

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

Dayapala De Silva,
No.478/4, Nugawela Road,
Negombo. (deceased)
Defendant

1. Ranaweera Arachchige Mary Agnes,
2. Asha Kumudini De Silva Jayawickrama,
3. Pradeep De Silva Jayawickrama,
All of No. 478/4, Nugawela Road,
Negombo.

Substituted Defendants-Respondents-
Appellants

SC/APPEAL/70/2020

WP/HCCA/NEG/19/2012 (F)

DC NEGOMBO 5484/L

Vs.

Welgama Aacharige Paalika
Priyadharshanie Silva,
No. 13/4, Raheemanabaad Road,
Periyamulla,
Negombo.

Plaintiff-Appellant-Respondent

Before: Hon. Justice A.L. Shiran Gooneratne
Hon. Justice Mahinda Samayawardhena
Hon. Justice Dr. Sobhitha Rajakaruna

Counsel: Saumya Amarasekara, P.C., with Hilary Livera, Zainab Ismail and Shanilka Perera for the Appellant.
Dinesh De Alwis with Ms. Dilini Withanage for the Respondent.

Argued on: 15.09.2025

Written submissions:

By the Appellant on 31.10.2025.

By the Respondent on 31.10.2025.

Decided on: 13.01.2026

Samayawardhena, J.

The plaintiff instituted this action against the defendant in the District Court of Negombo, seeking a declaration of title to the land described in the schedule to the plaint, ejectment of the defendant therefrom, and damages. The plaintiff's case was that she purchased the land from the defendant by deed marked P1. The defendant filed answer seeking the dismissal of the action on the ground that deed P1 was a nullity. In the alternative, he pleaded for a declaration that the plaintiff was holding the land in trust for him, and further prayed for an order directing the plaintiff to re-transfer the land upon acceptance of a reasonable sum within a reasonable time. His position was that he borrowed a sum of Rs. 150,000 from the plaintiff's mother and executed deed P1 believing it to be a mortgage given as security for the loan.

After trial, the learned District Judge refused to grant relief to the plaintiff and entered judgment for the defendant granting all the reliefs as prayed for in the answer. On appeal, the High Court of Civil Appeal of Negombo set aside the judgment of the District Court and entered judgment for the plaintiff as prayed for in the plaint. Hence, this appeal by the defendant. A previous Bench of this Court granted leave to appeal on the following two questions of law:

- (a) Did the High Court disregard the findings of fact made by the learned District Judge without giving reasons for doing so?
- (b) Did the High Court fail to take into consideration the attendant circumstances necessary to establish a constructive trust?

Section 83 of the Trusts Ordinance states that "*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.*"

Where the Court can infer, as contemplated by section 83, from the "attendant circumstances", namely the circumstances which precede or follow the transfer, that the owner did not intend to dispose of the beneficial interest in the property at the time the legal interest was transferred to the transferee, a constructive trust may be held to have been created. However, the law does not prescribe any general rule or fixed criteria by which the "attendant circumstances" sufficient to establish a constructive trust can be identified. Whether a constructive trust has in fact been created is a question of fact to be determined on unique facts and circumstances of the case. The burden of proving the existence of a constructive trust lies on the party asserting it, and the applicable test is objective rather than subjective.

At the trial, the plaintiff gave evidence and produced P1, the original deed of transfer dated 15.12.1994 by which she became the owner of the land, as well as the original title deed of the defendant dated 17.11.1983 marked P2. Although, by deed P2, the defendant had purchased an undivided 1/5 share of a land in extent of 1 acre and 24 perches, by deed P1 the defendant conveyed a defined portion of land in extent of 36.40 perches, identified by reference to a survey plan, in lieu of his undivided rights. The survey plan referred to in deed P1 had been prepared on 02.10.1984, approximately two months prior to the execution of deed P1. Although a copy of this survey

plan was initially marked as P3, it was subsequently withdrawn. Nevertheless, the plan clearly appears to have been prepared for the purpose of the sale.

These circumstances do not support the contention that deed P1 was executed merely as security for a loan transaction, but instead point to a clear intention on the part of the defendant to part with the property by way of an outright transfer.

The defendant was a retired police officer and not an ordinary lay person. He had served in the Police Department for a period of 22 years. With his experience and standing in society, he cannot be heard to say that he was unaware of the nature of the transaction. On the face of deed P1, it is not a mortgage, as he now claims it to be, but an outright transfer. If, notwithstanding this, as a police officer, he proceeded to execute the deed without appreciating its legal effect, he has only himself to blame.

Although the defendant claims that he paid interest on the alleged loan on three occasions to the plaintiff, there is no documentary evidence to establish that the plaintiff accepted any such payments.

On the other hand, according to the defendant's own evidence, the plaintiff's mother, Malani, was the moneylender, and she was present at the Notary's office at the time of the execution of deed P1. If that be so, it is unclear why the deed was written in the name of the daughter, and why any interest payments were allegedly made to the daughter rather than to Malani herself. Malani was not even an attesting witness to deed P1, nor was any attempt made to call her as a witness at the trial.

There is a temporary structure on the land constructed of clay. The defendant does not reside on the land, although there is some cultivation thereon.

The learned District Judge appears to have attached undue weight to perceived mistakes on the part of the Notary in the execution of deed P1, rather than examining whether the attendant circumstances established that the transaction was not an outright transfer but merely security for a loan. While non-compliance with section 2 of the Prevention of Frauds Ordinance renders a deed invalid, non-compliance with the Rules made for Notaries under section 31 of the Notaries Ordinance does not, as is expressly provided for in section 33 of the Notaries Ordinance. As already stated, the burden of proving the existence of a trust lay squarely on the defendant.

The fact that the learned District Judge granted all the reliefs prayed for in the answer, which are mutually contradictory in law and in practical terms unenforceable, itself suggests that he failed to adopt the correct legal approach in a case of this character. A Court cannot declare a deed to be a nullity and in the same breath hold that it is subject to a constructive trust. Nor can a Court simultaneously direct the plaintiff to re-transfer the land upon acceptance of a reasonable sum within a reasonable time. This, however, is precisely what the learned District Judge has done.

I answer the questions of law on which leave was granted in the negative and dismiss the appeal with costs.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court