

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

Ranatunga Arachchige Hemachandra
Ranatunge,
No. 24, Kospitiyana,
Pugoda.

C.A. No.1025 / 2000 (F)

Plaintiff

Vs.

D.C. Pugoda No. 219 / L

Mallika Appuhamilage Nandasiri,
Punchi Madawala,
Mandawala.

Defendant

And Now Between

Mallika Appuhamilage Nandasiri,
Punchi Madawala,
Mandawala.

Defendant-Appellant

Vs

Ranatunga Arachchige Hemachandra
Ranatunge,
No. 24, Kospitiyana,
Pugoda.

Plaintiff Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Dr. Sunil Cooray for the Defendant
Appellant
Gamini Marapona PC with Keerthi
Sri Gunawardana and Navin
Marapona for the Plaintiff
Respondent

WRITTEN SUBMISSIONS ON : 15.11.2012

ARGUED ON : 06.12.2012

DECIDED ON : 13.06.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted an action against the Defendant Appellant (hereinafter referred to as the Appellant) in the District Court of Pugoda seeking inter alia for a judgment that the property described in the schedule to the plaint was held by the Appellant in trust for the benefit of the Respondent and the said property be retransferred in the name of the Respondent. The Appellant took up the position that he was in possession of the land in dispute upon a deed of transfer No 152 dated 09.06.1986 which was not subjected to any trust or obligation. The case proceeded to trial upon 17 issues. After trial the learned Additional District Judge has delivered a judgment in favour of the Respondent. This appeal is from the said judgment dated 16.10.2000.

It was common ground that the Respondent was the owner of the land in dispute and also by deed of transfer No 152 dated 09.06.1986 (P 2) the Respondent has transferred the said land to the Appellant in the year 1986. The Respondent's position was that although the said deed of transfer was executed in favour of the Appellant he did not on the said transfer intend to convey the beneficial interest in the said land to the Appellant and that the said transaction though couched in the form of a transfer was in fact only a nominal transfer of title actually intended as security for a loan which the Respondent obtained from the Appellant.

The Appellant has given evidence and also has led evidence of two other witnesses. According to the said evidence of the Appellant he was a reputed money lender and the Respondent has executed the said deed of transfer as a security for a loan of Rs 20,000/- which had been borrowed from the Appellant. The Respondent has produce a deed bearing No 530 dated 26.07.1986 marked P 4 to prove that the actual value of the land in dispute was much more than the sum of Rs. 20,000/- reflected as the consideration of the said deed of transfer P 2.

The lands described in the schedules to the said deeds of transfer No 152 and 530 has been depicted in Plan No.443 dated 20.11.1984. Accordingly the lands described in the schedules are divided lots of a larger land. The deed of transfer bearing No 152 has been executed in respect lot 2 to 17 containing in extent of 2 acres and the other deed of transfer bearing No 530 has been executed in respect of lot No 22 and 23 containing in extent of 01 rood. It is apparent from the deed of transfer No 530 Lot 22 and 23 has been sold for a sum of Rs. 30,000/-.

Accordingly the said two deeds P 2 and P 4 show a clear disparity in the value placed for 40 perches in deed P 4 and the 02 acres dealt with on the deed P 2.

It seems from the said evidence that the Respondent has sought to prove an oral promise to re-convey the land in suit, not in order to enforce that promise but only to establish an "attendant circumstances" from which it could be inferred that the beneficial interest did not pass. Although that promise was of no force or avail in law by reason of section 2 of the Prevention of Frauds Ordinance, it is nevertheless a fact from which an inference of the nature contemplated in section 83 of the Trusts Ordinance properly arises. The Prevention of Frauds Ordinance does not prohibit the proof of such an act.

In the case of *Dayawathie and Others Vs. Gunasekera and Others* (1991) 1 SLR 115 (SC) it was held that "The Prevention of Frauds Ordinance and Section 92 of the Evidence Ordinance do not bar parole evidence to prove a constructive trust and that the transferor did not intend to pass the beneficial interest in the property. Extrinsic evidence to prove attendant circumstances can be properly be received in evidence to prove a resulting trust."

In the case of *Premawathie Vs. Gnanawathie* (1994) 2 SLR 171 G.P.S de Silva CJ observed that "An undertaking to re-convey the property sold was by way of a non-notarial document which is of no force or avail in law under section 2 of the Prevention of Frauds Ordinance. However the attendant circumstances must be looked into as the plaintiff had been willing to transfer the property on receipt of Rs. 6000/- within six months but could not do so despite the tender of Rs. 6000/- within the six months as she was in hospital, and the possession of the land had remained with the 1st defendant and the land itself was worth Rs. 15,000/-, the attendant circumstances point to a constructive trust within the meaning of section

83 of the Trusts Ordinance. The "attendant circumstances" show that the 1st defendant did not intend to dispose of the beneficial interest.

The learned Counsel for the Appellant submitted that the delay in instituting the action in the District Court has established the fact that the said deed in question is clearly an outright transfer without subject to any condition. I am not inclined to agree with the said submission. P 5 and P 6 clearly show that the Respondent has gone before the Mediation Board seeking redress with regard to the dispute arisen between the Respondent and the Appellant upon the said deed of transfer No 152.

In the said circumstances I see no reason to interfere with the judgment of the learned Additional District Judge dated 16.10.2000. Therefore I dismiss the appeal of the Appellant with costs.

Appeal Dismissed.

Judge of the Court of Appeal