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

In the matter of an Application for Leave Appeal under and in terms of Article 128 of the Constitution and in terms of Section 5C of High Court of Provinces (Special Provinces) (Amendment) Act No. 54 of 2006, against the judgement of the provincial High Court of Western Province holden in Negombo dated 30.11.2020 in Case No. WP/HCCA/NEG 26/2018(F)

SC Appeal No. 63/21

SC/HCCA/LA – 41/2021

WP/HCCA/NEG – 26/2018(F)

D.C. Negombo Case No. – 6055/L

Amitha Sandaseeli Kellambi, of No. 465, Lady Market Road, South Hall, Middlesex UB1 2QD, United Kingdom;

Appearing by her Power of Attorney

Kurugamage Rohana Perera,
No. 50/A, National Houses
Ketawalamulla, Dematagoda,
Colombo 09.

PLAINTIFF

Vs.

1. Costa Patabendige Alex Ratna Deepal Fernando,
   No 138, Gama Meda Road,
   Dandugama,
   Ja-ela

2. People's Bank
   Sir Chittampalam A. Gardiner Mawatha
   Colombo

DEFENDANTS

And Between

People's Bank
Sir Chittampalam A. Gardiner Mawatha
Colombo

2nd DEFENDANT-APPELLANT

Vs.

Amitha Sandaseeli Kellambi, of No. 465,
Lady Market Road, South Hall, Middlesex
UB1 2QD, United Kingdom;

Appearing by her Power of Attorney

Kurugamage Rohana Perera,
No. 50/A, National Houses
Ketawalamulla, Dematagoda
Colombo 09

PLAINTIFF-RESPONDENT

Costa Patabendige Alex Ratna Deepal
Fernando,
No 138, Gama Meda Road,

Dandugama,
Ja-ela

1st DEFENDANT RESPONDENT

And now between

Amitha Sandaseeli Kellambi, of No. 465, Lady Market Road, South Hall, Middlesex UB1 2QD, United Kingdom presently of *Flat 209, Swallow Court Gurnell Grove, Ealing, London, W13 OAB, United Kingdom;*

Appearing by her Power of Attorney

Kurugamage Rohana Perera,
No. 50/A, National Houses
Ketawalamulla, Dematagoda
Colombo 09

PLAINTIFF-RESPONDENT-APPELLANT

Vs.

Costa Patabendige Alex Ratna Deepal Fernando,
No 138, Gama Meda Road,
Dandugama,
Ja-ela

1st DEFENDANT-RESPONDENT-RESPONDENT

People's Bank
Sir Chittampalam A. Gardiner Mawatha,
Colombo

2nd DEFENDANT-APPELLANT-RESPONDENT

Before: **Justice A. L. Shiran Gooneratne**
Justice Janak De Silva
Justice Sampath B. Abayakoon

Counsel: Dr. Sunil Cooray with Sudarshani Cooray instructed by Diana Stephanie Rodrigo for the **Plaintiff-Respondent-Appellant**.

The **1st Defendant-Respondent-Respondent** is absent and unrepresented.

Argued on: 11/09/2025

Decided on: 26/11/2025

A. L. Shiran Gooneratne, Acting Chief Justice

By Plaint dated 04/10/2001, the Plaintiff–Respondent–Appellant (hereinafter referred to as the "Appellant") instituted Case No. 6055/L in the District Court of Negombo against the 1st Defendant–Respondent–Respondent and the 2nd Defendant–Appellant– Respondent (hereinafter referred to as the "1st Respondent" and the "2nd Respondent" respectively), seeking, *inter alia*, a declaration of title to the land described in the Schedule to the Plaint, a declaration that Deed No. 4729 dated 11/01/1998 is not an act or deed of the Appellant, and is

fraudulently executed, a declaration that Deed No. 4730 dated 13/01/1998 constitutes a fraudulent act of the 1st Respondent and does not convey any title to the 1st Respondent, a declaration that Deed No. 1127, under which the 2nd Respondent Bank claims title is invalid and conveys no right, title, or interest to the said land, an order for the ejectment of the 1st Respondent from the said premises, and for damages**.**

In paragraphs 4 and 5 of the Plaint, the Appellant avers that by Deed No. 6119 dated 24/08/1963, her mother, K. Winifreeda Perera, became the lawful owner of the subject property, and that by Deed No. 15494 dated 02/07/1979, her mother transferred the said property to the Appellant, having a life interest for herself and her husband, Festus Kelambi.

In paragraph 9 of the Plaint, the Appellant states that the 1st Respondent, acting fraudulently, executed Deed No. 4729 dated 11/01/1998, purporting that the Appellant and her mother had transferred their rights to Festus Kelambi, and thereafter fraudulently executed Deed No. 4730 dated 13/01/1998, alleging that Festus Kelambi had transferred his rights to the 1st Respondent.

In paragraphs 10, 11, and 12 of the Plaint, the Appellant claims that neither she nor her mother signed Deed No. 4729, and that the 1st Respondent, without any right, title, or interest in the said land, executed Deed No. 4730 and subsequently mortgaged the premises in suit to the 2nd Respondent Bank by Deed No. 1127, to obtain a loan. The Appellant completely repudiated the due execution of the Deeds based on forgery and sought an invalidation of the Deeds in question.

In paragraph 20 of the Appellant's pleading, the Appellant specifically avers that during the period from 1994 to 1999, she was never present in Sri Lanka to execute the Deeds which purported to contain her signature.

By Answer dated 09/07/2003, the 1st Respondent admitted title in the Appellant and her mother to the disputed land however, he alleged that the Deeds Nos. 4729 and 4730, and the Mortgage Bond No. 1127 were duly executed; therefore, the Appellant parted with her title and prayed for a dismissal of the Plaint.

Halfway through the 1st Respondent's case, the learned Counsel for the 1st Respondent informed Court that he had no instructions to appear on behalf of his client. In the circumstances, the case proceeded *ex parte* against the 1st Respondent.

At the conclusion of the trial, the learned Additional District Judge, by Judgment dated 04/05/2018, concluded that based on the Deeds and the evidence presented, the Court was satisfied that the Appellant had established her title to the disputed premises, and accordingly decided in favor of the Appellant.

Being aggrieved by the said Judgment, the 1st Respondent appealed to the Civil Appeal High Court of the Western Province holden in Negombo ("the Appellate Court"), challenging the Judgment dated 04/05/2018 delivered by the Additional District Judge of Negombo.

After hearing and considering the submissions of both parties, the Appellate Court allowed the appeal filed by the 1st Respondent. Being aggrieved by the Judgment of the Appellate Court dated 30/11/2020, the Appellant is before this Court.

The Appellant, by Petition dated 21/12/2020, seeks to set aside the said Judgment dated 30/11/2020 delivered by the Appellate Court.

By Order dated 23/03/2021, this Court granted Leave to Appeal on the following questions of law raised by the Appellant;

1. Did the Civil Appellate High Court err in law by holding that the Plaintiff failed to prove the signature contained in the deed marked P5 by not calling an expert witness?
2. Did the High Court err in law by holding that the Plaintiff failed to prove that the deed marked as P5 was the fraudulent deed?
3. Did the High Court err in law by holding that the Plaintiff did not adduce evidence to prove that the impugned signature in deed No. P5 is not hers?

In addition to that, the Counsel for the 2nd Respondent Bank raised the following question of law;

4. Did the Plaintiff lead evidence at the trial to establish the title to the corpus?

When this matter was mentioned on 04/12/2023, the Court observed that by motion dated 27/09/2022, the Appellant and the 2nd Respondent had entered a settlement. Accordingly, the Court discharged the 2nd Respondent from further proceedings, thereby obviating the necessity of answering the 4th question of law.

The Power of Attorney holder of the Appellant, in his testimony before the trial Court, stated that in 1998, while the Appellant was abroad, the 1st Respondent had fraudulently executed Deed Nos. 4729 (marked P5) and 4730 (marked P6). He further stated that the 1st Respondent subsequently obtained a loan of Rs. 475,000/- from the 2nd Respondent Bank by executing Deed No. 1127 as security for the said loan. The Power of Attorney holder also testified that he became aware of the execution of the impugned Deeds only in the year 2000 and denied signing the impugned Deeds.

He further testified that at the time the impugned Deed P5 was signed, the Appellant's mother was out of the country and stated that the signature claimed to be that of the Appellant's mother is not her genuine signature.

In her evidence, the Appellant categorically stated that she had never signed the impugned Deeds nor given any instructions to her Power of Attorney holder to transfer her rights to the disputed land. The Appellant further testified that she was able to produce her passport to establish that she was out of the country at the time the impugned Deeds were executed. However, the direction given by the trial Court to produce that evidence was subsequently expunged from the case record by an order of the Court of Appeal. The Appellant's mother could not testify in Court since she was deceased at the time the Appellant commenced her case.

The Notary who executed Deed Nos. 4729 and 4730 was described by the trial Court as an "eighty-nine-year-old feeble person" who, at times, was unable to answer questions with clarity. Nevertheless, the Court observed that the Notary had testified to knowing the 1st Respondent as the person who gave instructions to prepare the impugned Deeds. It is further noted that, according to the attestation

clause, the Notary expressly stated that he was not personally known to the Appellant or her mother, the executants of the impugned Deeds, but was only known to the two attesting witnesses.

Upon a consideration of the totality of the evidence, the trial Court held that the Appellant had established, on a balance of probabilities, that the Deeds marked P5 and P6 were not signed by her. Accordingly, in terms of Section 68 of the Evidence Ordinance, the burden of proving that the impugned Deed No. 4729, P5 was duly signed by the Appellant fell upon the 1st Respondent, and that burden had not been discharged. Consequently, Deed No. 4730 P6 was also held to be invalid.

However, the Appellate Court observed that the Appellant had failed to adduce the evidence of an expert witness to establish that the signatures appearing in the Deed marked **P5** were not that of the Appellant or her mother. The Court further held that, in the absence of cogent evidence, the burden of proving that the said Deed was tainted with fraud lies upon the Appellant. Consequently, the Appellate Court concluded that the Appellant had not discharged the burden of proof required to establish that the signature appearing in Deed **P5** was not hers.

It is pertinent to note that the Appellant**,** through her own testimony as well as the evidence of her Power of Attorney holder**,** consistently maintained that, at the time the impugned Deeds marked P5 and P6 were executed, neither the Appellant nor her mother was present in the country. It was further asserted that neither the Appellant nor the Power of Attorney holder had signed the said impugned Deeds.

To establish her absence from the country during the relevant period, the Appellant tendered her passport in evidence. The 1st Respondent objected, however, the learned District Judge permitted the passport to be marked in evidence. The Court of Appeal, by a subsequent interim order, has set aside the order of the District Court permitting the tendering of the passport.

Even though the Appellant produced the two questioned Deeds in evidence, she has, having raised specific issues to that effect, challenged their genuineness. On the other hand, the 1st Respondent, by issues No. 15, 16, and 17, alleged execution

of the Deeds marked P5 and P6 in his favour. The 1st Respondent, being the party relying on the said Deeds, bears the burden of establishing their due execution. Therefore, unless due execution is duly discharged, the said Deeds cannot be permitted to stand in evidence.

In terms of Section 154A (1) proviso (a) of the Civil Procedure Code (Amendment) Act No. 17 of 2022, where the execution or genuineness of a deed is specifically impeached and raised as an issue in the pleadings, the evidentiary presumption ordinarily afforded to such documents is displaced. The party relying on the deed should then lead evidence to prove its due execution and genuineness.

Section 154A (1) proviso (a) of the Civil Procedure Code, reads thus;

> ***154A. (1)*** *Notwithstanding the provisions of the Evidence Ordinance (Chapter 14), in any proceedings under this Code, it shall not be necessary to adduce formal proof of the execution or genuineness of any deed, or document which is required by law to be attested, other than a will executed under the Wills Ordinance (Chapter 60), and on the face of it purports to have been duly executed, unless–*
>
> > ***(a) in the pleadings or further pleadings in an action filed under regular procedure in terms of this Code, the execution or genuineness of such deed or document is impeached and raised as an issue; or***
> >
> > ***(b)*** *the court requires such proof:*
> >
> > *Provided that, the provisions of this section shall not be applicable in an event, a party to an action seeks to produce any deed or document not included in the pleadings of that party at any proceedings under this Code.*
>
> ***(2)*** *The provisions of subsection (1), shall mutatis mutandis apply in the actions on summary procedure under this Code.".*

In relying on the above provision of the Amendment Act. No 17 of 2022, this Court is also statutorily bound to consider the Transitional Provisions stipulated in its Section 3, for the reason that this Appeal has been pending before this Court at the time the Amendment Act came into force.

Section 3 of the Civil Procedure Code (Amendment) Act No. 17 of 2022 reads thus;

> ***3.*** *Notwithstanding anything contained in section 2 of this Act, and the provisions of the Evidence Ordinance, in any case or* ***appeal pending on the date of coming into operation of this Act*** *–*
>
> ***(a) (i)*** *if the opposing party does not object or has not objected to it being received as evidence on the deed or document being tendered in evidence; or*
>
> ***(ii)*** *if the opposing party has objected to it being received as evidence on the deed or document being tendered in evidence but not objected at the close of a case when such document is read in evidence, the court shall admit such deed or document as evidence without requiring further proof;*
>
> ***(b)*** *if the opposing party objects or has objected to it being received as evidence, the court may decide whether it is necessary or it was necessary as the case may be, to adduce formal proof of the execution or genuineness of any such deed or document considering the merits of the objections taken with regard to the execution or genuineness of such deed or document.*

In this case, it is noted that the factual circumstances of this case have not been contemplated under the Transitional Provisions, as the impugned deed itself has been produced by the Appellant. Therefore, the need does not arise for the 1st Respondent to object to the document as stated in the above Section. Hence, to consider it as an admitted document would not be in the interest of justice or the spirit of the statute, and in any event, the objection to the document by the Appellant (the party producing the document) has been consistent throughout the case. Thus, I am of the opinion that this Court should examine whether there had been sufficient evidence in regard to the authenticity of the document for it to be considered as a validly executed deed.

It is trite law that Section 2 of the **Prevention of Frauds Ordinance** mandates strict compliance with formal requirements in respect of transactions involving land or other immovable property. The provision unequivocally renders void any sale, transfer, mortgage, or agreement relating to such property unless the instrument is reduced to writing, signed by the executing party or their duly authorized agent, and attested in the presence of a licensed notary public and two or more witnesses simultaneously present. This statutory safeguard is not merely procedural but substantive in nature, designed to prevent fraudulent dealings and ensure legal certainty in transactions affecting immovable property. Accordingly, any purported agreement or conveyance that fails to satisfy these requirements cannot be enforced in law and must be deemed null and *void ab initio*.

Section 2 of the Prevention of Frauds Ordinance reads thus;

> ***2.*** *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 authorized 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.*

The rule of *'Authenticity'*, as articulated by E. R. S. R. Coomaraswamy in *The Law of Evidence* (Vol. II, Book I (Stamford Lake Publication, 2022) page 70), refers to the evidentiary requirement that a document must be shown to have been genuinely written or executed by the person who purports to be its author or signatory. In legal proceedings, authenticity is not presumed merely by the

production of a document; rather, it must be affirmatively established when challenged. This principle is reflected in Section 67 of the Evidence Ordinance, which stipulates that when a document is alleged to bear the handwriting or signature of a particular individual, **the party relying on the document must prove that the handwriting or signature is indeed that of the person in question.** *(emphasis added)*

The judicial approach to authenticity was clearly articulated in the case of ***Robins v Grogan*** **[43 N.L.R. 269 at 270]**, where the Court held that a document cannot be admitted into evidence until its genuineness has either been admitted by the opposing party or established through proof. The Court emphasized that such proof must precede the acceptance of the document into the evidentiary record. In situations where there is no admission regarding the execution of the document, it becomes necessary to prove the handwriting or signature through reliable means.

The Notary has clearly stated in the attestation clause that he did not personally know the executant**,** thereby necessitating calling the attesting witnesses to prove due execution of the said Deeds. Since the 1st Respondent relies on the genuineness of the two instruments**,** the burden of proof rests upon him to establish their authenticity by calling the attesting witnesses. There is no evidence before Court of the availability of the attesting witnesses at the trial stage. It is evident from the proceedings dated 20/07/2016 that the 1st Respondent not only failed to discharge that burden cast upon him but also abandoned the case even before the recording of the Appellant's evidence.

In the circumstances, I am of the view that, upon a consideration of the totality of the evidence, the due execution of the Deed Nos. 4729 (marked P5) and 4730 (marked P6) have not been proved on a balance of probabilities; therefore, the said Deeds are inadmissible in evidence. Accordingly, I answer the questions of law Nos. 1, 2, and 3 in the affirmative. As reasoned earlier in this Judgment, the question of law No. 4 does not arise for consideration.

For the foregoing reasons, the Judgment dated 30/11/2020 delivered by the Civil Appeal High Court is hereby set aside, and the Judgment of the Additional District Judge dated 04/05/2018 is affirmed.

Appeal allowed. I make no order as to costs.

Acting Chief Justice of the Supreme Court

Janak De Silva, J.
I agree

Judge of the Supreme Court

Sampath B. Abayakoon, J.
I agree

Judge of the Supreme Court