

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

Ahmed Usuf alias Ahmed Mohamed Usuf,
No.75/2, Raja Veediya,
Matale.

PLAINTIFF

-Vs-

SC Appeal 109/2022

SC/HCCA/LA No. 53/2021

WP/HCCA/COL/07/2019 (RA)

DC Colombo Case No: DSP
80/2018

1. Mohamed Imran Razak,
No. 59, Bathiya Mawatha,
Kalubowila, Dehiwala.
2. Mohamed Shahid Imran,
No. 59, Bathiya Mawatha,
Kalubowila, Dehiwala.
3. Pan Asia Banking Corporation PLC,
No. 450, Galle Road,
Colombo 03.

DEFENDANTS

AND BETWEEN

Ahmed Usuf alias Ahmed Mohamed Usuf,
No.75/2, Raja Veediya,
Matale.

PLAINTIFF-PETITIONER (DECEASED)

1A. Abdul Rasheed Hawwa Umma,

1B. Ahamned Yoosuf Anfaz Ahamed,

1C. Fathima Banu

1A - 1C PLAINTIFF-PETITIONERS

-Vs-

1. Mohamed Imran Razak,
No. 59, Bathiya Mawatha,
Kalubowila,
Dehiwala.

2. Mohamed Shahid Imran,
No. 59, Bathiya Mawatha,
Kalubowila,
Dehiwala.

3. Pan Asia Banking Corporation PLC,
No. 450, Galle Road,
Colombo 03.

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Pan Asia Banking Corporation PLC,
No. 450, Galle Road,
Colombo 03.

3RD DEFENDANT-RESPONDENT-

APPELLANT

-Vs-

- 1A. Abdul Rasheed Hawwa Umma,
1B. Ahamned Yoosuf Anfaz Ahamed,
1C. Fathima Banu

**1A to 1C PLAINTIFF-PETITIONER-
RESPONDENTS**

1. Mohamed Imran Razak,
No. 59, Bathiya Mawatha,
Kalubowila,
Dehiwala.
2. Mohamed Shahid Imran,
No. 59, Bathiya Mawatha,
Kalubowila,
Dehiwala.

**DEFENDANT-RESPONDENT-
RESPONDENTS**

BEFORE: **S. THURAIRAJA, PC, J.**
ARJUNA OBEYESEKERE, J. AND
Dr. SOBHITHA RAJAKARUNA, J

COUNSEL: Kushan D' Alwis, PC with Priyantha Alagiyawanna instructed by Athulya
Palihapitiya for the 3rd Defendant-Respondent-Appellant.

M.S.A. Wadood with Hashane Mallawarachchi, Ms. Dulmini Liyanage
and Jerome Senanayake instructed by S.B. Dissanayake Associates for
the 1A to 1C Plaintiffs-Petitioners -Respondents.

WRITTEN 3rd Defendant-Respondent-Appellant on 27th September 2022

SUBMISSIONS: 1A to 1C Plaintiff-Petitioner -Respondents on 24th November 2022

ARGUED ON: 05th February 2025

DECIDED ON: 04th March 2026

S. THURAIRAJA, PC, J.

1. The instant case is an appeal filed by the 3rd Defendant-Respondent-Appellant (hereinafter referred to as the "Defendant Bank" or "3rd Defendant Bank") seeking to set aside the judgment dated 30th November 2020 of the High Court of the Western Province holden in Colombo exercising Civil Appellate Jurisdiction (hereinafter referred to as the "Civil Appellate High Court") in a revision application filed by the Plaintiff-Petitioner-Respondent (hereinafter referred to as the "Plaintiff").
2. By the said judgment, the High Court of Civil Appeal has set aside the Order of the District Court of Colombo dated 11th February 2019, by which the learned District Judge refused to grant the interim injunctive relief sought by the Plaintiff.

BACKGROUND OF THE CASE

3. The Plaintiff had instituted action before the District Court of Colombo alleging that the land described in the schedule to the Plaint was being held in trust by the 1st and 2nd Defendants for his benefit. At the time of instituting the said action, the land in question was the subject of a mortgage with the 3rd Defendant Bank.
4. The 3rd Defendant of the District Court action to which this appeal relates, a Licensed Commercial Bank, had agreed to grant a loan of Rs. 25 million to the 1st and 2nd Defendant-Respondent-Respondents (hereinafter referred to as the 1st and 2nd

Defendants), subject to the terms and conditions outlined in the offer letter dated 6th June 2016 [marked "B(R1)"].

5. By signing the said offer letter, the 1st and 2nd Defendants had agreed to repay the said loan together with interest at the rate of 15% per annum. As security for the said loan, the 1st and 2nd Defendants had mortgaged the land described in the schedule with the Defendant Bank by a notarially attested Mortgage Bond No. 538 dated 24th June 2016 [marked "A(m)"].
6. The Defendant Bank states that the said property was inspected by the Panel Valuer of the said Bank on 7th May 2016 in the presence of the Plaintiff, who had agreed to sell the land to the 2nd Defendant. The said valuation report has been annexed with the Statement of Objections [marked "B(R2)"].
7. The Defendant Bank, before accepting the said property as security and disbursing the loan, had also checked the entries at the land registry. As per the entries, the Bank had found the 2nd Defendant to be the owner of the property in question.
8. The Defendant Bank states that, upon signing the offer letter and the Mortgage Bond No. 538 dated 24th June 2016, the said sum was duly disbursed to the 1st and 2nd Defendants.
9. The 1st and 2nd Defendants had thereafter failed to pay the instalments of the loan regularly and gone into default. As shown by the certified copy of the loan ledger [marked "R4"], a sum of Rs. 24,882,459/19 was due and owing as at 9th October 2017.
10. By the letter of demand dated 13th October 2017 [Marked "R5"], the 3rd Defendant Bank have demanded the said sum from the 1st and 2nd Defendants. By such letter, the 1st and 2nd Defendants have also been informed that, if such monies were not paid, steps would be taken to recover such sum under the *Recovery of Loans by Banks (Special Provisions)*

Act, No. 04 of 1990, by auctioning the mortgaged property under and in terms of the said Act.

11. Upon the 1st and 2nd Defendants' failure to repay the default sums and/or to take any meaningful action to settle the sum, the Defendant Bank's Board of Directors, acting under the *Recovery of Loans by Banks (Special Provisions) Act, No. 04 of 1990*, as amended, by resolution dated 25th October 2017, had resolved to auction the said mortgaged property to recover the monies due.
12. The Defendant Bank had published the said resolution in the Government Gazette [marked "R6(a)"] and in the newspapers [marked "R6(b)"] and duly communicated the resolution to the 1st and 2nd Defendant by a covering letter dated 11th April 2018 [marked "R7"]. Accordingly, the Defendant Bank has complied with the provisions of Section 8 of the *Recovery of Loans by Banks (Special Provisions), Act No. 04 of 1990*.
13. On 14th March 2018, the 1st and 2nd Defendants, by letter marked "R8", had written to the Defendant Bank through their Attorney-at-Law, requesting the Defendant Bank to stay the auction till 15th April 2018, as they intend to settle the total amount due to the Defendant Bank.
14. The 3rd Defendant states that, as the 1st and 2nd Defendants failed to settle the amount as undertaken, the public auction was fixed for 11th June 2018, and the auction notice was published in the Government Gazette [marked "R10(a)"] and the newspapers [marked "R10(b)"] by the Defendant Bank. The Defendant Bank has informed the 1st and 2nd Defendants of the auction by a covering letter dated 17th May 2018 [marked "R11"].
15. Thereafter, the Plaintiff had instituted action in the District Court of Colombo by Plaint dated 8th June 2018, seeking, *inter alia*, an interim injunction restraining the Defendant Bank and its agents from selling the premises described in the schedule of the plaint by

public auction under the *Recovery of Loans by Banks (Special Provisions), Act No. 04 of 1990*.

16. The Plaintiff has contended before the District Court, *inter alia*, that the Deed of Transfer No. 380 dated 8th June 2016, by which the Plaintiff transferred the subject property to the 2nd Defendant should be declared null and void and that such property was being held by the 2nd Defendant in trust for the benefit of the Plaintiff, as he never intended to transfer the beneficial interest to the 2nd Defendant.

Circumstances Surrounding the Deed of Transfer No. 380 as Averred by the Plaintiff Before the District Court

17. The Plaintiff had owned and lived at the said property with his family and carried out a textile business in the front portion of the premises since 2006. The Plaintiff states that he owed Rs. 2,900,820 as at 1st May 2016 to the 1st Defendant, on account of Salwars supplied to him for his textile business and the 1st Defendant needed the said money urgently.
18. The 1st Defendant had persuaded the Plaintiff to obtain a loan of Rs. 10 million to settle the said dues. As the Plaintiff was above the age of 58 years and unable to get a loan, the 1st Defendant had suggested that the Plaintiff transfer the said property to the 1st Defendant so that they could obtain a loan in his name. The agreement had been that the 1st Defendant would then deduct the amount owed to him by the Plaintiff and give the balance to the Plaintiff, while the Plaintiff was to pay the loan instalments and continue to be in occupation of the said property.
19. In September 2016, the 1st Defendant had obtained the Plaintiff's and his wife's signatures on a Deed of Lease, made by a notary, at his home in Matale, claiming that it was required to obtain the bank loan. A notary or any other witnesses had not been present when the

deed was signed. Thereafter, the Plaintiff had come to Colombo to nominally transfer the property to the 1st Defendant on or around 8th June 2016.

20. The Plaintiff states that the Deed of Transfer was drawn up in favour of the 2nd Defendant [the son of the 1st Defendant], whom the Plaintiff had not dealt with at all. The Plaintiff further states that he was assured by the 1st Defendant that this would make no difference to the agreed transaction. Thereafter, the Plaintiff had placed his signature on the Deed of Transfer. He states that the 2nd Defendant was absent when the said Deed was executed.
21. The Plaintiff further claims that, although the said Deed states that Rs. 25 million was paid as consideration, no consideration whatsoever was paid to the Plaintiff by the 2nd Defendant. The Plaintiff claims to have only become aware of this fact when the 2nd Defendant, through his power of attorney, instituted action to eject him from the subject property.
22. The Plaintiff states that he and his family had continued to be in occupation of the property, and that he continued to pay the electricity bills, water bills, telephone bills and rates for the property.¹ He had also continued his textile business at the said property.
23. The 1st Defendant had thereafter informed the Plaintiff that the loan was successfully obtained from the 3rd Defendant Bank and that the Plaintiff should now carry on paying the monthly loan instalment of Rs. 186,638.42 as agreed.
24. The 1st Defendant had then taken steps to register himself as the owner of the property with the local authority in 2017. The Plaintiff states that he stopped paying the monthly instalment to the bank at this point, having become suspicious of the entire transaction. The Plaintiff had thereafter attempted to sell the Plaintiff's newly built annexe in the said

¹ Some of these bills have been annexed marked "D1" to "D7"

property so that he could settle the loan amount of Rs. 10 million to the 1st Defendant and get the property re-transferred back to the Plaintiff's name.

25. However, the Plaintiff alleges that the 1st Defendant threatened him and tried to get him to vacate the property through various people. One such person, named James, had made a police complaint against the Plaintiff on 10th July 2017, and the Plaintiff had recorded a statement in relation to this with the Matale police.² Thereafter, said James, holding a power of attorney for the 2nd Defendant, had instituted action in the District Court of Matale against the Plaintiff to eject him from the premises,³ but had withdrawn said action before the Plaintiff could file an answer. It is after the notice he received with respect to this action that he had come to realise that Deed of Transfer No. 380, on the face of it, mentions an amount of Rs. 18 million had already been paid to the Plaintiff and that another Rs. 10 million was paid in the presence of the notary public.
26. The Plaintiff also stated that the Deed of Lease No. 399 should also be declared null and void, as the property was never given on lease by the 2nd Defendant, and that the Plaintiff and his family have continued to have possession of the said property without any interruptions.
27. Thereafter, the Plaintiff claims that he was surprised to see a banner advertising the auction of said property by the Defendant Bank and that it was at this point that the Plaintiff knew that the Defendant Bank was going to auction the property.
28. The Defendant Bank has filed its statement of objections on 6th July 2018 and prayed for the dismissal of the application of the Plaintiff for an interim injunction. The 1st and 2nd Defendants had failed to appear before the District Court.

² Police complaint and the Plaintiff's statement annexed as "F1" and "F2" respectively.

³ Plaintiff of the ejectment action marked "H"

29. By Order dated 11th February 2019, the learned District Judge has dismissed the Plaintiff's application for the interim injunction. Being aggrieved by the aforesaid Order of the District Court of Colombo, the Plaintiff has preferred a revision application to the Civil Appellate High Court to set aside the impugned order of the District Court.
30. During the pendency of this appeal, the Plaintiff passed away on 30th June 2020, and the 1A to 1C Plaintiff Respondents were substituted in his place. The Civil Appellate High Court, by its judgment dated 30th November 2020, has allowed the Plaintiff's application, setting aside the order of the District Court of Colombo. The Civil Appellate High Court has also seen it fit to issue the interim injunction against the Defendant Bank, effectively staying the auction of the property.
31. Being aggrieved by the said judgment of the Civil Appellate High Court dated 30th November 2020, the Defendant Bank invoked the jurisdiction of this Court.

QUESTIONS OF LAW

32. Leave was granted on the following questions of law raised by the 3rd Defendant Bank:
- I. Have the Learned Judges of the Civil Appellate High Court failed to consider that the Action of the Plaintiff is contrary to Section 4 of the Trust Ordinance?*
 - II. Have the Learned Judges of the Civil Appellate High Court failed to consider that the Plaintiff has failed to establish a prima facie case?*
 - III. Have the Learned Judges of the Civil Appellate High Court failed to consider that the Plaintiff has not established any exceptional circumstances which warrant the exercise the revisionary power [sic]?*

ANALYSIS

33. I shall begin with the first question of law, which invites us to examine whether the action of the Plaintiff is contrary to Section 4 of the Trusts Ordinance.

34. Section 4 of the Trusts Ordinance is as follows.

(1) A Trust may be **created** for any lawful purpose. The purpose of a Trust is lawful, unless it is –

(a) forbidden by law; or

(b) is of such a nature that, if permitted, it would defeat the provisions of any law; or

(c) is fraudulent; or

(d) involves or implies injury to the person or property of another; or

(e) the Court regards it as immoral or opposed to public policy.

(2) Every Trust of which the purpose is unlawful is void. And where a Trust is created for two purposes, of which one is lawful and the other unlawful and the two purposes cannot be separated, the whole Trust is void."⁴

35. The Plaintiff states that he agreed to transfer the property for the purpose of obtaining the said loan from the Defendant Bank and that he never intended to transfer the beneficial ownership to the 2nd Defendant and that, thereby, the 2nd Defendant holds the said property in trust for the benefit of the Plaintiff, giving rise to a constructive trust.

36. Section 4 refers to trusts that are 'created'. As succinctly explained in K.V.S. Ganesharajan's '*Cases and Materials on Law of Trusts*',

"Section 4 refers to "created" on the basis that trust must be for legal purpose and

⁴ Emphasis added

therefore does not govern constructive trust under Chapter IX of the Trusts Ordinance."⁵

37. Thereby, I find that the learned High Court judge did not err in failing to examine whether the action of the Plaintiff is contrary to Section 4 of the Trusts Ordinance, as the Plaintiff's position had been that there is a constructive trust. Section 4 of the Trusts Ordinance clearly does not apply. I answer the first question of law in the negative.
38. I shall now advert to the second question of law, which invites this Court to examine whether the Civil Appellate High Court failed to consider that the Plaintiff has not established a *prima facie* case to justify the granting of an interim injunction.
39. This Court has extensively discussed the tests to be applied in granting interim injunctions in many early judgments. The headnote itself of the seminal case of ***Felix Dias Bandaranayake v. The State Film Corporation***,⁶ states the following:

"In deciding whether or not to grant an interim injunction the following sequential tests should be applied

- 1. Has the Plaintiff made out a strong prima facie case of infringement or imminent infringement of a legal right to which he has title, that is, that there is a serious question to be tried in relation to his legal rights and that the probabilities are that he will win.*
- 2. In whose favour is the balance of convenience—the main factor being the uncompensatable disadvantage or irreparable damage to either party?*
- 3. As the injunction is an equitable relief granted in the discretion of the Court do the conduct and dealings of the parties justify grant of the injunction. The*

⁵ K.V.S. Ganesharajan, *Cases and Materials on Law of Trusts* (Kumaran Book House 2024) at p. 81

⁶ [1981] 2 Sri LR 287, at p. 287

material on which the Court should act as the affidavits supplied by plaintiff and defendant. Oral evidence can be led only of consent or upon acquiescence."

40. It was further held in ***Felix Dias Bandaranayake v. The State Film Corporation***⁷ that,

*"In Sri Lanka we start off with a prima facie case. That is, the applicant for an interim injunction must show that there is a serious matter in relation to his legal rights, to be tried at the hearing and that **he has a good chance of winning**. It is not necessary that the plaintiff should be certain to win. It is **sufficient if the probabilities are he will win...**"*⁸

41. As held in ***Jinadasa v. Weerasinghe***,⁹

"...the Court must be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that plaintiff is entitled to relief."

42. As Chitrasiri, J opined in ***DFCC Bank v. Fathima Ruzana Fakurdeen and Others***,¹⁰

*"...it is necessary to refer to Section 54 of the Judicature Act in which the manner in which injunctions are granted is stipulated. Under paragraph (a) of section 54(1) of our Judicature Act, **it must appear from the plaint that the plaintiff is entitled to judgment, that is, the plaintiff must show that a legal right of his is being infringed and that he will probably succeed in establishing his right.***

Under paragraph (b) of the same section 54(1) it must appear that during the

⁷ [1981] 2 Sri LR 287

⁸ *ibid*, at p. 302 [Emphasis added]

⁹ 31 NLR 33, at p. 34

¹⁰ SC Appeal No. 133/2014, SC Minutes of 24 March 2016, at pp. 12-13

*pendency of the action there is or there is about to be done or committed by the defendant or at his instance or with his acquiescence an act in violation of the plaintiff's rights in respect of the subject-matter of the action and tending to render the judgment ineffectual. **Once again he must establish his entitlement to the legal right which is being or about to be violated** and the alleged violation must be such as would tend to render the judgment ineffectual. Here too the probability of victory for the plaintiff must be there...*"¹¹

43. It must also be borne in mind that this power to grant injunctions is one that must be very cautiously exercised. As Amerasinghe, J observed in **Yasodha Holdings (Private) Ltd. v. People's Bank**,¹²

"The power which the court possesses of granting injunctions should be very cautiously exercised and only on clear and satisfactory grounds. An application for an injunction is an appeal to an extraordinary power [sic] of the court and the applicant is bound to make out a case showing a clear necessity for its exercise..."

44. Having cited the above case, in **Upul Chaminda Perera Kumarasinghe and Another v. Pan Asia Banking Corporation**,¹³ Aluwihare, PC, J held that a "...Bank's right to recover loans by the power of sale as mortgagee will not be prevented or interfered with by the court except on exceptional circumstances where it is shown that irremediable damage would be caused without such intervention..."

45. The Plaintiff states that he effected the Deed of Transfer No. 380 [marked "I"] due to his inability to obtain a loan as a result of his age, following the 1st Defendant's suggestion that the subject property be transferred to him so that the bank loan could be obtained

¹¹ Emphasis added

¹² [1998] 3 Sri LR 382, at p. 387

¹³ SC Appeal No. 74/2021, SC Minutes of 11 October 2023, at p. 11

under the 1st Defendant's name from the 3rd Defendant Bank to recover his dues. It is for this purpose that the Plaintiff claims to have ended up transferring the said property to the 2nd Defendant by way of Deed of Transfer No. 380, dated 8th June 2016.

46. The Defendant Bank, in its statement of objections, states that, prior to the property being transferred to the 2nd Defendant by the Plaintiff, the said property was inspected by the Panel Valuer of the Defendant Bank in the presence of the Plaintiff on 7th May 2016. The Defendant Bank states that the Plaintiff did not at any point object to the said valuation being carried out. The Defendant Bank also states that, thereafter, before accepting the property as security and disbursing the loan, it duly checked the entries of the land registry and accordingly found the 2nd Defendant to be the owner of the said property.
47. The Defendant Bank states that it is a *bona fide* innocent third party unaware of the agreement between the Plaintiff and the 1st and 2nd Defendants. The Defendant Bank argues that a transaction of this nature should not be allowed to form a trust, effectively preventing a mortgagee bank from auctioning a mortgaged property.
48. Before granting the loan and disbursing the money, as stated above, the Defendant Bank had done a title search and found the 2nd Defendant to be the owner. The Defendant Bank had taken steps to ensure that the property belonged to the 2nd Defendant before granting the loan. I fail to see what else the Defendant Bank could have done on its part.
49. It also appears that the Defendant Bank has followed the proper legal procedure in effecting the auction, and no allegation to the contrary has been made.
50. It must be understood that, at this stage of an action, i.e. when a trial judge is called to consider whether an interim injunction should be granted, such judge is required to make his or her decision based on the pleadings before the court.
51. The simple and straightforward question that arises in the instant appeal is, then, whether

the Plaintiff has produced with his pleadings before the District Court such evidence to sufficiently establish his case.

52. On one hand, there are two deeds, both attested on the face of it and duly registered. One such deed, i.e. Deed No. 380 [marked "I"], is a Deed of Transfer, which indicates that the Plaintiff has sold the property in suit to the 2nd Defendant for valuable consideration amounting to Rs. 25 million. The second deed, i.e. Deed of Lease No. 399 [marked "J"], shows, at least on the face of it, that the said property was leased back to the Plaintiff.
53. All that the Plaintiff has submitted to refute these two Deeds are some pictures of the property and the business carried out on the said property, along with proof that they have been paying utility bills relating to the said property. While this establishes that the Plaintiff is in occupation of the property in suit, that is by no means sufficient to establish his case, especially considering the Deed of Lease—for any lessee is generally able to provide such proof.
54. In addition, the Plaintiff has also submitted some deposit slips which show that he had deposited money to the 1st Defendant's bank account. While the Plaintiff avers to have deposited such amounts for the 1st Defendant to pay loan instalments to the 3rd Defendant Bank, there is no proof of this claim.
55. The Plaintiff also claims to have only noticed the true nature of the Deed of Transfer [marked "I"]—which he admits to have signed—after the 2nd Defendant took steps to institute action to eject the Plaintiff from the property in suit. This claim, too, does not strengthen the Plaintiff's case, as the general rule is *caveat subscriptor*.¹⁴

¹⁴ See the recent judgments of this Court in *Hitisekara Mudiyanselage Wimalasiri v. Commercial Leasing and Finance PLC and Others*, SC (CHC) Appeal No. 06/2019, SC Minutes of 26 September 2025; *Mallawa Waduge Jayaratne v. Wickramaarachchige Senani*, SC Minutes of 04 September 2025; *YB Alecman v. Hapuarachchige Don Douglas Martin Appubamy*, SC Appeal No. 08/2014, SC Minutes of 30 May 2025

56. Of course, it would be open for him to lead evidence as to the alleged improprieties associated with the deeds; however, such evidence was not available to the learned District Judge at the time of making the impugned order.
57. Accordingly, I find that the Plaintiff has failed to establish a *prima facie* to justify the granting of an interim injunction. The learned Judges of the Civil Appellate High Court have erred to this effect. The second question of law is accordingly answered in the affirmative.
58. The Order of the District Court of Colombo dated 11th February 2019 is affirmed, and the Judgment of the Civil Appellate High Court dated 30th November 2020 is set aside. The Appeal is allowed, and the interim injunction issued against the Defendant Bank is hereby vacated.

Appeal Allowed.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J.

I agree.

JUDGE OF THE SUPREME COURT

Dr. SOBHITHA RAJAKARUNA, J.

I agree.

JUDGE OF THE SUPREME COURT