~~G.1402.~~ Tanganyika

1959

IN THE PRIVY COUNCIL No. 9 of 1957

ON APPEAL

FROM HER MAJESTY'S COURT OF APPEAL

FOR EASTERN AFRICA AT DAR ES SALAAM

B E T W E E N

KESHAVJI RAMJI ... Defendant-Appellant

- and -

MOHANLAL RAMJI ... 1st Plaintiff-Respondent
SHIVJI RAMJI ... 2nd Plaintiff-Respondent
VANDRAVAN MAGANLAL Defendant-Pro Forma Respondent

AND BETWEEN

MOHANLAL RAMJI .. Plaintiff-Appellant

- and -

KESHAVJI RAMJI ... Defendant-Respondent
VANDRAVAN MAGANLAL Defendant-~~Pro Forma~~ Respondent
SHIVJI RAMJI Plaintiff-Pro Forma Respondent

(CONSOLIDATED APPEALS)

RECORD OF PROCEEDINGS

KNAPP-FISHERS and
BLAKE & REDDEN,
31, Great Peter Street,
Westminster, S.W.1.

Solicitors for Keshavji Ramji and Vandravan Maganlal.

ATTENBOROUGHS,
12, New Court,
Lincoln's Inn,
London, W.C.2.

Solicitors for Mohanlal Ramji.

IN THE PRIVY COUNCIL No. 9 of 1957

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VANDRAVAN MAGANLAL Defendant-~~Pro Forma~~ Respondent
SHIVJI RAMJI Plaintiff-Pro Forma Respondent

(CONSOLIDATED APPEALS)

# RECORD OF PROCEEDINGS

## INDEX OF REFERENCE

## E X H I B I T S

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT PRINTED

| Description of Document | Date |
|---|---|
| Order granting conditional leave to appeal to Her Majesty in Council | 14th January 1957 |
| Letter from Barclays Bank D.C.O. to Registrar, Her Majesty's High Court at Dar es Salaam, undertaking on Appellant's behalf to pay security for appeal to Her Majesty | 6th December 1956 |
| Letter as above confirming the above | 24th January 1957 |

LIST OF EXHIBITS NOT TRANSMITTED TO THE PRIVY COUNCIL

| Exhibit Mark | Description of Document |
|---|---|
| P. 2. | Account Book |
| P. 6. | 3 Postcards with translations. |
| P.10. | English translation of agreement. |
| P.12. | Document of Title No.366. |
| P.15. | Letter dated 27th October 1950 attached to written statement of Shivji. |
| P.17. | Ledger 1940. |
| P.18. | Ledger 1941. |
| P.19. | Ledger 1942/43. |
| P.20. | Ledger 1944/45. |
| P.21. | Ledger 1946. |
| P.22. | Typed statement of rent, income and expenses of Windsor Street property. |
| P.23. | This is Exhibit P.22 in Gujerati. |
| D. 2. | Bill Account Book. |
| D.10. | Muster Roll. |
| D.16. | Ledger - Mohanlal's account P.109. |
| D.17. | Impersonal Accounts - Ledger. |
| D.18. | Ledger 1947. |
| D.20. | Personal Ledger 1949. |
| D.21. | Income Tax Returns for 1940. |
| D. 1. to D. 9. D.11. D.13. D.15. | Letters between the parties. |

IN THE PRIVY COUNCIL No. 9 of 1957

ON APPEAL
FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA AT DAR ES SALAAM

B E T W E E N

KESHAVJI RAMJI ... Defendant-Appellant

- and -

MOHANLAL RAMJI ... 1st Plaintiff-Respondent
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AND BETWEEN

MOHANLAL RAMJI ... Plaintiff-Appellant

- and -

KESHAVJI RAMJI ... Defendant-Respondent
VANDRAVAN MAGANLAL Defendant-~~Pro Forma~~ Respondent
SHIVJI RAMJI Plaintiff-Pro Forma Respondent

(CONSOLIDATED APPEALS)

RECORD OF PROCEEDINGS

In the High Court of Tanganyika at Dar Es Salaam

No. 1.

Plaint

4th September, 1950.

No. 1.

PLAINT

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA
AT DAR ES SALAAM

Civil Case No.43 of 1950

MOHANLAL RAMJI Plaintiff

versus

1. KESHAVJI RAMJI
2. SHIVJI RAMJI Defendants

The Plaintiff above-named states as follows:-

1. The Plaintiff resides in Dar es Salaam and his address for service is care of Master & Dastur, Advocates, Dar es Salaam.

2. The 1st Defendant carries on business at Suleman Street, Dar es Salaam and resides in Jai Hind Building, Kisutu Street, Dar es Salaam. The 2nd Defendant resides in the Tanganyika Standard Building, Windsor Street, Dar es Salaam.

3. Plaintiff and the Defendants are brothers and have been carrying on since 1920 in Dar es Salaam the business of manufacturing furniture and body

In the High Court of Tanganyika at Dar es Salaam

No. 1.

Plaint.

4th September, 1950 - continued.

building in partnership in equal shares. The said business has at all material times been carried on in the name and style of Keshavji Ramji and conducted in partnership by the three brothers combining their property labour and skill on the understanding and with the intention of sharing profits and losses equally.

4. The 1st Defendant was at all material times the managing partner and kept control of the partnership books and accounts. Disputes and differences having arisen between the partners the 2nd Defendant retired from the partnership on or about the 1st day of January, 1948 and the 1st Defendant as managing partner without consulting the plaintiff paid the 2nd Defendant his share of the partnership assets after adjusting accounts with him. Thereafter the said partnership business has been carried on by the Plaintiff and the 1st Defendant in equal shares.

5. Since about September, 1949 the 1st Defendant has been conducting himself in such a manner as to exclude the Plaintiff from the partnership business By his advocate's letter dated 3rd December, 1949 the Plaintiff demanded accounts from the 1st Defendant on the basis of equal shares in the said partnership business but the Defendant has failed and neglected to render accounts. Copy of the said letter is annexed herewith and marked "A".

6. On or about the 11th day of March, 1950 the 1st Defendant without the consent of the Plaintiff transferred and assigned the assets, including goodwill, of the said partnership business to Keshavji Ramji Ltd., a company promoted by the 1st Defendant.

7. Plaintiff and the Defendants acquired out of their profits and assets of the said partnership business several immoveable properties in the Tanganyika Territory in equal shares. The 1st Defendant has at all material times been managing and collecting rents and profits of the said properties. The said rents and profits were utilised for purposes of the aforeaaid partnership business until the 2nd Defendant retired from the partnership. Thereafter the 1st Defendant has continued to manage the said properties and to collect the rents thereof but has not rendered true and correct accounts nor has he made any payment

to the Plaintiff in respect of his share of the rent.

A list of the said properties is given in the Schedule annexed herewith and marked "B".

8. No settlement of account has been made between the partners since the commencement of the partnership.

9. A sale of the properties described in the Schedule marked "B" and a division of the proceeds will be more beneficial than a division of the properties.

10. This Honourable Court has jurisdiction to try the suit as the Defendants reside in Dar es Salaam and the properties in the suit are situated in the Tanganyika Territory.

11. For the purposes of Court fees the Plaintiff estimates that the amount found payable to him will exceed Shs.100,000/-.

12. A list of documents on which the Plaintiff will rely is annexed herewith.

A. The Plaintiff claims against Defendant No. 1.

(1) A declaration that the partnership stood dissolved on or about 11th March, 1950.

(2) Alternatively, that the partnership be dissolved by decree of the Court.

(3) An account be taken of the partnership business, including value of goodwill.

(4) That the 1st Defendant be directed to pay to the Plaintiff such amount as may be found due and payable to him after accounts are taken of the partnership business.

(5) Cost of the suit.

(6) Such further and other relief as to this Honourable Court may seem just.

B. The Plaintiff claims against both Defendants jointly and severally :-

In the High Court of Tanganyika at Dar es Salaam

No. 1.

Plaint.

4th September, 1950 - continued.

(1) An account of the properties described in the Schedule marked "B".

(2) Appointment of a receiver.

(3) Sale of the said properties and distribution of the proceeds amongst the Plaintiff and the Defendants.

(4) Payment of the Plaintiff's share after accounts are taken.

Sgd. M. Ramji. Plaintiff.

Whatever is stated above is true to the best of my knowledge, information and belief. 10

Dated at Dar es Salaam this 4th day of September 1950.

Sgd. M. Ramji. Plaintiff.

COURT FEES:-

| | | |
|---|---|---|
| Plaint | - | 1140-00 |
| Service | - | 4-00 |
| Exhibits | - | 8-00 |
| | | 1152-00 |

ADVOCATES' COSTS TO BE TAXED

Filed this 7th day of September, 1950.

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No. 2.

Letter "A" Exhibited to Plaint.

3rd December, 1949.

No. 2.

LETTER "A" EXHIBITED TO PLAINT 20

CHITELE, PATEL, ANJARIA & DESAI,
Advocates.

Ref.No.ME/03/1413/49/C. DAR ES SALAAM.
3rd December, 1949.

Mr. Keshavji Ramji,
Dar es Salaam.

Dear Sir,

We are instructed by Mr. Mohan Ramji to write to you as follows :-

Our client cancels the Powers of Attorney given by him to you in 1942 and before as from this date. Our client also requests full information of whatever Transactions and commitments you may have made under the said power of attorney. Our 30

client must be consulted before letting the premises. Further our client claims an equal share with you in the business on the basis of joint family business or in the alternative as a partnership.

Our client is constrained to instruct us to write this letter as all attempts to arrive at an amicable settlement of the disputes between you and our client have failed owing to your refusal to recognise our client's rights and as you have appropriated and continue to appropriate funds and property belonging to the joint family business or partnership business. You have also withdrawn the authority to operate the bank account given by you to our client.

Our client also says that you have at present kept our client in complete ignorance of the accounts and the present financial position of the business and you have in your possession and control all accounts books and papers from the start of the business in 1919.

Unless you recognise our client's full rights and agree to render full accounts on or before the 10th December, 1949, our instructions are to file a suit to establish our client's rights and claims holding you responsible for all costs and consequences.

Yours faithfully,

CHITALE PATEL ANJARIA & DESAI

This is the Exhibit marked "A" referred to in the attached plaint.

Sgd. M. Ramji.

No. 2.

Letter "A" Exhibited to Plaint.

3rd December, 1949 - continued.

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No. 3.

SCHEDULE "B" TO THE PLAINT.

S C H E D U L E "B"

PROPERTIES IN THE NAMES OF KESHAVJI RAMJI, MOHANLAL RAMJI AND SHIVJI RAMJI :-

Title No. 366 (Plot No. 528, House No. 22, Windsor Street, Dar es Salaam)

with the structures thereon.

No. 3.

Schedule "B" to the Plaint.

In the High Court of Tanganyika at Dar es Salaam

No. 3.

Schedule "B" to the Plaint - continued.

Title No.6040 (Plot Nos.1392/2 III and 2066/2 III, Kisutu Street, Dar es Salaam) with the structures thereon.

Title No.6039 (Plot No. 2078/2 III, Kisutu Street, Dar es Salaam). with the structures thereon.

PROPERTIES IN THE NAME OF KESHAVJI RAMJI:-

3 Plots on Matendeni Street, Dar es Salaam, with the structures thereon.

Title No.6137 (Plot Nos.913/2 and 914/2 McGowan Estate, Dar es Salaam). with the structures thereon.

Plot No.588/206 Gerezani Area, Dar es Salaam, with the structures thereon.

This is the Exhibit marked "B" referred to in the attached plaint.

Note: An amended Schedule "B" was filed with leave on 19th September, 1950, see below.

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No. 4.

Order on application to amend Schedule

19th September, 1950.

No. 4.

ORDER ON APPLICATION TO AMEND SCHEDULE

IN HER MAJESTY'S HIGH COURT OF TANGANYIKA AT DAR ES SALAAM.

Civil Case No. 43 of 1950

| | |
|---|---|
| MOHANLAL RAMJI | 1st Plaintiff |
| SHIVJI RAMJI | 2nd Plaintiff |
| versus | |
| KESHAVJI RAMJI | 1st Defendant |
| VANDRAVAN MAGANLAL | 2nd Defendant |

19/9/50

Master : for Plaintiff
1st Defendant in person.

H. K. Patel : for 2nd Defendant.

For Plaintiff applies to amend the schedule to plaint by adding two properties. Counsel asks for amended Schedule. Amendment allowed by consent Order.

Statement of Defence written within 42 days from this date and replies if any within 14 days thereafter.

Hearing date to be fixed before Registrar.

Sgd. G. Graham Paul,
Chief Justice.

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No. 5.

AMENDED SCHEDULE "B" TO THE PLAINT.

In the High Court of Tanganyika at Dar es Salaam.

No. 5.

Amended Schedule "B" to the Plaint.

19th September, 1950.

PROPERTIES IN THE NAMES OF KESHAVJI RAMJI, MOHANLAL RAMJI AND SHIVJI RAMJI:-

Title No. 366 (Plot No.528, House No.22 Windsor Street, Dar es Salaam) with the structures thereon.

Title No.6040 (Plot Nos.1392/2 III and 2066/2 III, Kisutu Street, Dar es Salaam) with the structures thereon.

Title No.6039 (Plot No.2078/2 III, Kisutu Street, Dar es Salaam) with the structures thereon.

PROPERTIES IN THE NAME OF KESHAVJI RAMJI:-

3 Plots on Matendeni Street, Dar es Salaam, with the structures thereon.

Title No.6137 (Plot Nos.913/2 and 914/2 McGowan Estate, Dar es salaam) with the structures thereon.

Plot No.588/206 Gerezani Area, Dar es Salaam with the structures thereon.

¼ Share in Plot on Upanga Road purchased from legal personal representatives of Sulleman bin Nasser Lemki.

Plot No. 81 in Upanga Area.

This is the Exhibit marked "B" referred to in the attached Plaint.

19/9/50.

Amended Schedule handed in and amendment allowed by consent on this date.

Sgd. G. Graham Paul,
C.J.

In the High Court of Tanganyika at Dar es Salaam.

No. 6.

Defence of 1st Defendant.

30th October, 1950.

No. 6.

DEFENCE OF FIRST DEFENDANT

IN HIS MAJESTY'S HIGH COURT OF TANGANYIKA
AT DAR ES SALAAM

CIVIL CASE NO. 43 of 1950

MOHANLAL RAMJI — Plaintiff

versus

(1) KESHAVJI RAMJI
(2) SHIVJI RAMJI — Defendants

WRITTEN STATEMENT OF DEFENCE OF FIRST DEFENDANT

The First Defendant above-named states as under:-

(1) The First Defendant denies that the Plaintiff or the Second Defendant are or have been his partners in any business as alleged or otherwise.

(2) The properties situate on Plots Nos. 913/2, 914/2 and 588/206, Dar es Salaam referred to in the Schedule annexed to the Plaint and marked "B" are and have at all material times been the exclusive property of the First Defendant.

(3) The remaining properties, referred to in the said Schedule have since the 15th day of January, 1948, been held by the parties to this suit and one Vandravan Maganlal as tenants-in-common, and have been managed by the First Defendant, who has duly accounted to the Plaintiff for all rents and other income accruing in respect thereof.

(4) Save as hereinbefore expressly admitted, the First Defendant denies the allegations contained in paragraphs 3, 4, 5, 6 and 7 of the Plaint and each and every of them.

WHEREFORE the First Defendant prays that the Plaintiff's suit be dismissed with costs.

Dated at Dar es Salaam this 28th day of October, 1950.

Signed Keshavji Ramji
First Defendant.

I, Keshavji Ramji, the First Defendant herein, hereby declare, what is stated above is true to the best of my knowledge, information and belief.

Signed Keshavji Ramji
First Defendant.

Presented for filing this 30th day of October, 1950.

Signed

No. 7.

DEFENCE OF SECOND DEFENDANT

IN HIS MAJESTY'S HIGH COURT OF TANGANYIKA AT DAR ES SALAAM

CIVIL CASE NO.43 of 1950

MOHANLAL RAMJI Plaintiff

versus

1. KESHAVJI RAMJI
2. SHIVJI RAMJI Defendants

In the High Court of Tanganyika at Dar es Salaam.

No. 7.

Defence of 2nd Defendant.

30th October, 1950.

WRITTEN STATEMENT OF DEFENCE OF SECOND DEFENDANT

The second Defendant abovenamed states as follows:-

1. This Defendant admits paragraphs 1,2,3,7,8,9, 10 and 11 of the plaint subject however to the modifications and additions hereinafter contained.

2. The first Defendant is the eldest brother and this Defendant the youngest and at all material times the former has been in loco parentis to the Plaintiff and this Defendant.

3. This Defendant admits the statements contained in paragraph 4 of the plaint subject to his denying that he was paid his share in the partnership save for Shs. 50,501/- or that the partnership accounts were adjusted as alleged or at all.

4. The first Defendant, one Bhanushanker Mayashanker Thaker and one Ramji Kara, Indian friends of the first Defendant of Dar es Salaam induced this Defendant to retire from the said partnership from 1.1.1948 and to accept the said sum of Shs.50,501/- in settlement of his share by misrepresentation, fraud and undue influence:

P A R T I C U L A R S

The first Defendant and his two friends aforesaid represented to this Defendant that the latter could never enforce his right in the firm of Keshavji Ramji as a partner inasmuch as his name was never entered as such in the Registry of Business names at Dar es Salaam and that if he did not

In the High Court of Tanganyika at Dar es Salaam.

No. 7.

Defence of 2nd Defendant.

30th October, 1950 - continued.

accept what was offered to him by the first Defendant he would get nothing. The first Defendant offered 28½ per cent in the said partnership in place of his lawful one third share - therein to this Defendant which he on the faith of the aforesaid representations agreed to accept and it was also agreed (it being a condition of the first Defendant in the said offer) to appoint the said friends of the first Defendant for examination and settlement of the accounts of the said partnership from beginning to 31st December 1947 and to find out the total amount payable to this Defendant in terms of the said agreement. The Plaintiff at that time was in India and this Defendant was told by the first Defendant that the Plaintiff was in agreement with him for the retirement of this Defendant from the partnership as aforesaid.

5. The said friends of the first Defendant without going into the accounts of the partnership business unfairly and improperly valued the share of this Defendant at the aforesaid sum of Shs. 50,501/- which the said firm has since paid to this Defendant.

6. This Defendant was acting in good faith when he was turned out from participation in the business of the said firm, towards the end of the year 1949 he realised that when he was so induced, he was:

(a) mistaken as to the enforceability in a court of law of his right as a partner in the firm of Keshavji Ramji,

(b) not on equal footing with the first Defendant regarding correct state of affairs of the business or of the total assets of the partnership nor did the first Defendant disclose such information either to this Defendant or to his said friends.

(c) induced to give up a portion of his indisputable property in the said partnership as aforesaid to the Plaintiff and the first Defendant.

7. This Defendant submits that the said agreement to retire from the said partnership for the reasons aforesaid is voidable at his option and by a notice dated the 27th October 1950 of his advocate to the

Plaintiff and the first Defendant he has avoided the same. A copy of the said notice is attached hereto and marked "A".

8. Up to end 1947 this Defendant has not received anything from the usufruct of the properties mentioned in schedule to the plaint and never of those described therein as standing in the sole name of the first Defendant.

WHEREFORE this Defendant claims against the Plaintiff and the first Defendant jointly and severally :-

1. a declaration that the agreement mentioned in paragraph 4 supra and all that happened in pursuance thereof is not binding on this Defendant.

2. amount of his share in the said partnership be ascertained inclusive of the goodwill thereof when accounts are taken in terms of prayer 3 of the plaint and payment to this Defendant of any excess to which he may be entitled beyond the said sum of Shs.50,501/-.

3. an account of the properties described in the schedule to the plaint.

4. an appointment of a receiver.

5. sale of the said property and distribution of the proceeds thereof in terms of the accounts thereof amongst the Plaintiff and the Defendants and payment to this Defendant of his share therein.

6. costs of this Defendant.

7. any other or alternative relief deemed fit.

Signed Shivji Ramji
Second Defendant.

WHAT is stated above is true to the best of my knowledge information and belief.

Dated at Dar es Salaam this 30th day of October, 1950.

Signed Shivji Ramji
Second Defendant.

In the High Court of Tanganyika at Dar es Salaam.

No. 7.

Defence of 2nd Defendant.

30th October, 1950 - continued.

In the High Court of Tanganyika at Dar es Salaam.

PRESENTED for filing this 30th day of October, 1950.

Court Clerk.

A COPY HEREOF IS SERVED ON:

MESSRS. MASTER AND DASTUR,
ADVOCATES FOR THE PLAINTIFF DAR ES SALAAM.

A COPY TO BE SERVED ON:

MR. KESHAVJI RAMJI, SULEMAN STREET, DAR ES SALAAM.

No. 7.

Defence of 2nd Defendant.

30th October, 1950 - continued.

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No. 8.

Letter exhibited to Defence of 2nd Defendant.

27th October, 1950.

No. 8.

LETTER EXHIBITED TO DEFENCE OF SECOND DEFENDANT

H. K. PATEL S. 6/16 P.O. Box 203.
Advocate, Notary Public Dar es Salaam.
and Tanganyika Territory.
Commissioner for Oaths. 27th October, 1950.

To:- 1. Mr. Keshavji Ramji,
Suleman Street,
Dar es Salaam

and

2. Mr. Mohanlal Ramji,
Jai Hind Building,
Kisutu Street,
Dar es Salaam.

Dear Sirs,

Partnership business in the style of 'Keshavji Ramji' carried on in Dar es Salaam.

I address this letter to you on instructions from your other partner in the above mentioned business, namely Mr. Shivji Ramji.

About the end of the year 1947, my said client was persuaded to retire from the said partnership by you Mr. Keshavji Ramji and your two friends,

In the High Court of Tanganyika at Dar es Salaam.

No. 8.

Letter exhibited to Defence of 2nd Defendant.

27th October, 1950 - continued.

Messrs. Bhanushanker Mayashanker Thaker and Ramji Kara, by representing to my client that the latter should accept the offered 28½ per cent share in place of his rightful one third in the said partnership as he had no legal enforceable right as a partner since his name was never entered as such in the Registry of Business Names in Dar es Salaam. In addition, Mr. Keshavji Ramji, you included in the said offer a condition that your two friends aforesaid should see the accounts of the partnership from beginning till end 1947 of the said firm and declare the amount payable to the reduced share aforesaid of my client.

My client on the faith of the said representations and in the belief that you Mr.Keshavji Ramji, his older brother were really meaning to serve the interest of my client agreed to the above mentioned offer on 15th January 1950. Towards the end of the year 1949 my client realised that :-

(a) the above mentioned representations were false and were made to mislead him so as to defraud him to a portion of his indisputable property, and

(b) the accounts were not examined nor the said Bhanushanker Mayashanker Thaker and Ramji Kara were informed about the correct financial position of the business or the partnership property and my client was entitled to receive from the said firm much more than Shs. 50,501/- which he did.

My instructions therefore are to give notice to you both (as I hereby do) that the aforesaid agreement is voidable at my client's option and that he does hereby avoid the same.

Yours faithfully,

Sgd. H.K. Patel.

This is the annexure S-1 referred to in the written statement of defence of the second Defendant in H.M. High Court Civil Case No. 43 of 1950, Mohanlal Ramji v. Keshavji Ramji and another.

Shivji Ramji.

Second Defendant.

In the High Court of Tanganyika at Dar es Salaam.

No. 9.

Order on application to add Defendant.

7th November, 1950.

## No. 9.

### ORDER ON APPLICATION TO ADD DEFENDANT.

7/11/50. Master : for Plaintiff.
O'Donovan : for 1st Defendant.
H.K.Patel : for 2nd Defendant.

Application to add Defendant.

Master asks for leave and time to file counter affidavits.

Intd. G.G.P.

ORDER.

Summons adjourned. Plaintiff and 2nd Defendant to have leave to file counter-affidavits if so advised and such counter-affidavits to be filed by 21st November and any further affidavit by applicant to be filed by 28th November. Date of hearing of application to be fixed thereafter before Registrar.

7/11/50.

Sgd. G. Graham Paul,
Chief Justice.

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No.10.

Order on application for 2nd Defendant.

20th December, 1950.

## No. 10.

### ORDER ON APPLICATION FOR SECOND DEFENDANT

11/12/50.

Dastur for Plaintiff.

O'Donovan for 1st Defendant.

H.K. Patel for 2nd Defendant.

Chamber application for 2nd Defendant.

Suggest that this application should be dealt with along with the adjourned application to add a Defendant. This is agreed.

ORDER

20th December 1950 fixed for hearing of both applications.

Sgd. G. Graham Paul,
C.J., 11/12/1950.

In the High Court of Tanganyika at Dar es Salaam.

No.10.

Order on application for 2nd Defendant.

20th December, 1950 - continued.

20/12/50.

Dastur for Plaintiff.

Pandya for 1st Defendant.

H.K. Patel for 2nd Defendant.

Pandya.

I applied under O.I.R.3. Wish to add O.I R 10 common question of fact is whether properties mentioned in Schedule are owned as Tenants in common jointly with Defendant whom I wish to bring in. Vandravan Maganlal's name is not mentioned on title deeds. O I Rule 10(2) - If Dastur and Patel oppose application that is all the more reason why Vandravan Maganlal should be joined for effecting disposal of the matter. Second Defendant admits he signed agreement. (Refers to Counter-affidavit of Plaintiff). We have shown Plaintiff the Power of Attorney. Presence of Vandravan Maganlal essential for determination of question of fact and law. If it is decided he has no right in property then other parties get their share. Court has discretion under O.I R.10.

Dastur.

So far as the Plaintiff is concerned application is subject to several objections - Civil Court Manual 7th Edition p.768-O. I Rule 10. Affidavit and counter-affidavit should dispose of matter. Vandravan Maganlal according to his affidavit has a share but is not a partner. Upon what does he base application. If Court satisfied agreement invalid then the application fails. Plaintiff says (Counter-affidavit) that agreement is invalid for it gives an interest on immovable property to Vandravan Maganlal - Section 8 of Cap.117. No satisfactory reply has been given to statement that document not registered. The document is exhibited. Document creates and confirms right and interest on the land - Sec.10 of Cap.117. No Consideration in the document Indian Court Act Sect. 25. Plaintiff affidavit paragraphs 2 and 3. We have seen power of Attorney and it does not authorise first Defendant to enter into document on which present application is based. Suggest Court should inspect power of attorney - (Pandya) I have not brought the power of attorney but undertake to produce it. On affidavits Court should be able to decide he has no interest. There would

In the High Court of Tanganyika at Dar es Salaam.

No. 10.

Order on application for 2nd Defendant.

20th December, 1950 - continued.

be misjoinder - it would hurt us as it will complicate matters - He has no interest. No reason why he should be joined. Court not concerned with the dispute between Plaintiff and Defendant. Inter Sec. (Sic) Chitale & A.C.T. Co. Vol. II P. 1316 "question involving a suit". Vandravan Maganlal should file a separate suit. We have no affidavit from Vandravan Maganlal saying he wants to be joined. If agreement is sound in law then no right in Vandravan Maganlal to be joined. So far an application is said to be under O.I R.3 I say it is misconceived. If Vandravan Maganlal has cause of action he must bring a separate action. He is a total stranger to the suit and his claim based on documents which are not valid.

H.K. Patel.

Re O.I R.3. does not apply -

"Alleged to assist refers to plaint and to nothing else. Chitale Vol.II (Library Edition) P. 1074. Note 5 - If Vandravan Maganlal is joined fresh pleadings may have to be ordered and delay will take place. Proper remedy is for Vandravan Maganlal to file action against all 3 and sue for specific performance. From plaint as whole it will appear that property in which Vandravan Maganlal claims share is alleged to be portion of partnership assets. Unless he makes out case to show that he exists in partnership contract he has no locus standi. Title deeds very clear as to shares.

Dastur. Refers re misjoinders to Mulla 11th Ed. P.314.

Pandya.

Re O I Rule 3 - I have asked permission to refer to O.I R.10. The money matter mentioned in Plaint and in the affidavit is what we want to have thrashed out in Court not necessary for Vandravan Maganlal to make affidavit himself. Vandravan Maganlal wants to come in because thought first Defendant admits certain property is owned as tenants in common by Plaintiff and second Defendant in certain properties but by subsequent agreement a fourth person has come in who so wants to come in to suit to put his claim lest his claim go by default. Now whether document which gives him that share is valid, operative or not legally or otherwise will have to be looked into at a later

No. 10.

Order on application for 2nd Defendant.

20th December, 1950 - continued.

stage. That property is claimed by Plaintiff as partnership property - first Defendant claims partnership and denies it as partnership property. At this stage Court has to look to see if Vandravan Maganlal will be a running party that is sole contention. Dastur asks what relief Plaintiff could claim against Vandravan Maganlal. He can say he claims no relief and claims costs. I will produce the two powers of Attorney which first Defendant relied upon for signing the agreement.

Re temporary second Defendant as a Plaintiff.

10.20 a.m. (Hearing adjourned for 15 minutes)

Intd: P.B.
J.20/12/51.

10 a.m.

Hearing resumed.

Counsel as before -

Patel.

Application under O.I R.10. Unless I am transferred as Plaintiff it will not be possible for Court to grant me relief. This is partnership action - E.M. Wacha v V.K. Bhoy & Others I.L.R. Bombay 1883 Vol-VIII p.1679. If application refused I will have to file another suit which will be almost similar to this one. N.H.Singh and Others A.I.R. 1920 Calcutta p.428; Mulla (Library Edition) p.429, 430 - powers to enforce conditions exist as to amended pleadings -

Pandya.

I do not object but if his written statement is treated as a plaint I will have to put in a defence.

Dastur.

I do not object if any pleadings are not affected - Chitale 3rd Edition Vol.II p.1320 - second Defendant written statement can be taken as a Plaint.

Pandya.

Second Defendant has ample opportunity to elect in what capacity he would appear so I am entitled to costs of his application in any event.

In the High Court of Tanganyika at Dar es Salaam.

Dastur.

Costs of that application should be costs in cause.

Patel.

If any application is granted dispute of costs may be reserved - costs in the cause -

Pandya.

If it is to be costs in cause in case of Patel same should apply to my application.

Dastur.

If Pandya's application is dismissed I am entitled to costs.

Order on application is reserved.

Sgd. Peter Bell.
J. 20/12/50.

No. 10.

Order on application for 2nd Defendant.

20th December, 1950 - continued.

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No. 11.

Order on application by 1st Defendant to add a Defendant and on application by 2nd Defendant that Shivji Ramji be transferred as 2nd Plaintiff.

8th January, 1951.

No. 11.

ORDER ON APPLICATION BY FIRST DEFENDANT TO ADD A DEFENDANT AND ON APPLICATION BY SECOND DEFENDANT THAT SHIVJI RAMJI BE TRANSFERRED AS SECOND PLAINTIFF.

8/1/51.

Dastur for Plaintiff.

Pandya for 1st Defendant.

N.K. Patel for 2nd Defendant. Not present.

(Mr. Raval Court Clerk told me that a few days ago he informed Patel's clerk that the order would be given today).

Intd. P.B.

I read the following order aloud.

Order.

This order relates to an application by the first Defendant (Keshavji Ramji) in Civil Case No.43 of 1950 that one Vandravan Maganlal be joined as a Defendant in that case and to an application by the second Defendant in that case (Shivji Ramji) that the said Shivji Ramji be transferred to the category of the second Plaintiff in that case.

In the High Court of Tanganyika at Dar es Salaam.

No.11.

Order on application by 1st Defendant to add a Defendant and on application by 2nd Defendant that Shivji Ramji be transferred as 2nd Plaintiff.

8th January, 1951 - continued.

2. I now deal with the application of the second Defendant (Shivji Ramji). Mr. Pandya for the first Defendant raised no objection to the application, but pointed out that if the written statement of Defence of the second Defendant is treated as a Plaint, then the first Defendant will have to file a written statement of Defence. Mr. Dastur for the Plaintiff did not object to the application by the second Defendant provided the Plaintiff's pleadings were not affected. I now see no valid reason why the application by the second Defendant that he be transferred to the category of the second Plaintiff should not be granted and I hereby accordingly grant his application. I direct that his written Statement of defence dated the 30th day of October 1950 be treated as his Plaint for the purposes of Civil case No.43 of 1950. I grant to the Defendant Keshavji Ramji 14 days from the 6th January, 1951 within which to file a written statement of defence to the said Plaint and to the said Shivji Ramji 14 days thereafter within which to file his reply (if any). I direct that the costs of the application by the second Defendant be costs in the cause.

3. I now turn to the application of the first Defendant (Keshavji Ramji) that one Vandravan Maganlal be joined as a Defendant in Civil Case No.43 of 1950. The basis of that application is that Vandravan Maganlal is (so the first Defendant has averred in his affidavit in support of his application) a tenant in common in undivided shares with the Plaintiff and the second Defendant of some of the properties set forth in the Schedule to the Plaint. The first Defendant has stated in effect in his affidavit that the right of Vandravan Maganlal to be so regarded as a tenant-in-common depends upon the written agreement annexed to the first Defendant's affidavit. The Plaintiff on the other hand claims in his Plaint it will be remembered that the properties set forth in the Schedule to the Plaint are owned by himself and the first and second Defendants as partners. He denies (see his counter-affidavit) that Vandravan Maganlal has any interest as tenant-in-common or otherwise in any of the properties set forth in the schedule to the Plaint.

Mr. Dastur for the Plaintiff and Mr.Patel for the second Defendant have contended that the written agreement annexed to the first Defendant's affidavit

In the High Court of Tanganyika at Dar es Salaam.

No.11.

Order on application by 1st Defendant to add a Defendant and on application by 2nd Defendant that Shivji Ramji be transferred as 2nd Plaintiff.

8th January, 1951 - continued.

is as legally effective to make Vandravan Maganlal a tenant-in-common as claimed by the first Defendant and they ask that the first Defendant's application be refused. Mr. Pandya has in effect contended that I am not concerned at this stage of this litigation, with the question whether the agreement already referred to is legally effective or not to make Vandravan Maganlal a tenant-in-common as claimed by the first Defendant and must decide the application on the assumption that the agreement is legally effective to achieve that object.

I have come to the conclusion, however, that I am not prevented from concluding whether or not the agreement already mentioned is legally effective to make Vandravan Maganlal a tenant-in-common in undivided shares with the Plaintiff and the second Defendant in any of the properties set forth in the schedule to the Plaint. Upon such consideration I am of the opinion that the agreement it (sic) is not legally effective to do that because purporting as it does to create confer declare or transfer an interest on land it has not been registered as is required by the registration of Documents Ordinance Cap.117 sections 8 and 10, and because no consideration appears to exist in the agreement (Indian Contract Act 1872 - section 25) it follows then that I am not satisfied that Vandravan Maganlal has any interest as tenant-in-common in any of the properties set forth in the schedule to the Plaint and as it has not been said that he has any other interest, I do not consider that any good reason has been shown why he should be joined as a Defendant in Civil case No.43 of 1950.

In the result the application of the first Defendant must be dismissed with costs for the Plaintiffs and the second Defendant and it is ordered accordingly.

Dar es Salaam.

Sgd. Peter Bell,
Judge.

8/1/51.

In the High Court of Tanganyika at Dar es Salaam.

No. 12.

Order on application for appointment of a Receiver.

16th March, 1951.

## No. 12.

ORDER ON APPLICATION FOR APPOINTMENT OF A RECEIVER

16/3/51.

Master for first Plaintiff.

H.K. Patel for second Plaintiff.

O'Donovan for Defendant.

Application for appointment of Receiver.

O'Donovan asks for leave to file affidavit in reply.

Order.

Affidavit or affidavits in reply to be filed within one week or similarly affidavit or affidavits in rejoinder within one week thereafter. Hearing application thereafter on date to be fixed by Registrar.

Sgd. G.Graham Paul,
C.J.

No.13.

Application for leave to appeal from Order of 8th January, 1951.

20th March, 1951.

## No. 13.

APPLICATION FOR LEAVE TO APPEAL FROM ORDER OF 8TH JANUARY, 1951

20/3/51.

Application for leave to appeal from order of 8/1/51.

O'Donovan for applicant (Defendant).

Master for first Plaintiff.

H.K. Patel for second Plaintiff.

O'Donovan:

Matter of some importance. Reason is reasons given for order which affects rights of parties. S.7 (a) Cap.25 - in construing meaning of word "decree" one looks at definition of decree in C.P.C. One cannot go to definition in Rules.

This order is not a final determination. In pleadings issue is raised as to extent of rights of certain parties. Order does not determine Vandravan's rights conclusively. He was not a party. Nothing to prevent Vandravan himself filing a suit to establish his claim in which case he would have to join present parties. His suit and present suit would be consolidated. Desirable that Vandravan be joined in present proceedings. Even if leave not necessary I take step out of abundance of caution. Agreement conveys equitable estate. Entitled to enforce it by action for specific performance.

In the High Court of Tanganyika at Dar es Salaam.

No.13.

Application for leave to appeal from Order of 8th January, 1951.

20th March, 1951 - continued.

Agreement creating only equitable estate does not require to be registered.

Cap.117. Sec.8(2) (vi).

Consideration (1) Vandravan liable for whole of rent of household property (2) Vandravan liable for loan.

Partition of property is one of reliefs claimed.

Master:-

Vandravan not aggrieved. Right of appeal only granted to a party. Annual Practice 0.58 r.I (1943) p.1271. Discretionary matter. No appeal under Civil Procedure Code. Not argued that judge exercised his discretion arbitrarily or on wrong principles. Application made to embarrass Plaintiffs. Vandravan could make the application.

13. Cal.90 Rababba v Noorjehan.

Vavassen v Krupp. 9 ch.D.351.

Agreement not signed by the Plaintiff Mohanlal - it is signed by Keshavji on his behalf. Application has not made out a prima facie case for joining Vandravan. No effort made to execute another agreement to give effect to this agreement. Nandlal's Indian Civil appeals (2nd Edition) pp.163-615.

This is merely a trifle. Rights of Vandravan not concluded by the order.

H.K. Patel:-

Chitale Civil Procedure, Vol.2 p.1133. Order does not operate as a decree. Keshavji not aggrieved. Order is not a decree. As the order is not a decree there is no appeal.

O'Donovan:-

See Sec.104 of Civil Procedure Code for appeals and Cap.23. No impropriety in Defendant's making the application.

Order.

Decision reserved.

Sgd. R.O.Sinclair,
Judge.
20/3/51.

No. 13A.

ORDER ON APPLICATION FOR LEAVE TO APPEAL AGAINST ORDER OF 8th JANUARY, 1951.

In the High Court of Tanganyika at Dar es Salaam.

No.13A.

Order on application for leave to appeal against order of 8th January, 1951.

27th March, 1951.

27/3/51 at 8.45 a.m.

O'Donovan for applicant.

Master for first Plaintiff.

H.K.Patel for second Plaintiff.

Order.

This is an application for leave to appeal against the order of this Court dismissing the application of the Defendant, Keshavji Ramji, that one Vandravan Maganlal be joined as a Defendant. It seems to me that the learned Judge dismissed the application not in the exercise of his discretion but because of the view he took as to the validity of the agreement of the 15th January, 1948. In the circumstances I think the Defendant should have leave to appeal. Leave to appeal is accordingly granted. Costs of this application to be costs of the appeal.

Sgd. R.O.Sinclair,
Judge.
27/3/51.

No. 14.

No.14.

DEFENCE TO THE PLAINT OF SECOND PLAINTIFF WITH ANNEXURES "A" AND "B"

Defence to the Plaint of 2nd Plaintiff with Annexures "A" and "B"

16th April, 1951.

IN HIS MAJESTY'S HIGH COURT OF TANGANYIKA AT DAR ES SALAAM.

CIVIL CASE NO.43/50

MOHANLAL RAMJI — 1st Plaintiff

and

SHIVJI RAMJI — 2nd Plaintiff

versus

KESHAVJI RAMJI — Defendant

WRITTEN STATEMENT OF DEFENCE TO THE PLAINT OF SECOND PLAINTIFF.

1. The Defendant repeats his defence to the plaint

In the High Court of Tanganyika at Dar es Salaam.

No.14.

Defence to the Plaint of 2nd Plaintiff with Annexures "A" and "B".

16th April, 1951 - continued.

of the first Plaintiff, filed in this Honourable Court on the 30th day of October, 1950.

2. The Defendant is not and at no material time has been in loco parentis to the second Plaintiff.

3. Any interest which the second Plaintiff had in the business carried on by the Defendant, whether as a partner or otherwise (which is denied), was extinguished by the agreement in writing dated the 15th day of January, 1948, signed by the second Plaintiff and the Defendant. A copy of the said agreement, which is in the Gujarati language, and a translation thereof, are delivered to be filed herewith and are marked "A" and "B". 10

4. The Defendant denies that the second Plaintiff was induced to enter into the said agreement by any misrepresentation, fraud or undue influence, as alleged by the second Plaintiff or at all.

5. The Defendant admits the receipt of the notice referred to in paragraph 7 of the plaint of the second Plaintiff, but states that the second Plaintiff was not entitled to avoid the said agreement. 20

WHEREFORE the Defendant prays that the second Plaintiff's suit be dismissed with costs.

DATED at Dar es Salaam this 16th day of April 1951.

Signed Keshavji Ramji
Defendant.

VERIFICATION

What is stated above is true to the best of my knowledge, information and belief.

Signed KESHAVJI RAMJI, 30
Defendant.

Presented for filing this day of April, 1951.

To be served on :-

Master & Dastur,
Advocates,
Dar es Salaam. for first Plaintiff.

H.K. Patel,
Dar es Salaam. for second Plaintiff.

ANNEXURE "A"

In the
High Court of
Tanganyika at
Dar es Salaam.

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No.14.

Defence to the
Plaint of 2nd
Plaintiff with
Annexures "A"
and "B".

16th April,
1951 -
continued.

A DOCUMENT IN GUJERATI

In the High Court of Tanganyika at Dar es Salaam.

No.14.

Defence to the Plaint of 2nd Plaintiff with Annexures "A" and "B".

16th April, 1951 - continued.

ANNEXURE "B"

This is the annexure "B" referred to in paragraph 3 of the Written Statement of Defence in High Court Civil Case No.43/50.

I, the undersigned Keshawji Ramji of Dar es Salaam hereby agree to give share of 28½% in my business of body building and Furniture making from beginning of my above business up to 31st December, 1947. This is with my own will and desire, to my brother Mr. Shiwji Ramji of Dar es Salaam. And I, the undersigned hereby agree to accept the above share of 28½% from Keshawji Ramji of Dar es Salaam.

And we both brothers as above hereby appoint Mr. Ramji Kara Shah of Dar es Salaam and Mr.Bhanushanker Mayashanker Thaker of Dar es Salaam as arbitrators to settle the above matter and thereby ask Mr. Keshawji Ramji to pay the amount to Mr.Shiwji Ramji what they find reasonable.

And we both brothers agree to accept their decision.

And I, Keshawji Ramji hereby agree to pay to Mr. Shiwji Ramji and I Shiwji Ramji agree to receive the amount as may be fixed by the above arbitrators Mr. Ramji Kara and Mr. Bhanushanker Myashanker Thaker and this will be without any objection to any of us. And also we both brothers hereby declare that whatever decisions may come from both of the above arbitrators that will be final for both of us and the same will be accepted by both of us. And further I, Keshawji Ramji hereby agree to wipe off the amount as remains on debit side of my books to account of Mr. Shiwji Ramji on 31st December, 1947. And I, Shiwji Ramji hereby declare that after receiving decision of Mr. Ramji Kara and Bhanushanker Mayashanker in our matter, I shall not have any claims in business affairs running in name of Mr. Keshawji Ramji or that of his personal affairs. Nor I shall have any interest in the business affairs running in name of Mr. Keshawji Ramji on or after 1st January 1948. Nor I shall have any concern with assets and liabilities standing in business affairs of Keshawji Ramji thereafter. Whereby I shall be considered to be free from business affairs of Mr. Keshawji Ramji. And I Keshawji Ramji hereby agree to pay to Mr. Shiwji Ramji as may be fixed by above Mr. Ramji Kara Shah and Mr. Bhanushanker Mayashanker, while settling the above accounts.

If the above arbitrators declare their decision of amount over shillings ten thousand (Shs. 10,000) I Keshawji Ramji hereby agree to pay an amount of shillings fifteen thousand to Mr. Shiwji Ramji within a week time from date of decision of the above arbitrators. And remaining amount to be paid to Mr. Shiwji Ramji by monthly instalments of shillings three thousand only. (The relative promissory notes to be drawn by me i.e.Keshawji Ramji in favour of Mr. Shiwji Ramji and to be delivered to him).

And further we both hereby declare that neither of us shall have any grievance against each other regarding the accounts or anything after receiving the decision and declaration from the above arbitrators and agree as above.

And finally we both hereby give binding that we have read this document and with our free will and in good sense free from any effect of intoxicating liquor or so with full confidence have signed the above writing and agree the same.

Witnessed:-

This document has been read by) Mr. Keshawji Ramji and by Mr.) Shiwji Ramji and has been signed) by them in their own handwriting) dated 15.1.48 )

s/d Keshawji Ramji

s/d Shiwji Ramji

S/d Nandlal Dharamshi Shah
S/d Lavji Kara Shah
Witnesses.

DECLARATION

After having been signed the above document by Mr. Keshawji Ramji and by Mr.Shiwji Ramji we the undersigned hereby give our decision that Mr. Keshawji Ramji should pay to Mr.Shiwji Ramji an amount of shillings fifty thousand five hundred and one only (Shs.50,501/-) and we Ramji Kara Shah and Bhanushanker Mayashanker Thaker have jointly considered the case, have inspected the books and accounts and every matter concerning the business, stock in trade, machineries sheds relating to works, vouchers etc. and after satisfying ourselves we have fixed the above amount payable by Mr.Keshawji Ramji to Mr. Shiwji Ramji. And according that Mr.Keshawji Ramji is bound to pay to Mr.Shiwji Ramji and which Mr. Shiwji Ramji has agreed to take the amount.

Sgd. Ramji Kara Shah
Bhanushanker Mayashanker Thaker

Dar es Salaam
15.1.48.

In the High Court of Tanganyika at Dar es Salaam.

No.15.

Order re Filing of Affidavits and written Statements.

18th April, 1951.

## No. 15.

## ORDER RE FILING OF AFFIDAVITS AND WRITTEN STATEMENTS.

18th April, 1951.

On reading the letters dated the 13th April, 1951 from the advocates for the Defendant and the Advocates for the first and second Plaintiffs consenting :-

Order: (a) Let the Affidavit in reply be filed within three days from today.

(b) Let the written statement of Defence to the Plaint of the second Plaintiff be filed within three days from today.

Sgd. R.O. Sinclair,
Judge.

No.16.

Reply by 2nd Plaintiff to Defence with Annexure B.1.

20th April, 1951.

## No. 16.

## REPLY BY SECOND PLAINTIFF TO DEFENCE WITH ANNEXURE B.1.

IN HIS MAJESTY'S HIGH COURT OF TANGANYIKA AT DAR ES SALAAM

CIVIL CASE NO.43 of 1950

MOHANLAL RAMJI First Plaintiff

and

SHIVJI RAMJI Second Plaintiff

versus

KESHAVJI RAMJI Defendant

REPLY TO THE WRITTEN STATEMENT OF DEFENCE TO THE PLAINT OF SECOND PLAINTIFF

The Second Plaintiff above-named states as under :-

1. This Plaintiff joins issues with the Defendant on the statements contained in paragraphs 1, 2, 4 and 5 of his written statement of defence to the plaint of this Plaintiff.

2. As to paragraph 3 of the said defence this Plaintiff joins issues with the Defendant and

submits that the translation of annexure A thereto is not correct. The correct translation of the said annexure is annexed hereto and marked B-1.

WHEREFORE this Plaintiff prays that his suit be decreed as prayed in his plaint.

Sd. Shivji Ramji

What is stated above is true to the best of my knowledge information and belief.

Dated this 20th day of April 1951.

Sd. Shivji Ramji

Second Plaintiff.

PRESENTED for filing this day of April 1951.

A COPY HEREOF SERVED ON -

1. Messrs. Master & Dastur,
   Advocates for the first Plaintiff
   Dar es Salaam.
2. Messrs. Atkinson Ainslie Childs-Clarke & O'Donovan.
   Advocates for the Defendant.
   Dar es Salaam.

In the High Court of Tanganyika at Dar es Salaam.

No.16.

Reply by 2nd Plaintiff to Defence with Annexure B.1.

20th April, 1951 - continued.

ANNEXURE B.1.

I, the undersigned, KESHAWJI RAMJI, having the business of manufacturing furniture and body making at Dar es Salaam under the name of KESHAWJI RAMJI, am prepared of my own free will to give a share of 28½ in words twenty eight and half per cent in the said business to my brother SHIVJI RAMJI, from the beginning to 31.12.47 and hence I sign below as having agreed to it. Similarly, I the undersigned, Shivji Ramji sign below as having agreed to accept 28½ per cent as my share as mentioned above.

We, KESHAWJI RAMJI and SHIVJI RAMJI therefore appoint RAMJI KARA and BHANUSHANKER MAYASHANKER THAKER for settlement of the accounts concerning the said business up to 31.12.47 and we both agree to accept whatever amount they think fit to fix, to be given to Shivji Ramji by Keshawji Ramji.

In the High Court of Tanganyika at Dar es Salaam.

No.16.

Reply by 2nd Plaintiff to Defence with Annexure B.1.

20th April, 1951 - continued.

I the undersigned Keshawji Ramji agree to give to brother Shivji Ramji, without any objection or dispute whatever sum is described by Ramji Kara and Bhanushanker Mayashanker Thaker, and I the undersigned Shivji Ramji agree to accept that sum without any sort of objection or dispute; and we bind ourselves to consider the decision given by Ramji Kara and Bhanushanker Mayashanker as final.

I, Keshawji Ramji agree to write off in full whatever - amount is due from Shivji Ramji in the account books of the business carried on in the name of Keshawji Ramji up to 31.12.47 and after the decision is given by Ramji Kara and Bhanushanker Mayashanker Thaker there are no outstandings or debts due from Shivji Ramji either on account of myself that is Keshawji Ramji or on account of the business run under the name of Keshawji Ramji.

I, Shivji Ramji hereby agree that after the decision given by Ramji Kara and Bhanushanker Mayashanker Thaker I have neither any outstandings nor any debts due from Keshawji Ramji either personally or in the business run under the name of Keshavji Ramji; and after 1.1.48 I have no right in the said business and I agree to be considered as having retired from that business.

I, Keshavji Ramji agree to give to Shivji Ramji whatever sum (which) Ramji Kara and Bhanushanker Mayashanker Thaker decide to be given to Shivji Ramji in the settlement of these accounts. If the sum to be given exceeds Shs.10,000/- in words ten thousand, Shs.15,000/- in words fifteen thousand are to be given by me that is Keshawji Ramji within one week after the decision and the balance to be given by hundies of Shs.3,000/- three thousand every month (that is to say Keshavji Ramji will have to pay monthly instalments of Shs. 3,000/-).

There will not remain any dispute or objection to any one after the decision is given by Ramji Kara and Bhanishanker Mayashanker Thaker and we agree to consider the decision given by them as final.

We both sign this document of our own free will and pleasure with presence of mind without any intoxication with self possession and after full thought and it is acceptable to both of us.

The signatories to this document Keshawji Ramji and Shiwji Ramji have read and signed with their own hands

Dar es Salaam
Dated 15.1.48.

Witness:

NANDLAL DHARAMSHI
Sd. in own handwriting.

LAVJI KARA,
Sd. in own handwriting.

Keshawji Ramji, signed in own handwriting.

Shivji Ramji, signed in own handwriting.

The original is stamped with Shs. 10/- stamp.

In the High Court of Tanganyika at Dar es Salaam.

No.16.

Reply by 2nd Plaintiff to Defence with Annexure B.1.

20th April, 1951 - continued.

After the above having been signed in writing by Keshawji Ramji and Shivji Ramji (we) give our decision as below: that as stated above KESHAWJI RAMJI shall have to pay to Shivji Ramji Shs.50,501/- in words fifty thousand five hundred one by monthly instalments as per conditions set out above. We Ramji Kara (Shah) and Bhanushaker Mayashanker Thaker have jointly, after full thought after examining accounts and books, having obtained particulars concerning every business, having examined vouchers factory goods, machinery and sheds built therefor and after being fully satisfied, have settled as above and fixed the amount mentioned above according to which Keshawji Ramji is bound to pay regularly to Shivji Ramji and brother Shivji Ramji have agreed thereto.

Dar es Salaam

15.1.48.

Sd. Ramji Kara signed in own handwriting.

Sd. Bhanushanker Mayashanker Thaker.

THIS is the annexure marked B-1 referred to in clause 2 of the reply to the written statement of defence of the Defendant to the plaint of the second Plaintiff.

Sd. Shivji Ramji.

Second Plaintiff.

In the High Court of Tanganyika at Dar es Salaam.

No.17.

Order re Payment by Defendant of net rentals to each Plaintiff.

14th May 1951.

## No. 17.

### ORDER RE PAYMENT BY DEFENDANT OF NET RENTALS TO EACH PLAINTIFF

14.5.51.

Master for applicant.

H.K. Patel for second Plaintiff.

Childs Clark and Pandya for Defendant-Respondent.

Order: By consent application to stand adjourned sine die without prejudice to the contention of the parties. Defendant to pay to each Plaintiff monthly as from 1st March 1951 until the final decision of the suit 28½% of the net rentals arriving from the properties referred to in the application. The shares for March and April 1951 to be paid by 17 May 51. Liberty to the parties to apply.

Sgd. Clifford Knight,
Judge.
14/5/51

No.18.

Defence of 2nd Defendant.

6th November, 1951.

## No. 18.

### DEFENCE OF SECOND DEFENDANT

IN HIS MAJESTY'S HIGH COURT OF TANGANYIKA AT DAR ES SALAAM.

CIVIL CASE NO.43 of 1950

| | |
|---|---|
| MOHANLAL RAMJI | 1st Plaintiff |
| SAVJI RAMJI | 2nd Plaintiff |
| versus | |
| KESHAVJI RAMJI | 1st Defendant |
| VANDRAVAN MAGANLAL | 2nd Defendant |

WRITTEN STATEMENT OF DEFENCE OF THE SECOND DEFENDANT

1. The second Defendant does not admit any of the statements contained in paragraphs 3,4,5 and 6 of the Plaint.

2. The property situated on Plots No.913/2, 914/2 and 588/206, Dar es Salaam, referred to in the Schedule annexed to this Plaint and marked "b" are, and at all material times have been, the exclusive property of the first Defendant.

3. The remaining properties referred to in the said schedule have, since the 15th day of January, 1948, been held by the parties of this suit as tenants in common, and the second Defendant is entitled to an undivided share of 14½% therein by virtue of an agreement dated the said 15th day of January 1948, of which a copy and translation have been annexed to the application by the first Plaintiff in this Honourable Court for the joinder of the second Defendant as a party to the suit.

4. The said properties have been duly and properly managed by the first Defendant, who has accounted to the Plaintiff and the second Plaintiff for all rentals accrued in respect thereof.

WHEREFORE the second Defendant prays that the Plaintiffs claim be dismissed with costs.

COUNTER-CLAIM

1. The Plaintiffs have refused, and still refuse, to perform the said agreement, wherefore the second Defendant counter-claims to have the said agreement specifically performed.

2. Costs of the Counter-claim.

3. Such further or alternative relief as to this Honourable Court may seem fit.

Dated at Dar es Salaam this 6th day of November, 1951.

Sd. Vandravan Maganlal,
Second Defendant.

VERIFICATION

I, Vandravan Maganlal, declare that what is stated is true to the best of my knowledge information and belief.

Sd. Vandravan Maganlal,
Second Defendant.

Presented for filing this 24th day of November 1951.

Sd. J.J. Contractor,
24.11.51.

To be served on:
Master & Dastur,
Advocates,
Dar es Salaam — For first Plaintiff.

and

H.K. Patel
Dar es Salaam. — For second Plaintiff.

In the High Court of Tanganyika at Dar es Salaam.

No.19.

Reply by 1st Plaintiff to Defence of 2nd Defendant.

11th December, 1951.

No. 19.

REPLY BY FIRST PLAINTIFF TO DEFENCE OF SECOND DEFENDANT.

IN HIS MAJESTY'S HIGH COURT OF TANGANYIKA AT DAR ES SALAAM

CIVIL CASE NO.43 of 1950.

MOHANLAL RAMJI
SAVJI RAMJI — Plaintiffs

versus

KESHAVJI RAMJI
VANDRAVAN MAGANLAL — Defendants.

REPLY BY THE FIRST PLAINTIFF TO THE WRITTEN STATEMENT OF DEFENDANT No. 2.

The first Plaintiff herein states as follows :-

1. This Plaintiff joins issue with the second Defendant on the allegations contained in paragraphs 1 and 2 of the written statement of defence.

2. With reference to paragraph 3 of the written statement this Plaintiff denies that he is a party to the said agreement. In the alternative, this Plaintiff says that he did not receive any consideration and the agreement is void as far as he is concerned. This Plaintiff further denies that the second Defendant is entitled to 14½% or any interest whatsoever in the said properties.

3. With reference to paragraph 4 of the written statement of defence this Plaintiff denies that the said properties have been duly and properly managed by Defendant No.1 or that he has rendered proper accounts.

4. This Plaintiff further says that the said agreement was never acted upon.

5. With reference to the counterclaim of the second Defendant this Plaintiff submits that the claim is barred by limitation.

Sd. Mohanlal Ramji
Plaintiff No.1.

I hereby certify what is stated above is true to the best of my knowledge information and belief.

Dated at Dar es Salaam this 11th day of December, 1951.

Sd. Mohanlal Ramji,
Plaintiff No.1.

In the High Court of Tanganyika at Dar es Salaam.

No.20.

Reply by the 2nd Plaintiff to Defence of the 2nd Defendant.

18th December, 1951.

## No. 20.

## REPLY BY SECOND PLAINTIFF TO DEFENCE OF THE SECOND DEFENDANT.

IN HIS MAJESTY'S HIGH COURT OF JUSTICE AT DAR ES SALAAM

CIVIL CASE NO.43 of 1950

| | |
|---|---|
| MOHANLAL RAMJI | First Plaintiff |
| SHIVJI RAMJI | Second Plaintiff |
| versus | |
| KESHWJI RAMJI | First Defendant |
| VANDRAVAN MAGANLAL | Second Defendant |

REPLY TO THE WRITTEN STATEMENT OF DEFENCE OF THE SECOND DEFENDANT BY THE SECOND PLAINTIFF

The second plaintiff above-named states as under:-

1. This Plaintiff joins issue with the second Defendant on the allegations contained in paragraphs 1 and 2 of his defence.

2. As to paragraph 3 of the said defence this Plaintiff states that the agreement therein referred to is not enforceable at law for want of consideration. The said agreement was executed by this Plaintiff under circumstances described in paragraphs 4, 5 and 6 of his plaint (originally his written statement of defence) and the share of 14½ per cent in the said properties was intended to be only a gift to the second Defendant.

3. The said agreement was never acted upon by the parties thereto.

4. As to paragraph 4 of the said defence the Plaintiff herein denies that the properties therein referred to are duly and properly managed by the first Defendant and submits that the accounts rendered by him are not correct.

5. As to the Counter Claim of the second Defendant, this Plaintiff repeats allegations of paragraph 2 supra and submits that he the second Defendant is not entitled to specific performance as prayed by him or otherwise and further submits that in any event his right (if any) to specific performance is barred by limitation.

WHEREFORE the Plaintiff herein repeats the prayers of his plaint aforesaid and further prays that the Counter Claim of the second Defendant be dismissed

In the High Court of Tanganyika at Dar es Salaam.

No.20.

Reply by the 2nd Plaintiff to Defence of the 2nd Defendant.

12th December, 1951 - continued.

with costs.

Dated this 12th day of December, 1951.

Sd. Shivji Ramji
Second Plaintiff.

VERIFICATION

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No.21.

Proceedings - Preliminary Issues.

12th September, 1954.

No.21.

PROCEEDINGS - PRELIMINARY ISSUES

12/9/54. Master and Dastur for first Plaintiff.
N.S.Patel and H.K.Patel for the second Plaintiff.
O'Donovan, Murray and Davda for both Defendants.

The following preliminary issues are framed:-

1. Is or was the first Plaintiff a partner of first Defendant in the business carried on in the name or style of Keshavji Ramji.

2. Is the second Defendant entitled to any shares in the properties mentioned in the written statement of Defence?

3. Is the second Plaintiff entitled to avoid the agreement of 1st January, 1948. It may be necessary to frame additional issues later.

Master. Business started about 1920 - from income certain properties acquired - business in names of 2 Plaintiffs and 1st Defendant. 2nd Defendant is a son of deceased's brother. Evidence of certain accounts in the Bank - amounts accruing from premises utilised for partnership business. All partners worked together in shop and drew monies. First Defendant in India for about 6 years when business carried on by Plaintiffs - money sent to India from earnings of business to purchase property in India.

Title deeds of three properties in joint names of three brothers - Those of 3 other plots only in name of first Defendant. 15th January 48 agreements giving share 14½% to second Defendant. First Plaintiff not a party - but first Defendant signed on his behalf. Question of whether agreement can be recognised.

Calls.

In the High Court of Tanganyika at Dar es Salaam.

No.21.

Proceedings - Preliminary Issues.

12th September, 1954 - continued.

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No. 22.

Evidence for the Plaintiffs

Evidence for the Plaintiffs

No.22.

Evidence of 1st Plaintiff Witness - Mohanlal Ramji.

12th September, 1954.

Examination-in-Chief.

## EVIDENCE OF FIRST PLAINTIFF WITNESS - MOHANLAL RAMJI

1 P.W. MOHANLAL RAMJI, Hindu, about 50 years, affirmed.

Examined. Master. First Plaintiff in this suit. First Defendant K. Ramji; my eldest brother, second Plaintiff (formerly second Defendant) Shivji my younger brother second Defendant Vandravan is son of my deceased brother. Keshavji came to Tanganyika in 1919. At that time I and Shivji were in Zanzibar. Keshavji started carpentry business in 1920 or 1921. Shivji came to Tanganyika in 1920, and I at end 1921. When I first came I worked with my elder brother - Shivji also worked with us. We worked in partnership. We all lived together, and our families joined us later on. Our living expenses came from income of joint business apart from money required for living, we drew money from business for other purposes. Business accounts were kept. Keshavji kept the account at beginning but later clerk was engaged. In 1922 I started working for Railways and continued for about 4 years. I handed my salary to my elder brother to put into the business. Then I went back to work in business workshop - 1926. Thereafter, in 1926, I went to work at Kimamba for 8 to 10 months. Then returned to workshop. I then in 1927 got a taxi and ran one for about 10 years - but while running a taxi I also worked in our shop. The earnings from

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12th September, 1954.

Examination-in-Chief - continued.

Kimamba, after providing for my maintenance, I handed the balance to Keshavji - earning from the taxi all went to him. When I worked for railways, I worked after hours in our workshop. Keshavji went to India in 1921, while he was away I and Shivji carried on business. Keshavji returned after 3 months. Shivji worked in P.W.D. for 2 or 3 years. He also put his salary into business. In 1923 all three of us went to India for the marriage of Shivji; and myself and eldest daughter of Keshavji. Business left in charge of head carpenter in our employ and in charge of one of our relations. Elder brother returned first, then Shivji, then myself. Keshavji remained in India for 3 or 4 months. Before leaving for India our business got a sub-contract for woodwork from P.W.D. There was a loss of about 25,000/- to 30,000/- loss met from business. Shivji was in service at this time, 1923; so was I and we both put our salaries into the business.

Workshop situated near Jamat Khan, but later moved to near the Metropole Hotel. Recently we have moved to Pugu Road. After my return from India after marrying, I worked for railways; Shivji was in the business. I returned to the workshop in 1926. Keshavji next went to India in 1931. Stayed there until 1937. In his absence I ran the business with Shivji. When Keshavji was in India we sent him remittances from the business. In the six years we sent more than Shs.40,000/-.

We purchased properties. The first in 1927 vacant plot in Windsor Street, where the Tanganyika Standard premises now are. The documents were in the joint names of our three brothers. The cost of the plot was met from our funds from our business. We put up a building on the plot in 1929 - cost of Shs.130,000/- to Shs.135,000/-. Our business contributed 25,000/- to 30,000/- at start of building and then we borrowed money on mortgage. Completed 1929. Second property bought in 1934 - four vacant plots in Kisutu Street. Title deeds in names of three brothers - price paid from earnings at workshop. While Keshavji was in India we bought only these four plots and the other one I have mentioned.

(Dastur takes over from Master).

The money sent to Keshavji in India was recorded in our books. A clerk kept the books. The

money was for his maintenance and for the purchase of property in India. We were in correspondence with him. I have most of the original letters I received from him. These letters show that he treats me as a partner. In one of my letters to him I proposed we should open a branch at Tanga. He replied that we should concentrate on our own business at Dar es Salaam and later consider opening a branch. (Letter dated 28th July 1935 - to be put in by agreement later on).

Keshavji returned at the end of 1937. Told us he had bought a plot and erected a building thereon at KATHIAWAD our original home town - he said he had spent about 8,000 rupees.

On Keshavji's return we continued our business together - Business called Keshavji Ramji, Furniture Manufacturer - it was started in that name in 1921. After his return I was manager and took a more active part in it than Keshavji. I had been managing since 1927 or 1928.

When our relationship was good, Keshavji never disputed our status as partners. The partnership was not at any time recorded in writing because business was in name of elder brother as is common practice.

I know firm of Madhavji Ukashai in Dar es Salaam. That is eldest son's name, it is a partnership. Our drawings from the business were debited against each of us as salary. (Witness refers to entries in book) 30-4-30 Shs.325/- debited to Keshavji Ramji - salary for April. Further entry - same date Shs.300/- debited to Mohanlal Ramji, salary for April, again Shs.3,000/- debited to Shivji Ramji - salary for month of April. Clerk's salary 200/- debited on same date. Shukla was our clerk. No employee was receiving more than Shs.320/- per month at that time. There are other similar entries against all three brothers for salaries. This book is a daily book. The entries are original entries made on dates shown. Writing on this date is in Shukla's hand. (Book produced and taken on record as PI - ct). I have another daily cash book in which outgoings and incomings are entered - this one is in respect period 1922 to 1929. This is written up by Keshavji Ramji and a clerk - don't think I and Shivji have

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No.22.

Evidence of 1st Plaintiff Witness - Mohanlal Ramji.

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Evidence of 1st Plaintiff Witness - Mohanlal Ramji.

12th September, 1954.

Examination-in-Chief - continued.

made any entries. These are entries reflecting drawings of partners contains also income from taxi business, service on railways and P.W.D. At this time I had no personal bank account.

After Keshavji's return from India, business enlarged. Three brothers working in it. We erected a building in Kisutu Street in 1946 or 1947. In 1940 I went to India for business on behalf of our firm in Dar es Salaam. We intended starting same type of business in India. This was as result of verbal agreement among each other. The correspondence will reveal exchange of views on the business.

I started timber cutting business. Capital supplied from our business in Dar es Salaam and remitted by Keshavji. I reported from time to time and he advised me on the business. I received approx. Shs.50,000/- over seven years from 1940. He decided to open this business in India because of the war and wanted to establish ourselves in India as a safeguard. We closed down the business eventually and I returned to Dar es Salaam - this was in March 1948. I brought machinery for use in cutting timbers and making furniture. It cost more than Shs.50,000/-. This machinery is now being used in the business known as Keshavji Ramji. It is still in use. (Recess of 10 minutes). I produce the second daily cash book - (taken on record as Ex. P2).

During first stage of business the salaries mentioned in Ex. P2 refer to those earned outside the business. We had to work outside as business was not so good - all we earned outside was put into business. Even when serving outside, I assisted in the business after hours in spare time.

The Windsor Street Building completed in 1929. The rents from the building were used partly in payment of interest on mortgage and balance paid into business. The sum of the mortgage was repaid by instalments provided from the funds of the business. These transactions were recorded in the business books, a paid clerk has been employed since before 1930.

Apart from two books I have produced there are others in the possession of Keshavji. On my return in March 1948 from India, I found that a new

building on the four plots in Kisutu Street and three temporary houses had been built behind the Hindu Temple. As to the building on Kisutu Street, I was told while in India about it and was sent a plan. It consists of ground floor and two upper floors. They were all let from 1946. The Kisutu plots started in name of the three brothers. The rent was paid into the business of Keshavji Ramji: We borrowed from the bank (Exchange Bank of India and Africa) to build, as far as I know a loan was applied for and received in the firm's name. Loan has been repaid from income of business. True that the Bank is in liquidation. Official Receiver the liquidator. Correspondence regarding the loan will be found with him. With regard to three temporary houses, plots were acquired when I was in India, in 1945, I think. Purchased in name of Keshavji Ramji from funds of business. This I heard on my return from my brother, Keshavji. They are in Malindi Street. Buildings thereon erected in 1945 while I was in India. Funds for constructions from our business. On my return from India I didn't see relevant entries in the books regarding these buildings - didn't ask to see them - didn't think it necessary. While I was in India Keshavji informed me by letter about these buildings. On my return I asked Keshavji why these three properties were in his own name. He said it was immaterial if they stood in name of one or three, as they were in partnership.

There are 2 plots on the McGovan Estate - purchased in 1927 or 1928 - in name of Keshavji Ramji - from funds from business. No buildings thereon. The land rent and other outgoings are paid by the firm.

There are two titles in respect of the three plots on Kisutu Street - neighbouring plots - two buildings on the three plots.

The original titles for the Kisutu Street plots are with Keshavji - so also the title to the plots on the McGowan Estate. The Official Receiver has title to the Windsor Street property. The mortgage was paid thereon, but the title has not been released because of this dispute. I think the mortgage debt has been paid.

Apart from the properties mentioned, there is

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a plot in Pugu Road - purchased in name of Keshavji Ramji in 1947 - building thereon - our business workshop. This building constructed after this action was filed.

Portion of another plot was purchased in Upanga Road while I was in India in name of Keshavji Ramji - no building thereon. Quarter Share. There are no other properties. On my return in 1948, I learned of a change in constitution of the firm. I was told by letter in November, 1947. Shivji Ramji separated from business. I had written about this to Keshavji. On my return I saw a document in connection with the separation. That document is exhibited with the written statement of defence to the plaint of second Plaintiff Shivji. (Annexures A. agreed by parties to be treated as exhibit, it being a true copy in Gujerati of the original which is mislaid: Ct.)

My brother Shivji had received his share of the business in terms of the agreement. There then remained Keshavji and myself as partners. We carried on as before until 1949. Then Keshavji stopped me going to the office, a dispute arose because Keshavji brought a document setting out the terms of partnership which has been drawn up by an advocate.

I would not agree to the terms suggested in the document. I claimed partnership from the beginning while the document made 1948 the date of commencement of partnership. I refused to sign, the proposed agreement included a third person as partner Vandravan Maganlal, second Plaintiff. Respective shares were 40%, 40% and 20%. I agreed to these shares in the business. I objected to the commencement date as 1948, because my share and interest was from 1920. I was at a disadvantage if the date was to be 1948 - I would lose the rents recovered from the properties before 1948. The document said I would have no interest in the partnership before 1948. I could not agree. When I refused, he denied me any rights as a partner, I took legal advice and demanded an account of the partnership business and its properties. It has not been supplied to me.

The partnership business was incorporated as a limited company in 1951. The firm wanted to

acquire property in the Industrial area of Dar es Salaam for the erection of a factory for woodwork. I was told of this by letter when in India. On my return I was told a plot had been applied for in the names of Keshavji and myself, and the second Defendant. Houry, Advocate, was instructed to prepare document. Second Defendant is claiming share in the immovable properties. I have never at any time agreed to give him a share. Have never authorised Keshavji and Shivji to give him a share. Second Defendant has not contributed in any way to the acquisition of any property. He worked for the partnership since 1947. He was on a salary basis. I first learnt that he had been given a share in the immovable property when Keshavji showed me the document which I refused to sign. I did not agree to this. (the Gujerati writing annexed to written statement of Defence by first Defendant is shown to witness - ct.). I observed that second Plaintiff's share in the business has been rated at 28⅓%, that rating is wrong. This share should have been one third - we were three partners - we were three brothers.

Hearing adjourned to 2.15 p.m. tomorrow - Examination-in-chief not concluded.

Sgd. E.J. Edmonds,
Ag. Judge.

14th September, 1954.

14.9.54. Court as before.
MOHANLAL RAMJI, reminded of his affirm.

Examination-in-chief continues

(Reference to immovable properties) I omitted yesterday one property. The Pugu Road property I referred to is the same as that described in the schedule as 588/206 Gerezni Area. I recall some property purchased from Chavda (not mentioned in Schedule). This is in Upanga area - vacant plot - purchased in 1947 while I was in India. Purchased from our business funds. The business also purchased property in Nairobi - a plot near the aerodrome in the factory area - in 1949. I was then in Dar es Salaam. There was correspondence with the Land Office to the effect that the property should be purchased in my name, the name of Keshavji and of second Defendant, Maganlal. A document prepared in the names of these three was received then in the office by Keshavji. I saw the document, it was not executed. I was not asked to sign it.

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Examination-in-Chief - continued.

Subsequently the document was prepared in Keshavji's name alone and executed by him. He has the correspondence and documents.

Vandravan (second Defendant) I said yesterday, was working for the business on a salary basis. My son was working for the business - so also the son of Shivji - on salary basis. Their salaries were recorded in books of the firm which are with Keshavji. My son started in 1947. I claim partnership from 1920 - this is when business was started. I first came to Tanganyika in 1922 - before that I was in Zanzibar. I was in service in Zanzibar and whatever I earned I sent to India, we three brothers had debts in India.

Q. Why do you claim interest in partnership from 1920?

A. When Keshavji and Shivji came from India to Zanzibar in 1918, Keshavji stayed 2 weeks and then came to Dar es Salaam and it was agreed he would start business for us in Dar es Salaam and I would join him later. I agreed also to help pay our debts in India, and when they were paid to send my savings to our business in Dar es Salaam. I was called to Dar in 1922 by Keshavji. He called me to help him run the business - Shivji had come ahead of me for six months and joined the business. I started serving outside of the business, to raise money for it, in 1926 or 1927. The business started to prosper in 1927 and 1928. Since 1927 I have not worked outside the business - nor Shivji. (Referring to correspondence passing between witness and business while he was in India for 7 years). I have the originals of most of the letters passing - (produced together with English translation of certain extracts - O'Donovan does not object to these letters and translations going in though he has had no opportunity of checking the translations - he may challenge them during cross examination or when adducing his evidence).

Dastur: File containing 317 letters from Keshavji to witness put in as Exhibit P3 - File containing 98 letters - Exhibit P4. English translations in one file Exhibit P5 - three separate postcards with translations put in as Exhibit P6 - Ct.) I received all these letters. This is a copy of a letter I wrote to Keshavji - it is in my hand dated 1/1/48 (put in as Exhibit P7 with English translation of relevant portions - Ct.) I received this letter

dated 16/1/48 from Keshavji - his writing - written in Dar es Salaam to me in India (put in as Exhibit P8 with English translation - Ct.).

I then received from him this letter dated 21/2/48 (put in as Exhibit P9 with English translation - Ct.).

The reference to the settlement in these letters is the settlement referred to yesterday (the one attached to the written statement of defence of first Defendant to plaint of second Plaintiff - Ct.).

(Dastur: I put in an English translation of this writing - O'Donovan - no objection now, but subject to my right later to challenge if necessary - admitted and marked Exhibit P10 - Ct.).

In paragraph 9 of my plaint I say sale of properties more beneficial than division thereof because of difficulty of sub-dividing plots into three parts, further I and my son need the money so as to do business on our own. A third share of the plots wouldn't be sufficient for my business and my family - There are 8 members of my family.

Keshavji is managing the immovable properties - he used to consult me but has not done so since I came back. I have objected to this behaviour - he has not changed.

Examined Patel for second Plaintiff:

(Referring to agreement of which P10 is translation) matter referred to arbitration of KARA and THAKAR as mentioned in agreement. My opinion of them was that they knew nothing of our business. When I heard Shivji had retired on the terms set out, I was very sorry and thought he had got less out of the business than he was due. This meant I would benefit, but I didn't want to.

Cross-Examined O'Donovan:-

Business conducted solely in name of Keshavji Ramji. Letter heads describe him as carpenter and blacksmith among other things - so far as the outside world and third parties were concerned, the appearance was not that he was, sole proprietor. The trading licences in name of Keshavji Ramji - I applied for some of them in his name - the clerk

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Cross-Examination.

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Cross-Examination - continued.

also did so under my direction. Letter dated 27th August 1924 is a letter head used by the business (Exhibit D1). All bills sent out in the name of Keshavji Ramji - this is an example of the form on which the bills were sent out (put in - Exhibit D2).

To the public there may have been an impression that this was the business of one man. I don't recall my lawyers had this impression. I don't know if I told Mr. Dharsee, our lawyer, that I was manager of the business. (Witness is shown letter dated 27th February, 1934 taken on record D.3). I called myself manager because I was managing the business at the time. I remember instructing the advocate Clarke to act for me when a summons issued to Keshavji Ramji - summons on charge of creating a nuisance in 1935 - I don't remember that charge being dismissed because the proprietors were in India. I remember subsequently I was charged as Manager in charge and I remember saying in Court "I am manager of the shop of Keshavji Ramji". I personally dealt with the advocate Clarke. I remember his writing these two letters (dated 28th August and 5th September 1935 - marked Exhibit D4. and D5). I agree that my lawyer had the impression that I was manager and had my brother's power of attorney - that is it (produced to witness - taken on record as Exhibit D6). I read it and saw nothing wrong with it - I did not object to it. I acted on it for many years (Counsel reads paragraph 17) Keshavji had a bank account in Barclays - in his name - he gave authority to operate on his account. He cancelled this and the power of attorney when I left him in 1950. In operating the account I signed for my brother - these are specimens of cheques I signed - (taken on record as Exhibit D7). I have heard of registration of business names ordinance. I know it is the duty when a firm operating in the name other than the names of all partners has to register - my elder brother was doing these things - it didn't occur to me to comply myself.

I used to sign a lot of business correspondence - in all cases I signed for my brother. I signed in the form "P.P.Keshavji Ramji" and when signed my own name - as in this letter (put in as Exhibit D8). I used the first person singular in the letter. Our partnership was not a secret. The partnership was not known to the Courts, the Banks, or my own lawyers, other businesses executed decrees on behalf of my brother as his attorney.

I have not intended to conceal the partnership. There was no purpose to conceal it. There was always the partnership. Remember in 1937 Dharsee and Satchu on my brother's instructions wrote dismissing me. I rejoined him. In 1939 his lawyers again wrote dismissing me.

Q. Didn't it occur to you your position as a partner was insecure without any documentary proof of partnership.

A. I have never inspected the business books. I was never an employee of Keshavji - nor was Shivji. When I came back from India in 1948 I entered on an immigration permit as an employee of Keshavji. He wrote saying that was the only way I could enter by saying that was an employee - at least I think so. It was difficult to get permits because of the war - (Counsel reads a letter of 29th May 1946 - marked "M" for identification). The immigration authorities were not kept in the dark about the partnership. Keshavji is 8 years older than I. We both came here in 1908 - my brother is not 11 years older than me - he is 9 years older than Shivji. Father died when I was 14 and Shivji 6 years old. In accordance with Hindu custom. Keshavji became head of the family and had the responsibility of bringing us up. In our family not certain that the head of family responsible for the rest of the family but it is the custom that members of the family make contributions to him. For many years I lived "sharing the same kitchen" with Keshavji. I used to pay him from my earnings and he used to support me. It would work like that in any Hindu family. He did not pay my marriage expenses, and did not look for my bride. There is no strict accounting of every penny he received from us. He was in the position of my father.

While I was associated with Keshavji I don't know if I was credited each month with a salary. I know I was during the period of the two books I have produced. I got them from Keshavji when we were moving the stationary from the old office. He gave them to me in 1948 to show me how the business used to be run. I have as much right as he to the books, being full partners. I did not ask his permission to take them - it was not necessary - I did not tell him I was taking the books away, but he saw me take them, I did not filch them. I don't think I took any documents away. I

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Cross-Examination - continued.

took some papers dealing with insurance. (witness very reluctant to answer questions at this stage - Ct.).

Q. Did you take any other papers apart from those books?

A. I took a copy of a letter to the Exchange Bank of India. I thought it would help my case. I did not steal anything, I took the letter because I wrote it. The books were given me by Keshavji. This is the document I took away (Taken in as Ext. D9 - Ct.). I didn't take any other pieces of paper away.

It may be that other books of account show that Shivji and I drew salaries, but not Keshavji. He kept the accounts. I don't know how he kept them - I don't understand books of accounts. Our clerk knows this. When I took the two books, I could understand them, I know Shivji's handwriting. The books produced to me are in his hand (taken on record as Ext. D10). This is a muster roll kept by him at a period when I wasn't at the factory, Keshavji was there. Why is Shivji first on the list of muster-roll of workmen on each day? This is not possible. (Examines book - Ct.). I cannot explain why this is. As a partner I had access to the books, but I didn't examine them. I did not search the documents and books of business, unless it was necessary. I mean that it would become necessary if one took an interest in something. I did not search, however, I went to Chitale (in ref. to Ext. D9) on Keshavji's instructions. He acted as our elder, not as our master, he was our partner.

I have heard of income tax. I claim I am entitled to a share of profits since 1920. I am not aware that since income tax commenced in 1940 returns were put in by Keshavji, that he was assessed and paid income tax personally on the business. I have paid income tax in 1951 and 1952, after I left my brother, previously I think my clerk put in returns, my clerk is Shah. On my return from India in 1948, I don't remember informing the Income Tax Department that my only income was my share of the rent from the properties. I am prepared to produce my income tax returns after 1949. My income tax returns inform that are in the business office (sic?)

(Letter dated 28/7/48 shown to witness marked "N" for identification - Ct.). I did not write this letter. I will try and get my returns from the Income Tax Commissioner for the period 1939 to 1949. I agree I have not mentioned in any returns that part of my income that was from this business, but the business was in name of our name. I agree Keshavji has had to bear burden of paying Income Tax on whole profits of business.

Q. Why have you kept partnership secret from income tax authorities?

A. I have not kept it secret - our business has been carried on from the beginning in name of my brother. When business started in 1920, it was discussed and agreed in Zanzibar that shares should be equal.

The taxi I ran was bought by Keshavji. Have not in 34 years examined books of account. I never asked before this suit for an account of profits. It was not necessary. (referring to letter Ext. P.7). The word "partnership" does not appear in the letter - it would mean partnership (Ext. P.9, 5 lines from the end) I agree the word partnership does not appear (Dastur agrees - he had not checked the translations - ct.) The words are "two months have passed since he signed and left"- ct.).

Cross-examination not concluded:

Hearing adjourned to 8.30 a.m. tomorrow.

Sgd. E.A.J. Edmonds,
Ag. Judge.

15th September, 1954.

15.9.54. Counsel as before. Witness reminded of his affirmation.

Cross-examination continues:-

Since I left the first Defendant I have through advocates received statements of account, regarding the properties I have taken objections to them.

Dastur: Asks that the three letters Ext. P.7, P.8 and P.9 be translated by official interpreter as soon as possible.

O'Donovan agrees.

Order: Translation to be effected.

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Plaintiffs.

No.22.

Evidence of 1st Plaintiff Witness - Mohanlal Ramji.

15th September, 1954.

Re-Examination.

Re-examined Dastur:

As far as outside world concerned Keshavji Ramji appeared to be sole proprietor. The business was run in his name but the understanding was that we should be in partnership carrying on business in his name. I had no reason to object. From the beginning trading licences were taken out in name of Keshavji Ramji. When I was first in Zanzibar I was in pensionable service with a Zanzibar Government Department. Their electricity and telephone Department - I was working as a Telephone workman. Privileges of leave and pensions attached to the service. Had I thought I was joining my brother as an employee I would not have left my employment in Zanzibar. (Entries in books after 1930, witness and Shivji shown as persons receiving salaries mentioned in Cross-Examination) I have not seen those books or had opportunity of inspecting them. (The muster-roll D.10). Entries from 1924 to 1931. During that period I was in Dar es Salaam 5 to 6 years but was taking an active part in the business for 3 to 4 years. In 1927, 1928, 1929 and 6 months of 1930 I was taking an active part. My name does not appear as an employee in the muster-roll. As the business developed by arrangement special duties were assigned to each of us. Keshavji ran the office and books. I was works manager, Shivji was looking after machinery and woodwork. Keshavji also was looking after building on Windsor Street and the other immovable properties.

(Referring to books subsequent to 1930 - a ledger marked O for identification - Ct.). I am not responsible for any entries in this book. I have not seen this book before. (Business names Ordinance) Don't know when the ordinance came into force.

(Income Tax Returns). Income Tax came into force in 1940 when I was in India - I was there until 1948 - Keshavji was responsible for the returns I know the senior partner has right to fill in returns. I have had nothing to do with completing the return of the business of the individual partners.

Keshavji was responsible for the returns - the Clerk prepared them on his instructions.

(Entry permit on return from India in 1948). I

never signed anything - didn't see any application relating to my entry.

Have not signed any receipt for any salary. (Letter written by Advocate Dharsee about witness's dismissal) These dismissals were illegal as I was not serving - Keshavji had written dismissing me before when he was angry. Then when he calmed down he would write as though he had not written such a letter.

I was sent in 1940 to India to run business on behalf of the partnership. I was sent with valuable machinery of the firm. The machinery was booked on ship in my name, but it belonged to partnership. I brought the same machinery back when I returned. (Letter Ext. D.9 - Exchange Bank). On 2nd May, 1947, I was in India. Reshavji wrote the letter. I was not a party to the writing of the letter. Not true to say that Keshavji was maintaining us - supporting me - I was full partner with him. During all these years I had not slightest doubt that Keshavji would deny my partnership rights.

Not R.O.F.C. by consent.

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Plaintiffs.

No.22.

Evidence of 1st Plaintiff Witness - Mohanlal Ramji.

15th September, 1954.

Re-examination - continued.

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No. 23.

EVIDENCE OF SECOND WITNESS FOR PLAINTIFFS
HOMI KAIKHASHRU UDVADIA

No.23.

Evidence of 2nd Witness for Plaintiffs - Homi Kaikhashru Udvadia.

15th September, 1954.

Examination-in-Chief.

2 P.W.

HOMI KAIKHASHRU UDVADIA, Indian, Pharsee, affirmed:-

Examined Dastur: Clerk in the Official Receiver's office, in charge of records connected with liquidation of companies. Among companies in liquidation there is Exchange Bank of India and Africa Ltd. Within my knowledge that company went into liquidation. Official Receiver appointed liquidator among papers in my custody. I have correspondence between Bank and Keshavji Ramji. I produce letter dated 2nd May, 1947 (taken on record as Ext.P.II), written from Keshavji to Bank (this letter original of D.9 - Ct.).

The title deeds in respect of property mentioned in letter are in possession of Official Receiver. He is retaining the letter because we cannot get a discharge from all three parties to the letter.

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Plaintiffs.

No. 23.

Evidence of 2nd Witness for Plaintiffs - Homi Kaikhashru Udvadia.

15th September, 1954.

Cross-Examination.

Cross-examined O'Donovan:

The loan was paid off a long time ago by Keshavji Ramji. The property itself is registered in the names of the three parties as tenants-in-common. It would be necessary for all three to concur in the deposit of the title as security. I have examined the account in name of Keshavji Ramji. It starts in name of Keshavji Ramji in January 1948. It was a running account. He alone operated the account. In August 1948. The account is called Messrs. Keshavji Ramji - after 2 or 3 years, neither Mr. nor Messrs. appear - just Keshavji Ramji. The account was opened as an individual account.

People in Dar es Salaam Bazaar used the word partnership very loosely - I agree the word partnership in Gujerati may mean other kinds of sharing - there is no word in that language confined particularly to the meaning of partnership. Very common indeed for tenants-in-common to refer to "my partners in the building". Have not heard of shareholders in company referring to each other as partners.

Re-Examination.

Re-examined Dastur:

Three brothers are working together and one says to the second that the third person has received Shs. 50,000/-, and "CHHUTA THAYA CHHE" (Gujerati). What would you understand from this?

Answer: He took the money and separated and broke off the connection - not necessarily a partnership. (Title No. 366 produced and taken on record as Ext. P.12 - Ct.).

Not R.O.F.C. by consent.

No. 24.

EVIDENCE OF THIRD WITNESS FOR PLAINTIFFS SHEIK MUSTAPHA.

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Plaintiffs.

No. 24.

Evidence of 3rd witness for Plaintiffs - Sheik Mustapha.

15th September, 1954.

3 P.W.

SHEIK MUSTAPHA, Indian, Moh. about 50, affirmed :-

Examination.

Examined Dastur: I am managing clerk in G.Houry & Co., Advocates. In July 1948 the firm was G.N. Houry; among clients was Keshavji Ramji - he wrote a letter on 27th July 1948 regarding plot 588/206 giving our firm certain instructions (after preliminary comment, O'Donovan does not object to production - taken on record as P.13). I also produce letter dated 12th September 1949 (taken on record as Ext. P. 14).

Cross-examined O'Donovan:

Cross-Examination.

We were acting for the Vendor and for Keshavji. Not R.O.F.C. by consent.

Dastur: That is the case for Plaintiff I.

N.S. Patel calls Shivji Ramji second Plaintiff.

No. 25.

EVIDENCE OF SECOND PLAINTIFF - SHIVJI RAMJI.

No. 25.

Evidence of 2nd Plaintiff - Shivji Ramji

15th September, 1954.

4 P.W.

SHIVJI RAMJI, Indian, Hindu about 50 years, affirmed :-

Examination-in-Chief.

Examined Patel: I am second Plaintiff in this suit. Keshavji and Mohanlal are my brothers and Vandravan my nephew. On January 15th 1948, I entered into agreement regarding my separation on retirement from Keshavji Ramji. (P.10). I came to enter into this agreement because of a quarrel between Keshavji and my son-in-law GIRDHARLAL MULJI CHAVDA. Quarrel arose after J.M. Chavda, son-in-law of Keshavji died. He had started a business in the name of G.M. Chavda & Company and the registered names of the partners were Keshavji Ramji and

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Plaintiffs

No. 25.

Evidence of 2nd Plaintiff - Shivji Ramji.

15th September, 1954.

Examination-in-Chief - continued.

G.M. Chavda. Keshavji asked latter for accounts of partnership. In reply Chavda said he was not his partner but that his brother J.M. Chavda was his partner. J.M. Chavda was an architect and G.M. Chavda was in India. J.M.C. thought as he was an architect he would not set up as a builder and contractor; so he put Keshavji's name in his place as he was his father-in-law.

Due to this the trouble arose. Many times Keshavji pressed G.M. Chavda and me for accounts. G.M. Chavda said Keshavji had nothing to do with the business. I said I could do nothing in the matter. He didn't trust me. He thought I was backing G.M. Chavda. I became tired of it all and, to avoid trouble in the family I decided to get out of the business of Keshavji Ramji.

Consequently this agreement (P.10) was made. I know the arbitrator R.Kara and B.M. Thaker. I told Keshavji if he did not trust me and thought I was cause of trouble with Chavda it was better I take my share from the business of Keshavji and separate. He said he would think of it. After that Thaker came to me. This was between 1st and 15th January 1948. He said there is a quarrel in your family and asked how I wished to separate. I replied by taking my shares. He told me business was in name of Keshavji Ramji and that my name didn't appear as a partner. Thaker said he would try and persuade Keshavji. Next day he saw me and said take what Keshavji offered me. I asked the terms. He said Keshavji wants to give me and Mohanlal and himself 28½% and 14½% to Vandravan. He said I should accept as if I went to Court I would get nothing as in the business of Keshavji Ramji his name appeared alone. My true share in the business is one-third from beginning we were together. I replied to Thaker that I was being oppressed. He said Keshavji would not give anything more - to fight would mean useless expenses. I said I would think it over. Next day in the evening I said he could do what he liked. I felt very tired. Next day he told me an agreement had been made and I was to value the goods in the shop. I was very upset. Ramji Kara had also seen me; he said he and Thaker had been instructed by Keshavji to prepare agreement. I was shown a writing (a copy of P.10). This was between 8th and 15th January. Ramji Kara told me to go to his house

on 15th January in the evening. Keshavji, Vandravan and others were sitting there. After discussion, this agreement (P.10) was produced and signed. The award was given by arbitrators later and is recorded at foot of the same document - made after I signed the agreement.

It was added that very evening five minutes after I had signed the agreement. There was no inspection by the arbitrators of any accounts - there were no books with them.

I agreed to give Vandravan 14½% only because I knew I would get nothing. He was not a partner - he was the son of a dead brother. Vandravan was born in 1918. When he was in India my mother brought him up - we were a joint family with joint expenses. Keshavji and I were in India at the time. Vandravan is in Dar es Salaam now living apart from us. When signing the agreement I had no information as to the business accounts - Keshavji was in charge of them. He didn't give me any information as to the account. Don't know on what basis the arbitrators arrived at the sum awarded.

(Recess 10 minutes)

Examination-in-chief continues:

On 15th January 1948 another agreement was signed regarding Vandravan's 14½% share in the properties. I received no consideration for agreeing to give him this share. I agreed to this because he was a member of the family. (Tender a carbon copy of the original for identification - marked P - it is agreed by Counsel that the translation annexed to the chamber application of 31st October, 1950, is a correct translation of the document now tendered for identification - Ct.).

By this agreement three brothers are agreed to give a 14½% share in the properties mentioned in the document. The arrangement is not now acceptable to me, because I have been cheated. As regards the other agreement - my agreement to retire - I was told I couldn't enforce any rights in a Court of Law. I knew differently when Mohanlal filed this suit. On 27th October 1950 I served a notice on Mahanlal and Keshavji revoking my agreement - to retire; both agreements were signed the

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Plaintiffs.

No. 25.

Evidence of 2nd Plaintiff - Shivji Ramji.

15th September, 1954.

Examination-in-Chief - continued.

same day at Kara's House. (Referring to letter dated 27th October 1950 attached to written statement of Shivji, no objection to this letter being taken on record instead of original - Ext. P.15).

(Patel): In the third paragraph there is a mistake as to the date of the application '1950' should read '1948'.

O'Donovan agrees and no objection.

By this letter I revoked my agreement to retire. My father died when I was 6 years old. My mother brought me up. Keshavji brought me to Tanganyika. Before I retired from the business, I treated Keshavji, my elder brother, as my father. He is 17 years older than I. He looked after the social functions, family matters and marriages of the family. He arranged marriage of my daughter. He was head of family.

Examined Dastur: In the matter of the business, I was a partner - since 1920. I came to Zanzibar with Keshavji in 1919. I stayed there for 3 or 4 months until I could get permit to enter Tanganyika.

The agreements gave me 28½% share in the business run in name of Keshavji. I had the share right from the beginning.

Heard Mohanlal give evidence. I confirm substance of what he said.

Cross-Examination.

Cross-examined O'Donovan:

Don't recall in 1947 corresponding with Income Tax Authorities. (Letter shown to witness). This is office copy of a letter sent by me to the Income Tax Authorities. (Tendered and taken on record as Ext. D.II).

The particulars in letter are correct. I signed the letter. I say I am a partner - not correct I was employed as a Manager. Don't know English - clerk prepared letter, I signed it didn't know what was in it. (Muster-Roll D.10). My name is on the Roll. I used to write up this book sometimes. I am on the list of a lot of workmen. Every day I attend, my attendance is ticked off. According to roll my rate of pay is 9/- a day. The days I worked are marked off. The total attendance

of month is multiplied by my rate of pay. This is first for the purpose of costing. I say I was a partner. Keshavji's name is not in the list; he is the head of the business but not the owner; while the family is together and unseparated, it is a family - a joint Hindu family is a partnership.

I never looked at the books of account. I trusted. The books were in the office. I was not aware that Mohanlal and I were being credited with salaries monthly. The amount of my salary I discussed with him. I complained it wasn's enough. He used to pay me Shs.300/- which was increased ultimately to Shs.575/-. I didn't get it in cash - the amount should have been credited to me. I don't know if it was. In the same way I don't know if Mohanlal's salary was credited to me. I trusted Keshavji. We didn't keep partnership secret; have not registered it. Chavda registered his partnership - that was his concern.

In 1920 I was about 18 years of age. Keshavji was nearly twice my age. After 1920 I worked for about 3 years in the P.W.D. Whatever I got I gave to Keshavji - the custom was to do so. I was living with him - he was supporting me. (The agreement of retirement). It starts off by saying that I agree to accept 28½% of his business. It is not his business. This was not a gift by him; it was my share.

Thaker dealt with me in this matter. Keshavji sent him to me. He is not of our community - he is a Hindu, the secretary of the Hindu Society. His advice was that I had no right at law to partnership. I accepted this. But it was bad advice. It was not until I was sued by Mohanlal in this case that I came to think I had been cheated. I signed agreement giving 14½% to Vandravan. I did this because I was told if I didn't sign I would get nothing and I was afraid.

Cross-examination concluded.

Hearing adjourned to 2.30 p.m.

At 2.30 p.m. Witness reminded of his affirmation.

Re-examined Patel:

Re-examination.

Thaker was not my adviser - he was advising

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Plaintiffs.

No. 25.

Evidence of 2nd Plaintiff - Shivji Ramji.

15th September, 1954.

Re-examination - continued.

and helping Keshavji; so was Kara. I did not seek legal advice - had no time. (The Muster-Roll D.10). My name appears on a few pages, not all; doesn't appear on other Muster Rolls. This Roll in Court covers 1924/1930. I left business in 1948. Was with it from 1920. (Income Tax Return). The Income from the partnership is not shown in my return. I did not know what the income from the business was. I have never known what it was. The return (D.11) is for income for 1947. A clerk wrote this letter for my signature - I don't know who told him to. I didn't.

A salary has been credited to me in the books. Before 1946 I drew nothing; thereafter I drew cash for expenses. The business paid my expenses before 1946.

Court: I claim a one-third share in business and its profits. I have never been paid any profits - have never asked for any. I did not know what profits were made. Not my business to know. Not R.O.F.C. by consent. Close of second Plaintiff's case.

Hearing adjourned to 9.15 a.m. tomorrow.

Sgd. E.A.J. Edmonds,
Ag. Judge.

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Evidence for the Defendants

No. 26.

Evidence of 1st Defendant - Keshavji Ramji.

16th September, 1954.

Examination-in-Chief.

No. 26.

Evidence for the Defendants

EVIDENCE OF FIRST DEFENDANT - KESHAVJI RAMJI

16/9/54. Counsel as before.

KESHAVJI RAMJI, Indian, Hindu, about 65 years, affirmed:-

Examined Murray: I am first Defendant in this case. First came to Tanganyika in 1902. I was then 17 years old. Mohanlal is 10 years younger than I. I was born in 1885 - Mohanlal in 1896. Shivji was born about 1902. Maganlal, 4th brother, came between Mohanlal and Maganlal. I stayed about 5 years in Tanganyika and then returned to India,

my brothers having remained there. I came back to Tanganyika after six months in India. I came alone, Mohanlal followed after 18 months. Father had died at about this time. On return to Tanganyika I worked as a carpenter with a German contractor and then for the Government.

In my spare time from 1908 I did carpentry on my own account until 1913. Mohanlal was at school - Shivji not born then. When war broke out I sent my wife and family and Mohanlal to India. I remained until 1916. I returned in December 1918. Mohanlal arrived in Zanzibar. I brought Shivji with me. In 1919 I was working for a soda factory. In July I started carpentry work on my own account. Shivji was then 17. He was in Zanzibar with Mohanlal. In 1921, Shivji joined me as he was sick. He worked in P.W.D. until 1923, I think. Then he started working for me. We then went to India. Mohanlal was in Zanzibar, and came to Dar es Salaam in 1923. Worked for railways for 2 or 3 years. I and Shivji went to India in 1923 and we returned in same year. Mohanlal and Shivji and I at first lived together but separated in 1924. We lived in one building but ate separately. While they worked they paid their wages to me.

In 1923 we ate together, so our maintenance was communal. Mohanlal's taxi was mine, but he paid income from it to repay me.

In 1926, I think Mohanlal went to Kimamba for work, and then returned to work for me. Arrangement was that Shivji and Mohanlal worked for me like any other employee. They received a wage. Shivji for me until 1947 and Mohanlal until 1940. Before 1948 neither once suggested they were partners with me. In 1937 I dismissed both; re-employed them; and in 1939, again dismissed Mohanlal; on each occasion they were re-engaged on instructions of elders of community. It was never suggested by them at that time that I had no right to dismiss them. They never said "we are not your employees, we are your partners".

Applications for trading licences were made by me. Bank account in my name. I paid income tax on the business income.

In 1926 Windsor Street plot was bought on 99 years lease. I arranged purchase. I paid for it.

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Defendants.

No. 26.

Evidence of 1st Defendant - Keshavji Ramji.

16th September, 1954.

Examination-in-Chief - continued.

Land registered in names of three brothers. This was done because they were my brothers. Maganlal had died before this - in 1918. He left his son Vandravan, who was at time of purchase a boy of 7 or so. I didn't enter Vandravan's name in this deed as he was too young.

I raised a loan in order to erect a building on the plot. I repaid the loan.

In 1931 I bought one freehold plot in Kisutu Street; two other plots in 1937 - three neighbouring plots; about 1947 erected building thereon. Remember about this time signing letter to Exchange Bank. This was letter (D.9). I wanted this loan for the business in order to build on these plots. The Bank prepared the document for our signature. The security given was the Windsor Street property. (Two books P1 and P2). I am shown in this as drawing a salary, but I was not drawing a salary. I cannot read these books now - my eyesight is bad. Accounts for subsequent years do not show me as drawing a salary. The clerk stopped showing me as drawing a salary. I had discovered that in these books he had shown me as drawing a salary. I pointed out that it should not have been written.

Mohanlal went to India in 1940; gave me his power of attorney (tendered and taken on record as D.12).

In 1948 I entered into two agreements; one in respect of the business and the other the properties. As regards the properties, I wanted Vandravan to have 14½% in the properties. I had wanted to give him 25%, a quarter share, as we had been four brothers. But to avoid quarrels and to induce Mohanlal and Shivji to agree, I reduced the share to 14½%. I gave Shivji 28½% in the business to persuade him to agree to 14½% share for Vandravan. Shivji would not agree to any share for Vandravan until I undertook to give him 28½% in my business. (Letter marked M for identification). I remember in 1946 when Mohanlal wished to return to Tanganyika writing to Immigration Officer on his behalf (Taken on record as Ex.D.13). (The two books P1 and P2). I did not give those books to Mohanlal. I didn't see him take them out of his shop. I still regard myself as head of family. I consider I have certain responsibilities towards them. If they were in need, I would lend or give them money. I lent Shivji Shs.15,000/- last year in March - he was in need. (After recess of 10 minutes).

O'Donovan: Asks that evidence of this witness had been interrupted so that Clerk of Magistrate's Court may be taken. Order accordingly.

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Defendants.

No. 27

Evidence of Jayantilal Ganpatram Acharya - 16th September, 1954.

Statement to Produce and Document.

No. 27.

EVIDENCE OF JAYANTILAL GANPATRAM ACHARYA.

JAYANTILAL GANPATRAM ACHARYA, Hindu, affirmed :-

Examined O'Donovan: Chief Clerk, Resident Magistrate's Court (asks witness to produce document exhibited in C.C.879/50).

Master objects to production. Document declaring an interest of plots of land some of which are registered and some not. The document not being registered is not admissible in evidence. Vol. II Laws Cap.117, p.1569, Sec.8(1)(a) and 10. There is a counter-claim for specific performance based on this agreement. Cap.116, Sec.83(3), p.1550. This document relates to both types of land.

O'Donovan: Document purports to be registered in the optional register in 1951 - admissible after registration in its present form. In any event, not a document which requires registration because it is a document which gives no right except to an equitable claim that it be specifically enforced - if parties to it can be compelled to execute conveyance. Sec.8(2)(vi) - P.3 of the translation of the document not drafted by lawyer. This document not referred to in order. Agreement for sale not compulsorily executable. It has been registered in only place it could be.

Master: Sec.12 of Cap.117. This document is declaration of an existing right.

Order: Objection to admission of document as evidence over-ruled.

Evidence of Witness Continues:

(Document taken on record and marked Ex.D.14 - Court)

No Cross-examination.

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No. 27A.

Evidence of 1st Defendant Keshavji Ramji resumed. 16th September, 1954.

Cross-Examination.

No. 27A.

EVIDENCE OF FIRST DEFENDANT KESHAVJI RAMJI Resumed

First Defendant's evidence resumed - reminded of his affirmation :-

Examination-in-chief continues: I see this document (Ex.D14). I remember signing it in January

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Defendants.

No.27A.

Evidence of 1st Defendant Keshavji Ramji resumed.

16th September, 1954.

Cross-Examination - continued.

1948 giving Vandravan 14½% in the properties. I signed it on behalf of Mohanlal and for myself. Shivji signed it and Vandravan.

Cross-examined Master: I signed on behalf of Mohanlal as I had his general Power of Attorney which I have produced (Ex.D.12). This power gave me a right to make a gift of a portion of his property. I had full authority. I had no authority other than this Power of Attorney.

I gave Vandravan 14½% share in properties and agreed to give Shivji 28½% in business in order that brothers should not quarrel. I did this to induce Shivji and Mohanlal to give Vandravan 14½% share in properties. This did not mean we three brothers each had 28½% in the business. I gave only Shivji 28½% of my business. The balance was mine.

Question: What benefit did Mohanlal get for giving away 14½% to Vandravan?

Answer: None. I used my authority to give the 14½% to Vandravan on Mohanlal's behalf. I claim to be head and dictator of the family.

In 1918 Mohanlal was in Government Service in Zanzibar. It was his wish to leave and work for me. I did not order him to come to me. I don't know if he had secured work before he left Zanzibar. Can't remember but it may be that he worked for a month for me after his arrival.

I paid wages to him and Shivji, when they worked for me. Mohanlal worked for me in 1926 - salary, 300/- about - when he left in 1948 or 1949 his salary was Shs.600/- and Shs.1,000/- respectively. He went to India in 1940, on his return he continued to work in my business.

Their wages were credited to their accounts. They owed me money having overdrawn their accounts. They had drawn more than their salary. They got advances through my clerk SHAH on my authority. They could draw whatever they liked. I used to draw for my household expenses; our respective accounts were debited.

In beginning we lived together and had a joint

kitchen. I paid all expenses. I did not debit in the business books their share of expenses. When we had separate kitchens, they paid their own bills and deposit (sic) balance with me. They paid their household expenses from the money which they drew from their salaries.

(The properties). In 1926 I bought Windsor Street plot. Document in name of our three brothers. Rents were paid into my business account at the Bank. I wanted to give my brothers a present of a share in the property. I gave instructions for drawing the document. I said it was to be drawn in the names of my three brothers and Maganlal. When I went to execute it, Maganlal was dead and I was told his name would have to be taken out. I was told Vandravan's name couldn't be put in as he was too young. The District Officer told me. Can't remember his name now.

I know in 1926 there were advocates in Dar es Salaam. I knew some of them. I did not go to seek advice from one of them.

Question: Why didn't you have another document made when Vandravan came of age?

It was not necessary. I wanted to avoid quarrel. In 1937 or 1938 the boy started to work in my business. I didn't give him a 14½% share because he was working for me. I did not have the property transferred to the names of the three brothers because we were partners. It was intended to use the plot as workshop.

Building on Windsor Street completed in 1929. Cost Shs.135,000/- about. Did not put our workshop there - leased it. In last 20 years I have received rent - don't know how much; may be Shs. 400,000/-. Can't remember who my clerk in 1929 was. I am calling present clerk Shah; he started in 1930 or 1931. All the rent I received I put into the workshop business. I made use of all the rent because I paid for the building. The plot and building belong to all of us. The rent was utilised in paying the loan; also money from the workshop.

(Kisutu Plots). Mohanlal did not buy four plots at Kisutu in 1935. If he had my books they would show it. I have the documents of the Kisutu plots. I can produce them. The plots are in names of

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Defendants.

No. 27A.

Evidence of 1st Defendant Keshavji Ramji resumed.

16th September, 1954.

Cross-Examination - continued.

three brothers. I remember applying for first registration; titles issued in 1947. I applied for first registration about 2 or 4 months before I got titles.

Question: Why didn't you include Vandravan's name? No reason. Properties not bought from joint sweat of us three brothers.

For first years, earnings in shop was good, sometimes low, but I got my brothers earning from outside, including taxi.

From 1932 to 1937 I was in India for a change. Wasn't working. Got my daughter married. I put up some buildings while there for the joint family - three brothers and Vandravan. Money therefor came from the shop business. Did no business in India.

Remember taking a loan from Exchange Bank - for about Shs.85,000/-. My eyesight was good but do not know English though I can read a little. I arranged loan personally - 1947.

Question: Why in document (P11) to Bank say you all three carrying on business?

Answer: Because the title was in the name of the three brothers. I was asked to sign this as asked by the Bank Manager. I can sign in English, but not read it. The reason was not that all three brothers were in partnership. It was only because of the three names on the document. Account in Bank in my own name.

Question: How did manager know you were in business together?

Answer: Don't know. I registered the loan through Shivji. He was then working as manager. I wanted to make my brothers liable with me if I couldn't repay loan. They were not partners in liabilities or in any form.

When in India responsibility for shop rested in Mohanlal and Shivji. Mohanlal however had to do all things, including opening of branches. He could deal with shop as though his own. When in India I wrote several letters. Do not remember that in all these letters I have written to my

brothers as partners. I wrote they were responsible for liabilities - as manager he would be. I don't know if I wrote saying they had a share in the income.

12 noon. Hearing adjourned to 2.15 p.m.

At 2.15 p.m.

Cross-Examination 1st Defendant continues:

I bought some plots in my own name; price paid from my Bank account. To that account I paid income from workshop and from rents of joint properties. When Mohanlal was working in Railways his wages were paid into my Bank Account.

I did not pay to Mohanlal the rents from the buildings in our joint names until a court order after his suit was filed. Mohanlal separated from me in 1949. From 1949 until this order I did not pay him his share. I managed the properties and collected the rents. After the order I paid the rent accrued from month to month, not arrears.

I take pride in being the elder brother and head of family. I dismissed Mohanlal twice from my service because his work was not satisfactory and because of family troubles. I also dismissed Shivji for same reason. I considered I had right to dismiss them.

In 1947 I had no quarrel with Shivji. I filed an action against Shivji's son-in-law but no quarrel between me and Shivji.

Question: Why not dismiss Shivji instead of giving him 28½% in your business?

Answer: I gave him this share to please him.

Question: Why did you appoint two arbitrators?

Answer: In order to decide how much to give to Shivji. The arbitrators suggested the shares in the properties. They did not suggest the same shares in the business. Shivji got a share in the business because he worked more than Mohanlal. The latter stayed in India long and has had his share.

In the High Court of Tanganyika at Dar es Salaam

Evidence for the Defendants.

No.27A.

Evidence of 1st Defendant Keshavji Ramji resumed.

16th September, 1954.

Cross-Examination - continued.

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Defendants.

No. 27A.

Evidence of 1st Defendant Keshavji Ramji resumed.

16th September, 1954.

Cross-Examination - continued.

He was there to do business for me. Business in India was to be carried on in partnership but shares to be dictated by me. Machinery taken by Mohanlal from East Africa for business in India; no machinery was bought in India.

Same machinery brought back. I sent money to Mohanlal for the business in India. I have debited money sent to him to machinery account and to his account. No factory was started there because of the war against Japan. We closed our business there. Mohanlal remained in India of his own wish. I didn't ask him to return soon.

I converted my business into a limited liability Company in March 1950 - paid up shares of Shs.200,000/-. Transferred all business assets to that Company. Only shareholders myself, my wife, my daughter Vandravan and his son. I may have written informing Mohanlal that I intended to form Company. Don't remember suggesting to him that shares should be 59 for each brother and 29 for Vandravan.

Whatever happened 2 or 3 years ago I can't remember. My mind is not so good. I can recall the past.

Dastur taking over with consent of O'Donovan:

I was writing to Mohanlal while he was in India. In those letters I gave him details of business here and wrote to him to supply details of the business in India. My brothers know my handwriting, so does Vandravan. I wrote hundreds of letters to Mohanlal. (Letter P7 - This letter is read to witness). Yes, I had taken a loan of Shs.100,000/- for the business.

I admit that in my letters I have described the business as our business, and as to its debts as our debts. He was manager; so I used the plural. (Letter No. 256 in Ex.P3 - translation 19 in P5). Yes I referred to our work in this letter.

Letter P8 -(letter read to witness re division of shares - Ct.). In mentioning division of shares into 57, 57, 57 and 29 I mentioned no names. It was according to my wish to distribute those shares as I pleased. I was writing to Mohanlal as a brother.

Question: Why did Mohanlal leave the business?

Answer: It was his wish. Also he might not have agreed to the terms I suggested.

Cross-examined Patel: Shivji came to Dar es Salaam in 1922 or 1923; he didn't come in 1919. I might be mistaken. It is a long time ago - about 30 years ago. I started my business, then Shivji joined me and worked until end 1920. Then he joined P.W.D. pay 9/20 per day. Before going to India to marry he again joined me. He was paid 8/- or 9/- a day.

When I was in India I did not borrow money in name of my father. I was there 2 months - did no business. I borrowed money myself for my business in Dar es Salaam. I repaid it from the business.

(The agreement of 1948). It was not made because of trouble with Chavda. There was a law suit between Chavda and another man. I gave evidence against Chavda. I was a defendant in the suit. In 1950 I filed a suit against Chavda. I am on neither good nor bad terms with him. This has not caused a dispute between Chivji and me.

I dismissed Chivji once. He may have objected that he was a partner, not an employee. It may be that my advocates withdrew my order of dismissal on my instructions as I wished to settle the matter. I don't remember the letter.

(The agreement of 1948 for retirement of Chivji): The arbitrators had examined my books in my office before the agreement was signed - had done this in December. Thaker was in a bank; he examined my books at night. The award was signed about half an hour after the agreement at Kara's house. Shivji had no information as to state of my books and accounts.

(The properties). I have not supplied an account of my dealing with the properties. I have many letters from Shivji. He has complained about the rents - every month he gets a statement - ever since the agreement of 1948.

Re-examined Murray: Before 1948 Shivji had first access to books of business. He was my manager.

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Defendants.

No. 27A.

Evidence of 1st Defendant Koshavji Ramji resumed.

16th September, 1954.

Cross-Examination - continued.

Re-Examination.

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Defendants.

No. 27A.

Evidence of 1st Defendant Keshavji Ramji resumed.

16th September, 1954.

Re-Examination - continued.

It was not my intention to deprive Mohanlal of any benefits by the agreement of 1948. I did instruct Chitale, my advocate, to draw up a document giving him a share in the business. Mohanlal did not agree. I offered him 40%

I kept the proceeds of the joint properties. Mohanlal had had his own account. I credited to that account his share of rents every month after capital borrowed was repaid.

(The business in India during war): No decision was taken as to what the terms of partnership should be.

By the Court: I gave my brothers a share in my properties because they had worked for me. I gave share in business to Shivji and was prepared to give a share to Mohanlal - 40%. He refused this. These interests I wished to give my brothers because they had worked for me, not because they were entitled to them as partners. They were not partners. Vandravan's share was also a gift because he was the son of my dead brother.

Not R.O.F.C. by consent.

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No. 28.

Evidence of 2nd Defendant Witness Amratlal Chatrabhuj Shah.

16th September, 1954.

Examination-in-Chief.

No. 28.

EVIDENCE OF SECOND DEFENDANT WITNESS AMRATLAL CHATRABHUJ SHAH

D.W.2.

AMRATLAL CHATRABHUJ SHAH, Indian, Hindu, affirmed:-

Examined: I have been in first Defendant's service since 1930. I started keeping his books then. I look at document (marked N for identification). I recall this letter. I typed it out on instructions from Mohanlal. I don't know if it was signed (tendered; no objection and taken on record Exhibit D.15).

The book shown to me is a ledger for 1932 (marked O for identification - now taken on record

as D.16). I kept this. I see book P.1. It shows four persons credited with monthly to salaries at the pages flagged. This book not kept by me. Shows 1st Defendant drawing salary. I continued showing this until Keshavji told me to discontinue some time in 1931. Mohanlal and Shivji were shown as drawing salaries as before.

The ledger (D.16.1932) shows Mohanlal's account on page 109; each month credited with Shs. 300/-; debited sometimes with cash and other odd amounts paid for him. Shivji's account page 182 - credited with Shs.300/-; same system as to debits. I continued with this system while they continued in business. Books for subsequent years are available in Court for inspection.

Keshavji's account is at page 89 - in D.16. He is not credited with regular amounts or anything - he is debited with his drawings. His account is an open drawing account - shows no balance. Accounts for his two brothers are to be balanced. I recall properties being acquired.

In first place carpentry business advanced money for purchase of properties - the first was Windsor Street - account opened for it; later accounts opened for other properties. The business would be credited with money advanced to property and the property account debited with advance. When rents were received, the property account is credited and the business is debited with rents.

First thing the business Shivji Ramji does is to take his advances back as they were repaid by the properties; then stage would be reached when he was completely repaid and property accounts became in credit. The credit balance was divided into three and credited to each partner in the building account. First account was described as New Building Account, the Keshavji Ramji and Brothers Building Account. The profits from buildings were kept entirely separate from profits in carpentry business. In effect Keshavji, carpenter, was banker for his brothers building ventures. Never divided the profits of carpentry business into three.

To my understanding, Shivji and Mohanlal were partners in buildings but not in carpentry business.

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Defendants.

No. 28.

Evidence of 2nd Defendant Witness Amratlal Chatrabhuj Shah.

16th September, 1954.

Examination-in-Chief - continued.

Had they been partners in whole business would not have kept books in same way; had they been partners in business, they would have been credited with profits from business and buildings.

Mohanlal's account after crediting all salary and share of rents up to date shows a debit balance of about Shs.55,000/- due by Mohanlal to Keshavji, the account being overdrawn.

(Witness asked to show from books available example of credits of rents to buildings partners - Court).

This is a ledger in respect of 1947. Mohanlal's account at page 8 shows credits of rents. Shivji's account page 9 - his account credited with rents. There are impersonal accounts which are separate from salary accounts. (Ledger taken on record as D.17) This is a personal ledger. Shivji's account at page 167; salary Shs. 575/-. Mohanlal was in India; his account page 113 shows remittances to India (Ledger taken on record as D.18).

Personal ledger for 1948 (Exhibit D.19). Mohanlal's account page 136 credited with salary Shs.600/-.

Personal ledger 1949 (Exhibit D.20). His account 200/- credited with Shs.1,000/-. Keshavji's account in D.17 on page 28. No salaries credited - just drawings.

Have not since 1931 credited Keshavji with any salary.

I compiled Income Tax Returns for 1940. I produce my file (D.21). Keshavji alone was assessed on income of the business. Salaries of brothers shown on list of outgoings to staff. Mohanlal and Shivji described as manager and assistant manager.

The two Plaintiffs could have inspected these books had they wanted. Mohanlal and Shivji paid income tax on salary and income from rents - or should have done. I see the letter put to me ID.11). I remember it. I typed it on Shivji's instructions. I placed it on his table to sign. I imagine he signed it - letters typed are normally signed. Hearing adjourned to 9 a.m. tomorrow.

Sgd. E.A.J. Edmonds,
Ag.Judge (16.9.54).

17/9/54. Counsel as before.

D.W.2. reminded of his affirmation.

Cross-examined Dastur: I was engaged as accounts clerk as well as correspondence clerk to the business. I was in charge of both departments under directions of Keshavji, but sometimes Mohanlal and sometimes Shivji. I was the only clerk. Stationery was kept in open cupboard in office. I look at printed letter head - it is one of the type used by the business (tendered and taken on record as P.16). The nature of business is described in plural.

The oldest book I produced yesterday was for 1932 - have not produced any prior to 1932. The books before 1932 are not in the office. Haven't seen them recently - may have seen them 15 to 16 years ago. I joined business in 1930 - can't remember if I saw the old books there. I wrote up the books for 1931 but have not seen these for some time. When I joined there were only the current books of the year and I continued with them. (P.1 and P.2 shown to witness). I have not seen P.2 before; I have seen P.1 - it relates to 1930. The books I have brought to Court have been brought on Keshavji's instructions. I have no idea what has happened to the books prior to 1930. (Refer to 1932 book - P.16). I first entered salaries of the two brothers in 1930 and in 1931.

I joined in August 1930. Haven't got the books for August. First entry in 1932 book of salaries is 30th January, 1932; the book was opened on 1st January, 1932. In January, 1932, Keshavji does not appear as drawing a salary.

When I joined business salaries were being credited to all three brothers, but in about 1931 Keshavji instructed me to cease showing him drawing a salary. He went to India in 1931. He gave no reason why I was to change the system.

(The book P.16). I see Mohanlal's account - in the first six months of 1932; he drew about Shs.400/-. He was credited with Shs. 300/- per month salary. His credit balance remained in the business. Shivji drew Shs. 1,700/- approximately in that period. No receipts were given by them in respect of their drawings. No such procedure.

When Keshavji told me to stop crediting him

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Defendants.

No. 28.
Evidence of 2nd Defendant Witness Amratlal Chatrabhuj Shah.

17th September, 1954.

Cross-Examination.

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Defendants.

No. 28.
Evidence of 2nd Defendant Witness Amratlal Chatrabhuj Shah.

17th September, 1954.

Cross-Examination - continued.

with salary I did not consult the two brothers; no necessity as he was in charge.

When Keshavji was in India from 1931 to 1937 certain monies were sent to him - debited to his personal account. Mohanlal told me to debit him. Keshavji gave me no instructions. When Mohanlal went to India, monies that were sent to him were debited partly to him personally, partly to machinery maintenance account. He was credited with his salary. I produce ledger for 1940. Mohanlal was not credited with salary in December; remittances of about 4,000/- are debited to him. (Ledger 1940 - Exhibit P.17). This is 1941 Ledger. He was credited with 2,931/- in one lump sum at end of year as salary - about Shs. 2,500/- was remitted to him. The salary entry is not a recent one. It was not interposed (Ledger 1941 - Ex.P.18).

Ledger 1942 - salary 225/- regular monthly remittances on withdrawals approximately Shs.2,400/-. These entries made on instructions of Keshavji. January ledger has 1943 entries - salary 225/- monthly regular credits - remittances to India. Shs. 2,800/- approximately. (Ledger 1942/43 - Exhibit P.19).

Ledger 1944/45 - salary 225/- monthly - regular credits. Remittances above Shs.3,600/- at end of December, salary credits were cancelled on instructions of Keshavji.

Don't know why 1945 salary credited but cancelled at end of year - remittances Shs. 2,500/- (Ledger 1944/45 Ex. P.20).

Ledger 1946 - salary credited for 2 months - 225/- per month - remittances Shs.4,000/- approximately (ledger 1946 Ext. P.21).

Exhibit D.18 - Ledger 1947 - no salary credited - remittances Shs. 9,700/- don't know the purpose of remittances.

Keshavji did not inform me that Mohanlal had been sent to India to open a partnership business. (The properties) - separate account for each property - in the books of the business.

(Ledger P.16) Building account at P.15 - expenses on debit side - rent on credit side. There

was then one building as far as I remember. No separate banking account for the buildings. As far as I know the building was the joint property of the three brothers. It was not until about 1944 that I adjusted the account and started crediting each brother with share of rents - debiting each with a third of cost. This was after cost of building paid off.

In 1943 debit balance of Windsor Street property was cleared. Each brother has been credited all that is due to him from rents of the joint buildings. When Mohanlal left for India in 1940 he did not ask me what the position of the building account was. He might have done, but I don't recall the matter.

The paper produced to me is not in my handwriting. I did not type this paper. The typed summary is not correct in accordance with the books (taken on record Exhibit P.22). This summary is in my hand - it is a rough summary of actual received (sic) but no mortgage interest charges and other items are included as in the building account. The typed summary appears to be a correct copy of the written document (Letter put in Exhibit P.23).

Interest on mortgage has always been debited to the building account. The share of rent was not paid out to brothers. Interest was not credited to them for use of money by business.

There is not a general loan account - there is a Mombasa loan account starting 1936 or 1937.

In 1947 an employee was receiving salary of Shs.375/- Shivji Shs.575/-. In 1948 the former got Shs.450/- rising to Shs.550/-, Shivji had then left. Mohanlal 600/- per month 1948.

Keshavji gave me my orders as to Income Tax Returns. When Mohanlal was absent in India, I don't remember if I submitted returns.

Agreement of January 1948 - rent accounts were adjusted to show shares of partners as 28⅔% on instructions of Keshavji.

Cross-Examined Patel: (Title deed P.12). Loan of Shs.30,000/- raised - I wasn't with business then, don't know where it was credited. In 1930 Shs. 60,000/- was borrowed - ledger not available. Don't

In the High Court of Tanganyika at Dar es Salaam.

Evidence for the Defendants.

No. 28.
Evidence of 2nd Defendant Witness Amratlal Chatrabhuj Shah.

17th September, 1954.

Cross-Examination by Patel - continued.

know if it was paid up that year. In 1935 - Shs. 40,000/- borrowed. In 1935 ledger I cannot find a credit or debit of this sum to any account in the books - some pages are torn out of 1936 ledger - pages 56 to 385. If a property is mortgaged, the property account should normally be credited. The property account in the books of the business was not credited. There is no entry in the cash book. The property account was not debited with interest. There was a separate interest account. The interest was not debited against the properties of the business, but I debited the interest to the property account - the loan account and interest debited was kept separate from the business. In 1939 onwards profits and loss accounts were made out - but the interest on the mortgage was not included in those accounts. Profits of business in 1939 was Shs.6,560/-. There was no interest account taken into consideration in preparing profit and loss account.

There is a business interest account and a partnership account in the name of Mombasa Company. Up to 1944 interest was kept separate but not debited to property account. Employees drew their salaries in cash - but not in case of Mohanlal and Shivji - they drew as they required. I have never supplied them with a statement of their accounts - they never asked for them.

Re-examination

Re-examined O'Donovan: Keshavji went to India in December 1931 - returned in May 1937. While he was away it was under Mohanlal's directions that I kept accounts. Books were available for him to look at.

When property was bought, the business would finance it and then get paid back out of rents. Keshavji did not in the carpentry business charge interest to the property account.

Not R.O.F.C. by consent.

No. 29.

In the High Court of Tanganyika at Dar es Salaam.

No. 29.

Address by O'Donovan for Defendants.

17th September, 1954.

## ADDRESS BY O'DONOVAN FOR DEFENDANTS.

O'Donovan - Close of Defendants case.

The background of the parties - came of race and family with tradition of family unity - concept of partnership known to be most difficult to follow. Shivji saw no difference between partnership and joint Hindu family. Naturally, not same in personal treatment between brothers as between ordinary master and servant.

Plaintiffs must prove there was precise relationship of partnership - entitled to share profits and liable to share losses. What would Plaintiff's position have been if business failed; would defendants have had a hope of succeeding in establishing their liability - in face of the books.

Joint Hindu family not pleaded - 2nd Defendant not recognised as being entitled to anything, although if joint Hindu family he would be.

No written agreement proving partnership - not essential.

1. Conduct of parties - made in which each has dealt with third parties.

2. Conduct in relationship to each other.

As regards 1 - Lindley 11th Ed. 117.

Plaintiffs have a copy of one letter to Exchange Bank - remained with 1930 account from office - that one letter to set against an overwhelming mass of documents - Banks, advocates, authorities, Courts - so far as they are concerned - business that of first Defendant. Intention to represent to third parties that business was that of the first Defendant. What object? Unless true position. This cloak for 35 years.

Letter to Exchange Bank - an admission ? Lindley 115 - inconclusiveness - money borrowed on security of property owned by the three brothers - bank draft letter - which Shivji and Keshavji sign - Shivji manager, speak and read English - not first Defendant. Whole case founded on this letter - but it is quite inconclusive - Shivji's letter to

In the High Court of Tanganyika at Dar es Salaam.

No.29.

Address by O'Donovan for Defendants.

17th September, 1954 - continued.

Income Tax authorities - no ambiguity there - if not true, a criminal misrepresentation.

3. Even more suggestive - if partners, curious that books since 1932 don't support them.

Did Keshavji decide then to assist them - hence division not even in the books, of profit of business - not reconciliable with partnership. Both Plaintiffs say they never looked at the books - yet for 6 years Keshavji was in India. Mohanlal was in charge, in such a position did he have no idea what was in them?

The property account Keshavji Ramji and brothers building account - separate calculation and distribution of profits from properties - but not in respect of business, clearly not partners in business.

From 1932 onwards (early years under Mohanlal management) first Defendant never credited with salary - two brothers were - The book of 1930 removed by Mohanlal - what explanation for stopping doing this 20 years ago. Keshavji paid Income Tax on whole profits of business but on only a share of profits from properties.

Share in buildings do not indicate share in business - Closer examination shows separation of the business from properties.

Exhibit P.8 page 2 at top. Keshavji's private buildings have no connection with factory. Last page P.23 last page - brothers debited with cost of work done in shop for building - 1930.

The correspondence - hundreds of letters - can only produce a few to show plural used - our business. Significant feature and overall picture - Keshavji giving orders - egotistical tones. The owner - not only the elder.

In 1937 Keshavji dismissed both. In 1938, dismissed one. In 1940 onwards - if profits divided into three, income tax in total would have been less. Why not register - 5/- fee.

Mohanlal can't be in stronger position than Shivji. They stand or fall together. In 1948 Shivji signs agreement which describes business belonging to Keshavji. Cause of trouble - because first Defendant wished his nephew to have a share -

In the High Court of Tanganyika at Dar es Salaam.

No.29.

Address by O'Donovan for Defendants.

17th September, 1954 - continued.

Shivji wouldn't agree without inducement - first Defendant intended to let Mohanlal have same interest - but later refused.

Burden on Plaintiffs - evidence is consistent only with family association.

Shivji rescinded agreement - his efforts to do so pathetic, alleges fraud - fails even to suggest it- He attacks procedure of second part of agreement but he seeks to upset the first part. No suggestion of repaying the money Shs. 50,000/- paid under the agreement.

Vandravan - specific performance.

Agreement void for lack of consideration - fails because -

1. Shivji agreed to 14½% otherwise he might have lost 28½%.

2. Mohanlal was offered 40%.

3. Not necessary that consideration should flow from promise so long as consideration to Shivji sufficient.

On face of agreement, a good consideration is disclosed - Vandravan undertakes liability to Bank to exclusion of Shivji.

Suggested it cannot bind Mohanlal, as Keshavji had no right to do it. It was a matter within his ostensible authority - he could bind Mohanlal - remedy, if breach of trust, is by Mohanlal against Keshavji but not Vandravan - damages or compensation from Keshavji but third party cannot be made to suffer, for wrongful, if so, act of agent.

New Issue - Is the claim for specific performance barred by limitation.

Hearing adjourned to 2.15 p.m.

At 2.15 p.m.

O'Donovan. First New Issue.

On the issue of time-bar of claim for specific performance. Article 113. Indian Limitation Act. 3 bars from date of performance, or, where no date fixed, the date of repudiation.

Agreement does not prescribe any date. Time could not commence running until repudiated by notice to second Defendant. Only evidence of any notice is

In the High Court of Tanganyika at Dar es Salaam.

filing of suit September 1950. Burden of proof on Plaintiffs who allege limitation. May have been a letter in May 1950. Claim for specific performance November, 1951.

No need to find unless evidence adduced that out of time last issue - appointment of Receiver (Framed - should a Receiver of the properties be appointed?). etc. claimed on grounds that first Defendant has managed properties without reference to co-tenants and has not accounted for rents.

No.29.

Address by O'Donovan for Defendants.

17th September, 1954 - continued.

Each Plaintiff to prove mis-management of some sort - Shivji a party to agreement of 15th January, 1948, whereby first Defendant was to be sole manager of properties for five years. No complaint if that authority made use of up to date he left firm, had access to accounts - never asked for them - said he was disinterested. No complaint. Mohanlal - same observations - evidence that statements have been submitted since then "separated" regular payments made since filing of suit - Plaintiffs overdrawn prefer(?) suit. Neither has proved any mismanagement as to justify appointment Receiver and the sale of properties. (Court, Further Issue: In what properties have first and second Plaintiffs an interest?) What properties involved? Shivji bound by agreement of January 1948 - has been paid out his interest in business - which would include any interest in other properties. Mohanlal if he succeeded in establishing partnership, he would be entitled to share in all assets of partnership.

If no partnership, no proof of properties other than those in agreement of January 1948 crumbles (sic) away. Ask for dismissal of suit and specific performance.

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No.30.

Address by Master for 1st Plaintiff.

17th September, 1954.

No. 30.

ADDRESS BY MASTER FOR FIRST PLAINTIFF.

Master: Have endeavoured to keep out element of crime. But Keshavji has described Vandravan as his son in Income Tax Returns - Criminal.

In Hindu law, a brother does not take interest by property acquired by another property. Hindu law or custom must be proved by expert evidence.

Agreement about the properties - signed by Keshavji on behalf of Mohanlal reporting to give away his property. Power of Attorney in Court does not authorise Keshavji to act in this way. An agreement through wrongful act cannot bind principal and give a good title.

Mohanlal not a party to the agreement. Consideration - what did Mohanlal get - what did V (sic) give? No consideration - this agreement cannot be specifically performed as against Mohanlal.

Partnership: The conduct of the parties 1931 (I) EACA 5. Mohanlal in Government service Zanzibar - comes to Dar es Salaam - took up an appointment in Railways, so did Shivji - whole salary put into workshop - Keshavji admitted funds being so low, salaries helped out, all rent went into business and used for business; each brother drew what he liked. Title deed in Court and loans were taken for use in the business. Davis v. Davis 1894 (I) Ch. Div. 393 at 401. All income whatever source went into one common fund. Keshavji's salary - In 1930 salary was credited to Keshavji - no books confirm this - Defendant to produce them - suggest that for 10 years this has been done.

(Murray: No evidence of this).

Why was this done in 1930 - why was it stopped? When Mohanlal was in India, sometimes he was credited with salary sometimes not - on Keshavji's instructions. Keshavji did just what he liked.

Keshavji says Mohanlal went to India with idea of starting business in partnership - machinery provided from business in East Africa - indication a partnership - then later machinery returned to business. Mohanlal would not have left Government service to take up other service - he went to take a partnership.

The salaries books entries - Money sent to Mohanlal in India debited to him personally - these debits unfair if he is a partner in India - He alone carries the burden.

Mohanlal refused the offer of 40% share because it was to date only from 1948 or 1949 - no objection to Vandravan. Shivji was given a share from beginning - why not Mohanlal.

In the High Court of Tanganyika at Dar es Salaam.

No.30.

Address by Master for 1st Plaintiff.

17th September, 1954 - continued.

Keshavji says two agreements made to avoid quarrel with brothers. Then why wasn't Mohanlal given the same consideration as Shivji.

Then all public documents and papers in name of Keshavji Ramji - but from beginning business carried on in name of Keshavji Ramji. Letter heads show description of nature of business in plural. The letter to the Bank showing all as partners - Keshavji signed the letter - 2 May, 1947 - admission. Correspondence between the parties - 2 letters - P.5 page 7.10 "we" - "our".

The general picture of the conduct of the partners. If buildings a gift from Keshavji, then they were a gift from the beginning - rents should have been credited all the time to the brothers. Not pursuing application for appointment of receiver unless Court decides to order sale of properties.

Joint owners can claim partition - but if partition not possible alternative is sale.

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No.31.

Address by Patel for 2nd Plaintiff.

17th September, 1954.

No. 31.

ADDRESS BY PATEL FOR SECOND PLAINTIFF

Patel: I adopt Master's arguments on partnership. Mohanlal and Shivji were dormant partners - money raised on property was not credited to property account but went into general revenue of business which is evidence of partnership. No P & L account before 1939. Interest on loans - not charged to property account.

The agreement of retirement - cancellation thereof - undue influence, mistake to rights at law - Keshavji being in control of accounts of partnership. Keshavji admitted he was in loco parentis - at that time Shivji had no knowledge of position of business.

Shivji not sure of his right at law at time of agreement; he was wrongly advised.

Strige v. Strige 50 ER 1049 E & E Digest V. 24 page 959 Case 122 - Case 123.

Specific performance of agreement. The agreement is merely authority to Keshavji to manage property for 5 years - not an agreement to transfer any property - there is nothing which Vandravan can specifically enforce. No consideration mentioned on passing. 35 E & E Digest page 96 Case 50.

Limitation - I have abandoned this.

C.A.V.

(Sgd.) E.A.J. Edmonds,
Ag. Judge.
17/9/54.

In the High Court of Tanganyika at Dar es Salaam.

No.31.

Address by Patel for 2nd Plaintiff.

17th September, 1954 - continued.

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No. 32.

No.32.

JUDGMENT OF TRIAL, ACTING JUDGE, E.A.J. EDMONDS.

Judgment of Trial Judge Acting Judge E.A.J. Edmonds.

5th October, 1954.

5/10/54. JUDGMENT

EDMONDS, Ag. J. - The first Plaintiff filed an action against his brothers, the second plaintiff (originally cited as the second Defendant) and the first Defendant alleging that the business carried on in the name of the first Defendant at Dar es Salaam had been carried on in partnership by the three brothers from 1920, under the control and management of the first Defendant, until 1st January 1948 when the second Plaintiff retired from the partnership after being paid out his share of the partnership business by the first Defendant. It was also alleged in the plaint that certain immovable property listed in the schedule attached to the plaint had been acquired out of the profits of the business and was held in equal shares by the brothers, that the first Defendant had managed and collected the rents and profits of the properties, and that he had failed to render accounts in respect thereof or to make any payment therefrom to the first Plaintiff in respect of his share. The first Plaintiff claimed against the first Defendant:

(1) A declaration that the partnership stood dissolved on or about 11th March 1950 or that it be dissolved by decree of the Court.

(2) An account of the partnership business.

In the High Court of Tanganyika at Dar es Salaam.

No.32.

Judgment of Trial Judge Acting Judge E.A.J. Edmonds.

5th October, 1954 - continued

(3) That the first defendant be directed to pay to the first Plaintiff the amount found due after the accounts had been taken.

He further claimed against both Defendants jointly and severally an account of the properties described in the Schedule to his plaint, the appointment of a receiver and the sale of the properties and distribution of the proceeds amongst the three brothers. In his written statement of defence the first Defendant denied the existence of the partnership, claimed that certain of the properties listed in the Schedule were the exclusive property of himself, asserted that the balance of the properties were held by the parties and one Vandravan Maganlal, as tenants-in-common and that the first Defendant as manager thereof had accounted to the first Plaintiff for all rents accruing therefrom, and prayed that the suit be dismissed with costs. The second Plaintiff (then the second Defendant) filed a written statement of defence admitting the main allegations in the plaint but denying that, save for the sum of Shs.50,501/- he had been paid his share of the partnership or that the partnership accounts had been adjusted. He then went on to allege that he was, as a result of misrepresentation, fraud and undue influence, induced to enter into a written agreement to retire from the partnership business and to accept as his share thereof the aforementioned sum, and he claimed that as a result of the misrepresentation, fraud and undue influence he was entitled to avoid the agreement. He prayed for an order declaring the agreement void and generally in other respects repeated the prayer of the first Plaintiff. Subsequently as a result of applications to this Court (the ruling as to one of which was the subject of an appeal to the Court of Appeal for Eastern Africa) it was ordered that the second Defendant be transferred to the category of a second Plaintiff and that Vandravan Maganlal be added as a second Defendant. The first Defendant then filed a further written statement of defence to meet the allegations contained in the plaint (originally filed as a written statement of defence) of the second Plaintiff. He repeated his defence to the plaint of the first Plaintiff and added that any interest which the second Plaintiff had in the business, whether as partner or otherwise (which was denied) was extinguished by an agreement dated 15th January

1948. The first Defendant denied that the second Plaintiff was induced by any misrepresentation, fraud or undue influence to enter into the agreement, and further denied that he was entitled to avoid the agreement. The second Defendant filed a written statement of defence supporting the first Defendant's claim to exclusive ownership of certain properties mentioned by the latter in his written statement of defence, and claiming by virtue of another agreement dated 15th January 1948 an undivided 14½% share in the remaining properties. He prayed for an order for specific performance of the agreement by the transfer to himself of his undivided share. To this claim the first Plaintiff replied denying that the second Defendant had any share in these properties on the grounds that he was not a party to the agreement or, alternatively, the agreement was void for want of consideration.

The following preliminary issues were framed:-

(1) Is or was the first Plaintiff a partner of the first Defendant in the business carried on in the name or style of Keshavji Ramji?

(2) Is the second Defendant entitled to any share in the properties mentioned in the written statement of defence of the first Defendant?

(3) Is the second Plaintiff entitled to avoid the agreement of 15th January 1948?

At the close of the evidence and during Mr.O'Donovan's address to the Court the following issues were added:-

(4) Is the claim for specific performance barred by limitation?

(5) Is the appointment of a receiver of the properties justified?

(6) In what properties have the first and second Plaintiffs an interest?

As regards the first issue, the question affects the second Plaintiff as much as the first Plaintiff. The second Plaintiff maintains equally with the first Plaintiff that the business in the first Defendant's name was in reality a partnership of the three brothers, and he seeks to avoid the agreement between him and the first Defendant of 1st January 1948 whereby he purported to accept

In the High Court of Tanganyika at Dar es Salaam.

No.32.

Judgment of Trial Judge - Acting Judge E.A.J. Edmonds.

5th October, 1954 - continued.

a gift of a 28½% share in the business of Keshavji Ramji. There is an admission in that agreement by the second Plaintiff that the business was that of the first Defendant, but he seeks now to upset the whole agreement and claims that he was in partnership with the first Defendant and first Plaintiff from 1920 when the business was started. I propose therefore to frame a further issue. The present first issue will be numbered I (a) and the new issue I (b):-

I (b) was the Second Plaintiff prior to 15th January 1948 a partner of the first Defendant in the business carried on in the name or style of Keshavji Ramji?

The evidence in this case has been voluminous and a great many papers, documents and books have been exhibited, but I do not find it necessary to refer to the exhibits or the evidence in any great detail. I have experienced no difficulty or doubt in deciding that the two Plaintiffs (apart from the agreement of 15th January 1948 affecting the second Plaintiff) were never in partnership with the first Defendant. It is true that the Plaintiffs have pointed to certain exhibits and factors in the conduct of the parties which by themselves may support their case, but there cannot in my view be any doubt as to the true position when the evidence is viewed as a whole. There being no written agreement of partnership, it is necessary to consider the question by reference to the conduct of the brothers, as to the mode in which they have dealt with one another, and the mode in which each has, with knowledge of the others, dealt with other people. I will take the latter first. The Plaintiffs have placed great reliance on the letter addressed to the Exchange Bank of India and Africa Limited (Exhibit P.II). That letter reads as follows :-

"Letter of Deposit of title Deed as Security
"for accruing overdraft not exceeding the sum
"of Shs.1,000,000/-

"To Messrs. The Exchange Bank of India & Africa Ltd., Dar es Salaam.

"Dear Sirs,

We, Keshavji Ramji, Mohanlal Ramji and "Shivji Ramji, carrying on business as Keshavji "Ramji, do hereby deposit title No. 366 with

No.32.

Judgment of Trial Judge - Acting Judge E.A.J. Edmonds.

5th October, 1954 - continued.

"you by way of security for any liabilities "not exceeding the sum of One hundred thousand "Shillings (Shs.100,000/-) for which we may "now or hereafter be indebited to you.

Yours faithfully,"

and it was signed by the first Defendant and the second Plaintiff in their individual capacities and by first Defendant on behalf of the first Plaintiff who was then in India. It is the admission by the first Defendant in that letter upon which the Plaintiffs place such great store. But admissions are not necessarily conclusive and it is open to the party making the admission to contradict it by evidence. And this is what in fact the first Defendant has sought to do and, in my view, conclusively succeeded in doing. In all other letters and documents, in letters to the Bank, to the Government Authorities, to the Courts and to the lawyers of the business, and in documents such as trading licences and income tax returns, there is only the one representation and that is that the business is that of the first Defendant. To other persons, to third parties and to the public at large, over a period of more than thirty years, the carpentry business of Keshavji Ramji was the business of one man. If, as Mr. O'Donovan argues, this name was a cloak for the partnership, what could be the object? Why the secrecy? Does it not rather suggest that the true position was that the first Defendant was the sole proprietor of the business? But to revert to the letter to the Exchange Bank, what was its purpose? The purpose was to raise a loan on the security of property owned by the three brothers in equal undivided shares. The letter was drafted by the Bank and it was signed in the form drafted. The brothers were in partnership in the property and it was the property which was being given as security for a loan to the business. To have been careless or indifferent to meticulous detail cannot be held to result in binding the first Defendant to an admission of a state of affairs if they did not in fact exist. It is argued for the Plaintiffs that, while it is true that all public documents and papers are in the name of the first Defendant, it was a matter of convenience that it should be so as the business from the beginning was conducted under his name, and it is argued that there are many factors evidencing that in fact the partnership

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5th October, 1954 - continued.

existed. At the beginning all income of the brothers from whatever source was paid into the business in order to give it a working capital. Mohanlal (first Plaintiff) and Shivji (second Plaintiff) went out to work and paid their earnings into the business. But in the early days they lived with first Defendant and he fed and maintained them, and they were allowed to draw on the business for any other expenses. The business books of 1930 show that each partner was credited each month with a salary. No books are available for years before 1930, and there is no evidence to support the submission by Plaintiffs that it would be reasonable to suppose that those books also showed that each brother drew a salary. The 1930 ledger is the only book which shows that the first Defendant received a salary. This book was produced in evidence by the first Plaintiff, the only book of the many in the business which apparently he was able to find to support his theory that the three brothers were in partnership. The system in 1930 of crediting the first Defendant with a monthly salary was stopped on his orders in subsequent years, and no objection was taken by either of the other brothers. All subsequent books show that the two Plaintiffs were credited with salaries monthly but that the first Defendant was not, he drawing sums from the business as and when he pleased. Why was this never challenged by Mohanlal and Shivji? Each had in turn been manager of the business, the former for some six years while the first Defendant went to India. Both had access to the books yet both say that they never examined the books; but they could give no satisfactory explanation, if the statement was true, as to why they did not examine them. It was always the first Defendant and never the Plaintiffs who gave instructions and orders as to how the business was to be run and the accounts to be kept. I do not believe that Mohanlal and Shivji were not aware of the position and of the manner in which the accounts were being kept, and as they never took any action to oppose the system it must be taken that they acquiesced in it. Significant, too, is the account in the business books entitled "Keshavji Ramji and Brothers - Building Account". That is in relation to the properties held jointly by the brothers, and it shows a regular credit of profits from rent to each brother. No such similar distribution of business profits is shown and none

was ever asked for by the Plaintiffs. In answer to a question by the Court, Shivji said :-

> "I claim a third share in the business and its profits. I have never been paid any profits - never asked for any. I did not know what profits were made. Not my business to know."

That is an answer which cannot be treated seriously. The question then must be asked, what is the significance of the fact that the books show that the three brothers have an equal interest in the building profits but that the two Plaintiffs have none in the business profits? The story of the Plaintiffs is a little too far-fetched for credibility.

Learned Counsel for the Plaintiffs referred to the letters passing between the first Defendant and Mohanlal when the latter was in India, and to the fact that in some of Keshavji's letters he used the expressions in relation to the business of "we" and "our business". I can find no significance in these expressions. It is not unreasonable to find that the owner of a business in writing to an employee who has been with him for many years and who has been his manager should refer to the business as "our business". But what is significant in those letters is their general tenor indicating that it was Keshavji who was the masterful figure. He refers to "his" decisions, "his" thoughts and plans, and what "he" intends to do. And this is the tenor of all the evidence. It was the first Defendant who gave the orders and the directions. In 1937 Keshavji dismissed both Mohanlal and Shivji from employment, though he later took them back; in 1938 he again dismissed Shivji but later, again relenting, took him back. The tenor of all the evidence shows Keshavji to be the dominant personality, conducting and running the business as he saw fit, whose word was law. Again, it is argued on behalf of the Defendants that when Mohanlal went to India he went there to start a business in partnership with the first Defendant and the second Plaintiff, that the machinery for the business in India came from the business in East Africa, and it was argued that this indicates that there was equally a partnership in the business here. If that had been the only evidence before the Court it might have been reasonable to regard it as evidence of a partnership in the business in East

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Judgment of Trial Judge - Acting Judge E.A.J. Edmonds.

5th October, 1954 - continued.

Africa, but that evidence pales into significance in the light of all the other evidence, and the evidence, as viewed as a whole. It was suggested that in a letter written by Keshavji to Mohanlal (P.7) he wrote referring to "the partnership", but the official translation of that letter makes no reference to that word.

It was pointed out by Mr. Patel that the money raised on the security of the properties was not credited to the property account in the books but went into the general revenue, and that this indicates that the brothers had an equal interest in the business and that the business and the properties were their joint property. Yet Keshavji in his letter to Mohanlal (P.8) stated that the properties had no connection with the business, and this was not disputed in writing by Mohanlal.

The evidence establishes that Keshavji paid income tax on the whole profits of the business. Had the profits been divided among the three brothers, and had each paid income tax thereon, the total amount of tax paid would have been less than that paid by Keshavji. What possible explanation can there be other than that it was his business. In his letter D.11 to the Income tax Authorities, Shivji gives the first Defendant as his employer, and describes himself as his manager, and, in setting out the source of his income, includes rents from a one-third share in one of the properties but does not include any income from the profits of the business. If indeed Keshavji was only a partner and in no stronger position than either of his brothers, why did neither take any steps to challenge his actions? Why did they not seek to register the partnership? If it was a partnership there was certainly no advantage that I can see in cloaking it in obscurity, but no action was taken for nearly thirty years to challenge the first Defendant's position. No profits were ever claimed and no third party ever knew of the existence of the alleged partnership. As Mr.O'Donovan so pertinently remarked, had the business fallen on hard times and had Keshavji sought to make his two brothers share his liabilities, how hopeless would have been his task in the light of the business books and other evidence to establish that they were partners and liable equally with him. While the effect of the evidence when regarded as a whole, is to contradict the admission by the

first Defendant in the letter to the Exchange Bank, its effect, as regards second Plaintiff's admission in the agreement of 15th January 1948, is to support and confirm that admission. The answer to Issue No.I(a) is in the negative. To issue No. I(b) it is "No, not until 15th January 1948".

I shall next deal with Issues Nos.2 and 4, in reverse order. On the question of whether the Defendant's claim that the agreement of 15th January 1948 respecting the properties therein mentioned be specifically performed is barred by limitation, Article 113 is the governing article of the law of Limitation. The period prescribed by that Article is three years from the date fixed for the performance or, if no such date is fixed, when the Plaintiff has notice that performance is refused. The only evidence of a repudiating notice is the filing of the suit by the first Plaintiff on 4th September 1950. The second Defendant made his counterclaim in his written statement of defence on 6th November 1951. The onus is upon the Plaintiffs to prove that the claim is time-barred, but they have adduced no evidence in proof thereof. Indeed, Mr. Patel, for the second Plaintiff, in his address stated that he abandoned the claim. The answer to the fourth issue is therefore in the negative.

The question whether the second Defendant is entitled to any share in the properties mentioned in paragraph 3 of the written statement of defence of the first Defendant must be considered in two parts, namely, as it affects the first Plaintiff and as it affects the second Plaintiff. Mr.O'Donovan argues that it was within the ostensible authority of the first Defendant to execute this agreement on behalf of the first Plaintiff. The power of attorney under which the first Defendant sought to act (Exhibit D.12) is in a form so as to give the first Defendant the management and control of first Plaintiff's property for his benefit under Clause 4 of which the power is given to sell, mortgage, lease or otherwise dispose of or deal with immovable property belonging to Mohanlal. I do not think it can be held that this power of attorney included the power to dispose of the first Plaintiff's property by way of gift, a dealing against the interests of the first Plaintiff, without the express knowledge and permission of the latter. Mr. O'Donovan argues that if the act

In the High Court of Tanganyika at Dar es Salaam.

No.32.

Judgment of Trial Judge - Acting Judge E.A.J. Edmonds.

5th October, 1954 - continued.

amounted to a breach of trust Mohanlal's remedy is against the first Defendant by way of damages and compensation, but that Vandravan, a third party, cannot be made to suffer. I do not think it can be held that the first Defendant was acting within the apparent scope of his authority or that the second Defendant could be misled into believing that Keshavji had the power to execute such an agreement on behalf of Mohanlal. It is my view that the first Plaintiff is not bound by the act of the first Defendant. So far, therefore, as the first Plaintiff's one-third share in these properties is concerned, the agreement is not enforceable against him. As far as the second Plaintiff is concerned, it is argued that the agreement is void for want of consideration. It is clear from the evidence that the inducement to Shivji to agree to give Vandravan a 14⅓% share in the properties was the gift to him; Shivji, by Keshavji of a 28⅔% share in the carpentry business. He was not entitled by any legal right to that share, but I am satisfied that Keshavji in his anxiety to do the right thing by Vandravan, the son of his deceased brother, was prepared to allow both Shivji and Mohanlal a share in the business if they in turn agree to a share for Vandravan. The consideration given by Vandravan for the share of the properties was the assumption by him of Shivji's liability, if any, in respect of the loan granted by the Exchange Bank. I take the view that there was good consideration and the agreement is enforceable. The answer to the second issue is that Vandravan, second Defendant, is entitled to an undivided 14⅓% share in two-thirds of the property.

As regards the third issue, whether the agreement of 15th January 1948 by which the first Defendant gave a 28⅔% share in his business to the second Plaintiff may be avoided by the latter on the grounds that he was induced to enter into it by misrepresentation, fraud and undue influence, I think I can dismiss this in a few words by saying that in view of my finding in respect of IssueI(b) the question cannot arise. I have held that Shivji was not a partner in the first Defendant's business and was not entitled to any share in it. His plea, therefore, that he entered into the agreement because it was misrepresented to him that he would not be able to establish that he was a partner has no substance. The agreement was

wholly in his favour. The answer to the third issue is in the negative.

As to Issue No.6, the Plaintiffs have failed to establish the partnership. Had they been successful it must have followed that they had an equal interest in all properties with Keshavji. Being unsuccessful, they have not adduced any evidence to prove a legal share in the properties mentioned in the second paragraph of the written statement of defence of the first Defendant, and have thus failed to discharge the onus upon them of proving any interest or share therein. The answer to Issue No.6 is that Plaintiffs have a legal interest and share in the properties mentioned in the third paragraph of the first Defendant's written statement of defence and as set out more particularly in the agreement of 15th January 1948.

As to the fifth issue, Mr.Master intimated that he did not pursue the prayer for the appointment of a receiver unless the Court decided to order the sale of the properties. I am not persuaded that the sale of the properties will be in the best interests of the parties, and do not propose to make any such order.

There is left one final matter to dispose of. Mr. Patel argued that there is no act in the property agreement of 15th January 1948 in respect of which specific performance can be ordered; that there is no agreement to transfer the properties; and that the agreement amounts to no more than an authority to Keshavji to manage the property for a period of five years. Paragraph 3 of the agreement states as follows :-

"The above-mentioned properties are in the names of Keshavji Ramji, Mohanlal Ramji and Shivji Ramji, and we all hereby agree to include the name of Vandravan Maganlal in said property".

and towards the end of paragraph 4 it is set out that:-

"On this contract deed we have set our hands and we undertake to get a proper document drawn by an advocate on the above subject. Until the proper document by a lawyer is drawn up we agree to what is written in this document and undertake to act

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No.32.

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5th October, 1954 - continued.

In the High Court of Tanganyika at Dar es Salaam.

No.32.

Judgment of Trial Judge - Acting Judge E.A.J. Edmonds.

5th October, 1954 - continued.

in accordance with this agreement. All the costs of the proper document that may be drawn up by an advocate shall be borne in proportion to the percentage of our interest".

This clear intention of the parties and the only meaning that can be given to the second extract quoted is that effect should be given to their agreement to give a share of the properties to Vandravan. The only way that can be done is to transfer to him the share to which he is entitled. The intention was that the "proper document" should be a deed of transfer.

In the result, therefore, I find as follows:-

(1) Prior to the 15th of January 1948 the first Defendant was sole proprietor of the carpentry business, and the two Plaintiffs had no partnership rights in the business.

(2) Since 15th January 1948 second Plaintiff has held a 28⅓% share in the business of the first Defendant.

(3) The four parties hold the following shares in the property described in the agreement of 15th January 1948 as from that date:-

| | | |
|---|---|---|
| Mohanlal Ramji | ... | 33.33% |
| Keshavji Ramji | ... | 26.575% |
| Shivji Ramji | ... | 26.575% |
| Vandravan Maganlal | | 13.52% |

(4) The first Defendant is the sole owner and proprietor of all other properties mentioned in the suit.

IT IS ACCORDINGLY ORDERED that the Plaintiff's suits be dismissed with costs and that Keshavji Ramji and Shivji Ramji do specifically perform the agreement of 15th January 1948 by transferring to the second Defendant 14⅓% of their undivided two-thirds share in the property set out in the agreement of 15th January 1948.

Delivered in Court at Dar es Salaam this 5th day of October, 1954.

Sgd. E.A.J. Edmonds,
Acting Judge.

No. 33.

In the High Court of Tanganyika at Dar es Salaam.

No. 33.

Decree of Her Majesty's High Court of Tanganyika.

5th October, 1954.

DECREE OF HER MAJESTY'S HIGH COURT OF TANGANYIKA

IN HER MAJESTY'S COURT OF TANGANYIKA
AT DAR ES SALAAM
CIVIL CASE NO.43 of 1954

| | |
|---|---|
| Mohanlal Ramji | 1st Plaintiff |
| Shivji Ramji | 2nd Plaintiff |
| versus | |
| Keshavji Ramji | 1st Defendant |
| Vandravan Maganlal | 2nd Defendant |

D E C R E E

The first Plaintiff claims against the first Defendant :-

1. A declaration that the partnership stood dissolved on or about 11th March, 1950;
2. Alternatively, that the partnership be dissolved by decree of the Court;
3. An account be taken of the partnership business, including value of goodwill;
4. That the first Defendant be directed to pay to the first Plaintiff such amount as may be found due and payable, after accounts are taken of the partnership business;
5. Costs of the suit.
6. Such further and other relief as to this Honourable Court may seem just.

The first Plaintiff further claims against both Defendants jointly and severally :-

1. An account of the properties described in the Schedule to the plaint;
2. Appointment of a receiver;
3. Sale of the said properties and distribution of the proceeds amongst the Plaintiff and the Defendants.
4. Payment of Plaintiff's share after accounts are taken.

The second Plaintiff claims against the Defendants jointly and severally :-

In the High Court of Tanganyika at Dar es Salaam.

No.33.

Decree of Her Majesty's High Court of Tanganyika.

5th October, 1954 - continued.

1. A declaration that the agreement dated 1st January, 1948 and all that happened in pursuance thereof is not binding on the Defendants;
2. Amount of his share in the said partnership be ascertained inclusive of the goodwill thereof when accounts are taken in terms of prayer 3 of the first Plaintiff and payment to the second Plaintiff of any excess to which he may be entitled beyond the sum of Shs.50,501/-.
3. An account of the properties described in the Schedule to the plaint;
4. An appointment of a receiver;
5. Sale of the said property and distribution of the proceeds thereof in terms of the accounts thereof amongst the Plaintiffs and the Defendants and payment of his, the second Plaintiff's share therein.
6. Costs.
7. Any other or alternative relief deem fit.

The second Defendant counterclaims:-

1. To have the said agreement specifically performed;
2. Costs of the counterclaim.
3. Such further or alternative relief as to this Honourable Court may seem fit.

This case coming on this day for hearing and final disposal before the Honourable Mr. Acting Justice Edmonds in the presence of K.A.Master, Esq. and P.R. Dastur Esq., Advocates for the first Plaintiff and N.S. Patel, Esq., and H.K.Patel, Esq. Advocates for second Plaintiff and B. O'Donovan, Esq., Fraser Murray, Esq., and C.J. Davda, Esq., Advocates for both the Defendants.

THIS COURT DOTH pass judgment and Doth Order and decree that :-

1. The Plaintiffs' suits be and are hereby dismissed;

2. Keshavji Ramji the first Defendant and Shivji Ramji the second Plaintiff do specifically perform the agreement of the 15th January 1948 by transferring to the second Defendant Vandravan Maganlal 14½% of their undivided two-thirds share in the

property set out in the agreement of the 15th January, 1948.

3. The Plaintiffs' do pay to the Defendants the sum of Shs. 11,086/- being the taxed costs of this suit including the costs of this decree.

Given under my hand and the seal of the Court this 5th day of October, 1954.

Sgd, H.R.F. Butterfield,
Registrar.

Issued and signed: 25/5/55.

In the High Court of Tanganyika at Dar es Salaam.

No.33.

Decree of Her Majesty's High Court of Tanganyika.

5th October, 1954 - continued.

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No. 34.

MEMORANDUM OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT DAR ES SALAAM

CIVIL APPEAL NO.37 of 1955.

In the Court of Appeal for Eastern Africa at Dar es Salaam.

No. 34.

Memorandum of Appeal.

30th May 1955.

BETWEEN:

| | |
|---|---|
| KESHAVJI RAMJI | 1st Appellant |
| VANDRAVAN MAGANALAL | 2nd Appellant |

- and -

| | |
|---|---|
| MOHANLAL RAMJI | 1st Respondent |
| SHIVJI RAMJI | 2nd Respondent |

(Appeal from a judgment and decree of Her Majesty's High Court of Tanganyika at Dar es Salaam (Mr. Acting Justice Edmonds) dated the 5th day of October 1954 in Civil Case No.43 of 1950

| | | |
|---|---|---|
| Between - | MOHANLAL RAMJI | 1st Plaintiff |
| | SHIVJI RAMJI | 2nd Plaintiff |
| | and | |
| | KESHAVJI RAMJI | 1st Defendant |
| | VANDRAVAN MAGANLAL | 2nd Defendant |

In the Court of Appeal for Eastern Africa at Dar es Salaam.

No.34.

Memorandum of Appeal.

30th May 1955 - continued.

## MEMORANDUM OF APPEAL

KESHAVJI RAMJI and VANDRAVAN MAGANLAL the Appellants above-named appeal to Her Majesty's Court of Appeal for Eastern Africa against part of the decision above-mentioned on the following grounds, namely :-

1. The learned Judge erred in law in holding that the second respondent Shivji Ramji above-named, was entitled to a 28½% or any share in the business of the first Appellant Keshavji Ramji, above-named, from the 15th January 1948 or at all. The learned Judge, having held that no partnership existed prior to the said date, erred in law in failing to hold that the second Respondent was not a partner in the said business at any time, that the second Respondent's only claim to a share in the business arose from the document annexure 'B' to the plaint, (being one of the two documents dated 15th January 1948) and that the second Rospondent had been paid and had accepted the sum of Shs.50,501/- in settlement of such claim.

2. The learned Judge erred in law in holding that the agreement, Exhibit D.14, (being the second of the said two documents dated 15th January 1948) was not enforceable against the first Respondent Mohanlal Ramji, and in holding that the said agreement purported to or did dispose of the property of the first Respondent by way of gift. The learned Judge should have held that the act of the first Appellant Keshavji Ramji in executing the said agreement on behalf of the first Respondent Mohanlal Ramji was within the powers conferred upon the first Appellant by the Power of Attorney Exhibit D.12, or alternatively that it was within the ostensible authority of the first Appellant.

Dated this 30th day of May, 1955.

Sgd. Fraser Murray,
Advocates for the Appellants.

To the Honourable the Judges of Her Majesty's Court of Appeal for Eastern Africa.

And to: Mohanlal Ramji,
c/o K.A. Master, Esq.,
Dar es Salaam.

No.34.

Memorandum of Appeal.

30th May 1955 - continued.

And to: Shivji Ramji,
c/o N.S. Patel, Esq.,
Dar es Salaam.

The address for service of the Appellants is :-
c/o Fraser Murray,
Bank House,
Dar es Salaam.

Filed the 30th day of May, 1955 at Dar es Salaam.

Sgd. H.R.F. Butterfield,
Deputy Registrar for the Court of Appeal.

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No. 35.

No.35.

Notice of Cross-Appeal.

7th June 1955.

NOTICE OF CROSS APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT DAR ES SALAAM

CIVIL APPEAL NO.37 of 1955

Between:

| | |
|---|---|
| KESHAVJI RAMJI | 1st Appellant |
| VANDRAVAN MAGANLAL | 2nd Appellant |
| - and - | |
| MOHANLAL RAMJI | 1st Respondent |
| SHIVJI RAMJI | 2nd Respondent |

NOTICE OF CROSS APPEAL

TAKE NOTICE that on the hearing of this Appeal MOHANLAL RAMJI, the first Respondent above-named, will contend that the decision above-mentioned ought to be varied to the extent and in the manner and on the grounds hereinafter set out, namely :-

1. The Learned Trial Judge erred in holding in face of overwhelming evidence on the record of the existence of partnership that the two Plaintiffs (apart from the agreement of 15th January, 1948, affecting the second Plaintiff) were never in partnership with the first Defendant.

In the Court of Appeal for Eastern Africa at Dar es Salaam.

No.35.

Notice of Cross-Appeal.

7th June 1955 - continued.

2. The Learned Trial Judge erred in law in failing to take into account the Hindu concept of partnership between brothers.

3. In arriving at his decision on the issue of the existence of a partnership the Learned Judge failed to take into consideration the unchallenged and admitted fact that the rents of the immovable properties held by the Plaintiffs and the first Defendant and the loans taken on their security were utilised in the furniture business run in the name of Keshavji Ramji.

4. The Learned Trial Judge misdirected himself in his construction of agreement dated 15th January, 1948, (Exhibit 'A' and English translation, Exhibit 'B' and 'B1') and in holding :-

(a) That by the said document the second Plaintiff purported to accept a gift of a 28½% share in the business of Keshavji Ramji.

(b) That there is an admission by the second Plaintiff that the business was that of the first Defendant.

5. The Learned Judge failed to appreciate the true meaning and effect of the several letters exchanged between the first Plaintiff and the first Defendant.

6. The Learned Trial Judge erred in holding that the first Defendant in his view conclusively succeeded by evidence in contradicting his admission contained in Exhibit P.11.

7. On the evidence the Learned Trial Judge should have held that partnership existed right from the beginning between the two Plaintiffs and the first Defendant in the business carried on in the name and style of "Keshavji Ramji", and should have granted the reliefs asked for by the first Plaintiff.

8. The Learned Trial Judge failed to exercise judicial discretion in omitting to allow costs of the counterclaim to the successful first Respondent.

WHEREFORE this Respondent prays :-

No.35.

Notice of Cross-Appeal.

7th June 1955 - continued.

(a) That the Judgment and Decree in so far as it dismisses the Respondents' claim be set aside and Judgment in terms of first Respondent's prayers to the Plaint be given.

(b) That costs of this appeal and of the claim as well as those of the dismissed counterclaim before the High Court be awarded to this Respondent.

DATED this 7th day of June, 1955.

K.A.Master
Advocate Signed P.R.Dastur

K.A.Master and P.R.Dastur
Advocates for the first
Respondent.

To the Honourable the Judges of Her Majesty's Court of Appeal for Eastern Africa

And to: Keshavji Ramji 1st Appellant
and
Vandravan Maganlal 2nd Appellant.
c/o Fraser Murray, Advocate, Dar es Salaam.

The address for service of the first Respondent above-named is c/o K.A.Master and P.R.Dastur, Advocates, Dar es Salaam.

FILED the 7th day of June, 1955, at Dar es Salaam.

Deputy Registrar of the Court of Appeal.

In the Court of Appeal for Eastern Africa at Dar es Salaam.

No.36.

Letter from Registrar of Her Majesty's Court of Appeal for Eastern Africa.

30th April 1956.

No. 36.

LETTER FROM REGISTRAR OF HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA

From the Registrar of the Court of Appeal for Eastern Africa.

Civ.App.37/55 30th April, 1956.

The Deputy Registrar,
H.M.Court of Appeal for Eastern Africa,
c/o H.M. High Court,
P.O. Box 49,
Dar es Salaam,
TANGANYIKA.

E.A.C.A.CIVIL APPEAL NO.37 of 1955.

I am directed by the Honourable Mr. Justice Bacon to write with reference to the above-mentioned appeal.

I refer to my previous letter, reference Civ. App. 37/55 dated 4th February, 1956 in response to which you furnished a schedule of properties in dispute in this appeal, which schedule was agreed by all parties.

A detailed examination of the record, including that schedule which now by consent forms part thereof, has brought to light two further questions relating to the identification of properties, the answers to which cannot be ascertained with absolute certainty from the material at present available owing to the variety and vagueness of the descriptions of some of the properties in various parts of the record.

It is accordingly desired that you will be good enough to obtain at the earliest possible moment the answers to the following two questions agreed and signed on one sheet of paper by or on behalf of each of the four parties to the appeal:-

To which item (or part of an item), if any, contained in the "Agreed schedule of all properties forming part of the subject-matter in dispute" does each of the following items set out in the second

No.36.

Letter from Registrar of Her Majesty's Court of Appeal for Eastern Africa.

30th April 1956 - continued.

agreement in writing dated 15th January, 1948 (Exhibit D.14) at p.107 of the record correspond?

(a) Item 3. "Kisutu Street temporary House (Mtendeni Street) in which now the following tenants live: Velji Walji, Stantaben, Babu and Jagjiwan etc."

(b) Item 4. "The plot on Upanga Road belonging once to Suleman Lembi in which we have kept ¼ (one-fourth) share with Harikaka".

It should be carefully noted (inter alia) that the last two lines of p.107 of the record constitute part of a clause in the above-mentioned agreement itself which has a direct bearing on the two questions asked above.

It is particularly requested that the persons concerned be asked to furnish the answers immediately so that the preparation of the appellate judgments may be concluded without further delay. This can and will be done as soon as the answers are forthcoming.

To save time I enclose four carbon copies of this letter to be supplied to the parties or their advocates.

I also enclose one copy of the Schedule agreed by the parties and the original translation of Exhibit D.14 in case either of these is required. Please return them when you reply.

Sgd. F. Harland.

Registrar.

In the Court of Appeal for Eastern Africa at Dar es Salaam.

No.37.

Agreed reply to letter (No.36 as above).

No. 37.

AGREED REPLY TO LETTER (NO.36 above)

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT DAR ES SALAAM

CIVIL APPEAL NO.37 of 1955

Between:

| | |
|---|---|
| KESHAVJI RAMJI | 1st Appellant |
| VANDRAVAN MAGANLAL | 2nd Appellant |

- and -

| | |
|---|---|
| MOHANLAL RAMJI | 1st Respondent |
| SHIVJI RAMJI | 2nd Respondent |

Agreed reply to questions asked in Registrar's letter Civ. App. 37/55 of 30th April, 1956 :-

(a) Item 3 in the 2nd agreement dated 15th January, 1948 (Ex. D.14) refers to Item 4 in the agreed schedule prepared by the parties in response to the Registrar's letter of 4th February, 1956.

(b) Item 4 in the said 2nd agreement does not appear in the agreed schedule, the agreement for the purchase of this property having been rescinded; the property was not in fact acquired by the parties named in the agreement Ex.D.14.

.....) Advocate for 1st Appellant.
Intd.F.M. )
)
)
.....) Advocate for 2nd Appellant.

Intd.P.R.D. Advocate for 1st Respondent.

Sgd. S. Ramji 2nd Respondent.

No. 38.

AGREED SCHEDULE OF PROPERTIES FOR APPELLATE JUDGMENTS.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT DAR ES SALAAM.

CIVIL APPEAL NO. 37 of 1955.

AGREED SCHEDULE OF ALL PROPERTIES FORMING PART OF THE SUBJECT MATTER IN DISPUTE. BY CONSENT TO BE INCLUDED IN THE RECORD OF APPEAL. (Supplied by parties to the Court of Appeal at the request of Mr.Justice Bacon after the hearing of the Appeal)

| (i) TITLE & PLOT NO. | WHERE SITUATED | (ii) WHEN PURCHASED | (iii) IN WHOSE NAME REGISTERED OR PERSONS ENTITLED AND DATE OF REGISTRATION | (iv) WHEN BUILDING BUILT | NATURE OF BUILDING. |
|---|---|---|---|---|---|
| 1. Title No.366 Plot No.528 House No.22. | Windsor Street, Dar es Salaam. | Plot purchased in 1926. | In the names of: Keshawji Ramji, Mohanlal Ramji and Shivji Ramji. Date of Registration: 1926. | Two buildings completed in 1929. Third building in 1946. | 3 Buildings on this plot - two are two storeyed buildings and one is ground floor for office use. (Also a temporary C.I. Sheet shed built in the yard in 1951 approximately). |
| 2. Title Nos. 6040 Plots 1392/2:Flur III 2066/2:Flur III | Kisutu Street Dar es Salaam. | 1931 | In the names of the three brothers Date of Registration: 1931. | JAIHIND Building. Built in 1946. | Ground floor and two upper storeys (Residential). |
| 3. Title No.6039 Plot No. 2078/2:Flur III | Kisutu Street, Dar es Salaam. | Plot purchased in 1935. | In the names of the three brothers. Date of Registration: 1937. | Building commenced in 1947. | Not yet completed |
| 4. Temporary 3 Plots. No.1148/16 No.1149/16 No.1150/16 Under temporary licences from Municipality | Mtendeni Street and not MALINDI Street as recorded on page 52 of record. | Licence commenced in 1944. | Not registered, Licence in the name of Keshawji Ramji. | 3 temporary buildings built in 1945-46. | Temporary mud wall houses with Debe tin roof. |

| (i) TITLE & PLOT NO. | (ii) WHERE SITUATED | (ii) WHEN PURCHASED | (iii) IN WHOSE NAME REGISTERED OR PERSONS ENTITLED AND DATE OF REGISTRATION | (iv) WHEN BUILDING BUILT | (iv) NATURE OF BUILDING |
|---|---|---|---|---|---|
| 5. Title No.6137 Plot Nos. 913/2 and 914/2. | McGowan Estate Dar es Salaam (Upanga area near Budhist Temple). | 1930 | Keshawji Ramji. Date of Registration: 1930. Sold in 1950-51 Plot 913/2 to K.C.J.Gohel. Plot 914/2 to Shanta Devi. | - | - |
| 6. Plot No. 588/206 Purchased from Mr.N. Ramsey. | Gerezani Industrial Area (Pugu Road) Dar-es-Salaam. | 1948 | Keshawji Ramji. Sold to Keshawji Ramji Ltd., in 1950. | Factory buildings erected and completed in 1954 by Keshawji Ramji Ltd. | |
| 7. Plot No. 208/2875. Title No. I.R.7446. | Factory Area, Nairobi. | 1949 | Registered in the name of Keshawji Ramji. Date of Registration: 1949 | Workshop building put up in 1951. (Since sold by Keshawji Ramji) | Nil. |

We agree to the details stated in the above Schedule.

FRASER MURRAY,
Advocate for the two Appellants.

P. R. DASTUR,
Advocate for 1st Respondent.

Sgd. Shivji Ramji,
2nd Respondent.

Note - The transfer in each case was registered in the Registry of Documents soon after the purchases of the plot.

No. 39.

JUDGMENT OF HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT DAR ES SALAAM.

(See following pages)

In the Court of Appeal for Eastern Africa at Dar es Salaam

No.39.

Judgment of Her Majesty's Court of Appeal for Eastern Africa at Dar es Salaam.

22nd June 1956.

No.39.

JUDGMENT OF HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT DAR ES SALAAM.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT DAR ES SALAAM

CIVIL APPEAL NO.37 OF 1955

BETWEEN

1. KESHAVJI RAMJI
2. VANDRAVAN MAGANLAL — Appellants

AND

1. MOHANLAL RAMJI
2. SHIVJI RAMJI — Respondents

(Appeal from a judgment and decree of Her Majesty's High Court of Tanganyika at Dar es Salaam (Mr. Acting Justice Edmunds) dated 5th October 1954 in

Civil Case No.43 of 1950

between

Mohanlal Ramji
Shivji Ramji — Plaintiffs

and

Keshavji Ramji
Vandravan Maganlal — Defendants)

J U D G M E N T

BACON J.A.

This is an appeal from a decree of the High Court of Tanganyika in proceedings to determine the rights of the parties in relation to (a) an industrial undertaking (hereinafter referred to as "the business") concerned with the manufacture of furniture, car-bodies and other products and carried on under the name of "Keshavji Ramji" from about 1920 until March 1950 (when the business was taken

over by Keshavji Ramji Ltd., incorporated at that time), and (b) certain interests in land and in buildings erected thereon (hereinafter collectively referred to as "the properties") which interests were acquired from time to time in the name or names of one or more of the parties.

The parties are members of a Hindu family. The first appellant and the respondents are the survivors of four brothers; they will be referred to respectively as "Keshavji", "Mohanlal" and "Shivji" and collectively as "the brothers". Keshavji is the eldest, Mohanlal the next and Shivji the youngest. The second appellant (hereinafter called "Vandravan") is their nephew, being the son of the deceased brother Maganlal who died in about 1926.

The pleadings were numerous, and the earlier stages of the proceedings disclosed the need to convert Shivji (originally the second defendant) into the second plaintiff and to join Vandravan as second defendant. Thus from an obscure beginning there eventually emerged the following issues with which we are called upon to deal on this appeal:-

(1) Was Mohanlal a partner in the business, and, if so between what dates and what was his share?

(2) Was Shivji a partner in the business, and, if so, between what dates and what was his share?

(3) Has Mohanlal an interest in any of the properties and, if so, which of them and what is his share?

(4) Has Shivji an interest in any of the properties and, if so, in which of them and what is his share?

(5) Has Vandravan an interest in any of the properties and, if so, in which of them and what is his share?

(6) Should there be an order for specific performance of the agreement made between all the parties dated the 15th January 1948?

(7) Should we order the taking of any accounts,

It will be convenient, before further considering these questions and the contentions of the parties relating thereto, to set out the principal

In the Court of Appeal for Eastern Africa at Dar es Salaam

No.39.

Judgment of Her Majesty's Court of Appeal for Eastern Africa at Dar es Salaam.

22nd June 1956 - continued.

material fa cts which form the background to this case as I find them proved, I commence with the personal activities of the parties.

On attaining adolescence the brothers emigrated from India one by one in the course of the years 1902 to 1919, and, after various changes of residence and occupation in East Africa, eventually became associated with the business, with its headqua rters in Dar es Salaam, at some time in or shortly after 1920. The business had been started in about 120. It appears that during the early period of its existence Mohanlal was from time to time engaged in part-time, and at least for one short period in whole-term, work elsewhere, and Shivji worked whole-time elsewhere for some three years; but the evidence of all three brothers is that the two younger ones handed over to Keshavji their earnings or at any rate a substantial part thereof. Mohanlal's evidence on this matter, which I accept as expressing the true position, went a little further; he said that at that early stage "business was not so good" and all the brothers' spare income earned outside "was put into the business." No doubt in those days the younger brothers regarded Keshavji as filling the dual role of head of the family (their father having died in a bout 1908) and controller of the business fina nces.

The brothers did not, however, always work in harmony. According to Keshavji, he "dismissed" both the others from the business in 1937 and "dismissed" Mohanlal again in 1939, but on each occasion reinstated them at the instance of the elders of his community. The reason for reinstatement is controversial, for in cross-examination Mohanlal said that these "dismissals" were illegal and merely due to Keshavji's anger, that he (Mohanlal) had resisted with the help of an advocate and that Keshavji had thereafter behaved as though he had never written the offending letter. Shivji was not questioned about this matter at all, but Keshavji said in cross-examination "He may have objected that he was a partner, not an employee. It may be that my advocates withdrew my order of dismissal on my instructions as I wished to settle the matter. I don't remember the letter." I mention these incidents in passing, but I do not think any weight should be given to them inasmuch as Mohanlal's explanation of their origin is probably correct since Keshavji

appears promptly to have made peace with his brothers on each occasion and only to have raked up these momentary quarrels of the rather distant past in order to strengthen his case in this litigation.

I have observed that the headquarters of the business were in Dar es Salaam, and there it clearly appears to have remained at all material times. But it was by no means the only place in which the brothers were active. From about 1931 till the end of 1937 Keshavji was in India, during which time he bought a plot at Kathiawad, the family's home town, and erected a building thereon. Throughout that period Mohanlal was left in charge of the Dar es Salaam operations, and funds were from time to time remitted by him to Keshavji. The latter testified that the building was put up for the joint family, that is to say the three brothers and their nephew, and that that was why the money therefor was drawn from the business in Dar es Salaam. He added that he was not engaged in any other work while in India on that occasion.

From the end of 1937 to 1940 the brothers were again working together in the business in Dar es Salaam. But in 1940 it was arranged that Mohanlal should go to India to establish what was undoubtedly designed as an extension of the business in that country as a safeguard against the unknown prospects resulting from the outbreak of the second world war. So Mohanlal went off, and on so going he left Keshavji armed with his power of attorney, to the latter's use of which at two critical moments I shall later refer. On reaching India Mohanlal set up a timber-cutting concern which he supervised for approximately eight years. In 1948 that branch of the business was closed down and Mohanlal returned in March of that year, bringing back with him the machinery which he had taken with him from the workshop in Dar es Salaam. The machinery was thereafter again used at the headquarters of the business. Moreover, Mohanlal had been supplied with funds from the business to the amount of some Shs.50,000/- while in India.

Meanwhile Vandravan, born in 1918 and brought up in India by his paternal grandmother, had also settled in Tanganyika and had worked as a salaried employee of the business since 1937. There is no suggestion of his having been associated with it in any other capacity, or of his having contributed anything other than his labour towards the building

In the Court of Appeal for Eastern Africa at Dar es Salaam

No.39

Judgment of Her Majesty's Court of Appeal for Eastern Africa at Dar es Salaam.

22nd June 1956 - continued.

up of its assets. Apparently he was still employed by the business in 1948. In the present proceedings he figures only as a donee to whom an interest in some of the properties to which I have referred was granted by reason of his blood relationship with the brothers. He was joined as a party to the suit only when it transpired that he, as well as his uncles at whose expense the purported gift had been made, was an interested party.

Against all that background there came into being on the 15th January 1948 two documents of outstanding importance. The first was an agreement between Keshavji and Shivji whereby in effect it was agreed that as from the 1st January 1948 there should be written off and renounced any and every claim by either party against the other in relation to the business, and that Shivji should receive from Keshavji a sum of money in consideration for such renunciation by Shivji, such sum to be calculated on the footing of a 28½ per centum share as from the beginning to that date. The second agreement, to which the brothers and Vandravan were parties, acknowledged and confirmed that each of them had a specified share in the properties therein mentioned. Keshavji executed this second agreement not only on his own behalf but also on behalf of Mohanlal by virtue of the power of attorney of which I have made mention.

As regards the first of those agreements I must enter a protest in passing. The original document was in Gujerati and unfortunately there is no agreed or independent translation. On the contrary there are two translations - annexure "B" to Keshavji's statement of defence, and annexure "B1" to Shivji's reply - each apparently coloured to suit its producer's case. This is a very undesirable state of affairs, calculated as it is to add fresh difficulties to the task of reaching a just and proper decision. Any document of such importance as this should be translated and certified either by an official of the court or by some other expert agreed upon by the parties. In the present instance all one can do is to endeavour to gather from the two versions what appears to be the probable meaning on the original.

After the execution of these agreements Mohanlal returned from India. He found, of course, that Shivji no longer claimed to be concerned with the business. That left him (Mohanlal) alone to establish his position vis-a-vis Keshavji. They

carried on as before until the crisis came in 1949 when Keshavji presented him with a partnership agreement for signature. The document prescribed a date in 1948 as that of the commencement of the partnership in the business. Mohanlal, asserting that his interest had in truth dated from the foundation of the business, refused to sign. Keshavji thereupon "denied him any rights as a partner", so Mohanlal took legal advice and demanded an account of the business and its properties. The account was never supplied. Mohanlal and Keshavji were thus at arm's length and the present proceedings resulted in due course, the plaint bearing the date 4th September 1950. In the meantime, in March of that year Keshavji had turned the business into a limited liability company, Keshavji Ramji Ltd.

The other main aspect of the story o the question of the properties - now calls for attention. Commencing in 1926, funds were invested from time to time in real property in Dar es Salaam and finally in an industrial site in Nairobi. Schedule "B" annexed to the plaint was originally intended to contain the list of all those properties which are in dispute in these proceedings, but on examination of the record in detail it appeared that the schedule was incomplete and inadequate in several respects for the purpose of giving judgment on this appeal. Accordingly all parties were invited to agree an accurate and comprehensive schedule of the properties forming part of the subject-matter in dispute, and this they have done. By consent the agreed schedule now forms part of the record. It shows that the properties in question, in the chronological order in which they were acquired, are as follows:-

(A) Title No.366, Plot No.528, on Windsor Street, Dar es Salaam.

Purchased in 1926.

Registered in the names of the brothers shortly after the purchase.

Buildings erected on this site: (a) two two-storeyed buildings completed in 1929; (b) a ground-floor office - building completed in 1946; (c) a temporary shed built in approximately 1951.

(B) Title No.6137, plots Nos.913/2 and 914/2, on the McGowan Estate in the Upanga area, Dar es Salaam.

Purchased in 1930.

In the Court of Appeal for Eastern Africa at Dar es Salaam

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22nd June 1956 - continued.

Registered in the name of Keshavji shortly after the purchase.

No buildings erected on this site.

Sold in 1950 - 1951: plot No. 913/2 to K.C.J. Gohel; plot No.914/2 to Shanta Devi.

(C) Title No.6040, plots Nos.1392/2: Flur III and 2066/2: Flur III, on Kisutu Street, Dar es Salaam.

Purchased in 1931.

Registered in the names of the brothers shortly after the purchase.

Buildings erected on this site: a residential building known as "Jaihind" consisting of ground floor and two upper storeys built in 1946.

(D) Title No.6039, plot No.2078/2: Flur III, On Kisutu Street, Dar es Salaam.

Purchased in 1935.

Registered in the names of the brothers shortly after the purchase.

Building commenced on this site in 1947 but not yet completed.

(E) Plots Nos.1148/16, 1149/16 and 1150/16, on Mtendeni Street, Dar es Salaam.

Acquired under temporary licence from the Municipality in 1944.

Licence granted in the name of Keshavji.

Buildings erected on this site: three temporary mud-walled houses commenced in 1945 and completed in 1946.

(F) Plot No.588/206, on Pugu Road in the Gerezani Industrial Area, Dar es Salaam.

Purchased in 1948.

Registered in the name of Keshavji.

No buildings erected on this site prior to the sale thereof.

Sold in 1950 to Keshavji Ramji Ltd.

Factory buildings erected on this site by Keshavji Ramji Ltd. in 1954.

(G) Title No.I.R.7446, plot No.208/2875, in the Industrial Area, Nairobi.

Purchased in 1949.

Registered in the name of Keshavji.

Building erected on this site: a workshop built in 1951, subsequently sold by Keshavji.

That concludes the history of the material events leading up to these proceedings. I now revert to the issues.

The answers given by the learned trial Judge to the seven questions which I have mentioned as arising on this appeal were as follows:-

(1) Mohanlal was never a partner in the business.

(2) Shivji was not a partner in the business until the 15th January 1948.

(3) Mohanlal has a $33^{1}/3$ per centum share in items (A), (C) and (D) in the list of properties set out above. It appears from the references in the judgment (see the record p.97, lines 21 to 26) to paragraph 3 of Keshavji's statement of defence (record, p.10) and to the agreement of the 15th January 1948 (record, p.107) that the learned Judge intended to hold that Mohanlal also has a similar share in a further item of property. But it is impossible to reconcile those two references with each other and with the subsequently agreed schedule of the properties in dispute so as to identify that further item. According to schedule "B" (record, p.8), to which paragraph 3 of Keshavji's statement of defence refers, the further item should be item (E), in my list; but that item is not included in the properties described in the agreement of the 15th January, 1948, and moreover it seems to be expressly excluded therefrom by the clause (commencing at p.107, line 37) which reads "The above-mentioned properties are in the names of Keshavji Ramji, Mohanlal Ramji and Shivji Ramji". I therefore find it impossible to determine what was intended by the judgment below on this point.

(4) Shivji has a 26.575 per centum share in items (A), (C) and (D) in my list of the properties. The obscurity as to a similar share in a further item arises also in Shivji's case, for the same reasons.

(5) Vandravan has a 13.52 per centum share in

In the Court of Appeal for Eastern Africa at Dar es Salaam

No.39

Judgment of Her Majesty's Court of Appeal for Eastern Africa at Dar es Salaam.

22nd June 1956 - continued.

items (A), (C) and (D) in my list of the properties. Again the same obscurity as to a similar share in a further item arises in the case of Vandravan.

(6) There should accordingly be an order for the specific performance of the (second) agreement dated the 15th January 1948: Keshavji should transfer to Vandravan 14½ per centum of his 33 1/3 per centum share in the properties concerned, and so also should Shivji, thus leaving Keshavji and Shivji each with a 26.575 per centum share.

(7) No account need be taken.

The combined effect of the memorandum of Appeal and of Mohanlal's cross-appeal is to challenge expressly or by clear inference the learned Judge's answers to questions (1) to (6) inclusive, and, in my view to re-open question (7). As regards the latter, Mohanlal's plaint claimed as against Keshavji an account of the business including the value of its goodwill, and as against Keshavji and Vandravan an account of the properties. Shivji stood apart. He is not a party to the cross-appeal, having expressly so stated in a written argument filed at the very moment when the hearing before us commenced. In that argument, however, he seeks to support the judgment at first instance in toto, including in particular that part of it whereby he was held to be a partner in the business as from the 15th January 1948.

It thus remains for me to state my conclusions on those seven issues. In so doing I shall, as regards the properties in dispute, base myself as I am bound to do, on the schedule agreed by all the parties subsequent to the trial, which by consent has superseded both schedule "B" annexed to the plaint and also the purported descriptions of and certain data relating to the properties given in evidence by various witnesses at the trial.

(1) The first issue is as to Mohanlal's share in the business. He claimed to have had a one-third interest as from its foundation in about 1920. Keshavji denied that Mohanlal ever had any interest. Shivji supported Mohanlal's claim.

There is a great deal of evidence on this issue. I have examined it all but shall refer only to such detail as seems necessary to support my conclusion.

The only witness on this issue other than the brothers themselves was Amratlal Shah who first stated that he had been in Keshavji's service as his book-keeper since 1930. That statement, of course, begged the question. In point of fact, as he admitted in cross-examination, the witness kept the books relating to the business and to the properties under the general direction of whichever of the brothers happened at any given time to be in charge of affairs in Dar es Salaam; but neither Mohanlal nor Shivji ever actively supervised or even examined the book-keeping.

On his employment in August 1930 Shah found that each of the brothers was being regularly credited with a salary. That system continued to operate until as Shah testified, in 1931 Keshavji instructed him "to cease shewing him drawing a salary" without giving any reason for the change. But the evidence on this significant matter goes a good deal further than that. Shah only brought to court (on Keshavji's instructions) the books as from 1932. The books for 1931, the year in which the change of system occurred, had not been seen by him for some time and were never before the court at all. But Mohanlal had produced (as Exhibits P.2 and P.1 respectively) a daily cash-book for 1922 to 1929 and one for 1930, the former written up by Keshavji and a clerk, the latter by one Shukla, another clerk then employed by the business. Both P.2 and P.1 shewed that each of the brothers drew a salary. P.2 (the earliest record we have) also confirmed that when one or other of the brothers was working outside the business he paid his earnings into it. P.1 shewed that during 1930 Keshavji was credited with a salary of Shs.325/- per month and each of the other brothers with a salary of Shs.300/- per month: see supp. record, pages 48-49. When Shah ceased in 1931 to credit Keshavji with a salary he (Shah) did not consult the other brothers. Keshavji, on being shown P.2 and P.1 at the trial, said this (at page 70 of the record): "I am shewn in this as drawing a salary, but I was not drawing a salary. I cannot read these books now - my eyesight is bad. Accounts for subsequent years do not shew me as drawing a salary. The clerk stopped shewing me as drawing a salary. I had discussed that in these two books he had shewn me as drawing a salary. I pointed out that it should not have been written". That explanation is unconvincing; Keshavji had perhaps forgotten that both P.2 and P.1 were compiled

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before Shah was employed at all, and that P.2 (covering no less than eight years) was partly written in his own hand.

It thus appears that for the first ten or eleven years the books indicated that the position of each brother vis-a-vis the business was the same except that Keshavji drew a slightly larger salary than the others, that they were moreover pooling for its benefit the product of their labours, but that in 1931 Keshavji, without his brothers appreciating what was happening, introduced a change in the book-keeping which he desired.

Nevertheless the witness Shah said in chief that to his understanding Mohanlal and Shivji were "partners in buildings but not in the carpentry business". He sought to substantiate that view by describing his book-keeping methods and by referring to the income tax returns which he had compiled in the name of Keshavji alone and on which Keshavji alone was assessed. I do not think that his contention carries weight; for clearly it was Keshavji who gave the orders as to how the books were to be kept by Shah, and though Keshavji alone may have paid the tax I have no doubt that the payments were entered in the books and the burden would thus fall eventually on whoever owned the business. Moreover the business was always carried on under the style "Keshavji Ramji" and it seems to me to be a matter of no particular significance that the returns of income were made out in Keshavji's name alone. The only Exhibits in the nature of returns are a letter of Shivji dated the 6th August 1947 (Exhibit D.11) and one of Mohanlal dated the 28th July 1948 (Exhibit D.15), each purporting to be an account of the signatory's personal income as to which I say no more than that neither appears to be a document from which one can obtain any real assistance for present purposes. Incidentally Shivji testified that he knows no English and was unaware of the contents of his letter which was prepared by a clerk.

A vivid illustration of Keshavji's manipulation of the book-keeping was elicited from Shah in cross-examination. For it transpired that during Mohanlal's long sojourn in India the book-keeper, who had dutifully recorded the salary credits in favour of the absent brother, was ordered by Keshavji to cancel them for the years 1944 and 1945 (but leaving entries of substantial "remittances"), and for the years 1946 and 1947 he entered two months'

salary and no salary respectively (but recorded "remittances" totalling Shs.13,700/-). Shah himself was unable to offer any explanation of these financial antics. It is plain that Keshavji did what he liked with the books and Shah was his tool. In my opinion neither the books as kept by Shah from 1931 onwards nor Shah's opinion of what they prove as against Mohanlal are a safe guard to the legal relationship of the brothers.

Next, there is the oral testimony of the brothers themselves. Though perhaps on the whole this category of evidence does not by itself lead conclusively to the answer, I think that on balance it undoubtedly tends to shew that Mohanlal was a partner from the beginning. There is no question but that in the early years the brothers were together striving to establish themselves on a solid foundation in the form of the business, contributing to that end not only their labour in the workshop but also earnings which came from outside, and, when sufficient resources had been created, investing by common consent in land and buildings financed by the proceeds of their toil. Keshavji may now forget or even deny that early struggle, but I prefer the evidence of the others as to the fundamental nature of the relationship. The vagueness - or worse - of Keshavji's testimony may be illustrated by the following passage:-

> "Mohanlal stayed in India long and has had share. He was there to do business for me. Business in India was to be carried on in partnership but shares to be dictated by me. Machinery taken by Mohanlal from East Africa for business in India; no machinery was bought in India."

Lastly there is the correspondence. A considerable number of letters from Keshavji to Mohanlal or to Shivji are to be found in the supplementary record. I can find nothing in any of them which would support the view that Keshavji was writing as sole owner of the business to persons who had to take his orders. On the contrary there is much to indicate a partnership - so much that, added together, it seems to me to clinch the matter. I shall quote from a few of the letters.

There is first the period 1931 to 1937 when Keshavji was in India and Mohanlal and Shivji were in Dar es Salaam, as regards which I quote the

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following extracts (in terms of the translations provided) from Keshavji's letters. In many instances it is not recorded to which of his brothers - or whether to both of them - the particular letter was expressly addressed. It seems unimportant, for the general tenor of the whole correspondence clearly shews that the letters were intended to be mainly for the information of whoever was in charge at Dar es Salaam, namely Mohanlal. These, then, are the extracts:-

7th July 1933

"How much debt we have in the town and what are our outstandings for collection? If possible, arrange to credit our rent in the Bank, Because now there is 1½ years time. Then it will be very difficult for us."

6th August 1933

"Further, our godown which was vacant must not have been rented. Further, there were four new tables for working and two boxes in the shed constructed in our godown. Please look after them, because they would be spoiled by white ants ..... Further, the time limit for our building will be over very soon; so am worried about it; there remains only one year and 5 months. During this period whether it is possible to pay up from our workshop and rents. How much we owe to people in the town please send the accounts, so that I can know."

30th September 1933

"Therefore try to pay up as much as possible. As long as it (debt) is over our head, we cannot sit peacefully. Our name (?credit) is good; Every person who comes reputation here praises much. Therefore pay proper attention. As you are my brother, I have no worries at all. I have great respect for my brothers..... share with brother in misery and happiness, so you continue in the same way - where there is unity, there is wealth - If the debt on us is paid up, everything will be all right within five years."

2nd April 1934

"So according to my opinion,we will surely earn. So you should not sell it" (a merry-go-round). "You have spent Shs.2,000/- over it, out of which you must have realised Shs. 1,000/-. Now you have not to pay anything for it and it is ready. So think over it and write to me. According to my opinion, if it is sent here, we will earn out of it and on the contrary, it is my hope that I will be able to remit to you."

28th October 1934

(To both brothers)

"I note what you have written about opening a branch at Didoma but brother, that must be done only if you can cope with it, otherwise not. It is altight (good) to satisfy (ourselves) with whatever we are getting. Further you are only two persons, hence you may not cope ..... (with the work) there and there also we should have one of our own (special man)."

26th May 1935

"Everything should be settled with Karimjee - otherwise we may have troubles. I am here and you know the position there. We have not yet become separate - you write that we have much work and we get yearly rent of Shs. 13,800/- and if Government expenses worth about Shs.2,000/- are deducted therefrom, even then there would remain Shs.11-12 thousand. Also there would be some income from the workshop..... The reason for writing all this is that - it occurs to me as to when we may become separate - that is why (I have) to write. And also you do not send accounts since two years, so I have to write."

4th August 1935.

To both brothers)

"If possible I will come by the first Porbander boat. I have examined all the accounts sent by you regarding the workshop. I have no objection. But one thing occurs to me that if we shift the workshop - what would happen to the big shed which we have constructed

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..... There is nothing here which is profitable to us. And my days are wasted here."

28th March 1936.

"Our rent which is received is also spent away in the workshop. If the system of keeping separate rent account had been followed it would have been paid automatically. But that account is not being kept separate; Also there is much work, then the earnings are not seen. So what is the position there? You know better because you keep accounts. I am here and depend upon what you write as to the position there. Otherwise, you do what you think fit there. And if necessary and ..... are available at small interest, (you) do business with pleasure, I have no objection ..... You may do as you think fit. Do not allude wrong meaning by my writing. And I do not take any ill; because it is you who have to earn and it is also yours. It is the same to me whether (you) consider me as father or consider me as elder brother."

7th June 1936.

"So our work which is carried on at present is sufficient, And must be satisfied with that much; whether to extend the business or not depend upon your wish, but (we) cannot cope with everywhere - so what we have at present is sufficient."

21st June 1936

"And what is the rate of wages for carpenters and what is the price of timber? And what profit do we get? If you have time and spare time to write about it, let me know."

3rd September 1936

"Further, so much work (business) is done in our workshop, then send me a balance sheet at the end of the year showing how much we earn; so that it can be ascertained how much profit is made."

When cross-examined on that group of letters, this is what Keshavji said:

> "When in India responsibility for shop rested in Mohanlal and Shivja. Mohanlal however had to do all things, including opening of branches, He could deal with shop as though his own. When in India I wrote several letters Do not remember that in all these letters I have written to my brothers as partners. I wrote they were responsible for liabilities - as manager he would be. I don't know if I wrote saying they had a share in the Income."

That does not appear to me to be a very convincing explanation; apart from a convenient failure of memory there is, in particular, the suggestion that Mohanlal and Shivji were responsible for the liabilities of the business because the former was acting as manager.

Next in chronological order is a letter of outstanding significance (Exhibit P.11) dated the 2nd May, 1947, written while Mohanlal was in India and signed by Keshavji for himself and, by virtue of the power of attorney to which I have already referred, for Mohanlal. Shivji also signed. The letter was written as the result of a decision to raise a loan in order to develop the Kisutu Street properties (item (C) and (D) in my list). It was was as follows:

> LETTER OF DEPOSIT OF TITLE DEED AS SECURITY FOR SECURING OVERDRAFT NOT EXCEEDING THE SUM OF SHILLINGS ONE HUNDRED THOUSAND
>
> To:
>
> M/S The Exchange Bank of India & Africa Ltd., Dar es Salaam.
>
> Dear Sir,
>
> We, Keshavji Ramji, Mohanlal Ramji and Savji Ramji carrying on business as Keshawji Ramji do hereby deposit Title No.366 with you by way of security for any liabilities not exceeding the sum of shillings one hundred thousand (Shs.100,000/-) for which we may now or hereafter be indebted to you.
>
> Yours faithfully,
>
> Sgd. 1. Keshavji Ramji
> p.p. Mohanlal Ramji
> " 2, Keshavji Ramji
> " 3. Shiwji Ramji.

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That letter - perhaps above all others - called for an explanation. The following is the material extract from the record of Keshavji's cross-examination -

"Question: Why in document P.11 to Bank say you all three carrying on business.

Answer: Because the title was in the name of the three brothers. I was asked to sign this as asked by the Bank Manager. I can sign in English, but not read it. The reason was not that all three brothers were in partnership. It was only because of the three names in the document. Account in Bank in my own name.

Question: How did manager know you were in business together?

Answer: Don't know. I registered the loan through Shivji. He was then working as manager. I wanted to make my brothers liable with me if I couldn't repay loan. They were not partners in liabilities or in any form."

A moment ago we found Keshavji, when attempting to explain his letters from India, asserting that Mohanlal and Shivji were responsible (presumably with himself) for his liabilities of his business. We now find him asserting the very reverse - a remarkable change of front necessitated, of course, by the otherwise inexplicable terms of this letter to the bank. I imagine that he thought no more than I do of his taking refuge in his ignorance of English, or of his explanation on the ground that title No.366 was registered in the names of the brothers. The fact was (as Keshavji well knew) that the development of the Kisutu Street properties was to be financed by the business, as were all similar operations throughout this story, and that the loan was accordingly to be made to the business. It followed that those who owned the business were the persons whom the bank would require to make themselves responsible to it. When asked how the bank manager - who, according to Keshavji, drafted the letter - knew that the brothers were the partners, Keshavji denied that he could say. I reject that answer as plainly evasive. When arranging the loan Keshavji, by then an experienced man of business, must himself have given

the information - unless as may be so, the bank already knew full well, in which case I do not doubt but that Keshavji was aware of their knowing. In my view this letter to the bank constitutes an unequivocal admission by Keshavji that he and his brothers were in partnership trading as "Keshavji Ramji."

Finally there is a group of three letters written shortly before Mohanlal's return from India in March 1948.

The first of that group is from Mohanlal to Keshavji, dated the 1st January, 1948, in answer to a letter not included in the record. Mohanlal had evidently been told by Keshavji of Shivji's wish to leave the business. To what extent, if any, Keshavji had indicated to Mohanlal his plan for settling with Shivji if he left - still less, his impending arrangement concerning the properties - we do not know. At all events Mohanlal declined his approval of whatever had been proposed to him, for he wrote as follows:-

1st January 1948.

"My dear elder brother,

Your letter of the 9th December has been received on the 21st.

I am very sorry that Shivji wants to separate. I believe that my wishes will not be fulfilled. Why our work and name should not continue for generations to come? We cannot understand what will be the wish of the Almighty. My dear brother, when I wished to clear up (and) it was cleared up, such time perhaps, would not have come now but if it is to come in the destiny of us all how can we clear? The real reason of spoiling all these is due to our internal relations of which we have experience from the beginning and still we are carrying on with it. And this would be the only result of it. My dear brother, I do not advise you but I am just writing you my views that whatever your explanation you make and clear, do it without any enmity or jealousy, keeping the God in between."

In my view Mohanlal was there saying in effect: "What a pity it is that Shivji wants to break away.

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I cannot agree to be a party to it. We should all continue to work together. We are throwing away all we have built up because of personal differences such as we have had before."

The next letter is a long one written by Keshavji to Mohanlal on the 16th January 1948 reporting the full story of the agreement concluded with Shivji on the previous day (but without mentioning the agreement as to shares in the properties, to which Mohanlal had been made a party by Keshavji's signature under the power of attorney). After describing how the agreement with Shivji had ultimately been reached and how an account "from the beginning when we started the factory to the 31st December 1947" - significant words indeed - had been taken, Keshavji ended as follows:-

> "Shivji has left us. And this is also done willingly. He will go on his way and we on ours. Everything has been settled peacefully without any quarrel. It was to be settled under any cost and it has settled now."

If after that there remains any doubt as to which way the correspondence points there is the last of this group of letters, one from Keshavji dated the 21st February 1948, written when the writer knew that Mohanlal would soon be back from India. The letter opened thus:-

> "A plot has been broughton Pugu Road. No money has been paid. If after your arrival, we do not want there is a loss of Shd.3,000/- Plot will remain in our hands up to end of August. After our thinking over, if we will want we will keep but it is better if (it is) in our hands."

Then Keshavji told how Shivji had tried to outbid them but without success. Then came this announcement: "Want to make a limited company but will do it after your arrival."

To my mind the effect of that letter is this: "The time has now come to make a further investment. I have obtained an option on a plot on Pugu Road. Shivji (now, as you know, no longer interested in the business) has failed in an attempt to acquire this plot over our heads. When you return, you and I will decide whether to take up the option. I also want to turn the business into

a limited company, but will await your arrival as regards this matter also". That seems to me to be a letter from one partner to another.

It may here be noted that the land in question was item (F) in my list (with the subsequent history of which I shall deal presently), and that the business was ultimately turned into a company by Keshavji alone in 1950 after the final dispute between him and Mohanlal had broken out.

In my view the correspondence as a whole contains a number of admissions, either by express or clearly implied, by Keshavji that Mohanlal (and, incidentally, Shivji) were in partnership with him. Such admissions do not estop him from explaining them away: Ridgway v. Philip and Broadhurst (1834) 149 E.R. 1141. The question is whether by any of the evidence Keshavji has done so. I can find nothing said or written or done by him prior to the commencement of the suit which amounted to a contradiction of his admission, nor indeed anything which appreciably detracted from their value. And in my opinion his evidence at the trial was plainly insufficient to turn the scale, to say the least of it. Those considerations alone suffice to support the view that Mohanlal was a partner in the business. In addition there is the other evidence to which I have referred.

I come, then, to the basic question on this issue: bearing in mind all the evidence as to material events between 1920 to 1949, was Mohanlal speaking the truth when he testified as follows (at page 61 of the record)? "When business started in 1920, it was discussed and agreed in Zanzibar that shares should be equal." In my opinion he was.

My conclusion, therefore, on this first issue is that Mohanlal was a partner in the business, with a one-third interest as from its commencement until the business was transferred to Keshavji Ramji Ltd. in 1950.

(2) The issue as to Shivji's share in the business may be disposed of in a few words. The oral evidence and the correspondence as a whole point to his having been a partner on a par with his brothers. I will quote from one further letter, written to Shivji alone by Keshavji in India, evidently at a time when Mohanlal was away from Dar es Salaam:-

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> "(You) both the brothers do the work peacefully - As you are young, you do your duty. If you have any difficulty, write me a letter in detail. But (you) should remain quiet. Mohanlal is in my place and you are in the place of Mohanlal. Therefore do the work with care. Do not hear what others say. But keep in mind that the workshop is yours."

The question is, I think, put beyond any doubt (as against Keshavji, who alone disputes Shivji's claim) by the first agreement of the 15th January 1948 and by Keshavji's account of the matter in his letter of the following day: By those documents Keshavji recognised that Shivji had been a partner in the business from its beginning. The agreement, however, was clearly intended to put an end to Shivji's interest and equally clearly had that effect. In a word, Keshavji brought him out. If Shivji was not being bought out as a partner, why the elaborate machinery for calculating the value of his share? Keshavji maintained in the witness box that all he had done was ro make Shivji a present: "I gave him", he said, "this share to please him." Earlier his explanation was this:

> "I gave Vandravan 14½ per centum share in properties and agreed to give Shivji 28½ per centum in business in order that brothers should not quarrel. I did this to induce Shivji and Mohanlal to give Vandravan 14½ per centum share in properties."

That passage is palpably nonense. How could a gift to Vandravan of (inter alia) a portion of Mohanlal's share in the properties, when the latter was in India and had not consented, prevent a quarrel between the brothers? Surely it was more likely to cause one? And how in the circumstances could Mohanlal have been induced by the alleged gift to Shevji to give to Vandravan part of his (Mohanlal's) share?

Before disposing of this issue I will refer to one other curious feature. At the time of filing his first pleading (page II of the record) Shivji was seeking to have his written agreement with Keshavji set aside. For tha t purpose he alleged a fiduciary relationship between them. To that allegation Keshavji pleaded (page 16 of the

record, paragraph 2) that he was not and at no material time had been in loco parentis to Shivji. This, however, did not deter Keshavji from contending, when it came to the question of partnership at the trial, that his business relationship with his brothers was entirely explicable on the footing that he was the eldest, the head of the family, the controller and guardian of the family fortune, the one who by Hindu custom was dictator of their affairs, the person entitled to accept the benefit of their labours and to bestow such financial favours as he might think fit. In my view Keshavji said from time to time what suited him at the moment.

I conclude that it was clearly established that Shivji was a partner in the business from its commencement with an interest equal to that of Mohanlal, namely one-third, until the 15th January 1948, but that on that day he retired with effect from the 1st January 1948 without retaining any share. As regards the quantum of his previous interest, the fact that he was induced to sell out to Keshavji for something less than his full claim is immaterial. He no longer seeks to re-open the transaction, and I am unaware of any ground on which he could hope to succeed in so doing.

(3) The third, fourth and fifth issues are concerned with the shares of Mohanlal, Shivji and Vandravan respectively in some or all of the properties. Before answering the first of these questions it will be convenient to record the facts relating to all the properties as I find them proved, and the main evidence concerning their history upon which I rely, since many of those matters affect more than one of these three issues.

As to item (A):- The combined effect of Keshavji's and Mohanlal's evidence is that the Windsor Street plot was bought with money from the business and that the buildings completed in 1929 were partly paid for by further funds from that source but mostly by means of borrowing on mortgage. There does not appear to be any evidence expressly relating to the source of the funds used for erecting the office-building which was completed in 1946 or for the shed built in about 1951. But as regards the office-building it seems to be the proper inference from the evidence of the bookkeeper Shah that the business financed this operation also. As for the shed, since the business

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was taken over by Keshavji Ramji Ltd., formed in March 1950, it seems, in the absence of any evidence, that it must be inferred that its construction was carried out by that Company.

There is also evidence concerning the rents obtained from this Windsor Street venture. Keshavji and Mohanlal, each speaking with particular reference to the buildings completed in 1929, testified that the rents obtained therefrom were paid into the business bank account, which always stood in the name of Keshavji alone. Mohanlal also said that part of the rents were used in payment of the interest on the mortgage, and that the capital sum was repaid by instalments from the business funds.

Keshavji's evidence concerning these rents is noteworthy. He said this:-

> "In the last twenty years I have received rent - I don't know how much - may be Shs. 400,000/-. All the rent I received I put back into the workshop business. I made use of all the rent because I paid for the building. The plot and building belong to all of us. The rent was utilised in paying the loan; also money from the workshop."

And later, in cross-examination, he said this:-

> "To that account" (his bank account) "I paid income from workshop and from joint property. When Mohanlal was working in Railways his wages were paid into my bank account. I did not pay to Mohanlal the rents from the buildings in our joint names until a court order after his suit was filed. Mohanlal separated from me in 1949. From 1949 until this order I did not pay him his share. I managed the properties and collected the rents. After the order I paid the rent accrued from month to month, not arrears."

The book-keeper Amratlal Shah's testimony as to the general system of dealing with the various investments in real property was to the effect that the business financed the ventures and recouped itself out of the rents collected.

I conclude from all this that the Windsor Street venture - less the shed built in about 1951 - was an investment of profits from the business,

an investment made for the benefit of the brothers jointly, and that the rents received from the venture were for the most part put back into the business, but that some rents were paid over to Mohanlal.

As to item (B):- This item consists of the two McGowan Estate plots. Mohanlal, who alone spoke of this particular venture in any detail, said that the funds for the purchase again came from the business and that the outgoings were also paid out of the business resources. Keshavji testified thus: "I bought some plots in my own name; price paid from my bank account." applying that statement to the case of these two plots (which were registered in Keshavji's name alone,) his evidence is the same as that of Mohanlal; for the business bank account and Keshavji's bank account were one and the same, according to the evidence throughout. This second venture was, I conclude, financed in the same manner as the first, that is to say by the business. As for the land being registered in the name of Keshavji alone, there is a passage in his evidence relating to item (E) to which I shall presently refer. In this instance no building was constructed and no rent accrued. There is no evidence as to whether the sale of these plots in 1950 and 1951 produced a profit or a loss.

As to items (C) and (D):- These are the three plots on Kisutu Street, covered as to two of them by title No.6040 and as to the third by title No. 6039. I shall consider these three plots together. As already mentioned, Keshavji was in India, from about 1931 till the end of 1937. Mohanlal said that these three plots were bought while Keshavji was in India; Keshavji said that he himself arranged the purchase of title No.6040 in 1931 and of title No.6039 in 1937. Exhibit D8 is a contract dated the 9th January of apparently the year 1937; the final figure of the year is in typescript and the figure "7" seems to have been superimposed on the figure"6". This contract clearly refers to Kisutu Street "plots", but four plots, not three, are mentioned. Mohanlal also testified that four Kisutu Street plots were bought. It seems to me that Exhibit D8 relates only to title No.6039, the four "plots" being only sub-divisions of the one plot officially designated as No.2078/2. The buyer's signature on Exhibit D8 is that of Mohanlal "on behalf of Keshavji Ramji". Both the date and the

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signature indicate that Mohanlal was right when he said that title No.6039 was (at any rate formally) bought while Keshavji was in India. All these three plots were registered in the names of the brothers. Mohanlal said that once again the purchase-price was provided from the funds of the business; neither of the other brothers is recorded as saying anything on this point. I accept Mohanlal's evidence as to his having bought the plots (for the brothers) and as to the price having been paid out of the business resources. According to the agreed schedule of properties in dispute these plots were, however, first purchased (which presumably in these instances means that there were informal agreements to purchase them) in 1931 and 1935 respectively. In my view that does not affect the legal result, for in any event the three plots were bought during a period when the brothers were all associated as partners in the business, were registered in their joint names and were paid for out of the business funds.

After these three plots had remained vacant for some years it was decided to build on them. One building was erected in 1946. But sufficient funds were not available to complete the work, so, as already mentioned, it was decided to raise a loan on the security of item (A), the Windsor Street property. The loan was made and a second building was commenced. Mohanlal (by then in India) was kept informed by Keshavji. The rents were paid into the business account. It was proved by one Udvadia, a clerk in the Official Receiver's office, that the loan was repaid out of business funds a considerable time before the commencement of those proceedings.

As to item (E):- This, the fifth investment, was in the three plots on Mtendeni Street which were acquired in 1944 under temporary licence from the Municipality of Dar es Salaam - again, according to Mohanlal whose evidence on this transaction stands alone, purchased out of the business funds. Three temporary houses were built in 1945 to 1946, also with business funds. Mohanlal (then in India) was kept informed of this operation also. But on his return he found that the licence was in Keshavji's name alone. His uncontradicted evidence is that Keshavji, on being asked by him why that was so, said that it was immaterial whether the properties stood in the name of one or three, as they were in partnership. Had Keshavji denied

having made this statement, or had even suggested an acceptable departure from its plain meaning, there might have arisen a vital controversy as to its effect. Since there was no such denial or suggestion I treat it as a cogent admission relating directly to this item (E) and (as already indicated) inferentially to item (B).

When recording herein the learned trial Judge's conclusions on the issues I mentioned the doubt as to this item (E). What remains now to be observed is that by his written statement of defence (p.10 of the record) Keshavji asserted (see paragraph 3) that since the 15th January 1948 this item has been held by the brothers and Vandravan as tenants-in-common. It is noteworthy that he made this assertion (or, more accurately, concession) from the commencement of the proceedings despite the fact that the licence was in his name alone.

As to item (F):- This next investment was in the plot in the Gerezani Area, purchased in 1948, apparently in or shortly before July of that year. The evidence as to where the money came from is that of Keshavji which I have cited in connection with item (B). It is to be observed that this item (F) was bought in 1948, that is to say after Shivji had left the business. The subsequent history of this plot stems from that fact and from the fact that in 1949 (apparently before September) Keshavji and Mohanlal openly quarrelled. Thus Exhibits P.13 and P.14 prove that Keshavji in July 1948 instructed his advocate that the deed should shew himself (Keshavji), Mohanlal and Vandravan as the purchasers, whereas in September 1949 (the deed not yet having been executed) he cancelled those instructions and said that the plot was to be transferred to himself alone. It seems that this latter order was carried out. Mohanlal who had been informed of the original intention and instructions, and also Vandravan were thus excluded from appearing as co-owners with Keshavji of this plot. This plot, still undeveloped, was sold to Keshavji Ramji Ltd. in 1950.

As to item (G):- the last investment was the purchase in 1949 of the plot in the Industrial Area, Nairobi. Mohanlal testified as to this transaction. His evidence was again not challenged or contradicted. He said that there was correspondence with the Land Office to the effect that this property should be purchased in the names of himself,

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Keshavji and Vandravan, and that a document prepared accordingly was received in the business office by Keshavji. But Mohanlal was never asked to sign it, and subsequently a document was prepared in Keshavji's name alone and executed by him. We know from the agreed schedule of properties in dispute that Keshavji became the sole registered owner. I do not doubt that the quarrel between the two elder brothers in 1949 accounted also for this exclusion of Mohanlal and Vandravan - though the latter seems, so far as we know, to have been an innocent victim as regards both this item and item (F). Keshavji sold this plot in or after 1951.

So much for the facts as to the seven properties. I now pass to my decision on the third issue: what is Mohanlal's interest?

The first consideration is whether Mohanlal was bound in law by Keshavji's use of the power of attorney for the purpose of executing the second agreement of the 15th January 1948. I accept it as proved that Keshavji acted without Mohanlal's consent. The latter testified: "Second defendant" (Vandravan) "is claiming share in the immovable properties. I have never at any time agreed to give him a share." Keshavji said nothing to the contrary, and indeed admitted that he "had no authority other than this power of attorney." The learned trial Judge held (at p.96 of the record) that Mohanlal is not bound by that act of Keshavji. With respect, I cannot agree.

It was contended in the first place that the agreement to transfer to Vandravan a share of each of the other's interests in the properties concerned was merely evidence of a gift. I agree with the learned trial Judge that it was not. He held - as I think, rightly - that consideration moved from Vandravan in that he assumed Shivji's former liability in respect of the loan granted by the bank (see pages 96 and 108 of the record). Moreover Keshavji undertook to manage the properties concerned for five years. Again, Mohanlal acquired the benefit of each of those premises. In my view the agreement in question was a "contract" (and therefore binding upon all the parties) within section 2(h) of the Indian Contract Act, 1872.

I think it is arguable that, even if there were no consideration such as would render the agreement binding on Mohanlal, he would be bound

by it under section 25 of that Act. The original Exhibit D.14 (the agreement) shows that it was registered on the 21st March 1951, namely before Vandravan was made a party to the suit and many months before any of the parties pleaded any allegation as to the agreement not being binding on all. At length, in December 1951 Mohanlal raised the issue in answer to Vandravan's reliance on the agreement in his pleading of the previous month. If registered in time, the agreement was a "contract" within the meaning of section 2(h). It could, of course, be argued that the registration was out of time, being after the filing by Mohanlal of the plaint. But on the whole I think that the other view should prevail. It is not necessary for me to decide the point, and it was not taken at the hearing before us.

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It was next contended that the power of attorney on which Keshavji relief was insufficient to authorise him to bind Mohanlal. The special powers which Keshavji prayed in aid are contained in clause 4, namely:-

> "To sell, mortgage, lease or otherwise dispose of or deal with any real or personal property", etc. etc.

Keshavji also rested - but only in conjunction with clause 4 - on clause 12 wherein are set out the general powers as follows:-

> "And generally to do execute and perform any other act deed matter or thing whatsoever which ought to be done executed or performed or which in the opinion of my said attorney ought to be done executed or performed in or about my concerns engagements and business of every nature and kind whatsoever as fully and effectually to all intents and purposes as I myself could do if personally present and did the same in my proper reason it being my intent and desire that all matters and things respecting the same shall be under the full management and direction of the said attorney."

The gist of the argument, as I understand it, was that Mohanlal in fact gained nothing and lost something, and that the transaction, so far as he was concerned, was thus against his interests, and was outside his attorney's authority as given by those clauses. Attwood v. Munnings (1827) 7 B.& C. 727 and Harper v. Godsell (1870) 5 Q.B. 422 were cited in support of that proposition.

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In Attwood's case the questionable transaction was the acceptance by the attorney of a bill of exchange drawn on the donor of the power in respect of a partnership matter. It was held that the special powers given were not apt to authorise this particular acceptance inasmuch as they did not authorise acceptances for partnership, but only for personal purposes, and also because the drawer of the bill had not drawn it in the capacity of the donor's "agent" within the meaning of the deed. That part of the decision is immaterial here. But the relevant deed in that case (the second of two) contained general powers in these terms, which seem to have followed immediately after, and in the same clause, as the special power to accept bills: "generally to do, negotiate and transact the affairs and business of him during his absence, as fully and effectually as if he were present and acting therein." And it was held, expressly per Holroyd J. and inferrentially by the other two members of the court, that those general powers were not at large but took effect "only where they are necessary to carry the purposes of the special powers into effect."

Harper v. Godsell was nearer to the instant case inasmuch as the general powers there and here were in identical terms. The special powers in that came were again held not to cover the particular act done by the attorney, since on a proper construction of those powers he could only enter into transactions in furtherance of the donor's partnership whereas what the attorney did was to dissolve it. As to the general powers Blackburn J. (at page 427) said this, with which Mellor J. (at page 429) agreed:

> "The special terms of the first part of the power prevent the general words from having an unrestricted general effect. The meaning of the general words is cut down by the context in accordance with the ordinary rule of ejusdem generis. This general principle is laid down in Arlington vs. Merricke."

Keshavji, on the other hand, relied on the principle of the application of which Davy v. Waller (1899) 81 L.T.107 is an example, namely that, although the particular act done by the attorney may be "utterly unauthorised" by the donor, it will be unassailable if the powers are

suffciently widely expressed.

Applying these principles here, the question is whether the special powers given by clause 4 of the deed enabled Keshavji to bind Mohanlal by the transfer to Vandravan, If that clause was insufficient for that purpose, clause 12 is of no avail to enlarge the ambut of clause 4.

The transaction in question was, as I have said, not in the nature of a gift but, under the law of Tanganyika, a contract, Was the making of such a contract authorised by the words "to sell, mortgage, lease or otherwise dispose of or deal with"? I think it was. It may be said that in a strictly materialistic sense Mohanlal probably lost by it more than he gained. So he would have done if Keshavji had sold Mohanlal's share at a poor price through insufficiency of business acumen. But could Mohanlal have claimed release from a bargain merely because it was a bad one? I think not. Or supposo Keshavji had entered into a lease - greatly to Mohanlal's detriment - of premises which, on his return from India, the latter intended himself to occupy. Mohanlal would undoubtedly been bound. The donor of a power of attorney must rely on the judgment, good, bad or indifferent, of the donee. It by no means follows that a merely unwise disposition of the donor's property is made in excess of the authority he has given. I think Keshavji had the power to bind Mohanlal by "disposing of" or "dealing with" his share as he did. It follows, and I so hold, that the second agreement of the 15th January 1948 is binding on all four parties thereto. Only Mohanlal has contended the contrary on this appeal, and then only as regards himself.

The remaining question as to that agreement Exhibit D.14, is this: to which of the seven properties agreed to be in dispute in these proceedings does it relate. On a close examination of the available material - the agreement itself the other exhibits, the agreed schedule, schedule "B" annexed to the plaint, Keshavji's written statement of defence and the oral evidence - it transpired that there was room for considerable doubt as to which property the parties intended item 3 in Exhibit D.14 to refer to, and also as to what present significance, if any, item 4 in that exhibit had. It was therefore decided that the most

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satisfactory course would be to invite the parties to agree on those two matters if they could and to furnish their answer. This was done and their collective reply has been received. I therefore treat its contents as forming part of the agreed facts as to the identities of the properties; this inevitably involves disregarding evidence which is inconsistent with the result. The answer is that item 3 in Exhibit B.14 corresponds with item 4 in the agreed schedule, and that item 4 in Exhibit D.14 was never in fact acquired by the parties thereto. The latter item is therefore to be entirely ignored.

For the sake of clarity, then, I have set out a comparative table showing the seven properties agreed to be in dispute as they appear in my chronological list embodied in this judgment and in the agreed schedule, and as three of them appear in Exhibit D.14.

| My list | Agreed schedule | Exhibit D.14. |
|---|---|---|
| Item (A) | Item 1 | Item 1 |
| " (B) | " 5 | |
| " (C) | " 2 | |
| " (D) | " 3 | " 2 |
| " (E) | " 4 | " 3 |
| " (F) | " 6 | |
| " (G) | " 7 | |

I now proceed to answer this third issue the question of Mohanlal's share in some or all of the properties.

It is first necessary to consider the associated or ancillary question arising out of paragraphs A(1) and A(2) of the prayer in Mohanlal's plaint herein, namely what view we are to take as regards the dissolution of the partnership. The relevant law is contained in Sections 253 and 254 of the India Contract Act. I think that the main principles (in accordance with sub-sections (7) and (8) of section 253) by which one must be guided are, first, that (except in the case of an insolvent firm) a partner can surrender his share and interest in the firm to his co-partners or to any of them upon any terms to which he and they may all agree, but, secondly, that there is only one method by which a partner can retire without the consent of his co-partners and that is by

dissolving the firm. Applying those principles here, where there was of course no partnership deed or other evidence of terms agreed in advance. I think that the true view is that Keshavji alone negotiated and settled with Shivji in January 1948, by which settlement he himself purchased from Shivji the latter's entire interest in the firm, that Mohanlal's letter to Keshavji dated the 1st January 1948 (hereinbefore set out in full) shows that at that time he disapproved of Shivji breaking away at all but resigned himself to the possibility of his so doing, and that, when Mohanlal returned from India in March 1948 and found that the severance was fait accompli, he accepted and ratified that event by his conduct inasmuch as he never attempted to treat it as having put an end to the firm's existence but, on the contrary, adopted the attitude throughout that he and Keshavji were the continuing partners. Moreover, Mohanlal never suggested that by the first agreement of the 15th January 1948 he and Keshavji together had bought Shivji out and the funds entirely negatived any such contention. In a word, the legal position was then as though Mohanlal had previously consented to his co-partners entering into the first agreement of the 15th January 1948. Accordingly from then onwards Keshavji's and Mohanlal's interests in the business were two-thirds and one-third respectively.

It appears that the next material event was that at some time in 1949 Keshavji and Mohanlal became finally at arm's length and there was no longer any active co-operation in the conduct of the business. But the evidence as to this phase in their relations is so slight and inconclusive that, in my view, it is not possible to deduce from it that at any given moment either of the continuing partners did an act which in law effected the dissolution of the firm.

In March 1950, however, something happened which fundamentally affected the position: Keshavji formed Keshavji Ramji Ltd. and transferred to it item (F) of the properties and all the assets of the industrial side of the business. That, of course, was done in the end without Mohanlal's consent or approval. In my opinion that was an act or series of acts which entitled Mohanlal to ask under section 254 of the Indian Contract Act for a decree of dissolution. Paragraphs (4) and (5) of that section seem each to apply to this case.

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Accordingly I think that we should decree a dissolution as at the date in March 1950 (hereinafter called "the dissolution date") on which Keshavji Ramji Ltd. took over the business. It follows that Mohanlal's rights as regards the various properties (except those as to which the parties' shares were fixed by Exhibit D.14) fall to be determined on that footing.

I therefore hold on this issue as follows:-

In item (A) Mohanlal had a one-third share from the date of its purchase by the business until the 15th January 1948. Pursuant to the second agreement of that date his share was thereafter 28½ per centum and has so remained.

I do not accept Keshavji's reason for the registration of this item in the names of the brothers, viz, that it was done "because they were my brothers" - "I wanted to give my brothers a present of a share in the property." I find that the true reason which prompted the registration in those names was because the purchase was intended to be and was in fact to the knowledge of all concernod an investment of profits earned by the business, an investment made by and for the brothers. who were at that time the partners.

As regards item (B), I find that the purchase thereof was a similar investment of further profits so earned, and I hold that Mohanlal had a one-third share in this property also from the date of its purchase. The property was, however, unaffected by the second agreement of the 15th January 1948. But it appears from the agreed schedule that Keshavji sold this property to outside purchasers in two portions in 1950 and 1951 respectively. Mohanlal is entitled, as against Keshavji, to one-third of the true market value of each portion as at the date of the sale thereof. If (which is not quite clear, according to the agreed schedule) Keshavji transferred this property to Keshavji Ramji Ltd. and that Company subsequently sold the two portions, then Mohanlal's share is to be calculated on the true market value of this entire item (B) as at the date of the transfer thereof to the Company.

Item (C) differs from item (A) only inasmuch as it was not included in Exhibit D.14, and differs from item (B) only inasmuch as it has never been sold; for I find that its acquisition and its

registration in the names of the brothers took place in the same circumstances and for the same reasons as in the case of Items (A) and (B). Consequently I hold that Mohanlal had a one-third share in this item (C) from the date of its purchase and still has that share.

As to item (D) I find and hold exactly as in the case of item (A), and for the same reasons.

Item (E) was, as I have mentioned, in effect stated by Keshavji in his pleading to have been included in Exhibit D.14, despite the fact that the licence was always in his own name alone. That seems to me to be of considerable significance, and not merely as regards this one item. For it is wholly inconsistent with Keshavji's general contention in the witness box that properties standing in his name alone are in his sole beneficial ownership. There is, moreover, no doubt as to Keshavji's attitude regarding this item, for he was of course a party to the collective answer which confirmed the statement in his pleading.

There is also the evidence to which I referred when considering this item, particularly Keshavji's admission to Mohanlal to the effect that it made no difference whether the property stood in one name or in three.

Accordingly I find that this item was acquired and developed by the business for the benefit of the brothers. Accordingly I hold that Mohanlal had a one-third share in this property from the date in 1944 when the licence in Keshavji's name commenced, but only until 15th January 1948. As from then his interest has been and still is a 28⅓ per centum share.

This item is the only one of the seven properties where the land is held under licence only, and the title is not registered. Whatever profit accrues from the land and the buildings on it nevertheless accrues for the benefit of those who are entitled to shares in the property.

Finally, items (F) and (G) are in a category by themselves since each was purchased after Shivji(s rights had all crystallized by reason of the two agreements of the 15th January 1948. These properties were, as I have already found, purchased with funds from the business. But Shivji had

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already renounced all his former interest in the business. Thus at the time of the purchase of each of them Keshavji and Mohanlal were the only partners, the former with a two-thirds share. It would be unfruitful to speculate as to Keshavji's reasons for his first intention, in the case of each of those two items, to have it registered in the names of Mohanlal, Vandravan and himself. He may or may perhaps not have then appreciated that he and Mohanlal were still partners in the business. Vandravan was in any event no more than an intended donee of a share which in the result he never got. The position in law today is that, in the case of each of these two properties, Mohanlal had a one-third share as from the date of purchase. But Keshavji subsequently sold each property - item (F) to the Company in 1950 and item (G) to an un-named purchaser in or since 1951. Mohanlal is thus entitled to a one-third share of the true market value of each property as at the date of its sale by Keshavji.

(4) The fourth issue is as to Shivji's interest in the properties. Speaking generally, his position is that, for the reasons already stated in the case of Mohanlal, he had a one-third share in each property purchased prior to the 15th January 1948, but that as from that date he has had and still has no more than a 28½ per centum interest in such of the properties in dispute as are affected by the second agreement of that date. In my view the true effect of the first agreement of that date is that Shivji renounced all and every interest of his in the business or in its then or future assets or profits. But that agreement did not affect the respective shares which he had already acquired in various properties, which shares by then ranked no longer as assets of the business but were treated as the personal investments of the brothers respectively. By the second agreement Shivji agreed to part with a portion of some, but not all, of such investments.

Applying those criteria to the properties in turn, the result is as follows:-

Item (A):- Shivji had a one-third share as from the date of purchase until the 15th January 1948. As from then he has had and still has a 28½ per centum share.

Item (B):- Shivji had a one-third share

from the date of its purchase until Keshavji sold it in two portions. Shivji is entitled, as against Keshavji, to one-third of the true market value of each portion as at the date of the sale thereof.

Item (C):- Shivji had a one-third share from the date of its purchase and still has that share.

Items (D) and (E):- Shivji's position is the same as in the case of item (A).

Items (F) and (G):- Shivji never had any interest in either of these.

(5) The issue as to Vandravan's share in properties is simple. Since the second agreement of the 15th January 1948 is binding on all the four parties thereto, Vandravan has since that date had a 14½ per centum share in items (A), (D) and (E). He has never had any other interest in any of the properties.

By way of concluding this subject of the respective shares of the parties in various properties, I should mention the following two points.

In the case of item (D), the agreed schedule shews thatt the building is not yet completed. Each of the parties now has a share in this item. If the building is to be completed and the parties all wish to retain their present respective shares in the property as a whole, then each will be under an obligation to provide his proportion, corresponding with his share, of the cost of finishing the work.

Secondly, whenever I have referred to "a share" in any given property, the expression is to be understood to mean an undivided share.

(6) The sixth issue is as to whether specific performance of the second agreement of the 15th January 1948 should be ordered. The learned trial Judge held, that it should, I agree. I note that in the judgment (at page 98 of the record) there is a misquotation of the final paragraph of the agreement. In the agreed translation (at page 109) the opening words of that paragraph are "On this draft deed", whereas they are quoted in the judgment as "on this contract deed." The

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translation to be found in the bundle of exhibits contains the word "draft", not the word "contract". However, I do not think that anything turns on this and no argument to that effect was addressed to us.

Moreover, the learned trial Judge also based his conclusion on paragraph 3 of the agreement (at the bottom of page 107) which is quoted without comment (at page 97, lines 40 to 44), whereas in truth that paragraph itself contains a misleadingly erroneous statement by the parties, for as now transpires from their collective answer as to the identity of item 3 of the properties described in the agreement (at page 107), that item is one which, according to the agreed schedule, was never "in the names of" the brothers but always in that of Keshavji alone. However, it is clear that this mis-statement in paragraph 3 cannot now prevail over the parties' collective answer so as to affect the true construction of the agreement as a whole.

As regards this matter of the identification of the properties affected by this agreement (now by common consent confined to the first three items therein described), there has been considerable confusion. I now for the last time refer to it so as to avoid any doubt as to the manner in which I think it should be resolved. In both his pleadings (as against Mohanlal and Shivji respectively) Keshavji stated that the agreement affected items (A), (C), (D) and (E) of my list. It is now crystal clear that the agreement itself relates only to the three items (A), (D) and (E); that is to say, it is more favourable to Keshavji than Keshavji himself pleaded, for it contains not even a suggestion that Keshavji thereby parted with a portion of his share in item (C). But the learned trial Judge (at page 97 of the record, lines 21 to 26) treated Keshavji's pleading and the agreement as mutually identical in this respect. In the face of the plain meaning of the agreement (clarified, as to item 3, by the collective answer of the parties) I cannot read into it that which is not there, and thereby give to Vandravan a share in item (C) - not only at Keshavji's expense but also at Mohanlal's and Shivji - which the agreement did not give him, simply on the strength of an erroneous admission made by Keshavji. I must treat the agreement as paramount, not merely in some respects but in all, and whether

or not it conflicts with any particular pleading. The fact is that on the 15th January 1948 Vandravan was given no interest in item (C) and as regards that item none of the brothers was affected by the second agreement of that date.

Nevertheless, I do not think that any of those matters substantially affect the broad issue, for the agreement must in my view be held to be fully binding and no longer ambiguous in view of the collective answer given by the parties.

On this issue of specific performance, therefore, I agree with the learned trial Judge that the parties must be held to have intended that such steps should be taken by all of them in concert as would give to each of them a clear legal title to his agreed share in each of the properties concerned - though not the properties which the learned Judge seems to have indicated, but the three properties listed by me as items (A), (D) and (E). As regards items (A) and (D), there should be a transfer by each of the brothers of 14½ per centum of his one-third share to Vandravan. As to item (E), the licence relating to the land is in Keshavji's name alone and his title thereunder is not registered. If the rights thereby granted are transferable Keshavji should transfer to the other three parties their respective shares in those rights; and if the rights are registrable each party will then be at liberty to register his share. If the licence is of such a nature that the rights are non-transferable, then all the parties should together execute such document as may be approved by the Registrar of the High Court at Dar es Salaam as being one which is lawful and is effective as conclusive evidence of the beneficial share of each party in this item (E) as against the other parties respectively.

(7) The seventh and last issue is as to what accounts, if any, should be ordered to be taken.

By his plaint Mohanlal alleged (in paragraph 8) that "no settlement of account" had been made between the partners since the commencement of the partnership, and asked as against Keshavji that an account be taken of the business and as against Keshavji and Shivji that an account be taken of the properties. By his advocates' letter to Keshavji dated the 3rd December 1949 he demanded "full account". It seems that the demand was

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never complied with. Shivji's pleading contained substantially the same prayer. Neither Keshavji nor Vandravan has asked for any account.

In this connection there are two material provisions of the agreements of the 15th January 1948.

In the first agreement (see pages 22 and 23 of the record) Shivji expressly declared that he thereby accepted as duly settled between Keshavji and himself the entire business accounts up to the 31st December 1947 and that as from the 1st January 1948 he had no claim or rights relating to the business. I have construed that as relating only to what may be called the industrial side of the business, and not to those properties which, although originally financed out of the business profits had long since become the personal investments of the partners.

Again, in the second agreement there was the following provision (at page 109 of the record):

> "We further declare that all the accounts of rents of the properties up to the 31st December 1947 have been settled and that none of us have any claim or debt against or owing to any shareholder as regards rents."

That provision, as I understand it, estops each of the parties from claiming an account of rents received in respect of items (A), (D) and (E) relating to any period up to the end of 1947.

Then there is that passage in Keshavji's evidence hereinbefore quoted, in which he admitted to not having accounted to Mohanlal for certain rents received in or about 1949.

Also there is the question of the amount due to Mohanlal from his co-partner Keshavji as at the dissolution date. I have taken the view that by the first agreement Keshavji personally acquired Shivji's one-third share in all the assets of the business. It follows, of course, that in calculating the value of Mohanlal's share in the business at the dissolution date no part of the sum of Shs.50,501/- paid to Shivji pursuant to the first agreement can be treated as having been paid by the business. The whole of that sum was payable by Keshavji individually, and he thereby

acquired another one-third share in the business, that is to say in what I have called its industrial side, including the goodwill.

Finally there is the matter of the sale or transfer by Keshavji of items (B), (F) and (G), to a share in each of which Mohanlal was entitled at the time of its being so sold or transferred, Shivji being then entitled to a share in item (B).

All those matters should, I think, be borne in mind on this issue, and the result seems to me to be as follows. In setting out the result I shall treat the various properties as the subject of separate accounts and inquiries because of the different factors affecting them individually and as opposed to the industrial activities of the business. This arrangement will, I hope, tend to clarify the complexities resulting from the extremely unbusinesslike methods of the brothers which have led to the whole dispute. But it does not necessarily mean that each account must be taken separately from the others; it may well be found more convenient to combine several accounts in one.

In my view Mohanlal is entitled as against Keshavji to -

(a) a partnership account of the nett profits of the business excluding the profits obtained from investments in the properties from its commencement in or about 1920 to the dissolution date;

(b) an account of the nett profits obtained from the properties as follows -

(i) from item (B) from the date of its purchase in 1930 until the date or dates at which Keshavji disposed of this property in 1950 or 1951,

(ii) from item (c) from the date of its purchase in 1931,

(iii) from items (A), (D) and (E) from the 1st January 1948,

(iv) from item (F) from the date of its purchase in 1948 until the date of its transfer by Keshavji to Keshavji Ramji Ltd. in 1950,

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(v) from item (G) from the date of its purchase in 1949 until the date of its transfer by Keshavji in or since 1951;

(c) an enquiry as to the market value of item (B) as at the date or dates at which Keshavji disposed of it;

(d) an enquiry as to the market value of item (F) as at the date of its transfer by Keshavji to Keshavji Ramji Ltd;

(e) an enquiry as to the market value of item (G) as at the date of its transfer by Keshavji in or since 1951;

(f) an enquiry as to what date was the dissolution date;

(g) an enquiry as to the value of the assets of the business as at the dissolution, date, excluding the value of any of the properties but including that of the goodwill.

Shivji is entitled as against Keshavji to the accounts mentioned above in paragraphs (b)(i), (b)(ii) and (b)(iii) and to the enquiry mentioned in paragraph (e).

All those accounts should be taken and enquiries held by the Registrar of the High Court at Dar es Salaam, except to the extent that the parties concerned may by consent dispense therewith. On the taking of each account such sum or sums, if any, as Keshavji may prove to have been paid to Mohanlal or to Shivji, as the case may be, towards or in excess of the amount found to be payable by him (Keshavji) are to be credited to him in that account.

Accordingly I would allow the appeal and the cross-appeal, the appellants to have their costs of the former as against the first respondent, the first respondent to have his cost of the cross-appeal, the last-mentioned costs to be set off against the first-mentioned. I would make no order for costs in favour of or against the second respondent. I would set aside the judgment and decree of the High Court of Tanganyika and, as at present advised, I would order that there be substituted a decree as follows:-

(1) A declaration that Mohanlal was a partner in the firm carrying on business under the style of "Keshavji Ramji" as from its commencement in or about 1920 until its dissolution as herein decreed, with a one-third share therein.

(2) A declaration that Shivji was a partner in the said firm as from its commencement until the 1st January 1948, with a one-third share therein.

(3) A declaration that Keshavji was a partner in the said firm with a one-third share therein as from its commencement until the 1st January 1948 and with a two-thirds share therein as from that date until its dissolution.

(4) An order for an enquiry as to the date in March 1950 on which Keshavji Ramji Ltd. acquired the business carried on by the said firm.

(5) Dissolution of the said firm as at the last-mentioned date.

(6) A declaration defining Mohanlal's undivided share in each of the properties respectively in accordance with my conclusions on the third issue on this appeal.

(7) A similar declaration as regards Shivji's undivided shares in certain of the properties in accordance with my conclusions on the fourth issue.

(8) A similar declaration as regards Vandravan's undivided shares in certain of the properties in accordance with my conclusions on the fifth issue.

(9) An order for specific performance of the second (Quadripartite) agreement of the 15th January 1948 in the manner indicated in my conclusions on the sixth issue.

(10) An order for each of the accounts and enquiries (other than the enquiry already ordered under paragraph (4) above) to which, on the seventh issue, I have held Mohanlal and Shivji respectively to be entitled.

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(11) An order for payment to Mohanlal, Shivji or Keshavji, as the case may be, of any sum found to be due to any of them on the taking of each of the said accounts and on the holding of each of the said enquiries, each of such sums to be calculated with reference to the respective shares or interests to which I have held those parties to be entitled during the periods covered by the accounts respectively or at the respective dates as at which the values are to be ascertained, as the case may be, with any appropriate set-offs of any sums so found to be due.

(12) An order that the plaintiffs Mohanlal and Shivji do recover from the first defendant Keshavji their respective costs of the proceedings up to and including the trial.

(13) Liberty to any party to apply to the High Court for directions as to the working out of this decree and as to the costs of the taking of accounts and holding of enquiries.

I have said that that is the decree which, as at present advised, I would order. So far as I can see, it would dispose of all matters in dispute, but in case I have overlooked any detail I would further order that any party do have liberty to apply to this Court at its next sittings at Dar es Salaam for further consideration of the form of the decree, a draft (or, if any detail is in dispute, drafts) of which should be previously submitted. Among other things which the parties may wish us to consider are the dates up to which the accounts of profits from the various properties should be taken. It would appear from Bulstrode & Bradley (1747) 3 Atkyns 582 (26 E.R. 1136), Bell v Read (1765) 3 Atkyns 590 (26 E.R. 1140) and Barfield v Kelly (1828) 4 Russell 355 (38 E.R.839) that such accounts may and should be taken up to any date not later than that of the Registrar's certificate. A similar consideration may arise as regards the dates as at which the market values of items (B) and (G) respectively be ascertained by enquiry.

In the interests of the parties and of future

peace between them I think it right to conclude with the following general comment on the case. Various passages in Keshavji's evidence depict him as an arbitrary, dictatorial and somewhat impulsive man who in his exercise of the headship of the family displayed from time to time something very like tyranny and who was prone to assume the sole right to control the course of the business. "I claim to be head and dictator of the family", as he said at one stage in the box, sums up his attitude. He was however, doing himself less than justice, for a number of his letters disclose a much more reasonable attitude. His younger brothers, true to the Hindu tradition of organised family life, deferred for many years to his leadership and authority, trusting in his judgment and integrity, content that he should hold the purse-strings for them all, and thereby imperilling their ability to establish their legal rights if a conflict supervened. At length, when the conflict came, they suffered the disadvantage of those who over a long period leave the administration of joint affairs to one of their number: their trustfulness, and indeed their neglect to look after their affairs, had encouraged the assumption by their elder brother of rights which in reality were those of all three, not his alone. Keshavji may perhaps have acted dishonestly, or he may have been guilty of no more than confusing his claim to take the lead, as the senior member of the family, in controlling the family business of which he had originally been the chief promoter with a different and wrongful claim to appropriate its assets for himself and to assume the role of a generous distributor of such part thereof as he might choose to give away. It is unnecessary to decide - and I make no attempt to do so - into which of those two errors Keshavji fell. The only questions requiring decision are the issues to which I have referred. And it would serve only to perpetuate ill-feeling - without any compensating benefit - if the younger brothers were to persist in recrimination or suspicion. The brothers would do well to forget those unfortunate and costly disputes once and for all.

ROGER BACON

JUSTICE OF APPEAL

Nairobi.
6th June 1956.

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WORLEY P.

In the judgment which has been prepared by the learned Justice of Appeal, the history and the facts of this matter and the issues raised on this appeal are set out and discussed so fully and carefully that there is no need for me to repeat them. I have had the advantage of reading that judgment when in draft and of discussing it with my brother Bacon. I agree entirely with his analysis of the business and legal relationships between the parties, with the construction he has placed upon the two agreements and the correspondence and with his conclusions and findings thereon. I therefore agree that the appeal and cross-appeal must both be allowed and I agree with his proposed orders as to costs. An order will be made accordingly.

I have given full consideration to the details of the orders to be made consequent upon these findings and have had the advantage of discussing with Bacon J.A. those which he has proposed. So far as I also can see they will dispose of all the disputed issues raised by this appeal; but, in case any point has been overlooked or in case any party or parties wish to apply to this Court for any modification of a consequential order or in case any party wishes to have an opportunity to address the Court on the question of costs, a direction will be given that the final order on this appeal and cross-appeal shall not be signed until the parties have had opportunity to apply to this Court at its next forthcoming sittings in Dar es Salaam.

Before concluding this judgment, I wish to point out that a part of the confusion and uncertainty as to the properties affected by the second agreement of 15th January, 1948 was occasioned by an error in the preparation of the record. Schedule B to the plaint, as originally filed, catalogued only six properties. An amended Schedule B, listing eight properties, was filed with leave, on 19th September 1950. No note was made on the original schedule nor were the amendments on the amended Schedule shown, as they should have been, in red ink. Consequently, the amendment was lost sight of and the Schedule as originally filed was copied for the appeal record. This is yet another instance of the trouble which

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can be, and often is, caused to this Court by the failure of advocates to observe and of the Courts of trial to insist on, the normal practice when amendments to pleadings are made.

N.A. WORLEY
PRESIDENT

Nairobi
8th June 1956.

MAHON J.

10 I have had the advantage of reading the two judgments which have already been delivered. I entirely agree with all that has been said and have nothing to add.

G.M. MAHON
JUDGE

DELIVERED at Dar es Salaam on 22nd June 1956.

In the Court of Appeal for Eastern Africa at Dar es Salaam

No.40

Order of Court of Appeal for Eastern Africa at Dar es Salaam.

27th July 1956.

No.40.

ORDER OF COURT OF APPEAL FOR EASTERN AFRICA AT DAR ES SALAAM.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
AT DAR ES SALAAM

CIVIL APPEAL NO.37 OF 1955.

BETWEEN

1. KESHAVJI RAMJI
2. VANDRAVAN MAGANLAL — APPELLANTS

AND

1. MOHANLAL RAMJI
2. SHIVJI RAMJI — RESPONDENTS

Appeal from a judgment and decree of Her Majesty's High Court of Tanganyika at Dar es Salaam (Mr. Acting Justice Edmonds) dated 5th October 1954 in

Civil Case No.43 of 1950

between

Mohanlal Ramji
Shivji Ramji — Plaintiffs

and

Keshavji Ramji
Vandravan Maganlal — Defendants

IN COURT this 27th day of July, 1956 - Before the Honourable The President (Sir Newnham Worley) - the Honourable Mr.Justice Bacon and the Honourable Mr.Justice Mahon.

O R D E R

THIS appeal and the cross appeal filed by Respondent No.1 Mohanlal Ramji coming on for hearing on the 5th and 6th days of December 1955 AND UPON hearing Mr.O'Donovan and Mr. Fraser Murray counsel for appellants and Mr.K.A. Master, Mr.P.R. Dastur and Mr.H.G.Dodd counsel for Respondent No.1

and upon reading the written arguments filed by Respondent No.2 it was ordered that this appeal and cross appeal do stand for judgment and the same having been delivered on the 22nd day of June, 1956 and the matter coming for further consideration this 27th day of July, 1956, IT IS ORDERED:-

That this Appeal and the Cross Appeal be allowed and that the Judgment and Decree of the High Court of Tanganyika (The Honourable Mr.Acting Justice Edmonds) be set aside and a Decree be substituted as follows:-

(a) This Court declares that Mohanlal was a partner in the firm carrying on business under the style - "Keshavji Ramji" as from its commencement in or about 1920 until its dissolution as herein decreed, with a one-third share therein.

(b) This Court declares that Shivji was a partner in the said firm as from its commencement until 1st January, 1948, with a one-third share therein.

(c) This Court declares that Keshavji was a partner in the said firm with a one-third share therein as from its commencement until the 1st January 1948 and with a two-thirds share therein as from that date until its dissolution.

(d) This Court orders that an enquiry be made as to the date in March 1950 on which Keshavji Ramji Limited acquired the business carried on by the firm of Keshavji Ramji.

(e) This Court declares that the firm of Keshavji Ramji was dissolved as at the last mentioned date.

(f) This Court declares that Mohanlal is entitled to an undivided share in the following properties:-

(1) An undivided one-third share in item (A), namely Title No.366. Plot No.528 on Windsor Street, Dar es Salaam (together with the buildings and temporary shed built thereon) from the date of its purchase in 1926 until 15th

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January 1948 and thereafter 28½ per centum undivided share therein.

(2) An undivided one-third share in item (B), namely, Title No.6137, Plot Nos. 913/2 and 914/2 on the McGowan Estate in the Upanga Area, Dar es Salaam from the date of its purchase such share to be calculated on the true market value of this entire item (B) as at the date of the transfer thereof to Koshavji Ramji Ltd.

(3) An undivided one-third share in item (C), namely, Title No.6040, Plots Nos. 1392/2; Flur III and 2066/2; Flur III, on Kisutu Street, Dar es Salaam (together with the buildings erected thereon) from the date of its purchase in 1931.

(4) An undivided one-third share in item (D), namely Title No.6039, Plot No. 2078/2; Flur III, on Kisutu Street, Dar es Salaam (with an incomplete building thereon) from the date of its purchase in 1933 until the 15th January, 1948, and thereafter a 28½ per centum undivided share therein.

(5) An undivided one-third share in item (E), namely, Plots Nos.1148/16, 1149/16 and 1150/16, on Mtendeni Street, Dar es Salaam (with temporary housesbuilt thereon) from the date of the licence in the name of Keshavji in 1944 until the 15th January, 1948 and thereafter an undivided 28½ per centum share therein.

(6) One-third share of the true market value of items (F) and (G), namely, Plot No.586/206 on Pugu Road in the Gerezani Industrial Area, Dar es Salaam, and Title No.P.R.7446, Plot No.208/2875, in the Industrial Area, Nairobi as at the dates of their sale in 1950 and 1951 respectively.

(g) This Court declares that Shivji is entitled to an undivided share in the following properties:-

(1) An undivided 28½ per centum share in item (A) as from 15th January, 1948 and onwards.

(2) An undivided one-third share in item (B) from the date of its purchase, such share to be calculated on the true market value of this entire item as at the date of the transfer thereof to Keshavji Ramji Ltd.

(3) An undivided one-third share in item (C) from the date of its purchase in 1931.

(4) An undivided 28½ per centum share in items (D) and (E) as from 15th January, 1948, and onwards.

(h) This Court declares that Vandravan is entitled to an undivided 14½ percentum share in items (A), (D) and (E) only since 15th January, 1948.

(i) As regards item (D), this Court orders that if the building is to be completed and the partners all wish to retain their present respective shares in the property as a whole, then each will provide his proportion corresponding with his share of the cost of finishing the work.

(j) AND IT IS FURTHER ORDERED that parties do specifically perform the second agreement of the 15th January, 1948, by all of them taking such steps in concert as would give to each of them a clear legal title to his agreed share in the three properties, namely, items (A), (D) and (E) and for this purpose follow the directions contained on page 31 of the Judgment of this Court.

(k) AND IT IS FURTHER ORDERED that the Registrar of Her Majesty's High Court at Dar es Salaam should take accounts and hold enquiries hereunder specified:-

"On the taking of each account such sum or sums if any, as Keshavji may prove to have paid to Mohanlal or to Shivji, as the case may be, towards or in excess of the amount

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found to be payable by him (Keshavji) are to be credited to him in that account."

Mohanlal is entitled as against Keshavji to:-

(a) a partnership account of the nett profits of the business (excluding the profits obtained from the investments in the properties) from its commencement in or about 1920 to the dissolution date and interest at 6% on the amount of Mohanlal's share of partnership assets from such last mentioned date to the date of the decree.

(b) An account of the nett profits obtained from the properties as follows:-

(i) From item (B) from the date of its purchase in 1950 until the date or dates at which Keshavji disposed of this property in 1950 or 1951.

(ii) From item (C) from the date of its purchase in 1931.

(iii) From items (A), (D) and (E) from the 1st January, 1948.

(iv) From item (F) from the date of its purchase in 1948 until the date of its transfer by Keshavji to Keshavji Ramji Ltd. in 1950.

(v) From item (G) from the date of its purchase in 1949 until the date of its transfer by Keshavji in or since 1951.

(c) An enquiry as to the market value of item (B) as at the date or dates at which Keshavji disposed of it;

(d) An enquiry as to the market value of item (F) as at the date of its transfer by Keshavji to Keshavji Ramji Ltd.

(e) An enquiry as to the market value of item (G) as at the date of its transfer by Keshavji in or since 1951;

(f) An enquiry as to what date was the dissolution date;

(g) An enquiry as to the value of the assets of the business as at the dissolution date, excluding the value of any of the properties but including that of the goodwill.

Shivji is entitled to the accounts mentioned above in paragraphs (b)(i), (b)(ii), (b)(iii) and to the enquiry mentioned in paragraph (c) hereof.

(kk) IT IS FURTHER DIRECTED that the accounts of the profits from the various properties be taken up to 31st August 1956 except where herein otherwise directed.

(l) IT IS FURTHER DIRECTED that in calculating the value of Mohanlal's share in the business at the dissolution date, no part of the sum of Shs.50,501/- paid to Shivji pursuant to the first agreement should be treated as having been paid by the business but should be treated as having been paid by Keshavji.

(m) AND IT IS FURTHER ORDERED that payment be made to Mohanlal, Shivji or Keshavji as the case may be of any sum found due to any of them on the taking of each of the said accounts and on the holding of each of the said enquiries, each of such sums to be calculated with reference to the respective shares or interests to which this Court had held those parties to be entitled during the periods covered by the accounts respectively or at the respective dates as at which the values are to be ascertained, as the case may be with any appropriate set-offs of any sums so found to be due.

(mm) AND IT IS FURTHER ORDERED that the decree shall carry interest at 6% from the date of the decree till payment on the amounts found due and payable by Keshavji to Mohanlal on taking accounts.

(n) AND IT IS FURTHER ORDERED that:-

(1) The Plaintiff, Mohanlal do receive from the first Defendant, Keshavji

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Judgment of Court of Appeal for Eastern Africa at Dar es Salaam.

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his taxed costs of the proceedings up to and including the trial; Mohanlal to receive two advocates' costs.

(2) That the costs of the issue at the trial as to Vandravan's share in the properties incurred by Vandravan be taxed and paid to him by the first named Plaintiff, Mohanlal.

(3) That the Appellants do have their taxed costs of the Appeal (two advocates) as against the first Respondent and the first respondent do have his taxed costs of the Cross Appeal (two advocates) the first mentioned costs to be set off against the last.

(c) AND IT IS FURTHER ORDERED THAT any party shall have liberty to apply to Her Majesty's High Court at Dar es Salaam for directions as to the working out of this Decree including the appointment of a Receiver of the rents and profits of the aforesaid properties and as to the costs of the taking of accounts and holding of enquiries and matters incidental thereto.

Given under my hand and the seal of the Court at Nairobi the 27th day of July 1956.

H.R.F. Butterfield

Deputy Registrar.

Issued this 13th day of August 1956.

In the Court of Appeal for Eastern Africa at Dar es Salaam.

No.41

Order Granting Final Leave to the Appellant to Appeal to Her Majesty in Council.

8th April 1957.

## No.41.

## ORDER GRANTING FINAL LEAVE TO THE APPELLANT TO APPEAL TO HER MAJESTY IN COUNCIL.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT DAR ES SALAAM

Civil Application No.4 of 1956.

IN THE MATTER OF AN INTENDED APPEAL TO HER MAJESTY IN COUNCIL.

BETWEEN

KESHAVJI RAMJI — Appellant/Applicant

and

MOHANLAL RAMJI — 1st Respondent
SHIVJI RAMJI — 2nd Respondent

(Appeal from the Judgment and Order of Her Majesty's Court of Appeal for Eastern Africa, at Dar es Salaam dated the 22nd day of June 1956 in Civil Appeal No.37 of 1955.

BETWEEN

KESHAVJI RAMJI
VANDRAVAN MAGANLAL — Appellants

and

MOHANLAL RAMJI
SHIVJI RAMJI — Respondents)

In Chambers this 8th day of April 1957

Before the Honourable Mr. Justice Lowe.

ORDER

UPON application made to this Court by Counsel for the above-named Applicant on the 8th day of April 1957 for final leave to appeal to Her Majesty in Council as a matter of right under sub-section (a) of the Section 3 of the East African (Appeal to Privy Council) Order in Council 1951 AND UPON HEARING Counsel for the Applicant and for the Respondent THIS COURT DOTH ORDER that the Applicant do have final leave to appeal as a matter of right to Her Majesty in Council from the judgment and Order, and that the costs of and incidental to this application be costs in the intended appeal.

Dated at Dar es Salaam this 8th day of April, 1957.

Sgd. H.R.F. Butterfield

Deputy Registrar

H.M. COURT OF APPEAL FOR EASTERN AFRICA

Signed and Issued 8th April 1957.

Exhibits

# E X H I B I T S

Exhibit D.12

## EXHIBIT D.12

Power of Attorney of Mohanlal Ramji.

21st December 1929.

## POWER OF ATTORNEY OF MOHANLAL RAMJI

KNOW ALL MEN BY THESE PRESENTS that I, MOHANLAL RAMJI British Indian of Dar es Salaam in the Tanganyika Territory do hereby nominate constitute and appoint KESHAVJI RAMJI also British Indian of Dar es Salaam aforesaid by true and lawful attorney for me in my name and for my use and account to do the following acts and things :-

1. To receive the rents and profits of and manage all the houses farms lands and property of whatsoever tenure and of any interest therein, of or to which I am now or at any time hereafter shall or may become entitled for any interest or estate whatsoever, with liberty in course of such management to let or demise the property or any part thereof either from year to year or for any term or number of years or for any less period than a year at such rents and either with or without any fine or premium and to such covenants and conditions as the said attorney shall think fit and with liberty also to accept surrenders of leases or tenancies to make allowances to and arrangements with lessees tenants and others to cut timber and other trees whether for repairs sale or otherwise to repair and rebuild houses or other buildings and to insure the same against damage by fire tempest or otherwise to repair fences to drain or otherwise improve the property or any part thereof to appoint and employ agents servants and others to assist in the management of the property and to remove them and appoint others in their places and to pay and allow to the persons to be so employed as aforesaid on such salaries wages or other remunerations as the said attorney shall think fit and with power also to give effectual receipts and discharges for the rents profits income of the property and on non-payment of any rent or the breach of any covenant agreement or condition which ought to be observed or performed by any lessee or tenant to take such proceedings by distress action or otherwise for recovering such rent or in respect of such breach as the said attorney shall think fit and generally to do all such acts or things in or about the management of the property as the said attorney might do if he was absolute owner thereof also to use and take all lawful ways and means for recovering any houses lands or property belonging or supposed to belong to me.

Exhibits

Exhibit D.12

Power of Attorney of Mohanlal Ramji.

21st December 1929. - continued

2. To ask sue for recover and receive all sums of money goods effects and things now or hereafter owing or payable to me by virtue of any security or upon any balance of account or otherwise howsoever and to give sign and execute receipts releases and other discharges for any property or thing in action whatsoever.

3. To apply for purchase perform sign and execute all such acts deeds transfers matters and other things as may be necessary for the purpose of acquiring land of any description in the Tanganyika Territory.

4. To sell mortgage lease or otherwise dispose of or deal with any real or personal property (whether in possession or reversion) now or hereafter belonging to me or which I have or shall have power to dispose of or as mortgagee or otherwise and to sell either by public auction or private contract and subject to any condition as to title or otherwise with liberty to buy in at any sale either by auction or otherwise to rescind or vary any contract for sale or resell without being answerable for any loss arising thereby.

5. To commence prosecute enforce defend answer or oppose all actions and other legal proceedings and demands touching any of the measures aforesaid or any measures in which I am or hereafter be interested or concerned and also if thought fit to compromise refer to arbitration abandon submit to judgment or become non-suited in any such action or proceedings as aforesaid.

6. To settle compound submit to arbitration or compromise any accounts disputes claims actions or proceedings in which I may be concerned and pay any money due or which the said attorney may consider due from me.

7. To draw accept or endorse bills of exchange promissory notes or cheques in satisfaction or on account of any debt or claim due or payable to or by me.

8. To apply for any money which may come to the hands of the said attorney under this deed in payment of all costs and expenses incurred by him or about the execution of the powers herein contained or to realise the same by way of mortgage or otherwise.

Exhibits

Exhibit D.12

Power of Attorney of Mohanlal Ramji.

21st December 1929 - continued.

9. To deposit any money not required for costs and expenses as aforesaid at any Bank either in the name of the said Attorney or in my name and to withdraw the same from time to time and to open or close any current account and to draw and sign cheques.

10. To invest any money either in the name of the said attorney or in my name in any investment or in the purchase or on the security of any property real or personal or any interest therein which he may think proper and to vary the investment from time to time.

11. To execute and do in my name or otherwise all such deeds covenants agreements and things or to appear in any Court or Courts Registration Offices or offices as the said attorney may think proper for the purpose of giving effect to the powers hereby conferred.

12. AND GENERALLY TO DO EXECUTE and perform any other act deed matter or thing whatsoever which ought to be done executed or performed or which in the opinion of my said attorney ought to be done executed or performed in or about my concerns engagements and business of every nature and kind whatsoever as fully and effectually to all intents and purposes as I my-self could do if personally present and did the same in my proper reason it being my intent and desire that all matters and things respecting the same shall be under the full management and direction of the said attorney AND FOR THE FURTHER better and more effectually doing effecting executing and performing of the several matters and things aforesaid I hereby give and grant unto my said attorney full power and authority from time to time to appoint one or more substitute or substitutes to do execute and perform all or any such matters and things as aforesaid and the same substitute or substitutes at pleasure to remove and to appoint another or others in his or their place or places and all and whatsoever my said attorney or his substitute or substitutes shall do or cause to be done in or about the premises I hereby covenant with the said attorney to allow ratify and confirm.

IN WITNESS whereof I have hereunto set my hand this 21st day of December One thousand nine hundred

and twenty nine.

SIGNED AND DELIVERED by the said Mohanlal Ramji this 21st day of December 1929 in my presence, it having first been interpreted and explained to him when he appeared perfectly to understand its contents

Sgd. MOHANLAL RAMJI
(Sgd. over 10/- R. Stamp)

DISTRICT OFFICE
21st DEC 1929
DAR ES SALAAM

Registration Fee Shs. Ten paid and General Revenue Receipt No. C.84280 dated 21.1.30 issued.

Sd. D.A. Colton
Ag. Registrar General
of Documents

TANGANYIKA TERRITORY.

MEMORIAL

Be it remembered that the within Power of Attorney was duly registered at the Principal Registry at Dar es Salaam at 10 a.m. hours on the 21st day of January 1930 in Volume No. V.4 Folio No. 691.

Sd. D.A. Colton
Ag. Registrar General
of Documents

Exhibits

DATED day of 1929

Exhibit D.12

Power of Attorney of Mohanlal Ramji.

21st December 1929 - continued.

MOHANLAL RAMJI

- to -

KESHAVJI RAMJI

GENERAL POWER OF ATTORNEY

S.N. Ghose,
Advocate,
Dar es Salaam.

Exhibit D.14

Translation of Property Agreement.

15th January 1948.

EXHIBIT D.14

TRANSLATION OF PROPERTY AGREEMENT

We the undersigned Keshavji Ramji, Mohanlal Ramji, Shavji Ramji, and Vandravan Maganlal hereby agree and confirm that we have the following properties in Dar es Salaam as tenants in common:-

1. The leasehold property on Windsor Street together with structures thereon.

2. Freehold plot comprised in Title No.6039 together with structure thereon.

3. Kisutu Street temporary House (Mtendeni Street) in which now the following tenants live: Velji Walji, Shantaben, Babu and Jagjiwan etc.

4. The plot on Upanga Road belonging once to Suleman Lembi in which we have kept $\frac{1}{4}$ (one-fourth) share with Harikaka.

In the above described properties we confirm that we have the following shares :-

| | | |
|---|---|---|
| Keshavji Ramji | .. | 28½% (Twenty Eight & half per cent) |
| Mohanlal Ramji | .. | 28½% - do - |
| Shavji Ramji | .. | 28½% - do - |
| Vandravan Maganlal | .. | 14½% (Fourteen & half per cent) |

1. Each one of us hereby agree to take the returns that may be derived out of the above properties in proportions above described after the expenses have been deducted therefrom.

2. The management of the above properties for the first five years shall be done by Keshavji Ramji without any payment. The management will include renting of the premises, eviction of tenants, fixing rent, taking rent, white-washing and small repairs.

Sub-paragraphs:-

1. The manager has no power to evict the shareholders of properties.

2. The parties hereto will decide by majority votes as to who would manage the properties after the lapse of the first five years.

3. The above mentioned properties are in the names of Keshavji Ramji, Mohanlal Ramji and Shavji Ramji and we all hereby agree to include the name of Vandravan Maganlal in the said properties.

4. To erect the buildings situate on Kisutu Street and for the purpose of the business carried on in the name of Keshavji Ramji, Mr. Keshavji Ramji has with the consent of Shavji Ramji obtained a loan facility on mortgage on the Windsor Street plot and building from the Exchange Bank of India & Africa Limited, Dar es Salaam to cover a loan facility up to Shs. 100,000/-. For this loan facility the whole responsibility will be of Keshavji Ramji, Mohanlal Ramji and Vandravan Maganlal and with which Shavji Ramji has no concern. To obtain such loan facility on the Windsor Street Plot and buildings Keshavji Ramji, Mohanlal Ramji and Vandravan Maganlal shall have a right. If it is found necessary to obtain a Mortgage on this plot and building from any other place we all the shareholders undertake to obtain such

Exhibits

Exhibit D.14

Translation of Property Agreement.

15th January 1948 - continued.

mortgage (Shavji Ramji included). But such right shall subsist up to 1st. Jan. 1953.

The Manager of these properties should insure the buildings and pay the insurance thereon out of the rents realised.

The rents of the premises now used by both Keshavji Ramji and Shavji Ramji shall be Shs.150/- per month (shillings one hundred and fifty) and when Mohanlal Ramji would come back from India he should be given a flat in the building on Kisutu Street of the same size as of one occupied by Keshavji Ramji and its rent shall also be Shs.150/- per months (shillings one hundred and fifty). There shall not be any change in the rent within coming two years in the rents now fixed.

We Keshavji Ramji, Mohanlal Ramji and Shavji Ramji and Vandravan Maganlal hereby confirm and agree that we are all equal partners in any of our ancestral property at Bhanvad, India both moveables and immoveable. And we declare that we have no separate personal claim or debt against the same. Except for what is stated above all the ornaments, furniture, clothes, household effects etc. now belonging to individual shareholder shall be his personal property and we declare that none other shall have any interest therein.

We further declare that all the accounts of rents of the properties up to 31.12.47 have been settled and that none of us have any claim or debt against or owing to any shareholder as regards rents.

We Keshavji Ramji, Mohanlal Ramji, Shavji Ramji and Vandravan Mohanlal enter into this settlement out of our own volition and while in full possession of our sanity. On this draft deed we have set our hands and we undertake to get a proper document drawn by an Advocate on the above subject, until the proper document by a lawyer is drawn up we agree to what is written in this document and undertake to act in accordance with this agreement. All the costs of the proper document that may be drawn up by an advocate shall be borne in proportion to the percentage of our interest. This document shall be null and void and of no effect after the proper document is drawn up and all the shareholders hereby undertake to execute the proper document when it is drawn. Keshavji Ramji has,

Exhibits

Exhibit D.14

Translation of Property Agreement.

15th January 1948 - continued.

as attorney of Mohanlal Ramji, agreed to the above as Mohanlal Ramji is now in India. The Manager of the property hereby undertakes to pay the balance of rents to each shareholder monthly at the end of each month.

SIGNED AND DELIVERED by Keshavji Ramji, Mohanlal Ramji by his Attorney Keshavji Ramji, Shavji Ramji and Vandravan Maganlal in their own handwriting before us at Dar es Salaam.

Sd. Keshavji Ramji
p.p. Mohanlal Ramji
Keshavji Ramji

Shavji Ramji

Vandravan Maganlal

15.1.48

Sd. Nandlal Dharamsi
Sd. Lavji Kara

Original has been stamped with Shs. 10/- Stamp.

15.1.48

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Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4).

## EXHIBIT P.5

## ENGLISH TRANSLATION OF EXTRACTS FROM LETTERS IN GUJERATI
(Put in as Exhibits P.3 and P.4)

### FILE NO. I

LETTERS WRITTEN FROM INDIA (BHANWAD)
BY KESHAVJI RAMJI

TO MOHANLAL RAMJI AND SAWJI RAMJI

---

Bhanwad, 31.1.34

P.13 l.7-8 ---- We are also much pleased that you have got much work .....

---

Exhibits

Bhanwad, D.14.10.34.

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4). - continued

P.17
1.9.14

To Brother Savji .....
From Brother Keshavji Ramji .....

.....(You) both the brothers do the work peacefully - As you are young, you do your duty. If you have any difficulty, write me a letter in detail. But (you) should remain quiet. Mohanbhai is in my place and you are in the place of Mohanlal. Therefore do the work with care. Do not hear what others say. But keep in mind that the workshop is yours .....

---

Bhanwad. D.8.7.1934.

Page 19
1.4.22

To brother Mohanlal and Sawji, Dar es Salaam

Writer brother Keshavji Ramji's compliments from Bhanwad ...

I have noted what you wrote about Yusufali. What works they (he) are doing and whether he has profits in that work? Let me know which carpenters are going to his place .....

Further, you wrote that there is balance in the Bank, that you have informed me. Still there are six months inclusive of the current month. Rent also will be added to it and work also will be done. In that case it may reach about 30 (thousand), cannot say, but for the remaining, try to arrange that it comes to hand before time .....

---

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (put in as Exhibits P.3 and P.4) - continued.

P.22
1.5-15

Bhanwad, D-5-8-34.

To brother Mohanlal and Sawji, Dar es Salaam.

From Keshavji from Bhanwad -

Received your (register) letter of 31-7-34 and noted the contents. Have also received the Hundi No.97 for Rs. Five Hundred, so do not worry. Have noted what you wrote about money matters. Have also noted what you wrote about the expenses incurred here by me. It is good that you economise there. I also do not incur such expenses as may be harmful to us; and it would not have mattered if it was not done; but, what is done is done. Now no further (expenses) is to be done. What you write is due to the force of circumstances, otherwise it would not have been necessary for you to write; now I will not put you in such position that you may have to write again .....

---

Bhanwad, 18-3-54 Sunday.

P.24

F.I

To brother Mohanlal and Sawji .....

Writer from Bhanvad, brother Keshavji Ramji..

.....

Further, have noted that you have given work to the Greek for the Motor Mart, and if it is convenient, it should be taken back in future, but .....

Pay proper attention to Fords peoples, Real work with us is for bodies, therefore attention should be paid to it. Further have read what you wrote about Lord K. and that (you) had to borrow 6½ from outside sources. But it would be good if it was paid as early as possible. Because this is the last year - and we must take care that he does not
Because at the last moment he may say that he would accept it if it was paid in full - Therefore keep in mind; had enquired about us; what reply is sent to him. And if the first instalment is paid up as

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

early as possible, one-third of the interest will be reduced. Therefore I do not write further about it, because for that it is you who worry much about it. I simply write - It solely depends on you - .....

---

Bhanvad, D.23.12.34.

To brother Mohanlal --------

From brother Keshawji Ramji ------

Received your letter and read the contents. Have noted what you write about money matters. (you) collected Shs.15----from Mr.Dharsee and Shs.25.... from Saleh Vares, making a total of Shs.40-----and that too at the rate of interest of 8 per cent that too is well. Now let me know, how much interest we will have to pay monthly and that for 3 years - and to reduce the amount of Shs.5 ..... every year. Further, you had shown more balance before it is less now; may be due to outstandings - You write that outstandings worth 10 to 12 will be collected this month, but it would be well if the outstandings are good (definite?). Then you will have no difficulty. If this amount is paid up, then the amount of rents received may be credited separately and the sum taken from the rents will be paid up. Therefore as soon as rent is received regularly, it should be regularly paid to in the Bank or to Dharsee. Then you have not have the slightest trouble. And spend from the profits from the workshop and the remaining balance can be credited. Do as is convenient to you. What more can I write; you know. Further, you wrote about the necessity of extending the shed of the workshop. Will it be done by Karimjee or shall we have to incur the expenses - It is good that Karimjee will extend one office and one room in the corner; and it is true that one room is too small for Sawji to live in. He must have one more big room. Therefore it would be better if one more room was extended. Further, if the shed is extended up to the road, then do have a gate and windows put therein. And if an office is done in the corner, on the remaining portion a wall should be erected. It should not be left open. The gate for motorcars to come in and go should be made new. Further, have noted what you wrote about money and I also know it. Have a

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (put in as Exhibits P.3 and P.4) - continued.

copper "CHORI" and Rs. 325/- for community plot. Except that, we have given nothing and nothing else is to be given now - Have not done it on anybody's advice or have not followed anybody's example - Whatever is given, it was necessary to give - When you come here, you will see and say that it is well. Only that money which you remit is spent and for that also, you have to worry. But now nothing is to be done. Want more money but payment is to be made in December and therefore an helpless. Now I have nothing more to do - When the money is paid up and there is a balance, then let me know. I will still require some more money, for what purpose I inform you. You will know when you see the plan. It can be purchased now, but if some other person.....it will be difficult to get. Then, there is another plot of Kara Pancha. He is in debts and that plot can be had for Rs. 3500 to Rs. 3700. Please write if you decide about it. He is alright with us. If the plot is there, it will be necessary for the brothers. If all live at home, definitely more space is

---

Bhanwad, D-30-9-33.

noted that the work of Sawji is completed. Also noted that have undertaken Magan's work. Have noted what you wish about the carpenters. Also have noted what you wish about the Bank, but please try to reduce (?overdraft) as much as possible - Brother Sawji, you live unitedly with elder brother, and you have as much worries as I and brother have. Therefore try to pay up as much as possible. As long as it (debt) is over our head, we cannot sit peacefully, Our name (?credit) reputation is good; Every person who comes here praises much. Therefore pay proper attention. As you are my brother, I have no worries at all. I have great respect for my brothers. I remember father very much, because I had much experience (of him). You were young, so you do not know - But you also must be remembering him. I am elder brother of both of you. You should consider me as your father, and you must be considering also - You should not take ill I have written something. I will write but will not allow any one else to say (against you). People praise you as much as Mohanbhai, so you should continue as such. You share with brother in misery and

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

happiness, so you continue in the same way - Where there is unity, there is wealth - If the debt on us is paid up, everything will be alright within five years .....

---

First settle properly with Kani and then start his work; otherwise he will charge you more at the end of the year. You must have got----------printed after settlement with Standard people. Our one godown is vacant, keep in view to find out a tenant --

---

AIRMAIL
(reverse)-------- Bhanvad, D-1-9-33.

Further, you wrote about money (enquiring) whether it sufficient or whether there remains any balance; brother, up to now, it makes both sides equal; because (I) had borrowed Rs. 300/- from mother which have not yet been paid, because there does not remain any balance; I carry on with great economy, mother had demanded payment but I told her that I will pay up when I get more: I realise that circumstances are such that I cannot ask for more (remittance). The time for payment comes nearer, that worries me much; I would be happy if that worry is gone.

---

Bhanved D6-8-33

(After reference to the rent of building occupied by "Standard" - etc.) - we had rented to Vacuum Company for Shs.275/-. I do not remember properly. If that is so, have told them to reduce rent by Shs.50/-. That is alright - Because, if there are not tenants available, what can be done. Let me know whether the remaining upper portion has been rented. If it is rented, what is the rent? Further, our Godown which was vacant must not have been rented. Further, there were 4 new tables for working and two boxes in the Shed constructed in our godown. Please look after them, because they would be spoiled by white ants .....

Have noted what you write about Joshi and that Shs. 4100/- have been received from him. Now how much remains due?

---

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

Further, the time limit for our building will be over very soon; so am worried about it; there remains only one year and 5 months. During this period whether it is possible to pay up from our workshop and rents. How much we owe to people in the town, please send the accounts, so that I can know. Please keep in view if it is possible to obtain (loan) from Dhanji Visram or Keshawhi Amandji or person like Mr.Leslie. You have great worries about that matter and you must also be in search of it, so I do not write more. It is useless for me to worry here, but naturally I am (worried). Exercise as much economy as possible and credit the saving in the Bank. That is all. It is God's Grace that the business is running well.--------

---

Bhanwad, D.2-1-34.

Received your letter of 27-3-34. Also received a Hundi for Rs. 100/- enclosed therewith - Also have noted what you write about Lord K. But, brother, see that we have not to suffer in the end, therefore please make arrangements before (in advance). Otherwise time may come to repent. Therefore pay attention. In our writing, nowhere it would be such that we can reduce -------- because we were quite strangers in that matter. Done is done, but next time do it in time; There are now 8 months, so take care. Further, I cabled you from here that (keep carnival.see letter); about that, we thought that the Bohra at Mobasa would pay something more. And that you also, due to pressure of work, cannot after everything. So we thought that if you sent it down here, we will carry it on. Because in Jammagar, the fair is held for the whole Shrawan Month. There as fairs held for Satam, Atham and Idd. There is also electricity. In Junagadh, two big Fairs are held in the month of Mah & Chaiter.. ..... In big cities where there is electricity, fairs are held often. In that case can definitely get a chance. In place like Dar es Salaam, where there are few people and at less prices, we can save Shs. 500-600 net, while here there are thousands of persons and the fair also lasts for 4 - 5 days. So we will definitely get profits here. There will be no difficulty about the working. The carpenters are also cheap. So we decided that if you send it to Jamnagar, we will take the first chance there. There is no doubt about it. So if

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

you will also think over it, you will agree that business can be done very nicely here. Because wherever fairs are held, many persons gather and lot of money is also spent. So according to my opinion, we will surely earn. So you should not sell it. You have spent Shs. 2000/- over it, out of which you must have realised Shs.1000/-. Now you have not to pay anything for it and it is ready. So think it over and write to me. According to my opinion if it is sent here, we will earn out of it and on the contrary, it is my hope that I will be able to remit to you .....
.....

---

KESHAWJI RAMJI

D.11-12-1932.

To Brother Mohanlal and Sawji, Dar es Salaam.....

From brother Keshawji from Bhanwand.....

Have read that (you) had been to Karimjee Jivenjee's office regarding the rent. Have noted that there is slackness in the business. But God will help. What is destined will happen. We must do our duty. Do not have worries on that account. It is good that new wiring is installed for the electricity because if there is leakage there will be more expenses. Let me know by whom the wiring was done.....
..... ....

---

25-12-1932

Further, you wrote about our car, that is good, what is done is good. Shs.100/- worth work is to be done on that car, that should be done, and a new Bill should be made. The price is reasonable. We used it for about 3½ years. Have seen the account of Jiwa Suther sent by you. That is all..... .....
..... .....
(Regarding houses in India)..... The work of the masons is now over. The work of Laxmanbhai is for 8-10 days. Everything is over. The work of the Front Deli will be over tomorrow..... Now there will be grant fecility (sic) for living, there will

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

to much space etc. ..... Much expenses have been done and you were also hard up. But it is done. As remittances were sent, the money was spent. Now only you earn there and pay up there. There we had done (i.e. built houses ?) but here there was not even sufficient sitting accommodation, so it had to be done. Whether you may be pleased or get angry, but I have done it .....

..... .....

---

Bhanwand D-13-11-32.

Further, Mr. Baltazer of Zanzibar must have come. Demand from him for the Rupees (money) he owes us. And make demand when he comes for.....Then he will pay otherwise it is very difficult..... Go and talk to Karimji about rent and ask them to reduce it. You may do, as you think fit.....

---

D.7-7-1933.Bhanwand.

last 10 lines

.....

Received Hundi No.853 for Rs.150/--------Further, have noted what you write about the work. Am much pleased that at present the business is good. Have noted which you write about the Samaj work and it is good that the work has been already started.... ..It is good that Walji has been engaged for work. Fix up his wages beforehand, because it is not good to fix his wages after he has done the work. Because, if it less or more.There would be dissatisfaction. So whatever works done, it should be settled beforehand. Further, as arrangement has been made with Sikh people for work, so if there is similar other work, it should not be allowed to let go. We are at present in need of work and money. You are well aware of it, so I do not write about it. Further, have noted what you write about Yusufalli - But that man is very bad, He will not eat and will not allow others to eat, he is of that type. So beware. How much debt we have in the town and what are our outstandings for collection. If possible, arrange to credit our rent in the Bank. Because now there is 1½ years time.

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

Then it will be very difficult for us. If in the meantime, if it is possible to get from somebody else, keep in mind. Enquire from Devram and if at can be arranged, then fix up the rate of interest, then nothing should be drawn from the rent..... Have noted what you have written about Haridas, and write how much is due to his account. I had paid to the Receiver's office Shs. 1700/- for Haridas. How much balance is now due (?) I have forgotten how many shillings we have given to Handas. If he pays you Shs.50/- per month, it is good, Further, inform me if anything is due by Vaman Joshi.....

---

AIRMAIL. D.309-36 Bhanwad.

Saturday.

Have noted what you wrote about Bhule Wood and cutting of the timber. At present the season must be slack. Further you have kept a separate account for the building rent, from which month it is kept separate and how much amount (Shillings) is credited for rent, let me know. And do not spend anything from it. If you spend, then the same financial embarassment will continue, as is now. And those shillings will be spent away, therefore shillings from that Account should not be used. Keep that particularly in mind. Further, I had written to you before (enquiring) about how much amount is due by Dharamsi Makan, and whether he has paid anything or not. In that matter, send me a copy of his Account, so that it can be known how much is due by him. Further, so much work (business) is done in our workshop, then send me a balance sheet at the end of the year showing how much we earn; so that it can be ascertained how much profit is made. At present, there are two clerks, so there will be no difficulty in sending the balance sheet.

.....You both of you will have to come to India, but cannot come together, as the workshop cannot be left alone, without both of you.....

---

And it is good that at present there is much business. Bear in mind that this is the time to earn. About that I do not wish to write, be still am writing.....Have noted what you wrote about money.

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

Have borrowed for a term of six years and within that period, it should be paid up. Further, you have done well that the rent has been kept separate. As the rent is received, we must pay it to him every year, so that our burden would be lessened. It is good that it has been brought (borrowed from an European) - They are better than our people.....About timber, have noted that they come from Tanga.....

---

Bhanwad, 31.7.36

It is well that the account for our rent is kept separate, because if it is separate, it will increase automatically and the burden of debt will be reduced

.....

Further, you write that the clerk has no time to prepare the balance sheet and so, probably you will ask Master to prepare. But, brother, if it is to be prepared by Master, then I do not require the balance sheet and I do not want Master also.....

---

Bhanwad, D-21-6-36.

Further, the rent which we receive, must be credited separately, or credited with Dharsee. That should be kept in mind - because that burden of debt which is on us, will be automatically wiped out. And if (you) spend it in the workshop, it will be spent away and the burden of debt will remain as it is. Therefore please credit the rent separately. Because Shs.13,000/- must be paid up in 12 months. If a smaller amount is credited then, the (balance) should be credited and paid up from the workshop (account).

At present there is much business, but it is not certain that it would remain permanent..... In the last letter you wrote that you have ordered new machines and if they are good, you will go on ordering one by one - this plan is alright. Now how you arrange them, let me know by return post. As long as possible, oil engine should be used and not motor should be used. Do as is convenient to you. I am quite sure that you will do it in such

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

a way as is less expensive. I simply write, otherwise it would depend upon the circumstances there. ..... Further, ask clerk Amritlal to sent last year's balance Sheet, so that it can be known how much profit is there in the business, so do not forget. There are now two months, and he will surely find time. Further, we take work from Peerani and Dharamsee, what rate (price) these people give to us? And what is the rate of wages for carpenters and what is the price of timber? And what profit do we get? If you have time and spare time to write about it let me know..... Further, in a previous letter you had written that we will have to order "Devder" (from England), in that case, whether or not (you) have started importing it. Whatever work you undertake, you will do it if you are acquainted with it. Further you wrote about the plot in the corner ..... for the workshop - but the plot you have shown in the plan will not be sufficient for the workshop, because it is too small. It would have been better if a plot on Kisutu Road could be had. But do as is convenient to you.....

---

Bhanwad, D 7-6-36.

Further, at present how much rent we have to pay and how much rent we receive, let me know. You wrote that our rent, you propose to pay to Dharsee. If you do so, it is very good. Because the burden on us will go on becoming less. And by keeping it with us, it is spent away. Therefore if you think of crediting it later, that idea should be given up. And the cheque received for the current month should be directly credited ..... In the meantime, the burden of debt which is on us - is being reduced, then there will be no difficulty. Therefore you should try as much as possible to reduce the burden. That matter you should keep in mind because up till then we cannot raise our head - I do not write further in that matter. From ideal to import Devdar wood from England is good. Because if we benefit about Shs.5 to 6 thousand in a year, it is also our earning. The timber which we import should be used, as it is imported and in the meantime, there will be no objection of other stuff is received ..... I am not in favour of starting a workshop at Tanga, because some person will be required there. And it cannot

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

be carried on without the owner. If it is started there, then we will be in need of persons (men). After some time, you will have to come to India because daughters are becoming grown up..... If cannot be done without coming to India. So that thing has also to be kept in hand. So, our work which is carried on at present is sufficient. And must be satisfied with that much; whether to extend the business or not depend upon your wish, but (we) cannot cope with everywhere- So what we have at present is sufficient. We have extended the workshop from this end to the opposite end; so what has been done for looking after it day and night. In the new workshop there is a proper wall but in the old one it is open on the road and there are no doors to the machine room. So what have you done for it because our stock is great and no one will know if theft takes place..... Further, have noted what you write about our merry-go-round. If the godown is vacated, it should be rented as warehouse because it is vacant with us for very long time..... Further, have noted what you wrote about Dharsee and our matter. Let me know when arrangements have been made. Our old outstandings have become good. Now what you write about his money to be paid by instalments - So inform what time it is to be paid up.....

.....(Ref. giving employment to one Daya)

He may be employed in our workshop if there is work.....

..... .....

---

Bhanwad, D-28-3-36.

AIRMAIL.

Further have noted what you wrote about Tanga, you may go there if you have objection. Have noted what you wrote about money. It is time that instead of being reduced, it is again increasing. Because it is one year since we borrowed and nothing has been reduced. And if there is much work, then what is our income (Earnings). If it is not reduced, then what are the expenses of the workshop and what is its income. Or if there are more outstandings to be collected, then there must be debt also. Our rent which is received is also spent away in the workshop. If the system of keeping

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

separate rent account had been followed, it would have been paid automatically. But that account is not being kept separate; Also there is much work, then the earnings are not seen. So what is the position there. You know better because you keep accounts. I am here and depend upon what you write as to the position there. Otherwise, you do what you think fit there. And if necessary and ------- are available at small interest, (you) do business with pleasure. I have no objection. But it would be good if the debts which are on us for a long time are paid up. People like Saia (?) had not been pulling on well, have now got good capital, whereas we have good work and there is nothing in the balance and there is always scarcity (of money) (i.e. financially hard up) - So it would have been better if it had been settled as early as possible. You may do as you think fit. Do not allude wrong meaning by my writing. And I do not take any ill; because it is you who have to earn and it is also yours. It is the same to me whether (you) consider me as father or consider me as elder brother. You and Savji have to look after.....

---

Bhanwad, D.11-3-36.

Have known what (you) write about work. (You) must have left the Ruplez building and occupied-----(0) There also you will have to keep an office. So my opinion is that our old office is alright, do not change it. But keep---------one man and keep one book there. But the account books should be kept where they are. So keep in mind. Further, you have to go to Tanga, so when are you to go? And if you succeed, open a branch there and keep Savji or other person as you think fit. And after making proper inquiries there, the work should be done on sound basis. If we get sufficient work there, then should go there. You do as you think proper.....
.....

---

Bhanwad, D 16-2-36.

Further, at present the work of doors and windows is going on, from whom the contract has been taken; And whether Pillai and Dharamsee have joined in the

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

contract - that let me know. Whether you take any interest in the stone quarry work - it would be better if you do so - because it is worth earning ----
---

---

Bhanwad, D.26-1-36.

Some sort or the other of unforeseen expenses come in; You have not fallen short of in remitting the money. But the lines in the palm are such that whatever is earned is spent away. I am also tired of this place. I do not want any botheration.....
.....

---

Bhanwad, 31-3-1935.

Further have noted what (you) wrote about office, room and wall and also that you have put in cement in the portion extended. Let me know how much it has cost us. Further, if more rent has to be paid, write me as after fixing it up ------Further, have noted that we have to suffer on account of Yusuba and that we suffer a loss of about Shs. 50/- per each lorry. Then brother, we should do the work haphazard, just as Yusuba does - somewhat better than his - but should not waste much after it.....
.....

---

Bhanwad, 26-5-35.

Everything should be settled with Karimjee - otherwise we may have troubles. I am here and you know the position there. We have not yet become separate - you write that we have much work and we get yearly rent of Shs. 13,800/- and if Government expenses worth about Shs.2000/- are deducted therefrom, even then there would remain Shs. 11-12 thousand. Also there would be some income from the workshop. If we take that account and compare what amount has been credited and what amount has yet to be paid, then we do not earn anything. One year will soon be over, when we have to pay Shs.8,000/-; interest is paid separately. So, brother, whatever you do, do so after deliberation. You should not

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

be in difficulties. It is three years and five months since I came to India. If you take an average of Rs.100/- to me I would not have reached Rs. 4500/- and out of that, what work is done here is well known. And also out of that, about Rs.650/- work has been returned to you. The reason for writing all this is that - it occurs to me as to when we may become separate - that is why (I have) to write. And also.....

---

you do not send accounts since two years - so I had to write -

---

Bhanwad, D.23-6-35.

Further, have known what (you) wrote about work. If our work is good, then we will get more customers. Everyone has his luck with him. As long as luck is there, there will be no difficulty. Everything will be well if there is unity. But if a thought enters into one's mind that the brothers are not good, everything, money, reputation - will make its own way. Whether it is I or you, whoever gives place to idea of disunity - will be know. Therefore it is well that by God's grace, it is going on well. The reputation of all as joint. Where there is morality, there is prosperity.....
----------Brother there is one thing to be kept in mind one is that Kastur has no right to write anything about me or we three brothers. Still he writes such things that seeds may be sewn for disunity. Therefore write to him flatly not to write anything about brothers - that no news regarding me, either bad or good, should be received from him. It is in the womb of the future whether we will call Kasture when time comes for us three to become separate.....
.....

---

Bhanwad, D.5-7-35.

To Brother Mohanlal and Sawji, Dar es Salaam.

From brother Rawji, Bhanwad.....

Received your registered letter with a Hundi for Rs.200/- No.508.....Further, I return you

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

today having duly signed the Form of Barclays Bank which you sent me and have noted what you explained about overdraw (account); and if it can be done in that way, it is good. You will be relieved of daily difficulties - Further, whether you have taken back from Janmohamed Hansraj the Deed about freehold plot; and if you have not taken back, remember to take it from him; and if money can be had by depositing Deeds of that plot and Deed of plot of Gova, then also do so. The reason for writing this is that there is a source (means) and you have never written to me whether you have taken back our documents from Janmohamed therefore I remind you. Further, have noted what (you) wrote about the work and (you) have done well in taking the lorries to the Ruplex workshop. I was of the same opinion and was to write in this letter but in the meantime received news from you.....
.....

---

To brother Mohanlal, Savji and Vandravan.

Brother Mohanlal and Savji, your Air Mail letter dated 17-7-35 was received by us on 28-7-35..... You wrote that you are much in need of carpenters and asked to send carpenter Jiwa..... Further, have noted what you wrote about me. But brother, I have no work here now; have to pass time for nothing (in vain) - what work there was has been finished.....

At present you are greatly in need of carpenters but carry on and in short time, everything will be well,

Further, brother everything will be well if you will send me Rs.1000/- at the same time - Carpenters will be available, because if there is money, sometimes may have to pay them cash of Shs.5/- to Shs. 25/- and allowance etc. So I may not have to be pressed. And my expenses (requirements) will be included therein. Then you will not have to send anything - But this work you have to do immediately. I will help you there as much as I can, so do not worry about me. In short, there is need of money here. According to my calculation, Shs. 200/- monthly are necessary, but have exceeded Rs.125/-. Does not matter what difficulty is there. Therefore as soon as possible, does not matter if

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

you are hardpressed - but if you remit Rs. 1000/- work will be done. At least 5 or 7 carpenters will be available. It is all God's will. Do not forget this work. Send a Hundi by air mail. You send money, but as one is never satisfied by mouthfuls - such is my condition.....To whom can I approach here. Whatever I wish to say, I must say to you and therefore I have to write to you. And definitely I would come by the second steamer for Porbander. Perhaps - if (work) men are available, may come by the first steamer. It is not certain. But definitely by the second. Further, brother, your idea about going to Tanga is good, but, brother, do not do anything at present. First we must cope with in our own town - it is better thereafter to do elsewhere. My opinion is this - Therefore do not give out this matter at present..... Have noted what you wrote about machine. If (it is) in Mombasa, brother, put an order by telegram through Usagara and get new ones, or enquire about one belonging to Gulamhusein which machines and when they are. Do according to your wish. But it is better to enquire from Usagara. Perhaps you may be able to get from Tanga.....

..... ...

Further have noted what you write about renting the whole of Ruplez Workshop - If you think it proper and if we are not hardpressed every month, then think of it. But our old one at present is not to be disposed of. And take into consideration its rent and the rent for the Ruplez one and if it is possible to manage, then there is no harm in making a contract. And also enquire what is the value of the whole workshop. If such circumstances arise, there is no harm in enquiring in casual talks someone may give a loan on the workshop.....

..... .....

Also noted what you wrote that Keshavlal of Tanga has much work. If we wish to go to Tanga, it should not be disclosed to any one. But I think it would be better if you decided after I come there. And (you) should go to Tanga thereafter. Do not do anything at present. Any way it is left to you. You are required here and Savji can very well carry on at Tanga. (I) have no objection to that. Further, you wrote about Premji of Zanzibar. But brother, he is not able to do work. Formerly he could do, but now he cannot do physical work. Therefore it does not matter if he does not reply.

.....

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

Bhanwad. D.4-8-35.

To brother Mohanlal and Savji .....

Your (register) letter dated 3-8-35 has been received. Therewith received one Hundi of Rs.800/- ------

If possible I will come by the first Porbander boat. I have examined all the accounts sent by you regarding the workshop. I have no objection. But one thing occurs to me that if we shift the workshop - what would happen to the big shed which we have constructed. If Karimjee give a reasonable refund, it would be well. Otherwise there would be much loss----------It is best to have workshop at one place only. And it is difficult to get a workshop like the Ruplez one. So if we got it at 500/- rent, it is good. But our old one - rent should be reduced (or should be given up) by settlement. If the workshop is to be shifted immediately, it is not possible by you alone. Because cannot afford to stop work. Also there is much outside work. So there would be no time to shift. So if you can wait for two months, it would be well because by that time I will be coming there - And it would be much easy thereafter to decide about Tanga affairs ..... Now another matter that we pay Shs.500/- rent and if sub-let a portion to someone then which portion will remain with us. And which portion will remain for three of us to line. Because at present we have to pay a total about Shs. 420/- 430/- rent to Karimjee house for Savji, Ruplez and our godown. Now if we get the Ruplez one for Shs. 500/- and can satisfy all our requirements, there would be a saving of Shs. 50/- for our godown. So it comes to Shs. 450/- for Ruplez, which would further be reduced by the profit from the show room and the vacant portion can be sub-let to someone. Therefore there is no harm in taking the whole of Ruplez one. But the one which we give up - What is to be done if a new one comes in. So will have to suffer loss for 2-4 months, or if some other way can be found out, it is well.

But the workshop should not remain in the same position as it is at present .....

Now if I come alone, there is no benefit. Because once I come there, I cannot get out again. There

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

is nothing here which is profitable to us. And my days are wasted here..... So if you wish to have this Ruplez one there is no objection.....
..... .....

---

Bhanwad, 4-8-35.

Respected elder Mohanlal.....

Writer child Jayaran.....

The elder (brother) explained to me with Sketch your ideas about changing the workshop, and an experienced elderly person like him (though he is full of youthful vigour) did me the honour of asking my advice. And I had ventured to give it as I thought - For which you will kindly excuse. Your idea of changing is proper from the point of view of efficient management, general economy and convenience. But looking to the immediate interest of the workshop, if the shifting can be prolonged till the arrival thing the elder there is no harm and believing that his arrival there would be helpful to you, I have given my opinion in the favour of his coming there.....
.....

Sd. Jayaran

Further, Jayaran has come from Jamnagar on Thursday, and have taken his advice, and had showed him the plan of our workshop and the Ruplez workshop. And he said that if Mohanlal has much difficulty, he may change it with great pleasure, but if it can be postponed till about one and a half month, then after you (I) go there, three brothers get together and think over and then shift. Such advice he has given. We considered the rent and there is no harm in going to the Ruplez workshop. Now you may do as you think proper.....

In the last letter (I had) suggested about purchasing it, now that topic should not be opened with the Usagara because it is useless. If we work in that workshop for four or five years, then we can know. It will also be seen how the position is. On making calculations about interest, looking to

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P. 3 and P.4) - continued.

the value of the workshop, the rent is quite reasonable. So what you have decided is good. Only one thought puzzles me and it is that if someone comes to our old one (workshop), perhaps it may harm us. That is all. Otherwise, what is in lock no body can take it away. Further, when have shifted to the Ruplez - have the name written there. If not, have it written; Bhimji mistry is present with you and so he will do it.....

---

Bhanwad, D.1-9-35.

Further, (I) have sent a list in my previous letter regarding money; examine it (and) though you will be hard pressed but undo it and do send which I have written to you at your convenience.....

---

Bhanwad, D.20-10-55.

Further, have noted what (you) wrote about Tanga and about the manager there and at Tanga. If we wish to start a workshop at Tanga, there is no objection. Because if one person gives us work, there will be no worry.....

But it will be necessary to have machinery there. Then from where to bring the machinery? And if it is necessary immediately, you should first go to Tanga and rent a place (premises) and then send Savji there; He will be able to carry on there and you should stay at Dar es Salaam. And you write that we all met and thought over together and have decided that if Brother comes it is better, Brother, I have no objection at all to come there. Definitely, can earn more than my expenses but I cannot come now because it is the Karlak month.....

.....Further, you write about money; then send a Hundi for Rs.500/-.....

.....

Further, have noted that you purchased 4 engines for Shs.1100/- it is good. The best one should be kept at Tanga and the second one, you keep there if you want to use it. The remaining one may be disposed of if proper customers are available. They

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

all must be of crude (oil) let me know. Further, brother, you had written that first had written to call (me) and then did not, so (you) must have taken ill. But Mohan, I do not take ill at all. I only consider that I am ready to do what is convenient to you. So do not think so. If I take ill at all, it is.....money. When you are hard pressed with me, is it ever possible that I can take ill. Therefore do not worry at all about me. I think that it will be better if we all were there together in case of war; and also received your letter, so it is much better.

.....will start in the month of Magshar. For (my) residence, you make such arrangements as may be convenient to you and then inform me. As far as possible. The house of Savji will be very convenient.....
.....

---

AIR MAIL. Bhanwad, D.10-11-35.

---------- Received Air Mail Registered Hundi for Rs. 180/-.....

Further, have noted what you write about work. It is good that have contracted for the work of windows and doors of Hindu Mandal. Also have noted about the price. There is no harm if it is paying according to the local prices there. The other work is of Jindani, have also noted that. And the carpenters are the same, it is well. Further, Madam who works there and there is a boy with him. He has come to our workshop. I know him.....
.....

---

Letters written by Keshawji Ramji from Bhanwad in India to Mohanlal Ramji and Savji Ramji at Dar es Salaam.

Bhanwad, D.28-10-1934.

To Bhai Mohanlal Ramji and Savji Ramji.
Dar es Salaam.

From Bhai Keshawji Ramji.....

.....

..... I note what you have written about opening a branch at Dodama but brother, that must

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - Continued

be done only if we can cope with it, otherwise not. It is alright (good) to satisfy (ourselves) with whatever we are getting. Further you are only two persons, hence you may not cope.....

(with the work) there and there also we should have one of our own (special man). There do not undertake big things.....Whatever we are to get, we shall even get it there. Then as you please..... .....

---

Bhanwad, 1-9-34.

.....and you write that we should have in total Shs.30,000/-; that can be known at the end of the month of December and how much (remaining) we have to take (borrow) that also can be known at the end and we should keep some balance because it will be required for lending or borrowing. Further you write that we should keep an account with the Congo Bank. There was our account before but you might probably have closed it after my arrival. However you do whatever is convenient to you. Further you had written that the bank will allow in current account and not in mortgage and in case if you get somewhere else in the town, then we have to register; hence it is better if (we) can get in current account, otherwise you can have better view of it there and do whatever is fit (convenient to you).

---

Letters written by Keshawji Ramji from Dar es Salaam to Mohanlal Ramji - in India (on printed letter heads)

Keshawji Ramji,
P.O. Box No. 211,
Dar es Salaam.
25-4-1930.

CABINET MAKERS
HOUSE DECORATORS,
BLACKSMITHS
LATHETURNERS.

To Bhai Mohanlal ----------at Bhanwad.....
by Keshawji Ramji ----------from Dar es Salaam.

..... There will be a turnover (business) of 4 to 500 during this month and same in the town

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

so it will be alright. There is yet a month for the season but - trade has started from to-day and railway trains have started running. New models of Chevrolet have arrived but are not yet out, will be out to-day or tomorrow and the new model of Ford has also arrived. Bhai is working alright now. Further, have obtained order for windows and doors of one of the bungalows of Sondhi. They are about 60 nos and he is constructing on the vacant plot of land which is opposite to the house of Sheikh Suleman Lemki who was sitting in front of Gush Vakil. We havetaken the order at Shs. 4/- per foot .....

---

have noted what you have written about the work (business) here, have received already about 6 or 7 body in this month but it is raining heavily. There has rained so much as have seen before any day. Trains are in the upper side (north) but stop working since is great force of water; you have written for work (business) that we should do things as our neighbours - we shall think over it. It is not necessary to do anything if we have to continue it, and we shall see what happens ahead (in future). Write when you think of coming here.....

---

---------- because the plot (place) which you write is of importance since there are roads in both sides and a decent building can also be constructed; then it can be had very cheap if (we) can fix up after seeing Johnny Saheb; therefore must do if possible, although there is scarcity of money but if it can be (arranged) cheaply then (we) must do (it). It does not matter if it remains as it is for a year two afterwards and (we) must inquire what are condition and laws relating to it. There the season has not yet opened here. It will be open after about a month or 1½ months from now because the roads are closed in the interior. Business is slack. Then (I) think of taking up the work (contract) of doors and windows of one house. Can be had up to 3¾ Shs. per foot, that's all. Then one large G.M.C. has come for body (building) for mercantile and one six wheeled chevrolet will come. That's all. There is no business in the town also. Railway has given a

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (put in as Exhibits P.3 and P.4) - continued.

much loss to the town, that's all. Then have received telegram of Rambhi and Harilal; have both been sorry after reading (knowing) it.

---

---------- But since there is no sale with these people, they have become helpless. There is an unlimited (scarcity) difficulty of money (finance) in the whole of the town and (one) can not tell till now how long the flood shall remain; have given leave to many of the carpenters; very few have been kept - when there will be business (we) shall increase but at present miscellaneous work is being done and household furniture will be done by the remaining.....

---

To Mohanlal at Bhanvad

From Savji Ramji, Dar es Salaam.

----------There is practically no business nowadays because the railway is closed and the bodies of 8 lorries are lying ready. There are other orders for making more but that is useful only when motors and goods are booked. Business is slack in the town also. Babu is making (manufacturing) doors for Patel at Shs.3/-. Other thing - the spring is not here and sent it from there. Eight and six inches ones of Langda (Lame same business man) - that of eight had arrived and that he has charged Shs.60/- per gross. Hence it will be better if they are carsizied (sic) from Bombay. .....

---

To Mohanlal at Bhanvad

From Keshawji Ramji atDar es Salaam.

----------Business is somewhat normal. There will be 5 to 6 motors (bodies) in this month. The railway (route) has been opened to-day but there has been rain again so whatever it cold season will continue yet for a month. There were bills (invoices) of Shs. 1800/- in last month. It will be alright if they (Bill) (invoices) will be of 3 to 4000/- during this month. Soma has gone to home

Exhibits

Exhibit P. 5

English translation of extracts from letters in Gujerati. (Put in as Exhibits P.3 and P.4) - continued.

country (India) in this boat (mail). It is raining too much. Other thing - must send definitely 6" to 8" springs as available from Bombay. Kalidas has charged Shs.72/- per gross here. A catalogue from England for 6" has come and it is priced Shs. 10/- in it: hence wish to place the order.....

---

Exhibit P. 7

Two English translations of a letter in Gujerati by Mohanlal Ramji to Keshawji Ramji dated 1st January 1948.

EXHIBIT P.7

TWO ENGLISH TRANSLATIONS OF A LETTER IN GUJERATI BY MOHANLAL RAMJI TO KESHAWJI RAMJI, DATED 1st JANUARY 1948

1-1-48
JAMNAGAR

H.H.High Court of Tanganyika
Civil Case No. 43 of 1950
Exhibit No.P.7
Put in by Plaintiff.

Sgd. E.J. Edmonds
Ag.Judge.

14/9/54

My dear elder Brother,

Your letter of 9-12 has been received on 21st.

I am very sorry that I cannot participate in it. I am also very sorry to note that Shavji wants to leave the partnership. I think that my wishes will not be fulfilled. Why our name and firm should not continue for generations to come. We cannot know the wishes of almighty. My dear brother, if we did clear up all these when I had mind to, then such time would not have come but when such thing was destined to how can we clear it. All these things have been spoiled only due to internal relations. We had the experience of this and still we are carrying it on. My dear brother I am not

advising you, but I am just writing you my views. Whatever you clear do it without any prejudice.

Signed MOHANLAL.

Exhibits

Exhibit P. 7

Two English translations of a letter in Gujerati by Mohanlal Ramji to Keshawji Ramji dated 1st January 1948 - continued.

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OFFICIAL TRANSLATION OF THE
EXTRACTS IN THE LETTER UNDERLINED.
EXHIBIT P.7 D/ 1-1-48.

Jamnagar.

My dear elder Brother,

Your letter of 9-12 has been received on 21st.

I am very sorry that I cannot participate in it. I am very sorry that Shivji wants to separate. I believe that my wishes will not be fulfilled. Why our work and name should not continue for generations to come. We cannot understand what will be the wish of the Almighty. My dear brother, when I wished to clear up (and) it was cleared up, such time perhaps, would not have come now but if it is to come in the destiny of us all how can we clear. The real reason of spoiling all these is due to our internal relations of which we have experience from the beginning and still we are carrying on with it. And this would be the only result of it. My dear brother, I do not advise you but I am just writing you my views that whatever your explanation you make and clear, do it without enmity or jealousy, keeping the God in between.

Sgd. MOHANLAL.

Translated by Mr. B.B. Raval, Legal Clerk
and Interpreter.

Sgd. B.B. Raval.
Civ. I
20.9.54.

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Exhibits

Exhibit P. 8

Two English translations of a letter in Gujerati by Keshawji Ramji to Mohanlal Ramji dated 16th January 1948.

## EXHIBIT P.8

### TWO ENGLISH TRANSLATIONS OF A LETTER IN GUJERATI BY KESHAWJI RAMJI TO MOHANLAL RAMJI, DATED 16th JANUARY 1948

16-1-48

H.M. High Court of Tanganyika Dar-es-Salaam.
Civil Case No. 43 of 1950
Exhibit No.P.8
Put in by Plaintiff
Defendant

Sgd. E.J. Edmonds Ag.Judge.
14/9/54.

(AIR LETTER)

My dear brother Mohanlal,

We are all happy here. I awaited for a letter from you. Last evening everything was settled perfectly. I received your letter just now, and am pleased to note the contents. Everything has been done according to your letter. I had a mind to delay but could not carry on after 15.1.48. First of all I had a mind to divide the shares as - 57 for each of us three and 29 for the other - total being 200 shares. Bhanubhai Thakkar and Shah Ramji Kara, you know them but as you have no acquaintance with them, you will not know them fully. You write that it would have been better done if we did it when you wrote to me. My dear brother you are right but things settle according to the circumstances. Everything has its destination so there is nothing to worry. We are having the same experience as we had before and that too should be beneficial. It is no good to write it in a letter but we cannot imagine what time it will take when we meet and talk over it. But we need not have what happened to us in the past. You will have to look after all these affairs here now.---- Shavjibhai, Bhanubhai, Ramji Kara came to me and the talk started. In the beginning Shavji told that I keep my shares in the factory and do my own business. Therefore I exclaimed to him that is it your intention to keep half shares for yourself and give half-shares to Vaju and do your own business. In reply he said, Yes. I told him that this is impossible. How is it possible to do your own business while you are in the factory. He said

Exhibits

Exhibit P. 8

Two English translations of a letter in Gujerati by Keshawji Ramji to Mohanlal Ramji dated 16th January 1948 - continued.

that you give me my 28% shares of the factory and buildings. I explained to him that regarding factory it is alright. But regarding houses we cannot sell them. I can give you your share every month from the rent we receive. Ramji Kara is a wise man and he made Shavji to understand that he being a wise man it is no good for him to bring such story of keeping shares in the factory and do his own business. Nobody would agree to such a proposal, if the profit of other business is higher than that of the factory. In the end I kept these two people as Arbitrators for the meetings. After consulting Mr. Rambhai and Mr. Chitale we decided to come to the agreement and make out an agreement in vernacular and sign it on 10 shilling stamp and that it will do. After that we checked the books and after checking debits and credits we took the stock of goods and Shavji himself put the prices of each item. I did not speak a single word. Amritalal has gone to India. Sukalaji, who was with us before, made out the books and handed over them to the arbitrators. After that I paid to Shavji Shs. 50,501/- taking over the bank balance and all the debits and credits on my account. I agreed to pay Shs.15,000/- first and the balance at Shs.3,000/- every month. This is the account from the day we started the factory up to 31-12-47 the day on which Shavji left us. He has left us at his own accord. He will go on his way and we on ours. Every thing has been settled peacefully without any quarrel. It was to be settled under any costs and it has settled now. Upon your arrival we will do it limited. If possible, I will ask Mr. Rambhai advocate and do it limited as soon as possible. It is essential only to the factory. Buildings have no connection with the factory. So we have not to worry about it. The factory will have to be taken over farther in future and there is no space for it anywhere. What is obtainable is on lease from Ali Mana. It is four miles far. It is far to go and come back daily. The other plot is behind P.W.D.'s workshop leaving 40 to 50 ft. space. I have decided about it. The plot slightly more than two acres. The cost is Shs. 50,000/-. It is freehold and owner is Mr.Ramsey who is manager of Daresco. It should be bought under any circumstances. The plot next to it has been sold at a very high price, in comparison this is cheaper. I have fixed up with Mr. Ramsey and the letter has also been written to him. It is good so long as factories are allowed in the town

Exhibits

Exhibit P. 8

Two English translations of a letter in Gujerati by Keshawji Ramji to Mohanlal Ramji dated 16th January 1948 - continued.

but when they will be forced out of township it will be difficult if we will have no plot at that time. Out of these two acres we will use what we want and the balance we will sell it off at a good price. So we have not to worry about it. Now longer you stay in India, more harmful it is to us. Because for the office Jiwraj is very weak, Vanu is alright but is doing outside work all the time. Vaju is doing his own transport business. Shavji will also do his own business. What business he will that he knows only. He says that he is intending to visit Congo shortly.

Signed Best wishes from the brother.

---

OFFICIAL TRANSLATION OF THE
EXTRACTS IN THE LETTER UNDERLINED.
EXHIBIT P.8

D/- 16-1-48.

My dear brother Mohanlal,

Last evening everything was settled perfectly. I have received your letter just now and am pleased to note the contents. Everything has been done according to your letter. Sooner or later had to do. Could not carry on further. Could carry on hardly up to 15/1/48. First I had decided that 3 persons having 57 shares and one 29 shares that rate total shares would be 200. Bhanubhai Thaker (Brother of Ravishankar Thaker of Bank) and Shah Ramji Kara. you know both of them but you have no full acquaintance of them, you will not know them fully. You write that it would have been better done if it was done when I wrote you. My dear brother you are right but things settle when it is to settle. Everything has its destination so there is nothing to repent. We are having the same experience as we had before and that also may be for the good. It is not good to write in a letter but when will sit together, we will (realise) know how long it will take. But we need not have what has happened in the past. Now you have to look after everything. Savji, Bhanubhai, Ramji Kara came to me and the talk began. In the beginning Savji said I keep my shares in the factory and I do another business. Therefore I made it clear to that is it your idea that you want to keep half shares yourself and give half-share to Vaju and do

Exhibits

Exhibit P. 8

Two English translations of a letter in Gujerati by Keshawji Ramji to Mohanlal Ramji dated 16th January 1948 - continued.

(your) business remaining outside. Is it all right? He replied in the affirmative. Then I said it is impossible. To remain in the factory and do another business, how is it possible. Then he said that let me have my 28½% accrued and 28½% accrued in the building. I explained to him that regarding the factory it is all right but Savji buildings are not made for sale and we cannot sell the buildings but I can give you your share every month from the rent according to your percentage. Ramji Kara is a wise man and he made Shivji to understand that he (Shavji) being a man of understanding it is no good for him to bring such story of keeping shares in the factory and do business elsewhere. No body would agree to such proposal, if the profit of other business is higher than that of the factory. In the end these two people were kept as arbitrators for discussion. After consulting Messrs. Rambhai and Chitale we decided that we should come to agreement and make agreement in vernacular and sign on 10 Shilling stamp and that I will do. After that all books were examined and after checking debits credits minutely and after examining who owes and who are owed and after coming to a definite determination after consulting each other, after taking all the stock old, new and Savji himself put the price of each item and I have not said a word. Amritalal has gone to India so Shukalji who was with us before, after showing all the accounts of all the books and copying, handed over to the arbitrators. After that after letting go whatever debts Savji had in the factory and the debt he had in the bank after taking over all the debts and credits on my account and award nett for Shs. 50,501/- was given in that I had to pay Shs. 15,000/- in the beginning and the balance of Shs. 3,000/- every month. This account (is) from the beginning when we started the factory to 31-12-47, Savji has left us. And this is also done willingly. He will go on his way and we on ours. Everything has been settled peacefully without any quarrel. It was to be settled under any cost and it has settled now.

Upon your arrival is to be made limited. If possible and after asking Mr. Rambhai advocate, do it limited as soon as possible. It is necessary for the factory. Building have no connection with the factory wherefore have not to worry about it. Factory will have to be removed very far in the future.....Out of these two acres of land, we will keep what we want and the remainder we will sell

Exhibits

Exhibit P. 8

Two English translations of a letter in Gujerati by Keshawji Ramji to Mohanlal Ramji dated 16th January 1948 - continued.

off at a good price. So have not to worry about it. Now, longer you stay in India more harmful it is because Jivraji could be considered very weak for the office.

Translated by Mr. B.B. Raval, Legal Clerk and Interpreter.

Sgd. B.B. Raval
Civ. I
20.9.54.

I, Bhanushanker Balashanker Raval, Legal Clerk and Interpreter of Her Majesty's High Court of Tanganyika, do declare that I read and perfectly understand the language and character of the original letter in Gujerati and certify this to be a true and accurate translation of the extracts of the letter underlined to the best of my understanding and skill.

Dar es Salaam this 20th day of September, 1954.

Sgd. B.B. Raval
Legal Clerk and Interpreter.

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Exhibit P. 9

The two English translations (by court clerk) of a letter in Gujerati written by Keshawji Ramji to Mohanlal Ramji

21st February 1948.

EXHIBIT P.9

THE TWO ENGLISH TRANSLATIONS (BY COURT CLERK) OF A LETTER IN GUJERATI WRITTEN BY KESHAWJI RAMJI TO MOHANLAL RAMJI, DATED 21st FEBRUARY 1948

21-2-1948.

H.M. High Court of Tanganyika
Civil Case No.43 of 1950 Dar es Salaam.
Exhibit No.P.9
Put in by Plaintiff
Sgd. E.J. Edmonds. Ag. Judge
14/9/55.

Dear Brother Mohanlal,

We are all happy here. I have received your letter of 12-2-48 on 20-2-48 and have noted its

Exhibits

Exhibit P. 9

The two English translations (by court clerk) of a letter in Gujerati written by Keshawji Ramji to Mohanlal Ramji

21st February 1948 - continued.

content. I knew that you have got the ticket for 5-3-48 and also the difficulties you had to undergo. The marriage of Ladhu has been happily passed on 19-2-48 (Thursday) in our Jai-Hind building. There were five elders including the bridegroom and 5 children from Nairobi. Today is the last ceremony of Mandva. They will leave within a day or two if the steamer is available. Your invitation card has been posted on the Popat mistry by book post and you should have received it. We are also pleased to know that the marriage of Prabhavati has been finished there. I have thought over your letter very deeply. You have no experience of those two arbitrators but you will have their experience now and will know them very well. I know you have written about sons of one mother but you do not know about the sons of our grandfather Valji while I know it very well and I have seen the behaviour of the grandsons of Valji with my own eyes. Therefore there is no reason to believe that the sons of same mother should be of same behaviour. Take it from me that I have done no harm to him. There are no more days before you come here and you will see them personally. Plot has been bought on Pugu Road no money has been paid. After your arrival here if we decide not to have it we shall have to go undergo the loss of only Shs. 3,000/- but the plot will be in our possession up to August if we pay Shs. 3,000/-. After that we shall think over it and if we want it we will keep it. It is better if the possession be in our hands. I fixed up the plot for Shs. 50,000/- but our brother went to the seller with the offer of £1000 more to buy that plot. In reply he told him that if Mr.Keshavji does not want I shall think over it but I have promised Mr. Keshavji and I am a noble man. Therefore I should give it to Mr.Keshavji. After this everything was fixed and it was decided that the seller should wait up to August and if we don't want it at that time we have to let go Shs. 3,000/-. There is no harm in this transaction. All these talks have been done through Mr. Houry. Everything cannot be written in the letter. We shall talk over it when we meet. I have told to Mr. Shavji, through two arbitrators, to wait up to the time you come here. Only thing left for me is to be put in the prison by him. He signed it after reading, examining in the presence of witnesses with the firm mind. But now he feels that his brother has robbed him, because he feel that from where we got Shs.50,000/- when we bought the plot. Two months have been passed after we signed and

**Exhibits**

Exhibit P. 9

The two English translations (by court clerk) of a letter in Gujerati written by Keshawji Ramji to Mohanlal Ramji

21st February 1948 - continued.

left the partnership. We have no connections at all but he asks for this thing and that but that is all useless. Father and son-in-law are similar. You will know all this when you come here and see and hear personally. He has treated in such a bad manner as he would not have treated my ener (sic) This is in short. Most probably I should not write but cannot help.....We want to register the company with a limited liability but that will be done after your arrival here. Regarding financial matters he has placed me in such a difficult condition that there is no limit to it-------You come here and look after the factory and children. I will be free then. I have to look after both places house and factory. I have given money to Mr. Shivjibhai and with the assistance of my money if he does not take me to the court he will not be called Shivji. After reading my letter you do not worry. Just look at the condition.....both the brothers are working. I do not allow them to worry about money. Everything will be all right by the grace of god. You also do not worry.

You might not remember that some time ago you had written to me that in this period everybody has earned, but we did not, but my dear brother you do not know we have also earned a lot. But due to the thefts on the other hand we have not been able to show it to the world. Summarise the condition in those words.

Signed.....I brother.

My dear uncle,

I can not write all in two lines, but I should write that you are definitely coming now. Think about uncle from what father has written about him. Uncle has got a balance of Shs.60,000/- to 70,000/- in the bank, and that is why we have not earned anything That is all.

Signed.....Vanu.

OFFICIAL TRANSLATION OF THE
EXTRACTS IN THE LETTER UNDERLINED.
EXHIBIT P.9

D/21-2-48

Dear Brother Mohanlal,

A plot has been bought on Pugu Road. No money has been paid. If after your arrival, we do not want there is a loss of Shs. 3,000/-. Plot will remain in our hands up to end of August. After our thinking over, if we will want, we will keep but it is better if (it is) in our hands. That plot is fixed up for Shs. 50,000/- and after that our brother did go to take (buy) to pay £1000/- more. In the matter be (owner?) told that if Mr.Keshavji does not want, I will think over it but I have promised and I am a noble man therefore I should give to Mr. Keshavji.....
Mr. Shivji is stopped through our abovenamed two arbitrators till you come.....
Two months (have?) elapsed since he signed and left. Have no connection at all.....
Want to make a limited company but will do it after your arrival.....

You come and look after the factory and children when I would be free. I have to sit there and in the house also.....

Both the brothers are working. (I) do not allow them to worry about money. Everything will be all right by the grace of God and you have also not to worry.

You might not remember what you wrote me once what in this time all earned but we did not earn but my dear brother we have also, earned a lot but back - thefts etc. would not allow anybody to rise (get up) in the world.

Sd. I. BROTHER.

Translated by Mr. B.B. Raval, Legal Clerk
and Interpreter.

Sd. B.B. Raval, Civ.I.20.9.54.

I, Bhanushanker Balashanker Raval, Legal Clerk and Interpreter of Her Majesty's High Court of Tanganyika, do declare that I read and perfectly

Exhibits

Exhibit P. 9

The two English translations (by court clerk) of a letter in Gujerati written by Keshaji Ramji to Mohanlal Ramji

21st February 1948 - continued.

Exhibits

Exhibit P. 9

The two English translations (by court clerk) of a letter in Gujerati written by Keshawji Ramji to Mohanlal Ramji

21st February 1948 - continued.

understand the language and character of the original letter in Gujerati and certify this to be a true and accurate translation of the extracts of the letter underlined to the best of my understanding and skill.

Dar-es-Salaam this 20th day of September, 1954

Sgd. B.B. Raval.
Legal Clerk and Interpreter.

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Exhibit P.11

A letter dated 2nd May 1947 to the Exchange Bank of India and Africa Ltd., Dar es Salaam.

2nd May 1947.

EXHIBIT P.11

A LETTER DATED 2nd MAY 1947 TO THE EXCHANGE BANK OF INDIA AND AFRICA LTD., DAR ES SALAAM

LETTER OF DEPOSIT OF TITLE DEED AS SECURITY FOR SECURING OVERDRAFT NOT EXCEEDING THE SUM OF SHILLINGS ONE HUNDRED THOUSAND.

To:

M/s. The Exchange Bank of India & Africa Ltd., Dar es Salaam.

Dear Sir,

We, Keshawji Ramji, Mohanlal Ramji and Savji Ramji carrying on business as Keshawji Ramji do hereby deposit Title No. 366 with you by way of security for any liabilities not exceeding the sum of shillings one Hundred thousand

(Shg. 100,000/-) for which we may now or hereafter be indebted to you.

Yours faithfully,

Sgd. 1. Keshawji Ramji.
p.p. Mohanlal Ramji.
" 2. Keshavji Ramji.
" 3. Shiwji Ramji.

DATED at Dar es Salaam this 2nd day of May, 1947.

H.M. High Court of Tanganyika
Civil Case No. 43 of 1950.
Exhibit No.P.11
Put in by Plaintiff
Sgd. E.J. Edmonds.
Ag. Judge
15/9/54.

Exhibits

Exhibit P.11

A letter dated 2nd May 1947 to the Exchange Bank of India and Africa Ltd., Dar es Salaam.

2nd May 1947. continued.

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EXHIBIT P.13

COPY OF LETTER DATED 27th JULY 1948 ADDRESSED BY KESHAWJI RAMJI TO G.N. HOURY, Esq., ADVOCATE, DAR ES SALAAM

Exhibit P.13

Copy of letter dated 27th July 1948 addressed by Keshawji Ramji to G.N. Houry, Esq., Advocate, Dar es Salaam.

27th July 1948.

K E S H A W J I  R A M J I

ESTABLISHED 1908

CAR AND TRUCK BODY BUILDER

CABINET MAKER AND FURNITURE MANUFACTURER

Factory ------ ---- ---Bridge Street

Offices and Showrooms..... Suleman Street

P.O. Box 211, Phone No. 460,

Dar es Salaam, 27th July, 1948.

G.N.Houry, Esq., Tanganyika Territory.
Advocate,
Dar es Salaam.

Dear Sir,

Re: Plot No. 588/206 from Mr. N. Ramsey.

Under further reference to my letter of today's

Exhibits

Exhibit P.13

Copy of letter dated 27th July 1948 addressed by Keshawji Ramji to G.N. Houry, Esq., Advocate, Dar es Salaam.

27th July 1948 - continued.

date and depositing with you Shg. 35,000/- in the above matter, I shall be glad if you will please prepare the deed in names of the following partners:-

1) Mr. Keshawji Ramji.
2) Mr. Mohanlal Ramji.
3) Mr. Vandravan Maganlal.

Thanking you,

Yours faithfully,

Sgd. Keshawji Ramji.

H.M. High Court of Tanganyika
Civil Case No. 43 of 1950
Exhibit No.P.13
Put in by Plaintiff

Sgd. E.J. Edmonds
Ag.Judge
15/9/54.

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Exhibit P.14

Copy of letter dated 12th September 1949 addressed by Keshawji Ramji to G.N. Houry, Esq., Advocate, Dar es Salaam.

12th September 1949.

EXHIBIT P.14

COPY OF LETTER DATED 12th SEPTEMBER 1949 ADDRESSED BY KESHAWJI RAMJI to G.N.HOURY, ESQ., ADVOCATE, DAR ES SALAAM

KESHAWJI RAMJI

CAR & TRUCK BODY BUILDER — Phone 460

CABINET MAKER & FURNITURE MANUFACTURER — P.O.Box 211

Dar es Salaam 12th September, 1949.

G.N.Houry Esq.,
Advocate,
Dar es Salaam

Re: Plot No.588/206, Girazani Area, Dsm.

Under reference to my letter dated 27th July, 1948 advising you to prepare a deed of above, plot, will you please cancel the above instructions

and arrange to transfer the plot in my name as soon as possible.

Thanking you,

Yours faithfully,

Sgd. Keshawji Ramji.

H.M. High Court of Tanganyika
Civil Case No. 43 of 1950
Exhibit No.P.14
Put in by Plaintiff

Sgd. E.J. Edmonds,
Ag.Judge.
15/9/54.

Exhibits

Exhibit P.14

Copy of letter dated 12th September 1949 addressed by Keshawji Ramji to G.N. Houry, Esq., Advocate, Dar es Salaam.

12th September 1949 - continued.

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EXHIBIT P.16

A SPECIMEN LETTER-HEAD OF THE BUSINESS KNOWN AS "KESHAWJI RAMJI"

Exhibit P.16

A specimen Letter-Head of the Business known as "Keshawji Ramji".

KESHAWJI - RAMJI

POST BOX NO. 211

DAR ES SALAAM,

Tanganyika Territory.

CABINET MAKERS
HOUSE DECORATORS
BLACKSMITHS
LATHE TURNERS.

WE SPECIALISE IN :

ALUMINIUM AND
WOOD BOX BODIES
FOR
CARS & LORRIES

QUOTATIONS FREE.

---

Exhibits

Exhibits P.1 and D.19

English translations of Book Entries from Exhibits P.1 and D.19.

## EXHIBITS P.1 and D.19

## ENGLISH TRANSLATIONS OF BOOK ENTRIES FROM EXHIBITS P.1 and D.19

**CIVIL CASE NO. 43 of 1950.**

Mohanlal Ramji & Shivji Ramji ... Plaintiffs

versus

Keshavji Ramji Vandravan Maganlal ... Defendants

1. Extracts from Ledger Exhibit No. P.1.

2. Extracts from Journal Exhibit No. D.19.

P.I.

P.39 - 325/- Credited in account with Mr. Keshavji Ramji being salary for the month of April. LP. 127.

P.40 - 300/- Credited in account with Mr. Mohanlal Ramji being salary for the month of April. LP. 149.

300/- Credited to Mr. Savji Ramji being salary for the month of April. LP. 182.

P.31 - 325/- Credited to Mr. Keshavji Ramji being salary for the month of March. LP. 127.

300/- Credited to Mr. Mohanlal Ramji being salary for the month of March. LP. 149.

300/- Credited to Mr. Savji Ramji being salary for the month of March. LP. 182.

Exhibits

Exhibits P.1 and D.19

English translations of Book Entries from Exhibits P.1 and D.19. continued.

P.21 - 325/- Credited to Mr. Keshavji Ramji being salary for month of February.
LP. 127.

300/- Credited to Mr. Mohanlal Ramji being salary for the month of February.
LP. 149.

300/- Credited to Mr. Savji Ramji being salary for the month of February.
LP. 182.

P.10 - 325/- Credited to Mr. Keshavji Ramji being salary for the month of January.
LP. 127.

300/- Credited to Mr. Mohanlal Ramji (not readable).
LP. 149.

300/- Credited to Mr. Savji Ramji being salary for the month of January.
LP. 182.

P.49 - 325/- Credited to Mr. Keshavji Ramji being the salary for the month of May.
LP. 127.

300/- Credited to Mr. Mohanlal Ramji being the salary for the month of May.
LP. 149.

300/- Credited to Mr. Savji Ramji being salary for the month of May.
LP. 182.

P.61 - 325/- Credited to Mr. Keshavji Ramji being salary for the month of June.
LP. 127.

300/- Credited to Mr. Savji Ramji being salary for the month of June.
LP. 182.

300/- Credited to Mr. Mohanlal Ramji being salary for the month of June.
LP. 149.

P.68 - 325/- Credited to Mr. Keshavji Ramji being salary for the month of July.
LP. 127.

Exhibits

Exhibits P.1 and D.19

English translations of Book Entries from Exhibits P.1 and D.19 - continued.

300/- Credited to Mr. Mohanlal Ramji being salary for the month of July.
LP. 149.

300/- Credited to Mr. Savji Ramji being salary for the month of July.
LP. 182.

P.67 - 340/- Credited to carpenter Lakhsman Hirji being salary for the month of July.
LP. 131.

398/81 - Credited to carpenter Jhina Bhana being salary for the month of July.
LP. 138.

P.75 - 325/- Credited to Mr. Keshavji Ramji being salary for the month of August.
LP. 127.

300/- Credited to Mr. Mohanlal Ramji being salary for the month of August.
LP. 149.

300/- Credited to Mr. Savji Ramji being salary for the month of August.
LP. 182.

P.84 - 325/- Credited in account with Mr. Keshavji Ramji.
LP. 127.

300/- Credited in account with Mr. Mohanlal Ramji.
LP. 149.

300/- Credited in account with Mr. Savji Ramji.
LP. 149.

P.90 - 325/- Credited to Mr. Keshavji Ramji.
LP. 127.

300/- Credited to Mr. Mohanlal Ramji.
LP. 149.

300/- Credited to Mr. Savji Ramji.
LP. 287.

326/12 - Credited in account with carpenter Jhina Bhana.
LP. 138.

Exhibits

Exhibits P.1 and D.19

English translations of Book Entries from Exhibits P.1 and D.19 - continued.

P.136 A/C of Mohanlal Ramji - 1948

| | | | | |
|---|---|---|---|---|
| 1948 | | | | |
| March | 31 | - Salary for the month of March | J.16 | 600/00 |
| " | 31 | - Allowance | J.17 | 30/00 |
| April | 30 | - Salary for April | J.21 | 600/00 |
| " | 30 | - Allowance " | J.21 | 30/00 |
| May | 31 | - Salary for May | J.28 | 600/00 |
| " | 31 | - Allowance May | J.28 | 30/00 |
| June | 30 | - Salary for June | J.36 | 600/00 |
| " | 30 | - Allowance for June | J.36 | 30/00 |
| July | 31 | - Salary for July | J.44 | 600/00 |
| " | 31 | - Allowance for July | J.45 | 30/00 |
| Aug. | 31 | - Salary for August | J.53 | 600/00 |
| " | 31 | - Allowance for August | J.53 | 30/00 |
| Sept. | 30 | - Salary for September | J.64 | 600/00 |
| " | 30 | - Allowance for September | J.64 | 30/00 |

Mistry Somabhai Kara - 1948

| | | | | |
|---|---|---|---|---|
| Nov. | 30 | - Salary for November | J.89 | 625/00 |
| Dec. | 31 | - Salary for December | J.98 | 675/00 |

I, H.H. Buch, Legal Clerk and interpreter of Her Majesty's High Court of Tanganyika, do declare that I read and perfectly understand the language and character of the original letter in Gujerati and certify this to be a true and accurate translation of the extracts of the books underlined to the best of my understanding and skill.

Dar es Salaam this 1st day of December, 1955.

Sgd. H.H. Buch
Legal Clerk and Interpreter.

IN THE PRIVY COUNCIL No. 9 of 1957

ON APPEAL

FROM HER MAJESTY'S COURT OF APPEAL

FOR EASTERN AFRICA AT DAR ES SALAAM

B E T W E E N

KESHAVJI RAMJI ... Defendant-Appellant

- and -

MOHANLAL RAMJI ... 1st Plaintiff-Respondent
SHIVJI RAMJI ... 2nd Plaintiff-Respondent
VANDRAVAN MAGANLAL Defendant-Pro Forma Respondent

AND BETWEEN

MOHANLAL RAMJI .. Plaintiff-Appellant

- and -

KESHAVJI RAMJI ... Defendant-Respondent
VANDRAVAN MAGANLAL Defendant-~~Pro Forma~~ Respondent
SHIVJI RAMJI Plaintiff-Pro Forma Respondent

(CONSOLIDATED APPEALS)

RECORD OF PROCEEDINGS

KNAPP-FISHERS and
BLAKE & REDDEN,
31, Great Peter Street,
Westminster, S.W.1.

Solicitors for Keshavji Ramji and Vandravan Maganlal.

ATTENBOROUGHS,
12, New Court,
Lincoln's Inn,
London, W.C.2.

Solicitors for Mohanlal Ramji.