

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

Aluthgama Hewage Ariyapala Amaradasa,  
No. 555/16B, Elhenewatte,  
Gonahena, Kadawatha.  
Plaintiff

**SC APPEAL NO: SC/APPEAL/108/2019**

**SC LA NO: SC/HCCA/LA/175/2018**

**HCCA CASE NO: WP/HCCA/GPH/28/2013 (F)**

**DC GAMPAHA CASE NO: 3735/M**

Vs.

Hewaralalage Dulani Dilrukshi,  
No. 555/16A, Elhenawatte,  
Gonahena, Kadawatha.  
Defendant

AND BETWEEN

Hewaralalage Dulani Dilrukshi,  
No. 555/16A, Elhenawatte,  
Gonahena, Kadawatha.  
Defendant-Appellant

Vs.

Aluthgama Hewage Ariyapala Amaradasa,

No. 555/16B, Elhenewatte,  
Gonahena, Kadawatha.  
Plaintiff-Respondent (deceased)

Gamlath Ralalage Chandrawathie,  
No. 555/16B, Elhenewatte,  
Gonahena, Kadawatha.  
Substituted-Plaintiff-Respondent

AND NOW BETWEEN

Gamlath Ralalage Chandrawathie,  
No. 555/16B, Elhenewatte,  
Gonahena, Kadawatha.  
Substituted-Plaintiff-Respondent

Vs.

Hewaralalage Dulani Dilrukshi,  
No. 555/16A, Elhenawatte,  
Gonahena, Kadawatha.  
Defendant-Appellant-Respondent

Before: P. Padman Surasena, J.  
Mahinda Samayawardhena, J.  
Arjuna Obeyesekere, J.

Counsel: Sudarshani Coorey for the Substituted Plaintiff-Respondent  
Appellant.  
Defendant-Appellant-Respondent absent and unrepresented.

Argued on : 16.12.2021

Written submissions:

by the Plaintiff-Respondent-Appellant on 26.06.2019

Decided on: 02.12.2022

Mahinda Samayawardhena, J.

The plaintiff filed this action against the defendant in the District Court of Gampaha seeking to recover a sum of Rs. 200,000/- with interest. The defendant filed answer seeking dismissal of the action. After trial, the District Court entered judgment for the plaintiff. On appeal, the High Court of Civil Appeal of Gampaha set aside the judgment of the District Court and allowed the appeal. This appeal by the plaintiff is against the judgment of the High Court. This Court granted leave to appeal against the judgment of the High Court on the following two questions of law (reproduced verbatim):

- (a) Did the learned High Court judges err in failing to appreciate that the mere fact that the two letters were obtained on the same day, does not show that the two transactions are the same, especially when there is overwhelming evidence to show that the jewellery was obtained earlier by the defendant from the plaintiff's wife and the money was obtained at a later date from the plaintiff?*
- (b) Did the learned High Court judge disregard and/or misunderstand the evidence placed before court by the parties and the learned High Court judge set aside the District Court judgment and dismissed the Plaintiff's action?*

Notwithstanding the fact that the defendant was served with notice several times, the defendant was absent and unrepresented before this Court.

The defendant is a close relation of the plaintiff and his wife. Before the marriage, the defendant had helped the plaintiff and his wife in their

household chores for a considerable length of time. According to the evidence of the defendant, she has studied up to the G.C.E. Ordinary Level examination.

The case for the plaintiff is that after the defendant's marriage on 06.03.2003, the defendant borrowed Rs. 200,000/- to construct a house but that money was not returned. P1 dated 08.07.2009 written by the defendant corroborates this. It is in her handwriting. By that letter the defendant has agreed to repay the said money in monthly instalments of Rs. 5,000/-. The fact that a sum of Rs. 180,000/- was withdrawn by the plaintiff from the Bank was corroborated through the evidence of a Bank officer although there is no evidence to say that that money was entirely given to the defendant.

The defendant's position as stated in the answer is that: the plaintiff's wife gave her Rs. 75,000/- as a wedding gift but later wanted the money back on the insistence of the plaintiff's son; since the defendant was not able to pay back, the plaintiff's wife gave the defendant jewellery to pawn and pay the son; P1 was signed as security for giving the jewellery. The defendant gave evidence at the trial.

The plaintiff and his wife gave evidence at the trial. Their position is that the jewellery was taken by the defendant from the plaintiff's wife to return after the wedding and Rs. 200,000/- was taken from the plaintiff after the wedding to construct a house. According to the plaintiff and his wife, these are two different transactions. This evidence is acceptable.

The defendant has neither returned the money nor the jewellery; instead the jewellery has been pawned by the defendant and the money taken has been used by her.

Regarding the failure to return the jewellery, the wife of the plaintiff has filed a separate action in the District Court and it has been settled, in that

the defendant has agreed to redeem the jewellery and return it to the plaintiff's wife (the plaintiff in the other case). The instant case was pending at the time of entering into the settlement in the other case but this matter was not mentioned in the other case. If P1 was relevant to the dispute on the jewellery, the parties could have informed the District Court of the same and arrived at an overall settlement. The instant case has not even been mentioned in the settlement in the other case.

If the plaintiff or his wife gave money to the defendant which was not returned, it is very unlikely that the plaintiff's wife would give jewellery to the defendant to pawn and pay the money back. There is no logic in that argument. If the plaintiff's wife wanted to satisfy her son, she herself could have pawned her jewellery and pretended to her son that the defendant had paid the money. Why did the plaintiff's wife need to give the jewellery to the defendant? What is the connection between P1 and handing over jewellery to the defendant? There is no connection. This is the evidence of the defendant regarding the connection between P1 and the jewellery.

ප්‍ර: තමුන්ට යෝජනා කරනවා, පැ. 1 ලේඛනයට අනුව රුපියල් ලක්ෂ දෙකක මුදලක් ගෙවන්න තමුන් බැඳිලා ඉන්නවා කියලා?

උ: රත්රන් බඩු උගස් කල එකට තමයි අත්සන් කර දුන්නේ.

ප්‍ර: පැ. 1 ලේඛනයේ රත්රන් බඩු වලට අදාලව කිසියම් ප්‍රකාශයක් සඳහන් කර නැහැ කියා යෝජනා කරනවා?

උ: එම ලේඛන දෙකටම අත්සන් කළේ එකම දවසේ.

ප්‍ර: පැ. 1 ලේඛනයේ රත්රන් බඩු ගැන ලියා තිබෙනවා ද?

උ: නැහැ. නැන්දා අසනීප නිසා මාමා කිව්වේ අත්සන් කරන්න කියා. රත්රන් බඩු සින්න වෙන නිසා බඩු භාගයක් ගත්තා. ඉතුරු ටිකට පොලිය දෙන්නම් කියා කිව්වා. තමුන් පොලිය දුන්නෙන් නැහැ.

There is no reason for signing P1 as security; there is no meaning to it. It is an absolutely meaningless and false stand taken up by the defendant.

Even if this argument of the defendant is accepted, still the plaintiff's money needs to be repaid for the reason that the money generated from the pawned jewellery does not belong to the defendant.

V1 dated 08.07.2009 is relevant to the jewellery dispute. By V1 the defendant has promised to redeem the jewellery before a particular date. V1 is also in the defendant's handwriting.

The brief judgment of the High Court is completely unsatisfactory. No reasons acceptable to this Court have been given for setting aside the judgment of the District Court. The High Court Judge says the fact that P1 and V1 bear the same date corroborates the defendant's story. (“එමෙන්ම, එකී පැ1 දරන ලේඛනය අත්සන් කරන ලද 2009.07.08 වන දිනම වී1 ලෙස ලකුණු කොට ඉදිරිපත්කර ඇති ලේඛනයටද විත්තිකාරිය අත්සන් කර ඇති බැවින් විත්තිකාරිය විසින් දරන ලද ඉහත සඳහන් ස්ථාවරය සාක්ෂි මගින් තහවුරු වන බව පෙනේ.”) But as I have already explained, there is no correlation between P1 and V1. The High Court Judge also says (without stating any reason) that P1 is security for pawning the jewellery. There is no basis for this finding. (“විත්තිකාරිය විසින් අදාළ මුදල් පැමිණිලිකාරියගේ පුතාට ගෙවීම්ට එකඟ වුවද එසේ ගෙවීම්ට අපොහොසත් වීම මත පැමිණිලිකාරියගේ භාර්යාව විසින් ඇයගේ ස්වර්ණාභරන උකස් කර අදාළ මුදල් ගෙවා දැමීමට විත්තිකාරිය සහාය වී ඇති අතර පැමිණිලිකාරියගේ බිරිඳගේ ස්වර්ණාභරන උකස් කිරීම අනුව එකී උගස බේරා දෙන තෙක්, ඊට සුරැකුමක් ලෙස පැමිණිලිකරු විසින් විත්තිකාරියගේ පැ-1 දරන පොරොන්දු නෝට්ටුවට අත්සන් ලබාගෙන ඇති බවය. එහෙත් පැමිණිලිකරුගේ භාර්යාව විසින් උකස් කරන ලද ස්වර්ණාභරන වලට අදාළ මුදල් විත්තිකාරියගෙන් අයකර ගැනීම සඳහා 3737 දරන මුදල් නඩුව ගම්පහ දිසා අධිකරණයේ පවරා පවත්වාගෙන යන අතර සමථයකට පත්වීම මත මෙම නඩුව මගින් පැමිණිලිකරුට, එකී ස්වර්ණාභරන උකස් කිරීම පිළිබඳව ගනුදෙනුවේ මුදල් අයකර ගැනීමට නඩු නිමිත්තක් පැන නොනගින බවට තීරණය කරමි.”)

I answer both questions of law in the affirmative and set aside the judgment of the High Court and restore the judgment of the District Court. The plaintiff is entitled to costs in all three Courts.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court