

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

In the matter of an Appeal against
the Judgment of the High Court of
Civil Appeal of Western Province
Holden in Mt. Lavinia

Brenda Hilda Violet Perera,
No. 21, " Mount Rose ",
JambugasmullaMawatha,
Nugegoda.

Plaintiff

SC Appeal No. 170/ 14
Leave to Appeal No. SC(HC) CALA/320/12
WP/HCCA/MT/05/2010(F)Vs
D.C.Nugegoda No.Spl/062/08

IndramalaNelumDhanaratne,
No. 17, Rochester Drive,
Pinner, Middlesex,
United Kingdom

Defendant

AND BETWEEN

IndramalaNelumDhanaratne,
No. 17, Rochester Drive,
Pinner, Middlesex,
United Kingdom

Defendant Appellant

Vs

Brenda Hilda Violet Perera,
No. 21, “ Mount Rose “,
JambugasmullaMawatha,
Nugegoda.

Plaintiff Respondent

AND NOW BETWEEN

IndramalaNelumDhanaratne,
No. 17, Rochester Drive,
Pinner, Middlesex,
United Kingdom

Defendant Appellant Appellant

Vs

Brenda Hilda Violet Perera,
No. 21, “ Mount Rose “,
JambugasmullaMawatha,
Nugegoda.

Plaintiff Respondent Respondent

**BEFORE: S. EVA WANASUNDERA PCJ.
UPALY ABEYRATHNE J.
NALIN PERERA J.**

COUNSEL: Manohara de Silva PC with Pubudini Wickremaratne for the
Defendant Appellant Appellant.
Ranjan Suwandarathne with Sunari Tennekoon for Plaintiff
Respondent Respondent.

ARGUED ON: 06.05.2016.

DECIDED ON: 22.06.2016.

S. EVA WANASUNDERA PCJ.

In this matter, leave to appeal was granted on one question of law. It reads as follows:-

“Have the judges of both the District Court and the High Court erred *in law and in fact* in coming to the conclusion that the Plaintiff has set out a cause of action based on Gross Ingratitude in the circumstances of this case?”

The Plaintiff Respondent Respondent (hereinafter referred to as the Plaintiff) had gifted a house and property at Jambugasmulla Mawatha, Nugegoda situated on a block of land of an extent of 17 Perches to the Defendant Appellant Appellant (hereinafter referred to as the Defendant) by Deed No. 1586 dated 11.11.1992. reserving the right to live therein as life interest holder.

At the time of this gift, the Defendant had been living in England and her father had accepted this gift as her Power of Attorney holder. The Plaintiff Donor and the Defendant's father were brother and sister. There had been four more siblings in the family. The Plaintiff was the youngest female in the family and she did not get married. The brothers and sisters got together and transferred their shares of this property to this spinster in the year 1976 when their parents had passed away. The Plaintiff made icing cakes, wedding cakes etc. as an occupation. The Defendant's father who accepted the gift of the land given to his daughter had passed away some years after receiving the gift on behalf of his daughter. He had done so as the Power of Attorney holder of the daughter, who is the Defendant in this case.

The Plaintiff had carried on the occupation of cake making for a long time. The Defendant has been living in England for over 35 years with her husband and children but has been in the habit of coming to Sri Lanka at least once a year. The Plaintiff Aunt and the Defendant Neice had been liking each other for quite some time until the Plaintiff fell ill with some problem in her eyes which happened in the year 2005. Until then the Plaintiff Aunt had been managing her own expenses etc. without a problem. Thereafter, it is alleged that the Plaintiff asked for money at different times from the Defendant which she failed to give. It is alleged that it is only then that the Plaintiff had decided to file this action to revoke the gift on gross ingratitude.

Action was filed after one year and five months from the time she fell sick i.e. in March, 2005, in the District Court of Mount Lavinia on 18th August, 2006. The Plaintiff had pleaded that the house and property which is the subject matter of the action had been her home from birth. She was given all the other shares of the property in question, belonging to the other siblings in 1976 by a deed of gift and she became the sole owner of the property. She is a spinster. She had looked after the Defendant who is the neice when she was in Sri Lanka as well as the Defendant's parents as the Defendant's father was the Plaintiff's elder brother. There had been a close connection between themselves as the Defendant was the only child of the Plaintiff's elder brother.

As the Plaintiff was doing well with her home industry of making cakes, she had advanced one hundred thousand rupees as a loan to the elder brother when he was living and taken care of the brother when he was ill and hospitalized until his death. In 1992, the Plaintiff had gifted the property to the Defendant keeping for herself the life interest thereof. At the time of filing action the Plaintiff was 70 years of age and was living with a trusted servant in the house on the property. She had gifted the property to the Defendant due to the love and affection she had for her as well as repeated promises that she will look after the Plaintiff Aunt in her old age just like the Plaintiff Aunt looked after the Defendant and the Defendant's parents. The Plaintiff had asked for financial help many times over the phone when she fell ill with problems in both her eyes. She had become incapacitated in making icing cakes and her income had fallen down due to her being unable to do the icing decorations which needed the help of the eyes, the use of which was not recommended by the eye specialists. When no assistance

was given financially by the Defendant, and when the Defendant asked the Plaintiff to send a request for money in writing she had got a friend to write the letter on her behalf on 24.03.2005, which was marked as P3 with the Plaintiff and pleaded that a monthly payment of 15000/- be made as well as to send the loan of Rs. 100,000/- given to the Defendant's father be paid back. The Plaintiff had written that letter in good courteous language in English stressing the point of having been sick for the last two months. She had also suggested that the Defendant could open a Fixed Deposit and give a standing order to transfer Rs. 15000/- every month. She had also added that the Defendant can take the interest and all what is left after her demise. She had added that she will be obliged if Rs. 15000/- be sent to her 'as long as she is around' meaning that she needs help to live on till she dies.

The Defendant filed answer on 05th November, 2007, i.e. after one year and three months from the date of filing action by the Plaintiff, stating that the gift of property was irrevocable ; it was gifted not for affection but as an appreciation of the acts done by the Defendant's father who was the elder brother of the Plaintiff; the Defendant had not acted in breach of any conditions of the deed; the action had been filed at the instigation of others who had ulterior motives and that the action is frivolous and vexatious.

The Plaintiff had given evidence on 08.07.2008 at the age of 72 and stressed the point that even though the property was gifted to the Defendant in 1992, she did not ask for any financial assistance until the year 2005 when she seriously fell ill with her eyes going bad and her home industry was affected due to the sickness. She had pleaded with the Defendant to send her some money monthly as she had found it very difficult to live with what she earned. In evidence she had stated that the Defendant had told her to make wedding cakes and earn money if she is unable to make icing cakes. Anyway she said that with difficulty she still makes wedding cakes. She further said that once she asked her to get her a new oven which the Defendant failed to do. Then again she had wanted a new refrigerator and asked the Defendant to help her to get one. The Defendant's response had been to be satisfied with the old fridge. It is an accepted fact that the Defendant had never assisted her financially except once, and that was by sending her Rs. 17000/- (100 sterling pounds) by post, after she filed this action. It is also accepted that the Defendant who usually comes to Sri Lanka once a year or more had never visited her when she came to Sri Lanka after the Plaintiff fell ill. This

had caused great mental pain to the Plaintiff. When cross examined, the Defendant said that she did not visit the Plaintiff Aunt on legal advise. The Plaintiff was cross examined at length on two dates , i.e. on 18.08.2008 and on 05.11.2008. The doctor, eye specialist from the Kalubowila national hospital had given evidence on behalf of the Plaintiff. Two others, one relation and one friend also had given evidence in support of the Plaintiff.

The Defendant had given evidence on 01.09.2009. In cross examination she had admitted that the Plaintiff had never asked for assistance until she fell ill. She also admitted in evidence that she ignored her requests. She had admitted that she did not visit her after her sickness. She had further admitted that she asked the Plaintiff to make a request for financial assistance in writing. She stated in her evidence that she was a citizen of U.K and Sri Lanka. Having lived in U.K. from the year 1972 up to date she had stated in her evidence that she does not have money and she had to get it from her Engineer husband and therefor she had told the Plaintiff Aunt to send a request in writing.

She has three grown up children who are well educated and living and earning in U.K. Even though the Defendant had pleaded that it was a gift given in consideration of and in appreciation of the Defendant's father's good actions to the Plaintiff, the Defendant had not even stated anything to that effect in her evidence. It was only the Defendant who had given evidence and no other evidence was called for the defence.

The argument of the Defendant was that since it is an irrevocable gift and it is not subject to any condition. The failure to fulfill a condition in the deed may render it revocable but as the said deed of gift had no such conditions to be fulfilled by the donee, it cannot be revoked. The deed of gift can be revoked only if gross ingratitude by the Donee towards the Donor is proved. The Defendant contends that the Plaintiff has failed to prove gross ingratitude.

The case ***of Dona Podi Nona RanaweeraMenikeVsRohiniSenanayaka 1992, 2 SLR 180*** was very much discussed in the submissions made by the Defendant. This is a lengthy judgment of Amarasinghe J with Fernando J and Kulatunga J agreeing which was decided on 5th June, 1992. This judgment has dealt with mostly deeds of gift granted to the sons in law as dowry, at the time of the daughters getting married according to our Sri Lankan culture , whether such deeds can be revoked

or not and on what grounds such deeds can be revoked. Yet, the said learned judges have considered about what can be interpreted as “ gross ingratitude “ to the Donor.

As pointed out by the Defendant’s counsel, in the case in hand, a summary of causes to revoke a donation on account of ingratitude, according to the aforementioned decision of the Supreme Court can be categorized as follows:

1. If the **donee** lays impious hands on **the donor**
2. If he does him an atrocious injury
3. If he willfully causes him great loss of property
4. If he makes an attempt on his life
5. If he does not fulfill the conditions attached to the gift and
6. If he does other equally grave causes.

It was submitted by the Defendant’s counsel that none of the causes enumerated above under categories 1 to 5 were ever committed by the Defendant donee to the Plaintiff donor. The evidence did not show that anything of that sort was done.

I am inclined to consider whether the acts done or omitted to have done by the donee in this instance amounts to “ other equally grave causes “ which would amount to gross ingratitude towards the donor by the donee.

I observe from the evidence placed before the District Court that the Plaintiff donor had placed material before court to show that she had a lot of love and affection towards the donee Defendant at the time of executing the deed of gift as she was the only child of the donor’s elder brother. The donor had got full title in 1976 and executed the deed of gift to the Defendant 16 long years later in the year 1992. Nothing quite terrible happened till the year 2005 when the donor fell ill with terrible eye problems which brought down her level of income, even though when she wanted help to get a new oven once and then a new fridge, the donee had not obliged in the previous years.

The evidence shows that the donor never pressurized the donee to give her anything until the time she fell ill and as a result when her home industry could

not function well. The letter from the donor to the donee , namely P3 speaks well for her needs.

That letter was sent by post as requested by the Defendant donee demanding a written request from the Plaintiff if she needed financial assistance. In that letter, the Plaintiff reminds of the debt of Rs. 100000/-which was owing and due to her by the Defendant's father as well as begs for Rs. 15000/- as monthly assistance from the donee. It was hand written with the help of a friend and the letter begins with that confession of a friend writing it as she is unwell and suggests even ways of how to deposit money so that she can receive Rs.15000/- a month. She further says that she needs it only 'till she is around' and states that she can get all what is left after her demise.

I find it very surprising and shocking to see that the donee Defendant who had received such a property of very high value in Nugegoda from the donor who gifted the same 13 years ago, had not cared to send her any money or made any arrangements to assist her in any way as requested. It is also incredible to see the evidence given by the Defendant to the effect that she wanted a written request for financial assistance needed by her Aunt because the Defendant did not have any money and to get the money from the husband she wanted a written request.

How can someone living in U.K. for over 40 years with an Engineer husband and three working adult children in U.K. and who has the money to come to Sri Lanka more than once a year, state that she has no money.

I am of the opinion that the District Judge who has analysed her evidence had come to the correct decision that the Defendant had acted ungratefully in this instance. Furthermore the Defendant had admittedly not visited her after she complained of her sickness even when she came to Sri Lanka. This attitude of the Defendant had given great mental pain to the Plaintiff donor. Even without visiting there are many more things that one could have done, if the Defendant had an iota of gratitude.

The Plaintiff , in this year of 2016 , must be over 80 years. She is old enough to be given assistance of whatever kind even if she does not have any sickness. This is not the way a donee who has got millions worth of property from the donor

should act towards the donor. The love and affection which caused the donor to give the property when she was healthy and young should be returned when she is unhealthy and old. The donee Defendant has failed to do so. She could not have acted any worse than turning a blind eye to someone who did not ask for any assistance monthly from 1992 to 2005, when asked for financial assistance of a small amount compared to the earning capacity of someone living in U.K. There are numerous ways she could have helped if she really cared to do so but she never did. The pain of mind of the old donor cannot be even imagined specially when she is an unmarried person. On the other hand, when the Plaintiff had gifted her house and property to the neice in U.K., while having many other nieces in Sri Lanka , there is no way she could have asked for money from anyone else. Knowing this situation very well the donee had failed and neglected the donor. I would categorise this situation as one of cruelty which is worse than ingratitude.

I am of the view that the attitude of the Defendant comes under “ other equally grave causes “ as pointed out in the case of the authority mentioned above.

In the case of ***KrishnaswamyVsThillaiyampalam 1957, 59 NLR 265 at 269,*** Basnayake CJ said thus;

“The ways in which a donee may show that he is ungrateful being legion, it is not possible to state what is ‘slight ingratitude’ and what is not, except in regard to the facts of a given case. There is nothing in the books which lays down the rule that a revocation may not be granted on the commission of a single act of ingratitude. 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 by a series of acts.”

In the case in hand, ingratitude has been continuous. The donee had never wanted to give the donor any help at any time. That is the reason for not helping her to get a new oven or a new fridge when she was doing her home industry earning some income. She had not even suggested to chip in if the donor wanted to really buy new instruments to help her industry of making cakes. Then she had not responded well to the donor’s request for financial help over the telephone conversations when she fell sick but demanded that the request be done in writing. Even thereafter no money was sent or made any arrangement for her to

get any money when the donor was in dire need of it and mentally down as she was sick. Thirdly she had not visited her when she came to Sri Lanka knowing very well that she was sick. By doing so she had caused great mental pain to her. The donor was an aunt who loved and comforted her when she needed that before leaving the country in 1972 and finally gifted her only house and property to the Defendant. The Plaintiff donor was a spinster who had no others from whom she could ask for any help financially. Fully well knowing all these circumstances, the donee had failed to care for her. I consider this attitude of the Defendant as continuous ingratitude. I conclude that gross ingratitude has been proven.

I conclude that the trial judge of the District Court and the Civil Appellate judge of the High Court have correctly adjudicated that there are grounds to allow the deed of gift to be revoked. I affirm the Judgement of the District Judge and the Judgement of the Civil Appellate High Court.

Appeal is dismissed with costs. The Registrar is directed to send the District Court record forthwith to the District Court of Mount Lavinia for necessary action to be followed.

Judge of the Supreme Court

Justice Upaly Abeyrathne
I agree.

Judge of the Supreme Court

Justice Nalin Perera
I agree.

Judge of the Supreme Court

