

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 39 of 1983

ON APPEAL FROM THE
FEDERAL COURT OF MALAYSIA

BETWEEN

1. DATUK JAGINDAR SINGH

2. DATUK P. SUPPIAH

3. ARUL CHANDRAN (Defendants)

Appellants

- AND -

TARA RAJARATNAM (M.W.) (Plaintiff)

Respondent

RECORD OF PROCEEDINGS

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DEFENDANTS' EVIDENCE
JAGINDAR SINGH
EXAMINATION

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In the High
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DW 1

DW 1 - Jagindar Singh, affirmed, states in English:
Aged 46, Advocate & Solicitor, practising
with the firm of Suppiah & Singh, Johore Bahru,
residing 41 Jalan Waspada, Johore Bahru.

I am still a partner of Suppiah & Singh.
I have not been active in my legal practice since
the very beginning. I was called to the local
Bar in August, 1966. On or about 1st October,
1973, Dass (PW 2) asked me for a loan.

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Q. How much?

A. \$120,000/-.

Q. Did you agree to give him the loan ?

A. No. I agreed to accomodate him in some other
way. I agreed to arrange for him a bank overdraft
of \$120,000/- with Hongkong & Shanghai Bank,
Singapore. I stood as his guarantor, for the
amount. Dr. Dass told me he wanted the money
for about 3 weeks. He gave me his reasons for

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request for financial help. He said he required it to resurrect his ailing medidata. I then took Dass to Hongkong Bank to arrange for the guarantee and to open a bank account. Dass opened an account with the Bank. Then I guaranteed an overdraft for him up to \$120,000/-. When the account was opened, I informed the Manager of the current account that the facilities required was for about 3 weeks. After the 3 weeks I asked Dass about the overdraft at the Bank. Before the 3 weeks was up, he made use of a substantial part of the \$120,000/-. I do not know exactly but certainly in the region of over \$100,000/-. When I asked him whether he had cleared it, he said no. Then he told me that he had sold a house in Singapore, for about \$700,000/-. The impression I got was that the money would be soon forthcoming to settle the overdraft. He told me the house was registered in his friend's name. He did not tell me to whom the house was sold, on this occasion, i.e. when he told me the house was sold. That was all that he told ~~me~~ me on that occasion. I accepted the explanation given to me by Dass. He was a friend. I approached him again about his account with the Bank about 10 days or two weeks later and asked him whether he had settled the amount with the Bank. He said the house was sold to a non-Singapore citizen or resident and as such clearance was required by the purchaser from the Government of Singapore,

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before the sale could be completed. And this was being done. I accepted his explanation. After that I saw Dass again regarding the account. On this occasion again it was after a lapse of 10 or 14 days or thereabout; I again asked him first whether the clearance has come from Singapore government and whether money had been received. He said money had been received. Clearance had been given, but he could not find his friend. That he was repeatedly looking for him. He indicated that he would find him in 2 or 3 days' time. After that I saw Dass again. I enquired about the same matter again. This time he said he believed his friend had run away with the money. I told him he ought to make a Police report. He said he could not do that because he would be in trouble with the tax authorities. He said he was already having trouble or had one with the tax authorities. Then I said how are you going to settle the overdraft. I said you have your problem and I have my problem, and he said he was looking for other sources for financial assistance and wanted a little bit more time. He did not tell me where he was going to look for the assistance. I saw Dass again about a week after that. He said on this occasion that an Indonesian has agreed to lend him a large sum of money. I accepted his explanation. I had no choice. I had given him so many chances. Then I saw him, again. About a week later. He told me that the

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Indonesian's son in Singapore had been kidnapped. He had to pay ransom money and the Police are now investigating the case and he is not drawing any money from the Bank for the time being. Then 2 or 3 days later or thereafter my friend's bank account in Singapore was frozen. I said still how are you going to clear the overdraft. That was my problem and also your problem. He said he realised it and he will come back very soon with some proposition. He did come back with some proposition. Whether I was prepared to accept a second mortgage of his house at Jalan Waspada, Johore Bahru. I refused. Then I said I do not want any second mortgage or anything like that. All I want is that you find something to give to the bank or some other person to substitute me as a guarantor or find the money and pay the money to the bank. Then he said he will have to think about what I have told him and he would come back to me. He came back to me, after a few days and said that the only solution that he could think was to sell his brother's property, which was mortgaged to Chung Khiaw Bank and then clear his overdraft. But he also said that the property was registered in his brother's wife's name. Then I said to him how do we go about finalising matters. That was round about the first week of March, 1974. He said that he would ask his brother to get in touch with me. His brother got in touch with me. 2 or 3 days after. Devan spoke to me

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on the telephone. He said Dass had spoken to him and arising from what was discussed with Dass, he would like to see me. We arranged to meet about 10th of March in my office. Devan came alone. He said he was aware what it was all about. He was prepared to sell the property, but he suggested that if a higher mortgage could be obtained from any financial institution, then the extra money could be used to clear the overdraft of Dass as well as his overdraft with Chung Khiaw Bank. Devan said that since I had a good relationship with the Hongkong Bank, Johore Bahru, I could make enquiries towards this intention. I then said "how much do you owe the Bank" and also I said that the Hongkong Bank would like to see the title deed to the land and he said "you can write to Chung Khiaw Bank and find out what I am owing Chung Khiaw Bank and also ask for the title deed." This conversation took place in the presence of my partner Suppiah and I said to Devan - "I said Allright Dato' Suppiah would write; most of the correspondence done by him." Arising out of this a letter was written by Suppiah to Chung Khiaw Bank dated the 12th March, 1974. Shown P 27 - My firm sent this letter. I knew about it, subsequently. Then there was a reply from the Bank - P 28. Then I approached the Hongkong Bank. I also told them that the amount due on the piece of land to Chung Khiaw Bank at the time was about over \$103,000/-. Then attempts to obtain the

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increased overdraft from the Hongkong Bank
were abortive.

To 11.30 a.m.

DW 1 (Examination-in-chief) (Continues)

I communicated this to Devan; then he said "we
will proceed for the sale of the property and
I will call at your office". Dass came to our
office on the 23rd March, 1974. There was a
discussion on the sale. Suppiah was present.
Suppiah was interested in buying it. D 1 was
in the picture then. Suppiah told Devan that
D 1 valued the property at \$258,000/- and the
report talks about the development potential
of the land and end up by valuing at \$210,000/-
and that Suppiah considered the value of the
house not relevant, because the house would have
to be demolished with the development. Devan
said it had been valued at \$48,000/-. Devan said
to Suppiah - "I appreciate your stand and what
are you prepared to offer?". Suppiah said "I
am prepared to pay \$220,000/-" And Devan agreed
at that figure. It was also suggested by Devan
that \$110,000/- was owed by Dass. to Hongkong
Bank and he said also \$110,000/- was also to
be paid to Chung Khiaw Bank, Kulai. He told
Suppiah to prepare the necessary documents to
give his effect to the arrangement. Then we
dispersed. The transfer document and memorandum
and confirmation were then prepared by Suppiah
and I, Suppiah and Sivanandan went to Devan's
house on 30th March, 1974 at about 2 P.M. Devan
met us. He took us to the study. He called his

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wife. The documents I mentioned were given by Suppiah to the plaintiff. Suppiah said here are the transfer and related documents. The plaintiff took them, went through them. She called her husband to follow her outside. Devan was present when the documents were handed to the plaintiff. After a short while Devan and wife came back. Devan then said to Suppiah that the plaintiff would like to have the option of re-purchase and also said that medidata was picking up business and within a year the property could be re-purchased. Arising out of this Suppiah dictated the manuscript in P 31 to Sivanandan. What Suppiah dictated was in the hearing of every one else. P 30 - P 31 were then handed back to the plaintiff. She then signed P 31. Devan witnessed it. The 2nd defendant signed it. Sivanandan witnessed the signature. The plaintiff had also signed the transfer and the confirmation. After that a few months later we went back. Shown P 56 a and b. These are the confirmation - P 56 a and b are as they are now when the plaintiff signed them on the 30th March, 1974. Shown P 53 - it was as it is now when it was presented to the plaintiff except the date and my signature. The date was not there when she signed it. It was subsequently dated by our firm. I did not sign P 57 on the 30th March. I subsequently signed it ~~the~~ about the 5th July, 1975. The confirmation ^{as} P 56a & b were/they are now except for the date

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and my signature. It was not dated on the 30th March, 1974. It was dated on the 5th July, 1975, same day as transfer. I did not sign the confirmation on the 30th March. I signed it about 8th July, 1975. I put my signature on P 56, P 57 as a witness of the plaintiff's signature. My firm had to the best of my knowledge, never acted for Devan or the plaintiff. My firm was not acting for the plaintiff in respect of the confirmation and transfer at P 57 and P 56a&b. Arising from P 56 and P 57 our firm did not raise any bill that I know of to the plaintiff. Shown P 27 - My firm was not actually acting for the plaintiff at the time. This letter merely arose to assist Devan and Dass to obtain a bigger mortgage overdue for the land and clear Dass's overdraft in Singapore. Shown P 52 - I spoke to Yeow as indicated in this letter. Earlier there was a letter from Yeow asking for \$140,000/- before the discharge of the charges. It is P 49 - 2nd defendant had told me before I received P 49 that Devan had agreed with 2nd defendant that he would reduce the overdraft to \$92,000/-. I rang up Yeow. I knew him very well. And I said the understanding is that the amount required is 'only \$92,000/- and why are you asking for \$140,000/- Then he said -

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Cashin - I object. This is hearsay. The defendant must prove that the statement made by the deceased was against the ~~deceased's~~ deceased's pecuniary

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proprietary interest. Section 32 (c) of the Evidence Act. At the beginning when we called the plaintiff the 2nd defendant objected to the plaintiff saying what was said by the plaintiff's husband Devan to the plaintiff. Then I referred to Subramaniam's case. There was a general discussion about this. It was then ruled first that we should not refer to statement made by the deceased Devan. We did not mind because their defence was based on statement by defence. Later the Court raised the point that the defence would require statement from Devan deceased to be recorded. Then there was again a discussion and it was then ruled that for the purposes of this trial witnesses from both sides could refer to statements made by Devan and all parties agreed. The question of what weight was to be given was for the Court to decide. There was no agreement that we would let in hearsay evidence generally. If they are now going to refer to hearsay evidence, we are now going to object. It is true that Subramaniam's case is authority binding on this Court. What we are in difficulty is in the manner it is to be applied. In my view it was not intended by the Subramaniam's case that the effect is to modify section 32 in its entirety. The case said that you can give evidence of what was said, but it does not go to the truth of what was said and it is left

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to the Court to decide what weight was to be given to such statement.

Suppiah

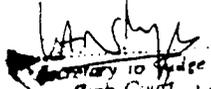
A witness can say what he heard of another person whether he is alive or dead. The question is if the witness is not in a position to produce the witness, then the Court is to determine the weight to be attached to the evidence. I objected to plaintiff's evidence of what Devan told her only when she mentioned that Devan told her what a 3rd party told Devan. It then becomes hearsay - Section 60 (1) (b).

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(Adjourned to 17.10.81)

Sd: Abdul Razak J.
24.9.81

Certified True Copy


Secretary to Judge
High Court
10/10/81

PROCEEDINGS

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IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 284 OF 1979

Tara Rajaratnam (m.w.) v. Datuk Jagindar Singh &
2 Ors.

IN OPEN COURT

This 17th day of October, 1981

Coram: ABDUL RAZAK J.

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Parties as before.

Ronald Khoo

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I have just been retained by the 3rd defendant. My client was absent last time. He apologises. He produces the medical certificate.

Suppiah

Section 60(1)(b) of the Evidence Act.

Chin

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Section 32(c) of the Evidence Act. Subramaniam's case. Page 222 (photostat). My object is not to establish that the truth of what Devan was purported to have told the ~~deceased~~ ^{deceased}. My object is to establish that that conversation took place. We are not concerned with the truthfulness. Mr. Yeow has interest in this matter. It is equally applicable if it is against the proprietor or pecuniary interest of Devan. If it is shown that the deceased Yeow was acting as agent and solicitor for Devan/^{and}the plaintiff was prepared to accept a sum of \$92,000/-, it must act against the pecuniary interest of Devan.

Cashin

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What counsel told us was that the witness was going to report a conversation on the phone between

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the witness and Yeow the deceased to which Yeow the deceased had said that Devan had asked for \$140,000/- and that Yeow had checked and found out it was only \$92,000/-. The ruling is Subramaniam's case never went so far that it could allow what A (Devan) told B (the deceased) who then told C on the phone what A told B. It is a third hand report. It is a case where A meets B in the jungle and B says to A when you give me some food I am going to shoot you then that would be admissible. What is being reported is not what B said to C but what A said to B. And B, deceased reporting to C the witness the conversation between B Yeow and A Devan.

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DEFENDANTS' EVIDENCE
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(CONT'D)

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(Examination-in-chief) (Continues)
(On former oath, states)

I would like to make a small correction regarding the earlier evidence. That the amount payable to Chung Khiaw Bank should be \$103,000/- and not \$110,000/- Then he said he would look into the matter and communicate to us. He did ~~not~~ communicate in P 52. Then the \$92,000/- was paid by the 2nd defendant to Yeow and Chin. The charges were discharged and the property was transferred to him. I paid \$121,819.80 to Hongkong & Shanghai Bank, Singapore on the 27.4.74. Apart from 30.4.74, I have not met the plaintiff at any other time before or after the 30th in the manner I met her on the 30.4.74. Presumably I never asked Dass for any security but I did tell him that he should clear the overdraft with Hongkong & Shanghai Bank, Singapore. If he could do that by providing some security to the Bank in

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Singapore I would be released from my guarantee. It is not true that I asked Dass whether his brother had any property. It is not true that I was pressing Dass for the payment of the judgment sum obtained by the 2nd defendant against Dass. It is not true that I did not press Dass to settle the overdraft with the Hongkong Bank, Singapore. There was no reason for it. Shown P 100 - I remember this letter. The firm wrote it. I signed it. Our C.C. told me about the approval. He is dead. He also mentioned the conditions. They were standard conditions. I would not know whether it is his job to find out about it. It is not true that the plaintiff was asked to sign blank sheets of paper on the 30.3.74. It is not true I have committed fraud against the plaintiff. It is not true I have used undue influence on the plaintiff. It is not true I have committed a breach of trust on the plaintiff. The property was properly transferred to the 2nd defendant.

To 11 a.m.

Cross-examination (Cashin)

I am an advocate and solicitor. I am a partner of Suppiah and Singh. I did not take active part as a lawyer in the partnership. I did act as a lawyer years ago, in that partnership. I was not actively acting as a lawyer in the firm of Suppiah & Singh in 1974. I do not remember seeing clients in my office in 1973 - 74. I am a director of several companies. In the company

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I was a director, there were other directors.

I was a director of Jet Age Freighter Company. It was a dormant company. It did not conduct any business.

Chin: I object to the relevancy of the Jet Age Co. or other companies.

Cashin: I am seeking to establish that he was a successful businessman; this is relevant to the evidence he has given. I am trying to establish that he is a competent and successful businessman, in order to test his story he has given us.

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Order: Objection disallowed.

Cross-examination (Continues)

There was the company called Singapore Australia Shipping Company. There was a company dealing in transport of passengers called Far East Travels. I was not actively engaged in an executive capacity in these companies. I was not directly engaged in the running of these companies. I attended board meetings. I kept an eye on the running of the companies. I can say I am a man who can lay my hands on or obtain credit for a few hundred thousand dollars. I know the 3rd defendant. He is a friend of mine, a very good friend. The 2nd defendant was also a very good friend of mine. I also knew Dr. Das. I agree what he recounted before 1973 was true. He asked for a loan on 1st October, 1973, when I introduced Dr. Das to the Hongkong Bank, Singapore, I was present. I suggested to the Bank that the limit should be \$120,000/- I agree that I intended that Dr. Das

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could make use of that overdraft up to that limit. I had no quarrel with Dr. Das that he went up to \$120,000/- I informed the Bank that there was a time limit. As a guarantor I signed the Bank's guarantee. I read it but not in detail, only that which stipulated the limit of \$120,000/-. I did look at the part regarding the time limit. The limit said it was more than three months. I drew the Bank's attention to this. It was not altered from the longer period to three months.

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Q. That although you drew the Bank's attention to the fact that there was not a three months limit, you nevertheless signed?

A. I signed it after the assurance given by the Bank that it would be up to about a year.

I am a man of affairs. I did not ask Dr. Das about the house he was going to sell. It is not odd that if Dr. Das owned a house worth \$700,000/- he could have put up the house for overdraft, without recourse to me. Because, the house could have been mortgaged to the hilt. The fact that I enquired revealed my anxiety about the overdraft. I was not concerned about making enquiries regarding the house. I accepted his word that he had sold the house. He told me the house was registered in his friend's name. I was not suspicious regarding the transaction relating to the house. I was not the person who received the Bank statements from the Bank. I believe the statements were sent to my office. I have not opened

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& Shanghai
any of the bank statements from Hongkong/Bank,
Singapore. I do not remember whether Dr. Das had
handed to me the bank's statements. I believed
Dr. Das's explanation that as the purchaser was a
non-resident of Singapore, clearance was required
from the government. He said later that money had
been received and clearance had been given. Then
he told me he could not find his friend. I did not
believe 100% the story. Then he told me that his
friend had run away with the money. I did not
believe him on that.

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Q. Why did you not at that stage ask him to clear
the overdraft?

A. That was what I have been doing all the time. It
is not that at that stage, other than telling him,
I could not do anything else. I paid the Bank only
when the overdraft had reached \$121,000/-. After
that it did not matter to me whether I believe him
or not. I just gave him time to pay.

Q. I put it to you that Dr. Das never told you about
these stories as his purported reasons for not paying?

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A. I have no reason to tell the story if he had not
told me.

Q. I put it to you that the story is not true because
right at the start when Dr. Das told you he was selling
a house worth \$700,000/- your action would have been
completely different, people would have asked where
was the house?

A. I do not agree with that suggestion. My defence
is a joint defence with the 2nd and 3rd defendant.

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I stand by the fact as stated in my defence where it involves me. 2nd defendant is a good friend of mine. Referred to para 1(a) of the Statement of Defence - I knew (a) and (b) - Where it says 1st and 2nd defendants deny - I agree with the facts in (a) of para 3, with (b), (c), (d), (e), (f), (g), (h), (i), (j) (i) and (ii). I do not remember whether (j)(i) and (ii) was said by Devan to the 2nd defendant. (j)(i) was after the 30.3.74. (j)(ii) was after. I cannot remember (j)(iii). I agree with para (j) (iv). I agree I knew of para 4 with the exception of (j)(iii). I agree I knew para 5. I knew para 9(a),(b),(c). I did not know of (d) and (e). I do not know the exact amount in para 10. I agree with para 13. I agree with para 12. I do not remember/~~about~~ the limit except that I remember Devan was trying to sell the house. Para 16 - I knew this. Para 17 - I knew about it. I agree I knew para 29.

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Q. I put it to you that you started with the turn of the year to press Dr. Das for the repayment of the loan ?

A. I agree. I did not refer Das to it as a loan. All I asked him was to clear the overdraft. I believed Das when he said the only solution was to sell his brother's property. I was not suspicious when he said the property was mortgaged to Chung Khiaw Bank. After the conversation, Devan came to see me in my office, by arrangement. I asked Devan how much he owed ~~about~~/Chung Khiaw Bank. Devan said - "You can write

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to Chung Khiaw Bank and find out." I made
approaches to the Hongkong Bank on behalf of Devan.

I knew at that time the property was in the name
of the plaintiff. My approach to the Bank was
on behalf of both plaintiff and Devan. When I
went to see Devan and Tara on the 30.3.74 the
memo P 30 had already been prepared. It is not
true in the light, the passage which says "he
told Suppiah to prepare the necessary document
and the fact that the memorandum was prepared, that
Suppiah & Singh were acting for the plaintiff, at
that time, i.e. 30.3.74.

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Q. I put it to you the fact that Devan told you
try and
to/obtain a larger overdraft from Hongkong Bank,
you were acting as a solicitor for Devan and Tara?

A. It is not true. I do not know whether P 30
was prepared in my office.

Q. I put it to you you knew the memorandum was
prepared in your office ?

A. Not true, because at that time Suppiah had also
an office in Singapore. He could have prepared it
in Singapore.

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Q. If the firm of Suppiah & Singh were not acting
as solicitors for Devan and Tara, what business
have they to accept instructions to prepare the
necessary documents and then actually to produce
them to Devan and Tara on the 30th March, 1974?

A. The request to prepare the documents was made
by Devan to Suppiah and he was the purchaser. Devan
told him to prepare it. If we were acting for

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Devan we would have raised a bill.

Q. Are you saying that because you did not raise a bill, you were not acting as solicitors?

A. We did not raise the bill because we were not acting as solicitors. We would have raised the bill if we acted especially since we went to Kulai. (Shown P 27) - It is true generally that if a

10 person instructs a lawyer to make enquiries of that person's account with his bank and lawyer then does as instructed, then the lawyer is acting as his solicitor. But in this case the letter P 27 was written to assist Devan to obtain a bigger amount of overdraft and also to clear Das's overdraft.

To 2.30 p.m.

Cross-examination (Continues)

20 This was an exception. It is correct what Devan was interested in was helping Das to clear the overdraft in Hongkong Bank. I had met Devan before the 10th March. We used to meet at Johore Civil Service Club. He was not in the relationship as I had with Das. Devan was not as good a friend with me as I was with 2nd and 3rd defendants. Devan was still lower down the ladder of friendship. Devan knew about my business activities not 100%. He was aware of my travel business. I am sure he knew of my relationship with the Hongkong & Shanghai Bank here as well as in Singapore. To my mind the Hongkong Bank would require the title deeds to determine the value of the property. When I said most of the correspondence was done by

30 Suppiah, I meant firm's correspondence.

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In the High
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No. 23
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Q. I put it to you that where you and leaving your partner Suppiah the writing of the letter to the Bank to enquire about the amount of the overdraft and for the title deed, you are clearly accepting that the firm was acting as solicitors ?

A. I entirely disagree. Because we were not solicitors. I did say that normally Suppiah wrote letters for the firm. Suppiah was merely helping me to write the letters. It is true that a bank would disclose a client's overdraft or account only if instructed 10
by solicitor, but in this case Devan asked me to write for the information and the title and I as solicitor told Suppiah who happens to be a solicitor to write. I do not agree and it is impossible to believe from the circumstances that Devan comes to a firm of solicitors and asked me to do something which on my admission only a solicitor and I then asked my partner as solicitor to write. Because Devan came to see me to discuss about ~~xxxx~~ what Das spoke to Devan. I agree with the statement that no bank would 20
give a title deed to any one except a firm of solicitors. But in this case I and Suppiah were assisting Devan to obtain a bigger mortgage. We were asked to assist but there was no solicitor and client relationship. Shown P 27 - This is the letter Suppiah wrote. It is written with a head note of Suppiah & Singh. We wrote down "We act for Madam Tara" because if we did not write it in that manner the bank would not release the title deed. Since we said we were acting for Tara we might as well use the word "client". 30

Q. Why is it necessary therefore if you were not acting as solicitor to go on to say that your client wishes to pay the charge by charging the property for an increased amount?

A. Because it was Devan's intention to charge the property for a bigger amount.

Q. Could it not have been simpler to ask Devan to ask for the title deed himself and tell the bank he was going to charge it for a bigger amount?

A. He could have.

Q. As the property was charged to the Bank, Devan could not ask for the title deed?

A. He could have asked someone else.

Q. I put it to you that only people to whom the bank would release the title deed of a property charged to them would be a firm of solicitors giving their usual undertaking ?

A. That may be so. I do not know whether Devan could have written to the bank to send the title deed to us.

Q. Are you not agreeing that in the light of your letter saying that you were acting for the plaintiff the title deed was given to you on your usual undertaking for the above purpose that you were acting as solicitors?

A. No, I do not agree. This has to be said otherwise they would give the title deed. I was in a way misrepresenting the bank the true facts, in order to assist Devan.

Q. Could you not have told Devan - "We are not acting for you as solicitors, go to other solicitors to ask for the title deed?"

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A. I could have. The word "solicitors" was not in our mind.

Q. You sent copies of the letter P 27 to Tara and Devan. On the receipt of that copy of letter, could not Devan be entitled to believe that you were acting as solicitor or Tara's solicitor?

A. No, Devan knew the circumstances that led to the writing of this letter.

Shown P 28 - Q. I put it to you from this letter the bank is of the belief that you as a firm of solicitors are preparing a discharge of charge ?

10

A. That may be so, but their reply is in reference to letter dated 12th March i.e. P 27.

Shown P 32 and P 33 - P 33 was written by my firm. After we got a reply to P 27 in P 28.

Q. I put it to you that when you wrote P 33 to the Bank stating "we are in the course of preparing the discharge of the charges and we will send them to you for execution" you were writing as solicitors for the plaintiff and Devan ?

20

A. I do not know about P 33. It was written by Suppiah and he would explain the circumstances.

Q. Are you saying that although you caused to write P 27 and your/^{partner}then wrote P 33 direct and you knew nothing about P 33 ?

A. That is the case.

Q. When did you get to know about P 33 ?

A. I cannot remember when. May be late 1974, 1975.

Q. Shown P 80 - Q. I put it to you in the term written by Chung Khiaw Bank to you in P 80 and P 34

30

the Bank believed you were acting as solicitors for the redemption of the property ? .

In the High Court

A. Other than P 27 written by our firm, all subsequent correspondence to Chung Khiaw Bank and Yeow & Chin was done by Suppiah without my knowledge

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at the time they were written. I knew later. 3, 4; 5 weeks later. Shown P 81 - This letter was about 4½ months after P 30 was signed. It is true that since our firm had been writing to the Bank regarding redemption. It is true that the interest had accumulated steadily since 30.3.74. I agree that the accumulation was not to the interest of Tara, but 2nd defendant had told me Devan wanted to operate his overdraft account with the Chung Khiaw Bank for some period of time. It would appear that it would not be to the advantage of Devan to continue with the overdraft. I do not know the reason. The 2nd defendant knows.

10

Q. Did Suppiah ever tell you why Devan wanted his overdraft going?

20

A. He did. He said Devan wanted it and he agreed. Shown P 82 - Q. Will you agree that when Devan paid the bank the \$2,000/- in reduction of his overdraft, it was no benefit to Devan, bearing in mind that according to P 30, the whole of the overdraft should have been paid off within a few days of P 30 ?

A. I do not know whether it has any benefit to Devan.

Q. Will you agree with me that Devan was now threatened by the Bank with a further charge - by P 82 ?

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A. I agree but there is no evidence, that Devan has

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been asked to pay and he has refused to pay.

Shown P 83 - Q. Is it clear or is it not that
Devan is agreeing to the further charge?

A. Yes, according to the letter.

Shown P 84 - I agree that the bank is asking for
the title deeds, since there has been discharge.

Shown P 35 - This letter was written to my firm.
I do not know about the discharge at that time. I
do not know about the ^{of}resuscitation/the discharge
in November, 1974. I did not come to know about it
in early 1975. Shown P 36 - Q. Does it not appear
that the 8th December, 1974 is a significant date?

A. This letter does not mean anything to me.

Shown P 37 - The letter speaks for itself.

Shown P 38 - I agree by this time no payment to
Chung Khiaw Bank had been made under the memo, P30.

Shown P 40 - Q. I put it to you that neither you
nor the 2nd defendant have had any intention of
carrying out the terms of the memorandum?

A.

To 18.10.81

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AMENDED DEFENCE AND COUNTER CLAIM
OF 3RD DEFENDANT

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO 284 OF 1979

In the High
Court

No. 24
Amended Defence
and Counterclaim
of 3rd Defendant
17th October
1981

Between

Tara Rajaratnam (m.w.) .. Plaintiff

And

1. Datuk Jagindar Singh)
2. Datuk P. Suppiah) Defendants
3. Arul Chandran)

AMENDED DEFENCE OF THE 3RD DEFENDANT

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1. The 3rd Defendant admits paragraph 2 of the Statement of Claim.
2. The 3rd Defendant has no direct or personal knowledge of the various allegations set out in the Statement of Claim but does not admit the same and further and says as follows:-
 - (a) Prior to July 1975, the 3rd Defendant had not heard of the property, the Plaintiff or anything else about the transaction.

In the High CourtAmended Defence of the 3rd Defendant

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claim of 3rd
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17th October
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- (b) In July 1975, the 1st Defendant requested the 3rd Defendant to accept title of the property as nominee of and in trust for the 1st Defendant who paid the whole consideration for the property.
- (c) The 1st Defendant told the 3rd Defendant that he wanted to use the Third Defendants name for the purpose of applying for conversion and subdivision of the property.
- (d) The 3rd Defendant acceded to this request and accepted title.
- (e) The 3rd Defendant had never seen the property and has no beneficial interest in it. 10
- (f) By virtue of being legal owner, all subsequent legal proceedings and applications for conversion and subdivision were made in the name of the 3rd Defendant.
- (g) The 3rd Defendant signed and executed all necessary papers as requested by the 1st Defendant.
- (h) The 3rd Defendant only came to know of the background of the property after 15th January 1977.
- (i) The 3rd Defendant's role is that of trustee and nominee. He had and has no interest in the matter except to act in a representative capacity as above described. 20

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(j) The 3rd Defendant has made no representations to the Plaintiff. In fact he had never met her.

(k) The 3rd Defendant had not in any manner assisted the 1st or 2nd Defendant in any breach of agreement, fraud, undue influence or breach of trust as pleaded or otherwise.

10 3. Save as hereinbefore expressly admitted the 3rd Defendant denies each and every allegation contained in the Statement of Claim as if the same were herein set out seriatim and specially traversed.

COUNTERCLAIM BY THE 3RD DEFENDANT

4. The 3rd Defendant repeats the Defence and Counterclaims for compensation (damages) under Section 329 of the National Land Code for the reasons set out hereunder.

5. The Plaintiff applied for Entry of a Private Caveat against the said property on 15.5.76.

20 6. By a letter dated 24.7.76 written by Messrs. Suppiah and Singh on behalf of the 3rd Defendant and addressed to the Commissioner of Lands and Mines they requested him to remove the Caveat pursuant to Section 326 of the National Land Code.

7. By a letter dated 16.5.76 the Commissioner of Lands

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and Mines informed the 3rd Defendant that the Plaintiff had caveated the said property as from 16.5.76.

8. By a letter dated 30.6.76 the Commissioner of Lands and Mines acting under Section 326 of the National Land Code informed the Plaintiff that the said Caveat would be removed if she did not obtain a Court Order for the extension of the Caveat after one month from 30.6.76.

9. The Plaintiff failed to obtain an Order of Court to have the Caveat extended and as a result the Commissioner of Lands and Mines removed the said Caveat lodged by the Plaintiff. 10

10. After the said property was sub-divided into 70 lots the Plaintiff applied for Entries of Private Caveats on 10.10.77 against the said 70 lots.

11. By a letter dated 6.12.79 the Commissioner of Lands and Mines informed the 3rd Defendant that the caveats had been lodged by the Plaintiff against the said 70 lots to take effect as from 10.10.77.

12. The 3rd Defendant made an application to the High Court of Johore Bahru in O.M. 46 of 1977 to have the said 70 caveats removed and the Court after hearing all parties ordered on 17.4.78 that the said 70 caveats lodged by the Plaintiff be removed. The Judgment of the court is reported at page 172 (Arul Chandran v Tara Rajaratnam) 1979, 2 M.L.J. 20

Amended Defence of the 3rd Defendant

13. The Plaintiff was wrong in caveating the said property and also after it was sub-divided into 70 lots.

In the High Court

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Amended Defence
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of 3rd Defendant
17th October
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And the 3rd Defendant:

- (a) claims compensation (damages) for wrongfully caveating the said property and also after it was sub-divided into 70 lots, such damages to be assessed by the Assistant Registrar of this Honourable Court;
- (b) Such other or further relief as the Court may deem fit; and
- (c) Costs.

10

Amended and Re-delivered this 17 day of October 1981.

sd.

Solicitors for the 3rd Defendant

To the Plaintiff's Solicitors
Messrs. Subra Naicker & Co.

No. 25
PROCEEDINGS

IN OPEN COURT
This 18th day of October, 1981

No. 25
Proceedings
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Parties as before.

Khoo - Tender an amendment. I am made to understand that the 1st and 2nd defendants have no objection to the amendment to the 3rd defendant's defence. There is slight amendment to the draft. The word "plaintiff" should read 3rd defendant in sub-para (c) of para 2. Also/^{sub-}para (k) of para 2. to delete the word "knowingly".

10

All the parties have no objection to the amendment as amended. Cashin has no objection.

In the High Court
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No. 26

DEFENDANTS' EVIDENCE
JAGINDAR SINGH
CROSS-EXAMINATION
18TH OCTOBER 1981
(CONT'D)

DW 1 - (on former oath) states:

Cross-examination (Continues)

Referred to para 2 (b) of the 3rd defendant's defence - C. Referred to P 40 - I ~~was~~ came to know about the letter.

Q. Can you explain why your firm wrote to the Bank stating that your firm would ask Devan and Tara to pay the balance due on the charges?

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A. I do not know. The 2nd defendant knows about it. I came to know about the letter but I do not know how long afterwards. I did not enquire from Suppiah why P 40 was written. There was no reason to. There is no reason because the property was purchased by Dato Suppiah. The memorandum is in two parts. One part the paying off of the Chung Khiaw Bank. The other part deals with the settlement of overdraft to the Hongkong Bank, Singapore.

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Q. As a lawyer would you know that if the consideration was not paid as set out in the memorandum the whole transaction is at an end or void?

Objection by ~~the~~ Chin. Counsel is asking witness to give his opinion on a point of law. We are not bound by it.

Suppiah: The pertinence of consideration and the whole thing being void not pleaded.

Cashin

We have set out in the statement of claim the money had not been paid within the twelve months of

30

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18th October
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the execution of the memorandum. The legal consequences of what follow is a matter of law. We do not have to plead law. We only have to plead facts, which would give rise to legal proposition which we will argue.

Order - Objection is overruled.

A. What is being put to me is not true because para 7 of the statement of claim says that no money had passed under the memorandum until one year had passed. It has been clearly established that \$121,000/- was paid.

10

Q. I put it to you, you paid \$121,000/- ?

A. I paid it, at the request of the 2nd defendant.

Q. On the 29th December, 1974 had the 2nd defendant paid you the \$121,000/-?

A. No. I paid, on the request of the 2nd defendant.

Q. I put it to you that there was no consideration paid under the memorandum by the end of year 1974 ?

A. It was paid, as a consideration.

20

Q. As a lawyer would you know that if the whole of the consideration was not paid as set out, in the memorandum, the whole memorandum is at an end ?

Objects - It is hypothetical

A. I agree, but in such circumstances the plaintiff would have gone to the second defendant and ask for the document back which she had executed on 30.3.74. I agree the \$92,000/- had not been paid by the 2nd defendant by the 29th December, 1974.

30

Q. In P 40 your firm is writing to the Bank stating that you have written to Devan and Tara to pay the balance due on the charge ?

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A. The letter speaks for itself.

Q. Are you saying that your firm writes, you are not involved as a partner?

A. If it is a question of being sued for negligence then I am involved. I am involved but it does not mean I have knowledge.

Q. I put it to you that you knew that the whole consideration had not been paid by the end of 1974?

A. I do not agree because \$121,000/- was already paid on the 27.4.74. I agree that the full payment had not been paid under the memorandum.

10

Q. Why did you not ask Suppiah why he is asking Devan and the plaintiff to pay ?

A. I did not ask Suppiah, because on 30th March, 1974 Suppiah handled everything in connection with the property and the correspondence to the Bank and Yeow & Chin.

Q. Did Suppiah ever pay you the \$121,000/- ? (Witness pauses).

A. He did not.

20

Shown P 41, P 42 - I did not know about these letters. It did not concern me. I came to know about the contents of P 41, P 42 much later. It would be one month, two months or three months. Referred to P 43 - I came to know about it, 2 or 3 months later.

Q. Do you agree that the sale if at all was not subject to the charges ?

A. If it was not sold subject to charges, then the money would have gone to the plaintiff.

Shown P 30 - I agree that the sale is subject to the 3 charges. But it does say the money is due to the Bank. It is true that the intention of the memorandum

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is that Chung Khiaw Bank is to be paid \$103,000/-.

Shown P 44 - P 85 - I do not know about the letter.

Shown P 93 - I do not know anything about this letter. Shown P 86 - I do not know about this letter. Shown P 87 - I do not know about this letter. Shown P 94 - I do not know about it.

Shown P 95 - I do not know about this letter.

Shown P 45 - I do not know about this letter.

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But I know Suppiah filed the caveat.

Q. When Suppiah filed it, did you ask him why ?

A. I did not but he told me it was to protect his interest. He did not tell me what the interest was. But I knew. The interest was to protect his interest in the property which he purchased on 30.3.74.

20

Q. If the property had been sold to Suppiah, can you tell me why in P 40, the charges were returned to the Bank on 30.1.75? A. Without a reason it would appear to be odd why the title deeds were returned to the Bank. Without an explanation, it would be much odd that there was a caveat, that he had bought this property.

Q. If you think it is odd without a reason, why did you not ask for a reason?

A. Because it did not concern me.

Shown P 89 - I do not know about this letter. I ^{has} presume that the Bank/had personal discussion with Devan. I agree from P 89 that the Bank is pressing Devan to reduce the overdraft. I remember P 10 said

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he lent Devan \$40,000/- I agree that when PW 10 paid \$40,000/- the overdraft fell to \$83,000/- on the 2nd June, 1975.

Q. I suggest it to you that Devan had paid \$40,000/- to the Bank, because he had been pressed by the Bank to reduce the overdraft and not because there was any alleged agreement between Suppiah and Devan ?

A. I do not know. The 2nd defendant told me that there was an agreement between him and Devan that the 2nd defendant would pay \$92,000/- to get the charges discharged and complete the sale.

10

Referred to para ~~4~~ para 3 of the defence -

Q. You told us that you accepted what was said in that defence ? A. Yes.

Q. I put it to you that there was no such agreement as alleged in para 14 of the defence ?

A. I do not agree. There was as can be seen from the evidence, that Devan owed the Bank more than \$92,000/-

Q. I put it to you that neither you nor the 2nd defendant/^{ever}intended to use the transfer on 30.3.74 or to make use of the memorandum until the end of June, 1975 when you both discovered that Devan had reduced the overdraft to little over \$90,000/- You then decided to perpetuate the fraud, because you were going to get the land a little over \$90,000/- instead of nearly \$130,000/- ?

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A. Approximately \$122,000/- had been paid, \$92,000/- was being paid at about June. If one adds up the two totals, I believe the figure comes to \$214,000/-.

30

The consideration was \$220,000/-. To suggest that we were prepared to commit fraud for \$6,000/- it is a diabolical one.

Shown P 89 - I agree that letter shows that the Bank was discussing with Devan about the reduction of the overdraft - I agree. I agree that in para 3 the bank was demanding that the overdraft be reduced to \$100,000/- within 30 days.

Q. Earlier PW 10 told us that he lent Devan \$40,000/- by cheque to Hongkong Bank ?

10

A. I agree.

Q. According to P 105 the overdraft was reduced to \$83,000/- as a result of payment of \$40,000/- ?

A. I agree.

Q. I put it to you Devan reduced the overdraft because the Bank was insisting on it, not because Devan had agreed with the defendant to reduce the overdraft to \$92,000/- ?

A. I do not know about why the payment of \$40,000/- was made but I was told by the 2nd defendant that there was an arrangement that 2nd defendant would pay \$92,000/- to get the charges discharged.

20

Q. I suggest that neither you nor the 2nd defendant knew about the Bank's insistence about the reduction?

A. I agree.

Q. All you knew was that the overdraft had been reduced to below \$92,000/- ?

A. It is not true.

Q. I suggest that you and the 2nd defendant discovered at the end of June, 1975 that the overdraft was

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\$92,000/- and because it was so low that you decided to pay off the \$92,000/- ? A. It is not true.

Q. In order to make it look as if they knew why the overdraft had been suddenly reduced to below \$92,000/- the two of you decided to concoct that there was an agreement between Devan and the 2nd defendant that Devan would reduce the overdraft to \$92,000/- ?

A. Not true.

Q. I put it to you that the advantage to you was not \$6,000/- as stated by you earlier, but about \$35,000/- because you took advantage of the reduced overdraft ?

10

A. I have partly answered this. The 2nd defendant's obligation under the memorandum as consideration was \$220,000/-. I disagree with the calculation. I paid the \$92,000/- on behalf of the 2nd defendant. I paid the whole of the \$214,000/-. I did say that the money had been paid by the 2nd defendant and that at the time transfer was made to the 3rd defendant, I had paid the 2nd defendant. What happened was up to 3rd week of July, 1975 the property was the 2nd defendant's property. In the third week of July, 1975, 2nd defendant asked me whether I would be prepared to take over the property from him at the same price and I agreed. He owed the purchase price to me. I had paid the whole of the \$214,000/- at the request of the 2nd defendant. The 2nd defendant borrowed the \$214,000/-

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Q. I put it to you that you did not advance any money to the 2nd defendant. All you did was to pay off the

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the money to the respective banks ?

A. Not true.

Q. I put it to you that the memorandum had nothing to do with the transaction subsequent to it ?

A. The memorandum had all to do with it.

Q. I put it to you that not for one moment did you or Suppiah believe that Suppiah was going to pay the Hongkong Bank ?

A. That is not true. I paid the money on behalf of the 2nd defendant.

Q. I put it to you that neither you nor Suppiah believed that Suppiah would pay off the Chung Khiaw Bank ? A. It is not true. Chung Khiaw Bank was paid \$90,000/- by me on Suppiah's behalf.

Q. I put it to you that you used Suppiah as a tool to transfer the property into his name and later in the same way to the 3rd defendant ?

A. I do not agree.

Q. I put it to you that after it was put in the 2nd defendant's name, that if the transaction came to light to the plaintiff or Devan, that you felt that you have another person who would pose as an innocent purchaser for value without notice, as to defeat the plaintiff's claim ?

A. It is not true. If that were the position then the best thing for me and 2nd defendant to do was to sell to someone else, why bring a good friend.

Q. It has to be your friend because he would keep the secret that the land was not bought for value ?

A. It is not true. No secret to be kept.

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Q. In Sessions Court case No. 146/76 the 3rd defendant claimed possession of the land as the registered owner?

A. Yes. (Referred to page 89)

Q. I put it to you that neither you nor the 2nd defendant who was counsel nor the 3rd defendant pointed out to the trial President at the Sessions Court that the plaintiff was not in fact a bona fide purchaser?

A. Plaintiff's counsel there made an application that he would take the 3rd defendant here who was the plaintiff there to be in the box for cross-examination as to his bona fide. 10

Q. Why did you not point out this fact, as officers of the Court to the trial President?

A. I do not agree that it needs to be pointed out because it was one of possession. I was not in Court. The 3rd defendant was nominee. As a nominee the 3rd defendant was acting under my instructions. I disagree that the question of whether the 3rd defendant was a bona fide purchaser or not in that action was not vital to the defendant's case. The National Land Code talks about registered proprietor. The 3rd defendant was not a bona fide purchaser. He was my nominee. I was not bound to disclose to the Sessions Court. It is true that no where in any of the courts in this country, that I have ^{then} said/that the 3rd defendant was my nominee. 20

Q. I put it to you that you and the 2nd defendant knew shortly after the notes were produced to 3rd defendant that he had admitted that he was not a bona 30

fide purchaser in 1977 ?

A. Yes, I agree. I knew after the complaint was filed. It is true that there is not a single admission of this fact, in the defence filed by the defendants in this Suit.

Q. I suggest it to you that not until Coomarasamy (PW 4) made the disclosure that you decided to admit that the 3rd defendant was not a bona fide purchaser ? A. Not true.

10

Q. Why did you go to Devan's house ?

A. I just followed the 2nd defendant. I agree the documents were prepared by my firm. It was done on the request of Devan and given in my office. It is my case from P 30 that Suppiah bought the property.

Q. Did you not think that where two solicitors were present and one was buying the property that you or Suppiah should have suggested that they be separately advised by another solicitor ?

20

A. That question does not arise because we were not there as the plaintiff's solicitors. P 30 had been prepared without the manuscript. I agree that the manuscript was added later to the memorandum.

Q. Is it not advisable at that stage to advise the plaintiff to engage another solicitor ?

A. I did not think it was necessary. It was merely an option to re-purchase the property. I agree that it was the plaintiff who brought the manuscript up, but the request came from her husband. I mean to say that the request came after they went out.

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To 2.30 p.m.

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DW 1 - (Cross-examination continues)

I said the request made by Devan - he made it on wife's behalf. It is not true that the plaintiff said that there is no mention of the word security in the memorandum.

Q. Is it not the case that the whole transaction regarding the memorandum came about because you were worried about the guarantee that you had given to the Hongkong Bank ?

A. It is not true that P 30 came about because I was worried about my guarantee to the Hongkong Bank. I was concerned not worried that it should be cleared.

10

Q. I put it to you your concern was because Dr. Das could not pay the overdraft ?

A. I disagree with that. It is true that I have been asking Dr. Das for the overdraft to be paid off. From November to March he had not done so. I do not agree entirely that the stories allegedly told by Das to you were ridiculous.

Q. I put it to you that in the middle of March, 1974 all that you wanted was that Das or someone on his behalf to put security so that you would be relieved of your guarantee? A. I disagree.

20

Q. I put it to you that all that Devan ever put up was the property in the name of his wife as a security?

A. It is not true.

Q. I put it to you that what Devan was prepared to give was merely a security not out and out transfer?

A. I disagree.

Q. I put it to you that as a result of your firm's drafting it took the form of a transfer instead?

30

A. I disagree.

Q. I put it to you that if you and Suppiah intended P 30 to be out and out transfer there would not have been a manuscript wording at all ?

A. I disagree.

Q. I put it to you that when the plaintiff knew ⁱⁿ that it was/no sense a security she objected ?

A. I disagree.

Q. I put it to you the manuscript turned the transfer into a security ? A. I disagree.

10 Shown P 31 - I agree that there is a curb on the right of sale. I disagree that the plaintiff had an equity of redemption. The manuscript itself does not say from when the year is to run. I agree that the manuscript was dictated by the 2nd defendant. 2nd defendant is an advocate and solicitor.

Q. If it was intended that the time should begin to run from 30.3.74, you could have asked Suppiah to say so in the manuscript ?

20 A. It is not for me to ask because the 2nd defendant ^{begins} was buying the property. To me the time/from the 30th March. I did not ask Suppiah about inserting the date in the manuscript because I had no doubt. To me the sale took place on the 30th March, 1974. The signing had been completed on the 30th March but the consideration had not been paid.

Q. What is the worth of the manuscript if the whole consideration is not paid within one year?

A. Unless the sale is rescinded by the plaintiff the agreement is still binding on the plaintiff.

30 Q. Are you saying that if only part of the consideration had been paid within one year of March, 1974 in order

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to save her house and land the plaintiff had to pay \$220,000/- ?

A. I am not saying that but the plaintiff has still to pay the \$121,000/-.

Q. Is it your way of looking at the agreement that if the whole of the consideration of \$220,000/- had not been paid within one year of March, 1974 that there was no sale at all ?

A. It is still a sale because a part of the consideration had been paid. The balance of the second payment to Chung Khiaw Bank was delayed at the request of Devan. I disagree that the plaintiff was to have one year to pay back the whole consideration from the time the consideration was paid. It is open to the plaintiff to pay back, that part of the consideration the plaintiff had received. It is my opinion that if the plaintiff had not received \$220,000/- in full, the sale is still on, but she has to pay back what she had received within one year of 30th March.

10

Q. Did you or Suppiah explain to the plaintiff the full implication that could arise and did arise under the manuscript ?

20

Q. The question of explaining to her does not arise because the consideration mentioned was \$220,000/-. That is what the plaintiff should have got. If she got a lesser amount than \$220,000/- then what she got she has to pay back to re-purchase. I did not explain the implication of P 31 because there was no need for it.

30

Q. Do you not now think that it would be prudent to have advised the plaintiff to get the services of another solicitor, so that she can be independently advised?

A. No, I do not think it is prudent.

Q. Assuming that you and Suppiah were not advocate & solicitor do you think Devan would have turned round and asked Suppiah to prepare the necessary documents?

10 A. That would not be possible. It would have been impossible for a shop assistant to do it.

Q. I put it to you that Devan was instructing Suppiah to prepare the necessary documents to give effect to the arrangement as a solicitor ?

20 A. I disagree that Devan was instructing Suppiah as his solicitor. I do not know whether Devan knew all the documents that had to be prepared. The memorandum was prepared, the transfer and two copies of the transfer and two copies of the confirmation. One copy would have been kept by the firm and the other to be sent to the appropriate government department. Normally a vendor would not be given a copy unless requested. This is the knowledge I gained from my previous land transactions. Shown P 57 - The transfer was a standard printed form. And the particulars were typed in. Shown P 57 - Suppiah's name was filled in before the plaintiff signed it. The 2nd defendant did not sign it. It was signed on the 5th July, 1975. Although the transfer form was filled in with Suppiah's name, he could have still transferred it to some other

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buyer at Devan's choice.

Q. I put it to you that 3 (g)(iv) is not what was suggested by you. What was intended was a direct transfer from Tara to any buyer ?

A. It is not true. It is not true that the plaintiff raised the question of the security.

It is not true that the 2nd defendant calmed the fear of the plaintiff saying that the memorandum was just a security. I agree he dictated the memorandum to Sivanathan.

10

Q. I put it to you when the 2nd defendant had finished the dictation the plaintiff then said, why only one year ?

A. It was not true. It was never said.

Q. I put it to you the 2nd defendant's reply was I do not want your land, you can get it any time you like ? A. It is not true. It was never said.

Q. Is it not true that at this stage Devan said to the 2nd defendant please help my brother ?

A. It is not true. It was never said.

20

Q. When did you think the whole consideration should be paid by the 2nd defendant ?

A. Within a reasonable time. Reasonable time is 2 or 3 months or one month depending upon the circumstances. 16 months is not a reasonable time, without reason.

Q. Can you think of any reason, why Devan and Tara should want to wait 15 or 16 months before receiving the whole consideration?

A. The reason is because Devan wanted to continue operating the overdraft account.

30

To 19.10.81

IN OPEN COURT
This 19th day of October, 1981

In the High Court

Chin

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I wish to put on record my objection to the line of cross-examination by my learned friend relating to the question whether legal opinion of witness was sought and also to other questions relating to hypothetical situation and entirely speculative in nature.

10 DW † on former oath states:
(Cross-examination by Cashin continues)

20 The payment made to the Hongkong and Shanghai Bank by me was at the directive of the 2nd defendant. I knew before I went to Kulai on the 30.3.74 that the 2nd defendant wanted to buy the property. He did not tell me why he wanted to buy the property. I first came to know he wanted to buy the property on the 23rd March, 1974. I did not enquire from the 2nd defendant why he wanted the property. I never enquired even after the 23rd why he wanted to buy the property. I do not know whether he paid the stamp fees. I did not pay. It is true that between 5th July and the end of July I decided to buy the property. I wanted to buy it because the 2nd defendant did not want it any more. I wanted to buy the land for development. My decision to buy was when the 2nd defendant offered to me, in the 3rd week of July. I first approached the 3rd defendant to be my nominee towards the end of July, 1975. I asked the 3rd defendant to accept the transfer on my behalf and be my nominee, as registered owner. The 3rd defendant

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did not ask me why I wanted him to be the nominee. It is not true that he accepted to be my trustee absolutely blindly. When I told him to be my nominee I also told him that the land would be subdivided and converted and an application would be made towards that end. This was partly as a result of the report of the land I had received earlier. This is the report - D 1. I first saw the report on 23.3.74, it was brought to the office by Devan. I had to pay conversion fees. The conversion fee was about 17 to 20 thousand dollars. The stamp fee was \$7,338/-. I got it from this document.

10

Chin - I object to the admission of the document. There is a relationship of solicitor and client arising between the firm of Suppiah & Singh and the 3rd defendant. The document in issue is common for the tax to the firm of Suppiah & Singh in connection with the tax matter of the 3rd defendant. The witness has made certain observations which are not relevant to this case. If the document is to come in that portion of it where it relates to his private affairs be deleted.

20

Adjourned to 10.15 a.m.

Khoo

We all are agreed that the document be allowed to come in. But we are all also agreed that we will ignore the handwriting on it.

Court - The document is admitted as P 106.

Cashin

In anticipation of further objection I say the 3rd defendant is the nominee of the 1st defendant.

30

Clear from 3rd defendant's defence and from the admission made by this witness. It follows therefore if Suppiah & Singh write on behalf of the 3rd defendant the true position is that the 1st defendant is writing on his own behalf. There must be a privilege because these are written by the 1st defendant in his personal capacity.

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Cross-examination (Cashin)(Continuation)

10 I do not remember the exact amount of the conversion fees. It is not true that with a paltry sum of \$17,000/- I would develop the land, because there is evidence because the sub-division was only approved in 1977 not 1975 and further if what counsel says is true the sum of money paid - \$121,000/- and the \$92,000/- paid to the plaintiff must have been a gift. I agree that having got the land all I have to do to develop it is to pay \$17,000/-. I did not inform the plaintiff before the land was finally and completely transferred to 2nd defendant

20 because it was not my obligation but the 2nd defendant's obligation to inform her. Also because the plaintiff was at that time represented by solicitors Yeow & Chin. By P 49 it speaks for itself that Yeow & Chin was acting for the plaintiff. I disagree that Yeow was only concerned with the discharge of the charges, because there is a letter from the 2nd defendant dated 29th June, 1975 (P 50) asking Yeow on what basis Yeow & Chin were asking for \$140,000/- and also P 51 from Yeow & Chin to Devan asking him to call at

30 the office, and P 52 where they agreed to accept

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\$92,000/-. In between there is no correspondence between Yeow & Chin and the Bank. I disagree that the 2nd para is the usual form written by solicitors for the Bank where they are writing to discharge the charge. In the usual form the amount stated in the letter would have been the actual amount due to Chung Khiaw Bank for the discharge of the charges. Shown P 50 - I agree that the letter seeks to find out the actual amount due to the Bank and the basis for asking the \$140,000/-.
Shown P 52 - I agree in this context of this letter "our client" refers to the Bank. "Solicitors" refers to the Bank. In this letter they say they are acting for the Bank and the sum required is \$92,000/- but in P 49, when they said they were acting for the registered owner they said the sum was \$140,000/-

10

Q. I put it to you that where solicitors are acting for a bank in the discharge of a charge, the normal practice is that they would also be acting for the owners of the property for the purposes of the discharge only ?

20

A. I agree but in these circumstances they would only be asking for the money actually due to the Bank.

Q. I put it to you that there has been no departure from the principle. Q.P 52 is merely a clarification of P 49? A. It is not true.

Chin

I ask that the evidence be allowed regarding what Yeow told the witness. It is entirely different 30

from the earlier case where Devan told Yeow and Yeow told the witness. In any event I wish that what was said by Devan to Yeow and Yeow to the witness be recorded.

Cashin - I object. If it is inadmissible it should come in, in the record.

Court - I overrule the objection.

Cross-examination - Cashin (Continues)

10 But it is also clear from P 53 that the actual amount due to Chung Khiaw Bank was \$91,127.67. The amount paid to Devan's account was \$91,999/-. I agree that Yeow & Chin were not acting for the plaintiff in respect of the memorandum and the transfer to the 2nd defendant but they were acting for the plaintiff after the signing of the transfer form and when the final payment was made to complete the sale and transfer in the memorandum. I am saying that Yeow & Chin were interested in obtaining the consideration referred to in the memorandum on behalf of the plaintiff, to be used to discharge the charges. I would not know whether Yeow and Chin knew what the total consideration was in P 30.

20 Q. I put it to you that all they were interested in was in getting sufficient money to discharge the charges ? A. I disagree.

Q. I put it to you that Yeow & Chin would not know that the \$92,000/- had anything to do with the consideration expressed in P 30 ?

A. I do not know. I have nothing to do with it.

30 Referred to P 30 - I agree that in para (b) is that

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I should pay Hongkong & Shanghai Bank first before Dato Suppiah pays me. I agree as far as the bank was concerned the liability to pay the Bank is mine.

Q. How can you say earlier that you paid the bank at the direction of Suppiah ?

A. I said I paid on his instruction, because 2nd defendant paid me. I agree also that I did not receive one cent from Suppiah, but the two sums paid stood as a debt from 2nd defendant to me.

10

Q. I put it to you that if you say you agreed to take the property over from the 2nd defendant the truth is 2nd defendant was your nominee from the outset ? A. I do not agree.

Q. I put it to you in July you and 2nd defendant knew well that ^{no.} /one was acting as solicitors for the plaintiff in the matter of the transfer to the 2nd defendant? A. I deny that.

Q. I put it to you in those circumstances it was your duty to inform the plaintiff that 16 months after you were transferring the property to your nominee?

20

A. I deny I was under such duty or that I was transferring the property to my nominee.

Q. I put it to you that you as a schemer of the entire fraud knew and intended fraudulently to get hold of the property and put it in the name of the 2nd defendant?

A. I deny that.

Q. What was the purpose of transferring the land to the 3rd defendant ?

A. To enable the land to be sub-divided and converted.

30

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tion

19th October
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Q. Why could you not have done it yourself if the whole transaction was innocent?

A. Because the process of sub-division and conversion would have been more expedient if it was put in the 3rd defendant's name, than mine.

Q. I put it to you the expediency was you wished to continue to hide the fraud?

A. There was no fraud and I have nothing to hide.

Why I said it was more expedient because I did not enjoy good relationship with the authorities.

Q. Why could you not have continued to use the 2nd defendant as your trustee, instead of the 3rd defendant?

A. I did not do so because the 2nd defendant was my partner.

Q. Are you saying that the 2nd defendant was not enjoying a good relationship with the authorities?

A. The actual application for conversion and sub-division on behalf of Arul Chandran was not done through our firm. Shown P 100 - This letter was sent by our

firm. Shown P 100 - This letter was sent by our firm. Q. How does that tally with your answer that you had no good relationship with the authorities?

A. This letter was written for the 3rd defendant by the firm and not 2nd defendant and me. It was written after the sub-division had been approved. I and Suppiah were not acting in our personal capacity in writing P 32 and the letter does not suggest that it was written on behalf of Suppiah or me.

Q. Are you suggesting that they liked your firm but not you in your personal capacities ?

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A. I do not know whether they liked the firm or not.

Q. How do you know, that they did not like you?

A. How do you know that I do not like you.

Mohyuddin was the surveyor who applied for the sub-division and conversion. I did not pay the 3rd defendant to be my nominee. He did not receive any benefit at financial or otherwise for being a

nominee. Shown P 106 - The sale price according to his document is \$361,113/- The return was not made by me but by the 3rd defendant. I agree with the particulars. It is true the sale was to my company, Jet Age Construction Company. But I do not own it completely. I cannot remember whether I owned 90% shares at that time, but I own 60% shares now.

10

Q. Am I to understand from the document P 106 that your company paid \$300,000/- to the 3rd defendant?

A. Yes. It is not true that I paid the Hongkong Bank \$121,000/- because I was bound by the guarantee to the Bank. I paid because 2nd defendant directed me. He was bound under the memorandum.

20

Q. I put it to you that the payment to the Hongkong Bank by you had nothing to do with the land at all?

A. Not true. Because the payment arose out of the memorandum.

Q. I put it to you that the payment of \$92,000/- to Chung Khiew Bank was the payment made in relation to the land? A. I disagree. \$214,000/- was paid towards the land. Q. I put it to you that you maintain the fiction that you had paid the 2nd defendant \$220,000/- in that document.

30

Chin - Objection - I say that any deception practised on the tax department has got no relevance to this case.

Cashin: Our object of cross-examination is to establish fraud of the defendant. In the defence of the 1st defendant, he did not see fit to state that the 3rd defendant was his nominee. He hid that fact. I am entitled to dispute the admission to test the accuracy or veracity and the credibility of this witness and to do so I am entitled to ask him questions about P 106 which showed he had not been truthful so that his credibility overall can be impeached - section 146 of the Evidence Act. He had cheated the tax department.

Chin: Section 148 - questions pertaining to alleged deception on the tax department is not relevant for this case because it has not been pleaded. Under section 148 the witness must be warned regarding his answer.

Order - Objection overruled.

Cross-examination continues

Q. Is it not true that at the time when you gave 3rd defendant the particulars for the purpose of C.S.T. 1, the sale by 3rd defendant to Jet Age had not taken place?

A. The sale took place, but no consideration passed. It is not true that the \$361,000/- in Jet Age was merely a book entry. It is not true.

Q. How could it be otherwise ?

A. (Witness pauses) - Because when the property was

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transferred from the 3rd defendant to Jet Age \$361,113/- became a debt owed by Jet Age to the 3rd defendant. Q. Is that how it is showed in the book? A. Yes, also in accounts. But I do not do the accounts. The books will show how much had been paid to 3rd defendant.

Q. If what you say is true then the book must be shown to be wrong? A. What is shown to be paid to Arul was paid to me by Arul. He is entered in the book nevertheless because the land is transferred from him to the Jet Age.

10

Q. Would it not be a fact that the income of the company would be reduced by the amount of the debt or liability shown to be due to the 3rd defendant?

A. I do not know how it is reflected in the account. But the asset of the company should be shown somewhere in the account.

Q. Would you agree that the amount would not show a correct picture, if this is shown as a debt due to the 3rd defendant?

20

A. It would show a correct picture because the 3rd defendant was the owner of the land before Jet Age became his successor-in-title. Therefore to show the debt is due to someone else not 3rd defendant, is not a correct picture arising out of the land sold by 3rd defendant.

Q. The whole situation arose when you decided not to show the 3rd defendant was trustee or nominee?

A. I was under no obligation to do so.

To 2.30 p.m.

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DW 1
Cross-examination (continues)

In the High Court

The company has got the accounts. Decision of the Board is by majority.

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Q. Could you request the Board then to produce the Account?

Chin - I object to the production of the document. It is not relevant to the issue before the Court because the evidence sought to be adduced is only relevant in consequence to the decision that the case is in favour of the plaintiff.

10

The directors of Jet Age are myself, wife, ~~Suppiah~~ Suppiah and Aris bin Mohamed. I agree that the defence in the Sessions Court raised the question of the right of title. (The defence bundle to be marked as D).

Shown D 10 in 3 para 5 - I agree that para 5 - the question of title is being raised. I agree that the learned President came to the decision that vacant possession ought to be given to the registered owner. This is the grounds of judgment and notes of evidence - P 109 and notes of evidence P 110.

20

Q. You did not think it fit to point out that the question of nominee was not an issue and he was not a purchaser for value despite the fact that he was proved to be the registered owner?

A. I knew that no consideration had passed, at the time when the judgment was delivered. It is true that the learned President made the decision based on the fact that the 3rd defendant was the registered owner. Q. And you did not think it fit to inform the learned President that there had been no consi-

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deration and therefore he could not be a registered proprietor ?

A. But you don't have to be a purchaser for value to be a registered owner. My son could be one.

Q. By the fact that you had misled all the judges and we have not been able to get judgment on the merits today?

A. I disagree. There was no counter-claim or prayer by the defendant to set aside.

(Cashin and agreed by Ronald Khoo that the 3rd defendant was not present in Court at the hearing at the Sessions Court).

10

Referred to (1979) 2 M.L.J. page 173 -

Q. You were misleading the fact that the three of you were very good friends?

A. I disagree.

Referred to the judgment which says that the applicant was a bona fide purchaser.

Q. You have misled the Court in making this decision that he was a bona fide purchaser ? Why did you not inform about the fact that the 3rd defendant was not your nominee ?

20

A. It would have come out at the trial anyway. I did not do in the beginning because the defence was filed by Suppiah.

Q. I put it to you that if the 3rd defendant had not the courage and the decency to admit the truth you would have continued to deceive the Court ?

A. I disagree because you yourself know from the partnership minutes that the 3rd defendant did not

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pay the money way back in 1977.

Q. I put it to you that in so many applications made before this Court in connection with the land you have not revealed the true facts ?

A. I did not feel obliged to do so.

To 20.10.81

IN OPEN COURT

This 20th day of October, 1981

Parties as before.

10 Chin: I object to the manner in which counsel for the plaintiff has been cross-examining the witness; it has been alleged that the witness is a fraud, a cheat and a fool. There are serious allegations made of the witness. Section 150. Having regard to the incidents after the 30th when such incidents had not been pleaded and when so directed in a scandalous fashion was most improper. If counsel is saying he ~~acted~~ acted in accordance with instructions given by instructing solicitor or in accordance with instructions given by the plaintiff that would not suffice. He would have to satisfy himself that there is evidence against any allegation of fraud. See (1970) 2 Q.B.D.P450 at P456. These matters had not been pleaded in relation to matters after the 30th.

20 Cashin: I would like to deal with the question of ~~fact~~ fact first. That arose. Particulars of fraud are set out under three heads - Para 12 (a),(b),(c). (h) deals with facts leading to and including the events of the 30th of March, 1974. (b) refers to what

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happened after the date up to and including the transfer to the 2nd defendant on the 5th July, 1975. (c) deals with what happened after the sub-division and conversion of the property into a housing estate. The allegation of fraud does not spell out every single fraudulent act. But ~~anybody~~ ~~thing~~ reading the particulars would be left with no doubt with what the fraud is in each case. During the trial the 3rd defendant made an admission which immediately meant that there were many fraudulent acts of the 1st and 2nd defendants. It is true that those particulars of facts relating to fraud which had been disclosed had not been pleaded. They will have to be pleaded but as in normal, one admits at the end of the cross-examination, before seeking an application to amend by adding the additional particulars. I know this is done before submission, otherwise it would mean one has to do so as every new fact has come out. The word 'fool' arose because the witness at the end of an answer turned round to me and said "do you think I am a fool", and I said you are a fool.

10

20

Chin: This is precisely what I was going to say earlier. That the plaintiff not having proved, the several allegations of fraud against the defendant, finds that there would be a need for further amendment suggests the allegations are not with any proper foundation. (1979) 2 M.L.J. p.172, page 173 D. If the plaintiff only applies for amendment just before submission when all the witnesses have given evidence

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surely if the plaintiff is allowed to do what she likes, she is asking the Court to conduct the case in the manner ~~most~~ favourable to her.

Cashin - The amendment would only relate to the admission by the defendant. I cannot see how it can be prejudicial to the defendant.

Suppiah - (1975) 1 MLJ p 85 - 89 G. Must be "active fraud". Snell on Equity 24th Edition p 502. There is constructive fraud only if at all, here which is not sufficient. What happened after the 30th has no relevance. Syed Othman's certificate at page 173 E. White Book - 1979 Vol. 1 page 276 para 18.8.4. Particulars of fraud must be pleaded.

Cashin

There must be fraud not constructive fraud. If the learned Judge in the O.M. 46/76 had been fully aware of the facts, his obiter would not have taken the form he did. Case refers to transaction before the 30th March, 1974, not concluded until 5th July, 1975. So to suggest that questions should be confined only to the 30th March, 1974 is ridiculous. In order to show the intention of the 1st defendant to cheat and defraud the plaintiff .. the transfer we are entitled to look at all events because the 1st defendant on his own admission produced the 3rd defendant to whom title was transferred leading the world to believe that the 3rd defendant was a bona fide purchaser for value. The intention of the 1st defendant was to defraud and cheat the plaintiff into signing undated transfers in the belief that

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they are connected with the memorandum, when there was never any belief on the part of the 1st defendant to act under the memorandum. The purpose of insinuations and bringing the 3rd defendant into the scene was merely to defeat the claim by the plaintiff for her land which succeeded. Every fraud has a different set up. There can be no hard and fast rule as to the evidence necessary to prove that fraud. It must be left to the discretion of the trial Judge in each particular case. Subsequent events are in certain circumstances relevant to show the intention in the prior event. The 2nd point is it is necessary for me to destroy the credibility of the witness. So that the Court would say at the end, I just cannot believe this witness. To do that I am permitted to go far beyond the limits of any particular transaction. I am proving actual fraud. The 1st defendant and 2nd defendant deceived the plaintiff, into signing certain documents, the chief of it was the transfer. The active fraud was that a memorandum was put up to allay the fears of the plaintiff and her husband and when it was never intended by either the defendants to rely upon that memorandum. As a result a signed transfer undated, was put up, and at a later stage the fraud was concluded by dating the transfer and registering it, completely divorced from the memorandum. This is not a constructive fraud, but an active fraud.

Court - I overrule the objection.

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DW ↑ - on former oath states -

Cross-examination (Cashin) (Continues)

Q. At the time when the 3rd defendant was being questioned by the partners of Rodyak & Davidson in 1977 did not the 3rd defendant question you and the 2nd defendant with the facts relating to the transactions before this Court?

10

A. Yes. I told the 3rd defendant that everything was above board and it was in no way tainted with any fraud. I am not sure whether I referred him to the memorandum. I did tell the 3rd defendant that the transfer to the 2nd defendant was under form 14A and not under the memorandum because only under form 14A could the transfer be effected to the 2nd defendant. Shown P 58 (The continuation bundle is marked as PP)

Referred to P 76 in PP at page 16 -

Q. I put it to you that the 3rd defendant was telling you that he was not relying on the memorandum at all?

20

A. It is not true, because the transfer of the property was effected under Form 14A and the memorandum was evidence of it. Shown Page 18 - I put it to you that Pott was left under the impression by the 3rd defendant that reliance was placed on the memorandum?

A. What impression Pott had is no concern of mine.

Referred to page 22-- I knew that judgment was obtained by the 2nd defendant in Singapore against Dr. Das. I do not know that in Suppliah's affidavit he said that Das was indebted to him to the tune of \$149,520/-. It is my case that I paid the bank on

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the direction of the 2nd defendant. It is not true that when the claim was made by the 2nd defendant, the \$149,520/- includes the \$121,000/- due from me to the Bank.

To 11.15 a.m.

Cross-examination (Continues)

I agree that the \$149,520/- is arrived at in the manner set out in the State of Claim in Suit in Suit No. 261 of 1977. I disagree that when the suit was filed \$110,000/- was due from Das to the 2nd defendant.

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Q. Are you saying then the \$110,000/- was not due to the 2nd defendant? A. I do not know how the \$110,000/- came about. Yes, it is true that the claim made by the 2nd defendant was after the payment by me to the Hongkong & Shanghai Bank of \$121,000/- I did not ask Das for the amount due to me after the payment made by me to the Bank.

Chin: Objection. There is no relevancy in the question asked because the action in that Suit was taken against Das by 2nd defendant. If my learned friend is suggesting that there was collusion by 1st and 2nd defendants, such a plea is not on record. Action in 1975, surely no relevancy.

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Court - Objection is disallowed.

DW 1 - Cross-examination (Continues)

After the payment by me to Das, it is not true that I frequently and regularly asked Das for repayment. I knew that 2nd defendant had obtained judgment against Das at the time or shortly after. It

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In the High
Court

No. 26-
Defendants'
Evidence
Jagindar Singh
Cross-Examination
20th October
1981 (Cont'd)

plaintiff by May, 1975?

A. The memorandum is dated 30.3.74 and the plaintiff had one year to re-purchase the property; it follows by 30th March, 1975, the year was over; whether the 2nd defendant was prepared to re-transfer the property to the plaintiff in May, 1975 as suggested would be entirely up to the 2nd defendant.

Cross-examination (Suppiah)

Shown P 52 - When Yeow spoke to me on the telephone he informed me what/^{was}the amount due to Chung Khiaw Bank. He told me the amount was \$91,000/-.

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Shown P 30 and P 31 - A copy was given to the plaintiff on the 30th March, 1974.

Shown P 106 - The price mentioned is \$361,113/-
This was after the land had been sub-divided into 70 lots.

To 2.30 p.m.

Cross-examination (Ronald Khoo)

I agree that towards the end of July, 1975 I approached the 3rd defendant to ask him to accept the transfer on my behalf. I told him that the land would be converted and sub-divided and an application would be made towards that end. I did not tell him anything else about the land. Towards the end of July, 1975 was the first time I mentioned about the land to the 3rd defendant. I was referred to P 106 - This document arose out of C.S.T. 1 form submitted by the 3rd defendant. CST 1 form is a declaration which must be made by a person disposing of the land under section 57 of Capital Gains Tax

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Act, 1974. One has to declare the person to whom the land was sold, the price you were receiving, the method you received the consideration, the date of the agreement of sale, open market value of the property and whether there was any building on the land. The form itself says all this. The Act actually is the Land Speculation Act, 1974. I stand corrected. I believe it came into force in 1974. Insofar as the disposal of the land by the 3rd defendant was concerned the CST 1 form was completed and submitted. Form CST 1 was also completed in the transfer from the plaintiff to the 2nd defendant. It is a Court exhibit - D6. In respect of the disposal of the land by the 3rd defendant whatever money was received by the 3rd defendant was paid to me, by him. The reason why I transferred the land to the 3rd defendant was because I was not enjoying good relationship with the authorities. And I felt that Arul Chandran the 3rd defendant who had no relationship with the State government, I mean the State authorities was in a better position than me to get the approval for the sub-division. I was aware at that time that the 3rd defendant was a Malaysian citizen resident in Singapore.

Court: I am a Dato from Johore and conceded by 2nd defendant he was also.

Re-examination (Chin)

Shown P 52 - I asked Yeow and Yeow told me that about \$91,000/- was required to be paid to discharge

In the High Court

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Evidence
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Cross-Examination
20th October
1981 (Cont'd)

Re-Examination
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1981 (Cont'd)

the charges, on the telephone. The reason between the \$91,000/- and \$92,000/- was like this. Yeow told me that \$91,000/- was due to be paid. Then I said that the 2nd defendant told me that \$92,000/- was due. As you are asking for \$140,000/- He said I will come back to you and he sent P 52. I do not know why there is a difference of \$782/-. Personally I do not know to whom the \$92,000/- was paid into by Yeow. I presume it must be to Devan's account. Referred to D page 68 - I have not seen the statement of claim in P 108. It has been that for the last 6 years I have not disclosed the fact that the 3rd defendant was nominee. As far back as 1976 the plaintiff herself ~~has~~ alleged in her defence in the Sessions Court action, that the 3rd defendant was not a bona fide purchaser and further as far back as 1977, all the partners of Rodyak & Davidson and Cashin knew that the 3rd defendant did not pay the money and he was holding the property as a trustee. I am saying that because the 3rd defendant had said in the notes at Rodyak & Davidson that he was holding the property as a trustee, and since Pott asked whether Suppiah and I provided the funds, it can be inferred that the field had been narrowed to either me or Suppiah. Bona fide purchaser in the context when it was referred to 3rd defendant, I meant he was holding the property as my trustee but in no way was the property itself tainted with any of the allegation contained in the present suit. In the Sessions Court

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and the High Court Caveat matter I was personally not a party to the proceedings and I did not make representations to the Court. That is the reason why I say I was not obliged to disclose the fact that the 3rd defendant was my nominee. I say now that Yeow & Chin were acting for the plaintiff at the time of payment of \$92,000/- under the memorandum to clear the charges. I say this in P 49 it is stated as clearly as possible that Yeow & Chin were acting for the Bank and the registered owner of the property, in the first para. The amount requested for in the letter is \$140,000/- Query was raised to this by 2nd defendant through P 50 and arising out of the query Yeow & Chin wrote P 51 asking Devan to call on them. In P 52 they wrote back to say that they were asking for the Bank, when they asked for \$92,000/-. In P 59 to substantiate my part receipt by Yeow & Chin dated 8th July also says that the receipt was in respect of payment by Devan.

To 21.10.81

IN OPEN COURT

This 21st day of October, 1981

Parties as before.

DW 1 - on former oath, states -

Re-examination (Continues)

It is not true that when I discovered that the overdraft has been reduced to \$90,000/- by Devan that I fraudulently decided to pay off the debt and effected the transfer.

In the High Court

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Defendants'
Evidence
Jagindar Singh
Re-Examination
20th October
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Re-Examination
21st October
1981

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Court

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Defendants'
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Re-Examination
21st October
1981 (Cont'd)

Further the property was purchased by the 2nd defendant and the obligation to pay the money was his. It has been suggested that the fraud at that time was the benefit of \$36,000/- or thereabout was being derived. It has been adduced in evidence that I could lay my hands on a few thousand dollars easily. Being in that position the suggestion of fraud becomes ridiculous. It is absolutely not correct that the 2nd defendant was merely my nominee on the 30.3.74. I agreed to the question asked by counsel for the plaintiff in relation to those matters alleged in the Statement of Defence pertaining to the 2nd defendant because I was told by the 2nd defendant about these matters subsequently to the events mentioned therein.

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Court

I said earlier that I did not inform the Court about the fact that the 3rd defendant was my nominee because I was not obliged to do so. I did not say that at the outset because it was going to come out in any event. I would say it in any event in the witness box, not necessarily because the 3rd defendant was going to say it. I will be saying it because I am on oath and therefore I would be obliged to tell the truth.

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Q. What difference does it make whether you were talking on oath or not, in so far as telling the truth was concerned ?

A. When I take the oath, I am under obligation and

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when I am facing the world I am not under any obligation. I was also an advocate & solicitor. I do not think as an officer of the Court I am obliged to do so, because I was not personally involved. I made no representations. I knew that the 3rd defendant was representing me as my nominee for the purpose of the action in the Sessions Court. I still felt I was not duty bound to tell the truth to Sessions Court, because the action was in connection with possession.

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became the Dato' for Johore in 1971 or 1972; the 2nd defendant became the Dato in Johore in 1978. I was already a Dato' when the land was transferred to the 3rd defendant in July, 1975. I said I transferred the land to the 3rd defendant in 1975 because I did not enjoy good relationship with the State authorities. It is true that I did not expect to be treated for the purpose of the sub-division and conversion any different from any other citizen in the country. I would not say that my relationship with the State authorities was not such that I was treated like a second class citizen. I am a Federal citizen. I considered my relationship with the State authorities was even less than a citizen. The State authorities have not attempted to strip me of my Dato'ship. I do not want to say why I do not enjoy good relationship with the State authorities. State authorities mean all the authorities connected with sub-division and conversion. It involves also Executive Council

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In the High Court

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Defendants'
Evidence
Jagindar Singh
Re-Examination
21st October
1981 (Cont'd)

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Evidence
Jagindar Singh
Re-Examination
21st October
1981 (Cont'd)

indirectly. I did not ask Paramjothy to be my nominee because he is a good friend of mine. I have friends in Johore Bahru.

Q. Why did you choose a friend in Singapore and not a friend in Johore Bahru which is more convenient? A. I chose Arul.

Chin - I wish to apply to release my client. He wishes to take time off to attend to his other matters.

Cashin - I would prefer the client to stay in Court. I wish to point out that 3rd defendant contrary to what I said earlier did appear in the Sessions Court on the 12th May, 1976. I discovered it last night. This was before the final day.

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The record of the Sessions Court is produced as exhibit P 109.

2nd defendant says it is the understanding between him and Paramjothy that he would do the examination-in-chief and re-examination.

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No. 27

DEFENDANTS' EVIDENCE
DATO' P. SUPPIAH
EXAMINATION
21ST OCTOBER 1981

No. 27 DW 2
Dato' P. Suppiah
Examination
21st October
1981

DW 2 - Dato' P. Suppiah, affirmed, states in English:

Advocate & Solicitor, 33 Jalan Keruing, Kebun Teh, Johore Bahru.

I am a partner of Suppiah & Singh. I am a citizen. I am 51. I read law in 1956. I was called in 1959, and Malayan Bar in 1961. I practised for a while with M. Ismail. I knew the 1st defendant. He was a pupil of Omar Salleh,

practising in Johor Bahru. 3rd defendant was my contemporary in London. I first knew 1st defendant when he was reading in chambers with Omar Salleh. I was the legal adviser to the Armed Forces for a short service commission for five years. In 1969 I retired with the rank of Major. In 1969 I teamed up with Omar Salleh in Johore Bahru. I acted as Judge Advocate for the Armed Forces on an ad hoc basis for 7 years. In 1974 Omar Salleh ceased practice in Johore Bahru and he went to Singapore, by right of the Advocates & Solicitors Act. At same stage myself, the 1st defendant and Omar Salleh teamed up. When Omar Salleh left I and 1st defendant continued to team up. I was conferred a Dato'ship by the Sultan.

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On the 10th March, 1974, Devan came to see me at our firm's premises in connection with the land at Kulai. The 1st defendant was present then. Devan wanted to sell his property at Kulai, but before that was done, he wanted the 1st defendant to find out whether the property ^{could} be charged for an increased amount. The 1st defendant said he would try and ^{Devan} ~~he~~ also said that the property was already charged to Chung Khiaw Bank at Kulai. Devan said if the amount could be increased, then he would settle the money owed by Das to Hongkong Bank, Singapore. There was a guarantee which I understood from the 1st defendant at that time, guaranteeing the overdraft of Das. I knew the amount guaranteed was \$120,000/-. Whether the actual amount taken

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In the High
Court

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Defendants'
Evidence
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Examination
21st October
1981 (Cont'd)

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No. 27
Defendants'
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1981 (Cont'd)

by him by way of overdraft was \$110,000/- or not, I am not sure, and whether it was mentioned in that meeting or not. Arising from the discussion a letter was written by our firm, in P 27 to Chung Khiaw Bank, Kulai. It was copied to the plaintiff and her husband. Devan gave me the information as set out in page 1. I received a reply in P 28. I knew that the 1st defendant made attempt to get an increased overdraft from Hongkong & Shanghai Bank, Johore Bahru. It was abortive. Devan was informed orally of the abortiveness by the 1st defendant. Then Devan came to my office. On the 23rd March, 1974. The 1st defendant was also present. There was a negotiation between Devan and me to sell and buy the property. In the course of the discussion he produced D 1 (at page 25 of D). D1 was used as a basis to arrive at the purchase price of the property as according to D 1, which is a report based on development potential wherein the land was valued at \$210,000/- and the house at \$48,000/- Finally it was agreed that the purchase price was at \$220,000/- and at this meeting I came to know the actual overdraft, according to Devan at Hongkong & Shanghai Banking Corporation, Singapore was \$110,000/-. The letter P 28 shows the overdraft on 8.3.74 was \$103,628/-. So, I knew the overdraft on the 8.3.74 to be that amount.

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To 11.15 a.m.

DW 2 - on former oath, states -
Examination-in-chief (Continues)

In the High
Court

Devan also told me that even though the property
was registered in the name of his wife, it was
his property. He asked me to prepare the
necessary papers to give effect to the transaction
and also as to how the consideration was to pass.

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Defendants'
Evidence
Dato' P. Suppiah
Examination
21st October
1981 (Cont'd)

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I cannot remember whether the arrangement to
meet him at Kulai was on that day or subsequently.
But it was pre-arranged meeting for the purpose
of signing the necessary documents and the day
was fixed on the 30.3.74. I kept the appointment.
On that day I made arrangement for the 1st
defendant to be at the Civil Service Club, at noon.

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I went there and met the 1st defendant. One
Sivanathan was also there. He was the Secretary
of the Club. We asked Sivanathan to come along
with us, for a drive. Then all the three of us
got into the car and arrived at the plaintiff's
house at about afternoon 1.30 or so. When we
arrived there, Devan came and opened the gate and
we went in. He took us to the study. Before that
I mentioned to Devan the purpose of our visit. He
took us to the study and asked us to rest for a
while as the plaintiff was somewhere at the other
part of the building. Then Devan went out of the
room and after a few minutes, he came back with
the plaintiff. Then I gave all the documents to
the plaintiff to read. She read them and after that
she asked her husband to go out of the room with her

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In the High
Court

No. 27
Defendants'
Evidence
Dato' P. Suppiah
Examination
21st October
1981 (Cont'd)

as she wanted to have a private discussion with him. Then after a few minutes, both of them came back and the husband Devan told me that his wife wanted the right to repurchase the property, within one year. She confirmed it. The husband also said that Medidata was picking up and that the property could be re-purchased within a year. Then I dictated the manuscript portion to Sivanathan and he wrote the manuscript part in P 31. She read it; after that she signed two copies of the memorandum, P 30 and P 31, transfer and confirmation. Then I signed at the bottom of the manuscript, which was witnessed by the said Sivanathan. I then handed over a copy of the memorandum to the plaintiff and then ^{we} left. Devan was present throughout. Shown P 30 and 31 - These are the memorandum and the manuscript. Devan also signed P 31, in my presence. He was there throughout except for the period when both plaintiff and Devan went out together to have a little discussion. I cannot remember whether Devan and the plaintiff took the three documents when they left the room.

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Referred to P 57 - This is a copy of the transfer form. At that time the date was not stated. It was left blank. The 1st defendant's signature was also not in P 57. My signature was also not put down. All the three documents were signed in duplicate. P 56 was in this form except for the date and the 1st defendant's attesting signature. They were not there. They were subsequently dated and

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signed by the 1st defendant on the 5th July, 1975. I deny the allegation by the plaintiff that blank documents were signed by her. Except for the three documents in duplicate nothing else was signed by the plaintiff. It is not true that I flipped over the papers and I pointed out the places to the plaintiff to sign. I deny that. It is not true. I did not tell her that some typewritten letters must accompany the transfer form which I signed. The plaintiff did not say why the word "transfer" was there when it was going to be a "security". I deny she said these words. It is not true that I told her that the security was by way of a transfer. She did not say she was not happy. She did not ask me how she was to get the property back once it is transferred to me. I deny I assured her that Das would pay the debt to me and she would get the land back. The plaintiff did not say to me that if Das could not pay back the money then what happens. I did not tell her that the land could be sold, the debt paid off and the balance of the money could be used to buy some property nearby. It is not true that she told me that she was not happy and that she was holding the property for her five daughters. It is not true that only after she said that I asked Sivananthan to write the manuscript. When she read the manuscript, she did not say "Why one year". I did not say that she can get the property back any time she liked it. The

In the High Court

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Defendants' Evidence
Dato' P. Suppiah
Examination
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1981 (Cont'd)

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In the High Court

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Evidence
Dato' P. Suppiah
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1st defendant discovered the true state of the account at the Hongkong & Shanghai Bank in Singapore a few days after that. The first defendant told me what the amount was and the amount was in the region of \$120,000/- or \$121,000/- and Devan was informed of this. Then I had a meeting with Devan and told him about the state of the overdraft with the Hongkong Bank in Singapore, because under P 30 the amount to be paid was \$110,000/- and he said to me that I could ask the 1st defendant to pay off whatever the amount was and the consideration set out in P 30, could be adjusted. He also said that if he had any buyers for the property, he wanted me to transfer the property direct to him. He also said he wanted to operate the account at Chung Khiew Bank for about a year and he also stated that he would like to stay on the property for which he would pay the compensation. I agreed to the proposal. The 1st defendant paid subsequently to the Hongkong & Shanghai Bank, Singapore. It was paid on the 27th April, 1974. Devan was informed of the actual amount. Devan told me there were buyers for the land. This intimation took place between April, 1974 until on or about February, 1975. On or about the 1st February, 1975 I had a meeting with Devan and he told me that he and his wife did not have the money to re-purchase the property and could not get any buyers as well. He also said at the meeting that

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he would like to stay on the property up to the end of the year 1975. Then he said he wanted to continue operating the account at Chung Khaiw Bank up to the end of June. He agreed that he would bring down the overdraft to \$92,000/-. It was agreed that out of the total amount paid up and the balance of the total amount due to be paid i.e. \$220,000/-(and that amount being roughly \$6,000/-) was to be paid as compensation. Then I converted the property a few days after on the 2nd February.

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1981 (Cont'd)

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To 2.30 p.m.

DW 2 - Examination-in-chief (Continues)

I made an application to file the caveat on the 2nd February - P 99. This was supported by a statutory declaration. It was made on the 2nd February, 1975. A letter was sent by the Land Office informing the plaintiff of the caveat. I wrote to Yeow & Chin on 28.6.75 at P 48. After the caveat I wrote to Yeow & Chin in P 48 with a view to the property being transferred into my name and asking for the document of title. Then we received a letter from Yeow & Chin in P 49 saying that they were acting for the registered owner and asking for \$140,000/- to discharge the charges. Then we replied in P 50 referring to P 49 and enquiring the actual amount owed and asking whether the registered owner wished to have a further sum to bring it up to \$140,000/-. On the same morning I spoke to Yeow & Chin and told Yeow that arrangement with Devan was

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In the High
Court

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Defendants'
Evidence
Dato' P. Suppiah
Examination
21st October
1981 (Cont'd)

only \$92,000/- and if he had any doubt he could verify this from him. He said he would come back to me. Then I received P 52 from Yeow & Chin referring to our letter in P 50 and also referring to the conversation between the 1st defendant and Yeow and asking for \$92,000/- to discharge the charges. Then we wrote P 54 referring to P 52 stating that we would let them have the sum of \$92,000/- for the purpose of discharging the charges. We also stated when we would want to complete the matter - on the 5th July, 1975. On the 5th July, 1975 in P 55 we wrote to Yeow & Chin enclosing a cashier's order for \$92,000/-. Then we received the document of titles from ~~the~~/the Chung Khiaw Bank. I then presented the document together with the transfer to the Land Office for the purpose of effecting the registration of the property into my name. The documents I presented were three copies of the discharge of the 3 charges. They are D 2, D3, and D 4, together with the transfer - P 57. I also filed the documents to remove my caveat. From the time the caveat was imposed on the 2.2.75 till it was removed in July, 1975, the plaintiff did not seek to remove it, even though she was notified of my caveat. The caveat was imposed to protect my interest because under P 42 I returned the C.T. mentioned in P 42 to the Bank copied to Devan, dated the 30th January, 1975. Then on the 31st July I had the property transferred to the 3rd

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defendant. The \$121,000/- paid to the Hongkong & Shanghai Bank by the 1st defendant was on my direction and it was a debt due to him and the \$92,000/- was provided also by the 1st defendant and it was also a debt due to him from me. In fact all the \$220,000/- minus \$6,000/- was paid by the 1st defendant. I borrowed from him. In the third week of July 1st defendant and myself had a discussion over this property and I decided to ask the 1st defendant as to what I should do with the property and he told me that to transfer it in favour of the 3rd defendant. Steps were then subsequently taken for the property to be transferred to the 3rd defendant. He then became the registered owner subsequently. I had the money to pay for the value of the property but I decided against developing it myself. It is my own decision, because it is cumbersome to develop the land. If the 1st defendant decided not to buy it from me then I will have to carry it myself. On 26.3.76 my firm filed an action No. 146 of 1976 against the plaintiff here and her husband for possession of the property. Judgment was given in favour of the 3rd defendant. Before filing the action there was a notice given to the defendant (plaintiff) to vacate the premises. It is P 65. Only then the Court action was taken as the plaintiff did not vacate the premises. The action was for vacant possession to a registered proprietor. The issue of bona fide purchaser did not arise in that

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case. There was a defence filed in that action and there was no counter-claim. One of the defence is set out in para 4 and para 6 where the defendant had stated that for business reasons they were unable to pay the sum of \$220,000/- within the period. The other is para 6 where they say they were always and willing to pay the plaintiff's predecessor-in-title the sum secured and other ancillary relief and have been unable to do so. In para 7 they say in the above premises the title is defeasible. In that action both the plaintiff here and her husband were present, but did not give evidence as their counsel left the question of possession entirely to the Court. I was the counsel for the plaintiff in that action. The 3rd defendant did not appear in any of the mention dates or the day of the trial itself. The plaintiff had filed an affidavit in ~~connection~~ the present suit where she had said in para 3 (b) and 4 where she repeated the fact that she had left matters to her counsel - D 26 and she gave also the reason why she had not expressly pleaded fraud in the Sessions Court case; it was to spare the feeling of counsel. On 9.8.76 judgment was obtained against the defendant (plaintiff). They appealed and the appeal was dismissed in P 109. They took it up to the Federal Court but it was struck out because they did not appeal in time. They also made a separate application by way of Originating

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Motion in the High Court. There were three caveats filed by the plaintiff - first caveat was allowed to lapse, without any step being taken to have the time extended. The present action was filed on the 30th August, 1979. The first time the allegation of fraud with details and particulars against all the defendants was made only in this case. Shown D 1 - This is the charge for the land. The maximum overdraft was \$35,000/-, including interest. The 2nd charge was at page 7 - \$15,000/- would also include interest. Third charge for \$30,000/- does not include interest. According to the charge P 17 para 1 the plaintiff not only charged the land but also the single storey bungalow. That gives the impression that the bungalow belongs to the plaintiff. P 27 was the first letter written to Chung Khiaw Bank.

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To 22.10.81

IN OPEN COURT

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This 22nd day of October, 1981

Parties as before.

DW 2 - Examination-in-chief (Continues)

In P 27 we were not acting for the plaintiff. It was written to assist Devan in obtaining an increased overdraft and this letter was written to Chung Khiaw Bank to obtain the documents relating to the property with a view to find out whether it could be charged for an increased amount. There were a number of letters written to Chung Khiaw

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In the High Court

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Bank asking for the title deed and asking for the balance due at the particular point of time. These letters were written arising out of Devan telling me that there was a purchaser of the property. Because under P 30 and 31 the plaintiff herself has the right to re-purchase the property, and Devan had also requested me some time in April that I should agree to sell the property if there was a buyer. Only after the 2.2.75 was I making arrangement to have the charges discharged or to have the property registered in my name. I only made the final arrangement to have the property registered in my name after the one year period i.e. from 30.3.74. P 33 is one of the letters.

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I issued a writ against Das in Singapore. That was Civil Suit No. 1224 of 1975. The amount was \$149,000/- Das gave me a cheque for this amount before or after judgment made up in my name. I presented it. It bounced. He told me that I should hand over the money to the plaintiff and after the cheque bounced, I told him about it and he told me to issue a writ against him which I did, so that with the judgment he could obtain the money from Moscow Rodney Bank; so that it will assist him in getting the overdraft facilities to cover the judgment amount. I had it served on Das's lawyers in Singapore. Das said if he was made a bankrupt then possibly the Moscow Rodney Bank would assist him in granting the additional overdraft.

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To assist him I proceeded to register the judgment in Johore Bahru with a view to taking Bankruptcy proceedings against him since he was a Malaysian citizen. After doing this, I decided not to proceed further in the matter. The matter ended there and no execution proceedings were ever taken on the judgment debt against Das. After 5th July, 1975 I saw Devan off and on and I remember seeing him some time in August, 1975 and asked him about the \$140,000/-. He just smiled and said he needed the money badly. Even after that I used to see him off and on and no mention was made by him in relation to the land transaction. All sorts of allegation of fraud, not bona fide purchaser, undue influence, breach of trust, titles defeasible began to be made against the defendants only after proceedings were taken for possession in the Sessions Court. Before proceedings were taken, a notice was taken to vacate the premises. There was no reply either from the plaintiff or her husband or their lawyers, setting out all or any of the allegations. No letter had been received by me from the plaintiff at any time or from her solicitors, even if a transaction was a fraud, which I deny, to rescind the contract. To my mind after accepting the \$92,000/- paid to Chung Khiaw Bank and then making all sorts of allegations puzzles me. If they did not want to go through with the contract for any reason, they should

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1981. (Cont'd)

have
[redacted]/returned the \$92,000/-. In short one cannot
blow hot and cold. Referred to D 58 - This is
CST 1 of the plaintiff. A copy of which was
given to me by Devan, some time at the end of
September, 1975. My copy did not have the stamp.
Devan or the plaintiff was never indebted to me.
I did not know them before the 30th March, 1974. I
only knew Devan by sight, not as a friend. The
first time I met him was on the 10th March in my
office. I knew who he was before I met him. Leader
of M.I.C. in Kulai. My firm or I have not raised
any bill for any legal work done and I have done
no legal work for them - either the plaintiff or
Devan. They have other solicitors. The stamp
duty office accepted my consideration of \$220,000/-.

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Cross-Examination
Dato' P. Suppiah
22nd October
1981

Cross-examination (Cashin)

I agree I and the 1st and 3rd defendants are
very close friends. I do not have a very good idea
of the 1st defendant's activities. It is correct
that the 1st defendant was not active in his legal
work. It is true I would be the one who would deal
with the correspondence and dictate letters. I
would in fact run the office. I was actively
engaged in the legal work of advocate & solicitor,
in Singapore and Johore. I knew in the latter part
of December, 1973 and beginning of 1974 the 1st
defendant had guaranteed an overdraft to Das. I
knew the extent was \$120,000/-. I did not know Das
personally. He was well known in Johore Bahru.
1st defendant did not relate to me in detail, in

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the manner in which he has given it, the reasons by Das why he had not been able to pay the overdraft at the Hongkong & Shanghai Bank. The first time I heard the details was when I was in Court here hearing it from the 1st defendant. I cannot recollect (he may or may not) whether the 1st defendant had told me that he was anxious about the repayment of the overdraft in Singapore. I was in the office on the 10th March, 1974 when Devan called. It is not true that Devan came to propose to the 1st defendant to put up the Kulai land as security for the loan guaranteed by the 1st defendant for Das at the Hongkong & Shanghai Bank, Singapore. 1st defendant was there. It is true on that occasion there was a discussion to get an increased overdraft from another Bank. It is true according to the 1st defendant that 1st defendant said he would see whether he could arrange for it. Q. I put it to you that if that attempt was genuinely made there was no real suggestion of sale at that meeting?

A. It is correct.

Devan
Q. It was because of that suggestion by/and 1st defendant agreeing to attempt to arrange such increased overdraft that P 27 came to be written on the 12th March ?

A. First Devan wanted to sell the property; before that could take place, he wanted the 1st defendant to find out whether the property could be charged for an increased amount.

In the High Court

No. 27
Defendants'
Evidence
Dato' P. Suppiah
Cross-Examination
22nd October
1981 (Cont'd)

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In the High
Court

No. 27
Defendants'
Evidence
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22nd October
1981 (Cont'd)

Q. If you read P 27 the answer to my previous question is Yes ?

A. I disagree. It is a matter of construction. The word "sale" I agree is not in P 27. I did ask for the title deed in order to charge the property for an increased amount. I used those words for the purpose of getting the title deed, and not for the purpose of getting an increased overdraft. Now I say the purpose of P 27 was to get an increased overdraft. Assuming that the Hongkong Bank had agreed to give an increased overdraft over and above what was given by Chung Khiaw Bank, I would not have prepared the discharge of the charges of the Chung Khiaw Bank. I would have written to Chung Khiaw Bank and told them that there was a possibility of getting an increased overdraft from another bank which could be the Hongkong Bank and ask them for their views. If ~~there~~ a 3rd party were to ask me to write to enquire whether they could get an increased over- draft facilities over and above the one given by present bank, I would write. I would ^{then} be writing as advocate & solicitor. The difference is in the bill. I would send the 2nd one a bill. The difference turns on the bill. Not always. I could be working on behalf of my brother and bill charged. The other reason is to assist Devan. It is true that a solicitor always assists or tries to. Shown P 28 - It is true I received the title deed as a solicitor because I gave the usual under- 10 20 30

taking. Q. Are you saying that you received the title deeds as solicitors in P 28 for Devan but you did not write as a solicitor for Devan in P 27 where you asked for the title deeds?

A. I wrote in P 27 as a solicitor, but to assist, but in P 28 I received as a solicitor to assist.

Generally a bank would not give the title deeds (without mentioning name). Now I say even/mentioning the name of the person for whom I was acting the Bank might not send the title deeds.

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Q. I put it to you you were acting as the plaintiff's and Devan's solicitor at that time ?

A. No. I disagree that the prime purpose of the meeting on the 10th and 23rd March was for the 1st defendant to get a security for the overdraft to Hongkong & Shanghai Bank. I disagree that there would be reason to seek an increased overdraft or sell the land other than to help Das. I do not know what was in the mind of Devan.

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Q. You knew that the 1st defendant was anxious to get a security and the whole exercise by the 1st defendant was to cover that guarantee ?

A. I disagree.

Q. I put it to you that all Devan intended was to have documents prepared so as to put up the land as a security chiefly for the 1st defendant?

A. I disagree.

Q. I put it to you what was suggested by 1st defendant and you was that the 1st defendant would pay off both Das's debt to Hongkong & Shanghai Bank and the amount

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In the High Court

No. 27
Defendants' Evidence

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Cross-Examination
22nd October
1981 (Cont'd)

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22nd October
1981 (Cont'd)

due on the overdraft to the Chung Khiaw Bank and that the land would stand as security for the total of \$220,000/- ? A. I disagree.

Q. I put it to you it was never your intention on 23.3.74 or at any time thereafter to buy the land? A. I disagree.

Q. I put it to you that you as the actual solicitor in the partnership then prepared what you call the necessary documents ?

A. I agreed to the preparation of the document.

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Q. Is it not pertinent that you and 1st defendant referred to the "necessary documents" as opposed to the documents of sale? A. The transaction was meant to be a sale to me. The documents prepared by me would necessarily be documents of sale and purchase. Generally it is not necessary that in a normal practice where the vendor has charged the land to the Bank that a solicitor acting for both vendor and purchaser would write for the title deeds. One would not ask necessarily for the title deed. At some stage I would have to call for the title deed. I would also ascertain the amount owed by the vendor. If there is a house on the land, I would check on the land, but I would not necessarily check on the Town Council to find out the owner of the house.

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Q. If you have proceeded in such a manner and after the sale it is discovered that the house belonged to the wife, then you would have a nice action for negligence against you by the purchaser?

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A. I do not know what action but the purchaser could take action against me.

Q. I put it to you that an ordinary solicitor would in such a situation wish to find out who the owner of the house is?

A. Not necessarily, land yes.

Q. I put it to you that you made no search at all regarding land or house?

A. I may or may not have made a search on the land. But not on the house.

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Q. I put it to you that you knew that Dr. Das was living very near 1st defendant's house?

A. I do not know. I agree I have never been to Devan's house before the 30th March, 1974.

Q. You are suggesting to this Court that you are prepared to buy land and house which you have never inspected.

A. I agree I cannot answer the question that if I was acting for a purchaser as a solicitor I would make sure the client knew what he was buying not necessarily.

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To 11.15 a.m.

Q. I put it to you that even if the idea was a sale to you so that the transaction on 30.3.64 was a sale, it was because Das was unable to pay the overdraft to Hongkong & Shanghai Bank ?

A. I disagree.

Q. I am showing you a copy of the proposed agreed facts prepared by you ?

I agree that in the proposed agreed facts prepared by me I said that the transaction on the 30.3.74

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In the High Court

No. 27

Defendants' Evidence

Dato' P. Suppiah
Cross-Examination
22nd October
1981 (Cont'd)

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Court

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had come about because the plaintiff's brother-in-lawone Das was unable to pay his overdraft with the Hongkong & Shanghai Bank in Singapore guaranteed by the 1st defendant on 8.10.73 for the sum of \$120,000/- I am prepared to put the document in marked P 110.

Q. I put it to you that what you put up to be agreed as a fact was the truth?

A. I disagree. It is partly leading to the negotiations for the sale of the property. Now I say that the transaction on the 30th March was was linked to the repayment of the overdraft to Hongkong & Shanghai Bank.

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Q. I suggest to you that where you yourself are buying land with a house you would most certainly make all the searches you could to ensure you knew what you were buying ?

A. Not necessarily with regard to the house. I was buying the property. The purpose of the 1st defendant coming along on the 30th March 1974 was to be a witness to the signature. I brought along Sivananthan for a ride, because at the time the 1st defendant had a new Mercedes and Sivananthan wanted to ride in the new Mercedes. Referred to P 30 - 31 - This was drafted by me, the typed portion. It was engrossed by my office. I also prepared a transfer and a confirmation.

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Q. Could you escape the fact that you were acting as solicitor as vendor as well as yourself?

A. Not true. I was acting for myself. No one was acting for the vendor. I consider P 30 as typed as a memorandum as to how consideration was to pass. I do not regard it as an agreement for sale. At P 31 I have typed it. "Signed by the above named." I intended the plaintiff to sign it. I do not agree that the vendor should be separately advised, in the circumstances. I do not agree that para (b) of P 30 was an unusual form of the passing for the consideration. The memorandum has not stated the time when the consideration was to be paid. I did not explain to the plaintiff that I could pay any time I like it. I would not know if any hypothetical counsel could have insisted a date of payment to be inserted. I would not have done it myself under the circumstances. I am implying that payment of the consideration would have been made within a reasonable time. A reasonable time is about a month.

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Q. I put it to you that a reasonable time will be 2 or 3 days or within a week at the outside ?

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A. I agree provided there was not an increased amount that had to be paid to Hongkong & Shanghai Bank.

When I arrived at the house on the 30th March I did not know about the increased amount at the Hongkong Bank, Singapore. I disagree that in the light of the manuscript that the transaction was not intended to be an outright sale. I disagree, because the manuscript, ~~allows~~ allows the plaintiff to re-purchase the property within one year. It gives an option

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In the High Court

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Defendants'
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22nd October
1981 (Cont'd)

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to repurchase. The manuscript is not a cloak on my dealing with the land. I agree I cannot sell the property to any one within a year. It is an out and out transfer. I agree normally an out and out transfer is where one completely and finally transfers a land to the transferee. This is also an out and out transfer with an option to re-purchase. I agree that the manuscript fattens my right as owner to sell the land, within one year. Q. Would you agree from the manuscript to have no meaning at all, the consideration must be paid within a reasonable time - 2 or 3 days or one week at the outside? A. I disagree in this particular instance.

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. If it had not been for this particular instance I would agree. I do not agree in this instance because of the events that took place subsequently about which I have given evidence.

Q. By the 7th April, you had not paid one penny to the 1st defendant under B? A. Yes, I agree.

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Q. By the 7th April the 1st defendant had not paid a penny to Hongkong & Shanghai Bank, Singapore?

A. It is correct.

Q. By 7th April you had not paid a cent to Chung Khaiw Bank? A. It is correct. I agree that after the events which recounted in my evidence-in-chief took place well after 7th April.

Q. If this transaction was intended to be an out and out sale to you, then you have paid the consideration by the 7th April, would you not?

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A. Yes, if it had not been for the events that took place afterwards.

Q. But all the events took place after the 7th April and what is the relevance of the events subsequent to the 7th April ?

A. It is relevant. One of the many subsequent events was the overdraft of Das with the Hongkong Bank which was \$121,000/-. I agree that a

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guarantor is entitled to enquire from the Bank whether the amount of the guarantee had been reached. I agree that if the 1st defendant had wanted to do that on the 1st April he could easily have done that. I could direct 1st defendant to pay if the sum owed to Hongkong Bank was only \$110,000/- My liability as far as the memorandum was concerned was only \$110,000/-. If I wanted it I could have paid \$110,000/- to the 1st defendant. I could have given a cheque to the 1st defendant for \$110,000/- on the 30.3.74.

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That would be correct if the overdraft amount was not \$121,000/-. My liability was only \$110,000/- under P 30. Q. What other documents were there on the 30th March for which you were liable ?

A. There are no other documents.

(Referred to para (a) of P 30 - It refers to P28.

On the 30th March I could have written out a cheque for \$103,000/- or \$104,000/- to Chung Khiaw Bank.

That would have ended my liability to the plaintiff, if not for the subsequent events. It is normal for

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payment to be made within a week at the outside.

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Cross-Examination
22nd October
1981 (Cont'd)

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The 1st defendant was present on the 30th March.
I cannot answer what he considers to be a reasonable time. Q. I put it to you that it was your duty to tell the 1st defendant to pay within a week at the outside? A. Yes.

Q. If he came back and said the amount due was \$121,000/- and not \$110,000/- you could do one of two things - you could give the 1st defendant your cheque for \$110,000/- or say "let us go and see the plaintiff" ? A. In this case I did not see the plaintiff. I saw the husband. I cannot remember the date, I saw Devan. It is between the 30th March and 27th April.

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Q. Are you suggesting that any written agreement with the plaintiff could be varied orally by the husband? A. Yes, depending on the circumstances.

Q. What was the point of getting the plaintiff to sign the memorandum then ? A. Because she was the registered owner.

Q. Would it not have been prudent as a lawyer to have reduced to writing any variation of the written agreement and get the plaintiff to sign a supplementary memorandum?

20

A. Under the circumstances it was not prudent.

To 24.10.81

IN OPEN COURT
This 24th day of October, 1981

Parties as before

DW 2 - on former oath, states -

Cross-Examination
Dato' P. Suppiah
24th October
1981

Cross-examination (Cashin) (Continues)

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I do not agree that up to 7th April, neither

I nor the 1st defendant had done anything towards the payment under the memorandum.

Q. I put it to you, neither you nor the 1st defendant ever intended to pay up the consideration expressed in the memorandum on the 30th March, 1974? A. I do not agree.

Referred to P 30 and 31 - Q. I put it to you that what the plaintiff and her husband had been prepared to offer was their land as security for the debt due from Das to Hongkong & Shanghai Bank, Singapore which had been guaranteed by 1st defendant?

A. I disagree.

Q. I put it to you that the plaintiff raised the question that the memorandum when first presented to her was not in the form of security ?

A. I disagree that she raised the point.

Q. I put it to you that she continued to raise the question as to the form of the memorandum and was not happy about it ? A. I disagree. I disagree that I assured her that the memorandum was a security in the form of a transfer. I disagree that I said words to that effect - "all-right all-right I will make it clearer" and dictated the manuscript

I disagree that she said why one year within which to get the property back.

Q. You finally calmed her down by saying - "look we don't want your property, it is only a security" ?

A. I deny that I said so.

Q. I put it to you that it was obvious to you that knowing you were a lawyer she was relying on you

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Defendants'
Evidence
Dato' P. Suppiah
Cross-Examination
24th October
1981 (Cont'd)

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In the High
Court

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Defendants'
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Datq' P. Suppiah
Cross-Examination
24th October
1981 (Cont'd)

to prepare a set of documents that were in effect a security? A. I disagree.

Q. I suggest to you that knowing that the memorandum was a security you did nothing to pay up the consideration mentioned in the memorandum?

A. I disagree. Yes, the Hongkong Bank, Singapore on the 27.4.74 was paid the sum of \$121,000/-

Q. I put it to you why the 1st defendant paid the sum was because he was called upon by the Bank to honour his guarantee ?

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A. That is for the 1st defendant to answer. I do not know whether that was the fact. I knew the limit was \$121,000/- because the 1st defendant told me. I did say earlier that 1st defendant told me. Q. I put it to you that \$121,000/- which you knew was paid by the 1st defendant was not as a result of the memorandum at all ?

A. I disagree.

Q. I put it to you that it was paid because Das had reached the limit guaranteed by the 1st defendant? 20

A. I disagree.

Q. I put it to you that when you first recounted the story about the 1st defendant paying the Hongkong Bank \$121,000/- in evidence-in-chief you said nothing about directing the 1st defendant to pay on your behalf? A. It is understood.

Q. I put it to you that by wanting to operate the account the interest would be increased by over \$1,000/- a month ? A. I agree.

Q. I put it to you there is absolutely no sense in Devan wanting to continue operating the account

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because the longer the account was being operated the greater is the interest?

A. I would not know. He may have the reason. Shares were linked with overdraft.

Q. I put it to you that the first time you came to know about the shares was when the Bank officer gave evidence?

A. Not true. Devan said he would stay on the property and pay compensation.

10 Q. I put it to you that under the manuscript Devan would by necessary implication be staying on the land in any event ?

A. I do not agree with that construction. Referred to P 31 - I agree with the first limb.

Q. So there was reason why she should not stay on the property for one year ?

A. There is no such arrangement. There is no expressed provision for her to stay on the land for a year.

20 Q. Are you saying that by saying that "I confirm, agree and undertake not to sell the land for one year", that this means she cannot stay in the house, during that period?

A. Yes, that is how I construe it. I was the draftsman of the memorandum. I dictated the manuscript. Q. Is there any express provision for

vacant possession to be given at any stage ?

A. No. Q. Are you saying that the plaintiff should vacate the house before you pay the \$220,000/- ?

In the High Court

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Defendants' Evidence

Dato' P. Suppiah

Cross-Examination

24th October

1981 (Cont'd)

In the High
Court

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24th October
1981 (Cont'd)

A. If I had paid the \$220,000/- she would have to vacate.

Q. It follows if you do not pay the \$220,000/- she does not have to vacate ? A. Yes, I agree.

Q. I put it to you that the plaintiff and her family were entitled to stay on the property at least until you paid the \$220,000/ ?

A. I disagree. Q. I put it to you that it is rubbish to suggest that Devan would offer to pay compensation to stay on the property when he was entitled to stay on the property? A. I disagree.

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Q. I put it to you that there was no such conversation at all between you and Devan regarding the operation of the account and Devan wanting to stay on the property for which he has to pay compensation?

A. I disagree. I did not explain to the plaintiff that she would have to vacate the property even before I paid the \$220,000/-. I was not her solicitor on the 30th March, 1974 but I being a solicitor was buying a property from the plaintiff

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Q. Do you not think that in the circumstances you should have explained to her that according to you that she has to vacate the property before you paid the whole consideration ? A. I do not think so.

Q. Do you think that if that is the real meaning of the manuscript that she would nevertheless have signed the memorandum? A. Yes.

Q. Do you think it would have been proper to suggest to her that she should be represented? A. No.

Q. In that case, the conclusion is irresistible that you wanted her to sign the memorandum in ignorance of its true meaning? A. No.

Q. I put it to you that it is plain fraud?

A. No. I am not saying that I dictated the manuscript unwillingly. It is not the construction that the plaintiff has to vacate at once and I can pay the whole consideration at any time I like.

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Court

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Cross-Examination
24th October
1981 (Cont'd)

10 Referred to P 32 - I agree this letter was in reply to my letter in P 27, P 28 and P 29. I remember saying that whenever I wrote to the Bank saying I was preparing discharges it was because Devan had indicated that he had buyers.

Referred to P 33 - Q. Are you suggesting that quite accidentally following the Chung Khiaw Bank's letter of the 10th June Devan had indicated he had a buyer? A. Yes.

Q. I put it to you that is not true ?

20 A. I disagree.

Q. I put it to you that all that you have done was to reply to letter of the 10th June deceiving the Bank into believing that you were preparing the discharges? A. I disagree.

Q. Will you agree that at no time up to 13.6.74 had you referred to the Bank and told them that on the 30th March, 1974 that you had bought the property ? A. Yes, it is true.

30 Q. Why didn't you ? A. There was no necessity to do so. Referred to P 80 - This letter is following my letter in P 33. Referred to P 81 -

Q. Would you agree that this letter is a threat

In the High
Court

No. 27
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Cross-Examination
24th October
1981 (Cont'd)

by the Bank to Devan to take action to foreclose the overdraft? A. No. In the last para the Bank says "Your account has been stagnant and interest is accumulating.

Q. I put it to you that it must be obvious to Devan that there was no benefit to leave the interest accumulating ?

A. I do not know what Devan had in mind.

Q. [REDACTED] I suggest to you that when you suggest that there was an agreement between you and Devan on or before 27th April, 1974 inter alia to keep the account alive so that he could operate it, the suggestion of such an agreement is untrue? A. No.

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Q. I suggest to you that if there was such an agreement to operate the account as you alleged Devan would have told the Bank about it ?

A. I cannot answer for Devan.

Referred to P 82 - Q. I put it to you that you have no knowledge of P 81 or P 82, at the time when you filed your defence in the present action ?

20

A. I cannot remember. I accept what you said that P 81 or P 82 were not exhibited at that time.

Q. I put it to you that if there had been a sale of the property to you by the plaintiff on the 30.3.74 before paying off any money Devan would have approached you and said "look you have bought the property and house - I am asked to pay the bank." ?

A. He never asked me the question.

Referred to P 83 - Q. Is the first 3 para consistent with he having sold the property to you ?

A. It is consistent from the facts.

Q. You think that having sold the property to you Devan and the plaintiff are entitled to create a further charge on the property ?

A. Yes, from the facts.

Q. I put it to you that you are only to leave of the 4th charge as in P 83 at the beginning of February, 1975 ? A. I agree.

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Q. I put it to you that your immediate reaction was to file a caveat ? A. No, it is not true.

Q. I put it to you that if you had known about the possibility of a further charge in September, 1974 you would have filed the caveat then ? A. No.

to 11.00 a.m.

Shown P 84 - Q. I suggest that this letter was written for the return of the deed and charges because the Bank needed them to create the fourth charge?

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A. I would not know what the Bank's intention was.

Shown P 35 - We wrote this letter.

Q. Are you saying that at this point Devan had indicated he had a buyer ? A. Yes.

Q. I put it to you it is far too much of a coincidence that every time the bank writes to you Devan indicates he has a buyer? A. I disagree.

Q. Why did you not send a copy of P 35 to Devan ?

A. It did not occur to me it was necessary.

Q. I suggest to you that you did not send that letter because it is not true that Devan said to you that

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In the High Court

No. 27
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Evidence
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Cross-Examination
24th October
1981 (Cont'd)

he had a buyer? A. I disagree.

Shown P 36 - This letter was not sent because there was another buyer. It is linked with P35. Referred to P 37 - I agree that the amount of \$116,000/- was due to the accumulation of the interest.

Q. In what way is that accumulation of interest helping Devan? A. He was keeping the account in anticipation of the shares going up. If he had re-purchased the property at this point of time in December, 1974 he would have to pay only \$121,000/-. If he had a buyer the buyer would be paying that amount.

10

Q. Why was it that in your examination-in-chief you made no mention of Devan having told you about the shares? A. I thought it was not important.

Q. I put it to you that Devan never mentioned the shares to you at any time at all ?

A. I agree that it is not in any of the correspondence exhibited.

20

Q. How can you use the word "re-purchased" when you have not paid for the property?

A. I had purchased the property but I had not paid the full consideration.

Q. Do you feel that in December 1974 you were entitled to pay for and obtain the property ?

A. Yes, if not for the variation i.e. operating the

account. Q. You feel that you are entitled to pay for the property at any time? A. Yes.

Q. And you still say the plaintiff has to pay compensation for staying on the land, although

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you had not paid the whole consideration ?

In the High Court

A. Yes, that was the arrangement.

No. 27

Shown P 38, P 39 and P 40 - Q. If it is true

Defendants' Evidence

you had bought the property were you trying to find a purchaser for Devan?

Dato' F. Suppiah
Cross-Examination

A. Whether he had a purchaser - if he had not got the purchaser, I would have returned the title deeds to the Bank.

24th October
1981 (Cont'd)

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Q. Why did you not write to the Bank at this stage P 40 that you had bought the land, if it is true? A. I thought there was no necessity.

Q. I put it to you that the agreement that you alleged you had with Devan regarding the variation of the memorandum took place after the 7th April?

A. Yes, now I say the variation must have taken place between the 30.3.74 to 27.4.74.

Shown P 26 - Para (iv) - Q. If he had transferred the property to you now could he have transferred the property direct to the buyers ?

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A. Prepare another transfer from me to the ^{new} buyer.

Q. I suggest to you on the 30.3.74 you presented to the plaintiff, certain sheets of blank paper - you instructed her where she should sign them ?

A. I deny that.

Q. I put it to you at a later stage you caused to be typed a confirmation which appears at P 56?

A. I deny that. - Q. I put it to you that was done on or before July 5th 1975 ? - A. I deny that.

Q. I put it to you, your pleadings in para 3 (iiv)

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Court

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Evidence
Dato' P. Suppiah
Cross-Examination
24th October
1981 (Cont'd)

is intended to be a transfer directly from
the plaintiff to another buyer ? - A. I disagree.

Q. Otherwise there would be no point in using
the word "direct" ? - A. I disagree.

Q. I put it to you that when the Hongkong Bank
debt was paid off by the 1st defendant on the
27.4.74 you never directed the 1st defendant
to pay on your behalf ? - A. I disagree.

Q. Are you positively saying that you directed
him or words to that effect to pay off the Hongkong
& Shanghai Bank ? - A. Yes. 10

Q. I put it to you, that the answer is untrue ?
A. I disagree.

Q. What was the purpose of buying the property ?

A. For the purpose of development. There was
development potential. I bought it because I
wanted to develop the land.

Q. With a view to making a profit? - A. Yes.

Q. Have you not looked into the cost of develop-
ment or considered a scheme for development ? 20

A. No. Shown P 41 - I cannot remember whether
I saw Devan about this time. Shown P 42 - I
cannot remember whether I checked again with
Devan whether the buyer was still there before.

I sent P 42. Q. Why did you not tell the Bank
that you have bought the property at this stage,
if you have bought the property ?

A. I felt there was no necessity.

Q. I put it to you that the fact you returned the
title deeds and did not tell the Bank that you had 30

bought the land means that you have never bought up to that point i.e. 30th January, 1975 ?

A. I disagree. Shown P 43- Q. In the light of the past history of the correspondence why did you suddenly find it necessary to let the Bank know that you had bought the land ?

A. Devan met me on or about the 2nd of February 1975 and he told me that he and his wife could not get any buyer and they did not have the means to repurchase the property; he wanted to operate the overdraft account up to the end of June when it was agreed that he would bring it down to \$92,000/-. He wanted to stay on the property up to the end of the year. And compensation figure was agreed.

Q. Why if you write at the bottom of P 40 to Devan "please let us know about the position in this matter", did you not write to Devan or Tara or both setting out the agreement with them as you just told us ? - A. I felt there was no necessity.

Q. I put it to you that there was no truth in what you say? - A. I disagree.

Q. I put it to you that as a solicitor you would have put the agreement you mentioned on record or informed the Bank and Devan ?

A. I felt there was no necessity. I disagree there was no such agreement.

Q. Are you saying that in P 43 that the sale mentioned there is the sale on the 30th March 1974?

A. Yes.

In the High Court

No. 27
Defendants' Evidence
Dato' P. Suppiah
Cross-Examination
24th October
1981 (Cont'd)

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In the High
Court

No. 27
Defendants'
Evidence
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24th October
1981 (Cont'd)

Q. Why did you not say so in the letter ?

A. There was no necessity for it.

Q. I put it to you that in the light of the correspondence with the Bank where again and again the amount was about to be paid off, the bank would have inevitably believed that you had just bought the property ?

A. I would not know what the Bank would have believed. The sale on the 30th March was not subject to the three charges.

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Q. So what was put in para 1 of P 43 was not true?

A. The word "subject" in that para means that the property had three charges, or, I was buying the property subject to the three charges. The Bank must have known that the property was charged with three charges. I agree there is no point of telling the Bank of what they already know. I do not agree that the 1st para by itself has one meaning only. I remember saying that I could have paid the \$92,000/- at any time. I mean to say in the last para, that if I could get a loan why not make use of it.

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Q. Are you saying that if you could not get a loan it would be the end of the matter ?

A. No. I do not agree that the necessary construction of the last para that if I could not raise the loan I would not pay the money. I was making arrangements to raise the loan, from my own Bank. I am not calling them. Because I never made the actual approach.

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Q. I put it to you that if you never made an actual approach then you were not making any arrangement for the loan? - A. I disagree.

Q. What do you mean then by saying making arrangements? - A. I have not approached any one.

Q. Why do you have to say - "if he is successful in raising" he will pay if you are going to send the money in any case?

10 A. If I am successful in raising the money from other sources, I will pay. It does not follow if I am not successful I would not pay. This letter was sent to Devan. Shown P 41, P 42 -

Q. If it was true that Devan had a buyer, you would not have returned the title deed?

A. I may or may not.

Q. You would have checked with Devan about the buyer, if there was one, before you returned the title deeds? - A. I disagree.

20 Q. I suggest that Devan could not have possibly come with the story of saying that he could not find a purchaser and he did not have the money to repurchase? - A. I disagree.

Q. Suppose you were acting for the Bank and you received P 43 from a firm of solicitors, would you not believe that the payment to the Bank would be made within a reasonable time?

A. I agree that a reasonable time is implied in the letter. Reasonable time there is three months.

30 Q. I put it to you that the second para suggests that you are going to act on it reasonably promptly

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Cross-Examination

24th October

1981 (Cont'd)

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Court

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1981 (Cont'd)

to pay? - A. I disagree.

To 2.30 p.m.

DW 2 - Cross-examination continues)

I cannot find/^{so far}whether P 81 and P 82 are in my
file. Shown P 43 - Are you not saying in the
letter that according to the/^{first}two paragraphs/⁽¹⁾You
have bought the property from Tara Rajaratnam ?

A. Yes - Q. (2) she has sold the property
subject to the three charges?

A. I have answered that. Q. (3)"send us the 10
document so that I can prepare a transfer from
Tara to me" ? A. Yes. - Q. (4) After the
transfer "I have it registered" ? - A. I agree.

Q. (5)"I will-then return the documents including
the transfer to you" ? - A. Yes.

Q. The sense of the first two paragraphs of P 43
is that you could become the registered owner,
subject to the three charges? A. Yes. I agree.

Q. I put it to you that it is very different
from what is set out in P 30 ? 20

A. I agree that P 30 does not say I became the
owner subject to the three charges.

Q. I put it to you that at P 43 you were suggesting
something which had nothing to do with the memorandum
at all? - A. It has everything to do with P 30
except that P 30 does not say "subject to the three
charges". I should say I am relying on the memo-
randum. Q. I put it to you that if you rely on the
memorandum you would have mentioned at P 43 and send

a copy of the memorandum to the bank?

A. Not necessarily so. Shown P 44 -

Q. Is it the case that in P 44 the bank did not agree to let you become the registered owner subject to the three charges? A. I do not know what the Bank had in mind. I agree that the Bank was not prepared to let me have the document of title unless the full amount of \$118,000/- was paid. Referred to P 99 - Yes, I caveated the land at the same time as I wrote P 43.

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Q. Are you not clearly saying again that you have bought the land subject to the three charges?

A. What I mean was transferring the said land in my favour subject to the said charges is that the property would be registered in my name subject to the charges; the overdraft account would still be operated by Devan.

Q. Are you suggesting that Devan can draw on the bank any amount he likes?

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A. No, he is still governed by the three charges and can draw only up to the limit of \$80,000/- as spelled out in the charges.

Q. Do you agree that if you had become owner of the land, subject to the three charges, you would have become liable to the amount due on the overdraft? - A. Yes.

Q. Can you point out to any document on which you could rely to force Devan to reduce the overdraft to \$92,000/-? - A. I do not have any document.

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24th October
1981 (Cont'd)

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Court

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1981 (Cont'd)

Q. Don't you think it prudent to reduce into writing the second agreement with Devan on or before the 2nd February, 1975?

A. Not necessarily. Shown P 99 (Statutory declaration) para 2 - Q. There is nothing in that statutory declaration to say that there was an agreement to pay any other interest up to the date of actual transfer? - A. I agree.

Q. You do not refer to any other agreement ?

A. I agree. Q. Will you agree that Tara executed a transfer on the 30th March, 1974 ? - A. Yes.

Q. There will be no interest due after the 30th March, 1974? - A. I agree.

Q. If there were these two agreements you would have referred to them in P 99 (Statutory declaration)?

A. There were these two agreements.

Q. Why did you not mention them in the statutory declaration? - A. Not necessary.

Q. You use the word "would" in para 1 although you said that Tara had transferred the property to you on the 30th March? - A. The first para cannot be read independently of the memorandum because it had been referred to it in the memorandum.

Q. By using the word "would" was it in your mind that the Chung Khiaw Bank had not been paid off and that the transfer would be executed only when the Chung Khiaw Bank had been paid off? - A. No.

Q. Did you not think that when supporting your application for a caveat, that you should have stated

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In the High
Court

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24th October
1981 (Cont'd)

Q. By filing the caveat what you were intending to do was to prevent further charges, which would be a liability on you ?

A. That was done to protect my interest. I filed the caveat in February 1975 and not sometime shortly after March, 1974 because I returned the title deeds to the property on the 30th January, 1975. Referred to P 85 and P 93 -

Q. If it is true that there was the agreement on or before 2nd February, 1975 between Devan and you, do you not expect Devan to have told Yeow & Chin about the agreement? - A. I cannot answer that

question. Shown P 82 - Do you not agree that all these letters clearly indicate that Yeow & Chin or the Bank knew anything about the agreement between you and Devan? - A. I agree.

Shown P 89 - It would appear from the 1st paragraph that Devan and the Bank had several discussions.

I agree there is no mention in the letter of the sale agreement in February, 1975 - beginning of February, 1975. I agree.

Q. I put it to you that if there had been truly a sale in March, 1974 and the agreement in February 1975, Devan would have mentioned it to the Bank?

A. I cannot answer the question. I do not know whether Devan had no reason not to mention the sale or the agreement of February 1975 in the discussions referred to in P 59.

Q. I put it to you it was clear from P 89 that it

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is the Bank and not you which is insisting on the reduction of the overdraft ?

In the High Court

A. Yes, I agree. Q. I put it to you that the reason why Devan Got Anandan to pay \$40,000/- was because of the Bank's request and not because of any alleged agreement to reduce the overdraft between you and Devan? - A. It is not true.

No. 27 Defendants' Evidence Dato' P. Suppiah Cross-Examination 24th October 1981 (Cont'd)

To 8.30 a.m. 25.10.81

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IN OPEN COURT
This 25th day of October, 1981

Parties as before

DW 2 - on former oath, states:

Cross-examination (Continues)

Dato' P. Suppiah Cross-Examination 25th October 1981

Shown P 89 - Q. I put it to you that the reason why Devan got Anandan to pay the \$40,000/- was because of the Bank's request to reduce the overdraft? - A. I do not know. Q. I put it to you that the overdraft was reduced because of this request and not because of any alleged agreement between you and Devan? - A. I disagree.

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Q. I suggest to you that you only discovered that the overdraft had been reduced to about \$91,000/- at the end of June, 1975? -

A. I do not agree. Q. I put it to you that once you knew by the end of June, 1975 that the overdraft had been reduced by \$91,000/- you concocted the story about the agreement with Devan?

A. No, it is not true.

Shown P 46 - I agree that this is the first letter

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I sent since I sent P 43. In P 43 I sent a copy of the letter to Devan. P 46 is really a request of P 43. Q. Is it true that on the 22nd June when you sent P 46 you were still maintaining to the Bank what you said in P 43 on the 2nd February, that the transfer was subject to the three charges? A. I do not agree. What I am saying in this letter is a request to have the transfer registered in my name subject to the three charges. Q. That is because you had on the 2nd February in P 43 told the Bank that the plaintiff had sold the property to you subject to the three charges? - A. That is not the construction. I repeat it is a request to the bank to be the registered owner subject to the three charges. Shown P 46 - It is true that 2nd para of P 46 says the request was for the purpose stated in P 43. Q. I put it to you that ⁱⁿ P 46 you intended the bank to believe that the position was exactly the same as on the 2nd February as in P 43? A. I do not agree. We undertake as spelled out in (a) and (b) in P 46. I agree that I first wrote ~~me~~ the 30th August, 1975. Then I deleted it and wrote down "the end of 1975". Q. I put it to you that by the end of June, 1975 you had no intention whatsoever of paying off the bank within the next fortnight? - A. Yes, and no. If the bank had acceded to my request by returning the title deeds and making myself the registered

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owner subject to the three charges, I would not pay off the bank. Otherwise I would have to pay off the Bank at the end of June, i.e. the date on which Devan had agreed to bring down the overdraft to \$92,000/-.

In the High Court

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Cross-Examination
25th October
1981 (Cont'd)

Q. I put it to you that if you intended to pay the bank off by the end of June, if your request was refused, you would have said so in this letter? - A. There was no necessity.

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Q. When I test your story about the agreement between between you and Devan against the correspondence at the time, when there was no mention at all of such an agreement, you replied there was no necessity? - A. That is correct.

Q. I put it to you that on the 26.6.75 you did not know the amount of Devan's overdraft? - A. It is true. Shown P 48 - I agree there was no copy to Devan. Shown P 49, 50 - Q. Are you saying that on the 29th June that the Bank would allow you to become the owner subject to the three charges? - A. No. The bank manager was on the phone with me. I agree that "transferred" in the last para refers to transfer to me.

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Q. Does the 3rd para not mean that the Bank manager agreed to the property being transferred to you subject to the existing charges?

A. No. He had merely given me an indication that he would agree. However it was subject to what his solicitor has to say. There was no transfer

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Court

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25th October
1981 (Cont'd)

subject to the three charges.

Q. From what you said then Yeow & Chin did not agree to the transfer to you subject to the three charges? A. It appears to be so.

Q. I put it to you that the word indicated in the 3rd para is the same as saying as "told"; which would tantamount to saying the bank manager had told Suppiah that he would agree to the property being transferred subject to the three charges? - A. I agree that in the context in which it was said, it does not suggest that the Bank had agreed. Shown P 51 - 90 - Yeow & Chin wrote to Devan on the 30th June in P 51. On the same date I wrote to the Bank enclosing three letters. I cannot remember what but the letter refers to the legal charge. I did not send a copy of P 90 to Devan or the plaintiff.

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Q. You did not send any copy of any correspondence from the 2nd February, 1975 in P 43 onwards ?

A. It is true. Q. I put it to you that the \$92,000/- was mentioned in the letter? - A. I agree.

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Q. I put it to you that in P 52 it was the first time that you came to know that the overdraft had been reduced to below \$92,000/- ? A. Yes, by way of letter. Q. Do you agree that Yeow was not

acting for the plaintiff in the matter of the memorandum nor in the matter of the two agreements between you and Devan? - A. I would not know.

But from the request made ^{by} Yeow & Chin in P 49 they

were in fact acting for the registered owner.

In the High
Court

Q. If Yeow had acted for the plaintiff in the memorandum and the two agreements, they would most certainly have stated in P 52 that despite the fact that you were about to pay off the bank that it was agreed that Devan could continue to operate the account and the plaintiff could stay on the property until the end of 1975?

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Cross-Examination
25th October
1981 (Cont'd)

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A. I would not know what Devan had told Yeow and what Yeow would have written.

Q. I put it to you that you well knew that Yeow & Chin were not acting for the plaintiff in the matter of the memorandum and the agreements?

A. I disagree. Q. I put it to you that you knew in the beginning of July, 1975 you were going to pay off the 2nd half of the consideration mentioned in P 30, 5 months after the memorandum had been signed by the plaintiff? - A. Yes.

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Q. I put it to you that you deliberately did not send the plaintiff a notice stating your intention to pay off the bank and thereby giving her a chance to repurchase the property? - A. I deny that.

Q. I put it to you that by not sending the plaintiff copies of the correspondence or such a notice you knew that the bank would be paid off by you without her knowledge? - A. I disagree.

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Shown P 54 and 91 - P 55 - I do not know whose handwriting it is in P 55 - Yeow & Chin would have the original, P 55 A is the original. In P 55 A it is not in my handwriting. It would appear

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Court

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to me that the signature at the bottom is mine. Perhaps Yeow & Chin after receiving this letter must have come to my office with this letter and with the document mentioned in long hand and handed over the document after writing it down in long hand. I see the date 5.7. is somewhat altered. Referred to P 56 A - I agree that there is a rubbing off at the place where the word "July" is mentioned. I do not know why there are alterations made to the date in P 55, P 55 A and P 56 A, where in each case the date is 5th of July, 1975. Shown P 54 - Q. Is it possible that the date had been somewhat altered in P 55, P 55A and P 56 A that the transfer was not effected on the 5th July, 1975?

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A. It must have been on that date. Shown P 54 -

Q. Why do you want the completion at 10 a.m. sharp?

A. It is the conveyancing practice. Shown P 57 -

I did not sign it until the 5th July, but my name as purchaser was typed in before I went to Kulai on the 30th March, 1974. I cannot remember whether I was present when 1st defendant signed the attestation in respect of my signature on the 5th July even though the attestation clause reads ~~my~~ signature was done in 1st defendant's presence. My signature must have been affixed in the presence of the 1st defendant - whether he attested it immediately or after I left I cannot remember. Referred to P 57 front page -

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Q. You have told us that the plaintiff signed the transfer on 30th March, 1974, she did not sign it therefore on the 5th July, 1975 ?

A. It is true that looking at P 57 itself it is not true that the \$220,000/- had been received. Looking at P 57. It is true that the attestation by 1st defendant stating that the plaintiff signed in the 1st defendant's presence on the 5th July, 1975 is not true. It is ^{not} true also of the attestation by 1st defendant that the plaintiff said she was of full age on 5th July. It is true therefore that all the facts alleged to have taken place - (i), (ii) and (iii) in the attestation by the 1st defendant did not take place on the 5th July.

Chin

We know for sure that the plaintiff executed P 57 on the 30th March, 1974. We know for sure that the plaintiff did not subsequently appear before the 1st defendant in connection with the instrument of transfer. Whether it is proper for the transfer to be dated the 5th July is a matter of law and argument.

Cross-examination (continues)

Q. If Yeow & Chin were acting in the matter of the memorandum and the agreement and the discharge, do you think that their bill to Devan would be for \$90/- only ? - A. Why not.

Shown P 62 - It is a transfer. Shown P 96 - I agree that in the C.T. the transfer is stated to be registered on the 22.7.75.

In the High Court

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Q. As a practising Advocate & Solicitor after forwarding a transfer for registration, but before registration, where a property has been repurchased is it not possible to request the land office for the return of the 1st transfer documents and to forward a fresh transfer to the land office in order to avoid stamp duties ?

A. I have not done it. And it is not possible.

Q. In the defence you said if Devan found another buyer he would transfer the land direct to the new buyer? - A. Yes - I sold the land to the 1st

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defendant; I transferred the land to the 3rd defendant. Q. When do you say the sale to the 1st defendant took place? - A. On or about the 3rd week of July, 1975. I paid the \$92,000/- to the Chung Khiaw Bank. I borrowed from the 1st defendant. I did not physically receive \$92,000/- from the 1st defendant and pay it to Chung Khiaw Bank. I asked him for the money and it was paid by way of cashier's order, drawn on the 1st defendant's account.

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To 2.30 p.m.

(It is agreed by 2nd defendant that while he is in the witness box the objections if any, would be made by Paramjothy on his behalf and Cashin has no objection to it. It is also made clear by the 2nd defendant that as far as his understanding with Paramjothy was concerned that from the time the 2nd defendant gave evidence in the witness box that Paramjothy would do the objections on his behalf.)

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DW 2 - Cross-examination (Continues)

In the High
Court

I paid the \$92,000/-

No. 27

Q. I put it to you that \$121,000/- paid to
Hongkong & Shanghai Bank and the \$92,000/-

Defendants'
Evidence

paid to Chung Khiaw Bank were in fact paid by
the 1st defendant? A. It is not correct.

Dato' P. Suppiah
Cross-Examination
25th October
1981 (Cont'd)

Q. I put it to you that you and 1st defendant
decided to tell this story about the \$92,000/-

(that it was a sale from you to the 1st defendant)
only

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/after the 3rd defendant had amended his defence
wherein he had admitted that he was the nominee
of the 1st defendant? - A. I do not agree.

Q. I put it to you that you appeared in the register
as the true registered owner of the property
after the transfer from the plaintiff to you had
been registered? A. I agree.

Q. I put it to you that ever since the 3rd
defendant's name appeared on the register as the
owner all the courts had been led to believe that
there was a sale from you to the 3rd defendant?

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A. It was transferred into his name. How the Courts
look at it I do not know.

Q. I put it to you that when the 3rd defendant
admitted by his amendment that he was the nominee
of the 1st defendant, you and the 1st defendant
concocted a story whereby you meant to have sold
the property to the 1st defendant? - A. No.

Q. I put it to you that the concocted story was
invented so that the 1st defendant could say that
the property was his and that the 1st defendant

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Court

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used the 3rd defendant as his nominee ?

A. It is not true. (Shown the written submission of the 2nd defendant in the Sessions Court, Johore Bahru Civil Action 146/76 - marked P 111) - I did say in my submission "that in the present case the 1st defendant (i.e. the plaintiff here) was the original owner of the land and the plaintiff (i.e. 3rd defendant here) did not buy the land in question from her direct but bought it from her predecessor-in-title in whom the land was registered before it was transferred to the plaintiff (i.e. the 3rd defendant)".

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Q. I put it to you you are admitting in that submission that the land was bought by the 3rd defendant from you and not being bought by the 1st defendant from you as you now say?

A. The word "bought" was used in a loose sense. In actual fact it was sold to the 1st defendant, because if one looks at the transfer, one will get the impression that it was the 3rd defendant who bought it from me. Q. Can you say when you said the plaintiff (in C.A. 146/76) bought the land from a predecessor-in-title, how much more definite can you be that you were saying that the 3rd defendant bought the land from you?

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A. When I made that submission I was in fact the predecessor-in-title. I do not know whether besides me Majid or the President knew what I had in my mind, or what I knew.

Q. You misled deliberately the Judicial Commissioner

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who believing that the 3rd defendant became the registered owner of the piece of the land on execution of the memorandum of transfer for valuable consideration?

A. It is a correct statement. There was consideration. Q. I am suggesting to you that the

3rd defendant had become registered owner for valuable consideration, the Judicial Commissioner understood it to be that the 3rd defendant provided the consideration? - A. I do not know.

10

Q. The Judicial Commissioner went on to say that the plaintiff (i.e. the 3rd defendant) is a bona fide purchaser of the land? - A. Yes, he did say that. Q. That from the time of the submission in July, 1976 onwards that you either as counsel for the 3rd defendant or on your own behalf as a defendant, you have misled every Court in the land into believing that the plaintiff i.e. the 3rd defendant had in fact bought the land from you?

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A. That is the impression one would get, if one looks at the transfer. It was not transferred for love and affection.

Q. And in your defence to the present action there is no plea, that you sold the land to the 1st defendant? - A. That is stated in the defence in pleadings - Para 12.

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Q. There is no explanation in the defence that when you said there was a transfer to the 3rd defendant from you on 31.7.75 there was no mention that the transfer to the 3rd defendant was as nominee of the

In the High Court

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Defendants' Evidence

Dato' P. Suppiah

Cross-Examination

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Court

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1st defendant to whom you had sold the land ?

A. One does not explain in the defence.

Q. You do not think as an officer of the Court even as late as this defence that you should come out with the true position ?

A. I am obliged. Being an officer of the Court irrelevant. Q. Do you not agree as an advocate & solicitor a higher degree of duty is imposed on you to explain the full truth than a layman?

A. There is no degree of duty at all.

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Q. I put it to you that from the 30th March you were acting as nominee for the 1st defendant?

A. I disagree.

Q. I put it to you that it was 1st defendant who paid the money? - A. It is not true.

Q. I put it to you that there was no question of you directing the 1st defendant to pay the Hongkong & Shanghai Bank, Singapore ? - A. I disagree.

Q. I put it to you that the 1st defendant had to pay the Hongkong Bank that he had an obligation to the Bank to honour his guarantee ?

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A. I disagree. Q. I put it to you that in commencing action against Das in Singapore for \$149,000/- you were again acting as nominee for the 1st defendant? - A. I disagree.

Q. I put it to you that Das never said to you to commence proceedings against him (Das) because this would assist him to persuade Moscow Bank to pay up?

A. I disagree

Q. I put it to you that Das never said to you if you get the money give it to the plaintiff?

A. I disagree. - Q. I put it to you that Das never said register the Singapore judgment in the High Court, Johore Bahru as this would assist him to get Moscow Bank to make payment?

A. I disagree. Q. I put it to you that Das never suggested to you that you should make him a bankrupt for the same reasons? - A. I disagree.

10 Q. I put it to you that throughout the rest of the year Devan never kept coming to you saying he had a buyer every time you wrote to Chung Khiaw Bank asking for statement of Devan's account? - A. I disagree. Q. I put it to you that there never were two verbal agreements between you and Devan as suggested by you ?

A. I disagree. Q. I put it to you that the memorandum P 30 was never intended as an out and out sale by the plaintiff to you, or to you as nominee of the 1st defendant? - A. I disagree.

20 Q. I put it to you that on the 2nd February, 1975 you deliberately deceived the Chung Khiaw Bank into believing that the plaintiff had sold the property to you subject to the three charges?

A. I disagree. Q. I put it to you that you and the 1st defendant discovered at the end of June or beginning of July, 1975 that the overdraft at the Chung Khiaw Bank had suddenly been reduced to below \$92,000/-? - A. I disagree.

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Q. I put it to you that the 1st defendant and you in collusion then decided to pay off the Chung Khiaw Bank in order that you may become the registered owner? - A. I disagree.

Q. I put it to you that for that purpose you used an undated transfer signed by the plaintiff on the 30th March, 1974 which you and 1st defendant had obtained by persuading the plaintiff to put her land up as security by way of a transfer? - A. I disagree.

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Q. I put it to you that you deliberately hid from the plaintiff and Devan the fact that you were paying off Chung Khiaw Bank so as to avoid any reaction from them? - A. I disagree.

Q. I put it to you that you and 1st defendant in collusion decided that you had to have the name of a person who could pose as a bona fide purchaser for value of the land? - A. I disagree.

Q. I put it to you that for that purpose the two of you i.e. 1st defendant and you persuaded 3rd defendant to lend his name as bona fide purchaser for value? - A. I disagree.

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Q. I put it to you that you and the 1st defendant obtained the transfer of the property to the 3rd defendant three weeks after the property had been transferred into your name so as to defeat any attempt the plaintiff might make to recover the land? - A. I disagree.

Q. I put it to you that when acting for the 3rd defendant as counsel in Civil Action 146/76 you

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deliberately misled the President of the Sessions Court and later the Judicial Commissioner into believing that the 3rd defendant became the registered owner for valuable consideration and was the bona fide purchaser for value?

A. I disagree. Q. I put it to you that for the next five years you did everything in your power to hide the true state of affairs ?

A. I disagree. Q. I put it to you, you also did everything in your power to prevent her action heard so that there could be a trial on the merits? - A. Everything was done legally.

To 27.10.81

IN OPEN COURT

This 27th day of October, 1981

Parties as before.

Subra Naicker says he still cannot find H.L. Tan and he is made to understand he is overseas.

DW 2 - on former oath, states-

Cross-examination (Continues) (Cashin)

Q. Do you agree that under section 344(1) of the National Land Code it provides for the registration of land of a person as a trustee? - A. I agree.

Q. You must have known that when the land was transferred to the 3rd defendant by you, that the 3rd defendant was your trustee?

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A. I do not know whether nominee is a trustee.
He is holding on trust as nominee. I would
agree that the 3rd defendant was holding on
trust for some one else.

Q. Are you saying that you do not know anything
about the law of trust? - A. I know something.

Q. I put it to you that you know enough about
the law of trust that by the sale of the property
to the 1st defendant and the transfer by you to
the 3rd defendant, the 3rd defendant was in fact
holding the property on trust for the 1st defendant?

10

A. I would say more as a nominee.

Q. I put it to you that on the register, the 3rd
defendant should have been registered as the
trustee? - A. I do not think so.

Q. I put it to you that when you came to act for
the 3rd defendant in the Sessions Court Civil
Action No. 146/76, you should have insisted that
the register be amended by order of court, to
reflect the true position? - A. I disagree. I
was responsible for drafting the Statement of Claim
in Sessions Court C.A. 146/76.

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Q. See the second para? - A. I agree that I drafted
that para. Q. Do you remember that your story
of the two agreements with Devan was that Devan
should pay compensation for staying on the property?

A. Yes. Q. If it was true that Devan and the
plaintiff were occupying the land and premises free
from any rent (para 2) how do you explain that

Devan must pay compensation for staying on the land? A. When I said "free" in the statement of claim it means the rent, it does not relate to compensation. Q. The compensation could only have been in respect of occupation of the premises and nothing else? - A. Yes.

Q. See your present defence in para 3 (j)(3) ?

A. I agree that he would stay on the property by paying compensation.

10 Q. See para 2 of the statement of claim in C.A. 146/76 ? - A. Yes, I said the defendant continued to remain in occupation. I am distinguishing compensation from rent.

Q. I put it to you that from para 2 of the statement of claim in C.A. 146/76 it is perfectly clear that there was no such agreement as suggested by you between you and Devan ?

A. I disagree. Q. You will recall in the memorandum at P 30 at (b), there was no agreement that the plaintiff should pay any interest in respect of the \$110,000/-? - A. I agree.

20 Q. It is also stated in (b) that the sum payable by you is limited to a sum of \$110,000/- ? - A. Yes.

Q. You have also told us that in regard to your dealing in this matter, you dealt with Devan and the plaintiff? - A. Yes. Q. In this memorandum, you dealt with the plaintiff? -

A. Yes, signed by the plaintiff, witnessed by the husband.

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Q. I put it to you that as an advocate and solicitor you know very well that in all the circumstances, if you wanted to vary the memorandum, you would have to go back to the plaintiff and not to Devan as you did in the memorandum itself? A. I disagree.

Cross-examination (Chin)

Q. It was put to you that you were the 1st defendant's nominee on the 30.3.74 ?

A. I am not his nominee.

10

Q. If you were in fact the 1st defendant's nominee would you have to get the 1st defendant's approval to the insertion of the manuscript? - A. Yes.

Q. Did you get the approval? - A. I did not get.

Q. What was the result of C.A. 146/76?

A. Judgment was in favour of the 3rd defendant.

Q. What was the result of the O.S. 95/76 in the High Court by the plaintiff ?

A. The plaintiff (here) did not proceed to obtain an order of court to extend the caveat. As a result the caveat lapsed. Yes, there was an action in C.S. 261/77 by the plaintiff against the three defendants. Yes, I defended the 3rd defendant in that Civil Suit. I made various applications in that action; eventually the action was dismissed with liberty to file fresh action. I made certain interlocutory applications in the present action.

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(Chin wishes to say that he is asking these questions as a follow up of Cashin's questions

and that he is doing it out of his own volition)

In the High
Court

Q. Did you use any power to prevent the plaintiff's action being heard on the merits as the question was put ? -

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A. I have not used my power in the sense of influencing to prevent the action from being tried on the merits.

Q. From the 23rd March, 1974 i.e. the second meeting between me and Devan when you decided to buy the property to the 31st July, 1975 it is the date of transfer to the 3rd defendant when the property was transferred to the 3rd defendant were you acting for yourself? - A. Yes.

10

Q. Would you have agreed to purchase the property if you had known on the 30th March, 1974 that the overdraft of Das stood at \$121,000/- ?

(Chin: Cashin is not entitled to object. It is only Paramjothy who is entitled to object.)

A. I would not have agreed. Q. Why?

20

A. The purchase price is \$220,000/- and if I had to pay Hongkong & Shanghai Bank \$121,000/- plus Chung Khiaw Bank \$103,000/- plus, both these sums would exceed the consideration.

Shown P 49 - Q. You did not pay the plaintiff the sum of \$140,000/- requested in that letter?

A. I did not agree to pay because the agreed figure with Devan was \$92,000/-.

Q. What was the amount outstanding in the account of Devan when P 49 was written?

30

A. According to P 47 the sum was \$90,893/-.

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Q. If you in fact had paid the sum of \$140,000/- the difference between that sum and the amount due to Chung Khiaw Bank as reflected in P 47 would have gone into whose pocket?

A. It would have gone into Devan's pocket, Yeow & Chin or the Bank.

Q. When you received your bank statement and you see a sum of \$92,000/- is credited to your account, would you not be curious where it came from?

A. I would, if I did not know the source.

Q. Would you not have gone to the Bank to make enquiries? - A. I would.

Shown P 30 - Q. Would you not have paid the amount under B within a few days, if not for the fact that Das's account had swelled to a sum of \$121,000/-.

(Cashin: I object.)

Cashin

The way the question is turned suggests the witness got to know that the overdraft account of Dr. Das was \$121,000/- within a few days. It presupposes that the overdraft reached \$121,000/- within a few days of the 30th March, 1974. I object. The witness has already said that he did not know about the \$121,000/- until the 7th April.

Chin: I will rephrase the question.

Q. There are two sums payable under (A) and (B) and you were asked what would be the reasonable period for the performance of the contract? What was the reason for the delay in making the payment

of \$121,000/- and \$90,000/- ?

A. There were many reasons, one of which was that the amount payable to the Hongkong Bank was not \$110,000/- as stated in para (B) of P 30 but \$121,000/-. And as a result I had to seek permission from Devan to pay the excess amount so as to adjust the consideration in (A) and (B).

Q. Did Devan or the plaintiff object to the late payment? - (Cashin: I object - That pre-

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supposes that Devan and the plaintiff knew that payment had been made. It is a thoroughly loaded question and a fairly unfair one. There has been no evidence at all from any one that the plaintiff knew first that 1st defendant had paid the Hongkong Bank and secondly that the plaintiff knew that the payment to the Hongkong Bank by the 1st defendant was done at the direction of the 2nd defendant, thirdly that the plaintiff knew that 2nd defendant had paid the 1st defendant in terms of para (B) of P 30. And as far as Chung Khiaw Bank was concerned any question asked should be separated from questions directed to para (B).

20

Chin: I will rephrase it.

Q. Did the plaintiff or Devan write to you and asked to make the payment as required under (A) and (B) ?

A. I did not receive any letter from the plaintiff or Devan. Orally there was an arrangement to pay the two sums between myself and Devan.

Q. Since the memorandum constituted according to you an outright sale and you had said that the

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period of performance would on the outside
be seven days, was 7 days a reasonable period
in the circumstances of this case?

(Cashin: I object, in the light of the answer
that "if this was an out and out sale as you
have maintained, you would have paid the consi-
deration by the 7th April, 1974, and the answer
was Yes" and the fact the witness said that the
after events all occurred after the 7th of April.)

(Court - I disallow the question)

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Q. Since the property was charged to the Chung
Khiaw Bank what steps would have to be taken to
discharge the three charges?

A. I have recounted the steps I took after 30th
January, 1975. These steps were what another
person in the same circumstances would have taken.
Shown P 28 - Would you have released the money
to the Bank, if the charges had not been discharged?

A. No. Q. Did the plaintiff or Devan at any
time approach you to repurchase the property ?

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A. No. Q. Was there a need for you to make
a search at the Town Council to ascertain who was
the owner of the house at the time when the pro-
perty was registered?

(Cashin: I object. The question asked by counsel
for the 1st defendant must be relevant to the 1st
defendant, unless he is going to try to discredit
and obviously he is not, otherwise he is usurping
the function of 2nd defendant's counsel)

(Court: I disallow the question - the question
should be asked by Paramjothy)

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Q. In P 30 it is stated that the transfer of the land also includes the house. Did the plaintiff or Devan tell you that the house was registered in Devan's name at any time ? - A. No.

Q. When the plaintiff signed the certificate did she tell you that the house was not registered in her name? - A. No.

Q. When you agreed to purchase the property were you only interested in the land? - A. Yes.

10 Q. You said you did not inspect the property prior to 30th March, 1974 - why did you not inspect it prior to 30th March, 1974 ?

A. Because I knew where the property was and I made general enquiries and also I had D 1 with me.

Q. Under the National Land Code does the transfer of a piece of land also involve the transfer of the house? - A. Yes.

20 Q. If the plaintiff had made an offer to repurchase the land from you within one year from 30.3.74 would you have sold it back to the plaintiff? -

A. Yes. In this case it would be \$220,000/- less what was paid to Hongkong & Shanghai Bank. The manuscript is not a clog on outright sale. It is an option to repurchase.

Q. When the \$92,000/- was paid to Yeow, was it accepted with reservation? - A. No.

30 Q. It has been suggested that the 3rd defendant was used as a shield or barrier to defeat the plaintiff's title. Was there a need for such a step to be taken? - A. No.

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Q. You were asked whether there was a need for the plaintiff to obtain independent advice, from you?

A. I said there was no necessity for it because I was purchasing the property from her. Further the price paid is a fair one.

Referred to P 56 - When the bundle was prepared the plaintiff's solicitors did not tell me that P 56 was^a blank paper, signed by the plaintiff.

Shown P 56A and B -/Can you tell whether the plaintiff's original signature appeared in P 56A and P 56B? - A. The signature on P 56 B is not a carbon signature.

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Shown the memorandum of retainer of solicitors in Sessions Court C.A. 146/76 - D 27 - The plaintiff's and the husband's signatures appear on the memorandum.

Q. If the plaintiff had repurchased the property within one year, the plaintiff would not have to pay the interest? - A. Yes.

Q. You have said that Devan had agreed to pay compensation of about \$6,000/- When you paid \$92,000/- to Yeow there would still be a shortfall of about \$6,000/- Did the plaintiff or Devan ever demand that sum from you? - A. No.

20

Q. You said that you bought the property subject to the three charges. What would be the extent of your liability to the Bank and Devan ?

A. At the end of June, 1975 - \$92,000/-

Q. (Shown P 99) - Could any one have obtained a copy of this Statutory Declaration from the Land Office? - A. Yes.

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Q. (Referred to affidavit sworn by Subra Naicker on the 10th December, 1979 - Federal Court Civil Appeal No. 201/79.

To 2.15 p.m.

Shown para 7 of the affidavit of Subra Naicker - (Ronald Khoo says he is not going to take up this point later) - marked D 28 - Witness reads para 7.

There is a ^{counter-claim} in this action in relation to the caveat filed by the plaintiff in respect of the land. Referred to defence to counter-claim Para 2 (b).

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Q. When you dealt with Devan you were dealing with him in what capacity ?

A. As the owner of the property and as the agent of the registered owner.

Referred to P 49 - Q. Arising from this letter could your firm have written subsequent letters direct to the plaintiff? - A. I cannot, because etiquette requires that once a person is represented by an advocate and solicitor all letters must be written to him or her solicitors.

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Referred to D 2, D3, D4 - They all bear the date 5th July, 1975. It was the date the three charges were discharged.

Q. In this suit were interrogatories admitted on any of the defendants? - A. No.

Q. If interrogatories were admitted by the plaintiff could the plaintiff have asked any of the defendants in what way they were connected touching upon the sale of the property?

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Cashin

I maintain this is purely one for submission and it is a hypothetical question on which submission could be made.

Court - Question disallowed.

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Cross-examination (Ronald Khoo)

10 Q. Did the plaintiff ever admit as far as the 3rd defendant was concerned any interrogatories on the 3rd defendant as to whether or not he held the land as nominee or trustee?

A. No. I transferred the property to the 3rd defendant on the 31st July, 1975. I did not tell the 3rd defendant at the time of the transfer about the land.

Q. Did you tell him, how you came to be holding the land? - A. No.

Q. Would I be correct in saying that the first time you told the 3rd defendant about this land was around the 30th January, 1977? - A. Yes.

20 Q. On the 12th May, 1976, was the 3rd defendant present in Court, in connection with Civil Action No. 146/76? - A. He was not.

Q. You were acting as solicitor for the 3rd defendant who was the plaintiff, in that action?

A. Yes. Q. Did you tell him about the contents of the statement of defence filed in those proceedings at the time you received them as solicitor? - A. No, I did not.

Q. Would it be correct to say that the 1st time

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you told him about the statement of defence was on the 30th January, 1977? - A. I cannot remember the exact date. Around that period.

Q. Would it be correct in saying that in all the Court proceedings connected with this land, your firm was acting as solicitors for the 3rd defendant?

A. Yes. The 3rd defendant left the entire conduct of the proceedings, except this case, in my hands. As regards the original statement of defence for the 3rd defendant it was prepared by my firm.

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Re-Examination
27th October
1981

Re-examination (Paramjothy)

P 27 came about because Devan wanted to sell the property. Before he did that, he wanted the 1st defendant to find out whether the property could be charged for an increased amount. As a result this letter was sent. If the Hongkong & Shanghai Bank had given an increased overdraft following the exploration made by the 1st defendant I would have asked Devan to see the right person in the Hongkong & Shanghai Bank, through the 1st defendant.

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Q. Why did you make the search of the house?

A. Because the third charge says the charge was not only in respect of the land but also the house.

I am aware under the National Land Code the definition of land includes anything attached to the land.

Q. Did you put any economic significance to the fact that there was a house on the land, for the purpose of development? - A. I did not.

Q. Earlier you were asked and you said "Now I say

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that the transaction on 30th March, 1974 was purely linked to the repayment of Das's overdraft with Hongkong & Shanghai Bank, Singapore?"

A. Yes. Q. What was the other part ?

A. It is given in para (a) of P 30. If it had not been for the fact that Hongkong & Shanghai Bank had to be paid \$121,000/- the transaction would have been completed.

10 Q. Did the plaintiff within the one year give notice to you or the firm that she was exercising the option? - A. No. I returned the document of title because the Bank asked for it. From my experience for stamp duty the time taken for an execution of transfer to registration varies. I did not send a copy of P 30 to the Bank because there was no necessity.

Q. Why was the letter P 48 not copied to Devan and the plaintiff? - A. There was no reason.

No. 28

DEFENDANTS' EVIDENCE
ARUL CHANDRAN
EXAMINATION
27TH OCTOBER 1981

DW 3
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DW 3 - ARUL CHANDRAN, affirmed, states in English:
23 N, Balmoral Point, Singapore.

I am an advocate and solicitor practising in Singapore with Karthigesu and Arul. I was called to the Bar in 1959. I returned and was in Singapore legal service from 1960 - 1964 as an Assistant Official Assignee, Assistant Public Trustee, as a Magistrate and as Crown counsel. In 1964 I went to join Rodyak & Davidson with whom I remained until mid-1977. I was called to the

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Malaysian Bar in 1964. I used to appear as counsel in Malaysia. I have not done any solicitor's work in Malaysia and I have not had any dealing in land matters. Even the conveyancing of my property was done by others. I am not familiar with the National Land Code. I cannot say I know my way round; 1st and 2nd defendants are personal friends of mine, long standing. The 2nd defendant was my contemporary in England in 1959. As regards 1st defendant he was apart from being an advocate and solicitor active in business. I was not aware of the details but he pioneered the chartered flights between Malaysia and Singapore and was doing other business. I was aware that he was involved in property development.

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I first saw the plaintiff in the Federal Court case in the present suit in Kuala Lumpur, the at the Court building. I never met/late Devan. I have never met Dass before this hearing. In July, 1975 the 1st defendant approached me. He asked me to act as his trustee or nominee, in respect of a piece of land, he was buying in Johore. Q. What was your reaction? - A. I said I agree. He told me it was for sub-division and development. Q. Did he ask you about the citizenship status at the time? - A. He already knew that I was a Malaysian citizen. He got the confirmation from me that I was still a Malaysian citizen. After

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having agreed to his request, I did not make further enquiries from him. I did not feel it necessary to make further enquiries, because I knew him well and I trusted him. I had no beneficial interest in this property in Johore. I never saw the property.

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Q. As far as you are concerned how did you view this request by the 1st defendant?

10 A. Nothing abnormal. I cannot say for certain whether the transfer form P 14 was signed in Singapore or Johore Bahru. I did sign as presented by Jagindar Singh. In 1976, I was told that the tenants of the property were not leaving although the notice had been given to them, and it would be necessary to commence proceedings. I agreed because it had to be in my name. I signed the memorandum of retainer of solicitors of Suppiah & Singh. They were also the agents of Rodyak & Davidson in Johore Bahru.

20 Q. Did you attend the Court proceedings at Johore Bahru in connection with the eviction proceedings?

A. No. Q. Were you ever asked to attend? - A. No. Shown P 109 - page 13 - I was most certainly not in Court on 12.5.76 contrary to this record. I have since seen Majid and he has confirmed to me, that what is contained in the record is incorrect; that I was ~~present~~ present in Court. I have also caused my Secretary in Singapore to check on my diary. I was in Singapore on that day. I cannot

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remember what I did on that day. I can say
that I was not at Johore Bahru.

Q. Were you informed at a subsequent time of
the outcome of the proceedings at Singapore?

A. Yes, in January, 1977.

Q. In late 1976 were you a partner of Rodyak
& Davidson? - A. Yes.

Q. Who was the senior partner? - A. Hill.

Q. In January, 1977, was anything brought up
among the partners of Rodyak & Davidson ?

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A. There was a serious partnership dispute in
Rodyak & Davidson involving on one hand Coomara-
samy and S. K. Tan and the other capital
partners in the other. Pott was then the senior
partner. He was in the early stages not taking
an active part in the dispute because he was
due to retire in June, 1977. There were various
heated meetings between the partners and on the
15th January, 1977 a luncheon meeting was held
among 4 partners i.e. myself, Foo, Selvadurai
and Tan See Chin, in my house. At that lunch
it was Selvadurai who told me that Coomarasamy
had accused me of being involved in some scandalous
land transaction in Johore. I was shocked. This
accusation had never been made to me by either
Coomarasamy or Tan. I told the partners that
there was no such scandalous behaviour in Johore
Bahru on my part, as I was a registered owner, of
a land in Johore.

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To 28.10.81

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IN OPEN COURT

This 28th day of October, 1981

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Parties as before.

DW 3 - Examination-in-chief (Continues)

Ronald Khoo

10 I wish to say this. That yesterday I met
Majid, Counsel for the plaintiff who was defendant
in Sessions Court Civil Action 146/76. I asked
him as to whether or not Arul Chandran was
present in Court on the 12th May, 1976. He said
Arul Chandran was not. I then pointed out to him
that in an exhibit before this Court, in the
notes of evidence recorded by the President,
Sessions Court, it had been recorded that he
informed the Court, that Arul Chandran and his
counsel were present in Court on the 12th May.
His reply was if that was so, it was a mistake as
to the best of his recollection Arul Chandran did
not attend any of the proceedings in the Sessions
20 Court. I asked him whether ^{he} was sure about that
and he said yes.

Cashin

I wish to state that I accept completely
what Ronald Khoo had said from the Bar that he
spoke to Majid that he was told by Majid that Arul
Chandran was not in Court on the 12th May, 1976.
This however is not evidence. It does not mean
to say that what Majid told Ronald Khoo is true.
What the witness has said from the box is evidence.
30 But as Majid is available unless they call Majid

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to support what has been said, I will feel free to ask the Court to draw the necessary inference.

It is agreed by Counsel that it is not against the professional conduct for lawyers to buy land from their own clients and there is nothing abnormal about it and there is no reason not to disclose the fact.

DW 3 - Examination-in-chief continues)

Q. Did you ask the partners present, why this was brought up? - A. They told me that Coomarasamy had tried to use the allegation to try and expel me from the partnership, in that he was trying to get the rest of the capital partners to pass a unanimous vote to expel me. Coomarasamy himself had not made the allegation to me and the bitter partnership fight was principally between me and Coomarasamy regarding the admission^{into} the capital partnership of Coomarasamy's assistant Miss Shiela Murugesu. I then told the partners that I would go and make enquiries with Suppiah and Singh and would report back to them. I did make enquiries. I met Dato' Suppiah and Dato' Jagindar Singh at their office. They told me the history of the land transaction. Because we had arranged to meet beforehand they had already prepared for me one set of relevant papers. I cannot say in detail what the papers were. The Sessions Court proceedings papers were included. They recounted the history of the transaction. That was the first time I came to

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know the facts relating to the transfer to me. In the High Court
I saw them on the 30.1.1977. Two documents which Court
I placed importance on was the letter from Yeow No. 28
& Chin (P 49) and form CST 1 (D 6). They gave Defendants'
copies of these documents among others to me. Evidence
Having got to Singapore I made further copies in Arul Chandran
my office and handed them to my partners. I think Examination
I gave the documents to the partners at the 28th October
meeting on the 3rd February - (see notes P 78 1981 (Cont'd))
page 13). At page 21 of P 99. The notes against
Pott's statement is - "These do not determine the
question. If an action was started to defeat your
title by the other parties you will be back to
square one". Mostly everything that I said or
others had said were recorded. It was not Pott
who recorded the notes but S.K. Tan. The recordings
were not done verbatim. S.K. Tan had it done on
long hand and had it typed. I am not complaining
by and large what is stated in the notes. It is
just that a lot of things/^{were}said on the notes. An
instance is shown at page 23 where "General
Discussion" is mentioned and at page 24 where
again "general discussion" is mentioned. What I
am saying is over and above these references to
discussions there were other occasions when things
were said which were not recorded, because they were
not verbatim. Page 17 for instance - there is a
mistake, in the middle. It should have been said
"last few days" not "last few weeks".

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After the meeting of the 3rd February, there were other meetings between me and the other partners. The partners were concerned about my behaviour; so many meetings took place; and at the end there was an agreement as far as I was concerned among the partners that I would myself make a reference to the Law Society of Singapore setting out all the details alleged against me and the facts of the case that I knew.

Ronald Khoo

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I think it is important that that the complaint by S.K. Tan and the reply by Arul Chandran to the Law Society be admitted. Because it would show the consistency of the 3rd defendant's conduct, particularly bearing in mind that the allegation against the 3rd defendant relates to collusion and fraud. I wish to state in no way it is my intention to suggest that the Court is bound by the finding of the Law Society or that it is open to Court as to give such weight as it will on the issue of the 3rd defendant, consistency of conduct or otherwise.

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Cashin

If the complaint and reply are asked to be introduced to show Arul Chandran's (3rd defendant) consistency throughout the hearing of the case it must be relevant. It was not presented in this form earlier. If it is only for the purpose of showing the 3rd defendant's consistency then I have no objection for them to be allowed to come in but

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only for that purpose.

Court - I allow the complaint and the reply to be admitted - marked as D 29.

DW 3 - Examination-in-chief continues

It was agreed among the partners that the reference by me be made to the Law Society on the 21st March, 1977. However, two of the partners Coomarasamy and S.K. Tan dated their complaint on the 16th March and sent it to the Law Society, before my reference could reach the Law Society.

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The original complaint was meant **originally** to be by three people - Pott, Coomarasamy and S.K. Tan, but when the complaint went in, Pott's name was blacked out. The person who conveyed the partner's decision to me that I make a reference on my own was Pott. When I informed Pott that a complaint had been sent in to the Law Society before I made my reference he was shocked. The date of the

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complaint is 16th March, 1977. The date of the reference is 14th April, 1977. There were meetings with the partners subsequently and before the decision of the Law Society and I was informed that a petition for the winding up of Rodyak & Davison by Coomarasamy and Tan had **already** been prepared and was ready to be lodged in the High Court. I have never at any time stated or asserted that I was a bona fide purchaser for value. The term as I understand it at all it is a defence that is

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available to the owner of the property whose title is to be defeated. It is an equitable defence. I

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did not see any of the documents that had been filed in Court by either Suppiah and Singh or the defendants except the memorandum of retainer of Solicitors which I had signed. I told all the partners except Coomarasamy and S.K. Tan that I was a trustee or nominee. I did not set this out in the reply to the Law Society but I told them i.e. the Law Society when I appeared before them to give evidence. The reason I did not set this out in my reply was because copies of the reply would be put into the hands of Coomarasamy and S.K. Tan as complainants to the Law Society. I had also informed Hill the senior partner who had retired when he returned to Singapore in March, 1977. He was attempting to mediate in the problem that had arisen. And it was he who had suggested to all concerned that I myself should send in a reference to the Law Society and asking them for a ruling. And I also believed that as a result of the talk Hill had with Pott that Pott declined to be a party to the complaint.

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Q. It is alleged that you had colluded with the 1st and 2nd defendants to defraud the plaintiff?

A. It is not true. That is certain. I do not have to lead any evidence because the defence to the counter-claims speaks for itself. I presented the counter-claim as trustee for the 1st defendant. In the course of my work, I do hold **assets** as trustee and I still do .

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Cross-examination (Cashin)

In the High Court

Q. If you made a statement from the Bar as counsel for a client would you expect the trial Judge to believe you? - A. Yes.

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Q. You expect it to be believed because you are an officer of the Court? - A. Yes.

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Q. If you have privilege like this, you have also a duty? - A. Yes.

10 Q. In so far as pleadings are concerned, as an advocate and solicitor, you would not plead something you knew to be untrue? - A. Yes.

Q. Your story is that you got to know about the facts of this matter about the end of January, 1977 when you were told the history by 1st defendant? - A. Yes.

Q. You admit do you not, you were trustee as far as this land transaction was concerned for the 1st defendant? - A. Yes.

20 Q. When the defence came to be drafted by Suppiah & Singh you knew all the facts? - A. Yes.

Q. Would I be right in believing that it was filed you read and approved it? - A. I did not. I left the conduct of the defence to the 2nd defendant including the preparation of the defence.

Q. Are you saying that when the defence was filed you had not seen it? - A. Yes.

Q. You now know the defence contains a counter-claim by you which follows the defence filed on the 17th January, 1981? - A. Yes.

30 Q. When did you actually see the defence and the

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counter-claim? - A. Some time after Easter in April, I was away from Singapore. I saw it some time in May or June, after my return. When I saw it I did not seek to amend it.

Q. I take it that since you did not seek to amend it that you were prepared to adopt it?

A. Yes. (Referred to para Page 16 of the Statement of Claim) - Q. Do you not think that you ought to have admitted at least that you were the agent of the 1st defendant?

10

A. No, because if the plaintiff was going to allege these things against me, I would be entitled to ask the plaintiff to prove the allegations against me which I knew to be untrue.

Q. Surely it is an accepted principle of pleading that if a matter is not admitted it is an issue?

A. Yes. Q. And so we have a position where you were making no admission you being a trustee for the 1st defendant and leaving to the plaintiff to prove it? - A. Yes. I am entitled to do it in law and I am happy to accept the defence as drawn up by the 2nd defendant.

20

Q. The 1st and 2nd defendants and yourself are advocates and solicitors?

A. I am not an advocate and solicitor in Malaysia but an advocate and solicitor in Singapore and a barrister. Q. You have told us that you have acted as counsel in Malaysia up to 1979? - A. Yes.

Q. You also told us you were admitted as an advocate and solicitor in Malaysia in 1964? - A. Yes.

30

Q. Are you not an advocate and solicitor in Malaysia since 1964? A. I do not know as the Legal Profession Act has changed the position and I am no longer a Malaysian citizen since 1979.

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Q. Although you may no longer be an advocate and solicitor in Malaysia do you think as an advocate and solicitor in Singapore you owe a duty to any court to make clear a matter which would be very important in a trial?

10 A. I do not agree because the question is pure rhetoric. If you say to me that I should say the truth all the time I would most certainly agree. Q. I put it to you that you owe a duty to this Court not to mislead it any time?

A. I owe a duty to this Court as a man not to mislead it. The fact that I am an advocate and solicitor in Singapore is immaterial.

Q. During the adjournment you appointed Ronald Khoo to be your Solicitor and Counsel? - A. Yes.

20 Q. You have filed an amended defence? - A. Yes.

Q. I take it that the amendment was filed with your consent and approval? - A. Yes.

Q. Will you agree that when Coomarasamy gave evidence you objected to the production of notes taken by Pott? - A. Not entirely true. I said you could have them in provided they were accompanied by the complaint to the Law Society and my reply, because then the Court would get a complete picture. I said earlier I do not mind it going in provided they went in together. But

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if failed to persuade the Court, then I would object to the notes going in by itself.

Q. You in other words were objecting to the notes going in by themselves? - A. Yes.

Q. Although the notes disclosed an admission by you that you were a trustee, they don't disclose for whom you were a trustee?

A. Yes, the notes speak for themselves.

Q. Why was it that after seeing Ronald Khoo you decided to come out openly in the defence that you were holding the land as trustee and nominee for the 1st defendant?

10

A. I took the advice of Ronald Khoo and it was his view that it ought to be amended. I had no sinister motive in disclosing it.

Q. You said in your evidence that you learnt for the first time about the facts of this case at the end of January, 1977? - A. Yes.

Q. In July, 1975, you told us the 1st defendant asked you to act as his trustee or nominee in Johore? - A. Yes.

20

Q. Is it not natural to ask a person in the circumstances such as this, why does he want to have a trustee? - A. As the 1st defendant had told me that he wanted to sub-divide and develop the land and it would be advantageous to him to do it in the name of a non-resident, I did not feel necessary to go any further.

Q. You knew that the 1st defendant was experienced

in developing properties? - A. Yes.

Q. Did it not strike you that he could develop and apply for sub-division himself? - A. No.

Q. Did that point strike you at all at that time?

A. No. Q. Did he explain to you why he wanted a non-resident of Malaysia to act as trustee?

A. No. Q. Nor did you ask him?

A. Yes, I did not.

10 Q. When it came to the transfer you said the transferor was Suppiah? - A. Yes.

Q. Who was also a close friend? - A. Yes.

Q. And you knew that the 2nd and 1st defendants were partners? - A. Yes.

Q. Did you not ask Jagindar Singh why he could not be satisfied with the 2nd defendant as his trustee as he was already on the register?

20 A. No. He told me he was buying the land from Suppiah. Q. I put it to you that a natural

question to ask of the 1st defendant would be why can't the 2nd defendant be on the register and be his trustee? - A. It may well be a

natural question but I did not ask him. Nothing was said by the 1st defendant of 2nd defendant being on the register.

Q. You knew the Torrens System existed in Johore?

A. Yes. - Q. When 1st defendant told you he was buying land in Johore and wanted you to be

30 his nominee you knew that your name would appear on the register in due course? - A. I did not

direct my mind to the system then.

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Q. When the 1st defendant asked you to be his trustee did he tell you that he was buying from the 2nd defendant? - A. I cannot remember whether he did. Q. But when it came to execution of the transfer by you, you saw the 2nd defendant's name on it? - A. Yes.

Q. Your mind must have been directed to the fact that your name was going to be on the register?

A. No, I was merely understanding that I would merely be the owner of the land holding it on

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trust. Q. Are you really telling the Court, that under the system, as a lawyer, that you would not appreciate that your name would appear on the land register? - A. I was not directing my mind to the register but to the fact that I would be owner holding the land as trustee.

(Referred to P 62 - (transfer)) - Q. When you got this document, are you saying that you did not read it? - A. I read it. Q. Did you see

"For Registry Use" at the top? - A. Yes.

20

Q. I put it to you that once you have read what was immediately below the heading "For Registry Use" you could not fail to realize that your name was going to be on the register?

A. I accept at all times I was going to be the owner. If you say that my name would appear under the register under the system, I would accept that. Q. When you signed the transfer did you

sign it in front of the 1st defendant? - A. Yes.

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Q. Do you agree with me that where you are
or
signing on behalf of a donor/beneficiary the latter
ought not to be the attesting solicitor?

A. I do not agree. Q. Where you are acting
yourself as a solicitor, in a matter in which
your firm is involved, and you are a party to
the proceedings in Singapore, do you/think it
not
proper to sign before an independent solicitor?

A. I do not know. (Referred to P 62) - Q. Did
10 the 1st defendant explain to you the contents
and the effect of signing that transfer? - A. No,
he need not to. Q. Did your name appear in the
transfer as trustee? - A. No.

Q. Did that strike you at all? - A. No.

Q. Where did you sign it? - A. I cannot recollect.

Q. Can you remember whether 2nd defendant was also
present when you signed? - A. No.

Q. By 31st July, 1975 you knew the transfer was
from the 2nd defendant to you? - A. Yes.

20 Q. Are you telling the Court that in front of the
1st defendant it never crossed your mind to ask
the 1st defendant what this matter was all about?

A. It would have crossed my mind, if he had not
already told me why he wanted me to be the trustee.

Q. If this was the first time i.e. 31st July, that
you knew that 1st defendant was buying from 2nd
defendant I suggest to you that you would have asked
the 1st defendant what it was all about?

30 A. I do not agree. 1st defendant asked me whether
I was still a Malaysian citizen and I said yes and

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then he asked me whether I would agree to have his land put under my name as trustee because he wanted to develop and sub-divide it. And without any questions by me, I said I would.

To 2 p.m.

DW 3 - Cross-examination (Cashin) (Continues)

I did not discuss with the 2nd defendant why he was selling the land to the 1st defendant.

Q. Did you enquire from the 1st defendant in July, 1975 when he bought the property?

10

A. No, I did not. Q. Did you discuss either with the 1st or 2nd defendant during July, 1975 the purchase by the 2nd defendant of the property?

A. I did not. Q. So what you are saying is that you did not know around July, 1975 that 2nd defendant had registered the property in his name, 3 weeks earlier? A. I did not know then.

Q. Nor did you know from whom 2nd defendant bought the property or from whom he had it transferred?

A. Yes, it is correct. Q. Nor did you know the sum which the 2nd defendant paid? - A. Yes.

20

Q. Do you understand that you got to know these facts at the end of January, 1977? - A. It is true.

Q. When you discovered that property had been transferred three weeks after the property was put in 2nd defendant's name, did you ask 1st defendant and 2nd defendant why this was done?

A. I did not because they told me of what had happened. So there was no need for me to ask them.

Q. Did you then see your Statement of Claim in the Sessions Court ? - A. Yes and the defence as well. Q. Did it not strike you that by placing your name on the register as the registered proprietor, unqualified, that you were appearing in the eyes of the world as an owner for value? A. It was clear to me that I was appearing as the registered owner. If as registered owner I was sued to defeat my title and if circumstances permitted, I could take the defence of a bona fide purchaser for value without notice.

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Q. You saw the defence? - A. Yes.
not

Q. Did it/seem to you that the defendants were in the Sessions Court action challenging the title of 2nd defendant here ? (Referred to P 11 para 5 - Don't you think that they were raising the issue of your not being a bona fide purchaser for value? A. Correct. Q. Don't you think, then you should have said that "I was not a bona fide purchaser for value" ? - A. I disagree. I had been told the circumstances under which the 2nd defendant had become the owner and what had transpired at the hearing in the Sessions Court I knew that such an allegation could not be raised by the defendant in law because this is a defence that is only open to me as trustee or the beneficial owner of the land if we were sued. My view then was that the course open to them was to sue 2nd defendant under section 340 of the National Land Code.

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30 Under that belief I felt it was not necessary for

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me to do anything. Q. Would you agree with me that only a registered proprietor knows whether he is a bona fide purchaser for value?

A. No, I do not agree, depending on the circumstances. But generally yes.

Q. Would you agree that it is incumbent on a registered proprietor to prove that he is a bona fide purchaser for value i.e. the burden of proof is on him? - A. Absolutely Not. It is an equitable defence which can be used as a

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shield not as sword. Q. Do you not agree that it is in equity that those who come to equity must come with clean hands? - A. I agree. It applies to any one who wants to raise an equitable defence. In the Sessions Court case we were relying on law not on equity.

Q. Did any one draw your attention to the fact that you could go upon the register as trustee?

A. No, but even if it had been drawn unless the provisions are mandatory I would not of my own volition declare my interest unless the beneficial owner so directs me as trustee.

20

Q. You have seen the judgment of the Judicial Commissioner. The judgment says that "the plaintiff became the registered owner of the land on execution of memorandum of transfer for consideration. The plaintiff is a bona fide purchaser of the land."

That is not true is it? - A. I cannot agree that it is untrue. My beneficiary paid for the land. So he becomes the bona fide purchaser. In

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any case there was not sufficient evidence before the Judicial Commissioner to come to that finding. Thirdly, it was unnecessary to make the finding because of the nature of the case. I take and wear whatever colour the 1st defendant wears legally. Q. That turns on you being a trustee? - A. Yes

Q. There is nothing on the register to say that you were a trustee? A. Yes, but there was no need for it. Q. You did execute a transfer?

10

A. Yes, I agree on the face of the judgment it is clear that I bought the land and I paid for the price and I became the registered owner.

Q. I put it to you that as long as you remain on the register unqualified, every one else is going to think the same thing? - A. I disagree. To do otherwise would be to defeat the very purpose of the creation of a trust.

20

Q. I suggest to you that the very purpose of the creation of this trust and putting you on the register unqualified was to decline every one as to the true nature of the transaction? - A. That is not so. Q. I put it to you that by the end

of January, 1977 when you have received the pleadings you were now aware that so long as you remain on the register unqualified you were in a fair way defeating a court of justice by not disclosing your true status on the register?

A. That is preposterous.

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(Referred to ~~page 28~~ P 78 in PP Page 15 - I agree

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that the notes were substantially correct.

Q. Where did you get these facts starting from
"question is whether up to against me" ?

A. I got them from the meeting I had with the 1st
and 2nd defendants and my perusal of the papers.

Q. I put it to you that by saying at page 20
that "I am the registered owner and proceedings
are commenced by me" that you were representing
to Pott that you personally had commenced the
action? - A. I disagree, but I made clear that
I was a trustee.

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Q. I put it to you that what Pott is making clear
in that question is he wants to know whether the
decision to take action for possession was you
as trustee or you personally? - A. I disagree.
The notes speak for themselves.

Q. You said that you "took decision in conjunction
with a third party" and therefore the decision was
partly yours? - A. No. I agreed with the decision
of the beneficiary and said the proceedings may be
commenced in my name.

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Q. I put it to you that if you had meant to leave
the decision to your beneficiary, you could quite
clearly have said so? - A. I agree ^{but} in a
confrontation of this nature you cannot expect
perfect answers.

Q. Did you get the information
that "even before the transfer to 2nd defendant
he asked Dass and Devan to get another buyer" from
the 1st and 2nd defendant? You got "attempted to
sell the land" from the 1st and 2nd defendant also?
A. Yes.

30

Q. Who told you that Form 14A was signed subsequent to the agreement; do not know how long afterwards" ? - A. Suppiah and Singh had given me a history of the transaction and given me documents. I was then narrating to the partners. I obviously had got it wrong, because I was briefed on 30th January and this meeting was on the 3rd February. (Referred to) - Q. I put it to you that you learnt that the transfer to 2nd defendant was under form 14A and not under the agreement on the morning of February 3rd - (see page 17 of PP) - not on the 30th January? - A. Yes.

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Q. I further put it to you that it was something that stuck very firmly in your mind because you came out with it three times in the course of the meeting? - A. That is correct because I and the other partners were labouring under the misconception that the land was transferred using P 30. One of the partners said it was strange on it. I contacted the 2nd defendant, who informed me the land could only be transferred under form 14A. I do not remember whether he told me whether form 14A was signed on same day or afterwards. But not being conversant with these matters, I wrongly assumed it was executed long afterwards and mis-informed my partners.

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Q. I suggest to you that what you were suggesting to your partners was that the agreement had nothing to do with the transaction and the land was simply transferred under Form 14A? - A. I disagree.

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1981 (Cont'd)

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Court

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1981 (Cont'd)

Q. If you disagree why at page 16 did you use
the words "this is the stand we have taken" ?

A. Because I was informed that was the position
in law. I am not calling Majid. I do not need to.

Q. An action for recovery of land was made in
your name showing you as the plaintiff? - A. Yes.

Q. And not describing you in any way as trustee?

A. Yes. Q. Are you telling the Court that you
never saw the Statement of Claim in 1976? - A. Yes.

The preparation and everything was left in the
hands of counsel. (Referred to Federal Court

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Civil Appeal No. 71/78) - Q. In your affidavit

you said the allegation contained in Tara's
statutory declaration (P 74) was not true?

A. Yes it is true.

Q. In no affidavit of yours in any proceedings
of your case have you gone into the merits of the

case. It was merely a blanket denial. You have
not in any affidavit in any proceedings adverted

to the merits of this case, as for except in your
affidavit in O.M. 46/76 in support of your appli-

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cation to renew the caveat? - A. Yes, I agree.

I had not adverted to all the merits because/I
was not obliged to in law and two I was happy to

leave the conduct of the proceedings in the hands
of the 2nd defendant.

Q. In reply to your affidavit the plaintiff in her
affidavit set out the whole of her case?

A. The affidavit speaks for itself.

Q. In reply you filed a bare affidavit not
 adverting to her affidavit at all? - A. No -
 It is a matter of law. Q. If it is a matter
 of law, then you have not disclosed that you
 were a trustee and therefore not a bona fide
 purchaser for value? - A. It is true that I
 have not disclosed that I was a trustee. It is
 not true that I was not a bona fide purchaser
 from my beneficiary. And it was not necessary
 for the issues in the case to disclose it.

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 Court
 No. 28
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 Arul Chandran
 Cross-Examination
 28th October
 1981 (Cont'd)

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To 31.10.81

No. 29
 DEFENDANTS' EVIDENCE
 K. PARAMPATHY
 EXAMINATION
 31ST OCTOBER 1981

IN OPEN COURT
This 31st day of October, 1981

No. 29
 K. Parampathy
 Examination
 31st October
 1981

Parties as before.
 S.N. Yap stands in for Ronald Khoo for 3rd
 defendant who has also been excused for today.

DW 4

DW 4 - K. PARAMPATHY, affirmed, states in English:
 Aged 39, Chartered Surveyor,
 No. 2 Taman Sari, Johore Bahru.

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A fellow of Royal Institute of Chartered Surveyors
 of United Kingdom. I am the principal of Param
 & Associates, having an office at 708, 7th floor,
 Merlin Tower, Johore Bahru. I have 12 years
 experience, post qualified. I qualified in 1969.
 I gathered my experience in survey and valuation
 while I was with the Valuation Division of the
 Treasury, Kuala Lumpur from 1969 - 1975. There-
 after with the ~~Port~~ ^{Port} of Singapore Authority, with
 the Estate Department up to May, 1978. Subse-
 quently in practice in Johore Bahru up to now.

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Court

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K. Parampathy
Examination
31st October
1981 (Cont'd)

I have served in Kuala Lumpur from 1969 - 71.
In Kuantan for a short period - 1971 - 73 in
Penang. Later part of 1973 in Malacca. January
1974 till I left in Johore Bahru. I left in
1975. I have appeared as an expert witness in
Court cases. I made a report of the property
in issue - D 30. I have set out the Court cases
in my report. I am also a registered surveyor.
One practising as a valuer in the country on a
mature basis by being registered with the Board
of Surveyors, Malaysia. One becomes a registered
surveyor by virtue of relevant qualification and
serving a 2 year compulsory service with one of
the approved institutions from which you would
have gathered sufficient experience. I am
familiar with Kulai locality. I have a plan of
the property and sales transaction - P 19. I also
produce a schedule to be read with the plan and
the report. It is attached to the report. Shown
page 2 of the report - The lot number is in the
report - at page 2. (Witness reads the whole
report) - I agree that I have not given a separate
value for the building as stated in page 3 para
2: The comparables are in the schedule. It refers
to the situation of the respective land in com-
parables in the plan. The subject land is farthest
away from Kulai town. Shown P 57 - The consideration
is stated as \$220,000/-. The consideration was
referred to the government valuer for stamp duty
and I was the head of the Department at the time

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and I approved. Shown D 1 at page 25 in D 2.
I have read Kim Seng's report before.

Cross-examination (Cashin)

Q. When the transfer was sent to your Department
did your men inspect the land? - A. I would not
know whether my men had gone to the land. I
assume they would have carried out the normal
investigations. I cannot recall having seen the
investigation report by my men.

10 Q. Are you saying that you did not know the consi-
deration of \$220,000/- before you came to give
evidence today? - A. I would have known.

Q. You also knew it at the time when you made the
report on 12th September, 1981? - A. Yes.

Q. I put it to you you cannot be heard to give
any different valuation of the property from the
one you gave in 1975?

(Suppiah, - I would like it to be recorded that
Cashin says the witness has a sinister motive).

20 Cross-examination (Continues)(Cashin)

See page 2 - "I have been requested
of its market value" ? - A. The defendants
had not asked me to give the market value, but
they have asked me to say whether the price given
was a reasonable or unreasonable. I went to look
at site in 1981 before I made the report. The
land is flat, but slopes slightly to the rear.
The difference in height is about 3 ft. and 4 ft.
When I went to see the land, I saw lots 6024,
30 6026 adjoining the subject land.

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Lot 6024 has shot-houses in front and the rear
is unbuilt.

Q. When you inspect the land you do so because
the best comparables are on either side of
subject land? - A. Yes.

Q. See Lot 6024 - Was there not a sale on 31st
December, 1971? - A. I had not made a search
of the property transacted before 1973.

Q. Why did you limit to just these years?

A. I was asked to express an opinion with respect
of value in 1974-75 and to my mind reference to
values much earlier would not give much signi-
ficance. Q. I mentioned a sale in 1977?

A. Yes. Q. If I were to tell you that the price
of the land 6024 on 31st December, 1971 was
\$50,000/- per acre? - A. I accept the figure.

Cashin - I will be calling Kepal who made the
search and I will apply to recall him.

Cross-examination (Continues)

I do not know the sale of 6026 on 31.12.64 at
\$20,000/-. I have not checked on the sale price
of the shop houses on subject land and I have not
checked on the other type of houses either.

Referred to D 1 in D at page 25 - I would agree
if the land is in the township there would be no
difficulty in getting the social services like
water, electricity. I would not say that it would
be easy to seek a conversion from agriculture to
building, by it merely being in a town council area.
I agree the lots on either side had been developed

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already. I agree that if the lands on either side are developed lands it would not be difficult to get the approval irrespective of whether it is in Town Council area or not.

Q. Do you agree that when Kim Seng made this report the house on 6024 had not been built?

A. From the report of Kim Seng dated 26th February 1972 i.e. two months after 31.12.71 and 4 months before the approval date for 6024, Kim Seng's report already says that the subject property had either side newly established housing estate and shop houses. So, I am not in a position to agree that at 26th February, 1972 there were no shop houses on either side of 6025.

(Referred to D 30) - At page 4, para 4 - I am making references to the comparison schedule more particularly in respect of comparison (1), (2), (3) and (6). Additionally I have also made a study of sale prices of houses in selected housing estates in the neighbourhood. These indicate to me that there were no substantial changes in value after the period 1974. I would like in particular to refer to character of properties indicated in (1),(2) and (3) in my file. These three properties lie contiguous to an area where there is already established housing estate Kek Loong Garden; what these comparisons indicate in November, 1973 the second larger land comparison was \$24,300/- per acre; comparison about same time November, 1973, \$30,300/- per acre. Comparison (3)

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is in 1977 and is \$32,000/- per acre. This would show a very marginal movement over a four year period. Comparison (6) was transacted in April, 1976 at \$34,000/- per acre. This property was sited contiguous to Kulai Bahru, a development at 21½ milestone. This property had frontage to main road. We have also 4 properties at Kek Loong Garden, two terraced houses September 1974 and November, 1975 - the properties were transacted at same price of \$24,500/- per unit. Two other terraced houses in Taman Kulai Besar was transacted in June, 1975 at \$38,000/- and October, 1975 at \$37,000/-. I have a few others. In respect of 3625 it is a conveyance of 4 individual shares - 1/4 share each. One share was sold for \$119,000/-. The others were sold at same price. Transacted at same time.

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Q. I put it to you that the transaction recorded on 5.1.77 in respect of 1252 was really the valuation given by government department and what it was actually purchased for? - A. That is so, but it would reflect in my view the market value of the property as comparison (2) adjoining it was a bona fide transaction in 1973 at \$30,300/-.

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Q. I am suggesting to you that Kulai was a sleeping hollow in 1972, 1973? - A. I do not agree, because there were already developments apparent in Kulai Bahru at 21st milestone, at Kulai New Village at 20th milestone and at 19½ milestone referred to in

Kim Seng's report, which had already been developed.

Cross-examination (Continues)
Cashin

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10 I wish to say that I suggested that there were no shop-houses on 6024 which is not correct. There were wooden shop houses before 1977. I wish also to say that the date 22nd June, 1972 was not correct. It relates to a file, No. I wish to say also that the \$50,000/- per acre was not a recorded transaction.

(Referred to schedule) - Q. 6022, 6021 were transferred for love and affection? - A. Yes.

Q. The valuation was therefore by the government?

A. Yes. Q. So, 1252, 6022, 6021 are all government valuations? - A. Yes.

Q. The other three lots are Khet Loong? - A. Yes.

20 Q. 6602, 6603, 6604 are all bought by the same person? - A. Yes. Q. The valuation of 6602 and 6603 were given by government department?

A. Yes. Q. 6604 was the only one not valued by government department? - A. Not correct. There was also 3625. I say that in 1972-73 development of Kulai was apprent.

Q. I put it to you that it was gathering momentum of development in succeeding years? - A. Yes.

30 Q. I put it to you that in the same way the price of land in the town area would also be increasing keeping pace with the momentum? - A. I agree with the statement that there was increasing development, but I would add that market/~~situation~~^{reaction} would not

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have been consistent with the development pace.
What I mean is that in general the principle is
true but ^{there} ~~it~~ may be extraneous circumstances
influencing the price - fiscal measures by
government regarding lending and economic climate
and including legislation.

Q. I put it to you that there was no fiscal
restriction by the government in that period?

A. To my recollection there were fiscal measures
to curb speculation. Q. Can you quote an

instance? - A. We had the Land Speculation Tax
Act in 1974 enacted on 14th March, 1974, effective
on 6.12.73 and the idea was to curb speculation.
The development was there, but the reaction to
the development would have been dictated by market
forces prevalent at the time.

(Referred to plan) - I would agree the land
fronting the road would be superior in respect of
commercial element. But in respect of the residential

aspect of that property, I would have preferred
comparisons at Khet Loong. I agree with you that
land with the frontage would enjoy better price
than at the rear. On the 11th August, 1981 my
office wrote to Subra Naicker. I was not here.

It is true that a lay out plan was submitted by the
Town and Country Planning Department, Johore in
respect of Lot 6025 on the 30.3.76, for a proposed
housing and commercial development. Yes, it is
correct. Q. Is it not the case normally that the

application is made by the registered owner?

A. I do not know.

Q. I put it to you that the lay-out plan was approved by the planning department on the 3rd May, 1976? - A. Yes. The building plan was submitted to the Local Council of Kulai on 13th October, 1976. Q. I put it to you that the building plan has to be signed by the registered owner of the lot? - A. I do not know. This is the letter - P 112.

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1981 (Cont'd)

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Cross-examination (Chin)

6024 is slightly bigger by about 30 feet at the frontage than 6025. As a chartered surveyor in law I am also authorised to provide valuation reports.

No questions by Yap.

Re-examination (Suppiah)

Re-Examination
31st October
1981

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P 112 was written following a request from Subra Naicker requesting for a search in respect of the various stages of development of this land in question. Referred to Lot 3625 - It has a frontage, facing the road. Prior to the Act there was no capital gains tax on sales of land and as a result of this Act, such gains tax was imposed thereby curbing speculation. There was 50% on the profit. There was no sliding scale till 1976. In the sales where the government had valued the valuation had exceeded the consideration in both cases in Lots 6602, 6603 and 1252. Government valuers must be guided by section

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120A / of the Stamp Duty Ordinance. Market value is

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mentioned. We can accept the consideration stated if we found it to be reasonable and this is shown in respect of Lots 6604 and 3625. If the value declared for consideration was not in accordance with my opinion of market value it would have been increased. If the consideration is more than market value we could accept the consideration.

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Sivanandan
Examination
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1981

DW 5

DW 5 - Sivanandan, affirmed, states in English:

Aged 46, Ex-Secretary of the Tasek Utara Golf Club, Johore Bahru. Residing at 33 Pichok Lima, Taman .. , Johore Bahru.

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On 30.3.74 I was the Secretary of the Johore Civil Service Club. I remember going to Kulai on 30.3.74. I went to Devan's house. I went with Jangindar Singh and Suppiah. We arrived after lunch. When we arrived the late Devan asked us in. He took us to his study. He left the room and came back later with his wife. At that time the three of us i.e. 1st and 2nd defendants and myself were in the study. Then 2nd defendant handed some papers to Devan. He in turn handed the papers to his wife. She then read the papers. The plaintiff said something to Devan. They then left the room. They came back some time later. Devan then said that his wife would like the opportunity to purchase the land back within a year. To this the 2nd defendant replied that this can be included in the papers. 2nd defendant then

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Court

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Defendants'
Evidence
Sivanandan
Cross-Examination
31st October
1981 (Cont'd)

they were going to Kulai. I did not know the purpose of going to Kulai. I knew Devan. I am not sure whether he was a member of the Club. I have met him at the Club. Devan knew me. He was not often at the Club. I only knew him through his visits to the Club and the visits by him were infrequent. When I got to Kulai town no one had said anything about going to Devan. I knew Devan's house. I have been passing by it and friends of mine told me about it. I have never been to the house before. I have never met Devan's wife, the plaintiff. No one had mentioned up to to the point of arrival at Devan's house, the purpose of the visit. As we turned into Devan's house, I asked the 1st and 2nd defendant, what we were doing there. They said "we got some papers to be signed". I cannot remember whether there was any one greeting us at the door. Johore Bahru to Kulai is about 20 miles. The 1st defendant was driving. The 1st and 2nd defendant were in front. When we got to the door, Devan was already there. Whether the 1st and 2nd defendants knocked at the door or not I cannot remember. I was invited in by Devan. He did not seem surprised to see me there. I do not think he expected me. Devan would have known I was the Secretary of the Civil Service Club. I do not remember whether there were introductions made. I was browsing through the magazines. I was not paying real attention to what was going on. I was flipping through the papers. I

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was looking the magazines. I was reading a little and passing on to the next page. I was not interested in what was going on. I was not a party to it. I did not hear any introductions being made. I saw the plaintiff reading the papers. I stopped browsing through the magazines to look at the plaintiff. She said something to Devan. The room was 1/3rd the size of this Court room (40 ft. x 30 ft.). I was sitting facing the door. The plaintiff was not seated at a table. She was standing. At about 10 to 15 ft. from me - from here to 2nd defendant. I did not hear what she said to her husband. She whispered to him. They were away for about 5 minutes. I knew nothing about the purpose for which they came.

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Q. And yet for more than 7 years you could remember that Devan came back from the rear and said "my wife would like the opportunity to have the land back within the year". I put it to you that you are not telling the truth? - A. I am telling the truth. The reason is I had to write something down to the same effect at the house on one of the papers they were supposed to sign. If I did not write it, I would not have remembered it. I cannot remember what I wrote down 7 years ago, not everything. The gist of what I wrote down is the opportunity to purchase the land within a year. That stuck in my mind. That is the gist of what I wrote down. There was no discussion on the proposal by Devan to the 2nd defendant. I was not surprised

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to be asked by the 2nd defendant to act as a secretary. I had not done this before.

Q. We have a situation where you had not done before and you did not know what the matter was about but you promptly accepted? - A. Yes. I accepted because when Devan asked the 2nd defendant that he would like to include something so that the wife could repurchase within a year, the 2nd defendant said no problem. The 2nd defendant looked at me and said - "Siva, you are a school teacher, your writing is good, can you write something down". I said okay, I can do that. After my writing it, I gave it back to 2nd, defendant. He handed it to Devan. I do not remember whether 2nd defendant checked it. After I handed it I just sat there, at the table. The plaintiff sat down to sign.

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Q. I put it to you that you have a very selective memory? - A. Yes, after all I am a human being.

Q. I put it to you that the plaintiff was the one who started commenting on the papers?

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A. No, I never heard it. The talking was done by the husband.

To 2.00 p.m.

DW 5 - Cross-examination (Continues)

Q. When you heard what Devan said that "my wife would like the opportunity to buy the land back within a year", you must have presumed that has something to do with the purchase of the property?

A. I did not know what it was all about. All that

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I can remember is the 2nd defendant saying about the school master and the one remark from Devan.

Q. I put it to you that there was a lot of discussion between the 2nd defendant and the plaintiff? A. It is possible.

Cross-examination (Chin) - None.

2nd defendant - None.

(Witness released)

No. 31

SELVARAJAH ARASU
EXAMINATION

31st OCTOBER 1981

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Cross-Examination
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1981 (Cont'd)

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DW 6

DW 6 - Selvarajah Arasu, affirmed, states in English:

Aged 33, Assessment Officer, Department of Inland Revenue, Johore Bahru.

(Referred to D 6) - I received this document on the 24th September, 1975. In connection with this letter a letter was sent by my Department to the plaintiff regarding the sale of a piece of land. The date of the letter is 30.10.1975. It is the only letter that was written. I did not receive a reply. This is the letter - D 31.

Cross-examination (Cashin) - No questions.

Cross-examination (Chin) - No questions.

(Witness released)

No. 32

PROCEEDINGS
31ST OCTOBER 1981

Cashin

I wish to recall Kepal to rebut Param's (DW 4's) evidence.

2nd defendant

I object. The reason Kepal has already given evidence and whatever evidence he wants to give now could have been given at the time when he

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gave evidence earlier. It cannot be said the plaintiff had been taken by surprise as to the type and nature of the evidence given by DW 4. There must be exceptional circumstances where such an application is allowed. There is no such exceptional circumstances in this case. Kepal said he did not make any search for recorded transactions.

Chin

Under what section of the Evidence Act is application made? Such rebuttal evidence should only be permitted.

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Cashin

I cannot see the evidence given by Param (DW 4) is all that relevant. The main thrust of my case does not really depend on the value of the property.

To 1.11.81

No. 33

ARUL CHANDRAN
CROSS-EXAMINATION
1ST NOVEMBER 1981
(CONT'D)

IN OPEN COURT

This 1st day of November, 1981

Parties as before.

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No. 33
Arul Chandran
Cross-Examination
1st November
1981 (Cont'd)

DW 3 - on former oath states:

Cross-examination (Continuation)(Cashin)

It is correct that the idea of putting my case by me to the Law Society was to ask them to rule whether I was guilty of unprofessional conduct. To do this I would have to put before them all the facts relating to the case, because otherwise they would not come to a proper decision. I did not send the reference because I had been

prevented by the partners Coomarasamy and S.K. Tan by sending their complaint a few days earlier. They were represented by Cashin.

Q. Why did you want the reference to be exhibited in this case then?

A. Even though it is titled a reference, it was not the same type of reference which was agreed between me and the partners.

10 Q. Am I to understand that your reference in D 29B was not put in to the Law Society ?

A. It was put in.

Q. Am I to understand that it would have been in a different form if it had been sent to the Law Society initially by you before S.K. Tan and Coomarasamy did?

A. Yes. I do not have the original reference by me here. It was a draft. D 29 B is not in the same form as the one I intended to put in.

20 Q. Why are you putting in D 29 B to the Law Society in a form different from the draft?

A. If I had sent in the draft it would have contained information such as the fact that I was a bare trustee and that information could not be supplied to the plaintiff and her associates, by the Law Society, whereas I was making a reply, which contained the reference D 29 B to the complaint, a copy of which would have been supplied to Cashin, S.K. Tan and Coomarasamy.

30 Q. The reply in D 29 C would have dealt with the complaint, would it not ?

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A. Not entirely. Because the reply is only dealing with specific allegations made in the complaint para by para, whereas D 29 B set out the events more or less in a chronological order.

Q. Am I right in believing that the original reply sent by you to the Law Society stated that the reference D 29 B would have gone in to the Law Society first, if the agreement had been kept?

A. Wrong because if I had sent in my reference as agreed it would have taken in, in a different form. I agree that D 29 B i.e. the reference does not set out all the facts. I agree that the fact that I was the trustee of the 1st defendant was not stated in D 29 B and D 29 C. It is true that no where in D 29 B and C was it stated that I was a nominee.

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Q. How does D 29 B and C then show the consistency of your conduct?

A. It shows that I became aware of the allegations being made against me and 1st and 2nd defendants only after January, 1977 i.e. the time my partners told me that allegations of fraud were being made against me.

20

Q. Does it not also show your consistency of conduct in that you were keeping from the Law Society in the same way as you had kept away from the Court, that you were a trustee?

A. No, I told the Law Society I was a trustee when I appeared before them.

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Q. Does it not also show your consistency of conduct in that you were still keeping away from the Law Society as you had been keeping away from the Courts the fact that you were the trustee?

A. No. 'I informed the Law Society of this fact when I appeared before them in person.

Q. Was it important to inform the Law Society that you were a trustee ? - A. Yes.

10 Q. Why did you not consider it important to tell the Courts that you were a trustee ?

A. I left the drafting of the defence to the 2nd defendant, who was in charge of this case.

Q. Did you think it was important to tell the Courts, you were a trustee?

A. Not important until I gave evidence.

Q. Allegation of fraud was made against you in the Statement of Claim, on the basis that you were a trustee?

20 A. Not true. They were merely alleging that I was/a bona fide purchaser for value.

(Referred to page 16 of the Pleadings -

Q. Is not para 12 (d) of the Statement of Claim make an allegation of fraud with the particulars set out therein?

A. It is correct, fraud is being alleged. I agree that it is alleged that I was the nominee or agent of the 1st and 2nd defendants as set out in para 12 D (4).

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Q. Did you not think it was proper for you to admit that you were a trustee or explain that there was no fraud in your defence?

A. I do not agree, because he who alleges must prove.

Shown D 29 B - Para 2 - It is true that I instructed Suppiah & Singh to institute proceedings for possession. Because proceedings had to be instituted in my name as the registered owner.

Q. I put it to you that you knew in March, 1976 when the action was taken at the Sessions Court that the plaintiff and her husband were residing on the bungalow on the land?

10

A. Yes, I knew, that the plaintiff and her husband were staying there and action had to be taken for possession, in my name. It is true that I said that I was told a short while ago after the summons had been issued that the defendants were contesting the summons.

Q. Your statement of claim in C.A. 146/76 at para 2 reads as follows - "....." (Reads the para) - I put it to you that you knew in March, 1976 when you filed the Statement of Claim that the defendants J.B. in/Sessions Court C.A. 146/76 were on the land prior to July, 1975, which is the date of the transfer to 2nd defendant?

20

A. Not true. I only saw the Statement of Claim in January, 1977.

Q. Are you really asking the Court to believe that your solicitors told you the names of the

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occupants of the bungalow without telling you the rest of the allegations in para 2 ?

A. The solicitors did not tell me even the names of the parties at the stage when they told me that action had to be taken against some people on the land. I came to know the relationship of the plaintiff and her husband and their role in that action in January, 1977. The names of the plaintiff and Devan were set out in the memorandum of retainer of solicitors, which I knew and I signed but it had no significance on me. Q. When you were told the defendants were contesting the summons are you saying that you did not ask to see the defence?

A. It is correct. I left it in the hands of Suppiah.

(Referred to P 29 B - Para 3 - It is true that I was informed by my solicitors that they had obtained an order for possession. The solicitors did not tell me what had been alleged in the defence.

(Shown P 113 at page 42 - 43) - This is my affidavit in connection with an application for the removal of a caveat by the plaintiff in this case. Although in the affidavit I said it was served on me, it was in fact not served on me but my solicitors.

(Referred to D 29 B Para 3 - "Subsequently for stay of execution" on C.A. 146/76) - That is true.

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Q. I put it to you that you knew in July, 1975 that the plaintiff had been in residence in the bungalow in question? - A. Not true.

Q. I put it to you that you had been told by 1st and 2nd defendants at that time that there had been a transfer to the 2nd defendant on the 5th July, 1975? - A. Not true.

Q. I put it to you that you were asked to be the apparent owner of the land by the 1st and 2nd defendants?

10

A. Not true. 1st defendant asked me to take the land as his nominee in July, 1975.

To 11 a.m.

Q. I put it to you that the purpose of asking you to be the apparent owner of the land was to defeat any attempt which the plaintiff might make to recover the land? - A. Not true.

Q. I put it to you that this is why your name appeared on the register instead of trustee?

A. It is not true because it is not obligatory to describe myself as trustee.

20

Q. I put it to you that when you commenced C.A. 146/76 for possession you were fully aware of the Statement of Claim and Statement of Defence?

A. Not true.

Q. I put it to you that thereafter you were aware of every proceedings in the Courts?

A. In the light of my previous answer, it is not true.

Q. I put it to you that together with the 1st and 2nd defendants you deliberately kept away from the Courts that you were a trustee of the defendant? - A. Not true.

Q. I put it to you that it was your intention together with 1st and 2nd defendants to cheat the plaintiff of her land? - A. Not true.

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Cross-examination (2nd defendant)

10 The complaint to the Law Society was on the 16th March, 1977. Cashin acted for both S.K. Tan and Coomarasamy in the complaint made to the Law Society and I understand he had a big hand. D 29 B and C were sent to the Law Society on the 14th April, 1977. I handed a copy of C.S.T. 1 to Pott, S.K. Tan and Coomarasamy among other people. It was on the 3rd February, 1977. (Referred to Page 23 of PP - When I said this valuation at page 23 it refers to 20 Kepal's valuation. Pott was using it and alleging that the property was worth more than one million dollars. Referred to P 113 - Page 23 - Para 4 - The plaintiff here and there - that the issue was one of possession and not ownership and title or rights thereto.

Chin - Cross-examination

30 I agree that the 70 caveats that had been filed relate to the 70 new titles that had been issued as a result of sub-division and surrender. Yes, the sub-divided titles are fresh titles issued by the Land Office.

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Ronald Khoo

I wish to put in the document filed with
the Law Society by the witness.
(Cashin: I have no objection)
Marked as P 32 which contains D 29 b, c and P 33
which contains D 29 a.
(Shown the pleadings Para 12 D (iv) of the state-
ment of claim Page 17 -
Q. Would it be correct to say that the answer
to this para was given in para 22 of the original
defence? - A. Yes.

10

CASE FOR THE DEFENCE

Court

Generally when a person says that a
person is the proprietor of a hotel it suggests
that he is either the owner of the premises or
the owner of the business. I agree that under
the National Land Code the word used to refer
the person who holds the land is the registered
proprietor. It has never been referred to as
the registered owner. I did not even see the
statement of claim in the Sessions Court Civil
Action No. 146/76 in January, 1977, after the
judgment had been made. I did not notice the
significance of owner and proprietor. I do not
know what significance the word "owner" has as
distinguished from a registered proprietor. In
my own opinion there is no difference. I agree

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it would be more correct to say registered proprietor than registered owner because it is in keeping with the National Land Code. There is nothing to prevent me from suggesting to the 1st defendant to put my name as the trustee. I did not do. Because I was not aware of the provisions of the National Land Code. It just did not occur to me to suggest to him to do that. I agree that counsel should assist the Court in every possible way he can. I agree that counsel should not as far as possible mislead the Court. When I say "assist" it presupposes that one is volunteering to do something. When one says to assist it means one can do it if one wants to.

10

Court

Q. Why did you not draw the attention of the Judicial Commissioner about your true status since he had made a wrong conclusion based on the wrong facts?

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A. It is not correct. The President of the Sessions Court came to the right conclusion from a wrong reason. There was no necessity to point this out to him because he would have come to the same conclusion even if the true facts were known.

Q. But how can you be so positive that the Judicial Commissioner would have come to the same conclusion even if the true facts had been presented

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to him ? - A. From the judgment, I cannot pin-point but I would say so from reading the judgment, as a whole.

I agree that on general principle that the circumstances may be taken into account in coming to a conclusion. In the circumstances where I have not told the Court that I was a bona fide purchaser, the Court should not have made the finding.

Q. Why did you not come forward and assist the Court and tell the Court the true position that you were a trustee ? 10

A. Because first I was not involved personally in any of the cases, secondly there was a solicitor handling the cases, who was competent to handle it and I was not going to come forward to tell him what to do. Thirdly it is a complete misconception of the law when plaintiff's counsel puts it that because I was a solicitor that I should come forward to tell the true facts. I do not think it necessary to find out from the 2nd defendant whether he should point it out to the Court; now I say the problem does not arise. It does not mean that I have changed the stand regarding the law. I still maintain that it is the duty of the plaintiff to prove her case. When the defence was drafted by the 2nd defendant who was more 20

IN THE HIGH COURT IN MALAYA AT JOHOR BAHRU
CIVIL SUIT NO. 284 OF 1979

BETWEEN

ara Rajaratnam ... Plaintiff

AND

Datuk Jagindar Singh)
Datuk P. Suppiah) ... Defendants
Arul Chandran)

In the High Court

No. 34
Defendants' Evidence Proceedings
17th July 1982 (Cont'd)

NOTES OF EVIDENCE OF RAZAK, J

10

In Open Court on 17th. July, 1982.
Cashin with Subra Naicker assisting him for the plaintiff.
Chin for the 1st. defendant.
Ronald Khoo for the 3rd. defendant.
2nd. defendant absent. Chin is taking the judgment for him.

Judgment for the plaintiff with costs. Order of committal to issue after the disposal of suit. Sureties in the meantime.

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The defendants have by consent agreed to make written submissions on the question of damages. The plaintiff's Counsel to submit his submissions by the 17th. of August. The defendants' Counsel to reply by the 17th. of September. The plaintiff's Counsel final reply by the 31st. September, 1982. To be served on me at Kuala Lumpur.

I certify that it is proper for the two

...2/-

- 301 -

- 2 -

In the High
Court

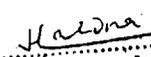
No. 34
Defendants'
Evidence
Proceedings
17th July
1982 (Cont'd)

Counsels to be retained by the plaintiff.


(BAKAR)
HIGH COURT
KUALA LUMPUR.

29th. July, 1982.

Certified true copy


Secretary to Judge
Kuala Lumpur.