

IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRILANKA

Ranasinghe Arachchige Kanthilatha  
Bodhipala,  
No. 22 / 13, Saman Uyana,  
Dambahena Road, Maharagama.

PLaintiff

C A 325 / 2000 (F)  
D.C. Mt. Lavinia No. 776/95/M

Vs.

Kalukapuge Ariyasena alias  
Ariyaratna Perera,  
No 44, Borella Road,  
Pannipitiya.

Defendant

**NOW BETWEEN**

Kalukapuge Ariyasena alias  
Ariyaratna Perera,  
No 44, Borella Road,  
Pannipitiya.

Defendant Appellant

Vs.

Ranasinghe Arachchige Kanthilatha  
Bodhipala,  
No. 22 / 13, Saman Uyana,  
Dambahena Road, Maharagama.

Plaintiff Respondent

BEFORE : UPALY ABEYRATHNE, J.  
COUNSEL : Rohitha Wimalaweera for the Defendant Appellant  
J.W.P.F. Ekanayake for the Plaintiff Respondent  
ARGUED ON : 16.01.2013  
DECIDED ON : 28.08.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the Defendant Appellant (hereinafter referred to as the Appellant) in the District Court of Mt. Lavinia seeking a declaration that deed of revocation of agreement to sell no 225 dated 12.02.1993 is null and void and to recover a sum of Rs 200000/- from the Appellant. The Appellant filed his answer praying for a dismissal of the Respondent's action. The case proceeded to trial upon 06 issues. After trial, the learned Additional District Judge has delivered a judgment in favour of the Respondent. Being aggrieved by the said judgment dated 16.03.2000 the Appellant has preferred the present appeal to this court.

The learned Additional District Judge has concluded that the Appellant has failed to prove the due execution of deed of revocation of agreement to sell no 225 dated 12.02.1993. The learned counsel for the Appellant contended that the burden of proof of the due execution of deed of revocation of agreement to sell no 225

dated 12.02.1993 was on the Respondent and the learned Additional District Judge has wrongfully shifted the burden on the Appellant.

At the commencement of the trial the Appellant has admitted the execution of deed of agreement to sell No 198 dated 20.05.1992 and the receiving of a sum of Rs 200000/- from the Respondent. The Appellant's position was that he has settled the said sum of money borrowed from the Respondent and thereafter the Respondent has revoked the said deed of agreement to sell No 198 by executing the deed of revocation of agreement to sell No 225 dated 12.02.1993. The Respondent denying the due execution of the said deed of revocation of agreement to sell No 225 dated 12.02.1993 contended that it was a forgery.

The Appellant, in the said premise, has raised issue No 04 and 05 as follows;

04. Did the Appellant settle the said amount of money which had been obtained upon the deed of agreement to sell No 198 dated 20.05.1992 with the interest thereon?
05. Having accepted the said sum of money did the Respondent revoke the said deed of agreement to sell No 198 dated 20.05.1992 by executing the deed of revocation of agreement to sell No 225 dated 12.02.1993?

Since the Appellant has relied upon the due execution of the said deed of revocation of agreement to sell No 225 dated 12.02.1993 and the Respondent has denied the due execution of the said deed of revocation of agreement to sell No 225 alleging that it was a forgery, a burden would cast upon the Appellant to prove that the Respondent having accepted the said sum of Rs.200000/-, has duly executed the said deed of revocation of agreement to sell no 225 dated 12.02.1993.

Section 101 of the Evidence Ordinance stipulates that “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

The illustration to Section 101 clearly explains that “A desires a court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies to be true. A must prove the existence of those facts.”

Accordingly if the Appellant desires the court to answer the issues No 04 and 05 in the affirmative he must adduce evidence in order to prove the due execution of the said deed of revocation of agreement to sell No 225 dated 12.02.1993. Hence the Appellant cannot remain silent without leading evidence to prove matters pertaining to issues No 04 and 05.

For the forgoing reasons I am of the view that the learned Additional District Judge is correct in concluding that the Respondent is entitled to a judgment as prayed for in the plaint. For the above reasons, I dismiss the appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal