adjourned into Court for further argument.

Rajah

Concede that the sale of the land in the original  
probate matter was by consent.

But the caveat was entered in the Civil Suit No.34 of  
1951 - not in the Probate Action.

20

Refer to para. 6 of Plaintiff's affidavit dated  
19.6.79. This is correct.

This is the most valuable piece of land and if the  
caveat is removed the land will be sold and defendant's  
security for his share is to be considered. The removal  
should be judged in context of the Civil Suit No.34 of 1951.  
Accounts in that case have not been taken yet.

Consent was only for the sale of the land - not for the  
removal of the caveat.

30

Alternatively, the money realised on sale to be  
deposited in Court pending what is due to the parties in  
the Civil Suit.

Order

I confirm my order of 6.8.79.

Sd: Ajaib Singh J.  
22.8.79

Certified True Copy  
Sd: Secretary to Judge  
High Court  
Seremban.

In the High Court  
of Malaya at  
Seremban

NO. 9

GROUNDS OF JUDGMENT

No.9  
Grounds of  
Judgment 27th  
September 1979.

IN THE HIGH COURT IN MALAYA AT SEREMBAN  
SUMMONS-IN-CHAMBERS DATED 30TH JUNE 1979 IN  
ORIGINATING SUMMONS NO.126 OF 1978

In the Matter of Probate Suit No.1 of 1973

And

In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased.

10

BETWEEN

PL.AR. Letchumanan Chettiar @  
AR. Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar

Plaintiff

AND

AR.PL. Palaniappa Chettiar

Defendant

GROUNDS OF JUDGMENT

On February 5, 1979 by consent of the parties the  
Plaintiff as the executor of the estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar was granted leave to sell  
the land held under Grant No.8457 for Lot No.538 in the  
Town and District of Port Dickson by private treaty for the  
sum of \$1,239,213.50. The proceeds of the sale after  
settling the dues to the Inland Revenue Department were  
ordered to be divided into two-third thereof to the  
Plaintiff and one-third to the defendant and consequential  
orders were made for the purpose of effecting the  
registration of the said transfer of the land in favour of  
the purchaser.

20

Subsequently the Plaintiff realised that the defendant  
had entered a caveat on the land in the course of his  
litigation in respect of the estate of PL.AR. Arunasalam  
Chettiar in Civil Suit No.34 of 1951 and that the caveat  
was still in existence. Thereupon the Plaintiff's  
Solicitors wrote to the Solicitors for the defendant  
requesting the defendant's consent to withdraw the caveat  
but the defendant refused to do so and in his reply  
through his solicitors the defendant alleged mismanagement  
of the properties by the late father during his kartaship  
and said that he would only agree to the withdrawal of the  
caveat if the karta's one-third share of the proceeds of  
sale be kept in a bank in a fixed deposit until the final  
accounts are taken.

30

40

10 In my view the defendant's refusal to vacate the caveat was not justifiable. He was now placing obstacles to thwart the order to which he had consented on February 5, 1979. Mr. A.D. Rajah for the defendant also submitted that the present application to vacate the caveat should have been made in Civil Suit No.34 of 1951 and not in the present Originating Summons because the caveat was entered in relation to the litigation commenced in the Civil Suit. With respect, I do not think there is any substance in this contention as the subject matter of the litigation in Civil Suit No.34 of 1951 also related to the land which was ordered to be sold in the present Originating Summons. In the circumstances therefore I made an order in terms of the Plaintiff's application for the removal of the caveat.

Dated this 27th day of September 1979.

Sgd: Ajaib Singh  
JUDGE  
HIGH COURT, MALAYA  
SEREMBAN.

20 Mr. P.S. Gill .. for Plaintiff

Solicitors  
Messrs. Gill & Tang,  
Seremban.

Mr. A.D. Rajah .. for Defendant

Solicitors  
Messrs. Lovelace & Hastings  
Kuala Lumpur.

30 Certified True Copy  
Sgd: Illegible  
Secretary to Judge  
High Court  
Seremban.

In the High Court  
of Malaya at  
Seremban

No.9  
Grounds of  
Judgment 27th  
September 1979.  
(Contd)

In the Federal  
Court of Malaysia  
at Kuala Lumpur

IN THE FEDERAL COURT OF MALAYSIA AT  
KUALA LUMPUR

NO.10

No.10  
Memorandum of  
Appeal 19th  
October 1979

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO.180 OF 1979

10

BETWEEN

AR.PL. Palaniappa Chettiar

Appellant

AND

PL.AR. Letchumanan Chettiar @  
AR. Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar

Respondent

(In the Matter of Originating Summons No.126 of  
1978 in the High Court in Malaya at Seremban

AND

In the Matter of Probate Suit No.1 of 1973

20

AND

In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased.

BETWEEN

PL.AR. Letchumanan Chettiar @  
AR. Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar

Plaintiff

AND

AR.PL. Palaniappa Chettiar

Defendant)

MEMORANDUM OF APPEAL

30

AR.PL. Palaniappa Chettiar the Appellant abovenamed  
appeals to the Federal Court against the whole of the  
decision of the Honourable Mr. Justice Ajaib Singh given at  
Seremban on the 22nd day of August, 1979 on the following  
grounds:-

1. (a) The Learned Judge erred in law and in fact by  
ordering on 22nd August, 1979 in the Originating  
Summons No.126 of 1978 the removal of the caveat

Presentation No. 102806 Volume XXXI Folio 40 which was registered in the Land Registry, Negeri Sembilan in pursuance of an Order of Court dated 17th March, 1958 made in Seremban High Court Civil Suit No.34 of 1951. In the Federal Court of Malaysia at Kuala Lumpur

No.10

10 (b) The said Order of Court dated 17th March, 1958 made in the Seremban High Court Civil Suit No.34 of 1951 ordered "that the said caveat do remain registered until further Order of the Court". The Learned Judge failed to consider that the Order for removal of the said caveat could only be made in Seremban High Court Civil Suit No.34 of 1951 after taking into account the facts and circumstances of that case and the reason for which the said caveat was entered. Memorandum of Appeal 19th October 1979 (Contd)

20 (c) The Learned Judge erred in law and in fact in ordering the removal of the said caveat before the final accounts are taken in the said Seremban High Court Civil Suit No.34 of 1951 and inquiry held to ascertain what part of the amounts found due to the Appellant shall be paid from the joint family and what part thereof shall be paid by the father. The said Civil Suit is still pending.

- 30 2. The consent order for the sale of said land held under Grant for Land No.8457 for Lot No.538 in the Town and District of Port Dickson was made on the mistaken believe of both the parties that the said land was not subject to a caveat. The Learned Judge has failed to take this fact into consideration in making the said Order dated 22nd August 1979.
3. Having ordered the removal of the said caveat the Learned Judge erred in not ordering that the money realised on sale be deposited in court pending the determination of what amounts are due to the parties in the said Civil Suit No.34 of 1951.

The Appellant therefore prays that this Appeal be allowed with costs.

Dated this 19th day of October, 1979.

Sd: Illegible  
Solicitors for the Appellant

40 To:

1. The Registrar  
Federal Court  
Kuala Lumpur.
2. The Senior Assistant Registrar  
High Court  
Seremban.
3. The abovenamed Defendant and his Solicitors.

In the Federal  
Court of Malaysia  
at Kuala Lumpur

NO. 11

ORDER ALLOWING THE APPEAL

No.11  
Order Allowing the  
Appeal 1st  
October 1980

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.180 OF 1979

BETWEEN

10

AR.PL. Palaniappa Chettiar

Appellant

AND

PL.AR. Letchumanan Chettiar @ AR.  
Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar

Respondent

(In the Matter of Originating Summons No.126 of  
1978 in the High Court in Malaya at Seremban

AND

In the Matter of Probate Suit No.1 of 1973

AND

20

In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased

BETWEEN

PL.AR. Letchumanan Chettiar @ AR.  
Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar

Plaintiff

AND

AR.PL. Palaniappa Chettiar

Defendant)

CORAM: RAJA AZLAN SHAH, AG LORD PRESIDENT, FEDERAL  
COURT, MALAYSIA

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SYED OTHMAN, JUDGE, FEDERAL COURT, MALAYSIA:

SALLEH ABBAS, JUDGE, FEDERAL COURT, MALAYSIA.

THIS 1ST DAY OF OCTOBER, 1980

O R D E R

THIS APPEAL coming on for hearing this day in the

presence of Encik R.R. Sethu of Counsel for the Appellant and Encik Atma Singh Gill of Counsel for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid for the parties IT IS ORDERED that this appeal be and is hereby allowed AND IT IS ORDERED that the costs of this Appeal be paid by the Respondent to the Appellant AND IT IS LASTLY ORDERED that the sum of \$500.00 (Ringgit Five Hundred only) paid into Court be refunded to the Appellant.

In the Federal Court of Malaysia at Kuala Lumpur

No.11  
Order Allowing the Appeal 1st October 1980  
(Contd)

10 GIVEN under my hand and the seal of the Court this 1st day of October, 1980.

(L.S.)

Sgd: Illegible

Senior Assistant Registrar  
Federal Court, Malaysia  
Kuala Lumpur.

This Order is filed by Messrs. Sethu, Ghazali & Gomez, Solicitors for the Appellant whose address for service is at 8th floor, Hong-kong Bank Building, 2 Leboh Ampang, Kuala Lumpur.

20

NO. 12

FOUNDATIONS OF JUDGMENT

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.180 OF 1979

Between

AR.PL. Palaniappa Chettiar

Appellant

AND

30

PL.AR. Letchumanan Chettiar @ AR.  
Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar

Respondent

(In the Matter of Originating Summons No.126 of 1978 in the High Court in Malaya at Seremban

AND

In the Matter of Probate Suit No.1 of 1973

AND

No.12  
Grounds of Judgment 30th March 1981

In the Federal  
Court of Malaysia  
at Kuala Lumpur

In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased

Between

No.12  
Grounds of  
Judgment 30th  
March 1981

PL.AR. Letchumanan Chettiar @ AR.  
Lakshmanan @ Ana Runa Leyna  
Lakshmanan Chettiar

Plaintiff

AND

AR.PL. Palaniappa Chettiar

Defendant)

10

GROUND'S OF JUDGMENT

The respondent applied to the High Court at Seremban for sale of a piece of land (Grant 8457, Lot 538, Port Dickson), part of the estate of the deceased father of the parties who are step-brothers. With the appellant's consent the order was made. It was later discovered that the title of the land had been under caveat since 1951 and extended with consent by the respondent in 1958. The respondent applied for the caveat to be removed to facilitate transmission of the title. The application was granted. The appellant appealed against the removal of the caveat. We allowed the appeal. These are our reasons.

20

The affidavit accompanying the application for sale of the land by the respondent can be briefly stated thus: the Respondent was executor of the estate of the father, who before his death was the Karta or manager of the Hindu Joint Family of the PL.AR. Firm of Port Dickson which consisted of the deceased and the two step-brothers. On 22.1.1977 the learned trial Judge ordered that the Probate of the said will be granted to the respondent except that the testator's one-thire share, i.e. the Joint Hindu Family of PL.AR. Firm of Port Dickson be excluded and that this 1/3 share shall form part of the deceased's estate in intestacy. The Federal Court on 24.9.1977 allowed the appeal and amended the Order to read:

30

"Probate granted subject to the proviso that before disposing of or distributing any property bequeathed under the will or the proceeds of such property, there shall be an Order of Court to that effect."

The respondent also undertook, after sale and paying off taxes and all outgoings on the 3 shares of the estate, to pay the appellant's share to him or to his solicitors, or otherwise to the Court or Public Trustee in trust for the appellant. The reason given for the application for sale was that the land had been seized and put into the hands of the Receiver since the later part of 1964 and his late father had lived on borrowed money and since the death of the father he too had been living by borrowing money for

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maintaining his mother, wives and children.

In the Federal  
Court of Malaysia  
at Kuala Lumpur

No. 12  
Ground of  
Judgment  
30th March 1981

10 With the consent of the appellant the learned trial  
Judge made the Order. After the order, the respondent  
discovered that the appellant in the course of litigation  
with their late father in Seremban High Court Civil Suit  
No. 34 of 1951 had lodged a caveat against the title and  
the caveat had been extended by consent order dated  
17.3.1958 until further order of the Court. None of the  
counsel appearing in the Originating Summons applying for  
sale of the land seemed to be aware of the caveat. On  
becoming aware of the old caveat the respondent's solitiors  
wrote on 19.4.1979 a letter to the appellant's solicitors  
requesting them to consent to the withdrawal of the  
caveat. The appellant's solicitors replied alleging  
mismanagement of the properties by the late father during  
his Kartaship and stating that the appellant would agree  
to withdraw the caveat if the Karta's 1/3 share from the  
proceeds of sale would be put in a bank on fixed deposit  
until final account was taken and the amount to which  
20 appellant was entitled from the Karta's estate was  
ascertained. Further correspondence did not alter the  
appellant's stand in the matter.

According to an affidavit of the respondent the  
accounts as ordered by the Privy Council have long been  
filed and the appellant has failed and refused to take  
accounts or to challenge them even though he is in the  
country now.

30 The respondent on 30.6.1979 took out a Summons in  
Chambers seeking, as executor of the estate, that the  
caveat be removed.

40 The main parts of the affidavit in reply by the  
appellant are as follows: The Order of the Court dated  
5.2.1979 cannot affect the caveat entered in Seremban  
High Court Civil Suit No. 34 of 1951. On 20th and 21st  
March, 1951 prior to the Seremban High Court action he  
lodged caveats on 35 titles including Grant 8457. He  
consented to the removal of the caveats on the numerous  
properties mentioned in the Court order of 17.3.1958.  
He considered the land held under Grant 8457 to be the  
most valuable of all the properties and the caveat on it  
together with caveats in respect of 4 Grants for 3  
pieces of land in Port Dickson and one in Seremban would  
be sufficient securities for the amounts due to him in  
Seremban High Court Suit No. 34 of 1951. In the action  
he sought a declaration that all properties held by his  
deceased father or step-mother to belong to the Joint  
Family, order for an account to be taken of the amount  
due to him, order for an inquiry to ascertain what part  
of the amount due to him should be paid to the Joint  
50 Family estate and what part thereof should be paid by  
the deceased father. He makes various allegations of  
wrongful sale of the property by the deceased father and

In the Federal  
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his brother (the respondent), wrongful spending of money out of the assets of PL.AR. Firm, large sums borrowed by the respondent from the Firm after 1950 which should be accounted to him.

No. 12  
Ground of  
Judgment  
30th March 1981

In vacating the caveat the learned trial Judge gave his reasons as follows:

"In my view the defendant's refusal to vacate the caveat was not justifiable. He was now placing obstacles to thwart the order to which he had consented on February 5, 1979. Mr. A.D. Rajah for the defendant also submitted that the present application to vacate the caveat should have been made in Civil Suit No. 34 of 1951 and not in the present Originating Summons because the caveat was entered in relation to the litigation commenced in the Civil Suit. With respect, I do not think there is any substance in this contention as the subject-matter of the litigation in Civil Suit No. 34 of 1951 also related to the land which was ordered to be sold in the present Originating Summons. In the circumstances therefore I made an order in terms of the Plaintiff's application for the removal of the caveat".

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20

From the above it is clear that the only reason given for removing the caveat was that the consent given in the Originating Summons should also be taken as consent to remove the caveat without the need to consider the grounds for the caveat having been lodged under the Civil Suit. We are inclined to agree that the learned trial Judge should have considered these grounds by themselves before ordering its removal, as it was not disputed that when the consent was given the parties' minds were not directed to the caveat. Indeed the trial Court itself was unaware of the caveat. The consent given in the circumstances must be treated as being subject to the legal limitations and encumbrances under the title, more so when in applying for the order of sale no mention was made of any limitation and encumbrance. We also consider that the trial Court should have dealt specifically with the appellant's offer that he would only agree to the withdrawal of the caveat if the Karta's 1/3 share of the proceeds of sale be kept in a bank on a fixed deposit until the accounts are taken, having regard to the Civil Suit which is still pending and to the fact that the Privy Council has ordered the taking of accounts. Here in seeking the Order for sale the respondent did not show how he was going to dispose of the Karta's share. He did not show what were his objections to depositing the Karta's share in the bank until disposal of the civil suit. There is nothing to show that he was wholly entitled to it. He only met the appellant's request in his affidavit with vehement words rather than acceptable reasons by labelling the request as vicious, unreasonable and illogical.

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Further in considering the appellant's request, enquiry should have been made whether it would have been sufficient to deposit in the bank a portion of the Karta's share instead of the whole.

In the Federal  
Court of Malaysia  
at Kuala Lumpur

No. 12  
Grounds of  
Judgement  
30th March 1981

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It is accepted that the respondent has rendered accounts. The appellant might be at fault for delaying the taking of accounts. But the respondent himself has not shown if he has taken steps to get the appellant to expedite the taking of accounts and whether or not the accounts so far rendered are in favour of or against the appellant's claim that a considerable sum was due to him from the Karta's share. It is to be noted that the appellant was not concerned with the respondent's share. There is no dispute to the appellant's claim that of all the properties, the property concerned is the more valuable piece. The respondent himself has stated that measuring 16a. 1r. 0lp. it is now priced at least \$1,239,213.50, i.e. \$1.75 per sq.ft.

20

We find that there are many factors concerning the caveat which were not considered and from the evidence that is available the considerations in favour of maintaining the caveat outweigh any consideration that has so far been shown to be in favour of removing it. We therefore restored it. But in allowing the appeal we must remind the parties that it does not mean that the respondent cannot come back and make a fresh application. Indeed if he has good new grounds he may reapply to the Court for its removal.

30

Kuala Lumpur

(SYED OTHMAN BIN ALI)

Judge

FEDERAL COURT, MALAYSIA.

Notes:

(1) Arguments in Kuala Lumpur on 1.10.1980.

(2) Counsel

Mr. R.R. Sethu for appellant,

(M/s Sethu, Ghazali & Gomez)

Mr. Atma Singh Gill for respondent.

(M/s Gill & Tang)

Salinan yang di-akui benar

Sd: Illegible

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Setiausaha Hakim

Kuala Lumpur

In the Federal  
Court of Malaysia  
at Kuala Lumpur

No. 13

NOTICE OF MOTION FOR CONDITIONAL  
LEAVE TO APPEAL

No. 13  
Notice of Motion  
28.10.80

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 180 of 1979

Between

AR.PL. Palaniappa Chettiar Appellant

and

PL.AR. Letchumanan Chettiar @ AR. Lakshmanan @ Ana Runa Leyna Lakshmanan Chettiar Respondent

10

(In the Matter of Originating Summons No. 126 of 1978  
in the High Court in Malaya at Seremban

And

In the Matter of Probate Suit No. 1 of 1973

And

In the Matter of the Estate of PL.AR. Arunasalam Chettiar  
s/o Palaniappa Chettiar, deceased

Between

20

PL.AR. Letchumanan Chettiar @ AR. Lakshmanan @ Ana Runa Leyna Lakshmanan Chettiar Plaintiff

And

AR.PL. Palaniappa Chettiar Defendant)

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved at 9.30 o'clock in the forenoon on Monday the 17th day of November 1980 or soon thereafter as Counsel can be heard by Atma Singh Gill of Counsel for the abovenamed Respondent for an Order:-

30

- (a) that Conditional leave be granted to the Respondent abovenamed to Appeal to His Majesty the Yang di-Pertuan Agong, against the Judgment and Order of the Federal Court dated the 1st day of October, 1980.

- (b) that the execution of the said Order of the Federal Court dated the 1st day of October 1980, be stayed pending the Appeal to His Majesty the Yang Di-Pertuan Agong. In the Federal Court of Malaysia at Kuala Lumpur
- (c) that the costs of the proceedings be costs in the cause. No. 13  
Notice of Motion  
28.10.80
- (d) for liberty to apply and
- (e) for such other and further relief as this Honourable Court may deem fit.

10

Sgd: Gill & Tang

Solicitors for the Respondent

Dated at Kuala Lumpur this 28th day of October 1980.

Sgd: K.S. Tan

Senior Assistant Registrar  
Federal Court  
Malaysia  
Kuala Lumpur

Filed this 29th day of Oct. 1980

Sgd: K.S. Tan

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Senior Assistant Registrar  
Federal Court  
Malaysia  
Kuala Lumpur

This Notice of Motion is taken out on behalf of the Respondent by his Solicitors M/s GILL & TANG, whose address for service at at No. 1, Jalan Tunku Hassan, Seremban.

This Notice of Motion will be supported by the Affidavit of Respondent herein affirmed on the 27th day of October, 1980, and filed herein.

30

To:

The Appellant and/or his Solicitors

M/s Sethu, Ghazali & Gomez

Bangunan Hongkong Bank

No. 2, Leboh Ampang, Kuala Lumpur, 01-19.

In the Federal  
Court of Malaysia  
at Kuala Lumpur

No. 14

AFFIDAVIT OF PL.AR LETCHUMANAN CHETTIAR  
27th October 1980

No. 14  
Affidavit of  
PL.AR Letchumanan  
Chettiar  
27th October 1980

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)  
FEDERAL COURT OF CIVIL APPEAL NO. 180 of 1979

Between

AR.PL. Palaniappa Chettiar

Appellant

and

PL.AR. Letchumanan Chettiar & AR. Lakshmanan  
@ Ana Runa Leyna Lakshmanan Chettiar

Respondent

10

(In the Matter of Originating Summons No. 126 of 1978  
in the High Court of Malaya at Seremban

and

In the Matter of Probate Suit No. 1 of 1973

and

In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased

Between

PL.AR. Letchumanan Chettiar @ AR. Lakshmanan  
& Ana Runa Leyna Lakshmanan Chettiar

Plaintiff

20

and

AR.PL. Palaniappa Chettiar

Defendant)

AFFIDAVIT

I, PL.AR. Letchumanan Chettiar @ A.R. Lakshmanan  
@ Ana Runa Leyna Lakshmanan Chettiar of full age, an  
Indian Citizen, at present residing at No. 72, Jalan Paul,  
Seremban, solemnly and sincerely affirm and say as  
follows:-

1. I am the duly appointed Executor of the Estate of  
PL.AR. Arunasalam Chettiar s/o Palaniappa Chettiar,  
deceased.
2. I refer to the Judgment and Order of the Federal  
Court dated the 1st day of October, 1980.

30

3. I am desirous of appealing to His Majesty the Yang Di-Pertuan Agong, against the said Judgment and Order of the Federal Court dated the 1st day of October 1980.

In the Federal Court of Malaysia at Kuala Lumpur

4. The matter in dispute in this Appeal is of the value of over \$25,000.00.

No. 14  
Affidavit dated  
27th October 1980

5. The property the subject matter of the Appeal is of the value of over \$25,000.00.

10 6. This Appeal involves directly and or indirectly some claim or question to or respecting property or some civil right of the value of over \$25,000.00.

7. The case is from its nature a fit one for Appeal to His Majesty the Yang Di-Pertuan Agong, and I therefore pray:-

(a) for an Order granting Conditional leave to me to appeal to His Majesty the Yang Di-Pertuan Agong, against the Judgment and Order of the Court dated the 1st day of October 1980.

20 (b) for an Order staying execution of the said Judgment and Order dated the 1st day of October, 1980, pending Appeal to His Majesty the Yang Di-Pertuan Agong.

Affirmed by the said PL.AR. )  
Letchumanan Chettiar @ AR. )  
Lakshmanan @ Ana Runa Leyna )  
Lakshmanan Chettiar at Seremban )  
on this 27th day of October, )  
1980 at 2.30 p.m. )

Sd: AR. Lakshmanan

Before me,

30 Sd: Anthony S. Santhanam

Pesurohjaya Sumpah

Mahkamah Tinggi

Seremban.

This affidavit is filed by the Respondent's Solicitors M/s GILL & TANG, of and whose address for service is at No. 1, Jalan Tunku Hassan, Seremban.

In the Federal  
Court of Malaysia  
at Kuala Lumpur

No. 15

ORDER OF THE FEDERAL COURT GRANTING CONDITIONAL  
LEAVE TO APPEAL

No. 15  
Order of the  
Federal Court  
granting  
Conditional Leave  
to Appeal  
17th November  
1980

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 180 of 1979

Between

AR.PL. Palaniappa Chettiar Appellant

and

PL.AR. Letchumanan Chettiar @ AR. Lakshmanan  
@ Ana Runa Leyna Lakshmanan Chettiar Respondent

10

(In the Matter of Originating Summons No. 126 of 1978  
in the High Court in Malaya at Seremban

and

In the Matter of Probate Suit No. 1 of 1973

and

In the Matter of the Estate of PL.AR. Arunasalam  
Chettiar s/o Palaniappa Chettiar, deceased

Between

PL.AR. Letchumanan Chettiar @ AR. Lakshmanan  
@ Ana Runa Leyna Lakshmanan Chettiar Plaintiff

20

and

AR.PL. Palaniappa Chettiar Defendant)

CORAM: RAJA AZLAN SHAH, CHIEF JUSTICE, HIGH COURT, MALAYA;

CHANG MIN TAT, JUDGE, FEDERAL COURT, MALAYSIA;

ABDUL HAMID, JUDGE, FEDERAL COURT, MALAYSIA

IN OPEN COURT

THIS 17th DAY OF NOVEMBER 1980

O R D E R

UPON MOTION made unto Court this day by Encik Atma  
Singh Gill of Counsel for the Respondent in the presence  
of Encik R.R. Sethu of Counsel for the Appellant AND UPON

30

READING the Notice of Motion dated the 28th day of October, 1980 and the Affidavit of PL.AR. Letchumanan Chettiar affirmed the 27th day of October, 1980 AND UPON HEARING Counsel aforesaid IT IS ORDERED that leave be and is hereby granted to the Respondent abovenamed to appeal to His Majesty the Yang Di-Pertuan Agong against the Order of this Honourable Court dated the 1st day of October 1980 in Federal Court Civil Appeal No. 180/79 upon the following conditions:-

In the Federal Court of Malaysia at Kuala Lumpur

No. 15  
Order of the Federal Court granting Conditional Leave to Appeal  
17th November 1980

10 (i) that the Respondent abovenamed do within three (3) months from date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia, in the sum of \$5,000/- (Ringgit Five Thousand only) for the due prosecution of the Appeal, and payment of all costs as may become payable to the Appellant abovenamed in the event of the Respondent abovenamed not obtaining the Order granting him final leave to appeal or of the  
20 Appeal being dismissed for non prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the Respondent abovenamed to pay the Appellant costs of the Appeal as the case may be;

(ii) that the Respondent abovenamed do within three (3) months from the date hereof take necessary steps for the purpose of procuring the preparation of the Record for the despatch thereof to England.

30 AND IT IS ORDERED that the stay of execution of the Order of this Court made on 1st October, 1980 be and is hereby refused AND IT IS LASTLY ORDERED that costs of and incidental to the proceedings be costs in the cause.

GIVEN under my hand and the Seal of the Court this 17th day of November 1980.

Sgd: K.S. Tan

SENIOR ASSISTANT REGISTRAR  
FEDERAL COURT,  
MALAYSIA  
KUALA LUMPUR

40 (L.S.)

In the Federal  
Court of Malaysia  
at Kuala Lumpur

No. 16  
ORDER OF THE FEDERAL COURT GRANTING FINAL LEAVE  
TO APPEAL

No. 16  
Order of the  
Federal Court  
granting Final  
Leave to Appeal  
19th May 1981

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 180 of 1979

Between

AR.PL. Palaniappa Chettiar Appellant

and

PL.AR. Letchumanan Chettiar @ AR. Lakshmanan  
@ Ana Runa Leyna Lakshmanan Chettiar Respondent

10

(In the Matter of Originating Summons No. 126 of 1978 in  
the High Court in Malaya at Seremban

and

In the Matter of Probate Suit No. 1 of 1973

and

In the Matter of the Estate of PL.AR. Arurnsalam  
Chettiar s/o Palaniappa Chettiar, deceased

Between

PL.AR. Letchumanan Chettiar @ AR. Lakshmanan  
@ Ana Runa Leyna Lakshmanan Chettiar Plaintiff

20

and

AR.PL. Palaniappa Chettiar Defendant)

CORAM: RAJA AZLAN SHAH, CHIEF JUSTICE, HIGH COURT, MALAYA;

ABDUL HAMID, JUDGE, FEDERAL COURT, MALAYSIA;

E. ABDOLCADER, JUDGE, HIGH COURT, MALAYA

IN OPEN COURT

THIS 19th DAY OF MAY, 1981

O R D E R

UPON MOTION made unto Court this day by Encik Atma  
Singh Gill of Counsel for the Respondent and in the  
presence of Encik R.R. Sethu of Counsel for the Appellant

30

10 AND UPON READING the Notice of Motion dated the 15th day of April 1981 and the Affidavit of Encik Atma Singh Gill affirmed on the 27th day of February 1981 AND UPON HEARING Counsel as aforesaid IT IS ORDERED that final leave be and is hereby granted to the Respondent to appeal to His Majesty the Yang di-Pertuan Agong, against the Order of the Federal Court dated the 1st day of October, 1981, in the above Federal Court Civil Appeal No. 180/79; and that the costs of and incidental to this Application be costs in the cause.

In the Federal Court of Malaysia of Kuala Lumpur

No. 16  
Order of the Federal Court granting Final Leave to Appeal  
19th May 1981

GIVEN under my hand and the Seal of the Court this 19th day of May, 1981.

Sgd. K.S. Tan

SENIOR ASSISTANT REGISTRAR  
FEDERAL COURT, MALAYSIA,  
KUALA LUMPUR

This Order is filed by M/s GILL & TANG, Solicitors for the Respondent whose address for service is at No. 1, Jalan Tunku Hassan, Seremban.

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

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B E T W E E N:-

PL. AR. Letchumanan Chettiar  
@ AR. Lakshmanan @ Ana Runa  
Leyna Lakshmanan Chettiar

Appellant

- and -

AR. PL. Palaniappa Chettiar

Respondent

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RECORD OF PROCEEDINGS

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KINGSFORD DORMAN  
14 Old Square,  
Lincoln's Inn,  
London WC2A 3UB

Solicitors for the Appellant

BULCRAIG & DAVIS  
4 John Street,  
London, WC1N 2EX

Solicitors for the Respondent