

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

1. Rohana Wijewardena,
2. Athula Wijewardena,
3. Milton Rupasinghe,
All of No. 7, Dehiwala Road,
Pepiliyana, Borelesgamuwa.

Plaintiffs

C.A. No. 1133 / 2000 F

Vs.

D.C. Gampaha No. 36123/L

Ranasinghe Arachchige Nandasena
Ranasinghe,
No. 132/26, 'Saraboomi',
Kirindiwela Road, Weliweriya.

Defendant

AND NOW BETWEEN

Ranasinghe Arachchige Nandasena
Ranasinghe,
No. 132/26, 'Saraboomi',
Kirindiwela Road, Weliweriya.

Defendant Appellant

Vs

1. Rohana Wijewardena,
2. Athula Wijewardena,
3. Milton Rupasinghe,
All of No. 7, Dehiwala Road,
Pepiliyana, Borelesgamuwa.

Plaintiff Respondents

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : S.A.D.S. Suraweera for the Substituted
Defendant Appellant
Sudath Bandara with Ranil Samarasuriya for
the Plaintiff Respondents

WRITTEN SUBMISSIONS ON : 14.10.2013

ARGUED ON : 13.11.2013

DECIDED ON : 13.02.2014

UPALY ABEYRATHNE, J.

The Plaintiff Respondents (hereinafter referred to as the Respondents) instituted the said action against the Defendant Appellant (hereinafter referred to as the Appellant) in the District Court of Gampaha seeking for a declaration of title and ejectment of the Appellant from the land described in the schedule to the plaint. The Appellant filed an answer denying the averments contained in the plaint and praying for a dismissal of the Respondents' action.

The case proceeded to trial on 09 issues. After trial the learned District Judge delivered judgment in favour of the Respondents. Being aggrieved by the said judgment dated 20.11.2000 the Appellant has preferred the instant appeal to this Court.

It was common ground that the Appellant did not have any title deed to claim the ownership of the land in suit. His position was that a person called Opatha who said to be an owner of Saraboomi Investment Company (Pvt) Limited

agreed with him to sell the land in suit for a sum of Rs 30,000/- and he paid to said Opatha a sum of Rs. 15,000/- as an advance for the said transaction and thereafter he entered in to the possession of the said land and spent about Rs. 127,795/- for the development of the said land by constructing a building thereon.

It was clear from the evidence that the Appellant's claim was based upon an oral agreement. The Respondent has denied the existence of such an agreement with the Appellant. The learned counsel for the Respondent contended that the said purported agreement is an informal oral agreement and therefore the said agreement *per se* cannot be enforced in view of the mandatory provisions contained in Section 2 of the Prevention of Fraud Ordinance.

In terms of Section 2 of the Prevention of Fraud Ordinance no contract or agreement affecting land or other immovable property shall be of force or avail in law unless the same shall be in writing and signed by the party making the same, or by some person lawfully authorized by him or her in the presence of a licensed notary public and two or more witnesses present at the same time, and unless the execution of such writing, deed, or instrument be duly attested by such notary and witnesses.

The Appellant did not produce such an agreement entered with the Respondent. Also, he did not call said Opatha to give evidence in order to establish any contractual obligation between the Appellant and the Respondent. Apart from that the Appellant did not produced the receipt he obtained for the alleged payment of Rs. 15,000/- which had been paid as an advance for the said land transaction. The Appellant has further stated that he had spent a sum of Rs 130,000/- for the

construction of a building in the land in suit. But the Appellant has not led adequate evidence in order to prove the alleged construction of a building.

In the said circumstances I find no reason to interfere with the said judgment of the learned District Judge dated 20.11.2000. Therefore I dismiss the instant appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal