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

Mudalige Weeranatha Samarawickrema,
'Eranga', Polonnaruwa,
Gonapala Junction.
PLAINTIFF

C.A. Case No.671/2000 (F)

D.C. Case No.3032/SPL

-Vs-

1. Lanka Orix Leasing Company Ltd.,
   1st Floor, Lakshman Building,
   No. 33, Galle Road,
   Colombo 03.
2. Dilrukshi Rajasinghe,
   No. 5, Kaluwarippuwa West,
   Katana.
3. Soma Kotakadeniya,
   Commissioner of Motor Vehicles,
   Department of Motor Vehicles,
   Colombo 05.

DEFENDANTS

And Now Between

Mudalige Weeranatha Samarawickrema,
'Eranga', Polonnaruwa,
Gonapala Junction.
PLAINTIFF-APPELLANT

-Vs-

1. **Lanka Orix Leasing Company Ltd.,**
   1st Floor, Lakshman Building,
   No. 33, Galle Road,
   Colombo 03.
2. **Dilrukshi Rajasinghe,**
   No. 5, Kaluwarippuwa West,
   Katana.
3. **Soma Kotakadeniya,**
   Commissioner of Motor Vehicles,
   Department of Motor Vehicles,
   Colombo 05.

DEFENDANT-RESPONDENTS

BEFORE	:	A.H.M.D. Nawaz, J.
COUNSEL	:	Shantha Perera with P.P. Gunasena and W.L.S. Gayani for the Plaintiff-Appellant Shanaka de Livera for the 1st Defendant-Respondent.
Argued on	:	15.06.2015
Decided on	:	11.05.2016

A.H.M.D. Nawaz, J.

The main *dramatis personae* in the appeal are; the Plaintiff-Appellant (hereinafter sometimes referred to as "the Plaintiff"); the 2nd Defendant-Respondent (hereinafter sometimes referred to as "the 2nd Defendant") and the 1st Defendant-Respondent

Finance Company (hereinafter sometimes referred to as "the 1st Defendant"). The story begins with a business relationship that the Plaintiff struck with the husband of the 2nd Defendant-Respondent. They both agreed that they would jointly engage in the business of quarrying stones in Kataragama and a metal crusher be purchased for this purpose. The 1st Defendant Finance Company extended credit facilities to purchase the metal crusher which was in effect bought in the name of the 2nd Defendant-the wife of the business partner of the Plaintiff-Appellant. The 2nd Defendant secured her indebtedness to the 1st Defendant by pledging her vehicle to the 1st Defendant Company. Though the business partners agreed to share the spoils of the business, it appears that for some reason or the other the profits were not transferred to the husband of the 2nd Defendant. The 2nd Defendant fell into arrears of her installments to the creditor-the 1st Defendant Company. It was then upon a suggestion made by the 2nd Defendant and her husband that the Plaintiff-Appellant agreed to secure the debt of the 2nd Defendant owed to the 1st Defendant Company by pledging his own Double Cab bearing No.40 Sri 2275 as a security to the 1st Defendant Company. Admittedly the mode adopted was that he signed MTA transfer forms in blank and handed it over to the 1st Defendant Company. According to the Plaintiff, one fine day he was astonished to find that in the end the Finance Company-the 1st Defendant had become the absolute owner of the vehicle and the 2nd Defendant its registered owner. Did the jural relations change with the MTA forms being transferred? Was it a voluntary transfer? Did consideration pass between the Plaintiff-Appellant and the 1st Defendant Company? These are issues that arise in this appeal. The learned Additional District Judge of Colombo by her judgment pronounced on 21.07.2000 dismissed the action of the Plaintiff-Appellant. The pith and substance of the judgment was that the Plaintiff had long put his vehicle beyond his reach when he divested himself of its ownership by executing the signed transfer forms albeit in blank. The Plaintiff appeals against the decision and before I deal with the issues that this appeal raises, let me hark back to the reliefs that the Plaintiff Mudalige Weeranatha Samarawickrema did pray for in his plaint dated 16.11.1989.

1. Judgment and Decree that the Plaintiff is the owner of the vehicle bearing No.40 Sri 2275.

2. For a Decree to return the vehicle bearing No.40 Sri 2275 to the Plaintiff.
3. For a Decree that the documents transferring the vehicle to the 2nd Respondent are null and void and are of no avail in law.
4. For Judgment against the 1st and 2nd Respondents jointly and/or severally for the recovery of damages in a sum of Rs.2,000/- per month from 29.03.1988 until the return of the vehicle to the Appellant.
5. For costs.

Whilst the 1st Respondent Finance Company prayed for a dismissal of the plaint, the 2nd Respondent who obtained the loan from the 1st Defendant Finance Company to finance the purchase of the metal crusher averred in her answer:-

a. That she admits that the Appellant had purchased the vehicle bearing No.40 Sri 2275 (the plaintiff's vehicle) referred to in paragraph (2) of the plaint from Sathosa Motors and took the metal crusher to Kataragama which had been obtained on a hire purchase agreement from the 1st Respondent.
b. That the Appellant hired the metal crusher belonging to her (the 2nd Respondent) for the purpose of supplying metal to Kataragama Gam Udawa and promised to pay Rs.40,000/- per month.
c. That the Appellant did not pay the monthly rental to the 2nd Respondent as promised.
d. That the Appellant paid a sum of Rs.25,000/- in the 1st month and thereafter did not make any cash payments.
e. Because of the pressure exerted by her-the 2nd Respondent and her husband, the Appellant issued two cheques each valued at Rs.25,000/- on two occasions, but the Appellant purposely countermanded payment on the said cheques.
f. As the Appellant did not pay the rental as promised, the metal crusher was removed from the possession of the Appellant and brought to Colombo.

g. That the Appellant had transferred his vehicle bearing No.40 Sri 2275 in the name of the 2nd Respondent to set off the money due to the 2nd Defendant. However, the possession of the vehicle remained with the Appellant.

Accordingly she (the 2nd Defendant) prayed for *inter alia* the following:-

i. That the Appellant's action be dismissed.

ii. For a declaration that vehicle No.40 Sri 2275 belongs to the 1stDefendant-Respondent.

iii. For costs.

The case proceeded to trial on 09.05.1995 on 4 admissions and 8 issues numbered 1 to 8 raised by thePlaintiff and 3 issues raised by the 1st Defendant numbered 9 to 11 and 9 issues raised by the 2nd Defendant numbered 12 to 20.

So the cause of action of the Plaintiff was based on the ownership of his vehicle. The learned Judge of the District Court entered judgment on 21.07.2000 dismissing the Appellant's action. Apart from the law, it has to be straightaway pointed out that on the question of whether the vehicle belonged to the 1st Defendant Finance Company there is evidence emanating from the Plaintiff himself that it belonged to the Company-see the evidence of the Appellant at pages 13 and 14 of the proceedings of 10.05.1996.

The cross examination culminated with the following answers.

ප්‍ර : එතකොට දැනටමත් වාහනයේ පරම අයිතිකරු 1 වන විත්තිකරුද?

උ : 1 වන විත්තිකරු

ප්‍ර : ලියාපදිංචි අයිතිකරු 2 වන විත්තිකරුද?

උ : ඔව්

An extract **P2** from the Registrar of motor vehicles confirms this evidence-vide also further questions at page 15: (Proceedings dated 10.05.1996)

ප්‍ර : මෙම "පැ2" මෝටර් රථ වාහන දෙපාර්තමේන්තුව මෙම වාහනයේ අයිතිය සම්බන්ධයෙන් දෙනු ලබන උදෘතයක්?

උ : එහෙමයි

ප්‍ර : මෝටර් රථ වාහන දෙපාර්තමේන්තුව අනුව මෙම වාහනයේ අයිතිකරු 1 වන විත්තිකරු?

උ : එහෙමයි

In the circumstances it is clear that the absolute owner of the vehicle is the 1st Respondent.

At page 24 of the proceedings dated 10.05.1996,the Appellant admits;

a. That the 2nd Respondent entered into a lease agreement with the 1st Respondent.
b. That the 2nd Respondent defaulted in terms of the lease agreement.
c. In the event of such default the 1st Respondent had the right to take possession of the vehicle.
d. In view of the aforesaid default the 1st Respondent took possession of the vehicle.

On his own admission the Plaintiff admits the following.

a. the 1st Defendant-Respondent is the owner of the vehicle.
b. the 2nd Defendant-Respondent has breached the terms and conditions of the lease Agreement.
c. the 1st Defendant-Respondent thereafter in terms of the lease Agreement took possession of the vehicle.

However let me touch upon some other issues raised in the trial.

Factual Matrix

The 4th Issue raised by the Plaintiff was as follows:-

Did the 1st Defendant and or 2nd Defendant collusively acting together unlawfully transfer vehicle No.44 Sri 2275 to the Plaintiff?

In effect the Finance Company (1st Defendant) had entered into a lease agreement with the 2nd Defendant and the 2nd Defendant transferred her bus as a security for the metal crusher that had been leased by the Finance Company. In consideration of the said lease, the 2nd Defendant had transferred her bus as a security to the 1st Defendant

Leasing Company. It is the subsistence of this leasing contract that enabled the Plaintiff to enter into a commercial relationship with the 2nd Defendant and her husband covenanting with them to transfer his vehicle the Double Cab No. 40 Sri 2275. By this time the 2nd Defendant had already pledged her vehicle to the 1st Defendant Finance Company for the metal crusher they supplied her.

Pursuant to the agreement the Plaintiff reached with the 2nd Defendant and her husband, the 2nd Defendant executed an MTA transfer in blank and handed it over. This antecedent transfer which is admitted is corroborated by **P2** the extract from the register of motor vehicle. According to the document **P2**, the Plaintiff had transferred this vehicle on 11.08.1987 whereupon Lanka Orix Leasing Company Ltd., (the 1st Defendant) became the absolute owner of this vehicle. It appears that on the same day the 2nd Defendant became the registered owner of this vehicle. The Plaintiff alleged in his evidence that he continued to possess this vehicle notwithstanding this transfer and it was only upon seizure of the vehicle consequent to nonpayment of dues he came to know that the 2nd Defendant had become the registered owner of this vehicle.

It is quite clear that when the Plaintiff transferred this lorry on 11.08.1987 in favour of the Lanka Orix Leasing Company Ltd., it was an absolute transfer by which he divested himself of his right ownership over the vehicle. The fact that it was a voluntary transfer is admitted by the Plaintiff himself when he gave evidence before the District Judge. Therefore in the light of his evidence it does not lie in the mouth of the Plaintiff to say that he did not understand the nature and extent of his deed of transfer which he effected on 11.08.1987. No evidence of duress either on the part of the 1st Defendant leasing company or the 2nd Defendant is disclosed on the evidence.

In the circumstances it is quite evident that no evidence has been led to prove that the transfer of the vehicle in favour of the Leasing Company was a collusive act between the leasing company and the 2nd Defendant. Therefore Issue No. 4 which alleged collusion between the 1st Defendant and 2nd Defendant has not been proved by evidence and the District Judge came to a correct finding that the transfer was a voluntary transaction.

In the circumstances there is no error that this Court finds the District Judge's committed and the circumstances the Court find no reason to set aside judgment of the District Court.

It has to be noted that though the Plaintiff-Appellant was the owner of the Double Cab bearing No.40 Sri 2275, he voluntarily placed his signature on MTA transfer forms in favour of the 1st Defendant Finance Company. In fact the Plaintiff-Appellant admitted to this voluntary transfer in his evidence. In fact the learned District Judge has considered quite carefully the antecedent circumstances that might have led to the voluntary transfer of ownership of the vehicle to the 1st Defendant Finance Company. There was a promise of payment of profits made by the Plaintiff-Appellant to the 2nd Defendant. There is evidence that the Plaintiff-Appellant did not keep to this promise of turning over the profits due to the 2nd Defendant and her husband. Though the Plaintiff owed money to the 2nd Defendant and her husband as a result of the business relationship that existed between them, there is evidence that even the cheques that the Appellant delivered to the Defendants in settlement of his debt were countermanded by him and the debt owed to the 2nd Defendant and her husband in connection with their commercial relationship remained unpaid. An antecedent debt would constitute consideration for a cheque. Such a debt or liability is deemed valuable consideration for a bill of exchange such as a cheque-vide Section 27(1) (b) of the Bills of Exchange Ordinance.

If the contention is raised on behalf of the Plaintiff-Appellant that there was no consideration that flowed from the Finance Company in exchange for the transfer of the Plaintiff's Vehicle to the 1st Defendant Finance Company, that would not hold water. Even if it was argued that the antecedent debt owed to the 1st Defendant would constitute consideration only to the 2nd Defendant and not to the 1st Defendant Finance Company, the fact that the Finance Company had extended a hire purchase/leasing facility to a person to whom the Appellant owed money would constitute sufficient consideration for the Appellant to make his undertaking to the Finance Company. In any event the Appellant was not a volunteer who was motivated with altruism to go to

the extent of transferring his vehicle to a third party. The transfer was an obligation voluntarily assumed and undertaken by the Appellant on behalf of the 2nd Defendant.

In other words because the Plaintiff had the use and benefit of the metal crusher which was leased out by the Finance Company, the Finance Company (the 1st Defendant) had given sufficient consideration to the Plaintiff for his pledge that was contained in the blank but signed MTA forms. Consideration is usually described as being something which represents either some benefit to the person making a promise (the promisor) or some detriment to the person to whom the promise is made (the promise), or both.

In ***Dunlop v. Selfridge*** (1915) AC 847 the House of Lords explained consideration in terms of purchase and sale-X must show that he or she has bought Y's promise, by doing, giving or promising something in return for it. Here the Plaintiff made a promise that his vehicle could be taken possession of in the event there was a default on the payment of lease rentals. This became enforceable because the 1st Defendant conferred a benefit on the Plaintiff by leasing out the metal crusher whose use the Plaintiff enjoyed through the 2nd Defendant. In fact Patrick Atiyah has suggested that consideration can simply be seen as "a reason for the enforcement of promises", with that reason being "the justice of the case"-see Atiyah, 'Consideration: a restatement', *Essays on Contract*, Oxford (1990). Thus one can see that Atiyah's formulation of consideration resonates on par with the Roman Dutch law equivalent of *causa*.

The transfer via the MTA form had the effect of releasing the security of the 2nd Defendant and replacing it with the security of the Appellant given voluntarily to the 1st Defendant Finance Company. As a security for the lease rentals on the metal crusher, the Appellant's Double Cab was substituted for the lorry of the 2nd Defendant. What really occurred among the parties was novation.

Novation is an act, whereby, with the consent of all the parties, a new contract is substituted for an existing contract and the latter is discharged. Usually it takes the form of the introduction of a new party to the contract and the discharge of a person who was a party to the old contract. For instance, if A owes B Rs. 10,000/- under one contract and C owes A Rs. 10,000/- under another, novation will occur if C agrees to

pay B Rs. 10,000/- if B will release A from his debt to B. The difference between assignment and novation is that assignment only transfers the benefits, and not the burdens of a contract, to transfer both burdens and benefits, a novation is required. The effect of novation is that the old contract is destroyed and the new one created-see *Contract Law* by Catherine Elliot & Frances Quinn (9th Edition, 2013 at page 298). So when the Plaintiff signed MTA transfer forms in blank and there was no duress or undue influence exercised on him, he was entering into a contract with the 1st Defendant Finance Company knowing fully well that the ownership would pass to the 1st Defendant Finance Company in the event of defaults on lease rentals. Infact the new contract replaced the old contract of the 2nd Defendant whereby she had pledged her vehicle to the 1st Defendant Finance Company. By his new contract, the Plaintiff pledged his vehicle to the 1st Defendant Finance Company promising to pay the debt of the 1st Defendant. This is exactly what happened between the parties and the admission of the Plaintiff that the 1st Defendant Finance Company was able to seize his vehicle by virtue of the fact that it had become its owner strengthens the legal position that novation did occur among the parties.

In the circumstances I proceed to affirm the judgment of the learned Additional District Judge of Colombo dated 21.07.2000 and dismiss the appeal.

JUDGE OF THE COURT OF APPEAL