

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

In the matter of an Application for Special Leave to Appeal against an Order of Learned Judge of High Court of Civil Appeal of Western Province Holden in Mount Lavinia dated 31/01/2011, under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Amendment Act No. 54 of 2006 read with Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC Appeal 178/2011  
SC(HCCA) LA No. 79/11  
WP/HC CA/MTL/106/06(F)  
D.C. Mount Lavinia  
Case No. 1113/98/L

1. Kodithuwakku Arachchige Dayawathie
2. Kodithuwakku Arachchige Dayarathne

Both of No. 119/1 Saranankara Road  
Kalubowila  
Dehiwala

**The Defendants-Appellants-Appellants**

Vs

Pattiyage Iranganie Sirisena of  
No. 15/4, Sudharshana Road  
Dehiwala

**The Plaintiff-Respondent-Respondent**

Before : Tilakawardane, J  
Dep, PC J  
Wanasundera, PC J

Counsel : J.M. Wijebandara for the Defendants-Appellants-  
Appellants.  
Ranjan Suwadaratne for the Plaintiff –Respondent-  
Respondent.

Argued on : 18.10.2012

Decided on : 04.04.2014

**Priyasath Dep, PC, J**

This is an appeal against the judgment of the High Court of Civil Appeal of Western Province holden in Mt. Lavinia which affirmed the judgment of the District Court of Mt. Lavinia in case No 1113/98/L.

The Plaintiff-Respondent-Respondent (hereinafter referred to as the Plaintiff ) instituted action in the District Court of Mt. Lavinia against the Defendants-Appellants-Appellants (hereinafter referred to as Defendants) praying for the following reliefs:

- a) Declaration to the effect that she is the lawful owner of the premises described in the scheduled to the Plaint.
- b) Order to eject the Defendants and others claiming under the Defendants who are in occupation of the said premises.
- c) Monthly damages in a sum of Rs. 7500/- with legal interests from the date of filing of this action.

Plaintiff stated that by deed of transfer No 1255 dated 24<sup>th</sup> June 1997 attested by H.W. Jayatissa, Notary Public she purchased the property described in the schedule to the plaint from the Defendants. The Defendants after the transfer of the said premises failed and neglected to hand over vacant and peaceful possession to the Plaintiff. The Defendant by their conduct caused damages in a sum of Rs. 7500/- per month.

The Defendants in their answer dated 13<sup>th</sup> August 1999 denied that a cause of action accrued to the Plaintiff to sue them and evict them from the premises. The Defendant admitted that they signed the deed mentioned in the Plaint but they did so under duress. Three days after the signing of the deed the 1<sup>st</sup> Defendant made a complaint to the Police and to the Notary Public who attested the deed. Defendants stated that prior to the signing of the deed the Plaintiff came to their residence with some thugs and threatened them with death and threatened to destroy their home. On the day the deed was signed, Plaintiff with some others came to their residence and threatened them and took them to the Notary Public and got the deed signed by them.

The Defendants in their answer set out a cross claim to set aside the deed of transfer as it was executed under duress. Plaintiff in her replication denied the cross claim filed by the Defendant.

At the trial both parties raised issues based on their pleadings. The Plaintiff commenced his case by calling Mr. H.W. Jayatissa, Notary Public who attested the deed. He testified that the deed was attested by him and the plaintiff, Defendants and witnesses were present and placed their signatures before him. The deed was duly executed. At the time of the execution he did not observe any reluctance on the part of the defendants to sign the deed. Three days after the execution of the deed, the defendants came to him and said that the plaintiff threatened and intimidated them and forced them to sign the deed and requested him not to register the deed. He made a note in the attestation clause that the defendants had informed him that they did not voluntarily sign the deed.

There after the Plaintiff gave evidence and stated that at the request of the 1<sup>st</sup> Defendant from time to time she advanced Rs. 700,000/- to the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant requested for this money to send her sister abroad. The Plaintiff stated that her husband was working abroad and sent money to his account regularly and she withdrew money from this account and gave it to the 1<sup>st</sup> Defendant as she was a close friend of hers expecting that she will return the money in due course. Her husband after returning to the country found that she had withdrawn money from the account and this led to a dispute with the husband. The 1<sup>st</sup> Defendant agreed to transfer the property in settlement of Rs. 700,000/- borrowed by her. The Plaintiff thereafter went to the Notary's office with the defendants and signed the deed. Her father-in-Law Jothipala Sirisena and her husband signed the deed as witnesses.

The 1<sup>st</sup> Defendant gave evidence and stated that it was her sister who is friendly with the Plaintiff borrowed Rs 175,000/= from the Plaintiff and her sister had settled the money with interest. She stated that Plaintiff came along with her husband and some unknown persons and forcibly took her and her brother before a Notary and got the deed executed. Three days after the signing of the deed she made a complaint to the Police and also informed the Notary Public of the threat made by the Plaintiff and requested him not to register the deed.

The learned District Judge disbelieved the evidence given by the Defendants and gave judgment in favour of the Plaintiff.

It was admitted that the deed was executed by the parties. In such a situation the burden of proof shifts to the defendants to establish duress if they intend to invalidate the deed. The Defendants failed to discharge the burden. The following facts are unfavourable to the defendants.

- (a) The Notary who attested the deed testified that the parties signed the deed voluntarily.
- (b) The complaint made to the police is a belated complaint.
- (c) The Defendants did not take any steps to get the deed set aside. Only after the filing of this action in their answer made a cross claim to set aside the deed.
- (d) It was revealed at the trial that the 2<sup>nd</sup> Defendant is a man prone to violence and facing a charge of murder. The learned District Judge had observed that it was improbable that the Plaintiff threatened the defendants and forcibly took the defendants before a Notary and got the deed signed.

The Defendants appealed against the Judgment of the learned District Judge to the High Court of Civil Appeal of the Western Province holden in Mt Lavinia and the Appeal was dismissed. The Defendants filed a Leave to Appeal application in the Supreme Court and this court granted Leave to Appeal on following Questions of Law:

- 1. Is a party permitted to adduce evidence against the contents of notarially executed deed to prove fraud and/or duress/intimidation?
- 2. If the answer is in the affirmative to the aforesaid question, has the Learned Trial Judge failed to evaluate the evidence of the defence in terms of law ?
- 3. If both the aforesaid questions are answered in the affirmative, are the defendants entitled to a judgment as prayed for in their answer?

The learned District Judge in his judgment stated that under section 92 of the Evidence Ordinance oral evidence could not be led which is inconsistent with the contents of the deed. Under proviso (1) to section 92 of the Evidence Ordinance any fact may be proved which will invalidate any document on the basis of fraud, intimidation, illegality, want of consideration etc. However, the learned trial judge had permitted the Defendants to lead evidence to invalidate the deed. The defendant had failed to establish duress or want of consideration. Therefore there is no prejudice caused to the defendants.

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We find that the learned District Judge had properly evaluated the evidence led by both parties and having considered the inherent weaknesses of the defendants' case gave judgment in favor of the Plaintiff which was affirmed by the Civil Appellate High Court. The learned trial judge is the best person to observe the demeanor and deportment of witnesses. We see no basis to interfere with the findings of the learned District Judge.

For the reasons set out above in the judgment we dismiss the appeal and affirm the judgment of the District Court of Mt. Lavinia in Case No. 1113/98/L dated 14<sup>th</sup> December 2006 which was affirmed by the High Court of Civil Appeals.

Appeal dismissed. No costs.

Judge of the Supreme Court

Shiranee Tilakawardena ,J.

I agree.

Judge of the Supreme Court

Eva Wanasudera , PC. J

I agree.

Judge of the Supreme Court