

ON AN APPEAL FROM THE

SUPREME COURT OF CEYLON

B E T W E E N :-

VISWANATHAR KANAGARATNAM
SUBRAMANIAM as Executor of
VISWANATHAR KANAGARATNAM
deceased (Substituted
Defendant) Appellant

- and -

KANAGARATNAM KADIRGAMAN
(Plaintiff) Respondent

CASE FOR THE APPELLANT

Record

1. This is an Appeal from a Judgment and Decree of the Supreme Court of Ceylon, dated the 5th day of February, 1966, dismissing with costs the appeal of the Appellant from a Judgment and Decree of the District Court of Point Pedro, dated the 3rd day of June 1963, in favour of the Respondent. The said District Court by its said Judgment and Decree granted the Respondent a declaration that as Administrator of the estate of the late Rasammah he was entitled to a half share of certain lands described in the Schedule to his Plaint, decreed that the Respondent as such Administrator be placed in peaceful possession thereof and that the Appellant pay to the Respondent as such Administrator Rs. 2,500/- per annum as damages from the 14th day of September 1959 till the Respondent was placed in peaceful possession of the said lands and further decreed that the Appellant pay the Respondent as such Administrator the costs of the action. The said Supreme Court by its said Judgment and Decree adjudged that the part of the decree of the said District Court which decreed that the Respondent be placed in peaceful possession of the said lands be deleted but that subject to that alteration the decree should stand, and ordered that the Appellant's Appeal

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p.82
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Record be dismissed with costs.

p.18 2. The Respondent, who was the Plaintiff in the action, sued as Administrator of the estate of Rasammah, his late mother and the first wife of Viswanathar Kanagaratnam, the original Defendant, p.4, Viswanathar Kanagaratnam died after the proceedings ll.13,20 were commenced, and the Appellant, his son by a second marriage, was substituted as Defendant.

p.66 It was common ground:

l.29 ~ (a) that Rasammah married Viswanathar 10
p.67, l.4 Kanagaratnam, the original Defendant, in or about 1916 and that she died on the 20th August 1948.

(b) that Viswanathar Kanagaratnam and Rasammah were persons to whom the Thesawalamai (the customary law of the Malabar inhabitants of the Province of Jaffna) applied.

(c) that the lands, a half share of which was claimed by the Respondent, were purchased by Viswanathar Kanagaratnam during the subsistence of his marriage with Rasammah between 1916 and 1946. 20

The question at issue was whether these lands were tediatetam (property which is to be treated as part of "the profits during marriage" or "acquisition") as defined in the Jaffna Matrimonial Rights and Inheritance Ordinance (which amended the Thesawalamai), in which case Rasammah's estate would be entitled to a share, or whether they were the separate property of the acquiring spouse viz. Viswanathar Kanagaratnam, the original Defendant.

It was the Appellant's case that the effect of the amendments to the Jaffna Matrimonial Rights and Inheritance Ordinance made by Ordinance No.58 of 1947 (which came into force on the 4th July 1947) was that these lands were not to be treated as tediatetam, since lands so acquired were excluded from the definition of tediatetam by the amendments which were made. 30

The Respondent's case was that the amending Ordinance (No.58 of 1947) did not apply, since at the time the property was acquired the original unamended Ordinance (Ordinance No. 1 of 1911) was 40

in force and the affect of this was that Rasamma became vested with a half share of the properties at the time of acquisition. Record

The principal questions arising in this Appeal therefore are -

(a) whether Rasamma became vested with a half share of the properties as and when each was acquired.

(b) whether the amending Ordinance No. 58 of 1947 was applicable to the case.

10 (c) whether the properties of which the Respondent claimed a half share were to be treated as tediatetam or as the separate estate of Viswanathar Kanagaratnam.

3. Ordinance No. 1 of 1911 provided as follows:-

20 "7. Any movable or immovable property to which any husband married after the commencement of this Ordinance may be entitled at the time of his marriage, or, except by way of tediatetam, may become entitled during his marriage, shall, subject and without prejudice to the trusts of any will or settlement affecting the same, belong to the husband for his separate estate. Such husband shall, subject and without prejudice to any such trusts as aforesaid, have full power of disposing of and dealing with such property."

Inheritance.

30 "14. The following sections of this Ordinance shall apply to the estate of such persons only as shall die after the commencement of this Ordinance, and shall be then unmarried, or if married, shall have been married after the commencement of this Ordinance."

"19. The following property shall be known as the tediatetam of any husband or wife -

(a) property acquired for valuable consideration by either husband or wife during the subsistence of marriage;

(b) profits arising during the subsistence of marriage from the property of any husband or wife."

Record

"20. (1) The tediatetam of each spouse shall be property common to the two spouses, that is to say, although it is acquired by either spouse and retained in his or her name, both shall be equally entitled thereto.

(2) Subject to the provisions of the Tesawalamai relating to liability to be applied for payment or liquidation of debts contracted by the spouses or either of them on the death intestate of either spouse, one-half of this joint property shall remain the property of the survivor and the other half shall vest in the heirs of the deceased, and on the dissolution of a marriage or a separation a mensa et thoro, each spouse shall take for his or her own separate use one-half of the joint property aforesaid." 10

"21. Subject to the right of the surviving spouse in the preceding section mentioned, the right of inheritance is divided in the following order as respects (a) descendants, (b) ascendants, (c) collaterals." 20

4. Ordinance No. 58 of 1947 by sections 4, 5 and 6, repealed respectively sections 7, 19 and 20 of Ordinance No. 1 of 1911 and substituted the following sections in their place -

"7. All movable or immovable property to which any husband married after the commencement of this Ordinance may be entitled at the time of his marriage, or, which he may during the subsistence of the marriage acquire or become entitled to by way of gift or inheritance or by conversion of any property to which he may have been so entitled or which he may so acquire or become entitled to, shall, subject and without prejudice to the trusts of any will or settlement affecting the same, belong to the husband for his separate estate. Such husband shall, subject and without prejudice to any such trusts as aforesaid, have full power of disposing of and dealing with such property." 30 40

"19. No property other than the following shall be deemed to be the thediatheddham of a spouse:-

- (a) Property acquired by that spouse during the subsistence of the marriage for valuable consideration, such consideration not forming or representing any part of the separate estate of that spouse.
- (b) Profits arising during the subsistence of the marriage from the separate estate of that spouse."

Record

10 "20. On the death of either spouse one half of the thediatheddam which belonged to the deceased spouse, and has not been disposed of by last will or otherwise, shall devolve on the surviving spouse and the other half shall devolve on the heirs of the deceased spouse."

Sections 14 and 21 were not repealed or amended.

20 5. The Respondent commenced THE PRESENT PROCEEDINGS by Plaint dated the 14th September 1959, suing as "Administrator of the Estate of Rasammah in Case No. 400/T.D.C. Point Pedro." Viswanathar Kanagaratnam was made Defendant.

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The Respondent pleaded as follows :-

"3. The Defendant above named married the said Rasammah in or about 1916 and is governed by the law of Thesavalamai as amended by Chapter 48 of the Legislative Enactments of Ceylon. Ordinance No. 1 of 19117.

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30 4. During the subsistence of the said marriage the defendant purchased for valuable consideration the lands described in the schedule hereto and the said lands constitute the Thediatheddam property of the defendant and the said Rasammah.

5. The said Rasammah was by operation of law vested with a title to a half share of the said lands and died in or about 1948 entitled to the said half share.

6. A half share of the said lands is vested in the Plaintiff as administrator of the estate of the said Rasammah.

40 8. The defendant is since the death of the said Rasammah in possession of the said lands and is

p.19,
11.7-18

Record

denying the right of the Plaintiff as administrator to possess a half share on behalf of the said estate causing thereby damages of Rs.3,000/- per annum from date hereof till the Plaintiff as such administrator is placed in possession of the said half share.

9. A cause of action has therefore accrued to the plaintiff to sue the defendant to obtain a declaration that he as such administrator is entitled to a half share of the said lands and to recover possession thereof and damages as aforesaid. 10

10. The plaintiff further pleads that the proceedings, Judgment, decree and order in Case No. 4329 of the Court of Point Pedro operates as res-judicata."

48 properties were listed in the schedule.

The Relief sought by the Respondent was as follows:-

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ll.21-29

"(i) That he as such administrator be declared entitled to a half share of the said lands. 20

(ii) That the Plaintiff as such administrator be placed in peaceful possession thereof.

(iii) That the defendant be ordered to pay the plaintiff as such administrator Rs.3,000/- per annum as damages from date hereof till possession of the said lands.

(iv) For costs, for such other and further relief as to this Court shall seem meet." 30

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ll.13,20

6. An Answer, dated the 10th February, 1960, was filed by the original Defendant, Viswanathar Kanagaratnam, who however died before the action came to trial. The Appellant was thereupon substituted as Defendant.

In his Answer dated the 21st June 1961 the Appellant pleaded -

p.60,
ll.8-22,

"2. Answering to paragraph 3 of the plaint, this Substituted Defendant while admitting

that the deceased defendant married Rasammah in or about 1916 states that the estate of Rasammah is governed by Chapter 48 as amended by Ordinance No. 58 of 1947.

Record
11.25-39

10 3. Answering to paragraph 4 of the plaint this Substituted Defendant denies the correctness of the averments contained therein and states that lands Nos. 6, 13, 14, 16, 17, 18, 21, 22, 23, 24, 25, 26, 29 - 34, 38, 39, 40, 44 - 48 described in the Schedule to the plaint, were purchased by the deceased defendant out of his mudusom [husband's hereditary property] and separate money of his first bed children and belonged exclusively to him.

20 4. Answering to paragraph 5 and 6 of the plaint this Substituted Defendant while admitting that Rasammah died in or about 1948 deny that lands Nos. 6, 13, 14, 16, 17, 18, 21, 22, 23, 24, 25, 26, 29 - 34, 38, 39, 40, 41, 44 - 48 were thediathettam properties or that half share of the said lands vested in the Plaintiff.

6. Answering to paragraph 8 of the plaint, this Substituted Defendant denies all and singular the averments contained therein and states that the plaintiff and his brothers are in possession of lands Nos. 1, 2, 4 - 13, 15, 20, 36, 41 and 42 described in the Schedule to the plaint inclusive of the deceased defendant's separate property and thediathettam share.

30 7. Answering to paragraph 9 of the plaint this Substituted Defendant denies all and singular the correctness of the averments contained therein and states that the plaintiff and his brothers are liable to pay the income of the lands described under items 6 and 13 and thediathettam share of items 1, 2, 3, 4, 5, 7 - 12, 15, 20, 36, 37, 41 and 42 described in the schedule to the plaint.

40 8. Answering to paragraph 10 of the plaint, the Substituted Defendant denies the correctness of the averments contained therein and states that Case No. 4329 referred to therein only applies to the land called Nitchinganollai partitioned in the said case."

Record
p.64
p.65,
ll.15-19

p.231

p.214

7. In his Replication, dated the 12th October 1961, the Respondent pleaded inter alia that "the Defendant is estopped from denying that the estate of Rasammah is entitled to the lands described in the Schedule to the Plaint by reason of his conduct in Case No. 400T of this Court and by reason of his representation in Petition dated 31st January 1949 and Affidavit dated 30th January, 1949, filed by him in the said Case No. 400T."

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p.72
ll.12-14

Case No. 400T was a Testamentary action which the Appellant had brought in the District Court of Point Pedro, following the death of Rasammah. In it he had applied for Probate of a joint last Will said to have been executed by Rasammah and Viswanathar Kanagaratnam, by which last Will Rasammah bequeathed and devised all her properties to her husband Viswanathar Kanagaratnam and appointed her husband as Executor. The Respondent and his brothers, the children of Rasammah, had filed objections to the last Will, and in the result, it had not been admitted to Probate.

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p.231
p.214

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The lands and the shares therein listed in the Appellant's Petition in that case, and his Affidavit in support, as being the property of Rasammah were substantially the same as were claimed to be such by the Respondent in the present proceedings. However, the Petition in that case was subsequently amended, it being stated that these properties had been included by mistake.

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pp.67 -
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p. 72,
ll.3-17
pp.231,
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8. Issues were settled in the present Suit and the case proceeded to trial. The Respondent gave evidence on his own behalf. He referred to the proceedings in Case No. 400T and produced certified copies of the Petition (P.2) and Affidavit (P.3) filed by the Appellant therein. He said that after the Court had refused to admit the Will to Probate he had followed the Schedule to P.2 in listing the properties in his own application for Letters of Administration.

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p.72,
ll.19 -
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With regard to the properties, he said that he and his full brothers (i.e. the children of Rasammah) were living in the house "owned by" their parents, which constituted lands 1, 2, 4, 6, 8, 9, 10, 11, 12 and 13, these being all fragments of

land acquired by his father during the subsistence of his marriage. The income derived from these lands was negligible. They were also in possession of one-sixth share of item 41 in the Schedule to the Plaint, of which one-sixth share his mother would be entitled to only half. Neither he nor his full brothers were in possession of any of the other lands, his father having been in possession of all of them since the time of his mother's death.

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The Respondent also referred in his evidence to the proceedings in Case No. 4329 of the District Court of Point Pedro (a partition case) producing the pleadings, the statement of issues, the judgment and the interlocutory decree made by the Supreme Court on Appeal (dated the 16th July 1954) and the final partition decree. The subject matter of that case was a land known as Nitchinganollai Vadakku which had been purchased by his father. His father was the First Defendant in the case, and the Respondent and his three brothers had intervened, claiming that by reason of the fact that their father had purchased that land during the subsistence of his marriage with Rasammah, Rasammah was entitled to a half share therein. On Appeal the Supreme Court had found in their favour.

p.73,
ll. 30-41pp.275 -
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In cross-examination the Respondent was shown a Deed of Transfer (D.1), dated the 5th June 1921, by which his father had purchased items 13 and 14 in the Schedule to the Plaint and a Deed of Transfer (D.2), dated the 21st March 1967, by which his father had purchased item 6. In both of these Deeds it was recited that the purchase money was stated by the purchaser's Attorney to be mudosom (hereditary property brought into a marriage by the husband) of the purchaser. The Respondent said that the first transaction took place before he was born, and that at the time the second Deed was executed his father was in India. Nevertheless, the Respondent testified as to these transactions in the following terms:-

p.76,
ll.14,20
p.145
p.147

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"According to me my father had no separate mudosom money at that time. All monies were acquired by my father during the subsistence of his marriage with my mother."

p.76,
l.23

Record

p.76,

ll.26-31

The Respondent was shown various Deeds relating to other properties which he admitted were the separate properties of his father.

p.77, l.3

In the course of his cross-examination, the Respondent made a brief reference to the marriage of his father's eldest daughter and her being given a number of lands as dowry. He added that his father "would not have derived much income from these lands. The income from these lands was very little". No documents were produced to show that the daughter had been given a dowry at all.

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pp.80 --
81p.73,
ll.2-5

9. The Appellant called only one witness, Sinnathamby Kandavanam, who spoke as to certain works and improvements said to have been carried out by Viswanathar Kanagaratnam after the death of Rasammah in and upon the land comprising item No. 21 in the Schedule.

p.82

10. On the 13th May 1963 the District Court delivered Judgment in favour of the Respondent.

p.84,
l.3

The learned Additional District Judge said that the main issue in the case was whether Rasammah became vested with a title to a half share of the lands described in the Schedule to the Plaint, by operation of law. The learned Judge held, it is respectfully submitted erroneously, that she did become so vested - presumably immediately upon their acquisition by her husband. The ratio of his decision is contained in the following passage -

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p.84, l.32
- p.85,
l.15

"But one has to take into consideration the fact that Ordinance 1 of 1911 was in operation till July, 1947. Rasammah was already vested with a half share of her husband Kanagaratnam's acquired property.

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The Supreme Court has definitely held that Ordinance No. 58 of 1947 has no retrospective effect. In 55 N.L.R. 260 it was held that half the Thediatheddam property acquired by a husband vested in the wife immediately under Section 20 of 1 of 1911. It was also held that the amending ordinance No. 58 of 1947 does not operate as to affect title to property which had already vested in a spouse prior to the date of amendment.

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Case No. 4329 P of this court went up in appeal and is reported in 56 N.L.R. 44. The Plaintiff and the substituted defendant in this case were also the plaintiff and defendant in case No. 4329. It was in respect of a land bought by Kanagaratnam during the subsistence of marriage with Rasammah. In this case His Lordship Justice Fernando [the Judgment quoted is in fact that of Gratiaen J.] observed - 'in my opinion the problem under consideration admits of no doubt. Rasammah's rights in respect of Thediatheddham property acquired by her husband before 4.7.1947 were governed by Section 20 of the principal Ordinance and the provisions of Sections 5 and 6 of the amending Ordinance did not operate to divest Rasammah of rights already vested in her under the earlier law.'

It thus becomes clear that new Sections 19 and 20 have no bearing on the present problem. A half share of the Thediatheddham property acquired by Kanagaratnam in 1933 and 1943 had automatically vested in Rasammah (as non-acquiring spouse) under the old Section 20, and the subsequent repeal of the old Section 20 did not operate to divest her of that share. The devolution of Rasammah's share upon her death in 1948 was regulated solely by Section 21 of the principal Ordinance because the new Section 20 has no application in this case. Accordingly the entirety of Rasammah's vested interests passed to her heirs."

As to the decision in Case No. 4329 the learned Judge held, it is submitted correctly, that this did not operate as res judicata.

p.86, 1.2

Referring to the Deeds of Transfer D.1 and D.2, in which it had been stated that the purchase money for the lands comprised in items 13, 14 and 6 was mudusom money of Viswanathar Kanagaratnam, the learned Judge said -

"But plaintiff disputed this stating that there was no proof that his father had any separate mudusom money. All monies were

p.86,
11.30-35

Record

acquired by his employment in India. In 1921 and 1927 his mother was living. Further defendant had dowried his daughters by the first marriage and there would not have been much left in his hands;"

pp.145,
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It is submitted that Exhibits D.1 and D.2, in which the claim was asserted that the purchase money was mudusom money of the purchaser, was some evidence of that fact and that the Respondent adduced no admissible or reliable evidence to controvert it. It is submitted accordingly that in any event the Respondent was not entitled to a declaration with respect to the lands to which those Deeds related.

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11. The following were inter alia issues in the case and the answers that the learned Judge gave them -

Issues and Answers

p.88,1.13
- p.89,
1.26

"1. Did the deceased Rasammah become vested with the title to a half share of the lands described in the Schedule to the plaint by operation of law?

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A. Yes.

2. Is the Defendant in wrongful possession of the half share of the said lands?

A. Yes.

3. What damages is the plaintiff as the administrator of the estate of Rasammah entitled to recover from the defendant?

A. Rupees 2,500 per annum from date of plaint as agreed.

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4. Do the proceedings, decree and order in Case No. 4329 of this court operate as res judicata?

A. Legally No. But the principles decided apply.

5. Were the rights of Rasammah referred to in the plaint governed by Chapter 48 as amended by Ordinance 58 of 1947? Record

A. No.

6. Were the lands referred to in the plaint purchased by the defendant during the subsistence of his marriage with the said Rasammah?

A. Yes as admitted.

10 7. If issue No. 5 is answered in the affirmative, or issue No. 6 in the negative, is the plaintiff entitled to any share of the lands referred to in the plaint?

A. Does not arise.

8. Were the lands referred to in paragraph 3 of the Answer of the substituted defendant purchased by the deceased defendant out of his mudusom and separate money?

A. No.

20 9. If the above issue is answered in the affirmative, is the plaintiff entitled to a half share out of the said lands?

A. Does not arise.

10. Are the plaintiff and his brothers in possession of the lands referred to in paragraph 5 of the original Answer and paragraph 6 of the amended Answer of the substituted Defendant?

A. Yes - only items 1, 2, 4, 6, 8, 9, 10, 11, 12, 13 and 1/6 of 41 in plaintiff's Schedule.

30 11. If the above issue is answered in the affirmative:-

(a) What is the income received and appropriated by the plaintiff and his brothers in respect of the said lands?

Record

(b) Is the defendant entitled to credit in respect of any amount found to have been received by the plaintiff and his brothers in respect of the said lands, in the event of the court holding that the plaintiff is entitled to a half share as administrator?

A. (a) Nil.

(b) No.

12. (a) Does the decree in Case No. 4329 apply to the land called Nitchinganollai partitioned in the said case?

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(b) If so, does the decree operate as res judicata in this case?

A. (a) Yes.

(b) No.

p.92,
11.1-23

31. (a) Did the substituted defendant by his petition dated 31.1.1949 and affidavit annexed thereto, claim from it in respect of an alleged last Will devising half share of the lands described in the Schedule to the plaint in this case to his father Kanagaratnam the original defendant in this case?

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(b) Did the substituted defendant represent in the said petition and affidavit that Rasammah left behind on her death, the half share of the lands claimed by the plaintiff in this case?

(c) If either of the issues 31a or 31b is answered in the affirmative, is the substituted defendant estopped from denying that the estate of Rasammah is entitled to half share of the lands described in the Schedule to the plaint?

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A. (a) Yes.

(b) Yes.

(c) Yes.

32. In the event of the Court holding that the substituted defendant conducted himself or made representation as stated in the issues, 31a and 31b, did the plaintiff and the other heirs of the said Rasammah act on the said representation or conduct?

A. Yes.

10 33. If, issue No. 32 is answered in the negative, is the plaintiff entitled to plead estoppel?

A. Does not arise."

12. It is respectfully submitted that the learned Judge was in error in holding, in his answers to Issues Nos. 31 and 32, that the Appellant's Petition and Affidavit in the testamentary action No. 400, gave rise to any estoppel. The Appellant made no representation as to the facts, which were not in issue between the parties in either proceeding, and in any event the Respondent did not alter his position as a result of or act upon the Appellant's averments or, if he did so not to his detriment but to his advantage. Moreover, the learned Judge overlooked the subsequent amendment of the Petition in that case, making no reference to this in his Judgment and not giving his reasons at all for answering these issues as he did.

p.250

13. In the result the District Court entered Judgment for the Respondent as prayed for, damages fixed at Rs. 2,500.00 per annum and costs.

p.92,1.24

14. By Petition of Appeal, dated the 10th June 1963, the Appellant appealed to the Supreme Court on inter alia the following grounds -

p.100

40 "4. (c) The Appellant humbly submits that the learned Additional District Judge could not have held that a half share of the said lands vested in Rasammah in as much as the estate of Rasammah was governed by Ordinance No.58 of 1947, as Rasammah died on 20th August, 1948.

p.105,
11.10-14,
11.24-32

Record

(f) The Appellant humbly submits that the learned Additional District Judge could not have held that items 6, 13 and 14 of the Schedule to the plaint were thediat-heddam property in as much as the consideration was mudusom money as stated in D.1 and D.2.

(g) The Appellant submits that the learned Additional District Judge could not have held that the Defendant's daughter was dowried in view of the fact that no document was produced to support it." 10

p.109 15. On the 15th February 1966 the Supreme Court gave Judgment. Following the earlier decisions in Ceylon which were binding upon it, it upheld the decision of the District Court that the amendments affected by Ordinance No. 58 of 1947 did not have retrospective effect. The Court however accepted a submission of the Appellant that as the parties were the heirs of Rasammah they were co-owners and therefore an order of ejectment could not be made. It accordingly deleted the part of the decree which decreed that the Respondent should be placed in possession but, subject to that alteration, ordered that the decree should stand and that the appeal be dismissed with costs. 20

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p.110,
l.31

p.114
p.116 16. The Appellant was granted Conditional Leave to Appeal to the Privy Council on the 8th May 1966 and Final Leave on the 20th July 1966.

17. The Appellant respectfully submits that this Appeal should be allowed and the Respondent's action stand dismissed or the Order of the Supreme Court of the 5th February 1966 be varied and that the Respondent should be ordered to pay the Costs of this Appeal and the Costs in both Courts below for the following amongst other 30

R E A S O N S

1. BECAUSE Rasammah did not become vested with a half share of the lands described in the Schedule to the Plaint at the time of their acquisition or at any other time. 40

2. BECAUSE Viswanathar Kanagaratnam acquired the said lands for valuable consideration such consideration forming or representing a part of his separate estate. Record
3. BECAUSE the Respondent failed to show that the consideration for which Viswanathar Kanagaratnam acquired the said lands did not form or represent a part of his separate estate.
- 10 4. BECAUSE the said lands are not to be deemed, and are not, tediatetam.
5. BECAUSE at the time of Rasammah's death in 1948 Ordinance No. 1 of 1911 had been amended by Ordinance No. 58 of 1947, and the unamended Ordinance is not the law applicable to this case.
- 20 6. BECAUSE the devolution and distribution of Rasammah's estate were subject to and were governed by Ordinance No. 58 of 1947 and the amendments introduced thereby.
7. BECAUSE Ordinance No. 58 of 1947 had full retrospective effect.
8. BECAUSE if Rasammah had at any time become vested with a half share of the lands described in the Schedule to the plaint, the effect of Ordinance No. 58 of 1947 was to divest her of the same.
- 30 9. BECAUSE if Rasammah had at any time become vested with a half share of the said lands and if the effect of Ordinance No. 58 of 1947 was not wholly to divest her, then the devolution of such half share is governed by Section 20 of that Ordinance and her heirs are accordingly entitled only to a half of the half share which was vested in her at the time of her
- 40 death.

18.

- Record 10. BECAUSE the money with which Viswanathar Kanagaratnam bought the lands comprised in items 13, 14 and 6 of the Schedule to the plaint was mudusom money and such lands were therefore in any event his separate property.
11. BECAUSE the Appellant is not estopped from denying that the estate of Rasammah is entitled to a half share of the lands described in the Schedule to the plaint. 10

MONTAGUE SOLOMON.

No. 8 of 1968

IN THE PRIVY COUNCIL

ON AN APPEAL FROM THE

SUPREME COURT OF CEYLON

B E T W E E N :

VISWANATHAR KANAGARATNAM
SUBRAMANIAM as Executor of
VISWANATHAR KANAGARATNAM
deceased (Substituted
Defendant)

Appellant

-- and --

KANAGARATNAM KADIRGAMAN
(Plaintiff)

Respondent

CASE FOR THE APPELLANT

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London, S.W.1.