

**In the Court of Appeal of the Democratic
Socialist Republic of Sri Lanka**

CA 268/2000F
DC Negambo: 5414/L

Katunatiyawe Muhamdiramalage
Jayawardena,
24/77, Elapitiwala
Ragama.

Plaintiff-Appellant

Vs

Katunatiyawe Muhamdiramge
Gathila Jayawardenana,
24/77, Elapitiwala
Ragama.

Defendant- Respondent

Before: A W A Salam J
Counsel: Nilmini Tirimanne for the appellant
and D L A Kanangara for the respondent.
Written submissions tendered on: 26. 01.2011
Decided on: 01.02.2011

This is an appeal from the judgment of the district court of Negambo dismissing the action of the plaintiff. The action of the plaintiff concerns a deed of gift No 8689 dated 3 August 1989 attested by L. A. C. Amaratunga, Notary Public. By the said deed Katunatiyawa Muhamdiramlage Jayawardena (plaintiff) of 24/77, Elapitiwela, Ragama donated the land which is

the subject matter of this action, situated within the jurisdiction of the district Court Of Negambo to Katumatiyawa Muhamdiramlage Gathila Jayawardena, his son (defendant) of 24/77, Elapitiwela, Ragama. The gift was sought to be revoked on gross ingratitude of the defendant and the plaintiff being subject to Kandyan law. The cause of action for the revocation of the deed of gift on the ground of ingratitude was abandoned at the trial. The learned district judge dismissed the action in so far as the plaintiff is concerned as there was no proof of the application of Kandyan law.

As such, the only question that arises for determination in this appeal is the correctness of the finding of the learned district judge as regards the application of Kandyan law to the deed of gift in question.

The two issues on which the learned district judge was invited to determine the dispute were whether the plaintiff is governed by Kandyan law and if so whether he is entitled to relief prayed for in the plaint. The learned district judge answered both issues in the negative. Consequently, the deed of gift in question continued to be in force.

At the trial the plaintiff gave evidence and produced documents marked P1 and P2. P1 is the deed of gift in question and P2 is the certificate of birth of the plaintiff. As regards the purported application of Kandyan law to the dispute the only document produced by the plaintiff was P2. In terms of P2 the plaintiff had been born on 17 February 1927 at Bamunaulla in the district of Walgampaththuwa in Kagalle division within Sabaragamuwa Province. In his evidence the plaintiff maintained that his father and ancestors were all born at Bamunaulla. The plaintiff further recalled that his father was born in the year 1870.

The learned counsel of the plaintiff submits that the learned district judge has erred in law in determining that the plaintiff is not governed by Kandyan law despite the proof offered by the plaintiff that he was born to parents who were both Kandiyans living within the Kandyan Provinces and therefore governed by Kandyan law. He further submits that in the result whether the plaintiff was born to a man governed by Kandian law and a woman not so governed and whether he is a person born to a non-Kandyan father who had contracted a

Binna marriage with a Kandyan lady did not arise for consideration.

Admittedly, the plaintiff had been living in the Maritime Provinces for a long period of time and also had contracted a marriage with a low country Sinhala woman. Even though it is not strictly relevant, the subject matter of the gift is also situated outside the Kandian Provinces.

In terms of the Kandian Succession Ordinance No 23 of 1917

- (1) an issue of a marriage contracted between a man subject to the Kandyan law and domiciled in the Kandyan provinces and a woman not subject to the Kandyan law or
- (2) an issue of a marriage contracted in binna between a woman subject to the Kandyan law and domiciled in the Kandyan Provinces and a man not subject to the Kandyan law shall be deemed to be and at all times to have been persons subject to the Kandyan law.

If the plaintiff is governed by Kandyan law undoubtedly he has the right to revoke the deed of gift. In order to exercise that right he must prove that he is governed by Kandyan law. As has been observed by the learned district judge, the plaintiff was not able to give the necessary details regarding his parents to ascertain whether he falls under the category of a person to whom Kandyan law applies. For purpose of easy reference the evidence of the plaintiff found at page 32 and 33 of the brief is produced hereunder in its original form which reads as follows.

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The evidence of the plaintiff on this matter was quite unreliable to decide the issue relating to the applicability of the Kandyan law. Although he claimed that his grandfather lived in Bamunawala in terms of P2 his father had resided at a place called BAMUNAULLA and not at BAMUNAWALA as claimed by the plaintiff.

Taking into consideration the evidence of the plaintiff it is hardly possible to come to a definite finding on a balance of probability as to whether he in fact is governed by Kandyan law. In the circumstances, I am of the view that the impugned judgment merits no interference by way of the exercise of appellate jurisdiction. Hence this appeal is dismissed.

There shall be no costs.

Judge of the Court of Appeal

Kwk/-