

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

Hapu Arachchige Ariyadasa,
No. 26, Pirivena Road,
Mandawala.
Plaintiff-Appellant-Appellant

SC/APPEAL/231/2017

WP/HCCA/AV/1471/2013 (F)

DC PUGODA 705/L

Vs.

1. Wariyapperuma Appuhamillage Prematileke
Wariyapperuma, No. 194/1/3,
Wilimbulawatta, Wilimbula,
Radawana.
2. Puwakpitiyage Jayantha Pushpamal
Mandawala Road, Mahena, Radawana.
3. Kanangama Arachchige Thamarasu
Sudharma Priyangani, Pirivena Road
Mandawala.

Defendant-Respondent-Respondents

Before: Hon. Justice Janak De Silva
Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere

Counsel: Thishya Weragoda with Chamodi Wijeweera for the Plaintiff-
Appellant-Appellant.

Romesh Samarakody for the 2nd and 3rd Defendant-
Respondent-Respondents.

Argued on: 09.06.2025

Written submissions:

By the Plaintiff-Appellant-Appellant on 14.07.2025.

By the 2nd and 3rd Defendant-Respondent-Respondents on
02.07.2025.

Decided on: 29.07.2025

Samayawardhena, J.

The plaintiff instituted this action against the three defendants in the District Court of Pugoda, seeking a declaration of title to the land described in the second schedule to the plaint, along with consequential reliefs, on the following grounds:

- (a) that Deed of Transfer No. 3010 marked P1, by which the plaintiff transferred the property to the 1st defendant, was not an outright transfer but was executed solely as security for a loan obtained by the plaintiff from the 1st defendant, and therefore the 1st defendant held the property in trust for the plaintiff;
- (b) that no valid title passed to the 2nd defendant under Deed of Transfer No. 3704 marked P5, executed by the 1st defendant;
- (c) that no valid title passed to the 3rd defendant under Deed of Transfer No. 6364 marked P4, executed by the 2nd defendant; and
- (d) that Deed No. 3704 is invalid by operation of the doctrine of *laesio enormis*.

The defendants sought dismissal of the action.

After trial, the District Court dismissed the plaintiff's action with costs.

The appeal preferred against the judgment of the District Court was dismissed by the High Court of Civil Appeal of Avissawella.

A previous Bench of this Court granted leave to appeal to the plaintiff on the following questions of law:

- (a) Is the judgment of the High Court inconsistent with the provisions of section 774 of the Civil Procedure Code as it merely summarised, paraphrased and made precis of the judgment of the District Court?
- (b) Did the High Court fail to hold that the failure and/or neglect on the part of the District Judge to answer issues No.18 to 27 resulted in the Judgment of the District Court rendering null and void *ab initio*?
- (c) Did the High Court fail to consider that upon the District Judge answering issues No.4 and 5 in favour of the plaintiff, and the trust being established, the purported transfers to the 2nd Defendant and thereafter to the 3rd Defendant were subject to trust?
- (d) Did the High Court fail to consider that in view of the Roman Dutch Law maxim *nemo potest plus juris ad alium transferee quam ipse habet* the transferee does not receive any better title than the transferor and in this case the 2nd Defendant had title subject to the trust and beneficial interest of the plaintiff?

It must be emphasised that leave to appeal has been granted solely on questions of law, and not on any disputed questions of fact.

Nonetheless, I shall briefly consider the facts of this case to understand the real dispute between the parties. In paragraphs 4, 5, and 10 of the answer, the 1st defendant expressly admitted that Deed No. 3010, by which the plaintiff transferred the land to the 1st defendant, was in fact executed as security for a loan of Rs. 15,000 obtained by the plaintiff from him; that the said loan, together with interest, was repaid by the plaintiff to the 1st defendant; and that upon such repayment, the 1st defendant retransferred

the property to the plaintiff on 03.02.2000; and that he did not transfer the property to the 2nd defendant.

The above facts have been expressly admitted by the plaintiff in his police complaint dated 22.12.2003, marked by the plaintiff himself as P3. The same document was also marked as 1V1 by the 1st defendant during the cross-examination of the plaintiff. In this complaint, which was made prior to the institution of the instant action, the plaintiff further stated that, following the retransfer of the land to him by the 1st defendant, he transferred the land to the 2nd defendant by a deed of transfer, and that he also paid the notarial fees to the notary. It is significant to note that, in the police complaint, the plaintiff's allegation is directed against the notary, and not against the 1st defendant. The plaintiff's position in this complaint appears to be that he did not intend to transfer the beneficial interest in the land to the 2nd defendant. The plaintiff's grievance to the police was that the 2nd defendant refused to retransfer the land to him upon his offer to repay the money obtained from the 2nd defendant.

During the course of re-examination, counsel for the plaintiff sought clarification regarding the aforesaid police complaint. The plaintiff's explanation was that what he had stated to the police was correct, and that the complaint had been made against the notary. The plaintiff did not assert that the contents of P3 are false. He further stated that the complaint was subsequently withdrawn at the request of the notary, who had assured him that he would resolve the matter.

According to Deed No. 3704 marked P5, by which the property was transferred to the 2nd defendant, the named transferor is the 1st defendant, and the plaintiff is cited as an attesting witness. All relevant deeds, including P5, have been executed by the plaintiff's notary. The 1st defendant states that he merely signed the documents presented to him and that he lays no claim to the land.

The 2nd defendant obtained possession of the land at the time of the execution of his deed marked P5. Although the plaintiff alleges in the plaint that possession was obtained by force, there is no supporting material such as a police complaint to substantiate that claim. The plaintiff has handed over all his original title deeds. These deeds were subsequently produced at the trial by the 3rd defendant, to whom the land was later transferred by the 2nd defendant. These circumstances are wholly inconsistent with the plaintiff's claim in the police complaint that the beneficial interest in the property remained with him after the transfer to the 2nd defendant.

The issues raised by the plaintiff at the trial were centered on the contention that Deed No. 3010 marked P1, by which the land was transferred to the 1st defendant, was executed merely as security for a loan obtained by the plaintiff from the 1st defendant, and not as an outright transfer of title. On that basis, the plaintiff further contended that no valid title passed to the 2nd defendant under Deed No. 3704 marked P5, and that the 2nd defendant was therefore not in a position to transfer the land to the 3rd defendant by Deed No. 6364 marked P4.

There was no necessity for the plaintiff to frame issues on the basis that Deed No. 3010 marked P1 was executed merely as security for a loan obtained by the plaintiff from the 1st defendant when that fact was expressly admitted by the 1st defendant in his answer.

The plaintiff failed to frame the real issue in dispute, namely, how the 2nd defendant came to be the owner of the property. Instead, the plaintiff simply contended that the 2nd defendant could not have acquired title under Deed No. 3704 marked P5, on the basis that the named transferor was the 1st defendant. The plaintiff thus failed to address and effectively concealed the real dispute reflected in his own police complaint marked P3.

It is evident from the issues raised that the plaintiff's position prior to the institution of the action and after the institution of the action are materially different. In particular, the version disclosed in the police complaint marked P3 is at variance with the case pleaded and pursued at trial. In my view, the plaintiff is not entitled to maintain the action as presently constituted.

The learned District Judge analysed the evidence led at the trial and concluded that the plaintiff had failed to establish his case on a balance of probabilities. On appeal, the High Court affirmed the judgment of the District Court.

The plaintiff's argument before this Court is that the judgment of the High Court should be set aside on the ground that it fails to comply with the requirements of section 774(2) of the Civil Procedure Code, in that the High Court merely reiterated the findings of the District Court without assigning independent reasons for its conclusion.

In a court of law, a judgment is the final determination made by a court in a legal proceeding. It is the formal expression of the court's decision on the issues of fact and law that have been raised for adjudication, and it embodies the judicial reasoning that underpins that decision. In terms of section 5 of the Civil Procedure Code, "judgment" means the statement given by the Judge of the grounds of a decree or order. Thus, a judgment must articulate not only the decision itself, but also the rationale for arriving at that decision.

Section 774(2) of the Civil Procedure Code reads as follows:

The judgment which shall be given or taken down in writing, shall be signed and dated by the Judges, and shall state-

(a) the points for determination;

(b) the decision of the Judges thereon;

- (c) the reasons which have led to the decision;*
- (d) the relief, if any, to which the appellant is entitled on the appeal in consequence of the decision.*

According to Section 187 of the Civil Procedure Code, the same requisites are prescribed in a judgment of the District Court as well.

187. The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision; and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by such assessors respectively.

In order to constitute a valid judgment, it is not sufficient merely to repeat the cases advanced by the contending parties and state the final decision. The court must clearly identify the actual points for determination, record its findings on each such point, and, most importantly, set out the reasons that underpin those findings. A judgment that fails to disclose the reasons for the decision is no judgment in the eyes of the law.

However, where the District Judge has given adequate reasons for the findings reached, and the appellate court concurs with those findings, it cannot be said that the appellate court has failed to comply with section 774(2) merely because it adopted the reasoning of the trial judge with approval. The appellate court is not required to rehear the case or re-evaluate the evidence afresh as if it were a trial court. Where the reasoning of the District Court is found to be sound and is adopted by the appellate court, it constitutes the reasons for the appellate court's decision.

As a general principle, in direct appeals, the appellate court is required to address the grounds of appeal or the points in contest raised in the petition of appeal, or in the written submissions filed prior to the argument and further elaborated during the argument. In appeals where leave of court has

been obtained, the appellate court is confined to determining the questions of law on which such leave was granted.

Although those requisites must be present in the judgment, it is not necessary for a judgment to set out the points for determination, the decision thereon, and the reasons for the decision in that precise sequence or under distinct subheadings. What is required is that these three essential elements are discernible when the judgment is read as a whole. That constitutes sufficient compliance with the statutory requirements.

The structure and style of a judgment may vary, depending *inter alia* on the personal preferences of the judge and the nature and complexity of the case. Indeed, the same judge may adopt different formats in different cases, as circumstances may warrant. The essence of judicial duty lies in delivering reasoned justice. The form or style adopted by the judge is secondary and should not detract from that fundamental objective.

The principal submission of learned counsel for the plaintiff-appellant before this Court is that the judgment of the District Court ought to be set aside on the ground that the learned District Judge failed to answer the 1st defendant's issues No. 18 to 23 and the additional issues raised by the plaintiff No. 24 to 27.

These issues were raised on a date subsequent to the framing of issues by the plaintiff and the 2nd and 3rd defendants. As previously explained, the real contest lies between the plaintiff and the 2nd defendant, inasmuch as the 1st defendant, in his answer, categorically admitted that Deed P1 was not an outright transfer but was executed merely as security for a loan, and further stated that he was unaware of the contents of Deed P5.

In view of the admitted facts contained in the plaintiff's police complaint marked P3, the 1st defendant ought not to have raised any issue except issue No. 23, which asserts that the plaintiff instituted the action against the 1st

defendant without any basis. The additional issues raised by the plaintiff were in response to the 1st defendant's claim that he was entitled to compensation on the ground that he had been wrongly named as a defendant in the action. The learned District Judge, however, did not grant compensation to the 1st defendant in the judgment.

Accordingly, it is abundantly clear that no prejudice was caused to the plaintiff by the District Judge's failure to answer the said issues, which appears to have occurred by oversight.

Where the points in contest or the issues have been considered and addressed with reasons in the body of the judgment, the failure to answer certain issues, or the answering of some issues in a manner inconsistent with such findings, does not, *per se*, vitiate the judgment. In the course of writing a judgment, momentary lapses on the part of a Judge may occur, for Judges, though tasked with a solemn duty, are nonetheless human beings. Unless such lapses go to the root of the judgment and materially affect its outcome, they should be reconciled as far as reasonably possible. A judgment must be read and understood in its entirety, as a cohesive whole, and not merely by considering the issues framed and the answers given thereto.

As Justice Edussuriya aptly observed in the Supreme Court case of *Udugamkorale v. Mary Nona* [2003] 2 Sri LR 7 at 9 “*the answers to issues in a judgment are almost always monosyllabic and are a follow up on the matters in issues discussed, dealt with and decided in the body of the judgment. Hence the decision of the case must be arrived at by a careful reading of the body of the judgment and not on a superficial reading of the answers to the issues.*”

In dealing with the jurisdiction of the Court of Appeal, the proviso to Article 138(1) of the Constitution states that “*no judgment, decree or order of any*

court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.” This constitutional safeguard ensures that appellate intervention is not grounded on mere technicalities, but only on errors that have materially affected the outcome of the case.

Accordingly, unless the error, defect, or irregularity complained of either (a) has prejudiced the substantial rights of the parties, or (b) has occasioned a failure of justice, no judgment or order shall be varied or set aside by the appellate court. This provision reflects a principle of judicial restraint, requiring appellate courts to respect the finality of trial court decisions where the proceedings, viewed as a whole, have been fair and just. It also underscores the duty of the appellate court to distinguish between harmless procedural lapses and those that go to the root of the matter, causing actual injustice to a party.

The Constitution is the supreme law of the land, and all other laws must be interpreted in a manner consistent with its provisions. This fundamental principle is recognised and upheld by statutory laws as well, which often restate it by way of emphasis. It is imperative that Judges in appellate courts bear this fundamental principle firmly in mind when discharging their appellate function.

Section 334(1) of the Code of Criminal Procedure Act, No. 15 of 1979, as amended, reads as follows:

The Court of Appeal on any appeal against conviction on a verdict of a jury shall allow the appeal if it thinks that such verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of any law or that on any ground

there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

Section 436 of the Code of Criminal Procedure Act reads as follows:

Subject to the provisions hereinbefore contained any judgment passed by a court of competent jurisdiction shall not be reversed or altered on appeal or revision on account –

- (a) of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, summing up, or other proceedings before or during trial or in any inquiry or other proceedings under this Code; or*
- (b) of the want of any sanction required by section 135,*

unless such error, omission, irregularity, or want has occasioned a failure of justice.

Section 456A of the Code of Criminal Procedure Act reads as follows:

The failure to comply with any provision of this Code shall not affect or be deemed to have affected the validity of any complaint, committal or indictment or the admissibility of any evidence unless such failure has occasioned a substantial miscarriage of justice.

Section 11(1) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 reads as follows:

The Court of Appeal shall have and exercise, subject to the provisions of this Act or any other law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any High Court established by Article 154P of the Constitution in the exercise of its jurisdiction under paragraph (3) (a), or (4) of Article 154P of the Constitution and sole and exclusive cognizance by way of appeal, revision and restitutio in integrum of all causes, suits, actions, prosecutions, matters and things of which such High Court may have taken cognizance:

Provided that, no judgment, decree or order of any such High Court, shall be reversed or varied on account of any error, defect, or irregularity which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

Section 5A of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 (as amended by Act No. 54 of 2006) reads as follows:

5A(1) A High Court established by Article 154P of the Constitution for a Province, shall have and exercise appellate and revisionary jurisdiction in respect of judgments, decrees and orders delivered and made by any District Court or a Family Court within such Province and the appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such District Court or Family Court, as the case may be.

(2) The provisions of sections 23 to 27 of the Judicature Act, No. 2 of 1978 and sections 753 to 760 and sections 765 to 777 of the Civil Procedure Code (Chapter 101) and of any written law applicable to the exercise of the jurisdiction referred to in subsection (1) by the Court of Appeal, shall be read and construed as including a reference to a High Court established by Article 154P of the Constitution for a Province and

any person aggrieved by any judgment, decree or order of a District Court or a Family Court, as the case may be, within a Province, may invoke the jurisdiction referred to in that subsection, in the High Court established for that Province:

Provided that no judgment or decree of a District Court or of a Family Court, as the case may be, shall be reversed or varied by the High Court on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

In *Vernon Boteju v. Public Trustee* [2001] 2 Sri LR 124 at 128-129, Justice Weerasekera stated:

Proviso to Article 138(1) of the Constitution provides that no judgment, decree or order of any Court shall be reversed or varied on an error, defect or irregularity which has not prejudiced the substantial rights of the parties or occasioned a failure of justice. The learned District Judge has arrived at findings on the points for determination upon an evaluation of the evidence led in this case. Therefore, despite the error that has occurred in answering issue No. 13 and his failure to answer some issues it is not open to the defendant-appellant to assert that prejudice has been caused to his substantial rights or has occasioned a failure of justice.

In *Gunaratna v. Nandawathie* [2003] 3 Sri LR 96, the District Judge had failed to answer a material issue raised by the appellant concerning the applicability of section 111 of the Trusts Ordinance read with section 10 of the Prescription Ordinance. This formed one of the principal contentions before the appellate court. However, Justice Dissanayake declined to allow the appeal on that basis, stating at page 100 as follows:

Even if issue No.9(c) is answered, the defendant-appellant could never succeed in this action as his plea of prescription would fail. Hence even if provisions of section 187 of the Civil Procedure Code have not been complied with by the learned District Judge, by his failure to answer issue 9(c) no prejudice would be caused to the defendant-appellant.

In *Gunasena v. Kandage* [1997] 3 Sri LR 393, despite the District Judge's failure to properly analyse the evidence and to answer certain issues, Justice Weerasuriya, referring to the proviso to Article 138(1) of the Constitution, affirmed the judgment of the District Court, stating at pages 400–401 that:

It is clear on a close examination of the totality of the evidence that the learned District Judge is correct in entering judgment for the plaintiffs-respondents as prayed for in the plaint. However, she was in error for failing to adduce reasons for her findings. Nevertheless, the question that has to be examined is whether or not such failure on her part had prejudiced the substantial rights of defendant-appellant or has occasioned a failure of justice. Having considered the totality of the evidence, it seems to me that no prejudice has been caused to the substantial rights of the defendant-appellant or has occasioned a failure of justice by this error, defect or irregularity of the judgment.

Similar conclusion was reached by Justice Weerasuriya in *Victor v. Cyril De Silva* [1998] 1 Sri LR 41 at 46:

It is apparent that the learned District Judge has not engaged in an exhaustive analysis of the evidence led at the trial. Nevertheless, on the basis of overwhelming evidence led on behalf of the plaintiff-respondent and the evidence of Piyasena Silva, who was called by the defendants-appellants, the conclusion is irresistible that a judgment for the plaintiff-respondent, as prayed for in the plaint is inevitable.

Article 138 (1) of the Constitution which deals with the jurisdiction of the Court of Appeal is on the following terms:

138(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any court of first instance...

Provided that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

It is evident on a close examination of the totality of the evidence that the District Judge is correct in pronouncing a judgment in favour of the plaintiff-respondent as prayed for in the plaint. However, the learned District Judge was in obvious error when she failed to evaluate the evidence in terms of section 187 of the Civil Procedure Code. The failure of the learned District Judge to comply with the imperative provisions of section 187 of the Civil Procedure Code has not substantially prejudiced the rights of the defendants-appellants, or has not occasioned a failure of justice to the defendants-appellants.

In the circumstances, we affirm the judgment and the decree of the learned District Judge and dismiss this appeal with costs.

It has been clearly established by this Court in several decisions, including *Sunil Jayaratne v. Attorney-General* [2011] 2 Sri LR 91 at 101, *Kiri Mahaththaya and Another v. Attorney-General* [2020] 1 Sri LR 10 at 18–19, and *The State v. Chandana Sri Lal Gurusinghe and Others* (SC/APPEAL/139/2019, SC Minutes of 05.04.2024 at pages 6–12), that in order for a judgment of the trial court to be vitiated, the appellant must satisfy the court that the alleged lapse or non-compliance has resulted in

prejudice to the substantial rights of the appellant or has occasioned a failure of justice, as stipulated in the proviso to Article 138(1) of the Constitution.

However, what has been stated herein should not be construed as a licence to disregard the mandatory requirements set out in section 187 and section 774(2) of the Civil Procedure Code. The applicability of the proviso to Article 138(1) of the Constitution must be determined by the appellate court, having regard to the particular facts and circumstances of each case.

In the present case, while it appears that the learned District Judge inadvertently failed to answer certain issues, it is evident that such omission has not prejudiced the plaintiff's substantial rights nor has it resulted in a failure of justice. The body of the judgment clearly reflects a full evaluation of the relevant evidence on the points of contest, and the findings are well supported. Accordingly, there is no justifiable basis to set aside the judgment of the District Court on account of this omission.

I answer the questions of law on which leave to appeal was granted in the negative and dismiss the appeal with costs.

Judge of the Supreme Court

Janak de Silva, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court