

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

In the matter of an Application for Leave to
Appeal to the Supreme Court in terms of
Section 5C (1) of the High Court of
Provinces (Special Provisions) Act No.19 of
1990 as amended by Act No. 54 of 2006.

SC/ APPEAL/ 122/ 2024

SC/ HCCA/ LA 74/2019

HCCA Mount Lavinia Case No.

WP/HCCA/MT/18/16/F

DC Moratuwa Case No. 164/SPL

Mudugamuwa Hewage Mendis Appuhamy,
No. 36/10, P.B. Alwis Perera Mawatha,
Katubedda, Moratuwa.

Plaintiff

Vs.

Bowalgaharalalage Sirithilaka Kumari,
No.95, St. Anthony's Road,
Kadalana, Moratuwa.

Defendant

AND BETWEEN

Mudugamuwa Hewage Mendis
Appuhamy,
No.36/10,
P.B. Alwis Perera Mawatha,
Katubedda, Moratuwa.

Plaintiff-Appellant

Vs.

Bowalgaharalalage Sirithilaka Kumari,
No.95, St. Anthony's Road,
Kadalana, Moratuwa.

New Address

No.11/11A, Niwahal Place,
Koralawella, Moratuwa.

Defendant - Respondent

AND NOW BETWEEN

Mudugamuwa Hewage Mendis Appuhamy,
No.36/10,
P.B. Alwis Perera Mawatha,
Katubedda, Moratuwa

Deceased Plaintiff-Appellant-Appellant

Mudugamu Hewage Ramyalatha
No.36/10,
P.B.Alwis Perera Mawatha,
Katubedda, Moratuwa

Substituted Plaintiff-Appellant-Appellant

Vs.

Bowalgaharalalage Sirithilaka Kumari,
No.95, St. Anthony's Road,
Kadalana, Moratuwa.

New Address

No.11/11A, Niwahal Place,
Koralawella, Moratuwa.

Defendant-Respondent-Respondent

Before : Janak De Silva, J.
Menaka Wijesundera, J.
M. Sampath K.B. Wijeratne, J.

Counsel : Pubudu Alwis with Supun Jayathilake instructed by
Nandana Perera for substituted Plaintiff-Appellant-
Appellant.
Chathura Galhena with Sachini Hadapangoda instructed
by Devmini Bulegoda for the Respondent.

Written
Submissions : Written submissions on behalf of the Defendant-
Respondent-Respondent on 1st of December, 2025.

Argued on : 15.12.2025

Decided on : 11.03.2026

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgment dated 22.01.2019 of the Civil Appellate High Court of the Western Province.

When this matter was supported for leave, this Court has granted leave to appeal on the following Questions of Law,

- a. Did the learned Judges of the Civil Appellate High Court and the learned District Judge fail to consider the fact that the Respondent was holding the property subject to a constructive trust created in favour of the Petitioner by Deed bearing No. 4271 dated 09th August 1996 attested by M. A. S. W. Amarasinghe, Notary Public?
- b. Did the Learned Judges of the Civil Appellate High Court erred in law when they held that the Plaintiff's action is prescribed in law when in fact the Defendant had failed to take up such a position in the answer and failed to raise an issue to that effect in the trial?

The plaintiff-appellant-appellant had died on 30th July, 2021 and Mudugamu Hewage Ramyalatha has petitioned this court on 16th March, 2023 seeking for her to be substituted in place of the deceased plaintiff. The said application has been allowed. However, for ease of reference the original plaintiff (now deceased) would be referred hereinafter as “the plaintiff” in place of the substituted plaintiff.

Hence, the plaintiff instituted action in the District Court of Mt. Lavinia against the defendant-respondent-respondent (hereinafter referred to as the defendant) seeking a declaration that the Deed of transfer No. 4271 executed by him is not a Deed of transfer but a Deed of trust with regard to the property described in the schedule to the plaint.

Prior to the institution of the present action, the plaintiff had filed an action in the District Court against his daughter and son-in-law, alleging that they were unlawfully occupying his property by force.

During the pendency of the said trial the parties had reached a settlement and the plaintiff had to pay a sum of Rs. 200,000/- to the defendants to vacate the said property.

The plaintiff had decided to obtain a loan from a bank by offering the property described in the schedule to the plaint as security. However, the plaintiff has pleaded that he was unable to satisfy the lending institution of his capacity to repay the said loan. Therefore, he had decided to transfer the property, described in the schedule to the plaint, to the defendant, who was his daughter-in-law, and she had obtained the loan from the bank.

As such, the Deed No. 4271 had been executed on 9th August 1996.

On the same day, the Defendant mortgaged the property described in the schedule to the plaint and obtained a loan in the sum of Rs. 310,000/-. Thereafter, the Defendant paid a sum of Rs. 200,000/- to the Plaintiff for the purpose of settling the other case.

At this time, the plaintiff and the defendants had continued to occupy the property.

Hence, the plaintiff had pleaded that he never intended to transfer the title of the property to the defendant and that she held the property on a constructive trust for the plaintiff.

In the case of ***Piyasena v. Don Vansue [1997] 2 Sri LR 311, Justice C. V. Wigneswaran*** held that,

“The trust is an obligation imposed by law on those who try to camouflage the actual nature of the transaction. When the attendant circumstances point to a loan transaction and not a genuine sale transaction the provisions of section 83 of the Trust Ordinance apply.”

The law relevant to this case is found in the Trust Ordinance. 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.”

Black’s Law Dictionary (8th Edition Bryan A. Garner at pg. 260) defines an “Attendant circumstance” as a fact that is situationally relevant to a particular event or occurrence.

Chief Justice Basnayake, in *Muttammah v. Thiyagaraja [1960] 62 NLR 559*, further elucidated that “attendant circumstances” denote events either preceding or succeeding the transfer, provided they are so closely connected in point of time as to form part of the same transaction. His Lordship emphasized that such circumstances must invariably be assessed in light of the specific facts of each case.

According to the evidence of the plaintiff, after the defendant obtained the loan on his behalf, he has given the installments due to the bank to the defendant to be paid to the bank and up until 2001 she had done so. Thereafter, due to the non-payment of the installments, the bank had tried to auction the property. He further stated that he paid the installments to the defendant from the proceeds earned by hiring out his van. He had also stated that the defendant had told him that he would be ousted from the house if he does not pay the bank installments.

In cross-examination, the plaintiff had been shown V1 and V2, where the plaintiff had said that he is selling the impugned property to the defendant as an outright purchase. He had also been questioned as to why he waited for six years to sue the defendant. The Courts attention also had been drawn to the fact that it is the defendant who had paid the rates for the property to the local municipality since 1996 which the plaintiff says was done against his wish and he maintains

the position that the land in dispute was transferred to the defendant on a constructive trust, but V1 and V2 speak otherwise.

The bank official, who had given evidence, had said that the deed by the no. 4271 had been kept as security for the loan obtained by the defendant and the said deed had been in the name of the defendant. The loan had been obtained in 1996 and the entire amount has been paid to the bank by 2007.

According to the defendant's husband, they were not aware of the completion of the loan payment and that the bank had not informed them and he says that the Deed No. 4271 had been in the name of the defendant, which had been sold by the plaintiff to the defendant.

Therefore, in view of the evidence stated above the following has been proved before the trial court. They are,

- 1) Deed no. 4271 had been transferred from plaintiff to the defendant as a deed of sale,
- 2) The defendant had obtained a loan from People's bank, keeping the above-mentioned deed as security,
- 3) Documents marked as V1 and V2 indicates that the plaintiff had sold the property for a sum of Rs. 700,000 and the Deed no. 4271 shows that the said property had been transferred for a sum of Rs. 310,000 from the plaintiff to the defendant.

The position of the plaintiff is that he had transferred the said property to the defendant on a constructive trust. This position has not been substantiated by his own witness who happens to be one of the daughters of the plaintiff and his son-in-law. Although the plaintiff and the witnesses say that the plaintiff paid the installments of the loan, the bank official who came to give evidence stated that they cannot trace said receipts. No person, other than the plaintiff, states that the land in dispute was transferred to the defendant on a constructive trust.

The Deed no. 4271, which is the most vital document in the case, does not speak of the property being transferred to the defendant from the plaintiff on a constructive trust and the witnesses as said before who were called by the plaintiff do not speak of a trust existing between the plaintiff and the defendant.

The learned Trial Judge held that the plaintiff had failed to discharge the burden of proving his case and accordingly dismissed the plaint.

Aggrieved by the said judgment, the plaintiff filed an appeal to the Civil Appellate High Court. The Civil Appellate High Court dismissed the appeal on the basis

that the impugned Deed No. 4271 did not disclose the existence of a trust between the plaintiff and the defendant. The Court further observed that although the plaintiff asserted that he had settled the bank loan by remitting monies to the Defendant, such payment had not been substantiated by documentary evidence. The Court also noted that the impugned deed had been executed in the year 1996, whereas the action in the District Court had been instituted only in 2004, and consequently held that the plaintiff's action was prescribed in law.

In view of the material stated above, the main ground to be decided in the instant matter is whether the defendant held the property on trust for the plaintiff. At this adjudication the most vital document is the Deed no. 4271 and according to its contents, it does not reveal that the property in the deed had been transferred on a trust, and the evidence led on behalf of the plaintiff also does not reveal that it is so. The documents marked by the defendants as V1 and V2 also reveal otherwise, and most importantly the said deed has been executed in 1996 but the action in the District Court has been filed in 2004.

Therefore, I am compelled to conclude that the position of the plaintiff has not been proved in the District Court and as such, I answer both questions of law in the negative. The second question of law being answered in the negative is due to the fact that even though the defendant did not raise the issue of prescription before the District Court, the learned High Court Judge, sitting in Civil Appellate jurisdiction, merely observed that the plaintiff's action could have been dismissed on the ground of prescription, having regard to the lapse of time between the execution of the impugned deed and the institution of proceedings in the District Court. He had not acted on this principle of the action of the plaintiff being prescribed. Therefore, I answer the second question of law also in the negative.

Hence, I am of the view that there is no merit in the instant appeal and as such, it is dismissed without costs.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

M. Sampath K. B. Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT