

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

Thevarasa Thavamany,
Kallady, Uppodai.
Plaintiff

SC APPEAL NO: SC/APPEAL/102/2013

SC LA NO: SC/HCCA/LA/421/2011

HCCA NO: EP/HCCA/BC/43/2007

DC BATTICALOA CASE NO: 4609/L/98

Vs.

1. Velapody Maheswaran
2. Pasupathy Rasaletchumy

Both of Kallady, Uppodai.
Defendants

AND BETWEEN

Thevarasa Thavamany,
Kallady, Uppodai.
Plaintiff-Appellant

Vs.

1. Velapody Maheswaran
2. Pasupathy Rasaletchumy

Both of Kallady, Uppodai.
Defendant-Respondents

AND NOW

1. Velapody Maheswaran
2. Pasupathy Rasaletchumy

Both of Kallady,
Uppodai.

Defendant-Respondent-Appellants

Vs.

Thevarasa Thavamany,
Kallady,
Uppodai.

Plaintiff-Appellant-Respondent

Before: Hon. Justice P. Padman Surasena
Hon. Justice A.L. Shiran Gooneratne
Hon. Justice Mahinda Samayawardhena

Counsel: S. Mandaleswaran with S. Abinaya for the Defendant-
Respondent-Appellants.
N.R. Sivendran with Fihama Hanifa for the Plaintiff-
Appellant-Respondent.

Written Submissions:

By the Defendant-Respondent-Appellants on 10.09.2013

By the Plaintiff-Appellant-Respondent on 21.01.2014

Argued on: 01.04.2024

Decided on: 10.05.2024

Samayawardhena, J.

The plaintiff filed this action in the District Court of Batticaloa on 02.09.1998 against the two defendants seeking declarations that (a) the Deed of Transfer No. 1485 dated 09.10.1994 attested by Abdul Jawath, Notary Public, is null and void as it was executed fraudulently and deceitfully, and (b) that the defendants are holding the property in trust for the plaintiff. The defendants filed answer seeking dismissal of the plaintiff's action on the basis that the transaction was an outright transfer. While the trial was in progress, the plaintiff also raised an issue that the Deed is invalid by operation of the principle of *laesio enormis*. After trial, the District Court dismissed the plaintiff's action. On appeal, the High Court of Civil Appeal set aside the judgment of the District Court and declared that the Deed is null and void. Hence this appeal by the defendants.

It must be observed at the outset that the plaintiff filed the action without clear direction, seeking cancellation of the Deed of Transfer on contradictory legal principles: fraud, constructive trust and *laesio enormis*.

The whole case depended on facts rather than legal concepts. At the trial, the plaintiff, her mother, and the 1st defendant gave evidence. The trial Judge, before whom evidence was led, did not believe the plaintiff's version. He accepted the defendant's version.

The High Court did not appreciate that it had only printed evidence before it and it is not a trial Court. Although the High Court ultimately declared that the Deed is a nullity, it is not clear exactly on what basis – fraud, constructive trust or *laesio enormis* – the Deed was declared a nullity. The High Court judgment discusses fraud, constructive trust, *laesio enormis*, undue influence etc. but does not make specific findings on any of those

grounds. I must add that there was no issue on undue influence raised in the trial Court, nor has it been raised before the High Court by the plaintiff.

At the commencement of the trial, it was recorded as a formal unqualified admission that "*The Deed No. 1485 dated 09.10.1994 and attested by Notary Public A.L. Jawath was executed by the plaintiff.*" In view of this admission, the burden was on the plaintiff to prove that the Deed was invalid on any other ground.

By reading the judgment of the High Court it appears to me that the High Court declared that the Deed is a nullity on the basis of fraud.

The story of the plaintiff is that the 1st defendant promised to arrange a marriage between the plaintiff and the 1st defendant's brother-in-law, with the land in suit being transferred as part of the dowry. However, the marriage arrangement did not materialise, and the plaintiff thinks she was deceived. Hence, the plaintiff seeks the return of the property and is willing to refund the Rs. 25,000 received at the time of executing the Deed.

The plaintiff has not met or at least seen her prospective husband before transferring the property. If it was intended as the dowry, it is not clear why the property was transferred in the 2nd defendant's name instead of the future husband's name. The 2nd defendant is not the brother-in-law of the 1st defendant but rather the wife of the 1st defendant. The evidence of the 1st defendant is that he does not have a brother-in-law.

The consideration stated in the Deed is Rs. 25,000, which the plaintiff acknowledges receiving before the Notary. However, she says this money was given to her to construct a well on her land. If it is to construct a well, there is no reason to give it before the Notary and for the Notary to state in the attestation clause of the Deed that "*the said consideration of*

this instrument was paid in my presence". The Notary in the attestation clause further states that he "*read and explained the contents of this instrument to the executant Thevarasa Thavamany, who signed in English*".

The 1st defendant contends that he paid Rs. 100,000 as consideration, while Rs. 25,000 was stated in the Deed to reduce payment of stamp duty. The disagreement between the parties on the amount of consideration passed does not affect the validity of the Deed. That issue must be addressed separately.

After purchasing the property, the plaintiff admits that the larger land was subdivided with the permission of the Urban Council and the 1st defendant constructed a building on the land and started a business. The plaintiff did not object to any of those matters at that time. The plaintiff is said to have made a complaint to the police regarding this issue nearly four years after the execution of the Deed. If the land was given as a dowry in the expectation of marriage to another person, such conduct on the part of the plaintiff and the 1st defendant is unimaginable.

The fact that the trial Judge did not believe the plaintiff's story is not unreasonable. Fraud in the execution of the Deed has not been proved.

If the plaintiff's story is not believable, the claims that the 2nd defendant is holding the property in trust for the plaintiff and the Deed was executed on undue influence cannot be successful.

The pursuit of invalidating a Deed based on fraud, trust, *laesio enormis* etc. simultaneously is irreconcilable, as they are grounded on different principles. The drafting of pleadings and framing of issues in such a manner indicate the strength of the plaintiff's case.

Be that as it may, the plaintiff stated in evidence that, at the time of the execution of the Deed, the value of the land was around Rs. 150,000, and if she intended to sell the land, she would have sold it for that price. This will not help the plaintiff to get a declaration that the Deed is invalid on *laesio enormis*. This remedy is not available to a seller who knew the price when he executed the Deed, but rather to a seller who executed the Deed due to ignorance of the real price. (*Jayawardene v. Amerasekera* (1912) 15 NLR 280 at 281)

The questions of law upon which leave to appeal has been granted and the answers thereto are as follows:

Q. Did the High Court of Civil Appeal err in law in coming to the conclusion that Deed No. 1485 is not an outright transfer in light of the evidence in this case?

A. Yes.

Q. Did the High Court of Civil Appeal err in law in coming to the conclusion that a constructive trust has been created in favour of the plaintiff on the ground of fraud perpetrated by the 1st defendant?

A. It is not clear whether the High Court came to that definite finding. If the High Court has come to such conclusion, it is erroneous.

Q. Did the High Court of Civil Appeal err in law in coming to the conclusion that the said Deed is invalid due to undue influence exerted on the plaintiff with the promise of arranging a marriage?

A. It is not clear whether the High Court came to a definite finding on undue influence. If it has come to such finding, it is erroneous.

Q. (raised by the plaintiff-respondent) On the basis of the evidence, are the defendant-appellants guilty of fraud on the revenue, and if so, can the appellants maintain this appeal?

A. The appeal cannot be dismissed/the Deed cannot be declared null and void on “fraud on the revenue”.

I set aside the judgment of the High Court and restore the judgment of the District Court and allow the appeal but without costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court