

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

In the matter of an application for Leave to Appeal in terms of Section 5C of the High Court of the Provinces Special Provisions (Amendment) Act No. 54 of 2006 against the judgment dated 21/11/2023 in the Provincial High Court of the Western Province (Holden in Gampaha) case No. HCCA Appeal No.21/2021 (F)F, D.C. Pugoda Case No.1133/L.

SC/APPEAL/123/2024

SC/LA/Application No.

SC/HCCA/LA/01/2024

Civil Appellate High Court of
Gampaha Case No.

WP/HCCA/GPH/21/2021 (F)

DC Pugoda Case No. **1133/L**

1. Rajapaksha Arachchilage Alpenis (**Deceased**)

2. Panawala Kankanamge Lilian Somalatha

Both

“Jayasath”, Bellana Road,
Agalawatta,

PLAINTIFFS

vs

1. Waduwanage Jayaratne
No.80/B, Udagama, Kirindiwela.

2. Panawala Kankanamlage Chithra Malani

3. Herath Mudiyanseelage Gamini Ranjith
Herath Pilapitiya

Both

No.347/1, Alapalavilawatta,
Udagama, Kirindiwela,

4. Waduwanage Nilan Madushanka

81/C, Galkaduwatta, Vihara Kumbura,
Kirindiwela.

DEFENDANTS

And Between

2. Panawala Kankanamlage Chithra Malani
3. Herath Mudiyanseelage Gamini Ranjith
Herath Pilapitiya

Both

No.347/1, Alapalavilawatta,
Udagama, Kirindiwela,

2nd and 3rd DEFENDANTS - PETITIONERS

vs

1. Rajapaksha Arachchilage Alpenis (**Deceased**)
2. Panawala Kankanamge Lilian Somalatha

Both

“Jayasath”, Bellana Road,
Agalawatta,

PLAINTIFFS – RESPONDENTS

1. Waduwanage Jayaratne
No.80/B, Udagama, Kirindiwela.

1st DEFENDANT – RESPONDENT

4. Waduwanage Nilan Madushanka
81/C, Galkaduwatta, Vihara Kumbura,
Kirindiwela.

4th DEFENDANT – RESPONDENT

And Now Between

2. Panawala Kankanamlage Chithra Malani
3. Herath Mudiyanseelage Gamini Ranjith
Herath Pilapitiya

Both

No.347/1, Alapalavilawatta,
Udagama, Kirindiwela,

**2nd and 3rd DEFENDANTS –
PETITIONERS - APPELLANTS**

VS

1. Rajapaksha Arachchilage Alpenis (**Deceased**)
2. Panawala Kankanamge Lilian Somalatha

Both

“Jayasath”, Bellana Road,
Agalawatta,

**PLAINTIFFS – RESPONDENTS –
RESPONDENTS**

1. Waduwanage Jayaratne
No.80/B, Udagama, Kirindiwela.

**1st DEFENDANT – RESPONDENT –
RESPONDENT**

4. Waduwanage Nilan Madushanka

81/C, Galkaduwatta, Vihara Kumbura,
Kirindiwela.

**4th DEFENDANT – RESPONDENT -
RESPONDENT**

BEFORE

: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.
M. Sampath K. B. Wijeratne, J.

COUNSEL

: Dr. Sunil F. A. Coorey instructed by Sumiri
N. Fernando for the 2nd and 3rd Defendants-
Petitioners- Appellants.

Romesh Samarakkody instructed by Anoma
Samarakkody for the Plaintiff – Respondent -
- Respondent.

ARGUED ON

: 21.01.2026

DECIDED ON

: 17.09.2026

M. Sampath K. B. Wijeratne J.

Introduction

This appeal arises from the judgment delivered on November 21, 2023, by the High Court of Gampaha, exercising its civil appellate jurisdiction in the Western Province, holden at Gampaha (hereinafter referred to as the “Civil Appellate High Court”), whereby the appeal preferred by the 2nd and 3rd Defendants, seeking to set aside the judgment of the learned District Judge of Pugoda dated January 20, 2021, was dismissed.

Being aggrieved by the judgment of the Civil Appellate High Court, the 2nd and 3rd Defendants preferred an application for leave to appeal to this Court. Having

heard the submissions made on behalf of the 2nd and 3rd Defendants, this Court granted leave to appeal on the following two questions of law¹.

1. *Is the deed of gift bearing No. 6932 dated 23/09/2010, a deed for a valuable consideration within the meaning of Section 7 of the [Registration of Documents Ordinance]?*
2. *If not, can the said deed have priority of registration over deed No. 3016 dated 08/07/2009 which was a deed of gift in favour of the 2nd Defendant in this case?*

Factual Background

The original owner, R. A. Alpenis, (hereinafter referred to as the “1st Plaintiff”), derived title to the land described in the First Schedule to the plaint from the Land Reform Commission by Deed No. 2364 dated May 16, 1998 (‘ප්‍ර 1’), attested by Cyril Fernando, Notary Public². The said deed is registered in Folio D 260/04 at the District Land Registry of Gampaha. The 1st Plaintiff, being the owner of the land described in the First Schedule to the plaint, conveyed a defined portion of one rood in extent by Deed No. 2928 dated March 28, 1999, attested by C.W. Bandara, Notary Public, to the 1st Defendant Waduwanage Jayaratne.

This deed is registered in the folio D 260/210, with a cross-reference to the folio in which the previous Deed No. 2364 (‘ප්‍ර 1’) was registered.

According to section 14 of the Registration of Documents Ordinance, an instrument should be “*registered in the book allotted to the division in which the land affected by the instrument is situated and in the folio in which the first registered instrument affecting the same land is registered, or in another folio (whether of the same volume or of another volume) bearing a separate number,*

¹ *Vide* proceedings dated October 16, 2024.

² Lot No. 14 in Surveyor General’s plan No. ෧෧ 2196 dated April 1994, in an extent of 1 rood and 36.89 perches.

opened in continuation thereof, cross reference being entered in the prescribed manner so as to connect the said folios”.

Thereafter, notwithstanding that a portion of the land had previously been alienated, the 1st Plaintiff transferred the entirety of the land described in the First Schedule to the plaint to the 2nd Defendant by Deed of Gift No. 3016 dated July 8, 2009, attested by G. A. S. Ganepola, Notary Public (‘28 1’/ ‘පැ 7’). The said deed is registered in a different folio, D 470/39, without any cross-reference to the previous folio.

Thereafter, by Deed of Gift No. 6932 dated September 23, 2010 (‘පැ 6’), attested by D. P. Suriyapperuma, Notary Public, the 1st Plaintiff gifted the same land described in the First Schedule to the plaint to the 2nd Plaintiff. This deed was registered in the correct folio, D 260/04.

On October 1, 2010, the 2nd Defendant, the donee under Deed No. 3016, executed Deed of Declaration No. 21 (‘28 4’), attested by C. Sirisena, Notary Public, connecting Deed No. 3016, which had been registered in Folio D 470/39, to the correct Folio D 260/04. However, this Deed of Declaration was executed after the execution of Deed of Gift No. 6932 (‘පැ 6’).

The 2nd Defendant has transferred one rood of her rights to the 4th Defendant, Waduwanje Nilan Madushanka, by Deed No. 432 dated December 3, 2010, attested by G. U. N. Perera, Notary Public (‘4 81’).

At the trial before the District Court, the 2nd and 3rd Defendants claimed priority under Deed No. 6932 (‘පැ 6’), executed on September 23, 2010, over Deed No. 3016, executed on July 8, 2009 (‘28 1’/ ‘පැ 7’), on the ground that the former was registered in the correct folio, whereas the latter was not.

Although there were other issues to be determined by the original Courts, according to the questions of law upon which this Court granted leave to appeal, the only issue to be determined by this Court is whether Deed No. 6932 (‘පැ 6’) should be accorded priority over ‘28 1’/ ‘පැ 7’. It is imperative to note that due execution of the deed ‘28 1’/ ‘පැ 7’ was not challenged at the time it was marked

in evidence. Since the deed *prima facie* appears to be a genuine document, it could be accepted as such³.

Analysis

In the ordinary course, Deed No. 6932 (‘ප්‍ර 6’) should be accorded priority over Deed No. 3016 (‘28 1’/ ‘ප්‍ර 7’), despite the fact that Deed No. 3016 was executed prior to Deed No. 6932, on the ground that the former was registered in the correct folio. The basic principle is that any instrument affecting land must be registered in the folio in which the first registered instrument was registered, or in another folio maintained in continuation thereof, with proper cross-references connecting the relevant folios.⁴

In *Heenappuhamy vs Charles*⁵, it was held that where a part of a land is conveyed by X, the owner of that land, to A, and the same portion is subsequently conveyed by X to B, the proper folio for the registration by B of the subsequent deed, for the purpose of securing priority of title over the earlier deed executed in favour of A, is still the original folio relating to the larger land, or a new continuation folio properly connected to the original folio, as required by section 14 of the Registration of Documents Ordinance.

However, in the instant case, the two deeds in conflict are deeds of gift.

Section 7(1) of the Registration of Documents Ordinance provides that any instrument affecting land, unless duly registered under Chapter III of the Ordinance, shall be void as against all parties claiming an adverse interest thereto on “**valuable consideration**” by virtue of any subsequent instrument duly registered under that Chapter.

What, then, is meant by the expression “valuable consideration” as contemplated in section 7(1) of the Registration of Documents Ordinance?

³ See *Sangarakkita Thero vs Buddarakkita Thero* 53 NLR 457, SC/Appeal No. 52/2024, SC minutes of 18.06.2026.

⁴ SC/ Appeal No. 66/2011, SC Minutes of 15.10.2021.

⁵ (1973) 77 NLR 169.

Learned Counsel for the Plaintiffs, in his written submissions, relying on, *inter alia*, **Jayawickreme vs Amarasuriya**⁶ and **Lipton vs Buchanan**⁷, submitted that where the term “consideration” appears in the statutes of Sri Lanka, its meaning must be interpreted in accordance with Roman-Dutch law, namely, as referring to a *justa causa*.

The Roman-Dutch law concept of *justa causa* is broader than the English law notion of “consideration”, since, under Roman-Dutch law, even a promise made deliberately to discharge a moral duty, or to perform an act of generosity or benevolence, may be enforceable at law. However, under English law, legally enforceable consideration is essentially valuable consideration, whereas “moral consideration” based on natural affection, generosity, love, or moral duty does not constitute consideration in the eyes of the law.

Although Roman-Dutch law is the common law of the country, English law will apply where legislative enactments employ terms and concepts peculiar to English law.

Accordingly, the English concept of “consideration” is relevant when considering certain contracts, such as transactions relating to the sale of goods, and in construing certain statutes, such as the Registration of Documents Ordinance.⁸ In **Salaman vs Obias**⁹, it was observed that:

“The question is really a question of the interpretation of certain words in the Land Registration Ordinance, 1891, namely, under section 17, the words “valuable consideration.” These words must, I think, be interpreted according to English law. The consideration alleged in this case is that the appellant rendered certain services to his deceased grandmother, and expended certain sums for her benefit. It is stated by a witness to the deed that she, at the time of its execution, said, with regard to the appellant, that he was looking after her, that

⁶ 20 N.L.R. 289.

⁷ 8 N.L.R. 49.

⁸ See *Dona Podi Nona Ranaweera Menike vs Rohini Senanayake* [1992] 2 Sri LR. 180.

⁹ 21 NLR 410.

he had attended on her, spent for medical assistance, brought her there and gave her sea baths, and that he had better have a conveyance. These words denote as plainly as can be denoted that the consideration for the deed was a past consideration. The principles of English law are perfectly clear, and they are that a past consideration is no consideration at all [...]”

The first Registration Ordinance came into operation in Ceylon in 1863, having been enacted as Ordinance No. 8 of 1863. It was subsequently amended by Ordinance No. 3 of 1865 and replaced by Ordinance No. 14 of 1891. Thereafter, in 1927, Ordinance No. 23 of 1927 was introduced for the registration of documents, with the purpose of amending and consolidating the law relating to the registration of documents. The said Ordinance has since been amended on several occasions. Accordingly, the aforementioned case remains equally relevant under the present law.

In such circumstances, a deed of gift would not obtain priority by reason of prior registration over any instrument executed for valuable consideration. This is primarily because the very purpose of the Ordinance is to protect the *bona fide* purchaser. This principle was succinctly discussed by Sinnetamby, J., in ***Lairis Appu vs Tennakoon Kumarihamy***¹⁰, as follows:

“Our Registration Ordinance provides for the registration of documents and not for the registration of titles. If it had been the latter, then, from whatever source the title was derived, registration by itself would give title to the transferee. When, however, provision is made only for the registration of documents of title, the object in its simplest form, is to safeguard a purchaser from a fraud that may be committed on him by the concealment or suppression of an earlier deed by his vendor. The effect of registration is to give the transferee whatever title the vendor had prior to the execution of the earlier unregistered deeds”

¹⁰ (1958) 61 N.L.R. 97.

Hence, in *H. M. Juwan vs A. R. Totcho and another*¹¹, the Court held that a deed of gift could not prevail over an earlier bond by reason of its prior registration.

The question before this Court, therefore, is whether, in the event of a conflict between two deeds of gift, priority can be conferred upon the deed that was first registered under section 7(1) of the Registration of Documents Ordinance.

In *Mohamadu Hamidu vs Rahimuttu Natchiya*¹², it was held that where two deeds of gift come into conflict, registration does not confer priority upon either deed.

“The registration of plaintiff's gift deed does not affect the contest between the parties, inasmuch as plaintiff's deed was not a conveyance made for valuable consideration, and the operation of section 39 of the Land Registration Ordinance 1868, in favor of deeds registered before deeds earlier in date, is confined to deeds made for valuable consideration. Therefore, so far as paper title is concerned, defendants' deed prevails over plaintiff's, apart from the circumstance that the plaintiff's deed is not proved.”

The Registration of Documents Ordinance, being a remedial measure designed to safeguard purchasers, does not alter the relative priority of volunteers as between themselves. Nevertheless, voluntary deeds are generally registered and, indeed, ought to be registered to ensure the protection of purchasers claiming under them.

Conclusion

For the reasons stated above, I answer both questions of law raised in the negative. I set aside the judgment of the learned Judges of the High Court of Civil Appeal dated November 21, 2023, and the judgment of the learned District Judge dated January 20, 2021. I further set aside the answers given to Issues Nos.

¹¹ 2 Matara cases 15.

¹² (1889) 1 CLR 182.

5, 6, 9, 10, 12, 13, 16, 18(ii), 20(i) and (iii), 23(i), 24 and 25 (i) to (vi), and answer the said issues as follows:

- Issue No 5- Deception is not proven. Due execution of the Deed is established.
- Issue No 6- Not registered in the proper folio. But the two folios were adequately connected.
- Issue No 9- Since Deed No. 6932 does not get priority over Deed No. 3016. title passes.
- Issue 10- 2nd Defendant gets title as per the Judgment of this Court
- Issue 12- No.
- Issue 13-No.
- Issue 16- No. As per the Judgment of this Court.
- Issue 18 (ii)- Yes. As per document marked ‘ཅུ7 (ཅ)’.
- Issue 20 (i)- 1st Plaintiff had title as per the answer given in Issue No 9.
- Issue 20 (iii)- Yes.
- Issue 23 (i)- A cause of action disclosed at paragraph 9 of the plaint.
- Issue 24- Yes. But only entitled to 36.89 perches.
- Issue 25 (i)- Yes. (ii)- Deed No. 6932 is void in so far as priority by registration is concerned (iii) Not proved to the satisfaction of the Court. (iv) Yes. The 2nd Defendant has subsequently gifted her rights to the 4th Defendant added under Journal Entry 19 of the District Court. (v) Yes. The 4th added Defendant is entitled. (vi) Yes.

The answers to Issues Nos. 1 to 4, 7, 8, 11, 14, 15, 17, 18(i), 19, 20(ii), 21, 22, 23(ii) and (iii), and 26 shall remain unchanged.

Accordingly, the 1st Defendant is entitled to an extent of one rood under Deed No. 2928. Although Deed No. 3016 purports to convey the entirety of the *corpus*, since the 1st Plaintiff had already parted with one rood under the aforementioned Deed No. 2928, the 2nd Defendant is entitled only to the remaining extent of 36.89 perches. Consequently, the 4th Defendant is entitled to the same extent under Deed No. 432.

It appears that the 4th Defendant was added as a party to the action while the case was pending, as the 2nd Defendant had conveyed her title to the 4th Defendant prior to the institution of the action. Although the 4th Defendant, having been added as a defendant, failed to file an answer or prefer his claim, his case was represented by the 2nd Defendant throughout the proceedings. The title deed of the 4th Defendant was also marked and tendered in evidence as '4E 1' without objection. It is noteworthy that neither the Plaintiff nor any of the contesting Defendants moved to proceed against the 4th Defendant *ex parte*. In these circumstances, I do not propose to venture into the question of whether the 4th Defendant should be granted title to the extent claimed, despite the fact that he has not sought such relief in his pleadings.

The learned District Judge of Pugoda is directed to enter a decree in accordance with the judgment of this Court.

The Appeal is allowed. The 2nd and 3rd Defendants are entitled to costs.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT

Arjuna Obeyesekere, J.

I agree.

JUDGE OF THE SUPREME COURT