

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 831 OF 1999

BETWEEN:

JOSEPHINE ORFIDA ASTORIS

Plaintiff

and

MARY ULINA ADOLPHE

Defendant

Appearances:

Ms.Claire Greene-Malaykhan for the Plaintiff.
Ms.Michelle John for the Respondent.

2001: September 18
September 24

JUDGMENT

[1] **HARIPRASHAD-CHARLES J.:** This is a sad dispute between an aged mother, the Plaintiff and her daughter, the Defendant. From the evidence, the two had a close relationship until unhappy differences arose.

THE FACTS

[2] By Deed of Donation executed on 26th day of November 1998, the Plaintiff made a gift *inter vivos* to her daughter, the Defendant, of her property situate at Waterworks, Castries reserving unto herself the usufruct or life interest therein.

- [3] The Deed of Donation was executed before Mr. Evans Calderon, Attorney-at-law and Notary Royal. Mr. Calderon submitted a witness statement on behalf of the Defendant and he was extensively cross-examined by Learned Counsel for the Plaintiff. I believe the evidence of Mr. Calderon that he was told by the Plaintiff to prepare a Deed of Donation after he explained the legal ramifications of such document.
- [4] The Plaintiff was an octogenarian (89 years old) at the date of the execution of the Deed of Donation. It is accepted that even though the Plaintiff is illiterate, partly deaf and cannot speak perfect English, her mental faculty was and still is fully intact. Not only is she mentally sound but she is also physically fit. She is now 92 years old and she washes, cleans and cooks for herself. In a nutshell, the Plaintiff is an extremely independent and agile person. This was evident from her demeanour.
- [5] I therefore have no doubt that the Plaintiff knew fully well what she was doing when she executed the Deed of Donation. I do not believe her when she testified that she thought she was signing a Codicil to her Last Will.
- [6] I am of the firm view that the Plaintiff wanted to give the property to the Defendant who was her favourite daughter. Indeed, she demonstrated such feeling when some years prior to the execution of the Deed of Donation, she made a Last Will and Testament leaving the said property to the Defendant. Despite the attractive and ingenuous arguments advanced by Counsel for the Plaintiff, I am of the view that the Plaintiff decided to execute the Deed of Donation in order to protect the Defendant's interest in the property from her other daughters.
- [7] The Defendant assisted the Plaintiff financially to build the house. There is ample documentary evidence to substantiate this.
- [8] The relationship between the Plaintiff and the Defendant has broken down considerably and it would be difficult for them to co-exist peacefully.

THE LAW

(i) NON EST FACTUM

[9] The Plea of *non est factum* is not available to the Plaintiff. The facts as I find them is that the Plaintiff knew fully well what she was doing. Now that the relationship between herself and the Defendant has broken down, she wants to revoke the said Deed of Donation. This cannot be done unless she could prove ingratitude of the donee, the Defendant.

((ii) INGRATITUDE

[10] The Plaintiff urged the Court to find ingratitude on the part of the donee to warrant a revocation of the Deed of Donation. Article 751 of the Civil Code states:

" Gifts *inter vivos* accepted are liable to be revoked by reason of ingratitude on the part of the donee."

[11] Article 753 of the said Code reads:

" Ingratitude on the part of the donee justifying revocation of a gift consists in-

(a) Ill-usage of donor, grievous injury done to him, or crime committed against him;

(b) Refusal to maintain donor, regard being had to the nature of the gift and the circumstances of the parties."

[12] Analyzing the evidence adduced in this case and the law in respect of ingratitude, I cannot find ingratitude on the part of the Defendant. The Defendant has admitted that she ceased doing certain things for the Plaintiff since the institution of this action. And understandably so.

(iii) LIFE INTEREST

[13] In the Deed of Donation, the Plaintiff reserves unto herself the usufruct or life interest therein. Article 394 of the Civil Code states

“Usufruct is the right of using and enjoying things of which another has the ownership, in the same manner as the owner uses and enjoys them, but subject to the obligation of preserving their substance. ’

[14] Article 718 of the Civil Code reads as follows:

“ It is essential to gifts intended to take effect *inter vivos* that the donor should actually divest himself of the ownership of the thing given.

The donor may reserve to himself the usufruct or precarious possession.”

[15] In accordance with the law, the Plaintiff is entitled to use and enjoy the property just as the owner which would mean a right to peaceful enjoyment without interference from anyone including the owner.

[16] The present position is that the Plaintiff occupies the lower floor of the property and the Defendant occupies the upper floor. They share some of the common amenities including the kitchen and toilet facilities. It is virtually impossible for the two to continue to do so. The Plaintiff is adamant to continue to have the Defendant living in the same property with her. In simple language, she wants the Defendant out of the property.

[17] From all indications, the Defendant has nowhere else to go but to return to England. She does not wish to do that. She has contributed substantially to the construction of the said house. She is now retired. Given these circumstances, it is almost impossible to ask her to vacate the house. The Defendant has undertaken to convert the upper floor of the house into a self-contained apartment whereby limiting her contacts with her mother. Against that background, I will order that the Defendant’s use of the house be restricted to the upper floor solely and the Plaintiff to the lower or ground floor where she has always resided.

(iv) OBLIGATION TO MAINTAIN

[18] Article 753 of the Civil Code imposes an obligation on the donee to maintain the donor having regard to the nature of the gift and the circumstances of the parties. The Defendant receives as pensionable emoluments the amount of four hundred pounds sterling (the equivalent of approximately two thousand dollars Eastern Caribbean Currency) from the British Government. She has consented to pay a monthly sum of three hundred dollars towards the maintenance of the Plaintiff for the rest of her life. The Defendant will also pay all of the utility bills (water and electricity).

[19]] My Order will be as follows:

- (i) The action by the Plaintiff for a revocation of the Deed of Donation is hereby dismissed.
- (ii) That the Defendant's use of the house be restricted solely to the upper floor and that she undertakes the necessary expenses with regard to converting the said floor into a self contained apartment no later than 30th day of November 2001. The Plaintiff will continue to occupy the ground or lower floor of the property situate at Waterworks, Castries.
- (iii) That the Defendant pays a monthly sum of \$300.00 towards the maintenance of the Plaintiff for the rest of her life. This sum is to be paid to an account in the Plaintiff's name at a Commercial Bank commencing 1st day of September 2001.
- (iv) That the Defendant pays the utility bills (water and electricity).
- (v) That each party bear their own costs.
- (vi) That the Defendant be placed on a bond in the sum of \$1,000.00 to keep the peace.

[20] There is one further observation which I feel impelled to make. I would hope that the bitterness of the conflict between the Plaintiff and the Defendant will be speedily forgotten

and the good relationship that once existed between mother and daughter will return to normalcy.

[21] Lastly, I would like to commend both lawyers for their sterling presentation and immeasurable assistance to this Court. For this, I am indeed thankful.

Indra Hariprashad-Charles
High Court Judge