

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

Konara Mudiyansele Bandara Menika
Bogahawattegedara, Dambagalla,
Monaragala

Plaintiff

SC Appeal 99/2013

SC/HC(CA)LA No.122/2012
High Court No. UVA/HCCA/BDL/25/2008(F)
DC Monaragala L/1959

Vs

(deceased) Konara Mudiyansele Kumara Mutuwella
Defendant

1a. Konara Mudiyansele Chula Indika Kumara
1b. Konara Mudiyansele Wajira Saminda Kumara
1c. Konara Mudiyansele Manoj Dilanka
Kumara Podinilame
All of 'Kumara Niwasa', Dambagalla
Monaragala

Substituted Defendants

AND

1a. Konara Mudiyansele Chula Indika Kumara
1b. Konara Mudiyansele Wajira Saminda Kumara
1c. Konara Mudiyansele Manoj Dilanka
Kumara Podinilame
All of 'Kumara Niwasa', Dambagalla
Monaragala.

Substituted Defendant-Appellants

Vs

Konara Mudiyansele Bandara Menika
Bogahawattegedara, Dambagalla,
Monaragala

Plaintiff-Respondent

AND NOW BETWEEN

Konara Mudiyansele Bandara Menika
Bogahawattegedara, Dambagalla,
Monaragala

Plaintiff-Respondent-Petitioner-Appellant

Konara Mudiyansele Heen Menika.
Udumulla, Dambagalla,
Monaragala

Substituted Plaintiff-Respondent-Petitioner-Appellant

Vs

1a. Konara Mudiyansele Chula Indika Kumara
1b. Konara Mudiyansele Wajira Saminda Kumara
1c. Konara Mudiyansele Manoj Dilanka
Kumara Podinilame
All of 'Kumara Niwasa', Dambagalla
Monaragala.

Substituted Defendant-Appellants-Respondent-Respondents

Before : Sisira J De Abrew J
Upaly Abeyratne J
Anil Gooneratne J

Counsel : S N Vijithsingh for the Plaintiff-Respondent-Petitioner-Appellant
DMG Dissanayake for
the Defendant-Appellants-Respondent-Respondents

Argued on : 15.2.2017

Decided on : 16.3.2017

Sisira J De Abrew J.

This is an appeal by the Plaintiff-Respondent-Petitioner-Appellant (hereinafter referred to as the Plaintiff-Appellant) against the judgment of the Civil Appellate High Court dated 21.2.2012 wherein the Judges of the Civil Appellate High Court set aside the judgment of the learned District Judge dated 13.2.2008. The learned District Judge held in favour of the Plaintiff-Appellant. Being aggrieved by the judgment of the Civil Appellate High Court, the Plaintiff-Appellant has appealed to this court. This court by its order dated 18.7.2013, granted leave to appeal on the following questions of law.

1. Did the Civil Appellate High Court Judges err in law by accepting the validity of deed No.6984 (V2)?
2. Were the learned High Court Judges in error by allowing the appeal of the Respondent holding that there was no issue challenging the validity of deed marked V2 whereas issues No. 5,6 and 12 dealt with regard to the title of the Defendant and the learned District Judge answered the said issues against the Defendant and whereas the Respondent had not prayed for a dismissal of the action of the Petitioner?

The Plaintiff-Appellant instituted this action in the District Court seeking a declaration of title to the property in suit. The Plaintiff-Appellant, in her evidence, has taken up the position that by Deed No.3750 dated 2.10.1966 attested by DS Wickramasingha Notary Public, she became the owner of the property in suit and

that she did not sell the said property to the Defendant-Appellant-Respondent-Respondent (hereinafter referred to as the Defendant-Respondent) by Deed No.6984 dated 5.8.1988 marked V2. The Defendant-Respondent has taken up the position, in his evidence, that the Plaintiff-Appellant, by Deed No.6984 dated 5.8.1988 attested by Priya. S. Bandara Notary Public (V2) has sold the property in suit to him. He states, in his evidence, that both the Plaintiff-Appellant and her husband signed the said deed. Learned counsel for the Plaintiff-Appellant contended that Deed No.6984 was a forged deed as the Plaintiff-Appellant had not signed the said deed. He further submitted that the Plaintiff-Appellant in her evidence had stated that she had not sold the property. I now advert to this contention. Was there an issue at the trial to the effect that the Deed No.6984 was a forged deed? The answer is in the negative. This shows that the Plaintiff-Appellant had not contested the Deed No.6984. If the Deed No.6984 was a forged deed, one would expect the Plaintiff-Appellant to make a complaint to the police. When the Plaintiff-Appellant was cross-examined by the Defendant- Respondent whether she made a complaint to the police to the said effect, she answered in the negative. It is important to note that both parties admitted at the trial that the Plaintiff-Appellant by Deed No.3750 referred to above, became the owner of the property in suit and reference with regard to the said deed has also been made in the Deed No.6984. From the above matters, it is clear that the Plaintiff-Appellant has not proved that the Deed No.6984 was a forged deed.

Learned counsel for the Plaintiff-Appellant contended that as the Deed No.6984 had not been registered in the proper folio in the Land Registry, the Defendant- Respondent has not got the title. I now advert to this contention. It is correct that the Deed No.6984 was not registered in the proper folio in the Land Registry. If a deed was not registered in the proper folio in the Land Registry and

the said deed is challenged on the basis that another deed on the same property was registered in the proper folio, the deed registered in the proper folio, gets the priority of registration and validity over the other deed. But if there is no contesting deed, the deed that was not registered in the proper folio does not lose its validity and in such a situation, in my view, the purchaser of the property does not lose title of the property merely because it was not registered in the proper folio in the Land Registry. For the above reasons, I reject the above contention of learned counsel for the Plaintiff-Appellant.

Learned counsel for the Plaintiff-Appellant contended that the Deed No.6984 was not a valid deed as the Notary Public who attested the deed, in her attestation, has stated that the Plaintiff-Appellant signed the deed when in fact she did not sign it. I now advert to this contention. The Plaintiff-Appellant placed her left thumb impression in the said deed as she was a person who could not sign. When the deed No.6984 is examined, it is clear that the Notary Public who attested the deed has made a note on the same page to the following effect. "This left thumb impression is the thumb impression of KM Bandara Manike." KM Bandara Manike is the Plaintiff-Appellant. Thus it appears that the Notary Public has certified the thumb impression appearing in the Deed No.6984 is the thumb impression of the Plaintiff-Appellant. When a person cannot sign, his or her left thumb impression is placed on the document. It has to be considered as his or her signature. An examination of Deed No.6984 reveals that the other vendor (the husband of the Plaintiff-Appellant) and two attesting witnesses have signed the deed. When I consider the above matters I hold that the Notary Public who attested the deed has not committed any mistake and that the Plaintiff-Appellant and her husband have signed the deed. For the above reasons, I reject the above contention of learned counsel for the Plaintiff-Appellant.

It is important to consider whether the deed No.6984 is a valid deed or not. KM Sirisena one of the attesting witnesses of the deed No.6984 gave evidence. He stated that two vendors placed their signatures and thereafter two attesting witnesses (one of them was Sirisena) signed the deed. He further stated in his evidence that the Notary Public and the other attesting witness are dead. When I consider his evidence I hold that the validity of the Deed No.6984 has been proved.

Having considered all the above matters, I hold that the Plaintiff-Appellant has not proved his title to the property in suit. A person who seeks a declaration of title to the property in suit must prove his title. This view is supported by the following judicial decisions.

In *Peeris Vs Savunhamy* 54 NLR 207 Supreme Court held as follows:

“Where, in an action for declaration of title to land, the defendant is in possession of the land in dispute the burden is on the plaintiff to prove that he has dominium.”

In *Loku Menika and Others Vs Gunasekare* [1997] 2 SLR 281 Court of Appeal held as follows.

“The plaintiff must set out his title on the basis on which he claims a declaration of title to the land and must prove that title against the defendant.”

Since the Plaintiff-Appellant has not proved his title to the property in suit, he cannot be declared the owner of the property and his action should fail.

For the aforementioned reasons, I answer the questions of law in the negative.

For the above reasons, I affirm the judgment of the Civil Appellate High Court and dismiss this appeal with costs.

Judge of the Supreme Court.

Upaly Abeyratne J

I agree.

Judge of the Supreme Court.

Anil Gooneratne J

I agree.

Judge of the Supreme Court.