

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

CA (Writ) Application 239/2016

Vinitha Malkanthi Hulangamuwa,
No 24/35, Purana Wihara Mawatha,
Pamankada, Colombo 06.

Petitioner

Vs.

(1) Aluthge Dona Silawathi,
No 78, Sirimal Mawatha, Papiliyana,
Boralasgamuwa.

(2) Yahampath Arachchige Dona Dharmawathi,
No 92, W. A. D. Ramanayaka, Colombo 02.

(3) Debt Conciliation Board,
No 35A, Dr. N. M. Perera Mawatha, Colombo 08.

(4) Malani Abewardana Ranathunga,
Chairperson, Debt Conciliation Board,
No 35A, Dr. N. M. Perera Mawatha, Colombo 08.

(5) T.D.K. Pujitha Thilakawardana,
Member, Debt Conciliation Board,
No 35A, Dr. N. M. Perera Mawatha, Colombo 08.

(6) K H. Premadasa,
Member, Debt Conciliation Board,
No 35A, Dr. N. M. Perera Mawatha, Colombo 08.

(7) K P. Bandula Ranjith,
Member, Debt Conciliation Board,
No 35A, Dr. N. M. Perera Mawatha, Colombo 08.

(8) K.M. Karunarathna,
Member, Debt Conciliation Board,
No 35A, Dr. N. M. Perera Mawatha, Colombo 08.

(9) Secretary, Debt Conciliation Board,
No 35A, Dr. N. M. Perera Mawatha, Colombo 08.

Respondents

C.A. 239/2016Writ Application

Before : Vijith K Malalgoda PC. J (P/CA) &
S Thurairaja,J.

Counsel : C. Paranagama with Chanaka Kulatunga for the
petitioner.

Kapila Suriyarachchi with S.N. Ihalakathrige for
the 1st respondent.

Argued &

Decided on : 16.11.2016

Vijith K Malagoda, PC. J (P/CA)

The petitioner of the present application Vinitha Malkanthi Hulangamuwa had come before this Court against the decision by the Debt Conciliation Board which is produced before this Court marked 'N'. According to the facts placed before this Court the 1st respondent, Seelawathie was the owner of two blocks of land which were adjacent to each other in Nedimala-Dehiwala. According to the petitioner, she is a bona fide purchaser of a block of land to the extent of 24 perches she purchased from one Dharmawathie. After three years of the said purchase she was noticed by the Debt Conciliation Board and she had faced an inquiry by the said Debt Conciliation Board. However during the inquiry at the said Debt Conciliation Board, the 1st respondent to this application, Seelawathie

revealed that the only transactions she had was with the petitioner Hulangamuwa, even though Hulangomuwa had denied the same. According to Seelawathie she was in the habit of mortgaging the two blocks of land when she need money to various persons. At once stage when she mortgaged the 14 perches block to one Nimali Madeshika and in order to get the said mortgage discharged, she had mortgaged balance 24 perch block to Mrs. Hulangamuwa who is the petitioner to the present application. According to the evidence of Seelawathie she had never mortgaged the property to a person by the named Dharmawathie and her position was that the said Dharmawathie is a fictitious person. She only admits signing blank papers before a lawyer and obtaining a loan from Mrs. Hulangamuwa. As observed by this Court the two transactions referred to by the petitioner as evinced by the documents produced marked B and C have taken place within a period of three months. The amount referred to in both transactions are the same as Rs: one million for the value of a block of land to the extent of 24 perches at Nedimala, Dehiwala. The Debt Conciliation Board was mindful of the two transactions referred to above when they concluded that the transactions before them were not transfers but mortgages. Even though the petitioner to the present application claimed that she is a bona fide purchaser, the person from whom she brought the said property was not summoned to given evidence to support her position. Since the amount referred in both the said deeds appears to the same amount, this Court too cannot understand the purpose of the sale between Dharmawathie and Hulangamuwa without making any profit. Even the stamp fees spent by Dharmawathie had not been recovered by her. When

considering the submissions before this Court and also considering the decision of the Debt Conciliation Board which is before us marked 'N', this Court is of the view that the Debt Conciliation Board had reached the said decision after carefully analysing the evidence available at the inquiry before them and therefore we see no reason to interfere with the findings of the Debt Conciliation Board. Therefore this Court is not inclined to issue notices in the present application. We therefore dismiss this application.

PRESIDENT OF THE COURT OF APPEAL

S Thuraiaraja,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-