

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

M. W. Somawathie Botheju
No. 357/1, Artigala Road,
Meegoda.

PLAINTIFF

C.A 890/1998 (F)
D.C. Homagama 1332/L

Vs.

Kulatunga Mudalige Hemakanthi
No. 362, New Road,
Meegoda.

DEFENDANT

AND NOW BETWEEN

Kulatunga Mudalige Hemakanthi
No. 362, New Road,
Meegoda.

DEFENDANT-APPELLANT

Vs.

M. W. Somawathie Botheju
No. 357/1, Artigala Road,
Meegoda.

PLAINTIFF-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: Ajith Munasinghe for the Defendant-Appellant

Daya Guruge with R. Wimalaweera for the Plaintiff-Respondent

ARGUED ON: 18.07.2012

DECIDED ON: 08.11.2012

GOONERATNE J.

Action was filed in the District Court of Homagama by the Plaintiff against the Defendant-Appellant for

- (a) Cancellation of deed No. 168, on payment of Rs. 30,000 to Defendant with interest.
- (b) Cancellation of deed No. 767
- (c) Direction to Registrar of Lands to cancel the said deeds.

The case of the Plaintiff is that a sum of Rs. 30,000 was borrowed from Defendant's mother Alice Nona to spend for Plaintiff's husband's illness. At the time of borrowing money transfer deed No. 168 (P2) was executed on Alice Nona's requests. Plaintiff aver that the transaction was a pure money lending transaction, though a transfer deed was executed. Plaintiff also made application P7 to the Debt Conciliation Board on the

basis of a mortgage to Alice Nona and a loan transaction. Plaintiff relies on the principle of *Laisio Enormis*, and also that the transaction was a loan transaction.

Defendant-Appellant on the other hand take up the position that plaintiff cannot ask for the above relief i.e *Laisio Enormis* and loan transaction. Appellant stress that the transaction is nothing but outright sale. Parties proceeded to trial on 13 issues.

The learned District Judge has considered and given his mind to the market value of the property. Deed P4 refer to the consideration as Rs. 30,000/-. However the valuation report marked P6 gives the value as at 1986, Rs. 175,000/-. P6 also refer to the fact that the land in question is in close proximity to the main road. Particulars of the building, it's extent are also described and valued. As such there is no basis to challenge the report P6 which had been supported by oral evidence of the valuer. Trial judge has also *inter alia* considered the matters pleaded in paragraph 11 of the answer and the continuation in possession by Plaintiff in the property in dispute. This court does not wish to interfere with the primary facts dealt by the trial judge. Unless for cogent reasons, those primary facts need not be disturbed.

1993(1) SLR 119.

In a claim for relief on the ground of Laisio Enormis the price which it is sought to challenge must be ascertained and certain a Law Rec .56. The difference in value must exist at the time of execution of deed 20 NLR at 93.

In all the above circumstances I see no real basis to disturb the judgment of the trial judge. The judgment of the learned District Judge is affirmed. Appeal dismissed without costs.

Dismissed.

JUDGE OF THE COURT OF APPEAL