

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

1. Gothamadattawa Weerasinghe
(Deceased)
2. Vijitha Weerasinghe
No. 29, Jambugasmuilla Rd,
Nugegoda.
(for himself and as the substituted 1st
Plaintiff for the 1st Plaintiff deceased)
PLAINTIFFS

C.A.Appeal No. 509/97 (F)

D.C. Panadura Case No. 16733/L

Vs

1. Epitawelage Eron Singho
No. 32/2, Walana Road,
Panadura.
2. L.T.P. Rajakaruna
No. 117, Kirulapona Road
Colombo 05.
(Now residing at No. 177, Maya
Avenue, Colombo 06.)
DEFENDANTS

AND NOW BETWEEN

Epitawelage Eron Singho
(Deseased)
Jayasinghage Anula
No. 43/2, Galle Road,
Walana Road, Panadura.
**SUBSTITUTED 1st DEFENDANT-
APPELLANT**

Vs

Gothamadattawa Weerasinghe
Vijitha Weerasinghe
**(Deceased 1st and 2nd Plaintiffs –
Respondents)**

1. Gladys Augusta Weerasinghe nee
Boralessa.
No. 29, Jambugasmulla Road,
Nugegoda.
(substituted in place of the deceased
1st and 2nd Plaintiffs – Respondents)

**SUBSTITUTED PLAINTIFF –
RESPONDENT**

2. L.T.P. Rajakaruna
No. 117, Kirulapona Road,
Colombo 05.
(Now residing at No. 177, Maya
Avenue, Colombo 06)

2nd DEFENDANT – RESPONDENT

BEFORE

: Deepali Wijesundera J.

: M.M.A. Gaffoor J.

COUNSEL

: S.A.D.S. Suraweera for the 1st

Defendant – Appellant

H. Withanachchi for the 2nd

Defendant – Appellant

Ranjan Gunaratne for the

Plaintiff – Respondent.

ARGUED ON

: 24th November, 2015

DECIDED ON

: 17th June, 2016

Deepali Wijesundera J.

The plaintiff respondent filed an action in the District Court for a declaration that Deeds no. 41 and 21525 are null and void and a declaration of title to the land in issue. The original plaintiff died and his heirs were substituted in his place. The case was taken up for trial and judgment was delivered by dismissing the plaintiff's action. An appeal was filed against it and the Court of Appeal directed the District Court to have a 'de novo' trial. The trial 'de novo' was held and judgment was delivered on 31/01/1997 in favour of the plaintiffs. Being aggrieved by the said judgment the defendant appellant have preferred this appeal against the said judgment.

At the trial in the District Court both parties have admitted that Hector Weerasinghe was the owner of the property in suit, that he died on 24/08/1977 and that the first plaintiff was the widow and the second plaintiff was the son of Hector Weerasinghe.

The second plaintiff respondent giving evidence in the District Court has stated that his father who became the owner of the land in suit on deed no. 217 (P1) was adjudicated to be of unsound mind in the District Court of Colombo in case no. 2221 and the first plaintiff his mother was appointed as the guardian, and that he was warded at the Mental hospital Angoda from 1933 to 1964. After he was discharged in 1964 he was kept in the house of O.J. Jayawardena who was attached to the Mental hospital as a male nurse so he could be taken to weekly clinics. After the demise of Hector Weerasinghe at the age of 85 years in 1977 his Testamentary case was instituted in respect of his estate. The plaintiff respondent had stated that his father during the 13 years he was staying with Jayawardena continuously took treatment from the Mental hospital and that his expenses were borne out by the plaintiff. The plaintiff has stated in evidence that deed no. 41 (1D3) was signed by his father transferring the property to Aron Singho in August 1977 while he was mentally unfit and 85

years old. Aron Singho was married to a niece of Jayawardena. Defendant appellant has called Jayawardena to give evidence on his behalf and he has testified that Hector Weerasinghe after full recovery indicated his desire to leave the hospital and since his wife and son did not want him to stay with them he wanted the witness to keep him. He has stated that while he stayed with them he used to teach the children in the neighborhood English and accompany his children to school. The witness has also stated that the plaintiffs visited Hector Weerasinghe and paid Rs. 90/= for his upkeep and that his conduct was quite normal. He has also stated that Hector Weerasinghe was periodically treated for 'simple schizophrenia' and that he did not have a serious mental defect. By consent of both parties evidence of the first defendant and Notary public given at the previous trial had been adopted. The District Judge had accepted the placing of the signature by Hector Weerasinghe but had stated that he was not sane at that time, hence the deed no. 41 was void and the subsequent deed no. 21525 based on deed no. 41 too became void. The learned District Judge has held that the defence failed to produce any evidence that Hector Weerasinghe was cured of his deficiency after being declared a lunatic by Court. The District Judge had stated in his judgment that documents marked **P11 and P12** showed Hector Weerasinghe was afflicted with a mental disorder up to the time of his death.

The counsel for the appellant submitted that Hector Weerasinghe after being discharged from the Mental hospital led a normal life except for bouts of depression which required minimal treatment and that Jayawardena was more conversant with his condition than the plaintiffs according to the second plaintiff respondent's evidence. The appellant stated that according to the testimony of the Notary, Hector Weerasinghe had appeared normal. The appellant further stated that the police after their investigation on the plaintiff's complaint by **1D2** informed the plaintiff that Hector Weerasinghe had been normal when he signed deed no. 41.

The appellant submitted that in the light of these overwhelming evidence it was irrational of the District Judge to arrive at a finding that Hector Weerasinghe was still a lunatic. He stated that the District Judge had failed to analyse the evidence led in the case.

The appellant further submitted that under our law a presumption of continuance of lunacy can be rebutted, and that the evidence of Aron Singho and the Notary established that Hector Weerasinghe was quite aware of what he was doing and had given clear instructions regarding deed no. 41.

Citing the judgment in **Hamid vs Marikkar 52 NLR 269** and **Amarasekera vs Jayanethi 64 CLW 17** the appellant stated that under our law a transaction entered during a lucid interval of a mental patient is valid due to the presumption of lunacy raised by the adjudication can be rebutted by evidence of restoration to reason.

The learned counsel for the plaintiff respondents submitted that Hector Weerasinge was adjudged a lunatic by the District Court of Colombo and the first plaintiff was appointed his manager, and letter of administration was given to her. By deed no. 41 (1D1) he gifted the said property to the first defendant. The first defendant's position was that this deed was executed during a lucid interval.

The respondent further stated that when a person is adjudged a lunatic the court must necessarily presume that he continues to be insane unless evidence is led to establish the contrary. (*Estate Rehne and others vs Pehne*). The respondent stated that in deed no. 41 the donee the first defendant is referred to as the step son, and Hector Weerasinghe would have believed that he married his mother and that this belief is absolutely misconceived.

The respondent's counsel submitted that the Notary while giving evidence has admitted that he did not know Weerasinghe was declared a lunatic by a Court of Law and that Aron Singho's evidence that he informed the Notary that Weerasinghe was an inmate at the Mental hospital is false and it contradicts the Notary's evidence.

Citing the judgment in **Re. Bearney 1978 2 AER 395** the respondent stated that if the defendant wishes to prove a lucid interval the burden of proving such an interval was on the defendant and that there is no evidence whatsoever to show that at the time the deed was executed Weerasinghe had a lucid interval. The respondent stated under Sec. 560 of the Civil Procedure Code and 565 of the Civil Procedure Code the District Court is empowered to examine or call for a report on the person alleged to be of unsound mind and make an order thus the evidence of Jayawardena a male Nurse on Weerasinghe's mental capacity should be rejected. The respondent stated the appellant did not make an application under *Sec. 578 in case no. 2221/LG* and that on the appellant's own admission Weerasinghe's lunacy had not ceased. The appellant submitted that in **Soysa vs Soysa 19 NLR 314** it was held that a deed executed by an insane person is void, therefore deed no. 41 passed no title to the first defendant appellant accordingly the second defendant appellant even if he is a bona fide purchases gets no title on deed 20394.

Both parties in the District Court have admitted that Hector Weerasinghe was the owner of the property in suit and that he died on 24/05/1977 and that first and second plaintiffs are his wife and son. The fact that Hector Weerasinghe was warded at the Angoda Mental hospital from 1933 to 1964 was also not disputed. The fact that he was looked after by Jayawardena and that he was treated for a mental disorder from time to time was also not in dispute. Execution of deed no. 41 too was admitted by both parties and what court had to decide was whether Hector Weerasinghe was in a sound mind or lucid interval at that time. Weerasinghe was declared a lunatic by the District Court therefore when executing a deed the Notary had a duty to examine his

mental condition. The notary has said he did not know about it. The learned District Judge had gone into these evidence when making his findings. He had seen and observed the witnesses giving evidence and come to the conclusion that Jayawardena was not in a position to judge the mental condition of Weerasinghe.

Sec. 578 (1) reads;

"When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent by petition to the District Court, or if the court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the court may institute an inquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs".

Sec. 578 (2) reads;

"The inquiry shall be conducted in the manner provided in section 560 and the four following sections of this Ordinance; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the court shall make an order for his estate to be delivered over to him, and such order shall be final".

The appellants have not made any application under the above section to say Weerasinghe was of sound mind. They said he was on a lucid interval which had not been proved at the trial since there is no evidence to say Weerasinghe was of a sound mind when deed no. 41 was signed this deed

becomes void and the subsequent deed gets no title from deed no. 41 and both deeds become null and void.

For the afore stated reasons I see no reason to interfere in the learned District Judge's judgment. The judgment dated 31/01/1997 is affirmed. the appeal is dismissed with costs fixed at Rs. 50,000/=.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree

JUDGE OF THE COURT OF APPEAL