

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 read with Section 5C(1) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended

SC Appeal No. 19/2012
SC Spl LA No. 163/2010
CA No. 1278/2002 (F)
DC Colombo Case No. 15602/L

Ranatunga Arachchige Chandra,
133, Maguruwila Road, Gonawela, Kelaniya.

PLAINTIFF

- Vs -

Kapugama Wansagamage Dona Murin,
3A, 6th Lane, Pagoda, Nugegoda

DEFENDANT

And between

Kapugama Wansagamage Dona Murin,
3A, 6th Lane, Pagoda, Nugegoda

DEFENDANT – APPELLANT

- Vs -

Ranatunga Arachchige Chandra,
133, Maguruwila Road, Gonawela, Kelaniya.

PLAINTIFF – RESPONDENT

And now between

(1) Kapugama Wansagamage Dona Murin,
3A, 6th Lane, Pagoda, Nugegoda.

(1A) Muthukuda Arachchige Sriyani Peiris

(1Ai) Buthpitiya Lekamge Don Gamini

(1Aii) Buthpitiya Lekamge Madhura Buddhika
Niroshan

(1Aiii) Buthpitiya Lekamge Don Asanka
Madhujith

1A, 1Ai, 1Aii, 1Aiii at 1219/81, Elsevana,
Walpita Road, Batawala.

(1B) Muthukuda Arachchige Wasantha Peiris,
856, A1 Kurunuduwatte Road,
Gonawela, Kelaniya.

(1C) Muthukuda Arachchige Rohana Jayasiri Peiris,
85/13, Gonahena, Weboda.

**SUBSTITUTED DEFENDANT – APPELLANT –
APPELLANTS**

- Vs -

(1) Ranatunga Arachchige Chandra

(1A) Nandasena Ranatunga

(1B) Dayananda Ranatunga

(1C) Sirimal Ranatunga

(1D) Chandra Ranatunga

All at, 133, Maguruwila Road,
Gonawela, Kelaniya.

**SUBSTITUTED PLAINTIFF – RESPONDENT –
RESPONDENTS**

Before: Kumudini Wickremasinghe, J
Arjuna Obeyesekere, J
M. Sampath K.B. Wijeratne, J

Counsel: Manohara De Silva, PC with Hirosha Munasinghe for the Substituted Defendant – Appellant – Appellants

Rohan Sahabandu, PC with Chathurika Elvitigala for the Substituted Plaintiff – Respondent – Respondents

Argued on: 23rd May 2025

Written Submissions: Tendered on behalf of the Substituted Defendant – Appellant – Appellants on 8th March 2012 and 4th July 2025

Tendered on behalf of the Substituted Plaintiff – Respondent – Respondents on 25th April 2012 and 27th June 2025

Decided on: 31st March 2026

Obeyesekere, J

(1) This is an appeal arising from the judgment delivered by the Court of Appeal on 20th July 2010. By the said judgment, the Court of Appeal affirmed the judgment delivered by the District Court of Colombo [the District Court] on 31st October 2002, granting the relief prayed for by the Plaintiff – Respondent – Respondent [the Plaintiff] in paragraphs (a), (b) and (e) of the prayer to the plaint dated 24th October, 1991. Aggrieved, the Defendant – Appellant – Appellant [the Defendant] sought and obtained special leave to appeal on 26th January 2012 on four questions of law which have been re-produced at paragraph 15 of this judgment.

The relevant facts

(2) It is admitted that the mother of the Plaintiff was the owner of a property in extent of approximately 78P situated in Gonawela within the district of Colombo, and that the said property was gifted to the Plaintiff by her mother by Deed of Gift No. 1898 dated 29th March 1984. The Plaintiff was a spinster and did not have any other land.

- (3) The Plaintiff states that in 1989, she was in need of money and had borrowed a sum of Rs. 60,000 from a person she has referred to in the plaint as “Newton Perera”. It is admitted that as security for the said loan, the Plaintiff had transferred the said property to a person named Jamis by Deed of Transfer No. 1265 dated 1st December 1989 [V9], with the consideration being Rs. 110,000. It is admitted further that on the same date, the said Jamis had executed Lease Agreement No. 1266 [V8] in favour of the Plaintiff granting the Plaintiff for a period of one year – i.e. until 30th November 1990, a lease of the said property that the Plaintiff had transferred by V9.
- (4) The Plaintiff states further that in terms of the understanding that she had with Jamis, she was required to settle the money she had borrowed by 30th November 1990. She had therefore informed a friend of hers, Asilin Weerakkody that she needs to raise a sum of Rs. 132,000 to settle Jamis. This sum comprised the capital that she had borrowed and the interest due thereon. There is a discrepancy between the evidence of the Plaintiff and Asilin whether the Plaintiff was looking to find a buyer for the said property or whether she was only looking for someone to give her the money to settle the loan and enter into a transaction similar to the one the Plaintiff had already entered into with Jamis.
- (5) Be that as it may, it is admitted that the Defendant, who was known to Asilin, had been introduced to the Plaintiff by Asilin. The Plaintiff stated further that in addition to the Rs. 132,000 she required to settle Jamis, she required a further Rs. 50,000 and that the Defendant had agreed to give her a total sum of Rs. 182,000. Although the Plaintiff had been confused between the phrases ‘විකුණුම්කරය’ and “උකස්කරය”, when the evidence of the Plaintiff is taken as a whole, it is the unequivocal position of the Plaintiff that she never intended to execute a transfer deed to sell the property to the Defendant but only intended to mortgage the property to the Defendant.
- (6) Having made arrangements with the Defendant to obtain the money, Jamis had transferred the said property to the Plaintiff by Deed No. 243 dated 26th October 1990 [V7], with the consideration being Rs. 120,000. V7 has been attested by A Rodrigo, Attorney-at-Law. According to the attestation in V7, the said sum had been paid to Jamis on 19th September 1990 in the presence of the Attorney-at-Law, but

V7 had been executed only on 26th October 1990. Even though the Attorney-at-Law gave evidence, no explanation was offered for V7 not having been executed simultaneously with the payment of money.

- (7) The Plaintiff and Asilin stated that they met the Attorney-at-Law only once and that it was the Defendant who had attended to the above transaction with the Attorney-at-Law. The Plaintiff stated further that she signed a set of printed forms before the Attorney-at-Law but that the said forms were blank at the time she signed them and therefore the contents were not read out to her by the Attorney-at-Law. If I may summarise, the Plaintiff's position is that (a) she wanted to raise the required funds to settle the loan in order to revoke the transfer that she had made in favour of Jamis, (b) she only wanted to mortgage the property, and (c) it was her belief at the time she signed the blank papers before the Attorney-at-Law that what she was signing was only a mortgage in favour of the Defendant.
- (8) Thus, it is not the position of the Plaintiff that even though she executed a transfer deed, she did not intend to transfer the beneficial interest in the land to the Defendant and that the Defendant held it in trust for the Plaintiff.
- (9) According to the Plaintiff, the Defendant had tried to forcibly enter her property in August 1991. The Plaintiff had also heard that the Defendant is seeking to claim ownership to the said property. The Plaintiff had therefore instructed her Attorney-at-Law to carry out a search at the Land Registry, and followed it up by making a complaint to the Police. At the inquiry before the Police, the Defendant had produced two deeds, namely (a) Deed No. 263 dated 31st January 1991 [P3/V2] by which the Plaintiff is said to have transferred 60 perches of the said property to the Defendant with the consideration being Rs. 200,000 and (b) a Deed of Mortgage bearing No. 264 [P4/V3] attested on the same day, by which the Defendant had in turn mortgaged the said property to the Plaintiff and obtained a sum of Rs. 125,000 from the Plaintiff. According to P4, the Defendant had time until 31st October 1993 to settle the said mortgage. Both deeds had been executed before the same Attorney-at-Law who had attested V7.

- (10) It is only thereafter that the Plaintiff filed action in the District Court seeking *inter alia* a declaration that the Plaintiff is the owner of the property referred to in the Schedule to the plaint, and a declaration that Deed No. 263 is of no force in law. I must state that if the said relief is granted, Deed No. 264 too would become null and void.
- (11) The position taken up by the Defendant in her answer was as follows:
- (a) She agreed with the Plaintiff to purchase the said property for a sum of Rs. 400,000 and of that sum, she paid Rs. 54,000 to the Plaintiff;
 - (b) Having executed P3, she had mortgaged the said property to the Plaintiff by P4 for a sum of “Rs. 150,000” and that she has paid the Plaintiff a sum of Rs. 50,000 out of the said sum on 2nd July 1991;
 - (c) Although she tried to settle the amounts due under and in terms of P4, the Plaintiff had refused to accept the said sum of money.

The trial before the District Court and the judgment of the District Court

- (12) The trial commenced on 19th September 2000 before the Additional District Judge of Colombo with the marking of admissions and the raising of issues. The Plaintiff gave evidence on her behalf and led the evidence of Asilin. The Defendant did not give evidence although she was present throughout the trial but instead, led the evidence of her husband and of the Attorney-at-Law before whom P3, P4 and V7 had been signed.
- (13) The District Court has carefully considered the evidence of both parties and the documents prior to concluding as follows:

“කෙසේ වෙතත් මෙම නඩුවේ ඉදිරිපත් වී ඇති කරුණු අනුව ප්‍රශ්නයට තුඩු දී ඇති අංක 263 දරණ වී2 වශයෙන් ලකුණු කර ඇති ඔප්පුව ලියා සහතික කර ඇත්තේ ඇත්තවශයෙන්ම විකුණුම්කරයක් වශයෙන් නොව පැමිණිලිකාරිය විසින් විත්තිකාරියගෙන් ලබා ගන්නා ලද ණය මුදලක් පිළිබඳව බවට අධිකරණය සැකිමට පත් වේ. පැමිණිලිකාරිය වෙනුවෙන් ඉදිරිපත් කරන ලද සාක්ෂි මගින් ඒ පිළිබඳව සනාථ වී ඇති නමුත්, එය එසේ නොවන්නේය යන්න පිළිබඳව විත්තිය වෙනුවෙන් අධිකරණය සැකිමට පත් වන අයුරින් සාක්ෂියක් ඉදිරිපත් කර නොමැත.”

- (14) The District Court had accordingly entered judgment in favour of the Plaintiff.

The judgment of the Court of Appeal and Questions of law

- (15) Aggrieved, the Defendant invoked the appellate jurisdiction of the Court of Appeal. Her appeal having been dismissed by the Court of Appeal, the Defendant sought and obtained from this Court, Special leave to appeal against the said judgment on the following questions of law:
- (a) The judgment of the Court of Appeal is contrary to law and against the weight of evidence.
 - (b) The Court of Appeal erred in affirming the finding of the District Court that Deed No. 263 was executed through misrepresentation.
 - (c) The Court of Appeal erred in delivering judgment in favour of the Plaintiff on the basis that the Defendant had perpetrated a fraud on the Plaintiff.
 - (d) The Court of Appeal misdirected itself by failing to properly consider the evidence of the Notary that was led on behalf of the Defendant.
- (16) It was the submission of the learned President's Counsel for the Defendant that the evidence that was led before the District Court does not support the conclusion reached by the District Court, and that the Court of Appeal erred in law when it failed to properly evaluate the judgment of the District Court.
- (17) The primary issue that arises in determining the above questions of law is whether the version of the Plaintiff that she did not intend to execute a transfer of the property in favour of the Defendant but only wanted to mortgage the property to the Defendant as part of a money lending transaction, is credible.

The credibility of the Plaintiff's version

- (18) The starting point in deciding the credibility of the Plaintiff's version is the purpose for which the Plaintiff states she required the money.
- (19) The claim of the Plaintiff that she had "mortgaged" the said property to Jamis is borne out by the Deed of Transfer [V9] that she executed in favour of Jamis on 1st

December 1989. Jamis had thereafter executed a lease in favour of the said premises by V8 on the same date, in terms of which the said premises had been leased out to the Plaintiff until 30th November 1990. Such an arrangement is reflective of the claim of the Plaintiff that she needed to raise money in order to settle Jamis and is clearly borne out by V8 and V9, which documents were incidentally produced by the Defendant.

- (20) It is admitted that the money required to pay Jamis was given by the Defendant. The Attorney-at-Law who attested V7 in fact stated that the Defendant and her husband had met him in order to discuss the settlement of the moneys due and owing to Jamis and that they were present when the money was paid to Jamis. Having paid Rs. 120,000 to Jamis, V7 had been executed two months later transferring the property to the Plaintiff.
- (21) Although the Attorney-at-Law states that the said sum was paid in his presence on 19th September 1990, according to V7, it had been attested only on 26th October 1990. While it is difficult to believe that Rs. 120,000 was paid by the Defendant to Jamis, a stranger to her, without obtaining a deed of transfer on the same date, the Attorney-at-Law has not offered any explanation for this delay in attesting V7. It is however clear that the Plaintiff wanted the money in order to settle a money lending transaction with Jamis and that the money was paid by the Defendant.
- (22) This brings me to the core issue of whether the Plaintiff intended only to mortgage the land or to transfer it outright to the Defendant. In this regard, on the one hand is the evidence of the Plaintiff and Asilin, and on the other is the evidence of the Attorney-at-Law and the husband of the Defendant. It is significant that the Defendant did not give evidence, although the transaction that had given rise to this appeal had been discussed between the Plaintiff, Asilin and the Defendant.
- (23) Be that as it may, there is confusion with regard to the consideration that the Defendant claims she agreed to pay for the transfer of the land to her. According to the Defendant's husband, the agreed purchase price was Rs. 400,000, whereas the consideration that is stated in P3 is Rs. 200,000. The Attorney-at-Law has confirmed in the attestation that the purchase price was Rs. 200,000 and nothing more and

even given the breakdown of the manner in which the said Rs. 200,000 was paid – i.e., a sum of Rs. 146,000 and a further sum of Rs. 54,000 having been paid in his presence on 19th September 1990 and 7th November 1990, respectively. The Defendant’s husband however claimed that a further sum of Rs. 50,000 was paid to the Plaintiff on 4th January 1991 [V5]. However, this payment is not reflected in the attestation of the Attorney-at-Law on P3, even though the deed was signed thereafter on 31st January 1991.

(24) This confusion regarding the consideration is aggravated by two receipts prepared by the same Attorney-at-Law and said to have been signed by the Plaintiff. In terms of the receipt for the payment of Rs. 54,000 [V6] the Attorney-at-Law has stated thereon that the consideration is Rs. 400,000. However, on V5, the consideration has been given as Rs. 250,000. V5 and V6 have been prepared by the same Attorney-at-Law before whom P3, P4 and V7 had been executed and have been signed by the husband of the Defendant as a witness. When questioned on this contradiction, the Attorney-at-Law admitted that this was a lapse on his part. However, in my view, these contradictions cannot be brushed aside as being a mere lapse on the part of the Attorney-at-Law for the reason that when taken as a whole it gives credence to the version of the Plaintiff that she signed on blank printed papers.

(25) There is one other matter that I wish to advert to with regard to the two receipts, V5 and V6. These are standard receipts prepared by the said Attorney-at-Law, with provision to fill the blank spaces and delete the words that not applicable, depending on the nature of the transaction. Thus, the words, “සින්නක්කරයේ විකිණීමට/පොරොන්දුවීම/උකස්කිරීම/ බද්දට දීම” appear on V5 and V6 and it was the duty of the Attorney-at-Law to delete what was not relevant. However, unlike in the receipt prepared by him for V7, the Attorney-at-Law had not deleted any of the words, “සින්නක්කරයේ විකිණීමට/පොරොන්දුවීම/උකස්කිරීම/ බද්දට දීම”. The explanation offered by the Attorney-at-Law was that this was a lapse on his part. However, this too cannot be brushed aside as being a mere lapse. Instead, it shows not only that even the Attorney-at-Law who prepared P3, P4 and V7 was “confused” with regard to the nature of the transaction but also supports the version of the Plaintiff that she signed printed forms which were blank at the time she signed them.

(26) Owing to the many lapses admitted by the Attorney-at-Law, it was suggested to him that he had acted in collusion with the Defendant in the execution of this entire transaction. The learned District Judge who had the benefit of listening to the evidence of the Attorney-at-Law had this to say of the Attorney-at-Law:

“මේ අනුව ප්‍රශ්නයට තුඩු දී ඇති අංක 263 දරණ ඔප්පුව ලියා සහතික කර ඇති නොතාරිස්වරයාගේ සාක්ෂියේ විස්වාසනීයත්වය අවම මට්ටමක පවතින බව අධිකරණයේ නිගමනයයි. ඔහු සත්‍ය සාක්ෂියක් දී ඇති පුද්ගලයෙකු ලෙස සැලකිය නොහැකිය. තම රාජකාරිය නිසි ලෙස ඉටු කර නොමැති නොතාරිස්වරයෙකු ලෙසද සැලකිය හැකිය. පැමිණිල්ල වෙනුවෙන් යෝජනා කර ඇති පරිදි විත්තිකාරිය සමග මෙම නොතාරිස්වරයා එකතු වී නඩුවට අදාළ දේපල ඇපයක් වශයෙන් විත්තිකාරියට ලියා පැමිණිලිකාරිය විසින් මුදල් ලබා ගෙන ඇති බවද, ව.2 වශයෙන් ලකුණු කරන ලද අංක 263 දරණ ඔප්පුව විකිණීමක් ලෙස සකස් කර වියට පැමිණිලිකාරියගේ අත්සන ලබා ගෙන ඇති බවද අධිකරණයේ නිගමනයයි. එසේම පැමිණිලිකාරිය විසින් මුදල් ලබා ගත්තේ යයි කියමින් ඉදිරිපත් කර ඇති ව4, ව5, ව6, ව11, ව12 දරණ ලේඛණ ද මෙම නොතාරිස්වරයා විසින් සකස් කර ඇති ලේඛණ බැවින් ඒවායේ නිරවද්‍යතාවය පිළිබඳව සහ සත්‍යතාවය පිළිබඳව අධිකරණයට සැහිමට පත්විය නොහැකිය.”

(27) The above conclusion of the District Court has been affirmed by the Court of Appeal. I must state that I see no basis to disagree with the above finding

(28) The next item of evidence is critical to the success of the case of the Plaintiff. Here was a Plaintiff who was in urgent need of Rs. 132,000 to settle a loan and secure the release of her property which she had transferred to Jamis. She stated that she needed a further sum of Rs. 50,000 and that the Defendant had agreed to give her that sum, as well. Thus, it is clear that the Plaintiff was in need of money.

(29) It is in this light that one must now consider P4, said to have been attested at the same time as P3, by which the Defendant claims she mortgaged the said property to the Plaintiff **to secure a loan of Rs. 150,000 that the Plaintiff was giving the Defendant.** The Attorney-at-Law had however stated that the consideration, which he has stated on P4 was Rs. 125,000 and not Rs. 150,000 as claimed by the Defendant, was not exchanged in his presence, thus giving rise to a doubt with regard to the genuineness of the entire transaction. The evidence was to the contrary, in that it was the Plaintiff who required the money and hence, while it is almost impossible to believe that the Plaintiff had a sum of Rs. 150,000 [or Rs. 125,000 as it appears on P4] to lend to the Defendant, P4 makes it abundantly clear that the Defendant had concocted a master plan to defraud the Plaintiff, who it is said had a mental infirmity and could not comprehend easily.

Discrepancies in the version of the Plaintiff

- (30) The learned President's Counsel for the Defendant pointed out several discrepancies in the case of the Plaintiff. However, I am in agreement with the view expressed by the Court of Appeal that the entire transaction must be looked at holistically. Viewed from that context, I am satisfied that such discrepancies are not sufficiently significant to vary the findings of fact arrived at by the District Court.
- (31) I am fortified in arriving at such a conclusion by the fact that the issues were raised and the recording of evidence, which commenced on 8th February 2001 and was concluded in less than one year on 1st February 2002, took place before the same learned District Judge who delivered the judgment. Thus, the learned District Judge not only had the benefit of hearing the entirety of the evidence of all witnesses but of seeing for herself the demeanour of the witnesses including that of the Plaintiff.
- (32) Our Courts have held over a long period of time that due regard must be had of such circumstances when considering a judgment of a trial court. In **M.P. Munasinghe v C.P. Vidanage and another** [69 NLR 97], Lord Pearson cited with approval the following statement by Viscount Simon in Watt or Thomas v Thomas [(1947) A. C. 484; at page 485-6 (H. L.)]:

“Apart from the class of case in which the powers of the Court of Appeal are limited to deciding a question of law (for example, on a case stated or on an appeal under the County Courts Acts) an appellate court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this is really a question of law) the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight. This is not to say that the judge of first instance

can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given."

- (33) Ranasinghe, J [as he then was] held in **De Silva and others v Seneviratne and another** [(1981) 2 Sri LR 7; at page 17] that:

*"..it seems to me: that, where the trial judge's findings on questions of fact are based upon the credibility of witnesses, on the footing of the trial judge's perception of such evidence, then such findings are entitled to great weight and the utmost consideration, and **will be reversed only if it appears to the appellate Court that the trial judge has failed to make full use of the "priceless advantage" given to him of seeing and listening to the witnesses giving viva voce evidence, and the appellate Court is convinced by the plainest consideration that it would be justified in doing so.**" [emphasis added]*

- (34) This position was reiterated in **Alwis v Piyasena Fernando** [(1993) 1 Sri LR 119; at page 122] by Chief Justice G.P.S De Silva when he stated as follows:

"It is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal. The findings in this case are based largely on credibility of witnesses. I am therefore of the view that there was no reasonable basis upon which the Court of Appeal could have reversed the findings of the trial Judge."

- (35) A similar view was taken recently by Anil Gooneratne, J in **Gamini Perera v Don Joseph** [S.C. Appeal No. 04/2012; SC Minutes of 30th May 2016] when he held that, *"All primary facts and truth of the matters in dispute are best to be left in the hands of the Trial Judge..... It is the Trial Judge who hears evidence, sees the witness in the witness box and observes the witness's demeanour at all times in Court. As such the learned District Judge's views on disbelieving the Plaintiff on items of evidence as above need not be interfered by this Court."*

Conclusion

(36) In the above circumstances, I see no basis to interfere with the judgment of the Court of Appeal. Accordingly, the questions of law are answered in the negative, the judgments of the District Court and the Court of Appeal are affirmed and this appeal is dismissed without costs.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J

I agree

JUDGE OF THE SUPREME COURT

M. Sampath K. B Wijeratne, J

I agree.

JUDGE OF THE SUPREME COURT