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

N.L.A. Karunarathne,
No. 17/8,
Kuruppu Road,
Borella.
(Now at 345/17, Serpentine Road,
Borella)
Defendant-Appellant

CASE NO: CA/589/2000/F
DC COLOMBO CASE NO: 5074/ZL

Vs.

Bogawathie Karunaratne (nee
Wagapedigedara Bogawathie),
No.1, Jayasuriya Place,
Dehiwala.
Plaintiff-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Kuvera de Zoysa, P.C., with Piume Kulatilake for the Defendant-Appellant.
Saumya Amarasekera, P.C., with Dhammika Welagedara for the Plaintiff-Respondent.

Decided on: 10.06.2019

Mahinda Samayawardhena, J.

The plaintiff filed this action against her husband (who were living separately at that time and later divorced) seeking a declaration that she is the owner of the premises in suit or the defendant is holding the premises in trust for her, ejectment of the defendant therefrom and damages. The defendant filed the answer seeking dismissal of the plaintiff's action and a declaration that he is the owner of the premises. After trial the learned District Judge held with the plaintiff. Hence this appeal by the defendant.

The plaintiff was an employee of the Central Bank. The premises were purchased from the Commissioner of National Housing. All correspondence with the Commissioner of National Housing both before and after the purchase was by the plaintiff. It is the plaintiff who mortgaged the premises to the Central Bank to obtain a loan.

It is significant to note that in all correspondence marked at trial, the plaintiff has used as her name, her husband's name, N.L.A. Karunaratne, with the prefix "Mrs." in front as that had been the practice of the Central Bank for administrative purposes, which has later been changed by the Bank because of this dispute—vide P51 (at page 897 of the brief).

By P12 dated 03.01.1977 (at page 541 of the brief), the plaintiff in reply to the letter P11 sent by the Commissioner of National Housing, has given her full name as "Mrs. Nilakarawasam Lankadewa Ariyapala Karunaratne" to be included as the grantee in the instrument of disposition (the deed). However in the said instrument of disposition marked P19 dated 21.04.1977

(at page 550), obviously by clerical mistake, the prefix "Mrs." has been omitted, and the name of the grantee has been mentioned as "Nilakarawasam Lankadewa Ariyapala Karunaratne". This has later been rectified by the Commissioner of National Housing by deed of rectification marked P18 (at page 547).

The defendant has tried to take advantage of this mistake and claimed that he is the owner of the premises and the deed of rectification is illegal. The defendant has not invoked writ jurisdiction of this Court against that move if he thought that the said rectification of the Commissioner of National Housing was illegal.

The pivotal argument of the learned President's Counsel for the defendant-appellant before this Court is that, in terms of section 59 of the National Housing Act, No.37 of 1954, as amended, any rectification to the original instrument can be made only (a) with the participation of the grantee and (b) on the instrument itself, and, in this instance, as the defendant has not been informed, and the rectification has not been done on the instrument itself, the deed of rectification is bad in law.

I am unable to agree with this argument.

Section 59 reads as follows:

> *Where the instrument of disposition of any State land under this Act contains any clerical or other error or requires amendment in respect of the description of that land or in respect of the inscription or recital of the name or designation of the grantee under such instrument or of any other material fact, such error may be rectified or such amendment may be made by an endorsement on such*

> *instrument signed by the appropriate authority and such grantee; and any endorsement so signed shall be sufficient for all purposes to rectify the error or to effect the amendment; and the instrument on which any such endorsement is made shall have effect as though it had been originally executed as so rectified or amended.*

Firstly, if that argument to be considered, the Commissioner of National Housing shall be a necessary party. But he has not been made a party. Without him being given a hearing, his decision cannot be reversed.

Secondly, in terms of section 59 of the National Housing Act, only the grantee shall participate in the process of rectifying the clerical or other error in the instrument. The grantee of the instrument, according to the Commissioner of National Housing, is the plaintiff, and therefore there was no necessity to notice the defendant about it.

Thirdly, rectification, in terms of section 59, can be done on the instrument itself by way of an endorsement. But there is no prohibition for the Commissioner of National Housing to do it by way of a deed of rectification if he has the necessary wherewithal at his disposal.

There is no necessity to consider the "trust" pleaded by the plaintiff as an alternative cause of action.

The learned President's Counsel for the defendant further draws the attention of this Court to the issue No.10 raised in the middle of the trial (at page 359 of the brief) whereby it was suggested that the plaintiff cannot maintain the action as her name has been changed. In that regard what I have to state in

short is actions are filed not by or against the names but against the parties designated by names and therefore if there is no dispute regarding identification of the party change of the name is immaterial.

Appeal is dismissed with costs.

Judge of the Court of Appeal