

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

Mundigala Pathirage Jimonona Perera,  
No. 164, Mawalgama, Waga.

Plaintiff

**SC APPEAL NO: SC/APPEAL/140/2017**

**SC LA NO: SC/HCCA/LA/136/2016**

**CA NO: WP/HCCA/AV/1571/2015(F)**

**DC AVISSAWELLA NO: 25097/L**

Vs.

Rupasinghe Arachchige Diana  
Priyadarshani,  
No. 162 A, Kelagahawatte,  
Mawalgama, Waga.

Defendant

AND BETWEEN

Rupasinghe Arachchige Diana  
Priyadarshani,  
No. 162 A, Kelagahawatte,  
Mawalgama, Waga.

Defendant-Appellant

Vs.

Mundigala Pathirage Jimonona Perera,  
No. 164, Mawalgama, Waga.

Plaintiff-Respondent

AND NOW BETWEEN

Mundigala Pathirage Jimonona Perera,  
No. 164, Mawalgama, Waga.

Plaintiff-Respondent-Appellant

Vs.

Rupasinghe Arachchige Diana  
Priyadarshani,  
No. 162 A, Kelagahawatte,  
Mawalgama, Waga.

Defendant-Appellant-Respondent

Before: P. Padman Surasena, J.  
Yasantha Kodagoda, P.C., J.  
Mahinda Samayawardhena, J.

Counsel: Kumaran Aziz for the Plaintiff-Respondent-Appellant.  
Defendant-Appellant-Respondent is absent and  
unrepresented.

Argued on : 03.12.2021

Written submissions:

by Plaintiff-Respondent-Appellant on 10.11.2021.

Decided on: 12.05.2023

Samayawardhena, J.

The plaintiff filed this action against the defendant in the District Court of Avissawella seeking to set aside the deed of gift marked P1 on gross ingratitude. The defendant is a relative of the plaintiff. By this deed the plaintiff donated the property to the defendant subject to her life interest. The defendant filed answer seeking dismissal of the plaintiff's action. After trial, the District Judge entered judgment for the plaintiff. On appeal, the High Court of Civil Appeal of Avissawella reversed the judgment and dismissed the plaintiff's action on the ground that gross ingratitude had not been proved. Hence this appeal by the plaintiff.

The general rule is that a deed of gift is absolute and irrevocable. However, under the Roman Dutch law, which is our common law, such a deed of gift can be revoked with the intervention of Court *inter alia* on ingratitude on the part of the donee. The fact that the term "irrevocable donation" is used in the deed is not decisive.

This is now recognised by statute as well. In terms of sections 2 and 3 of the Revocation of Irrevocable Deeds of Gift on the Ground of Gross Ingratitude Act, No. 5 of 2017, 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 against the donee within a period of ten years from the date of the execution of the deed and within two years from the date on which the cause of action arose.

Slight ingratitude is not sufficient. There shall be gross ingratitude. No hard and fast rule can be laid down on what constitutes gross ingratitude. It is a question of fact, not of law. A single act or a series of acts can constitute gross ingratitude. An assault on the donor by the donee is a clear instance of gross ingratitude. Depending on the facts

and circumstances of each individual case, for instance, threats to cause bodily injury to the donor by the donee, continuous slander and insult, damage to the donor's property, ill-treatment of the donor can constitute gross ingratitude. The onus of proof is on the donor and the standard of proof is on a balance of probabilities. *Vide Sinnammah v. Nallanathar* (1946) 47 NLR 32, *Krishnaswamy v. Thillaiyampalam* (1957) 59 NLR 265, *Fernando v. Perera* (1959) 63 NLR 236, *Calendar v. Fernando* [2001] 2 Sri LR 355, *Ariyawathie Meemaduma v. Jeewani Budhdhika Meemaduma* [2011] 1 Si LR 124, *De Silva v. De Croos* [2002] 2 Sri LR 409, *Gunawathie v. Premawathi* (SC/APPEAL/31/2013, SC Minutes of 05.04.2019), *Wasantha Cooray v. Indrani Cooray* [2020] 1 Sri LR 150.

The failure to fulfil the conditions of the gift (such as that the donee shall provide succour and assistance to the donor) is a ground to revoke the gift. This is an incidence of gross ingratitude.

In the leading case of *Dona Podi Nona Ranaweera Menike v. Rohini Senanayake* [1992] 2 Sri LR 181 at 220, Amarasinghe J. states:

*A donor is entitled to revoke a donation on account of ingratitude (1) if the donee lays manus impias 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 upon his life; (5) if he does not fulfil the conditions attached to the gift. In addition, a gift may be revoked for other, equally grave, causes.*

Has the plaintiff donor in the instant case proved gross ingratitude on the part of the defendant donee? Both gave evidence at the trial. The donor is a widow. She does not have children. Since the death of her husband, the donor has been living in the donated house all alone. The donee in her evidence admits that the donor is a sick lady. (page 81 of

the brief) At the time of giving evidence, the donor was 75 years of age and the donee 29 years of age. The donee's mother in her evidence stated that the donor was eating very little, about one spoonful for a meal. (page 87) This itself indicates that the donor was feeble and in need of care and protection. In my view, according to the evidence of the donee herself, she did not look after the donor.

The donor's husband died on 01.01.2003. The deed of gift was executed on 01.09.2003. According to the evidence of the donee, the donee left home for further studies in 2002 and continued to be away from her home till 2007. (pages 71-72) That means, she did not look after the plaintiff for about five years. The defendant got married in 2007.

The donor's evidence is that in April 2008, the donee and her father came to her house and, using abusive language, demanded vacant possession of the house. This was corroborated by the evidence of Dayawathie, a neighbour. The donor further says that the donee and her father told her that she could be sent to a home for elders.

The donor made a police complaint marked P2 dated 20.06.2008 stating that the donee does not look after her. The police have not acted on this complaint. This case has been filed on 17.11.2008.

The donee admits in evidence that the donor gifted this property, her dwelling house, expecting that the donee will look after her until her death but she could not look after the donor properly. (pages 77-78 of the brief)

The District Court held that the plaintiff proved gross ingratitude but the High Court held otherwise. The High Court gives undue prominence to the police complaint marked P2 and concludes that the

plaintiff's version is not supported by the police complaint. The High Court did not consider the evidence of the defendant. In my view, on the facts and circumstances of this case, the High Court should not have reversed the judgment of the District Court on the merits, as there is sufficient evidence to prove gross ingratitude on a balance of probabilities.

The questions of law on which leave to appeal was granted and the answers to them are as follows:

Has the High Court misdirected itself when it failed to consider that the defendant herself admitted that she failed to look after the plaintiff?

Yes.

Has the High Court misdirected itself when it failed to consider that the defendant herself admitted that she knew that the condition of the deed of gift is that the defendant must take care of the defendant for the rest of her life and that such failure constitutes gross ingratitude?

Yes.

I set aside the judgment of the High Court and restore the judgment of the District Court and allow the appeal with costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Yasantha Kodagoda, P.C., J.

I agree.

Judge of the Supreme Court