

**In the Court of Appeal of the Democratic
Socialist Republic of Sri Lanka**

CA 767/96A (F) and 767/96B (F)

DC Horana : 3853/L

1. N D Rajanetti,
2. W.D.Chandra
Fernando nee
Jayaratna
Gamini Malwana all
of Sri Chandrasekara
Mawatha, Panadura
Defendant-Appellant

Vs

**Harischanra P
Jayasooriya,
Kotalawala,
Bandaragama
Plaintiff-Respondent**

Before : A.W.A. Salam, J.

Counsel : Rohan Sahabandu for the defendant-appellants and Maithri Premalal for the 4th defendant-appellant.

Argued on : 08.09.2010

Decided on : 27.01.2011

A.W. Abdus Salam, J.

The plaintiff filed action and sought a declaration against the 2nd and 3rd defendants that they hold the subject matter in question in trust for his benefit. The defendants filed their answers denying the allegation. The 1st defendant denied that there was any agreement as averred in the plaint and that the subject matter is being held in trust for the plaintiff. The other defendants filed their answers claiming rights in the subject matter on the strength of certain deeds by which they have acquired rights in the land.

The matter proceeded to trial on the admissions that the 1st defendant became the owner of the land described in schedule 2 of the plaint on deed No 1929 dated 7th January 1989 and the said land was divided into 12 lots as per plan No 3874 made by RW Fernando, Licensed Surveyor. The matter of the dispute proceeded to trial on 8 issues suggested by both parties. At the trial the plaintiff gave evidence and closed his case reading in evidence documents marked P1 to P 33. Thereafter, the 1st defendant gave evidence and closed his case on his behalf and that of the 2nd and 3rd defendants reading in evidence 1 D1 and 1D 2. The 4th and 6th defendants did not give evidence nor did they produce any the documents. At the conclusion of the trial the learned district judge held interalia that the 1st defendant has violated the informal agreement to sell the land and sold the allotments of land in question to people other than the plaintiff in breach of the said

informal agreement. In the circumstances the learned district judge held that the land in question had been held in trust by the 2nd and 3rd defendant in favour of the plaintiff.

In coming to this conclusion the learned district judge has failed to appreciate the provisions of the Trust Ordinance which interalia are intended to protect the *bona fide* purchases against the existence of a trust. He has also failed to appreciate that P4 is an informal agreement which could not have been properly received in evidence or considered for arriving at a decision in this case. The learned district judge has also failed to appreciate that at the most the agreement between the plaintiff and the 1st defendant was an agreement to sell land and therefore the concept of trust is not applicable to the dispute. In any event the learned district judge has failed to appreciate and/or evaluate the attended circumstances as contemplated in the Trust Ordinance to ascertain the existence of a trust. The learned district judge has also not evaluated the evidence regard being had to the principles applicable to the concept of trust.

In the circumstances, the judgment entered by the learned district judge appears to me as perverse and also ended up in a miscarriage of justice. As such, the impugned judgment of the learned district judge is set aside. The learned district judges is directed to hear the case afresh.

There shall be no costs.

Judge of the Court of Appeal