

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

C.A. Case No 1258/2000 (F)

D.C. Negombo Case No. 4767/L

Polpitiya Aralchchilage Saineris of
Kudagammana, Divulapitiya.

Plaintiff

V.

Kudawadurawaralalage Jayasinghe of
Kudagammana, Divulapitiya.

Defendant

NOW BETWEEN

Polpitiya Arachchilage Saineris of
Kudagammana, Divulapitiya.

Plaintiff/Appellant

V.

Kudawadurawaralalage Jayasinghe of
Kudagammana, Divulapitiya.

Defendant/Respondent

BEFORE : JANAK DE SILVA, J
K.PRIYANTHA FERNANDO, J

COUNSEL : Ruwini Perera for Plaintiff /Appellant.

ARGUED ON : 04.04.2019

WRITTEN SUBMISSIONS

FILED ON : 11.05.2018 by the Plaintiff /Appellant.

JUDGMENT ON : 31.07.2019

K. PRIYANTHA FERNANDO, J.

01. This is an appeal preferred by the Plaintiff Appellant (Appellant) against the Judgment of the learned District Judge of Negombo dated 21.11.2000. Appellant filed the above action in the District Court of Negombo praying for a declaration that deed No.980 dated 19.06.1993 executed by H.P.A. Rupasinghe, Notary Public is null and void and that the said deed is not the act and deed of the Appellant, and that the above deed does not convey title to the Defendant Respondent (Respondent) of the portion of the land described in the schedule to the plaint. The Appellant's case was based on

the ground that the Respondent fraudulently misrepresented to the Appellant that he was getting a lease of the portion of the land.

02. Version of the Appellant is that, the Respondent requested the land in question to be given to him on a lease for 05 years for him to grow pineapples. He had agreed to give it on lease for 05 years for a sum of Rs. 8000/-. On 19.06.1993 he had gone to the Notary's office with the Respondent to sign the lease agreement. He had been after consuming alcohol and on their way to the Notary also he had consumed more alcohol that the Respondent bought. At the Notary's office after the Respondent had a discussion with the Notary, his signature was obtained on few papers. He had signed under the belief that he is signing on a lease agreement. Notary had not explained the contents to him. He had received Rs. 8000/= upon signing the documents.
03. On 24.06.1993, the Respondent had tried to erect a fence in the land and on inquiring, the Respondent had said that he bought this land outright. On further inquiring from the Notary, he has got to know that it was on a deed of sale he had signed.
04. Respondent's version is that, he never wanted to get the land on lease to grow pineapples. Respondent himself had been a co-owner of the land. According to the Respondent, about 6 months prior to signing of the deed in question, the Appellant had asked him to buy the undivided portion of his land and he had agreed to buy it for Rs. 25,000/-. Before signing the deed, he had given Rs. 17,000/- to the Appellant. On that agreement between the parties, on 19.06.1993, the deed in question was signed and attested by the Notary. The balance Rs. 8,000/- was paid to the Appellant at Notary's office at the time of signing the deed. Respondent says that there was no

misrepresentation or fraud. He denied that the Appellant was consuming alcohol and said that the Appellant came to the Notary on his own. He says that after signing the deed, the Appellant had made this complaint on the instigation of the Appellant's son.

05. At the trial, the Appellant, his wife, his son and his brother had given evidence on behalf of the Appellant. On behalf of the Respondent, Respondent, the Notary, two witnesses who witnessed signing of the deed and one G.A.M. Gunaratne had testified in the District Court. After trial the learned District Judge delivering the judgment on 21.11.2000 dismissed the plaintiff's action.
06. Being aggrieved by the said judgment, the Appellant preferred the instant appeal on 14 grounds. Although there are 14 grounds of appeal mentioned in the petition of appeal, those grounds can be summarized into three.
 1. That the judgment of the learned District Judge is contrary to law and the weight of the evidence led at the trial.
 2. That the Respondent has failed to prove that the attesting of the deed in question was in compliance with Section 02 of the Prevention of Frauds Ordinance.
 3. That the long delay of about 04 years for the learned District Judge to deliver the judgment, there was all possibility that the learned District Judge forgetting the demeanour of the witnesses.
07. Counsel for the Appellant filed written submissions. However, the Respondent neither filed written submissions, nor he represented himself or by counsel at the argument stage of this appeal. Counsel for the Appellant agreed to dispose this appeal by way of the written submissions already filed

without going to oral argument. I have considered the pleadings, evidence adduced at the trial, judgment of the learned District Judge, grounds of appeal, and the submission made by counsel for the appellant.

08. When fraud is alleged in signing of a deed, in a Civil Court it would require a higher degree of probability although it does not adopt the standard of proof beyond reasonable doubt.
09. In case of *Kumarasinghe V. Dinadasa and Others* [2007] 2 Sri L.R. page 203 it was held;

‘...A civil Court when considering a charge of fraud requires a higher degree of probability than it would require in establishing negligence.’

10. In case of *Peiris and Another V. Siripala* [2009] 1 Sri L.R. page 75 at page 83, Court of Appeal held;

‘In Sri Lanka the earlier view was that the burden of proving fraud in regard to a civil transaction must be satisfied beyond reasonable doubt (vide *Yoosoof V. Rajaratnam* 74 N.L.R. at page 9). But the law as it stands today is that the standard of proof remains on a balance of probabilities although the more serious the imputation, the stricter is the proof which is required. (*Associated Battery Manufacturers Ltd. V. United Engineering Workers Union* 77 N.L.R. 541)’.

On the above line of authorities, it is clear that in proving a fraud in a civil transaction, although the standard of proof is balance of probabilities a strict proof is required.

11. The position of the Appellant was that he was misled or tricked as he had consumed alcohol. Although he said that the Notary did not explain the contents of the document he signed, in cross examination he admitted that the Notary read the contents to him. (Page 72 of the record).

ප්‍ර: නොතාරිස් මහතා එය තේරුම් කර දුන්නාද?

උ: කියෙව්වා මට තේරුමක් නැහැ.

12. Other than his own evidence, there is no evidence to show that he had consumed alcohol. The Respondent, notary and the witnesses to the deed testified about signing of the deed and they had not noticed that the Appellant was drunk.
13. Counsel for the Appellant submitted that the evidence of the witnesses for the Respondent should be disregarded as they were coached by the Respondent. The witnesses admitted that they came to Court with the Respondent to give evidence and that they discussed about the case. It is quite natural for the witnesses in a civil case to come together to court and also to discuss about the case. On that point they have been truthful to Court. What is important is to see whether they were not truthful about the incident of signing of the deed in question or whether they lied to Court in favour of the Respondent.
14. The learned District Judge found that the evidence of the Appellant could not be accepted. It was evident that the wife and the son of the Appellant were not even aware of the Appellant going and signing the deed, whether it was a transfer deed or a lease agreement. In paragraph 07 of the plaint, Appellant averred that at the Notary's office he signed on few papers. (ඔප්පු කොළ කිහිපයකට පැමිණිලිකරුගේ අත්සන ලබා ගන්නා ලදී.)

15. However, his evidence in Court was that he signed only on one paper (page 57 of the record). Appellant's evidence on signing of the deed was also not consistent. In her judgment the learned District Judge has properly analyzed the evidence of all witnesses and had given good and sufficient reasons for her conclusion. As the witnesses testified before the learned District Judge, it was the trial Judge who heard and saw the demeanour and deportment of the witnesses. Unless there are serious infirmities in the evidence that were not considered by the trial judge, an appellate court will be slow in interfering with the Trial Judge's decision on the credibility of the witnesses. In case of **Fradd V. Brown & Company Ltd. (20 N.L.R. page 282)** Privy Council held;

"It is rare that a decision of a Judge so express, so explicit, upon a point of fact purely, is over-ruled by a Court of Appeal, because Courts of Appeal recognize the priceless advantage which a Judge of first instance has in matters of that kind, as contrasted with any Judge of a Court of Appeal, who can only learn from paper or from narrative of those who were present. It is very rare that, in question of veracity, so direct and so specific as these, a Court of Appeal will over-rule a Judge of first instance"

16. Counsel for the Appellant submitted that the Respondent was not consistent in his evidence with regard to his going to the Notary's office. It is clear from the evidence that the position taken by the Respondent from the inception was that the Appellant and the Respondent went separately to the Notary's office. It seems that Appellant is trying to misinterpret what the Respondent said in his evidence at page 98, taking it in isolation, that he

went to Notary with Plaintiff. In the next page at page 99, the Respondent has clearly explained as to how Appellant was already at Notary's office when he went there.

17. Although it was not pursued at the argument of the appeal, in the petition of appeal it was urged that there had been a long delay in delivering the judgment by learned District Judge and therefore, the learned District Judge may have forgotten the demeanour of the witnesses. Having scrutinized the evidence and the Judgment, I am of the view that the learned District Judge has considered all the evidence and that no prejudice has caused to the parties because of the delay in delivering the judgment.

In the above premise I find that the grounds of appeal are without merit and appeal should be dismissed.

Hence, the appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL