

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

Case No: CA 131/96

D.C. Mount Lavinia Case No: 1955/L

Lindamulage Deepthi Lalitha De Silva  
No. 20/5, St. Peter's Road,  
Moratuwa.  
Plaintiff

Vs.

Ranaweeraarachchige Seetin  
No. 246, Manthrimulla, aththidiya,  
Dehiwala.  
Defendant.  
AND

Ranaweeraarachchige Seetin  
No. 246, Manthrimulla, aththidiya, Dehiwala.  
Defendant-Appellant.

Vs.

Lindamulage Deepthi Lalitha De Silva of No.  
20/5, St. Peter's Road, Moratuwa.  
Plaintiff-Respondent.

BEFORE : A.W.A . Salam, J

COUNSEL : Ranjan Suwandarathne with Anil Rajakaruna for the Defendant-Appellant and Anusha Gunasekara with Jayanthi Rodrigo for the Plaintiff-Respondent.

ARGUED ON: 14.05.2012.

WRITTEN SUBMISSIONS TENDERED ON: 29.11.2012

DECIDED ON: 29.01.2013.

Abdus Salâm J.

This is an appeal from the judgment dated 04.04.1996 of the district judge of Moratuwa, whereby the plaintiff was declared entitled to the subject matter of the action, viz. the land and premises more fully described in schedule 4 and the right to use the roadway set out in schedule 5 of the plaint.

As narrated by the plaintiff in her plaint and later followed up in the presentation of her case, the original owner of the larger land of which the subject matter of this action has been subsequently carved out was owned by one Subramaïam. One of the salient features in the case was the admission made by the defendant that he became the owner of the subject matter of the action on a chain of title pleaded in paragraphs 2 to 7 of the plaint by virtue of deed No 14889 dated 18 March 1985.

The defendant admitted having placed his signature on the deed by which the plaintiff claimed that she became the owner of the land, the ownership of which is now in dispute. The positions maintained by the defendant in his answer inter alia is that the deed by which the plaintiff claimed that she became the owner of the subject matter (deed No 14889-PI) was a conditional transfer whereby the plaintiff advanced a sum of money to the defendant by way of a loan transaction.

Quite remarkably the defendant neither raised the benefit of a constructive trust or that the deed in question a mere sham. The issues raised by the plaintiff related to the question of title and

whether she is entitled to relief as prayed for in the plaint. As opposed to that the defendant raised six issues which centred round the defendant's prescriptive title to the subject matter and the alleged loan transaction.

The learned trial judge at the end held *inter alia* that the acknowledgement of title by the defendant has deprived him of the right to set up prescriptive title and dismissed the claim made by the defendant to the subject matter and gave judgment for the plaintiff.

The central issue in this case is whether the deed of transfer P1 conveys a valid title to the plaintiff free of any encumbrances or any other conditions. As pointed out earlier the defendant has neither raised the question of a constructive trust arising from P1 or that the transaction in question as reflected in P1 is a mere sham. It is elementary principle of evidence that in terms of sections 91 of the Evidence Ordinance when the terms of a contract, or of a grant, or of any other disposition of property is required by Law to be reduced to the form of a document, no evidence shall be given in proof of the terms of disposition of property except the document itself, or secondary evidence of its contents.

In terms of Section 92 of the Evidence Ordinance when the terms of any such contract, grant, or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument,

or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from its terms.

Proviso (1) to the above Section deals with facts that may be proved to invalidate any document. Quite remarkably, the exceptions to the rule of prohibition against the permissibility to lead oral evidence are evidence to show fraud in the execution of the document in question, intimidation, illegality, want of due execution, want of capacity. Another prominent exception emerge from Section 92 is the permissibility to prove the existence of any separate oral agreement as to any matter on which the document is silent, and which is not inconsistent with its terms,

It is appropriate, at this stage to find out exactly the defence put forward by the defendant. The defence version as made out in the course of the trial, reflects in issue No 3, 4, 5 and 6. The cumulative effect of these issues are suggestive of a loan transaction whereby the defendant had allegedly obtained a sum of Rs. 50,000/- from the plaintiff at a monthly interest rate of 6% and that the defendant had continuously paid the interest over a period of time. These issues also raised the question of prescriptive title of the defendant as against the plaintiff, by reason of his long and continuous possession despite the deed of transfer in question. The purported exemption relied by the defendant in this case is clearly outside the permissible exceptions provided in the Evidence Ordinance, namely that the deed in question P1 is not an absolute transfer but a conditional transfer arising from a loan transaction. As stated earlier the defendant has not raised the existence of a constructive trust or that the document is a mere

sham. In the circumstances the reasoning adopted by the learned district judge does not appear to me as blameworthy to interfere with his decision.

In the circumstances, this court has no option but to dismiss the appeal. There shall be no costs.

Judge of the Court of Appeal

NR/-