

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

*In the matter of an appeal in terms of section 5
C of the High Court of the Provinces (Special
Provisions) Act No. 19 of 1990 as amended by
Act No. 54 of 2006, against a judgment
delivered by the Provincial High Court exercising
its jurisdiction under section 5A of the said Act.*

S C Appeal No. 138/2012

SC/HCCA/LA No. 270/2011

CP/HCCA/CA/885/2002

DC Gampola case No. 1551/X

Sewgan Sivapakyam,
No. 90,
Mahakumbura,
Nawalapitiya.
Presently at
196/31,
Pannaloka Mawatha,
Peiris Road,
Dehiwala.

DEFENDANT - RESPONDENT - APPELLANT

-Vs-

Indrani Sinnaiah,
No. 56,
Kotmale Road,
Nawalapitiya. (now deceased)

PLAINTIFF - APPELLANT - RESPONDENT

1A. Sinnaih Muththalagu

1B. Sinnaih Manoharan

Both of
No. 92,
Mahakumbura,
Soysakele 6,
Nawalapitiya.

1C. Ramachandran Haridas,
Soysakele Road,
Mahakumbura,
Nawalapitiya.

**SUBSTITUTED PLAINTIFF - APPELLANT -
RESPONDENTS**

Before: BUWANEKA ALUVIHARE PC J

P PADMAN SURASENA J

S THURAIRAJA PC J

Counsel: Rohan Sahabandu PC for the Defendant - Respondent - Appellant

L M K Arulanandam PC with Premasiri Perera and Devika Panagoda for the
1C substituted Plaintiff - Appellant - Respondent

Argued on: 19-06-2019

Decided on: 21-05-2020

P Padman Surasena J

The Plaintiff – Appellant - Respondent (hereinafter sometimes referred to as the Plaintiff) who filed the plaint in this case, in the District Court of Gampola, has, inter alia, stated in her plaint;

- i. that she had conditionally transferred to the Defendant - Respondent - Appellant (hereinafter sometimes referred to as the Defendant), the land more fully set out in the schedule to the said plaint, subject to the condition that the said Defendant will transfer it back to the Plaintiff upon payment of the value mentioned in the said deed together with a 5% interest (per month) thereon,
- ii. that the Plaintiff had failed to pay back the money as undertaken,
- iii. that the Plaintiff had then made an application to the Debt Conciliation Board,

- iv. that the Debt Conciliation Board, having inquired into the said application,
- a) concluded by its order dated 09-11-1990, that the said conditional transfer is a mortgage in terms of the provisions of Debt Conciliation Ordinance;
 - b) accepted as reasonable, the proposed undertaking by the Plaintiff to pay back the interest at a reduced rate of 20% per annum instead of 5% per month which is the rate mentioned in the deed that had effected the said conditional transfer;
 - c) issued to the Plaintiff, a certificate under section 32(2) of the Ordinance (produced marked **P 2**) to that effect.

The Plaintiff in her plaint, had prayed *inter alia* that,

- (i) the deed No. 270 attested on 05-06-1988 by Mangalika Hesle Jayasundera Notary Public be annulled;
- (ii) a declaration that the Plaintiff is the owner of the property be granted;
- (iii) the Defendant be directed to transfer the property in the name of the Plaintiff;
- (iv) the Plaintiff be restored in the possession of the land in extent of 13 perches described in the schedule of the plaint dated 07th June 1995.

The Defendant filed his answer dated 20th January 1997. The Defendant in his answer has;

- 1) admitted that the Plaintiff made an application to the Debt Conciliation Board and that the said application was dismissed;

- 2) admitted that the deed of lease was executed between the Plaintiff and the Defendant;
- 3) taken up the position that the Plaintiff has failed to pay the sum due to the Defendant within six months of the issuance of the certificate by the Debt Conciliation Board and therefore the Plaintiff is not entitled to maintain this case.

At the conclusion of the trial, the learned District Judge has delivered judgment dated 27.06.2002, dismissing the plaint on the basis that the Plaintiff has not proved her case on the balance of probability and that the action by the Plaintiff is out of time as per the provisions of Prescription Ordinance.

The Plaintiff being aggrieved by the said order of the learned District Judge has appealed to the Provincial High Court canvassing the said order.

At the conclusion of the argument of the said appeal, the Provincial High Court by its judgment dated 14.06.2011, has set aside the judgment of the learned District Judge and held that the Plaintiff is entitled to the relief as prayed for in the Plaint.

The Provincial High Court has taken the view;

- i. that the Defendant has failed to plead the prescription in his answer;
- ii. that the Defendant has failed to frame an issue pertaining to the above position in the trial before the District Court and that the Defendant had taken up the position of time bar against the maintenance of the plaintiff's action only in his written submissions;

- iii. that the conclusion by the learned District Judge that Plaintiff has failed to comply with the order of the Debt Conciliation Board is erroneous as it is based on "misevaluation of the evidence" as submitted by the Plaintiff;
- iv. that there is no basis to infer that the failure to pay costs in the previously filed case bearing No. X 1503 would be a bar for the institution of case No. 1551.

The Provincial High Court having regard to the substantial relief prayed by the Plaintiff in the instant action has taken the view that the Debt Conciliation Ordinance has provided for such relief, which could be granted by the District Court to the Plaintiff.

It was on the above basis that the Provincial High Court has reversed the conclusion of the learned District Judge.

This Court, when the leave to appeal application pertaining to the instant appeal was supported, having heard the submissions of the learned President's Counsel for the Defendant and the learned Counsel for the Plaintiff, by its order dated 31-07-2012, has granted leave to appeal only in respect of the following two questions of law.

- 1) Could the Plaintiff have and maintain the present action without depositing the consideration referred to in Deed 270 dated 05.06.1988 together with the legal interest thereon?
- 2) Is the certificate relied upon by the Plaintiff binding between the parties?

Thus, I would consider the judgment of the Provincial High Court within the scope of the above two questions of law.

It is the position of the Defendant that the Debt Conciliation Board has imposed a condition on the Plaintiff to deposit the amount payable to the Defendant within six months of the said order. The said order (dated 09-11-1990) has been produced marked **P 02**.

Perusal of the judgment of the learned District Judge shows clearly that he had taken the view that the plaintiff had undertaken to repay the loan along with the accrued interest within six months of the certificate issued by the Debt Conciliation Board. He has arrived at this conclusion based on the contents of the certificate issued by the Debt Conciliation Board produced marked **V 02** and the document marked **P 02**.

However, it is clearly mentioned in those two documents that the Defendant had rejected the proposal put forward by the Plaintiff for the settlement of the loan in the way specified therein. It is also clearly mentioned in the said documents that the Defendant had demanded 40% interest as against the interest agreed by the Plaintiff. Therefore, it is clear that the certificate does not contain any mutually agreed method of settlement of the debt. This is because both parties had not converged on a mutually accepted method of either re-payment or re-conveyance of title of the land to the Plaintiff. The certificate issued by the Debt Conciliation Board is to the effect that "the debtor has made the creditor a fair offer which the creditor ought to reasonably have accepted". It is not a certificate containing a settlement arrived at between parties.

Thus, I am of the view that it has only certified the fact that the debtor has made the creditor a fair offer which the creditor ought to reasonably have accepted. The effect of

the certificate must be confined only to the above fact. For the above reasons, the answer I provide to the question of law No. (2) would be 'the certificate relied upon by the Plaintiff would be binding between the parties only to the above extent.'

Section 39(2) (a)¹ of Debt Conciliation Ordinance states as follows;

"Where a certificate has been granted under this Ordinance in respect of a debt secured by a conditional transfer of immovable property and subsequent to the granting of that certificate an action is instituted in any court for the recovery of that property, the court-

- a) *may, notwithstanding that the title to that property has vested in the creditor in relation to that debt, make such appropriate orders as are necessary to re-convey title to, and possession of, that property to the debtor, in relation to that debt, on the payment by the debtor of the debt together with the interest thereon in such instalment and within such period not exceeding ten years as the court thinks fit; and ..."*

Indeed, it is to obtain the benefit of the maximum possible time of ten years provided for by law, that the Plaintiff has invoked the above jurisdiction of the District Court. One of the reasons the leaned District Judge has given in his judgment when he decided to dismiss the action of the Plaintiff is the failure of the Plaintiff to deposit any money in Court to be paid to the Defendant. However the leaned District Judge has failed to observe that the main purpose of the action was to obtain the benefit of the maximum

¹ Before the Amendment by Act No. 29 of 1999.

possible time of ten years for the repayment of the relevant debt as provided for in section 39(2) (a) of Debt Conciliation Ordinance. In the above circumstances, insisting that the Plaintiff should deposit money to be paid to the Defendant would clearly be unnecessary unreasonable and defeat the primary purpose of the action.

Thus, I am of the view that in the circumstances of the instant case, there is no impediment for the Plaintiff to maintain the instant action in the District Court. For the above reasons, the answer I provide to the question of law No. (1) would be 'the Plaintiff can maintain the present action without depositing the consideration referred to in Deed 270 dated 05.06.1988 together with the legal interest thereon.'

For the foregoing reasons, I affirm the judgment of the Provincial High Court dated 14th June 2011 and proceed to dismiss this appeal with costs.

JUDGE OF THE SUPREME COURT

BUWANEKA ALUVIHARE PC J

I agree,

JUDGE OF THE SUPREME COURT

S THURAIRAJA PC J

I agree,

JUDGE OF THE SUPREME COURT