

1937

Present: Soertsz and Hearne JJ.

SIVARASIPILLAI v. ANTHONYPILLAI.

240—D. C. Jaffna, 8,290.

Donation—Action to set aside gift by wife to husband—Cruelty and desertion—Definition of ingratitude—Roman-Dutch law.

Where the plaintiff sued the defendant (her husband) to set aside a deed of gift executed by her in his favour on the ground of cruelty and desertion.—

Held, that the grounds alleged did not fall within the instances of ingratitude for which a gift may be revoked under the Roman-Dutch law.

A PPEAL from a judgment of the District Judge of Jaffna.

H. V. Perera, K. C. (with him *J. A. T. Perera*), for defendant, appellant.

S. Subramaniam (with him *G. E. Chitty*), for plaintiff, respondent.

Cur. adv. vult.

July 13, 1937. SOERTSZ J.—

This is an action instituted by a married woman against her husband to have a deed of gift executed by her in his favour set aside on the ground that he has driven her and her children out of the house and that "on account of this cruelty and desertion a cause of action has accrued to the plaintiff to have the said deed of donation revoked and set aside". It will be noticed that the plaintiff herself did not expressly aver that this conduct of the defendant amounted to gross ingratitude. Nor was there an issue framed on that basis. The issues were—

(1) Did the defendant drive the plaintiff and her children out of the houses where they were living and leave them in a helpless state?

(2) If so, is the plaintiff entitled to have the deed of donation set aside and two other issues which do bear directly on the point involved in this appeal. The trial Judge however entered judgment for the plaintiff on the ground that "defendant's conduct appears . . . to amount to gross ingratitude". Overlooking for the moment the omission I have indicated on the part of the plaintiff to allege expressly that she was seeking to revoke the gift on the ground of gross ingratitude, I will examine her case on that footing and begin by asking myself the question with which Wood Renton C.J. began his consideration of a similar point in *Hamine v. Goonewardene*¹, does such conduct on the part of the defendant as is disclosed in the circumstances stated in the pleadings and the plaintiff's evidence amount to ingratitude within the meaning of the Roman-Dutch law? If one bases oneself on the authority of *Voet* one finds that there are five instances of ingratitude expressly mentioned by him as affording justification for the revocation of gifts, namely, (1) the laying of impious hands of the donee on the donor; (2) the donee outrageously defaming the donor; (3) the donee causing the donor enormous loss; (4) the donee plotting against the donor's life; (5) the donee failing to fulfil the conditions annexed to the gift. *Voet*, however, goes on to add that "it does not seem to admit of doubt that for *other similar and graver*

¹ 17 N. L. R. 507.

causes donations may be revoked". (*Voet V. 39, 22.*) We have been referred to a passage of *Perezius* on donations in which that commentator challenges *Voet's* extension of the instances of ingratitude to "other similar and graver causes" as opposed to authority. In these modern times, the natural tendency will be to take the view of *Perezius* and strictly limit the instances of ingratitude which justify the revocation of a donation to those expressly mentioned for it will be highly inconvenient and even dangerous to make "ingratitude" at large a ground for revocation as respondent's Counsel contended was the law. For one thing, ingratitude and gratitude are such elastic terms. Their name is legion. I find considerable difficulty when I attempt to define these words. I recall the definition of gratitude by some cynic who said that it was a lively sentiment of thankfulness towards those from whom favours are expected, implying thereby that it does not exist so far as past benefactors are concerned. But that, I concede is going too far. As for ingratitude I know that it has been said to be "base" and "sharper than a serpent's tooth". But that, I fear, is not very illuminating. The conclusion I reach in this state of things is that this matter of ingratitude as a ground for setting aside donations is not as fluid as respondent's Counsel sought to make out. If it is then in the words of *Voet* "*fora omnia atque tribunalia non suffectura actionibus contra ingratos movendis*".

But even acting upon the authority of *Voet* that donations may be revoked for any of the five instances of ingratitude mentioned by him as well as for "other similar and graver causes" I do not find it possible to grant the plaintiff the relief she claims. Her case certainly does not fall within the five enumerated instances. Does it amount to a similar and graver type of ingratitude? In my opinion, clearly not. The case reveals a difference of views between husband and wife and it is impossible to say that the resulting relationship involves ingratitude on one side or the other. The husband thinks that the wife's inclinations are too nomadic. She goes about from house to house and he disapproves of this. This, to use the words of a witness, has led to a "cat and dog life" between them. A point was reached when the husband drove the wife out. His view apparently is that if she will not acknowledge his marital control, she must live apart. She took the matter to the maintenance Court and although she waived maintenance for herself he agreed to give her a field to enable her to support herself. This can hardly be described as ingratitude of "a similar and graver kind". The case of *Sansoni v. Foenander*¹ does not help the plaintiff. The two grounds on which the revocation of the gift was allowed in that case were: (a) failure to observe the conditions imposed, (b) continued slander and insult by the donee of the donor—both grounds are among the enumerated instances.

It is also worthy of note that the deed of gift in question in this case is one that was executed as far back as 1926. I would set aside the judgment of the trial Judge and dismiss the plaintiff's action but will not make an order for costs.

HEARNE J.—I agree.

Appeal allowed.

¹ *Vanderstraaten 144 and (1872-76) Ramanathan 32.*