

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

Abesirinarayana Lokuruge Wijedasa
Puwakdanda, Beliaththa.

C.A. No.921/97(F)

1st Defendant-Appellant

D.C. Tangalle Case No.1631/P

Vs.

Katuwana Gammacharige
Weeraratne
Puwakdanda, Beliaththa.

Plaintiff-Respondent

2. Abesirinarayana Lukuruge
Samarapala
Puwakdanda, Beliaththa.
3. Abesirinarayana Lukuruge
Premawathi
Henagehena, Belideniya
Kottagoda.
4. Weda Mesthrige Piyathilaka
Henagehena, Belideniya
Kottagoda.
5. Abesirinarayana Lukuruge
Heennona (Piyaseeli)
No.97, Dodanwala, Kandy.
6. Abesirinarayana Lukuruge
Ariyadasa
Puwakdanda, Beliaththa.
7. Abesirinarayana Lukuruge
Jinapala

Puwakdanda, Beliaththa.

8. Abesirinarayana Lukuruge
Leelawathi
Puwakdanda, Beliaththa.

9. Abesirinarayana Lukuruge
Piyawathi
Puwakdanda, Beliaththa.

Defendant-Respondents

**In an application for substitution
in the rooms of deceased 2nd, 4th
and 7th Defendant-Respondents**

Abesirinarayana Lokuruge Wijedasa
Puwakdanda, Beliaththa.

**1st Defendant-Appellant-
Petitioner**

Vs.

Katuwana Gammacharige
Weeraratne
Puwakdanda, Beliaththa.

**Plaintiff-Respondent-
Respondent**

2. Abesirinarayana Lukuruge
Samarapala
Puwakdanda, Beliaththa.

**2nd Defendant-Respondent
(Deceased)**

2a. Abesirinarayana Lokuruge
Wijedasa
Puwakdanda, Beliaththa.

**(Party sought to be substituted in
the room of - 2nd Deceased
Defendant-Respondent)**

3. Abesirinarayana Lukuruge
Premawathi
Henagehena, Belideniya
Kottagoda.
4. Weda Mesthrige Piyathilaka
Henagehena, Belideniya
Kottagoda.

**4th Defendant-Respondent
(Deceased)**

- 4a. Abesirinarayana Lukuruge
Premawathi
Henagehena, Belideniya
Kottagoda.

**(Party sought to be substituted in
the room of - 4th Deceased
Defendant-Respondent)**

5. Abesirinarayana Lukuruge
Heennona (Piyaseeli)
No.97, Dodanwala, Kandy.
6. Abesirinarayana Lukuruge
Ariyadasa
Puwakdanda, Beliaththa.
7. Abesirinarayana Lukuruge
Jinapala
“Medagedara”, 1st Wiskampura,
Beliatta.

**7th Defendant-Respondent
(Deceased)**

7a. Dediyaigala Gammacharige
Alisnona

**(Party sought to be substituted in
the room of - 4th Deceased
Defendant-Respondent)**

8. Abesirinarayana Lukuruge
Leelawathi
Puwakdanda, Beliaththa.

9. Abesirinarayana Lukuruge
Piyawathi
Puwakdanda, Beliaththa.

**Defendant-Respondent-
Respondents**

BEFORE : M.M.A. GAFFOOR J AND
S. DEVIKA DE L. TENNEKOON J

COUNSEL : Ali Sabri PC with Ruwantha Cooray instructed
by Wijesinghe Associates for the 1st Defendant-
Appellant.

Chathura Galhena with Manoja Gunawardena
and Nehara Sandaruwan for the Plaintiff-
Respondent

ARGUED ON : 29.06.2017

WRITTEN SUBMISSIONS

TENDERED ON : 31.08.2017 (1st Defendant-Appellant)
11.09.2017 (Plaintiff-Respondent)

DECIDED ON : 22.11.2017

M.M.A. GAFFOOR J

This is a final appeal preferred against the order of the learned District Judge of Tangalle in Case No.1631/Partition. Both parties have tendered written submissions in support of their contentions.

The bone of contention in this matter pertains to a Deed of Transfer marked by the defendant as P2. The defendant's main issue was that Deed No.13189 had been executed when he was mentally ill and that act lead to deceive the defendant. It is elicited in evidence that the defendant was mentally ill and he had been taking treatments in the mental hospital, Angoda. The position in this respect as urged by the plaintiff-respondent is that the 1st defendant had not been adjudicated a lunatic. In order to substantiate this position provisions of the Civil Procedure Code Chapter 39 had been cited.

The 1st defendant had given evidence in Court and the learned District Judge was in a position to observe the demeanor of the said defendant before the original Court.

It was held in the judgments of ***Fredd v. Brown and Company*** (18 NLR 302) which was followed in ***De Silva and Others v. Seneviratna and Another*** (1981 (2) SLR 7), ***Alwis v. Piyasena Fernando*** (1993 (1) SLR 119), ***Dharmathilake Thero v. Buddharakkith Thero*** (1990 (1) SLR 211).

The learned Counsel for the plaintiff-respondent has cited a case bearing No. CA Appeal 509/97(F) decided on 17.06.2016. A careful consideration of that appeal will show that the person in question in that case was declared a lunatic by a competent court. Therefore, the above case does not come within the four corners of this case and therefore has to be distinguished in reference to the case in point.

One of the contentions of the defendant-appellant was that Deed marked P2 had not been proved to the satisfaction of Section 68 of the Evidence Ordinance. It should be noted that the said deed had been marked and the plaintiff's case had been closed marking documents P1 to P9 (page 68 of the Appeal Brief) When these documents were marked and the case was concluded for the plaintiff the defendant had not taken any objection as regards to the deed in question P2. Therefore, according to the law if a document had not been challenged at the conclusion of the plaintiff's case it is presumed that it has to be taken in evidence as proved.

(Sri Lanka Ports Authority and another vs. Jogolinja – 1981 (1) SLR 18) Therefore, non proof of the deed in question cannot be contested as an issue in this case. Gamini Amarathunga J in **Samarakoon vs. Gunasekera and another** 2011 (1) SLR 149 observed that,

“(3) When a document is admitted subject to proof, the party tendering it in evidence is obliged to formally prove it by calling the evidence necessary to prove the document according to law. If such evidence is not called and if no objection is taken to the document when it is read in evidence at the time of closing the case of the party who tendered the document it becomes evidence in the case.

(4) On the other hand if the document is objected to at the time when it is read in evidence before closing the case of the party who tendered the document in evidence, the document cannot be used as evidence for the party tendering it.”

In light of the above decision of the Supreme Court the document marked subject to proof as P2 cannot be contested now.

The case of **Hameed vs. Marikkar** (52 NLR) 269 and **Amarasekera vs. Jayanetti** – 64 CLW 17 demonstrate that under our law a transaction entered during a lucid interval of a mental patient is valid.

In the above case of Hameed the Supreme Court had held that,

“A contract of a lunatic while the adjudication of lunacy remains unreserved would be valid if it can be shown that at the time he entered into the contract he was of sound mind and understood the nature of the transaction.”

It is also pertinent to refer to the Supreme Court case of ***Amarasekera vs. Jayanetti*** 64 CLW 17 where T.S. Fernando J. held thus,

“The question that arises upon this appeal is whether an alienation of land executed, during a lucid interval by a person who has been adjudicated by the District Court to be of unsound mind and incapable of managing his affairs, void where the execution has taken place while the adjudication remains unreserved.”

In the above circumstances, we see no reason to interfere with the judgment of the learned District Judge. Hence, the deed in question P2 has been proved executed properly by the defendant. The partition action can proceed on the basis of these findings. Hence, the appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

S. DEVIKA DE L. TENNEKOON J

I agree.

JUDGE OF THE COURT OF APPEAL