

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

E.M. Rasika Subhashini,  
No. 3, Densil Kobbakaduwa  
Mawatha, Hali-Ela.  
2<sup>nd</sup> Defendant-Respondent-Appellant

**SC/APPEAL/160/2018**  
**UVA/HCCA/BDL/17/15(F)**  
**DC BANDARAWELA 297/SPL**

Vs.

Ratnayake Mudiyansele Somasiri  
alias Samarasinghe Mudiyansele  
Ranjith Sisira Kumara alias  
Samarasinghe Mudiyansele Ranjith  
Sirikumara,  
“Saumya Villa”, Amunudowa,  
Bandarawela.  
Plaintiff-Appellant-Respondent.

Ranaweera Mudiyansele Nihal  
Premalal Ranaweera,  
No. 52A, 3<sup>rd</sup> Floor, Mega Hardware,  
Main Street, Bandarawela (Deceased)  
1<sup>st</sup> Defendant-Respondent-Respondent.

1A. Rathnayake Mudiyansele  
Nandawathi,  
No. 31, Suramyagama Road,  
Vishaka Mawatha,  
Bandarawela.

1B. Amila Sampath Ranaweera,  
No. 148/15, Lesley Ranagala Mawatha,  
Baseline Road, Colombo 08.

1C. Ranaweera Mudiyanseelage Abhaya  
Gamini Bandara Ranaweera,  
Manager Department of Industries  
(Electrical Engineering),  
Electrical Section,  
Sri Lanka Sugar Company.  
1A, 1B, and 1C Substituted Defendant-  
Respondent-Respondents

Before: Mahinda Samayawardhena, J.  
Dr. Sobhitha Rajakaruna, J.  
Sampath K.B. Wijeratne, J.

Counsel: Thanuka Nandasiri for the 2<sup>nd</sup> Defendant-Respondent-  
Appellant.

Esara Wellala for the 1<sup>st</sup> Defendant-Respondent-  
Respondent.

Kamal Dissanayake with Sajani Ranasinghe and Sureni  
Amaratunga for the Plaintiff-Appellant-Respondent.

Argued on: 13.05.2026

Written submissions:

By the 2<sup>nd</sup> Defendant-Respondent-Appellant on 08.09.2020.

By the 1<sup>st</sup> Defendant-Respondent-Respondent on  
17.02.2022.

By the Plaintiff-Appellant-Respondent on 25.09.2020,  
19.05.2026.

Decided on: 27.07.2026

**Samayawardhena, J.**

The plaintiff instituted this action against the first and second defendants seeking, *inter alia*, declarations that Deed No. 201 dated 01.12.2000 marked P2, by which the plaintiff transferred the land in suit to the first defendant, and Deed No. 249 dated 21.09.2002 marked P3, by which the first defendant transferred the said land to the second defendant, are null and void, and that the plaintiff is the owner of the land.

The plaintiff's position before the District Court was that although deed P2 was executed, it was subject to a condition which was not fulfilled, that the agreed consideration was not paid, and that consequently deed P2 was of no force or avail in law.

I must mention at the outset that the plaintiff's case suffers from a fundamental difficulty. The factual basis upon which he sought to invalidate deeds P2 and P3 is not only unclear but is also inconsistent with his own pleadings and the admissions recorded at the trial.

At the commencement of the trial, admissions and issues were recorded. The fourth admission was that the first defendant purchased the land described in deed No. 201 dated 01.12.2000 from the plaintiff. The fifth admission was that the first defendant transferred the said land to the second defendant by deed No. 249 dated 21.09.2002. These were formal and unqualified admissions made by the parties and recorded by Court.

The consideration stated in deed P2 is Rs. 100,000. In paragraph 13 of the plaint, the plaintiff expressly averred that he had received the sum of Rs. 100,000 from the first defendant and that he is prepared to return the said amount. A plaintiff who seeks to avoid a conveyance on the basis that no consideration passed under the transaction cannot, at the same time, maintain that he received the consideration and is willing to refund it.

These admissions and averments substantially undermine the plaintiff's case that deed P2 was merely a conditional transfer or that no consideration passed under the transaction.

Although the consideration stated in deed P2 is Rs. 100,000, the attestation clause states that the said sum was not paid before the Notary and that, in lieu thereof, the first defendant undertook to construct a building on another land belonging to the plaintiff on or before 31.01.2002. The deed further provides that, in the event of default, the first defendant shall pay damages at the rate of Rs. 5000 per month.

Significantly, the deed contains no provision to the effect that ownership of the land would revert to the plaintiff if the first defendant failed to construct the building, nor does it provide that the transfer would become void upon such failure. On the contrary, the parties expressly stipulated the consequence of non-performance, namely liability to pay damages. The obligation to construct the building was therefore not a condition precedent to the passing of title but merely stipulated the manner in which the consideration was to be paid.

It is clear from the terms of the deed that P2 was intended to operate as an outright transfer of ownership. The fact that the consideration was to be satisfied by constructing a building on another property belonging to the plaintiff does not transform the conveyance into a conditional transfer.

It is well-settled law that a deed cannot be declared null and void merely because consideration has not been paid. If consideration has not been paid, the remedy of the transferor is to recover the amount due in appropriate proceedings.

Hence, even if the first defendant failed to perform his obligation to construct the building, such failure would not render deed P2 null and void. At best, it may give rise to a claim for damages as the attestation clause of the deed itself indicates.

After trial, the learned District Judge, by judgment dated 24.02.2015, dismissed the plaintiff's action, holding that deeds P2 and P3 constituted outright transfers.

On appeal, the High Court of Civil Appeal accepted the legal position that non-payment of consideration, by itself, does not invalidate a conveyance. Nevertheless, the High Court set aside the judgment of the District Court on the basis that the conduct of the first defendant was fraudulent, that no consideration had in fact passed to the plaintiff, and that deeds P2 and P3 were therefore liable to be invalidated.

I am unable to agree with that reasoning.

Learned counsel for the plaintiff-respondent candidly accepted before this Court that non-payment of consideration, by itself, would not invalidate deed P2. However, relying on *Jayawardene v. Amarasekera* (1912) 15 NLR 280, he defended the judgment of the High Court stating that the first defendant acted fraudulently from the inception of the transaction and never intended to fulfil his obligation to provide the agreed consideration.

In *Jayawardene v. Amarasekera*, Lascelles C.J. stated at page 282:

*There can be no doubt but that on the execution of a notarial conveyance the sale is complete, and it is difficult to see how the mere fact, if it be a fact, that the whole of the consideration has not been paid can, in the absence of fraud or misrepresentation, afford ground for the rescission of the sale and the cancellation of the conveyance.*

The difficulty with that submission of learned counsel for the plaintiff is that fraud was never part of the plaintiff's case. The plaintiff did not seek to set aside deeds P2 and P3 on the ground of fraud. Fraud was not pleaded in the plaint. No issue relating to fraud was raised at the trial.

No evidence was led by the plaintiff with a view to establishing fraud. Nor did the learned District Judge make any finding of fraud.

Nevertheless, the High Court concluded that “*it is not difficult to understand that no consideration was passed as a result of a fraud that had taken place*”. That conclusion cannot be sustained.

It is well-settled that fraud vitiates everything, including judgments and orders of the court. Fraud is a serious allegation carrying grave civil and criminal consequences. It cannot be founded upon inference, conjecture or assumption. A party alleging fraud shall specifically plead it with sufficient particulars, and a distinct issue of fraud shall be framed so that the opposing party is afforded a fair opportunity to meet the allegation. Furthermore, although the standard of proof remains on a balance of probabilities, fraud shall be established by cogent and convincing evidence commensurate with the gravity of the allegation. (*Chatoor v. General Assurance Society Ltd* (1954) 56 NLR 566)

The mere failure of a party to perform a contractual obligation does not, without more, establish that he acted fraudulently when the contract was entered into. A breach of contract and fraud are distinct legal concepts. To infer fraudulent intent merely from subsequent non-performance would be to convert many ordinary contractual disputes into allegations of fraud.

The learned District Judge correctly held that deeds P2 and P3 constituted outright transfers and that the plaintiff had failed to establish any legal basis upon which those deeds could be set aside. The High Court therefore erred in interfering with that judgment.

This Court granted leave to appeal on the following questions of law:

- (1) Did the High Court err in law and in fact in holding that deeds marked P2 and P3 are void on the basis of non-passing of consideration?

- (2) Did the High Court err in law and in fact in holding that the first defendant had a fraudulent intent at the time of the execution of deed P2?

For the reasons set out above, both questions shall be answered in the affirmative.

Accordingly, the judgment of the High Court of Civil Appeal dated 14.03.2018 is set aside, the judgment of the District Court dated 24.02.2015 is restored, and this appeal is allowed with costs.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court

Sampath K.B. Wijeratne, J.

I agree.

Judge of the Supreme Court