

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

In the matter of an application for leave to appeal
under and in terms of Section 5C (1) of the High
Court of the Provinces (Special Provisions) Act No.
19 of 1990, as amended by Act No. 54 of 2006.

SC/APPEAL No. 112/2022
SC/LA/Application No.
SC/HCCA/LA/47/2022
Civil Appellate High Court of
Kegalle Case No.
SG/HCCA/KEG/10/2020 (F)
DC Kegalle Case No. **8236/L**

Perammudi Arachchillage Rasika Nilmini
Kumari of Hettimulla, Ananda Bodiraja Mawatha,

PLAINTIFF

vs

Perammudi Arachchillage Nilantha Pushpa
Kumara of Hettimulla, Ananda Bodiraja Mawatha,

DEFENDANT

And Between

Perammudi Arachchillage Nilantha Pushpa
Kumara of Hettimulla, Ananda Bodiraja Mawatha,

DEFENDANT – APPELLANT

vs

Perammudi Arachchillage Rasika Nilmini Kumari of
Hettimulla, Ananda Bodiraja Mawatha,

PLAINTIFF - RESPONDENT

And Now Between

Perammudi Arachchillage Nilantha Pushpa Kumara of
Hettimulla, Ananda Bodiraja Mawatha,

DEFENDANT-APPELLANT-PETITIONER-
-[APPELLANT]

Perammudi Arachchillage Rasika Nilmini Kumari of
Hettimulla, Ananda Bodiraja Mawatha,

PLAINTIFF-RESPONDENT-RESPONDENT-
-[RESPONDENT]

BEFORE : Mahinda Samayawardhena, J.
Menaka Wijesundera, J.
M. Sampath K. B. Wijeratne, J.

COUNSEL : S. K. Chaminda instructed by Sena Hemendra
for the Defendant - Appellant - Petitioner -
[Appellant].

S. A. D. S. Suraweera with K. A. T. Fernando
instructed by Ranjani for the Plaintiff – Respondent -
Respondent - [Respondent].

ARGUED ON : 17.02.2026

DECIDED ON : 10.09.2026

M. Sampath K. B. Wijeratne J.

Factual Background

The Plaintiff-Respondent-Respondent-[Respondent] (hereinafter referred to as the “Plaintiff”) instituted the above-styled action in the District Court of Kegalle by way of an action *rei vindicatio* seeking the eviction of the Defendant-Appellant-Petitioner-[Appellant] (hereinafter referred to as the “Defendant”) and his family from the land described in the schedule to the plaint dated February 18, 2013.

The Plaintiff pleaded that she was, at one time, the owner of the land described in the plaint. Subsequently, she is stated to have transferred the said land to her brother, the Defendant, by Deed No. 96 dated December 1, 2003, marked 'ඵ11/V3', without consideration and with the expectation that he would look after and care for her in the future. On its face, the said instrument is a Deed of Transfer, notwithstanding that the Plaintiff has described it as a Deed of Gift executed with the expectation of future care and support. However, she has executed the instrument in the form of a Deed of Transfer enabling her brother to obtain bank loans in the future.

However, as per the Plaintiff, in the course of time, the Defendant has failed to fulfill his obligation towards the Plaintiff. Consequently, the Plaintiff revoked Deed No. 96, by executing Deed of Revocation No. 153 dated July 23, 2012, marked 'ඵ153', on the ground that the basis upon which the deed had been executed had been frustrated. The Plaintiff accordingly asserted that, by virtue of the said revocation, she had re-acquired title to the land described in the schedule to the plaint.

The Defendant filed his answer denying the averments in the plaint and contended that, since Deed No. 96 was a Deed of Transfer, it could not be construed as a Deed of Gift. At the trial, the parties recorded five admissions and raised fifteen issues. The Plaintiff called three witnesses during the trial, whereas the Defendant called one witness in support of his position. The Plaintiff marked documents 'ඵ1' to 'ඵ16A', whilst the Defendant marked documents 'ඵ1' to 'ඵ4' in support of their respective cases.

Upon conclusion of the trial, the learned District Judge, by judgment dated November 28, 2019, entered judgment in favour of the Plaintiff. Being aggrieved by the said judgment, the Defendant preferred an appeal to the High Court of Civil Appeal (hereinafter referred to as the 'Civil Appellate High Court'). The learned High Court Judges affirmed the judgment of the learned District Judge, holding, *inter alia*, that the Plaintiff was entitled to revoke Deed No. 96, on the basis that no consideration had passed between the parties at the time of its execution.

Being aggrieved by the judgment of the Civil Appellate High Court, the Defendant sought leave to appeal to this Court on the following grounds set out in the petition:

1. ***Have the Learned High Court Judges of the Civil Appellate High Court of the Sabaragamuwa Province Holden at Kegalle erred in admitting oral***

Evidence to prove that a deed which purported to be a Transfer for Consideration was a Deed of Donation?

2. *Was the Learned District Judge correct in taking into consideration of the evidence of passing/not passing of the consideration between the parties in order to arrive at a conclusion as to the nature of the deed 96 to within the ambit of Section 2(a) of the Kandyan Law Declaration and Amendment Ordinance?*

Analysis

The Plaintiff contends that, notwithstanding the fact that the impugned deed, namely Deed No. 96, is expressed on its face as a deed of transfer, the true nature and legal effect of the transaction bring it within the ambit of a Kandyan Deed of Gift as contemplated by Section 2 of the Kandyan Law Declaration and Amendment Ordinance (hereinafter referred to as the "Ordinance"), since no consideration was paid or received by the Plaintiff in respect of the said transfer. Section 2(a) of the Ordinance provides as follows:

*“gift” means a voluntary transfer, assignment, grant, conveyance, settlement, or other disposition inter vivos of immovable property, **made otherwise than for consideration in money or money’s worth;**”*

The aforesaid provision clearly stipulates that, for a transfer to fall within its ambit, it must be affected without consideration in money or money's worth. In the present case, the Plaintiff and the Defendant executed Deed No. 96, which is expressed as a deed of transfer. By its very nature, an outright transfer constitutes a complete and irrevocable conveyance of title to property, whereby the transferor divests himself or herself of all right, title, and interest in the property in favour of the transferee, free from any conditions or limitations.

If, in fact, Deed No.96 was executed without consideration, it may, subject to the fulfilment of the statutory requirements, have been liable to revocation under Section

5(d) of the Ordinance. The decisive question that therefore arises is whether consideration in fact passed between the parties.

I now turn to examine the facts and circumstances of the present case in relation to the issue of consideration. The operative clause of Deed No. 96 recites that a sum of Rs. 75,000 was paid by the Defendant to the Plaintiff as consideration for the transfer. However, the attestation clause contains the Notary Public's certification that no consideration passed between the executants before him.

In the context of a deed of transfer, there are three recognised forms of notarial attestations with respect to consideration, namely:¹

- (1) That the consideration was paid before him*
- (2) That the consideration was acknowledged to have been previously paid or;*
- (3) That the consideration did not pass in his presence*

Nevertheless, under the third category, which is applicable to the present case, the mere fact that the Notary Public did not witness the payment of the consideration before him does not, by itself, justify the inference that no consideration was passed. Because the payment may well have been affected outside the presence of the Notary Public, particularly where the operative part of the deed expressly acknowledges that the consideration was paid.

In *Munasinghe vs Vidanage*², it was held that, “*that the statements of the notary in the attestation clause of a deed of sale are admissible evidence, and may well be important evidence, regarding consideration, but are not conclusive.*”

Accordingly, the Notary Public's endorsement does not, in itself, assist in determining whether consideration in fact passed between the parties or not. It has been consistently held by the Supreme Court in a series of judgments that the consideration stated in a deed, or recital acknowledging receipt of payment, is not conclusive and may be

¹ T. B Dissanayake and A.B Colin De Soysa, *Kandyan Law and Buddhist Ecclesiastical Law*, (1963) at Page 112.

² 69 NLR 97.

contradicted or superseded by extrinsic evidence.³(*Kiri Banda vs Marikar*⁴; *Nadaraja Ramalingam*⁵; *Molagoda vs Molagoda*⁶; *Begaswatte vs Ukku Banda*⁷ ; *Dingiri Naide vs Kirimenike*⁸)

However, the controversy arises from the divergent intentions of the parties as to the true nature of the transaction embodied in the impugned deed No.96. This is because the Plaintiff's case is that she intended to execute a deed of gift on the understanding that the Defendant would provide for and care for her in future, but that, at the Defendant's request, she executed a deed of transfer instead. The Defendant, on the other hand, maintains that the transaction was intended to be a deed of transfer from the outset and not a Deed of Gift.

Both the learned District Judge and the learned Judges of the High Court have found in favour of the Plaintiff, holding, upon an assessment of the evidence, that no consideration had passed. Accordingly, the principal issue that arises for determination is whether oral evidence may be admitted to establish that a deed which, on its face, purports to be a transfer for consideration was, in substance, a Deed of Gift.

The Defendant contended that the Plaintiff is precluded by law from adducing oral evidence to vary the terms of Deed No.96. This contention is founded upon the general rule embodied in Section 92 of the Evidence Ordinance, which excludes oral evidence for the purpose of contradicting, varying, adding to, or subtracting from the terms of a written instrument.

Nevertheless, as provided by Proviso (1) to the same section, “*Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact of law.*” The Proviso 1 is one of the

³ SC/CHC/Appeal /19/2023.

⁴ 20 NLR 123.

⁵ 21 NLR 38.

⁶ 45 NLR 481.

⁷ 43 NLR 281.

⁸ 57 NLR 559.

exceptions to the above main section which allows oral evidence to be led to prove that the agreed consideration was not paid.

In *Ananda Nimal Chandra De Silva vs Grace Advertising (Private) Limited*⁹, A.H.M.D Nawaz, J, reproduced a quotation from “*The Law Evidence*” by E.R.S.R. Coomaraswamy (Volume II, Book I),

“It can always be shown that a contract was entered into without consideration, or the consideration, if any, has failed. This applies even where the instrument contains an averment that the deed was for consideration. If, therefore, in a deed of sale of land, there is the usual consideration and receipt clause in the operative part of the deed, it is still open to the vendor to show that in fact no consideration was paid or that the consideration was in fact different from that which was recited in the deed.”

In *Nambuwasan vs Deonis Appu et al*¹⁰ it was held that,

“No doubt, where a transaction embodied in a deed is on the face of it a sale, and notwithstanding a statement in the attestation that consideration passed, it is open to a Court to hold that the surrounding circumstances negative a genuine sale and point to the transaction being merely a colourable one.”

Since the present case concerns the alleged failure of consideration, it falls squarely within Proviso (1) to Section 92 of the Evidence Ordinance. Therefore, I am unable to agree with the contention of the Defendant that, by virtue of Section 92 of the Evidence Ordinance, oral evidence is inadmissible to establish that a deed which purports to be a transfer for consideration was, in fact, a Deed of Gift. Accordingly, I hold that the learned District Judge did not err in law in admitting oral evidence for that limited purpose, and that the learned Judges of the High Court likewise did not err in law in affirming the said decision.

⁹ SC/CHC/Appeal/19/2013.

¹⁰ 65 NLR 353.

I shall now proceed to examine the said evidence placed before the Court. It is settled law that a finding arrived at upon an erroneous appreciation of evidence may give rise to a question of law. This principle was clearly established in the following judgments.

In ***Sithamparanathan vs People's Bank***¹¹ it was held that,

“failure to properly evaluate evidence or to take into account relevant considerations in such evaluation is a question of law and is reviewable by an Appellate Court.”

Saranasin Patabandigei Jayatissa vs Saranasin Patabandigei Sirisena and others¹²,

“In my view, a judge in analysing evidence must consider the totality of evidence rather than each single fact in isolation.”

In ***Fonseka vs Candappa***¹³ it was held that,

“In regard to 'concurrent findings, in Collettes Ltd. vs Bank of Ceylon (2) Sharvananda, J. (as he then was) said:

"Thus this court undoubtedly has the jurisdiction to revise the concurrent findings of fact reached by the lower court in appropriate cases. However, ordinarily it will not interfere with findings of fact based upon relevant evidence except in special circumstances: such as, for instance, where the judgment of the lower court shows that the relevant evidence bearing on a fact has not been considered or irrelevant matters have been given undue importance or that the conclusion rests mainly on erroneous considerations or is not supported by sufficient evidence. When the judgment of the lower court exhibits such shortcomings, this court not only may, but is under a duty to examine the supporting evidence and reverse the findings."

¹¹ [1989] 1 Sri L.R. 124.

¹² SC Appeal No. 01/2016 SC Minutes dated 03.03.2026.

¹³ [1988] 2 Sri L.R. 11.

In *Ceylon Transport Board vs Thungadasa*¹⁴ it was held,

“Some of the findings are inconsistent with the evidence and contradictory and there has been a failure to consider relevant and admissible evidence. This Court is therefore entitled, as a question of law, to examine and interfere with such an order.”

Among the documents relied upon by the Plaintiff is the affidavit of H. R. Somarathne, produced through the Plaintiff, who was one of the attesting witnesses to Deed No. 96. However, this affidavit cannot be relied upon as admissible evidence, since the deponent was not called as a witness and the contents thereof were not tested by cross-examination. Accordingly, the statements contained in the affidavit do not constitute evidence admissible in law.

The Plaintiff testified that the Defendant initially requested her to construct a house on the land at her own expense so that they could reside there together. She further stated that, after construction had commenced, the Defendant requested the transfer of a portion of the land, assuring her that he would care for her in return. According to the Plaintiff, it was in reliance on this assurance that she executed the deed of transfer.¹⁵ However, the Plaintiff later contradicted this account by testifying that the Defendant constructed the house on the transferred portion of the land, while she merely provided financial assistance. This evidence establishes that the Defendant also contributed financially to the construction of the house.

According to the evidence of the mason who assisted in the construction of the said house, which he specifically identified as the ‘Defendant’s house’, the Plaintiff had paid the wages of the workers engaged in the construction. However, the same witness testified that the Defendant had entrusted the construction work to him. This gives rise to an apparent inconsistency, as it raises the question as to why the Defendant assumed responsibility for assigning the construction work if the Plaintiff had solely borne all expenses connected with the construction¹⁶.

¹⁴ 73 NLR 211.

¹⁵ *Vide* page 109 of the appeal brief.

¹⁶ *Vide* page 155 of the Appeal Brief.

Furthermore, the Plaintiff's witness, Sunil Peramuna, at one stage of his evidence, stated that one house had been constructed by the Defendant and the other by the Plaintiff. The same witness further stated that the Plaintiff had provided a small amount of financial assistance towards the construction of the house occupied by the Defendant¹⁷. This evidence suggests that both parties had constructed separate houses on the land in dispute¹⁸.

Moreover, the Plaintiff, in her evidence, stated that she executed the deed in favour of the Defendant for monetary consideration¹⁹. However, this position is contradicted by the evidence of Thamara Menike, a witness who testified on behalf of the Plaintiff, who stated that the Plaintiff did not receive any money as consideration for the execution of the said deed. These contradictions give rise to doubts regarding the credibility and reliability of the evidence of both the Plaintiff and her witnesses.

Upon a careful analysis of the aforesaid evidence, I am of the view that the construction of the house cannot be attributed solely to the Plaintiff, as the pieces of evidence indicate that the Defendant had also made some contribution towards the construction. Although the Plaintiff may have provided financial assistance towards the construction, I am of the view that she was aware that the said house was intended ultimately to be owned by the Defendant. It is difficult to accept that the Plaintiff would have permitted another person to construct a house on her land and incur expenses in that regard without an understanding of the Defendant's interest and involvement therein.

Another factor relied upon by both the learned District Judge and the learned High Court Judges in reaching their conclusions was that the consideration allegedly paid by the Defendant to the Plaintiff was substantially lower than the value of the impugned portion of the land. However, I am unable to agree with this reasoning. Consideration is undoubtedly an important element of a deed of sale. Nevertheless, the adequacy of the consideration is generally not a matter for judicial scrutiny. In the absence of circumstances warranting the application of the doctrine of *laesio enormis*, it is not the

¹⁷ *Vide* page 150 of the Appeal Brief.

¹⁸ *Vide* page 149 of the Appeal Brief.

¹⁹ *Vide* Page 134 of the Appeal Brief.

function of the court to inquire whether the consideration agreed upon by the parties was adequate or inadequate. Parties are, in principle, free to determine the consideration for their bargain, and the court ought not to substitute its own assessment of the value of the property for the agreement voluntarily reached by the parties. Justice C. G. Weeramantry in his treatise “The Law of Contract” has stated that *“Consideration must have value in the sense of economic or money value. If the promised consideration can be estimated at a money value, no matter how trivial, there is a valuable consideration, and the Court will not inquire into its adequacy.”*²⁰

On the other hand, no independent corroborative evidence has been produced to substantiate the position advanced by the Defendant either. Accordingly, I find that there are several inconsistencies, concerns regarding credibility, and evidentiary gaps in the oral testimony presented by both parties, which make it difficult to arrive at a definite conclusion regarding the passing of consideration if reliance is placed solely upon the aforesaid evidence.

Therefore, I now turn to the most decisive and conclusive piece of evidence, the impugned deed. Irrespective of the assertions made by the executants, the operative clause of the impugned deed clearly states that it was executed as a deed of transfer for valuable consideration. The fundamental characteristic of a deed of transfer is that it embodies the intention of the parties to transfer ownership or a legal interest in property from one party to another. The purpose of reducing such intention into a formal written instrument is to ensure certainty and finality in the transaction.

Where a transaction or disposition relating to property has been expressly recorded in a duly executed deed, the Court must accord due weight to the contents of such deed, except in circumstances falling within the proviso to Section 92 of the Evidence Ordinance. Otherwise, the very purpose and legal efficacy of executing a deed would be rendered nugatory.

²⁰ C.G. Weeramantry, The Law of Contracts (Volume I) (1st edn) Lawman India (Pvt) Ltd., at page 228.

In *R.M. Jayawardena vs R. M. Jayathilaka* ²¹, the following observation was made regarding the aforesaid rule of interpretation:

“(...) if the operative part is clear, it gets the priority over the other parts of the deed, but other clauses can be used to clear up doubts that arise in relation to the words in the operative part.”

In the present case, I find no ambiguity in the operative part of the impugned deed. On the other hand, as mentioned above, the Notary Public’s attestation does not, by itself, establish the failure of consideration. Further, available evidence considered pursuant to Proviso (1) to Section 92 of the Evidence Ordinance appears to be of limited assistance in determining the crucial issue as to whether consideration was, in fact, not passed between the parties. Accordingly, I find it appropriate to attach significant weight to the operative clause of the impugned deed. I therefore hold that the said deed is a deed of transfer executed for valuable consideration.

Conclusion

For the foregoing reasons, I hold that the impugned Deed No. 96 was executed for valuable consideration and, therefore, does not constitute a deed of gift within the meaning of Section 2 of the Kandyan Law Declaration and Amendment Ordinance. Accordingly, the judgments of the learned District Judge and the learned Judges of the High Court are set aside.

I answer the questions of law as follows:

1.No, as per proviso (1) of 92 of the Evidence Ordinance, oral evidence can be led to prove failure of consideration at the time of execution of a deed.

2.No. Deed No. 96 is a deed of transfer, executed for monetary consideration and not a gift, therefore it does not fall under Section 2(a) of the Kandyan Law Declaration an amendment Ordinance.

²¹ S.C. Appeal No. 221/2012, SC Minutes dated 19.12.2019.

Accordingly, the appeal is allowed. In all the circumstances, I make no order as to costs.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT

Menaka Wijesundera, J.

I agree.

JUDGE OF THE SUPREME COURT