

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

In the matter of an application under the provisions of High Court of the Province (Special Provisions) Act No.19 of 1990 as amended by the Act No.54 of 2006, for leave to appeal against judgement dated 11/09/2012 delivered by the High Court of the Southern Province in SP/HCCA/GA/0030/2006 (F) D.C. Galle Case No.13556/L.

S.C. Appeal No.31/2013,

S.C.HCCA/LA No.444/2012,

S.C.HCCA/GA/Appeal No.030/2006 (f),

D.C.Galle Case No.13556/L

Dona Premawathie
Kodithuwakkurachchi,
'Seedevi', Narawala,
Poddala.

Plaintiff

Vs.

1. Kuragodage Sujitha Gunawathie

2. Piyasena Annatta Pathirana alias
A.P. Gunadasa both of Post Office
Quarters, Poddala.

Defendants

Dona Premawathi
Kodithuwakkuarachchi,
'Seedevi', Narawala,
Poddala.

Plaintiff -Appellant

Vs.

1. Kuragodage Sujitha Gunawathie
2. Piyasena Annatta Pathirana alias
A.P. Gunadasa both of Post Office
Quarters, Poddala.

Defendant –Respondent

And Now Between

1. Kuragodage Sujitha Gunawathie
2. Piyasena Annatta Pathirana alias
A.P. Gunadasa both of Post
Office Quarters, Poddala.

Defendant-Appellant-Petitioner

Vs.

Dona Premawathi
Kodithuwakkuarachchi,
'Seedevi', Narawala,
Poddala.

Plaintiff-Appellant-Respondent

Before: Buwaneka Aluwihare PC, J.

Priyantha Jayawardena PC, J.

L.T.B.Dehideniya, J.

Counsel: Dr. S.F.A.Cooray with Ms. Sudarshani Cooray and Nilanga Perera
for the Defendant-Respondent –Appellants.

Manoj de Silva instructed by Dhammika Gabadage for the
Plaintiff-Appellant-Respondent

Argued on: 02.03.2018

Decided on: 05.04.2019

L.T.B.Dehideniya J,

The Plaintiff –Appellant- Respondent (hereinafter sometime called and referred to as the Respondent) has appealed to this court against the Defendant-Respondent- Appellants (hereinafter sometime called and referred to as the Appellants) to seek a revocation of a Deed of Gift No: 25057 dated 24.07.1994 subject to the life interest of Respondent on the ground of 'gross ingratitude' on the part of the 1st Appellant.

It appears from the circumstances of the case that, the Respondent has gifted the property to the 1st Appellant for the affection towards her. The 1st Appellant has resided with the Respondent and her ailing husband providing due care and support to both of them. The 2nd Appellant was at that time employed in Katuwana as a post master, travelling regularly to see his wife (1st Appellant) and the children. Simultaneously, he has provided care and support to the Respondent and her husband.

The deed of gift which is subjected to the discussion in this case was executed on 24-06-1994 subsequent to the death of the Respondent's husband. The date on which the Respondent's husband died was 12-06-1994. The Respondent's position was that the 2nd Appellant was handed over the original of her deed with the intention of preparing the impugned deed, 2 or 3 days before the execution of the deed. This position is rejected by the 2nd Appellant and he produced evidence before the court to prove that, he was working at his workplace in Katuwana, for continuous 05 days prior to the execution of the deed. With this allegation, the Respondent further holds the position, that there was an inducement on the part of the 2nd Appellant at the point of executing the deed and reiterates that there was an inducement to execute the deed by deceit. The inducement as the Respondent discloses, was a request to transfer the property to enable him to obtain a telephone connection. The Appellants denied this connection.

The Respondent's contention is that, she was the chief householder and the 1st Appellant was a resident in her household. The Respondent further states that, she was induced to execute the deed in favour of 1st Appellant. Once the deed was executed the 1st Appellant on two occasions had taken the keys of the house with

them leaving the Respondent at home. The main complaint which was directed against the 1st Appellant was the maltreatment. The Respondent states that, the 1st Appellant offered her stale food or food without proper complementary curries. Further, the Respondent alleges that, the 1st Appellant left the house with her family on 15th January and 28th March 1997, and on the latter date, she resided at the official quarters of Poddala Post Office where her husband (2nd Appellant) was working.

The 2nd Appellant was employed as a Post master attached to the Postal Department. The children of them were attending to the schools in Katuwana and the family was spending a highly contended life in 2nd Appellant's hometown in Katuwana. The 1st Appellant has revealed that, there was a close relationship between the Respondent and her from childhood. Both Appellants emphatically state that, they do not have a trace of ill will towards their relations.

This matter proceeded to trial at the District Court and the Learned District Judge delivered the judgement in favour of the Appellants.

The Learned District Judge scrutinized the allegations which were made by the Respondent against the Appellants on the ground of 'gross ingratitude'. He highlighted the fact that the Respondent attempted to establish ingratitude, by stating that, the 1st Appellant has made a differentiation between her children and the Respondent when preparing meals. What the District Judge emphasizes in his judgement is that, a single instance related to the preparation of meals within the family unit in which the Respondent and the Appellants live with their children is not sufficient to blame it on the 1st Appellant. Further, the contention of the District Judge specified that, 1st Appellant's act of preparing a special kind of

meal to her children at the schooling stage is not a reason to revoke a notarialy executed deed on the ground of 'gross ingratitude'. The Respondent's evidence clearly show that, she had lived with the Appellants for a considerably long period of time. In such a condition, the Respondent's complaint over a trifle matter connected to a meal on the ground of ingratitude is not of much importance.

The view of the Learned High Court judge is different from what the District Judge held. According to her viewpoint, the deed was executed by the Respondent, by considering her own condition of life as a childless widow, and with the expectation that the 1st Appellant will look after her with care and kindness. Subsequently, the Respondent needed to revoke the deed upon the understanding that her expectation is not fulfilled by the 1st Appellant, and she was mentally crestfallen due to the acts of the 1st Appellant. The learned high court judge further held the view that, the Respondent being an aged childless widow confronted a helpless situation in her life due to the conduct of the Appellants and the Appellants' acts reflect 'gross ingratitude'.

The Appellants being the Petitioners sought to leave to appeal from this court on the following questions of law and the court granted leave on all the said questions. The said questions are,

- 1) Did the learned High Court Judge err in Law by intervening the judgement of the learned District Judge without analysing the evidence of this case;
- 2) Did the learned High Court Judge err in Law by not considering that the Appellant's main complaint of maltreatment by the 1st Respondent is in respect of offering her stale food or food without proper complementary

curries and that this position is a total fabrication on her part to conjure up this false case;

- 3) Did the learned High Court Judges err in law by failing to consider that the law pertaining to the revocability of an irrevocable deed of gift on the ground of ingratitude constitutes a grave cause like assault or acting in manner which an attempt at the life or limb or some atrocious conduct is attributed to the donee;
- 4) Did the learned High Court judges err in law by coming to the conclusion that, there was gross ingratitude on part of the Petitioners;

The Respondent's main allegation against the 1st Appellant is the maltreatment accompanied with 'gross ingratitude' and further emphasizes it as the basis for the revocation of the deed of gift. In the general sense, there are certain instances where it is authorized by the law, for the revocation of a deed of gift.

In **Kirshnaswamy vs. Thillaiyampalam NLR 265**, Basnayake C.J held that, gift is generally irrevocable but some exceptional instances renders it revocable.

- 1) *If the donee failed to give effect to a direction as to its application (donatio sub modo) or*
- 2) *On the ground of the donee's ingratitude or*
- 3) *If at the time of the gift, the donor was childless but afterwards became the father of a legitimate child by birth or legitimation.*

It is clear that, the Respondent is legally entitled to revoke the deed of gift on 'gross ingratitude'. But, the term 'gross ingratitude' does not denote a ground of revocation which can easily be utilized by a donor to revoke a deed of gift under his own whims and fancies. Justice Bandaranayake further identifies the instances of ingratitude to revoke a deed of gift and further, followed and emphasized by Justice Amarasinghe in **Dona Podi Nona Ranaweera Menike vs. Roshini Senanayake [1992] 2 Sri.LR 180.**

- 1) *If the donee lays 'manusimpias' (impious hands) on the donor.*
- 2) *If he does him an atrocious injury.*
- 3) *If he wilfully causes him great loss of property.*
- 4) *If he makes an attempt on his life.*
- 5) *If he does not fulfil the conditions attached to the gift.*
- 6) *Other, equally grave causes.*

It is apt to consider the acts of ingratitude which have been complained by the Respondent. Her contention is that, the 1st Appellant with her family left the house on or about 15th January 1997 isolating the Respondent at home and the Respondent confronted the same situation on or about 28th March 1997, when the 1st Appellant left with her family to reside at the official quarters allocated to the 2nd Appellant at the Poddala Post Office. The Respondent's contention is that, it was an act of ingratitude to leave her alone in the empty house and the situation aggravated due to the fact that she is a widow.

Basnayake C.J. said regarding the commission of a single act or serious acts relating to ingratitude, is of predominant concern. His Lordship states as follows,

'There is nothing in the books which lays down the rule that a revocation may not be granted on the commission of a single acts of ingratitude. Ingratitude is a frame 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 by series of acts.'

This court has to decide whether, the 1st Appellant's act of leaving the house with her family constitutes an act of 'gross ingratitude' in the eyes of law. With the advancement of the society, the family has become the smallest social unit of the society. The 1st Appellant being married to a government servant, and a mother has her own commitments in life. It is clear from the facts of the case, that the 1st Appellant was providing due care and support to the Respondent and her late husband while residing with her. The 2nd Appellant similarly treated the Respondent with care while keeping her in the same footing as his family. The evidence clearly show that, there was a close relationship subsisting between the Appellants and the Respondent. After the demise of the husband, the Respondent had a joint bank account with the 2nd Appellant and the money had been withdrawn by the Respondent in December 1996. This shows that, the Appellants were trustworthy to the Respondent which implies that, there was an impression on the part of the Respondent which is positive in nature towards the Appellants. Generally, a person may not enter into a monetary bond with another, if there is any doubt of existing or imminent maltreatment on latter's part. This is contrary to the view of the Learned High Court Judge, which says that, the Respondent was helpless with the conduct of the Appellants. The Respondent herself was confident with her life spent with the Appellants, and it is apparent to this court that, the Respondent attempts to create a chaos over a trifle matter she confronted or imagined may be. This clearly reiterates the view which was held by the

District Judge, which he stated that, a trifle matter in connection with a meal is not of high importance to revoke a deed on the basis of ‘gross ingratitude’.

The Learned District Judge is logical in his viewpoint on the preparation of meals by the 1st Appellant. What the District Court judge attempted to emphasize was that, the 1st Appellant being a mother preparing a special kind of meal for the children at the schooling stage does not amount to an act of ingratitude. An act of a mother offering her children with a special cannot be criticized as an act which treated an adult with gross ingratitude and is a trivial ground for this court to revoke a deed. It is a matter of less importance and in the eyes of law ‘preparation of a meal’ is purely a subjective matter that depends on one’s sentimentality.

There is another controversy regarding the view of the Learned High Court Judge; the Appellants leaving the house amounts to an act of gross ingratitude. What the High Court Judge attempted to convince was that, the Respondent executed the deed in favour of the 1st Appellant, with the intention that, she would be looked after by her with due care and affection and leaving her alone at house is prima facie ingratitude. It is clear that in Sri Lanka, the exigencies of the Public Service necessitate the government servants to work in distant areas, and more or less they have to live apart from their families. The 2nd Appellant was a government servant who worked as a Post Master attached to the Postal Department. Previously, he was working in Katuwana and the evidence show that he treated the Respondent with sufficient care and support by considering her as a member of his own family. It is evident, that he regularly travelled from Katuwana to the place where the 1st Appellant lived with children and the Respondent. Subsequently, the 2nd Appellant had started working as a post master in Poddala Post office and he had the facility of a quarters there. The family moved to reside

at the official quarters. The law does not see any misconduct on the side of a party who quitted a residence to live at an official residence the party was lawfully entitled to. As far as the situation of the Appellants is concerned, it is not only an exigency of the public service, but also an exigency of their nuclear family as well. The Respondent's attempt to establish an act of ingratitude on the basis of leaving the home is apparently selfish in nature.

In the perusal of facts of the case, it is evident that the act or a series of acts alleged by the Respondent against the Appellants are slight. It is worthy to consider the view of Basnayake C.J in **Kirshnaswamy vs. Thillaiyampalam (Supra)**. His Lordship cited a passage of Voet at page 269 as follows;

'Of course slighter causes of ingratitude are by no means enough to bring about a revocation. Although both the laws and right reason entirely condemn every blot and blemish of ingratitude, albeit somewhat slight, nevertheless, they have not intended that for that reason, it should be forthwith penalized by revocation of the gift.'

The Respondent has alleged that the Appellants conduct in preparing meals and a series of acts related to the offering of food constitute an act of gross ingratitude. This is contrary to the general principles of law, which reiterate the fact that, an act of ingratitude, which is sufficient to revoke a deed should be 'grave' in nature. As stated in, **Dona Podi Nona Ranaweera Menike vs. Roshini Senanayake (Supra)**, an act of gross ingratitude which is grave in nature symbolizes a physical trauma inflicted by the donee on the donor. This may take different actions namely, laying impious hands on the donor, causing injuries which are atrocious in nature, causing a loss to the property, attempted in taking the life, donee acts

in violation of the conditions of the deed, equally grave causes. It is impractical for the law to consider that, an allegation in relation to the provision of meals, or food which is purely subjective and sentimental in nature constitutes an act of gross ingratitude to revoke a deed of gift. It is evident to this court, the learned High court judge's view in regard to the maltreatment is not adduced by proper evidence. The acts complained of by the Petitioner does not amount to gross ingratitude. Therefore, a notarially executed deed cannot be revoked on the said behaviour.

By considering the circumstances, I answer all questions of law in affirmative and set aside the order of the High Court dated 11.09.2012 and affirm the order of the District Court dated 12.04.2006.

I allow the appeal subject to cost of this court fixed at Rs.25, 000.00.

Judge of the Supreme Court

Buwaneka Aluwihare PC, J

Judge of the Supreme Court

Priyantha Jayawardena PC, J

Judge of the Supreme Court