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

In the matter of an appeal under and in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC Appeal No. 74/2020
SC Spl LA Application No. 191/2019
Court of Appeal Case No. CA/1280/99 (F)
District Court of Matale Case No. 4499/L

Welhena Rajapakse Appuhamilage Don Podi Ralahamy Rajapakse,
No. 15, Viduhal Pedesa,
Matale.

PLAINTIFF

- Vs -

1. Rajaguru Rajakaruna Gane Bandararalage Manel Padma Kanthi Hulangamuwa,
   Weragama, Kaikawala,
   Matale.

2. A. Somasunderam,
   Thotagamuwa,
   Matale.

DEFENDANTS

And between

Welhena Rajapakse Appuhamilage Don Podi Ralahamy Rajapakse,
No. 15, Viduhal Pedesa, Matale.

PLAINTIFF – APPELLANT

- Vs -

1. Rajaguru Rajakaruna Gane Bandararalage
   Manel Padma Kanthi Hulangamuwa,
   Weragama, Kaikawala,
   Matale.

2. A. Somasunderam,
   Thotagamuwa, Matale.

DEFENDANTS – RESPONDENTS

2A. Anjalidevi Thangavel,
   Thotagamuwa,
   Matale.

SUBSTITUTED 2A DEFENDANT – RESPONDENT

And now between

Anjalidevi Thangavel,
Thotagamuwa,
Matale.

SUBSTITUTED 2A DEFENDANT – RESPONDENT – APPELLANT

- Vs -

Welhena Rajapakse Appuhamilage Don Podi Ralahamy Rajapakse,
No. 15, Viduhal Pedesa,
Matale.

PLAINTIFF – APPELLANT – RESPONDENT

Rajaguru Rajakaruna Gane Bandararalage
Manel Padma Kanthi Hulangamuwa
Weragama, Kaikawala,
Matale.

1ST DEFENDANT – RESPONDENT – RESPONDENT

Before: **Murdu N. B. Fernando, PC, J**
Achala Wengappuli, J
Arjuna Obeyesekere, J

Counsel: Dr. Sunil Cooray with Hemantha Boteju, Nilanga Perera, Heshan Pietersz and Diana Rodrigo for the Substituted 2A Defendant – Respondent – Appellant

Chathura Galhena with Dharani Weerasinghe for the Plaintiff – Appellant – Respondent

Argued on: 12th June 2023

Written Submissions: Tendered on behalf of the Substituted 2A Defendant – Respondent – Appellant on 22nd March 2021

Tendered on behalf of the Plaintiff – Appellant – Respondent on 23rd March 2021

Decided on: 7th June 2024

Obeyesekere, J

The Plaintiff – Appellant – Respondent [the Plaintiff] filed action in the District Court of Matale [the District Court] against the 1st Defendant – Respondent – Respondent [the 1st Defendant] and the 2nd Defendant – Respondent [the 2nd Defendant] seeking the following relief:

(a) A declaration that he is entitled to the property referred to in the schedule to the plaint in extent of 3 roods less an extent of 16.67 perches; and

(b) An order that the Defendants be ejected from the said property and for vacant possession thereof to be handed over to the Plaintiff.

The 1st Defendant filed her answer claiming that the plaint has not set out a cause of action against her. The 2nd Defendant admitted in the amended answer filed by him that he had executed a deed of transfer in respect of the said property in favour of a person by the name of Odayan Kureishan [Kureishan]. The 2nd Defendant however claimed that (a) the said Kureishan, (b) the 1st Defendant to whom the said property had subsequently been transferred to by Kureishan, and (c) finally the Plaintiff to whom the 1st Defendant had thereafter transferred the said property, are holding the said property in trust for the 2nd Defendant.

By its judgment delivered on 25th June 1999, the District Court:

(a) upheld the position of the 2nd Defendant that the beneficial interest in the said property had not been transferred to Kureishan, and that the said property is being held in trust for the 2nd Defendant by Kureishan, as well as by the 1st Defendant and the Plaintiff; and

(b) directed the Plaintiff to transfer the said property to the 2nd Defendant upon the payment of a sum of Rs. 110,000.

Dissatisfied with the judgment of the District Court dismissing his action, the Plaintiff filed an appeal in the Court of Appeal. By its judgment delivered on 4th April 2019, the Court of Appeal set aside the judgment of the District Court and granted the relief prayed for by the Plaintiff.

Questions of law

Being aggrieved by the said judgment of the Court of Appeal, the Substituted 2A Defendant – Respondent – Appellant [the 2A Defendant], the daughter of the 2nd Defendant who had been substituted in place of the 2nd Defendant while the appeal was pending before the Court of Appeal, sought and obtained the leave of this Court on 28th July 2020 on the following four questions of law:

(1) Has the Court of Appeal failed to appreciate that the learned District Judge has rightly arrived at the conclusion that the 2nd Defendant had not vacated the premises even after he had conveyed this property by Deed No. 3275 marked P6 to Odayan Kureishan?

(2) Has the Court of Appeal failed to appreciate that although this property had been transferred and re-transferred by Deeds marked P1 – P11 from time to time, the 2nd Defendant and/or his parents had been in continuous possession thereof?

(3) Has the Court of Appeal erred in law by failing to appreciate the findings of the learned District Judge with regard to possession of the property which is claimed to be the trust property?

(4) Has the Court of Appeal been in grave misconception of the law when it placed much weight on the fact that the 2nd Defendant had failed miserably to establish the existence of an oral agreement between the 2nd Defendant and Odayan Kureishan?

Although the learned Counsel for the Plaintiff too had raised a question of law – i.e., "Is the 2nd Defendant entitled to plead constructive trust without making Kureishan as a party to the District Court action?", this question was not pursued either in the written submissions or at the hearing.

While I shall refer later in this judgment to the series of transactions between the 2nd Defendant on the one hand and Kureishan, the 1st Defendant and the Plaintiff on the other, it would suffice to state at the outset that there are three primary issues that need to be determined in this appeal. The first is whether Kureishan held the said property in trust for the 2nd Defendant as provided for in Section 83 of the Trusts Ordinance. The second and third issues are whether the said trust endured through to the 1st Defendant, and to the Plaintiff, respectively.

Facts in brief – the position of the 2nd Defendant

The property which is the subject matter of this appeal had been purchased by K. A. Somasunderam, the father of the 2nd Defendant, by Deed No. 1389 on 10th September 1951 [**P1**]. Together with his wife M. A. Somasunderam, K. A. Somasunderam had transferred the said property to the wife of one Karuppiah by Deed No. 8366 dated 10th November 1960 [**P2**]. Karuppiah's wife had re-transferred the said property to M. A. Somasunderam and K. A. Somasunderam by Deed No. 8802 dated 16th July 1962 [**P3**]. It is the position of the 2nd Defendant that P2 and P3 are reflective of a money lending transaction where the Somasunderams had pledged the said property as security for a loan taken from the wife of Karuppiah. The 2nd Defendant states that the property was re-transferred to his parents by P3 at the time the mortgage was redeemed. The fact that the said property remained in the possession of the Somasunderam family during the period between P2 and P3 is not in dispute.

By Deed No. 31682 dated 16th November 1963 [**P4**], K. A. Somasunderam and M. A. Somasunderam had transferred the said property to their nephew, T Wijayaratnam. It is the position of the 2nd Defendant that P4 was also part of a money lending transaction, and that the Somasunderam family continued to be in possession of the said property after the execution of P4, as well. The 2nd Defendant claims that in 1987, Wijayaratnam had requested that the monies borrowed by his parents way back in 1963 be returned, and that as he himself did not have sufficient money to repay Wijayaratnam, he had borrowed from Kureishan the required sum of money to pay Wijayaratnam.

Creation of a trust in favour of the 2nd Defendant

Accordingly, upon the debt owed to Wijayaratnam being settled, Wijayaratnam had transferred the said property to the 2nd Defendant by Deed No. 3274 dated 23rd December 1987 [**P5**]. On the same date, the 2nd Defendant had transferred the said property to Kureishan by Deed No. 3275 [**P6**] as security for the loan that the 2nd Defendant claims he took from Kureishan to settle Wijayaratnam. The 2nd Defendant's position is that although P6 is said to be, on the face of it, an outright transfer, it was only a mortgage and was executed to reflect the money lending transaction between himself and Kureishan.

The following question posed to the 2nd Defendant during cross examination and the answer thereto contains the reason for the execution of P6 as a deed of transfer and refers to the oral agreement between the 2nd Defendant and Kureishan that Kureishan shall hold the said property in trust for the 2nd Defendant until the money borrowed from Kureishan was repaid by the 2nd Defendant:

"ප්‍ර: තමන් කියන්නේ මෙම උසාවියට දාපු නඩුවත්, අද සාක්ෂි මෙහෙයවුවාට මෙම ඔප්පුවෙන් තමන් අයිතිය පැවරුවේ නැහැ? රු.30,000/-ක් ණයක් ගත්තා කියලා, තමන්ගේ අයිතිය පැ.6 ඔප්පුවෙන් ඔඩියන් කුරේයිසාන්ට පැවරු එක තමන් පිලිගන්නවාද ඔහුට අයිතිය ගියා කියලා?

උ: උගස් ඔප්පු ලියන්නේ නැහැ, මුදල් ඉල්ලුවාට. හදිසියට සින්නක්කර ඔප්පු ලියාගෙන තමයි මුදල් ගනුදෙනු කරන්නේ. කට්ටින් කොන්දේසියක් කියා ගන්නවා ආපසු මුදල් දුන්නම ලියනවා කියලා.**"**

It would perhaps be important to mention that in spite of the execution of P6, possession of the said property remained with the 2nd Defendant. Thus, **in the event** the version of the 2nd Defendant that the beneficial interest in the said property was not transferred to Kureishan by P6 is accepted, as was done by the District Court, P6 would signify the beginning of a constructive trust over the said property in favour of the 2nd Defendant. Whether the said trust endured the several other deeds executed after P6, firstly by Kureishan and thereafter by the 1st Defendant, culminating in Deed No. 9632 dated 6th April 1991 [**P11**], which is the deed of transfer upon which the Plaintiff '*purchased*' the said property, thereby making the Plaintiff the current trustee of the said constructive trust created in 1987 by P6, is a matter that remains to be considered.

<u>Further transfers of the said property</u>

The 2nd Defendant states that he was shot at by unknown assailants in November 1988, and had to undergo medical treatment for a period of over two years, both in Sri Lanka and India. It is his position that although Kureishan wanted the money returned, he did not have sufficient resources to repay Kureishan and redeem the property as his business had suffered during this period due to his absence. ["ඊට පස්සේ මම අසනීපවෙලා ඉන්න කාලේ කුරේයිසාන් ඇවිත් මුදල් ඉල්ලලා මට සැහෙන්න කරදර කලා. ඒ කාලේ මගේ ලග මුදල් තිබුනේ නැහැ. මගේ වෙළඳ ව්‍යාපාර ඔක්කෝම අඩපණ වෙලා ගියා. ව්‍යාපාර කර ගන්ට බැරී තත්ත්වයක් ඇති වුනා ගමට ඇවිල්ලා."]

The 2nd Defendant states that it is at this point that the husband of the 1st Defendant, one Rajaguru, whom he had known for a long period of time, agreed to assist him raise the necessary finances to settle Kureishan. The evidence of the 2nd Defendant in this regard is as follows:

"මම බලන්නට ආව අවදියේ මම සාකච්ජාවක් කලා ඔහු සමග. මම මෙහෙම කෙනෙකුට ණය වෙලා තිබෙනවා, මේකට මට උදව් කරන්න පුලුවන්ද කියලා මම ඇසුවා. ඔහු ආපු දවසේ. ඔහු කල්පනා කරලා කියන්නම් කියලා, ඒ ඇවිල්ලා දවස් දෙකක ට පසුව නැවත ආවා. ඔහුම ඇසුවා මෙම ඉඩම ඔඩසන් කුරේයිසාන් උගස් කරලා තිබෙනවාද කියලා. මම ඔව් කියලා කිව්වා. ඊට පසුව ඒකට මොනවද කරන්න ඕනෑ කියලා ඔහු ඇසුවා. ඔහේට පුලුවන් නම් මෙම ඉඩම හරවලා දෙන්ට පුලුවන් ද කියලා අසනව්ට හා කියලා පොරොන්දු වුනා. ඒ සිද්ධියෙන් පසු ඊලග දවසේ ඔඩසන් කුරේයිසාන් සමග ඔහු මාව බලන්ට ආවා. ඔඩසන් කුරේයිසාන්ගෙන් මට ඒක බේරලා දෙන්නම් කියලා ඔහු පොරොන්දු වුනා. ඒකට මම කැමති වුනා. 1 වන විත්තිකරු ඉඩම මම ලියා ගන්නම් පස්සේ මුදල් බලා ගමු කියලා කිව්වා."

As part of the above transaction, Kureishan had initially mortgaged the said property to the 1st Defendant by Mortgage Bond No. 3243 dated 1st August 1990 [**P7**] upon the payment of a sum of Rs. 50,000 by the husband of the 1st Defendant. Kureishan is then said to have mortgaged an extent of 16.67 perches of the said property to one Tikiri Bandara by Deed No. 3346 dated 2nd November 1990 [**2V1**]. On 1st December 1990, Kureishan had transferred the entire extent of the said property to the 1st Defendant by Deed No. 3382 [**P8**] for a further sum of Rs. 60,000. It is the position of the 2nd Defendant that the constructive trust created in his favour by P6 continued through to the 1st Defendant by P7 and P8. I should perhaps reiterate that even though P7, 2V1 and P8 were executed in respect of the said property in favour of the 1st Defendant as well as Tikiri Bandara, the 2nd Defendant continued to be in possession of the said property throughout, with neither the 1st Defendant nor Tikiri Bandara taking any steps to evict the 2nd Defendant.

The 1st Defendant had in turn transferred the said property to one Musammil for a sum of Rs. 60,000 by Deed No. 3393 dated 6th December 1990 [**P9**], only for it to be re-transferred to the 1st Defendant on 13th February 1991 by Deed No. 3438 [**P10**] with the consideration being Rs. 60,000. Although the husband of the 1st Defendant gave evidence before the District Court, no explanation was tendered with regard to the circumstances under which P9 or P10 were executed. On 6th April 1991, the 1st Defendant had

transferred the said property to the Plaintiff by P11 for a sum of Rs. 300,000 which value is significantly higher than P8 and P10. It was admitted at the trial by the Plaintiff as well as by the husband of the 1st Defendant that the 2nd Defendant continued to be in possession of the said property, in spite of the execution of P11.

The position of the Plaintiff

In his plaint, the Plaintiff pleaded that he purchased the said property from the 1st Defendant by P11 on 6th April 1991, for a purchase consideration of Rs. 300,000. However, he states that at the time of execution of P11, he only paid a sum of Rs. 50,000 to the 1st Defendant and that the balance sum of Rs. 250,000 was due to be paid (a) after the 1st Defendant had redeemed the conditional transfer executed by her in favour of Tikiri Bandara in respect of an extent of 16.67 perches of the said property, and (b) after handing over vacant possession of the said property on or before 31st May 1991. While this arrangement is reflected in P11, the Plaintiff states that the 1st Defendant failed to hand over the said property as promised, resulting in the institution of action on 21st May 1992 against the 1st Defendant as well as the 2nd Defendant who was in possession of the said property, purportedly as an agent of the 1st Defendant.

In his evidence, the Plaintiff stated that he was informed by one Siripala, a property agent in Matale that the said property is for sale. He had thereafter accompanied Siripala to the said property where he had met the husband of the 1st Defendant. The Plaintiff claims that he was shown around the property and was informed that the personal belongings of the 1st Defendant are stored inside the house situated on the said property. The Plaintiff admits that he did not go inside the house and states that he did not meet anyone else living inside the house. The Plaintiff states further that the Notary Public who executed P11 had carried out a search at the Land Registry prior to the execution of the said deed, to which Siripala was a witness. The above version of the Plaintiff was corroborated by the evidence of Siripala and the husband of the 1st Defendant, who however admitted later that the 2nd Defendant was in possession of the said property at the time of the Plaintiff's visit.

Reception of oral evidence in light of an existing instrument

Bearing in mind that the 2nd Defendant is seeking to contradict the terms of P6 and P8, as well as P11 which are on the face of it outright transfers and are the instruments by which the said property was transferred to Kureishan, the 1st Defendant and the Plaintiff, respectively, and in order to give context to the submissions of the learned Counsel, I shall at the outset refer to the provisions of two laws.

The first is the Prevention of Frauds Ordinance, of which Section 2 (prior to its amendment by the Prevention of Frauds (Amendment) Act, No. 30 of 2022) provided as follows:

> "*No sale, purchase, transfer, assignment, or mortgage of land or other immovable property, and no promise, bargain, contract, or agreement for effecting any such object, or for establishing any security, interest, or incumbrance affecting land or other immovable property (other than a lease at will, or for any period not exceeding one month), nor any contract or agreement for the future sale or purchase of any land or other immovable property, and no notice, given under the provisions of the Thesawalamai Pre-emption Ordinance, of an intention or proposal to sell any undivided share or interest in land held in joint or common ownership, shall be in force or avail in law* ***unless the same shall be in writing*** *and signed by the party making the same, or by some person lawfully authorized by him or her in the presence of a licensed notary public and two or more witnesses present at the same time, and unless the execution of such writing, deed, or instrument be duly attested by such notary and witnesses."* [emphasis added]

The second is the Evidence Ordinance of which Sections 91 and 92 provide as follows:

Section 91

> "*When the terms of a contract, or of a grant, or of any other disposition of property have been reduced by or by consent of the parties to the form of a document, and* ***in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms*** *of such contract, grant,*

or other disposition of property, or ***of such matter, except the document itself****, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained*. …" [emphasis added]

Section 92

"*When the terms of any such contract, grant, or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section,* ***no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument****, or their representatives in interest,* ***for the purpose of contradicting, varying, adding to, or subtracting from its terms***. …" [emphasis added]

None of (a) the exceptions to Section 91, and (b) the provisos to Section 92, as indicated in the respective provisions, arise for consideration in this appeal.

The cumulative effect of Section 2 of the Prevention of Frauds Ordinance and Section 91 of the Evidence Ordinance is that while the disposition of any immovable property must be reduced to writing, proving the terms of a deed by which any immovable property has been transferred can only be done by producing the deed itself or, where permissible, by way of secondary evidence and in the manner provided therefor. It is important to note that to this, Section 92 of the Evidence Ordinance adds that no oral evidence that seeks to contradict, vary, add to or subtract from the terms contained in any instrument relating to land can be received by a Court.

Section 83 of the Trusts Ordinance

However, Section 83 of the Trusts Ordinance, reproduced below, acts as an exception to the rule laid down in Section 92:

"*Where the owner of property transfers or bequeaths it, and* ***it cannot reasonably be inferred****,* ***consistently with the attendant circumstances*** *that* ***he intended to dispose of the beneficial interest therein****, the transferee or legatee must hold such property for the benefit of the owner or his legal representative*." [emphasis added]

In **Muttammah v Thiyagarajah** [62 NLR 559] H.N.G. Fernando, J (as he then was) referring to Section 2 of the Prevention of Frauds Ordinance and Section 92 of the Evidence Ordinance, stated as follows at page 571:

> *"**The plaintiff sought to prove the oral promise to reconvey not in order to enforce that promise, but only to establish an 'attendant circumstance' from which it could be inferred that the beneficial interest did not pass**. Although that promise was of no force or avail in law by reason of Section 2 of the Prevention of Frauds Ordinance, **it is nevertheless a fact from which an inference of the nature contemplated in Section 83 of the Trusts Ordinance properly arises**. The Prevention of Frauds Ordinance does not prohibit the proof of such an act. If the arguments of counsel for the appellant based on the Prevention of Frauds Ordinance and on section 92 of the Evidence Ordinance are to be accepted, then it will be found that not only section 83, but also many of the other provisions in Chapter IX of the Trusts Ordinance will be nugatory. If for example "attendant circumstances" in Section 83 means only matters contained in an instrument of transfer of property it is difficult to see how a conveyance of property can be held in trust unless indeed its terms are such as to create an express trust."* [emphasis added]

A similar view was expressed in **Balasubramanium and Another v Vellayar Krishnapillai and Another** [(2012) 1 Sri LR 261] where Sripavan, J (as he then was) referring to the judgment in **Dayawathie and Others v Gunasekera and Another** [(1991) 1 Sri LR 115] stated [at page 267] that this Court has "*held that the provisions of the Prevention of Frauds Ordinance and Section 92 of the Evidence Ordinance do not bar parole evidence to prove a constructive trust and that the transferor did not intend to pass the beneficial interest in the property. In such a case, extrinsic evidence to prove attendant circumstances can be properly received in evidence to prove a resulting trust*."

In **Jude Fernando v Malani Fernando and Another** [(2017) 1 Sri LR 230; at page 236], Sisira De Abrew, J reiterated that, "… *Section 2 of the Prevention of Frauds Ordinance and Section 92 of the Evidence Ordinance do not operate as a bar to lead parole evidence to prove a constructive trust and to prove that the transferor did not intend to dispose of beneficial interest in the property*."

Application of Section 83 – caution and scrutiny

Section 83 thus being a significantly generous exception, it has been held that in applying Section 83, Courts must exercise great caution. In **Senadheerage Chandrika Sudarshani v Muthukuda Herath Mudiyanselage Gedara Somawathi** [SC Appeal No. 173/2011; SC minutes of 6th April 2017], Prasanna Jayawardena, PC, J stated [at page 15] that:

> "***The Court has to keep in mind that, a notarially attested deed of transfer should not be lightly declared to be a nullity***. *The Court must also guard against allowing a false or belated claim of 'Trust' made by a transferor who has transferred his property and then had second thoughts or seeks to profit from changed circumstances. Dalton J's observations made close to 90 years ago in Mohamadu vs. Pathuamma [11 CLR 48 at page 49], (that) 'It is becoming not uncommon by the mere allegation of a trust to seek to evade the very salutary provisions of (the Evidence) Ordinance to which I have referred,' continues to remain a salutary caution*." [emphasis added]

The need for Court to carefully scrutinise the evidence before it when Section 83 is sought to be applied was considered by Aluwihare, PC, J in **Watagodagedara Mallika Chandralatha v Herath Mudiyanselage Punchi Banda and Another** [SC Appeal No. 185/2015; SC minutes of 4th December 2017] when His Lordship held [at page 8] as follows:

> "*One needs to bear in mind that where a constructive trust within the meaning of Section 83 of the Trust Ordinance is asserted, it is incumbent on the court to meticulously examine the evidence placed before the court, the reason being, on the face value the evidence placed may give the appearance of a straight forward transaction of a sale but* ***the real intention of the parties can only be gleaned from a close scrutiny of the circumstances under which the transaction was effected***. *And the intention of the parties is of paramount importance."* [emphasis added]

Section 83 - what is an attendant circumstance?

The application of the test laid down in Section 83 would enable the Court to decide whether the owner of the property intended to dispose his or her beneficial interest in the said property when he or she executed the relevant deed. Accordingly, the intention of the owner must both be **reasonably inferred from** and **consistent with** the attendant circumstances surrounding the transfer.

What, then, would be an 'attendant circumstance'? In **Muttammah v Thiyagarajah** [supra; at page 564], Chief Justice Basnayake though delivering the minority opinion, referring to Section 83, rightly stated as follows:

> "*The section is designed to prevent transfers of property which on the face of the instrument appear to be genuine transfers, but where an intention to dispose of the beneficial interest cannot reasonably be inferred consistently with the attendant circumstances.* ***Neither the declaration of the transferor at the time of the execution of the instrument nor his secret intentions are attendant circumstances. Attendant circumstances are to my mind circumstances which precede or follow the transfer but are not too far removed in point of time to be regarded as attendant which expression in this context may be understood as "accompanying" or "connected with".*** *Whether a circumstance is attendant or not would depend on the facts of each case*." [emphasis added]

In **Senadheerage Chandrika Sudarshani v Muthukuda Herath Mudiyanselage Gedara Somawathi** [supra; at page 14], Prasanna Jayawardena, PC, J stated that, "*The words 'attendant circumstances' can be broadly described as meaning* ***the facts surrounding the transaction****. In Black's Law Dictionary (9th Edition) the words 'attendant circumstance', as used in the American Law, have been defined as 'A fact that is situationally relevant to a particular event or occurrence*.'" [emphasis added] Thus, Jayawardena, PC, J echoed with approval, the views expressed by Chief Justice Basnayake in **Muttammah.**

Dias, J stated thus in **Ehiya Lebbe v Majeed** [48 NLR 357; at page 359]:

"*There are certain tests for ascertaining into which category a case falls. Thus if the transferor continued to remain in possession after the conveyance, or if the transferor paid the whole cost of the conveyance or if the consideration expressed on the deed is utterly inadequate to what would be the fair purchase money for the property conveyed – all these are circumstances which would show whether the transaction was a genuine sale for valuable consideration, or something else*."

In **Thisa Nona and Three Others v Premadasa** [(1997) 1 Sri LR 169], a judgment of the Court of Appeal, Wigneswaran, J held that the following circumstances which transpired in that case were relevant on the question of whether the transaction was a loan transaction or an outright transfer:

(a) The fact that a non-notarial document was signed by the transferee contemporaneous to the impugned deed of transfer, agreeing to re-transfer the land if the sum of Rs. 1,500 referred to in the deed was paid within six years;

(b) The payment of stamp duty and the Notary's fees by the transferor;

(c) The fact that the transfer deed came into existence in the course of a series of money lending transactions;

(d) The continued possession of the premises in suit by the transferor in the same manner as she did before the transfer deed was executed.

It is clear that our Courts have identified over the years different circumstances as being 'attendant circumstances' within the meaning of Section 83, and emphasised that, what an attendant circumstance is and the weight that must be attached to such circumstance in reasonably inferring the intention of the owner, would depend on the facts and circumstances of each case. It would therefore mean that a circumstance which is attendant in one case may not be so in another.

Accordingly, I am of the view that it is in light of the sequence of events and the nature of the attendant circumstances peculiar to a particular case, that a Court must arrive at its conclusion on whether Section 83 of the Trusts Ordinance applies to that particular case.

The burden of proof and standard of proof

The burden of proof in establishing the applicability of Section 83 lies on the person who claims that he or she did not intend to transfer the beneficial interest in the property to the transferee. In **Watagodagedara Mallika Chandralatha v Herath Mudiyanselage Punchi Banda and Another** [supra] Aluwihare, PC, J cited with approval the following passage from '**The Reception in Ceylon of the English Trust**' (1971) by L.J.M. Cooray: *"Where a person has a notarial conveyance in his favour,* ***courts have placed a heavy burden on the transferor*** *to prove facts bringing himself within Section 83."* [emphasis added]

In **Senadheerage Chandrika Sudarshani v Muthukuda Herath Mudiyanselage Gedara Somawathi** [supra; at page 15], it was held that:

> "…. *the use of the aforesaid words in Section 83 require that, the Court applies an objective test when determining the intention of the owner from the attendant circumstances. Therefore,* ***if the claim of a Constructive Trust is to succeed, the attendant circumstances must make it plainly clear to the 'reasonable man' that, the owner did not intend to part with his beneficial interest in the property.*** *A secret or hidden intention to retain the beneficial interest will not do.* ***The attendant circumstances must be such that they would have demonstrated to the transferee that the owner intended to retain the beneficial interest in the property.*** *The transferee is judged here as standing in the shoes of the 'reasonable man'. If a 'reasonable man' must have known from the 'attendant circumstances' that the owner intended to retain his beneficial interest in the property, the transferee is deemed to hold the property upon a Constructive Trust in favour of the owner. However, if a 'reasonable man' may not have drawn such an inference from the attendant circumstances, the transferee holds the property absolutely, since no Constructive Trust can be deemed to have arisen. Further, the burden of proof lies firmly on the person who claims a Constructive Trust to prove it.*" [emphasis added]

Attendant circumstances relied upon by the 2nd Defendant

At the trial, the 2nd Defendant relied on the following four attendant circumstances in support of his position that Kureishan had agreed to re-transfer the said property upon the payment of the money borrowed by him and that he had no intention of transferring the beneficial interest in the said property to Kureishan by P6, or for that matter to the 1st Defendant, by P8:

(a) The transaction with Kureishan reflected by P5 and evidenced by P6 was purely a money lending transaction;

(b) The execution of P7 and P8 are also reflective of a further money lending transaction between Kureishan, the 1st Defendant and himself and gives context to the previous transaction with Kureishan;

(c) At all times since 1951, the 2nd Defendant and his family have been in possession of the said property;

(d) On each occasion that the impugned deeds [P6, P8 and P11] were executed, the said property had a much higher market value than what was declared as consideration for the said property in such deeds.

It was the position of the learned Counsel for the 2nd Defendant that the reason for the 2nd Defendant to continue to remain in possession of the said property, which in itself is cited as the third circumstance, and the consideration that passed for P6 and P8 are reflective of the underlying money lending transactions referred to in the first two circumstances. I shall therefore consider each of the said attendant circumstances separately as well as cumulatively and thereafter the findings of the District Court on the said circumstances, in order to ascertain the real character of P6, and consequently, P8 and P11.

Money lending transactions

The first circumstance relied upon by the 2nd Defendant is that his transaction with Kureishan reflected by P5 and P6, (a) was to raise money in order to settle what he owed Wijayaratnam, (b) was purely a money lending transaction with the agreement being that Kureishan would re-transfer the said property upon the re-payment of the loan, and (c) was not entered into with an intention of transferring the beneficial interest in the said property to Kureishan.

The above position of the 2nd Defendant is borne out by the following important factors and have been relied upon by the District Court:

(a) P5 was executed by Wijayaratnam in favour of the 2nd Defendant upon the repayment of the money due to Wijayaratnam by utilising the money that the 2nd Defendant had borrowed from Kureishan;

(b) On the same date and seemingly simultaneously, by way of consecutively numbered deeds, the 2nd Defendant executed the transfer deed P6 in respect of the said property in favour of Kureishan;

(c) The 2nd Defendant remained in possession;

(d) Kureishan did not take any steps to have his name registered at the local authority or to have the 2nd Defendant ejected from the said property.

The finding of the District Court in this regard is as follows:

“02 විත්තිකිරු කියා සිටින්නේ විජයරත්නම්ට මෙම දේපල පවරා මුදල් ලබාගැනීමෙන් පසුව එම මුදල් ඔහු ඉල්ලා සිට බැවින්, දේපල කුරේෂාන්ගේ නමින් පවරා මුදල් ලබාගෙන විජයරත්නම්ට දුන් බවය. විජයරත්නම් විසින් 2 විත්තිකරුට මෙම දේපල ආපසු පවරන ලද ඔප්පුව පැ: 5 ලෙසද, 2 විත්තිකරු විසින් කුරේෂාන්ට පවරන ලද ඔප්පුව පැ: 6 ලෙසද, ඉදිරිපත් කර ඇත. මෙම ඔප්පු දෙකම එකම දින එනම් 87.12.23 දින එකම නොතාරිස් වරයා ඉදිරිපිටදි ලියා සහතික කර ඇති අතර එයට ලබාදි ඇත්තේද 3274 හා 3275 යන අංකයන්ය. එනම් මෙම ඔප්පු දෙකම එකම අවස්ථාවේදි ලියා සහතික කර ඇත. මෙම කරුණු වලින් 2 විත්තිකරුගේ සාක්ෂිය සනාථ වේ.”

The second attendant circumstance relied upon by the 2nd Defendant that the execution of P7 and P8 are also reflective of a further money lending transaction is at first sight *far removed in point of time to be regarded as attendant* as held in **Muttammah.** However, when viewed from the angle that P8 was executed to settle Kureishan and redeem P6, it supports the position of the 2nd Defendant that the transaction between Kureishan and himself [i.e. P6] was only a money lending transaction. Thus, the intention of the 2nd Defendant to continue to retain the beneficial interest in the said property is borne out by the execution of P7 and P8, as well.

Furthermore, if the 2nd Defendant was not actively involved in the transaction between Kureishan and the 1st Defendant, the most natural course of action would have been to execute a transfer [P8], instead of a mortgage followed by a transfer [P7 and P8], and for the 1st Defendant to have taken possession of the said property, which the 1st Defendant failed to do. The active involvement of the 2nd Defendant in the transaction between Kureishan and the 1st Defendant is further and most significantly supported by the evidence of the 2nd Defendant, to which I have already referred, that to begin with, it was the husband of the 1st Defendant who had assisted the 2nd Defendant to raise the necessary finances to settle Kureishan. Thus, it was the position of the 2nd Defendant that the underlying money lending transaction to settle Kureishan is, in fact, the singular reason for the execution of P8.

Continued possession by the 2nd Defendant

The third and the most important attendant circumstance relied upon by the 2nd Defendant is that he continued to remain in possession of the said property at all times and never parted with the possession of the said property in spite of the execution of P6, and for that matter, P8 and P11. The learned District Judge has placed significant importance on the continued possession of the said property by the 2nd Defendant in arriving at his conclusion that Kureishan held the said property in trust for the 2nd Defendant.

I re-produce below in its entirety the findings of the District Court on the possession of the said property by the 2nd Defendant as the first three questions of law raised in this

appeal are directly referable to the said findings and the consequent failure on the part of the Court of Appeal to consider the said findings:

"01 විත්තිකාරිය මෙම ඉඩම පැමිණිලිකරුට විකුණන ලද අවස්ථාවේදි මෙම ඉඩමේ පිහිට නිවසේ පදිංචිව සිටියේ 2 විත්තිකරු බව 1 විත්තිකාරියගේ සාක්ෂිකරු එනම් ඇයගේ ස්වාමිපුරුෂයා පිලිගෙන ඇත."

"පැ: 6 ඔප්පුවෙන් 2 විත්තිකරු විසින් ඔඩසන් කුරේෂාන් යන අයට මෙම දේපල පැවරීමෙන් පසුවද, 2 විත්තිකරු මෙම දේපලේ භුක්තියෙන් ඉවත්ව ගොස් නොමැති බව ඉහත සාක්ෂි වලින් පැහැදිලි වේ." පැ 1 සිට පැ 11 දක්වා සලකුණු කොට ඉදිරිපත් කර ඇති ඔප්පු වලින් මෙම දේපල එක් එක් අවස්ථාවල පවරා නැවත පවරා ගෙන ඇති බව පාහැදිලි වේ. නමුත් මේ කිසිදු අවස්ථාවක 2 විත්තිකරු හෝ ඔහුගේ පියා විසින් මෙම දේපලෙහි භුක්කිය වෙනත් අයෙකුට පවරා නැත"

"පැ: 6 ඔප්පුවෙන් ඔඩසන් කුරේෂාන්ට මෙම දේපල පැවරීමෙන් වසර තුනකට පමණ පසුව කුරේෂාන් විසින් පැ: 8 ඔප්පුවෙන් 01 විත්තිකාරියට පවරා ඇත. එම වසර තුනකට ආසන්න කාලසීමාවේදි කුරේෂාන් විසින් මෙම දේපලෙහි භුක්තිය ලබාගැනිමට කිසිදු උත්සාහයක් දරා නැත. මෙම කරුණු වලින් පැහැදිලි වන්නේ මෙම නඩුවට ආදාල දේපල නොයෙක් අවස්ථාවලදි එක් එක් අයට පවරා තිබුනද එම කිසිදු අවස්ථාවක දේපලෙහි භුක්තිය පවරා නොමැති බවත්, භුක්තිය කිසිවකුටත් භාරදීමට 2 විත්තිකරු තුල අදහසක් තිබී නොමැති බවත්ය. මේ අනුව 2 විත්තිකරු විසින් ඔඩසන් කුරේෂාන්ට මෙම දේපල පැවරීමේදි එය ඔහුගෙන් ලබාගන්නා ලද මුදලේ ආරක්ෂාවට කර ඇති පැවරීමක් මිස වැඩදායි අයිතිය පැවරීමේ අදහසින් කරන ලද පැවරීමක් නොවන බව පැහැදිලි වේ.

"මේ අනුව තවදුරටත් සනාථ වන්නේ පැ: 11 දරණ ඔප්පුවෙන් කර ඇති පැවරීම හැරුණ විට අනෙක් සියලුම පැවරීම් ඒ ඒ අවස්ථාවලදි ලබාගන්නා ලද ණය මුදලේ ආරක්ෂාව සඳහා කර ඇති පැවරීම බවය."

ඉහතින් සලකා බලන ලද සාක්ෂි අනුව පැ: 6 ඔප්පුව ලියා සහතික කල අවස්ථාවේ සිට මේ දක්වාම අදාල දේපල භුක්ති විඳිමින් එහි පදිංචිව සිටින්නේ 2 විත්තිකරු බව පැහැදිලිය. ඔඩසන් කුරේෂාන් පමණක් නොව ඔහුගෙන් මෙම දේපල මිලදි ගන්නා ලද 1 විත්තිකාරිය එසේම ඇයගෙන් මිලදි ගන්නා ලද මුසම්මිල් යන කිසිම පුද්ගලයකුට මෙම දේපලහි භුක්තිය බාරගැනීමේ අවශ්‍යතාවයක් තිබී නොමැති බව පැහැදිලි වේ.

නමුත් මෙම අධිකරණය ඉදිරියේ ඇති නඩුවේ 2 විත්තිකරු විසින් නඩුවට අදාල දේපල භුක්ති විදිම සාමාන්‍යයෙන් දේපලක අයිතිකරුවෙකු තම දේපල වෙනත් අයෙකුට පවරා භුක්තිය භාරනොදි සිටීමක වැනි දෙයක් ලෙස සැලකිය නොහැක

2 විත්තිකරු මෙම දේපල ඔඩසන් කුරේෂන්ට පැවරීමෙන් පසුව ඔහු මෙම දේපල 01 විත්තිකාරියට පවරා පසුව ඇය විසින් මුසම්මාල්ට පවරා ඇත. නැවත මුසම්මාල්ගෙන් 01 විත්තිකාරිය මෙම දේපල පවරගෙන පසුව පැමිණිලිකරුට විකුණා ඇත. මෙම කිසිදු අවස්ථාවකදි අදාල දේපලෙහි භුක්තිය ලබාගැනිම සම්බන්ධයෙන් පැවරුම්කරු හා පැවරුම්ලාභියා අතර කිසිදු එකඟතාවයක් තිබී නැත. කුරේෂාන් පමණක් නොව මෙම දේපලෙහි අයිතිය දැරූ වෙනත් කිසිම පුද්ගලයකු විශේෂයෙන් මෙම දේපල මිලදි ගත්තේ යයි

කියා සිටින 01 විත්තිකරිය හා 2 විත්තිකරු අතර භුක්තිය ලබාදීම සම්බන්ධයෙන් කිසිදු, එකඟතාවයක් තිබී නැත.

මෙම සියලු කරුණු වලින් සනාථ වන්නේ 2 විත්තිකරු විසින් දේපල කුරේෂාන්ට පවරා භුක්තිය බාරදීමක් සිදුනොකල බව නොව 2 විත්තිකරු මෙම දේපල පවරන අවස්ථාවේ එසේ පවරා ඇත්තේ, මුදල් ගෙවා නැවත පවරා ගැනීමේ අදහසින් මෙන්ම කුරේෂාන් සමඟ ඒ සඳහා ඇතිකරගන්නා ලද එකඟතාවයක් මත බවය."

Thus, the continued possession of the said property by the 2nd Defendant gives context to the first two attendant circumstances relied upon by the 2nd Defendant.

Value at the time of transfer

The fourth and final attendant circumstance is that the value of the said property was much higher than what was reflected as consideration for the said property in P6, as well as in P8. If the version of the 2nd Defendant that P6 and P8 reflected a money lending transaction is to be accepted, the consideration declared therein should not be commensurate to the market value of the said property at the time P6 and P8 were executed.

The 2nd Defendant led the evidence of a Court appointed Valuer on whom a Commission had been issued. It was his evidence that the said property was situated 200 feet away from the main road, behind the business premises of the 2nd Defendant, and that having taken the value of similar properties adjacent to the said property, he has valued the said property as follows:

(a) At Rs. 300,000 – 400,000 in 1987 whereas the consideration for P6 was only Rs. 30,000;

(b) At Rs.600,000 – 800,000 in 1991 whereas the total consideration for P7 and P8 was only Rs. 110,000 and even for P11, it was only Rs. 300,000.

This evidence had not been contradicted by the Plaintiff or the 1st Defendant. The District Court has accepted the above evidence and determined that P6 does not reflect the correct value of the said property.

Judgment of the District Court

It is clear from the above findings of fact reached by the learned District Judge that he has quite correctly placed much reliance on the transactions that led to the execution of P6 and P8, the value at which P6 was conveyed, and in particular on the 2nd Defendant remaining in possession of the said property at all times in arriving at his conclusion that:

(a) the beneficial interest in the said property has not been transferred to Kureishan;

(b) the said property was held in trust by Kureishan for the 2nd Defendant; and

(c) the requirements of Section 83 have been satisfied by the 2nd Defendant.

In view of the above findings, which are supported by the evidence led by the parties, the District Court had proceeded to hold that all subsequent transfers are also subject to the trust, and that the 2nd Defendant is entitled to have the said property re-transferred to him. Thus, all three primary issues that arise for determination in this appeal have been answered by the District Court in favour of the 2nd Defendant.

There are two matters that I wish to advert to for the sake of completeness, prior to considering the judgment of the Court of Appeal. The first is that the finding of the District Court that P8 and P11 are subject to the trust created by P6 is supported by the judgment of this Court in **Perera v Fernando and Another** [(2011) 2 Sri LR 192]. The facts being similar as in this case, Suresh Chandra, J held [at page 197] that:

> *"It would be apparent from the evidence that the first transaction was not an absolute transfer as seen from the evidence but the question arises as to what was conveyed by the transferee on the first transaction to the transferee on the second transaction since the first transferee Dharmalatha did not have absolute title to the property.* ***What she could convey to the 2nd defendant was only the right she had in respect of the said property which was not absolute title****. In these circumstances it would be necessary to conclude that both transfers did not convey absolute title to the transferees and that they held the property in trust for the transferor as the*

transferor in both instances had not intended to convey the beneficial interest in respect of the property. This is in line with the principle laid down in Section 83 …" [emphasis added]

A similar conclusion was reached in **Jayasooriya Kuranage Romold Dickson Sumithra Perera v Jayasooriya Kuranage Padma Jenat Jasintha Perera and Others** [SC Appeal 110/2018; SC minutes of 3rd April 2019; at page 13].

Is the Plaintiff a transferee in good faith?

The second matter that I wish to advert to is the applicability of Sections 65(1) and 66(1) of the Trusts Ordinance, which are re-produced below:

Section 65(1)

"*Where trust property comes into the hands of a third person inconsistently with the trust, the beneficiary may institute a suit for a declaration that the property is comprised in the trust.*"

Section 66(1)

"Nothing in section 65 entitles the beneficiary to any right in respect of property in the hands of –

(a) ***a transferee in good faith for consideration without having notice of the trust****, either when the purchase money was paid, or when the conveyance was executed; or*

(b) a transferee for consideration from such a transferee." [emphasis added]

In **Warnakulasuriyage Charlert Kusumawathi Kulasuriya v Don Wimal Harischandra Gunathilaka** [SC Appeal No. 157/2011; SC minutes of 4th April 2014] Tilakawardane, J referring to Section 66(1) stated [at page 14] that, *"…it is well established law that where the legal title has passed to a bona fide purchaser for value without notice, equity refuses to intervene to preserve any rights held by the former beneficial owner of the property.*

This is further affirmed by Section 98 of the Trusts Ordinance which states that 'Nothing contained in this Chapter shall impair the rights of transferees in good faith for valuable consideration.' ".

The 2nd Defendant did not initiate action as provided by Section 65(1) but raised the existence of a constructive trust for the first time in his answer. In addition to raising several issues in that regard, the 2nd Defendant also raised an issue that the Plaintiff and the 1st Defendant have acted fraudulently in executing P11, which issue has been answered by the District Court in the affirmative. If the Plaintiff was a transferee in good faith and did not have notice of the constructive trust in favour of the 2nd Defendant, it was open for him to have claimed the benefit of Section 66(1) and to have raised an issue in that regard. However, no such issue was raised before the District Court nor was it agitated in appeal before the Court of Appeal or this Court.

Even though no issue was raised, the Plaintiff did state in his evidence that the house situated on the said property was not occupied by anyone else at the time he visited the said property. This evidence has been rejected by the District Court due to the admission by the husband of the 1st Defendant that the 2nd Defendant was in fact in possession of the said property at the time of the said visit by the Plaintiff and at the time the 1st Defendant executed the deed in favour of the Plaintiff.

The District Court has also pointed out that there would have been no impediment to the Plaintiff taking over possession of the said property at the time P11 was executed if the keys to the house situated on the said property were with the 1st Defendant, as claimed by the Plaintiff, and that instead the true reason for the Plaintiff not being able to take over possession was the fact that possession was with the 2nd Defendant. This position remained uncontested. Thus, even in the absence of an issue, the *bona fides* of the Plaintiff and the fact that he did not have notice of the constructive trust have been rejected by the District Court.

The judgment of the Court of Appeal

The Court of Appeal **has not considered at all** the above findings of fact reached by the District Court that possession of the said property remained at all times with the 2nd Defendant, and that until action was filed by the Plaintiff, neither Kureishan nor the 1st Defendant had ever challenged the right of the 2nd Defendant to possess the said property. As I have already observed, the first three questions of law relate to this critical failure on the part of the Court of Appeal to consider the thrust of the judgment of the District Court, and therefore the said questions of law must be answered in the affirmative.

Instead, the Court of Appeal allowed the appeal on two grounds.

The first ground is that, "*the said deed P6 had been executed way back in 1987, the 2nd Defendant – Respondent never made any attempt to challenge the said deed during the entire period of more than 9 years which elapsed up to the institution of the instant action by the Appellant."*

This finding is incorrect as the position of the 2nd Defendant was that P6 was purely a money lending transaction, and that the delay in repayment of the moneys borrowed and the redemption of P6 was due to the attempt on his life and the subsequent disruption to his business. It is also not denied that in any event, Kureishan did not try to dispossess the 2nd Defendant.

The second ground is that:

> "*the Appellant brought an important fact that the 2nd Defendant-Respondent did not so much as call either Odayan Kureishan or the Notary or any of the attesting witnesses to give evidence regarding the said transaction. Therefore, the Appellant strenuously has taken up an argument that the 2nd Defendant had failed to establish that the said Odayan Kureishan held the property in trust for him.*
>
> *Furthermore, it is important to note that the entire claim of the 2nd Defendant – Respondent is based on the premise that Deed P6 by which he conveyed the land and*

premises to Odayan Kureishan was subject to an oral agreement to re-convey upon repayment of the consideration which was purported to be a loan. However, this Court is of the view that the 2nd Defendant – Respondent was not intensely entitled to lead parole evidence to establish the purported oral agreements with Odayan Kureishan to re-convey the property."

This finding too is incorrect. The fundamental premise on which Section 83 applies is to ascertain whether the owner intended to transfer the beneficial interest in the property in question, which intention must be reasonably inferred from, and be consistent with the attendant circumstances surrounding the transfer. While it is true that the 2nd Defendant did not call Kureishan to establish his claim, I am satisfied that the four attendant circumstances relied upon by the 2nd Defendant have established a constructive trust in his favour. The fourth question of law too must therefore be answered in the affirmative.

Conclusion

I am of the view that as Kureishan did not have any beneficial interest over the said property but instead was holding the said property in trust for the 2nd Defendant, he could not have transferred a better title than what he had to the 1st Defendant nor could the 1st Defendant have done so in favour of the Plaintiff by P11. The aforementioned attendant circumstances relied upon by the 2nd Defendant, the disparity between the value of the said property and the consideration that passed on P11, and the finding that the Plaintiff was not a *bona fide* purchaser for value without notice, all point towards the survival of the constructive trust in favour of the 2nd Defendant. Accordingly, the trusteeship merely changed hands from the 1st Defendant to the Plaintiff upon the execution of P11.

Taking into consideration all of the above circumstances, I am of the view that:

(a) The Court of Appeal erred in law when it failed to correctly apply the provisions of Section 83 of the Trusts Ordinance;

(b) The Court of Appeal erred in law when it failed to consider that the 2nd Defendant has been in possession of the said property at all times and that this attendant circumstance has not been displaced by the Plaintiff;

(c) The Court of Appeal erred in law when it failed to consider the uncontradicted evidence of the 2nd Defendant that Kureishan held the said property in trust for the 2nd Defendant by P6, and that P8 and P11 were subject to the said trust;

(d) The Court of Appeal erred in law when it failed to consider the fact that the District Court has analysed and applied the evidence in light of the test laid down in Section 83.

I would therefore answer all four questions of law raised by the learned Counsel for the 2nd Defendant in the affirmative and allow this appeal. The judgment of the Court of Appeal dated 4th April 2019 is accordingly set aside and the judgment of the District Court dated 25th June 1999 is affirmed. I make no order for costs.

JUDGE OF THE SUPREME COURT

Murdu N.B. Fernando, PC, J

I agree.

JUDGE OF THE SUPREME COURT

Achala Wengappuli, J

I agree.

JUDGE OF THE SUPREME COURT