

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

In the matter of an Appeal under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 as amended by High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006 read together with Article 127 of the Constitution.

Galabada Kankanamge Jinadasa  
No.265/A, High Level Road,  
Colombo 5.

**Plaintiff**

Vs.

**S.C. Appeal No. 77/2017**

**(SC/HCCA/LA No. 445/2016)**

**High Court Civil Appeal Case**

**No. WP/HCCA/COL 147/2015/LA**

**D.C. Colombo Case No.DLM/97/2015**

Galabada Kankanamge Lekha  
Lasanthi  
No.2A, Balapokuna Road,  
Colombo 06

**Defendant**

**AND BETWEEN**

Galabada Kankanamge Lekha  
Lasanthi  
No.2A, Balapokuna Road,  
Colombo 06

**Defendant-Petitioner.**

**Vs.**

Galabada Kankanamge Jinadasa  
No.265/A, High Level Road,  
Colombo 5.

**Plaintiff-Respondent**

**AND NOW BETWEEN**

Galabada Kankanamge Jinadasa  
No.265/A, High Level Road,  
Colombo 5.

**Plaintiff-Respondent-Appellant**

**Vs.**

Galabada Kankanamge Lekha  
Lasanthi  
No.2A, Balapokuna Road,  
Colombo 06

**Defendant-Petitioner-Respondent.**

**BEFORE** : ACHALA WENGAPPULI, J.  
K. PRIYANTHA FERNANDO, J.  
MENAKA WIJESUNDERA, J.

**COUNSEL** : Dr. Romesh de Silva PC, with Widura Ranawake  
and Shanaka Cooray instructed by Suraj  
Rajapakse for the Plaintiff-Respondent -  
Appellant.  
Dr. Sunil F.A. Cooray instructed by Nilanga  
Perera for the Defendant-Petitioner -Respondent

**ARGUED ON** : 18<sup>th</sup> September, 2025.

**DECIDED ON** : 07<sup>th</sup> May, 2026

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ACHALA WENGAPPULI, J.

In this appeal, the Plaintiff seeks to set aside the judgment of the Provincial High Court of Civil Appeal in appeal No. WP/HCCA/COL/147/2015/LA pronounced on 28.07.2016, which allowed the appeal made by the Defendant, in order to have an order made by the District Court on 11.11.2015 in case No. DLM/97/2015, set aside. In making the said order, the District Court granted relief in the interim to the Plaintiff, preventing the Defendant from alienating, transferring, encumbering, mortgaging, leasing or renting out the property described in the schedule to the Plaintiff.

In instituting the instant action (Case No. DLM/75/2017) against the Defendant by Plaintiff dated 19.06.2015 in the District Court of *Colombo*, the Plaintiff declared therein that the Defendant is one of his two daughters to whom he gifted the property under dispute by Deed of Gift No. 1821 and executed on 27.01.2002, reserving his life interest. The Plaintiff claims that due to multiple acts of gross ingratitude on the part of the Defendant, he now seeks to annul the said Deed of Gift by way of a decree of Court. The Plaintiff also alleged that the Defendant is taking steps to lease out or to sell the said property as she had previously collected advance deposits and lease rentals in respect of that property.

On 22.06.2015, the Plaintiff sought an enjoining order against the Defendant, and was granted by the District Court. The Defendant tendered her Statement of Objections on 06.07.2015, resisting the issuance of the interim injunction. She stated in her Statement of Objections that in Case No. DLM/88/2012, which she had filed before the same Court on

24.05.2012, her father was named as the Defendant. In that action the Defendant sought to annul the Deed of Declaration No. 2872, executed by the Plaintiff, for the purpose of cancelling the Deed of Gift No. 1821, executed in her favour. The Defendant also alleged that in that case (Case No. DLM/88/2012) the Plaintiff sought the identical reliefs by way of his amended answer, which the Court had rejected and therefore; without setting aside that order by an appellate Court, he is now bound by that order. She therefore seeks to have the enjoining order already dissolved by Court.

After an inquiry, the District Court, by its order dated 11.11.2015 has held that the Plaintiff had re-transferred the ownership of the disputed property back to himself after cancelling the Deed of Gift No. 1821, by the execution of Deed of Declaration No. 2872 on 30.03.2012, on the basis of gross ingratitude on the part of the Defendant and therefore had established a *prima facie* case, which made him entitled to the interim relief. The original Court further ruled that the balance of convenience also favoured the Plaintiff and, if no injunction is issued, he would suffer an irreparable loss as that would allow the present Defendant to earn and income by leasing or renting out the property.

The Defendant obtained leave to appeal against the said order from the Provincial High Court of Civil Appeal. The appellate Court had thereupon, allowed her appeal by setting aside the said order of the District Court. The appellate Court held that the District Court erred when it held that the Plaintiff is the owner of the property by solely acting on the premise that the execution of Deed of Declaration revoking the gift conferred title on him, but the instant action was instituted on the premise

of gross ingratitude on the part of his daughter, thus seeking to have the Deed of Gift void by a decree of Court. The appellate Court noted that what the Plaintiff had presented a different case before the lower Court in support of injunctive relief to the case he had pleaded in his Plaint.

The High Court also considered the line of reasoning adopted by the District Court in arriving at the conclusion; that the balance of convenience lies with the Plaintiff. The District Court acted on the Defendant's statement in her objections that she has no intention of alienating the property or to lease it or to rent it out, and therefore concluded that she would not suffer any inconvenience by the issuance of the injunction. The appellate Court decided that it is also as an erroneous conclusion. The third point that the appellate Court found on which the lower Court had erred was its decision on the acceptance of the claim of irreparable damage of the Plaintiff, if the property was leased or rented out.

With those pronouncements made by the Provincial High Court of Civil Appeal, and determining to allow the appeal of the Defendant, the Plaintiff sought leave to appeal from this Court against that judgment. On 04.04.2017, this Court decided to grant leave and allowed the Plaintiff to appeal against the said judgment on the questions of law as set out in paragraphs 14(ii) and 14(v) of the Petition dated 07.09.2016, along with the interim reliefs that were sought in terms of paragraph (f) of the prayer of the said Petition:

- a. Whether the impugned Judgement is against the applicable legal principles and/or fails to appreciate the applicable legal principles?

- b. Whether the impugned Judgment is misconceived in law and does not contain due and proper reasons in that totally fails to appreciate that the underlying basis and/or rationale of the said Judgment is the life interest of the Plaintiff in the relevant property (which fact not challenged by the Defendant) ?

During the hearing of this appeal, learned President's Counsel who represented the Plaintiff, had strongly contended that; although the instant action was instituted seeking to annul a Deed of Gift that had been executed in favour of the Defendant, consequent to her committing several acts that are referred to in the Plaint, which the Plaintiff alleged as acts of gross ingratitude rendering that gift voidable, the fact that he nonetheless retained his life interest over the disputed property and therefore the rights of the donor placed in such a situation were not given due attention by the appellate Court. He relied on the judgment of this Court in *Lamabadusuriya v Abeygunawardena* (SC Appeal No. 169 of 2011 - decided on 06.04.2018 by *Prasanna Jayawardena* J) in support of the appeal.

As the Defendant concedes the life interest, by which the Plaintiff is entitled to use and enjoy the property until his death, it was the contention of the learned President's Counsel that the original Court had rightly issued the injunction as pleaded in order to preserve that right by ensuring the *status quo*.

In addition, the learned President's Counsel also contended that the principle set out in the judgment of *Seelawathie Mallawa v Millie Keerthiratne* (1982) 1 Sri L.R. 384, that a wrong doer not to benefit from his own wrongdoing, is applicable to the instant action which further justifies the issuance of the injunction.

Learned Counsel for the Defendant on the other hand submitted that it was the Defendant who constructed the building that stands on the land gifted by her father. The development to the property under dispute was carried out by the Defendant with the consent of her father and, as such, she is entitled to remain in the possession of the land until she is compensated for the improvements.

It is in this backdrop of factual and legal submissions presented before this Court; I now turn to consider and determine the two questions of law on which this appeal was argued.

The Deed of Gift No. 1821, was executed on 27.01.2002 in favour of the Defendant. The Defendant obtained Development Permits from the Municipal Council of *Colombo* on 27.04.2005 and on 06.12.2007 which granted her permission to the proposed construction. Her plans for the proposed building were approved by the said Council on 10.03.2006. The Defendant claims that she spent around Rs. 15 million, which she obtained as a loan from a bank, in order to construct a multi-storeyed building on the land gifted by her father. She had also obtained the water, electricity and telephone facilities to the property on her own. The Plaintiff denied that the funds for the construction was obtained solely by the Defendant, who did not engage in any income generating activity during that time, and claimed that it was he who provided the required funding for the construction of the said building.

The Plaintiff executed a Deed of Declaration on 30.03.2012, revoking the gift he already made in favour of his daughter in 2002. It is the Defendant's position that the dispute with her father arose when she requested a sum of Rs. 3 million from him. It was alleged that the Plaintiff

agreed to provide that amount, on the condition that the Defendant would renounce her rights to the estate of her deceased brother. The Defendant did not agree with that condition and when she examined the relevant folio of the Land Registry in order to apply for another loan, she realised that a Deed of Declaration had been executed by her father, annulling the said Deed of Gift.

During the ensuing period of over a period of ten years since the execution of the Deed of Gift; and even after the execution of the Deed of Declaration, the Defendant had leased out the building to different parties from time to time. It was done on the basis that she had put up the building by her own funds on the land gifted by her father, thereby entitled to derive an income for herself. The Plaintiff apparently did not contest any of these actions by his ungrateful daughter during this time.

It appears that; with the rift (that commenced with the refusal by the Plaintiff to lend her Rs. 3 million and imposing a condition with which the Defendant did not agree) between the two becoming widened as time progressed, the health of the filial relationship between the Plaintiff father and the Defendant daughter too had suffered incrementally and had deteriorated significantly. Upon realizing that the Plaintiff had revoked the Deed of Gift, the Defendant promptly instituted an action by Plaint dated 24.05.2012 in Case No. DLM/88/2012, seeking a declaration of title to the property in dispute. She also sought to annul the said Deed of Declaration No. 2872, executed by her father on 20.03.2012.

In his answer to the Plaint dated 24.08.2012 in Case No. DLM/88/2012, the Plaintiff had stated that it was he who provided funds to the Defendant to put up the building and denied the allegation made

against him over imposing conditions over the estate of his deceased son. The Plaintiff, admitted the execution of the Deed of Declaration and made a counter allegation that she had maltreated him and cited several of such instances that are attributed directly to the acts of the Defendant. In that answer, he only sought for the dismissal of the Plaintiff.

After about seven months since filing his answer, the Plaintiff made an application before the District Court to amend same by adding that the Defendant, after the Deed of Gift was cancelled by him, had no right to remain on the property and therefore ought to be treated as a trespasser. The Plaintiff therefore prayed for a declaration of his title to the disputed land and also of the eviction of the Defendant therefrom by a decree of Court. The Defendant successfully objected to the reception of the said amended Answer.

The Plaintiff thereupon moved the Provincial High Court of Civil Appeal seeking leave to appeal against the said order of refusal made by the District Court on 19.03.2014 in Case No. WP/HCCA/COL/LA 43 of 2014. An amended petition was filed on 21.07.2014 and the Defendant objected to that amendment as well. The Plaintiff had thereupon moved to withdraw the said leave to appeal application filed before the Provincial High Court of Civil Appeal. The appellate Court dismissed the application upon withdrawal on 16.10.2015.

It is in these circumstances the Plaintiff instituted the instant action to annul the Deed of Gift by way of a decree of Court, pleading that relief on the basis of gross ingratitude on the part of the Defendant. Their litigating history referred to above in detail is clearly set out by the parties, in their respective pleadings in the instant action.

It need not to be re-iterated here that the instant appeal arises out of an interlocutory order made by the District Court issuing an injunction, well before even the instant case had matured to the stage that it could be taken up for trial. The case instituted by the Defendant however had progressed to the stage of trial.

It is evident from the pleadings that the execution of the Deed of Gift and the Deed of Declaration, the fact that the Defendant is in possession of the disputed land, and the existence of a building on that land are undisputed facts, and are not contested by either party in these actions.

The validity of the Deed of Gift, after the execution of the Deed of Declaration whether the Defendant was responsible for the alleged acts of gross ingratitude towards the Plaintiff, whose funds were utilised to put up that building on that land, whether the Plaintiff consented for that construction, under what right the Defendant is in possession of the disputed property, and even if she is guilty of gross ingratitude; whether she is entitled to remain on that land until she is paid compensation for improvements are perhaps some of the issues of fact and law, which must be determined by the District Court after proceeding to trial on both these cases. This Court has no intention of expressing any view on any of these factual or legal issues. It is noted that the two cases that are pending before the District Court, one for annulment of the Deed of Declaration and the other for annulment of the Deed of Gift, would eventually determine the legal entitlements of the respective parties.

However, as at the present moment, this Court concerns itself only with the entitlement of the Plaintiff to the injunctive relief, which he claimed against the Defendant. In this context, it must be noted that it is an

undisputed fact that the Plaintiff had retained his life interest over the disputed property, even after executing the Deed of Gift in favour of the Defendant.

The judgment of *Lamabadusuriya v Abeygunwardena* (SC Appeal No. 169 of 2011 – decided on 06.04.2018) relied on by the Plaintiff, clearly identifies the nature of the bundle of rights held by a life interest holder over a property, after same was gifted. After having referred to the authoritative texts on Roman-Dutch Law, *Prasanna Jayawardena J* has made the following pronouncement; “ ... that a life interest holder, even though has the power to exercise *jus utendi* and *jus fruendi* (Right to use and enjoy the property) in full measure, subject to his right to deal with his life interest, he does not have the power to exercise *jus disponendi* (Right to alienate the property) or *jus abutendi* (Right to demolish or diminish the property) which remains with the title holder, who has the dominium over the property but who could not exercise it fully without the assent of the life interest holder.”

When viewed in the light of the said pronouncement on the nature of the rights of a life interest holder; who had gifted a property, this Court must accordingly consider the validity of the reasoning of the appellate Court had adopted in holding that the initial requirement which must be fulfilled by an applicant, who seeks an injunctive relief; namely a *prima facie* case, had not been satisfied.

What exactly is meant by a *prima facie* case that must be established by an applicant seeking injunctive relief had been considered by the superior Courts in many of its judgments. The Plaintiff himself relied on the judgments of *Jinadasa v Weerasinghe* (1929) 31 NLR 33, *Dissanayake v Agricultural and Industrial Credit Corporation and Others* (1963) 64

NLR 283 and *Kariyawasam v Janaki and 2 Others* BLR [2013] Vol. XX at p. 77 before the District Court in support of his application.

The term '*prima facie case*', as defined by these judgments, speaks of a situation where "... *that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that the plaintiffs are entitled to relief.*" In *Dissanayake v Agricultural and Industrial Credit Corporation and Others* (*ibid*) the Court said (at p. 285) that it must consider "... *whether the circumstances are such that the decree which may ultimately be entered in favour of the party seeking the injunction would be nugatory or ineffective if the injunction is not issued.*"

In the impugned judgment, the appellate Court found that the Plaintiff, having presented his Plaint on the basis that the Deed of Gift executed in favour the Defendant should be nullified by a decree of Court issued on the basis of gross ingratitude on her part, but in response to the Statement of Objections filed by the Defendant resisting the extension of the enjoining order already issued, presented his case in the following manner (at page 4, paragraph 11 of the further written submissions tendered to District Court on 17.11.2015);

" ... *it is crystal clear that in terms of the law as it stands today, the Plaintiff is entitled to a declaration of title, in that;*

- a. the Plaintiff was the owner of the land (admitted)*
- b. the Plaintiff donated the land to the Defendant (admitted)*
- c. the Plaintiff revoked the donation on the ground of ingratitude."*

In view of the position taken before the District Court by the Plaintiff, the Defendant raised a pertinent question in her written submissions, namely that if the Deed of Gift has already been properly revoked, there is no necessity for the Plaintiff to nullify it once more, by way of a declaration of Court.

However, in the instant matter, the Plaintiff had alleged (in paragraph 13 of his Pleint), that “... *the Defendant is guilty of gross ingratitude*” and after making references of several such instances therein, goes on to claim that “... *a cause of action has accrued to the Plaintiff to sue the Defendant for the revocation of Deed of Gift bearing number 1821 dated 27/1/2002 and attested by K.P. Jayawardena, Notary Public hereinbefore marked as P2.*”

In the prayer (a) to the Pleint in the instant action, the Plaintiff prayed for a “... *Judgment and decree by which the Court be pleased to set aside and/or declare null and void and/or voidable the said Deed of Gift bearing number 1821 dated 27/1/2002 and attested by K.P. Jayawardena, Notary Public hereinbefore marked as P2 is of no force or effect in law.*”

It is clear from the above, having pleaded a case based on gross ingratitude and seeking to annul the said Deed of Gift, as his final relief, the Plaintiff had pleaded in the interim, a case based on the basis that the Deed of Gift that had been executed is no longer valid since it had already been revoked by him with a Deed of Declaration. The Plaintiff did not invite the District Court to consider the grant of the injunctive relief on the case had had pleaded in the Pleint, but instead presented a different case, and thereby seeking to establish a *prima facie* case, for the issuance of an interim order. When the very basis of his action and the relief sought from

Court based on that action, not been presented before Court in seeking relief in the interim, it does not require a detailed consideration to reach a conclusion that there is no serious question presented before Court to be tried at the hearing, and that on the facts presented before it, there is a probability that the plaintiff is entitled to relief.

The District Court, in granting injunctive relief to the Plaintiff had acted on the case relied upon by him in the written submissions whereas the Provincial High Court of Civil Appeal considered the case pleaded by him in the Plaint and the case presented to satisfy the District Court that there exists a *prima facie* case, in arriving at the conclusion that the lower Court had erred. I am in agreement with the said conclusion reached by the appellate Court.

The *Explanation 2* of Section 150 of the Civil Procedure Code states that “ ... *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.*” Thus, with the case presented by the Plaintiff during the inquiry stage to determine his entitlement to any relief in the interim and then seeks to substantiate a case which is substantially different to the one he had already pleaded in the Plaint and runs contrary to the one which the Defendant was called upon to meet by filing her answer, there cannot be a reasonable prospect for the Plaintiff to claim “ ... *that the decree which may ultimately be entered in favour of the party seeking the injunction be nugatory or ineffective if the injunction is not issued*” (vide judgment of *Dissanayake v Agricultural and Industrial Credit Corporation and Others*).

It is already referred earlier on that the Plaintiff's submission that since the Defendant concedes the life interest, that the original Court had

rightly issued the injunction as pleaded in order to preserve that right by ensuring the *status quo*. This part of the submissions of the Plaintiff brings the question of the *status quo* into consideration of this Court.

The Plaintiff relied on the judgment of this Court in *Kariyawasam v Sujatha Janaki and "Others* (supra) before the District Court to impress upon that Court that “[T]he primary purpose of granting interim injunctions is to preserve the status-quo of the subject matter in dispute until legal rights and conflicting claims of the parties are adjudicated and decided upon.”

Turning to consider the actual status quo that existed when the District Court issued the injunction must be examined before I proceed any further on this aspect. The Defendant instituted her action in 2012 whereas the Plaintiff instituted his action only on 19.06.2015. Similar to the prayer of the Plaintiff in the instant action, the Defendant also prayed for injunctive relief against the Plaintiff in her action. The District Court, by its order dated 24.01.2013, granted the Defendant of the interim relief she had prayed for by issuing an injunction on the Plaintiff preventing him from alienating the property by selling, renting/leasing, mortgaging or depriving the Defendant of her rights by any other means.

There is no challenge to the said order made against him on the part of the Plaintiff, who thereafter only moved to amend his answer, that too unsuccessfully. Thus, the Plaintiff could not have exercised some of his rights he is entitled to under his life interest over the property, in terms of the said order.

The property in dispute is essentially a commercial property. Neither party ever resided in that building. Since the building was put up

and made ready for occupation, it was the Defendant who rented/leased out same repeatedly, which the Plaintiff now wants to prevent. The Defendant cannot sell the property given to her under a life interest, without the consent of her father. This being the *status quo* of the property, considered in the light of the principles of equity, the Defendant, deriving an income from the property could not be termed as an act of impingement of the rights of the Plaintiff, when the exercise of which had been prevented by an order of Court.

Since the Plaintiff is prevented by the Court in exercising some of his rights, there cannot be an irreparable loss caused to him when his daughter does that. The reliance placed on the *ratio* of the judgment in *Seelawathie Mallawa v Millie Keerthiratne* (*supra*) by the Plaintiff would not render him of any assistance as the principle enunciated in the said pronouncement that a wrong doer obtaining the benefit of his own wrong to the detriment of the other party has no relevance to the instant appeal.

In view of the reasoning contained in the preceding paragraphs of this judgment, I proceed to answer the questions of law on which the instant appeal was argued as follows;

- c. Whether the impugned Judgement is against the applicable legal principles and/or fails to appreciate the applicable legal principles? No.
- d. Whether the impugned Judgment is misconceived in law and does not contain due and proper reasons in that totally fails to appreciate that the underlying basis and/or rationale of the said

Judgment is the life interest of the Plaintiff in the relevant property (which fact not challenged by the Defendant) ? No.

Since the two questions of law were answered in the negative, the judgment of the Provincial High Court pronounced on 28.07.2016 is hereby affirmed. The appeal of the Plaintiff is accordingly dismissed.

I make no order as to costs.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE SUPREME COURT

MENAKA WIJESUNDERA, J.

I agree.

JUDGE OF THE SUPREME COURT