

1964 Present : Sri Skanda Rajah, J., and Alles, J.

E. H. FRANCISCO and another, Appellants, and A. A. DON SEBASTIAN and 2 others, Respondents

S. C. 20-21/61 (Inty.)—D. C. Negombo, 123/P

Minors—Donation to a minor—Acceptance—Persons who are not competent to accept—Marriage Registration Ordinance (Cap. 112), s. 21.

A deed of donation in favour of a minor, while his parents who are not the donors are alive, is not valid unless it is accepted by the natural guardian of the minor.

Where a gift is made to a minor who is the offspring of an adulterine union, the putative father of the donee is not competent to accept it.

APPEAL from a judgment of the District Court, Negombo.

J. A. L. Cooray, with *D. A. E. Theverapperuma*, for the 2nd Defendant-Appellant in S. C. 20 and for the 2nd Defendant-Respondent in S. C. 21.

T. P. P. Goonetilleke, for the 1st Defendant-Respondent in S. C. 20 and for the 1st Defendant-Appellant in S. C. 21.

V. Thillainathan, with *A. J. F. Fonseka*, for the Plaintiff-Respondent.

Cur. adv. vult.

November 4, 1964. SRI SKANDA RAJAH, J.—

It behoves us to explain the delay in the disposal of these two interlocutory appeals. They were originally heard by Basnayake, C.J., and Herat, J., on 6th and 24th September, 1962, and judgment was reserved. About eighteen months later Herat, J., died and four months later Basnayake, C.J., retired. On the first day of hearing by us we dismissed appeal No. 20/61 as there was no merit in it. Then we called upon Mr. Thillainathan. He was, however, not well enough to argue. Therefore we heard him on 8th October, 1964, allowed appeal No. 21/61 with costs reserving our reasons, which we set out hereunder.

The point of law involved is the validity of acceptance of gifts to minors.

By deed 15373 of 13.1.1922 (P2) one Maria Alwis gifted to Kotte Muhandirange Emaliyanu Rodrigo and Ponweera Aratchige Don Gabriel, both minor children of one Maria Perera, who does not appear to have been related to the donor Maria Alwis. Maria Perera was married to Stephen Rodrigo and they begat Emaliyanu. Maria Perera then eloped with Jusey, son of the donor Maria Alwis, and by that adulterine union she had Gabriel. Stephen Rodrigo was alive, but, living in separation from Maria Perera, at the time of the gift on P2—he died on 1.10.1923 (vide death certificate 1 D5). Jusey it was who accepted the gift on P2; wherein he purported to accept on behalf of Gabriel “a son of mine” and on behalf of Emaliyanu “an adopted son of mine”.

In the case of a donation to a minor the law requires acceptance by the natural or legal guardian of the minor : *Silva v. Silva*¹. This has been accepted as correct in later cases, including *Nagalingam v. Thanabala-singham*² and *Nagaratnam v. John*³.

Section 21 of the Marriage Registration Ordinance, Cap. 112, enacts :—

“ A legal marriage between any parties shall have the effect of rendering legitimate any children who have been procreated between the same parties before marriage, *unless such children shall have been procreated in adultery.*”

At the date of P2 Jusey was not Gabriel's natural guardian. In fact, he was for all time prohibited from becoming Gabriel's natural guardian. Therefore, he could not validly accept the gift on behalf of Gabriel. Only Maria Perera was competent to do so, because the mother is the natural guardian of a bastard.

As regards the gift to Emaliyanu : his father Stephen Rodrigo, who was alive at that date, and Maria Perera, were his natural guardians. Only one of them could validly accept a gift to him.

For these reasons, P2 was invalid for want of acceptance and could therefore convey no title to Emaliyanu and Gabriel, through whom the plaintiff claims.

The argument that Maria Alwis had allowed acceptance by Jusey and, therefore the acceptance was valid does not find favour with us. All the cases which can be called in aid of this argument are cases of gifts by parents to their minor children and they had either permitted or authorised acceptance by others for the obvious reasons that they themselves could not accept the gifts on behalf of their minor donees. e.g. *Abeyawardene v. West*⁴ ; *Nagaratnam v. John*⁵ ; *Francisco v. Costa*⁶.

This being an action for partition the plaintiff's action will stand dismissed with costs payable to the first defendant-appellant both here and below. Though the first defendant's appeal is allowed he will not be entitled to a declaration of title in his favour in view of the nature of this action.

ALLES, J.—

I agree with the views expressed by my brother Sri Skanda Rajah, J. and the order proposed by him.

The plaintiffs claimed title through Deed of Gift No. 15373 of 13.1.22 (P2). By this Deed Maria Alwis, the donor, gifted certain shares to two minors Emaliyanu Rodrigo and Ponweera Aratchige Don Gabriel. The gift was accepted by the donor's son Jusey on behalf of Gabriel as a ' son ' and on behalf of Emaliyanu as an ' adopted son '. The only question that arises in this appeal is the validity of the acceptance by Jusey on behalf of the two minors.

¹ (1908) 11 N. L. R. 161.

² (1952) 54 N. L. R. 121 (P. C.)

³ (1958) 60 N. L. R. 113.

⁴ (1957) 58 N. L. R. 313 (P. C.)

⁵ (1958) 60 N. L. R. 113.

⁶ (1888) 8 S. C. C. 189.

Emaliyanu Rodrigo was the son of Maria Perera and Stephen Rodrigo and both parents were alive at the time of the execution of P2, and as the natural guardians of their son either of them could have accepted the gift on behalf of Emaliyanu. Gabriel was the offspring of the adulterine union between Jusey and Maria Perera. His natural guardian was his mother Maria Perera who was alive at the time of the execution of the Deed of Gift and could have accepted the gift on behalf of Gabriel. Jusey's acceptance of the gift was therefore bad and no title passed to the plaintiffs.

Appeal No. 20 dismissed.

Appeal No. 21 allowed.

