

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

S.C. Appeal No. 30/2015

S.C (Spl) LA No. 113/2014

Court of Appeal No. CA 132/99 (F)

D.C Homagama Case No.3291/CD

In the matter of an Application for Special Leave to Appeal made in terms of Article 128 of the Constitution of Sri Lanka and the Supreme Court Rules thereof.

Talagalage Punchi Singho  
No. 251, Seelammala Mawatha,  
Oruwala South,  
Athurugiriya.

**PLAINTIFF**

Vs.

Ratnayake Mudiyanseelage Bandara  
Menike  
No. 64/C, Vidyala Mawatha,  
Oruwala.

**DEFENDANT**

**AND**

Ratnayake Mudiyanseelage Bandara  
Menike  
No. 64/C, Vidyala Mawatha,  
Oruwala.

**DEFENDANT-APPELLANT**

Vs.

Talagalage Punchi Singho  
No. 251, Seelammala Mawatha,  
Oruwala South,  
Athurugiriya.  
(Deceased)

**PLAINTIFF-RESPONDENT**

Thalagalage Wijeratna  
No. 251, Seelammala Mawatha,  
Oruwala South,  
Athurugiriya.

**SUBSTITUTED-PLAINTIFF-RESPONDENT**

**AND NOW BETWEEN**

Thalagalage Wijeratna  
No. 251, Seelammala Mawatha,  
Oruwala South,  
Athurugiriya.

**SUBSTITUTED-PLAINTIFF-RESPONDENT-  
APPELLANT**

Vs.

Ratnayake Mudiyanseelage Bandara  
Menike  
No. 64/C, Vidyala Mawathqa,  
Oruwala.

**DEFENDANT-APPELLANT-RESPONDENT**

**BEFORE:**

B. P. Aluwihare P.C., J.  
Priyantha Jayawardena P.C., J. &  
Anil Gooneratne J.

**COUNSEL:** Chathura Galhena With Ms. Manoja Gunawardana  
for the Substituted Plaintiff-Respondent-Appellant

Pulasthi Hewamanne with Ms. C. Hettiarachchi  
for the Defendant-Appellant-Respondent  
on behalf of the Legal Aid Commission.

**ARGUED ON:** 02.10.2017

**WRITTEN SUBMISSION OF THE  
DEFENDANT-APPELLANT-RESPONDENT FILED ON:**

24.07.2015

**WRITTEN SUBMISSIONS OF THE  
SUBSTITUTED-PLAINTIFF-RESPONDENT-RESPONDENT FILED ON:**

22.01.2016

**DECIDED ON:** 23.10.2017

**GOONERATNE J.**

This was an action filed in the District Court of Homagama pertaining to a case of revocation of a deed of gift by the Plaintiff-Respondent-Appellant, (now deceased) on the ground of ingratitude of the Defendant-Appellant-Respondent. The facts of this case reveal that the District Court held in favour of the Plaintiff-Respondent-Appellant but in appeal to the Court of Appeal the Appellate Court set aside the Judgment of the District Court and dismissed the action of the Plaintiff-Respondent-Appellant. The main issue as

stated in the Judgment of the Court of Appeal is on the question of credibility of the Plaintiff-Respondent-Appellant's evidence that transpired at the trial. However the Supreme Court granted Leave to Appeal on questions of law set out in paragraph 16 (i and iii) of the petition dated 19.07.2014. However the written submissions of the Plaintiff-Respondent-Appellant refer to three questions of law. In any event I would refer to all three questions which reads as follows:

- (i) Did the court of Appeal misdirect itself on the concept of standard of proof required to establish gross ingratitude?
- (ii) Did the Court of Appeal misdirect itself in analysing the evidence led and documents marked at the trial by the deceased Plaintiff?
- (iii) Did the Court of Appeal err in entering the Judgment without dealing with the merits of the Judgment of the District Court.

Plaintiff-Respondent-Appellant was the owner of the land and premises described in the schedule to the plaint. Plaintiff-Respondent-Appellant became the owner by deed P1 dated 18.08.54 from which he derived ownership from his mother. The Defendant-Appellant-Respondent was a lessee of the Plaintiff-Respondent-Appellant from the year 1992. The Defendant-Appellant-Respondent had taken care of the Plaintiff-Respondent-Appellant during the period she was a lessee and looked after him when he was sick and promised to do so even in the future. On that basis the Plaintiff-Respondent-Appellant gifted

an undivided share of 10 perches of the land in dispute inclusive of the house situated therein to the Defendant-Appellant-Respondent by deed P2 of 22.05.1995. However subsequently the Defendant-Appellant-Respondent breached the above undertaking within a few days after the execution of deed P2, and as such Plaintiff-Respondent-Appellant filed action on the basis of gross ingratitude by the Defendant-Appellant-Respondent, to have the deed of gift to her revoked.

Deed of Gift P2 though irrevocable could be revoked for gross ingratitude under Roman Dutch Law gifts inter vivos are as a rule irrevocable, Voet 39.5.4 except for such cases as ingratitude. 17 NLR 507. The question of ingratitude is a question of fact. It could vary with the circumstances of each case. I do agree with the views of the learned Judge of the Court of Appeal that gratitude is a form of mind which has to be inferred from the donee's conduct, and such an attitude of mind will be indicated either by a single act or a series of acts.

In a case of this nature bare assertions of being assaulted by a person alone will not suffice. Gross ingratitude should be proved with certainty and with sound evidence. If a party is able to prove gross ingratitude would deprive a person of a property right. In the case in hand the oral testimony of

the Plaintiff-Respondent-Appellant will diminish in its value due to the statement made to the police by the Plaintiff.

In the statements marked and produced in court as P3 does not implicate the Defendant-Appellant-Respondent. It is one Piyasena who had hit the Plaintiff (Defendant's husband). I agree with the views expressed on this statement by the Court of Appeal. If the statement contradict or is an omission to the oral testimony it is unsafe for a court to act upon it. Especially when gross ingratitude has to be established. The second complaint to the police by the Plaintiff-Respondent-Appellant dated 26.07.1995, there is no mention of the Defendant-Appellant-Respondent. The other complaint to the police is produced marked P4 dated 23.06.1997. This statement is a belated statement made to the police, subsequent to filing action by the Plaintiff-Respondent-Appellant. No court will consider its application and consequences since value of such statement will greatly diminish due to delay and that being an after thought. This statement no doubt implicates the Defendant-Appellant-Respondent. That is only a wilful attempt on the part of the Plaintiff-Respondent-Appellant to harm the Defendant and project Defendants ingratitude. It cannot be relied upon in the circumstances of the case in hand. Evidence Ordinance recognise the rule of impeaching credit of witness by other

evidence. It could be done by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

In this background it is also relevant to consider the evidence of the Defendant-Respondent-Appellant. It is Defendant's evidence that she was a tenant of Plaintiff from 1987. Defendant-Respondent-Appellant had helped the Plaintiff-Appellant-Respondent and as such he gifted 10 perches of the land with the house to her. Defendant testify that she expended her money and built a well, toilet and a room for Plaintiff-Appellant-Respondent (proceeding of 25.09.1998). Defendant-Respondent-Appellant emphasis that she never ill-treated the Plaintiff. It is the explanation of the Defendant that Plaintiff sought to revoke deed P2 as she married the Plaintiff's cousin. As regards the injuries of Plaintiff the Defendant testified that the Plaintiff very frequently travelled about at night by bicycle. Defendant-Respondent-Appellant also states in evidence that she will continue to look after the Plaintiff-Appellant-Respondent.

Slight acts of ingratitude are insufficient to revoke a deed of gift 1992 (2) SLR 180. I have to state that a Court of law has to consider the totality of evidence led and arrive at a conclusion. It is not correct to give your mind only to certain items of evidence. The material placed before court does not make it possible to interfere with the Court of Appeal Judgement. Therefore I affirm the Judgment of the Court of Appeal, and dismiss this appeal without costs. The

questions of law are answered in the negative in favour of the Defendant-Appellant-Respondent.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

B.P. Aluwihare P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Priyantha Jayawardena P.C., J.

I agree.

JUDGE OF THE SUPREEM COURT