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

SC Appeal No: 133/19

SC/HCCA/LA No: 140/18

EP/HCCA/BC/164/16

D.C. Batticaloa Case No: L/5570/2011

Mr.Arumugam Pushpakaran,
Mariyamman Kovial Road,
Kaluwanchikudy.

Plaintiff

Vs.

Mrs. Ranjithamalar Santhiraseharan,
Patrol Station Road,
Kaluwanchikudy.

Defendant

AND

In the matter of Appeal in terms of Article 154P of the Constitution in the exercise of its jurisdiction granted by Section 5A of the High Court of the Provinces (Special Provinces) Act, No. 54 of 2006 read with Section 88(2) of the Civil Procedure Code.

Mr.Arumugam Pushpakaran,
Mariyamman Kovial Road,
Kaluwanchikudy.

Plaintiff-Appellant

Vs.

Mrs. Ranjithamalar Santhiraseharan,
Patrol Station Road,
Kaluwanchikudy.

Defendant-Respondent

AND NOW

In the matter of an application for Leave to Appeal from Judgment dated 15/03/2018 of the High Court of the Eastern Province (Holden at Batticaloa) in the case No. EP/HCCA/BC/164/16 under and in terms of Section 5C of the High Court of Provinces (Special Provisions) Act No. 19 of 1990 as amended by the High Court of Provinces (Special Provisions) Act No: 54 of 2006.

Mrs. Ranjithamalar Santhiraseharan,
Patrol Station Road,
Kaluwanchikudy.

Defendant-Respondent-Appellant

Vs.

Mr.Arumugam Pushpakaran,
Mariyamman Kovial Road,
Kaluwanchikudy.

Plaintiff-Appellant-Respondent

BEFORE: **S.THURAIRAJA, PC, J.**
K.KUMUDINI WICKREMASINGHE, J.
MAHINDA SAMAYAWARDHENA,J.

COUNSEL: Mr. Niranjan Arulpragasam with Ms. Rasara Jayasuriya for the Defendant-Respondent-Appellant

Ms. S.N. Vijithsingh for the Respondent.

WRITTEN SUBMISSIONS: By the Defendant-Respondent-Appellant on 7th of January, 2020 and 11th of November 2022.

By the Plaintiff-Appellant-Respondent on 26th of November, 2019 and 3rd of November 2022.

ARGUED ON: 12.10.2022.

DECIDED ON: 16.05.2024

K. KUMUDINI WICKREMASINGHE, J.

This is an appeal from a judgment of the High Court of the Eastern Province (Holden in Batticaloa) dated 15.03.2018 which set aside the judgment of the District Court of Batticaloa, case bearing No: L/ 5570/2011 dated 03.02.2016.

The Plaintiff-Appellant-Respondent (hereinafter referred to as the "Respondent") instituted the initial action before the District Court of Batticaloa by Plaint dated 08.11.2011 against the Defendant-Respondent-Appellant (hereinafter referred to as the "Appellant") after which an amended plaint was filed on 30.05.2012 seeking a declaration that the Respondent is the owner of the land described in the schedule B to the Plaint, an order to eject the Defendants from the subject land and claimed compensation and costs until the Defendant has handed over vacant and peaceful possession of the land morefully described in the schedule B to the Plaint. The Appellant sought the dismissal of the Respondent's action and claimed prescriptive title to the property.

After the conclusion of the trial, the District Court delivered the Judgment on 03.02.2016 in favour of the Appellant on the ground that she has become entitled to the land in dispute by way of prescription under Section 3 of the Prescription Ordinance. Aggrieved by the said decision, the Respondent appealed to the Civil Appellate High Court of the Eastern Province (Holden in Batticaloa). On 15.03.2018 the learned High Court Judge set aside the judgment of the District Court on the basis that the learned District Court judge has failed to attribute proper evidentiary value to the testimony of Defendant and has come to erroneous findings of fact which if allowed to stand would cause a gross miscarriage of justice to the Respondent.

The Appellant is before this Court challenging the said Judgment. This Court by Order dated 23.07.2019 granted Leave to Appeal on the following question of law.

“Did the High Court of Civil Appeal of the Western Province Holden in Batticaloa erred in law by holding that the deeds marked V1, V2 and V3 were proved by the Plaintiff?”

My analysis hereafter will be confined to examining the aforesaid question of law based on which leave was granted.

The Respondent and the Appellant are brother and sister and their mother one, Velupillai Thanagaratnam (deceased) by Deed No. 22 dated 30.11.1984 attested by S.Sooriyakumar Notary Public, has gifted the property described in schedule A to the amended answer to the Appellant

and her husband one, Arumugam Chandrasegaran as dowry. Thereafter, the Appellant and her husband transferred the same to one, Mylvaganam Thillaiyampalam by Deed of Transfer No. 23847 (Deed marked V1) dated 16.08.1989 attested by S.Kandappan Notary Public as collateral for a loan of Rs. 50 000.00. The Appellant and her husband were unable to repay the said loan and the interest accrued.

Thereafter, the said Mylvaganam Thillaiyampalam recovered the amount due to him and transferred the excess portion of land described in schedule B to the amended answer to Velupillai Thanagaratnam (deceased) the mother of the Appellant and Respondent by Deed of Transfer No. 177 (Deed marked V2) dated 01.-7.1995 attested by E.Kandasamy Notary Public.

The above two deeds are not disputed by the Appellant. Further, the parties are in agreement with regard to the identity of the property which has been described correctly in Schedule B to the Amended Plaint and Schedule C to the Amended Answer.

The crux of the matter is the Deed of Gift No.5586 (Deed marked V3) dated 07.06.2006 attested by M. Gunasekaram Notary Public. According to the Respondent, the mother, Velupillai Thanagaratnam (deceased) transferred the property in question to him by the said deed. The Respondent has further submitted a document marked V4 which is a letter dated 01.01.2011 allegedly written by the Appellant requesting permission of the Respondent to reside in the property in dispute for a period of six months from 01.01.2011 to 01.06.2011.

The counsel for the Appellant contends that the above mentioned documents marked V3 and V4 are fraudulent. The learned counsel states that the signature of the mother in the Dowry Deed No. 22 is different to that in V3 and when the Respondent was cross examined on the alleged forgery of V3 he claimed that he cannot read. Nevertheless, the Respondent has thereafter read and answered questions regarding the document marked V4. (page 71 of the English Translation of the District Court proceedings) Furthermore, the Appellant states that she has never signed the document marked V4 as there was no necessity for her to obtain permission from any person to stay at her home where she had lived since birth and the signature in the said document shows as 'S. Ranjithamalar' when she usually signs as 'A.Ranjithamalar'. (page 70 and 89 of the English Translation of the District Court proceedings)

However, the Appellant's counsel has failed to reiterate the aforesaid objections to the documents marked V3 and V4 when the Respondent's counsel closed his case at the District Court. (page 75 of the English Translation of the District Court proceedings) Hence, the principal issue in this case is whether the said two documents should be considered as proved by the Respondent although these documents were not objected by the Appellant's counsel at the close of the case of the Respondent.

The accepted position in this regard is the principle enunciated by Samarakoon, C.J., in ***Sri Lanka Ports Authority and another v. Jugolinija – Boal east*** **(1981) 1 Sri L.R 18**, at page 24,

> *"If no objection is taken when at the close of a case documents are read in evidence they are evidence for all purposes of the law.".*

The above decision was followed by the Supreme Court in the case of ***Balapitiya Gunananda Thero Vs. Thalalle Methananda Thero*** **[1997] 2 Sri L.R 101** which stated at page 101 that,

> *"Where a document is admitted subject to proof but when tendered and read in evidence at the close of the case is accepted without objection, it becomes evidence in the case. This is the cursus curiae."*

Nevertheless, the counsel for the Appellant in the present case has relied on the case of **Dadallage Anil Shantha Samarasinghe Vs. Dadallage Mervin Silva and Mohamed Rosaid Misthihar [SC Appeal 45/2010] SC Minutes of 11.06.2019** where the counsel for the 1st Defendant-Appellant failed to object to a deed at the close of the case when that deed was not proved according to Section 68 of the Evidence Ordinance.

In this case, Sisira J de Abrew J at page 6 stated that,

"If the principle enunciated in the case of Sri Lanka Ports Authority and Another Vs Jugolinja Boal-East (supra) is accepted in respect of deeds, even a fraudulent deed marked subject to proof can be used as evidence if it is not objected by the opposing party at the close of the case of the party which produced it. In such a situation, one can argue that courts will have to disregard section 68 of the Evidence Ordinance. I do not think that the principle enunciated in the case of Sri Lanka Ports Authority and Another Vs Jugolinja Boal-East (supra) extends to such a situation. Whether the opposing party takes up an objection or not to a deed which is sought to be produced, the courts will have to follow the procedure laid down in law."

The Appellant in the present case states that the deed marked V3 must be considered as not proved in terms of section 68 of the Evidence Ordinance as no attesting witness was called in the District Court to prove the said deed.

However, I must highlight that a new amendment has been introduced to section 154 of the Civil Procedure Code by the **Civil Procedure Code (Amendment) Act, No.17 of 2022 on 23rd June 2022** and the position of the aforementioned case has now been overtaken by this new amendment.

Transitional Provision in Section 3 of the said amendment states as follows,

Notwithstanding anything contained in section 2 of this Act, and the provisions of the Evidence Ordinance, **in any case or appeal pending on the date of coming into operation of this Act** –

(a)

(i) if the opposing party does not object or has not objected to it being received as evidence on the deed or document being tendered in evidence; or

(ii) **if the opposing party has objected to it being received as evidence on the deed or document being tendered in evidence but not objected at the close of a case when such document is read in evidence, the court shall admit such deed or document as evidence without requiring further proof**;

(b) if the opposing party objects or has objected to it being received as evidence, the court may decide whether it is necessary or it was necessary as the case may be, to adduce formal proof of the execution or genuineness of any such deed or document considering the merits of the objections taken with regard to the execution or genuineness of such deed or document.

The counsel for the Appellant has relied on Section 3 (b) of the above cited amendment to state that this court may decide it was necessary to adduce formal proof of execution of the deed marked V3 and in the absence of such, the case of the Appellant must succeed.

However, I am of the view that the section of the new amendment that is applicable to the present case is Section 3 (a) (ii) as the Appellant's counsel failed to reiterate his objections at the end of the Respondent's case even though he objected to the said deed marked V3 during the cross-examination.

In the present case, the Appellant has disputed the Deed marked V3 on the ground that their mother has signed on the said deed as 'V. Thangaretnam' when she usually signs as 'A.Thangeratnam'. However, the Appellant has admitted that their mother Velupillai Thanagaratnam (deceased) was also known as Arumugam Thangeratnam (page 80 of the English Translation of the District Court proceedings). The Appellant has denied the document marked V4 stating that she never signed the said document and the signature appearing is a forged signature. Nevertheless, the Appellant has submitted a document marked ෆ4 to the District Court

to prove her prescriptive title and the comparison of the Appellant's signature in that document with the alleged forged signature in V4 proves that the signatures belong to the same person which is the Appellant.

However, I am of the opinion that there is no necessity to discuss the genuineness of the said documents as these documents have to be considered as admitted as evidence without requiring further proof under Transitional Provision in Section 3 (a) (ii) of the **Civil Procedure Code (Amendment) Act, No.17 of 2022**. On this basis, I decide the question of law in the present case in negative.

In these circumstances and for the foregoing reasons, the appeal is hereby dismissed without costs.

JUDGE OF THE SUPREME COURT

S.THURAIRAJA, PC, J.
I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.
I agree.

JUDGE OF THE SUPREME COURT