

~~PC~~
~~ELI.G.I.~~

Judgment
32, 1965

30 OF 1964

No.....

Supreme Court of Ceylon,
No. 517 (Final) of 1960.

District Court of Colombo,
Case No. 44567/M.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

V. N. SOCKALINGAM CHETTIAR of No. 172, Sea Street,
Colombo, now of Rangiem, South India.

*Plaintiff-Respondent-
Appellant*

AND

A. K. R. KARUPPAN CHETTIAR of No. 297, Sea Street,
Colombo.

*Defendant-Appellant-
Respondent.*

R E C O R D
OF
P R O C E E D I N G S

PC
GLC-2

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PART I

No. 1

Journal Entries

IN THE DISTRICT COURT OF COLOMBO

No. 44567/M. V. N. S. Sockalingam Chettiar.....*Plaintiff*
 Class : V. vs.
 A. K. R. Karuppan Chettiar.....*Defendant.*

Amount : Rs. 29,747/- + Rs. 29,939.30 = Rs. 59,686.30.

(On defendant's claim in reconvention.)

10 Nature : Money.
 Procedure : Regular.
 Class stamps : Rs. 27/-.
 Exhibit stamps : Rs. 7/80.
 Schedule stamps : Rs. 2/40.

JOURNAL

The 11th day of August, 1958.

Mr. K. Rasanathan, Proctor, files appointment and Plaintiff together with Documents marked (A).

Plaint accepted and summons ordered for 26.9.58.

20 (Intd.).....
District Judge.

(2) 3.9.58.

Summons issued with Precept returnable the 24th day of September, 1958.

(Intd.).....

(3) 29.9.58.

26.9.58 having been declared a Public Holiday case called today.

Mr. K. Rasanathan for plaintiff.

Summons served.

30 Defendant's Proxy filed by Mr. S. Somasundaram.
 Answer on 31.10.58.

(Intd.).....
D.J.

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

- (4) 31.10.58.
Mr. S. Somasundaram for defendant.
Answer on 14.11.58.
(Intd.).....
D.J.
- (5) 14.11.58.
Answer filed.
Replication and
Deficiency 12.12.58.
(Intd.)..... 10
D.J.
- Deficiency due :
(a) from plaintiff Rs. 27 ·00.
(b) From defendant Rs. 21 ·60.
(Intd.).....
14.11.
- (6) 26.11.58.
Deficiency called for.
(Intd.).....
- (7) 2.12.58. 20
Proctor for defendant tenders stamps to the value of Rs. 21 ·60
being deficiency of duty payable by the defendant.
Affix and cancel.
(Intd.).....
D.J.
- (8) 12.12.58.
Mr. K. Rasanathan for plaintiff.
Mr. S. Somasundaram for defendant.
Replication filed.
Deficiency of Stamp }
Duty Rs. 27/- } tendered 30
Affix and cancel.
Call 17.12.58 in " B " Court to fix date of trial.
(Intd.).....
A.D.J.

(9) 17.12.58.

Case called. *Vide* (8).
Mr. K. Rasanathan for plaintiff.
Mr. S. Somasundaram for defendant.
Trial on 26.6.59.

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

(Intd.).....

(10) 17.6.59.

Proctor for plaintiff files plaintiff's list of witnesses and moves for summons.

10 Proctor for defendant received notice.
Allowed except on No. 4.

A.D.J.,
18.6.59.

(11) 17.6.59.

Proctor for defendant files defendant's list of witnesses and documents and moves for summons.

Proof of posting copy of list to proctor for plaintiff filed.
Allowed.

(Intd.).....

20

A.D.J.
18.6.59.

(12) 19.6.59.

2 Subpoenas issued on defendant.

(Intd.).....

(13) 25.6.59.

Proctor for plaintiff files plaintiff's additional list of witnesses and move for summons.

Registered Postal receipt filed in proof of posting copy to proctor for defendant.

30 (14) 25.6.59.

Proctor for defendant files defendant's additional list of witnesses.
Proctor for plaintiff received notice.

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

(15) 26.6.59.

Trial (I). *Vide* (I).

Mr. K. Rasanathan for plaintiff instructing Mr. E. B. Wickramanayake, Q.C. and Mr. Somasundaram.

Mr. S. Somasundaram for defendant instructing Mr. Thiagalagam, Q.C. with Mr. Arulambalam.

Defendant's additional list of witnesses and documents filed.

No time.

Trial 11.12.59.

(Intd.)..... 10

(16) 19.11.59.

Proctor for defendant files additional list of witnesses and documents.

Proctor for plaintiff received notice.

File.

(Intd.).....

A.D.J.

20.11.59.

(17) 30.11.59.

Proctor for defendant files additional list of witnesses with 20 notice to proctor for plaintiff, and moves for summons.

Allowed.

(Sgd.).....

A.D.J.

30.11.59.

(18) 2.12.59.

2 Subpoenas issued on defendant.

(Intd.).....

(19) 3.12.59.

Proctor for plaintiff files additional list of witnesses with proof 30 of posting copy to proctor for defendant and moves for summons.

Allowed.

(Sgd.).....

A.D.J.

3.12.59.

(20) 3.12.59.

1 Subpoena issued on plaintiff.

(Intd.).....

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

(21) 11.12.59.

Trial (2). *Vide* (15).

Mr. K. Rasanathan for plaintiff.

Mr. S. Somasundaram for defendant.

Vide proceedings.

Trial 23.5.60.

10

A.D.J.

(22) 28.4.60.

Proctor for defendant with notice to proctor for plaintiff files lists of witnesses and documents and moves for summons.

Allowed.

(Sgd.).....

A.D.J.

30.4.60.

(23) 5.5.60.

2 Subpoenas issued on defendant.

20

(Intd.).....

(24) 23.5.60.

Trial (3). *Vide* (21).

• Mr. K. Rasanathan for plaintiff.

Mr. S. Somasundaram for defendant.

Additional District Judge ill. I have an old case specially fixed for hearing before me today and it will take up the whole day.

I therefore refix trial for 9.9.60.—‘ B ’ Court.

(Sgd.).....

Ag.D.J.

23.5.60.

30

(25) 9.8.60.

2 Subpoenas issued on defendant.

(Intd.).....

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

(26) 9.9.60.

Trial (4). *Vide* (24).

Mr. K. Rasanathan for plaintiff.

Mr. S. Somasundaram for defendant.

Vide proceedings.

Further hearing on 11.10.60.

(27) 29.9.60.

Proctor for plaintiff files original of document marked " X " in this case.

File.

10

(Intd.).....

A.D.J.

29.9.60.

(28) 11.10.60.

Trial (5). *Vide* 26 continued.

Mr. K. Rasanathan for plaintiff.

Mr. S. Somasundaram for defendant.

Vide proceedings.

Judgment on 20.10.60.

(Sgd.) A. L. S. SIRIMANE, 20

11.10.60.

(29) 12.10.60.

Translation ' Y ', P1—P7 filed.

(30) 12.10.60.

D1 and D2 filed together with translations of D3—D6.

(D3—D6 in the Record Room).

(31) 20.10.60.

Mr. K. Rasanathan for plaintiff. Present.

Mr. S. Somasundaram for defendant. Present.

Judgment delivered in open Court.

30

(Sgd.) A. L. S. SIRIMANE,

20.10.60.

(32) Decree entered.

20.10.

(33) 20.10.60.

Proctor for plaintiff files application for execution of decree and moves to issue writ of execution against the property of the defendant.

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

Tender deficiency of stamp duty and move.

(Sgd.) A. L. S. SIRIMANE,

(1) *A.D.J.*

24.10.60.

(34) 20.10.60.

10 Mr. S. Somasundaram, proctor for defendant-appellant files Petition of Appeal against the judgment of this Court dated 20.10.60, and also tenders uncanceled stamps to the value of Rs. 81/- for the Supreme Court decree and Secretary's Certificate-in-appeal.

Stamps Rs. 54/- for Supreme Court Decree cancelled and kept in Secretary's safe.

Stamps Rs. 27/- affixed to Secretary's Certificate-in-appeal form and cancelled.

Petition of appeal accepted.

(Sgd.) A. L. S. SIRIMANE,

(2) *A.D.J.*

24.10.60.

20

Received Stamps,

(Intd.).....

24.10.60.

(35) 20.10.60.

30 Proctor for defendant-appellant files notice by way of motion, signed by the defendant-appellant and by proctor for defendant-appellant, and addressed to the plaintiff-respondent through his proctor, Mr. K. Rasanathan, stating that the petition of appeal presented by the defendant-appellant in this action on 20.10.60 against the judgment of this Court dated 20.10.60 in this action having been received by Court, Counsel on behalf of defendant-appellant will on 7.11.60 or soon thereafter (being within twenty days from the date of such judgment) move to tender security in a sum of Rs. 250/- by depositing the same to the credit of this action and hypothecating the same as security for any costs which may be incurred by plaintiff-respondent in appeal in the premises and will on the said date deposit in Court a sufficient sum of money to cover the expenses of serving notice of appeal on plaintiff-respondent.

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

Mr. K. Rasanathan, proctor for plaintiff-respondent received notice on the motion, with copy of petition of appeal.

Mention on 7.11.60.

(Sgd.) A. L. S. SIRIMANE,

(3) *A.D.J.*

24.10.60.

(36) 20.10.60.

The petition of appeal presented by the defendant-appellant in this action on 20.10.60 against the decree of this Court dated 20.10.60 in this action having been received by Court, proctor for defendant-¹⁰ appellant moves for a notice on the plaintiff-respondent that Counsel on behalf of the defendant-appellant will on 7.11.60 or soon thereafter (being within twenty days from the date of such decree) move to tender security in a sum of Rs. 250/- by depositing the same to the credit of this action and hypothecating the same as security for any costs which may be incurred by him in appeal in the premises and will on the said day deposit in Court a sufficient sum of money to cover the expenses of serving notice of appeal on him.

He also moves for leave of Court to have the said notice on the plaintiff-respondent served on P. L. S. Sevugan Chettiar of 172, ²⁰ Sea Street, Colombo, the Attorney of the plaintiff-respondent, and tenders notice signed by the defendant-appellant and addressed to the plaintiff-respondent, for issue through Court.

1. Issue notice for 7.11.60.
2. Allowed.

(Sgd.) A. L. S. SIRIMANE,

(4) *A.D.J.*

24.10.60.

(36a) 20.10.60.

Notice of tendering security issued on plaintiff-respondent to ³⁰ be served on P. L. S. Sevugan as Attorney of plaintiff with Precept to Fiscal, W.P. (returnable 31.10.).

(Intd.).....

(37) 20.10.60.

Proctor for defendant-appellant moves for a paying-in-voucher for Rs. 50/- being the fees for two typewritten copies of the record in this case.

Issue paying-in-voucher.

(Sgd.) A. L. S. SIRIMANE,
(5) *A.D.J.*
24.10.60

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

(37a) 20.10.60.

10 Paying-in-voucher for Rs. 50/- issued.

(Intd.).....

(38) 20.10.60.

Proctor for defendant-appellant files application for typewritten copies of the record in this case as per particulars therein, and tenders Kachcheri Receipt bearing No. Y/15 861765/1761 of 20.10.60 for Rs. 50/- being fees for typewritten copies.

File.

(Sgd.) A. L. S. SIRIMANE,
(6) *A.D.J.*
24.10.60.

20

(38a) 20.10.60.

Kachcheri Receipt No. Y/15 861765/1761 of 20.10.60 for Rs. 50/- being fees for typewritten copies filed.

(Intd.).....

(39) 26.10.60.

Proctor for defendant-petitioner files petition and affidavit and for the reasons stated therein moves—

(a) to declare that the appeal by defendant had been filed prior to the application for execution of decree.

30 (b) that if the Court holds that application for execution of the decree had been applied for prior to the filing of the appeal then execution be stayed pending the appeal on the

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

petitioner furnishing security. Proctor for plaintiff
respondent receives notice for 7.11.60.

Mention on 7.11.60.

(Sgd.) A. L. S. SIRIMANE,
(1) *A.D.J.*
28.10.60.

(40) 26.10.60.

With reference to the notice of security for costs of appeal of the plaintiff issued for service on the Attorney of plaintiff Proctor for defendant-appellant states that he is instructed that the Attorney 10 left Ceylon for India and it is not known of his return. Notice *re* the said security has been already given to the plaintiff's proctor.

Proctor for defendant-appellant moves for leave of Court to issue the said notice to the plaintiff personally by registered post to his Indian address, viz. Rangeem, Pudukottai Division, Tiruchinapalli District, South India.

Service of process in India should be through the relevant Indian Court.

Support.

(Sgd.) A. L. S. SIRIMANE, 20
(2) *A.D.J.*
28.10.60.

(41) 26.10.60.

Proctor for plaintiff tenders stamps of Rs. 9/- being deficiency on his application for writ, and moves that the same be allowed now.

1. Affix and cancel.
2. Mention on 7.11.60.

(Sgd.) A. L. S. SIRIMANE,
(3) *A.D.J.*
28.10.60. 30

(42) 1.11.60.

Case called.

Vide application at Journal Entry (40).

Mr. Somasunderam addresses Court in support of application at Journal Entry 40 which is allowed.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.
1.11.60.

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

(43) 7.11.60.

10 Case called. *Vide* (35), (36), (39) and (41).

Mr. K. Rasanathan for plaintiff-respondent. Present.

Mr. S. Somasundaram for defendant-appellant. Present.

Notice of tendering security not served on the plaintiff-respondent.

Mr. Somasundaram tenders registered article receipt with copy of notice posted to respondent.

Security offered is accepted. The Bond being perfected issue notice of appeal for 12.12.60.

(Issue Deposit Note).

Inquiry re stay of execution of decree on 12.12.60.

20 (Sgd.) A. L. S. SIRIMANE,
A.D.J.
7.11.60.

(44) 7.11.60.

Paying-in-voucher for Rs. 250/- issued.

(Intd.).....

(45) 7.11.60.

Proctor for defendant-appellant files security Bond Kach-cheri Receipt No. Y/15 863458/559 of 7.11.60 for Rs. 250/- being security deposit, and notice of appeal.

30 1. File.
2. Issue notice of appeal.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.
8.11.60.

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

(45a) 7.11.60.

Kachcheri Receipt No. Y/15 863458/559 of 7.11.60 for Rs. 250/- being security deposit filed.

(Intd.).....

(45b) 7.11.60.

Notice of appeal issued on proctor for plaintiff-respondent with Precept to Fiscal, W.P. returnable 30.11.

(Intd.).....

(46) 12.12.60.

Case called. *Vide* (43).

10

Mr. K. Rasanathan for plaintiff-respondent.

Mr. S. Somasundaram for defendant-appellant.

1. Notice of appeal served on the proctor for plaintiff-respondent. Forward record to Supreme Court.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.
12.12.60.

2. Inquiry. *Vide* (43).

Vide proceedings filed.

(Sgd.) A. L. S. SIRIMANE, 20
12.12.60.

(47) 4.1.61.

Proctor for plaintiff-respondent files application for typewritten copies of the record in this case as per particulars therein, and applies for a paying-in-voucher for Rs. 25/-.

Issue paying-in-voucher.

(Sgd.).....
Ag.D.J.
4.1.61.

(48) 5.1.61.

30

Paying-in-voucher for Rs. 25/- issued. *Vide* (47).

(Intd.).....

(49) 9.1.61.

Paying-in-voucher for Rs. 7,000/- issued in favour of the proctor for defendant. *Vide* (46) (.....).

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

(50) 16.1.61.

Case called. *Vide* (46).

Mr. K. Rasanathan for plaintiff-respondent.

Mr. S. Somasundaram for defendant-appellant.

.....execution not to proceed. *Vide* motion filed.

10

(Sgd.).....

A.D.J.

16.1.61.

(51) 15.2.61.

Proctor for defendant-petitioner files Bond from defendant-petitioner hypothecating the sum of Rs. 7,000/- deposited by him as security for the stay of execution.

File.

(Intd.).....

A.D.J.

17.2.61.

20

(52) 5.4.61.

Record forwarded for typing of briefs to Registrar, Supreme Court, with cancelled stamps to the value of Rs. 54/- for the Supreme Court Decree. Documents marked D3 to D6 sent separately.

(Sgd.).....

Assistant Secretary.

5.4.61.

(53) 16/19.2.63.

The Registrar, Supreme Court, returns case record together with Supreme Court Judgment and Decree.

Documents marked D3 to D6 are also returned.

It is directed that a decree be entered dismissing the plaintiff's action with costs and for the payment by the plaintiff to the defendant the aggregate sum of Rs. 21,086.55.

30

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

It is further directed that the plaintiff-respondent do pay to the defendant-appellant the costs of the appeal.

Proctors to note.

(Sgd.) A. L. S. SIRIMANE,
D.J.
22.2.63.

(54) 27.2.63.

Proctor for defendant moves to enter decree in terms of the Order of the Supreme Court made in appeal in terms of the motion.

Vide order at Journal Entry (55). 10

(Sgd.) A. L. S. SIRIMANE,
(1) *D.J.*
1.3.63.

(55) 1.3.63.

For reasons stated, proctor for defendant moves to return the record to the Supreme Court so that the decree to be entered.

Return record to Registrar, Supreme Court.

(Sgd.) A. L. S. SIRIMANE,
(2) *D.J.*
1.3.63. 20

(56) 30.3.63.

Registrar, Supreme Court, returns record together with Supreme Court decree.

Plaintiff's action dismissed with costs and the plaintiff to pay to the defendant aggregate sum of Rs. 21086/55.

The defendant in addition will be entitled to the costs of the appeal.

Proctors to note. This has already been journalised. *Vide* Journal Entry 53.

(Sgd.) A. L. S. SIRIMANE, 30
D.J.
1.4.63.

(57) 2.4.63.

Proctor for defendant moves for execution of decree by issue of writ against the plaintiff.

Issue writ.

No. 1
Journal Entries
11.8.58 to
7.6.63—
Continued

(Sgd.).....
A.D.J.

(58) 10.4.63.

Proctor for defendant moves for an order of payment in favour of the defendant for Rs. 7,000/- and accrued interest if any as the decree entered in favour of the plaintiff has been set aside in appeal.

Proctor for plaintiff consents.

Issue payment order in favour of defendant for Rs. 7,000/-
Pay Rs. 7,000/-.

(Sgd.).....
A.D.J.

(59) 19.4.63.

Order of Payment No. B-094112 for Rs. 7,000/- issued in favour of defendant.

(Sgd.).....

20 Asst. Secretary.

(Sgd.).....
Adm. Secretary.

(60) 23.5.63.

Proctor for defendant returns Payment Order and moves to revalidate same.

Extend validity for a further period of 30 days.

(Sgd.).....
A.D.J.
25.5.63.

Validity extended.

(Intd.).....

30 (61) 7.6.63.

The Registrar, Supreme Court, requests to forward the record early together with documents, if any, as permission has been granted to appeal to the Privy Council.

Forward record to Registrar, Supreme Court, with documents, if any.

(Sgd.).....
D.J.

account of the plaintiff's half share of the profits of the said estate up to the date of sale of the plaintiff's share at Rs. 29,747/-. The defendant became liable in terms of the said agreement of the 1st August, 1956 to pay the said sum of Rs. 29,747/- to the said Department for and on behalf of the plaintiff.

No. 2
Plaint of the
Plaintiff
11.8.58—
Continued

7. The defendant had failed and neglected to pay to the said Income Tax Department the said sum of Rs. 29,747/- and obtain for the plaintiff a Tax Clearance Certificate as agreed upon, though called upon to do so by the plaintiff on a number of occasions.

10 8. By the failure of the defendant to pay the said sum to the Income Tax Department as agreed upon and to obtain the Tax Clearance Certificate the plaintiff is liable to pay Income Tax amounting to Rs. 29,747/- and penalty.

9. A cause of action has now accrued to the plaintiff to sue the defendant for the recovery of the said sum of Rs. 29,747/-, which sum or any part thereof the defendant has failed and neglected to pay though often demanded.

20 Wherefore the plaintiff prays for judgment against the defendant for the said sum of Rs. 29,747/- together with legal interest thereon from the date of action up to date of decree and thereafter legal interest on the aggregate amount of the decree till payment in full, and costs of suit, and for such other and further relief as to this Court shall seem meet.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

Documents relied on by Plaintiff

Agreement dated 21.8.1956.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

Documents filed with Plaintiff

30

Power of Attorney marked letter "A."

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

ANNEX MARKED "A."

To All To Whom These Presents Shall Come, I, VANA NAVANNA SONA SOCKALINGAM CHETTIAR, son of NAGAPPA CHETTIAR otherwise known as V. N. S. Sockalingam Chettiar,

Annex marked
"A"
(Power of
Attorney)
8.8.58

No. 2
 Plaint of the
 Plaintiff
 11.8.58

Annex marked
 " A "
 (Power of
 Attorney)
 8.8.56—
Continued

son of Nagappa Chettiar of Rangiam in the Pudukkottah Division of Tiruchirappalli District in South India.

SEND GREETINGS :—

WHEREAS I am desirous of appointing an Attorney to manage and control my lands and affairs in the Island of Ceylon.

NOW KNOW YE AND THESE PRESENTS WITNESS that I the said SOCKALINGAM CHETTIAR, son of NAGAPPA CHETTIAR, do hereby nominate, constitute and appoint PANA LANA SAYANA SEVUGAN CHETTIAR, son of PALANIAPPA CHETTIAR of No. 172, Sea Street in Colombo to be my true and lawful Attorney in the said Island to act for me and on my behalf and in the name of my and of said firm or otherwise for all and each and every or any of the following purposes, that is to say :—

To superintend, manage and control the houses, lands, estate, other landed property as also the ships, vessels and boats I now or hereafter may become entitled to possessed of or interested in. To sell and dispose of or to ship and consign for sale elsewhere the crops and produce of the estates which I now am or hereafter may become entitled to, possessed of or interested in.

To call for and to give and consent to partition of the said lands, houses, and buildings and premises or any of them between me and the proprietor or proprietors thereof.

To purchase or take on lease for me any necessary lands, tenements or hereditaments as to my said Attorney, shall seem proper.

To file partition suits in respect of my lands in the appropriate Courts.

In the event of any such purchase, partition, freight, charter or for any other purpose, whatsoever for me and in my name and as my act and deed to sign, execute and deliver all deeds and other writings necessary for giving effect and validity to the same respectively or to any contract, agreement or promise for effecting the same respectively.

To ask, demand, sue for, recover and receive of and from all persons liable now or hereafter to pay and deliver the same respectively all sum and sums of money, debts, legacy, goods, effects and things whatsoever now owing payable or belonging or which shall or not at any time hereafter be due, owing, payable, coming or belongs to me and on payment or deliver thereof to give, sign and execute receipts, releases and other discharges for the same respectively and thereupon to manage, employ and deal with the same as I could or might lawfully do, and on non-payment or non-delivery thereof or of any part thereof, to commence, carry on and prosecute any

action or actions, suit or suits or other proceedings whatsoever before any Court or Courts in the said Island for receiving and compelling the payment or delivery thereof.

To state, finally settle and adjust all accounts, reckonings and demands whatsoever between me and any person or persons whomsoever and to compromise disputes and differences and to refer matters to arbitration and to sign and execute all necessary bonds, submissions and references therefor and to enforce any award.

10 To sell and convert into money all goods, effects or things which now belongs or at any time hereafter shall belong to me and invest the money which now belongs or at any time hereafter may belong to me upon such security as my said Attorney shall consider good and sufficient and from time to time to vary such investments for other or others of the same or like nature or to release such security.

To appear for me before any Court or Courts in the said Island either as plaintiff, defendant or intervenient and to sign and grant all necessary Proxy or Proxies to any proctor or proctors of the said Courts and the same from time to time recall and revoke and to prosecute or defend any suit or suits or other proceedings now or
20 hereafter to be brought by or against me and to proceed to judgment thereon or to suffer judgment by way of default to be entered against me and to admit any claim or claims which may be brought against me in such Court or Courts as my said Attorney shall think fit, and against any judgment, order or decree of any of the said Courts, appeal and prosecute such appeal before the Supreme Court of the said Island and from any judgment or decree of the said Supreme Court to appeal to HER MAJESTY THE QUEEN-in-Council or any other Court or Tribunal and give all necessary securities and sign all necessary bonds for the prosecution of such appeals.

30 To prove any debts or debts due to me by any person who shall be adjudged an insolvent in any Court or Courts in the said Island and to vote in elections and assignees and to accept any offer of composition and otherwise to represent and act for me in such insolvency proceedings.

To open, keep, maintain, make, deposit, to draw upon and close any accounts with any bank or banks which is or are now opened or may at any time hereafter be opened with such bank or banks.

40 To draw, sign, make, endorse, accept and discount any Bill or Bills of Exchange or Bills of Lading and to sign and endorse cheques, drafts and orders for money.

To open current accounts in any banks in Ceylon and for that purpose to draw, sign and negotiate cheques and to endorse them for the purpose of operating such bank accounts.

No. 2
Plaint of the
Plaintiff
11.8.58

Annex marked
" A " (Power
of Attorney)
8.8.56—
Continued

No. 2
 Plaintiff of the
 Plaintiff
 11.8.58

Annex marked
 " A " (Power
 of Attorney)
 8.8.56—
Continued

To appear before the Exchange Controller and The Income Tax Commissioner or Assistant Commissioners or Assessors on my behalf and to compromise and settle my tax liabilities and to obtain permits for me from the Exchange Controller or his assistants and for that purpose to sign and deliver all documents and writings as may be necessary in that behalf.

To revoke and annul the powers of Attorney granted to my hitherto Attorney or Attorneys or any of them and for that purpose to take the necessary steps and proceed thereon and sign and execute all manner of documents and writings on that behalf. 10

Generally to do, execute and perform all such further and other acts, deeds, matters and things whatsoever which my said Attorney shall think necessary or proper to be done in and about or concerning my business, estate, lands, houses, debts or affairs as fully and effectually to all intents and purposes as I might or could do if I were personally present and did the same in my proper person it being my intent and desire that all matters and things respecting the same shall be under the full management, control and direction of my said Attorney.

And for more effectually doing, effecting, executing and performing the several matters and things aforesaid, give and grant unto 20 my said Attorney full power and authority from time to time to appoint one or more substitute or substitutes to do, execute and perform all or any of the matters and things aforesaid and such substitute or substitutes at pleasure to remove and to appoint another or others in his or their places. I hereby promising and agreeing to ratify, allow and confirm all and whatsoever my said Attorney substitutes shall lawfully do or cause to be done in the premises by virtue hereof.

And I do hereby direct that all acts which shall be had, made or done by my said Attorney substitute substituted, before he or 30 they shall have received notice of my death or the revocation of the authority contained in these presents shall be as binding and valid to all intents and purposes as if the same had taken place previous to my death or before such revocation, any rule of law or equity to the contrary notwithstanding.

And it is hereby expressly declared and agreed that as against me and my said firm and any person claiming under me or my said firm every act, deed, matter or thing which the said Attorney, substitutes shall execute or cause to be executed or done in relation to the premises subsequent to the revocation of the powers expressed 40 to be hereby conferred or any of them shall be binding and conclusive in favour of every person claiming the benefit of such act, deed, matter or thing who shall not proper to the execution or doing thereof have received express Notice of such revocation and it is hereby

further declared that no such person shall be bound to inquire or ascertain whether I am living or whether the said powers or any of them have or has been revoked or otherwise determined.

No. 2
Plaint of the
Plaintiff
11.8.58

IN WITNESS WHEREOF I have set my hand at Pudukkottah on this the 8th day of August One Thousand Nine Hundred and Fifty-six.

Annex marked
" A " (Power
of Attorney)
8.8.56—
Continued

(Sgd.) VANA NAVANNA SONA
SOCKALINGAM CHETTIAR.

Signed in the presence of us :

10 Before me: A. Krishnamurthi Aiyar, B.A.L. Notary Public, Pudukkottai, Trichinopoly District, S. India, attested in person the aforesaid Donor V. N. S. Sockalingam Chettiar at Pudukkottai on this the 8th day of August 1956 to whom the contents were explained in Tamil and who having understood the same affixed his signature hereto in my presence.

He is personally known to me.

(Sgd.) A. KRISHNAMURTHI AIYAR,
Notary Public,
Pudukkottai, S. India.

20 Stamps.

Re. 1/-.

Re. 1/-.

SEAL

True Certified Copy.

(Sgd.).....

11.8.58.

Notary Public.

No. 3

Answer of the Defendant (with Annex marked " XI ")

No. 3
Answer of the
Defendant
14.11.58

30 IN THE DISTRICT COURT OF COLOMBO

V. N. Sockalingam Chettiar of No. 172, Sea Street in Colombo.....*Plaintiff*

vs.

No. 44567(M.). A. K. R. Karuppan Chettiar of No. 40, Mutwal Street in Colombo.....*Defendant.*

No. 3
 Answer of the
 Defendant
 14.11.58—
 Continued

On this 14th day of November, 1958.

The answer of the defendant above named appearing by Sabapathy Somasundaram and his assistant Sinnathambiappillai Thuraisingham, his Proctors states as follows :—

1. The defendant admits—

(i) the jurisdiction of this Court to hear and determine this action, and

(ii) paragraphs 2 and 3 of the plaint and denies all and singular the allegations set out in the plaint subject to the averments contained herein. 10

2. Prior to and at the time of negotiations for the sale of the plaintiff's half share in Kaloogala Estate to the defendant, the plaintiff was entitled to various sums of monies due to him by way of refunds in respect of Income Tax paid by him and Income Tax payable by him up to September 1956 on the income received by him from his said half share. The total of such refunds was estimated to be in the neighbourhood of Rs. 30,000/-.

3. At the treaty for sale of the plaintiff's half share in the said estate to the defendant it was agreed that the defendant do pay to the Income Tax authorities such Income Tax as was payable by 20 the plaintiff on his share of income from the said estate and that the defendant should take the benefits of all the refunds due, as stated above, to the plaintiff.

4. In such circumstances and with due regard to the benefits accruing to the defendant from the relief of about Rs. 30,000/- aforesaid two informal agreements were signed by the parties to this action on 21st August 1956 and later the consideration on deeds of sale Nos. 7498 and 7496 dated 7th September 1956 and attested by S. Somasundaram of Colombo Notary Public was reckoned at Rs. 250,000/-.

5. By way of further answer the defendant states that no 30 demand in respect of Income Tax payable by the plaintiff on his share of the said estate from 1st April 1956 to 7th September 1956 has been made either by the Income Tax authorities in Ceylon or by the plaintiff. Such tax is a refund which the plaintiff may claim under Article III of the Agreement for Relief from or Avoidance of Double Taxation of Income between the Government of Ceylon and the Government of India dated 10th September 1956; and must pay over to the defendant in terms of the agreement referred to hereafter.

For a claim in Reconvention

40

6. Under and by virtue of one of the said informal agreements annexed hereto marked " X " with a translation thereof marked

“ XI ” and pleaded as part and parcel of this answer it was agreed *inter alia* between the parties :—

No. 3
Answer of the
Defendant
14.11.58—
Continued

- (a) The second party (the defendant) shall receive the entire refund of Ceylon Income Tax due to the first party (the plaintiff) and for that purpose the first party (the plaintiff) shall sign and deliver the relevant documents whenever called upon to do so by the second party (the defendant).
- (b) The second party (the defendant) shall pay the Income Tax payable in Ceylon for the share of the profits of the first party (the plaintiff) from 1st April 1956 and for that if refund and/or deduction is made in the Income Tax Office in India in the assessment of the first party (the plaintiff) such amounts shall be paid by the first party (the plaintiff) to the second party (the defendant).

7. The plaintiff has failed and neglected to sign and deliver relevant documents necessary to enable the defendant to get the benefits of all refunds due in terms of the agreement pleaded in paragraph 6 above though thereto often requested.

8. (i) By way of relief under Section 45 (2) of the Income Tax Ordinance (Cap. 188) and on account of over payment of Income Tax the plaintiff is entitled to refund in the sums of Rs. 13,584/30 and Rs. 6,355/- respectively.

(ii) A computation of the refund due to the plaintiff by way of relief in terms of Section 46 (i) of the said Income Tax Ordinance and demand thereof from the Income Tax Authorities in Ceylon has been rendered impossible by reason of the plaintiff's failure to furnish relevant information and documents. The defendant assesses such refund and relief in a sum of Rs. 10,000/-.

(iii) By reason of the plaintiff's default the defendant has been prevented from receiving from the Income Tax authorities in terms of the said agreement the afore-said sums of Rs. 13,584/30, Rs. 6,355/- and Rs. 10,000/- aggregating to Rs. 29,939/30 and the plaintiff has become liable to pay the defendant the said aggregate sum of Rs. 29,939/30.

9. The defendant claims the said sum of Rs. 29,939/30 in this action and reserves to himself the right to make other claims under the said informal agreements if and when they arise.

Wherefore the defendant prays :—

- (i) that the plaintiff's action be dismissed ;

No. 3
Answer of the
Defendant
14.11.58—
Continued

- (ii) that the plaintiff be ordered and decreed to pay to the defendant the said sum of Rs. 29,939/30 with legal interest thereon from the date hereof till payment in full ;
- (iii) for costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendant.

Settled by :

V. ARULAMBALAM, Esquire,
C. THIAGALINGAM, Esquire, Q.C.,
Advocates.

10

Memorandum of documents filed with the answer.

Informal agreement dated 21st August 1956 marked " X " Translation thereof marked " X1."

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendant.

No. 3
Annex marked
" X1 " (English
Translation of
Agreement—
21.8.56)

X1

(English Translation of the Document written in Tamil Marked X Annexed to the Answer of the Defendant)

The Agreement made and entered into after discussion on this 20 21st day of August 1956 at Colombo by and between the two parties namely : V. N. Sockalingam Chettiar and A. K. R. Karuppan Chettiar in the presence of M. S. M. Muthuraman Chettiar and Do Saminathan Chettiar in respect of Kaloogala Estate in Badulla District is as follows :—

1. Till the date when a transfer is being effected to the 2nd party by the 1st party of his half share in the Kaloogala Estate in accordance with the agreement entered this day to sell and transfer same, the 2nd party A. K. R. shall pay the Ceylon Income Tax that may fall due hereafter and the arrears if any payable to the date 30 hereof in respect of the half share of the profits of the 1st party V. N. S.

2. The 2nd party shall receive the entire refund in Ceylon Income Tax due to the first party and for that purpose the 1st party shall sign and deliver the relevant documents whenever called upon to do so by the 2nd party.

3. The 2nd party A. K. R. shall tender such relevant documents and cause to be nullified the penalty already imposed by the Indian Income Tax authorities in connection with the said estate and in

spite of it, if tax is to be paid the 1st party V. N. S. shall pay only a third of the amount and the balance two-thirds by the 2nd party A. K. R.

4. The 1st party himself shall pay the Income Tax levied in India affecting the half share in the said estate belonging to the 1st party.

5. To enable the 1st party to obtain Exchange Control Permit for the sum of Rs. 250,000/- being the sale price of the said half share and the sum of Rs. 125,000/- being the profits attached thereto aggregating to a sum of Rs. 375,000/-, the 2nd party shall pay the Ceylon Income Tax arrears payable by the 1st party and deliver to the 1st party the Income Tax Clearance Certificate.

6. All Estate accounts and Audit Statements that may be required in connection with the Exchange Control the 2nd party shall, when called upon by the 1st party deliver and get back through the Auditor.

7. From 1.4.56 if Income Tax becomes payable in Ceylon for the share of the profits of the 1st party V. N. S. the same shall be paid by the 2nd party A. K. R. and for that if reduction is made by way of refund in the Income Tax Office in India in the assessment of the 1st party V. N. S. such amounts shall be paid without delay to second party A. K. R. by the 1st party V. N. S.

8. If Income Tax payments receipts were required for obtaining refunds of Income Tax either in Ceylon or in India, the same shall be delivered to the party requiring and got back through the Auditor.

9. If a Valuation Report was needed in respect of the said estate and for that purpose when the Valuer visits the said estate at the expense of the 1st party it shall be done with the sanction of the 2nd party A. K. R. And further agreeing to furnish other details when required we have set our signatures to two of the same tenor and written by the same hand as these presents and held one by each of us.

Revenue stamp of 50 cents.

Per Pro V. N. S. SOCKALINGAM CHETTIAR,
(Sgd.) P. L. S. SEVUGAN CHETTIAR,
(Sgd.) A. KARUPPAN CHETTIAR.

No. 3
Answer of the
Defendant
14.11.58

Annex marked
" XI "
(English
Translation of
Agreement
21.8.56)—
Continued

No. 3
 Answer of the
 Defendant
 14.11.58
 ———
 Annex marked
 " XI "
 (English
 Translation of
 Agreement
 21.8.56—
 Continued

Witnesses :

1. (Sgd.) M. S. M. MUTHURAMAN CHETTIAR.
2. (Sgd.) M. S. M. SAMINATHAN CHETTIAR (in Tamil).
3. (Sgd.) K. M. MUTHIAH CHETTIAR.

This is drawn and witnessed by S. P. Arunasalam Chettiar.

Translated by me :

(Sgd.).....

Sworn Translator,

District Court, Colombo.

13th November, 1958.

10

No. 4
 Replication of
 the Plaintiff
 24.11.58

No. 4

Replication of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

V. N. Sockalingam Chettiar of No. 172, Sea
 Street, in Colombo.....*Plaintiff*

No. 44567/M.

vs.

A. K. R. Karuppan Chettiar of No. 40, Mutwal
 Street, in Colombo.....*Defendant.*

On this 24th day of November 1958.

The Replication of the abovenamed plaintiff appearing by K. 20
 Rasanathan his Proctor states as follows:—

1. The plaintiff joins issue with the defendant upon the denials
 contained in the Answer.

2. Answering to paras 2 and 3 the plaintiff admits that in terms
 of the said Agreement he agreed that any refund of Income Tax
 in Ceylon payable to the plaintiff should be paid to the defendant.

3. Answering to the first part and para 5 the plaintiff states
 that in or about 2.10.1958 at the pressing demand of the Income
 Tax Authorities in Ceylon he paid to them a sum of Rs. 29,747/00
 which sum the defendant was liable to pay in terms of the said Agree- 30
 ment. The plaintiff does not understand the latter part of the said
 para.

4. Answering to the defendant's claim in reconvention the
 plaintiff states that in terms of the said agreement,

- (1) The defendant should pay the Income Tax due on the plaintiff's half share up to the date of the sale and taxes due and payable thereafter should any be payable.
- (2) Any refund in respect of the plaintiff's Tax should be paid to the defendant and the plaintiff should sign all necessary documents when called upon to do so.
- (3) That if this defendant paid the Tax on the plaintiff's half share and thereafter the plaintiff obtained a reduction by the refund of Income Tax in Ceylon and in India in respect of Income of the said Kalugala Estate, the plaintiff should pay to the defendant the amount of such refund.

10

5. Answering to para 7 the plaintiff states that he was at all times ready and willing to sign any documents called for by the defendant but that the defendant at no time made any demand on him.

6. The plaintiff puts the defendant to the strict proof of all the averments in para 8. The plaintiff is unaware that he is entitled to any refund. And states that in terms of the agreement it is the duty of the defendant to recover any refund. The plaintiff specially denies that he failed to furnish relevant information and documents and states that the defendant at no time called for them. The plaintiff was always ready and willing to furnish any information within his knowledge and grant any documents necessary for obtaining any refunds of Income Tax to the defendant.

20

7. Answering to para 9 the plaintiff denies that the defendant is entitled to Rs. 29,939/30 or any other sum.

WHEREFORE the plaintiff prays that the defendant's Claim in reconvention be dismissed and that Judgment be entered for the plaintiff as prayed for in the plaint, and for costs, and for such other and further relief as to this Court shall seem meet.

30

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

No. 5
Plaintiff's
Lists of
Witnesses and
Documents (i)
11.6.59

No. 5

Plaintiff's Lists of Witnesses and Documents (4)

(1) **IN THE DISTRICT COURT OF COLOMBO**

No. 44567/M. V. N. Sockalingam Chettiar of No. 172, Sea Street, in Colombo.....*Plaintiff*
vs.
A. K. R. Karuppan Chettiar of No. 40, Mutwal Street, in Colombo.....*Defendant.*

I move to file the plaintiff's List of Witnesses and move for summons on them. 10

Colombo, 11th June, 1959.

The list referred to above

1. Plaintiff's Attorney P. L. S. Sevugan Chettiar to give evidence and to produce agreement dated 21st August 1956, and Income Tax receipts for the payment of Rs. 29,747/- paid to Ceylon Income Tax and to produce his Power of Attorney of 8th August 1956 executed in India.
2. K. M. Muthiah Chettiar of Sea Street, Colombo and
- + 3. S. P. Arunasalem Chettiar of Sea Street, Colombo.
4. The defendant. 20

Colombo, 12th June, 1959.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

Received notice with copy list.
(Sgd.) S. SOMASUNDERAM,
Proctor for Defendant.

No. 5
Plaintiff's Lists
of Witnesses
and
Documents (ii)
25.6.59

(2) **IN THE DISTRICT COURT OF COLOMBO**

No. 44567/M. V. N. Sockalingam Chettiar of No. 172, Sea Street, Colombo.....*Plaintiff*
vs.
A. K. R. Karuppan Chettiar of No. 40, Mutwal Street, Colombo.....*Defendant.* 30

I move to file the plaintiff's additional list of witnesses in this case and move for summons.

The list above referred to

The plaintiff's Attorney P. L. S. Sevugan Chettiar to give evidence, and to produce the Income Tax (Profits Tax) assessment orders for the years 1955, 1956, 1957 and letter dated 23rd July 1958 written by plaintiff's Proctor to defendant and the reply thereto dated the 31.7.1958 written by defendant's Proctor to plaintiff's Proctor.

Colombo, 25th June 1959.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

10 Copy sent by registered post.
Registered receipt annexed.

No. 5
Plaintiff's
Lists of
Witnesses and
Documents (ii)
25.6.59—
Continued

(3) IN THE DISTRICT COURT OF COLOMBO

No. 44567/M. V. N. Sockalingam Chettiar.....*Plaintiff*
vs.
A. K. R. Karuppan Chettiar.....*Defendant.*

No. 5
Plaintiff's Lists
of Witnesses
and Documents
(iii) 2.12.59

I move to file the plaintiff's additional list of witnesses and move for summons.

The list referred to above

20 The Commissioner of Income Tax, Inland Revenue, Colombo to produce or cause to be produced the Counterfoil of Profits tax receipt No. Q 28798 dated 8.10.1958 for Rs. 8,312/- and Counterfoil of Profits Tax receipt No. Q 27714 dated 8.10.1958 for Rs. 21,435/-.
Colombo, 2nd December, 1959.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

Copy sent by registered post.
Proof annexed.

(4) IN THE DISTRICT COURT OF COLOMBO

30 No. 44567/M. V. A. Sockalingam Chettiar
vs.
A. K. R. Karuppan Chettiar

No. 5
Plaintiff's Lists
of Witnesses
and Documents
(iv) 11.10.60

I tender documents produced at the trial of this case by the plaintiff with stamps.

No. 5
Plaintiff's
Lists of
Witnesses and
Documents (iv)
11.10.60—
Continued

- A. Plaintiff's Power of Attorney filed of record (stamped.)
 - Y. Translation of agreement dated 21.8.56. (Requires stamp.)
(Original stamped filed under J.E. 27.)
 - P1. Profits tax assessment for 1956. (Requires stamp.)
 - P2. Profits tax assessment for 1957. (Requires stamp.)
 - P3. Profits tax assessment for 1955. (Requires stamp.)
 - P4. Profits tax receipts for 1955 and 1956. (Requires stamp.)
 - P5. Profits tax receipt for 1957. (Requires stamp.)
 - P6. Letter dated 23.7.58 by me. (Requires stamp.)
 - P7. Letter dated 31.7.58 by Mr. S. Somasundaram. (Requires 10 stamp.)
- Colombo, 11.10.60.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

No. 6
Defendant's
Lists of
Witnesses and
Documents (i)
15.6.59

No. 6
Defendant's Lists of Witnesses and Documents (7)

(1) IN THE DISTRICT COURT OF COLOMBO

V. N. Sockalingam Chettiar.....*Plaintiff*
vs.
A. K. R. Karuppan Chettiar.....*Defendant.* 20

No. 44567/M.

I file defendant's list of witnesses and documents in the above case and move for summons.

List referred to

- 1. Agreement dated 21.8.1956.
- 2. Account Books of plaintiff.
- 3. Account Books of Kaloogala Estate.
- 4. Notices and other documents showing the Relief the plaintiff is entitled to get after 21.8.1956 under Section 45 (2) and Section 46 (1) of the Income Tax Ordinance.
- 5. Notices showing the Tax Refund the plaintiff is entitled 30 to in India after 1.4.1956.

6. Correspondence that passed between plaintiff and his Proctor on one side and the defendant and his Proctor in the other.

7. S. Coomaraswamy Accountant C/o. M. N. Sambamurti & Co., Auditors State Bank Building, Colombo 1.

8. Assessor, Unit No. 6 Income Tax Department, Colombo, to give evidence and to produce the notices and other documents showing the Relief the plaintiff is entitled to get after 21.8.1956 under Section 45 (2) and Section 46 (1) of the Income Tax Ordinance.

9. Plaintiff to give evidence and to produce his account books, 10 and the notices of Tax Refund both in India and Ceylon.

10. The defendant.

As Proctor for plaintiff is not in office copy is sent by registered post.

(Sgd.) S. THURAI SINGHAM.
Colombo, 15th June, 1959.

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendant.

No. 6
Defendant's
Lists of
Witnesses and
Documents (i)
15.6.59—
Continued

(2) IN THE DISTRICT COURT OF COLOMBO

V. N. Sockalingam Chettiar.....*Plaintiff*

No. 44567/M.

vs.

20

A. K. R. Karuppan Chettiar.....*Defendant.*

No. 6
Defendant's
Lists of
Witnesses and
Documents (ii)
22.6.59

I file additional list of witnesses and documents in the above case on behalf of the defendant.

The list referred to

1. Sri K. Srinivasan of Sripuram View, Madras, Advocate.

2. Sri S. Swaminatha Iyer of Madras, Advocate.

3. Sri A. Ramaiyah of Madhurai, Advocate.

4. Defendant's books of account.

Colombo, 22nd June, 1959.

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendant.

30

Received notice.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

No. 6
Defendant's
Lists of
Witnesses and
Documents (iii)
25.6.59—
Continued

(3) IN THE DISTRICT COURT OF COLOMBO

No. 44567/M. V. N. Sockalingam Chettiar.....*Plaintiff*
vs.
A. K. R. Karuppan Chettiar.....*Defendant.*

I file defendant's additional list of witness in the above case.

The list referred to

N. Annamalai, C/o Messrs. M. N. Sambamurti & Co., Auditors,
State Bank Buildings, Fort, Colombo.

Colombo, 25th June, 1959.

(Sgd.) S. SOMASUNDARAM, 10
Proctor for Defendant.

Received notice with copy.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

No. 6
Defendant's
Lists of
Witnesses and
Documents (iv)
17.11.59

(4) IN THE DISTRICT COURT OF COLOMBO

No. 44567/M. V. N. Sockalingam Chettiar.....*Plaintiff*
vs.
A. K. R. Karuppan Chettiar.....*Defendant.*

I file defendant's additional list of Witnesses and Documents
in the above case. 20

The list above referred to

1. K. Srinivasan, Advocate, Sripuram View, Madras.
2. S. Swaminathan Iyer, Advocate, Madras.
3. A. Ramaiyah, Advocate, Madurai.
4. Accounts Books of defendant.

Colombo, 17th November, 1959.

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendant.

Received notice with copy.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

30

(5) IN THE DISTRICT COURT OF COLOMBO

No. 44567/M. V. N. Sockalingam Chettiar.....*Plaintiff*
vs.
 A. K. R. Karuppan Chettiar.....*Defendant.*

No. 6
 Defendant's
 Lists of
 Witnesses and
 Documents (v)
 30.11.59

I file defendant's additional list of Witness and move for summons in the above case.

The list referred to

N. Annamalai of Messrs. M. N. Sambamurti & Co. Auditors, State Bank Buildings, Fort, Colombo, to produce the file of the plaintiff relating to the Relief he is entitled to get after 21.8.1956 under Section 45 (2) and Section 46 (1) of the Income Tax Ordinance. Colombo, 30th November, 1959.

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendant.

Received notice with copy.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

IN THE DISTRICT COURT OF COLOMBO

20 No. 44567/M. V. N. Sockalingam Chettiar.....*Plaintiff*
vs.
 A. K. R. Karuppan Chettiar.....*Defendant.*

No. 6
 Defendant's
 Lists of
 Witnesses and
 Documents (vi)
 27.4.60

I file defendant's additional list of witnesses and documents and move for summons in the above case.

The list referred to

1. Plaintiff to produce the undermentioned documents:—

(a) Notices of repayments and their respective repayment vouchers issued by the Income Tax Department in respect of the years ending 31.3.1951 for Rs. 1,989.46, 31.3.1952 for Rs. 2,454.28, 31.3.1953 for Rs. 2,355.16, 31.3.1954 for Rs. 2,548.40, 31.3.1955 for Rs. 5,187/- and 31.3.1956 for Rs. 2,229/- and in respect of overpayment of Rs. 6,355/- in the assessment for 1955/56.

(b) All notices, vouchers and correspondence and other papers connected with the Double Tax Relief in respect of Relief under Section 46(1) of the Income Tax Ordinance for the

years 1950-51 and 1951-52 given by the Indian Income Tax Department.

2. N. Annamalai of Messrs. M. N. Sambamurti & Co. of Union Place, Slave Island in Colombo to give evidence and to produce the undermentioned documents :—

- (a) Notices of repayments and their respective repayment vouchers issued by the Income Tax Department in respect of the years ending 31.3.1951 for Rs. 1,989.46, 31.3.1952 for Rs. 2,454.28, 31.3.1953 for Rs. 2,355.16, 31.3.1954 for Rs. 2,548.40, 31.3.1955 for Rs. 5,187/- and 31.3.1956¹⁰ for Rs. 2,229/- and in respect of overpayment of Rs. 6,355/- in the assessment for 1955/56.
- (b) All notices, vouchers and correspondence and other papers connected with the Double Tax Relief in respect of Relief under Section 46 (1) of the Income Tax Ordinance for the years 1950-51 and 1951-52 given by the Indian Income Tax Department.

3. Messrs. M. N. Sambamurti & Co. of Union Place, Slave Island, Colombo to cause to be produced the undermentioned documents :—

20

- (a) Notices of repayments and their respective repayment vouchers issued by the Income Tax Department in respect of the years ending 31.3.1951 for Rs. 1,989.46, 31.3.1952 for Rs. 2,454.28, 31.3.1953 for Rs. 2,355.16, 31.3.1954 for Rs. 2,548.40, 31.3.1955 for Rs. 5,187/- and 31.3.1956 for Rs. 2,229/- and in respect of overpayment of Rs. 6,355/- in the assessment for 1955-56.
- (b) All notices, vouchers and correspondence and other papers connected with the Double Tax Relief in respect of Relief under Section 46 (1) of the Income Tax Ordinance for the 30 years 1950-51 and 1951-52 given by the Indian Income Tax Department.

Colombo, 27 April 1960.

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendant.

Received notice with copy.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff.

(7) IN THE DISTRICT COURT OF COLOMBO

No. 44567 (M.). V. N. Sockalingam Chettiar.....*Plaintiff*
vs.
 A. K. R. Karuppan Chettiar.....*Defendant.*

No. 6
 Defendant's
 Lists of
 Witnesses and
 Documents (vii)
 11.10.60

List of documents tendered by the defendant at the hearing of the above case.

No.	Date	Nature
D1	.. 7.9.1956	.. Agreement
D2	.. 8.8.1958	.. Letter from Commissioner of Income Tax
10 D3	.. 1953	.. Ledger (folio 33 and translation)
D4	.. 25.7.1953	.. Day Book (folio 35 and translation)
D5	.. 1955	.. Ledger (folio 31 and translation)
D6	.. 29.9.1955	.. Day Book (folio 51 and translation)

Colombo, 11th October 1960.

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendant.

No. 7
Proceedings before the District Court

20

11.12.59

No. 7
 Proceedings
 before the
 District
 Court
 11.12.59

Advocate E. B. Wikramanayake, Q.C. with Advocate Somasundaram for plaintiff instructed by Mr. K. Rasanathan.

Advocate C. Thiagalingam, Q.C. with Advocate Arulambalam for defendant instructed by Mr. S. Somasundaram.

Mr. Arulambalam says he is compelled to ask for a date as his senior counsel is still on his feet in the Supreme Court.

This case was taken up last on the application of the defendant's
 30 counsel.

Mr. Wikramanayake consents to the application, but it is agreed that the defendant will not be entitled to costs in any event.

No. 7
 Proceedings
 before the
 District
 Court
 11.12.59—
Continued

It is also agreed that the notices of assessment marked P1, P2 and P3 and the receipts from the Income Tax Department marked P4 and P5 should be admitted in evidence without proof.

Trial is re-fixed for 23rd May, 1960.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.

No. 8
 Issues
 Framed

No. 8
Issues Framed

9.9.60

Mr. E. B. Wikramanayake, Q.C. with Mr. Advocate Soma-10
 sundaram instructed for plaintiff.

Mr. C. Thiagalingam, Q.C. with Mr. Advocate Arulambalam
 instructed for defendant.

Mr. Wikramanayake opens his case. He says that the plaintiff is the father-in-law of the defendant and that the plaintiff and defendant were co-owners of an estate and plaintiff transferred a half share to the defendant. There was an agreement between them and the defendant undertook to pay all the income tax in Ceylon of the plaintiff due on the profits of the half share. The income tax assessment has come to Rs. 29,747/-. The plaintiff has paid this sum of money. 20
 There was a further amount he was called upon to pay which also the plaintiff has paid—that is the subject-matter of 47113/M. Plaintiff also undertook to give the defendant any refund which the Income Tax Department gave them. After the action was filed they have received Rs. 14,000 by way of refunds which he is prepared to set off.

It is admitted that the plaintiff transferred a half share of Kalugala Estate to the defendant.

Mr. Wikramanayake suggests the following issues :

1. Did the defendant by his agreement dated 21st August 1956 promise to pay all Income Tax payable by the plaintiff to the 30
 Income Tax Department on the profits of the plaintiff's half share of Kalugala Estate ?

2. Has the Department of Income Tax called upon the plaintiff to pay a sum of Rs. 29,747/- on account of the plaintiff's half share of the profits on the said estate ?

3. Has the plaintiff paid this sum to the Income Tax Department ?

4. If so, what sum is the defendant liable to pay the plaintiff ?

Mr. Thiagalingam objects to issue 2 on the ground that Rs. 29,747/- should be referred as being income tax. He says that Mr. Wikramanayake should specify whether it is income tax or not. His position is that he is not liable to pay profits tax and issue 2 is not in accordance with the pleadings. Mr. Wikramanayake says that his position is that the defendant undertook to pay income tax on profits.

I allow the issue to stand.

Mr. Thiagalingam suggests the following issues :—

10 5. At the time of the negotiation of the sale of the plaintiff's half share in Kalugala Estate was the plaintiff entitled to various refunds in respect of Income Tax paid and or payable by plaintiff up to September 1956 ?

6. Under the Agreement " X " was the defendant entitled to receive the entire refund of Ceylon Income Tax due to the plaintiff ?

7. And for that purpose was the plaintiff under a duty to sign and deliver relevant documents to the defendant ?

8. Had the plaintiff failed and neglected to sign and deliver the relevant documents necessary to enable the defendant to get the
20 refund of income tax due as agreed ?

9. (a) To what relief under Section 45 (2) of the Income Tax Ordinance was the plaintiff entitled to ?

(b) To what refund on account of overpayment of Income Tax was plaintiff entitled to ?

(c) To what refund by way of relief under Section 46 (1) of the Income Tax Ordinance was the plaintiff entitled to ?

10. To what sum of money is defendant entitled to claim in reconvention ?

30 Mr. Wikramanayake says that as far as his client is concerned he has always been willing to sign any document to enable the defendant to get a refund.

All the issues are accepted.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.

No. 9
Plaintiff's Evidence

Mr. Wikramanayake calls :

PALANIAPPA SEVAGAN CHETTIAR, affirmed, 52 years, trader, residing at No. 172, Sea Street, Colombo.

Q. You are the attorney of the plaintiff ?

A. Yes.

Q. The plaintiff is V. N. S. Sockalingam Chettiar ?

A. Yes, a copy of my Power of Attorney is filed with the plaint marked " A ".

10

Q. Where is the plaintiff resident ?

A. In India.

Q. How often does he come to Ceylon ?

A. This estate was bought in 1941 and he has come on two occasions after that.

Q. The defendant is a son-in-law of the plaintiff ?

A. Yes.

Q. The plaintiff and defendant were co-owners of an estate called Kalugala Estate ?

A. Yes.

20

Q. In August 1956 the plaintiff transferred his half share of this estate to the defendant ?

A. Yes, for 2½ lakhs.

Q. Then on the 21st August 1956 the plaintiff and the defendant entered into an agreement ?

A. Yes.

Q. You produce a copy of this agreement marked P1 ?

A. Yes.

(Mr. Thiagalingam says that his position is that the translation of Y is inaccurate in respect of the words " Income Tax in Ceylon " 30 as the words used in the agreement are " Ceylon Income Tax Wary ").

Q. In terms of that agreement the defendant undertook to pay according to you all taxes payable on the half share of profits ?

(Mr. Thiagalingam objects to the question and states that it is not a content of a document and the document speaks for itself.

I allow the question.)

A. All taxes which are due and all taxes which will become due on the profits on account of his half share of the land he undertook to pay. All kinds of taxes.

No. 9
Plaintiff's
Evidence—
Continued

Q. Were you present at the discussion between plaintiff and the defendant when this agreement was signed ?

Evidence of
P. Sevagan
Chettiar—
Examination—
Continued

A. Yes.

Q. That discussions where did it take place ?

A. At No. 188, Sea Street at M. S. M. Chettiar's shop.

Q. The plaintiff has been assessed by the Income Tax Department ?

A. Yes.

Q. And has been asked to pay altogether a sum of Rs. 29,000 ?

A. Yes.

Q. You produce marked P1, P2 and P3 notices of assessment ?

A. Yes.

Q. And P4 and P5 are receipts of the Income Tax Department for payments made ?

A. Yes.

Q. Did you write to the defendant and ask him to pay this sum of money in terms of the agreement ?

A. Yes.

Q. You produce a copy of your letter as P6 dated 23rd July, 1958.

(The receipt of the original is admitted by Mr. Thiagalingam.)

A. Yes.

Q. You received the letter P7 in reply ?

A. Yes.

Q. You say you had to pay this sum of money yourself to the Income Tax Department ?

30 A. Yes.

Q. Where are the books of account of this estate ?

A. The defendant has them.

Q. Who was managing this estate ?

A. From the time the estate was bought it was he who was managing up to date.

No. 9
Plaintiff's
Evidence—
Continued

Q. Did the defendant make any demand for you to sign any documents for the purposes of meeting a refund.

A. No.

Evidence of
P. Sevagan
Chettiar—
Examination—
Continued

Q. You have brought this action to recover the sum of Rs. 29,000 odd which has already been paid ?

A. Yes.

Evidence of
P. Sevagan
Chettiar—
Cross-
examination

Cross-examined.

Q. You said you were a trader ?

A. Yes.

Q. You pay income tax ?

10

A. Yes.

Q. Profits tax ?

A. Yes.

Q. You pay that also ?

A. A long time ago I have been paying profits tax but not now.

Q. You know there is a distinction between the two ?

A. Yes.

Q. Tell me in what do you trade now ?

A. Sundry goods, spices.

Q. How long are you doing that ?

20

A. I am doing that business commencing from 1939. For a period of about 10 to 12 years there was a partnership business. Now for the last about 9 years it is a sole business of mine.

Q. I put it to you that on the 21st August 1956 the plaintiff was not in Ceylon ?

A. I do not know exactly with regard to his being in Ceylon. His agent Muttiah Chettiar came and spoke.

Q. Did you tell the Court here that on the 21st August, 1956 the plaintiff was in Ceylon ?

A. It was his agent who came that day and discussed with me. 30
After that this defendant signed.

Q. Answer my question.

A. I am not saying that he was in Ceylon.

Q. Indeed the plaintiff was in India in August 1956 ?

A. After that he came here to Ceylon but I am unable to give the date when he was in Ceylon.

Q. Do you tell his honour that you saw the plaintiff in August 1956 in Ceylon ?

A. I did not see him. I saw his agent only.

Q. When did you see the plaintiff ?

A. It is not possible for me to give a definite date as to when I saw the plaintiff in Ceylon. He had been coming and going now and then. It is not possible for me to say on which date exactly that I saw him in Ceylon.

Q. Did you use the word "*adi kadi*"?

10 A. Yes.

Q. Does it not mean very often ?

A. Now and then.

Q. How many times a month he comes ?

A. He will come sometimes once a month. Sometimes once in two months and sometimes twice a month.

(Court :

We are talking about the plaintiff ?

A. Sokalingam Chettiar has not come to Ceylon at all. I was talking all this while of Karuppan Chettiar.)

20 Q. Did you tell his honour in examination-in-chief that the plaintiff was here in August 1956 ?

A. No. He was not here in August, 1956. He came only in September 1956 in order to sign that deed.

Q. Deed of transfer ?

A. Yes.

Q. Have you ever spoken to the defendant ?

A. I have never spoken to him direct.

Q. Where did you sign this agreement "*Y*"?

A. It was signed in the shop of M. S. M. Mutturaman Chettiar.

30 Q. Did the defendant sign on that occasion ?

A. Yes.

Q. At the same time ?

A. After I had signed and come away he had signed.

Q. Did he sign in your presence ?

A. No. At the time I signed the deed the defendant was not there. At the time the defendant signed I was not there.

No. 9
Plaintiff's
Evidence—
Continued

Evidence of
P. Sevagan
Chettiar—
Cross-
examination—
Continued

No. 9
Plaintiff's
Evidence—
Continued

Evidence of
P. Sevagan
Chettiar—
Cross-
examination—
Continued

Q. You refer to the document " Y " ?

A. Yes.

Q. You had never spoken to the defendant at any time ?

A. I had never spoken to the defendant directly.

We have spoken to the defendant through the members of the arbitration board.

(Court :

How were the terms of the agreement drawn up ?

A. On behalf of the defendant his relation and agent Muttiah Chettiar came and spoke to me and with the arbitrators and also 10 now and then he used to telephone to the defendant to arrange with regard to the terms of the agreement.

Court :

Who are these arbitrators you refer to ?

A. M. S. M. Muttu Rama Chettiar, M. S. M. Saminathan Chettiar and the defendant's agent and relation Muttiah Chettiar.)

Q. You were not there when the arbitrators spoke to the defendant ?

A. No.

Q. You do not know what was agreed to between the arbitrators 20 and the defendant by personal hearing ?

A. I heard what Muttiah Chettiar his agent was speaking with the arbitrators.

Q. Whatever conversation the arbitrators had with the defendant did you hear it ?

A. No.

Q. Did you ever speak to this man the defendant on the telephone ?

A. Never.

Q. You understand a little English ?

30

A. Very little.

Q. P1, P2 and P3 are profits tax for 1956, 1957 and 1955 ?

A. Yes.

Q. All Ceylon Income Tax due on the profits on income of Kalugala Estate has been paid by the defendant ?

A. It was he who was paying.

Q. And he has paid all income tax ?

A. No. He has still to pay a balance and that is the balance that he agreed to pay.

Q. I am talking of income tax not profits tax. Has he paid all income tax ?

A. Our idea is that profits tax, income tax, all are taxes which accrue on the income of the estate.

Q. Has he paid all income tax on the profits of the estate ?

A. He had left a balance tax and paid up a portion.

10 Q. You told his honour that you understood the difference between profits tax and income tax ?

A. Yes.

Q. Now I am talking to you not of the profits tax but of income tax ?

A. Yes.

Q. Has the defendant paid all income tax ?

A. At the time of the conclusion of the agreement we were aware there was a balance tax due to the defendant. As to what kind of tax that was I was not aware. It was agreed in the agreement
20 that that tax should be paid by the defendant.

Q. Will you answer my question ?

A. Yes, in entirety.

Q. You told his honour that you understood the difference between the profits tax and income tax ?

A. Profits tax is on account of income in excess.

Q. Now you also told his honour what you thought was the agreement ?

A. Yes.

30 Q. My question is, has the defendant paid all income tax, not profits tax ?

(Mr. Wikramanayake objects to the question. I allow it.)

A. Now it looks that he had left out that and paid this.

Q. Left out what and paid what ?

A. He has left out paying tax on account of excess in income.

Q. What has he paid ?

A. The other tax he has paid.

Q. Take the agreement " Y " into your hands.

No. 9
Plaintiff's
Evidence—
Continued

Evidence of
P. Sevagan
Chettiar—
Cross-
examination—
Continued

No. 9
Plaintiff's
Evidence—
Continued

Evidence of
P. Sevagan
Chettiar—
Cross-
examination—
Continued

A. The Tamil rendering of the agreement is not here in my file. It is at home. I have got the English translation.

(At this stage Mr. Wikramanayake admits that the document " Y " is not with him. Only a translation is there. Mr. Thiagalingam moves that the document " Y " be ruled out. Mr. Wikramanayake moves for time till 1.30 to produce the original, which is allowed.)

Q. Shown " X " filed with the answer filed by defendant ?

A. Yes, the first signature is mine.

Q. You got a copy similar to " X " ?

A. Yes. 10

Q. Is it here or is it in India ?

A. It should be here, it must be here.

Q. Now look at " X ". The reference is to " Illankai Income Tax Wary " ?

A. Yes.

Q. That is the reference to para 1 of the agreement ?

A. Yes.

(It is admitted that " wary " means tax.)

Q. In para 7 there is a reference to income tax wary due from 1st April, 1956 ? 20

A. Yes.

Q. Do you know why that clause came to be put in ?

A. Yes.

Q. Was any income tax levied on the period first April 1956 to the date of transfer ?

A. No.

Q. The plaintiff has got certain refunds from the Income Tax Department ?

A. Yes, under 45 (2) Reliefs, we have got a refund of Rs. 14,311.30. I have also got a further voucher for a sum of 30 Rs. 1,875.25 today. We got that today. This is relief out of profits tax.

Q. Have you got the voucher which gave you the Rs. 14,000 odd under 45 (2) ?

A. They have been all presented to the bank.

Q. Those are reliefs under 45 (2) in respect of income tax, not profits tax ?

A. I do not know.

- Q. For the year 1950/51 you had under 45 (2) a refund of Rs. 1,989.46 ?
- A. I must look at it.
- Q. Look at it ?
- A. On 23.1.60 under 45 (2) for 1950/51 I got Rs. 1,989.46.
- Q. For 1951/52 ?
- A. On 28.1.60 under 45 (2) for 1951/52 I got Rs. 2,454.28.
- Q. For 1952/53 ?
- A. On the same date 28.1.60 I got Rs. 2,365.06. Under the
10 same date under 45 (2) for 1953/54 I got Rs. 96.50.
- Q. What was the refund you were entitled to for 1953/54 ?
- A. That I must ask the audit.
- Q. You do not know the refund ?
- A. I do not know.
- Q. That has been adjusted or paid back to the plaintiff ?
- A. What we actually received was Rs. 96.50.
- Q. In 1953/54 you were entitled to a refund of Rs. 2,548.40 under 45 (2) ?
- A. I do not know.
- 20 Q. For 1954/55 ?
- A. Under date 13.5.60 under 45 (2) I got Rs. 5,187. Also under date 23.1.60 under 45 (2) for the years 1955/56 Rs. 2,229/-, total Rs. 14,311.30.
- Q. Will you tell me whether the sum of Rs. 5,000/- odd which you mentioned for the year 1954/55 was all paid as relief under 45 (2) ?
- A. That is how the Auditor told me.
- Q. Auditor meaning Mr. Annamalai ?
- A. Messrs. Sambamurti & Co.
- 30 Q. Tell me the name.
- A. Mr. Kumaraswamy.
- Q. You know Mr. Annamalai who was seated here ?
- A. Yes.
- Q. He is the man who deals with your accounts and the defendant's accounts ?
- A. Yes.

No. 9
Plaintiff's
Evidence—
Continued

Evidence of
P. Sevagan
Chettiar—
Cross-
examination—
Continued

No. 9
Plaintiff's
Evidence—
Continued

Evidence of
P. Sevagan
Chettiar—
Cross-
examination—
Continued

Q. You have been talking to him ?

A. I have been talking to him on several occasions.

Q. In fact he is the man who attends to the accounts ?

A. Kumaraswamy and Annamalai.

Q. That is relief under 45 (2) and so non-resident relief ?

A. I can't understand what exactly is non-resident relief.

Q. You do not know what non-resident relief is ?

A. I do not know exactly.

Q. Do you personally get relief under 45 (2) ?

A. No. I have got my income tax revised. 10

Q. Under 45 (2) ?

A. Not under 45 (2).

Q. You have been paying excess income tax and the income tax authorities assessed you and you paid the income tax assessed ?

A. I got the assessment notice that a certain sum of money was payable, so I pay.

Q. Then you would show your income and get a refund ?

A. As I pay tax here in Ceylon as well as in India I get a refund.

Q. That is double taxation relief under Section 46 (1) ?

A. Yes, may be. 20

Q. You know double taxation relief ?

A. Yes.

Q. What is the double taxation relief which the plaintiff has got under Section 46 (1) ?

A. He did not get anything yet.

Q. Do you know that he is entitled to relief under 46 (1) ?

A. I do not know.

Q. The plaintiff has seen the answer filed in this case ?

A. Yes, I have seen.

Q. Not you. Has the plaintiff seen ? 30

A. A copy has been sent to the plaintiff.

Q. Has the plaintiff told you anything about that answer ?

A. "It is he who has got to pay taxes. You better recover from him."

- No. 9
Plaintiff's
Evidence—
Continued
- Q. Has he said anything in the answer with reference to relief under 46 (1) ?
- A. No. He did not say anything.
- Q. For the assessment of 1955/56 the accounts are looked at for the period 1954/55 ?
- A. Yes.
- Q. And for the assessment year 1955/56 there had been an overpayment of income tax ?
- A. I do not know.
- 10 Q. You made no claim in regard to the tax payable for the period 1st April 1956 to the date of transfer ?
- A. Yes.
- Q. Did you send up this reply P7 to the plaintiff ?
- A. Yes.
- Q. Did you tell the plaintiff that the defendant denies liability to pay profits tax ?
- A. Yes. He has told some of these Chettiars that the defendant is refusing to give.
- 20 Q. Did you also tell him that the defendant was calling upon the plaintiff to give him the necessary documents for refund ?
- A. The defendant never asked me for documents and I never told the plaintiff.
- Q. Did the defendant ask the plaintiff for the document ?
- A. The defendant and the plaintiff never talks to each other and he had not asked for any documents.
- Q. For the defendant's son's marriage did the plaintiff attend ?
- A. He went there for the purpose of celebrating the marriage only.
- 30 Q. In P7 the plaintiff complained of Sokalingam being in default in respect of his obligations ?
- A. That is correct.
- Q. What is your reply to that ?
- A. There was no such default.
- Q. Have you handed up all your documents to enable the defendant to get your refund vouchers ?
- A. He has not asked for documents and we have not handed any documents. He had not paid the tax and we have filed an action against him. It is after we filed the action that we got the refund.
- Evidence of
P. Sevagan
Chettiar—
Cross-
examination—
Continued

No. 9
Plaintiff's
Evidence—
Continued

Evidence of
P. Sevagan
Chettiar—
Cross-
examination—
Continued

Q. Did you claim the refund after the agreement ?

A. No.

Q. Was it your duty under the agreement to claim the refunds and give the necessary documents to the defendant ?

A. It is there in the agreement that if I receive the claim voucher that we had to sign and give a document.

Q. From the time when the defendant was managing Kalugala Estate accounts were rendered to the plaintiff regularly ?

A. At the commencement he had been sending accounts. Later on he had ceased to do so and on account of the cessation of 10 sending the accounts there was displeasure between the two which resulted in the sale of the plaintiffs share to the defendant.

Q. In 1953 accounts were being sent ?

A. I do not know. Sokalingam Chettiar told me that accounts were not coming and he was displeased.

(Mr. Thiagalingam objects to this evidence. The evidence has already been given in reply to his question).

Q. The transfer was signed on the 7th September 1956, not on the 21st August 1956 ?

A. The agreement was in August 1956 the deed was executed 20 in September 1956 but I am not sure of the exact date of the deed.

Q. In September 1956 the defendant and the plaintiff spoke to each other ?

A. One did not look at the face of the other at all.

Q. Did the plaintiff examine the defendant's accounts ?

A. The plaintiff did not examine the accounts. The defendant asked him for a receipt to the effect that he had examined the accounts and got such a receipt signed by the plaintiff.

Q. You heard the defendant make such a request of the plaintiff ?

A. When Sokalingam Chettiar and I had gone together the 30 proctor asked Sokalingam Chettiar to place his signature to that receipt.

Q. Did you hear the defendant making the request to the plaintiff ?

A. No. The arbitrators said that he was asking for such a receipt.

Q. Shown D1. Who has signed D1 ?

A. Sokalingam Chettiar.

Q. The plaintiff ?

A. Yes.

Q. Have you got a copy of that document ?

A. May be it will be in my file.

Q. In that document D1 the plaintiff has signed the statement to the effect that he had examined the accounts of the defendant. Do you say that it is a lie ?

A. The plaintiff did not examine the accounts at all. As the defendant was reluctant to sign the deed unless such a receipt was given to him he signed that receipt and gave him.

Q. Did you hear the defendant tell anybody, the plaintiff or the arbitrators, anybody, that unless the plaintiff signed the document D1 he would refuse to sign the deed ?

A. I did not hear the defendant telling anybody that he would not sign that deed unless a receipt to the effect that the plaintiff had examined the accounts was given to him. The arbitrators told me that he said so.

(Mr. Thiagalingam says that these answers given by the witness be ruled out as they are hearsay).

20 Q. You have not signed D1 ?

A. I must look. I can't remember.

Q. Were you present when D1 was signed ?

A. Yes.

Q. But you can't remember who signed ?

A. Sokalingam Chettiar of course signed that document and gave it. That I am definite. As to who were the others who had signed it after such a long time I do not know.

Q. Muttu Raman Chettiar was he there ?

A. Yes. He was one of the arbitrators.

30 Q. Saminathan Chettiar was he there ?

A. He was there.

Q. Was your Proctor, Mr. Rasanathan there ?

A. He would have been there. He was there.

Q. This has not been signed by you ?

A. Yes.

Q. Can you tell us who has signed as witnesses ?

No. 9

Plaintiff's
Evidence—
Continued

Evidence of
P. Sevagan
Chettiar—
Cross-
examination—
Continued

No. 9
Plaintiff's
Evidence—
Continued

Evidence of
P. Sevagan
Chettiar—
Cross-
examination—
Continued

A. The first witness is Proctor Rasanathan and the 2nd signature is that of their Proctor Mr. Somasundaram. The 3rd is M. S. M. Muttu Raman Chettiar and the 4th is Saminathan Chettiar.

Q. The first three signatures are in English ?

A. Yes.

Q. Apart from the 2½ lakhs the income from the estate was reckoned at Rs. 75,428.18 cents ?

A. They made notes of these accounts. We were only concerned about the contract. We made the agreement to the effect that 1¼ lakhs was on account of the profits, and the defendant was 10 to pay all taxes. The contract was for 1¼ lakhs and the defendant was to pay all taxes.

Q. My question to you is, was a sum of Rs. 75,442.18 arrived at as being the income of this estate to the 31st March 1956 ?

A. I do not know anything about the accounting of profits. That is a figure that they have noted. We were satisfied so long as we got 1¼ lakhs.

Q. Do you know from where this figure Rs. 75,422.18 was obtained ?

A. I do not know. 20

Q. You have never seen the defendant's accounts ?

A. I do not know in what shape it is.

Q. Nor have you seen copies of any such accounts in the hands of the plaintiff ?

A. Yes.

Q. You have summoned the defendant to produce accounts ?

A. Yes.

Q. Why ?

A. In order to obtain a clearance certificate. As exchange control has asked for it we have asked the defendant to produce 30 his accounts books.

Q. What has the Exchange Control got to do with the case. You have asked him to produce his accounts in this case ?

A. In order to see the details.

Q. I put it to you you know very well that when the defendant was paying taxes on the plaintiff's share of Kalugala Estate the accounts showed distinctly the difference between income tax and profits tax ?

A. I have not seen the books.

Q. Do you know that under the agreement certain refunds are due to the defendant in India ?

A. Is it for the income tax.

No. 9
Plaintiff's
Evidence—
Continued

Q. The plaintiff is entitled to refund in India which is payable under the agreement ?

A. There is no such term in the agreement. It is provided for that for the last year in 1956 that no tax will be levied by the Ceylon Government. But if tax is levied for the year 1956 by the Ceylon Government and any refund that will be obtained in India **10** on account of taxes that have been paid in Ceylon for 1956 be refunded by the plaintiff to the defendant.

Evidence of
P. Sevagan
Chettiar—
Cross-
examination—
Continued

(Mr. Thiagalingam says that he is making no claim here in respect of payment due in India under the agreement).

Q. In point of fact Income Tax has been paid for the period 1st April 1956 up to September 1956 in Ceylon ?

A. I do not know.

Q. You do not know that up to date ?

A. No.

Q. Do you know that the income tax authority has set off **20** certain refunds due under 45 (2) as overpayment of tax as against the tax due for the broken period 1st April 1956 to September 1956 ?

A. I do not know.

Re-examined.

Q. Do you know on how many occasions has Sokalingam Chettiar visited Ceylon ?

A. Twice.

Q. Once was to sign this deed in September 1956 ?

A. Yes.

Q. An earlier occasion he had come once ?

30 A. Yes.

Q. How many years before that ?

A. The estate was bought in 1941. I think he came some, where in 1947 or 1948. I am not definite of the year.

Q. After the visit in 1947 and 1948 the 2nd visit was in September 1956 ?

A. Yes.

Evidence of
P. Sevagan
Chettiar—
Re-examination

No. 9
Plaintiff's
Evidence—
Continued

Q. The defendant was in the habit of visiting Ceylon off and on ?
A. Yes. He had come many times.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.

Evidence of
P. Sevagan
Chettiar—
Re-
examination—
Continued

Mr. Somasundaram closes the plaintiff's case reading in evidence
" A " and " Y " and P1 to P7.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.

Further hearing at 2.15 p.m.

(Sgd.) A. L. S. SIRIMANE, 10
A.D.J.

9.9.60.

After Lunch

Mr. Wikramanayake says that the original of " Y " is not with him as it is in India and moves to mark a copy of it. He also says that this is identical with " X " produced by the defendant.

Mr. Thiagalingam objects because he says he has certain instructions about the original, that it was not produced in India in a case there on the ground that it was in Ceylon.

Mr. Wikramanayake moves to recall the plaintiff's Attorney 20 to produce a copy which he had kept of the original.

I allow Mr. Wikramanayake's application. Mr. Wikramanayake calls :—

PALANIYAPPA SEEVAGAM CHETTIAR. Affirmed, recalled.

Evidence of
P. Seevagam
Chettiar—
Examination

There were two copies made of the agreement—one was given to the plaintiff and the other to the defendant. The plaintiff's copy of the agreement is in India, having been sent there for purposes of income tax.

(Shown a document which is now marked Y1). This is a copy taken by the kanakapulle from that document at my request and 30 kept in my file.

(Mr. Thiagalingam objects to this document. He says this is a copy made by some kanakapulle. Where the original is available, there is no call to mark a copy.

ORDER

I allow the document to be produced.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.

(Shown X). This is the copy that was given to the defendant. Y1 which I have produced is identical with the document "X" without even a difference in a single letter.

Cross-examined.

Q. Have you got any letter written to you by the plaintiff
10 calling for the original of this document Y1 ?

A. He may have written to me asking for the original, or he may have told me personally and I may have taken it and given it to him personally when I went to India.

Q. You don't know if you had any letter written to you by the plaintiff calling for the original document ?

A. Yes.

Q. In whose hands is the document today ?

A. That copy had been given to Sockalingam Chettiar's hands. As to whether he had sent it to the Income Tax Department and it is
20 with them or whether it had been produced in a case and is in any Court or where it is I am unable to say, but I undertake to have it produced in Court in ten days' time.

Q. I put it to you that the original of that document has been tampered with to include all taxes payable in Ceylon, not merely income tax ?

A. Never, not at any time.

Q. I put it to you that that document is in Ceylon ?

A. No.

Q. I put it to you also that in India that document was called
30 for in a case and the plaintiff took up the position that the document was in Ceylon ?

A. It is probable that the plaintiff may have taken up that position that the copy was not with him at a time when it was not with him and when it was in Ceylon, but later on it may have been sent to him.

Q. Can you recall that incident ?

A. I am not aware of the plaintiff telling the Court that it was not with him, but I am aware that it was sent from here to India.

No. 9
Plaintiff's
Evidence—
Continued

Evidence of
P. Seevagam
Chettiar—
Examination—
Continued

Evidence of
P. Seevagam
Chettiar—
Cross-
examination

No. 9
Plaintiff's
Evidence—
Continued

Evidence of
P. Seevagam
Chettiar—
Cross-
examination—
Continued

Q. What was the document given to the translator to do the translation "Y."

A. This translation was obtained from the original that is filed of record. It was translated from the document "X."

Q. Do you tell the Court that you got the sworn translator to come and look at the document "X" and translate it?

A. Yes, and the one that was with us also is the same as "X," and it was written in the same handwriting.

Q. This translation was made in 1959?

A. May be, I don't know the date.

10

Q. The other document "X" was in the defendant's custody?

A. Yes.

Q. After it got into the defendant's hands when did you see that document "X" thereafter?

A. Now in Court.

Q. So you have never seen it before?

A. No.

Q. You did not take this document from the record and give it to the sworn translator to translate "Y"?

A. No.

20

Q. What you gave him was your own original document, the counterpart of "X"?

A. Yes.

Q. You did not give the document Y1 for translation?

A. No.

Q. When did you make a copy Y1?

A. I don't know the date, but when the other copy which was with the plaintiff was to be sent to India, then this copy Y1 was made.

Q. You remember that now?

30

A. Yes.

Q. This morning you did not remember that?

A. Yes.

Q. Can you explain why in the translation there is a reference to payment of income tax in Ceylon and not to Ceylon income tax relief?

A. It is stated that the tax which is payable, which is leviable from this estate on account on income tax must be paid from Sockalingam Chettiar's share by the defendant. I don't know why the translator had translated it that way, but tax has got to be paid in Ceylon to the Ceylon Government.

Re-examination. Nil.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.

No. 9
Plaintiff's
Evidence—
Continued

Evidence of
P. Seevagam
Chettiar—
Cross-
examination—
Continued

(Mr. Advocate Somasundaram undertakes to produce a translation of Y1 by the Interpreter Mudaliyar of the Court).

Plaintiff's case closed.

No. 10

Defendant's Evidence

Defendant's case.

Mr. Thiagalingam calls :

NAMASIVAYAM ANNAMALAI. Affirmed, 25, Chartered Accountant, Sambamurthi & Co., Colombo, No. 4/1, Murugan Place, Wellawatte.

Under Section 45 (2) of the Income Tax Ordinance relief was available to British Nationals. With India going out of the Commonwealth, Indian Nationals could not claim relief under Section 42 (2) of the Income Tax Ordinance. At that stage an amendment was effected by Section 16 of Act III of 1956, and the operation of Section 45 (2) was extended to include non-resident nationals of other countries whose Government had entered or may enter into appropriate agreement with the Government of Ceylon. Such an agreement was entered into between the Indian Government and the Ceylon Government and published in the Gazette No. 11049 of 18th January 1957, under the heading "The Government Tax Relief Act XXVI of 1950" and by virtue of that the plaintiff is entitled to relief in respect of taxes paid under Section 45 (2).

I do the income tax returns of both the plaintiff and defendant.

Q. Under Section 45 (2) the plaintiff was entitled to a refund of how much ?

A. For the years 1950/51 he was entitled to a relief of Rs. 1,989.46, for 1951/52 he was entitled to a relief of Rs. 2,454.28, 1952/53 he was entitled to a relief of Rs. 2,141.05, for 1953/1954

No. 10
Defendant's
Evidence

Evidence of
N. Annamalai—
Examination

No. 10
Defendant's
Evidence—
Continued

Evidence of
N. Annamalai
Examination—
Continued

he was entitled to a relief of Rs. 2,548.40, for 1954/1955, to a relief of Rs. 2,476/- and for 1955/1956 to a relief of Rs. 2,229/-.

Q. The plaintiff has told Court that for 1952/1953 the refund due to him was Rs. 2,141.09, which is correct ?

A. The figure Rs. 2,141.05 is correct. The total relief was Rs. 2,835.60; under Section 45 (2) he was entitled to a refund of Rs. 2,141.05. He was assessed more on account of income tax. The total refund in 1952/53 included Rs. 2,141.05 on account of Section 45 (2) and the balance Rs. 694.55 was a refund for overpayment of income tax. 10

Q. For 1954/55 the plaintiff says the relief under Section 45 (2) was Rs. 2,476/- is that correct ?

A. Yes.

Q. He also says he got a refund of Rs. 5,187/- ?

A. That was the total refund for that year and out of that relief under Section 45 (2) was Rs. 2,476/-. The balance Rs. 2,711/- is excess income tax.

Q. For the year 1955/56 had there been an overpayment of income tax ?

A. There was an over payment. 20

Q. Was a refund made ?

A. There was due a refund of Rs. 6,355/-.

Q. For the broken year commencing 1st April 1956 was any claim made by the income tax authorities on the defendant to pay the tax or did they do something ?

A. The assessment orders are issued in the name of the plaintiff and only he is liable to pay the tax.

Q. What was the income tax payable for the broken period commencing 1st April, 1956 ?

A. The refund of Rs. 6,355/- due for the period 1955/56 ³⁰ was adjusted against the tax payable for 1956/57.

Q. What was the tax payable for 1956/57 ?

A. Rs. 8,807/- including a penalty of Rs. 574/-.

Q. Was any part of that money paid by anybody or was it adjusted by the income tax department ?

A. The balance was adjusted against the refund due for 1953/54.

Q. Neither the plaintiff nor the defendant paid any tax for the year commencing 1st April 1956 ?

A. Yes.

Q. For the year commencing 1st April 1956 was the plaintiff entitled to a refund in India of the entire taxes paid here ?

A. According to the double tax agreement they are entitled to a refund. Usually the Indian tax is more than the Ceylon tax and therefore they should get the whole thing that they paid in Ceylon.

Q. As far as you know no call was made on the defendant to pay the Ceylon income tax for the period 1st April 1956 onwards?

A. Yes.

10 Q. Section 46 (1) relates also to double taxation relief, is the plaintiff entitled to double taxation relief ?

A. Yes, he is.

Q. What must the plaintiff do to claim that relief ?

A. He must produce the Indian relief orders from the taxing authority there. They should be produced here to the Income Tax Department and they will grant him refund in Ceylon.

Q. Has the defendant often told you to get those refund orders from the plaintiff in India ?

A. Yes. We informed the agent to get the refund. That has not been given up to date.

20 Q. By that relief under Section 46 (1) can you tell the Court approximately how much the plaintiff should get on account of income tax ?

A. About Rs. 4,900—Rs. 5,000/-. That has still not been paid as far as I know by the Ceylon authorities for the reason that they have got to produce the relief orders issued to the plaintiff in India. We have called for them. Whenever he comes to our office we ask for them, but they have not been produced.

Q. What is the total sum due by way of refund under Section 45 (2) for all these years ?

30 A. Rs. 13,838.19.

Q. Under Section 46 (1) the plaintiff would be entitled to about Rs. 4,000—Rs. 5,000 ?

A. Yes.

Q. This sum of Rs. 8,233/- paid there as income tax for the period 1st April 1956 is refundable to the plaintiff in India ?

A. Yes.

Cross-examined.

The refund vouchers we received were handed over. I said that we called for some Indian relief orders. We did that whenever

No. 10
Defendant's
Evidence—
Continued

Evidence of
N. Annamalai
Examination—
Continued

Evidence of
N. Annamalai—
Cross-
examination

No. 10
Defendant's
Evidence—
Continued

he comes to our office and we remind him of them. We did not write to him about them.

Re-examined.

Evidence of
N. Annamalai—
Re-
examination

Q. This refund for 1955/56 for Rs. 6,355/- did you get a refund voucher ?

A. I got an order. That is adjusted against 1956/57. The income tax paid for 1955/56 was in excess by Rs. 6,355/- therefore there is a refund.

Q. What had been paid as taxes for 1955/56 was a certain amount plus Rs. 6,355/-. The refund in respect of that is contained 10 in D2 ?

A. Yes.

(Mr. Thiagalingam produces a document marked D2.)

Q. In regard to all the vouchers for refund under Section 45 (2) you have handed them over to the plaintiff ?

A. Yes.

(Sgd.) A. L. S. SIRIMANE,

A.D.J.

Evidence of
A. Karuppan
Chettiar—
Examination

ANNAMALAI KARUPPAN CHETTIAR. Affirmed, 40, Estate Proprietor and Banker, No. 297 Sea Street, Colombo. 20

I am the defendant. Plaintiff is my father-in-law. He and I owned Kaloogala Estate in equal shares. For some time there has been displeasure between me and my father-in-law about the estate. When I was in charge of the estate I used to send up my accounts regularly to my father-in-law in India. I sent him the accounts monthly. Sending accounts monthly is a Chetty custom.

Q. In 1956 while you were in India had you been talking to your father-in-law the plaintiff about this estate and common possession ?

A. Yes, I spoke to him. 30

Q. At that time had he copies of all the accounts that you had sent him with regard to his share of the estate ?

A. They were with him.

Q. What was the nature of the discussions you had with him in 1956 prior to this agreement on the 21st August ?

A. After the displeasure between us two I told him that I did not want to worry myself about this estate and requested him to take over my share of the estate. Then he told me you had better

purchase the estate but I want a higher price. I told him that I did not want his share of the estate for a price more than 2 lakhs. Then he told me you will be getting income tax refunds which would come to about Rs. 30,000/- therefore you must give me a larger amount. Then I told him that in spite of getting the refunds there was profits tax payable to the Department, as such I was not prepared to pay him more than 2 lakhs. Then he told me that he believed that there will be no profits tax and that profits tax will get cancelled and that even if profits tax becomes payable that he will pay the profits tax and that I should take the refunds of the income tax.

No. 10
Defendant's
Evidence—
Continued

Evidence of
A. Karuppan
Chettiar—
Examination—
Continued

Q. At this time was the question of profits being discussed either here or in India ?

A. Yes. Then the plaintiff undertook and agreed to pay the profits tax. I accepted.

Q. Then why didn't you come to some terms with him at that time ?

A. As he was asking for a larger amount for the estate and as I was not agreeable to pay him a larger amount I did not conclude the discussions and came to Ceylon.

20 Q. About that time apart from the price for the estate was there any discussion about what was due to him from the profits of the estate ?

A. Yes, up to 31.3.56 there was a sum of Rs. 74,422.18 to his credit in the books. The books were in Ceylon. But monthly I was sending the accounts to him.

Q. Was this figure arrived at by looking at the books in Ceylon or by looking at the accounts copies the plaintiff had had sent to him in India ?

A. That was looked into in India from the copies.

30 Q. Was any settlement arrived at ?

A. It was not possible to come to a definite settlement in India so far as the price of the estate was concerned. Then I came to Ceylon thereafter.

Q. What happened thereafter, after you came to Ceylon ?

A. After I came to Ceylon M. S. S. Muthuraman Chettiar and Saminathan Chettiar came to me and said that as there were refunds which I would be getting and as you can take those refunds you must pay a larger amount on account of the estate price and settle for 2½ lakhs for the estate and Rs. 125,000/- on account of income from the estate.

No. 10
Defendant's
Evidence—
Continued

Evidence of
A. Karuppan
Chettiar—
Examination—
Continued

Q. On whose behalf did Muthuraman Chettiar and Saminathan Chettiar come ?

A. They were mostly talking to me on behalf of Sockalingam Chettiar.

Q. Did you invite Muthuraman Chettiar and Saminathan Chettiar to Ceylon ?

A. In India when I was having the discussions with my father-in-law the plaintiff those two persons were also concerned in it and there I refused to pay more than 2 lakhs. After that when I came back they spoke to me. 10

I entered into the agreement which I filed in the answer marked " X."

Q. Under that agreement were you liable to pay any tax payable by the plaintiff ?

A. As I was to get the refund on account of income tax I undertook and agreed to pay income tax payable by the plaintiff.

Q. Were you aware of the difference between income tax and profits tax ?

A. I know the difference very well, and all knew the difference very well. 20

Q. In keeping your accounts for this estate you had been called upon from the profits of the estate to pay the various taxes due to the taxing authority both for yourself and your father-in-law ?

A. Yes.

Q. Whenever you paid taxes did you in your accounts specify them as being either income tax or profits tax ?

A. Yes, clearly.

Q. Were copies of those accounts indicating the different kinds of taxes paid by you sent to the plaintiff in India ?

A. Yes, they were sent. 30

I produce my account book ledger for the period 1953/1954 marked D3. At folio 33 there is the account of a man of Irangion, one Vana Nana Shoona ; that is the account of the plaintiff in India. His native place is Rangiam. Under date 25th July I have paid a sum of Rs. 5,725.11 on account of myself.

Q. On account of plaintiff too have you paid ?

A. I have paid on account of plaintiff and defendant.

Q. You also have debited yourself in this book with a similar amount ?

A. With regard to payment of income tax for myself, sometimes I would have paid and debited in the estate books, sometimes the payments would have been made from my Colombo office here and debited in these books.

No. 10
Defendant's
Evidence—
Continued

Q. Under the date 25th July you have paid a sum of Rs. 5,725/- made up of a sum of Rs. 5,162.11 as income tax and a sum of Rs. 563/- as profits tax :

Evidence of
A. Karuppan
Chettiar—
Examination—
Continued

A. Yes.

Q. That is separately referred to in your accounts ?

10 A. Yes.

I produce the corresponding Day Book marked D4 where on folio 35 under date 25th July there is the first entry which was carried on to the ledger D3.

I produce the accounts ledger for the year 1955 marked D5. In folio 31 is the account of the plaintiff and under date 29th September 1955 a sum of Rs. 6,702/- being plaintiff's share of income tax has been paid while on the same day a sum of Rs. 325/- has been paid on account of excess profits tax. I produce the corresponding day book marked D6 where the first entry appears at page 51 in
20 similar terms, referring to payments of income tax and excess profits tax on account of the plaintiff.

Q. At any time were you called upon either by the plaintiff or by the Ceylon Income Tax authorities to pay income tax on behalf of the plaintiff ?

A. No.

Q. You got a letter from Proctor Rasanathan on the 23rd July 1958 (P6) ?

A. Yes.

Q. You saw your Proctor Somasundaram after that ?

30 A. Yes.

Q. What instructions did you give Mr. Somasundaram ?

A. I told my proctor that I did not undertake at any time to pay profits tax and I was not liable to pay profits tax on behalf of the plaintiff, but if I am called upon to pay income tax on account of the plaintiff I shall do so.

Q. Did you also complain to Mr. Somasundaram that you had not been allowed a refund of the income tax due to the plaintiff ?

A. That is the chief thing in the agreement.

Q. Why is it the chief thing ?

No. 10
Defendant's
Evidence—
Continued

A. This agreement was entered into in order that I may be able to get the Rs. 30,000/- due to me.

Q. When was that transfer actually signed ?

A. On the 7th September.

Q. On that day did plaintiff sign the document D1 ?

A. Yes.

Q. Is it correct that he had examined all the accounts ?

A. Doubtless.

Q. Have you ever talked to the plaintiff's Attorney ?

A. Never.

10

Q. Is it true that you prevailed upon the plaintiff to sign D1 without his examining the books and understanding the accounts ?

A. It was not necessary for me to have prevailed upon him to sign this document without examining the books. It was not done so. In fact, he examined the accounts in India itself.

Q. You now know that the plaintiff has been actually drawing certain amounts by way of refunds by way of Section 45 (2) and on account of overpayments of income tax ?

A. Yes.

Q. You claim all those moneys from the plaintiff ?

20

A. Yes.

Q. Apart from that, under Section 46 (1) certain further refunds are due and payable to the plaintiff ?

A. Yes.

Q. At how much have you estimated that in your answer ?

A. About Rs. 10,000/-.

Q. But now having heard the Auditor you say it is about Rs. 4,000—Rs. 5,000, you are willing to accept that ?

A. Yes.

Q. None of those documents have been given to you yet ? 30

A. No.

Q. Have you asked anybody for those documents ?

A. Through the Auditors I have asked from the plaintiff.

Q. Have the documents been given to you ?

A. Not yet.

Evidence of
A. Karuppan
Chettiar—
Examination—
Continued

Q. When the plaintiff got the refund vouchers under Section 45 (2) did he make the refund vouchers available to you ?

A. No.

No. 10
Defendant's
Evidence—
Continued

Q. You now know that certain of these refunds have been set off by the taxing authority against the income tax due for the period 1st April 1956 to September ?

A. Certain adjustments have been made.

Evidence of
A. Karuppan
Chettiar—
Examination—
Continued

Q. That is to a sum of about Rs. 8,000/- ?

A. Rs. 8,800/-. All that money I must get from the plaintiff.
10 It is not said by anyone as to what place that money has got to be given, but as it is a refund in India it must be given to me. I am entitled to that refund.

Q. On the other hand, you have not paid the income tax for the period April 1956 ?

A. I was not asked to pay and I have not paid.

Q. Nor was any notice of assessment sent to you ?

A. Yes.

Cross-examination

Q. When did you marry the plaintiff's daughter ?

20 A. I married in 1935.

Evidence of
A. Karuppan
Chettiar—
Cross-
examination

Q. What were you doing at that time ?

A. I was engaged in the same occupation. I was doing banking business in Sea Street, Colombo.

Q. You mean a money lender ?

A. Yes.

This estate was bought on 5th December 1941.

Q. How much money did you contribute towards this ?

A. Rs. 103,750/- being my share and for the working capital Rs. 32,000/-.

30 Q. What did you pay for the estate ?

A. Rs. 3,032,000/- and for a 5/16th share I paid Rs. 103,750/-.

Q. I put it to you that your father-in-law provided the entire purchase money ?

A. Not at all. He did not pay a cent more than what was due on account of his share. He was only entitled to 5/16th and N. V. Nagappa Chettiar the entire 6/16th.

From the time of the purchase I have been managing the estate.

No. 10
Defendant's
Evidence—
Continued

Evidence of
A. Karuppan
Chettiar—
Cross-
examination—
Continued

Q. Income tax, profits tax all the taxes were paid by you ?

A. When I was managing the estate I paid the taxes from the estate funds and debited them to his account.

Q. All the books were kept by you ?

A. They were on the estate.

Q. You were managing the estate ?

A. Yes.

Because I am manager it is not necessary for me to carry the books. What I meant was I did not keep the books with me.

Q. You know what is meant by keeping books ? 10

A. I thought that keeping books is to keep the books with me.

Q. When did you first start this displeasure with your father-in-law ?

A. It started in April 1956.

Q. Your father-in-law resided in India he hardly ever comes here ?

A. Yes.

Q. When did you go to India to see him and discuss this matter ?

A. I did not go to India purposely to discuss this matter. I used to go to India now and then. 20

Q. When did you discuss this matter with him ?

A. We started the discussions in May or June 1956.

Q. You did not want the co-ownership ?

A. The dispute arose because both of us were unwilling to continue co-ownership.

Q. How much did he ask you to pay for it ?

A. He did not say a price but he asked me for how much I would buy. I told him I did not want the estate for more than 2 lakhs. He was not willing to give it for 2 lakhs. Then he said that there are refunds due on the income tax, all that you can take, therefore 30 give me something more.

Q. Refunds due from income tax for what ?

A. He asked me to take the refunds from the income tax.

Q. What were the refunds ?

A. Relief under Section 45 (2), Section 46 (1) and other refunds. He said I am not mostly in Ceylon, you will be in Ceylon you take the refunds.

Q. Did you go into the matter and find out how much was due ?

A. Yes. I thought I would get about Rs. 30,000 approximately on account of refunds.

Q. You paid an extra Rs. 50,000 ?

A. First of all I offered to buy it for 2 lakhs but he was asking for something more and he did not come to any kind of settlement. Then after I came to Ceylon I wrote to my father-in-law asking him to take over my share. After that he sent Muthuraman Chettiar and Saminathan Chettiar requesting them to speak to me and some-
10 how or other to bring about a settlement, but I was not prepared to yield with regard to the price.

Q. But after Muthuraman Chettiar and Saminathan Chettiar spoke to you you settled for this amount ?

A. Yes.

Q. You told Court that you discussed the question of income tax with your father-in-law ?

A. Yes. He told me that the profits tax would not become payable, but if it becomes payable that he would pay it.

Q. Profits tax on his profits are payable by him ?

20 A. Yes.

Q. Why should he discuss profits tax with you ?

A. In the course of our discussions I told him that if I were to take the refunds on account of income tax that I would pay if there be any more income tax due. Then the question of profits tax also transpired and then he told me that I would not be called upon to pay profits tax, but if I was ever asked to pay profits tax that he would pay it.

Q. There was a definite agreement that he would pay profits tax ?

30 A. Yes.

Q. Why didn't you put that also in the agreement ?

A. As it was mentioned in the agreement in a number of places, more than 20 times, the words Ceylon Income Tax, then there were other taxes like wealth tax, expenditure tax and profits tax. These are taxes which he would pay and it was not necessary to mention that in the agreement.

Q. There was no wealth tax, and expenditure tax at that time ?

A. There are various kinds of taxes by Government.

Q. You have referred to all the taxes ?

No. 10
Defendant's
Evidence—
Continued

Evidence of
A. Karuppan
Chettiar—
Cross-
examination—
Continued

No. 10
Defendant's
Evidence—
Continued

Evidence of
A. Karuppan
Chettiar—
Cross-
examination—
Continued

A. When the assessment is made in our name and I am called upon to pay why should it be mentioned in the agreement with regard to profits tax when I will be called upon to pay it.

Q. That is exactly why you should have mentioned it in the agreement ?

A. When I discussed this with Muthuraman Chettiar and Saminathan Chettiar they said there will be thousands of taxes which will be leviable from the plaintiff and he will be called upon to pay why should you worry about those taxes.

Q. Income tax is leviable from the plaintiff and you will be 10 called upon to pay ?

A. Muthuraman Chettiar and Saminathan Chettiar said that as you are going to get refunds on account of income tax it is you who must pay if there be any further or more income tax to be paid. Therefore I agreed.

Q. This Agreement " X " was signed in August 1956 ?

A. Yes.

(The translation is marked X1)

Q. By August 1956 all income tax up to the 31st March 1956 had been paid ? 20

A. Most of the payments on account of income tax had been made but I was aware that income tax would be levied on account of the broken period yet due.

Q. That is from 1st April to 31st August ?

A. Yes.

Q. All the taxes prior to that had been paid ?

A. I said that most had been paid.

Q. Did you make any payment after that on account of income tax ?

A. I have already said that I was not called upon to pay and 30 I did not pay. I have not paid any income tax after the agreement was signed.

Q. You were not called upon to pay any income tax because no income tax was due ?

A. Apart from the tax for the broken period there was no other income tax payable.

Q. What are the arrears of income tax you referred to in the agreement ?

A. In order to satisfy themselves they said that if there be any arrears of income tax payable that should also be included in the agreement. As I would be called upon to pay only if there had been arrears of payment of income tax I agreed to it.

No. 10
Defendant's
Evidence—
Continued

Q. When you signed this agreement you were aware and the plaintiff was aware that income tax up to the 31st March 1956 had been paid ?

Evidence of
A. Karuppan
Chettiar—
(Cross-
examination—
Continued

A. Yes.

Q. That is, as far as all of you were aware there was no arrears
10 of income tax payable up to 31st March 1956 ?

A. When the 1954/55 tax was appealed against and there was some Rs. 55,000/- payable and because of that they wanted this statement to be embodied in the agreement ; that was held over and it had been paid by them. I don't know when it was paid.

Q. You appeal against an assessment as being too much ?

A. Yes.

Q. So that it can never be increased it can only be reduced ?

A. A sum of Rs. 15,000/- had been shown as expenditure and that had been disallowed by the department. Then I applied to the
20 department to hold over the taxation as I was going to make an appeal. While that matter was pending, without my knowledge plaintiff had gone and paid it.

Q. There was nothing to do therefore ?

A. I succeeded in the appeal and got the refund. Plaintiff got Rs. 5,187/- as a refund.

Q. There was nothing to be paid to the department ?

A. They gave a return because plaintiff went and paid later.

Q. Profits tax had been paid only up till 1954 ?

A. Yes, and I have written the account 1953/54.

30 Q. The assessment for the following years had not been sent up. In 1956 August when you signed this agreement the only profits tax that had been paid was up to 1954 ?

A. May have been.

Q. Profits tax for the following years had not been assessed ?

A. Because I know that profits tax would become payable that I asked plaintiff that he should pay the profits tax.

Q. The assessment had not come ?

No. 10
Defendant's
Evidence—
Continued

Evidence of
A. Karuppan
Chettiar—
Cross-
examination—
Continued

A. How was it possible for me to say whether the assessment notice had been served or not because the assessment notices come under registered cover and I cannot receive registered letters which are sent in the name of the plaintiff.

Q. Up to that time you had paid the profits tax ?

A. How am I to pay. It was paid by the estate. The plaintiff was in India, but the Superintendent is on the estate.

Q. But the payments were made by you ?

A. No, by the Superintendent.

Q. Who received the registered letters ?

10

A. The Superintendent had authority to receive registered letters.

Q. And pay without reference to you ?

A. Even if he had asked me I would have told him to pay and put it to the plaintiff's account. If the amount was small and reasonable the Superintendent would pay without consulting me, but if the amount was large he will consult me.

Q. Did the Superintendent consult you at any time about profits tax ?

A. I don't remember.

20

Q. You were not aware of any profits tax assessed in that year ?

A. From the notices issued to Mr. Rasanathan, I became aware.

Q. Up to 31st August 1956 you told the Court that you had paid the profits tax out of the profits of the estate ?

A. I accept that profits tax till 1956 had been paid by the estate Superintendent and debited to the plaintiff.

Q. At that time there was no income tax due from the estate ?

A. No. Profits tax may have been paid up to 1954.

(It is 4 p.m. now. Further hearing on 11.10.).

(Sgd.) A. L. S. SIRIMANE, 30
A.D.J.

11.10.60.

Hearing resumed.

Appearances as before.

Mr. Thiagalingam wants it noted that on the last date he stated that he was liable to pay income tax only and not profits tax at the conclusion of Mr. Wikramanayake's opening.

ANNAMALAI KARUPPAN CHETTIAR. Recalled, affirmed.

Cross-examination continued.

Q. Shown document "A" filed of record. Is that the agreement given to the plaintiff filed by you?

A. Yes, this must be the one.

Q. That must be the one given to the plaintiff?

A. Yes.

Q. On the last occasion you suggested that the document had been altered?

10 A. I did not say that there had been any alterations.

Q. Did you instruct your counsel that there were any alterations?

A. What I said was that as they were delaying to produce that document in Court I guessed that there must be an alteration.

Q. Look at the document. Are there alterations?

A. There are no alterations.

Q. You said that the plaintiff had not given you the relief form?

A. Yes.

Q. Did you at any time write to the plaintiff and ask him for it?

20 A. I have not written for it myself but on several occasions I have asked for it and my proctor had written for it.

Q. Can you produce a single letter that your proctor sent a letter before the case was filed?

A. I had asked him to write and he had written.

Re-examined.

Q. You told us that on one occasion when you came back from India you wrote to your father-in-law asking him to take over your share?

A. Yes.

30 (Mr. Thiagalingam moves to produce a copy of a letter sent by the defendant's proctor to the plaintiff offering to gift his half share. Mr. Wikramanayake objects as he has not been noticed to produce the original. Objection upheld).

(Sgd.) A. L. S. SIRIMANE,
A.D.J.

Mr. Thiagalingam closes his case reading in evidence D1 to D6.

No. 10
Defendant's
Evidence—
Continued

Evidence of
A. Karuppan
Chettiar—
Cross-
examination—
Continued

Evidence of
A. Karuppan
Chettiar—
Re-examination

No. 11
Addresses to Court

Mr. Thiagalingam addresses Court. He says that he restricts his claim under 45 (2) to Rs. 13,838.19. He also submits that he is entitled to a refund of a sum of Rs. 6,355/-. In regard to para 8 (2) of the answer he says that he restricts his claim to Rs. 4,900/- in view of the accountants evidence and the lower limit placed by him. He says he is not claiming credit for Rs. 1,879.25 which was a refund of profits tax. He cites 132 Law Times 729, 122 Law Times 462, 1950 A.E.R. 309, 1951 2 A.E.R. 617. 10

Mr. Wikramanayake addresses Court. He submits that profits are part of the income. Profits tax and income tax are the same. All income tax had already been paid up to April 1956 at the time of the agreement. He points to the evidence at page 37.

Documents to be filed with a list in the office today.
Judgment on 20.10.60.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.

No. 12
Judgment of the District Court

20

JUDGMENT

The plaintiff transferred his half share of Kaloogala Estate to his son-in-law the defendant (the owner of the other half share) for a sum of Rs. 250,000/-. In arriving at this figure many matters had been taken into consideration—one of them being the payment of Income Tax due to the Income Tax Department of Ceylon by the plaintiff in consequence of the ownership of this share. It was agreed that the defendant should pay the "Income Tax," and that he should get the benefit of any refund or rebate granted to the plaintiff.

Admittedly, the terms of the agreement are set out in the writing 30 marked "X" produced by the defendant. There were two originals, one with each party. "X" is the one with the defendant, and "A" the one with the plaintiff.

The plaintiff complains that after the execution of the transfer in September 1956 the Income Tax Department had called upon him to pay a sum of Rs. 29,747/- that the defendant failed to pay as agreed—and that he (plaintiff) had therefore to pay it. He claims

this sum in this action. (After this action was filed the plaintiff had got refunds of two sums of money for which he is prepared to give credit to the defendant).

No. 12
Judgment of
the District
Court
20.10.60—
Continued

The fact that the plaintiff was called upon to pay is not denied, and is proved by the notices of assessment P1, P2 and P3. The receipts P4 and P5 prove that plaintiff had paid this sum.

The main defence is that this sum represents "Excess Profits Tax"—and that the defendant is not liable to pay it as his agreement was to pay "Income Tax." The defendant also says that the plaintiff
10 failed to sign documents to enable him to recover refunds, and makes a claim in reconvention.

In considering the first of these two matters, it is relevant to note the fact that the plaintiff has always lived in India and came to Ceylon only a couple of times. I accept the evidence of his Attorney, though there was some confusion in his mind at one stage of the evidence in regard to the identity of the plaintiff and defendant.

It would be natural to expect an arrangement by which taxes in Ceylon should be paid by the person who resided here, *i.e.* the defendant. One should also take note of the fact that all income
20 tax due from the estate had been paid up to 31.3.56 and there were no arrears due on that account, except of course for the short period 1.4.56 till the date of execution of the deed which was in September that year. Defendant himself admits this. There was really no arrears on that account.

Profits Tax had been paid only up to 1954. The translation of para 1 of "X" as rendered by the defendant himself (X1) reads as follows :—

1. "Till the date when a transfer is being effected to the second party by the first party of his half share in Kaloogala Estate in accordance with the agreement entered this day to sell and transfer same, the second party A.K.R. shall pay the Ceylon
30 Income Tax that may fall due hereafter and the arrears if any payable to the date hereof in respect of the half share of the profits of the first party V.N.S."

I have no doubt whatsoever in my mind that the "Ceylon Income Tax . . . and the arrears . . . in respect of the half share of the profits of the first party" referred to above include both Income Tax and Profits Tax. That is to say, all taxes due to the Income Tax Department. The Tamil words "Ceylon Income Tax valri"
40 would mean all taxes due to the Ceylon Income Tax Department—the words "Ceylon Income Tax" being used to distinguish these taxes from those due in India.

No. 12
 Judgment of
 the District
 Court
 20.10.60—
Continued

The English cases cited are not quite in point, but they show that Super Tax was included in the term "Income Tax," for example, in the case reported in 122 Law Times Reports, page 462, the Testator gave the whole of his residuary estate to Trustees upon trust to pay his widow so long as she did not re-marry "the clear annual sum of £4,000 free from income tax." It was held that Super Tax was an additional income tax, and that on the true construction of the language in the Will the gift of £4,000 free of income tax was not limited to Income Tax strictly so called, but also included Super Tax. The following words of Swinfen Eady, L.J. were quoted with approval :— 10

"Super Tax as imposed by this statute is merely additional income tax—that was pointed out in *Bowles vs. Attorney-General*, and it is charged in respect of the income of any individual . . ."

In the later case cited, 132 Law Times, page 729, the words were different, but the decision referred to above was not dissented from.

Profits (or excess profits) made by a person form part of his income, and the tax on such profits is a tax on his income. Such a tax therefore does not, in my view, cease to be income tax. In short, profits tax is a species of Income Tax. If indeed the parties 20 agreed that this tax should not be paid by the defendant it would undoubtedly have been specified in the agreement.

I hold that the defendant is liable to pay such taxes.

After this action was filed the plaintiff had received two sums of money, viz. Rs. 14,311·30 and Rs. 1,875·25, making a total of Rs. 16,186·55. It was also alleged by the defendant that a sum of Rs. 6,355/- was granted to the plaintiff by way of a refund. But the plaintiff did not actually receive this sum. It was set off against the Income Tax due for April 1956 to September 1956 and certain taxes due for 1953/1954—according to the evidence of an Accountant 30 called by the defendant.

I cannot agree with the submission that the defendant is nevertheless entitled to claim this sum, for, the defendant who was liable to pay Income Tax got the benefit of this sum when credit was given to this extent, for a tax which he was liable to pay. The defendant estimated in his answer that a sum of about Rs. 10,000/- would be refunded. His Accountant says that this sum may be around half the amount stated in his answer. All this is pure conjecture. If anything further is to be refunded the Department of Income Tax would know it best, and the defendant has called no one from there. 40

I reject the defendant's evidence that he called upon the plaintiff or his Attorney in Ceylon to sign any papers in order to claim a refund. There is not one single letter written by the defendant to this effect

during the whole period. It was only after the plaintiff sent the letter of demand P6 in 1958 that the defendant stated in his reply P7 that the plaintiff was "in default in respect of the obligations on his part." Evidence of oral requests to sign papers cannot be taken seriously. In my opinion the defendant never asked for any documents because he was never keen on finding out what he had to pay on account of taxes due from the plaintiff. The distinction now drawn between Income Tax and Profits Tax is in my view an after-thought.

No. 12
Judgment of
the District
Court
20.10.60—
Continued

10 Giving credit to the defendant for the two sums refunded, there is now due to the plaintiff Rs. 13,560.45.

I answer the issues as follows :—

1. Yes.
2. Yes.
3. Yes.
4. Rs. 13,560.45.
5. Yes.
6. Yes.
7. Yes—if he had been requested to do so.
- 20 8. No.
9. (a) The amounts to which the plaintiff was entitled by way of relief under Sections 45 (2) and 46 (1) during the period relevant to this case are the two sums Rs. 14,311.30 and Rs. 187.25.
(b) Rs. 6,355/- which was set off against Income Tax due.
(c) *Vide* answer to Issue 9 (a).
10. Nil.

Enter judgment for plaintiff in a sum of Rs. 13,560.45 and costs. The claim in reconvention is dismissed.

30

(Sgd.) A. L. S. SIRIMANE,
A.D.J.

Delivered in open Court.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.
20.10.60.

No. 13
Decree of the
District
Court
20.10.60

No. 13
Decree of the District Court

DECREE No. 44567/M.

IN THE DISTRICT COURT OF COLOMBO

V. N. S. Sockalingam Chettiar of No. 172
Sea Street Colombo.....*Plaintiff*

Against

A. K. R. Karuppan Chettiar of No. 40 Mutwal
Street Colombo.....*Defendant.*

This action coming on for final disposal before A. L. S. Sirimane 10 Esqr., Additional District Judge, Colombo, on the 20th day of October 1960 in the presence of proctor on the part of the plaintiff and of proctor on the part of the defendant, it is ordered and decreed that the defendant do pay to the plaintiff the sum of Rs. 13,560.45 and costs of suit. It is further ordered that the defendant's claim in reconvention be and the same is hereby dismissed.

(Sgd.) A. L. S. SIRIMANE,
Additional District Judge,
Colombo.

24.10.60. 20

The 20th day of October 1960.

No. 14
Petition of
Appeal to
the Supreme
Court
26.10.60

No. 14
Petition of Appeal to the Supreme Court

IN THE HONOURABLE THE SUPREME COURT OF
THE DOMINION OF CEYLON

D.C. Colombo.
No. 44567 (M.)

V. N. Sockalingam Chettiar of No. 172 Sea
Street in Colombo.....*Plaintiff*

vs.

A. K. R. Karuppan Chettiar of No. 40 Mutwal
Street in Colombo.....*Defendant. 30*

A. K. R. Karuppan Chettiar of No. 40 Mutwal
Street in Colombo.....*Defendant-Appellant*
and

S.C. 517(F.)
1960.

V. N. Sockalingam Chettiar of No. 172 Sea
Street in Colombo.....*Plaintiff-Respondent.*

To :—

The Honourable the Chief Justice and the other Judges of
the Honourable the Supreme Court of the Dominion of Ceylon.

On this 20th day of October, 1960.

The petition of Appeal of the defendant-appellant abovenamed appearing by Sabapathy Somasundaram and his assistant Sinnathambiapillai Thuraisingham his proctors states as follows :—

1. The plaintiff-respondent sued the defendant-appellant for the recovery of a sum of Rs. 29,747/- alleging that they are taxes payable by the plaintiff-respondent which the defendant-appellant undertook to pay to the Income Tax Department by an agreement between the parties dated 21st August 1956.

2. The defendant-appellant in his answer denied his liability to pay the plaintiff-respondent or the Income Tax Department the said amount as it was profit tax and claimed in reconvention an aggregate sum of Rs. 29,939.30 under the said agreement as refunds as follows :—

Rs. 13,584.30 as Relief under Section 45 (2) of Income Tax Ordinance ;

20 Rs. 6,355/- as overpayment of Income Tax ;

Rs. 10,000/- an estimate of Relief under Section 46 (1) of Income Tax Ordinance.

3. At the trial it was admitted by the plaintiff-respondent that he has, subsequent to the filing of the action received refunds amounting to Rs. 14,052.30 by way of relief under Section 45 (2) of the Income Tax Ordinance. The defendant-appellant has adduced proof that a sum of Rs. 6,355/- was an overpayment of Income Tax and a sum of Rs. 4,900/- or Rs. 5,000/- as relief under Section 46 (1) of the said Ordinance. In all the defendant-appellant is entitled to claim a sum of Rs. 25,307.30 from the plaintiff-respondent.

4. The case went to trial on 10 issues and the learned Additional District Judge by his judgment dated 20th October 1960 held that the defendant-appellant is liable to pay the plaintiff-respondent the said sum of Rs. 29,747/- on the basis the term " Income Tax " included " Profit Tax " also.

5. Being aggrieved with the said judgment and decree of the learned Judge the defendant-appellant begs to appeal to Your Lordships' Court on the following among other grounds that may be urged by counsel on his behalf at the hearing of the appeal :—

40 (i) The said judgment is contrary to law and the weight of evidence led in this case.

No. 14

Petition of
Appeal to the
Supreme
Court
20.10.60—
Continued

No. 14
Petition of
Appeal to
the Supreme
Court
20.10.60—
Continued

- (ii) On the documents produced and the evidence led the learned Judge ought to have held with the defendant-appellant.
- (iii) The said agreement casts on the defendant-appellant the liability to pay only the Ceylon Tax (இலங்கை இன்கம்டாக்ஸ் வரி) and therefore, he is not liable to pay the sum claimed as it was profit tax.
- (iv) The parties are long standing business men who knew the difference between the two taxes and Documents D3, D4, D5 and D6 accounts of the plaintiff-respondent's half share of the estate tendered by the defendant-appellant 10 to the plaintiff-respondent clearly establish same.
- (v) Furthermore, there is the uncontradicted evidence of the defendant-appellant that at the initial negotiations in India between him and the plaintiff-respondent the latter undertook to pay the profit tax, if levied.
- (vi) Hence it is submitted that the learned Judge was wrong in holding that Income Tax includes Profit Tax and that the defendant-appellant is liable to pay that amount to the plaintiff-respondent.
- (vii) At the outset of the trial after the plaintiff-respondent's 20 Counsel opened his case (as recorded) the learned Judge suggested to counsel for the defendant-appellant that the difference may be paid and thus litigation ended. Counsel for the defendant-appellant declined to accept the suggestion and pointed out to the learned Judge that the defendant-appellant was liable to pay only Ceylon Income Tax (இலங்கை இன்கம்டாக்ஸ் வரி).

Thereupon issues were suggested by plaintiff-respondents' Counsel. The defendant-appellant's Counsel objected to Issue 2. The learned Judge allowed the issue to go in. 30 It is submitted that this was wrong.

Wherefore the defendant-appellant prays that Your Lordship's Court be pleased—

- (a) to set aside the said judgment and decree of the learned Judge dated
- (b) to dismiss the plaintiff-respondent's action ;

(c) to enter judgment in favour of the defendant-appellant in a sum of Rs. 25,307.30 ;

(d) to order costs in both Courts and for such other and further relief as to Your Lordships' Court shall seem meet.

No. 14
Petition of
Appeal to the
Supreme
Court
20.10.60—
Continued

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendant-Appellant.

Settled by :

C. THIAGALINGAM Esquire, K.C.,
V. ARULAMPALAM Esquire,
Advocates.

10

No. 15

Petition of the Defendant

IN THE DISTRICT COURT OF COLOMBO

V. N. Sockalingam Chettiar of No. 172 Sea
Street in Colombo.....*Plaintiff*

No. 44567(M.)

vs.

A. K. R. Karuppan Chettiar of No. 40 Mutwal
Street in Colombo.....*Defendant.*

A. K. R. Karuppan Chettiar of No. 40 Mutwal
Street in Colombo.....*Defendant-Petitioner.*

20

and

V. N. Sockalingam Chettiar of No. 172 Sea
Street in Colombo.....*Plaintiff-Respondent.*

No. 15
Petition of the
Defendant
24.10.60

On this 24th day of October 1960.

The petition of the defendant-petitioner abovenamed appearing by Sabapathy Somasundaram and his assistant Sinnathambiapillai Thuraisingham his proctors states as follows :—

1. The petitioner has filed an appeal to the Honourable the Supreme Court from the Judgment of this Court.

30 2. The defendant-respondent has filed an application for execution which has been entered before the filing of the appeal by the petitioner.

3. The petitioner submits that when the application for execution was made the said application was bad and not in conformity

No. 15
Petition of the
Defendant
24.10.60—
Continued

with the provisions of the law and in the circumstances the appeal was earlier than the application for execution of the decree.

4. The petitioner states that if it is held that an application for execution was made prior to the filing of the petition of appeal then it is submitted that the Court should stay execution of the decree pending appeal.

5. The petitioner would suffer irreparable loss if execution is allowed pending appeal.

6. The respondent is not in Ceylon and his assets have been and are being transferred to India. 10

7. The petitioner is willing to give adequate security for the amount of the decree.

Wherefore the petitioner prays that :—

(a) the Court be pleased to declare that the appeal had been filed prior to the application for execution of the decree ;

(b) if Court holds that application for execution of the decree had been applied for prior to the filing of this appeal then the execution be stayed pending this appeal on the petitioner furnishing security ;

(c) for costs of this application and 20

(d) for such other and further relief as to this Court may seem meet.

(Sgd.) S. SOMASUNDARAM,
Proctor for Defendant-Petitioner.

No. 16
Affidavit of the
Defendant
24.10.60

No. 16

Affidavit of the Defendant

IN THE DISTRICT COURT OF COLOMBO

V. N. Sockalingam Chettiar of No. 172 Sea Street in Colombo.....*Plaintiff*

No. 44567 (M.)

vs.

30

A. K. R. Karuppan Chettiar of No. 40 Mutwal Street in Colombo.....*Defendant.*

A. K. R. Karuppan Chettiar of No. 40 Mutwal Street in Colombo.....*Defendant-Petitioner*

and

V. N. Sockalingam Chettiar of No. 172 Sea Street in Colombo.....*Plaintiff-Respondent.*

I, A. K. R. Karuppan Chettiar presently of 279, Sea Street in Colombo being a Hindu solemnly and truly declare and affirm as follows :—

No. 16
Affidavit of
the Defendant
24.10.60—
Continued

1. I am the petitioner abovenamed and the defendant in this case.

2. The plaintiff-respondent was not in Ceylon and the attorney who gave evidence for the plaintiff has left Ceylon for India before judgment was delivered in this case. The plaintiff-respondent resides at Rangiem, Pudukottai Division, Tiruchirappalli District
10 in South India.

3. I have appealed against the judgment of this Court and the said petition of appeal has been minuted after an application for execution of the decree.

4. I am advised that the application for execution on the date when it was first made is bad and not in conformity with the provisions of the law.

5. I would suffer irreparable loss if execution is allowed in this case.

6. The assets of the plaintiff-respondent have been and are
20 being transferred to India.

7. I am willing to give security for the due performance of the judgment entered in this case.

Signed and affirmed to at Colombo on this 24th day of October 1960.

(Sgd.) Illegibly.

Before me :

(Sgd.) Illegibly.

Commissioner for Oaths.

No. 17

30

Proceedings before the District Court

12.12.60.

No. 17
Proceedings
before the
District
Court
12.12.60

Mr. K. Rasanathan for plaintiff.

Mr. Advocate Charavanamuttu for defendants instructed by Mr. Somasundaram.

This matter has been adjusted and counsel notify the following terms of settlement.

No. 17
Proceedings
before the
District
Court
12.12.60—
Continued

Of consent it is agreed that if the defendant deposits a sum of Rs. 7,000/- on or before 16th January 1961 execution to be stayed pending appeal. In default execution to proceed. Money so deposited to remain in Court until the decision of appeal.

(Sgd.) A. L. S. SIRIMANE,
A.D.J.

No. 18
Judgment of
the Supreme
Court
28.1.63

No. 18
Judgment of the Supreme Court

S.C. No. 517/1960 (F.)

D.C. Colombo No. 44567(M.)

A. K. R. Karuppan Chettiar of No. 40 Mutwal 10
Street Colombo.....*Defendant-Appellant*

vs.

V. N. Sockalingam Chettiar of No. 172 Sea
Street Colombo.....*Plaintiff-Respondent.*

Present : H. N. G. Fernando and H. W. Tambiah, J.J.

Counsel : C. Thiagalingam, Q.C., with V. Arulambalam for the
defendant-appellant ;

E. B. Wikramanayake, Q.C., with T. Arulanathan for
the plaintiff-respondent.

Argued on : 22nd January 1963.

20

Decided on : 28th January 1963.

H. N. G. FERNANDO, J.

According to the plaint filed in this action, the plaintiff was the owner of a $\frac{1}{2}$ -share of Kalugala Estate and the defendant, his son-in-law, was the owner of the other $\frac{1}{2}$ -share. In August 1956 the plaintiff agreed to sell his $\frac{1}{2}$ -share to the defendant. Contemporaneously, the parties entered into another written agreement, the English translation of which was produced marked "X." The first paragraph of this agreement reads as follows :—

" Till the date when a transfer is being effected to the 2nd 30
party by the 1st party of his half share in the Kaloogala Estate
in accordance with the agreement entered this day to sell and
transfer same, the 2nd party A. K. R. shall pay the Ceylon
Income Tax that may fall due hereafter and the arrears if any
payable to the date hereof in respect of the half share of the
profits of the 1st party V. N. S."

According to the evidence at the trial, the first party to the agreement, that is the plaintiff, had already settled his Income Tax liabilities up to the end of the income tax year 1955—56, that is to say, until 31st March 1956. There remained, therefore, the Income Tax liability of the plaintiff in respect of the period 1st April 1956 to September 1956 at which time the plaintiff's $\frac{1}{2}$ -share of the estate was in fact transferred to the defendant in pursuance of the earlier August agreement. That liability clearly was undertaken by the defendant in the clause of the agreement which has been reproduced

10 above. But the plaintiff's further claim, which has been put forward in this action, is that the clause also imposed upon the defendant the liability to pay Profits Tax for the years 1955, 1956 and 1957, the assessments for which were served after the execution of the agreement. The learned District Judge has upheld the plaintiff's claim declaring that he had no doubt whatever in his mind that the language of the clause was intended to impose on the defendant the liability to pay *all taxes due to the Income Tax Department*. In our opinion, the clause by itself is in no way open to the construction placed upon it by the trial Judge. In the first place it has been

20 proved in evidence that although the original agreement was written in the Tamil language, the words "Income Tax" rendered in Tamil actually occurred in the original. If then it was intended that there should be liability to pay Profits Tax as well, it is strange that the Tamil rendering of the words "Profits Tax" was not also included in the original. Mr. Wikramanayake has submitted that we should restrict ourselves to construing the English translation, but even if we do so the very fact that Profits Tax, which is a tax different from Income Tax and one levied under a different statute, is not mentioned in the agreement is a circumstance which would negative

30 the existence of an intention to include within the scope of the clause the plaintiff's liability to pay Profits Tax. In any event, an analysis of the language employed also leads to the conclusion that only the Income Tax liability was contemplated.

According to the clause the defendant undertook to "pay the Ceylon Income Tax that may fall due hereafter." These words do not apply to the plaintiff's existing liability to be assessed for Profits Tax for previous years.

Secondly, the defendant undertook to pay "the arrears (of Ceylon Income Tax) if any payable to the date hereof." At the

40 time of the agreement, however, the plaintiff was not in arrears in respect of any Profits Tax because no assessments had yet been served on him and he could not be said to be in arrears until the time of such service.

There is no doubt that in August 1956 the parties were aware that in respect of his $\frac{1}{2}$ -share of the profits derived from April 1956

until the date of the transfer, the plaintiff would at some time be assessed for Income Tax. The terms of the agreement also appear to indicate that the parties may have thought that some arrears were due as well. These two matters were clearly provided for in the clause, and the defendant undertook to make the payments, and they were the only matters for which provision was actually made. In these circumstances, a heavy burden lay on the plaintiff to establish a claim which is to a large extent contradicted by the terms of the document. This aspect of the matter was unfortunately not appreciated by the learned trial Judge. On the contrary, his view 10 was stated as follows :—

“ If indeed the parties agreed that this tax (the Profits Tax) should not be paid by the defendant, it would undoubtedly have been specified in the agreement.”

We are quite unable to agree with that view. In a document in which a person undertakes to make certain payments, one would ordinarily expect the various contemplated payments to be expressly mentioned. It is unreasonable to expect in such a document any mention of payments which the person *does not undertake to pay*.

As to the oral evidence in the case, I should point out that the 20 only witness for the plaintiff was his attorney in Ceylon. This witness had to admit that he neither drew up the agreement nor had even any discussion with the defendant as to the matters to be covered by it. There was hence no evidence of any consent on the part of the defendant to make payments in respect of Profits Tax.

The defendant made a counter-claim for 3 sums of money in the following circumstances. The same agreement of August 1956 provided that the defendant would be entitled to receive certain refunds of Income Tax expected to be made to the plaintiff and for this purpose the plaintiff agreed to sign and deliver relevant documents 30 to enable these refunds to be obtained. It was conceded at the trial that a refund of Rs. 16,186.55 was actually made to the plaintiff by the Income Tax Department after the commencement of the action, and the plaintiff admitted that he was liable to make over this sum to the defendant. The defendant will therefore be entitled to judgment for that amount.

In addition it was proved at the trial through the evidence of an Accountant of the firm which acts for both the parties that a sum of Rs. 4,900 or Rs. 5,000 was expected to be payable to the plaintiff as a further refund under the Income Tax Ordinance. The Account- 40 ant also stated that he had repeatedly requested the plaintiff's attorney in Ceylon to furnish the necessary documents which would enable the defendant to obtain the refund under this head. This evidence was not contradicted at the trial and there is no good reason for

rejecting it. By failing to honour his agreement the plaintiff deprived the defendant of the benefit of this refund to which the defendant was entitled under the agreement. The defendant has therefore successfully proved the damage suffered under this head by the breach of the agreement. This amount therefore is now due to the defendant.

We direct accordingly that a decree be entered dismissing the plaintiff's action with costs, and for the payment by the plaintiff to the defendant of the aggregate sum of Rs. 21,086.55. The defendant will in addition be entitled to the costs of this appeal.

(Sgd.) H. N. G. FERNANDO,
Puisne Justice.

TAMBIAH, J.
I agree.

(Sgd.) H. W. TAMBIAH,
Puisne Justice.

No. 18
Judgment of
the Supreme
Court
28.1.63—
Continued

No. 19

Decree of the Supreme Court

S.C. 517/'60(F).

20 ELIZABETH THE SECOND, QUEEN OF CEYLON AND
OF HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

V. N. S. Sockalingam Chettiar of No. 172
Sea Street Colombo.....*Plaintiff*

vs.

A. K. R. Karuppan Chettiar of No. 40 Mutwal
Street Colombo.....*Defendant.*

30 A. K. R. Karuppan Chettiar of No. 40, Mutwal
Street Colombo.....*Defendant-Appellant*
Against

V. N. S. Sockalingam Chettiar of No. 172 Sea
Street Colombo.....*Plaintiff-Respondent.*

No. 19
Decree of the
Supreme
Court
28.1.63

No. 19
Decree of the
Supreme
Court
28.1.63—
Continued

Action No. 44567/Money.

District Court of Colombo

This cause coming on for hearing and determination on the 22nd and 28th January, 1963, and on this day, upon an appeal preferred by the defendant-appellant, before the Hon. Hugh Norman Gregory Fernando, Puisne Justice and the Hon. Henry Wijayakone Tambiah, Q.C., Puisne Justice of this Court, in the presence of Counsel for the defendant-appellant and plaintiff-respondent.

It is considered and adjudged that the plaintiff's action be and the same is hereby dismissed with costs and the plaintiff do pay 10 to the defendant the aggregate sum of Rs. 21,086.55.

It is further decreed that the defendant will in addition be entitled to the costs of this appeal.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 29th day of March, in the year One thousand Nine hundred and Sixty-Three and of Our Reign the Twelfth.

(Sgd.) B. F. PERERA,
Deputy Registrar, S.C.

(SEAL).

No. 20
Application
for Conditional
Leave to
Appeal to
the Privy
Council
21.2.63

No. 20

20

**Application for Conditional Leave to Appeal to
the Privy Council**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional leave to appeal to Her Majesty The Queen-in-Council under the provisions of the Privy Council Appeals Ordinance No. 31 of 1909.

V. N. Sockalingam Chettiar of No. 172 Sea Street Colombo now of Rangiem, South India.....*Plaintiff-Petitioner.* 30
D.C. Col. No. 44567/M
S.C. No. 517/1960(F.) *vs.*

A. K. R. Karuppan Chettiar of No. 297 Sea Street Colombo.....*Defendant-Respondent.*

To :

The Honourable The Chief Justice and the Justices of the Supreme Court.

On this 18th/21st day of February 1963.

The humble petition of the petitioner abovenamed appearing by his Proctor K. Rasanathan states as follows :—

No. 20
Application
for Conditional
Leave to
Appeal to
the Privy
Council
21.2.63—
Continued

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 28th day of January 1963 the abovenamed petitioner is desirous of appealing therefrom to Her Majesty the Queen-in-Council.

2. That the said judgment is a final judgment and the matter in dispute is over the value of Rs. 5,000/-.

3. That due notice of this intended application in terms of 10 rule 2 of the schedule to the Privy Council Appeals Ordinance has been given to defendant-respondent by ordinary, registered post and Telegram addressed to (i) the defendant-respondent to his address in Ceylon both at No. 297 Sea Street Colombo and his estate at Kaloogala Estate, Namunukula (Uva). (ii) the defendant-respondent to his address in India, Pulankuruchi, Ramnad District South India; (iii) his Proctor; Mr. S. Somasundaram Dam Street, Colombo.

Wherefore the petitioner prays for Conditional leave to appeal against the said judgment of this Court dated 28th day of January 1963, to Her Majesty The Queen-in-Council, for costs, and for such 20 other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) K. RASANATHAN,
Proctor for Plaintiff-Petitioner.

No. 21

**Minute of Order Granting Conditional Leave to Appeal to
the Privy Council**

No. 21
Minute of
Order Granting
Conditional
Leave to
Appeal to the
Privy Council
5.4.63

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

30

V. N. Sockalingam Chettiar of No. 172 Sea Street, Colombo now of Rangiem, South India.....*Plaintiff-Petitioner*

S.C. Application
No. 82 of 1963.

vs.

A. K. R. Karuppan Chettiar of No. 297 Sea Street Colombo.....*Defendant-Respondent.*

The Application of V. N. Sockalingam Chettiar of No. 172 Sea Street Colombo for Conditional Leave to Appeal to Her Majesty

No. 21
Minute of
Order Granting
Conditional
Leave to
Appeal to the
Privy Council
5.4.63—
Continued

the Queen-in-Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 28th day of January 1963 in S.C. 517 (Final) of 1960 District Court Colombo Case No. 44567/M, having been listed for hearing and determination before the Honourable Miliani Claude Sansoni, Puisne Justice, and the Honourable Leonard Bernice de Silva, Puisne Justice, in the presence of E. B. Wikremanayake Esquire, Q.C. with T. Arulanathan Esquire, Advocates for the petitioner and V. Arulambalam Esquire, Advocate for the respondent, order has been made by Their Lordships on the 5th day of April 1963 allowing the aforementioned application for 10 Conditional Leave to Appeal to Her Majesty the Queen-in-Council.

(Sgd.) J. W. SUBASINGHE,
Registrar of the Supreme Court.

No. 22
Application
for Final Leave
to Appeal to
the Privy
Council
30.4.63

No. 22
Application for Final Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to Appeal to Her Majesty The Queen in Her Privy Council.

S.C. 517(F.) of 1960. D.C. Colombo. Case No. 44567/M.	V. N. Sockalingam Chettiar of No. 172 Sea 20 Street Colombo now of Rangiem, South India..... <i>Plaintiff-Petitioner-Appellant.</i>
S.C. Application No. 82 of 1963 (Conditional Leave to Appeal).	<i>vs.</i> A. K. R. Karuppan Chettiar of No. 297 Sea Street Colombo..... <i>Defendant-Respondent-Respondent.</i>

To :

The Honourable The Chief Justice and the other Judges of the Supreme Court of the Island of Ceylon. 30

On this 30th day of April 1963.

The petition of the petitioner abovenamed appearing by his Proctor Krishnapillai Rasanathan states as follows :—

1. That the petitioner abovenamed on the 5th day of April 1963 obtained Conditional Leave from this Honourable Court to appeal to Her Majesty The Queen-in-Council against the judgment of this Court pronounced on the 28th day of January 1963 in S.C. 517 (Final) of 1960 District Court Colombo Case No. 44567/M.

2. That the petitioner has in compliance with the conditions on which such leave was granted deposited a sum of Rupees Three thousand (Rs. 3,000/-) with the Registrar of the Supreme Court and hypothecated the said sum by Bond on the 26th day of April, 1963, and has further deposited with the Registrar a sum of Rupees three hundred (Rs. 300/-) in respect of the amounts and fees mentioned in Section 4 (2) (b) and (c) of the Appeals (Privy Council) Ordinance.

No. 22
Application
for Final Leave
to Appeal to
the Privy
Council
30.4.63—
Continued

Wherefore the petitioner prays :—

- 10 (a) That he be granted Final Leave to Appeal to Her Majesty The Queen in Her Privy Council against the said judgment of this Court, dated the 28th day of January 1963.
- (b) For costs and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) K. RASANATHAN,
Proctor for Petitioner.

No. 23

**Minute of Order Granting Final Leave to Appeal to the
Privy Council**

No. 23
Minute of
Order Granting
Final Leave to
Appeal to the
Privy Council
15.5.63

20 IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

S. C. Application
No. 209 of 1963.

V. N. Sockalingam Chettiar of No. 172, Sea Street, Colombo, now of Rangiem, South India *Plaintiff-Petitioner.*

vs.

30

A. K. R. Karuppan Chettiar of No. 297, Sea Street, Colombo *Defendant-Respondent.*

The application of V. N. Sockalingam Chettiar of No. 172, Sea Street, Colombo, for Final Leave to Appeal to Her Majesty the Queen-in-Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 28th day of January 1963 in S.C. 517 (Final) of 1960 District Court Colombo Case No. 44567/M, having been listed for hearing and determination before the Honourable Hugh Norman Gregory Fernando, Puisne Justice, and the Honourable

No. 23
Minute of
Order Granting
Final Leave to
Appeal to the
Privy Council
15.5.63—
Continued

Thusew Samuel Fernando, Q.C., Puisne Justice, in the presence of E. B. Wikremanayake Esquire, Q.C. with T. Arulanathan Esquire, Advocates for the petitioner and there being no appearance for the respondent, order has been made by Their Lordships on the 15th day of May 1963 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen-in-Council.

(Sgd.) J. W. SUBASINGHE,
Registrar of the Supreme Court

PART II

EXHIBITS

PART II

D3

Extract from the Ledger of Kaloogala Estate

Translation

D3
Extract from
the Ledger of
Kaloogala
Estate

EXTRACTS FROM THE LEDGER OF KALOOGALA
ESTATE, NAMUNUKULA

Current Account of V. N. S. Rangiyam

Folio. 33

			Rs.	c.	Rs.	c.
10	1953					
	April	1	By amount from Folio 33 of Ledger No. 11	..	40,925	50
	April	8	To amount paid as for travelling and way-expenses to Palaniappan when leaving for India	.. ..	500	00
	June	8	To Chelliah Master on account of Palaniappan's school—Boarding fees etc. for May	.. ..	62	05
	July	3	To Chelliah Master on account of Palaniappan's school—boarding fees etc., for June	.. ..	89	67
		25	To Income Tax Rs. 5,162·11 being half share of Rs. 10,324·21 the Assessment for 1952/53 and Excess Profit Tax Rs. 563/- paid	.. ..	5,725	11
20	Aug.	20	To Chelliah Master on account of Palaniappan's school—boarding fees etc. for July	.. ..	89	82
		23	To income tax dept. paid this day by Cheque being the balance out of Rs. 10,324·53 less Rs. 5,162·11 paid earlier	.. ..	5,162	10
	Sept.	29	To Chelliah Master on account of Palaniappan's school—boarding fees etc. for August	.. ..	24	07
	Oct.	4	To Chelliah Master on account of Palaniappan's school—boarding fees etc. for September	.. ..	94	57
30	Nov.	4	To Chelliah Master on account of Palaniappan's school—boarding fees etc. for October	.. ..	104	75
	Dec.	7	To Chelliah Master on account of Palaniappan's school—boarding fees etc. for November	.. ..	104	95
		27	To value of goods, ticket, cash etc. when Palaniappan left for India	.. ..	600	00

(Contd.)

D3
Extract from
the Ledger of
Kaloogala
Estate—
Continued

1954			
Feb.	7	To school-boarding fees etc. on account of Palaniappan for December	Rs. 48 25
			<u>Rs. 12,605 34</u>
Mar.	31	By half share of the current year's profit	56,000 00
		Total	<u>Rs. 96,925 50</u>
		By Balance	84,320 16

Translated by me :

(Sgd.).....,

Sworn Translator,

District Court,

Colombo.

Colombo, 23.6.59.

10

D4
Extract from
the Day Book
Account of
Kaloogala
Estate
25.7.53

D4
**Extract from the Day Book Account of Kaloogala
Estate**
**FROM DAY BOOK ACCOUNT OF KALOOGALA
ESTATE, NAMUNUKULA**

1953			
July	25	.. Debit V. N. S. Current Account to half share of Rs. 10,324.21 being the Assessment of Income Tax for the year 1952/53, being Rs. 5,162.11 ; to Excess Profit Tax being 563/-	20
		Total	<u>5,725.11</u>

Translated by me :

(Sgd.).....,

Sworn Translator,

District Court,

Colombo.

11th October 1960.

D5

Extract from the Ledger of Kaloogala Estate

Translation

D5
Extract from
the Ledger of
Kaloogala
Estate

EXTRACTS FROM THE LEDGER ACCOUNT BOOK OF
KALOOGALA ESTATE, NAMUNUKULA CURRENT
ACCOUNT OF V. N. S. RANGIYAM
Folio. 31

		Rs.	c.	Rs.	c.
1955					
April	1	By Folio 31 of Ledger No. 13	..	..	.. 106,099 35
10 May	30	To two drafts for Rs. 34,906/0/10 (Rs. 17,000/- to draw from Trichy Imperial Bank on Draft No. 98/708 and Rs. 17,906/0/10 to draw from Madras Mercantile Bank) on exchange control Permit No. F /55/ In 340 on account of Profit for 1953/54, and together with Commission on Exchange paid to the Mercantile Bank, Colombo	..	..	.. 34,861 17
		To amount paid to M. N. Sambamurti & Co. as fees for obtaining the Permit	..	..	.. 400 00
		By Balance Cr.	..	..	.. 70,838 18
20 Sept.	29	To Income Tax paid being $\frac{1}{2}$ out of Rs. 13,406/- the Balance left over out of Rs. 16,506, assessment for 1953/54 less Rs. 3,100/- held over	..	..	.. 6,703 00
		To Excess P-ofit Tax paid for 1953/54 being balance out of Rs. 2,204.25 less Rs. 1,879.25 held over	..	..	.. 325 00
		By Balance credit	..	..	.. 63,810 18
Oct.	27	To Income Tax paid this day out of Rs. 16,506/- for 1953/54 less Rs. 3,100/- held over and Rs. 6,703/- paid on 29/9/55	..	..	.. 6,703 00
		By Balance credit	..	..	.. 57,107 18
30	1956				
Mar.	31	By half share of the nett profit for the current year	..	..	.. 96,500 00
		To Capital Account	..	..	.. 40,000 00
		Total	..	..	.. 153,607 18
					.. 40,000 00
		By Balance Credit	..	..	.. 113,607 18

Translated by me :

(Sgd.).....,
Sworn Translator,
District Court,
Colombo.
Colombo, 23.6.59.

D6
Extract from
the Day Book
Account of
Kaloogala
Estate
29.9.55

D6

Extract from the Day Book Account of Kaloogala Estate*Translation*

FROM DAY BOOK ACCOUNT OF KALOOGALA
ESTATE, NAMUNUKULA

1955

Sept. 29 ..	Debit V. N. S. Current Account to payment of half share this day towards the assessment of Income Tax in the sum of Rs. 16,506/- for the year 1953/54, whereof Rs. 3,100/- have been held over leaving the sum of Rs. 13,406/-	6,703·00	10
	Debit also to Excess Profit Tax for the year 1953/54, being Rs. 2,204·25, less Rs. 1,879·25, which has been held over	325·00	
		<hr/>	

Translated by me :

(Sgd.).....,

Sworn Translator,

District Court,

Colombo.

11th October, 1960.

Y
English
Translation of
Agreement
21.8.56

Y

English Translation of Agreement

20

Translation

This 21st day of August 1956.

We both (1) V. N. Sockalingam Chettiar, and (2) A. K. R. Karuppan Chettiar have hereby envisaged and entered into this Agreement pursuant to the decision reached at by us at the determination concluded in the presence of M. S. M. Muthuraman Chettiar and Do. Saminathan Chettiar in Colombo in respect of Kalugala Estate situate in Badulla.

1. With regard to the agreement entered into this day and consented to by the first named pursuant to the sale of Kalugala 30 Estate to the second named that the second named A. K. R. shall pay the income tax in Ceylon due and payable on the half share of profits of V. N. S. up to the date of execution of sale, and the taxes which shall be due and payable hereafter and also arrears of payments if any which shall be due and payable to date.

2. It is agreed that in the event of there obtaining refund of income tax in Ceylon regarding the first named that the same too shall be paid to the second named and such documents as are necessary in support of same the 1st named shall sign and grant to the second named whenever called upon to do so.

Y
English
Translation of
Agreement
21.8.56—
Continued

3. It is agreed that the second named A. K. R. shall submit the necessary proofs for disproving the action taken by the Income Tax Officer in India in imposing penalty in respect of the said Estate and to cause same to be dismissed and contrary to it if taxes were
10 imposed the one-third share thereof of the amount so becomes due shall be paid by the first named V. N. S. and the balance two-third share shall be paid by the second named A. K. R.

4. The first named shall pay the income tax due and payable in India in respect of his half share of the said Estate.

5. For the consideration of the sum of Rs. 250,000/- being the price paid to the first named for the said half share and the sum of Rs. 125,000/- being the half share of profits accrued to that date aggregating to Rupees Three Hundred and Seventy-Five Thousand
20 Rs. 375,000/- that the second named shall pay the income tax assessment in Ceylon in respect of the 1st named enabling him to obtain a permit from the Exchange Controller and obtain an income tax clearance certificate and grant same to the first named.

6. Whenever the first named called for from the second named for any documents relating to estate accounts Auditors' statement for the purpose of Exchange Control, that the same shall be given by the second named through their Auditors and received them back.

7. That if taxes on income commencing from 1.4.56 for the half share of the profits of the first named V. N. S. being paid by the
30 second named A. K. R. and in respect of same that the first named V. N. S. has had obtained reduction of assessment by refund of income tax in India that the first named shall pay the said amount to the second named A. K. R. without any objection being raised.

8. Whenever the receipts for payment of income tax whether in Ceylon or in India are required by one or the other for purpose of obtaining refund that the same shall be given to the one or the other by their respective Auditors.

9. It is also discussed and agreed that in the event of there being required valuation report for estate purpose and that if the
40 same valuator were to visit the said estate at the expense of the first named that the second named A. K. R. shall allow and permit disclosing him details whenever called upon pertaining to the same.

Y
English
Translation of
Agreement
21.8.56—
Continued

Thus, both have agreed and signed the two writings of the same tenor written by one and the same hand and a copy is retained by each one of them.

Witnesses :—

1. (Sgd.) M. S. M. MUTHURAMAN CHETTIAR.
2. (Sgd.) M. S. M. SAMINATHAN CHETTIAR.
3. (Sgd.) K. M. MUTHIAH CHETTIAR.

Stamp of the value of Fifty Cents.

Per Pro V. N. S. SOCKALINGAM CHETTIAR.

(Sgd.) P. T. S. SEVUGAN CHETTIAR. 10

(Sgd.) A. KARUPPAN CHETTIAR.

This is drawn and witnessed by S. P. Arunasalam Chettiar.
Translated by me :

(Sgd.).....

Sworn Translator,

D.C. Colombo.

25th June, 1959.

D1
Declaration
made by V. N.
S. Sockalingam
Chettiar
7.9.56

D1

Declaration made by V. N. S. Sockalingam Chettiar

Executed in duplicate.

20

With reference to the undivided five-sixteenth (5/16) share I the undersigned V. N. S. Sockalingam Chettiar had in Kaloogala Estate in Namunukula in the District of Badulla and the undivided one-half ($\frac{1}{2}$) share I later had in the said estate and the management of the said estate by Karuppan Chettiar son of Annamalay Chettiar from the date of purchase of the said estate up to the date hereof and the profits due to me and the capital investment made by me in respect of the said estate I hereby state and declare as follows :—

1. That I have examined the accounts of the said estate and accept the correctness of said accounts maintained by the said 30 Karuppan Chettiar.

2. That a sum of Rupees Seventy-five Thousand Four hundred and Twenty-two and cents eighteen (Rs. 75,422·18) represents the balance income due to me on the 31st March 1956 after taking into account all the drawings made by me or on my behalf up to the date hereof.

3. That in regard to the income of the said estate for the period 1st April 1956 up to date it has been agreed by the said Karuppan Chettiar and me that I should be paid a sum of Rupees Forty-nine Thousand Five hundred and Seventy-seven and cents eighty-two (Rs. 49,577·82) in full settlement of my half share of the income of the said estate for the said period.

D1
Declaration
made by V. N.
S. Sockalingam
Chettiar
7.9.56—
Continued

4. That the aforesaid two sums amounting to One hundred and Twenty-five Thousand (Rs. 125,000/-) have been received by me this day by cheque No. T867748 on the Mercantile Bank of India,
10 Colombo.

5. That in the event of an accounting for the period 1st April 1956 to the date hereof it is found that my half share of the income exceeds or falls short of the said sum of Rs. 49,577·82 such excess or shortfall shall belong to or be borne by the said Karuppan Chettiar and I shall have no claim for such excess or be liable for such deficit.

6. My said half share of the said estate having been this day sold and conveyed to the said Karuppan Chettiar and having received all moneys due to me on account of profits and otherwise according to the said accounts I have no further claim whatsoever in respect
20 of the said estate its income or any moneys relating to the said estate, its stocks provisions or other assets belonging to the said estate.

7. That all liabilities of the said estate if any shall be borne by the said Karuppan Chettiar who shall keep me indemnified against all such claims and he shall be entitled to receive and recover all moneys that may be due to the said estate and appropriate the same himself.

Colombo 7th September, 1956.

(Sgd.) In Tamil.

(Sgd.) Illegibly.

30 Witness :

(Sgd.) K. RASANATHAN.

(Sgd.) S. SOMASUNDARAM.

(Sgd.) M. S. M. MUTHURAMAN CHETTIAR.

(Sgd.) In Tamil.

P1
Notice of Assessment (Profits Tax)

Amended.

Profits Tax—Year 1956
 Notice of Assessment

File No. 53/9104A/PT143.

Charge No. PL3265.

To : V. N. S. SOCKALINGAM CHETTIAR Esq.,

Of : Kaloogala Estate, Namunukula.

Take notice that the assessor, Unit 6, has assessed you as 10 follows :—

Source	Profits
A.—Agriculture	.. Rs. 93,866 ·00

Aggregate Profits	.. ..	Rs. 93,866 ·00
Taxable Profits	.. ..	„ 93,866 ·00
Allowance, Section 9	.. ..	„ 50,000 ·00
Chargeable Surplus	.. ..	„ 43,866 ·00
25% Profits Tax Payable	.. ..	„ 10,966 ·00

The above amount is payable by you on or before 16.6.1958. If not paid on that date, a sum not exceeding 20% of the tax will be added.

30

Date of Notice : 26.5.58.

B. A. C. W. JAYASEKERA,
Assistant Commissioner,
 Unit 6.

Income Tax Office,
 Colombo 1.

Notice of Assessment (Profits Tax)

P3
Notice of
Assessment
(Profits Tax)
26.5.58

Amended.

Profits Tax—Year 1955
Notice of Assessment

File No. 53/9104A/PT143.

Charge No. PL3264.

To : V. N. S. SOCKALINGAM CHETTIAR Esq.,

Of : Kaloogala Estate, Namunukula.

10 Take notice that the Assessor, Unit 6, has assessed you as follows :—

Source	Profits
A—Agriculture	.. Rs. 91,877 ·00

Aggregate Profits	..	Rs.	91,877 ·00
Taxable Profits	.. ..	,,	91,877 ·00
Allowance, Section 9	.. ..	,,	50,000 ·00
Chargeable Surplus	.. ..	,,	41,877 ·00
25 % Profits Tax payable	.. ..	,,	10,469 ·00

The above amount is payable by you on or before 16.6.1958.
If not paid on that date, a sum not exceeding 20% of the tax will
20 be added.

Date of Notice : 26.5.1958.

B. A. C. W. JAYASEKERA,
Assistant Commissioner,
Unit 6.

Income Tax Office,
Colombo 1.

Notice of Assessment (Profits Tax)

Profits Tax—Year 1957
 Notice of Assessment

File No. 53/9104A/PT143.

Charge No. PM3251.

To : V. N. S. SOCKALINGAM CHETTIAR Esq.,
 Of : Kaloogala Estate, Numunukula.

Take notice that the Assessor, Unit 6, has assessed you as follows :—

10

Source	Profits
A—Agriculture	Rs. 49,578 ·00

Aggregate Profits	.. ..	Rs. 49,578 ·00
Taxable Profits	.. ..	„ 49,578 ·00
Allowance, Section 9	.. ..	„ 21,870 ·00
Chargeable Surplus	.. ..	„ 27,708 ·00
30 % Profits Tax payable	.. ..	„ 8,312 ·00

The above amount is payable by you on or before 29.7.1958. If not paid on that date, a sum not exceeding 20% of the tax will be added.

20

Date of Notice : 9.7.1958.

B. A. C. W. JAYASEKERA,
Assistant Commissioner,
 Unit 6.

Income Tax Office,
 Colombo I.

**Letter from Proctor K. Rasanathan to A. K. R. Karuppan
Chettiar**

P6
Letter from
Proctor K.
Rasanathan to
A. K. R.
Karuppan
Chettiar
23.7.58

Regd.

K. RASANATHAN,
Proctor & Notary,
" WESTCLIFF,"
Madampitiya Road,
Mutwal.

10

Colombo, 23rd July, 1958.

To :

A. K. R. KARUPPAN CHETTIAR,
Pulankuruchi.

Dear Sir,

On instructions from my client V. N. S. Sockalingam Chettiar of Colombo, I write as follows :—

My client and you were co-owners of Kaloogala Estate situated in Badulla, In 1956 my client sold his half share in the said estate to you and you by agreement dated 21st August 1956 in consideration of the sale of the said half share to you, promised and undertook to pay to the Income Tax Department in Ceylon. All income tax payable by my client on the profits of his half share of the estate outstanding up to the date of the said sale. Now the Income Tax Department in Ceylon has fixed the total taxes payable by my client for his half share of the profits of the said estate up to the said sale at Rs. 29,747/- details given below. By the said written agreement you are liable to pay the entire tax due and obtain for my client a tax clearance certificate to enable my client to transfer his assets to India. So far, inspite of the repeated requests of my client you have failed and neglected to pay the tax and obtain the Certificate. By your failure to pay the said tax my client has already suffered considerable loss and damage and continues to suffer loss and damage.

I am instructed by my client to request you to pay at once the said sum of Rs. 29,747/- to the Income Tax Department and obtain the Tax clearance certificate as agreed upon. In default of paying the above tax before 31st instant my client has no other alternative but to file action against you for the recovery of the said sum of Rs. 29,747/- and penalty and the damages suffered by him.

<p>P6 Letter from Proctor K. Rasanathan to A. K. R. Karuppan Chettiar 23.7.58</p>	<p>Details</p>	<p>Charge No. PL 3264 Year 1955 Rs. 10,469 ·00 Charge No. PL 3265 Year 1956 „ 10,966 ·00 Charge No. PM 3251 Year 1957 „ 8,312 ·00 Total .. Rs. 29,747 ·00</p>
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Yours faithfully,

(Sgd.) K. Rasanathan.

Copy to :

40, Mutwal Street, Colombo
and Kaloogala Estate.

10

P7
Letter from
Proctor S.
Somasundaram
to Proctor K.
Rasanathan
31.7.58

P7
**Letter from Proctor S. Somasundaram to Proctor
K. Rasanathan**

S. SOMASUNDARAM, O.B.E.,
Proctor & Notary,
S. THURAISINGHAM,
Proctor & Notary,
381, Dam Street.

Colombo.
31st July, 1958.

K. RASANATHAN Esq.,
Proctor &c.,
161/61, Hultsdorf,
Colombo.

20

Dear Sir,

With reference to your letter of the 23rd instant addressed to Mr. A. K. R. Karuppan Chettiar, I am instructed to state that the amount claimed therein represents Profits Tax payable by your client Mr. V. N. S. Sockalingam Chettiar and is not payable by Mr.

Karuppan Chettiar. The tax contemplated by the agreement relates only to Income Tax payable in respect of the half share of Kaloogala Estate and not to Profits Tax.

I am to add that Mr. Sockalingam Chettiar is already in default in respect of the obligations on his part contained in the said agreement.

Yours faithfully,
(Sgd.) S. SOMASUNDARAM.

P7
Letter from
Proctor S.
Somasundaram
to Proctor K.
Rasanathan
31.7.58—
Continued

D2

10 **Letter from Commissioner of Income Tax to V. N. S.
Sockalingam Chettiar**

My No. 53/9104A.

Forn No. 30. H.
Income Tax Office,
Senate Square, P.O. Box No. 515,
Colombo 1. 8th August, 1958.

D2
Letter from
Commissioner
of Income Tax
to V. N. S.
Sockalingam
Chettiar
8.8.58

Sir/Madam,

Charge No. HG 3963/HG/DF 2810
Year of Assessment : 1955/56.

20 You will see from the Amended Notice of Assessment attached that the tax paid by you on the above charge number is in excess of the tax due by Rs. 6,355/-. Please send the receipts for tax paid on the above charge Number together with the attached slip to the Assessor, Unit 6 to enable a refund of the excess tax to be transferred against tax due for the year of Assessment 1956/57.

I am, Sir/Madam,
Your Obedient Servant,

(Sgd.).....
for Commissioner of Income Tax.
St. 46 (8/55) W.A.P.

30

V. N. S. SOCKALINGAM CHETTIAR Esq.,
C/o Messrs. M. N. Sambamurti & Co.

104

P4
Profits Tax
Receipt
8.10.58

P4
Profits Tax Receipt

Original

Receipt

Ceylon Profits Tax Q No. 27714
Profits Tax Year 1955 and 1956

Date : 8.10.1958.

Received from :—

V. N. S. SOCKALINGAM CHETTIYAR Esq.,
172, Sea Street,
Colombo 11.

10

On behalf of :

The sum of Rupees Twenty-one Thousand Four hundred and
Thirty-five only being

Tax Rs. 21,435 ·00 on Charge No.

PL3264/PL/DF 3001 ..	..	Rs. 10,469 ·00
PL3265/PL/DF 3002 ..	..	„ 10,966 ·00
		<u> </u>
By Cheque	..	Rs. 21,435 ·00
		<u> </u>

(Sgd.).....

for Commissioner of Income Tax. 20

N.B.—This receipt should be carefully preserved for production
in the event of a refund becoming due. Duplicates of receipts cannot
be issued in any circumstances.



Profits Tax Receipt

Profits Tax
Receipt
8.10.58

Original.

Receipt

Ceylon Profits Tax Q No. 28798
Profits Tax Year 1957

Date : 8.10.1958.

Received from :

10 V. N. S. SOCKALINGAM CHETTIAR Esq.,
172 Sea Street,
Colombo 11.

The sum of Rupees Eight Thousand Three hundred and Twelve only being

Tax. Rs. 8,312/- on Charge No. PM3251.

By Cheque.

(Sgd.).....
for Commissioner of Income Tax.

N.B.—This receipt should be carefully preserved for production in the event of a refund becoming due. Duplicates of receipts cannot be issued in any circumstances.

