

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

Rambandi Deveyalage Gamini
Pushpalatha of Kandegedara,
Devalegama.

Plaintiff

SC APPEAL NO: SC/APPEAL/131/2016

SC LA NO: SC/HCCA/LA/102/15

PHC KEGALLE NO: SP/HCCA/KAG/24/2013 (F)

DC KEGALLE NO: 7706/L

Vs.

1. Wickrema Arachchilage Suneetha,
'Jeewana' Devalegama.
2. Kapuwella Gamlath Ralalage
Abeywickrema of
Kandegedara, Devalegama.

Defendants

AND BETWEEN

Rambandi Deveyalage Gamini
Pushpalatha of Kandegedara,
Devalegama.

Plaintiff-Appellant

Vs.

1. Wickrema Arachchilage Suneetha,
'Jeewana' Devalegama.
2. Kapuwella Gamlath Ralalage
Abeywickrema of Kandegedara,
Devalegama.

Defendant-Respondents

AND NOW BETWEEN

Rambandi Deveyalage Gamini
Pushpalatha of Kandegedara,
Devalegama.

Plaintiff-Appellant-Appellant

Vs.

1. Wickrema Arachchilage Suneetha,
'Jeewana' Devalegama.
2. Kapuwella Gamlath Ralalage
Abeywickrema of Kandegedara,
Devalegama.

Defendant-Respondent-
Respondents

Before: P. Padman Surasena, J.
Achala Wengappuli, J.
Mahinda Samayawardhena, J.

Counsel: Sunil Abeyaratna with Buddhika Alagiyawanna for the Plaintiff-Appellant-Appellant.

Chatura Galhena with Dhanani Weerasinghe for the 1st Defendant-Respondent-Respondent.

Vidura Gunaratne for the 2nd Defendant-Respondent-Respondent.

Argued on: 26.11.2021

Written submissions:

by the Plaintiff-Appellant-Appellant on 29.07.2019.

by the 1st Defendant-Respondent-Respondent on 28.11.2016.

by the 2nd Defendant-Respondent-Respondent on 03.06.2019.

Decided on: 20.01.2022

Mahinda Samayawardhena, J.

The plaintiff filed this action against the two defendants in the District Court seeking a decree in her favour on the basis that the defendants are holding the property in suit in trust for the plaintiff. In the alternative, the plaintiff claimed the property on unjust enrichment. The defendants sought dismissal of the action. After trial, the District Judge dismissed the plaintiff's case. On appeal, the High Court affirmed the judgment of the District Court. This appeal is against the judgment of the High Court.

The position taken up by the plaintiff in the plaint was that she borrowed a sum of Rs. 25,000 from the 1st defendant and as

security for the said loan transferred the land in suit in the name of the 1st defendant. She also stated that at the time of the execution of the deed the 1st defendant signed another informal agreement (which she tendered with the plaint marked P2) to say that once the consideration stated in the deed is paid with interest, the 1st defendant agrees to retransfer the property to the plaintiff. According to the plaint, notwithstanding the repayment of Rs. 25,000, the 1st defendant did not retransfer the property but instead had transferred the property to the 2nd defendant by deed No. 2164.

The 1st defendant in the answer stated that deed No. 4057 is an out and out transfer of the land in consideration of the payment by the 1st defendant to the plaintiff of a sum of Rs. 15,000 and that it is not subject to a constructive trust. The 1st defendant denied any informal agreement between the parties.

At the trial, the evidence of the plaintiff was unclear and confusing. As the learned District Judge had correctly observed, the plaintiff was inconsistent in the positions taken. Contrary to what she stated in the plaint, her evidence at the trial was that she never executed a deed, and deed No. 4057 is a fraudulent deed in that her signature was obtained on some blank half sheet papers that have later been converted to a deed of transfer. In evidence, she neither marked deed No. 4057 nor the contemporaneous informal agreement through which the 1st defendant allegedly promised to retransfer the property to the plaintiff once the money was paid with interest, even though those documents were tendered with the plaint.

Her evidence that she was unaware of the value of the property rendered it impossible for the District Court to grant relief even on the alternative claim of unjust enrichment.

It is unfortunate that no proper evidence was given by the plaintiff at the trial. Her evidence was completely unsatisfactory and unreliable. No other witness was called by her. It is likely that the defendants did not give evidence because the plaintiff did not prove her case.

The District Judge who saw and heard the evidence of the plaintiff found it difficult to accept her evidence, and rightly so. The High Court cannot be found fault with when it decided not to interfere with the judgment of the District Court.

This court granted leave to appeal on two questions of law. One is whether the High Court failed to consider that deed No. 4057 “*is necessarily subject to an undertaking or condition of retransfer, which in effect creating a constructive trust.*” This question shall be answered in the negative. Deed No. 4057 which the plaintiff did not produce in evidence is not a conditional transfer; it is an outright transfer. The plaintiff never gave clear evidence on retransfer. The informal document with the purported condition of retransfer was never produced in evidence. On top of that, the position taken up by her in evidence was not that deed No. 4057 is subject to the condition of retransfer but that the deed is a forgery. In view of this finding, there is no necessity to express my views on the latter part of the question.

The other question of law is unspecific and couched in broader terms. It is whether the High Court failed to consider that the District Court erred in law and fact in deciding the case. In my

view, the District Court did not err in law and fact when it decided to dismiss the plaintiff's case on the basis that the plaintiff failed to prove her case. As such, this question shall also be answered in the negative.

I dismiss the appeal but without costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court