

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

1. Yoganathan Ranjithkumar
2. Wife Venitta
3. Selvarani widow of Sinnatty Christo

SC(HC)C.A.L.A.NO. 367/16

HCCA NO: 34/2015

DC/Jaffna Case No: Land/616

All of Maatha Kovilady,
Point Pedro Road,
Kopay South,
Kopay

PLAINTIFFS

Vs.

1. Kidinan Rajah
2. Wife Amalaranjini
3. Mary Vijitha daughter of Sinnathurai
All of Semmankundu,
Matha Kovil Lane,
Kopay South,
Kopay

DEFENDANTS

AND

*In the matter of an appeal under
Section 754(1) of the Civil Procedure
Code read with Section 5A (1) of the
Act No. 19 of 1990 as amended by Act
No. 54 of 2006.*

1. Yoganathan Ranjithkumar
2. Wife Venitta

3. Selvarani widow of Sinnatty Christo
All of Maatha Kovilady,
Point Pedro Road,
Kopay South,
Kopay

PLAINTIFFS - APPELLANTS

Vs.

1. Kidinan Rajah
2. Wife Amalaranjini
3. Mary Vijitha daughter of Sinnathurai
All of Semmankundu,
Matha Kovil Lane,
Kopay South,
Kopay

DEFENDANTS – RESPONDENTS

AND NOW

***In the matter of an appeal for leave
to Appeal to the Supreme Court
under Section 54 of the Act No. 54 of
2006***

- 1.Yoganathan Ranjithkumar
- 2.Wife Venitta
- 3.Selvarani widow of Sinnatty Christo
All of Maatha Kovilady,
Point Pedro Road,
Kopay South,
Kopay

**PLAINTIFFS – APPELLANTS -
PETITIONERS**

Vs.

1. Kidinan Rajah (deceased)
2. Wife Amalaranjini
3. Mary Vijitha daughter of Sinnathurai
All of Semmankundu,
Matha Kovil Lane,
Kopay South,
Kopay

DEFENDANTS - RESPONDENTS -
RESPONDENTS

BEFORE : **S. THURAIRAJA, PC, J**

JANAK DE SILVA, J

K. PRIYANTHA FERNANDO, J

COUNSEL : K.V.S. Ganesharajan with Mangala for the Petitioner.

Sachchindra De Zoysa with M.W. Selvananiam for the 1st to 3rd Defendant – Respondent – Respondent.

ARGUED &
DECIDED ON: **09/01/2024**

JANAK DE SILVA, J

Court heard the submissions of both counsel and we are inclined to grant leave on the questions of law (g), (h), (i) of law at paragraph number 11 of the Petition dated 26/07/2016.

g) Did the High Court of Civil Appeal err in law in coming to the conclusion that the property was transferred to Vethanayagam by Deed No. 893 as a security for the said loan and that the said Vethanayaam was holding the property in constructive trust for the 2nd Defendant's father totally ignoring

the fact that the said Deed No. 893 is a Deed of Transfer for valuable consideration and not for a security?

- h) Did the High Court of Civil Appeal err in law in coming to the conclusion that the said Vethanayagam transferred the property to his son and the said son transferred the property to the 3rd Plaintiff dishonestly and fraudulently totally ignoring the fact that as the lawful owners of the property they are entitled to transfer the property any person?
- i) Did the High Court of Civil Appeal misdirect itself in not considering the fact that the District Court erred in law in setting aside the Deed of Transfer No. 6013 dated 29/04/2003 attested by S. Kanagaratnam, Notary Public which was not before the District Court and that the District Court erred in law in setting aside the Deed which was not before the court at the relevant time?

After careful consideration, with the consent of the parties, the Court acts under Rule 16 (1) of the Supreme Court Rules. The parties move that they are not filing written submissions and moves Court to take a decision. They made submissions on the substantive matter.

We have carefully considered the submission made by both counsel and we decide as follows.

The Plaintiffs – Appellants – Petitioners (Appellants) filed this action before the District Court of Jaffna seeking *inter alia* a declaration that the 2nd Appellant is entitled to the property more fully described to the schedule to the Plaintiff, a judgment and order to eject the Defendant -Respondent – Respondents (Respondents) from the property and damages.

The Respondents filed answers denying the claim of the Appellant and sought *inter alia* a judgment and order that the land in dispute was held in trust by Iyadurai Vethanayagam and thereafter his son for the sum of Rupees 10,000/= and interest thereon, a declaration that Deed No. 6013 and 7172 are null and void.

After trial, the learned District Judge dismissed the action of the Appellants and entered judgment in favour of the Respondents and granted the relief sought in prayers (a), (b,) (c) and (d) of the answer.

Aggrieved by the said Judgment, the Appellant appealed to the Civil Appellate High Court which affirmed the judgment of the District Court.

The case for the Respondent is that Iyadurai Vethanayagam held the property in issue in trust on behalf of the Respondents. They also rely on Deed No. 893 dated 22/10/1980. According to this Deed, Sinnattambi Christo transferred the property in issue to Iyadurai Vethanayagam. On a plain reading of this Deed, it is an absolute transfer.

There is no mention of any trust being created in favor of the Respondents or their predecessor in title. The position of the Respondentx is that their father Sinnathurai lent a sum of Rupees 30,000/= to Sinnaddy Christo. However, such a transaction does not enable the Respondent to set up a plea of constructive trust when Sinnattambi Christo has by Deed No. 893 made an absolute transfer in favor of Iyadurai Vethanayagam.

Moreover, Deed No. 6013 has not been tendered in evidence during the trial. In these circumstances, a declaration declaring the said Deed No.6013 to be null and void does not arise.

Upon an examination of the evidence led before the District Court, it is clear that the Appellants have failed to prove a constructive trust and accordingly, a declaration declaring Deed number 7172 to be null and void does not arise.

For the forgoing reasons, we are of the view, that the Learned District Judge as well as the Judges of the Civil Appellate High Court erred in law in upholding the judgment of the Learned District Judge.

For the forgoing reasons, we answer the questions of law (g), (h) and (i) in the affirmative.

For the forgoing reasons we, set aside the judgment of the learned Civil Appellate High Court in so far as granting the relief prayed for in prayers (b), (c) and (d) of the answer in favour of the Respondent is concerned.

Appeal partly allowed. Parties shall bear their costs.

JUDGE OF THE SUPREME COURT

S. THURAIJAJA, PC, J

I agree

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J

I agree.

JUDGE OF THE SUPREME COURT