



HIGH COURT ORIGINAL
25 FEB 1941

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25 FEB 1941
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Suit No. 502 of 1939.
IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL
Ordinary Original Civil Jurisdiction.

JOYRAM DEY residing at No. 7, Wellington Lane in the town of Calcutta within the jurisdiction aforesaid land-holder ...

... PLAINTIF: ...

- versus -

(1) BALORAM DEY merchant and Land holder

(2) SM. LILABATI DASSEE widow of Makar Lal Dey deceased both residing at No. 7,

Wellington Lane in the town of Calcutta within the said jurisdiction. DEFENDANTS

To
The Honourable Sir Arthur Trevor Harries, Kt., Chief Justice and His Companion Justices of the said Court WHEREAS by a decree made in this suit and dated the ninth day of April one thousand nine hundred and forty-one it was declared with regard to the properties mentioned in Schedule "D" to the Plaint in the said suit (copy whereof is set forth in the Schedule thereto annexed and marked "A") and also in the Schedule "A" hereunder written as also in the Schedule under the Writ of Commission hereinafter mentioned that the plaintiff was entitled to the shares or parts as therein mentioned (the same into the parts or shares mentioned in the said Schedule being considered as divided and in the said Decree and writ of Commission as also hereinafter referred to as the said first mentioned properties) and that the said defendant Baloram Dey was entitled to an un-divided one-third share only in ^{item} (f) set out in the said Schedule "D" to the Plaint and to no other property mentioned therein and that the said defendant Sreemutty Lilabati Dassee was entitled to the shares or parts therein as mentioned in the said Schedule "D" except that in item (e) thereof being the business of M.L. Day & Co., The said defendant Sreemutty Lilabati Dassee was

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entitled to an undivided two-third parts or shares as follows: namely as to one third part or share she was entitled to as Hindu mother and as to the other one-third part or share she was entitled to absolutely and the plaintiff to the remaining un-divided one third share thereof and that with regard to all other properties to be found upon the enquiry as the said decree directed to belong jointly to the parties (in the said Decree referred to as the said second mentioned properties) each of the parties was entitled to one equal third part or share (the same into three equal parts or shares being considered as divided) And whereas by the said Decree it was ordered and decreed that a partition should be made of the said first mentioned properties other than item (f) and the said second mentioned properties with the appurtenances into aforesaid parts or shares and that a Commission should be issued directed to myself who was also by the said Writ of Commission appointed Surveyor and Referee for the purposes therein mentioned on a settled remuneration of Rupees two hundred and fifty the said Commissioner namely myself being at liberty to allot the entirety of the business of M.L. Day & Co., to any one of the parties and to make allotment of the immoveable properties in suit accordingly And whereas by the said Decree it was further ordered and decreed that I should make a division of the said properties into the aforesaid parts or shares and as regards the immoveable properties make the same by metes and bounds where I should see occasion with power to me to award compensation in money by way of equalizing the said partition and all deeds and writings relating to the said properties in the custody or power of any of the parties were to be produced before me as such Commissioner of partition as aforesaid upon oath or solemn affirmation as I should direct and whereas by the said Decree it was inter alia further ordered and decreed that I should allot the aforesaid properties to the parties in the shares or parts as they had been respectively declared entitled to as aforesaid the said Sreemutty Lilabati Dassee being entitled thereto as a Hindu mother during the term of her natural life in the manner prescribed by the Hindu Law and whereas by the said Decree it was inter alia further ordered and decreed

that after such partition should have been so made the plaintiff and the defendants should execute conveyances to each other of their respective shares such Conveyances to be settled by the Registrar of the said Court in case the parties should differ about the same And Whereas by the said decree it was further inter alia ordered and decreed that after I should have made such partition and returned the same such of the deeds and writings as relate to such parts of the aforesaid properties as should by such division be allotted to any of the parties alone be delivered to him or her respectively and as to those that should concern any part of the said premises that should be allotted to one of the parties jointly with those allotted to one or more of the other parties any of the parties was to be at liberty to apply to the said Court for direction concerning the same And Whereas by the said Decree it was inter alia further ordered and decreed that I as the said Referee as aforesaid should make the enquiries and take the account following that is to say: (1) An enquiry as to what were the properties belonging to the plaintiff under the Wills of Makar Lal Day deceased and Krisingha Das Day deceased both named in the said Plaint which came into the hands of the said defendant Baloram Day as the Guardian of the Plaintiff (2) An enquiry as to what were the properties acquired by the said defendant Baloram Day out of the joint funds and properties belonging to the parties in the said suit (3) An accounts of the dealings of the said defendant Baloram Day with regard to the respective shares of the plaintiff and the said defendant Sreemutty Lilabati Dassee in the aforesaid various properties on the basis of wilful neglect and default and submit his report along with the said Return And Whereas in pursuance of the said Decree a Writ of Commission was issued to me on the twentieth day of May one thousand nine hundred and forty four And Whereas by the said Writ of Commission I was directed to go, to enter upon, walk over and survey the said first and second mentioned properties and according to the best of my skill and judgment make a division of the said premises into the equal parts or shares mentioned in the said Schedule and to allot the business mentioned in the said Schedule as directed by the said Decree and also to allot the immoveable properties mentioned in the said Schedule to the parties in the shares or parts they are respectively declared entitled to as aforesaid the defendant Sreemutty Lilabati Dassee being entitled thereto as a Hindu mother during the term of her natural life in the manner

prescribed by the Hindu Law And whereas by the said Writ of Commission I as the Referee appointed herein under the said decree was directed to make the enquiries and take the account as hereinbefore mentioned and to submit my Report along with the said Return And whereas by the said Writ of Commission I was authorised and empowered to award compensation in money by way of equalizing the said partition And whereas an office copy of the said Decree was served on me as such Referee as aforesaid And whereas the parties concerned having found that no useful purpose would be served by making the enquiries under item (1) aforesaid namely the enquiry as to the properties belonging to the plaintiff under the Wills of Makar Lal Day and Nrisingha Das Day deceased hereinbefore mentioned and the enquiry under item (2) aforesaid namely as to the properties acquired by the defendant Baloram Day out of the joint funds and the properties belonging to the parties herein I was asked not to proceed with the enquiries under the heads (1) and (2) as aforesaid AND WHEREAS the said Sreemutty Lilabati Dassee having waived her right to account under the head (3) hereinbefore mentioned and the plaintiff Joyram Day having asked me to take such account I took the account of the dealings of the said defendant Baloram Day with regard to the share of the plaintiff Joyram Day alone AND WHEREAS the parties to this suit being entitled jointly with other persons who are not parties to this suit to the property mentioned in item (d) of the said schedule being premises No.23, Banerjee Lane, Calcutta, to an undivided one-fifteenth part or share whereof the plaintiff and the defendants Baloram Day and Sreemutty Lilabati Dassee are each entitled same cannot be conveniently partitioned and divided in this suit and I was asked by the parties not to proceed with the partition thereof.

I whose name is hereunder subscribed being Commissioner of Partition and Referee appointed in this suit as aforesaid do hereby certify to your Lordships that I did in terms of the said Decree dated the ninth day of April one thousand nine hundred and forty one take upon myself the burden of partition and that I did go to, enter upon and walk over the premises No.5, Srinath Babu Lane in Calcutta mentioned in item (a) of the said Schedule "A" referred to in the said decree and also in item (a) of the First Schedule hereunder written; the premises No.7, Wellington Lane, Calcutta mentioned in item (b) of the said Schedule "A" referred to in the said Decree and also mentioned in item (b) of the First Schedule hereunder; and

the premises No.9, Harinbari First Lane, Calcutta, mentioned in item (c) of the said Schedule "A" referred to in the said Decree and also mentioned in item (c) of the First Schedule hereunder and I did also inspect the assets of the business of M.L. Day & Co., mentioned in item (e) of the said Schedule "A" referred to in the said Decree as also in item (d) of the First Schedule hereunder written and I have surveyed and valued the same and have prepared the plans of the said several premises No.5, Srinath Babu Lane No.7, Wellington Lane and No.9, Harinbari First Lane that the total value of the said four items of property is Rupees one Lac one thousand five hundred and sixty nine. That the parties concerned have accepted the plans and valuations of the said several properties.

I do further certify that I have according to the best of my skill knowledge and judgment made a fair partition division and allotment of the said several immovable properties namely No.5, Srinath Babu Lane, No.7, Wellington Lane and No.9, Harinbari First Lane and the said Factory and Business of M.L. Day & Co.,

I do further certify that I have with the consent of the parties concerned allotted and do hereby allot to the plaintiff as and for his moiety or half share in the joint immovable properties hereby partitioned and for his one third share of and in the said Factory and Business of M.L. Day & Co., the following properties namely:-

(a) No.9, Harinbari First Lane (b) Portion of premises No.7, Wellington Lane shewn and delineated in the plan hereto annexed and marked "A" and therein enclosed within red borders and marked Lot "A" and (c) the entirety of the Factory and business of M.L. Day & Co., all mentioned and described in the Second Schedule hereunder, the total value of such properties being Rupees Sixty-Three thousand Two hundred and Seventeen.

I do further certify that I have with the like consent of the parties concerned allotted and do hereby allot to the defendant Sreemutty Lilabati Dassee as and for her moiety or half share in the joint immovable properties hereby partitioned and for her two third share of and in the said Factory and Business of M.L. Day & Co., the following properties namely:-

(a) No.5, Srinath Babu Lane and (b) Portion of No.7, Wellington Lane shewn and delineated in the said plan hereto annexed and marked "A" and therein enclosed within Blue Borders and marked Lot "B"

mentioned and described in the Third Schedule hereunder, the total value of such properties being Rupees Thirty eight Thousand Three hundred and fifty two to be held and enjoyed by the said defendant Sreemutty Lilabati Dassee as a Hindu mother during the term of her natural life in the manner prescribed by Hindu Law.

I do hereby further certify that regarding the accounts of the dealings of the defendant Baloram Day with regard to the share of the plaintiff in the various properties I have gone through the statements of accounts filed on behalf of the plaintiff and have accepted the same. I have certified and allowed and do hereby certify and allow that the sum of Rupees Twenty-one thousand nine hundred and sixty-two and annas two is due to the plaintiff from the defendant Baloram Day.

I further direct that the respective allotments aforesaid be made self supporting ~~the~~ and independent from each other within six months from the confirmation of this Return and that the allottees do within three months from the date of such confirmation deliver possession to each other of their respective allotments.

I do further certify that regarding the custody of the Title-Deeds I have directed and do hereby direct with the consent of the parties concerned that the Title Deeds in respect of such of the said premises as have hereby been allotted to any of the parties alone be delivered to such party and that as to the Title Deeds in respect of the said premises No. 7, Wellington Lane the same do remain with and be kept by the plaintiff and that the parties do enter into covenants for production with each other with regards to the Title-Deeds so to be kept in their respective possession.

I do further certify that I have directed and do hereby direct that the plaintiff do within twelve months from the date of the confirmation of this Return pay to the defendant Sreemutty Lilabati Dassee the sum of Rupees fourteen thousand and Eleven annas ten and pies eight as owelty for equalising the said partition.

IN TESTIMONY WHEREOF I the said T.K.Ghose have hereunto set my hand this 17th day of January one thousand nine Hundred and Forty-seven.

T.K.Ghose

(MY seal).

Schedule "A"

SCHEDULE "A"

Schedule "A" referred to in the annexed Decree made in Suit No. 502 of 1939 and dated the 9th day of April One thousand nine hundred and forty-one.

List of properties and shares of parties therein referred to in paragraph 25 of the plaint.

Properties:	Parties interested	Shares of the plaintiff Joyram Day.	Shares of the defendant Baloram Day.	Shares of the defendant Sm. Lilabati Dassi.
(a) No. 5, Srinath Babu Lane, Calcutta.	1. Plaintiff: Joyram Day 2. Defendant: Sm. Lilabati Dassi	$\frac{1}{2}$ (half)	Nil	$\frac{1}{2}$ (half)
(b) No. 7, Wellington Lane, Calcutta.	1. Plaintiff: Joyram Day 2. Defendant: Sm. Lilabati Dassi	$\frac{1}{2}$ (half)	Nil	$\frac{1}{2}$ (half)
(c) No. 9, Harinbari 1st Lane, Calcutta	1. Plaintiff: Joyram Day 2. Defendant: Sm. Lilabati Dassi	$\frac{1}{2}$ (half)	Nil	$\frac{1}{2}$ (half)
(d) No. 23, Banerjee Lane, Calcutta.	1. Plaintiff: Joyram Day 2. Defendant: Baloram Day 3. Defendant: Sm. Lilabati Dassi	1/15th	1/15th	1/15th
(e) Business for manufacture and sale of sheet-metal goods carried on under the name of M.L. Day & Co., at No. 9, Harinbari 1st Lane, Calcutta.	1. Plaintiff: Joyram Day 2. Defendant: Baloram Day 3. Defendant: Sm. Lilabati Dassi	1/3rd	1/3rd	1/3rd
(f) The sum of Rs. 21,000-0-0 with interest @ 6% per annum from 18th April 1923 payable under Decree in Suit No. 408 of 1922 (Baidyanath Dutt -Vs- Arun Ch. Ghosh).	1. Plaintiff: Joyram Day 2. Defendant: Baloram Day 3. Defendant: Sm. Lilabati Dassi	1/3rd	1/3rd	1/3rd

THE FIRST SCHEDULE ABOVE REFERRED TO:

- (a) No.5, Srinath Babu Lane, Calcutta.
- (b) No.7, Wellington Lane, Calcutta.
- (c) No.9, Harinbari First Lane, Calcutta.
- (d) Business for manufacture and sale of Sheet Metal goods carried on under the name of M.L.Day & Co., at No.9, Harinbari First Lane, Calcutta.

THE SECOND SCHEDULE ABOVE REFERRED TO:

- (a) 9, Harinbari First Lane.

ALL THAT the messuage and hereditaments together with the piece or parcel of land measuring 6 cottas 3 chittacks and 31 Sq.Ft. situate lying at and being premises No.9, Harinbari First Lane in the town of Calcutta butted and bounded on the North by No.6, Colootola Lane on the East partly by No.9, Colootola Lane and partly by No.10, Colootola Lane, on the South by Damzen Lane and on the West partly by Harinbari First Lane and partly by Harinbari Second Lane.

Valued at Rs.18,715-0-0.

- (b) ALL THAT the messuage and hereditaments together with the piece or parcel of land measuring 4 cottas 2 Chittacks and 17 Sq.Ft. situate lying at and being a portion of premises No.7, Wellington Lane in the town of Calcutta butted and bounded on the North by No.8, Wellington Lane on the East by the remaining portion of the said premises No.7, Wellington Lane marked Lot "B" on the South by premises No.59, Creek Row and on the West by Wellington Lane.

Valued at Rs.34,997-0-0.

- (c) ALL THAT the business for manufacture and sale of Sheet-Metal goods carried on under the name of M.L.Day & Co., at No.9, Harinbari First Lane, Calcutta, together with all plants, engines, machineries, tools, implements and all other things and all articles belonging to the said business or in any way appertaining thereto.

Valued at Rs.9,475-0-0.

THE THIRD SCHEDULE ABOVE REFERRED TO:-

- (a) ALL THAT the messuage hereditaments and premises together with the piece or parcel of land measuring 2 cottas 5 chittacks and 4 Sq.ft. situate lying at and being premises No.5, Srinath Babu Lane in the town of Calcutta butted and bounded on the North by premises No.63, Phears Lane on the West by No.64 Phears Lane and 65, Phears Lane on the South by premises No.4/1, Srinath Babu Lane and on the West by Srinath Babu Lane.

Valued at Rs.13,248-0-0.

(b) ALL THAT the messuage hereditaments and premises together with the piece or parcel of land measuring 3 cottas 4 ghittacks and 15 Sq.Ft. situate lying at and being the Eastern portion of premises No.7, Wellington Lane in the town of Calcutta butted and bounded on the North by premises No.8, Wellington Lane, on the East by Sakharitola First Lane, on the South by premises No.59, Creek Row and on the West by the remaining portion of the said premises No.7, Wellington Lane marked lot "A" and allotted to the plaintiff.

Valued at Rs.25,104-0-0.

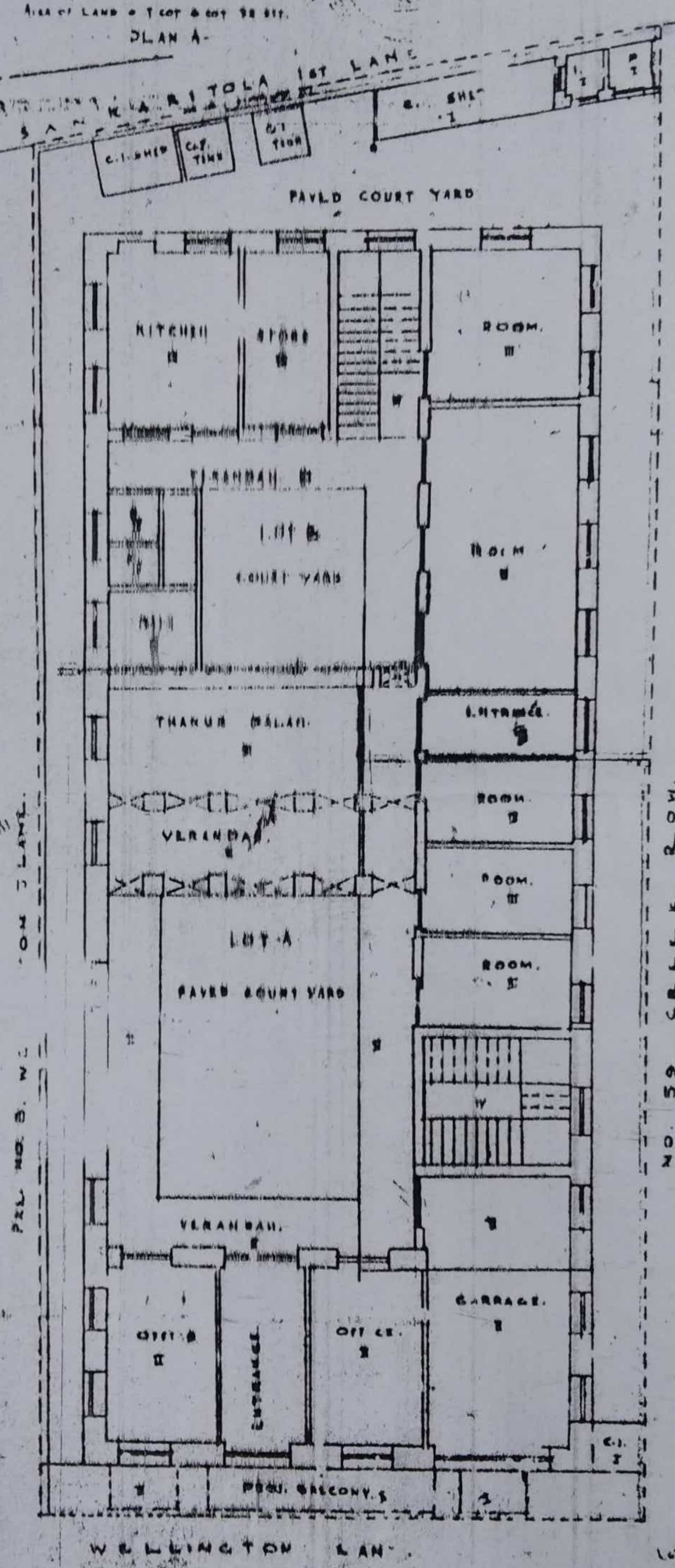
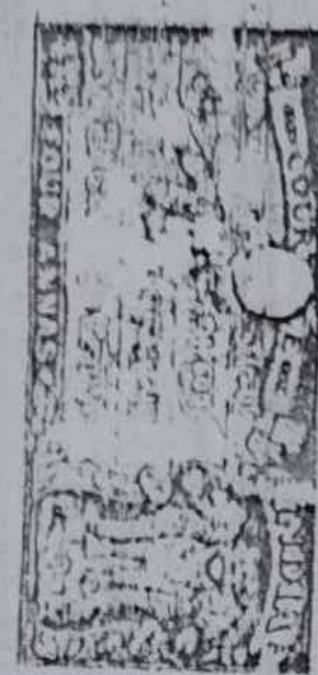
I do hereby certify that this is a true
copy of the original in my custody.
Dated this 9th day of March 1969.

For L. J. High Court
at Calcutta, original Side

7/10/69

PLAN OF
 PERMITS NO 7, WELLINGTON LANE
 SCALE 3/4" = 1' INCH
 AREA OF LAND = 1 COT & 2 COT 3/4" = 1' INCH
 PLAN A-

502/39
 Joyram Day 13
 Balwan Day 24m



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T.K. DAVIE

Suit no. 502 of 1939

Suit No. 502 of 1939.
IN THE HIGH COURT OF JUDICATURE AT
FORT WILLIAM IN BENGAL.

Ordinary Original Civil Jurisdiction

Joyram Day
vs.
Baloram Day & Anr.

R E T U R N of the Commissioner of
Partition.

Received this 17th day of January,
1947.

Filed this 12th day of February,
1947.

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