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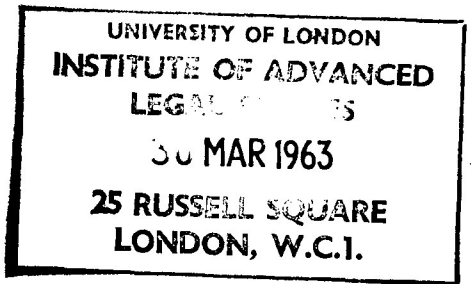
IN THE PRIVY COUNCILNo. 1 of 1961

ON APPEAL  
FROM THE SUPREME COURT OF THE ISLAND  
OF CEYLON

B E T W E E N :

CHELLAMMAH, wife of PHILIP OF BANKSHALL  
 STREET, KARAIYOOR

Petitioner



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- and -

- 10 1. VYRAVAN KANAPATHY OF SANDILIPAY  
 2. RASAMANY, widow of MUTTU OF BANKSHALL STREET,  
 KARIYOOR JAFFNA  
 3. KANNAKAI, alias REBECCA wife of ANTHONIPILLAI  
 OF MOOLAI ROAD, CHUNDIKULI  
 4. VELAN MARIMUTTU OF SANDILIPAY  
 5. VELAN VAITHIAN OF SANDILIPAY  
 6. PATHAN KANAPATHY AND WIFE  
 7. PONNY, BOTH OF SANDILIPAY  
 8. ARUMUGAM VEERASINGHAM AND WIFE  
 9. PACKIAM, BOTH OF UDUVIL, MANIPAY  
 20 10. SINNAYA ARUMNGATHAN OF CHANGANAI  
 11. KANAPATHY SELLAN AND WIFE  
 12. SETHAI, BOTH OF SANDILIPAY  
 13. KUDDY, widow of SINNAPODIAN VALLY OF CHANGANAI  
 14. VAIRAVY CHELLIAH OF KADDADI, JAFFNA  
 15. ELLUPOLAI SINNAPODY AND WIFE  
 16. VELLIAMMAI BOTH OF KELLAVIL LANE, CHUTHUMALAI  
 17. KANAPATHY MURUGAN AND WIFE  
 18. RASU BOTH OF CHANGANAI  
 19. MURUGAR PONNAR AND WIFE  
 30 20. LEDCHUMY BOTH OF ALAVEDDY  
 21. VISUVAN KATHIRAVELAN AND WIFE  
 22. THANGAMUTTU BOTH OF NALLUR NORTH  
 23. VAIRAVY NALLATHAMBY OF MOOLAI ROAD, CHUNDIKULI  
 24. KANAPATHY CHELLAN AND WIFE  
 25. THANGAMMAH BOTH OF VADDUKODDAI EAST  
 26. MARUCHELIN ANTHONIPILLAI OF KAKILAMANDAI,  
 NARANTHANI NORTH Respondents

C A S E

40 for the 26th, 23rd and 14th to 16th, the 4th, 5th,  
 19th, 20th, 6th, 7th, 21st, 22nd, 10th, 1st, 11th,  
 12th, 13th, 17th, 18th, 24th and 25th Respondents

1. The Administratrix de bonis non - Petitioner-

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pp.296-303

Appellant (hereinafter called "the Appellant") appeals by special leave from the judgment and decree of the Supreme Court whereby the Supreme Court allowed the appeals of two sets of respondents, namely, the 26th, 23rd and 14th to 16th respondents (referred to in the Courts below as the 14th and 27th to 30th respondents and referred to hereinafter as the first set of respondents) and the 4th, 5th, 19th, 20th, 6th, 7th, 21st, 22nd, 10th, 1st, 11th, 12th, 13th, 17th, 18th, 24th and 25th respondents (referred to in the Courts below as the 4th to 11th, 20th to 26th and 31st to 34th respondents and referred to hereinafter as the second set of respondents) from the judgment and decree of the District Court of Jaffna dated the 28th March, 1956. By the said judgment the District Court declared the Appellant and her sister, the 2nd respondent to be the only heirs of a deceased person named Kanapathy Kanther.

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pp.264-272

p.272, 11.23-25

2. The said judgment of the District Court was given in a testamentary inquiry in which the main question was as to who were the intestate heirs of the said Kanapathy Kanther who had died intestate and issueless on the 19th May 1938. Before the District Court, there were four groups of claimants: The Appellant and her sister, the 2nd Respondent, together claimed to be the heirs of the deceased to the exclusion of the other claimants. The first set of respondents claimed through the mother of the deceased. The second set of respondents claimed through the father of the deceased. The 8th and 9th respondents claimed through one Raman who they alleged was a brother of the deceased's father. The 8th and 9th respondents dropped out of the contest at the stage of the appeal to the Supreme Court and in the present appeal the claims of the first three groups only fall to be considered.

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p.150, 11.8-11

p.214  
p.179p.127  
p.176, 11.20-26

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p.149, 11.4-11  
p.150, 11.8-11  
p.85, 11.1-5p.221, 1.1 -  
p.222, 1.32

3. The Appellant and her sister the 2nd respondent, claim that their paternal grandfather Eliavy was a brother of Kathirinchy, the mother of the deceased. The deceased was, according to them, Kathirinchy's illegitimate and only child by a man called Kanapathy with whom she lived after the death of her husband Kaithar. They also alleged that Kathirinchy had three brothers Marian, Sinniavi and Elaiyavi of whom the Elaiyavi alone left any heirs.

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4. The first set of respondents claimed that the

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deceased's mother Kannathai had three brothers two of whom had left heirs. They claimed to be the heirs of Kannathai's brother Sinnavi. At first they claimed half the estate and later claimed one fourth conceding that the deceased was not illegitimate.

p.171, 11.7-10  
p.126  
p.213, 11.1-6  
p.214

10 5. The second set of respondents claimed as heirs of the deceased's father, Kanapathy. They claimed that the deceased was the only son of Kannathai who was lawfully married to one Kanapathy. Kanapathy was, according to these respondents, the son of Thievi by her first marriage with Velan. By her second marriage to Nannian, Thievi had four children namely Vyravan, Sinnavan, Vellan and Wally. The second set of respondents claimed as the lawful descendants of the said four children of Thievi.

p.179  
p.178, 11.25-28

20 6. At the commencement of the inquiry 31 issues were raised. The issues relevant to the present appeal were answered by learned trial judge as follows :-

pp.218-220  
p.272, 11.1-22

Issue 1 Did Kanthar and wife Kathirasi have a daughter Kathirinchi and a son Eliyavi?  
Answer Yes.

Issue 2 Was the deceased Kanthar, the son of Kathirinchi?  
Answer Yes.

Issue 3 Was Eliavy's son Arumugam?  
Answer Yes.

30 Issue 4 Was Arumugam the sole heir of the deceased Kanthar?  
Answer Yes.

Issue 5 Are the Administratrix de bonis non and her sister the 16th respondent (2nd respondent) the heirs of the said Arumugam?  
Answer Yes.

Issue 7 Was Kanthar the legitimate son of Velan Kanapathy?  
Answer No.

40 Issue 8 Was Theivy, the mother of Kanapathy, the father of Kanthar?  
Answer Does not arise in view of answer to Issue 7.

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	<u>Issue 10</u>	Did Theivy, after the death of Velan, marry Nannian?	
	<u>Answer</u>	Does not arise in view of answer to Issue 7.	
	<u>Issue 11</u>	If so, are the respondents 4 to 11 and 20 to 26 (second set of respondents) heirs of Kanthar?	
	<u>Answer</u>	Does not arise in view of answer to Issue 7.	
	<u>Issue 12</u>	If so, what portion of the estate did they inherit?	10
	<u>Answer</u>	Does not arise in view of answer to Issue 7.	
	<u>Issue 24</u>	Have the interests of Kanthar Sinnavi devolved on the 14th, 27th, 28th and 30th respondents (first set of respondents)?	
	<u>Answer</u>	No.	
	<u>Issue 25</u>	If so, what share?	
	<u>Answer</u>	Does not arise.	20
	<u>Issue 28</u>	Have the interests of the 2nd respondent (in the original caption) devolved on the 31st to 24th (17th, 18th, 24th and 25th) respondents?	
	<u>Answer</u>	No.	
	<u>Issue 29</u>	If so, what is the extent of the interest?	
	<u>Answer</u>	Does not arise.	
pp.264-272	7.	The learned trial judge accordingly gave judgment on the 28th March 1956 declaring the Appellant and the 2nd respondent to be the only heirs of the deceased. From this judgment the first and second sets of respondents appealed, by separate petitions, to the Supreme Court.	30
pp.273-281 pp.282-288			
pp.296-303	8.	The Supreme Court (Sansoni J. and T.S. Fernando J.), by its judgment and decree dated the 9th May 1958, allowed the appeals with costs. The Supreme Court held that both sets of respondents had established their claims to be heirs of the deceased.	
p.303, 11.9-13			40
p.298, 1.4 - p.299, 1.13		With regard to the exclusion of the first set of respondents from heirship, the Supreme Court held that the trial judge erred in that he did not	

10 give effect to the death certificate of Sinnavi (A.16) from which it clearly appeared that the Sinnavi through whom the first set of respondents claimed was the uncle of the deceased Kanapathy Kanthar and that he retained his name until his death. The Supreme Court held that the learned trial judge erred in taking the view that the baptismal certificate A.8 produced by the Appel-  
lant referred to the Sinnavi through whom the first set of respondents claimed and that the baptismal certificate A.9 referred to a daughter of that Sinnavi. The Supreme Court held (rightly, it is submitted) that the learned trial judge should not have rejected the oral evidence tendered by the first set of respondents that they were the des-  
cendants of the Sinnavi referred to in document A.16. On this aspect of the case, Sansoni J. said :-

p.299, 11.13-16

20 "Now this evidence, which was the main evidence relied on by the 14th and 27th to 30th respondents (first set of respondents) who have appealed, seems to me to be of considerable weight, but the learned Judge has rejected it. One of the reasons given by him is that the 28th respondent did not impress him favourably as a witness. I fully realise that a trial Judge is entitled to make such a comment, and that such an opinion of a witness should not be lightly disregarded.  
30 But this opinion must be judged in the light of the other reasons given by the learned Judge for rejecting the claims of the 14th and 27th to 30th respondents and for not acting upon the documents which they produced. One such reason is that Sinnavi died in Kanapathy Kanthar's house and not in the house of any of his descendants, and he draws the inference that Sinnavi had no descendants. With all respect, I consider this an inade-  
40 quate reason for holding that the Sinnavi who died in Kanapathy Kanthar's house was not the grandfather of these respondents. Nobody has suggested that there was any other Sinnavi, who was an uncle of Kanapathy Kanthar, in this pedigree. Another reason given by the learned Judge is that the dowry deed A.1 provides that if Sellamma dies issueless the property should devolve on her father and the learned Judge thinks that if Kanapathy Kanthar  
50 had other heirs he would have provided dif-ferently. But this is pure conjecture as to

p.299, 1.17 -  
p.300, 1.11

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how Kanapathy Kanthar's mind might have worked, and I do not consider it a sound reason for holding that there were no other heirs besides Eliavy Arumugam father of Sellamma. I need not deal with certain other comments which the learned Judge has made except to remark that if the 28th respondent did say that Kanthar was a Hindu and not a Roman Catholic, it may well have been because Kanthar was not a practising Roman Catholic, who, for that reason was not given the honours usually given to a practising Roman Catholic at his funeral."

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p.300, l.40 -  
p.301, l.31

With regard to the claim of the second set of respondents, the Supreme Court took the view that there was sufficient evidence to establish the marriage of the deceased's parents, Kanapathy and Kannathai. Sansoni J. held that the rejection by the trial judge of the evidence of Dr. Mills who gave evidence to the effect that persons in the second set of respondents were referred to by the deceased as his heirs was unjustified. He took the view that the rejection of Dr. Mills' evidence was probably due to a misconstruction of a passage occurring in a letter (4 R 16) written by Dr. Mills. Sansoni J. also held that the evidence of the 22nd respondent was wrongly rejected by the trial judge. The learned trial judge was wrong in taking the view that the evidence of this witness was hearsay.

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p.302, ll.11-32

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9. It is submitted with respect that the judgment of the Supreme Court is right. It is further submitted that trial judge was wrong in rejecting the evidence of Velupuram and Mathavar.

10. It is respectfully submitted that this appeal should be dismissed with costs throughout for the following among other

R E A S O N S

BECAUSE the Supreme Court has rightly held that the first group of respondents have proved that they are heirs of the deceased through the deceased's maternal uncle Sinnavi.

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BECAUSE the Supreme Court has rightly held that the second group of respondents have proved that they are heirs of the deceased through his father Kanapathy.

BECAUSE the marriage of Kanapathy and Kannathai, the parents of the deceased, has been established by the evidence led in the case.

BECAUSE the learned trial judge was wrong in rejecting the evidence of Velupuram and Mathavar.

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BECAUSE the judgment of the Supreme Court (except for the decision not to interfere with the rejection by the trial judge of the evidence of Velupuram and Mathavar) is right for the reasons therein stated and should be affirmed.

E.F.N. GRATIAEN.

WALTER JAYAWARDENA.

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