

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

Vettivel Pillai Rajagopal,
No. 805,
K. Cyril C. Perera Mawatha,
Colombo 15.
Defendant-Appellant

CASE NO: CA/17/1999/F

DC COLOMBO CASE NO: 15899/L

Vs.

Orient Holdings Limited,
No. 250/B-01,
Liberty Plaza,
R.A. De Mel Mawatha,
Colombo 3.
Plaintiff-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Kapila Liyanagamage for the Defendant-Appellant.
Nihal Fernando, P.C., with Harshula Seneviratne for the Plaintiff-Respondent.

Decided on: 11.03.2019

Samayawardhena, J.

The plaintiff filed this action against the defendant seeking a declaration of title to the premises described in the schedule to the plaint, the cancellation of the Mortgage Bond No. 929 marked P4 upon the plaintiff paying to the defendant moneys due thereon, ejectment and damages. The defendant filed the answer seeking dismissal of the plaintiff's action and a declaration that the Deed of Transfer No. 928 marked P3 is null and void. After trial, the learned District Judge entered Judgment for the plaintiff as prayed for in the prayer to the plaint. Hence this appeal by the defendant.

The defendant purchased the premises from one Munas for a sum of Rs. 120,000/= by the deed of transfer marked P2 dated 09.03.1984. The defendant admits borrowing Rs. 175,000/= from Sugath Kodithuwakku, the Chairman/Managing Director of the plaintiff company to purchase the premises as the defendant did not have money.¹

By V5 dated 09.03.1984 marked by the defendant, it is clear that Sugath Kodithuwakku has given Rs. 150,000/= to the defendant as a part payment of the consideration payable by Sugath Kodithuwakku to the defendant in respect of the resale of the premises, which was to be purchased by the defendant on that day. The defendant by V5 has also agreed to handover the original deed to the plaintiff's Attorney and Notary (Mr. Danny de Silva) before 4.30 pm on that day. The handwritten endorsement of the plaintiff's Attorney and Notary found in V5 further establishes that the Notary has received the original deed, which was marked by the plaintiff as P2.

¹ Vide the evidence of the defendant at page 180 of the Brief.

Thereafter the defendant has resold the premises to the plaintiff by Deed of Transfer marked P3 dated 23.03.1984 for a sum of Rs. 225,000/=.

As seen from the Mortgage Bond marked P4 of the same date, out of that consideration, Rs. 50,000/= has been paid by cash at the time of the execution of the deed and the balance money had been secured by mortgaging the property to the defendant.

It is the position of the defendant that he never wanted to sell the premises to the plaintiff, but wanted to mortgage the premises to the plaintiff as security for repayment of the money borrowed from the plaintiff to purchase the premises from Munas. He says that he signed the documents (P3, P4, P10, P11 etc.) in that belief.

This evidence of the defendant has not been believed by the trial Judge. That is not unreasonable. The defendant is a man who had been doing a business in Panchikawatta about 30 years. At the beginning of his evidence he has stated that he knows Tamil and English, and can speak Sinhala.² It is not believable a man of that stature signing a spate of documents without knowing what he was signing to. All the documents have been signed before the plaintiff's Attorney and Notary, Mr. Danny de Silva, who was not among the living at the time of the trial.

The defendant's Attorney and Notary is Mr. Kabral. It is Mr. Kabral who has attested the deed P2 from which the defendant purchased the property from Munas. If the defendant wanted to mortgage the property to Sugath Kodithuwakku, he could have asked Mr. Kabral to do it. Otherwise, if he could not understand

² Vide the defendant's evidence at page 174 of the Brief.

for what he was signing, he could have shown those documents to Mr. Kabral, who, according to the defendant, was running the office in the same building about 10-12 yards away from Mr. Danny de Silva's office.³

If he admittedly borrowed Rs. 175,000/= from Sugath Kodithuwakku to purchase the property from Munas, did he repay the money? Admittedly not. He has borrowed the money in 1984 and the case was filed by the plaintiff 1992. Rs. 175,000/= is a substantial amount at that time. According to the defendant, he does not know Sugath Kodithuwakku. He knows only his brother.⁴ Will an unknown man lend a sum of Rs. 175,000/= in 1984 to the defendant without any Agreement? Both the plaintiff and the defendant were not philanthropists, but veteran businessmen in Punchikawatta although unknown to each other.

The learned District Judge in my view is correct to have refused to accept V7, a self-made document by the defendant himself, to say that he paid interest to that sum to Sugath Kodithuwakku from time to time. Sugath Kodithuwakku has not signed V7 at least one time acknowledging receipt of interest. Nor has he issued a receipt. If he has paid interest, what was the interest rate, before which date the principal sum of Rs. 175,000/= should have been returned, where is the Agreement? There is none. The defendant's story is not believable.

If Sugath Kodithuwakku actually wanted to cheat the defendant, as the defendant now suggests, by getting his signatures to various documents including to the Deed of Transfer P3 and the

³ Vide the defendant's evidence at page 208 of the Brief.

⁴ Vide the evidence of the defendant at pages 194-196 of the Brief.

Mortgage Bond P4, Sugath Kodithuwakku could not have executed the Mortgage Bond P4 at all. He could have prepared only the Deed of Transfer P3 and simply stated therein that full consideration was paid.

The entire case depends on facts and not on law. The full trial has been conducted before the trial Judge by whom the Judgment has been delivered.

I see no compelling reason to interfere with the Judgment of the District Court.

Appeal is dismissed with costs.

Judge of the Court of Appeal