

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

SC/Appeal/148/2018

SC/HCCA/LA/567/2016

Revision Application No:
65/2016

D.C. Mallakam Case No:
Misc/164/2012

1. Iyathurai Kulenthiran
5252 Rue L'armoise Pierrefonds
QC H8Z 0A6 Montreal, Canada
through his power of attorney holder
Kumunthan Vijitha
of Markandu Road, Mulangavil.

2. Rathinam Kumunthan

3. Wife Vijitha
both of Markandu Road, Mulangavil.

PLAINTIFFS

Vs.

Iyathurai Perinpanayagam,
Moolai South, Chuilpuram
Presently of Chettiar Eating House,
Pillaiyar Kovilady, Mulangavil.

DEFENDANT

AND BETWEEN

Iyathurai Perinpanayagam,
Moolai South, Chuilpuram

Presently of Chettiar Eating House,
Pillaiyar Kovilady, Mulangavil.

DEFENDANT-PETITIONER

Vs.

1. Iyathurai Kulenthiran
5252 Rue L'armoise Pierrefonds
QC H8Z 0A6 Montreal, Canada
through his power of attorney holder
Kumunthan Vijitha
of Markandu Road, Mulangavil.
2. Rathinam Kumunthan
3. Wife Vijitha
both of Markandu Road, Mulangavil.

PLAINTIFF-RESPONDENTS

AND NOW BETWEEN

1. Iyathurai Kulenthiran
5252 Rue L'armoise Pierrefonds
QC H8Z 0A6 Montreal, Canada
through his power of attorney holder
Kumunthan Vijitha
of Markandu Road, Mulangavil.
2. Rathinam Kumunthan

3. Wife Vijitha

both of Markandu Road, Mulangavil.

PLAINTIFFS-RESPONDENT-APPELLANT

Vs.

1. Iyathurai Perinpanayagam,

Moolai South, Chuilpuram

Presently of Chettiar Eating House,

Pillaiyar Kovilady, Mulangavil.

DEFENDANT-PETITIONER-

RESPONDENT

BEFORE: **S. THURAIRAJA, PC, J.**
KUMUDINI WICKREMASINGHE, J. AND
A.L. SHIRAN GOONERATNE, J

COUNSEL: Shakthiyaraji Kamalanathan for the Plaintiff-Respondent-Appellants

K.V.S. Ganesharajan with M. Mangaleswary Shanker and Vithusha Loganathan instructed by M. Pushparaj for the Defendant-Petitioner-Respondent

WRITTEN Plaintiff-Respondent-Appellants on 30th March 2022, 28th February

SUBMISSIONS: 2025 and 01st April 2025

Added-Respondent on 18th May 2022

Defendant-Petitioner-Respondent on 19th February 2025 and 08th April 2025

ARGUED ON: 03rd February 2025, 17th March 2025, 18th March 2025

DECIDED ON: 04th July 2025

THURAIRAJA, PC, J.

1. This appeal relates to a decision of the Civil Appellate High Court of the Northern Province holden in Jaffna, in a revision application filed by the Defendant-Respondent-Respondent (hereinafter at times referred to as 'Respondent'), which set aside the judgment of the District Court of Mallakam entered in favour of the Plaintiff-Respondent-Appellants (hereinafter at times referred to as 'Appellants').
2. In the interest of avoiding any doubt with respect to the identification of parties in the proceedings, I wish to note at the very outset that this Court took the liberty of correcting the caption to properly identify the Appellant parties, in spite of the Registered Attorney's failure to amend the caption after obtaining leave to appeal to properly reflect the designation of the said party at this stage of the proceedings.
3. The pleadings of the Appellants in this matter are far from clear and coherent. In spite of this, I shall make my best efforts to comprehensibly narrate the factual circumstances leading up to the instant appeal.

THE FACTUAL BACKGROUND OF THE DISPUTE

4. The original action, to which this appeal relates, concerns a bus which was registered in the name of the Defendant-Petitioner-Respondent, one lyathurai Perinpanayagam, as all parties agree. The said Defendant-Petitioner-Respondent is the brother of the 1st Plaintiff-Respondent-Appellant (lyathurai Kulenthiran) and the father of the 3rd Plaintiff-Respondent-Appellant (one Vijitha, as reflected in the caption filed by Plaintiff-

Respondent-Appellant), to whom the 2nd Plaintiff-Respondent-Appellant (Rathinam Kumunthan) is married.

Plaintiff-Respondent-Appellants' Claim Before the District Court

5. The Appellants had filed the action before the District Court of Mallakam against the Respondent, claiming the bus, which was registered in his name, to be a movable property held in trust by the said Respondent for the benefit of the 2nd and 3rd Appellants.
6. It was the position of the Appellants that the 1st Appellant, who resides in Canada, sent Rs. 3.5 million, upon the 2nd and 3rd Appellants' request, to purchase the said bus. The 2nd and 3rd Appellants, who used the said Rs. 3.5 million as consideration for the bus, had registered the same in the name of the Respondent. The 2nd Appellant claims to have then obtained a route permit with the consent of the Respondent.
7. As the 2nd Appellant (the Respondent's son-in-law), working as the driver of the bus, proceeded to provide transportation services, the 1st Appellant had requested the repayment of Rs. 2 million from the funds he provided. The Appellants claim that a leasing facility was obtained from the Commercial Leasing Company in January 2011 for the purpose of such repayment, wherefore the aforementioned bus became the subject of a lease agreement.
8. The Appellants' claim is that it was the 2nd and 3rd Appellants who paid instalments of Rs. 60,000/- per month, from the earnings derived from the bus, towards settling the said lease. Although the Appellants have annexed documents marked 't3' and 't5' to their Plaint dated 27th March 2012 as proof of such payments, said documents mention "I. Perinpanayagam" (the Defendant-Petitioner-Respondent) as the customer. The 2nd and 3rd Appellants further claim that they paid Rs. 3,000/- or Rs. 3,100/- for the route permit.

9. The Appellants claim that, in June 2011, the Respondent demanded a monthly payment of Rs. 5,000/- from the 2nd and 3rd Appellants. The Appellants further claim that the Respondent saw to the prohibition of their route permit by visiting the Divisional Secretariat of Kilinochchi in or about December 2011, leaving the 2nd Appellant unable to pay the lease instalments as he could no longer earn an income from the bus.
10. The 2nd and 3rd Appellants claim that, despite their repeated requests, the Respondent refused to give the route permit. In addition to this, the Appellants further claim in their Complaint before the District Court that the Respondent had also hidden the bus in Vavuniya at the time of filing the said Complaint.
11. The Appellants had then made a complaint to the Kilinochchi police in this regard. The police, having inquired into the matter, had referred the dispute to the Sangana Mediation Board. As the dispute could not be resolved through mediation, the Appellants had preferred action before the District Court of Mallakam.

Defendant-Petitioner-Respondent's Position

12. Denying the Appellants' claim that the bus was being held in trust, the Respondent asserts that he, as the registered owner of the vehicle, took care of all things related to the vehicle. He claims that the 2nd Appellant was only allowed to use the vehicle and provide transport services.
13. The Respondent further claims that the Rs. 3 million was obtained from the 1st Appellant as a loan, and that when the said Appellant demanded repayment, it is the Respondent who took a loan of Rs. 2 million in his name by pledging the bus with the Commercial Leasing Company in order to pay the 1st Appellant.
14. The Respondent further claims that he wished to set up the 2nd Appellant with employment and allowed the 2nd Appellant to engage the bus in transport services

towards this end. He claims to have requested the 2nd Appellant to pay the lease instalment in exchange for allowing him to so use the bus. However, as the 2nd Appellant failed to pay several of such instalments duly, the Respondent had requested that the 2nd Appellant pay Rs. 5,000/- to him.

15. When the 2nd Appellant failed to pay the lease instalments and the Rs. 5,000/- so demanded, the Respondent had taken steps to withdraw the route permit. The Respondent vehemently denies the Appellants' claim that he hid the subject vehicle. According to him, it is the 2nd Appellant who had previously hidden the bus in Aachchipuram owing to the 2nd Appellant's failure to settle lease instalments in time, thereby causing significant damage to it. The Respondent had only been able to recover the bus with the help of the Vavuniya police.
16. The Respondent claims that he spent over Rs. 500,000/- to repair damages so caused to the bus by the 2nd Appellant, and he had even set up a claim in reconvention in this regard.

The District Court Decision and the Subsequent Revision Application to the Civil Appellate High Court of Jaffna

17. Having considered the pleadings of both parties, delivering judgment in favour of the Plaintiff-Respondent-Appellants, the learned District Judge has concluded that the bus was purchased by the 1st Plaintiff-Respondent-Appellant for the benefit of the 2nd and 3rd Plaintiff-Respondent-Appellants and was registered under the Defendant-Petitioner-Respondent's name. Arriving at this conclusion, the learned Judge has relied entirely on Sections 5(2) and 84 of the *Trust Ordinance*. The learned judge has further ordered the Defendant-Petitioner-Respondent to hand over possession of the bus to the 2nd and 3rd Plaintiff-Respondent-Appellants.

18. Aggrieved by the said judgment of the District Court of Mallakam, the Defendant-Petitioner-Respondent had filed a revision application before the Civil Appellate High Court of Jaffna, after failing to file an appeal within the stipulated time limit.
19. Having considered the said revision application, the Civil Appellate High Court of Jaffna, by order dated 12th October 2016, has allowed the revision application and set aside the judgment of the District Court.
20. Aggrieved by the said order, the Plaintiff-Respondent-Appellants sought the intervention of this Court by Petition dated 21st November 2016.

CIRCUMSTANCES OF THE INSTANT APPEAL

Questions of Law

21. Challenging the judgment of the Civil Appellate High Court, the Appellants sought leave on the following four questions of law (reproduced *verbatim* from the Petition of Appeal), and this Court granted leave on all such questions on 05th October 2018:
 - i. *Did their Lordships of the Civil Appellate Division err in law in their finding that a trust cannot be created for movable property under section 5 of the Trust Ordinance?*
 - ii. *Was the transaction between 1st plaintiff and the respondent a money landing [sic] transaction? If not was the determination of the Civil Appellate Division wrong in law?*
 - iii. *At the request of the respondent was the possession of the Bus handed over to the respondent as trust property?*
 - iv. *Was the intended beneficiary the 2nd and 3rd petitioners?*

Appellants' Motion to Add the New Owner as a *Necessary Party* to the Appeal

22. However, on 11th October 2017, the Appellants had brought to the notice of this Court by way of a motion, that the ownership of the movable property in dispute had changed, seeking permission to add the new owner, one *Selvarasa Selvarooban*, as a '*necessary party*' to the instant appeal, as such addition is necessary to '*effectually and completely adjudicate the dispute*'. Owing to the said motion being misplaced, Appellant had repeated this application in a second motion dated 03rd May 2018, as well as two other motions, dated 10th October 2018 and 26th November 2018. Along with the fourth motion, the Appellant had tendered an amended petition and affidavit, with an amended caption which included said *Selvarasa Selvarooban* as an Added-Respondent.
23. Having heard submissions of the learned Counsel for the Appellants in support of this fourth motion, as there were no objections from the Respondent, this Court issued notice on the said Added-Respondent. On the notice returnable date, Counsel representing the said Added-Respondent contested this addition and sought his dismissal from the proceedings. The inquiry of the said application was taken up on 22nd February 2022, and the learned Counsel on behalf of the Added-Respondent contended that he was not a party to the actions before the District Court nor the Civil Appellate High Court and further contended that there was no legal basis for the Appellants' application.
24. Written submissions were filed by the Appellants on 30th March 2022 and by the Added-Respondent on 18th May 2022 in relation to the aforementioned.
25. Having considered the submissions of all parties, by Order dated 06th April 2023, this Court allowed the application of the Added-Respondent and discharged him from the proceedings.

Subsequent Proceedings Before This Court

26. Thereafter, this matter was initially taken up for argument on 03rd February 2025, it was revealed that the Counsel for the Appellant had not filed written submissions as required under the Supreme Court Rules. In addition, it was further revealed that she is not duly prepared to make submissions and had not numbered the brief properly, rendering it virtually impossible for this Court to follow the submissions of either party.
27. In the interest of justice, this Court rescheduled the matter and ordered the Appellants to file written submissions and properly number the Appeal Brief. When the argument resumed on 17th March 2025, the Court found that the Counsel for the Appellant had not complied with the order and that she had filed written submissions well after the deadline without seeking permission from the Court. The argument was once again postponed to the next day, as the Registered Attorney (who was also the Counsel in the matter) had failed to properly number the Appeal Brief as well.
28. In spite of all such irregularities in the course of this Appeal, in the interest of justice and in order to be fair by the litigants, this Court allowed the proceedings to continue and granted all parties permission to file post-argument written submissions.

“Preliminary Objection” of the Appellants

29. Adding on to the irregularities, the Counsel for Appellants sought to raise a preliminary objection when the matter was taken up for argument, as well as in their written submissions, which were not filed according to Supreme Court Rules but were only filed after this Court directed the Appellant to file the same once this matter was taken up for argument.
30. In this “preliminary objection”, she contends that the Defendant-Petitioner-Respondent did not exercise his right of appeal in time but instead sought to challenge the decision

by way of a revision application before the High Court 73 days after the District Court judgment. She takes up the position that the Civil Appellate High Court has considered a revision application without sufficiently considering whether there were *exceptional circumstances* warranting its consideration. The Counsel for the Appellant further asserts that the said objection was taken before the Civil Appellate High Court on the very first date and that the same was also raised by way of written objections.

31. While it is true that this objection has been taken before the Civil Appellate High Court, as the Appellant contends, it goes without saying that the same cannot be raised as a "preliminary objection" for the instant appeal. If the learned High Court judges erred in considering the revision application without giving due regard to the objection that there were no exceptional circumstances, the Appellant ought to have raised that as a question of law in the Petition before this Court.
32. However, the Appellant has not raised the same as a question of law and leave has only been granted on the questions of law raised in paragraph 39 of the Petition dated 21st November 2016, as I have noted above. Accordingly, I am not inclined to consider this "preliminary objection" at this stage as it bears no relevance to the instant appeal.

ANALYSIS OF THE QUESTIONS OF LAW

First Question of Law

33. The first question of law the Appellants have raised is whether learned Judges of the Civil Appellate High Court erred in law in their finding that a trust cannot be created for movable property under Section 5 of the *Trust Ordinance*.
34. Section 5(2) of the *Trust Ordinance* provides that

"No Trust in relation to movable property is valid unless declared by the last will of the author of the Trust or of the Trustee, or by a non-testamentary instrument in

writing signed by the author of the Trust or the Trustee, or unless the ownership of the property is transferred to the Trustee by delivery.”

35. It is amply clear from this provision that a trust can be created in relation to movable property where certain conditions are met. However, the question placed before this Court is not whether a trust in relation to movable property can be created under Section 5 of the *Trust Ordinance*, but whether learned Judges of the High Court erred in their analysis of Section 5.
36. It is a question which admittedly leaves me bemused, for there is not a single reference to Section 5 of the *Trust Ordinance* or the provision therein to be found in the judgment of the Civil Appellate High Court—although the learned District Judge, who found in favour of the Appellant, has referred to the same.
37. Accordingly, I can only answer the first question of law in the negative, as the learned Judges have never arrived at such a finding as the question of law suggests.

Second, Third and Fourth Questions of Law

38. The Counsel for the Appellant in her written submissions adverted to Sections 83 and 84 of the *Trust Ordinance* in order to establish a constructive trust in favour of the Appellants, although Section 83 is considered by neither the District Court nor the High Court.
39. Section 83 of the *Trust Ordinance* is as follows:

“Where the owner of property transfers or bequeaths it, and it cannot reasonably be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.”

40. The case at hand does not involve a situation where the owner of the subject property transferred the same to another. All parties admit that the property in question was bought and registered in the Respondent's name. The Appellants' position from the very inception of these proceedings has been that the Respondent held the property in trust as the consideration was provided by the 1st Appellant.

41. Section 84 of the *Trust Ordinance* provides that,

*"Where property is transferred to one person for a consideration paid or provided by another person, **and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee**, the transferee must hold the property for the benefit of the person paying or providing the consideration."¹*

42. The plain language of this Section suggests that the transferee must hold the property in trust for the *benefit of the person paying or providing the consideration* and no other. The Respondent argued that it is only the 1st Appellant who made a financial contribution towards the purchasing of the bus, and that the 2nd and 3rd Appellants are not entitled to claim relief under Section 84 of the *Trust Ordinance*, having never contributed towards the purchase at the time of transfer.

43. The Respondent cited **L.J.M. Cooray's** text **"The Reception in Ceylon of the English Trust"**, which states that a person who relies on Section 84 must prove, firstly, *that he provided the consideration* and, secondly, *that it was not for the benefit of the transferee that such consideration was paid.*²

¹ Emphasis is mine

² LJM Cooray, *The Reception in Ceylon of the English Trust* (1971) at p. 131

44. The judgment of the Court of Appeal in **A.M. Nawaratne Amarakoon and Two Others v. Sita Hapuarachchi**³ may be considered in this regard. In this case, the plaintiff, a divorcee, alleged that her former husband, the 1st defendant, held a portion of land in trust for her as it was her father who paid the consideration for the purchase towards the advancement of her marriage. The District Court had accepted the position that it was the plaintiff's father who paid the purchase price, and had accordingly held that the plaintiff was entitled to the benefit of Section 84 of the *Trust Ordinance*. When this decision was challenged before the Court of Appeal, K.T. Chitrasiri, J (as His Lordship was then) observed as follows:

*"In this instance, plaintiff alleged that the payment was made by the plaintiff's father and not by the plaintiff though it had been denied by the 1st defendant. As mentioned above, the said provision of law namely **Section 84 of the Trusts Ordinance allows only the person who paid the consideration to claim a constructive trust** under that Section **and not by another on his/her behalf**. Admittedly, the plaintiff in this case has not paid the consideration to the vendor of the property in question. Admittedly, it was by her father who had made the payment. Under those circumstances, it is seen that the aforesaid **section does not provide for the plaintiff to claim a constructive trust, she not being the person who paid the price** for the purchase of the property that she claims as a constructive trust."*⁴

45. Considering the plain language of Section 84 of the *Trust Ordinance* and the above opinion of Chitrasiri, J, I am in agreement with the Counsel for the Respondent that the 2nd and 3rd Appellants, having made no direct contributions towards the consideration of the transfer, cannot be the beneficiaries of a trust under Section 84, unless such

³ CA Appeal No. 396A/98(F) & 396B/98(F), CA Minutes of 06th June 2014

⁴ Original emphasis omitted. Emphasis that is added is my own

consideration was paid by the 1st Appellant on behalf of the 2nd and 3rd Appellants. This, however, must necessarily be decided with reference to the evidence led before the District Court.

46. It is pertinent to note that the position taken by the Respondent throughout was that the transaction between the 1st Appellant and the Respondent was a simple money lending transaction. If this is so, it cannot logically be maintained that the 1st Appellant provided the consideration, for it is the Respondent who would have paid such consideration out of the loan he obtained, and the 1st Appellant can be deemed to have provided the consideration for the benefit of the Respondent. The loan transaction between the 1st Appellant and the Respondent, in such an instance, is a distinct obligation entirely unrelated to the transfer of the property in question.
47. The Appellants' case taken as a whole, I must admit, does not inspire much confidence owing to several infirmities and inconsistencies present in their evidence.
48. It is clear, and is admitted by all parties, that the property in question, the bus, was registered in the name of the Respondent. It is also pertinent to note that the Plaintiffs-Respondent-Appellants in their Complaint dated 27th March 2012 claim that Rs. 2 million out of the Rs. 3.5 million have been repaid to the 1st Appellant. The Respondent claims that he paid the said Rs. 2 million to the 1st Appellant out of a leasing facility he obtained from the Commercial Leasing Company.⁵
49. However, the 2nd and 3rd Appellants in their evidence claim that they paid this Rs. 2 million to the 1st Appellant, as they have averred in the Complaint dated 27th March 2012⁶ and in their

⁵ HCCA Brief, at pp. 66, 68 and 72

⁶ Complaint of the Plaintiffs dated 27th March 2012, at para 7

Affidavit dated 27th March 2012.⁷ It is not disputed by the 2nd and 3rd Appellants that the leasing facility for the said amount was obtained in the Respondent's name. In fact, the 2nd and 3rd Appellants have admitted that fact.⁸ As such, even if the 2nd and 3rd Appellants were to give the said Rs. 2 million, they would have given that amount from the monies obtained by the Respondent through the leasing facility. While the 2nd and 3rd Appellants claim to have paid instalments for the said lease, they have done so in the Respondent's name.

50. In any event, the 1st Appellant vehemently denies receiving even a single rupee as repayment from the Respondent, as well as the 2nd and 3rd Appellants.⁹ This amounts to a contradiction *inter se* in the Appellants' evidence.
51. More significantly, the 1st Appellant, in his testimony, states that he provided the money as a help and that he gave the same thinking or expecting that he would be paid back,¹⁰ supporting the Respondent's contention that this was but a mere money lending transaction between the 1st Appellant and the Respondent.
52. In addition to this, the 2nd and 3rd Appellants also state that they paid a monthly payment of Rs. 5,000/- to the Respondent for using the bus.¹¹

⁷ Affidavit of the 2nd and 3rd Plaintiffs dated 27th March 2012, at para 6

⁸ Proceedings of the District Court of Mallakam dated 12th September 2013 as reflected in HCCA Brief (Translation), at p. 37; Proceedings of the District Court of Mallakam dated 28th November 2013 as reflected in HCCA Brief (Translation), at pp. 48/49

⁹ Proceedings of the District Court of Mallakam dated 07th August 2014 as reflected in HCCA Brief (Translation), at pp. 54/55, 56/57, 58/59, 60/61 and 62/63

¹⁰ *ibid* at pp. 54/55 and 62/63

¹¹ Proceedings of the District Court of Mallakam dated 12th September 2013 as reflected in HCCA Brief (Translation), at pp. 31/32; Proceedings of the District Court of Mallakam dated 28th November 2013 as reflected in HCCA Brief (Translation), at pp. 50/51

53. Considering the above, I am of the view that the Appellants have failed to establish on a balance of probability that the Respondent holds the subject property in trust. Accordingly, the third and fourth questions of law are answered in the negative.

54. The second question of law is answered in the following manner:

*Was the transaction between 1st plaintiff and the respondent a money lending transaction? **Yes** If not was the determination of the Civil Appellate Division wrong in law? **No***

55. I have already answered the first question of law in the negative hereinabove. Accordingly, I see no reason to interfere with the Judgment of the Civil Appellate High Court of Jaffna.

56. The Appeal is dismissed. No orders as to costs.

Appeal Dismissed.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT