

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

D.M.D. Ananda Jayaratne,
No. 209, Thalawathugoda Road,
Mirihana, Pitakotte.

Plaintiff

SC APPEAL NO: SC/APPEAL/40/2016

SC LA NO: SC/HCCA/LA/345/2014

HCCA MT LAVINIA NO: WP/HCCA/MT/07/2011 (F)

DC NUGEGODA NO: 076/08/SPL

Vs.

M.D.R.M. Perera,
No. 138/35, Thalahena,
Malabe.

Defendant

AND BETWEEN

M.D.R.M. Perera,
No. 138/35, Thalahena,
Malabe.

Defendant-Appellant

Vs.

D.M.D. Ananda Jayaratne,
No. 209, Thalawathugoda Road,
Mirihana, Pitakotte.
Plaintiff-Respondent

AND NOW BETWEEN

M.D.R.M. Perera,
No. 138/35, Thalahena,
Malabe.
Defendant-Appellant-Appellant

Vs.

D.M.D. Ananda Jayaratne,
No. 209, Thalawathugoda Road,
Mirihana, Pitakotte. (Deceased)
Plaintiff-Respondent-Respondent

D.M.D. Dhanushka Buddhika Jayaratne,
House/Assessment No. 431/2,
Kattakaduwa Janapada Kotasa,
Grama Niladari Division of Wadugama,
(No. 71), Galgamuwa.
Substituted Plaintiff-Respondent-
Respondent

Before: E.A.G.R. Amarasekara, J.
Achala Wengappuli, J.
Mahinda Samayawardhena, J.

Counsel: Harsha Soza, P.C., with Anuruddha Dharmaratne for the Defendant-Appellant-Appellant.
Substituted Plaintiff-Respondent-Respondent absent and unrepresented.

Argued on: 03.06.2022

Written submissions:

Written Submissions by the Defendant-Appellant-Appellant
on 24.06.2022

Decided on: 06.04.2023

Samayawardhena, J.

The deed No. 2943 is a deed of transfer where the transferor is the plaintiff and the transferee is the defendant. The plaintiff filed this action against the defendant seeking a declaration that the defendant is holding the property described in the deed in trust for the plaintiff. The plaintiff also sought a declaration that the deed is a nullity on the ground of *laesio enormis* – vide paragraph 13 of the plaint. The defendant filed answer seeking only dismissal of the plaintiff's action. After trial, the District Court entered judgment for the plaintiff granting both reliefs. On appeal, this was affirmed by the High Court. This appeal by the defendant is against the judgment of the High Court. Although notices were served on the plaintiff when he was alive and, after his death, on the substituted plaintiff, they did not come before this Court to contest the defendant's appeal.

It is admitted that a partition case was filed in the District Court of Mount Lavinia (Case No. 54/94/P) in respect of the larger land including the subject matter of this action around the time of the institution of this case in the District Court. The defendant in his post argument written

submissions states “*on the plaintiff’s evidence and on a balance of probability, it is clear that the said deed No. 2943 (P1) has been executed before the said partition case was registered a lis pendens.*” The plaintiff is said to be the 14th defendant in the partition action and the defendant is not a party to that action. It is not clear what happened in the partition case.

The plaintiff’s evidence that this deed was executed only to be valid until he paid money (Rs. 125,000) for the development of the land by the defendant and that he did not want to part with the property is hard to believe. The defendant says he was not involved in developing this land or constructing a road across the land. The defendant says he withdrew the purchase price stated on the deed (Rs. 200,000) from the bank on the date the deed was executed (*vide V6*) and paid the same at the notary’s office to the brother of the plaintiff who accompanied the plaintiff. In the attestation of the deed, the notary says that money was not paid before him. In any event, failure to pay consideration does not make the deed invalid although it might give rise to a different cause of action to recover the money (*Jayawardena v. Amarasekera* (1912) 15 NLR 280, *Nona Kumara v. Abdul Cader* (1946) 47 NLR 457, *Pingamage v. Pingamage* [2005] 2 Sri LR 370).

In the Kaduwela Magistrate’s Court Case No. 21946 (*vide V2 and V3*) filed regarding the same transaction, the plaintiff did not take up the position that the deed is subject to a trust. In the Magistrate’s Court case the plaintiff has promised to transfer the portion of land sold to the defendant by V6 after entering the final decree in the partition case. In my view, the plaintiff did not prove that the deed was subject to a trust.

As seen from the prayer to the plaint, the plaintiff filed this action claiming on the one hand that the deed is valid but subject to a trust in his favour and on the other hand that the deed is invalid on the ground of *laesio*

enormis. These are not pleaded as alternative reliefs. The District Court granted both. These two reliefs cannot co-exist.

The plaintiff cannot succeed in this action. The plaintiff's action in the District Court shall stand dismissed.

The questions of law on which leave was granted and the answers thereto are as follows:

1. Have the learned judges of the High Court of Civil Appeal erred in law in failing to appreciate that the plaint of the plaintiff as presently constituted is not maintainable in law?

Yes.

2. Have the learned judges of the High Court of Civil Appeals erred in law in holding that the defendant is holding the property in suit subject to a constructive trust in favour of the plaintiff and at the same time ordering a rescission of the sale of the said property to the defendant by the plaintiff?

Yes.

3. In any event have the learned trial judge and the judges of the High Court of Civil Appeals erred in considering that the evidence placed before Court warrants a finding that the property in suit is held by the defendant subject to a constructive trust in favour of the plaintiff?

Yes.

4. Have the learned trial judge and the learned judges of the High Court of Civil Appeals erred in law in failing to appreciate that on the evidence before Court, there are no grounds to order a rescission of the sale of the said property in suit to the defendant by the plaintiff?

Yes.

I set aside the judgments of the District Court and the High Court and allow the appeal. No costs.

Judge of the Supreme Court

E.A.G.R. Amarasekara, J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court