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

Bulathsinhalage Edwin Cooray,
No. 08, Mahinda Place,
Kirulapona, Colombo 06.

Plaintiff

-Vs-

Bulathsinhalage Harschandra Wasantha Cooray,
No. 11/3, Vihara Mawatha, Narangoda Paluwa, Ambalama Junction, Ragama.

Defendant

AND

SC Appeal No. 174/2014
SC Application No: SC (SPL) 66/2014
Court of Appeal No. CA 549/98 (F)
District Court of Mt. Lavinia No. 605/96/L

Bulathsinhalage Harschandra Wasantha Cooray,
No. 11/3, Vihara Mawatha, Narangoda Paluwa, Ambalama Junction, Ragama.

Defendant-Appellant

Vs

Bulathsinhalage Edwin Cooray
No. 08, Mahinda Place,
Kirulapona, Colombo 06.

Plaintiff-Respondent (Deceased)

Tamara Indrani Cooray,
No. 08, Mahinda Place,
Kirulapona, Colombo 06.

Substituted Plaintiff–Respondent

AND NOW BETWEEN

Bulathsinhalage Harschandra Wasantha Cooray,
No. 11/3, Vihara Mawatha, Narangoda Paluwa, Ambalama Junction, Ragama.

Defendant-Appellant-Appellant

Vs.

Tamara Indrani Cooray,
No. 08, Mahinda Place,
Kirulapona, Colombo 06.

Substituted Plaintiff – Respondent - Respondent

Before: Buwaneka Aluwihare, PC. J.,
Vijith K. Malalgoda, PC. J. and
Murdu N.B.Fernando, PC. J.

Counsel: M.S.A. Wadood with Palitha Subasinghe, Tharanga Edirisinghe and J. Beruwalage for the Defendant-Appellant-Appellant.
Daya Guruge with R. Wimalaweera for the Substituted Plaintiff-Respondent-Respondent.

Argued on: 10.07.2018

Decided on: 18.02.2020

Murdu N.B. Fernando, PC. J.

The Defendant-Appellant-Appellant has come before this Court challenging the judgment of the Court of Appeal dated 19-03-2014. The Court of Appeal dismissed the appeal and affirmed the judgment of the District Court of Mount Lavinia dated 05-06-1998 granted in favour of the original plaintiff.

On 25-09-2014 this Court granted Special Leave to Appeal on the following questions of law: -

(i) Have the learned judges of the Original Court and the Hon. Court of Appeal erred in law in coming to the conclusion that the plaintiff-respondent-respondent is entitled to revoke the said deed of gift according to the facts, circumstances and/or evidence adduced in this case.

(ii) Has the learned judge of the Original Court erred in law in concluding that the defendant- appellant-petitioner had acted in gross ingratitude of the respondent by scolding the respondent in foul language and/or by intimidating him.

(iii) In determining that a single blow was sufficient to constitute gross ingratitude did the learned judges of the Original Court and the Hon. Court of Appeal err in law in not considering the state of mind of the Donee as held *in Krishnaswamy Vs Thillaiyampalam (1957) 59 NLR 265.*

(iv) Have the learned judges of the Original Court and the Hon. Court of Appeal fail to fairly, objectively and judicially analyze the evidence adduced in this case according to the facts and circumstances of this case in holding that the respondent is entitled to revoke the said Deed of Gift.

According to the Petition of Appeal filed before this Court, the deceased plaintiff-respondent ("the plaintiff") bestowed upon the defendant-appellant-appellant ("the defendant/appellant"), his youngest son, the dwelling house, the plaintiff was living at Kirulapone, Colombo by way of an irrevocable deed of gift retaining for himself the life interest.

In view of the subsequent conduct of the defendant in demanding the house, using foul language, assaulting the father and threatening him with death, the plaintiff moved the District Court to set aside the said deed of gift upon the ground of gross ingratitude of the defendant.

The defendant denied the allegation of gross ingratitude and assault of the father.

The learned trial judge, gave judgment as prayed for and held that the quarreling and speaking in filth to the father who gifted the property would amount to ungrateful conduct which necessitates the revocation of an irrevocable deed of gift on the ground of ingratitude.

The learned trial judge went on to hold that the actions and attitude of the defendant being a son towards a father cannot be condoned.

The learned Judge of the Court of Appeal upheld the said decision, and in his judgment referred to the opinion expressed in **Podinona Ranaweera Menike Vs Rohini Senanayake [1992] 2 SLR 180** and **Krishnaswamy Vs Thillaiyampalam 59 NLR 265**, that an atrocious injury to the donor by the donee is a reason to have a deed of gift revoked and that the commissioning of a single act of ingratitude was sufficient for a donor to revoke a deed of gift.

Upon the said background, I wish to now collate and consider the questions of law raised before this court. These questions centre around the failure of the original court and the Court of Appeal to fairly, objectively and legally analyse the evidence adduced in holding that the plaintiff was entitled to move court to revoke an irrevocable deed of gift.

The revocation of an irrevocable deed of gift has been considered and analysed in depth by our courts in the multitude of reported judgments wherein deeds of gift have been executed by parents upon children, grandparents upon grandchildren, one spouse upon the other, one sibling upon the other.

In all these instances, the law governing the revocation of a gift was based upon the principles of Roman Dutch Law, referred to and interpreted in the statements of law and the commentaries of eminent jurists.

In **Krishnaswamy and another Vs Thillaiyampalam 59 NLR 265** Basnayake, C.J. quotes from Voet (Gane's translation) as follows:-

> "Such a *donatio inter vivos* cannot from its own peculiar nature be hastily revoked, not even on a rescript from the Emperor, nor if the donor avows that he made the gift in fraud of another. Nevertheless, five just causes of ingratitude are listed for which, if the donee has offended against the donor in regard to them, there is room for revocation, that is to say for change of mind.
>
> This is so although it had been arranged by agreement at the time of the donation, even by agreement confirmed on oath, that the gift would not be withdrawn on the ground of ingratitude. Such a covenant is void as being a temptation to wrongdoing, and as involving the forgiveness of a future offence.

These causes are when the **donee has laid wicked hands upon the donor, or has contrived a gross and actionable wrong,** or some huge volume of sacrifice or a plot against his life, or finally has not obeyed conditions attached to the donation." (emphasis added)

In the said judgment, Basnayake, C.J. also quotes Perezius (Wickramanayake's transtation) as follows: -

"The causes of ingratitude are five in number, namely, **if the donee outrageously insults the donor, or lays impious hands on him**, or squanders his property or plots against his life or is unwilling to fulfill the pact which was annexed to the gift." (emphasis added)

Basnayake, C.J. in the said judgment compares and analyzes the views of many other jurists including Van Leeuwen whose views he says is precise and brief when he opines,

"that a duly constituted gift can never be revoked by the donor, unless the **donee has turned out to be ungrateful**, as for instance, **when he damaged the honour of the donor, has used personal violence towards him, or has made an attempt on his life,** or has wasted his property, or has not observed the agreement or conditions attached to the gift" (emphasis added)

and finally at page 269 states thus,

"It would be unwise to lay down a hard and fast rule as to what conduct on the part of a donee may be regarded as ingratitude for which a donor may ask for revocations of his gift. Voet's view is that ingratitude for which a donation may be revoked must be ingratitude which a court does not regard as trifling. He says "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 ways in which a donee may show that he is ungreatful being legion, it is not possible to state what is 'slight ingratitude' and what is not except in regard to the facts of the case.

There is nothing in the books which lays down the rule that a revocation may not be granted to the commission of a single act 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 a series of acts".

In the said Krishnaswamy case, a husband and a wife filed action to revoke a deed granted to the husband's brother, conveying the wife's dowry property at the request of the defendant, to obtain some advantage from the income tax authorities by showing he was the owner of the property. The plaintiffs' contention was that the deed was not meant to be acted upon but re-conveyed and when the defendant refused to re-convey, and all efforts failed, obtained the good office of a respected elder and at the said discussion the defendant spoke to the plaintiffs in filth and raised his hand to assault the brother and Basnayake, C.J. went on to state thus-

> "What greater ingratitude could there be than to treat the plaintiffs as the defendant has done? It may be one instance, but the donee must take the consequences of his conduct if the donor is unwilling to forgive him."

Thus, it is apparent, that our courts have quite categorically held that a revocation of a deed of gift may be granted on the commission of a single act of ingratitude and there is no hard and fast rule as to what conduct on the part of a donee may be regarded as ingratitude for which a donee may ask for revocation of a gift, and that what is ingratitude and what is not can only be inferred based upon the facts of each case.

In an earlier case **Manuelpillai Vs Nallamma 52 NLR 221** where a wife who was assaulted, from whom moneys were extracted and forced to execute a transfer of property, filed action against her husband to revoke the properties she transferred to him reserving life interest. Basnayake, J. (as he was then) after quoting extensively from the writings of jurists stated as follows: -

> "I have quoted extensively from the commentators both ancient and modern in order to show that there is no difference of opinion among them on the question before us. Whether the latin word 'impairs' is rendered 'impious' as de Sampayo [*de Sampayo's translation of Voet*] has done or "sacrilegious" as Krause has done, the legal position is the same. It is impious or sacrilegious for a donee who has derived benefits from a donor to strike him or use personal violence on him." (emphasis added)

and held that the donor wife is entitled to an order of court revoking the deed of gift, since the donee husband used violence on the donor.

In coming to the said finding in the above referred Manuelpillai's case, Basnayake, J. distinguished yet an earlier case, **Sivarasipillai Vs Anthonypillai 40 NLR 47**, where Soertz, J. referred to five instances in which a gift could be revoked for ingratitude as being:- (i) the laying of impious hands of the donee on the donor, (ii) the donee outrageously defaming the donor, (iii) the donee causing the donor enormous loss, (iv) the donee plotting against the donor's life, and (v) the donee failing to fulfill the conditions annexed to the gift and held that the ground of cruelty and desertion averred to by the donor wife was not sufficient to revoke a deed of gift granted to a donee husband for the reason that the wife had 'nomadic habits' leading to a 'cat and dog life'.

The counsel for the appellant in Manuelpillai's case relied on the judgment of Soertz, J. and the law laid therein to contend, that an assault committed by the husband on a wife did not come within the said grounds referred to by Soertz, J. which submission was rejected by Basnayake, J. who emphatically held, that even between spouses a deed can be revoked for ingratitude.

In **Dona Podi Nona Ranaweera Menike Vs Rohini Senanayake 1992 (2) SLR 180** Amerasinghe, J. referred to the above 1937 judgment of Soertz, J. in Sivarasipillai Vs Anthonypillai case (supra) and many other decided cases in respect of a revocation of an irrevocable deed of gift on account of ingratitude and laid down the grounds upon which a donor is entitled to revoke a gift as follows:-

- If the donee lays *manus impias* on the donor;
- If he does him an atrocious injury;
- If he willfully causes him great loss of property;
- If he makes an attempt on his life;
- If he does not fulfill the conditions attached to the gift; and
- for other equally grave causes.

Amarasinghe, J. at page 220 specifically emphasised on the 1st ground in the following manner-

> "However, the laying of personally violent, impious, wicked, sacrilegious hands (judges and jurist translate *manus impias* in these, and perhaps other, different ways) on the donor is, without question one of the five specified causes of ingratitude warranting 'just' revocation."

In the said case, Dona Podi Nona and her husband, gifted their only child Rohini Senanayake, Apaladeniya Estate reserving their life interest, on the occasion of her marriage. Twelve years hence, the donee daughter assaulted her donor parents and the parents filed action to seek revocation of the gift on the ground of gross ingratitude manifested by assault.

In a lengthy judgment Amerasighe, J. having analyzed the law pertaining to *donatio propter nuptias,* thereafter referred to and discussed an act of ingratitude and at page 219 held, an act of ingratitude sufficient to warrant revocation, must vary with the circumstances of each case and at page 221 went on to hold that assault of the donor parents by a donee daughter, no doubt was in the words of Voet "the foul offence of ingratitude" which justified seeking the assistance of a court and allowed the revocation of the deed of gift.

In a subsequent case, **Stella Perera Vs Margaret Silva 2002 (1) SLR page 169** Amerasinghe J. re-iterated that a gift could be revoked on the ground of ingratitude even between spouces.

In the instant appeal before us, the Court of Appeal referred to the judgment of Amerasinghe, J. in the case of Podi Nona (supra) and judgment of Basnayake, C.J. in the case of Krishnaswamy Vs Thillaiyapalam (supra) and looked at the evidence led before the trial court, afresh, to ascertain whether or not an act of ingratitude had been committed by the donee son towards the donor father and held that the evidence pertaining to the assault had not been controverted at all and thus held that the act of assault was sufficient to have the deed of gift revoked on the basis of ingratitude towards the donor father.

In another reported case, **Fernando Vs Perera 63 NLR 236** Basnayake, C.J. set aside a deed of gift granted by a foster mother to her adopted son on the ground of ingratitude, namely an assault on her with a broom stick and a threat to cause bodily harm and injury to her, notwithstanding the trial court holding that the said acts do not constitute an act of ingratitude.

Thus, our courts have consistently considered and analyzed the evidence led before the trial court in coming to a finding, sometimes varying with the decision of the trial Court with regard to revocation of a deed of gift. In the instant case, the trial court held that quarrelling and speaking in filth itself amounted to ingratitude. The Court of Appeal upheld the said finding and held further, that the assault too was a ground to revoke the gift. In the said circumstances I do not see merit in the submission of the counsel for the appellant that the

Court of Appeal erred in coming to a finding with regard to the act of assault which was an additional reason to revoke the gift.

The act of assault referred to in the instance appeal before us is an incident that took place a few months prior to the filling of the District Court case. The original plaintiff's version was that his son, the defendant, on the day of the assault came to his residence and persisted with the demand of the house and when he refused to give a date of vacating the house, scolded him in filth. The sister admonished the defendant not to speak to the father in the said manner and the defendant hit the sister with a stool and the plaintiff who intervened to settle the melee was hit by the defendant with the stool and suffered injuries to his forehead and lips.

We observe that the learned Judge of the Court of Appeal having referred to the opinion expressed in the case of Podi Nona(supra) and the grounds referred to therein by Amerasinghe, J. and the case of Krishnaswamy (supra) considered and analysed in detail the evidence on the above referred assault, in order to ascertain whether or not an atrocious injury had been committed by the donee on the donor. The learned judge analysed the evidence of the plaintiff, his cross-examination, the evidence of the witnesses which had not been controverted and held that the defendant assaulted the plaintiff with a stool causing injury to his forehead and that such an act itself was sufficient to have the deed revoked on the basis of ingratitude. We see, no reason to reverse the said finding.

The submission of the counsel for the appellant was that the learned judge of the Court of Appeal misdirected, erred and contradicted himself when he came to a totally different conclusion to that of the trial judge who was hesitant to come to a finding on the assault and at the conclusion of the judgment, upheld the judgment of the District Court when he pronounced 'I do not see any error in the findings of the learned District Judge'. We observe that the trial Judge gave judgment as prayed for by the plaintiff, having accepted that the quarrelling and speaking in filth amounted to acts of ingratitude and had categorically condemned the actions and attitude of the donee towards the donor father and clearly and precisely held that the ungrateful conduct necessitates the revocation of the deed of gift on the ground of gross ingratitude.

Thus, we observe that the counsel is placing too much reliance on the concluding words and his contention is too farfetched. He is playing on words and placing undue weightage on a general statement made in concluding the judgment and making an issue of a non-existing matter. Hence, we see no merit or reason in the said submission.

The next submission of the counsel for the appellant was with regard to use of foul language. The learned counsel relied on the 1914 judgment of **Woodrenton, C.J.** in **Hamine Vs Gunawardene 17 NLR 507** and submitted before this Court that scolding a donor using an 'infamous word' was no ground for revocation of a gift. The learned counsel failed to distinguish nor consider the more recent judgments, specifically the Krishnaswamy case referred to earlier in which diametrically opposite views had been expressed by this court when the same 'infamous word' was uttered by a donee.

In the instance case before us, not only the donor father was scolded in filth, the donee son continuously intimidated the donor father to instantaneously part with the property which had been gifted to him subject to the life interest of the father. Thus, we see no merit or reason to set aside the judgment of the learned District Judge solely based upon the said submission of the learned counsel for the appellant, with regard to the use of an 'infamous word' based on a 1914 case, whereas subsequent judicial pronouncements had distinguished and held otherwise.

In the said circumstances, we answer the 2nd question of law raised before this court, that the learned District Judge erred in law in concluding that the defendant had acted in gross ingratitude by scolding in foul language and/or intimidating the plaintiff, in the negative.

The 3rd question of law raised before this Court was whether the trial court and the Court of Appeal erred in not considering the state of mind of the donee as held in Krishnaswamy's case in determining that a single blow was sufficient to constitute ingratitude?

The state of mind of the donee, as we observe from the evidence led is very clear and precise. Prior to the execution of the deed, the defendant who was employed overseas provided for the father and financially attended to the matters of the ancestral home where the father resided. This property was subsequently gifted to the son by the impugned deed of gift.

However, what is material is the state of mind of the donee and the attitude or the conduct of the defendant towards the father, after the execution of the deed by which the property was gifted reserving life interest. The evidence led at the trial categorically indicated the continuous intimidation and harassment of the father, use of foul language, assault or a single blow on the father. It is very apparent that the state of mind of the son was to obtain the possession of the gifted property whilst the life interest was still with the father.

In Krishnaswamy's case discussed above, Basnayake, C.J. categorically held that 'an ingratitude is a frame of mind which has to be inferred from the donee's conduct and I may add, especially after the execution of the deed. The frame of mind can be gathered either by a single act or by a series of acts, and I observe, that the many acts of the defendant after the execution of the deed, especially the assault on the father or the 'single blow' as the counsel for the appellant contends, does amount to an act of ingratitude contemplated under Roman Dutch Law, succinctly referred to in the wrtings of Voet, Perezius, Van Leeuwen and other jurists referred to in the said Krishnaswamy's case. Hence, I answer the 3rd question of law raised before this Court also in the negative and in favour of the plaintiff-respondent.

The 1st and the 4th questions of law raised before this Court is whether the trial court and the Court of Appeal erred in law and failed to analyse the evidence led in coming to the conclusion that the plaintiff-respondent is entitled to revoke the irrevocable deed of gift given in favour of the defendant-appellant?

Based upon the facts of this case and specifically the intimidation, use of foul language, the assault and the law pertaining to revocation of an irrevocable deed of gift for gross ingratitude more fully discussed in detail earlier, it is the considered view of this Court that the District Court and the Court of Appeal have correctly held that the acts and actions of the defendant the donee son, towards the original plaintiff the donor father, amounts to ingratitude which justifies the revocation of the irrevocable deed of gift, given and gifted to a son with love and affection by a father.

The assault or the single blow on the father may have been only in one single instance, but the attitude, actions, and conduct of the son, the persistent demand of the house, using foul language and intimidation and harassment of the father by the son cannot be condoned, justified nor excused under any circumstances.

This Court condemns such acts in no uncertain terms and without any hesitation holds that the said acts falls within the grounds referred to by the great jurists and morefully analysed and discussed by our courts. This Court further holds that the said acts falls within the first two grounds, being 'laying of impious hands of the donee on the donor' and 'causing an atrocious injury' wherein a donor could move court to revoke an irrevocable deed of gift.

This Court is also in agreement with the opinion expressed by Amerasinghe, J. in the case of Dona Podi Nona (supra) that *manus impias* on the donor warrants 'just' revocation of an irrevocable gift. In the aforesaid circumstance, actions of the donee son the defendant-

appellant on the donor father the plaintiff-respondent, falls within the term *manus impias* which justifies revocation of the irrevocable deed of gift granted in favour of the defendant-appellant.

Thus, we answer the 1st and 4th questions raised before this Court also in the negative and holds that the trial court and the Court of Appeal after analyzing the facts, circumstances and evidence came to a correct finding and conclusion that for gross ingratitude, the plaintiff-respondent is entitled to revoke the irrevocable deed of gift executed in favour of the defendant-appellant.

For the reasons morefully set out in this judgment, the four questions of law raised before this Court are answered in the negative and in favour of the plaintiff-respondent.

We affirm the Judgment of the Court of Appeal and the Judgment of the District Court and dismiss this appeal with costs fixed at Rs. 25,000/=.

The appeal is dismissed.

Judge of the Supreme Court

Buwaneka Aluwihare, PC J
I agree

Judge of the Supreme Court

Vijith K. Malalgoda, PC J
I agree

Judge of the Supreme Court