

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

In the matter if an application for Leave to Appeal made in terms of Section 5C of the High Court of the provinces 9 Special Provisions) (Amendment) No.54 of 2006 and the Rules of the Supreme Court made in terms of Article 136 of the Constitution.

Millaniyage Chandra Jayawathie Perera,
No. 44/6, Woodland Avenue,
Kohuwela

S.C. Appeal No. 24/2022

PLAINTIFF

SC/HCCA/LA. 322/2020

WP/HCCA/MT/02/17/F

DC Mt Lavinia Case No. 47/06/Trust

Vs.

1. Savithri Rajakaruna,
2. Vinitha Rajakaruna,
Both No. 154, 6th Cross Street,
Rathmalana.

DEFENDANTS

AND BETWEEN

Millaniyage Chandra Jayawathie Perera,
No. 44/6, Woodland Avenue
Kohuwela

PLAINTIFF - APPELLANT

Vs.

1. Savithri Rajakaruna,
2. Vinitha Rajakaruna (Deceased),
Both of No. 154, 6" Cross Street,
Rathmalana.

2a. Hewa Edirappulige Jayan Asela
Rajakaruna,
2b. Savithri Rajakaruna,
Both of No. 154, 6" Cross Street,
Rathmalana.

DEFENDANTS-RESPONDENTS

AND NOW BETWEEN

1.Savithri Rajakaruna,
2.Vinitha Rajakaruna (Deceased),
Both No. 154, 6h Cross Street,
Rathmalana.

2a. Hewa Edirappulige Jayan Asela
Rajakaruna,
2b. Savithri Rajakaruna,
Both of No. 154, 6" Cross Street,
Rathmalana.

DEFENDANTS- RESPONDENTS-

APPELLANTS

Vs.

Millaniyage Chandra Jayawathie Perera,
No. 44/6, Woodland Avenue,
Kohuwela.

PLAINTIFF- APPELLANT-

RESPONDENT

BEFORE:

Hon. S. Thurairaja, P.C., J.
Hon. Janak De Silva, J.
Hon. Arjuna Obeyesekere, J.

COUNSEL:

Manohara De Silva, P.C. with Ms.
Harithriya Kumarage and Ms.
Nadeeshani Lankathillake for the 1st
and 2nd Defendants - Respondents-
Appellants

Ranjan Suwadaratne, P.C. with Yashoda
Dharmaratne and Dulna De Alwis for
the Plaintiff- Appellant- Respondent

WRITTEN SUBMISSIONS:

14.11.2023 by the Defendants-
Respondents-Appellants
03.08.2023 for the Plaintiff- Appellant-
Respondent

ARGUED ON:

30. 10.2023

DECIDED ON:

13.11.2025

Janak De Silva, J.

The Plaintiff-Appellant-Respondent (Plaintiff) instituted this action against the Defendants-Respondents-Appellants (Defendants) praying for a declaration that the 1st Defendant is holding the property described in the Second Schedule to the plaint, which was transferred by Deed No. 1455, in trust for the Plaintiff, for a declaration that the 1st Defendant did not have and do not have any beneficial interest in the property, to set aside Deed No. 1455 on the principle of *laesio enormis*, for a direction to the 1st Defendant to retransfer the property to the Plaintiff and in the alternative for a direction to the Registrar of Court to effect a retransfer to the Plaintiff and for costs of the action.

The Plaintiff claims that the transfer of land to the 1st Defendant was executed merely as security for a loan, while the Defendants maintain that it was an outright sale for valuable consideration.

The property described in the First Schedule to the plaint was originally held by the Plaintiff and her husband, Wilson Perera, by virtue of Deed No. 331. At one stage Wilson Perera required funds and, by Deed No. 118, the land was conveyed as security to Somalatha Perera for a loan of Rs.150,000/=. Upon repayment, that loan was discharged and the land reconveyed to Wilson Perera and the Plaintiff.

Subsequently needing further funds, the Plaintiff executed Deed No. 16824 in favour of Gnanaratna Ramanayake as a security and obtained Rs.200,000/=. When Ramanayake demanded repayment, the Plaintiff procured Rs. 175,000/= from Wannipulli Arachchige Swarnalatha and settled Ramanayaka's debt.

Thereafter, the Plaintiff executed Deed No. 2677 in favour of Swarnalatha as security for the said loan. Following partial repayment, Swarnalatha partitioned the property described in the First Schedule, into three lots: Lot A1, Lot A2, and Lot A3 (the roadway) and reconveyed Lot A1, to the Plaintiff by Deed No. 2839 dated 20.07.1995.

Subsequently, further sums fell due and Swarnalatha demanded payment of the outstanding balance. The Plaintiff, being unable to raise the required funds, requested Swarnalatha to execute a transfer in favour of the 1st Defendant. Accordingly, Swarnalatha executed Deed No. 1455, transferring Lot A2, the portion described in the Second Schedule to the plaint to the 1st Defendant, who advanced a sum of Rs.150,000/=.

The Plaintiff's case is that this transfer was executed only as security for the loan and that the Defendants agreed to reconvey the property upon repayment. When the Respondent sought to repay the loan, the Defendants purportedly demanded a higher sum and refused reconveyance. On learning that the Defendants intended to sell or otherwise dispose of the property, the Plaintiff lodged a caveat in the Land Registry.

Before the District Court and the High Court, the Plaintiff contended that the earlier transfers, beginning with Deed No. 16824 executed in favour of Ramanayaka, had given rise to a trust in her favour. She maintained that both Ramanayaka and, subsequently, Swarnalatha had held the property under the same trust. She contended that the present transaction with the 1st Defendant, effected by Deed No. 1455, was of a similar nature and likewise intended to operate as a security, thereby giving rise to a constructive trust in her favour.

The Plaintiff relied principally on oral evidence of an understanding that the transfers were security arrangements and on certain attendant circumstances to show that the beneficial interest never passed. The Defendants, however, denied any promise as such and asserted that the transfer under Deed No. 1455 was an outright purchase for valuable consideration.

The 1st Defendant was found to hold all original title deeds, to have registered her name in the assessment records and to have paid Municipal assessment charges since 1999. Evidence before Court included admissions that Swarnalatha had been in possession when she received title from Ramanayaka and that title searches trace

ownership through the chain from Ramanayaka to Swaranalataha and then to the 1st Appellant.

After trial, the learned District Judge dismissed the Plaintiff's action, holding in favour of the Defendants. The District Court primarily grounded its decision on the question of ownership, concluding that as the Plaintiff was not the transferor of the property, no trust could validly arise in her favour.

Being dissatisfied with the judgment of the learned District Judge, the Plaintiff appealed to the Civil Appellate High Court of the Western Province helden in Mount Lavinia. The learned Judges of the Civil Appellate High Court set aside the judgment of the District Court and entered judgment in favour of the Plaintiff.

Leave to appeal has been granted on the following questions of law:

1. Whether the learned High Court Judges has misdirected themselves in holding that the 1st Defendant is holding the property more fully described in the Second Schedule to the plaint, by Deed No. 1455 dated 24.12.1998, in trust for the benefit of the Plaintiff?
2. Whether the learned High Court Judges erred in concluding that the 1st Defendant holds Lot A1 in trust for the Plaintiff, within the meaning and application of Section 84 of the Trusts Ordinance ?

The two grounds on which leave to appeal has been granted are, in essence, correlative, as the learned High Court Judge's finding that the 1st Defendant holds the property in trust for the Plaintiff is solely premised on the application of Section 84 of the Trusts Ordinance, which forms the basis of the second question of law.

Therefore, in addressing the first question, I will first examine whether there exists any other provision in the Trusts Ordinance that may give rise to a trust applicable to the present case, if at all. The specific applicability and interpretation of Section 84 will thereafter be dealt with comprehensively when examining the second question of law.

Let me however begin by expounding the provisions in Chapter IX of the Trusts Ordinance which creates 13 separate constructive trust doctrines as follows:

- Section 83: Where it does not appear that transferor intended to dispose of beneficial interest
- Section 84: Transfer to one for consideration paid by another
- Section 85: Trust incapable of execution or executed without exhausting Trust property
- Section 86: Transfer for illegal purpose
- Section 87: Bequest for illegal purpose
- Section 88: Transfer pursuant to rescindable contract
- Section 89: Debtor becoming creditor's representative
- Section 90: Advantage gained by fiduciary
- Section 91: Advantage gained by exercise of undue influence
- Section 92: Advantage gained by qualified owner
- Section 93: Property acquired with notice of existing contract
- Section 94: Purchase by person contracting to buy property to be held on trust

Section 95: Advantage secretly gained by one of several compounding creditors

Section 96: Constructive Trusts in cases not expressly provided for

Question of Law No. 1

The Defendants contended, *inter alia*, that the Plaintiff was not the owner of the property at the time of execution of Deed No. 1455, and that the 1st Defendant had not purchased the said land from the Plaintiff but from Swarnalatha, who held valid title and possession at the time of transfer. Swarnalatha resurveyed the property described the First Schedule, divided it into Lots A1 ,A2 and A3, and transferred Lot A2, as described in the Second Schedule to the plaintiff, to the 1st Defendant for valuable consideration. The Defendants, maintain that the Plaintiff had already lost title to the entirety of the land described in the First Schedule at the time of execution of Deed No. 16824, and that the Plaintiff could not thereafter have conveyed any interest.

The learned Judges of the Civil Appellate High Court, in allowing the appeal, held that the initial transfer of the property by the Plaintiff to Gnanaratna Ramanayake was not an outright conveyance, but one made as security for a loan, and therefore Ramanayake, on a balance of probability, held the property in trust for the Respondent within the meaning of Section 83 of the Trusts Ordinance. However, the Court observed that such a trust does not automatically pass from one transferee to another upon subsequent conveyances, and thus the application of Section 83 fails beyond the initial transaction.

Section 83 read as follows:

*"Where the **owner of property** transfers or bequeaths it and it cannot be reasonably inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold property for benefit."* (emphasis added)

The trust contemplated in this section, arises only between the **owner** of the property and the **transferee** or legatee. This section does not envisage, either expressly or by implication, the creation of a trust in favour of a third party who is not the owner of the property. Therefore, any attempt to extend the application of Section 83 to transactions involving a third-party beneficiary falls outside the scope and intent of the provision.

In ***Weragoda Aarchchillage Weraj Sharm Weragoda v. Kullaperuma Aarchchilage Kusumawathie and Others [S.C. Appeal No. 09/2011, S.C.M. 29.06.2018]***
Wanasundera, P.C. J., held (at page 11) :

"The concept of trust does not pass automatically from one person to another with regard to the property and with regard to the original transferor since Section 83 of the Trusts Ordinance does not provide for such a reasoning to imply a constructive trust at all. The property can change hands but the trust created in the first deed of transfer cannot get attached to every change of hand of the property and end up with a different transferee who cannot be held in law to own the property on trust for the first transferor of the first deed in the chain of deeds executed thereafter."

Moreover, it was the Plaintiff who requested Swarnalatha to execute a transfer in favour of the 1st Defendant which was done by Deed No. 1455, transferring Lot A2, the portion described in the Second Schedule to the plaint, to the 1st Appellant.

In ***Vandervell v. Inland revenue Commissioner [(1967) 1 All E.R 1 at 7]***, Lord Upjohn held that:

"If the intention of the beneficial owner in directing the trustee to transfer the legal estate to x is that x should be the beneficial owner, I can see no reason for any further document or further works in the document assigning the legal estate also expressly transferring the beneficial interest; the greater includes the less".

The documentary evidence reveal, *inter alia*, that the Plaintiff herself had attested as one of the witnesses to the disputed Deed No. 1455 (P7), and in cross-examination admitted to the execution and transfer of ownership of Lot A1 in favour of the 1st Defendant.

In ***Edirisinghe v. Charles Singho [(2000) 3 Sri LR 380]*** a tenant cultivator signed as a witness to a deed of transfer of the land over which he claimed to have ande rights. It was held that from the conduct of the tenant in consenting to be an attesting witness to such a transaction which purports to transfer ande rights, active assent on the part of the Respondent to the waiver or surrender of his rights may be inferred.

Hence even assuming that Swarnalatha was holding the land in trust for the Plaintiff, the above transfer done on the direction of the Plaintiff is sufficient to transfer the beneficial interest, if any, which survived with the Plaintiff to the 1st Defendant.

In ***Liyana Athukorilage Indrawathie v. Galolu Kankanamlage Dharmasena and Another [S. C. Appeal No 190/2016, S.C.M. 02.10.2023]***, relying on ***Vandervell (supra)***, I held that (at page 14):

“Where it can be shown that the beneficial owner directed the trustee to transfer the legal interest in the trust to a third party so that the third party becomes both the beneficial and legal owner, no further documentation is needed secure the title of the third party. Any trust that existed as between the trustee and the beneficial owner ceases to exist and the third party becomes the absolute owner of the trust property.”

Having examined the scope of the other provisions of Chapter IX of the Trusts Ordinance, I hold that the factual circumstances of this action does not fall within Section 83 or any of the other constructive trusts expounded in the other provisions therein.

Question of Law No. 2

The learned Judges of the Civil Appellate High Court, having found that the provisions of Section 83 of the Trusts Ordinance did not extend to subsequent transfers, proceeded to consider the applicability of Section 84 which reads as follows:

"Where property is transferred to one person for a consideration paid or provided by another person and it appears that such person did not intend to pay or provide such consideration for the benefit of the transferee the transferee must hold the property for the benefit of the person paying or providing the consideration."

There are two requirements that must be fulfilled for the constructive trust contemplated therein to come into existence.

Firstly, the consideration for the transfer must be paid or provided by a person other than the transferee. Secondly, it must appear that such person did not intend to pay or provide such consideration for the benefit of the transferee.

Accordingly, for the Plaintiff to succeed in establishing a constructive trust within Section 84, the Plaintiff has to establish:

- (a)that the consideration was paid or provided by the Plaintiff though the property was transferred in the name of the 1st Defendant.
- (b)that the Plaintiff did not intend to pay or provide such consideration for the benefit of the 1st Defendant.

In this action, the first fundamental element is absent. It is clear from the evidence that the consideration for the purchase of Lot A2 was paid by the 2A Defendant (1st Defendant's husband), to the transferor, Swarnalatha Perera, and obtained title under Deed No. 1455 dated 24.12.1998, and not by the Plaintiff. Accordingly, the essential requirement for invoking Section 84, that the Plaintiff provided the consideration is not established, and the High Court's conclusion that a constructive trust arose in favour of the Plaintiff under Section 84 of the Trusts Ordinance cannot be sustained.

Finally, having regard to the 1st Defendant's claim as a *bona fide* purchaser for value without notice, it is necessary to consider the relevant circumstances and their bearing on the present dispute. Cooray [L.J.M Cooray, *The Reception in Ceylon of the English Trust*, (1971), pages 183-185] has stated that to take free of the trust, "the transferee, under 66(1)(a) must prove that (i) he did not have notice and (ii) he paid consideration".

In the present action, consideration amounting to Rs. 150,000/= passed from the Defendants to Swarnalatha.

On the question of notice, Section 3(j) of the Trust Ordinance states that:

"A person is said to have notice of a fact either when he actually knows that fact, or when, but for willful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by any person whom the court may determine to have been his agent for the purpose of receiving or obtaining such information".

Although the Plaintiff accompanied the 1st Defendant to Swarnalatha, there was no evidence of any agreement for reconveyance or of a pre-existing trust over the property; instead, the 1st Defendant had conducted a title search to verify the previous owners. Thus, there is no clear evidence to support the contention that Defendants had actual notice or constructive notice of such alleged agreement between the Respondent and Swarnalatha.

In *Warnakulasuriyage Charlert Kusumawathi Kulasuriya v. Don Wimal Harischandra Gunathilaka* (S.C appeal 157/2011, S.C.M. 04.04.2014] Tilakawardane, J. held (at page 14):

"Having established that the Respondent is a bona fide purchaser, it is well established law that where the legal title has passed to a bona fide purchaser for value without notice, equity refuses to intervene to preserve any rights held

by the former beneficial owner of the property. This is further affirmed by Section 98 of the Trusts Ordinance which states that “Nothing contained in this Chapter shall impair the rights of transferees in good faith for valuable consideration.” Therefore, even if a constructive trust could have been established, a prayer to grant possession of the property to the Petitioner will not stand as the property has already passed into the hands of a bona fide purchaser. This case underscores the necessity for parties to formalize their transactions with clarity and legal precision. Reliance on oral assurances and informal arrangements in property dealings gives rise to uncertainty and protracted litigation. The law of trusts, being rooted in equity, must not be stretched to cover every moral or relational obligation, especially at the expense of legal certainty. It is therefore incumbent on the public to ensure that their intentions, particularly where property is concerned, are reduced to writing and duly executed, safeguarding both ownership and trust alike.”

For all the foregoing reasons, I answer the two questions of law in the affirmative.

Accordingly, I set aside the judgment of the Civil Appellate High Court dated 10.09.2020 and affirm the judgment of the District Court of Mount Lavinia dated 19.10.2016. The appeal is allowed with costs fixed at Rs. 75,000/=.

JUDGE OF THE SUPREME COURT

S. Thurairaja, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Arjuna Obeyesekere, J.

I agree.

JUDGE OF THE SUPREME COURT