

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

S.C. Appeal No. 151/2012

WP/HCCA/LA 91/2012

WP/HCCA/GPH/47/07/F

D.C. Gampaha Case No. 37511/L

H.M.D. Ramlan,

No. 143, Kandy Road,

Thihariya.

PLAINTIFF

Vs.

K.A. Wimalasena,

No. 260, Dandagamuwa Road,

Weyangoda, Thihariya.

DEFENDANT

AND

H.M.D. Ramlan,

No. 143, Kandy Road,

Thihariya.

PLAINTIFF – APPELLANT

Vs.

K.A. Wimalasena,

No. 260, Dandagamuwa Road,

Weyangoda, Thihariya.

DEFENDANT – RESPONDENT

AND NOW BETWEEN

H.M.D. Ramlan,
No. 143, Kandy Road,
Thihariya.

PLAINTIFF – APPELLANT – APPELLANT

Vs.

K.A. Wimalasena,
No. 260, Dandagamuwa Road,
Weyangoda, Thihariya.

DEFENDANT – RESPONDENT – RESPONDENT
(NOW DECEASED)

- A. K.A. Treleshiya Padmani
- B. K.A. Erandathi Pushpa Kumari
- C. K.A. Pomila Nishani
- D. K.A. Sujeewa Kumari

All of No. 327, Dandagamuwa East,
Wewapara, Weyangoda.

SUBSTITUTED DEFENDANTS –
RESPONDENTS – RESPONDENTS

BEFORE : **P. Padman Surasena, C.J.,**
A.L. Shiran Gooneratne, J.
Janak De Silva, J.

COUNSEL : P. Peramunugama with Ranga Peiris for the Plaintiff –
Appellant - Appellant

H. Withanachchi with Shantha Karunadhara for the
Substituted Defendant – Respondent – Respondents

WRITTEN SUBMISSIONS : On 16.10.2012 by the Plaintiff – Appellant – Appellant

On 10.04.2018 by the Defendant – Respondent –
Respondents

ARGUED ON : 02.11.2022

DECIDED ON : 25.09.2025

Janak De Silva, J.

Plaintiff-Appellant-Appellant (Appellant) instituted this action against the Defendant-Respondent-Respondent (Respondent) seeking declarations that:

- (a) deed No. 7216 dated 29.03.1993 attested by G.S. Ranatunga, Notary Public is a fraudulent deed and null and void;
- (b) no right will pass to the Respondent by the said deed; and
- (c) the Plaintiff is the lawful owner of the corpus in the action.

The Respondent filed answer claiming that the Appellant had sold the corpus by deed No. 7216 (P6) dated 29.03.1993 attested by G.S. Ranatunga, Notary Public and that he was the absolute owner of the corpus. He claimed to possess the corpus from the time of

purchase, that is from 29.03.1993 to 13.02.1994. The Respondent moved for a dismissal of the action, a declaration that he was the owner of the corpus and an order of ejectment against the Appellant and all those claiming under him.

After trial, the learned District Judge dismissed the action of the Appellant and granted the relief claimed by the Respondent.

The Appellant appealed to the Provincial High Court of the Western Province (Civil Appellate) holden at Gampaha which was dismissed.

Leave to appeal was granted on the following questions of law:

- (1) Did the Provincial High Court (Civil Appeals) of the Western Province (Holden at Gampaha) err in holding that the said Deed No. 7216 marked P6 is a properly executed Deed in terms of section 2 of the Prevention of Frauds Ordinance as set out in the case of ***Thiyagarasa v. Arunodayam* [(1987) 2 Sri LR 184]** without considering the evidence of the Defendant as to the place of the signing of the said Deed marked P6 and as to the signatures of the attesting witnesses (vide page 251 of the brief marked X1) which contradicts the evidence of both the witnesses namely R.A.G.S. Ranatunga who executed the said deed No. 7216 in question and M.A.S. Hemantha who was one of the attesting witnesses to the said deed No. 7216 called by the Defendant in this case?
- (2) Did the Honourable Judges of the Provincial High Court (Civil Appeals) of the Western Province (Holden at Gampaha) err in applying the *ratio* in the case of ***De Silva and Others v. Seneviratne and Another* [(1981) 2 Sri LR 7]** on the facts and circumstances of this case, in deciding the credibility of witnesses in this case, particularly because the evidence of all the witnesses including the Plaintiff, except further cross -examination of the Plaintiff's wife, the Notary and one M.A.S. Hemantha, have been recorded previously and the learned District Judge who

delivered this judgment did not have opportunity of seeing and listening to those witnesses including the Plaintiff in this case?

(3) Did the Honourable Judges of the Provincial High Court (Civil Appeals) of the Western Province (Holden at Gampaha) err in not considering at all the documents marked P9, P10, P11 and P8 and out of these documents the document marked P9 which is the most important document in analyzing the case before Court in this case, as the Defendant has admitted that he has issued the said document marked P9 on 27.11.1993?

(4) Can the Plaintiff-Appellant-Petitioner raise the validity of the impugned deed marked (P6) on the ground that of due execution at this stage of the case?

Question of Law No. 4

Question of Law No. 1 is whether Deed No. 7216 (P6) was duly executed. Question of Law No. 4 challenges the ability of the Appellant to raise this question at this stage. Question of Law No. 1 will not arise for consideration should Question of Law No. 4 be answered in the negative. Hence, I will first examine Question of Law No. 4.

The Respondent submits that the issue of due execution of Deed No. 7216 (P6) was never part of the case of the Appellant. The cause of action pleaded by the Appellant was that Deed No. 7216 (P6) is a forgery. No issue was raised on the due execution of that deed. It was submitted that the facts and circumstances of ***Thiyagarasa (supra)*** are different as due execution was put in issue there.

The Appellant contends that his signature was obtained fraudulently to Deed No. 7216 (P6), which is an absolute transfer, after misleading him that it was a conditional transfer. He claims that he cannot read Sinhala. Moreover, it is submitted that Deed No. 7216 (P6) was signed by the parties at different places. The Appellant contends that in the circumstances of the case, the burden of proving due execution was on the Respondent.

It was submitted that the Respondent failed to prove due execution in terms of Section 2 of the Prevention of Frauds Ordinance.

Explanation 2 to Section 150 of the Civil Procedure Code contains an important element of the rules of natural justice. It requires the case enunciated at the trial to be reasonably in accord with the party's pleading, i.e., plaint or answer, as the case may be. No party is allowed to make at the trial a case materially different from that which he has placed on record, and which his opponent is prepared to meet. The facts proposed to be established must in the whole amount to so much of the material part of his case as is not admitted in his opponent's pleadings.

A civil trial proceeds on the issues raised. The pleadings recede to the background. The Appellant did not raise any issue on the due execution of Deed No. 7216 (P6). Neither did the Respondent, possibly as the parties understood that the case revolves on whether Deed No. 7216 (P6) is a forgery.

In these circumstances, I am inclined to hold that due execution cannot be raised at this stage.

In any event, the position of the Appellant is not tenable in law.

In ***Multiform Chemicals (Private) Limited v. Adrian Machado*** [S.C. Appeal 183/2011, S.C.M. 18.07.2024 at page 7], I examined Section 154 of the Civil Procedure Code which states that every document or writing which a party intends to use as evidence against his opponent must be formally tendered by him in the course of proving his case at the time when its contents or purport are first immediately spoken to by a witness. Accordingly, I held that if the opposing party does not, on the document being tendered in evidence, object to its being received, and if the document is not such as is forbidden by law to be received in evidence, the court should admit it. I went on to hold that where no objection is taken when the document is sought to be tendered in evidence,

and the document is not forbidden by law to be received in evidence, any objection to its receipt as evidence is deemed to have been waived. [See ***Kenakal v. Velapillai* (2 NLR 80)**; ***Muttaiya Chetty v. Haramanis Appu* (4 NLR 184)**; ***Silva v. Kindersley* (18 NLR 85)**; ***Siyadoris v. Danoris* (42 NLR 311)**].

Interestingly, Deed No. 7216 (P6) was tendered in evidence by the Appellant. It was not marked subject to proof of due execution. At the close of his case, the Appellant read Deed No. 7216 (P6) in evidence.

In ***Sri Lanka Ports Authority and Another v. Jugolinija-Boal East* [(1981) 1 Sri LR 18 at 24]** Samarakoon, C.J. held:

*“If no objection is taken when at the close of a case documents are read in evidence they are evidence for all purposes of the law. This is the *cursus curiae* of the original Civil Courts.”*

Moreover, Civil Procedure Code (Amendment) Act No. 17 of 2022 (Act) was certified on 23.06.2022. Section 3 of the Act states that notwithstanding anything contained in section 2 of the Act, and the provisions of the Evidence Ordinance, in any case or appeal pending on the date of coming into operation of the 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. This appeal was heard on 02.11.2022 and as such was pending when the Act No. 17 of 2022 became law. Section 3 of that Act applies and accordingly Deed No. 7216 (P6) must be admitted in evidence.

For all the foregoing reasons, I answer Question of Law No. 4 in the negative. Accordingly, Question of Law No. 1 does not arise for consideration.

Question of Law No. 3

The Appellant submits that the Honourable Judges of the Provincial High Court (Civil Appeals) of the Western Province (Holden at Gampaha) erred in not considering at all the documents marked P8, P9, P10 and P11.

According to the Appellant, he borrowed Rs. 60,000/= from the Respondent and Deed No. 7216 (P6) was executed as security for this loan but it was fraudulently prepared as an outright transfer. Documents marked P8, P9, P10 and P11 prove that the Appellant had paid certain sums of money from this loan.

Nevertheless, the Respondent has explained the circumstances leading to the issuance of P9, which is a receipt issued by the Respondent for Rs. 1800/=. The Appellant sought to establish that this reflects part payment of the money borrowed on Deed No. 7216 (P6) because it is dated subsequent to the date of Deed No. 7216 (P6). However, the Respondent testified that when he conveyed the corpus previously by Deed No. 7113 (D8/P5), the Appellant gave him Rs. 18,000/= which was the consideration in that deed. The Appellants wife had conveyed the property earlier by Deed No. 7076 (D7/P4) which was a conditional transfer for Rs. 18,000/=. The Respondent conveyed the corpus back to the Appellant by Deed No. 7113 (D8/P5) for the very same amount and on that occasion the Appellant gave him an extra Rs. 1800/= which is one tenth of the consideration. According to the Respondent, it was a gift for him for giving the corpus back for the same amount he lent. Much later and sometime before the institution of the action, the Appellant asked for a receipt for that Rs. 1800/= which the Respondent readily gave.

Moreover, I observe that the learned District Judge has not given credence to the credibility of the Appellant particularly to the allegation of fraud he made against G.S. Ranatunga, Notary Public who attested Deed No. 7216 (P6).

The evidence revealed that the same Notary Public had in fact attested four deeds in total between the parties which were marked as P3, P4, P5 and P6. The original of these deeds were marked by the Respondent as D10, D7, D8 and D9 respectively. Although the Appellant claimed that he did not know Sinhala, all these deeds were executed in Sinhala. Moreover, the wife of the Appellant testified that her husband knows Sinhala.

Accordingly, I answer Question of Law No. 3 in the negative.

In view of the answers given above, Question of Law No. 2 does not arise.

For all the foregoing reasons, I dismiss the appeal with costs fixed at Rs. 100,000/=.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

P. Padman Surasena, C.J.

I agree.

CHIEF JUSTICE

A.L. Shiran Gooneratne, J.

I agree.

JUDGE OF THE SUPREME COURT