IN THE COURT OF APPEAL

OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Vidanelage Swarnalatha Perera
No.97/1, Galle Road,
Wellawatte,
Colombo 6.

Defendant-Appellant

C.A.No.1125/98 (F)
D.C.MT.LAVINIA CASE NO.231/SPL/97

Vidanelage Gamini Soysa
No.50, Banhl of Str 70794,
Filderstadt, Germany.
Presently at
No.95, Galle Road, Wellawatte,
Colombo 6.

Plaintiff-Respondent

BEFORE	:	**K.T.CHITRASIRI, J**
COUNSEL	:	Gamini Marapana P.C. with Navina Marapana and Keerthi Gunawardane for the Defendant-Appellant Harsha Sosa P.C.with R. Perera for the Plaintiff-Respondent
ARGUED ON	:	**27.08.2013**
WRITTEN SUBMISSIONS FILED ON	:	30th September 2011 by the Defendant- Appellant 30th September 2011 by the Plaintiff-Respondent
DECIDED ON	:	**05.02.2014**

CHITRASIRI, J.

This is an appeal seeking to set aside the judgment dated 30.12.1998 of the learned District Judge of Mt.Lavinia. In the petition of appeal the defendant-appellant (hereinafter referred to as the appellant) also sought to have the action filed by the plaintiff-respondent (hereinafter referred to as the respondent) dismissed. The action of the respondent is to have the gift given to the appellant by executing the deed bearing No.304 dated 18.01.1990 attested by K.D.C.V.Karunaratne, Notary Public, revoked. This deed was marked P1 in evidence. Parties to the action are the sister (appellant) and the brother (respondent) of the same family. The property that was gifted by the said deed is described as lot 17C(1) in Plan No.749 dated 15.07.1975 (vide page 143 of the appeal brief). The father of the two parties, who was the earlier owner of the premises in suit, had gifted this property to the respondent reserving to himself and to his wife a life interest. That is how the respondent became entitled to the property in question. Thereafter respondent gifted it to the appellant by the deed marked P1 subject to his life interest in the property.

The respondent filed this action to have the said gift revoked on the basis of gross ingratitude. The said contention of the respondent is clearly evident by paragraph 14 in the plaint (vide page 23 of the appeal brief) and also by the issue No.11 raised at the trial on his behalf. (vide page 27 of the appeal brief) Even though the cause of action is on the basis of gross ingratitude, the respondent in the plaint as well as in the issues has also described the

circumstances alleged to have led to cause gross ingratitude committed by the appellant. The appellant in her answer as well as in the issues raised at the commencement of the trial has taken up the position that the respondent is not entitled in law to revoke the gift on the grounds as described by the respondent.

Learned District Judge, when he decided the case in favour of the respondent having considered the evidence adduced, has set out the following acts as the acts that amounted to gross ingratitude committed by the appellant.

1. *Allowing the son of the appellant to lock up the father in a room of the house in question.*
2. *Not allowing the respondent, who had a life interest to occupy a room in the up-stairs of the house.*
3. *Assaulting the respondent when he went to occupy a room in the house and threatening him to leave the house.*
4. *Failing to properly understand the father without being mindful of his age.*
5. *Not acting in a manner that pleased his father.*
6. *Not making any attempt to find out as to what actions would have pleased the father.*

(vide page 127 of the appeal brief)

Having reasoned out the manner in which the alleged gross ingratitude was committed, learned District Judge has held that those

matters are sufficient enough to constitute gross ingratitude committed by the donee and then decided the case as prayed for in the plaint. Being aggrieved by the said decision of the learned District Judge, appellant filed this appeal seeking to set aside the impugned judgment and also to have the plaint dismissed. In the circumstances, it is first necessary to ascertain whether the learned District Judge is correct in determining that those acts of the appellant do constitute "gross ingratitude".

As referred to above, this is an action filed to revoke a deed of gift. A "gift" or as it is sometimes called a "donation" is technically, in its narrower sense, a giving or promising of a thing without compulsion or legal obligation or stipulation for anything in return, freely, out of sheer liberality or beneficicense, (Voet, Commentarius ad Pandectas, 39.5.1.) Voet says (xxxix 5.5) to donate is nothing else than to sacrifice, and to abandon. (donare vero nihil aliud est, quam jactare & perdere)

Donation made in that context is generally absolute and irrevocable. However, there exist exceptions to this rule; and a gift is revocable:

- If the donee failed to give effect to a direction as to its application;
- On the ground of donee's ingratitude; or
- If at the time of the gift the donor was childless, but afterwards became the father of a legitimate child by birth or legitimation.

The aforesaid criteria of revoking a gift had been described at length by **Amarasinghe, J,** in the case of **Dona Podi Nona Ranaweera Menike v. Rohini Senanayake, [(1992) 2 SLR at page 180.]**

On the face of the deed of gift subjected to in this case, it does not contain any condition other than the reservation of the life interest in favour of the respondent. Therefore, it is a gift given out of pure liberality and it is an act of pure disinterested benevolence towards the appellant. However, it is settled law that even such a gift is revocable for gross ingratitude committed by the donee towards the donor.

As stated hereinbefore, the reason for the respondent to have the gift subjected to this action, revoked is gross ingratitude committed by the appellant. Therefore, I will now turn to consider whether or not the circumstances alleged to have prevailed in this particular instance constitute gross ingratitude.

I will now consider the manner in which the Courts have looked at when revoking gifts given upon pure benevolence on the basis of gross ingratitude.

In **SIVARASIPILLAI** *Vs* **ANTHONYPILLAI [40 N L R 47]**

SOERTSZ J. Held thus:

> *"If one bases oneself on the authority of Voet one finds that there are five instances of ingratitude expressly mentioned by him as affording justification for the revocation of gifts, namely, (1) the laying of impious*

hands of the donee on the donor; (2) the donee outrageously defaming the donor; (3) the donee causing the donor enormous loss; (4) the donee plotting against the donor's life; (5) the donee failing to fulfil the conditions annexed to the gift. Voet, however, goes on to add that "it does not seem to admit of doubt that for other similar and graver."

In the case **of FERNANDO Vs PERERA [63 N L R 236] BASNAYAKE, C.J.** held as follows:

This is an action by the plaintiff, who is the foster mother of the defendant her adopted son, to have a deed of gift No. 10544 dated 11th May 1953 and attested by Notary P. P. Goonewardene set aside on the ground of ingratitude. She alleged three acts of ingratitude, namely;
(1) an assault on her with a broom-stick,
(2) a threat to cause bodily harm and injury to her, and
(3) causing mischief and damage to the house occupied by her.

The learned District Judge has held that the plaintiff has exaggerated those incidents but he does not hold that they are entirely unfounded. He has however accepted the plaintiff's evidence in regard to the incident of the threat to cause bodily injury to her as her evidence is supported by the evidence of an independent witness. But he holds that it does not constitute an act of ingratitude.

We are unable to agree. On that occasion the defendant chased after the plaintiff threatening to kill her and she had to seek refuge in the house of the witness Mrs. Samarasekera who is a disinterested person. She says : " When I was living in the Tuduwe road house I remember the plaintiff coming running into my house. I asked her why she came running, and she said that her son was coming to kill her." The fact that the defendant more than once endeavoured to dissuade this witness from giving evidence for the plaintiff is a circumstance which is in favour of the plaintiff and goes to reinforce the evidence of the witness. This incident by itself is sufficient to support the allegation of ingratitude on the part of

the defendant, and the plaintiff is therefore entitled to the relief she seeks.

In **KRISHNASWAMY** and another Vs.**THILLAIYAMPALAM** [**59 N L R 265]** Basnayake C.J. held thus:

"Revocation of a deed of gift may be granted on the commission of a single act of ingratitude. ***There is no hard and fast rule as to what conduct on the part of a donee may be regarded as ingratitude for which a donor may ask for revocation of his gift."***

[emphasis added]

In the case of **CALENDAR v. FERNANDO [2001 (2) S L R 355 [C.A. 283/89(F) D.C. MT LAVINIA 345/SPL]** Wigneswaran J. had the following observations to make in this regard.

"We may deal with this third issue at this stage. The examination of the third issue would necessitate an answer to legal issue No. 7 too which dealt with the adequacy of the act of violence mentioned amounting to an act of gross ingratitude.

In Dona Podi Nona Ranaweera Menike vs. Rohini Senanayake (supra) it was held by the Supreme Court that a donor was entitled to revoke a donation on account of ingratitude

(i) if the donee lays manus impias (impious hands) on the donor and/or.

(ii) if he does him an atrocious injury and/or.

(iii) if he willfully causes him great loss of property and/or.

(iv) if he makes an attempt on his life and/or.

(v) if he does not fulfill the conditions attached to the gift and/or.

(vi) other equally grave causes.

It was also held that ingratitude was a form of mind which had to be inferred from the donee's conduct and such an attitude of mind will be indicated either by a single act or a series of acts. *Chief Justice Basnayake stated in Krishnasamy vs. Thilaiampalan as follows:- "There is nothing in the books which lays down the rule that a revocation may not be granted on the commission of a single act of ingratitude."*

In the background of the Defendant-Respondent leaving for Dubai much against the wish of the Plaintiff-Appellant, her considering another marriage when her first marriage was still subsisting, her removing articles belonging to the Plaintiff Appellant (this fact being corroborated by witness Agalawatte) when the Plaintiff-Appellant was not at home, her failure to refer to plausible grounds for divorce in her plaint and divorce itself being granted on the evidence of the Plaintiff-Appellant on the ground of malicious desertion by the Defendant-Respondent, the assault on the Plaintiff-Appellant after the divorce action had already been filed by the Defendant-Respondent - there is no doubt that the Defendant-Respondent laid impious hands on the Plaintiff and wilfully caused the Plaintiff-Appellant great loss of property both of which are acts of gross ingratitude. The act of hitting a man 54 years' old and 21 years older than herself with a sugar filled bottle and saucepan could even be considered as an attempt on the life of the Plaintiff-Appellant though sufficient evidence in this regard was not furnished. The Judge therefore had ample grounds to hold that an act of ingratitude had been committed by the Defendant-Respondent. ***With the necessary intention to cause him harm established*** *coupled with the decree of divorce based on malicious desertion granted in favour of the Plaintiff-Appellant D.C. Mt. Lavinia case No. 2007/ D issue No. 3 should have been answered in the affirmative. [Vide Mulligan vs. Mulligan 1925* WLD 178 at 182*).* [emphasis added]

Looking at all those decisions and the law prevailing in this country, particularly the Roman- Dutch law principles, it is my opinion that a decision as to whether there exist sufficient material to establish gross ingratitude basically depends, on the state of mind of the donee or in other words by ascertaining whether the donee in fact, intended causing gross ingratitude. Thus, such an issue can only be decided by applying what is commonly known as the "subjective test".

The next question then arises is to find out the standard of proof that is required in establishing gross ingratitude in a case filed to have a gift revoked on that basis. The answer to this question could be found by looking at the decision in Ariyawathie Meemaduma V Jeevani Bodhika Meemaduma. [S.C.Appeal No.68/2010 W.P/HCCA/Col 98/2006(f) D.C.Colombo 7402/Spl S.C. minutes dated 26.07.2011]. In that decision, it was held by Gamini Amaratunga J as follows:

> *"A deed of gift is absolute and irrevocable. That is the rule. However, the law has recognized certain exceptions to the rule of irrevocability.* ***A party applying to Court to invoke the exceptions in his favour has to satisfy court, by cogent evidence, that the court would be justified in invoking the exceptions in favour of the party applying for the same.*** *In this case even if the appellant's evidence in the District Court is considered alone (without any reference to the contents of the documents P4A and P4B) her evidence falls short of the standard of proof required to invoke any recognized exception to defeat the rule of irrevocability. A mere ipse dixit like "he threatened to kill me" is not sufficient to discharge that burden".* [emphasis added]

Having discussed the law on establishing gross ingratitude committed by the donee and the standard of proof required in such a situation, it is then necessary to consider whether or not, the respondent in this case was successful in establishing with cogent evidence that the appellant, in fact had the intention of acting in a manner that constitute gross ingratitude towards the donor.

The respondent filed this action setting out, the instances where the appellant has alleged to have committed ingratitude not only towards himself but also towards the father of the both. Respondent had been away from the country for a long period of time and married to a foreign national. Before the parties were married they all were living together with their parents basically on the earnings of the father who ran a studio by the side of Galle Road in Wellawatta. It is not incorrect to state that they were a happy family living with harmony then. Both parties to the action married afterwards and the appellant was living where they were living with the parents and the respondent had decided to settle outside the country having married to a foreign national.

As their parents grew older, the appellant virtually took over the control of the properties belonging to their family that included the premises in suit as well. Indeed, there is evidence to show that the appellant had received rent amounting to Rs.40,000/- by renting out the property in suit, having given only Rs.5,000/- to the father.

Looking at the behavioral pattern of the parties, it is evident that the respondent was very much keen to see that the father is well looked after by her sister, particularly during the old age of the father. No doubt that the father too was well aware of such thinking of the respondent. It may have been the reason for him to write letters one after the other to the son even for a slightest issue. Those had been the circumstances under which the respondent had gifted the property in suit to the sister. The appellant cannot be heard to say that she was not aware of such a scenario. Therefore, it is not incorrect to state that the appellant was under the impression that she was causing ingratitude towards the brother by doing something that caused agony even to their father. Accordingly, it is appropriate even to look at those incidents that have taken place to ascertain whether the appellant intended causing gross ingratitude towards the respondent brother, she being the donee.

The respondent in his evidence has stated that the property was gifted to the sister, anticipating that she would look after the father as he was living in Germany though such a condition is not found in the deed itself. Said thinking of the respondent is seen by the following evidence:

ප්‍ර: එම ඔප්පුව ලියන්න හේතු වුනේ මොකද ?

උ: මම ජර්මනියේ ඉන්න නිසා තාත්තාව බලා ගන්න මට පුළුවන් කමක් නැහැ. මෙහේ ඉන්නේ නංගි විතරයි. ඒ නිසා තාත්තාව බලා ගන්න ලියා දුන්නේ.

ප්‍ර: තාත්තාව බලාගන්න නිසා ලියා දුන්නා?

උ: මට තාත්තාට ප්‍රතිකාර කරන්න බැරී නිසා. ඒ හේතුව උඩ නංගි මගින් ඒ සියල්ල කර ගැනීම නිසා. නංගිට කරන කෘතඥතාවයක් වශයෙන්, තාත්තාට සලකන නිසා මම තෑගි කළා. තාත්තාට සළකන්න වෙන පොරොන්දුව උඩ.

ප්‍ර: නංගි පොරොන්දු වුනා තාත්තාට සළකන්න? තාත්තාව බලා ගන්නවා කියා?

උ: ඔව්.

(Vide proceedings at page 31 in the appeal brief).

In answer to cross-examination too, the respondent has clearly stated that it was gifted because the love and affection he had towards the father.

ප්‍ර: එහෙම ඉල්ලීමක් කරලා නැහැ. තමන්ගේ කැමැත්තෙන් තමන් තෑගි ඔප්පුව දුන්නේ?

උ: ඔව්. මම තාත්තාට තිබෙන ලැදියාව නිසා මම දුන්නේ.

(මේ අවස්ථාවේදී පැ.1 ඔප්පුව සාක්ෂිකරුට පෙන්වයි)

(Vide proceedings at page 50 in the appeal brief)

The father has informed the respondent by his letter marked P2 of an incident where the appellant has scolded the father over a condition of a door frame. It had resulted the respondent coming down to Sri Lanka in order to console the father. The evidence in this connection reads thus:

ප්‍ර: ඒ එන්න හේතුව ?

උ: 1992 නොවැම්බර් මස දී, තාත්තා මට ලිපි කිහිපයක් එව්වා ගෙදර තිබුන මුලික ප්‍රශ්ණ සම්බන්ධයෙන් ගෙදර වැඩ කටයුතු සම්බන්ධයෙන්, ගෙදර උළුඅස්සක් හදන්න ගිය වේලාවේ දී, ඒක හදන්නේ නැතිව අරගලයක් ඇති වී, ඊට පසුව තාත්තාට නොයෙක් විදියේ කරදර ඇති වී තිබෙන නිසා ඒ කරදර

වලින් බේරා ගන්න මාර්ගයක් සොයා ගන්න 1992.12.11 වෙනිදා මා ශ්‍රී ලංකාවට ආවා.

(Vide proceedings at page 32 in the appeal brief)

In another occasion the respondent had to come down to Sri Lanka due to a telephone call received by him from the daughter of the appellant informing him that the father had taken poison. He stated that he came down to Sri Lanka on that occasion because he could not bear up the shock he had, upon hearing the incident of taking poison by the father. The evidence to that effect is as follows:

ප්‍ර: ආවේ මොන කාරණයක් නිසා ද ?

උ: මූලික කාරණාව තාත්තා වස බීලා කළුබෝවිල රෝහලේ ඇතුළත් කර ඉන්නවාය කියා එදා උදේ 4.00 ට පමණ නංගී ගේ දුව මට කිව්වා. "සියා වහා බීලා හොස්පිට්ල් එකට ඇතුල් කලා කියා ගෙදර ඉදන් කෝල් කලා.

ප්‍ර: 1995 දී තමා ලංකාවට ආවේ එම කාරණාව නිසාද?

උ: ඔව්. මොකක් නිසාද තාත්තා වහා බිව්වේ කියා දැන ගන්න ආවේ.

ප්‍ර: තමාට දැන ගන්න ලැබුනාද?

උ: මා ඇහුවාම කිව්වා. "මොන හේතුවක් උඩද කියා කියන්න බැහැ කිව්වා".

(vide proceedings at page 35 in the appeal brief)

The appellant too has testified to this incident and her evidence in this regard is as follows:

ප්‍ර: දැන් වත් දන්නේ නැද්ද තාත්තා වහ බොන්න හේතුව ?

උ: දුවගේ ගෙදර ලමයා වැඩ වගයක් කරලා එයාට තරහ ගිහිල්ලා ඒ ලමයාට හිරිහැර කරලා තිබෙනවා. ඒ හයට කියලා මම හිතන්නේ.

ප්‍ර: තාත්තා මොනවාද බිව්වේ ?

උ: මම කියන්න දන්නේ නැහැ.

ප්‍ර: මොකක්ද ඒ සිද්ධිය කියලා කියන්න පුළුවන්ද?

උ: දුවගේ ගෙදර ඉන්න ලමයාගේ වැඩක්. ඒ ලමයාව කළුබෝවිල රෝහලට අරන් ගියා. දුවයි මහත්තයයි.

ප්‍ර: දැනගත්තේ කොහොමද තමන් ?

උ: තාත්තාගේ නිවසේ ලමයෙක් නැවතිලා හිටියා ඒ ලමයා කිව්වේ.

(Vide proceedings at page 108 in the appeal brief)

The respondent also has said that he became very sad after having received the letters marked in evidence which were written by the father. The following is the evidence of the respondent to that effect in answer to Court.

(අධිකරණයෙන්) :-

ප්‍ර: තාත්තා වහා බිව්ව හේතුව කිව්වේ නැහැ?

උ: කිව්වේ නැහැ)

==========

ප්‍ර: තමන්ට ජර්මනියට මේ ලිපි ලැබුනාම තමන් මොන තත්වයකට පත් වුනාද ?

උ: මට හිතන්න බැරී විදියට කණගාටුවක් ආවා. (මේ අවස්ථාවේදී සාක්ෂිකරු අඬයි).

(Vide proceedings at page 35 in the appeal brief)

There had been another incident where a padlock had been placed preventing the respondent entering into the upstairs of the house. The evidence in this regard is as follows:

ප්‍ර: තමන් නැවත මතු ආරක්ෂාව සඳහා පැමිණිල්ලක් කලාද 1997.4.30 වන දින, ඒකට හේතුව මොකක්ද?

උ: ඔව්. ඒකට හේතුව පොලිසියට ගිය වේලාවේ නංගිටයි, ළමයින්ට ගෙදර සාමය ඇති නොවන වැඩක් කරන්න එපා කියා කිව්වා. ඒ අතරතුරේ නංගිගේ පුතා කාමරේ දොර වහලා ඉබ්බෙක් දාලා මට ඇතුල් වෙන්න නොවන ලෙස කටයුතු කලා. ඒ අවස්ථාවේදී මම දොර ඇර දෙන ලෙසට පැමිණිල්ලක් කලා ඒ පහර දෙන්න පෙරත් පැමිණිල්ලක් කලා. මට උඩ නවතින්න අවස්ථාවක් ලබා දෙන්න කියා.

(Vide proceedings at page 40 in the appeal brief)

Moreover, the respondent has stated that the appellant herself scolded him jointly with her children and it had led for him to leave the house. This is evident by the following questions and the answers.

ප්‍ර: තමන්ට මානසික බාධාවක් සිද්ධ වුනාද ?

උ: ඔව් මට මානසික වේදනා විඳින්න සිද්ධ වුනා. ඒ හේතුව නිසා නිතර, නිතර ලංකාවට ඇවිල්ලා හුඟාක් වියදම් දරන්න සිද්ධ වුනා. ඒ හැරෙන්න නංගි ඇයගේ දරුවන් සමඟ එකතු වී මට බැන වැදී ගෙදරින් ගහලා පැන්නුවා. ඒ තත්වයට මාව පත්කළා.

(Vide proceedings at page 41 in the appeal brief)

The father has also stated that the son-in-law of the appellant demanded Rs.40,000/- from him alleging that he damaged the car belong to the son-in-law. The father then had to pay Rs.40,000/- to the son-in-law. The evidence to that effect reads thus:

ප්‍ර: මේ ලිපියේ සඳහන් කර තිබෙනවා ගෙදර බඩු භාණ්ඩාදිය පොඩි පට්ටම් කළා කියා.

උ: ඔව්.

ප්‍ර: කවුද ඒ ?

උ: ඉම්මි මිණිබිරිගේ මහත්තයා. මේ සම්බන්ධව එවන ලද තවත් ලිපියක බොහෝ දුරට දන්වා ඇත. පොලිසියට යන්න ද අවශ්‍යය වුණා. අලාභ වශයෙන් මට රුපියල් 40,000/- ක් ශම්මිට ගෙව්වා. කාරය හිරුවාට. මට කිසි කෙනෙක් නැහැ කියන්න මේ කථාව. මා ..... හා හොඳයි කියා රුපියල් හතලිස් දාහක් මම ගෙව්වා. පොලිසියට පැමිණිලිකර මට හරියට හිරී හැර කලා. මා එක පැමිණිල්ලක් මේ සම්බන්ධයෙන් කලා. එම පැමිණිල්ල පැ.22 වශයෙන් ලකුණු කර ඉදිරිපත් කර තිබෙනවා.

ප්‍ර: මේ පැ.9 ලිපියේ තමා කියා තිබෙනවා "ලංකාවට වහාම පැමිණෙන ලෙස මා විසින් ආදරයෙන් කරුණාවෙන් දන්වා අයදිමි" කියා පුතාට දන්වා තිබෙනවා ?

උ: ඔව්.

(Vide proceedings at page 67 in the appeal brief)

The appellant too had admitted that her son-in-law took Rs.40,000/- from the father as damages in view of the damage caused to the vehicle though no evidence is found as to the person who damaged the vehicle other than what the son-in-law has told her. The evidence in this regard is as follows:

ප්‍ර: කාරයක් හිරීම ගැන සාක්ෂි දුන්නා නේද?

උ: දුවගේ මහත්තයා ගේ කාරය හිරීම සම්බන්ධවයි.

ප්‍ර: මොකක්ද සිද්ධ වුනේ ?

උ: දුවගේ මහත්තාය කිව්වා එයා දැක්කා කියලා. තාත්තා කාරය හුරලා ගේ ඇතුලට යනවා.

ප්‍ර: එයට තාත්තාගෙන් රුපියල් 40,000/- ක් ඉල්ලා සිරියාද ?

උ: අපි නොදැනුවත්ව දුවගේ මහත්තයා ඉල්ලුවා.

මම දුවගේ මහත්තයාට කිව්වා ඒ සල්ලි දෙන්න කියලා. දුන්නේ නැතිනම් මම හරී දෙනවා කිව්වා.

(Vide proceedings at page 109 in the appeal brief)

The appellant could have easily prevented such payment being made without having a blind eye to the issue, if she genuinely did not intend causing ingratitude to her brother.

Moreover, there is evidence to show that even the son-in-law of the appellant has assaulted the respondent. The respondent had made a complaint to the police of this incident and the said complaint is marked as P19. The following is the evidence in that connection.

ප්‍ර: තමන් පොලිසියට පැමිණිල්ලක් කලා ද?

උ: මා ඒ පිළිබඳව පොලිසියට පැමිණිල්ලක් කලා මැයි මස 4 වෙනිදා.

ප්‍ර: කවදාද ?

'පි19' උ: 1997 මැයි මස 4 වෙනිදා වැල්ලවත්ත පොලිසියට කරන ලද පැමිනිල්ල 'පැ 19' වශයෙන් කර ඉදිරිපත් කරමි. මේ පැමිණිල්ල කලා ඒක අස් කරලා දෙන්න කිව්වා.

'පැ20' ඊට අමතරව එදාම සවස 1997.05.4 වන දින තවත් පැමිණිල්ලක් කලා එම පැමිණිල්ල මේ අවස්ථාවේ දී 'පැ20' වශයෙන් ලකුණු කර ඉදිරිපත් කරමි.

එම පැමිණිල්ල කලේ පහර දීම ගැන.

(මේ අවස්ථාවේදී එය සාක්ෂිකරුට පෙන්වයි) එයින් කොටසක් කියවයි.

'රවී මට පහර ගැසුවා' එම කොටස 'පැ20 අ'

ප්‍ර: මහත්මයා එහෙම බැන වැදිලා ගහන්න හේතුව මොකක්ද ?

උ: මම උඩ ඉන්න අවස්ථාව ඉල්ලුව එකයි.

(Vide proceedings at page 39 in the appeal brief)

The father of the two parties also had confirmed having taken place such an incident and accordingly he has stated thus:

ප්‍ර: පැමිණිලිකරු කිව්වා පැමිණිලිකරුට විත්තිකාරියගේ පුතා පහර දුන්නා කියා ?

දුවගේ පුත්තු කී දෙනෙක් ඉන්නවාද?

උ: එක්කෙනයි.

ප්‍ර: පුතාගෙ නම මොකක්ද?

උ: මම දන්නේ නැහැ.

මම අහලා තියෙනවා ආරවුලක් ඇති වුන වෙලාවේ කීපදෙනෙක් ගහනවා, ගහනවා කියනවා ඇහුනා. මම දැක්කේ නැහැ.

ප්‍ර: ඒකට හේතුව මොකක්ද කියා දන්නවාද?

උ: මගේ පුතා සොල්දරය උඩ තිබුණ බඩු මුට්ටු අස් කරන්න කිව්වා.

(Vide proceedings at page 85 in the appeal brief)

The appellant could have avoided such an incident or at least should have taken some step to prevent it, if she did not allow the son-in-law to

occupy the house, to which the family members of her daughter had no right whatsoever. Those incidents clearly show that the appellant was acting with an ulterior motive to cause ingratitude towards his own brother.

Upon considering all the circumstances referred to above, it is clear that the respondent had undergone serious mental agony probably due to the implied acts of the appellant, even though some of those may not show any direct involvement by her. However, the fact remain that she had blindly allowed to have those incidents taken place continuously. Those are the circumstances which show the kind of intention, the appellant had, she being the donee.

Therefore, by looking at the totality of the evidence, it would indicate the attitude and the mindset of the appellant had, towards the respondent, he being his own brother. Such an attitude, to my mind shall constitute "gross ingratitude" particularly in the context upon which this action was instituted. Such a decision, I believe is correct when considering the family background referred to hereinbefore of the parties as well. In the circumstances, it is clear that the appellant has clearly intended causing gross ingratitude to the donee who is the plaintiff-respondent in this case.

In the circumstances, I am of the view that there exists ample of evidence to constitute gross ingratitude committed by the appellant she being the donee. Hence, it is my opinion that the learned District Judge is correct when he

decided to allow revoking of the gift given to the appellant on the ground of gross ingratitude. Therefore, I am not inclined to interfere with his findings.

For the aforesaid reasons, this appeal is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL