

CAN WE PREVENT THE FRAUDS IN RELATION TO LAND ?

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The Island

Big land scam extending to at least five land registries

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The 56 forged folios, 110 original deeds, old stamps dating back to 1957 and the seals used to make forged documents taken into custody by the Criminal Investigations Department sleuths on Tuesday night from a suspect's residence. Pic courtesy police media.

By Madura Ranwala

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The Criminal Investigations Department (CID) sleuths on Tuesday night arrested two suspects in connection with a huge land scam running into billions of rupees. The detectives have taken into their custody 56 forged folios for land registration and 110 torn folios from various land registries, old stamps dating back to 1957 and seals used to make forged documents from a residence of one of the suspects.

The government is likely to launch an investigation to identify the names of the suspects involved in the scam, which is estimated to be worth Rs. 10 billion.

- Impersonation
- Selling the same land twice or more
- Declaring ownership by way of Deeds of Declaration (Acquisition Prescription)and then sell
- Creating a new chain of title by inserting forged folios at the land registry

COMMON METHODS USED BY
FRAUDSTERS TO COMMIT FRAUDS



**PREVENTION OF FRAUDS ORDINANCE NO.7 OF
1840 (AS AMENDED)**

**NOTARIES ORDINANCE NO.1 OF 1907
(AS AMENDED)**

PREVENTION OF FRAUDS ORDINANCE NO.7 OF 1840

SECTION 2 (before the amendment)

No sale, purchase, transfer, assignment, or mortgage of land or other immovable property and no promise, bargain, contract or agreement for effecting any such object or for establishing any security, interest or incumbrance .affecting 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**, or by **some person lawfully authorized** by him or her in the **presence of a licensed notary public and two or more witnesses present at the same time**, and unless the execution of such writing, deed, or instrument **be duly attested by such notary and witnesses**

PROOF OF DUE EXECUTION

1. the document to be signed by the “party making the same” or some person “lawfully authorized” by him/her
2. signed in the presence of “licensed notary public” and two or more witnesses
3. the notary public and the witnesses were present at the same time
4. the execution of the document was “duly attested” by the notary public and the witnesses

Thiyagarasa v. Arunodayam [1987] 2 Sri L.R. 184

“DULY ATTESTED”

- Not defined in the Ordinance
- “terms such as ‘attest’ and ‘attestation’ when they are not defined in the Ordinance in which they appear, should be given the meaning which is in accord with the context”

de Silva v. de Silva [56 N.L.R. 1]

- - “... the notary and the witnesses must at the proper time and place sign the instrument as proof of the fact that they were present and saw its maker sign the instrument. The requirement of the section is not satisfied if the notary and the witnesses sign the deed at another place and at some other time. They must sign it then and there in the presence of the maker. The signing by the maker in the presence of the notary and the witnesses and the attestation by the notary and the witnesses are one and the same transaction to be carried out at one and the same time and place.”

Fernando v. Fernando [59 N.L.R. 341]

RULES IN SECTION 31 OF THE NOTARIES ORDINANCE NO.1 OF 1907

Rule 12 - He shall not authenticate or attest any deed or instrument unless the person executing the same and the witnesses shall have signed the same in his presence and in the presence of one another, and unless he shall have signed the same in the presence of the executant and of the attesting witnesses.

Rule 9- He shall not authenticate or attest any deed or instrument unless the person executing the same be known to him or to at least two of the attesting witnesses thereto ; and in the latter case, he shall satisfy himself, before accepting them as witnesses, that they are persons of good repute and that they are well acquainted with the executant and know his proper name, occupation, and residence, and the witnesses shall sign a declaration at the foot of the deed or instrument that they are well acquainted with the executant and know his proper name, occupation, and residence.

Rule 10.- He shall not authenticate or attest any deed or instrument in any case in which both the person executing the same and the attesting witnesses thereto are unknown to him.

ATTESTATION

“... What constitutes the attestation and the form of attestation are set out in sections 31(20) and 31(21) of the Notaries Ordinance; this is the formal attestation appended by the notary at the end of the deed. This is different from attesting a deed by the notary and witnesses as contemplated in section 2 of the Prevention of Frauds Ordinance. If the formal attestation of a deed is defective, the notary can be prosecuted under the Notaries Ordinance, but the deed’s validity is unaffected.”

Weerappuli Gamage Gamini Ranaweera v. Matharage Dharmasiri and Others
(SC Appeal 56/2020, Decided on 20.05.2022)

See Rules 20 and 21

Thiyagarasa v. Arunodayam [1987] 2 Sri L.R. 184

The Court quoted with approval the following statement of law found in The Conveyancer and Property Lawyer (1948) Vol. 1 Part 1 by E.R.S.R. Coomaraswamy at page 94:

“...The formal attestation by the notary is not part of the deed but it is the duty of the notary to append it.”

Weerappuli Gamage Gamini Ranaweera v. Matharage Dharmasiri and Others (SC Appeal 56/2020, Decided on 20.05.2022, Page 8)

OF WITNESSES

“To attest” means to bear witness to a fact. An attesting witness is a witness who has seen the deed executed and who signs it as a witness. Where the instrument is required by law to be attested, the meaning is that the witness shall be present at its execution and shall testify that it has been executed by the proper person.

Valupillai v. Sivakampillai (1 A.C.R.180)

PREVENTION OF FRAUDS ORDINANCE NO.7 OF 1840 AS AMENDED BY 30 OF 2022 – SECTION 2

“No sale, purchase, transfer of land shall be in force or avail in law unless;

the relevant deed or instrument shall be in writing, signed by every executant and attested by a notary public **before** two witnesses present at the same time;

(the requirement to duly attest by the Notary **and** the witnesses is no more there)

NOTARIES ORDINANCE NO.1 OF 1907 AS AMENDED BY 31 OF 2022

- Thumb or Toe Impression
- Affixing a Photograph
- Obtaining the affidavit confirming the genuineness of the POA
- Obtaining a certified copy of the POA and annexing it to the original deed
- Obtaining the extracts of the last entry from the land registry
- Obtaining the details of the Directors and Trustees
- Inclusion of the details of the will in the **Deed Registry**
- Making the registration compulsory
- Making failure to submit duplicates a serious crime which may lead to cancel the license

