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

C.A. No. 613/99(F)
D.C. Kuliyapitiya Case
No. 9452/P.

1. Abusaleehu Ahamed Kabeer,
"Rasheed Villa"
Paragahadeniya,
Weuda.

2A. Mohamed Raseem Siththy
Masooda, 208,
Gampathyniwasa,
Polgahayaya,
Narammala.

1 and 2A DEFENDNAT-APPELLANTS

Vs.

Abusaleehu Mohamed
Thawfeek,
Polgahayaya,
Narammala.

PLAINTIFF-RESPONDENT

3. Ismail Seleha Ummma,
Molligoda,
Horombawa.
And 7 others.

DEFENDANT-RESPONDENTS.

C.A. 613/99(F) D.C. Kuliyapitiya Case No. 9452/P

Before : M.M.A. Gaffoor, J and
Janak De Silva, J.

Counsel : Roshan B. Gamage for the 1st Defendant-Appellant.
M.S.A. Wadood with Tharanga Edirisinghe for the 2A Defendant-Appellant.
Ifthikar Hassim with A. Hassim for the Plaintiff-Respondent.

Judgment will be
Delivered on : 01.02.2018.

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M.M.A. Gaffoor, J.

This is an appeal from the District Court of Kuliyapitiya.

The main point of contest in this appeal is the conditions under which a Muslim could revoke a deed of gift in respect of an immovable property.

The Plaintiff-Respondent originally instituted the instant action in the District Court of Kuliyapitiya to partition the land called "Bulugahamullahena" and now "Watte" morefully described in the schedule to the original plaint dated 06.07.1993 *(vide page 70)* and subsequently by his amended plaint dated 06.07.1993 *(vide page 75)* and setting out the pedigree with the devolution of title.

It is not in dispute that the original owner was one Seyyadu Fathima who was the mother of the Plaintiff-Respondent and she became entitled to the corpus sought to be partitioned in this action in terms of deed No. 10183 dated 18.03.1943. Thereafter the said Seyyadu Fathima transferred an undivided ¼ share of the land in the said corpus and ½ share of the house situated in the said corpus by deed No. 5633 dated 09.03.1969 marked **P1** *(vide page 255)* to her son Khalid.

Thereafter the said Khalid transferred his rights that he had obtained in terms of the deed no. 5633 to his father Abusallih by executing a deed no. 1089 dated 18.08.1974 marked **P2** *(vide page 259).* The father Abusallih thereafter gifted by deed no: 6253 dated 14.01.1981 marked **P3** *(vide page 216)* his title to his three sons; the Plaintiff the 1st Defendant and the 2nd Defendant.

The said Seyyadu Fathima died intestate and her husband and the eight children including the Plaintiff-Respondent and the Defendant-Appellants succeeded to the remaining ¾ share of the land and ½ share of the house as intestate heirs under Muslim law. This is not in dispute.

The dispute arises in what Abusalih did thereafter which was to revoke the deed of gift 6253 and gifted all his rights and interests to his son, the Plaintiff-Respondent by deed no: 9564. The Plaintiff-Respondent submits that the deed of gift no: 6253 was revocable and the Defendant-Appellant dispute this.

It is not in dispute between the parties that in respect of deeds of gifts between the law that ought to be applied is Muslim law (section 3 of the Muslim Intestate Succession Ordinance No: 10 of 1931). It is also not in dispute that under classic Muslim law that possession of the

subject matter of the gift must be handed over to the donee for the gift to be complete and upon completion it remain irrevocable. However in this case the deed of gift 6253 was subject to the life interest of the donor - the father Abusalih. Reservation of t he life interest does not complete the gift under Muslim law (Sultan v Peiris 35 NLR 57). Therefore the gift in the deed of gift no: 6253 is per se in valid.

Furthermore the application of the classic Islamic law is subject to the proviso to section 3 of the Muslim Intestate Succession Ordinance which is as follows.

Provided that no deed of donation shall be deemed to be irrevocable unless it is so stated in the deed and the delivery of the deed to the donee shall be accepted as evidence of delivery of possession of the moveable or immovable property donated by the deed.

The deed no: 6253 does not state that it is irrevocable. Words in statutes must always be given their literal meaning unless they result in absurdity. There is nothing absurd in interpreting the word 'stated in the deed' to mean 'expressly stated' and this meaning is in accord with actual notarial practice of specifically stating whether a deed is revocable or not and it appears that the intention of Parliament in enacting the

Muslim Intestate succession Ordinance was to bring clarity in to that area of law.

The Defendant -Appellants rely on the words **"Sadakalayatama"** in the deed no: 6253 and the judgment in ***Sinna Marikkar V Thangaratnam 57 NLR 260*** does not state that even if it is 'implicitly stated' that it would be good enough to meet the standared in the proviso to section 3. His observation is that *'I find no words in the deed from which a renunciation of the right of revocation appears either expressly or by necessary implication.'* It is not an interpretation of section 3 of the Muslim Intestate Succession Ordinance specifically. In any case the words 'Sadakalayatama' does not necessarily imply that the deed of gift is irrevocable. The deed could be interpreted as gift granted 'forever' unless and until revoked. That interpretation also cannot be excluded. Therefore the 'necessary' implication is not that the deed of gift was irrevocable.

In this appeal 1st & 2nd Defendant Appellant had filed further written submissions by way of a motion 6th December 2017, in which he had drawn the attention of this Court to the issues mainly No.1, namely did abusally who has gifted an undivided 1/4th share in the subject matter of this action to the 1st & 2nd defendants, and the Plaintiff in this action in terms of Deed No.6253(P3) dated

14th January 1981, revoked the said deed in terms of Deed No.9563 (P4) dated 29th Nov. 1987attested by K.T.Wettwa Notary Public for the said issue the learned District Judge had answered " No".

However answering the defendant's issue No. 6 vide Page 95 contrarily to the answer in the affirmative to the staid issue No.1 the Learned District Judge has stated that (Deed 6253) (P3) has been revoked by Deed No.9563 (P4).

Issue No. 6 framed by the Defendants 1st and 3rd from the D.C. Kuliyapitiya, namely

Are the said Defendant denying the revocation of Deed No. 9563 dated 29th 11 1987 (P4) by Abbusally.

The learned District Judge had answered the said issue as, Deed No.3253 had been revoked by Deed No.9563.

Considering the issues the Learned District Judge had allotted the shares as given in the judgment.

This Court notes that there is a discrepancy or a conflict in the answers given by the Learned District Judge. In the light of the above analysis of

the Learned District Judge, we see no prejudice had been caused to the 1st and 2nd defendants.

The learned Counsel for the Plaintiff submitted that the learned District Judge failed to given reasons for her judgment as required by section 187 of the Civil Procedure Code. I am unable to agree the judgment contains the reasons for the conclusions set out therein. In any event, the proviso to Article 138(1) of the Constitution states that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice. Therefore, even where there is a failure to comply with Section 187 of the Civil Procedure Code, if it is evident on a close examination of the totality of the evidence that the learned District Judge is correct in pronouncing judgment, there is no prejudice to the substantial rights of the parties or occasioned a failure of justice and the judgment of the learned District Judge should not be disturbed. The evidence in this case supports the judgment of the learned District Judge.(Victor and Another V, Cyril de Silva (1998) 1 Sri LR 41)

Further this court is of the view that issue No.1 should have been answered as " Yes" . It is also noted that his being an oversight in the light of the Learned

District Judge's comprehensive analyses. Therefore this court rectify and correct the answer to issue No.1 as ' Yes".

Therefore we see no valid and a justifiable reason to interfere with said judgment of the Learned District Judge of Kuliyapitiya delivered on 30th July 1999.

Hence for the reasons enumerated above this appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Janak De Silva, J.

I agree.

JUDGE OF THE COURT OF APPEAL