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

In the matter of an application for Appeal.

Anura Silva Abeyratne
XB- 8/311,
Edmonton Housing Complex,
Colombo 06.

Plaintiff

SC APPEAL 36/2011
SC (HC) CA LA 169/2010
SP/HCCA/219/2003 (F)
DC Hambantota 1124/L

V.

1. Kusuma Wijetunga
   Thavaluwila,
   Ambalantota.

2. Sudirikku Hennedige Nilupul
   Jayawickrema
   Thavaluwila,
   Ambalantota.

Defendants

AND BETWEEN

Anura Silva Abeyratne
XB- 8/311,
Edmonton Housing Complex,
Colombo 06.

Plaintiff-Appellant

V.

1. Kusuma Wijetunga
   Thavaluwila,
   Ambalantota.

2. Sudirikku Hennedige Nilupul
   Jayawickrema
   Thavaluwila,
   Ambalantota.

Defendants-Respondents

AND NOW BETWEEN

1. Kusuma Wijetunga
   Thavaluwila,
   Ambalantota.

2. Sudirikku Hennedige Nilupul
   Jayawickrema
   Thavaluwila,
   Ambalantota.

Defendants-Respondents-Appellants

V.

Anura Silva Abeyratne,
XB- 8/311,
Edmonton Housing Complex,
Colombo 06.

Plaintiff-Appellant-Respondent

Before : **E. A. G. R. Amarasekara, J**
Achala Wengappuli, J
K. Priyantha Fernando, J

Counsel : Vijith Singh instructed by Iranga Perera for the Defendants-Respondents-Appellants.

Upul Jayasuriya, PC with Kassala Kamer instructed by Sampath Wijewardena for the Plaintiff-Appellant-Respondent.

Argued on : 01.10.2024

Decided on : 06.02.2025

K. PRIYANTHA FERNANDO, J

1. The Defendants-Respondents-Appellants (hereinafter referred to as the defendants) preferred this appeal against the judgment of the High Court of Civil Appeal in *Matara* dated 05.05.2010.

Facts in Brief

2. The plaintiff in his plaint has stated that, he is the owner of the lands described in the schedule to the plaint.

3. The plaintiff has stated that, on 17.04.1988 he had obtained a loan of Rs. 40,000 from the 1st defendant. According to the plaintiff, there had been an agreement between the plaintiff and the 1st defendant, by which the plaintiff had transferred the beneficiary interest of the aforementioned lands to the 1st defendant as interest for the said loan.

4. The plaintiff in his plaint has also stated that, in addition to the conditions of the above agreement, the 1st defendant had taken into his possession the deeds of the lands described in the schedule to the plaint and had taken the

signatures of the plaintiff on three unfilled copies of a deed of sale as a security for the aforementioned loan.

5. According to the plaint, the plaintiff upon carrying out a search had discovered that, the deed bearing No. 167 [P-1] attested by *H.A Amarasena* Notary Public had been fraudulently executed after filling out the blanks of the aforementioned unfilled deed of sale by the use of a typewriter. The plaintiff in his plaint further states that, a false date which was 13.06.1988 and a false figure had been included in getting the false deed attested by *H.A. Amarasena Notary Public*.

6. The plaintiff has also asserted that, the 2nd defendant who is the son of the 1st defendant and who is also a minor has been fraudulently included as the purchaser in the deed of sale P-1.

7. The plaintiff in his plaint also states that, the subject matter of P-1 was never subject to a sale. There existed no such agreement between the parties and that the details in P-1 had been subsequently included in a fraudulent manner. The plaintiff states that, the 1st and the 2nd defendants have acted together and created a false deed.

8. The plaintiff in his plaint states that, three causes of action have arisen. First, P-1 is a fraudulent deed and has no legal effect. Second, as at the date on which P-1 had been executed, the 2nd defendant was a minor. Finally, as at the date on which P-1 was executed, the lands described in the schedule to the plaint was exceeding the value of Rs. 200,000 and according to *laesio enormis*, the deed is of no force.

9. The plaintiff states that he is ready to pay Rs. 40,000 at any given instance, and that as the 1st defendant had been using the lands as interest for the said loan, the 1st defendant has no right to claim interest on the said loan.

10. The plaintiff in his plaint, prayed for a declaration that P-1 is a fraudulent deed and for a declaration that the 2nd defendant would get no rights from P-1.

11. The 1st and the 2nd defendants in their answer stated that, no cause of action exists for the plaintiff to institute action against the defendants. The defendants deny that the plaintiff is the owner of the lands described in the schedule to the plaint. The defendants assert that, by deed bearing No. 167 [P-1], the said

lands had been sold to the 2nd defendant and thereby, all rights that the plaintiff possessed had been extinguished.

12. The defendants deny that the plaintiff obtained a loan from the 1st defendant in the manner the plaintiff states. The defendants also deny obtaining the deeds of the lands from the plaintiff and obtaining three unfilled copies of a deed of sale and creating a false deed of sale.

13. The defendants assert that, the deed bearing No. 167 has been duly executed and the subject matter had been vested with the 2nd defendant. The defendants state that the instant action is an attempt to obtain more money from the defendants and also asserts that the said lands had been purchased at the proper value at the time. The defendants state that *laesio enormis* does not apply to this case.

14. In addition to the above, the defendants state that, the plaintiff has obtained a loan in a sum of Rs. 40,000 from the 1st defendant, due to a requirement that arose in relation to the health condition of the plaintiff and this has not yet been paid. The defendants prayed that the action of the plaintiff be dismissed.

15. The learned District Judge by his judgment dated 20.11.2006 held in favour of the defendant. Being aggrieved by the judgment of the learned District Judge, the plaintiff preferred an appeal to the High Court of Civil Appeal in *Matara*. The learned Judges of the High Court by judgment dated 2010.05.05 allowed the appeal and held in favour of the plaintiff.

16. Being aggrieved by the judgment of the learned Judges of the High Court, the defendants preferred an appeal to the Supreme Court. This Court granted leave to appeal on the questions of law set out in sub paragraphs (2), (5),(6),(7),(10) of paragraph 13 of the petition dated 22.05.2010.

Questions of Law

(2) Did the learned High Court Judge introduce the concept of a trust into the transaction in determining the pivotal issues in favour of the plaintiff, when it was not the case of the plaintiff that there was a trust?

(5) Did the learned High Court Judge misapply the law relating to *'Laesio Enormis'*?

(6) In any event, did the learned High Court Judge err in holding that, there was evidence to show that the impugned deed is a fraudulent deed?

(7) Did the learned High Court Judge draw wrong inferences from the material before Court?

(10) Did the learned High Court Judge err in law and in fact in setting aside the judgment of the learned District Judge?

17. At the hearing of this appeal, the learned President's Counsel for the plaintiff limited his oral submissions to the documents marked P-3, P-4, P-5 and P-6.

18. It was his submission that, the District Court case has been instituted by the plaintiff on 11th June 1990. Consequent to this, a letter of demand dated 13th August 1990 [P-3] had been sent by the defendants' attorney to the plaintiff. Upon the attention of Court being placed on the document P-3, this Court observed that, as per the contents of P-3, towards the beginning of March 1989, the plaintiff has obtained a loan of Rs. 40,000 from the 1st defendant. The 1st defendant requests that, the loan that the plaintiff obtained from the 1st defendant be paid either fully or partly with a reasonable interest, within 14 days of the receipt of the letter of demand. It also states that if the plaintiff fails to do so, action would be instituted against the plaintiff.

19. It is also observed that, by letter dated 27th August 1990 [P-4], the plaintiff through his attorney has responded to P-3. In P-4, the plaintiff has stated that,

> "...
>
> එම එන්තරාවාසියේ සඳහන් පරිදි මාගේ සේවා දායකයා විසින් 17.04.1988 වන දින රුපියල් 40,000/= ක (රුපියල් හතලිස් දහසක) මුදලක් ඔබගේ සේවා දායිකාව වන කුසුමා විජේතුංග මහත්මියගෙන් ණයට ගත් බව පිලිගනිමි.
>
> එම මුදල නයට ගත් අවස්ථාවේදී ඔබගේ සේවාදායිකාව වන කුසුමා විජේතුංග මහත්මිය එම මුදලේ ආරක්ෂාව සඳහා ඇපකරයක් වශයෙන් විකිණීමේ හිස් ඔප්පු තුනකට අත්සන් තබන ලෙස මාගේ සේවාදායකයාගෙන් ඉල්ලීමක් කර ඇත. මුදල් අවශ්‍යතාවය නිසා මගේ සේවදායකයාට ඔබ සේවාදායිකාවගේ එම ඉල්ලීම ඉෂ්ඨ කිරීමට සිදුවී ඇත. ඒ අනුව මාගේ සේවාදායකයාට එම රුපියල් 40,000/= ක (රුපියල් හතලිස් දහසක) මුදල ණයට දුන් අවස්තාවේදීම ඔබගේ සේවාදායිකාව වන කුසුමා විජේතුංග මහත්මිය විසින් හිස් ඔප්පු කොල 3 කට මාගේ සේවාදායකයාගේ අත්සන ලබාගෙන ඇති අතර, ඔහුගේ භාර්යාවගේ අත්සන සාක්ෂිකාරියක් වශයෙන් ලබා ගෙන ඇත.

ඔබගේ සේවාදායිකාව විසින් මාගේ සේවාදායකයාට කිසිම දැනුම් දීමක් නොකොට එම ඔප්පු වලින් මාගේ සේවාදායකයා සතු දේපල ඔබගේ සේවාදායිකාවගේ වයස සම්පූර්ණ නොවූ, (බාලවයස්කාර) සුදිරික්කු හැන්නදිගේ නිලුපුල් ජයවික්‍රමට විකුණූ බවට නොතාරිස් කෙනෙකු ලවා සහතික කොට ව්‍යාජ ඔප්පුවක් ලේඛණ ගත කොට ඇත.

ඉහත කී නීති විරෝධී ක්‍රියා දාමයට විරුද්ධව මාගේ සේවාදායකයා විසින් අංක : එල්. 1124 දරණ නඩුව හම්බන්තොට දිසා අධිකරණයේ පැමිනිලි කොට ඇත. ඔබගේ සෙවාදායිකාව වන කුසුමා විජේතුංග මහත්මිය මෙම නඩුවේ පළමුවන විත්තිකාරිය වන අතර, එම නඩුවට අදාළ සිතාසිය ඔබගේ සේවාදායිකාවට පිස්කල් තැන විසින් දැනට බාර දී ඇතැයි විශ්වාස කරමි.

…”

20. The plaintiff through his reply has also stated that, in the event the defendants agree to nullify the said fraudulent deed bearing No. 167, he would be agreeable to repay the Rs. 40, 000 that was obtained from the 1st defendant upon nullifying the same.

21. Further, he also points out that the said loan had been obtained on 17th April 1988 and not on March 1989 as erroneously referred to in the letter of demand [P-3].

22. The learned Counsel for the plaintiff pointed out that, the defendants’ upon receiving the letter P-4, sent a letter dated 08.03.1991 [P-6] to the plaintiff. When considering the entirety of the letter P-6, the defendants’ attorney has stated that,

“මහත්මයාණනි,

වර්ෂ 1990 ක්වූ අගෝස්තු මස 13 වන දින මාගේ සේවාලාභී අම්බලන්තොට, තවාලුවිල පදිංචි කුසුමා විජේතුංග මහත්මියගේ උපදෙස් පිට මවිසින් ඔබට එන්තරාවාසියක් එවා ඇත.

එහි 1 වන ඡේදයේ වර්ෂ හා මාසය වශයෙන් ලියා ඇත්තේ ‘‘1989 මාර්තු මාසය මුල හරියේදී’’ හැටියටය.

එය යතුරුලියනය කිරීමේදී සිදුවී ඇති බැරිවීමක් හා වරදක් බව කරුණාවෙන් සළකන්න. එය කියවිය යුත්තේ ‘‘1988 මාර්තු මුල හරියේදී’’ වශයෙනි.**”**

23. It was the submission of the learned President's Counsel for the plaintiff that, in replying to P-4, the defendants had not denied the contents of P-4. The defendants simply admit the change in the date on which the money had been loaned. Further, they had not even denied the allegation of fraud or disputed the facts contained in the letter P-4. It was further submitted that the defendants cannot take the position that they never received P-4 as they have responded to the same. The learned Counsel for the plaintiff relied on the case of ***The Colombo Electric Tramways and Lighting Co. Ltd. V. Pereira 25 NLR 193.***

24. It was submitted by the learned President's Counsel for the plaintiff that, the learned District Judge in entering judgment in favour of the defendants had not made reference to the three letters P-3, P-4 and P-6. However, the learned Judges of the High Court have duly considered the contents of the three letters aforementioned in entering judgment in favour of the plaintiff.

25. In *Colombo Electric Tramways (supra)*, cited with approval, the case of ***Wiedeman v. Walpole [1 (1891) 2 Q. B. 534]***. Which held,

> *"It has been held in Wiedeman v. Walpole [1 (1891) 2 Q. B. 534] that in certain circumstances the failure to reply to a letter amounts to an admission*
> *of a claim made therein. Lord Esher M.R. there said:-*
>
> *Now there are cases-business and mercantile cases- in which the Courts have taken notice that, in the ordinary course of business, if one man of business states in a letter to another that he has agreed to do certain things, the person who receives that letter must answer it, if he means to dispute the fact that he did so agree. So, where merchants are in dispute one with the other in the course of carrying on some business negotiations, and one writes to the other, " but you promised me that you would do this or that," if the other does not answer that letter, but proceeds with the negotiations, he must be taken to admit the truth of the statement."*

26. When considering the string of cases that followed the above case, there seems to be a presumption that, the failure to answer a business letter, would be considered as an admission as to its contents. However, His Lordship *Dias J.* in the case of ***Saravanamuttu V. De Mel 49 N.L.R. 529*** at page 542 held that, there exist certain exceptions to this rule.

"… .In business matters, if a person states in a letter to another that a certain state of facts exists, the person to whom the letter is addressed must reply if he does not agree with or means to dispute the assertions The Colombo Electric Tramways and Lighting Co., Ltd., v. Pereira[1] and wijewardene v. Don John [2]. Of course there are exceptions to this rule. For example, failure to reply to mere begging letters when the circumstances show that there was no necessity for the recipient of the letter to reply can give rise to no adverse inference against the recipient. …"

27. Furthering this position, His Lordship *Samayawardhena J*, in the case of ***Disanayaka Mudiyanselage Chandrapala Meegahaarawa V. Disanayaka Mudiyanselage Samaraweera Meegahaarawa [SC Appeal No. 112/2018, SC Min. 21.05.2021]*** stated that,

"However, I must add that although it is a general principle that failure to answer a business letter amounts to an admission of the contents therein, this is not an absolute principle of law. In other words, failure to reply to a business letter alone cannot decide the whole case. It is one factor which can be taken into account along with other factors in determining whether the Plaintiff has proved his case. Otherwise, when it is established that the formal demand, which is a sine qua non for the institution of an action, was not replied, Judgment can ipso facto be entered for the Plaintiff. That cannot be done. Therefore, although failure to reply to a business letter or a letter of demand is a circumstance which can be held against the Defendant, it cannot by and of itself prove the Plaintiff's case. The impact of such failure to reply will depend on the facts and circumstances of each case. Vide the Judgment of Weeramantry J. in Wickremasinghe v. Devasagayam (1970) 74 NLR 80."

28. In light of the above cases, it is apparent that, the presumption that failure to answer a business letter would be considered as an admission as to its contents, is not an absolute presumption. It depends on other circumstances as well.

29. In the same light, one cannot enter judgment in a case where the plaint and answers are filed without conducting a trial, merely because there is no reply to the letter of demand. In the case at hand, the letter of demand for Rs. 40,000 has explained the position of the defendants relating to that transaction and

the plaintiff has denied and taken up a position that it relates to the transaction in the present case. In reply, the defendants have amended a clerical error but has not withdrawn his position in the original letter of demand. Further, it should be well noted that, the defendants have filed their answer denying the position in the plaint. Additionally, no suggestion has been made to record an admission when issues were raised, neither was an issue raised proposing that this letter has to be treated as an admission.

30. Thus, in the circumstances of this case, it is not reasonable to consider the failure to reply or in other words failure to deny the contents of the reply to the letter of demand, as an admission. One cannot expect a party to reply to letters when the case is pending before the Court. It is my position that it is not suitable to presume it as an admission when the defendants have stated their position in the original letter of demand and the answer.

31. When considering the questions of law on which leave to appeal has been granted, I will first address the question of law (6) set out in paragraph 13 of the petition.
In any event, did the learned High Court Judge err in holding that, there was evidence to show that the impugned deed is a fraudulent deed?

32. The learned Counsel for the defendants (appellants) submitted that, the learned Judges of the High Court have not gone into the standard of proof in deciding that the deed in question was fraudulent. The learned Counsel made extensive submissions on the required standard of proof. He cited the cases of ***Lakshmanan Chettiar V. Muttiah Chettiar 50 NLR 337*** and stressed that the finding of fraud cannot be based on suspicion or conjecture and requires proof beyond reasonable doubt.

33. The learned Counsel also made reference to several items of evidence. He stressed that, there are certain discrepancies in the evidence where the plaintiff in his evidence at page 117 of the brief has stated that his wife was present when the money was paid to the plaintiff. However, the plaintiff's wife in her evidence at page 140 of the brief has stated that she was not present at the time money was paid to the 2nd defendant. Further, the plaintiff at page 86 of the brief has stated that, they signed 3 unfilled sheets of deeds. However, the plaintiff's wife at page 113 of the brief has stated that she signed only 2 unfilled sheets of deeds. He submitted that, at page 140 of the brief, it is referred to 3 unfilled sheets of deeds. Many other discrepancies were also submitted to

support the position of the learned Counsel that, fraud has not been established as the required proof beyond reasonable doubt has not been satisfied.

34. The learned President's Counsel for the plaintiff (respondent), in his written submissions submitted that, a property in an extent of 10 acres had been transferred by the deed P-1, for a nominal consideration of Rs. 58,000. The learned President's Counsel asserts that, it is a fraudulent deed. The learned President's Counsel had also made submissions with regard to the minority of the 2nd defendant and on how the notary public who attested the deed has not acted in compliance with the provisions of the Notaries Ordinance.

35. The learned President's Counsel for the plaintiff in his written submissions submitted further that, the transferee in the deed bearing No. 167 [P-1] who is the son of the 1st defendant was a minor and was still schooling at the time of executing the deed (page 200 and 204 of the brief). The Notary in his evidence has also admitted that he could not check the age of the 2nd defendant at the time of execution.

36. The learned District Judge has provided sufficient material to show that the plaintiff failed to prove his case. Even the Notary has stated that the consideration of Rs. 58,000 as mentioned in the deed was passed before him. Further, it has not been properly challenged at the time of the cross examination. When the consideration was Rs. 58,000 as mentioned in the deed in his favor, would they mention Rs. 40,000 in the letter of demand, if it was for the same transaction?.

37. It appears that the letter of demand was sent and replied to, while summons were to be served in this action. It cannot be presumed that sending the letter of demand was an afterthought to meet the present case. However, it appears that the learned District Judge has not considered the fact that there was no reply to the reply letter to the letter of demand. Further, these are not alternative causes of action and they have not elected to proceed with one even at the time of raising issues. Therefore, the plaintiff cannot blow hot and cold while taking the position that the deed was fraudulent and no sale took place in one hand, and there was a sale but it can be invalidated or null and void on other grounds on the other hand at the same time.

38. It is also observed that, apart from possession, the plaintiff has also handed over the original deeds to the defendant. I do not see any reason why the

plaintiff would willingly hand over the original deeds to the defendants. This acts as another vital circumstance which supports the defendants' position that it is not a fraudulent deed.

39. Apart from this, it is also accepted by the plaintiff that he had placed his signature on a transfer deed which he claimed was unfilled. Regardless of it being filled or unfilled, there is nothing to show that the plaintiff was an illiterate person. Therefore, plaintiff in placing his signature on a piece of document titled transfer deed cannot thereafter take the position that he was helpless especially in an instance where the circumstances of the case are not in his favour.

40. When addressing the issue of minority of the 2nd defendant to whom the 1st defendant had transferred the property in dispute, it was stated in the case of ***Palipane V. Palipane and Others [2003] 2 S.L.R. 262*** that,

"In Fernando v Fernando Ennis, J and Schneider, J decided that a minor's deed was not absolutely void and might be ratified by the minor when he attained majority. In that case Ennis, J also expressed the opinion that the distinction between void and voidable made by the latter day jurists was not clear in the Roman Dutch text books.

… .Whenever a minor obtained a benefit from the contract there was no complete prohibition and whether or not he obtained a benefit was a question of fact. In the case of donation and suretyship it was considered that absence of any benefit by a minor was manifest and the contract was considered to be void ab initio or prohibition being absolute. In the case of a loan there was some doubt throwing the onus of proof on the minor to show that he received no benefit. Thus it appears that in every case except gift or suretyship the contract was in fact voidable and not void but as there was no word for voidable the idea was expressed by using the word void with illustration showing that the contract could be made void at a future time at the option of the minor."

41. In this case, although the 2nd defendant (the minor) has attained majority, he has never ratified or repudiated the deed in question. In this instance, the 2nd defendant (minor) has benefitted from the deed in question. Further, he has also continued to defend his right in this case after attaining majority.

42. When considering the issue on the fraudulent nature of the deed, I do not see any grounds to support the decision of the learned Judges of the High Court.

Although the learned District Judge has made a misstatement by stating that fraud has to be proved without any doubt, he has provided sufficient reasons to dismiss the plaintiff's case.

43. In case of ***Kumarasinghe V. Dinadasa and Others [2007] 2 SLR 203*** it was clearly stated that,

> *"… .In the case of Bater v. Bate, where Lord Denning observed that in civil cases the case must be proved by preponderance of probabilities but there may be degrees of probabilities within that standard. The degree depends on the subject matter. A civil court when considering a charge of fraud will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of criminal nature. …"*

44. Further, in the case of ***Peiris and Another V. Siripala [2009] 1 SLR 75*** the Court of Appeal stated that,

> *"In Sri Lanka the earlier view was that the burden of proving fraud in regard to a civil transaction must be satisfied beyond reasonable doubt (Vide Yoosoof Vs Rajaratnam). But the law as it stands today is that the standard of proof remains on a balance of probabilities although the more serious the imputation, the stricter is the proof which is required."*

45. As it is apparent from the decisions of the above authorities, the standard of proof required in civil actions is on balance of probabilities. However, the degree of probability required is higher in situations where the subject matter concerned is to establish fraud. In such instances, fraud is required to be established on a balance of probabilities but with very strong evidence.

46. When considering all the circumstances of this case, it is clear that the standard of proof has not been met by the plaintiff, in asserting that the deed in question is a fraudulent deed.

47. The learned District Judge has given sufficient reasons to reject the plaintiff's case. Thus, the plaintiff's case must fail. Therefore, the learned Judges of the High Court have erred in holding that, there was evidence to show that the

deed in question was a fraudulent deed. The question of law set out in sub paragraph (6) of paragraph 13 of the petition is answered in the affirmative.

48. In view of what has been decided in question of law (6), questions of law set out in sub paragraphs (7) and (10) of paragraph 13 of the petition can also be answered in the affirmative.

49. For the sake of completeness, I will address the question of law (5) set out in paragraph 13 of the petition.
Did the learned High Court Judge misapply the law relating to 'Laesio Enormis'?

50. It was the submission of the learned Counsel for the defendants that, *laesio enormis* does not apply to this case, and that the learned Judges of the High Court have erred on this regard. Citing the case of ***Jayawardena V. Amarasekera 15 NLR 280***, he submitted that if the proprietor knows the value of the property, he is not entitled to recession of the sale merely by reason of the fact that the price at which he has sold the property is less than half its true value. It was his submission that according to the evidence at page 120 of the brief, the plaintiff had known the value of the land to be Rs. 25,000 per acre. Therefore, it was his submission that, *laesio enormis* does not apply to this case and he could not rescind the contract.

51. The learned President's Counsel for the respondent also submitted that, according to the doctrine of *laesio enormis*, which has been pleaded in his plaint, the deed is null and void on the basis that, when the deed was executed, the value of the land was around Rs. 200, 000 and it had been transferred at a sum of Rs. 58,000 which is a price that was less than the just or true price.

52. The learned District Judge has aptly dealt with the question on *laesio enormis*. The learned District Judge was correct in holding that the doctrine of *laesio enormis* does not apply to the present case. Therefore, the question of law set out in sub paragraph (5) of paragraph 13 of the petition is answered in the affirmative.

53. In view of what has been already discussed, the question of law (2) set out in paragraph 13 of the petition need not be answered.

54. Thus, the questions of law (5),(6),(7) and (10) set out in paragraph 13 of the petition are answered in the affirmative. question of law (2) need not be answered.

55. The judgment of the District Court dated 20.11.2006 is affirmed, and the judgment of the High Court dated 2010.05.05 is set aside. The appeal is allowed.

Appeal is allowed.

JUDGE OF THE SUPREME COURT

JUSTICE E. A. G. R. AMARASEKARA

I agree

JUDGE OF THE SUPREME COURT

JUSTICE ACHALA WENGAPPULI

I agree

JUDGE OF THE SUPREME COURT