

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

**LANKA.**

*In the matter of an appeal in terms of section 5 C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.*

**SC Appeal No. 189/2014**

HCCA of Galle Case No.

SP/HCCA/GA/93/2005 (F)

DC Balapitiya Case No. 1103/L

Thennakoon Mudiyansele Leesin

L. S. Mawatha,

Uragasmansandiya.

**(Deceased)**

**PLAINTIFF**

Iddamalgoda Dissanayakalage Winson

Ranasinghe

Magala South,

Karadeniya.

**SUBSTITUTED PLAINTIFF**

**-Vs-**

Akuraliya Liyanawaduge Piyadasa

No. 29,

New Road,

Ambalangoda.

**DEFENDANT**

**AND THEN BETWEEN**

Akuraliya Liyanawaduge Piyadasa

No. 29,

New Road,

Ambalangoda.

**(Deceased)**

**DEFENDANT-APPELLANT**

D. A. Piyaseeli

No. 29,

New Road,

Ambalangoda.

**SUBSTITUTED DEFENDANT-APPELLANT.**

**-Vs-**

Iddamalgoda Dissanayakalage Winson

Ranasinghe

Magala South,

Karandeniya.

**SUBSTITUTED PLAINTIFF-**

**RESPONDENT**

**AND NOW BETWEEN**

D. A. Piyaseeli

No. 29,

New Road,

Ambalangoda.

**SUBSTITUTED DEFENDANT-**

**APPELLANT-APPELLANT .**

**-Vs-**

Iddamalgoda Dissanayakalage Winson

Ranasinghe

Magala South,

Karandeniya.

**(Deceased)**

**SUBSTITUTED PLAINTIFF-  
RESPONDENT- RESPONDENT**

1B1. Ariyadasa Galappaththi

1B2. Deshika Nayomani Galappaththi

1B3. Lathika Ruwani Galappaththi

1B4. Sandali Bhagya Galappaththi

All of,  
No. 45/1,  
Magala - South,  
Karadeniya.

1B5. Thennakoon Mudiyansele Vijitha

Nandani  
Udyana Mawatha,  
Uragasmansandiya.

**SUBSTITUTED PLAINTIFF  
RESPONDENT-RESPONDENTS**

**BEFORE** : **P. PADMAN SURASENA, J.  
KUMUDINI WICKREMASINGHE, J.  
ARJUNA OBEYESEKERE, J.**

**COUNSEL** : Mr. Rohan Sahabandu, PC with Ms. Chathurika Elvitigala and Ms. S. Senanayake for substituted Defendant-Appellant-Appellant.

Mr. Amrith Rajapaksa for the 1 B 5 substituted-Plaintiff- Respondent-Respondent instructed by Ms. G.S. Wijethunga.

**ARGUED &**

**DECIDED ON: 19-09-2023.**

**P. PADMAN SURASENA, J.**

The original Plaintiff in this case had filed plaint against the original Defendant praying *inter alia* :

- i. for a declaration that the Plaintiff is the owner of the land relevant to this case.
- ii. for an order ejecting the Defendant and his representatives from the relevant land.

The Defendant filing the amended answer has taken up the position that he had transferred this land by Deed No. 11763 dated 16-05-1980 to the Plaintiff as he was in an urgent need of money at or about the time he had executed that deed.

Indeed, it must be observed that in paragraph 5 of the answer, it is the position of the Defendant that he was in need of this money at the time of executing the deed or before the said execution. It was in following terms that the Defendant had averred that position in paragraph 5 of the answer:

“ ඔප්පුව ලියා අත්සන් කරන ලද දිනයට හෝ එදිනට පෙරාතුව මෙහි විත්තිකරු හට ඉතාමත් හදිසි මුදල් අවශ්‍යතාවයක් ඇතිවූ බව මෙම විත්තිකරු ජරකාශ කර සිටී”

The parties have recorded an admission that the Deed No. 11763 dated 16-05-1980 has been executed. It is by the said Deed No. 11763 that the Plaintiff had purchased the land from the Defendant. At the outset, it must be observed that the following issues have been raised by the Defendant.

**Issue No. 05.**

“සංශෝධිත උත්තරයේ 05 වන ඡේදයේ සඳහන් පරිදි 1980-05-16 දින හෝ තදාසන්න දිනයකදී පමණ විත්තිකරුට ඉතාමත් හදිසි මුදල් අවශ්‍යතාවයක් පැන නැගුනේද”

**Issue No. 06.**

“සංශෝධිත උත්තරයේ 06 වන ඡේදයේ සඳහන් පරිදි විත්තිකරු, පැමිණිලිකරුගෙන් රු. 10,000 ක මුදල් ණයට ලබාදෙන ලෙසට ඉල්ලා සිටින ලද්දේද”

**Issue No. 07.**

“සංශෝධිත උත්තරයේ 07 වන ඡේදයේ සඳහන් පරිදි පැමිණිලිකරු එම මුදල ලබා දීමට මෙම නඩුවට අදාළ ඉඩම ඇපයක් වශයෙන් තබන ලෙස ඉල්ලා සිටින ලද්දේද”

Since the above issues have been raised by the Defendant, one would expect the Defendant to have adduced evidence relevant to those issues. On the other hand, it is the Defendant who claims that there is a constructive trust in this case and that he did not intend to part the beneficial interest to the Plaintiff by the execution of the said deed. Therefore, the burden is on the Defendant to prove that there in fact exists a constructive trust.

It is the position of the Defendant that he had borrowed Rs. 10,000/- from the Plaintiff in order to purchase this land from Siripala. It is his evidence that he had collected Rs. 15,000/- from his garage and borrowed Rs. 10,000/- more from the Plaintiff and used the total sum of money i.e., Rs. 25,000/- to pay Siripala to purchase this land.

At the outset, it must be noted according to Deed No. 11634 that the Defendant had purchased a land from Siripala on 31-03-1980 for a sum of Rs. 25,000/-.

According to the Plaintiff's Deed No. 11763, the Plaintiff had purchased half of this land from the Defendant on 16-05-1980, which is two months after the date the Defendant had purchased the whole land from Siripala.

Therefore, the evidence of the Defendant in this regard taken alone, in our view, does not establish the fact that he had borrowed Rs. 10,000/- from the Plaintiff for the purpose he claims, as per the issues raised. However, since the court must consider all circumstances together in a case of this nature, we will proceed to consider the other aspects of the case as well.

Plaintiff has produced the document marked **P 5** signed by the Defendant. **P 5** is dated 29-03-1980. In **P 5**, the Defendant has stated that he has accepted Rs. 20,000/- from the Plaintiff agreeing to sell the relevant land to the Plaintiff. The words used in **P 5** are: “ලිසින් මුදලාලි මහතාට විකිණීමට පොරොන්දු වී අද දින එම මහතාගෙන් ලංකාවේ වලංගු මුදලින් රු. 20,000 ඉල්ලා සම්පූර්ණයෙන් ගැන භාරගනිමි”

Although the learned Counsel who appeared for the Defendant had stated to Court in the course of the trial, that this document must be marked subject to proof, we observe that the Defendant had admitted the fact that he has signed this document. However, it is the position of the Defendant that he had only signed a blank document. The Defendant had been content with the bare statement that he had only signed a blank document. He had failed to adduce any further proof in that regard. As opposed to that, since the Defendant had admitted the fact that he has signed this document, we cannot hold that the Plaintiff has not proved on a balance of probability, the document marked **P 5**.

We observe that the document **P 5** is dated 29-03-1980, which is a date two days before the date on which the Deed No. 11634 was executed for Rs. 25,000/-. (Deed No. 11634 was executed on 31-03-1980)

Indeed **P 5** establishes or corroborates the fact that the Plaintiff pursuant to **P 5**, had indeed proceeded to purchase on 16-05-1980, Lot 02 of Plan No. 838 dated 12-05-1980 prepared by D. G. Mendis Licenced Surveyor, from the Defendant for Rs. 10,000/-. It must be noted that what the Defendant had promised in **P 5** is to sell half of that land to the Plaintiff. Therefore, we do not see any discrepancy or contradiction between **P 5** or the making of **P 5** and the execution of the Deed No. 11763 on 16-05-1980 produced marked **P 3**. Thus, **P 5** is not sufficient to establish that the Defendant had not intended to part with his beneficial interest in the property to the Plaintiff. The presence of Plan No. 838 dated 12-05-1980 would also negate such a position.

Since the Defendant had only adduced his bare statement that he signed the blank document (**P 5**), having regard to the totality of evidence adduced in the case, on a balance of probability, we are inclined to accept the evidence of the Plaintiff with regard to this aspect.

It was argued on behalf of the Defendant that the fact that the Defendant is still in possession, must be treated as an attendant circumstance in this case.

The fact that the Defendant is in possession of the relevant land is not disputed by the Defendant. However, learned counsel for the Plaintiff referred us to page 236 of the appeal brief to convince us that the Plaintiff appears to have permitted the Defendant directly or indirectly to continue to occupy the land as there was a friendship between them. We also observe that it is in evidence that the Plaintiff and the Defendant are not strangers to each other as the Plaintiff had taken his vehicles for the purpose of repair, to the garage run by the Defendant.

In view of such facts, we are not inclined to hold that the mere continuation of possession by the Defendant would itself amount to an attendant circumstance in this case.

Another feature that is present in this case is the fact that it was the Plaintiff who had paid the stamp fees and the fees of the Notary. Moreover, we also observe that the Plan No. 838 produced marked **P 1** has been prepared on 12-05-1980. It was pursuant to this plan that the Deed No. 11763 was executed by the Defendant on 16-05-1980. The payment of the stamp fees and the Notary's fees by the Plaintiff, taken together with the fact that the Plan No. 838 has been prepared just four days prior to the deed executed by the Defendant, in our view, is not in favor of establishing a constructive trust as claimed by the Defendant, but indicative of the fact that the Defendant had intended to part with his beneficial interest in the property to the Plaintiff.

Learned President's Counsel for the Defendant also submitted that there was a construction in the nature of a permanent structure which occupies both Lot 1 and Lot 2 in Plan No. 838 (**P 1**). Based on that fact, the learned President's Counsel for the Defendant sought to argue that this fact would be indicative of the fact that the Defendant may never have intended to part with Lot 2 to the Plaintiff as his garage was partly situated in Lot 2 as well.

However, according to the document produced by the Defendant marked **V 6** we observe that the said structure is not a permanent structure.

This court on the date the Leave to Appeal Application relevant to this appeal was supported, by its order dated 15-10-2014 has granted Leave to Appeal on the following question.

*Do the facts and circumstances prove the existence of a trust?*

For the foregoing reasons, we proceed to answer the question of law in respect of which this court has granted Leave to Appeal, in the negative.

We are of the view that both the learned District Judge and the learned Judge of the Provincial High Court of Civil Appeals had come to the correct conclusion. We proceed to affirm both the judgment dated 11-01-2005 pronounced by the learned District Judge and the judgment dated 10-07-2012 pronounced by the learned Judge of the Provincial High Court of Civil Appeals.

We proceed to dismiss this appeal without costs.

Appeal is dismissed.

**JUDGE OF THE SUPREME COURT.**

**KUMUDINI WICKREMASINGHE, J.**

I agree.

**JUDGE OF THE SUPREME COURT.**

**ARJUNA OBEYESEKERE, J.**

I agree.

**JUDGE OF THE SUPREME COURT.**

AG/-