

1976 Present : Wimalaratne, J., Sirimane, J., and Gunasekera, J.
D.M.C. RANASINGHE, Appellant, and J. A. M. D. DE SILVA,
Respondent.

S. C. 56/72—D. C. Negombo, 1327/ L

Prescription Ordinance—Declaration that a notarially executed deed is null and void—Action prescribed within 3 years of date of execution of deed—Section 10 of Prescription Ordinance.

An action for a declaration that a notarially executed deed is null and void is prescribed within 3 years of the date of execution of the deed in terms of section 10 of the Prescription Ordinance.

APPEAL from a judgment of the District Court, Negombo.

H. W. Jayewardene, with Percy Valentine and Sriyangane Fernando, for the Defendant-Appellant.

A. C. Gooneratne, with R. C. Gooneratne, for the Plaintiff-Respondent.

Cur. adv. vult.

August 4, 1976. WIMALARATNE, J.—

The Plaintiff instituted this action on 6th May, 1968 praying for a declaration that Deed No. 5983 dated 28th May 1963, attested by J. P. Jayasinghe, Notary Public, was null and void and of no force or avail in law.

Amongst the pleas taken up by the Defendant was that the Plaintiff's rights, if any, were prescribed in law.

The learned District Judge held that the said deed was null and void because the Plaintiff had been compelled to execute it by threat, fear, undue influence and coercion exercised on

her by the Defendant. He also held against the Defendant on the plea of prescription, for the reason that what the plaintiff was seeking was a declaration of nullity of the deed, and that the Prescription Ordinance (Cap. 68) does not apply to such action.

In the case of *Thiagarajah vs. Karthigesu*, 69 New Law Reports, page 73, which was cited before the learned District Judge, the question of the applicability of the Prescription Ordinance did not arise, because the Plaintiff's action to have his status declared was commenced within three years of the date when a purported customary marriage applicable to the Mukkuwa community, had taken place. What the Court held in that case was that the cause of action arose upon the denial of the plaintiff's status of bachelor; and to deny that status was to deny his right and his capacity to contract a valid marriage.

Similarly, in the instant case, the cause of action accrued on 28.5.63. That was the date on which the plaintiff's rights to the land in question were deprived as a result of the execution of the deed. The action for relief on that cause of action should, therefore, have been commenced within three years of that date, in terms of section 10 of the Prescription Ordinance.

The learned District Judge should have answered the issue of prescription in favour of the Defendant. I would, therefore, set aside the judgment and decree on that ground, and dismiss the Plaintiff's action with costs.

The Defendant-Appellant will be entitled to the costs of appeal.

SIRIMANE, J., I agree.

GUNASEKERA, J.—I agree.

Appeal allowed.

