

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

1. D.M. Gunadasa
No.22, Sumanatissa Mw.
Padukka Road, Horana
2. D.M. Wijepala
Bambaragaha Ulpatha,
Kuruwitenne

Plaintiffs

C.A. No. 37/95(F)

D.C. Badulla Case No. 423/92/L

Vs.

D.M. Somawathi Alias Samawathi
4th Mile Post Galkotuwawatta,
Ketawala, Landewela

Defendant

AND

1. D.M. Gunadasa
No.22, Sumanatissa Mw.
Padukka Road, Horana
2. D.M. Wijepala
Bambaragaha Ulpatha,
Kuruwitenne

Plaintiff- Appellants

Vs.

D.M. Somawathi Alias Samawathi
4th Mile Post Galkotuwawatta,

Ketawala, Landewela

Defendant-Respondent

AND NOW BETWEEN

1. D.M. Gunadasa
No.22, Sumanatissa Mw.
Padukka Road, Horana

Plaintiff- Appellant-Petitioner

2. D.M. Wijepala
Bambaragaha Ulpatha,
Kuruwitenne

Deceased-Appellant

- 2A. Senadeera Siriyalatha

Bambaragaha Ulpatha,

Kuruwitenne

- 2B. Ravindra Pushpakumara

Dissanayaka

Bambaragaha Ulpatha,

Kuruwitenne

- 2C. Piyal Kumara Dissanayaka

Bambaragaha Ulpatha,

Kuruwitenne

- 2D. Vajira Kumara Dissanayaka

Bambaragaha Ulpatha,

Kuruwitenne

Substituted-Plaintiff- Appellants

Vs.

1.

D.M. Somawathi Alias Samawathi
4th Mile Post Galkotuwawatta,
Ketawala, Landewela

Deceased-Defendant-Respondent

1A. D.M. Upul Kumarasiri Bandara
4th Mile Post Galkotuwawatta,
Ketawala, Landewela

Substituted-Defendant-
Respondent

BEFORE : M.M.A.GAFOOR, J. &
JANAK DE SILVA, J.

COUNSEL : Dr. Jayatissa de Costa P.C. for the Plaintiff-
Appellants.
S.A.D.S. Suraweera for the Substituted
Defendant-Respondent.

ARGUED ON : 03-10-2017.

WRITTEN SUBMISSIONS

TENDERED ON: 19-01-2018(By the appellants)
27-02-2018(By the respondents)

DECIDED ON : 22nd June, 2018

M.M.A.GAFOOR, J.

This refers to an appeal from the judgment of the learned District Judge of Badulla for the declaration of title to the land in dispute action No.423/92 L.

The Plaintiff-Appellants (hereinafter referred to as the Appellants) both brothers had filed this action against their sister who is the Defendant-Respondent (hereinafter referred to as the Respondent) for a declaration of title to the land and premises described in the schedule to the plaint, which is produced and filed of record.

The Appellants claimed their chain of title to the land in equal shares by virtue of the Deed of Gift bearing No. 27248 dated 26/01/1967 attested by H.S.Abeysekera Notary Public, gifted by their mother Heen Menike who was the original owner of the said land in dispute.

Heen Menike had eleven children and all the children were born in the land and premises described in the schedule including the Appellants and the Respondent. Although there were eleven

children in the family, their mother had gifted the specified land equally to the two children namely, D.M.Gunadasa and D.M. Wijepala (the 1st and the 2nd Appellants) in 1968 and she died in 1978.

D.M.Gunadasa (the 1st Appellant) and D.M. Wijepala (the 2nd Appellant) are the Donees of the Deed of Gift bearing No. 27248. The 1st Appellant was in Police service and lived in Horana.

When the Deed of Gift No. 27248 was executed, he was not present to accept the gift made by his mother Heen Menike and then the 2nd Appellant D.M. Wijepala (2nd named Donee) accepted the gift for himself and on behalf of the 1st Donee (D.M. Gunadasa).

Later the Appellants submitted that they had possessed and enjoyed the land from 1968 to 1982, also they had rented out the said premises and collected the rent for two years' of period somewhere around 1974.

The Appellants further pleaded that in the year of 1982 they allowed the Respondent being their sister to occupy the land and house thereon with the leave and license of them and afterward the

Respondent commenced disputing the title of the Appellants and refused to vacate the premises in suit and she had taken undue advantage of the leave and license.

But the Respondent claimed that Deed of Gift No. 27248 is not valid in law and she came into occupation of the said premises in 1982 and derived title to the property by way of uninterrupted possession for over ten years and had been paying certain taxes for the particular land and premises in dispute.

The learned District Judge of Badulla in his judgment delivered on 22/02/1995, dismissed the Appellants action for the reason that the Deed of Gift No.27248 executed by the parties in accordance with Roman Dutch Law had not been properly accepted by one of the Donee and held that hence after the demise of the Donor (the mother) the $\frac{1}{2}$ share of the premises had to be devolved upon the other children of the Donor including the Respondent.

The Appellants pleaded that the finding of the learned District Judge as to the acceptance of the Deed of Gift concerned was erroneous as one brother could have accepted the gift on behalf of

the other and moves the aforesaid judgment of the learned District Judge of Badulla be set aside and allow the appeal.

The bone of contention of this matter raises as an Issue No. 07, before the trial Judge.

“Whether the Deed of Gift No. 27248 stated in the plaint is the gift valid in law?”

General principles under Roman Dutch Law in regard to the Deed of Gift is a contract and there must be a Donor and a Donee or Donees to the transaction to make a valid gift.

The Donee by way of accepting the gift via placing his signature at the time of its execution and no deed of gift is completed until it is accepted by the Donee.

In **Wickremasinghe Vs. Wijetunga** 16 NLR 413 Pereira J stated that :

“a donation of land must be notarially attested as much as the making of the donation and the acceptance by the Donee himself or by some person competent in law to represent the donee for the purpose of entering into such contracts. But in

view of the long series of decisions it will be in expedient to the question their correctness at this time of the day"

The Respondent submitted that though the both Appellants got a gift of the land, there were eleven children in the family. The mother gifted in 1968 and died in 1978. The gift has been accepted only by one of the Donees. The 1st Appellant was in Horana, when the gift was made. He did not accept the gift and also he admitted the same before the learned trial Judge.

We have taken into consideration of the cases referred to us in **Chellaih Vs. Sivasambo 75 NLR 193**, **Abeywardana Vs. West 58 NLR 313**, **Bindua Vs. Untty 13 NLR 259**, are which examined and analyzed the relevant principle of law to develop and to implement where the property gifted to minors and the acceptance on behalf of the minors.

It is noted that the 1st Appellant was 38 years old in 1968, and lived in Horana could have been accepted the gift but he didn't. And there was valid reasons shown by the 1st Appellant for his not acceptance of the gift. The law and its principles favours the acceptance of the gift on behalf of a minor but in the case of adults there should be a valid acceptance of the gift.

I am of the view that according to Roman Dutch Law, a Deed of Gift is a contract and the principle of acceptance is essential for the transfer of rights on a contract. And further the Donees were majors at the time of the donation took place and there was no evidence led to establish the fact that the 1st Appellant had accepted the donation to complete the contract between himself and the donor. Further in accordance with the judgment held in **Wickremasinghe Vs. Wijetunga 16 NLR 413** that when a gift is being accepted by a third party on behalf of a donee, the said person should have the capacity and authority to accept the donation.

I am of the opinion that it has not adduced any evidence to show any capacity or authority given to the 2nd Appellant to act or sign and accept the gift on behalf of the 1st Appellant and by the 1st Appellant.

It is observed that the learned District Judge relied strongly on principles analyzed in the case of **Wickremasinghe Vs. Wijetunga 16 NLR 413** and Roman Dutch Law principles and correctly arrived his conclusions by answering Issue No.7 negative stating clear reasons in his judgment.

I am of the firm view, that the 1st Appellant did not accept the donation and therefore his half share remained the property of Heen Menike and at her death should be devolved on all the eleven children including the Respondent who is thus entitled to 1/11th share of the 1/2 share. The 1st Appellant's gift is not valid and I affirm the learned District Judge's judgment and dismiss the appeal with costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL