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

SC APPEAL NO. 69/12

SC HCCA LA NO. 319/10

HCCA Gampaha NO. 24/2006(F)

DC Gampaha NO. 30752/L

K.A. Ranjith Amarasiri Perera
209, Pahala Yagoda,
Ganemulla.

PLAINTIFF

-VS-

Senadeerage Don Chandrasiri
519, Kuda Bollathe
Ganemulla

DEFENDANT

AND

Senadeerage Don Chandrasiri
519, Kuda Bollathe,
Ganemulla.

DEFENDANT-APPELLANT

-VS-

K.A. Ranjith Amarasiri Perera
209, Pahala Yagoda,
Ganemulla.

PLAINTIFF-RESPONDENT

AND NOW

K.A. Ranjith Amarasiri Perera
209, Pahala Yagoda, Ganemulla.

PLAINTIFF-RESPONDENT-APPELLANT

-VS-

Senadeerage Don Chandrasiri

519, Kuda Bollathe,

Ganemulla.

DEFENDANT-APPELLANT-RESPONDENT

AND NOW BETWEEN

Senadeeralage Don Chandrawathie

209, Phala Yagoda, Ganemulla

SUBSTITUTED PLAINTIFF-RESPONDENT-APPELLANT

- Vs –

Senadeeralage Don Chandrasiri

519, Kuda Bollathe,

Ganemulla.

DEFENDANT-APPELLANT-RESPONDENT

Before : Vijith K. Malalgoda, PC, J

E.A.G.R. Amarasekara, J

Mahinda Samayawardhena, J

Counsels : Kuvera de Zoysa PC with Shabry Haleemdeen instructed by Ananda Kulawansa for the Plaintiff-Respondent-Appellant.

S.N. Vijithsingh with Iranga Perera for the and Sandamal Rajapakse for the Defendant- Appellant-Respondent.

Argued on : 13.06.2023

Decided on : 22.08.2024

E. A. G. R. Amarasekara, J.

Baby Nona, the mother of the Defendant Appellant Respondent (Hereinafter sometimes referred to as the Defendant) and the mother-in-law of the Plaintiff Respondent Appellant (Hereinafter sometimes referred to as the Plaintiff) was the original owner of the property in suit. She had become the owner by way of Deed bearing No. 1765 dated 28.08.1941.

The said Baby Nona by Deeds of gift bearing Nos. 165 dated 18.12.1974 and 166 dated 18.12.1974 gifted undivided half share of the said property reserving the right to revoke respectively to the Defendant and Gamaralalage Gunarathne.

Thereafter, the said Baby Nona by Deed of Revocation bearing No. 2070 dated 02.04.1980 revoked the aforesaid Deed of Gift bearing No. 166 which was in favour of the said Gamaralalage Gunaratne and by Deed of Revocation bearing No. 13878 dated 17.03.1984 revoked the aforesaid Deed of Gift bearing No. 165 in favour of the Defendant.

Subsequently, the said Baby Nona by way of Deed of Transfer bearing No. 2523 dated 04.08.1987 transferred the entirety (including the portions originally gifted to the Defendant and to the said Gamaralalage Gunaratne) of the said property to the Appellant who was her son in law.

It appears that said Gamaralalage Gunaratne neither disputed nor challenged the said revocation by the said Baby Nona nor the later Transfer of his portion as well to the Plaintiff.

The Plaintiff instituted an action bearing case No. 30752/L by the Plaint dated 24.12.1987 against the Defendant seeking substantial reliefs inter alia;

(a). For a declaration that the Defendant is in unlawful occupation of the premises more fully described in the schedule to the Plaint, bearing assessment No. 519,

(b). For the ejectment of the Defendant from the said premises, and

(c). For damages.

As per the amended Answer dated 18.11.1993, among other things, the Defendant prayed for the dismissal of the Plaint and, in the alternative, for an order granting the Respondent the right to continue occupying the premises identified in the Plaint, bearing assessment No. 519, until he receives payment for the improvements he made to those premises, which amounts to Rs. 80,000/=.

The Plaintiff filed amended replication dated 19.05.1994 refuting the claims made by the Defendant.

After the trial, learned District Judge delivered his Judgment dated 08.02.2006 in favour of the Plaintiff rejecting the claims made by the Defendant. Especially the learned District Judge answered the issues No.21,22 and 23 in favour of the Plaintiff. Those issues were raised to question the validity of the aforesaid Deeds No.13878 and 2523 which revoked the Deed No.165 that gifted ½ of the premises to the Defendant and then transferred the entirety to the Plaintiff as aforesaid, and the mental capacity of Baby Nona to execute them. The learned District Judge was of the view that the Defendant failed to prove those issues which were raised

on behalf of the Defendant. It should be noted that the issue No.23 raised on behalf of the Defendant poses the question whether Baby Nona did not have the mental capacity to execute the deed of revocation Number 13878 which revoked the deed of gift made to the Defendant at the time of executing the said deed. As it was an issue raised by the Defendant based on what he averred, basically it is the Defendant's task to establish the position proposed by that issue. Section 101 of the Evidence Ordinance states that "*whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist".*

The Defendant, being aggrieved by the said Judgment of the District Judge of Gampaha in the case bearing No. 30752/L, preferred an Appeal bearing No. WP/HCCA/GPH/24/2006 (F) to the Civil Appellate High Court of the Western Province holden in Gampaha. Subsequently, the appeal was taken up for argument and the Honourable High Court Judges of the Civil Appellate High Court of Gampaha pronounced their judgment on 31.08.2010 allowing the Appeal of the Defendant with costs.

It appears that the learned High Court Judges were of the view that it was the Plaintiff who should prove that Baby Nona was in proper mental status to understand the gravity of her acts at the time of executing the relevant deeds and hence, the learned District judge erred in his decision in coming to the conclusion that the said burden lies on the Defendant- vide page 3 of the High Court Judgment. As it is the Judgment of the learned High Court Judges that is being challenged in this appeal, I now quote the following parts from the High Court Judgment for easy perusal.

"*In my view, there is no necessity for the defendant to prove that Babynona was suffering from mental disorder because it was a fact admitted by Babynona in her evidence and all parties to the case. In any event, the Medical Certificate which was issued by the Mental Hospital sought to be proved was not objected to at the close of the defendant's case.*

It was held in the case of ***Sri Lanka Ports Authority Vs. Jogolinija-Boal East (1981 1 Sri. L.R. 18)*** *that no objection is taken, when at the close of a case documents are read in evidence, they are evidence for all purposes of law. This is the "curses curiae" of the Civil Court.*

In the circumstances, the Medical Certificate was only of corroborative value and even without the certificate the fact that Babynona was suffering from a Mental disorder has been established by admission. In the circumstances, the question arises that as to whether the impugned deeds were executed during the lucid interval that any mental patient becomes normal. But, unfortunately this issue has never been raised at the trial.

In observing the judgment, it is thus, clear that the learned District Judge has placed the burden of proof on the wrong party. On a careful consideration of the evidence available, I am of the view that Babynona was not suffering from the Mental disorder during the period material to the execution of the impugned deeds was not sufficiently established by the respondent. Therefore, I hold that the respondent has failed to prove the title to the premises in suit." (In these quoted parts the term 'Respondent' is used to refer to the Plaintiff as he was the Respondent before the High Court.)

Being aggrieved by the said Judgment, the Plaintiff filed a leave to appeal application to this Court and leave was granted on the following questions of law – vide Journal Entry dated 23.03.2012.

Question of Laws allowed on 23.03.2012 are as follows;

1. Has the Civil Appellate High Court erred in its decision by placing the burden of proof of establishing the mental capacity of Baby Nona on the wrong party?
2. Has the Civil Appellate High Court erred in its conclusion that the burden placed on the Appellant has not been discharged?

In his Petition the Plaintiff, among others, prays to set aside the High Court Judgment and affirm the District Court Judgment.

When this matter was taken up for argument on 13.06.2023, both parties informed this Court that they will restrict their appeals only to the two questions of law on which the leave had been granted. Thus, this Court need not go into the question whether Baby Nona could have cancelled the aforesaid deeds of gift without resorting actions filed in the relevant Courts.

As per the above quoted paragraphs of the High Court Judgment, the learned High Court Judges have expressed its observation as follows;

"*In the circumstances, the question arises that as to whether the impugned deeds were executed during the lucid interval that any mental patient becomes normal. But, unfortunately this issue has never been raised at the trial*".

It is clear that learned High Court Judges erred in the said observation. As mentioned before issue No. 23 which was raised by the Defendant specifically focused on the fact whether Baby Nona had the mental capacity at the time of executing deed No.13878. Even issue No.22 focused on her ability to revoke- vide page 6 of the High Court Judgment and page 84 of the proceedings. If it was done during a lucid interval during a mental illness in which she could understand the gravity of her actions as explained below, she has the capacity.

Learned Counsel for the Defendant has referred to Halsbury's Laws of England, 4th Edition Vol.30 page 580 which speaks of the presumption of Continuance of Mental Disorder as follows;

"*Where a person has been proved or is admitted to have so mentally disordered as to be incapable for purpose of contract or disposition, the law presumes such a condition to continue until it is proved to have ceased; and the burden of proving recovery or a lucid interval, as the case may be, lies on the person alleging it. The evidence to prove a recovery or a lucid interval must be as strong and demonstrative of the fact as when the object is to prove mental disorder*"

The above speaks of English law and this appears to be the position in Indian law too. As per above quoted part, it appears that as there is a presumption of continuance the party who assert or rely on the validity of the contract has to prove that it was made during a period when the mental disorder has ceased or the relevant person was recovered from such disorder or during a lucid interval. However, our common law is Roman Dutch Law (RDL) and the RDL principles in this regard is found in the Wille's Principles of South African law in page 232 which have also been referred to in the written submissions of the Defendant. It states as follows;

"*It is always a question of fact whether the person in question was mentally ill at the time of his performance of a juristic act. If there has been a declaration of mental illness by the court,*

this is conclusive proof of such illness at the time; but there is only a presumption of the continuation of this condition, and this is rebuttable by clear evidence to the contrary. Hence, if it is shown that he performed the relevant juristic act during a lucid interval, i.e. period when he was in possession of his faculties and hence had the capacity to act, such act is valid and he is bound thereby. ***Conversely even though there has been no declaration of mental illness, a juristic act performed by a person is null and void if it is shown that, at the relevant time, he was actually mentally ill and hence lacked the capacity to act, as discussed above****."* (highlighted by me)

The above quoted paragraph indicates that when there is a declaration made by Court, it is a conclusive proof of such mental illness as at the time such declaration was made and there is a presumption of the continuation of that condition. If that presumption exists then the burden is on the party who claims the action of the person who is presumed to have a mental disorder valid. However, the highlighted portion above indicates that when there is no such declaration made by a Court, the acts performed by the person alleged to be suffering from mental illness become null and void **when it is shown that the said person was actually mentally ill** and **hence lacked the capacity to act at the relevant time**. (highlighted by me). Thus, it has to be shown by the person who alleges such acts performed by the alleged mentally ill person are invalid.

At this juncture, I prefer to refer to section 555 to 565 of the Civil procedure Code where the provisions are available for application, inquiry and adjudication of whether a person is of unsound mind and incapable of managing his affairs. In the matter at hand, no such adjudication or any other declaration to similar effect made by a Court has been tendered in evidence. Thus, such presumption mentioned above cannot be arisen. This indicates that the burden was on the Defendant to prove that the Baby Nona did not have a proper mental condition to revoke the gifts made to him and to Gunaratne and execute the deed of transfer to the Plaintiff at the time those deeds were executed as it was the Defendant who alleged the mental incapacity of Baby Nona in his answer and raised the said issues mentioned above.

In this regard it is worthwhile to quote the following passage from 'The Law of Contract' by C.G. Weeramantry Vol.1 page 469.

"*Indeed the mere presence even of delusions not altogether unconnected with the subject matter of the contract does not in modern law ipso jure destroy contractual capacity unless the delusions constitute the real reason or motive of the transaction.* ***The burden of establishing a contracting party's unsoundness of mind of such character as to impair his understanding of the nature and the quality of his act is imposed upon the party alleging its existence***." (highlighted by me)

In the foot note relating to the above quoted passage, it has also been referred to one of our superior court decisions made in **Soysa v Soysa 19 N L R 314**.

In this regard the learned Counsel for the Plaintiff has brought this Court's attention to the following decisions.

Hameed v Marikar 52 NLR at page 272, where it was held that,

"*Whether the mortgaged bond entered into by Razeena Umma was null and void, is a matter of interest. If it was executed by her in a lucid interval, it would under the Roman Dutch Law*

be considered valid. Under the English law however once a person is adjudged to be of unsound mind and incapable of managing his affairs any contract entered into by in while that order stands is null and void. In India the position is the same. Under the Roman Dutch Law however a contract made by a person declared by a competent court to be a lunatic and for whom curator has been appointed would be valid if it was made during a lucid interval."

Pheasant v Warne 1922 A D, where Innes CJ stated at p 485:

"*And a court of law called upon to decide a question of contractual liability depending upon mental capacity must determine whether the person concerned was or was not at the time capable of managing the particular affair in question that is to say whether his mind was such that he could understand and appreciate the transaction into which he purported to enter*."

Prinsloo's Curators Bonis v Crafford & Prinsloo 1905 TS 669, where Solomon J stated at page 673 that

"*The test was whether the person concerned was of sufficiently sound mind and understanding to realize the nature of the obligation into which he was entering and to appreciate the duties and responsibilities created by that contract."'*

As stated above, as there was no declaration or adjudication by a court to state that Baby Nona was of unsound mind and/or she was not capable of managing her affairs that is to say whether her mind was such that she could not understand and appreciate the transaction into which she purported to enter, it was the task of the Defendant to establish such incapacity existed at the time of executing the impugned deeds. Thus, it is clear that the learned High Court Judges erred in that aspect. Even though the Defendant's Counsel made submissions on shifting of the burden of proof, first the Defendant must prove what he asserts.

In that backdrop, now I will look at the available evidence to see whether the Defendant was able to establish that Baby Nona was not in a proper mental condition when she executed the relevant deeds.

Aforesaid Baby Nona herself has given evidence at the trial on behalf of the Plaintiff, and the learned District Judge has not made any observation to the effect that she was incapable of understanding the questions posed to her; or, that she was in anyway incapable of giving evidence; or, that she showed any mental incapacity to understand and respond. She gave her evidence in 2000. This was after the said hospitalization referred to in the High Court Judgment. There is no evidence that she was treated for mental illness after coming back from the mental hospital. With regard to hospitalization in the mental hospital what she has admitted is that she was taken by others without her knowledge- (vide page 98 of the brief.) and even though she was taken there to the mental hospital, she was told that her condition was not serious. -vide pages 98 and 99 of the brief. In her evidence, she has said that impugned deeds were her voluntary acts. The way she has answered does not indicate that she was suffering from any mental illness which has made her incapable of understanding the gravity of her actions at the time she was giving her evidence. As said before the learned District Judge who heard her evidence has not made any observation in that regard. During the cross examination the medical report mentioned in the High Court Judgment has been marked as V3. V3 has been issued in 1988 and it indicates that she was warded at the mental hospital from 08.04.80 to 18.05.80. It only says that she shows the signs and symptoms of schizophrenia and the medical officer's opinion is that she is suffering from schizophrenia. However, it does not indicate that

she was unable to understand the gravity of her actions at the time she was taken in as a patient or while she was treated or when she was released. Whatever it is, it relates to the time period mentioned in that report. Even the Plaintiff and his wife (daughter of Baby Nona) have admitted that Baby Nona was admitted to the mental hospital but neither of them has said that she was in a state of mind that cannot understand the gravity of her action. The mere admission of admitting to a mental hospital in April of 1980 for a few weeks does not prove the fact that when Baby Nona revoked the deed of gift made to the Defendant in 1984 and executed the deed of transfer to the Plaintiff in 1987, she was not in a proper mental capacity to understand what she was doing.

The Defendant in his evidence has stated that her mother Baby Nona had a mental illness and first she was treated by a native doctor called Weerasena and then she was hospitalized at the mental hospital. Though he has said that her mental state was not good enough to execute a deed, aforesaid medical report does not support such opinion. On the other hand, he also speaks of such native treatment commencing from 30.03.1980 onwards. Once the Defendant has stated that her mother was in the mental hospital and he visited her once in two weeks throughout a year -vide page 159 of the breif. However, the aforesaid report marked V3 clearly indicates that she was hospitalized only from 08.04.1980 to 09.05.1980. This indicates that the Defendant was exaggerating facts for his benefit. Thus, his evidence cannot be relied on as to the nature of the mental condition of Baby Nona. Whatever it is, he also does not speak of her mental status as at 1984 or 1987.

One Juwan Appuhamy has given evidence for the Defendant. He has stated that the mother of the Defendant had a mental illness and she was of absence of her mind and a native doctor called Stephen treated her but he cannot remember when it was. I will refer to the evidence of this alleged native doctor's evidence later in this Judgment. However, said Juwan Appuhamy's evidence does not reveal that Baby Nona was mentally incapable to understand the gravity of her acts when she revoked the deed of gift written in favour of the Defendant in 1984 or when she transferred the subject matter to the Plaintiff in 1987.

The next witness, Jayaweera Perera, who gave evidence, was a helper of the Defendant in his masonry work. He also speaks of Defendant's mother's mental illness that occurred in 1980 and the treatment made by the aforesaid native doctor. He has stated that Baby Nona did not have a mental capacity to understand what was written on a paper. It is not revealed how he came to this conclusion. On the other hand, he is not a suitable witness to speak of the mental capacity of a person and whatever it is, he speaks of what he saw in 1980.

The other witness for the Defendant was the said native doctor named Stephen Weerasena. In cross examination, when questioned, he had stated that he cannot remember his registration number as a native doctor. He has also said that he has not brought any certificate to show that he is authorized to treat patients. Further, he has said that he enters the name of the patient in his books but did not bring it to Courts- vide page 215 of the brief. However, in re-examination he has said that he did not take the book to the patient's house. As per the evidence given at page 214 of the brief, he has treated only twice. However, through him, the Defendant has marked four small notes containing apparent native prescriptions. These notes do not contain the name of the patient or name of the doctor or doctor's registration number. Out of those, only one note contains a date which is 02.04.80. Therefore, there is nothing to show that he is qualified to treat mental patients or to give an opinion as to the nature of the mental condition.

In the examination in chief, apparently when it was suggested, he has said that he treated the patient in April of 1980. In the beginning of cross- examination, he has said it was in or around 1954. At page 216 of the brief, he has said that he cannot remember the dates but had he brought his books, he could have revealed the dates. However, as said before, he neither have brought such books to Court nor had taken them when he went to treat her. At one occasion he has said that the illness was insanity and, on another occasion, has said that it was gout or rheumatism. Whatever it is, he speaks of treating Baby Nona before she was admitted to the mental hospital. He clearly says that he informed that he was not able to treat her and take her to any place and thereafter she was taken to Angoda (Mental Hospital). Thus, he has spoken of what has happened in 1980 but not in 1984 or 1987. Thus, his evidence is not acceptable to consider that Baby Nona was not in a proper mental capacity when she revoked the deed of gift written in favour of the Defendant in 1984 or when she transferred her rights to the Plaintiff in 1987.

The last witness for the Defendant was one Maha Withanage Joseph who also has just stated that the Defendant's mother had something similar to a mental illness but does not reveal why he says so or when he came to know that. Thus, this evidence also is not adequate in establishing that Baby Nona was mentally ill to the extent not to understand the gravity of her actions during the time she revoked the deed of gift executed in favour of her son, the Defendant in 1984 or when she executed the deed of transfer to the Plaintiff in 1987.

What she revoked in 1980 was the Deed of gift No.166 by executing deed No. 2070. That was the gift made to Gunaratne and not to Chandrasiri, the Defendant. Gunaratne has not challenged the revocation of his gift, it seems. On the other hand, as indicated above, other than she was suffering from some mental illness, there was no acceptable evidence to say that she was not in a position to understand the gravity of her action. She has been discharged from the mental hospital in May 1980, most probably after the recovery. There is no evidence that she suffered from a serious illness after that. The Deed No.165 which was the gift given to the Defendant was revoked only in 1984 by Deed No.13876. The deed which transferred the subject matter to the Plaintiff took place in 1987.When Baby Nona gave evidence in 2000, the learned District Judge, as the judge who observed her while giving evidence, has not recorded any observation as to her incapacity. As there was no adjudication or declaration as to her mental incapacity, there was no presumption that the mental disorder of Baby Nona continued from 1980 even after her release from the mental hospital. As such, the learned High Court Judges erred in their findings. Hence, for the reasons discussed above, the two questions of law mentioned above has to be answered in the affirmative.

Therefore, this appeal is allowed with costs. The Judgment of the High Court dated 13.07.2010 is set aside and the Judgment of the learned District Judge dated 08.02.2006 is restored and affirmed.

Appeal allowed with costs.

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Judge of the Supreme Court.

Hon. Vijith. K. Malalgoda

I agree.

…….

Judge of the Supreme Court.

Hon. Mahinda Samayawardane

I agree.

……

Judge of the Supreme court.