

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

SC/Appeal No. **SC/APP/01/2022**
SC/LA/Application No.
SC/HCCA/LA/237/2020
Civil Appellate High Court of
Mount Lavinia Case No.
WP/HCCA/MT/08/2018/F
DC Nugegoda Case No. **SPL/50/08**

T. A. Donald
No. CG6, Kammalwatta Flats,
Dematagoda Road,
Colombo 09.

PLAINTIFF

vs

T.A. Roopa Thenuwara
No.11/67, Bodiya Road,
Mirihana.

And Now

No.93, Bia Bellaarta,
Soma Lomeardo,
Barese 2119,
Italy.

DEFENDANT

And Between

T. A. Roopa Thenuwara
No.11/67, Bodiya Road,
Mirihana.

And Now

No.93, Bia Bellaarta,
Soma Lomeardo,
Barese 2119,
Italy.

DEFENDANT - APPELLANT

vs

T. A. Donald,
No.CG6, Kammalwatta Flats,
Dematagoda, Road,
Colombo 09.

PLAINTIFF – RESPONDENT

And Now Between

*In the matter of an Application for Leave to
Appeal under Section 5C of the High Court
of the Provinces (Special Provisions) Act,
No. 19 of 1990 as amended by Act No. 54 of
2006.*

T. A. Roopa Thenuwara,
No. 11/67, Bodiya Road,
Mirihana.

And Now

No.93, Bia Bellaarta,
Soma Lomeardo,
Barese 2119,
Italy.

**DEFENDANT – APPELLANT –
PETITIONER – [APPELLANT]**

vs

T. A. Donald,
No. CG6, Kammalwatta Flats,
Dematagoda Road,
Colombo 09.

PLAINTIFF – RESPONDENT –
RESPONDENT – [RESPONDENT]

BEFORE : Mahinda Samayawardhena J.
Menaka Wijesundera, J.
M. Sampath K. B. Wijeratne J.

COUNSEL : Kuvera De Zoysa, P.C., with Ms. Randeewari
Arangal instructed by Lanka R. Dharmasiri
for the Defendant-Appellant- Petitioner-
[Appellant].

Rohan Sahabandu, P.C., with Ms. Chathurika
Elvitigala and Ms. Sachini Senanayake
Instructed by Sarath P. Walgamage for the
Plaintiff – Respondent – Respondent -
[Respondent].

ARGUED ON : 24.09.2025

DECIDED ON : 20.05.2026

M. Sampath K. B. Wijeratne J.

This appeal emanates from the judgment delivered by the Learned Judges of the High Court of Civil Appeals at Mount Lavinia on July 23, 2020, whereby the

Learned Judges dismissed the appeal preferred against the judgment of the District Court of Nugegoda.

Facts of the Case

The Plaintiff-Respondent-Respondent (hereinafter referred to as the “Plaintiff-Respondent”) and the Defendant-Appellant-Appellant (hereinafter referred to as the “Defendant-Appellant”) are members of a family comprising twelve siblings. The Defendant-Appellant is the youngest sister in the family, while the Plaintiff-Respondent is one of her elder brothers. The subject matter of the action was admittedly purchased in the name of the Defendant-Appellant by Deed No. 1567 dated October 3, 1993, attested by S.W.L. Liyanage, Notary Public. At the time of the purchase, the Plaintiff-Respondent was employed in Italy, while the Defendant-Appellant was only 18 years of age.

The contention of the Plaintiff-Respondent was that the property was purchased in the name of the Defendant-Appellant with funds provided by him, upon her promise to convey the property to him following his request. Accordingly, the Plaintiff-Respondent sought a declaration of a constructive trust in terms of Section 84 of the Trusts Ordinance.

The Defendant-Appellant, in her defence, asserted that the consideration was paid by her and that she holds absolute title to the property, free from any trust or encumbrance.

The learned District Judge, having heard the parties and their respective witnesses, upheld the claim of a trust and entered judgment in favour of the Plaintiff-Respondent.

Being aggrieved by the said judgment, the Defendant-Appellant preferred an appeal to the High Court of Civil Appeals. The learned Judges of the High Court affirmed the judgment of the District Court and dismissed the appeal.

Thereafter, the Defendant-Appellant sought leave to appeal against the judgment of the Learned Judges of the High Court, and this Court granted leave to appeal on the following questions of law:

(a) Has the Plaintiff-Respondent paid or provided full consideration to purchase the property in suit?

(b) If the answer to the said question is in the negative can the plaintiff succeed in this action?

It is common ground that;

- (a) The Plaintiff-Respondent and the Defendant-Appellant are members of a family of 12 siblings.
- (b) They were all residing with the parents in a house in Maradana which both parties admitted to be a slum-dwelling.
- (c) On 11.12.1991, the Plaintiff-Respondent left for Italy for employment.
- (d) The Defendant-Appellant, being the youngest member of the family, was residing with her parents at the house in Maradana.
- (e) The subject matter of the action was owned by Mathara Kankanamge Stanly and the Defendant-Appellant initially entered into an agreement to purchase the same for a sum of Rupees 800,000/= upon deed No.1497 dated February 25, 1993 marked 'P1'.
- (f) A sum of rupees 50,000/= was paid as an advance at the time of the execution of the agreement for sale.
- (g) Having paid the consideration in full, the deed of transfer bearing No. 1569 marked 'P2' was executed.

- (h) The house in Maradana was sold by the father for a sum of Rupees 140,000/= which too was utilized for payment of the consideration for the transfer.
- (i) One of the sisters of the parties, namely Premalatha, is in occupation of one part of the house, and the other is occupied by a tenant of the Defendant-Appellant.

The Plaintiff-Respondent's case, as presented to the original Court, was that the living conditions at the Maradana house were unsatisfactory and that, with the intention of earning sufficient funds to purchase a property, he left for employment in Italy in December 1991.

The Defendant-Appellant, being the youngest sister, resided with their parents and was entrusted with the responsibility of searching for a suitable residence for the family. At that time, she was unemployed, and it was the Plaintiff-Respondent who remitted money to their parents and to her for household expenses.

Upon being informed by the Defendant-Appellant that the subject property was available for sale, the Plaintiff-Respondent instructed her to proceed with the purchase. Accordingly, the Defendant-Appellant paid an advance of Rs. 50,000/, which had been sent by the Plaintiff-Respondent, and entered into the Agreement of Sale marked 'P1'.

The balance sum of Rs. 750,000/- was raised through loans obtained from family members. The father, who owned the Maradana house, sold it for Rs. 140,000/, and the proceeds were distributed among the children. The Plaintiff-Respondent thereafter obtained, by way of loans, the amounts distributed to his siblings, and those sums were utilized towards the payment of the balance consideration.

The Plaintiff-Respondent maintained that he settled the said loans. He specified that he had borrowed Rs. 65,000/- from Bandulatha, Rs. 100,000/- from Pushpalatha, and Rs. 75,000/- from Vineetha. He further contended that

additional sums were borrowed from other family members and that those amounts were likewise repaid by him.

Analysis

The dispute arose on or about December, 4, 2006, when the Defendant-Appellant allegedly evicted the Plaintiff-Respondent from the subject property. Consequently, he lodged a complaint with the police, marked 'P4', and thereafter dispatched a letter of demand marked 'P5', seeking a reconveyance of the property.

In the course of cross-examination, the Plaintiff-Respondent marked two letters written by the Defendant-Appellant, namely 'P6' and 'P7'. In letter 'P6', dated August 28, 1995, the Defendant-Appellant set out the outstanding loans payable to family members and acknowledged that the Plaintiff-Respondent was responsible for settling those loans. Letter 'P7', dated March 31, 1994, similarly contains an acknowledgment of the Plaintiff-Respondent's undertaking to repay the said loans.

The Defendant-Appellant called her brother-in-law, Siripala Gamage, the husband of Seetha Mangalika (one of the sisters), to testify on her behalf. He stated that he had advanced a sum of Rs. 185,000/- to the Defendant-Appellant for the purchase of the property and that he had further obtained a loan of Rs. 90,000/- from a friend, Martin Wickramaratne, which was also handed over to her.

Although the witness maintained that the monies advanced by him were utilized for the purchase of the property and were subsequently repaid by the Defendant-Appellant, he admitted under cross-examination a letter sent by him to the Plaintiff-Respondent, marked 'P9', in which he acknowledged that it was the Plaintiff-Respondent who had obtained the loans. This document substantially undermined the credibility of Siripala Gamage's testimony and correspondingly strengthened the case of the Plaintiff-Respondent. Furthermore, his testimony

was further contradicted by photographs marked 'P10' and 'P11', which clearly contradict the position of the Plaintiff that he had no association with the Plaintiff-Respondent and had never met him after his departure to Italy. Because, the two photographs clearly show that Siripala attended the Plaintiff-Respondent's wedding, which took place while the Plaintiff-Respondent was serving in Italy. I find it unlikely that an individual would extend a wedding invitation to someone with whom they share no connection.

In addition to that, the Plaintiff-Respondent called Premalatha, a sister who was in occupation of the house, to support his assertion that it was he who settled all the loans.

Another sister of the Plaintiff-Respondent, Thenuwara Arachchige Chithra, also testified on his behalf. She stated that she accompanied the Defendant-Appellant in searching for houses to be purchased. She further testified that she inspected the land in suit and participated in the negotiations for its purchase. Her evidence corroborated the testimony of the Plaintiff-Respondent with regard to the settlement of the loans by him.

Contrary to the Plaintiff-Respondent's version, the Defendant-Appellant testified that the initial advance of Rupees 50,000/- was paid by her from money she earned by selling lunch packets. However, this position has not been satisfactorily substantiated by the Defendant-Appellant.

The credibility of her testimony was further undermined by her own letters marked 'P6' and 'P7', in which she acknowledged the Plaintiff-Respondent's commitment to settle the loans. Although she claimed to have obtained a loan of Rupees 425,000/- from Vineetha, Rupees 185,000/- from Siripala Gamage, and Rupees 90,000/- from Martin Wickramarathne, and to have repaid these sums from her own earnings in Italy, her version remains questionable. Notably, she did not call Martin Wickramarathne to testify in support of her claims either.

The evidence indicates that the Defendant-Appellant did not proceed to Italy for employment until 1996. Although she claimed to have had better employment than the Plaintiff-Respondent, this assertion is doubtful, as the Plaintiff-Respondent was already well-settled in his employment at an airport by that time.

Vineetha, who was alleged to have advanced a sum of Rupees 425,000/-, was called as a witness for the Defendant-Appellant. In her evidence, she was unable to explain how she could have afforded such a large sum in 1993. Her testimony regarding her salary was found to be inaccurate. She claimed that she worked at Nelum Fashions for a salary of Rupees 10,000/- per month, whereas the salary particulars indicated a salary of only Rupees 7,000/-, demonstrating that her evidence on this crucial point of financial capacity was false.

The learned District Judge found that the evidence of the Plaintiff-Respondent and his witnesses was consistent. In contrast, the District Judge observed that the evidence of the Defendant-Appellant and her key witnesses was contradictory and not worthy of credit. On appeal, the learned High Court Judges, after analyzing the evidence, also arrived at the same conclusion. It appears to me that the conclusions reached by the learned District Judge and the learned Judges of the High Court are correct and do not require any reversal.

It was argued by the Learned President's Counsel for the Defendant-Appellant that part of the consideration was provided out of the proceeds from the sale of the old house, and accordingly, on the Plaintiff-Respondent's own version, the full consideration was not provided by him, which, it was contended, would disqualify him from obtaining relief under Section 84 of the Trusts Ordinance.

However, the evidence shows that the proceeds from the sale of the old house were not directly applied to the payment of the balance consideration. Instead, the father distributed the proceeds among the children, who then advanced those amounts as loans to the Plaintiff-Respondent. The fact that the father distributed the money among the children was admitted by the Defendant-Appellant.

Therefore, it appears to me that the said argument is not supported by the evidence.

The Learned President's Counsel for the Defendant-Appellant strenuously argued that, based on the Plaintiff-Respondent's own evidence, only a sum of Rupees 480,000/- was paid by him towards the purchase of the property. This calculation was based on:

- Rupees 140,000/- being the proceeds from the sale of the ancestral house in Maradana,
- Rupees 50,000/- as the Plaintiff-Respondent's personal contribution as the initial advance,
- Rupees 65,000/- advanced by Bandulatha,
- Rupees 100,000/- advanced by Pushpalatha, and
- Rupees 75,000/- advanced by Vineetha.

Accordingly, it was contended that there remained a deficit of Rupees 320,000/. On this basis, the Counsel argued that the Plaintiff-Respondent had not provided the full consideration and that, under Section 84 of the Trusts Ordinance, only a person who provides the full consideration is entitled to relief.

Section 84 of the Trusts Ordinance reads as follows:

“Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.”

It was argued on behalf of the Defendant-Appellant that Section 84 of the Trusts Ordinance should be interpreted literally. In support of this submission, reliance was placed on Pollock J. in *Miller vs Salomons*¹ and Justice Mahinda

¹ (1852) 7 Ex. 475.

Samayawardana's judgment in *Auriya Vinothini Yogaraja vs. Riyal Mohamed Riswan and Others*², where it was held that the statutory language should be given its plain and literal meaning.

The argument, therefore, was that only a person who provides the full consideration for the purchase of the property is entitled to relief under Section 84. I see no reason to venture into an interpretation of Section 84 of the Trusts Ordinance, as the evidence clearly establishes that the full consideration for the subject matter was borne by the Plaintiff-Respondent.

Role of an Appellate Court in an Appeal on Factual Position.

It is well-settled law that an appellate court should be slow to reverse findings of fact made by a trial court. In *Allas vs Allas*³, Lord Radcliffe stated:

"To reverse this finding on appeal would be a strong step, only justified if the trial judge has demonstrably misjudged the position."

Similarly, in *Alwis vs Piyasena Fernando*⁴, G.P.S. de Silva CJ observed (at page 122):

"It is well established that findings of primary facts by a trial judge, who hears and sees the witnesses, are not to be lightly disturbed on appeal."

These authorities underscore the principle that appellate courts should give due deference to the factual findings of the trial court, particularly when the judge had the opportunity to assess the credibility of witnesses.

In *King vs Guneratne*⁵, the Supreme Court set out the criteria for reversing the findings of a trial court on appeal in the following terms:

² *Auriya Vinothini Yogaraja vs Riyal Mohamed Riswan and Others* SC/ Appeal/33/2020 (SC Minutes, dated.02.12.2024.

³ *Alles vs Alles* 51 NLR 416 at 420.

⁴ *Alwis vs Piyasena Fernando* 1993 1 SLR 119.

⁵ *King vs Guneratne* 37 NLR 167.

- a) *Is the verdict of the trial judge unreasonably against the weight of evidence?*
- b) *Was there a misdirection on either on law or on evidence?*
- c) *has there been wrong inference drawn on matters in evidence which is as much before the Court of Appeal as it was before the trial court.*

Subject to the above guidelines, it is not the role of an appellate court to lightly interfere with the findings of fact made by a trial judge. In ***M.P.Munasinghe vs C.P Vidanage***⁶, it was held that where a trial court is confronted with two conflicting versions, it must accept one, and such acceptance should not be reversed on appeal.

The learned Counsel for the Plaintiff drew our attention to an important observation of Lord Hailsham in ***In re W (an infant)*** (1971) 2 All E.R. 49, where he stated:

"Two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable. The question in any given case is whether a parental veto comes within the band of possible reasonable decisions, and not whether it is right or mistaken. Not every reasonable exercise of judgment is right, and not every mistaken exercise of judgment is unreasonable."

(Rajapakse and Another vs Gunasekera and Others 1984 (2) SLR 1, ***Mahawithana vs Commissioner of Inland Revenue*** 64 NLR 217)

Therefore, in my view, there were two versions before the trial courts: the Plaintiff-Respondent's position that he paid off the loans, and the Defendant-Appellant's version that she settled them. The Learned District Judge accepted the Plaintiff-Respondent's version for sound reasons and rejected the defence on reasonable grounds. Accordingly, the Learned Judges of the High Court were correct in their determination, affirming the judgment of the original court.

⁶ *M.P. Munasinghe vs C.P Vidanage* 69 NLR 97.

Conclusion

Accordingly, questions of law (a) and (b) are answered in the affirmative.

Therefore, the judgments of the High Court of Civil Appeals and of the District Court are affirmed. In the circumstances, I make no order as to costs.

Appeal is dismissed.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT

Menaka Wijesundera, J.

I agree.

JUDGE OF THE SUPREME COURT