

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

CA Case No: 13/1998(F)

DC Colombo Case No: 6213/ZL

Duleep Mangala de Silva
289 2/1,
Dean's Road,
Colombo 10.

-Defendant-Appellant-

Vs.

Maris Primali Dilanthi
No: 48,
Muhandiram Lane,
Dehiwala.

-Plaintiff-Respondent-

C.A. 13/1998

D.C.Colombo Case No.6213/ZL

BEFORE : K.T.CHITRASIRI, J.

**COUNSEL : Nihal Jayamanne PC with Anandalal Nanayakkara
and Dilhan de Silva Attorneys-at-Law for Defendant-Appellant**

Plaintiff-Respondent is absent and unrepresented.

ARGUED &

DECIDED ON : 21.02.2013

K.T.CHITRASIRI, J

When this matter was mentioned on the last date namely 21.11.2012, it had been recorded that the notice issued on the plaintiff-respondent (hereinafter referred to as the plaintiff) was returned with an endorsement that she is not found at the given address. The said notice had been sent to the address given in the petition of appeal. Notice issued on the Registered Attorney of the plaintiff also had been returned stating that he is dead. Accordingly this appeal is taken up for hearing in the absence of the plaintiff-respondent.

This is an appeal seeking to set aside the judgment dated 17.11.1997 of the learned District Judge of Colombo. By that judgment, the learned District Judge decided the case in favour of the plaintiff as prayed for in the prayer to the plaint dated 24.11.1989.

Learned Counsel for the defendant-appellant (hereinafter referred to as the defendant) submits that the learned District Judge had not considered the matters pertaining to the issues bearing Nos. 8, 9 and 14 raised by the defendant. He further submits that had the learned District Judge properly evaluated the evidence relating to those issues, he would have dismissed the action of the plaintiff having answered the said issues 8, 9 and 14 affirmatively.

Aforesaid three issues are on the basis of fraud alleged to have committed by the plaintiff with the knowledge of the Notary who executed the deeds upon which the claim of the plaintiff had been made. Committing fraud had been raised on the basis that:

- The signatures found on the two deeds marked P4 and P7 have been placed on blank forms which were intended to use as the deeds upon which the plaintiff claim title to the land in dispute;
- The two signatures of the Notary found on the Deed of Transfer and on the Agreement to Sell are visibly different to the naked eye even though both the deeds had been executed by one and the same Notary namely, Susantha Mahes Munasinghe.

I will now consider whether the learned District Judge had properly evaluated the evidence relating to the said issues suggested by the defendant in order to ascertain whether any fraud had been committed when executing the two deeds marked P4 and P7. The defendant in his evidence had clearly stated that he

was asked to sign on blank sheets and he did so. (Page 168 of the brief) This evidence of the defendant had not been controverted at any time. The witness Lesley Gratian Fernando, who had been working as the Manager in the Institution by the name of T.M.L.Associates where the deeds in question supposed to have executed, had said that large number of blank deeds were given for him to obtain signatures of various vendors whose deeds were executed by the Notary Munasinghe. (Page 197 of the brief)

Even the plaintiff herself in her evidence had admitted that she had been working as one of the clerks at T.M.L. Associates owned by Susantha Mahes Munasinghe who is the Notary who executed the two deeds P4 and P7. (Page 78 and 79 of the brief) On one hand, she being a person who had been working with witness Lesley Fernando at T.M.L.Associates should have known the practice of the Notary Munasinghe as described by the said witness Fernando and on the other hand, had the plaintiff disputed the practice of obtaining signatures on blank forms that were being used to execute deeds, Counsel for the plaintiff who appeared in the lower Court should have questioned the witness Fernando on this aspect. No such evidence is found in the original record.

The plaintiff herself in her evidence had admitted that the two signatures alleged to have placed on the two deeds marked P4 and P7 by the Notary Munasinghe are clearly different to each other. She, without any hesitation had said so even though those signatures are of the one and the same person. (Page 108 of

the brief) Moreover, she had said that she did not intend to call the Notary or the two witnesses to the deeds in order to prove proper execution of the two deeds P4 and P7 though those were marked subject to proof at the trial.

The evidence referred to above shows that the deeds on which the plaintiff claim title had been completed or written after the signatures were obtained on the blank forms prior to the placing of the signatures of the Notary. Furthermore, two signatures of the Notary who executed the two deeds upon which the plaintiff claim title are visibly different to each other even according to the plaintiff even though those two signatures are of the same Notary namely S.M.Munasinghe.

Such evidence alone is sufficient to prove fraud committed at the time, the two deeds P4 and P7 were executed. Even though the evidence mentioned above had been referred to by the learned District Judge in his judgment, he has not evaluated the said evidence and its possible outcome. Also, it is incorrect on the part of the learned District Judge to have disregarded the consequences of the evidence in relation to the fraud alleged to have committed at the time the two deeds P4 and P7 were executed. Had he addressed his mind on those lines, learned trial Judge would have decided the issues 8, 9 and 14 affirmatively.

In view of the above, it is my opinion that the learned District Judge had misdirected himself when answering the issues 8, 9 and 14 even though adequate evidence was available to answer those issues affirmatively. Against this

background, the plaintiff cannot claim title to the land in question particularly when there is evidence to establish fraud.

For the aforesaid reasons, I set aside the judgment dated 17.11.997 of the learned District Judge of Colombo.

Accordingly, this appeal is allowed with costs.

Appeal allowed

JUDGE OF THE COURT OF APPEAL