

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

In the matter of an Appeal to the Supreme Court  
under the Constitution of the Democratic Socialist  
Republic of Sri Lanka

Magret Karunasinghe,  
No. 16/1, Amunuwatta, Henamulla, Kurunegala.

**Plaintiff**

**SC Appeal 135/2016**

**SCHCCALA/34/2016**

Provincial High Court of  
Civil Appeal Case No. 08/2011 (F)

**DC-Kurunegala Case No. 6249/L**

Vs,

Jayalathge Srimathi Mangalika Jayasinghe,  
Amunuwatta, Henamulla, Kurunegala.

**Defendant**

**And**

Magret Karunasinghe, (Deceased)  
R.P. Wijeratne,  
No. 16/1, Amunuwatta, Henamulla, Kurunegala.

**Substituted Plaintiff-Appellant**

Vs,

Jayalathge Srimathi Mangalika Jayasinghe,  
Amunuwatta, Henamulla, Kurunegala.

**Defendant -Respondent**

**And now between**

Jayalathge Srimathi Mangalika Jayasinghe, (Deceased)

1. Sunil Jayantha Amarasinghe
  2. Iresha Nayomi Amarasinghe
- Amunuwatta, Henamulla, Kurunegala.

**Substituted Defendant –Respondent-Petitioner**

Vs,

R.P. Wijeratne,  
No. 16/1, Amunuwatta, Henamulla, Kurunegala.

**Substituted Plaintiff-Appellant-Respondent**

**Before: Justice Vijith K. Malalgoda, PC  
Justice K.K. Wickremasinghe,  
Justice Janak De. Silva,**

**Counsel:** Lakshman Perera. PC with Lakmali Fernando for the Defendant-Respondent-Petitioner  
K.G. Jinasena with Chathubha Abeywickrama for the Substituted Plaintiff-Appellant-Respondent.

**Argued on: 11.05.2023**

**Decided on: 12.03.2024**

### **Vijith K. Malalgoda PC J**

The instant appeal was instituted by the Original Defendant (hereinafter sometimes referred to as the “Defendant-Appellant” or “Appellant”) against the Judgment dated 07<sup>th</sup> January 2016, delivered by the High Court of Civil Appeal of the North Western Province holden at Kurunegala.

The initial action which is the basis for the instant appeal was filed by the Original Plaintiff (hereinafter sometimes referred to as the “Plaintiff-Respondent” or “Respondent”) against the Defendant-Appellant in the District Court of Kurunegala praying for a declaration of title to the property described in the plaint and to declare that the Deed No 5414 dated 13<sup>th</sup> March 2000 and the Deed No 7568 dated 10<sup>th</sup> April 2003, both of which are attested by Edmond Kularatne, Notary Public are null and void.

In the said plaint, the Plaintiff-Respondent pleaded *inter alia* that she became entitled to the land described in the schedule to the plaint by final decree entered in DC Kurunegala case No 1931/P and continued to possess the same. However, while the said case was pending, the Plaintiff-Respondent obtained a loan of Rs. 15,000 from the Original Defendant at a rate of 1.5% interest per month. Thereafter subject matter to this action was transferred by the Original Plaintiff to the Original Defendant by Deed of Transfer No 989 dated 14<sup>th</sup> April 1992 as a security to the said loan transaction. After Original Plaintiff became entitled to the said land by the said final decree, she had

communicated to the Original Defendant that she was ready to settle the said loan of Rs, 15,000 along with the interest accrued upon on the said loan.

Thereafter by Deed No 5413 dated 13<sup>th</sup> March 2000 attested by Edmond Kularatne, Notary Public, the Original Defendant transferred the aforesaid subject matter back to the Original Plaintiff after receiving the money thereon. The Original Plaintiff had contended that at the time of executing the said Deed and completing the said loan transaction, the Original Defendant had obtained the signature of the Original Plaintiff on some blank papers. After some time, the Original Defendant came to the Original Plaintiff's house and informed that she had the title to the subject matter and requested the Original Plaintiff to hand over the vacant possession to the Original Defendant. The Original Plaintiff contends that only after searching the registers at Kurunegala land registry that she come to know that the Deed of Transfer No 5414 dated 13<sup>th</sup> March 2000 attested by Edmond Kularatne, Notary Public had been executed. The said Deed was concerning a loan obtained by the Original Plaintiff to a value of Rs. 325,000 to be paid in 1 ½ years at the interest rate of 18% per annum. The Original Plaintiff's position was that she neither obtained a loan of Rs. 325,000 from the Original Defendant nor executed the said Deed. Therefore Learned Counsel of the Respondent pleads that the actions of the Original Defendant are fraudulent and that both the Original Defendant and the Notary Public have acted in collusion in the guise of settling the outstanding transaction created by Deed No 989 in the year 1992, got the Original Plaintiff to sign blank sheets which have been later converted into a conditional transfer Deed which the Original Plaintiff was unaware of until she obtained the copy of the same from the land registry.

The story of the Original Defendant is quite different from that of the Original Plaintiff. The Original Defendant took up the position that after the said final decree in case No 1931/P the said Deed No 989 took effect and the Original Defendant received the title to the subject matter in question. After the said final decree, the Original Plaintiff requested a further loan of Rs. 75,000 from the Original Defendant; by agreement of both parties, the Original Defendant transferred the said land back to the Original Plaintiff upon Deed No 5413 and executed a fresh Deed No 5414 by giving the Original Plaintiff Rs. 75,000 and by adding the loan amount of Rs. 15,000 previously obtained, along with the interest thereon. The agreement between the parties when executing the said Deed was for the Original Plaintiff to pay the total amount within a period of 1 1/2 years at an interest rate of 18% per

annum. Since the Original Plaintiff had not acted in accordance with the said agreement the Original Defendant contends that she has now become the owner of the subject matter.

At the conclusion of the trial, the Additional District Judge of Kurunegala delivered the judgment *inter alia* holding that the Original Defendant is the owner of the subject matter of the action upon the Deed No 5414 and Deed No 7568, both of which were attested by Edmond Kularatne, Notary Public and therefore is entitled to eject the Original Plaintiff from the subject matter and to be placed on the peaceful possession thereof.

Being aggrieved by the said judgment, the Original Plaintiff appealed to the High Court of Civil Appeal of the North Western Province holden at Kurunegala. Pending the appeal, the Original Plaintiff died and was substituted by one R.P. Wijeratne in her place. The Learned Judges of the High Court of Civil Appeal allowed the appeal with costs and set aside the judgment of the District Court on the ground that there is a strong possibility that the said Deed No 5414 being a fraudulent Deed.

This Court granted Leave to Appeal against the judgment of the High Court of Civil Appeal of North Western Province holden at Kurunegala on a series of questions of law set out in paragraph 19 (ii) to (x) of the Petition dated 18.01.2016, which states as follows;

- ii. have the learned Judges of the High Court of Civil Appeals erred in law by failing to appreciate and consider that the Defendant called the Notary who executed the impugned Deed No. 5414 and the witnesses thereto who testified as to the due execution thereof and that the Notary and witnesses in Deed No. 5414 were the same as those in Deed No. 5413?
- iii. a) has the court failed to appreciate that the said judgment of the learned District Judge in coming to a finding on questions of fact is based upon the credibility of witnesses on the footing of the trial judge's perception of such evidence?
  - b) if that be the case whether such findings are entitled to great weight and utmost consideration?
- iv. in reversing the said judgment has the High Court of Civil Appeal failed to come to a finding that the Trial Judge has failed to make the full use of the Trial Judge's advantage of seeing and listening to the witnesses?

- v. has the court failed to come to a conclusion in the said judgment that the Trial Judge has failed to make the full use of the opportunity given to him when hearing the *viva voce* evidence?
- vi. has the High Court of Civil Appeal failed to appreciate that there was evidence before the Trial Judge, affecting the relative credibility of the witnesses, which would make the exercise of his critical faculties in judging the demeanor of the witnesses a useful and necessary operation?
- vii. has the High Court of Civil Appeal failed to appreciate that there was no glaring improbability about the story accepted, sufficient in itself to constitute a governing fact which in regulation to others has created a wrong impression or any specific misunderstanding or disregard of a material fact, or any 'extreme and overwhelming or disregarded of a material fact, or any 'extreme and overwhelming pressure' that had the same effect?
- viii. has the High Court of Civil Appeal of Civil Appeals in delivering the said judgment dealt with probabilities and not come to a conclusion as to whether the impugned Deed No. 5414 is fraudulent on the evidence and the documents produced and has not examined the findings of the learned District Judge in relation to the documents and evidence led at the trial?
- ix. Is the said Judgment contrary to Section 774 (2) of the Civil Procedure Code in that the said judgment has not given reasons as to why the District Court judgment is wrong in fact and law?
- x. has the High Court of Civil Appeal failed to consider that the burden of proof in terms of Section 101 and 102 of the Evidence Ordinance rests on the Plaintiff which the Plaintiff has failed to discharge?

While the application was pending before the Supreme Court, the Original Defendant also passed away and her husband and a daughter were substituted as the Substituted Defendant – Respondent–Appellant (hereinafter referred to as “the Appellant”).

When considering the several questions of law under which the leave was granted, the crux of the matters referred to in those issues can be reduced to two main issues for the convenience of analysis.

They are,

1. Has the High Court of Civil Appeal failed to consider that the burden of proof in terms of sec 101 and 102 of the Evidence Ordinance rests with the Respondent to this case to prove that the said Deed 5414 is fraudulent, which the Respondent has failed to discharge?
2. Has the Judges of the High Court of Civil Appeal failed to appreciate the findings of the Learned District Judge in relation to questions of facts as to the credibility of witnesses and material placed before the Court?

***Has the High Court of Civil Appeal failed to consider that the burden of proof in terms of sec 101 and 102 of the Evidence Ordinance rests with the Respondent to this case to prove that the said Deed 5414 is fraudulent, which the Respondent has failed to discharge?***

In a civil case burden of proof usually rests with the proving of facts essential in establishing his claim, rests on the Plaintiff as clearly stated in sec 101 and 102 of the Evidence Ordinance.

Sec 101 of the evidence Ordinance provides that,

*Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*

*When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

Section 102 of the Evidence Ordinance states:

*The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*

Sec 102 illustration (b) further elaborates on it as follows:

*A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies. If no evidence were given on either side, A would succeed, as the bond is not disputed, and the fraud is not proved. Therefore, the burden of proof is on B*

Hence in the present case, the burden is with the Original Plaintiff to prove that Deed No 5414 dated 13<sup>th</sup> March 2000 is a fraudulent deed. To claim that the said Deed is fraudulent, Original Plaintiff relied on 2 main arguments; Firstly, she contended that Notary Public was a relative of the Original Defendant and acted in collusion in executing the said Deed. To support her version she further stated that she never knew Mr. Kularatne.

ප්‍ර: එඬිමන් කුලරත්න මහතා තමුන් දන්නවද?  
උ: මම අදුනන්නේ නෑ

However, when the Original Plaintiff was cross-examined, she admitted that she had previously obtained the services to attest several Deeds from the said Notary. In cross-examination, it was further revealed that the Notary who attested the said Deed was not only a relative of the Original Defendant but also the Original Plaintiff as well.

Secondly, the Original Plaintiff challenges the way her signature was obtained on Deed No. 5414. In her police statement, the Original Plaintiff claimed that her signature was obtained after having drugged her.

අත්සන් කරන මොහොතේ මා කොළ කිහිපයකට අත්සන් කලා. මගේ මානසිකත්වය වෙනස් වෙන්න වතුර වගයක් බොන්න දීලා තවත් කොළ කීපයකට අත්සන් ගත්තා.

The Original Plaintiff contradicted herself with regard to the placing of her signature in sheets of papers which were later used to produce Deed No 5414.

ප්‍ර: තමුන්ගෙන් මොනව හරි ලියකියවිලි වලට අත්සන් ගත්තාද?  
පි: මට පොලිය ගෙවන්න තිබුනේ නැති නිසා ගනුදෙනුව සනාථ කිරීම සම්බන්ධව ලියකියවිලි වගයකට අත්සන් කරලා දුන්නා.  
ප්‍ර: ඒ අනුව අත්සන් කලාද?  
පි: ඔව්

.....  
ප්‍ර: තමා අත්සන් කල පිටු හිස් පිටුවක්ද?  
පි: ඔව්

When analyzing the above evidence, it is quite clear that the Original Plaintiff had past experiences in taking loans and transferring land. Therefore, it is quite difficult to assume that the Original Plaintiff was unaware of the other Deed she had to sign and reckless enough to put her signature on several blank documents. In focusing on the Notary's evidence led at the trial, the Counsel for the Plaintiff has not challenged his evidence to prove that the signatures were obtained fraudulently at his office moreover as there is no complaint against the Notary or the Original Defendant that they have obtained her signatures into several blank pages to the Police until three years have passed.

The argument of Learned President's Counsel for the Appellant is quite convincing that Deed No. 5414 is a printed form Deed and there was no possibility of the said sheet being signed in blank considering the fact that the entire Deed is a standard form printed Deed and the signature of the Original Plaintiff appears at the proper place. Therefore, the position of the Original Plaintiff that she placed her signature on the blank sheet is unacceptable. The Trial Judge has quite rightly observed that if the Original Plaintiff had signed on a blank sheet, the Original Defendant need not have executed a conditional transfer in her favour but could have easily prepared an absolute transfer in her favour.

According to section 2 of the Prevention of Frauds Ordinance No. 7 of 1840, ***if the relevant deed or instrument is in writing and signed by every executant and attested by a notary public before two witnesses present at the same time, it is considered to be having force in law (emphasis added)***. Here the Original Plaintiff's position was that she never signed the said Deed No 5414 and that the said Deed was not properly executed before a notary and two witnesses and therefore the said Deed is null and void.

Though the Original Plaintiff must discharge the burden of proof in this case, the Original Defendant instead called the Notary Public and the two witnesses thereto who testified as to the due execution of the Deed.

In the case of ***Hemathilake vs Alina and Others***,<sup>1</sup> it was held that *"By calling the notary and the attesting witness the defendants-respondents have led the best possible evidence, and that too coming from independent witnesses."*

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<sup>1</sup> [2003] 2 Sri LR 144.



In the case of **Piyadasa v. Binduva alias Gunasekara**,<sup>2</sup> Ananda Coomaraswamy J citing the case of **W. Branchy Appu v. Poidohamy**<sup>3</sup> in his judgment stated that,

*But when it is alleged that a person signed a blank sheet of paper, which was subsequently filled up in the form of a deed and impeached as fraudulent by such person, the execution of such document ought to be proved, not by calling the notary who attested it, but by calling at least one of the witnesses thereto.*

However according to T.S. Fernando J in the case of **Solicitor General v. Ava Umma**<sup>4</sup>

*The object of calling the witness is to prove the execution of the document. Proof of the execution of the documents mentioned in Section 2 of the No. 7 of 1840 means proof of the identity of the person who signed as maker and proof that the document was signed in the presence of a notary and two or more witnesses present at the same time who attested the execution.*

In the aforementioned case, T.S. Fernando J further stated that,

*If the notary knew the person signing as maker, he is competent equally with either of the attesting witnesses to prove all that the law required in Section 68.*

In considering the evidence of one of the witnesses to the alleged Deeds namely Rampati Dewayalage Peduru who was also the notary's clerk, it was revealed that he was well acquainted with the Original Plaintiff and identified the Original Plaintiff in open court and also identified the Deeds in which he placed his signature as a one witness.

ප්‍ර: පෑ 4 ඔප්පුවේ තමාගේ අත්සන තිබෙනවා?

උ: ඔව්, පළවෙනියට තිබෙනවා

ප්‍ර: එහි තමා පැමිණිලිකාරිය හඳුනන පුද්ගලයෙක් ලෙස අත්සන් කර තිබෙනවා?

උ: ඔව්

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<sup>2</sup> (1992) 1 SLR 108

<sup>3</sup> (1902) 2 Br. Rep 221

<sup>4</sup> 71 NLR 512

Then the other witness who was also the notary’s clerk namely Rankonege Wijeratne who placed his signature as a witness to the impugned Deed No. 5414 testified that he signed as a witness to the impugned Deed and also admitted that he was acquainted with the Original Plaintiff.

- ප්‍ර: මෙම වි 5 ඔප්පුවේ මහත්මයා අත්සන් කර තිබෙනවාද සාක්ෂිකරුවෙක් හැටියට ?
- උ: ඔව්
- ප්‍ර: කී වෙනි අත්සනද?
- උ: දෙවැනි අත්සන

When scrutinizing the aforesaid evidence, it could be observed that the Deed in question has been properly executed in terms of section 2 of the Prevention of Frauds Ordinance.

During the cross-examinations of the Notary and the two witnesses, the Counsel for the Original Plaintiff did not raise any questions regarding how the signature was obtained from the Original Plaintiff. The only question that was put to the notary with regard to obtaining the signature was denied by the notary as follows;

- ප්‍ර: මම තමාට යෝජනා කරනවා පැ 4 කියන ඔප්පුව ලියාගන්න අවස්ථාවේදී මෙම නඩුවේ වි 5 පසුව අංක කරන ලද මුද්‍රිත විකුණුම්කර ඔප්පුවකට මෙම පැමිණිලිකාරියගේ අත්සන ලබා ගන්නා කියලා?
- උ: මම පිළිගන්නේ නැහැ

This position is clearly in contradiction to the version given by the Original Plaintiff in her evidence before the District Judge.

For the above reasons, it can be concluded that the Plaintiff has failed to challenge the deeds before the District Court.

Learned Counsel for the Respondent contended that the sum of Rs. 216,000 stated as “ අඩු 80 ෂාලිය” is far in excess of the interest due on such a small amount of Rs. 15,000 and therefore has no relevancy to Deed No 989. It was further contended that even if the interest was calculated at 11/2 per month, at this rate the interest due on Rs. 15,000 was only 21,000 and not Rs. 216,000 as shown in වි 3. However, in the evidence, it was confirmed that this document was in the handwriting of the Original Plaintiff.

Even if there is a calculation error of the interest in 3, it does not vitiate the Deed as evident in the case of **Nadarajah vs Nadarajah**<sup>5</sup> where it was held that if a party contradicted the attestation the other party also can lead the evidence to show the real nature of the transaction which in this case is depicted by the documents marked 3 and 6 read along with the Deed No 5414.

In **Jayawardene vs Amerasekara**,<sup>6</sup> Lascelles C.J held that,

*On the execution of a notarial conveyance, the sale is complete, and the mere fact that the whole of the consideration has not been paid cannot, in the absence of fraud or misrepresentation, afford ground for the rescission of the sale and the cancellation of the conveyance.*

In **Mohamadu vs Hussim**<sup>7</sup> Pereira J held as follows,

*Where a person obtains a conveyance of property without fraud, but afterward fraudulently refuses to pay the consideration stipulated for, the grantor is not entitled to claim cancellation of the conveyance, but his remedy is an action for the recovery of the consideration.*

When considering the above facts, the question of whether the High Court of Civil Appeal failed to consider that the burden of proof in terms of sec 101 and 102 of the Evidence Ordinance rests with the Respondent to this case to prove that the said Deed 5414 is fraudulent, which the Respondent has failed to discharge could be answered in affirmative.

***Has the Judges of the High Court of Civil Appeal failed to appreciate the findings of the Learned District Judge in relation to questions of facts as to the credibility of witnesses and materials placed before the Courts?***

In the case of **Gamini Perera vs Don Joseph**<sup>8</sup> A. Goonerathne J. noted that,

*All primary facts and truth of the matters in dispute are best to be left in the hands of the Trial Judge..... It is the Trial Judge who hears the evidence, sees the witness in the witness box, and observes the witness's demeanor at all times in Court. As such the learned District Judge's*

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<sup>5</sup> 21 NLR 38

<sup>6</sup> 15 NLR 280

<sup>7</sup> 16 NLR 368

<sup>8</sup> S.C. Appeal 04/2012

*views on disbelieving the Plaintiff on items of evidence as above need not be interfered with by this Court*

When it comes to the credibility of witnesses in the instant case, it is quite evident that the Original Plaintiff had contradicted herself and has given false evidence several times. The Original Plaintiff in the plaint stated that the defendant obtained her signature on blank sheets and it was these sheets that were later used to produce Deed no 5414. Here the Learned Trial Judge has quite rightly observed that if the Plaintiff signed on the blank sheets the Original Defendant need not to have executed a conditional transfer and that the Original Defendant could have used the blank sheets to prepare an absolute transfer in her favour.

However, in appeal, High Court Judges overturned the findings of the Trial Judge and noted that,

*That it is very probable that no such transaction took place on 13.03.2000... and her claim that she was asked to sign on a blank document is possible and there is a strong possibility that Deed No 5414 is fraudulent*

This is a serious mistake when considering the fact that the Respondent has failed to discharge the burden of proof that Deed No 5414 is null and void in the eyes of the law when concrete evidence reinforces the legal validity of the said Deed.

Further in reversing the judgment of the Learned Trial Judge, the High Court of Civil Appeal has failed to come to a finding that the Trial Judge has failed to make the full use of the Trial Judge's advantage of seeing and listening to the witnesses.

In the case of ***De Silva and Others vs Senevirathne and Another***<sup>9</sup> Ranasinghe J. noted that,

*..it seems to me: that, where the trial judge's findings on questions of fact are based upon the credibility of witnesses, on the footing of the trial judge's perception of such evidence, then such findings are entitled to great weight and the utmost consideration, and will be reversed only if it appears to the appellate Court that the trial judge has failed to make full use of the "priceless advantage" given to him of seeing and listening to the witnesses giving viva voce*

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<sup>9</sup> [1981] 2 SLR 7

*evidence, and the appellate Court is convinced by the plainest consideration that it would be justified in doing so*

In the case before us, the Learned District Judge appears to have made use of the advantage he had in considering the demeanor of the witnesses which the Learned District Judge was fully entitled to do so.

Hence, the question of whether the Judges of the High Court of Civil Appeal have failed to appreciate the findings of the Learned District Judge in relation to questions of facts as to the credibility of witnesses and materials placed before the Courts is also answered in affirmative.

In the said circumstances I answer the several questions of law raised on behalf of the Defendant-Appellant in the affirmative.

Thus, I hereby set aside the judgment of the High Court of Civil Appeal dated 07.01.2016 and affirm the Judgment of the District Court dated 24.11.2010. The learned District Judge of Kurunegala is directed to enter decree accordingly.

Appeal allowed. I make no order for cost.

**Judge of the Supreme Court**

**Justice K.K. Wickremasinghe,**

**I agree,**

**Judge of the Supreme Court**

**Justice Janak De. Silva,**

**I agree,**

**Judge of the Supreme Court**