

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

C.A. No. 549/98(F)

D.C. Mt. Lavinia Case No. 605/96/L.

Bulathsinalage Harischandra Wasantha
Cooray,
No. 11/3, Vihara Mawatha,
Narangoda Paluwa,
Ambalama Junction, Ragama.

Defendant-Appellant

Vs.

Bulathsinalage Edwin Cooray,
No. 5, Mahinda Place,
Kirulapona, Colombo 6.

Plaintiff-Respondent.

Before : **K.T. CHITRASIRI, J.**

Counsel : **D.M.G. Dissanayake for the Defendant-Appellant.**

Daya Guruge for the Substituted-Plaintiff-Respondent.

Argued &

Decided on : **19.03.2014.**

K.T. CHITRASIRI, J.

Heard both Counsel in support of their respective cases. This is an appeal seeking to set aside the judgment dated 05.06.1998 of the learned District Judge of Mt. Lavinia. By the aforesaid judgment learned District Judge decided the case in favour of the plaintiff having answered the two issues affirmatively. Both those issues have been raised to establish gross ingratitude committed towards the original-plaintiff by the defendant-appellant in order to have the deed of gift bearing No. 1374 dated 02.06.1993 revoked.

The matters that should be looked into when considering revocation of a gift, on the basis of gross ingratitude had been comprehensively discussed in the case of ***Podinona Ranaweera Menike Vs. Rohini Senanayake 1992 (2) SLR 180***. In that decision it was held that a donor is entitled to revoke a donation on account of ingratitude if:

- i. the donee lays manus impias (impious hands) on the donor;
- ii. he does him an atrocious injury;
- iii. he willfully causes him great loss of property;
- iv. he makes an attempt on his life;
- v. he does not fulfill the conditions attached to the gift; or
- vi. on other, equally grave causes.

Accordingly, if the donee does atrocious injury to the donor it becomes a reason to have a deed of gift revoked. Furthermore, in **Crhisnaswamy Vs. Thilleipalam 59 NLR 265 Basnayake C.J.** held that revocation of a deed of gift may be granted on the Commission of a single act of ingratitude.

In view of the law referred to above it is now necessary to look at the evidence, in order to ascertain whether or not such an act had been committed by the donee towards the donor. The original plaintiff in his evidence in chief has stated thus:-

විත්තිකරු මට කුණුකරුපයෙන් බැන්නා. ඒ පාර දෙවනියා කෑ ගසාගෙන ඇවිත් කිව්වා එහෙම තාත්තට කතා කරන්න එපා කියා. ඒ පාර විත්තිකරු ස්ටුල් එක අරගෙන තමා දුටුව ගහන්න යනවිට මම ඉස්සරහට පැන්නා. මට පනත් නෑ. මම ස්ටුල් එක අල්ලන්න ගිනාම විත්තිකරු ස්ටුල් එකෙන් මට ගැනුවා. මගේ නලලත්, තොලත් තුවාල වුනා. මම ගෙදර තිබුණු බෙහෙතක් දමාගත්තා.

(vide proceedings at page 31 in the appeal brief)

In cross examination, he once again has confirmed the assault by the defendant-respondent with a stool. The said evidence is as follows:

ප්‍ර: ඒ අවස්ථාවේදී ගැටුමට සම්බන්ධ වුනා නේද සුරංගනී සහ තමා දුටලා?

උ: නෑ. නෑ. පස්සේ ඒ අය ආවේ. ලේලිත් විත්තිකරුත් ඇවිත් කතාවක් ඇතිවුනා. කතාව දුර දිග යනවා. විත්තිකරුට කේන්ති ගිනික් ස්ටුල් එකක් ගත්තා.

මට බලාගෙන් ඉන්න බෑ. මම එල්ලනා. මට ස්ටුල් එකෙන් හැරීලා ගැනුවා.
ඒ පාර තමයි මට තුවාල වුනේ.

(Vide proceedings at page 46 in the appeal brief)

Moreover, the witnesses Malani Cooray in answer to the questions posed in cross examination has stated that she was told by the father that he was assaulted by the defendant-respondent though she did not see whether the injury was caused by the defendant-appellant. The said evidence reads thus.

ප්‍ර: විභාගයේ දී ඇති වූ ප්‍රච්ඡේදය මොකක්ද?

උ: විභාගයේදී කිව්වා පියාට වෙන්න කියා. මෙයාට ගෙදර දෙන්න. තාත්තට හිරිහැර කරනවා නම් නඩු දාලා ආපසු ගන්න කිව්වා.

තාත්තා පහුවෙන්නදා රෝහලට ගෙනහින් වෛද්‍ය වරයාට පෙන්වුවා. නළල තුවාල වී තිබුනා. තාත්තා කිව්වා මල්ලි නංගිට ගහන්න යනකොට ඇල්ලුවාම තාත්තා කිව්වා ස්ටුල් එකෙන් ගැසුවා කියා.

නංගිට තැල්ම තිබුනා ඔරුවේ. අත ඉඳිමිලා තිබුනා.

ස්වාමිනි මට තව ප්‍රකාශයක් කරන්න තිබෙනව.

(vide proceedings at page 81 in the appeal brief)

The evidence referred to above has not been controverted at all. Hence, the said evidence clearly show that the defendant-appellant has assaulted the original plaintiff with a stool causing injury to his

forehead. He is the respondent's father who donated the land referred to in the deed sought to be revoked. The law referred to in the two decisions mentioned hereinbefore shows that such an act of the defendant-respondent is sufficient to have a deed of gift revoked on the basis of ingratitude towards the donor who is his father.

In the circumstances, I do not see any error in the findings of the learned District Judge.

For the aforesaid reasons this appeal is dismissed. Having considered the circumstances of this case, I make no order as to the costs of this appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

AKN