

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

Irene Liyanage,  
No. 48/21, Udahamulla Road,  
Wijerama, Nugegoda.  
Plaintiff

**SC APPEAL NO: SC/APPEAL/32/2019**

**CA NO: WP/HCCA/AV/1663/2016 (F)**

**DC HOMAGAMA NO: 4904/99/L**

Vs.

1. Maddumage Geetha Jayamali,  
No. 418/2,  
Gunanandaghana Mawatha,  
Moragahahena, Millawa.
2. Sirimewan Pathirana,  
No. 332/B, Makumbura,  
Pannipiya.

Defendants

AND BETWEEN

Irene Liyanage,  
No. 48/21, Udahamulla Road,  
Wijerama, Nugegoda.  
Plaintiff-Appellant

Vs.

1. Maddumage Geetha Jayamali,  
No. 418/2,  
Gunanandaghana Mawatha,  
Moragahahena, Millawa.
2. Sirimewan Pathirana,  
No. 332/B, Makumbura,  
Pannipiya.

Defendant-Respondents

AND NOW BETWEEN

Sirimewan Pathirana,  
No. 332/B, Makumbura,  
Pannipiya.

2<sup>nd</sup> Defendant-Respondent -Appellant

Vs.

1. Irene Liyanage,  
No. 48/21,  
Udahamulla Road,  
Wijerama, Nugegoda.  
Plaintiff-Appellant-Respondent
2. Maddumage Geetha Jayamali,  
No. 418/2,  
Gunanandaghana Mawatha,  
Moragahahena,  
Millawa.

1<sup>st</sup> Defendant-Respondent-Respondent

Before: S. Thurairaja, P.C., J.  
Yasantha Kodagoda, P.C., J.  
Mahinda Samayawardhena, J.

Counsel: Manohara De Silva, P.C., with Harithriya Kumarage for the  
2<sup>nd</sup> Defendant-Respondent-Appellant.

Hussain Ahamed for the Plaintiff-Appellant-Respondent.

Argued on: 10.10.2022

Written submissions:

by the 2<sup>nd</sup> Defendant-Respondent-Appellant on 22.10.2019  
and 30.11.2022.

by the Plaintiff-Appellant-Respondent on 15.06.2020 and  
09.01.2023.

Decided on: 24.05.2023

Samayawardhena, J.

According to the amended plaint, the plaintiff filed action in the District Court against the two defendants seeking declarations/orders that the 1<sup>st</sup> and/or the 2<sup>nd</sup> defendant are holding the property in trust for the plaintiff; and/or the 1<sup>st</sup> and/or the 2<sup>nd</sup> defendant are holding the property as security obtained for a loan in a sum of Rs. 500,000 (from the Dedigama Group); to retransfer the property in the name of the plaintiff; Deed No. 1096 marked P3 is a fraudulent Deed; and Deed No. 1387 marked P4 is a nullity. The defendants filed answer seeking dismissal of the plaintiff's action.

The case for the plaintiff is that she borrowed a sum of Rs. 500,000 from the Dedigama Group in May 1996 and the property in suit and another property were mortgaged as security for the loan. After payment of the money borrowed in August 1996, the Deed in relation to the other property

(Deed No. 17) was returned to her but not the Deed in relation to the property in suit (Deed No. 252 marked P1 whereby the plaintiff became the owner). The plaintiff has made a complaint to the police in this regard which has been marked P2.

The plaintiff in her evidence says that, after the discussion with Ranjan Dedigama and Podi Nilame of the Dedigama Group, she was taken to a notary's office and therein her signatures were obtained to blank papers after being told that the transaction was a mortgage and not a sale. This has happened before the money was lent to the plaintiff.

According to Deed No. 1096 marked P3 (the impugned Deed), the land in suit has purportedly been transferred by the plaintiff to the 1<sup>st</sup> defendant on 18.09.1997 for a sum of Rs. 150,000. The plaintiff categorically denies this. The 1<sup>st</sup> defendant was a female employee of the Dedigama Group at that time. According to the plaintiff, she has never spoken to her at any time let alone sold the land to the 1<sup>st</sup> defendant. Thereafter the 1<sup>st</sup> defendant has transferred this land to the 2<sup>nd</sup> defendant by Deed No. 1387 marked P4. The 2<sup>nd</sup> defendant at that time was a superintendent of police.

After trial, the learned District Judge, particularly by answering issues No. 2 and 12, had come to the findings that (a) the Deed of Transfer P3 had been executed in favour of the 1<sup>st</sup> defendant who was an employee of the Dedigama Group when the land was in fact mortgaged to the Dedigama Group as security to a loan (b) there were no dealings by the 1<sup>st</sup> defendant with the plaintiff prior to the execution of the purported Deed of Transfer P3, and P3 was not a Deed executed on valuable consideration. I read the evidence led at the trial before the District Court and I am fully convinced that the said findings are correct.

However the learned District Judge dismissed the plaintiff's action primarily on the basis that the plaintiff made a fundamental mistake by

tendering an amended plaint by removing the names of Ranjan Dadigama, his employee Podi Nilame and Notary Walisundara as parties to the case.

Being dissatisfied with the judgment of the District Court, only the plaintiff preferred an appeal to the High Court of Civil Appeal. The defendants did not appeal against the said adverse findings of the District Court. The High Court set aside the judgment of the District Court and directed the District Court to enter the judgment for the plaintiff. I take the view that the conclusion of the High Court is correct.

The 2<sup>nd</sup> defendant came before this Court against the judgment of the High Court. This Court has granted leave to appeal on several questions (Paragraphs (b) to (f) of the petition). The first question is whether the High Court misdirected itself in failing to consider that the plaintiff had failed to prove that Deed P3 was a forged Deed or executed on misrepresentation. As I have already stated, this is the finding of the District Judge, against which there was no appeal. The High Court only fortified or rather affirmed that finding. This question shall be answered in the negative. The third question is whether the High Court misdirected itself by placing the burden on payment of consideration on the defendants. The finding of the learned District Judge is that consideration on Deed P3 was not paid by the 1<sup>st</sup> defendant to the plaintiff. There was no appeal against this finding. The High Court merely affirmed it. The finding of the learned District Judge is correct.

I accept that the High Court further says that consideration on Deed P4 was also not paid by the 2<sup>nd</sup> defendant to the 1<sup>st</sup> defendant. I think that finding is unwarranted. Even the 1<sup>st</sup> defendant does not say so. The learned District Judge does not say that Deed P4 is a forgery. I set aside that finding of the High Court and affirm the finding of the District Court on Deed P4. However, whether or not Deed P4 is a forgery is immaterial. If Deed P3 is a forgery, Deed P4 executed based on P3 is a nullity. The 2<sup>nd</sup>

defendant-appellant may seek relief against the 1<sup>st</sup> defendant, if so advised.

In view of the above findings, there is no necessity to answer the other questions raised by the 2<sup>nd</sup> defendant-appellant.

I dismiss the appeal but without costs.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Yasantha Kodagoda, P.C., J.

I agree.

Judge of the Supreme Court