

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

1_Malamie Janthi Mahakumara
2Chamela Prasadini Vandabona
3Akila Sushan Vandabona
All of 372/2, Kandy Road,
Kurunegala

Substituted-Defendant-Appellant

C.A.No.825/97 (F)

D.C.Kurunegala No.4099/L.

Vs.

1.Gonagala Withanage Roshana Ajith
2.Gongala Withanage Sanjeewa Vithana
3. Gongala Withanage Nirosha Vithana
All of Gamagewatta, Gonagalpura
Bentota.

Plaintiff-Respondents.

Before : M.M.A.gaffoor,J. &
S.Devika de L.Theekoon,J.

Counsel : Vidura Gunarathne for the Substituted-
Defendant- Appellant.
S.N.Withisingh for the Plaintiff-Respondent.

Argued on : 07.02.2017

Decided on : 07.06.2017

M.M.A.Gaffoor,J.

This is an appeal against the order of the Learned Additional District Judge dated 29.09.1997. This case is being a rei-vindication action. The plaintiff-Respondents are entitled to the property morefully described in the schedule Number 1 of the Plaint by virtue of a deed of gift bearing No.5739 dated 25.07.1979 and by virtue of deed of transfer bearing No.156 dated 31.05.1989. The said deed of gift was subject to the life interest of Gunawathi who has leased out the property to the 1st Defendant by deed bearing No.426 dated 24.08.1988. After the demise of the said Gunawathi on 22.08.1991 the lease has come to end. In the aforesaid

circumstances the plaintiff –respondents prayed for a declaration of title and ejection of the defendant as well as damages.

The Counsel for the Respondents respectfully submitted that the appellant prayed for in his plaint for an entitlement of the property in suit and once the title is proved the burden shifts to appellant to establish that he is possessing the property on his own or any rights. In this case the appellant failed to prove his rights to possess the said property on a right accrued to him after the death of life interest holder and the lessor and he further submitted the title of the respondents and thereafter appellant is stopped from disputing title of respondent. In view of the Section 116 of the Evidence Ordinance, the learned District Judge correctly held in his judgment that the lease agreement has come to an end after the death of life interest holder.

According to the case of *Yapa Vs. Dissanayake Sedara 1981 SLR 361*, it is not essential that acceptance of donation on a deed of Gift should appear on the face of the instrument. Such acceptance may be inferred one in circumstances. Where there is no acceptance on the fact of the deed and there was no evidence of delivery of the deed nor of possession of the property acceptance cannot be inferred.

In the case of the Counsel for the Plaintiff- Respondent submitted that the appellant did not raise any issues in relation to the minority of the respondent but raised an issue, Issue No 12 whether the deed Number 5739 is null and void and invalid. And the 1st respondent in relation to his age and it was revealed that at the time of execution of the deed, the 1st respondent has reached the age of seventeen. Thus there is a valid acceptance. Acceptation could be effected by other means as well .

In the case of *Sri Lanka Ports Authority and another V.Jugolinjia –Boal East 1981 (1) SLR 18* in which it was decreed that;

“If no objection is taken, when at the close of a case document are read in evidence, they are evidence for all purposes of the Law. This is the *curses curiae* of the original Civil Courts.”

Similarly in the recent case of *Samarakoon V. Gunasekera and another 2011 (1) SLR 149* in which Amaratunga J. held inter alia that :

“ When a document is admitted subject to proof, the party tendering it in evidence is obliged to formally prove it by calling the evidence necessary to prove the document according to law. If such evidence is not called and if no objection is taken to the document it is read in evidence at the time of closing the case of the party who tendered the document it becomes evidence in the case.

On the other hand if the document is objected to at the time when it is read in evidence before closing the case of the party who tendered the document in evidence, the document cannot be used as evidence for the party tendering it.

Considering above findings it is clear there is no objection was made by defendant-appellant regarding the acceptance of the deed of gift by the respondent.

And also, in the case of *Yapa Vs. Dissanayake Sedara 1981 1 SLR 361*. It is not essential that acceptance of donation on a deed of gift should appear on the face of the instrument. Such acceptance may be inferred one in circumstances. Where there is no acceptance on the face of the deed and there was no evidence of delivery of the deed nor of possession of the property acceptance cannot be inferred.

The position of the appellant is that the appellants were minor at the time the gift were made and therefore they could not have accepted the deed of gift. In effect the appellants are challenging the title of the Respondents.

In the case of *Siriwardena V. Wiramanathan SLR 2001 2page No.228* it was held by lordship Justice Weerasuriya that:

1. The plaintiff respondent was 12 years of age at the time of the execution of the deed of gift, the Notary in attestation clause made explicit reference to the fact that he had duly read over and explained
2. The proposition that acceptance by a minor, does not contribute valid acceptance cannot affect, the validity of deed of Gift. It is competent for a minor to accept a donation in his favour inasmuch as he is benefitted thereby.

In *Coudert Vs. Don Elias 17 NLR 134* it was held when the property gifted was already in the possession of the respondent and who would not allow the plaintiff to take possession of it. How were the plaintiff to accept the gift except by means as an attempt to take possession of the property? This action is such an attempt and I am inclined to agree with the respondent's Counsel that in the circumstances of this case an action to gain possession of the property donated would be tantamount to a manifestation of the acceptance by the donee of the Gift.

In these circumstances of this case the 1st appellant was staying in the property until 1982 and the life interest of the property was in the name of Gunawathi and when Gunawathi had passed away, the respondent filed this case to take possession of the property in their control which was tantamount of a manifestation of acceptance by the Respondents.

The learned District Judge summarized that at the page 214 and had come to the conclusion that after the deed of Gift bearing No.5739 has been registered and it was handed over to the respondent's father therefore respondents are entitled to the property described in the schedule of the plaint.

In these circumstances, I am of the view that the learned District Judge has very carefully and correctly arrived his determination with correct perspective and analysed the entire verbal and documentary evidence place before him to come his conclusion.

Therefore the appeal is dismissed with cost fixed at Rs. 25,000/=.

JUDGE OF THE COURT OF APPEAL

S.Devika de L.Tennekoon,J.

I agree.

JUDGE OF THE COURT OF APPEAL