

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

1. Thirimadura Amarasena,
(deceased)
2. Thirimadura Sudath Asoka
Amarasena,
(deceased)
3. Thirimadura Prasanna Anura
Kumara Amarasena,
All of
Pansala Road,
Boosa.
Plaintiff-Appellants

CASE NO: CA/1303/2000/F

DC GALLE CASE NO: 2740/SPL

Vs.

Dinetti Prematilleke De Silva,
No. 188,
Pansala Road,
Boosa.
Defendant-Respondent

Before: Mahinda Samayawardhena, J.
Counsel: Rohan Sahabandu, P.C., for the Appellants.
Dr. Sunil Cooray for the Respondent.
Decided on: 05.11.2019

Mahinda Samayawardhena, J.

Prema Walisinghe was the owner of the land in suit by deed No.2114 marked P1. She transferred the property for a sum of Rs. 15,000/= to Rita de Silva by deed No.35 dated 27.02.1985 marked P2 subject to the condition of retransfer to her or her successors in title upon payment of a sum of Rs. 15,000/= with 20% interest within one year from the execution of that deed¹, which is, on or before 27.02.1986.

Admittedly, the payment of a sum of Rs. 15,000/= with 20% interest was not made within one year, and therefore Rita de Silva transferred that property to the defendant by deed No.5242 dated 08.05.1988 marked P3.

It is interesting to note that, Prema Walisinghe was one of the subscribing witnesses to deed No.5242, which was an outright transfer with no conditions as in the earlier deed No.35.

Prema Walisinghe died in 1992, and the plaintiffs, who are the successors of her intestate estate have filed this action in the District Court in 1996 seeking declarations that Rita de Silva could not have transferred the property as an absolute transfer to the defendant by deed No.5242, and the plaintiffs are entitled

¹ Vide page 254 of the brief. Interest per mensem or per year, not clear.

to get the said deed cancelled upon payment of Rs.16,500 with interest of 20% per mensem to the defendant.

The defendant filed answer seeking dismissal of the plaintiff's action and seeking a declaration that he is the owner of the property.

After trial, the learned District Judge delivered the Judgment in favour of the defendant. Hence this appeal by the plaintiffs.

In my view, the Judgment of the District Court is absolutely correct. Although by deed No.35, conditional transfer was created, once the conditions were not fulfilled within the stipulated time, the transferee became the absolute owner to the property without further ado.

I will only refer to the following dicta of Tissa Bandaranayake J. in the Supreme Court case of *Sanmugam v. Thambaiyah*² to establish that position.

We have on P1 a legal obligation on the purchaser to retransfer upon fulfilment of the contract within 2 years. The terms of the deed show it is an outright sale or transfer of interests in land subject to a condition to reconvey if the sum of Rs. 5000/- owned by the vendor is paid in full within the time stipulated. No question of trust arises in such a context. Time is explicit. On the expiry of two years the purchaser is relieved of the undertaking to retransfer the property. The true construction of Deed P1 is that property has been offered as security for the payment of a sum of money within 2 years. It is not a pledge or mortgage.

² [1989] 2 Sri LR 151 at 160-161

It is well to remember the evidence of Sanmugam that the bridegroom's parents wanted tangible security. The two years for obtaining a retransfer lapsed on 4.1.66. It was held by the Supreme Court in Maggie Silva v. Sai Nona (78 NLR 313) that "when the condition underlying the conditional transfer is not fulfilled the transferee becomes absolute owner in terms of the agreement of parties free from any obligation to retransfer". After the two years lapsed the vendors remaining in possession of the property without fulfilling the condition rendered themselves liable to be ejected. On 4.1.66 the purchaser became absolute owner of the property and consequently the plaintiff got good title on P2 executed in 1970. In the premises the District Judge was correct in entering judgment and decree for the plaintiff as prayed for with costs. The appeal is dismissed with costs in this Court and in the Court of Appeal.

For the aforesaid reasons, I affirm the Judgment of the District Court and dismiss the appeal with costs.

Judge of the Court of Appeal