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

In the matter of an application made in terms of Section 5 (c) of the High Courts of the Provinces (Special Provisions) (Amendment) Act, No. 54 of 2006.

SC / APPEAL / 23 / 2022

SC / HCCA / LA / 273 / 2019

WP / HCCA / KALU / 02 / 2014 (F)

DC Matugama: 4008 / L

Liyanaarachchige Jamis Dissanayake,
No.188, Agalawatta Road,
Matugama.

PLAINTIFF

-Vs-

1. **Liyanaarachchige Leelarathna Dissanayake,**
   No.126, Agalawatta Road,
   Matugama.

2. **Kandammilage Dona Kusumawathie (Deceased),**
   No.188, Agalawatta Road,
   Matugama.

DEFENDANTS

AND THEN BETWEEN

Liyanaarachchige Leelarathna Dissanayake,
No.126, Agalawatta Road,
Matugama.

1st DEFENDANT – APPELLANT

-Vs-

Liyanaarachchige Jamis Dissanayake (Deceased),
No.188, Agalawatta Road,
Matugama.

PLAINTIFF – RESPONDENT

Liyanaarachchige Nandani Dissanayake,
No.188, Agalawatta Road,
Matugama.

SUBSTITUTED PLAINTIFF – RESPONDENT

AND NOW BETWEEN

Liyanaarachchige Jamis Dissanayake (Deceased),
No.188, Agalawatta Road,

Matugama.

PLAINTIFF – RESPONDENT - APPELLANT

Liyanaarachchige Nandani Dissanayake,
No.188, Agalawatta Road,
Matugama.

SUBSTITUTED PLAINTIFF – RESPONDENT - APPELLANT

-Vs-

Liyanaarachchige Leelarathna Dissanayake,
No.126, Agalawatta Road,
Matugama.

1st DEFENDANT – APPELLANT – RESPONDENT

Before : A.H.M.D. Nawaz, J.
Kumudini Wickremasinghe, J. &
K. Priyantha Fernando, J.

Counsel : Ranil Samarasooriya with Wimukthi Weragama instructed by Upamalika Liyanage for the Substituted – Plaintiff - Respondent - Appellant.

Chitta Swarnadhipathi with Sanjeewa Dassanayake and Sasika Premanayake instructed by Lilanthi De Silva for the 01st Defendant - Appellant – Respondent.

Argued &

Decided on : **06.12.2024**

A.H. M. D. Nawaz, J.

This Court has heard both the learned counsel for the Substituted-Plaintiff-Respondent-Petitioner-Appellant (hereinafter known as the Plaintiff) and the 01st Defendant-Appellant-Respondent-Respondent (hereinafter sometimes referred to as "the 1st Defendant" or "the Defendant").

By a plaint dated 16.05.2011, the Plaintiff instituted an action before the District Court of Matugama seeking a revocation of a deed bearing No. 5206 dated 01/08/2023 on the ground of gross ingratitude, among other reliefs that were prayed for. When this matter was taken up for trial, two admissions were recorded, namely;

1. Jurisdiction of Court to try and determine this matter,
2. The admission that the impugned deed was a deed of gift.

Thereafter, in response to the Plaintiff's issues, the defendant raised issues on the basis that since it was a valid deed of gift, he should be declared the owner of the property that was conveyed through the aforesaid deed.

After the trial, the learned District Judge granted the reliefs prayed for by the Plaintiff. In other words, the deed of gift was set aside by Court. The Defendant preferred an appeal to the Civil Appellate High Court of *Kalutara* where the learned Civil Appellate High Court judges in a long and comprehensive judgment allowed the appeal of the Defendant.

This court observes that the learned judges of the Civil Appellate High Court have indulged in an analysis of facts to ascertain whether the deed was a gift or not in the first instance. Notwithstanding the fact that the 1st Defendant had pleaded and admitted at the trial that it was a valid gift, the learned Civil Appellant High Court judges examined the facts and decided in their judgment dated 11 June 2019 that the impugned deed was in fact not a deed of gift and took the view that the District Judge should have dismissed the action instituted by the Plaintiff.

The learned Civil Appellate High Court judges opined that this is not a gift in a strict sense. It is on that basis that the learned Civil Appellate High Court judges dismissed the action of the Plaintiff.

When this matter was taken up for argument before this Court, both learned counsel advanced their respective arguments. Mr. Samarasooriya, the learned counsel for the Plaintiff contended that once the nature and character of the document was admitted at the trial by the 1st Defendant a deed of gift by way of a formal admission tendered before court, there cannot be a withdrawal of such an admission as the admission was based on facts.

Mr. Swarnadhipathi, learned Counsel for the 1st Defendant, sought to advance a contrary argument by relying on a segment of the Plaintiff's own testimony, namely that the 1st Defendant, his son, had brought improper pressure to bear upon him in the execution of the deed of gift. This submission is misconceived. Improper pressure is a vitiating factor recognised by law, and evidence tending to establish such pressure

fortifies the Plaintiff's challenge to the deed rather than detracts from it. I shall return to the question of improper pressure presently.

Mr. Swarnadhipathi in supporting the judgment of the Civil Appellate High Court cited ***Wille's Principles of South African Law*** and he drew our attention to a passage at page 624 of that treatise where the learned author sets down the ingredients of what a gift should be. One of the ingredients that was set down by Wille as constituting a deed of gift is liberality - a large heartedness on the part of the donor.

Mr. Swarnadhipathi, the learned counsel for the 1st Defendant contends that since admittedly there was fear instilled into the mind of the father (the Plaintiff) which compelled him to execute this deed of gift, there was no liberality and the ingredient of a valid gift is totally lacking. The import of this argument was that the deed never came into existence as a gift but the Defendant must continue to enjoy the property.

These were the rival arguments that this Court heard on this appeal. We would consider these arguments and determine whether a party who has admitted to the nature and character of a document in a formal admission can resile from such admission, without having raised it as a question of fact to be tried before the trier of facts.

The unqualified admission that it was a gift was made before court and it became admissible against the maker of that admission by virtue of Section 58 of the Evidence Ordinance. Section 58 refers to formal admissions. Justice Gamini Amaratunga distinguished between formal admissions such as those found in Section 58 and informal admissions in the case of ***Sivaratnam Vs. Dissanayake.***

According to this section, an admission of fact made by a party or his agent before the hearing or at the hearing or in any rule of proceeding in force at the time it has been made need not be proved in any proceeding. Once a question of fact such as the existence of a gift is admitted at the trial, that admission takes the place of proof.

A question that has often arisen is how far an admission of fact or law or of a mixed question of fact and law can bind a client in a civil action? In ***Uvais vs. Punyawathie*** Fernando J. held that;

> *"It is sometimes permissible to withdraw admissions of questions of law, but admission on questions of fact cannot be withdrawn. Quite apart from any question of estoppel or prejudice, to permit admissions to be withdrawn in these circumstances would subvert some of the most fundamental principles of the Civil Procedure Code in regard to pleadings and issues. Section 75 of the Civil Procedure Code not only requires a defendant to admit or deny the several averments in the plaint, but also to set out in detail, plainly and concisely the matters of fact and law, and the circumstances of the case upon which he means to rely for his defence; sections 46(2), 142D and 142H[2] of the Civil Procedure Code oblige the Court upon the pleadings or upon the contents of the documents produced, and after examination of the parties if necessary, to ascertain the material propositions of fact or of law upon which the parties are at variance, and thereupon to record issues on which the right decision of the case depends; Explanation (2) of Section 150 of the Civil Procedure Code prohibits a party from making at the trial, a case materially different from that which he has placed on record and which his opponent is prepared to meet; the facts proposed to be established by a party must in the whole amount to so much of the material part of his case as is not admitted in his opponent's pleadings".*

This case was followed by the Court of Appeal in the case of ***Jayalath vs. Karunatilaka***where it was reiterated that *"It is a well-established principle of law that parties to a case cannot resile from admissions of fact. While it is sometimes permissible to withdraw admissions on questions of law, admissions of fact cannot be withdrawn."*

It has to be observed that section 8 (1) of the Evidence (Special Provisions) Act, No. 14 of 1995 also provides that it is not necessary to prove any fact which is admitted by the

opposing party. This subsection concurs with the provisions of section 58 of the Evidence Ordinance, which states:

> *'No fact need be proved in any proceeding which the parties thereto or their agents agree to admit* ***at the hearing****, or which,* ***before the hearing****, they agree to admit by any writing under their hands, or which* ***by any rule of pleading*** *in force at the time they are deemed to have admitted by their pleadings:*
>
> *Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."*

If the Court is satisfied that the admission has been obtained by fraud or that there is other good and sufficient cause, it will be in its discretion, under the proviso, to require the fact to be proved otherwise than by such admission. The Court may require the proof of facts admitted by the parties under the *proviso* to section 58 of the Evidence Ordinance.

No issue or demurrer was raised that the admission was obtained by fraud. In such a situation all ingredients of a gift have been admitted by the Defendant and a Plaintiff can subsequently seek to invalidate the deed on the ground of ingratitude or gross ingratitude, whichever appellation they attach to it. This is one such case founded on that cause of action but while giving evidence, the Plaintiff also referred to improper pressure being brought to bear on him by the son to obtain the conveyance in his favor. But improper pressure was not his cause of action.

Admissions made before Court are binding on the 1st Defendant, and he is precluded from leading evidence to resile from or rebut such admissions. The Court of Appeal has drawn a clear distinction between admissions falling within Section 58 and those contemplated by Section 17 of the Evidence Ordinance. Admissions on questions of fact made before Court and attracting Section 58 are conclusive for the purposes of the proceeding and cannot thereafter be withdrawn. By contrast, informal admissions made outside Court, though admissible in evidence under Section 21 of the Evidence Ordinance, remain open to explanation or rebuttal.

We take the view that the 2nd admission made by the 1st Defendant in the trial binds him and there cannot be any evidence led by the Plaintiff to renege on this admission. On the question of admission I must in passing state that I held in the Court of Appeal that even averments in pleadings which are uncontradicted in responsive pleadings can also be acted upon as admissions.

Having dealt with this admission, we now come to the material portion of evidence that is relied upon by the 1st Defendant-Appellant before this Court namely, the father made the assertion in his testimony that the son-the 1st Defendant exercised improper pressure on him to execute this deed. Even though this would provide a basis of invalidating a deed, in fact the Plaintiff did not raise any issue on this basis to have this deed invalidated. The only ground relied upon by the Plaintiff to set aside this deed was gross ingratitude.

A party who comes to court alleging a particular ground of invalidation often gives evidence which may provide another basis for his claim to succeed. In the quotidian life of a practitioner and our civil courts, it so happens that such grounds, if they emanate in the course of the testimonies are not considered by original court judges, because they are not raised before them as issues.

However, that evidence exists on the record and it is open to an appellate tribunal such as the High Court or the courts above the High Court to consider that ground and see whether that will constitute a question of law. In other words, an appellate forum can raise issues on a question of law because that question of law originates from the facts that have been already led and are available for court. In such a situation that question of law will qualify to be a pure question of law.

Quite contrary to the argument placed by the learned counsel for the 1st Defendant I take the view that the evidence of improper pressure has not been contradicted or rebutted by the 1st Defendant when the father gave that evidence. An uncontradicted item of evidence has to be treated as an admission made by the Defendant in such a scenario - see the

decision of ***H.N.G. Fernando, CJ*** in the case of ***Edrick de Silva v. Chandradasa de Silva.***

But the allegation of improper pressure was never the case of the Plaintiff in the District Court nor was it a case of the Defendant. In fact, the Defendant's case right throughout had been one of a valid deed of gift in his favour. By keeping silent in the face of the in court testimony of the father that the son (the 1st Defendant) pressured him to convey the property, the son was making an admission that he did not secure a valid gift born of the liberality of the father. That admitted fact alone is sufficient to invalidate the deed on the ground of improper pressure or duress. But this was not the pleaded cause of action by the Plaintiff and he sought a nullification of the deed only on the ground of gross ingratitude. The learned District Judge found for the Plaintiff as it was the case that was presented before the District Court.

However, the learned Counsel for the 1st defendant sought to rely on his admission of improper pressure, adducing his own admission in court in order to show that the father had not made a valid gift to him. If this was not a valid gift, it is clear as daylight that the property must revert to the father.

For the reasons I have adumbrated above, that attempt is illogical and destroys the case of the Defendant. When he was challenged on his gratitude towards his donor, it goes without saying that his success in retaining the property must depend on his adduction of evidence to disprove gross ingratitude. When a particular answer and issues were presented before the original court on the basis that his gift was voluntary and born of free will of his father, the 1st defendant must be treated as having advanced a case of the validity of that deed before the learned District judge and it does not lie in his mouth to deny the existence of a gift. The fact in issue would then be whether there was gross ingratitude to invalidate the deed.

In contradistinction to a case that a party had put forward in the District Court, he could not present a different case before the Supreme Court -Explanation 2 to Section 150 of the Civil Procedure Code makes this patently clear.

Explanation 2

The case enunciated must reasonably accord with the party's pleading, i.e., plaint or answer, as the case may be. And no party can be allowed to make at the trial a case materially different from that which he has placed on record, and which his opponent is prepared to meet. And the facts proposed to be established must in the whole amount to so much of the material part of his case as is not admitted in his opponent's pleadings.

This Court also finds an assertion by the 1st Defendant in the written submissions made before the High Court that what he secured was a valid deed of gift.

In the circumstances, we find it quite contrary to logic and law that the judges of the Civil Appellate High Court had to embark upon an inquiry to hold that this is not a valid deed of gift. They were prohibited from doing so on the basis of the admissions, the case presented before the learned District Judge and the written submissions that were tendered in both the District Court and the Civil Appellate High Court. The first Defendant could not have blown hot and cold.

If a person is alleged to have exercised duress or improper pressure which remains uncontradicted and unimpeached by that person in the trial, that person cannot make a virtue of that vitiating factor and use it in his favour before this Court.

In the circumstances, we are compelled to hold that the learned Civil Appellate High Court judges were in error when they dismissed the Plaintiff's case. We set aside the judgment of the Civil Appellate High Court 11 June 2019 and affirm the judgment of the District Court dated 06 January 2014.

In the circumstances, we allow the appeal preferred before this Court by the Plaintiff-Respondent-Appellant.

The learned District Judge is directed to give effect to the reliefs that had been ordered by the District Court as soon as this judgment is received by that Court.

Judge of the Supreme Court

Kumudini Wickremasinghe, J. **Judge of the Supreme Court**

I agree.

K. Priyantha Fernando, J. **Judge of the Supreme Court**

I agree.