

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.

C.A. 710/96F
D.C. Kegalle 1321/L

D Pedrick Perera
Mawanella
Plaintiff-Appellant
DESEASED

L U Jayagosa,
Dehimaduwa,
Mawanella,
Substituted-Plaintiff
Appellant

Vs

Kapugampothe Ananda
Maithri Theo,
Walkadayawa,
Aranayaka, Mawanella
And 3 others
Defendant-Respondents

BEFORE : A W A SALAM, J

COUNSEL : Ranjan Suwandaradne with Ranjith Perera for the
substituted-plaintiff-appellant and Manohara De Silva PC with
Pubudini Wickramasingha for the defendant-respondents.

ARGUED ON : 25.04.2011.

WRITTEN SUBMISSIONS TENDERED ON : 21.2.2012

DECIDED ON : 06.08.2012.

A W Abdus Saām, J

The plaintiff- appellant has preferred the present appeal against the dismissal of the plaintiffs' action for a declaration of title to the land described in the schedule to the plaint, ejectment of the defendants and damages. The plaintiff's case as pleaded was that the plaintiff gifted the subject matter of the action to the 1st defendant subject to his life interest and that of his wife on certain terms and conditions as laid down in the deed of gift. By virtue of the life interest reserved in them when the plaintiffs had continued to possess the subject matter, the subject matter has been leased out to the 1st, 2nd, 3rd and 4th defendants for a period of one year on an informal document, upon the request of the 1st defendant. Plaintiff averred that upon the expiration of the lease agreement the defendants continued to possess the property in question without any lawful authority giving rise to a cause of action to sue the defendants for reliefs prayed for in the plaint.

The defendants maintained that the land in question was gifted by the plaintiff to the 1st defendant who represented the entire priesthood and therefore the subject matter constitutes a Sangika property. On the contrary, as regards the deed of gift, the plaintiff contended that the deed of gift was revoked by him as the 1st defendant failed to fulfil the terms and conditions of the deed of gift. The deed by which the gift was revoked is dated 10 May 1974 bearing No 2442. This was produced as P1.

The trial commenced with the parties having made 2 admissions.

The facts thus admitted were the execution of the deed of gift 1098 in favour of the 1st defendant and that the wife of the plaintiff died in the year 1968. Thereafter 16 issues were suggested by the parties 6 by the plaintiff and the rest by the defendants.

Although there were several questions arose for decision in the trial court, the main question was whether the gift made by the plaintiff constituted a dedication to the whole order of the Sangha, present and future, throughout the world, in all directions and whether such a dedication is revocable. Even though it was suggested on behalf of the plaintiff that no dedication had taken place, the evidence led at the trial is amply demonstrative of the fact that a dedication had in fact taken place in the presence of the required number of Buddhist Monks and after chanting the relevant recitals followed by pouring water down the finger of the 1st defendant.

The verbal dedication of the subject matter of the Maha Sanga had taken place in addition to the notarial gift made by the plaintiff to the 1st defendant. Therefore, even if there is a defect in the deed of gift as contended by the defendant, the verbal dedication constituting a valid alienation of the property in favour of the 1st defendant, stands in the way of the plaintiff to obtain a declaration of ownership against the defendants.

Taking into consideration the approach made by the learned district judge to resolve the issue, I am of the view that the

impugned judgement is flawless and needs no intervention of this court. Hence, the appeal is dismissed without costs.

Judge of the Court of Appeal

LA/-