

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

C.A. No. 1163/1998 F
D.C.Galle No. 12023/L

K.A. Karolis
Padilihewatte,
Malagoda,
Wanwawala.

Appellant

Vs.

Sirisena Gunawardane
No:221,
Matara Road,
Unawatuna,
Galle.

Respondent

C.A. No. 1163/1998F)

D.C.Galle No. 12023/L

BEFORE : K.T. CHITRASIRI, J.
COUNSEL : Parties are absent and unrepresented.
DECIDED ON : 31st January, 2014.

K.T. CHITRASIRI, J.

Upon preparation of the briefs, the Registrar of this Court has sent notices to the parties as well as to their registered Attorneys directing them to collect the briefs and to be present in this Court on 12th December, 2013. When this matter was mentioned on that date namely, 12th December, 2013 neither the parties nor their Attorneys were present in Court, even though the notices referred to above had been sent under registered cover to the addresses given in the petition of appeal. Also, it is to be noted that those notices have not been returned. Accordingly, this Court had no option than to fix the matter for argument in their absence. The case was taken up for argument today. The parties are not present even today.

This is an appeal seeking to set aside the judgment dated 28th of August 1998 of the learned District Judge of Galle. In that

judgment the learned trial Judge decided the case in favour of the plaintiff-respondent whilst rejecting the claim of the defendant-appellant. The respondent filed this action seeking for a judgment declaring inter alia that he is the owner of the land referred to in the 4th schedule to the plaint and to have the appellant ejected therefrom. The appellant in his answer has prayed for a declaration that the plaintiff is holding the property in trust for the defendant-appellant while seeking to have the plaint of the plaintiff dismissed. Learned District Judge decided to reject the claim of constructive trust of the appellant and has concluded that the land in question belongs to the respondent.

The respondent has established that he is the owner of the land particularly by producing the deeds bearing Nos. 2858 and 20058 marked P5 and P7 in evidence. The evidence contained in those two deeds have not been challenged. Therefore, it is clear that the plaintiff has established that he is the owner of the premises in suit.

Then the next issue is whether the appellant was able to establish his claim made on the basis of constructive trust. The law in this regard is governed by Section 83 of the Trust Ordinance.

Accordingly, determining the question of constructive trust depends on the attendant circumstances of each and every case.

The appellant has taken up the position that he has paid Rs.1500/= to the plaintiff's father when the said father purchased the property for Rs.8000/=. However, other than the oral evidence of the appellant, no evidence is found, to prove that the appellant has contributed a sum of Rs. 1500/= to pay the consideration when the property was purchased by the father of the respondent. Learned District Judge too having heard the evidence of the appellant has rejected to accept such a position. Therefore, I am not inclined to interfere with such findings since the trial Judge is the best person to decide on such matters. Other than the aforesaid oral evidence of the appellant, no other evidence is forthcoming to establish that the appellant was instrumental in purchasing the property. Therefore, it is correct to reject the claim of the appellant.

However, the appellant has given evidence stating that he had made considerable improvements to the property in question. It is not a matter that can be considered in order to determine constructive trust. In such a situation, the defendant could have made a claim for compensation for the improvements that he has made. However, the

learned District Judge has stated that the appellant has not established the manner in which the improvements were made. He also has found that there were no particular improvements made by the appellant. Once again, it is a matter that involves facts of the case. Therefore, I am not inclined to interfere with the decision of the learned District Judge as to the claim made on the improvements supposed to have made by the appellant as well.

For the aforesaid reasons, I am not inclined to interfere with the judgment of the learned District Judge. Accordingly, this appeal is dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Kwk/=