

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

Wagoda Pathirage Siripala
Of No. 196, Ganegoda
Elpitiya.

PLAINTIFF

CA Appeal No. 346/97 (F)

D.C. Balapitiya Case No. 785/L

Vs

Kariyawasam Indipalage Nandisena
Of Ganegoda, Elpitiya.

DEFENDANT

NOW

Kariyawasam Indipalage Nandisena
Of Ganegoda, Elpitiya.

DEFENDANT - APPELLANT

Vs

Wagoda Pathirage Siripala
Of No. 196, Ganegoda,
Elpitiya.

PLAINTIFF - RESPONDENT

BEFORE

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

COUNSEL

: Rohan Sahabandu PC for the

Defendant - Appellant

Dr. Sunil Cooray for the

Plaintiff – Respondent.

ARGUED ON

: 21st May, 2015

DECIDED ON

: 11th March, 2016

Deepali Wijesundera J.

The plaintiff respondent has filed a case against the defendant appellant in the District Court Balapitiya seeking a declaration of title to the land described in the schedule to the plaint on the basis that the defendant was holding the said property on a trust. The plaintiff has claimed that the land was transferred by deed no. 404 dated 08/04/1982 to the defendant to obtain a loan of Rs. 10,000/= and that the defendant promised to retransfer the property to him. The defendant claimed the deed was an outright transfer and that the property was not held in trust by him. After trial the learned District Judge has delivered the judgment in favour of the plaintiff respondent. Being aggrieved by the said judgment the appellant has filed this appeal against it.

The learned counsel for the appellant argued the issues of the plaintiff were on trust, *laesio enormis* and unjust enrichment and that the District Judge after trial held that there was a trust, unjust enrichment and that the principal of *laesio inormis* too applied and that these causes of action are not pleaded in the alternative and under the law *laesio anormis* and unjust enrichment can not co-exist with a trust.

The appellant stated that in a trust, one has to accept the deed as valid and lawful and that the title in law is with him, and in an unjust enrichment the plaintiff has to accept that there was a valid transfer and though it is a valid transfer he has been enriched by that transfer and in *laesio enormis* to the plaintiff has to admit ownership had been transferred but for a lesser consideration. He further stated that in the instant case the plaintiff knew the value of the land therefore he can not plead *laesio enormis*. He cited the judgment in **Fernando vs Fernando 19 NLR 210** and said that trust, *laisio enormis* and unjust enrichment can not be pleaded together. The appellant submitted that on this issue the learned District Judge has failed to appreciate the legal principle involved and a great miscarriage of justice has been caused, to the appellant.

The appellant stated that in terms of *Sec. 91 and 92 of the Evidence Ordinance* a person is prevented from leading evidence to convert pleadings to a different character, therefore no evidence could be led to prove that the plaintiff's case was a mortgage.

The appellant further stated that the plaintiff mentioned a non-notarial document marked **P12** which he claimed was an agreement entered into by the parties which is not a valid legal document under *Sec. 2 of the Prevention of Frauds Ordinance*.

Citing the judgment in **Samujan vs Thanmbaiyah 1899-2-151** he stated that there can not be a trust and after the lapse of the period in the conditional transfer there can not be an action founded on the conditional transfer and the plaintiff is precluded in seeking a declaration on trust.

The learned counsel for the plaintiff respondent submitted that in the District Court the documents produced by them were not objected to by the appellant thereby making them admitted as evidence. He stated at the time of the exclusion of the said deed the land in dispute was subject to a two year lease agreement (deed no. 29686). This has not

been mentioned in deed no. 404 the respondent stated that if it was an outright purchase this lease agreement would have been mentioned in the said deed.

The respondent stated that the possession of the land transferred was never handed over to the appellant, and that the appellant never took up the position that when **P1** was executed he took over possession of the land.

The respondent further submitted that the consideration paid for the land was much less than its market value in terms of the report marked **P25**. The respondent stated the timber found in this land was much more valuable than the consideration paid for the land.

On perusal of the judgment of the learned District Judge of Balapitiya it can be said that it is a well-considered judgment. The District Judge has carefully analysed the evidence and documents placed before him and arrived at his findings.

When the legal issues taken up by the appellant on misjoinder of causes of action is considered, the appellant had taken this up in the

District Court and the objection was refused and the appellant had not challenged this order of the District Court in revision but merely proceeded to trial on the same issues. On perusal of the judgment and the submissions made one can not say there is a misjoinder of issues. The argument of the respondent was that by taking over possession of the said land by the appellant which was transferred for a very less amount of the actual value the respondent has become unjustifiably rich. The respondent claimed it was a trust that he did not intend to transfer the land to the appellant which he has said in evidence as well. Therefore the appellant can not say the District Judge has erred when he said there is a trust and well as unjust enrichment. These two have gone hand in hand in the instant case. Therefore appellant's argument on this issue has failed.

The statement given to the police by Panis Singho shows that the appellant had forcibly entered into the premises. If it was an outright transfer he would have taken possession of the land then and there without waiting for so long to take over possession this evidence have been considered by the District Judge in his Judgment.

The appellant argued that the respondent had waited and for a long time to seek a declaration on trust and he is precluded by law to do

so. This is not correct the respondent has filed an action against the appellant in July 1983 soon after one year from the execution of deed no. 404.

On considering the amount paid for the said land which is situated by the side of a main road it is apparent the transfer has been on a trust and not an outright sale, this has been considered in the District Court judgment.

For the afore stated reasons I decide that the learned District Judge has come to the correct finding after carefully analyzing the evidence and documents placed before him.

I affirm the judgment dated 24/04/1997 of the District Court of Balapitiya and dismiss the appeal with costs fixed at Rs. 50,000/=.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree.

JUDGE OF THE COURT OF APPEAL