

Judgment
17/1957

PC G.L.G.2

No. 17 of 1955.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

BETWEEN

THE ATTORNEY GENERAL OF CEYLON Appellant

AND

1. V. RAMASWAMI IYENGAR
2. K. R. SUBRAMANIA IYER,
Administrators of the Estate in Ceylon of
Rm. Ar. Ar. Rm. Arunachalam Chettiar,
deceased Respondents.

RECORD OF PROCEEDINGS

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
LONDON, S.W.1,
Solicitors for the Appellant.

LEE & PEMBERTONS,
46 LINCOLN'S INN FIELDS,
LONDON, W.C.2,
Solicitors for the Respondents.

GLI.G.2.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CEYLON.

BETWEEN

THE ATTORNEY-GENERAL OF CEYLON *Appellant*

AND

1. V. RAMASWAMI IYENGAR

2. K. R. SUBRAMANIA IYER

Administrators of the Estate in Ceylon of Rm. Ar. Ar. Rm.

ARUNACHALAM CHETTIAR, deceased *Respondents.*

RECORD OF PROCEEDINGS.

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R6	Enclosure to R5	18th August 1938

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CEYLON.

BETWEEN

THE ATTORNEY GENERAL OF CEYLON . *Appellant*

AND

- 10
1. V. RAMASWAMI IYENGAR
 2. K. R. SUBRAMANIA IYER,
Administrators of the Estate in Ceylon of RM.
AR. AR. RM. ARUNACHALAM CHETTIAR, deceased *Respondents*.

RECORD OF PROCEEDINGS

No. 1.

JOURNAL ENTRIES.

IN THE DISTRICT COURT OF COLOMBO.

No. 38/T Special.

20

IN THE MATTER of an APPEAL under Section 34 and the other sections of the Estate Duty Ordinance against Assessment of the Estate of RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased.

1. V. RAMASWAMI IYENGAR
2. K. R. SUBRAMANIAN IYER Appellants

VS.

THE ATTORNEY-GENERAL OF CEYLON . Respondent.

16.5.42

Messrs. Wilson & Kadirgamar, Proctors for Appellants file Proxy, petition of appeal under section 34 of Chapter 187 against assessment made by the Commissioner of Estate Duty.

He also files a copy of notice of 5.10.37 signed by the Assessor.

30

Issue notice on Attorney-General with copy of petition of appeal for 21.7.

(Intld.) . . . District Judge.

*In the
District
Court,
Colombo.*

No. 1.
Journal
Entries,
16th May
1942 to
30th
October
1953.

- In the District Court, Colombo.*
- No. 1. Journal Entries, 16th May 1942 to 30th October 1953, *continued.*
- 22.5.42 Notice on respondent issued to Fiscal, Western Province.
- 2.7.42 Messrs. Wilson & Kadirgamar for Appellants.
 Notice on Respondent—Respondent's proxy filed.
 Inquiry 28th and 30th October. (Intld.) . . . District Judge.
- 8.1.42 Proctor for Respondent moves that Court be pleased to postpone the inquiry fixed for 28th and 30th October to some other date convenient 10 to Court. Proctor for Appellant consents.
 Refix for 9th and 10th February 1943. (Intld.) . . . District Judge.
- 2.2.43 Proctors for Appellants and Proctor for Respondent move that Court be pleased to postpone the inquiry fixed for 9th and 10th February 1943 to some other date convenient to Court.
 Call case on 24.5 to fix date of inquiry. (Intld.) . . . District Judge.
- 5.2.43 Proctor for Appellants tender Appellants list of witnesses and documents and move for leave of court to issue summons on the witnesses.
 1. The witnesses in India, arrangements should be made for payment of their batta.
 2. *Re* witnesses 14 to 20 obtain certified copies before issuing summons.
 3. The others file. (Intld.) . . . Additional District Judge.
- 24.5.43 Mr. Advocate Perisunderam.
 Messrs. Wilson & Kadirgamar for Appellants. 30
 Mr. John Wilson for Respondent.
 Case called to refix date for inquiry.
 Call case on 10.9 to fix date of inquiry. (Intld.) . . . Additional District Judge.
- 10.9.43 Messrs. Wilson & Kadirgamar for Appellant.
 Mr. John Wilson for Respondent.
 Case called to refix date for inquiry.
 Mr. Adv. Perisunderam for Appellant.
 Mr. John Wilson for Respondent. 40
 Vide minute of today's date in No. 37/T (Special) a similar situation arises in this case.
 Of consent call 27th January 1944. (Sgd.) . . . Additional District Judge.

- 27.1.44
Case called—case not yet decided in appeal of consent call on 4.5.
(Intld.) . . . Additional District Judge.
- 4.5.44
Case called. Call 30.5 to fix date of hearing.
(Intld.) . . . Additional District Judge.
- 30.5.44
Messrs. Wilson & Kadirgamar for Appellant.
Mr. J. Wilson for Respondent.
- 10 Case called to fix a date for inquiry—vide Journal entry of this date
in case Special 37/T. I fix hearing for 3rd October along with that case.
(Intld.) . . . Additional District Judge.
- 3.10.44
Messrs. Wilson & Kadirgamar for Appellant.
Mr. J. Wilson for Respondent.
Inquiry.
Vide journal entry of today in case No. 37/T Special.
Hearing is refixed for 25th 27th and 28th February 1945.
(Intld.) . . . Additional District Judge.
- 20 18.1.45
26th February 1945 falls on a Public Holiday. Inform Proctors that
the case will be called on 22.1.45 to fix another date for hearing.
(Intld.) . . . Additional District Judge.
- 19.1.45
Proctors informed. Call 22.1.45.
(Intld.) . . .
- 22.1.45
Messrs. Wilson & Kadirgamar for Appellant.
Mr. J. Wilson for Respondent.
- 30 Case called vide above order.
Call on 25th instant.
(Intld.) . . . Additional District Judge.
- 25.1.45
Case called—vide above order.
Vide minute of today in case No. 37/Special. Hearing is fixed for
15.18.19.20 and 22 June.
(Intld.) . . . Additional District Judge.
- 7.5.45
As the 15th 18th 19th 20th and 22nd June 1945 for which date the
40 above case is fixed for inquiry will not suit the Solicitor-General, Mr. J.
Wilson for Respondent moves that Court do refix inquiry for 5 other dates
suitable to Court. The case may be called on 15.6.45 or earlier for fresh
dates to be fixed.
Proctors for Petitioner consent.
Allowed.
Call on 15.6.45.
(Intld.) . . . Additional District Judge.

*In the
District
Court,
Colombo.*

No. 1.
Journal
Entries,
16th May
1942 to
30th
October
1953,
continued.

1.11.46

Messrs. Wilson & Kadirgamar for Appellants.

Mr. J. Wilson for Respondent.

Case called to fix date for inquiry.

Inquiry 28 and 29 Ap. 1947.

(Intld.) . . . Additional District Judge.

1.4.47

The Attorney-General moves for leave of Court to revoke the proxy granted by him to Mr. J. Wilson.

10 Mr. Wilson consents.

Allowed.

(Intld.) . . . Additional District Judge.

2.4.47

Mr. Trevor de Saram tenders formal revocation together with fresh proxy in his favour.

File.

(Intld.) . . . Additional District Judge.

2.4.47

20 For reasons given in motion, Proctors for Petitioners with consent of Proctor for Respondent move that the inquiry fixed for 28th and 29th April 1947 be postponed.

Allowed. Postponed for 10.9.47.

(Intld.) . . . Additional District Judge.

8.8.47

Messrs. Wilson & Kadirgamar for Petitioners move that the inquiry fixed for 10.9.47 be postponed to some other date convenient to Court subsequent to 30.9.47 as Mr. Chelvanayagam K.C. is a candidate in the elections.

Proctor for Respondent has no objection.

30 Call on 30.9.47.

(Intld.) . . . Additional District Judge.

Respondent's Proctor's bill is taxed at Rs.342/54.

(Intld.) . . .

30.9.47

Messrs. Wilson & Kadirgamar for Appellant.

Mr. J. Wilson for Respondent.

Case called vide 8.8.47 for fresh date of inquiry.

Inquiry fixed for 8 and 9 of March.

(Intld.) . . . Additional District Judge.

40 26.2.48

Messrs. Wilson & Kadirgamar for Appellants move to file Appellants following additional list of witnesses and documents and also move for summons.

1. Rs.1 and 2 obtain certified copies. Subject to this allowed.

(Intld.) . . . Additional District Judge.

*In the
District
Court,
Colombo.*

No. 1.
Journal
Entries,
16th May
1942 to
30th
October
1953,
continued.

- In the District Court, Colombo.*
- No. 1.
Journal Entries, 16th May 1942 to 30th October 1953, continued.
- 28.2.48
Messrs. Wilson & Kadirgamar for Appellants move to file Appellants further additional list of witnesses and move for summons on them. Proctor for Respondent received notice and copy.
- Issue summons. (Intld.) . . . Additional District Judge.
- 2.3.48
Ss to witness on 28.2.48 (Respondent) issued to W.P.
- 8.3.48
Messrs. Wilson & Kadirgamar for Appellant. 10
Mr. T. de Saram for Respondent.
Inquiry.
Vide proceedings—adjourned for 9.3.48.
(Intld.) . . . Additional District Judge.
- 9.3.48
Mr. T. de Saram for Respondent moves to file Respondent's list of witnesses for the trial.
Proctors for Appellants received notice with copy. File.
(Intld.) . . . Additional District Judge.
- 9.3.48 20
Messrs. Wilson & Kadirgamar for Appellants move to file Appellants' further additional list of witnesses and documents and also moves for summons. Proctor for Respondent received notice with copy.
File—Summons allowed.
(Intld.) . . . Additional District Judge.
- 9.3.48
Messrs. Wilson & Kadirgamar for Appellants.
Mr. T. de Saram for Respondent.
Adjourned inquiry. (Intld.) . . . Additional District Judge. 30
- Vide proceedings—further hearing for 2.6.48.
Call case 26th to 30th July 1948, for expert evidence.
(Intld.) . . . Additional District Judge.
- 18.5.48.
M. T. de Saram for Respondent as explained in the motion moves that dates in the third week in August be fixed as is convenient for leading expert evidence and for addresses. Proctors for Appellants received notice.
Call on Bench 2.6. (Intld.) . . . District Judge. 40
- 2.6.48.
Case called.
M/s. Wilson & Kadirgamar for Appellant.
Mr. T. de Saram for Respondent.

- List of documents filed.
 Vide proceedings filed.
 Further evidence on 19th July 48.
 Expert evidence from 4th to 8th October 48.
 (Intld.) . . . A.D.J.
- Further Inquiry.
- 19.7.48
 M/s. Wilson & Kadirgamar for Appellant.
 Mr. T. de Saram for Respondent.
 10 Vide proceedings.
 Further hearing 6th September 1948.
 (Intld.) . . . A.D.J.
- 6.9.48
 M/s. Wilson & Kadirgamar for Appellants.
 Mr. T. de Saram for Respondent.
 Further Inquiry (Vide proceedings).
 Expert evidence from 4th to 8th October '48.
 (Intld.) . . . A.D.J.
- 24.9.48
 20 Proctor for Respondent moves that the court be pleased to postpone
 the inquiry and adjourn the same to five other days convenient to court.
 Proctors for Appellants received notice with copy for 29.9.48 and have
 cause to show.
 Call 29.9.
 (Intld.) . . . A.D.J.
- 29.9.48
 Case called.
 M/s. Wilson & Kadirgamar for Appellant.
 Mr. T. de Saram for Respondent.
 30 Adjourned for 4.10.48.
 (Intld.) . . . A.D.J.
- 4.10.48
 Case called.
 M/s. Wilson & Kadirgamar for Appellant.
 Mr. T. de Saram for Respondent.
 Vide Proceedings.
 Adjourned for 5.10.48.
 (Intld.) . . . A.D.J.
- 5.10.48
 40 Case called.
 Vide Proceedings.
 Further hearing tomorrow.
 (Intld.) . . . A.D.J.

*In the
 District
 Court,
 Colombo.*

No. 1.
 Journal
 Entries,
 16th May
 1942 to
 30th
 October
 1953,
continued.

<i>In the District Court, Colombo.</i>	6.10.48	Case called. Vide proceedings. Adjourned till 7.10.48.	(Intld.) . . . A.D.J.		
	No. 1.				
	Journal Entries, 16th May 1942 to 30th October 1953, <i>continued.</i>	7.10.48	Case called. Vide Proceedings. After lunch.	(Intld.) . . . A.D.J.	10
	8.10.48	Case called. Vide proceedings. After lunch.	(Intld.) . . . A.D.J.		
	1.12.48	Mr. Wilson & Kadirgamar for Appellant. Mr. T. de Saram for Respondent. Further hearing.			
	2.12.48	Further hearing. Proceedings of 1st and 2nd filed.		20	
	3.12.48	Proceedings filed. Further hearing on 7.12.48.	(Intld.) . . . A.D.J.		
	6.12.48	Mr. Wilson & Kadirgamar for Applt. Mr. T. de Saram for Respondent. Further hearing. Proceedings filed. Further hearing on 7.12.48.	(Intld.) . . . A.D.J.	30	
	7.12.48	Further hearing. Proceedings filed. Addresses on 24th, 25th, 28th & 29th March, 1949.	(Intld.) . . . A.D.J.		
	24.3.49	M/s Wilson & Kadirgamar for Petitioner. Mr. T. de Saram for Respondent. Addresses.		40	

	Proceedings filed. Further hearing tomorrow.	(Intld.) . . . A.D.J.
25.3.49	Addresses. Proceedings filed. Further hearing for 28.3.49.	(Intld.) . . . A.D.J.
10 28.3.49	Addresses Proceedings filed.	(Intld.) . . . A.D.J.
29.3.49	Addresses. Proceedings filed. Further hearing tomorrow.	(Intld.) . . . A.D.J.
20 30.3.49	M/s Wilson & Kadirgamar for Petitioner. Mr. T. de Saram for Respondent. Address. (Proceedings filed). Further hearing on 5.4.49.	(Intld.) . . . A.D.J.
5.4.49	Addresses. Vide proceedings further address 6.4.49.	(Intld.) . . . A.D.J.
30 6.4.49	Addresses. Vide proceedings. Further hearing 27.5.49.	(Intld.) . . . A.D.J.
27.5.49	Addresses. Vide proceedings. Further hearing 1.7.49.	(Intld.) . . . A.D.J.
1.7.49	Addresses. Vide proceedings. Postponed for 3.8.49.	(Intld.) . . . A.D.J.
40 3.8.49	For addresses. Vide proceedings filed. Judgment 17.10.49.	(Intld.) . . . A.D.J.

*In the
District
Court,
Colombo.*

—
No. 1.
Journal
Entries,
16th May
1942 to
30th
October
1953,
continued.

<i>In the District Court, Colombo.</i>	10.8.49	Documents of Respondent filed—See Part III of 37/T Special.	
No. 1.	24.8.49	Productions A1–A68 filed by Proctor for Appellants.—Vol. IV (Intld.) . . .	
Journal Entries, 16th May 1942 to 30th October 1953, continued.	8.11.49	Judgment delivered in open court. Petitioners' appeal is dismissed with costs. (Intld.) . . . A.D.J.	
	17.11.49	M/s Wilson & Kadirgamar files Petition of Appeal of the Appellants against the order of the Court dated 8.11.49 and tender stamps Rs.162/- for certificate in appeal and Rs.324/- for Supreme Court judgment. 1 Accept. (Intld.) . . . A.D.J.	10
	17.11.49	Proctors for Appellants move to deposit security for Rs.250/- on or before 24.11.49. Proctor for Respondent has received notice. Issue. They also apply for two copies of brief. 1. Issue D/n for Rs.250/- 2. Issue Paying in voucher for Rs.50/-. Call case on 24.11.48. (Intld.) . . . A.D.J.	20
	18.11.49	Paying in voucher for Rs.250/- issued. Paying in voucher for Rs.50/- issued.	
	24.11.49	Messrs. Wilson & Kadirgamar for Appellants. Mr. T. de Saram for Respondents. Present. Security to be fixed. Security offered is accepted. Issue notice of appeal on bond being perfected, for Rs.26/1. (Intld.) . . . A.D.J.	30
	24.11.49	Proctors for Appellants, tender perfected Security bond together with Kachcheri receipt No. 095481 for Rs.250/-. They also tender Kachcheri receipt No. 095482 for Rs.50/- being fees for typewritten brief. They further tender notice of appeal with stamps to the value of Rs.37,20 affixed thereto, together with a copy of the petition of appeal for services on the Respondent's proctor. 1. File. 2. Alld. Issue. Notice of appeal returnable 26.1.50. (Intld.) . . . A.D.J.	40

- 28.11.49
Notice of appeal issued.
(Intld.) . . . A.D.J.
- 30.11.49
Proctor for Respondent applies for two typewritten copies of the record.
Allowed.
(Intld.) . . . A.D.J.
- 26.1.50
10 M/S Wilson & Kadirgamar for Appellants.
Mr. T. de Saram for Respondents.
Notice of appeal served on Proctor for Respondents—absent.
Forward in due course.
- 3.5.50
Proctor for Respondent, Appellant, files an application for 3 copies of typewritten briefs in this case and moves that his previous application for two copies be cancelled.—(Vide notice filed in case No. 37/T filed.)
Allowed.
(Intld.) . . . A.D.J.
- 20 5.7.1949
Record forwarded to the Registrar, Supreme Court for typewritten briefs to be prepared in the Registry.
(Intld.) . . . A.D.J.
- 9.6.51
Registrar, Supreme Court returns record and states that stamp duty on S.C. decree form would appear to be deficient.
Inform Registrar, S.C. that the stamp duty recovered is in accordance with the Stamp Ordinance and appears to be correct.
(Intld.) . . . A.D.J.
- 30 23.5.52
Respondent filed minute of revocation of proxy granted to Mr. C. T. de Saram together with fresh proxy appointing Messrs. B. K. Billimoria & C. G. Jayasuriya, Crown Proctors—*re* D.C. proceedings.
(Intld.) F.C.V.C., Dy. Registrar, S.C.
- 24.5.52
Respondent files proxy appointing above Crown Proctors to act for him in the proceeding in the Supreme Court.
(Intld.) F.C.V.C., Dy. Registrar, S.C.
- 25.3.53
40 Mr. S. Somanathan files his appointment as Proctor for the Appellant together with minute of revocation of proxy granted to Mr. S. J. Kadirgamar now dead and moves that the Court be pleased to allow same.
1. File.
2. Revocation allowed.
(Intld.) . . . A.D.J.

*In the
District
Court,
Colombo.*

—
No. 1.
Journal
Entries,
16th May
1942 to
30th
October
1953,
continued.

[sic]

In the District Court, Colombo.

30.10.53

Record returned by the Registrar, Supreme Court Order under appeal set aside.

(A) Decree declaring that no estate duty is payable under the Estate Duty Ordinance and

(B) Ordering Crown to refund Rs.700,402/65 with legal interest as specified and costs.

Proctors to note.

(Intld.) . . . A.D.J.

No. 1.
Journal Entries,
16th May 1942 to 30th October 1953,
continued.

No. 2.
Petition of Appeal,
14th May 1942.

No. 2.

10

PETITION OF APPEAL.

IN THE DISTRICT COURT OF COLOMBO.

No. 38.

IN THE MATTER of an appeal under section 34 and the other sections of the Estate Duty Ordinance (Chapter 187 of the Legislative Enactments of Ceylon) against Assessment of Estate Duty in Estate File No. ED/A452/AJ 3206 Charge No. 9186/AR 1619.

1. V. RAMASWAMI IYENGAR and

2. K. R. SUBRAMANIA IYER, Administrators of the Estate in Ceylon of Rm. AR. AR. Rm. ARUNACHALAM CHETTIAR, deceased of Devakottai, South India

20

Appellants

vs.

THE HONOURABLE THE ATTORNEY GENERAL OF CEYLON

Respondent.

Amount

Rs.633,601/76.

To His Honour the District Judge and other Judges of the District Court of Colombo.

30

This 14th day of May 1942.

The petition of appeal of the Appellants above-named appearing by Samuel Jebaratnam Christian Kadirgamar practising under the name style and firm of "Wilson & Kadirgamar" and his Assistant David Frederick de Silva and Francis Nicholas Dias-Abeyesinghe their Proctors states as follows :—

1. The Appellants are the Administrators of the Estate of one Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased.

Letters of Administration to the said Estate were issued to them in case No. 8727 Testamentary of this Court.

40

2. The Respondent is the Attorney-General of Ceylon required to be made a Respondent by Section 38 of the Estate Duty Ordinance (Chapter 187 of the Legislative Enactments of Ceylon).

*In the
District
Court,
Colombo.*

3. The Commissioner of Estate Duty Income Tax & Stamps by his Notice of Assessment (provisional) dated the 5th day of October 1939 assessed the Estate Duty alleged to be payable in respect of the alleged Estate of the said Arunachalam Chettiar deceased at Rs.449,611/52. Thereafter by his Additional Notice of Assessment dated the 9th day of May 1941 assessed the Estate Duty alleged to be payable in respect of the said alleged Estate at Rs.639,361/76 (true copies whereof are annexed hereto marked "A" and "B" respectively).

—
No. 2.
Petition
of Appeal,
14th May
1942,
continued.

4. In terms of Section 35 of the said Estate Duty Ordinance the Appellants lodged with the Commissioner of Estate Duty Income Tax and Stamps a written notice of objection setting out specifically the several grounds upon which the Appellants contended that the Estate was not liable to pay any Estate Duty and that the assessment was erroneous.

5. The Commissioner of Estate Duty Income Tax and Stamps has by his letter No. ED/A452 dated 16th April 1942 notified to the Appellants that he has determined to maintain the assessment, except as regards the exclusion of a half share of Thanmakerney, Thachchankadu and Vannankerny Estates and by his Amended Notice of Assessment dated 29th April 1942 has reduced the Estate duty alleged to be payable to Rs.633,601/76 (true copies whereof are annexed hereto marked "C" and "D" respectively).

6. The Appellants have already paid without prejudice a sum of Rs.459,429/76 as Estate Duty.

7. Being dissatisfied with the said determination and aggrieved by the assessment, the Appellants beg to appeal therefrom to Your Honour's Court for the following among other reasons that will be urged at the hearing of this appeal:—

(1) The said deceased left no Estate in Ceylon liable to Estate Duty.

(2) The value of the alleged Estate of the said deceased is nil.

(3) The said deceased was a Hindu domiciled in India and was governed by the Mitakshara School of Hindu Law.

(4) Under section 73 of the Estate Duty Ordinance no Estate Duty can be charged upon the Estate of the deceased as he was a member of a Hindu Undivided Family and because—

(A) the movable properties sought to be charged with duty were the joint properties of that family, and

(B) the immovable properties to be charged if they had been movable properties would have been the joint properties of that family.

(5) The deceased and his son who predeceased him and their wives together constituted a Hindu undivided Family and all the property in Ceylon to wit: The business carried on under the Vilasam of Rm. Ar. Ar. Rm. in Ceylon (all the property movable

*In the
District
Court,
Colombo.*

No. 2.
Petition
of Appeal,
14th May
1942,
continued.

and immovable being trade assets) were the joint property of the Undivided Hindu Family. The son having died on 9th July 1934, the said family continued to be an undivided Hindu Family with the deceased (father) his wife and the widow of the deceased son as members thereof and the said property continued to be the joint property of the said undivided Hindu Family. At the time of the death of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar (father) on 23rd February 1938 the said undivided family consisted of himself, his two wives (one of whom he married subsequent to the death of his son) and widowed daughter-in-law referred to above and a minor unmarried daughter of the said property was the joint property of the said undivided Hindu Family. No Estate Duty is payable on the joint property of an undivided Hindu Family when a member of such family dies. 10

(6) The Appellants plead as a matter of law that the Commissioner of Estate Duty Income Tax and Stamps is precluded in law from claiming any Estate Duty as he has always accepted the position of the deceased as a member of an undivided Hindu Family that owned the joint property in Ceylon to wit : the business carried on under the Vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. 20 and assessed for Income Tax on that basis and Income Tax was accepted on the said basis.

(7) The Appellants on whom notice of assessment of duty in respect of the alleged estate of the son (No. ED/A300 A.J.2943 Charge No. 8208) was served have filed objections thereto. Without prejudice to the objection filed by the Appellants in respect of the son alleged estate, in the event of the son's alleged Estate being held to be liable to pay estate duty, as a matter of law, this estate will be entitled to a reduction of 20 per cent. in the duty as per section 18 of the said Estate Duty Ordinance. 30

(8) Without prejudice to the foregoing objections the Appellants state :—

(A) That the Assessor is not justified in including the Mysore Government Securities as part of the Ceylon Estate.

(B) The said securities were at no time and are not in Ceylon and cannot be deemed to be assets in Ceylon in any sense of the term.

(9) The Appellants state that if any duty is liable to be paid on the alleged estate of the son (ED/A300) to that extent the value of this estate becomes reduced, as the said duty will be a 40 liability of the said Estate as on 9th July 1934.

(10) The Appellants state that they are not liable to pay any interest on the amount of duty for a period anterior to the date of assessment.

Wherefore the Appellants pray that Your Honour's Court will be pleased to enter judgment for the Appellants with costs of appeal :

(A) setting aside the assessment of the Commissioner of Estate Duty, Income Tax and Stamps ;

(B) declaring that the Estate of the said Arunachalam Chettiar, deceased, is not liable to pay any Estate Duty ; and ordering the refund of the amount already paid and hereafter to be paid as duty in pursuance of the Assessment in respect of the aforesaid Estate with interest or in the alternative,

In the District Court, Colombo.

(C) by reducing the value of the Estate by the amount, if any, paid or payable as Duty on the Estate of the son referred to in paragraph (9) above ;

No. 2.
Petition of Appeal,
14th May 1942,
continued.

10 (D) and by reducing the said Assessment by the deletion of the value of the Mysore Government Securities and by granting relief under section 18 of the said Estate Duty Ordinance ;

(E) and granting such and further relief as to Your Honour's Court shall seem meet.

(Sgd.) WILSON & KADIRGAMAR,
Proctors for Appellants.

DOCUMENTS FILED WITH THE PETITION.

1. Notice of Assessment (Provisional) dated 5th October 1939 marked "A".
2. Additional Notice of Assessment dated 9th May 1941 marked " B ".
- 20 3. Letter dated 16th April 1942 addressed by the Commissioner of Estate Duty to the Appellants marked " C ".
4. Amended Notice of Assessment dated 29th April 1942 marked " D ", and
5. Appointment.

(Sgd.) WILSON & KADIRGAMAR,
Proctors for Appellants.

Settled by—

Messrs. PERI SUNDERAM and N. NADARAJAH, K.C.,
Advocates.

NOTICE OF ASSESSMENT

30

" A "

Doc. " A "

Charge No. 9186.

To Messrs. V. Ramaswami Iyengar and K. R. Subramaniam Iyer,
c/o Messrs. Wilson & Kadirgamar, Gaffoor Buildings, Fort, Colombo.

TAKE NOTICE that the estate duty in respect of the estate of Rm.Ar.Ar.Rm. Arunachalam Chettiar deceased has been assessed as follows :—

CEYLON ESTATE

ASSETS :

40	Nett value of the Ceylon Estate as per statements of account furnished with the declaration dated 1st May 1939	Rs.2770072.00
	Half share of Thanmarkerny Thachchankadu and Vannankerny Estates	40000.00
		<hr/>
		2810072.00

*In the
District
Court,
Colombo.*

ESTATE OUTSIDE CEYLON		
As per declaration	.. .. .	3756701.00
		Rs.6566773.00
		Rs.6566773.00

No. 2.
Petition
of Appeal,
14th May
1942,
Doc. " A "
continued.

ESTATE DUTY		
Duty on Rs.2,810,072 at 16% with interest at 4% from 24.2.1939	.. .. .	Rs.449611.52

This assessment is provisional and is liable to revision. It is issued to enable the Receivers to obtain Letters on the issue of a Provisional Certificate.

The above amount is payable by you on or before 16th November 1939 and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing within 30 days of the date hereof stating the grounds of objection.

(Sgd.) L. G. GUNASEKERA,
Assessor, Estate Duty.

Colombo, 5th October 1939.

Form No. 236.

Doc. " B "

**THE ESTATE DUTY ORDINANCE No. 1 OF 1938
ADDITIONAL NOTICE OF ASSESSMENT**

20

File No. ED/A 452.
Charge No. 9186/38.

D.C. Colombo Testamentary No. 8727.

Rm.Ar.Ar.Rm. Arunachalam Chettiar, Deceased

To Messrs. V. Ramaswami Iyengar & K. R. Subramania Iyer, c/o
Messrs. Wilson & Kadirgamar, Proctors, Gaffoor Buildings, Colombo.

TAKE NOTICE that the Estate Duty in respect of the estate of the deceased above named has been assessed as follows :—

CEYLON ESTATE		
ASSETS		30
Nett value as per provl. assessment of 5.10.1939		Rs.2810072.00
Increase by off. valn. of Ceylon Govt. Bonds	.. .. .	Rs.1125
Amt. claimed on a/c of Bad Debts	.. .. .
Interest due on loans shown in Sch. C of New A/c	.. .. .	Rs.3500

Interest due on loans shown in Sch. 2 of old a/c	25410		
Bad debts claimed in Sch. 3 of old a/c	164731		
Bad debts claimed on a/c of the rice business	12160		
	<u>205801</u>		
Amount allowed	175000		
		<u>30801</u>	
10 Amount disallowed on a/c of income tax liability		9115	
Increase by offl. valn. of the immovable property			
As per list I	67200		
As per list II	26475		
	<u>93675</u>		
Less allowance under			
s. 20 (3)	29719		
s. 20 (4)	3433		
20 s. 20 (5)	200		
	<u>33352</u>		
	60323		
Less allowance under			
s. 20 (3) in respect of Thannakerny Estate	4000		
	<u>56323</u>		
Add Mysore Govt. Securities		<u>1088575</u>	
			<u>1185939.00</u>
			<u>3996011.00</u>
ESTATE OUTSIDE CEYLON			
30 Nett. value as per provl. assessment	3756701		
Less Mysore Govt. Securities treated as a Ceylon asset	1088575		
	<u>2668126.00</u>		
			<u>6664137.00</u>
Estate duty on Rs.3,996,011 at 16%			639361.76
Duty as per provl. assessment of 5.10.39			449611.52
			<u>189750.24</u>
40 Addl. Duty			<u>189750.24</u>
With interest at 4% per annum from 24.2.1939			

The amount is payable by you on or before 20th June 1941 and should be remitted to the Commissioner of Estate Duty. This form

*In the
District
Court,
Colombo.*

No. 2.
Petition
of Appeal,
14th May
1942,
Doc "B"
continued.

*In the
District
Court,
Colombo.*

should accompany your remittance. If you object to the above assessment you must give notice of appeal in writing within 30 days of the date hereof stating the grounds of objection.

(Sgd.) L. G. GUNASEKERA,
Assessor, Estate Duty.

No. 2.
Petition
of Appeal,
14th May
1942,
Doc "B"
continued.

Colombo, 9th May 1941.

(List referred to)

List 2		List 1		
Item	Increase	Item	Increase	
2	Rs.4500	1	Rs.2000	10
3	500	3	1000	
4	675	4	5000	
5	1400	5	1000	
8	1000	8	4000	
9	5000	9	4000	
10	1000	10	4000	
11	5000	11	1000	
14	5000	12	7000	
17	2400	13	8000	
	<hr/>	14	1000	20
	26475	15	8000	
	<hr/>	16	4000	
		18	1000	
		19	9000	
		21	6500	
		22	700	
			<hr/>	
			67200	
			<hr/>	

Doc "C"

" C "

Estate Duty Office,
Colombo. 30
April 16, 1942.

Estate No. ED/A452—
RM. AR. AR. RM ARUNACHALAM CHETTIAR, Deceased.

Gentlemen,

With reference to your letter dated the 27th February 1942 you are hereby notified under section 37 of the Estate Duty Ordinance that I have determined to maintain the assessment, subject to the exclusion of a half share of Thanmakerny, Thachchankadu and Vannankerny Estates.

Yours faithfully, 40
(Sgd.) T. D. PERERA,
Commissioner of Estate Duty.
LGS.

Messrs. V. Ramaswamy Iyengar and
K. R. Subramania Iyer,
c/o Messrs. Wilson & Kadirgamar,
Proctors & Notaries,
P.O. Box No. 224,
Colombo.

“ D ”

THE ESTATE DUTY ORDINANCE NO. 1 OF 1938.
AMENDED NOTICE OF ASSESSMENT.

D.C. Colombo Testamentary Case No. 8727.

File No. ED/A452/AJ3206.

Charge No. 9186/AR1619.

RM. AR. AR. RM. ARUNACHALAM CHETTIAR.

To Messrs. V. Ramasamy Iyengar & K. R. Subramaniam Iyer, c/o Messrs.
Wilson & Kadirgamar, Proctors, P.O. Box 224, Colombo.

*In the
District
Court,
Colombo.*

No. 2.
Petition
of Appeal,
14th May
1942,
Doc “D”
continued.

- 10 TAKE NOTICE that the Estate Duty in respect of the estate of the deceased above named has been assessed as follows :

ASSETS—CEYLON ESTATE.

Nett value as per assessment dated 9.5.1941	.. ..	Rs.3996011.00
Less half share of Thannakerny, Thachchankadu and Vannankerny Estate now excluded	.. ..	Rs.40000
Less allowance under S. 20 (3)	.. ..	4000
		36000.00
		3960011.00

20

ESTATE OUTSIDE CEYLON.

As per previous assessment	.. ..	2668126.00
Total estate	.. ..	6628137.00
Estate Duty on Rs.3,960,011 at 16%	.. ..	633601.76
Duty paid with interest as per additional assessment of 9.5.41	.. ..	189750.24
Amended duty payable	.. ..	443851.52
Less amount paid with interest	.. ..	299679.52
Balance duty payable	.. ..	174172.00

with interest at 4% per annum from 24.2.1939.

- 30 The above amount is payable by you on or before 1st June 1942 and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing within 30 days of the date hereof, stating the grounds of objection.

(Sgd.) L. G. GUNASEKERA,
Assessor, Estate Duty.

Colombo, 29th April 1942.

*In the
District
Court,
Colombo.*

No. 3.

INTRODUCTORY MATTERS, Agreement of Parties as to Leading Evidence common to both Appeals, Opening of Case.

No. 3.

(Pages 23 to 25 in Record of Appeal No. 16 of 1955.)

No. 4.
Framing of
Issues,
8th March
1948.

No. 4.

FRAMING OF ISSUES.

Mr. Chelvanayagam formulates in the form of issues the points raised in his appeal in this case. He suggests :—

(1) (A) Was the deceased a member of an undivided Hindu family which carried on business in Ceylon of moneylender, rice merchant etc. under the vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. ? 10

(B) Was the deceased not entitled to any definite share in the assets of the said family ?

(C) Did the deceased have no interest in the assets of the said family which passed on his death ?

(2) Was all the property that has been assessed as liable to pay estate duty the joint property of a Hindu undivided family of which the deceased was a member ?

(3) If any portions of issue (1) or if issue (2) is answered in favour of the Appellant, is estate duty payable on the property that has been assessed ? 20

(4) If issue (3) is answered in favour of the Respondent what is the value of the interest of the deceased in the property that has been assessed ?

(5) If issue (2) is answered in favour of the Appellant is the alleged estate in question exempt from estate duty by virtue of section 73 of Ordinance No. 1 of 1938 ?

(6) (A) Had the Crown for purposes of income tax accepted the position of the deceased that all his income in Ceylon was the income from the joint property of an undivided Hindu family of which he was a member ? 30

(B) If so, is the Crown estopped from denying that the said estate is joint property of an undivided Hindu family ?

(7) On the death of the deceased did any property pass within the meaning of the Estate Duty Ordinance No. 1 of 1938 ?

(8) If issue (7) is answered in the negative is any estate duty payable ?

(9) Are the items referred to as "Mysore Government Securities" liable to be included as part of the Ceylon Estate of the deceased ? 40

(10) Are the Appellants liable to pay interest on the assessed duty for any period anterior to the date of assessment ?

In the District Court, Colombo.

(11) In the event of the Appellants being found liable to pay duty on the estate of the son of the deceased—

(A) is the amount of that duty deductible from the assets of this estate ?

No. 4.
Framing of Issues,
8th March 1948,
continued.

(B) are the Appellants entitled to relief in virtue of quick succession ?

10 Mr. Weerasooriya agrees to these issues ; he has no issues to suggest. I accept the issues.

No. 5.

No. 5.

ADMITTED FACTS.

(Pages 27 to 28 in Record of Appeal No. 16 of 1955.)

ORIGINAL APPELLANTS' EVIDENCE.

No. 6.

Original Appellants' Evidence.

Ramasamy Ramanathan Chettiar.

No. 6.

(Pages 28 to 31 in Record of Appeal No. 16 of 1955.)

No. 7.

No. 7.

A. Ulagappa Chettiar.

20 (Pages 32 to 33 in Record of Appeal No. 16 of 1955.)

No. 8.

No. 8.

V. Ramaswami Iyengar.

(Pages 33 to 36 in Record of Appeal No. 16 of 1955.)

No. 9.

No. 9.

FURTHER ISSUES.

(Page 37 in Record of Appeal No. 16 of 1955.)

*In the
District
Court,
Colombo.*

ORIGINAL APPELLANTS' EVIDENCE.

No. 10.

S. K. Srinivasan.

(Pages 37 to 39 in Record of Appeal No. 16 of 1955.)

*Original
Appellants'
Evidence.*

No. 10.

No. 11.

Manicam Chettiar.

(Pages 40 to 45 in Record of Appeal No. 16 of 1955.)

No. 11.

No. 12.

V. Ramaswami Iyengar (recalled).

(Pages 46 to 47 in Record of Appeal No. 16 of 1955.)

No. 12.

10

No. 13.

ARGUMENT regarding Admissibility of Affidavit of Arunachalam Chettiar (senior) sworn in 1936.

(Pages 47 to 48 in Record of Appeal No. 16 of 1955.)

No. 13.

No. 14.

ORDER on No. 13.

(Pages 49 to 50 in Record of Appeal No. 16 of 1955.)

No. 14.

ORIGINAL RESPONDENT'S EVIDENCE.

No. 15.

David Norrie.

*In the
District
Court,
Colombo.*

Mr. Chelvanayagam calls :

DAVID NORRIE. Sworn.

*Original
Respondent's
Evidence.*

I am a partner of the firm of Keel & Waldock, Share and Produce Brokers, also Exchange Brokers. We buy and sell securities on behalf of our clients. We are a member of the Colombo Brokers' Association ; there are about seven other members. There is a share market in Colombo conducted by the Colombo Brokers' Association. Twice a day except on Fridays we meet and transact business. There is no Stock Exchange in Colombo known as such. I know the English Stock Exchange very vaguely. Our Brokers' Association functions in Colombo, the capital of Ceylon. There is no other Brokers' Association dealing with stocks and shares in any other part of Ceylon to my knowledge. When we meet twice a day, members of the Association buy and sell their clients' shares and stocks. We have an official share list in the transactions up till the call over at the noonday meeting are given ; that is the list published in the daily newspapers. When the Association meets every day for transaction of business all the stocks and shares on that list are called over. It is known as the daily Call Over which only takes place at the noonday meeting. At the morning meeting at 9.30 a.m. the whole list is not called. At the noonday meeting every share is called over irrespective of whether there are or no transactions. Each brokers' firm reports the business it has done and it is also recorded at each daily call over. We give the buyer's price as well as the seller's price. The buyers and sellers have to be called over irrespective of whether there is or no transaction. In this list there are Government Securities, local companies and Malayan Companies registered in Ceylon, but no other foreign Companies. Our List consists of all companies registered in Ceylon. A company registered in Ceylon may hold assets outside Ceylon ; it may hold lands in Malaya. Our share list consists of Ceylon Government Stocks as well as Ceylon Companies registered under the Ordinance of Ceylon. Indian Government Securities do not appear in our List nor shares in Indian Companies.

No. 15.
David
Norrie,
19th July
1948.

I have heard of Mysore Government Securities. We have never done any transaction in them. They are not in our Share List.

(Shown two of the Mysore Government Notes A7 and A9.) I have never dealt with these at all. As a broker, if a client comes and asks us to buy securities in a foreign company what we do is this : so far as Indian securities are concerned, we have little or no enquiries for them ; But if we get a definite order to sell or buy we would pass that order on to our agents in the particular country concerned ; they would then execute the sale or purchase as the case may be, on our behalf. Like that we would act on behalf of any client in Ceylon in respect of any security in any part of the world. But our acting on behalf of a Ceylon client in respect of a foreign security or shares would not be reported in the Colombo Share Market. These Mysore Government Bonds are not reported at our meetings at all. Even if we did such business it is between ourselves and our Agents in India.

50 *XXN. :*

Nil.

(Sgd.) . . . Additional District Judge.

*In the
District
Court,
Colombo.*

No. 16.
Further
Issue,
19th July
1948.

No. 16.
FURTHER ISSUE.

At this stage Mr. Chelvanayagam suggests an additional issue as :—

(9) (B) In any event is the amount paid as succession duty in Mysore deductible in assessing the value of the Mysore Bonds under Section 23 of the Ordinance ?

Mr. Weerasuriya has no objection to this issue.
I allow it.

*Original
Appellants'
Evidence.*

No. 17.
Manicam
Chettiar,
re-called,
19th July
1948.

No. 17.
Manicam Chettiar (recalled).

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Mr. Chelvanayagam calls :—

A. R. MANICAM CHETTIAR. Recalled. Affirmed.

I have already given evidence in this case and spoken to my connections with this firm.

The father Arunachalam Chettiar died on 23rd February 1938. Thereafter the present Appellants applied for Letters of Administration of this Estate in this court. Before we could obtain Letters we had to get a certificate from the Commissioner of Estate Duty. For that purpose we sent a declaration of the property in the statutory form ; that was dated 1st May 1939. I produce a copy of that declaration marked A39. 20
In that the Administrators claimed exemption from duty under section 33 of the Estate Duty Ordinance. The Assessor Estate Duty, wrote to the Appellants on the 30th September 1939 agreeing to grant a certificate on the Appellants giving security for the payment of duty. I produce that letter marked A40. He followed that up with provisional notice of assessment dated 5th October 1939 marked A41. The Appellants objected to that notice of assessment on the 3rd November 1939, copy marked A42. In the same month, soon after, the Appellants gave security as referred to in A40, copy marked A43. On 9th May 1941 the Assessor, Estate Duty, served an additional notice of assessment on the Appellants marked A44. 30
My Proctor replied to that on the 27th May 1941, copy marked A45.

(Sgd.) . . . Additional District Judge.

(Adjourned for lunch.)

D.C. 38/T (Special).

19th July 1948.

(After Interval.)

A. R. MANICKAM CHETTIAR Affirmed (recalled).

Examination in chief continued :

A45 was replied by the Assessor on 2nd May 1941 by his letter marked A46. On the same date the Appellants sent notice of objections to the 40
assessment marked A47. Our Proctor wrote on 13th June 1941 letter A48.

They also wrote on the 19th June 1941 letter A49. On the 27th June 1941 the Commissioner of Estate Duty wrote to our Proctors letter A50. On the 21st July 1941 our Proctors wrote letter A51. On the next day, the 22nd July 1941 they wrote A52 and the Commissioner replied on the 31st July 1941 by A53. Our Proctors wrote on 13th August 1941 letter A54. They wrote again on the 26th September letter A55. They wrote again on the 8th October letter A56. The Commissioner wrote to us on the 11th November letter A57. Our Proctors wrote back on the 18th November 1941 letter A58. A59 was written by the Commissioner on the 12th December 1941. To A59 is attached a statement showing the working out of the account A59a. Our Proctors wrote on the 16th December 1941 A60. On April 16th 1942 the Commissioner wrote A61 informing us that he had determined to maintain the assessment subject to the exclusion of a half share in respect of certain properties. That is the statutory finding of the Commissioner rejecting our objections to the notice of assessment.

*In the
District
Court,
Colombo.*

*Original
Appellants'
Evidence.*

No. 17.
Manicam
Chettiar,
re-called,
19th July
1948,
continued.

On the 14th May 1942 the Appellants filed a further appeal. Before that, on the 29th April 1942, the Assessor of Estate Duty had served another amended notice of assessment A62 leaving out the properties excluded in terms of A61. Our appeal was in respect of that portion of the assessment which was not allowed by the Commissioner.

On the 1st June 1942 our Proctors wrote A63 sending two cheques for Rs.174,000 without prejudice, in further payment of duty. On the 29th June 1942 the Commissioner wrote A64 acknowledging the money sent by A63 and showing what the balance due was. That balance was remitted by our Proctors on the 25th July 1942 with letter A65. By A66 letter of 13th August 1942 the Commissioner asked for a further sum of Rs.6/90. That also has been paid. We have paid all duty and the interest on the duty. We have got the receipts. I hold fifteen receipts for the total amount of duty and interest paid in both cases. In case No. 38/T the amount paid is Rs.7000, 402/65 being duty and interest. I hold the receipts for this amount in hand.

The Mysore Government Security bonds have been included in the assessment notice they are valued at Rs.1,088,575, that is, including interest up to the date of death. First of all I claim they should not be treated as a Ceylon asset liable to duty. They are shown as assets out of Ceylon. Secondly I claim that even if they are to be included in the estate that is liable to duty the amount that was paid as succession duty in the State of Mysore has to be deducted from that amount.

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No. 18.
FURTHER ISSUE.

(At this stage, arising out issue 9 (b). Mr. Weerasuriya frames another issue, namely

9. (c) Even if the amount paid as succession duty is deductible can the Appellants seek to claim the benefit of such a deduction in these

No. 18.
Further
Issue,
19th July
1948.

*In the
District
Court,
Colombo.*

proceedings inasmuch as they have not taken an objection in the petition of appeal nor stated it in the statement of objections sent to the Commissioner of Estate Duty ?

Mr. Chelvanayagam has no objection to this issue).

*Original
Appellants'
Evidence.*

No. 18.
Proceedings
19th July
1948,
continued.

No. 19.
Manicam
Chettiar,
re-called
19th July
1948,
(continued).

No. 19.

Manicam Chettiar (recalled).

I claim that amount paid as succession duty in the State of Mysore has to be deducted from the assessment in terms of the Ordinance. Duty is paid in Mysore in stamps affixed to the succession certificate itself, or 10 rather the succession certificate is issued on Government stamped paper. That succession certificate is herewith with me in Court. It is a voluminous document consisting of 403 sheets of stamped paper. The duty as appearing in that certificate is to the total value of Rs.40,293/-.

(Mr. Chelvanayagam moves to produce the succession certificate.

Mr. Weerasuriya objects. He states no objection has been taken by the Appellants to the assessment on the ground that the amount should be deducted, either in the notice of objections (A47) or in the petition of appeal filed in this Court. He also objects to the production of the document on the ground that it has not been included in the list of documents 20 furnished to the Commissioner of Estate Duty under sections 36 (a) and 39 (2).

Mr. Chelvanayagam submits that the date of issue of the succession certificate was the 17th November 1941, and the notice of objections to the Commissioners was on the 2nd June 1941 (A47). He says he actually submitted the list of documents on the 2nd August 1941.

Mr. Weerasuriya says it is not relevant on the pleadings.

Mr. Weerasuriya informs me that the time within which the notice had to be delivered under section 36 (a) had been extended. I therefore, do not propose to make an order until I hear further evidence on this 30 point.)

I also claim in this estate relief under the provisions relating to quick succession, namely, section 18. The son died on the 19th July 1934 and within four years the father died—after three years and within four years. All the property that is assessed in the son's estate passed on the father's death. In fact that amounts to a half share of the assets of the family at that time. A half share of the estate of the sum was assessed in 1934. The same half share was assessed as the father's estate in 1938. Therefore one half of the estate has passed twice, once in 1934 and again in 1938. I claim a reduction on one half of the father's estate on the ground of 40 quick succession that should be a reduction under section 18 (b); I ask for a reduction by 20 per cent. on half the estate.

XXN.

As regards the succession certificates I got this only about two or three months ago from India. I had been in correspondence with the Head Office of this branch at Devakottai. The administrators have been paying frequent visits to Ceylon.

(At this stage Mr. Weerasuriya has no objection to the succession certificate being admitted in evidence in order to establish the amount paid, without prejudice to his arguments on issues 9 (b) and (c).

I allow the document to be produced.

Mr. Chelvanayagam marks the document A67.)

(Sgd.) . . . Additional District Judge.

In the District Court, Colombo.

Original Appellants' Evidence.

Mr. Chelvanayagam closes his case reading in evidence 1A to A67, subject to the agreement with regard to expert evidence.

(Sgd.) . . . Additional District Judge.

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No. 20.

PROCEEDINGS.

(Pages 50 to 51 in Record of Appeal No. 16 of 1955.)

No. 20.
Original Respondent's Evidence.

No. 21.

L. G. Gunesekera.

(Pages 51 to 57 in Record of Appeal No. 16 of 1955.)

No. 21.

No. 22.

PROCEEDINGS.

(Page 58 in Record of Appeal No. 16 of 1955.)

No. 22.
Original Appellants' Expert Evidence.

ORIGINAL APPELLANTS' EXPERT EVIDENCE.

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No. 23.

K. Bhashyam.

(Pages 59 to 121 in Record of Appeal No. 16 of 1955.)

No. 23.
Original Respondent's Expert Evidence.

ORIGINAL RESPONDENT'S EXPERT EVIDENCE.

No. 24.

K. Raja Aiyer.

(Pages 122 to 190 in Record of Appeal No. 16 of 1955.)

No. 24.

*In the
District
Court,
Colombo.*

*Addresses
of Counsel.*

No. 25.

ADDRESSES OF COUNSEL.

No. 25.

ADDRESS of Counsel for the Original Respondent.

(Pages 191 to 215 in Record of Appeal No. 16 of 1955.)

No. 26.

No. 26.

ADDRESS of Counsel for the Original Appellants.

(Pages 216 to 277 in Record of Appeal No. 16 of 1955.)

No. 27.

No. 27.

FURTHER ADDRESS of Counsel for the Original Respondent.

(Pages 277 to 285 in Record of Appeal No. 16 of 1955.)

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No. 28.

No. 28.

JUDGMENT (apart from Answers to Issues).

(Pages 286 to 312 in Record of Appeal No. 16 of 1955.)

No. 28A.
ANSWERS TO ISSUES.

*In the
District
Court,
Colombo.*

(Pages 312 to 313 in Record of Appeal No. 16 of 1955.)

I answer the issues in Case No. 38/T (Special) as follows :—

No. 28A.
Answers to
Issues,
8th
November
1949.

(1) (A) Yes.

(B) When his son was alive he was not entitled to any definite share.

(C) He had an interest in the assets of the property which once belonged to a joint family and which, on his son's death, became his exclusive property. It passed on his death.

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(2) No. Not at the time of his death.

(3) Does not arise.

(4) Total value of the property.

(5) Does not arise.

(6) (A) Yes.

(B) No; particularly in view of the decision in the 45 N.L.R. case.

(7) Yes.

(8) Does not arise.

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(9) Yes.

(9) (A) Will not arise in view of my answer to (9).

(B) As these claims for deductions were not made in the petition of appeal or in the statement of the Commissioner of Estate Duty, I hold that they cannot be raised at this stage.

(10) Yes.

(11) (A) Does not arise in view of my findings in 37/T that the son's estate is not liable for duty.

(B) Does not arise in view of my findings in 37/T that the son's estate is not liable for duty.

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(12) No.

(13) Yes.

(14) Nil.

I accordingly dismiss the petitioner's appeal with costs.

(Sgd.) . . . Addl. District Judge.

Judgment delivered in open Court in the presence of Mr. Kadirgamar for the Appellant and Mr. Trevor de Saram for the Respondent.

(Sgd.) . . .

8.11.49
Addl. District Judge.

*In the
Supreme
Court.*

No. 29.

PETITION OF APPEAL.

No. 29.
Petition of
Appeal,
17th
November
1949.

IN THE DISTRICT COURT OF COLOMBO.

No. 38/T. (Special).

Supreme Court No. 236 of 1951.

IN THE MATTER of an APPEAL under Section 34 and the other sections of the Estate Duty Ordinance (Cap. 187 of the Legislative Enactments of Ceylon) against assessment of of Estate Duty in Estate File No. ED/A452/AJ 3206 Charge No. 9186/AR 1619.

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1. V. RAMASWAMI IYENGAR and
 2. K. R. SUBRAMANIA IYER, Administrators of the Estate in Ceylon of Rm. Ar. Ar. Rm. ARUNACHALAM CHETTIAR, deceased of Devakottai, South India Appellants
- vs.*

**THE HONOURABLE THE ATTORNEY-GENERAL
OF CEYLON Respondent.**

To the Honourable the Chief Justice and the other Judges of the Supreme Court of the Island of Ceylon.

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This 17th day of November 1949.

The Petition of Appeal of the Appellants above named appearing by Samuel Jebaratnam Christian Kadirgamar practising under the name style and firm of "Wilson and Kadirgamar" their Proctor states as follows:—

1. Your Appellants are the Administrators of the estate of Rm. Ar. Ar. Rm. Arunachalam Chettiar deceased who died in India on 23rd February 1938.

2. The said deceased is referred to in this petition and in the proceedings of the District Court as Arunachalam Chettiar (Sr.). He had a son named Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar who died on 9th July 1934. This son has been referred to in the proceedings and is being referred to in this petition as Arunachalam Chettiar (Jr.).

3. Both father and son, the two Arunachalam Chettiars were Indians domiciled in India and were persons subject to the Mitakshara School of Hindu Law.

4. Prior to the death of Arunachalam Chettiar (Jr.) he and his father along with certain female members constituted a Hindu undivided family, which family owned considerable property in India and Ceylon.

5. After the death of Arunachalam Chettiar (Jr.) the property of the said family remained with Arunachalam Chettiar (Sr.) who thereafter, till his death, remained the only male member of that family which,

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however, had, besides him, a number of female members. In Hindu Law such a remaining only male member of an Hindu family is called "Sole surviving coparcener."

*In the
Supreme
Court.*

6. On the death of Arunachalam Chettiar (Sr.) the Commissioner for Estate Duty called upon the Appellants as Administrators of the Estate of the said deceased to pay Estate Duty on all which he alleged to be the Ceylon property which belonged to the joint family of which Arunachalam Chettiar (Sr.) was the sole surviving coparcener. A formal assessment to that effect was made on the Appellants.

No. 29.
Petition of
Appeal,
17th
November
1949,
continued.

10 7. The Appellants duly appealed against the assessment to the Commissioner and on his maintaining the assessment and rejecting the appeal, they appealed to the District Court of Colombo against the assessment.

8. Subsequent to the order of the Commissioner maintaining the assessment he called upon the Appellants to pay the entire duty notwithstanding the appeal to the District Court. The Appellants had accordingly paid the duty, the return of which they asked for in their appeal to the District Court.

20 9. The Commissioner had also in parallel proceedings called upon the Appellants to pay duty on half the Ceylon property of the said family as on the date of death of Arunachalam Chettiar (Jr.). The Commissioner's claim was made on the basis that Arunachalam Chettiar (Jr.) had just prior to his death been an owner to the extent of a half share of all the property that belonged to the joint family of which the father and son were the male members.

10. The Appellants similarly appealed to the District Court from that assessment and that appeal was numbered 37 Special.

30 11. During the trial of both these appeals in the District Court the proceedings were consolidated and the evidence was recorded together in both appeals.

12. The appeal in this case against the assessment on the father's estate went to trial on the following issues :—

(1) (A) Was the deceased a member of an undivided Hindu family which carried on business in Ceylon of moneylenders, rice merchants etc., under the vilasams of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. ?

(B) Was the deceased not entitled to any definite share in the assets of the said family ?

40 (C) Did the deceased have no interest in the assets of the said family which passed on his death ?

(2) Was all the property that has been assessed as liable to pay estate duty the joint property of a Hindu undivided family of which the deceased was a member ?

(3) If any portions of issue (1) or if issue (2) is answered in favour of the Appellants, is estate duty payable on the property that has been assessed ?

*In the
Supreme
Court.*

No. 29.
Petition of
Appeal,
17th
November
1949,
continued.

(4) If issue (3) is answered in favour of the Respondent what is the value of the interest of the deceased in the property that has been assessed ?

(5) If issue (2) is answered in favour of the Appellant is the alleged estate in question exempt from estate duty by virtue of Section 73 of Ordinance 1 of 1938 ?

(6) (A) Had the Crown for purposes of income tax accepted the position of the deceased that all his income in Ceylon was the income from the joint property of an undivided Hindu Family of which he was a member ?

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(B) If so, is the Crown estopped from denying that the said estate is joint property of an undivided Hindu Family ?

(7) On the death of the deceased did any property pass within the meaning of the Estate Duty Ordinance No. 1 of 1938 ?

(8) If issue (7) is answered in the negative is any Estate Duty payable ?

(9) Are the items referred to as "Mysore Government Securities" liable to be included as part of the Ceylon Estate of the deceased ?

(9) (A) In any event are these items properly included in the estate to be assessed for the purpose of ascertainment of the rate payable ?

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(B) In any event is the amount paid as succession duty in Mysore deductible in assessing the value of the Mysore Bonds under section 23 of the Ordinance ?

(C) Even if the amount paid as succession duty is deductible can the Appellants seek to claim the benefit of such a deduction in these proceedings inasmuch as they have not taken an objection in the petition of appeal nor stated it in the statement of objections sent to the Commissioner of Estate Duty ?

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(10) Are the Appellants liable to pay interest on the assessed duty for any period anterior to the date of assessment ?

(11) In the event of the Appellants being found liable to pay duty on the estate of the son of the deceased—(A) is the amount of that duty deductible from the assets of this estate ? (B) are the Appellants entitled to relief by virtue of quick succession ?

(12) Has any claim for refund been made to the Commissioner of Estate Duty in terms of section 58 of the Estate Duty Ordinance ?

(13) If the answer to issue (12) is in the negative is it open to the Court to make an order for a refund in terms of prayer (b) in the petition of appeal ?

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(14) What amount if any of the duty paid is repayable ?

13. At the commencement of the trial the following admissions were made by both sides :—

(A) That for the purpose of the payment of income tax in Ceylon during the lifetime of Arunachalam Chettiar (Jr.) the returns of income derived by him and his father were made on the basis that they were members of a Hindu undivided family ;

(B) That during the aforesaid period the income of Arunachalam Chettiar (Jr.) and his father were assessed for purposes of payment of income tax in Ceylon on the basis that they were members of a Hindu undivided family ;

(C) That only one return was made for each year in respect of the joint income of father and son and one assessment was made on that return :

(D) That after the death of Arunachalam Chettiar (Jr.) the return of income derived by his father were made on the basis that he was a member of a Hindu undivided family ;

(E) That after the death of Arunachalam Chettiar (Jr.) the income of his father was assessed on the footing that the latter was a member of a Hindu undivided family.

(F) That the property assessed for payment of estate duty on the estate of Arunachalam Chettiar (Jr.) was immediately prior to his death the joint property of a Hindu undivided family of which he and his father were members.

(NOTE : Mr. Chelvanayagam states that while he agrees to this so far as it goes he does not concede that they were the sole and only members of the undivided family.)

(G) That the property assessed for payment of estate duty on the estate of Arunachalam Chettiar (Sr.) was property which, had his son been alive on the 22nd February, 1938, would have been on that date the joint property of a Hindu undivided family of which the father and son were members.

(NOTE : Mr. Chelvanayagam while admitting that father and son were members of a joint Hindu undivided family, does not concede that they were the only members.)

Mr. Chelvanayagam was the Counsel for the Appellants.

14. By his judgment dated November 8th 1949, the learned District Judge dismissed the appeal of the Appellants with costs.

15. In case No. 37 where the Appellants appealed against the assessment in the estate of Arunachalam Chettiar (Jr.) the learned District Judge allowed the appeal, holding in effect that Arunachalam Chettiar (Jr.) being a member of a Hindu undivided family did not have in the family property such an interest as passed on his death and that there was no property on which estate duty was leviable.

16. Being aggrieved with the judgment in this case the Appellants beg to appeal therefrom and from the decree thereon on the following amongst other grounds that may be raised at the hearing of this appeal :—

(A) The said judgment is contrary to law and the weight of evidence.

(B) Section 73 of the Estate Duty Ordinance exempts from duty the joint property of a Hindu undivided family when a member of that family dies. It was admitted that the property assessed for payment of estate duty in this case was property which, had the

*In the
Supreme
Court.*

No. 29.

Petition of
Appeal,
17th
November
1949,
continued.

*In the
Supreme
Court.*

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Petition of
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1949,
continued.

son been alive on the death of the father, would have been on that date the joint property of a Hindu undivided family of which the father and son were members.

From the death of the son up to the death of the father it was established that the same Hindu family existed with a change in the personnel. It was conceded by the Crown and it was otherwise established that a Hindu family can consist of only one male member and female member or members or with female members only. Hence that which was property of a Hindu Family on the death of the son did not cease to be the property of that family, because the family continued to exist and did not become extinct. 10

(c) During the time that the father was sole surviving coparcener of that family he had very much larger powers over that family property than he had when there was another coparcener. These larger powers would once again have disappeared on the admission by birth or adoption of another male member to the family. No doubt the larger powers enjoyed by the sole surviving coparcener amounted even to almost unrestricted powers of alienation; none the less the property remained the property of the family. The finding that the deceased had power to dispose of this property might have been sufficient to justify the learned District Judge in holding that under section 6 (a) of the Estate Duty Ordinance the property passed on the death of the deceased inasmuch as it was property which the deceased was at the time of his death competent to dispose. But that finding on competency to dispose was not necessarily decisive of the question under Section 73 of that Ordinance as to whether that property which the deceased was competent to dispose was still his property or whether it was the joint property of a Hindu undivided family. There are various examples in Hindu Law where property belonged to a family but which could be disposed of by an individual member of that family. It was clearly pointed out in those examples that despite the power of disposition possessed by that individual the property none the less did not belong to him but to the family. In his judgment the learned District Judge has failed to appreciate these examples and the principles underlying them. 30

(D) It was submitted that the learned District Judge had failed to draw the proper distinction between separate property and joint property in Hindu Law. The learned District Judge interpreted joint property as property "jointly" owned by more than one man; that is not the meaning of the term joint property in Hindu Law. The term "joint property" is one borrowed from the English Law but applied to a Hindu Law conception as the nearest equivalent in the English language. In Hindu Law it is a term used in contra distinction to separate property. The fundamental distinction between joint property and separate property is that in the case of joint property a new member of the family admitted by birth or adoption takes an interest in that property on the mere admission to the family, whereas in the case of separate property it is owned by a Hindu owner absolutely and in the same sense as an owner of property in Ceylon law owns his property. No other member 40 50

admitted to that family by birth or adoption acquires any right to that property. Joint property can however change into separate property, but this can only happen when it is no longer possible in the way of nature or in the way of law to bring in a new male member to that family. That, it is respectfully submitted, is the fundamental distinction between joint property and separate property. Judged by that test the property that was assessed for estate duty in this case was joint property of a Hindu undivided family of which Arunachalam Chettiar (Sr.) was the sole surviving coparcener. It was not his separate property ; it had not lost the dormant quality of a new addition to the family acquiring an interest in it.

*In the
Supreme
Court.*

No. 29.
Petition of
Appeal,
17th
November
1949,
continued.

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(E) Even if the learned Judge is right in treating "joint property" as synonymous with "coparcenary property" he has gone wrong in giving to the term "coparcenary property" the meaning that it is owned by more than one man. Like the term "joint" so the term "coparcenary" does not necessarily imply a plurality of owners at every moment of time.

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(F) The learned District Judge ought to have found that the properties sought to be assessed were the joint properties of a Hindu undivided family of which the deceased was a member and that section 73 of the Estate Duty Ordinance applied to exempt the estate in question from duty.

(G) The learned District Judge should have found that no property passed within the meaning of the Estate Duty Ordinance.

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(H) The Mysore Government Securities are not part of the Ceylon Estate. The documents are foreign promissory notes, but they are not necessarily negotiable instruments in Ceylon. The learned Judge has failed to appreciate the distinction between these two classes of assets. These Mysore Securities have not been proved to be negotiable instruments in Ceylon.

(I) In any event the amount paid as succession duty in Mysore should have been deducted in assessing the value of the Mysore Bonds under section 23 of the Ordinance. The learned Judge's holding that the question of this deduction could not be raised at this stage is wrong, because the succession duty was paid after these proceedings were started in the District Court.

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(J) Having taxed for purposes of Income Tax the deceased and his estate on the basis that that income of the assessee in Ceylon was the income from the joint property of an undivided Hindu family the Crown is estopped from denying that the estate assessed for estate duty in this case is the joint property of an undivided Hindu family.

(K) In the event of the appellants being found liable at any stage to pay duty on the estate of the son of the deceased, the amount of that duty should be deducted from the assets of the estate and the Appellants should be given relief in virtue of quick succession. The judgment should have contained a direction to that effect.

*In the
Supreme
Court.*

No. 29.
Petition of
Appeal,
17th
November
1949,
continued.

Wherefore the Petitioners Appellants pray :—

(A) that the judgment and decree of the District Court be set aside.

(B) that the assessment of the Commissioner of Estate Duty be set aside.

(C) that it be declared that the estate of Arunachalam Chettiar (Sr.) deceased is not liable to pay any Estate Duty.

(D) that the Crown be ordered to refund to the Appellants the amount of duty paid i.e. Rs.700,402/65 with legal interest thereon from date of action till date of decree and thereafter interest at the same rate on the aggregate amount of the decree till payment in full. 10

(E) that in any event it be declared that the Mysore Government securities are not part of the Ceylon Estate and that in assessing them for duty the value of the said securities be not taken into account.

(F) that the amount paid as succession duty in Mysore be deducted in computing the value of the estate in this case.

(G) that in the event of the son's estate being declared liable to pay duty the amount of that duty be deducted from the estate and that this estate be given relief in virtue of quick succession. 20

(H) for costs in the lower Court and for costs of appeal and for such other or further relief as to Your Lordships' Court shall seem meet.

(Sgd.) WILSON & KADIRGAMAR,
Proctors for Appellants.

Settled by
Messrs. Peri Sunderam &
S. J. V. Chelvanayagam, K.C.,
Advocates.

No. 30.
JUDGMENT.

*In the
Supreme
Court.*

Supreme Court No. 236 of 1951.
DISTRICT COURT COLOMBO No. 38 Special.

No. 30.
Judgment,
12th
October
1953.

IN THE MATTER OF AN APPEAL UNDER THE ESTATE DUTY
ORDINANCE.

V. RAMASWAMI IYENGAR AND ANOTHER, Adminis-
trators of the Estate in Ceylon of RM. AR. AR. RM.
ARUNACHALAM CHETTIAR (deceased) of Devakottai
10 South India Appellants

vs.

THE ATTORNEY-GENERAL OF CEYLON . . . Respondent.

Present : GRATIAEN J. and GUNASEKARA J.

Counsel : H. V. Perera Q.C. with S. J. V. Chelvanayagam Q.C. Peri
Sunderam and S. Sharvananda for the Appellants.
Walter Jayawardena C.C. with V. Tennekoon C.C. and G. F.
Sethukavaler C.C. for the Respondent.

Argued on 25th, 28th, 29th, 30th September and 1st and 2nd October
1953.

20 Decided on : 12th October 1953.

GRATIAEN J. :

This is an appeal against a judgment of the District Judge of Colombo upholding an assessment made by the Commissioner of Estate Duty under the provisions of the Estate Duty Ordinance (Cap. 187) in respect of the estate of a person who has been conveniently described throughout the proceedings as "Arunachalam Chettiar (Snr.)." He died on 23rd February 1938 shortly after the Ordinance came into operation, and was the father of Arunachalam Chettiar (Jnr.) in connection with whose estate a separate assessment had been made under the provisions of the earlier Ordinance
30 No. 8 of 1919 (*vide* the proceedings in S.C. 235 of 1951/D.C. Colombo 37 Special). The assesseees in each case were the administrators of the estate of Arunachalam Chettiar (Snr.). They appealed against both assessments and, by agreement of parties, the relevant evidence, which overlapped to a considerable extent, was recorded in consolidated proceedings in the Court below.

40 During Arunachalam (Jnr.'s) lifetime i.e. until 9th July 1934, he and his father were the only "co-parceners" of an undivided family which, regarded as an entity, owned considerable "joint property" in various countries including Ceylon. We have already held that no part of that property had actually or even notionally "passed" upon the son's death to his father so as to attract duty under the provisions of Ordinance No. 8 of 1919. The basis of our decision, shortly stated, was that, under the Mitakshara law, the joint property belonged to the entire family group to the exclusion of its individual members.

*In the
Supreme
Court.*

No. 30.
Judgment,
12th
October
1953,
continued.

The earlier Ordinance did not make express provision for the case of joint property belonging to a Hindu undivided family in relation to the question whether estate duty is payable upon the death of one of its members. In the Ordinance passed in 1938 (Cap. 187), however, which is concerned with the estates of persons on and after 1st April 1937, section 73, as originally enacted, declared as follows :—

“ Where a member of a Hindu undivided family dies no estate duty shall be payable on any property proved to the satisfaction of the Commissioners to be a joint property of that Hindu undivided family.”

10

Shortly afterwards, a declaratory amendment to section 73 was passed by section 5 of Ordinance No. 76 of 1938 so as to remove doubts and difficulties which might exist in the case of immovables belonging to an undivided family—*vide A.G. v. Valliammai Atchie* (1949) 51 N.L.R. 169 at 174, which was upheld by the Privy Council in (1952) 53 N.L.R. 505. Section 73 as amended now reads as follows :—

“ Where a member of a Hindu undivided family dies, no estate duty shall be payable—

(A) on any movable property which is proved . . . to have been the joint property of that family ;

20

(B) on any immovable property when it is proved . . . that such property, if it had been movable property would have been the movable property of that family.”

Upon the death of Arunachalam Chettiar (Jnr.) what had been previously the entire “ joint property ” of the undivided family to which both he and his father had belonged as “ co-parcenary members ” came into the hands of the father, by survivorship (and not by succession) as “ the sole surviving co-parcener.” It so remained throughout the period 9th July 1934 to 23rd February 1938 when the father died leaving no male issue in existence to continue the line. The actual survivors of the family were all females—namely, his step-mother, his widows, his unmarried daughter and his daughter-in-law.

30

The assesses claim exemption under section 73 from duty in respect of the deceased's estate on the ground that they have established the following facts :—

(A) that he continued, until he died, to be a member of a Hindu undivided family ;

(B) that all the property in his possession at that time was the joint property of the undivided family.

If both these propositions be established, section 73 admittedly operates even if, but for the statutory exemption, the property would have “ passed on his death ” within the meaning of section 6 of the Ordinance.

40

It is beyond argument, under the Mitakshara law which governs the case, Arunachalam Chettiar (Snr.) did continue until the time of his death to be a “ member of a Hindu undivided family.” That family had been undivided in status during the lifetime of his son, and the son's death did not operate to disrupt the family. Indeed, the undivided status

of the family continued even after the death of Arunachalam Chettiar (Snr.) himself. "Hindu lawyers do not regard the male line to be extinct or Hindu to have died without male issue until the death of his widow renders the continuation of the line of adoption impossible." A.I.R. 1918 P.C. 192. In other words, "A Hindu undivided family cannot be brought finally to an end while it is possible in nature and in law to add a male member to it." A.I.R. 1943 P.C. 196. The High Court of Nagpur has held that a right of a widow to adopt a son to her deceased (co-parcenary) husband is preserved even if no single co-parcener exists, that is to say, even if at the time of adoption the Hindu undivided family "has been reduced to a female, i.e., the adopting mother"—A.I.R. 1942 Nag. 19 at 23, the *ratio decidendi* of which was approved by the Privy Council in A.I.R. 1943 P.C. 196.

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The learned District Judge accepted the contention that the first qualification for exemption under section 73 was fulfilled. He took the view, however, that the death of Arunachalam Chettiar (Jnr.) operated to divest the family of the joint property thereafter became vested (albeit provisionally) in Arunachalam Chettiar (Snr.) as absolute owner. He accepted the opinion of Mr. Rajah Aiyar, the expert witness called by the Crown, that the term "joint property" is synonymous with "Co-parcenary property" and that "until the contingency of an addition of a male member, whether in nature or in law, arises" a sole surviving co-parcener becomes the "full owner" of what previously had been joint property belonging to the undivided family.

Mr. Bhashyam, who was called as an expert by the assesses, disagreed with Mr. Rajah Aiyar's opinion on this vital issue. He took the view that the fortuitous circumstances that the "co-parcenary unit," so to speak, of an undivided family has at any point of time been reduced to a single individual does not divest the family of its "joint property"; the undivided status of the family continues, and so does its joint estate.

We are once again confronted with the duty of deciding for ourselves upon the conflicting evidence of two distinguished lawyers in regard to a question of foreign law with which we are unfamiliar.

I have arrived at the conclusion that Mr. Rajah Aiyar's opinion, and the learned Judge's acceptance of his view upon this question, cannot be accepted. I must assume, for the purpose of this appeal, that our decision in the connected case correctly explains the concept of "joint property" belonging to a Hindu undivided family. An undivided family, being an entity consisting not merely of its co-parcenary members but also of others, must be regarded as "the true owner" of the joint property; the co-parceners for the time being collectively constitute, so to speak, "the holding members" of the larger entity; and the karta for the time being is the "managing member." To what extent, if any, can the temporary reduction of the "Co-parcenary unit" to a single individual affect the ownership of what had previously been the joint property belonging to the entire undivided family whose corporate existence has admittedly not been brought to an end? It seems to me that we can only answer this question by adopting the *ratio decidendi* of our earlier decision and following it to its logical conclusion.

If it be correct to say that, when two or more co-parceners exist, they do not own the joint property in undivided shares, I do not see how

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continued.

it can logically be concluded that, when only when one of them remains, he automatically becomes the owner of the entire property which he and his co-parceners had previously held for the benefit of the true owner, namely, the undivided family. On the contrary, it seems to me that, so long as the co-parcenary unit (irrespective of the number of persons who comprise it at any point of time) continues to hold that property, there can be no change of ownership until the family, as a corporate entity, has itself finally ceased to exist.

It is important to bear in mind that a person's rights of ownership may well be subject to very wide powers vested in someone else. For 10
example, all the co-parceners acting collectively, possess unfettered powers of alienation over the joint property which is owned by the undivided family (i.e. an entity including but not confined to the co-parceners themselves). They may alienate the entire joint property by collective action, or they may gift it away. If they so prefer, they may dispose only of some part of the joint property, in which event what remains in their hands continues to belong to the family whose undivided status is still preserved.

In the same way, if there is only a single co-parcener for the time being (as there was in the present case after 9th September 1934) all the 20
unfettered powers of alienation previously vested in the co-parcenary group become centred in the individual. He too is free to defeat the existing property rights of the undivided family, wholly or partially, by exercising those powers in any way he pleases; (1905) I.L.R. 39 Mad. 437; so much so that even a male who subsequently enters the family (by birth or by adoption) may well find his "birthright" to have been diminished or even extinguished *in toto*. In other words, there is nothing except the dictates of his own conscience to prevent a single co-parcener from frittering away the joint estate, to the detriment of the other 30
members of the family (be they alive or yet unborn).

Some of the authorities referred to by the experts, in discussing a single co-parcener's extensive powers of alienation, certainly use words suggesting that he is, in a certain sense and for all practical purposes, regarded as "the owner of the joint property" or as "in the position of full owner"—A.I.R. 1929 Mad. 296. But this does not mean that he is in truth the absolute owner of the joint property to the exclusion of the quasi-corporation to which an undivided family is often equated. His responsibilities and obligations as manager or karta of property in his possession are not extinguished, and female members still enjoy the right, based on their continued membership of the undivided family, to be 40
maintained by him out of the common fund. A.I.R. 1940 Mad. 664; A.I.R. 1953 Mad. 159. So again a widow of a deceased co-parcener—e.g. in this case, the widow of Arunachalam Chettiar (Jr.)—could enforce against him her claim to maintenance quoad what would have been her husband's share upon a partition if he were still alive. A.I.R. 1947 P.C. 143. I have not been referred to any authority which suggests that the position of an "inferior" member of an undivided family is, when the joint property is in the hands of a single co-parcener, any different to what it had previously been when the property was in the hands of a larger co-parcenary unit. 50

From all these circumstances, I cannot but conclude that so long as a single surviving co-parcener refrains from exercising his power to

place the property beyond the reach of the undivided family by alienation, the property continues to belong to the entire family. Although, therefore, Arunachalam Chettiar (Snr.) at the time of his death was "competent to dispose" of the joint property throughout the relevant period following his son's death, and although the joint property would, for that reason, normally be deemed to have "passed" on his death within the meaning of section 6 of the Ordinance so as to attract estate duty, the exempting provisions of section 75 protect the property from taxation.

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continued.

I concede that if at any time (before a Hindu undivided family capable as such of owning joint property to the exclusion of its individual members has been established) a man governed by the Mitakshara law enjoys full dominion over even ancestral property which has come into his hands, he continues to hold it "as his very own" until a son is born to him so as to diminish his individual interest in the property—because it is only then that such ancestral property would be brought by operation of law into the joint ownership of the newly established Hindu undivided family—A.I.R. 1937 P.C. 36. I also agree that "the mere existence of a wife or daughter" is not sufficient to create an undivided family and thereby convert a man's individual property into "joint" property. But the converse proposition does not automatically follow, and, to my mind, it would make a mockery of the undivided family system if the temporary reduction of the co-parcenary unit to a single individual were to convert what was previously joint property belonging to an undivided family into the separate property of the surviving co-parcener.

By enacting section 73, the legislature has now given formal recognition to the concept of an undivided family (in spite of constant fluctuations in its composition) as an entity capable of owning property. The term "of an undivided family" in section 73 means "belonging to an undivided family." Nevertheless, it has been argued for the Crown, the phrase "joint property" implies that there should always be at least two co-parceners actually alive to hold the property in "community of interest and unity of possession." I disagree. The word "joint" in this context merely emphasises the element of unity attaching to the entire undivided family which is the true owner of the property concerned.

For these reasons, I have come to the conclusion that the learned District Judge was wrong in deciding that section 73 does not apply to this case. I would therefore set aside the order under appeal, and substitute a decree (A) declaring that no estate duty was payable under the Estate Duty Ordinance (Cap. 187) in respect of the estate of Arunachalam Chettiar (Snr.) and (B) ordering the Crown to refund to the Appellants the sum of Rs.700,402/65 with legal interest thereon from the date on which these proceedings were instituted in the District Court. The Appellants are also entitled to their costs in this Court and in the Court below.

It is unnecessary to express an opinion on certain subsidiary issues which would only have arisen for consideration if the principle of the Commissioner's assessment had been affirmed.

(Sgd.) E. F. N. GRATIAEN,
Puisne Justice.

Gunasekara J.
50 I agree.

(Sgd.) E. H. T. GUNASEKARA,
Puisne Justice.

*In the
Supreme
Court.*

**No. 31.
DECREE.**

No. 31.
Decree,
20th
October
1953.

ELIZABETH THE SECOND, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

1. V. RAMASWAMI IYANGAR

and

2. K. R. SUBRAMANIA IYAR Administrators of the Estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR of Devakottai, South India, Deceased . Appellants 10

against

THE HONOURABLE THE ATTORNEY-GENERAL OF CEYLON Respondent.

Action No. 38/T Special.

District Court of Colombo.

This cause coming on for hearing and determination on the 25th, 28th, 29th, 30th September and 1st, 2nd and 12th October 1953 . . . and on this day, upon an appeal preferred by the Appellants above named before the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for 20 the Appellants and Respondent.

It is considered and adjudged that the order under appeal be and the same is hereby set aside and a decree (A) declaring that no estate duty was payable under the Estate Duty Ordinance (Cap. 187) in respect of the estate of Arunachalam Chettiar (Snr.) and (B) ordering the Crown to refund to the Appellants the sum of Rs.700,402/65 with legal interest thereon from the date on which these proceedings were instituted in the District Court is substituted. The Appellants are also entitled to their costs in this Court and in the Court below.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief 30 Justice at Colombo, the 20th day of October, in the year of our Lord One thousand Nine hundred and fifty-three and of Our Reign the Second.

(Sgd.) W. G. WOUTERSZ,
Deputy Registrar, S.C.

No. 32.

APPLICATION for Conditional Leave to Appeal to the Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

IN THE MATTER OF an APPLICATION for Conditional Leave to Appeal under the Appeals (Privy Council) Ordinance Cap. 85.

*In the
Supreme
Court.*

No. 32.
Application
for Con-
ditional
Leave to
Appeal to
the Privy
Council,
19th
October
1953.

1. V. RAMASWAMI IYENGAR,
and
2. K. R. SUBRAMANIA IYER, Administrators of the
10 Estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM
CHETTIAR, deceased, of Devakottai, South India . Appellants

vs.

THE HONOURABLE THE ATTORNEY-GENERAL
OF CEYLON Respondent.

D. C. Colombo.
Case No. 38/T (Special).
S.C. No. 236 (F) of 1951.

- 20 THE HONOURABLE THE ATTORNEY-
GENERAL OF CEYLON Respondent-Appellant
vs.

1. V. RAMASWAMI IYENGAR,
and
2. K. R. SUBRAMANIA IYER, Adminis-
trators of the Estate in Ceylon of RM. AR.
AR. RM. ARUNACHALAM CHETTIAR,
deceased, of Devakottai, South India . Appellants-Respondents.

To: The Honourable the Chief Justice and the other Judges of the
Supreme Court of the Island of Ceylon.
This 19th day of October 1953.

- 30 THE HUMBLE PETITION of the Attorney-General, the Respondent-
Appellant abovenamed, appearing by Behram Kaikhushroo
Billimoria, his Proctor, states as follows:—

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 12th day of October 1953, the abovenamed Respondent-Appellant is desirous of appealing to Her Majesty the Queen in Her Privy Council.

2. That the said judgment is a final judgment and the matter in dispute on the appeal is of the value of over Rs.5,000/00.

- 40 Wherefore the Respondent-Appellant prays for Conditional Leave to
Appeal against the said judgment of this Court dated the 12th day of
October 1953 to Her Majesty the Queen in Her Privy Council.

(Sgd.) B. K. BILLIMORIA,
Proctor for Respondent-Appellant.

*In the
Supreme
Court.*

No. 33.

JUDGMENT granting Conditional Leave to Appeal.

No. 33.

(Pages 334 to 336 in Record of Appeal No. 16 of 1955.)

No. 34.

DECREE granting Conditional Leave to Appeal.

S.C. Application.

No. 483.

No. 34.
Decree
granting
Conditional
Leave to
Appeal,
25th
February
1954.

ELIZABETH THE SECOND, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON. 10

THE HONOURABLE THE ATTORNEY-
GENERAL OF CEYLON Respondent-Appellant
against

1. V. RAMASWAMI IYANGAR,
and
2. K. R. SUBRAMANIA IYER, Adminis-
trators of the Estate in Ceylon of RM. AR.
AR. RM. ARUNACHALAM CHETTIAR,
deceased, of Devakottai, South India . Appellants-Respondents.

Action No. 38/T (Special) (S.C. 236 (Final)). 20
District Court of Colombo.

IN THE MATTER OF an APPLICATION dated 19th October 1953 for Conditional Leave to Appeal to Her Majesty the Queen in Council by Respondent-Appellant abovenamed against the decree dated 12th October '53.

This cause coming on for hearing and determination on the 18th day of February 1954 . . . before the Hon. Mr. E. F. N. Gratiaen, Q.C., Acting Chief Justice, and the Hon. Mr. E. H. T. Gunasekera, Puisne Justice . . . of this Court, in the presence of Counsel for the Appellant and Respondents.

It is considered and adjudged that this application be and the same 30 is hereby allowed upon the condition that the applicant do within one month from this date :—

Deposit in terms of provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs.300/- in respect of fees mentioned in Section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Mr. E. F. N. Gratiaen, Q.C., Acting Chief Justice at Colombo, the 25th day of February, in the year of our Lord One thousand Nine hundred and Fifty Four and of Our Reign the Third.

(Sgd.) W. G. WOUTERSZ,
Dy. Registrar, S.C.

*In the
Supreme
Court.*

No. 34.
Decree
granting
Conditional
Leave to
Appeal,
25th
February
1954,
continued.

No. 35.

APPLICATION for Final Leave to Appeal to the Privy Council.

**IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND
OF CEYLON.**

10 **IN THE MATTER OF** an APPLICATION for Final Leave to
appeal under the Appeals (Privy Council) Ordinance Cap. 85.

**THE HONOURABLE THE ATTORNEY
GENERAL OF CEYLON . . . Respondent-Appellant**

D.C. Colombo case *Vs.*
No. 38/T (Special)
S.C. No. 236 (F.) of 1951.
S.C. Application No. 483.

No. 35.
Applica-
tion for
Final Leave
to Appeal
to the
Privy
Council,
5th March
1954.

1. **V. RAMASWAMI IYENGAR,**

and

20 2. **K. R. SUBRAMANIA IYER,** Adminis-
trators of the Estate in Ceylon of **RM. AR.
AR. RM. ARUNACHALAM CHETTIAR,**
deceased, of Devakottai, South India . **Appellants-Respondents.**

To the Honourable the Chief Justice and the other Justices of the Supreme
Court of the Island of Ceylon.

This 5th day of March 1954.

THE HUMBLE PETITION of the Respondent-Appellant abovenamed
appearing by Behram Kaikhushroo Billimoria, his Proctor, Showeth
as follows :

30 1. That the Respondent-Appellant on the 18th day of February 1954
obtained conditional leave from this Honourable Court to appeal to Her
Majesty the Queen in Her Privy Council against the judgment of this
Court pronounced on the 12th day of October 1953.

2. That the Respondent-Appellant has in compliance with the
condition on which such leave was granted deposited on the 1st day of
March 1954 in terms of the provisions of Section 8 (a) of the Appellate
Procedure (Privy Council) Order deposited with the Registrar of this
Court a sum of Rupees three hundred (Rs.300/-) in respect of fees mentioned
in Section 4 (2) (a) and (c) of Ordinance No. 31 of 1909 (Cap. 85).

40 Wherefore the Respondent-Appellant prays that he be granted final
leave to appeal against the said judgment of this Court dated the 12th day
of October 1953 to Her Majesty the Queen in Her Privy Council.

(Sgd.) B. K. BILLIMORIA,
Proctor for Respondent-Appellant.

*In the
Supreme
Court.*

No. 36.

DECREE granting Final Leave to Appeal.

No. 36.
Decree
granting
Final Leave
to Appeal,
4th June
1954.

S.C. Application No. 114.

ELIZABETH THE SECOND, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

THE HONOURABLE THE ATTORNEY-
GENERAL OF CEYLON Respondent–Appellant

against

1. V. RAMASWAMI IYENGAR, 10
and
2. K. R. SUBRAMANIA IYER, Adminis-
trators of the Estate in Ceylon of RM. AR.
AR. RM. ARUNACHALAM CHETTIAR,
deceased, of Devakottai, South India . Appellants–Respondents.

Action No. 38/T (Special) (S.C. 236 (Final)).

District Court of Colombo.

IN THE MATTER OF an APPLICATION by the Respondent abovenamed dated 8th March, 1954, for Final Leave to Appeal to Her Majesty the Queen in Council against the decree of this Court dated 20 12th October, 1953.

This cause coming on for hearing and determination on the 28th day of May, 1954, before the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice and the Hon. Mr. M. C. Sansoni, Puisne Justice of this Court, in the presence of Counsel for the Applicant.

The applicant has complied with the conditions imposed on him by the order of this Court dated 18th February, 1954, granting Conditional Leave to Appeal.

It is considered and adjudged that applicant's application for Final Leave to Appeal to Her Majesty the Queen in Council be and the same is 30 hereby allowed.

Witness the Hon. Sir Alan Edward Percival Rose, Kt, Q.C., Chief Justice at Colombo, the 4th day of June in the year of Our Lord One thousand Nine hundred and fifty four and of Our Reign the Third.

(Sgd.) W. G. WOUTERSZ,
Dy. Registrar, S.C.

EXHIBITS.*Exhibits.***A1.**A1.**PEDIGREE.**

(Page 340 in Record of Appeal No. 16 of 1955.)

A7.

A7.

MYSORE GOVERNMENT 5% LOAN 1955 for Rs.1,000.

(Pages 341 to 342 in Record of Appeal No. 16 of 1955.)

A6.

A6.

MYSORE GOVERNMENT 4% LOAN 1953-63 for Rs.25,000.

10

(Pages 342 to 343 in Record of Appeal No. 16 of 1955.)

A8.

A8.

MYSORE GOVERNMENT 3½% LOAN 1951-58 for Rs.1,000.

(Page 344 in Record of Appeal No. 16 of 1955.)

A13.

A13.

CITATION in D.C., Colombo No. ED/A 300.

(Pages 345 to 347 in Record of Appeal No. 16 of 1955.)

A9.

A9.

MYSORE GOVERNMENT 3% LOAN 1956-61 for Rs.5,000.

(Pages 347 to 348 in Record of Appeal No. 16 of 1955.)

Exhibits.

A14.

A14.

LETTER, Commissioner of Income Tax to Sitaram and Vankataram.

(Page 348 in Record of Appeal No. 16 of 1955.)

A2.

A2.

WILL OF ARUNACHALAM CHETTIAR.

(Pages 349 to 355 in Record of Appeal No. 16 of 1955.)

R5.

R5.

LETTER, Receivers of Estate of Rm. Ar. Ar. Rm. Arunachalam Chettiar to Commissioners of Income Tax.

(Page 356 in Record of Appeal No. 16 of 1955.)

10

A3.

A3.

AFFIDAVIT filed in D.C., Colombo. No. 8727/T.

(Pages 362 to 366 in Record of Appeal No. 16 of 1955.)

DECREE in Case No. O.S. 93 of 1938 Devakottai Sub-Court.

IN THE COURT OF THE SUBORDINATE JUDGE OF DEVAKOTTAI.

Present : SRI. P. S. CHANDRASEKHARA AIYAR, M.A., B.L., Principal Subordinate Judge.

Monday the 17th day of February 1947.

Original Suit No. 93 of 1938.

Between

10 RM. AR. RM. AR. AR. UMayAL ACHI wife of RM. AR.
AR. RM. AR. ARUNACHALAM CHETTIAR, residing at
Devakottai, Hanumanthakudi Plaintiff
and

1. LAKSHMI ACHI wife of RM. AR. AR. RM. ARUNACHALAM CHETTIAR residing at Devakottai, Hanumanthakudi, Taluk.
2. NACHIAR ACHI wife of RM. AR. AR. RM. ARUNACHALAM CHETTIAR residing at do.
3. AR. S. M. S. SUNDARESAN CHETTIAR son of SOMASUNDERAM CHETTIAR residing at do.
- 20 4. C. T. L. RM. ARUNACHALAM CHETTIAR son of RAMASWAMI CHETTIAR residing at do.
5. RM. AR. AR. RM. AR. AR. VEERAPPA CHETTIAR adopted son of RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR residing at do.
6. (Minor) ARUNACHALAM CHETTIAR, adopted son of RM. AR. AR. RM. ARUNACHALAM CHETTIAR (adopted by 1st Defendant) residing at do.
7. (Minor) RAMATHAN CHETTIAR adopted son of
30 RM. AR. AR. RM. ARUNACHALAM CHETTIAR (adopted by 2nd Defendant) residing at do.
Minor 6TH DEFENDANT through his adoptive mother and guardian LAKSHMI ACHI, 1st Defendant (appointed as per order dated 4.11.46 on I.A. No. 886 of 1946).
Minor 7TH DEFENDANT through his adoptive mother and guardian NACHIAR ACHI, 2nd Defendant (appointed as per order dated 4.11.46 on I.A. No. 887 of 1946).
- 40 DEFENDANTS 5 to 7 added as per order dated 17.2.1947 on I.A. No. 885 of 1946 Defendants.

Suit for directing division by metes and bounds of the immovable properties described in schedule hereunder and awarding separate possession of half the said properties to the Plaintiff and the other half to Defendants 1 and 2 together.

Exhibits.
A4.
Decree in
Case No.
O.S. 93
of 1938
Devakottai
Sub-
Court,
17th
February
1947.

Exhibits.
 A4.
 Decree in
 Case No.
 O.S. 93
 of 1938
 Dewakottai
 Sub-
 Court,
 17th
 February
 1947,
continued.

2. To divide the movables, jewels, moneys, silver and other vessels etc. belonging to the estate into two shares after making provision for the payment of stridhanam, thanathu and other moneys of the Plaintiff and the other moneys mentioned in paragraph 16 of the plaint and award one share to the Plaintiff and the other to the Defendants 1 and 2 together.

3. To divide the businesses solely owned by the deceased into two shares and allot one to Plaintiff and the other to Defendants 1 and 2 together.

4. To give suitable directions for the administration and the payment 10 of such of the legacies and debts as this court may find to be valid and binding on the estate, in case the Court finds the will to be genuine and valid.

5. To make suitable provision for the management of the trusts and charities specified in schedule E.

6. To restrain the Defendants 3 and 4 by an injunction and from interfering with the possession and management of the estate.

7. To direct the contesting Defendants to pay the costs of this suit. The Plaintiff is the widow of the only son of the deceased Arunachalam Chettiar. Her husband and the deceased formed members of a joint 20 Hindu family. The Plaintiff's husband died on 9.7.1934 and after him all the properties survived to the father. The father died on 23.2.1938 leaving behind besides the Plaintiff, two widows (Defendants 1 and 2) a daughter by the 2nd Defendant, a sister by name Alamalu and a step-mother Sivagmi. According to the Hindu Women's Right to Property Act XVIII of 1937 the properties have devolved upon the Plaintiff and Defendants 1 and 2 as the next heirs of the deceased. The Plaintiff is entitled to one moiety of the estate and the Defendants 1 and 2 are entitled to another moiety. No other person has any manner of right whatever to any portion of the estate. The Plaintiff and Defendants 1 30 and 2 are in joint possession of the estate. The Plaintiff finds it inconvenient to enjoy the property in common with Defendants 1 and 2.

3. Defendants 3 and 4 set up a Will dated 8.1.1938 as having been executed by the deceased Arunachalam and claimed to have been appointed as executors entitled to the possession of the estate under the terms of the Will. The Plaintiff questioned the validity and genuineness of the Will as it was brought about by incessant importunity and the undue influence exercised by Defendants 3 and 4 on Arunachala.

4. The Plaintiff also claims that sums constituting her own stridhanam and that of her deceased mother-in-law to which she is 40 entitled deposited with the testator should be paid over to her.

Court fee paid under Article 17—B of Schedule 11 i.e.	RS.100.0.0
Value for relief of injunction Rs.5000/- Court fee is	
paid under Section 7 (iv) (d) of the Court Fees Act	412.7.0
	<hr/>
Total	512.7.0
	<hr/> <hr/>

The Plaintiff values the reliefs at Rs.1983050 for purposes of jurisdiction.

Cause of action arose on 23.2.1938. Complaint presented on 12.7.1938. *Exhibits.*

This suit coming on for rehearing on remand (by order of the High Court dated 4.3.1946 in Appeal No. 321 of 1940 and 3,104 and 239 of 1941) before me this day, in the presence of Mr. K. Thiruvengadatha Iyengar Advocate for the Plaintiff, of Messrs. M. G. Mukundaraja Iyengar and R. Srinivasa Iyengar, pleaders for the 5th Defendant, of Mr. V. Srinivasa, pleader for Defendants 1 and 6 of Mr. R. Krishnaswami Iyengar, pleader for Defendants 2 and 7 and Defendants 3 and 4 having been absent, the minor Defendants 6 and 7 appearing through their guardians Defendants 1 and 2 applying that this suit may be compromised in terms of an agreement in writing dated this day between the parties, and it appearing to this Court that the said compromise is fit and proper and for the benefit of the said minors, this Court doth sanction the said compromise on behalf of the minors and with the consent of all the parties hereto, it is ordered as follows:—

A4.
Decree in
Case No.
O.S. 93
of 1938
Devakottai
Sub-
Court,
17th
February
1947,
continued.

That the adopted son of late Arunachala be impleaded as parties—
Defendants 5 to 7, that the said adoptions are true and valid and beyond question; that a sum of 2½ lakhs has been given to 1st Defendant and the same is given as an extra share to Defendants 1 and 6 by consent;
20 that the stridhanam etc., amounts belonging to deceased Valliammai Achi, Plaintiff's husband's mother and credited to vilasam of or Ar. Rm. Ar. in the Colombo Rm. Ar. Rm. firm be paid with interest to the Plaintiff from out of the estate the stridhanam amount of Plaintiff, 1st Defendant and 2nd Defendant, that are credited in the estate be paid to respective persons with interest from the estate, that the amount of Rs.75,000/- be given to 2nd defendant as mentioned in the will; besides she will be paid sums of Rs.2300 and Rs.1004.1.0 credited in the name of Alamelu be paid to her with interest as per decree of the High Court, Madras.
30 That remaining legacies be paid as per terms of the will dated 8.1.1938; that Rs.700 be paid in equal shares by Defendants 5 to 7 to the step-mother Sivagami Achi; that a sum of Rs.5000/- be paid as fees to 5th Defendants pleader Mr. M. G. Mukundaraja Iyengar that Rs.5000/- be paid to Defendants 1 and 6's Vakil, Mr. V. Srinivasa Iyengar; a sum of Rs.5000/- be paid to Defendants 2 and 7's pleader. Mr. R. Krishnaswami Iyengar and a sum of Rs.5000/- be paid as fees to Plaintiff's Vakil Mr. K. Tiruvengadatha Iyengar; that Rs.5000/- be paid to 1st Defendant and 2nd Defendant each for subsequent expenses from out of the Rm. Ar. Ar. Rm. Estate direct to the respective above mentioned persons; that the Receivers do give all information and such help to the parties; and
40 pay the Vakil's fees as per the razinama, that Defendants 5 to 7 from out of the properties given to them pay the Seermurais etc. to Plaintiff's husband's sisters; that the amount of Rs.2419.3.11 mentioned as item 15 and Rs. 2091.11.11 mentioned as item 21 in estate accounts in Receiver's report 58 to be paid to the Plaintiff with interest from out of the estate; that excluding the above, all the properties wherever situated in India, Ceylon, Burma, Mysore, Federated Malay States and Indo China and mentioned in the Rm. Ar. Ar. Rm. Estate accounts or firms etc. and other accounts in the ainthogais and reports of receivers and in the name of deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar, or his son Arunachalam
50 Chettiar or both or whomsoever name it may be, are the properties of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar and ½ share is to belong

Exhibits.
 A4.
 Decree in
 Case No.
 O.S. 93
 of 1938
 Devakottai
 Sub-
 Court,
 17th
 February
 1947.
continued.

to Plaintiff and 5th Defendant, another $\frac{1}{3}$ rd share to Defendants 1 and 6 and remaining $\frac{1}{3}$ rd share belongs to 2nd Defendant and 7th Defendant; the parties agree the same be partitioned by the 3 persons to be chosen as hereunder mentioned (by metes and bounds or otherwise) and $\frac{1}{3}$ rd share is to be given to Plaintiff and 5th Defendant another $\frac{1}{3}$ rd share to be given to 1st Defendant for herself and on behalf of 6th Defendant; and the remaining share to be delivered to 2nd Defendant for herself and on behalf of 7th Defendant; that out of 3 groups of persons each to nominate a person for partitioning the property and for preparing a scheme and intimate to court in writing within two weeks from now and in default by any one party the court do nominate such Devakottai Chettiars in their places; that Defendants 5 to 7 do enjoy and manage with heritable rights all the trust properties as per the scheme to be prepared by aforesaid 3 persons that Plaintiff and Defendants 1, 2 and 5 to 7 do as mentioned above conduct all proceedings pertaining to deceased Arunachalam Chettiar's estate or in the name of his son and bear expenses in 3 shares and execute such documents etc. as may be necessary and share the profit and loss in 3 shares as mentioned above; that the Privy Council Appeal in A.S. 69 of 1946 preferred by Plaintiff having been satisfied by this compromise the Plaintiff may at her expense do take such proceedings to give effect to this compromise in the Privy Council; that the excess amounts paid for Income Tax, if any, by Defendants 1 and 2 be repaid to them respectively with interest at (4) annas per cent. from out of the estate of Rm. Ar. Ar. Rm. And the further consideration of the suit is adjourned *sine die* and any party can apply for further steps.

PARTICULARS OF RAZINAMAH.

X	X	X	X	X	X	X
X	X	X	X	X	X	X
X	X	(In Tamil characters)			X	X
X	X	X	X	X	X	X
X	X	X	X	X	X	X

30



Exhibits.

A39.
Declaration
of
Property
under
Estate
Duty
Ordinance,
1st May
1939,
continued.

PARTICULARS OF PROPERTY.		As per Sche- dule No.	Value at Date of Death	
(1) Full details of each item should be given on a separate schedule. (2) Where there is no property under a particular item the word "NIL" should be entered			Rs.	c.
B CEYLON ESTATE, MOVABLES IN CEYLON				
1.	Cash in the house			
2.	Money in Banks (including Ceylon Savings Bank and Post Office Savings Bank)— (a) Current Accounts, with interest to date of death .. (b) Fixed Deposits, with interest to death of death ..			
3.	Ceylon Government Stocks or Funds			10
4.	State Mortgage Bank Debentures, Ceylon Savings Certificates			
5.	Money in other financial institutions, such as Provident, Building and Co-operative Societies, &c.			
6.	Stocks, Shares or Debentures of Companies (A Broker's valuation report should be annexed)			
7.	Uncashed dividends and interest accrued due on items 3 to 6			
8.	Money out on Mortgages and interest thereon to date of death			
9.	Money out on bonds, bills, promissory notes and other securities, and interest thereon to date of death			20
10.	Other debts			
11.	Policies of Insurance and bonuses (if any) thereon payable on the death of the deceased			
12.	Saleable value of other Policies of Insurance			
13.	Household goods, jewellery, motor cars, &c.			
14.	Value at date of death of businesses owned solely by deceased. (A balance Sheet and accounts should be annexed)			
15.	Goodwill of the above businesses			
16.	Value at date of death of deceased's share of businesses carried on in partnership. (A Balance Sheet and accounts should be annexed)			30
17.	Share of Goodwill of businesses in partnership			
18.	Rents accrued due at date of death			
19.	Arrears of Salary or pension			
20.	Amount due as legacy or undistributed share of the estate of, deceased			
21.	Annuities, donations, bonuses and other sums payable under the rules of any provident, mutual benefit society or lodge or friendly society			
22.	Movable property including cash, gifted by the deceased within five years of his death			40
23.	Any other movable property not included in the above items			
C CEYLON ESTATE, MOVABLES OUTSIDE CEYLON				
— (To be entered in this space in the case of a person domiciled in Ceylon.)				
24.	Movables in the United Kingdom. (A copy of the Inland Revenue Affidavit should be annexed)			
25.	Movables in other countries			
Total of movables				
D CEYLON ESTATE, IMMOVABLES IN CEYLON				
26.	Immovable property owned absolutely by deceased			50
27.	Immovable property in respect of which deceased had a life interest created by a third party, or the interest of a fiduciary under a <i>fideicommissum</i> . (The deed creating such interest should be annexed)			
Carried forward				

PARTICULARS OF PROPERTY.		As per Sche- dule No.	Value at Date of Death		Exhibits. A39. Declara- tion of Property under Estate Duty Ordinance, 1st May 1939, <i>continued.</i>
(1) Full details of each item should be given on a separate schedule. (2) Where there is no property under a particular item the word "NIL" should be entered.			Rs.	c.	
	Brought forward ..				
28.	Value of unsold crops, tea and rubber coupons and other income accrued at date of death				
10	NOTE.— (a) Full particulars of immovable property under items 26, 27 and 30 should be entered on Form 261 attached hereto. Further copies of this form may be had on application. (b) The value entered should be the declarant's estimate of the market value of the property as at the date of death of the deceased, and not merely the value appearing on the title deeds relating to the property. (c) Relief is provided by section 20 of the Estate Duty Ordinance in respect of the value of land situate in rural areas and of undivided shares. No deduction is to be made in respect of this relief in estimating the market value; the necessary deductions will be made by the Assessor when the assessment of duty is made.				
20	29. Leasehold property				
	30. Immovable property gifted by deceased by deed of donation, transfer or settlement liable to duty (The deed or deeds should be annexed.) NOTE.—Property gifted is liable to duty where :— (a) The gift was within five years of the death, or in the case of a gift for a religious, charitable or public purpose within one year of death, or (b) life interest or power of revocation is reserved, even though the gift was made over five years before the death.				
30					
	Total of immovables ..				
40	E CEYLON ESTATE, OTHER PROPERTY (Not included in the above items)				
	31. Property held in trust for the deceased or purchased by him in the name of a third party				
	32. Property of which the deceased was at the time of his death competent to dispose				
	33. Property subject to an annuity limited to cease on the death of the deceased				
	34. Property taken as a <i>donatio mortis causa</i>				
50	35. Property vested in the deceased and any other person jointly so that the beneficial interest passes to such other person on the death				
	36. Any other property liable to estate duty not included in the above items				
	Total ..				
	Total of immovables ..				
	Total of movables ..				
	Total assets of Ceylon estate ..				

Exhibits.

A39.
 Declaration of Property under Estate Duty Ordinance, 1st May 1939,
continued.

						As per Sche- dule No.	Value at Date of Death	
							Rs.	c.
F DEDUCTIONS FROM CEYLON ESTATE								
37. Funeral expenses (The cost of mourning or tombstone or of customary alms-givings and commemorative ceremonies cannot be deducted.)								
38. Mortgage debts, as per particulars below :—								
No. and Date of bond	Name of Notary	Property mortgaged	Creditor's Name (state relationship to deceased, if any)	Creditor's Address	Names of joint debtors (if any)			
39. Other debts (Full particulars to be given.)								
Total deductions ..								

10

NIL.

Re LAST WILL

It is alleged that the deceased left a Last Will. A certified copy of 20 the alleged Will with a translation thereof is annexed hereto. The Will is challenged and is now the subject of Court action No. O.S. 93 of 1938, of Devakotta Sub-Court (S. India).

Receivers have been appointed in the matter of the Estate of the deceased and they have applied to the District Court of Colombo for limited letters of administration or in the alternative for letters *ad colligenda*.

GROUNDS ON WHICH EXEMPTION FROM DUTY IS CLAIMED.

Exemption from Estate Duty is claimed :—

(A) Under Section 73 of Ordinance No. 1 of 1938 :

Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar (son) and 30 Rm. Ar. Ar. Rm. Arunachalam Chettiar (father) and their wives were members of an undivided Hindu Family. The son died on 9th July 1934. The father in respect of whose estate this declaration and statement is submitted died on 23rd February 1938. The said undivided Hindu Family owned joint properties in Ceylon to wit : The businesses carried on under the Vilasams of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. in Ceylon. All the property in Ceylon both movable and immovable are Trade Assets of the said businesses.

(B) Under Section 7 of Ordinance No. 1 of 1938 :

A half share of the following properties are Trust Property : 40
 (1) Thanmakerny, (2) Thachchankadu, and (3) Vannankerny Estates.

		As per Sche- dule No.	Value at Date of Death		<i>Exhibits.</i> A39. Declara- tion of Property under Estate Duty Ordinance, 1st May 1939, <i>continued.</i>
			Rs.	c.	
G ESTATE OUTSIDE CEYLON, ASSETS					
	40. Property in the United Kingdom (A copy of the Inland Revenue Affidavit should be annexed.)				
	41. Property in other countries		4592924	52	
10	NOTE.—Movables should be entered in this space only in the case of persons domiciled outside Ceylon. Immovables should be entered in all cases.				
	Total assets outside Ceylon		4592924	52	
H ESTATE OUTSIDE CEYLON, DEDUCTIONS					
	42. Funeral expenses incurred outside Ceylon and debts due to non-resident persons		836223	22	
	Net estate outside Ceylon		3756701	30	
I EXEMPT PROPERTY					
	43. Movables Nett value of the Ceylon Estate as per statements of account		2770072	13½	
20	44. Immovables Half share of Thanmakerny, Thachchankadu and Vannankery, Estates held in trust as per statement (Full details of the grounds on which exemption from duty is claimed together with deeds or other documents should be furnished.)		40000	00	
J QUERIES.					
	(1) Did the deceased within the five years immediately preceding his or her death make any gifts of movable or immovable property whether by deed or otherwise ?		<i>Replies</i>		
30	Note.—Deeds in the form of transfers should be included if the consideration did not actually pass. Gifts of cash should be declared under gifts of movable property				
	(2) Did the deceased at any time make any gifts reserving to himself or herself life interest or the power of revocation, whether such life-interest was retained till death or surrender before death ?				
	(3) Did the deceased at any time make gifts or transfers where the grantee did not immediately assume <i>bona fide</i> possession and enjoyment to the entire exclusion of the deceased ?				
40	(4) Did the deceased make any purchases of movable or immovable property in the names of others ?				
	(5) Was the deceased at the time of death entitled to any property held by another in trust for the deceased ?				
	(6) Was the deceased at the time of death or at any time within the five preceding years entitled to a life interest in any property of another ?				
	(7) Are any of the debts due by the estate and shown in <i>Cage F</i> due to the husband or wife or any relative of the deceased ?				

DECLARATION

50 We declare that to the best of our knowledge, information and belief the statements contained in this form and in the schedules attached thereto

Exhibits.
A39.
Declara-
tion of
Property
under
Estate
Duty
Ordinance,
1st May
1939,
continued.

are true and correct and that we have disclosed all the property liable to estate duty on the death of the deceased and have made a true and correct estimate of the value of such property.

(Sgd.) V. RAMASWAMI IYENGAR.

(Sgd.) K. R. SUBRAMANIA IYER

Receivers to the Estate of Rm. Ar. Ar. Rm.
Arunachalam.

Dated this 1st day of May 1939.

Signature of Executor.

NOTICE OF ASSESSMENT

Charge No.

10

To

Take notice that the estate duty in respect of the estate of.....
....., deceased, has been assessed
as follows :—

The above amount is payable by you on or before
....., and should be remitted to the Commissioner of Estate
Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal
in writing WITHIN 30 DAYS of the date hereof, stating the grounds of
objection.

20

.....
Assessor, Estate Duty.

CERTIFICATE

In terms of Section 49 of the Estate Duty Ordinance (Cap. 187), I certify
that the estate duty amounting to Rupees.....and cents
..... (Rs.) with interest Rs.....
has been paid, or that the payment thereof has been secured to my
satisfaction, or that no estate duty is payable.

.....
for Commissioner of Estate Duty.

Date :

R2B.**AUDITORS' REPORT, Messrs. Rm. Ar. Rm. and Ar. Ar. Rm., with Annexures.***Exhibits.*

R2B.

(Pages 367 to 400 in Record of Appeal No. 16 of 1955)

R2A.**DECLARATION OF PROPERTY on death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar.**

R2A.

(Page 401 in Record of Appeal No. 16 of 1955)

A40.**LETTER, Commissioner of Income Tax to Administrators.**

10

Department of Income Tax,
Estate Duty & Stamps.
Colombo.A40.
Letter,
Commissioner of
Income Tax
to Adminis-
trators,
30th
September
1939.

ED/A 452

30th September, 1939

Estate No. ED/A 452—D.C. Colombo Testy : Case No. 8727 :
Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased.

Gentlemen,

With reference to your interview with the Commissioner of Estate Duty of the 29th instant, I have the honour to confirm the terms of the agreement arrived at, which are as follows :

20

A provisional assessment will be made on the basis of the Return. You will then deposit with the Commissioner of Estate Duty as security Ceylon Government Loan Promissory Notes to face value of Rs.300,000/—, and will enter into a preliminary bond that shortly after obtaining Letters you will deposit with the Commissioner a further Rs.150,000/— worth of Government Promissory Notes. On this bond a provisional certificate will issue, to enable you to obtain Letters.

I am, Gentlemen,
Your Obedient Servant,
(Sgd.) I. G. GUNASEKARA,
Assessor, Estate Duty.

30

Messrs. V. Ramaswami Iyengar and K. R. Subramaniam Iyer,
C/o Messrs. Wilson & Kadirgamar,
Proctors,
Gaffoor Buildings,
Fort, Colombo.

Exhibits.

A41.
 Notice of
 Assess-
 ment, 5th
 October
 1939.

A41.

NOTICE OF ASSESSMENT.

Charge No. 9186

To Messrs V. Ramaswami Iyengar and K. R. Subramaniam Iyer,
 C/o Messrs. Wilson & Kadirgamar,
 Gaffoor Buildings,
 Fort, Colombo.

TAKE NOTICE that the estate duty in respect of the estate of
 Rm. Ar. Ar. Rm. Arunachalam Chettiar deceased has been assessed as
 follows :—

10

CEYLON ESTATE.

ASSETS :

Nett value of the Ceylon estate as per statements of account furnished with the declaration dated 1st May 1939	Rs.2770072.00
Half share of Thanmakerny, Thachchankadu and Vannamkerny Estates	40000.00
	<u>2810072.00</u>
ESTATE OUTSIDE CEYLON	
As per declaration	3756701.00 20
	<u>6566773.00</u>

ESTATE DUTY

Duty on Rs.2,810,072 at 16%	449611.52
With interest at 4% from 24.2.1939	

This assessment is provisional and is liable to revision. It is issued to
 enable the receivers to obtain Letters on the issue of a Provisional
 Certificate.

The above amount is payable by you on or before 16th November 1939
 and should be remitted to the Commissioner of Estate Duty. This form
 should accompany your remittance.

30

If you object to the above assessment you must give notice of appeal
 in writing within 30 days of the date hereof stating the grounds of objection.
 Colombo, 5th October, 1939.

(Sgd.) L. G. GUNASEKERA,
 Assessor. Estate Duty.
 3rd November, 1939.

A42.

NOTICE OF APPEAL.

Exhibits.

A42.

Notice of
Appeal,
3rd
November
1939.

From : 1. V. RAMASWAMI AIYANGAR, } Objectors
2. K. R. SUBRAMANIA IYER }

(Receivers of the Estate of the late Rm. Ar. Ar. Rm. Arunasalam Chettiar)
c/o Messrs. Wilson & Kadirgamar, Times Building, Fort, Colombo.

To : The Commissioner of Estate Duty,
Colombo.

The objectors above named hereby give notice of appeal against
10 the provisional assessment dated 5th October 1939 in respect of the
alleged Estate of Rm. Ar. Ar. Rm. Arunasalam Chettiar, deceased, on
the following among other grounds that may be urged at the hearing of
the appeal :

1. The said deceased left no Estate in Ceylon liable to Estate Duty.

2. The value of the alleged Estate of the said deceased is nil.

3. The said deceased was a Hindu domiciled in India and was
governed by the Mitakshara School of Hindu Law.

4. Under Section 73 of Ordinance No. 1 of 1938 no Estate Duty can
be charged upon the alleged Estate of the deceased as he was a member
20 of an undivided Hindu Family and the property was joint property of that
undivided family.

5. The deceased and his son who predeceased him and their wives,
together constituted a Hindu undivided family and all the property in
Ceylon to wit :—the businesses carried on under the Vilasams of
Rm. Ar. Ar. Rm. and Ar. Ar. Rm. in Ceylon (all the property movable
and immovable being trade assets) were the joint property of the said
undivided Hindu family. The son having died on 9th July 1934 the said
family continued to be an undivided Hindu Family with the deceased
(father), his wife and the widow of the deceased son as members thereof
30 and the said property continued to be the joint property of the said
undivided Hindu Family. At the time of the death of the deceased
Rm. Ar. Ar. Rm. Arunasalam Chettiar (father) on 23rd February 1938
the said undivided Family consisted of himself, his two wives (one of whom
he married subsequent to the death of his son) and the widowed daughter-in-
law referred to above, and the said property was the joint property of the
said undivided Hindu Family. No Estate Duty is payable on the joint
property of a Hindu undivided Family, when a member of such a family
dies.

6. The objectors plead as a matter of law that the Commissioner
40 of Estate Duty, Income Tax and Stamps is estopped in law from claiming
any Estate Duty as he always accepted the position of the deceased as

Exhibits.
 —
 A42.
 Notice of
 Appeal,
 3rd
 November
 1939,
continued.

a member of an undivided Hindu Family that owned the joint property in Ceylon to wit :—the businesses carried on under the Vilasams of Rm. Ar. Ar. Rm. and Ar. Ar. Rm., and assessed for income tax on that basis.

7. The objectors on whom notice of assessment of Duty in respect of the alleged Estate of the son (No. ED/A 300-AJ2943, Charge No. 8208) was served, have filed objections thereto.

8. Without prejudice to the objections filed by the objectors in respect of the son's Estate they submit that in the event of the son's alleged Estate being held to be liable to pay Estate Duty, as a matter of law this Estate will be entitled to a reduction of twenty per (20%) in the Duty so payable. 10

(Sgd.) V. RAMASWAMI AIYANGAR.

(Sgd.) K. R. SUBRAMANIA IYER.

Receivers of the Estate of the late
 Rm. Ar. Ar. Rm. Arunasalam Chettiar.

3.11.39.

R1.

R1.

DECLARATION OF PROPERTY on death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar.

(Pages 402 to 414 in Record of Appeal No. 16 of 1955.)

20

A44.

ADDITIONAL NOTICE OF ASSESSMENT.

THE ESTATE DUTY ORDINANCE No. 1 OF 1938

ADDITIONAL NOTICE OF ASSESSMENT.

*Exhibits.*A44.
Additional
Notice of
Assess-
ment, 9th
May 1941.

File No. ED/A.452

D.C. Colombo Testy No. 8727

Charge No. 9186/38.

RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased.

10 To : Messrs. V. Ramaswami Iyengar & K. R. Subramaniam Iyer, c/o
Messrs. Wilson & Kadirgamar, Proctors, Gaffoor Buildings, Colombo.

TAKE NOTICE that the estate duty in respect of the estate of the deceased above named has been assessed as follows :—

CEYLON ESTATE :

ASSETS :

	Nett value as per provl. assessment of 5.10.1939	2810072.00
	Increase by offl. valn. of Ceylon Government bonds	1125
	Amount claimed on account of bad debts	
20	Interest due on loans shown in Sch. C of New A/C	3500
	Interest due on loans shown in Sch. 2 of old A/C	25410
	Bad debts claimed in sch. 3 of old A/C ..	164731
	Bad debts claimed on A/C of the rice business	12160
		<u>205801</u>
	Amount allowed	175000
		<u>30801</u>
30	Amount disallowed on a/c of income tax liability	9115
	Increase by offl. valn. of the immovable property as per list I	67200
	Do. do. II	26475
		<u>93675</u>
	Less allowance under—	
	S. 20 (3)	29719
	S. 20 (4)	3433
	S. 20 (5)	200
		<u>33352</u>
40		<u>60323</u>

<i>Exhibits.</i> — A44. Additional Notice of Assess- ment, 9th May 1941, <i>continued.</i>	Less allowance under S. 20 (3) in respect of Thannakery Estate	4000	
		56323	
	Add Mysore Government Securities ..	1088575	
		1185939.00	
			3996011.00
	ESTATE OUTSIDE CEYLON		
	Nett value as per provl. assessment ..	3756701	
	Less Mysore Govt. Securities treated as a Ceylon asset	1088575	
		2668126.00	10
	Total Estate ..		6664137.00
	Estate duty on Rs.3,996,011/- at 16% Duty as per provl. assessment of 5.10.39		639361.76
	with interest at 4% per annum from 24.2.1939		
	Additional Duty		449611.52
			189750.24
			20

The above amount is payable by you on or before 20th June 1941 and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing within 30 days of the date hereof, stating the grounds of objection.

Colombo 9th May, 1941.

(Sgd.) E. G. GUNASEKARA,
Assessor, Estate Duty.

A47.

STATEMENT OF OBJECTIONS.

Exhibits.

A47.
Statement
of
Objections,
2nd June
1941.

Colombo, 2nd June 1941.

File No. E.D/A 452

Charge No. 9186/38

From : 1. V. RAMASWAMI AIYANGAR }
2. K. R. SUBRAMANIA IYER } Appellants

Administrators of the Estate of the late Rm. Ar. Ar. Rm. Arunachalam Chettiar, c/o Messrs. Wilson & Kadirgamar, Times Buildings, Fort, Colombo.

10 To The Commissioner of Estate Duty,
Colombo.

The Appellants above named hereby give notice of objection against the assessment dated 9.5.41 in respect of the alleged estate of Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased, on the following among other grounds that may be urged at the hearing of the appeal.

1. The said deceased left no Estate in Ceylon liable to Estate Duty.
2. The value of the alleged estate of the said deceased is nil.
3. The said deceased was a Hindu domiciled in India and was governed by the Mitakshara School in Hindu Law.
- 20 4. Under Section 73 of the Estate Duty Ordinance, Chapter 187, no estate duty can be charged upon the estate of the deceased as he was a member of a Hindu Undivided family and because
 - (A) the movable properties sought to be charged with duty were the joint properties of that family, and
 - (B) the immovable properties sought to be charged if it had been movable properties would have been the joint properties of that family.
- 30 5. The deceased and his son who predeceased him and their wives together constituted a Hindu Undivided Family and all the property in Ceylon to wit:—The business carried on under the Vilasams of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. in Ceylon (all the property movable and immovable being trade assets), were joint property of the undivided Hindu Family. The son having died on 9.7.1934, the said family continued to be an undivided Hindu family with the deceased (father) his wife, and the widow of the deceased son as members thereof and the said property continued to be the joint property of the said undivided Hindu family. At the time of the death of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar (father) on February 23rd, 1938 the said undivided family consisted of himself his two wives (one of whom he married subsequent
40 to the death of his son) and widowed daughter-in-law referred to above and a minor unmarried daughter and the said property was the joint property of the said undivided Hindu family. No Estate Duty is payable on the joint property of an undivided Hindu family when a member of such a family dies.

Exhibits.
 A47.
 Statement
 of
 Objections,
 2nd June
 1941,
continued.

6. The Appellants plead as a matter of law that the Commissioner of Estate Duty Income Tax and Stamps is precluded in law from claiming any estate duty as he has always accepted the position of the deceased as a member of an undivided Hindu family that owned the joint property in Ceylon to wit: the business carried on under the Vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. and assessed for Income Tax on that basis and accepted Income Tax on the said basis.

7. The Appellants on whom notice of assessment of duty in respect of the alleged estate of the son (No. ED/A 300—A.J. 2943 Charge No. 8208) was served have filed objections thereto. Without prejudice to the objection filed by the Appellants in respect of the son's estate they submit that in the event of the son's alleged estate being held to be liable to pay estate duty, as a matter of law this estate will be entitled to a reduction of 20% in the duty as per Section 18 of the Ordinance No. 1 of 1938. 10

Without prejudice to the foregoing objections the Appellants state :—

(A) That undivided half share of the properties called and known as Thanmakerny, Thachchankadu and Vannankerny Estates did not belong to, and do not form part of, the estate of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar and he had no beneficial interest therein. 20

(B) The said Rm. Ar. Ar. Rm. Arunachalam Chettiar held the said half share of the said properties as trustee for Tiruvadanaï Tirupani Trust.

(c) In 1921 on the security of said Thanmakerny, Thachchankadu and Vannankerny Estates the deceased had advanced as loan to one Murugesu Kadiruvelu a sum of Rs.120,000/- of which Rs.60,000/- was advanced from the joint family funds and Rs.60,000/- from the funds belonging to the Tiruvadanaï Tirupani Trust of which he was a trustee. The said fact had been admitted and declared by the deceased in his trust declaration deed dated 11.1.1928 executed by him in India and duly registered. A suit was filed in the District Court of Jaffna No. 23588 for the recovery of the balance due and the claim was settled at Rs.146,000/- and the said estates were purchased by the deceased by a sale deed dated 13th January 1930 for his family and for the said trust in equal moiety for a consideration of Rs.150,000/- of which Rs.146,000/- was by way of settlement of the said claim and Rs.4,000/- by cash payment of which Rs.2,000/- was paid out of the said trust funds. If the whole of the said Thanmakerny etc., estates is deemed to belong to the deceased it is submitted that the said deceased will be indebted to the said trust to the extent of Rs.75,000/- and consequently a reduction to that extent from the value of the estate should be made. 30 40

(D) The Appellants state that the Income Tax authorities in Ceylon have accepted the fact that half share of the said Thankerny etc., estates belong to the said trust and have imposed Income Tax on the said trust when trust incomes were not exempt from taxation and have exempted the Income from the same after the trust

income were exempted from taxation. It is submitted that the Assessor is precluded from including the said half share of the said estates as part of the estate of the deceased.

Exhibits.

—
A47.

Statement
of
Objections,
2nd June
1941,
continued.

9. The Appellants state :

(A) That the Assessor is not justified in including the Mysore Government Securities as part of the Ceylon Estate.

(B) The said securities were at no time and are not in Ceylon and cannot be deemed to be assets in Ceylon in any sense of the term.

10 10. The Appellants state that if any duty is liable to be paid on the alleged Estate of the son (ED/A300) to that extent the value of this Estate becomes reduced, as the said duty will be a liability of the said Estate as on 9.7.34.

11. The Appellants state that they are not liable to pay any interest on the amount of duty for a period anterior to the date of assessment.

(Sgd.) V. RAMASWAMI AIYANGAR.

(Sgd.) K. R. SUBRAMANIA IYER.

Administrators of the Estate of the late
Rm. Ar. Ar. Rm. Arunachalam Chettiar.

20

(Sgd.) WILSON & KADIRGAMAR.

Proctors for Administrators.

Settled by
Messrs. N. Nadarajah & Peri Sunderam
Advocates.

Exhibits.

A5.

PETITION filed in Case No. C.R. 2490 and 33 of 1941-42 in District Court of Bangalore Division.

A5.
 Petition
 filed in
 Case No.
 C.R. 2490
 and 33 of
 1941-42 in
 District
 Court of
 Bangalore
 Division,
 17th
 October
 1941.

C.R. 2490
 29.10.41

Mr. E. S. Venkataramanan
 25.3.0
 Rtd. 12.3.0

By Advocate. 0.12.0. Copy of Order appointing as Receiver.
 0.10.0. Copy of Memo from Sub Judge, Devakottai to Comptroller. 10
 0.8.0. Vakalat. 0.8.0 with letter dated 7th May 1941 from the
 Comptroller to the Sub Judge, Devakottai. Copy of letter dated 7.5.1940
 to the Agent Indian Bank.

(Initld.) V. L. R. SHERISTADAR.

8.9.1941.

IN THE COURT OF THE DISTRICT JUDGE, Bangalore Division
 Bangalore.

Miscellaneous Case Number 33 of 1941-1942

Petitioners : 1. V. RAMASWAMI IYENGAR son of VENUGOPALA
 IYENGAR, aged about 58 years. 2. K. R. SUBRAMANIA IYER, 20
 son of RAMASAWAMY IYER, aged about 35 years. Receivers of the
 Estate of late RM. AR. AR. RM. ARUNACHALAM CHETTIAR, appointed
 by the Sub Court, Devakottai in Original Suit Number 93 of 1938
 on the file of the said Court. Under section 6 of the Mysore
 Succession Certificate Act VII of 1901 the petitioners above named
 beg to state as follows :—

1. The address of the petitioners for service of all processes of Court
 is care of Mr. E. S. Venkataramanan, B.A., B.L., Advocate, Chickpot,
 Bangalore City.

2. The petitioners are Vakils practising in Devakottai and have 30
 been appointed as Receivers of the Estate of Rm. Ar. Ar. Rm. Arunachalam
 Chettiar, now deceased, in original Suit Number 93 of 1938 on the file
 of the Subordinate Judge's Court at Devakottai. The said suit is one for
 partition and administration of the estate of the said deceased and has
 been instituted by one of the heirs of the deceased, Umayal Achi the
 daughter-in-law of the said deceased by his pre-deceased son, claiming
 half the estate of the deceased under Madras Hindu Women's Right to
 Property Act XVIII of 1937 and impleading therein Lakshmi Achi and
 Nachiar Achi, the widows of the deceased and also Ar. Sm. S. Sundaresan
 Chettiar and Ct. L. Rm. Arunachalam Chettiar who were appointed 40
 executors under a will of the said deceased dated 8.1.1938, the truth and
 validity of which was attacked by the said Umayal Achi in the said suit.
 A certified copy of the Order of Appointment is produced herewith.

3. The above named Rm. Ar. Ar. Rm. Arunachalam Chettiar died
 on the 23rd day of February 1938 at Devakottai, Ramnad District, possessed
 of a very large estate consisting of both movables and immovables in and
 outside British India.

4. The ordinary residence of the deceased at the time of his death was at Devakottai but the debts and securities in respect of which this certificate is applied for are within the jurisdiction of this Honourable Court.

5. The said deceased was a Hindu by religion not governed by the India Succession Act and died leaving a Will dated 8.1.1938 referred to above appointing the said Ar. Sm. S. Sundaresan Chettiar and Ct. L. Rm. Arunachalam Chettiar as executors. Their addresses are as follows :—

10 (i) Ar. Sm. S. Sundaresan Chettiar son of Somasundaram Chettiar residing at Karuthavoorani, North Bank, Devakottai.

(ii) Ct. L. R. M. Arunachalam Chettiar, son of Ramaswamy Chettiar residing at Sivakeil South Street Devakottai.

6. In the above suit in which the said Umayal Achi is the Plaintiff and the said Lakshmi Achi, Nachiar Achi, Ar. Sm. S. Sundaresan Chettiar and Ct. L. Rm. Arunachalam Chettiar or respectively 1, 2, 3 and 4, a preliminary decree was passed on 26.10.1940 and it has been held by the court in that judgment that the said Will does not dispose of all the properties of the deceased and that there has been a partial intestacy except to the extent of the legacies covered by the Will.

20 7. It has also been further held in the said judgment that on the above finding there is no provision in the Will which " would enable the executors to hold on to the estate after the distribution of the legacies. So far as the distribution of the legacies themselves are concerned the Will does not contemplate the administration of the amounts given by way of legacies but only contemplates treating the legatees as creditors to the estate by crediting the amounts directed to be paid to them in the accounts of the estate as their money which they are entitled to draw or draw upon at the rates of interest provided for and from the funds specified therefore in the Will. This does not require the continuance of the executors."

30 8. The petitioners aver that so far as the debts and securities in respect of which this application is made, there is an intestacy according to the judgment referred to above and and [*sic*] the executors have no manner of right to deal with them are the petitioners, the above said judgment directing that the Receivers should continue to be in management of the estate.

9. The names and addresses of the near relatives of the deceased are as stated hereunder :—

40 (i) Umayal Achi, the daughter-in-law of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar by his pre-deceased son Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, Chathrathar Street, Devakottai.

(Id) E. S. V.
17.10.41

Amended (Id) H. N.
Additional District Judge.
17.10.41

Exhibits.

—
A5.
Petition
filed in
Case No.
C.R. 2490
and 33 of
1941-42 in
District
Court of
Bangalore
Division,
17th
October
1941,
continued.

Exhibits.

A5.

Petition
filed in
Case No.
C.R. 2490
and 33 of
1941-42 in
District
Court of
Bangalore
Division,
17th
October
1941,
continued.

(ii) Lakshmi Achi widow of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar, Chatrathar Street, Devakottai.

(iii) Nachiar Achi widow of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar, Chathrathar Street Devakottai.

10. The debts and securities in respect of which this certificate is applied for and which are within the jurisdiction of this Court are set forth in Schedule annexed hereto.

11. The petitioners being the Receivers appointed by a Court of law of the estate of the deceased and representing as such the Estate and the heirs of the deceased are entitled to a Succession Certificate prayed for hereunder. The executors and the near relatives who are parties to the said suit are bound by the direction and the findings of the Court. 10

12. There is no impediment under section 1 subsection 4 of this Act or under any other provision of this Act or any other enactment to the grant of the certificate to the petitioners or the validity thereof if granted.

13. The petitioners applied to the Government of Mysore on the strength of a letter addressed by the Subordinate Judge of Devakottai to the Comptroller to the Government of Mysore a copy of which is produced herewith, for the transfer of the securities and payment of interest on the securities specified in schedule, but as the petitioners have been directed to produce a Succession Certificate, by Government Order dated the 7th day of May 1941 and produced herewith, this application has been filed. 20

14. Wherefore the petitioners pray that this Honourable Court may be pleased to grant them a Succession Certificate empowering them to collect the debts and securities and to receive interest thereon and to negotiate and transfer the said securities and for such relief as to this Court may seem fit.

(Sgd.) V. RAMASWAMI AIYENGAR.

(Sgd.) K. R. SUBRAMANIA IYER.
Petitioners. 30

Place, Bangalore, Date 8.9.1941.

(Sgd.) E. S. VENKATARAMANAN.
Advocate for Petitioners.

We the petitioners above named do hereby declare that what is stated above is true to the best of our knowledge except as to these matters stated therein to be on information and as these matters are we believe them to be true.

(Sgd.) V. RAMASWAMI IYENGAR.

(Sgd.) K. R. SUBRAMANIA IYER.
Petitioners. 40

SCHEDULE.

Exhibits.

(A) 3% 1956-61 Mysore Government Bonds. Present market value at Rs.104.8.0 per cent. Interest due from 20.10.1937 to 7.9.1941.

		<i>Bond Numbers</i>				<i>Face Value</i>
		G	000046	..	..	Rs. 5000/-
		G	000047	..	..	5000/-
		G	000048	..	..	5000/-
		G	000049	..	..	5000/-
		G	000070	..	..	10000/-
10		H	000071	..	..	10000/-
		H	000072	..	..	10000/-
		K	000015	..	..	25000/-
		K	000016	..	..	25000/-
		Total face value				.. 100000/-
		Total Market value				.. 104500/-
		Total interest due				.. 11650/-

A5.
Petition filed in Case No. C.R. 2490 and 33 of 1941-42 in District Court of Bangalore Division, 17th October 1941, *continued.*

(B) 3½% 1951-58 Mysore Government Bonds. Present Market Value at Rupees 107.8.0 per cent. Interest due from 15.12.1937 to 7.9.41.

		<i>Bond Numbers</i>				<i>Face Value</i>
20		F	000278	..	..	Rs. 1000/-
		F	000399	..	..	1000/-
		F	000400	..	..	1000/-
		F	000401	..	..	1000/-
		F	000529	..	..	1000/-
		F	000530	..	..	1000/-
		F	000531	..	..	1000/-
		F	000532	..	..	1000/-
		F	000533	..	..	1000/-
30		F	000534	..	..	1000/-
		F	000535	..	..	1000/-
		F	000536	..	..	1000/-
		F	000537	..	..	1000/-
		F	000538	..	..	1000/-
		F	000539	..	..	1000/-
		F	000540	..	..	1000/-
		F	000541	..	..	1000/-
		F	000542	..	..	1000/-
		F	000543	..	..	1000/-
40		F	000544	..	..	1000/-
		F	000545	..	..	1000/-
		F	000546	..	..	1000/-
		F	000547	..	..	1000/-
		F	000548	..	..	1000/-
		F	000814	..	..	1000/-
		F	000815	..	..	1000/-
		F	000816	..	..	1000/-
		F	000817	..	..	1000/-

	002179	..	..	..	..	10000/-
	002180	..	..	..	..	10000/-
	002181	..	..	..	..	10000/-
	002182	..	..	..	..	10000/-
	002183	..	..	..	..	10000/-
	K 000047	..	..	..	..	25000/-
	K 000048	..	..	..	..	25000/-
	K 000049	..	..	..	..	25000/-
	K 000050	..	..	..	..	25000/-
10	002070	..	..	..	..	25000/-
	002071	..	..	..	..	25000/-
	002422	..	..	..	..	25000/-
						300000/-
	Total Face Value	..				300000/-
	Total Market Value	..				345000/-
	Total interest due	..				45233.54

Exhibits.
A5.
Petition
filed in
Case No.
C.R. 2490
and 33 of
1941-42 in
District
Court of
Bangalore
Division,
17th
October
1941,
continued.

(D) 5% 1955 Mysore Government Bonds. Present Market value
at Rupees 126.0.0 per cent. Interest due from 1.11.1937 to 7.9.1941.

	<i>Bond Numbers</i>					<i>Face Value</i>
	001321	..	..	..	..	1000/-
20	001322	..	..	..	..	1000/-
	001323	..	..	..	..	1000/-
	001324	..	..	..	..	1000/-
	001232	..	..	..	..	5000/-
	001325	..	..	..	..	5000/-
	001326	..	..	..	..	5000/-
	001327	..	..	..	..	5000/-
	001445	..	..	..	..	5000/-
	001233	..	..	..	..	10000/-
	001234	..	..	..	..	10000/-
30	001275	..	..	..	..	10000/-
	001328	..	..	..	..	10000/-
	001329	..	..	..	..	10000/-
	001330	..	..	..	..	10000/-
	001446	..	..	..	..	10000/-
	000569	..	..	..	..	25000/-
	001372	..	..	..	..	25000/-
						149000/-
	Total Face Value	..			Rs.	149000/-
	Total Market Value	..				187740/-
	Total interest due	..				28703.3.1.

40 (E) 6¼% 1940 Mysore Government Bonds (matured on 1.10.1940).
Interest due from 1.10.1937 to 30.9.1940.

	<i>Bond Numbers</i>					<i>Face Value</i>
	F 003217	..	..	..	..	1000/-
	F 003645	..	..	..	..	1000/-
	009380	..	..	..	..	1000/-

<i>Exhibits.</i>	<i>Bond Numbers</i>					<i>Face Value</i>	
	009765	..	..	..	..	1000/-	
A5.	010509	..	..	..	..	1000/-	
Petition	010510	..	..	..	..	1000/-	
filed in	010511	..	..	..	..	1000/-	
Case No.	010512	..	..	..	..	1000/-	
C.R. 2490	010564	..	..	..	..	1000/-	
and 33 of	010709	..	..	..	..	1000/-	
1941-42 in	011152	..	..	..	..	5000/-	
District	011153	..	..	..	..	5000/-	10
Court of	011251	..	..	..	..	5000/-	
Bangalore	011155	..	..	..	..	10000/-	
Division,	011156	..	..	..	..	10000/-	
17th	011157	..	..	..	..	10000/-	
October	011158	..	..	..	..	10000/-	
1941,	011159	..	..	..	..	10000/-	
<i>continued.</i>	011249	..	..	..	..	10000/-	
	011252	..	..	..	..	10000/-	
	010524	..	..	..	..	25000/-	
	011194	..	..	..	..	25000/-	20
	011250	..	..	..	..	25000/-	
	011253	..	..	..	..	25000/-	
	011254	..	..	..	..	25000/-	
	011255	..	..	..	..	25000/-	
	011256	..	..	..	..	25000/-	
	011257	..	..	..	..	25000/-	
	011393	..	..	..	..	5000/-	
						300000/-	
	Total face value	..				300000/-	
	Total value	..	..			300000/-	
	Total interest due	..				56250/-	30

N.B.—The Petitioners beg to state that the Government of Mysore by its order dated 7.5.1941 has directed that the principal amount due on the 6½% Bonds of Rupees 3,00,000/- referred to above in the schedule which have matured for payment together with accrued interest may be deposited in the Mysore Government Savings Bank Current Account to be opened in the name of "The Comptroller Mysore Government," until a certificate from a competent court in Mysore is obtained and furnished. The said amount of Rs.3,56,250/- is now in deposit in the Savings Bank account in the name of the Comptroller.

The total market value of the several bonds referred to above (A) to (E) is	..	..	..	..	..	Rs.1172665.0.0	40
The total interest due on the said bonds (A) to (E) is	..	..	..	..	..	170431.3.9	
						1343096.3.9	

(Sgd.) V. RAMASWAMI IYENGAR,

(Sgd.) K. R. SUBRAMANIA IYER,
Receivers 8.9.1941.

True Copy,

(Sgd.) Not clear,

Head Record Keeper. 50

IN THE COURT OF THE DISTRICT JUDGE, Bangalore Division, *Exhibits.*
Bangalore.

Miscellaneous Case Number 33 of 1941-1942.

Petitioners : V. RAMASWAMI IYENGAR AND OTHERS

versus

Respondent : AR. SM. S. SUNDARESAN CHETTIAR AND OTHERS.

Deposition of Mr. K. R. SUBRAMANIA IYER first witness for
Petitioners. (Petitioner Number 2.)

10 Father's name Ramaswamy Iyer. Age 36 years. Caste Brahmin.
Occupation Advocate of Madras. Residence Devakottai Ramnad District.
Duly Sworn. 17.10.1941. Mr. Ramaswami Iyengar and myself have
been appointed Receivers in Original Suit Number 93 of 1938 Subordinate
Judge's Court Devakottai. Exhibit A is the copy of the order. We
have asked for Succession Certificate regarding the bonds belonging to
the estate in that suit. Exhibit B is a copy of the letter addressed by the
Sub Judge. Devakottai to the Comptroller of Mysore and Exhibit C is
the reply of the Comptroller.

Taken down by me and read over to the witness and admitted by
him to be correct.

20 (Sgd.) H. NANJUNDIAH,
Additional District Judge. 17.10.1941.

True Copy,

(Sgd.) Not clear.

15.11.41,

Head Record Keeper.

IN THE COURT OF THE DISTRICT JUDGE, Bangalore Division,
Bangalore.

Dated : The 17th day of October 1941.

30 Present : H. NANJUNDIAH Esquire B.A., B.L. Additional District
Judge, Bangalore Division, Bangalore.

Miscellaneous Case Number 33 of 1941-1942.

Petitioners :

1. V. RAMASWAMI IYENGAR son of VENUGOPALA IYENGAR,
aged about 58 years.
2. K. R. SUBRAMANIA IYER son of RAMASWAMY IYER aged
about 35 years. Receivers of the Estate of late RM. AR. AR. RM.
ARUNACHALAM CHETTIAR, appointed by the Sub Court Devakottai
in Original Suit Number 93 of 1938 on the file of the said court.

versus

40 Respondents :

1. AR. SM. S. SUNDARESAN CHETTIAR son of SOMASUNDARAM
CHETTIAR residing at Karuthavoorani north bank Devakottai.
2. CT. L. RM. ARUNACHALAM CHETTIAR son of RAMASWAMI
CHETTIAR residing at Sivankeil South Street, Devakottai
Respondents 1 and 2 Executors.

A5.
Petition
filed in
Case No.
C.R. 2490
and 33 of
1941-42 in
District
Court of
Bangalore
Division,
17th
October
1941,
continued.

Exhibits.

A5.
Petition
filed in
Case No.
C.R. 2490
and 33 of
1941-42 in
District
Court of
Bangalore
Division,
17th
October
1941,
continued.

3. UMayAL ACHI the daughter in law of the deceased RM. AR. AR. RM. ARUNACHALAM CHETTIAR by his pre-deceased son RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR, Chathrathar Street, Devakottai.
4. LAKSHMI ACHI widow of the deceased RM. AR. AR. RM. ARUNACHALAM CHETTIAR, Chathrathar Street, Devakottai.
5. NACHIAR ACHI widow of the deceased RM. AR. AR. RM. ARUNACHALAM CHETTIAR, Chathrathar Street, Devakottai, 3, 4, 5 relatives of the deceased.

Application filed on 8.9.1941 under section 6 of the Mysore Succession Certificate Act VII of 1901 by Mr. E. S. Venkataramanan, Advocate for the petitioners praying that a succession certificate may be granted empowering the petitioners to collect the debts and securities and to receive interest thereon and to negotiate and transfer the said securities. 10

ORDER.

Petitioned by Mr. E. S. V. Notices issued to Respondents by post returned duly served in person and also served through Court. Citation issued returned duly proclaimed. Gazette publication made. Published in the Gazette dated 25.9.1941 in part VI at page 2188. Respondents absent. 20

1. A. Number 1 :—The Petitioner files an application for amendment. It is allowed as it does not materially affect the case. The amendment is made.

Second Petitioner is examined. The Petitioners ask for a Succession Certificate as Receivers appointed in Original Suit Number 93 of 1938 on the file of the Subordinate Judge's Court at Devakottai.

So I order Succession Certificate to issue to the Petitioners.

(Sgd.) H. NANJUNDIAH,
Additional District Judge,
Bangalore Division, Bangalore. 30
17.10.1941.

True copy.
(Sgd.) Not clear.

15.11.1941.
Head Record Keeper.

A67.

Exhibits.

SUCCESSION CERTIFICATE granted in Case No. 33 of 1941-42.

SUCCESSION CERTIFICATE SECTION 11 of SUCCESSION CERTIFICATE
REGULATION 1901. FORM No. 81 CIVIL.IN THE COURT OF THE DISTRICT JUDGE, Bangalore Division,
Bangalore.

Miscellaneous Case No. 33 of 1941-42.

A67.
Succession
Certificate
granted in
Case No. 33
of 1941-42,
13th
November
1941.

Petitioners :—

- 10 1. V. RAMASWAMI AIYENGAR son of VENUGOPAL IYENGAR
aged about 58 years.
2. K. R. SUBRAMANIA IYER son of RAMASWAMY IYER aged
about 35 years.

Receivers of the Estate of late RM. AR. AR. RM.
ARUNACHALAM CHETTIAR appointed by the Sub Court Devakottai
in O.S. No. 93 of 1938 on the file of the said Court.

vs.

Respondents :—

- 20 1. AR. SM. S. SUNDARESAN CHETTIAR son of SOMASUNDERAM
CHETTIAR, residing at Karuthavoorani, North Bank, Devakottai.
2. CT. L. RM. ARUNACHALAM CHETTIAR son of RAMASWAMY
CHETTIAR residing at Sivankoil South Street, Devakottai.
3. UMayal ACHI, the daughter in law of the deceased.
4. LAKSHMI ACHI widow of the deceased.
5. NACHIAR ACHI widow of the deceased.

3, 4 & 5 are residing at Chathrathar Street, Devakottai.

To :

- (1) V. RAMASWAMI AIYENGAR son of Venugopala Iyengar, aged
about 58 years.
- 30 (2) K. R. SUBRAMANIA IYER son of Ramaswamy Iyer aged about
35 years.

Receivers of the Estate of late Rm. Ar. Ar. Rm. Arunachalam
Chettiar appointed by the Sub Court, Devakottai in O.S. No. 93
of 1938 on the file of the said Court.

Whereas you applied on the 8th day of September 1941 for a certificate
under Succession Certificate Regulation 1901, in the matter of the estate of
Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased, in respect of the
following debts and securities namely—

SCHEDULE.

40 (A) 3% 1956-61 Mysore Government Bonds. Present market value
at Rs.104.8.0 per cent. Interest due from 20.10.1937 to 7.9.1941.

<i>Bond Numbers</i>	<i>Face Value</i>
G 000046	5000/-
G 000047	5000/-

		<i>Bond Numbers</i>					<i>Face Value</i>		
		F	000838	1000/-	<i>Exhibits.</i> A67. Succession Certificate granted in Case No. 33 of 1941-42, 13th November 1941, <i>continued.</i>
		F	000839	..	..	..	..	1000/-
		F	000840	..	..	..	..	1000/-
			000073	..	..	..	..	5000/-
		G	000130	..	..	..	..	5000/-
		G	000131	..	..	..	..	5000/-
			000203	..	..	..	..	5000/-
			000210	..	..	..	..	5000/-
10		G	000295	..	..	..	..	5000/-
		G	000296	..	..	..	..	5000/-
		H	000046	..	..	..	..	10000/-
		H	000080	..	..	..	..	10000/-
			000020	..	..	..	..	25000/-
		K	000003	..	..	..	..	25000/-
		K	000166	..	..	..	..	25000/-
		K	000167	..	..	..	..	25000/-
		K	000168	..	..	..	..	25000/-
20								Total Face value 2,19,000/-	
								Total market value 2,35,425/-	
								Total interest due 28,594-11-4	

(c) 4% 1953-63 Mysore Government Bonds. Present Market Value at Rs.115-0-0 per cent. Interest due from 1.12.1937 to 7.9.1941.

		<i>Bond Numbers</i>					<i>Face Value</i>	
		G	000024	..	..	..	..	5000/-
		G	000025	..	..	..	..	5000/-
		G	000026	..	..	..	..	5000/-
		G	000027	..	..	..	..	5000/-
30		G	000028	..	..	..	..	5000/-
		G	000029	..	..	..	..	5000/-
		G	000174	..	..	..	..	5000/-
		G	000175	..	..	..	..	5000/-
		G	000176	..	..	..	..	5000/-
		G	000177	..	..	..	..	5000/-
			001596	..	..	..	..	5000/-
			001597	..	..	..	..	5000/-
			001599	..	..	..	..	5000/-
			001598	..	..	..	..	10000/-
40			002179	..	..	..	..	10000/-
			002180	..	..	..	..	10000/-
			002181	..	..	..	..	10000/-
			002182	..	..	..	..	10000/-
			002183	..	..	..	..	10000/-
		K	000047	..	..	..	..	25000/-
		K	000048	..	..	..	..	25000/-
		K	000049	..	..	..	..	25000/-
		K	000050	..	..	..	..	25000/-
		K	002071	..	..	..	..	25000/-
			002422	..	..	..	..	25000/-
50								Total face value 3,00,000/-
								Total market value 3,45,000/-
								Total interest due 45,233-5-4

Exhibits. (D) 5% 1955 Mysore Government Bonds. Present market value at
Rs.126-0-0 per cent. Interest from 1.11.1937 to 7.9.1941.

<i>Succession Certificate granted in Case No. 33 of 1941-42, 13th November 1941, continued.</i>	<i>Bond Numbers</i>							<i>Face Value</i>	
	001321	..	..	..	..	..	..	1000/-	
	001322	..	..	..	..	..	..	1000/-	
	001323	..	..	..	..	..	..	1000/-	
	001324	..	..	..	..	..	..	1000/-	
	001232	..	..	..	..	..	..	5000/-	
	001325	..	..	..	..	..	..	5000/-	
	001326	..	..	..	..	..	..	5000/-	10
	001327	..	..	..	..	..	..	5000/-	
	001445	..	..	..	..	..	..	5000/-	
	001233	..	..	..	..	..	..	10000/-	
	001234	..	..	..	..	..	..	10000/-	
	001275	..	..	..	..	..	..	10000/-	
	001328	..	..	..	..	..	..	10000/-	
	001329	..	..	..	..	..	..	10000/-	
	001330	..	..	..	..	..	..	10000/-	
	001446	..	..	..	..	..	..	10000/-	
	000569	..	..	..	..	..	..	25000/-	20
	001372	..	..	..	..	..	..	25000/-	
								1,49,000/-	
								1,87,740/-	
								28,703-3-1	

(E) 6 $\frac{1}{4}$ % Mysore Government Bonds (matured on 1.10.1940).
Interest due from 1.10.1937 to 30.9.1940.

	<i>Bond Numbers</i>							<i>Face Value</i>	
	F 003217	..	..	..	..	..	..	1000/-	
	F 003645	..	..	..	..	..	..	1000/-	
	009380	..	..	..	..	..	..	1000/-	30
	009765	..	..	..	..	..	..	1000/-	
	010509	..	..	..	..	..	..	1000/-	
	010510	..	..	..	..	..	..	1000/-	
	010511	..	..	..	..	..	..	1000/-	
	010512	..	..	..	..	..	..	1000/-	
	010564	..	..	..	..	..	..	1000/-	
	010709	..	..	..	..	..	..	1000/-	
	011152	..	..	..	..	..	..	5000/-	
	011153	..	..	..	..	..	..	5000/-	
	011251	..	..	..	..	..	..	5000/-	40
	011155	..	..	..	..	..	..	10000/-	
	011156	..	..	..	..	..	..	10000/-	
	011157	..	..	..	..	..	..	10000/-	
	011158	..	..	..	..	..	..	10000/-	
	011159	..	..	..	..	..	..	10000/-	
	011249	..	..	..	..	..	..	10000/-	
	011252	..	..	..	..	..	..	10000/-	
	010524	..	..	..	..	..	..	25000/-	

<i>Bond Numbers</i>	<i>Face Value</i>	<i>Exhibits.</i>
011194	25000/-	A67. Succession Certificate granted in Case No. 33 of 1941-42, 13th November 1941, <i>continued.</i>
011250	25000/-	
011253	25000/-	
011254	25000/-	
011255	25000/-	
011256	25000/-	
011257	25000/-	
011393	5000/-	
10	Total face value 3,00,000/-	
	Total value 3,00,000/-	
	Total interest due 56,250/-	

N.B.—The Petitioners beg to state that the Government of Mysore by its order dated 7.5.1941 has directed that the principal amounts due on the 6½% bonds of Rs.3,00,000/- referred to above in the schedule which have matured for payment together with accrued interest may be deposited in the Mysore Government Savings Bank current account to be opened in the name of “ The Comptroller, Mysore Government ” until a certificate from a competent court in Mysore is obtained and furnished.

20 The said amount of Rs.3,56,250/- is now in deposit in the Savings Bank account in the name of the Comptroller.

The total market value of the several bonds referred to above (A) to (E) is	Rs. 1172665.0.0
Total interest due on the said bonds (A) to (E) is ..	170431.3.9
Total	<u>13,43,096.3.9</u>

This certificate is accordingly granted to you and empowers you to collect these debts and

- (1) To receive interest or dividends on.
- (2) To negotiate or transfer.
- 30 (3) Both to receive interest or dividends on and to negotiate or transfer the securities or any of them.

Dated this Monday the 17th day of November 1941.

(Sgd.) . . .
Additional District Judge,
Bangalore Division,
Bangalore.

*Exhibits.***A61.****LETTER, Commissioner of Estate Duty to Administrators.**

A61.
Letter,
Commissioner of
Estate
Duty to
Adminis-
trators,
16th April
1942.

Ref. ED/A.452.

Estate Duty Office,
Colombo.
April 16, 1942.

Estate No. ED/A452—
RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased.

Gentlemen,

With reference to your letter dated the 27th February 1942 you are hereby notified under Section 37 of the Estate Duty Ordinance that I have determined to maintain the assessment, subject to the exclusion of a half share of Thanmarkerny, Thachchankadu and Vannankerny Estates. 10

Yours faithfully,
(Sgd.) T. D. PERERA,
Commissioner of Estate Duty.
LGS.

Messrs. V. Ramaswamy Iyengar
and K. R. Subramania Iyer
Messrs. Wilson & Kadirgamar,
Proctors & Notaries,
P.O. Box 224,
Colombo.

20

A62.**AMENDED NOTICE OF ASSESSMENT.**

A62.
Amended
Notice of
Assess-
ment, 29th
April 1942.

THE ESTATE DUTY ORDINANCE NO. 1 OF 1938.

AMENDED NOTICE OF ASSESSMENT.

File No. ED/A452/AJ 3206.
Charge No. 9186/AR1619.

D.C. Colombo Testy No. 8727.

RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased. 30
To Messrs. V. Ramasami Iyengar & K. R. Subramaniam Iyer, C/o Messrs.
Wilson & Kadirgamar, Proctors, P.O. Box 224, Colombo.

TAKE NOTICE that the estate duty in respect of the estate of the deceased above-named has been assessed as follows:—

ASSETS :**CEYLON ESTATE**

Nett value as per assessment dated 9.5.1941	..	Rs. 3996011.00	
Less half share of Thannakerny, Thachchandadu & Vannankerny Estates now excluded	.. ..	Rs. 40000	40
Less allowance under S. 20 (3)	..	4000	
		<u>36000.00</u>	
		<u>3960011.00</u>	

ESTATE OUTSIDE CEYLON			<i>Exhibits.</i>
	As per previous assessment	2668126.00	A62.
	Total Estate	<u>6628137.00</u>	Amended
	Estate Duty on Rs.3960011 at 16%	633601.76	Notice of
	Duty paid with interest additional assessment of		Assess-
	9.5.41	189750.24	ment, 29th
			April 1942,
	Amended duty payable	443851.52	<i>continued.</i>
	Less amount paid with interest	<u>269679.52</u>	
10	Balance duty payable with interest at 4% per		
	annum from 24.2.1939	<u>174172.00</u>	

The above amount is payable by you on or before 1st June 1942 and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing within 30 days of the date hereof, stating the grounds of objection.

(Sgd.) I. G. GUNASEKARA,
Assessor, Estate Duty.

29th April, 1942.

A68.

20 **JUDGMENT in Appeal 436 of 1951, High Court of Madras.**

IN THE HIGH COURT OF JUDICATURE at Madras.

Thursday, the twenty fourth day of February, One thousand nine hundred and forty-four.

Present :

THE HONOURABLE MR. JUSTICE KRISHNASWAMI AYYANGAR
and

THE HONOURABLE MR. JUSTICE SOMAYYA.

Appeal No. 436 of 1941.

30 V. R. K. M. KUMARAPPA CHETTIAR—
Appellant (2nd Plaintiff).

1. UMayAL ACHI,

2. CHINNAMMAI ACHI (being of unsound mind) by guardian C. T. VE. VE. VAIRAVAN CHETTIAR (as per order in I.A. No. 749 of 1938 in O.S. No. 172 of 1936, Sub Court Devakottai), the cause title regarding the 2nd Respondent amended as per Order of Court dated 11.11.1941.

3. KANNAMMAI ACHI,

A68.
Judgment
in Appeal
436 of
1951, High
Court of
Madras,
24th
February
1944.

- Exhibits.* 4. V. E. A. ANNAMALAI CHETTIAR,
 ——— 5. V. E. RM. AR. RAMANATHAN CHETTIAR,
 A68. 6. V. E. RM. N. R. SOMASUNDARAM CHETTIAR,
 Judgment in Appeal 7. S. M. VEERAPPA CHETTIAR,
 436 of 8. NARAYANAN alias CHIDAMBARAM, lately a minor by guardian
 1951, High Umayal Achi, the 1st Respondent herein, and since declared a
 Court of major and the guardian discharged, Vide order of the High Court
 Madras, dated 11.11.1941 and made in the appeal,
 24th 9. VAIRAVAN CHETTIAR,
 February 10. SATHAPPAN alias VEERAPPAN (minor), by guardian KANNAMMAI 10
 1944, Achi, the 3rd Respondent herein,
continued. 11. RM. VE. N. NACHIAPPA CHETTIAR,
 12. V. E. VR. V. VEERAPPA CHETTIAR.
 Respondents (Defendants 1 to 12).

Appeal against the Decree of the Court of the Subordinate Judge of Sivaganga dated 27.8.1941 in O.S. No. 13 of 1939 (O.S. No. 172 of 1936, Sub Court, Devakottai).

This appeal and the Memoranda of Cross objections filed by the Respondents Nos. 1 and 8, 2 and 9, and 3 and 10 respectively coming on for hearing yesterday and having stood over for consideration till this 20 day, the Court delivered the following judgment:—(Judgment of the Court was delivered by Krishnaswami Ayyangar).

Yet another instance of the peculiar customs prevalent among the Nattukottai Chetti community came up for consideration in the suit out of which this appeal arises. The custom pleaded is one which is said to permit a plurality of adoptions to the same individual; that is to say, there can be as many adoptions as there are wives or widows of a Nattukottai Chetti, an adoption being made for or by each one of them.

The facts which have given rise to the suit are the following: Vairavan Chettiar a member of the Nattukottai Chetti community died 30 on the 3rd August 1934 leaving considerable properties. He had married three wives in succession and all of them have survived him. None of them, however, bore him any issue. The first two days' ceremonies after the death of Vairavan Chettiar were performed but the rest of the ceremonies were suspended on account of the quarrels which arose between the three widows. Umayal Achi the first Defendant in the suit and the senior widow set up a custom that she alone as the senior widow was entitled to make an adoption to her husband and to be in possession and management of the estate left by him. She also alleged that she had the authority of her husband to make the adoption. Chinnammai Achi the second widow 40 pleaded that by the custom of the community each of the three widows was entitled to make an adoption. Kannammai Achi the junior most among the widows put forward a will said to have been left by Vairavan Chettiar by which she alone among the widows was authorised to make an adoption. There is every reason to believe that these quarrels assumed serious proportions and they led to the institution of O.S.217 of 1934 by Umayal Achi claiming that she alone had the sole right to make an adoption and to be in possession and management of the estate left by her husband. In the alternative she claimed a division of the estate into three equal shares, one share for each of the three widows. In the conduct of this suit she was 50

admittedly assisted by S. M. Veerappa Chettiar who figures as the seventh Defendant in the present suit. She had also, it would seem, the help of the first Plaintiff in carrying on the litigation. The second widow Chinnammai Achi had the assistance of her brother Muthayya Chetty and the third widow Kannammai Achi had the help and co-operation of the second Plaintiff Kumarappa Chetti. The first Defendant who was the Plaintiff in the said suit O.S. 217 of 1934 applied for the appointment of a receiver pending its disposal. By an order dated 2nd March 1935 Somasundaram Chettiar who figures as the sixth Defendant in the present

10 suit was appointed receiver. On the 21st July 1935 an agreement was reached between the three widows for a settlement of their disputes on the terms embodied in a muchilika of the same date a copy of which has been filed and exhibited as Ex. VII in the present suit. The muchilika was in favour of Somasundaram Chettiar, Annamalai Chettiar and Ramanathan Chettiar who are Defendants 6, 4 and 5 respectively in the present suit. These three persons were invited by the muchilika to investigate the points at issue among the three ladies "in the matter of the adoption of three boys to be made to said Vairavan Chettiar, each of us taking one boy in adoption according to her pleasure, in accordance with the practice

20 obtaining in our community, on the same day and in the same muhurtham (auspicious period) and in the matter of partition of the properties of the estate of said Vairavan Chettiar into three equal shares within a period of two weeks from now." The muchilika was attested by three witnesses: the first of whom is the seventh Defendant Veerappa Chettiar. The evidence in the case as pointed out by the learned trial Judge makes it abundantly clear that this muchilika was the result of the intervention of the reversioners who interested themselves in bringing about an amicable settlement of the differences between the ladies. It may at once be mentioned that the nearest reversioners as shown by the genealogical

30 tree annexed to the plaint, the correctness of which is not disputed by anybody, were Kumarappa Chettiar the second Plaintiff, Chidambaram Chettiar the first Plaintiff and Veerappa Chettiar the seventh Defendant all of whom are the sons of brothers of the deceased Vairavan Chettiar. The muchilika of the 21st July 1935 though intended to bring about a settlement of the disputes did not, as events turned out, achieve its purpose, for we find that quarrels arose between the widows in regard to the division of the jewels and it is now common ground that within a few days the muchilika was torn away by the second widow Chinnammai Achi. On the 30th July 1935 she however filed an application in O.S.217 of 1934

40 requesting the court to record the agreement evidenced by the muchilika of which a copy was filed into Court. While this application was pending, a fresh attempt appears to have been made by the reversioners and others interested in the family to bring about a compromise and it resulted in a petition Ex. X filed by all the three widows requesting that the terms therein mentioned should be recorded and the matter referred to the three arbitrators, namely, Defendants 4 to 6 in the present suit for a division of the properties into three equal shares. The main provisions of the arrangement were (1) that the entire movable and immovable properties of the deceased should be divided among the three widows into three equal

50 shares by the three arbitrators (2) that the shares so divided should be handed over to the sons to be adopted by them if majors or to the respective adopting mothers if minors within thirty days after the completion of the

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continued.

adoption ceremony (3) that the ceremonies suspended by reason of the quarrels aforesaid should be performed and for that purpose a common fund should be set apart from the estate (4) that the junior widow Kannammai Achi should abandon her case that Vairavan Chettiar had left a will and (5) that each of the three widows of Vairavan Chettiar should take a boy in adoption to her husband "as she likes and from among her people (kinsmen), in accordance with the custom obtaining among the Nattukottai Chetti community" and that they should have the three adoptions made on the same day and in the same muhurtham (auspicious hour) and that they should not have the adoption made independent of one another; 10
 . . . they should not dispute in any manner the said three adoptions so made and the sons to be taken in adoption should get only the properties to which they are entitled from their respective adoptive mothers and should not claim the properties of the other sharers. This petition which bears the signatures of the three ladies was attested among others by the seventh Defendant Veerappa Chettiar. Pursuant to this petition a preliminary decree for partition passed by the Court on the 27th March 1936. The arbitrators proceeded to make a division in accordance with the arrangements made and gave their award on the 1st September 1936 affecting a division by metes and bounds. The award was accepted by the 20
 Court and a final decree was made on the 5th September 1936 incorporating the terms of the award. The disputes between the three widows of Vairavan Chettiar were thus composed by a decree which so far as they were concerned, was undoubtedly final.

The reversioners who had not so far objected to the proposed adoptions or the division of the properties then became active and within six weeks of the final decree they filed the present suit with the object of annulling the adoptions and securing their reversionary rights after the termination of the estates of the limited owners, namely, the widows. At the date of the suit the widows had not made the adoptions though they were intending 30
 to do so. The Plaintiffs therefore prayed for a declaration that the arrangement come to between the widows and the award, the preliminary and final decrees passed in O.S. 217 of 1934 are void, illegal and not binding on the Plaintiffs and the other reversioners of Vairavan Chettiar. Along with the plaint they applied for an interim injunction restraining the widows from making the proposed adoptions, but this petition was dismissed on 4th November 1936 and the order was confirmed on appeal on 30.11.1937. On the 22nd March 1937 the three widows of Vairavan Chettiar simultaneously, i.e., at the same place and the same hour made three adoptions. The adopted sons are Defendants 8, 9 and 10. Of the three reversioners, 40
 two alone, namely, Chidambaram Chettiar and Kumarappa Chettiar were the Plaintiffs; the other reversioner namely, the seventh defendant, did not join them though he was equally interested in getting rid of the adoptions. The three widows were in order the first three Defendants in suit. Defendants 4, 5 and 6 were the arbitrators with whom it was alleged deceased Vairavan Chettiar had left some jewels. Defendants 11 and 12 are the remoter reversioners.

The plaint contains no reference whatsoever to the custom of the community in the matter of adoption specifically referred to in the muchilika Ex. VII and in the petition Ex. X. It contains the averment 50
 that the proposed adoptions were absolutely illegal and void, that none of the widows had any right to make an adoption except with the consent of

the Plaintiffs and the seventh Defendant, that none of them was consulted in the matter and that in no event could each of them simultaneously adopt to the deceased as that was not sanctioned by law. The Plaintiffs of course denied that the deceased had authorised any of his widows to make an adoption. The defence put forward by the widows was more or less identical. It was pleaded that the Plaintiffs and the seventh Defendant who were the reversioners were consenting parties to the settlement arrived at in O.S.217 of 1934 and they had recognised as valid the custom of the community that adoptions could be made simultaneously by them.

- 10 Though they alleged that the consent of the reversioners was not necessary for an adoption being made ; still they averred that such consent had in fact been given by them soon after Vairavan Chettiar's death and also at the time of the passing of the preliminary and final decree in O.S.217 of 1934. The main contest between the parties was thus the existence or non-existence of the custom pleaded. A subsidiary question was also mooted, namely, whether the consent of the reversioners is a necessary condition of a valid adoption in the absence of specific authority by the husband. Voluminous evidence was adduced to prove the custom in pursuance of which the contesting Defendants contended that the adoptions
- 20 had been validly made. The learned Judge has on a consideration of that evidence come to the conclusion that the custom has been established. On the question whether the consent of the reversioners is necessary, he held that no custom was made out enabling a widow to adopt without the authority of the husband in the absence of the consent of the nearest sapindas.

- The evidence adduced in support of the custom has been subjected by the learned Subordinate Judge to close scrutiny and has been analysed and considered by him under three heads, namely (1) where a person has left more than one wife without sons and the widows have adopted a
- 30 boy each (2) the adoption by one co-wife of a boy while another had a natural son, and (3) where one of the two widows has adopted and the right of the other or right of widows to adopt has been recognised. Instances in which the custom has been observed by the members of the community are all grouped by the learned Subordinate Judge under the three heads. The evidence appears to cover a period of nearly sixty years although the instances mostly relate to comparatively modern dates. The earliest instance on which there is documentary evidence relates to the year 1913. It is unquestionable that there is a very large body of oral and documentary
- 40 evidence in support of the custom and indeed it is of so overwhelming a character that it is not surprising that the learned advocate for the Appellant felt obliged to concede that no purpose is to be served by a detailed reference to that evidence which is practically all one way. The finding of the learned Subordinate Judge in favour of the custom therefore stands.

- The attempt of Mr. Muthufrishna Ayyar, learned advocate for the Appellant, before us was more to show that the widows had not obtained the consent of the reversioners for making the adoptions than to argue that the custom itself was not made out. Here again the evidence is of such a clear and convincing character that there is no escape from the
- 50 conclusion that the reversioners had in fact given their consent. Indeed they seem to have throughout acted more for the purpose of influencing the widows to make the adoptions than for securing the reversion to

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themselves. It is obvious that they did not think of their reversionary rights until after the final decree in O.S. No. 217 of 1934 was passed. It will be sufficient for us in this connection to refer briefly to the evidence of some of the witnesses examined for the defence, who speak in no uncertain voice on the question of consent. The first Defendant examined herself as D.W.13. Referring to the events that had taken place before the execution of the *muchilika* Ex. VII she has stated that the relations of the parties were complaining that the ceremonies to be performed for the deceased had not been completed and suggested that each of the widows should take a boy in adoption as was customary in the community. 10
 In particular she stated that S. M. Veerappan, the seventh Defendant, Nachiappa, the eleventh Defendant and Natesan—doubtful whether the reference is to the first Plaintiff or his son—represented that they were also being abused for the delay in the performance of the ceremonies and wanted that that the *sadangu* should be performed and that each of the widows might take a boy in adoption. These three individuals, according to her, approached the arbitrators, namely, Defendants 4, 5 and 6 to have the matter settled and arrange for the adoption of a boy to each of the three widows. She added that the arbitrators approved of the idea and suggested that each of the widows might take a boy in adoption as usual 20
 and customary. In cross-examination it was elicited that at the time of the settlement the second Plaintiff Kumarappa was in village but he was not consulted by her. The third Defendant was examined as D.W.15. It will be remembered that her original case was that Vairavan Chetty had left a will giving her authority to make an adoption. Referring to the quarrels that arose immediately after his death, she deposed that Umayal Achi stated that she as the senior widow was entitled to make an adoption according to the custom in the community but she was agreeable to each of the widows making an adoption and then having the (*sadangu*) ceremonies performed. The witness then stated that the 30
 first Plaintiff and the eleventh Defendant sided with the first Defendant and represented to the arbitrators that though there was a will, the three widows should each take a boy in adoption. Referring to the part taken by the second Plaintiff, she deposed that he represented to her that it was customary in the community for each of the widows taking a boy in adoption and that she might consent to the said procedure in order to avoid litigation. Later on in her deposition she stated that all (referring to the pangalis and other relations) stated that the *sadangu* had not been done and that *savandi* the 15th day ceremony had not been done for her husband and “we might have the disputes settled by each of the widows 40
 taking a boy in adoption as per custom of the caste. Kumarappa Chetti also told me to that effect.” In cross-examination she added that the second Plaintiff was present at the time when the *muchilika* was executed, though he did not attest it. All the three arbitrators Defendants 4, 5 and 6 have been examined and they have also given evidence on the point. The fourth Defendant examined as D.W.29 deposed that Veerappa, the seventh Defendant Chidambaram, the first Plaintiff, Kumarappa, the second Plaintiff and two others represented to the arbitrators that the first annual ceremony of Vairavan Chettiar was approaching and that there was scandal in the village and that it would be better if three sons 50
 be adopted to the three widows one for each, and that at their instance he then interviewed the widows in order that they might act on this advice. The fifth Defendant examined as D.W.27 also deposed that

Chidambaram, the first Plaintiff, Veerappa the seventh Defendant, Kumarrappa, the second Plaintiff, and certain others interfered to bring about a settlement fifteen or twenty days after the institution of O.S. No. 217 of 1934 and suggested that the three ladies should compose their differences by each taking a boy in adoption and having the properties divided in three equal shares. The third arbitrator, the sixth Defendant, examined as D.W.19 has sworn that the two Plaintiffs and the Defendants 7 and 11 represented that the differences between the widows should be settled and wanted the witness to see that they each took a boy in adoption. As we already observed, the general effect of the evidence is that all the reversioners and the other relations of the deceased were throughout endeavouring to have three adoptions made by the three widows for the purpose of ensuring peace and amity in the family. Indeed more than the widows seeking the consent of the reversioners, the reversioners themselves appear to have taken initiative in making the widows consent to the adoptions being made. On a fair view of the evidence, it seems to us that Ex. VII and Ex. X represent a settlement arrived at between the widows on the concurrence and advice of the reversioners including the Plaintiffs and the seventh Defendant. That the consent of the reversioners was given for these adoptions is made out beyond all question by the evidence adduced in the case.

Mr. Muthukrishna Ayyar referred to the case of the three widows as disclosed in the written statement and in the course of the evidence that the consent of reversioners was not required for a valid adoption being made by them and argued that if that was the view they had taken, it is very unlikely that they would have asked for the consent of the reversioners and much less that the reversioners would have consciously and deliberately given their consent to the adoptions being made. But it is to be remembered that the widows, while pleading that such consent was not necessary, insisted at the same time that the consent had in fact been given. Their attitude in this regard is made plain by the contents of the notice given by them to the reversioners immediately before the adoptions were made. It is not to be forgotten that we are concerned more with the attitude of these ladies at or before the time when the disputes were settled and not at the time of the suit or when the notices which preceded the adoption were issued. We can find nothing in the evidence to suggest that at the relevant period they had made up their minds that the consent of the reversioners was not necessary. We are therefore of opinion that the finding of the learned Subordinate Judge that the consent of the reversioners had been given for the adoptions made by the widows is not open to exception.

The appeal fails and is accordingly dismissed with costs of the contesting Respondents Nos. 1 and 8, 2 and 9 and 3 and 10. As regards the sixth Defendant who was a receiver in the Court below, we allow him a lump sum fee of Rs.200/- for his costs of the appeal, to come out of the estate.

The memoranda of objections preferred by Respondents 1 and 8, 2 and 9 and 3 and 10 will be dismissed but without costs.

50

(Sgd.) K. C. NAMBIAR, 14.3.44,
Asst. Registrar, App-Side.

(True copy)

(Sgd.) M. V. KRISHNAMURTHI, 5.2.1948,
Supdt. of Copyists.

Exhibits.
—
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Madras,
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1944,
continued.

Exhibits. **LIST OF AUTHORITIES CITED** in the Appeal and before the District Court, Colombo, filed at the direction of the Appellate Court.

List of Authorities cited in Courts in Ceylon.

(Pages 421 to 422 in Record of Appeal, No. 16 of 1955.)

Statement showing Payment of Estate Duty.

STATEMENT showing Payment of Estate Duty.

IN THE DISTRICT COURT OF COLOMBO.

IN THE MATTER of an APPEAL under the Estate Duty Ordinance.

1. V. RAMASWAMI IYENGAR and another
Administrators of the Estate of RM. AR. RM.
ARUNACHALAM CHETTIAR, deceased.

10

v.

THE HON'BLE THE ATTORNEY-GENERAL of
Ceylon Respondent.

No. 38 EST.SPL.

STATEMENT OF PAYMENTS OF ESTATE DUTY.

23.6.1941	Rs.190,000.00	A49 & A50 & A59 & A59a
25.7.1941	Rs. 50,000.00	A52 & A59 & A59a
15.8.1941	Rs.135,000.00	A54 & A59 & A59a
29.9.1941	Rs. 80,000.00	A55 & A59 & A59a
10.10.1941	Rs. 45,000.00	A56 & A59 & A59 & A59a
18.12.1941	Rs. 3,312.08	A60
3.6.1942	Rs.174,172.00	A63 & A64
29.7.1942	Rs. 22,911.67	A65 & A66
15.9.1942	Rs. 6.90	

Rs.700,402.65

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CEYLON

BETWEEN

THE ATTORNEY GENERAL OF CEYLON *Appellant*

AND

1. V. RAMASWAMI IYENGAR
2. K. R. SUBRAMANIA IYER,
Administrators of the Estate in Ceylon of
Rm. Ar. Ar. Rm. Arunachalam Chettiar,
deceased *Respondents.*

RECORD OF PROCEEDINGS

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
LONDON, S.W.1,
Solicitors for the Appellant.

LEE & PEMBERTONS,
46 LINCOLN'S INN FIELDS,
LONDON, W.C.2,
Solicitors for the Respondents.