

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

In the matter of an Appeal

1. Niriellage Jayamini Keerthisheeli  
No.106/2, Wattegedera Road,  
Maharagama.
2. Niriellage Dhammadevomittha Upasena alias  
Devamittha Upasena Niriella.  
No.174/9, Balika Nivasa Road, Rukmale  
Pannipitiya.
3. Niriellage Aruna Kumara Upasena alias  
Kumara Upasena Niriella.  
No.662/A, Eeriyawatiya Road,  
Kiribathgoda

**Plaintiff**

SC Appeal 179/2014  
SC/HC(CA)/LA No. 465/2013  
WP/HCCA/MT/143/07 (F)  
DC Mt. Lavinia Case No. 33/03/Trust

Vs

Niriellage Shanthi Mangalika Upasena alias  
Shanthi Mangalika Upasena Niriella.  
No.130/8, Wijeya Mawatha,  
Wattegedera Road,  
Maharagama.

**Defendant**

**AND NOW**

Niriellage Shanthi Mangalika Upasena alias  
Shanthi Mangalika Upasena Niriella.  
No.130/8, Wijeya Mawatha,  
Wattegedera Road,  
Maharagama.

**Defendant-Appellant**

Vs

1. Niriellage Jayamini Keerthisheeli  
No.106/2, Wattegedera Road,  
Maharagama.
2. Niriellage Dhammadevomittha Upasena alias  
Devomittha Upasena Niriella.  
No.174/9, Balika Nivasa Road, Rukmale  
Pannipitiya.
3. Niriellage Aruna Kumara Upasena alias  
Kumara Upasena Niriella.  
No.662/A, Eeriyawatiya Road,  
Kiribathgoda

**Plaintiff-Respondents**

**AND NOW BETWEEN**

Niriellage Shanthi Mangalika Upasena alias  
Shanthi Mangalika Upasena Niriella.  
No.130/8, Wijeya Mawatha,  
Wattegedera Road,  
Maharagama.

**Defendant-Appellant-**

**Petitioner- Appellant**

Vs

1. Niriellage Jayamini Keerthisheeli  
No.106/2, Wattegedera Road,  
Maharagama.
2. Niriellage Dhammadevamittha Upasena alias  
Devamittha Upasena Niriella.  
No.174/9, Balika Nivasa Road, Rukmale  
Pannipitiya.
3. Niriellage Aruna Kumara Upasena alias  
Kumara Upasena Niriella.  
No.662/A, Eeriyawatiya Road,  
Kiribathgoda

**Plaintiff-Respondent-  
Respondent- Respondents**

Before: Sisira J. de Abrew J  
P.Padman. Suresena J  
Gamini Amarasekera

Counsel: Rassika Dissanayake with Rajitha Haturusinghe  
for the Defendant-Appellant-Petitioner-Appellant  
L.B.J. Peiris with A.D.G. Rubasinghe for the  
Plaintiff-Respondent-Respondent-Respondents

Written submission  
tendered on : 12.12.2014 by the Defendant-Appellant-Petitioner-Appellant  
23.2.2015 by the Plaintiff-Respondent-Respondent-  
Respondents

Argued on : 8.7.2020

Decided on: 9.9.2020

Sisira J. de Abrew, J

The learned District Judge by his judgment dated 13.12.2007 held the case in favour of the Plaintiff. Being aggrieved by the said judgment of the learned District Judge, the Defendant appealed to the Civil Appellate High Court of Mount Lavinia and the learned Judges of the Civil Appellate High Court by their judgment dated 2.10.2013 dismissed the appeal. Being aggrieved by the said judgment of the learned Judges of the Civil Appellate High Court, the Defendant appealed to this court and this court by its order dated 1.10.2014 granted leave to appeal on questions of law set out in paragraphs 10(a) to (c) of the petition of Appeal dated 11.11.2013 which are set out below.

1. Whether the learned District Judge and the Honourable High Court Judges have erred in law holding that there was a Constructive Trust established in favour of the Respondents despite the fact that the Respondents had no *locus standi*/legal standing to file an action as constituted in their plaint.
2. Whether the learned District Judge and the Honourable High Court Judges have erred in law holding in favour of the Respondents despite the fact that the alleged cause of action to obtain a decree of a Constructive Trust does not fall to any category of Constructive Trust contemplated in Chapter IX of the Trust Ordinance.
3. Whether the learned District Judge and the Honourable High Court Judges have failed to evaluate the evidence adduced at the trial in coming to the said conclusion as the evidence revealed that in fact late

K.A. Upasena had no intention whatsoever either to retain the beneficial interest for himself or to pass on to the Respondents.

Facts of this case may be briefly summarized as follows. The three plaintiffs and the defendant in this case are sisters and brothers.

Niriellage Upasena who is the father of the Plaintiff-Respondent-Respondents (hereinafter referred to as the Plaintiff-Respondents) and the Defendant-Appellant-Appellant (hereinafter referred to as the Defendant-Appellant) gifted the property in question by Deed No.529 dated 11.6.2001 to the Defendant-Appellant. This was an irrevocable gift and the donor Niriellage Upasena did not keep the life interest of the property. Niriellage Upasena died in June 2002. After the death of Niriellage Upasena, the Plaintiff-Respondents filed this case in the District Court of Mount Lavinia against the Defendant-Appellant seeking, inter alia, a declaration that the Defendant-Appellant holds the property in question in trust in favour of the Plaintiff-Respondents and to retransfer  $\frac{3}{4}$  share of the property in question to the Plaintiff-Respondents. It was the contention of the Plaintiff-Respondents that the property in question was gifted to the Defendant-Appellant for her to get visa to go to Canada and that their father never intended to transfer the beneficial interest to the Defendant-Appellant. Therefore, the most important question that must be decided in this case is whether the Defendant-Appellant held the property in question in trust in favour of her father. The 1<sup>st</sup> Plaintiff-Respondent Niriellage Jayamini Keerthiseeli says in her evidence that the property in question was gifted to the Defendant-Appellant for her to get visa to go to Canada. The Notary Public who attested the relevant Deed of Gift (Deed of Gift No.529) says, in his evidence, that he was informed that there was a

necessity to produce the relevant deed to the relevant Embassy in order to obtain visa. It is interesting to find out as to who gave this information to the Notary Public. Mr.Ranawaka the Notary Public says, in his evidence, that it was the 1<sup>st</sup> Plaintiff-Respondent who gave this information. Mr.Ranawaka the Notary Public, in his evidence, further says the following matters.

1. He (the Notary Public) is a neighbour of the donor Niriellage Upasena.
2. The donor Niriellage Upasena told him (the Notary Public) that he wanted to gift the property in question to her youngest daughter.
3. The donor Niriellage Upasena did not tell the Notary Public that he wanted to get the property back after gifting the same to her youngest daughter.
4. He (the Notary Public) prepared the Deed of Gift No.529 on the instructions given by the donor.

It has to be noted here that the above evidence of the Notary Public was not challenged in the cross-examination. From the above evidence of the Notary Public it is clear that the donor Niriellage Upasena had fully gifted the property in question to the Defendant-Appellant with clear intention of gifting and that he did not have an intention to reclaim the property in question from the donee. The above evidence clearly demonstrates that the Defendant-Appellant was not holding the property in question in trust in favour of the donor who is her father. If the Defendant-Appellant was not holding the property in question in trust in favour of the donor who is the father of the Defendant-Appellant and the Plaintiff-Respondents, then the Defendant-

Appellant was not holding the property in question in trust in favour of the Plaintiff-Respondents. Further, the Plaintiff-Respondents have failed to adduce any evidence to show that there were attendant circumstances to establish any constructive trust between the donor and the Defendant-Appellant. When I consider all the above matters, I hold that the Plaintiff-Respondents are not entitled to the relief claimed in the plaint. The learned District Judge and the learned Judges of the Civil Appellate High Court have failed to consider the above evidence of the Notary Public and come to the wrong conclusion that the Defendant-Appellant was holding the property in question in trust in favour of the donor.

In view of the conclusion reached above, I answer the 3<sup>rd</sup> question of law in the affirmative and answer the 1<sup>st</sup> question of law as follows. “The learned District Judge and the learned Judges of the Civil Appellate High Court have come to the wrong conclusion that the Defendant-Appellant was holding the property in question in trust in favour of the Plaintiff-Respondents. The Defendant-Appellant was not holding the property in question in trust in favour of the Plaintiff-Respondents.”

In view of the answers given to the 1<sup>st</sup> and the 3<sup>rd</sup> questions of law, the 2<sup>nd</sup> question of law does not arise for consideration.

For the above reasons, I set aside both judgments of the learned District Judge and the Judges of the Civil Appellate High Court and allow the appeal. I dismiss the action of the Plaintiff-Respondents. The learned District Judge is

directed to enter decree in accordance with this judgment. The Defendant-Appellant is entitled to the costs in all three courts.

*Appeal allowed.*

Judge of the Supreme Court.

P. Padman Surasena J

I agree.

Judge of the Supreme Court.

Gamini Amarasekera J

I agree.

Judge of the Supreme Court.