IN THE SUPREME COURT OF DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA.

In the matter of an Application under Section 113 of the Companies Act No.17 of 1982.

SC(CHC)Appeal case No. 11/2014

CHC Case No. HC/CIVIL/02/2011/CO

1. K.K.D.T.Dharmaratne,
2. Mrs.D.P.M. Dharmaratne,

Via Santa Maria Dell,
Angelo No.32,48018,
Faensa (RA), Italy,
Presently,
"Sridhara",
Dambugahawatta,
Hokandara Road,
Pannipitiya

Petitioners.

-Vs-

1. Palm Paradise Cabanas Limited,
No.66, Norris Canal Road,
Colombo 10.

2. Gonaduwage Upali Perera Gunasekara, (Now deceased),
No. 19/2, Sunandarama Road,
Kalubowila,
Dehiwala.

2A. Sunethra Gunasekara,
No. 19/2, Sunandarama Road,
Kalubowila,
Dehiwala.
Presently,
No.16, Centre Road,
Borupana,
Ratmalana.

3. Registrar of Companies,
Department of Company Registrar,
"Samagam Medura"
D.R.Wijewardena Mawatha,
Colombo 10.

Respondents.

AND NOW

In the matter of an Appeal against the judgment dated 28th November 2012 of the High Court of the Western Province Holden Civil and Commercial Jurisdiction.

1. K.K.D.T.Dharmaratne,

2. Mrs.D.P.M.Dharmaratne,
"SriDhara",Dambugahawatta,
Hokandara Road,
Pannipitiya.

Petitioner – Appellants

1. Palm Paradise Cabanas Limited,
   No.66, Norris Canal Road,
   Colombo 10.
2. Gonaduwage Upali Perera Gunasekara, (Now deceased),
   No. 19/2, Sunandarama Road,
   Kalubowila,
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3. Registrar of Companies,
   Department of Company Registrar,
   "Samagam Medura"
   D.R.Wijewardena Mawatha,
   Colombo 10.

Respondents - Respondents

Before: Hon. Sisira J De Abrew J

Hon. Murdu N. B. Fernando J

Hon. E.A.G.R. Amarasekara J.

SC(CHC)Appeal Case No. 11/2014.

Counsels: Romesh de Silva PC with Manjuka Fernandopulle for Petitioner Appellants, Uditha Egalahewa PC with Amarnath Fernando for the 1st Respondent Respondent, Chandaka Jayasundara PC with Rehan Almeida for 2nd Respondent Respondent.

Argued On: 10.02.2020

Decided On: 20.05.2021

E.A.G.R.Amarasekara J.

This action was originally instituted by the Petitioner – Appellants (hereinafter sometimes referred to as the Appellants) against the 1st, 2nd and 3rd Respondents – Respondents (hereinafter sometimes referred to as the 1st, 2nd, and 3rd Respondents respectively) in the District Court of Colombo by petition dated 20th July 1999, in terms of the Section 113 of the Companies Act No. 17 of 1982, *inter alia* on the basis that;

- The initial paid up capital of the 1st Respondent Company was 43,100 shares and the 1st Appellant was allotted 13,400 shares, the 2nd Appellant was allotted 8600 shares and the two Foreign Collaborators were allotted 10,550 shares each- (vide paragraph 9 of the petition).
- Due to the circumstances more fully described in their Petition to the District Court, in 1988 the Appellants decided to resign from the Board of Directors of the 1st Respondent Company and the said Foreign Collaborators paid a sum of Rs. 75,000 to the Appellants as compensation and soon after that the Appellants left Sri Lanka for employment in Italy. (vide paragraphs 25,26 and 27 of the petition)
- However, the 1st and 2nd Appellants decided to keep their shares in the 1st Respondent Company. (Vide paragraph 28 of the petition)
- From March, 1989, 1st Appellant visited Sri Lanka only for short breaks and in such instances 1st Appellant visited the 1st Respondent Company and was also informed that the 1st Respondent Company was running at a loss. (vide paragraph 31 of the petition)

- In 1999, when the Appellants, through their Attorneys – at – Law, searched the entries of the Register of Companies to effect a transfer of land allotted to him by a decree in a Partition Case bearing No. 2218/P of DC, Tangalle, which is the a land occupied by the 1st Respondent Company as a part of the Hotel, the 1st Appellant was informed that according to the annual returns filed in the Register of Companies on 20th March 1989, the Appellants were no longer shareholders of the Company and the 2nd Respondent (now deceased) was holding shares aggregating to 22,000. (Vide paragraphs 37 and 38 of the petition).
- The Appellants have not sold their shares to the 2nd Respondent or anyone and the Appellants had no intention whatsoever to sell them to the 2nd Respondent or to any other person and the Appellants have not signed any transfer form transferring their shares to anyone.
- The Appellants have not been paid any consideration for the said purported transfer of the said shares. (vide paragraph 40 of the petition).

Having alleged that no such transfer of shares had taken place, the Appellants sought the intervention of court to declare that the Appellants continued to be the owners of said shares and, as such, continued to be the members of the 1st Respondent Company and further that the register be rectified accordingly.

The 2nd Respondent filed its statement of objections dated 25th February 2000 to this application in the District Court and sought for dismissal of the Appellants' action. The 2nd Respondent in his aforesaid statement of objections took up certain preliminary objections and without prejudice to the preliminary objection, inter alia pleaded that;

- Appellants and the Foreign Collaborators are acting in collusion with the objective of depriving the 2nd Respondent of the shares. (vide paragraph 5 of the statement of objections).
- Appellants have wrongfully and unlawfully not made the said Foreign Collaborators as parties to these proceedings with a view of suppressing and misrepresenting facts and documents to court. (vide paragraph 5 of the statement of objections).

- 1st Appellant had 13,400 shares and the 2nd Appellant had 8,600 shares and the entirety of the said shares was transferred to the 2nd Respondent for valuable consideration (vide paragraph 6 of the statement of objections).
- Appellants having mismanaged the company, when the Foreign Collaborators and the Foreign Investment Advisory Committee (FIAC) pressurized them, decided to sever relationship with the company and to have nothing to do with the company- (vide paragraph 12 of the statement of objections.).
- Thus, the 2nd Respondent was approached to purchase the shares of the Appellants and to run the business of the company and, accordingly an agreement was reached to transfer shares- (vide paragraph 12 of the statement of objections).
- Pursuant to such agreement a meeting of the Board of Directors was held on 5th January 1988 at which the 2nd Respondent was also present, and at the said meeting the transfer of shares by the Appellants was notified to the Board of Directors, and the Board of Directors approved the transfer of the Appellants' shares to the 2nd Respondent - (vide paragraph 13 of the statement of objections).
- The share certificates issued in favor of the 2nd Respondent was in the office of the 1st Respondent premises and all books and documents are now in the control and custody of the Foreign Collaborators and their Nominee Directors - (vide paragraph 13 of the statement of objections).
- From 5th January 1988, the 2nd Respondent has exercised all rights, powers and entitlements in the 1st Respondent Company as its major shareholder- (vide paragraph 13 of the statement of objections).

Although the application of the Appellants was dismissed by the District Court on preliminary objections taken on the basis that the Petitioners were not entitled to recourse to 'summary procedure' to make this application, the Supreme Court by judgment dated 18th August 2008 set aside the order of the Court of Appeal which confirmed the said order of the District Court and referred this matter back for inquiry on the pleadings already completed. However, with the enactment of the new Companies Act No. 07 of 2007, this case was transferred from the District Court to the Commercial High Court as jurisdiction over company matters are presently vested with the Commercial High Court - (Vide Paragraphs 5 to 8 of the

petition to the Supreme Court). During the said process, the 2nd Respondent died and the 2A Respondent was substituted in the place of the 2nd Respondent.

Accordingly, the matter was taken before the Commercial High Court. At the trial into the said application, parties recorded 8 admissions and 31 issues out of which, issues Nos. 1-6 were framed by the Appellants, issues Nos. 7-8 were raised by the 1st Respondent and issues Nos. 9-31 were raised by the 2nd Respondent. The 1st Appellant tendered his evidence by way of an affidavit dated 7th February 2011 and marked documents "P1" to "P19" in evidence and also gave oral evidence in open court. Appellants also called Mr. Sudath Wickramaratne, AAL to give evidence. At the conclusion of the said evidence, Appellants closed their case reading in evidence the documents marked P1 to P19. Only the objection to P9 was re-iterated. The 1st Respondent has tendered the affidavit dated 30th May 2012 of Mr. W.F.E.S. Fernando and the Appellants have informed the Court that they would not cross-examine on the said affidavit. Thereafter, 2A Respondent has closed her case reading in evidence documents marked "2R1" to "2R3" – vide Journal Entry dated 26.09.2012.

At the conclusion of the trial, the parties filed written submissions. The Learned High Court Judge of Colombo exercising commercial jurisdiction delivered his judgment on 28th November 2012 and, by the said judgment, dismissed the Appellants' action with costs.

Being aggrieved by the said decision of the learned High Court Judge, the Appellants have filed this direct appeal before this Court.

As for the case placed before the learned High Court Judge, the main matter to be decided was whether the Appellants transferred their shares to the 2nd Respondent or not. This being a matter that had to be decided on facts, this court has to be careful before taking any decision to interfere with the decision of the learned judge who heard the evidence of the witnesses since it was held in **Alwis Vs Piyasena Fernando (1993) 1 S L R 119** that it was a well-established principal that finding of primary facts by a trial judge who hears and sees witnesses are not to be lightly disturbed on appeal. It was also held in **Fradd Vs Brown& Company Ltd. 20 N L R 282** that it is rare that a decision of a judge of a first instance upon a point of fact purely is overruled by the Court of Appeal. Where the controversy is about veracity of witnesses, immense importance is attached not only to the

demeanour of witnesses but also the course of trial, and the general impression left on the mind of the judge of the first instance, who saw and noted everything that took place in regard to what was said by one or other witness. Therefore, in this regard this court has to see whether the decision of the learned High Court Judge is perverse or one that could not have been reached as per the evidence led at the trial or whether the learned High Court Judge did not consider the relevant facts and or consider the irrelevant facts in coming to his conclusions[1] or whether he applied wrong principles of law in evaluating evidence in coming to his conclusions. This court is also mindful of the fact that an appellate court is entitled to interfere with the findings on facts of the trial judge if they are based not so much on credibility of the witness as on wrong inferences from documents- vide **Peiris Vs Fernando 62 N L R 534.**

Now, I would attend to the reasons and findings of the learned High Court Judge to see whether he has erred and whether this Court shall interfere with his findings.

As said before, the Learned High Court Judge has identified that the matter to be decided in the action was whether the Appellants transferred their shares to the 2nd Respondent or not. Further he has observed;

- That as per the evidence given by the 1st Appellant himself, that in the formation of the 1st Respondent Company, the 2nd Appellant had not contributed in any manner and the money invested by the 1st Appellant had been recouped within one year by the Foreign Collaborators who invested 5.6 million in the venture – (as per the evidence at pages 10- 13 of the proceedings dated 22.02.2011 and page 4 of the High Court judgment. Further the contribution contemplated here seems to be the contribution towards the capital).
- That as per the document marked P5(a), there had been a court case between the Appellants and the Foreign Collaborators in which the Foreign Collaborators sought to cancel the shares issued to the Appellants without paying for them and also to remove the Appellants from their positions as the Directors of the said company. (The said removal was so prayed in case

[1] Naturupana Tea and Rubber Estates Ltd. Vs Perera 66 N L R 135 and Fonseka Vs Kandappa (1988) 2 S L R 11

the Appellants do not contribute to the Capital as per the conditions laid down by the FIAC).

- That after the issuance of an interim order preventing the Appellants from doing anything regarding the Company without prior approval of the Foreign Collaborators, in 1988, out of court settlement had been arrived at between the Appellants and the Foreign Collaborators, whereby the Foreign Collaborators made a payment of Rs.75000/= as "compensation" to the 1st Appellant and the Foreign Collaborators had withdrawn the case with liberty to file a fresh action if necessary.- (as per the evidence at pages 14 & 15 of the proceedings dated 22.02.2011 and proceedings dated 08.03.1988). (This court observes that here the word compensation has been used by the learned High Court Judge within inverted comas indicating that it was not used there by the learned High Court judge in its pure dictionary meaning but may be to indicate that the Appellants had used it to connote what they received as a compensation.).
- That the 1st Appellant admitted in evidence that, in a meeting held on 05.01.1988, which he says not a board meeting, he resigned from the Board of Directors and from his positions as Chairman and Managing Director and after that he stopped having day to day control of the Company and that the aforesaid Rs.75000/= was paid at the said meeting – (as per the evidence at pages 18,19 of the proceedings dated 22.02.2011 and page 13 of the proceedings dated 21.06.2011.)
- That Minutes of a Board Meeting dated 05.01.1988 had been marked by the 1st Appellant as P18 stating that it is a fraudulent document and, as borne out by the said Minutes, the Appellants have transferred their shares for a consideration of Rs.75000/=.
- That the 1st Appellant had said in evidence that he resigned at the time of the meeting and, with regard to the surrendering of the share certificate, he had said that he might have said that he surrendered them during the meeting but, with regard to the transfer of shares he had stated that he never transferred them. – as per the evidence at page 13 and 14 of the proceedings dated 21.06.2011.
- That the 1st Appellant had stated that he lost the original share certificate when they were kept in office of the Tangalle hotel soon after the interim

order was issued against him in the said Homagama District Court case. – (as per the evidence at page 39 of the proceedings dated 22.02.2011.)

- That as per the evidence of the 1st Appellant, he has stated that he and his wife the 2nd Appellant left Sri Lanka after the meeting held on 05.01.1988 and came back to Sri Lanka in 1999, and had nothing to do with the Company during that 10 years, however, during that time, he came to Sri Lanka annually for two months on holiday from Italy and visited the hotel and spent several days there in the hotel – (as per the evidence at pages 16 and 39 of the proceedings dated 22.02.2011).
- That the 1st Appellant admits that he did not receive any notices in relation to affairs of the company and was never informed of the changes that have taken place with regard to the change of company secretaries as well as new appointments of directors etc. – (as per evidence at pages 22 and 34 of the proceedings dated 22.02.2011).

This court cannot find fault with the above observations made by the learned High Court Judge as they are supported by the evidence led and the documents marked during the trial. On the other hand, trial judge had the opportunity to observe the 1st Appellant when the 1st Appellant gave evidence with regard to P18, while admitting and denying different parts that it contained while alleging it a fraudulent document.

The above observations indicate that the Foreign Collaborators withdrew their case against the Appellants after the "out of court settlement" whether the said settlement happened in a board meeting or some other meeting. It is more probable that it was due to the fact that they received substantial relief from that settlement similar to what they have prayed from the court. As observed by the learned High Court Judge, the Foreign Collaborators sought to cancel the shares issued to the Appellants without paying for them and also to remove the Appellants from their positions as the Directors of the said company through that action. P18 reflects both these reliefs, however with a payment of Rs. 75000/= to the Appellants. Further, if the 1st Appellant had lost his share certificate just after the interim order, his statement in evidence which gives the impression that he might have said that he handed over the share certificates in a meeting held on 05.01.1988, which also took place just after the interim order, creates a contradictory situation. It appears that such facts and circumstances led the

learned High Court Judge to disbelieve the position of the Appellants that P18 is a fraudulent document. It is true that the then Chairman has not signed P18. What section 141(1) of the Companies Act No.17 of 1982 required was to keep the minutes of the directors' meetings to be entered in a book kept for that purpose. As per sub sections 141 (2) & (3) such minutes purported to be signed by the chairman of the meeting or the next succeeding meeting became evidence of such proceedings until the contrary is proved. It appears if the chairman's signature was placed it became *prima facie* evidence. Similar Provision is found in section 147 of the present Act No.7 of 2007. Thus, it does not seem that the placing of the signature of the Chairman was a must but it gave better evidential value making the minute prima facie evidence until the contrary was proved. Thus, in my view, mere fact that it does not contain the signature of the Chairman does not make it a fraudulent document. There was no evidence to show that this minute was not entered in the books kept for that purpose. In fact, other evidence led at the trial indicate that the decisions of this meeting were carried out by the 1st Respondent Company since the 2nd Respondent seems to have become a Director from that time onwards and the registers with the Company Registrar was accordingly changed – vide P13. As per section 75 of the said Act, without a proper instrument of transfer, a company could not register a transfer. As per P18, it is evidenced that Foreign Collaborators were represented in the said purported Board Meeting. From 1988, said Foreign Collaborators or their representatives in the board seems to have considered the 2nd Respondent as a Director and shareholder since his position in the Company has not been challenged by them as per the evidence led. Even though, the Appellants averred in paragraph 43 of the Petition filed in the District Court as well as in the paragraph 23 of the affidavit filed in lieu of evidence in chief, that the Foreign Collaborators informed their son that they do not know how the shares were registered in the name of the 2nd Respondent, no evidence has been led to established that fact. On the other hand, Foreign Collaborators were there from the beginning of the business and, as per the Article of Association marked P1(a), no share transfer is valid or effectual unless the Board of Directors approve or give consent to it- vide article7. As such, this impression given in the petition that even the Foreign Collaborators do not know how the 2nd Respondent became a shareholder cannot be relied upon. P14 and P15 only reveal that the Appellants had inquired from the Company Secretary appointed in 1996 whether relevant

documents in respect of the share transfer are with them and the consideration passed for the said transaction, and they received a reply to the effect that the said Company Secretary was not involved in preparation of the documents and registering any transfer referred to in the letter sent by the Appellants. It appears no attempt has been taken by the Appellant to inquire from the Company Secretary of the relevant time or lead evidence of that secretary.

Further in the Petition filed and in paragraph 27 of his affidavit filed as evidence in chief, the 1st Appellant avers that P18 is a fraudulent act of the 2nd Respondent in collusion with the Foreign Collaborators. Even for the sake of argument one assumes that there would have been a fraud with regard to P18, it had to be fraud by the then directors as it appears to be a minute of the board meeting and, as said before, without the sanction of the Board of Directors no share transfer could have been effected. The application of the Appellant was to rectify the register and not to claim consideration for the shares. It appears that all the people who are responsible for the decision were not made parties since, no Foreign Collaborator or their representative Director is made a party to the action. In other words, fraud and change in the entries in relevant books have been alleged without making the other necessary persons, who are responsible for the relevant changes in the entries in the books as well as for the alleged fraud, parties to the action. It must be noted that the 2nd Defendant who was dead and gone by the time the trial was taken became a Director only from the date of P18 and the others who took part in the purported decision in P18 were not made parties to reveal their side of the story or defend their action. Further as per the Appellants' version settlement after the interim order in the District Court case was with the Foreign Collaborators and not with the 2nd Respondent. If there was any misdeed in the guise of that settlement as alleged, main perpetrators should be the Foreign Collaborators. It is apparent that at a time when the 2nd Respondent and the Foreign Collaborators were involved in litigation, the Appellants have filed this action in the District Court - vide P17.

The learned High Court Judge, due to his observation, as per the evidence given by the 1st Appellant, on the lack of interest shown by the 1st Appellant during the period from 1988 to 1989 with regard to the affairs of the Company, has come to the conclusion that, if the 1st Appellant was the majority shareholder as he claims, his such behavior was beyond comprehension. This is not an improbable

conclusion. Especially, the 1st Appellant once being the Chairman and the Managing Director, should have known that there shall be general meetings annual or otherwise of which shareholders shall be given notices. If he was the majority shareholder, he would have shown some interest with regard to his rights throughout these ten years. He naturally would have taken interest in the change in the managements etc. especially when he takes up the position that the Company was run by directors who were appointed illegally – vide page 22 of the proceedings dated 22.02.2011. The 1st Appellant's explanation seems to be that he had no further interest in the Company after his resignation- vide page 35 of the proceedings dated 22.02.2011. The 1st Appellant further has stated, that when he visited the hotel during his holidays, he came to know that the Company was running at a loss – vide paragraph 17 of his affidavit and page 34 of the proceedings dated 22.02.2011. It is the human nature to take interest when his rights and investment are at risk. Further the evidence indicates that the 1st Appellant successfully involved in a partition case during the time he was employed in Italy. Most probably he would have acted through an agent. If he had shares and was the major shareholder, it is more probable to expect that such a person would take necessary precautions or interest to protect and enjoy his rights as a shareholder but he has not done so. The Counsel for the Appellants in his submissions argues that learned High Court judge failed to take into consideration that the absence from Sri Lanka was a perfect explanation for lack of participation in the Company's affairs. It is true that the management of a company is basically with the Board of Directors. However, evidence is that the 1st Appellant came to Sri Lanka for 2 months every year and, as mentioned above if they are the major shareholders, they would have taken interest to see how the company was running by purported illegally appointed directors without giving even a notice of general meetings. Thus, this court cannot find fault with the learned High Court judge for disbelieving the 1st Appellant in that aspect.

As per the impugned Judgment, the learned High Court Judge has not accepted the assertion of the appellants that they did not transfer their shares and also disbelieve the 1st Appellant's evidence that their share certificates were lost when they were kept in the office of the Tangalle hotel soon after the interim order in the Homagama District Court case, which was issued in 1987. If it was lost, stolen or destroyed, a vigilant person would have naturally taken steps to get a duplicate

certificate and if necessary, to make a complaint to the proper authorities as opined by the learned High Court Judge. Not taking such steps by the Appellants, especially when the 1st Appellant agreed through an 'out of court settlement' to withdraw from the management of the Company, creates a serious doubt with regard to the reliability of their story. On the other hand, if it was lost, how can the 1st Appellant say that, when he was question about what is mentioned in P18 with regard to the surrendering of the share certificate, he might have said that- vide page 14 of the Proceedings dated 21.06.2011. To say so during the meeting, he should have the share certificate when the said out of court settlement reached and, there should have been an agreement to transfer shares.

In the said backdrop, the learned High Court Judge has considered that the Appellants' inability, without acceptable reasons to produce the share certificates, which is prima facie evidence of their entitlements to the shares if they are the shareholders, against them, stating that initial burden is on the Appellants to prove what they say. In this regard the learned Counsel for the Appellants in his submissions argues that the production of share certificate has no relevancy to the issue whether the Appellants transferred their rights or not. It is true that it is common ground that the Appellants held the impugned shares prior to 05.01.1988 but the issue No. 7 has been raised to query whether the Appellants are entitled to file and maintain an action in terms of the Section 113 of the Companies Act No.17 of 1982. Said Section 113 enable a person aggrieved or a member of the Company or the Company to make an application to court to rectify the register. To show the Appellants have status to file and maintain the action, they must show that either they are members or aggrieved persons as at the date of application. In that regard the share certificates become prima facie evidence to show their status to file the action, namely their entitlement to shares as at the date of filing the action.

For the reasons given above, this Court cannot come to the conclusion that the Learned High Court judge's findings with regard to the story of lost share certificates by the Appellants are not supported by the evidence led or, in other words those findings are perverse. Further this court cannot hold that the learned High Court judge erred when he considered the non-production of the share certificates in evidence against the Appellants.

This Court observes that, if P18 is a forged document made to transfer the shares of the Appellants, it is difficult to think that the purported fraudsters would have mentioned things such as the absence of the 2nd Appellant and proxy given by her and the inappropriateness of such conduct in P18. Such inclusions in P18 tend to show that it reflects what really happened on the relevant occasion.

The Appellants have called Mr.Sudath Wickramarathne AAL to say that he did not participate in any of the Board Meetings of the 1st Respondent Company. This may be due to the name Sudath Wickramasinghe AAL appears in P18. This will not make anything clear since the name appears in P18 is Sudath Wickramasinghe and not Wickramarathne, since not being a party to that meeting Mr. Wickramarathna cannot tell that said name is wrong or one Wickramasinghe did not attend the meeting.

The learned High Court Judge has not accepted the position of the Appellants that Rs.75000/= was paid as compensation for resigning from the Board of Directors and, has considered it as payment for the transfer of shares. Even though, the 1st Appellant take up the position that there was an out of court settlement, there was no document containing the terms of settlements other than P18. It is only the word of the 1st Appellant against what is mentioned in P18. No officer from the 1st Respondent Company was summoned to show that it is not a board minute as per their books. Other Party to the out of court settlement, namely the Foreign Collaborators or their representatives were not summoned or made parties to the action as party to P18. As observed by the learned High Court judge, subsequent conduct of the Appellants does not support the view that they remained as major shareholders after they resigned from their director posts in the Company.

It is argued that no evidence was led and, share certificate or transfer forms were not submitted on behalf of the 2nd Respondent. To place evidence on behalf of the Respondent, first the Appellants, being the petitioners, should have proved their case. It is pertinent to note that the 2nd Respondent's position in the objection was that those documents are not with him but in the office the 1st Respondent premises. However, he was not among the living at the time the trial was taken up. 2A Substituted Respondent was not a party to P18 or the purported out of court settlement referred to by the Appellant to give evidence in that

regard. The 2nd Respondent's position in the objection was that this is an action filed in collusion with the Foreign Collaborators and as such, the 2A substituted Respondent may not have been in a position to call Foreign Collaborators in support of the case of the 2nd Respondent. In such a situation no adverse inference shall be made against the 2nd Respondent for not calling additional witnesses but for only relying on the documents and the facts revealed in cross examination. In fact, on behalf of the 1st Respondent an affidavit of an officer of the Company Secretary to the 1st respondent Company has been filed as per the journal entry dated 30.07.2012 and the Appellants counsel appeared to have said that no cross examination would be done on that affidavit evidence- vide journal entry dated 26.09.2012. Said affidavit confirms the content in P15 which has been written in reply to P14 sent on behalf of the Appellants. The said letter P15 confirms that even by 16th May 1996, the Appellants' names did not appear as shareholders in the books of the company. It is pertinent to note after getting this information through P15, the Appellants have not taken any steps to inquire from the secretaries who were at the time the said alleged transfer took place or to summon the said secretary or any board member of that time to show that P18 is a forgery or a document containing false information. Even though, the Appellants allege that P18 is fraudulent act done in collusion with the Foreign Collaborators, Appellants have averred that Foreign Collaborators have informed the Appellants that they do not know how the Appellants' names were removed from the register- vide paragraphs 53, 42 and 43 of the original petition to District Court. In such a situation, if it is true, the Appellants could have called the Foreign Collaborators to prove their version which they did not do. On the other hand, as mentioned before, for the Respondent to place evidence, the Appellants must have proved their case.

This court also observes that the 2nd Appellant has not given evidence to say that she did not sell or transfer her shares.

For the foregoing reasons, this court is of the view that the Appellants failed to prove their case before the High Court. Hence the learned high court judge's decision not to accept Appellants' version that P18 is a fraudulent document and, not to accept the Appellants as shareholders of the 1st Respondent Company while refusing to grant reliefs as prayed by the Appellants as indicated by the reasons given in the impugned judgment cannot be termed as perverse or not

supported by evidence. Further, this court cannot find that the learned High Court Judge did take into account irrelevant considerations or did not take into account relevant considerations or failed to apply correct principals of law in dismissing the Appellants' action.

Hence this appeal is dismissed with costs.

Judge of the Supreme Court.

Sisira J de Abrew, J.

I agree.

Judge of the Supreme Court

Murdu N.B. Fernando, P C J.

I agree.

Judge of the Supreme Court