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

C.A. Case No. 262/2000 (F)

D.C. Colombo Case No. 17168/L

Gnanasambandan Shanmuganathan
No. 172, Ginthupitiya Street,
Colombo 13.
PLAINTIFF

-Vs-

Sri Lanka Insurance Corporation
No. 21, Vauxhall Street,
Colombo 2.
DEFENDANT

AND NOW BETWEEN

Sri Lanka Insurance Corporation
No. 21, Vauxhall Street,
Colombo 2.
DEFENDANT - APPELLANT

-Vs-

Gnanasambandan Shanmuganathan
No. 172, Ginthupitiya Street,
Colombo 13.
PLAINTIFF - RESPONDENT

BEFORE	:	A.H.M.D. Nawaz, J.
COUNSEL	:	Rohan Gunapala and Dulani Perera for the Defendant-Appellant. Ali Sabry, P.C. with Nuwan Bopage and P.C. De Silva for the Plaintiff-Respondent.
Argued on	:	02.11.2015
Written Submissions on:		02.02.2016 (For the Defendant-Appellant) 01.02.2016 (For the Plaintiff-Respondent)
Decided on	:	11.01.2017

A.H.M.D. NAWAZ, J.

This case raises the fundamental elements of offer and acceptance that constitute two of the most essential elements of a contract-a legally enforceable agreement. It also engages the question of how vitiating elements such as duress can avoid a Deed of Transfer (a contract of sale) signed by the vendor. The relevance of Section 92 of the Evidence Ordinance to invalidate a deed for duress also surfaces to the fore in the case.

This appeal is preferred by the Insurance Corporation of Sri Lanka, which is the Defendant-Appellant in this case, (hereinafter sometimes referred to as "the Defendant") against the judgment dated 05.05.2000 of the learned District Judge of Colombo in favour of the Plaintiff-Respondent, (hereinafter referred to as "the Plaintiff").

The Factual Template

The facts of the case merit narration at the outset. The Plaintiff was the owner of the land and premises morefully described in the first and second schedules to the plaint, which were rented out to the Appellant some time ago. By a letter dated 14.09.1980

(P2), the Plaintiff requested the Defendant Insurance Corporation to vacate and give vacant possession of the said land and premises as he wanted to marry and put up a house on the said land. The Defendant by a letter dated 29.09.1980 **(P3)** informed the Plaintiff that they could not vacate the premises until they found an alternative accommodation for themselves. Further the correspondence on the matter shows that the Defendant Corporation was interested in buying Lot 2, which is 24.25 perches in extent.

Offer to Buy Lot 2

This is evident by the defendant's letter dated 15.10.1990, **(P4)**, the 2nd paragraph of which states:

> ***"In this connection, we wish to inform you that the Management of this Corporation has agreed to purchase Lot 2 consisting of 24.25. p. as per P. Plan bearing No. 1607 dated 20.07.90 drawn by A. Welagedera-Licensed Surveyor."***

I must state that this letter verily evinces an intention to purchase Lot 2 which was in an extent of 24.25 perches. There is no doubt about the extent of land which the Defendant Corporation had decided to purchase from the Plaintiff.

Price for Lot 2

One finds two valuations in respect of Lot 2 namely **P7** filed by the Plaintiff from a private company quoting the value at Rs. 4,282,500 and the other is from the Government Chief Valuer, (but no report of the Govt. valuer is produced), which is said to have valued Lot 2 at Rs. 2 million. The Defendant Corporation, by their letter dated 09.08.1991 **(P13)** had indicated their position on the value to the Plaintiff in the following tenor:

> "***We have pleasure to inform you that the Insurance Corporation of Sri Lanka has decided to offer you Rs. 2 Million for the above premises.***"

The above premises is described in the head-note as follows:

"*Sale of premises No. 77 (Lot 2), Ratnapura Road, Avissawella, in Survey Plan No. 1607 dated 20/07/90 by A. Welagedera L.S. property occupied by the Insurance Corporation of Sri Lanka*".

Again the Defendant Corporation has confirmed its position by a letter dated 18.11.1991 **(P6)** as follows:

"*We have pleasure to inform you that the Insurance Corporation of Sri Lanka has decided to offer you the Govt. Chief Valuer's valuation of Rs. 2 Million in respect of the above premises.*"

The description of the premises as given in the head-note of this letter is the same as in the earlier letter **(P13)**.

From these letters the Defendant Corporation has very clearly indicated their intention that they were prepared to purchase only Lot 2 for Rs.2 million. Thus there was no doubt about the subject matter of the agreement that the Defendant was making an offer-lot 2 at Rs. 2 million. Did the Offeree-the Plaintiff accept this offer?

Acceptance of the Offer for Lot 2-P8

The Plaintiff, by his letter dated 26.11.1991 **(P8)** has responded to the Defendant as follows:

"*Further reference to your letter dated 18th November, 1991 and my letter to you dated 22nd November, 1991, I write to confirm that your offer of Rupees two million is accepted by me on the sale of the above premises.*"
(emphasis is added)

The heading of this letter too must be noted, which states:

"Premises No. 77 (Lot 02) Ratnapura Road, Avissawella."

This reply clearly indicates that the offer of Rs. 2 million for Lot 2 depicted in Plan No. 1607 has been **accepted** by the Plaintiff. It is thus clear that the parties were negotiating for the sale of Lot 2 as depicted in Plan No. 1607 which contains an extent of 24.25 perches. Did this offer to buy and acceptance thereof mature into a contract?

Did it finally crystallize into a binding contract of sale of Lot 2 for a consideration of Rs. 2 million? ***It is trite law that offer and acceptance alone will not result in a binding contract of sale. Offer and acceptance will only give rise to an agreement. A combination of offer and acceptance will not produce a legally enforceable agreement. In order to convert an offer and acceptance into a legally enforceable agreement which finally becomes a contract, there are further elements that must be added to offer and acceptance.***

The Other Requisites Necessary to Create a Contract

Contract Law requires that in addition to offer and acceptance, there are other requisites necessary for the constitution of a valid contract such as consideration or causa, intention to create legal relations, form and capacity but again these essentials alone are not sufficient. Even if all these factors are present in an intended transaction between two parties, there will not be a binding contract if the agreement is tainted by vitiating factors such as duress, undue influence, mistake, misrepresentation and illegality. The agreement which consists of offer and acceptance, provided form, intent to create legal relationship and consideration or causa are present, should be free from these vitiating factors. These factors, if they inhere in an agreement between two parties, would render a seemingly valid contract void or voidable having regard to the particular vitiating factor that taints the agreement.

If I may sum up the relevant law in a nutshell, not all agreements are contracts. An agreement becomes a legally enforceable agreement (a contract) only if there are no vitiating factors therein. Is there a vitiating factor alleged and established against the Defendant Corporation? As far as the agreement to buy and sell Lot 2 for Rs. 2 million is concerned, I must say that since it involves an agreement to convey interest in land, there is a requirement as to form namely the agreement to sell must be notarially attested.[1] It has to be noted that since this agreement was not notarially attested, it was a *nudum pactum*-a naked promise or an unenforceable agreement. Not that it failed

[1] Section 2 of the Prevention of Frauds Ordinance.

for want of consideration or otherwise but because there was a formal invalidity as Section 2 of the Prevention of Frauds Ordinance was not complied with. The requirement as to form was missing.

The Cause of Action Pleaded by the Plaintiff

The pleaded case of the Plaintiff in the case is that his agreement with the Defendant Corporation was only in relation to Lot 2. But subsequently and without the consent of the Plaintiff, Lot 1 too had been included in the Deed of Transfer No.715 which the Plaintiff alleges he was compelled to sign.

The final contract of sale (deed of transfer), which the Plaintiff was asked to subscribe to, embodied the sale of not only Lot 2 but also Lot 1 for the same consideration of Rs. 2 million and the Plaintiff impugns the whole transaction on the ground of duress-one of the vitiating factors I have referred to above. **The Plaintiff has sought a declaration that the deed of sale that he signed was null and void. This deed of sale has incorporated Lot 1 too. In fact Issue No. 9 put forward the issue of duress.**

Before I discuss the deed bearing No. 715 and dated 29.04.1992 **(P15)** which the Plaintiff was finally asked to sign and whose invalidation he seeks in this case, I have already stated that the Defendant offered a sum of Rs. 2 million only for Lot 2. No doubt despite the acceptance of that offer by the Plaintiff, that agreement was only an informal agreement. As I said before, it eventuated in a *nudum pactum* because it was not embodied in a notarially attested instrument.

There was though a subsequent preparation of a draft deed of transfer **(P9)** which referred to Lot 2. This would have become a binding contract of sale of Lot 2 if parties had proceeded to have a deed of transfer duly executed. This did not come to pass. The draft deed did not ripen into a binding sale as there was no final deed that was prepared and executed. In other words this informal agreement for the sale of Lot 2 fell through because a final deed of sale in terms of Section 2 of the Prevention of Frauds Ordinance was never executed. The informal agreement between the parties for the sale of Lot 2 for Rs. 2 million did not become a binding contract of sale

between the parties because the requirements as to form of a contract of sale of immovable properties as stipulated in Section 2 of the Prevention of Frauds Ordinance was not complied with. Neither an agreement to sell Lot 2 nor an eventual sale of lot 2 was ever notarially executed. What was finally executed was a deed conveying Lot 1 and Lot 2. This is the deed bearing No. 715 and dated 29.04.1992 **(P15)** that was sought to be invalidated for duress.

It is trite that the formal requirements of a conveyance of a land are set out in Section 2 of the Prevention of Frauds Ordinance thus:

Deeds affecting immovable property to be executed before a notary and witnesses.

> *"No **sale, purchase, transfer**, assignment or mortgage of **land or other immovable property** and no promise, bargain, contract or **agreement for effecting any such object** or for establishing any security, interest or incumbrance affecting land or other immovable property (other than a lease at Will or for any period not exceeding one month), nor any contract or agreement for the future sale or purchase of any land or other immovable property and no notice, given under the provisions of the Thesawalamai Pre-emption Ordinance, of an intention or proposal to sell any undivided share or interest in land held in joint or common ownership, shall be of force or avail in law unless the same shall be in writing and signed by the party making the same or by some person lawfully authorised by him or her in the presence of a licensed notary public and two or more witnesses present at the same time and unless the execution of such writing, deed or instrument be duly attested by such notary and witnesses." (Emphasis added)*

I have already stated that a contract which is defined as a legally enforceable agreement[2] must have, as preconditions to its formation, offer, acceptance, causa or consideration, intention to create legal relations, *form* and absence of any vitiating factors. Applying this principle to the negotiated sale of Lot 2 for Rs. 2 million, I have

[2] See how *Treitel on The Law of Contract* (edited by Edwin Peel, 13th edn, 2011) defines a contract as an agreement giving rise to obligations which are enforced or recognized by law.

stated that though the correspondence between the parties shows an offer, acceptance, consideration and intention to create legal relations, the requirements as to form in Section 2 of the Prevention of Frauds Ordinance were not complied with and therefore the parties did not bind themselves to a legally enforceable obligation for the sale of Lot 2.

In terms of Section 2 of the Prevention of Frauds Ordinance, even an agreement for the sale of Lot 2 would not eventuate unless it was reduced to writing and signed by the vendor in the presence of a licensed notary public and two or more witnesses present at the same time and unless the execution of such writing, deed or instrument be duly attested by such notary and witnesses.

As I have stated, the schedule of the draft deed **(P9)** exchanged between the parties describes only Lot 2. No other land is included, leave alone Lot 1. The draft deed, though exchanged between the parties, did not ripen into a deed of sale as the execution of a formal deed of sale did not go through. So no contract of sale came about for the transfer of Lot 2.

There seems to be another reason as to why a final deed of sale of Lot 2 for a sum of Rs. 2 million was not executed. There is evidence that the Defendant Corporation evinced a subsequent intent to purchase Lot 1 as well, along with Lot 2 but for the same consideration of Rs. 2 million. One finds evidence of this in the subsequent correspondence between the parties.

Subsequent Offer to Buy Lots 1 and 2 for Rs. 2 million.

The Defendant Corporation went back on the informally agreed transaction of Lot 2 for Rs. 2 million and came out with a fresh offer, according to which, "certain portion of Lot 2 would go for street line and therefore they may not have sufficient land to put up their office building and therefore they wanted Lot 1 also"-vide **P10** dated 12.03.1992. I would straightaway observe that if at all, this was a new offer put forward by the Defendant Corporation. The Plaintiff rejected this offer to buy Lot 1, as could be seen in the document marked **P11**-vide page 123 of the appeal brief-*see* also

the evidence relating to the rejection of the offer at page 3 of the proceedings dated 01.07.1999.

However there seems to be a counter offer made by the Plaintiff to sell Lot 1 provided a higher price was paid-*see* document marked **P11** dated 26.03.1992. This counter offer for a higher price was not accepted at all by the corporation.

In this case the Defendant Corporation represented to the Plaintiff that they would be buying only Lot 2 for Rs. 2 million and that belief induced the Plaintiff to accept the offer to buy only Lot 2. The Plaintiff acted on the supposition that he would be parting with only Lot 2 for a sum of Rs. 2 million even though the valuation which he got for his property was somewhere around Rs. 4.1 million. As I have shown, this agreement had long become unenforceable for want of form. Neither was the draft deed carried through.

Thereafter the story of an offer for Lot 1 began but with the same price of Rs. 2 million being offered for both Lot 1 and Lot 2.

There is no evidence before the Court that a portion of Lot 2 would be lost for street line and if that be so, how much of Lot 2 would be lost. In the absence of any such evidence, the stand taken by the Defendant Corporation to justify making the offer for Lot 1 cannot be accepted.

It is the position of the Plaintiff that he reserved Lot 1 for his personal purposes, that is, to construct a house therein for himself as he was to get married. But if the Defendant Corporation was really in need of that land (Lot 1), then it goes without saying that it had to be sold at a market value and not as an annex to Lot 2 free of further consideration.

Having pleaded and prayed for the invalidity of the entire deed of sale wherein he signed away Lot 1 and Lot 2 allegedly under duress, the Plaintiff pleaded a **second cause of action in his plaint dated 19.06.1995. The gravamen of the Plaintiff is that Lot 1 should be valued at Rs. 1.56 million**. His stance was that the sum of Rs. 2 million that was paid to him was only in respect of Lot 2. There was no consideration

at all for Lot 1. In his 2nd cause of action he pleaded he should be paid Rs. 1.56 million for Lot 1. Alternatively the entire deed bearing No. 715 and dated 29.04.1992 must be declared null and void.

The argument was that the deed incorporating Lot 1 and Lot 2 was signed under duress. Lot 1 was unlawfully included in the schedule to the Deed of Transfer No. 715. The deed must be set aside not only for duress but also for want of consideration.

Alternatively the consideration for Lot 1 which the Plaintiff fixed at Rs. 1.56 million should be paid. In other words this implied a waiver of the plea of invalidity of the deed.

The question that arises is whether the vitiating element of duress was established in order to support the remedy of setting aside the deed. The first proviso to Section 92 of the Evidence Ordinance sets out a list of factors that go to invalidate a document that is required by law to be reduced to writing. **It is not an exhaustive list but duress though not specifically referred to in the first proviso to Section 92 of the Evidence Ordinance would no doubt be included therein since words "such as intimidation" are wide enough to mean and include duress. If duress is established, it goes without saying that the first proviso to Section 92 of the Evidence Ordinance would enable the invalidation of the Deed of Transfer bearing No. 715.**

Duress-the Vitiating Factor to Invalidate Deed No. 715

The Plaintiff alleged before the District Court that duress under which he signed the Deed of Transfer containing the transfer of not only Lot 2 but also Lot 1 for Rs. 2 million was null and void and should therefore be set aside. This was his first cause of action.

There is no evidence in this case that the Plaintiff has voluntarily agreed to sell Lot 1 in combination with Lot 2 for Rs.2 million, which is the amount agreed upon only for Lot 2. All the letters exchanged between the Plaintiff and the Defendant Corporation show that the sale price of Rs. 2 million was only for Lot 2. Therefore, the inclusion of

Lot 1 in the Deed of Transfer No. 715 is quite contrary to the agreement reached and against the wish of the Plaintiff.

The Plaintiff, having agreed to sell only Lot 2 for Rs. 2 million cannot be expected to part with another land, i.e., Lot 1, which is 6.5 perches in extent, free of any consideration. No doubt given the inequality of the bargaining power between the Plaintiff and Defendant, the Plaintiff was willing to part with Lot 2 for a lesser amount than the value assessed by the private valuer. In light of the fact that the offer of the Defendant for Lot 2 was only a sum of Rs. 2 million vis-à-vis the estimate of Rs. 4 million that the private valuer had apprised the property at, the Plaintiff was likely to be deprived of a good amount of money if the sale for Lot 2 went through at a price of Rs. 2 million and accordingly it would be unconscionable on the part of the Defendant to coerce the Plaintiff to sell Lot 1 and Lot 2 for the same consideration of Rs. 2 million by exercising undue influence and duress.

It must be reiterated that Lot 1 was not a matter in contemplation when the sale of Lot 2 was negotiated. It was clearly agreed between the parties that the land to be sold was only Lot 2 and the price for that Lot was Rs. 2 million. It was on this basis that the draft deed of transfer had been prepared.

The testimony of the plaintiff's brother throws light on what happened subsequently when he along with his father and uncle went to sign the deed of transfer at the corporation. In fact it was Lot 2 for a consideration of Rs. 2 million that was in contemplation of their minds. But the witness stated that Lot 1 had also been included in the deed of sale whereupon they protested. They had gone again to the corporation on 29.04.1992-the day on which the duress allegedly took place. The evidence is to the effect that the then Chairman of the Corporation stated to them- "unless you sold Lot 1 too, the land would be acquired." So the witness caved in and signed the deed bearing No. 715. The witness-the brother of the Plaintiff was quite emphatic that the then Chairman told them in no uncertain terms on 29.04.1992 that if Lots 1 and 2 were not sold for Rs. 2 million, the lands would be recommended for

acquisition. It has to be remembered that this evidence given by the witness was never contradicted or impeached by the Defendant in any way.

When the Plaintiff leads evidence of a relevant fact and the Defendant does not adduce evidence to contradict or impeach it, this is an additional "matter before the court" towards proof of the relevant fact. Sir James Fitzjames Stephen the author of our Evidence Ordinance quite advisedly uses the word "matters" in Section 3 of the Evidence Ordinance thus:

> "***A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.***" *(Emphasis added).*

So the uncontradicted allegation of duress as narrated by the witness is a "matter" before the Court, which the definition of "proved" in Section 3 of the Evidence Ordinance requires the court to take into account. There is another additional matter that this Court has to allude to.

Letter Marked as V1

According to the witness who was the brother of the Plaintiff, it is not only the deed of transfer that he signed under duress but also a letter dated 29th April 1992 to which he appended his signature under improper pressure. On the same day as he signed the deed of transfer which conveyed to the corporation Lots 1 and 2 for Rs. 2 million namely on 29.04.1992, he was also asked to sign V1-the only document produced by the Defendant at the trial. This document, according to the witness, was typed by the managing director of the corporation and the plaintiff's brother was told to sign this letter. The letter V1 dated 29.04.1992 goes as follows:-

> "
>
> *C. Shanmuganathan,*
> *172, Gintupitiya Street,*
> *Colombo 13.*
> *29th April, 1992.*
>
> *Deputy General Manager (Admn.),*
> *Insurance Corporation of Sri Lanka,*

21, Vauxhall Street,
Colombo 2.

Dear Sir,

SALE OF PREMISES NO.77, RATNAPURA ROAD, AVISSAWELLA, LOTS 1 & 2 IN PLAN NO.1607 DATED 27.07.1990 MADE BY A. WELAGEDERA, L.S.

I am in receipt of your undated letter. I am most surprised to note that you have subsequently observed that the lot No.2 was affected by a street line. The actual position is that the said lot No.2 was originally valued by the Government Chief Valuer at Rs.2 (Two) million taking the street line into careful consideration. Therefore your personal offer of Rs.2 million for lot 1 & 2 is really a disappointment. I believe you need more land to put up your new building.

However, as requested I hereby confirm that Lots 1 & 2 as an entity will be transferred to the Insurance Corporation for a sum of Rs.2 Million. Please expedite the transaction.

Thanking you,
Yours faithfully,
-sgd-"

The pith and substance of the evidence of the witness is that he signed both the deed of transfer and the letter under duress. The learned District Judge has believed the witness on his testimony and having regard to the law governing duress, I would state that the elements of duress are made out on the facts before Court. Let me set out the cardinal elements of what has to be established, that would amount to duress.

Duress

Duress turns out to be a common law doctrine (equity's doctrine of coercion has now been superseded by common law). The essence of 'duress' is improper pressure, and this must be sufficiently powerful and influential so as to render consent legally unsustainable. Such coercion can involve direct force (violence against a person, or harm to his property or his commercial interests); or coercion can involve the threat of personal violence, or ***of material or economic harm,*** or of harm to a person's personal or family reputation. As Lord Devlin said:

> *"All that matters to the plaintiff is that, metaphorically speaking, a club has been used. It does not matter to the plaintiff what the club was made of – whether it is a physical club or an economic club or otherwise an illegal club."*[3]

Neil Andrews in his illuminative *Contract Law*[4] classifies duress under three categories: duress as to person; duress as to goods; and *economic duress.* Because threats can concern matters of personal or family reputation, *Neil Andrews* comments that this tripartite classification *though* is not exhaustive.

> *"Duress does not extinguish contractual consent but merely vitiates it. Thus, a coerced party is psychologically aware of the transaction: he is neither mistaken about what he is doing, nor is he an automaton. In fact, he is all too 'painfully' or vividly aware of what, contrary to his wishes, he is being coerced to do. The coerced person's consent is 'vitiated' because he was not psychologically 'free' when deciding to enter the relevant agreement. The Latin tag for this constrained act of contracting is coactusvolui, 'I volunteered to act, having been compelled to do so.'*[5]

Five conditions need to be satisfied in order for there to be a finding of duress:

1. Pressure was exerted on the contracting party
2. This pressure was illegitimate
3. This pressure induced the claimant to enter the contract-*causal impact of the pressure.*
4. The claimant had no real choice but to enter the contract.
5. The claimant protested at the time or shortly after the contract was made.

- **Pressure was exerted on the contracting party**

The witness in the case has clearly referred to the circumstances in which pressure

---

[3]See *Rookes v Barnard* (1964) AC 1129, 1209, HL, *per* Lord Devlin (spoken in the context of tort of intimidation: and approving Hamson's analysis, (1961) CLJ 191, 192-see *Contract Law by* Neil Andrews.
[4](2011) at page 310 (Cambridge)
[5]See Neil Andrews, Contract Law–*ibid* at page 310.

was exerted on him to induce him to sign both the deed and the letter VI. Pressure must have been exerted on the innocent contracting party, which amounted to a compulsion of the will. As the law has developed, traditionally, the common law confined the doctrine of duress to render consent obtained by means of physical violence or threats of it, or unlawful constraint inoperative. Over the past 25 years, the courts have extended the scope of the doctrine to include what has now come to be known as economic duress.

Economic Duress

Economic duress occurs where one party was forced into a contract because of economic pressure.

The principle that economic pressure could amount to duress was confirmed in ***Pao On v. Lau Yiu Long***,[6] where the Privy Council declared

> '***It must be shown that the payment made or the contract entered into was not a voluntary act.***'

- The pressure was illegitimate

Illegitimate pressure must have been exerted on the other contracting party. A threat to do an unlawful act (which includes breaking a contract) will always be illegitimate, but *a threat to do a lawful act will only be illegitimate if the threat is unreasonable*, which will depend on the circumstances. The court did not accept, however, that the fact that what was threatened was perfectly lawful, and would not have involved the supplier in any breach of contract, was in itself fatal to a claim. It thought that *it was possible, in appropriate circumstances, for a threat to commit an entirely lawful act to amount to duress.* In coming to this conclusion, it noted with approval the opinion of Professor Peter Birks that it ought not to be the case that *'those who devise outrageous but technically lawful means of compulsion must always escape restitution'*.[7] So when the then Chairman Peter

[6] (1980) AC 614, (1979) 3 W.L.R. 435; (1979) 3 All E.R. 65 (Privy Council)
[7] Professor Peter Birks, *An Introduction to the Law of Restitution* (1989) p.177.

Perera told the witness that if he did not agree to the sale of not only Lot 2 but also Lot 1 for Rs. 2 million, the property would be acquired, no doubt he was prophesying the prospect of what otherwise could be a lawful act of acquisition. As Mr. Rohan Gunapala, Counsel for the Defendant Corporation submitted rightly, there is provision in the Sri Lanka Insurance Act to acquire lands but Mr. Ali Sabry, President's Counsel argued that the acquisition must be effected at a market price and an unwilling buyer cannot be slapped with an order of acquisition when he refuses to sell his property in the first instance.

I hold that a threat to do a lawful act (an acquisition permitted by legislation) may, in appropriate circumstances, amount to economic duress if the threat is illegitimate in that it coerces an unwilling seller into acquiescing in a sale which he would otherwise not engage in. This was the duress of circumstances that surrounded the witness on 29.04.1992.

This appears to have been the approach taken in ***Atlas Express Ltd. v. Kafco (Importers and Distributors) Ltd***.[8]

Pressure Induced the Claimant to Enter the Contract

Duress must be one of the reasons for entering or modifying a contract, but it does not have to be the only or even the main reason. In the Australian case of ***Barton v. Armstrong***[9] Armstrong, a former chairman of a company, threatened to kill Barton, its managing director, if Barton did not agree to buy Armstrong's shares on terms which were decidedly favourable to Armstrong. Barton bought the shares, but there was some evidence that he in fact did so because it looked like a good business deal at the time. Nevertheless, the Privy Council decided that the contract was voidable for duress. Armstrong's threats had contributed to Barton's decision to sign the deed, even if they were not the only reason. This could be described as a 'but for' test of causation: but for the illegitimate pressure the claimant would not have entered the contract and made a payment.

[8] (1989) Q.B. 833; (1989) 3 W.L.R. 389.
[9] (1976) AC 104 (Privy Council)

- Claimant had no real choice but to enter the contract

Universe Tankships v. International Transport Workers' Federation (The Universe Sentinel)[10] concerned an industrial dispute. The ITWF insisted on a payment being made to its welfare fund before it would call off a strike, which was affecting a ship belonging to the claimant. The payment was made and, once the strike was lifted, the ship-owners sought to reclaim it, as having been paid under duress. In deciding that the payments had indeed been made under duress, Lord Diplock further defined the test. He suggested that compulsion of will alone could not form the basis of duress, since in all cases there is a choice, even though it may be between two unpleasant options. In other words, the ship-owners had the choice of paying the money or losing revenue while the ship was stuck in port; they were not actually compelled to pay the money. He suggested that the issue should be whether they had any practical alternative to complying with the threat, and whether the pressure applied would be regarded by the law as illegitimate.

It now appears that economic duress will be present where there is compulsion of the will to the extent that the party under threat has no practical alternative but to comply. Accordingly, two elements of duress were identified in the case;

1. Compulsion of the will – absence of choice.
2. Illegitimacy of the pressure.

Thus I would hold that all elements of duress which were emphasized in the case of *Pao On v. Lau Yiu Long*[11] have been established in the case.

I have said before that whether a contract is void or voidable depends on the particular vitiating element.

Nature of Contractual Invalidity

Lord Scarman declared in *Pao On v. Lau Yiu Long*[12] that duress renders the contract

[10] (1983) I AC 366
[11] *Supra*
[12] *Supra*

voidable, at least in the context of 'economic duress' (and, almost certainly, duress as to goods).[13] The three consequences of treating the transaction as voidable, as distinct from void *ab initio*, are: (1) a sub-purchaser, if he receives in good faith and without notice, will acquire good title; (2) *the coerced party also has the choice whether to affirm or set aside the relevant coerced transaction.*

Whilst praying for the setting aside of the deed bearing No. 715 and dated 29.04.1992, the Plaintiff has also prayed for the alternative remedy-namely he be paid Rs. 1, 560,000 as consideration for Lot 2. In other words he has prayed for an affirmation of the transaction provided the Defendant makes a payment of Rs. 1, 560,000. Though the parties indicated a possibility of a settlement prior to hearing, no such settlement was forthcoming and the argument of the Plaintiff thereafter proceeded on the basis that the coerced transaction should be annulled. Since the option of choosing either the setting aside or affirmation is with the Plaintiff, this court regards the option of affirmation as having been jettisoned having regard to the arguments that were placed before this Court. Hence the Court indulged in an analysis of the constituent elements of duress vis-à-vis the evidence adduced in the case.

It is clear, from the evidence led in this case, that the Plaintiff never agreed to sell both Lot 1 and Lot 2 for a sum of Rs. 2 million. The Defendant has failed to prove that the Plaintiff agreed to sell both these lots for Rs. 2 million without any protest. In the absence of such evidence it is clear that the Defendant's Chairman Peter Perera exercised duress on the witness and obtained his signature on the said deed No. 715. This position has been accepted by the learned Trial Judge and I see no reason to disturb that finding having regard to the law. That would in the end result in a declaration of nullity of the Deed No. 715 dated 29.04.1992, subject to the right of the Defendant to recover back the consideration it paid on the transaction.

[13] *Pao On v. Lau Yiu Long* (1980) AC 614, PC (cf Lord Cross' earlier reference in *Barton v. Armstrong* [1976] AC 104, 120, PC, to a threat as to person rendering the contract 'void so far as concerns him' is ambiguous on this point).

In the circumstances a decree of nullity of the deed bearing No. 715 has to be entered and accordingly I proceed to dismiss the appeal of the Defendant-Appellant in view of my finding as above.

For the reasons stated above, the Appeal of the Defendant is dismissed with costs.

JUDGE OF THE COURT OF APPEAL