

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

In the matter of an application for Special Leave to Appeal to the Supreme Court of the Democratic Socialist Republic of Sri Lanka from the judgment dated 24.11.2010 of the Court of Appeal in terms of Article 128 of the Constitution.

Karunasinghe Herathge Lalitha Padmini  
No.91/1Keedagammulla, Gampaha  
**Plaintiff-Appellant-Petitioner-Appellant**

SC Appeal 118/2011

SC/SPL/LA/03/2011  
CA 688/2000 F  
DC Gampaha 35792/L

Vs

1. Wijesinghe Arachchige Wijedasa  
No.5 Sri Dharmapala Mawatha,  
Gampaha
2. Bandaranayake Mudiyansele Bandara  
Manawatta.  
No.45, Diyawanna Road, Etul Kotte, Kotte  
**Defendant-Respondent-Respondent-Respondents**

Before : Eva Wanasundera PC J  
Sisira J De Abrew J  
Upaly Abeyratne J

Counsel : Harsha Soza PC with Upendra Walgampaya for the  
Plaintiff-Appellant-Petitioner-Appellant  
Athula Perera with Chathurani De Silva for the  
Defendant-Respondent-Respondent-Respondents

Argued on : 7.12.2015

Written Submissions

tendered on : By the Plaintiff-Appellant-Petitioner-Appellant on 17.10.2011

By the Defendant-Respondent-Respondent-Respondents on  
23.1.2012

Decided on : 31.3.2016

**Sisira J De Abrew J.**

This is an appeal to set aside judgment of the Court of Appeal dated 24.11.2010. The Court of Appeal, by the said judgment affirmed the judgment of the learned District Judge who dismissed the plaintiff's action. Being aggrieved by the said judgment of the Court of Appeal, the Plaintiff-Appellant-Petitioner-Appellant (hereinafter referred to as the Plaintiff-Appellant) has appealed to this court. This court, by its order dated 5.9.2011, granted special leave to appeal on the questions of law set out in paragraphs 22(i),(ii),(iii) and (iv) of the petition of appeal dated 4.1.2011 which are set out below.

1. Has the Court of Appeal failed to appreciate that there has been no proper evaluation of the evidence in this case?
2. Has the Court of Appeal failed to consider that well before 28.12.1992 the 1<sup>st</sup> Defendant has unequivocally refused to fulfill his obligations and breached in law the agreement P1?
3. Has the Court of Appeal failed to consider that in law it is the 1<sup>st</sup> Defendant who is in *mora* , and that he cannot take advantage of his own wrongdoing?
4. Has the Court of Appeal erred in law holding that no cause of action had occurred to the Plaintiff as at 28.12.1992?

Facts of this case may be briefly summarized as follows: The 1<sup>st</sup> Defendant-Respondent-Respondent-Respondent (hereinafter referred to as the 1<sup>st</sup>

Defendant) is the owner of the land described in the 1<sup>st</sup> schedule to the plaint. It can be described as Lot No.8 of plan No.88/68 dated 3.6.1968 of CL Wickramaratne Licensed Surveyor. Sangapala Archchige Jayasiri Dissanayake was the owner of blocks of land described in the 2<sup>nd</sup> and 3<sup>rd</sup> schedules to the plaint. For the purpose of convenience they can be described as Lots 7 and 9 of Plan No.88/68 of CL Wickramaratne Licensed Surveyor dated 3.6.1968. The 2<sup>nd</sup> Defendant-Respondent-Respondent-Respondent (hereinafter referred to as the 2<sup>nd</sup> Defendant) is the holder of Power of Attorney of said Sangapala Archchige Jayasiri Dissanayake (SAJ Dissanayake).

On 22.8.1991, the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants entered into an agreement with the Plaintiff-Appellant marked P1 (Deed No.4091) for the sale of Lots 7,8 and 9 of Plan No.88/68 of CL Wickramaratne Licensed Surveyor dated 3.6.1968. The said Lots 7 and 9 were sold and conveyed by the 2<sup>nd</sup> Defendant to the Plaintiff-Appellant after fulfilling the terms of the said agreement (agreement to sell). The sale of Lot 8 of the said Plan No.88/68 did not take place as per the agreement to sell. The Plaintiff-Appellant filed the present case against the 1<sup>st</sup> Defendant on the ground that the 1<sup>st</sup> Defendant failed and neglected to perform his obligations arising on the agreement. He sought a direction from the District Court on the 1<sup>st</sup> defendant to transfer the property described in the 1<sup>st</sup> schedule (Lot No.8 of the plan No.88/68 of CL Wickramaratne Licensed Surveyor dated 3.6.1968) to the plaintiff after fulfilling the terms of the said agreement.

Both parties admit that the value of three blocks is Rs.15,17,500/-; that Rs.50,000/- was paid to the 2<sup>nd</sup> Defendant on the day that the agreement was signed; and that Rs.400,000/- was deposited on 20.2.1992 (prior to the signing of the agreement to sell) in the account of SAJ Dissanayake. One of the

conditions of the agreement to sell was that the Plaintiff-Appellant should, before **31.12.1992**, pay the balance to the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants (clause No.6). According to clause No.7 of the agreement to sell, after the payment of the balance amount by the Plaintiff-Appellant, the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants must, by deeds of transfer, convey the property to the Plaintiff-Appellant. The 2<sup>nd</sup> Defendant sold and conveyed Lots 7 and 9 of Plan No. 88/68 to the Plaintiff-Appellant as the balance amount was paid to him. The Plaintiff-Appellant maintains the position that although she requested the 1<sup>st</sup> Defendant to accept the balance amount, the 1<sup>st</sup> Defendant failed and neglected to accept the balance amount.

One of the important issues that must be decided in this case is whether the 1<sup>st</sup> Defendant failed and neglected to accept the balance amount. The 1<sup>st</sup> Defendant himself, in his evidence, admits that the balance amount that should be paid to him was Rs.170,000/-. The Plaintiff-Appellant, by his letter dated 8.12.1992, requested the 2<sup>nd</sup> Defendant to come and accept the balance amount due to him at Bank of Ceylon Ja-ela branch and to inform the 1<sup>st</sup> Defendant too about her intention to pay the balance due to him and the writing of the deeds. The 2<sup>nd</sup> Defendant accepted the balance amount due to him and transferred lots 7 and 9 of Plan No.88/68 of CL Wickramaratne Licensed Surveyor dated 3.6.1968. The Plaintiff-Appellant, by his letter dated 8.12.1992 addressed to the 1<sup>st</sup> Defendant, also informed her intention to pay the balance amount due to him. She, by the said letter, further requested the 1<sup>st</sup> Defendant to make arrangements to write the deed before 15.12.1992. As the 1<sup>st</sup> Defendant did not accept the balance amount, the Plaintiff-Appellant deposited money with R Abeysinghe Attorney-at-Law. R Abeysinghe Attorney-at-Law, by his letter dated 21.12.1992 (P11), informed the 1<sup>st</sup> Defendant that the Plaintiff-Appellant had

deposited Rs.170,000/- with him and requested him to collect the said amount immediately and transfer the property by a deed as per the agreement to sell (deed No 4091). The evidence of R Abeysinghe Attorney-at-Law was not challenged in court. The 1<sup>st</sup> Defendant did not comply with the said request. He (the 1<sup>st</sup> Defendant) maintained the position that he never received letters alleged to have been sent by the Plaintiff-Appellant and R Abeysinghe Attorney-at-Law. But the Plaintiff-Appellant produced the relevant registered postal article receipts. SK Jayadasa, an officer from Post Office Gampaha confirmed in evidence that the relevant letters had been delivered to the 1<sup>st</sup> Defendant. From the above facts it is clear that the 1<sup>st</sup> Defendant had failed and neglected to accept the balance amount from the Plaintiff-Appellant and that the Plaintiff-Appellant had the bona fide intention to pay the balance amount and that she had made all endeavours to pay the balance amount to the 1<sup>st</sup> Defendant. As the 1<sup>st</sup> Defendant did not comply with the request of R Abeysinghe Attorney-at-Law, the Plaintiff-Appellant, on 28.12.1992, deposited in the District Court Rs.170,000/- which is the balance amount that should be paid to the 1<sup>st</sup> Defendant and filed the present case in the District Court of Gampaha. The case was filed on **28.12.1992**.

The main contention of learned counsel for the 1<sup>st</sup> Defendant was that no cause of action had accrued to the Plaintiff-Appellant as at 28.12.1992. The learned District Judge too had come to the same conclusion. He had also come to the conclusion that it was open for the 1<sup>st</sup> Defendant to perform his obligation on the agreement to sell on or before 31.12.1992. The Court of Appeal too came to the same conclusion. Learned counsel for the 1<sup>st</sup> Defendant too advanced the same contention before us. I now advert to this contention.

An examination of clause 6 and 7 of the agreement to sell clearly indicates that the Plaintiff-Appellant should pay the balance amount to the 1<sup>st</sup> Defendant before 31.12.1992 and the 1<sup>st</sup> and the 2<sup>nd</sup> Defendant should thereafter transfer the property by transfer deeds. The said clauses do not state that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants should transfer the property after 31.12.1992. Thus whenever the balance payment was made, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were obliged to transfer the property to the Plaintiff-Appellant. According to clause 6 and 7 of the agreement to sell, the Plaintiff-Appellant need not wait till 31.12.1992 to make the balance payment; the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are not empowered to wait till 31.12.1992 to write the deed of transfer upon payment of the balance amount; and no sooner the balance amount is paid the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are obliged to transfer the property to the Plaintiff-Appellant by way of transfer deeds. It appears that both the District Court and the Court of Appeal have failed to appreciate the above contention. As I pointed out earlier the 1<sup>st</sup> Defendant had failed and neglected to accept the balance amount. The Plaintiff-Appellant showing her bona-fide intention to pay the balance amount had written letters to the 1<sup>st</sup> Defendant and finally deposited the money with R Abeysinghe Attorney-at-Law and later deposited in the District Court.

For the aforementioned reasons, I hold that the 1<sup>st</sup> Defendant had failed to perform his obligations on the agreement to sell and therefore the Plaintiff-Appellant is entitled to relief claimed in his plaint.

For the above reasons, I set aside both the judgments of the District Court and the Court of Appeal and grant relief claimed by the Plaintiff-Appellant in his plaint. The learned District Judge is directed to enter decree accordingly. In view of the conclusion reached by me, I answer the questions of

law in the affirmative. I allow the appeal. The Plaintiff-Appellant is entitled to recover costs of the actions in all three courts.

Judge of the Supreme Court.

Eva Wanasundera PC, J

I agree.

Judge of the Supreme Court.

Upaly Abeyratne J

I agree.

Judge of the Supreme Court.