

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

In the matter of an application for
Revision under Article 138 of the
Constitution of the Republic of Sri
Lanka

Weerakkodige Nandani Weerakkody,
No.45, Dethamulla,
Pugoda.

Plaintiff

C.A. (Revision)
Application No.2570/2004
D.C. Pugoda 249/D

Vs

Attygalle Vidanelage Upali Jayasekera,
No.35/B, Pattiyagama,
Pugoda.

Defendant

And Between

Attygalle Vidanelage Upali Jayasekera,
No.35/B, Pattiyagama,
Pugoda.

Defendant/Pettioner

Vs

Weerakkodige Nandani Weerakkody,
No.45, Dethamulla,
Pugoda.

Plaintiff/Respondent

BEFORE : S. SRISKANDARAJAH, J (P/CA)

COUNSEL : W.Dayaratne P.C with R.Jayawardana,
for the Petitioner.

Athula Perera,

for the Plaintiff- Respondent

Argued on : 29.04.2011 & 30.10.2012

Written Submission : 21.01.2013 (Petitioner)
14.03.2013 (Respondent)

Decided on : 28. 06.2013

S.Sriskandarajah,J

This is a revision application filed by the Defendant-Petitioner to revise and set aside the judgment of the learned District Judge. In the said judgment the learned District Judge has granted a divorce in favour of the Plaintiff-Respondent on the ground of the Defendant-petitioner's malicious desertion and also ordered to cancel deed bearing No.10789 attested by D.S. Kumarapillai, Notary Public. The main submission of the Petitioner is that the learned District Judge has misdirected himself on the law when he cancelled the deed bearing No.10789, which is a relief that cannot be granted in an action for divorce, as the cancellation of the deed has to be made by way of a separate action for property, since the action for divorce is a personal action. The

Petitioner also further pleaded that the learned District Judge has misdirected himself with regard to the expenses incurred by the Petitioner to build the house in the stated land when there is admission that the Petitioner has spent money on the construction of the said house.

The Plaintiff-Respondent had filed an action in the District Court seeking a divorce on the ground of malicious desertion by the Defendant-Petitioner, and a decree to cancel the deed of gift bearing No.10789 attested by D.S. Kumarapillai, Notary Public, executed by the Plaintiff-Respondent's mother prior to the marriage as a dowry. The Plaintiff-Respondent pleaded in the District Court, although the marriage was registered on 12/07/1996, it was not fulfilled as she was not taken to the Defendant-Petitioner's home. Prior to this marriage the Plaintiff-Respondent's mother, on 15/07/1993, under and by virtue of deed bearing No.10789, attested by D.S. Kumarapillai, Notary Public, gifted a land in extent of 25 perches to the Plaintiff-Respondent. It is the contention of the Plaintiff-Respondent that the house in the said land was constructed at the expense of her parents.

The Plaintiff-Respondent relied in the case of *Premini Samarasinghe Vs Leelaraj Samarasinghe 1990 1 SLR page 31* where the Court has held "Under Section 618 of the Civil Procedure Code, the Court may, if it thinks fit, upon the presenting of a decree of divorce or separation, after going through these matters i.e, which relates to the forfeiture of benefits at the main trial itself order the settlement of property. The question which relates to forfeiture of benefits by the guilty spouse could be put in issue at a trial for divorce or separation." In the instant case the Petitioner has put in issue at the trial for divorce the forfeiture of benefits of the Defendant-Petitioner, and the learned District Judge, after the trial, has found that the Defendant-Respondent was at matrimonial fault or, the guilty spouse and, therefore, his benefits could be forfeited and ordered that the deed by which the property was gifted as dowry be cancelled by the said order.

In view of this judgment the Petitioner's 1st submission that the settlement of a property cannot be sought in a divorce action and it has to be sought by a separate action has no merit.

The Petitioner's claim that the learned District Judge has erred in finding the Petitioner-Defendant is the guilty spouse in the divorce case is a matter of fact, and the learned District Judge, after giving due consideration to the evidence led, and the submissions made, has given his finding that the Defendant-Petitioner is the guilty spouse and has granted divorce on malicious desertion in favour of the Plaintiff Respondent. As this is a judicial review proceedings, this Court cannot go into the decision of the learned District Judge, whether it is right or wrong in arriving at a decision based on factual matters. As there is no illegality in the decision of the learned District Judge, this Court refuses the application for revision. The application is dismissed without costs.

President of the Court of Appeal