

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

SC Appeal 46/2017  
SC. Spl.L. A 144/2018  
CA Appeal 509/97 (F)  
D.C. Panadura Case  
No.16733/L

In the matter of an Application for Special Leave to Appeal from the Judgment dated 17-06-2016 of the Court of Appeal in C.A. 509/97(F) in terms of Article 128 of the Constitution.

Gothamadattawa Weerasinghe, of  
No.29, Jambugasmulla Road, Nugegoda  
[Deceased]

**Original 1<sup>st</sup> Plaintiff**

Vijitha Weerasinghe, of  
No. 29, Jambugasmulla Road, Nugegoda

**Substituted 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Plaintiff**

Vs.

1. Epitawalage Eron Singho  
No. 32/2, Walana Road, Panadura
  
2. B.T.P Rajakaruna of  
No. 117, Kirillapone Road, Colombo 5  
(Now residing at No. 117, Maya Avenue,  
Colombo 6)

**1<sup>st</sup> and 2<sup>nd</sup> Defendants**

**AND BETWEEN**

B.T.P. Rajakaruna of  
No. 177, Maya Avenue, Colombo 6 and

No. 39/3, Auburnside,  
Dehiwela

**2<sup>nd</sup> Defendant-Appellant**

Vs.

Vijitha Weerasinghe of  
No. 29, Jambugasmulla Road, Nugegoda  
[Deceased]

**Substituted 1<sup>st</sup> Plaintiff-Respondent and  
Original 2<sup>nd</sup> Plaintiff-Respondent**

Gladys Augusta Weerasinghe nee of  
Boralessa of No.  
29, Jambugasmulla Road, Nugegoda.

**Substituted 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff-Respondent**

Epitawalage Eron Singho of  
No. 32/2, Walana Road, Panadura.  
[Deceased]

**1<sup>st</sup> Defendant-Respondent**

Jayasinlage Anula of  
No. 43/2, Galle Road, Walana,  
Panadura.

**Substituted 1<sup>st</sup> Defendant-Respondent**

**AND NOW BETWEEN**

B.T.P Rajakaruna of  
No. 39/3, Auburnside, Dehiwala

**2<sup>nd</sup> Defendant-Appellant-Appellant**

Vs.

Gladys Augusta Weerasinghe nee Boralessa  
of No. 29, Jambugasmulla Road,  
Nugegoda.

Substituted 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff-Respondent-  
Respondent

Jayasinghe Anula, of  
No. 43/2, Galle Road, Walana, Panadura

Substituted 1<sup>st</sup> Defendant-Respondent-  
Respondent

**Before:** Buwaneka Aluwihare P.C., J.  
Priyantha Jayawardene P.C., J.  
Murdu N.B. Fernando P.C., J.

**Counsel:** Gamini Marapana, P.C. with Navin Marapana for the 2<sup>nd</sup> Defendant-  
Appellant-Appellant.  
Ranjan Gooneratne with Sarath Walgamage for the Substituted 1<sup>st</sup> and 2<sup>nd</sup>  
Plaintiff-Respondent-Respondents.

**Argued on:** 6<sup>th</sup> February 2020

**Decided on:** 20<sup>th</sup> July 2023

### Judgement

**Aluwihare PC. J,**

The central question of this appeal is the validity of a deed of gift executed in favour of the 1<sup>st</sup> Defendant-Respondent by the donor, C.H. Weerasinghe. The Plaintiff's

argument was that C.H. Weerasinghe did not have the capacity to execute the deed of gift in issue, as he was a person of unsound mind and moved that the District Court declare the same null and void. The Defendant's case on the other hand was that Weerasinghe had recovered from his illness and that he was in a good state of mind when he executed the impugned deed.

In concurrent findings, both the District Court as well as the Court of Appeal held that the impugned deed of gift is void. The present appeal is against the said findings. This Court granted leave to appeal in this matter on seven questions of law which are referred to in paragraph (15) of this judgement.

### **Factual background**

- (1) The original Plaintiffs Gothamadattawa Weerasinghe (now deceased) (hereinafter sometimes referred to as the '1<sup>st</sup> Plaintiff') and Vijitha Weerasinghe (now deceased) (hereinafter sometimes referred to as the '2<sup>nd</sup> Plaintiff') are the widow and son respectively of one Charles Hector Weerasinghe (now deceased) (hereinafter sometimes referred to as C.H. Weerasinghe').
- (2) The property in suit called "Meegahawatta" alias "Ambagahawatta" had been gifted to C.H. Weerasinghe by the original owners, Don Martinus Perera Weerasinghe and Dona Justina Peternella by Deed No. 217 dated 17<sup>th</sup> August 1917.
- (3) In Case No. 2221/LG, the District Court of Colombo, on the basis that said C.H. Weerasinghe, [the purported donor of the gift referred to above], was a person of unsound mind, appointed the 1<sup>st</sup> Plaintiff's wife as the Manager of his estate 'until he was of sound mind and understanding', as evidenced by the certified copies of the certificate of management dated 18<sup>th</sup> September 1929, marked P2 (at page 568 of the Brief) and the security bond marked P3 (at page 570 of the Brief). This fact had not been disputed by the Defendants.

- (4) C.H. Weerasinghe received treatment as an in-house patient at the Angoda Mental Hospital, and according to the 2<sup>nd</sup> Plaintiff's testimony (*vide* pages 416-417 of the Brief) he had been in the hospital for a period of 31 years, i.e., from 1933 and was discharged in 1964.
- (5) After being released from the hospital, C.H. Weerasinghe had resided at the house of one O.J. Jayawardena, a male nurse who was attached to the Angoda Mental Hospital, up to his death, in 1977.
- (6) While C.H. Weerasinghe was living with O.J. Jayawardena, he had gifted the property in suit to Eron Singho, the 1<sup>st</sup> Defendant-Respondent [hereinafter the 1<sup>st</sup> Defendant] by Deed No. 41 dated 2<sup>nd</sup> July 1977. C.H. Weerasinghe died the following month, on 24<sup>th</sup> August 1977 at the age of 87, leaving the Plaintiffs as his heirs. His estate was administered in D.C. Colombo case No. 1963 wherein the 1<sup>st</sup> Plaintiff was appointed as the administratrix of his estate.
- (7) Following C.H. Weerasinghe's death, Eron Singo, the 1<sup>st</sup> Defendant, by execution of a Conditional Transfer No. 20390 dated 11<sup>th</sup> December 1978, had obtained a sum of Rs. 4000/- from one Lionel Ranasinghe. Having discharged the said Conditional Transfer by Deed No. 21524, the 1<sup>st</sup> Defendant transferred the said property to Rajakaruna, the 2<sup>nd</sup> Defendant-Appellant, for a sum of Rupees 30,000/- by Deed No. 21525 dated 4<sup>th</sup> March 1980.
- (8) The Plaintiffs assert that C.H. Weerasinghe had transferred the property in suit to the 1<sup>st</sup> Defendant without the sanction of the Court or of his guardian while he was insane, thus making Deed No. 41 null and void. Therefore, it was argued that Deed No. 21525 by which 1<sup>st</sup> Defendant transferred the impugned property to Rajakaruna, is also void as no title passed to Eron Singo, the 1<sup>st</sup> Defendant.

**Action Before the District Court**

- (9) The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff-Respondents instituted this action in the District Court of Panadura against the 1<sup>st</sup> Defendant [Eron Singo] and the 2<sup>nd</sup> Defendant [Rajakaruna], praying *inter alia*,
1. For a declaration of title to the property more fully described in the Schedule to the Plaint.
  2. A Declaration that Deeds No. 41 and No. 21525 are null and void.
  3. An interim and/or permanent injunction restraining the Defendants from entering the said property.
- (10) The District Court dismissed the action of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs. The Plaintiff-Respondents appealed against the said judgment in Case No. 85/87(F) and on 15<sup>th</sup> February 1990, the Court of Appeal set aside the judgment of the District Court and directed the District Court to hold a trial *de novo*.
- (11) The second trial commenced under the same case number in 1991 and at the conclusion of the trial, by his judgement dated 31.01.1997, the learned District judge held that both Deeds, i.e., No. 41 and No. 21525 were invalid.
- (12) Aggrieved by the said judgment the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant-Appellant preferred appeals to the Court of Appeal. [CA Case No. 509A/97(F) and CA Case No. 509/97(F) respectively].
- (13) Both appeals were consolidated and taken up for hearing and the Court of Appeal by its judgment dated 17<sup>th</sup> June 2016 dismissed the Appeals.
- (15) Being aggrieved by the Judgment of the Court of Appeal, the 2<sup>nd</sup> Defendant-Appellant preferred a leave to appeal application to this Court and Leave to Appeal was granted on the following questions of law, set out in

paragraphs 19 (i), (iv), (v), (viii) and (ix) of the Petition which are reproduced verbatim below;

- i. Did the Court of Appeal err in law by not taking into consideration that at the time of the execution of Deed No. 41 by Hector Weerasinghe, he was quite capable of managing his affairs as reflected by the uncontroverted evidence adduced at the trial in respect of his mental capacity?*
- iv. Was the Court of Appeal in error by not taking into cognizance that the 2<sup>nd</sup> Defendant being a bona fide purchaser was not bound to make application in terms of Section 578 of the Civil Procedure Code for a declaration that the said Weerasinghe was of sound mind prior to the execution of Deed No. 21525 by the 1<sup>st</sup> Defendant?*
- v. Whether our law prohibits a person who has been declared a person of unsound mind by a competent Court to enter into a contract when such a person was fully conscious and aware of what he intended to do and capable of understanding the transaction?*
- viii. Did the Courts below err in law by the conclusion that the presumption of lunacy created by the Court Order was in operation as the Defendants had not taken steps under Section 578?*
- ix. Did the Court below misdirect in law by insisting on a higher degree of proof which is not required by the Roman-Dutch Law?*

The learned Counsel for the Substituted 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff-Respondent-Respondents raised the following questions of law;

- 1. "Has the Defendant formulated issue No. 12 based on the fact that C.H. Weerasinghe executed deed No. 41 during the lucid interval."*
- 2. If so, that the Defendant admits that the deed was executed between the space of time between two fits of insanity either the Lucid interval to be proved by competent medical evidence as the Defendant failed to do so?"*

### The position of the 2<sup>nd</sup> Defendant-Appellant

- (16) The learned President's Counsel on behalf of the 2<sup>nd</sup> Defendant contended that C.H. Weerasinghe was of sound mind when he executed the Deed No.41 and that ample evidence had been led in the District Court to substantiate that position.
- (17) The 2<sup>nd</sup> Defendant primarily relied on the testimonies of the 1<sup>st</sup> Defendant and witnesses, O.J. Jayawardena and Notary Public Chandrapala Hettige, to establish that after being discharged, C.H. Weerasinghe had led a normal life, regained full sanity and Deed No. 41 had been executed by him while he was fully conscious and had the mental capacity to understand the nature of the transaction, i.e., the execution of the deed no 41.
- (18) The position of the 2<sup>nd</sup> Defendant was that, when C.H. Weerasinghe was discharged from the Angoda Mental Hospital in 1964, he had fully recovered from his mental illness according to 'expert medical opinion of the specialist doctors' at the hospital. He also sought to prove that C.H. Weerasinghe was of sound mind through the testimony of O.J. Jayawardena, a male nurse who had worked at the said Mental Hospital with whom C.H. Weerasinghe had spent the final 13 years of his life after he was released from the hospital.
- (19) Giving evidence at the trial, O.J. Jayawardena stated that he was a senior nursing officer who was attached to the Angoda Mental Hospital and that he had special knowledge of nursing mental patients. The witness had further stated that he had become acquainted with C.H. Weerasinghe while he was receiving treatment at the Mental Hospital. He observed that C.H. Weerasinghe possessed a sound knowledge of English and of Shakespeare and that during one of their light-hearted conversations he had expressed his desire to leave the hospital and Weerasinghe had requested the witness to keep him with the witness as his wife and son, [the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs], did not want to take him back on account of their social status. Having informed the 1<sup>st</sup> Plaintiff and having obtained permission from the doctors, the witness stated that C.H. Weerasinghe was discharged and taken to the witness' home where he remained for 13 years till his death. When



questioned as to why C. H. Weerasinghe had been lodged in his house, the witness stated that it was at the requests made by C.H. Weerasinghe and the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs. Jayawardena said that after C.H. Weerasinghe was brought to his place, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs visited him once every two to three months and the witness was paid for Weerasinghe's upkeep.

- (20) O.J. Jayawardena, testified to the effect that he would never have taken the risk of accommodating C.H. Weerasinghe at his residence where he lived with his spouse and children, if he had been mentally unsound. According to him, C.H. Weerasinghe did not exhibit abnormal behaviour during his 13 year-stay at his residence. On the contrary, the witness claimed that C.H. Weerasinghe gave English tuition to children in the neighborhood, accompanied his children to school, bought items needed for the household, went out alone, attended cricket matches and occasionally enjoyed an alcoholic drink and a cigarette. These items of evidence, the 2<sup>nd</sup> Defendant claims, establish that he was quite sane, had regained his natural state of mind and lived a very productive life for a person of his age.
- (21) In order to substantiate the assertion that C.H. Weerasinghe was of sound mind, memory and understanding at the time of execution of Deed No. 41, reference was made to the evidence of the Notary, Chandrapala Hettige who executed the deed. He had testified to the effect that when C.H. Weerasinghe visited him to give instructions regarding the drafting of the deed, *he appeared to be of sound mind* and that he did not have any doubts regarding his mental state.
- (22) To further substantiate the assertion, the attention of the court was drawn to evidence of the 2<sup>nd</sup> Plaintiff-Respondent, who accepted that it was his father's signature on Deed No. 41 (*vide* page 425 of the Brief) and that even the District Judge in his judgment accepted the placement of the signature of C.H. Weerasinghe, thus, it was contended that it further established that he was of sound mind, memory and understanding when the deed was executed.

- (23) The 2<sup>nd</sup> Defendant-Appellant has sought to justify the gifting of the property to the 1<sup>st</sup> Defendant-Respondent, by highlighting the evidence given by the 1<sup>st</sup> Defendant -Respondent during the trial. According to the 1<sup>st</sup> Defendant-Respondent's evidence, he was married to the niece of C.H. Weerasinghe and had been treated as his adopted child. The 2<sup>nd</sup> Defendant contrasted this with the estranged relationship between the Plaintiff-Respondents and C.H. Weerasinghe which is evidenced by the testimony of O.J. Jayawardena who stated that when the Plaintiff-Respondents visited him once every two to three months, they stayed only for a few minutes.
- (24) In his evidence, the 1<sup>st</sup> Defendant-Respondent stated that he used to visit C.H. Weerasinghe at witness Jayawardena's residence, who had stated that he wished to donate the property in suit to the 1<sup>st</sup> Defendant-Respondent. The 1<sup>st</sup> Defendant -Respondent also stated that when he went to the Notary Public's office on 2<sup>nd</sup> July 1977, he met C.H. Weerasinghe and two witnesses and the said deed was executed by C.H. Weerasinghe and that he too signed the deed accepting the said gift. He admitted that the same had been transferred in the name of the 2<sup>nd</sup> Defendant-Appellant in 1980 by Deed No. 21525 and strongly denied that C.H. Weerasinghe was of unsound mind at the time he transferred the land in his name.
- (25) To further buttress the 2<sup>nd</sup> Defendant-Appellant's position regarding C.H. Weerasinghe's mental state, attention was also directed towards the admission made by the 2<sup>nd</sup> Plaintiff-Respondent at the trial regarding his correspondence with his father after he was discharged from the mental hospital. It is to be noted that 2<sup>nd</sup> Plaintiff-Respondent had admitted that his father, while he was residing with O.J. Jayawardena, sent postcards to him and that he, in return, sent his father postcards to inform him of the dates of his to visits. It was suggested that the postcards had allegedly been destroyed by the 2<sup>nd</sup> Plaintiff-Respondent, which allegation was refuted by him. In the light of this evidence, it was submitted that Weerasinghe was not mentally deranged as the Plaintiff- Respondents had tried to make out when he was at Jayawardena's and could not have corresponded with him if he had been a lunatic.

- (26) With respect to the validity of Deed No. 21525, the 2<sup>nd</sup> Defendant-Appellant giving evidence at the trial stated that she did not know of C.H. Weerasinghe's mental disabilities, and only entrusted her Notary, Arthur Wijesuriya with the task of examining the title to the land. Arthur Wijesuriya, giving evidence, stated that he examined the title before he attested the deed and recommended to the 2<sup>nd</sup> Defendant-Appellant that the title was good and therefore at her request, attested the deed. The 2<sup>nd</sup> Defendant-Appellant claimed that she was not aware of the mental illness of C.H. Weerasinghe prior to and during the period material to the execution of the deed.
- (27) It was submitted that in any event, the 2<sup>nd</sup> Defendant is a bona fide purchaser for valuable consideration without any knowledge whatsoever of the mental ailments of C.H. Weerasinghe and that in the circumstances the 2<sup>nd</sup> Defendant-Appellant is entitled to the said property.

**The position of the Plaintiff-Respondents**

- (28) The Plaintiff-Respondents argued that what has to be decided is whether C.H. Weerasinghe executed Deed No. 41 during a lucid interval, which has been conceded by the original Defendants by issue No. 12 which states (in translation) "At the time Charles Hector Weerasinghe executed Deed No. 41, did he sign the deed voluntarily, conscious of what he was doing?"
- (29) The argument on behalf of the Plaintiff-Respondent was, that an insane person is presumed to be so, until it is shown that he has recovered and that the original Defendants on whom the burden of proof lay had failed to discharge that duty. The contention of the Plaintiff-Respondents is that C.H. Weerasinghe was mentally deranged up to his death in 1977. It was the contention of the Plaintiff-Respondents that he was lodged at the house of O.J. Jayawardena on the advice of his doctor who said that he should be kept in a place where he could be well provided for, and was close to the hospital so that he could be taken to the clinic every week (vide page 417 of the Brief).
- (30) In countering the evidence adduced by the Defendants regarding the mental state of C.H. Weerasinghe, the Plaintiff-Respondents argue that despite the

assertion that it was the “expert opinion of specialist doctors at the hospital” that C.H. Weerasinghe had fully recovered from his mental illness, no expert opinions were adduced during the trial. It was argued that the most important evidence that can be led to establish a person’s sanity is medical evidence. However, the 2<sup>nd</sup> Defendant-Appellant has primarily relied on the opinions of the male nurse, O.J. Jayawardena who cannot be regarded as an expert who is fully capable of assessing and submitting a professional opinion with respect to Weerasinghe’s mental state to the satisfaction of the court. With respect to the testimony of O.J. Jayawardena, the Plaintiff-Respondents have highlighted the admissions made by him when giving evidence, which points to the fact that C.H. Weerasinghe was of unsound mind even after he was discharged from the mental hospital.

- (31) According to O.J. Jayawardena, C.H. Weerasinghe suffered from simple schizophrenia and had experienced moments where he would zone out and stare into the distance (vide pages 474-475 of the Brief). He proceeded to admit that C.H. Weerasinghe would recover when given medication. The admission was also made that C.H. Weerasinghe was given psychopharmaceutical drugs on certain occasions, during his stay at O.J. Jayawardena’s residence. (vide; pages 470 and 478 of the Brief).
- (32) To further strengthen the assertion that C.H. Weerasinghe remained a mentally deranged individual to his death, the original Plaintiffs to the action, submitted two letters addressed to the 2<sup>nd</sup> Plaintiff-Respondent by O.J. Jayawardena marked P11 and P12. In the letter marked P11 dated 25<sup>th</sup> March 1972, O.J. Jayawardena states as follows with respect to C.H. Weerasinghe, “*he is also getting vitamin tablets and psychopharmaceuticals.*” In the letter marked P12 dated 9<sup>th</sup> October 1965, the male nurse states as follows, “*Mrs. Weerasinghe, his doctor is on maternity leave. So I am getting treatment for him from Dr. Sittampalam.*” Which confirms the position that that Weerasinghe continued to receive professional treatment for his mental disorder even after he was discharged from the hospital.
- (33) Commenting on the evidence pertaining to placement of C.H. Weerasinghe’s signature on Deed No. 41 and the Notary Public Chandrapala Hettige’s

evidence, the Plaintiff-Respondents argue that if those testimonies are inadequate to establish C.H. Weerasinghe's sanity. It was submitted that attention must be given to the fact that although the 1<sup>st</sup> Defendant-Respondent's claimed that he informed the Notary Public Chandrapala of C.H Weerasinghe's period of treatment at the Angoda Hospital (page 336 of the Brief), this was denied by the Notary Public who claimed that if this information had been divulged to him, he would not have executed the deed (page 356 of the Brief). Witness Chandrapala's evidence recorded in the first trial was adopted by the consent of the parties.

(34) The Plaintiff-Respondents also note that, in Deed No. 41 Eron Singho is referred to as the "step-son" of C.H. Weerasinghe, which they argued indicated that at the time of the execution of the Deed, Weerasinghe was under the insane delusion that he was married to Eron Singho's mother.

(35) The Plaintiff-Respondent's Counsel argued that the postcards supposedly sent by the 2<sup>nd</sup> Plaintiff Respondent's father contained no meaning, [pg. 427 of the Brief]. They claimed that if these postcards had not been destroyed, they would have proven that C.H. Weerasinghe was still mentally ill and receiving treatment. Therefore, due to lack of expert evidence, medical or psychiatric, the presumption of insanity persists, and Deed No.41 and the ensuing Deed No.21525 are invalid, according to the Plaintiff-Respondent.

### **The Legal position**

(36) The sanity of a person is presumed, [ *R vs Layton* 1849 4 Cox C.C 149 at155] unless the court adjudicates otherwise. If a court had declared someone to be insane, our law presumes this status still exists, though this can be disproved by clear evidence. This case concerns whether C.H. Weerasinghe who had been determined to be insane, could have signed a deed while adjudication was still in force. The first issue to be considered is whether he was having a lucid interval or had sufficiently recovered or rational. The second issue is what proof is needed to establish that he was of sound mind at the time of signing the deed, given the court's prior adjudication of insanity.

(37) The learned President's Counsel for the 2nd Defendant-Appellant argued that, according to the law, a person who has been declared of unsound mind by a

competent court does not need to seek a Court order to prove his sanity under Section 578 of the Civil Procedure Code. He also argued that, in this situation, the applicable law should be Roman Dutch Law and not English Law. I agree with this contention, as our law differs from English Law in that an adjudication is not considered conclusive proof of lunacy. In English Law, any contract entered into by an adjudicated person while the order is in place is null and void [*In re Walker L.R. 1905 1 Ch.8 at 160*].

(38) The learned Counsel on behalf of the Plaintiff-Respondents on the other hand argued that a person who is adjudicated insane is presumed to be so until it is established that he had a lucid interval at the relevant time or that he had recovered from lunacy and the burden of establishing that fact is on the party so contending, before the court. It is trite law that lunacy is a contractual disability. Our courts, however, have recognized that a person of unsound mind could enter into valid contracts during a lucid interval. A lucid interval as understood in law refers to a perfect restoration to reason or a temporary cessation of the insanity (*vide A.G. vs. Parnter (1792) 3 Bro. C. Rep. 442*) which in turn would enable such individual to understand the nature and effect of a deed or contract.

(39) This principle of law is laid down in the cases of *Hamid vs. Marikkar (1951) 52 NLR 269* and in the case of *Amarasekera vs. Jayanetti 64 CLW 17*.

In the case of *Amarasekera vs. Jayanetti* (supra), in which the appellant who was adjudged to be of unsound mind and incapable of managing his affairs had conveyed his interests in certain lands by way of deeds to the husband of the respondent, T.S. Fernando J. held,

“(1) ...an alienation of land executed *during a lucid interval* by a person adjudicated by the District Court to be of unsound mind and incapable of managing his own affairs, is valid even though the execution has taken place while the adjudication remains unreversed. [emphasis added]

(2) *That this question must be determined by the Roman Dutch Law and not by the English Law. The provisions of Chapter XXXIV of the Civil Procedure Code have not superseded the Roman-Dutch law on this point.”*

- (40) In the case of *Hamid vs. Marikar* (1951) 51 NLR 269, which arose in respect of a mortgage bond executed by a person who had been adjudicated to be of unsound mind at a time when the adjudication stood unreversed, Swan J., observed (at page 272);

*“Whether the mortgage bond entered into by Razeena Umma was null and void is a matter of interest. If it was executed by her during a lucid interval, it would, under the Roman-Dutch law, be considered valid. Under English law, however, once a person is adjudged to be of unsound mind and incapable of managing his affairs, any contract entered into by him, while that order stands, is null and void....Under the Roman-Dutch law, however, a contract made by a person, declared by a competent Court to be a lunatic and for whom a curator has been appointed, would be valid if it was made during a lucid interval.”*  
[emphasis added]

Swan J., proceeded to cite the position taken up in the South African case of *Prinsloo’s Curators vs. Crafford and Prinsloo* (1905) T.S. 669. In this case Prinsloo had, by order of Court been declared to be of unsound mind and curators were appointed. He married two years later and it was proved that he was no longer insane. It was contended that he could not contract while the order was in force. The Transvaal Supreme Court held that;

*“...an order declaring an alleged lunatic to be of unsound mind was not a judgment in rem but only operated, while in force, to create a rebuttable presumption that he was a lunatic.”*

- (41) Therefore, the rebuttable presumption of lunacy can be held to be recognized by our law. Professor Weeramantry in his “The Law of Contracts”- at page 467 draws the distinction between the Roman-Dutch law and English law in the following words;

*“It is always a question of fact whether the person in question was mentally defective at the time of his making a contract. If there has been an adjudication of lunacy by a Court, there would under our law be a presumption of continuance of this condition, but this is rebuttable by clear evidence to the contrary. Our law differs in this respect from the English law under which an*

*adjudication operates as conclusive proof of lunacy, and any contract entered into by the adjudicated person while such order stands is null and void.”*

- (42) Therefore, in light of the abovementioned observations, the inference that can be drawn is that our law does not prohibit a person who has been declared to be of unsound mind by a competent court to enter into a contract when it can be shown that he was of sound mind and understood the nature of the transaction at the time he entered into it. The rationale behind this principle is succinctly enunciated by Professor Lee in ‘Introduction to Roman-Dutch Law’ (5<sup>th</sup> Ed.) at page 115 as follows;

*“It is tempting to speak of unsoundness of mind as constituting a status; but it would not be correct to do so, for mental unsoundness is not necessarily permanent or constant, and the question which must be answered is not, ‘Has the man been declared mad?’ but, ‘Was he, in fact, incapable of understanding the particular transaction which is brought in issue?’ If the answer is negative, the transaction stands.’*

- (43) Considering these observations referred to above, the question of law No. (v) *“Whether our law prohibits a person who has been declared a person of unsound mind by a competent Court to enter into a contract when such a person was fully conscious and aware of what he intended to do and capable of understanding the transaction?”*, must be answered in the negative, that is, in favour of the Appellant.

#### **The evidence and burden of proof**

- (44) In light of the legal principles pertaining to the instant case, attention shall be directed towards the **first (i) and ninth (ix) questions of law** which are as follows;

*(i) Did the Court of Appeal err in law by not taking into consideration that at the time of the execution of Deed No. 41 by Hector Weerasinghe, he was quite capable of managing his affairs as reflected by the uncontroverted evidence adduced at the trial in respect of his mental capacity?*

*(ix) Did the Court below misdirect in law by insisting on a higher degree of proof which is not required by the Roman-Dutch Law?*



In light of the aforementioned judicial decisions, [as referred to in paragraphs 41-43] it can be observed that a declaration of lunacy has no conclusive effect and the logical inference that can be drawn is that, when such declaration remains unrevoked the only legal effect would be to shift the burden to the person who asserts the validity of the impugned contract to satisfy the Court that the contractor was sane at the relevant time.

- (44) Commenting on the onus of proof Solomon J in the South African case of *Prinsloo's Curators vs. Crafford and Prinsloo* (1905) T.S. 669, observed that;

*“...an order declaring a person to be of unsound mind is conclusive proof of the fact that at the time that the order was made such person was insane and consequently an order of that nature merely shifts the onus of proof. For there is no doubt a presumption that when a person has been declared to be of unsound mind he continues to be of unsound mind, but it is open to him at any time to bring evidence to satisfy the Court that subsequent to the date of the order he became sane and that consequently a contract entered into by him was a valid contract...:”*

- (45) Counsel on behalf of the Plaintiff-Respondents, on the other hand argued that the presumption of lunacy/insanity created by a declaration of the court can only be rebutted by leading expert evidence which is the most important evidence that can be led to establish a person's sanity. Their contention is that a lay individual's evidence can *only supplement* expert evidence and that there was no strong medical evidence to support the alleged existence of a lucid interval at the time the transaction was entered into. In this vein, the Plaintiff-Respondents refer to the dicta of De Villiers J.P. in the case of *Estate Rehne and Others vs. Rehne*,

*“I also take into consideration the expert evidence led to the effect that persons subject to delusions may appear quite sane to the lay mind, and that they are often secretive and, in many cases, will not tell their delusions to everyone but only to their doctors, and that they are apt to disguise their delusions.”*

- (46) The crux of the case rests on the mental state of C.H. Weerasinghe. Although it is not a *sine-qua-non*, given the facts and circumstances of the case before us, producing some evidence emanating from a source having expert knowledge

of the subject of lunacy would have been desirable on the part of the Defendants to determine whether the disorder was still present, as the legal burden of rebutting the presumption was on the Defendant.

- (47) In the absence of such evidence, the finding of fact on the part of the learned district judge in holding that C.H. Weerasinghe was a person of unsound mind until his death cannot be faulted. The learned district Judge had relied on the documents marked as P11 and P 12, both are letters written by witness Jayawardena to the 2<sup>nd</sup> Plaintiff. In one letter written in 1977, [P11] he refers to C.H Weerasinghe “*getting vitamin tablets and other psychopharmaceuticals*”. The learned District judge, in concluding, had stated that, having considered the evidence placed and the written submissions tendered by both parties, he accepts the evidence placed on behalf of the Plaintiffs, suggesting impliedly that the Defendants have failed to discharge the burden of rebutting the presumption of lunacy.
- (48) It is trite law that a factual finding by the original court should not be disturbed on appeal, unless the finding is visibly erroneous. Therefore, the question of law No. (ix) regarding whether the Court below misdirected itself in law by insisting on a higher degree of proof which is not required by the Roman-Dutch Law, must be answered in the negative.
- (49) In light of this standard of proof, the Appeal was dismissed by the Court of Appeal on the finding that the fact that C.H. Weerasinghe was experiencing a lucid interval had not been proved at the trial as there was no evidence pointing to the assertion that he was sane when the deed was being executed and the Court of Appeal observed that they saw no reason to interfere with the judgment of the learned District Judge.
- (50) It is pertinent to note that the learned District Judge had the advantage of observing the demeanor and the deportment of the witnesses and had analyzed the entire gamut of evidence placed before the court, which is amply reflected in the judgment. In the case of *Gunawardena V. Cabral and Others* (1980) 2 Sri. LR 220, it was held that the appellate court will set aside inferences drawn by the trial Judge only if they amount to findings of fact based on: - (a) inadmissible evidence; or (b) after rejecting admissible and relevant evidence; or (c) if the

inferences are unsupported by evidence; or (d) if the inferences or conclusions are not rationally possible or Perverse.

- (51) On the perusal of the judgement of the learned District Judge, it cannot be said that the findings and the inferences drawn by him are vitiated by any of these considerations and therefore as rightly held by the Court of Appeal, there was no justification for interfering with the conclusions reached by the learned District Judge which are based on the evidence placed before him. Therefore, the **first question of law also must be answered in the negative.**

#### **The Applicability of Section 578**

- (52) Section 578 of the Civil Procedure Code reads as follows;

*“578. Further inquiry, when a person of unsound mind so found alleged to have recovered.*

*(1) When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent by petition to the District Court, or if the Court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the Court may institute an inquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs.*

*(2) The inquiry shall be conducted in the manner provided in section 560 and the four following sections of this Ordinance; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the Court shall make an order for his estate to be delivered over to him, and such order shall be final.”*

- (53) As regards capacity of a lunatic to contract during a lucid interval, the settled position is that our common law [Roman Dutch law] on this matter must be taken to have superseded the provisions of Chapter XXXIX of the Civil Procedure Code (vide *Amarasekera vs. Jayanetti* (supra)). This, however, does not imply that the provisions of the Code are of no avail. According to our law, if a party to a contract is insane at the time of contracting, the contract

is null and void even though the other party contracted bona fide without knowledge of insanity (vide *Soysa vs. Soysa* (1916) 19 NLR 314). Therefore, if an application had been made under Section 578 to establish the sanity of an individual declared to be a lunatic by a court of law, it would be beneficial to that individual and other interested parties in securing the validity of contracts or deeds executed for or on behalf of such individual.

- (54) In the present case, however, the 2<sup>nd</sup> Defendant, who had purchased his rights to the property from the 1<sup>st</sup> Defendant, was not aware that the original owner C.H Weerasinghe was a person who had been adjudicated as a person of unsound mind by the court. He had merely got the property transferred to himself from the 1<sup>st</sup> Defendant after having checked the land registry as to the devolution of title, and having satisfied himself that 1<sup>st</sup> Defendant Eron Singho had title to the land in issue, he had proceeded with the transfer of the property. Therefore, the questions of law [no. iv and viii] pertaining to whether the Court of Appeal erred *by not taking into cognizance that the 2<sup>nd</sup> Defendant being a bona fide purchaser was not bound to make application in terms of Section 578 of the Civil Procedure Code for a declaration that the said Weerasinghe was of sound mind prior to the execution of Deed No. 21525 by the 1<sup>st</sup> Defendant* and whether *the Courts below err in law by the conclusion that the presumption of lunacy created by the Court Order was in operation as the Defendants had not taken steps under Section 578*, must be answered in the affirmative, in favour of the Appellant.
- (55) In conclusion, it can be held, however, that the Defendant-Appellants had failed to prove that C.H. Weerasinghe, [in respect of whose property his wife was appointed by the District Court to manage his property until said lunatic (Weerasinghe) is of sound mind and understanding], was of sound mind, memory and understanding at the time of the execution of Deed No. 41. Therefore, the conclusion of the learned District judge that, the Deed No. 41 is *null and void ab initio* and consequently, the 1<sup>st</sup> Defendant-Respondent had no legal title to pass on to the 2<sup>nd</sup> Defendant-Appellant under Deed No. 21525, thus Deed No. 21525 should also be held to be null and void, in my view, cannot be faulted.

Conclusions;

I have answered the questions of law referred to in subparagraphs (iv), (v) and (viii) of paragraph 19 of the Petition of the Appellant in favour of the Appellant and the questions of law referred to in subparagraphs (i) and (ix) of the said paragraph of the Petition in favour of the Respondents.

As referred to in this judgement, questions (i) and (ix) are the primary issues, namely whether the Appellant [The 2<sup>nd</sup> Defendant] and the 1<sup>st</sup> Defendant have rebutted the presumption of insanity [of C.H. Weerasinghe] by adducing sufficient evidence. For the reasons set out, I have concluded that the finding of the learned trial judge on that issue cannot be faulted. In the circumstances, the judgement of the District Court and the Court of appeal are affirmed, and the appeal dismissed.

The substituted 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff Respondent -Respondent would be entitled to the cost of this matter.

*Appeal Dismissed.*

JUDGE OF THE SUPREME COURT

PRIYANTHA JAYAWARDENA, PC. J

I agree

JUDGE OF THE SUPREME COURT

MURDU FERNANDO, PC. J

I agree

JUDGE OF THE SUPREME COURT