

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

Ceylinco Securities and Financial Services
Ltd.

Now

Nation Lanka Finance PLC,
53 1/1, Island Building, Galle Road,
Colombo 3.

1st Defendant-Respondent-Appellant

SC/APPEAL/191/2018

WP/HCCA/MT/42/11 (F)

DC NUGEGODA L/031/08

Vs.

1. Watawala Kankanamlage Mahesh
Padmakumara,
2. Nalika Chandanie Perera Gamage,
Both at 14/4B, Depanama, Pannipitiya.

Plaintiffs-Appellants-Respondents

2. Manawaduge Don Chitra Kumudunie,
218/5, Pathiragoda Road, Pamunuwa,
Maharagama.
3. Mangala Samarasinghe,
14/3C, Station Lane, Borella Road,
Pannipitiya.

2nd and 3rd Defendants-Respondents-
Respondents

Before: Hon. Justice P. Padman Surasena
Hon. Justice Achala Wengappuli
Hon. Justice Mahinda Samayawardhena

Counsel: Avindra Rodrigo, P.C., with Tharushi Jayarathna and
Nishika Fonseka for the 1st Defendant-Respondent-
Appellant.

Rohan Sahabandu, P.C., with Sachini Senanayake for the
Plaintiffs-Appellants-Respondents.

Argued on: 19.03.2025

Written submissions:

By the 1st Defendant-Respondent-Appellant on 25.07.2019
and 07.04.2025.

By the Plaintiffs-Appellants-Respondents on 29.08.2019 and
04.04.2025.

Decided on: 22.05.2025

Samayawardhena, J.

The two plaintiffs have instituted this action against the three defendants in the District Court of Nugegoda, seeking, *inter alia*, declarations that: (i) the 1st plaintiff is the owner of the land described in the 3rd schedule to the plaint, subject to the life interest of the 2nd plaintiff; (ii) the 2nd defendant holds the property in trust for the plaintiffs; (iii) the 2nd defendant had no authority to transfer the property to the 1st defendant by Deed marked P11; and (iv) the 1st defendant had no right to lease the property to the 3rd defendant by Deed marked P12.

The case proceeded *ex parte* against the 2nd and 3rd defendants. Only the 1st defendant, Ceylinco Securities and Financial Services Ltd., contested the

plaintiffs' action. In its answer, the 1st defendant sought a dismissal of the action.

After trial, the District Court dismissed the plaintiffs' action. On appeal, the High Court of Civil Appeal of Mount Lavinia allowed the plaintiffs' appeal. Hence, this appeal by the 1st defendant. This Court granted leave to appeal on the following questions of law:

- (a) Did the High Court err in holding that the transfer of the land by the plaintiffs to the 2nd defendant by Deed marked P9 was merely as security for a loan granted by the 2nd defendant to the plaintiffs?
- (b) Did the High Court fail to consider that the 1st defendant is a *bona fide* purchaser?
- (c) Did the High Court fail to consider that the rights of a *bona fide* purchaser of land are unaffected by the existence of a constructive trust?

As the 2nd defendant did not challenge the plaintiffs' evidence that Deed marked P9 was not an outright transfer but was executed as security for a loan transaction, which loan was repaid as evidenced by P10, the finding of the High Court that the 2nd defendant was holding the property in trust for the plaintiffs cannot be faulted. This finding was not vigorously challenged by learned counsel for the 1st defendant at the hearing.

The main ground on which the appeal was argued by learned counsel for the 1st defendant is that, even if a constructive trust could be presumed, the 1st defendant's rights as a *bona fide* purchaser are unaffected by virtue of section 98 of the Trusts Ordinance.

Section 98 of the Trusts Ordinance reads as follows:

Nothing contained in this Chapter shall impair the rights of transferees in good faith for valuable consideration, or create an obligation in evasion of any law for the time being in force.

Learned President's Counsel for the plaintiffs contended that this was a novel argument raised for the first time before the Supreme Court. However, learned counsel for the 1st defendant countered this by drawing the attention of the Court to issue No. 9 raised by the 1st defendant at the trial.

Issue No. 9 and the corresponding answer given by the trial Judge read as follows:

9(අ) 1 වන විත්තිකරු අදාළ ඉඩම මිලට ගන්න අවස්ථාවේ එහි අයිතිය හා අදාළ ඔප්පු නිරවුල්ව තිබුනේද?

එසේ ඔප්පුව නිරවුල්ව තිබුන බව 1 වන විත්තිකරු පරීක්ෂාකර බැලුවේද යැයි ඔප්පුකර නැත.

(ආ) ඒ අනුව 1 වන විත්තිකරු අදාළ ඉඩම සත්භාවයෙන් මිලට ගෙන ඇත්ද?

ඉහත 09 (අ) පිළිතුර අනුව පැනනොනගී.

(ඇ) එසේ නම් පැමිණිලිකරුවන්ට 1 වන විත්තිකරුට එරෙහිව වූ නඩු නිමිත්තක් උපවය නොවන්නේද?

තීන්දුවේ සඳහන් කරුණු මත 1 වන විත්තිකරුට විරුද්ධව නඩු නිමිත්තක් පැනනොනගී.

The issue raised by the 1st defendant as to whether it is a *bona fide* purchaser under Deed P11 was not answered in the affirmative by the District Court.

The involvement of the 1st defendant in this transaction appears to be dubious. According to the written submissions filed on behalf of the 1st defendant, its position is that the 3rd defendant approached the 1st defendant and requested that the property be purchased on his behalf, with an arrangement allowing the 3rd defendant to repurchase or reacquire the property through a "lease-back agreement". It is further stated that although the lease agreement marked P12 was executed, the 3rd defendant failed to honour his obligations under the lease and defaulted in making

payments. This arrangement is difficult to understand without any assistance from recorded evidence.

At the trial, on behalf of the 1st defendant company, only an officer of the company and an assessor gave evidence. Neither of these witnesses was able to offer clear testimony regarding the exact details of the aforesaid transaction. The assessor's role was limited to valuing the land. The officer of the 1st defendant company, however, gave evidence that contradicted the position taken by the 1st defendant in its written submissions. In his evidence he stated as follows:

ප්‍ර: දැන් මේ නඩුවට අදාළ ඉඩම 2 වන විත්තිකාරිය විසින් 1 වන විත්තිකරුට විකුණුවා දන්නවාද?

පි: එහෙම දෙයක් සිදු වී නැහැ. 3 වන විත්තිකාරිය විසින් ආයතනයට ඉඩම විකිණීමක් කර තිබෙනවා.

ප්‍ර: තමා කියන්නේ මොකක්ද වුණ ගනුදෙනුව?

පි: 3 වන විත්තිකාරිය විසින් මෙම ඉඩම පවරා තිබෙනවා. 1 වන විත්තිකාරිය ආයතනයට විකිණීම් කර තිබෙනවා. එම විකිණීම කලා දෙවන විත්තිකරු විසින් ලබා ගන්නා ලද ස්ථානවරම පහසුකම සම්පූර්ණ කිරීම සඳහා.

ප්‍ර: මහත්තයා ඒක ඔප්පු කරලා කියන්න පුළුවන්ද?

පි: මම ඒක දැක තිබෙනවා.

Deeds P11 and P12 were marked by the 1st plaintiff in the course of his evidence in order to fully present the plaintiffs' case. However, this should not be construed as an acknowledgment of the validity of the transactions reflected therein. The plaintiffs maintain that these documents are invalid and ought to be declared null and void.

None of the attesting witnesses to P11—the vendor, vendee, subscribing witnesses, or notary—was called to give evidence. The officer of the 1st defendant who testified admitted that the notary and the two subscribing witnesses were employees of the 1st defendant company.

In the attestation, the notary states that the vendor was unknown to him, but that the subscribing witnesses were known to him. However, the notary does not state that the vendor was known to the subscribing witnesses.

More importantly, in the attestation, the notary in a separate paragraph further states that “*I further certify and attest that the consideration herein mentioned was not paid in my presence.*” He does not state that the vendor and/or vendee claimed the consideration was paid previously. There is no evidence before Court that the 1st defendant purchased the property for valuable consideration. None of the witnesses gave any evidence regarding the consideration.

In accordance with section 98 of the Trusts Ordinance, “*the rights of transferees in good faith for valuable consideration*” remain unaffected. However, upon reviewing the evidence, I am not satisfied that the conditions of good faith and valuable consideration have been established to the satisfaction of the Court. Therefore, the 1st defendant’s claim to protection under section 98 of the Trusts Ordinance cannot be upheld.

I answer the questions of law on which leave to appeal was granted in the negative. The appeal is dismissed but without costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court