

1951

Present: Basnayake J. and Gunasekara J.

MANUELPILLAI, Appellant *and* NALLAMMA, Respondent

S. C. 217—D. C. Jaffna, 4,704

Donation—Subsequent ingratitude of donee—Assault committed by donee on donor—Valid ground for action for revocation.

Where a donee has used violence on the donor, the donor is entitled to an order of court revoking the deed of gift, except in so far as it affects those who have, prior to the institution of the action for revocation, purchased any of the property which was the subject-matter of the gift.

A PPEAL from a judgment of the District Court, Jaffna.

S. J. V. *Chelvanayakam*, K.C., with S. *Thangarajah*, for the defendant appellant.

S. *Nadesan*, with H. W. *Tambiah*, for the plaintiff respondent.

Cur. adv. vult.

January 30, 1951. BASNAYAKE J.—

This is an appeal from a judgment of the District Judge of Jaffna ordering the revocation of a deed of gift made by the plaintiff-respondent, one Nallamma, in favour of her husband one Soosaipillai Manuelpillai, the defendant-appellant.

Shortly, the facts are as follows:—The plaintiff is a Hindu and the defendant a Roman Catholic. Since the death of her first husband one Nagamany in July, 1943, the plaintiff lived with the defendant, her husband's carter, as man and wife till February, 1946, when they were married in church. Both before and after the marriage the defendant acted cruelly towards the plaintiff. He assaulted her, extracted money from her, and forced her to execute transfers of her property. As life with the defendant was becoming intolerable, in May and December, 1946, she lodged complaints at the Chankanai Police Station. But in January, 1947, despite the harsh treatment meted out to her by the defendant, the plaintiff made a gift of all her lands to him reserving a life-interest. Thereafter on April 25, 1948, the defendant assaulted the plaintiff again and drove her out of the house. On April 26, 1948, she once more lodged a complaint at the Chankanai Police Station.

It reads:

“ Last night about 9 p.m. while I was in my house my husband Soosaipillai Manuelpillai came drunk and abused me in indecent language and assaulted me with hands all over my body and pulled me down and kicked me several times on my back. I raised cries. He then brought an axe and said that he will kill me with it by cutting if I raise cries. Through fear I did not cry out after. He then came up and held my hand and pulled me out and asked me to go out and not to step into his house. ”

The plaintiff did not thereafter make up with the defendant and on July 27, 1948, the present action was instituted.

In the course of the trial it was admitted by both sides that this case was governed by Roman Dutch Law and it is on that footing that the case has been argued in the trial court as well as here.

Learned counsel for the appellant submitted that in the instant case there was no proof of ingratitude and that the plaintiff was therefore not entitled to revoke the donation. He cited the case of *Sivarasipillai v. Anthonypillai*¹ and contended that an assault committed by the husband on the wife did not come within any of the following five instances of ingratitude indicated in the judgment of Soertsz J.—

- (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.

For the purpose of this case it is not necessary to discuss instances (3), (4), and (5).

Learned counsel submitted that instance (1) does not apply to a case where the husband assaults the wife. He submitted that it applies only to cases where the donee is under a duty to treat the donor with respect as in the case of parent and child. He relies on the word "impious", which is the rendering of the Latin word *impias* in de Sampayo's translation of Voet². Krause³ translates the relevant passage of Voet thus: "If the donee has laid sacrilegious hands on the donor (i.e., has assaulted him)".

Reference to the other Roman Dutch commentators makes it clear that what de Sampayo has rendered as "if the donee should lay impious hands upon the donor" is only another way of saying that the donee has used personal violence on the donor.

In order to obtain a clear picture of the Roman Dutch Law on the point I have examined the works of the various commentators, whose statements of the law on this point are set out below.

(a) Van Leeuwen's *Censura Forensis* (Barber's translation)⁴ :

"And so a duly constituted gift can never be revoked by the donor, unless the donee has turned out to be ungrateful, as, for instance, when he has damaged the honour of the donor, has used personal violence towards him, or has made an attempt on his life, or has wasted his property, or has not observed the agreement or conditions attached to the gift."

¹ (1937) 40 N. L. R. 47.

² Book XXXIX, Title V, Section 22, p. 25.

³ Book XXXIX, Title V, Section 22, p. 50.

⁴ Book IV, Part I, Chapter XII, Section 20, p. 91.

(b) Van Leeuwen's Commentaries¹:

“Donations again may also be revoked and cancelled by reason of great ingratitude and injury done to the donor; as where the donee has attempted the life of the donor, assaulted him, or publicly slandered him, or has refused support to the donor who has been reduced to poverty, and the like.”

(c) Huber's “Jurisprudence of My Time”²:

“35. Yet there are also cases in which donations already made are invalidated, not through repentance or death of donor or donee, nor through loss of the deed of gift, nor alienation of the property donated, nor on the pretext that the donation would be to the prejudice of another, nor finally through command of the princes or sovereign power of the country;

“36. But for two reasons only, firstly, on the ground of ingratitude of the donee towards the donor; and secondly, through subsequent birth of children.

“37. Ingratitude has five species of cases :

- (1) If the donee has sought to take the life of the donor;
- (2) If he has laid violent hands upon him;
- (3) If he has grievously insulted him;
- (4) If he has wrought great damage to his property; and
- (5) If he has not observed the terms and expressed object of the donation which was made.

To this the jurists have added, not without reason, if one, who has obtained the donation of all or most of a person's property, refuses maintenance to the donor, when he has fallen into poverty.”

(d) Grotius:

(i) Maasdorp's translation³:

“16. A donation once made is valid and irrevocable.

“17. Unless the acceptor attempts the life of the donor, or strikes him, or attempts to ruin his estate. Malicious slander or any other great injury gives the same right, except to mothers who marry a second time. Causes of equal or greater weight are also held to have the same force, amongst others the neglect of the acceptor (if he has the means) to maintain the donor in his utmost need.”

(ii) Herbert's translation⁴:

“A donation once made is binding and irrevocable.

¹ *Kotze's translation, Vol. 2, p. 235-236.*

² *Vol. I, Section 35-37, p. 477.*

³ *Maasdorp, Book III, Chapter II, Sections 16-17, p. 206.*

⁴ *Grotius, Book III, Chapter II, Section 16 and 17, p. 287.*

“ Unless the acceptor has attempted the life of the donor, or inflicted on him personal violence, or has contemplated making all his property of no value. Slander, or reproach, or other grievous injury, confers the same legal effect except to mothers who have married a second time. Matters of the same or greater weight are also considered to be of the same consequence and amongst these also the refusal of the acceptor (should he have the means) to support the donor in his utmost need.”

(iii) Lee's translation ¹:

“ A gift once made retains its force and cannot be revoked :

“ Unless the donee has attempted the donor's death, beaten him, or sought to deprive him of all his property. Outrageous slander or other great injury gives the same right of revocation, except to mothers who contract a second marriage. Causes of equal or greater weight are held to have the same effect, and amongst them if the donee, having the means, has refused to support the donor in his utmost need.”

I have also consulted Burge and Domat. Burge ² expresses his view thus :

“ A donation may become revoked by the non-performance of the condition to which it has been made subject, or *ob ingratitudinem donatarii*. In the first case, the donation is determined by the very terms in which it is granted; in the latter, it is not revoked *ipso jure*, but only by the sentence of the judge, *post plenam causae cognitionum*. The causes for which it may, on the latter ground, be revoked consist of personal violence against the donor, attempts on his life, or some great damage to his property.”

Domat ³ says :

“ The first engagement of the donee is to satisfy the charges and conditions of the donation, when there are any; and if he fails in it, the donation may be revoked, according to the circumstances. (Art. I, para. 941).”

“ The second engagement of the donee is thankfulness for the benefit received; and if he is ungrateful to the donor, the donation may be revoked according as the deed of the donee may have given occasion for it. Thus, the donor may revoke the donation, not only if the donee makes any attempt upon his life or honour, but likewise if he commits any violence or outrage upon his person, or does him any injury; or if he occasions him any considerable loss by unfair practices. (Art. II, para. 942).”

¹ Lee's *Grotius*, pp. 310 and 311.

² Burge's *Commentaries on Colonial and Foreign Laws*, Vol. 2, p. 146.

³ Vol. I, *Treatise on the Civil Law*, p. 406. Part I, Book I, Title X, Section III, paras. 941-942.

I have quoted extensively from the commentators both ancient and modern in order to show that there is no difference of opinion among them on the question before us. Whether the Latin word *impias* is rendered "impious" as de Sampayo has done or "sacrilegious" as Krause has done, the legal position is the same. It is impious or sacrilegious for a donee who has derived benefits from a donor to strike him or use personal violence on him. It is in that sense that I understand that these words have been used by the learned translators and not in the sense in which learned counsel submits they should be construed.

It is clear therefore that in the instant case as the donee has used violence on the donor, the donor is entitled to an order of court revoking the deed of gift, except in so far as it affects those who have prior to the institution of this action purchased any of the lands gifted to the donee by the donor by her deed No. 1,730 of January 13, 1947.

The appeal is dismissed with costs.

GUNASEKERA J.—I agree.

Appeal dismissed.

