

GL-G-2

28, 1961

INSTITUTION FOR THE STUDY OF
LAW
INSTITUTE OF ADVANCED
LEGAL STUDIES

6353

IN THE PRIVY COUNCIL LEGAL STUDIES No. 34 of 1960

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

BETWEEN

LEELAWATHY SELLATHURAI the wife of Karthigesu
Sunthera Rajah and KARTHIGESU SUNTHERA RAJAH
(Plaintiffs)
Appellants

- and -

10 ANNALEDCHUMY widow of Nallathamby Sellathurai
(Defendant)
Respondent

CASE FOR THE RESPONDENT

TO THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Record

1. This appeal is from a Judgment and decree of
the Supreme Court of Ceylon pronounced on 30th
October 1958. p. 41 & 45

20 2. On the 8th of August 1955 the Appellants as
Plaintiffs filed a plaint in the District Court of
Colombo alleging that on the occasion of the marriage
of the first Appellant to the second Appellant the
Respondent and her husband (since deceased) agreed to
pay a Cash Dowry of Rs. 30,000/- by virtue of Dowry
Deed No. 2496 dated 10th September 1949 and that out
of such sum Rs. 15,000/- was paid and that the balance
of Rs. 15,000/- was to be paid within one year of the
date of execution of the Deed. p. 10

30 It was also alleged that the Respondent had
failed to pay the balance of Rs. 15,000/- in respect
of which the Appellants sought Judgment.

3. On the 12th October 1955 the plaint was
amended alleging that a cause of action had arisen
to the Appellants to sue the Respondent: p. 11 &
p. 12

(a) for the recovery of the sum of Rs. 18,687-50 to
wit: Rs. 15,000/- being the balance amount of
principal and Rs. 3,687-50 being legal interest
from 10th September 1950, date of Dowry Deed, to
10th August 1955, date of filing plaint; and

Record

- (b) for further legal interest on the said principal amount of Rs. 15,000/- from 10th August 1955 to date of decree; and
- (c) for legal interest on the aggregate amount of decree from date of decree till payment in full.

p.55

The Dowry Deed No. 2496 referred to as P₁ in the proceedings in the District Court of Colombo¹ describes Nallathamby Sellathurai (since deceased) Annaledchumy wife of Nallathamby Sellathurai and Sellammah widow of Suppiah as the Dowry Grantors. The Appellants, however, have failed to join Sellammah widow of Suppiah and the legal representative of Nallathamby Sellathurai in this action.

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pp.13 &
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4. on the 25th November 1955 the Respondent filed her answer. The Respondent stated that a cash dowry of Rs. 15,000/- was paid to the Appellants, but denied that the said payment was made under or by virtue of or on account of any promise made or agreement entered into by Deed No. 2496. The Respondent, inter alia, specifically denied that she was or is under any obligation or liability to pay to the Appellants the sum of Rs. 15,000/- or any sum whatsoever. The Respondent further stated:-

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- (a) that the Appellants' claim, if any, is prescribed;
- (b) that the Appellants are not entitled, in any event, to claim any sum in excess of a one-third share of the alleged balance of Rs. 15,000/-.

pp.28 &
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By his Judgment dated 20th June 1957 the District Judge entered Judgment for the Appellants in a sum of Rs. 15,000/- and costs.

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pp.30-33

5. On 20th June 1957 the Respondent lodged a petition of appeal to the Supreme Court on the grounds therein mentioned which was rejected with costs on the grounds therein referred to; but the court added that it was prepared to deal with the case in Revision under section 753 of the Civil Procedure Code.

p.37 & 39

Thereafter, an application in Revision was filed on 21st March 1958 supported by the Respondent's affidavit.

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pp.41-45

Judgment in this application was given on 30th October 1958 in favour of the respondent setting

aside the Judgment of the District Court and making an order dismissing the Appellants' action with costs and costs of the Revision application.

On the 19th day of March 1959 the Supreme Court granted the Appellants final leave to appeal to Your Majesty in Council from the Judgment and decree of the 30th day of October 1958.

p. 51

10 The Respondent humbly submits that this appeal should be dismissed with costs here and prays that she be granted all the costs in the courts below as was decreed by the Supreme Court, for the following among other,

R E A S O N S

- (1) BECAUSE, the construction placed upon Deed P₁ in the District Court is not correct in law.¹
- (2) BECAUSE, the Supreme Court was right in law in deciding that Deed P₁ did not contain a written promise to pay a balance sum of 15,000/- to the Appellants.
- 20 (3) BECAUSE, the Supreme Court was right in law in deciding that the document P₁ taken as a whole left no room for doubt that an oral agreement was made before the execution of P₁ and that the right of action of the Appellants' is barred by the provisions of Section 7 of the Prescription Ordinance.
- (4) BECAUSE, as the Supreme Court has indicated, the Appellants are not entitled (as the Appellants had sold the said lands after the institution of this case but before the trial) to enforce specific performance of the promise without at the same time offering to perform their part of the obligation to transfer the lands referred to in P₁.
- 30 (5) BECAUSE, the Appellants have failed to join the other Dowry Grantors as Defendants in this case; and
- (6) BECAUSE, the Appellants realised a sum of Rs. 16,300/- by the sale of the said lands (i.e. an excess of Rs. 1,300/- over the alleged claim of Rs. 15,000/-), the Respondent is entitled to credit in part or whole of the said sum of Rs. 1,300/-; and
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Record

- (7) BECAUSE, in any event, the Appellants are not entitled to claim any sum in excess of one third share of the alleged claim of Rs. 15,000/- less any sum credited as aforesaid to the Respondent.

D. J. TAMPOE

No. 34 of 1960

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B E T W E E N

LEELAWATHY SELLATHURAI the wife
of Karthigesu Sunthera Rajah and
KARTHUGESU SUNTHERA RAJAH
(Plaintiffs)
Appellants

- and -

ANNALEDCHUMY widow of
Nallathamby Sellathurai
(Defendant)
Respondent

C A S E FOR THE RESPONDENT

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