

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

In the matter of an Appeal from  
a judgment of the High Court of  
Civil Appeal of Kandy.

Seyadu Mohamadu Mohamed Munas,  
No. 1/96, Dehigama, Muruthalawa.  
Plaintiff

Vs

**SC APPEAL 195/2012**  
SC HC ( CALA ) 341/12  
CP/HC/CA 197/08  
D.C.Kandy Case No. L/19019

Sitti Patu Umma, No. 19, Dehianga,  
Muruthalawa.  
Defendant

AND BETWEEN

Sitti Patu Umma, No. 19, Dehianga,  
Muruthalawa.

Defendant Appellant

Vs

Seyadu Mohamadu Mohamed Munas,  
No. 1/96, Dehigama, Muruthalawa.

Plaintiff Respondent

AND NOW BETWEEN

Seyadu Mohamadu Mohamed Munas,  
No. 1/96, Dehigama, Muruthalawa.  
(Now deceased)  
Mohamed Muhuseen Inul Zulfika,  
No. 1/96, Dehianga, Muruthalawa.

Substituted Plaintiff Respondent  
Appellant

Vs

Sitti Patu Umma, No. 19, Dehianga,  
Muruthalawa.

Defendant Appellant Respondent

**BEFORE : PRIYASATH DEP PCJ.  
S. EVA WANASUNDERA PCJ. &  
PRASANNA JAYAWARDENA PCJ.**

**COUNSEL : S.K.K. Sangakkara with W.D. Weeraratne and  
Ms. Aloka de Silva for the Substituted Plaintiff  
Respondent Appellant.  
Hemasiri Withanachchi for Defendant Appellant  
Respondent.**

**ARGUED ON : 01.02.2017.  
DECIDED ON : 06.04. 2017.**

**S. EVA WANASUNDERA PCJ.**

In this matter leave to appeal was granted on two questions of law raised by the Appellant and another question of law was raised by the Respondent at the same

time, all of which have to be considered and answered by this Court. The said questions are as follows:-

1. Did the High Court of Civil Appeal fail to consider the implication of Section 83 and 98 of the Trust Ordinance in arriving at its decision?
2. Did the High Court of Civil Appeal err by failing to consider the injustice caused to the Appellant if the Respondent gets the property without payment of any consideration?
3. Can the Petitioner have a declaration of title when the property is subject to a constructive trust?

The background facts of this case are pertinent to throw some light before treading on the matters which have to be decided. Sitti Patu Umma was a female who was running the boutique which covered about 2.7 Perches, bearing assessment number 7 in the town of Muruthalawa on a land of 2.8 Perches. Muruthalawa is about 8 kilometers away from Kandy. She had bought the said property from the Plaintiff, Munas in 1991. Since then she had been running the boutique and is in possession up to date. In April, 1997, Sitti Patu Umma had borrowed Rs. 60,000/- from Lilian Ranaweera on the promise that she will pay back the loan within one year and had **transferred her property to Lilian as security for the loan**. She had paid interest monthly on the loan as agreed for about 1 ½ years but failed to pay the loan. Lilian had sent a letter through her lawyer Karalliyedde to Sitti Patu Umma **demanding from the said loan of Rs. 60000/-** and further said that if it is not paid back to Lilian, *action will be filed to recover the said loan*. At that time Sitti Patu Umma had gone to Lilian and begged her to allow her two more years to pay in full the money borrowed from her and **it was so agreed between Lilian and Sitti Patu Umma**.

Later on, Lilian had executed a transfer deed to the Plaintiff, Munas for Rs. 150000/-. **Sitti Patu Umma did not know about it**. She was still running the boutique and carried on her business. Munas had then filed action in the District Court praying for a declaration of title to the said property and for ejection of Sitti Patu Umma from the said boutique. The District Judge held in favour of Munas. Then Sitti Patu Umma appealed to the Civil Appellate High Court and the High Court held in her favour. Now Munas is before this Court in appeal from the judgment of the Civil Appellate High Court.

This Court has to consider both Sections 83 and 98 of the Trusts Ordinance. They come under the title, “Constructive Trusts” in Chapter IX of the Trusts Ordinance.

Src. 83 of the Trusts Ordinance reads 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.

Sec. 98 reads as follows:

Nothing contained in this Chapter shall impair the rights of **transferees in good faith for valuable consideration**, or create an obligation in evasion of any law for the time being in force.

In this matter, the Plaintiff Respondent Appellant (hereinafter referred to as the Plaintiff) had filed action in the District Court of Kandy praying for a declaration of title to the property in question and for eviction of the Defendant Appellant Respondent ( hereinafter referred to as the Defendant) from the said property. The Plaintiff based his title on Deed No. 1483 dated 22.09.1998 by which he had bought the property for Rs.150000/- from Lilian Ranaweera. The said Lilian Ranaweera had claimed title on the transfer **Deed No. 22090 dated 07.04.1997** which she claims to have received from the previous owner Sitti Patu Umma who is the Defendant in this case. The consideration thereof is mentioned as Rs. 60000/-.

The Defendant in her answer stated that the said Deed No. 22090 is **not in fact a deed of transfer but was security given for a loan of Rs. 60000/- obtained by the Defendant from Lilian Ranaweera.** The Defendant had prayed that Lilian Ranaweera be made a party to the action and be summoned to Court but the District Judge had not allowed that application.

The case proceeded to trial on three admissions and 17 issues. The Plaintiff gave evidence and marked documents P1 to P4. The Defendant gave evidence and Attorney at Law who sent the letter of demand to the Defendant as instructed by Lilian Ranaweera also gave evidence on behalf of the Defendant. The Defendant closed her defense case marking documents D1 to D3. The Defendant had been in

possession even prior to herself buying the property in 1991 and at the time of the trial as well, according to the evidence of the Defendant and the Plaintiff.

The Notary Public who attested the said Deed was Attorney at Law L.B. Karallyadde. On 29.05.1998, Romesh Karallyadde , Attorney at Law had written a letter to the Defendant, Sitti Patu Umma on behalf of his client Lilian Ranaweera demanding the return of the sum of **money which was borrowed by the Defendant Sitti Patu Umma on 07.04.1997 , ' upon the Deed No. 22090 attested by L.B.Karallyadde Notary Public ' in order to discharge the deed.** Romesh Karallyadde was the son of L.B. Karallyadde who had attested the Deed No. 22090. Attorney at Law Romesh Karallyadde had given evidence on behalf of the Defendant.

On 15.02.1991, George Kulasekera had sold this property to the Plaintiff, S.M.M.Munas for Rs.50,000/- by Deed No. 13315. Munas had transferred the said property to Sitti Patu Umma, the Defendant by Deed No. 14093. Sitti Patu Umma had executed the Deed of Transfer No. 22090 to the transferee Lilian Ranaweera. Lilian Ranaweera had transferred the **same back to Munas**, the Plaintiff by Deed No. 1483. Lilian Ranaweera was not a party to this action. She was not a witness for the Plaintiff either.

The Plaintiff Appellant argued that he was the rightful owner of the property as he had paper title. He admitted that he never got possession of the boutique even though Lilian Ranaweera promised to get the same from the Defendant and hand over possession later. Lilian Ranaweera did not give evidence.

The Defendant Respondent gave evidence and stated that she executed the deed **in the firm belief that when the loan was paid up, Lilian Ranaweera would re transfer the property to her.** Even though interest was paid for about one and a half years she could not pay up the loan amount of Rs. 60000/-. She stated in evidence further that on such deeds executed as transfers for loans taken by others, Lilian instructs the Notary Public **to place only the loan amount as the consideration** for the transfer even though the **actual value** of the property is **much more** than the amount written in the deed. She had asked for more time to pay and Lilian had verbally agreed. Thereafter without giving any notice to the Defendant, the property had been transferred to the Plaintiff by Lilian Ranaweera for Rs.150000/-. Further in evidence she stated that in 1998 the property was

worth about Rs.10 lakhs and at the time she gave evidence in 2006, it was worth about Rs. 20 lakhs. She did not know that Lilian had transferred it to the Plaintiff. Lilian had been well known in that area, for giving loans on interest, keeping deeds of transfer as security for loans. The Attorney at Law who gave evidence for the Defense stated that he sent the letter of demand to the Defendant **on instructions from his client Lilian who specifically stated that it was a loan.**

The pivotal question is whether the transaction reflected in the Deed No. 22090 has given rise to a constructive trust in terms of Sec. 83 of the Trusts Ordinance due to the reason that the grantor in the said deed did not intend to pass her beneficial interest in the property to the grantees, Lilian. If the said transaction is on constructive trust, is the Transfer Deed No. 1483 which was executed by Lilian to the Plaintiff null and void?

In the Case **of Perera Vs Fernando and Others, 2011 BLR 263**, it was held that “When the owner of a property transfers it without intention to dispose of the beneficial interest therein, then a constructive trust is created and the transferee must hold such property in trust for the benefit of the transferor in line with the principle laid down in Sec. 83 of the Trusts Ordinance.” In the present case in hand it is obvious from the evidence before court that the Defendant, Sitti Patu Umma never intended to dispose of the beneficial interest of the property to Lilian Ranaweera when Deed 22090 was signed by her.

In the case **of Dayawathie Vs Gunasekera and Another, 1991, 1 SLR 115**, it was held that if the relevant attendant circumstances were sufficient to demonstrate that the transferor hardly intended to dispose of his beneficial interest, then it would be logical to elucidate that the beneficial interest of the property was not parted with by the transferor. In the case in hand the attendant circumstances clearly show that the Defendant did not intend to dispose of her beneficial interest of the property to Lilian Ranaweera. It is Lilian’s lawyer who had written to the Defendant that the loan has to be repaid to Lilian if the Defendant wanted the deed discharged.

In the case of **Thisa Nona and Three Others Vs Premadasa, 1997 1 SLR 167**, Justice Wigneswaran had considered along with other reasons that the reason of continuation of possession of the premises in suit, just the way the transferor had done prior to execution of the transfer deed, contribute to show that the

transaction was a loan transaction and not an outright transfer. He further said that when the attendant circumstances show that the transferor did not intend to dispose the beneficial interest of the property to the transferee, then the law declares that the transferee would hold such property for the benefit of the transferor.

In the case of **Piyasena Vs Don Vansue 1977, 2 SLR 311**, it was held by the Court of Appeal that a trust is inferred from attendant circumstances. The trust is an obligation imposed by law on those who try to camouflage the actual nature of a transaction. When the attendant circumstances point to a loan transaction and not a genuine sale transaction the provisions of Sec. 83 of the Trusts Ordinance apply.

In an older case of **Muttamma Vs Thiagaraja 1961, 62 NLR 559** Basnayake CJ held referring to Sec. 83 of the Trusts Ordinance that “ The Section is designed to prevent transfers of property which on the face of the instrument appear to be genuine transfers, but where an intention to dispose of the beneficial interest cannot reasonably be inferred consistently with the attendant circumstances. Neither the declaration of the transferor at the time of execution of the instrument nor his secret intentions are attendant circumstances. Attendant circumstances are to my mind, circumstances which precede or follow the transfer but not too far removed in point of time to be regarded as attendant which expression in this context may be understood as ‘accompanying’ or ‘connected with’. Whether a circumstance is attendant or not would depend on the facts of each case.”

In the present case, the intention of the Defendant when she executed Deed 22090 was never to transfer the title to the transferee Lilian Ranaweera and never to transfer the beneficial interest of the property to Lilian Ranaweera. The only intention was to get a loan on interest on the promise that when the loan was paid in full with interest having been paid monthly, the property would be transferred back to the Defendant. The Deed 22090 was the security for the loan. The lawyer’s letter of demand to pay the loan and the lawyer’s evidence before court regarding instructions of Lilian Ranaweera to send the letter of demand to the Defendant add to the attendant circumstances pointing the finger to the fact that the said Lilian Ranaweera held the property in trust for the Defendant.

The Plaintiff had failed to prove that he was a bona fide purchaser for valuable consideration. The evidence indicates that the property was much more valuable than the consideration paid by the Plaintiff to Lilian Ranaweera which was only Rs. 150000/- when he got paper title from Lilian Ranaweera. In fact, the Plaintiff had sold the property to the Defendant in 1991, the Defendant had obtained a loan from Lilian Ranaweera and executed a transfer deed to Lilian Ranaweera in 1997 for Rs.60,000/- mentioned as consideration and thereafter Lilian Ranaweera had transferred it back to the Plaintiff mentioning in the deed as consideration only Rs. 150000/-. Somehow by the year 1998, the Plaintiff had managed to get back paper title to the property sold by him in 1991. The Plaintiff had valued the land and the boutique for the law suit as Rs.500,000/- in the year 1999. If in fact the Plaintiff bought the property for good consideration, he should have sent a demand for the Defendant to hand over possession to the Plaintiff but he had never demanded so. The Plaintiff does not seem to be a bona fide purchaser for value since there is a disparity on the purchase price and the market price of land at that time. On the other hand the Plaintiff had not placed any evidence before court to prove that he was a bona fide purchaser. He had failed to bring the transferor in title from whom he bought the property, namely Lilian Ranaweera. It is seen that the Plaintiff had got together with Lilian Ranaweera and got the property of the Defendant transferred behind her back and then filed action to evict her from the property.

According to the evidence before Court, it can be understood that Lilian Ranaweera had held the said property in trust for the Defendant. Even though Deed No. 22090 was a transfer, the attendant circumstances point to the direction that the beneficial interest was not passed on to Lilian Ranaweera. Therefore I hold that Lilian Ranaweera had held the property in trust for the transferee Sitti Patu Umma the Defendant in this case.

At the time Lilian Ranaweera executed the Deed of Transfer No. 1483, passing the property to the Plaintiff, she was holding the property in trust for the Defendant. Therefore the Deed No. 1483 is not a valid transfer. The Plaintiff does not get any right of ownership from Lilian Ranaweera. The Defendant still remains as the owner of the property. The Deed No. 1483 is null and void.

The Defendant is entitled to get the property re transferred in her name through the Registrar of the District Court when the loan of Rs. 60000/- is deposited in court with legal interest. The Substituted Plaintiff Respondent Appellant is entitled to withdraw the money which will be deposited with the Registrar of the District Court. The Plaintiff is hereby dismissed. The Defendant is entitled to reliefs prayed for in prayer (a), (e) and (h) of the Answer dated 22.09.2000. The District Court should enter judgment accordingly.

This Appeal is dismissed. However I order no costs.

Judge of the Supreme Court.

Priyasath Dep PC.

I agree.

Chief Justice of the Supreme Court

Prasanna Jayawardena PC.

I agree.

Judge of the Supreme Court.