

MOHAMED
V.
LEBBE AND OTHERS

COURT OF APPEAL.
ANANDACOOMARASWAMY J (P/CA)
EDUSSURIYA J.,
CA 178/84 (F)
D. C. KALMUNAI 625/L.
January 8, 17, 18, 19, 31, 1996.

Donation - Revocation of same - Issues - when could it be raised - Illegality - Sanctity attached to Notarially attested Documents.

The Deed of Donation from the father to the daughter - P1 is alleged to have been revoked by the Father with the consent of the Daughter by P2 on 9.6.1969, but according to the Appellant it was revoked on 19.6.1969. On 11.6.1969, the donee on P1, had donated the property to her husband by P5 and he had sold it to the 3rd Defendant-Appellant for valuable consideration on 4.3.1970 - P7.

The Plaintiff-Respondent claimed that the Deed of Revocation was on 9.6.1969 (before P5) the 3rd Defendant Appellant claims that it was on 18.6.1969 (After P5).

The District Court held with the Plaintiff.

Held:

(1) On examining the original Deed P2 the duplicate, and the protocol it is quite clear that there are interpolations, alterations and amendments and all copies are not exact copies.

Furthermore the 1st Defendant Respondent denied having consented to the said revocation, as seen by her letter to the Registrar wherein she had on 16.6.1969 objected to any transfer of her property which she got on P1.

(2) It is also strange that the Attesting Notary was not called as a witness, instead the Plaintiff-Respondent called the Clerk, according to whom the protocol only was filled and signed and the signatures of all concerned were obtained in blank forms which were later filled.

This was illegal, and therefore there was no due execution of the deed.

(3) The net result of this exercise is that transaction that took place is not genuine, and therefore the Deed of Revocation is invalid for want of due execution and that title passed to the 3rd Defendant - Appellant.

It was submitted that there was no issue raised on the due execution of the Deed and as such the Court should not rule on the due execution of the Deed of Revocation.

Per Anandacoomaraswamy, J.

“Issues can be raised upon evidence and in the course of the trial and even before judgment, the evidence upon which this issue arises was tendered by the Plaintiff-Respondent and he cannot be heard to complain against it. Further no court can turn a blind eye to such an illegality which if condoned would be a blot on the sanctity attached to notarially attested documents.

AN APPEAL from the judgment of the District Court of Kalmunai.

S. Mahenthiran for substituted 3rd Defendant-Appellant.
Faiz Mustapha P.C. with *Sanjeewa Jayawardane* for Plaintiff-Respondent.

Cur. adv. vult.

February 14, 1996.

ANANDACOOMARASWAMY, J. (P/CA)

This is an appeal from the judgment of the learned District Judge of Kalmunai entering judgment for the Plaintiff-Respondent affirming the revocation of a Deed of Donation from the father the Plaintiff-Respondent to his daughter the 1st Defendant-Respondent who gifted it to her husband the 2 Defendant-Respondent, who in turn transferred for valuable consideration to 3rd Defendant-Appellant.

The facts relevant to this appeal are briefly as follows:

The Deed of Donation from the father to the daughter was by P1, which is alleged to have been revoked by the father with the consent of the daughter by deed P2 of 9.6.1969 but according to the Appellant it was revoked on 19.6.1969. On 11.6.1969 the donee on P1 donated the property to her husband by deed P5 and he sold it to the 3rd Defendant-Appellant for valuable consideration (Rs. 20,000/-) by P7 on 4.3.1970.

While the Plaintiff-Respondent claims that the Deed of Revocation was on 9.6.1969 (that is before the donee transferred it to her husband on 11-6-69) the 3rd Defendant-Appellant claims that it was on 19.6.69. But the 1st Defendant-Respondent denied having consented to revocation of the said deed P1 by P2 as seen by her letter to the District Registrar marked P12(a), wherein she had on 16.6.1969 objected to any transfer of her property which she got on P1.

Counsel for Defendant-Appellant and Plaintiff-Respondent cleverly demonstrated that the deed in question P2 was executed on 19.6.69 and 9.6.69 respectively. On examining the original deed P2, the duplicate P10 and the protocol P11, it is quite clear that there are interpolations, alterations and amendments and all these copies are not exact copies. The net result of this exercise is that we are unable to hold that the transaction that took place is a genuine one especially in view of the Plaintiff-Respondent's own evidence of the Notary's clerk who was the attesting witness to the said transaction and the letter P12(a) of the 1st Defendant-Respondent produced by the Plaintiff-Respondent. It is strange as to why the attesting Notary was not called as that would have been the best evidence. Instead the Plaintiff-Respondent called the clerk according to whom the protocol only was filled and signed and the signatures of all concerned were obtained in blank forms which were later filled and now called as original and duplicate, marked P2 & P10 respectively. The witness further said that that was their practice, which in our view is illegal and therefore there was no due execution of the deed, which alone is sufficient to declare the Deed of Revocation invalid.

The learned counsel for the Plaintiff-Respondent submitted that there was no issue raised on the due execution of the deed and as such the Court should not rule on the due execution of the Deed of Revocation. We do not agree. Issues can be raised upon evidence and in the course of the trial and even before judgment. The evidence upon which this issue arises was tendered by the Plaintiff-Respondent and he cannot now be heard to complain against, it. Further no Court can turn a blind eye to such an illegality, which if condoned would be a blot on the sanctity attached to notarially attested documents.

The learned Counsel for the Plaintiff-respondent drew our attention to the letter by the 1st Defendant-Respondent to the District Registrar

marked P12(a) and stated that that letter supports his contention that the Deed of Revocation was executed on 9.6.69 as it was written on 16.6.69 and refers to the Deed of Revocation and therefore the Deed of Revocation could not have been on 19.6.69. That may be so, but that letter refers to the execution on 11. 6.69, which according to the Counsel for Plaintiff-Respondent is a mistake and the reference to her father can only refer to the Deed of Revocation as he did not figure in any other transaction pertaining to the property in question. If that be so her father had cheated her and therefore she had in fact not consented to the revocation which go further to corroborate and strengthen the story that the duplicate and the original were signed in blank and filled later perhaps to suit them.

It is thereofe quite clear that she did not consent to the revocation of the Deed of Donation and the question whether it was executed on 9.6.69 or 19.6.69 is immaterial and/or irrelevant.

We therefore hold that the Deed of Revocation is invalid for want of due execution and that the title to the property passed to the 3rd Defendant-Appellant. For these reasons we set aside the judgment of the learned District Judge and dismiss the Plaintiff-Respondent's action with costs.

The appeal is accordingly allowed with costs fixed at Rs. 5,250/-.

EDUSSURIYA, J. - I agree.

Appeal allowed.