

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

K. L. Eward Udayasiri Perera
No.416/1, Henegama Road
Weliweriya
Substituted 2B Defendant-Appellant

Vs

Bomiriyage Dharmasiri Perera
No.416/168, Finco watta
Weliweriya
Substituted-Plaintiff-Respondent

Finco (Property Sales) Limited
No.49/16 Iceland Building, Galle Face
Colombo 3
1st Defendant-Respondent

C.A.NO.516/98 (F)

D.C.GAMPAHA CASE NO.30867/L

BEFORE : **K.T.CHITRASIRI, J.**

COUNSEL : Lasith Chaminda
for the Substituted 2nd Defendant- Appellant

S.A.D.S.Suraweera
for the Substituted-Plaintiff-Respondent

Anuruddha Dharmaratne with Darshika Perera
for the 1st Defendant-Respondent

ARGUED ON : 28.06.2014

WRITTEN : 28.07.2014 by the Substituted-Plaintiff-Respondent

SUBMISSIONS : 31.07.2014 by the 1st Defendant-Respondent

FILED ON : 31.07.2014 by the Substituted-2nd Defendant-Appellant

DECIDED ON : 11TH SEPTEMBER 2014

CHITRASIRI, J.

This is an appeal seeking *inter alia* to set aside the judgment dated 30th July 1998 of the learned District Judge of Gampaha. By the aforesaid judgment, learned District Judge decided the case in favour of the plaintiff as prayed for in his plaint dated 10th February 1988. The reliefs prayed for in the aforesaid plaint are to have a judgment declaring that the land referred to in the second schedule to the plaint is being held in trust for the plaintiff by the two defendants and then to have an order from the Court, directing the two defendants to transfer the property in the name of the plaintiff.

Admittedly, the plaintiff-respondent (hereinafter referred to as the plaintiff) having paid Rupees One Hundred (Rs.100/-) as a non-refundable deposit, has agreed to purchase from the 1st defendant-respondent company (hereinafter referred to as the 1st defendant) the two blocks of land referred to in the two schedules to the plaint (Lots 168 and 169) for a sum of Rupees Eight Thousand. (Rs.8,000/-) The aforesaid agreement between the plaintiff and the 1st defendant is evident by the document dated 05.09.1972 marked as P1. Having agreed so on a date which goes back to more than 42 years, the plaintiff has paid a sum of Rupees Seven Thousand Four Hundred and Five (Rs.7,405/-) by way of installments to purchase the said two blocks. This position had been accepted by the witness Chandralatha too, who gave evidence on behalf of the 1st defendant. (vide proceedings at page 114 in the appeal brief). The plaintiff in his evidence has stated that he was to pay a balance sum of Rupees One Thousand

and Ten (Rs.1,010/-) to complete the transaction. [*Vide proceedings at page 84 in the appeal brief*]. Witness for the 1st defendant also has accepted this position and accordingly she has stated that the plaintiff was to pay only a balance sum of Rupees One Thousand Fourteen. (Rs.1,014/-) [*Vide proceedings at page 119 in the appeal brief*]. In the circumstances, it is clear that the plaintiff has paid a substantial part of the purchase price in order to buy the land referred to in the two schedules to the plaint as agreed in the document marked P1.

However, the 1st defendant alleged to have accepted the balance money due, not from the plaintiff but from the 2nd defendant-respondent (hereinafter referred to as the 2nd defendant) though the agreement had been between the plaintiff and the 1st defendant in respect of the land described in the second schedule to the plaint. However, the land in question had been finally transferred by the 1st defendant company in the name of the 2nd defendant.

Witness for the 1st defendant stated that the land in question was transferred by the deed bearing No.74 [2V2] to the 2nd defendant since the plaintiff has failed to pay the balance due to the 1st defendant in accordance with the agreement referred to in the receipt marked P1.

The 2nd defendant in her evidence -in-chief has stated that she purchased the land from the 1st defendant due to the failure on the part of the plaintiff to pay the balance due to the 1st defendant. In that evidence-in-chief she also has stated that she paid an additional sum amounting to Rupees Ten Thousand

(Rs.10,000/-) in order to have the land transferred in her name. [*Vide proceedings at page 132 in the appeal brief*]. However, no documentary evidence whatsoever is forthcoming to establish as to any payment been made by the 2nd defendant to the 1st defendant in order to have the disputed land transferred in her name.

Learned District Judge having adverted to the totality of the evidence, has stated that there was no evidence to establish that a sum of Rupees Ten Thousand (Rs.10,000/-) was given to the plaintiff by the 2nd defendant in order to compensate the plaintiff for the money that he has paid previously. He also has found that there was no money given by the 2nd defendant to the plaintiff in the presence of the witness Chandralatha though such a position had been advanced by the 2nd defendant-appellant.

Furthermore, the document marked "1V1" was produced in evidence to show that a request had been made by the plaintiff from the 1st defendant to have the land transferred in the name of the 2nd defendant. However, the plaintiff in his evidence has stated that the document marked "1V1" was a blank form at the time he signed the document though he has admitted having placed his signature on that document. This position had been explained by the plaintiff at length whilst giving evidence. [*Vide proceedings at pages 90, 91 & 92 in the appeal brief*]. Accordingly, the plaintiff has categorically denied that he made a request to the 1st defendant to transfer the land in the name of the 2nd

defendant. Said evidence of the plaintiff has not been contradicted and therefore such a position of the plaintiff cannot be disregarded.

Learned District Judge also has carefully considered the evidence in respect of the contents found in the document marked "1V1" by which the plaintiff alleged to have consented to transfer the land to the 2nd defendant. Having considered the contents in the document 1V1, he has concluded that it was a blank form when the plaintiff placed his signature on that document. [*Vide proceedings at page 158 in the appeal brief*].

Furthermore, even the witness who gave evidence on behalf of the 1st defendant namely, Chandralatha has clearly stated that she objected to the deed marked 2V2 being executed and to have the land transferred to the 2nd defendant. [*Vide proceedings at page 110 in the appeal brief*]. Accordingly, it is clear that the 1st defendant being the owner of the land in dispute also at one stage was not in agreement to have the deed executed in the name of the 2nd defendant.

Finally, the learned trial Judge has concluded that a substantial amount of money which amounts to more than three-fourth of the value of the land then, had been paid by the plaintiff to the 1st defendant. Accordingly, he has decided to grant the reliefs as prayed for in the plaint.

In the circumstances, it is clear that the learned District Judge, has considered the attendant circumstances carefully and has come to the conclusion that a substantial part of the consideration had been paid by the plaintiff to the 1st defendant in order to purchase the land described in the second schedule to the plaint. Accordingly, he has decided the case as prayed for in the plaint.

Then the question is whether the learned District Judge is correct or not, in deciding so under those circumstances. It is the Section 84 of the Trust ordinance that is applicable when a claim to have a constructive trust is made by a party to an action. The said Section 84 stipulates thus:

“84. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.”

In **the book on “Trusts” by Dr.L.J.M.Cooray**, it is mentioned that Section 84 of the Trust Ordinance has effected a change, because a person who relies on it must prove that;

- (1) He provided the consideration,
- (2) It was not for the benefit of the transferee (even if he was a stranger)

(At page 131)

Also, in the case of **Daniel v. Arnolis [30 N.L.R. at 247]**, it was held that the plaintiff must prove that he paid the consideration and he paid so not for the benefit of the defendant when claiming a constructive trust in terms of Section 84 of the Trust Ordinance.

As discussed hereinbefore, plaintiff has established that he has paid almost the full consideration to the 1st defendant in order to purchase the property described in the 2nd schedule to the plaint. Witness Chandralatha who gave evidence on behalf of the 1st defendant too has admitted that the plaintiff had to pay only a balance sum of Rs.1014/- to have the deed executed in order to have the property transferred in favour of the plaintiff. That evidence has gone in, unchallenged. At the same time, no evidence is forthcoming to show that any consideration had been paid by the 2nd defendant in order to have the deed executed in her name. In the circumstances, I do not see any error on the part of the learned District Judge when he granted the reliefs as prayed for in the plaint.

Also, it must be noted that this Court being an appellate Court is generally reluctant to interfere with a decision that had been arrived at, by a trial judge upon considering the facts of the case unless it is perverse and/or irrational. **[Frad Vs. Brown & Co. 28 NLR 282, Mahawithana Vs. Commissioner of Inland Revenue 64 N L R 217, De Silva Vs. Seneviratne 1981 (2) SLR 8, Alwis Vs. Piyasena Fernando 1993 (1) S L R 119]** In this instance too, I am not

inclined to interfere with the findings he has arrived at having looked at the facts of the case.

In the circumstances, relying upon the authorities referred to above, it is my opinion that the learned District Judge is correct when he concluded the case in favour of the plaintiff. For the aforesaid reasons, I am not inclined to disturb the findings of the learned trial judge. Accordingly, this appeal is dismissed with costs fixed at Rupees Fifty Thousand. (Rs.50,000/-)

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL