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

Dr. Durgadas De Fonseka
No. 6, Alfred House Road, Colombo 03.

Plaintiff

Case No. C. A. 326/1997(F)
D.C. Colombo Case No. 5808/ZL

Vs.

Edward Keerthi De Silva Goonethillake (Deceased)
No. 6A, Alfred House Road, Colombo 03.

Defendant

1A. Mrs. Vasanthi Gunathillake
No. 11, Campbell Terrace, Borella.

Substituted Defendant

AND

Dr. Durgadas De Fonseka
No. 6, Alfred House Road, Colombo 03.

Plaintiff-Appellant

Prema Marambage
No. 110/9A, Temple Road, Maharagama

Substituted Plaintiff-Appellant

Vs.

1A. Mrs. Vasanthi Gunathillake
No. 11, Campbell Terrace, Borella.

Substituted Defendant-Respondent

Before: K. K. Wickremasinghe, J.

Janak De Silva, J.

Counsel:

Iraj De Silva for the Substituted Plaintiff-Appellant

Ikram Mohamed, P. C. with C. Jayawickrema for the Substituted Defendant-Respondent

Written Submissions tendered on:

Substituted Plaintiff-Appellant on 05.11.2018 and 30.11.2018

Substituted Defendant-Respondent on 01.11.2018

Argued on: 12.03.2018, 27.03.2018, 03.05.2018, 11.05.2018, 31.05.2018, 13.06.2018, 26.06.2018, 20.09.2018 and 03.10.2018

Decided on: 05.12.2019

Janak De Silva, J.

This is an appeal against the judgment of the learned Additional District Judge of Colombo dated 29.05.1997.

The Plaintiff-Appellant (Plaintiff) instituted the above styled action in the District Court of Colombo seeking *inter alia* a declaration that the Deed of Transfer No. 753 dated 14.02.1986 purported to have been attested by R. C. B. Joseph, Notary Public (පැ11/බ10) is null and void and/or is of no force or avail in law and a declaration that the Plaintiff is the lawful owner of the land and premises described in the Second Schedule to the plaint dated 15.06.1988.

The Plaintiff averred in his plaint that –

1. The Plaintiff became entitled to Lot B2 of Plan No. 1219 dated 28.02.1969 made by M. D. J. V. Perera, Licensed Surveyor (described in the Second Schedule to the Plaint) under and by virtue of Deed No. 7140 dated 30.06.1969 attested by Cyril Reginald De Alwis, Notary Public (පැ2);
2. The Plaintiff built a house bearing Assessment No. 6A, Alfred House Road and a flat bearing Assessment No. 6A 1/1, Alfred House Road on the said land;
3. The said flat was rented out to the Embassy of Union of Soviet Socialist Republics for a monthly rental of Rs. 4,000/- from 1972 and the said house was occupied by the Plaintiff as a residence till 20.06.1986;
4. On or about 20.06.1986, the Defendant wrongfully and unlawfully ejected the Plaintiff from the said house and he is in wrongful and unlawful occupation of the same since then, causing damages amounting to Rs. 50,000/- per month;
5. The Defendant wrongfully and unlawfully collects rents from the Plaintiff's tenant (i.e. the Embassy of Union of Soviet Socialist Republics);
6. The Defendant claims the ownership of the said land and premises under and by virtue of Deed of Transfer No. 753 dated 14.02.1986 purported to have been attested by R. C. B. Joseph, Notary Public and purported to have been signed by the Plaintiff;
7. The said Deed of Transfer No. 753 is null and void and/or voidable and/or is of no force or avail in law for the following reasons –
    a. The Plaintiff didn't intend to sell the said land and premises to the Defendant and the said Deed of Transfer No. 753 is not the act and deed of the Plaintiff;

b. The signature of the Plaintiff on the said Deed of Transfer No. 753 was obtained by fraud and/or by fraudulent misrepresentation of facts where it was fraudulently represented to the Plaintiff by the Defendant that he was signing a Deed of Transfer in respect of a land in Mahawaskaduwa;

c. The said Deed of Transfer No. 753 was not duly executed and/or attested in terms of the Prevention of Frauds Ordinance.

As an alternative cause of action, the Plaintiff averred that the consideration supposed to have been paid for the sale of the said land and premises was less than half of its true value and thus, the said Deed of Transfer No. 753 should be declared null and void on the ground *laesio enormis*.

The Defendant filed his Answer on 02.11.1988. However, on or about 11.02.1990, the Defendant died intestate and his widow was substituted in his place by the order dated 29.01.1992. By the Amended Answer dated 22.04.1992, the Substituted Defendant claimed the ownership of the said land and premises under and by virtue of the said Deed of Transfer No. 753 and prayed for a dismissal of the action.

During the trial, K. T. D. Tissera, a Chartered Valuation Surveyor and the Plaintiff himself gave evidence on behalf of the Plaintiff. On behalf of the Substituted Defendant, S. C. Fernando, a Valuer, R. C. B. Joseph, the Notary Public who attested the said Deed of Transfer No. 753 and B. M. M. Piyaratne, one of the attesting witnesses to the same gave evidence.

The learned Additional District Judge, by the Judgment dated 29.05.1997, dismissed the action of the Plaintiff. Being aggrieved, the Plaintiff appealed.

The contention of the Plaintiff is that the learned Additional District Judge has failed to properly evaluate the evidence led and the totality of evidence was not analyzed.

The Substituted Defendant-Respondent (Substituted Defendant) while relying on Sections 70 and 106 of the Evidence Ordinance submitted that the Plaintiff has not discharged his burden of proof in establishing that the said Deed of Transfer No. 753 is not his act and deed and that the signature of the Plaintiff on the same was obtained by fraud and/or by fraudulent misrepresentation of facts.

Evaluation of Evidence

The learned Counsel for the Substituted Defendant submitted that the best person to determine issues in relation to the facts of the case is the trial judge who had the advantage of hearing testimony and observe the demeanor of a witness and his finding should not be lightly disturbed in appeal [*Fradd v. Brown & Co. Ltd* (20 N.L.R. 282), *Mahawithana v. Commissioner of Inland Revenue* (64 N.L.R.217), *De Silva and Others v. Seneviratne and Another* (1981) 2 Sri.L.R. 7, *Alwis v. Piyasena Fernando* (1993) 1 Sri.L.R. 119, *A. M. Nawaratne Amarakoon and Others v. Sita Hapuarachchi* (C. A. 396A-B/1998(F), C.A.M. 06.06.2014), *Sanvara De Ruberu Samaraweera Gunasekera v. Fathima Thasneem Yusuff* (S. C. Appeal 143/2013, S.C.M. 28.01.2016)].

However, where the findings of fact are based upon the trial judge's evaluation of facts, the Appellate Court is then in as good a position as the trial judge to evaluate such facts and no sanctity attaches to such findings of fact of a trial judge and where it appears to an Appellate Court that on either of these grounds the findings of facts by a trial judge should be reversed then the Appellate Court "ought not to shrink from that task" [*De Silva and Others v. Seneviratne and Another* (Supra), *Anulawathie v. Gunapala and Another* (1998) 1 Sri.L.R. 63, *De Silva v. De Croos* (2002) 2 Sri.L.R. 409]. An Appellate Court will not overrule the decision of the Court below on a question of fact in which the judge has had the advantage of seeing the witnesses and observing their demeanor unless they find some governing fact which in relation to others has created a wrong impression [*Francis Samarawickrema v. Hilda Jayasinghe and Another* (2009) 1 Sri.L.R. 293]. In regard to the proper inference to be drawn from proved facts, an Appeal Court is generally in as good a position to evaluate the evidence as the trial judge [*The Attorney General v. I. Gnanapiragasam and Another* (68 N.L.R. 49)].

The Burden and the Quantum of Proof in Civil Cases Involving Fraud

During the trial, the Plaintiff vehemently denied that he sold or intended to sell the land and premises more fully described in the Second Schedule to the Plaint to the Defendant. Further, he has firmly stated that he never signed 'ඇ11/ඊ10' [Pages 258, 260, 271 – 273, 277 – 286, 289, 296, 310, 315 and 336 – 338 of the Appeal Brief]. When the Plaintiff was cross-examined, he took up the position that he never met the Notary Public who purported to have attested 'ඇ11/ඊ10' nor the attesting witnesses to the same. He alleged that the Defendant fraudulently obtained his signature on several blank sheets of paper, while he was drunk, misrepresenting that the signed blanks sheets of paper will be used to draw a deed relating to a land situated in Mahawaskaduwa [Pages 264, 268, 269, 277, 281, 282, 285 – 287, 289, 295, 314 – 317, 324 and 336 of the Appeal Brief]. Also, the Plaintiff denied any consideration being passed between the parties.

Section 101 of the Evidence Ordinance states –

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

Accordingly, the legal burden of proving all facts essential to his claim ordinarily rests upon the Plaintiff in a civil suit and therefore, the burden is on the Plaintiff to show that the execution of 'පැ11/පි10' is tainted with fraud.

In the case of *Francis Samarawickrema v. Hilda Jayasinghe and Another* (Supra), S. Marsoof, J. observed (at page 319) –

"However, in Associated Battery Manufacturers (Ceylon) Ltd. v. United Engineering Workers Union at 544, and Caledonian Estate Ltd., v. Hilaman at 426, it has been observed by this Court that allegations of misconduct in labour tribunal proceedings may be proved on a balance of probabilities. It is clear from these decisions that while the civil standard is generally applicable, the more serious the imputation, the stricter is the proof which is required. As explained by Lord Nicholls in Re H (Minors) at 586 –

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the court will have in mind the factor, to whatever extent is appropriate in the particular case that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury."

Explaining the principles enunciated by the courts in this regard, Phipson on Evidence (16th Edition - 2005) at Page 156, emphasizes that ***"attention should be paid to the nature of the allegation, the alternative version of facts suggested by the defense (which may not be that the event did not occur, but rather that it occurred in a different way, or at someone else's hand), and the inherent probabilities of such alternatives having occurred."*** [Emphasis added]

The Plaintiff, in his testimony, stated that around the time of the alleged execution of 'පැ11/වි10', he was emotionally in a vulnerable position due to the demise of his mother, who was very close to him and the desertion of his wife and only child, as a result of which he became addicted to alcohol. He further stated that the Defendant, whom he first met about 8 months prior to the execution of 'පැ11/වි10', was his only friend.

Also, the Plaintiff stated that his only place of residence at the time of the alleged execution of 'පැ11/වි10' was the land and premises in dispute and that there was no financial need for him to sell the said land and premises. These factual evidences were not contracted during the trial.

A careful perusal of the evidence of the Notary Public who attested 'පැ11/වි10' shows that the draft was prepared within a period of 3 – 4 hours after a photocopy of the title deed of the Plaintiff was given to the Notary Public for the purpose of drafting 'පැ11/වි10' [Page 413 of the Appeal Brief]. Also, the Notary Public testified that a title search was conducted by him at the Colombo Land Registry upon the request of the Defendant and that he discovered that there is an existing mortgage relating to the said land and premises [Page 435 of the Appeal Brief].

It must be noted that the Mortgage Bond by which the said land and premises were mortgaged to the National Savings Bank (පැ5) prohibits the sale and/or disposition of the mortgaged property in any manner without the prior written sanction of the Board of the National Savings Bank [Page 578 of the Appeal Brief]. It further states that a sale and/or disposition without such sanction shall be null and void as against the Board.

However, the Notary Public has failed to mention anything about 'පැ5' in 'පැ11/වි10'. He has failed to register the same in the relevant folio ('පැ11/වි10' is registered in A 230/77 whereas the title deed and the mortgage bond are registered in A 488/178). Also, the address of the Plaintiff is wrongly indicated in 'පැ11/වි10'. Furthermore, in that context it is inconceivable as to how the Notary can testify that he was satisfied with the title [Page 413 of the Appeal Brief] when (පැ5) prohibits the sale and/or disposition of the mortgaged property in any manner without the prior written sanction of the Board of the National Savings Bank [Page 578 of the Appeal Brief].

Consideration may not be an ingredient to prove "due attestation", but where the question is whether the execution of the impugned deeds was tainted with fraud, proof of payment of the amounts stated as consideration for the execution of the deeds may be equally relevant [*Francis Samarawickrema v. Hilda Jayasinghe and Another* (Supra)].

In the instant case, the Plaintiff denied receiving any consideration from the Defendant. The Substituted Defendant did not only give evidence during the trial and also failed to lead any evidence to show that such consideration was passed between the Plaintiff and the Defendant. Nor the financial means of the Defendant to purchase such valuable property were established. According to 'පැ11/වි10' and the evidence of the Notary Public, the consideration was fully paid prior to the execution of 'පැ11/වි10'.

Although no issue was raised by either party in respect of the passing of valuable consideration for the subsequent instrument, the absence of such an issue could not have the effect of absolving the plaintiff from proving that valuable consideration was given. Proof of the existence of a statement in the deed by the notary that consideration was paid is not sufficient to establish the truth of the payment of such consideration [*Diyes Singho v. Herath* (64 N.L.R. 492 at 494)].

In view of the above, I hold that prima facie there is evidence that the execution of 'පැ11/වි10' is tainted with fraud as claimed by the Plaintiff. Hence, the burden of proof shifts to the Defendant to show that the impugned deeds were duly executed according to law. [*Francis Samarawickrema v. Hilda Jayasinghe and Another* (Supra)].

Proof of Due Execution of 'පැ11/වි10'

The learned trial judge has in the judgment (Page 519 of the Appeal Brief) held that the Deed of Transfer 753 'පැ11/වි10' has been executed before a notary and two witnesses. But only one witness testified.

It is trite law that before a document/deed can be proved, it must be proved to have been duly executed.

Section 68 of the Evidence Ordinance reads –

> *"If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence."*

E. R. S. R. Coomaraswamy; Law of Evidence (Pages 103 – 104 of Vol. II – Book 1, 2nd Edition) states that "duly executed" means that –

a. The signature of the party or parties who executed it and of any attesting witnesses must be proved;
b. The formalities of the law for such documents have been complied with;
c. If it is required to be stamped, it must be properly stamped.

The ordinary meaning of "executing" a document is signing a document as a consenting party thereto. If it is a document required by law to be attested, "execution" designates the whole operation, including the signature by the executant and attestation thereof by the subscribing witnesses.

It is further stated by *E. R. S. R. Coomaraswamy; Law of Evidence* (Pages 107 – 108 of Vol. II – Book 1, 2nd Edition) that to "attest" an instrument is not merely to subscribe one's name to it as having been present at the execution but also includes the presence in fact at its execution so as to testify to the fact of execution. It included both the witnessing and the writing on the document. The following essentials may be formulated –

a. There must be the intention to bear witness to the execution of the document;
b. The witness must be present and sign the document as an attesting witness;
c. The witness must thereby bear witness to the fact that the executant signed the document, which necessarily means that **he should have known the executant, and that other formalities were observed**. [Emphasis added]

Our law requires documents relating to immovable property to be attested. The formalities to be observed when transferring/selling a land or other immovable property is laid down in Section 2 of the Prevention of Frauds Ordinance which reads as follows –

> *"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 encumbrance 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."*** [Emphasis added]

As I observed earlier, the Plaintiff alleged that the Defendant fraudulently obtained his signature on several blank sheets of paper, while he was drunk, misrepresenting that the signed blanks sheets of paper will be used to draw a deed relating to a land situated in Mahawaskaduwa.

When it is alleged that a person signed a blank sheet of paper, which was subsequently filled up in the form of a deed and impeached as fraudulent by such person, the execution of such document ought to be proved, not by calling the Notary Public who attested it, but by calling at least one of the witnesses thereto because the alleged execution is in fact no execution at all [*Piyadasa v. Binduva alias Gunasekera* (1992) 1 Sri.L.R. 108 at 109].

B. M. M. Piyaratne, one of the attesting witnesses to 'පැ11/වි10' gave evidence on behalf of the Substituted Defendant. As I observed earlier, when attesting a document, it is essential that the executant was well-known to the attesting witnesses. However, during the cross-examination, the attesting witness who gave evidence has stated that –

a. He signed 'පැ11/වි10' upon the request of the Defendant, who is a close friend of him for over a period of 15 years [Pages 474 and 480 of the Appeal Brief];
b. He first met the Plaintiff about 8 months ago and occasionally saw him during his visits to meet the Defendant [Page 477 of the Appeal Brief];
c. The Defendant asked him to take him to a Notary Public to get a deed prepared and it is the Defendant who instructed him regarding the preparation of 'පැ11/වි10' [Pages 475, 485 and 487 of the Appeal Brief];
d. He has not seen the signature of the Plaintiff before the execution of 'පැ11/වි10' [Pages 490, 495 and 496 of the Appeal Brief];
e. He came to give evidence not because he was formally summoned but upon the request of the Defendant [Page 479 of the Appeal Brief].

It is clear, by the evidence of the attesting witness, that the Plaintiff was not known to him and/or the Plaintiff and the attesting witness were not well-acquainted nor that the signature of the Plaintiff was familiar to the attesting witness.

E. R. S. R. Coomaraswamy; Law of Evidence (Pages 103 – 104 of Vol. II – Book 1, 2nd Edition) states that although Section 68 speaks of at least one attesting witness being called, as a matter of precaution, however, it is better to call all the attesting witnesses. The object of requiring attestation by more than one witness is to guard against the difficulties arising out of death, unavailability, absence from jurisdiction and other causes. **If one witness is called and he speaks to attestation, the document is *prima facie* proved. But it is open to the other side to rebut the proof by evidence that the apparent attestor is not an attestor in the legal sense. Where only one of the attesting witnesses is called and his evidence is not believed, the provisions of Section 68 would not have been complied with. The evidence of an attesting witness is not necessarily conclusive** and can be rebutted. [Emphasis added]

Other than the said attesting witness, R. C. B. Joseph, the Notary Public who attested 'පැ11/වි10' gave evidence on behalf of the Substituted Defendant. However, as 'පැ11/වි10' is alleged to be fraudulent and filled up in the form of a deed after obtaining the signature of the Plaintiff to several blank sheets of paper, the evidence of the Notary Public is not admissible in proving the due execution of the same [*Piyadasa v. Binduva alias Gunasekera* (Supra)].

Where a deed executed before a Notary is sought to be proved, the Notary can be regarded as an attesting witness within the meaning of Section 68 of the Evidence Ordinance provided only that he know the executant personally and can testify to the fact that the signature on the deed is the signature of the executant [*Ramen Chetty v. Assen Naina* (1909) 1 Curr. L. R. 256, *Marian v. Jesuthasan* (59 N.L.R. 348), *The Solicitor-General v. Ahamadulebbe Ava Umma* (71 N.L.R. 512)].

In view of the above, the evidence of the Notary Public cannot be considered anyway in proving the due execution of 'පැ11/වි10' as he had admitted that the Plaintiff was not known to him personally and he first saw the Plaintiff at the time of the execution of the same and he merely attested the document on the faith of the witnesses knowing the executant [Pages 397, 414, 416 and 419 of the Appeal Brief].

A careful perusal of the evidence of the Notary Public shows that his conduct and the practice as a Notary Public is questionable and gives rise to suspicion. Also, it must be noted that the attesting witness, who took the Defendant to the Notary Public who attested 'පැ11/වි10' was working as a clerk under another Attorney-at-Law who was actively practicing as Notary Public at the time [Pages 426, 427, 481 and 501 – 503 of the Appeal Brief]. Such circumstances suggest that the Notary Public who attested 'පැ11/වි10' and the attesting witness were engaged in collusive practices.

Both the Notary Public and the attesting witness have admitted that the Plaintiff was not known to them prior to the execution of 'පැ11/වි10' and the same was prepared upon the request and the instructions of the Defendant. Moreover, the evidence led shows that the whole operation of "executing" 'පැ11/වි10' (including the title search done at the Colombo Land Registry) was concluded within a period of 3 hours.

In *Amerasinghe Arachchige Don Dharmaratne v. Dodangodage Premadasa* (S. C. Appeal 158/2013, S.C.M. 12.10.2016) Prasanna Jayawardena, P. C., J. observed –

"It should also be mentioned that, Section 68 of the Evidence Ordinance only spells out the mode of proof or what I might call the minimum required to make the Deed admissible in evidence, which is that, as stated in Section 68, "at least" one attesting witness must give evidence to enable the Deed to be "used as evidence". In other words, the testimony of "at least" one attesting witness is the threshold stipulated by Section 68 which must be passed for the Court to take the Deed into consideration.

However, Section 68 does not state that, leading the evidence of only one attesting witness shall fully discharge the burden of proving due execution of the Deed. In other words, Section 68 does not refer to the quantum of proof required to prove the Deed in a manner which will satisfy the Court that the Deed was the act and deed of the executant and was executed in compliance with the requirements of Section 2 of the Prevention of Frauds Ordinance.

As Tambiah, J. explained in JAYASINGHE v. SAMARAWICKREMA [(1982) 1 SLR 349 at Page 359] citing Sarkar's Law of Evidence, "Sec. 68 of the Evidence Ordinance lays down that documents required by law to be attested shall not be used as evidence unless at least one attesting witness is called to prove its execution, if he is alive and subject to the process of the Court. 'This is not the same thing as saying that a document required to be attested by more than one witness shall be proved by the evidence of only one witness. Sec. 68 only lays down the mode of proof and not the quantum of evidence required. More than one attesting witness may be necessary to prove a document according to the circumstances of a case' (Sarkar's Law of Evidence, 10th Edition. Page 591)".

Therefore, ***if there are doubts regarding the circumstances in which the Deed was executed or the role played by the Notary Public, the party producing that Deed may be well advised to lead the evidence of more than one attesting witness since the evidence of the Notary Public alone or the evidence of only one witness may not suffice to duly prove a Deed which is challenged."*** [Emphasis added]

Due to the factual circumstances adverted to earlier, I am of the opinion that the Substituted Defendant should have called the other attesting witness to 'ඌ11/ඒ10' (i.e. P. Liyanapathirana) to prove the due execution of the same. However, she has not only failed to do so but also failed to give evidence herself regarding the entire transaction that allegedly took place between the Plaintiff and the Defendant. In particularly, she was in a position to lead evidence to show that her deceased husband had the means to pay for the impugned transaction but failed to do so.

In view of the above, I hold that the Substituted Defendant has failed to prove the due execution of 'පැ11/වි10' in terms of Section 68 of the Evidence Ordinance. I further hold that the attendant circumstances prove that the formalities required to be observed when transferring and/or selling a land or other immovable property as laid down in Section 2 of the Prevention of Frauds Ordinance were not followed when executing 'පැ11/වි10'.

In terms of Section 2 of the Prevention of Frauds Ordinance a sale or transfer of land has to be in writing signed by two or more witnesses before a Notary, duly attested by the Notary and the witnesses. If this is not done, the document and its contents cannot be used in evidence [*Samarakoon v. Gunasekera and Another* (2011) 1 Sri.L.R. 149].

For all the foregoing reasons, I set aside the Judgment of the learned Additional District Judge of Colombo dated 29.05.1997 and enter judgment as prayed for in the plaint.

I allow the appeal and answer the issues as follows –

1. 1986.02.14 දින ආර්. සී. බී. ජෝසෆ්, නොතාරිස් තැන විසින් සහතික කරන ලද අංක. 753 දරණ ඔප්පුව පැමිණිල්ලේ 15 වැනි ඡේදයේ සඳහන් කර ඇති පරිදි හිස් සහ ශූන්‍ය සහ/හෝ හිස් කළ හැකි සහ/හෝ නීතියෙන් බල රහිත ක්‍රියාත්මක කළ නොහැකි ඔප්පුවක් ද? ඔව්
2. (අ) විත්තිකරු මෙම ඔප්පුවේ ප්‍රතිෂ්ඨාව රු. 600,000/- ක් බව කියා සිටියේ ද? ඔව්
   (ආ) මෙම ඉඩමේ එවකට වටිනාකම රු. 600,000/- දෙගුණයකට වැඩි ද? පැන නොනගී
3. කෙසේ වෙතත් එම ඔප්පුව ලයිසියෝනෝර් කරුණ මත අහෝසි කළ යුතු ද? පැන නොනගී
4. විත්තිකරු නඩුවට අදාළ ස්ථානයේ වැරදි සහගත ලෙස පදිංචි වී සිටී ද? ඔව්
5. විසඳිය යුතු ප්‍රශ්න 1, 2, 3 සහ 4 පැමිණිල්ලේ වාසියට තීන්දු වුවහොත් පැමිණිල්ලේ වාසියට නඩු තීන්දුවක් ලබා ගත හැකි ද? ඔව්
6. නඩුවට අදාළ ස්ථානය 1986.02.14 දින ආර්. සී. පී. ජෝසෆ්, නොතාරිස් තැන විසින් සහතික කරන ලද අංක. 753 දරණ ඔප්පුව මගින් පැමිණිලිකරු විසින් විත්තිකරුට විකුණා භාර දී ඇත් ද? නැත
7. එකී ස්ථානයේ නියම වෙළඳ මිල සහ/හෝ වටිනාකම ගනිමින් එම ස්ථානය පැමිණිලිකරු රු. 600,000/- කට විකුණා ඇත් ද? පැන නොනගී
8. ඉහත සඳහන් විසඳිය යුතු ප්‍රශ්න 6 සහ/හෝ 7 ට එසේ යැයි පිළිතුරු ලැබුණහොත් විත්තිකරුට අයැද ඇති අයිතිවාසිකම් ලබා ගැනීමට අයිතිවාසිකම් ඇත් ද? පැන නොනගී
9. කෙසේ වෙතත් ලයිසියෝනෝර් යන සිද්ධිය මත පැමිණිලිකරුට ලබා ගත හැකි සහනය එකී ඔප්පුව අවලංගු කිරීම සිදු නොව සිදු වී ඇති පාඩුවක් වී නම් එය පිරිමැසීම සඳහා මුදල් අය කර ගැනීම පමණක් ද? පැන නොනගී
10. කෙසේ වෙතත් පැමිණිලිකරුට පැමිණිල්ලේ අයැදි ඇති සහන ලබා ගත හැකි ද? ඔව්

The learned District Judge of Colombo is directed to enter decree accordingly.

The Substituted Plaintiff-Appellant is entitled to the costs of this appeal.

Judge of the Court of Appeal

K. K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal