

IN THE COURT OF APPEAL OF
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

C. A. 1361/99 (F)

D. C. Matale, Case No. 4872/L

1. Waligamage Hemalatha
 2. Waligamage Madumathi
- Both of No. 51,
Harasgama Road,
Matale.

Defendant-Appellants

VS

G. G. M. Jemis de Silva
(Deceased)
No. 51, Harasgama
Road,
Matale

Plaintiff-Respondent

1. G. G. Ariyawathi
 2. G. G. Chandrasiri
- No. 51, Harasgama
Road, Matale.

Substituted Plaintiff-
Respondent

BEFORE : **M. M. A. GAFFOOR, J.**
COUNSEL : C. Sooriyarachchi for the Defendant-Appellant
Plaintiff-Respondent absent and unrepresented

WRITTEN SUBMISSIONS
TENDERED ON : 02.07.2018 (by the Defendant-Appellant)

DECIDED ON : **07.12.2018**

M. M. A. GAFFOOR, J.

This refers to an appeal stemming from the judgment of the learned District Judge of Matale in respect of a Declaration of title and the possession to the land in action, bearing case Number 4872/L.

Plaintiff-Respondent (hereinafter referred to as the "Respondent") filed this action to have that specific Deed of Gift No. 4510, dated 18.02.1986 attested by U. I Wijeyathilake, Notary Public been revoked by Deed No. 8117 attested by the same U. I Wijeyathilake, Notary Public on 09.09.1994 and vacate the Defendants-Appellants (hereinafter referred to as the "Appellants") from the premises and declare the title to the land and its possession to him, also claimed compensation from the Appellants.

The learned District Judge on 30.07.1999 delivered the judgment in favour of the Respondent as prayed for in the *Plaint (page 56-65 of the appeal brief)*.

Being aggrieved with the said judgment of the learned District Judge, the Appellants preferred this appeal and prayed to set aside the

judgment of the learned District Judge and to make an order to call for a fresh trial.

In the District Court, the Respondent pleaded that under the Partition action No. 749/P (in the District Court of Matale) he had received the premises in dispute and wilfully had gifted the specific premises to the both Appellants by way of Deed of Gift No. 4510, dated 18.02.1986 (as mentioned above) marked as "P1" and he further mentioned the following conditions were included that:

1. The life interest vested is to the Respondent
2. Respondent have the right to revoke the Deed of Gift when he desires.

Further he pleaded that on 09.09.1994 by Deed No. 8117 attested by the same U. I Wejethilake, Notary Public revoked the above mentioned Deed of Gift No. 4510 and he has sent a notice to the Appellants through his Attorney-at-Law informing that the Deed of Gift No. 4510 had been revoked; and the said notice had been received by the Appellants.

Further on 01.01.1995, the Respondent had asked them to pay Rs.500/- monthly as rental for the specific premises and asked them to vacate but, the Appellants refused to vacate and also denied to pay monthly rental of Rs.500/. Then the Respondent persuaded this action before the learned District Judge of Matale.

The Appellants argued that the Respondent only wilfully gifted the specific premises to them and they are unaware of the revocation made by the Respondent and also there were no proper reason to

revoke the Deed of Gift No. 4510 and this could be suppressed the rights over the property.

Further they had pleaded that they have spent lot of money to improve the premises and quoted as follows:

- *In the year of 1979 due to heavy storm the premises had been severely damaged, they rebuilt the house and for the improvements they have taken a loan amount of Rs.5000/- from National Housing Scheme Office and still (1999s) they are liable to pay loan.*
- *The 1st Defendant-Appellant claimed that she had faced 3872/L and 3879/L cases in order to obtain the right of way to the specific property.*
- *Further the 1st Defendant-Appellant claimed that she had spent Rs.5000/- to dug a well in the premises and she had built a toilet and took steps to get the electricity connection to the specific property.*
- *The Appellants also pleaded that they are the two who possessed the premises for a long period of time.*

It is to be noted that the Respondent had properly revoked the Deed of Gift No. 4510 through Deed No. 8117 attested by U. I Wijeyathilake, Notary Public on 09.09.1994 and sent notice about the revocation to the Appellants and all the evidence led by the Respondent and been proved before the learned District Judge.

The learned District Judge approached in proper manner that the revocation is valid and the clause of revocation clearly stated that in Deed of Gift No. 4510 attested by the same Notary Public.

I am incline to accept the view of the learned District Judge that, although the Appellants had stated that many improvements done by them such as rebuilding the house after the said catastrophe, digging the well, building a toilet, obtaining right of way through facing cases and getting power supply but the important point to be noted that they have not submitted at least a single evidence, therefore, they failed to prove their all claims for the improvements.

The Appellants also averred that they have possessed the premises for a long time. According to the provisions of Section 3 of the Prescription Ordinance Act, No 2 of 1889 the claimant must prove the following elements:-

1. Undisturbed and uninterrupted possession
2. Such possession to independent or adverse to the claimant and
3. Then (10) years previous to the bringing of such action.

[Vide CHELLIAH vs. WIJENATHAN [54 NLR 337], SIRAJUDEEN AND TWO OTHERS vs. ABBAS [(1994) 2 SLR 365]]

In this issue the Appellants prescriptive period had started on 1986 (by Deed of Gift No. 4510) and ended on 1994 (by Deed No. 8117) and which is lesser than 10 years according to Section 3 of the Prescription Ordinance and it is clear that the Appellants cannot claim prescriptive title.

I further observed that the monthly rental of Rs.500/- claimed by the Respondent is a reasonable prayer; and I hold that the Appellants are liable to pay the rentals up to the date.

For the foregoing reasons, I affirm the judgment of the learned District Judge and dismiss the appeal with Costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL