

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

R. Upendra Perera,
No. 76/3, Fonseka Place, Colombo 5,
Presently of
No 7, Duwa Pansala Road,
Kalutara South.
(Administrator of the Estate of
deceased Raigamage Arnolis Perera)

C.A. No. 890 / 96 F

Plaintiff

Vs.

D.C. Kalutara No. 4019 / L

1. Loku Liyanage Premawardena Alwis,
2. Loku Liyanage Amendra Padmajeewa
Premawardena,
3. Loku Liyanage Thanoja
Padmakanthie Premawardena,
All of No. 219, Old Road,
Kalutara South.

Defendants

And Now Between

R. Upendra Perera,
No. 76/3, Fonseka Place, Colombo 5,
Presently of
No 7, Duwa Pansala Road,
Kalutara South.
(Administrator of the Estate of
deceased Raigamage Arnolis Perera)

Plaintiff-Appellant

Vs

1. Loku Liyanage Premawardena Alwis,

2. Loku Liyanage Amendra Padmajeewa Premawardena,
3. Loku Liyanage Thanoja Padmakanthie Premawardena,
All of No. 219, Old Road,
Kalutara South.

Defendnt-Respondents

BEFORE : UPALY ABEYRATHNE J.

COUNSEL : H. Withanachchi with Keerthi Sri Gunawardena
for the Plaintiff Appellant.
Gamini Marapana PC with Navin Marapana for
the Defendant Respondents

ARGUED ON : 06.10.2011

DECIDED ON : 11.01.2012

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) in his capacity as the Administrator of the estate of deceased Arnolis Perera, instituted the said action against the Defendant Respondents (hereinafter referred to as the Respondents) in the District Court of Kalutara seeking a declaration that the premises described in the schedule to the plaint belongs to the said estate and the ejectment of the Respondents from the premises referred to above. The Appellant's position was that the said Arnolis Perera who was the owner of the said premises

had permitted one of his nieces, Padma and her husband, the 1st Respondent to occupy the same with leave and licence and notwithstanding the termination of the said leave and licence the 1st Respondent had failed to handover the said premises to the Appellant.

The 1st Respondent in his amended answer took up the position that his wife Padma was the daughter of said Arnolis Perera's sister, upon a marriage proposal made by said Arnolis Perera he got married to said Padma, Arnolis Perera agreed to give the said property and a sum of Rs. 5000/- as dowry, on the occasion of their marriage said Arnolis Perera handed over a piece of paper in order to mark the handing over of the deed of the said premises to them as a part of the dowry, after their marriage on 24.02.1961 they went in to the occupation of the said premises and since then they have been in possession of the said property up to date. On the said basis the 1st Respondent contended that the said property was held by the said Arnolis Perera in trust for the benefit of the 1st Respondent and Padma.

At the hearing of this appeal both Counsels conceded that the main issue to be dealt with is the question of constructive trust. The learned Counsel for the Respondent contended that under Section 2 of the Trust Ordinance a Constructive Trust must be held to exist since Section 2 empowers our courts to apply the principles of equity for the time being in force in the High Court of Justice in England.

The learned Counsel for the Appellant contended that the Trust Ordinance is exhaustive and hence the principles of equity for the time being in force in the High Court of Justice in England have no force in our law.

Section 2 of the Trust Ordinance stipulates that “All matters with reference to any trust, or with reference to any obligation in the nature of a trust law arising or resulting by the implication or construction of for which no specific provision is made in this or any other enactment, shall be determined by the principles of equity for the time being in force in the High Court of Justice in England.”

In the case of *Ranasinghe Vs Fernando* 24 NLR 170 Bertram CJ stated that “On this latter point I observe a further expression of opinion by Lord Atkinson in *Adaicappa Chetty Vs. Caruppen Chetty* [(1921) 22 N. L. R. 417] I see no reason, however, to vary the opinion to which I have previously given expression that the more drastic terms of our Ordinance do not prevent the application of the English equitable doctrine. Moreover, that English equitable doctrine has been applied in a series of cases in our own Courts of which *Gould Vs. Innasitamby* [(1994) 9 N. L. R. 177] is the best known and which are binding upon us.”

In the case of *Abeyesundera Vs. Ceylon Exports Ltd* 38 NLR 117 (Privy Council) Their Lordships were clearly of opinion that said section makes the English law applicable to trusts or obligations in the nature of a trust arising or resulting by the implication or construction of law which has not been provided for by the Ordinance.

Hence it is important to look at the principles of equity for the time being in force in the High Court of Justice in England. In the case of *Hussey Vs. Palmer* (1972) 1 WLR 1286 at 1289 and 1290 Lord Denning MR stated that “Although the plaintiff alleged that there was a resulting trust, I should have thought that the trust in this case, if there was one, was more in the nature of a constructive trust: but this is more a matter of words than anything else. The two

run together. By whatever name it is described, it is a trust imposed by law whenever justice and good conscience require it. It is a liberal process, founded upon large principles of equity, to be applied in cases where the legal owner cannot conscientiously keep the property for himself alone, but ought to allow another to have the property or the benefit of it or a share in it. The trust may arise at the outset when the property is acquired or later on as the circumstances may require. It is an equitable remedy by which the court can enable an aggrieved party to obtain restitution.”

In the Hussey’s case, His Lordship Denning MR, having considered the cases of Falconer Vs Falconer (1970) 1 WLR 1333, Heseltine Vs Hesltine (1971) 1 WLR 342, Cooke Vs head (1972) 1 WLR 518 and Binions Vs Evans (1972) Ch 359, further observed that “In all those cases it would have been quite inequitable for the legal owner to take the property for himself and exclude the other from it. So the law imputed or imposed a trust for his or her benefit.”

In the present case according to the evidence of the 1st Respondent Arnolis had given his sister’s daughter Padma in marriage to the 1st Respondent. At the wedding the title deed of the property in dispute had been handed over to the 1st Respondent on a tray symbolically signifying that the property was the dowry. There had been an announcement made at the wedding ceremony that the premises in suit were given as dowry to Padma. The new couple, soon after their homecoming in February 1961, had entered in to occupation of the new house constructed in the said premises and continued to occupy the said house as their own until the dispute arose in 1989.

The Appellant in his evidence at page 142 of the brief had admitted that Padma went in to occupation of the new house. The Appellant in his evidence at page 121 said that Arnolis Perera had given the premises to the 1st Respondent and Padma on a temporary basis. But the Appellant had not expressed anything about the alleged leave and license. On the other hand even after the death of Padma in 1981 Arnolis Perera had not proceeded to terminate the alleged leave and license given to the 1st Respondent and Padma.

When I consider the said evidence of this case in the light of the said judicial pronouncements I am of the view that even there is no reference to a trust, but, since it appears an obligation in the nature of a trust which does not fall within the ambit of Chapter IX of the Trust Ordinance, it is open to the court to look at and apply the principles of equity for the time being in force in the High Court of Justice in England and declare that the Appellant should hold the property in trust for the Respondents.

In the said circumstances I see no reason to interfere with the judgment of the learned Additional District Judge dated 07.10.1996. Therefore I dismiss the appeal of the Appellant with costs.

Appeal Dismissed.

Judge of the Court of Appeal