

30/80

No. 20 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

SAMINATHAN s/o VANATHAN Appellant
(Defendant)

- and -

PAPPA d/o THOPPAN Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

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Appellant

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Solicitors for the
Respondent

No. 20 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

SAMINATHAN s/o VANATHAN

Appellant
(Defendant)

- and -

PAPPA d/o THOPPAN

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

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Description of Document	Date
Notice of Motion	21st October 1975
Affidavit of Saminathan	10th October 1975
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EXHIBITS

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	Letter, Collector of Land Revenue to Registrar High Court	19th March 1963
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No. 20 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

SAMINATHAN s/o VANATHAN

Appellant
(Defendant)

- and -

PAPPA d/o THOPPAN

Respondent
(Plaintiff)

10

RECORD OF PROCEEDINGS

No. 1

AMENDED WRIT OF SUMMONS
AND STATEMENT OF CLAIM

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 269 OF 1972

Between

Pappa d/o Thoppan
c/o Ladang Kampong Bahru,
Kuala Selangor

Plaintiff

20

And

Saminathan s/o Vanathan
Parit 4 Sungei Burong,
Sekinchan,
Kuala Selangor

In the
High Court

No.1
Amended
Writ of
Summons and
Statement
of Claim

20th
September
1973

In the
High Court

No.1
Amended
Writ of
Summons and
Statement
of Claim

20th
September
1973

(continued)

AMENDED GENERAL FORM OF WRIT OF SUMMONS

Amended this 20th day of
September, 1973 pursuant to
the Order of Court dated 20th
September, 1973.

Sgd. Illegible

Senior Assistant Registrar,
High Court, Kuala Lumpur

BEFORE THE HONOURABLE TAN SRI ONG HOCK THYE,
P.S.M., D.P.M.S., P.M.N., Chief Justice of the High Court in Malaya, in the Name and on behalf
of His Majesty the Yang Di-Pertuan Agong. 10

To: Saminathan s/o Vanathan,
Parit 4 Sungei Burong,
Sekinchan,
Kuala Selangor.

WE COMMAND YOU, that within eight (8) days
after service on you of this Writ of Summons,
inclusive of the day of such service, you do cause
an appearance to be entered for you in an action
at the suit of Pappa d/o Thoppan of care of
Ladang Kampong Bahru, Kuala Selangor. 20

AND TAKE NOTICE that in default of such
appearance, the Plaintiff may proceed therein
and Judgment may be entered into against you.

WITNESS Abu Bakar bin Awang, Senior Assistant
Registrar High Court, Kuala Lumpur this 31st
day of March, 1972.

Sd. M. Segaram & Co.
PLAINTIFF'S SOLICITORS

Sd. Illegible
SENIOR ASSISTANT REGISTRAR 30

N.B. This Writ is to be served within twelve
months, from date thereof, or, if renewed
within six months from date of last renewal
including the date of such date and not
afterwards.

A Defendant (or Defendants) may appear
hereto by entering an appearance (or appear-
ances) either personally or by Solicitors at
the Registry of the High Court in Malaya at
Kuala Lumpur. 40

A Defendant appearing personally may if he

so desires, enter his appearance by post and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the High Court in Malaya at Kuala Lumpur.

In the
High Court

No.1
Amended
Writ of
Summons and
Statement
of Claim

20th
September
1973

(continued)

INDORSEMENT OF CLAIM

The Plaintiff claims is for :

- 10 (1) A Declaration that the Plaintiff is the Registered Owner of the land held under E.M.R. No. 5089 Bendang Lot No. 10600 and Kampong Lot No. 5406 in the Mukim of Tanjong Karang in the State of Selangor.
- (2) An Injunction restraining the Defendant or his Agent or Servant or any person or persons claiming by or through him from interfering with the rights of the Plaintiff over the said land.
- 20 (3) Order that the Defendant and all persons or persons holding by or through him do vacate from the said land and give vacant possession of the aforesaid land to the Plaintiff.
- (4) Damages for trespass.
- (5) Mesne Profits until possession be delivered by the Defendant.
- 30 (5A) In event of the Court declaring that the Power of Attorney No.739/72 is void and consequently the Transfer of the Land by the Plaintiff in her name was also void, for an order that the Defendant should execute a fresh and valid and registrable Memorandum of Transfer of the said lands to the Plaintiff and failing which the Senior Assistant Registrar, High Court, Kuala Lumpur be empowered to execute the Memorandum of Transfer for and on behalf of the Defendant or the Registered Proprietor of the aforesaid lands.
- (6) Costs and
- (7) Such further or other reliefs as the Honourable Court may seem fit.

40 Dated this 31st day of March, 1972

Sd. M. Segaram & Co.,
Solicitors for Plaintiff

In the
High Court

Amended this 20th day of September, 1973

No.1
Amended
Writ of
Summons and
Statement
of Claim
20th
September
1973

Sd. M. Segaram & Co.
Solicitors for Plaintiff

This Writ of Summons was issued by M/s.
M.Segaram & Co., Advocates and Solicitors, of
Nos: 17 & 19 Jalan Silang, Kuala Lumpur,
Solicitors for the Plaintiff who resides at
Ladang Kampong Bharu, Kuala Selangor.

(continued)

This Writ was served by me at
on the Defendant abovenamed on the _____ day of 10
1973 at the hour of _____ a.m./p.m.

Indorsed this _____ day of 1973.

(Signed)
(Address)

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
(CIVIL SUIT NO. 269 OF 1972)

Between

Pappa d/o Thoppan Plaintiff

And

Saminathan s/o Vanathan Defendant 20

AMENDED STATEMENT OF CLAIM

Amended this 20th day of
September, 1973 pursuant to
the Order of Court dated 20th
September, 1973

Sd. Illegible
Senior Assistant Registrar
High Court, Kuala Lumpur.

1. The Plaintiff was and is at all material
times the registered proprietor and beneficial
owner of the lands held under E.M.R. No.5089
Bendang Lot No.10600 and Kampong Lot No.5406
in the Mukim of Tanjong Karang in the District
of Kuala Selangor (hereinafter called the said
land). 30

2. Since March, 1970 the Defendant has trespassed into Plaintiff's said lands and has been cultivating padi on the aforesaid lands and has wrongfully been remaining in possession thereof.

In the
High Court

No.1
Amended
Writ of
Summons and
Statement
of Claim

20th
September
1973

(continued)

3. By reason of the matters aforesaid the Plaintiff has been deprived of the use and enjoyment of the said lands and has been prevented from cultivating the said lands.

10 4. The Plaintiff has repeatedly requested the Defendant to give vacant possession of the said lands but the Defendant has refused to do so.

5. Alternatively the Defendant wrongfully claiming himself to be the Owner of the said lands, entered into the said lands and cultivating padi on the said lands.

20 5A. Alternatively, sometime on the 10th day of August, 1967 the Defendant agreed with the Plaintiff to sell the lands held under E.M.R. No.5089 Bendang Lot No.10600 and Kampong Lot No.5406 in the Mukim of Tanjong Karang in the District of Kuala Selangor for the sum of \$7,500.00. On the 10th day of August 1967 the Plaintiff paid a sum of \$3,200.00 and a sum of \$2,000.00 paid by one Gopal to whom the aforesaid lands were leased was in turn brought towards the purchase price and subsequently the Plaintiff paid a balance sum of \$2,300.00.

30 5B. In event of the Court declaring that the Power of Attorney No. 739/62 was void and therefore consequently the Transfer of the said lands in the Plaintiff's name was void the Defendant should execute a fresh, valid and registrable Memorandum of Transfer of the said lands in the Plaintiff's name.

6. The Plaintiff has repeatedly requested the Defendant to refrain from claiming to be the Owner of the said lands and give possession of the said lands to the Plaintiff nevertheless the Defendant refused and neglected to do so.

40 7. WHEREFORE the Plaintiff prays for :

(a) A Declaration that the Plaintiff is the Registered Owner of the Land held under E.M.R. No.5089 Bendang Lot No.10600 and Kampong Lot No.5406 in the Mukim of Tanjong Karang, in the District of Kuala Selangor.

In the
High Court
No.1
Writ of
Summons and
Statement
of Claim
20th
September
1973
(continued)

- (b) An injunction restraining the Defendant or his Agents or Servants or any person or persons claiming by or through him from interfering with the rights of the Plaintiff over the said lands.
- (c) Order that the Defendant and all person or persons holding by or through him do vacate from the said lands and give vacant possession of the aforesaid lands to the Plaintiff. 10
- (d) Damages for trespass.
- (e) Mesne profits until possession be delivered by the Defendants.
- (e)A. In event of the Court declaring that the Power of Attorney No. 739/72 is void and consequently the Transfer of the land by the Plaintiff in her name was also void, for an Order that the Defendant should execute a fresh and valid and registrable Memorandum of Transfer of the said lands to the Plaintiff and failing which the Senior Assistant Registrar, High Court, Kuala Lumpur be empowered to execute the Memorandum of Transfer for and on behalf of the Defendant of the Registered Proprietor of the aforesaid land. 20
- (f) Costs, and
- (g) Such further or other Orders as the Honourable Court may deem fit to give.

~~Dated this 22nd day of April, 1973~~
Amended this 20th day of September, 1973. 30

~~Sd. M. Segaram & Co.,
Solicitors for the Plaintiff~~

Sd. M. Segaram & Co.,
Solicitors for Plaintiff.

This Amended Statement of Claim is filed by Messrs. M. Segaram & Co., Advocates and Solicitors, of Nos. 17 & 19 Jalan Silang, Kuala Lumpur, Solicitors for the Plaintiff abovenamed.

No. 2

AMENDED STATEMENT OF
DEFENCE

In the
High Court

No.2
Amended
Statement of
Defence

19th March
1973

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 269 OF 1972

Amended this 20th day of March,
1973 pursuant to an Order of
Court dated this 13th day of
March, 1973.

10

Sd. Illegible

Senior Assistant Registrar,
High Court, Kuala Lumpur.

Between

Pappa d/o Thoppan

Plaintiff

And

Saminathan s/o Vanathan

Defendant

AMENDED STATEMENT OF DEFENCE

1. The Defendant denies paragraphs 1, 2, 3, 4
and 5 of the Statement of Claim.

20

2. The Defendant has been and maintains that
he still is the beneficial attorney ~~owner~~ and
proprietor of the land known as E.M.R. 5089
Bendang Lot No. 10600 and Kampong Lot No.5406 in
the Mukim of Tanjong Karang, Kuala Selangor
(formerly described as approved application Nos:
814/50 and 79/57)(hereinafter referred to "as
the said land").

30

3. Prior to the 10th day of August, 1967 the
Defendant had permitted the Plaintiff to cultivate
a portion of the said land (hereinafter referred
to as the said portion) subject to certain terms
and conditions the details whereof will be
referred to at the trial.

4. The Plaintiff acted in breach of the terms
and conditions in that inter alia a sum of
\$2,300/- due to be paid to the Defendant on or
before the 31st day of October, was not paid by
the Plaintiff to the Defendant.

In the
High Court

No. 2
Amended
Statement of
Defence

19th March
1973

(continued)

5. Despite repeated demands the Plaintiff failed and/or neglected to pay the said amount of \$2,300/-.

6. As a result of the Plaintiff's breach of condition the Defendant after giving ample notice to the Plaintiff entered into occupation of the land and began his own cultivation and is in rightful occupation of the said lands.

7. Meanwhile the Defendant has ascertained that the Plaintiff had applied for and obtained permission from the appropriate authority to transfer the said lands into her own name.

10

7A. The Defendant avers that the Plaintiff has on the 9th day of July, 1970 fraudulently transferred the said lands into her own name by virtue of a Power of Attorney No.500/57 dated 16th May, 1957 and another purported Power of Attorney No. 739/62 dated 9th July, 1962.

7B. The Defendant avers that the transfer of the said lands into the name of the Plaintiff was fraudulent and void ab initio as the Power of Attorney No.739/62 dated 9th July, 1962 on all material times and including the time of the said transfer was invalid, null and void and of no effect due to the want and/or failure of consideration or alternatively due to the unlawful and excess use of the said Power dated 9th July, 1962.

20

8. The Defendant avers that the Plaintiff has exercised fraud on the Defendants :-

PARTICULARS OF FRAUD

30

(a) The Plaintiff applied for the transfer of the land without the knowledge of the Defendant.

(b) The Plaintiff misrepresented to the Collector of Land Revenue that the Defendant desired the transfer of the approved application to the Plaintiff.

9. The Defendant states that the application for transfer and the transfer is invalid and void in law, and as such the Plaintiff does not have an indefeasible title to the said lands.

40

10. WHEREFORE the Defendant prays that the claim of the Plaintiff be dismissed with costs.

AMENDED COUNTERCLAIM

In the
High Court
No.2
Amended
Statement of
Defence
19th March
1973
(continued)

11. The Defendant repeats paragraphs 2 to 9 of the Defence herein.

12. The Plaintiff has fraudulently and wrongfully caused the transfer of the Defendant's land into her own name.

13. WHEREFORE BY WAY OF COUNTERCLAIM the Defendant prays for :

- 10 (a) A Declaration that the purported Irrevocable Power of Attorney dated 9th July, 1962 and registered in the High Court at Kuala Lumpur vide registration No.739/62 appointing the Plaintiff to be his Attorney be declared null and void.
- 20 (b) A declaration that the Plaintiff Defendant's principal has been and still is the proprietor and owner of the land held under E.M.R. No.5089 Bendang Lot No.10600 and Kampong Lot 5406 in the Mukim of Tanjong Karang in the District of Kuala Selangor (formerly known as Approved Application Nos. 814/50 and 79/57).
- (c) An injunction restraining the Plaintiff or her agents or servants or any person or persons claiming by or through him from interfering with the rights of the Defendant over the said lands.
- 30 (d) An Order that the Assignment or Memorandum of Transfer or other application drawn and/or executed by the Plaintiff in respect of the said property be set aside.
- (e) A Consequential Order that the appropriate authority do expunge the name of the Plaintiff from the records of the relevant land office.
- (f) Such further or other Order as this Honourable Court may deem fit to make; and
- (g) Costs.

~~Dated this 13th day of June, 1972-~~

40

~~Sd. Raj & Co.
Solicitors for Defendant-~~

In the
High Court

No.2
Amended
Statement of
Defence
19th March
1973
(continued)

Dated this 19th day of March 1973

Sd. Dulip Singh & Co.
Solicitors for Defendant.

This Defence and Counterclaim is filed by Messrs. Raj & Co., O.C.B.C. Chambers, Jalan Mountbatten, Kuala Lumpur. Solicitors for the Defendant abovenamed.

This Amended Statement of Defence and Counterclaim is filed by Messrs. Dulip Singh & Co., 5th Floor, Bangunan Safety Insurance, Jalan Melayu, Kuala Lumpur. Solicitors for the Defendant abovenamed.

10

No.3
Amended
Reply and
Defence to
Counterclaim
30th March
1973

No. 3

AMENDED REPLY AND DEFENCE
TO COUNTERCLAIM

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 269 OF 1972

Between

Pappa d/o Thoppan Plaintiff

And

20

Saminathan s/o Vanathan Defendant

AMENDED REPLY

1. The Plaintiff joins issue with the Defendant on paragraphs 1 to 9 of the Amended Statement of Defence including paragraphs 7A and 7B of the Amended Defence.

AMENDED DEFENCE TO COUNTERCLAIM

1. The Plaintiff denies that the Defendant is the Owner and Proprietor of the lands known

as No.5089 Bendang Lot No.10600 and Kampong Lot No.5406 in the Town of Tanjong Karang in the District of Kuala Selangor formerly described as A/A 814/50 and 79/57 (hereinafter called the said lands). The Plaintiff maintains that she is the Owner and Proprietress of the said land.

In the
High Court
No.3
Amended
Reply and
Defence to
Counterclaim

2. Paragraph 3 to 6 is denied.

30th March
1973

10 3. Answering paragraph 7 of the Counterclaim that at the time the Plaintiff applied for permission of the Ruler in Council and for transfer the Defendant knew the various actions of the Plaintiff to register her as the Owner.

(continued)

3A. Answering, paragraph 7A the Plaintiff denies that the Transfer of the said land into the Plaintiff's name was fraudulent and puts the Defendant to strict proof.

20 3B. Answering paragraph 7B the Plaintiff denies that the Transfer of the said lands in the Plaintiff's name was fraudulent or void ab initio or the Power of Attorney No. 739/62 was invalid and/or Null and Void. The Plaintiff further denies that there was want or failure of Consideration or that Plaintiff's Transfer of the said land by virtue of the Power of Attorney was unlawful or an excess use of the Power.

4. The Plaintiff denies paragraph 8 of the Amended Defence and each and every particulars of allegations of fraud is also denied.

30 5. Answering paragraph 3 to 9 the aforesaid lands, prior to the registration in the Plaintiff's name on the 9th of July, 1970 was owned by one Palaniandy s/o Murugan and the Defendant held a Power of Attorney from the aforesaid Palaniandy s/o Murugan. On the 9th of July, 1962 the Defendant executed in favour of the Plaintiff an irrevocable Power of Attorney empowering the Plaintiff to deal with the aforesaid lands and to transfer the said lands in her favour as an
40 absolute Owner.

6. Sometime on 10th day of August, 1967 the Defendant agreed with the Plaintiff to sell the aforesaid lands to the Plaintiff for the sum of \$7,500/-. It was inter alia agreed that as from the date of the Agreement the Defendant shall give possession to the Plaintiff and would cease to exercise any rights. The Plaintiff will at the trial

In the
High Court

No.3
Amended
Reply and
Defence to
Counterclaim

30th March
1973

(continued)

refer to the terms of the Agreement. On the 10th day of August, 1967 the Plaintiff paid a sum of \$3,200.00 and one Gopal to whom the aforesaid lands were leased for cultivation paid a sum of \$2,000.00 towards the purchase. Subsequently the Plaintiff paid and settled the balance of \$2,300.00 pursuant to the Power of Attorney. Pursuant to the Power of Attorney, the Plaintiff duly obtained the Consent of the Ruler in Council for the transfer and on the 9th day of July, 1970 the lands were transferred into the Plaintiff's name. 10

7. Save and except in so far as herein expressly admitted, the Plaintiff denies each and every allegations set forth in the Counterclaim herein seriatim and specifically traversed.

8. Wherefore the Plaintiff prays that the Defendant's Counterclaim be dismissed with costs. 20

~~-Dated this 21st day of September, 1972.~~

~~Sd. M. Segaram & Co.
Solicitors for Plaintiff~~

Amended this 30th day of March, 1973

Sd. M. Segaram & Co.
Solicitors for Plaintiff

This Amended Reply and Amended Defence to Counterclaim is delivered by Messrs. M. Segaram & Co., Advocates and Solicitors of Nos. 17 & 19 Jalan Silang, Kuala Lumpur. 30
Solicitors for the Plaintiff abovenamed.

No. 4
PROCEEDINGS

In the
High Court

No.4
Proceedings

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 269 OF 1972

14th June
1973

Between

Pappa d/o Thoppan Plaintiff

And

Saminathan s/o Vanathan Defendant

In Open Court 14th day of June, 1973

10

NOTES OF EVIDENCE

BEFORE MOHD. AZMI J.

Mr. Segaram for Plaintiff.
Mr. Dulip Singh for Defendant.

Mr. Dulip Singh applies to amend para.2 of Amended Statement of Defence by inserting the word "beneficial attorney" immediately before the words "owner and proprietor", and another amendment of para.3(b), to insert the words "Defendant's principal" for the word "Plaintiff".

20

By consent the above amendments allowed.

Mr. Segaram applies to amend Amended Defence to Counterclaim by adding a new paragraph 8A in the following terms :-

"The Defendant's Amended Counterclaim against the Plaintiff is not maintainable, as the Defendant was never at any stage the registered owner of the lands referred to therein."

By consent the above amendment allowed.

30

Both counsel submit there are four agreed issues in this case, viz :-

(1) Whether the Defendant can counterclaim against the Plaintiff for the reliefs which he has prayed.

(2) Whether there was sale of land of E.M.R.

In the
High Court
No.4
Proceedings
14th June
1973
(continued)

No.5089 (consisting of two lots -
i.e. Bendang Lot No.10600 formerly
A.A. 814/50 and Kampong Lot No.5406
formerly A.A. 79/57) from Defendant
to Plaintiff.

(3) Whether Power of Attorney No.739/62
dated 9.7.1962 given by Defendant
to Plaintiff is valid and effective,
to convey the said lands to the
Plaintiff.

10

(4) Whether the registration of transfer
of the said lands i.e. E.M.R. No.5089
from Palaniandy s/o Murugan to the
Plaintiff is valid and effective.

No.(2) above is the principal issue i.e.
whether there was sale of the said land.

Agreed Bundle of Documents produced and
marked Exhibit AB 1 to 8.

Mr. Dulip Singh also now agrees that
documents at pages 1 to 5, page 7 and page 9
of Plaintiff's Bundle of documents be treated
as part of Agreed Bundle of Documents.

20

The above documents now produced and
marked Exhibit AB 9 - 13, Exhibit AB 14 and
Exhibit AB. 15.

Both Counsel now agree that the heading
of Exhibit AB8 should read "79/57" and not
"79/578B".

Mr. Segaram calls :

Plaintiff's
Evidence
No.5
Hassan bin
Mohd. Ali
14th June
1973
Examination

No. 5

30

HASSAN BIN MOHD. ALI

P.W.1 Hassan bin Mohd. Ali affirmed states
in English :

Assistant Collector of Land Revenue,
Kuala Selangor.

I have the records of E.M.R. No.5089.
The present owner is Pappa d/o Thoppan who
was registered on 9.7.1970. Immediately before
him, Palaniandy s/o Murugan was the owner.

The said land was alienated to him first under Approved Application Nos. 814/50, and 79/57.

In the
High Court

There were two applications for consent of Ruler-in-Council to transfer the lands.

Plaintiff's
Evidence

The first application was made by Saminathan s/o Vanathan on 6.1.1967 to transfer the lands from Palaniandy to himself (Saminathan). In that application he enclosed :-

No.5
Hassan bin
Mohd. Ali
14th June
1973

10 (i) A Statutory Declaration to the effect that Palaniandy s/o Murugan was still alive. The Statutory Declaration was made by Saminathan.

Examination
(continued)

(ii) A Power of Attorney No.500/57 dated 4.5.1957 registered on 16.5.1957 (Exhibit AB. 2 to 5 identified). The donor of the Power of Attorney is Palaniandy s/o Murugan and the donee is Saminathan s/o Vanathan.

20 This application was rejected by the Commissioner for Lands and Mines on 15.5.1970 in view of the contents of Power of Attorney No.739/62 in which Saminathan (Defendant) was the donor and Pappa d/o Thoppan was the donee.

30 What happened is that, after we received the first application for consent by Saminathan (Defendant) on 6.1.1969, we received a second application for consent of Ruler-in-Council dated 28.8.1967 i.e. seven months later, from Pappa d/o Thoppan (Plaintiff) to transfer the lands from Palaniandy to herself. In her application she enclosed a statutory declaration made by her to the effect that -

(a) Palaniandy s/o Murugan had executed a Power of Attorney dated 11.5.1957 to Saminathan (Defendant).

(b) Saminathan had in turn executed a Power of Attorney dated 9.7.1962 to her with full power.

40 The first application is enclosure (1) in the file, and the second application is enclosure (5).

(By consent file No. P.T.K.S. 11/4/67 produced and marked P1).

In the
High Court
Plaintiff's
Evidence

No.5
Hassan bin
Mohd. Ali
14th June
1973

Examination
(continued)

The second application made by Plaintiff was for issue of grant to her. I take it to mean that it is an application for consent of Ruler-in-Council also.

The reply to the second application is enclosure (9) in Exhibit P1. The gist of the reply was that we advised the Plaintiff to submit to us a letter from High Court stating that P.A. No.739/62 is still effective.

On 11.3.1970, the Plaintiff wrote to us: 10
enclosure (16) in Exhibit P1. (Witness reads out letter). She forwarded the required letter from High Court.

The Issued Document of Title E.M.R. No.5089 was registered on 15.7.1965. It is issued in the name of Palaniandy s/o Murugan. There is nothing in the file to whom the title was handed to. The extract was issued on 2.12.1966.

(NOTE: witness undertakes to search from 20
another file to whom the title was
handed to).

Application by Plaintiff for consent to transfer was given by Exco on 19.6.1970 and the lands were transferred to Plaintiff on 9.7.1970.

Sd. Mohd. Azmi

Cross-
Examination

Cross-examination by Mr. Dulip Singh:

From the time the first application was received from Defendant on 6.1.1967 till the second application from Plaintiff was received on 28.8.1967, we did take action. We made 30
investigation.

The Defendant was not informed of the rejection of his application.

When the second application was made by the Plaintiff, I agree the first application by Defendant had not been withdrawn.

The application of the Plaintiff was not supported by the Defendant, other than the Power of Attorney.

When Plaintiff's application was submitted, 40

I agree there were two rival applications to the same lands, seeking the consent of Ruler-in-Council.

In the
High Court
Plaintiff's
Evidence

We made separate enquiries in respect of the two applications. First enquiry was made on 15.3.1967 i.e. before Plaintiff's application was received.

No.5
Hassan bin
Mohd. Ali

The second enquiry was made on 4.3.1968 i.e. after receipt of Plaintiff's application.

14th June
1973

10 In enclosure (16) i.e. Plaintiff's letter, she also forwarded a statutory declaration made by her on 11.3.1970 - same date as the letter, to the effect that Palaniandy (the original owner) and Saminathan (Defendant), donors of P.As No.500/57 and No.739/62 were still living in India.

Cross-
Examination
(continued)

Letter from High Court dated 11.3.1970 was also enclosed stating that both P.A.s were still effective.

20 The land was transferred to Plaintiff on 9.7.1970. It was transferred on the strength of the two P.A.s.

After the consent of Exco, was obtained, no further declaration was required from the Plaintiff to say the P.A.s were still effective.

I agree the transfer to Plaintiff was done on strength of the two Power of Attorneys.

Sd. Mohd. Azmi

Re-examination:

Re-
Examination

30 After receipt of Defendant's application, he did not write to Land Office to enquire about his application. He has not enquired whether his application was approved or not up to date. The Land Office also did not inform him of the rejection of his application.

To us it is a rival application. I do not think the second application superseded the first application.

40 The Land Office wanted to know whether the P.A.s were still valid.

There was no letter from Land Office to

In the
High Court

get consent of the Defendant regarding
transfer to Plaintiff.

Plaintiff's
Evidence

Sd. Mohd. Azmi

No.5
Hassan bin
Mohd. Ali
14th June
1973

Re-Examination
(continued)

Plaintiff's
Evidence

No. 6

SIVARAJAN s/o SARAYANAMUTTU

No.6
Sivarajan
s/o Sarayana-
muttu
14th June
1973
Examination

P.W.2 Sivarajan s/o Sarayanamuttu affirmed
states in English:

Age 57 years. Now required, residing
at Batu Dua, Telok Piah, Batang Berjantai Road.

In 1967 I was a petition writer at Kuala 10
Selangor.

I know both the Plaintiff and Defendant
(identified).

(Exhibit AB 15 shown to witness). This
document was prepared by me. It is a tenancy
agreement between Defendant and one Kobale
s/o Kovindan. It was made at the request of
Defendant.

(Pages 11 and 12 of Plaintiff's Bundle
of Documents shown to witness). 20

Both the Agreement dated 10.8.1967 and
Receipt dated 5.10.1967 were prepared by me.
(By consent copy of Agreement dated 10.8.1967
produced and marked P2). Both Plaintiff and
Defendant came to see me. The Defendant gave
me the first instruction that he wanted to
make an agreement of sale. Those who came
were the Plaintiff and her husband, and the
Defendant and his adult son. I know Plaintiff's
husband Manikam s/o Muthu identified as 30
(Plaintiff's husband). I based the Agreement
on two P.A.s (Exhibits AB2 and AB9 identified).
No other document was produced.

My instruction from the Defendant was that he was going to dispose of the property to \$7,500.00. After discussion between the Plaintiff and Defendant, they agreed that the Plaintiff should pay a first payment \$5,200/-. This payment consisted of \$3,200/- in cash and \$2,000/- against the rents which the Defendant had already received from Gopal s/o Govindan who was a tenant of the land. The balance of \$2,300/- was to be paid by 31.10.1967. After settling the amount, the Defendant agreed that the Plaintiff could proceed to transfer the land to herself. It was agreed the Defendant would give the title to the Plaintiff later on. What I understood was, Plaintiff was to take steps to transfer the land to herself.

In the
High Court
Plaintiff's
Evidence
No.6
Sivarajan
s/o Sarayana-
muttu
14th June
1973
Examination
(continued)

It was agreed from the date of the agreement, the Plaintiff would exercise rights over the land and the Plaintiff accordingly gave her consent in writing on the reverse of the tenancy agreement, allowing Gopal to continue as a tenant. These are the three Tenancy Agreements (Exhibits AB 13, 13 and 15 identified). I produce the originals. (By consent put in and marked Exhibit P3, P4 and P5 respectively). I prepared all the endorsements on the reverse of the agreements.

Both parties and I spoke Tamil. After preparing the agreements, I read to them and they signed them in my presence.

I counted the \$3,200/-. When I found it correct, I handed the money to Defendant.

By the endorsements at the back of the three tenancy agreements, Plaintiff took the place of the Defendant. All three agreements in respect of tenant Gopal, but for different periods.

I do not know who did the stamping of the agreements.

I do not know about the cancellation in Exhibit P2. Exhibit P.2 was signed by two witnesses viz.

Ramiah and K.V.Munusamy - the Sidang. (K.V. Munusamy called the identified). I do not know Ramiah. I cannot remember who called him.

Plaintiff and Defendant cannot sign. They

In the
High Court
Plaintiff's
Evidence
No.6
Sivarajan
s/o Sarayana-
muttu
14th June
1973
Examination
(continued)

put their thumb impressions. They were taken by me. I prepared this Receipt for \$600/- (Original Receipt produced and marked Exhibit P6). On 5.10.1967 Plaintiff and her husband and the Defendant came up to me and wanted a receipt to be made out for \$600/-. The sum of \$600/- was given to Defendant by Plaintiff in my presence. The Defendant received the money. I was then waiting for transport to go home. That was why the receipt was prepared by hand. The witnesses of Exhibit P2 signed in the presence of both parties. So are the endorsements.

10

Sd. Mohd. Azmi

To 2.30 p.m.

Sd. Mohd. Azmi

Parties as before

P.W.2 on former oath

Cross-
examination

Cross-examination by Mr. Dulip Singh

Prior to signing the agreement, I did not know the Plaintiff or the Defendant. One year before that (10.8.1967) I was already working as a petition writer. They never patronised me before that.

20

Q: Exhibit P2 was not prepared by you?

A: It was prepared by me. My initial appears on third line second paragraph where I cancelled certain words by typing. I did not have the chop. That is why I did not put on the document "prepared by me". I was new then. I was not aware that I should put down my licence number and the fee charged. In Exhibit P2 the words "R.T.P. of Saminathan etc". and "Pappa d/o Thoppan" are in my handwriting. The erasure of handwriting in the last paragraph was done by me. The writing which has been erased is not mine.

30

Q: Why was Exhibit P2 not witnessed by you?

40

A: Because there were more responsible witnesses, like K.B.Munusamy who is a Sidang and P.J.K. Sidang is the Ketua Kampong. In the case of the Receipt

(Exhibit P6) because there was no other person, I witnessed it.

In the
High Court

I agree the Receipt was stamped on 18.5.1970. They argued about the price at my place. Until I asked them about the price, then only they bargained about it. They went to separate table in the coffee shop. I did not hear what they were talking.

Plaintiff's
Evidence

No.6
Sivarajan
s/o Sarayana-
muttu

14th June
1973

Cross-
examination
(continued)

10 When I explained the agreement in Tamil, no one contradicted. The Plaintiff told me about the \$2,000/- rents already collected by the Defendant from Gopal as rents. No date was mentioned when the Defendant received the rents.

20 I did ask why the sum of \$2,000/- was being deducted from \$5 200/-. I asked from Plaintiff and as well as from Gopal. The Plaintiff told me period of tenancy was up to 1972. The \$2,000/- represented rents from date of Agreement up to April or May 1972. That amount had already been paid by Gopal to Defendant. The rents were paid in advance.

Exhibits P3 and P4 were not prepared by me. Only the endorsements on the reverse were prepared by me.

I prepared Exhibits P2, P5, P6 and all the endorsements on the back of the three tenancy agreements.

30 When I prepared the third Tenancy Agreement Exhibit P5, only the Defendant and Gopal were present. The Plaintiff was then not in the picture. The tenancy was to run from 1.5.1970 upto 30.4.1972.- clause (2). No money passed in my presence on 21.6.1967 when I prepared Exhibit P5. It was witnessed by Rengasamy. I do not know who is the witness for Kobale. Gopal and Kobale is one and the same person.

40 I was instructed to put the clause of the \$2,000/- as in para.(2) of the Agreement (Exhibit P2). I personally do not know whether Gopal had in fact paid the \$2,000/- to the Defendant in respect of future rents.

(Para.(2) of Agreement Exhibit P2 read to witness).

Normally this \$2,000/- would be paid by Gopal to Defendant. Because of endorsements, the

In the
High Court
Plaintiff's
Evidence

No.6
Sivarajan
s/o Sarayana-
muttu

14th June
1973

Cross-
examination
(continued)

Plaintiff became entitled to the money. When the agreement was made, the endorsement on Exhibits P3, P4 and P5 had not been made yet. When the endorsements were made, the future rents became due to Plaintiff. That is why in para.(2) of Exhibit P2 I wrote "\$2,000/- due to Gopal".

Gopal was already willing. He brought the tenancy agreements to me. So there was no necessity to ask him whether he was prepared to accept the change landlord. It was not necessary to ask Gopal to sign the endorsements.

10

I maintain \$3,200/- in cash was paid to the Defendant. I handed the money personally to him. There was no receipt of \$3,200/-. I thought the agreement itself is more than a receipt.

Sd. Mohd. Azmi

Re-
examination

Re-examination by Mr. Segaram

Exhibit P2 was done be me.

20

The Defendant did not protest about \$2,000/- being included. No one protested.

I consider a receipt of \$3,200/- was not necessary as the agreement also covers it.

Sd. Mohd. Azmi

Mr. Dulip Singh recalls P.W.1

No.7
Hassan bin
Mohd. Ali

14th June
1973

(Recalled)
Cross-
Examination

No. 7

HASSAN BIN MOHD. ALI (RECALLED)

P.W.1 re-affirmed

Further cross-examination by Mr.Dulip Singh:

30

(Enclosures 13 and 14 in file Exhibit P1 referred to witness).

Enclosure is a letter from Land Office to Plaintiff dated 17.1.1969. I agree in short the Plaintiff was informed that the Power of Attorney produced by her (Exhibit AB9) was not adequate enough to transfer the land

in question because reference to particulars of the land are not correct.

In the
High Court
Plaintiff's
Evidence

10 Enclosure (14) is the reply from Plaintiff. She acknowledged receipt of enclosure (13). I agree she also acknowledged receipt of P.A. No.500/57 (Exhibit AB2) and No.739/62 (Exhibit AB9) and she agreed to submit fresh Power of Attorney in place of P.A. No.739/62. From the file, no fresh Power of Attorney was supplied pertaining to the transfer.

No.7
Hassan bin
Mohd. Ali
14th June
1973
(Recalled)
Cross-
examination
(continued)

Sd. Mohd. Azmi

Further re-examination:

Re-
examination

20 Subsequent to enclosures (13) and (14), the Land Office sent another letter to the Plaintiff (enclosure 15) to the effect that as the two Powers of Attorney were registered quite some time ago, it was not necessary to get a new Power of Attorney provided a letter was obtained from High Court to confirm that these two P.A.s had not been revoked. The Plaintiff did obtain the required confirmation - enclosure (16).

Sd. Mohd. Azmi

Mr. Segaram says at this stage he does not wish witness to find out from the office records to whom the title was handed.

By consent witness released.

Sd. Mohd. Azmi

Time 4.10 p.m.

30 Mr. Segaram has six more witnesses and Mr. Dulip Singh would be calling three witnesses.

Counsel apply for three more days.

ORDER:

Case adjourned to a date to be fixed by Senior Assistant Registrar at the next fixing date.

Three full days would be required.

Sd. Mohd. Azmi

In the
High Court
Plaintiff's
Evidence

No.8
Proceedings
21st November
1973

No. 8
PROCEEDINGS

21st November, 1973

Hearing resumed

Mr. M.Segaram for Plaintiff.
Mr. Dulip Singh for Defendant.

Since the last adjournment, Plaintiff had obtained leave from Court to amend pleadings and Defendant was also given leave to amend.

Amended Bundle of Pleadings produced. 10

Mr. Segaram says the effect of the amendment is to ask for alternative prayer so that if Court finds P.A. No.739/62 dated 9.7.1962 (Exhibit AB9) is null and void or the transfer of the land to the Plaintiff is in excess of the power, Plaintiff wants the Defendant to execute a proper and registrable transfer pursuant to Agreement of Sale dated 10.8.1967 (Exhibit P2).

Mr. Dulip applies to amend para.5 of Amended Statement of Defendant by adding the following :- "or alternatively the said sale agreement was illegal". 20

Mr. Segaram has no objection.

Amendment allowed.

Plaintiff's
Evidence

No.9
Pappa d/o
Thoppan
21st & 22nd
November
1973
Examination

No. 9
PAPPA d/o THOPPAN

P.W.3 Pappa d/o Thoppan affirmed, states
in Tamil

Age 50 years, Housewife, residing at
Sungai Tinggi, Batang Berjuntai, Selangor. 30

I do not know how to read and write Tamil.
I am illiterate.

I know Saminathan. (Defendant identified).

I have known him since the Power of Attorney was executed i.e. the Power of Attorney given by the Defendant to me. (AB9 - 9.7.1962).

In the
High Court
Plaintiff's
Evidence

The Power of Attorney was prepared at lawyer Chelvanayagam's office. The Power given pertains to sale of Defendant's land to me i.e. land in dispute.

No.9
Pappa d/o
Thoppan

21st & 22nd
November
1973

Examination
(continued)

10 (At this stage Mr. Dulip Singh says Defendant is not disputing as to the description of the land in dispute as contained in Agreement Exhibit P2, nor its execution by Defendant. But all other facts are being disputed).

On 10.8.1967 an agreement was executed by me and the Defendant before a petition writer named Sivarajah (P.W.2). The agreement pertains to the sale of the land to me at a price of \$7,500/-.

20 The sale of the land was first agreed in 1962. The sale price then was \$4,000/-. It was subsequently increased to \$7,500/-. The Defendant simply increased the price without giving any reason. I agreed with the \$7,500/- (Exhibit P2 identified).

No other agreement of sale was executed other than (Exhibit P2).

The earlier price of \$4,000/- was agreed verbally.

30 When the Sale Agreement (P2) was executed, I paid \$5,200/- to the Defendant comprising of \$3,200/- in cash and \$2,000/- to be paid to Defendant by one Gopal.

Gopal is my relative. He is my cousin. (Gopal s/o Govindan called and identified).

This \$2,000/- was owing to me from Gopal for the money which he had borrowed.

On the date of agreement (10.8.1967) I do not know who was cultivating the land.

40 Subsequently the Defendant leased the land to Gopal. I do not know when about five years after the agreement was executed. The rent for the lease was given by Gopal to the Defendant. Gopal gave \$2,000/- lease money altogether to Defendant. This is the amount which I referred earlier on.

In the
High Court
Plaintiff's
Evidence

No.9
Pappa d/o
Thoppan
21st & 22nd
November
1973

Examination
(continued)

The Defendant, the petition writer (P.W.2), Munusamy Gopal and myself were present at the execution of the agreement. My husband, Manickam, was also present. (Manikam s/o Muthu called and identified).

After the execution of the agreement (10.8.1967) I paid a further sum of \$1,700/- and another \$600/- to Defendant.

\$600/- was given first in the presence of the petition writer (P.W.2). I paid in cash. 10
P.W.2 gave this receipt to me. (Exhibit P6 identified). I handed the \$600/- to P.W.2 who in turn gave it to Defendant. I was present. I saw P.W.2 handing the money to Defendant. My husband, Manikam, was also present.

The remaining \$1,700/- was paid in the presence of Vallipuram - the President of the Temple. (Vallipuram s/o Muthuthamby called and identified). The petition writer, Sivarajan. was not available on that day. The 20
Defendant, his wife, myself, my husband and Vallipuram were present. I paid in cash directly to Defendant. A document was executed - prepared by Vallipuram. This is the document. (Document produced and marked Exhibit P7). It is in respect of final payment.

Subsequently, I applied to the Collector and got the land transferred to me.

The title to the land was given to me by the Defendant when the document Exhibit P7 30
was executed. This is the title (Title E.M.R. 5089 produced and marked Exhibit P8).

When Exhibit P7 was executed (25.1.1968), the Defendant was cultivating the land.

Some time in early 1970 Gopal told me the Defendant was interfering with the cultivation of the said land. The Defendant was interfering with Gopal's cultivation. Gopal was cultivating the land in early 1970. So on 20.4.1970 I 40
wrote to Defendant by registered letter (Exhibit AB8) complaining about the interference.

I do not remember whether Defendant replied to my letter AB8.

Subsequently on 4.12.1970 I lodged a Police Report (AB 6).

Subsequently, I instituted proceedings against the Defendant in Kuala Selangor Magistrate's Court for vacant possession and trespass.

In the
High Court
Plaintiff's
Evidence

(Mr. Segaram wishes to produce the certified true copy of pleadings in Magistrate's Court C.A. 36/71, Kuala Selangor under section 17 of Evidence Ordinance.

No.9
Pappa d/o
Thoppan

21st & 22nd
November
1973

Examination
(continued)

10 Mr. Dulip Singh objects on ground that the pleadings in Lower Court are irrelevant. We do not know the pleadings were made on advice of Counsel without knowledge of Defendant. The solicitor then was M/s M. Abraham & Co. If the pleadings are produced as admission what is the use of calling Plaintiff to give evidence and to produce various documents.

ORDER:

20 Objection over-ruled. The pleadings being certified true copy are relevant. (Pleadings in Magistrate's Court Kuala Selangor produced and marked Exhibit P9).

I ask for Order as prayed in para.7 of my Amended Statement of Claim.

From 1970 up to now, the Defendant has been in possession of the land. I have been deprived the fruits of my property.

30 By High Court Order dated 30.10.1972 the Defendant is ordered to pay into Court all moneys received in respect of the land pending final decision of present dispute. (Order produced and marked P.10).

I do not know whether Defendant has paid money into Court.

Sd. Mohd. Azmi

Cross-examination by Mr. Dulip Singh:

Cross-
examination

40 Before P.A. No.739/62 (AB9) was executed on 9.7.1962, I did not know the Defendant. The first time I knew Defendant was on 9.7.1962. I was introduced to him by his nephew - Angamuthu. Not by Muniandy.

I met Angamuthu at Kg. Bharu, Batang Berjuntai. We were then staying in the same

In the
High Court

Plaintiff's
Evidence

No.9
Pappa d/o
Thoppan
21st & 22nd
November
1973

Cross-
examination
(continued)

kampong.

It is true that Poongabanam, Defendant's younger brother was the first person to introduce Defendant to me. But during the signing of the Power of Attorney, Poongabanam was not present. Angamuthu was present. It is not true Poongabanam was present in lawyer's office on 9.7.1962.

I agree Poongabanam and my family were working in the same rubber estate. He called me "sister". He was treating me as a real sister. In 1962 I was not aware that Defendant was seriously ill from T.B. 10

I was not aware Defendant's wife was also not well - with failing eye-sight, at that time.

I never visited Defendant at Klang District Hospital together with Poongabanam. I did not give Defendant fruits or money at Hospital. 20

The purpose of giving the Power of Attorney to me at that time (9.7.1962) was that at that time Defendant did not cultivate the land and he wanted me to cultivate and purchase the land. On the way to lawyer's office to execute the Power of Attorney, the Defendant told me that. The Defendant agreed to sell on the way to lawyers office. Before we left Batang Berjuntai, the Defendant had agreed to give Power of Attorney. He agreed to give me Power of Attorney at that time because his idea was to sell the land. 30

The discussion regarding Power of Attorney and purchase of the land also took place before leaving for Batang Berjuntai for the lawyer's office. I did not tell this to the lawyer. I do not know whether Defendant told the lawyer. I did not tell the lawyer of the purchase price of \$4,000/-.

The price of \$4,000/- was discussed after execution of Power of Attorney. I do not remember when, but it was after execution of Power of Attorney. 40

Q: When did you actually agree to buy the land for \$4,000/-?

A: About five or six months after execution of Power of Attorney (9.7.1962).

I did not reduce into writing the \$4,000/- agreement.

The idea of executing the Power of Attorney was to sell the land to me. There was no other reason.

10 Angamuthu, Defendant and myself went to lawyer's office for execution of Power of Attorney. The Defendant was not ill on that day. Poongabanam did not carry Defendant upstairs because of his illness.

Q: I put it to you, the actual purpose of giving the Power of Attorney to you was due to your undertaking to look after the Defendant and his wife - both of whom were ill, and not for purpose of sale.

A: No, not true.

20 I did not tell the lawyer the Power of Attorney was given to me because I would look after the Defendant and his wife. This was not the consideration.

After Power of Attorney was executed, I did not visit the Defendant at the hospital.

30 (Mr. Segaram refers to section 92 Evidence Ordinance. Defendant should not be allowed to adduce oral evidence to vary the contents of Power of Attorney. Power of Attorney is a matter required by law to be reduced to the form of a document. The Power of Attorney already says the consideration is for love and affection and \$10/-. Now Defendant tries to show the consideration is to look after Defendant.

40 Mr. Dulip Singh refers to para.7B of new Amended Defence. The question is to show how the love and affection arose. Parties are strangers.

ORDER:

Objection overruled.

Q: After Defendant was discharged from hospital,

In the
High Court
Plaintiff's
Evidence

No.9
Pappa d/o
Thoppan

21st & 22nd
November
1973

Cross-
examination
(continued)

In the
High Court
Plaintiff's
Evidence

No.9
Pappa d/o
Thoppan
21st & 22nd
November
1973

Cross-
examination
(continued)

you ignored him?

A: No.

My son, Munusamy, got married seven years ago. Defendant did not give me \$1,000/- at said marriage, for looking after him when he was in hospital. It is not true Defendant gave me \$1,000/- because I had spent money when looking after him.

At the time of execution of Power of Attorney. I did not give \$10/- to Defendant. I did not see Defendant showing another Power of Attorney to the lawyer.

10

I do not remember when I received the Power of Attorney (AB9).

Time: 12.50 p.m.

To 2.30 p.m.

Sd. Mohd. Azmi

Hearing resumed

P.W.3 on former oath

Continued cross-examination:

20

From date of Power of Attorney (9.7.1962) to date of agreement (10.8.1967) the Defendant had not taken any loan whatsoever from me. I had not given him any money either as loan or gift to Defendant. During the five years, there was no dealing between me and the Defendant except there was an incident when we went to cultivate on the land Defendant's son, Rengasamy, came with knife to assault us. I did lodge a police report regarding this incident.

30

(Mr. Segaram says the Police Report was in 1970 - Exhibit AB 6).

I now agree the Police Report was made in 1970. There was no dealing between 9.7.1962 and 10.8.1967.

Q: Why did you not take any action between 9.7.1962 and 10.8.1967 to have the land transferred to you under the Power of Attorney?

A: Because Defendant had leased the land to Gopal.

Gopal owed me \$2,000/-. He had to give me \$2,000/- because the Defendant had leased my land to Gopal and therefore Gopal had to pay the rents to me. The rent of \$2,000/- was for four years. I do not know for what period.

10 I do not agree before 10.8.1967 the Defendant was entitled to the land rents from Gopal.

I now agree that whatever was due prior to the agreement (10.8.1967) from Gopal was payable to Defendant. (Witness corrects herself).

20 Gopal did not tell me how much money had had paid Defendant by way of rents. At the time of the agreement I agree I did not know how much was due from Gopal to Defendant by way of land rents. Under the leases, I did not know at the time of the agreement whether money was due from Gopal to Defendant or vice versa. Even now I do not know Gopal would know.

I agree I do not know the exact contents of the agreement when I signed it.

I do not know how long before the signing of the Agreement that the sale price of \$7,500/0 on the land was decided.

30 I did pay \$3,200/- in cash to the Defendant at the time of signing the agreement (10.8.1967). The money was raised from my husband's E.P.F. money plus money raised from pawning of my jewellery. The E.P.F. was about \$2,000/- and the rest from pawning and tontine. The jewellery had not been redeemed and I had lost the pawn tickets. There were about four or five pawn tickets.

I did pay \$3,200/- to Defendant on 10.8.1967.

40 Q: During the five years period, you had been advancing money to the Defendant in small sums, when he was ill - the total being about \$3,000/-?

A: I deny this.

In the
High Court

Plaintiff's
Evidence

No.9
Pappa d/o
Thoppan

21st & 22nd
November
1973

Cross-
examination
(continued)

In the
High Court
Plaintiff's
Evidence

No.9
Pappa d/o
Thoppan
21st & 22nd
November
1973

Cross-
examination
(continued)

Q: Who advised you to put up the agreement and receipts. (P2, P6 and P7)?

A: P.W.2 - the Petition Writer advised me.

I knew Mr. Vallipuram, the Temple President, when I visited the Temple. I also saw him in the Court at Kuala Selangor. He had not advised me to get documents.

Exhibit P7 - the acknowledgement of final payment by Defendant was prepared in a shop. I do not know by whom. I know Exhibit P7 was prepared by Mr. Vallipuram in Court at Kuala Selangor. (Witness retracts). I did not know which particular document was referred to just now.

10

I was present when Defendant affixed his thumb impression on Exhibit P7.

(Witness shown the reverse of Exhibit P7 which is an I.O.U. for \$7,500/- being cash loan dated 25.1.1968).

I am aware that the Defendant affixed his thumb impression on the reverse of Exhibit P7 i.e. the I.O.U. I knew that P7 was an acknowledgement of receipt of final payment by Defendant, but I do not know that at the same time the I.O.U. for \$7,500/- was prepared. I do not know why Defendant affixed his thumb impression on reverse of Exhibit P7.

20

Mr. Vallipuram did not explain to me about Exhibit P7 and what the reverse is all about.

30

I do not know of any person who guarantees to pay me all money paid to Defendant in the event the Authority did not approve the transfer.

Q: Did Muniandy promise that if Defendant died, he would repay all sums received by the Defendant?

A: No.

Q: If such undertaking is found in a document, do you agree the document is false?

A: I agree the document would not be true.

40

Sd. Mohd. Azmi

Hearing resumed after 10 minutes adjournment.

P.W.3 on former oath

Continued cross-examination:

10 I do now know the contents of Exhibit P7. Neither Mr. Vallipuram nor anybody else explained the contents of Exhibit P7 to me. I do not know whether it was explained to Defendant. I did not see Vallipuram explaining it to Defendant. I was present when Defendant affixed his thumb print on Exhibit P7.

To me P7 is a receipt for \$1,700/-.

(Witness informed there is no mention of \$1,700/- in Exhibit P7).

I did pay \$1,700/- to Defendant on 25.1.1968.

(AB8 referred to witness dated 20.4.1970).

20 Gopal complained to me saying that Defendant had leased the land to him and was now interfering in Gopal's cultivation. As owner of the land, I should take action and not Gopal. Gopal did not tell me he had consulted solicitors and notice had been sent to Defendant.

To transfer the land to me, I knew at that time what documents would be necessary. I could use the Power of Attorney in my power to effect the transfer.

I did make a statutory declaration at Kuala Lumpur Court in respect of the transfer.

(Enclosure 16B in File Exhibit P1 referred to witness).

30 To my knowledge the Defendant had not gone to India. In 1970 I do not know whether he went to India or not.

(Contents of enclosure 16B read and explained to witness by Court Interpreter).

I do not remember making the statutory declaration. I was referring Palaniandy s/o Murugan being in India but not in respect of Defendant. That part of the declaration regarding the Defendant is not true.

In the
High Court
Plaintiff's
Evidence

No.9
Pappa d/o
Thoppan
21st & 22nd
November
1973

Cross-
examination
(continued)

In the
High Court
Plaintiff's
Evidence

No.9
Pappa d/o
Thoppan

21st & 22nd
November
1973

Cross-
examination
(continued)

I knew I was making a statutory declaration but only in respect of Palaniandy. The Commissioner for Oaths did not explain the contents of the statutory declaration to me.

I did use the statutory declaration to transfer the land to me, but only in respect of Palaniandy's name and not the Defendant.

I cannot remember affixing my thumb impression on another form in respect of the transfer.

10

(NOTE: On application of Mr. Dulip Singh, I order that P.W.1 be recalled for further cross-examination and for production of Memorandum of Transfer filed by Plaintiff).

In para.(1), I undertake to pay \$2,300/- on or before 31.10.1967.

(Mr. Segaram concedes that out of \$2,300/- only \$600/- was paid on or before 31.10.1967).

Time: 5.00 p.m.

20

To 9.30 tomorrow 22.11.1973.

Sd. Mohd. Azmi

22nd November
1973

22.11.1973

Hearing resumed.

Parties as before.

P.W.3 reaffirmed.

Continued cross-examination by Mr.Dulip Singh:

I did pay Defendant \$1,700/- when P7 was executed on 25.1.1968. Defendant was not deceived in putting his thumb impression on P7. 30

I did pay \$600/- to Defendant on 5.10.1967 as stated in Exhibit P6.

At time of transfer of the land I did inform the Collector of Land Revenue that I paid \$7,500/- for the land. I do not know about Collector of Land Revenue file (Exhibit P1). I have no document to show I told Collector of Land Revenue about it.

NOTE: Further cross-examination reserved on execution of Memorandum of Transfer which will be produced by P.W.1 this afternoon.

Sd. Mohd. Azmi

Re-examination by Mr. Segaram:

In the
High Court
Plaintiff's
Evidence

No.9
Pappa d/o
Thoppan
21st & 22nd
November
1973

Cross-
Examination
(continued)

Re-
examination

10

The Power of Attorney was given in July, 1962. The Agreement was executed in August, 1967. Prior to 10.8.1967, I did not pay any money towards the purchase price.

Between 9.7.1962 and 10.8.1967, I did not transfer the land to me although I had the Power of Attorney, because I did not have money, during that period. Only on obtaining my E.P.F. money, I could raise the purchase money. With the Power of Attorney I could have transferred the land, but I felt that the transfer should be effected after paying the money.

20

When the agreement was executed on 10.8.1967, Defendant had already given leases to Gopal. I do not know the date of expiry of the lease. I knew the lease was for four years. The lease expired after 10.8.1967. In 1970 the lease was still subsisting. Hence the rent paid to Defendant by Gopal was brought into the agreement.

30

The \$1,700/- final payment was paid to Defendant in the presence of Vallipuram, the Temple official. It was after 4.00 p.m. - after office had closed. It was paid at the shop of another petition writer - not P.W.2, at Kuala Selangor Town. His office was in a coffee-shop. I do not know his name. It was not paid at the Court but Government offices had closed.

(Witness informed by Court in 1967
Government offices closed at 4.30 p.m.)

Now I say I do not know the time.

40

When money was given, Defendant's grandson Muniandy was present. I do not know what work Muniandy did at that time.

In the
High Court
Plaintiff's
Evidence

No.9
Pappa d/o
Thoppan
21st & 22nd
November
1973

Re-examination
(continued)

I do not know what type of document was prepared by Vallipuram (referring to Exhibit P7). I do not know the difference between I.O.U. receipt and agreement.

The transaction before Vallipuram on 25.1.1968 took about half an hour. I did not execute Exhibit P7. No one explained to me what P7 was all about. Vallipuram gave it to me on the same day.

Sd. Mohd. Azmi

10

Further re-examination reserved if witness is cross-examined further.

Sd. Mohd. Azmi

Plaintiff's
Evidence

No.10
Vallipuram s/o
Muthuthamby
22nd November
1973
Examination

No. 10

VALLIPURAM s/o MUTHUTHAMBY

P.W.4 Vallipuram s/o Muthuthamby affirmed states in English:

Age 41 years. Chief Clerk, High Court Registry, Kuala Lumpur.

On 25.1.1968 I was residing at No.4, Jalan Hospital, Kuala Selangor. I was then a Clerk in Land Office, Kuala Selangor. 20

I know both the Plaintiff and Defendant. I know them from middle of 1967.

Some time at the end of 1967, the Defendant met me at my office in Kuala Selangor. He told me he had a problem. He said he had sold his land to one lady and there was still some balance of money due from the lady, although he had given her document, which I gathered to be a Power of Attorney. His problem was the difficulty to get the balance of money from the lady. He told me the land was at Sungai Burong and the balance due from the lady was \$1,700/-. I told Defendant to decide the matter among themselves. He said he would bring the lady one day to see me. At that time I did not realise the lady was the Plaintiff. 30

10 About four days later, the Defendant, and one of his sons together with Plaintiff and her husband met me in Kuala Selangor town whilst I was going home from office. I took four of them to my house. I asked the Plaintiff what it was all about. She told me she had bought a piece of land from Defendant and that earlier on she had paid some money to Defendant towards the purchase price. She said the purchase price was \$7,500/- which Defendant confirmed. According to her, she had already paid a total sum of \$5,800/- leaving a balance of \$1,700/-. This was also confirmed by Defendant.

20 I asked Plaintiff what documents the Defendant gave her. She produced a power of attorney. I can identify the Power of Attorney because there was additional clause added to Power of Attorney. (Exhibit AB9 identified - the additional clause mentioned being clause 24).

30 I asked Plaintiff what was the difficulty of settling the balance due to Defendant. She said apart from this Power of Attorney, the transfer with Land Office had not been proceeded with. She asked me what guarantee would the Defendant give her in case the land was not transferred to her. I told the Defendant, the Plaintiff wanted guarantee. Defendant said he could sign an I.O.U. note as a guarantee. No money was paid on that day. The Defendant said she accepted the I.O.U. as guarantee. Nothing was done on that day. Both Plaintiff and Defendant agreed to come back in two weeks' time for settlement of the money due to Defendant.

40 As promised, they turned up two weeks later. The same four persons turned up with additional of one man named Muniandy - the Defendant's grandson. Muniandy was then unemployed. He is educated up to Form V. This second meeting took place on 25.1.1968 and this time the meeting took place in an Indian bicycle repair shop, where there was a petition writer working. His name is Pakianathan. The Plaintiff brought money with her. I then asked Defendant what other documents he had in his possession. He gave me one old Power of Attorney and the title to the land. The old Power of Attorney that I saw was type-written and certified true copy (enclosure 1C in Exhibit P1 identified). This type written Power of Attorney

50

In the
High Court
Plaintiff's
Evidence
No.10
Vallipuram
s/o
Muthuthamby
22nd November
1973
Examination
(continued)

In the
High Court

Plaintiff's
Evidence

No.10
Vallipuram s/o
Muthuthamby

22nd November
1973

Examination
(continued)

is the same as Exhibit AB2 - P.A.No.500/57
executed on 11.5.1957.

This is the title. (Exhibit P8 identified
i.e. same as Exhibit AB.1).

After going through the two documents,
I found the title was not in defendant's name.
Defendant told me he bought the land from
one Palaniandy - the donor of P.A. No.500/57
(AB2). I did not ask Defendant how much he
paid for it. I also told Defendant the
restriction in interest in the title which
says "the land hereby alienated shall not be
transferred or charged or leased without the
written consent of the Ruler in Council".
(See last paragraph of Express Conditions in
Title Exhibit AB1 or P8). I explained to the
Defendant the position. He said in the event
that consent for Ruler in Council could not
be obtained, then he would refund the \$7,500/-
and he said his grandson Muniandy would vouch
for it. I then explained the situation to
Plaintiff. She consented to the guarantee
arrangement. The Plaintiff wanted interest.
Defendant agreed but the rate was not
mentioned at all.

10

20

At my request, Defendant bought three
I.O.U. forms, and handed them to me. I type-
written the I.O.U. in triplicate. This is
the original. (Exhibit P7 - I.O.U. identified).
I then typed the reverse of the I.O.U. The
document in the reverse of the I.O.U. contains
the condition agreed by the parties regarding
the sale of the land in the event of the
Ruler in Council refusing to give its consent.
The first part states that Defendant had sold
the land to the Plaintiff and that part was
executed by the Defendant.

30

The second part on the reverse of the I.O.U.
was the guarantee by Muniandy, in the event that
the Ruler in Council withheld its consent, and
this second part was executed by Muniandy.

40

The Defendant also executed the I.O.U.

After typing the I.O.U. and the reverse,
I explained the contents to Defendant. At my
request, Muniandy also explained the contents
to Defendant (Muniandy's grandfather).

On that day, money was passed from Plaintiff

to Defendant. The I.O.U. was signed only by Defendant. The first condition was also signed by Defendant and the second condition by Muniandy.

In the
High Court
Plaintiff's
Evidence

10 I prepared three copies. I gave one copy to Defendant. The original to Plaintiff and I kept one copy. This is my copy. (Put in and marked P7A). All three copies were executed by Defendant and Muniandy. \$1,700/- was paid by Plaintiff to Defendant in my presence. The money was counted by both Defendant and Muniandy. The title and Power of Attorney were then handed by Defendant to Plaintiff. (AB1 and AB2). I told Plaintiff that she could apply to get consent of authority to transfer. Then they all left.

No.10
Vallipuram s/o
Muthuthamby
22nd November
1973

Examination
(continued)

(Second condition of Exhibit P7 referred to witness).

20 I inserted the second condition at the request of the Plaintiff to cover a situation where the Defendant died. If Defendant died, Power of Attorney No. 500/57 (AB2) would lapse.

I am not related to both Plaintiff and the Defendant. I have no personal interest in the transaction.

I was transferred to Kuala Lumpur on promotion on 1.1.1970 from Kuala Selangor Land Office.

Sd. Mohd. Azmi

30 Cross-examination by Mr. Dulip:

Cross-
examination

I was in Land Office Kuala Selangor for six years - from 1.11.1963 to 31.12.1969.

During that six years, I only saw the Plaintiff and Defendant at the Land Office in middle of 1967. I often saw Defendant but not the Plaintiff.

40 The first time I met the Plaintiff was when she was brought by Defendant to see me. Before that I never spoke to her at the Land Office - at the end of 1967.

In 1967 Plaintiff did not come to see me to file certain papers in connection with the

In the
High Court

Plaintiff's
Evidence

No.10
Vallipuram s/o
Muthuthamby

22nd November
1973

Cross-
examination
(continued)

land in dispute in this case.

I told them to come after two weeks. I cannot remember whether they in fact turned up exactly after two weeks. But I am definite they came back to see me on 25.1.1968.

During the first meeting with the parties, the Plaintiff did not tell me for how much she had purchased the land, but Defendant had told me earlier when he came to see me alone.

10

When Defendant came to see me alone, he did not produce any document. He only told me the problem. I did not tell Defendant to bring the Plaintiff and to bring all the documents at that first meeting. The Defendant had told me the lady purchaser had paid him in stages totalling \$5,800/-. He did not tell me the date of sale and how much was paid to him the first time.

The Plaintiff also told me she had paid \$5,800/-.

20

Q: In examination-in-chief you said "the Plaintiff said the purchase price was \$7,500/- - which the Defendant confirmed". But just now you said the Plaintiff did not tell you how much she had purchased the land?

A: The Plaintiff did tell me the purchase price.

(NOTE: Witness cannot offer any explanation for discrepancy in his evidence).

30

During the first meeting with both parties i.e. four days after meeting the Defendant alone, the amount of the I.O.U. was agreed upon at \$7,500/- on receipt of the balance of \$1,700/-.

I did ask Plaintiff why she had not paid the \$1,700/-. She said so far she had already paid \$5,800/- and still nothing happened to the land. She was not even working on the land. Somebody else was cultivating the land. She did not give me any other reason. She never told me that she had no money to pay the balance. At that time no one agreed to be a guarantor for the Defendant. The Plaintiff

40

then asked for Defendant's grandson to be guarantor. The Defendant only had one grandson - Muniandy. At that time Muniandy was not present. He was then 21 years old. He never stayed with me.

In the
High Court
Plaintiff's
Evidence

No.10
Vallipuram s/o
Muthuthamby

22nd November
1973

Cross-
examination
(continued)

10 During the first meeting with both parties, the Plaintiff only produced the second Power of Attorney (AB9). I did not ask for agreement or receipt for payment. The first meeting took place in early January 1968. I did not ask for documents because the Power of Attorney is very clear and both parties agreed with me.

20 I agree the Power of Attorney (AB9) does not state the purchase price. At first meeting with the parties, the Defendant agreed that his grandson should stand as surety. It was specifically agreed by the parties that if the Ruler in Council did not consent to transfer Defendant would refund the whole purchase price with interest, and in the event of Defendant's death, Muniandy would refund the money. His liability to refund only arises on the death of Defendant and not otherwise.

During the second meeting with the parties I knew there was agreement between them for the sale and purchase of the land. On that day, it was for the purpose of concluding the sale or payment of the balance of \$1,700/-.

30 Q: Why did you not mention \$1,700/- in Exhibit P7 - that figure being the relevant issue at all times, as far as you are concerned?

A: The reason is that Plaintiff told me \$5,800/- had already been paid but there was no receipts from Defendant. I admit it was an error on my part for not inserting \$1,700/- in the first condition on Exhibit P7.

40 Muniandy was aware of the sum for which he stood as surety although \$1,700/- was not mentioned in Exhibit P7.

Plaintiff did not hand the money to me. Nor did I count it. She gave direct to Defendant in my presence.

I did not ask Plaintiff where she got \$1,700/- from.

In the
High Court

Plaintiff's
Evidence

No.10
Vallipuram s/o
Muthuthamby

22nd November
1973

Cross-
examination
(continued)

It was on the insistence of the Plaintiff herself that the guarantee-clause was put in.

I did not explain to Plaintiff the contents of the guarantee-clause. I did not explain to her in detail. But I did tell her the guarantee clause was there. I told her that her request had been entered. She knew what the request was.

(Evidence of Plaintiff in cross-examination at pages 332 to 333 referred to witness).

I still maintain that the guarantee-clause was made at Plaintiff's request. 10

I did explain the whole contents of P7 to Defendant. But I only explained the gist of guarantee-clause to Plaintiff.

Q: Do you agree the I.O.U. is inconsistent with the first condition on reverse of I.O.U. (Exhibit P7).

A: I agree they were inconsistent but it is to conclude the sale of the land.

I maintain \$1,700/- was paid on that day - 25.11.1968. I did not deceive Defendant to execute P7 by telling him that by doing so he would get the title early from the Land Office with the express condition erased. 20

I deny asking the Defendant to pay \$100/- in order to get approval. Defendant did not pay me \$80/-.

Sd. Mohd. Azmi

Re-examination

Re-examination

I was preoccupied with the position where Ruler in Council did not give its consent when I prepared P7. That is the reason why P7 is in the present form. Both I.O.U. and the reverse should be read together. 30

It is not true I received any money.

Sd. Mohd. Azmi

To 2.30 p.m.

Sd. Mohd. Azmi

Hearing resumed

By consent P.W.4 released. 40
P.W.1 recalled for further cross-examination.

No. 11

HASSAN BIN MOHD. ALI
(RECALLED)

In the
High Court
Plaintiff's
Evidence

No.11
Hassan bin
Mohd. Ali
22nd November
1973

(Recalled)
Cross-
examination

P.W.1 reaffirmed

Cross-examination by Mr. Dulip:

10 I have the original Memorandum of Transfer vide Presentation No. 14721 folio by Plaintiff. (By consent photostat copy of Memorandum of Transfer produced and marked D11). The purchase price stated in the Memorandum is \$3,000/-. The transfer was registered on the strength of two Powers of Attorney No. 739/62 and No.500/57.

Consent of Ruler in Council was obtained on 19.6.1970. (See Minute Sheet in file Exhibit P1).

Two memorandum were prepared for Exco to get the consent. But only second memorandum dated 5.6.1970 was sent up to Exco. (Enclosure 21 Exhibit P1).

20 I agree no purchase price was mentioned in both memorandums. They contain the fact that plaintiff was applying for permission to transfer the land on the strength of two powers of attorneys which have not been revoked and still subsisting. The transfer was from Plaintiff as an Attorney to herself in her personal capacity.

Sd. Mohd. Azmi

Re-examination:

Re-examination

30 The Collector valued the land transferred at \$6,000/-. Stamp duty was paid on \$6,000/-. The transfer occurred before any time.

After consent of Exco had been obtained, Land Office sent a letter dated 9.7.1970 to Plaintiff to bring a witness. The witness was for identification. The Collector attested it. I would not know whether the Memorandum of Transfer was done in the Land Office.

In the
High Court

BY COURT

Plaintiff's
Evidence

No.11
Hassan bin
Mohd. Ali
22nd November
1973

(Recalled)
Re-examination
(continued)

The Sidang - K.V. Munusamy is now dead.

A caveat has been lodged by Defendant's former solicitor, M/s M. Abraham on the land in dispute. A photostat copy of original agreement (Exhibit P2) is attached to the caveat. (See file Exhibit P1 - caveat kept as loose document).

sd. Mohd. Azmi

No.12
Plaintiff's
Evidence

Pappa d/o
Thoppan

22nd November
1973

(Recalled)
Cross-
examination

P.W.3 re-called No. 12

PAPPA d/o THOPPAN
(RECALLED)

10

P.W.3 reaffirmed

Further cross-examination by Mr. Dulip:

I went to Land Office to effect the transfer of the land from Palaniandy, the previous owner to my name.

The Defendant gave the transfer form to me. (Exhibit D11 shown to witness). I got the Transfer Form from District Office. The consideration of \$3,000/- in Memorandum of Transfer was decided by the authority.

20

I did inform the authority that I bought the land for \$7,500/- but Munusamy, the Sidang, told me not to disclose the actual purchase price. The Sidang assisted me in making the transfer. I did inform the Defendant about the transfer verbally.

Q: I put it to you, you did not inform the Defendant because you had made a false statutory declaration stating that he was living in India.

30

A: I deny that.

Sd. Mohd. Azmi

Re-examination: Nil

Sd. Mohd. Azmi

No. 13

KOBALÉ s/o KOVINDAN

In the
High Court
Plaintiff's
Evidence

P.W.5 Kobale s/o Kovindan @ Gopal affirmed
states in Tamil:

No.13
Kobale s/o
Kovindan
22nd & 23rd
November
1973

Examination

Age 55 years. A padi planter, residing at 4th mile Sungei Burong, Kuala Selangor.

I am also known as Gopal.

I know the Defendant for 20 years and the Plaintiff since the purchase of the land.

10 Some time on 29.11.1966 I enter into a tenancy agreement in respect of padi land with Defendant. (Exhibit P3 or AB 13 identified). Prior to this agreement, the land was cultivated by one Konan. I paid to Defendant \$700/- being rents for two years for period between 30.4.1967 and 30.4.1969.

20 Before 30.4.1967 I also made a tenancy agreement with Defendant dated 3.1.1967. I paid to Defendant \$350/- rent for one year from 1.5.1969 to 30.4.1970.

On 21.6.1967 I made another Tenancy Agreement with Defendant for two years period from 1.5.1970 to 30.4.1972. I paid \$650/- rent for the two years tenancy, although Agreement states \$600/- only.

Altogether I paid \$2,000/- to Defendant i.e. \$1,700/- as rents and \$300/- as a friendly loan.

30 All three tenancy agreements are in respect of the land in dispute. It refers to the whole land - four acres i.e. Kampong Lot and Bendang Lot.

The three agreements were not made after the expiration of the earlier agreement because the Defendant was in need of money, and so the agreements were made in advance to cover up to 30.4.1972.

40 Some time in middle of 1967, the Defendant told me he was going to sell the land to his sister - the Plaintiff for \$7,500/-. He said he

In the
High Court
Plaintiff's
Evidence

No.13
Kobale s/o
Kovindan
22nd & 23rd
November
1973
Examination
(continued)

would take me to the Plaintiff and arranged for my continuation to cultivate the land. He said the \$2,000/- which I had paid would figure in the purchase price of \$7,500/-.

Defendant asked me to accompany him to see a petition writer some time in 1967. The Plaintiff and her husband were there. I have forgotten the name of the Petition Writer. A purchase agreement was made between the Plaintiff and Defendant. Beside the petition writer only four of us were present. I now say the Defendant's son was also there. (Note: After prompting from the Plaintiff). The Sidang was also present - i.e. Munusamy. 10

I was present when Plaintiff gave money to petition writer. I do not know how much.

After they had made their agreement, Plaintiff told me I could continue cultivating the padi land on same terms. From 10.8.1967 the Plaintiff was substituted as my landlord for the Defendant and this fact was recorded on the reverse of all three tenancy agreements (P3, P4 and P5). When the sale agreement was executed, Plaintiff also affixed her thumb impression on the reverse of the three tenancy agreements. 20

I continued cultivating up to April, 1972.

Sometime in 1970, the Defendant came and told me my lease had ended and asked me to quit the land. I made a report. I did not receive anything in writing from the Defendant. 30

On 6.3.1970 I instructed my solicitor, M/s Segaram, to write to Defendant to stop interfering.

(Letter produced and marked Exhibit P12).

Sd. Mohd. Azmi

To 23.11.1973 for continuation at 9.30 a.m.

Sd. Mohd. Azmi

23rd November
1973

23.11.1973

Hearing resumed.
Parties as before. 40

P.W.5 reaffirmed

Continued examination-in-chief

I did not receive any letter from Defendant before I instructed my solicitor to send Pl2. This is the A.R. Registered Card showing acknowledgement of Pl2 by Defendant. (A.R. Registered Card produced and marked Exhibit Pl2A). No reply was received from Defendant.

10 The first paragraph of Pl2A is true. I now remember it is on receipt of a letter from Defendant that I instructed my solicitor to send Pl2. (Witness corrects himself). I have lost the letter.

On 10.8.1967 I was present when the terms were discussed and the sale agreement executed. The sale price was \$7,500/-. The purchase price was to be paid in the following manner :-

- 20 (i) \$2,000/-, which was the rent of the land, to be deducted; and
(ii) the balance to be paid by Plaintiff. Thus - \$3,200/- paid on same day and the balance within one month.

The Defendant said the transfer was to be executed basing on Power of Attorney.

These were the terms discussed.

When money passed, I did not know the actual amount because at that time I was speaking to a friend of mine - Munusamy, a padi planter; not the Sidang.

30 Sd. Mohd. Azmi

Cross-examination by Mr. Dulip:

I know Defendant for twenty years. I know his younger brother, but I do not his name. He stayed in same Estate as Plaintiff.

The Plaintiff is treated as a real sister by Defendant and his brother.

Between 1961 and 1963, I do not know the Defendant being ill and admitted to Bukit Rotan Estate Hospital.

In the
High Court
Plaintiff's
Evidence
No.13
Kobale s/o
Kovindan
22nd & 23rd
November
1973
Examination
(continued)

Cross-
examination

In the
High Court

Plaintiff's
Evidence

No.13
Kobale s/o
Kovindan
22nd & 23rd
November
1973

Cross-
examination
(continued)

I lived about two miles away from
Defendant at that time.

I had occasions to give Defendant money
as loan. I also paid him money as rents for
the land. Defendant took personal loan after
the three Tenancy Agreements had been executed
- about ten days after the last agreement (P5).
There was no written agreement for the loan.
He said he would further extend the lease, and
the money would be deducted. The loan was for
\$300/-. That was the only loan. 10

It is true that I have a loan of \$300/-
ten days after 21.6.1967. I did give the loan.

The three agreements were made within
short period because Defendant wanted money.
He did not tell me for what purpose.

There was no fourth tenancy agreement
after I gave him the \$300/- loan because he
only promised me verbally.

On 10.8.1967 I did not know the actual
amount paid by Plaintiff to Defendant. I was
talking to a friend. 20

Plaintiff agreed to allow me to continue
cultivating as shown on the reverse of the
three Tenancy Agreements (P3, P4 and P5).

Before the Plaintiff endorsed the three
agreements, the rents were due to Defendant.
I paid \$1,700/- rents altogether to Defendant.
The first Tenancy Agreement commenced on
30.4.1967 and the sale agreement was on
10.8.1967. 30

The Defendant sent me a letter terminating
the tenancy and asking me to quit. I told my
solicitor the tenancy was still in force.

I did not demand for the return of the
loan of \$300/- and for extention of lease as
promised by Defendant I did not instruct my
solicitor. I intend to write such demand
letter after the case was filed. I agree I
have not made such demands up to now, because
of the dispute that has arisen and I am scared
of being assaulted. 40

The Third Agreement states \$600/- was paid,
but I actually paid \$650/-. I asked Defendant

why \$650/- was not written in the agreement. He said there would not be any dispute about it. My lawyer was aware of \$650/- but I did not instruct him that I was interested in the \$50/- difference.

In the
High Court
Plaintiff's
Evidence

No.13
Kobale s/O
Kovindan
22nd & 23rd
November
1973

Cross-
examination
(continued)

10 The first time Defendant asked me to quit was by letter some time at the end of February, 1970. There was no discussion with Defendant after I met my lawyer. There was no agreement whereby Defendant allowed me to cultivate till end of 1970.

It is not true Defendant cultivated the land from beginning of 1971. He only cultivated the land after April, 1972. I continued cultivating the land up to and of April, 1972 as agreed in the Third Tenancy Agreement (P5).

Sd. Mohd. Azmi

Re-examination

Re-examina-
tion

20 After Pl2 was sent to my solicitor on 6.3.1970, I cultivated three acres of the land. Defendant did not allow me to cultivate the remaining oneacre. He did the cultivation himself, although the lease allowed me to cultivate the whole land up to 30.4.1972.

I was not able to dispossess the Defendant in respect of the one acre. I lodged a police report. I told Defendant to quit.

30 The \$2,000/- I paid to the Defendant was agreed by Plaintiff and Defendant to be deducted from the purchase price.

I was prepared to forego my \$300/- loan.

On 10.8.1967 when the agreement of sale was being discussed in my presence and when Plaintiff and Defendant agreed to deduct \$2,000/- I paid from the purchase price, I did not raise the question of \$300/-, because I could get it back later from the Defendant. I expected cash.

Sd. Mohd. Azmi

40 BY COURT:

Up to now, I have not made any demand from

In the
High Court
Plaintiff's
Evidence

No.13
Kobale s/o
Kovindan
22nd & 23rd
November
1973

Re-examination
(continued)

the Defendant for the return of the \$300/- because of the dispute that arose some time at the end of February 1970 when Defendant sent me a letter asking me to quit.

Before the dispute arose, I did ask Defendant for the return of \$300/- orally. He promised to pay later, but up to now he has not paid me.

Before I became a tenant of the Defendant on 30.4.1967, one Konan was the tenant of the land. 10

Sd. Mohd. Azmi

Mr. Segaram says he is making Plaintiff's husband Manickam s/o Muthu available for the Defence. The Plaintiff is not calling him as he will be giving some evidence.

Mr. Dulip says Defence does not want to call this witness.

CASE FOR PLAINTIFF CLOSED

Mr. Dulip calls: 20

Defenant's
Evidence

No.14
Saminathan s/o
Vanathan
23rd November
1973

Examination

No. 14

SAMINATHAN s/o VANATHAN

D.W.1 Saminathan s/o Vanathan affirmed,
states in Tamil:

Age 75 years. Unemployed, now residing at No.14 16th Milestone Sekinchan, Kuala Selangor.

(Witness allowed to sit down)

I know Palaniandy s/o Murugan - the original owner of the land. He is still alive in India. He is my cousin brother - being the son of my father's elder brother. 30

On 11.5.1967, Palaniandy gave me P.A. No.500/57 (Exhibit AB2). It is a general power in connection with the land in dispute. After giving me the power he left for India and since then he has not come back. I then looked after the land. The land was then still under Approved Application.

I have a younger brother named Poonga.

Some time in 1962 I was seriously ill suffering from T.B. I was then receiving treatment in Bukit Rotan Hospital. I was referred to Klang District Hospital. I was not admitted to Klang District Hospital. I was an out-patient. I produce the two out-patient cards of the Hospital. (Put in and marked Exhibit D13).

In the
High Court
Defendant's
Evidence
No.14
Saminathan
s/o Vanathan
23rd November
1973
Examination
(continued)

10 When I was in the Estate Hospital, my brother Poonga used to visit me. The Plaintiff used to accompany my brother.

At that time, my wife was suffering from defective eye-sight. Now she is blind. She became totally blind for the last four or five years.

20 The Plaintiff visited me because she is related to me. Because we were working in the same estate for thirty years, we treated each other as relatives. I referred to her as my younger sister.

30 Plaintiff rendered assistance to me when I was ill. As a result of my illness, I was afraid I might die. I was thinking of making arrangement for the welfare of my wife and grand-children. I have only one son and no daughter. At that time my son - Rengasamy - was mentally deranged. Three or four years ago, after I was discharged from hospital, he even attacked me with knife.

Under the circumstances, I decided to give Power of Attorney to Poonga - my younger brother. But Poonga did not accept because he had family problem. He was in debt. He suggested I gave the Power of Attorney to Plaintiff. I agreed because I had no choice under the circumstances.

40 When I gave the irrevocable Power of Attorney to the Plaintiff, the purpose was beside looking after my wife and grandchildren, the Plaintiff would cultivate the land. (Exhibit AB9). I told the Plaintiff so, and she agreed. At that time I did not intend or agree to sell the land.

We went to Kuala Lumpur to execute the Power

In the
High Court
Defendant's
Evidence

No.14
Saminathan
s/o Vanathan
23rd November
1973

Examination
(continued)

of Attorney viz. Plaintiff, myself, Poonga,
and one Veerasamy. Veerasamy used to act as
a headman in the absence of the Sidang and
he is now dead.

We went to office of M/s. Chelvanyagam
in Kuala Lumpur. At that time, I was still
seriously ill. There I executed Power of
Attorney in favour of the Plaintiff (AB 9).

(Para.24 Exhibit AB9 read to witness).

I never intended to give the power as
contained in para.24 of P.A.No.739/62. No
did I intend to give that power in the event
of my death.

10

(Mr. Dulip Singh says that his instruction
is not to dispute para.24 of P.A.No.739/62).

The purpose of giving the Power of
Attorney was mainly to look after me and my
family.

I was admitted to the Estate Hospital in
1961 and discharged in 1962. When I executed
the Power of Attorney in favour of Plaintiff
on 9.7.1962, I had already been discharged
from hospital, but I continued to receive
treatment as out-patient for one year.

20

After giving the Plaintiff the Power of
Attorney, the Plaintiff continued to help me.
She used to give \$20/- or \$30/- to me and my
wife. Apart from financial help, she only
visited me and used to bring food to hospital.
After I was discharged, she only gave me
financial help.

30

Whilst I was in Estate Hospital, I gave
a one-year lease to a Chinese in respect of
the land. After that I have a lease to Konan
for one year. Then I gave a five-year lease
to Gopal. (P.W.5 identified).

As regards Gopal. I first gave him two
years lease at a rent of \$350/- per year. I
received \$700/-. Before the first lease could
commence, I gave him a second lease for one
year at \$350/- per annum. (P3 and P4). About
six months later, in the same year, I gave him
a third lease for two years at \$300/- per year.
I received \$600/- as stated in P5 and not \$650/-
as alleged by Gopal (P.W.5).

40

Under the three Tenancy Agreements (P3, P4 and P5), I received a total of \$1,650/- rents from Gopal for five-year lease.

Immediately after the third lease was executed, I did not borrow \$300/- from Gopal. I never promised to give him further extension of Lease.

To 2.15 p.m.

Sd. Mohd. Azmi

10 By consent P.W.5 released.

Sd. Mohd. Azmi

In the
High Court

Defendant's
Evidence

No.14
Saminathan
s/o Vanathan

23rd November
1973

Examination
(continued)

Hearing resumed

D.W.1 on former oath

Continued examination-in-chief.

All this time, I have received from Plaintiff about \$3,500/- as financial assistance when I was ill.

20 In 1965 I paid back \$1,000/- to Plaintiff when her son was getting married. It might be 1964. I got the money when the land was leased to a Chinese for two years at \$350/- per year. I borrowed \$300/- from my brother Foonga (sic)

I think I have to pay \$2,000/- odd more to Plaintiff.

The exact figure Plaintiff gave me was \$3,500/-. I agree the amount I have to pay back is \$2,500/-. I am sure.

30 In August, 1967, I did not agree to sell the land to Plaintiff. On 10.8.1967 I did not receive \$3,200/- from Plaintiff in the presence of Sidang and petition writer.

On 5.10.1967 I did not receive \$600/- from Plaintiff.

I have known Vallipuram for the last ten years from today, I have a grandson named Muniandy. He was schooling at Kuala Selangor. While schooling, he was staying with Vallipuram (P.W.4).

In the
High Court

Defendant's
Evidence

No.14
Saminathan
s/o Vanathan
23rd November
1973

Examination
(continued)

I did not tell P.W.4. I sold the land to anyone I heard P.W.4's evidence yesterday about seeing him at the Land Office. This is not true. I went to his house in order to ascertain about the Grant. I told him everyone had received a grant including my brother. I wanted the grant to be transferred to my name from Palaniandy s/o Murugan. P.W.4 told me he would be sending Muniandy (my grandson) to my house and asked me to send through him the title and Power of Attorney given by Palaniandy s/o Murugan. I did not give the documents to Muniandy. I said I would take the documents myself the next day.

10

The next day I went to P.W.4's house with the two documents. There he asked me to sign Exhibit P7. I affixed my thumb impression on one page. I do not remember putting it on the reverse. He asked me for \$100/- for "coffee belanja" for the District Officer. Only then the grant could be obtained quickly. P.W.4 did not explain the contents of the document to me. At that time, only P.W.4 and myself were present, apart from P.W.4's family. The Plaintiff was not there. I gave the title and Power of Attorney to P.W.4. I gave him \$80/-.

20

I then sent a letter to Gopal (P.W.5) asking him to quit and for vacant possession of my land because I came to know that the Plaintiff wanted to sell the land to Gopal.

30

I did not receive any letter from the lawyer. I did not acknowledge Pl2A. I do not know how to sign. I only use my thumb impression.

(Interpreter told me Pl2A is acknowledged by one Somu)

I do not know who Somu is.

After sending the letter to quit, I allowed Gopal to cultivate three acres. I cultivated one acre. It was about three months after I sent the letter.

40

When I sent the letter to quit to Gopal, his tenancy was still subsisting. I understood I would be deprived of my land. This is why I took action. It was on the suggestion of an arbitration council, I agreed to allow Gopal to

cultivate three acres for five months.

I have not at any time agreed to sell the land to Plaintiff.

She never told me that she would be using the Power of Attorney which I gave her to transfer the land to himself.

Sd. Mohd. Azmi

Cross-examination by Mr. Segaram

10 Muniandy - my grandson - is English educated. He is now in the military.

When I executed P7, I do not know whether my grandson also signed it.

I cannot remember whether I executed the I.O.U. or the reverse. My memory fails me.

20 On 25.1.1968 (P7) my grandson and I did not sign the document. Plaintiff did not pay me \$1,700/-. Vallipuram did not explain to me the document before I affix my thumb impression. I did not give the title and Power of Attorney (AB1 and AB2) to Vallipuram to be handed to Plaintiff.

On 10.8.1967 I did not agree in the presence of Sivarajan (P.W.2) to sell the land to Plaintiff for \$7,500/-. Plaintiff did not give me \$3,200/-. I did not execute the agreement Exhibit P2. The thumb impression is not mine.

30 (Mr. Dulip Singh concedes that the thumb impression belongs to Defendant. I inform Defendant).

I now agree I affix my thumb impression in Exhibit P2, in the presence of Vallipuram. I did put my thumb impression on documents as big as P2 in the presence of Vallipuram (P.W.4). The document was not explained to me. Vallipuram told me, I had taken money from Plaintiff so I had to put my thumb impression which I did.

I executed P2 and P7 on different occasions. I was not given a copy of each document.

40 On 10.8.1967 I deny entering into an

In the
High Court

Defendant's
Evidence

No.14
Saminathan
s/o Vanathar

23rd
November
1973

Examination
(continued)

Cross-
Examination

In the
High Court

Defendant's
Evidence

No.14
Saminathan
s/o Vanathan
23rd November
1973

Cross-
Examination
(continued)

agreement to sell the land to Plaintiff. She did not give me \$3,200/- on the same date. It is not true what Gopal gave me was to be deducted. On 5.10.1967 (P6) Plaintiff did not pay me \$600/-. The thumb-print on Exhibit P6 is not mine. I did not receive \$600/-.

I leased the land to a Chinese man when I was in hospital. It was leased in 1959 for one year in respect of Bendang Lot - three acres. The Kampong Lot is one acre.

10

The Plaintiff had given me \$3,500/-. I already paid \$1,000/-. I still owe her \$2,500/-. She does not owe me any money.

From the time I leased the land to the Chinese in 1959 up to the time I leased it to Gopal I had leased the land to other people as well. After the Chinese, I leased the land to Chinnasamy Konan for one year. After that I cultivated the land for one year personally, then I gave to Gopal for five years.

20

I leased to the Chinese for two years. I did not lease to any other Chinese. I now say I did lease to other Chinese. (Witness corrects himself).

Immediately before leasing the land to Gopal, I remember giving a lease to Konan. Before Konan a Chinese.

Before I became ill, the Chinese was my tenant. When I was in hospital, Konan was cultivating one year. When Konan's tenancy expired, I was already discharged. I cultivated the land myself for two years. After that Konan did it. The Gopal.

30

(NOTE: Witness appears uncertain and cannot remember his tenants in order of event).

In 1964 or 1965 I did lease the land to a Chinese for two years at \$350/- per annum. I cannot remember whether before or after Konan. I was then already discharged from hospital. I was discharged in 1962. The leases were given by me. I collected the money.

40

Plaintiff did not cultivate the land.

There is no arrears of rent from Plaintiff.

Plaintiff did not owe me any money pertaining to arrears of rent. (Paras.3 and 4 Amended Statement of Defence referred). In 1965 I told Plaintiff to cultivate the land. She said she could not do it. So I leased it out to a Chinese.

The Plaintiff never cultivated the land. I never demanded \$2,300/- from the Plaintiff.

10 The Plaintiff did not pay me \$5,200/- as arrears of rent.

My original solicitor was M/s. Abraham, then M/s. S.A.Raj. I did not tell my previous solicitors Plaintiff owed me \$2,300/- as arrears of rent.

(Paras. 3, 4, 5 and 6 of Amended Statement of Defence read and interpreted to witness).

Paras. 3, 4, 5 and 6 of the Statement of Defence are not true.

20 (Exhibit P9 - para.7 of the Statement of Defence in lower court read and explained to witness).

If P.A. No.739/62 gives Plaintiff power to convey the land to herself, then the power is false. I executed P.A. No.739/62 at the lawyer's office - M/s. Chelvanayagam's office. When I affixed thumb print I knew I was giving power to Plaintiff.

30 Q: Was clause 24 of P.A. No.739/62 explained to you?

A: No.

If I had known, I would have objected to such a clause.

I deny my memory is bad and that was the reason I say para.24 was not explained to me.

Although I am now 75 years, my memory power is still good.

40 Before I affix my thumb impression, I would not ask if I knew the person. I knew Mr. Chelvanayagam for eight years from today.

In the
High Court

Defendant's
Evidence

No.14
Saminathan
s/o Vanathan

23rd November
1973

Cross-
Examination
(continued)

In the
High Court
Defendant's
Evidence

No.14
Saminathan
s/o Vanathan

23rd November
1973

Cross-
examination
(continued)

It is not true when I executed P.A.739/62
I also agreed to sell the land to Plaintiff
for \$4,000/-. I did raise the price to
\$7,500/- subsequently.

My allegation against Vallipuram is true.
I did not take up the matter with Anti-
Corruption.

Muniandy was not present when Vallipuram
asked for money.

I did not execute the sale agreement
(Exhibit P2).

10

Sd. Mohd. Azmi

Re-examination

Re-examination:

I can recall all the events in detail
since 1962. Whatever I can remember I can say.

Sd. Mohd. Azmi

Time: 4.35 p.m.

To 9.30 a.m. tomorrow.

Sd. Mohd. Azmi

Defendant's
Evidence

No.15
Chelvanayagam

24th November
1973

Examination

No. 15

CHELVANAYAGAM

24.11.1973

Hearing resumed.
Parties as before.

D.W.2 Chelvanayagam affirmed states in English:

Advocate and Solicitor, Kuala Lumpur.

Some time in July, 1962 I was practising
in Kuala Lumpur K. Chelvanayagam & Co. My
office then was at No.14 Ampang Street, second
floor, i.e. top floor.

30

On 9.7.1962 (from the Power of Attorney

which I attested) both Plaintiff and Defendant and two or three others came to my office. This is the Power of Attorney which I attested. (Exhibit AB9 identified). The donor was the defendant and the donee was Plaintiff (both identified). I can identify the Defendant's brother who was then present. (Poonga called and identified).

In the
High Court
Defendant's
Evidence
No.15
Chelvanayagam
24th November
1973
Examination
(continued)

10 I remember this very well. The Defendant was practically carried to my office and he told me he was going to die and wanted a power to be given to the Plaintiff - a near relation he said. At that time I really felt that he might die at any time. He also told me he had just been discharged from T.B. Hospital, Kuala Selangor.

20 Defendant told me that the power was to take effect upon his death and in the meantime as his wife was blind and his son was half-idiot, he wanted the Plaintiff to look after his property and upon his death to make the necessary application to have the property transferred to the Plaintiff provided she looked after his wife and half-idiot son. Defendant also said his brother (Poonga) did not want to take over the responsibility.

Poonga told me he was frightened to take the responsibility because he had a son who had a bad reputation.

30 The Plaintiff told me also that she was a near relative of Defendant and that she would take the responsibility.

The Defendant brought one quit rent receipt which showed the Approved Application number. He gave me the receipt for the purpose of preparing the Power of Attorney.

40 I prepared AB9 and the consideration is stated as on the first page. The power is made irrevocable specifically because it was to take effect upon his death.

It is not true there was any mention of sale of the land.

In the meantime as the Defendant could not till the land, the Plaintiff was empowered to do so, as provided under clause 8 of Power of Attorney.

The amendment of the figures in clause 24 of

In the
High Court
Defendant's
Evidence

No.15
Chelvanayagam

24th November
1973

Examination
(continued)

Cross-
examination

Power of Attorney was done by me (refers to original Power of Attorney in file Exhibit P1 enclosure ID).

After registration of the power at High Court, Kuala Lumpur, I gave it to the Defendant. He paid the fee.

Sd. Mohd. Azmi

Cross-examination

Nothing is written in Power of Attorney to say that it was to take effect only on the death 10 of the Defendant. It was in view of his impending death that the Power of Attorney was prepared.

I agree, by virtue of clause 24 of Power of Attorney there is nothing to stop the Plaintiff from transferring the land to herself and provided she could obtain consent of Ruler in Council - the land being still under Approved Application.

Though Defendant was ill, I was able to 20 get instruction from him.

I did not explain paragraph by paragraph to both parties, but I explained to them the substance of the Power of Attorney. But para.24 was particularly explained to them. I explained to them in Tamil the effect of the clause. I told them under clause 24 provided the Rule in Council gave permission to transfer the land, the Plaintiff by herself would have the legal power of transfer the land to herself. The 30 Defendant did not object. This is of course subject to his death.

I did not advise Defendant to make a will because the property was still under Approved Application. At that time I thought the Approved Application was in Defendant's name.

The Defendant did give the authority on the inclusion of Clause 24.

If there had been prior arrangement so to sale, I would not know. They did not tell 40

me about it.

Sd. Mohd. Azmi

Re-examination: Nil

Sd. Mohd. Azmi

In the
High Court

Defendant's
Evidence

No.15
Chelvanayagam

24th November
1973

Cross-
examination
(continued)

No. 16

POONGIAN s/o VANATHAN

Defendant's
Evidence

No.16
Poongian s/o
Vanathan

24th November
1973

Examination

D.W.3 Poongian s/o Vanathan @ Poonga affirmed,
states in Tamil:

10 Age 55 years. Unemployed. Now residing
about 3½ miles from Batang Berjuntai.

The Defendant is my elder brother. I know
the Plaintiff- she is my younger sister by
mutual consent.

Some time in 1961 or 1962, I knew the
Defendant was ill in hospital suffering from
T.B. - Estate Hospital. The Plaintiff was
staying in the same Estate with me - Kg. Bharu
Rubber Estate.

20 Whilst Defendant was in hospital, Plaintiff
and I visited him once in four days. At that
time Defendant's wife was partially blind and
his son was mentally deranged. Plaintiff used
to bring food when we visited Defendant at
hospital. She also used to give small amount
of money. Initially it was \$4/- or \$5/-, and
later on I knew of an occasion when she gave
\$200/- when Defendant was in hospital.

30 The Defendant was in hospital for about
1½ years. After discharge from hospital he
continued to be ill for one year.

Because Defendant was ill, Defendant wanted

In the
High Court

Defendant's
Evidence

No.16

Poongian s/o
Vanathan

24th November
1973

Examination
(continued)

to give me Power of Attorney. I refused because I had to attend to my cows, and I suggested the he should give the Power of Attorney to Plaintiff. The Plaintiff agreed to accept the power.

We then went to see a lawyer in Kuala Lumpur. The Plaintiff, Defendant, myself and Veerasamy came. Veerasamy was the Headman in the Estate. We went to see the lawyer (D.W.2) where Power of Attorney was executed in favour of Plaintiff. The Defendant was virtually lifted up to the lawyer's office.

10

When Plaintiff's son was getting married, the Defendant approached me for \$300/-. I gave him \$300/- as a friendly loan. I got the money by selling my two cows. I have been rearing cattle for the last twenty years.

Sd. Mohd. Azmi

Cross-
examination

Cross-examination:

20

I rejected the Power of Attorney because I had to attend to my cattle. Further I was working in the estate as a labourer. So I could not look after the land in dispute.

It is not true that prior to Power of Attorney Defendant agreed to sell the land to Plaintiff.

Sd. Mohd. Azmi

Re-examination: Nil

Sd. Mohd. Azmi

30

CASE FOR DEFENDANT CLOSED

No. 17

ORDER

In the
High Court

No.17
Order

14th October, 1974

14th October
1974

Mr. M.Segaram for Plaintiff.
Mr. Dulip Singh for Defendant.
Plaintiff present.
Defendant absent.

Judgment delivered.

ORDER:

10 Plaintiff's claim dismissed with costs.

Judgments for Defendant on the counter-claim in the following terms :-

- 20 (1) a declaration that the Defendant's principal Palaniandy, has been and still is the proprietor and registered owner of the land held under E.M.R. No.5809 in the Mukim of Tanjong Karang, in the District of Kuala Selangor, formerly known as Approved Application Nos.814/50 and 79/57;
- (2) a declaration that the irrevocable power of attorney dated July 9, 1962 and registered in the High Court at Kuala Lumpur vide Registration No. 739/62 be declared null and void as far as it affects the lands mentioned in (1);
- 30 (3) an injunction restraining the Plaintiff or her agents or servants or any person or persons claiming by or through her from interfering with the rights of the Defendant over the said land in his capacity as attorney for Palaniandy;
- (4) an order that the assignment or memorandum of transfer or other application drawn and/or executed by the Plaintiff in respect of the said lands be set aside;
- 40 (5) a consequential order that the appropriate authority do expunge the name of the Plaintiff from the records of the relevant Land Office;

In the
High Court

No.17
Order
14th October
1974

(continued)

(6) costs of the counterclaim.

It is also ordered that all monies (if any) paid into Court vide Order of Court dated October 30, 1972 be paid out to the Defendant.

Sd. Mohd. Azmi

Certified true copy

Sd. Illegible 4/Jan/75
Secretary to Judge
Kuala Lumpur

No.18
Judgment of
Mohd Azmi, J.
14th October
1974

No. 18

10

JUDGMENT OF AZMI, J.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 269 OF 1972

Between

Pappa d/o Thoppan

Plaintiff

And

Saminathan s/o Vanathan

Defendant

JUDGMENT OF MOHD. AZMI, J.

This is a dispute in respect of ownership of land held under E.M.R. 5087 comprising of 2 acres 3 roods 35 poles or bendang Lot No. 10600 and one acre of kampong Lot No.5406 in the Mukim of Tanjong Karang, in the District of Kuala Selangor. This type of land title commonly referred to as "tied-title" is prevalent in Tanjong Karang. The two lots (hereinafter referred to as "the said lands") were originally held under Approved Application Nos. 814/50 and 79/57 under the provisions of the repealed F.M.S. Land Code - the registered occupier being one Palaniandy s/o Murugan. In 1957 before leaving for India, Palaniandy appointed the defendant as his attorney in

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10 respect of his property in this country including the said lands vide a general power of attorney No. 500/57 dated May 11, 1967 (Exhibit AB2). About five years later, acting as a duly constituted attorney of Palaniandy, the defendant in turn gave the Plaintiff an irrevocable Power of Attorney No. 739/62 dated July 9th, 1972 (Exhibit AB), purporting to authorise the plaintiff to transfer the said lands to herself. On July 15, 1965 Palaniandy was registered by the Land Office as the owner of the said lands under issued Document of Title E.M.R. 5089, and the extract was issued on December 2, 1966 (see Exhibit P8). On his own application, the said lands were transferred and registered in the plaintiff's name on July 9, 1970 on the strength of the two powers of attorney No.500/57 and No.739/62 together with a statutory declaration sworn on March 11, 20 1970. (See enclosure 16B in Exhibit P1).

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30 From the Statement of Claim, it is alleged that since March 1970, i.e. some four months prior to the said lands being registered in the plaintiff's name, the defendant has trespassed into the property and has been cultivating padi thereon and is wrongfully in possession thereof. The plaintiff prays for a declaration that she is the registered owner of the said lands; for an injunction to restrain the defendant from interfering with her rights; for vacant possession; damages for trespass and other ancillary reliefs. In the event of the Court declaring the irrevocable Power of Attorney No.739/62 to be void and consequently the transfer of the land by the plaintiff as donee of the power to herself is also void, she prays for an order for specific performance based on the sale agreement dated August 10, 1967 (Exhibit 40 P2) so that the defendant should execute a fresh and valid registrable memorandum of transfer of the said lands to the plaintiff, and failing which, the Senior Assistant Registrar, High Court, be empowered to execute the said transfer on behalf of the defendant or on behalf of Palaniandy, the registered proprietor of the said lands. In his defence, the defendant maintains that he is still the beneficial attorney and proprietor of the said lands. He refers to certain transaction between him and the 50 plaintiff, in which he permitted the plaintiff to cultivate a portion of the said lands subject to certain terms and conditions. It is averred that the plaintiff was in breach of the said terms

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and conditions by failing to pay a sum of
\$2,300/- on or before October 31, 1967 despite
repeated demands. In the alternative, he
averts that the sale agreement with the plaintiff
was illegal. By reason thereof, he admitted
entering into occupation of the said lands and
cultivating them. He further avers that
without his knowledge the plaintiff applied
for and obtained permission from the appropriate
authority to transfer the said lands into her 10
name, and that on July 9, 1970 the plaintiff
had fraudulently transferred the said lands
into her name by virtue of the two powers of
attorney. It is further averred that the transfer
into the plaintiff's name was fraudulent and
void ab initio as the 1962 irrevocable Power of
Attorney was at all material times invalid,
null and void and of no effect due to want or
failure of consideration, or alternatively due 20
to the unlawful and excess use of the aforesaid
power. Two particulars of fraud were pleaded
to have been exercised by the plaintiff on
the defendant. Firstly, it is alleged that
the plaintiff applied for the transfer of the
said lands without the knowledge of the
defendant, and secondly, the plaintiff misrep-
resented to the Collector of Land Revenue that
the defendant desired the transfer to the
plaintiff. By virtue of the application for
transfer and the transfer being invalid and void 30
in law, the defendant avers that the plaintiff
does not have an indefeasible title to the said
lands. He accordingly counterclaims against the
plaintiff for a declaration that the 1962
irrevocable power appointing the plaintiff as
his attorney to be declared null and void;
for a declaration that Palaniandy, the
defendant's principal, has been and still is
the registered proprietor and owner of the said
lands; for injunction and other ancillary 40
reliefs. In her Reply, the plaintiff denies
the counterclaim. She denies the alleged
fraud or that there was want or failure of
consideration, or the plaintiff's transfer of
the land by virtue of the 1962 irrevocable power
was unlawful or in excess use of that power.
The plaintiff also alleges that on August 10,
1967 the defendant agreed with her to sell the
said lands for \$7,500/- and it was agreed,
inter-alia, that as from that date the defendant 50
should give vacant possession and would cease
to exercise any rights on the property. On the
same date, she paid \$3,200/- to the defendant
and one Gopal @ Kobale, a tenant of the said

lands, paid \$2,000/-. Subsequently, the plaintiff paid and settled the balance of \$2,300/-. In short, the plaintiff's claim is for a declaration, injunction, vacant possession and damages for trespass. Alternatively, if the Court finds the 1962 irrevocable power of attorney is void, she claims for specific performance of the sale agreement dated August 10, 1967 (Exhibit P2).

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10 Having regard to the nature of this case, in my view, the first issue to be discussed is whether or not the plaintiff's title is indefeasible. Illegality as distinct from fraud is not sufficient to defeat the plaintiff's title in the said lands. (See Kho Kwang Choon v. Phuman Singh (1)). Section 42 of the repealed F.M.S. Land Code (Cap.138) provides :

20 "(i) The title of a proprietor, chargee or lessee shall be indefeasible except as in this section provided.

(ii) In the case of fraud or misrepresentation to which he is proved to be a party the title of such proprietor, chargee or lessee shall not be indefeasible.

30 (iii) If the registration of any proprietor, chargee or lessee has been obtained by forgery or by means of an insufficient or void instrument such registration shall be void."

Section 42 is the fore runner of the present section 340 of the National Land Code, the relevant part of which provides :

40 "(1) The title or interest of any person or body for the time being registered as proprietor of any land..... shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible -

(a) in any case of fraud or misrepresentation to which the person or

(1) (1965) 2 M.L.J. 189; (1968) 1 M.L.J. 183.

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body, or any agent of the person
or body, was a party or privy; or

(b) where registration was obtained
by forgery, or by means of an
insufficient or void instrument;
or

(c) where the title or interest
was unlawfully acquired by the
person or body in the purported
exercise of any power or authority 10
conferred by any written law.

(3) Where the title or interest of any
person or body is defeasible by
reason of any of the circumstances
specified in sub-section (2) -

(a) it shall be liable to be set
aside in the hands of any person
or body to whom it may subse-
quently be transferred; and

(b) any interest subsequently granted 20
thereout shall be liable to be
set aside in the hands of any
person or body in whom it is for
the time being vested;

Provided that nothing in this sub-
section shall affect any title or
interest acquired by any purchaser
in good faith and for valuable
consideration, or by any person or
body claiming through or under such 30
a purchaser."

On the issue of fraud and misrepresentation,
the evidence disclosed that on January, 6th,
1967 the defendant made an application to the
Collector of Land Revenue Kuala Selangor to
transfer the said lands from Palaniandy to
himself, and in support of the said applica-
tion be forwarded the general Power of Attorney
No.500/57 executed by Palaniandy in his
favour, together with a statutory declaration 40
to the effect that Palaniandy is still alive.
On August 28th, 1967, i.e. about seven months
later, the plaintiff made a similar application
to transfer the same property to herself on
the strength of the aforesaid 1957 general
power, by which the defendant was duly
constituted as attorney of Palaniandy, and the

1962 irrevocable power executed by the defendant in favour of the plaintiff. The position by the end of August, 1967 as far as the Kuala Selangor Land Office is concerned, was that there were two conflicting or rival applications for the transfer of Palaniandy's lands - one by the defendant and the other by the plaintiff. From the evidence of Encik Hassan bin Mohd. Ali, the Assistant Collector of Land Revenue Kuala Selangor, the earliest application for transfer by the defendant was rejected by the Commissioner of Lands and Mines on May 15th, 1970, and the subsequent application of the plaintiff was approved in July the same year. It is not seriously in dispute that the decision in favour of the plaintiff was made on the strength of both powers of attorney after it has been ascertained from the Kuala Lumpur High Court Registry that they were still effective, and also on the strength of the plaintiff's statutory declaration to the effect that both Palaniandy and the defendant were still living and that they were in India at the material time. On the evidence, it is my finding that the defendant has established fraud and misrepresentation on the part of the plaintiff as envisaged by section 340 (2) (a) of the National Land Code. That part of the statutory declaration which declared that the defendant was still living and was in India is obviously untrue and fraudulent. It can reasonably be inferred that the Collector, the Commissioner of Lands and Mines and as well as the State Executive Council must have been misled into thinking that both Palaniandy and the defendant agreed to the transfer and were no longer interested in the said lands, and that there was no necessity to inform any of them. (See Memorandum to Exco in enclosure 21 in Exhibit P1). In my view, this explains why the defendant was never informed regarding the rejection of his application for transfer nor the approval of the plaintiff's application. Having regard to the evidence of the Assistant Collector of Land Revenue and the memorandum dated June 5, 1970 prepared for the State Executive Council for the purpose of obtaining the consent of transfer of the said lands, I am satisfied that the registration of the property in the plaintiff's name was obtained by means of fraud and misrepresentation. There is nothing in the memorandum to say that the said lands were sold to the plaintiff, but was stated by the Assistant Collector, the transfer

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was made by the plaintiff as attorney to her own self on the strength of the two powers and also on the strength that the defendant was supposed to have gone back to India. In the circumstances of this case, I find the plaintiff has applied for the transfer of the said lands without the knowledge of the defendant and that the plaintiff misrepresented to the Collector that the defendant desired the transfer to the plaintiff. Further, I do not accept the plaintiff's contention that the defendant gave her the 1962 irrevocable power solely because he had in mind to sell the said lands to her. Her story is not supported by Mr. Chelvanayagam the solicitor who prepared the power of attorney; nor by the defendant's brother, Poongian @ Poonga (D.W.3), who is also treated as a real "brother" by the plaintiff. In my view, the defendant's version as to the circumstances under which the power was given is more probable.

The 1962 power literally allows the plaintiff to transfer the said lands to herself as a gift - the consideration for the power being for love and affection and the sum of \$10.00 - although the plaintiff admits that the sum of \$10.00 was never in fact paid to the defendant. In my opinion, the story of the defendant shows how the "love and affection" had arisen. I accept the fact that the power was given on the understanding that the plaintiff would look after the defendant who was then seriously ill and also to look after his wife who was then going blind. Further, according to Mr. Chelvanayagam, whose evidence I accept, it was understood by the parties that the plaintiff should only transfer the said lands to herself on the death of the defendant.

In cross-examination, the plaintiff originally alleged that the defendant agreed to sell the said lands in 1962 and the discussion on the sale transaction took place before they left Batang Berjuntai for Mr. Chelvanayagam's office for the purpose of executing the power of attorney. But, later, she testified that it was only five or six months after the execution of the document that she agreed to buy the said lands for \$4,000/-. If there was such an agreement and the sole purpose of granting the power was to sell the said lands to her, it is odd that the plaintiff did nothing about it

till August 10, 1967 when the sale agreement (Exhibit F2) was executed. What happened between the granting of the power of attorney to the plaintiff (July 9, 1962), and the date of sale agreement (August 10, 1967) is very relevant. In this connection, I accept Mr. Chelvanayagam's evidence that the power was granted in contemplation of the defendant's death, and it was understood by the parties that the plaintiff could only transfer the said lands to her own name on the death of the defendant. He could not advise the defendant to make a will because the property was still under Approved Applications. This neatly explained why nothing was done by the plaintiff for nearly five-and-a-half years after the power was granted. On the contrary, during this period, the defendant executed three tenancy agreements in respect of the said lands with Gopal - a cousin of the Plaintiff. The third tenancy agreement was executed on June 21, 1967 (Exhibit P5). The total period of lease extended for five years commencing from April 30, 1967 to April 30, 1972. The right of the defendant to lease the said lands despite the existence of the irrevocable power of attorney was never challenged by the defendant at the material time. It can reasonably be inferred that the plaintiff knew all along that the power was given to her not for the purpose of selling the property to her; and, as such, there was fraud and misrepresentation on the part of the plaintiff when she applied for the transfer of the said lands to herself on the strength of the said power. She very well knew that it was never intended for that purpose. The fact that the plaintiff's name was endorsed as the lessor from August 10, 1967, on the reverse of the three tenancy agreements (Exhibits P3, P4 and P5) does not alter the fact that the irrevocable power was never intended to be used for transferring the said lands by the plaintiff as attorney to herself in her personal capacity. Gopal cultivated the said lands to the end of April 1972 as agreed in the third tenancy agreement, and it was only after the expiry of this tenancy the defendant entered into occupation of the said lands up to now. In any event, the said endorsements were only executed by the plaintiff and, as such, they were not legally binding on the defendant. Having regard to the evidence as a whole, I find fraud and misrepresentation on the part of the plaintiff have been

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proved beyond reasonable doubt.

Under paragraph 7B of the Amended Statement of Defence, apart from alleging fraud, the defendant avers that the transfer of the said lands into the name of the plaintiff was void ab initio on the ground that the 1962 irrevocable power at all material times was invalid, null and void and of no effect due to want or failure of consideration or, alternatively, due to the unlawful and excess use of the power. On the issue of want or failure of consideration, learned counsel for the plaintiff concedes that the irrevocable 1962 power given to the plaintiff by the defendant does not show consideration, but he argues that under section 138 of our Contracts Ordinance no consideration is necessary to create an agency and, as such, failure of consideration does not make the power void. With respect, I agree with that argument. In my view, English cases on enforcement of equity like *Hughes v. Seanor* (2) although affirmed on appeal, has no relevance in this case. However, on the issue of unlawful and excess use of power, it is my finding that the 1962 irrevocable power cannot confer the plaintiff as attorney of the defendant with the authority to transfer property belonging to Palaniandy. The 1957 power given by Palaniandy to the defendant being a revocable and general power, does not entitle the defendant to confer to the plaintiff an irrevocable power of attorney in respect of the said lands. The defendant is, of course, empowered to transfer the said lands, but he has no authority to delegate that power unless such authority is either expressly or impliedly given. No authority need be cited for the proposition that an agent or attorney cannot give to a third person a greater power than what has been conferred to him by his principal. Powers of attorney should be construed strictly. Thus, in *Bryant, Powis and Bryant Limited v. La Banque Du Peuple* (3) Lord Macnaghten said at page 177:

".....that where an act purporting to be done under a power of attorney is challenged as being in excess

(2) (1869) W.R. 108
(3) (1893) A.C.170

of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication."

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10 In short, the defendant cannot delegate a power which is outside the power of attorney No.500/57. From the contents of this power, I find no provision either express or otherwise for any authority on the part of the defendant to grant to a third person to transfer the said lands, and as such the power purported to be given to the plaintiff in respect of the said lands is null and void, even if the discrepancy in the particulars of the Approved Applications in the two powers could be ignored as a mere typographical error. On the facts and the
20 law, I find the defendant's act in conferring the irrevocable power to the plaintiff is in excess of the power given to him by Palaniandy, and it would therefore follow that the transfer and registration of Palaniandy's lands by the plaintiff to herself on the strength of the two powers was obtained by means of an insufficient or void instrument as envisaged under section 340(2)(b) of the National Land Code, and, as such, the plaintiff's title to
30 the said lands is not indefeasible. In the event, I hold that the 1962 irrevocable power is not valid and effective to convey the said lands to the plaintiff. It is my finding that the transfer of the said lands by the plaintiff into her own name was void ab initio on the ground that the 1962 irrevocable power at all material times was invalid, null and void and of no effect as far as the said lands are concerned due to unlawful and excess use of the original
40 power given by Palaniandy.

50 On the alternative claim of the plaintiff that there was a sale of the said lands, it is the story of the plaintiff that on August 10, 1967 the Defendant executed an agreement to sell the said lands for \$7,500/- in the presence of a petition writer, Siva Rajan (P.W.2). It is suggested that the intention to sell existed as early as 1962 when the defendant gave her the irrevocable power of attorney in order to enable her to transfer the said lands which were then under Approved Applications to herself. The alleged sale is supposed to be supported by the

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so-called receipt Exhibit P7 dated January 25, 1968, in which the defendant acknowledged the said sale. Although the Defendant admits putting his thumb impression on the alleged agreement, he being illiterate and of old age says that it was not explained to him that it was a sale agreement. The reason for granting the 1962 irrevocable power has already been dealt with and, as such, I do not propose to deal again with this aspect of the plaintiff's story. I need only add that her allegation that the defendant intended to sell the said lands to her as early as 1962 for the sum of \$4,000/- should be rejected. On this particular issue, the evidence of the defendant as materially corroborated by Mr. Chelvanayagam is clear enough and should be accepted as more probable. On the sale agreement, it is the plaintiff's contention that she entered into the transaction with the defendant in which the defendant agreed to sell the said lands at the purchase price of \$7,500/-. The agreement is on the following terms and conditions :

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"(1) The purchaser will pay the seller the sum of dollars Five Thousand Two hundred only(\$5,200/-) on this day of signing this agreement and the balance of dollars Two Thousand and Three hundred only (\$2,300/-) during or before 31st day of October, 1967.

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(2) The above amount includes dollars Two thousand (\$2,000/-) due to Gopal of Parit 4, Sungei Burong, Sekinchan, Selangor by way of monies received under leases by the seller and for which from this day the purchase will be responsible for.

(3) The purchaser will do the needful acts to obtain the grants of the aforesaid A/As vide the powers vested in her under Irrevocable Power of Attorney executed in favour of the purchaser by the seller. The Power of Attorney reference is K.L. Supreme Court Reg. No.739 of 1962 of 1.8.1962.

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(4) The seller from this day will cease

to exercise any rights relating to the aforesaid A/As."

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10 The plaintiff testifies that she has settled all the purchase price as stipulated in the agreement, and the final payment of \$2,300/- under condition (1) was made in two instalments of \$600/- and \$1,700/- vide Exhibits P6 and P7 respectively, and, as such, it is argued that even if the Court finds the 1962 irrevocable power to be void rendering the transfer of the said lands by the plaintiff as donee of the power to herself also void, the alleged sale should be enforced. The defendant, however, says that he did not realise that the document he had executed on August 10, 1967 was a sale agreement. He denies receiving \$3,200/- in cash as part of the purchase price on that date, and he also denies receiving \$1,700/- on 20 January 25, 1968 as final payment of the purchase price. He avers that he was deceived into executing Exhibit P7, which is supposed to be the acknowledgment for the receipt of the sum of \$1,700/-. On the issue of whether the said lands have in fact been sold by the defendant, the plaintiff is principally relying on the 1967 sale agreement (Exhibit P2). She also relies on the so-called receipt for \$1,700/- (Exhibit P7) and the endorsement on 30 the reverse of the three tenancy agreements dated November 29, 1966 (Exhibit P3) January 3, 1967 (Exhibit P4), and June 21, 1967 (Exhibit P5), under which the defendant leased the said lands for a total period of five years to a cousin of the plaintiff named Gopal @ Kobale (P.W.5) commencing from April 30, 1967 till April 30, 1972. On the 1967 agreement itself, it is not in dispute that the defendant did execute the document. The fact that the defendant has agreed to sell the said lands 40 is supported by Siva Rajan, the Petition Writer, who prepared the document. Neither fraud nor undue influence has been pleaded by the defendant as far as the sale agreement is concerned. Further, paragraph 4 of the Statement of Defence wherein the defendant avers that the plaintiff "acted in breach of the terms and conditions in that, inter alia, a sum of \$2,300/- due to be paid to the Defendant on or before 30th day of October 1967 was not 50 paid by the plaintiff to the defendant", must in all probabilities refer to condition (1) of the said agreement. From the pleadings and the evidence, it is reasonable to infer that the defendant knew the document he executed in

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1967 was in respect of sale of the said lands. In my view, the only issue as far as the sale of the said lands is concerned is whether the plaintiff has settled the agreed purchase price of \$7,500/- and complied with all the terms and conditions of the agreement. On the question of the payment of the purchase price, I find there are material discrepancies between the evidence of the plaintiff and her witnesses and as well as between the evidence adduced by the plaintiff and the pleadings. Thus, in her Reply to the defendant's counter-claim, it is alleged that the agreement to sell was made on August 10, 1967, and as regards the purchase price of \$7,500/- it is pleaded that she paid a sum of \$3,200/- and Gopal the lessee of the said lands paid \$2,000/- and that subsequently she paid and settled the balance of \$2,300/-. In her evidence, the plaintiff explained that the \$2,000/- mentioned in the sale agreement was owing to her from Gopal for money which Gopal had borrowed from her. However, according to the Petition Writer, Mr. Siva Rajan (P.W.2), it was a deduction made in respect of advanced rentals received by the defendant from Gopal in respect of the third tenancy agreement. Whatever it may be, the defendant denies the allegation that what Gopal gave him by way of advance rents for the five-year lease was to be deducted from the purchase price of \$7,500/-. On the evidence, it is my finding that even if there was a deduction as alleged, the amount that could have been deducted could not possibly be \$2,000/-. Firstly, the plaintiff alleged that the total rents were \$1,700/- under the three tenancy agreements (Exhibits P3, P4 and P5), whilst the defendant says that they were only \$1,650/-. There is thus a difference of \$50/-. However, even if the plaintiff's figure is accepted, there is no reason why the whole amount of \$1,700/- should be deducted since the defendant should at least be entitled to that part of the rent between April 30, 1967 (date of commencement of first tenancy agreement) and August 10, 1967 (date of alleged sale). Secondly, it is the plaintiff's story that the \$2,000/- deduction from the purchase price was made up for \$1,700/- of advanced rents paid by Gopal to the defendant, and the balance of \$300/- was a loan given by Gopal to the defendant after the third tenancy agreement was executed in consideration of the defendant giving him an extension of period of lease. Gopal, who was a lessee of the said lands,

10 is never a party to the sale agreement and, although he is related to the plaintiff, there is no reason why his alleged loan of \$300/- should be included in the purchase price of the said lands. I find the story about the loan most improbable, particularly having regard to the fact that it was not even mentioned in Gopal's letter dated March 6, 1970 to the Defendant's Solicitors reply to the defendant's notice requesting him to vacate the said lands. (See Exhibit P12). I therefore reject the plaintiff's story that she has paid \$2,000/- by way of deduction towards the full purchase price of the said lands as envisaged in condition (2) of the sale agreement.

20 As regards the balance of \$2,300/-, the plaintiff testifies that it was paid as follows - \$600/- on October 5, 1967 and \$1,700/- on January 26, 1968. She further alleges that it was after these payments that she applied to the Collector for transfer. This cannot be so as the evidence is so clear that she applied for transfer to the Land Office as early as August 28, 1967, i.e. before the alleged final payment of \$1,700/-. Further, according to the plaintiff, the sum of \$600/- was receipted by Exhibit P6 and the remaining \$1,700/- was paid in cash on the date Exhibit P7 was executed. It is alleged that Exhibit P7 is the receipt for the second final payment. However, on perusal of this document, I find Exhibit P7 is not a receipt for any sum. In fact it is an I.O.U. Chit for \$7,500/-, although the plaintiff in her evidence testifies that she does not know about this. On the reverse of the document, I find there is some sort of an undertaking by the defendant to repay an unspecified sum including interest to the plaintiff with the defendant's grandson, Muniandy, standing as a guarantor. There is no mention on either side of this document of \$1,700/- or any payment made by the plaintiff to the defendant. Thus, on proof of the various alleged payments towards the purchase price, the plaintiff is relying on oral testimony except for the payment of \$600/- which was receipted by Exhibit P6. I cannot believe that the petition writer who is alleged to have witnessed the payment of \$3,200/- on August 10, 1967 would allow the plaintiff to do so without any receipt.

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It should be noted that the payment of \$600/- was also made in the presence of the same petition writer and the receipt was issued in that particular case. Nor can I accept that an experienced Land Office Clerk (P.W.4) before whom the alleged final payment of \$1,700/- was made on January 25, 1968 would allow it to take place without mentioning it in Exhibit P7 or noting it down somewhere. The explanation by P.W.4 that he had made an error by omitting the same from Exhibit P7 sounds entirely hollow. As stated earlier on, there is nothing in Exhibit P7 to show that it is a receipt for the alleged payment of \$1,700/- Since a comparatively small payment of \$600/- is receipted, it would be more probable that larger payment of \$3,200/- and \$1,700/- be acknowledged in writing. On the balance of probabilities, apart from the payment of \$600/-, I find the plaintiff has failed to establish the other payments towards the purchase price. However, even if it is accepted that the plaintiff has settled the whole of the agreed purchase price, it is obvious on the evidence that she has committed a breach of the agreement, and thereby does not justify the Court to grant specific performance of the sale agreement. Under the terms of the sale agreement, the balance sum of \$2,300/- should be paid on or before October 31, 1967. It is conceded by learned counsel for the plaintiff that of the balance due only the sum of \$600/- was paid by that date. Under the circumstances, the plaintiff has committed a breach of condition (1) of the sale agreement, and by applying to the Land Office for the transfer of the said lands in August 1967 the plaintiff was clearly acting fraudulently, as by that date she had not yet settled the full purchase price. For these reasons, and as well as the fact that the plaintiff has failed to satisfy me that the full purchase price of the said lands has been paid, I do not think that this is a proper case where the Court should enforce the sale agreement. In the event, the plaintiff's claim in the alternative should also be dismissed.

I would therefore dismiss the plaintiff's claim with costs. On the evidence before me, I also find the defendant's counterclaim has been established. I accordingly allow the counterclaim in the following terms :-

- (1) a declaration that the defendant's principal, Palaniandy, has been and

still is the proprietor and registered owner of the land held under E.M.R. 5809 in the Mukin of Tanjong Karang, in the District of Kuala Selangor, formerly known as Approved Application Nos. 814/50 and 79/57;

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- 10 (2) a declaration that the irrevocable power of attorney dated July 9, 1962 and registered in the High Court at Kuala Lumpur vide Registration No. 739/62 be declared null and void as far as it affects the lands mentioned in (1);
- 20 (3) an injunction restraining the plaintiff or her agents or servants or any person or persons claiming by or through her from interfering with the rights of the defendant over the said lands in his capacity as attorney for Palaniandy;
- (4) an order that the assignment or memorandum of transfer or other application drawn and/or executed by the plaintiff in respect of the said lands be set aside;
- (5) a consequential order that the appropriate authority do expunge the name of the plaintiff from the records of the relevant Land Office;
- 30 (6) costs of the counterclaim.

I also order that all monies (if any) paid into Court vide Order of Court dated October 30, 1972 be paid out to the defendant.

JUDGE
HIGH COURT
KUALA LUMPUR

Kuala Lumpur
October 14, 1974

40 Mr. M.Segaram of M/s Segaram & Co. for plaintiff.
Mr. Dulip Singh of M/s. Dulip Singh & Co. for defendant.

In the
High Court
No.18
Judgment of
Mohd Azmi, J.
14th October
1974
(continued)

Authorities cited but not mentioned in Judgment:

- (1) Subramania Pillay v Sundarammal,
(1968) 1 M.L.J. 30.
- (2) Clark v Malpas
E.R. 54 page 1067
- (3) Saroj Bandhu Bhaduri v Sm.Jnanada Sundari
Debya & Anor.,
36 C.W.N. 555.
- (4) Chin Tai v Siow Shiow & Ors.,
(1971) 1 M.L.J. 67. 10
- (5) Tan Bing Hock v. Abu Samah
(1968) 1 M.L.J. 221.
- (6) Abdool Hoosein Zanail Abadin & Anor.
v. Charles Agnew Turner
Vol.14 Indian Appeals 111.
- (7) Dharmaratna v. Dharmatna
(1939) F.M.A.L.R. 99.
- (8) Assets Company Limited v. Mare Roihi,
(1905) A.C. 176 P.C.
- (9) A.L.N. Narayanan Chettyar & Anor.
v. Official Assignee, High Court Rangoon
& Anor.,
(1941) A.I.R. P.C.93. 20

No. 19

ORDER

In the
High Court

No.19
Order

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 269 OF 1972

14th
October
1974

Between

Pappa d/o Thoppan
c/o Ladang Kampong Bharu,
Kuala Selangor.

Plaintiff

And

10 Saminathan s/o Vanathan
Parit 4 Sungei Burong,
Sekinchan,
Kuala Selangor.

Defendant

BEFORE THE HON'BLE MR. JUSTICE MOHD. AZMI

IN OPEN COURT

THIS 14TH DAY OF OCTOBER, 1974

O R D E R

20 This action coming up for final disposal
on the 14th day of June, 1973 in the presence
of Mr. M. Segaram of Counsel for the Plaintiff
and Mr. Dulip Singh of Counsel for the
defendant and the parties being present and upon
reading the pleadings of Plaintiff and the
Defendant and UPON READING the evidence adduced
by the parties hereto aforesaid IT WAS ORDERED
THAT THE ACTION DO STAND ADJOURNED for further
hearing on the 21st day of November, 1973 and
the same coming up for hearing on the 21st day
of November, 1973 and in the presence of afore-
30 said Counsel and upon hearing further evidence
adduced by the parties hereto IT WAS ORDERED
THAT THE ACTION DO STAND ADJOURNED for continued
hearing and the same coming up for hearing on
the 22nd day of November, 1973 and in the
presence of aforesaid Counsel and upon hearing
further evidence adduced by the parties hereto
IT WAS ORDERED THAT THE ACTION DO STAND ADJOURNED
for continued hearing and the same coming up
40 for hearing on the 23rd day of November, 1973
and in the presence of the aforesaid Counsel
and upon hearing further evidence adduced by
the parties hereto IT IS ORDERED THAT THE CASE

In the
High Court

No.19
Order

14th October
1974

(continued)

DO STAND ADJOURNED for hearing of arguments and submissions of Counsels and the same coming up for hearing on the 24th day of November, 1973 and in the presence of the afore-said Counsel and upon hearing the arguments and submissions of Counsel IT WAS ORDERED THAT THE ACTION DO STAND ADJOURNED for Judgment and the same coming up for Judgment this day in the presence of Mr. M.Segaram of Counsel for the Plaintiff and Mr. Dulip Singh of Counsel 10 for the Defendant IT IS ORDERED that the Plaintiff's claim is hereby dismissed with costs and the Defendant's Counterclaim is hereby allowed with costs AND IT IS DECLARED that the Defendant's Principal Palaniandy s/o Murugan still is the proprietor and registered owner of the land held under E.M.R. No. 5089 in the Mukim of Tanjong Karang in the District of Kuala Selangor (formerly known as Approved Application Nos. 814/50 and 79/57) AND IT IS ALSO 20 DECLARED that the Irrevocable Power of Attorney dated 9th July, 1962 registered No.739 of 1962 in the High Court at Kuala Lumpur is null and void as far as it affects the land held under E.M.R. No.5089 AND IT IS FURTHER ORDERED that the Plaintiff or her agents or servants or any persons claiming by or through her is restrained from interfering with the rights of the Defendant over the said lands in his capacity as Attorney for the said Palaniandy s/o Murugan AND IT IS ALSO ORDERED that the 30 Assignment or Memorandum of Transfer or other applications drawn and/or executed by the Plaintiff in respect of the said lands be set aside AND IT IS FURTHER ORDERED that the appropriate authority do expunge the name of the Plaintiff from the records of the relevant Land Office AND IT IS FURTHER ORDERED the Plaintiff do pay the Defendant the costs of the Counterclaim AND IT IS FINALLY ORDERED 40 that all monies (if any) paid into Court vide Order of Court dated 30th October, 1972 be paid out to the Defendant.

Given under my hand and the Seal of
the Court this 14th day of October, 1974.

(L.S.) Sd. Illegible
Senior Assistant
Registrar,
High Court, Kuala Lumpur

This Order is filed by Messrs. Dulip Singh & Co., Solicitors for the Defendant abovenamed whose address for service is 5th Floor, Bangunan Safety Insuran, Jalan Melayu, Kuala Lumpur

In the
High Court

No.19
Order

14th October
1974

(continued)

No.20

NOTICE OF APPEAL

IN THE FEDERAL COURT IN MALAYA AT KUALA LUMPUR
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 162 OF 1974

In the
Federal Court

No.20
Notice of
Appeal

11th November
1974

10

Between

Pappa d/o Thoppan
c/o M. Muniandy,
Sungei Tinggi Group Hospital,
Batang Berjuntai, Selangor.

Appellant

And

Saminathan s/o Vanathan,
Parit 4, Sungei Burong,
Sekinchan, Selangor

Respondent

20

(In the matter of Kuala Lumpur
High Court Civil Suit No.269/72)

Between

Pappa d/o Thoppan Plaintiff

And

Saminathan s/o Vanathan

Defendant

NOTICE OF APPEAL

TAKE NOTICE that Pappa d/o Thoppan, the appellant abovenamed being dissatisfied with the

In the
Federal Court

No.20
Notice of
Appeal

11th November
1974

(continued)

decision of the Hon'ble the Justice Haji
Azmi bin Kamaruddin given at the High
Court in Kuala Lumpur on the 14th day of
October, 1974 appeals to the Federal Court
against the whole of the said decision.

Dated this 11th day of November, 1974

RTP of Appellant
Pappa d/o Thoppan.

To: The Chief Registrar,
Federal Court,
Kuala Lumpur.

10

The Senior Assistant Registrar,
High Court,
Kuala Lumpur.

The Respondent abovenamed
and or his solicitors
Messrs. Dulip Singh & Co.
5th Floor, Bangunan Safety Insuran,
Jalan Melayu, Kuala Lumpur.

This Notice of Appeal is filed by Pappa
d/o Thoppan the abovenamed appellant whose
address for service is c/o M. Muniandy, Sungei
Tinggi Group Hospital, Batang Berjuntai,
Selangor.

20

No. 21

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

CIVIL APPEAL NO. 162 OF 1974

Between

PAPPA d/o THOPPAN

Appellant

And

SAMINATHAN s/o VANATHAN

Respondent

10 (In the Matter of Kuala Lumpur High Court
Civil Suit No.269 of 1972

Between

Pappa d/o Thoppan

Plaintiff

And

Saminathan s/o Vanathan Defendant)

MEMORANDUM OF APPEAL

20 Pappa d/o Thoppan, the Appellant abovenamed
appeals to the Federal Court against the whole
of the decision of the Learned Judge given on
the 14th day of October, 1974 on the following
grounds:

I. The Learned Judge erred in law in and in
fact in holding that the Appellant's title
was not indefeasible in that the registration
of the property in the Appellant's name
"was obtained by fraud and misrepresentation".

30 (a) The Learned Judge erred in law in holding
that the Respondent had "established"
and proved fraud and misrepresentation
on the part of the Appellant as envisaged
by section 340(2)(a) of The National
Land Code when in fact he found that it
could only be "inferred" that the Collector,
the Commissioner of Lands and Mines as
well as the state Executive Council
"must have been misled."

In the
Federal Court

No.21
Memorandum
of Appeal

8th February
1975

In the
Federal Court

No.21
Memorandum
of Appeal

8th February
1975

(continued)

- (b) The Learned Judge in deciding on the question of fraud failed to follow the sequence of events as evidenced by the documents in Exhibit P.1. The documents in the said Exhibit P.1 evidence the facts as follows :
- (i) that the Appellant first applied for a transfer of the said property in her name vide her letter to the Pemungut Hasil Tanah dated 28th August, 1967 together with a Statutory Declaration dated 21st August, 1967 (Enclosures 5 and 5A of Exhibit P.1) 10
 - (ii) The receipt of same was acknowledged by the Land Office on 16th July, 1968 (Enclosure 9) of Exhibit P.1) whereby your Appellant was required to obtain a letter from the High Court Registry that the Power of Attorney No.739/62 dated 1st August, 1962 was still valid; 20
 - (iii) Subsequently vide letter of 2nd February, 1970 (Enclosure 15 of Exhibit P.1) the Land Office required the Appellant to submit a Statutory Declaration to the effect that Palaniandy s/o Murugan and Saminathan s/o Vanathan (the Respondent) were still alive and as to their whereabouts. 30
 - (iv) In compliance with such requirement the Appellant produced a Statutory Declaration dated 11th March, 1970 (Enclosure 16B of Exhibit P.1) which while declaring that both Palaniandy s/o Murugan and Saminathan s/o Vanathan were still "living" unfortunately referred to both of them as "living" in India. The Appellant explains in her evidence that she had meant that only Palaniandy was "living" in India. 40

In the
Federal Court

No.21
Memorandum
of Appeal

8th February
1975

(continued)

(c) The Learned Judge failed to consider the fact that the Appellant is an illiterate woman and that in order to understand the contents of any document whether it be one addressed to her or one to be executed by her, the same must be translated to her, and her understanding of same would in fact be dependant on the translation of same.

10 (d) In this context the Learned Judge erred in failing to consider the explanation given by the Appellant under cross-examination (From paragraph 5 of page 26 to the first paragraph at page 27 of the Notes of Evidence) which reads as follows :

"I did make a statutory declaration at Kuala Lumpur Court in respect of the transfer. (Enclosure 16B in File Exhibit P.1 referred to witness).

20 To my knowledge, the Defendant had not gone to India. In 1970 I do not know whether he went to India or not.

(Contents of enclosure 16B read and explained to witness by Court Interpreter).

30 I do not remember making the statutory declaration. I was referring Palaniandy s/o Murugan being in India but not in respect of Defendant. That part of the declaration regarding the Defendant is not true.

I knew I was making a statutory declaration but only in respect of Palaniandy. The Commissioner for Oaths did not explain the contents of the statutory declaration to me.

I did use the statutory declaration to transfer the land to me, but only in respect of Palaniandy's name and not the Defendant."

40 (e) The Learned Judge further erred in failing to consider the fact that there was no proof of fraudulent intent on the part of the Appellant in making the Statutory Declaration of 11th March, 1970 (Enclosure 16B in Exhibit P.1) particularly in the light of the fact as stated hereinabove; and furthermore in the light of the fact

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of Appeal
8th February
1975
(continued)

that if in fact the Appellant had intended to mislead the Land Office, the same would have been done at the outset vide the Statutory Declaration dated 21st August, 1967 (Enclosure 5A of Exhibit P.1) which was sent in at the time of application for the transfer of title and which was in fact for all intents and purposes the material time.

- (f) The Learned Judge further erred in fact in inferring that the Statutory Declaration dated 11th March, 1970 (Enclosure 16B of Exhibit P.1) influenced the Land Office in transferring the title to the Appellant when in fact it is obvious that the same was of no importance to the Land Office which was only concerned about ensuring that both the Powers of Attorney were still valid. This has been stressed by P.W.1 under both cross-examination and re-examination (at page 6 of the Notes of Evidence) where he states that the "land was transferred on the strength of the two P.A.s". "I agree the transfer to the Plaintiff was done on strength of the two Power of Attorneys". "The Land Office wanted to know whether the Power of Attorneys were still valid". 10 20
- (g) Even assuming that the Appellant's declaration in her Statutory Declaration dated 11th March, 1970 that the Respondent was in India be deemed to be tantamount to fraud or misrepresentation even then that declaration would have had no material bearing or relevance to the registration of the transfer to the Appellant by the Land Office. 30
- (h) The Learned Judge failed to consider the fact that the Respondent had never at any time subsequent to his application to transfer the title to himself approached the Land Office to enquire of the position or outcome of his application which he would have done if in fact he did not agree to your Appellant transferring the title to herself. 40
- II. (a) The Learned Judge erred in law and in fact in holding that the 1962 Irrevocable Power cannot confer the Plaintiff as attorney of the Defendant with the authority to transfer property belonging to Palaniandy. 50

- (b) The Learned Judge erred in law in construing that although the Respondent is empowered to transfer the lands "he has no authority to delegate that Power" when in fact the 1957 Power of Attorney reads (at page 4 of Agreed Bundle of Documents) in clause 23 as follows :

10 "To substitute and appoint from time to time one or more attorney or attorneys with the same or more limited powers and such substitute or substitutes at pleasure to remove and another to appoint."

- (c) The Learned Judge erred in law and in fact in finding that he finds "no provision either express or otherwise for any authority on the part of the Defendant to grant to a third person to transfer the said lands and as such the power purported to be given to the Plaintiff in respect of the said Lands is null and void". In so holding the Learned Judge failed to construe clause 23 of the 1957 Power of Attorney in its proper form and context.

- (d) The Learned Judge was wrong in law and misdirected himself in holding that "the Defendant's act in conferring the irrevocable power to the Plaintiff is in excess of the Power given to him by Palaniandy and it would therefore follow that the transfer and registration of Palaniandy's lands by the Plaintiff to herself on the strength of the two powers was obtained by means of an insufficient or void instrument as envisaged under Section 340 (2)(b) of the National Land Code and, as such, the Plaintiff's title to the said lands is not indefeasible".

- (e) The Learned Judge erred in law and in fact in failing to hold that the irrevocable Power of Attorney of 1962 was a limited power within the context of Clause 23 of the 1957 Power of Attorney in that the 1962 Power of Attorney was exercised in respect of a specific item of Palaniandy's property, and as such did not derogate or deviate from or exceed the general power which continued to remain in force in respect of other items of Palaniandy's property.

- 50 III.(a) The Learned Judge erred in fact and decided

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Federal Court

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1975

(continued)

against the weight of evidence adduced in holding that the Power of Attorney to the Appellant in 1962 was "given on the understanding that the Plaintiff would look after the Defendant who was then seriously ill"; and in failing to hold that the said Power of Attorney was in fact given in furtherance of an Agreement to sell the land to the Appellant.

10

(b) In so holding the Learned Judge placed complete reliance on the memory of D.W.2 who claimed to have remembered the incident of the execution of the Power of Attorney despite the fact that 11 years had lapsed since.

(c) The Learned Judge placed undue reliance on the evidence of D.W.2 when it is difficult to see how D.W.2 could remember the execution of the 1962 Power of Attorney in particular in such detail when in course of his practice, during the intervening 11 years various Powers of Attorney would have in fact been executed before him.

20

(d) The Learned Judge misplaced reliance on the evidence of D.W.2 particularly in view of the fact that D.W.2 apparently remembers the incident well enough at the time of trial to state that "the Defendant told me that the power was to take effect upon his death and in the meantime as his wife was blind and his son was half-idiot he wanted the Plaintiff to look after his property and upon his death to make the necessary application to have the property transferred to the Plaintiff provided she looked after his wife and half-idiot son. (Paragraph 3 at page 60 of the Notes of Evidence).

30

40

The Learned Judge however failed to take into consideration the fact that if in fact D.W.2 remembered the incident as well as he claimed, then that the exact reason for the execution of the Power of Attorney would in fact have been stipulated therein. Instead of containing the alleged condition that the Appellant should take care of the

50

Respondent and his wife till their death the Power of Attorney instead contains a specially typewritten clause 24 as follows : "To convey unto herself (grantee) the land held under A.A. 814/505B and 79/575B Sekinchan, Kuala Selangor absolutely."

In the
Federal Court

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1975

(continued)

- 10 (e) The Learned Judge failed to take into consideration that it was most improbable that D.W.2 as a legal practitioner of some standing would include Clause 24 in its text and use the word "absolutely" when in fact its legal implications were clear to him particularly in the light of his client's alleged instructions that the power was given on condition that the Appellant would take care of the Respondent and his wife and not transfer the property till their death.
- 20 (f) The Learned Judge erred in law in holding that the 1962 Power of Attorney was granted in contemplation of the Respondent's death and it was understood by the parties that the Appellant could only transfer the said lands to her own name on the death of the Respondent (at page 10 of the Judgment) in view of the fact that the power would have been automatically revoked upon death of the Respondent.
- 30 IV. The Learned Judge erred in law and in fact and decided outside the pleadings in holding that apart from the payment of \$600/- the Appellant had failed to establish the other payments towards the purchase price, when in fact the payment of at least the sum of \$5,200.00 was established as follows :
- 40 (a) By the evidence of P.W.2 an independent witness (at page 8 of the Notes of Evidence) who states that he himself had handed the cash of \$3,200.00 to the Respondent.
- (b) By the evidence of P.W.2 and P.W.5 in respect of a further \$2,000.00;
- (c) By the fact that the Respondent himself had pleaded in his Amended Statement of Defence in paragraph 4 that only a sum of \$2,300.00 was due to be paid to him.

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Federal Court

No.21
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of Appeal

8th February
1975

(continued)

- (d) By the fact that the Respondent had previously pleaded in paragraph 4 of his Statement of Defence in respect of Kuala Selangor Magistrate's Court Civil Action No.36 of 1971 (Exhibit P.9) that a sum of \$5,200.00 had been paid to him by the Appellant leaving balance of \$2,300.00.
- V. (a) The Learned Judge erred in law and in fact in holding that the Appellant was not entitled to Specific Performance of the Agreement in that she was in breach of contract for not paying the sum of \$2,300.00 on or before October 31st, 1967. 10
- (b) In so holding the Learned Judge failed to take into consideration the fact that time had started running afresh by the fact that the Respondent was himself agreeable to accepting and did in fact accept the balance sum of \$2,300.00 after the 31st October, 1967. 20
- (c) Basing on the evidence of P.W.4 an independent witness and one who in fact was approached by the Respondent to help him, it is apparent that the Respondent had himself set time running afresh by the following acts :
- (i) The Respondent had approached the Appellant to meet P.W.4 to settle the balance of \$1,700.00. 30
- (ii) The Respondent had in fact accepted the sum of \$1,700.00 willingly.
- (iii) That in return the Respondent had agreed to give effect to the Agreement between himself and the Appellant by further agreeing to return the total sum of \$7,500.00 if for some reason the title was not transferred to the Appellant. (Exhibit P.7) 40
- (d) The Learned Judge erred in law and in fact in failing to hold that the Respondent was estopped by his own conduct in claiming that the Appellant was in breach of the Agreement for not tendering the

sum of \$2,300.00 before 31st October, 1967 by reason of the fact that the Respondent accepted the said sum subsequent to 31st October, 1970.

Wherefore the Appellant prays that this Appeal be allowed with costs.

Dated this 8th day of FEBRUARY, 1975.

Sd: Illegible

Solicitors for the Appellant

10 To: The Registrar, Federal Court, Kuala Lumpur.

And to:

The abovenamed Respondent and/or his Solicitors Messrs. Dulip Singh & Co., of Safety Insurance Building, Jalan Melayu, Kuala Lumpur

20 This Memorandum of Appeal is filed on behalf of the Appellant by her Solicitors, Messrs. Ranjit, Thomas and Kula of 7th Floor, Wing On Life Building, Jalan Silang, Kuala Lumpur.

In the
Federal Court

No.21
Memorandum
of Appeal

8th February
1975

(continued)

In the
Federal
Court

No. 22

JUDGMENT OF SUFFIAN, L.P.

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

FEDERAL COURT CIVIL APPEAL NO.162 OF 1974

(Kuala Lumpur High Court Civil Suit No.269 of 1972)

Between

Pappa d/o Thoppan Appellant/Plaintiff

And

Saminathan s/o Vanathan Respondent/Defendant

Coram: Suffian L.P.:

Ali Hassan F.J.:

Wan Suleiman F.J.

30

JUDGMENT OF SUFFIAN, L.P.
(read by Ali Hassan, F.J.)

This is a dispute regarding the ownership of a piece of land held under E.M.R.5087 which is in two lots, being padi land Lot 10600 and

No.22
Judgment of
Suffian,L.P.

3rd
September
1975

In the
Federal Court

No.22
Judgment of
Suffian, L.P.
3rd September
1975
(continued)

kampung land Lot 5406 in the Mukim of Tanjung
Karang in the District of Kuala Selangor.

It is registered in the name of the
plaintiff (appellant before us) but in the
possession of the defendant (respondent before
us). The plaintiff sued the defendant for
a declaration that she is the registered
proprietor and praying for, among other things,
vacant possession. Her claim was dismissed
by Haji Mohd. Azmi J. and she now appeals
to us. 10

The facts, briefly, are as follows. The
two lots were originally held under approved
applications Nos.814/50 and 79/57 under the
old F.M.S. Land Code, the approved applicant
being one Palaniandy son of Murugan.

In 1957, before leaving for India,
Palaniandy appointed the defendant as attorney
in respect of the land (see Power of Attorney
No.500/57 dated 11th May, 1957, at pages 136
and 139 of the appeal record, hereinafter
referred to as the first P.A.). 20

Five years later on or about 9th July,
1962, the defendant executed an irrevocable
Power of Attorney No.739/62 authorising the
plaintiff to convey the land to herself
absolutely (see pages 152 to 155 of the appeal
record) hereinafter referred to as the second
P.A.

So on that date there were two P.As., 30
one executed by Palaniandy in favour of the
defendant and the other an irrevocable one
executed by the defendant in favour of the
plaintiff.

When Palaniandy obtained a grant of the
land from the Government, it was on condition
that the land was not to be transferred
without the written consent of the Ruler in
Council.

On or about 6th January, 1967, the 40
defendant applied to the Ruler in Council
for consent to transfer the land to himself
by virtue of the first P.A.

On or about 10th August, 1967, the
plaintiff and defendant entered into a sale
agreement (Exhibit P2 at page 197) whereby
the defendant agreed to sell and the plaintiff

agreed to buy the land for \$7,500. The agreement provided that the plaintiff was to pay the defendant \$5,200 on the date of the agreement, leaving a balance of \$2,300 to be paid on or before 31st October, 1967.

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Federal Court

No.22
Judgment of
Suffian L.P.

3rd September
1975

(continued)

Further the agreement expressly confirmed the second P.A. given by the defendant to the plaintiff.

10 Subsequent to the above agreement, on or about 28th August, 1967, the plaintiff wrote to the Land Office the letter at page 190 to ask when she could obtain the document of title relating to the land.

20 On or about 15th May, 1970, the Ruler in Council rejected the Defendant's application to have the land transferred to him. The Land Office, Kuala Selangor, by letter dated 25th May, 1970 (at page 164) told the plaintiff the defendant's application had been rejected by the Ruler in Council.

Subsequently on 31st May, 1970, the plaintiff herself by letter (at page 163) applied to the Ruler in Council for consent to transfer the land to her. The Ruler in Council approved the plaintiff's application and subsequently on 9th July, 1970, the land was registered in the plaintiff's name.

30 It would appear that some time in 1970 the defendant had entered into occupation of the land. He refused to vacate and the plaintiff filed against him the suit out of which this appeal arises.

40 In her statement of claim the plaintiff alleges that since March, 1970, that is some four months before the land was registered in her name, the defendant has been a trespasser on the land. The plaintiff prays for a declaration that she is the registered proprietor of the land; for an injunction to restrain the defendant from interfering with her rights; for vacant possession; and for damages and other ancillary relief.

It would appear that she founds her claim on two grounds :

- (a) that her appearance on the register is valid by virtue of the two P.As.;
- (b) alternatively that her appearance on

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Federal Court

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Judgment of
Suffian, L.P.
3rd September
1975
(continued)

the register was valid by virtue
of the sale agreement (Exhibit P2)

As regard ground (a) the defendant pleads that the second P.A. was void because of want and/or failure of consideration or because of "the unlawful and excessive use of that power". The defendant also pleads that the plaintiff committed fraud on him by -

- (1) applying to the Ruler in Council for the transfer of the land to her without the defendant's knowledge; and 10
- (2) by misrepresenting to the Collector of Land Revenue that the defendant desired the transfer to the plaintiff.

As regards (b), the plaintiff pleads that on 10th August, 1967, the defendant agreed to sell the land to the plaintiff for \$7,500, that from the date of that agreement the defendant was to give possession to the plaintiff and would cease to exercise any right over the land, that on that date the plaintiff paid the defendant \$3,200, that in addition one Gopal paid \$2,000 to the defendant towards the purchase price on the plaintiff's behalf, that subsequently the plaintiff paid the balance of the purchase price (\$2,300) and that pursuant to the second P.A. the plaintiff obtained the consent of the Ruler in Council for the transfer of the land to her. 20 30

The defence does not admit the sale but pleads that a sum of \$2,300 was due to be paid by the plaintiff to the defendant on or before 31st October, 1967, but that the plaintiff failed to do so.

The defendant counterclaims for, among other things :-

- (a) a declaration that the second P.A. was void; 40
- (b) a declaration that Palaniandy is still the proprietor and owner of the land;
- (c) an injunction restraining the plaintiff from interfering with the

defendant's rights in the land; and

- (d) an order that the transfer of the land to the plaintiff be set aside.

Now as to the law, it is clear from section 340 of the National Land Code that the plaintiff's title to the land in dispute is indefeasible, but it may be defeated in case of fraud or misrepresentation to which she was a party or where registration was obtained by means of an insufficient or void instrument.

10

Section 340 of the National Land Code reads as follows :

"340.(1) The title or interest of any person or body for the time being registered as proprietor of any land... shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible -

20

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c)

30

(3)....."

As the plaintiff's name is on the register and the defendant wanted it removed, in my judgment the burden is on the defendant to prove fraud or misrepresentation to which the plaintiff was a party, or that the registration of the plaintiff as proprietor was obtained by means of an insufficient and void instrument.

As regards fraud, the defendant must prove it not on a balance of probabilities but beyond reasonable doubt: see the Privy Council case of Narayanan (1).

(1) (1941) A.I.R. P.C.93.

In the Federal Court

No.22 Judgment of Suffian, L.P.

3rd September 1975

(continued)

In the
Federal Court

No.22
Judgment of
Suffian, L.P.

3rd September
1975

(continued)

The learned trial judge held that the plaintiff was guilty of fraud or misrepresentation within the meaning of section 340 and that therefore her title was defeasible. He held that the Ruler in Council consented to the land being transferred to the plaintiff on the strength of the two P.As., that the plaintiff had falsely declared that the defendant was in India (in fact he was then in Malaysia) and that the plaintiff had misled the State authorities into thinking that both Palaniandy and defendant agreed to the transfer and were no longer interested in the land.

10

The learned trial judge found that the second P.A. was executed by the defendant on the understanding that the plaintiff would look after the defendant who was then seriously ill and would also look after his wife who was then going blind, that the plaintiff should transfer the land to herself only after the defendant's death and that the plaintiff knew all along that the power was given to her not for the purpose of selling the property to her.

20

The learned trial judge also found that by granting the second P.A. to the plaintiff the defendant had exceeded the authority granted to him by Palaniandy under the first P.A. and that therefore the transfer of Palaniandy's land by the plaintiff to herself was obtained by means of an insufficient or void instrument within the meaning of section 340(2)(b) of the National Land Code, and that accordingly the transfer was void.

30

As regards the plaintiff's claim that the land had been sold to her by the defendant by virtue of Exhibit P2, the learned trial judge held that the defendant executed the sale agreement, that the defendant had agreed to sell the land to the plaintiff, that neither fraud nor undue influence had been pleaded by the defendant as far as that exhibit was concerned, that it was therefore reasonable to infer that the defendant knew that the document was in respect of sale of the land. But the learned trial judge found as a fact that of the purchase price of \$7,500 the plaintiff had paid only a sum of \$3,200 and a further sum of \$600, making a total of \$3,800, and that the plaintiff had

40

50

not paid a total sum of \$3,700.

Accordingly, the learned trial judge dismissed the plaintiff's claim and allowed the defendant's counterclaim. He granted in favour of the defendant :-

In the
Federal Court

No.22
Judgment of
Suffian, L.P.

3rd September
1975

(continued)

- (a) a declaration that the defendant's principal, Palaniandy, has been and is still the proprietor and registered owner of the land;
- 10 (b) a declaration that the second P.A. was null and void as far as it affected the land;
- (c) an injunction restraining the plaintiff or her agents or servants or any person or persons claiming by or through her from interfering with the defendant's rights over the land in his capacity as Palaniandy's attorney; and
- 20 other relief.

The plaintiff appeals to us.

Before us it is submitted on behalf of the plaintiff that there are two issues :

- (1) whether the title of the plaintiff is indefeasible;
- (2) if her title is not indefeasible, then whether the plaintiff had discharged her obligations under the sale agreement (Exhibit P2) by paying the balance of the purchase price so as to entitle her to specific performance.
- 30

The gist of the argument is that the learned trial judge erred in considering the second P.A. in isolation and that he should have considered it together with the sale agreement (Exhibit P2) and an "I.O.U." chit (Exhibit P7) and that if he had done so he could and should have ordered specific performance of the sale agreement.

40 My conclusion is as follows.

The first P.A. given by Palaniandy in 1952 to the defendant gives him power among other

In the
Federal Court

No.22
Judgment of
Suffian, L.P.
3rd September
1975

(continued)

things to do the following :

"9. To sell to any person all or any of my lands.....now belonging to me.....and for the purpose to sign and to execute all transfers and other instruments necessary."

It is plain that under that clause the defendant had power to sell Palaniandy's land and for that purpose to sign and execute all transfers and other necessary instruments. In my opinion this includes power to sell the land in question to the plaintiff and to execute an irrevocable P.A. in her favour; this P.A. had to be irrevocable because there was at that stage no registered title to the land. In my judgment, when granting the second P2, the defendant was acting in accordance with the authority given to him by Palaniandy in the first P.A.

10

This second P.A. was on a printed form. It contains a typed acknowledgment by the defendant that he had received a consideration of \$10. The solicitor who prepared this P.A. explained that consideration was inserted so that the power would survive the defendant's death. The P.A. also had typed in an additional clause (No.24) by which the defendant authorised the plaintiff "to convey unto herself [the disputed land]..... absolutely". The significance of this clause was explained by the solicitor to the defendant.

20

30

It is true that the evidence of the solicitor which the learned judge accepted was that when executing the second P.A. the defendant did not intend to sell the land and that it was the intention of the plaintiff and defendant that the land was not to be transferred by the plaintiff to herself until after the defendant's death. This arrangement was made on the understanding that the plaintiff was to look after the defendant's wife and son after his death.

40

But with respect, the parties' intention in 1962 was superseded by their intention on 10th August, 1967, when they executed the sale agreement by which the defendant clearly agreed to sell the land to the plaintiff on certain conditions and in my opinion the validity of the registration of the plaintiff as proprietor

has to be viewed in the light of this agreement also. If this agreement gave the plaintiff a good title, then in my opinion her title is indefeasible.

In the
Federal Court

No.22
Judgment of
Suffian, L.P.

3rd September
1975

(continued)

The next question that arises is this: has the plaintiff complied with the conditions of the sale agreement? More specifically, did the plaintiff pay the balance of the purchase price by the due date?

10 The learned judge was in error in finding that the plaintiff did not pay a total of \$3,700, when the defence pleads that if there had been a sale which was not admitted, only a lesser sum (\$2,300) remained outstanding.

Did the plaintiff pay this sum (\$2,300) by the due date given by P2 as 31st October, 1967?

20 The learned judge found that a sum of \$600 was paid by the plaintiff to the defendant on or before that date, so that the only question that remains is whether or not the plaintiff did pay the defendant \$1,700 by that date.

30 As to this the plaintiff said that she did pay though late and the defendant said that the plaintiff never paid at all. PW4 Mr. Vallipuram, a clerk at the Land Office, Kuala Selangor, and President of the Indian Temple, and an independent witness, however, was quite definite that the plaintiff did pay the defendant the \$1,700 on 25th January, 1968.

40 The learned trial judge however disbelieved PW4's evidence that the plaintiff paid the defendant \$1,700 on 25th January, 1968. If that had been the only evidence on this point, then it would not have been open to us to interfere with the judge's conclusion, but that was not the only evidence. There is also the written evidence of the endorsement at the back of the I.O.U. (Exhibit P7) executed by the defendant that day, which reads :

"I, defendant being the holder of the first P.A. has this day extended the power given to me by Palaniandy to the plaintiff on second P.A. which is

In the
Federal Court

No.22
Judgment of
Suffian, L.P.
3rd September
1975
(continued)

IRREVOCABLE. This power is in respect of the land in question. I defendant has this day sold the abovementioned land to the plaintiff. She may have the land transferred in her name and I have no claim over this land. In the event the authority do not approve the transfer then the whole sum including interest thereto is payable by me defendant."

10

In my judgment it would have been open to the learned judge to infer from the language of P7 that the plaintiff had paid the defendant \$1,700; otherwise the defendant would not have agreed to refund it if the Ruler in Council refused to consent to the transfer of the land.

It is to be observed that the defendant affixed his thumb print impression on both sides of the I.O.U., and that he had the benefit of the advice and assistance of his son Munday who knew English.

20

I respectfully agree with learned counsel for the plaintiff before us that in view of this the learned judge should have found that a sum of \$1,700 was paid by the plaintiff to the defendant on the day P7 was executed, namely 25th January, 1968.

But the sale agreement provided that the balance of the purchase price was to be paid on or before 31st October, 1967, and final payment was not made until 25th January, 1968. Did late payment matter?

30

It is to be observed that the sale agreement did not contain any time clause and that time was not therefore of the essence of the contract. Even assuming that time was of the essence of the contract, the fact that the plaintiff and the defendant mutually varied the agreement by the plaintiff tendering and the respondent accepting the sum of \$1,700 on a date subsequent to the date by which the amount should under the agreement have been paid (31st October, 1967) is in my judgment sufficient to estop the defendant from complaining that the plaintiff had not paid the money in due time.

40

As regards the plaintiff's alleged fraud

10 in misrepresenting to the Ruler in Council
that the defendant was in India when he was
in fact in Malaysia and that Palaniandy and
the defendant were no longer interested in
the land, as already stated the burden is on
the defendant to prove the plaintiff's
alleged fraud beyond reasonable doubt. Has
he done so? The only evidence of fraud came
from the Collector who appeared in the witness
box and who also handed over to the Court the
relevant file from his office. But with due
respect I do not think that that was enough.
There was no evidence that he was a member of
the Executive Council that advised the Ruler
on the defendant's and plaintiff's applications.
It is true that the paper submitted to Execu-
tive Council on the plaintiff's application
(page 159 of the appeal record) mentioned only
the two P.As. and did not mention the sale
20 agreement P2, but there was no evidence from
any member or the Secretary of the Council or
in what way the contents of the paper or
omissions from it influenced their decision
one way or another, it being quite well-known
that even if all documents were in order the
Ruler in Council could still refuse his consent
to an application of this kind, decisions on
which being made on grounds of public policy,
not on considerations of law. I would there-
30 fore respectfully disagree with the learned
judge that the defendant has satisfied the
court beyond reasonable doubt that the plaintiff
has been guilty of fraud.

40 It would appear from the correspondence
between the plaintiff and the Land Office,
especially the Collector's letter dated 2nd
February, 1970, that the Collector was mainly
interested in finding out whether or not the
two P.As. in question were still valid at the
time of the application.

50 During the course of arguments in this
appeal it was stated on behalf of the defendant
that the plaintiff applied for the Ruler in
Council's consent before she had paid the full
purchase price and that this showed fraud on
her part. With respect I do not think that
there is any merit in this argument, in the
absence of any evidence whether or not this
factor influenced Executive Council's decision
one way or another.

In the
Federal Court

No.22
Judgment of
Suffian, L.P.

3rd September
1975

(continued)

In the
Federal Court

No.22
Judgment of
Suffian, L.P.

3rd September
1975

(continued)

It should be emphasised that there is no evidence in this case that Executive Council acted in any way like a registering authority to whom is presented a memorandum of transfer for registration. A registering authority will not register such a document unless it is sure that all the formalities have been observed, but it is quite possible for Executive Council to consent to a transfer which may be agreed only in the future or to a transfer for which there is little or no consideration or even to refuse to consent to a transfer the instruments of which are all fit for registration. 10

Finally I deal with the point that the alleged consideration (\$10) stated in the second P.A. had not in fact been paid by the plaintiff to the defendant. I do not think that this affected the validity of the transfer one way or the other because - 20

- (1) at the time of the transfer this P.A. had not been revoked and the donor (defendant) was still alive; and
- (2) a valid P.A. does not require consideration, vide section 138 of our Contracts Ordinance.

In the circumstances I would therefore allow the appeal.

I would set aside the learned judge's order 30 and instead I would enter judgment allowing the plaintiff's claim and rejecting the defendant's counterclaim.

Accordingly -

- (a) there shall be a declaration that the plaintiff is the registered owner of the land in question;
- (b) there shall be an injunction restraining the defendant or his agents or servants or any person or persons acting by or through him from interfering with the plaintiff's rights over the land; 40
- (c) there shall be an order that the defendant and any person or persons holding by or through him do vacate the land and give vacant possession to the

plaintiff not later than three months from today.

In the
Federal Court

The plaintiff shall have costs here and below. Her deposit to be returned to her.

No.22
Judgment of
Suffian, L.P.

Delivered in Kuala Lumpur (Tun Mohamed Suffian)
on 3rd September, 1975 LORD PRESIDENT,
MALAYSIA

3rd September
1975

(continued)

Ali Hassan and Wan Suleiman, F.JJ., concur.

Notes

- 10 1. Arguments in Kuala Lumpur on 15th April, 1975.
2. Counsel:
- For appellant - Mr.S.Kulasegaran with Miss Ratna Singam of Messrs. Ranjit, Thomas and Kula, Kuala Lumpur;
- For respondent - Mr.Dulip Singh of Messrs. Dulip Singh & Co., Kuala Lumpur.
3. Authorities cited:
- 20 (1) Smith 1890 Vol.9, NZLR 449, 464 3rd para.
(2) Assets 1905 A.C.176, 210, 2nd para.
(3) Derry 14 A.C. 337, headnote.
(4) Angus 1891 Ch.449, headnote, 465.
(5) Akerhielm 1953 3 A.E.R. 485, headnote.
(6) Rickands v. Oppenheim 1950 1 A.E.R.420,423.
(7) Paneutses 1917 2 K.B.473, headnote.
(8) Alan & Co. 1972 2 A.E.R. 127, 140.
(9) 1893 A.C. 170, 177.
(10) 1968 1 M.L.J. 30.
(11) 17 English Empire Digest, para.18.
- 30 (12) Jasbir Kaur 1974 1 M.L.J. 224.
(13) Himat Singh 1970 2 M.L.J. 246, 248D,
2nd column.
(14) Loh Boon Siew 1972 1 M.L.J. 139, 143.
(15) 1968 1 M L.J. 221 Tan
(16) Yeow Kim Pong 1962 M.L.J. 118, 121.
(17) Lim 1973 1 M.L.J. 241, 244, 1st column.

Certified true copy.
Sd. Illegible

40 Setia-usaha kapada Ketua Hakim Negara
Mahkamah Persekutuan,
Malaysia
Kuala Lumpur.
9 Sep 1975

In the
Federal Court

No.23
Order
3rd September
1975

No. 23
ORDER

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.162 OF 1974

Between

Pappa d/o Thoppan

Appellant

And

Saminathan s/o Vanathan

Respondent

10

(In the Matter of Civil Suit No.269 of 1972
in the High Court in Malaya at Kuala
Lumpur

Between

Pappa d/o Thoppan

Plaintiff

And

Saminathan s/o Vanathan Defendant)

CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA
ALI, JUDGE, FEDERAL COURT, MALAYSIA
WAN SULEIMAN J., JUDGE, FEDERAL COURT,
MALAYSIA

20

IN OPEN COURT

THE 3RD DAY OF SEPTEMBER, 1975

O R D E R

THIS APPEAL coming on for hearing on the
15th and 16th days of April, 1975 in the
presence of Mr. S.Kulasegaran (with him Miss
U.Ratnasingam) of Counsel for the Appellant
and Mr. Dulip Singh of Counsel for the
Respondent AND UPON READING the Record of
Appeal herein AND UPON HEARING Counsel as
aforesaid IT WAS ORDERED that this appeal do
stand adjourned for Judgment AND the same
coming up for Judgment this day in the presence
of Miss U.Ratnasingam of Counsel for the

30

Appellant and Mr. Dulip Singh of Counsel
for the Respondent IT IS ORDERED that the
Appeal herein be and is hereby allowed
AND IT IS ORDERED AND DECLARED that the
Appellant is the Registered Owner of the
lands held under E.M.R. No.5089 Bendang
Lot No.10600 and Kampong Lot No.5406 in the
Mukim of Tanjong Karang in the State of
Selangor AND IT IS FURTHER ORDERED that the
10 Respondent or his Agents or Servants or any
person or persons claiming by or through
him be and is hereby restrained from inter-
fering with the rights of the Appellant over
the said lands AND IT IS FURTHER ORDERED
that the Respondent and all persons or
person holding by or through him do within
three (3) months of the date hereof vacate
from the said lands and give vacant
20 possession of the aforesaid lands to the
Appellant AND IT IS FURTHER ORDERED that the
Respondent do pay to the Appellant Damages
for trespass, to be assessed AND IT IS ALSO
FURTHER ORDERED that the Respondent do also
pay to the Appellant Mesne Profits until
possession be delivered by the Respondent,
to be assessed AND IT IS ALSO FURTHER ORDERED
that the Respondent do pay to the Appellant
the costs of this Appeal and of the Court
30 below to be taxed by the Officer of the Court
AND IT IS LASTLY ORDERED that the Deposit in
the sum of \$500.00 (Ringgit Five hundred only)
be refunded to the Appellant.

GIVEN under my hand and the Seal of the
Court this 3rd day of September, 1975.

(L.S.) Sd. Illegible
CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

This Order is filed on behalf of the
Appellant by her Solicitors, Messrs. Ranjit,
40 Thomas and Kula of 7th Floor, Wing On Life
Building, Jalan Silang, Kuala Lumpur.

In the
Federal Court

No.23
Order

3rd September
1975

(continued)

In the
Federal Court

No. 24

No.24
Order granting
Final Leave to
Appeal to His
Majesty the
Yang di-Pertuan
Agong
12th July 1976

ORDER GRANTING FINAL LEAVE
TO APPEAL TO HIS MAJESTY
THE YANG DI-PERTUAN AGONG

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.162 OF 1974

Between

Pappa d/o Thoppan

Appellant

And

10

Saminathan s/o Vanathan

Respondent

(In the matter of Civil Suit No.269 of
1972 in the High Court in Malaya at
Kuala Lumpur

Between

Pappa d/o Thoppan

Plaintiff

And

Saminathan s/o Vanathan Defendant)

CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA
ONG HOCK SUM, JUDGE, FEDERAL COURT,
MALAYSIA
WAN SULEIMAN, JUDGE, FEDERAL COURT,
MALAYSIA

20

IN OPEN COURT

THIS 12TH DAY OF JULY, 1976

O R D E R

UPON MOTION preferred unto Court this day
by Encik Dulip Singh of Counsel for the
Respondent in the presence of Cik U. Ratnasingam 30
of Counsel for the Appellant AND UPON READING
the Notice of Motion dated 22nd day of June,
1976 and the Affidavit of Saminathan s/o Vanathan
affirmed on the 11th day of June, 1976 and filed

herein in support of the said Motion AND UPON HEARING Counsel as aforesaid IT IS ORDERED that final leave be and is hereby granted to the Respondent to appeal to His Majesty the Yang di-Pertuan Agong against the Order of the Federal Court dated the 3rd day of September, 1975 AND IT IS ORDERED that execution hereof be stayed until the Appeal is heard and disposed of.

10 GIVEN under my hand and the Seal of the Court this 12th day of July, 1976.

Sd.

CHIEF REGISTRAR
FEDERAL COURT, MALAYSIA

This Order is filed by Messrs. Dulip Singh & Co., Solicitors for the Respondent abovenamed whose address for service is 5th Floor, Bangunan Safety Insuran, Jalan Melayu, Kuala Lumpur.

In the
Federal Court

No.24
Order granting
Final Leave to
Appeal to His
Majesty the
Yang di-Pertuan
Agong

12th July 1976
(continued)

EXHIBITS

AB(i)
Extract from
Mukim Register
No. 5089 for
Lots Nos. 5406
and 10600
15th July 1965

EXHIBITS
AB (i)

EXTRACT FROM MUKIM REGISTER No. 5289 FOR LOTS
NOS. 5406 and 10600

EXTRACT FROM THE MUKIM REGISTER
Schedule IX - Section 67 of the Land Code (Cap. 138)

MUKIM OF TANJONG KARANG ENTRY NO. 5089 GOVERNMENT OF SELANGOR

No. of the entry	Name of proprietor	Area	Express conditions	Remarks	Annual rent
5089	Lot 5406	A. R. P. 1 0 00	1. The land hereby alienated shall not be subdivided provided in Section 50 or Section 101 of the Land Code	Lot 5406	5 00
Survey No. Lot 5406	Lot 10600	2 3 35	nor shall Lot No. 10600 (Bendang) be held by separate entry in the Mukim Register from Lot No. 5406 illegible	Lot 10600 Office fees: \$3.00 Rt: 6356 47	3 00
Lot 10600		<u>Boundaries</u>		26.4 illegible illegible Office fees: \$2.00 Rt: 97719 illegible	
No. and nature of former document of title	Palaniandi s/o Muruan				
Lot 5406: A.A.79/57	illegible Lot 5406: Lot 10600	5388:			
Lot 10600: A.A.814/50	"	5434;			
	"	5407:			
Name of kampong or place	"	5405: Distributory No.4			
Sungai Burong			2. No plant or tree of the (ILLEGIBLE) or any other rubber-producing plants or trees shall be planted or cultivated or permitted to grow on the land hereby alienated.	Entry registered this 15th day of July 1965 Sd. Collector	
			3. (i) Lot No. 10600 (Bendang) hereby alienated shall be used solely for the cultivation of wet rice	Extract issued this 2nd day of December 1966 Journal No. 21268	

No. of entry	Name of proprietor	Area	Express conditions	Remarks	Annual rent
			3.(ii) Lot No. 5406 hereby alienated shall be used solely illegible for one or more dwelling houses and for the cultivation of trees of economic value other than rubber trees		
			Restrictions in interest		
			The land hereby alienated shall not be transferred or leased unless such transfer or lease is to a single individual person and relates in the whole of both Lot No. 10600 and Lot No. 5406		
			Transfer shall mean and include a transfer between parties or by operation of Law or transmission by operation of Law.		
			The land hereby alienated shall not be transferred or charged or leased without the written consent of the Ruler in Council		

EXHIBITS

AB(i)
 Extract from
 Mukim Register
 No. 5089 for
 Lots Nos. 5406
 and 10600
 15th July 1965
 (continued)

I hereby certify that the above is a true copy of the now existing entry in the mukim register.

Land Office: Kuala Selangor

Date: 15th July, 1965

Sd.
 Collector of Land Revenue
 District of Kuala Selangor
 State of Selangor

EXTRACT FROM THE MUKIM REGISTER

[Schedule IX.—Section 67 of the Land Code (Cap. 139)]

(Land Code 10)

AB (i) Extract from Mukim Register No. 5089 for Lots No. 5406 and 10600
PLAN OF THE LAND

Mukim... Tanjong Karang ... District... Kuala Selangor ...

Plan... 20790 Sheet 43-C ... Scale Two Chains to an inch

Mukim of Tanjong Karang

Entry No. 5089

Government of Selangor

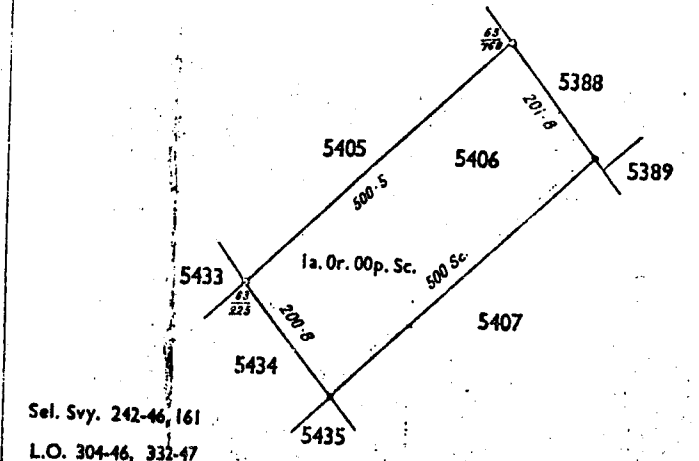
B1
184
190

Exhibits

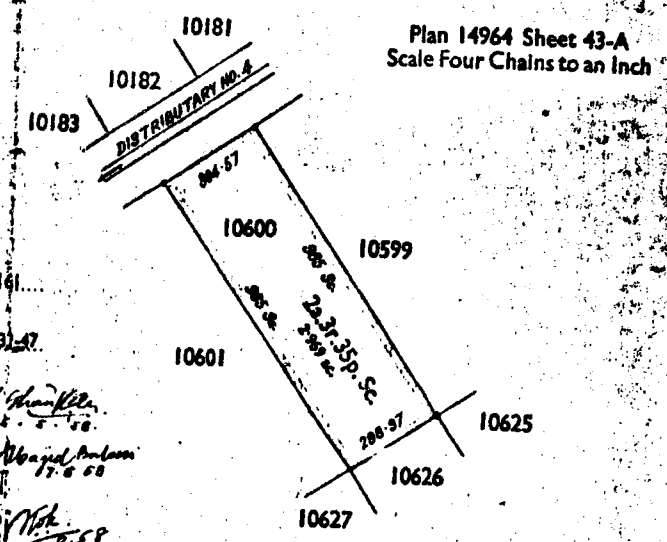
AB(1)
Extract from
Mukim Register
No. 5089 for
Lots Nos 5406
and 10600

15th July 1965

No. of the entry.	Name of proprietor.	Area.			Express conditions.	Remarks.	Annual rent.			
		A.	B.	P.			s.	c.		
5089	Lot 5406 Lot 10600	1.	0.	00.	The land hereby alienated shall not be subdivided provided in Section 40 or Section 101 of the Land Code nor shall Lot No. 10600 (Bendam) be held by a separate title in the Mukim Register from Lot No. 5406.	Lot 5406 Lot 10600	5	00		
		2.	3.	35.			3	00		
Survey No.	Palaniandi % Muruan	Boundaries.			No plant or tree of the species listed in Schedule 1 of any other rubber planting plants or trees shall be planted or collected or permitted to grow on the land hereby alienated.	Office fees: f 3.00 RT: 6356 47 26-4-57 Office fees: 12.00 RT: 97719 0 32-4-57				
Lot 5406 Lot 10600		of 5406: Lot 10600:					Entry registered this 15th day of Jul 1965			
and nature of former document of title.		i.e. 5388: 10599						Extract issued this 22nd day of Dec 1964 Journal No. 217/H		
of 5406: A.A. 79/57 of 10600: A.A. 811/50		ii. 5434: 10601								
Name of kampung or place.	5407: 10626			Restrictions in interest The land hereby alienated shall not be transferred or leased unless such transfer or lease is to a single individual person and relates to the whole of both Lot No. 10600 and Lot No. 5406. Transfer shall mean and include a transfer between parties or by operation of law or transmission by operation of law.						
Sungai Burong	5405: Distributary No. 14									



Sel. Svy. 242-46, 161
L.O. 304-46, 332-47



Plan 14964 Sheet 43-A
Scale Four Chains to an Inch

Svy. 241-48, 161
L. O. 188-47, 332-47

Drawn by M. S. S. S.
Examined by Abang Anwar
Plan Approved M. S. S. S.

I hereby certify that the above is a true copy of the now existing entries in the mukim register.

Land Office Kuala Selangor

Date 15th July, 1965

Bahayutay
Collector of Land Revenue
District of Kuala Selangor
State of Selangor
(P.T.O.)

EXHIBITS

AB (ii)

POWER OF ATTORNEY, PALANIANDY
TO SAMINATHAN

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT I,
Palaniandi s/o Murugan (N.R.C. No. SL 701762 K.S.)
of Block "M" Sungei Burong, Tanjong Karang,
Kuala Selangor do hereby nominate and appoint
10 Saminathan s/o Vanathan (N.R.C. No.K.Sel.(SL)
005819)of Block "M", Sungei Burong, Tanjong
Karang, Kuala Selangor to be my attorney for me
and in my name or otherwise to do all or any of the
following things within the Federation of Malaya.

1. To demand, sue for, recover and receive
by all lawful ways and means from all and every
person whom it may concern all moneys, rents,
debts, tributes, dues, goods, and property
20 whatsoever which now are or may hereafter become
due, owing, payable or belonging to me upon or
by virtue of my judgment, decree, bill bond
promissory note, account or upon any instrument
relating thereto: and upon receipt and recovery
of the same to grant sufficient acquittances
releases and discharges and in case of non-payment
or non-delivery to distrain and to take such
action in law or other proceeding as may be
necessary for the recovery of the same.

2. To state, settle adjust, compound and
30 compromise all accounts, claims, demands and
differences between myself and any other person
or persons and if advisable to refer any such
matters to arbitration and for that purpose to
sign, seal and execute any agreement of reference
or any instrument necessary.

3. To pay and settle all my lawful debts
and obtain full and effectual receipts and
releases for the same.

4. To appear before any Judge, Magistrate
40 or any Public Officer in connection with any of
the matters herein contained. To appeal from
any order or judgment given against me.

5. To exercise any of the powers vested in me

EXHIBITS

AB (ii)

Power of
Attorney,
Palaniandy to
Saminathan

11th May
1957

EXHIBITS

AB (ii)
Power of
Attorney,
Palaniandy
to Saminathan

11th May
1957

(continued)

by virtue of any Charge or Bill of Sale to lodge any caveats and to withdraw the same and to apply for orders to sell, to transfer any such Charges or Bills of Sale, and to sign and execute any discharges or release in connection with such Charges or Bills of Sale. To sign and execute any charges of which I am the Chargee or one of the Chargees.

6. To let, lease or sub-lease any of my lands and houses upon such terms as my said attorney shall think advisable to accept the surrender of any lease or sub-lease and for that purpose to sign all necessary lease agreements surrenders or other instruments. 10

7. To appeal in any Court or Courts and to procure Letters of Administration with or without the will annexed of the estate and effects of any deceased debtor or debtors and to execute such bond, covenant or other obligation as may be required upon the grant of such Letters of Administration. 20

8. To manage and conduct my business in Sawah Land a/a S14/50 Sg. Burong and Kampong Land Lot No.5406 and to do and perform all acts or things in the execution of the said business as fully completely as I might do were I personally present.

9. To sell to any person all or any of my lands, leases and charges and movable property whether now belonging to me or which shall hereafter belong to me and for that purpose to sign and execute all transfers and other instruments necessary. 30

10. To charge or mortgage any of my said lands and movable property and for that purpose to sign all necessary charges and other documents.

11. To borrow such sums of money and upon such terms as my said attorney shall deem expedient upon my personal security or the security of any of my property movable and immovable in the Federation of Malaya, and for such purpose to give and execute such mortgages, charges bills of sale, pledges promissory notes, bills of exchange, guarantee or other securities, and with such powers and provisions as my thought proper. 40

12. To draw, accept, endorse, give or negotiate or concur with others in drawing accepting, endorsing, giving or negotiating cheques, bills, notes, or other securities for the goods purchased or for the purpose of borrowing or raising money or otherwise.

EXHIBITS

AB (ii)
Power of
Attorney,
Palaniandy
to Saminathan

13. To surrender any of my leases for title deeds in exchange for others or otherwise as my said Attorney shall think advisable.

11th May
1957

(continued)

10

14. To enter into possession of all my lands and houses and other property, to give notice to quit, to increase the rents of any of my lands and houses; to take down, rebuild alter, improve or repair all or any of such houses or building as occasion may require and to do every other act and thing for the improvement of the same.

20

15. To purchase land, mines, houses and movable property and for that purpose to sign all necessary agreements transfers and other documents.

16. To apply for lands for building mining, agricultural or other purpose and to accept such titles as may be advisable.

30

17. To accept the lease or sub-lease of any land whether for agricultural, mining or other purpose from any person or persons upon such terms as my said attorney may think fit and for that purpose to sign all necessary writings and other instruments relating thereto and to surrender same for cancellation, if advisable.

18. To apply for and to obtain rubber coupons, licences, certificates of standard production or other documents, to transfer the same and to do and perform all such acts deeds and things as may be necessary under The Rubber Regulation Enactment 1934 or any other Enactment for the time being in force or of any rules made thereunder.

40

19. To invest any money upon mortgages or charges of lands, houses, stock-trade, goods and chattels, promissory notes or other securities and from time to time to vary such investments or any of them for others of the same or a like nature as may said attorney may think fit.

20. To make any affidavit or proof of any

EXHIBITS

AB (ii)
Power of
Attorney,
Palaniandy to
Saminathan
11th May
1957
(continued)

debt or debts due or claimed to be due to me in any proceedings taken or hereafter to be taken by or against any person firm or Company under the Bankruptcy Enactment or the Companies Enactment or any other Enactment or Ordinance for the time being in force, to attend to all meetings of creditors under any such proceedings and to propose second or vote for or against any resolution at any such meeting and generally to act for me in all proceedings whether by way of bankruptcy or liquidation by arrangement or by composition which may be taken against any debtors of mine as my said attorney shall think fit. 10

21. To place money to my credit at any Bank on current account deposit in my name and from time to time to withdraw all money which is now or hereafter may be at any Bank or to overdraw to such extent as my said attorney may think fit and to draw sign and endorse cheques on any Bank or any receipt or document necessary for this purpose. 20

22. To concur in doing any of the acts and things herein contained with any person or persons interested in the premises.

23. To substitute and appoint from time to time one or more attorney or attorneys with the same or more limited powers and such substitute or substitutes at pleasure to remove and another or others to appoint. 30

And generally to do all acts and things and sign and execute all such documents as may be necessary for effectuating any of the purposes aforesaid as fully and completely as I myself could do if personally present.

And I hereby agree to ratify and confirm all and whatsoever my said attorney or his substitutes shall lawfully do in the premises by virtue of these presents.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 11th day of May in the Year One thousand nine hundred and fifty-seven (1957) 40

SIGNED SEALED AND DELIVERED)
by the said Palaniandi s/o }
Murugan in the presence of:) R.T.P. of
Palaniandi s/o
Murugan

10 I, Abdul Ghani bin Mohd Nor, Magistrate of the Federation of Malaya, Kuala Selangor hereby certify that the thumb-mark of the donor above-named was affixed in my presence on this 11th day of May, 1957 and is according to information given to me by trustworthy and respectable persons namely Mr. K V.Munusamy (SL)707880 K.S.) of Sungei Burong, Tanjong Karang and Mr. Vesayan s/o Damodaran (SL.684329 K.S.) Sg.Burong of Tanjong Karang, which information I verily believe the true thumb mark of Palaniandi s/o Murugan who has acknowledged to me that he is of full age and that he has voluntarily executed this instrument.

Witness my hand.

SEAL. Sd: illegible
Magistrate
Kuala Selangor

Sd: 1. K.V.Munusamy
(In Tamil)
2. Vesayan s/o
Damodaran
(In Tamil)

Registered No.500/57

20 True Copy deposited in the Supreme Court
Kuala Lumpur on 16.5.57
Compared with original

illegible
Clerk. Sd: Yap Yeok Siew
Senior Asst. Registrar,
Supreme Court,
Kuala Lumpur.

30 Registered No.500/57
True Copy deposited in the
High Court Kuala Lumpur on
16-5-57 Compared with original
Sd: Yap Yeok Siew
Clerk Senior Asst. Registrar
High Court, Kuala
Lumpur.

CERTIFIED TRUE COPY

Sd.

1/12/66

EXAMINED BY
Sd.
Clerk, High Court, Kuala Lumpur

EXHIBITS

AB (ii)
Power of
Attorney,
Palaniandy
to Saminathan

11th May
1957

(continued)

EXHIBITS

AB(iii)
Report to
Sekinchan
Police Station
by Pappah d/o
Thoppan
4th December
1970

EXHIBITS

AB (iii)

REPORT TO SEKINCHAN POLICE
STATION BY PAPPAH d/o THOPPAN

A.....MUKA.....
POLIS DI-RAJA MALAYSIA

SALINAN REPORT

No. Report 611/70 Rumah Pasong Sekinchan
Pada 11.20 pagi 4.12.1970 Fasal
Aduan Pappah d/o Thoppan K/P No. SL.676100/ 10
4072452 Sangsa Indian Umor 69 tabun
Kerja Jaga Rumah Dudok di Sungai Tinggi Estate,
Batang Berjuntai

R E P O R T

Report No. Police Station - Sekinchan
Date & Time Name:- Pappah d/o Thoppan
i/c No.:- 4072452 Sex:- Female Race:- Indian
Language:- Tamil Address:- c/o Muniandy s/o
Manickam, Sungei
Tinggi Group Hospital, 20
Batang Berjuntai.

I will have to report that I bought lots Nos.
5406 - Dwelling and 10600 - Padi under EMR 5089
at Sungei Burong in the Mukim of Tanjong
Karang from one Saminathan s/o Vanathan. These
Lots were originally allotted by the State to
One Palaniandi s/o Muruan who sold them to
Saminathan s/o Vanathan by executing a Power of
Attorney, and Saminathan s/o Vanathan in turn
sold the lots to me for \$7500/- and executed a 30
Power of Attorney in my favour. Under the
presents made to me under the Power of Attorney
executed by Saminathan s/o Vanathan, I after
going through the necessary official formalities
had the lots transferred to me by the Pemungut
Hasil Tanah, Kuala Selangor on 9th July, 1970.
From the time the Power of Attorney was executed
in my favour by the said Saminathan s/o Vanathan
and completing the payment of the cost of the
lots in the sum of \$7500/- he the said Saminathan 40
s/o Vanathan relinquished his rights to the said
lots in my favour by executing an instrument
dated the 25th January, 1968 when I took over
the lots under my ownership, control and manage-
ment. I appointed one Kobale s/o Kovindan of
Sungei Burong to take charge of the lots and to
plant padi on behalf, and, I also engaged one

EXHIBITS

AB(iii)
Report to
Sekinchan
Police
Station by
Pappah d/o
Thoppan

4th December
1970

(continued)

10 Renganathan also of Sungei Burong to assist
Kobale s/o Kovindan. During March, 1970 the
said Saminathan s/o Vanathan without my knowledge
whatsoever put up a dwelling house on the said
lot No.5406 and obstructed the said Kobale and
Renganathan from planting padi on the said lot
No.5406 who were also warned by the Saminathan
not enter the lots in future and that if they
did enter the lots they would be forcibly
ejected, and during September 1970 after the
last harvesting of padi I instructed the said
Kobale and Renganathan to plant padi on lot
No.5406, who were again ordered out of the
lots by the said Saminathan.

20 I have reported the above matter of the trespass
into my lot by the said Saminathan s/o Vanathan
of the Penghulu at Tanjong Karang, the Indian
Sidang at Sungei Burong and the Police at
Sekinchan, to date the reports have had no
effect and I am still unable to plant padi or
put up an house inmy said lot No.5406.

30 Finally I approached the Tuan Pemungut Hasil
Tanah, Kuala Selangor on this matter of trespass
and illegal occupation of my lot No.5406 and
he advised me to report the matter and to
institute appropriate Court action for the said
Saminathan s/o Vanathan to be dealt with
according to law for trespass and illegal
occupation of my said lot, hence I make this
report as a preliminary measure to institute
appropriate Court action.

Explained in Tamil RTP of Pappah d/o
Thoppan

Interpreter Court
Kuala Selangor.

SALINAN YANG DI SAHKAN OLEH.

Sd. Zakaria bin Chek

(ZAKARIA BIN CHEK) PPP, 23/2/73
Ketua Polis Daorah
Kuala Selangor.

EXHIBITS

AB (iv)
Letter,
Pappa to
Saminathan

20th April
1970

EXHIBITS

AB (iv)
LETTER, PAPPA TO SAMINATHAN

Pappa d/o Thoppan,
c/o Munusamy s/o Manikam,
Kampong Bahru Estate,
Kuala Selangor.

20th April, 1970

To:-

Saminathan s/o Vanathan
Parit 4 - Sungei Burong,
Sekinchan P.O., Selangor

10

Dear Sir,

Subject :- Your sale of Lots under
A/As (Approved Applications)
814/50 and 79/57 B vide your
Power Attorney (Irrevocable)
issued to me by you.

1. I write to draw your attention to the above matter. 20
2. In accordance with the agreement executed by us (i.e. yourself & myself) the total amount stipulated therein (the agreement) was finally settled by me vide your receipt dated 25th January, 1968.
3. Until the date of the settlement of the stipulated amount my husband and I had to put up with your various demands besides those stipulated in the agreement, your aggressive and bullying ways to bilk us of sums of money. 30
4. Now it has been brought to our notice that you have been unnecessarily interfering with Kobale s/o Kowindan who is the lessee of the padi lot under the above-mentioned A/As and were obstructing him from cultivating the lot by saying that the lot was not mine, and, that you have also dumped some building materials in the lot for the purpose of erecting a house for your occupation. These you had no right to do and what you have done are illegal. 40

5. WARNING - Take warning that if you do not with immediate effect remove the materials from my lot and stop interfering with the lessees - Kobale, I will have to seek the assistance of the POLICE to whom I am REPORTING and have the matter LEGALLY dealt with, with the support of the numerous witnesses and evidence at my disposal. It will be my unpleasant duty to carry out my intentions should you fail to have matters cleared by the week ending 25th April, 1970.

EXHIBITS
AB (iv)
Letter,
Pappa to
Saminathan
20th April
1970
(continued)

Yours faithfully,

R.T.P. of Pappa d/o Thoppan

c.c.:-

1. Kobale s/o Kowindan
2. O.C.Police S'kinchan
3. District Officer K.Selangor
4. O.C.P.D. K.Sel.

EXHIBITS

D.11

TRANSFER, LOTS 5406 and 10600
BY PAPPAH

National Land Code
Form 14A
(Sections 215, 217, 218)

TRANSFER OF LAND, SHARE OR LEASE

(Stamps to be affixed - or payment of duty certified - in this space)

Memorial of registration made in the register Document/s of Title scheduled below, with effect from 12.10 p.m. on the 9th day of July 1970

File of -
.....
Volume CXVIII
Folio 73
Presentation No.-
14721

L.S. Collector Sd:
District Kuala Lumpur

EXHIBITS
D.11
Transfer,
Lots 5406
and 10600
by Pappah
9th July
1970

EXHIBITS

D.11
Transfer,
Lots 5406
and 10600
by Pappah
9th July
1970
(continued)

I/We Pappah d/o Thoppan, Identity Card No. 4072452, holder of Power Attorney 739/62 given by Saminathan s/o Vanathan, holder of Power Attorney 500/57 given by Palaniandi s/o Murugan residing at New Village Estate c/o Riverside Estate, Kuala Selangor

*proprietor of the *land/undivided share in land-
*lessee/sub-lessee under the *lease/sub-lease -
described in the schedule below;

*(a) In consideration of the sum of 10
dollars \$3,000/- (Dollars Three
thousand only)

the receipt of which sum I/we hereby
acknowledge:

*(b) In consideration of -

The Approval to the Transfer has
been approved vide Fail P.T.K.S.
11/4/67

*(c) For no consideration;

Hereby transfer to the transferee named below, 20
all such title or interest as is vested in me.

Dated this 9th day of July 1970

Right Thumb Print
of Pappah d/o Thoppan

Signature (or other form of
execution) by or on behalf
of transferor.

I, Abdul Razak bin Haji Mohd. Zain, Assistant
Collector of Land Revenue, Kuala Selangor
hereby testify that the above thumb print was 30
affixed in my presence this 9th day of July 1970
and is

*(b) according to information given to me
by the following trustworthy and
reliable person, namely -
Mr. K.V.Munusamy, P.J.K., Identity
Card No.7983814, Parit 4, Sungei
Burong Tanjong Karang

which information I verily believe, the true
thumb print of Pappah d/o Thoppan who has 40

acknowledged to me

- (i) that she is of full age,
- (ii) that she has voluntarily executed this instrument, and
- (iii) that she understands the contents and effect thereof.

As witness my hand this 9th day of July 1970

EXHIBITS

D.11
Transfer,
Lots 5406
and 10600
by Pappah
9th July
1970

(continued)

10

Signed: K.V.Munusamy Sd: Abdul Razak bin Haji
Mohd. Zain
Seal of Collector of
Land Revenue, Kuala
Selangor.

I, Pappah d/o Thoppan residing at New Village Estate, c/o Riverside Estate, Kuala Selangor accept this transfer.

20

Right Thumb Print of
Pappah d/o Thoppan
Signature (or other form of
execution) by or on behalf
of transferee

I, Abdul Razak bin Haji Mohd. Zain, Assistant Collector of Land Revenue, Kuala Selangor hereby testify that the above thumb print was affixed in my presence this 9th day of July (sic)1978 and is

30

*(b) according to information given to me by the following trustworthy and reliable person, namely -
Mr. K.V.Munusamy, P.J.K. Parit 4,
Sungei Burong, Tanjong Karang
which information I verily believe
the true thumb print of -
Pappah d/o Thoppan

who has acknowledged to me

- (i) that she is of full age;
- (ii) that she has voluntarily executed this instrument and

EXHIBITS

D.11
Transfer,
Lots 5406
and 10600
by Pappah
9th July
1970
(continued)

(iii) that she understands the contents
and effect or thereof.

As witness my hand this 9th day of July 1970.

Signed: K.V.Munusamy Sd: Abdul Razak bin Haji
Mohd. Zain
Seal of Collector of
Land Revenue, Kuala
Selangor.

Where the address of the person claiming
under this instrument is outside the Federation, 10
an address within the Federation for the
service of notices is to be added in this
space.

.....
.....

SCHEDULE OF LAND *AND INTEREST

*Town/ Village/ Mukim	*Lot/ Parcel/ L.O.No.	Description and No.of Title	Share of land (if any)	Regist- ered No.of *lease/ sub- lease (if any)	Regist- ered No.of charge (if any)
(1)	(2)	(3)	(4)	(5)	(6)
Tanjong Karang	5406 & 10600	EMR 5089	Whole	-	-

EXHIBITS

D.12

LETTER, SEGARAM & CO. TO
SAMINATHAN

EXHIBITS

D.12

Letter,
Segaram &
Co. to
Saminathan

/MS/70

6th March, 1970

6th March
1970

Mr. Saminathan,
Parit 4,
Sungei Burong,
Sekinchan,
TANJONG KARANG.

A.R. REGISTERED

10 Dear Sir,

Your letter dated 17th day of February, 1970 addressed to our client Gopal also known as Kobal s/o Kovindan has been handed down to us to reply.

20 You have signed an Agreement with our Client to allow our client to cultivate the land held on Grant No: 5089 in the Locality of Sungei Burong in the Mukim of Tanjong Karang, in the District of Kuala Selangor until the 30th day of April, 1972. Hence you cannot cancel the said Agreement until the 30th of April, 1972. Further we are informed that you are not the Owner of the said land.

30 Our client has informed us that you or your Agents or Servants have been giving trouble to our client and his workmen when every they entered the said land to cultivate. Should you persist in doing so, our client might consider either reporting the matter to the police or institute legal proceedings in the High Court.

ms/mk Yours faithfully,

c.c. To:-

Mr. Gopal,
Parit 4, Sungei Burong,
Sekinchan,
TANJONG KARANG.

EXHIBITS

P.1

Power of Attorney, Palaniandi to Saminathan

11th May 1957

EXHIBITS

P.1

POWER OF ATTORNEY, PALANIANDI TO SAMINATHAN

KNOW ALL MEN BY THESE PRESENTS THAT I, Palaniandi s/o Murugan (N.R.C. No. SL.701762 K.S.) of Block "M" Sungei Burong, Tanjong Karang, Kuala Selangor do hereby nominate and appoint Saminathan s/o Vanathan (N.R.C.No.K. Sel. (SL) 005819) of Block "M", Sungei Burong, Tanjong Karang, Kuala Selangor to be my attorney for me and in my name or otherwise to do all any of the following things within the Federation of Malaya. 10

1. To demand, sue for, recover and receive by all lawful ways and means from all and every person whom it may concern all moneys, rents, debts, tributes, dues, goods, and property whatsoever which now are or may hereafter become due, owing, payable or belonging to me upon or by virtue of my judgment, decree, bill bond promissory notes, account or upon any instrument relating thereto: and upon receipt and recovery of the same to grant sufficient acquittances releases and discharges and in case of non-payment or non-delivery to distrain and to take such action in law or other proceeding as may be necessary for the recovery of the same. 20

2. To state, settle adjust, compound and compromise all accounts, claims, demands and differences between myself and any other person or persons and if advisable to refer any such matters to arbitration and for that purpose to sign, seal and execute any agreement of reference or any instrument necessary. 30

3. To pay and settle all my lawful debts and obtain full and effectual receipts and releases for the same.

4. To appear before any Judge, Magistrate or any Public Officer in connection with any of the matters herein contained. To appeal from any order or judgment given against me. 40

5. To exercise any of the powers vested in me by virtue of any Charge or Bill of Sale to lodge any caveats and to withdraw the same and to apply for orders to sell, to transfer any

such Charges or Bills of Sale, and to sign and execute any discharges or release in connection with such Charges or Bills of Sale. To sign and execute any charges of which I am the Chargee or one of the Chargees.

EXHIBITS

P.1
Power of
Attorney,
Palaniandi
to
Saminathan
11th May
1957

(continued)

10 6. To let, lease or sub-lease any of my lands and houses upon such terms as my said attorney shall think advisable to accept the surrender of any lease or sub-lease and for that purpose to sign all necessary leases agreements surrender or other instrument.

7. To appeal in any Court or Courts and to procure Letters of Administration with or without the will annexed of the estate and effects of any deceased debtor or debtors and to execute such bond, covenant or other obligation as may be required upon the grant of such Letters of Administration.

20 8. To manage and conduct my business in Sawah Land a/a 814/50 Sg. Burong and Kampong Land Lot No.5406 and to do and perform all acts or things in the execution of the said business as fully completely as I might do were I personally presents.

30 9. To sell to any person all or any of my lands, leases and charges and movable property whether now belonging to me or which shall hereafter belong to me and for that purpose to sign and execute all transfers and other instruments necessary.

10. To charge or mortgage any of my said lands and movable property and for that purpose to sign all necessary charges and other documents.

40 11. To borrow such sums of money and upon such terms as my said attorney shall deem expedient upon my personal security or the security of any of my property movable and immovable in the Federation of Malaya, and for such purpose to give and execute such mortgages, charges bills of sale, pledges promissory notes, Bills of exchange, guarantee or other securities, and with such powers and provisions as my thought proper.

12. To draw, accept, endorse, give or negotiate or concur with others in drawing accepting, endorsing, giving or negotiating cheques, bills notes, or other securities for the

EXHIBITS

P.1

Power of
Attorney,
Palaniandi to
Saminathan

11th May 1957

(continued)

goods purchased or for the purpose of
borrowing or raising money or otherwise.

13. To surrender any of my lease or
title deeds in exchange for others or otherwise
as my said Attorney shall think advisable.

14. To enter into possession of all my
lands and houses and other property, to give
notice to quit, to increase the rents of any
of my lards and houses; to take down, rebuild
alter, improve or repair all or any of such
houses or building as occasion may require and
to do every other act and thing for the
improvement of the same.

10

15. To purchase land, mines, house and
movable property and for that purpose to sign
all necessary agreements transfer and other
documents.

16. To apply for lands for building,
mining, agricultural or other purpose and to
accept such titles as may be advisable.

20

17. To accept the lease or sub-lease of
any land whether for agricultural, mining or
other purpose from any person or persons upon
such terms as my said attorney may think fit
and for that purpose to sign all necessary
writings and other instruments relating thereto
and to surrender same for cancellation, if
advisable.

18. To apply for and to obtain rubber
coupons, licences, certificates of standard
production or other documents, to transfer
the same and to do and perform all such acts
deeds and things as may be necessary under
The Rubber Regulation Enactment 1934 or any
other Enactment for the time being in force or
of any rules made thereunder.

30

19. To invest an money upon mortgages or
charges of lands, houses, stock-trade, goods
and chattels, promissory notes or other
securities and from time to time to vary such
investments or any of them for others of the
same or a like nature as my said attorney
may think fit.

(sic)

40

20. To make any affidavit or proof of any
debt or debts due or claimed to be due to me
in any proceedings taken or hereafter to be
taken by or against any person firm or Company

under the Bankruptcy Enactment or the Companies Enactment or any other Enactment or Ordinance for the time being in force, to attend to all meetings of creditors under any such proceedings and to propose second or vote for or against any resolution at any such meeting and generally to act for me in all proceedings whether by way of bankruptcy or liquidation by arrangement or by composition which may be taken against any debtors of mine as my said attorney shall think fit.

EXHIBITS

P.1
Power of
Attorney,
Palaniandi to
Saminathan

11th May
1957

(continued)

10

21. To place money to my credit at any Bank on current account deposit in my name and from time to time to withdraw all money which is now or hereafter may be at any Bank or to overdraw to such extent as my said attorney may think fit and to draw sign and endorse cheques on any Bank or any receipt or document necessary for this purpose.

20

22. To concur in doing any of the acts and things herein contained with any person or persons interested in the premises.

23. To substitute and appoint from time to time one or more attorney or attorneys with the same or more limited powers and such substitute or substitutes at pleasure to remove and another or others to appoint.

30

And generally to do all acts and things and sign and execute all such documents as may be necessary for effectuating any of the purposes aforesaid as fully and completely as I myself could do if personally present.

And I hereby agree to ratify and confirm all and whatsoever my said attorney or his substitutes shall lawfully do in the premises by virtue of these presents.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 11th day of May in the Year One thousand nine hundred and fifty-seven (1957)

40

SIGNED SEALED AND DELIVERED)
by the said Palaniandi s/o)
Murugan in the presenceof)

R.T.P. of
Palaniandi s/o Murugan

SEAL. Sd:
Magistrate
Kuala Selangor.

EXHIBITS

P.1
Power of
Attorney,
Palaniandi to
Saminathan
11th May 1957
(continued)

I, Abdul Ghani bin Mohd Nor, Magistrate of the Federation of Malaya, Kuala Selangor hereby certify that the thumb-mark of the donor above-named was affixed in my presence on this 11th day of May, 1957 and is according to information given to me by trustworthy and respectable persons namely Mr.K.V.Munusamy (SL)707380 K.S.) of Sungei Burong, Tanjong Karang and Mr.Vesayan s/o Damodaran (SL.684339 K.S.) Sg. Burong of Tanjong Karang, which information I verily believe the true thumb mark of Palaniandi s/o Murugan who has acknowledged to me that he is of full age and that he has voluntarily executed this instrument.

10

Witness my hand.

SEAL. Sd: ?
Magistrate,
Kuala Selangor.

Sd: 1. K.V.Munusamy
(In Tamil)

2. Vesayan s/o
Damodaran
(In Tamil)

20

Registered No. 500/57

True Copy deposited in the Supreme Court
Kuala Lumpur on 16.5.57
Compared with original

?
Clerk. Sd: Yap Yeok Siew
Senior Asst. Registrar,
Supreme Court,
Kuala Lumpur.

EXHIBITS

P.1

POWER OF ATTORNEY,
SAMINATHAN TO PAPA

9467

I R R E V O C A B L E
JILID v FOLIO 55
POWER OF ATTORNEY

EXHIBITS

P.1

Power of
Attorney,
Saminathan
to Papa

9th July
1962

10 KNOW ALL MEN BY THESE PRESENTS THAT I, SAMINATHAN
son of VANATHAN holder of I.C.No.K.Sel. (SL)
005819 of Block 'M' Sungei Burong, Sekinchang,
Kuala Selangor do hereby nominate and appoint
PAPA daughter of THOPPAN of Sungei Selangor
Estate, Buki Rotan Post, Kuala Selangor
(I.C.SL.676100). to be my attorney for me and
in my name or otherwise to do all or any of
the following things within the Federation of
Malaya and in consideration of my love and
affection to the Grantee and the sum of \$10/-
now received by me I declare this Power to be
irrevocable.

20 1. To demand, sue for, recover and receive
by all lawful ways and means from all and every
person whom it may concern all moneys, rents,
debts, tributes, dues, goods and property
whatsoever which now are or may hereafter
become due, owing, payable or belonging to me
upon or by virtue of any judgment, decree,
bill, bond, promissory note, account or upon
any instrument relating thereto: and upon
30 receipt and recovery of the same to grant
sufficient acquittances, releases and discharges
and in case of non-payment or non-delivery to
distrain and to take such action in law or
other proceedings as may be necessary for the
recovery of the same.

40 2. To state, settle, adjust, compound and
compromise all accounts, claims, demands and
difference between myself and any other person
or persons and if advisable to refer any such
matters to arbitration and for that purpose to
sign, seal and execute any agreement of
reference or any instrument necessary.

3. To pay and settle all my lawful debts
and obtain full and effectual receipts and
releases for the same.

EXHIBITS

P.1
Power of
Attorney,
Saminathan
to Papa

9th July 1962
(continued)

4. To appear before any Judge, Magistrate or any Public Officer in connection with any of the matters herein contained. To appeal from any order or judgment given against me.

5. To exercise any of the powers vested in me by virtue of any Charge or Bill of Sale, to lodge any caveats and to withdraw the same and to apply for orders to sell; to transfer any such Charges or Bills of Sale, and to sign and execute any discharges or releases in connection with such Charges or Bills of Sale. To sign and execute any charges of which I am the Chargee or one of the Chargees. 10

6. To let, lease or sub-lease any of my lands and houses upon such terms as my said Attorney shall think advisable to accept the surrender of any lease or sub-lease and for that purpose to sign all necessary leases agreements surrenders or other instruments. 20

7. To appear in any Court or Courts and to procure Letters of Administration with or without the will annexed of the estate and effects of any deceased debtor or debtors and to execute such bond, covenant or other obligation as may be required upon the grant of such Letters of Administration.

8. To manage and conduct my business in Cocomanut and Padi Planting at Sekinchang and to do and perform all acts or things in the execution of the said business as fully and completely as I might do were I personally present. 30

9. To sell to any person all or any of my lands, leases and charges and movable property whether now belonging to me or which shall hereafter belong to me and for that purpose to sign and execute all transfers and other instruments necessary.

10. To charge or mortgage any of my said lands and movable property and for that purpose to sign all necessary charges and other documents. 40

11. To borrow such sums of money and upon such terms as my said Attorney shall deem expedient upon my personal security or the security of any of my property movable and immovable in and for such purpose to give and execute such

mortgages, charges, bills of sale, pledges, promissory notes, bills of exchange, guarantee or other of securities, and with such powers and provisions as may be thought proper.

EXHIBITS

P.1
Power of
Attorney,
Saminathan
to Papa

9th July 1962

(continued)

10 12. To draw, accept, endorse, give or negotiate or concur with others in drawing accepting, endorsing, giving or negotiating cheques, bills, notes, or other securities for the goods purchased or for the purpose of borrowing or raising money or otherwise.

13. To surrender any of my leases or title deeds in exchange for others or otherwise as my said Attorney shall think advisable.

20 14. To enter into possession of all my lands and houses and other property, to give notices to quit, to increase the rents of any of my lands and houses, to take down, rebuild, alter, improve or repair all or any of such houses or buildings as occasion may require and to do every other act and thing for the improvement of the same.

15. To purchase land, mines, houses and movable property and for that purpose to sign all necessary agreements, transfers and other documents.

16. To apply for lands for building, mining, agricultural or other purposes and to accept such titles as may be advisable.

30 17. To accept the lease or sub-lease of any land whether for agricultural, mining or other purposes from any person or persons upon such terms as my said attorney may think fit and for that purpose to sign all necessary writings and other instruments relating thereto and to surrender same for cancellation, if advisable.

40 18. To apply for and to obtain rubber coupons, licences, certificates of standard production or other documents under The Rubber Regulation Enactment 1934, to transfer the same and to do and perform all such acts deeds and things as may be necessary under The Rubber Regulation Enactment 1934 or any other Enactment for the time being in force or of any rules made thereunder.

19. To invest any moneys upon mortgages or

EXHIBITS

P.1
Power of
Attorney,
Saminathan
to Papa

9th July 1962
(continued)

charges of lands, houses, stock-in-trade, goods and chattels, promissory notes or other securities and from time to time to vary such investments or any of them for others of the same or a like nature as my said attorney may think fit.

20. To make any affidavit or proof of any debt or debts due or claimed to be due to me in any proceedings taken or hereafter to be taken by or against any person firm or company under the Bankruptcy Enactment or the Companies Enactment or any other Enactment or Ordinance for the time being in force to attend at all meetings of creditors under any such proceedings and to propose second or vote for or against any resolution at any such meeting and generally to act for me in all proceedings whether by way of bankruptcy or liquidation by arrangement or by composition which may be taken against any debtor of mine as my said Attorney shall think fit. 10 20

21. To place money to my credit at any Bank on current account or deposit in my name and from time to time withdraw all money which is now or hereafter may be at any Bank or to overdraw to such extent as my said Attorney may think fit and to draw, sign and endorse cheques on any Bank or any receipt or document necessary for this purpose.

22. To concur in doing any of the acts and things herein contained with any person or persons interested in the premises. 30

23. To substitute and appoint from time to time one or more attorney or attorneys with the same or more limited powers and such substitute or substitutes at pleasure to remove and another or others to appoint.

24. To convey unto herself (grantee) the land held under A.A.814/505B and 79/575B Sekinchang Kuala Selangor absolutely. 40

And generally to do all acts and things and sign and execute all such documents as may be necessary for effectuating any of the purposes aforesaid as fully and completely as I myself could do if personally present.

And I hereby agree to ratify and confirm all and whatsoever my said Attorney or his substitute or substitutes shall lawfully do in

the premises by virtue of these presents.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 9th day of July in the year One thousand nine hundred and sixty-two (1962)

SIGNED SEALED AND DELIVERED)
by the said SAMINATHAN son)
of VANATHAN in the presence)
of)

R.T.R.
Saminathan s/o
Vanathan

10 Sd. Illegible

Advocate & Solicitor
Kuala Lumpur

EXHIBITS

P.1
Power of
Attorney,
Saminathan
to Papa
9th July 1962
(continued)

20

I, Kandiah Chelvanayagam an Advocate & Solicitor of the Supreme Court of the Federation of Malaya hereby certify that the Signature of the donor above-named was written in my presence on this 9th day of July 1962 and is to my own personal knowledge the true Signature of the said SAMINATHAN son of VANATHAN who has acknowledged to me that he is of full age and that he has voluntarily executed this instrument.

As Witness my hand this 9th day of July 1962

Sgd: Illegible
Advocate & Solicitor
Kuala Lumpur

EXHIBITS

P.1

Letter,
Collector of
Land Revenue
to Registrar,
High Court

19th March
1963

EXHIBITS

P.1

LETTER, COLLECTOR OF LAND
REVENUE TO REGISTRAR,
HIGH COURT

Translation

No.3, Kuala Selangor
(7) dlm. P.T.K.S. 11/4/67

19th March, 63

The Registrar,
High Court,
Kuala Lumpur.

10

Power of Attorney Registered
No.739 of 1962 dated 1.8.62

With reference to the above matter, I
would be grateful if you could inform this
office as to whether the Power of Attorney has
been revoked or not.

Sgd.

(MOHD TALHA B. HJ.ABD.RAHMAN)
Collector of Land Revenue,
Kuala Selangor.

20

EXHIBITS

P.1

CERTIFICATE THAT PADI LAND
E.M.R.5089, LOT 5406 and
LOT 10600 BEING WORKED BY PAPPAH

Translation

CERTIFICATE

10 I, K.V. MUNUSAMY s/o VELLIAH, Identity
Card No.7983814, Headman of Parit 4 Village,
Sungei Burong, hereby certify that the padi-
land E.M.R. 5089 Lot 5406 and Lot 10600 in
the area of Parit 4, Sungei Burong, Mukim of
Tanjong Karang, is being worked upon by
PAPPAH a/k THOPPAN, Identity Card No.4072425,
at present.

signed (in Tamil)
K.V.Munusamy P.J.K.
Headman of Village.

20 c/o Parit 4, Sungei Burong,
Sekinchan.

EXHIBITS

P.1

Certificate
that Padi
land E.M.R.
5089, Lot
5406 and
Lot 10600
being worked
by Pappah
(Undated)

EXHIBITS

P.1

STATUTORY DECLARATION BY
SAMINATHAN

FEDERATION OF MALAYSIA

STATE OF SELANGOR

FORM OF STATUTORY DECLARATION

30 I, SAMINATHAN s/o VANATHAN (NRIC No.K.Sel
(SL)005819/3679318 of Parit 4, Sungei Burong,
Sekinchan, in the District of Kuala Selangor,
State of Selangor do solemnly and sincerely
declare as follows:

That I am the holder of a Power of
Attorney, vide Registered No.500/57 and a
true copy deposited in the High Court at Kuala
Lumpur, executed by PALANIANDI s/o MURUGAN,

EXHIBITS

P.1

Statutory
Declaration
by Saminathan
2nd December
1966

EXHIBITS

P.1
Statutory
Declaration
by Saminathan
2nd December
1966
(continued)

(NRIC No.SL.701762 K.S.) formerly of Block "M"
Sungei Burong, Tanjong Karang, in the District
of Kuala Selangor, and now permanently residing
in India, who is still alive.

The said Power of Attorney is in respect
of Sawah Land A/A 814/50 Sungei Burong and
together Kampong land Lot 5406 in transaction
to me.

The executor of the Power of Attorney
(PALANIANDI s/o MURUGAN) as to the best of
my knowledge and belief is not returning to
Malaysia and decided to settle permanently in
India. 10

That I make this Declaration for the
purpose of presenting same to the Collector of
Land Revenue to obtain the Title Deed of the
into my name.

And I make this solemn declaration
conscientiously believing same to be true and
by virtue of the provisions of the Statutory
Declarations Act 1960. 20

Subscribed and solmenly declared)
by the abovenamed SAMINATHAN s/o
VANATHAN, NRIC No.K.Sel(SL)
005819/3679318 New No. at Kuala
Selangor in the State of
Selangor this 2nd day of
December 1966. } R.T.P. of
V.Saminathan

Before me,
Sd: Illegible 30
MAGISTRATE
KUALA SELANGOR

Illegible
Tamil
Illegible
Illegible
2/12/66
Illegible No. 474/66
Illegible
Date 2/12/66 Clerk
Illegible

EXHIBITS

P.1

LETTER, SAMINATHAN TO
COLLECTOR OF LAND REVENUE

Translation

Saminathan s/o Vanathan
i.c. 3679318
Holder of Power of
Attorney Registered No.500/57
Riverside Estate,
Kuala Selangor.

6th January, 1967

Collector of Land Revenue,
Kuala Selangor.

Sir,

Application for Transfer of Ownership
of Padi-Land EMR. No.5089, Lot No.
5406 & 10600 Mukim of Tanjong Karang.

I have the honour to hereby attach the
following documents:

- (a) My Statutory Declaration dated 22nd
December, 1966 stating that Palaniandy
s/o Murugan is still living;
- (b) Power of Attorney Registered No.500/57
is attached herewith. (This is the copy
received from the High Court, Kuala Lumpur).

My intention of furnishing these particulars
is to obtain approval to have the land transferred
to my name.

I hope that you would extend this application
to Selangor State Councillor for his considera-
tion and approval.

That is all and thank you.

Yours truly,

Thumb-print.

EXHIBITS

P.1

Letter,
Saminathan
to Collector
of Land
Revenue

6th January
1967

10

20

30

EXHIBITS

P.1
Letter,
Collector of
Land Revenue
to K.V.Munusamy
2nd May 1967

EXHIBITS

P.1
LETTER, COLLECTOR OF LAND
REVENUE TO K.V. MUNUSAMY

Translation

K.Selangor. 3
(3) dlm. P.T.K.S. 11/4/67

2nd May, 67

Mr. K.V.Munnusamy, P.J.K.
Sidang (Headman) of Tamil Settlement
Parit 4, Sungei Burong,
Tanjong Karang.

10

Land EMR. 5089 Lot 5406 and
Lot 10600 Mukim of Tanjong
Karang

With reference to the above matter, this office has received an application from Mr. Saminathan s/o Vanathan for transfer of ownership.

2. In my investigation, I found that Sinnasamy Konar and Perumal have interest in this matter. I therefore request you to bring both the persons to this office for interview at 3.00 pm. during office days.

20

Please arrange this matter early.

Signed.
(MOHD TALHA BIN HAJI
ABDUL RAHMAN)
Collector of Land Revenue,
Kuala Selangor.

30

EXHIBITS

P.1

AGREEMENT, SAMINATHAN
AND PAPPA

EXHIBITS

P.1

Agreement,
Saminathan
and Pappa

10th August
1967

10 AN AGREEMENT made this 10th day of August, 1967 BETWEEN SAMINATHAN s/o VANATHAN i/c No.K. Sel (SL) 005819 of Block 'M', Sungei Burong, Sekinchan, Selangor of one part (Seller) and Papa d/o Thoppan i/c No.SL 676100 of Riverside Estate, Kuala Selangor, Selangor (Buyer) of the other part.

Whereas the seller agrees to the Lots under A/as 814/50813 & 79/578B of Sungei Burong, Sekinchan (Block 'N') Selangor for dollars Seven thousand five hundred only (\$7500/-) to the purchaser on the following conditions agreed by both the parties.

20 (1) The purchaser will pay the seller the sum of dollars Five Thousand Two hundred only (\$5200/-) on this day of signing this agreement and the balance of dollars Two Thousand and Three hundred only (\$2300/-) during or before 31st day of October, 1967.

30 (2) The above amount includes dollars Two Thousand (\$2000/-) due to Gopal of Parit 4, Sungei Burong, Sekinchan, Selangor by way of monies received under leases by the seller and for which from this day the Purchaser will be responsible for.

(3) The purchaser will do the needful acts to obtain the grants of the aforesaid A/As vide the powers vested in her under Irrevocable Power of Attorney executed in favour of the purchaser by the seller. The Power of Attorney reference is K.L. Supreme Court Reg.No.739 of 1962 of 1.8.1962.

40 (4) The seller from this day will cease to exercise any rights relating to the aforesaid A/As.

In Witness thereof the parties have set their hands this day the date and year first abovewritten.

EXHIBITS

P.1
Agreement,
Saminathan
to Pappa
10th August
1967
(continued)

(SELLER)

Signed and delivered by)
the said SAMINATHAN s/o)
VANATHAN at Kuala
Selangor in the State
of Selangor in the
presence of)

R.T.P. of
Saminathan s/o
Vanathan

Witness: Sgd.

(BUYER)

Signed and delivered by)
the said Papa d/o
Thoppan at Kuala
Selangor in the State
of Selangor in the
presence of)

R.T.P. of
Papa daughter of
Thoppan

10

Witness: Sgd.

EXHIBITS

P.1
Statutory
Declaration
by Pappah
21st August
1967

EXHIBITS

P.1
STATUTORY DECLARATION
BY PAPPAH

20

STATUTORY DECLARATION

I PAPPAH d/o THOPPAN i/c No.4072452/
SL.676100 KS of Kampong Bharu Estate, c/o
River Side Estate, Kuala Selangor do
hereby solemnly and sincerely declare that

a) Palaniandi s/o Murugan (i/c No.SL
701762 K.S.) who executed a Power
of Attorney dated 11th May, 1957
to Saminathan s/o Vanathan (i/c No.
K.Sel.(SL) 005819) with full powers

30

and

b) Saminathan s/i Vanathan (i/c No.K.
Sel. (SL) 005819) who in turn executed
a Power of Attorney dated 9th July,
1962 to me with full powers

are both alive and I make this solemn
declaration conscientiously believing the same

to be true, and by virtue of the provisions of the Statutory Declarations Act, 1960.

Subscribed and solemnly }
declared by the above- }
named Pappah d/o Thoppan }
at Kuala Selangor in the }
State of Selangor this }
21st day of August, 1967 } Thumb print

EXHIBITS

P.1
Statutory
Declaration
by Pappah
21st August
1967
(continued)

Before me,
Sgd.

10

Explained in Tamil

Sgd. Illegible

Illegible 256/67
Fees paid in Stamps \$1.06
Date 21/8/67

Illegible
Clerk

EXHIBITS

P.1

LETTER, PAPPAH TO COLLECTOR
OF LAND REVENUE

EXHIBITS

P.1
Letter,
Pappah to
Collector
of Land
Revenue
28th August
1967

Pappah d/o Thoppan,
c/o Munusamy s/o Manikkam
Kampong Bhary Estate,
c/o River Side Estate,
Kuala Selangor

28th August, 1967

20

Tuan Pemungut Hazil Tanah,
Pejabat Dacrah,
Kuala Selangor.

Tuan,

AA/814/50813 and AA/79/578 B
Sungei Burong (Block 'N') Sekinchan

The above AAs in respect of Palaniandi s/o Murugan by virtue of a Power of Attorney executed by him to Saminathan s/o Vanathan, Block 'N', Sungei Burong, Sekinchan on 11th May, 1957 and further by virtue of a Power of Attorney issued to me by Saminathan s/o Vanathan to me is now managed and run by me.

30

EXHIBITS

P.1
Letter,
Pappah to
Collector
of Land
Revenue

28th August
1967

(continued)

Enclosed herewith
is s/o dated 21.8.67
stating donors of P.As
are alive.

I should therefore be grateful to know what the position is relating to the issue of Grants. When Grants are ready in respect of the abovementioned AAs I humbly request that I be informed to take delivery of the Grants.

Thanking you in anticipation of an early issue of the Grants.

Yang Benar
R.T.P. of
(PAPPAH d/o THOPPAN)

10

EXHIBITS

P.1
Statement
by Sinnasamy
(Undated)

EXHIBITS

P.1
STATEMENT BY SINNASAMY

Translation

Statement by Sinnasamy s/o
Vinkidajalam
Identity Card 2686111

Whereas I, name as abovementioned, hereby state that the plantation belonging to Saminathan s/o Vanathan has been leased to me for \$350/- for a period of one year. This lease shall cease or expire at the end of this year.

20

I have no objection in changing the name to Mr. Saminathan s/o Vanathan because the land E.M.R. 5089 Lot 5406 belongs to him. I have no right whatsoever on this land. If I am asked to leave this land on expiry of agreement (oral), I have to do so and surrender it to Mr. Saminathan s/o Vanathan without any compensation.

30

That is all that I have to state.

Thumb-print of
Sinnasamy s/o Vinkidajalam.

Before me,

Signed. (in Tamil)

EXHIBITS

P.1

LETTER, COLLECTOR OF LAND
REVENUE TO PAPPAH

Translation

Ref: (9) dlm. P.T.K.S. 11/4/67
Tel. No.17 Kuala Selangor

Land Office,
Kuala Selangor.

16th July, 1968

10 Pappah d/o Thoppan,
c/o Munusamy s/o Manikam,
Kampong Bharu Estate,
BATANG BERJUNTAI

Sir,

Application for Change of Name
on Lot 5406 and 10600 Mukim of
Tanjong Karang

20 With reference to your letter dated 28th
August, 1967 in respect of the above matter
this is to inform that you are required to
send to this office a copy of letter from the
Registry, High Court, Kuala Lumpur confirming
that Power of Attorney No.739/62 dated 1st
August, 1962 has not been revoked as yet.

That is all for your information.

Yours sincerely,

Sgd.
(MOHD TALHA BIN HJ ABD RAHMAN)
Collector of Land Revenue,
Kuala Selangor.

30

EXHIBITS

P.1

Letter,
Collector
of Land
Revenue to
Pappah

16th July
1968

EXHIBITS

P.1
Letter,
Senior Assistant
Registrar
to Pappa

24th July
1968

EXHIBITS

P.1
LETTER, SENIOR ASSISTANT
REGISTRAR TO PAPPA

Translation

Ref (165 dlm.ARSC.SEL. 4/67 Pt.11
BMS/Hk/

HIGH COURT REGISTRY
THE LAW COURTS
Kuala Lumpur

10

24th July, 1968

Pappa d/o Thoppan,
Kampong Bharu Estates,
Kuala Selangor

Power of Attorney
No.739 of 1962

With reference to your letter dated
22nd July, 1968 in respect of the above, I
have examined my record in this office and I
found that Power of Attorney 739-62 is still
in force.

20

That is all.

Sgd.

(MARINA BT. YUSOFF)
SENIOR ASSISTANT REGISTRAR.

EXHIBITS

P.1

LETTER, COLLECTOR OF LAND
REVENUE TO PAPPAH

Translation

Bil:(13) dlm. P.T.K.S. 11/4/67
Tel. No. 17 Kuala Selangor

Land Office,
Kuala Selangor.

10

17th January, 1969

Pappah a/k Thoppan,
c/o Munusamy a/k Manikam,
Kampong Bharu Estate,
Kuala Selangor.

Application for Transfer of name
on E.M.R. 5089 Lot 5406 and Lot
10600 Mukim of Tanjong Karang

20

With reference to your letter dated 28th August, 1967 in respect of the abovementioned matter, this is to inform that your Power of Attorney is in respect of A.A. 814/50 and A.A. 79/57 T.K. and not in respect of Land Title E.M.R. 5089 Tanjong Karang. Therefore, the said transfer can not be made as your Power of Attorney is not in respect of EMR 5089 Tanjong Karang.

That is all.

Yours sincerely,

30

Sgd.
(MOHD TAHA BIN HJ ABD RAHMAN)
Collector of Land Revenue,
Kuala Selangor.

EXHIBITS

P.1

Letter,
Collector of
Land Revenue
to Pappah

17th January
1969

EXHIBITS

P.1
Letter,
Collector of
Land Revenue
to Papa

2nd February
1970

EXHIBITS

P.1
LETTER, COLLECTOR OF LAND
REVENUE TO PAPA

Translation

Ref: (15) dlm. P.T.K.S. dlm. 11/4/67
Tel.No. 17 Kuala Selangor

Land Office,
Kuala Selangor

2nd February, 1970 10

Miss Papa a/k Toppan,
a/d Munusamy a/k Manikam,
Kampong Bharu Estate,
Kuala Selangor

Application for transfer of name
on EMR.5069 Lot 5406 and Lot
10600 Mukim of Tanjong Karang

This is to inform that in respect of the
above mentioned matter, it has been observed
that Power of Attorney Bil.500/57 which had
been given by Palaniandi a/k Murugan to
Saminathan a/k Vanathan and Power of Attorney
739/62 given by Saminathan a/k Vanathan to
you have been registered long time ago. 20
Before the said application could be considered
you are required to obtain a letter of
confirmation from the Registrar, High Court
stating that both the said Power of Attorneys
have not as yet been revoked or withdrawn.

2. You are also required to make a Statutory
Declaration that Palaniandi a/k Murugan and
Saminathan a/k Vanathan are still alive at
present and also state their place of residence. 30

That is all.

Yours sincerely,

Sgd.
(Khalid bin Hasin)
for Collector of Land Revenue,
Kuala Selangor

EXHIBITS

P.1

LETTER, SENIOR ASSISTANT
REGISTRAR TO PAPA

Translation

Ref. (181) dlm ARSC.SEL.
/OME

EXHIBITS

P.1

Letter,
Senior Assistant
Registrar
to Papa

11th March
1970

10

The Registry,
High Court,
Kuala Lumpur.

11th March, 1970

Madam Papa a/k Toppan
a/d Munusamy a/k Manickam,
Kampong Bharu Estate,
Kuala Selangor

Power of Attorneys Nos.500/57 and
739/62

20

In reply to your letter dated 11.3.70
regarding the above matter, this is to inform
that Power Attorney No.500/57 and Power Attorney
No.739/62 are still in force.

That is all.

Sgd.
(K.C. VOHRAH)
Senior Assistant Registrar,
High Court,
Kuala Lumpur.

EXHIBITS

P.1
Letter, Pappa
to Collector
of Land
Revenue

11th March
1970

EXHIBITS

P.1
LETTER, PAPPA TO COLLECTOR
OF LAND REVENUE

Translation

Pappa d/o Thoppan,
Kampong Bharu Estate,
c/o Riverside Estate,
Kuala Selangor

11th March, 1970

10

Collector of Land Revenue,
Kuala Selangor.

Sir,

P/A.500/57 and 739/62 on
Land EMR.5089 Lot 5406 and
10600, Mukim of Tanjong Karang

I have the honour to refer to your
letter ref.(15) dlm PTKS 11/4/67 dated 2nd
February, 1970 in respect of the above
matter. I attach herewith the letter of
confirmation from the Senior Assistant
Registrar, High Court, Kuala Lumpur and a
Statutory Declaration for your perusal and
action.

20

2. I would be very grateful if you could
expedite this matter.

That is all.

Yours truly,

RTP of T. PAPPA

EXHIBITS

P.1

NOTE BY PAPA AS TO
POWERS OF ATTORNEY

EXHIBITS

P.1

Note by
Papa as to
Powers of
Attorney

(Undated)

Translation

P/A from Saminathan s/o Vanathan to
Papa d/o Thoppan

&

10 P/A from Palaniandi s/o Murugan to
Saminathan s/o Vanathan

received on 12-2-69 to make a new P/A by
entering EMR number.

RTP of Papa d/o Thoppan

EXHIBITS

P.1

STATUTORY DECLARATION BY
PAPPAH

EXHIBITS

P.1

Statutory
Declaration
by Pappah

11th March
1970

FORM OF DECLARATION

20 I, Pappah d/o Thoppan, NRIC No.4072452
residing at Kampong Baharu Estate, c/o Riverside
Estate Kuala Selangor do solemnly and sincerely
declare that Enche Palaniandi s/o Murugan and
Saminathan s/o Vanathan the donors of Power of
Attorney No.500/57 and 739/62 respectively are
still living in India and I make this solemn
declaration conscientiously believing the same
to be true, and by virtue of the provisions
of the Statutory Declaration Act, 1960.

30 Subscribed and solemnly)
declared by the above-)
named Pappa d/o Thoppan) R.T.P. of Pappa
at Kuala Lumpur in the)
State of Selangor this)
11th day of March, 1970)

Before me,
Sgd. Illegible
(Signature of Commissioner for Oaths)

EXHIBITS

P.1

Letter,
Pappah to
Collector of
Land Revenue

31st March
1970

EXHIBITS

P.1

LETTER, PAPPAH TO COLLECTOR
OF LAND REVENUE

Pappah d/o Thoppan,
i/c No.4072452/SL676100
c/o M.Munusamy,
Ladang Kampong Bahru,
Kuala Selangor

31 Mei, 1970

10

Tuan Pemingut Hasil Tanah,
Kuala Selangor

Tuan,

Permohonan penukaran nama di-atas
EMR. 5089-Lot 5406 dan Lot 10600
MUKIM TANJONG KARANG

Your reference is BIL:(19) dlm.P.Y.K.S.
11/4/67 dated 25 hb. Mei, 1970

In accordance with above quoted reference
I as the holder of Power of Attorney No.739/62 20
of 1962 dated 1 hb. Ogos, 1962 humbly pray
for your early permission to enable me to
transfer the land to myself.

Thanking you in anticipation of your
early indulgence in this matter.

Yang benar

R.T.P. of Pappah d/o Thoppan

EXHIBITS

P.1

APPLICATION FOR APPROVAL TO
TRANSFER LOTS 5406 and 10600
TO PAPPa WITH DECISION THEREON

EXHIBITS

P.1

Application
for approval
to transfer
Lots 5406
and 10600
to Pappa
with
decision
thereon

Translation

Bil : (18) dlm. P.T.K.S. 11/4/67
IN BRIEF

13th April
1970

10

Application for an Approval to Transfer
the Ownership of Land EMR.5089 Lot 5406
& 10600 Mukim of Tg. Karang from
Palaniandi a/k Murugan to Pappa a/k
Thoppan

This is an applidation for an approval to
transfer the ownership of land EMR 5089 Lot
5406 and Lot 10600, Mukim of Tanjong Karang from
Palaniandi a/k Murugan to Pappa a/k Thoppan.

20

2. Description of Land EMR 5089 Mukim of
Tanjong Karang is as in (2). The said land is
situated in Block 'N', area of Sungei Burong,
as shown in sunprint (17) in this file. This
village land is planted with coconut trees
which are now bearing fruits and part of it is
planted with padi (rice) on every season with
success.

30

3. The land in question is registered in the
name of Palaniandi a/k Murugan. A power of
attorney registered as No.500/57 was given to
Saminathan a/k Vanathan to manage all matters
concerning this land. Saminathan a/k Vanathan
then gave the Power of Attorney to Pappa a/k
Thoppan vide Power of Attorney 739/62. Both
the said Power of Attorney have not been
revoked as yet as confirmed by the Senior
Assistant Registrar, High Court, Kuala Lumpur,
in (16) A. Pappa a/k Thoppan, holder of Power
of Attorney 739/62, has also made a Statutory
Declaration stating that Palaniandi a/k Murugan
and Saminathan a/k Vanathan are still living at
present and now residing in India. This Statutory
Declaration is as in (16)B.

40

4. Actually the land EMR 5089 has been sold
by Palaniandi a/k Murugan to Saminathan a/k
Vanathan, at the price of \$2,500/- in 1957.
Palaniandi a/k Murugan then returned to India
and resides there. Subsequently, Saminathan

EXHIBITS

P.1
Application
for approval
to transfer
Lots 5406
and 10600
to Pappa with
decision
thereon

13th April
1970
(continued)

a/k Vanathan surrendered the land to Pappa a/k Thoppan in 1962 and also has returned to India. Since then the land has been worked and developed by Pappa a/k Thoppan and enjoyed its produce. This has been confirmed by the Headman of the area, Mr. K.V.Munusamy, PJK, as stated in (6).

5. As there is a restriction regarding the Title EMR 5089 which reads :-

"The Land hereby alienated shall not be transferred or leased without the written consent of the Ruler-in-Council". 10

this application was forwarded in order to obtain the approval for transfer.

6. Based on the above information, the Collector of Land Revenue, Kuala Selangor, has no objection to this application and propose that an approval be given for the transfer of Title EMR 5089 from Palaniandi a/k Murugan to Pappa a/k Thoppan. 20

Sgd.
(KHALID BIN HUSIN)
for Collector of Land Revenue
Kuala Selangor

Land Office,
Kuala Selangor

13th April 1970.

EXHIBITS

P.1

LETTER, COLLECTOR OF LAND
REVENUE TO PAPPA

Translation

Ref: (19) dlm. P.T.K.S. 11/4/67
Tel.No.17 Kuala Selangor

Land Office,
Kuala Selangor

EXHIBITS

P.1

Letter,
Collector of
Land Revenue
to Pappa

25th May
1970

10

25th May, 1970

Miss Pappa a/k Thoppan,
Kampong Bharu Estate,
c/o Riverside Estate,
Kuala Selangor.

Madam,

Application for transfer of name
on EMR 5069 Lot 5496 and 10800
Mukim of Tanjong Karang

20

With reference to the above matter, it has been observed that the original application for transfer of name has been received from Mr. Saminathan a/k Vanathan, holder of P.A.500/57 to transfer the ownership of the said land to him. As Mr. Saminathan a/k Vanathan has given his power of attorney to you his original application has therefore been rejected.

30

2. However, you are advised to make a fresh application as holder of Power of Attorney No.739/62 for an approval to transfer the Title of the said land to you.

Yours sincerely,

Sgd.
(KHALID BIN HUSIN)
for Collector of Land Revenue,
KUALA SELANGOR

EXHIBITS

P.1
Application
for approval
to transfer
Lots 5406 and
10600 with
decision
thereon

5th June 1970

EXHIBITS

P.1

APPLICATION FOR APPROVAL TO
TRANSFER OF LOTS 5406 and 10600
WITH DECISION THEREON

Translation

BiJ; (21) dlm P.T.K.S. 11/4/67

IN BRIEF

Application for an approval to Transfer
the Ownership of Land EMR 5089 Lot 5406
& 10600, Mukim of Tg. Karang from Pappa
s/o Thoppan holder of P.A. 739/62 to
her own 10

This is an application for an approval to
transfer the ownership of land EMR 5089 Lot 5406
and Lot 10600 Mukim of Tanjong Karang from
Pappa a/k Thoppan, holder of P.A. 739/62 to
her own.

2. Description of Land EMR 5089 Mukim of
Tanjong Karang is as in (2). The said land is
situated in Block 'N', area of Sungei Burong,
as shown in sunprint (17) in this file. This
village land is planted with coconut trees
which are now bearing fruits and part of it
is planted with padi (rice) on every season
with success. 20

3. The land in question is registered in the
name of Palaniandi a/k Murugan. A Power of
Attorney registered as No.500/57 was given to
Saminathan a/k Vanathan to manage all matters
concerning this land. Saminathan a/k Vanathan
then gave the Power of Attorney to Pappa a/k
Thoppan vide Power of Attorney 739/62. Both
the said Power of Attorneys have not been
revoked as yet as confirmed by the Senior
Assistant Registrar, High Court, Kuala Lumpur,
in (16)A. Pappa a/k Thoppan, holder of Power
of Attorney 739/62, has also made a Statutory
Declaration stating that Palaniandi a/k Murugan
and Saminathan a/k Vanathan are still living
at present and now residing in India. This
Statutory Declaration is as in (16)B. 30 40

4. Actually the land EMR 5089 has been sold
by Palaniandi a/k Murugan to Saminathan a/k
Vanathan, at the price of \$2,500/- in 1957.

Palaniandy a/k Murugan then returned to India and resides there. Subsequently, Saminathan a/k Vanathan surrendered the land to Pappa a/k Thoppan in 1962 and also has returned to India. Since then the land has been worked and developed by Pappa a/k Thoppan and enjoyed its produce. This has been confirmed by the Headman of the area, Mr. K.V.Munusamy, PJK, as stated in (6).

10 5. As there is a restriction regarding the Title EMR 5089 which reads :-

"The Land hereby alienated shall not be transferred or leased without the written consent of the Ruler-in-Council".

this application was forwarded in order to obtain the approval for transfer.

20 6. Based on the above information, the Collector of Land Revenue, Kuala Selangor, has no objection to this application and propose that an approval be given for the transfer of Title EMR 5089 from Palaniandi a/k Murugan to Pappa a/k Thoppan.

Sgd.
(KHALID BIN MUSIN)
for Collector of Land Revenue,
Kuala Selangor

Land Office,
Kuala Selangor

5th June, 1970

EXHIBITS

P.1
Application
for approval
to transfer
Lots 5406
and 10600
with decision
thereon

5th June 1970

(continued)

EXHIBITS

P.1
Letter,
Collector of
Land Revenue
to Pappa

9th July 1970

EXHIBITS

P.1
LETTER, COLLECTOR OF LAND
REVENUE TO PAPPA

Translation

Ref: (21) dlm. P.P.
Tel.No. 17 Kuala Sa

Land Office,
Kuala Selangor

9th July, 1970

10

Miss Pappa d/o Thop
Ladang Kampong Bahru
c/o Riverside Estate
Kuala Selangor

Miss,

Application for Transfer
of name on EMR 5089, Lot
5406 and 10800, Mukim of
Tanjong Karang

With reference to the abovementioned
matter this is to inform that your application
has been approved by the Honourable Chief
Minister, Selangor.

20

2. Please be present at this office with a
witness for the purpose of transferring the
name on Title EMR 5089 after you have completed
the Transfer of Land Title Form attached
herewith. You are also required to pay the
registration fee of \$10/- apart from the
stamp fee.

30

That is all for your information.

Yours sincerely,

Sgd.

(KHALID BIN HUSIN)
for Collector of Land Revenue
Kuala Selangor

EXHIBITS

P.1

APPLICATION BY SAMINATHAN
FOR ENTRY OF A PRIVATE CAVEAT

NATIONAL LAND CODE
FORM 19 B
(SECTION 323)

R. No. 8158/23.9.70

APPLICATION FOR ENTRY OF A PRIVATE
CAVEAT

EXHIBITS

P.1

Application
by Saminathan
for entry
of a private
caveat

21st September
1970

10

(Stamps to be affixed - or payment of duty
certified - in this space)

Memorial of registra-
tion made in the Register
of Documents of Title
scheduled below, with
effect from 9 h. 30 m. a.m
on the 23rd day of September
1970

File of -
Volume V
Folio 19
Presentation No.
14913A

20

Collector.....
District Kuala Selangor

To:-

The Collector of Land Revenue,
Kuala Selangor.

I, V.Saminathan of Parit 4, Sg. Burong,
Sekinchan Post, Kuala Selangor, hereby apply for
the entry of a caveat upon the title to the land
described in the schedule below to be expressed
to bind the land itself :-

30

1. The grounds of my claim to the interest
are that I have been and still claim to be the
owner of land formerly known as A/A 814/50 and 79/57
of Sungei Burong, Sekinchan Block N, Tanjong
Karang, originally in the name of M.Palaniandy
my elder brother. I was given the said land by
the said Palaniandy when he went off to India
and I was in possession of same till about 1963
when I allowed my sister Pappa to look after the

EXHIBITS

P.1
Application
by Saminathan
for entry
of a private
caveat

said land due to my illness. The said Pappa has now without my knowledge and consent transferred the said land into her name. I am, accordingly, taking legal proceedings in the High Court, Kuala Lumpur against the said Pappa and shall be filing the Summons this week.

21st September
1970

2. As required by section 323 of the National Land Code, I now submit :-

(continued)

- (a) the prescribed fee of \$20/-; 10
- (b) a statutory declaration by myself verifying the claim set out in paragraph 1 above.

Dated this 21st day of September 1970.

R.T.P. of V.Saminathan
.....
Signature of Applicant

ATTESTATION CLAUSE

I, Matthews Abraham, Solicitor, hereby testify that the above signature was written in my presence this day of September, 1970 and is according to my own personal knowledge the true signature of V. Saminathan who has acknowledged to me that he is of full age and that he has voluntarily executed this instrument and that he understands the contents and effects thereof. 20

As witness my hand this 21st day of September 1970.

Sd: M.Abraham
.....
Signature 30
M. ABRAHAM
ADVOCATE & SOLICITOR
KUALA LUMPUR

SCHEDULE OF LAND AND INTEREST

Mukim	Lot No.	Description & No.of Title	Share of Land	Regist-ered No. of Lease	Register-ed No. of Charge
Tanjong Karang	5406 10600	Grant No. 5089 (formerly A/A 814/50 and 79/57	whole	-	-

Ingatan pendaftaran dibuat dalam suratan 2/hakmilek dalam daftar yang dijadualkan di Bawah illegible dari puteral 9.30 paji pada 23 haributan September 1970.

FEDERATION OF MALAYSIA

STATE OF SELANGOR

FORM OF STATUTORY DECLARATION

EXHIBITS

P.1
Application
by Saminathan
for entry
of a private
caveat

21st September
1970

(continued)

10 I, V. Saminathan of full age presently
residing at Parit 4, Sg. Burong, Sekinchan
Post, Kuala Selangor, do Solemnly and
sincerely declare that the grounds stated in
paragraph 1 of my Application for Entry of
a Private Caveat are true and that I make
this solemn declaration conscientiously
believing the same to be true and by virtue
of the provisions of the Statutory Declaration
Act, 1960.

SUBSCRIBED and solemnly)
declared by the said)
V.SAMINATHAN at Kuala)
Lumpur in the State of) R.T.P. of Saminathan
Selangor this 21st day)
of September, 1970)

20

Before me,
Sgd. Illegible
Commissioner for Oaths,
High Court,
Kuala Lumpur

EXHIBITS

P.1
Letter, Dulip
Singh & Co.
to Collector
of Land Revenue
15th March 1973

EXHIBITS

P.1

LETTER, DULIP SINGH & CO.
TO COLLECTOR OF LAND REVENUE

DULIP SINGH & CO. ADVOCATES & SOLICITORS

5th Floor, Bangunan Safety Insuran,
Jalan Melayu
Kuala Lumpur Tel: 206557
DULIP SINGH (Bar-at-Law) 15th March, 1973

U R G E N T

10

Our ref: 1439/235/73/DS

The Collector of Land Revenue,
District Office,
Kuala Selangor.

Tuan,

Re: K.L. High Court Civil Suit No.
269/72 in respect of Transfer
of piece of lands known as No.
5089 Bendang Lot No.10600 and
Kampong Lot No.5406, Mukim of
Tanjong Karang, District of
Kuala Selangor formerly described
as A.A. 814/50 and 79/57

20

We act for Inche Saminathan s/o Vanathan
of Parit 4, Sg. Burong, Sekinchan, Kuala
Selangor, the Defendant in the above matter.

We are instructed to make a search of
the records of the file in respect of the
transfer of the above lots of land from
Palaniandi s/o Murugan to Pappa d/o Thoppan
on the 9th day of July, 1970 and we shall
be pleased if you will allow our clerk, the
bearers of this letter to do the search. We
undertake to pay herewith the requisite search
fees in respect of the said file.

30

We are further instructed to request
you to keep the said file available for
production in the High Court as we intend to
subpoena you as a witness.

Your assistance in this matter is deeply
appreciated.

40

Thanking you,

Yang benar,
Sgd. Illegible

162.

EXHIBITS

P.3

AGREEMENT OF TENANCY, SAMINATHAN
AND KOBALE

EXHIBITS

P.3

Agreement of
Tenancy,
Saminathan
and Kobale

29th November
1966

10 Agreement of tenancy is made this 29th day of November, 1966 between Saminathan s/o Vanathan, holder of Identity Card No. K.Sel (SL) 005819/3679318, residing at Parit 4, Sg. Burong, Sekinchan, Kuala Selangor (hereinafter referred to as the first party) of one part and Kobale s/o Kowindan, holder of Identity Card No. SL 708211/3668173, also residing at Parit 4, Sg. Burong, Sekinchan, Kuala Selangor (hereinafter referred to as the second party) of the other part. Now The Agreement Witnesseth As follows :-

20 Whereas the first party is the owner of a lot of padi land of three (3) acres and an acre of kampong land, totalling four (4) acres in all, held under Grant No.5089 in the locality of Sg. Burong, mukim of Tanjong Karang, district of Kuala Selangor (hereinafter referred to as the said land).

And Whereas the first party has hereby agreed to let out the said land to the second party who has also agreed to rent the same from the first party for the purpose of planting padi upon the terms and conditions as hereinafter appearing :-

30 The overall period of tenancy of the said land shall be for two (2) years only, commencing from 30th day of April, 1967 and expiring on 30th day of April, 1969.

40 The total rental for the aforesaid two years of tenancy of the said land shall be \$700/- (Dollars Seven hundred) only, and shall be payable in advance upon signing this Agreement, and which sum of money the first party hereby acknowledges receipt from the second party as full payment for the said tenancy.

The tenancy of the said land shall be free from all encumbrances, interferences, hindrances or obstructions from any source or from anybody and which the sole responsibility of the first

EXHIBITS

P.3
Agreement of
Tenancy,
Saminathan
and Kobale
29th November
1966
(continued)

In the event of any encumbrances
resulting or arising from the said tenancy
of the aforesaid land, or if the first party
requires the said land to be returned before
the expiry of the said tenancy, then the
first party shall pay to the second party a
compensation of \$1,400/- (Dollars One thousand
and four hundred) as full compensation
without fail.

Signed by both parties in the presence of :- 10

Sd. R.N.Balakrishman (Signature of the First Party, Saminathan s/o Nadesar) as witness Vanathan)

Prepared and explained by: F.W.Lic. 3/66 K.S. (Signature of Kobale s/o Kowindan, the Second Party) 20

Main persons signature illegible

Endorsement
of interest
of Papa
10th August
1967

ENDORSEMENT OF INTEREST OF PAPA

From This day I Papa d/o Thoppan replace Saminathan s/o Vanathan the first party of this agreement.

R.T.P. of Papa d/o Thoppan
10th August, 1967

Witness:- Sd. illegible

EXHIBITS

P.4

AGREEMENT OF TENANCY,
SAMINATHAN AND KOBALE

EXHIBITS

P.4

Agreement of
Tenancy,
Saminathan
and Kobale

3rd January
1967

10

AGREEMENT OF TENANCY is made this 3rd day of January, 1967 between Saminathan s/o Vanathan, holder of Identity Card No. K.Sel. (SL) 005819/3679318, residing at Parit 4, Sg. Burong, Sekinchan, Kuala Selangor (hereinafter referred to as the first party) of one part, and Kobale s/o Kowindan, holder of Identity Card No. SL 708211/3668173, also residing at Parit 4, Sg. Burong, Sekinchan, Kuala Selangor (hereinafter referred to as the second party) of the other part. Now The Agreement Witnesseth As Follows :-

20

Whereas the first party is the owner of a lot of padi land of three (3) acres and an acre of kampong land, totalling four (4) acres in all, held under Grant No.5089 in the locality of Sg. Burong, mukim of Tanjong Karang, district of Kuala Selangor (hereinafter referred to as the said land)

And Whereas the first party has hereby further agreed to let out the said land to the second party who has also agreed to rent the same from the first party for the purpose of planting padi upon the terms and conditions as hereinafter appearing :-

30

That this Agreement is made in addition to the one already made dated 29th day of November, 1966 between the two parties.

The period of tenancy of the said land as agreed by both parties shall be an extension of the previous period, and shall commence from 1st day of May in the year One thousand nine hundred and sixty-nine and expiring on 30th day of April in the year One thousand nine hundred and seventy (from 1.5.1969 to 30.4.1970)

40

The rental for the aforesaid one year of tenancy of the said land shall be \$350/- (Dollar three hundred and fifty) only, and shall be payable in advance upon signing this Agreement, and which sum of money the first party hereby acknowledges receipt from the second party as full payment for the said tenancy.

EXHIBITS

P.4
Agreement of
Tenancy,
Saminathan
and Kobale
3rd January
1967
(continued)

The tenancy of the said land shall be free from all encumbrances, interferences, hindrances or obstructions from any source or from any body and which are the responsibility of the first party.

In the event of any encumbrances resulting or arising from the said tenancy of the said land or any problem in connection with the said tenancy of the said land, or if the first party requires the said land to be returned to him before the expiry of the said tenancy, then the first party shall definitely pay without any question to the second party a sum of \$700/- (Dollars Seven hundred) as compensation without fail. 10

That this Agreement is also binding upon the heirs, administrators, executors, legal representatives, assigns and successors of both parties.

Signed by both parties in the presence of :- 20

Sd. Illegible (Rengasany s/o Saminathan as witness)illegible..... (Signature of the First Party, Saminathan s/o Vanathan)

Di-buat oleh P.S.R. No.3/66 K.S. Telah di-bachakan dan di-huraikan oleh saya kepada kedua2 pihak.illegible..... (Signature of Kobale s/o Kowindan, the Second Party) 30

Sd. illegible

Endorsement
of interest
of Papa
10th August
1967

ENDORSEMENT OF INTEREST OF PAPA

From this day I Papa d/o Thoppan replace Saminathan s/o Vanathan first party of this Agreement.

RTP of Papa d/o Thoppen
Witness: Sd. Illegible

10th August, 1967

EXHIBITS

P.5

AGREEMENT OF TENANCY, SAMINATHAN
AND KOBALÉ

EXHIBITS

P.5

Agreement of
Tenancy,
Saminathan
and Kobale

June 1967

10 AN AGREEMENT of Tenancy made this day the
of June, 1967 between Saminathan s/o
Vanathan (First Party) i/c No.K.SEL (SL) 005819/
3679318 of Part 4, Sungei Burong, Sekinchan,
Kuala Selangor and Kobale s/o Kowindan (Second
Party) i/c No.SL. 708211/3668173 of Parit 4,
Sungei Burong, Sekinchan, Kuala Selangor

Now the Agreement Witnesseth as follows :-

- (1) This Agreement is in conjunction with the Agreement made by the same parties on the 3rd day of January, 1967
- (2) In conjunction with the Agreement stated in clause (1) above the date of agreement is extended by a further period of two years, that is from 1st May, 1970 to 30th April, 1972
- (3) Pursuant to clause (2) above a sum of dollars Six hundred is payable in advance to the First Party by the Second Party.
- (4) All other bindings applicable to this agreement will be the same as for the agreement made between the two parties on the 3rd day of January, 1967 mentioned in clause (1) above.

30 IN WITNESS THEREOF the parties have hereunto
set their hands the date and year first above
written.

Signed and delivered by the
said SAMINATHAN s/o VANATHAN
at Kuala Selangor in the
State of Selangor in the
presence of :- (First Party)) R.T.P.
SAMINATHAN s/o VANATHAN

WITNESS: Sd. Illegible
Rengasamy s/o Saminathan

40 Signed and delivered by the
said KOBALÉ s/o KOWINDAN at
Kuala Selangor in the State
of Selangor in the presence
of :- (Second Party))
Sd.
KOBALÉ s/o KOWINDAN

WITNESS: Sd. Illegible

EXHIBITS

P.5
Agreement of
Tenancy,
Saminathan
and Kobale

June 1967

Endorsement
of interest
of Papa

10th August
1967

ENDORSEMENT OF INTEREST OF PAPA

From this day I Papa d/o Thoppan
replace Saminathan s/o Vanathan the first
party of this agreement.

R.T.P. of Papa d/o Thoppan

10th August, 1967

Witness: Sd: Illegible

EXHIBITS

P.6
Receipt for
\$600.00
Saminathan
to Papa

5th October
1967

EXHIBITS

P.6

RECEIPT FOR \$600.00 SAMINATHAN
TO PAPA

10

R E C E I P T

I Saminathan s/o Vanathan i/c No.
K.Sel. (SL) 005819 of Block "M" Sungei
Burong, Sekinchan, Selangor have this
day received the sum of dollars Six
Hundred only (\$600/-) as payment against
the sum of dollars Two thousand three
hundred mentioned in the agreement dated
10th August 1967 made between me and
Papa d/o Thoppan i/c No.SL.676100 of
River Side Estate, Kuala Selangor.

20

The balance due to me under the
said agreement is now dollars One thousand
seven hundred only (\$1700/-).

Witness: Sd: Illegible
5/10/67

5th October 1967

R.T.P. of Saminathan
d/o Vanathan

30

EXHIBITS

P.7

I.O.U. FOR \$7,500 AND
ACKNOWLEDGMENT

25th January, 1968

\$7,500/-

I. O. U.

Dollars Seven thousand five hundred only.
being cash loan

Thumb Print

.....

Signature

10

I Saminathan s/o Vanathan I/C No.3679318 being the holder of Power of Attorney No. 500/57 has this day extended the Power given to me by Palaniandi s/o Murugan I/C No.SL. 701762 to Madam Pappa d/o Thoppan I/C No.4072452 on Power of Attorney No.739/62 which is IRREVOCABLE. This Power is in respect of Land held under EMR.5089 situated at Parit 4 Sungei Burong. Saminathan s/o Vanathan has this day sold the above-mentioned land to Pappa d/o Thoppan. She may have the land transferred in her name and I have no Claim over this land. In the event the Authority do not approve the transfer, then the whole sum including interest thereto is Payable by me (Saminathan s/o Vanathan).

20

(SAMINATHAN S/O VANATHAN)

Further, in the event of the Death of Saminathan s/o Vanathan, then, I Muniandy s/o I/C No.7871525 being the Grandson of Saminathan s/o Vanathan shall pay all dues towards the sum received by my Grandfather Saminathan s/o Vanathan.

30

Sd: Muniandy
IC No.7871525

EXHIBITS

P.7

I.O.U. for
\$7,500 and
acknowledg-
ment

25th
January
1968

EXHIBITS

P.7A
I.O.U. for
\$7,500/- and
acknowledg-
ment

25th January
1968

EXHIBITS

P.7A
I.O.U. FOR \$7,500/- AND
ACKNOWLEDGMENT

25th January, 1968

\$7,500/-

I. O. U.

Dollars: Seven thousand five hundred only
being cash loan

Thumb print

.....

Signature

10

EXHIBITS

P. 9

CIVIL ACTION NO.36 of 1971
SUMMONS

STATE OF SELANGOR

IN THE MAGISTRATE'S COURT AT KUALA SELANGOR

CIVIL ACTION No.36 OF 1971

Between

10 Pappa d/o Thoppan,
c/o Ladang Kampong Bharu,
Kuala Selangor Plaintiff/s

And

Saminathan s/o Vanathan,
Parit 4, Sungei Burong,
Sekinchan,
Kuala Selangor. Defendant/s

S U M M O N S

20 To:- Saminathan s/o Vanathan
Parit 4, Sungei Burong,
Sekinchan,
Kuala Selangor.

You are hereby Summoned to appear either in person or by your Advocate & Solicitor to the abovementioned Court at 9.00 a.m. o'clock in the forenoon on the 27th day of August, 1971, to answer a claim against you by the Plaintiff/s abovenamed, particulars whereof are set out in the Statement of Claim endorsed hereon.

30 TAKE NOTICE that in default of such appearance, the Plaintiff/s may proceed therein and Judgment may be entered into against you.

AND TAKE NOTICE that if you desire to defend the said claim, you must not less than two clear days before the date abovementioned, file in Court and serve on the Plaintiff's a Defence in due form.

Dated this 9th day of August, 1971.

EXHIBITS

P.9

Civil Action
No.36 of
1971
Summons

9th August
1971

EXHIBITS

P.9
Civil Action
No.36 of 1971
Summons

9th August
1971

(continued)

Sd: ENIK HASHIM D MIR ABD RAHMAN
MAGISTRATE
Kuala Selangor

This Summons is filed by M/s M.Segaram & Co., Advocates & Solicitors, of Nos: 17 & 19, Jalan Silang, Kuala Lumpur, Solicitors for the Plaintiff/s above named.

Statement
of Claim
4th August
1971

STATEMENT OF CLAIM

The Plaintiff abovenamed states as follows :-

1. The Plaintiff is and was at all material times the Registered Owner of land held under Entry No.5089 Bendang Lot No.10600 and Kampong Lot No.5406 in the Mukim of Tanjong Karang in the State of Selangor. 10

2. Since July, 1970 the Defendant has wrongfully occupied the Kampong Lot No.5406 and has cultivated padi thereon and has wrongfully been remaining in possession thereof.

3. By reason of the matters aforesaid the Plaintiff has been deprived of the use and enjoyment of the said Kampong Lot and has thereby been prevented from cultivating the said Kampong Lot. A reasonable sum for the use and enjoyment of the said land is \$50.00 a month. 20

4. And the Plaintiff claims :-

(1) The Defendant and all person holding through him do vacate from the said land and give possession of the said land to the Plaintiff. 30

(2) Mesne profit at the rate of \$50.00 a month until possession is delivered.

Dated this 4th day of August, 1971.

Sd: M.Segaram & Co.
SOLICITORS FOR PLAINTIFF.

This Statement of Claim is filed by
M/s M. Segaram & Co., Advocates & Solicitors,
of Nos: 17 & 19, Jalan Silang, Kuala Lumpur,
Solicitors for the Plaintiff abovenamed.

EXHIBITS

P.9
Civil Action
No.36 of
1971
Statement of
Claim
4th August
1971
(continued)

STATEMENT OF DEFENCE

Statement of
Defence

FEDERATION OF MALAYSIA

23rd August
1971

STATE OF SELANGOR

IN THE MAGISTRATE'S COURT AT KUALA SELANGOR

CIVIL ACTION NO: 36 OF 1971

10

Between

Pappa d/o Thoppan,
c/o Ladang Kampong Bharu,
Kuala Selangor

Plaintiff

And

Saminathan s/o Vanathan,
Parit 4, Sungei Burong,
Sekinchan,
Kuala Selangor

Defendant

STATEMENT OF DEFENCE

20

1. As to paragraph 1 of the Statement of Claim,
the Defendant maintains he is still the
beneficial owner of the said land for reasons
and on the ground stated hereafter.

30

2. The Defendant denies the allegations
contained in paragraph 2 of the Statement of Claim.
The Defendant has been in cultivation of the
said land for over twenty-five years and is still
cultivating the portion known as Lot No.5406.
The Plaintiff has not sought to interfere with
the Defendant's possession and enjoyment of the
said land or portion.

3. The said land was originally in the name of

EXHIBITS

P.9
Civil Action
No.36 of 1971
Statement of
Defence

23rd August
1971

(continued)

M. Palani (also M.Palaniandy) who asked the Defendant to cultivate the said land in his absence while away in India. In or about 1963, due to illness, the Defendant allowed the Plaintiff or her representative to cultivate the portion of the land known as Lot No: 10600 in consideration of the payment of rent to be agreed upon from time to time.

4. The Plaintiff has been in arrears of payment of the said consideration for a long period. On the said 10th day of August, 1967, an account was taken between the Defendant and the Plaintiff whereby it was found that a sum of \$7,500/- was due and payable to the Defendant from the Plaintiff whereof a sum of \$5,200/- had been paid in various amounts, leaving a balance sum of \$2,300/-.

5. It was thereupon expressly agreed between the Defendant and the Plaintiff that the said balance sum of \$2,300/- should be paid on or before the 31st day of October, 1967, failing which the Defendant was to obtain repossession of the said portion.

6. The Plaintiff failed to pay to the Defendant the said sum of \$2,300/- on the due date and, although demanded by the Defendant, has refused and still refuse to give up possession of the said portion.

7. Meanwhile, the Plaintiff through her representative had by fraudulently misrepresenting to the Defendant that his signature was needed for purposes of paying certain arrears of rent due in respect of the said land obtained Power of Attorney from the Defendant during his illness and had same registered at the Land Office. Subsequently, the Defendant ascertained that the said Lot No.10600 had been transferred into the name of the Plaintiff. The Defendant will crave leave to refer to the alleged transfer at the trial hereof.

8. In the above circumstances, the Defendant will contend that the title to the said land is in dispute and, accordingly, request that it be transferred to the High Court, Kuala Lumpur. Further the Defendant will be asking by way of counterclaim for a declaratory Order as to ownership which claim is more properly within the jurisdiction of the said

High Court.

Dated this 23rd day of August, 1971.

Sd: M.Abraham & Co.
.....
Solicitors for Defendant.

This Statement of Defence is filed by
M/s M. Abraham & Co., Mah Singh Building,
Nos: 112-114, Jalan Pudu, Kuala Lumpur,
Solicitors for the Defendant abovenamed.

EXHIBITS

P.9
Civil Action
No.36 of
1971
Statement of
Defence
23rd August
1971
(continued)

EXHIBITS

P.10

ORDER, CIVIL SUIT NO.269
of 1972

EXHIBITS

P.10
Order,
Civil Suit
No.269 of
1972
30th October
1972

10

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 269 OF 1972

Between

Pappa d/o Thoppan,
c/o Ladang Kampong Bharu,
Kuala Selangor. Plaintiff

And

20 Saminathan s/o Vanathan,
Parit 4, Sungei Burong,
Sekinchan,
Kuala Selangor Defendant

BEFORE THE HONOURABLE MR. JUSTICE RAJA AZLAN SHAH

THIS 30TH DAY OF OCTOBER, 1972 IN CHAMBERS

O R D E R

30

UPON HEARING Mr. M.Segaram of Counsel for
the Plaintiff and Mr. S.A.Raj of Counsel for
the Defendant AND UPON READING the Summons-in-
Chambers dated the 23rd day of September, 1972
and the Affidavit of Pappah d/o Thoppan affirmed
on the 14th day of August, 1972 and both filed
herein IT IS ORDERED that the Defendant abovenamed

EXHIBITS

P.10
Order,
Civil Suit
No.269 of
1972

30th October
1972

(continued)

be and is hereby ordered to pay into Court towards the credit of these proceedings all moneys received in respect of the cultivation of the lands known as E.M.R. 5089 Bendang Lot No.10600 and Kampong Lot No.5406 in the Mukim of Tanjong Karang, in the District of Kuala Selangor pending the final decision of the proceedings herein AND IT IS FURTHER ORDERED that an early date of hearing of this case be given by the Senior Assistant Registrar 10 High Court, Kuala Lumpur.

Given under my hand and the Seal of the Court this 30th day of October, 1972.

Sd: Illegible

Senior Assistant Registrar
High Court, Kuala Lumpur.

No. 20 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

SAMINATHAN s/o VANATHAN

Appellant
(Defendant)

- and -

PAPPA d/o THOPPAN

Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

GRAHAM PAGE & CO.
24 John Street,
London WC1N 2DA

Solicitors for the
Appellant

PHILIP CONWAY THOMAS & CO.
61 Catherine Place,
London SW1E 6HB

Solicitors for the
Respondent