

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

*In the matter of an Appeal in terms of Section 5(C) of
the High Court of the Provinces (Special Provisions)
Act No. 19 of 1990 as amended by Act No. 54 of 2006
read with Article 128 of the Constitution of the
Democratic Socialist Republic of Sri Lanka*

SC/Appeal / 42/ 2021

SC /HCCA/ LA 36/2020

WP/HCCA/MT/51/17/F

DC Nuggeoda No. 1/224/08

Ungamandadige Sriyalatha Fernando
alias Sriya Fernando
of No. 45/46A,
4th Lane,
Ratmalana.

PLAINTIFF- APPELLANT-
APPELLANT

Vs.

1. Fernando Ungamandadige Shayamali Indunil
Thilakalatha Dheerasooriya
No. 15, Andagala Road,
Kurunegala.
2. Kosala Dheerasooriya
No. 15, Andagala Road,
Kurunegala.
3. Chinthaka Perera
No. 127/2, Temple Road,
Maharagama

DEFENDANTS-
RESPONDENTS-RESPONDENTS

U. Sriyalatha Fernando, alias Sriya Fernando v F. U. S. I. Thilakalatha Dheerasooriya and Others
Case No. SC/Appeal/42/2021

Before: Mahinda Samayawardhena, J.
Dr Sobhitha Rajakaruna, J.
Sampath K.B. Wijeratne, J.

Counsel: Rohan Sahabandu, PC with C.P. De Silva and Kerthi Sri Gunawardene for the Plaintiff-Appellant-Appellant.
Mayura Gunawansa, PC with Yashodi Wijayasekara and Senuri Mudannayake for the 1st, 2nd and 3rd Defendant-Respondent-Respondents.

Written Submissions: Plaintiff-Appellant-Appellant – 28 April 2026, 30 April 2021

1st, 2nd and 3rd Defendants-Respondents-Respondents –

29 July 2021

Argued on: 25 February 2026

Decided on: 09 September 2026

Judgement

Dr Sobhitha Rajakaruna, J.

The Plaintiff-Appellant-Appellant ('Plaintiff') submitted that Deed No. 2071 attested on 02 August 1994 ('P4') was an ordinary deed of gift expressly made subject to the life interests of the Plaintiff and her parents, and not a *donatio propter nuptias* or dotal gift as contended by the Defendants. It was submitted that the 1st Defendant-Respondent-Respondent ('1st Respondent'), who was a signatory to the deed, was fully aware of the reservation of such life interests and had admitted in evidence that her right to possession would arise only upon the expiration of those interests. Accordingly, the Plaintiff contended that the 1st Defendant had violated an express condition of the gift by preventing the Plaintiff and her mother from enjoying the property.

It was further submitted that the evidence established that the Plaintiff's mother, who was in possession of the property, was compelled to leave the premises following incidents involving the 2nd and 3rd Defendants. In this connection, reliance was placed particularly upon the police complaints marked 'P5' and 'P6', which, according to the Plaintiff, had been admitted by the Defendants and in respect of which a police inquiry had been conducted. The Plaintiff argued that the 1st Defendant's admission that the keys to the premises remained in her custody, together with her refusal to restore possession without a court order, supported the inference that the life interest had been deliberately denied.

The Plaintiff contended that the failure by a donee to comply with a condition attached to a gift constitutes an act of ingratitude sufficient in law to justify revocation of the donation. Reliance was placed, inter alia, upon *Dona Podi Nona Ranaweera Menike v Rohini Senanayake* [1992] 2 Sri LR 180, *Sansoni v Foenander* (1872,'75 & '76 Ramanathan 32) and *Krishnaswamy and Another v Thillaiyampalam* [1957] 59 NLR 265. It was submitted that, once the existence of the condition and its violation were established, such violation itself constituted ingratitude, while the alleged assault, eviction and other conduct constituted additional circumstances demonstrating the 1st Defendant's gross ingratitude.

The Plaintiff further submitted that both courts below had erred in treating 'P4' as a dotal gift. Particular emphasis was placed on the fact that the District Judge had found that the deed was a deed of gift and not a deed executed as dowry in consideration of marriage, and that the Defendants had neither appealed nor filed a cross-appeal against that finding. It was therefore contended that the Provincial High Court of Western Province holden in *Mount Lavinia* ('High Court') erred in disturbing that finding and in holding that 'P4' was a donatio propter nuptias. Reliance was also placed upon the decision in *Brandywattage Siriyawathee v H.G.A. Menaka Kumari* (SC Appeal No. 162/2019, SC Minutes 06 February 2026), in support of the proposition that the absence in the deed of any reference to marriage or to the property being given as dowry counts against defining it as a dotal gift.

On those grounds, the Plaintiff submitted that the findings of both courts below were erroneous in law and fact and that the deed of gift was liable to be revoked on the ground of gross ingratitude. The Plaintiff accordingly sought that the judgment of the High Court

and the judgment of the District Court (District Court of *Nugegoda*) be set aside and that judgment be entered in her favour as prayed for in the Plaint.

Learned Counsel for the 1st, 2nd and 3rd Defendants-Respondents-Respondents submitted that the Plaintiff had failed to establish, by credible evidence, any act of gross ingratitude on the part of the Defendants, sufficient to warrant revocation of 'P4'. It was contended that the Plaintiff was the sole witness relied upon to establish the alleged misconduct and that she had failed to call her mother, who was said to have been the victim of the alleged assault and eviction. The Defendants therefore challenged the credibility of the Plaintiff's evidence, drawing attention to material inconsistencies and alleged false statements made by her in the course of her testimony.

It was further submitted that the Plaintiff had failed to establish any connection between the alleged incident concerning her mother and the 1st and 2nd Defendants, who were residing in *Kurunegala* at the material time. According to the Defendants, the evidence did not establish that the 1st or 2nd Defendants had participated in, instigated or authorised any alleged eviction or assault by the 3rd Defendant. The Defendants therefore maintained that the findings of the District Court and the High Court that the alleged acts of gross ingratitude had not been proved were fully justified.

Concerning the life interest reserved in 'P4', it was submitted that the Plaintiff had unsuccessfully attempted to rely upon the alleged denial of such life interest as an alternative basis for revocation. The Defendants-Respondents-Respondents contended that the 3rd Defendant had been in possession of the property even prior to the execution of 'P4' and that neither the 1st nor the 2nd Defendant had interfered with the Plaintiff's or her mother's right to occupy the premises. It was further submitted that the Defendants had not objected to the Plaintiff or her mother occupying the property in the exercise of their alleged life interests.

The Defendants also supported the finding that the police complaints relied upon by the Plaintiff had not been duly proved. They submitted that the mother, who was alleged to have made the complaints and to have been the victim of the relevant conduct, had not been called as a witness and that the Plaintiff had consequently failed to establish the truth

of the matters contained in those documents. The Defendants therefore maintained that ‘P5’ and ‘P6’ could not properly be relied upon as establishing gross ingratitude.

Finally, the Defendants submitted that, although the District Court had answered the issues relating to *donatio propter nuptias* in favour of the Plaintiff, the High Court had, upon a consideration of the evidence and applicable law, correctly concluded that ‘P4’ was not an ordinary gift but a *donatio propter nuptias*. However, it was emphasised that, irrespective of the characterisation of ‘P4’, the Plaintiff had failed to establish the alleged gross ingratitude or violation of the reserved life interest. The Defendants accordingly submitted that the Plaintiff had failed to establish her case and that the appeal ought to be dismissed with costs.

The Legal Matrix

Under Roman-Dutch Law, the default position is that a deed of gift is absolute and irrevocable. However, this principle admits of an exception: even an irrevocable deed may be revoked on the ground of gross ingratitude. At the same time, Section 2 of the Revocation of Irrevocable Deeds of Gift on the Ground of Gross Ingratitude Act, No. 5 of 2017 stipulates that 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 of such deed against the donee to have the said deed revoked. These provisions permit the donor to institute an action for revocation within ten years from the date of execution of the deed, and within two years from the date on which the cause of action arose.

Moreover, in the Supreme Court case of *Visenthi Baduge Piyasiri v Dissanayaka Mudiyansele Gunarathna Banda* (SC Appeal No. 42/2010, SC Minutes of 17 June 2022), L. T. B. Dehideniya J. observed that, as a matter of law, a deed of gift is irrevocable unless the donor has expressly reserved the right to revoke the gift. Similarly, in *Rathnayake Mudiyansele Jayathilaka v R. M. Siriwardena of Ihalagama* (SC Appeal No. 221/2012, SC Minutes of 19 September 2019), E. A. G. R. Amarasekara J. held that the legal texts and judicial authorities referred to therein establish that, in interpreting a deed, the Court must ascertain the expressed intention of the parties from the meaning of the words employed

in the deed. In doing so, the deed must be considered as a whole, so as to ascertain the true meaning and effect of its several clauses.

Accordingly, I am of the view that, where the donor and the donee subsequently reach a mutual agreement to revoke a deed of gift, such agreement may be given effect to by an appropriate legal instrument, without the necessity of invoking the jurisdiction of a court. Where no such subsequent agreement exists, however, a deed of gift may nevertheless, in my view, be revoked by an appropriate legal instrument where the deed itself contains either: (a) unambiguous provisions governing revocation; or (b) unambiguous provisions governing revocation upon the occurrence of a specified event and the occurrence of that event is readily apparent or objectively ascertainable to both parties or to any reasonable person.

Having regard to the broader principles governing the revocation of deeds of gift, I am further of the view that the right of revocation on the ground of gross ingratitude should extend to deeds of gift which contain provisions permitting revocation, provided that the deed expressly manifests its revocable character. This is without prejudice to the recognised grounds upon which a court may, under the general law, set aside or revoke a deed of gift, including undue influence, misrepresentation and fraud.

Turning to another area, His Lordship Justice Mahinda Samayawardane observed in *Brandywattage Siriyawathee v H.G.A. Menaka Kumari* (SC Appeal No. 162/2019, SC Minutes of 06 February 2026) that:

“A donation propter nuptias cannot be revoked on gross ingratitude. In *Ponnamperume v. Goonesekera* (1921) 23 NLR 235 the Supreme Court held that “A donation propter nuptias is not revocable for ingratitude during the subsistence of the marriage. But it may be revoked by a donor who has reserved the power of revocation. A donation proper nuptias is not a mere gift made on the occasion of a marriage, but a contract made as an inducement to marry.” The distinction between a donatio propter nuptias and an ordinary gift given on the occasion of a marriage must be understood in the light of the unique facts of each case, since the character of the donation depends upon the intention of the donor and the surrounding circumstances.

In the celebrated case of *Dona Podi Nona Ranaweera Menike v. Rohini Senanayake* [1992] 2 Sri LR 181, Amarasinghe J. highlighted the distinction between a *donatio propter nuptias* and an ordinary gift given on the occasion of a marriage. His Lordship observed that an ordinary donation made on the occasion of a marriage, as an act of love and affection or for the sake of enrichment, is a pure act of disinterested benevolence and liberality, unconditionally given, without any sense of compulsion or obligation, and without any further expectation or hope. In contrast, a *donatio propter nuptias* is a gift made in contemplation of a marriage with a view to enabling or supporting that marriage. It is given in consideration of the marriage and not merely on the joyful occasion of the marriage.”

The rationale underlying the earlier jurisprudence, including the approach adopted in *Dona Podi Nona Ranaweera Menike v Rohini Senanayake* [1992] 2 Sri LR 181, was substantially founded upon principles derived from Roman-Dutch law, under which a donation was regarded, in its essential character, as a contractual juridical act between the donor and the donee. I take the view that the legislative development in Sri Lanka (in 2017) requires a reconsideration of the rationale underlying the earlier law relating to *donatio propter nuptias* and the manner in which that law is to be understood and applied in Sri Lanka.

As observed earlier in *Ponnamperume v. Goonesekera* [1921] 23 NLR 235, under Roman-Dutch law, a *donatio propter nuptias* cannot be revoked on the ground of gross ingratitude. This question can no longer be approached solely through the conceptual framework of Roman-Dutch law or by reference to the contractual character traditionally attributed to a donation. Rather, the law must be construed in its contemporary context, having regard to the expressed intention of the parties. Such construction should also take account of the prevailing socio-economic realities of Sri Lanka and the legitimate expectations of a society in which property transactions, family relationships, inter-generational transfers of wealth, and the security of property rights have undergone substantial change.

At the same time, the law ought to be interpreted in a manner conducive to sustainable social and economic development, preserving the sanctity and stability of lawful transfers of property, while providing an effective judicial remedy where the conduct of a donee has reached the degree of gross ingratitude contemplated by the aforementioned jurisprudence or where any condition expressly stipulated in the deed has been violated. The principles

governing this area of law should therefore be approached not merely as inherited rules of private law, but as principles operating within a contemporary statutory framework, in which the protection of property, family interests, contractual expectations, and access to judicial remedies must be harmoniously balanced. I make it clear, however, that the foregoing analysis does not extend to matters falling within the respective domain of Kandyan Law.

Evaluation

Having considered the evidence led before the learned District Judge, the judgments of the courts below and the submissions advanced before this Court, I shall first determine the legal character and effect of Deed No. 2071 marked 'P4'. For the reasons set out earlier in this judgment, I am firmly of the view that 'P4' cannot properly be characterised as a *donatio propter nuptias*. The evidence does not establish that the property was conveyed in consideration of, or as an inducement to, the marriage between the 1st Defendant and the 2nd Defendant. Nor does the deed itself contain any reference to such marriage or to the property being conveyed as dowry. On the contrary, the deed expressly reserves the life interests of the Plaintiff and her parents. Having regard to the law applicable at the time 'P4' was executed, as well as the judicial authorities considered earlier, I am unable to accept the proposition that 'P4' was a dotal gift.

The conclusion I have reached on this question is also consistent with the fundamental distinction between a *donatio propter nuptias* and an ordinary donation made on the occasion of a marriage. A donation does not acquire the character of a dotal gift merely because the donor and donee happen to be related and the donee subsequently enters into marriage. The essential question is whether the gift was made in consideration of, or as an inducement to, the marriage. In the present Case, that essential element has not been established.

More importantly, the legal effect of the express reservation contained in 'P4' cannot be overlooked. The deed conveyed the property to the 1st Defendant subject to the life interests reserved in favour of the Plaintiff and her parents. The 1st Defendant was a signatory to 'P4', and the deed was read over and explained to her by the Notary. Her own

evidence establishes that she was aware of the terms of the deed. Indeed, her evidence is of particular significance because she accepted that her right to possess the property would arise only upon the expiration of the relevant life interests.

In those circumstances, the 1st Defendant cannot assert a right of possession inconsistent with the very life interests subject to which the property was conveyed to her. The acceptance of a gift subject to an express reservation necessarily carries with it the obligation to respect and give effect to that reservation. The donee cannot accept the benefit of the deed while simultaneously disregarding a material term upon which that benefit was conferred. It is significant that the 1st Defendant herself admitted that the keys to the premises were in her custody and that she would not hand over possession to the Plaintiff unless a court order was obtained. That admission is inconsistent with the proposition that the 1st Defendant had no control over the possession of the premises or that the Plaintiff's right of occupation was being freely respected.

I have carefully considered the allegation that the Plaintiff's mother was assaulted and compelled to leave the premises. I am conscious that the mother did not give evidence before the learned District Judge. I am also conscious that the police complaints relied upon by the Plaintiff were made by the mother and that the complaint concerning the alleged assault was directed against persons other than the 1st Defendant. Accordingly, I do not consider that the material before Court is sufficient to make a positive finding that the 1st Defendant herself assaulted the Plaintiff's mother.

Nor am I satisfied that the evidence establishes, with the degree of cogency required in law, that the 1st Defendant herself committed an act of gross ingratitude towards the Plaintiff or her mother by way of assault, threat or other comparable misconduct. The fact that police complaints were made and that a police inquiry subsequently took place cannot, on its own, establish the truth of every allegation contained therein or establish the personal participation of the 1st Defendant in the alleged assault.

In this regard, I adopt the principle stated by Samayawardena J. in the said *Brandywattage Siriyaawathe v H.G.A. Menaka Kumari*, that gross ingratitude must be established by cogent evidence and that the question whether particular conduct amounts to gross ingratitude

must be determined according to the facts and circumstances of each case. His Lordship further recognised that an assault by the donee upon the donor, threats of bodily injury, continuous insult, damage to property, ill-treatment and failure to fulfil conditions attached to a gift may, depending upon the circumstances, constitute gross ingratitude. The burden nevertheless remains upon the party seeking revocation to establish such conduct on a balance of probabilities.

Applying that principle to the present Case, I am not prepared to hold that the Plaintiff has established, on the evidence before Court, an independent case of gross ingratitude arising from an assault or other personal misconduct on the part of the 1st Defendant towards the Plaintiff or her mother. The absence of the mother's testimony is material in this regard. I therefore do not base my conclusion on a finding that the 1st Defendant committed an act of gross ingratitude of that nature. Moreover, no cogent evidence has been placed before Court to establish that the 1st Defendant continuously obstructed the occupation of the premises by the Plaintiff or her mother, save for the evidence relating to the statement made by the 1st Defendant that she would not hand over possession of the premises without a court order.

That conclusion, however, does not resolve the principal question concerning the Plaintiff's right to possession of the premises. These two questions must be kept distinct. The failure to establish an independent act of gross ingratitude does not extinguish a life interest expressly reserved in a deed of gift. The right of the Plaintiff and her parents to occupy and enjoy the property during their respective lifetimes arises from 'P4' itself. That right cannot be defeated merely because the Plaintiff has failed to establish an additional ground for the revocation of the gift.

The Plaintiff's right to occupy and enjoy the premises is not contingent upon establishing that any of the Defendants assaulted her mother. It is a right expressly reserved by 'P4'. The question, therefore, is whether that right has been respected and whether the Plaintiff and her parents have been permitted to enjoy it. In my view, the evidence establishes that they have not. The evidence of the 1st Defendant that the keys to the premises remained

in her custody and, more particularly, her statement that she would not hand over possession without a court order, assumes considerable significance in this regard.

Similarly, I do not accept the circumstance that the 3rd Defendant may have been in occupation or possession of the premises prior to the execution of 'P4' alters the legal position. Whatever may have been the circumstances of occupation prior to 'P4', the rights created by 'P4' must be determined by the terms of that deed. Once the 1st Defendant accepted the property subject to the life interests expressly reserved therein, neither she nor any person claiming through or under her could acquire a right to exclusive possession contrary to those interests.

Conclusion

A life interest is neither a nominal nor an illusory right. It necessarily carries with it the right to occupy, possess, and peacefully enjoy the property during the subsistence of that interest. Ordinarily, a donee is likewise entitled to possession, provided that such entitlement does not override the rights expressly reserved by, or the intentions of, the donor. In essence, the relationship between the donor and the donee, and the exercise of the rights arising under the deed, must be understood in the context of the trust and confidence reposed by the donor in the donee, particularly during the donor's lifetime.

Having regard to the special circumstances of the present Case, I therefore find that the Plaintiff and her mother (this Court has been apprised of the death of the Plaintiff's father, but no indication as to the present status of her mother) are entitled, by virtue of the life interests expressly reserved in 'P4', to possess, occupy, and peacefully enjoy the subject premises during their respective lifetimes. The title of the 1st Defendant under 'P4' is subject to those subsisting rights. Her entitlement as donee cannot, therefore, mature into an entitlement to exclusive possession until the expiration of the life interests reserved by the deed.

I emphasise that this conclusion does not amount to a revocation of 'P4' on the ground of gross ingratitude. I have reached the conclusion that the evidence is insufficient to establish such gross ingratitude in the strict sense contemplated by the law. The relief concerning

possession follows from the independent and express rights created by 'P4' itself. In my view, it would be contrary to both the terms of the deed and the principles governing the protection of an expressly reserved life interest to allow the donee to retain exclusive possession and thereby render the reserved interests ineffective.

Consequently, the 1st, 2nd and 3rd Defendants and all persons presently occupying or claiming possession of the subject premises through or under them shall vacate the said premises and hand over peaceful and vacant possession thereof to the Plaintiff, subject always to the life interests expressly reserved in favour of the Plaintiff and her mother under 'P4'. The Plaintiff and her mother shall thereafter be entitled to occupy and enjoy the premises free from all disturbances by the 1st Defendant or any person through whom she claims or claiming through her within the limits of the Deed 'P4'. This order is consistent with, and falls within the scope of, the reliefs prayed for by the Plaintiff in her Complaint and is warranted by the facts and circumstances of the present Case.

Thus, I proceed to answer the following Questions of Law found in para 15 (a),(c),(d),(e) of the Petition dated 18 January 2020 as follows;

(a) When the Learned District Judge who had seen and heard the witnesses giving evidence at the trial of this Case held that the said deed marked 'P4', bearing No. 2071 dated 02 August 1994, attested by W.D.V. Tillekeratne N.P., is a deed of gift and not a dowry property and when the Defendants had not appealed against the said decision or had not filed a cross appeal in respect of the said decision, did the Hon. High Court Judges err in law holding that the said deed marked 'P4', is a deed conveying property for a dowry? **Yes**

(c) Did the 1st Defendant fail to fulfill the conditions and violated the conditions attached to the said deed of gift marked 'P4', by refusing and by not allowing the Plaintiff to enjoy the life interest in the property in suit which the courts below failed to appreciate? **Yes**

(d) In any event Since the Plaintiff has specifically reserved the life interest in the property by the said deed marked as 'P4', have the Learned District Judge and the

Honourable Judges of the Civil Appellate High Court err in not granting to the Plaintiff the right to possess the property ? **Yes**

(e) Was the said act or acts of not allowing the Plaintiff to enjoy the Plaintiff's life interest in the property in suit, amount to gross ingratitude of the 1st Defendant towards the Plaintiff ? **No**

For the reasons stated above, I would allow the appeal to the extent necessary to give effect to the aforesaid rights. The judgment of the High Court dated 12 December 2019, and the judgment of the District Court dated 20 March 2017 are accordingly set aside insofar as they are inconsistent with the foregoing findings. The Plaintiff is entitled to the relief relating to possession of the premises in accordance with the terms of 'P4', however, I make no order for the revocation of 'P4' on the ground of gross ingratitude.

In all the circumstances of this Case, I hold that the Plaintiff-Appellant-Appellant is entitled to the costs of litigation in this Court.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

Sampath K.B. Wijeratne, J.

I agree.

Judge of the Supreme Court