

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

In the matter of an appeal under Sec.
755(3) of the Civil Procedure Code.

C.A. Case No. 1022/97(F)

Solamuthu Pillai Doraisamy of

D.C. (Hatton)

No. 160, Main Street, Maskeliya.

Case No. DE/85

Plaintiff

Vs.

Mrs. Kandasamy Visalatchy of

No.131, Post Office Road,

Maskeliya.

Defendant

1. K. Jayarani and

2. K. Pushparani

Both of 131,

Post Office Road, Maskeliya.

Added Defendants

And Now Between

Solamuthu Pillai Doraisamy of

No. 160, Main Street, Maskeliya.

Plaintiff – Appellant

1. Kandasamy Kadirkamanathan

No.48, Post Office Road, Maskeliya.

2. Kandasamy Jeyarani

No.71/85, 2nd Lane, Heerassgala Road,
Mulgampala, Kandy.

3. Kandasamy Pushparani

No.53, Temple Road,
Maskeliya.

4. Kandasamy Kughaneshan

7 – 2A, Devanampiyatissa Mawatha,
Darley Road, Colombo 10.

5. Kandasamy Yogarani

No. 1, 8th Street, Maskeliya.

Defendant – Respondents

1. K. Jayarani and

2. K. Pushparani

Both of 131,

Post Office Road, Maskeliya.

Added Defendants – Respondents

BEFORE

: P.W.D.C. JAYATHILAKE, J

COUNSEL

: H. Pushparaji for the Plaintiff

Appellant.

K.K. Farooq for the 1st and 2nd

Added Defendant

Respondent.

ARGUED ON

: 25.07.2014

DECIDED ON

: 24.07.2015

P.W.D.C. Jayathilake, J

The Plaintiff Appellant filed this action seeking for declaration that he is entitled to the possession of the premises described in the schedule to the Plaint as Lessee under the state and an order for ejectment of the Defendant Respondent. He has averred that he gave the premises in suit to one of his uncles, namely, A.S. Kandasami to reside free of rent, on humanitarian ground. But the Respondent's position taken up in the answer for that was that the 1st Defendant Respondent's husband, Kandasami was given the subject matter by the state. However since Kandasami was not a citizen of Sri Lanka, the property was leased in the name of the Appellant who was a brother of Kandasami and that the Appellant held the subject matter as a trust for said Kandasami.

The Appellant has admitted in his evidence that Kandasami had been running a tea boutique in the old Maskeliya town and that he was not a citizen of Sri Lanka but later he was granted the citizenship in Sri Lanka.

The learned counsel for the Appellant contended that if the Defendants are claiming the right of the property in dispute on the basis that the Plaintiff Appellant is holding the property in trust, the state should have been made a party which has not been done. As the Plaintiff Appellant is a Lessee and his

rights are governed as per the terms and conditions contained in the lease agreement, the Defendants are not entitled to claim the possession of the property on the basis of trust, he argues.

The learned trial judge has observed that though the Appellant states that the house was constructed by him, subsequently he, deviating from that position has stated that it was Kandasami who constructed the house and his father and he only supplied the materials. Finally, the learned trial judge had accepted the position taken up by the Respondent that the subject matter had been offered by the state to Kandasami as an alternative to the land where Kandasami was residing which went under water as a result of a development project and that the said land was given on lease in the name of the Appellant since Kandasami was not a citizen of Sri Lanka. The learned District Judge has followed *Muniyandi Nachchi Vs M. Kayambu and three others* (1988 CALR 56) in deciding that the Appellant is holding the subject matter on a constructive trust in favour of the Respondent.

The learned District Judge is of the opinion that the position taken up by the Respondent is proved by the possession of Defendant and his family for 20 years uninterrupted and undisturbed.

It has been contended by the counsel for the Appellant that though the learned District Judge has decided that a trust had been created in terms of Sec.97 of

the trust ordinance, Defendants had not pleaded for a trust in their answer in which they have only claimed ownership.

It has been stated in paragraph 9 of the answer that the land had been given in trust in the name of the Plaintiff and therefore he becomes the trustee of Kandasami and his successors. It is true that there is no prayer in respect of the said averment. But the issue No.13 had not been objected which is based on the above mentioned averment.

In those circumstances, the opinion of this court is that finding of the learned District Judge that the land in dispute had in fact been given for the benefit of Kandasami though the lease was in the name of the Appellant. The said finding of the learned District Judge is in line with the evidence adduced before the court. Therefore, this court is of the view that there is no reason to interfere with the judgment of the learned District Judge and as such this court dismisses the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL