

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

In the matter of an Appeal from the  
Judgement dated 29/04/2016 in  
Appeal No.CP/HCCA/FA/12/2014  
in terms of Sec.5C(1) of the Act  
No.54 of 2006.

Herath Mudiyanseelage Priyanthi  
Winifreda of No.2, Pallegama,  
Atabage.

**Plaintiff**

**Vs.**

1. Senarath Abeysiri Yamilawatte  
Panilatenna.

2. D.G.N. Dhanahitiyawa of  
No.294, Hunukotugama, Ihalagama,  
Atabage.

**Defendants.**

**AND**

Herath Mudiyanseelage Priyanthi  
Winifreda of No.02, Pallegama,  
Atabage.

**Plaintiff-Appellant**

**Vs.**

1. Senarath Abeysiri Yamilawatte  
Panilatenna.
2. D.G.N. Dhanahitiyawa of No.294,  
Hunukotugama, Ihalagama,  
Atabage.

**Defendants-Respondents**

SC Appeal No. **89/2017**

SC HC (CA) LA Application No.264/2016

HC Appeal No. CP/HCCA/FA/12/2014

DC Gampola Case; No. L/3160

**AND NOW BETWEEN**

Herath Mudiyanseelage Priyanthi  
Winifreda of No.2, Pallegama, Atabage.

**Plaintiff-Appellant-Appellant**

**Vs.**

1. Senarath Abeysiri Yamilawatte  
Panilatenna.
2. D.G.N.Dhanahitiyawa of No  
294, Hunukotugama, Ihalagama,  
Atabage.

**Defendants-Respondents-Respondents.**

**BEFORE: CHIEF JUSTICE MURDU N.B. FERNANDO, PC, CJ.  
JUSTICE K.KUMUDINI WICKREMASINGHE,,  
JUSTICE MAHINDA SAMAYAWARDHENA,,**

**COUNSEL:** Murshid Maharooof with Githme Senanayake instructed by S.M.M. Makkam for the Plaintiff-Appellant-Appellant.

Shane Foster for the Defendant-Respondent-Respondent instructed by Niranjana de Silva.

**WRITTEN SUBMISSIONS:** by the Plaintiff-Appellant-Appellant on 04/01/2018 and 22/07/2022.

1<sup>st</sup> Defendant-Respondent-Respondent on 07/09/2018 and 16/06/2022.

**ARGUED ON:** 24/05/2022

**DECIDED ON:** 24/06/2025

**K.KUMUDINI WICKREMASINGHE, J**

The Application for Special Leave to Appeal was preferred by Plaintiff-Appellant-Appellant (hereinafter referred to as the Appellant) against the judgement of the High Court of the Central Province dated 29.04.2016 dismissing the Appeal of the Appellant. Aggrieved by which the Appellant appealed to the Supreme Court.

Accordingly this Court by Order dated 05/05/2017 granted special leave to Appeal on the following questions of Law:

a) Did the Honourable High Court of the Central Province arrive at an erroneous Conclusion that the said Deed of Transfer 2357(P14) constitutes an outright transfer?

b) Did the Honourable High Court of the Central Province err in Law by arriving at a wrongful conclusion that only secondary evidence could be led in terms of Section 91 and Section 92 of the Evidence Ordinance since the said deed was the Deed of Transfer and fail to identify the proper cause of action which was based on the Constructive Trust?

c) Did the High Court of Central Province err in Law in failing to consider that parol evidence cannot be led to establish constructive trust?

d) Did the High Court of the Central Province arrive at an erroneous conclusion that the Petitioner cannot proceed with the case in view of the third admission between the parties?

g) Did the Courts below err in drawing correct inferences from the attendant circumstances which clearly point that there was no intention to dispose of the beneficial interest by the Petitioner?

**BRIEF FACTS OF THE CASE ARE AS FOLLOWS:**

The property in question, which is the subject of this appeal, originally belonged to the Appellant's husband. Upon his passing, ownership transferred to the Appellant. Since 1980, the Appellant had used the property as collateral to secure loans on multiple occasions.

In 1997, due to her husband's illness, the Appellant borrowed money from one W.A. Hathurusinghe. At his request, she transferred part of the property to him by Deed No. 8679. The remaining portion was transferred to one Cyril Gamage by Deed No. 2339 to raise additional funds for her husband's medical expenses.

Subsequently, the Appellant borrowed Rs. 60,000/= from the father of the 1st Defendant- Respondent- Respondent (hereinafter referred to as the 1st Respondent). He agreed to lend the money on the condition that a monthly interest of Rs. 3,000/= would be paid. As the process of transferring the property back from Hathurusinghe and Gamage would involve additional costs, the 1st Respondent's father insisted that the property be transferred directly into the name of his

son—the 1st Respondent. Accordingly, on 05/01/1998, the property was transferred to the 1st Respondent via Deed No. 2357.

The Appellant, in her petition, stated that she never intended to transfer the beneficial ownership of the property to the 1st Respondent. However, when she requested a reasonable time to repay the loan, the Respondent claimed full ownership of the property and attempted to evict her.

The Appellant contends that the Respondents are holding the property in constructive trust on her behalf. As a result, she filed an action in the District Court of Gampola on 22/02/2002, seeking the following reliefs:

1. A declaration that she is the rightful owner of the property.
2. An order that the Respondents hold the property in trust for her.
3. A directive for the Respondents to reconvey the property to her upon repayment of the Rs. 60,000/=.
4. In the event of non-compliance, an order directing the Court Registrar to transfer the property back to her.
5. An interim injunction restraining the Respondents from entering the land or causing any damage.

The 1st Respondent filed his answer on 12/02/2002, claiming that he became the lawful owner through Deed No. 2357 dated 05/01/1998. He further stated that he subsequently transferred the property to the 2nd Respondent via Deed No. 10719 dated 19/03/2002. Therefore, he argued that the Appellant has no valid cause of action.

After the matter was set for trial on 04.10.2004, three admissions were recorded between the parties. The Appellant raised issues numbered 1 to 35, while the 1st Respondent raised issues numbered 36 to 40.

According to the District Court judgment, three key points of admission were accepted:

1. Jurisdiction was not contested.
2. The location of the property and the subject matter of the case were accepted.

3. As stated in paragraph 18 of the plaint, the 1st Defendant admitted that the property in question was acquired on a freehold basis.

The judgment of the District Court of Gampola, dated 02.12.2013, was primarily based on the third admission. In addition, the decision relied on the answers given for Issue No. 27 and Issue No. 36, which were as follows:

**Issue 27:**

As stated in paragraph 19 of the plaint, did the Plaintiff, along with W.A. Hathurusinghe and Siril Gamage, transfer the said property to the 1st Defendant by Deed No. 2357 dated 05.01.1998?

**Issue 36:**

Was the property referred to in the plaint transferred to the 1st Defendant in freehold by Deed No. 2357 dated 05.01.1998, executed by the Plaintiff and W.A. Hathurusinghe, and attested by the Notary Public T.B. Abeyakoon?

Based on the third admission and the answers to the above issues, the District Court delivered its judgment in favor of the 1st Respondent. Aggrieved by this decision, the Appellant filed an appeal before the High Court of the Central Province on 31.01.2014. By its order dated 29.04.2016, the High Court of the Central Province dismissed the appeal on the following grounds:

In accordance with the third admission made in the District Court, the Appellant acknowledged that the 1st Respondent had acquired the disputed property through a deed of transfer (Deed No. 2357), executed by three parties including the Appellant. Therefore, under **Section 2 of the Prevention of Frauds Ordinance**, once the land was transferred in accordance with proper legal procedure, the Appellant no longer held any legal interest in the property. The burden of proof was on the Appellant to establish that the 1st Respondent held the property in trust for the Appellant.

The High Court emphasised the importance of Deed No. 2357 (marked as P14), which clearly stated that the property had been transferred and assigned to the 1st Respondent. According to **Sections 91 and 92 of the Evidence Ordinance**, once such a deed exists, only secondary

evidence is permitted where applicable. The law does not allow the introduction of other evidence to contradict, vary, or modify the terms of a written agreement.

The Court also noted that although three parties who originally held legal interest in the disputed property had transferred their rights to the 1st Respondent, the present case was filed solely by the Appellant. This was viewed as a potential misuse of the law, as it appeared that the property had been deliberately transferred only in the name of the Appellant for the purposes of litigation. Based on these considerations, the High Court upheld the judgment of the District Court of Gampola.

Aggrieved by the abovementioned Judgement the Appellant appealed to the Supreme Court and accordingly this court granted special leave to appeal from the aforementioned judgement.

I now proceed to address the first question of law, namely:

**“Did the Honourable High Court of the Central Province arrive at an erroneous conclusion that Deed of Transfer No. 2357 (P14) constitutes an outright transfer?”**

I refer to *The Law of Property in Sri Lanka* by Professor G.L. Peiris, which explains that *tradition of delivery* alone does not amount to a transfer of ownership unless five essential conditions are satisfied:

1. The transfer must be made with the intention of transferring ownership *ex iusta causa*—i.e., the nature of the disposition must be such that, in law, the transfer of possession also signifies a transfer of ownership.
2. The transferor must be legally competent to alienate the property.
3. The property must be legally capable of being alienated through delivery.
4. The transferee must be competent and willing to accept ownership as a consequence of the transfer.
5. The transferor must either be the owner or act under the authority of the owner, such as a servant or agent.

In answering the first question of law, the facts of the case must be examined against the backdrop of these five conditions to determine whether Deed No. 2357 amounts to an outright transfer.

#### Condition 1: Intention to Transfer Ownership

The District Judge of Gampola held that the Appellant, by admitting the third point of admission (that the property was transferred by Deed No. 2357 executed by the parties with beneficial interest), could not thereafter challenge the deed under Sections 91 and 92 of the **Evidence Ordinance**, which bar the admission of oral evidence to vary the terms of a notarially executed deed.

However, on appeal, the Appellant argued that the learned District Judge misinterpreted the third admission. Paragraph 18 of the Plaint explained that the purpose of executing the deed was to obtain a loan, with the promise of paying monthly interest of Rs. 3,000, as the Appellant required funds to treat her ailing husband.

Section 83 of the **Trusts Ordinance** states:

*“Where the owner of property transfers or bequeaths it, and it cannot reasonably be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.”*

This principle was further elaborated in **Muttammah v. Thiyagaraja [1960] 62 NLR 559**, where Chief Justice Basnayake observed that:

*“The section is designed to prevent transfers of property which on the face of the instrument appear to be genuine transfers, but where an intention to dispose of the beneficial interest cannot reasonably be inferred consistently with the attendant circumstances.”*

The key question is whether the District Judge gave due consideration to the attendant circumstances referenced in Paragraph 18 of the Plaint.

According to *Muttammah v. Thiyagaraja*, “attendant circumstances” refer to events that precede or follow the transfer and are closely connected in time. They must be viewed in the context of the specific facts of each case.

The attendant circumstances that must be established are as follows: a series of transactions where the beneficial interest was not transferred, involving the transfer of property and its

subsequent retransfer following the settlement of a loan. In this case, several such circumstances demonstrate that the transfer was not intended to be absolute:

It is on record that several individuals who had previously provided loans testified in favor of the Appellant. It was proven that the Appellant’s husband was unwell and that she was in urgent need of money, a fact further substantiated by his subsequent death. Medical prescriptions confirming his illness (marked P31 to P36), along with a copy of his death certificate (P37), were submitted as part of the evidence, reinforcing the credibility of this claim.

Two deeds of transfer, bearing Nos. 8679 (P12) and 2239 (P13), executed in favor of Hathurusinghe and Cyril Gamage, respectively, concern the same property and were executed as security for loans obtained by the Appellant. These individuals also testified to support the Appellant’s version of events.

When the Appellant required additional funds, she approached the Chief Priest, Ven. Atabage Sumanathissa, who introduced her to the father of the 1st Respondent for the purpose of obtaining a further loan. The said Chief Priest gave evidence at trial in favor of the Appellant, and his testimony remained unchallenged during cross-examination.

However, when the burden of proof shifted to the Appellant to establish the existence of a constructive trust, the Appellant was unable to produce a written agreement documenting the arrangement with the father of the 1st Respondent. The only document available to support this claim is a letter written by the 1st Respondent’s father, which refers to the repayment of the loan. This letter has been certified by the 1st Respondent as being in his father's handwriting.



While such a letter cannot override the terms of a notarial deed, it can serve as an attendant circumstance supporting the existence of a constructive trust under Section 83 of the Trusts Ordinance.

This legal position has been affirmed in several judgments:

*Carthelis v. Perera* [1930] 32 NLR 19: Held that a non-notarial writing can establish an equitable interest.

*Ehiya Lebbe v. Majeed* [1947] 48 NLR 357: A non-notarial document executed on the same day as the deed was accepted as evidence of a constructive trust.

*Premawathi v. Gnanawathi* [1994] 2 SLR 171 and *Thisa Nona and Others v.*

*Premadasa* [1997] 1 SLR 169: Both reaffirm the evidentiary value of non-notarial documents in establishing attendant circumstances and constructive trusts.

In conclusion, the High Court's finding that Deed No. 2357 constituted an outright transfer appears to overlook the surrounding circumstances and applicable trust principles under Section 83. The evidence presented, including the purpose of the transfer, the conduct of the parties, and corroborative testimony, strongly suggests the existence of a constructive trust. Therefore, the conclusion of the Honourable High Court on this issue warrants re-examination.

Condition 2-The Transferor must be legally competent to alienate

The 1st Respondent, in his Answer, contends that the Appellant had no legal right, title, or interest in the property—neither prior to, at the time of, nor after the execution of the transaction. This argument seeks to challenge the Appellant's beneficial interest in the property. However, it is evident that the Appellant had previously obtained loans from Hathurusinghe and Gamage by executing Deeds of Transfer bearing Nos. 8679 and 2239 (marked P12 and P13), offering the same property as security. This conduct indicates that the Appellant exercised control and asserted beneficial ownership over the property, which undermines the Respondent's claim.

According to **Exception 1 to Section 92 of the Evidence Ordinance**, when a public officer is required by law to be appointed in writing, and it is shown that a particular person has acted in that capacity, the written instrument of appointment need not be produced in evidence.

In this context, during cross-examination, oral testimony was supported by a set of relevant documents that further established the Appellant's intention and authority concerning the property. These include:

1. Annual Tax Receipts paid in respect of the said property (P22 to P28);
2. An Affidavit certified by a Justice of the Peace, who also served as the Deputy Chairman of the relevant Provincial Council (P29).
3. A Letter issued by an official of the Agrarian Department, confirming the Appellant's continuing relationship with the property and intention not to transfer ownership (P30).

These documents, though non-notarial, are strong indicators of the Appellant's continued beneficial interest and intention. Additionally, the presence of the Appellant's signature in Deed No. 2357 (P14) must be viewed in light of these circumstances—it alone cannot be conclusive of an absolute transfer, especially when weighed against the totality of evidence suggesting the contrary.

#### Condition 3 – Whether the Deed Proves a Transfer

This condition is satisfied on the face of the deed itself. The previous set of Deeds of Transfer related to the property used as security for the loan (marked P1 to P13), along with Deed No. 2357 (P14) and Deed No. 10719 (P39), serve as written evidence to establish that this immovable property is alienable by delivery, in accordance with the Evidence Ordinance No. 14 of 1895.

#### Condition 4 – Whether the Transferee Was the Real Beneficiary

Section 84 of the **Trusts Ordinance** states:

*“Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.”*

During cross-examination, the transferee claimed that he purchased the property himself for agricultural purposes. However, this assertion is contradicted by oral testimony and other forms of evidence.

Two of the transferors who held beneficial interest in the property, along with the Chief Priest (a witness to Deed No. 2357), testified in favour of the Appellant. The Chief Priest's testimony—which was not challenged in cross-examination—affirmed that the father of the 1st Respondent (Thegiris Appuhamy) had in fact advanced a loan to the Appellant, with an understanding that he would receive monthly interest until the loan was repaid.

Supporting this version of events is a non-notarial letter written by Thegiris Appuhamy, requesting repayment of the loan and warning that, failing such repayment, he would proceed to cultivate tea on the land. This letter was accepted by the 1st Respondent as being in his father's handwriting, and confirms his awareness of the true purpose behind the transfer. Moreover, Thegiris Appuhamy signed both as a witness to Deed No. 2357 and the subsequent deed that transferred the interest to the 2nd Respondent.

His dual involvement, coupled with his knowledge of the transaction's real intent, establishes his role as an agent of the 1st Respondent. In terms of Section 84 of the Trusts Ordinance, the knowledge of the agent (Thegiris Appuhamy) is imputed to the principal (1st Respondent). Therefore, the transferee cannot claim to be an innocent purchaser without notice of the trust.

#### Condition 5 – Ownership or Authority of the Transferor

Although the legal title to the property may have initially rested with Hathurusinghe and Gamage, both parties confirmed through oral evidence that their interest in the property was held for the benefit of the Appellant. Their willingness to transfer this interest in favour of facilitating the Appellant's needs reinforces her continued beneficial ownership.

Furthermore, documents obtained and events that occurred *after* the execution of the deed further demonstrate the Appellant's enduring connection to and control over the property. These include tax records and official correspondence, all pointing toward her beneficial interest.

The High Court, in its reasoning, limited itself to a review of the documentation and relied solely on the third condition. It failed to consider the substantial body of oral evidence and supporting non notarial documentation which clearly illustrated the existence of a constructive trust.

Even in the absence of a formal agreement, the letter from Thegiris Appuhamy—acknowledged by the 1st Respondent as his father’s handwriting—demonstrates the real intention behind the transaction. It provides compelling evidence that the deed masked a constructive trust, and the transfer was not absolute.

I will now proceed to answer the second question of Law on which leave has been granted namely **Whether the High Court of the Central Province erred in law by concluding that only secondary evidence could be led under Sections 91 and 92 of the Evidence Ordinance.**

To address this question, it is essential to analyse the wording of **Section 91 of the Evidence Ordinance:**

*“When the terms of a contract, or of a grant, or any other disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant, or disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained...”*

However, **Exception 1 to Section 91** provides that:

*“When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.”*

Further, **Explanation 3** clarifies:

*“The statement of any document, whatever of a fact other than the facts referred to in this section shall not preclude oral evidence as to the same fact.”*

In the present case, the Plaintiff tendered several non-notarial documents in support of the claim, as mentioned before at page number 09 and 10 of this judgement. These documents serve not to contradict the terms of the deed but to support the Appellant's assertion regarding the true nature of the transaction—that is, the existence of a constructive trust.

In *Mudiyanse v. Dissanayake* [1909] 40 C.L.W. 34 the Court held that to prove the existence of a driving licence, the licence itself must be produced. However, in the present matter, the documents in question are not the instrument of title, but rather ancillary documents corroborating the intent and conduct of the parties.

Therefore, the High Court's exclusion of these documents on the basis of **Section 91** reflects a misapplication of the law, particularly in failing to recognise the relevance of oral and secondary evidence under the exceptions and explanations provided within the section.

Turning to **Section 92**, it provides:

*“When the terms of any such contract, grant, or disposition of property have been proved under the previous section, no evidence of any oral agreement or statement shall be admitted between the parties or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms.”*

However, **Proviso (4) to Section 92** is directly applicable to this case:

*“The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has to be registered according to the law in force for the time being as to the registration of documents.”*

This exception was affirmed in the landmark case of *Thivanipillai v. Sinnapillai* [1921] 2 NLR 316, where the Court accepted oral evidence to prove that a transfer of property was made on the oral condition that it would later be transferred to the transferee's son after repayment of a loan. The Court recognised that oral evidence was sufficient to prove the existence of a trust in that instance.

Applying this reasoning to the present case, the letter authored by the 1st Respondent's father, who acted as an agent and acknowledged the real purpose of the transfer, is critical. This letter, along with the surrounding oral and documentary evidence, clearly supports the existence of a trust arrangement.

Hence, the refusal of the District Court and the High Court to admit or consider this evidence under Sections 91 and 92 represents a fundamental error of law. Both courts failed to properly apply the statutory exceptions and judicial precedents, and thereby erred in dismissing relevant and admissible evidence that establishes the true intention of the parties.

I will now proceed to the third question of Law on which leave has been granted namely **Whether the High Court of the Central Province erred in law by failing to consider that parol evidence can be admitted to establish a constructive trust.**

The key issue is whether the High Court was correct in excluding parol evidence on the basis of **Section 2 of the Prevention of Frauds Ordinance** and **Sections 91 and 92 of the Evidence Ordinance**, without giving due consideration to the legal framework applicable to constructive trusts under the Trusts Ordinance.

His Lordship Justice Dheeraratne, in the case of *Dayawathi and Others v. Gunasekara and Another* [1991] 1 SLR 115, held as follows:

*“The Prevention of Frauds Ordinance and Section 92 of the Evidence Ordinance do not bar parole evidence to prove a constructive trust and that the transferor did not intend to pass the beneficial interest in the property.”*

The distinction regarding parole evidence was elaborated in the case of *Mercantile Bank v. Taylor* [1891] 12 LR (NSW) 252 at 262, where it was stated:

*“The Parol Evidence Rule is a substantive rule of law that operates to bar the introduction of evidence intended to show that the parties had agreed to something different from what they finally arrived at and wrote down. It applies prior to written as well as oral discussions that do not make it into the final agreement. But the parol*

*evidence rule does support rectification, partly oral and partly written contracts and collateral contract.”*

Despite the restrictions under Section 2 of the *Prevention of Frauds Ordinance* and **Sections 91 and 92 of the Evidence Ordinance No. 14 of 1895**, parol evidence may still be admitted in limited circumstances. However, **Section 5(1) of the Trusts Ordinance No. 9 of 1917** imposes a mandatory requirement that a declaration of trust concerning immovable property must be notarially executed. The section provides:

*“Subject to the provisions of section 107 of the Trusts Ordinance, no trust in relation to immovable property is valid unless declared by the last will of the author of the trust or of the trustee, or by a non-testamentary instrument in writing signed by the author of the trust or the trustee, and notarially executed.”*

However, as emphasised by Justice Samayawardhena in ***Hewa Abeywickrama vs Sugath Nandana* in SC/APPEAL/18/2021 decided on 17/11/2022**, parol evidence is nevertheless admitted to establish a constructive trust despite the express provisions in the Prevention of Frauds Ordinance and the Evidence Ordinance:

*“In addition, section 2 of the Prevention of Frauds Ordinance, No. 7 of 1840, and sections 91 and 92 of the Evidence Ordinance, No. 14 of 1895, mandate that transactions in relation to immovable property be notarially executed and that no oral evidence is permitted to be led to contradict such documents. Despite the above express provisions, parol evidence is nevertheless admitted to establish a constructive trust. This is justified on different grounds. The Trusts Ordinance was enacted subsequent to the Prevention of Frauds Ordinance and the Evidence Ordinance and therefore in the event of a conflict, the later Act should prevail. Maxwell on The Interpretation of Statutes, 12th Edition, page 193 states ‘If, however, the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together, the earlier is abrogated by the later.’”*

***Bernadette Vanlangenberg v. Hapuarachchige Anthony* [1990] 1 Sri LR 190 at 202** also highlighted this principle, where the Supreme Court held that:

*“Section 2 of the Prevention of Frauds Ordinance is applicable only to the trusts created under Chapter II of the Trusts Ordinance and not to the constructive trusts created under Chapter IX of the Trusts Ordinance.”*

Further, **Section 5(3)** of the **Trusts Ordinance** provides an important exception:

*“These rules do not apply where they would operate so as to effectuate a fraud.”*

This exception was applied in ***Ehiya Lebbe v. Majeed* [1947] 48 NLR 357**, establishing that where fraud is alleged, the formal requirements are relaxed—even an oral agreement can be sufficient.

In ***Valliyammai Atchi v. Abdul Majeed* [1947] 48 NLR 289**, the Privy Council held:

*“The formalities required to constitute a valid trust relating to land are to be found in section 5 of the Trusts Ordinance and not in section 2 of the Prevention of Frauds Ordinance; that the act of the widow in seeking to ignore the trust and to retain the property for the estate was to effectuate a fraud; that, therefore, under section 5(3) of the Trusts Ordinance even a writing was unnecessary and sections 91 and 92 of the Evidence Ordinance had no application.”*

Thus, **section 2 of the Prevention of Frauds Ordinance**, which requires notarial execution of instruments relating to immovable property, cannot be used as a shield for fraud. In constructive trust cases, it is often permissible to rely on non-notarial documents or parol evidence that reveal the true intention of the parties.

Moreover, the first proviso to **Section 92 of the Evidence Ordinance** explicitly allows the admission of parol evidence where the purpose is to invalidate a document on the basis of fraud, mistake, etc. It states:

*“Any fact may be proved which would invalidate any document, or which would entitle any person or order relating thereto, such as fraud, intimidation, illegality,*



*want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law.”*

Turning to the facts of this case, during cross-examination, the 1st Respondent provided contradicting answers about the property. The only document that supported his claim to beneficial interest was the Deed of Transfer No. 2357. In contrast, the Appellant presented a substantial body of evidence, including:

1. Oral testimony from multiple witnesses stating that the Appellant used the said property to secure loans;
2. Testimony from a witness who also signed the said deed;
3. A set of non-notarial documents including:
  - A letter from the 1st Respondent’s father (acting as agent) P15,
  - An affidavit from a Justice of the Peace (Deputy Chairman of the Udapalatha Provincial Council) P29,
  - A confirmation letter from an Agrarian Department official P30.
  - Tax payment receipts to the Agrarian Department made even after the said transfer P22 to 28.
  - Caveat filed by the Appellant on behalf of the Property P16

These documents and testimonies collectively demonstrate the continued beneficial interest of the Appellant in the property and strongly suggest the presence of fraud or mistake.

Accordingly, under the legal principles established in the above landmark cases and statutory provisions, there is no legal impediment to leading parol evidence to establish a constructive trust or to reveal the true nature of the transaction. The High Court’s failure to consider this legal position amounts to an error of law.

I will now proceed to answer the 4th question of law on which leave has been granted namely:  
**Did the High Court of the Central Province arrive at an erroneous conclusion that the Petitioner cannot proceed with the case in view of the third admission between the parties?**

Third Admission of the parties reads as follows;

පැමිණිලිලේ 18 වන ජෝද්දේ සඳහන් පරිදි 1 වන චිත්තිකරු දෝර්පිළි සිත්තකරයෝ පවරාගන්නට යද්දකු බව පිළිගනී .

The aforesaid Paragraph 18 of the plaint reads as follows;

පැමිණිලිකාරියගේ ස්වාමිපුරුෂයාගේ අසතිප තත්වය උත්සන්නවීමෙන් ඇතිව තවත් මුදල අවශ්‍ය වූ අතර චිත්තිකරුගේ පියා වන තගේරිස් අප්පුහාමි යන අයගෙන් රු.60000 ක් මුදලක් ලබාගැනීමට සාකච්ඡා කළ අතර චිත්තිකරුගේ පියා එකී මුදල ගවේමට එකගවූයේ එකී දෝර්පිළි චිත්තිකරුගේ නමින් ලියවා මසකට පොලිය වශයෙන් රු.3000 බැගින් ගවේමේ කතෝන්දේසිය මතය.

Paragraph 18 states the ground and the circumstances for the said transfer which is a loan of Rs.60,000 obtained from the 1st Respondent's father subject to the monthly interest of Rs.3000. As per the written submissions of the Appellant, the 1st Respondent has admitted that the said transaction took place according to the circumstances set out in paragraph 18 of the plaint. Therefore the 1st Respondent has admitted that it was not an outright transfer and it was only transferred as a security for the loan obtained. It is evident that, when considering paragraph 18 as a whole, the 3rd admission is based on the facts set out in paragraph 18 of the plaint. The circumstances of this loan is further confirmed by the letter sent by the 1st Respondent's father Thediris Appuhmay marked P15 confirming the surrounding circumstances of the loan arrangement, blaming the priest for the introduction of the Appellant.

**Section 83 of the Trusts Ordinance** provides:

*“Where the owner of the property transfers or bequeaths it, and it cannot be reasonably be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.”*

In *Piyasena v. Don Vansue* [1997] 2 Sri LR 311, the Court held:

*“A trust is inferred from attendant circumstances. The trust is an obligation imposed by law on those who try to camouflage the actual nature of the transaction. When the attendant circumstances point to a loan transaction and not a genuine sale transaction the provisions of section 83 of the Trust Ordinance apply.”*

Applying the above principles to the facts of this case, although the Learned District Judge based the decision on the third admission, and the Learned High Court Judge upheld that decision, it is my opinion that both courts failed to adequately analyse the legal effect and depth of that third admission.

The 1st Respondent, in his answer, contended that the Appellant failed to prove the contents of Paragraph 18 of the plaint. However, the Appellant submitted credible supporting documents, including the prescriptions issued to her husband (P31 to 36) and his death certificate (P37), both of which correspond to the relevant time period. In addition, there is no legal bar to the admission of parol evidence supporting the Appellant's position.

When considered in this context, the third admission—rather than undermining the Appellant's case—reinforces the existence of a hidden beneficial interest in the property. That interest appears to be buried beneath the surface of the Deed bearing No. 2357, which, on its face, shows legal title in the name of the 1st Respondent.

Furthermore, **Section 84 of the Trusts Ordinance** states:

*“Where the property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.”*

**Section 58 of the Evidence Ordinance** states that:

*“No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing they agree to admit any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted in pleadings;*

*Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission”.*

According to this section, a fact may be admitted at three stages: (i) during the hearing or trial, (ii) prior to the commencement of the hearing or trial, or (iii) through the pleadings. In the present case, the admission regarding paragraph 18 of the plaint was made on the very first day of the trial. As this express admission was entered at the hearing, it is admissible under **section 58 of the Evidence Ordinance**. Consequently, there is no requirement to present further evidence to establish that fact.

According to the available facts, including both oral testimony and non-notarial documentary evidence, and even based on the 1st Respondent's own admission regarding the handwriting of his father, it is evident that the property was transferred in the name of the 1st Respondent, but the consideration was paid or provided by his father.

Accordingly, the son holds the legal title in trust for the father, who is the real beneficiary. Therefore, the letter written by the father, which was produced as part of the plaint, serves as key evidence in demonstrating the Appellant's beneficial interest in the property.

In summary, relying solely on the third admission without considering the surrounding circumstances and available evidence led the High Court to an erroneous conclusion. A proper application of **sections 83 and 84 of the Trusts Ordinance**—together with the attendant circumstances—clearly supports the Appellant's right to proceed with the claim.

I will proceed to the final question of law on which leave has been granted, namely that **Did the Courts below err in drawing correct inferences from the attendant circumstances which clearly point to the fact that there was no intention to dispose of the beneficial interest by the Petitioner?**

In *Muttammah v. Thiyagaraja* [62 NLR 559 at p.564], Chief Justice Basnayake, interpreting the term “attendant circumstances” under Section 83 of the **Trusts Ordinance**, stated:

*“Attendant circumstances are, to my mind, circumstances which precede or follow the transfer but are not too far removed in point of time to be regarded as attendant, which expression in this context may be understood as ‘accompanying’ or ‘connected with.’ Whether a circumstance is attendant or not would depend on the facts of each case.”*

In the present case, the Appellant has pointed to several such attendant circumstances that clearly demonstrate there was no intention to part with the beneficial interest in the property:

**1. Past Pattern of Transactions:**

The Petitioner had previously entered into similar loan arrangements without transferring beneficial interest. She would temporarily transfer the title as security and have it re-transferred after repayment of the loan. Attachments **P1 to P13** document this pattern. Furthermore, one of the previous lenders who had held the title under such an arrangement gave evidence in support of the Appellant.

The 1st Respondent argued that had the impugned Deed No. 2357 truly been subject to an agreement to retransfer, such an intention would have been recorded in the deed itself. However, a comparison of the Respondent's arguments with prior lenders' actions—when considered together with the attendant circumstances—calls for analysis under the reasonable person test.

**2. Health and Financial Need:**

The Appellant's husband was critically ill at the time of the transaction, a fact supported by his subsequent death and related documents. This further supports the Appellant's claim that the transfer was made in urgent need of money, not with the intention of passing beneficial ownership.

**3. Similar Prior Transactions:**

By Deeds No. 8679 and 2339, the Appellant had previously transferred the same property to Hathurusinghe and Cyril Gamage under loan arrangements. These past dealings further confirm her consistent pattern of not intending to dispose of beneficial interest.

**4. Involvement of Religious Leader:**

In need of further funds, the Appellant approached Chief Priest Rev. Atabage Sumanathissa, who introduced her to the 1st Respondent's father, Thegiris Appuhamy, as evidenced in Attachment **P15**. The priest was also a witness to Deed No. 2357.

**5. Uncontested Testimony:**

The said priest testified in favour of the Appellant, and his testimony was not challenged under cross-examination, thereby strengthening the Appellant's case.

**6. Letter from the 1st Respondent's Father:**

A letter written by the 1st Respondent's father (marked **P15**) was produced in court,

blaming the priest for introducing the Appellant. It provides context to the transaction and supports the Appellant's claim that this was a loan, not a genuine sale. The 1st Respondent admitted under cross-examination that the handwriting was his father's.

Collectively, these circumstances clearly indicate that the Appellant did not intend to transfer beneficial ownership. The lower courts erred in failing to draw appropriate legal inferences from these facts.

Another significant point to consider is the conduct of the 2nd Respondent.

According to Deed No. 10719 (P39), executed on 19.03.2002, after the filing of the Appellant's plaint in the District Court of Gampola—the 2nd Respondent is the person who allegedly holds the beneficial interest in the property. As stated in Paragraphs 16 and 17 of the Appellant's written submissions to the Supreme Court, the transfer of the property by the 1st Respondent to the 2nd Respondent is alleged to be a sham transaction. Although the 2nd Respondent was named as a defendant, she failed to appear before court and made no effort to pursue the case and defend her title.

It is noteworthy that the attesting witnesses to Deed No. 10719 are the fathers of both the 1st and 2nd Respondents. Moreover, this deed was executed shortly after the initiation of the legal action by the Appellant.

In response, the 1st Respondent, in his written submissions, argues that the 2nd Respondent was permitted to intervene in the original case on the basis that Deed No. 10719 had been executed prior to the service of summons in the District Court action. Accordingly, it was claimed that the property described in the schedule to the plaint had already been transferred to the 2nd Respondent.

Furthermore, the 1st Respondent contends that even after the intervention of the 2nd Respondent, the Appellant did not amend the plaint to include any relief against the 2nd Respondent. As such, the Appellant failed to assert that the 2nd Respondent held the property in a constructive trust in her favour.

Additionally, by citing **Section 98 of the Trusts Ordinance No. 9 of 1917**, the 1st Respondent argues that the 2nd Respondent qualifies as a bona fide purchaser. Section 98 provides:

*"Nothing contained in this Chapter shall impair the rights of transferees in good faith for valuable consideration, or create an obligation in evasion of any law for the time being in force."*

It is well accepted that a beneficiary under a trust has a personal remedy against a trustee for loss caused by a breach of the trust. Section 65 (1) of the Trust Ordinance provides an additional remedy to a beneficiary to follow the trust property into the hands of a third party where trust property has been disposed of by the trustee. This section enacts that where property comes into the hands of a third party inconsistently with the trust, the beneficiary may institute a suit for a declaration that the property is comprised in the trust. Though the remedy available to the beneficiary is merely a declaration, this would effectively prevent the third party (transferee) from exercising his proprietary rights in respect of the property. It is significant that Section 66 (1) makes provisions for a third party to obtain the property free of the trust on proof of certain circumstances. This section lays down that nothing in Section 65 (1) entitles the beneficiary to any right in respect of the property in the hands of a transferee who in good faith for consideration purchases the property without notice of the trust either when the purchase money was paid or when the conveyance was executed.

However, when analysing the facts of this case in light of the above provision, the question arises as to whether the 2nd Respondent truly acted in *good faith*. According to the oral evidence and submissions before the District Court, the actual value of the land was approximately Rs. 500,000. In contrast, Deed No. 2357 reflects a transaction for Rs. 60,000, while Deed No. 10719 states a purchase price of Rs. 125,000.

In this context, the validity of the transaction under Deed No. 10719 may be questioned under the Doctrine of *Laesio Enormis*, which allows a seller to rescind a contract if the sale price is less than half the fair market value of the property, or gives the buyer the option of paying the difference.

The significant undervaluation of the property, combined with the 2nd Respondent's minimal participation in court proceedings, raises doubts about her good faith and whether the deed represents a genuine transaction or a sham intended to defeat the Appellant's claim.

Another important factor is the close relationship between the families of the 1st and 2nd Respondents. According to the case record, three and a half years after the transaction under Deed No. 2357, which was executed for a loan of Rs. 60,000, the 1st Respondent—along with the 2nd Respondent's father—entered the disputed property, damaged its vegetation, and destroyed the tombstones of the Appellant's in-laws situated on the land. A police complaint was lodged regarding this incident and is included in the record as attachment P20.

These facts strongly suggest that the 2nd Respondent was aware of the Appellant's true beneficial interest in the property prior to the execution of Deed No. 10719.

Moreover, Deed No. 10719 refers only to Cyril Gamage as the previous beneficiary, whereas Deed No. 2357 lists Hathurusinghe, Cyril Gamage, and the Appellant as beneficiaries. This inconsistency further undermines the claim of *good faith* on the part of the 2nd Respondent.

Therefore, the 2nd Respondent cannot rely on the protection provided under Section 98 of the *Trusts Ordinance No. 9 of 1917*. Consequently, both the 1st and 2nd Respondents must be deemed to hold the property on constructive trust in favour of the Appellant.

Given the above circumstances and legal principles, the District Court and High Court judgments were erroneous. The courts failed to properly interpret and apply Sections 83 and 98 of the Trusts Ordinance, and to appreciate the relevance of the attendant circumstances.

Therefore, I answer all five questions of law on which leave was granted in the affirmative. I set aside the judgments of the High Court of the Central Province and the District Court of Gampola.

I order the reconveyance of the property by the 2nd Respondent to the Appellant upon repayment of an amount Rs. 60,000/- with an interest rate of 12% per year from the date of the judgement of the District Court of Gampola (dated 02.12.2013) within a period of one year from this judgment, to the 1st Respondent; and In the event the either of the Respondent fails to comply,



direct the Registrar of the District Court of Gampola to execute the necessary steps to retransfer the property to the Appellant.

*Appeal Allowed.*

**JUDGE OF THE SUPREME COURT**

**MURDU N.B. FERNANDO P.C., CJ**

I agree

**CHIEF JUSTICE**

**MAHINDA SAMAYAWARDHENA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**