

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

In the matter of an application under Section 773 and Section 839 of the Civil Procedure Code.

**Court of Appeal** Hettiarachchige Dominic Marx Perera,  
**Case No: CA/0713/2000F** No. 267/B/45/A, Morawake Watte,  
Pahala Bomiriya, Kaduwela  
**DC Colombo** **Plaintiff**  
**Case No: 3711/SPL**

**Vs**

1. Kuruwita Arachchige Mulin Perera  
**(Deceased)**
2. Milroy Christy Kasichetty  
Dalugama, Kelaniya
3. National Savings Bank,  
Galle Road, Colpetty,  
Colombo – 03.

**Defendants**

**AND**

Hettiarachchige Dominic Marx Perera  
No. 267/B/45/A, Morawake Watte,  
Pahala Bomiriya, Kaduwela.

**Plaintiff-Appellant**

**Vs**

- 1.Kuruwita Arachchige Mulin Perera.  
(Deceased)
- 1A. Kuruwita Arachchige Jeramious  
Perera  
No. 542, Nungamugoda, Kelaniya
- 1B. Kuruwita Arachchige Violet Perera  
No. 184, Hospital Junction,  
Akaeagama

1C. Leela Tilakaratne  
No. 636, Sri Vijaya Mawatha  
Arawwala, Pannipitiya

1D. Kuruwita Arachchige Sandya  
Chandani Perera  
No. 33, Maheshi Uyana,  
Kahatuduwa, Polgasowita.

1E. Kuruwita Arachchige Thamara  
Dinadari Perera  
No. 708 Abillawatta Road,  
Katuwawala Mawatha,  
Boralasgamuwa.

1F. Kuruwita Arachchige Jayantha  
Perera  
No. 636, Sri Vijaya Mawatha,  
Arawwala, Pannipitiya

1G. Kuruwita Arachchige Ranil Sanath  
Kumara Perera  
No. 47/12A, Bandaragama-West,  
Bandaragama.

### **Substituted Defendant-Respondents**

2. Milroy Christy Kasichetty  
Dalugama, Kelaniya.

3. National Savings Bank,  
Galle Road, Colpetty,  
Colombo – 03.

### **Defendant-Respondents**

### **AND NOW BETWEEN**

Hettiarachchige Dominic Marx Perera  
No. 267/B/45/A, Morawake Watte,  
Pahala Bomiriya, Kaduwela

### **Plaintiff-Appellant-Petitioner**

### **Vs**

1. Kuruwita Arachchige Mulin Perera.  
(Deceased)

1A. Kuruwita Arachchige Jeramious  
Perera  
No. 542, Nungamugoda, Kelaniya

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No. 184, Hospital Junction,  
Akaeagama.

1C. Leela Tilakaratne  
No. 636, Sri Vijaya Mawatha  
Arawwala, Pannipitiya.  
(Deceaased)

1C 1. Kuruwita Arachchige Sandya  
Chandani Perera  
No.33, Maheshi Uyana,  
Kahatuduwa, Polgasowita.

1C 2. Kuruwita Arachchige Thamara  
Dinadari Perera  
No. 708, Abillawatta Road,  
Katuwawala Mawatha,  
Boralasgamuwa

1C 3. Kuruwita Arachchige Jayantha  
Perera  
No. 636, Sri Vijaya Mawatha  
Arawwala, Pannipitiya.

1C4. Kuruwita Arachchige Ranil Sanath  
Kumara Perera  
No. 47/12A, Bandaragama-West,  
Bandaragama.

#### **Substituted Defendant-Respondents- Respondents**

1D. Kuruwita Arachchige Sandya  
Chandani Perera  
No. 33, Maheshi Uyana,  
Kahatuduwa, Polgasowita.

1E. Kuruwita Arachchige Thamara  
Dinadari Perera  
No. 708, Abillawatta Road  
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1F. Kuruwita Arachchige Jayantha  
Perera  
No. 636, Sri Vijaya Mawatha,  
Arawwala, Pannipitiya

1G. Kuruwita Arachchige Ranil Sanath  
Kumara Perera  
No. 47/12A, Bandaragama-West  
Bandaragama.

**Substituted Defendant-Respondents-  
Respondents**

2. Milroy Christy Kasichetty  
Dalugama, Kelaniya
3. National Savings Bank  
Galle Road, Colpetty, Colombo 03.

**Defendant-Respondents-Respondents**

Before : R. Gurusinghe, J.  
&  
S. Premachandra, J.

Counsel : Anura Gunarathne  
**For the Plaintiff-Appellant**

Yasas De Silva  
**For the 2<sup>nd</sup> Defendant-Respondent-Respondent**

Argued on : 22-09-2025

Decided on : 30-10-2025

**JUDGMENT**

R. Gurusinghe, J.

The Plaintiff-Appellant (hereinafter referred to as the Plaintiff) instituted this action seeking a declaration that the deed of transfer no. 259 dated 26-05-1992, attested by G.H. Premasundera, NP, is a forgery and is a fraudulent deed.

Further sought the reliefs prayed for in the prayer to the plaint. After trial the Learned District Judge dismissed the plaintiff's action by judgment dated 02-02-2000. However, the judgment was delivered in open court on 21-07-2000.

Being aggrieved by the said judgment, the plaintiff preferred an appeal to this court. While the appeal was pending before this court, the plaintiff made an application to admit fresh evidence, namely a conviction that was entered against the 1<sup>st</sup> defendant in the Magistrate's Court of Colombo. The 1<sup>st</sup> defendant had appealed against the conviction to the High Court. Whilst that appeal was pending before the High Court, the 1<sup>st</sup> Defendant had died, and the appeal was abated.

This court refused to admit the evidence of the conviction on the basis that the conviction of the 1<sup>st</sup> defendant was not affirmed in the appeal and therefore, did not come within the provisions of section 41A(2) of the Evidence Ordinance as amended by Act No. 33 of 1988. The plaintiff appealed to the Supreme Court, against that order of the Court of Appeal. The Supreme Court on 31-10-2023 pronounced the judgment and directed to admit the evidence regarding the convictions and to consider the appeal on its merits, inclusive of the fresh evidence permitted by the Supreme Court.

The facts of this case briefly are as follows:

The property (hereinafter referred to as the property) in question in this case was owned by the 1<sup>st</sup> defendant's husband. The plaintiff is the 1<sup>st</sup> defendant's elder sister's son. The plaintiff, in his evidence, stated that, on the 1<sup>st</sup> defendant's request, her husband gifted the property to the plaintiff, by deed of gift no. 363 dated 13-02-1988, with a view that the plaintiff would look after the 1<sup>st</sup> defendant. If not for that deed, the 1<sup>st</sup> defendant would have been entitled to half of the property. The husband of the 1<sup>st</sup> defendant died two days after the execution of the above deed. The plaintiff did not assist or look after the 1<sup>st</sup> defendant as her husband and she expected. The 1<sup>st</sup> defendant sought to sell a portion of the land, and the plaintiff objected to the sale. Thereafter, the plaintiff learned that the 2nd defendant claimed part of the 10 perches of the land. He searched the land registry and found that by deed no. 259 dated 26-05-1992, attested by G.H. Premasundera NP, the property was gifted to the 1<sup>st</sup> defendant. However, the plaintiff had not signed such a deed, and that deed number 259 was a forgery.

At the trial, the plaintiff and the Notary who attested the alleged forged deed testified in favour of the plaintiff's case. The 1<sup>st</sup> and 2<sup>nd</sup> defendants also gave evidence in support of their respective claims. The 3<sup>rd</sup> defendant, the National Savings Bank, did not give evidence.

The Learned District Judge observed the following facts and decided that the plaintiff had not proved his case. The Learned District Judge observed that after the 1<sup>st</sup> defendant requested to sell a part of the land, there was a resentment between the plaintiff and the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant had no other property or income for her living. The plaintiff had not come to see the 1<sup>st</sup> defendant for three and a half years. The plaintiff had not looked after the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant was in possession of all the original deeds, including the Deed of Gift, which conveyed the property to the plaintiff. The plaintiff resides a quarter of a mile from the property. When the 1<sup>st</sup> defendant sold a part of the property to the 2<sup>nd</sup> defendant, a surveyor prepared a plan, and the plaintiff would have probably known those facts. The plaintiff did not take any steps in that regard because the plaintiff attested the deed number 259 in favour of the 1<sup>st</sup> defendant. Further, the Notary who attested the deed stated that the person who signed deed no. 259 was not the plaintiff; however, he said that he had inspected the vendor's identity card. The plaintiff did not state that the identity card number on the deed is not his. The learned District Judge also observed that the signature in deed nos. 363 and 259 are similar or identical. The Learned District Judge believed the fact that all the original deeds were returned to the 1<sup>st</sup> defendant by the plaintiff when Deed 259 was executed.

In the appeal, the conviction of the 1<sup>st</sup> defendant in the Magistrate's Court Case No. 59332/1 in the Magistrate's Court of Colombo marked as X1. In that case, the 1<sup>st</sup> defendant was charged under Section 454 of the Penal Code.

The Learned Magistrate, having regard to the evidence for the prosecution, especially the report of the Examiner of Questioned Documents (EQD), convicted the 1<sup>st</sup> defendant and one of the attesting witnesses. The 1<sup>st</sup> defendant appealed against the conviction, and while the appeal was pending, she died. The appeal abated.

When considering the evidence of the plaintiff that he did not sign the deed before G.H. Premasundera NP, even though the Learned District Judge observes some infirmities of the evidence on the plaintiff, the conviction of the 1<sup>st</sup> defendant outweighs such infirmities and heavily supports the plaintiff's case. Therefore, I hold that the plaintiff has established his case by a preponderance of the evidence.

The 2<sup>nd</sup> defendant purchased 10 perches of a divided and defined portion, out of the two roods and 30.75 perches of the property, by deed no. 757 attested by A.C. Amarasinghe, NP, dated 08-03-1993. The 2<sup>nd</sup> defendant mortgaged that 10 perches to the National Savings Bank on 09-03-1993 by deed no. 760 attested by the same Notary Public. The 2<sup>nd</sup> defendant gave evidence and stated that he had known the 1<sup>st</sup> defendant and her husband for a long time, and the land was situated in front of his ancestral house. The NSB had taken a title report, which was marked in evidence. All the original deeds were in the possession of the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant was employed as a peon. He obtained a loan from the 3<sup>rd</sup> defendant Bank by mortgaging the plot of land purchased from the 1<sup>st</sup> defendant to pay the consideration to the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant had nothing to do with the forged deed. In those circumstances, the 2<sup>nd</sup> defendant is a *bona fide* purchaser.

The 2<sup>nd</sup> defendant had no opportunity to challenge the fresh evidence admitted in the appeal. The documents or signatures used by the EQD to compare the alleged forged signature on the deed are unknown and not before this court.

The substituted parties for the 1<sup>st</sup> defendant did not contest the appeal. Furthermore, the plaintiff himself is an heir to the 1<sup>st</sup> defendant, in the event the 1<sup>st</sup> defendant is liable to pay damages to the 2<sup>nd</sup> defendant. In those circumstances, the court holds that the plaintiff is not entitled to costs from the 2<sup>nd</sup> defendant.

For the reasons set out above, the appeal is allowed. Judgment delivered on 21-07-2000 is set aside. The Learned District Judge is directed to enter a decree as prayed for in the prayer to the plaint, except costs. No order for costs.

Judge of the Court of Appeal.

Dr S. Premachandra J.  
I agree.

Judge of the Court of Appeal.