

1935.

Present : Schneider J. and Jayewardene A.J.

HORATALA *v.* SANCHI *et al.*

182—D. C. Negombo, 16,879.

Donation—Action to revoke deed of gift—Ingratitude of donee—Right of transferee to interrene—Civil Procedure Code, s. 18.

Where in an action for the revocation of a deed of gift, it appeared that the property had been transferred by the donee, the transferee is a proper party to the action and may be added under section 18 of the Civil Procedure Code.

Per JAYEWARDENE A.J.—Under the Roman-Dutch law property donated cannot be reclaimed for ingratitude, if the donee has in good faith and without any intention to defraud the donor alienated the same by sale, donation, or any other lawful mode before the question of ingratitude has been raised or the institution of the action for revocation.

APPEAL from an order of the District Judge of Negombo. An action to revoke a deed of gift by which the plaintiff and her husband donated the property in question to the defendant their son, subject to certain conditions. The plaintiff, after the death of her husband, brought the present action to revoke the

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deed of gift as to her half share on the ground of ingratitude and on the further ground that the donee had violated the conditions attached to the gift. The defendant filed no answer, and the case was heard *ex parte* and judgment reserved. On the day fixed for judgment, the appellants filed a petition of intervention and asked that they be added as defendants to the action. They claimed the property as purchasers in execution against the donee. Their application was refused, and they appealed.

Weerasinghe, for appellants.

H. V. Perera, for plaintiff, respondent.

January 30, 1925. JAYEWARDENE A.J.—

This is an action to revoke a deed of gift. The plaintiff and her husband gifted in the year 1908 the property referred to in the plaint to the defendant, their son, subject to certain conditions. The plaintiff's husband died some time ago, and the plaintiff brings the present action to revoke the gift as to her half share on the ground of ingratitude and as the donee had violated the conditions attached to the gift. The defendant filed no answer, and the case was heard *ex parte* and judgment reserved. On the day the case was to be called for judgment, the appellants filed a petition of intervention, and asked that they be added as defendants to the action. The defendants claimed the property in question as purchasers in execution against the donee. They alleged that the property was sold by the Fiscal in the year 1917, and that they had obtained a Fiscal's transfer on August 4, 1924, a few days before the action was instituted. Their application to intervene was refused, and they appeal. Assuming the Fiscal's sale to be a genuine one, it is clear that at the date of the action the defendant was not entitled to the property, and the legal owners of it were the appellants. According to Voet a donation can be revoked for failure to fulfil the conditions annexed to a donation and for gross ingratitude (39, 5, 22). In the evidence given by the plaintiff no statement is made with regard to the breach of any condition by the defendant, and the plaint does not state which of the conditions annexed to the gift have been violated, and this case may therefore be regarded as one to set aside the deed of gift on the ground of ingratitude or on similar grounds alone. Under the Roman-Dutch law property donated cannot be reclaimed for ingratitude, if the donee has, in good faith and without any intention to defraud the donor, alienated the same by sale, donation, or any other lawful mode before the question of ingratitude has been raised or the institution of the action for revocation. Voet 39, 5, 24; *Maasdorp*, vol. 3, p. 102; *Nathan*, vol. 2, s. 1090, p. 1164.

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The donee being divested of his right to the property, and being no longer interested in the property, the proper persons against whom the action ought to have been brought are the appellants. The transfer in their favour would be valid, unless it can be shown that the Fiscal's sale was a collusive and fraudulent one. It is not alleged that the defendant is in possession of the property, and no damages are claimed against him, the prayer is for the cancellation of the gift in respect of the plaintiff's half share of the property and for a declaration of title in her favour. In the circumstances as soon as it was disclosed that the defendant was not the owner of the property at the date of the institution of this action, the plaintiff's action became liable to be dismissed. If the plaintiff wishes to continue the action, it can only be done by adding the appellants as defendants. This is strenuously resisted, and the plaintiff says that she is prepared to have a decree against the defendant alone for what it is worth. But Courts cannot be called upon to pass worthless decrees. In the ordinary case a plaintiff would be only too glad to add the party who is the real disputant.

I think the Court has power under section 18 to add these appellants as defendants to the action. The appellants are persons who ought to have been joined as defendants when the action was instituted, and section 18 empowers the Court at any time to order such persons to be joined as plaintiffs or defendants.

The appellants are deeply interested in the relief claimed by the plaintiff, and I am further of opinion, if the expression of any such opinion is necessary in this case, that their presence before the Court is required to enable it to effectually and completely adjudicate upon and settle all questions involved in the action.

Such a joinder would also prevent litigation over the deed of gift in the future and thus avoid a multiplicity of actions.

The order appealed from is set aside, and the appeal allowed with costs.

SCHNEIDER J.—

I agree with the judgment of my brother Jayewardene that the appellants, who are the applicants for intervention, come within the description of persons who may be allowed to intervene in that their presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action.

I would express no opinion on the question whether it is competent for the plaintiff to seek a revocation of the donation in the light of the events which have happened since the donation was made, because that question does not arise upon this appeal and it was not discussed at the hearing of the appeal.

Appeal allowed.