

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

*In the matter of an Appeal under and in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

**SC Appeal No:**

**197/2017**

S.C. (Spl) L.A. Application No:  
172/2014

C.A. 1078/99(F)

D.C. Kegalle Case No:  
4281/L

1. Abdul Hasan Mohamed Ameen,  
2. Abdul Hasan Mohamed Sharook,  
*Both of:*

No. 142, Molagoda.

**PLAINTIFFS**

**Vs.**

H.A.D. Samson Arthur

Dharmawardena,

Molagoda.

**DEFENDANT**

**AND BETWEEN**

H.A.D. Samson Arthur

Dharmawardena,

Molagoda.

**DEFENDANT-APPELLANT**

**Vs.**

1. Abdul Hasan Mohamed Ameen,
2. Abdul Hasan Mohamed Sharook,

*Both of :*

No. 142, Molagoda.

**PLAINTIFF-RESPONDENTS**

**AND NOW BETWEEN**

H.A.D. Samson Arthur

Dharmawardena, (*deceased*)

Molagoda.

**DEFENDANT-APPELLANT-**

**APPELLANT**

1A. Kusuma Welgama

1B. Buddhika Sampath

1C. Chandani Indika

1D. Chamila Buddhika

Dharmawardena.

*All of:*

No. 192, Sampath Bakery,

Molagoda, Kegalle.

**SUBSTITUTED DEFENDANT-**

**APPELLANT-APPELLANTS**

**Vs.**

1. Abdul Hasan Mohamed Ameen,
2. Abdul Hasan Mohamed Sharook,

*Both of :*

No. 142, Molagoda.

**PLAINTIFF-RESPONDENT-**  
**RESPONDENTS**

- Before** : Mahinda Samayawardhena J.
- : K. Priyantha Fernando, J.
- : Sampath B. Abayakoon, J.
- Counsel** : Manohara de Silva, P.C. with Nadeeshani
- Lankatilleka instructed by Anusha Perusinghe for  
the Defendant-Appellant-Appellant.
- : Keerthi Thilekerathne with Bishran Iqbal
- instructed by Sanjeewa Kaluarachchi for the  
Plaintiff-Respondent-Respondents.
- Argued on** : 16-09-2025
- Written Submissions** : 15-09-2022 (By the Plaintiff-Respondent-  
Respondents)
- : 19-09-2018 (By the Substituted Defendant-  
Appellant-Appellant)
- Decided on** : 26-02-2026

**Sampath B. Abayakoon, J.**

This is an appeal preferred by the substituted defendant-appellant-appellants (hereinafter referred to as the defendant) of being aggrieved of the judgment dated 06-08-2014 by the Court of Appeal, where the appeal preferred by them was dismissed.

From the said impugned judgment, the Court of Appeal affirmed the judgment pronounced on 03-11-1999 by the learned District Judge of Kegalle in District Court of Kegalle Case No. 48/21/L, which was decided in favour of the plaintiff of the said action.

When this matter was considered for the granting of special leave to appeal on 11-10-2017, this Court granted leave on the questions of law as set out in paragraph 12 (b), (c), (d), (e) and (f) of the petition dated 16-04-2014.

However, when the matter was taken up before this Court for argument, the learned President's Counsel who represented the defendant informed the Court that it would suffice if the Court considered the question of law set out in paragraph 12 (b) of the petition for the purposes of determining this appeal.

The said question of law that needs determination before this Court reads as follows-

12(b) The Court of Appeal erred in holding that there was no trust and has failed to consider the existence of attendant circumstances which warrants the inference that the Defendant did not intend to dispose of the beneficial interest of the lands to the Plaintiff and therefore the Plaintiff held the land in trust for the Defendant, in particular that:

- i. The Defendant continued in possession of the land after the execution of the impugned Deed and up to date;
- ii. The reason as to why the Plaintiffs waited for a period of three years to take legal action to obtain possession of the premises if they were rightly entitled to the property by virtue of the said Deed;

- iii. The purchase price specified in the Deed is utterly inadequate and is less than half the market price at the time.

At the hearing of this application, this Court heard the submissions of the learned President's Counsel for the defendant as well as the submissions of the learned Counsel for the plaintiff-respondent-respondents (hereinafter referred to as the plaintiffs). This Court also had the benefit of considering the written submissions of the parties in determining this appeal.

The facts of the matter upon which the impugned judgment was pronounced can be summarized in the following manner.

The plaintiffs instituted action before the District Court of Kegalle, by their plaint dated 11-07-1989, against the defendant for a declaration of title for the lands morefully described in the schedule of the plaint, for the ejectment of the defendant from the said lands and the building standing thereon, and for other incidental reliefs.

In their plaint, the plaintiffs have pleaded their title claiming that the defendant sold the lands depicted in the plaint by deed No. 2514 dated 16-06-1986, however, refused to leave the land and handover possession to them despite repeated requests. It has been averred that the defendant is also attempting to lease the building standing on the land, which may cause irreparable damage to their rights.

The defendant, of his answer dated 26-10-1990, has denied the title of the plaintiff. However, he has admitted that he transferred the rights of the three lands mentioned in the schedule to the plaint as stated by the plaintiff. However, it was his position that he transferred the said rights because of his economic difficulties, and he needed money at the time he executed the deed in favour of the plaintiffs.

He has claimed that he had no intention of transferring the beneficial interest of the properties, and therefore, his transfer amounts to creating of a constructive trust.

Apart from his claim of a constructive trust, he has also pleaded reliefs under the concept of *laesio enormis* claiming that the land was sold for less than half of its value.

The case has gone for trial before the District Court based on 6 issues raised by the plaintiffs and the 7<sup>th</sup> to 13<sup>th</sup> issues raised by the defendant. It appears that due to an inadvertence in numbering the issues, no issue has been recorded as number 8 after the recording of issue number 7. It is clear from the issues under which the evidence was led before the District Court that the defendant's issues No. 7 to 10 have been based on a trust, although he has not raised an issue as to a constructive trust. The issues No. 11 to 13 have apparently been raised under the concept of *laesio enormis*.

It is clear from the trial Court judgment that the learned District Judge has considered all the issues raised before the Court on the basis of whether the defendant has established a constructive trust in favour of him although he has not raised an issue as such, and under *laesio enormis* as well in reaching her judgment, although the two causes of action cannot be maintained in the same action.

However, that the appeal has been argued before the Court of Appeal on the premise whether there was sufficient evidence placed before the trial Court for the learned District Judge to come to a conclusion that the admitted transfer of rights of the lands mentioned in the schedule of the plaint should constitute a constructive trust in favour of the defendant. It has been on that basis, the Court of Appeal has decided to dismiss the appeal preferred by the defendant after having considered the relevant facts and circumstances, and the established law in that regard.

It is clear from the evidence placed before the Court that the deed upon which the plaintiffs claim title to the property, namely deed No. 2514 dated 16-06-1986 attested by U.H. Wickramarachchi, Notary Public, is an unconditional deed of transfer with no conditions attached to it.

Therefore, for the defendant to claim that it has only created a constructive trust, the defendant must establish that although he transferred his rights to the property by way of a deed of transfer, he never intended to dispose the beneficial interest therein, by bringing before the trial Court the necessary evidence, the facts and circumstances he claims that amount to a creation of constructive trust in favour of him.

The relevant section 83 of the Trust Ordinance reads as follows-

**83. 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.**

In the case of **Thisa Nona and Three Others Vs. Premadasa (1997) 1 SLR 169;**

*The District Court refused the claim of the 1<sup>st</sup> defendant-appellant that P-16 created a constructive trust.*

*On appeal – Held:*

- 1. The fact that document 1V2 was admitted by the plaintiff-respondent, the fact that the 1<sup>st</sup> defendant-appellant paid the stamp and notary's charges, the fact that P-16 was a document which came into existence in the course of series of transactions between the plaintiff-respondent and the fact that 1<sup>st</sup> defendant-appellant continued to possess the premises in suit just the way she did before P-16 was executed all goes to show that the transaction was a loan transaction and not an outright transfer.*
- 2. The attendant circumstances show that the 1<sup>st</sup> defendant-appellant did not intend to dispose the beneficial interest in the property transferred. Law therefore declares under such circumstances that the plaintiff-respondent would hold such property for the benefit of the 1<sup>st</sup> defendant-appellant.*

In the case of **Ehiya Lebbe Vs. A. Majeed 48 NLR 357 at 359**, which was a case where the creation of a constructive trust was considered, it was observed-

*“There are certain tests for ascertaining into which category a case fall. Thus, if the transferor continued to remain in possession after the conveyance, or if the transferor paid the whole cost of the conveyance, or if the consideration expressed on the deed is utterly inadequate to what would be the fair purchase money for the property conveyed – all these are circumstances which would show whether the transaction was a genuine sale for valuable consideration, or something else.”*

The above line of authorities clearly establish the question whether a constructive trust had been created is a fact that should be ascertained based on the evidence placed before the Court and having considered the relevant attendant circumstances unique to each situation.

As I have stated earlier, the plaintiffs have claimed their rights based on the admitted deed of transfer by the defendant to them. The consideration mentioned in the deed is Rs. 100,000/-. It is an admitted fact that the defendant is in possession of the land, which is the subject matter of this action. It is quite apparent from the answer filed by the defendant, the position he had taken is that he executed this deed of transfer due to the economic difficulties he was facing during the period where the deed was executed. It was on that basis he has claimed that he had no intention to transfer the land, and the transfer amounts to a creation of a constructive trust.

In framing issues, though the defendant has not raised a direct issue claiming that the transaction between the plaintiffs and him creates a constructive trust, his issues No. 8, 9, and 10 impliedly suggest that the purpose of raising such issues has been to establish a constructive trust in favour of him.

I find that, admittedly, the defendant’s position had been that he had to sell this property due to the economic difficulties he was facing at that time, which in my view does not constitute a creation of a constructive trust in itself. It is normal for a person to sell a property due to economic difficulties faced by

such a person or due to the necessity for him to raise money for his needs, which always happen in property transactions. In such circumstances, there must be clear evidence before the trial Court for the person who claims that he never intended to pass the beneficial interest in the property to substantiate such a fact.

It is an undisputed fact that the 1<sup>st</sup> plaintiff and the defendant are persons well known to each other over a long period of time and had been engaged in business activities in buildings situated next to each other. There had been various loan transactions between the parties from time to time as a result of their close business connections. At the time of this transaction, it was the 1<sup>st</sup> plaintiff who has been instrumental in buying the property since the 2<sup>nd</sup> plaintiff was admittedly overseas at that time.

The Notary who executed the deed of transfer has given evidence and has testified that Rs. 100,000/- stated in the deed as the consideration was passed before him, which means that the plaintiffs have paid the full consideration mentioned in the deed to the defendant. Although the defendant has taken up the position that he actually received Rs. 50,000/-, since the balance was given back to the plaintiff to settle a previous loan, it is not a matter that can be brought up to hold that the mentioned consideration was not passed. The admitted fact that the defendant paid Rs. 36,000/- out of the money received to settle a mortgage transaction he had with another person in relation to the property, is also not a matter that can be held against the plaintiffs.

The defendant has taken up the position that the amount he received as consideration for the property was wholly inadequate, which may be a position taken up to show that he had no intention to sell the property. However, nowhere in evidence the defendant has taken up the position that the deed of transfer executed by him was only as a security for a loan obtained by him from the plaintiffs. He has failed to disclose details of any such transactions for the Court to come to a finding that he had no intention of passing the beneficial interest in the property to the purchasers, which amounts to a creation of a constructive trust.

When considering the value of the property, although the defendant had claimed that it was worth about Rs. 300,000/-, when considering the evidence placed before the trial Court as to the property transfers relating to some of the nearby lands, there is no basis to conclude that Rs. 100,000/- paid as consideration for the property was not an adequate sum. It may quite well be that the defendant was in need of money, and it was his friend, the 1<sup>st</sup> plaintiff who agreed to buy it since the property was next to his own property. Under the circumstances, I do not find a basis to consider the amount paid for the property by the plaintiffs was an inadequate sum.

The next matter that needs consideration is the fact that the defendant being in possession of the property even after 3 years from the purchase of it by the plaintiffs and whether it would amount to an inference that the defendant had no intention of transferring the beneficial interest of the property to the plaintiffs.

Admittedly, the plaintiffs and the defendant were friends and business partners at the time this transaction took place. It has been the position of the 1<sup>st</sup> plaintiff that since the defendant promised to purchase another land and move away, he did not insist the defendant to handover possession of the property immediately after the transaction. He has taken up the position that although he continued to ask the defendant to vacate and handover possession, he did not do so under various pretexts. It has been his explanation that since his other brother, the 2<sup>nd</sup> plaintiff, wanted to return to the island from overseas employment and establish his own business, he demanded the property from the defendant, and as the defendant failed to hand over the property, he had to institute an action to recover. In my view, the evidence led before the Court in this regard clearly favours the position taken up by the plaintiffs as to the reasons why the defendant continued to be in possession of the land.

I find that these attendant circumstances taken together cannot form a basis for the trial Court to conclude that the transfer of the property by the defendant to the plaintiffs should form a transaction in the form of a constructive trust as envisaged under section 83 of the Trust Ordinance.

For the reasons as considered above, I find no basis to interfere with the judgment of the Court of Appeal.

Accordingly, I answer the question of law under which this appeal was considered in the negative. Hence, the appeal is dismissed for want of merit.

There will be no costs of this appeal.

**Judge of the Supreme Court**

**Mahinda Samayawardhena, J.**

I agree.

**Judge of the Supreme Court**

**K. Priyantha Fernando, J.**

I agree.

**Judge of the Supreme Court**