

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

*In the matter of an Appeal made in terms  
of Section 5(c) of the High Court of the  
Provinces (Special Provisions)  
(Amendment) Act No. 54 of 2006.*

**SC Appeal No: 46/2022**

Kaludurage Kanthi Pushpalatha,  
No. 38, Samagi Pedesa,

**SC HC (CA) LA No:**

Mallehewa,

106/2021

Kaleliya.

**PLAINTIFF**

**HCCA Gampaha Case No:**

**Vs.**

WP/HCCA/GAM/50/2016(F)

1. Senanayake Ralalage Steven

**DC Attanagalla Case No:** 364 L

Senanayake,

2. Karunarathna Chandrathilaka

Appuhamilage Rupawathie,

Both of:

Samagi Pedesa,

Mallehewa, Kaleliya.

**DEFENDANTS**

1. Ranathunga Arachchige Samanthi

Hemamalee Ranathunga,

No.24, Radawana,

Meerigama.

2. Muthugala Pedige Sudesh  
Chaminda Mahilal,  
No.138, Meerigama Road,  
Pasyala.

**ADDED DEFENDANTS**

**AND BETWEEN**

1. Senanayake Ralalage Steven  
Senanayake,

**(Deceased)**

1A. Karunarathna Chandrathilaka  
Appuhamilage Rupawathie,  
Samagi Pedessa, Mallehewa,  
Kaleliya.

1B. Nimesha Madumalee Senanayake,  
Samagi Pedesa, Mallehewa,  
Kaleliya.

2. Karunarathna Chandrathilaka  
Appuhamilage Rupawathie,  
Samagi Pedessa, Mallehewa,  
Kaleliya.

**DEFENDANT-APPELLANTS**

**Vs.**

Kaludurage Kanthi Pushpalatha,  
No. 38, Samagi Pedesa,  
Mallehewa, Kaleliya.

**PLAINTIFF-RESPONDENT**

3. Ranathunga Arachchige Samanthi  
Hemamalee Ranathunga,  
No. 24, Radawana, Meerigama.

4. Muthugala Pedige Sudesh Chaminda  
Mahilal,  
No. 138, Meerigama Road, Pasyala.

**ADDED DEFENDANT-RESPONDENTS**

**AND NOW BETWEEN**

1. Senanayake Ralalage Steven  
Senanayake,

**(Deceased)**

1A. Karunarathna Chandrathilaka  
Appuhamilage Rupawathie,  
Samagi Pedessa, Mallehewa, Kaleliya.

1B. Nimesha Madumalee Senanayake,  
Samagi Pedesa, Mallehewa,  
Kaleliya.

2. Karunarathna Chandrathilaka

Appuhamilage Rupawathie,

Samagi Pedessa, Mallehewa,

Kaleliya.

**DEFENDANT-APPELLANT-**

**APPELLANTS**

**Vs.**

Kaludurage Kanthi Pushpalatha,

No. 38, Samagi Pedesa,

Mallehewa, Kaleliya.

**PLAINTIFF-RESPONDENT-**

**RESPONDENT**

3. Ranathunga Arachchige Samanthi

Hemamalee Ranathunga,

No. 24, Radawana, Meerigama.

4. Muthugala Pedige Sudesh Chaminda

Mahilal,

No. 138, Meerigama Road, Pasyala.

**ADDED DEFENDANT-RESPONDENT-**

**RESPONDENTS**

- Before** : Yasantha Kodagoda, P.C., J.  
: A.L. Shiran Gooneratne, J.  
: Sampath B. Abayakoon, J.
- Counsel** : Chathura Galhena instructed by Manoja  
Gunawardana for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant-  
Appellant-Appellants.  
: Widura Ranawake with Ms. Menaka  
Warnapura and Bhathiya Dassanayake  
instructed by Mrs. Eranga Jayasundara for  
the Plaintiff-Respondent-Respondent.
- Argued On** : 06-02-2026
- Written Submissions** : 05-08-2022 (By the 1A, 1B and the 2<sup>nd</sup>  
Defendant-Appellant-Appellants)  
: 27-10-2022 (By the Plaintiff-Respondent-  
Respondent)
- Decided On** : 05-06-2026

**Sampath B. Abayakoon, J.**

The 1A, 1B and 2<sup>nd</sup> defendant-appellant-appellants (hereinafter collectively referred to as the 1<sup>st</sup> and 2<sup>nd</sup> defendants) preferred this appeal on being aggrieved of the judgment pronounced on 12-01-2021 by the Provincial High Court of the Western Province holden at Gampaha, while exercising its civil appellate jurisdiction.

From the impugned judgment, the High Court affirmed the judgment pronounced by the learned District Judge of Attanagalla on 26-09-2016 in District Court of Attanagalla Case No. 364/L, where judgment was in favour of the plaintiff in the said case.

When this matter was considered on 01-06-2022 for the purpose of granting of leave to appeal from the impugned judgment, this Court granted leave on the question of law referred to in sub-paragraph (i) of paragraph 21 of the petition dated 25-02-2021.

The said question of law reads as follows,

1. Did the Civil Appellate High Court misdirect itself in deciding that 1<sup>st</sup> and 2<sup>nd</sup> defendants have failed to establish attendant circumstances relating to a constructive trust?

At the hearing of this appeal, this Court heard the submissions of the learned Counsel who represented the 1<sup>st</sup> and 2<sup>nd</sup> defendants, and the submissions of the learned Counsel who represented the plaintiff-respondent-respondent (hereinafter referred to as the plaintiff). This Court also had the benefit of considering the written submissions tendered by both parties for the purpose of this judgment.

### **The Facts**

The facts of the matter that led to the District Court judgment as well as the appellate judgment of the High Court can be summarised in the following manner.

The plaintiff of this action has instituted proceedings before the District Court for a declaration of title for the land morefully described in the 1<sup>st</sup> schedule of the plaint, which is a land of 10 perches in extent, for the ejectment of the 1<sup>st</sup> and 2<sup>nd</sup> defendants from the said land and for other incidental reliefs.

The plaintiff has initially filed this action only against the 1<sup>st</sup> and 2<sup>nd</sup> defendants, the 2<sup>nd</sup> defendant being the wife of the 1<sup>st</sup> defendant. Upon an application made by the original 1<sup>st</sup> and 2<sup>nd</sup> defendants claiming that the 3<sup>rd</sup> and the 4<sup>th</sup> defendants named in the District Court are necessary parties, they have been added as such.

In their answer before the District Court, the 1<sup>st</sup> and 2<sup>nd</sup> defendants have denied the title of the plaintiff and have taken up the position that the plaintiff is holding the land under a constructive trust in favour of them on the basis that they never intended to sell the land.

It needs to be noted that the plaintiff has purchased the questioned land not from the original 1<sup>st</sup> defendant who owned the land, but from the added 4<sup>th</sup> defendant named in the case, who has purchased it from the added 3<sup>rd</sup> defendant named before the District Court.

The evidence led before the District Court shows that there had been no dispute as to the title pleaded by the plaintiff. According to the title deeds produced, the now deceased original 1<sup>st</sup> defendant has purchased this land by deed No. 6501 dated 15-03-1996 (marked P3/1V1) and has transferred his rights to one Pathmalatha Pathirana by deed No. 6891 dated 02-02-1997 (marked P4/1V3). The said Pathmalatha Pathirana has transferred her rights back to the original 1<sup>st</sup> defendant by deed No. 8256 dated 05-05-2000 (marked P5/1V4). The said original 1<sup>st</sup> defendant Steven Senanayake has again transferred his rights to Hemamalee Ranathunge, the added 3<sup>rd</sup> defendant in the action, by deed No. 7721 dated 04-12-2000 (marked P2/1V5) through his Power of Attorney holder the 2<sup>nd</sup> defendant, and she has transferred her rights to the added 4<sup>th</sup> defendant Chaminda Mahilal by deed No. 790 dated 01-01-2002 (marked P6/1V6).

It is from the said Chaminda Mahilal; the plaintiff has purchased this property by deed No. 9558 dated 05-08-2005 (marked P8/1V7).

The position of the plaintiff before the District Court has been that even before she purchased the property from Chaminda Mahilal, it was she who

possessed the land as the licensee of the said Mahilal, who is a relative of hers, and after she purchased the land, she obtained the full possession of the land. The plaintiff has averred that when she attempted to repair the northern boundary of her land, the 1<sup>st</sup> and 2<sup>nd</sup> defendants prevented her from doing so. It has been her position that when this dispute was referred to the Primary Court under the provisions of section 66 of the Primary Courts Procedure Act, the Court granted possession of the land to the 1<sup>st</sup> and 2<sup>nd</sup> defendants until the matter is finally determined by a competent Court, which resulted in her filing action to assert her rights.

The position taken up by the 1<sup>st</sup> and 2<sup>nd</sup> defendants had been that although the rights of the land were transferred by the original 1<sup>st</sup> defendant to Pathmalatha Pathirana by deed No. 6891 (marked P4/1V3), it was transferred only as a security for a loan obtained by him from her, and the said Pathmalatha Pathirana re-transferred her rights to the original 1<sup>st</sup> defendant after he settled the loan. It has been contended that after the said transfer, since the original 1<sup>st</sup> defendant was overseas for employment, the 2<sup>nd</sup> defendant, as the Power of Attorney holder of the 1<sup>st</sup> defendant, transferred his rights again to Hemamalee Ranathunge, the added 3<sup>rd</sup> defendant, as a security for a loan obtained from her. It has been the position of the 1<sup>st</sup> and 2<sup>nd</sup> defendants that since the added 3<sup>rd</sup> defendant wanted her money back in a hurry, the 2<sup>nd</sup> defendant sought the help of the added 4<sup>th</sup> defendant, Chaminda Mahilal, who settled the loan amount due to the added 3<sup>rd</sup> defendant by the 2<sup>nd</sup> defendant, and as a result, the deed No. 790 dated 01-01-2002 (marked P6/1V6) was executed in favour of the added 4<sup>th</sup> defendant.

It has been an admitted fact that the 2<sup>nd</sup> defendant has also signed as a witness for the said deed where the ownership was transferred to the added 4<sup>th</sup> defendant. It has been the contention of the 1<sup>st</sup> and the 2<sup>nd</sup> defendants that the said added 4<sup>th</sup> defendant transferred the rights of the land to the plaintiff without informing them and contrary to the agreement they had with him.

They have also contended that although the ownership of the questioned land was transferred several times, they never relinquished the possession of the land because it was not their intention to sell the land. They have denied that the plaintiff ever had any possession of the land.

It is on the above basis that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have pleaded that the plaintiff should hold the land on the basis of a constructive trust in their favour. Further, a declaration has been sought to the effect that they have a right to repay the loan amount obtained to the added 4<sup>th</sup> defendant, and to get a deed of transfer executed in their favour.

The learned District Judge of Attanagalla in the judgment dated 22-09-2016, after having considered the evidence led before the Court and the issues under which the trial proceeded, has determined that the plaintiff has proved her title to the land as required in a *rei vindicatio* action, and the 1<sup>st</sup> and 2<sup>nd</sup> defendants who claimed a constructive trust in favour of them have failed to establish their claim. Accordingly, the plaintiff has been granted relief as sought.

When this judgment was appealed against by the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the Provincial High Court of the Western Province holden in Gampaha, the learned Judges of the High Court, after having heard the parties, have determined that there exists no basis to interfere with the trial Court judgment.

It is very much clear from the impugned High Court Appellate judgment that although the learned District Judge of Attanagalla has not considered the essential requisites relating to a claim of a constructive trust in detail, the Judges of the High Court have well considered the same in order to determine the appeal.

It is after drawing their attention to the required legal provisions that the High Court has come to the same finding as the learned District Judge in relation to the counter claim of the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

## **Consideration of the Question of Law**

Since the question of law allowed has been a question relating to establishing attendant circumstances in terms of section 83 of the Trusts Ordinance, I will now proceed to consider whether there is any merit in the contention that the Provincial High Court of Western Province holden in Gampaha, while exercising its civil appellate jurisdiction, misdirected in determining that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have failed to establish attendant circumstances as required by law.

The relevant section 83 of the Trusts 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.**

What are the circumstances that can be considered as “attendant circumstances” in terms of section 83 of the Trusts Ordinance have been consistently considered and determined by our Superior Courts.

As considered correctly by the learned Judges of the High Court, **Basnayake, CJ. in Muttammah Vs. Thiyagarajah (1960) 62 NLR 559 at 564**, observed as follows;

*“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 the 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 are 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.”*

Considering the mode of proof in a case where a constructive trust is claimed in terms of section 83 of the Trusts Ordinance as against a paper title holder of a property, **Prasanna Jayawardena, P.C., J.** observed in the case of **Senadeerage Chandrika Sudarshani Vs. Muthukuda Herath Mudiyansele Gedara Somawathi (S.C. Appeal No. 173/2011) decided on 06.04.2017;**

*“It is clear that, the use of the words “it cannot reasonably be inferred consistently with the attendant circumstances” in Section 83, impose a requirement on the Court to satisfy itself that, the attendant circumstances clearly point to the conclusion that the owner did not intend to dispose of his beneficial interest. If the attendant circumstances unequivocally point to that conclusion, a Constructive Trust would have arisen. However, if the attendant circumstances fail to unequivocally establish that the owner did not intend to dispose of his beneficial interest or, in other words, there is a doubt as to the conclusion which can be drawn from the attendant circumstances, a Court should, usually, reject the claim that, a Constructive Trust exists.*

*Further, the use of the aforesaid words in Section 83 requires that, the Court applies an objective test when determining the intention of the owner from the attendant circumstances. Therefore, if the claim of a Constructive Trust is to succeed, the attendant circumstances must make it plainly clear to the ‘reasonable man’ that, the owner did not intend to part with his beneficial interest in the property. A secret or hidden intention to retain the beneficial interest will not do. The attendant circumstances must be such that they would have demonstrated to the transferee that the owner intended to retain the beneficial interest in the property. The transferee is judged here as standing in the shoes of the ‘reasonable man’. If a ‘reasonable man’ must have known from the ‘attendant circumstances’ that the owner intended to retain his beneficial*

*interest in the property, the transferee is deemed to hold the property upon a Constructive Trust in favour of the owner. However, if a 'reasonable man' may not have drawn such an inference from the attendant circumstances, the transferee holds the property absolutely, since no Constructive Trust can be deemed to have arisen.*

*Further, the burden of proof lies firmly on the person who claims a Constructive Trust to prove it. In this case, that is the plaintiff.*

*Thus, if the plaintiff is to succeed in this appeal, she should have furnished evidence which satisfies the Court that, it cannot be reasonably inferred from the attendant circumstances that she intended to part with her beneficial interest in the land.”*

The above cited authority as well as a plethora of judgments pronounced by our Superior Courts have clearly defined that what constitutes attendant circumstances in a given situation should be considered in relation to the facts and circumstances of each case in order to find whether a constructive trust has been created.

In my view, this becomes especially so when a person claims such a constructive trust has been created in terms of section 83 of the Trusts Ordinance; it would be against the accepted rights of ownership of a person who has paper title to a property as in the instant case. I am also of the view that attendant circumstances should not be considered only in favour of a person who is claiming a constructive trust but also in relation to a person who has clearly established his title to the property. I find that when considering such circumstances, the conduct of the parties would also become immensely relevant.

When applying the said legal considerations to the facts of the appeal under consideration, it is my considered view that the 1<sup>st</sup> defendant's transfer of his rights by deed No. 6891 (marked P4/1V3) to Pathmalatha Pathirana and said Pathirana re-transferring her rights by deed No. 8256 dated 05-05-2000 (marked P5/1V4) to the said Steven Senanayake cannot be considered as co-

related to the same Senanayake transferring his rights again to Hemamalee Ranathunga, the 3<sup>rd</sup> defendant in the action by deed No. 7721 (marked P2/1V5).

It is abundantly clear to me that the 1<sup>st</sup> mentioned transaction between Steven Senanayake and Pathmalatha Pathirana has been clearly in relation to a loan transaction. The fact that Pathmalatha Pathirana transferring the property back to Steven Senanayake establishes that fact with certainty.

In my view, if it is the contention of the 1<sup>st</sup> and 2<sup>nd</sup> defendants that the subsequent transfer of property in question to the 3<sup>rd</sup> added defendant was also as a security for a loan obtained, there must be evidence that can be acceptable to the trial Court to establish that fact independently to the earlier mentioned loan transaction.

The 1<sup>st</sup> defendant in his evidence before the trial Court has claimed that his wife, the 2<sup>nd</sup> defendant acting as the Power of Attorney holder for him, executed the deed No. 7721 (marked P2/1V5) in favour of Hemamalee Ranathunga in order to redeem the land, apparently from Pathmalatha Pathirana. The title deeds tendered to Court show that Pathmalatha Pathirana has re-transferred the land to Steven Senanayake on 05-05-2000, and the land has been again transferred in favour of the added 3<sup>rd</sup> defendant on 04-12-2000. This goes on to establish that the said transfer could not have been for the purpose of obtaining money to pay Pathmalatha Pathirana.

The 1<sup>st</sup> defendant in his evidence has failed to give any details as to the alleged loan transaction between the parties, which does not give any credibility to his claim that the transaction between him, through his wife acting as the Power of Attorney holder, and the added 3<sup>rd</sup> defendant, was done only as to provide security for a loan obtained.

The 2<sup>nd</sup> defendant in her evidence, after having described the previous transaction with Pathmalatha Pathirana, has claimed that she obtained money from the added 3<sup>rd</sup> defendant after transferring the land to her as the Power of Attorney holder of the 1<sup>st</sup> defendant who owned the land. Although

she has not specified the amount allegedly taken, she has claimed that she paid interest at the rate of Rs. 7,000/- per month. She has also claimed that the 3<sup>rd</sup> added defendant wanted her money back and Rs. 85,000/- in that regard, she obtained the said sum of money from the 4<sup>th</sup> added defendant and settled the loan amount, and as security for the money obtained from the 4<sup>th</sup> added defendant, deed No. 790 (marked P6/1V6) was executed by the 3<sup>rd</sup> defendant, who had the ownership of land at that time in favour of the 4<sup>th</sup> added defendant.

It was on the said basis she has claimed that 1<sup>st</sup> and 2<sup>nd</sup> defendants had no intention to pass the beneficial interest of the land to the 4<sup>th</sup> defendant, but he has transferred his rights to the plaintiff without informing them and in violation of the agreement they had.

Admittedly, when the 1<sup>st</sup> defendant transferred the land to Hemamalee Ranathunga, through his wife the 2<sup>nd</sup> defendant, she has handed over the original deeds relating to the previous ownership to the 3<sup>rd</sup> added defendant. Interestingly, when the 3<sup>rd</sup> added defendant transferred her rights to the 4<sup>th</sup> added defendant, it was the 2<sup>nd</sup> defendant who has signed as a witness to the transaction.

I find that this is not the usual behaviour of a person who part with the ownership of a land only as a security for a loan. There was no need to hand over the original deeds relating to the previous ownership if the transaction was only as a security for a loan. The 2<sup>nd</sup> defendant signing as a witness to the deed where the 3<sup>rd</sup> added defendant transferred her rights to the 4<sup>th</sup> added defendant shows that she was well aware that the 3<sup>rd</sup> added defendant was acting contrary to their agreement to have the land as security for a loan if they had such an agreement. However, it appears that both the 1<sup>st</sup> and 2<sup>nd</sup> defendants have done nothing about that.

The 4<sup>th</sup> added defendant has transferred his rights to the plaintiff more than three and a half years after he obtained rights to the land.

The proceedings before the District Court clearly establish the fact that the 1<sup>st</sup> and 2<sup>nd</sup> defendants had claimed the benefit of a constructive trust only after the plaintiff filed an action to assert her rights.

Besides knowing that the 3<sup>rd</sup> added defendant has transferred the rights of the land to the 4<sup>th</sup> added defendant, they should have come to know of the fact of the 4<sup>th</sup> added defendant transferring his rights to the plaintiff, at least after the dispute arose between them when the plaintiff attempted to erect the fence that separated the land sold to her by the 4<sup>th</sup> added defendant and the land held and possessed by the 1<sup>st</sup> and the 2<sup>nd</sup> defendants on a different title deed.

The judgment of the Primary Court pronounced in terms of section 66 of the Primary Courts Procedure Act has clearly stated that the parties should get their rights adjudicated by a competent Court. Hence, it is my considered view that knowing very well that their rights have been alienated contrary to the alleged agreement they had with the 3<sup>rd</sup> added defendant, it is they who should have gone before the District Court for a declaration in their favour on the basis of a constructive trust and also for an order for the cancellation of the deeds executed by the added 3<sup>rd</sup> and 4<sup>th</sup> defendants.

They have waited until the plaintiff instituted an action to assert her rights to claim a constructive trust as against her rights. I am of the view that this is an attendant circumstance that should be considered in favour of the plaintiff's ownership rights as against the claim of a constructive trust.

It was on an application made by the 1<sup>st</sup> and 2<sup>nd</sup> defendants, the 3<sup>rd</sup> and 4<sup>th</sup> added defendants have been made parties to the action, where they too have filed their answers and had given evidence in the case. None of the added defendants have given evidence to support the contention of the 1<sup>st</sup> and 2<sup>nd</sup> defendants as to the claimed constructive trust. Their evidence had been that the land was transferred to them for valuable consideration and the 4<sup>th</sup> added defendant transferred his rights to the plaintiff free of any constructive trust. In other words, they have supported the notion that the plaintiff was a *bona fide* purchaser.

The case of **S.C. Appeal No. 157/2011 decided on 04-04-2014** is a case where a constructive trust in terms of section 83 of the Trusts Ordinance was claimed. The defendant named in the District Court was not the person to whom the plaintiff had transferred the land but a person who purchased it from the person to whom the plaintiff of the action originally transferred the property.

After having considered the mode of proof of a constructive trust and the rights of a *bona fide* purchaser in such a situation, **Shiranee Tilakawardane, J.** held;

*“Having established that the respondent is a bona fide purchaser, it is well established law that the legal title has passed to a bona fide purchaser for value without notice equity refuses to intervene to preserve any rights held by the former beneficial owner of the property. This is further affirmed by section 98 of the Trusts Ordinance which states that*

***“Nothing contained in this chapter shall impair the rights of transferees in good faith for valuable consideration...”***

*Therefore, even if a constructive trust could have been established, a prayer to grant possession of the property to the petitioner will not stand as the property has already passed into the hands of a bona fide purchaser.”*

It appears that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have made an attempt to claim that the consideration mentioned in the deeds were much lower than the actual value of the land to make out a case that the reason for that the transactions were not actual sale of property in its proper sense.

However, it needs to be noted that in a transaction of this nature, it is a common practice to mention a lower value than the actual consideration passed between the parties in order to avoid proper stamp duty being paid. It appears clearly that the figure mentioned as the value has been continuously mentioned in the deeds. However, the evidence of the 1<sup>st</sup> defendant clearly

shows that the actual value under which the transactions took place between the added defendants was much higher than the figures mentioned as consideration in the relevant deeds.

In my view, the figures mentioned as the value of the deeds do not reflect any attendant circumstances in favour of the 1<sup>st</sup> and 2<sup>nd</sup> defendants' claim of a constructive trust.

When the claim that although the ownership of the land changed hands several times, they never relinquished their possession of the land is concerned, I find that the questioned land was a block of land adjacent to the block of land where the 1<sup>st</sup> and 2<sup>nd</sup> defendants have built their home. It is also an admitted fact that the plaintiff is also living on another block of land close to the questioned land, which shows that she has an interest in buying the land in question. Admittedly, there are no constructions on the land, which can be termed as a bare land although there may be some plantations on it. When considering the evidence as to not relinquishing the possession of the land despite several deeds of transfer being executed, that in itself does not establish any intention of the parties that would give credence to a claim of a constructive trust.

At the trial, the plaintiff has produced a document marked P7 where the 2<sup>nd</sup> defendant has signed as a witness. In the said document, the 3<sup>rd</sup> added defendant has accepted that she was paid Rs. 85,000/- by the 4<sup>th</sup> added defendant as the full and final settlement of the transaction value of deed No. 790 (marked P6/1V6), though it was not the sum mentioned as the value of the said deed.

Although the 2<sup>nd</sup> defendant has admitted this document and her signature when it was shown to her initially, she has retracted from it later, apparently after realising that the contents of the documents are against her claim of a constructive trust. On the contrary, the stand of the plaintiff had been that it was she who enjoyed the land, and only when she wanted to repair the boundary fence between the land she purchased and the land of 1<sup>st</sup> and 2<sup>nd</sup>

defendants, the dispute arose, which needs to be considered taking the evidence in its totality.

When considering all these pieces of evidence in its totality, it is very much clear that the attendant circumstances do not establish that the 1<sup>st</sup> and 2<sup>nd</sup> defendants did not intend to dispose the beneficial interest of the land but the relevant deed of transfer was executed in favour of the 3<sup>rd</sup> defendant only as a security for a loan.

I am of the view that the plaintiff, who is not the person against whom the constructive trust is claimed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants, is a *bona fide* buyer whose proprietary rights should not be allowed to be invalidated under the pretext of a constructive trust as claimed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

For the reasons as considered above, I answer the question of law under which leave to appeal was allowed in the negative.

Accordingly, the appeal is dismissed for want of merit. The judgments of both the Civil Appellate High Court as well as the trial Court are affirmed.

Having considered the facts and the circumstances, I order no costs.

**Judge of the Supreme Court**

**Yasantha Kodagoda, P.C., J.**

I agree.

**Judge of the Supreme Court**

**A.L. Shiran Gooneratne, J.**

I agree.

**Judge of the Supreme Court**