

**ROHAN DE SOYZA**  
**v**  
**JINENDRADASA**

COURT OF APPEAL  
DISSANAYAKE, J. AND  
SOMAWANSA, J.  
C.A. 1114/95 (F)  
D.C. KANDY 15254/L  
NOVEMBER 20, 21, 26 AND 27, 2003

*Prevention of Frauds Ordinance, section 2 – Registration of Documents Ordinance, section 31 – Deed fraudulent – Maxim falsus in uno, falsus in omnibus – Is it an absolute rule? – Civil Procedure Code, section 440A – Notaries Ordinance, section 27(2).*

The plaintiff-appellants instituted action seeking a declaration that a certain deed of transfer is a forgery and a fraudulent deed and an order cancelling the registration of the said deed in terms of section 31.

The District Court dismissed the action.

**Held**

- (i) The evidence shows that the impugned deed has been attested in violation of section 2 of the Prevention of Frauds Ordinance in that, it has been signed by a Notary who did not have a license to officiate as a Notary Public for the year 1985.
- (ii) The evidence also reveals that the deed has not been signed by the executant, the attesting witness and the Notary all being present at the same time and place and therefore it has not been signed before one another.
- (iii) Evidence of witness S with regard to the Notary's state of health, with regard to the fact that he was paralysed and was unable to write from about 1984, and that the impugned deed did not bear his signature has not been challenged; it has not even been suggested that he was an untruthful witness.

"The *maxim falsus in uno, falsus in omnibus* is not an absolute rule which has to be applied in every case where a witness is shown to have given false evidence on a material point.

**APPEAL** from the judgment of the District Court of Kandy

**Cases referred to:**

1. *Aresakularatne v Perera* – 29 NLR 342
2. *Francis Appuhamy v Q* – 68 NLR 439
3. *Q v Julis* – 65 NLR 505

*P.A.D.Samarasekera, P.C.*, with *Keerthi Sri Gunawardena* for plaintiff-appellant.

*Dr. Jayatissa de Costa* with *D.D.P. Dassanayake* and *K.D. Epitawela* for defendant-respondent.

*Cur.adv.vult*

February 20, 2004.

**DISSANAYAKE, J.**

The plaintiff-appellant instituted this action seeking a declaration that the deed of transfer No. 2007 dated 19th July 1985, purported to have been attested by Loku Banda Ratnayake is a forgery and is a fraudulent deed and an order cancelling the registration of deed No. 2007 on the aforesaid grounds and registered in the Land Registry Kandy without due authority, in terms of section 31 of the Registration of Documents Ordinance (chapter vi of C.L.E.) 01

The defendant-respondent by his answer whilst denying the averments in the plaint prayed for dismissal of the action.

The case proceeded to trial on 24 issues and at the conclusion of the trial learned district judge dismissed the action. 10

It is from the aforesaid judgment that this appeal is preferred.

Learned President's counsel who appeared for the plaintiff-appellant contended that the learned District Judge had erred in dismissing the action of the plaintiff-appellant. His aforesaid contention was based on the ground that the learned District Judge has failed to embark on a proper evaluation and analysis of the evidence in the case.

It is interesting to note, that despite the fact the learned District Judge had raised 24 issues on the suggestion of learned counsel 20

who appeared at the District Court the crucial issues in the case are as follows:-

- i) whether deed No. 2007 was executed in the manner required by law – i.e. whether it had been executed in accordance with the provisions of section 2 of the Prevention of Frauds Ordinance; and
- ii) whether it had in fact been executed (i.e. signed) in the presence of L.B. Rátnayake who is said to have attested same.

The aforesaid 2 issues have been crystallized in issues numbers 1 and 21 framed at the District Court. 30

The following facts that had transferred in the evidence at the court below will shed light to the background on which the present dispute revolves round, of which the following matters are undisputed:-

- a) that the plaintiff-appellant's father Ricardo Don Alonzo de Soyza was the owner of the land and premises situated in Dalada Weediya Kandy in which premises called the "Muslim Hotel" was being run by five Muslim gentlemen.
- b) The plaintiff-appellant's father had died in 1974, leaving as his heirs, his widow and two children, the plaintiff-appellant and his sister. 40
- c) The "Muslim Hotel" premises was left by the said Ricardo de Soyza, in his last will to his son the plaintiff-appellant reserving a life interest in it to his widow,
- d) The "Muslim Hotel" premises was occupied by the aforesaid five brothers carrying on the said business in partnership as monthly tenants.
- e) After Ricardo de Soyza's death, the monthly rent was paid by the tenants to the plaintiff-appellant's mother as she had the life interest. 50
- f) Probate of Ricardo de Soyza's last will was given in District Court Colombo case No. 1161/PO.

The plaintiff-appellant's testimony in brief was as follows:-

- a) the five brothers who ran the "Muslim Hotel" business were anxious to purchase the said premises from the plaintiff-appellant. They having negotiated with the plaintiff-appellant, had entered into agreement to purchase by agreement NO. 2661 of 04.07.1983 attested by C.Viknarajah, Notary Public (P9).

The plaintiff-appellant's case is that he was accustomed to call at the "Muslim Hotel" premises to collect the monthly rental on behalf of his mother. In the month of August 1985, when he called on as usual to collect the rent, he was told by Hassan the eldest of the 5 brothers, that he could not be paid the rent as the defendant-respondent had already called on them and had claimed that the property belonged to him and had wanted them to deliver the property to him. On being asked to establish his ownership, the defendant-respondent has given him a photocopy of a deed which was purported to have been signed by the plaintiff-appellant and purported to have been attested by L.B. Ratnayake, Notary Public of Kandy by which the property was alleged to have been transferred and conveyed to the defendant-respondent. 60 70

The plaintiff-appellant denied that he executed any such deed. On hearing of this story the plaintiff-appellant lodged a complaint at the Kandy Police Station. His complaint to the Kandy Police was produced by the defendant-respondent marked V16.

The Kandy Police filed charges against the defendant-respondent for committing forgery by the purported execution of deed No. 2007 alleged to have been executed by L. B. Ranayake, Notary Public. Certified copy of Magistrate's Court Kandy was produced marked V30. 80

The defendant-respondent instituted action No. 14917/L in the District Court of Kandy against the plaintiff-appellant and a person called Yahampath, alleging that he had purchased the said "Muslim Hotel" premises by deed No. 2007 and that he had failed to deliver peaceful possession of the premises. He sought a declaration of title and ejectment and delivery of property to him. The five brothers who were running the "Muslim Hotel" business filed papers and sought to intervene in that action.

No sooner they had filed papers to intervene the defendant-respondent who was the plaintiff-appellant in that case had withdrawn that action. 90

The plaintiff-appellant's position as to the reason why he had to institute this action was that in July 1985 he was urgently in need of some money to pay an advance as rent to a house he was intending to rent out. He had gone to Kandy intending to meet Hassan, the eldest brother of his tenants at "Muslim Hotel" premises. As Hassan had gone out, he had tried to obtain some money from a person called Samarasekera. Samarasekera had not been able to help him. Samarasekera had taken him to one Yahampath, who too had been not able to help him. However, Yahampath had taken him to the defendant-respondent who had agreed to help him. On the suggestion of the defendant-respondent they had partaken in lot of drink and meat. After they had consumed a lot of liquor the plaintiff-appellant asserted that he was taken to a place at Pilimalalawa and given about 10 to 15 papers which were partly printed and partly blank and had been asked to place his signature on the said papers if he had wanted the money. The plaintiff-appellant stated that he had signed the blank papers and he had been given Rs. 6000/-. The plaintiff-appellant had gone onto state that according to his recollection the blank papers that he had signed had been similar to the document which was a photocopy of the impugned deed given to him by Hassan. 100 110

The main plank of the defendant-respondent's case is that he has purchased the "Muslim Hotel" premises from the plaintiff-appellant for good and valuable consideration and the plaintiff-appellant executed deed No. 2007 and had confirmed the said transfer deed by utilizing or disposing of the lands which he had given to the plaintiff-appellant by deed No. 2008 (V18) as part of the consideration.

I shall now deal with the crucial issues in the case, namely firstly the question whether deed No. 2007 was executed according to the requirements of the law and secondly whether L.B.Ratnayake has in fact attested the said deed. 120

It is pertinent to refer to section 2 of the Prevention of Frauds Ordinance, which provides that no sale, transfer, etc. of land or other immovable property.....shall be of force or avail in law unless the same shall be in writing and signed by the party making

the same.....in the presence of a *licensed* notary and two or more witnesses present at the same time, unless the execution of writing deed or instrument be duly attested by such notary and witnesses. (emphasis added). 130

The evidence of Mihindu Ratnayake, Assistant Registrar of Lands Kandy, Ranaweera clerk of the Land Registry, Kumarihamy clerk of the High Court Kandy were the official witnesses who had given evidence at the District Court. Their evidence clearly established the following matters;

- a) that L. B. Ratnayake, attorney-at-law and notary public had ceased to practice as a notary from or about November 1984.
- b) that the disputed deed is said to have been attested on the 19th July 1985 (vide deed 2007, P3) 140
- c) that L.B. Ratnayake had not obtained a licence to practice as a notary for the year 1985 and he had not even applied for such a licence as required by section 27(2) of the Notaries Ordinance. Under section 30 of the said Ordinance it is an offence for a notary to practice without such licence.
- d) documents produced by defendant-respondent V10, 12, V13 and V14 show that he had applied for such licences upto the year 1984. However the defendant-respondent had been unable to produce such a licence or an application for a licence for the year 1985. 150
- e) notary Ratnayake had died on 25.07.1986. After his death all his deed registers and protocols of his deeds have been handed over to the registrar of lands. The last protocol so handed over is in respect of deed No. 1993 attested in November 1984, there had been no protocols handed over after deed No. 1993 in November 1984.
- f) every notary has to send a monthly list showing the deeds attested by him in the previous month on or before the 15th of the following month. If the notary had not attested any deed in a month then he is required to send a nil list. According to the land registry officials, in respect of the months December 1984, January, February and March 1985, L. B. Ratnayake has sent nil lists. After March 1985 he has not sent any list at 160

all, probably because he was not a notary licensed to practice, in the year 1985 as he had not applied for a licence on or before 1st March 1985.

- g) together with the monthly list a notary has to forward to the land registry the duplicates of deeds attested in the previous month. It is the duplicates that carry the stamp duty payable on such deeds. The land registry has received such duplicates also upto deed No. 1993, attested in November 1984, but it had not received duplicates of any deed attested after deed 1993. 170
- h) Mihindu Ratnayake who had been Assistant Registrar of Lands, Kandy had given evidence from his personal knowledge of many relevant matters. Documents V2, V3, V6 and V7 produced by the defendant-respondent show that the Assistant Registrar of Lands, Mihindu Ratnayake had in fact taken action against L. B. Ratnayake, for not sending monthly lists and duplicates and that Suraj Ratnayake L.B. Ratnayake's son, has written to the Registrar-General and had explained how his father had fallen ill had been bed ridden. He had stated that his father had been unable to sign. This explanation has been accepted by the Registrar-General who had directed Mihindu Ratnayake, the then Assistant Registrar General of Lands, Kandy to treat Notary L.B. Ratnayake as having ceased to practice and accordingly no further action has been taken against the notary for not submitting the monthly returns. 180
- i) This correspondence appears to have started with letter dated 22.3.1988 (V7) sent by Suraj Ratnayake explaining the failure of his father L.B.Ratnayake sending the monthly list for February 1985. When that correspondence started in March 1985 the plaintiff-appellant has not yet made any complaint against the defendant-respondent regarding deed 2007 (P3) and that correspondence had nothing to do with the deed in question, but it was concerned only with the notary's failure to send monthly returns. This is further confirmed by letter dated 15.8.85 (P1) which had been produced from the file of the Land Registry and specifically the endorsement at the bottom of the document in ink, which reads as follows:- 190 200

Registrar of Lands,

“He had attested his last duplicate on 27.11.1984. Thereafter upto March 1985 he had furnished nil lists. For the months of April, May, June and July he has not furnished neither duplicates nor nil lists.”

Below there is a further endorsement to forward this document to the Registrar-General for further directions. That correspondence had ended with the letter V3 from the Registrar-General's Office, directing the Registrar of Lands Kandy, to treat L.B. Ratnayake as a notary who had ceased to practice. It had been on that basis that further action against L.B. Ratnayake has come to a standstill. 210

- h) The aforesaid documentary evidence and the oral testimony of Mihindu Ratnayake, Assistant Registrar of Lands Kandy establishes that L.B. Ratnayake has ceased to practice after 27.11.194 and that he was not a notary public licensed to practice as at 19.7.1985, the date on which the disputed deed is said to have been executed.

Evidence of Kumarihamy clerk of the High Court had clearly established that the last licence issued to L.B. Ratnayake was in the year 1984 and after 1984 L.B. Ratnayake has not made any application for a licence nor has he been issued any licence to practice as a notary. 220

The learned District Judge had in his judgment erroneously stated that the letters that had been written by Suraj Ratnayake have been sent, at or about the time the dispute has arisen regarding the execution of the deed in question.

It is to be observed that the correspondence with the Registrar of Lands has started from letter V7 dated 22.03.1985 regarding not sending the monthly list for February 1985 which was long prior to the start of the dispute regarding deed 2007 (3) with the complaint made by the plaintiff-appellant to the Kandy police on 30.08.1985 (V18) regarding the purported execution of the deed in question on 19.07.1985. 230

It is of significance to note that in the light of the evidence with regard to the last licence that had been issued to L.B. Ratnayake had been for the year 1984; and that he has not made any application for

a licence to practice after 1984; L.B. Ratnayake has ceased to practice as a notary after 27.11.1984; Further he was not licensed to practice for the year 1985; he had no licence to practice as a notary public specifically on 19.07.1985 the day on which the deed in question (P3) is said to have been signed by L.B. Ratnayake; thus the conclusion is irresistible that deed No. 2007 (P3) is not a deed which can be of any force or avail in law as it has been attested in violation of section 2 of the Prevention of Frauds Ordinance, in that it has been signed by a notary who did not have a licence to officiate as a notary public for the year of 1985. 240

It is pertinent to refer to *Arsecularatne v Perera*<sup>(1)</sup> where at page 345 it has been held "both cases last cited and the doctrine of part performance have reference to section 4 of the English Statute of Frauds and they have no application to the more stringent provisions of clause 2 of the Ordinance by which an agreement not clearly attested by a notary and two witnesses is of no force or avail in law." 250

Now I move on to the next question whether the deed bearing No, 2007 (P3) had been signed before L.B. Ratnayake at all.

It is of significance to refer to the evidence of the son-in-law of L.B.Ratnayake, who is married to his daughter and with whom L.B.Ratnayake had been living since 1981. With regard to the health of L.B. Ratnayake, his son-in-law who is a senior attorney-at-law at the Kandy bar has testified that L.B. Ratnayake had suffered a stroke in 1981 and had undergone surgery and had reduced his practice. He was emphatic that towards the end of 1984 he had got paralyzed and had been unable to read and write. 260

His evidence is consistent with what the documents of the office of Registrar of Lands, Kandy had revealed. His evidence was consistent with the evidence of Mihindu Ratnayake and the officer of the Land Registry who had testified in relation to the material that was before them like the protocols, deed register, monthly lists and the other correspondence they have had with L.B. Ratnayake and his son Suraj Ratnayake. They all pointed to the fact that the last deed attested by L.B. Ratnayake had been deed No. 1993 on 27.11.1984. And that after the said deed, no deeds have been attested. The monthly nil lists submitted have been continued upto February 1985. No lists at all have been sent from the month of March 1985 onwards. And it is revealed by letter dated 15.08.1985 (P1) that the 270

last deed attested by him was on 27.11.1984 and thereafter he has failed to furnish monthly lists or duplicates from 1985 March to July. It is to be observed that from the aforesaid endorsements that appear in the said document of the District Registrar of Kandy revealed that the matter has been referred to the Registrar-General for directions. The Registrar-General by letter V3 has directed the District Registrar Kandy to treat L.B. Ratnayake as a Notary who has ceased to practice. 280

Kithsiri Seneviratne's evidence with regard to L.B.Ratnayake's state of health, with regard to the fact that he was paralyzed and was unable to write from about 1984 and that deed No. 2007 (P3) did not bear his signature has not been challenged. It has not been even suggested that he was an untruthful witness.

The only discrepancy that was found in his evidence was with regard to trivial matters like the address at which L.B. Ratnayake's office was situated. 290

The learned District Judge had considered this trivial contradiction as a material contradiction and had decided to disbelieve Kithsiri Seneviratne's evidence solely based on this minor contradiction.

Learned counsel for the defendant-respondent sought to justify the rejection of the evidence of Kithsiri Seneviratne on the basis that if a witness has been untruthful on one matter whole of his evidence must be considered untruthful. He cited the case of *Francis Appuhamy v Queen* (2) in support of his contention. That case was a criminal case where a higher degree of proof was required than in a civil case. 300

In this context it is necessary to refer to the observation of Weerasuriya S.P.J. at page 524 in the case of *Queen v Julis* (65 NLR 505) "the maximum *falsus in uno, falsus in omnibus* is not an absolute rule which has to be applied in every case where a witness is shown to have given false evidence on a material point."

Furthermore the only attesting witness who was called to give evidence J. George Silva who was an employee of the defendant-respondent on being questioned with regard to the time when L.B. Ratnayake signed the deed, answered in the following manner; 310

**Q.** Was it after or before the deed was readover and explained that Ratnayake signed?

A. Ratnayake did not sign at that time. I do not know whether he signed before. I am not aware of those matters.

Q. When the signatures were placed on this was Ratnayake looking at it?

A. No.

This witness had testified to seeing Hewage, the other attesting witness explaining the deed and placing his signature. However he had stated that he did not see Ratnayake signing. 320

In the cross-examination of the defendant-respondent he had been confronted with his statement to the Police, a certified copy of which had been produced marked P33.

The defendant-respondent was asked whether he stated in his statement to the Police the following:

“However I fully well know that this deed was not signed before L.B. Ratnayake” which was denied by him. It was marked as P33 (අ෭)

Again he was asked whether he stated in his statement to the police:-

“I did not go before Ratnayake” which was denied. It was marked as P33 (අ෭) 330

Learned counsel tried to make out that since P33 has been marked subject to proof and since no steps have been taken to prove it, that it cannot be accepted in evidence.

It is to be observed that in terms of section 440A of the Civil Procedure Code, a certified copy of a statement made to the police is admissible in evidence without calling the Police Officer to whom the statement was made.

Therefore I am of the view that the deed in question has not been executed according to section 2 of the Prevention of Frauds Ordinance, for the reasons that firstly it was attested if at all by a person who was not a licensed notary and secondly the deed has not been signed by the executant, the attesting witnesses and the Notary all being present at the same time and place and therefore it has not been signed before one another. 340

Therefore deed No. 2007 (P3) had not only not been signed by L.B. Ratnayake and it is not a deed that has been executed in accordance with section 2 of the Prevention of Frauds Ordinance and hence it shall be of no force or avail in law.

Thus the plaintiff-appellant is entitled to judgment as prayed for in the pleadings. 350 02E  
the plaint.

I set aside the judgement of the learned District Judge and direct the learned District Judge to enter judgment for the plaintiff-appellant as prayed for in the plaint.

The appeal of the plaintiff-appellant is allowed with costs fixed at Rs. 10000/-

**SOMAWANSA, J.** - I agree

*Appeal allowed.*