

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

C.A. Case No. 1026/2000 (F)

D.C. Pugoda Case No. 159/L

Makaewita Appuhamilage jeremias Perera,

Kahatagahawatta, Radawana

Plaintiff (Deceased)

V.

Peduruk Athukoralage Asilin Nona,

Kahatagahawatta, Radawana.

Defendant (Deceased)

BETWEEN

Makaewita Appuhamilage Susilawathi Perera,

Kahatagahawatta, Radawana.

Substituted Plaintiff Appellant

M. Dilani Dharshanee De Costa.

25/F, Shramadhana Mawatha, Mahavila, Panadura

Substituted Defendant Respondent

BEFORE

: JANAK DE SILVA, J

K. PRIYANTHA FERNANDO, J

COUNSEL

: Saman Liyanage with
Nishani Godellawatta for the Substituted
Plaintiff Appellant.

M. Nizam Kariapper PC with
N.I.M. Iynullah for the Substituted
Defendant Respondent.

ARGUED ON

: 03.04.2019

WRITTEN SUBMISSIONS

FILED ON

: 02.07.2018 by the
Substituted Defendant Respondent.

JUDGMENT ON

: 26.07.2019

K. PRIYANTHA FERNANDO, J.

01. Plaintiff Appellant (Appellant) filed the above action in the District Court Gampaha (later transferred to District Court Pugoda) against the Defendant Respondent (Respondent) seeking a declaration against the Respondent that the property in question is held by the Respondent in trust for him, and for an order on the Respondent to transfer the property back to him. Alternatively, he prayed for a declaration that the Respondent got the property transferred by exercise of undue influence in terms of section 91 of the Trust Ordinance. Respondent in her answer stated that the property was

transferred to her, on payment of consideration and denied that she was keeping the property in trust for the Appellant.

02. After trial, the learned District Judge delivered the judgment in favour of the Respondent and dismissed the action filed by the Appellant. It is against that judgment, the instant appeal was preferred by the Appellant. Grounds of appeal preferred in the petition of Appeal are:

- a) The said Judgment is contrary to Law and against the weight of the evidence led in the said case.
- b) The learned District Judge has failed to take in to account the relevant provisions contained in the Trust Ordinance in respect of Constructive Trust.
- c) The learned District Judge erred in law by not applying the relevant provisions of the Trust Ordinance to the facts and circumstances of this case.
- d) The learned District Judge has taken extraneous matters into consideration and thus omitted to take into account the relevant evidence which deals with 'Constructive Trust'.
- e) The learned District Judge has disregarded the true spirit and effect of the provisions of the Trust ordinance and given undue weightage to the Respondent's claim of prescription which is not tenable in Law.
- f) The learned District Judge has failed to consider that the Plaintiff and his family members remained in possession of the subject matter of this action for many years after the execution of the deed No. 2019

which itself reflects the intention of the Plaintiff that he had no idea to part with the said property.

- g) The learned District Judge has failed to judicially analyse and evaluate the evidence of the Plaintiff in this case reasonably.
- h) The learned District Judge erred in law in not considering the judgment cited by the Plaintiff in favour of this case.

All grounds of appeal urged can be considered together.

- 03. Contention of the Appellant was that the Respondent who was his wife's sister was living with him and his family. During that period, he had a sexual relationship with the Respondent. Respondent had bought another land and had wanted to build a house. As she wanted to get a loan to build the house, she had requested the Appellant to transfer the property in question, so that she could obtain a loan. Respondent has not paid any consideration, but because of the trust he had transferred the land.
- 04. Contention of the Respondent was that as mentioned in the attestation of the deed, she had paid the consideration to the Appellant. She had been a government employee as an attendant in the hospital, and from the money she saved, she had paid the money to the Appellant.
- 05. Section 83 of the Trusts Ordinance reads;

“Where the owner of property transfers or bequeaths it, and it cannot reasonably be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.”

06. Referring to section 83 of the Trusts Ordinance, His Lordship Justice C.V. Wignashwaran in case of *Piyasena V. Don Vansue* [1997] 2 Sri L.R page 311 said;

“Thus to set up a constructive trust the Defendant-Appellant should have proved that ‘it cannot reasonably inferred consistently with the attendant circumstances’ that the Defendant-Appellant ‘intended to dispose the beneficial interest’ in the property that is the subject matter of this action. ...A trust is inferred from attendant circumstances. The trust is an obligation imposed by law on those who try to camouflage the actual nature of a transaction.”

07. At the commencement of the trial, parties admitted the fact that the property in question was transferred to the Respondent by the Appellant by deed No. 2019 dated 03.12.1959.
08. In his evidence the Appellant said that the Respondent did not pay any consideration to him. Value of the property mentioned in the deed is Rs. 2500/-. The notary in his attestation has said that Rs. 2000/- was paid in his presence by the Respondent to the Appellant and that the Appellant informed him that the balance was accepted by him prior to the signing of the deed. Respondent testified that she paid the money as stated in the deed. Neither the Notary nor the witnesses were available to give evidence. Appellant had not been able to get down any other witnesses to show that the money was not paid as stated in the deed. Wife and the daughter who testified were not present at the time signing of the deed.
09. After analyzing the evidence adduced at the trial, the learned District Judge rightly concluded that the Respondent had been in possession of the land and

that later after about 35 years, the wife and daughter of the Appellant had come and ousted the Respondent from the property.

10. It is pertinent to note that the Appellant in his plaint has concealed the fact that the Respondent was ousted by them from the property and that Respondent was given possession by the Court in an action filed by her. In paragraph 15 of the plaint the Appellant had averred that the Respondent on her own left the house and filed action against them stating that she was evicted. Evidence proved otherwise.
11. The evidence of the wife and the daughter of the Appellant revealed that they got to know about the transfer after the year 1992 that is after about 33 years of the transfer. Appellant admitted in evidence that he left the property about 2 to 3 years after he signed the deed of transfer. He also admitted in cross examination that he got to know within the same time he signed the deed, that the Respondent deceived him saying that she wanted to get a loan. However, he had not asked her to transfer the land back to him. I am of the view that these attendant circumstances are hardly sufficient to show that the Appellant did not intend to dispose of the property to the Respondent. Evidence of the witnesses were led before the learned District Judge and she was the best person to decide on the credibility of the witnesses and I see no reason to interfere with the decision of the learned District Judge. Hence the grounds of appeal are without merit.
12. At the argument, counsel for the Appellant submitted that the learned District Judge has answered only the issues of the Plaintiff, and has failed to answer the Defendant's issues. Further it was submitted that, it is a violation of the Section 187 of the Civil Procedure Code.

13. Section 187 of the civil procedure code provides;

“The Judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision; and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by such assessors respectively.”

14. In the case of *Gunasena V. Kandage [1997] 3 SLR 39*, Weerasuriya J. held that;

“The learned District Judge was in error for failing to adduce reasons for her findings. Nevertheless the question that has to be examined is whether or not such failure on her part had prejudiced the substantial rights of the Defendant Appellant or has occasioned a failure of justice. Having considered the totality of the evidence, it seems to me that no prejudice has been caused to the substantial rights of the Defendant-Appellant or has occasioned a failure of justice by this error, defect or irregularity of the Judgment.”

The same decision was followed in the case of *Victor and another V. Cyril De Silva [1998] 1 Sri L.R. 41*, where Weerasuriya J. Held that;

“...the learned District Judge was in obvious error when she failed to evaluate the evidence in terms of section 187 of the Civil Procedure Code. The failure of the learned District Judge to comply with the imperative provisions of section 187 of the Civil Procedure Code has not substantially prejudiced the rights of the Defendants-Appellants, or has not occasioned a failure of justice to the Defendants-Appellants.”

Therefore, the failure of the learned District judge to answer the issues of the Defendant was neither substantially prejudiced nor occasioned a failure of justice to the Defendant, as the learned District judge has correctly decided the case.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL