Privy Council Appeal No. 13 *of* 1943

P. Sellasamy – – – – – – – – – *Appellant*

v.

K. Kaliamma and others – – – – – – *Respondents*

FROM

THE SUPREME COURT OF THE ISLAND OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH NOVEMBER, 1944

Present at the Hearing:

LORD THANKERTON
LORD WRIGHT
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from the judgment and decree of the Supreme Court of the Island of Ceylon dated the 17th June, 1941, affirming an order of the District Court of Kandy, dated the 3rd February, 1941, in proceedings for the administration of the estate of one Ponniah who died in the year 1936. The appellant is the eldest son of Ponniah by his first marriage, and the respondents are children by a subsequent marriage. After the death of Ponniah, his widow applied for letters of administration to his estate which were granted on the 28th June, 1937, various matters, which were in dispute between the parties, being referred to a judicial settlement. The only dispute which is relevant to this appeal is as to whether the appellant is bound to bring into hotchpot in the distribution of the estate a gift made to him by his father on the 1st November, 1927. Both the lower courts have held that the appellant is so bound.

The relevant facts may be stated shortly. The appellant was born in the year 1896, and in the year 1926 his father was anxious that he should marry a cousin, by name Ponnamma. On the 7th September, 1927, the appellant gave to the Registrar of Marriages of the Division of Matale South in the District of Matale written notice that a marriage was intended to be held within three calendar months from the date thereof between himself and Ponnamma who was described in the notice. The deed of gift which has occasioned this dispute was made on the 1st November, 1927, that is during the currency of this notice. It was executed by the deceased, Ponniah, and the appellant, and it states that in consideration of natural offspring love that the deceased had towards the appellant in expectation of all necessary aid and assistance from him during the deceased's lifetime and divers other good causes, the deceased gave unto the appellant as an absolute gift irrevocable on any account the immoveable property therein described, of the value of Rs.6,000, subject to the donor's life interest, and the appellant accepted the gift. The contemplated marriage did not in fact take place, and, although the donor lived until the year 1936, he took no step to recall the gift.

The question whether this gift is liable to be brought into hotchpot by the appellant in the distribution of his father's estate depends upon the construction of section 39 of Ordinance 15 of 1876 (subsequently replaced

by section 35 of chapter 47 in the revised legislative enactments issued in 1938), which is in the following terms:—

> "Children or grandchildren by representation becoming with their brothers and sisters heirs to the deceased parents are bound to bring into hotchpot or collation all that they have received from their deceased parents above the others, either on the occasion of their marriage or to advance or establish them in life, unless it can be proved that the deceased parents, either expressly or impliedly, released any property so given from collation."

Although the deed of gift does not mention the contemplated marriage, the lower courts were clearly right in admitting evidence as to the circumstances in which the deed was executed and the state of the donor's knowledge at that date. The principal argument for the appellant before their Lordships has been that a gift cannot be said to have been made on the occasion of a marriage if in fact no marriage takes place. If the expression "on the occasion of their marriage" be held to mean on the happening of the marriage, the occasion of the marriage and the occasion of the gift being the same, such a construction would rule out the normal case of a gift by a parent to a child made shortly before or after the child's marriage designed to help the child to set up a matrimonial home. Such gifts can seldom be made upon the actual solemnisation of the marriage. Their Lordships agree with both the lower courts in thinking that this is too narrow a construction to be placed upon the section. They think that the relevant consideration is what, at the time of the gift, was the donor's intent. If the marriage, or contemplated marriage, was a factor inducing the gift, then the gift was made on the occasion of the marriage, and, in their Lordships' view, it is irrelevant that a marriage, in fact, never took place. Both the lower courts construed the section in this sense, and, so construing it, held as a fact that the gift was on the occasion of the marriage. Their Lordships see no reason for departing from their normal practice of not interfering with a concurrent finding of fact.

It was further argued that the donor impliedly released the property given from collation within the last sentence of the section, because, during the nine years in which he lived after the date of the gift, he took no steps to recall it. Once it be accepted that the gift was made on the occasion of the marriage, the burden is upon the appellant to prove that the property was released from collation, and there are concurrent findings of fact by the lower courts that there was no such release; these findings again their Lordships accept.

Their Lordships will humbly advise His Majesty that this appeal be dismissed and that the appellant pay the respondents' costs of the appeal.

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DELIVERED BY SIR JOHN BEAUMONT

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