

ST. LUCIA

IN THE COURT OF APPEAL

CIVIL. APP. No: 4 OF 1996

BETWEEN:

LUCY FELICIEN

PERSONAL REPRESENTATIVE OF THE LATE

MERILESE VELINOR

PLAINTIFF/APPELLANT

AND

KENNETH POLINERE

PATRICIA JULES

MARIA MARK as PERSONAL REPRESENTATIVE OF THE LATE

NAZARIUS MERLE

DEFENDANTS/RESPONDENTS

Before: The Hon. Mr. C.M. Dennis Byron	Chief Justice (Ag.)
The Hon. Mr. Satrohan Singh	Justice of Appeal
The Hon. Mr. Albert Redhead	Justice of Appeal

Appearances:

Mr. Gordon for the Appellant
Mr. P. Husbands Q.C. for the Respondents

1997 May 28, 29

Real Property Law - Disputed gift inter vivos - Deed of Sale - Whether the gift inter vivos has been accepted and therefore binds the plaintiff - Articles 717 & 696, Civil Code - Whether plaintiff is entitled to remove the gift notwithstanding the acceptance of any of the donors, on ground of their ingratitude, under the Civil Code art.751(i) - Whether plaintiff in fact owned the land in dispute. Appeal allowed.

JUDGMENT

REDHEAD, J.A.

On December, 1994 Merilese Velinor brought an Originating Summons in which she sought the determination of the following questions, namely:-

1. Whether by Deed of sale dated February 14, 1978 and made between Eva Mongroo and Mary DeFreitas of the one part and the plaintiff of the other part, the plaintiff made a gift inter vivos of immovable property registered in the Land Registry as Block 1642 B Parcel 1 in favour of the first and second defendants and the deceased, Lazarus Hyacinth.
2. Whether the gift inter vivos has been accepted and therefore binds the plaintiff.
3. Whether the plaintiff is in all the circumstances entitled to remove the gift inter vivos, notwithstanding the acceptance of any of the donors, on the ground of their ingratitude under 751 (i) of the civil code.

The Learned judge answered the above questions thus:-

"I answer the first question in the negative and say that it is unnecessary to answer the second and third questions."

The appellant has appealed against the ruling of the Learned Trial Judge. The grounds of appeal are as follows:-

- (i) The Learned Trial Judge erred in holding that Merilese Velinor never owned the land, the subject matter of the dispute.
 - (ii) The Learned Trial Judge erred in holding that the Deed of sale dated February 14, 1978 in respect of the said, land did not constitute, inter alia, a gift by deed of the said land to the defendants/respondents.
 - (iii) The Learned Trial Judge erred in failing to decide the second and third questions raised by the Originating Summons to wit.
2. Whether the gift inter vivos has been accepted and therefore binds the plaintiff.

3. Whether the plaintiff is in all the circumstances entitled to revoke the gift inter vivos, notwithstanding the acceptance of any of the donors, on the ground of their ingratitude under Article 751.1 of the Civil Code.

(iv) The judgment is against the weight of the evidence.

The conclusion that the said deed was not inter alia a gift inter vivos by deed is not supported by the evidence.

The evidence of the plaintiff/appellant which was uncontroverted by the defendant/respondent was that the said Merilese Velinor had purchased land with her funds, that the defendants/respondents had not contributed in any way! to the purchase price that the said Merilese Velinor manifested an intention in a deed that the defendants/respondents should have ownership of the property, reserving the usufruct to herself.

Learned Counsel for the appellant produced before this court a document dated 14th February, 1978 entitled Deed of Sale by

Eva Mungroo, Mary DeFreitas Mungroo

To

Merilese Velinor

for and on behalf of

- (1) Kenneth Polinere
- (2) Patricia Jules
- (3) Lazarus Hyacinth

In that Deed there is the recital as follows: _

"AND MERILESE VELINOR of Denire Rivere in the Quarter of Dennery in the State of St. Lucia - Housewife, stipulating that she is purchasing with her seperate funds and earnings for

and on behalf of:

(1) her grandson, Kenneth Polinere

(2) her granddaughter Patricia Jules

(3) her nephew Lazarus Hyacinth

in equal shares but reserving to herself the life usufruct therein to which shall be reunited the nuda proprietas on her death hereinafter called "the purchaser" of the other part.

In the judgment of the Learned Trial Judge at page 5 of the judgment he said:-

"It is difficult to say on the facts of this case that the plaintiff divested herself of the ownership of any land in favour of the donors. She never owned any land to be able to divest her ownership of it."

As I understand the argument of Learned Counsel, Mr. Gordon that this is a misconception of the law that one does not have to have title in order to divest ownership of property, I agree.

It is with this finding that he has taken the most objection to because by that finding the Learned Trial Judge thought it was not necessary to answer the second and third questions which were most vital in his Originating Summons.

Mr. Gordon argued under 2. The gift was never accepted and consequently did not bind the plaintiff.

I have absolutely no doubt in my mind that having regard to the wording of the Deed of sale Eva Mungroo & Mary DeFreitas Mungroo to Merilese Velinor et al (referred to above) that the plaintiff /appellant made a gift to her grandson, granddaughter and nephew and reserved usufruct, a life interest in the property for herself.

Article 717 of the Civil code states as follows:-

"Deeds containing gifts inter vivos must under pain of nullity be executed in the notarial form and the original thereof be kept of record. The acceptance must be made in the same form:-"

In my view, the Civil Code is quite clear and explicit in that all gifts in order to be accepted, must be executed in notarial form. It is quite clear that this gift by the appellant to the respondents was not so accepted . What is therefore the result of non acceptance of the gift? Article 696 states as follows:-

"Gift inter vivos is an act by which the donor divests himself by gratuitous title, of the ownership of a thing, in favour of the donee, whose acceptance is requisite and renders the contract perfect. This acceptance makes it irrevocable, saving the cases provided for by law, or valid resolute condition."

Non acceptance of the gift makes it not binding on the donor and makes it a nullity.

Mr. Gordon, Learned Counsel for the appellant also argued that the gift, if the Court so finds that it was a gift should be set aside on the ground of ingratitude.

The Learned Judge at page 7 of his judgment said:-

"I do agree with Learned Counsel for the plaintiff. The plaintiff is alleging ingratitude and she must prove so on a balance of probabilities. In consideration of a refusal by the donees to maintain the donor. Article 753(2) stipulates that regard must be had to the nature of the gift (a remainder of interest in land in this case) and the circumstances of the parties.

In my judgment the plaintiff must satisfy the Court that defendants 1 and 2 have the capacity to maintain the donor and are not doing so. They have not done so."

This is a finding of the trial judge which this Court will not lightly upset. However, having regard to my finding that there was no acceptance of the gift) I would allow the appeal and declare:-

- (1) The gift inter vivos has not been accepted and therefore does not bind the plaintiff.
- (2) That the plaintiff or her estate is entitled to revoke the gift inter vivos.

The Registrar of Lands is hereby ordered to rectify the register in favour of the appellants.

Costs to the appellant to be taxed if not agreed.

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Albert Redhead
Justice of Appeal

I concur

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C.M.Dennis Byron
Chief Justice (Ag.)

I concur

.....
Satrohan Singh
Justice of Appeal