

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

In the matter of an appeal in terms of Article 127 of the Constitution to be read with Section 5(C) of the High Court of the Provinces (Special Provisions) Act No 10 of 1996 as amended by High Court of the Provinces (Special Provisions) (Amendment) Act No 54 of 2006.

SC / Appeal / 148/2013

SC/ HCCA/LA/ 497/2012

WP/HCCA/MT/17/09(F)

DC Nugegoda/138/08/L

1. Bulathsinghalage Gnanawathie,
 2. Presanna Ramanayake,
- Both of No. 211 A, Nawala Road,
Nugegoda.

Plaintiff

Vs.

1. Warnakula Patabendige Konrad
Anthony Perera,
No. 282, Badulla Road, Bandarawela.
2. Ivon Indrani Rupasinghe,
No. 37/01, the Fonseka Road,
Colombo 5.
3. Peoples Bank,
Nugegoda Branch,
Nugegoda.

Defendants

AND BETWEEN

1. Bulathsinghalage Gnanawathie,

2. Presanna Ramanayake,
Both of No. 211 A, Nawala Road,
Nugegoda.

Plaintiff Appellant

Vs.

1. Warnakula Patabendige Konrad
Anthony Perera,
No. 282, Badulla Road
Bandarawela.
2. Ivon Indrani Rupasinghe,
No. 37/01, the Fonseka Road,
Colombo 5.
3. Peoples Bank,
Nugegoda Branch,
Nugegoda.

Defendant Respondents

AND NOW BETWEEN

1. Bulathsinghalage Gnanawathie,
2. Presanna Ramanayake,
Both of No. 211 A, Nawala Road,
Nugegoda.

Plaintiff Appellant Appellants

Vs.

1. Warnakula Patabendige Konrad
Anthony Perera,
No. 282, Badulla Road
Bandarawela.
2. Ivon Indrani Rupasinghe,

No. 37/01, the Fonseka Road,
Colombo 5.

3. Peoples Bank,
Nugegoda Branch,
Nugegoda.

Defendant Respondent Respondents

BEFORE

: B. ALUWIHARE, PC, J.
UPALY ABEYRATHNE, J.
K. T. CHITRASIRI, J.

COUNSEL

: M.U.M. Ali Sabry PC with Shamith
Fernando and Suranga Perera for the
Plaintiff Appellant Appellants

Kuvera De Zoysa PC with Aneen Maharooof
for the 2nd Defendant Respondent
Respondent

WRITTEN SUBMISSION ON:

24.01.2014 (the Plaintiff Appellant
Appellants)

17.11.2014 & 10.11.2016 (2nd Defendant
Respondent Respondent)

ARGUED ON

: 04.10.2016

DECIDED ON

: 11.07.2017

UPALY ABEYRATHNE, J.

The Plaintiff Appellant Appellants (hereinafter referred to as the Appellants) instituted an action against the Defendant Respondent Respondents (hereinafter referred to as the Respondents) seeking inter alia a declaration of title

to the property described in the schedule to the plaint dated 21.12.2001 and a declaration that the deed bearing No. 2071 dated 29.03.2001 is null and void. According to Journal Entry (J.E.) 6 dated 23.08.2002, the Appellants have tendered an amended plaint dated 20.08.2002, to which the Respondents have filed their statement of objections. By order dated 28.07.2004, the learned District Judge has refused to accept the said amended plaint. Thereafter the Appellants have made another application to amend the plaint for the second time and accordingly have tendered the second amended plaint dated 25.05.2005. Unfortunately, the learned District Judge, by order dated 30.09.2005, has refused to accept the the said second amended plaint as well.

As it appears in JE 8 dated 29.11.2002, the 1st and 2nd Respondents have filed their answers dated 28.11.2002 and 29.11.2002, respectively. The 2nd Respondent in her answer has made a claim in reconvention. Also on 13.06.2003, the 3rd Respondent has filed its answer dated 13.06.2003. All the Respondents have prayed for a dismissal of the Appellant's action. After the filing of the answer of the 3rd Respondent on the said date, the case has been fixed for trial.

In the meantime, on 25.01.2006, the Appellants have made an application to withdraw the plaint with liberty to file a fresh action to which the Respondents have objected to. The learned District Judge, by order dated 17.03.2006, has allowed the said application to withdraw the plaint without liberty to file a fresh action. The Appellants have not canvassed any of the said orders of the learned District Judge in appellate courts.

Thereafter, upon the claim in reconvention, the case of the 2nd Respondent has proceeded to trial on 11 issues. After trial, the learned District Judge has delivered the judgment dated 06.03.2009 in favour of the 2nd Respondent

as prayed for in prayer 'a' and 'b' of the said answer. Being aggrieved by the said judgment the Appellants have preferred an appeal to the High Court of Civil Appeal holden at Mount Lavinia. The High Court has dismissed the said Appeal of the Appellants. The Appellant sought leave to appeal to this court from the said judgment of the High Court dated 03.10.2012 and leave was granted on the questions of law set out in paragraph 16 of the petition of appeal dated 12.11.2012.

It is apparent from the plaint filed by the Appellant dated 21.12.2001, that he has transferred the property described in the plaint to the 1st Respondent by a deed of transfer bearing No 9146 dated 10.12.1996. He has averred that said deed of transfer was made as a security for a loan obtained from the 1st Respondent and he did not intend to transfer the beneficial interest of the land to the 1st Respondent. The Appellant's position was that the 1st Respondent had verbally agreed to retransfer the said property to the Appellant upon the repayment of the money borrowed from the 1st Respondent and the 1st Respondent has failed to do so. He further averred that in the meantime, the 1st Respondent, by deed of transfer bearing No. 2071 dated 29.03.2001, has transferred the said property to the 2nd Respondent and therefore the said deed of transfer was a forgery. But the Appellants, having thus pleaded, has withdrawn their action.

The 2nd Respondent in her answer has averred that the Appellants, who were the owners of the land in dispute, transferred the said property to the 1st Respondent by a deed of transfer bearing No. 9146 dated 10.12.1996 and the 1st Respondent transferred the same to the 2nd Respondent by the deed of transfer bearing No 2071 dated 29.03.2001. She has further averred that once she became the owner of the land in dispute, the Appellants agreed to vacate the premises and hand over the vacant possession thereof to the 2nd Respondent but the Appellant has failed to do so. Accordingly, the 2nd Respondent in her claim in reconvention

has prayed for a declaration of title to the said land in dispute and to eject the Appellants from the said premises.

The Appellants, in their replication has not levelled any allegation against the said deed of transfer bearing No 2071 dated 29.03. 2001. Also they have admitted the execution of the deed of transfer bearing No. 9146 dated 10.12.1996. They have only sought for dismissal of the claim in reconvention. On the other hand, all the allegations levelled against the said deed of transfer bearing No 2071 and the deed of transfer bearing No. 9146 dated 10.12.1996, now stand dismissed since the action has been withdrawn by the Appellant. Hence. I cannot see any forcible defence for the Appellants against the claim in reconvention of the 2nd Respondent.

In the aforesaid circumstances, I am of the view that both courts have correctly reached their respective conclusions. Hence, I see no reason to interfere with the judgment of the High Court of Civil Appeal dated 03.10.2012. Therefore, the appeal of the Appellants is dismissed with costs.

Appeal dismissed.

Judge of the Supreme Court

B. ALUWIHARE, PC, J.

I agree.

Judge of the Supreme Court

K. T. CHITRASIRI, J.

I agree.

Judge of the Supreme Court