

**GUNASEKERA  
VS  
WICKREMASINGHE**

COURT OF APPEAL,  
SOMAWANSA J, (P/CA) AND  
EKANAYAKE, J.  
CA 692/94(F)  
D. C. MT. LAVINIA 24/93/SPL  
JANUARY 17, 2005

*Conditional transfer – Action to set aside deed – Cause of action based on laesio enormis – Prescription Ordinance, sections 2, 5, 6 and 10, - Applicable section? – Is the action based on the contract of sale?*

The plaintiff appellant transferred the property in question with the right of re – purchase within a period of one year. Date of execution of the conditional transfer deed was 17. 09. 87, the date of institution of action is 14. 06. 1993, after 6 years of the execution of the said deed. The plaintiff appellant sought to set aside the said deed based on the principles of *laesio enormis*. The trial court dismissed the plaintiff appellant's action, stating that it is time barred.

**HELD:**

- (i) It is common ground that, the cause of action is based on the principle of *laesio enormis* and not based on a contract of sale, neither does the relief sought relate to title of immovable property.
- (ii) *Laesio enormis* is not a matter that is specifically covered by any of the sections in the Prescription Ordinance. The applicable section therefore would be section 10 (three years)
- (iii) The contract of sale is the transaction and not the cause of action.

**APPEAL** from the judgment of the District Court of Mt. Lavinia

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**Cases referred to :**

1. *Jackson vs Spittal* (1870) LR 5 CP 542
2. *Pless Pol vs Lady de Soya* – 9 NLR 316 at 320
3. *Low vs Fernando* – 16 LR 398
4. *Chand Keur vs Partab Singh* – (1888) 16 Cal. 98
5. *Abeydeera vs Hami* – 4 Bal. 89 at 90.
6. *Haniffa vs Nallamma* – (1998) 1 Sri LR 73 at 77
7. *Kirikitta Saranankara Thero vs Medigama Dhammananda Thero* – 55 NLR 313
8. *Panditha Watugedera Amaraseeha thero vs Tittagala Sasanatilaka Thero* 59 NLR 289
9. *Mapalana Dhammadaja Thero vs Rotumba Wimalajothi Thero* – 79 NLR 145
10. *Sinnamy Aiyar vs Balampki Amma* – 31 NLR 47
11. *Appuhamay vs Appuhamy* – 16 Ceylon Law Recorded 159
12. *Lamatena vs Rahaman Dole* – 26 LR 406

*Gamini Marapana P. C., with Navin Marapana and W. T. Palliyaguruge* for plaintiff appellant.

*Bimal Rajapakse with Ravindra Anawaratne* for defendant respondent

*Note by Edior :*

The Supreme Court in S. C. spl LA 57/05 on 11. 09. 2005 refused Special Leave to Appeal to the Supreme Court.

February 17, 2005

**ANDREW SOMAWANSA, J., P/CA**

The only question to be decided in this appeal is whether the plaintiff appellant's cause of action pleaded in the plaint seeking to set aside the deed of conditional transfer marked 'A' is prescribed or not.

Briefly the relevant facts of this case are as follows. By deed No. 551 dated 17. 09. 1987 marked 'A' the plaintiff appellant gave the defendant – respondent a conditional transfer of the property more fully described in the schedule to the plaintiff with the right of re-purchase within a period of one year. The plaintiff appellant did not obtain a re-transfer within the stipulated period of one year. However the plaintiff appellant instituted the instant action in the District Court of Mt. Lavinia seeking to set aside the aforesaid conditional transfer wherein the cause of action pleaded is based on the ground of 'Laesio Enormis' in that whilst the consideration stipulated in the deed was only Rs. 75000/- at the time of the sale in 1987, the value of the property in suit was much more. As per the valuation report marked 'B' the property in suit which is situated in Dehiwela was worth well over Rs. One Million.

At the commencement of the trial the following admissions were recorded:

1. මෙම නඩුවට අදාළ ගනුදෙනුව එනම් : අංක 551 දරන ඔප්පුව ලියා ඇත්තේ සැප්තැම්බර් 17 වෙනි දින බව,  
  
ඒ අනුව විත්තිකරු විසින් පැමිණිලිකරුව රු. 75,000 ක් ගෙවා ඇති බව.
2. පැමිණිල්ලේ මෙම නඩුව පදනම් වී ඇත්තේ ලිපියියො එනොමිස් යන සිද්ධාන්තය මත බව.
3. මෙම නඩුව පවරා ඇත්තේ 1993.06.21 වෙනි දින බව මේ අනුව මූලින් තෙතිම විසඳිය යුතු ප්‍රශ්නයක් නගමින්.

Based on the aforesaid admissions one legal issue was raised by the counsel for the defendant – respondent which reads as follows:

“පැමිණිල්ලේ නඩුව කාලාවරෝධී වී තිබේද? එසේ නම් පැමිණිල්ල නිෂ්ප්‍රභා කළ යුතුද?”

The aforesaid issue was taken up as a preliminary issue to be answered on the written submissions tendered by both parties. The learned District Judge having considered the written submissions of parties by his judgment, dated 05. 12. 94 answered the aforesaid issues in the affirmative and dismissed the plaintiff appellant's action. It is from the aforesaid judgment that the plaintiff – appellant has lodged this appeal.

At the hearing of this appeal Mr. Gamini Marapana P. C. strenuously contended that the plaintiff appellant's action is based on the contract of sale as evidenced by the deed marked 'A' and it is that contract which the plaintiff – appellant is seeking to have set aside. The mere fact that section 6 of the Prescription Ordinance does not refer to specific types of causes of action but refers to the written document upon which the action is based clearly makes the aforesaid section applicable to the facts of the instant action. He also submitted that in any event, the relief sought by the plaintiff – appellant in the instant action in facts relates to title in immovable property and therefore section 2 of the Prescription Ordinance could easily apply to the facts of the instant action and that there's no way that section 10 of the Prescription Ordinance was applicable to the facts of this case. In the circumstances he submits that the learned District Judge has clearly misdirected himself and erred in law when he came to a finding that the section applicable was 10 and not 5 and 6 of the Prescription Ordinance as contended by counsel for the plaintiff appellant. In support of the aforesaid reasoning counsel has cited a number of cases to which I would refer later.

It is common ground that the date of execution of the conditional transfer deed marked 'A' is 17. 09. 1987 and the date of institution of this action is 14. 06. 1993. viz 6 years of the execution of the aforesaid conditional transfer marked 'A'. It is common ground and is also admitted that the plaintiff – appellant's cause of action is based on the principle 'Leasio Enormis'. In the circumstances I am unable to agree with the counsel for plaintiff appellant that the plaintiff appellant's action is based on a contract of sale as embodied in the document marked 'A'. Neither does the relief sought by the plaintiff appellant relate to title of immovable property for the relief prayed for in the prayer to the plaint is as follows:

- අ. 'එ'. වශයෙන් සලකුණු කරන ලද පැවරුම් ඔප්පුව අවලංගු කරමින් නැතහොත් විකල්ප වශයෙන්
- ආ. රු. 9,75,000 ක් වූ මුදලක්. ඒ මුදල මත මෙහි දිනයේ සිට තීන්දු ප්‍රකාශයේ දිනය තෙක් වර්ෂයකට සියයට 20 ක (20%) අනු ප්‍රමාණයෙන් මත වූ පොලියක් සහ ඉන් අනතුරුව තීන්දු ප්‍රකාශයේ මුළු මුදල සම්පූර්ණයෙන් ගෙවා අවසන් කරනු ලබන තෙක් ඒ මුළු මුදල මත නෛතික පොලිය ප්‍රදානය කරමින්,
- ඇ. නඩු භාස්කු ප්‍රදානය කරමින් සහ,

ඇ. මෙම අධිකරණයට උචිත යැයි පෙනී යන වෙනත් හා වැඩිපුර සහන ලබා දෙමින්.

As was held in *Jackson vs. Spittal* (1) "Every action is based on a cause of action. The popular meaning of the expression is 'cause of action' that a particular act on the part of the defendant which gives the plaintiff his cause of complaint".

Section 5 of the Civil Procedure Code defines cause of action as follows:

"Cause of action" is the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfill an obligation, the neglect to perform a duty and the infliction of an affirmative injury".

In *Pless Pol vs. Lady de Soysa* at 320 per Lascelles, ACJ :

"An action is simply the right or power to enforce an obligation. It springs from the obligation which is simply the cause of action. Cause of action is the wrong or prevention or redress of which an action may be brought and includes a denial of a rights, the refusal to fulfill an obligation, the neglect to perform a duty, the infliction and affirmative injury. The words "the wrong or prevention or redress which an action may be brought" state generally what is connoted by the term "cause of action". The remainder of the sentence enumerates some, not necessarily all of the acts of the defendant which constitute cause of action."

Following the decisions of English and Indian Courts De Sampayo, ACJ in *Lowe vs. Fernando*<sup>(3)</sup> explained the term 'cause of action' in the following words:

"The expression "cause of action" generally imports two things, viz, a right in the plaintiff and a violation of it by the defendant and cause of action means the whole cause of action i. e., all the facts which together constitute the plaintiff's right to maintain the action, (Dicey's Parties to an Action Ch XI Sec. A) or, as it has been otherwise put, the media upon which the plaintiff asks the courts to arrive at a conclusion in his

favour (Lord Watson's judgment in *chand kour vs Partab Singh*<sup>4</sup> In *Abeydeera vs. Hami*<sup>5</sup> at 90 per Wood Renton, CJ:

"I adhere strongly to the view that I have expressed in a series of cases that the term 'cause of action' as used in the Civil Procedure Code ought not to be construed as if it were identical with the transaction out of which the right to relief arises."

In this respect I am inclined to follow the stringent view expressed by Wood Renton, C.J. in the aforesaid decision in *Abeydeera vs. Hami (supra)*. In the circumstances I am unable to agree with the counsel for the plaintiff – appellant that the plaintiff – appellant's action is based on the contract of sale embodied in the document marked "A" The contract of sale is only the transaction and not the cause of action, for the plaintiff – appellant himself, has admitted that the plaintiff – "appellant's cause of action is based on the ground of 'Laesio Enormis'. In any event, as was observed in *Hanifit vs. Nallamma* once issues are framed the case which the Court has to hear and determine becomes crystallized in the issues and the pleadings recede to the back ground. This is more so when an admission is recorded by which the parties agree that the issue was on erecting to 'Laesio Enormis' only.

It is to be seen that "Laesio Enormis" is not a matter that is specifically covered by any of the sections contained in the Prescription Ordinance. Certainly neither Section 3.5 or 6 would be applicable to this concept. Sections 3 of the Prescription Ordinance deals with lands or immovable property. Section 5 deals with mortgage debt or bond and Section 6 deals with partnership, deeds, written promise, contract, bargain, agreement, security, promissory notes, bills of exchange, etc. Thus it is to be seen that the applicable Section would be Section 10 of the Prescription Ordinance which reads as follows:

10. No action shall be maintainable in respect of any cause of action not hereinbefore expressly provided for, or expressly exempted from the operation of this "Ordinance, unless the same shall be commenced within three years from the time when such cause of action shall have accrued".

In the circumstances, my considered view is that the learned District Judge has come to a correct finding that the applicable Section in the Prescription Ordinance is Section 10.

Counsel for plaintiff appellant cited three decisions in support of his contention. They are *Kirikitta Saranankara Thero vs. Medegama Dhammannanda Thero*<sup>(7)</sup> *Panditha Watugedera Amaraseeha Thero vs. Tittagalle Sasanatilaka Thero*<sup>(8)</sup> and *Mapalane Dhammadaja Thero vs. Rotumba Wimalajothi Thero*<sup>(9)</sup>. The aforesaid decisions deal with exclusion against temple property and has no relevance to the facts of this action. Counsel also cited three other decisions which also can be distinguished. The decisions deal in *Sinnamy Aiyer vs. Balampiki Amma*<sup>(10)</sup> which relates to an agreement for sale in writing where the period was 6 years. *Appuhamy vs. Appuhamy*<sup>11</sup> an action based on a mortgage bond wherein it was held it was prescribed in 10 years and *Lamatena vs. Rahaman Doole*<sup>12</sup> which related to the balance consideration in respect of a deed of sale not been paid.

For the aforesaid reasons, I see no basis to interfere with the judgment of the learned District Judge. Accordingly the appeal will stand dismissed with costs fixed at Rs. 5000/-

**EKANAYAKE, J.** — I agree.

*Appeal dismissed.*

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