

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

In the matter of an Appeal

Pahalage Manel Malkanthi Abeygunawardane
“Rendagewatta”, Paiyagala South,
Paiyagala.

Plaintiff

SC Appeal 205/2016
SC/HCCA/LA App.No. 49/2015
WP/HCCA/GAM/281/2009 (F)
DC Gampaha Case No. 428/L

Vs

1. Hettiarachchige Podi Mahaththaya
No.69, Samagi Mawatha,
Nittambuwa.
2. Hettiarachchige Wijesundara
No.10, Samagi Mawatha,
Dangollawatta,
Nittambuwa.

Defendants

AND

Hettiarachchige Wijesundara
No.10, Samagi Mawatha,
Dangollawatta,
Nittambuwa.

2nd Defendant-Appellant.

Vs

Pahalage Manel Malkanthi Abeygunawardane
“Rendagewatta”, Paiyagala South,
Paiyagala.

Plaintiff-Respondent

Hettiarachchige Podi Mahaththaya
No.69, Samagi Mawatha,
Nittambuwa.

1st Defendant-Respondent

AND NOW BETWEEN

Hettiarachchige Wijesundara
No.10, Samagi Mawatha,
Dangollawatta,
Nittambuwa.

**2nd Defendant-Appellant-
Petitioner-Appellant**

Vs

Pahalage Manel Malkanthi Abeygunawardane
“Rendagewatta”, Paiyagala South,
Paiyagala.

**Plaintiff-Respondent-
Respondent-Respondent**

Hettiarachchige Podi Mahaththaya
No.69, Samagi Mawatha,
Nittambuwa. (Deceased)

**1st Defendant-Respondent-
Respondent-Respondent**

Hettiarachchige Wijesundara
No.10, Samagi Mawatha,
Dangollawatta,
Nittambuwa.

**Substituted 1st Defendant-Respondent-
Respondent-Respondent**

Before: Sisira J. de Abrew J
Vijith Malalgoda PC J &
Gamini Amarasekara J

Counsel: Rasika Dissanayake for the
2nd Defendant-Appellant-Petitioner-Appellant
M P Rajapakshe for the
Plaintiff-Respondent-Respondent-Respondent

Argued on : 17.1.2020

Written submission
tendered on : 5.5.2017 by the 2nd Defendant-Appellant-Petitioner-Appellant

Decided on: 26.2.2020

Sisira J. de Abrew, J

Plaintiff-Respondent-Respondent-Respondent (hereinafter referred to as the Plaintiff-Respondent) filed this action inter alia seeking to get a declaration that the Deed of Transfer No.2199 dated 18.9.1997 is null and void.

The learned District Judge by his judgment dated 26.10.2009 granted the above relief claimed by the Plaintiff-Respondent. Being aggrieved by the said judgment of the learned District Judge, the 2nd Defendant-Appellant-Petitioner-Appellant who is the son of the 1st Defendant appealed to the Civil Appellate High Court Gampaha (hereinafter referred to as the Civil Appellate High Court). The learned Judges of the Civil Appellate High Court by their judgment dated 17.12.2014, affirmed the said judgment of the learned District Judge. Being aggrieved by the said judgment of the Civil Appellate High Court, the 2nd Defendant-Appellant-Petitioner-Appellant (hereinafter referred to as the 2nd Defendant-Appellant) has appealed to this court. This court by its order dated 1.11.2016 granted leave to appeal on questions of law set out in paragraphs 14(b),(d) and (h) of the Petition of Appeal dated 27.1.2015 which are set out below.

1. Whether the Respondent has failed to discharge the burden of proof to vindicate her title?
2. Whether the learned District Judge and as well as the learned Judges of the Civil Appellate High Court of Gampaha have erred in law by failing to appreciate the fact that the Respondent has failed to rebut the evidence of the Petitioner and as well as the Notary Public Mr. Crooz Morais who executed the said Deed bearing No.2199?
3. Whether the learned District Judge and as well as the learned Judges of the Civil Appellate High Court of Gampaha have erred in law by holding that the Respondent is entitled for damages when there was no iota of evidence

placed before the court by the Respondent to that effect?

The 2nd Defendant-Appellant is the son of the 1st Defendant. The 2nd Defendant-Appellant claims that his father had acquired title to the property in dispute by Deed of Transfer No.2199 dated 18.9.1997 attested by AERC Moraes Notary Public. The Plaintiff-Respondent claims that she acquired title to the property in dispute by Deed of Gift No.27 dated 9.12.1997 attested by Ranjika P Navaratne Notary Public. The Plaintiff-Respondent by his plaint seeks a declaration that Deed of Transfer No.2199 dated 18.9.1997 is null and void. Learned counsel for the Plaintiff-Respondent supported this position of the Plaintiff-Respondent. Learned counsel for the 2nd Defendant-Appellant submitted that Deed of Gift No.27 dated 9.12.1997 is null and void. I now advert to the above submissions. The donor in Deed of Gift No.27 dated 9.12.1997 is Sathasivam Achalingam and the vendor in Deed of Transfer No.2199 dated 18.9.1997 is also Sathasivam Achalingam. Sathasivam Achalingam on 14.7.1998 has made a statement to the police (produced as X5) to the effect that he, by Deed of Gift No.27 dated 9.12.1997 attested by Ranjika P Navaratne Notary Public, gifted the property in dispute to the Plaintiff-Respondent. He has further stated in the statement that he did not sign Deed of Transfer No.2199 dated 18.9.1997 supposed to have been attested by AERC Moraes Notary Public and that the signature found in the said deed was not his signature. Learned counsel for the 2nd Defendant-Appellant submitted that Sathasivam Achalingam had not given evidence at the trial. However we note that when the Plaintiff-Respondent made an application to the District Court to record the evidence of Sathasivam Achalingam before the commencement of the trial on the basis that Sathasivam Achalingam was an old person and a sick person, the 2nd Defendant-Appellant strongly objected to the said application. The EQD has given

evidence in this case and stated that he compared the purported signatures of Sathasivam Achalingam in both deeds with the signatures in the following documents.

1. Passport of Sathasivam Achalingam.
2. Affidavit of Sathasivam Achalingam dated 20.1.2003.
3. Statement made by Sathasivam Achalingam to the Police.
4. Passbook issued by Commercial Bank to Sathasivam Achalingam under the Account Number 8528826601.

The EQD in his evidence has stated that the purported signature of Sathasivam Achalingam in Deed of Gift No.27 tally with the signature of Sathasivam Achalingam found in the above documents but the purported signature of Sathasivam Achalingam in Deed of Transfer No.2199 does not tally with the signature of Sathasivam Achalingam found in the said documents. One of the attesting witnesses in Deed of Gift No.27 dated 9.12.1997 gave evidence and confirmed his signature in the deed. However the Defendant-Appellant did not call any of the attesting witnesses in Deed of Transfer No.2199 dated 18.9.1997 except the Notary Public who attested the said deed.

When I consider all the above matters, I hold that the learned District Judge was correct when he, in his judgment dated 26.10.2009, decided that the Deed of Gift No.27 dated 9.12.1997 is a genuine deed and that the Deed of Transfer No.2199 dated 18.9.1997 is null and void. I further hold that the learned Judges of the Civil Appellate High Court were correct when they in their judgment dated 17.12.2014 affirmed the judgment of the learned District Judge dated 26.10.2009. In view of the conclusion reached above, I answer the above questions of law in the negative.

For the aforementioned reasons, I affirm the judgment of the learned District Judge dated 26.10.2009 and the judgment of the Civil Appellate High Court dated 17.12.2014 and dismiss this appeal with costs.

Appeal dismissed.

Judge of the Supreme Court.

Vijith Malalgoda PC J

I agree.

Judge of the Supreme Court.

Gamini Amarasekara J

I agree.

Judge of the Supreme Court.