

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

Case No. CA 1240/2000(F)
D.C. (Gampaha) Case No. 39146/L

Ninnali Srimathi Ranasinghe
No.3 M 39. National Housing Scheme
Kiribathgoda

Plaintiff

-Vs-

Chandralatha Sooriya Arachchi
No. 467 IB. Mahawela Road.
Pahalabiyavila,
Kadawatha.

Defendant

And

Chandralatha Sooriya Arachchi
No. 467/B, Mahawela Road,
Pahalabiyavila.
Kadawatha.

Defendant -Appellant

-Vs-

Nirmali Srimathi Ranasinghe
No.3 M 39. National Housing Scheme
Kiribathgoda

Plaintiff-Respondent

Before : K.T. CHITRASIRI, J.

Counsel : D.H. Siriwardhana for the defendant-Appellant
H. Withanachchi for the Plaintiff-Respondent

Argued &

Decided on : 29.04.2014

K.T. Chitrasiri, J.

Heard both counsel in support of their respective cases. This is an appeal seeking to set aside the judgment dated 08.11.2000 of the learned District Judge of Gampaha in which the plaintiff-Respondent (herein after referred to as the plaintiff) was declared entitled to the land more fully described in the schedule to the plaint. Being aggrieved by the decision of the learned District Judge, the defendant-appellant (hereinafter referred to as the defendant) preferred this appeal to this Court.

This is an action filed by the plaintiff seeking inter alia to have a judgment declaring that she is the owner of the land referred to in the schedule to the plaint and to have the defendant evicted therefrom. The defendant in paragraph 4 of the answer dated 24.02.1997 has pleaded that the predecessor in title of the plaintiff was holding the property as a trust in her favour. Accordingly, she has contended that the plaintiff is not entitled to have the ownership to the land in question. The issues also have been framed on those lines.

Admittedly the land put in suit had been owned by the defendant at one time. She, by the deed bearing No.8749 marked as P7 has executed a conditional transfer with the condition that she is to re-purchase the property from the transferee to the said deed, namely Rohini Perera upon a payment of Rs. 35,000/- with interest within a period of one year. Defendant has failed to repay the money as mentioned in the deed P7 within the stipulated period of time. Thereafter, the defendant, on 13.10.1993 has made an application to the Debt Conciliation Board to have the land re-transferred in her name and it had been dismissed by the Debt Conciliation Board. (Document marked P4 found at page 152 in the appeal brief)The plaintiff was not made a party to the said application filed in the Debt

Conciliation Board though the plaintiff has purchased the property by then i e on 01.10.1993 for a sum of Rs.150.000/-. Significantly, the said Rohini Perera against whom the defendant is making allegations has not been made a party to this action as well despite that the defendant is claiming the property relying upon the agreement, she has entered with Rohini Perera.

In the circumstances, it is clear that the defendant without making Rohini Perera, a party to this action is claiming the cover of the Trust Ordinance on a transaction she had with the said Rohini Perera. The plaintiff seems to be a bona fide purchaser having purchased the property by deed No. 573 marked as P1 for a sum of Rs, 150,000/-who may not have known the application made to the Debt Conciliation or to any arrangement, the defendant had with Rohini Perera.

Execution of the deed P1 was not in dispute. Therefore, it is clear that the paper title is with the plaintiff at all material times. Relying upon the said deed marked P1, learned District Judge has correctly held that the plaintiff is entitle to the land referred to in the schedule to the plaint and then made order evicting the defendant therefrom.

Then the question arises as to whether the defendant was successful in establishing the defence of constructive trust. Learned District Judge having identified the said issue has stated that a property subjected to a deed containing a condition to re-transfer the same cannot be treated as a property holding in trust for another party. His findings on this issue are as follows;

මෙම නඩුවේ විත්තිකාරිය උත්සාහ කළේ මෙම පැ7 දරන ඔප්පුව අනුමිත භාරයකට යටත් ඔප්පුවක් බව දැක්වීමටය. මේ සම්බන්ධයෙන් පැමිණිල්ලේ උගත් නීතිඥ මහති විසින් ඔහුගේ ලිඛිත සැල කිරීම් වලදී ශ්‍රී ලංකා නව නීති වාර්තා වෙති 1989 (2) කාණ්ඩයේ වාර්තා ගතවී ඇති සන්මුගම් සහ තවත් අයට එදිරිව තම්බයිසා නඩුවට සහ තවත් නඩු කිහිපයකට මගේ අවධානය යොමු කර ඇත. මෙම නඩු වලින් තීන්දු වී ඇති පරිදි එහි හරය වනුයේ මෙවැනි පොරොන්දු සින්තක්කර ඔප්පුවකට යටත් දේපලක් කිසි විටකත් අනුමිත භාරයකට යටත් දේපලක් ලෙස අර්ථ නිරූපණය කර දැක්වීමට නොහැකි බවකි. කොන්දේසිය කඩ කරයි නම් නියත වශයෙන්ම දේපල ගැනුම්කරුට හිමි විය යුතුය යන්න උක්ත නඩුවලදී තීන්දු කර ඇත.”

I do not see any wrong in the aforesaid findings of the learned District Judge which are being supported with authorities Therefore. I am not inclined to interfere with the decision of the learned District Judge.

Learned counsel for the appellant taking a new turn different to the position taken in the District Court by the

defendant, contended that the plaintiff has failed to establish title to the land in this instance. In support of his contention he submitted that it is the duty of the learned District Judge to consider all the circumstances of the case including the matters that had taken place prior to the execution of the deed P1 and then to arrive at a decision. It must be noted that such a position had not been put in issue in the lower court. Therefore, this court being an Appellate Court cannot consider those matters at this appeal stage since it is a matter that involves facts of the case. [**Gunawardena V. Deraniyagala and others 2010 (1) S L R 309 and Somawathie V Wilmon and others 2010 (1) S L R 128**]. Therefore, I am not inclined to accept the aforesaid contention of the learned Counsel for the appellant.

For the aforesaid reasons, this appeal is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

LA/-