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

Sirimevan Wanshanatha Sooriya Bandara,
No. 1, Radio Station Centre,
Housing Scheme,
Thalangama South,
Thalangama.
Plaintiff-Appellant

CASE NO: CA/594/1996/F
DC KULIYAPITIYA CASE NO: 7558/L

Vs.

1. Jayaweera Arachchige Pushpawathie,
   Thunmodera,
   Kuliyapitiya.
2. Allahuwa Lekamlage Upali alias Upali Premanath,
   Udubaddawa Town,
   Udubaddawa.
3. Allahuwa Lekamlage Sunil Ratnasiri alias Sumith Ratnasiri,
   Udubaddawa Town,
   Udubaddawa.

1st-3rd Defendant-Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Manohara de Silva, P.C., for the Plaintiff-Appellant.

Dr. Sunil Cooray for the Defendant-Respondents.

Decided on: 22.01.2019

Samayawardhena, J.

The plaintiff filed this action against the three defendants seeking declaration of title to the land described in the schedule to the plaint, ejectment of the defendants therefrom and damages. The defendants sought dismissal of the action. After trial, the learned District Judge dismissed the plaintiff's action on the basis that, as the defendants are also co-owners of the land, the dispute shall be resolved by way of a partition action. It is against the said Judgment the plaintiff has filed this appeal.

The original owner of the land was Jinadasa. His two daughters are the 1st defendant Pushpawathie, and Seelawathie whose children are the 2nd and 3rd defendants. Jinadasa gifted that property subject to the life interest of himself and his wife to Pushpawathie and Seelawathie by the Deed of Gift marked P9. Thereafter he has purportedly revoked that gift by the Deed of Revocation marked P10 and parted with portions of the land by subsequent Deeds.

The argument of the learned President's Counsel for the plaintiff-appellant (appellant) before this Court is two-fold:

(a) There was no acceptance of the Deed of Gift

(b) The Deed of Revocation is valid

At the time the Deed of Gift was executed the two donees were minors. Therefore, the gift has been accepted, on the face of the Deed of Gift, by Chandrasena, on behalf of Seelawathie whom he has identified in the Deed as his wife, and Seelawathie's sister, the 1st defendant Pushpawathie. Notwithstanding Chandrasena in the Deed of Gift has identified himself as the husband of Seelawathie and the son-in-law of the donor Jinadasa, according to the Marriage Certificate marked P11, Chandrasena and Seelawathie have got married about one month after the execution of the said Deed.

The learned President's Counsel for the appellant has cited a number of authorities for the proposition that "*for there to be proper acceptance of a donation, either the person should be recognized by law as a lawful guardian, such as mother, father, grandmother or grandfather, or there need to be lawful authorization for such by a third party to accept a donation on behalf of a minor*". According to the learned President's Counsel, there was no proper acceptance of the said gift as stated above, and therefore the gift is invalid. I regret my inability to accept that argument.

The general principle is that a donation is not complete unless it is accepted by the donee.

Hendrick v. Sudritaratne (1912) 3 CAC[1] *80* is on all fours with the present case. That was a case a father executed a Deed of Gift subject to his life interest in the name of her minor daughter, which was accepted by her future husband. The lower Court took the view that there was no valid acceptance of the gift. Setting aside the said Judgment, it was held in appeal:

> *Under the Roman-Dutch Law no particular form is required for the acceptance of the gift. It is in every case a question of fact whether or not there are sufficient indications of the acceptance by the donee.*
>
> *A deed of gift to a minor may be accepted by the minor himself or through any agent recognised by him for that purpose. A future husband of a minor daughter is entitled to act as an agent in that behalf.*

It was further held that there is a rebuttable presumption in favour of the acceptance of the deed, and the burden is on the party who asserts that it was not accepted to rebut that presumption. Lascelles C.J. at page 81 stated:

> *There is, I think, a natural presumption in all these cases that the deed is accepted. Every instinct of human nature is in favour of that presumption, and I think that, where a valuable gift has been offered, and it is alleged that it has not been accepted, some reason should be shewn for the alleged non-acceptance of the gift.*

The plaintiff in this case has manifestly failed to rebut that presumption.

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[1] Court of Appeal Cases in Ceylon

Wood Renton J. whilst entirely agreeing with Lascelles C.J., at page 83 further added:

> *Although under the deed the donor retained a life interest, there was no room in law, and there took place in fact, a present acceptance of the dominium which the deed conferred subject to the life interest.*

The principle that the question of acceptance is one of fact and each case has to be determined according to its merits is well established.

In *The Government Agent, Southern Province v. Karolis (1986) 2 NLR 72* it was held that:

> *The law favours the acceptance of gifts in the case of minors. The acceptance on the face of the deed by some person or other is not necessary: acceptance will be presumed when there are circumstances to justify such presumption.*

In *Bindua v. Unity (1910) 13 NLR 259* it was held that:

> *Acceptance may be manifested in any way in which assent may be given or indicated. The question of acceptance is a question of fact, and each case has to be determined according to its own circumstances.*

In this case Wood Renton J. with Grenier J. agreeing at page 261 stated:

> *For the purpose of determining whether there was such an acceptance, we are entitled to look not only at the*

circumstances accompanying, but also at those subsequent to the date of the donation.

That means, subsequent conduct of the donor is also relevant when determining the question of acceptance of the gift. In the instant case, the donor, unilaterally decided to revoke the Deed of Gift by the Deed of Revocation marked P10 (which I will deal with later) by giving two grounds. However, it is interesting to note that there he does not state the failure to accept the deed as a ground for revocation. If the gift was not accepted, I am quite certain that he would have stated it as the first ground. Vide *Bertie Fernando v. Missie Fernando [1986] 1 Sri LR 211*. This is clearly an afterthought. It is only after the purported revocation, subsequent deeds have been executed.

For the aforesaid reasons, I hold that there is a valid acceptance of the Deed of Gift by Chandrasena on behalf of both the donees.

The next matter to be considered is whether the Deed of Revocation marked P10 is valid.

The donor has not reserved the power of revocation in the Deed of Gift. Hence the general principle is that it is irrevocable. The donor in the Deed of Revocation, as I stated earlier, gives two reasons for revocation. One is failure to provide succour and assistance to the donor and his wife in violation of a condition of the Gift and the other is he is governed by the Kandyan Law.

If the latter position was factually correct, the revocation would have been valid as the Kandyan Law (unless there is a very special clause of renunciation of the right to revoke) reserves to

the donor the right to revoke a gift during his lifetime without the consent of the donee or any other person and without the sanction of Court. Vide *Dullewe v. Dullewe (1968) 71 NLR 289 (PC), Sirisena v. Eyelyn de Silva [2003] 2 Sri LR 255.* However, this position, i.e. that the donor was subject to the Kandyan Law was false, and no evidence was led to that effect at the trial, and no such a position was taken up before this Court. Any person claiming to be subject to any special law in derogation of the common law must prove it. Vide *Piyadasa v. Babanis [2006] 2 Sri LR 17.* The conclusion is irresistible that the donor is subject to the common law.

The remaining question is whether the Deed of Gift P9 executed subject to the condition that the donees shall provide succour and assistance to the donor and his wife can be revoked by the donor himself without a decision of Court on the basis that donees failed to provide such succour and assistance (as stated in the deed) from the date of the gift until the date of revocation.

The learned President's Counsel for the plaintiff-appellant has drawn the attention of the Court to (a) R.W. Lee, An Introduction to Roman Dutch Law, page 297; (b) Maarsdorp on Obligation, Vol III, pages 96-98; and (c) The Laws of Ceylon by Walter Pereira, Vol III, pages 524-525 in this regard. However, the celebrated authors in those treatises, although state revocation of a gift is possible on various grounds including gross ingratitude on the part of the donee (over which there is no dispute), have not stated that revocation can be done by the donor unilaterally by executing another deed without a decision

of the Court. That is not the position under the Roman-Dutch Law.

The Notary who executed the Deed of Revocation marked P10 was called as a witness of the plaintiff. He is an Attorney-at-Law as well. He, in his evidence (at page 169 of the Brief) has categorically stated that even though two reasons were stated in the deed as reasons for revocation of the Deed of Gift, in fact, the Deed of Gift was revoked because the donor Jinadasa told him that he was subject to the Kandyan Law, and he knew very well that an irrevocable Deed of Gift cannot be revoked by a subsequent Deed of Revocation without a decision of Court on the ground of ingratitude.

In the Supreme Court case of *Dona Podi Nona Ranaweera Menike v. Rohini Senanayake [1992] 2 Sri LR 180* Amerasinghe J. held:

> *Although a gift is generally irrevocable it is revocable*
>
> *(i) if the donee failed to give effect to a direction as to its application (donatio sub mode) or*
>
> *(ii) on the ground of the donee's ingratitude or*
>
> *(iii) if at the time of the gift the donor was childless but afterwards became the father of a legitimate child by birth or legitimation.*
>
> *A donor is entitled to revoke a donation on account of ingratitude.*
>
> *(i) if the donee lays manus impias (impious hands) on the donor*
>
> *(ii) If he does him an atrocious injury*

(iii) If he wilfully causes him great loss of property

(iv) If he makes an attempt on his life

(v) If he does not fulfil the conditions attached to the gift

(vi) Other, equally grave causes.

Slight acts of ingratitude are insufficient for revocation. What amounts to an act of ingratitude sufficient to warrant revocation must vary with the circumstances of each case. Ingratitude is a form of mind which has to be inferred from the donee's conduct. Such an attitude of mind will be indicated either by a single act or a series of acts. The donee-daughter by assaulting her donor-parents was guilty of the foul offence of ingratitude. Revocation is not however automatic. It requires a decision of the court. (emphasis added)

In *Ariyawathie Meemaduma v. Jeewani Buddhika Meemaduma [2011] 1 Sri LR 124* Justice Amaratunga on behalf of the Supreme Court set out the law in the following terms:

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 exception in favour of the party applying for the same. (emphasis added)

The Judgment of this Court by Anil Gooneratne J. in *Wilson v. Sumanawathie* (CA 535/95/F decided on 30.11.2007) where it was held that a donor could revoke a Deed of Gift on gross

ingratitude without a decision of Court is with respect a decision given in *per incuriam*. To rectify the anomaly created by this Judgment and to maintain the *status quo* which prevailed before this Judgment, the Revocation of Irrevocable Deeds of Gift on the Ground of Gross Ingratitude Act, No. 5 of 2017 was particularly enacted. Section 2 of the said Act expressly states:

> *An irrevocable deed of gift may be revoked on the ground of gross ingratitude, only on an order made by a competent court, in an action filed by the donor of such deed against the donee to have the said deed revoked.*

The plaintiff did not lead any evidence to prove that donees did not look after the donor and his wife. The evidence is to the contrary. Vide the evidence of Sinduwa (who is a witness called by the plaintiff) at page 173 of the Brief and the evidence of the 1st defendant at page 184.

An irrevocable Deed of Gift cannot be revoked without a decision of Court and therefore the Deed of Revocation executed by the donor is void *ab initio*.

The donor Jinadasa, soon after the execution of Deed of Revocation, has executed several other Deeds tracing his title only to the Deed of Revocation. If the Deed of Revocation is void *ab initio*, the subsequent Deeds which flow from it, are also void *ab initio*. Vide the Judgment of the Supreme Court in *Padmal Ariyasiri Mendis v. Vijith Abraham de Silva [2016] BLR 69 at 73*. I hold that the subsequent Deeds are void *ab initio*.

Appeal is dismissed with costs.

Judge of the Court of Appeal