

**IN THE COURT OF APPEAL, FIJI**  
**ON APPEAL FROM THE HIGH COURT**

**CIVIL APPEAL NO. ABU 0012 OF 2018**  
**(HIGH COURT CIVIL ACTION NO. 251 of 2012)**

**BETWEEN** : **MAIMUN NISHA AS EXECUTRIX TRUSTEE OF THE**  
**ESTATE OF MOHAMMED UMAR FARUQUE** *Appellant*

**AND** : **MOHAMMED ABU BAKER SADDIQUE** *Respondent*

**Coram** : **Basnayake JA**  
**Lecamwasam JA**  
**Guneratne JA**

**Counsel** : **Mr. R. Prakash with Mr. S. Nandan for the Appellant**  
**Mr. U. Koroi for the Respondent**

**Date of Hearing** : **2 May 2022**

**Date of Judgment** : **27 May 2022**

**JUDGMENT**

**Basnayake JA**

[1] The appellant 1<sup>st</sup> defendant (hereinafter referred to as the defendant) filed this appeal to have the judgment of the learned High Court Judge dated 12 February 2018 set aside (Pgs.

8-28 of the Record of the High Court (RHC)). The judgment in this case was given in favour of the plaintiff. By this judgment the learned Judge had cancelled the transfer No. 702754 of the Certificate of Title No. 12304 dated 4 June 2008 as it was obtained by fraud. The learned Judge also ordered as follows:

- 1) *The Registrar of Titles must replace the transfer dated 4 June 2008 and substitute the name of the plaintiff (Mohammed Abu Baker Saddique) as the owner of one half (1/2) undivided share free from any encumbrances whatsoever and the name of the defendant (Maimun Nisha) as administrator of the estate of Mohammed Umar Faruque.*
- 2) *The plaintiff is entitled to possession of one half of the property.*
- 3) *The mortgage created by the first defendant's husband by instrument No. 706665 registered on 15 July 2008 is cancelled so far as it relates to the plaintiff's half share and be registered against the half (1/2) interest of the first defendant.*
- 4) *The plaintiff is entitled to mesne profit (rental) in the sum of \$147,500.00.*
- 5) *The plaintiff is also entitled to interest on the judgment sum at the rate of 4% per annum from 5 April 2008, the date on which the cause of action arose till the date of judgment.*
- 6) *The judgment sum together with interest is payable from the Estate Mohammed Umar Faruque, the first defendant's husband.*
- 7) *The first defendant will pay the plaintiff summarily assessed costs of \$5,000.00.*

[2] The plaintiff respondent (plaintiff) filed this action inter alia to have the transfer No. 702754 dated 3 June 2008 (registered on 4 June 2008) declared null and void. The subject matter of this case is relating to a parcel of land comprised in the Certificate of Title No. 12304 known as lot 17 on DP 2631. This land contains a building, a three story flat. The original owner of this property was Mohammed Ishaque. He died on 25 October 1991 leaving a last will marked P1 (pgs. 115-118 RHC). The plaintiff states in paragraph 5 (pg. 31) of the Statement of Claim that the plaintiff and the 1<sup>st</sup> defendant are brothers. The plaintiff's name is Abu Baker Saddique. His brother's name is Mohammed Umar

Faruque. Ishaque was the father of these two brothers. He was the testator. The last will was attested on 13 January 1982.

- [3] By this last will the plaintiff states that the real estate consisting of the building was given to the plaintiff and the 1<sup>st</sup> defendant in equal share:- That is, between the two brothers. Paragraph 9 of the statement of claim states (pg. 32) as follows: *“That under his last will after the deceased directed his Executor and Trustee to pay all his just debts, funeral expenses and testamentary expenses the deceased gave all his real estate to the plaintiff and the 1<sup>st</sup> defendant in equal share”*.
- [4] The will states (pg. 116) in paragraph 4 (b) *“...my children Mohammed Abu Baker Saddique and Mohammed Umar Faruque ...in equal share absolutely”*. They are the plaintiff and his brother. From paragraph 7-11 the plaintiff gives details with regard to the death of the testator, the issue of probate on 8 May 1991 and the fact of devolving the administration on their mother Ahmed Bi. Ahmed Bi died on 14 June 2005. The plaintiff states in paragraph 13 of the plaint (pg. 32) as follows: *“That upon the death of the deceased wife (wife of the deceased testator) the 1<sup>st</sup> defendant fraudulently and unlawfully transferred the property to himself”*. In paragraph 13 under the heading, *“PARTICULARS OF IMPROPER AND/FRAUDULENT ACTIONS OF THE DEFENDANT*, the plaintiff states as follows:
- a). *Forging the signature of the plaintiff on the Deed of Renunciation and renouncing all the rights and interest of the plaintiff to himself (Meaning Faruque).*
  - b). *Knowing that the said deed of renunciation was never executed by the plaintiff the First defendant fraudulently misrepresented that it is a valid and legally binding document.*
  - c). *The first defendant used the forged deed of renunciation and carried out the letters of administration De Bonis with will.*
  - d). *The First defendant had fraudulently registered the transmission by death on the property.*

- e) *The first defendant fraudulently and unlawfully transferred the property to himself.*
- f) *Acting in a dishonest and deceitful manner and illegally transferring the property to himself.*

[5] The Deed of Renunciation was produced marked P4 (pg. 127). It states, “*Now, I Mohammed Abu Baker Saddique....Renounce all my rights and interest of the estate of Mohammed Ishaque in favour of my brother namely Mohammed Umar Faruque in his name....*” The plaintiff in the Statement of Claim complained that it was his brother Mohammed Umar Faruque who defrauded the plaintiff by forging the signature in a deed of renunciation. The attestation was done by Satendra Kumar Sharma, Commissioner for Oath on 5 April 2008.

[6] Now we will consider the agreed facts and the issues raised in this case (pgs. 59 and 60 under Tab 14).

*Agreed facts*

1. *Mohammed Abu Baker and Mohammed Umar Faruque are brothers and sons of late Mohammed Ishaque.*
2. *Mohammed Ishaque by his Will gave the residue of his estate to Mohammed Abu Baker and Mohammed Umar Faruque absolutely in equal shares.*
3. *The substantial part of the Estate of Mohammed Ishaque was a property comprised in Certificate Title No. 12304 known as Lot 17 on DP 2631 situated in Nadi together with substantial improvements thereon (herein referred to as “the property”).*
4. *On the 18<sup>th</sup> October, 1991 the Transmission of Death was registered in the name of Ahmed Bi (herein referred to as “mother”)*

[7] ISSUES TO BE DETERMINED

1. *Whether Mohammed Umar Faruque fraudulently transferred the said Property Certificate of Title number 12304 known as Lot 17 on deposited plan number 2631 under his own name?*

2. *Whether Mohammed Umar Faruque obtained executed a Deed of Renunciation from Mohammed Abu Baker on the 5<sup>th</sup> day of April, 2008.*
3. *Whether the Plaintiff signed the Deed of Renunciation and renounced his share to Mohammed Umar Faruque or was it obtained fraudulently by Mohammed Umar Faruque?*
4. *Whether Mohammed Abu Baker is entitled to his half share in the estate of Mohammed Ishaque as lawfully bequeathed to him by Mohammed Ishaque?"*

[8] At the trial the plaintiff and Mohammed Yunus gave evidence. The defence closed the case without calling any evidence, oral or documentary. The plaintiff (pgs. 175-196) said that the property constituted one building with three separate flats. It was always a rental property. The father (Testator) died in 1990 and the mother in 2005. He said that his brother never sent him money to the U.S.A. where he lived. His brother also never gave accounts of the receipts. His brother died in August 2011. His (plaintiff's) passport expired in 2001 and a new passport was obtained in 2011. He said that when he arrived in Fiji in December 2011 he discovered that the whole property was in his brother's name. He said he also found out about the Deed of Renunciation.

[9] He said that he never signed the Deed of Renunciation (127). He said at the time of its execution on 5 April 2008 he was not in Fiji. He said that the signature is a forgery. He said that he never met the person who witnessed the document. As a result of this forgery he was deprived of his half share of his father's estate. He also said that his brother never told him that the whole property belonged to the brother (meaning Faruque). The whole property was transferred by his brother to himself (Meaning to Faruque) on 3 June 2008. On 15 July 2008 his brother had mortgaged the entire property to Australian and New Zealand Banking Group Limited.

[10] After his brother's death Maimun Nisha became a Trustee of the brother's estate. The property consists of flats with 2 and three bed rooms. The rent of a one roomed flat would be \$500 to \$600 and a three bed room one would be \$800.00 to \$2000.00. He claims that CT No. 712754 dated 3 June 2008 should be declared null and void and in its place to

register his half share and half share of his brother. He also claims his share of the rental income. Under cross examination (188-195) he said that he and his brother were very close.

Q. So your brother transferred the property to himself completely not giving you the half share, he took the whole property?

A. That's what I believe (pg. 193).

Q. Now if your brother transferred the property to himself why should his wife be liable for fraud?

A. Firstly, my brother should not have transferred the property to himself...

Q. And also you give particulars that she forged the signature of the plaintiff...

A. I am not accusing her of forging my signature. Somebody did.

I am not accusing her.

[11] No questions were asked for the defendant about the execution of the Deed of Renunciation and the transfer of the property to himself by the plaintiff's brother. The plaintiff's brother died in 2011 and this action was filed against Maimun Nisha in her capacity as the Executrix and Trustee of the Estate of Mohammed Umar Faruque. Considering all those facts it becomes clear that the whole case revolves around the Deed of Renunciation by which the plaintiff's brother, Mohammed Umar Faruque, became entitled to the whole property. The half share that was admittedly belonging to the plaintiff was surrendered to his brother Mohammed Umar Faruque by this Deed of Renunciation which the plaintiff claims to be a fraudulent document created by Mohammed Umar Faruque.

[12] The plaintiff's case is that he never executed the Deed of Renunciation and his signature had been forged. Thereafter the property has been registered with the Registrar of Titles in the name of Mohammed Umar Faruque who mortgaged the entire property to ANZ Banking Group Limited.

[13] The plaintiff was questioned by the defence mainly to ascertain whether the accusation of fraud is made against Maimun Nisha who is the defendant in this case. The plaintiff answering that question categorically said “No”. In his lengthy evidence the plaintiff hardly spoke of Maimun Nisha who was married to the plaintiff’s brother. Throughout the evidence the plaintiff spoke of his brother Mohammed Umar Faruque and not of Maimun Nisha. She was named as a defendant in her capacity as the Executrix and Trustee of the Estate of Mohammed Umar Faruque.

[14] The defence filed a statement of defence (Pgs. 44-46) and an amended statement of defence (pgs. 48-50). In paragraph 11 of the statement of defence (pg. 45) the defendant neither admits nor denies the contents of paragraph 14 of the plaintiff’s statement of claim with regard to the plaintiff’s travel history. However in paragraph 12 (pg. 45) the defendant states that the plaintiff in fact signed the Deed of Renunciation. Here the defendant means Maimun Nisha.

12. *“The first defendant denies all allegations in paragraph 15 and 16 of the statement of claim and states that plaintiff did in fact sign the Deed of Renunciation and therefore any income derived from the property after Mohammed Umar Faruque transferred the property to himself on 4.6.08 was in all respects lawful”.*

[15] In the amended statement of defence (Tab 11 pgs. 48-50) the defendant in paragraph 12 further amplifying with regard to the Deed of Renunciation states, that, *“The same was signed in front of a court officer, namely, Satendra Kumar Sharma a Commissioner for Oath”*. In paragraph 14 of the amended statement of claim the defendant (pg. 50) states that, *“Only one of the three flats of the property was being rented out from July 2008 to date. However that flat was not under continuous rental during this period the particulars of which will be submitted to this Honorable Court at the time of trial of this matter...”*. No such evidence was produced.

[16] The defendant did not call any evidence with regard to mesne profits. About the signature in the deed of renunciation the plaintiff was cross-examined as follows at page 195.

*Q. And I am putting to you your date of organization (sic) (attestation) before your Commissioner of Oath Satendra Sharma was a genuine signature? A. That was not my signature. I did not sign it Your Lordship.*

- [17] The learned counsel revealed that Satendra Sharma used to work in the probate section in Suva. Answering a question by court with regard to the whereabouts of Satendra Sharma, the learned defence counsel said that he is somewhere in Fiji. This witness was not called to testify. The defendant too did not give evidence.
- [18] The only defence is that the case was filed against Maimun Nisha:- That she never forged a signature and thereby for a dismissal of the plaintiff's claim. However from the pleadings and evidence led in this case for the plaintiff, the accusations were directed towards Mohammed Umar Faruque who was deceased at the time of institution of this action on 4 December 2012. The action (Writ of summons at page 29) was instituted against Maimun Nisha in her capacity as the Executrix and Trustee of the estate of Umar Faruque.
- [19] Having examined the issues raised I find that all those issues are concerning the plaintiff and his brother and not a word about Maimun Nisha. The issues become the bone of contention in any civil case. The learned counsel for the defendant submitted that the issues raised are not in accordance with the pleadings and if pleadings are not in conformity with the issues, the pleadings should be amended. I think it is not always the case. Once the issues are raised the evidence has to be led within the scope of the issues raised and the pleadings recede to the background.
- [20] What is relevant for the present purpose and what needs to be stressed is that once the issues are framed, the case which the court has to hear and determine becomes crystallized in the issues. It is the duty of the court "*to record the issues on which the right decision of the case appears to the court to depend*" (section 146(2) of the Civil Procedure Code of Sri Lanka. Since the case is not tried on the pleadings, once issues are raised and accepted by the court the pleadings recede to the background. The Court of Appeal was



in error in harking back to the pleadings and focusing on the “*validity*” and the “*legality*” of the pleadings. This was held by the then Chief Justice of Sri Lanka in Hanaffi v Nallamma (1998) 1 Sri Lanka Law Reports (SLR) 73 at 77. In Haniff’s case (*supra*) it was held that on the basis of the issues raised by the parties the crucial issue was whether the 2<sup>nd</sup> defendant was a tenant under the plaintiff, and that in the light of the issues framed and the evidence on record the District Court rightly entered judgment for the plaintiff against the 2<sup>nd</sup> defendant. *“It seems to me that the submissions of Mr Premadasa in regard to the pleadings amount to no more than an irregularity in the pleadings. It is certainly not a matter which constitutes a bar to the plaintiff maintaining the action. The case proceeded to trial on the issues and therefore it is very relevant to consider the issues that were raised at the trial.” “It is seen that there is no reference at all to the 1<sup>st</sup> defendant in the issues. What is more, there is no issue as to whether the plaint disclosed a cause of action. The question whether an amended plaint should have been filed and whether it was permissible for the plaintiff to file a replication are now not material and do not really arise for consideration on this appeal.”*

- [21] Consider the case in appeal, I am of the view that the learned judge correctly decided this case focusing on the issues. That is, whether the Deed of Renunciation was an act of the plaintiff. There was no issue concerning Maimun Nisha. With regard to the Deed of Renunciation the plaintiff said that he was not in Fiji at the time of execution of this deed on 5 April 2008. He said that his signature has been forged. The defendant took up the position in the statement of defence that it was the plaintiff who placed his signature in the presence of Satendra Sharma, a Commissioner for Oaths. However neither the defendant Maimun Nisha nor Satendra Sharma gave evidence. The defence took up the position that the burden of proof rests on the plaintiff to prove that it was not his signature which he had not discharged. I am of the view that once the plaintiff showed on a balance of probabilities that it was not his signature, by producing his passports, thus placing some *prima facie* evidence, the burden shifts on to the defence to prove that it was in fact the signature of the plaintiff. The plaintiff need not call an expert witness to prove that it was not his signature. All these would have become necessary in the event the defence challenged the plaintiff by bringing an expert witness. I am of the view that the plaintiff

has proved his case on a preponderance of probability and the learned Judge was correct in deciding this case on the evidence adduced for the plaintiff.

- [22] Indeed it is commonly said that the burden of proof ‘shifts’ during the course of a trial. Sometimes it is asserted that the evidential burden but not the legal burden. Although it was the plaintiffs who filed the initial action claiming a share in “*the estate in question*”, it is to be noted that it was the defendants who put the alleged deed of renunciation in suit and claimed “*the signature on the said deed as being authentic.*” Accordingly, the burden to prove it was fairly and squarely with the defendants.
- [23] Going further, being convinced in my mind that, in the context of the circumstances as recounted above (in re: the factual matrix), to prove that the said deed of renunciation was procured by a genuine signature (being a specific fact which shifted the burden of proof to the defendants), I am of the view that, the defendants failed to discharge that burden).
- [24] I felt vindicated in expressing and arriving in that view by reference to the following authoritative precedents which I shall proceed to refer to as follows.
- [25] I begin by laying down as a proposition that, if a Court is not satisfied in respect of any issue (in the instant case, whether the defendants had proved the “*deed of renunciation*” on it being signed by the executant, then the said issue must be determined against the party carrying the said burden of proof. There is no room for the court to attempt to achieve a measure of rough justice by adopting any other hypothesis.
- [26] A basic test for determining which party has the burden of proof is contained in the Australian case of **Currie v. Dempsey** [1967] 69 SR NSW 116 wherein it was held thus

*“In my opinion [the legal burden of proof] lies on a plaintiff, if the fact alleged (whether affirmative or negative in form) is an essential element in his cause of action, eg if its existence is a condition precedent to his right to maintain the action. The onus is on the defendant, if the allegation is not a denial of an essential ingredient in the cause of action, but is one which, if established,*

*will constitute a good defence, that is, an “avoidance” of the claim which, prima facie, the plaintiff has.”*

[27] What then determines where the burden of proof lies? If an issue is commonly listed among the constituent elements of a cause of action, the burden no doubt would lie on the plaintiff. But, if the issue could be identified as a factor leading to the avoidance of liability on the cause of action pleaded by the plaintiff, then the burden of proof will be on the defendant (for which proposition I adopt the academic opinion expressed by Williams, CR on “*Burdens and Standards in Civil Litigation*” [2003] Syd Law Rw9, 165.

[28] On the basis of the aforesaid reasoning (based as it were on authoritative precedents) I conclude that, the defendants appeal was liable to be dismissed on their failure to discharge the burden of proof the requisite degree of proof required in law (in having to prove a particular fact arising in the course of a trial).

[29] The only remaining issue to decide is with regard to mesne profits which the learned Judge has ordered. With regard to this aspect too it was only the evidence of the plaintiff that helped court in arriving at a decision. Although the defendant undertook to produce evidence with regard to the rental income, no such evidence was produced. I am of the view that there is nothing to challenge the computation of the learned Judge.

[30] *GROUND OF APPEAL*

1. **THAT** *the Learned trial Judge erred in law and in fact interjecting/interfering with the Appellant’s counsel during the cross-examination of the Plaintiff and his witness which led to the Appellant/Defendant not having a fair trial and hence a substantial miscarriage of justice.*
2. **THAT** *the Learned Trial Judge erred in law and in fact in not taking into consideration that there was no independent evidence to calculate rent which was accepted by the Learned Trial Judge from the evidence of the Plaintiff who was not a Fiji resident and has not been in Fiji for a long time and as such he had no basis to give his opinion as to the rent that was assessed by the Learned Trial Judge.*

3. **THAT** the Learned Trial Judge erred in law and in fact in not taking into consideration that the Deed of Renunciation was witnessed by a commissioner for oaths despite the fact the Learned Trial Judge held that he was a competent witness to witness Documents and therefore contradicted himself when he stated that the said document was forged.
4. **THAT** the Learned Trial Judge erred in law and in fact in not taking into consideration that there was a 10 year gap between the last passport of the Plaintiff and new passport. Passport is valid for 10 years so there is a passport of the Plaintiff not submitted as evidence and this is when he came to Fiji and executed the Documents.
5. **THAT** the Learned Trial Judge erred in law and in fact in not taking into consideration that there was no handwriting expert was called to prove the allegations of forgery rather than relying on the Plaintiff's witness Mohammed Yunus who does not hold any qualification to verify signature and who is a interested party he held a power of attorney from the Plaintiff/Respondent.
6. **THAT** the Learned Trial Judge erred in law and in fact in not holding that the Appellant/Defendant was an innocent party despite that fact the Learned Trial Judge held that she did not procure the property by fraud.
7. **THAT** the Learned Trial Judge erred in law and in fact in stating the Appellant/Defendant had full knowledge of fraud but there was no evidence led by Plaintiff/Respondent but the Plaintiff gave evidence to the contrary that she had not forged the documents in question.
8. **THAT** the Learned Trial Judge erred in law and in fact in not holding that the Defendant was the registered proprietor of the title which cannot be defeated on the grounds of fraud unless that the registered proprietor was a party or privy to the fraud. There was no evidence before the court to that effect on the contrary the Plaintiff gave evidence on oath stating that the 1<sup>st</sup> defendant did not forged the documents.
9. **THAT** the Learned Trial Judge erred in law and in fact in not applying the correct principles of law regarding the question of indefeasibility of title and the fraud exception.
10. **THAT** the Learned Trial Judge erred in law and in fact in shifting the burden of proof to the defendant to proof that the documents was not forged when the law states that the onus is on the person to prove

*fraud/negligent in a proceeding who is commencing the action against the other party. The onus of proof was placed on the Plaintiff to proof whether the appellant/Defendant fraudulently and negligently transferred the property under her name and which was not done and hence there was a substantial miscarriage of justice.*

11. **THAT** *the Learned Trial Judge erred in law and in fact in not holding that there was no evidence against the defendant to proof that she herself fraudulently and unlawfully forged any Deed of renunciation, represented that the deed Of Renunciation was valid and was legally binding and as such lawfully sublet the property and legally obtained each rental proceeds. The only evidence the Plaintiff gave to Court against the Appellant/Defendant “I am not accusing her of forging .....I do not have any evidence that she did it .....”*
12. **THAT** *the Learned Trial Judge erred in law and in fact in deciding that the Appellant is liable when there was no evidence before the Court to come to such findings and hence there was a substantial miscarriage of justice.*
13. **THAT** *the Learned Trial Judge erred in law and in fact in not taking into consideration seriously that the evidence and witness of the Plaintiff with the Plaintiff’s Statement of Claim because most of the material presented by the Plaintiff was not in the pleadings of the Plaintiff and as such there was a substantial miscarriage of justice.”*

[31] **SUPPLEMENTARY GROUNDS OF APPEAL**

1. *The Learned Judge erred in law and/or in fact in not taking into account that in fraud and/or forgery cases there is a significantly high standard of proof required to prove the same and in holding that the onus and/or burden of proof had shifted to the Appellant after the Respondent gave evidence that he was not in Fiji on the date the renunciation was signed and showed his passport.*
2. *The Learned Judge (with great respect) erred in fact and in law finding fraud and forgery in the circumstances as in holding that the first Defendant as the wife had full knowledge of her husband’s fraud (paragraph 45 of the judgment) and (paragraph 38) that the registration of the first defendant as owner was procured by fraud and failed to take into account that the forgery and/or fraud had to be brought home to the First Defendant on particulars of forgery/fraud duly pleaded and proved against her.*

3. *The Learned Judge erred in law and/or in fact in holding that the Respondent had proved to the required standard proof that the Deed of renunciation was a forgery and did not give sufficient emphasis to the following:*
  - a. *The person against whom the Respondent had specially alleged forgery namely Mr Mohammed Umar Faruque was deceased and could not give evidence that he had not done it and forged the Respondent's signature*
  - b. *There was no handwriting expert evidence adduced by the Respondent regarding the signature on the renunciation document by the Respondent and when there is authority that a Court ought not undertake examination of signatures without assistance of an expert in handwriting. (Kuar vs Singh 1998 FJCA 51. ABU 0011e.98s)*
  - c. *The Appellant (First Defendant) could not give evidence of whether the signature on the renunciation was genuine unless it was alleged she was present or she saw it being executed.*
  - d. *When evidence of a number of signatures by the Respondent in other documents and a signature(s) being performed before the Court had not been tendered for comparison with the only evidence being his passports.*
  - e. *The same had been witnesses by a Commissioner for Oaths Mr Satendra Sharma who had been a senior Probate Registry Clerk.*
  - f. *There is a presumption of due execution.*
4. *The Learned Judge erred in law and/or in fact in holding that the renunciation was a forgery when the same was not properly pleaded in that:*
  - a. *Clause 13 of the statement of claim alleged 'the Defendant forged the signature of the Plaintiff' when the First Defendant is Ms Maimun Nisha*
  - b. *In the other particulars alleging that Ms Maimun Nisha (pleading states Defendant or First Defendant) carried out dishonest and forgery.*
  - c. *When the evidence of the Respondent himself was not that Ms Maimun Nisha had done the forgery but that her late husband had done it.*

- d. *The pleading amounts to a plea the Appellant who is sued as the Trustee of Mr Mohammed Umar Faruque had done the forgery and transfer.*
  - e. *When the Estate of Mohammed Ishaque had not been joined as a party and the essence of the claim is that the Respondent is entitled to a half share of that Estate.*
5. *The Learned Judge erred in law and/or in fact in not closely scrutinizing the evidence of the Respondent and his witness as the witness not being in the United States would not have been able to tell of the Respondent had a passport for any particular period and gave no basis for giving that evidence.”*

[32] Although a large number of grounds of appeal have been filed, I am of the view that those grounds can be summarized into three grounds namely:

1. Whether a cause of action against the defendant has been made.
2. Whether forgery is proved on the signature in the Deed of Renunciation
3. Whether the computation on the mesne profits is correct.

[33] I am of the view that the learned judge has correctly decided the case and the above 3 grounds are answered in the affirmative. The grounds of appeal filed by the appellant therefore need not be answered individually. The learned counsel for the defence mainly focused on the issue of pleadings. His submission was that the plaintiff cannot maintain this case against the defendant being an innocent party. I have answered the issue relating to pleadings. Hence I am of the view that this appeal is without merit and is dismissed with costs in a sum of \$5000.00 payable by the Appellant to the Respondent within 28 days.

**LecamwasamJA**

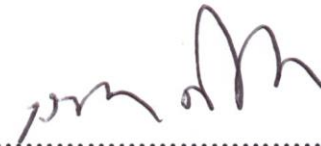
[34] I agree with the reasons and the conclusion arrived at by Basnayake JA.

**Guneratne JA**

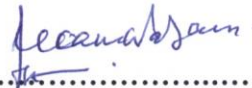
[35] I agree with the judgment of Basnayake JA together with his reasons adduced therefor and the orders proposed.

Orders of court are:

1. *Appeal dismissed.*
2. *Judgment of the High Court dated 12 February 2018 is affirmed.*
3. *Costs in a sum of \$5000.00 is awarded against the Appellant payable to the Respondent within 28 days.*



.....  
**Hon. Justice Eric Basnayake**  
**JUSTICE OF APPEAL**



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**Hon. Justice S. Lecamwasam**  
**JUSTICE OF APPEAL**



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**Hon. Justice Almeida Guneratne**  
**JUSTICE OF APPEAL**