

GL.C. 2 17, 1961

No. 10 of 1958.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CEYLON.

UNIVERSITY OF LONDON
W.C.L.
1958
INSTITUTE OF ADVANCED
LEGAL STUDIES

63673

BETWEEN

MANGALESWARI, daughter of VELUPILLAI SELVADURAI
of Karaveddy, a minor, appearing by her next friend
SINNAMA widow of SELLAR of Chavakachcheri . *Plaintiff/Appellant*

AND

- 10 1. VELUPILLAI SELVADURAI of Karaveddy,
- 2. POORANAM, widow of VEERAGATHIAR RAMALINGAM
of Chavakachcheri, personally and as Guardian *ad*
litem of SUDENDRA and RAMALINGAM NIMALAN,
- 3. VELUPILLAI SUNDARALINGAM of Chavakach-
cheri,
- 4. YOGESWARY, wife of VELUPILLAI SUNDARALINGAM
of Chavakachcheri,
- 5. MANGALESWARY, daughter of V. RAMALINGAM
of Chavakachcheri,
- 20 6. MADURESWARI, daughter of V. RAMALINGAM of
Chavakachcheri,
- 7. SUDENDRA, daughter of V. RAMALINGAM of
Chavakachcheri,
- 8. RAMALINGAM NIMALAN of Chavakachcheri, all
substituted in place of the late VEERAGATHIAR
RAMALINGAM of Chavakachcheri pursuant to the
Order of the Supreme Court of Ceylon dated the
18th December 1957,
- 9. VALLIPURAM SUBRAMANIAM of Chavakachcheri,
- 30 10. SUBRAMANIAN SIVARAJAH of Chavakachcheri,
and
- 11. SUBRAMANIAM RAJASINGHAM of Chavakach-
cheri, both substituted in place of the late
SINNATHANGAM, wife of VALLIPURAM SUBRAMANIAM
of Chavakachcheri pursuant to the said Order

Defendants/Respondents.

Case for the Appellant.

1. This is an Appeal from a judgment and decree of the Supreme Court of Ceylon dated the 25th and 26th June, 1952, respectively, allowing

RECORD.

pp. 25, 28

an appeal from a judgment and decree of the District Court of Chavakachcheri dated the 28th November, 1950, whereby it had been held, *inter alia*, that the Appellant was entitled to pre-empt an undivided half share in certain lands sold by the first Respondent and resold to the wife (now deceased) of the ninth Respondent ; and accordingly that a deed of transfer thereof executed by the first Respondent should be set aside and a transfer thereof in favour of the Appellant should be executed.

p. 35, l. 36

p. 26, l. 37

2. The Appeal raises one question, and in the submission of the Appellant one question only, relating to the right of pre-emption under the Thesawalamai or native law and customs of the Malabar Inhabitants of the Province of Jaffna. This question is : Must a co-owner who brings an action for pre-emption of land prove that he had the means to pay the purchase price of the land he claims *at the time when it was sold to a stranger without his knowledge* (as the Supreme Court has held in this case) ? Or is it enough for him to pay the purchase price of the land into court *within the time specified by the Court* which tries his action of pre-emption (as the District Court held in this case) ? 10

p. 44

3. The land in question consisted of 11 lachams of land called "Kaddukkarny" at Chavakachcheri in Jaffna District, Northern Province. It was allotted (as lot 4) to Ratnam, the mother of the Appellant by a final partition decree in the District Court of Jaffna (P.1) on 18th June, 1928, before the Appellant was born. 20

p. 18, ll. 6-11

4. By her will dated the 15th March, 1933, Ratnam bequeathed one undivided half-share in the allotted land to her daughter the Appellant, then about three years old, and the other undivided half-share to her husband, the first Respondent, who was the first Defendant in the action. Ratnam died in 1935.

p. 18, l. 13

p. 49

p. 28, l. 28

5. On the 21st July, 1936, the first Respondent executed a mortgage bond (2D3) mortgaging his half-share in the land to his uncle Kanapathiar Muthu to secure payment of a debt owed by him and Ratnam on a promissory note, and on the 11th September, 1937, the first Respondent sold his half-share for Rs. 1,500 by deed of transfer No. 15,268 (2D2) to Veeragathiar Ramalingam, the second Defendant in the action, now deceased, for whom the second, third, fourth, fifth, sixth, seventh and eighth Respondents have been substituted. This was the deed set aside by the District Court. 30

p. 52

p. 29, l. 15

6. By a later deed of transfer No. 10,610 dated the 19th August, 1947 (2D9) the deceased second Defendant sold 6 lachams of the allotted land (treating the undivided half-share as a divided share of that area) for Rs. 2,500 to the fourth Defendant now deceased, whose husband was the third Defendant, later ninth Respondent, for whom the tenth and eleventh Respondents have been substituted. This deed also the District Court set aside. 40

p. 58

7. By plaint in the District Court of Chavakachcheri in Case No. 241 dated the 10th January, 1950 (P.2), an action for partition of the part of the land which had been resold in 1947 was brought by the ninth

Respondent and the deceased fourth Defendant (his wife) against the Appellant and the first Respondent (her father), who was appointed her Guardian *ad litem* on 9th May, 1950; but the action was dismissed by consent on the 3rd July, 1950, and a fresh action was brought in the same Court (Case No. 332) between the same parties for partition of the whole share sold in 1937. p. 62, l. 27
p. 63, l. 28

8. Meanwhile by Plaint filed on the 30th August, 1950, the Appellant as Plaintiff instituted the proceedings out of which this Appeal arises by her next friend Sinnamma, who was also appointed her Guardian *ad litem* in Case No. 332 on the 25th September, 1950, instead of her father the first Respondent. The Appellant, called for the deceased second Defendant at the trial of the action, stated in evidence that her proctor had advised her that as her father's interests were adverse to hers, Sinnamma should be appointed Guardian *ad litem* and that she herself should file her pre-emption case. p. 9
p. 72, l. 15
p. 22, ll. 23-36

9. The first Respondent filed no Answer, did not appear and was not represented. The deceased second Defendant filed an Answer on the 30th October, 1950. On the same date the ninth Respondent and the deceased fourth Defendant jointly filed an Answer which was, with two exceptions (referred to in paragraph 11 (E) and (G) of this Case), the same as the deceased second Defendant's. p. 28, l. 23
p. 13
p. 14

10. The Appellant's contentions, put forward in her plaint, may be summarised as follows:— pp. 9-12

(A) The Appellant had a good title, derived from the partition decree of 1928, Ratnam's will of 1933 and prescription, to an undivided one half-share in the allotted land.

(B) The first Respondent's sale of the other one half-share to the deceased second Defendant in 1937 took place while she was a minor and she was neither given notice nor was she aware of the sale. 30

(C) The deceased second Defendant was neither as a co-owner, nor as an heir, nor as an adjacent land owner having a mortgage right over the land sold to him, qualified under the Law of Thesawalamai to purchase the first Respondent's half-share in preference to the Appellant.

(D) The Appellant was ready and willing to pay the sum of Rs. 1,500, which was the reasonable market value of that half-share and was also the consideration mentioned in the 1937 Deed of Transfer (2D2), or any other reasonable sum which the Court might fix for that half-share. p. 49
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(E) The subsequent sale of that half-share to the deceased fourth Defendant in 1947 made it necessary for her and her husband, the ninth Respondent, to be made parties to the action so that the deceased fourth Respondent would be bound by the decree sought for by the Appellant.

(F) The Appellant was therefore entitled by the law of Thesawalamai governing the parties to the action, who were all Jaffna Tamils, to have the 1937 Deed set aside and the half-share conveyed to her by the first Respondent or by the Court on payment into Court of the sum of Rs. 1,500 or any other reasonable sum which the Court might fix on a day to be fixed by the Court.

pp. 13-16

11. The contentions of the deceased second Defendant and of the ninth Respondent and deceased fourth Defendant, put forward in their Answers, may be summarised as follows :—

(A) They admitted the Appellant's title to her half-share of the allotted land, the sales in 1937 and 1947 (though not the amount of the land sold in 1947) and the applicability of the law of Thesawalamai. 10

(B) They admitted that the Appellant was a minor both at the time of the 1937 sale and at the time the action was brought, but contended that she was a minor living at both times under the care and guardianship of her father the first Respondent, that at neither time had she the means to buy the share she sought to pre-empt and that she was fully aware of the 1937 sale.

(C) The first Respondent sold his share in 1937 to pay off a debt due from him and the estate of Ratnam, and was entitled to sell it as the Appellant was aware of the sale and/or was not in a position either to pay the debt or purchase the share. 20

(D) The deceased second Defendant in 1947 offered to sell a part of the land sold in 1937 to the Appellant and her father the first Respondent, who declined to buy, and it was only after that offer was declined that he sold it to the ninth Respondent and the deceased fourth Defendant for Rs. 2,500.

(E) The plaint disclosed no cause of action against the ninth Respondent and the deceased fourth Defendant. This plea was not elaborated in the Answer of the deceased second Defendant, but the ninth Respondent and the deceased fourth Defendant in their Answer added to it that the Appellant had notice and was otherwise aware of the 1947 sale, that the land then purchased was reasonably worth Rs. 2,500 and that the Appellant could not maintain the action as she had neither the means to pre-empt nor had expressed her willingness to pay the market value. 30

(F) The half-share purchased by the deceased second Defendant in 1937 had then a market value of Rs. 1,500 but the second Defendant had improved it at a cost of about Rs. 3,000, it was at the time the action was brought itself reasonably worth Rs. 6,500 and the improvements reasonably worth Rs. 4,000 so that its market value with improvements was Rs. 10,500, and as the price of the land had gone up considerably, the first Respondent had "set up" the Appellant and her next friend or "put forward" her next friend to file a frivolous and malicious action. 40

(g) The Answer of the deceased second Defendant contained a plea, not to be found in the Answer of the ninth Respondent and deceased fourth Defendant, that the Appellant's claim was pre-scribed inasmuch as the action was not instituted within three years of the Appellant's awareness of the 1937 sale.

(ii) The action should therefore be dismissed or, if the Appellant were held entitled to pre-empt the half-share, she should be ordered to pay into Court the sum of Rs. 10,500.

12. On the 21st November, 1950, fifteen issues were framed which
 10 are set out in full in the Record and the trial of the action took place. All the evidence was heard on the same day and the learned District Judge reserved his judgment. The burden of proof was accepted by the defendants and the only evidence was called on behalf of the deceased second Defendant and consisted of the evidence of the deceased second Defendant himself, of the Plaintiff, cited by him on a witness summons, and of the village headman of Chavakachcheri South. The deceased second Defendant's case was completed by reading documents 2D1 to 2D11; the ninth Respondent and deceased fourth Defendant called no evidence; the Appellant called no evidence, but her proctor read in
 20 evidence documents P1 and P2 (the 1928 Partition Decree and the plaint in the 1950 partition action case No. 241).

13. On the question of the Appellant's awareness of the 1937 sale the deceased second Defendant stated in evidence that the Appellant was at the time of the 1937 sale a child of 7 or 8 living with the second Respondent at Chavakachcheri. He stated that her next friend knew of the purchase but not that she herself did. She denied any knowledge of it till the 1950 partition case and the District Judge accepted her denial. She said that she had lived with her father but that at Chavakachcheri she lived in her next friend's house. It was the deceased second Defendant's
 30 case that her father's knowledge must be imputed to her.

14. On the question of the Appellant's means to pre-empt, she said that her mother had entrusted her next friend with Rs. 1,000 in cash and that her next friend would supply her with the balance of the money required for pre-emption. This the District Judge thought likely to be an invention, but he also thought she had the means to pre-empt in November, 1950, if not in September, 1937, as was proved by her paying the money into Court by the date which he fixed.

15. On the question whether the deceased second Defendant had a right to purchase the first Respondent's half-share in 1937, he produced
 40 in evidence mortgage bond No. 25,454 of the 21st July, 1936 (2D3), mortgaging the first Respondent's share to Kanapathiar Muthu, his maternal uncle and the deceased second Defendant's father-in-law, to prove that the first Respondent sold his share in 1937 in order to pay off a debt due from the first Respondent and Ratnam's estate. This he sought to do with the aid of an indorsement on the mortgage bond of a receipt granted by Deed No. 15,267 of the 11th September, 1937; but he apparently relied on it as showing not that he himself was a mortgagor

p. 26, ll. 1-9

qualified under the Law of Thesawalamai but that he was a bona fide purchaser for value. But, as the District Judge pointed out, he was not, because he knew of the Appellant's rights as co-owner, and even if he was, the Appellant's right to pre-emption would not be defeated.

p. 19, l. 15

16. On the question of the resale in 1947 and the alleged offer to the Appellant and first Respondent by the deceased second Defendant, he said that at the time when he sold 6 lachams to the ninth Respondent and the deceased fourth Defendant he informed the first Respondent at Karavannai North in the Appellant's presence and sold after the first Respondent had there told him that he had no money to buy and wanted 10 the deceased second Defendant to sell. This the Appellant denied. No issue was formulated on this question and the District Judge made no express finding upon it; but he set aside the 1947 Deed (2D9), and his finding that she was not aware of the 1937 sale until 1950 (see paragraph 13 of this Case) implies that he also accepted her denial that she was aware of the 1947 sale.

p. 23, ll. 3-5

p. 28, l. 28

p. 52

p. 52, l. 30

p. 18, ll. 36-40

p. 21, ll. 1-20

p. 18, l. 41—p. 19, l. 16

p. 52, l. 14

p. 23, ll. 15-20

p. 23, ll. 32-37

p. 26, ll. 10-41

17. On the question of the increased value of the land and improvements, the deceased second Defendant said that he had put up three buildings and a latrine and raised the level of the land, and he also produced deeds relating to similar land as evidence of increased value and relied on 20 the Rs. 2,500 stated to be the consideration for the sale of the 6 lachams in the 1947 Deed (D29). But he called Vaithilingam Namasirayam, the village headman, who said that the price of land had gone up to Rs. 2,000 a lacham, that he had put up *one* low building and a shed at a cost of about Rs. 1,500, and had *not* raised the land. The District Judge accepted the figure of Rs. 1,500 given by the deceased second Defendant's own witness and pointed out that the improved value of the land was not relevant and that the high price of land in 1950 did not affect the Appellant's right to pre-empt at the actual price paid for the land in 1937.

p. 19, l. 42—p. 20, l. 7

p. 23, ll. 22-30

p. 22, ll. 26-35

p. 26, l. 39—p. 27, l. 8

2 D10, pp. 60-64

2 D11, pp. 71-74

18. On the question of the reason for the Appellant's bringing 30 the action and the parts alleged to be played by the first Respondent and the Appellant's next friend in bringing it, the only allegation made in terms by the deceased second Defendant was that the Appellant had filed the action at the instigation of one Ambalam Kandiah, a rich trader hand in glove with the first Respondent and at enmity with the ninth Respondent. The village headman confirmed the existence of a dispute between Ambalam Kandiah and the ninth Respondent, but not that Ambalam Kandiah was worth more than Rs. 20,000 or had a lease of the first Respondent's share of land or owned any land in the area. The Appellant was apparently not asked about Ambalam Kandiah, but alleged 40 that there was collusion between her father and the deceased second Defendant in the partition action No. 332 and that she had been advised by her proctor that as her father's interests were adverse to hers she should get Simmannah, her next friend, to act for her and file this action for pre-emption. The District Judge (before whom the proceedings in both partition actions No. 241 and No. 332 had been conducted) considered that the Appellant might have been put up by the first Respondent to file this action because the price of lands was then high, but that since she had the right to pre-empt nothing could be done about it. He also found that

Ambalam Kaudiah had had trouble with the ninth Respondent in regard to the portion of the land occupied by the ninth Respondent but held that the evidence was insufficient to establish that this action was "instituted maliciously and collusively with a third party" in the terms of the tenth issue. p. 17, l. 21

19. On the deceased second Defendant's plea of prescription, no evidence was given except that relating to the Appellant's knowledge which has been summarised in paragraphs 13 and 16 of this Case. Accepting the Appellant's evidence that she was not aware of the 1937 sale until 1950, the District Judge also pointed out that even if she had been aware of it earlier, her right of action would not have been barred by limitation until three years after she obtained her majority, i.e., a date which was then still in the future. p. 25, l. 30

20. On the 28th November, 1950, the learned District Judge delivered his reserved judgment. The substance of his decision was as follows:— pp. 25-27

(A) The Appellant as a co-owner of the land was entitled to pre-empt the share sold by her father the first Respondent to the deceased second Defendant on payment of Rs. 1,500, the actual price paid. p. 25, l. 15

20 (B) The Appellant herself had no notice of that sale and was not aware of it until 1950. (The District Judge may be strictly right in saying that the deceased second Defendant did not plead that she was given notice, but it was pleaded in both the Answers that the Appellant was fully aware of the sale and the fourth issue was directed to her awareness of it.) p. 25, ll. 18, 27

(C) Even if she had been aware of it earlier, her right to pre-empt would not have been prescribed until three years after 1951 when she would attain her majority. p. 25, l. 30

30 (D) As the first Respondent acted against the Appellant's interests in selling to the deceased second Defendant, it would be unreasonable to impute his knowledge to her merely because he was her natural guardian. p. 25, l. 21

(E) The deceased second Defendant was not a bona fide purchaser because, being a first cousin of the first Respondent and manager of the mill where he worked, he must have been aware that an undivided half-share of the land he bought belonged to the Appellant. (The deceased second Defendant in fact admitted in cross-examination that at the time when the sale was arranged he knew that the Appellant was entitled to a half-share.) p. 25, l. 33—p. 26, l. 5
p. 21, l. 33

40 (F) Even if he were a bona fide purchaser for value, the Appellant was entitled to be substituted for him and step into his shoes in an action for pre-emption: *Karthigesu v. Parupathy* (1945) 46 N.L.R. 162. p. 26, l. 6

(G) The deceased second Defendant was a bona fide possessor and was entitled to compensation, the amount to be the improved value of the land or the costs he incurred in improving it, whichever p. 26, ll. 10-32

was the less: *Carimjei v. Abeywickreme* (1920), 22 N.L.R. 286; and to retention of the land until compensated in Rs. 1,500, the costs he incurred in improving it, which was a sum less than its improved value.

p. 26, ll. 33-38

(H) The Appellant probably invented the story that her next friend had been entrusted with Rs. 1,000 in cash by her mother, but she might still be able to find the funds to pre-empt the share sold by the first Respondent by mortgaging her own share and so had the means to pre-empt.

p. 26, l. 39

(I) She might have been put up by the first Respondent to file this action because the price of lands was high, but that did not affect her right to pre-empt at the actual price paid.

p. 27, l. 1

(J) The evidence was insufficient to establish collusion between the first Respondent and Ambalam Kandiah in instituting this action within the true meaning of collusion: *Ferdinando v. Ferdinando* (1921), 23 N.L.R. at page 147 per Bertram, C.J.; *Ceylon Exports, Ltd. v. Abeysondere* (1933), 35 N.L.R. at page 432 per Dalton, A.C.J.

p. 28

p. 49

21. On the 5th December, 1950, a Decree of the District Court dated the 28th November, 1950, was filed in accordance with the foregoing judgment declaring (i) that Deed No. 15,268 dated the 11th September, 1937 (2D2), be set aside; (ii) that the first Respondent should execute a deed of transfer in favour of the Appellant for an undivided one half-share of the land described in the Schedule to the Decree, on a day to be fixed by the Court on the Appellant depositing a sum of Rs. 1,500 in Court, being the market value of the said half-share sought to be pre-empted on or before the 18th December, 1950; (iii) that in the event of the first Respondent failing to execute the said transfer on or before a day fixed by the Court the Court should execute such conveyance in favour of the Appellant; (iv) that if the Appellant failed to deposit the said sum of Rs. 1,500 on or before the 18th December, 1950, the Appellant's action would stand dismissed with costs; (v) that if the Appellant deposited the said sum of Rs. 1,500 the deceased second Defendant would continue in possession of the said half-share till he was compensated in a sum of Rs. 1,500; (vi) that the Deed No. 10,610 dated the 19th August, 1947 (2D9), granted by the deceased second Defendant in favour of the ninth Respondent and the deceased fourth Defendant should be set aside; and (vii) that the deceased second Defendant should pay to the Appellant the taxed costs of the action.

p. 52

p. 30

pp. 32-33

p. 32, l. 29—p. 33, l. 14

22. From this Judgment and Decree the deceased second Defendant appealed to the Supreme Court of Ceylon by Petition dated the 7th December, 1950, in which the grounds of appeal are fully recorded. Apart from the first ground, that the judgment was contrary to law and the weight of the evidence, and the last, that a larger sum should upon the evidence have been allowed for improvements, there were three grounds of appeal: (A) That the first Respondent was aware of the sale to the deceased second Defendant and his knowledge, as natural guardian of the Appellant who was a minor, was sufficient in law to bar her action;

(B) that the deceased second Defendant was a bona fide purchaser because he knew that the Appellant had no means to buy and that the first Respondent was selling to pay up a debt due from him and the Appellant as heir of her mother Ratnam; and (C) that the action was filed in collusion with the first Respondent and Ambalam Kandiah. Of these grounds only (A) and a part of (B) were pursued, or at least noticed, in the Supreme Court.

23. The Appellant complied with the condition that she should deposit a sum of Rs. 1,500 in Court by the 18th December, 1950.

10 24. The appeal was heard by the Supreme Court (Gratiaen, J. and Gunasekera, J.) on the 16th May, 1952, and on the 25th June, 1952, judgments were delivered allowing the appeal and dismissing the Appellant's action with costs in that Court and below.

25. In the leading judgment (with which Gratiaen, J., agreed) Gunasekera, J., stated the two contentions in support of the appeal as follows: (A) that the Appellant's natural guardian, who was the first Respondent, was necessarily aware of the sale to the deceased second Defendant, and (B) that in any event she had no sufficient means to pre-empt the share and therefore was not entitled to have the sale set aside on the ground of want of notice. He then proceeded to deal solely with the second ground.

26. He referred to the averment in the second paragraph of the deceased second Defendant's Answer that "the plaintiff had and has no means to buy the share sought to be pre-empted," to the ninth issue "is the plaintiff a bona fide pre-emptor having funds to pay for the purchase of this half-share?" and to the learned District Judge's affirmative answer to that issue and the reason he gave that she "may still be able to find the funds to pre-empt this share by mortgaging her own share," which he found had appreciated in value. He quoted the District Judge's opinion that "it may be that she has been put up by the first Defendant (the first Respondent) to file this action because the price of lands now is high," pointed out that the event proved that she was able to raise the necessary funds by the 18th December, 1950, and expressed the view that it was reasonably clear from the evidence that her estate was insufficient for the purpose at the time of the sale in 1937. He called attention to the fact that the Appellant's next friend did not give evidence to support the Appellant's story that her next friend had Rs. 1,000 entrusted to her by Ratnam, which the District Judge had thought likely to be an invention.

27. He then stated his conclusion that as the Appellant had no sufficient means to pre-empt the share in 1937 it was immaterial whether she had notice of the first Respondent's intention to sell it. The only authority cited for his conclusion was the observation made by Gratiaen, J., on 26th July, 1951, in *Velupillai v. Pulendra*—decided between the filing of the Petition of Appeal to the Supreme Court and the argument of the appeal and now reported in 53 N.L.R. 472 at p. 474: "It is fundamental to the cause of action such as is alleged to have arisen in this case that the pre-emptor should establish by positive proof that, had he in fact received

p. 32, l. 29

the requisite notice, he would and could have purchased the property himself within a reasonable time rather than permit it to be sold to a stranger." Deciding the appeal on that short ground, the Supreme Court never pronounced upon the other contention which had been described in the Petition of Appeal as "the most important issue which concludes the case," that the knowledge of the Appellant's natural guardian was sufficient; nor did the Supreme Court deal with any other issue or matter except the Appellant's financial means in 1937.

p. 17, l. 32

p. 22, l. 1

28. The Appellant respectfully challenges the factual basis of the Supreme Court's decision. No issue was framed as to the means of the Appellant in 1937 and the matter was never made the subject of investigation. When the issues were framed it was recorded, without any apparent sign of dissent or argument on the part of the contesting Defendants, that the burden was on the Defendants and it is to be noted that twelve out of the fifteen issues were suggested by the Defendants' Counsel. There being, as everyone accepted if not agreed, no onus on the Appellant, she did not give evidence on her own behalf: the deceased second Defendant decided to call her as his witness and, never having applied to treat her as a hostile witness, cannot be heard to contest the evidence she gave. The learned District Judge accordingly, even if he felt dubious about her statement as to her next friend having been entrusted with Rs. 1,000 by her mother, ought to have treated it as evidence binding on the deceased second Defendant. But even if it is regarded as dubious, it is no proof whatever that she had not other assets: she had in fact her own undivided half-share, and the mortgage of that, together with the half-share over which she had the right of pre-emption, would *prima facie* be amply sufficient to cover the purchase price of the latter half-share. In any event it is not right that the deceased second Defendant should be allowed to set up against the Appellant, on the basis of a judgment delivered at a later date, that she had failed to discharge a burden of proof. The deceased second Defendant had accepted that the burden of proof throughout was upon him and his evidence entirely failed to prove that the Appellant had not in 1937 the means to raise Rs. 1,500. The learned District Judge made no finding to that effect and there was no material upon which the Supreme Court could conclude that the deceased second Defendant had discharged what had been laid down in this case as his onus.

29. Furthermore the Appellant respectfully submits that her means in 1937 are immaterial to the matter in issue and, so far from being fundamental to her cause of action, afford no ground for dismissing her action or disturbing the judgment of the District Court in her favour. It is respectfully submitted on behalf of the Appellant that as co-owner of the allotted land she was entitled to pre-empt the share of it sold to the deceased second Defendant in 1937. She could do this either by tendering to him the price of Rs. 1,500 for which it was sold within a reasonable time of becoming aware of the sale, or by bringing an action for pre-emption within such a reasonable time and paying that price into Court on or before the day ordered by the District Court. It was unnecessary for the Appellant to assume the burden of proving that she would have been willing and able to purchase the share at that price in 1937 if she had in fact been aware of the sale then. There is much to be said for the view taken by the

District Judge that even if she was aware of the sale as a minor she would not have been barred by limitation from bringing her action at any time within three years of attaining her majority ; but it is not necessary for the Appellant to go that far for her to succeed in this appeal. p. 25, l. 30

30. The judgment of the Supreme Court under appeal can, the Appellant submits, be supported only if the observation of Gratiaen, J., already cited accurately states the law. If the case of *Velupillai v. Pulendra* from which it was extracted be examined, it will be seen that the observation was *obiter dictum*. In that case the plaintiff had notice of a sale by his parents about two months after it took place but did not challenge it for some ten months more. He agreed to an issue "was the plaintiff ready and willing to purchase the land?" and it was therefore held by the Supreme Court, consisting, as here, of Gratiaen and Gunasekera, JJ., and reversing the District Judge, to have assumed, and rightly assumed, the burden of proving that he would *and could* have purchased the property sold within a reasonable time if he had in fact received notice. As the plaintiff did not himself give evidence but only called his father to say that the plaintiff might have got the purchase money from an aunt or grandmother, he was held not to have discharged that burden. But there the periods between sale and notice and between notice and plaint were too short to raise the distinction between the pre-emptor's means past and present which was considered fundamental by the Supreme Court in this case ; no authorities were cited for the proposition so widely and precisely stated by Gratiaen, J. ; and he appears to have based it upon the undisputable doctrine, for which the District Judge in this case cited *Karthigesu v. Parupathy*, that the pre-emptor steps into the shoes of the stranger and takes the land sold subject alike to its benefits and its burdens, as the Indian decisions cited in *Karthigesu's* case show. But that doctrine lends no support to the *dictum* that the pre-emptor must prove he had the means to buy at the time of the sale or within a reasonable time thereafter. p. 26, l. 6

31. Nor can any other authority be found for the observation of Gratiaen, J., in *Velupillai's* case and thus for the decision of the Supreme Court in this. The Thesawalamai (printed in the Legislative Enactments of Ceylon Cap. 51 Vol. II pp. 49 and ff.) is the native or customary law, probably imported into the Northern Province of Ceylon by Mohammedans from India or later by Malabars under Mohammedan influence in India, collected by order of Governor Simons in 1706 and given the force of statute by Regulation No. 18 of 1806: see, e.g., *Karthigesu's* case above cited, the argument of the Solicitor-General in *Tillainatham v. Ramasamy Chetty* (1900), 4 N.L.R. 328 at pp. 329 and ff. and *per* Bower, C.J., at pp. 332 and ff., Balasingham's *The Laws of Ceylon* (1929) vol. I cap. XII pp. 136 and ff. paras. 243 and ff, Perera's *Institutes of the Laws of Ceylon* (1913) Introduction I, pp. 4, 17 and 19, H. B. Thomson's *Institutes of the Law of Ceylon* (1866) vol. II pp. 546 and ff.

32. The part of the Thesawalamai which treats of pre-emption is Part VII (Legislative Enactments vol. cit. p. 74 : see Appendix A). In 1947 an Ordinance was enacted (No. 59 of 1947) "to amend and consolidate

the Law of Pre-emption relating to Lands affected by the 'Thesawalamai', but does not apply to sales which took place before it came into operation. It lays down (*inter alia*) that no action to enforce a right of pre-emption shall be instituted or maintained if more than one year has elapsed from the registration of the purchaser's deed, repeals the Thesawalamai so far as inconsistent with the Ordinance and repeals also Ordinance No. 4 of 1895 relating to the publication of intended sales of immovable property affected by the Thesawalamai. Section 200 of the Civil Procedure Code (see Appendix B), which is in the same form as section 214 of the Indian Civil Procedure Code since replaced by Order XXV rule 14, requires that 10
 in an action for pre-emption where the Court finds for the plaintiff, if the purchase money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid and shall declare that on payment of such purchase money with any costs the plaintiff shall obtain possession but if it is not then paid, the action shall stand dismissed with costs. None of these statutory provisions support the proposition of Gratiaen, J.

33. Part VII of the Thesawalamai records the introduction into the parts of Ceylon where it was applicable of the custom known to Roman-Dutch law as "naasting" or "jus retractus": Lee's Introduction to Roman-Dutch Law, 5th ed., p. 298, citing Grotius' Jurisprudence of 20
 Holland lib. iii, cap. xvi (= Lee's ed. (1926) i. 377) and Voet's Commentaries 18.3.9 and ff. (= Gane's ed. (1956) iii. 298 and ff.). This right of "retractus" or "pre-emption" finds no place in, e.g., the modern law of South Africa, but was incorporated into Mohammedan law: Tyabji's Principles of Mohammedan Law, 2nd ed. (1919), cap. xii, pp. 646 and ff., ss. 522 and ff.; and has been the subject of many decisions in Ceylon: Mutukisna on The Thesawaleme (1862), pp. 519 and ff., where "Pre-emption Cases" between 1806 and 1860 are reported by the proctor who 30
 appeared in the most recent of them from the local court records. The principles of this right, their nature and application have been laid down and considered by jurists in Holland and France and judges in the courts of India and Ceylon and on examination do not support the proposition relied on by the Supreme Court but are, in the submission of the Appellant, inconsistent with it.

34. The most elaborate and exhaustive treatise on the subject appears to be Tiraquellus' Commentarii de Utroque retractu & municipali & conventionali (Paris 1543). With "retractus conventionalis," i.e., pre-emption by express stipulation or agreement, this appeal is not concerned. It is concerned with family pre-emption or "retraction": "retractus municipalis" or "retractus lignagier" (Tiraquellus), "retractus 40
 consanguinitatis, sive gentilitius" (Zoesius, Commentary on the Pandects, XVIII. iii. 37 (2nd ed. (1656) pp. 362 and ff.); cp. Van Leeuwen, Censura Forensis, IV. xx. (4th ed. (1741) pp. 430 and ff.). This is a right given to a member of a family to keep land in the family by buying it back from a stranger within a certain time. "Est igitur retractus gentilitius, facultas proximiori consanguineo concessa, ad redimendum intra certum tempus rem in extraneum alienatam"; Van Leeuwen, op. cit. IV. xx. 10. The term "retractus" reveals what "pre-emption" conceals, that it is primarily a right of redemption.

35. There is much discussion in the jurists as to the persons to whom the right is available, the nature of the property over which it is exercised, the forms of alienation to which it applies and the time and manner in which the pre-emptor must redeem. Van Leeuwen regarded three of Tiraquellus' requirements as almost universally accepted: (i) That the "consanguineus retractere volens" should have one year only from the sale to "retract," (ii) that the pre-emptor must offer and pay a fair price, and (iii) that he must "retract" for himself with his own money and for his own use, and not to profit another or to defraud the purchaser: *ib.* IV. xx. 10-15. Certain formalities were required for (iii), which are no part of the law of Ceylon, and there appears to have been considerable difference of opinion as to the time limit and as to the offer and payment of the price. Tiraquellus allows a year and a day but regards "retractus" as so strict a right that the year and a day runs against majors and minors, those present and absent, those with and without knowledge of the contract of sale: *op. cit.*, para. 35 and especially Gloss 2 (pp. 288 and ff.) which treats of "mineurs." He also discusses the questions whether the price must be offered even if not demanded, and whether to the purchaser in person or, if he cannot be found, to his wife or at his home or to the Court, and whether he must have the money in his hand or may offer sureties or security for it: para. 3 Gloss 3 No. 14, Gloss 12 No. 1, Gloss 17 No 8.; para. 9 Gloss 3 Nos. 1 and ff, 7, 9. Zoelsius insists that the whole price shall be offered and that it must be done within a certain time, and he discusses when the time should begin to run: *op. cit.* XVIII. iii. 97, 110. He too says that it runs against minors, with certain exceptions and quotes edicts which deprive minors of the right of pre-emption altogether: *ib.* 120.

36. There is also discussion in the jurists about notice (*notificatio*). Tiraquellus, e.g., asks within what time the "consanguineus" shall be allowed to retract against the purchaser if there has been no notice, and from what time the year for retracting should run in cases where custom had not fixed that it should begin to run from notice. He gives various answers which had been made to the first question, 10 or 20 years, or 30 years because after 30 years no claim could ever be enforced, and to the second he gives the date of the sale as the time from which the customary year ran in many parts of France and Italy: *op. cit.* para. 36 Gloss 2 (*ed. cit.* pp. 298 and ff.) especially Nos. 36 and 42.

37. Both in India and Ceylon the law of prescription and limitation of actions has developed and been clarified and it was not and could not be suggested by the deceased second Respondent that a minor could not claim to pre-empt. The right may be enforced on behalf of a minor, as it is in India: Tyabji *op. cit.* p. 710. Nor was it nor could it have been suggested in the District Court or the Supreme Court in face of paragraph 1 of Part VII of the Thesawalamai (see Appendix A) that knowledge of the sale did not have to be brought home to the Appellant or her guardian, and indeed the burden of proving knowledge was accepted apparently by all the Defendants without question or qualification. In India the pre-emptor must assert his claim immediately on getting notice of the sale, but he need not tender the purchase-money at the same time: Tyabji *op. cit.* pp. 678, 681; and the Punjab Laws Act (IV of 1872) s. 14 and the

Oudh Laws Act (XVIII of 1876), section 11 (cit. Tyabji op. cit. p. 727) give a pre-emptor three months after notice to pay or tender the purchase price or deposit it in Court. The need for notice has also continued to be recognised in Ceylon, where originally casual knowledge without formal notice was not enough: see *Nagamany Winasytamby v. Muttocomaroe Annamaley* (1826) Mutukisna (op. cit.), p. 530, and *Velaider Nagenaden v. Velaider Vadaramen* (1855), ib. p. 562.

38. India and Ceylon have also laid down the steps which a pre-emptor must take to enforce his right. Their Codes of Civil Procedure require a pre-emptor to pay the purchase price on a day fixed by the Court 10 after action brought and won: see para. 32 of this Case. And in Ceylon it was apparently once the practice to set aside a sale to a stranger but not to order a resale to the pre-emptor, leaving the stranger in possession until the purchase money was repaid: *Nagamany Winasytamby's* case above cited; cp. *Wessowenader Cander v. Caderen Maden* (1838), Mutukisna op. cit. p. 544. Later, however, the purchase money was deposited in Court by the Plaintiff "with libel or before answer" but could be deposited later by consent and order of the Court: *Cannewedy Ayer v. Sangeyamma* (1859) ib. p. 568.

39. It is respectfully submitted that statutory recognition has long 20 been given in Ceylon, as in India whence this law of *retractus gentilitius* reached Ceylon, to the right of the pre-emptor to find the purchase price after he has established in Court his right to pre-empt, and that such a recognised right is entirely inconsistent with the proposition that he must have been in a position to find the purchase price at any earlier date. It leaves no room for such a further requirement, for which there is no authority before 1951.

40. It is appreciated that cases in which a pre-emptor is long ignorant of a sale to a stranger of land in which the pre-emptor has a share must have been comparatively rare, and will be rarer still in Ceylon now that 30 registration of a deed of sale executed since 1947 will operate as notice to the pre-emptor and give him no more than a year thereafter to bring his action. But there must have been many cases in Ceylon and India in which the financial position of the pre-emptor has improved in the interval between sale and the institution or completion of pre-emption proceedings; yet the point now relied on by the Supreme Court does not appear to have been taken or upheld in any textbook or reported case until 1951. It is appreciated that the longer that interval the greater the possible hardship to the stranger purchaser in a period of rising land values from being repaid substantially no more than the price at which he bought. But 40 that is the penalty he pays for neglecting to see that the co-owner has notice of the sale; and where, as in this case, he admittedly knew of the Appellant's interest, it is not unjust that he should pay for his mistake in regarding the first Respondent's knowledge as her knowledge, particularly as he felt it necessary to attribute to her personal knowledge, at least of the 1947 resale, and was himself open to the charge which she made against him of colluding with the first Respondent.

41. It should perhaps be pointed out that Gratiaen, J., while sitting in the Supreme Court, showed a marked dislike of the right of pre-emption in other cases: see *Sivapiragesam v. Vellayijan* (1954) 55 N.L.R. 298, 300 and *Shivagarmathan v. Visaladchi* (1954) 56 N.L.R. 376, 378. There is ample authority for restricting rather than enlarging the right: see, e.g., Tiraquellus op. cit. Preface pp. 11 and ff., paras. 56 and ff. and the Glosses on para. 35; Zoesus op. cit. XVIII. iii 120. But Tiraquellus gives the names of those who regard "retractus" as "favorabilis & extendendus" as well as those who regard it as "odiosus & restringendus"; there is a powerful defence of it by Mahmood, J., in *Gobind Dayal v. Inayatullah* (1885), 7 Allahabad 775, 809 (a decision which was applied in *Karthigesu's* case cited above (see paragraphs 20 (F) and 30 of this Case) and in the judgment of the District Judge); and it would seem dangerous to begin the restriction of the right in a case where it is invoked by a girl still a minor to avoid a sale of property carried out when she was seven or eight years old.

42. It is submitted as of some significance that nowhere in the Answer of the deceased second Defendant or in his Petition of Appeal is the Appellant's alleged inability to pay Rs. 1,500 in 1937 relied on in isolation. In paragraph 2 of his Answer it is linked with her means in 1950 and with her knowledge of the sale in 1937; in paragraph 3 with her inability in 1937 to pay the debt due from her mother's estate; in paragraph 4 (c) of his Petition of Appeal it is linked with inability to pay that debt and with the contention that the deceased second Defendant was a bona fide purchaser. Further there was no plea in the Appellant's Complaint that she was ready and willing to purchase the first Respondent's share in 1937, as in *Vclupillai's* case above cited, but only a plea made, and in the Appellant's submission rightly made, in paragraph 9 of her Complaint that "the Plaintiff is ready and willing to pay" the purchase price; no issue was directed to the question whether she was ready or had funds to purchase in 1937: the ninth issue was more clearly than the issue quoted in *Vclupillai's* case directed to her bona fides in 1950 and to the state of her funds in 1950, and was probably linked with the tenth and eleventh issues which raised the question of collusion. It is not even clear from the statement of the contention in the judgment of the Supreme Court that the Appellant's lack of means in 1937 was there relied on as by itself sufficient to defeat her claim to pre-empt. Nowhere until the end of the judgment of the Supreme Court does *Vclupillai's* case appear to have been cited or the point on which the appeal was allowed to have been distinctly and separately taken. There is no trace of the point in the judgment of the District Judge.

43. If this point is, as the Appellant submits, unsound in law, it is further submitted that this Appeal should be allowed. Only one other contention on behalf of the deceased second Defendant was advanced, or at any rate noticed, in the Supreme Court, namely that the Appellant's natural guardian, the first Respondent, was necessarily aware of the sale to the deceased second Defendant. This is not disputed, but the Appellant respectfully submits that the learned District Judge was right in holding that the knowledge of a natural guardian, who is himself in his personal capacity the vendor of a share in land which he owns, but which the minor whose guardian he is has a right to pre-empt, cannot be imputed to the

p. 25, ll. 22-24

p. 25, l. 25

minor, whatever the position may be where the natural guardian is not the vendor but knows of a sale by another vendor. The District Judge rejected in terms the contention that in selling the first Respondent was acting in the best interests of the Appellant: and if he was "anxious to hide" what he was doing from the girl, he was acting in fraud of her rights and no imputation of knowledge can in such a case arise.

p. 33, ll. 8-14

44. If the knowledge of such a guardian were imputed to the minor whom it is his duty to protect, the minor would be deprived of the opportunity to pre-empt in circumstances where he or she most needed to be advised of it and a door would be opened to easy frauds upon minors 10 who owned property. There would be no valid reason why a guardian should not defer selling in such circumstances or see that the minor has independent advice from someone whose knowledge could be imputed to the minor. The Supreme Court has not given its views on the contention of the deceased second Defendant that it would be sufficient in law to prove that the natural guardian of a minor was aware at the time of sale of such sale, but the Appellant submits that the District Judge was plainly right in rejecting this contention.

p. 26, ll. 6-9
p. 33, ll. 15-28p. 26, ll. 1-5
p. 27, ll. 1-8
p. 33, ll. 29-39

p. 26, ll. 39-41

45. Should it be considered open to the Respondents to this Appeal to rely on any other contention that the two noticed by the Supreme Court, 20 the Appellant will submit that the District Judge was equally right in rejecting those other contentions. In particular, the Appellant will submit that the fact that the stranger, who buys a share which a member of the family has a right to pre-empt, is a bona fide purchaser for value without notice is irrelevant in law and that it was on the evidence impossible to hold that the deceased second Defendant did purchase without notice or that the action was instituted maliciously and collusively with Ambalam Kandiah. If anybody was behind the Appellant in instituting the action it was the first Respondent; but if and in so far as he "put" her "up" 30 to it, he was merely undoing the wrong he had done her thirteen years earlier in selling to a stranger a share of land which she had a right to buy.

p. 36

46. In accordance with the judgments of the Supreme Court a Decree dated the 26th June, 1952, was entered on the 30th June, 1952, whereby the appeal of the deceased second Defendant was allowed and the Appellant's action dismissed with costs in the Supreme Court and below.

pp. 37-39

47. Being aggrieved by the said judgment and decree of the Supreme Court the Appellant duly applied for and was granted conditional leave to appeal to the Privy Council on the 9th September, 1952, and final leave so to appeal on the 29th October, 1952.

pp. 40-42

48. On attaining her majority the Appellant filed her proxy in the 40 District Court on the 27th September, 1955, and adopted these proceedings.

49. On the deaths of the second and fourth Defendants, who were the second and fourth Respondents to this Appeal, the record of the proceedings herein became defective, and by orders of the Supreme Court dated the 17th September, 1957, and the 18th December, 1957, the above-named second, third, fourth, fifth, sixth, seventh and eighth Respondents

were declared the proper persons to be substituted for the deceased second Defendant/Respondent and the above-named tenth and eleventh Respondents were declared to be the proper persons to be substituted for the deceased fourth Defendant/Respondent and the said nine Respondents were substituted and/or entered on the record in place of the said two deceased Defendants/Respondents.

50. The Appellant humbly submits that the said judgment and decree of the Supreme Court of Ceylon dated the 26th June, 1952, be set aside and the judgment and decree of the District Court of Chavakacheheri
10 dated the 28th November, 1950, restored for the following amongst other

REASONS

- 20
- (1) BECAUSE the Appellant was a co-owner of the land in which she and the first Respondent owned shares and was entitled to pre-empt the share sold by him to the deceased second Defendant/Respondent on payment of Rs. 1,500, which she paid on or before the day fixed by the District Court.
- (2) BECAUSE the Appellant was neither given notice of the said sale by the first Respondent nor was she aware of it until 1950.
- (3) BECAUSE the first Respondent's knowledge of the said sale was not her knowledge and could not be attributed to her as in selling his said share he was acting not as her agent or natural guardian but on his own behalf and in his own interests and adversely to her interests and in fraud of her in so far as he concealed the transaction with a view to frustrating her right of pre-emption.
- 30
- (4) BECAUSE the Appellant was ready and willing and had the means to pay the purchase price for which the said share was sold at the material time, which was 1950.
- (5) BECAUSE the Appellant was not required by the law of Thesawalamai relating to pre-emption to be ready and willing and to have the means to pay the purchase price at the time of the said sale of which she had then no notice or knowledge.
- 40
- (6) BECAUSE the Respondents did not discharge the onus, which had been validly ruled to be upon them, of proving that the Appellant had not the means to pre-empt in 1937, even if means at that date were the governing factor.
- (7) BECAUSE the Appellant is a bona fide pre-emptor who has funds to pay for the purchase of the first Respondent's half-share and has paid for the same as directed by the District Court.

- (8) BECAUSE the Respondents did not discharge the burden of proving that the Appellant had notice or knowledge of the sale.
- (9) BECAUSE the Appellant's action is not barred by prescription.
- (10) BECAUSE the deceased second Defendant/Respondent was not a bona fide purchaser of the first Respondent's said share for value without notice of the Appellant's right to the other undivided half-share.
- (11) BECAUSE the Appellant's action was not instituted 10 maliciously or collusively at the instigation of any third party.
- (12) BECAUSE the Respondents did not discharge the burden of proving that the Appellant's action was instituted maliciously or collusively.
- (13) BECAUSE the Respondents substituted for the deceased second Defendant/Respondent had no right further or other than a right to Rs. 1,500 compensation for improvements and a *jus retentionis*.
- (14) BECAUSE the judgment of the Supreme Court was 20 wrong and ought to be reversed.
- (15) BECAUSE the judgment of the District Court was right and ought to be restored.

STEPHEN CHAPMAN.

JOHN STEPHENSON.

APPENDIX A.

THE THESAWALAMAL. Part VII. Paragraph 1.

1. Formerly, when any person had sold a piece of land, garden, or slave, etc., to a stranger without having been given previous notice thereof to his heirs or partners, and to such of his neighbours whose grounds are adjacent to his land, and who might have the same in mortgage, should they have been mortgaged, such heirs, partners, and neighbours were at liberty to claim or demand the preference of becoming the proprietors of such lands. The previous notice which was to be given to persons of the
 10 above description was to be observed in the following manner, namely, to such as resided at the village, one month ; to persons residing in the same province but out of the village, three months ; to those residing in another province, six months ; and to those who reside abroad, one year.

The above periods having expired without such persons having taken any steps upon the information given to them, the sale was considered valid ; yet this mode of selling lands underwent an alteration afterwards in consequence of the good orders given on that subject during the time of the old Commandeur Bloom (of blessed memory), as since those orders
 20 no sale of lands whatever has taken place until the intentions of such as wish to sell the same have been published on three successive Sundays at the church to which they belong, during which period such persons as mean to have the preference to the lands for sale according to the ancient customs of the country are to come forward and to state the nature of their preference in consequence whereof they then became the purchasers of the same.

It is customary under this nation that a piece of land which has been mortgaged to one person is sold to another, for which sale, according to the above-cited order proper title deeds are granted, although the new purchaser is unable to discharge the amount of the purchase-money, and
 30 in consequence thereof pays immediately to the seller only that part of the purchase-money which exceeds the sum for which the land has been mortgaged and afterwards leaves the same in possession of the former mortgagee for the amount for which it was mortgaged by the former proprietor, until the new purchaser has the means to pay the amount for which the said land has been mortgaged. This manner of dealing creates many disputes, as it occurs very often that such sums of money are not discharged before the expiration of eight, nine or ten and more years, on which account I am of opinion (yet submitting mine to wiser judgment)
 40 that the passing of title deeds without the purchase amount being fully discharged should be prohibited or at least that orders should be given that in cases of the above-described nature the mortgage deed made previously in the name of the seller should be repealed, and that a new one should be passed in the name of the purchaser instead of that which has been repealed.

APPENDIX B.

CIVIL PROCEDURE CODE. Section 200.

200. When the action is to enforce a right of pre-emption in respect of a particular sale of property, and the court finds for the plaintiff, if the amount of purchase money has not been paid into court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid on or before such day or any extension thereof which shall have been allowed for good cause shown, 10 the action shall stand dismissed with costs.

In the Privy Council

ON APPEAL

from the Supreme Court of Ceylon.

BETWEEN

MANGALESWARI, daughter of Velupillai Selvadurai of Karaveddy, a minor, appearing by her next friend Sinnama widow of Sellar of Chavakachcheri

Plaintiff/Appellant

AND

1. VELUPILLAI SELVADURAI of Karaveddy,
2. POORANAM, widow of Veeragathiar Ramalingam of Chavakachcheri, personally and as Guardian-ad-item of Sudendra and Ramalingam Nimalan,
3. VELUPILLAI SUNDARALINGAM of Chavakachcheri,
4. YOGESWARY, wife of Velupillai Sundaralingam of Chavakachcheri,
5. MANGALESWARY, daughter of V. Ramalingam of Chavakachcheri,
6. MADURESWARI, daughter of V. Ramalingam of Chavakachcheri,
7. SUDENDRA, daughter of V. Ramalingam of Chavakachcheri,
8. RAMALINGAM NIMALAN of Chavakachcheri, all substituted in place of the late Veeragathiar Ramalingam of Chavakachcheri pursuant to the Order of the Supreme Court of Ceylon dated the 18th December, 1957 ;
9. VALLIPURAM SUBRAMANIAN of Chavakachcheri ;
10. SUBRAMANIAN SIVARAJAH of Chavakachcheri ;
and
11. SUBRAMANIAM RAJASINGHAM of Chavakachcheri, both substituted in place of the late Sinnathangam, wife of Vallipuram Subramaniam of Chavakachcheri pursuant to the said Order

Defendants/Respondents.

Case for the Appellant.

LEE & PEMBERTONS,

11 South Square,

Gray's Inn,

London, W.C.1,

Solicitors for the Appellant.