44/85

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

[redacted]

RECORD OF PROCEEDINGS

[redacted]

VOLUME [redacted]

5

BARTLETTS, DE REYA
199 Piccadilly,
London W1V OAT

Solicitors for the Appellants

LE BRASSEUR & BURY
71 Lincoln's Inn Fields
London WC2 3JF

Solicitors for the Respondent

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.J.) (Plaintiff) — Respondent

RECORD OF PROCEEDINGS

INDEX TO VOLUME 5

PART II

A TARA v ARUL, SUPPIAH & JAGINDAR

HIGH COURT OF MALAYA AT J.B. 261 OF 1977

Exhibit Mark				Page:
D8	(A1)	Amended Statement of Claim	30th April 1977	911 - 920
D26	(A2)	Summons	21st May 1977	921 - -
D26	(A3)	Summons	26th May 1977	922 - 923
D26	(A4)	Affidavit of Suppiah	2nd June 1977	924 - 925
D26	(A5)	Summons	2nd June 1977	926 - -
D26	(A6)	Affidavit of Suppiah	10th July 1977	927 - 928
D26	(A7)	Summons	10th July 1977	929 - -
D26	(A8)	Order	5th June 1978	930 - -
D26	(A9)	Order	26th November 1978	931 - -
D26	(A10)	Orders (2)	26th November 1978	932 - 934
D15	(A11)	Letter from Judicial Department	5th January 1979	935 - 936

Exhibit Mark				Page:
D26	(A12)	Summons	27th January 1979	937 - -
D26	(A13)	Order	19th March 1979	938 - 939
D26	(A14)	Summons	28th March 1979	940 - -
D26	(A15)	Order	25th April 1979	941 - -

B TARA v JAGINDAR, SUPPIAH & ARUL

HIGH COURT OF MALAYA AT J.B. 284 OF 1979

D26	(B1)	Application to Strike Out	2nd October 1979	942 - -
D9	(B2)	Affidavit of Tara	8th October 1979	943 - 949
D28	(B3)	Letter	10th October 1979	950 - -
D26	(B4)	Order	10th October 1979	951 - 952
D28	(B5)	Statutory Declaration of Govinda	12th December 1979	953 - 954
D28	(B6)	Statutory Declaration of Yilangovan	12th December 1979	955 - 957
D28	(B7)	Affidavit of Naicker	18th December 1979	958 - 976
D26	(B8)	Order (Federal Court)	9th July 1980	977 - 979
D26	(B9)	Order (Federal Court)	9th July 1980	980 - 982
D26	(B10)	Order (Federal Court)	27th October 1980	983 - 984
D26	(B11)	Judgment (Estoppel Issue)	18th December 1980	985 - 994
D26	(B12)	Order	18th December 1980	995 - 996
D26	(B13)	Order	7th January 1981	997 - 998
D26	(B14)	Affidavit of Tara	3rd February 1981	999 - 1008
D15	(B15)	Affidavit of Jagindar	12th May 1981	1009 - 1025

C ARUL v TARA & DEVAN

SESSIONS COURT AT J.B. 146 OF 1976

Exhibit Mark				Page:
D32	(C1)	Summons & Statement of Claim	20th March 1976	1026 - 1029
D32	(C2)	Memorandum of Retainer (Plf)	20th March 1976	1030 - -
D27	(C3)	Memorandum of Retainer (Dfdt)	20th April 1976	1031 - -
D10	(C4)	Defence	8th May 1976	1032 - 1034
D32	(C5)	Application	9th May 1976	1035 - -
D32	(C6)	Affidavit of Suppiah	10th May 1976	1036 - 1037
D32	(C7)	Subpoena	18th May 1976	1038 - -
D32	(C7A)	Written Submissions (Plf)	30th May 1976	1039 - 1041
D32	(C8)	Application	5th June 1976	1042 - -
D32	(C9)	Affidavit of Suppiah	11th June 1976	1043 - -
D32	(C9A)	Written Submissions (Plf)	30th June 1976	1044 - 1055
D32	(C9B)	Written Submissions (Plf)	August 1976	1056 - 1059
D32	(C10)	Notes of Evidence	9th August 1976	1060 - 1062
D32	(C11)	Order	9th August 1976	1063 - 1064
D32	(C12)	Affidavit of Majeed)	29th August 1976	1065 - 1067
D32	(C13)	Judgment	30th August 1976	1068 - 1070
D32	(C14)	Notice of Motion (High Court)	30th August 1976	1071 - -
D32	(C15)	Affidavit of Suppiah	5th September 1976	1072 - 1074
D32	(C16)	Written Submissions (Respondent)	8th September 1976	1075 - 1081
D32	(C17)	Proceedings	8/9th September 1976	1082 - 1086
D32	(C18)	Order (High Court)	9th September 1976	1087 - 1088
D32	(C19)	Notice of Change	13th September 1976	1089 - -
D32	(C20)	Application and Affidavit of Tara	13th September 1976	1090 - 1094
D32	(C20A)	Section 340(1) of the National Land Code		1095 - -

D CAVEAT PROCEEDINGS

Exhibit Mark				Page:
P99	(E1)	Application for Caveat by Suppiah and Statutory Declaration	2nd February 1975	1096 - 1100
D7	(E2)	Notice of Entry	8th February 1975	1101 - -
P66	(E3)	Application for Caveat by Tara	15th May 1976	1102 - 1103
P68	(E4)	Statutory Declaration	15th May 1976	1104 - 1105
D5	(E5)	Notice of Intended Removal	30th June 1976	1106 - -
D33	(E6)	Affidavit of Tara	26th July 1976	1107 - 1111
D5	(E7)	Affidavit of Devan	26th July 1976	1112 - 1113
D33	(E8)	Originating Summons	2nd August 1976	1114 - 1117
P70	(E9)	Application for Caveat by Tara	2nd February 1977	1118 - 1120
P72	(E10)	Statutory Declaration	2nd February 1977	1121 - -
P113	(E10A)	Application for Caveat by Tara	10th October 1977	1122 - 1125
P113	(E11)	Statutory Declaration of Tara	10th October 1977	1126 - 1127
P113	(E12)	Affidavit of Arul	21st December 1977	1128 - 1132
P113	(E13)	Notice of Originating Motion	22nd December 1977	1133 - 1134
P113	(E14)	Originating Motion	22nd December 1977	1135 - 1136
P113	(E15)	Affidavit of Tara	19th January 1978	1137 - 1150
P113	(E16)	Affidavit of Arul	23rd January 1978	1151 - 1152
P113	(E17)	Judgment	17th April 1978	1153 - 1156
P113	(E18)	Order	17th April 1978	1157 - 1158
P113	(E19)	Notice of Appeal	17th April 1978	1159 - 1160
P113	(E20)	Judges Notes	15th May 1978	1161 - 1164
P113	(E21)	Memorandum of Appeal by Tara	6th June 1978	1165 - 1168

E SUPPIAH v DAS

HIGH COURT OF SINGAPORE

Exhibit Mark				Page:
P108	(F1)	Writ and Statement of Claim	16th April 1975	1169 - 1172
P108	(F2)	Summons	28th April 1975	1173 - -
P108	(F3)	Affidavit of Suppiah	28th April 1975	1174 - -
P108	(F4)	Judgment	5th May 1975	1175 - -

High Court of Malaya

D33	(F5)	Affidavit of Suppiah	20th May 1975	1176 - 1179

F DISCIPLINARY PROCEEDINGS - SINGAPORE/MALAYA

D11	(G1)	Statutory Declaration of Tara	25th January 1977	1180 - 1184
D13	(G2)	Statutory Declaration of Das	25th January 1977	1185 - 1189
D14	(G3)	Staturory Declaration of Devan	25th January 1977	1190 - 1194
D12	(G4)	Statutory Declaration of Tara	2nd February 1977	1195 - 1197
D33	(G5)	Complaint by Tan & Another	16th March 1977	1198 - 1215
D32	(G6)	Answer by Arul	14th April 1977	1216 - 1226
D15	(G7)	Complaint of Tara to Bar Council (Malaya)	August 1979	1227 - 1231
D32	(G8)	Reference (and Reply) by Arul	Undated	1232 - 1239

VOLUME 5 : PART II : EXHIBITS

D 8

AMENDED STATEMENT OF CLAIM SUIT NO. 261 OF 1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU.

CIVIL SUIT NO. 261 OF 1977.

D 8 (A1)
Amended Statement of Claim. Suit No. 261 of 1977
30th April 1977

Writ issued the 30th day of April , 1977.

Between

Tara Rajaratnam ... Plaintiff.

And

1. Arul Chandran
2. Datuk P.Suppiah
3. Datuk Jajinder Singh ... Defendants.

AMENDED STATEMENT OF CLAIM.

1. At all material times, prior to the 22nd July, 1975 the Plaintiff, a housewife was the registered proprietress in possession of the land and dwelling house known as 681, Main road, Kulai Besar, Kulai, Johore held under C.T. 13817 Lot No.6025 (hereinafter called "the property".

2. The said property has since been and is now unlawfully registered in the name of the First Defendant in the circumstances hereinafter mentioned.

3. The First Defendant is an Advocate and Solicitor, practising in the Republic of Singapore. The Second and Third Defendants are Advocates and Solicitors, practising in partnership together in Johore Bahru under the style or firm name of Suppiah & Singh at Jalan Ah Fook, Johore Bahru (hereinafter called "the firm").

4. At all material times prior to the 5th day of July, 1975 the property was charged to the Chung Khiaw Bank Kulai to secure overdraft facilities granted by the said Chung Khiaw Bank to the Plaintiff and her husband.

5. In or about the month of August 1973, one Dr.Das, the brother of the Plaintiff's husband was desirous of obtaining

...2

D 8 (A1)

Amended Statement of Claim. Suit No. 261 of 1977

30th April 1977 (Cont'd)

overdraft facilities from the Hongkong & Shanghai Banking Corporation Singapore (hereinafter called "the Hongkong Bank"). In consideration of a guarantee given by the Third Defendant to the Hongkong Bank, the Hongkong Bank granted overdraft facilities to the said Dr.Das up to a limit of $120,000.00.

6. It was agreed between the said Dr.Das and the Third Defendant that the said Dr.Das would pay off the overdraft obtained by him from the Hongkong Bank within 6 months of the granting of the overdraft facilities by the Hongkong Bank to him.

7. Sometime in early March 1974 the husband of the Plaintiff and the Second and Third Defendants arranged that the Plaintiff should allow the property to stand as security for the repayments to the Third Defendant of the sum of $110,000.00 which the Third Defendant claimed that he had paid to the Hongkong Bank in discharge of the said Dr.Das's overdraft and a further $110,000.00 which should be lent by the Second Defendant to the Plaintiff so that the overdraft to the Chung Khiaw Bank could be paid off and the property released.

8. On the 12th day of March 1974 the firm acting as solicitors for the Plaintiff wrote to the said Chung Khiaw Bank, stating that the Plaintiff wished to pay off the charge to the Chung Khiaw Bank by charging the property for an increased amount. The Chung Khiaw Bank replied to the said letter informing the firm that the amount outstanding was $103,658.44 as at the 8th day of March 1974 and further interest was accruing.

9. On the 30th day of March 1974 at a meeting at the said property between the Second and Third Defendants on the one hand and the Plaintiff and her husband on the other, there was produced several copies of several documents including a Memorandum and a form of Transfer of the property from the Plaintiff to the Second Defendant, and what the Plaintiff now knows to be an application for adjudication of stamp duty and a capital appreciation tax form.

10. The said documents were at the said meeting presented by

...3

the Second and Third Defendants to the Plaintiff as being documents which would give effect to what had been previously arranged as in paragraph 7 hereof, namely a transaction by way of security or charge.

11. The Plaintiff on seeing that a Transfer was mentioned in the Memorandum, the first document she looked at, asked the Second and Third Defendants why this was so and was assured by the Defendants that the transaction by way of transfer was intended to operate merely as a security or charge and the Plaintiff demanded of the Second and Third Defendants that the documents should represent the true nature of the transaction.

12. The Second Defendant then proposed that he made a written acknowledgement on the Memorandum to the effect that he would not sell the property for one year and that the Plaintiff would have the property transferred back to her if she repaid the $220,000.00 (being the total of the two sums of $110,000.00 each as mentioned in paragraph 7 hereof) within one year. The Plaintiff asked the Second Defendant why her right to repay should be limited to one year to which the Second Defendant stated in reply that there had to be some period of time stated but that he did not intend to limit the Plaintiff to one year.

13. The Second Defendant thereafter signed an undertaking which one Sivanathan (who had accompanied the Second and Third Defendants when they called at the property) wrote at the end of the Memorandum.

14. Relying on the said Undertaking and in particular on the Second Defendant's statement that some period had to be stated and that the Second Defendant did not intend to limit the Plaintiff to one year, the Plaintiff signed the Memorandum, form of Transfer and other documents which the Second and Third Defendants had produced.

15. A copy of the said Memorandum with the Undertaking thereon is annexed hereto and the Plaintiff refers to the same for their full terms and effect.

...4

D 8 (A1)

Amended Statement of Claim. Suit No. 261 of 1977

30th April 1977 (Cont'd)

16 (1) The Plaintiff will contend that, on a true construction of the said Memorandum and Undertaking, the Transfer of the property to the Second Defendant operated in law by way of security only for repayment of the sum amounting to $220,000.00 and that by law and/or equity the Plaintiff's right to redeem the property was not limited to a period of one year or any period.

(2) Further and alternatively the Plaintiff says that the Second Defendant's statement that some period of time had to be stated in the Undertaking and that he did not intend to limit the Plaintiff to one year, on reliance on which the Plaintiff signed the Memorandum constituted a collateral agreement between the Plaintiff and the Second Defendant whereby the Plaintiff's right to redeem was not limited to a period of one year or any period.

(3) Further and alternatively to sub-paragraphs (1) and (2) hereof, the Plaintiff says that the transaction between her and the Second Defendant being one by way of security or charge and her right to redeem not being limited to one year or any period, the Second Defendant was not entitled to sell the property without giving the Plaintiff reasonable notice and/or opportunity to redeem.

(4) Further and alternatively the Plaintiff says that the transaction being one by way of security or charge the Second Defendant was not entitled to sell the property :

(a) without advertising the property;

(b) except by public auction.

17 (1) By the terms of the Memorandum the $220,000.00 consideration stated in Transfer was as to $110,000.00 that the Second Defendant would -

(1) pay to the Chung Khiaw Bank, Kulai ... $103,658.44

(2) pay to the said Chung Khiaw Bank further interest ...

(3) pay the Plaintiff ... The balance.

...5/

(2) By the terms of the Memorandum the $220,000.00 consideration stated in the Transfer was as to the remaining $110,000.00 that the Second Defendant would pay the sum of $110,000.00 to the Third Defendant for payment to the Hongkong Bank towards the sum due to that bank by Dr.Das.

18. The Plaintiff will contend that on a true interpretation of the said Memorandum the Second Defendant was under an obligation to pay forthwith or within a reasonable time the amounts set forth in the Memorandum.

19. The Plaintiff will further contend that on a true interpretation of the Memorandum and the said Undertaking the period of one year mentioned in the Undertaking could not begin to run (if at all) until the Second Defendant had paid all the amounts set forth in the Memorandum.

20. Further and alternatively the Plaintiff says that if, which is denied, the true nature of the transaction between the Plaintiff and the Second Defendant was not one to operate by way of security or charge but by way of sale, it was conditional upon the Second Defendant paying all the sums provided for in the Memorandum forthwith or within a reasonable period.

21. As to the sums which the Memorandum provided be paid to the Chung Khiaw Bank with a balance (to make a total of $110,000.00) to be paid to the Plaintiff, the Second Defendant did not pay any of the said sums within a reasonable time after the 30th day of March, 1974. The Second Defendant did not pay any sum to the said bank until the 5th day of July 1975 when they paid the sum of $92,000.00 in the circumstances hereinafter mentioned. The Second Defendant has not paid the Plaintiff the difference between the said sum of $92,000.00 paid to the said bank and a sum of $110,000.00; or paid the Plaintiff any sum to account of the said difference.

22 (1) As to the sum which the Memorandum provided be paid by the Second Defendant to the Third Defendant for payment to the Hongkong Bank a sum of $121,819.80 was paid to the credit of the

...6

D 8 (A1) Amended Statment of Claim. Suit No. 261 of 1977 30th April 1977 (Cont'd)

account of Dr.Dass on the 27th day of April, 1974 by the Second or the Third Defendant on behalf of the Second Defendant.

(2) On the 16th day of April 1975 the Second Defendant sued Dr.Das in the High Court in Singapore upon a dishonoured cheque for $149,520.00 dated 25th March 1975 which had been given to the Second Defendant by Dr.Das in repayment of the following :-

Amount due to Hongkong & Shanghai Bank, Singapore	... $110,000.00
Amount of alleged loss and benefit incurred by the Third Defendant in giving the guarantee to the said Dr.Das	... $ 7,000.00
Amount of interest alleged incurred from August 1973 to March 1975	... $ 32,520.00
	$149,520.00

and took judgment therefor on the 11th day of May, 1975.

(3) The Plaintiff says that the sum of $110,000.00 included in the said judgment is the same sum which the Memorandum provided be paid by the Second Defendant to the Third Defendant for payment to the Hongkong Bank.

(4) The Plaintiff will further say that by taking judgment against Dr.Das the Second Defendant has elected to treat a sum of $110,000.00 paid to the Hongkong Bank as a payment by the Second Defendant to the use of Dr.Das, and not as a payment on behalf of the Plaintiff in accordance with the Memorandum.

23. The Plaintiff says that on the 30th day of March 1974 the Second Defendant and the Third Defendant induced the Plaintiff to sign the said Transfer, (by representing that the Second Defendant would pay the sum amounting to $220,000.00 would be paid within a reasonable time) well knowing that neither the Second Defendant nor anyone on his behalf had any intention of making any payment in pursuance of the Memorandum save to the Hongkong Bank in discharge of the Third Defendant's obligations as guarantor to the said Bank.

24. On the 5th day of July 1975 the Third Defendant attested

...7

the signature of the Plaintiff on the said Transfer which she had signed on the 30th day of March 1974 and the Second and/or Third Defendants and/or the said firm paid the Chung Khiaw Bank, by their solicitors, a sum of $92,000.00 on the 5th day of July, 1975 in exchange for a Discharge of the said Bank's Charge on the property, and proceeded to register the Transfer in the name of the Second Defendant as transferee on the 22nd day of July, 1975. Such attestation, payment and registration were done without any notice to or knowledge of the Plaintiff.

25. The Plaintiff says that the attestation by the Third Defendant on the 5th day of July 1975 of the Plaintiff's signature on 30th March, 1974 on the Transfer was contrary to the fact, as to date.

~~26 (i) Registration of the said Transfer and the attestation by the Third Defendant of the Plaintiff's signature which made registration possible, were done when both the Second and the Third Defendants we knew that a right to register the Transfer had not arisen for the following reasons :~~

26. Registration of the said Transfer, and the attestation by the Third Defendant of the Plaintiff's signature which made registration possible, were done when both the Second and the Third Defendants well knew that a right to register the Transfer had not arisen for the following reasons :-

(a) The Second Defendant had not paid within a reasonable time the amounts s . forth in the Memorandum.

(b) Even assuming that only a year was intended in the undertaking a year had not elapsed since payment to the Chung Khiaw Bank, even assuming that such payment would have completed the payments required by the Memorandum.

(c) The sum paid to the Hongkong Bank was $121,819.80
and to the Chung Khiaw Bank $ 92,000.00
a total $213,819.80

...8

D 8 (A1)
Amended Statement of Claim. Suit No. 261 of 1977
30th April 1977
(Cont'd)

which (apart from the fact that only $110,000.00 fell to be paid to the Hongkong Bank under the Memorandum) was less than the $220,000.00 payable under the Memorandum, and no other payment had been made;

(d) The Second Defendant had elected to treat the sum of $110,000.00 paid to the Hongkong Bank as paid to the use of Dr.Das by taking judgment against him;

and that the Second Defendant not having paid the several sums as he was required to do by the Memorandum was in breach of the terms upon which the Transfer had been delivered to him.

27. Further and alternatively the Second and Third Defendants were at all material times, in relation to the said Transfer and Memorandum, the solicitors for the Plaintiff, who had no opportunity for, and who had not been advised to seek, independent advice and the transaction, be it by way of security or charge or (which is denied) be it by way of sale, is liable to be set aside on the ground that the Plaintiff acted under undue influence.

28. On or about the 31st day of July 1975 the Second Defendant executed a Transfer of the property to the First Defendant whose signature as transferee was attested by the Third Defendant and the First Defendant became unlawfully registered as proprietor on registration of the Transfer on the 9th day of August 1975. The Transfer stated that the consideration was $220,000.00 but the Plaintiff says that there was no sum by way of consideration or other good consideration passing from the First Defendant.

29. On the 4th day of March 1976 the firm acting for and on behalf of the First Defendant wrote to the Plaintiff and her husband requiring them to quit the property by the 15th of March, 1976 or face eviction proceedings.

30. On the 20th day of March 1976 the firm acting for and on behalf of the First Defendant sued the Plaintiff and her husband in the Johore Bahru Sessions Court claiming possession of the Property. The Plaintiff filed a Defence on the 8th day of May

...9

1976 relating the matters between herself and the Second and Third Defendants hereinbefore referred to and resisted the claim for possession on the ground that the Second Defendant had not carried out his obligations to her and that the First Defendant was not a bona fide purchaser for value. Judgment for possession was given on the 9th day of August 1976 on the strength of the First Defendant being the registered owner. An appeal from the said judgment is pending.

31. The Plaintiff, her husband and family vacated the property on the 20th of September 1976.

~~30. The Plaintiff will say that the First Defendant who is and who was at all material times a good friend of the Second and Third Defendants knew or ought to have known that the Second Defendant's title was defeasible as a sale by him (the Second Defendant) as a mortgagee to himself (the Second Defendant) and that the First Defendant so knowingly accepted the transfer in an attempt to aid the Second Defendant and/or the Third Defendant to defeat the Plaintiff's lawful claim to the property and possession thereof.~~

32. The Plaintiff will say that the First Defendant who is and was at all material times a good friend of the Second and Third Defendants knew or ought to have known that,

(1) the Second Defendant's title was defeasible by by reason of the facts hereinbefore related, and

(2) the purported sale by the Second Defendant to himself, the First Defendant was made for the purpose of defeating the Plaintiff's lawful claim to the property and possession thereof.

and the First Defendant knowingly accepted the transfer in order so to defeat the Plaintiff's said claim.

33. In the further alternative the Plaintiff will say that the First Defendant was and is still a mere nominee for the Second and/or Third Defendants in that no consideration passed

...10.

D 8 (A1)
Amended
Statement of
Claim. Suit
No. 261 of 1977
30th April
1977 (Cont'd)

from the First Defendant to the Second or Third Defendants and that the transfer to the First Defendant was effected to defeat the Plaintiff of her lawful title to the property and possession thereof and that the First Defendant pursued the said action for possession well knowing that the Second Defendant had wrongfully registered the Transfer signed by the Plaintiff, and that the Plaintiff has suffered loss thereby.

The Plaintiff claims :-

1. A declaration that the transfer of the property and the registration thereof in the Second Defendant's name is defeasible on grounds of misrepresentation or fraud or on the ground that the registration was obtained by a void instrument;
2. An order that there be set aside
   (a) the Transfer from the Plaintiff to the Second Defendant;
   (b) the Transfer from the Second Defendant to the First Defendant;
3. Rectification of the Land Register;
4. All necessary enquiries;
5. Damages against the Defendants;
6. Further or other relief; and
7. Costs.

Dated this 30th day of April, 1977.

BY

Subra Naicker & Co;
Solicitors for the Plaintiff.

Dated and Re-delivered this day of ,1977.

BY

SPNAICKER & Co

Solicitors for the Plaintiff.

To:

The abovenamed Defendants.

D 26

SUMMONS
SUIT NO. 261
OF 1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

D 26 (A2)
Summons
Suit No. 261 of 1977
21st May 1977

CIVIL SUIT NO.261 OF 1977

Between

2. TARA RAJARATNAM
.. Plaintiff

And

1. ARUL CHANDRAN
2. DATUK P. SUPPIAH
3. DATUK JAJINDER SINGH
.. Defendants

SUMMONS-IN-CHAMBERS

LET ALL PARTIES CONCERNED appear before the Judge in Chambers on Tuesday the 5th day of July 1977 at 8.30 a.m. on the hearing of an application on the part of the Third Defendant herein for an order that the Indorsement and Plaintiff's Statement of Claim be struck out under Rules of the Supreme Court Order 25 Rule 4 on the ground that it discloses no reasonable cause of action against the Third Defendant and that the Plaintiff's action against the Third Defendant be dismissed and that the Third Defendant be at liberty to enter Judgment for his costs, including the costs of this application to be taxed.

Dated this 21st day of Mei 1977.

Entered No. [illegible] of 1977.

This is the paper writing marked "TRIA" referred to in the affidavit/petition of Tara K. sworn to/affirmed on the 3rd day of Feb 1981 before me.

(SIGNED) MUSTAPHA BIN [illegible]
MUSTAPHA BIN [illegible]
Pesurohjaya Sumpah
(Commissioner for Assistant Registrar
JOHOR BAHRU

D 26

SUMMONS

SUIT NO. 261 OF 1977

D 26 (A3)
Summons
Suit No. 261 of 1977
26th May 1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 261 OF 1977

Between

2. TARA RAJARATNAM

... Plaintiff

And

1. ARUL CHANDRAN
2. DATUK P. SUPPIAH
3. DATUK JAJINDER SINGH

... Defendants

SUMMONS-IN-CHAMBERS

LET ALL PARTIES concerned appear before the Judge in Chambers on Tuesday the 5th day of July 1977 at 9.00 o'clock in the forenoon on the hearing of an Application on the part of the abovenamed Defendants for an order that the Statement of Claim herein be struck out on the ground that

(a) There is no indorsement in the Amended Statement of Claim as to under which Order of the Rules of the Supreme Court the amendments are made and therefore there is a non-compliance with Order 28 Rule 9;

(b) That both the filing and service copies of the Amended Statement of Claim are undated;

(c) The date of re-delivery of the Amended Statement of Claim has not been stated and the omission thereof contravenes Order 19 Rule 11;

D 26 (A3)

Summons
Suit No. 261
of 1977
26th May
1977 (Cont'd)

(d) The words "Writ issued the 30th day of April 1977" has been included in the Amended Statement of Claim and if it is an amendment, it does not comply with the Rules of the Supreme Court;

(e) The description of the Plaintiff in the title of this Action has been omitted;

(f) The figure "2" appearing in the Writ of Summons before the name of the Plaintiff in the title of this Action does not appear in the Amended Statement of Claim nor does the figure "1" appearing before the name of the Plaintiff in the title of this Action of the Statement of Claim originally filed appear in the Amended Statement of Claim, and that in any event these numbers are meaningless and misleading;

(g) The amendments made to paragraph 12 of the Statement of Claim be disallowed and struck out under Order 28 Rule 4;

(h) That the time for the Defendants to serve their Defence be extended to a date after the hearing of this Application; and

(i) Costs of this Application.

Dated this 26th day of Mar 1977.

Entered No. 494 of 1977.

(Sd.) Rohani Binti Mohd. Dell
Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

(SIGNED) [illegible]
MUSTAPHA B.H. [illegible], PLP., PIS,
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

This is the paper writing marked "[illegible]" referred to in the affidavit of petition Tara Rajanathan sworn to affirmed on the 3rd day of Feb 1977 before me.

D 26 (A4)
Affidavit of Suppiah
Suit No. 261 of 1977
2nd June 1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO.261 OF 1977

Between

2. TARA RAJARATNAM .. Plaintiff

And

1. ARUL CHANDRAN
2. DATUK P. SUPPIAH
3. DATUK JAJINDER SINGH
Defendants

This is the paper writing marked "T1233" referred to in the affidavit of Tara Rajaratnam sworn (or affirmed) the 3 day of Feb 1977 before me (SIGNED) Mustapha Pesurohjaya Sumpah (Commissioner for Oaths) JOHOR BAHRU

10 A F F I D A V I T

I, PAKRISAMY SUPPIAH, of No.2-D, Jalan Ah Fook, Johore Bahru, Advocate and Solicitor solemnly and sincerely affirm as follows :

1. I am the abovenamed Second Defendant and the solicitor in charge of this Action for all the abovenamed Defendants.

2. As far as the First Defendant is concerned the allegations against him by the Plaintiff are contained in paragraphs 26(1), 28, 32 and 33 of the Statement of
20 Claim.

3. Paragraphs 29, 30 and 32 thereof relate to the First Defendant having taken execution proceedings against the Plaintiff and her husband, one K.V. Devan in Johore Bahru Sessions Court Civil Action No.146 of 1976.

4. Only bare and unsubstantiated allegations have been made against the Plaintiff in the paragraphs of the Statement of Claim referred to in paragraph 2 above.
30 Particulars are wholly lacking and have not been properly pleaded as required under the Rules of the Supreme Court. The said paragraphs are therefore embarrassing pleadings.

5. With regard to the allegation that there is no

consideration, I would urge the Court to refer to the admission set out in the Defence filed in respect of the said Sessions Court Civil Action No.146 of 1976 wherein the First Defendant herein (Plaintiff therein) took execution proceedings against the Plaintiff herein and her said husband K.V. Devan (Defendants therein).

6. The admission referred to in para 5 above reads: "The Defendants for business reasons were unable to repay the sum of $220,000 within the period".

It is a clear admission and a xerox copy of the said Defence is annexed hereto and marked "A". 10

7. In Johore Bahru Originating Motion No.17 of 1976 the Plaintiff and her said husband made an Application for stay of execution of possession granted by the Court in the said Civil Action No.146 of 1976 but the said application was duly heard and dismissed.

A xerox copy of the Order of this Honourable Court refusing stay in the said Originating Motion is annexed hereto and marked "B". 20

8. The subject matter of the action being the land held under C.T. 13817 Lot No. 6025 has been surrendered to the State Government under the National Land Code and it is therefore no more in existence.

AFFIRMED at Johore Bahru)
this 2nd day of June)
1977.

Before me,

R. Ramasamy.

A Commissioner for Oaths.
High Court
Johore Bahru. 2.6.77.

This is the paper writing marked "" referred to in the affidavit of petition sworn to affirmed on the day of 19 before me.

This Affidavit is filed on behalf of the First Defendant in support of the Application filed on the 2nd day of June 1977. 30

(SIGNED) MUSTAPHA BIN MOHAMAD
MUSTAPHA BIN MOHAMAD, P.U., M.S.
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

D 26

SUMMONS

SUIT NO. 261 OF 1977

D 26 (A5)

Summons
Suit No. 261 of 1977
2nd June 1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO.261 OF 1977

This is the paper writing marked "TR 3A" referred to in the affidavit/petition of Tara R sworn to/affirmed on the 3rd day of Feb 1977 before me.
(SIGNED) MUSTAPHA ...
MUSTAPHA ...
Pesuruhjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

Between

2. TARA RAJARATNAM .. Plaintiff

And

1. ARUL CHANDRAN
2. DATUK P. SUPPIAH
3. DATUK JAJINDER SINGH .. Defendants

SUMMONS-IN-CHAMBERS

LET ALL PARTIES concerned appear before the Judge in Chambers in the High Court in Malaya at Johore Bahru on Tuesday the 5th day of July 1977 at 9.00 o'clock in the forenoon on the hearing of an application on the part of the abovenamed First Defendant for an order that the Plaintiff's Statement of Claim be struck out under Rules of the Supreme Court, Order 19, rule 27 and Order 25, rule 4, and under the inherent jurisdiction on the ground that

(1) it discloses no reasonable cause of action against the First Defendant:

(2) it is frivolous and vexatious; and

(3) it is an abuse of the process of the court;

and that the Plaintiff's action against the First Defendant be dismissed, and that the First Defendant be at liberty to enter judgment for his costs, including the costs of this application to be taxed.

Dated this 2nd day of June 1977.

Entered No. 527 of 1977

(Sd.) Rohani Binti Mohd
SENIOR ASSISTANT REGISTRAR,
HIGH COURT, MALAYA,
JOHORE BAHRU.

JOHORE BAHRU.

D 26(A6)
Affidavit of Suppiah
Suit No. 261 of 1977
10th July 1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO.261 OF 1977

Between

2. TARA RAJARATNAM

Plaintiff

And

1. ARUL CHANDRAN
2. DATUK P. SUPPIAH
3. DATUK JAJINDER SINGH

.. Defendants

10

A F F I D A V I T

I, PAKRISAMY SUPPIAH, of No.2-D, Jalan Ah Fook, Johore Bahru, Advocate and Solicitor, solemnly and sincerely affirm as follows :

1. I am the abovenamed Second Defendant and the solicitor in charge of this Action for all the defendants.

2. The property referred to in paragraphs 1 and 2 of the Statement of Claim which is the subject matter of the claim herein has been surrendered to the State Government under the National Land Code. Therefore the reliefs prayed for by the Plaintiff in her Statement of Claim cannot be granted by this Honourable Court as they arise or are connected with the said property.

20

3. Furthermore the Statement of Claim does not comply with the Rules of the Supreme Court, in that :

30

(i) it contains evidence;

(ii) it states law and conclusions of the law;

(iii) it does not state the material facts in a summary form;

(iv) it contains arguments, reasons, theories and conclusions;

D 26(A6)

Affidavit of
Suppiah
Suit No. 261
of 1977
10th July 1977
(Cont'd)

(v) it contains vague and ambiguous expressions;

(vi) it does not contain particulars of, inter alia, fraud, undue influence and misrepresentation;

(vii) it does not say what is the cause of action against each of the Defendants;

(viii) it does not say what relief is asked against which defendant;

(ix) the facts pleaded do not support the kind of relief asked for.

10

AFFIRMED at Johore Bahru this 10th day of July, 1977.

Before me,

Sd. Mustapha bin Mohd
Comm. for Oaths
High Court
Johore Bahru

This Affidavit is filed on behalf of the Second Defendant in support of the Application filed on the 10 day of July 1977.

This is the paper writing marked "TR+B" referred to in the affidavit/petition of Tara Rajaratnam sworn to/affirmed on the 7 day of July 1977 before me,

(SIGNED) MUSTAPHA BIN MOHAMAD, PEN., PIS.
MUSTAPHA BIN MOHAMAD, PEN., PIS.
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

D 26

SUMMONS

SUIT NO. 261 OF 1977

D 26 (A7)
Summons
Suit No. 261 of 1977
10th July 1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO.261 OF 1977

Between

2. TARA RAJARATNAM .. Plaintiff

And

1. ARUL CHANDRAN
2. DATUK P. SUPPIAH
3. DATUK JAJINDER SINGH .. Defendants

SUMMONS-IN-CHAMBERS

LET ALL PARTIES concerned appear before the Judge in open court on Sunday the 21st day of August 1977 at 9.00 o'clock in the forenoon on the hearing of an application on the part of the abovenamed Second Defendant for an order that the Plaintiff's Statement of Claim be struck out under Rules of the Supreme Court, Order 19, rule 27 and Order 25, rule 4, and under the inherent jurisdiction on the ground that

(1) it discloses no reasonable cause of action against the Second Defendant;

(2) it is frivolous and vexatious;

(3) it is an abuse of the process of the court; and

(4) it may prejudice, embarrass or delay the fair trial of this action;

and that the Plaintiff's action against the Second Defendant be dismissed, and that the Second Defendant be at liberty to enter judgment for his costs, including the costs of this application to be taxed.

Dated this 10th day of July 1977.

Entered No. 601 of 1977.

This is the paper writing marked "TRA" referred to in the affidavit of petition of Tara Rajaratnam sworn to affirmed on the 3 day of Feb 1977 before me.

(SIGNED) MUSTAPHA BIN MOHAMAD
MUSTAPHA BIN MOHAMAD, PLP., PIS,
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

SENIOR ASSISTANT REGISTRAR,
HIGH COURT, MALAYA,
JOHORE BAHRU.

D 26

ORDER

SUIT NO. 261 OF 1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU.

D 26 (A8)

Order
Suit No. 261
of 1977
5th June 1978

CIVIL SUIT NO.261 OF 1977.

Between

Tara Rajaratnam

.. Plaintiff.

AND

1. Arul Chandran
2. Datuk P.Suppiah
3. Datuk Jajinder Singh.

.. Defendants.

BEFORE THE HONOURABLE TUAN ANUAR BIN DATUK ZAINAL ABIDIN JUDICIAL COMMISSIONER.

IN OPEN COURT, THIS 5TH DAY OF JUNE, 1978.

O R D E R.

UPON the application of the Defendants made by way of Summons-in-Chambers Entered No.494 of 1977 coming on for hearing this day in the presence of Datuk P.Suppiah of Counsel for the Defendants and Mr.Subra Naicker of Counsel for the Plaintiff AND UPON READING that said Summons-in-Chambers and the Affidavit of Datuk P.Suppiah affirmed and filed herein on the 26th day of May,1977 AND UPON HEARING Counsel as aforesaid IT IS ORDERED that the application made herein to strike out the Statement of Claim be and is hereby dismissed AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

GIVEN under my hand and the Seal of the Court, this 5TH day of June,1978.

This is the paper writing marked "TR25" referred to in the affidavit/petition of Tara R. sworn to/affirmed on the 3 day of Feb 1981 before me.

(SIGNED) MUSTAPHA BIN MOHAMAD
MUSTAPHA BIN MOHAMAD, PEN., PIS.
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

SENIOR ASSISTANT REGISTRAR,
HIGH COURT, MALAYA,
JOHORE BAHRU.

D 26

ORDER

SUIT NO. 261 OF 1977

D 26 (A9)
Order
Suit No. 261
of 1977
26th November
1978

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 261 OF 1977.

Between

TARA RAJARATNAM

... ... Plaintiff

And

1. ARUL CHANDRAN
2. DATUK P. SUPPIAH
3. DATUK JAJINDER SINGH

... ... Defendants

BEFORE THE HONOURABLE TUAN ANUAR BIN DATUK ZAINAL ABIDIN
JUDICIAL COMMISSIONER

IN CHAMBERS
THIS 26TH DAY OF NOVEMBER, 1978

O R D E R

UPON the application of the Third Defendant herein made by way of Summons-in-Chambers Entered No. 490 of 1977 coming on for hearing in chambers this day in the presence of Dato' P. Suppiah of Counsel for the Third Defendant and Mr. Subra Naicker of Counsel for the Plaintiff and upon hearing counsel as aforesaid and upon reading the indorsement on the Writ of Summons and the Statement of Claim IT IS ORDERED that the Plaintiffs' Statement of Claim be struck out under the Rules of the Supreme Court on the ground that it discloses no reasonable cause of action against the Third Defendant and that the costs of this application be taxed and paid by the Plaintiff to the Third Defendant.

Given under my hand and the Seal of the Court this 26th day of November, 1978.

(SIGNED) MUSTAPHA BIN MOHAMED
Pesuruhjaya Sumpah
(Commissioner for Oaths)
JOHOR BAHRU

Chief Assistant Registrar,
High Court,
Malaya,
Johore Bahru.

This is the paper writing marked "TR 18" referred to in the affidavit of Tara R sworn to affirmed on the 3rd day of Feb 19 81 before me.

D 26
ORDER
SUIT NO. 261 OF 1977

D 26 (A10)
Order
Suit No. 261
of 1977
26th November
1978

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU.

CIVIL SUIT NO.261 OF 1977

Between

Tara Rajaratnam ... Plaintiff

And

1. Arul Chandran
2. Datuk P.Suppiah
3. Datuk Jajinder Singh

... Defendants

BEFORE THE HONOURABLE TUAN ANUAR BIN DATUK ZAINAL ABIDIN, JUDICIAL COMMISSIONER.

IN CHAMBERS, THIS 26TH DAY OF NOVEMBER,1978

O R D E R

UPON the application of the 2nd Defendant made by way of Summons-in-Chambers Entered No.601 of 1977 dated the 10th day of July,1977 coming on for hearing this day in the presence of Datuk P.Suppiah the 2nd Defendant herein and Mr.Subra Naicker of Counsel for the Plaintiff AND UPON READING the said Summons in-Chambers and the Affidavit of Pakrisamy Suppiah affirmed and filed herein on the 10th day of July, 1977 AND UPON HEARING Datuk P.Suppiah the 2nd Defendant herein and Mr.Subra Naicker of Counsel for the Plaintiff abovenamed IT IS ORDERED that the application filed herein by the 2nd Defendant be and is hereby dismissed with costs in the cause with liberty to file an application within three (3) weeks as from the date hereof to strike out the irrelevant portions in the Statementof Claim failing which the 2nd Defendant do file and deliver his Defence upon the expiry of the aforesaid period of three (3) weeks AND IT IS LASTLY ORDERED that upon the filing of the said Application the 2nd Defendant need not file his Defence until the hearing of the said Application.

GIVEN under my hand and the Seal of the Court, this 26th day of November,1978.

D 26 (A10)
Order
Suit No. 261 of 1977
26th November 1978
(Cont'd)

15/12/78

SENIOR ASSISTANT REGISTRAR,
HIGH COURT MALAYA
JOHORE BAHRU.

D 26

ORDER

SUIT NO. 261 OF 1977

D 26(A10)
Order
Suit No. 261
of 1977
26th November
1978

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO.261 OF 1977

Between

Tara Rajaratnam ... Plaintiff

And

1.Arul Chandran
2.Datuk P.Suppiah
3.Datuk Jajinder Singh

... Defendants

BEFORE THE HONOURABLE TUAN ANUAR BIN DATUK ZAINAL ABIDIN, JUDICIAL COMMISSIONER.

IN CHAMBERS
THIS 26TH DAY OF NOV.1978

O R D E R

UPON the application of the 1st.Defendant made by way of Summons-in-Chambers Entered No.527 of 1977 dated the 2nd. day of June,1977 coming on for hearing this day in the presence of Datuk P.Suppiah of Counsel for the 1st.Defendant and Mr.Subra Naicker of Counsel for the Plaintiff AND UPON READING the said Summons-in-Chambers and the Affidavit of Pakrisamy Suppiah affirmed and filed herein on the 2nd day of June, 1977 and the exhibit referred to therein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that the application filed herein by the 1st Defendant be and is hereby dismissed with costs in the cause with liberty to file an application within three (3) weeks as from the date hereof to strike out the irrelevant portions in the Statement of Claim failing which the 1st.Defendant do file and deliver his Defence upon the expiry of the aforesaid period of three(3) weeks AND IT IS LASTLY ORDERED that upon the filing of the said application the 1st Defendant need not file his defence until the hearing of the said Application.

GIVEN under my hand and the Seal of the Court, this 26th day of November, 1978

This is the paper writing marked "TR3C" referred to in the affidavit/petition of Tara R. sworn to/affirmed on the 3 day of Feb 1981 before me

(SIGNED) MUSTAPHA BIN MOHAMED
MUSTAPHA BIN MOHAMED
Pesurohjaya Sumpah
Commissioner for Oaths
JOHOR BAHRU.

19/8/78

PENDAPAT ASSISTANT REGISTRAR,
HIGH COURT MALAYA,
JOHORE BAHRU.

D 15

EXHIBIT JS 1

LETTER, JUDICIAL DEPARTMENT
TO SUBRA NAICKER

D 15 (A11)
Exhibit JS 1
Letter Judicial
Department to
Subra Naicker
5th January 1979

Telegraphic Address: "REGCOURT"
Telephone Nos.: K.L. 84414/5/6

JABATAN KEHAKIMAN
(JUDICIAL DEPARTMENT)
MAHKAMAH PERSEKUTUAN
(FEDERAL COURT)
MALAYSIA
KUALA LUMPUR. 01-02

Your Reference:

In Reference: (9)dlm.F.C.Civil Appeal No.97/78.

5hb January, 19 79.

This is the Exhibit marked JS 1 referred to in the affidavit of Jagindar Singh sworn before me this 12th day of May 1981
R. RAMASAMY P.I.S
COMMISSIONER FOR OATHS
HIGH COURT
JOHORE BAHRU

Tetuan Subra Naicker & Co.,
Pegumbola dan Peguamcara,
No.45, 1st Floor,
Jalan Ibrahim,
JOHOR BAHRU.

Tuan,

FEDERAL COURT CIVIL APPEAL NO: 97 OF 1978
(J.Bahru High Court Civil Appeal No.20/77)

Between

Tara Rajaratnam (m.w.) & anor. ... Appellants

And

10 Arul Chandran ... Respondent

I acknowledge the receipt of your letter dated 28th December, 1978 together with the copies of the letters mentioned therein.

2. Although there has been some delay in perfecting the order of the High Court dated 6th June, 1978 and also obtaining the notes and grounds of judgment of the Hon'ble the Judicial Commissioner in this matter, proper application should have been made to me for an extension of time to file the record of appeal in accordance with Practice Note No.2/70 (1970 2 MLJ lvi) before the expiry of the prescribed period i.e.
20 1.8.78. In compliance with the above-mentioned Practice Note, consent of the Respondent's solicitors which you have obtained on the 2nd August, 1978 should have been transmitted to us well before the expiry date so that this Registry would have granted you an extension of time to file the record of appeal to run from the date of receipt of notes and grounds of judgment of the Judicial Commissioner in this appeal.

3. It is observed that no such steps were taken by you as stated above or the proper application by way of Motion to the Court have been made by you to-date.

30 4. It is observed that the record of appeal have been filed on 12th December, 1978 which almost 4 months out of the prescribed period. Any extension of time beyond the prescribed 6 weeks could only be granted on application to the Court in accordance with Rule 19(6) of the Federal Court (Civil Appeal) (Transitional) Rules 1963 and not by the Registrar under Practice Note No.2 of 1970.

5. In the circumstances you are required to file a proper notice of motion supported by Affidavit/s before the appeal is fixed for hearing at the next sitting of the Federal in Johore Bahru commencing on 3rd February, 1979. The intended Motion and the appeal proper will be listed

...2/-

at the same time.

Saya yang menurut perintah,

(Haji Wan Mohamed bin Haji Wan Mustapha)
KETUA PENDAFTAR

s.k.

1. Tetuan Suppiah & Singh,
   Peguambela dan Peguamcara,
   No.2-D Jalan Ah Fook,
   JOHOR BAHRU.

2. Penolong Kanan Pendaftar,
   Mahkamah Tinggi,
   JOHOR BAHRU.

RECEIVED
DATE - 8 JAN 1979
TIME 11.15 a.m.

VR/G

D 26

SUMMONS

SUIT NO. 261 OF 1977

D 26 (A12)

Summons
Suit No. 261
of 1977
27th January
1979

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO.261 OF 1977

Between

Tara Rajaratnam .. Plaintiff

And

1. Arul Chandran
2. Datuk P. Suppiah
3. Datuk Jajinder Singh
.. Defendants

SUMMONS-IN-CHAMBERS

LET ALL PARTIES concerned appear before the Judge in Chambers on Sunday the 18th day of February 1979 at 9.00 o'clock in the forenoon on the hearing of an application on the part of the abovenamed First and Second Defendants for an order that the Plaintiff's Statement of Claim be struck out under Rules of the Supreme Court, Order 19, rule 27 and Order 25, rule 4, and under the inherent jurisdiction on the ground that

(1) it discloses no reasonable cause of action against the First and Second Defendants;

(2) it is frivolous and vexatious;

(3) it is an abuse of the process of the court; and

(4) it may prejudice, embarrass or delay the fair trial of the action;

and that the Plaintiff's action against the First and Second Defendants be dismissed, and that the First and Second Defendants be at liberty to enter judgment for their costs, including the costs of this application to be taxed.

Dated this 27th day of January 1979.

Entered No. 78 of 1979.

27/1/79

SENIOR ASSISTANT REGISTRAR,
HIGH COURT, MALAYA,
JOHORE BAHRU.

This is the paper writing marked "TRS" referred to in the affidavit of Tara R. sworn to affirmed on the 3 day of 19 79 before me.

(SIGNED) MUSTAPHA BIN MOHAMMAD
MUSTAPHA BIN MOHAMMAD
Pesurohjaya Sumpah,
(Commissioner for Oaths,
JOHOR BAHRU.

D 26

ORDER

SUIT NO. 261 OF 1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 261 OF 1977.

Between

TARA RAJARATNAM

... ... Plaintiff

And

1. ARUL CHANDRAN

2. DATUK P. SUPPIAH

3. DATUK JAJINDER SINGH

... ... Defendants

BEFORE THE HONOURABLE MR. JUSTICE ANUAR BIN DATO ZAINAL ABIDIN

IN OPEN COURT
THIS 19TH DAY OF MARCH. 1979.

O R D E R

UPON the application of the First and Second Defendants herein made by way of Summons-in-Chambers Entered No. 78 of 1979 coming on for hearing in open Court on the 4th day of March 1979 in the presence of Dato' P. Suppiah of Counsel for the First and Second Defendants and Mr. Subra Naicker of Counsel for the Plaintiff and upon hearing counsel as aforesaid and upon reading the said Summons-in-Chambers, the Affidavit of the First Defendant filed herein on the 16th day of December 1978, the Affidavit of the Plaintiff filed on the 27th day of February 1979 and the Statement of Claim it was adjourned for judgment this day and upon the same coming on for judgment this day IT IS ORDERED that all the paragraphs of the Plaintiffs' Statement of Claim be struck out under the Rules of the Supreme Court Order 19, rule 27 and Order 25 rule 4 and under the inherent jurisdiction of the Court on the ground that it discloses no reasonable cause of action against the First and Second Defendants, it is frivolus and vexatious, it is an abuse of the process of the Court and it may prejudice, embarrass or delay the fair trial of this action

AND IT IS FURTHER ORDERED that the Plaintiff be at liberty to either discontinue this action and file a fresh Suit or a fresh Statement of Claim within two months from the date hereof and that the costs of this application be taxed and paid by the Plaintiff to the First and Second Defendants.

Given under my hand and the Seal of the Court this 19th day of March, 1979.

Senior Assistant Registrar,
High Court,
Malaya,
Johore Bahru.

This is the paper writing marked "TRSB" referred to in the affidavit/petition of Tara R. sworn to/affirmed on the 3 day of Feb 19 87 before me.

(SIGNED) MUSTAPHA BIN MOHAMAD
MUSTAPHA BIN MOHAMAD, PEP., PIS,
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

D 26

SUMMONS

SUIT NO. 261 OF 1977

D 26 (A14)

Summons
Suit No. 261 of 1977

28th March 1979

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 261 OF 1977

Between

2. TARA RAJARATNAM .. Plaintiff

And

1. ARUL CHANDRAN

2. DATUK P. SUPPIAH

3. DATUK JAJINDER SINGH .. Defendants

SUMMONS-IN-CHAMBERS

LET ALL PARTIES CONCERNED appear before the Judge in Chambers on Sunday the 22nd day of April, 1979 at 9.00 a.m. on the hearing of an application on the part of the First and Second Defendants herein for an order that the Indorsement in this Action be struck out under Rules of the Supreme Court Order 25 Rule 4 on the ground that it discloses no reasonable cause of action against the First and Second Defendants and that the Plaintiff's Action against the First and Second Defendants be dismissed and that the First and Second Defendants be at liberty to enter Judgement for their costs including the costs of this application to be taxed.

Dated this 28th day of March, 1979.

Entered No. 220 of 1979.

This is the paper writing marked "TR6A" referred to in the affidavit/petition of Tara R. sworn to/affirmed on the 3 day of Feb 1981 before me.

Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

(SIGNED) MUSTAPHA BIN ...
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

D 26

ORDER

SUIT NO. 261 OF 1977

D 26 (A15)
Order
Suit No. 261 of 1977

25th April 1979

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 261 OF 1977.

Between

TARA RAJARATNAM

... ... Plaintiff

And

1. ARUL CHANDRAN
2. DATUK P. SUPPIAH
3. DATUK JAJINDER SINGH

... ... Defendants

This is the paper writing marked "MGB" referred to in the affidavit of Tara R. sworn to affirmed on the 3rd day of Feb 1987 before me.

(SIG...)
MUSTAFA ... PIS,
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

BEFORE THE HONOURABLE MR. JUSTICE ANUAR BIN DATO ZAINAL ABIDIN IN CHAMBERS THIS 25TH DAY OF APRIL, 1979.

O R D E R

UPON the application of the First and Second Defendants herein made by way of Summons-in-Chambers Entered No. 220 of 1979 coming on for hearing in Chambers on the 25th day of April, 1979 in the presence of Dato' P. Suppiah of Counsel for the First and Second Defendants and Mr. Subra Naicker of Counsel for the Plaintiff and upon hearing counsel as aforesaid and upon reading the said Summons-in-Chambers, IT IS ORDERED that the Indorsement in this Action be struck out under Rules of the Supreme Court Order 25 Rule 4 on the ground that it discloses no reasonable cause of action against the First and Second Defendants and that the Plaintiff's Action against the First and Second Defendants be dismissed and that the First and Second Defendants be at liberty to enter Judgment for their costs, including the costs of this application, to be taxed and liberty was given to the Plaintiff to file a fresh action.

Given under my hand and the Seal of the Court this 25th day of April, 1979.

Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru

D 26

D 26 (B1)

Application to strike out Suit No. 284 of 1979

2nd October 1979

APPLICATION TO STRIKE OUT

SUIT NO. 284 OF 1979

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 284 OF 1979

Between

Tara Rajaratnam (m.w.)

... Plaintiff

And

1. Datuk Jagindar Singh
2. Datuk P. Supplah
3. Arul Chandran

... Defendants

SUMMONS-IN-CHAMBERS

LET ALL PARTIES concerned appear before the Judge in Chambers in the High Court in Malaya at Johore Bahru on Monday the 8th day of October, 1979 at 9.00 o'clock in the forenoon on the hearing of an application on the part of the abovenamed Defendants for an Order under the inherent jurisdiction of the Court that the Action be dismissed on the ground of res judicata, the issues in this action having been determined and adjudicated upon in an action between the same parties in Johore Bahru High Court Civil Suit No. 261 of 1977, and the same if frivolous and vexatious and an abuse of the process of the Court, and that the Plaintiff pay to the Defendants their costs in this action and costs of this application to be taxed and that in the mean time all further proceedings in this Action be stayed.

Dated this 2nd day of October, 1979.

Entered No. 608 of 1979.

This is the paper writing marked TRTA referred to in the affidavit of petition Tara R ... sworn to affirmed on the 3 day of Feb 1981 before me.

(SIGNED) MUSTAPHA BIN MOHAMAD MUSTAPHA BIN ..., PLP., PIS.
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

Senior Assistant Registrar,
High Court,
Malaya,
Johore Bahru.

To,

The above-named Plaintiff and/or her Solicitors Messrs. Subra Naicker & Co., Advocates and Solicitors of No. 45, 1st Floor, Jalan Ibrahim, Johore Bahru.

D 9
AFFIDAVIT OF TARA RAJARATNAM
SUIT NO. 284 OF 1979

D 9 (32)
Affidavit of
Tara Rajaratnam
Suit No. 284
of 1979
8th October 1979

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU.

CIVIL SUIT NO.284 OF 1979

Between

Tara Rajaratnam (m.w) ... Plaintiff

And

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

10 A F F I D A V I T

I, TARA RAJARATNAM (NRIC No.2317344) of No.184, Khet Loong Gardens, Kulai, Johore do solemnly and sincerely affirm as follows :

1. I am the Plaintiff in Johore Bahru High Court Civil Suit No.284 of 1979 and the Respondent in this Summons-In-Chambers Application Entered No.608 of 1979.

2. I refer to the Affidavit of Datuk P.Suppiah affirmed and filed herein on the 2nd day of October, 1979 in support
20 of the Application referred to.

3. The said Affidavit of Datuk P.Suppiah contains several contentions and allegations with reference to which I say as follows :

a. Paragraph 3 : - It is true that by an Order of Court dated 25th April,1979 the Indorsement in the Writ in Johore Bahru High Court Civil Suit No.261 of 1977 and consequently the suit itself was struck
30 out. But I respectfully say and beleive that the terms and spirit of the said Order are such that they were not intended to preclude me from filing a fresh Suit. I am advised, which I verily believe, that not only

..2

D 9 (B2)
Affidavit of
Tara Rajaratnam
Suit No. 284 of
1979

8th October 1979
(Cont'd)

the doctrine of Res Judicata has no application in this particular case but also the Court has specifically and expressly given me leave to file a fresh action as a practical alternative to amending the Writ and the Statement of Claim extensively.

b. Paragraphs, 5, 6 and 7 : - It is neither true that the obliterating and retyping of the address of service of the Defendants was done after the signing and sealing by the Senior Assistant Registrar, nor is it true that the Court copy is not so retyped. I believe, the Court copy which has been in the custody of the Court since filing also has this retyped version, unless this particular / copy / has been inadvertently omitted from being re-typed.

c. Paragraph 8 : - Not only are M/s.Suppiah & Singh, as admitted by Datuk P.Suppiah in paragraph 2 of his Affidavit, the solicitors on record for all the Defendants, but also I personally heard Datuk P.Suppiah on several occasions telling my solicitor Mr.Subra Naicker that it is better for me to discontinue Civil Suit No.261 of 1977 and prepare and file a fresh Writ and Statement of Claim and serve the same on his firm.

d. Paragraph 15 : - The valuation report of M/s.Chong Kim Seng & Co was compiled and made on 26.2.1972. As at that date the valuation was reasonable. But since that date property values shot up several folds and around July 1975, the time when my property was, without my knowledge or consent, transferred into the names of the 2nd. and 3rd.Defendants, the value was around at least One million dollars as evidenced by the report of Encik Mohd Kepol bin Bidin, Auctioner and Appraiser (First Class) Johore Bahru dated 5th July,1975 (exhibited herewith marked TR.1).

..3

e. Paragraph 16 : - M/s.Yeow & Chin, Advocates & Solicitors, Johore Bahru, were never my solicitors. They were the solicitors of Chung Khiaw Bank, Kulai Branch, from which bank my husband and I had borrowed some money on the security of my said property. The letter from M/s.Yeow & Chin to M/s.Suppiah & Singh dated 28.6.1975 was one of the several letters that passed between M/s.Suppiah & Singh, M/s.Yeow & Chin and the Chung Khiaw Bank, Kulai Branch from about March,1974 or thereabouts. The said letter is being referred to and exhibited out of context.

f. Paragraph 17 : - Form C.S.T.1 dated 31.7.1975 was not sent to my address at No.681, Kulai Besar but to No.76, Main Road, Kulai, My husband, K.V.Devan received the form and sent it to M/s.Suppiah & Singh to attend to the same as it referred to my property and which matter since March 1974 had been handled and attended to by them. I never signed the form and the signature in it is certainly not mine; it is a forged one.

g. Paragraph 19 : - I deny that others are aiding me in this Suit or that I filed the same to tarnish the characters, names and professions of the Defendants and to pressurise them to submit to any demands from me. As far as I am concerned I have been unjustly and unlawfully deprived of my valuable property by the Defendants and consequently I am pursuing my claim lawfully with a view to getting adequate compensation and damages for the loss of my said property.

4. At this stage, I respectfully bring to the attention of the Court the fact that when Johore Bahru High Civil Suit No.261 of 1977 was filed and served on the Defendants, the Defendants over the 2 years made at least 6 applications to strike out

..4

D 9 (B2)
Affidavit of Tara Rajaratnam Suit No. 284 of 1979 8th October 1979 (Cont'd)

the Writ on various technical and procedural grounds. At no time did the Defendants/were prepared to go through a trial or hearing to resolve the dispute on facts and merit. Now that, with leave of Court, Civil Suit No.284 of 1979 has been commenced, again the Defendants are seeking to stifle and muffle it on technical and procedural grounds. It is my humble view that if the Defendants really believe that my action has no basis or is frivolous, vexatious or repetitions, then they should do all they can to strive for a early hearing of the dispute and have it dismissed on merits.

5. The several contentions and allegations contained in Civil Suit No.261 of 1977 are, to the best of my knowledge and belief, are true. But owing to certain defects and irregularities in the form of pleadings it was struck out. The claim therein and the issues therein were never heard and determined or adjudicated at any time.

6. The present Writ and Statement of Claim in Civil Suit 284 of 1979 seeks and endeavours to set out the pleadings in a more acceptable form. The several contentions and allegations contained in this fresh action, which are substantially similar to those in the Writ and Statement of Claim in Civil Suit 261 of 1977, are to the best of my knowledge and belief are also true.

7. It is my humble prayer that my claim against the Defendants should be tested on merits on the grounds that :

a. Though the type-written Memorandum dated 30.3.1974 speaks of a transfer of the property, yet the handwritten indorsement at its foot signed by the 2nd.Defendant clearly reveals that the proposed transfer was in truth by way of security only.

b. Herewith exhibited as TR.2 a letter from M/s. Suppiah & Singh dated 12/3/1974 addressed to M/s.Chung Khiaw Bank Kulai which clearly shows that not only M/s.Suppiah & Singh were my

..5

solicitors but also that the purpose of seeking to discharge the property from the Chung Khiaw Bank was to charge it elsewhere for an increased amount.

c. Having entered into the arrangement with me dated 30.3.1974, the 1st. and 2nd.Defendants showed no interest in redeeming my property from the Chung Khiaw Bank. Herewith exhibited 2 letters marked TR.3 and TR.4 from Chung Khiaw Bank to M/s.Suppiah & Singh dated 26/12/1974 and 21/1/1975 respectively.pointing out the failure of M/s.Suppiah & Singh to redeem my said property even by these dates.

d. Since the 1st.and 2nd.Defendants never paid any money to the Chung Khiaw Bank, my husband K.V Devan had to pay several amounts from time to time to the Bank to keep the principal and interest within approved limits. Nonetheless, the Bank forced us to create a further charge on the property. Herewith attached ~~marked TR.4~~ a letter from Chung Khiaw Bank to M/s.Yeow & Chin dated 6.2.1975 to that effect exhibited and marked as TR.5. If the 1st. and 2nd.Defendants had acted on the arrangement dated 30.4.1974, there would be no necessity for further payments to the Bank or further charge of the property.

e. Not only my said property was never redeemed as promised but also no sums were paid to discharge Dr.Das of his debts. Instead, Dr.Das was sued in Singapore High Court by the 2nd.Defendant and the judgment registered in Johore Bahru High Court.

f. I never executed any transfer documents in July 1975 transfering my property to the 2nd.Defendant. Whatever forms I executed were done on 30.4.1974. The 1st.Defendant's attestation that I signed the transfer form on 5.7.1975 is clearly false.

g. What purports to be my signature on the Form C.S.T I is also not my signature. It is a forgery.

..6

D 9 (B2)
Affidavit of
Tara Rajaratnam
Suit No. 284 of
1979
8th October 1979
(Cont'd)

h. The subsequent transfer of my property by the 2nd. Defendant to the 3rd.Defendant was merely to pose the 3rd.Defendant as a bona fide purchaser for value without Notice. Not only the 3rd.Defendant knew the circumstances under which the 2nd.Defendant became registered as the owner of my property, but also he, the 3rd.Defendant, never paid any consideration for the transfer into his name and instead was the nominee of the 1st.and/or the 2nd.Defendant.

i. Throughout my dealings with the 2nd.Defendant, the 1st. Defendant was present every time and kept on giving me assurances and promises which were subsequently never kept by him or the 2nd.Defendant.

j. Taken as whole, I contend that the Defendants, acting in collusion with one another, advised and persuaded me to execute some documents, and without carrying out their part of the obligations under the relevant arrangement in question, without my knowledge or consent used these documents fraudulently and dishonestly to deprive me of my property.

k. It would be highly illogical on my part to execute transfer documents in July 1975 in favour of the 2nd. Defendant selling the property at $220,000/- whereas the approximate value of that property in July 1975 was easily in the region of $1,106,100/- as evidenced by the valuation report of Encik Mohd.Kepol bin Bidin dated 5.7.1975. Besides, the value of the property in February,1972 itself, when property prices were very low, was in fact assessed at $258,000/-.

8. By reason of matters aforesaid, I humbly say that these are triable issues in my case which have never been tried and adjudicated at all in Civil Suit No.261 of 1977. The contention therefore that the matter is 'Res Judicata' is

..7

untenable. Further, the Application does not state at what stage and when in the proceedings under Civil Suit No.261 of 1977 did my matter became Res Judicata.

9. In the premises, I pray that the Defendants application be dismissed with costs and if the Court is so minded, Order an early trial ofthe Suit.

AFFIRMED at Johore Bahru)
this 8th day of October,) Sd: Tara Rajaratnam
1979.)

Before me,
Sd.
Mustapha Bin Mohamad. P.I.S.
Commissioner For Oaths
High Court,
Johore Bahru

This Affidavit is filed on behalf of the Plaintiff by Messrs SUBRA NAICKER & Co; Advocates & Solicitors, Johore Bahru.

D 28

D 28(33)

Letter Subra Naicker & Co. to Senior Assistant Registrar, High Court, Malaya. 10th October 1979

LETTER, SUBRA NAICKER & CO.
TO SENIOR ASSISTANT REGISTRAR
HIGH COURT, MALAYA.

SUBRA NAICKER & CO.
Peguam2 Bela & Peguam2 Chara
Advocates & Solicitors
சுப்ரா நாயக்கர் & கம்பெனி

45, JALAN IBRAHIM
(TINGAT 1)
JOHOR BAHRU, JOHOR.
TEL 24467

Subramaniam Palany Naicker B A (Hons) LL B (Hons) Bar At Law (Lincoln's Inn)

BIL KAMI: SPN/...1/79 | BIL TUAN: | DATE: 10.10.79

This is the paper writing marked "SPN 7" referred to in the affidavit of SUBRAMANIAM PALANY NAICKER sworn to affirmed on the 18 day of Dec. 19 79 before me.
(Sd) R. Ramasamy.
R. RAMASAMY P.I.S.
COMMISSIONER FOR OATHS
HIGH COURT,
JOHORE BAHRU.

The Senior Assistant Registrar,
High Court Malaya,
Johore Bahru.

Your Honour,

re: JBHC C.S No.284 of 1979
Summons-in-Chamber Entered No.608/79

The above Summons-in-Chamber came up for hearing in Chambers on 8.10.79 and his Lordship reserved judgment and delivered the same this morning.

His Lordship has allowed the Application with costs.
In allowing the Application with costs, His Lordship has expressly stated that he requires no further argument in Court and that he would give a certificate to that effect.

Nonetheless, our client has instructed us to request the Court to have the matter set down for further argument in Open Court.

If His Lordship however, still holds that he requires no further argument, could we then have the Certificate in question at the earliest convenience please.

Thank you.

Yours faithfully,

c.c M/s.Suppiah & Singh
Advocates & Solicitors
Johore Bahru.

D 26

ORDER

SUIT NO. 284 OF 1979

D 26 (34)

Order
Suit No. 284 of 1979
10th October 1979

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 284 OF 1979

This is the paper writing marked "TR 73" referred to in the affidavit of Tara R. sworn to/affirmed on the 3 day of Feb 1979 before me.

(SIGNED) MUSTAPHA BIN [illegible]
MUSTAPHA BIN [illegible], PIS,
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

Between

Tara Rajaratnam (m.w.)

... ... Plaintiff

And

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

... ... Defendants

BEFORE THE HONOURABLE JUSTICE ANWAR BIN DATUK ZAINAL ABIDIN

IN CHAMBERS THIS 10TH DAY OF OCTOBER 1979

O R D E R

Upon the Application of the Defendants/Applicants herein made by way of Summons-in-Chambers Entered No. 608 of 1979 coming on for hearing in Chambers on the 8th day of October 1979 AND UPON HEARING COUNSEL for the Plaintiff/Respondent and for the Defendants/Applicants AND UPON READING the Affidavit of Pakrisamy Suppiah affirmed and filed herein on 2nd day of October 1979 and the Affidavit of Tara Rajaratnam affirmed and filed herein on the 8th day of October 1979 AND UPON the Defendants'/Applicants' said application for an Order under the inherent jurisdiction of the Court that this Action be dismissed on the ground of res judicata, in that the issues in this Action having been determined and adjudicated upon in an Action between the same parties in Johore Bahru High Court Civil Suit No. 261 of 1977 and the same being frivolous and vexatious and an abuse of the process of the court and the same coming on for judgment today IT IS ORDERED that the said Application of the Defendants/Applicants be dismissed and that

D 26 (34)
Order
Suit No. 284
of 1979
10th October
1979 (Cont'd)

the Plaintiff/Respondent pay to the Defendants/Applicants their cost of this Action including the costs of this application to be taxed and paid by the Plaintiff/Respondent to the Defendants/Applicants or to their Solicitors.

Given under my hand and the Seal of the Court, this 10th day of October 1979.

Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

D 28

STATUTORY DECLARATION
OF GOVINDA MENON

D 28 (35)
Statutory
Declaration of
Govinda Menon
12th December
1979

This is the paper writing marked "SPN 2" referred to in the affidavit/petition of Subramaniam Palany Naicker sworn to/affirmed on the 18 day of Dec 1979 before me.
(Sd) R. Rama Samy
R. RAMASAMY P.I.S.
COMMISSIONER FOR OATHS
HIGH COURT,
JOHORE BAHRU.

STATUTORY DECLARATION

I, GOVINDA MENON S/O GOVINDA MENON (NRIC No. [illegible]) residing at No.14, Jalan Merawan, Shangrilla Park, Johore Bahru do solemnly and sincerely declare and say as follows :

1. that I am the accounts clerk in the firm of Subra Naicker & Co and also the person referred to in paragraph 2(d) of the statutory Declaration of Yilangovan a/l Ramanathan.

2. that on the 30th day of August, 1979 I was the one who took the Writ, Statement of Claim and other relevant documents (in JBHC Civil Suit No.284 of 1979) to the High Court and filed the same.

3. that, though it is not part of my duties to file documents in the Court, nonetheless I did that because Encik Yilangovan, whose duty it was to do so, left the documents on his table and left the office in a hurry without informing anyone at the office at what time he would be back.

4. that, having waited for a couple of hours and not seeing him back in the office, I thought that since I was relatively free I may as well take the documents to the Court and file them instead of waiting for him. And so I took the documents and filed them.

5. that, at the time of filing the documents I was neither aware that the addresses on the Writ needed to be changed nor that Mr.Subra Naicker had told

..2

Yilangovan to do the change before filing. In filing the documents I though I was doing a favour for Yilangovan.

6. that, only after several days later that I came to know that the addresses on the writ ought to have been changed before filing and that Yilangovan had attended to that subsequently to the filing.

7. That the enteries made inthe despatch book pertaining to the filing of the said documents are in my hand-writting.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1960.

Subscribed and solemnly declared by the abovenmned Govinda Menon s/o Govinda Menon at Johore Bahru this 12 day of December, 1979.

Before me,

Sgd. (N. BALAN)
PESURUHJAYA SUMPAH
(COMMISSIONER FOR OATHS)
MAHKAMAH SESYEN
JOHOR BAHRU

D 28

D 28 (B6)
Statutory
Declaration of
Yilangovan.
12th December
1979

STATUTORY DECLARATION
OF YILANGOVAN

Referred to in the affidavit of/petition of SUBRAMANIAM PALANY NAICKER 5 sworn to/affirmed on the 18 day of DEC. 19 79 before me.
(Sd) K. Ramasamy
D. RAMASAMY P.I.S.
COMMISSIONER FOR OATHS
HIGH COURT,
JOHORE BAHRU.

STATUTORY DECLARATION

I, YILANGOVAN A/L M.RAMANATHAN (NRIC No.767579-01-[illegible]) at No.2A, Jalan Bukit Chagar, Johore Bahru do solemnly and sincerely declare and say as follows :

1. that I am the clerk at M/s.Subra Naicker & Co; in charge of Court documents including filing, serving and receiving of the same.

2. that with reference to the Affidavit of Dato P.Suppiah made and filed on 11th December,1979 in support of the Notice of Motion in Federal Court Civil Appeal No. 201 of 1979 and in particular to that part of the Affidavit which refers to the obliterations and re-typing on the face of the Writ (JBHC Civil Suit No. 284 of 1979, I declare as follows :

   a. After typing out the writ, statement of claim (in JBHC C.S No.284 of 1979) and completing other documents, I took these to Mr.Subra Naicker to sign.
   b. Mr.Subra Naicker read through them and signed. But while giving them to me he told me that since we are to serve the Writ on M/s.Suppiah & Singh, the address must be changed to that of the solicitors' address.
   c. But before I could do the changes, some other urgent matters came up, so I left the documents on my table and went out to attend to those urgent matters.
   d. During my absence Mr.G.Menon, the Accounts clerk of the firm took the documents to the Court and filed them. He never told me about the filing. I also forgot about it when I later returned to the office.

..2

e. Some days later when Mr.Subra Naicker asked me to go to the Court to check up whether the writ and the Statement of Claim have been served on M/s.Suppiah & Singh, I went and I found that they have not been served on M/s.Suppiah & Singh. On the same occasion too I discovered the addresses had not been changed.

f. I asked the Court clerk in charge of those documents whether I can now make the change as regards the addresses. He said alright and so I took them to our office and did the change and gave them back to the clerk concerned at the Court.

g. I did not know that we cannot do that and that such is improper. Since the clerk said it can be changed I had it changed. If he had said cannot I would have left it like that.

h. Then after reading Dato Suppiah's affidavit filed in support of Summon-in-Chamber Entered No.608 of 1979, Mr.Subra Naicker asked me when was the change in addresses done; and I told him that it was done before filing in the Court and the Court copy also has this change. I was afraid he would scold me if it was wrong to change anything after filing. Before that I did not know that such was wrong. I thought that if the Court staff allowed me to make the change there is nothing wrong if I Changed it.

i. After this some time later Mrs.Devan (Madam Tara Rajaratnam, the Plaintiff herein) also asked me as to when the change was done and I also told her, it was done before filing.

3. that now I realise that what I have done was improper and that it has caused a lot of embarrasement. I

sincerely apologise to the Court for my inadvertent conduct and ignorance of the procedures.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1960.

Subscribe and solemnly)
declared by the abovenamed) Sgd R Yilango
Yilangovan a/l M.Ramanathan)
at Johore Bahru this 12th)
day of December, 1979.)

Before me,
Illegible
(N Balan)
Pesuruhjaya Sumpah
(Commissioner For Oaths)
Mahkamah Sessyen
Johore Bahru

AFFIDAVIT OF S.P. NAICKER

D 28 (B7)
Affidavit of
S.P. Naicker

18th December
1979

IN THE FEDERAL COURT OF MALAYSIA
(Appellante Jurisdiction)
CIVIL APPEAL NO.201 OF 1979

Between

Tara Rajaratnam (m.w.) ... Appellant

And

1. Datuk Jagindar Singh
2. Datuk P. Suppiah
3. Arul Chandran ... Respondents

(In the Matter of Civil Suit No.284 of 1979 in the High Court in Malaya at Johore Bahru)

Between

Tara Rajaratnam (m.w.) .. Plaintiff

And

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

decided by the Honourable Mr. Justice Anuar bin Dato' Zainal Abidin at Johore Bahru, the 10th day of October, 1979.

A F F I D A V I T

I, Subramanian Palany Naicker, an Advocate & Solicitor practising at No.45, (First floor) Jalan Ibrahim, Johore Bahru do solemnly and sincerely affirm and say as follows :

1. I am the solicitor for the abovenamed Appellant/Plaintiff in the Appeal herein.

2. I respectfully refer to the Notice of Motion filed herein by the Respondents/Defendants and to the Affidavit of Dato' P. Suppiah made and filed on the 11th of December, 1979 in support of the said Notice of Motion.

D 28 (B7)
Affidavit of
S.P. Naicker
18th December
1979 (Cont'd)

3. With reference to the several paragraphs in the said Affidavit and the allegations therein, I respectfully say as hereunder.

4. Paragraph 3

The case reported at page 173 of the October issue of the Malayan Law Journal does not set out in full, as alleged, the circumstances under which the Third Defendant became the owner of the property in dispute. The judgement of Mr. Justice Tan Sri Dato' Syed Othman bin Ali refers only to those aspects of the case that were relevant to the particular Application in question. There was no trial of issues or evidence adduced on the question of how the Third Defendant became the registered owner of the property in dispute. The Application dealt only with the question of whether, once a private caveat was allowed to lapse, a subsequent caveat can be filed.

5. Paragraph 3(a)

It is true that the Third Defendant was registered as the owner of the property in dispute, but all along the Plaintiff's contention has been and still is, that he became such registered owner unlawfully.

6. Paragraphs 3(c),(d),(f) and (g)

(a) It is true that an Order for possession was granted against the Plaintiff herein and her husband vide Johore Bahru Sessions Court Civil Action No.146 of 1976; but in making the Order the learned President

made it clear that no evidence was taken as in a normal trial, and that since he was of the opinion that there was a bona fide dispute as to title or ownership he would transfer the case to the High Court for the determination of the question of title or ownership.

(b) Against the Order for possession, however, the Plaintiff filed an Appeal and when the appeal (Johore Bahru High Court Civil Appeal No.22 of 1977) came before Mr.Justice Anuar bin Dato' Zainal Abidin on the 6th. day of June, 1978, it was dismissed. His Lordship holding that the Learned President was wrong in holding such an opinion and that the matter should not have been transferred to the High Court.

(c) An appeal against the aforesaid High Court decision to the Federal Court (vide Federal Court Civil Appeal No.20 of 1977) failed by reason of the Plaintiff's failure to obtain leave to file the relevant Record of Appeal out of time.

7. Paragraph 3(h) and (i)

/Plaintiff The/did not proceed with the Appeal (Federal Court Civil Appeal No.71 of 1978) against the Decision of Mr.Justice Tan Sri Dato' Syed Othman bin Ali removing the caveats against the 70 sub-divided lots because the Plaintiff was subsequently advised that the said Decision is correct in that one cannot file

D 28 (B7)
Affidavit of
S.P. Naicker
18th December
1979 (Cont'd)

a fresh caveat after allowing the earlier caveat to lapse without extending it by an Order of Court.

8. Paragraphs 4, 5, 6, and 7

Dato' P.Suppiah's contention that the Action vide Johore Bahru High Court Civil Suit No.261 of 1977 was dismissed and yet the Plaintiff filed a fresh Johore Bahru High Court Civil Suit No.284 of 1979 because, as alleged in his paragraph 27, the Plaintiff was"bent on causing as much embarrasement to the Respondents as possible", is incorrect and ill-construed. If at all the matter was prolonged and became embarrasing, such was due to the actions of the Defendants/Respondents and not that of the Plaintiff/Appellant.

a. After accepting service of Writ and Statement of Claim under Civil Suit No.261/77 and after entering unconditional appearance for all the 3 Defendants, the Defendants demonstrated ever increasing reluctance to file their Defence or to have the matter tried on evidence and merits and dispose of the same as speedily as possible.

b. Instead, one after another, the Defendants/ Respondents filed six (6) separate interlocutory applications by way of Summons-in-Chamber to strike out and stiffle the claim and to prevent it from coming on for trial and adjudication on merits.

c. The first application, Entered No.480 of 1977, filed on 21.5.1977 on behalf of the 3rd.Defendant (Arul Chandran) prayed for striking out the suit as against him on the ground the Statement of Claim disclosed no reasonable cause of action against him.

d. Before the above application could be heard, a second application (Entered No.494 of 1977) was filed on 26.5.77 on behalf of all the three (3) Defendants/ Respondents praying for the Writ and Statement of Claim to be struck out on the grounds of certain irregularities and mistakes in the Writ and Statement of Claim.

e. On the same date too, that is, on 26.5.77 a third application, (Entered No.527 of 1977) was filed on behalf of the 1st. Defendant (Datuk Jagindar Singh) praying for an Order striking out the suit as against him on the grounds that the Writ and Statement of Claim discloses no reasonable cause of action against him.

f. All the above 3 applications came up for hearing together before His Lordship Mr.Justice Tan Sri Dato Syed Othman bin Ali on 5.7.1977 and after some arguments was postponed to 23.8.77 for continued hearing.

g. Then even before the 3 applications could be heard and determined, a 4th application (Entered No.601 of 1977) was filed on 10.7.1977 on behalf of the Second Defendant (Dato' P. Suppiah) praying for an Order striking out the suit as against him on the grounds that the Writ and Statement of Claim disclosed no reasonable cause of action against him as well.

D 28 (B7)
Affidavit of
S.P. Naicker
18th December
1979 (Cont'd)

h. The 3 applications along with the 4th, came up for hearing before His Lordship Tan Sri Dato' Syed Othman bin Ali on 23.8.1977. His Lordhsip expressed unhappiness over the multiplicity of the Defendants' applications and directed Datuk Suppiah to choose one only for argument. Datuk Suppiah chose Summons-in-Chamber Entered No.494 of 1977 (the one made on behalf of all the 3 Defendants), and a date was fixed for hearing for this Application.

i. Eventually, on 5.6.78 Summons-in-Chamber No.494/77 came up for hearing before Mr. Justice Anuar bin Dato' Zainal Abidin. The Application was dismissed with costs in the cause and the Plaintiff/Appellant was given leave to amend the mistakes and irregularites complained of in the Writ and Statement of Claim.

j. On 26.11.78 the remaining 3 applications came up for hearing before Justice Anuar bin Dato' Zainal Abidin;

(i) Summons-in-Chamber Entered No.480 of 1977 was allowed with costs;

(ii) Summons-in-Chamber Entered No.527 of 1977 was dismissed with costs in the cause;

(iii) Summons-in-Chamber Entered No.601/77 was also dismissed with costs in the cause.

k. At this point of the proceedings Dato' P. Suppiah requested of His Lordship whether he could have leave to file another application just to strike

out certain irrelevant parts of the Statement of Claim. His Lordship gave him such leave and ordered that if he failed to file such an application within 3 weeks from the date thereof he should file the Defence instead. (The relevant Order made herein on Summons-in-Chamber Entered No.601/77 appears at pages 96 and 97 of the Appeal Record and the Order made on Summons-in-Chamber Entered No.527/77 is exhibited herewith as SPN 1)

l. Pursuant to the said leave, the Defendants/Respondents on 16.12.1977 filed the 5th application (Summons-in-Chamber Entered No.78 of 1979). Instead of referring to the alleged irrelevant parts of the Statement of Claim as ordered, the Summons-in-Chamber prayed for the striking out the Statement of Claim and the action itself. Summons-in-Chamber No.78 of 1979 was identical to Summons-in-Chamber Nos.527/77 and 601/77 which were dismissed earlier on 26.11.1978. (Summons-in-Chamber Nos.527/77, 601/77 and 78/79 are exhibited herein as SPN 2, 3 and 4)

m. This Summons-in-Chamber Entered No.78 of 1979 came up for hearing on 19.3.1979 before Mr. Justice Anuar bin Dato' Zainal Abidin. The Court allowed the Application and struck out all the paragraphs of the Statement of Claim. In striking out all the paragraphs the Plaintiff/Appellant was given leave either to discontinue the action and file a fresh suit or to file a fresh Statement of Claim.
(The Order made on Summons-in-Chamber No.78 of 1979 appears at pages 110-111 of the Record of Appeal).

D 28 (B7)
Affidavit of
S.P. Naicker
18th December
1979 (Cont'd)

n. Immediately after that Order, on the following day, that is on 20.3.79, the Defendants/Respondents filed their 6th application (Summons-in-Chamber Entered No.220 of 1979) praying for an Order striking out and dismissing the suit or action itself; notwithstanding the terms of the Order in Summons-in-Chamber Entered No.78 of 1979.

o. On 25.4.79 Summons-in-Chamber Entered No.220/79 came up for hearing before Mr. Justice Anuar bin Dato' Zainal Abidin and the action or suit was dismissed and the Plaintiff/Appellant was given leave to file a fresh suit or action. Pursuant to this Leave Johore Bahru High Court Civil Suit No.284/79 was filed by the Plaintiff/Appellant on 30.8.79.

In view of the above, I respectfully say that the Plaintiff/Appellant can hardly be said to be "bent on enbarrasing the Defendants/Respondents".

9. Paragraphs 7 - 20

(i) Datuk P. Suppiah first complained of the obliterations and re-typing in his Affidavit made and filed on 2.10.1979 in support of his application (Summons-in-Chamber Entered No.608 of 1979) to strike out Johore Bahru High Court Civil Suit No.284 of 1979 on grounds of Res Judicata. Having complained, he then, by his paragraph 9 (Record of Appeal - page 31) - stated that, he "did not intend to set aside the service although irregular because I do not want to prolong the proceedings any further".

(ii) Having stated that way, he, at the hearing of the Summons-in-Chamber No.608/79 of 8.10.1979, harped on the issue extensively and went to the extent of suggesting that the said obliteration

and retyping were done dishonestly, in disregard of the law and procedure and in disrespect of the Court.

(iii) At the hearing too, I admitted that the obliteration and retyping were done improperly but that I had no knowledge of how or when such was done and apolicised for the same.

(iv) Since this issue is being brought up again herein, with regard to the same I respectfully say as follows :

a. On 30.8.79 I signed the Writ and the Statement of Claim; but while signing I noticed that below each of the 3 Defendants/Respondents' name the same address had been typed, that is "2D, Jalan Ah Fook, Johore Bahru". Bearing in mind that these are to be served on the firm of M/s. Suppiah & Singh (as solicitors for all the 3 Defendants/ Respondents), I instructed my clerk, one Yilangovan to amend the address to".. to his/their solicitors M/s. Suppiah & Singh, No.2D, Jalan Ah Fook, Johore Bahru) before filing.

b. Then on 3.10.79 I received a copy of an Application (Summons-in-Chamber No.608 of 1979) together with the said Affidavit of Dato' P. Suppiah dated 2.10.79.

c. On going through the said Affidavit I noticed the complaints pertaining to the obliteration and retyping of the

D 28 (B7)
Affidavit of
S.P. Naicker
18th December
1979 (Cont'd)

address on the Writ. I immediately called the said Yilangovan and read out the allegations to him. I then asked him when the obliteration and re-typing were done. He told me it was done before filing. Later, even when my client Tara Rajaratnam asked him, he said the said thing.

d. On 8.10.79 at the hearing of Summons-in Chamber Entered No.608/79 when His Lordship queried me about the obliteration and re-typing I told hin that according to my clerk R.Yilangovan the same were done before filing. Then at that stage His Lordship asked Dato' P. Suppiah whether he had any proof of obliteration re-typing after signing and sealing. Only then Dato' Suppiah came out with the photostat copy of the Writ as signed and sealed but not obliterated and re-typed and only then did I realise that my clerk had not told me and my client the truth.

If Dato' P.Suppiah had, in the first place, annexed the said photostat copy to his affidavit containing the complaints, I and my client would have known the true position straightaway and there would have been no need to seek any clarification from the said clerk or the Plaintiff/Appellant to file an affidavit based on the misleading and false information given by the clerk. The Plaintiff/Appellant would have admitted that the obliteration and retyping were in fact improperly done and apologised to the

/for

Court in respect of the conduct of the clerk.
(Herewith enclosed the Statutory Declaration of R.Yilangovan and M.Govinda dated 12.12.79 explaining the whole position as regards the obliteration and re-typing marked SPN 5 & SPN 6)

e. The Statutory Declaration of the said, now repentent, clerk clearly shows that he did the obliteration and re-typing after filing and sealing out of ignorance of procedure. When he went to the Court to check whether the Writs have been served he noticed that the Writs have been filed without changing the addresses for service. He enquired from the Court officer concerned whether he could then alter them. The officer concerned answered in the affirmative and handed the copies to him and he took them to the office and did the alteration and returned them to the Court. If the Court Officer concerned, who ought to have been better informed had said 'No' to the clerk, then there would not have been any obliteration and retyping at all; whether improperly or otherwise. In fact there has been no suggestion or allegation at all from the Court sources that the clerk took the copies of the Writ for alteration without the knowledge or consent of any officer of court.

10. On the question of obliteration and re-typing , I respectfully say as follows :

D 28 (B7)
Affidavit of
S.P. Naicker
18th December
1979 (Cont'd)

a. that there was in fact no such need at all for my firm to go out of its way to amend it after filing. "No.2D, Jalan Ah Fook, Johore Bahru" is an address where the 1st. and 2nd. Defendants/Respondents are practising and they could have been personally and validly served at that address. And as regards the 3rd.Defendant if it turns out that M/s. Suppiah & Singh had no instructions to accept service on his behalf, a simple ex-parte application could have been made to serve the 3rd.Defendant/ Respondent at Singapore.

b. Admittedly, what my clerk, R.Yilangovan, did was improper and wrong; but for Dato' P.Suppiah to seek to suggest that i and/or my client deliberately and dishonestly did that or that we had no regard for the Rules of the Court is untenable.

11. Paragraph 10

Dato' P.Suppiah's contention that "2D, Jalan Ah Fook, Johore Bahru is not and never been the address of the Defendants/Respondents, and it is simply the address of my legal firm" seeks to nullify the truth that it is not only the office address of Dato' P.Suppiah and Dato' Jagindar Singh, at which process could have been validly served on them, but also the only address at which all process and documents have been served on the Defendants/Respondents since 1976 when dispute arose between the Plaintiff/ Appellant and Defendants/Respondents over the property concerned. In fact, there is no single document or letter

in this matter with any other address.

12. Paragraph 11

Datuk P.Suppiah's contention that his firm never communicated to my firm on whether they had instructions to accept service of process on behalf of the Defendants/Respondents and his suggestion that the obliteration and retyping were deliberately done possibly to get the Court process server to force the service on them is again, with respect, not true and is illogical, for the reasons that :-

a. Since 1976, when proceedings in respect of the disputed property commenced, M/s. Suppiah & Singh not only acted for Dato' P. Suppian and Dato Jagindar Singh, but also for Arul Chandran; and they persisted in acting for themselves despite Mr.Justice Tan Sri Dato' Syed Othman b. Ali's suggestion at one stage that they should get some other solicitors to act for them as the dispute involves them personally.

b. Since 1976 at no stage was the question of instructions to accept service of procedd or any other document in respect of Dato' Jagindar Singh or Dato' P.Suppiah or even Arul Chandran was ever raised informally or formally. My firm and M/s.Suppiah & Singh, (of which Dato' P.Suppiah and Dato' Jagindar Singh are the two (2) partners), served and received process on the basis they were acting for all the three (3) Defendants/Respondents.

c. Having taken a photostat copy of the Writ and Statement of Claim (even before the same were officially served at '2D, Jalan Ah Fook,

D 28 (B7)
Affidavit of
S.P. Naicker
18th December
1979 (Cont'd)

Johore Bahru') for the reason that Dato' P.Suppiah was 'curious to find out what this new Action was all about', Datuk P.Suppiah could have, if indeed he were serious and honest in saying that M/s. Suppiah & Singh had no instructions to accept service, written or given a telephone call to me or my staff to the effect they had no instructions to accept service and named their solicitors who had instructions to accept such service. Instead Dato' P.Suppiah and/or M/s. Suppiah & Singh just kept quiet.

d. Further, on 26.9.1979 when the Writs and Statement of Claim were served at No.2D, Jalan Ah Fook, Johore Bahru by the Court process server, they could have subsequently returned the same to the Court saying that they had no instructions to accept service; instead, they waited till the last date (2.10.1979) for entry of Appearance and;

(i) on 2.10.1979 filed and served unconditional Memorandum and Notice of Appearance for all the three (3) Defendants/Respondents (as expected);

(ii) Filed Summons-in-Chamber Entered No.608 of 1979 on behalf of all the 3 Defendants/ Respondents to strike out the suit on the grounds of Res Judicata.

13. Paragraph 8

How a Newspaper reported was able to know (even before service) that "another" action has been filed at the High Court against him and the two (2) other Defendants/ Respondents is very interesting. And equally interesting

is Dato' P.Suppiah's claim that he was 'curious to find out 'what this new Action was all about'. He should have known that any action filed by the Plaintiff/Appellant against the three(3) Defendants/ Respondents must be in connection with the property under dispute.

14. Paragraphs 22 - 24

a. The request for further argument in open court was made not just by my letter dated 10.10.1979, but in fact was made orally at the hearing itself after His Lordship gave his decision. His Lordship said he did not require further argument in open court and that he would give a Certificate to that effect. This is stated in His Lordship's Grounds of Decision (Page 154 of the Record of Appeal).

b. Notwithstanding His Lordship's decision on the question of further argument in open Court, I, by the letter dated 10.10.79 wrote requesting His Lordship to reconsider my request for further argument or if His Lordship still felt that no further argument was required, to issue a Certificate to that effect. (A photostat copy of my letter dated 10.10.79 is annexed herewith marked SPN 7). His Lordship still did not require further argument and so on 29.10.79 signed and issued a Certificate to that effect.

15. Paragraph 25

It is admitted that the Memorandum of Appeal contained in the Record of Appeal is unsigned and undated. I most humbly say that this was due to an oversight

D 28 (37)
Affidavit of S.P. Naicker 18th December 1979 (Cont'd)

and the anxiety to file the Record of Appeal in time and before the expiry of the date limited for the filing of the same.
The Memorandum of Appeal was prepared by me and after typing I read through the same, and at page 4, paragraph 9 I deleted a word and initialled by the side. Then immediately I attended to the other copies of the Memorandum of Appeal in the same manner and initialled them. Having initialled all the copies, in my anxiety to have them bound, I handed them over for binding forgetting to sign at the foot of page 7 as required.
I regret very much for this omission and negligence on my part and I would be appealing to their Lordships of the Federal Court at the hearing of this Application for the exercise of their kind discretion under Rule 95 of the Federal Court (Civil Appeals)(Transitional) Rules 1963.

16. In his Notice of Motion (t ough not in his Affidavit) Dato' P.Suppiah had referred to, in paragraph (b) the omission on the part of my firm to indorse addresses of those to whom the Notice must be directed.
This omission is also admitted with regret and apology. However, covering letters were addressed and directed to those to be served at the time of filing of the Notice of Appeal and ensured that they were served. Nonetheless, on this irregularity too, I would be appealing to their Lordships for the exercise of their kind discretion under Rule 95 of the Federal Court (Civil Appeals) (Transitional) Rules 1963.

17. At various parts of his Affidavit, Dato P.Suppiah seeks to give the impression that the Plaintiff/Appellant is bent on embarrasing the Defendants/Respondents and prolonging or continuing with this

matter unjustifiably. With respect, I say this is not true at all. It is their actions, for reasons best known to them, that the matter is being prolonged and the so called embarrasement is being generated.

a. After commencing Johore Bahru High Civil Suit No.261 of 1977 it was the Defendants/Respondents who made application after application to strike out and abort the action without a hearing or trial on merits.

b. Even after the filing of the several applications as aforesaid, I on several occasions did suggest to Dato' P.Suppiah that if indeed the Defendants/Respondents were innocent and the Plaintiff/Appellant's allegations were false or groundless, he should file a Defence forthwith and apply for a early trial and prove their innocence and absolve themselves as early as possible and speedily. But Dato' P.Suppiah was not amenable to that suggestion.

c. In all the several proceedings and applications since 1976 in respect of the property in question, none of the Defendants/Respondents had filed any affidavit whatsoever touching on the several allegations and charges made against them by the Plaintiff/Appellant. The merits or otherwise of the Plaintiff/Appellant's claim has never been challenged or tested. Instead, throughout, all the proceedings and applications had been

interlocutory procedural or technical in nature. To-date there has been no denials or substantive denials of the several allegations made by the Plaintiff/Appellant against the Defendants/Respondents.

d. A cursory perusal of the several applications made by the Defendants/Respondents since the dispute arose, will, I humbly say, show that they are hesitant to have the dispute tried on evidence and merits or counter the Plaintiff/Appellant's allegations directly and squarely and prove their innocence.

e. I honestly believe that the Plaintiff/Appellant has a valid and substantial claim, both in law and in equity, against the Defendants/Respondents and pray that the Honourable Federal Court will exercise its inherent jurisdiction and discretion and those under the Rules of the Court and find it fit and just under the circumstances to Order that the irregularities referred to by the Defendants/Respondents be cured and that the Plaintiff/Appellant be given leave to present and argue the Appeal.

AFFIRMED by the abovenamed)
Subramaniam Palany Naicker,)
at Johore Bahru this 18th) S. Naicker
day of December ,1979)

Before me,

Illegible
R. RAMADAMY, P.I.S.,
COMMISSIONER FOR OATHS
HIGH COURT MALAYA
JOHORE BAHRU.

This Affidavit is filed by Messrs Subra Naicker & Co; Solidtors for the Appellant/Plaintiff.

Filed at Johore Bahru this 18th day of December, 1979

SENIOR ASSISTANT REGISTRAR,
High Court, Malaya,
Johore Bahru.

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 201 OF 1979

Between

Tara Rajaratnam (m.w.) .. Appellant

And

1. Datuk Jagindar Singh
2. Datuk P. Suppiah
3. Arul Chandran .. Respondents

(In the Matter of Civil Suit No. 264 of 1979
in the High Court in Malaya at Johore Bahru

Between

Tara Rajaratnam (m.w.) .. Plaintiff

And

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

CORAM: WAN SULEIMAN BIN PAWAN TEH, FEDERAL JUDGE, MALAYSIA

IBRAHIM BIN ABDUL MANAN, FEDERAL JUDGE, MALAYSIA

HASHIM BIN YEOP ABDULLAH SANI, JUDGE, MALAYSIA

IN OPEN COURT

THIS 9TH DAY OF JULY, 1980

O R D E R

UPON MOTION made unto Court on the 16th day of January 1980 by Dato' P. Suppiah the 2nd Respondent in person in the presence of Encik Ronald Khoo of Counsel for the 1st and 3rd Respondents and Encik P. Cumaraswamy (Encik C.V. Das and Encik Subra Naicker with him) of Counsel for the Appellant AND UPON READING the Notice of Motion dated the 17th day of December 1979 praying for the following orders, namely:

../2..

D 26 (B8)
Order
(Federal Court)
9th July 1980
(Cont'd)

(a) that this application be heard at Kuala Lumpur before the hearing of the abovenumbered Appeal herein;

(b) that the Appeal herein may be dismissed on the grounds, inter alia, that the Notice of Appeal dated and filed herein on 22.10.79 has not been brought in accordance with and does not comply with form I of the First Schedule of the Federal Court (Civil Appeals) (Transitional) Rules., 1963 in that it is not directed as required

"To:

The Registrar,
The Federal Court,
Kuala Lumpur.

And to:

The Registrar,
The High Court in Johore at Johore Bahru

And to:

The Respondents and/or to their Solicitors

(c) that the Appeal herein may be dismissed on the grounds that there has been no proper Notice of Appeal in that the Notice of Appeal dated 22.10.79 was filed before the learned trial Judge issued his certificate to the effect that he required no further argument, which said certificate was only given on 29.10.79;

(d) that the Appeal herein may be dismissed on the grounds that all the copies of the Memorandum of Appeal (filed and service copies) are undated and unsigned by either the Appellant or her solicitors as required by Rule 19(3) and Form 3 of the First Schedule of the said Rules;

(e) that such other orders may be made as may be necessary under the circumstances; and,

(f) that the Respondents be given the costs of this Application and of the Appeal;

AND the Affidavit of Dato' P. Suppiah affirmed the 11th day of December 1979 the Affidavit of Subramaniam Palany Naicker affirmed the 18th day of December 1979 AND UPON HEARING the 2nd Respondent and Counsel for 1st and 3rd Respondent and for the Appellant IT WAS ORDERED that motions do stand adjourned for Judgment AND the same coming on for Judgment this day in the presence of the 2nd Respondent and Counsel as aforesaid IT IS ORDERED that the Respondents' Motion be and is hereby dismissed with no order as to costs.

GIVEN under my hand and the Seal of the Court this 9th day of July 1980

L.S.

Sd. K. S. Tan
SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT,
MALAYSIA.

This is the paper writing marked "TLQ" referred to in the affidavit of person Tara Rajaratnam sworn to affirmed on the 3 day of Oct 1980 before me.

(SIGNED) MUSTAPHA BIN MOHAMAD, PLP., PIS.
MUSTAPHA BIN MOHAMAD, PLP., PIS.
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 201 OF 1979

Between

Tara Rajaratnam (m.w.) ... Appellant

And

1. Datuk Jagindar Singh
2. Datuk P. Suppiah
3. Arul Chandran ... Respondents

(In the Matter of Civil Suit No.284 of 1979
in the High Court in Malaya at Johore Bahru

Between

Tara Rajaratnam (m.w.) ... Plaintiff

And

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

CORAM: WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA;
IBRAHIM MANAN, JUDGE, FEDERAL COURT, MALAYSIA;
HASHIM YEOP ABDULLAH SANI, JUDGE, HIGH COURT, MALAYA.

IN OPEN COURT,
THIS 9TH DAY OF JULY, 1980

O R D E R

UPON MOTION made unto Court on the 1 th day of January, 1980 by Encik P. Cumaraswamy (Encik C.V. Das and Encik Subra Naicker with him) of Counsel for the Appellant in the presence of Encik Ronald Khoo of Counsel for the 1st and 3rd Respondent and the 2nd Respondent appearing in person praying for an Order that the Appellant be given leave to regularise the Record of Appeal in the following manner, namely,

D 26 (B9)
Order
(Federal Court)
9th July 1980
(Cont'd)

1. the Order of Court dated the 10th day of October 1979 as drawn by the Respondents to amended by substituting the word 'allowed' for the word 'dismissed' appearing therein at Page 156 of the Record of Appeal;
2. that the Appellant or her Solicitors be given liberty to formalise the Memorandum of Appeal at Page 7 of the Record of Appeal by signing all copies of the same, and
3. that the Appellant or her Solicitors be given liberty to formalise the Notice of Appeal so as to conform with Form I of the First Schedule of the Federal Court (Civil Appeal) Transitional Rules, 1963, in terms of the address thereof,

for such further or other Order as this Honourable Court deem fit,

AND UPON READING the Notice of Motion dated the 8th day of January 1980 AND UPON HEARING Counsel for the Appellant Counsel for the 1st and 3rd Respondent and the 2nd Respondent as aforesaid IT WAS ORDERED that the motion do stand adjourned for Judgment AND the same coming on for Judgment on this day in the presence of Counsel and party as aforesaid IT IS ORDERED that the Appellant's Action be and is hereby allowed

D 26 (B9)
Order
(Federal Court)
9th July 1980
(Cont'd)

with no Order as to Costs.

GIVEN under my hand and the Seal of the Court, this 9th day of July, 1980.

(L.S.)

Sd. K.S. Tan

SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT,
MALAYSIA

This is the paper writing marked "TR9"
referred to in the affidavit/petition of
Tamer R.
sworn to/affirmed on
the 3 day of Feb 1981 before me.

(SIGNED) MUSTAPHA [illegible]
MUSTAPHA [illegible], PEN., PIS,
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 201 OF 1979

Between

Tara Rajaratnam (m.w.) ... Appellant

And

1. Datuk Jagindar Singh
2. Datuk P. Suppiah
3. Arul Chandran ... Respondents

(In the Matter of Civil Suit No. 284 of 1979
in the High Court in Malaya at Johore Bahru

Between

Tara Rajaratnam (m.w.) ... Plaintiff

And

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

CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT, MALAYSIA;

WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA;

CHANG MIN TAT, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 27TH DAY OF OCTOBER, 1980.

O R D E R

UPON MOTION made unto Court this day by Encik Ronald Khoo of Counsel for the 1st and 3rd Respondents in the presence of Dato P. Suppiah the 2nd Respondent in person and Encik P. Cumaraswamy of Counsel for the Appellant AND UPON READING the Notice of Motion dated the 30th day of July 1980, the Affidavit of the Respondents filed on the 30th day of July 1980 and the Affidavit of the Appellant affirmed on the 20th day of September 1980

D 26 (B10)
Order
(Federal
Court)
27th October
1980 (Cont'd)

praying for the following orders, namely,

(a) that conditional leave be granted to the Respondents to appeal to His Majesty the Yang di-Pertuan Agong against the dismissal of the Motion of the Respondents dated the 7th day of January 1980 and the orders made in the Motion of the Appellant dated 15th day of January 1980 on the 9th day of July 1980;

(b) that the costs of and incidental to this application be costs in the cause;

(c) such other order or orders as may be necessary.

AND UPON HEARING the parties as aforesaid IT IS ORDERED that the Respondents' Motion be dismissed with costs.

GIVEN under my hand and the Seal of the Court this 27th day of October, 1980.

L.S.

Sd. K.S. Tan
SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT,
MALAYSIA.

This is the paper writing marked "TR 10" referred to in the affidavit/petition of Para Rajantan sworn to/affirmed on the 3 day of Feb 1981 before me,

(SIGNED) MUSTAPHA BIN MOHAMAD
MUSTAPHA BIN MOHAMAD, PLP., PIS,
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

JUDGMENT (ESTOPPEL ISSUE)

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR
(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 201 OF 1979

Between

Tara Rajaratnam (m.w) .. Applicant/Appellant

And

1. Datuk Jagindar Singh
2. Datuk P. Suppiah
3. Arul Chandran .. Respondents.

(In the Matter of Civil Suit No.284 of 1979 in the High Court in Malaya at Johore Bahru

Between

Tara Rajaratnam (m.w) .. Plaintiff

And

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

Coram: Wan Suleiman, F.J.
Ibrahim Manan, F.J.
Hashim Yeop A. Sani, J.

JUDGMENT OF THE COURT

The appellant was the plaintiff in the High Court Johore Bahru Civil Suit No.284 of 1979.

Her statement of claim is briefly this:

That prior to 22.7.75 she was the registered proprietress of a piece of land held under C.T. No. 13817 Lot No.6025 in Mukim Senai-Kulai, District of Johore Bahru, that she had entered into an arrangement with the 2nd respondent to transfer the land to him as security for a loan of $220,000 from him, that prior to executing a written memorandum and blank undated transfer and other related forms, there was oral agreement relating to retransfer to appellant on repayment of that sum, that without her knowledge or consent, the first and second defendants caused

2/..

D 25 (B11)
Judgment
(Estoppel Issue)
18th December
1980 (Cont'd)

2nd defendant to be registered as proprietor, and shortly thereafter transferred the property to 3rd defendant after which they had ejected her from the property.

Appellant alleged undue influence and breach of trust by the first and second defendants, and fraud against all three.

She then prayed for a declaration that these transfers were null and void, that the 2nd, 3rd defendants and successive registered owners hold and dealt with it as trustees and for her benefit, and for certain ancillary orders and declaration.

The respondents applied by way of Sommons-in-Chambers to have the appellant's claim dismissed on the ground that the matter is res judicata, the issues, it was alleged having been determined and adjudicated upon in a previous action between the parties. The appellant objected on the ground that there was no provision in the R.S.C. for this plea to be brought in this manner, but was promptly overruled by the learned Judge. Since the objection was not repeated before us, possibly because counsel for the appellant was not taken by surprise in the Court below, we need only remark that the proper course where a party claims that he is being vexed twice for the same cause is to plead this - see O.19 r.15 and the notes on Res Judicata in Mallal's Supreme Court Practice at page 261.

After hearing arguments from both sides, the learned Judge allowed respondents' application, or in other words found that the doctrine had correctly been invoked and dismissed the action

3/..

with costs.

The amended statement of claim in C.S. 261 of 1977 shows that the parties are identical, and the cause of action over the same piece of land, the same as that in C.S. 284 of 1979, and the substance of the prayers the same.

Let us now see how C.S. 261 of 1977 progressed after the writ was first filed on 30.4.77.

On 29.5.1977 the 3rd respondent applied by Summons-in-Chambers under O.25 r.4 for an order that appellant's Indorsement and Statement of Claim be struck out on the ground that it disclosed no reasonable cause of action. On 26.11.1978 the Court ordered the Statement of Claim to be struck out (P.51).

On the same day, as the 3rd respondent, 1st respondent also applied by Summons-in-Chambers to the same effect, on the same ground, as well as under O.19 r.27 (P.82), but the application was dismissed (P.91) "with liberty to file a fresh application within 3 weeks ...."

Next it was the turn of 2nd respondent, who on 10.7.77 applied by Summons-in-Chambers, also under O.19 r.27 and O.25 r.4 for the statement of claim to be struck out.

The Court on 26.11.78 made what we must with respect say an incomprehensible order dismissing the 2nd respondent's application with costs with liberty to file an application within 3 weeks' to strike out <u>irrelevant portions</u> of the Statement of Claim, failing which he was to file his defence

4/..

within the same period.

Then on 27.1.79, the 1st and 2nd respondents jointly made another application to have the Statement of Claim struck off, and to have the action against them dismissed - again under O.19 r.27 and O.25 r.4 and after considering the lengthy affidavit of both parties, and since the peculiar wording of the order of 19th March 1979 is highly relevant as will appear from the judgment of the Court below, the operative portion is set out in full:

> ".....IT IS ORDERED that all the paragraphs of the Plaintiff's Statement of Claim be struck out under the Rules of the Supreme Court Order 19, rule 27 and Order 25 rule 4 and under the inherent jurisdiction of the Court on the ground that it discloses no reasonable cause of action against the First and Second Defendants, it is frivolous ..... AND IT IS FURTHER ORDERED that the Plaintiff be at liberty to either discontinue this action or file a fresh suit or a fresh Statement of Claim within two months from the date hereof ...."

It should be noted that there was no dismissal of the action against the 1st and 2nd respondents.

Having obtained the order, the same two respondents then returned to the fray, this time with an application to have the Indorsement to the writ struck out, and for an order dismissing the action against them, and on 25th April 1979 the relevant

5/..

portion of order they obtained reads as follows:
".... IT IS ORDERED that the Indorsement in this action be struck out under Rules of the Supreme Court Order 25 Rule 4 on the ground that it discloses no reasonable cause of action against the First and Second Defendants and the Plaintiff's claim against the First and Second Defendants be dismissed .... and liberty was given to the Plaintiff to file a fresh action."

Appellant filed the writ in Johore Bahru High Court Civil Suit No.284 of 1979 on 10.9.1979, and the respondents filed a Summons-in-Chambers praying that the action be dismissed on grounds of res judicata.

Having already remarked that the proper procedure would be to plead the defence earlier, we shall pass on to the Grounds of Judgment of the Court below, the relevant portion of which is set out hereunder:

> " In my opinion having heard the argument of both counsels in the case the principle of res judicata would apply and in the circumstances I allowed the Defendants' application and dismissed the Plaintiff's action with costs.
>
> The Plaintiff had earlier filed an action against the 3 Defendants in JB HC C.S. 261/77. On 19th March 1979 the Court made an Order striking out the Plaintiff's Statement of Claim with liberty for the Plaintiff to file afresh within 2 months from the date thereof. The matter was fully argued in open Court and finally decided. It was decided that the Statement of Claim discloses no reasonable cause of action, was frivolous and vexatious, an abuse of the process of the Court and may prejudice, embarrass or delay the fair trial. In that case the same counsels appeared before the

6/..

court. The Plaintiff was given leave to file a fresh suit but not on the same cause of action as the one which the Court had earlier dismissed.

Again on 25th April 1979 in the same suit on the application by the Defendants the Plaintiff's action was dismissed. Same counsels appeared before the Court. In this second Order the Plaintiff was given leave to file a fresh action. A fresh action here meant an action not based on the same cause of action as the previous one."

In the Order of 19th March 1979 the whole of the Statement of Claim was ordered to be struck out and yet appellant was accorded liberty to file afresh within 2 months. The learned Judge explained that the leave given was to file a fresh suit but not on the same cause of action as the one the Court below earlier dismissed. The later Order of 25th April 1979, striking out the indorsement also gave the appellant liberty to file a fresh action. Yet his Lordship again insisted "fresh action here meant an action not based on the same cause of action as the previous one."

We are unable to see why filing a fresh action which arises out of a completely different cause of action should need leave of the court in the circumstances.

One may be excused from suspecting that the learned Judge, as Mr. Cumaraswamy suggested, had misunderstood his orders. Of course the Court can in appropriate cases strike out both indorsement and plea under O.25 r.4, but it is only in plain and

7/..

obvious cases that recourse should be had to the summary procedure under the rule, for example, where the statement of claim discloses no cause of action. (See Mallal's Rules of the Supreme Court, P.318).

In Republic of Peru v. Peruvian Guano Co. (1887)-36 Ch.D. 496, Chitty J remarked, "A pleading will not be struck out under this rule "unless it is not only demurrable, but something worse than demurrable," i.e. such that no legitimate amendment can save it from being demurrable." It certainly does not appear to us that the claim does not disclose a cause of action, and the only logical inference to be drawn that liberty was given in each order to file a fresh action, is that the trial Judge thought that amendment could have saved the action.

In Carl-Zeiss-Stiftung v. Rayner and Keeler, Ltd. and Others (No.2) 1966 2 A.E.R. 536 at page 564 Lord Guest said, "The rule of estoppel by res judicata, which is a rule of evidence, is that where a final decision has been pronounced by a judicial tribunal of competent jurisdiction over the parties to and the subject-matter of the litigation, any party or privy to the litigation as against any other party or privy is estopped in any subsequent litigation from disputing or questioning such decision on the merits."

Put in another way, "To invoke the doctrine of res judicata the respondent has to show that there was a former suit between the same parties for the same matter and upon the same cause of action, and also the matter directly and substantially in issue has been heard and finally decided by the Court which heard it." per Ismail Khan J (as he then was) in Andavan v. Thong

8/..

Nyik Lin (1966) 1 M.L.J. 57. In Parsotam Gir v. Narbada Gir 1898-99 Vol. XXVI I.R. I.A. 175, a Privy Council decision on an appeal from the High Court at Allahabad, their Lordships held that where a former suit between the same parties in the same court and for the same relief resulted in a decree of dismissal, the judgment leaving it open to the plaintiffs to bring a fresh suit and "leaving untouched and undecided" all matters affecting the rights of the parties, such a decree does not constitute res judicata, not being a final decision of the suit.

Another decision cited to us which is of assistance is that in Pople v. Evans (1968) 2 A.E.R. 743 wherein it was held that estoppel by res judicata could not be maintained merely by reason of the dismissal of an action for want of prosecution, for the estoppel by res judicata was intended to be limited to the decision of issues on their merits e.g. when orders were made on trial or on admission or by way of compromise.

In a further written submission made by the 2nd respondent few days after the hearing of this appeal, to which counsel for the appellant duly replied, our attention was drawn to the recent Court of Appeal decision of McIlkenny v. Chief Constable of the West Midlands and Anor. (1980) 2 W.L.R. 689.

The principles applied therein have been amply enunciated in the authorities we have already considered, and we find nothing in that decision which is of assistance to the respondents' case.

Two other proceedings, Sessions Court (J.B?) Civil Action 146 of 1976, and Johore Bahru Originating

Motion No.46 of 1977 were raised for the first time in 2nd respondent's written submissions, in support of the plea of res judicata, but were not raised in the court below as the judgment and records make abundantly clear. We agree with counsel for the appellant that respondents cannot raise these new grounds, regarding which nothing was mentioned in the court below to support their contention that res judicata applies.

We are of the view that the two orders in granting the appellant liberty to file a fresh action can only mean that no final decision has been pronounced so as to estop the appellant "in any subsequent litigation from disputing or questioning such decision on the merits", so that the plea of res judicata must fail.

We would allow this appeal with costs.

Sgd. Wan Suleiman
(Wan Suleiman)
Ag. Chief Justice,
Malaya.

Kuala Lumpur,
18th December, 1980.

Arguments in Kuala Lumpur on 9.7.80.

Cases cited:

(1) Kok Hoong v. Leong (1964) M.L.J. 49 at 53F.

(2) Teng Lee Hua v. Lee Yoke San (1979) 1 M.L.J. 24

(3) Jenkins v. R (1867) L.R. H.L. Sc.App.117 at 112 para 2.

(4) Shudar Singh v. D. Kumar ...I.R. 1968 S.C. 1332.

10/..

(5) Lee Sem Yoong v. Leong Yoong (1967) 2 M.L.J. 86.

(6) Saminathan v. P. Appa (1914) A.C. 618.

(7) A.A. v. Dass 1917 AIR P.C. 201.

(8) Hunt v. Allied Bakers Ltd. (1956) 1 W.L.R. 1326.

(9) D'stella v. Nathan 15 I.C. 930.

Counsel:

Encik P. Cumaraswamy (C.D. Das & Subramaicker with him) for appellant.

Solicitors: M/s. Subramaicker & Co.

Encik Ronald Khoo for 1st and 3rd respondents.
Solicitors: M/s. Suppiah & Singh.

2nd respondent in person (qua litigant).

Certified true copy.
Secretary to Judge
Federal Court
Malaysia
Kuala Lumpur.
18/12/80

This is the paper writing marked "M11" referred to in the affidavit of petition Tara Rajaratnam sworn to affirmed on the 3 day of Dec 1980 before me.

(SIGNED) MUSTAPHA BIN MOHAMAD
MUSTAPHA BIN MOHAMAD, PLP., PIS,
Pesurohjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

D 26

ORDER

D 26 (B12)
Order

18th December 1980

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.284 OF 1979

Between

Tara Rajaratnam (m.w) .. Appellant

And

1. Datuk Jagindar Singh
2. Datuk P.Suppiah
3. Arul Chandran .. Respondents

(In the Matter of Civil Suit No.284 of 1979 in the High Court in Malaya at Johore Bahru

Between

Tara Rajaratnam (m.w) .. Plaintiff

And

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

CORAM: WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA;
IBRAHIM MANAN, JUDGE, FEDERAL COURT, MALAYSIA;
HASHIM YEOP SANI, JUDGE, HIGH COURT, MALAYA.

IN OPEN COURT
THIS 18TH DAY OF DECEMBER 1980

O R D E R.

THIS APPEAL coming on for hearing the 9th day of July 1980 in the presence of Encik Param Cumaraswamy (Encik C.V Das and Encik Subra P.Naicker with him) of Counsel for the Appellant and Encik Ronald Khoo of Counsel for the 1st and 3rd.Respondents and Datuk

D 26 (B12)

Order
18th December
1980 (Cont'd)

Supplah in person AND UPON READING the Record of Appeal filed herein AND UPON HEARING the arguments of Counsel as aforesaid IT WAS ORDERED that the Appeal do stand adjourned AND UPON READING the Written Submission dated 15.7.80 put in by the 3rd.Respondent (which was adopted by Counsel for the 1st. and 3rd.Respondents) and the Reply dated 25.7.80 put in by Counsel for the Appellant AND the same coming on for Judgment this day in the presence of Encik Param Cumaraswamy of Counsel for the Appellant and Encik Wilfred Abraham of Counsel for the Respondents IT IS ORDERED that this Appeal be and is hereby allowed with costs AND IT IS FURTHER ORDERED that the Respondents do file their Statement of Defence to the Appellant's claim within one (1) month from the date hereof. AND IT IS LASTLY ORDERED that the sum of $500/- (Ringgit Five Hundred only) paid into Court by the Appellant as security for costs of this Appeal be refunded.

GIVEN under my hand and the Seal of the Court this 18th day of December, 1980.

SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT, MALAYSIA.
KUALA LUMPUR.

This is the paper writing marked "TR12" referred to in the affidavit of ..... Tara Rajasthan ..... sworn to the 3 day of Feb 1981 before me.

[illegible]
JOHOR BAHRU.

DRAFT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: 201 OF 1979

BETWEEN

Tara Rajaratnam (m.w.) APPELLANT

AND

1. Datuk Jagindar Singh
2. Datuk P. Suppiah
3. Arul Chandran RESPONDENTS

(In the Matter of Civil Suit No. 284 of 1979
in the High Court in Malaya at Johore Bahru

Between

Tara Rajartnam (m.w.) Plaintiff

And

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

CORAM: WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA;
IBRAHIM MANAN, JUDGE, FEDERAL COURT, MALAYSIA;
HASHIM YEOP SANI, JUDGE, HIGH COURT, MALAYA.

IN OPEN COURT

THIS 7TH DAY OF JANUARY, 1981

O R D E R

UPON MOTION for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong against the Order of the Federal Court dated the 18th day of December 1980 allowing the appeal of the Appellant against the decision of Mr. Justice Anuar bin Dato Zainal Abidin given at Johore Bahru on the 10th day of October 1979 made unto Court this day by Encik Ronald Khoo of Counsel for the 1st and 3rd Respondent Datuk P. Suppiah, the 2nd Respondent in person and Encik

D 26 (B13)
Order
7th January
1981 (Cont'd)

Param Cumaraswamy of Counsel for the Appellant AND UPON READING the Notice of Motion for conditional leave dated the 20th day of December 1980, the Affidavit of P.Suppiah affirmed on the 20th day of December 1980, and the Affidavit of Tara Rajaratnam affirmed on the 28th day of December 1980 and all filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that this application be and is hereby dismissed AND IT IS FURTHER ORDERED that the Respondents do pay to the Appellant the costs of this application as taxed by the proper officer of the Court. 10

GIVEN under my hand and the seal of the Court this 7th day of January, 1981.

CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

DRART ORDER for your approval please,

M/S. SUERA NAICKER & CO.

M/S. SUPPIAH & SINGH.

This is the paper writing marked "TR13" referred to in the affidavit of petition Tara Rajaratnam sworn to affirmed on the 3 day of Feb 1987 before me.

(SIGNED) MUSTAPHA BIN MOHAMAD
MUSTAPHA BIN MOHAMAD, PLP., PJK.
Pesuruhjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU

D 26

D 26(B14)
Affidavit of
Tara Rajaratnam
3rd February
1981

AFFIDAVIT OF TARA RAJARATNAM

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

(Summons In Chambers Entry No.67/1981)

Between

Tara Rajaratnam (m.w) ..Plaintiff

And

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

AFFIDAVIT

I, Tara Rajaratnam (m.w) of full age and residing at Khet Loong Gardens, Kulai, Johore do hereby solemnly and sincerely affirm and say as follows :

1. I am the Plaintiff in this suit and I respectfully refer to the Defendants' Summons-in-Chamber (entered No.67/81 dated 24.1.81) and the Affidavit of Pakrisamy Suppiah dated 17.1.81 filed in support thereof.

2. As regards paragraph 1 of the said Affidavit I respectfully say that at the hearing of Federal Court Civil Appeal No.201/79, the said Federal Court made it quite clear that it was improper for Pakrisamy Suppiah, at the one and the same time to act for himself in person as well as to act for the remaining 2 Defendants. Consequently, the 1st and the 3rd Defendants appointed one Encik Ronald Khoo to represent and act for them. I believe therefore it is not proper for Pakrisamy Suppiah to resume acting for the 1st and 3rd Defendants.

..2

3. As regards paragraph 2 and 3 relating to Johore Bahru Sessions Court Civil Action No.146/76, I say as follows :

(a) There is no evidence as alleged that the Defendants therein "chose not to give evidence nor call any witnesses". The Defendants then Counsel contended before the Learned President that since there was no consent by the parties concerned, the Court had, by reason of Section 70(4) of the Subordinate Courts Act 1948, no jurisdiction to hear the case and hence it ought to be transferred to the High Court for disposal.

(b) as regards vacant possession, I do not know why my then Counsel left the question to the Court. I am a lay person and I left everything to my Counsel.

4. As regards paragraph 4 and 5 of the said Affidavit, I say that the Statement of Defence was prepared by my former solicitors. Nonetheless, the Statement of Defence makes it clear that the transfer of my property first to Pakrisamy Supplah and then to Arul Chandran are impeachable, not bona fide and inequitable. It also alleges breach of undertaking by Pakrisamy Supplah, failure of consideration and that in essence it was a security transaction and not an outright sale. No doubt fraud, undue influence

..3

breach of trust, collusion were not expressly pleaded there but the reason for not doing so, I was told by my previous solicitor, was that since solicitors were involved in the dispute, it was not pleasant to plead everything bluntly and hurt their feelings or embarass them.

5. As regards paragraphs 6 and 7 relating to Johore Bahru High Court Civil Suit No.261/77, I say as follows :-

(a) Soon after Civil Suit No.261/77 was filed, the Defendants therein, jointly and or severally filed several applications to strike out the civil suit on several grounds including those grounds now advanced in the present Summons In Chambers No.67/81 filed herein. I set out hereunder the applications and the Orders made thereon.

(1) Summons In Chamber No.480/77 dated 21.5.1977 and the Order of Court made thereon dated 26.11.78.
(Exhibited herewith marked as TkI.A & B).

(2) Summons In Chamber No.494/77 dated 26.5.77 and the Order of Court made thereon dated 26.11.78.
(Exhibited herewith marked

as TR.2 A & B).

(3) Summons In Chamber No.527/77 dated 2.6.77 and the Affidavit of Pakrisamy Suppiah dated 2.6.77 and the Order of Court dated 23.8.77. (Exhibited herewith marked as TR.3 A, B & C).

(4) Summons In Chamber No.601/77 dated 10.7.77, the Affidavit of Pakrisamy Suppiah dated 10.7.77 and the order of Court made thereon dated 26.11.77. (Exhibited herewith marked as TR.4 A, B & C)

(b) When His Lordship made the Orders (TR.2B, TR.3B and TR.4B) dismissing the Defendants' applications, Pakrisamy Suppiah then told his Lordship that there were certain irrelevant parts or paragraphs in the Statement of Claim and that he would like leave to apply to strike them out. His Lordship granted him the leave to so apply.

(c) The Defendants then filed Summons in Chamber No.78/79 applying to strike out the irrelevant parts. In the course of the arguments Pakrisamy Suppiah found fault with almost every paragraph of the Statement of Claim.

His Lordship then struck out <u>all the paragraphs</u> of the Statement of Claim but gave leave to the Plaintiff to either file a fresh Statement of Claim or a fresh Writ itself. (Summons in Chambers No.78/79 dated 27.1.79 and Order dated 19.3.79 made thereon exhibited as TR.5A and TR.5B).

(d) Even before the Order could be extracted, the Defendants again filed another application, Summons In Chamber No.220/79 dated 28.3.79 applying to strike out the whole Action itself. Since, as result of Summons In Chamber No.78/79 all the paragraphs of the Statement of Claim were struck out, and there was nothing left of the Statement of Claim, His Lordship accordingly struck out the Action itself but gave leave and liberty to the Plaintiff to file a fresh Writ and Statement of Claim. (Summons In Chamber No.220/79 and the Order of Court dated 25.4.79 made thereon, exhibited herein as TR.6A and TR.6B).

6. The Plaintiff then filed a fresh Writ and Statement of Claim (Civil Suit No.284/79) hoping that thereafter the claim can go on without further hindrance as a fresh Civil Suit.

7. As soon as the Plaintiff filed Civil Suit No.284/79, the Defendants again came up with a further application

...6

(Summons In Chamber No.608/79). This time the Defendants claimed that by reason of Order dated 25.4.79 made in Summons In Chamber No.220/79, the matter has become 'Res Judicata'. (Summons In Chamber No.608/79 is marked as TR.7 and the Order of Court made thereon dated 10.10.79 is marked TR.8).

8. Being not satisfied with the Order of Court dated 10.10.79 (that is TR.8) I appealed to the Federal Court against the said decision. This Appeal is known as Federal Court Civil Appeal No.201 of 1979.

9. The Defedants then filed Notice of Motion 11.12.79 and applied to the Federal Court to reject the appeal documents on the grounds of certain procedural defects. I then by a Notice of Motion dated 8.1.80 applied to the Federal Court to cure the defects in my documents as well as certain errors in the documents of the Defendants.

10. After hearing arguments from both sides on 10.1.80, the Federal Court on 9.7.80 dismissed the Defendants application and allowed my Application. (The Orders of the Federal Court is annexed herewith marked TR.9 and TR.10)

11. The Defendants then by Motion dated 30.7.80 applied to the Federal Court for Conditional leave

...7.

to appeal to the Privy Council against TR.9A and TR.10A. This Application was also dismissed by the Federal Court on 27.10.80 . (Order of Federal Court is annexed herewith marked TR.11).

12. Then on 18.12.80 the Federal Court delivered reserved judgment on my appeal proper in Federal Court Civil Appeal No.201/79. The Federal Court allowed my Appeal and ruled that the dispute between the Plaintiff and the Defendants had not become 'Res Judicata' as it was never tried and determined on merits. (Judgment of Federal Court dated 18.12.80 is annexed herewith marked TR.12). In allowing the Appeal the Federal Court ordered the Defendants to file their Defence within one month (i.e by 18.1.81). Order of Court dated 18.12.80 annexed herewith marked TR.12A).

By Motion dated 20.12.80, the Defendants applied to the Federal Court for Conditional Leave to appeal to the Privy Council. On 7.1.81 the Federal Court dismissed this application. (Order of Federal Court (Draft dated 7.1.81 annexed herewith marked TR.13).

14. From the documents exhibited herein it would be seen that contentions and arguments relating to Johore Bahru Sessions Court Civil Action 146/77, Johore Bahru High Court Civil Suit No.261/77 and other matters as contained in rest of the paragraphs of the said

...8

Affidavit have been raised and argued before in the High Court and the Federal Court and that the same has been disposed off by the Courts.

15. As regards paragraph 9 of the said Affidavit, I deny that Sections 199(1) and 131 of the National Land Code extinguishes all my rights, title and interest in the said property.

16. As regards paragraph 11 of the said Affidavit I deny that the particulars set out by me do not constitute fraud or that as an alternative allegation it has no place in the pleadings.

17. As regards paragraph 12 of the said Affidavit I deny that the Statement of Claim does not show a viable legal and enforceable claim.

18. As regards paragraph 13 of the said Affidavit I do not agree that particulars are lacking in the Statement of Claim.

19. Further I say that the several allegations contained in paragraphs 11, 12, 13, 14, 17, 18 and 19 have been advanced before and have been considered and dismissed by the Courts.

20. As regards paragraph 15 of the said Affidavit, how the 3rd Defendant acquired the 'knowledge' is a matter of evidence to be adduced at the trial.

..9

21. As regards paragraph 16 of the said Affidavit, I still say that no money was ever advanced to me except that more than a year after the promise to advance, the $92,000/- was utilised to redeem the property and shortly after that the property was caused to be transferred into the name of Pakrisamy Suppiah.

22. In ordering the Defendants to file their Defence within one (1) month from 18.12.80, the Federal Court also directed Mr.Ramachandran, the Senior Tamil Interpreter of the Federal Court to liaise with the Johore Bahru High Court with a view to getting an early date for the hearing of the Civil Suit herein, so that the dispute may be resolved and disposed off on merits at the earliest.

23. I respectfully say thatthe Statement of Claim herein. discloses sufficient facts. What the Defendants are asking for are evidences and sources to support the allegations and contentious in the Statement of Claim. It is my humble view that once the trial commences the burden is on me to adduce the necessary evidence failing which I would fail in my claim. In the premises, I pray that the Honourable Court would find it fit to dismiss the Defendants' application with costs and direct that the matter be tried at the earliest.

....10

D 26 (B14)
Affidavit of
Tara Rajaratnam
3rd February 1981
(Cont'd)

AFFIRMED by the abovenamed)
Tara Rajaratnam (n.w)) Tara
at Johore Bahru this 3rd)
day of February, 1981.)

Before me

(SIGNED) MUSTAPHA BIN MOHAMED
MUSTAPHA BIN MOHAMED, P.P.S., P.I.S.A.
Pesuruhjaya Sumpah,
(Commissioner for Oaths)
JOHOR BAHRU.

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 284 OF 1979

Between

Tara Rajaratnam (m.w.)

.. Plaintiff

And

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

.. Defendants

AFFIDAVIT

I, JAGINDAR SINGH of No. 2-D, Jalan Ah Fook, Johore Bahru, solemnly and sincerely affirm as follows.

1. I am the abovenamed First Defendant and make this Affidavit on behalf of the other two Defendants as well as myself.

2. The Federal Court did on 18.12.80 order that the Defendants file their Defence herein on or before 17.1.81.

3. The Defendants duly did so with their Counterclaim and serve same on the Plaintiff on 17.1.81.

4. The Plaintiff served her Reply and Defence to Counterclaim on 24.1.81.

5. Pleadings in an action close at the expiration of 14 days after service of the Defence to Counterclaim by virtue of Order 18 Rule 20(1)(a) of the Rules of the High Court.

6. In the instant case as the Defence to Counterclaim was served on 24.1.81 the Pleadings would have been deemed

..2/-

closed on 10.2.81.

7. By virtue of Order 25 Rule 1, the Plaintiff must within one month thereafter take out a Summons for Directions, which in the instant case means the Plaintiff should have taken out a Summons for Directions on or before 10.3.81. This the Plaintiff failed to do.

8. Some of the proceedings in connection with the land, the subject matter of this Action which are relevant (in support of this application), and show that the Plaintiff has no regard for the rule of law are as follows :-

(1)(a) The Third Defendant took an action for possession of the land on 20.3.76 in Johore Bahru Sessions Court Case No. 140 of 1976 against the Plaintiff and her husband.

(b) The Plaintiff and her husband, as defendants in the said Action, filed their Defence on 8.5.76 in which they stated:

(i) for business reasons they were unable to repay the sum of $220,000/- within the period, and

(ii) they were always willing to pay the sum of $220,000/- to the Second Defendant but have been unable to do so.

..3/-

(c) Judgment for possession of the land was duly given to the Third Defendant on 9.8.78.

(d) Furthermore, at the hearing they chose not to give evidence, nor call any witness and as regards the claim for possession of the said property, they left the matter to the Court.

(e) They then appealed to the High Court against the said Order for possession. The Appeal was duly heard and dismissed on 6.6.78.

(f) They appealed further to the Federal Court, but <u>failed to file the Record of Appeal in time (four months out of time)</u>, and as a result made an Application for extension of time within which to file the Appeal Record. The Federal Court sitting at Kuala Lumpur on 19.3.79 dismissed the said Application.

A copy of the letter dated 5.1.79 written by the Chief Registrar explaining the situation is annexed hereto and marked "JS.1".

(g) There was no allegation of any fraud, undue influence, breach of trust and collusion in the said Sessions Court Action.

..4/-

(h) In an Affidavit affirmed by the Plaintiff on 3.2.81 in the Suit herein, this is what the Plaintiff stated :

(i) "As regards vacant possession I do not know why my then Counsel left the question to the Court. I am a lay person and I left everything to my Counsel".

(ii) "No doubt fraud, undue influence, breach of trust, collusion were not expressly pleaded there but the reason for not doing so, I was told by my previous solicitors was that since solicitors were involved in the dispute, it was not pleasant to plead everything bluntly and hurt their feelings or embarrass them". (If this is true then I must at least thank previous Counsel for sparing my feelings!).

(2) The Plaintiff next lodged a caveat against the said land. It lapsed because she did not make any application to extend it, and the Registrar of Titles removed it on 3.8.76.

(3)(a) After the land was subdivided into 70 lots

..5/-

the Plaintiff again lodged caveats, 70 of them. On an application made by way of Originating Motion by the Third Defendant, the High Court on 17.4.78 ordered that the said caveats be removed.

(b) The Plaintiff appealed to the Federal Court against the order removing the 70 caveats. When the appeal came on for hearing on 4.2.79 at Johore Bahru, she withdrew her appeal.

(4) The Plaintiff and her husband and one Dr. Das (her brother-in-law) gave frivolous statements in support of a Complaint made to the Law Society in Singapore on 16.3.77 against the Third Defendant in respect of the transactions connected with the said land.

(5)(a) The Plaintiff then issued a Writ and filed a Statement of Claim on 30.4.77 in Suit No. 261 of 1977 against the Defendants in the High Court at Johore Bahru in relation to the said land.

(b) The Statement of Claim in the said Suit was amended twice, once on 30.4.77 and again on 21.5.77.

(c) The said Suit was dismissed on 25.4.79.

..6/-

(6)(a) The Plaintiff then filed the present Action on 30.8.79 which said action was dismissed by the High Court on the grounds of res judicata. The Federal Court allowed the subsequent appeal therefrom. When she appealed she filed the Notice of Appeal even before receiving the Judge's certificate to the effect that he did not want to hear further argument.

(b) The said Notice of Appeal was not directed to the Registrar of the Federal Court. On this issue this is what the Federal Court said in its Judgment dated 9.8.80: "As stated by Mr. S.P. Naiker in his affidavit, though the Notice of Appeal did not indorse the addresses of those to whom the notice should be directed, covering letters were addressed and directed to those to be served at the time of the filing of the Notice of Appeal and ensured that they were served. We are therefore of the view that non-compliance with the requirements of rule 6(3) and Form 1 is in the circumstances of this case a mere irregularity which shall not render the Notice of Appeal void."

..7/-

No covering letter was ever sent to the Registrar of the Federal Court and therefore the Federal Court on this issue based its decision on an untruth contained in Counsel's Affidavit.

(c) Furthermore the Memorandum of Appeal was neither signed nor dated. The Federal Court held that these were irregularities that could be cured.

10

(d) The Writ in this action was filed on 30.8.79 with the address 2-D, Jalan Ah Fook, Johore Bahru, typed out below the names of each Defendants. In order to cause the process-server to serve the Writ on the Defendants hurriedly, the addresses on the service copies of the Writ were first obliterated and then retyped to read, "to his/or their Solicitors Messrs. Suppiah and Singh, No. 2-D, Jalan Ah Fook, Johore Bahru", and served on Messrs. Suppiah and Singh on 20.9.79 by leaving same at their office, even

20

..8/-

though they had not stated that they had instructions to accept service. The filed copy of the Writ (filed in the High Court) was also removed from the Registry on or about 6.10.79 obliterated and retyped to correspond with the Writ that was served. At first, the solicitors did not admit to tampering with the Court document after it was filed. The Plaintiff swore an Affidavit on 8.10.79 in which she said: "It is neither true that the obliterating and retyping of the address of service of the Defendants was done after the signing and sealing by the Senior Assistant Registrar, nor is it true that the Court copy is not so retyped. I believe, the Court copy which has been in the custody of the Court since filing also has this retyped version, unless this particular copy has been inadvertently omitted from being retyped". Subsequently when a photo-copy of the Writ as originally filed with the addresses was produced, the solicitors for the Plaintiff admitted that their clerk did it, and went on

..9/-

to blame the Court clerk in an Affidavit affirmed on 18.12.79 saying: "<u>If the Court Officer concerned who ought to have been better informed had said 'No' to the clerk, then there would not have been any obliteration or retyping at all</u>".

(7)(a) Sometime in August, 1979 the Plaintiff made a Complaint to the Bar Council in respect of the said land, and the various actions connected therewith against the First and Second Defendants, in which she inter alia scandalized the judiciary, and some of the astounding allegations she had made in her said Complaint are

(i) "In lightning speed without my defence being called, judgment for possession was given". (This statement is apparently directed against the learned President of the Sessions Court Action in granting an Order for possession of the land to the Third Defendant);

(ii) "I know that Dato Jogindar Singh and Dato P. Suppiah are very rich and

..10/-

powerful people, and I have also seen them walking in and out of the Judge's chambers".

(iii) "I believe that everyone must obtain equal justice under law or is it true that there is different scales of justice for different people!"

(iv) "I am convinced I cannot fight against rich people. My only hope is to appeal to the Law Minister and the Malaysian Bar Council to look into my case and do justice. Several lawyers and friends have advised me to do so. I am humbly leaving my case in your hands hoping that justice will be done".

(v) "My case became a very popular one and everytime it came up many other lawyers will come and listen and after hearing the verdict they will say that there is something fishy about the Judge's verdict. But there is nothing I can do".

(vi) "I appealed to the Federal Court. Unfortunately my lawyers, because they could not get judge Anuar's written judgment and other documents from court in time, failed to file

..11/-

the appeal in due time. But meanwhile my lawyer had asked Dato Suppiah to grant him some extra time. Dato Suppiah had no objection. My appeal was heard in the Federal Court on March 23, 1979. On that morning my lawyer and I came at 8.30 a.m. and waited. Dato Suppiah came in also without any books at all. But my lawyers brought in several books. It was Chief Justice Raja Azlan's room. A while later he came out. A few minutes later Borneo Chief Judge came and also went inside Justice Raja Azlan's room. Later my case was called. 2 other Judges sat with the Borneo Chief Judge. My lawyer stood up and explained to the court why the documents were filed late. But the Court cut him short. Another lawyer who was assisting my lawyer tried to explain but he did not want to listen. The other two judges appeared to sympathise with my lawyers but Borneo Chief Justice spoke to both of them. Finally, my application

..12/-

and appeal were dismissed.
I was grieved and shocked".
(This scandalous allegation
refers to the proceedings
stated in paragraph 8(1)(f)
above dismissing the application
for extension of time, in which
the Second Defendant did not
object to the said extension of
time.);

(vii) "In J.B. my people told me that
Dato Jogindar Singh and Dato
Suppiah were close friends of
the Judge. I never could
believe that they could get away
with injustice and fraud".

(viii) "I am not suggesting that the
judiciary can be bought, but I
feel that it is highly improper
for the lawyers concerned to see
the Judges privately and put
ideas into their heads".

(ix) "I believe it would be very helpful
if a copy of that complaint (i.e.
the complaint to the Singapore
Law Society) could be obtained
because I imagine it will not only
implicate Mr. Arul but will also

..13/-

implicate Dato Jogindar Singh and Dato Suppiah because the statements of my husband, Dr. Dass and me cover the whole ground and the whole story. I suggest that the Bar Council write to the Law Society to see if the Law Society is prepared to pass this information on."

A photostat copy of the said Complaint is annexed hereto and marked "JS.2". It is with respect a scandalous and mischievous document highly defamatory of our judges and those entrusted with the administration of justice, and quite unworthy of a bona fide litigant.

9. The above facts have been set out in extenso to show that the Plaintiff has complete and utter disregard for the Rules, and will do anything, and scandalize anyone at any time, whenever it suits her so to do.

10. After doing all that she did, in an Affidavit filed by her on 9.2.81 she stated that her intention in bringing the action against the Defendants was "to resolve the matter peacefully and speedily by judicial determination".

With great respect, such a statement from some one who has been so overtly contemptuous of courts, judges, and the other officers of the High Court Registry is to say the least, an amazing statement to make belieing her true motives.

11. The Plaintiff and her Solicitors on numerous

..14/-

occasions accused the Defendants in Affidavits and in open Court of not wanting the case to be heard early. This is not true for the following reasons:

(a) The transaction took place on 30.3.74;

(b) The previous Action was filed on 30.4.77;

(c) The Statement of Claim in the previous Action was amended twice and the final edition is dated 21.9.78, which was struck out; and

(d) The present action was filed on 30.8.79.

12. When the learned Judge Justice Datuk Mohd. Yusof bin Abdul Rashid heard recently certain interlocutory Applications by the Defendants this is what he stated in his said Judgment dated 10.2.81.

"The alleged transaction took place sometime in 1974 and the plaintiff had initiated action in relation to it in 1976. No conclusion has been reached after a lapse of four years though the parties had on numerous occasions appeared before a Judge of the High Court. As such, I ordered that the hearing of this action with the view of final disposal shall be fixed on May 16, 1981 and allotted four days for that purpose."

..15/-

13. In the Notes of Argument recorded on 10.2.81 in connection with the said Judgment, this is what the learned Judge has ordered: "The Court on its own violation gives parties 3 months from today to complete proceedings." The Solicitors for the Plaintiff has not complied with any of the pre-trial procedures since then even though the period of three months was given to do so.

14. Whatever interlocutory applications that were made by the Defendants were made within the Rules of Procedure but at no time have the Defendants disregarded them.

15. The matter has been pending over the Defendants' heads for a long time and the Plaintiff has once again blatantly disregarded the order made by the learned Judge.

16 (a). This Honourable Court made an order dated 10.2.81 that the Plaintiff do supply particulars of "reasonable cause" in her Defence to Counterclaim of the Third Defendant within 14 days. The said period of 14 days elapsed on 24.2.80 and to this day the Plaintiff has not supplied the said particulars.

(b). On the question of wrongfully caveating the property after it was divided into 70 lots which is a subject matter of the Counterclaim by the Third Defendant this is what the Solicitor (Mr. Subra Naicker) for the Plaintiff had stated in an Affidavit affirmed and filed on 18.12.79 in connection with this action:

"The Plaintiff did not proceed with the Appeal (Federal Court Civil Appeal No. 71

..16/-

of 1978) against the Decision of Mr. Justice Tan Sri Dato' Syed Othman bin Ali removing the caveats against the 70 sub-divided lots because the Plaintiff was subsequently advised that the said Decision is correct in that one cannot file a fresh caveat after allowing the earlier caveat to lapse without extending it by an Order of Court."

17(a). In the same Affidavit he had also stated the following:

(a) the unsigning of the Memorandum of Appeal referred to in paragraph 6(c) above was due to an oversight and he admitted negligence; and

(b) "if indeed the Defendants/Respondents were innocent and the Plaintiff/Appellant's allegations were false or groundless, he should file a Defence forthwith and apply for an early trial and prove their innocence and absolve themselves as early as possible and speedily."

(b). The Defendants are asked to prove innocence without the Plaintiff following the Rules of Procedure about which this is what the 1979 White Book says at page 2: "Being made under powers given by statute,

..17/-

the R.S.C. have themselves the force of statute (see, e.g.,S.S. Hontestroom v. S.S. Sagaporack (1972) A.C. per Lord Sumner at p. 47;". Our Rules are made pursuant to Section 17 of the Courts of Judicature Act 1964.

18. All the Plaintiff's actions and doings will clearly show that her sole intention is to cause as much embarrassment as possible to the Defendants without any due regard for Orders of Court and Rules of Procedure and to scandalise anyone at any time if things did not work out in her favour hoping in the process the Defendants would succum to a settlement.

19. For the reasons stated above I respectfully pray for an Order in terms of the application in respect of which this Affidavit is filed in support.

AFFIRMED at Johore Bahru
this 12th day of May
1981

Sd. Jagindar Singh

Before me,

Sd.
R RAMASAMY P.I.S.
COMMISSIONER FOR OATHS
HIGH COURT,
JOHORE BAHRU.

D 32

D 32 (C1)
Summons and Statement of Claim
Civil Action No. 146 of 1976
20th March 1976

SUMMONS AND STATEMENT OF CLAIM
CIVIL ACTION No. 146 OF 1976

IN THE SESSIONS COURT IN MAJAYA

IN THE STATE OF JOHORE

SITTING AT JOHORE BAHRU

CIVIL ACTION NO. 146 OF 1976.

Between

ARUL CHANDRAN ... ... Plaintiff

And

1. TARA RAJARATHAM (m.w.)
2. K.V. DEVAN ... ... Defendants

To the above-named Defendants:

1. Tara Rajaratnam (m.w.), No. 681, Kulai Besar, Kulai, Johore
2. K.V. Devan, No. 681, Kulai Besar, Kulai, Johore

You are hereby summoned to appear either in person or by your advocate and solicitor before the above-named Court at 9.00 o'clock of the forenoon on the 22nd day of April, 1976, to answer a claim against you by the above-named Plaintiff, particulars whereof are set out in the statement of claim endorsed hereon, whose address is care of No. 2-D, Jalan Ah Pook, Johore Bahru.

TAKE NOTICE that in default of such appearance judgment may be given against you.

AND TAKE NOTICE that if you desire to defend the said claim, you must, not less than two days before the date above-mentioned, file in Court and serve on the Plaintiff a defence in due form.

Dated this 20th day of March 1976.

—Sd—
Registrar
Magistrate

The address for service of the Plaintiff is care of Suppiah and Singh, Advocates and Solicitors, No. 2-D, Jalan Ah Pook, Johore Bahru.

D 32 (C1)
Summons and Statement of Claim
Civil Action No. 146 of 1976
20th March 1976
(Cont'd)

STATEMENT OF CLAIM

1. The Plaintiff is the registered owner of the land comprised in Certificate of Title No. 13817 Lot No. 6025 Mukim of Senai-Kulai and the house erected thereon and known as KLBSK 681, Kulai Besar, Kulai, Johore.

2. The First Defendant who is the wife of the Second Defendant was the owner of same until she sold same sometime in July 1975. Both the Defendants after the said sale continued to remain and occupy the said land and premises free of any rent.

3. By letter dated the 4th day of March, 1976, sent by the Plaintiff to the Defendants, the Plaintiff requested the Defendants to quit and vacate the said land and premises on or before the 15th day of March, 1976, but the Defendants have not vacated same.

The Plaintiff claims:

(a) Possession of the said land and premises;

(b) Costs of this action;

(c) Damages; and

(d) Such further and other relief as this Honourable Court may deem just and equitable.

Dated this 20th day of March 1976.

Ed Suppiah & Singh

Solicitors for the Plaintiff

D 32 (C1)
Summons and Statement
of Claim
Civil Action
No. 146 of 1976
20th March 1976
(Cont'd)

IN THE SESSIONS COURT IN MALAYA

IN THE STATE OF JOHORE

SITTING AT JOHORE BAHRU

CIVIL ACTION NO. OF 1976.

Between

ARUL CHANDRAN ... Plaintiff

And

1. TARA RAJARATNAM (m.w.)
2. K.V. DEVAN ... Defendants

S U M M O N S

and

STATEMENT OF CLAIM

Filed this day of March, 1976.

Suppiah & Singh,
Advocates & Solicitors,
No. 2-D, Jalan Ah Fook,
Johore Bahru

D 32

MEMORANDUM OF RETAINER (PLF.)
CIVIL ACTION NO. 146 OF 1976

D 32 (C2)
Memorandum of
Retainer (Plf.)
Civil Action
No. 146 of 1976
20th March 1976

GOVERNMENT OF MALAYSIA

IN THE STATE OF JOHORE

IN THE SESSIONS COURT AT JOHORE BAHRU

CIVIL ACTION NO. OF 1976

Between

ANUL CHANDRAN ... Plaintiff

And

1. TARA RAJARATNAM (m.w.)
10 **2. K.V. DEVAN ... Defendants**

MEMORANDUM OF RETAINER OF SOLICITOR

To,

Tara Rajaratnam (m.w.)
No. 681, Kulai Besar,
Kulai,
Johore.

K.V. Devan,
No. 681, Kulai Besar,
Kulai,
Johore

Mr. Pakrisamy Suppiah of Suppiah and Singh has been appointed by the abovenamed Plaintiff to act on his
20 behalf in these proceedings. Address for service is at No. 2-D, Jalan Ah Fook, Johore Bahru.

Dated this 20th day of March 1976.

.....
Plaintiff

.....
Solicitors for the Plaintiff

D 27

D 27 (C3)
Memorandum of
Retainer (Dfdt.)
Civil Action
No. 146 of 1976
20th April 1976

MEMORANDUM OF RETAINER (DFDT.)

STATES OF MALAYA

IN THE SESSIONS/~~MAGISTRATE'S~~ COURT AT JOHORE BAHRU:

STATE OF JOHORE

Civil Action)
)
No. 146 of 1976 .) Between

ARUL CHANDRAN

.... Plaintiff/~~s~~

And

1. TARA RAJARATNAM
2. K. V. DEVAN

.... Defendant/s

10 MEMORANDUM OF RETAINER OF SOLICITORS

Messrs C.K.G. Pillay & Co., Advocates & Solicitors of No. 45, Jalan Ibrahim , Johore Bahru have been appointed by the above-named ~~Plaintiff/s~~, Defendant/~~s~~ to act on ~~his/her~~/their behalf in these proceedings.

Address for service is at No. 45, Jalan Ibrahim, Johore Bahru, West Malaysia.

Dated this 20th day of APRIL , 1976 .

20 .....
Signature of ~~the Plaintiff/s~~,
Defendant/s

.....
Signature of ~~Plaintiff/s~~ Solicitors
Defendant/s

To, THE ABOVENAMED PLAINTIFF,
.....
AND/OR HIS SOLICITORS MESSRS.
.....
SUPPIAH & SINGH, ADVOCATES &
.....
SOLICITORS, 2-D, JALAN AH POOK,
.....
JOHORE BAHRU:
.....

D 10

DEFENCE

CIVIL ACTION NO. 146
OF 1976

D 10 (C4)
Defence
Civil Action
No. 146 of 1976
8th May 1976

IN THE SESSIONS COURT AT JOHORE BAHRU

CIVIL ACTION NO. 146 OF 1976

Between

ARUL CHANDRAN

... Plaintiff

And

1. TARA RAJARATNAM

2. K.V. DEVAN

... Defendants

10 DEFENCE

1. The Defendants admit that the Plaintiff is the registered owner of the land and premises as mentioned in paragraph 1 of the Statement of Claim, but will contend that he became such owner under certain circumstances on account of which his rights under the title are impeachable and not absolute and that he is not entitled to the reliefs claim . against the Defendants. The Defendants put the Plaintiff to strict proof that he was a bona fide purchaser.

20 2. The 1st Defendant says that she was at all material times the registered owner of the land and premises in question, and she and her family had been staying there ever since the premises were built. Sometime in the month of March, 1974, the 1st Defendant was approached by the 2nd Defendant informing her that the property should be pledged to get some financial aid for the purpose of opening a medical centre for her brother-in-law, one Dr. Dass. In compliance, she executed certain instruments in favour of one P. Suppiah,

30 the Plaintiff's predecessor-in-title, in consideration of certain financial adjustments relating to overdrafts etc., to the extent of $220,000/- made by him, the intention of

the 1st Defendant and P. Suppiah being that the property shall be a security for that sum which was to be repaid within a year by the 2nd Defendant and Dr. Dass, and will further say that that P. Suppiah undertook in writing that he will not transfer the property to any third party within one year from the date he became the registered owner.

3. The Defendants say that the adjustments were not entirely carried out strictly within the stipulated time and that in any event, it is ipem for the 1st Defendant to contend that there was no proper consideration. The sum of $110,000/- which was to have been paid to Dr. Dass was not paid on account of her interest, benefit or right.

In any case the said P. Suppiah has sought other remedy against Dr. Dass by obtaining Judgment against him in Singapore High Court Civil Suit No. 1224/75 for the sum of $149,520/-, which Judgment the said P. Suppiah sought to register in the High Court in Malaya at Johore Bahru.

4. The Defendants for business reasons were unable to repay the sum of $220,000/- within the period, and in consequence the said P. Suppiah arranged completion of the transfer of the piece of land and premises in question in his own name on 22nd July, 1975. The 1st Defendant will contend that such transfer was inequitable, contrary to understanding and intention of the parties and also because the market value of the land and premises for exceeds the sum due to the said P. Suppiah.

5. The Defendants will contend that the subsequent transfer of the piece of land and premises to the Plaintiff was not for value and that the Plaintiff is not a bona fide purchaser. The Plaintiff was in a position to know the true nature of the transactions.

6. The Defendants were and are always willing to pay the Plaintiff's predecessor-in-title the sum secured and other ancilliary reliefs but have been unable to do so.

7. In the above premises, the Defendants contend that the Plaintiff's title is dyeasable by reason of the original transfer to his predecessor-in-title taking place by means of an insufficient and void instrument of which the Plaintiff had notice, and that the Plaintiff's claim should be dismissed with costs.

Dated this 8th day of May, 1976.

Solicitors for the Defendants.

To:

The abovenamed Plaintiff
and/or his Solicitors
M/s. Suppiah & Singh,
Advocates & Solicitors,
No.2-D,Jalan Ah Fook,
Johore Bahru.

The address for service of the abovenamed Defendants is care of Messrs: Elyas Majeed & Co., Advocates & Solicitors, of Room 202, O.C.B.C. Building, Jalan Ibrahim, Johore Bahru.

D 32

APPLICATION

CIVIL ACTION NO. 146 OF 1976

IN THE SESSIONS COURT IN MALAYA

IN THE STATE OF JOHORE

SITTING AT JOHORE BAHRU

D 32 (C 5)
Application
Civil Action No.
146 of 1976
9th May 1976

CIVIL ACTION NO. 146 OF 1976.

Between

ARUL CHANDRAN ... Plaintiff

And

1. TARA RAJARATNAM (m.w.)
2. K.V. DEVAN ... Defendants

A P P L I C A T I O N

To,

The Defendants or their solicitors,
Messrs. Elyas Majeed & Co.,
Room 202, 2nd Floor,
O.C.B.C. Building,
Jalan Ibrahim, Johore Bahru.

TAKE NOTICE that the Plaintiff abovenamed will apply to the Court at 9.00 o'clock in the forenoon on the 10th day of May, 1976, for an order that:

1. The Defence of the Defendants be struck out on the ground that:
   a) it is in breach of Order 10 Rule 4 of the Subordinate Court Rules 1950 and under the inherent jurisdiction of the Court;
   b) it discloses no reasonable defence;
   c) it is frivolous and vexatious; and it is an abuse of the process of the Court; and
2. The Plaintiff be at liberty to enter judgment for possession of the land and premises as claimed in this Action including costs.

Dated this 9th day of May, 1976.

Solicitors for the Plaintiff

Magistrate,
Johore Bahru

D 32
AFFIDAVIT OF SUPPIAH
CIVIL ACTION NO. 146 OF 1976

IN THE SESSIONS COURT IN MALAYA

IN THE STATE OF JOHORE

SITTING AT JOHORE BAHRU

D 32 (C6)
Affidavit of
Suppiah
Civil Action No. 146
of 1976
10th May 1976

CIVIL ACTION NO. 146 OF 1976.

Between

ARUL CHANDRAN ... Plaintiff

And

1. TARA RAJARATNAM (m.w.)
2. K.V. DEVAN ... Defendants

A F F I D A V I T

I, Pakrisamy Suppiah, Advocate and Solicitor, of No. 33, Jalan Keruing, Johore Bahru, affirm and say as follows.

1. I am the solicitor incharge of the abovementioned Action and Messrs. Suppiah and Singh, of which I am a partner, are the Solicitors for the Plaintiff herein who filed an Application on 9th May 1976 for the Defence of the Defendants to be struck out for the reasons stated therein and furthermore the Defendants do not deny that the Plaintiff is the registered owner of the land and premises referred to in the Statement of Claim.

2. If for reasons the Defendants want to defeat the registered title of the Plaintiff or his predecessor in title they should take such action as is open to them under the law and until and unless such action is taken by the Defendants to divest the Plaintiff's title, his title is paramount and unimpeachable and therefore whatever allegations the Defendants have made in their Defence are not defences in law to a claim for possession by the Plaintiff as registered owner of the land and premises in question.

This Affidavit is filed in support of the Application

- 2 -

D 32 (C6)
Affidavit of
Suppiah
Civil Action No.
146 of 1976
10th May 1976
(Cont'd)

referred to paragraph 1 above.

Affirmed by the abovenamed)
Pakrisamy Suppiah at)
Johore Bahru this 10th day)
of May, 1976.)

Before me:

Sd R. Ramasamy
COMMISSIONER FOR [illegible]
HIGH COURT,
JOHORE BAHRU

11 MAY 1976

This ~~Application~~ Affidavit was filed by Messrs. Suppiah and Singh solicitors for the Plaintiff herein and whose address for service is No. 2-D, Jalan Ah Fook, Johore Bahru.

D 32 SUBPOENA (SUPPIAH)
CIVIL ACTION NO. 146 OF 1976

D 32 (C7)
Subpoena (Suppiah)
Civil Action
No. 146 of 1976
18th May 1976

IN THE SESSIONS COURT IN MALAYA AT JOHORE BAHRU

CIVIL ACTION NO. 146 OF 1976

Between

ARUL CHANDRAN

... Plaintiff.

And

1. TARA RAJARATNAM (m.w.)
2. K.V. DEVAN

... Defendants.

SUBPOENA (TO GIVE EVIDENCE, ETC.)

To P. Suppiah,
of No. 2-D, Jalan Ah Fook,
Johore Bahru.

You are hereby commanded personally to attend before the abovenamed Court at 9.00 o'clock in the fore noon on the 30th day of May, 1976 to give evidence on behalf of the Defendants and there to remain during the trial of the abovenamed proceedings or until you have the leave of the Court to depart.

Wilful failure to comply with this order may be treated as a contempt of Court.

Dated this 18th day of May, 1976.

Registrar,
Sessions Court,
Johore Bahru.

THE SEAL OF THE SESSIONS COURT JOHORE

"A Ma[illegible] 526194
for th[illegible] 50/= towards
you[illegible] and
travel[illegible] ered
with [illegible] the
pay[illegible] the
rea[illegible] ty or
Sol[illegible] Office
[illegible] J. Bahru."

D 32
WRITTEN SUBMISSIONS
(PLF.)
CIVIL ACTION NO. 146
OF 1976

D 32 (C7A)
Written
Submissions (Plf.)
Civil Action No.
146 of 1976
30th May 1976

IN THE SESSIONS COURT IN MALAYA

IN THE STATE OF JOHORE

SITTING AT JOHORE BAHRU

CIVIL ACTION NO. 146 OF 1976.

Between

ANUL CHANDRAN ... Plaintiff

And

1. TARA RAJARATNAM (m.w.)
2. K.V. DEVAN ... Defendants

Written submission by Counsel for the Plaintiff at the hearing on 30-5-76.

1. Except for the clear admission in paragraph 1 that the Plaintiff is the registered owner of the land and premises, the Defence as a whole is not only a frivolous, vexatious and embarrassing document but it also contains vague confused and contradictory statements, and my reasons for saying this are as follows:

2. A vague statement is contained in paragraph 1 when the Defendants state that the Plaintiff became the owner under "certain circumstances" on "account of which" they say the Plaintiff's rights to the title of the land and premises are impeachable and not absolute. Putting it the other way round, what the Defendants are saying is that because of the "certain circumstances" the Plaintiff does not have a good title to the property.

All of a sudden in the same paragraph they call upon the Plaintiff to prove that he is bona fide purchaser, and it would appear that they want the Plaintiff to prove this because of "certain circumstances".

3. A further vague statement appears in paragraph 2 of the Defence, and they are "certain instruments" and "certain financial adjustments". Surely both the Defendants who are

English speaking know what those instruments and those so-called financial adjustments are, but the Defendants do not deny that the sum of $220,000.00 was involved in the transaction by whatever term they wish to call it.

4. By para 4, the Defendants say that they were unable to pay the sum of $220,000.00 within the period which means they accept that there was this sum involved as consideration.

5. After stating all that they had to say and making all the allegations they wanted to make, the Defendants by paragraph 6 say:

> "they were and are <u>always willing</u> to pay the Plaintiff's predecessor-in-title the sum secured and other ancillary reliefs <u>but unable to do so</u>".

The important words in this Paragraph is <u>WILLING TO PAY BUT UNABLE TO PAY</u> and with this statement they expect to defeat the Plaintiff's claim for possession.

6. The contradictory statements appear in paragraphs 2, 4 and 7 of the Defence.

7. In paragraph 2 the 1st Defendant says that she sometime in March 1974 pledged (you can't pledge property) the property in favour of the predecessor-in-title to the extent of $220,000.00 and that he undertook in writing that he will not transfer the property to any third party within one year. From this it is clear that a transfer must have been executed in his favour, otherwise why impose a condition that he will not transfer the property to any third party within one year.

8. In paragraph 4 she says that as she was unable to repay the sum of $220,000.00 <u>within the period</u> the predecessor-in-title arranged completion of the transfer of the property in his own name. From this statement it must necessarily follow

that she knew that the document she signed in the presence of her husband was a document of transfer and not a charge.

9. In paragraph 7 it has been stated that the original transfer in favour of the Plaintiff's predecessor-in-title took place bymeans of an in sufficient and void instrument. How could the document be bad if she knew it was a transfer, there was consideration for it and it was accepted by the registering authority.

10 10. It is universally known that the transfer of a property to one person to another cannot be registered unless the issue document of title is handed over to the registering authority together with the instrument of transfer. It would be pertinent to ask the Defendants how did the instrument of title come to be in the possession of the predecessor-in-title for him to have the property registered in his name.

D 32
APPLICATION
CIVIL ACTION NO. 146 OF 1976
IN THE SESSIONS COURT IN MALAYA
IN THE STATE OF JOHORE
SITTING AT JOHORE BAHRU

D 32(C8)
Application
Civil Action
No. 146 of 1976
5th June 1976

CIVIL ACTION NO. 146 OF 1976.

Between

ARUL CHANDRAN ... Plaintiff

And

1. TARA RAJARATNAM (m.w.)
2. K.V. DEVAN ... Defendants

A P P L I C A T I O N

10

To,

The Defendants or their solicitors,
Messrs. Elyas Majeed & Co.,
Room 202, 2nd Floor,
B.C.B.C. Building,
Jalan Ibrahim, Johore Bahru.

TAKE NOTICE that the Plaintiff abovenamed will apply to the Court at 9.00 o'clock in the forenoon on the 29th day of June 1976, for judgment to be entered in this Action for the Plaintiff against the Defendants for possession of the 20 land comprised in Certificate of Title No. 13817 Lot No. 6025 Mukim of Senai-Kulai and the house erected thereon and known as KLBSK 681, Kulai Besar, Kulai, Johore, upon the admission contained in paragraph 1 of the Defence that the Plaintiff is the registered owner of the said land and premises.

Dated this 5th day of June 1976.

Solicitors for the Plaintiff

Registrar,
Sessions Court,
Johore Bahru

D 32

D 32 (C9)
Affidavit of
Suppiah
Civil Action No.
146 of 1976
11th June 1976

AFFIDAVIT OF SUPPIAH
CIVIL ACTION NO. 146 OF 1976

IN THE SESSIONS COURT IN MALAYA

IN THE STATE OF JOHORE

SITTING AT JOHORE BAHRU

CIVIL ACTION NO. 146 OF 1976.

Between

AMUL CHANDRAN ... Plaintiff

And

1. TARA RAJARATNAM (m.w.)
2. K.V. DEVAN ... Defendants

A F F I D A V I T

I, PAKRISAMY SUPPIAH of No. 2-D, Jalan Ah Fook, Johore Bahru, solemnly and sincerely affirm and say as follows:-

1. I am the solicitor in charge of this Action for the abovenamed Plaintiff.

2. In paragraph 1 of the Defendants Defence the Defendants admit that the Plaintiff is the registered owner of the land and premises mentioned in the Statement of Claim.

3. In view of the foregoing the Plaintiff is entitled in law forthwith to judgment on the said admission for possession.

AFFIRMED at Johore Bahru)
this 11 day of June,)
1976.)

Before me,

HIGH COURT,
JOHORE BAHRU

This Affidavit is filed on behalf of the Plaintiff in support of the Application dated 5-6-76 for judgment on admission.

D 32
WRITTEN SUBMISSIONS
(PLF.)
CIVIL ACTION NO. 146 OF 1976
IN THE SESSIONS COURT IN MALAYA

IN THE STATE OF JOHORE

SITTING AT JOHORE BAHRU

D 32 (C9A)
Written
Submissions (Plf.)
Civil Action
No. 146 of 1976
30th June 1976

CIVIL ACTION NO.146 OF 1976

Between

ARUL CHANDRAN .. Plaintiff

And

1. TARA RAJARATNAM (m.w.)
2. K.V. DEVAN .. Defendants

Written Submission by Counsel for the Plaintiff in the case to be heard on 30.6.76

1. The main claim of the Plaintiff in this Action is for possession of the land and premises by virtue of the fact that he is the registered proprietor thereof as stated by him in the first paragraph of the Statement of Claim and therefore to succeed in his claim for possession he need only establish that he is the registered owner.

2. By paragraph 1 of the Defence, the Defendants admit that the Plaintiff is the registered owner of the land and premises in question and as such there is nothing for the Plaintiff to prove in his claim for possession and therefore he is entitled to succeed in his claim for possession.

3. The Defence in paragraph 1 in addition to admitting that the Plaintiff is the registered owner of the land and premises goes on to say :

(a) "that he became the owner thereof under certain circumstances on account of which his rights under the title are impeachable and not absolute";

D 32 (C9A)
Written Submissions
(Plf.)
Civil Action No.
146 of 1976
30th June 1976
(Cont'd)

(b) "that the Defendants put the Plaintiff to strict proof that he is a bona fide purchaser", which has been repeated in paragraph 5 of the Defence.

4. What is stated in 3(a) above is frivolous and vague and what is meant by "certain circumstances" is left to conjecture.

5. According to Section 101 of the Evidence Ordinance the person who asserts the existence of facts must prove that those facts exist.

6. Section 102 of the same Ordinance says that the burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side. I reproduce Illustration (b) given thereunder which would be relevant to this case, though the facts are slightly different, which reads as follows :

"(b) A. sues B. for money due on a bond.
The execution of the bond is admitted, but
B. says that it was obtained by fraud, which
A. denies.
If no evidence were given on either side,
A. would succeed as the bond is not disputed
and the fraud is not proved.
Therefore the burden of proof is on B."

7. Section 103 of the same Ordinance says that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

8. From the above three sections of the Evidence Ordinance it is clear beyond doubt that it is for the Defendants to prove that the Plaintiff is not a bona fide

purchaser and it is not for the Plaintiff to prove that he is a bona fide purchaser unless of course as stated in Section 103 it is provided by any law that the proof of a fact shall lie on any particular person.

9. The principal provision relating to indefeasibility and defeasibility of title in the Land Code is Section 340. Section 340(1) states that the title of a person for the time being registered as proprietor of any land shall be indefeasible subject however to the provisions appearing in sub-sections (2) and (3) thereof. Sub-section (2) thereof says "the title of any person shall not be indefeasible (or shall be defeasible) in any case of fraud or misrepresentation to which the person or any agent of the person was a party or privy.

10. Reading the allegations against the Plaintiff in the Defence, the Defendants have not alleged that the Plaintiff is a party or privy to the fraud or misrepresentation and therefore Section 340(2)(a) would not apply as far as the Plaintiff is concerned.

11. By paragraph 7 of the Defence the Defendants have alleged "that the Plaintiff's title is dyeasable (what is dyeasable?) by reason of the original transfer to his predecessor-in-title taking place by means of an insufficient and void instrument of which the Plaintiff had notice".

12. According to Section 304(2)(b) the title of any person shall be defeasible where registration was obtained by means of an insufficient or void instrument. As far as the Defendants are concerned the defeasibility of title under an insufficient or void instrument is only applicable if the Defendants want to defeat the title of the predecessor-in-title of the property and would not

D 32 (C9A)
Written
Submissions
(Plf.)
Civil Action
No. 146 of 1976
30th June 1976
(Cont'd)

apply between the Defendants and the Plaintiff who derived his title not from the Defendants but from his predecessor-in-title to whom the Defendants transferred the property. Furthermore the predecessor-in-title is not a party to this Action and therefore such grounds are irrelevant to the issue and they could be made use of only when the Defendants are alleging same against the persons to whom the property passed from them and they (the Defendants) are plaintiffs in an action. The predecessor-in-title could invoke such grounds if he wants to defeat the title of the Plaintiff.

13. Section 304(3)(a) says that where the title of any person is defeasible by reason of the circumstances specified in Section 304(2) it shall be liable to be set aside in the hands of <u>any person</u> to whom it may <u>subsequently</u> be transferred, provided that nothing in Subsection 304(3) shall effect any title or interest acquired by any purchaser in good faith and for valuable consideration.

14. Before an allegation is made against a person that he is not a purchaser in good faith and for valuable consideration so as to defeat his title, the person alleging same must prove it and she must in her claim (in which she must be a plaintiff and not merely allege same in her defence as is done in this Action) state and prove that he was a party or privy to the fraud or misrepresentation.

15. Paragraphs 2 to 6 of the Defence are irrelevant in a case where the Plaintiff is claiming possession and they may be relevant if the 1st Defendant is a plaintiff and [redacted] invokes Section 340 of the Land Code and makes [redacted] a defendant.
the predecessor-in-title

16. There is a case reported at Page 85 of Volume 1 of the 1975 M.L.J. DOSHI v YEO TIONG LAY hereinafter referred to as the reported case which will go to support the present case with regard to a lot of issues involved.

17. In the reported case four parties were involved who are :

(a) Former owner of the land Yeoh Tiong Lay the Defendant (hereinafter called 'A').

(b) Person to whom two blank transfers were given by the Defendant in respect of two pieces of land who is one Chooi Mun Sou (hereinafter called 'B').

(c) A company called Equitable Nominees Sdn. Bhd. in whose favour the two pieces of land were subsequently registered of which the said Chooi Mun Sou and his wife were the shareholders and directors (hereinafter the said Company is called 'C'), and

(d) The present registered owner, the Plaintiff, Doshi who bought one piece of land from the said Company, Equitable Nominees Sdn. Bhd. (hereinafter called 'D').

18. The present owner the Plaintiff 'D' brought an action against the former owner the Defendant 'A' for possession.

This is what has been done in this Action which was commenced in the Sessions Court, whereas the reported case was commenced in the High Court.

19. In the reported case there was a Loan Agreement for $130,000/- and two blank Transfers for two pieces of

D 32 (C9A)
Written
Submissions
(Plf.)
Civil Action
No. 146 of 1976
30th June 1976
(Cont'd)

land were executed by the Defendant 'A'. The said loan with interest was to be repaid within 3 months failing which the said Agreement empowered 'B' the said Chooi Mun Sou to sell the two pieces of land. The loan was never repaid.

In this case there is no loan agreement but there is written authority showing how the consideration passed. There is also an Agreement between the previous owner the 1st Defendant and the predecessor-in-title to repurchase the property within a year which she failed to do. The consideration is stated in the Transfer which was duly executed by the 1st Defendant in favour of the predecessor-in-title to the property.

20. In the reported case 'B' using the blank Transfers transferred the two pieces of property to 'C' for failure by 'A' to repay the loan and interest by putting in the considerations which he thought were appropriate.

In this case the predecessor-in-title got the Transfer registered in his name. The 1st Defendant had failed to repurchase the land within the stipulated period.

21. In the reported case 'C' sold one of the two pieces of land and the premises erected thereon to 'D' the Plaintiff therein who became the registered owner.

In this case the predecessor-in-title sold to the Plaintiff the land and premises who also became the registered owner thereof.

22. In the reported case the Plaintiff 'D' after becoming the registered owner claimed for possession.

In this case the Plaintiff after becoming the registered owner also claimed for possession.

23. In the reported case 'D' the Plaintiff made an application under Order 14 for possession.

In this case which is a Sessions Court case, Order 14 does not apply and the case was fixed for trial on 30th of April 1976.

24. In the reported case the Defendant 'A' opposed the application and he wanted to counterclaim.

In this case there is no counterclaim.

25. In the reported case the Defendant's 'A's proposed defence stated :

(a) Firstly, as 'B' was charging interest without being licensed under the Moneylenders Ordinance the Loan Agreement under which the purported Transfers were effected was illegal and unenforceable under the provisions of the Ordinance.

(b) Secondly, 'B' and his wife were the sole shareholders and directors of 'C' company so that prior to and at the time of the purported transfer of the premises from the Defendant to 'C' company the said company had knowledge of the illegality of the transaction with the result that the purported transfer was void.

(c) Thirdly, the market value of the premises was not less than $150,000/- so that the purported consideration of $100,000/- for the transfer to 'C' company was to the knowledge of 'B' and the 'C' company a fraud on the Defendant 'A'.

D 32 (C9A)
Written Submissions
(Plf.)
Civil Action No.
146 of 1976
30th June 1976
(Cont'd)

(d) Fourthly, the form of Transfer executed by 'A' on June 1, 1970, was falsely dated and attested as if the Defendant had executed it on November 1, 1971 and was therefore of no legal effect.

(e) Fifthly, the Transfer from 'C' company to 'D' the Plaintiff was void as prior to or at the time of the Transfer, the Plaintiff 'D' by himself or his agent had knowledge of the facts constituting illegality and fraud.

(f) Sixthly, 'B' caused the premises to be transferred to 'D' to defeat Defendant 'A's' right of redemption thereby committing a fraud on 'A'.

26. In the reported case 'A' brought in 'B' and 'C' as 2nd and 3rd Defendants respectively and asked for an order :

(a) declaring the loan transaction to be void and setting aside the transfer to the Plaintiff 'D';

(b) in the alternative 'A' as Plaintiff in the counterclaim asked for a declaration that he was entitled to redeem the premises upon paying to 'B' and 'C' such sums of money as may be found due on the loan transaction together with such interest as the Court may allow.

In this case as I have stated earlier there is no counterclaim for any reliefs by the Defendants and furthermore nowhere has the 1st Defendant stated that she was

prepared to return the $220,000/-. What she is trying to do is to get back the land without even attempting to return the $220,000/-.

27. The learned Judge in the reported case gave judgment for the Plaintiff for possession of the premises for the reason that the Defendant was unable to set up a bona fide defence or raise an issue against the claim which ought to be tried.

In this case the Plaintiff is entitled to judgment to my mind even without hearing the evidence as there is no counterclaim asking for any relief whatsoever.

28. In the reported case the learned trial Judge took the view that as the Plaintiff 'D' was for the time being the registered proprietor of the premises for his title to be defeated under Section 340(2)(a) of the National Land Code the onus was on the Defendant to show that the Plaintiff was a party or privy to fraud either by 'B' transferring the property to 'C' or by 'C' transferring the land to 'D' the Plaintiff.

In this case I repeat there is no allegation of fraud or misrepresentation. The learned Judge also stated in the reported case that the Defendant 'A' had failed to provide any evidence to show that the Plaintiff 'D' had not acted in good faith when he caused himself to be registered as proprietor. He also stated that the English Rules in relation to Equity of Redemption do not apply to a system of registration to land. In this case this question does not arise. In the reported case he stated that it was insufficient for the Defendant 'A' to make a

D 32 (C9A)
Written
Submissions
(Plf.)
Civil Action
No. 146 of
1976
30th June
1976
(Cont'd)

bare allegation without the support of some sort of valuation or assessment to show the market value of the land at the date of the sale and therefore he was unable to say that there was fraud to which the Plaintiff 'D' or his servant or agent was a party or privy.

29. In the reported case the trial Judge said with regard to the allegation by the Defendant that the Instrument of Transfer used by 'B' to transfer the property to 'C' was void as the attestation clause was false, the learned Judge observed that the documents were not before the Court and furthermore there was nothing whatever to show that the Plaintiff 'D' was a party or privy to any fraud. He also observed that the Plaintiff became the registered proprietor on the presentation of any Instrument of Transfer which was accepted by the registering authority as an instrument fit for registration.

30. In the reported case as regards the counterclaim the learned Judge found that the allegations therein were directed essentially against 'B' and 'C' and he also stated that assuming that any fraud was committed by either of them the course open to the Defendant was to seek a remedy against either of them or both but that in so far as the Plaintiff's claim was concerned such fraud could not defeat the Plaintiff's title.

In this case the same principle will apply. Even if there is fraud on the part of the predecessor-in-title the proper action to be taken by the 1st Defendant is to commence an action against the predecessor-in-title by making him the Defendant. Instead of doing this the Defendants have merely made allegations against him without making him a party to this Action.

31. The Order giving judgment to the Plaintiff for possession was appealed against and the case in question was heard by the Appellate Court consisting of three Judges on the 2nd of November 1974 and the report contained in the said M.L.J. is with regard to the outcome of the said Appeal and the reasons for dismissing it.

32. In the reported case the Court of Appeal held there was no direct evidence of any sort to connect the Plaintiff with fraud. The appellate Judges also held that it is clear that fraud within the meaning of the National Land Code means actual fraud and not what is known as constructive and equitable fraud.

33. In the reported case it is also stated that the Loan Agreement was not illegal but merely unenforceable and if the Defendant had repaid the loan he could not recover the money on the ground that he had paid it under a contract which was unenforceable. The Court was of the opinion that third parties can acquire rights where a contract is merely unenforceable and not illegal.

34. It was also stated that assuming that the Loan Agreement was illegal so that for that reason the transfer from 'B' to 'C' was void and assuming that the transfer was also void because of the falsity of the attestation clause, registration of the Transfer from 'C' to 'D' was effective to vest title in 'D' as registered proprietor notwithstanding that he acquired his interest under an instrument that was void. The authority for this is the case of Frazer v. Walker which was cited. A separate transfer form must have been used for the transfer of the property by 'C' to 'D'.

D 32 (C9A)
Written
Submissions
(Plf.)
Civil Action
No. 146 of 1976
30th June 1976
(Cont'd)

35. In this case the issue is very simple. There is valuable consideration for the transfer of the property by the 1st Defendant to the predecessor-in-title, which is ₱220,000/- which the 1st Defendant does not deny and therefore the Plaintiff's title cannot be defeated who had derived his title from his predecessor-in-title. Assuming for the sake of argument the predecessor-in-title had given the property by way of gift, say, to a charitable organisation in whose name the property is registered, can this organisation's title be defeated by alleging that that organisation is not a bona fide purchaser for value. He is not a purchaser at all. I say you can't because first you must defeat the title of the donor, in this case, the predecessor-in-title, before you can even attempt to defeat the title of subsequent registered persons, in this case, the Plaintiff's title.

36. The allegations in the Defence as to title are merely put in hoping that the case would be transferred to the High Court and thereby delaying the Plaintiff's claim to obtain judgment.

37. I shall make further oral submissions after hearing the evidence adduced by the Defendants.

D 32
WRITTEN SUBMISSIONS (PLF.)
CIVIL ACTION NO. 146 OF 1976
IN THE SESSIONS COURT IN MALAYA
IN THE STATE OF JOHORE
SITTING AT JOHORE BAHRU

CIVIL ACTION NO. 146 OF 1976.

Between

ARUL CHANDRAN ... Plaintiff

And

1. TARA RAJARATNAM (m.w.)
2. K.V. DEVAN ... Defendants

Written submission by Counsel for the Plaintiff

1. This is an Application by the Plaintiff for an Order that the Defence of the Defendants be struck out on the grounds stated in the Application dated the 9th day of May 1976 and for the Plaintiff to enter Judgment for possession of the land and premises mentioned in the Statement of Claim of this Action.

2. The Plaintiff is claiming possession as the registered owner of the land comprised in Certificate of Title No. 13817. The land in question is registered and governed by the National Land Code which is based on the Torrens System.

3. The Defendants in the first part of Paragraph 1 of the Defence do not deny that the Plaintiff is the registered owner of the land and premises in question and therefore on this admission alone the Plaintiff is entitled to succeed.

4. Except for the admission part in Paragraph 1 of the defence, the other portions thereof are not defences at all and are vague, frivolous, vexatious, embarrassing and an abuse of the process of the Court and are also put into delay the fair trial of this action.

5. Putting the Plaintiff to strict proof that he is a bona fide purchaser of the property does not arise here and it only arises if the 1st Defendant takes an action in the High Court for rectification of title as provided for in Section 340 of the Land Code. Even then the doctrine is "a purchaser in good faith and valuable consideration" and not I repeat "bona fide purchaser".

-2-

D 32 (C9B)
Written Submissions Civil Action No. 146 of 1976 (Cont'd)

(Please see Page 334 line 2 of David Wong's book on Tenure and Land Dealings in the Malay States.)

6. If the 1st Defendant wants to defeat the title of the Plaintiff she should Counterclaim or take separate action for rectification of the register to revest the property in her as stated in Page 102 (second paragraph) of the book by Dass on the Torrens System in Malaysia. Please also see the case of Suppiah v Ponnampalam reported at Page 202 of the 1963 M.L.J. which says that the party making the allegation of fraud must take proceedings for rectification of the register.

7. Second to the Seventh paragraphs of the Defence are irrelevant, frivolous, vexatious and embarrassing as P.Suppiah is not a party to the proceedings and whatever allegations that have been made therein are not defences which would be set out in a Statement of Claim for rectification with P.Suppiah as a party who was the predecessor in title of the property. They are also put in to delay the fair trial.

8. Let us also examine whether the Court has jurisdiction to try the Action assuming that the Defence is in order and on this subject I say that this Court has the jurisdiction to try the action and my authority is based on a case HIEW KIM SWEE v G.C. GOMEZ reported at Page 170 of the 1955 M.L.J.

9. A good passage also appears at Page 166 of the book of Dass on the importance of registration which reads: Section 42(IV of the Land Code .... bona fide purchaser for value. From this passage it is clear that a person who has an impeacheable title can give an unimpeachable title to a bona fide purchaser for value. In the present case the 1st Defendant was the original owner of the land and the Plaintiff 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. If the First Defendant wants to divest the title from the Plaintiff and have the land registered in her name

- 3 -

she should comply with Section 340 of the Land Code which governs the transaction of the land in question. She should also bring in the predecessor in title of the land as a party to the proceedings in order to invoke Section 340 of the Land Code and this she can only do by bringing a separate action in the High Court.

10. Let us assume for the sake of argument that Your Honour decides and transfers this action to the High Court - what can the High Court do? The High Court under any circumstances cannot come to a decision whether the land in fact belongs to the 1st Defendant for the reason that the Plaintiff is the registered owner of the land and as far as the Land Code is concerned until the register is rectified he shall remain the registered owner and if any rectification is to be made the First Defendant should issue a writ in the High Court asking for the various reliefs she is entitled to. No such reliefs can be asked for the Defence and the High Court. I am certain is bound to send back the case to Your Honour with a direction to try whether the Plaintiff is the registered owner and if so whether he is entitled to the possession that he is claiming. Your decision shall not be a bar to the institution of an action, suit or proceedings of a civil nature in the High Court for trying title (Section 70(4) of the Subordinate Courts Act)

11. If one looks at paragraph 6 of the Defence one would see that the Defendants had stated that "they are always willing to pay the Plaintiff's predecessor-in-title the sum secured and other ancillary reliefs but have been unable to do so." In other words they do not deny that there was consideration in the transaction between the Defendants and predecessor in title.

For the above reasons I submit that the Defence does not disclose a defence. In fact it admits the title of the Plaintiff. Under the circumstances the Defence should be struck out and possession of the land and premises should be given to the Plaintiff.

12. I would like your Honour to look at the following sections and of the Land Code and the pages of Wong's book.

(a) Section 215(2) of the Land Code on the question of vesting the title in the transferee

(b) Section 89 of the Land Code on the question of register document of title duly registered "shall be conclusive evidence".
(on the question of (a) and (b) please see Suppiah's case, Page 202, 1963 M.L.J. which was decided under the old Land Code).

(c) 2nd paragraph in Page 104 of Wong's book

(d) Pages 322 to 325 of Wong's book under the heading "(a) The Notion of Indefeasibility of title".

(e) Page 345 of Wong's book last paragraph ending at Page 346 (Frazer's case is the highest authority on the question of indefeasibility of title)

(f) First paragraph of Wong's book at page 402

(g) Page 314 of Wong's book under "111 Effects of Registration"

(h) Page 317 of Wong's book first paragraph

(i) Page 333 of Wong's book under "(c) what can be indefeasible"

(j) Last paragraph of Wong's book Page 308

sd: P.Suppiah

NOTES OF EVIDENCE
CIVIL ACTION NO. 146
OF 1976

M A L A Y S I A

STATE OF JOHORE

IN THE SESSIONS COURT AT JOHORE BAHRU

CIVIL ACTION NO. 146 OF 1976

Between

ARUL CHANDRAN ... ... Plaintiff

And

1. TARA RAJARATNAM (m.w.)
10 2. K.V. DEVAN ... ... Defendants

NOTES OF EVIDENCE

A Paragraph 1 states that defendant admits:

Defence:

(1) If matter sent to High Court and if the title is not indefeasible.

(2) Defendant has been occupying the land - no rent

B paid no rent demanded because of certain under-
20 standing.

Plaintiff:

(1) Registered owner.

(2) No Counter Claim.

C Court to direct this matter to the High Court for a declaration under Section 71 of the Subordinate Court Rules.

Decision to be given at 11.30 a.m.

In matters concerning land and the rights of parties - either tenants or landlords the operative law in question
30 D is the National Land Code. The National Land Code is an embodiment of the Torrent System - a system whereby registration determines the title of an owner to immovable property.

Section 340(1) gives the registered owner however registered an indefeasible title to the property. But the
E law also provides to bona fide agrieved parties the right

A to challonge that Registration under Section 340(2), (3) and (4).

I am satisfied in the present matter before this Court, after careful perusal from all matters raised and documentated in this file that there does exist a bona

B fide dispute as to the title and by virtue of Section 71 of the Subordinate Courts Rules I am directing this matter before his Learned Lordship for his declaration on this matter.

The only thing remaining for my decision is

C whether to give effect to the right given under the law to the registered owner i.e. in this case vacant possession or to allow the defendants to continue to reside on the disputed land in question. The consequence of my decision will carry a long way either side.

D The framers of the law have deemed that the rights of registered owners be protected. And if Courts of Laws were to show such embodiments then the effect of our Registration system will be nullified and the whole purpose of the Torrent system defeated.

E But no where is it stated in the National Land Code that submissions on point of equity and sentiments cannot be admitted. The framers of the law have left this point open to the Courts to decide in the given facts what would appear to be most just in a given

F situation. Given that discretion I have to decide whether or not the continued residence of the defendants is more just against the legal rights of the Registered Owner - i.e. the Plaintiff.

The decision is hard to make and is unfair that

G the fate of 2 parties in this instance be left by one

A person to decide.

Whatever decision the High Court should make, the High Court will meet out justice to minimise the loss of either parties. It is not for this Court to give a decision in anticipation of a possible decision by the High Court.

B I have therefore come to the conclusion that the rights of the registered owner be maintained until High Court makes its declaration on this matter.

The plaintiff to obtain vacant possession.

Sd. Gulamoydeen bin Md. Haniffa
9/8

C 9.8.76

Mr. Elyas Majeed makes application for stay of execution.

I disallow the application.

Sd. Gulamoydeen bin Md. Haniffa.
9/8/76

Typed by: Pong Lin Ming.

CERTIFIED TRUE COPY

[illegible]

[illegible]

D 32

ORDER

CIVIL ACTION NO. 146 OF 1976

D 32 (C11)
Order
Civil Action No.
146 of 1976
9th August 1976

IN THE SESSIONS COURT IN MALAYA

IN THE STATE OF JOHORE

SITTING AT JOHORE BAHRU

CIVIL ACTION NO. 146 OF 1976

Between

ARUL CHANDRAN .. Plaintiff

And

1. TARA RAJARATNAM (m.w.)
2. K.V. DEVAN .. Defendants

The 9th day of August, 1976.

O R D E R

THIS ACTION coming on for trial this day before His Honour Encik Gulam Mydeen bin Mohd. Hanifah in the presence of Counsel for the Plaintiff and for the Defendants AND UPON READING the Pleadings and the written submissions of the Plaintiff's Counsel AND UPON HEARING what was alleged by Counsel aforesaid IT IS ADJUDGED that the Plaintiff DO FORTHWITH RECOVER against the Defendants vacant possession of the land comprised in Certificate of Title No.13817 Lot No.6025 Mukim of Senai-Kulai and the house erected thereon and known as KLBSK 681, Kulai Besar, Kulai, Johore, in the Statement of Claim mentioned AND IT IS ORDERED that the Defendants DO FORTHWITH DELIVER UP to the Plaintiff vacant possession of the said land and house AND IT IS ORDERED that this Action be and is hereby transferred by this Court to the High Court for trying the allegations contained in the Defence relating to the title of the said land and house AND THIS COURT DOTH FURTHER REMAND to allow the Defendants a stay of execution of this judgment for possession of the said land and house.

Given under my hand and the Seal of this Court this 9th day of August, 1976.

Registrar,
Sessions Court,
Johore Bahru.

063

D 32 (C11)
Order
Civil Action
No. 146 of 1976
9th August 1976
(Cont'd)

To:

1. Tara Rajaratnam (m.w.) and,
2. K.V. Devan, both of
   KLBSK 681,
   Kulai Besar,
   Kulai,
   Johore.

TAKE NOTICE that, unless you comply with the requirements of the Order above written within the time thereby limited, or within seven days after the service of this notice on you, whichever be the later, you will be guilty of contempt of Court and will be liable to be committed to prison.

Dated this 23rd day of August 1976.

Registrar,
Sessions Court,
Johore Bahru

D 32

AFFIDAVIT OF MAJEED
CIVIL ACTION NO. 146 OF 1976
IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
ORIGINATING MOTION NO. 17 OF 1976

D 32 (C12)
Affidavit of
Majeed
Civil Action No.
146 of 1976
29th August 1976

In the Matter Section 1 of the Order 52 of the Rules of the Supreme Court 1957.

A n d

In the Matter of Johore Bahru Sessions Court, Civil Action No.146 of 1976.

Between

1.Tara Rajaratnam (m.w)

10 2.K.V.Devan.

Applicants/Defendants.

And

Arul Chandran.

Respondent/Plaintiff.

A F F I D A V I T

I, Mohamed Elyas Majeed, an Advocate & Solicitor affirm and say as follows:-

1. I am the Solicitor in charge of this matter and am fully conversant with the facts of this case.

20 2. On the instructions of the Defendants I caused a defence to be filed and served on the Solicitors for the Plaintiff whose claim is as disclosed in the Statement of Claim. The Statement of Claim and the Defence are annexed herewith and marked as "A" and "B" respectively.

3. When the above matter was fixed for mention on the 10th May,1976, the Plaintiff through his Solicitors Messrs.Suppiah & Singh made an application to strike out the defence. The learned Senior President, after hearing arguments from the

30 Solicitor for Plaintiff and myself disallowed the Application and fixed the case once again for hearing on the 30th May,1976. Somehow for reasons unavoidable the above matter came for trial on the 31st July,1976.

D 32(C12)
Affidavit of Majeed
Civil Action No. 146 of 1976
29th August 1976 (Cont'd)

4. On the 5th June, 1976 the Plaintiff through his Solicitor made another application for Judgment to be entered in the action and which came up for hearing on the 29th June, 1976 before Puan Rohani Bte Bali dismissed the Application of the Plaintiff.

5. The case on the 31st July, 1976 did not go on and it was fixed once again for hearing on 9th August, 1976 and this time the presiding President was Inche Ghulam Mydeen bin Mohd. Hanifah.

6. Just before the hearing I did raise an objection that since Inche Ghulam Mydeen bin Mohd. Hanifah was not a Gazetted President he shall have no jurisdiction to hear the case but my objection was not heeded.

7. At the hearing it was contended on behalf of the Defendants that this action involved dispute as to title and provisions of the Sections 70 and 71 of the Subordinate Courts Act, was brought to His Honour's attention, and in any case it was contended that as the claim is as to recovery of land the Plaintiff's oral evidence was essential. The Plaintiff did not turn up to give evidence at any of the hearings and neither did he filed an Affidavit in support of his claim. The learned President, in his wisdom, although agreed that this action involved dispute as to title and that he would be applying to this Honourable Court for the transfer of the case he gave Judgment for the Plaintiff giving him possession of the property in question.

8. In the open Court, immediately after the order as to possession was made, I did make an Application on behalf of the abovenamed Defendants for stay of execution of the judgment but my application was disallowed.

9. The Defendants through their Solicitors did file a Notice of Appeal against the whole of the decision and it

was so filed on the 18th August, 1976 and a copy of the Notice of Appeal was served on the Plaintiff's Solicitor on the same date.

10. I verily believe that there are merits in the Appeal, and I also believe there are special circumstances in the above case which merit consideration by this Honourable Court.

11. I humbly pray on behalf of the abovenamed Defendants that the execution of Judgment obtained by the Plaintiff in the action against the abovenamed Defendants be stayed pending the disposal of the appeal filed herein in these proceedings.

Affirmed by the abovenamed Mohamed Elyas Majeed at Johore Bahru on the 29th day of August, 1976.

Before me,

D 32

JUDGMENT

CIVIL ACTION NO. 146
OF 1976

D 32 (C13)
Judgment
Civil Action
No. 146 of 1976
30th August 1976

MALAYSIA

STATE OF JOHORE

IN THE SESSIONS COURT AT JOHORE BAHRU

CIVIL ACTION NO. 146 OF 1976

Between

ARUL CHANDRAN ... ... Plaintiff

And

1. TARA RAJARATNAM (n.w.)
2. K.V. DEVAN ... ... Defendants

GROUNDS OF JUDGMENT

A In this case, no evidence was taken by the Court as would in the ordinary course of trial. Counsel for the Plaintiff submitted that there were no issues of facts to be decided and in the circumstance he was entitled to obtain vacant possession since the defence has admitted that the B Plaintiff in the registered owner of the land in question i.e. Title No.13817 Lot No.6025 Mukim of Senai-Kulai.

Defence counsel objected initially to this move by the Plaintiff. He requested to the Court that he would want to cross-examine the Plaintiff. Counsel for Plaintiff C replied that the Plaintiff was in Singapore and the presence of the Plaintiff in Court would be redundant since all that was to be decided was the issue of, whether the Plaintiff who is the registered owner of the said land is entitled to obtain vacant possession relying on the admission of the statement D of defence.

At this juncture, counsel for the defendant concured that this was the issue to be decided.

Counsel for the Plaintiff submitted that I had jurisdiction under Section 70(1) of the Subordinate Courts

Act 1948 which reads, "..... have jurisdiction to hear and determine any action or suit for the recovery of immovable property ....."

But counsel for the defence invoked Section 70(4) of the same Act and submitted that there does exist a bona fide question of title involved and as such the matter ought to be transferred to the High Court under Section 71 of the same Act since both the parties do not consent to have the matter adjudicated. Further counsel for the defence submitted that there is a dispute and a question of ownership in this matter and that Section 71 precludes the Court in adjudicating the matter.

Having heard submissions from both sides and after due perusal of all the documents I came to the decision that there exists a dispute as to the ownership of the land. By virtue of Section 71 I decided to have the matter referred to his Lordship to decide on the issue of title.

At this juncture counsel for the Plaintiff made an application seeking vacant possession of the premises on the strength of the title deeds. Counsel for the defence left the matter to the Court and submitted that should vacant possession be granted, the defendants will have no where to go.

I decided that vacant possession ought to be given. Bearing in mind that the torren system recognizes only a registered owner, such registration carries with it an indefeasible title until proven otherwise as enunciated in Section 304 of the National Land Code. Along with such a title, the owner is also entitled to all the rights given to him by the law including vacant possession.

I came to the decision that vacant possession ought to be given to the registered owner. A registered owner should be entitled to his legal rights until it is proven that such registration is defeasible and deregistered. If any other interpretation or opinion is to be held in favour of any unregistered interested party, would be defeating the principle of the Torrens System.

By virtue of Section 70(4) of the Subordinate Courts Act, I gave vacant possession to the Plaintiff as prayed.

Dated this 30th. day of August, 1976.

(GUL[illegible] BIN MD. MEHTA)
PRESIDENT,
SESSIONS COURT,
JOHORE BAHRU.

Typed by: Pong Lin Ming.

D 32 NOTICE OF MOTION (HIGH COURT)
CIVIL ACTION NO. 146 OF 1976

D 32 (C14)
Notice of Motion
(High Court)
Civil Action
No. 146 of 1976
30th August 1976

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 17 OF 1976

In the Matter Section 1 of the Order 52 of the Rules of the Supreme Court 1957.

A n d

In the Matter of Johore Bahru Sessions Court, Civil Action No. 146 of 1976.

Between

1. TARA RAJARATNAM (m.w.)
2. K.V. DEVAN

... Applicants/Defendants

A n d

ARUL CHANDRAN

... Respondent/Plaintiff

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on Monday the 6th day of September, 1976 at 9-00 o'clock in the forenoon, or so soon thereafter as Counsel can be heard by Mr. Mohamed Elyas Majeed for the abovenamed Applicants for the following Order that:

(i) execution of Judgment obtained against the Defendants/Applicants be stayed pending the disposal of the Appeal preferred by the Defendants/Applicants.

Dated this 30th day of August, 1976.

Encld No. 453/76

.....
Solicitors for the abovenamed Applicants/Defendants

.....
Senior Assistant Registrar,
High Court
Johore Bahru

To:
Arul Chandran and/or to his Solicitors M/s. Suppiah & Singh of No. 2-3, Jalan Ah Fook, Johore Bahru.

The address for service on the Applicants are care of Messrs. Elyas Majeed & Co. Advocates & Solicitors of Room 202, 2nd Floor, O.C.B.C. Building, Johore Bahru.

D 32
AFFIDAVIT OF SUPPIAH
CIVIL ACTION NO. 146
OF 1976

D 32 (C15)
Affidavit of Suppiah
Civil Action No.
146 of 1976
5th September 1976

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 17 OF 1976

In the Matter Section 1 of the Order 52 of the Rules of the Supreme Court 1957.

And

In the Matter of Johore Bahru Sessions Court, Civil Action No.146 of 1976.

Between

1. Tara Rajaratnam (m.w.)
2. K.V. Devan

Applicants/Defendants

And

Arul Chandran

Respondent/Plaintiff

A F F I D A V I T

I, P. SUPPIAH of No.2D, Jalan Ah Fook, Johore Bahru, Advocate and Solicitor, solemnly and sincerely affirm as follows :

1. I am the solicitor for the abovenamed Respondent/Plaintiff herein, and I have read the affidavit of Mohamed Elyas Majeed filed herein on the 29th day of August, 1976 together with the exhibits referred to therein.

2. Paragraphs 3, 4, 5 and 6 have no bearing on the issue at hand which as I understand it is an application for a stay of execution of the judgment herein. Changes in the Subordinate Courts (paragraph 6) often take place, and the administration of justice would come to a complete halt if litigants attack the administrative machinery relating to changes of judicial officers in various Courts. It is for this reason that when the said objection was

raised, the learned Precident assured Mr. Majeed that he may proceed on the basis that he (the President) had been duly appointed.

3. With regard to paragraph 7 of the said affidavit, it is an elementary principle of pleading that, that which is admitted need not be proved, and in this connection I would invite the Court's reference to the following passages appearing in various authoritative text books :

(i) Page 4 of Bullen & Leake, 12th ed. (1975) -

" Any fact in the statement of claim which is admitted in the defence, because it is expressly admitted or because it is impliedly admitted by the omission of the defendant to traverse it expressly, ceases to be in controversy between the parties, and no evidence will be required or admitted to prove such fact; and accordingly, only those facts stated in the statement of claim which are expressly traversed in the defence will remain in issue between them. "

(ii) Our own Evidence Ordinance.

In the circumstances therefore, there was nothing for the Plaintiff to do, his title having been duly admitted by the Defence.

4. It is submitted that the whole of the said affidavit discloses that no attempt of any kind has been made, inter alia, to show :

(i) any special circumstances justifying stay of execution;

(ii) that there are any merits in the appeal;

(iii) that the learned President has exercised his discretion denying a stay on wrong principles of law,

and that paragraph IO is only a bare statement, and nothing else.

5. Lastly, lest it be said that the Respondent/Plaintiff has waived the error in the procedure by which this Application is brought, it is submitted that the Applicants/Defendants cannot bring up this Application by Originating Motion.

AFFIRMED by the abovenamed)
P. SUPPIAH at Johore Bahru)
on the ~~6th~~ 5th day of September)
1976)

Before me,

Md. Mustaffa
C. for Oaths
High Court
Johore Bahru
5th Sep. 1976.

D 32

WRITTEN SUBMISSIONS
(RESPONDENT)
CIVIL ACTION NO. 146 OF 1976

D 32 (C16)
Written Submissions
(Respondent)
Civil Action No. 146
of 1976
8th September 1976

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO.17 OF 1976

In the Matter Section 1 of the Order 52 of the Rules of the Supreme Court 1957

And

In the Matter of Johore Bahru Sessions Court, Civil Action No.146 of 1976

Between

1. Tara Rajaratnam (m.w.)
2. K.V. Devan

Applicants/Defendants

And

Arul Chandran

Respondent/Plaintiff

Written Submission by Counsel for the Respondent/Plaintiff in Originating Motion No.17 of 1976 which was heard on the 6th and the 8th of September 1976

This is an Application by the Applicants/Defendants asking for a stay of execution for possession of the land and premises granted to the Respondent/Plaintiff by an order of the learned President on the 9th of August 1976 in Sessions Court Civil Action No.146 of 1976.

There are two parts to the said Order, one grants possession of the said land and premises to the Respondent/Plaintiff and the other relates to the transfer to this Honourable Court for trying the allegations contained in the Defence relating to the title in respect to the said land and premises.

The principle with regard to stay of execution is contained in the case SERANGOON GARDEN ESTATE LTD. v ANG KENG reported at page 116 of the 1953 M.L.J. and in

D 32 (C16)
Written Submissions
(Respondent)
Civil Action
No. 146 of 1976
8th September
1976 (Cont'd)

the Notes to the English Order 59, r 13 of the Supreme Court Practice 1970 (Volume 1) which appear at pages 805 and 806. A photocopy of the said case is marked 'A' and the pages relating to the said Notes are marked 'B', both of which are attached herewith for easy reference.

The various principles enunciated in the said case and Notes with regard to stay of execution are as follows :

(1) Discretion with regard to the stay of execution must be exercised on correct principles.

(2) It is a clear principle that the Court will not deprive a successful party of the fruits of his litigation until an appeal is determined, unless the unsuccessful party can show special circumstances to justify it.

(3) It is wrong to grant a stay of execution on the sole basis that the Defendant cannot be restored to his original possession. (This ground might well be an important question to take into consideration if there were other grounds.)

(4) That there are merits in the appeal.

(5) There must be an affidavit setting out the special circumstances.

In Volume 16 of the Halsbury's Laws of England (3rd Edn.) at page 35 there is a paragraph (para 51) which relates to stay of execution. The page containing the

said paragraph is annexed hereto and marked as 'C'.

It would be seen from the said paragraph that the Court will only grant a stay of execution if there are special circumstances which must be deposed to on affidavit unless the application is made at the hearing (r). In footnote (r) (inter alia) there are two cases mentioned which are :

(a) Barker v Lavery (1885) 14Q.B.D. 769, C.A.

(b) The Annot Lyle (1886) 11 P.D. 114, C.A.

Photocopies of the said two cases are attached herewith and marked as 'D' and 'E' respectively. At page 770 of the first case in the second last paragraph it is stated as follows :

> "those who apply for a stay of execution must come before us prepared with all necessary materials."

In the second case in the headnote it is stated that

> " an application by the Appellant to stay execution pending appeal will not be granted, unless special circumstances are shown by affidavit. "

From these two cases it is clear that special circumstances and all necessary materials asking for stay should be set out in the Affidavit.

Now let us look at the Affidavit itself filed in support in respect of the said Originating Motion. The special circumstances as required by law have not been set out in the Affidavit at all and therefore the Affidavit is in fact defective.

There are two Exhibits attached to the said Affidavit. They are :

(a) The Statement of Claim in Civil Action No.146 of 1976, and

(b) the Defence thereto.

The Plaintiff's claim is for possession based on the fact that he is the registered owner of the land and premises in question as stated in paragraph 1 thereof.

By paragraph 1 of their Defence the Defendants admit that the Plaintiff is the registered owner thereof and therefore as far as the Plaintiff is concerned there is nothing to prove to obtain possession of the said land and premises.

As the Plaintiff is the registered owner of the said land under the Land Code which is based on the Torrens System there is the clear law of the indefeasibility of title under the Torrens System given at page 89 (based on a Privy Council case) of the case TCSHI v YEOH TIONG LAY reported at page 85 of the 1975 (1) M.L.J. In fact this case (a copy of which is annexed hereto and marked 'F') would support the Respondent/Plaintiff on all issues, including the claim for possession.

For the reasons stated above and for the reasons stated in my Affidavit, the Applicants'/Defendants' application for stay should be dismissed with costs.

Lastly I would like to add :

(a) that there is clear admission by the Defendants that the Plaintiff is the registered owner of the land and

premises and therefore his title can only be defeated if the Defendants invoke Section 340 of the National Land Code, which can only be done if the Defendants take the necessary steps as Plaintiffs and ask for the appropriate reliefs based on the facts, if any, to support their action;

(b) that Section 89 of the said Code says that every register document of title duly registered under the Land Code subject to certain provisions of the Act be conclusive evidence that title to the land described in the document of title is vested in the person for the time being named in the said document;

(c) that the Defendants do not deny that there was consideration for the transaction;

(d) that the Defendants say that they were unable to repurchase the property within one year, that is, by the 29th of March 1975;

(e) that the Defendants state for business reasons they were unable to repurchase the land and premises within the said

period and that they are always willing to pay the Plaintiff's predecessor-in-title but have been unable to do so;

(f) that no reliefs have been asked for by the Defendants in the Subordinate Court Action either against the Plaintiff or his predecessor-in-title;

(g) that there is nothing this Honourable Court can do after looking at the Defence which contains only bare allegations and nothing more.

To support the application one of the grounds must be that there is merit. The Defence itself clearly reveals that there is no merit.

Sub-section (3) of Section 340 of the Land Code says that title shall be <u>set aside</u> by reason of any of the circumstances specified in Sub-section 2 thereof.

Can the Court basedon the Defence alone set aside the title of the Plaintiff - a third party - in the absence of a properly formulated claim and proper reliefs asked for which of course cannot be done in a Defence?

Assuming that the Court grants a stay of execution, which can only be granted up to the time when the Appeal is heard, what can the Court do at the hearing of the Appeal based on the Defence alone?

To my mind the Court at the Appeal can do nothing except ask the Appellants (the Defendants) what they want the Court to do. I am sure the Appellants themselves or their Counsel would not have any answer to this. Therefore

even if the Court holds that there are merits (I say no) and grants a stay I am of the considered opinion for the reasons stated above it would be an exercise in futility.

The cardinal principle of pleadings is that reliefs should be asked for either in the Statement of Claim or Counter-claim and in the absence of any reliefs being asked for the Court would not in the first place know what reliefs have been asked and in the second place, what reliefs to grant. (Please see Order X Rules 1 and 5(1) of the Subordinate Court Rules on this point.) (Please also see page 62 and 63 of Bullen & Leake Twelfth Edn.)

Defendants must issue a writ to set aside the title which they have yet to do and by making bare allegations in the Defence they are merely putting obstacles in the way of the Plaintiff from obtaining possession. There are illuminating passages on admission which appear at page 19 of Phipson's Manual of Evidence, Fourth Edition, which are reproduced hereunder for easy reference :

" (A) ADMISSIONS FOR PURPOSES OF TRIAL.

Admissions for the purpose of dispensing with proof at the trial may be made as follows:-

Civil Cases.

In Civil Cases (1) By the pleadings; e.g., if the defendant, in answer to an action for breach of contract, admits the contract and its breach, but pleads infancy, fraud or other defence, the plaintiff need give no evidence of his own allegations, being relieved therefrom by his opponent's admissions. "

Further oral submission will be made by me after hearing Counsel for the Applicants.

D 32

PROCEEDINGS

CIVIL ACTION NO. 146 OF 1976

Before me in open court,
This 8th day of September, 1976.

Sgd. S. Othman Ali.

Judge, Malaya.

Motion 17/76.

Tara Rajaretnam & Anor. v. Arul Chandran.

E. Majid (Nathan with him) for applicant/defendants

Suppiah for respondent/plaintiff.

E. Majid. Application for stay by my affidavit. I was served with affidavit by Mr. Suppiah on 4.9.76. There is objection to application. See last paragraph of Suppiah's affidavit.

Suppiah Application dated 29.8.76 served on me on 1.9.76 Notice of motion dated 30.8.76. 2.9.76 Thursday. I could only prepare yesterday. Application shows Order 52 (1) R.S.C. related to application "authorised to be made". So it must be stated that under what rules is he authorised to make the application.

Nathan Adger - principles of pleading and practice 16th ed. Notice of motion page 355. Where application to stay not granted in lower court application must be made to High court.

E. Majid I xxxx am not sure if these rules are applicable. Order applies to High court and Court of Appeal.

Court Surely there must be some rules applicable to lower court and then High Court, on similar lines as Order 58 rule 16.

By agreement of counsel till 8.9.76

8th day of September, 1976.

Nathan Execution to be stayed pending appeal.

Suppiah I am not raising objection on procedural ground Order 59 Rule 12 clearly allows this.

D 32 (C17)
Proceedings
Civil Action
No. 146 of
1976
8/9th September
1976 (Cont'd)

Nathan Decision giving possesion nullity section 70 Subordinate Courts Act 1948 (Act 92) subsection (3).

Subsection (4) question of title involved. P.S.C. had no jurisdiction to determine posession.

Hiew Kim Swee v. G.C. Gomez (1955) MLJ 170 page 173 ..... the actual words.

The learned P.S.C. makes 2 decisions - first he said there was dispute as to title and then he decided to give possession to the plaintiff.

Nathan We agree that the learned president had jurisdiction He did tell us that he would be gazetted as P.S.C.

Special circumstances show that execution should be stayed.

E. Majid Section 70 and 71. Suppiah undertook in writing not to transfer the land within one year.

Order 19 Rule 4(1). Even in undefended action there must be evidence - bona fide title in dispute.

Though applicants do not directly say in defence that they have right to be on property I would refer to para 1 of defence.

Nathan There is a cross-appeal by the respondent plaintiff/respondent with regard to transfer of case to the High court under normal cases we have to show merit. But in a case where the lower court has erred in law it is a ground for stay.

Section 70 takes away the power of Sessions Court P.S.C. has already decided to transfer case to High Court. Section 71 says the Sessions Court must transfer case to High Court if there is dispute in title.

The fact that learned president transferred case to High court the parties did not consent.

No evidence adduced at all in lower court either by affidavit or in person by the plaintiff.

In brief the proceedings were (1) a nullity (2) no evidence adduced. Merits of defence. This will be shown at the hearing of the appeal. I need not show this in view of section 70 and 71. 1955 case at page 174.

Suppiah No dispute as to title in this case once title is admitted. Law clear. Plaintiff need not prove title. Sarkar on Evidence 12th ed. page 183. Admission in pleadings. Waiver of all controversy. Neither party can go beyond that. All sorts of allegation in the defence. Plaintiff is 3rd party. Got title from predecessor in tittle. Until title defeated he is registered owner. He has right to possession of land. Section 340 NLC. In order to defeat title you cannot just make allegation in defence. There must be a counter claim or separate action. He who alleges must prove Section 103 Evidence Ordinance. Not a matter for purchaser to prove anything. Defence is merely a delaying tactic. 1955 case between sub-tenant and tenant. Magistrate's court case. On face of pleadings title was not disputed.

Order 19(4) does not apply. Marginal note - undefended action. Defence has been filed. Admission made. Plaintiff has not to prove anything. Defendant present. Plaintiff was not present.

There was application to strike out - dismissed. Application to enter final judgment - rejected. Rules of Supreme Court involved. Subordinate court Rules Order 1 Rule 2.

Adjourned at 12.30 p.m. till 9.9.76 10.00 a.m.

D 32 (C17)
Proceedings
Civil Action
No. 146 of
1976
8/9th September
1976 (Cont'd)

9th day of September, 1976.

Parties as before.

Suppiah Order made by Sessions Court. 2 Limbs Reads: 1: Recover possession of property; (2= deliver up possession.

Both sides have appealed against the decision. Applicant appealing against the whole of the decision. Respondent's appeal relates to transfer of the allegation. Application therefore says that transfer is wrong. Since applicant is appealing there is therefore but 10

Principle re in stay of execution Serangoon Garden v. Ang Keng (1953) MLJ 116. Order 59 Rule 13 "stay of execution". Mallal's practice page 573. There are merits of the appeal. Special circumstances Allegations as indicated ... not enough. Halsbury's 3rd ed. Vol 16 page 35 para 5. Barber v. Lavey (1885) QBD 769 page 770. Annot Lyle (1886) II C.A. 20 No special circumstances shown in the affidavit - affidavit defective. Statement of claim and defence attacked. Application strike out defence Order 10 Sub. Court Rules para 4. Order XLI R 1 and 4 and 7. re application. Interlocutory Orders.

Plaintiff claim based on the fact that he is registered owner. Defence para 1 - admission that plaintiff is registered owner. Affidavit of E. Majid.

At the hearing - evidence not by affidavit - 30 evidence on oath. No need for evidence. Admission by defendant that plaintiff is registered owner. Believe that there are merits in appeal and special circumstances.

Para 10. Merits and special circumstances must be shown in the affidavit. "I verily believe ....." in the affidavit is not good enough. It must be shown. Affidavit does not comply with rules.

In my affidavit - refers reads affidavit.

As to no evidence - since no denied - it must be taken to be admiited. Bullen v. Leake referred to in the affidavit.

Admission - civil cases - "pleadings" see Evidence by Sarkar.

Torrens system. Indefeasibility of titles. Principal case Doshi v. Yeoh Tiong Lay (1975) 1 MLJ 85 at page 89. Fraser and Waller P.C.

Section 340 NLC provision to impeach proprietorship section 89 NLC registered document - condusive evidence No merit in the defence. No relief asked from either against the plaintiff or in the predecessor in title. E. Majidd Sugar Edn. Estate's case. Decision was in fact in appeal. - reads. Successful litigant fraud of litigation. Oral application to stay. There are affidavits in support of this application "I verily believe .... merit and special circumstances."

Dismissed with costs.

Initialled S.O.A.

D 32
ORDER (HIGH COURT)

CIVIL ACTION NO. 146 OF 1976

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

D 32 (C18)
Order (High Court)
Civil Action
No. 146 of 1976
9th September
1976

ORIGINATING MOTION NO. 17 OF 1976.

In the Matter Section 1 of the Order 52 of the Rules of the Supreme Court 1957

And

In the Matter of Johore Bahru Sessions Court, Civil Action No. 146 of 1976

Between

1. Tara Rajaratnam (m.w.)
2. K.V. Devan

Applicants/Defendants

And

Amal Chandran

Respondent/Plaintiff

BEFORE THE HONOURABLE MR. JUSTICE SYED OTHMAN

IN OPEN COURT
THIS 9TH DAY OF SEPTEMBER, 1976

O R D E R

UPON READING the NOTICE OF MOTION ENTERED NO. 453/76 dated the 30th day of August 1976 made on behalf of the Applicants/Defendants for an order that execution of Judgment obtained against the Applicants/Defendants in the Johore Bahru Sessions Court Civil Action No. 146/76 on the 9th day of August, 1976, be stayed pending the disposal of the Appeal preferred by the Applicants/Defendants in the above proceedings and the Affidavit of Encik Mohamed Elyas Majeed affirmed and filed herein on the 29th day of August 1976 and the exhibits referred to therein and the Affidavit of Mr. P. Suppiah affirmed and filed herein on the 5th day of September 1976 AND UPON HEARING Encik Mohamed Elyas Majeed and Mr. P.K. Muthan of Counsel for the Applicants/Defendants and Mr. P. Suppiah of Counsel for the Respondent/Plaintiff IT IS ORDERED that the application made

- 2 -

sd
13 MAR 1977

D 32 (C18)
Order
(High Court)
Civil Action
No. 146 of
1976
9th September
1976 (Cont'd)

herein for a stay of execution be and is hereby dismissed AND IT IS ORDERED that the costs of this Motion be taxed by the Senior Assistant Registrar of this Honourable Court and paid by the Applicants/Defendants to the Respondent/Plaintiff or his Solicitors.

Given under my hand and the Seal of the Court, this 9th day of September, 1976.

Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru

10

sd
13 MAR 1977

IN THE SESSIONS COURT IN MALAYA AT JOHORE BAHRU

CIVIL ACTION NO. 146 OF 1976

Between

Arul Chandran

... Plaintiff

And

1. Tara Rajaratnam (m.w.)
2. K.V. Devan

10

... Defendants

MEMORANDUM OF CHANGE OF SOLICITORS

To:

The abovenamed Plaintiff
and/or his Solicitors
Messrs. Suppiah & Singh
of No. 2-D, Jalan Ah Fook,
Johore Bahru.

The Defendants abovenamed has appointed Messrs. Ho Thian Cheh & Co., to act on their behalf in these proceedings in place of Messrs. Elyas Majeed & Co. who previously so acted. Address for service is Room 409, 4th Floor, C.C.B.C. Building, Johore Bahru, Johore.

20

Dated this 13th day of Oct, 1976.

.....
Signature of former Solicitor
Messrs. Elyas Majeed & Co.

Ho Thian Cheh Co

.....
Signature of new Solicitor
Messrs. Ho Thian Cheh & Co.,

This Memorandum is filed on behalf of the abovenamed Defendants by Messrs. Ho Thian Cheh & Co. Johore Bahru.

30

D 32

D 32 (C20)
Application and
Affidavit of
Tara Rajaratnam
Civil Action No.
146 of 1976
13th September
1976

APPLICATION AND AFFIDAVIT
OF TARA RAJARATNAM
CIVIL ACTION NO. 146 OF 1976

STATES OF MALAYA.

IN THE SESSIONS COURT AT JOHORE BAHRU.

CIVIL ACTION NO. 146 OF 1976.

Between

Arul Chandran ... Plaintiff.

And

1. Tara Rajaratnam (m.w.),

2. K.V. Devan. ... Defendants.

A P P L I C A T I O N.

To:

The abovenamed Plaintiff,
Arul Chandran and/or his
Solicitors Messrs.Supplah
and Singh of No.2-D, Jalan
Ah Fook, Johore Bahru, Johore.

TAKE NOTICE that the Defendants abovenamed will apply to the Court at 9.00 o'clock in the forenoon on the 16th day of September, 1976 for an Order that the Bailiff be instructed to withhold execution until such time as the Court deems fit on the grounds appearing in the following affidavit.

Ho Thiau Chin & Co

Solicitors for the Defendants.

A F F I D A V I T.

I, Tara Rajaratnam (NRIC No.2317344) a Malaysian citizen of full age residing at No.681, Kulai Besar, Kulai, Johore do solemnly affirm as follows :-

1. I am the First Defendant named herein. The Second Defendant named herein is my husband.

2. On 30th day of March, 1974 at the request of my said husband and my brother-in-law one Dr.Dass, I entered into a written agreement with one P. Supplah, Advocate & Solicitor, Johore Bahru charging my property by way of security to secure

Page 2.

a loan of $220,000.00.

3. The Property in question is a piece of land with a brick house erected thereon held under C.T. No.13817, Lot No.6025 in the Mukim of Senai/Kulai consisting of 5A-0R-0P or thereabouts. I was the registered proprietor of the said property.

4. The said charge was by way of " Jual Janji" agreement and it was an express term of the said agreement that the said Mr.P. Suppiah would not sell the said land and house within one year of transfer to himself and without my consent.

5. Contrary to the agreement the said Mr.P. Suppiah sold the house within one year, to wit, the said premises were registered in the name of Mr.P.Suppiah on 21st July, 1975 and it was sold and transferred unto the name of one Arul Chandran the Plaintiff herein on 9th August, 1975.

6. On 20th day of March, 1976 the Plaintiff filed an action in the Sessions Court, Johore Bahru vide Civil Action No.146 of 1976 for possession. On the 9th day of August, 1976 judgment was entered against the Defendants.

7. After the said judgment was delivered, the Plaintiff's Counsel applied for an Order for stay of execution. The learned President of the Sessions Court did not grant the application.

8. Subsequently the Defendants appealed to the High Court both against the judgment and the refusal of the learned President to grant stay of execution.

9. The appeal to the High Court in respect of stay of execution was dismissed by the said High Court on the 9th of September, 1976.

10. I am advised and informed by Messrs. Ho Thian Cheh & Co; my solicitors, which information I verily believe, that the Defendants' failure to obtain a stay of execution merely enables the Plaintiff to apply for execution. I am informed that on such application by the Plaintiff to execute, the Court still has

...3

power and discretion as to whether or not to order and sanction execution.

11. I am further informed that even where the Court has ordered execution, under Order XXI Rule 23, the Court has power and discretion to " give any direction to the Bailiff concerning the performance of his dution as may be just".

12. The purpose of this Application is to pray for and invoke the powers of the Court to withhold execution by reason of the following grounds :-

(a) there is an Appeal against the judgment of the learned President still pending to be heard at the High Court. The date for the said hearing has not been fixed;

(b) the deponent honestly believes that at the hearing of the said Appeal at the High Court there is a reasonable prospect that the judgment of the learned President may be reversed;

(c) that the deponent and her family has been staying at the said premises since July, 1966 when the premises were first built by the deponent; and that over the past 10 years or so of occupation the deponent has collected a lot of household goods and live-stock that it is impossible to shift them away to an alternative suitable accomodation within such a short notice;

(d) only on the 9th of September, 1976 did the deponent and his family finally realised that they have to vacate the premises and since that date the deponent and his family have been frantically looking for an alternative accomodation in Kulai without any success so far.

(e) the deponent's daughter is still schooling at the Sekolah Sultan Ibrahim Kulai. The said daughter is doing Agricultural Science as one of the subjects and that the particular combination of the subject is not taught in any other school in Johore Bahru or anywhere else.

(f) The deponent has no close friends or relatives with whom the said daughter may be lodged and entrusted to continue her education.

(g) The deponent and her family as a last resort have found a suitable accomodation in Johore Bahru but have been informed by the landlords concerned that the said house will be ready for occupation only at the end of October, 1976.

(h) In any event, even on the assumption that the Defendants can get a house in the near future, it will take at least 2 weeks or thereabouts to do the packing and removal.

(i) Even if the deponent finds accomodation in Johore Bahru it will be difficult at such short notice to find and arrange transport for the deponent's daughter to continue schooling at Kulai. Further, not only it is not possible to transfer her to different school at such short notice but also such would disrupt her studies.

13. By reason of matters aforesaid, the deponent prays that this Honourable Court will either withhold execution for a reasonable period or if execution has already been ordered, direct the Bailiff to withhold execution for a reasonable period as the Court deems just.

14. The deponent hereby undertakes that if a reasonable grace period is given, the deponent and his family would move out of

Page 5.

the said premises without any further application to this Honourable Court.

Affirmed by the abovenamed Tara Rajaratnam at Johore Bahru this 13th day of September, 1976.

Sgd. Tara

Before me,

Sgd: Balwinder Singh,
Commissioner for Oaths,
Sessions Court,
J/Bahru.

This Application is taken out by Messrs. Ho Thian Cheh & Co; of Room 409, 4th Floor, O.C.B.C.Building, Jalan Ibrahim, Johore Bahru, Johore Solicitors for the Defendants.

SECTION 340(1) OF THE
NATIONAL LAND CODE

D 32 (C20A)
Section 340(1)
of the National
Land Code

DIVISION V—ALIENATED LANDS: SUPPLEMENTAL

PART TWENTY—INDEFEASIBILITY OF TITLE AND INTEREST

Registration to confer indefeasible title or interest, except in certain circumstances.

340. (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible—

(*a*) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(*b*) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(*c*) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2)—

(*a*) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

(*b*) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent--

(*a*) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or

(*b*) the determination of any title or interest by operation of law.

P 99

P 99 (E1)
Application for caveat by Suppiah and Statutory Declaration 2nd February 1975

APPLICATION FOR CAVEAT BY SUPPIAH AND STATUTORY DECLARATION

private caveat Bil.41 Fol.82

NATIONAL LAND CODE (FORM 19B)

(Section 323)

Application for Entry of A Private Caveat to the Commissioner of Land & Mines, Johore.

I, Pakrisamy Suppiah (NRIC No.2317344)of No.33, Jalan Keruing, Kebun Teh, Johore Bahru, hereby apply for the entry of a Caveat upon the title of the land described in the Schedule below, to be expressed to bind the land described in the said schedule.

2. The grounds of my claim to the land is :-

(a) That by an agreement dated the 30th day of March, 1974, made between me and Tara Rajaratnam (f) it was agreed that the said Tara Rajaratnam (f) would transfer the land comprised in certificate of title No.13817 for Lot No.6025 containing an area of 5A.0R.00P on the following terms.

(b) That I pay the sum of Dollars one hundred and three thousand six hundred and fifty eight and cents fourty four ($103,658.44) which is due to Chung Khiaw Bank, Kulai Branch as at 8.3.74 on three Charges namely (1) Pres.No.3060/67 Vol.126 Fol.72, (2) Pres.No.4686/67 Vol.127 Fol.89 and (3) Pres.No.7531/72 Vol.170 Fol.97 executed by Tara Rajaratnam (f) in their favour and all further interest up to the date of actual transfer

(c) That I pay a further sum of $110,000.00 to Datuk Jagindar Singh, being the amount payable by Dr.Krishna Shivadas, (also known as Dr.Dass)

to the said Datuk Jagindar Singh who will then pay to the Hongkong & Shanghai Bank the said sum and all interest to which the said Tara Rajartnam (f) agreed which is the amount of loan granted to the said Dr.Krisana Shivadass by the said Bank on the guarantee given by the said Datuk Jagindar Singh.

(d) That steps are being taken to have the said land transferred to me after making the necessary arrangements to pay off the said Bank in respect of the said loan or transferring the said land in my favour subject to the said three charges.

3. As requested by Section 323 of the National Land Code, I now submit:

(a) the prescribed fee of ~~$200/-~~; $ 20.00

(b) A Statutory Declaration by Pakrisamy Suppiah verifying the claim set out in paragraph 2 above.

Dated this 2nd. day of February, 1975.

Sgd. Pakrisamy Suppiah

I. R.S Grewal, an Advocate and Solicitor of the High Court in Malaya practising in the State of Johore hereby testify that the above signature was written in my presence this 2nd day of February, 1975, and is according to my own personal knowledge, the true

signature of Pakrisamy Suppiah who has acknowledge to me :

(i) that he is of full age

(ii) that he has voluntarily executed this instrument, and

(iii) that he understands the contents and effects thereof.

As witness my hand this 2nd day of February, 1975

10 Sg.Dr.B.S Grewal.

STATUTORY DECLARATION

I, Pakrisamy Suppiah of No.33, Jalan Keruing, Kebun Teh, Johore Bahru, do solemnly and sincerely declare as follows:

1. That by an agreement dated the 30th day of March, 1974 made between me and Tara Rajaratnam (f), it was agreed that the said Tara Rajaratnam (f) would transfer the land comprised in Certificate of Title No.13817 for Lot No.6025 containing an area of 5A.0R.00P on the following terms.

2. That I pay the sum of Dollars one Hundred and Three Thousand six Hundred and Fifty-Eight and cents Forty-Four ($103,658.44) which is due to Chung Khiaw Bank Kulai Branch as at 8.3.74 on three charges namely (1) Pres. No.3060/67 Vol 126 Fol.72, (2) Pres.No.4686/67 Vol.127 Fol.89 and (3) Pres.No.7531/72 Vol.170 Fol.97 executed by Tara Rajaratnam (f) ~~(f.H.e~~ in their favour and all further interest up to the date of actual transfer.

3. That I pay a further sum of $110,000.00 to Datuk Jagindar Singh, being the amount payable by Dr.Krishna Shivadass, (also known as Dr.Dass) to the said Datuk Jagindar Singh who will then pay to the Hongkong & Shanghai Bank the said sum and all interest to which the said Tara Rajaratnam (f) agreed which is the amount of loan granted to the said Dr.Krishna Shivadass by the said Bank on the guarantee given by the said Datuk Jagindar Singh.

4. That steps are being taken to have the said land TRANsferred to me after making the necessary arragements to pay off the said Bank in respect of the said loan or transferring the said land in my favour subject to the

said three charges.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declaration Act, 1960.

Declared by the abovenamed Pakrisamy Suppiah at Johore Bahru in the State of Johore this 2nd day of February, 1975, in the presence of:)

sgd. P. Suppiah

.....

Sgd. Illegible
Pesuruhjaya Sumpah
(Commissioner for Oaths)
High Court, Malaya, Johore Bahru.
3 Feb. 1975

D 7

D 7 (E2)
Notice of Entry of a caveat
8th February 1975

NOTICE OF ENTRY OF A CAVEAT

No.(2) in (R) 20/75 (N.L.C. 39A)

High 2416/84
24/
1 3 84

National Land Code
Form 19A
NOTICE OF THE ENTRY OF A CAVEAT

To Mr. Tara Rajaratnam (f)

of No. 76, Main Road, Kulai, Johore.

*proprietor of the land described in the schedule below

~~*lessee/sub-lessee/chargee under the lease/sub-lease/charge described in the schedule below of the land so described.~~

This is to inform you that, in exercise of the powers conferred by section *~~322~~/324/~~330~~, I have this day entered, upon the register document of title to the said land -

*(a) ~~a Registrar's Caveat.~~ Vol.41 Fol. 82 dated 3.2.75

*(b) a *Private Caveat/~~Lien-holder's Caveat~~ on the application of Mr. Pakrisamy Suppiah of No. 33, Jalan Keruing, Kebun Teh, J.B.

This caveat is expressed to bind -

* the land itself/~~the particular interest described in the said schedule~~ and the effect thereof is -

As stated below

Section 322 of National Land Code

Here state the effect of the caveat.

Dated this 8 day of February, 19 75.

c.c.

Messrs Suppiah & Singh,
Advocates & Solicitors,
Johore Bahru.

SEAL

Sd.
Registrar/~~Collector~~

Receipt L632312 is enclosed.

State/~~District~~ JOHORE

SCHEDULE OF LAND * AND INTEREST

*Town/Village/Mukim	*Lot/Parcel/L.O. No.	Description and No. of Title	Share of land (if any)	Registered No. of *lease /sub-lease (if any)	Registered No. of charge (if any)
(1)	(2)	(3)	(4)	(5)	(6)
Mukim Senai-Kulai	Lot 6025	C.T.13817	Whole	-	i. Pres.3060/67 Vol. 126 Fol. 72 ii. Pres.4686/67 Vol. 127 Fol. 89 iii. Pres. 7531/72 Vol. 170 Fol. 97

Certified true translation of Page 62, Exhibit D7 in Volume 3 in the Federal Court Civil Appeal Nos. 215 and 216 of 1982.

Malay Chinese ... Interpreter
High Court
Johore Bahru

*Delete as appropriate.

Pres.(R)205/76

NATIONAL LAND CODE

FORM 19-B

Section 323

APPLICATION FOR ENTRY OF A PRIVATE CAVEAT

To,
The Commissioner for Lands & Mines
Johore Bahru

I, Tara Rajaratnam (m.w.) of No. 681, Kulai Besar, Kulai, Johore apply for the entry of a Caveat upon the title to the land described in the Schedule below to be expressed to bind the under-
10 mentioned piece of land:-

1. Certificate of Title No. 13817 for Lot 6025 containting an area of 5A. OR. OOP. or thereabout situated in the Mukim of Senai-Kulai.

2. The grounds of my claim to the land are:-

(a) That I executed a transfer of my land held under C.T. No. 13817 for Lot 6025 containing an area of 5A. OR. OOP. or thereabout situated in the Mukim of Senai-Kulai in favour of Pakrisamy Suppiah
20 on an undertaking that he would not sell the said land and house to anyone for one year from the date of registration of the said property into his name. And also he had agreed to transfer the said property back to me on payment of certain amount to money to him. He transferred the said property without my knowledge to one Arul Chandran.

(b) That there is a Civil case pending in the Johore
30 Bahru Sessions Court relating this matter.

(c) I intend to institute proceedings in the High Court, Johore Bahru, for a declaration that the transfer executed by me in favour of the said Pakrisamy Suppiah is bad in law.

(d) That I have been verily advised to enter a Private Caveat on the aforesaid land restraining and for binding any dealing or sale by the present registered owner in respect of the ~~above~~ aforementioned land until my claim is settled.

- 2 -

3. As required by Section 323 of the National Land Code, I now submit

(a) the prescribed fee of $30.00

(b) a Statutory Declaration by myself verifying the claim setout in paragraph 2 above.

Dated this 15th day of May, 1976.

sd. Tara
Signature of Applicant

SCHEDULE OF LAND AND INTEREST

Town Village Mukim	Lot L.O. No.	Description and No. of Title	Share of land (if any)	Registered No. of lease sub-lense (if any)	Registered No. of Charge (if any)
Senai-Kulai	6025	C.T. 13817	5A.0R. 00Pls.	Nil	Nil

(One title only)

Serial No. 227/76
Private Caveat Vol. 45 Fol. 17
Registered at Johore Bahru this 16th day of May 1976 at 9.20 o'clock in the forenoon.

sd. Illegible

STATUTORY DECLARATION BY TARA RAJARATNAM
AGREED BUNDLE

P 68 (E4)
Statutory Declaration by Tara Rajaratnam 15th May 1976

STATES OF MALAYA

STATATORY DECLARATION

I, Tara Rajaratnam (m.w.) (holder of Identity Card No. 2317344) of No. 681, Kulai Besar, Kulai, Johore do solemnly and sincerely declare as follows:-

1. I am the former owner of the land held under Certificate of Title No. 13817 for Lot 6025 containing an area of 5A. OR. OOP. or thereabout situated in the Mukim of Senai-Kulai.

2. That I executed a transfer of my land held under C.T. No. 13817 for Lot 6025 containing an area of 5A OR. OOP or thereabouts situated in the Mukim of Senai-Kulai in favour of Pakrisamy Suppiah on an undertaking that he would not sell the said land and house to anyone for one year from the date of registration of the said property in his name. And also he agreed to transfer the said property back to me on payment of certain amount of money to him. He transferred the said property without my knowledge to one Arul Chandran.

3. The new owner has instituted proceedings against me to deliver up the land but I am resisting his claim and the said case is still pending vide Johore Bahru Sessions Court Civil Action No. 146 of 1976.

4. I also intend to commence proceedings in the Johore Bahru High Court for a declaration that the transfer executed by me in favour of the said Pakrisamy Suppiah is bad in law

5. That I am verily advised to enter a Private Caveat on the undermentioned land

C.T. No. 13817 for Lot 6025 containing an area of 5A. OR. OOP. or thereabout situated in the Mukim of Senai Kulai restraining and forbiding any dealings or sale by the present registered owner in respect of the said land until my claim hereto has been settled by the Commissioner of Land and Mines or by the by: Court of law.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of Provisions of the Statutory Declaration Act. 1960.

Subscribed and Solemnly declared by the abovenamed Tara Rajaratnam at Kulai, Johore this 15th day of Mei, 1976.

s/d Tara

(L.S.) sd.
Magistrate, Johore.

D 5

D 5 (E5)
Exhibit "H"
Notice of
Intended
Removal of
caveat
30th June
1976

EXHIBIT "H" NOTICE OF INTENDED REMOVAL OF CAVEAT

(N.L.C. 41A)

Bil.FTG(R)20E/76 A.R. Register

National Land Code

Form 19 C

(Section 326)

NOTICE OF INTENDED REMOVAL OF CAVEAT

To Mr. Tara Rajaratnam (m.w.)

of No. 681, Kulai Besar, Kulai, Johor.

at whose instance Private Caveat Registered No. Vol. 45 Fol. 17 bth.15.6.76

is entered upon the title to the land described in the schedule below.

Whereas the above caveat is expressed to bind -

*the land itself/~~the particular interest described in the said schedule;~~

And whereas -

*the proprietor of the land;

*~~the lessee/sub-lessee/chargee under the interest described~~ has applied to me for the removal of the said caveat;

Take notice that, in exercise of the powers conferred by section 326 of the National Land Code, I shall, at the expiry of the period of one month from the date of service of this notice, or of such further period (if any) as the Court may order, remove the caveat.

Dated this 30th day of June, 1976.

Certified true translation of Page 57, Exhibit D5, in Volume 3 in Federal Court Civil Appeal Nos.215 and 216 & 291 and 292 of 1982.

Malay/Chinese/Tamil/Punjabi Interpreter,
High Court Malaya,
Johore Bahru.

SEAL

Sd.
Registrar/~~Collector~~

State/District Johor

SCHEDULE OF LAND* AND INTEREST					
*Town/Village/Mukim	*Lot/Parcel/L.O. No.	Description and No. of Title	Share of land (if any)	Registered No of *lease/sub-lease (if any)	Registered No. of charge (if any)
(1)	(2)	(3)	(4)	(5)	(6)
Mukim Senai/Kulai	Lot 6025	CT.13817	Whole	Nil	Nil
* Delete as appropriate					

D 33

APPLICATION OF TARA RAJARATNAM
ORIGINATING SUMMONS 95 OF 1976

D 33 (E6)
Affidavit of Tara Rajaratnam Originating Summons 95 of 1976
26th July 1976

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING SUMMONS NO. 95 OF 1976.

In the Matter of Section 326(2) of the National Land Code Act 56 of 1965.

And

In the Matter of a Caveat Volume 45, Fol. 17 dated 15th June, 1976 against the land held under Certificate of Title No. 13817 for Lot 6025 in the Mukim of Senai/Kulai in the District of Johore Bahru registered in the office of the Commissioner of Lands and Mines, Johore Bahru.

And

In the Matter of Order 54 of the Rules of the Supreme Court, 1957.

Between

TARA RAJARATNAM (m.w.)

... Applicant.

And

ARUL CHANDRAN

... Respondent.

A F F I D A V I T

I, TARA RAJARATNAM (m.w.) (holder of Identity Card No. 2317344) of No. 681, Kulai Besar, Kulai, Johore do hereby solemnly affirm and say as follows:

1. I am the abovenamed Applicant.

2. The land held under Certificate of Title No. 13817 for Lot 6025 situated in the Mukim of Senai/Kulai in the District of Johore Bahru containing an area of 5A.0R.00P. or thereabouts together with a dwelling house erected thereon and known as No. 681, Kulai Besar, Johore Bahru was registered in my name as I was then the registered owner.

3. Sometime in the month of March, 1974, I was approached by my husband, K.V. Devan who informed me that the property in question should be pledged to get some financial aid for the purpose of opening a medical centre for my brother-in-law one Dr. K.G. Dass. Accordingly I executed certain blank transfer in favour of one P. Suppiah in consideration of certain financial adjustments relating to overdrafts etc. to the extent of $220,000/- made by him my and P. Suppiah intention being that the property shall be a security for that sum which was so repaid within a year by me husband and Dr. Dass, and I further state that the said P. Suppiah undertook in writing that he will not transfer the property to any third party within one year from the date he became the registered owner. The said blank transfer was accompanied by an Agreement and undertaking a copy which is annexed hereto and marked "A".

4. The said P. Suppiah on the 5th July, 1975 made use of the blank transfer and transferred the property into his name. A photostat copy of the transfer is annexed hereto and marked "B".

5. Subsequently the said P. Suppiah without my consent and ignoring the undertaking given to me on the 30th day of March, 1974 transferred the said land and the house to the Respondent on the 31st July, 1975. A photostat copy of the said transfer is annexed hereto and marked "C".

6. I am adviced and verily believe that the attesting Solicitor in both the transfers, that is Jagindar Singh and the Dato Jagindar Singh mentioned in the Agreement dated the 30th April, 1975 is one and the same person and that he was personally aware of the transaction.

7. Pursuant to the agreement dated the 30th day of March, 1974 the said P. Suppiah had paid the money to the Datuk Jagindar Singh but the account with the Hongkong and Shanghai Bank, Singapore was not settled until early part of 1974 and the money payable to Chung Khiaw Bank Limited, Kulai amounting to $110,000/- but out of which the sum of $91,127.62 was only paid on the 1st day of July, 1975. A photostat copy of the Bank Statement for the month of July, 1975 is annexed hereto and marked as "D".

8. In the latter part of February, 1975 the said P. Suppiah together with Datuk Jagindar Singh approached Dr. K.S. Dass and requested him to pay to P. Suppiah the sum of $149,520/- which sum was supposed to have been paid by Datuk Jagindar Singh in settlement of the Bank loan Hongkong and Shanghai Bank, Singapore on behalf of Dr. K.S. Dass and also told Dr. K.S. Dass that he would return the blank transfer form executed by me on the 30th day of March, 1974. Upon relying on P. Suppiah's promise Dr. K.S. Dass gave him a postdated Cheque dated the 25th day of March, 1975 for the sum of $149,520 which sum is made up as follows:

1.	Principal sum due to the Hongkong & Shanghai Bank, Singapore	$110,000.00
2.	Amount of loss and benefit incurred by Datuk Jagindar Singh in giving the guarantee to Dr. K.S. Dass	$ 7,000.00
3.	Amount of interest occured from August, 1973 to March, 1975	$ 32,520.00
		$149,520.00

and promise I am given to understand that was made in my husband's presence K.V. Devan's Affidavit which is annexed hereto and marked as exhibit "E".

9. The aforesaid cheque was dishonoured when presented for payment. Subsequently the said P. Suppiah filed an action against Dr. K.S. Dass in the Singapore High Court in Suit No. 124/75 claiming the sum of $149,520/- and obtained judgment on the 5th day of May, 1975. A photostat copy of the said Judgment is annexed hereto and marked as exhibit "F".

10. Apart from obtaining Judgment against Dr. K.S. Dass for the part of the money advanced by the said P. Suppiah on the 5th day of May, 1975 he also transferred the property into his name on the 22nd July, 1975.

11. The value of property in question exceeds $1,106,100/- and in this respect I annexed herewith a copy of the valuation report which is marked "G".

12. The Respondent has instituted proceedings against me to eject me out of the land and premises in Johore Bahru Sessions Court Civil Action No. 146 of 1976 and the same is fixed for hearing on the 31st day of July, 1976. In my defence to the action I have pleaded that the Respondent was not a bona fide purchaser and that the transfer of the piece of land and premises to the Respondent was not for value and that he was in a position to know the nature of the transaction between myself and P.Suppiah.

13. After the Respondent has commenced proceedings against me I on the 15th day of June, 1976 lodged the abovementioned Caveat Vol. 45 Fol. 17 against the said land held under Certificate of Title 13817 for Lot 6025 in the Mukim of Senai/Kulai at the office of the Commissioner of Lands and Mines, Johore Bahru in accordance with Section 323 of the National Land Code Act 56 of 1965 on the ground that the whole transaction was bad and a fraud perpatuated on me. Further I have been and am still in occupation of the said land.

14. The attestation of the transfer form from me to P. Suppiah and P. Suppiah to the Respondent was done by Datuk Jagindar Singh who knows the true nature of the whole transaction which is bad in Law and was a fraud perpatuated on me.

15. I verily believe that the said P. Suppiah and the Respondent know that the whole transaction is bad in Law and the transfer of the property into their name was a fraud.

16. On the 3rd day of July, 1976 I was served with a Notice of Intended Removal of Caveat under Section 326 of the National Land Code Act 56 of 1965. A copy of the said Notice is now produced annexed and marked "H".

17. I am afraid that if the Caveat is removed that the Respondent might transfer the said property to some other person so my interest on the said land will not be protected.

18. In order to protect my interest and my right in the said land, I therefore pray that the time during which the abovementioned Caveat against the land held under Certificate of Title No. 13817 for Lot 6025 in the Mukim of Senai-Kulai remain in force may be extended for a further period of 6 months from 30th day of July, 1976 the date of expiry of the Notice of Intended Removal of Caveat aforesaid.

AFFIRMED by the abovenamed TARA RAJARATNAM (m.w.) at Johore Bahru this 26th day of July, 1976.) sd. Illegible

Before me,

sgd. Illegible
Magistrate J.B.
Commissioner for Oaths,
Johore Bahru.

This affidavit is filed on behalf of the abovenamed Applicant by Messrs. Elyas Majeed & Co.

D 5

EXHIBIT "E" AFFIDAVIT OF
K.V. DEVAN

D 5 (E7)
Exhibit "E"
Affidavit of
K.V. Devan
26th July 1976

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING SUMMONS NO. OF 1976.

In the Matter of Section 326(2) of the National Land Code Act 56 of 1965.

And

In the Matter of a Caveat Volume 45, Fol.17 dated 15th June, 1976 against the land held under Certificate of Title No. 13817 for Lot 6025 in the Mukim of Senai/Kulai in the District of Johore Bahru registered in the office of the Commissioner of Lands and Mines, Johore Bahru.

And

In the Matter of Order 54 of the Rules of the Supreme Court, 1957.

Between

TARA RAJARATNAM (m.w.)

... Applicant.

And

ARUL CHANDRAN

... Respondent.

A F F I D A V I T

I, K.V. DEVAN (holder of Identity Card No. of No. 681, Kulai Besar, Kulai, Johore do hereby solemnly affirm and say as follows:

1. I am the abovenamed Applicant's husband.

2. I say that I am aware of the whole transaction between my wife and P. Suppiah and Arul Chandran.

3. I further say that the cheque given by my brother Dr. K.S. Dass for the sum of $149,520.00 in early part

D 5 (E7)

Exhibit "E"
Affidavit of
K.V. Devan
26th July 1976
(Cont'd)

of February, 1975 was in my presence and I am aware of the conversation between Dr. Dass, P. Suppiah and Datuk Jagindar Singh. On that date P. Suppiah promised to return the blank transfer form executed by my wife on the 30th day of March, 1974.

AFFIRMED by the abovenamed)
K.V. DEVAN at Johore Bahru) sgd: K.V. Devan.
this 26 day of July,)
1976.)

Before me,

Commissioner for Oaths,
Johore Bahru.

This Affidavit is filed on behalf of the abovenamed Applicant's husband by Messrs: Elyas Majeed & Co., Advocates & Solicitors, whose address for service is at Room 202, O.C.B.C. Building, 2nd Floor, Jalan Ibrahim, Johore Bahru.

This is the paper writing marked "E" referred to in the affidavit petition of Tara Rajaratnam ~~sworn to~~ affirmed on the 26th day of July 1976 before me

Sgd. Illegible
Magistrate,
Johore Bahru.

D 33 ORIGINATING SUMMONS NO. 95 OF 1976

D 33 (E8)
Originating Summons
No. 95 of 1976
2nd August 1976

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING SUMMONS NO. 95 OF 1976.

In the Matter of Section 326(2) of the National Land Code Act 56 of 1965.

And

In the Matter of a Caveat Volume 45, Fol. 17 dated 15th June, 1976 against the land held under Certificate of Title No. 13817 for Lot 6025 in the Mukim of Senai/Kulai in the District of Johore Bahru registered in the office of the Commissioner of Lands and Mines, Johore Bahru.

And

In the Matter of Order 54 of the Rules of the Supreme Court, 1957.

Between

TARA RAJARATNAM (m.w.)

... Applicant.

And

ARUL CHANDRAN

... Respondent.

ORIGINATING SUMMONS

LET ARUL CHANDRAN of No. 2-D, Jalan Ah Fook, Johore Bahru, the Respondent abovenamed within (8) days of the service of this Summons on him inclusive of the day of such service cause an appearance to be entered for him to this Summons which is issued upon the application of the abovenamed Applicant for an Order.

(1) that the time during which the Caveat Volume 45, Fol. 17 dated the 15th day of June, 1976 against the land held under Certificate of Title No. 13817 for Lot 6025 in the Mukim of Senai/Kulai in the District of Johore Bahru remain in force may be extended for a period of 6 months from the 28th day of July, 1976.

D 33 (E8)
Originating Summons
No. 95 of 1976
2nd August 1976
(Cont'd)

(2) that a sealed copy of the said Order of Court to be made herein may be served on the Commissioner of Lands and Mines, Johore Bahru and be registered in the Office of the Commissioner of Lands and Mines, Johore Bahru, Johore.

(3) that a copy of the said Order of Court to be made herein may be served on the above-named Respondent; and

(4) that the costs of this Application be costs in the cause.

Dated this 2nd day of August, 1976.

Solicitors for the Applicant

Senior Assistant Registrar,
High Court,
Johore Bahru.

- 2 AUG 1976

Entered No. 372 of 1976.

This Summons was taken out by Messrs. Elyas Majeed & Co., Solicitors for the abovenamed Applicant, whose address for service is at Room 202, O.C.B.C. Building, Johore Bahru.

This Summons is supported by the Affidavit of Tara Rajaratnam, the abovenamed Applicant, affirmed and filed herein on the 26th day of July, 1976.

This Summons is intended to be served on the Respondent, Arul Chandran and/or his Solicitors Messrs. Suppiah & Singh of No. 2-D, Jalan Ah Fook, Johore Bahru, Johore.

D 33 (E8)
Originating Summons
No. 95 of 1976
2nd August 1976
(Cont'd)

IN THE HIGH COURT IN MALAYA AT

JOHORE BAHRU

ORIGINATING SUMMONS NO. OF 1976.

In the Matter of Section 326(2) of the National Land Code Act 56 of 1965.

A n d

In the Matter of a Caveat Volume 45, Fol. 17 dated 15th June, 1976 against the land held under Certificate of Title No. 13817 for Lot 6025 in the Mukim of Senai/Kulai in the District of Johore Bahru registered in the office of the Commissioner of Lands and Mines, Johore Bahru.

A n d

In the Matter of Order 54 of the Rules of the Supreme Court, 1957.

Between

TARA RAJARATNAM (m.w.)

... Applicant.

A n d

ARUL CHANDRAN

... Respondent.

ORIGINATING SUMMONS

1317/76

Messrs. Elyas Majeed & Co.,
Advocates & Solicitors
202, 2nd Floor,
O.C.B.C. Building,
Johore Bahru.

Filed this 29th day of July, 1976.

1117

APPLICATION OF TARA RAJARATNAM FOR ENTRY OF A PRIVATE CAVEAT

NATIONAL LAND CODE
FORM 19B
Section 323

APPLICATION FOR ENTRY OF A PRIVATE CAVEAT

P 70 (E9)
Application of Tara Rajaratnam for Entry of a Private Caveat
2nd February 1977

Stamp to be affixed or payment of duty certified in this space

---

Memorial of registration in the register of Document of title schedule below with effect from 10.h. 20 m. on the 7th day of February, 1977.

File of .....
Private Caveat.
Volume No. 49,
Folio 58
Serial No. 97/77

sd. Registrar
L.S. sd. Masurah
State of Johore.

P 70 (E9)
Application of Tara Rajaratnam for entry of a Private Caveat
2nd February 1977
(Cont'd)

APPLICATION FOR ENTRY OF A PRIVATE CAVEAT

To

The Registrar of Title Johore,

Johore Bahru

1. I Tara Rajaratnam (m.w.) of No. 184, Khet Loong Garden, Kulai, Johore, hereby ~~certify~~ apply for the Entry of a Caveat upon the Title to the said Land described in the Schedule below, to be expressed to bind the land itself.

2. The grounds of my claim to the said land are to protect my right title and interest in the said Land pending the hearing of the matter before the Court and restrain and forbid any dealings in the said land by the purported new owner.

3. As required by Sec. 323 of the National Land Code, I now submit

(a) the prescribed fee for $30.00

(b) a Statutory Declaration by myself verifying the claim set out in paragraph 2 above.

Dated this 2nd day of February, 1977.

sd. Tara

Sig. of Caveator.

I, Ho Thian Cheh, an Advocate & Solicitor of the High Court in Malaya hereby testify that the above signature was written in my presence this 2nd day of February, 1977 and is according to my own personal knowledge the true signature of Tara Rajaratnam who has acknowledged to me:

(i) that she is of full age;

(ii) that she has voluntarily executed this instrument, and

(iii) that she understands the contents and effect thereof.

As Witness my hand this 2nd day of February, 1977.

sd. Ho Thian Cheh
Advocates & Solicitor
West Malaysia.

Where the address of the person claiming under this instrument is outside the Federation, an address within the Federation for the serviceof notice is to be added in this space.

Mukim	Lot No.	Description of land & Title No.	Share of Land (if any)	Registered No. of lease/sub-lease (if any)	Registered No. of charge (if any)
Mk. Senai/ Kulai	Lot No. 6025 5A. OR. OOP.	C.T. No. 13817	The whole	Nil	Nil

Issued under the provision of Section 383(1) of the National Land Code and certified as true copy.

STATUTORY DECLARATION
BY TARA RAJARATNAM

Agreed Bundle
P 72 (E10)
Statutory
Declaration of
Tara Rajaratnam
2nd February 1977

State of Malaya

STATUTORY DECLARATION

I, Tara Rejaratnam (m.w.) holder of NRIC No. 2317344of No. 184, Khet Loong Gardens, Kulai, Johore, do solemnly and sincerely declare as follows:-

1. I am the lawful and/or equitable owner of the land held under Certificate of Title No. 13817 for Lot No. 6025 estimated to contain an area of 5A. OR. 00P. or thereabouts situated in the Mukim of Senai-Kulai in the State of Johore.

2. On the 30th day of March, 1974 at the request of my husband K.V. Devan, and my brother in law, one Dr. Dass, I entered into a written agreement with one P. Suppiah, charging the said property by way of security in order to obtain a loan of $220,000.00.

3. It was agreed that the said P. Suppiah would not sell the said property within one year of the transfer of the same unto his name. It was further agreed that my consent was necessary in the event of a sale by the said P. Suppiah.

4. In breach of the aforesaid and in violation of the entire security transaction the said P. Suppiah registered, the property in his name on the 21st July, 1975 and then purported to sell and transferred to one Arul Chandran on the 9th of August, 1975.

5. I am advised and verily believe that the transfer ofthe said property to the said P. Suppiah and/or Arul Chandran is interalia bad, invalid or on operative in law. I intend to seek a declaration to that effect in the High Court in Johore Bahru.

6. I am advised and verily believe that to protect my right title and interest in the said property, it is necessary that a caveat be entered against the said property in order to restraint and forbid the proposed new owner from any dealings in the said property.

7. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act, 1960.

Subscribed and solemnly declared by the above named Tara Rajaratnam at Johore Bahru in the State of Johore this 2nd day of February,1977) sd. Tara

Before me
sd. Zainal Abidin b. Baba,

P 113

APPLICATION OF TARA RAJARATNAM FOR ENTRY OF CAVEAT

P 113 (E10A)
Application of Tara Rajaratnam for entry of caveat

10th October 1977

NATIONAL LAND CODE

Form 19B

Section 323

Application for Entry of a Private Caveat

(Stamps to be affixed - or payment of duty certified - in this space)

10

FOR REGISTRY USE

Memorial of registration made in File of -

the register Document/s of Title scheduled below, with effect from 11.00 on the 10th day of October 1977

P/Caveat
Volume 52
Folio 28
Serial No. 379/77

Registrar

(sd. ?)

Seal

20

State of Johore

THIS IS THE EXHIBIT MARKED A 2.
REFERRED TO IN THE Affidavit
Arul Chandran
SWORN BEFORE ME THIS 31st DAY OF December
1977
sd. F C. Pillai.
A COMMISSIONER FOR OATHS
Sipam

P 113 (E10A)
Application of Tara Rajaratnam for entry of caveat
10th October 1977
(Cont'd)

APPLICATION FOR ENTRY OF A PRIVATE CAVEAT

To the Registrar of Title
Johore
Johore Bahru

I Tara Rajaratnam (m.w.) of No.184, Khet Loong Gardens, Kulai, Johore hereby apply for the entry of a caveat upon the Titles to the said land described in the schedule below; to be expressed to bind the land itself.

2. The grounds of my Claim to the said land are to protect my rights title and interest in the said land pending the hearing of the matter before the Court and to restraint and forbid any dealings in the said land by the purported new owner.

3. As required by section 323 of the National Land Code, I now submit

(a) the prescribed fee of $1,065/-

(b) a statutory declaration by myself

verifying the Claim set out in paragraph 2 above.

Dated this 10th day of October 1977.

sd. Tara
Signature of the Caveator

I, Subramaniam Palany Naiker, an Advocate and Solicitor of the High Court in Malaya hereby testify that the above signature was written in my presence this 10th day of October 1977 and is according to my own personal knowledge the true signature of Tara Rajaratnam who has acknowledge to me

(i) that she is of full age,

(ii) that she has voluntarily executed this instrument and

(iii) that she understands the contents and effect thereof.

As witness my hand this 10th day of October 1977.

sd. Subramaniam Palany Naiker
Advocate & Solicitor
West Malaysia.

WHEREAS the address of the person claiming under this instrument is outside the Federation, and address within the Federation for service of notices is to be added in this space.

Schedule of land and Interest

Town Village Mukim	Lot No.	Description and No. of Title		Share of land (if any)	Registered No.of lease/sub lease (if any)	Registered No. of charge (if any)
S/Kulai	2062	HS(R)	20382	Semuanya	Tiada	Tiada
"	2063	"	20383	"	"	"
"	2064	"	20384	"	"	"
"	2065	"	20385	"	"	"
"	2066	"	20386	"	"	"
"	2067	"	20387	"	"	"
"	2068	"	20388	"	"	"
"	2069	"	20389	"	"	"
"	2070	"	20390	"	"	"
"	2071	"	20391	"	"	"
"	2072	"	20392	"	"	"
"	2073	"	20393	"	"	"
"	2074	"	20394	"	"	"
"	2075	"	20395	"	"	"
"	2076	"	20396	"	"	"
"	2077	"	20397	"	"	"
"	2078	"	20398	"	"	"
"	2079	"	20399	"	"	"
"	2080	"	20400	"	"	"
"	2081	"	20401	"	"	"
"	2082	"	20402	"	"	"
"	2083	"	20403	"	"	"
"	2084	"	20404	"	"	"
"	2085	"	20405	"	"	"
"	2086	"	20406	"	"	"
"	2087	"	20407	"	"	"
"	2088	"	20408	"	"	"
"	2089	"	20409	"	"	"
"	2090	"	20410	"	"	"

Town Village Mukim	Lot No.	Description and No. of Title	Share of land (if any)	Registered No. of lease/sub lease (if any)	Registered No. of charge (if any)
S/Kulai	2091	20411	"	"	"
"	2092	20412	"	"	"
"	2093	20413	"	"	"
"	2094	20414	"	"	"
"	2095	20415	"	"	"
"	2096	20416	"	"	"
"	2097	20417	"	"	"
"	2098	20418	"	"	"
"	2099	20419	"	"	"
"	2100	20420	"	"	"
"	2101	20421	"	"	"
"	2102	20422	"	"	"
"	2103	20423	"	"	"
"	2104	20424	"	"	"
"	2105	20425	"	"	"
"	2106	20426	"	"	"
"	2107	20427	"	"	"
"	2108	20428	"	"	"
"	2109	20429	"	"	"
"	2110	20430	"	"	"
"	2111	20431	"	"	"
"	2112	20432	"	"	"
"	2113	20433	"	"	"
"	2114	20434	"	"	"
"	2115	20435	"	"	"
"	2116	20436	"	"	"
"	2117	20437	"	"	"
"	2118	20438	"	"	"
"	2119	20439	"	"	"
"	2120	20440	"	"	"
"	2121	20441	"	"	"
"	2122	20442	"	"	"
"	2123	20443	"	"	"
"	2124	20444	"	"	"
"	2125	20445	"	"	"
"	2126	20446	"	"	"
"	2127	20447	"	"	"
"	2128	20448	"	"	"
"	2129	20449	"	"	"
"	2130	20450	"	"	"
"	2131	20451	"	"	"

Tujoh puloh Hakmilik Sahaja

P 113 STATUTORY DECLARATION OF TARA RAJARATNAM

P 113 (E11)
Statutory Declaration of Tara Rajaratnam Motion No. 46 of 1977
10th October 1977

STATE OF MALAYA

STATUTORY DECLARATION

I, Tara Rajaratnam (m.w.) holder NRIC No.2317344 of No.184, Khet Loong Garden, Kulai, Johore do solemnly and sincerely declare as follows:-

1. I am the lawful and/or equitable owner of the land held under certificate of Title No.13817 for Lot No.6025 estimated to contain an area of 5A OR. OOPls. or thereabouts situated in the Mukim of Senai/Kulai in the State of Johore.

2. On the 30th day of March 1974 at the request of my husband K.V. Devan and my brother in law, one Dr. Das, I entered into a written agreement with one P. Suppiah, charging the said property by way of security in order to obtain a loan of $220,000/-.

3. It was agreed that the said P. Suppiah would not sell the said property within one year of the transfer of the same unto his name. It was further agreed that my consent was necessary in the event of a sale by the said P. Suppiah.

4. In breach of the aforesaid and in violation of the entire security transaction of the said P. Suppiah registered the property in his name on the 21st July 1975 and then purported to sell and transferred to one Arul Chandran on the 9th of August 1975.

5. I am advised and verily believe that the transfer of the said property to the said P. Suppiah and/or Arul Chandran is inter-alia bad, invalid or inoperative in law. I have since filed a Writ of Summons in Johore Bahru High Court Civil Suit No. 261 of 1977 seeking for restituation of the land and for damages and the appeal in Johore Bahru Sessions Court Civil Action No. 146 of 1976 is still pending hearing before the High Court in Johore Bahru, Johore.

6. I am now informed that the said land has been sub-divided and the titles thereto issued as specified in the schedule to the Application filed by me herein.

7. I am advised and I verily believe that to protect my rights title and interest in the said property it is necessary that a Caveat be entered against the said property in order to restrain and forbid the purported new owner from any dealings

P 113 (E11)
Statutory Declaration of Tara Rajaratnam Motion No. 46 of 1977 10th October 1977 (Cont'd)

in the said property.

8. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1960.

Subscribed and solemnly declared by the abovenamed Tara Rajaratnam at Johore Bahru in the State of Johore this 10th day of October 1977.) sd. Tara

Before me:

Chin Kon Sing

Comm. for Oaths
Johore Bahru.

AFFIDAVIT OF ARUL CHANDRAN
MOTION NO. 46 OF 1977

P 113 (E12)
Affidavit of
Arul Chandran
Motion No. 46 of
1977
21st December 1977

A IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU.

ORIGINATING MOTION NO. 46 OF 1977.

In the Matter of Section 327 of the National Land Code

B And

In the Matter of the 70 pieces of Land under Lot Nos.2062 to 2131 and
10 Q.T.Nos.20382 to 20451 in the Mukim of Senai/Kulai, Johore

C And

In the Matter of Private Caveat Vol. 52 Fol.28 Serial No.379/77 dated 10.10.77 in the Registry of Titles Johore Bahru, Johore

D Between

Arul Chandran ... Applicant

And

20 Tara Rajaratnam ... Respondent

A F F I D A V I T

E I, ARUL CHANDRAN, of No.26 Bukit Tunggal Road, Singapore, the abovenamed Applicant, solemnly and sincerely affirm as follows:

1. The Registrar of Titles, Johore, by Form 19A dated 6.12.77 of the National Land Code served on me on 17.12.77 as the registered proprietor of the pieces of land in the documents of title
30 set out in the Schedule to the said Notice informed me that he had in exercise of the powers conferred on him by Section 324 of the said Code and on the
G application of the Respondent herein entered a private caveat upon the register documents of title of 70 pieces of land set out in the said Schedule.

A copy of the said Notice is annexed hereto
40 H and marked "A.1".

2. On receiving "A.1" I caused my solicitors, Messrs.Suppiah & Singh, to straightaway make a copy of the Application for Entry of a Private Caveat lodged by the Respondent herein under Form 19B and the copy of the Statutory Declaration submitted therewith.

A copy of the said Application together with the said Statutory Declaration is annexed hereto and marked "A.2".

3. By a Transfer dated 31.7.75, I became on 10.10.75 the registered proprietor of the land comprised in Certificate of Title No.13817 Lot No.6025 Mukim of Senai-Kulai (hereinafter called "the surrendered land").

4. By an Order of Court dated 9.8.78 and made in Johore Bahru Civil Action No.146 of 1976 I obtained possession of the surrendered land from the Respondent. Her application (made on the same day) for a stay of execution pending appeal was refused by the learned President who heard the case.

5. By an Order of Court dated 9.9.76 and made in Johore Bahru High Court Originating Summons No. 17 of 1976, the Respondent's application for stay of execution of the said Order for possession was also dismissed by the learned Judge with costs.

6. I did before the lodgment of the Private Caveat surrender and make over to the Johore State Authority the surrendered land, and I am advised by my said solicitors and verily believe that the effect of the surrender is that the land reverted to and vested in the

Johore State Authority as State land under Section 199(1) of the National Land Code.

The said Section reads as follows :

"S.199(1) Upon the making of any memorial pursuant to sub-section (4) of section 198, the land to which it relates shall revert to and vest in the State Authority as State land; and the provisions of section 131 shall apply as if the land had reverted pursuant to a forfeiture.

(2) The issue document of title to any land which has reverted to the State Authority pursuant to this section shall, where possible, be destroyed; and accordingly, if in a case falling within sub-section (2) of section 197 that document is not produced pursuant to the request therein referred to, its production shall be demanded under section 15."

7. I am further advised by my said solicitors that Section 131 reads as follows :

"Upon the taking effect in relation to any land of any forfeiture under this Act -

(a) the land shall revert to, and vest in, the State Authority as State land, freed and discharged from all titles and interests subsisting or capable of arising immediately before the forfeiture took effect;

(b) there shall also vest in the State Authority, to the extent specified in section 47 and without payment of compensation, any buildings then existing on the land; and

(c) any item of land revenue then due to the State Authority in respect of the land shall be extinguished."

8. After sub-division 70 new titles were issued to me, particulars whereof are set out in the Schedule to "A.1", the Statutory Declaration.

9. The present 70 pieces of land have been alienated to me by the State Authority, and as such my title to them are derived from the State Authority and from no one else, and absolutely freed and discharged from all other claims, titles and interests whatever.

10. It is true that a Writ of Summons was filed against me and two others in Johore Bahru High Court Suit No.261 of 1977 claiming inter alia that the transfer of the surrendered land to me be set aside and damages. All three of us have made applications to have the said Summons struck out and they have not been heard yet. However the allegations contained in the said Statutory Declaration are not true to the knowledge of the deponent.

11. The subject matter of the land in the said Writ of Summons is not the 70 pieces of land caveated by the Respondent herein, and can never be.

12. I am further advised by my solicitors and verily believe that in view of paragraphs 6 and 7 hereof, the Respondent has no right, title or interest in respect of the said 70 pieces of land or any part thereof which she has caveated, and as such the Respondent's caveats are clearly defective in law and she has no grounds for lodging them.

13. Furthermore even the land area of the surrendered land and the present 70 pieces is different and less by more than 2 acres, and buildings are being constructed thereon for sale.

14. In short, there is no connection between the surrendered land and the 70 pieces.

15. In the circumstances I pray for an Order in terms of the Motion herein.

AFFIRMED by the abovenamed)
ARUL CHANDRAN this 21st) Sdg: Arul Chandran
day of December, 1977, at)

Before me,

Sdg:
Commissioner for Oaths.

NOTICE OF ORIGINATING MOTION
MOTION NO. 46 OF 1977
IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. [illegible] OF 1977

P 113 (E13)
Notice of Originating Motion, Motion No. 46 of 1977
22nd December 1977

In the Matter of Section 327 of the National Land Code

And

In the Matter of the 70 pieces of Land under Lot Nos.2062 to 2131 and Q.T. Nos.20382 to 20451 in the Mukim of Senai/Kulai Johore

And

In the Matter of Private Caveat Vol.52 Fol.28 Serial No.379/77 dated 10.10.77 in the Registry of Titles Johore Bahru, Johore

Between

Arul Chandran .. Applicant

And

Tara Rajaratnam .. Respondent

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that this Honourable Court will be moved by Dato' P. Suppiah of Counsel for the above-named Applicant Arul Chandran on Sunday the 8th day of January 1978 at the hour of 9.0 o'clock in the forenoon or soon thereafter as Counsel can be heard for inter alia the following Orders and Directions:-

(1) That the Private Caveat Vol. 52 Fol. 28 Serial No.379/77 in the Registry of Titles Johore in respect of the 70 pieces of Land in Lot Nos.2062 to 2131 and Q.T. Nos.20382 to 20451 in the Mukim of Senai/Kulai Johore entered at the instance of the Respondent may be forthwith removed;

P 113 (E13)
Notice of Originating Motion
Motion No. 46 of 1977
22nd December 1977 (Cont'd)

(2) An Order directing the Registrar of Titles, Johore to remove the said Private Caveat and references thereto in the register documents of title;

(3) Such further or other relief as this Honourable Court may deem fit; and

(4) Costs.

Dated this 22nd day of December, 1977.

Solicitors for the abovenamed Applicant

.....
Sr. Assistant Registrar,
High Court, Malaya,
Johore Bahru.

Entered No. 70 of 1977.

The Affidavit of Arul Chandran affirmed on the 21st day of December 1977 and filed herein on the 22nd day of December 1977 will be used at the hearing of this Motion.

This Notice of Motion is intended to be served on the abovenamed Respondent.

The address of service of the Applicant is care of Messrs. Suppiah & Singh, Advocates and Solicitors of No.2D, Jalan Ah Fook, Johore Bahru, and he lives at No.26 Bukit Tunggal Road, Singapore.

P 113

ORIGINATING MOTION
MOTION NO. 46 OF 1977

P 113 (E14)
Originating Motion
Motion No. 46 of 1977
22nd December 1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 46 OF 1977

In the Matter of Section 327 of the National Land Code

And

In the Matter of the 70 pieces of Land under Lot Nos.2062 to 2131 and Q.T. Nos.20382 to 20451 in the Mukim of Senai/Kulai Johore

And

In the Matter of Private Caveat Vol.52 Fol.28 Serial No.379/77 dated 10.10.77 in the Registry of Titles Johore Bahru, Johore

Between

Arul Chandran .. Applicant

And

Tara Rajaratnam .. Respondent

ORIGINATING MOTION

Dato' P. Suppiah of Counsel for Arul Chandran the abovenamed Applicant moves this Honourable Court for the following orders :

(1) That the Private Caveat Vol.52 Fol.28 Serial No.379/77 in the Registry of Titles Johore in respect of the 70 pieces of Land in Lot Nos.2062 to 2131 and Q.T. Nos.20382 to 20451 in the Mukim of Senai/Kulai Johore entered at the instance of the Respondent may be forthwith removed;

(2) An Order directing the Registrar of Titles, Johore to remove the

P 113 (E14)
Originating Motion
Motion No 46
of 1977
22nd December
1977 (Cont'd)

said Private Caveat and references thereto in the register documents of title;

(3) Such further or other relief as this Honourable Court may deem fit; and

(4) Costs.

Dated this 22nd day of December, 1977.

Solicitors for the abovenamed Applicant

AFFIDAVIT OF TARA RAJARATNAM
MOTION NO. 46 OF 1977

A IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU.

ORIGINATING MOTION NO. 46 OF 1977.

In the Matter of Section 327 of the National Land Code

B And

In the Matter of the 70 pieces of Land under Lot Nos.2062 to 2131 and Q.T.Nos.20382 to 20451 in the Mukim
10 of Senai/Kulai, Johore

C And

In the Matter of Private Caveat Vol. 52 Fol.28 Serial No.379/77 dated 10.10.77 in the Registry of Titles Johore Bahru, Johore

D Between

Arul Chandran ... Applicant

And

20 Tara Rajaratnam ... Respondent

A F F I D A V I T

E I, Tara Rajaratnam (m.w.) holder of NRIC No. 2317344 of No.184, Khet Loong Cardens, Kulai, Johore do solemnly and sincerely affirm as follows :-

1. I am the Respondent herein and I have read
F what purports to be an Affidavit of one Arul Chandran, the Applicant herein, affirmed at Singapore on the 21st day of December, 1977
30 and I crave leave to refer to the said Affidavit.

G 2. The truth or otherwise of the contents of paragraphs 1 and 2 of the said Affidavit are not within my knowledge and in any event I am of the opinion that they are not likely to be
H in issue.

3. With regard to paragraph 3, it is true that the Applicant eventually became the registered owner of the said land, but, for reasons and grounds set out hereinafter, I humbly contend that the said registration of the Applicant's name as the owner of the said land is null and void and of no effect in law.

4. With reference to paragraph 4 and 5 of the Affidavit, I humbly contend that the points and issues then raised and decided by the Courts concerned were totally different and distinct from those in issue in this Application, in that the questions then decided was "possession" and not ownership and title or rights thereto.

5. With regard to paragraphs 6 and 7 I am informed and advised by my Solicitors, which I verily believe that :-

(a) section 199(1) of the National Land Code and the alleged effect of the said section has no relevance or application in this matter as Section 199(1) deals and concerns with surrender and re-alienation of land in sub-divided lots with separate titles for religious, educational, charitable or public purposes under Section 195 of the National Land Code and not for private development or sales as in the case here.

(b) even if surrender and sub-division for private purposes can validly be effected under Section 195 as is claimed by the Applicant, which is

denied, nonetheless, the alleged approval and sub-division under Section 195 is unlawful and contrary to the National Land Code in that Section 196(2) has not been complied with.

Section 196(2)(d) reads to the effect that any application for surrender and sub-division must be accompanied by the written consent of, inter-alia, any existing caveator. There was a valid and subsisting caveat on the said land entered at that stage by me and I never gave any written consent for the alleged surrender and sub-division. (Herewith exhibited and marked "TR 1" a letter dated 22nd March, 1977 from the Pengarah Tanah dan Galian to the Pemungut Hasil Tanah, Johore Bahru which is fairly self-explanatory).

6. In the light of my paragraph 5(a) and (b) above, the Applicant's various contentions in his Affidavit to the effect that he derived his title to the new sub-divided 70 lots from the State Authority and not from me, that there is no connection between my land and the newly sub-divided 70 lots, that whatever title, rights or interests I had in the land are destroyed and extinguished and that I have no caveatable interests in the said land are fallacious and incorrect.

P 113 (E15)
Affidavit of
Tara Rajaratnam
Motion No. 46
of 1977
19th January 1978
(Cont'd)

7. I honestly believe that the alleged surrender and sub-division were effected to circumvent, frustrate or defeat my claims, rights or interests in the said land, and with full knowledge that the whole matter is still before the Court for full and final determination.

8. I am further informed and advised by my Solicitors, which I verily believe,

(a) that the surrender is merely a procedure and a voluntary act on the part of the Applicant for the purposes of sub-division and re-alienation of the sub-divided lots back to the Applicant with separate titles to enable the Applicant to sell the sub-divided lots with separate titles to individual private purchasers.

(b) that no surrender and sub-division as alleged herein, even if such had been effected validly under any other provisions of the National Land Code can be meant or construed to produce such an effect as to circumvent, frustrate or defeat a legitimate claim of mine or to cause manifest unjustice to me.

9. I humbly say that I have a caveatable interest in the said land in that :-

(a) the alleged or purported sale and transfer of my said land to the

Applicant's immediate predecessor-in-title, one Datuk P.Suppiah was procured or brought about by misrepresentation or fraud and hence liable to be defeated or set aside in my favour;

(b) the Applicant, who purportedly acquired the said land from the said Datuk P. Suppiah, is not a purchaser in good faith for valuable consideration and without notice under the National Land Code, and whose title is therefore liable to be defeated or set aside in my favour.

10. Datuk P.Suppiah's rights and title to the said land purportedly arose out of a written memorandum and an indorsement thereto executed respectively by me and the said Datuk P. Suppiah (A copy of the said memorandum with the said indorsement is exhibited herewith and marked "TR 2").

11. I was induced and persuaded to agree to the transfer of my said land to Datuk P. Suppiah on the strength and for reasons of the various representations expressed, apparent or implied in the said memorandum and the indorsement thereto.

12. The expressed representations, to the best of my understanding are :-

(a) that the total consideration for the land is $220,000.00;

(b) that out of the said $220,000.00 a sum of $110,000.00 will be paid to me and/or to my account, and that

out of the said sum of $110,000.00 a certain amount will be for the discharge of my land from the Kulai Chung Khiaw Bank and the balance paid to me;

(c) that as to the remaining $110,000.00 the same was to be paid to or to the account of one Datuk Jajinder Singh by way of settling and discharging a debt of that amount owing to the said Datuk Jajinder Singh from my brother-in-law, one Dr. K.S. Das.

(d) that I would be given one year to repay the sum of $220,000.00 and to have the property re-transferred into my name.

13. The implied representations, to the best of my understanding are :-

(a) that the payment of the sum of $110,000.00 to me and/or to my account will be immediate or forthwith;

(b) that the payment of the remaining $110,000.00 to or to the account of the said Datuk Jajinder Singh will infact be and treated as a payment of that sum from the said Dr. K.S. Das to the said Datuk Jajinder Singh and that such would relieve and discharge the said Dr. K.S. Das from any liability in respect of and to the extent of the said sum of $110,000.00;

(c) that until and unless the said Datuk P. Suppiah makes the stated payments totalling $220,000.00 in full he will derive or acquire no rights whatsoever from the said memorandum and will therefore not transfer or register the land into his name;

(d) that the one year period given to me to repurchase or redeem my said land will begin to run only from the date the said Datuk P. Suppiah makes in full the stated payment of $220,000.00;

(e) alternatively, the one year period will run only from the date when Datuk P. Suppiah transfers the land into his name after fulfilling completely his obligations under the memorandum;

(f) that this transaction is in truth and in effect a security transaction to the extent that I have the stated period of one year within which to re-purchase or redeem my land.

14. Apart from the expressed and implied representations as contained in the said written memorandum and the endorsement thereto the said Datuk P. Suppiah also at my insistence, assured and represented to me that the period of one year stated therein was merely a nominal limitation and that in effect he will not limit my right to redeem or repurchase my land just to one year.

15. The various representations of intentions as set out above, never turned out to be true in that :-

(a) as to the $110,000.00 due to me under the memorandum, Datuk P. Suppiah never paid the same to me or to my account or discharge my land from the Kulai Chung Khiaw Bank immediately or soon after the execution of the said memorandum. I was left to pay the interests and reduce the debt at the Kulai Chung Khiaw Bank on my own; Datuk P.Suppiah resiling or withdrawing from his promise;

(b) Under the said memorandum Datuk P.Suppiah ought to have paid Datuk Jajinder Singh a sum of $110,000.00 by way of discharge of Dr. K.S. Das' debts to Datuk Jajinder Singh. This Datuk P. Suppiah did not do. Instead, claiming that he has settled Dr. Das' debts to Datuk Jajinder Singh and treating and electing such payment as a matter between himself and Dr. Das, Datuk P.Suppiah obtained from Dr. Das a cheque for $149,502.00, the same being principal and interest purportedly paid by Datuk P.Suppiah to Datuk Jajinder Singh on behalf of Dr. Das and when this cheque was dishonoured

on presentation, Datuk P.Suppiah sued Dr. Das on the cheque in Singapore High Court and on 5th May, 1975 obtained a judgment against Dr. Das. Further, vide Johore Bahru High Court Originating Motion No. 38 of 1975 he applied to register and enforce the said Judgment against Dr. Das in Malaysia. In doing so he ignored and resiled from the terms of the said memorandum.

16. Further to the above said misrepresentations, the said Datuk P.Suppiah on 22nd July, 1975 transferred my land into his name dishonestly and fraudulently with full knowledge that under the circumstances he had no right or fraudulent to do so, in that :-

(a) at the time of the execution of the said written memorandum and blank transfer forms on 30th March, 1974 Datuk P.Suppiah never had any genuine or settled intentions of paying me or to my account the said sum of $110,000.00 immediately or soon thereafter. This is clearly evident from his conduct and dealings. In his correspondence with Kulai Chung Khiaw Bank he made it quite clear, even as late as December, 1974 that he was merely acting as my and/or my husband whether or not

we were going to pay off the bank and discharge the charge on my land (Herewith exhibited a letter from Chung Khiaw Bank Kulai dated 26th December, 1974 and a reply to that letter from Suppiah & Singh dated 29th December, 1974 marked "TR 3" and "TR 4" respectively). Further, in the letter from Suppiah & Singh dated 29th December, 1974 and exhibited as TR 4, we are even asked to let Datuk P. Suppiah know what the position was on this matter. By this he has clearly made it known that he has resiled and freed himself from the terms of the memorandum.

(b) not only Datuk P.Suppiah did not pay off the Chung Khiaw Bank Kulai but also deviated himself from the terms of the said memorandum by containing to hold Dr. Das personally liable for the debts owing to Datuk Jajinder Singh and taking a judgment against Dr. Das in the High Court in Singapore. Whereas under the memorandum the sum of $110,000.00 should have been paid by Datuk P. Suppiah to Datuk Jajinder Singh and Dr. Das completely discharged from the debt.

(c) only on realising that he was not going to realise the judgment amount from Dr. Das, did Datuk P. Suppiah on 9th July, 1975 that is after 15 months

of the date of the memorandum, decided unilaterally to revive and fall back on the written memorandum.

On the 9th July, 1975 he paid off the Chung Khiaw Bank Kulai the sum of $91,907.75 and soon thereafter transferred the land into his name without my knowledge or consent. Further, as a matter of interest, out of the sum of $110,000.00 due to me under the said memorandum, Datuk P. Suppiah paid the Chung Khiaw Bank Kulai a sum of $91,907.75 and the balance of $18,092.25 still remains unpaid to me.

(d) having ignored the express and implied terms of the said written memorandum, and having in effect resiled and freed himself from the said terms and having any words and conduct indicated to me that the said memorandum was not not to be relied or acted upon, the said Datuk P. Suppiah unilaterally and at his own whims and fancy and without my knowledge or consent and with full knowledge that both in law and in equity he was not entitled to do so, transferred the said land into his name and immediately thereafter at lighting haste transferred the land into the name of the Applicant without giving me the promised one

year within which to re-purchase or redeem the said land from him.

17. The Applicant's own title and claim to my land is in turn defeasible and liable to be set aside under the National Land Code and under the inherent equitable jurisdiction of this Honourable Court by reason of the fact that he is not a purchaser in good faith for valuable consideration and without notice. For I honestly believe that :-

(a) the Applicant who is an Advocate & Solicitor in Singapore was and is a very close friend of Datuk P. Suppiah and Datuk Jajinder Singh and having been in their company more often than not had, all along, notice and knowledge of how and why I got involved in this purported transaction.

(b) he also had knowledge that Datuk P. Suppiah had sued and obtained a judgment against Dr. Das in the Singapore High Court;

(c) he never provided any valuable consideration for the alleged purchase of my said land from Datuk P. Suppiah and I put him to strictly prove otherwise;

(d) he merely holds my said land as the bare trustee or nominee of Datuk P. Suppiah and/or Datuk Jajinder Singh;

(e) he lent his name to the said Datuk P. Suppiah and/or Datuk Jajinder Singh with full knowledge that the transfer

effected by and into the name of Datuk P.Suppiah was improper, inequitable and unlawful;

(f) his intentions and motives in lending his name was to assist the said Datuk P.Suppiah or Datuk Jajinder Singh to defeat my claims in the guise of a bona fide purchaser for value without notice.

18. I am informed and advised by my Solicitors, which I verily believe that initially and basically the transaction between me and the said Datuk P. Suppiah is a security transaction, my land being the security and that being so it is in fact a mortgage transaction in which the equity of redemption is never lost, fettered or clogged without the sanction of the Court.

19. Further, in view of the fact that the Applicant is now proposing to or in the process of selling the 70 sub-divided lots to private purchasers, I am humbly of the opinion that my private caveat over the said 70 lots ought to remain in force for if the same are removed, the lots are lisble to be sold to numerous private purchasers and thereafter it would become more difficult or even impossible to prosecute or enforce my claims or rights against those numerous purchasers.

20. I am informed and advised which I verily believe that my caveats do not create any new or additional rights for me except that they preserve the status quo pending the final adjudication and determination of my claims by

P 113 (E15)
Affidavit of
Tara Rajaratnam
Motion No. 46
of 1977
19th January 1978
(Cont'd)

this Honourable Court.

21. In the premises, I humbly pray that his Honourable Court will find it fit to dismiss the Application herein with costs and preserve the status quo until this Honourable Court has had an opportunity to hear and determine fully and finally the competing claims of the Applicant and myself over the said piece of land.

Affirmed by the abovenamed)
Tara Rajaratnam at Johore)
Bahru this 19th day of)
January, 1978)

Before me,

Sdg.
Commissioner for Oaths,
Johore Bahru.

A IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU.

ORIGINATING MOTION NO. 46 OF 1977

In the Matter of Section 327 of the National Land Code

B And

In the Matter of the 70 pieces of land under Lot Nos.2062 to 2131 and Q.T.Nos.20362 to 20451 in the Mukim
10 of Senai/Kulai, Johore

C And

In the matter of Private Caveat Vol. 52 Fol.28 Serial No.379/77 dated 10.10.77 in the Registry of Titles Johore Bahru, Johore

D Between

Arul Chandran ... Applicant

And

20 Tara Rajaratnam ... Respondent

A F F I D A V I T

E, I, ARUL CHANDRAN, of No.26 Bukit Tunggal road, Singapore, the abovenamed Applicant, solemnly and sincerely affirm as follows :

1. The Registrar of Titles, by Form 19A dated
F 19.6.76 of the National Land Code served on me as the registered proprietor of the piece of
30 land held under Certificate of Title No.13817 for Lot No.6025 estimated to contain an area
G of 5 Acres informed me that he had in exercise of the powers conferred on him by Section 324 of the said Code on the Application of the Respondent herein entered a private caveat upon
H the register document of the title in respect of the said land.

A copy of the said Form is annexed hereto and marked as "A.1".

40 I 2. On receiving "A.1" I caused my Solicitors,

Messrs. Suppiah & Singh to write a letter to the said Registrar of Titles (which they did and which is dated 24.6.76) asking him to remove the said Caveat pursuant to Section 326 of the said Code.

A copy of the said letter is annexed hereto and marked as "A.2".

3. The Said Registrar by Form 19C and pursuant to Section 326 of the said Code sent to the Respondent herein informed her that in exercise of the powers conferred on him by Section 326 of the said Code he shall at the expiry of the period of one month from the date of service of the said Notice, or of such further period (if any) as the Court may order, remove the said Caveat.

A copy of the said Form is annexed hereto and marked as "A.3".

4. As the Respondent had failed to make an Application to Court to have the said Caveat extended beyond the period of one month it lapsed and the said Registrar by letter dated 3.8.76 informed my said Solicitors that he had removed the said Caveat pursuant to Section 326 of the said Code.

A copy of the said letter is annexed hereto and marked as "A.4"

AFFIRMED by the abovenamed)
ARUL CHANDRAN at Singapore) Sdg: Arul Chandran
this 23rd day of January,)
1978)

Before me

1152 Sdg:

Commissioner for Oaths

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 46 OF 1977

Between

Amul Chandran ... Applicant

And

Tara Rajaratnam ... Respondent

JUDGMENT OF SYED OTHMAN, J. (Pages 261 to 271)

Reported in 1979(2) MLJ Page 172 - Also at Page 92 of Volume 7

ARUL CHANDRAN v. TARA RAJARATNAM

[O.C.J. (Syed Othman J.) April 17, 1978]
[Johor Bahru — Originating Motion No. 46 of 1977]

Land Law — Caveat — Application to remove caveat — National Land Code, s. 326.

The applicant in this case sought to remove a private caveat lodged by the respondent in respect of 70 pieces of land in Johor. The applicant became the registered proprietor of the said land by a transfer on October 10, 1975. In an earlier action, the respondent was ordered by the court on August 9, 1977 to deliver up possession of the said land. The respondent's application for stay was refused.

The respondent contended that she was the lawful equitable owner of the land. She claimed that on March 30, 1974 at the request of her husband and her brother-in-law she agreed to charge the land to one *P.S.* to obtain a loan of $220,000. The respondent claimed that *P.S.* had agreed that he would not sell the land within one year of the transfer of the land to his name and that her consent was necessary in the event of sale by *P.S.* She contended that *P.S.* in violation of the agreement had after having the land registered in his name on July 21, 1975 purported to sell and transfer the land to the applicant on August 9, 1975. The respondent claimed that the said transfer was invalid and inoperative in law and that she had a caveatable interest in the land.

Held: (1) the extinction of a caveat is final and irrevocable. In the present case, the removal by the Collector of the caveat had the effect of extinguishing it;

(2) under section 326(2) the power to extend the life of the caveat lies with the court. The action of the respondent in lodging another caveat on the same land and based on the same ground after expiry of the first one, was in effect usurpation of the powers of the court.

Cases referred to:

(1) *Damodaran* v. *Vasudeva* [1974] 1 M.L.J. 128, 129.

(2) *K.I. Muhiuddeen Rawther* v. *K.E.P. Abdul Kassim* [1959] M.L.J. 257.

ORIGINATING MOTION.

Dato P. Suppiah for the applicant.

Subramaniam P. Naicker for the respondent.

Cur. Adv. Vult.

Syed Othman J.: The applicant seeks the removal of a private caveat entered by the respondent on the register document of title in respect of 70 pieces of land held under Q.T. 20382 to 20451 in the Mukim of Senai, Kulai, Johor.

The affidavit supporting the application may be stated briefly. On October 10, 1975, by a transfer the applicant became the registered proprietor of the land held under Certificate of Title No. 13817 Mukim of Senai, Kulai. In a Johor Bahru Court action, the court on August 9, 1977 ordered the respondent to deliver up possession of the land. Her application for stay was refused. The applicant then surrendered the land to the State Authority for sub-division. The State Authority after sub-division issued 70 new titles to the applicant. The lands are now being developed into a housing estate; buildings are being constructed thereon. More than 2 acres have been surrendered, if I am not mistaken, for the purposes of providing roads and other open spaces in the housing estate.

One of the exhibits attached to the affidavit is a statutory declaration by the respondent filed when she applied for entry of the caveat. By the statutory declaration she claims that she is the lawful equitable owner of the land; that on March 30, 1974, at the request of her husband and brother-in-law, Dr. Das, she entered into a written agreement with Dato P. Suppiah, an advocate & solicitor here, charging the said property to obtain a loan of $220,000; it was agreed that Dato Suppiah would not sell the land within one year of the transfer of the land to his name and that her consent was necessary in the event of sale by Dato Suppiah, and that Dato Suppiah in violation of the agreement, after having the land registered in his name on July 21, 1975, purported to sell and transfer the land to the applicant on August 9, 1975; she believes that the transfer to the applicant is bad, invalid and inoperative in law.

In reply to the application to remove the caveat, the respondent has filed a rather lengthy affidavit, which consists mainly of arguments, law and advice by solicitors. I must remind the solicitors who prepared the affidavit that in such an affidavit the court is merely concerned with facts, which would show or tend to show that the respondent has the right to maintain the caveat. The affidavit may be put briefly thus: she asserts that the transfer to the applicant was bad in law, and the order granted by the court to Dato Suppiah was possession and not ownership; she believes that the transfer to the applicant and sub-division were effected to defeat her claim to the land. Paragraphs 9 to 12 read as follows:

"9. I humbly say that I have a caveatable interest in the said land in that:—

(a) the alleged or purported sale and transfer of my said land to the applicant's immediate predecessor-in-title, one Datuk P. Suppiah was procured or brought about by misrepresentation or fraud and hence liable to be defeated or set aside in my favour;

(b) the applicant, who purportedly acquired the said land from the said Datuk P. Suppiah, is not a purchaser in good faith for valuable consideration and without notice under the National Land Code, and whose title is therefore liable to be defeated or set aside in my favour.

10. Datuk P. Suppiah's rights and title to the said land purportedly arose out of a written memorandum and an indorsement thereto executed respectively by me and the said Datuk P. Suppiah (A copy of the said memorandum with the said indorsement is exhibited herewith and marked 'TR 2').

11. I was induced and persuaded to agree to the transfer of my said land to Datuk P. Suppiah on the strength and for reasons of the various representations expressed, apparent or implied in the said memorandum and the indorsement thereto.

12. The expressed representations, to the best of my understanding are:—

(a) that the total consideration for the land is $220,000;

(b) that out of the said $220,000 a sum of $110,000 will be paid to me and/or to my account, and that out of the said sum of $110,000 a certain amount will be for the discharge of my land from the Kulai Chung Khiaw Bank and the balance paid to me;

(c) that as to the remaining $110,000 the same to be paid to or to the account of one Datuk Jaginder Singh by way of settling and discharging a debt of that amount owing to the said Datuk Jaginder Singh from my brother-in-law, one Dr. K. S. Das.

(d) that I would be given one year to repay the sum of $220,000 and to have the property retransferred into my name."

The consideration of transfer as shown in one of the exhibits to the affidavit reads as follows:

"I, Tara Rajaratnam (f) NRIC. No. 2317344 of No. 76, Main Road, Kulai, Johore, proprietor of the land described in the Schedule below and the house erected thereon and known as KLBSK 681, Kulai Besar, Kulai, Johore, hereby

confirm that the consideration of $220,000 referred to in the Transfer executed by me in respect of the said land in favour of Pakiasamy Suppiah of No. 33, Jalan Keruing, Kebun Teh Park, Johore Bahru is arrived at as follows:—
(a) in consideration of the said P. Suppiah paying the sum of Dollars $103,658.44 which is the amount due from me to the Chung Khiaw Bank Kulai Branch, as at March 8, 1974 as stated in their letter dated March 14, 1974 which is attached herewith and marked 'A' on the Charges executed by me in their favour and a further sum of $6,341.56 (making in all $110,000) part of which is for additional interest payable to the said Bank as from March 9, 1974 to the date of Transfer and the balance is to be received by me.
(b) further sum of $110,000 is in consideration of the said P. Suppiah paying Datuk Jagindar Singh of No. 41, Jalan Waspada, Johore Bahru, being the amount payable by my brother-in-law Dr. Krishna Shivadas (also known as Dr. Das) of No. 25, Jalan Waspada, Johore Bahru, to the said Datuk Jagindar Singh who will be paying to the Hongkong & Shanghai Bank, Collyer Quay, Singapore, the sum of $110,000 (which I hereby agree) being the loan granted to my said brother-in-law by the said Datuk Jagindar Singh.

The Schedule referred to above.

Mukim	*Lot No.*	*Description and No. of Title*	*Share of Land (if any)*	*Registered No. of lease/ sub-lease (if any)*	*Registered No. of Charge (if any)*
Senai Kulai	6025	Certificate of Title No. 13817 for area 5 acres 0 r. 00 p. or thereabouts	Whole	Nil	Nil

Dated this 30th day of March, 1974.

Signed K.V. DEVAN
Witnessed by

Signed by the abovenamed
TARA RAJARATNAM

I, the above named Pakrisamy Suppiah hereby confirm, agree, and undertake not to sell the said land and house to anyone for one year without the consent of the said Tara Rajaratnam (f) and further undertake to transfer the said land and house to her within one year in the event of her paying me the sum of $220,000 (Dollars two hundred and twenty thousand only) the consideration mentioned as above.

Witnessed by
Sgd. C. SIVANATHAN

Sgd. P. SUPPIAH"

The affidavit further says that the transfer to the applicant was not a *bona fide* purchase as he is an advocate and solicitor in Singapore and a close friend of Dato P. Suppiah and Dato Jaginder Singh.

I find that the respondent in the statutory declaration attached to her application for entry of the caveat has not quite correct in construing the transfer document. In the statutory declaration she states:

"... I entered into a written agreement with one P. Su iah, charging the said property by way of security in order to obtain a loan of $220,000.

3. It was agreed that the said P. Suppiah would not sell the said property within one year of the transfer of the same into his name. It was further agreed that my consent was necessary in the event of a sale by the said P. Suppiah."

The construction of the transfer document indicates that performance must have been completed by Dato Suppiah as the material parts in paragraphs (a) and (b) in the consideration of sale read "... in consideration of ... P. Suppiah paying...". As regards what is said by the respondent to be an agreement not to sell the land, as far as I can see, the appended note at the bottom shown above was a mere undertaking, and does not have the effect of a binding agreement giving the right of redemption within the stated one year, as stated by the respondent. In any case, it was clearly to be operative for one year from the date of transfer document i.e. March 30, 1974 and not from the date of registration of transfer, as stated by the respondent.

I also cannot see that there is anything in the memorandum of transfer which suggests that there was fraud or misrepresentation by Dato P. Suppiah as alleged. The indications from the respondent's own affidavit are that she entered into the transaction at the instance of the husband and the brother-in-law. Her quarrel or dissatisfaction seems to me to be with either of them or both. They must have been present when she entered into the transaction. Further in the court action against her for delivery of possession of the land, this ground was not raised at all. Neither was it mentioned in the application for stay of execution. I remember distinctly that she stated in her application that she was willing and had all the intentions to repurchase the land but did not have the $220,000 to pay Dato Suppiah. This statement cancels any suggestion of fraud or misrepresentation. Coming at this late stage, I have a strong feeling that the ground is being built up. From the respondent's affidavit the allegation appears to relate to events after the transaction and not at the time of transaction.

The contention by the respondent that the order of the court was merely for possession and not ownership is, I would say, is an idle play on words. The action was to recover possession from the respondent, as she was still occupying the land after having sold the land. The court's order was to enable the purchaser to enjoy his full rights as owner.

The respondent claims that the transfer of the land by Dato Suppiah to the applicant was in effect bogus. The reasons given are that Dato Jaginder Singh, Dato Suppiah and the applicant are friends and always seen together. It is not shown how the respondent knows that the three are always in each other's company. I cannot imagine that the respondent can be tracking their movements and can be around when the three are together, as the respondent is a housewife. In any case, I cannot accept that simply because a person sells his property to a friend under the circumstances, the transaction is bogus. In the absence of cogent evidence, I would presume that the applicant was a *bona fide* purchaser for value.

The applicant's side contends in effect that by reason of the surrender to the State Authority of the whole land which had been held under the certificate of title, and then realienation by the State Authority of the portions of the land under 70 separate titles, the land has lost its original character and the new titles in effect are freed and discharged from all other claims, titles and interest. Reference is made to section 131(a) of the National Land Code which provides to the effect that land forfeited under the Act and reverted to the State Authority shall be freed and discharged from all titles and interests subsisting and capable of arising immediately before the forfeiture

took effect. By section 199(1) the provisions of section 131 shall apply to surrendered land. My view is that the provisions are intended to apply to the State Authority and not to the holder of the land as against any person claiming title or interest in the land. I am also inclined to think that in whatever clothing a title of land may be, if it is identifiable to be the land affected by a claim to title or interest, then a caveat can be entered. The surrender to the State Authority, in the circumstances of this case, was merely for the purpose of sub-division and the issue of separate titles for the sub-divided portions of the land to enable the owner to dispose of them separately. Title numbers are merely brands given to the land. They do not change the material i.e. the land. They do not affect a claimant's rights.

I come to the most significant point that has been raised. It is shown by the applicant that when the land was held under certificate of title, the respondent caveated it on June 15, 1976; on June 30, 1976 at the instance of the applicant, the Collector issued a notice in Form 19C of intended removal of the caveat at the expiry of a month from service of the notice. The respondent did nothing and the Collector after the expiry of a month removed the caveat.

In dealing with this point, I need only advert to the judgment of Syed Agil Barakbah J. in *Damodaran* v. *Vasudeva*[1] where at page 129 he discussed several authorities. He referred to *K.I. Muhiuddeen Rawther* v. *K.E.P. Abdul Kassim*[2] where Ong J. (as he then was) said that the extinction of a caveat is final and irrevocable. It seems to be established law that the court has no power to remove, renew or extend a caveat after its lapse. I should add if it is based on the same claim. Under section 326(2) of the National Land Code the power to extend the life of the caveat lies with the court. The respondent ignored the Collector's notice to remove the caveat. She did not apply to the court for extension. Applying the above principle, the removal by the Collector has the effect of extinguishing the caveat. In my view, the action of the respondent in lodging another caveat, based on the same claim after the Collector had removed the first caveat and without seeking the court's order, was tantamount not only to spurning the Collector's act done according to law, but also to usurping the powers of the court. Considering this act of the respondent and then her non-disclosure to the court that the first caveat had been removed, I do not think she has any ground, equitable or legal, to maintain the caveat. Further, the land, by reason of her own act in having transferred it, has lost its original user, as it is being developed into a housing estate. The applicant must have expended substantial sums for the development. Regard must be had to this and to public interest as well. But in spite of all this, I would not say that the respondent is without remedy. If she could establish her claim, damages should be appropriate remedy in the circumstances of the case.

I hereby order that the caveat be removed. Costs to the applicant.

Order accordingly.

Solicitors: *Suppiah & Singh; Subra Naicker & Co.*

PUBLIC PROSECUTOR v. OH KENG SENG

[O.C.J. (Ajaib Singh J.) October 18, 1978]
[Seremban — Criminal Trial No. 2 of 1976]

Sedition — Freedom of speech — Limitations imposed by law — Intention of accused irrelevant — Sedition Act, 1948 (Revised 1969), ss. 3(1) & 4(1)(b).

Criminal Law & Procedure — Charge of sedition — Charge lacking in particulars — Charge did not specify particular category of seditious tendency — Sedition Act, 1948 (Revised 1969), ss. 3(1) & 4(1)(b).

The accused in this case was charged as follows:—

"That you on the 23rd day of June, 1972 between 8.40 p.m. and 9.35 p.m. at the Padang Besar, Tampin, in the District of Tampin, in the State of Negeri Sembilan, uttered seditious words in Mandarin (the full translation of the text of which is attached as Schedule 'A' to this charge) and that you have thereby committed an offence under section 4(1)(b) of the Sedition Act, 1948 (Revised 1969), and punishable under section 4(1) of the said Act."

The trial judge found the said charge defective and highly prejudicial to the accused as it did not specify the particular category of seditious tendency as defined in section 3(1) of the Sedition Act, 1948.

The trial court amended the charge to read as follows: "That you on June 23, 1972 between 8.40 p.m. and 9.35 p.m. at the Padang Besar, Tampin, in the District of Tampin, in the State of Negeri Sembilan, uttered seditious words in Mandarin (the full translation of the text of which is attached as Schedule 'A' to this charge) that is to say, words having a seditious tendency as defined in section 3(1)(a) and 3(1)(e) of the Sedition Act 1948 (Revised 1969) namely, to bring into hatred, contempt and to excite disaffection against the Government and to promote feelings of ill-will and hostility between different races of the population, and that you have thereby committed an offence under section 4(1)(b) of the Sedition Act 1948 (Revised 1969) and punishable under section 4(1) of the said Act."

The accused did not seriously deny that he had made the speech which was the subject-matter of the charge. He contended, however, that his speech was a fair criticism of government policies, that he had no intention of causing any racial trouble and that he never advocated to the people that they should take the law into their own hands.

Held: (1) *bona fide* and fair criticism of government policies and of opposition political parties is not within the mischief of the Sedition Act so long as the speaker does not exceed the bounds allowed to him under the law;

(2) the intention of the accused when he made the speech and used words which are alleged to be seditious is not material or relevant for it is provided in section 3(3) of the Sedition Act that the intention of the speaker shall be deemed to be irrelevant if in fact the words have a seditious tendency;

(3) to establish its case against the accused the prosecution is not obliged to prove that anything said in his speech was true or false or that it caused any disturbance or a breach of the peace;

(4) the accused in this case had not succeeded in establishing even on a balance of probabilities that the speech delivered by the accused came within any of the permissible limits as set out in section (2) of the Sedition Act.

Case referred to:-

(1) *Yoh Meng Heng* v. *Public Prosecutor* [1970] 1 M.L.J. 14.

CRIMINAL TRIAL.

Razalli bin Hassan (Deputy Public Prosecutor) for the prosecution.

Yeap Ghim Guan (*John Fernandez* with him) for the accused.

Cur. Adv. Vult.

Ajaib Singh J.: The accused was charged as follows: —

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 46 OF 1977

In the Matter of Section 327 of the National Land Code

And

In the Matter of the 70 pieces of Land under Lot Nos. 2062 to 2131 and Q.T.Nos. 20382 to 20451 in the Mukim of Senai/Kulai, Johore

And

In the Matter of Private Caveat Vol. 52 Fol. 28 Serial No. 379/77 dated 10.10.77 in the Registry of Titles Johore Bahru, Johore

Between

Arul Chandran ... Applicant

And

Tara Rajaratnam ... Respondent

BEFORE THE HONOURABLE MR. JUSTICE SYED OTHMAN — IN OPEN COURT THIS 17TH DAY OF APRIL, 1978

O R D E R

UPON the application of the abovenamed Applicant made by way of Motion entered No. 80 of 1977 coming on for hearing on the 8th day of January 1978 the 26th day of January 1978 and on the 1st day of February 1978 when Judgment was reserved to a date to be fixed AND UPON READING the Affidavit of Arul Chandran dated the 21st day of December 1977 and filed herein on the 22nd day of December, 1977 and the exhibits referred to therein and the Affidavit of Tara Rajaratnam affirmed on the 19th day of January 1978 and filed herein on the 21st day of January 1978 and the exhibits referred to therein AND UPON READING a further Affidavit

of Arul Chandran dated the 23rd day of January 1978 and filed herein on the 24th day of January 1978 and the exhibits referred to therein AND UPON HEARING Dato' P.Suppiah of Counsel for the Applicant and Mr.Subra Naicker of Counsel for the Respondent and the same coming on for judgment this day IT IS HEARBY ORDERED that the Private Caveat Vol.52 Fol.28 Serial No.379/77 in the Registry of Titles Johore in respect of the 70 pieces of land in Lot Nos.2062 to 2131 and Q.T.Nos. 20382 to 20451 in the Mukim of Senai/Kulai Johore entered at the instance of the Respondent be removed AND IT IS HEREBY DIRECTED that the Registrar of Titles, Johore, do remove the said Private Caveat and references thereto in the register documents of title AND IT IS LASTLY ORDERED that the costs of this application be taxed by the Senior Assistant Registrar of this Honourable Court and paid by the Respondent to the Applicant or his Solicitors.

Given under my hand and the Seal of the Court, this 17th day of April, 1978.

Sdg: Rohani bte.Mohd.Dali

Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

P 113

NOTICE OF APPEAL
MOTION NO. 46 OF 1977

IN THE FEDERAL COURT IN MALAYSIA.

FEDERAL COURT CIVIL APPEAL NO. 71 OF 1978.

Between

Tara Rajaratnam ... Appellant.

And

Arul Chandran ... Respondent.

(In the Matter of Johore Bahru High Court Notice of Originating Motion No. 46 of 1977)

In the Matter of Section 327 of the National Land Code

And

In the Matter of the 70 pieces of Land under Lot Nos.2062 to 2131 and Q.T. Nos.20362 to 20451 in the Mukim of Senai/Kulai, Johore.

And

In the Matter of Private Caveat Vol.52 Fol.28 Serial No.379/77 dated 10.10.77 in the Registry of Titles Johore Bahru, Johore

Between

Arul Chandran ... Applicant.

And

Tara Rajaratnam ... Respondent.

NOTICE OF APPEAL.

TAKE NOTICE that Tara Rajaratnam, the Appellant, being dissatisfied with the decision of the Honourable Mr.Justice Datuk Syed Othman given at Johore Bahru on the 17th day of April, 1978 upon the Application of the Applicant by way of Notice of Originating Motion Entered No. 80 of 1977 appeals to the Court of Appeal against the whole of the said decision.

Dated this 17th day of April, 1978.

Tara.

APPELLANT.

P 113 (E19)
Notice of Appeal
Motion No. 46
of 1977
17th April
1978 (Cont'd)

To:

1. The Chief Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

2. The Sr.Assistant Registrar,
High Court, Malaya,
Johore Bahru.

3. The abovenamed Applicant,
Arul Chandran and/or his
Solicitors Messrs.Supplah &
Singh of No.2D, Jalan Ah Fook,
Johore Bahru. 10

This Notice of Appeal is filed by Messrs.Subra Naidoo & Co; Advocates & Solicitors of No.45, 1st.Floor, Jalan Ibrahim, Johore Bahru, Johore Solicitors for the Appellant.

Filed at Johore Bahru this 19th day of April, 1978.

Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

Deposit of $500.00 lodged this 19th day of April, 1978. 20

Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
ORIGINATING MOTION NO. 46 OF 1977

Between

Arul Chandran ... Applicant

And

Tara Rajaratnam ... Respondent

Notes of Evidence

Before me in Open Court,
This 8th day of January, 1978.
Sgd: S.Othman Ali.
Judge, Malaya.

O.M.46/77

A Suppiah for applicant
Subramaniam for respondent.
Suppiah Application to set aside the caveat.
Respondent has entered caveat in respect of 70
B pieces of land. Section 323 National Land Code
sets out when a person can lodge a caveat - claim
to title and registrable interest. Respondent
can only enter caveat if she was claiming title
C to any alienated land. Statutory declaration
of respondent. See paragraph 1.
This is not land she has caveated. See 70 pieces
as shown in schedule. Paragraph 6 Statement of
D Defence. Land has been sub-divided. In paragraph
7 she mentions her right to property. Not disclosed
she has entered 70 caveats. Applicant obtained
possession of land referred to in paragraph 1
E Statement of Defence.
Sessions Court C.A. 114/76. See applicant's
affidavit paragraph 4. Respondent applied for stay.

P 113 (E20)
Judge's Notes
Motion No. 46
of 1977
15th May 1978
(Cont'd)

A This was refused. See paragraph 5. Title referred to in paragraph 2 had been destroyed. She has no right to caveat the 70 pieces of land. Original land surrendered to State

B Government for sub-division. Section 46(1)(d) N.L.C. Part XII - reads affidavit paragraph 3 et. seq.

Subramaniam Respondent filed caveats on 70 10

C pieces of land. Basis present 70 pieces were formerly from the single piece of land. Part XII refers to something else. The single piece of land was transferred by the respondent to

D Suppiah on 30th March, 1974. The same piece of land was transferred by Suppiah to applicant on 31st July, 1975 contrary to the terms of the written memorandum. Written memorandum not 20

E filed. I was overseas, come back yesterday on 7th.

Court Till 25th January, 1978, 9.00a.m.

This 26th day of January, 1978

Subramaniam (Cont.)

F Surrender of land. Realienation in sub-divided lots. Different identity. Section 199 does not apply. See S185 - (a) "the whole thereof; or (b) any part thereof - educational purposes". 30

G Even if such a surrender is valid, the procedure unlawful. There was a caveat. Section 196(1)(c). Sub-section 2(d) land under caveat cannot be surrendered without consent of caveator. The land office ignored the provision. See Exhibit 1 Encl. (S). So long as there was caveat, no surrender.

A There was caveat over the whole piece. This lapsed. Present caveat over 70 titles on same piece of land. Same ground . This is caveat referred to in letter in Exhibit 1 encl. 8.

B Court I may have to deal with this point, in view of letter from Commissioner.

Till 1st February, 1978.

This 1st day of February, 1978.

10 C Parties as before.

Subramaniam Can't trace any authority which says that whether applicant could enter series of caveats. But see Section 329(2) when court

D has ordered or refused extension of caveat. This provision has a bearing. Commentary by Wong page 442. Footnote 12. Syed Agil J - 2 caveats cannot be filed together.

E Suppiah Since it is agreed that application

20 for sub-division was long before caveat Section 196 N.L.C. should apply. "No surrender - at the time when the approval was applied for".

F At the time there was no caveat.

Successive caveats. Danodaran v. Vesudeva (1974) MLJ 128 see page 129. Raja Azlan's judgment in Lim Kiat Noy v. Hamzah (1966) 2

G MLJ 175. Land surrendered under section 197. Form 12A. NLC.

C.A.V.

30 This 17th day of April, 1978.

H Parties as before.

Judgment delivered. Caveat removed. Costs to the applicant.

Sgd: S.Othman Ali.

P 113 (E20)

Judge's Notes
Motion No. 46 of
1977
15th May 1978
(Cont'd)

Notes of evidence
O.M. No. 46/77

Certified true copy.

Sgd: C.S. Panshi
Setia-usaha Kepada Hakim
Mahkamah Tinggi,
Johore Bahru.

15.5.78

MEMORANDUM OF APPEAL
BY TARA RAJARATNAM
MOTION NO. 46 OF 1977

A IN THE FEDERAL COURT IN MALAYSIA.

FEDERAL COURT CIVIL APPEAL NO. 71 OF 1978.

Between

Tara Rajaratnam ... Appellant

B And

Arul Chandran ... Respondent

(In the Matter of Johore Bahru High Court Notice of Originating Motion No.46 of 1977)

C In the Matter of Section 327 of the
10 National Land Code

And

In the Matter of the 70 pieces of Land under Lot Nos.2062 to 2131 and
D Q.T.Nos.20382 to 20451 in the Mukim of Semai/Kulai

And

In the Matter of Private Caveat Vol.52
E Fol.28 Serial No.379/77 dated 10.10.77 in the Registry of Titles Johore Bahru,
20 Johore

Between

Arul Chandran ... Applicant

F And

Tara Rajaratnam ... Respondent

MEMORANDUM OF APPEAL.

Tara Rajaratnam, the appellant abovenamed, appeals to the Court of Appeal against the whole of
G the decision of the Honourable Mr.Justice Datuk Syed
30 Othman given at Johore Bahru on the 17th day of April, 1978 on the following grounds :

1. The learned Judge erred in law and/or in
H fact in holding that by reason of the wording and language of the written memorandum performance and full payment

P 113 (E21)

Memorandum of Appeal by Tara Rajaratnam Motion No. 46 of 1977 6th June 1978 (Cont'd)

must be presumed to have been completed; whereas there was no evidence shown to that effect.

2. The learned Judge erred in law and/or in fact in holding that the repurchase or redemption period of one year was operative from the date of the memorandum as opposed to the date of tne instrument of transfer.

3. The learned Judge erred in law and/or fact in holding that the repurchase or redemption period of one year was operative from the date of memorandum as opposed to from the date of performance of the terms and provisions of the said memorandum.

4. The learned Judge erred in law and/or in fact in holding that the undertaking by Dato P. Suppiah contained in the said memorandum does not have the effect of a binding agreement giving the Appellant the right of redemption within the stated one year.

5. The learned Judge erred in law and/or in fact in construing the transaction between the Appellant and the said Dato P. Suppiah as a sale as opposed to a security or mortgage transaction.

6. The learned Judge erred in law and/or in fact in dismissing and disregarding the Appellant's contentions of misrepresentation and fraud on the part of Dato P. Suppiah notwithstanding that the said Dato P.Suppiah did not counter or deny the truth of the said contentions.

7. The learned Judge erred in law and/or in fact in dismissing and disregarding the Appellant's contentions that the Respondent is a mere nominee and not a bona fide purchaser for value without notice notwithstanding that the Respondent did not counter or deny the truth of the said contentions.

8. The learned Judge erred in fact in holding that the Appellant's allegations and contentions of misrepresentations and fraud against the said Dato P. Suppiah and the Respondent were only raised herein for the first time and never raised before or at the Court below.

9. The learned Judge erred in law in holding valid the judgment order of the Sessions Court in Johore Bahru while the same is being appealed against and the said appeal has not been heard and determined by the High Court at Johore Bahru.

10. The learned Judge erred in law in holding that by reason of the lapse of the earlier caveat the Appellant is not entitled to file a fresh caveat on the sub-divided 70 new titles and in this respect the learned Judge failed to place proper construction on Section 329(2) of the National Land Code (Act 56 of 1965).

11. The learned Judge erred in fact in holding that the conversion of the said piece of land into a housing estate and the incurring

P 113 (E21)
Memorandum of Appeal
by Tara Rajaratnam
Motion No. 46
of 1977
6th June 1978
(Cont'd)

of substantial sums for its development by the Respondent is a further ground for the removal of the caveats.

12. The learned Judge erred in law in failing to attach or give proper or adequate weight to the various allegations which allegations were never refuted or countered and which if proved to be true, would result in the Honourable Court setting aside the transfers and restoring the said piece of land to the Appellant.

Dated this 6th day of June, 1978.

Sd. Subra Naicker & Co.
Solicitors for the Appellant.

To:

1. The Chief Registrar,
   Federal Court, Malaysia,
   Kuala Lumpur.

2. The Sr.Assistant Registrar,
   High Court, Malaya,
   Johore Bahru.

3. The abovenamed Applicant,
   Arul Chandran and/or his
   Solicitors Messrs.Suppiah &
   Singh of No.2D, Jalan Ah Fook,
   Johore Bahru.

P 108 WRIT AND STATEMENT OF CLAIM
SUIT NO. 1224 OF 1975

P 108 (F1)
Writ and Statement of Claim Suit No. 1224 of 1975
16th April 1975

WRIT OF SUMMONS

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 1224 of 1975. } Between

P. SUPPIAH Plaintiff

And

1169
16/4

K.S. DAS Defendant

THE HONOURABLE MR. JUSTICE WEE CHONG JIN, CHIEF JUSTICE OF SINGAPORE, IN THE NAME AND ON BEHALF OF THE PRESIDENT OF THE REPUBLIC OF SINGAPORE.

To:-

K.S. Das,
Regional Medidata Centre Pte. Ltd.,
5th Floor, D.B.S. Building,
Shenton Way,
Singapore 1,
General Medical Practitioner.

We command you that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in a cause at the suit of

and take notice, that in default of your so doing the plaintiff may proceed therein to judgment and execution.

WITNESS Mr. TAN WEE KIAN, Registrar of the Supreme Court in Singapore, the 16th day of April 1975.

P. Suppiah

Plaintiff's Solicitors

Registrar
Supreme Court, Singapore.

This Writ may not be served more than twelve calendar months after the above date unless renewed by order of Court.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by a solicitor at the Registry of the Supreme Court.

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for $5.00, with an addressed envelope to the Registrar, Supreme Court, Singapore, 6..

Notes:- If the defendant enters an appearance, then, unless a summons for judgment is served on him in the meantime, he must also serve a defence on the solicitor for the plaintiff within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

STATEMENT OF CLAIM

P 108 (F1)

Writ and Statement of Claim

Suit No. 1224 of 1975

16th April 1975 (Cont'd)

~~The Plaintiff's claim is for~~

1. The Defendant drew a cheque for $149,520/- dated 25th March 1975, upon the Moscow Narodny Bank Limited (Singapore Branch) payable to the Plaintiff.

2. The Plaintiff duly presented the said cheque for payment on the 25th of March 1975, but it was dishonoured.

3. By letter dated the 9th of April 1975, the Plaintiff duly gave to the Defendant notice of the said dishonour.

AND the Plaintiff claims against the Defendant as drawer the said sum of $149,520/- and costs. 10

Solicitors for the Plaintiff

And $ 125/- (or such sum as may be allowed on taxation) for costs, and also, if the Plaintiff obtains an order for substituted service, the further sum of $ 60/- (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the Plaintiff or his/[redacted] Solicitors within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed, but if it appears from the indorsement on the writ that the Plaintiff is/[redacted] resident outside the scheduled territories, as defined by the Exchange Control Act, (Chapter 245, 1970 Edition) or is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed and costs is paid into Court within the said time and notice of such payment in is given to the Plaintiff or his/[redacted] Solicitors.

This Writ is issued by Messrs. P. Suppiah & Co. of Rooms Nos. 401-403, People's Insurance Building, No. 6, Cecil Street, Singapore, Solicitors for the said plaintiff whose address is at Rooms Nos.401-403, People's Insurance Building, No.6 Cecil Street, Singapore, Advocate & Solicitor.

NOTICE OF SERVICE ON MANAGER OF PARTNERSHIP

Take notice that the writ of summons is served on you as the person having the control or management of the partnership business of the above-named Defendant firm of

(and also as partner in the said firm(a).)

Dated the day of , 197 .

Solicitors for the Plaintiff

Note: (a).- If the person served with the writ of summons is served in the two capacities of manager and partner, the clause should be left standing. If he is served as manager only, it should be struck out.

This Writ was served by me MD. KADER B. MD. KASSIM
by way of personal service
(~~or as may be~~) on the Defendant
(~~who is known to me~~) (~~or~~ who was pointed out to me by plaintiffs Lee P. Govindasamy
) (~~or who admitted to me that he was~~
) at (place) Rm 537, D.B.S. Bldg, Shenton Way.
Singapore
on Wednesday the 16TH day of April 1975 @ 2.45 PM.

Indorsed the 16th day of April 1975.

Process Server

P 108 (P1)
Writ and Statement of Claim
Suit No. 1224 of 1975
16th April 1975
(Cont'd)

2.05

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No.
of 1975.

Between

P. SUPPIAH Plaintiff

And

K.S. DAS Defendant

WRIT OF SUMMONS

P. GOVINDASAMY.

P. SUPPIAH & CO.,
ADVOCATES & SOLICITORS,
SINGAPORE.

1172 Filed the 16th day of April 1975.

P 108

SUMMONS

SUIT NO. 1224 OF 1975

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

P 108 (F2)
Summons
Suit No. 1224 of 1975
28th April 1975

Suit No.1224 of 1975

Between

P. SUPPIAH .. Plaintiff

And

K.S. DAS .. Defendant

SUMMONS-IN-CHAMBERS

LET ALL PARTIES concerned attend before the Registrar in Chambers on Monday the 5th day of May 1975 at 10.00 o'clock in the forenoon on the hearing of an application on the part of the Plaintiff for final judgment in this action against the Defendant for the amount claimed in the Statement of Claim and costs.

Dated the 28th day of April, 1975.

Entered No. 1346 of 1975

Clerk

ASST. REGISTRAR

This Summons was taken out by Messrs. P. Suppiah & Co. of Rooms 401-403, People's Insurance Building, No.6 Cecil Street, Singapore, Solicitors for the abovenamed Plaintiff.

To: The abovenamed Defendant,
and to his Solicitors,
Messrs.R.S. Balan & Co.,
13th Floor, UIC Building,
No.5 Shenton Way,
Singapore.

P 108 (F3)
Affidavit of
P. Suppiah
Suit No. 1224 of
1975
28th April 1975

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No.1224 of 1975

Between

P. SUPPIAH .. Plaintiff

And

K.S. DAS .. Defendant

A F F I D A V I T

I, P. SUPPIAH of Rooms 401-403, People's Insurance Building, No.6 Cecil Street, Singapore, the abovenamed Plaintiff, solemnly and sincerely affirm and say as follows :

1. The Defendant K.S. Das is, and was at the commencement of this action, justly and truly indebted to me in the sum of $149,520/- for the amount of the dishonoured cheque referred to in paragraph 1 of the Statement of Claim.

2. It is within my knowledge that the said debt was incurred and is still due and owing as aforesaid.

3. I verily believe that there is no defence to this action.

AFFIRMED at Singapore this 28th day of April 1975. (Sd) P. Suppiah.

Before me,

(Sd) Mahmad Yahia Dohan.

A Commissioner for Oaths

This Affidavit is filed on behalf of the Plaintiff.

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No.1224 of 1975

Between

P. SUPPIAH .. Plaintiff

And

K.S. DAS .. Defendant

J U D G M E N T

The 5th day of May, 1975

The Defendant having entered appearance herein and the Court having under Order 14, Rule 3 ordered, by consent, that Judgment as hereinafter provided be entered for the Plaintiff against the Defendant IT IS THIS DAY ADJUDGED that the Defendant do pay the Plaintiff $149,520/- and $350/- costs.

Entered in Volume 141 Page 106
at 11.25 a.m. on the 14th day of May 1975.

ASST. REGISTRAR

Examined by:—

I certify that this is a true copy of the original.

Asst. Registrar,
Supreme Court, Singapore.
16/5/75

AFFIDAVIT OF P. SUPPIAH
CIVIL SUIT NO. 1224 OF 1975

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING SUMMONS)
)
NO. 38 OF 1975.)

In the matter of the Reciprocal Enforcement of Judgments Act 1958 (Revised - 1972)

And

In the matter of a Judgment in the High Court of the Republic of Singapore obtained in Civil Suit No. 1224 of 1975.

Between

P. SUPPIAH ... Plaintiff

And

K.S. DAS ... Defendant

A F F I D A V I T

I, P. SUPPIAH of No. 33, Jalan Keruing, Johore Bahru, solemnly and sincerely affirm and say as follows:

1. On the 5th day of May, 1975, I obtained Judgment against the Defendant herein in the High Court of the Republic of Singapore in Civil Suit No. 1224 of 1975 for the sum of $149,520-00 and $350-00 costs equivalent to M$149,819-04 and M$350-70 respectively as at the date of the said Judgment. A certified copy of the said Judgment certified by the Assistant Registrar Supreme Court Singapore and authenticated by the Seal of the said Court is now produced and shown to me and marked "P.S.1".

2. Since the said 5th day of May, 1975, when Judgment was entered against the Defendant herein I have not applied for execution of the decree in the said High Court of the Republic of Singapore neither has the Defendant herein paid anything towards the said Judgment debt.

3. The said Judgment is now enforceable in the Republic of Singapore and if the said Judgment is registered in this

- 2 -

D33 (F5)
Affidavit of P. Suppiah
Suit No. 1224 of 1975
20th May 1975 (Cont'd)

Honourable Court it is not liable to be set aside under Section 5 of the Reciprocal Enforcement of Judgments Act 1958 (Revised - 1972).

4. The Defendant herein is a Medical Practitioner having his clinic at No. 1-G, Jalan Wong Ah Fook, Johore Bahru, and is at present residing at No. 25, Jalan Waspada, Johore Bahru, a place within the jurisdiction of this Honourable Court.

5. I am desirous of having the said Judgment registered in the High Court in Malaya at Johore Bahru pursuant to Section 4(1) of the Reciprocal Enforcement of Judgments Act 1958 (Revised - 1972) and humbly ask this Honourable Court for an order that it may be so registered.

Affirmed at Johore Bahru by the above-named P. SUPPIAH this 20th day of May, 1975.

sd. P. Suppiah.

Before me:

sd. Mustaffa
Comm. for Oaths
High Court
Johor Bahru

D33 (F5)
Affidavit of
P. Suppiah
Suit No. 1224 of 1975
20th May 1975 (Cont'd)

IN THE HIGH COURT IN MALAYA AT
JOHORE BAHRU

ORIGINATING SUMMONS NO. 38 OF 1975.

In the matter of the Reciprocal Enforcement of Judgments Act 1958 (Revised - 1972)

And

In the matter of a Judgment in the High Court of the Republic of Singapore obtained in Civil Suit No. 1224 of 1975.

Between

P. SUPPIAH ... Plaintiff

And

K.S. DAS ... Defendant

J[redacted]J

A F F I D A V I T

J[redacted]J

Filed this day of 1975.

SUPPIAH & SINGH,
Advocates & Solicitors,
No. 2-D, Jalan Ah Fook,
Johore Bahru.

D11 (G1)
Statutory Declaration of Tara Rajaratnam (Disciplinary Proceedings)
25th January 1977

STATUTORY DECLARATION
OF TARA RAJARATNAM
(DISCIPLINARY PROCEEDINGS)

[redacted]

26 I 77

STAMP OFFICER
$ =0200 ¢
SINGAPORE

STATUTORY DECLARATION

I, TARA RAJARATNAM of 184 Khet Loong Gardens, Kulai affirm and say as follows:-

1. I am the wife of Krishnan Vasu Devan of the same address and Dr. Krishna Shiva Das of 25 Jalan Waspada, Johore Bahru is my brother-in-law being the brother of my said husband.

2. I have read the statutory declaration of the said Dr. Krishna Shiva Das and confirm that where reference is made to me and my said husband the facts are correct and that I otherwise believe the facts set forth in the said Dr. Krishna Shiva Das's statutory declaration.

3. I have also read the statutory declaration affirmed by my husband Krishnan Vasu Devan and I verily believe that what he has said is true.

4. The property known as Klesk 681, Kulai Besar, Kulai, Johore stands in my name and is the property of my husband and myself.

5. Sometime in March 1974 my husband informed me that my brother-in-law the said Dr. Das owed money to one, Jajindar Singh and that after discussion with my said brother-in-law and the said Jajindar Singh and one Datuk Suppiah, my husband had agreed that our Kulai property should stand as a guarantee or security for the debt which the said Jajindar Singh had paid off due to the Hongkong & Shanghai Banking Corpn. of Collyer Quay, Singapore..

6. My husband and I also had an overdraft with the

Cont'd..

Chung Khiaw Bank, Kulai branch and my husband had agreed that this overdraft would be paid off and that our property should stand as security for the repayment to the Chung Khiaw Bank of approximately $110,000 as well as the repayment to the said Hongkong & Shanghai Banking Corpn.

7. As a result on the 30th of March 1974 the said Jajindar Singh and the said Suppiah together with one, Sivananthan called on our house at Kulai and presented for my signature an agreement together with other papers. I read through the first part of the agreement and was somewhat surprised at its contents and asked the said Suppiah what the agreement was about. He told me that it was just a security for the two sums mentioned and I gathered from the agreement that it was the said Suppiah who was to advance the sum of $220,000 as the agreement alleged that it was the said Suppiah who had paid to the said Jajindar Singh the sum of $110,000 due from my brother-in-law the said Dr. Das to the said Hongkong & Shanghai Banking Corpn. in Singapore.

8. When I was told that the agreement was meant to be a security I told the said Suppiah that there was no mention of this fact in the said agreement. The said Suppiah thereupon dictated the writing which appears at the foot of the second page of the said agreement to the said Sivananthan and I then signed the agreement. There were certain other papers grouped together under the said agreement and I was asked to sign at the places indicated by the said Suppiah as he lifted up the foot of each page for this purpose.

9. It was not until proceedings were commenced against me by one, Arul Chandran, in Originating Summons No. 95 of 1976 that I discovered that as a result of signing the agreement and signing what must have been a transfer form in blank I had unwittingly and unknowingly put the said Suppiah in a position whereby he could and did sell my said property without my knowledge to the said Arul Chandran and I verily believe that the entire transaction of the said Jajindar Singh, the said Suppiah and the said Arul Chandran is a fraud on me and my husband.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1835.

DECLARED at Singapore)
this 25th day of)
January 1977)

Tara..

Before me,

Commissioner for Oaths

NG KIAN FONG
COMMISSIONER FOR OATHS
SINGAPORE

D 11 (G1)
Statutory Declaration
of Tara Rajaratnam
(Disciplinary Proceedings)
25th January 1977
(Cont'd)

Dated this day of January 1977

.....

STATUTORY DECLARATION

OF TARA RAJARATNAM

.....

MURPHY &DUNBAR
Hong Leong Building
Raffles Quay
Singapore.

D 13

STATUTORY DECLARATION
OF K.S. DAS
(DISCIPLINARY PROCEEDINGS)

D13 (G2)
Statutory
Declaration of
K.S. Das
(Disciplinary
Proceedings)
25th January 1977

ANNEXURE "A"

26 I 77

STAMP OFFICE
$ =0200
SINGAPORE

STATUTORY DECLARATION

I, DR. KRISHNA SHIVA DAS, of 25 Jalan Waspada, Johore Bahru, affirm and say as follows:-

1. I am a medical practitioner practising in Singapore and Johore.

2. My brother is Mr. Krishnan Vasu Devan of 184 Khot Loong Gardens, Kulai. My sister-in-law, my said brother's wife, is Tara Rajaratnam of the same address.

3. A few years ago I intended setting up a medical centre in Singapore in the Development Bank of Singapore Building, Shenton Way. I needed facilities because this was going to cost a fair amount of money and so after negotiations with Datuk Jajindar Singh of Johore, a partner in the firm of Suppiah & Jajindar Singh, the said Jajindar Singh arranged to guarantee overdraft facilities for me at the Hongkong & Shanghai Banking Corpn. at Collyer Quay up to a limit of $120,000.

4. This facility was granted to me in August of 1973.

5. The arrangement I had with the said Jajindar Singh was that I should pay the bank back the money within 6 months. This arrangement was not expressed in writing and was an oral agreement between us.

6. In fact my overdraft with the said bank reached the figure of $110,000 approximately.

7. I was unable to pay this money back largely as a result of the failure to obtain the payment of money which I had been expecting.

8. About the turn of the year 1973/1974 when it became apparent that I was not going to be able to repay the money within the 6 months period I made various attempts including one through a third party whereby I hoped that my own bank, the Moscow Narodny Bank, would make funds available to me. This arrangement was to prove abortive but about the beginning of 1974 the said Jajindar Singh together with Pakrisamy Suppiah of No. 33 Jalan Keruing, Kebun Teh Park, Johore Bahru, the other partner of the firm Suppiah & Jajindar Singh suggested to me that I should approach my brother the said Krishnan Vasu Devan to see if he would be prepared to put up some form of security. About this time, the exact date I do not know, Jajindar Singh paid off my overdraft to the Hongkong & Shanghai Banking Corpn.

9. In consequence of the approach made by the said Jajindar Singh and the said Suppiah, I spoke to my brother and at a later stage I understood from my brother and I verily believe that he met the said Jajindar Singh and the said Suppiah and agreed to offer as security his property in Kulai which in fact stood in his wife's name.

10. As a result my sister-in-law the said Tara Rajaratnam entered into an agreement dated the 30th March 1974 whereby in consideration of the sum of $220,000 she executed a transfer form in blank on the terms and conditions in the said agreement contained. I learnt of this from my brother and sister-in-law and verily believe that what they say is true.

11. The contents of this my statutory declaration are

known personally to me except where otherwise stated and the said contents are true to the best of my knowledge and belief.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1835.

DECLARED at Singapore)
this 25th day of)
January 1977)

Before me,

Commissioner for Oaths

NG KIAN FONG
COMMISSIONER FOR OATHS
SINGAPORE

D 13 (G2)
Statutory Declaration
of K.S. Das
(Disciplinary Proceedings)
25th January 1977
(Cont'd)

Dated this day of January 1977

.....

STATUTORY DECLARATION

OF DR. KRISHNA SHIVA

DAS

.....

MURPHY & DUNBAR
Hong Leong Building
Raffles Quay
Singapore.

STATUTORY DECLARATION OF K.V. DEVAN
(DISCIPLINARY PROCEEDINGS)

ANNEXURE "M 3"

26 I 77
STATUTORY DECLARATION

STAMP OFFICE
$ =02 00 ¢
SINGAPORE

D 14 (G3)
Statutory Declaration of K.V. Devan (Disciplinary Proceedings) 25th January 1977

I, KRISHNAN VASU DEVAN of 184 Khet Loong Gardens, Kulai, affirm and say as follows:-

1. My wife is one, Tara Rajaratnam of the same address and my brother is one, Dr. Krishna Shiva Das of 25 Jalan Waspada, Johore Bahru.

2. I have read the statutory declaration affirmed by my said brother and confirm that where reference is made to me and my said wife the facts are correct and that I otherwise believe thefacts set forth in my said brother's statutory declaration.

3. I have also read the statutory declaration affirmed by my wife Tara Rajaratnam and I verily believe that what she has said is true.

4. Sometime in March 1974 my brother spoke to me about the debt that he owed the Hongkong & Shanghai Banking Corpn. which was occasioned by his setting up a medical centre at the Development Bank of Singapore Building, Shenton Way in Singapore. He explained to me that he was granted overdraft facilities by the said bank against a guarantee of Jajindar Singh of No. 41 Jalan Waspada, Johore Bahru. I understood from my brother that he owed the said bank the sum of approximately $110,000.

5. He informed me and I verily believe that what he said was true that he had attempted to raise money to pay off the debt through other sources but that this had failed. He also explained to me and again I verily believe that what

K.V. Devan

he said was true that the said Jajindar Singh had paid off his, my brother's, debt to the said bank and that my brother was now indebted to the said Jajindar Singh in the sum of approximately $110,000.

6. My brother then asked me whether I would be prepared to guarantee the repayment of this sum to the said Jajindar Singh or otherwise provide security. After some discussions with my said brother I agreed. My brother informed me that the suggestion to approach me had come from the said Jajindar Singh and his partner Pakrisamy Suppiah.

7. Shortly after this I met the said Jajindar Singh and the said Suppiah and they outlined to me what they required, namely, that they wished my wife in whose name our property known as Klesk 681, Kulai Besar, Kulai, Johore should stand as security for the repayment to the said Jajindar Singh of the sum of $110,000 which the said Jajindar Singh had paid to the bank in liquidation of my said brother's overdraft and an additional $110,000 which was owed by me in the name of my wife to the Chung Khiaw Bank, Kulai branch together with interest.

8. I relied upon the said Jajindar Singh and the said Suppiah to prepare the necessary legal documents knowing that they were lawyers and I accepted that they were not only acting on their own behalf but on behalf of my wife and myself.

9. On the 30th of March 1974 the said Jajindar Singh and the said Suppiah called on my wife and me, present also was one Sivananthan a friend of the said Jajindar Singh and the said Suppiah. They presented for my wife's signature

K.V. Devan

an agreement and certain other papers. My wife glanced at the agreement and I recall that she asked Suppiah who was to be the other party of the agreement and what the agreement was meant to be. The said Suppiah said that it was intended to be a security and I recall that my wife said that there was no mention of a security in the document. The said Suppiah immediately dictated to the said Sivanenthan who wrote out the writing appearing at the foot of the second page of the said agreement. My wife then signed the agreement and the said Suppiah also signed. I can recall my wife also signing several other papers where indicated by the said Suppiah.

10. It was not until proceedings were commenced against my wife by one, Arul Chandran, in Originating Summons No. 95 of 1976 that I discovered that as a result of signing the agreement and signing what must have been a transfer form in blank my wife had unwittingly and unknowingly put the said Suppiah in a position whereby he could and did sell my said property without my knowledge to the said Arul Chandran and I verily believe that the entire transaction the said Jajindar Singh, the said Suppiah and the said Arul Chandran is a fraud on me and my wife.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1835.

DECLARED at Singapore this 25th day of January 1977 } K.V. Devan

Before me,

Commissioner for Oaths

NG KIAN FONG
COMMISSIONER FOR OATHS
SINGAPORE

D 14 (G3)
Statutory Declaration
of K.V. Devan
(Disciplinary
Proceedings)
25th January 1977
(Cont'd)

Dated the 25th day of January 1977

.....

STATUTORY DECLARATION

OF KRISHNAN VASU DEVAN

.....

MURPHY & DUNBAR
Hong Leong Building
Raffles Quay
Singapore.

D 12 (G4)
Statutory Declaration of Tara Rajaratnam (Disciplinary Proceedings) 2nd February 1977

STATUTORY DECLARATION OF TARA RAJARATNAM
(DISCIPLINARY PROCEEDINGS)

STAMP OFFICE $3=00200 SINGAPORE

STATUTORY DECLARATION

I, TARA RAJARATNAM of 184 Khet Loong Gardens, Kulai affirm and say as follows:-

1. I am the wife of Krishnan Vasu Devan of the same address and Dr. Krishna Shiva Das of 25 Jalan Waspada, Johore Bahru is my brother-in-law being the brother of my said husband.

2. I have read the statutory declaration of the said Dr. Krishna Shiva Das of the 25th day of January 1977 and confirm that where reference is made to me and my said husband the facts are correct and that I otherwise believe the facts set forth in the said Dr. Krishna Shiva Das's statutory declaration.

3. I have also read the statutory declaration affirmed by my husband Krishnan Vasu Devan of the 25th day of January 1977 and I verily believe that what he has said is true.

4. The property known as Klbsk 681, Kulai Besar, Kulai, Johore stands in my name and is the property of my husband and myself.

5. Sometime in March 1974 my husband informed me that my brother-in-law the said Dr. Das owed money to one, Jajindar Singh and that after discussion with my said brother-in-law and the said Jajindar Singh and one Datuk Suppiah, my husband had agreed that our Kulai property should stand as a guarantee or security for the debt which the said Jajindar Singh had paid off due to the Hongkong &

Tara.

Shanghai Banking Corpn. of Collyer Quay, Singapore.

6. My husband and I also had an overdraft with the Chung Khiaw Bank, Kulai branch and my husband had agreed that this overdraft would be paid off and that our property should stand as security for the repayment to the Chung Khiew Bank of approximately $110,000 as well as the repayment to the said Hongkong & Shanghai Banking Corpn.

7. As a result on the 30th of March 1974 the said Jajindar Singh and the said Suppiah together with one, Sivananthan called on our house at Kulai and presented for my signature an agreement together with other papers. I read through the first part of the agreement and was somewhat surprised at its contents and asked the said Suppiah what the agreement was about. He told me that it was just a security for the two sums mentioned and I gathered from the agreement that it was the said Suppiah who was to advance the sum of $220,000 as the agreement alleged that it was the said Suppiah who had paid to the said Jajindar Singh the sum of $110,000 due from my brother-in-law the said Dr. Das to the said Hongkong & Shanghai Banking Corpn. in Singapore.

8. When I was told that the agreement was meant to be a security I told the said Suppiah that there was no mention of this fact in the said agreement. The said Suppiah then said that that could be put right. I then asked him why it was that my right to repay was limited to one year. He replied that there has to be some period of time in the agreement and that he did not intend to limit

Tara.

me to one year or words to that effect. The import of what he said was to the effect that the period of one year stated in the agreement was merely nominal and that he did not intend to keep me to one year in which to repay. The said Suppiah thereupon dictated the writing which appears at the foot of the second page of the said agreement to the said Sivananthan and I then signed the agreement. There were certain other papers grouped together under the said agreement and I was asked to sign at the places indicated by the said Suppiah as he lifted up the foot of each page for this purpose.

9. It was not until proceedings were commenced against me by one, Arul Chandran, in Originating Summons No. 95 of 1976 that I discovered that as a result of signing the agreement and signing what must have been a transfer form in blank I had unwittingly and unknowingly put the said Suppiah in a position whereby he could and did sell my said property without my knowledge to the said Arul Chandran and I verily believe that the entire transaction of the said Jajindar Singh, the said Suppiah and the said Arul Chandran is a fraud on me and my husband.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1835.

DECLARED at Singapore)
this 2nd day of) Tara.
February)
January 1977)

Before me,

H. KIAN FONG
Commissioner for Oaths
Commissioner for Oaths

COMPLAINT BY S.K. TAN AND M. COOMARASWAMY
(DISCIPLINARY PROCEEDINGS)

C O M P L A I N T

by

S.K. Tan and
M. Coomaraswamy, partners in
the law firm of Rodyk & Davidson

against

Arul Chandran, another partner
in the same firm

In the matter of Tara Rajaratnam
and property at 631, Kulai Besar,
Kulai, Johore Bahru

COMPLAINT

by

[redacted]
S.K. Tan
M. Coomaraswamy
partners in the law firm of Rodyk & Davidson

against

Arul Chandran, another partner in the same firm

In the matter of Tara Rajaratnam and property at 681, Kulai Besar, Kulai, Johore Bahru

---

1. The Complainants are concerned with the conduct of one of the members of their firm Mr. Arul Chandran ("Arul") and consider that the conduct in question has been improper in the light of the facts hereafter set out.

2. The parties principally involved are as follows:-

(i) Tara Rajaratnam ("Tara")

(ii) K.V. Devan ("Devan") the husband of Tara

(iii) Dr. K.S. Das ("Dr. Das") brother of Devan

(iv) Jaginder Singh also spelt "Jajinder" ("Jaginder") a lawyer practising in Johore Bahru, known to be of substantial wealth and is a Datuk

(v) Pakirisamy Suppiah ("Suppiah") also a Datuk, a lawyer who practises in Johore and in Singapore and is in partnership with Jaginder.

3. Arul has been a member of the firm Rodyk & Davidson for many years and has been a full partner for at least 2 years. He is 40 years of age and married with 2 children.

D 33 (G5)
Complaint by S.K. Tan and M. Coomaraswamy (Disciplinary Proceedings) 16th March 1977 (Cont'd)

FACTS

Annexure

4. Dr. Das obtained overdraft facilities from the Hongkong & Shanghai Banking Corporation, Collyer Quay ("HSBC") and Jaginder guaranteed the overdraft up to a limit of $120,000. — A

5. Dr. Das failed to pay off the HSBC and Jaginder approached Dr. Das to see if Dr. Das could put up security in the event that Jaginder was called upon to honour the guarantee.

6. Dr. Das consulted his brother Devan in late February or early March 1974 with this end in view and Devan and his wife Tara, who owned No. 681 Kulai Besar, Kulai, Johore ("the property") agreed to put up the property as security for Jaginder.

7. At that time Devan and Tara had an overdraft with the Chung Khiaw Bank, Kulai in respect of which the property was charged.

8. On the 12th March 1974 the firm of Suppiah & Singh, advocates and solicitors of Johore Bahru the partners of which were Suppiah and Jaginder wrote to the Chung Khiaw Bank Ltd., Kulai as solicitors asking for a statement of the amount then due from Devan and the title deeds to the property. — B1

Note:

(1) Note in the letter:
"We act for Madam Tara Rajaratnam ...."
"As our client wishes to pay off the Charge by charging the said property for an increased amount, ..."

(2) The letter is signed in the firm name with the notation below that a carbon copy was sent to Tara and Devan.

9. By letter dated the 14th day of March 1974 the Chung Khiew Bank Ltd. gave the information required and sent the title deeds. According to this letter the overdraft was $103,658-44 as at 8.3.74 with interest as therein mentioned. B2

10. On 30th March 1974 Tara executed:-

(1) a Transfer of the property in favour of Suppiah for a stated consideration of $220,000 C

(2) an Agreement between herself and Suppiah setting out how the $220,000 was to be paid, on which there is a handwritten passage signed by Suppiah undertaking that he will not sell the property for one year without Tara's consent and undertaking to transfer the property back to her if she repays the $220,000 within one year. D

According to the Defence of Tara and Devan in the possession case referred to hereinafter when the transaction was effected by the above 2 documents the intention of "the 1st Defendant (Tara), and D. Suppiah being that the property shall be a security for that sum" ($220,000).

Note:

(1) As to the transfer:-
It has a certificate by Jaginder as a solicitor purporting to attest that the transfer was executed by Tara on "this 5th day of July 1975".

(2) As to the agreement:-

(A) It refers specifically to "the transfer executed by me" in favour of Suppiah but it appears that the only transfer executed by Tara was the abovementioned transfer which indicates that the transfer was signed by Tara in blank as to date

and that the certificate of Jaginder and the date "5th July 1975" were later additions to the transfer.

(B) The $220,000 was to be paid:-

(a) to the extent of $110,000 by paying the Chung Khiew Bank, the $103,658-44 with additional interest from 9.3.74 "to the date of transfer" and as to the balance, to Tara;

(b) as to the remaining $110,000 payment was to be made by Suppiah to Jaginder who would pay it to the HSBC being the loan granted to Dr. Das by the said Bank.

(3) As to the handwritten undertaking of Suppiah:-

(a) It makes no provision for interest in the event of the property being transferred back to Tara;

(b) It is not stated when the period of one year begins to run but if it was to run from its date (30th March 1974), the payments amounting to $220,000 would, as a matter of construction, presumably have to be paid on the said date or within such time as the mechanics of payment would require.

11. As regards the HSBC the first payment after 30th March 1974 credited to Dr. Das' account was one of $121,819-80 on the 27th April 1974. It is presumed this was a payment by Suppiah through Jaginder. It left a balance of 5 cents. E

12. On the 16th April 1975 Suppiah issued a Writ in the Singapore High Court (Suit 1224/1975) against Dr. Das claiming $149,520 on a cheque dated 25th March 1975 F1

payable to Suppiah which had been dishonoured. On the 5th May 1975 Suppiah obtained Judgment by consent and subsequently applied in the High Court in Johore to have the Judgment registered under the Reciprocal Enforcement of Judgments Act 1958. F2 F3

Note:

(1) It is not known whether registration was effected.

(2) The reason why Dr. Das gave Suppiah the cheque for the $149,520 is said by Tara to be as set out in paragraph 8 of her Affidavit filed in the Caveat proceedings hereinafter referred to (OS 45/1976 in the High Court of Johore Bahru). According to her the $149,520 was made up as follows:- K2

"1. Principal sum due to the Hongkong & Shanghai Bank, Singapore $110,000.00

2. Amount of loss and benefit incurred by Datuk Jaginder Singh in giving the guarantee to Dr. K.S. Dass 7,000.00

3. Amount of interest occurred from August, 1973 to March, 1975 32,520.00

$149,520.00 "

It will be noted that at the time the cheque was given, the Chung Khiaw Bank had not been paid.

(3) It is not known what the $7,000 "amount of loss and benefit incurred" is, nor why any interest is charged let alone interest from August 1973 to March 1975 when in fact Suppiah/Jaginder did not pay the Bank until 27th April 1974.

13. On the 5th July 1975 Jaginder attested the signature of Tara on the transfer to Suppiah and it was registered thereafter. C

14. As regards the Chung Khiaw Bank Suppiah did not pay them off on or shortly after 30th March 1974 as he had agreed, but on the contrary on 29th December 1974 his firm, Suppiah & Singh wrote to the bank stating that they had written to their clients (Devan and Tara - note carbon copy to Mr. Devan) enquiring whether their clients would pay the bank. G1

15. On 2nd February 1975 Suppiah & Singh again wrote the Chung Khiaw Bank stating that they acted for Suppiah "to whom the owner of the above land" (that is the property) "Tara Rajaratnam had sold the property ...." The letter goes on to say, G2

> "Our Mr. Suppiah is also making arrangements to raise a loan to pay off the amount due to you ...."

Note:

It is clear from this letter -

(1) that Suppiah had made up his mind that Tara was not to be permitted to redeem her property;

(2) that at the time of the agreement of 30th March 1974 Suppiah had absolutely no intention whatsoever of paying off the Chung Khiaw Bank within a reasonable time of that date;

(3) that he would only pay off the Chung Khiaw Bank as owner;

(4) that he alleges, contrary to the fact that he was owner by February 1975 although he was later to execute the Transfer on 5th July 1975;

(5) that it was mere pretence that he would

give Tara a year in which to redeem her property.

16. The Chung Khiaw Bank were paid $92,000 in July 1975. The firm of Yeow & Chin acted as solicitors for the Bank and required payment of $92,000 in order that the charge might be discharged and the Bank's statement shows on 9th July 1975 a payment in of $91,909-75, the difference being presumably Bank commission. H1

Note:

(1) The letter of Suppiah & Singh to Yeow & Chin, the solicitors for the Chung Khiaw Bank says that Suppiah & Singh will let Yeow & Chin have $92,000 in exchange for the executed discharge of charge and "we wish to complete this matter on the 5th July 1975 at 10.00 a.m. sharp". It would appear that the $92,000 was paid to Yeow & Chin at that date and time, although the account was not credited till the 9th July, merely in order to obtain the property free from charge. H2

(2) No other payment by Suppiah to the Bank is known.

17. By the time this transfer was registered it appears that Suppiah/Jaginder had paid:-

(a)	the HSBC	$121,819-80
(b)	the Chung Khiaw Bank	92,000-00
	a total of	$213,819-80

and it is believed that this was the total paid by Suppiah/Jaginder.

Note:

Not only had the full $220,000 not been paid as required by the agreement but failure to

pay the Chung Khiaw Bank on 30th March 1974 or immediately thereafter involved Tara in further interest to the Chung Khiaw Bank.

On the 31st July 1975, Suppiah executed a Transfer of the property in favour of Arul. The Transfer was attested by Jeginder. The price was stated to be $220,000, that is the same amount that Suppiah was supposed to pay under the Agreement with Tara, without anything extra for the Stamp Duty of $3,400 on the Transfer from Tara or any interest on the sum that was paid in April 1974 to the HSBC. I

19. On the 20th March 1976 Arul by his solicitors Suppiah & Singh issued a summons (J.B. Sessions Court C.A. No. 146/76) claiming vacant possession as registered owner of the property. The Defence thereto was dated 8th May and filed on 9th May 1976 by Elyas Majeed & Co., solicitors for Tara and Devan. The Defence recounts the intention of Tara and Suppiah that the property should be a security; that the financial provisions relating thereto had not been complied with by Suppiah; that there had been no proper consideration; that Suppiah had obtained judgment against Dr. Das as mentioned in paragraph 12 hereof; and that the transfer to Arul was "inequitable, contrary to understanding and intention of the parties"; and also that the value of the property far exceeds the sum due to Suppiah. The Defence also contends that the transfer of the property to Arul was not for value and that he was not a bona fide purchaser as he was in a position to know the true nature of the transaction. J1 J2

Note:

Arul's Statement of Claim annexed to the Summons states that Tara was owner until July 1975.

20. Judgment for possession was given to Arul on J3

9th August 1976. The Grounds of Judgment dated 30th August 1976 show that no evidence was taken by the Court and that possession was given on the strength of Arul being the registered owner.

21. Meanwhile Tara had lodged a Caveat against the property and on the 29th July 1976 her said solicitors filed OS No. 95/76 (in the High Court at Johore Bahru) which was sealed on the 2nd August 1976 naming Arul as the Respondent seeking extension of time for the Caveat to remain in force. One of the Affidavits in support was the Affidavit of Tara referred to in paragraph 12 hereof. In addition to explaining how Dr. Das came to issue the cheque for $149,520 the Affidavit sets out in detail the facts of the transaction between her and Suppiah and reiterates that the transaction was by way of security and annexed a copy of the Agreement and undertaking and that the transfer to Arul was without her consent and states that that transfer ignored the undertaking given by Suppiah to her on the 30th March 1974. It also points out in paragraph 7 that not all the $110,000 payable to the Chung Khiaw Bank, Kulai was paid. According to paragraph 11, the value of the peroperty exceeded $1,106,100. K1 K2 D

Note:

(1) The annexed copy of the Affidavit does not give the date of affirmation or filing but presumably it was filed on the same day as the OS (29th July 1976) and was served shortly after the sealing of the OS (2nd August 1976).

(2) So far as is known, the OS and Affidavit were served on Suppiah & Singh as solicitors for Arul but presumably Arul was informed of their contents at that time.

(3) From paragraph 7 of the Affidavit it

would appear that Tara was not paid the difference between $110,000 and what was actually paid to the Chung Khiaw Bank.

22. Subsequently in September 1976 Tara, Devan and their family vacated the property; Tara's attempts to obtain Stay of Execution pending Appeal having failed. It is understood that the Appeal is still pending.

Action taken by the Complainants

23. The Complainants having by chance become aware generally of the transaction and legal proceedings, and having made certain enquiries were disturbed because it appeared that there was some ground for thinking that Arul, after he must have had sufficient knowledge to suspect that Suppiah was in breach of his Agreement with Tara, had instructed and continued to instruct Suppiah & Singh in his name to take steps which resulted in Tara and her family having to vacate the property. 10

24. The Complainants were aware that Arul was not possessed of funds which would have enabled him to buy the property for a price of $220,000 or to raise funds of $220,000 and that he was a very close friend of both Suppiah and Jaginder and that it was most unlikely that he could be an actual purchaser from Suppiah. 20

25. The Complainants accordingly had meetings with Arul on 3rd and 4th February 1977 and Mr. Potts had a meeting with Arul on 17th February 1977. Annexed hereto are copies of Notes of what took place at these meetings. The Notes of the meeting on 3rd February were corrected and agreed by Arul at the meeting on 4th February. L1, 2 and 3 30

Note:

In order to preserve confidentiality when the Notes of the meetings of 3rd and 4th February

were typed out a code was used to indicate the identity of the persons who were being recorded or referred to, as follows:-

A = T.H.A. Potts
B = S.K. Tan
C = C. Arul
D = Dr. Das
E = Devan
S = Suppiah
F = P. Selvadurai
J = Jaginder
T = Tara

CRITIQUE

1. The Complainants believe that Jaginder and Suppiah decided to obtain the property from Devan and Tara once Dr. Das became indebted to Jaginder. The lever used initially was the security which Jaginder required of Dr. Das in order to secure the payment he was to make on the 27th of April 1974. E

2. The meeting on the 30th of March 1974 between Jaginder and Suppiah on the one hand and Devan and Tara on the other suggests very strongly that Suppiah & Singh were acting for Tara at the time. This is supported by the letter of the 12th of March 1974 by Suppiah & Singh to Chung Khiaw Bank Ltd. and the reply by the bank to Suppiah & Singh of the 14th of March 1974. B1 and 2

3. If Suppiah & Singh as a firm of advocates and solicitors were acting for Tara then quite clearly what took place on the 30th of March was to say the least thoroughly reprehensible on the part of these two solicitors. It is submitted:-

(1) that they should never have acted in the first instance as their own interests were at stake;

(2) that Tara should have been separately advised at every step;

(3) that had she been advised separately her solicitors would have ensured immediate payment of the sums set out in the agreement of the 30th of March 1974 C and D

(4) that there would never have been any occasion for the transfer which was clearly executed on that date (the agreement itself says so) being used in the way it was on the 5th of July 1975;

(5) that the arrangement was clearly a form of equitable mortgage with an equity of redemption in Tara and that time would run for that equity only from the date when payment was actually made. 10

(6) Suppiah by taking Judgment against Dr. Das in Suit No. 1224/1975 in Singapore clearly elected to forego his security in the property and to treat Dr. Das as the debtor. It must follow therefrom that the $110,000 referred to in the agreement concerning Dr. Das' indebtedness to the HSBC must have been extinguished by this judgment and yet no reference was made to this point in any of the proceedings. F2 20

4 At the meeting it is clear from the annexed statutory Declarations of Tara that her suspicions were clearly aroused when no mention of the word "security" was made until this was pointed out by her which fact occasioned the handwritten passage. It is also clear from her statutory Declarations that Tara was not fully aware of what she was signing and the manner in which she was asked to sign is indicative of the conspiracy by Jeginder and Suppiah to have documents prepared of which Tara and Devan would not have sufficient knowledge. M1 and 2 30

Note:

The reason why there are two Statutory Declarations is that the first was executed at the same time as were the annexed Statutory Declarations of Devan and Dr. Das. It was only after further discussions with Tara that a further point arose with regard to the handwritten passage and it was decided that she should swear a further Statutory Declaration to enlarge upon this matter. M3 and 4

5. The import of the conversation and the dictated passage was to the effect that the period of one year stated in the Agreement would be merely nominal and that Suppiah did not intend to restrict Tara to one year in which to repay.

6. It is submitted that the payment to the HSBC on the 27th of April 1974 was in itself too late a payment and a breach of the agreement. E

7. It is clear from the letters of the 29th December 1974 and the 2nd of February 1975 sent by Suppiah & Singh to the Chung Khiaw Bank that Suppiah had no intention of honouring the agreement, that he had no intention of giving Tara a year in which to redeem her property, that he falsely declared himself to be the owner of the property on the 2nd of February 1975 and finally that the agreement of the 30th of March 1974 was a farce and never intended to be acted upon by him although he had every intention of making use of the transfer to which the said agreement referred as having been already executed. G1 and 2

8. The payment to the Chung Khiaw Bank on the 9th of July 1975 (although the cheque was handed over to Yeow & Chin at 10 a.m. on the 5th of July) is decisive of the fact that the agreement had been breached by H1, 2 and 3

Suppiah. It will be noticed that the new owner Suppiah executed the Transfer as transferee on the 5th of July. In other words such equity as lay in Tara lay for a few hours assuming that the payment to her solicitors could be taken as being payment to the bank.

9. It is known that Arul was a close friend of Suppiah and Jaginder and it becomes obvious that Suppiah and Jaginder needed to have a friend so that there could be a bona fide purchaser for value behind which any fraud which might later come to light could be sheltered. Hence it became vitally necessary to have a further sale to such a bona fide purchaser for value and this was provided in the person of Arul.

10. The alleged sale to Arul thereafter falls into place once the necessity for a further purchaser is appreciated.

11. It is practically unbelievable that such close friends would not enquire one of the other the reason why Suppiah should want to sell 26 days after he himself had bought the property and at exactly the same price. The Complainants feel that it is hardly necessary to stress the host of obvious deductions which can be made from this transaction once the larger picture is seen. However, in order to assist the Council the following are pointed out:-

(1) Messrs. Rodyk & Davidson have themselves a very competent conveyancing department. Why did Arul not use his own firm?
(2) Why did Arul not view the property?
(3) Why did he not enquire of Suppiah why the consideration should be the same even though 26 days earlier Suppiah had paid stamp fees of $3,400?

(4) Looking at the transcript of the meetings with Arul, it becomes clear that Arul in fact did not provide the consideration. Who did?

(5) Why was Arul so reluctant to disclose the name of the person who provided the money?

(6) Why did he not use his own address on his transfer form instead of that of Suppiah & Singh (Suppiah being the vendor)?

(7) Why did he not make full enquiries as any ordinary person would have done with regard to the purchase?

(8) As a solicitor the duty on him to enquire because of his knowledge of the law was the greater.

(9) Arul's Statement of Claim in J.B. Sessions Court C.A. No. 146/76 alleges in paragraph 2 that Tara sold the property in July of 1975. The Statement of Claim is dated the 20th March 1976. Tara's Affidavit in support of the Originating Summons for extension of the Caveat was filed about the 29th July 1976 so that certainly by that date Arul must have known that the agreement referred to a transfer having been executed on the 30th of March 1974. It follows that by the 22nd of July Arul ought to have been put upon full enquiry as to the date of the presumed sale and there must have been enough in his hands to realise that something was very wrong. J1 K2

(10) Once the Defence in Sessions Court C.A. No. 146/76 was filed, whatever Arul might claim his lack of knowledge might have been before, he could not fail at this stage to have been put upon enquiry by the Defence and yet he made no enquiry at all and continued to allow his name to be used.

(11) Had he made enquiry he would have discovered

from whom Suppiah had purchased and when and he would then have been put upon enquiry as to why Suppiah wished to sell so quickly.

(12) He would also presumably have been put upon enquiry to contact Tara and Devan and could have discovered from them what they thought the value of the land was even if the value is now disputed. It is submitted that the value of the land is in fact irrelevant to the issue of the propriety of Arul's actions.

(13) It is relevant to note that when he was confronted by the Complainants, Arul's attitude appears to have been that he had done nothing wrong nor had Suppiah and Jaginder in their turn.

(14) The following questions and answers which appear in the notes are significant:

L2

A

(Potts) Q. Will you disclose the name of the third party referred to in para 1 on page 8 of the mins?

L1

C

(Arul) A. Not particularly at this stage.

A

(Potts) Q. Can you give us an assurance that the moneys was not provided by S and J.

C

(Arul) A. No.

It seems clear that Arul has been and is knowingly protecting Jaginder/Suppiah and possibly himself (the beneficial owners if the scheme succeeded) against any attempt by Tara to have the transfers set aside by a court of law.

(15) If Arul claims innocence in spite of executing Form 14A (the transfer document) the fact that he has not made any attempt at all to disown the whole transaction shows that he was very much a part of the scheme.

(16) The execution of Form 14A by Arul without there passing any consideration between him and Suppiah would appear to disclose an offence under Section 423 of the Singapore Penal Code (Cap 103) if the signing by Arul took place in Singapore or Section 423 of the Malayan Penal Code (Cap 45) if the signing took place in Johore Bahru.

(17) It is relevant to note that by reference to the documents alone without having to rely on the truth or otherwise of any statements from Dr. Das, Devan or Tara or from anyone else that Arul clearly ought to have been put on enquiry at the time he executed Form 14A or certainly by the 20th of March 1976 when the Defence to the Johore Bahru Sessions Court Summons No. C.A. 146/76 was filed.

Dated this ~~20th~~ 16th day of ~~February~~ March 1977.

(Sgd) S.K. Tan

(Sgd) M. Coomaraswamy

ANSWER BY ARUL
(DISCIPLINARY PROCEEDINGS)

THE COMPLAINT

1. I shall deal with those parts of the complaint which concern me, where possible I shall answer the allegations/comments in the order in which they have been set out in the complaint. I have only dealt with the paragraphs that concern me or on which I wish to comment.

2. Para. 5

Dato Jagindar has informed me that he had been called upon by the Bank to make payment under the guarantee before the Agreement of Sale was drawn up and that the Agreement of the 30th March 1974 was not a security, as alleged, but an Agreement of Sale, as was the intention of the parties at the time when the Agreement was signed.

3. Para. 16

I am informed that M/s. Yeow & Chin acted not only for the Chung Khiaw Bank but also Madam Tara Rajaratnam - see their letter marked "Z1". Not only that - they demanded a sum more than what was owing to the Bank i.e. instead of $92,000/- they demanded $140,000/-. This action would appear strange.

4. Para. 18

The price agreed on a piece of land does not usually include the stamp duty to be paid on the transfer. The price a vendor wishes to place on a piece of land is for him and him alone and no one else.

5. Para. 20

Under order 32 rule 6 of the Federation Supreme Court Rules (which is applicable to the Sessions Court) the Court is empowered to give judgment on admissions without being required to record evidence viva voce.

6. Para. 21

a) The allegations of Madam Rajaratnam have nothing to do with me.

b) Note (2) - I was not given or informed of the contents of the Originating Summons or the Affidavit until the 30th January - as hereinbefore stated.

7. Para. 22

I confirm that the Appeal is still pending - having done so much "investigation" - Mr. M. Coomaraswamy (hereinafter referred to as "Mr. Cooma"), Mr. S.K. Tan and Mr. H.E. Cashin should not have had any difficulty confirming that the Appeal is still pending; it is therefore strange that they should say "It is understood". The matter is sub judice, in my respectful view.

8. Para. 23

a) The complainants say that they became aware of the transaction and legal proceedings "by chance" - when a certain solicitor from Johore Bahru consulted Mr. S.K. Tan - but Mr. S.K. Tan and Mr. Cooma have refused to reveal the name of this solicitor to me despite repeated requests. What is so secret about this? It is strange that they would want to withhold this information in a partnership.

b) The date of their coming into possession of this information is also not known, they have not told me.

c) Having come to this information "by chance" why was the whole partnership not told about it immediately and why was I not invited to tell them what it was all about?

d) Why the furtive efforts to contact my "opponents" and their solicitors? What promises were made by Mr. Cooma to them to get them to be so cooperative for them to provide all this information and Statutory Declarations to Mr. Cooma?

e) At this time Mr. S.K. Tan was seeing me almost

every day and there was only a partition dividing my room from his - why did Mr. Cooma or Mr. S.K. Tan not ask me about it instead of going about trying to gather information by stealth?

9. Para. 24

The complainants were not in a position to know of my financial standing - and their speculation whether I was an actual purchaser was unfounded and malicious, to say the least.

10. Para. 25

a) Mr. Potts has informed me that he was first informed of this matter 10 days before the meeting on the 3rd February i.e. around the 23rd January.

b) The other partners (I had not been invited though in my view I ought to have been) had a luncheon meeting at a private room in Raffles Hotel on the 31st January when this matter was discussed.

c) I am of the view that the Statutory Declarations of Madam Rajaratnam, Mr. Devan and Dr. Das already being in the possession of Mr. Cooma and Mr. S.K. Tan and which were not disclosed to me (or to my knowledge to Mr. Potts or the other partners) the meeting was "engineered" by Mr. Cooma (without Mr. Potts or the other partners realising the true implications) to try and obtain information which would be used in a manner prejudicial to me and my case in an effort to pursue this complaint and assist Madam Rajaratnam and Mr. Devan in their litigation. I believe that Mr. Cashin had already been consulted at this stage. Their failure to disclose the steps that had already been taken is, in my view, a very serious matter evidencing utter bad faith on the part of Mr. Cooma and Mr. S.K. Tan.

d) I had not given my consent to the partnership minutes being disclosed to anyone other than the partners.

I have been informed that some of the other partners had also not given their consent.

e) The code words were used by Mr. S.K. Tan (who was keeping the minutes) more for convenience than confidentiality, though it was agreed (and this was stressed by me at that first meeting) that what transpired at the meeting was to be confined to the partners. In fact, at the commencement of the meeting, I asked Mr. Potts that a minute of the meeting be kept and he stated that he himself had thought of it and had asked Mr. S.K. Tan to keep the minutes.

f) The minutes are not a full account of what took place, a lot of things have been left out. I questioned Mr. Potts, inter alia, on why the partners had not asked me directly what this was all about the moment they "by chance" came to hear of this matter and I told him that I was distressed by their action and Mr. Potts replied that he did not wish to "trade distresses" with me and my question was never answered either by the complainants, Mr. Cooma, Mr. S.K. Tan, or by Mr. Potts.

11. Between the meetings of the 4th February and Mr. Potts' seeing me on the 17th February (Chinese New Year's Eve) I had heard that opinions had been sought from Mr. Darvall Q.C. of Australia (who was then in Singapore) and Mr. John Skrine of Skrine & Co. of Kuala Lumpur. I asked to see the opinions and the instructions to Counsel to consider whether the questions should be answered by me but this request was refused me, even though I told Mr. Potts that I took the view that I was entitled to see these opinions.

12. I have learnt that the complaint in its present form was ready by the 28th February 1977. This means that when Mr. Potts wrote the letter to me dated 2nd March (I was away in Manila on that date, returning to Singapore only on the 4th March) the complainants had already drawn up the complaint i.e. even before the

letter was written by Mr. Potts!

13. I met Mr. Potts with Mr. Selvadurai and Mr. Tang See Chim on the afternoon of Thursday the 17th March and when I gave Mr. Potts some information and it was agreed that I would myself write to the Law Society the following Monday, the 21st March. The following day (Friday 18th March) I asked Mr. Potts for copies of documents Nos. 1, 2, 5 and 9 (in the schedule to his letter) to enable me to see these documents before writing the reference to the Law Society and Mr. Potts agreed to let me have copies. He has told me that he had immediately asked Mr. S.K. Tan who kept all the relevant documents to let me have copies but Mr. S.K. Tan did not send the copies to me straightaway. On Monday the 21st March Mr. Potts handed me an envelope from Mr. S.K. Tan containing 15 copies of document No. 1 but not the others.

14. I have learnt that, despite the agreement between Mr. Potts and myself on the 17th March, Mr. Cooma and Mr. S.K. Tan had already signed the complaint the day before i.e. 16th March and that it had been sent in on the day following my meeting with Mr. Potts i.e. on the 18th March. It will be remembered that I was to let Mr. Potts have my "reference" on Monday the 21st March. I say that in the circumstances then prevailing the sending in of the complaint by Mr. Cooma and Mr. S.K. Tan on the 18th March was a gross breach of faith and is indicative of their mala fides.

15. During this particular time the Pertamina Appeal (Civil Appeal No. 48 of 1976) before the Court of Appeal had been set down for hearing from Monday the 21st March in which I was being led by Mr. Michael Thomas QC. who was arriving in our office on Saturday morning (19th March) to work on the final preparations for the Appeal. I was in fact engaged in Court on that Appeal on Monday the 21st and Tuesday the 22nd March. Mr. Potts was originally supposed to appear in the Appeal but the file

was passed to me less than a week before because Mr. Potts had to be in Kuala Lumpur on Monday the 21st March.

16. When I heard that a complaint against me had been lodged with the Law Society I immediately asked Mr. Potts about this, on Friday the 25th March. He appeared very surprised and told me that he was not aware that the complaint by Mr. Cooma and Mr. S.K. Tan had been sent in. Two other partners were also informed me that they were also not aware that the complaint had been sent in.

Critique:

17. a) I cannot comment on paras. 1 to 10 though in my view the "critique" is wholly unfounded and slanted.

b) Having seen the documents and having heard what Mr. Potts had to say to the partners I told the other partners that though this did not, in my view, concern me but Dato Suppiah - I was of the opinion that Dato Suppiah was not in breach of the Agreement dated 30th March 1974 as alleged in para. 3(5).

18. With regard to para. 11 (Pg.14)- The complainants' beliefs are, in my submission, unwarranted and has no place in the complaint. In my submission, no deductions can be rightly made in view of the complainants having got their facts wrong and in wanting to believe Madam Rajaratnam and Mr. Devan who are not even (so far as is known to me) the clients of either Mr. Cooma or Mr. S.K. Tan and who it would seem clear has contradicted herself in her several Affidavits, Statutory Declarations and other documents.

19. With regard to the comments in para. 11 -

(1) I did not use Rodyk & Davidson as we do not have a branch (or for that matter a proper office) in

Malaya, and I was happy to use the firm of M/s. Suppiah & Singh. In fact M/s. Suppiah & Singh (and their predecessors) had been agents of Rodyk & Davidson as long as I have been with Rodyk & Davidson and moreover Rodyk & Davidson still use M/s. Suppiah & Singh as their agents in Johore. I do not wish to comment whether Rodyk & Davidson have a very competent conveyancing department to deal with land transactions in Johore or the rest of Malaya as alleged in the complaint. As far as I am aware the firm does not handle any land transactions in Malaya.

(2) I do not know how they have come to the conclusion that I did not view the property.

(3) This is a matter entirely for Dato Suppiah i.e. at what price he chose to sell the land.

(4) It is up to me to find financing in any way open to me within the law.

(5) I have stated my reasons in the minutes. I told the meeting that I felt there was an "enemy" within our midst - and this has been borne out in the complaint. I had heard that Mr. Cooma had already approached my "opponents'" solicitors in Johore Bahru behind my back in what would seem to me very suspicious and incorrect circumstances.

(6) It was open to me to use the address of my solicitors.

(7) Whether I made any enquiries is irrelevant in my submission.

(8) This is an incorrect statement of the law. Are solicitors required to drive more carefully?

(9) In view of my statement that I got the documents only on the 30th January I would submit that the conclusions

drawn by the complainants are erroneous and without foundation. The Affidavit in Originating Summons No.95 of 1976 was not served on me, I am informed that Madam Rajaratnam did not get the order sought in the said Originating Summons.

(10) Same as above i.e. I only got the documents and pleadings on the 30th January 1977.

(11) Same as above.

(12) Same as above. I do not agree that I should under any circumstances have contacted Madam Rajaratnam and/or Mr. Devan. In any case they were not the vendors.

(13) I was never "confronted" by the complainants, this is a false statement. Throughout the meeting of the partners on the 3rd February not one word was uttered by Mr. Cooma and Mr. S.K. Tan did not say anything of consequence as is shown by his own minutes. The use of the term "confronted" is mischievous and is intended to prejudice those reading the complaint.

I wish to confirm my previous statement which I wish to repeat now that I have done nothing wrong and, so far as I am aware, neither have Dato Suppiah nor Dato Jagindar Singh.

(14) This allegation is malicious and mischievous, and it is not true. Dato Suppiah informs me that from the beginning he has been telling Madam Rajaratnam's solicitors that if they wished to take proper steps they should institute proceedings to set aside the transfer of the land to him, but todate, 1 year later, no action has yet been taken by Madam Rajaratnam. There is no "scheme" and I need not "protect" anyone. But I shall defend myself against false accusations, especially those motivated by malice.

(15) I am innocent and will maintain my innocence.

I would have to sign Form 14A in any case if the land is to be transferred to me, it cannot be transferred to me in any other way! Under the law prevailing the transferee must accept the transfer by signing Form 14A. I am innocent and do not have any intention of disowning the transaction. I am also entitled to defend my rights.

(16) It is not true that no consideration has passed to Dato Suppiah, see para. 7 of Madam Rajaratnam's Affidavit (at Pg. 55 of the complaint) in which Madam Rajaratnam has deposed "Pursuant to the Agreement dated the 30th day of March 1974 the said P. Suppiah had paid the money to the Datuk Jagindar Singh ....." Where is the evidence that no consideration has passed to Dato Suppiah?

At page 55 Madam Rajaratnam has deposed that "the account with the Hongkong and Shanghai Bank, Singapore was not settled until early part of 1975 ....." The statement of account at page 25 clearly shows that payment was made in April 1974.

It is also untrue that an offence under S.423, or any other section, of the Penal Code has been committed. As lawyers, Mr. Cooma (a former Magistrate and a former Deputy Public Prosecutor) and Mr. S.K. Tan and their solicitor/adviser, Mr. Cashin, ought to know what steps to take if an offence has in fact been committed.

(17) This statement is incorrect, in fact and in law, in view of what has been set out by me hereinbefore.

The Motive:

20. One of the complainants, Mr. Cooma, has been motivated, not by his altruistic concern with my conduct in respect of the land transaction - as with his desire to expel me from the partnership of Rodyk & Davidson. Mr. Cooma has tried on a previous occasion recently to expel me by other means (unanimous vote of the remaining partners) and having failed he has resorted to lodging

this complaint. The manner and the timing in which the complaint has been brought and particularly the way in which it has been drawn up is indicative of his mala fides. The bone of discontent is Mr. Cooma's desire to have admitted as a capital partner, Miss Sheila Murugasu. I have steadfastly refused to accede to his pleas (and subsequent threats), I felt I had had enough of his nonsense in the firm and did not wish to put the "seal of approval" on his questionable relationship with Miss Murugasu. The atmosphere in the firm had been bad enough even without Miss Murugasu being a capital partner, I just could not stand to see the situation get any worse. I had been with Rodyk & Davidson for over 12 years and had already been a lawyer for 17 years and I felt that I had had enough of this treatment. I had to take a firm stand and this I did, for myself, for some of the other members of the firm and, most important of all, for the firm itself, now over 140 years old. I felt it was still not too late to salvage the name of the firm, of which I had been part for over 12 years.

21. Mr. S.K. Tan appears to be unable to decide or think for himself in the matter of Miss Murugasu being admitted as a partner and though there has (as far as I am aware) been no history of disagreement with him, he has taken a stubborn line, and has insisted that Miss Murugasu be made a partner despite the objections of not only myself but some other partners in the firm.

22. There is more than meets the eye, as I subsequently discovered, Mr. S.K. Tan did not disclose to the partners of Rodyk & Davidson that one of the candidates he put up to be a capital partner, Mrs. Yong Whee Choo, is his close relative (I believe she is his niece) and this fact only came to light after the disagreements arose. I feel that this is a serious breach of faith, if not lacking in candour, especially so in the case of one who was to be the future senior partner of the firm.

I feel that there is a question of principle

at stake here and I wish to defend myself against their unjust and malicious accusations.

23. I have sought confirmation from Dato Suppiah as set out in my letter to him of the 4th April and I have received his reply, copies of which are enclosed and marked "Z2".

24. I submit that I am not guilty of misconduct as is implied in the complaint and that the motive of the complainants is malicious and concerns an objective, not being any misconduct on my part but my refusal to admit to partnership a person (Miss Murugasu) whom the complainants (particularly Mr. Cooma) feel must be made a capital partner.

25. If the Council of the Law Society feels that I have not been as humble as they would expect an ordinary member of the Society to be, I wish to beg their indulgence, as, when an innocent man is accused unjustly, especially for ulterior motives, one tends to feel aggrieved. For my shortcomings in this "explanation" I beg their indulgence also.

26. I shall be happy to appear before the Council if so required.

C. ARUL
14th April 1977

D 15

D 15 (G7)

COMPLAINT BY TARA RAJARATNAM
TO MALAYA BAR COUNCIL

Complaint by Tara Rajaratnam to Malaya Bar Council
Undated

My name is Tara Rajaratnam. I am a housewife with five daughters. My husband (K.V. Devan) is a hospital assistant and formerly was employed in an estate. Now he is helping his brother (Dr. Das) in a clinic.

Our only property was a land of five acres in Mukim Senai Kulai in Johore. We were living in a house erected on it. Dr. Das (my husband's brother) had some financial dealings with one lawyer in Johore Bahru, by the name of Dato Jaginder Singh. This lawyer had guaranteed a bank loan of $110,000.00 taken by Dr. Das. Since he could not repay it in time, this lawyer wanted some property as security.

On March 30, 1974, P. Suppiah & Dato Jagindar Singh came to my house and asked me to sign several documents, including a Memorandum and a form of transfer of the land to P. Suppiah, who promised to advance immediately $110,000.00 to redeem my land which was at that time mortgaged to the Chung Khiaw Bank in Kulai. Also another $110,000.00 to settle the debt of Dr. Das. In good faith I signed the documents. According to a letter to the Bank P. Suppiah and Dato Jogindar Singh were acting as solicitors for me.

After that for one year P. Suppiah did nothing about the loan, so I presumed that he was not interested. I heard that on 16th April, 1975, P. Suppiah sued Dr. Das in the Singapore High Court for the loan and interest incurred. Judgement was taken in 11 May 1975. He never redeemed my mortgaged land from the Bank.

Before I signed the Memorandum, P. Suppiah assured me that he would not sell or transfer the property to anyone without giving me reasonable notice. He also assured me that the transfer was intended merely as a security.

Then suddenly, more than a year later I received a letter from Messrs. Suppiah & Singh saying that one Arul Chandran

is now the owner of the land, and that we must vacate the place. I was shocked and on enquiring I discovered that in July 1975 Dato Suppiah using the blank forms I signed in March 1974, had transferred the land into his name. In August 1975 had the property transferred and registered in Mr. Arul Chandran's name. This Arul Chandran is a lawyer in Singapore and a good friend of both Singh and Suppiah. Dato Jogindar Singh had acted as witnessing lawyer for both the transferes.

Because I refused to move out, on 20th of March 1976 through Suppiah & Singh, Arul Chandran sued me and my husband in the Johore Bahru Sessions Court claiming possession of the land. In lightning speed without my defence being called, judgment for possession was given. I appealed to the High Court for a stay but my application was dismissed. My family and I vacated the place on 20th August, 1976.

While I was still waiting for the Johore Bahru High Court to hear and decide the dispute about ownership Mr. Arul Chandran quickly within a few months got the sub-division approved and started a shop and housing development on my land.

I know that Dato Jogindar Singh and Dato P. Suppiah are very rich and powerful people, and I have also seen them walking in and out of the Judge's chambers. They were my solicitors according to the Memorandum and they did not give me opportunity or advice to seek independent help. They must be remarkable indeed if they can feel assured of holding the scales evenly between themselves and their client.

I believe that everyone must obtain equal justice under law or is it true that there is different scales of justice for different people!

A Writ of Summons was filed against Dato Jogindar Singh, Dato Suppiah and Arul Chandran. They filed several applications to strike out the writ and finally succeeded.

Now my lawyer is preparing a new writ, only God knows what is going to happen.

I am convicted I cannot fight against rich people. My only hope is to appeal to the Law Minister and the Malaysian Bar Council to look into my case and do justice. Several lawyers and friends have advised me to do so. I am humbly leaving my case in your hands hoping that justice will be done.

Following is what happened at the Appeal Court: My case became a very popular one and everytime it came up many other lawyers will come and listen and after hearing the verdict they will say that there is something fishy about the Judge's verdict. But there is nothing I can do.

I appealed to the Federal Court. Unfortunately my lawyers, because they could not get judge Anwar's written judgment and other documents from court in time, failed to file the appeal in due time. But meanwhile my lawyer had asked Dato Suppiah to grant him some extra time. Dato Suppiah had no objection. My appeal was heard in the Federal Court on March 23, 1979. On that morning my lawyer and I came at 8.30 a.m. and waited. Dato Suppiah came in also without any books at all. But my lawyers brought in several books. It was Chief Justice Raja Aslam's room. A while later he came out. A few minutes later Borneo Chief Judge came and also went inside Justice Raja Aslam's room.

Later my case was called. 2 other Judges sat with the Borneo Chief Judge. My lawyer stood up and explained to the court why the documents were filed late. But the Court

cut him short. Another lawyer who was assisting my lawyer tried to explain but he did not want to listen. The other two judges appeared to sympathise with my lawyers but Borneo Chief Judge spoke to both of them. Finally, my application and appeal were dismissed. I was grieved and shocked.

In J.B. my people told me that Dato Jogindar Singh and Dato Suppiah were close friends of the Judge. I never could believe that they could get away with injustice and fraud.

I am not suggesting that the judiciary can be bought, but I feel that it is highly improper for the lawyers concerned to see the Judges privately and put ideas into their heads.

I found out that Arul Chandran was a partner in Rodyk & Davidson. I therefore got in touch with Mr. Coomaraswamy, another partner. I told him my entire story. I know that he and Mr. S.K. Tan, the senior partner of Rodyk & Davidson, made various enquiries and they together with Mr. T.H.A. Potts, went to see Mr. H.E. Cashin of Murphy & Dunbar because they wanted to make a complaint against their partner, Mr. Arul Chandran.

As a result of this I saw Mr. Cashin on several occasions together with my husband and Dr. Dass and Mr. Cashin took statements from us all. The late Mr. Dunbar assisted Mr. Cashin. I did not see the complaint when it was finished but I do know that Mr. Cashin produced a complaint in the form of a book or pamplet which gave all the details so far as the story and the legal implications were concerned and the complaint was laid before the Law Society in Singapore. I do not know what has happened since although I have heard rumours that the Law Society is waiting for certain things to take place, exactly what I do not know.

I believe it would be very helpful if a copy of that complaint could be obtained because I imagine it will not only implicate Mr. Arul but will also implicate Dato Joginder Singh and Dato Suppiah because the statements of my husband, Dr. Dass and me cover the whole ground and the whole story. I suggest that the Bar Council write to the Law Society to see if the Law Society is prepared to pass this information on.

I do not know whether it is proper but the Bar Council might write to Mr. Cashin to see if Mr. Cashin is prepared to appear before the Bar Council so that he can explain in a legal way exactly what has occurred.

D 32

REFERENCE AND REPLY
BY C. ARUL
(DISCIPLINARY PROCEEDINGS)

D 32 (G8)
Reference (and Reply) by C. Arul (Disciplinary Proceedings)
Undated

IN THE MATTER OF

CERT. OF TITLE 13817, LOT 6025

KULAI, JOHORE

REFERENCE AND REPLY BY

C. ARUL

D 32 (G8)
Reference(and Reply)
by C. Arul
(Disciplinary
Proceedings)
Undated

A REFERENCE BY C. ARUL

The Facts

1. I became the registered owner of a piece of land in the district of Senai-Kulai, Johore, comprised in Certificate of Title No. 13817 Lot No. 6025, on the 31st day of July 1975 by virtue of a transfer executed in my favour by the previous owners, Dato P. Suppiah, for the price of M$220,000/-. The transfer into my name was effected through M/s. Suppiah & Singh, a firm of solicitors in Johore Bahru.

2. At the time of the purchase one Mr. K.V. Devan and his wife, Madam Tara Rajaratnam, resided in a bungalow on the said land. I instructed M/s. Suppiah & Singh to institute proceedings for possession. The obtaining of possession was left entirely in the hands of M/s. Suppiah & Singh. I was told a short while after the Summons had been issued that the Defendants were contesting the Summons but my solicitors said that they would look after the matter and would proceed to obtain possession.

3. Around September 1976 I was informed by my solicitors that they had obtained an order for possession but this decision was appealed against and that an application for a stay pending appeal had been rejected.

Subsequently I was also informed that the Defendants had filed a Motion in the High Court for a stay of execution and, after hearing argument, the Motion had been dismissed by the High Court. I did not see any of the Pleadings, I was content to leave it to my solicitors.

4. On the 15th January 1977 while I was having a lunch discussion with my partners, Messrs. P. Selvadurai, Tang See Chim and Foo Yew Heng, Mr. Selvadurai informed me that he had heard that I had been accused of fraud involving a Suit relating to a piece of land in Johore. I was aghast and informed him that the only litigation I was involved in Johore was in respect of a piece of land in Kulai, where I had issued a Summons in the Sessions

Court for possession.

I immediately informed them that there was no question of any fraud but I would check the matter with my solicitors in Johore Bahru and I would obtain a copy of the Pleadings and documents relating to this matter.

5. On the 30th January 1977 I met my solicitors in Johore Bahru and discussed this matter with them and obtained from them one set of the Pleadings and other relevant documents, including the documents in Originating Motion No. 17 of 1976. Dato Suppiah informed me that he had appeared at all the hearings and that there was no question of any fraud and that there were wild allegations made by the Defendants in their Defence which had no merit. He then related to me briefly for the first time how he had come to be the owner of the property.

6. He informed me that he became the owner as a result of a transfer executed by Madam Rajaratnam on the 30th March 1974 and an agreement dated the 30th March 1974 between him and the owner of the property, Madam Rajaratnam. At her request, he had endorsed the additional handwritten words on the second page of the said agreement giving her the right to re-purchase the property within one year from the date of the said agreement. The vendor did not re-purchase the property within one year. He caused the property to be registered in his name and subsequently the property was transferred to me. He further said that the consideration for the sale of the property was M$220,000/- which was based on a valuation report given to him by Madam Rajaratnam's husband.

7. With regard to the various allegations that had been made against me, Dato Suppiah informed me that they had been made in open Court and had been dealt with, not only at the hearing of the Civil Action but at the hearing of the Originating Motion and the Judge, having heard all the arguments and allegations, dismissed the Motion. It was Dato Suppiah's view that under the Torrens

System if Madam Rajaratnam was aggrieved or dissatisfied her remedy would be to proceed under the relevant laws against him as the person who bought the land from her and not against me. He stated that he had set this out in his Affidavit in Civil Action No. 146 of 1976 as far back as the 10th May 1976 and had repeated this in his written submissions at the hearing in the Sessions Court and again at the hearing of the Originating Motion in the High Court but no action had been taken todate by Madam Rajaratnam against him to set aside the transfer.

8. At the time when the transfer of the land was effected from Dato Suppiah to myself I was unaware of the circumstances under which he had himself become the owner; he did not tell me. I first became aware of the facts as set out above only after my meeting with him on the 30th January 1977.

The Actions

9. In my claim for possession, M/s. Suppiah & Singh acted for me and they issued a Summons in the Sessions Court of Johore Bahru on the 20th March 1976 claiming vacant possession (A1-4).

C.K.G. Pillai & Co. entered appearance on behalf of both Defendants on the 20th April 1976 (A5).

On the 9th May 1976 a Defence was filed by M/s. Elias Majeed & Co. (A6-8).

An Interlocutory application was taken out on the 9th May 1976 for the Defence to be struck out on the grounds that it was in breach of order 10 rule 4 of the Subordinate Court Rules 1950; that the Defence disclosed no reasonable defence; and that it was frivolous, vexatious and an abuse of the process of the Court and the Plaintiff sought liberty to enter Judgment for possession (A9). An Affidavit in support was filed by Dato Suppiah (A10).

The application failed.

10. Another Interlocutory application was taken out by my solicitors on the 5th June 1976 for Judgment to be entered upon the admissions made by the Defendants that I was the registered owner of the land (A17). Dato Suppiah filed an Affidavit on the 11th June (A18).

The application was disallowed.

11. At the hearing of the Summons on the 9th August 1976 the Court ordered vacant possession (A37).

The Defendants' Counsel applied for a stay of execution but the application was disallowed (A37).

12. Copies of the documents in Sessions Court Civil Action No. 146 of 1976 are attached herewith and marked "A".

13. On the 30th August 1976 the solicitors for the Defendants filed Originating Motion No. 17 of 1976 in the High Court in Johore Bahru praying that execution on the Judgment in the Suit referred to above be stayed pending hearing of the Appeal (B1). An Affidavit in support was filed by the Defendants' solicitor, Mr. Majeed (B2-4).

14. An Affidavit in Reply was filed by Dato Suppiah on the 5th September (B11-13). Written submissions were also filed by M/s. Suppiah & Singh (B14-20).

15. The Originating Motion was heard before Mr. Justice Syed Othman, Messrs. Elias Majeed and P.K. Nathan appeared for the Applicants/Defendants and Dato Suppiah represented me. The Motion was heard on the 6th, 8th and 9th September 1976 when, after full argument, the Motion was dismissed with costs (B26). No appeal was lodged against the dismissal of the Motion.

Copies of the documents relating to the Originating

Motion are attached herewith and marked "B"

16. The Appeal from the Sessions Court is pending.

17. On the 13th September M/s. Ho Thian Chch & Co. were appointed to act on behalf of the Defendants and on the same day, having filed a Memorandum of Change of Solicitors, they filed an application in the Sessions Court at Johore Bahru seeking an order that the Bailiff be instructed to withhold execution, copies of the Memorandum of Change of Solicitors and the application and the Affidavit are enclosed herewith and marked "C". No Affidavit in Reply was filed by me or my solicitors.

I am informed by Dato Suppiah that the application was heard in open Court on the 16th September when, after having heard all arguments, the President of the Sessions Court, Mr. Malek, struck out the application with costs.

The Law

18. Section 340 of the National Land Code of Malaysia (Ord. No. 56 of 1975) deals with the indefeasibility of title, a copy of Section 340(1) is attached and marked "D". The relevant parts of the Section read:-

> "The title ..... of any person ..... for the time being registered as the proprietor of any land ..... shall ..... be indefeasible."

19. Doshi v. Yeoh Tiong Lay (1975) 1 MLJ 85 - where the principle of the indefeasibility of title of the registered owner was upheld.

20. The Court is entitled to enter Judgment upon admissions pursuant to Order 32 rule 6 of the Federation Rules of the Supreme Court (page 102 of Mallal's Supreme Court Practice). This is similar to order 27 rule 3 of the U.K. R.S.C. and would be applicable to the Sessions Court in this case.

Other Miscellaneous Documents

21. Since my meeting with Dato Suppiah I have obtained from him certain relevant documents relating to this matter.

(a) The agreement dated 30th March 1974 marked "E".

(b) A copy of the transfer from Madam Rajaratnam to Dato Suppiah dated 5th July 1975 and a copy of the transfer from Dato Suppiah to myself dated 31st July 1975, are attached and marked."F".

(c) A copy of the valuation of the property dated 26th February 1972 by Chong Kim Seng & Co. which Dato Suppiah informs me was handed to him by Madam Rajaratnam's husband, Mr. Devan, prior to the purchase of the property by him, marked "G".

22. Copies of a letter from the Tax Authorities in Malaysia dated 31st July 1975 addressed to Madam Rajaratnam and Form CST1 (land speculation tax form) dated 24th September 1975 submitted by Madam Rajaratnam marked "H".

23. I am informed that Madam Rajaratnam is well educated in English.

Conclusion

24. I have considered this matter in the light of various allegations and counter-allegations which have been bandied about by various people and I wish to inform the Society that I do not feel that I am guilty of any fraud or misconduct in respect of the land transaction which I

carried out in my personal capacity and not as a partner of Rodyk & Davidson. I did not act as a solicitor in this transaction. Moreover, the grouses or complaints that Madam Rajaratnam and her husband, Mr. Devan, may have, have been ventilated in the Court below and in the High Court; the Appeal against the Sessions Court order for possession is still pending. The matter would therefore be sub judice in my humble view. I will of course write and report back to the Society on
10 the outcome of the Appeal that is now pending.

25. In the light of the various allegations, I have myself consulted solicitors who are competent in this field of law and I have been advised that there could be no question of fraud or improper conduct on my part.

C. ARUL