

1959

*Present* : Basnayake, C.J., and Sansoni, J.

FERNANDO, Appellant, and PERERA, Respondent

*S. C. 178—D. C. Negombo, 18093**Donation—Threat by donee to cause bodily injury to donor—Revocability on ground of ingratitude.*

A threat by a donee to cause bodily injury to the donor constitutes an act of ingratitude and is, therefore, a valid ground for the institution of an action by the donor to have the deed of gift set aside.

**A** PPEAL from a judgment of the District Court, Negombo.

*T. B. Dissanayake, with Annesley Perera, for Plaintiff-Appellant.*

No appearance for Defendant-Respondent.

November 16, 1959. BASNAYAKE, C.J.—

This is an action by the plaintiff, who is the foster mother of the defendant her adopted son, to have a deed of gift No. 10544 dated 11th May 1953 and attested by Notary P. P. Goonewardene set aside on the ground of ingratitude. She alleged three acts of ingratitude, namely,

- (1) an assault on her with a broom-stick,
- (2) a threat to cause bodily harm and injury to her, and
- (3) causing mischief and damage to the house occupied by her.

The learned District Judge has held that the plaintiff has exaggerated those incidents but he does not hold that they are entirely unfounded. He has however accepted the plaintiff's evidence in regard to the incident of the threat to cause bodily injury to her as her evidence is supported by the evidence of an independent witness. But he holds that it does not constitute an act of ingratitude.

We are unable to agree. On that occasion the defendant chased after the plaintiff threatening to kill her and she had to seek refuge in the house of the witness Mrs. Samarasekera who is a disinterested person. She says: "When I was living in the Tuduwe road house I remember the plaintiff coming running into my house. I asked her why she came running, and she said that her son was coming to kill her." The fact that the defendant more than once endeavoured to dissuade this witness from giving evidence for the plaintiff is a circumstance which is in favour of the plaintiff and goes to reinforce the evidence of the witness. This incident by itself is sufficient to support the allegation of ingratitude on the part of the defendant, and the plaintiff is therefore entitled to the relief she seeks.

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We accordingly make order setting aside the judgment of the learned District Judge and revoking the deed of gift marked P 3.

The plaintiff is declared entitled to the costs both here and below.

SANSONI, J.—I agree.

*Appeal allowed.*

