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

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

   Plaintiffs

SC APPEAL NO: SC/APPEAL/166/2018
SC LA NO: SC/SPL/LA/224/2018
CA NO: CA/37/95 (F)
DC BADULLA NO: 423/L

Vs.

D.M. Somawathie alias
Samawathie,
4th Mile Post,
Galkotuwawatta,
Ketawala,
Landewela.

Defendant

AND BETWEEN

1. D.M. Gunadasa,
   No. 22, Sumanatissa Mawatha,
   Padukka Road, Horana.
2. D.M. Wijepala, (Deceased)
   Bambaragaha Ulpatha,
   Kuruwitenne.

2A. Senadeera Siriyalatha,

2B. Raveendra Pushpakumara,
   Dissanayaka,

2C. Piyal Kumara Dissanayaka,

2D. Vajira Kumara Dissanayaka,
   All of,
   Bambaragaha Ulpatha,
   Kuruwitenne.
   Plaintiff-Appellants

Vs.

D.M. Somawathie alias
Samawathie, (Deceased)
4th Mile Post,
Galkotuwawatta,
Ketawala, Landewela.
Defendant-Respondent

D.M. Upali Kusumsiri Bandara,
4th Mile Post,
Galkotuwawatta,
Ketawala, Landewela.
Substituted Defendant-
Respondent

AND NOW BETWEEN

D.M. Gunadasa,
No. 22, Sumanatissa Mawatha,
Padukka Road, Horana.
1st Plaintiff-Appellant-Appellant

Vs.

2A. Senadeera Siriyalatha,
2B. Raveendra Pushpakumara,
Dissanayaka,
2C. Piyal Kumara Dissanayaka,
2D. Vajira Kumara Dissanayaka,
All of,
Bambaragaha Ulpatha,
Kuruwitenne.
Plaintiff-Appellant-Respondents

D.M. Upali Kusumsiri Bandara,
4th Mile Post,
Galkotuwawatta,
Ketawala, Landewela.
Substituted Defendant-
Respondent- Respondent

Before: S. Thurairaja, P.C., J.
A.L. Shiran Gooneratne, J.
Mahinda Samayawardhena, J.

Counsel: Dr. Jayatissa De Costa, P.C., with Chanuka Ekanayaka for the 1st Plaintiff-Appellant-Appellant.

Venuke Cooray for the Substituted Defendant-Respondent-Respondent.

Argued on: 27.10.2021

Written submissions:

by the 1st Plaintiff-Appellant-Appellant on 10.01.2019.

by the Substituted Defendant-Respondent-Respondent on 03.11.2021.

Decided on: 30.11.2021

Mahinda Samayawardhena, J.

The two plaintiffs filed this action in the District Court of Badulla seeking a declaration of title to the land described in the schedule to the plaint, ejectment of the defendant therefrom and damages. The defendant filed answer seeking the dismissal of the action.

The mother of the two plaintiffs and the defendant was the owner of this land. She gifted it to the two plaintiffs in 1968 by the deed of gift marked P1 at the trial. This deed was not marked subject to proof. It is on this deed the two plaintiffs claim title to the land.

As crystalised in the issues, the defendant contested the plaintiffs' action on three grounds: (a) the deed is invalid; (b) the defendant has alienated the land to her sons but they are not parties to the case; and (c) the land has not been properly identified. Grounds (b) and (c) were never pursued.

A deed of gift can be challenged on various grounds: due execution, fraud, prior registration, non-acceptance etc. Even though the defendant in her answer and by way of an issue made a general statement that the deed of gift P1 is invalid, she was careful not to disclose the basis on which she stated so. In my view, if it is the contention of the defendant that the deed was invalid because it was not accepted by the donee, the defendant must plead it specifically in her answer and raise it as a specific issue. Merely making a general statement that the deed is invalid and asking one or two questions about the acceptance of the deed in the cross examination of the plaintiff is not sufficient at all.

Be that as it may, after trial the District Court dismissed the plaintiffs' action with costs on the basis that the first donee who is the first plaintiff had not accepted the donation by placing his signature on the deed and the acceptance of the donation by the second donee who is the second plaintiff for himself and on behalf of the first donee who is his brother is not valid. The District Judge proceeded on the premise that when the donee is a major, the only mode of acceptance of the donation is the donee signing the deed himself. Although there was no issue regarding the acceptance of the donation by the second donee for himself, the District Judge gave no relief to the second plaintiff either.

On appeal, the Court of Appeal affirmed the judgment of the District Court and dismissed the appeal with costs. Hence this appeal by the plaintiffs to this court. This court granted leave to appeal on the following three questions of law:

> *Have the Court of Appeal and the District Court erred in law not considering:*

(a) that the deed of gift P1 is legally valid?

(b) that after the donation the first and second plaintiffs possessed and enjoyed the property from 1968-1982 and also they rented out and collected rent from the said property?

(c) that the second plaintiff could accept the gift on behalf of the first plaintiff who is his own brother?

The general principle is that a donation is a contract and acceptance of it by the donee is essential to clothe the deed of gift with validity. There is a natural presumption that every deed of gift is accepted. The law does not specify a particular form for acceptance of a deed of gift. The common practice is for the donee to sign the deed of gift signifying his acceptance. However this does not mean that the deed of gift is invalid unless the acceptance appears on the face of the deed. Such acceptance can be inferred from the circumstances. This includes the conduct of the doner and donee after the donation. The entering into possession of the property by the donee leads to the inevitable inference that the donation was accepted despite the lack of acceptance on the face of the deed. The question of acceptance of a donation is a question of fact which needs to be answered on the unique facts and circumstances of each individual case and not by simply looking at the deed of gift to ascertain whether the donee himself has signed the deed. This view is supported by ample authority including, ironically, all four decisions cited in the judgment of the Court of Appeal to dismiss the appeal on the ground that the first donee has not signed the deed personally. I will restrict my consideration to those four cases although there is a plethora of decisions to support the above view.

The first case cited by the Court of Appeal is *Wickremesinghe v. Wijetunga (1913) 16 NLR 413*, in which there was no acceptance of the gift on the face of the deed, but the District Judge held that the deed of gift was duly accepted and dismissed the plaintiff's action. On appeal, the Supreme Court held at 416:

> *In the present case the evidence shows that there were at least two distinct acts of acceptance by the first defendant of the donation in question. It appears that on the wedding day of the first defendant the plaintiff delivered over to her the deed of donation, and then she accepted the same. Although, as I have observed, the delivery of the deed was not essential to complete the transaction, it has significance here as a token of acceptance of the gift. Moreover, the first defendant sold a half of three of the lands gifted to her husband before the commencement of the present action. That also was clearly an act of acceptance of the donation. For these reasons I see no grounds for interfering with the judgment appealed from, and I would affirm it with costs.*

The next case cited was *Bindua v. Untty (1910) 13 NLR 259* where Wood Renton J. (later C.J.) held at 260-261:

> *It is quite clear that by the Roman-Dutch Law acceptance may be manifested in any way in which assent may be given or indicated. In the present case there is evidence showing that Sinda [the donor] not only permitted his eldest son Sumara, who was one of the donees, and who was of full age at the time, to accept the donation on his own behalf and on that of the minor children, but also that he surrendered the property in question to the donees after the execution of the deed of gift; that Sumara possessed the land*

thenceforward, and that his minor brothers and sisters took the produce themselves on becoming majors; and that they dealt with the land as owners while Sinda was still alive. I have examined all the cases that were cited to us in the argument, but I do not think it is necessary to deal with them in detail. The question of acceptance is a question of fact, and each case has to be determined according to its own circumstances. I would hold that here there is ample evidence of the acceptance of the donation to satisfy the requirements of the law in the conduct of Sinda himself at the time of the donation and subsequent to it, in the possession of the land by Sumara, a donee and a major, with Sinda's consent, and as Sinda's agent, if it is necessary to hold so much, for the purpose of the acceptance of the donation, and in the conduct of the minor donees themselves during Sinda's life. It is true that the critical point of time in such a case as this, where the donation was one taking effect at once on the execution of the deed, is the date of the execution of the deed itself. But 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. Taking all the facts of the present case I hold that a sufficient acceptance of the deed of gift has been established.

The third case cited was the Privy Council decision of *Abeyawardene v. West (1957) 58 NLR 313*. The main question in this case centered round the issue whether the deed of gift in question created a fideicommissum in favour of a family and the question of the acceptance of the gift arose for consideration incidentally. The Privy Council held at 319 that the acceptance

of the deed of gift on behalf of two minors by their two major brothers and their brother-in-law is a valid acceptance notwithstanding they are neither natural nor legal guardians of the minors.

The last case cited was *Chelliah v. Sivasamboo (1971) 75 NLR 193* where Alles J. in a separate judgment reviewed almost all the seminal decisions in relation to the acceptance of a deed of gift with particular reference to minors. In this case, a donor had gifted immovable property to three persons, namely his two sons and his grandson, who was the son of his deceased daughter. The three donees were all minors at the time and the donor allowed his second wife to accept the donation on behalf of the donees. The acceptor was hence the step mother of two of the donees and the step grandmother of the third donee. According to the terms of the deed, the acceptor and the donees were entitled to be in possession of the property and enjoy its income and produce. When the donees attained majority, they ratified the acceptance on their behalf by dealing with the property and reciting the deed of gift as their source of title. The trial Judge held there was no valid acceptance of the deed of donation on the ground that the donor's second wife was neither the legal nor natural guardian of the minor donees and therefore could not have accepted the donation on their behalf. The Supreme Court held that the acceptance by the donor's second wife on behalf of the minor donees was valid.

After reviewing the previous decisions, it was held at 211:

> *Therefore the character of the acceptor is not conclusive on the question whether there was a valid acceptance or not. Acceptance depends on the facts of each particular case, and*

> *when the acceptor was not a natural guardian or a person appointed by a competent court, acceptance could be presumed if there were sufficient circumstances for a court to draw such an inference.*

The next question is whether there was a valid acceptance of the deed of gift P1 by the first donee. At the time of the execution of the deed, the first donee was not present but the donor, the second donee, the two attesting witnesses and the notary were all present. The second donee accepted the gift on behalf of himself and his brother, the first donee. In the deed it was recorded that "*I the said second named donee for myself and for and on behalf of the first named donee do hereby thankfully and gratefully accept the above grant and gift hereby made*."

The donor mother who lived ten long years after the execution of this deed did not say that the first donee had not accepted the donation and therefore the deed was invalid. According to the evidence of the two donees and one of the attesting witnesses to the deed who was the donees' brother, the mother surrendered possession of the land together with the house thereon to the two donees and lived with one of her children until her death. The two donees have *inter alia* rented out the house to a school master for about two years. These items of evidence were never challenged during the course of cross examination. When this evidence is considered together with the acceptance of the donation by the second donee on behalf of himself and the first donee, there is no doubt that the deed of gift was accepted by both donees.

The District Court and the Court of Appeal only considered the absence of the signature of the first donee on the deed of gift to

conclude that the donation was not accepted by the first donee and therefore the deed P1 is invalid. That conclusion is erroneous. There is a valid acceptance of the deed of gift by both donees.

I answer the questions of law upon which leave was granted in the affirmative and set aside the judgments of the District Court and the Court of Appeal and allow the appeal with costs. The District Judge will enter judgment for the plaintiffs as prayed for in the prayer to the plaint.

Judge of the Supreme Court

S. Thurairaja, P.C., J.
I agree.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.
I agree.

Judge of the Supreme Court