

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

In the matter of an application for Leave to Appeal under and in terms of Section 5(c) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

SC/Appeal No. 38/2025
SC/HCCA LA /346/2019
WP/HCCA/KAL/14/2019
D.C. Kalutara Case No.
6533/L

1. Mahesh Hewagama
2. Manthri Hewage Nayani Fernando

Both of

‘Akinda’ Sama Uyana Mawatha
Duwa Temple Road,
Kalutara South.

PLAINTIFFS

vs

1. Senhiru Lands & Credit (Pvt) Ltd,
Malegoda Road,
Galawila, Rendapola,
Dodangoda.
2. Senhiru Micro Credit (Pvt) Ltd
Malegoda Road,
Galawila, Rendapola,
Dodangoda.
3. Binal Investment (Pvt) Ltd.
No. 91/A, Pirivena Road,
Molligoda, Wadduwa.

4. National Trust Bank
No. 242, Union Place
Colombo 2

DEFENDANTS

AND BETWEEN

1. Mahesh Hewagama
2. Manthri Hewage Nayani Fernando

Both of

‘Akinda’ Sama Uyana Mawatha
Duwa Temple Road,

Kalutara South.

PLAINTIFFS-PETITIONERS

vs

1. Senhiru Lands & Credit (Pvt) Ltd,
Malegoda Road,
Galawila, Rendapola,
Dodangoda.
2. Senhiru Micro Credit (Pvt) Ltd
Malegoda Road,
Galawila, Rendapola,
Dodangoda.
3. Binal Investment (Pvt) Ltd.
No. 91/A, Pirivena Road,
Molligoda, Wadduwa.
4. National Trust Bank
No. 242, Union Place
Colombo 2

DEFENDANTS- RESPONDENTS

AND NOW BETWEEN

3. Binal Investment (Pvt) Ltd.
No. 91/A, Pirivena Road,
Molligoda, Wadduwa.

**3rd DEFENDANT-RESPONDENT-
PETITIONER**

vs

1. Mahesh Hewagama
2. Manthri Hewage Nayani Fernando

Both of

‘Akinda’ Sama Uyana Mawatha
Duwa Temple Road,
Kalutara South.

**PLAINTIFFS-PETITIONERS-
RESPONDENTS**

1. Senhiru Lands & Credit (Pvt) Ltd,
Malegoda Road,
Galawila, Rendapola,
Dodangoda.
2. Senhiru Micro Credit (Pvt) Ltd
Malegoda Road,
Galawila, Rendapola,
Dodangoda.
4. National Trust Bank
No. 242, Union Place
Colombo 2

**DEFENDANTS-REPOENDENTS-
RESPONDENTS**

BEFORE : Janak De Silva, J.
Mahinda Samayawardhena, J.
M. Sampath K. B. Wijeratne, J.

COUNSEL : Saliya Pieris, P.C. with Varuna de Seram instructed
by Manjula Blasooriya for the 3rd Defendant-
Respondent-Appellant.

Kuvera de Zoysa, P.C. with Sajana de Zoysa
instructed by Poornima Perera for the 4th
Defendant-Respondent-Respondent.

Dr. Wijayadasa Rajapaksha, P.C. instructed by
Punarji Karunasekara for the Plaintiffs-
Petitioners-Respondents.

ARGUED ON : 21.07.2025

DECIDED ON : 04.03.2026

M. Sampath K. B. Wijeratne J.

The Plaintiff–Petitioner–Respondents (hereinafter referred to as the ‘Plaintiffs’) have instituted the present action seeking, *inter alia*,

- a) a declaration of title to the land morefully described in the schedules to the
plaint,
- b) a declaration that same is held by the 1st and 2nd Defendant-Respondent-
Respondents (hereinafter called and referred to as the ‘1st and 2nd
Defendants’) and the 3rd Defendant Respondent-Appellant (hereinafter
called and referred to as the ‘3rd Defendant’) in trust for the benefit of the
Plaintiffs,

- c) an order directing the Defendants to retransfer the title held by them in trust to the said land to the Plaintiffs, subject to the payment of monetary claim made in paragraph 'ॐ' of the prayer of the plaint.
- d) Ejectment of the 3rd Defendant from the portion of the premises possessed by the 3rd Defendant, which is described in the 2nd schedule to the plaint,
- e) for damages,
- f) for a declaration that the mortgage bond bearing No. 919A executed in favour of the 4th Defendant-Respondent-Respondent Bank (hereinafter called and referred to as the 4th Defendant) is invalid in law and,
- g) for interim injunctions restraining the 3rd Defendant from transferring, alienating or causing any encumbrance in any manner on the said property and restraining the 3rd Defendant from interfering with the possession of the Plaintiff in respect of the property in suit other than what is possessed by 3rd Defendant, described in the 2nd schedule to the plaint.

The case presented by the Plaintiffs is as follows:

The 1st Plaintiff was the owner of the land and the three-storied building standing thereon. He gifted the same to his wife, the 2nd Plaintiff, by Deed No. 252, marked 'A1'. The Plaintiffs, being in need of a sum of Rupees Twenty Million, sought a loan from Somachandra Investments (Private) Limited, which agreed to provide the loan subject to the execution of a deed of transfer of the property in suit as security. Accordingly, the Deed of transfer bearing No. 5592, marked 'A2', was executed.

Thereafter, the Plaintiffs, being in need of a sum of Rupees Fifty Million, sought a loan from the 1st Defendant Company. The 1st Defendant, having agreed to grant the loan, entered into an agreement as pleaded in paragraph 10 of the plaint and reflected in the document marked 'A3', which provides that:

- a) the 1st Defendant should pay sum of rupees 27.5 million in settlement of the loan obtained from Somachandra Investments (Pvt.) Ltd and take a deed of transfer of the property in suit in its name as security.

- b) That the 1st Defendant should pay a sum of rupees 16.5 million to the 1st Plaintiff out of which a sum of rupees 12.5 million should be invested by the 1st Plaintiff in the 1st Defendant company for which the 1st Defendant company should pay a monthly interest at the rate of 4%. Out of the balance sum of Rs. 4 million remaining from the total sum of Rs. 16.5 million, a sum of Rs. 3.5 million shall be paid in cash to the 1st Plaintiff.
- c) In lieu of the balance out of the total sum of Rs. 50 million, the vehicle bearing registration number WP CAV 0190 should be sold to the 1st Plaintiff. However, as it has been obtained on a leasing facility from a finance company, the 1st Defendant should settle all remaining monthly installments payable to the finance company and thereafter, transfer the vehicle in the name of the 1st Plaintiff.

The 2nd Defendant is a subsidiary company of the 1st Defendant. The Boards of Directors of both companies are the same. Therefore, it was further agreed that the contract between the Plaintiffs and the 1st Defendant would be enforced through the 2nd Defendant.

Acting on the aforesaid agreement, the Plaintiffs arranged for Somachandra Investments (Private) Limited to transfer the property in suit in the name of the 2nd Defendant by Deed No. 1816, marked 'A6'. In lieu of the loan, a further agreement bearing No. 1916, marked 'A4', was executed.

However, after a lapse of time, the Plaintiffs realised that the 2nd Defendant had defaulted in the payment of lease installments to the finance company in respect of the leasing facility obtained for the vehicle. It was further alleged that the 1st Defendant Company failed to pay the agreed interest on the sum of Rupees Twelve Point Five Million invested. It was also discovered that the Directors of the 1st and 2nd Defendant companies had defrauded a large number of their customers and had fled the country. In support of this allegation, two newspaper articles were produced and marked 'A7' and 'A8'.

The Plaintiffs were further made to understand that the 1st and 2nd Defendant companies had obtained a loan by hypothecating the property in suit. Accordingly, upon investigation, it was revealed that the 2nd Defendant had obtained a loan of Rupees Forty Million from the 4th Defendant Bank by hypothecating the property in suit under Deed No. 9191A, marked 'A9'. It was further found that the 2nd Defendant, having obtained the said loan from the 4th Defendant, had transferred the property in the name of the 3rd Defendant company by Deed No. 2597, marked 'A10'.

Accordingly, the Plaintiffs have prayed for the reliefs referred to above:

At the inception, the original court had issued an enjoining order as prayed for in the plaint, together with a notice for the issuance of an interim injunction.

The 3rd Defendant, having received the enjoining order and the notice of interim injunction, appeared before the Court and filed its statement of objections, stating the following facts.

The subject matter of the action, being a three-storied building, had been let to various tenants by the Plaintiffs under lease bonds. Upon the transfer of the property to Somachandra Investments (Pvt) Ltd., the said lease bonds were terminated, and fresh lease agreements were entered into by the new owner. Similarly, upon obtaining the transfer, the 1st and 2nd Defendants terminated the lease bonds entered into by Somachandra Investments Ltd. and entered into fresh lease agreements, thereby implying that the 1st and 2nd Defendants had been placed in possession. The 2nd Defendant additionally purchased the adjacent property and amalgamated it with the land in suit. Thereafter, the 2nd Defendant mortgaged the property to the 4th Defendant. The 3rd Defendant, being in search of a commercial property to purchase, negotiated with the 2nd Defendant and acquired the property for a sum of Rupees Fifty-Five Million, of which Rupees Seventeen Million Five Hundred Thousand was paid to the 2nd Defendant, and the balance was set off against the repayment of the loan granted by the 4th Defendant.

The 3rd Defendant further averred that the Plaintiffs had suppressed material facts, such as the lease bonds entered into between the tenants and Somachandra Investments (Pvt) Ltd., as well as the 2nd Defendant, demonstrating their possession, which constitute material evidence. It was further averred that Somachandra Investments (Pvt) Ltd. is a necessary party if the Plaintiffs are to succeed in a claim for trust, and, therefore, the plaint cannot proceed due to non-joinder of parties.

However, it is noteworthy that the 3rd Defendant did not claim to be a *bona fide* purchaser for value.

The Learned District Judge, relying on *Felix Dias Bandaranayake vs State Film Corporation*¹, inferred that the case presented by the Plaintiffs lacked a *prima facie* case. She further held that the Plaintiffs had suppressed material facts relating to the cancellation of the lease bonds with the tenants and the subsequent execution of fresh lease agreements, initially by Somachandra Investments Ltd., and thereafter by the 2nd Defendant. She also found that the Plaintiffs had failed to disclose that the police had warned both parties not to take possession, as such action could result in a breach of the peace.

Accordingly, the Learned District Judge dismissed the application for an interim injunction.

Thereupon, the Plaintiffs moved for leave to appeal to the High Court of Civil Appeal, which initially granted leave to proceed. Thereafter, by the impugned order, the Learned Judges of the High Court set aside the order of the Learned District Judge and granted the interim injunction as prayed for in the plaint. The Learned Judges of the High Court of Civil Appeal held that, in view of documents 'A1', 'A6', and 'A10', together with the evidence relating to all transactions, the Court is satisfied that there is a serious matter to be examined at trial. They inferred that the entire transaction gives rise to certain suspicions.

¹ 1981 2 SLR 287.

The Learned Judges expressed concern as to why the property, having been mortgaged to the 4th Defendant, was thereafter sold to the 3rd Defendant. They also noted that the 3rd Defendant, having purchased the property, did not opt to cancel the previous lease bonds between the tenants and the 2nd Defendant. In addition, the learned High Court Judges have raised concerns as to why fresh lease bonds were not executed, thereby giving rise to serious suspicion regarding the bona fides of the entire transaction. The lease bond marked 'X9vi', bearing No. 2205, was entered into by the 2nd Defendant even after the deed of transfer to the 3rd Defendant was executed.

The Learned Judges of the High Court, having considered all the facts and circumstances of the case, held that the issue of whether a constructive trust has been established or otherwise should be determined at the conclusion of the trial, rather than at an early stage. Accordingly, they set aside the impugned order and granted the reliefs as aforesaid.

The 3rd Defendant, being dissatisfied with the aforesaid order, has moved for leave to appeal to this Court. This Court granted leave on the following question of law:

“Have The learned Judges Provincial High Court of Civil Appeals have erred in deciding “that the learned District Judge should have issued interim injunction in terms of prayers (Ϸ) and (Ⓢ) in the plaint” in the light of the facts and circumstances of this case keeping in line with the relevant law?”

Before this Court, the learned Counsel for the 3rd Defendant submitted that the Plaintiffs have failed to tender *prima facie* evidence supporting the existence of a constructive trust that would justify the grant of interim reliefs. He further submitted that the Plaintiffs are guilty of suppressing material facts, which warrants the dismissal of their claim for interim reliefs.

Prima Facie Case

I will first address the issue of whether the Plaintiffs have established a *prima facie* case justifying the grant of an interim injunction.

Section 54(1)(a) of the Judicature Act provides:

“Where in any action instituted in a High Court, District Court or a Small Claims Court, it appears-

- (a) from the plaint that the plaintiff demands and is entitled to a judgment against the defendant, restraining the commission or continuance of an act or nuisance, the commission or continuance of which would produce injury to the plaintiff; or [...]

This requirement was elaborated in the celebrated judgment of **Soza J.**, in ***Felix Dias Bandaranayake vs State Film Corporation***². His Lordship has observed “*In Sri Lanka we start off with a prima facie case. That is, the applicant for an interim injunction must show that there is a serious matter in relation to his legal rights, to be tried at the hearing and that he has a good chance of winning. It is not necessary that the plaintiff should be certain to win. It is sufficient if the probabilities are he will win. Where however the plaintiff has established a strong prima facie case that he has title to the legal right claimed by him but only an arguable case that the defendant has infringed it or is about to infringe it, the injunction should not be granted (Hubbard v Vosper). If the probability is that no right of the plaintiff will be violated or that he will suffer no wrong such as the law recognizes then the injunction will not issue.*”

This requirement further elaborated in ***Damayanti Abayawardana vs Hemalatha Abayawardana***³ as plaintiff having a “reasonable prospect of success and actual and legally recognizable right”.

² 1981 (2) SLR 287, at page 302.

³ 1993 (1) SLR 272.

However, does a *prima facie* case mean an establishment of the case for the parties applying for interim injunction? In ***Gulam Hussain vs Cohen***⁴ a *prima facie* case was interpreted as “a serious matter in relation to legal rights to be tried at the hearing and having a good chance of winning”. S. N. Silva J. (as he was then), observed in ***Rajan and two others vs Sellasamy***⁵ “ The provisions of section 54(1) of the Judicature Act considered in the light of judicial dicta based upon antecedent legislative provisions postulate that there are two matters on which the plaintiff has to satisfy court to entitle him to interim relief by way of an injunction. They are:

(i) that, there is a serious question to be tried as to the impugned act of the defendant the commission of which is sought to be restrained;

(ii) that on the facts as disclosed in the material before court, it is probable that the plaintiff is entitled to permanent relief in restraining the defendant from committing the impugned act.”

S.N. Silva J., at page 386, while quoting with approval the dictum of Lord Denning M.R. in ***Hubbard vs Vosper***⁶, rightly held: “These matters that the plaintiff has to establish to entitle him to an interim injunction are put under the rubric of a “prima facie case”. The test of a “prima facie case” embracing the elements stated above, is the foremost consideration applied in deciding the question of granting an interim injunction. The matters looked at thereafter are the balance of convenience and the conduct of the respective parties.”

Further elaborating on this requirement, Chandra Ekanayake, J., in ***Kariyawam vs Sujatha Janaki and Two Others***⁷, observed: “ The line of authorities on interim injunctions would imply demonstrate that, the first and foremost thing that should be satisfied by an applicant seeking an interim injunction is: “has the applicant

⁴ 1995(2) SLR 365.

⁵ 1994(2) SLR 377, at page 385.

⁶ (1972) 2 Q.B. 84 at p. 86.

⁷ 2013 (1) SLR 176, at page 185.

made out a prima facie case?” that is it must appear from the plaint that the probabilities are such that plaintiff is entitled to a judgment in his favour.”

In other words, the plaintiff must show that a legal right is his being infringed and that he will probably succeed in establishing his rights. A prima facie case - does not mean a case which is proved to the hilt but a case which can be said to be established if evidence which is led in support of the same were believed and accepted In case of Murtin Burn Ltd V R.N.Banerjee at page 85’ the Supreme Court of India (Bhagwathi,J) had opted to outline the ambit and scope of connotation “Prima Facie “ case as follows;-

A prima facie case does not mean a case proved to the hilt but a case which can be said to have been established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence”

*In **Jinadasa vs Weeratunga**⁸ Dalton J., has observed: “In such a matter the Court must be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that plaintiff is entitled to relief.”*

According to Black’s Law Dictionary (third edition) term ‘prima facie’ means “on first appearance but subject to further evidence or information” and the term prima facie case means,

“1.the establishment of a legally required rebuttable presumption.

2.a party “production of enough evidence to allow the fact-trier to infer the fact at issue and rule in parties favor”

On this interpretation, a ‘prima facie’ case means a case which, on first appearance, is made out as set out.

⁸ 31 NLR 33.

Hence, in my view, a '*prima facie*' case does not require a rigid establishment of the applicant's claim, but only the establishment of a legally recognizable right 'on its first appearance,' which should be examined at trial. Therefore, in dealing with an application for an interim injunction, a complete picture of the entire case should not be expected.

A *prima facie* case is necessarily linked to the act complained of. Therefore, in deciding whether a *prima facie* case exists warranting the issuance of an interim injunction, the Court should be mindful of the act or acts sought to be prevented by way of interim relief.

Facts of the Case Presented in the Plaint

I will now revert to the facts of the case. The Plaintiffs have, in their plaint, pleaded a constructive trust as the main relief.

Section 83 of the Trust Ordinance provides:

“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.”

The document marked 'A3' demonstrates the true nature of the transaction between the Plaintiffs and the 1st and 2nd Defendants, as well as the background in which Deed of Transfer No. 1816, marked 'A6', was executed. 'A3' clearly shows that the 1st Defendant had advanced a sum of Rupees 27.5 million in settlement of the rights conveyed to Somachandra Investments (Pvt) Ltd. under Deed No. 5592, marked 'A2'. This, in my view, leads to the inference that the transaction recorded in Deed No. 5592, though termed a sale, was in reality a money-lending transaction.

In *Dayawathie vs Gunasekara*⁹, the actual transaction between the parties was held to be a loan, even though a deed of transfer was executed. It was further held that the intention of the parties to secure a loan constituted an attendant circumstance as provided under Section 83 of the Trust Ordinance.

A3' further acknowledges that the 1st Defendant had taken a deposit of Rupees 12.5 million from the 1st Plaintiff, which was also part of the same transaction. The agreement between the 1st Plaintiff and the 2nd Defendant in respect of the vehicle, bearing No. 1916 and marked 'A5', further supports the proposition that the true transaction was one intended to secure a loan.

The 3rd Defendant has stated that Somachandra Investments (Pvt) Ltd., having purchased the property under Deed No. 5592, marked 'A2', terminated all lease agreements entered into between the Plaintiffs and the tenants, implying that the transaction with Somachandra Investments (Pvt) Ltd. was an outright sale. However, both Plaintiffs joined in the subsequent Deed of Transfer in favor of the 3rd Defendant as transferors. If Somachandra Investments (Pvt) Ltd. had sold the property under the said deed, why should the Plaintiffs have joined as vendors? It is noteworthy that Deed No. 1816 states in its recital: “(...)ප්‍රසිද්ධ නොතාරිස් තුසර එන් ජයකොඩි මහතා විසින් ලියා සහතික කල අංක 252 සහ 2009.02.13 වන දිනැති තැගි ඔප්පුව මත හිමිකම් ලැබ නිරවුල්ව අඛණ්ඩව ස්වාධීනව බුක්ති විදිනු ලබන මෙහි පහත උපලේඛනයේ සවිස්තරව දක්වා ඇති දේපල සහ ඊට අදාල එහි කොටසක් හැටියට ඒ සමග බුක්ති විදින වෙනත් සියලුම දේද ඒ ගැන අපට ඇතිව තිබෙන මුළු හිමිකම් අයිතිකම් උරුමකරකාර වැදගත්කම් හා බලපුළුවන්කාරකම් ද (...)” This statement, *prima facie*, is capable of leading to the inference that the Plaintiffs were in possession, despite any lease bonds that had been entered into between Somachandra Investments (Pvt) Ltd. and the tenants. In fact, the third paragraph of 'A3' clearly states: “ඉහත සඳහන් දේපළ අප ආයතනය මිලදී ගැනීමට තීරණය කර ඇති බැවින් ඉහත සඳහන් සීමාසහිත සෝමවන්ද්‍ර ඉන්වෙස්ට්මන්ට් පුද්ගලික සමාගමෙන් නැවත පවරා ගැනීමට ලබාදිය යුතු මුදල රුපියල් ලක්ෂ දෙසිය හත්තැපහක් (රු

⁹ 1991(1) SLR 115.

27500000.00) වන අතර (...)” This could indicate that the sum of Rupees 27.5 million was paid in settlement of the amount required for the conveyance from Somachandra Investments (Pvt) Ltd. Therefore, there is sufficient material to infer, *prima facie*, that the Deed of Transfer in favor of the 2nd Defendant was, in reality, a loan transaction.

Thereafter, the 2nd Defendant, although said to have terminated the lease bonds entered into between Somachandra Investments (Pvt) Ltd. and the tenants, and executed fresh lease bonds, it could well be that these are nothing more than fabricated documents intended to camouflage the true nature of the transaction. In *Perera vs Fernando*¹⁰ Sureshchandra J. has observed “ *It is a matter of general observation that this case is yet another demonstration of a practice prevalent in many parts of the country where unofficial money lenders lend money to person who seek assistance when in need of money and the borrowers have very often no option but to agree to very high rates of interest for which no document is given and further they are compelled to effect transfers of property in order to obtain such loans. In addition, they resort to obtaining signed blank cheques form the borrower, a postdated cheque, promissory notes, powers of attorney, and sometimes rental agreements or lease agreement to give the impression that the borrower is permitted to be in possession of such properties*”

One strong piece of evidence in support of the Plaintiffs’ case is Lease Bond No. 2205, dated October 17, 2018, marked ‘X9 VI’, whereby the 2nd Defendant leased a shop in the building to a tenant. The Deed of Transfer in favor of the 3rd Defendant had been executed on May 10, 2018. How could the 2nd Defendant lease a part of the premises to any party after having sold the entire property to the 3rd Defendant? This demonstrates, on the face of it, that the Deed of Transfer in favor of the 3rd Defendant was nothing but a sham.

The 3rd Defendant has nowhere claimed the benefit of Section 66(1) of the Trust Ordinance, which provides:

¹⁰ 2011(2) SLR 192, at page 200.

(1) Nothing in section 65 entitles the beneficiary to any right in respect of property in the hands of—

(a) a transferee in good faith for consideration without having notice of the Trust, either when the purchase money was paid, or when the conveyance was executed; or

(b) a transferee for consideration from such a transferee.

In fact, the 3rd Defendant opted to obtain a transfer while a mortgage bond was still in force. Moreover, the attestation of the notary in Deed No. 2597, marked 'A10', executed for the purpose of transferring the property to the 3rd Defendant, states that the consideration had been acknowledged as paid prior to the execution. The 3rd Defendant has not provided any valid explanation for this statement contained in the attestation of the notary.

Therefore, an inference can be drawn from all the documents that the 3rd Defendant was not a *bona fide* purchaser for value.

In *Piyasena vs Don Vansu*¹¹ and *G.C. Karunaratne Perera vs Sanath Fernando*¹², it was held that a transferor remaining in possession constitutes evidence of retention of beneficial interest. Fabricated transactions may further support and strengthen the inference of the transferors' continued possession.

Therefore, I am of the view that the Learned Judges of the High Court were justified in their conclusion.

The learned Counsel for the Appellant has cited the judgments in *Senadirannahalage Chandrika Sudarshani vs Muthukuda Herath Mudiyansele Gedara Somawathi*¹³ and *Watagoda Gedara Mallika Chandralatha vs Herath Mudiyansele Punchi Banda*¹⁴, where the need to

¹¹ 1997 (2) SLR 311.

¹² S.C App 8A/2009, S.C minutes 9.5.2011.

¹³ SC APPEAL NO.173/2011 (S.C. Minutes of 6.4.2017).

¹⁴ SC APPEAL NO.185/2015 (S.C minutes of 4.12.2017).

recognize the strength of a Deed of Transfer was emphasized. However, both of these judgments dealt with the final determination of the respective cases and did not concern the grant of interim injunctions at the inception of proceedings.

Irreparable Loss and Balance of Conveniences

The balance of conveniences is closely linked with the establishment of a *prima facie* case. The mere fact that an applicant has made out a *prima facie* case does not, by itself, entitle him to the grant of an interim injunction. In ***Kaluthara Bodhi Trust vs Kaluthara Multi-Purpose Co-operative Society Ltd***¹⁵, Her Ladyship Chief Justice Shirani Bandaranayake observed: “*However as could be seen on an examination of these decisions, the establishment of a prima facie case alone would not be sufficient for the grant of an interim injunction. The Court would have to pay serious attention to the question of irreparable damage as well as the balance of conveniences, prior to grant of an interim injunction although a party would have satisfied the necessary ingredients for such injunction ...*”

Taking into consideration the nature of the injunctions sought in the plaint, it appears that the Plaintiffs would suffer if the 3rd Defendant alienates or encumbers the property before the final determination of the case. Nowhere has the 3rd Defendant stated that it has any urgent need to alienate or encumber the property. As noted above, the attestation of the notary in Deed No. 2597, marked ‘A10’, suggests the possibility that the 3rd Defendant may not have paid any consideration to the 2nd Defendant. Therefore, the grant of the interim injunction prayed for in paragraph (8) of the plaint is justified.

The next issue is whether the 3rd Defendant should be restrained from interfering with the Plaintiffs’ possession of the building, other than the portion described in the Second Schedule to the plaint, which is admittedly in the possession of the 3rd Defendant.

¹⁵ 2012 blr 175, at page 178.

In *Pounds vs Ganegama*¹⁶, the Supreme Court held that even a trespasser could not be deprived of possession by way of an interim injunction. On reading paragraph 39 of the plaint and prayer (⊕), it appears that the Plaintiffs have not sought an interim injunction to dispossess or restrain the 3rd Defendant Company from possessing the property, but rather seek to restrain the 3rd Defendant from interrupting or interfering with the Plaintiffs' possession. It appears that the rest of the building, other than the portion possessed by the 3rd Defendant, is occupied by tenants, and no tenant has entered into any lease agreement with the 3rd Defendant. The purpose of granting an interim injunction is to maintain the *status quo* (*Fernando vs Wickremasinghe*¹⁷). Therefore, I am of the view that the grant of the second injunction sought is also justified and does not cause serious prejudice to the 3rd Defendant. On the other hand, the Plaintiffs would suffer irreparable harm unless the 3rd Defendant is restrained from interfering with their possession.

Suppression of Material Facts

The Learned Counsel for the 3rd Defendant submitted that the Plaintiffs have suppressed material facts, particularly the lease bonds executed between the tenants and Somachandra Investments (Pvt) Ltd., and thereafter with the 2nd Defendant.

In *Hotel Galaxy vs Mercantile Hotels Ltd*¹⁸, the Supreme Court held that an applicant for an interim injunction is bound to disclose all material facts, and the suppression of any such fact should itself deprive the applicant of relief. The test for deciding whether a fact was required to be disclosed was articulated by His Lordship Justice:

“Thus, a misstatement of the true facts by the plaintiff which put an entirely different complexion on the case as presented by him when

¹⁶ 40 NLR 73.

¹⁷ [1998] 3 Sri.L.R. 37).

¹⁸ 1987 (1) S.L.R. 5, at page 36.

the injunction was applied ex parte would amount to a misrepresentation or suppression of material facts warranting its dissolution without going into its merits”.

In my view, disclosure or non-disclosure which are not material to the issue in dispute have no adverse effect on the Plaintiffs’ case. Lease bond No. 2205, dated 17 October 2018, marked ‘X9 VI’, was executed by the 2nd Defendant even after the execution of Deed of Transfer No. 2597 in favor of the 3rd Defendant, which constitutes strong evidence against the proposition that it was an outright sale. Therefore, the suppression of the deed has no negative impact on the Plaintiffs’ case but serves as strong evidence against the 3rd Defendant.

Accordingly, I see no reason to hold that the Plaintiffs withheld evidence material to the application for an interim injunction.

Conclusion

Therefore, I am of the view that the Learned Judges of the High Court of Civil Appeal were correct in their conclusion in light of the facts and circumstances of the case. I affirm the impugned Judgment. Accordingly, I answer the question of law raised in the “negative” and dismiss the appeal of the 3rd Defendant-Respondent-Appellant with costs.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT