

1957

Present: Basnayake, C.J., and L. W. de Silva, A.J.

KRISHNASWAMY and another, Appellants, and THILLAIYAMPALAM,  
Respondent.

*S. C. 516—D. C. Point Pedro, 4,572*

*Donation—Revocation—Ingratitude as ground—Scope.*

Revocation of a deed of gift may be granted on the commission of a single act of ingratitude.

There is no hard and fast rule as to what conduct on the part of a donee may be regarded as ingratitude for which a donor may ask for revocation of his gift.

**A**PPPEAL from a judgment of the District Court, Point Pedro.

*H. W. Juyewardene, Q.C.*, with *V. Arulambalam* and *N. R. M. Daluwatte*, for Plaintiffs-Appellants.

*C. Renganathan*, with *P. Naguleswaram*, for Defendant-Respondent.

*Cur. adv. vult.*

November 15, 1957. BASNAYAKE, C.J.—

The question that arises for decision on this appeal is whether the deed of donation executed by the plaintiffs on 29th December 1948 is revocable on the ground—

- (a) that the deed was not acted upon,
- (b) of ingratitude.

The plaintiffs' case is that the land was conveyed to the defendant by way of gift at his request because he represented to them that he would be able to gain some advantage from the income tax authorities by showing them that he was the owner of the land, and that the deed was not meant to be acted on. The plaintiffs therefore sought to obtain a re-conveyance on the footing that it was not meant to be a gift but a conveyance on the understanding that the defendant would after his purpose had been served re-convey the land to them. The learned trial Judge has found that the deed has been acted upon and was intended to operate as a gift of the land referred to therein. We see no reason to disturb that finding of fact.

The 1st plaintiff is the husband of the 2nd plaintiff and the defendant is the younger brother of the former. The land in question was given to the 2nd plaintiff by her parents as her dowry and the plaintiffs' residing house stands on it. The plaintiffs' case is that as they did not regard the conveyance as a gift they sought to get the land back from the defendant, but he put them off on various pretexts whenever they broached the

subject. Finally when all their attempts had failed they sought the good offices of Thayalpakar, a respected elder known to both parties. It was at the meeting between the plaintiffs, the defendant, one Sivaguru, and Thayalpakar that the defendant committed the acts of ingratitude complained of. The 2nd plaintiff described the incident thus: "I told him, 'You are not replying to our letters and when your brother comes you do not give a correct reply. Why are you cheating us like this? I have come personally to ask you to re-convey this land and give the money due to us. I am having the deed in my hand.' I asked him to re-convey the land. He said, 'You woman, are you a big landlady? To whom are you going to give it?' I said, 'It is my land and I can do it as I like.' The defendant said, 'You whore, are you going to give this property to the person who wants to have intercourse with you?' He continued to abuse me. Then my husband said, 'You fellow, is this the gratitude you have returned to us for all the help done to you?' The defendant raised his hand and went to assault my husband. He was continuing to abuse me."

Thayalpakar's evidence goes to support the 2nd plaintiff as to the occurrence of the incident she has described, and what is more he says that he had to separate the 1st plaintiff and the defendant when the latter attempted to assault him. Thayalpakar advised the defendant to re-convey the land, but he says that though the defendant agreed he did not do so. The learned trial Judge has not rejected the account of this incident as deposed to by the 2nd plaintiff and Thayalpakar, but he holds that the conduct of the defendant does not in law amount to ingratitude. Thayalpakar is a man of 73 and appears to be a person held in high esteem in his community. He is the proprietor and manager of two schools and manager of the Sivan Temple. Learned counsel for the appellant relied on the case of *Manuelpillai v. Nallamma*<sup>1</sup> and the statements from the Roman-Dutch Commentators cited therein, while learned counsel for the respondent relied on the case of *Sivarasipillai v. Anthonypillai*<sup>2</sup> wherein Soertsz J. says:

"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."

With great respect I wish to observe that the statement that Perozius "challenges Voet's extension of the instances of ingratitude to 'other similar and graver causes' as opposed to authority" is not correct, as Perozius was not a contemporary of Voet and Voet's commentaries on the Pandects did not appear till after the death of Perozius. When Perozius wrote his *Prælectiones Codicis Justiniani* he was not aware of

<sup>1</sup> (1951) 52 N. L. R. 221.

<sup>2</sup> (1937) 10 N. L. R. 17.

the view Voet was going to take in his Commentary. Perezius cannot therefore be said to have challenged a statement of which he was unaware. Perezius also known as Perez was born at Alfaro on the Ebro in 1583. He studied in Brussels and Louvain where he became professor in 1616 or thereabouts (the date is uncertain) and died there in 1672 or 1674, it is not certain in which year (*A South African Legal Bibliography* by A. A. Roberts, p. 236). He wrote his *Praelectiones Codicis Justiniani* in 1653 and at that time Voet's Commentary had not been published. It was only in 1698 that Volume I and in 1704 that Volume II of Voet's Commentaries appeared (*A South African Legal Bibliography* by A. A. Roberts, p. 319). An examination of Perezius's statement (*Praelectiones Codicis Justiniani*, Book VIII, Tit. LVI, Secs. 4, 5 and 7—Wikramanayake's translation) does not show that he was so dogmatic as all that. He says :

"4. Donations may be entirely revoked for two reasons. The first is if the persons on whom the benefit has been bestowed are ungrateful ; this is lest anyone may be allowed both to take the property of another and to mock at the donor's frugality, and also that the donor should not be allowed to lose his property and be ill-treated by an ungrateful recipient of the gift. This is observed not only in the case of children but much more in the case of freedmen so that if anything has been obtained in their name with the money of their Patron or by his favour it may be revoked on account of the vice of ingratitude. For those who evoked the liberality of their Patrons by their obedience are not worthy to retain it when they begin to neglect that obedience since the liberality bestowed on them ought rather to incline them to obedience than set them up to insolence.

"5. The causes of ingratitude are five in number, namely, if the donee outrageously insults the donor, or lays impious hands on him, or squanders his property or plots against his life or is unwilling to fulfil the pact which was annexed to the gift.

"7. The question arises whether a donation can be revoked for other causes besides the five causes of ingratitude just mentioned. The general opinion of the Doctors is that it can, also provided that they are graver than, or as grave as, these. But the contrary opinion is more correct that a gift cannot be set aside for any other cause, both because *d. l. ult.* when it enumerates these five causes adds that gifts can be invalidated for these causes alone if they are proved in a court of law : and also because the said law contains a penalty which ought not to be extended by a parity of reasoning or *a fortiori* to other cases than those about which it is expressly determined."

Let us compare this with what Voet<sup>1</sup> and Van Leeuwen<sup>2</sup> say :

"Such a donation *inter vivos* cannot from its own peculiar nature be hastily revoked, not even on a rescript from the Emperor, nor if the donor avows that he made the gift in fraud of another. Nevertheless

<sup>1</sup> *Book XXXIX, Tit. 5, Sec. 22* (Gane's translation).

<sup>2</sup> *Van Leeuwen, Book IV, Pt. I, Ch. XII, Sec. 20* Barber's translation, p. 91.

five just causes of ingratitude are listed for which, if the donee has offended against the donor in regard to them, there is room for revocation, that is to say, for change of mind. This is so although it had been arranged by agreement at the time of the donation, even by agreement confirmed on oath, that the gifts would not be withdrawn on the ground of ingratitude. Such a covenant is void as being a temptation to wrongdoing, and as involving the forgiveness of a future offence.

“These causes are when the donee has laid wicked hands upon the donor, or has contrived a gross and actionable wrong, or some huge volume of sacrifice or a plot against his life, or finally has not obeyed conditions attached to the donation.

“There seems also to be no doubt that a withdrawal of gifts can also take place for other similar or more serious reasons, on the analogy of what I have stated in my title on Undutiful Last Wills, as to disherison taking place for causes similar to or more serious than those which are listed in the passages cited below.”

Van Leeuwen is precise and brief. Though he does not discuss the subject at the same length as Voet he leaves no room for doubt that the instances of ingratitude specified are only meant to serve as examples and are not intended to be exhaustive. He says:

“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.”

If we go back to the original source, viz., the Roman Law, it will be seen that the wider interpretation of Voet and Van Leeuwen is preferable to the narrow view of Perçizius. This is what the decree of Justinian says:

“We decree, in general, that all donations made in conformity with law shall be valid and irrevocable, and if he who receives the donation is not found to be guilty of ingratitude towards the donor, as, for instance, where he has inflicted atrocious injury upon him, or has been guilty of personal violence towards him, or of having, by treachery, caused him to suffer great pecuniary losses which sensibly diminished his estate, or has exposed him to the danger of losing his life, or is unwilling to comply with any agreements inserted in the document evidencing the donation, or even if these were not committed to writing, and he, as the recipient of the donation, promised to observe them, but failed to do so.

“But only for causes of this kind, where they have been regularly proved in court by indisputable evidence, do we permit donations made to such persons be revoked, in order that no one may have permission to accept the property of another, and then ridicule his liberality, subject him to loss, and cause him to suffer the injuries above mentioned from the ungrateful beneficiary of his bounty.

“ We, however, decree that this provision shall only apply to the persons originally interested, as permission is not granted to the heirs of the donor to file complaints upon such grounds ; for if he who suffered these indignities remains silent, his silence should always continue, and his posterity ought not to be allowed to institute legal proceedings either against the individual alleged to be ungrateful, or his heirs.

“ Given on the fifteenth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 530. ” (Code of Justinian, Bk. VIII, Tit. LVI, s. 10) Scott's translation, Vol. 14, p. 349.)

I have quoted *in extenso* from the Commentators because their writings in translation are not readily available.

It would appear from what has been cited above that even Perezius acknowledges that the general opinion of the Doctors is that a donation can be revoked for other causes besides the five causes of ingratitude specified by him ; provided that they are graver than or as grave as those. But Perezius himself prefers the view that a donation cannot be set aside except on any of the grounds specially mentioned. His reasons for his view are unconvincing and I prefer to follow the other view which Perezius says is the general opinion of the Doctors and which is also the opinion of Voet, and Van Leeuwen.

It is clear from Justinian's decree that the instances cited are intended only to serve as examples of acts of ingratitude. His words are “ donations made in conformity with law shall be valid and irrevocable and if he who receives the donation is not found to be guilty of ingratitude towards the donor, as, for instance . . . ” The object of the power to obtain a revocation of a gift for ingratitude was in the words of Perezius “ lest anyone may be allowed both to take the property of another and to mock at the donor's frugality and also that the donor should not be allowed to lose his property and be ill-treated by an ungrateful recipient of the gift. ”

It would be unwise to lay down a hard and fast rule as to what conduct on the part of a donee may be regarded as ingratitude for which a donor may ask for revocation of his gift. Voet's view is that ingratitude for which a donation may be revoked must be ingratitude which a court does not regard as trifling. He says : “ Of course slighter causes of ingratitude are by no means enough to bring about a revocation. Although both the laws and right reason entirely condemn every blot and blemish of ingratitude, albeit somewhat slight, nevertheless they have not intended that for that reason it should be forthwith penalized by revocation of the gift ”. The ways in which a donee may show that he is ungrateful being legion, it is not possible to state what is “ slight ingratitude ” and what is not, except in regard to the facts of a given case.

There is nothing in the books which lays down the rule that a revocation may not be granted on the commission of a single act of ingratitude. Ingratitude is a frame of mind which has to be inferred from the donee's conduct. Such an attitude of mind will be indicated either by a single act or by a series of acts. What greater ingratitude could there be than to treat the 1st and 2nd plaintiffs as the defendant has done ? It may be

one instance, but the donee must take the consequence of his conduct if the donor is unwilling to forgive him. I am of opinion that the learned District Judge is wrong in taking the view that in law there is no ground for revocation of the deed of gift. I would grant the plaintiff's prayer for the revocation of deed No. 1015 of 29th December 1948 attested by K. Ratnasingham, Notary Public, and make order revoking the deed. The plaintiffs' appeal is allowed with costs both here and below.

L. W. de SILVA, A.J.—I agree.

*Appeal allowed.*

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