

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

In the matter of an appeal under and in terms of
Section 5C of the High Court of the Provinces
(Special Provisions) (Amendment) Act No. 54 of
2006.

SC / APPEAL / 06 / 2023

SC / HCCA / LA / 35 / 2021

CIVIL APPELLATE HC Kandy:

CP / HCCA / FA / 38 / 2017

DC Matale: L 6154

Dehikumuralage Chandradasa,
Dambuluoya Watta,
Kurunegala Road,
Pohoranwewa,
Dambulla.

PLAINTIFF

-Vs-

Suduhakurulage Lalitha,
Dambuluoya Watta,
Kurunegala Road,
Pohoranwewa,
Dambulla.

DEFENDANT

AND THEN BETWEEN

Dehikumuralage Chandradasa,
Dambuluoya Watta,

Kurunegala Road,
Pohoranwewa,
Dambulla.

PLAINTIFF – APPELLANT

-Vs-

Sudhakurulage Lalitha,
Dambuluoya Watta,
Kurunegala Road,
Pohoranwewa,
Dambulla.

DEFENDANT – RESPONDENT

AND NOW BETWEEN

Sudhakurulage Lalitha,
Dambuluoya Watta,
Kurunegala Road,
Pohoranwewa,
Dambulla.

**DEFENDANT – RESPONDENT –
APPELLANT**

-Vs-

Dehikumuralage Chandrasa,
Dambuluoya Watta,

Kurunegala Road,
Pohoranwewa,
Dambulla.

**PLAINTIFF – APPELLANT –
RESPONDENT**

Before: S. Thurairaja, PC, J
A.H.M.D. Nawaz, J &
Sampath B. Abyakoon, J

Counsel: Priyantha Alagiyawanna with Isuru with Dulmi Jayasinghe and
Sajani Piyatissa for the Defendant – Respondent – Appellant.

Chamara Nanayakkarawasam with Ridma Senarath for the
Plaintiff – Appellant – Respondent.

Argued on: 04.08.2025

Decided on: 19.03.2026

A.H.M.D. Nawaz, J.

1. It has long been the case that a party, whether as Plaintiff or Defendant, pleads that a deed of transfer, though absolute on its face, was executed solely as a security for a debt. In such instances, the Court is driven to look beyond the formal appearance of the conveyance to the underlying substance of the transaction. Where it is established that the transfer was intended as security for a loan, the transferee is deemed to hold the legal title as a constructive trustee for the benefit of the transferor, subject to the discharge of the underlying financial obligation.

2. The cardinal question before this Court is whether the circumstances surrounding the acquisition of **Lot No. 2** (depicted in the 3rd Schedule to the plaint) **in Plan No. 2877** are such that they attract the equitable obligations of a constructive trust, thereby precluding the Defendant – Appellant – Appellant from asserting absolute ownership of the corpus in question.
3. The Defendant – Respondent – Appellant (hereinafter referred to as 'the Defendant') has preferred an appeal against the judgment of the Civil Appellate High Court of the Central Province, sitting in Kandy, dated 11 May 2020. By the said judgment, the Civil Appellate High Court set aside the findings of the learned District Judge of Matale and entered judgment in favor of the Plaintiff – Appellant – Respondent (hereinafter referred to as 'the Plaintiff'). The Defendant now moves this Court to set aside the judgment of the Civil Appellate High Court and restore the original decree of the District Court. In other words, while the District Court held that the Defendant Lalitha did not hold the property in trust for the Plaintiff Chandradasa the Civil Appellate High Court held that the Defendant Lalitha held the property in trust in favour of Chandradasa.
4. The rival contentions concerning the corpus in dispute strike a well-worn chord, mirroring the plethora of land-centric litigations that routinely occupy the attention of this Court. In seeking to resolve the competing claims over the corpus in suit, this Court granted leave to appeal predicated upon the following questions of law;
 - (a) *Is the High Court judgment contrary to law?*
 - (b) *Can the Plaintiff claim a constructive trust while admitting the title of the Defendant by accepting part of the property described in the 2nd Schedule to the plaint by deed No. 7241 marked as P3?*
 - (e) *Has the High Court Judge erred in law by failing to consider that the Plaintiff through his plaint has prayed for two contradictory substantial reliefs?*

5. The law of Sri Lanka recognises constructive trust as a well established institution. Section 83 of the Trusts Ordinance reads as follows;

*“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”.*

6. It must be borne in mind that not every transfer of property will be subject to a constructive trust under Section 83. A transfer of property shall be deemed to create a constructive trust if, having regard to the **attendant circumstances**, it cannot reasonably be inferred that the transferor intended to part with the **beneficial interest** therein. The court must therefore scrutinize the environment of the transaction to determine if the transferor truly intended to divest himself of the beneficial interest of the property.

7. When confronted with such a situation the role of the Court is not to focus on the form of the instrument but on the substance of the arrangement and the true intention of the parties – see *Ehiya Lebbe v. Majeed*¹; *Valliammai Achi v. Abdul Majeed*²; *Dayawathie v. Gunasekera*³; *Premawathie v. Gnanawathie*⁴; *Thisanona v. Premadasa*⁵; *Piyasena v. Don Vansue*⁶.

8. Before proceeding to an analysis of the legal issues presented, it is apposite to set out a brief narrative of the factual landscape surrounding the corpus in suit.

¹ 48 NLR 357

² 48 N.L.R. 289

³ (1991) 1 Sri.L.R. 115

⁴ (1994) 2 Sri.L.R. 171

⁵ (1997) 1 Sri.L.R 169

⁶ (1997) 2 Sri.L.R. 311

9. The Plaintiff, Chandradasa, acquired a 1/10 undivided share of a parcel of land (depicted in the 1st Schedule to the plaint) from his mother, Miyulin Nona, by Deed of Gift No. 492 attested by Notary Munasinghe and executed on 13 May 1997 (marked P1). The Plaintiff and his nine siblings each held a 1/10 undivided share of the mother's property, and the family was in possession and enjoyment of the same.
10. The Defendant, Lalitha, is a neighbour whose property lies directly across from the subject land on the Dambulla-Kurunegala main road. The parties, together with the Plaintiff's siblings, had known one another for approximately twenty years, sharing a relationship of close familiarity and mutual confidence.
11. In or around the year 2004, the Defendant approached the Plaintiff and his family in a state of financial distress. Her husband was incarcerated, and she required documentary proof of assets in order to secure a financial facility from a finance company. According to the Plaintiff Chandradasa, she had requested the Plaintiff to transfer the property into her name solely for the purpose of showing assets to that institution, expressly promising that she would re-transfer the land to the Plaintiff upon obtaining the said facility. It is the version of the Plaintiff that acting in good faith and in the spirit of a long-standing relationship of trust, he agreed to do so.
12. Consequently, on 24 June 2004, the Plaintiff executed a Deed of Transfer No. 1853 (P2), attested by Notary Bandara, by which a 1/10 undivided share of the land (depicted in the 2nd Schedule to the plaint) was transferred to the Defendant. The consideration stated on the face of the deed was Rs. 25,000/= (Rupees Twenty-Five Thousand). The Notary who attested the deed, however, certified that the said sum of Rs. 25,000/= was not paid before her.
13. On 2 July 2005 and 10 July 2005, the Plaintiff and his siblings caused the land to be surveyed by Licensed Surveyor Anurathne Attanayake, resulting in Survey Plan No. 2877 (P4), titled "*Dambuluoya Watta*," the land being located

approximately 2.5 km from Dambulla town. The survey subdivided the mother's property into 26 lots. Pursuant to the subdivision, the 1/10 portion corresponding to the Plaintiff's share comprised **Lots 2, 12, and 18** (the "3rd Schedule to the plaint"). Of the three allotments, Lot No. 2 possesses the highest commercial utility, owing to its strategic position abutting the Dambulla-Kurunegala Main Road which is an arterial link of undeniable commercial significance in the region.

14. On 19 October 2006, the Defendant executed Deed of Transfer No. 7241 (P3), attested by Notary Ratna Divakara, by which she purported to re-transfer only Lots 12 and 18 to the Plaintiff. The consideration stated in that deed was also Rs. 25,000/= and the attesting Notary has certified that this sum was not paid before him. The deed of transfer P3 was not handed to the Plaintiff directly but was delivered to him through a police officer. The Defendant refused to re-transfer Lot 2, which she has retained.
15. The Plaintiff instituted action in the District Court of Matale and in his plaint he averred that ***he never had any intention of parting with the beneficial interest in his property***; that the transfer effected by Deed No. 1853 was a purely temporary arrangement founded entirely upon the Defendant's promise; and that a constructive trust thereby arose in his favour over all three lots, including Lot 2.
16. While giving evidence at the trial he affirmed that he had been in continuous possession of Lots 2, 12, and 18 at all times and that the Defendant never came to possess the land. It was only after sustained pressure by him and his family that the Defendant ultimately re-transferred Lots 12 and 18, but she steadfastly withheld Lot 2, the most valuable roadside lot. His evidence further disclosed that the deed of re-transfer (P3) was handed to him not by the Defendant in person but through a police officer, a circumstance highly unusual for a voluntary commercial transaction. All the Plaintiff's witnesses corroborated the foregoing evidence in its entirety.

17. The Defendant's evidence was characterised by a fundamental inconsistency and failed to demonstrate the attributes of a genuine purchaser. The following matters are of particular significance.
18. Firstly, In her formal pleadings (answering the plaint), the Defendant averred that she re-transferred Lots 12 and 18 to the Plaintiff because she "acted out of sympathy" on account of the difficulties he was experiencing with his siblings as a result of the transfer. Yet, when examined under oath at trial, she emphatically retracted this and stated; *"I had no need to sympathise with him"*, asserting instead that it was a purely commercial transaction for Rs. 30,000/=. This stark and irreconcilable shift between pleadings and testimony is devastating to her credibility.
19. Despite claiming to be a bona fide purchaser of a 2.5-acre parcel of prime commercial land, the Defendant was wholly unable to state the extent of the property, even approximately. Her answer, that it was a "huge land", reveals a complete absence of the knowledge one would not expect of a person who has genuinely purchased real property for valuable consideration.
20. The Defendant admitted that no money was passed before the Notary at the time of execution of the deed. She claimed the money was exchanged at her restaurant – an assertion that is uncorroborated and inherently improbable.
21. The Defendant sought to deny ownership of the land described in Survey Plan No. 2877 by stating she "claims no ownership over '*Dambuluoya watta*'" - which is the very name on the survey plan. Yet she simultaneously claimed ownership of a 1/10 portion of the land carved out of that same survey. This self-contradictory position, upon which more will be said below, is fatal to her case.
22. The Defendant's claim on her act of possession was limited to the "plucking of mangoes" - the vagueness and singularity of this alleged act of possession contrast starkly with the consistent, uninterrupted, and multi-witness corroborated possession of the Plaintiff.

23. The Defendant in her answer dated 3 July 2009 expressly admitted she has no legal right to the property in the 3rd Schedule, limiting her claim to the undivided 1/10 portion in the 2nd Schedule. This admission, made on oath in formal pleadings before the Court, is of the highest evidentiary value.
24. The learned District Judge of Matale, in his judgment dated 23 August 2016, dismissed the Plaintiff's action. The District Court rested its decision on two principal grounds: first, an alleged defect in the Deed of Gift P1 (the first page being blank and the identities of donor and donee being unclear); and second, an alleged failure by the Plaintiff to identify the corpus with sufficient legal certainty, arising from a discrepancy between the land name in Schedule 3 of the plaint ("*Wagapanaha Pallesiya pattu Siyambala wewa*") and the land name in Plan No. 2877 ("*Ibbankatuwa Pohoranwewa*").
25. While the District Court acknowledged in answering Issue No. 18 that the disputed Lot 2 is a portion of the 2nd Schedule property which is the very property transferred by Deed No. 1853, it nonetheless found the corpus unidentified by reason of the nomenclature discrepancy, and dismissed all issues in favour of the Defendant. Subsequently, the Plaintiff appealed to the Civil Appellate High Court of the Kandy Province.
26. The Civil Appellate High Court, in the Judgment dated 11 May 2020, allowed the appeal of the Plaintiff and set aside the District Court Judgment. The High Court held *inter alia* that:
- (i) *The learned District Judge erred in impeaching the validity of Deed P1 on grounds not challenged in the pleadings, it being a settled principle that what is not in issue need not be strictly proved;*
 - (ii) *The District Judge's finding that the corpus was unidentified was internally contradictory, given his own*

finding under Issue No. 18 that the disputed lot is a portion of the 2nd Schedule - the very land transferred by Deed No. 1853;

(iii) The Defendant's argument on identity of corpus was defeated by the doctrine of approbate and reprobate. She could not simultaneously assert the validity of Deed No. 1853 as the root of her own title while denying the identity of the land deriving from that very root;

(iv) The attendant circumstances; nominal consideration, non-passage of consideration before both attesting Notaries, the re-transfer on compassionate grounds, the Defendant's own admissions, established a constructive trust in favour of the Plaintiff.

Does there exist a constructive trust between the parties?

27. Given the central location the corpus in question is situated, such location attributes commands substantial commercial and market value. The proposition that such land was sold in 2004 for Rs. 25,000/= is, on its face, commercially absurd. No reasonable person in possession of his faculties would dispose of such property for such a sum unless motivated by an entirely different purpose, in this case, the accommodation of a trusted neighbour's temporary need.

28. A witness who contradicts herself between pleadings and sworn testimony on a material point cannot be regarded as a credible witness on that point. The Defendant's shift from "*sympathy*" or rather a transfer on compassionate grounds in her answer to "*I had no need to sympathise with him*" in her oral evidence is not a minor inconsistency, it is a complete reversal on the central question of why the re-transfer was made. If the original transaction were a genuine sale and the re-transfer a subsequent commercial purchase, there would be no room for sympathy to feature at all. The very invocation of sympathy in the original pleadings betrays

an underlying consciousness that there was a moral-and legal-obligation to return the property.

29. Moreover, the claim that Rs. 25,000/= was a fair price for 2.5 acres on the Dambulla-Kurunegala main road is a proposition this Court firmly rejects. The Defendant's inability to state the extent of the land she claims to have purchased which is a basic fact known to every genuine purchaser further exposes her claim as a fabrication. An owner of prime real estate does not describe her purchase as a "huge land" when asked for its measurements.
30. The surveyor's evidence that the Plaintiff had physically obstructed a prior survey of Lot 2 is particularly significant as it establishes that the Plaintiff was not merely claiming possession in the abstract but was actively on the land asserting physical control over it. Against this, the Defendant could not produce any credible evidence of possession. Possession, being a hallmark of beneficial ownership, cannot be lightly dismissed when it endures for years after the execution of the impugned deed.
31. The Defendant's alleged act of ownership; plucking mangoes, led not to her vindication but to a Magistrate's Court settlement. She was not resident on the land. She could not identify its boundaries or extent. She had never seen the survey plan for a property she claims to have purchased. These are not the attributes of a genuine owner. They are the attributes of a person who holds paper title to a land in which she has no genuine interest.
32. In paragraph 14 of her answer, the Defendant expressly admitted that she has no legal right to the property in the 3rd Schedule to the plaint, asserting rights only to the undivided 1/10 portion in the 2nd Schedule. This admission is of the utmost significance. It means that the Defendant, in her own pleadings, conceded that Lots 12 and 18 (the 3rd Schedule) did not belong to her, yet she had already transferred those lots back to the Plaintiff via Deed No.7241 (P3). If the Defendant had no right to the 3rd Schedule, and the 3rd Schedule includes Lots 2, 12, and 18, then it follows that she has equally no right to Lot 2 as against the Plaintiff.

33. The Defendant's central challenge to the identity of the corpus - that Plan No. 2877, which uses the name "*Dambuluoya Watta*," is unconnected to Deed No. 1853 is defeated by her own conduct. She herself executed Deed P3 transferring Lots 12 and 18, which are lots delineated in Plan No. 2877. She cannot simultaneously rely on Plan No. 2877 to assert the validity of Deed P3 (and thereby claim credit for having returned something) while denying that Plan No. 2877 identifies the land transferred under Deed No. 1853 (in order to avoid returning Lot 2). She cannot approbate and reprobate in the same breath.
34. While the Trusts Ordinance addresses constructing or resulting trusts in detail, it has long been accepted in Sri Lanka that constructive trusts arise by operation of law wherever it would be unconscionable for a person who holds the legal title to assert full beneficial ownership.
35. The Roman-Dutch law concept underlying this equitable intervention that equity will not permit legal form to be used as an instrument of fraud the maxim of *fraus omnia corrumpit* has been consistently affirmed in this Court. Where a party obtains the legal title to property by means of a promise or representation that the property will be returned or dealt with in a particular manner, equity fastens a constructive trust upon the conscience of that person and compels performance of the very obligation upon which the transfer was predicated.
36. The rule of exclusion in Section 92 is intended to preserve the sanctity of written instruments. While Proviso (1) to Section 92 of the Evidence Ordinance provides a gateway for the admission of parol evidence to prove a want of consideration, it does not serve as a license for mere conjecture. The Defendant – Appellant – Appellant, having asserted that consideration was settled at an instance prior to the notarial execution, bore the evidential burden to substantiate this claim with cogent material. In the absence of any corroborative testimony or documentary proof to bolster this oral assertion, the 'mischief' prohibited by Section 92 is triggered and the statutory protection of Section 92 remains undisturbed.

37. While the Prevention of Frauds Ordinance requires that transfers of land be effected by deed, it has never been the law in Sri Lanka that a formal deed is conclusive evidence of the nature of the transaction it purports to record. This Court has widened its scope and have consistently held that equity looks through the form to the substance, and that a constructive trust arising from the conduct and circumstances of the parties is not defeated merely by the existence of a formal instrument of transfer. The Prevention of Frauds Ordinance cannot be invoked as a shield for fraud.
38. The Doctrine of Approbate and Reprobate is well established in the jurisprudence of this country where it provides that a party cannot take contradictory positions with respect to the same set of facts or instruments. A person cannot approbate a deed that is, assert its validity and rely upon it for her own benefit while simultaneously reprobating it that is, denying its legal effect for the purpose of defeating another's claim arising from the same instrument. This is a rule of fair dealing fundamental to the administration of justice.
39. It is a cardinal principle of civil procedure in Sri Lanka that a party may not succeed on a ground not raised in the pleadings. The Plaintiff was entitled to present his deed before the Court without the burden of pre-emptively proving every element of a challenge that was never made. I am of the firm view that the learned District Judge has erred in law by deciding the non-existence of a constructive trust between the parties in question.
40. Further, learned District Judge's finding that the corpus is unidentified on account of a discrepancy in land names between the 3rd Schedule ("Siyambala wewa") and Plan No. 2877 ("*Ibbankatuwa Pohoranwewa*") cannot stand when the District Judge himself, in answering Issue No. 18, expressly found that the ***disputed Lot 2 is a subdivision of the 2nd Schedule property*** - the very property transferred by Deed No. 1853.

41. A court cannot simultaneously hold that a property is unidentified and that the disputed lot is a known subdivision of the transferred property. These findings are irreconcilably contradictory. The High Court was plainly correct to hold so. Therefore, the first question of law is answered against the Defendant – Appellant – Appellant.
42. The acceptance of a partial re-transfer does not amount to an admission that the original transfer was an absolute sale. A person who asserts a constructive trust over the whole of a property does not abandon or contradict that trust by taking possession of those parts which the trustee has already returned. Accepting Lots 12 and 18 back is entirely consistent with the Plaintiff's position that all three lots were held on constructive trust and that the Defendant has only partially discharged her obligation thereunder. The Plaintiff's claim is not that the Defendant had no title for she self-evidently had legal title but that she held that legal title for his benefit. The partial retransfer, far from destroying the trust, is the most powerful confirmation of it.
43. Indeed, the partial retransfer is itself an acknowledgment of the trust. As this Court has noted, the Defendant in her own pleadings explained the re-transfer to have taken place on compassionate grounds, a characterisation wholly inconsistent with the conduct of an absolute legal owner disposing freely of her own property. Her oral evidence that it was a commercial transaction for Rs. 30,000/= is internally contradicted by her own pleadings. Therefore, the second question of law is answered against the Defendant – Appellant – Appellant.
44. The Defendant argues that the Plaintiff's pleadings contain two contradictory reliefs - specifically, that the Defendant on one hand asserts a constructive trust, while on the other seeking a declaration of his own ownership. This Court, having examined the pleadings, does not accept this characterisation for the foregoing reasoning. The pleadings consistently aver (at paragraph 8(e)) that the Plaintiff *never intended to part with the beneficial interest*, and (at paragraph 9) that a *constructive trust exists*. These are not contradictory positions. A claimant

who pleads a constructive trust is, by definition, acknowledging that the legal title resides in the trustee while asserting that the beneficial ownership has at all times remained with him. The relief sought namely, an order compelling the Defendant to re-transfer Lot 2 is entirely consistent with a claim in constructive trust. There is no contradiction. This question of law is also answered against the Defendant – Appellant – Appellant.

45. Having carefully examined the evidence on record, this Court is satisfied that a constructive trust accordingly arose by operation of law upon the execution of Deed No. 1853, by which the Defendant holds and has at all times held Lot 2 as trustee for the beneficial ownership of the Plaintiff. The partial re-transfer of Lots 12 and 18 was not a voluntary commercial transaction but was made only under sustained pressure and constitutes partial performance of the trust obligation. It does not in any way extinguish the Plaintiff's right to Lot 2. Therefore, chain of title is unbroken and the identity of the corpus is unimpeachable.

46. In the circumstances, the appeal must be dismissed for the reasons set out herein. The Judgment of the Civil Appellate High Court of the Kandy dated 5 November 2020 is hereby affirmed. All reliefs prayed for by the Plaintiff – Appellant – Respondent are granted.

Judge of the Supreme Court

S. Thurairaja, PC, J.
I agree .

Judge of the Supreme Court

Samapath B. Abayakoon, J.
I agree.

Judge of the Supreme Court