

# ADULT CANNOT CHANGE POSITIONS ON LAND ACQUIRED AS MINOR

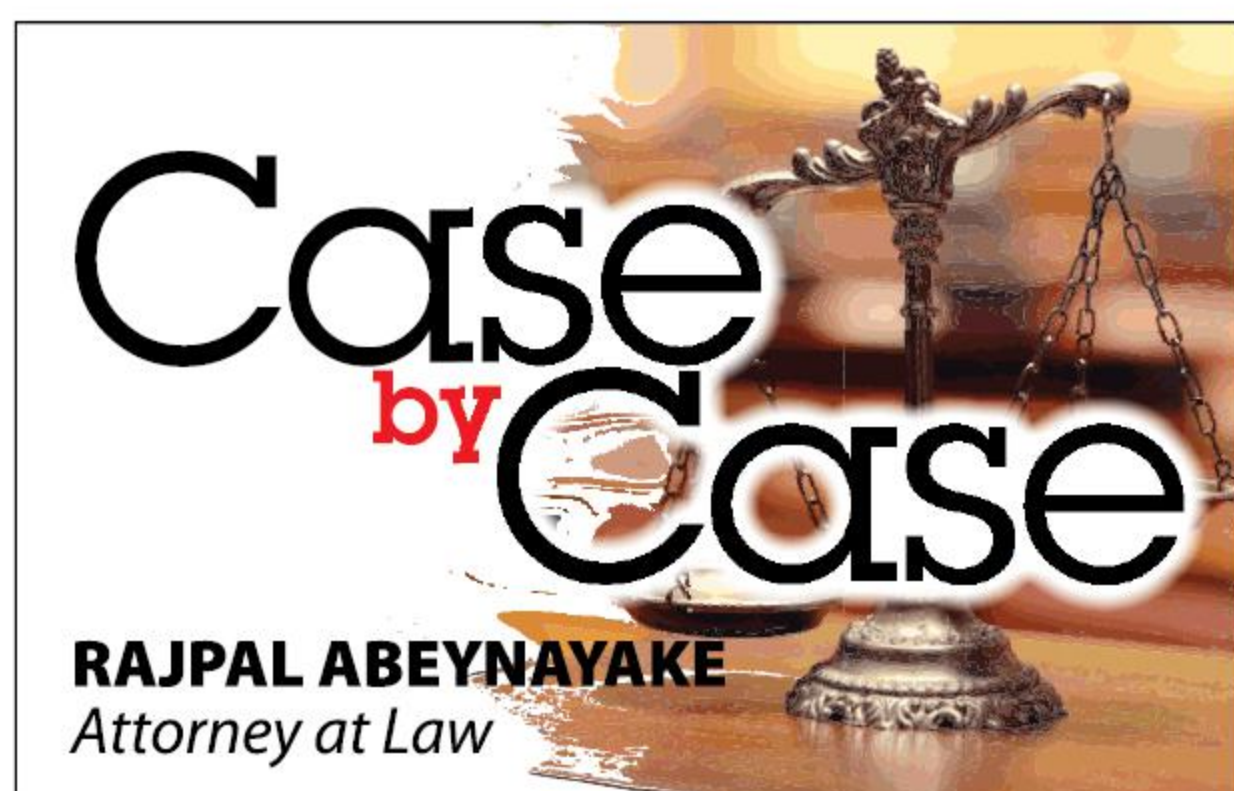


A matter in which a plaintiff was litigating in the District Court for a deed to be set aside, ended up in the Court of Appeal (*Wickramsinghe v. Corrine De Zoysa* - SLR - 33, Vol 1 of 2002 [2001] LKCA 68; (2002) 1 Sri LR 33 (April 6, 2001)) because the District Judge dismissed the plaintiff's application. When the matter came to be heard in the Court of Appeal, the following were the circumstances as noted subsequently in that Court's judgement:

"At the hearing of this appeal, learned President's Counsel appearing for the plaintiff-appellant submitted that the learned District Judge has misdirected himself in holding that the plaintiff-appellant, first defendant-respondent and second defendant-respondent derive their title from deed No. 2078 dated 05.01.1975 attested by J. B. Puvimanasinghe, marked P4 and therefore they are lawful owners of premises bearing Nos. 14/1, 14/2 14/3 and 14/4, respectively."

The plaintiff-appellant was the owner of an undivided one-third share of a set of flats after they had been gifted to certain other parties and herself, by deed of gift. However, subsequently by the disputed deed the parties including the plaintiff-appellant had acquired ownership of separate distinct units of flats. However the grouse of the plaintiff-appellant was that the extent of the property that was hers as a result of the bestowal by the disputed deed was less than that one-third share she owned when the property was undivided.

The plaintiff's counsel made the argument based on the following grounds: "(a)



that the execution of the deed No. 2078 (P4) has resulted in a reduction of the extent of property donated to plaintiff-appellant by deed No. 1876 (P3); and (b) that the said deed (P4) is *ipso jure* void since alienation of immovable property by a minor requires sanction of Court."

It is interesting to note that Sir Cyril de Soysa the original owner of the flats gifted undivided shares of these properties to the relevant parties involved in the case, because at the time of making these gifts he did not have recourse to the condominium law, as it had not yet been enacted yet.

This fact was recorded in detail in judgement: "In examining the question whether the change that was sought to be effected by deed No. 2078 (P4) was to the detriment or to the disadvantage of the plaintiff-appellant, it is vital to bear in mind that the donor had intended of gifting the flats in divided ownership to all the donees as evident from deed No. 1660 (P2). Undoubtedly, it was not possible for the donor, in law, to donate condominium property at the time when deed No. 1660 (P2) came to be executed in divided shares. The Apartment Ownership Law came into effect on 20. 03. 1973."



However, the real bone of contention in the contentious matter in court was that plaintiff was a minor when the disputed deed was signed allocating separate ownership of the flats to the parties, including her. Her counsel took up the position that the law was that if a property had been alienated to a minor, such alienation had to be ratified by the said minor upon attaining the age of majority, but that the minor in this case the plaintiff, had not ratified the deed upon attaining the age of majority – and therefore the deed was void.

What was in fact the law on this contentious issue of minors and deeds signed on their behalf?

Court of Appeal judgement observes: "It was held in *Raman Chetty v. Silva* that the Roman Dutch Law relating to ratification is in force in Sri Lanka. The Roman Dutch Law permits the ratification after majority, of an invalid contract of a minor and differs from English Law which denies to a minor the right to ratify certain classes of contract. Thus, in our law, a contract upon ratification by a minor after attaining majority becomes as binding upon him as if it had been executed after his majority and it is effective from the time the contract was made."

The Court apparently went with the Roman Dutch Law position that a minor

upon attaining the age of majority can ratify certain contracts that had been entered into when the party was a minor. The ratification can be either done expressly or impliedly and when done impliedly or by an express act of commission, the minor having claimed the contract was lawful cannot subsequently reject the contract at a later date. In other words, after attaining the age of majority if the minor decided that the contract was fine and is legal and also in his or her interests, he or she cannot change their mind on a later date and claim the contract was now being repudiated because he or she after all was a minor when it was signed. An erstwhile minor cannot "approve and reprobate," in other words.

The Court of Appeal held: "Ratification may be expressed or implied from some act by the minor manifesting an intention to ratify. For example where a person with full knowledge of his legal rights continues after majority to use as his own the subject-matter of a purchase made by him during minority, he must be taken to have ratified the contract. In such a case the erstwhile minor will not be permitted to approve and reprobate. Similarly, an attempt by the minor upon attaining majority to enforce his rights under the contract would be construed as a ratification of the contract, (*vide The Law of Contracts Vol. I* by Professor Weeramantry 1967 edition – page 417)."

In the case under review, had the minor upon attaining the age of majority, ratified the deed in dispute?

"Ratification may be express, or may be implied from some unequivocal act by the manifesting of an intention to ratify the contract. For example, where a minor who had purchased a motor cycle during his minority, continued to use it as his own after he reached full age, he was held liable for the purchase price."

Court decided that what remained to be considered is whether there was ratification (express or implied) by the minor of her unassisted contract after attaining majority.

The plaintiff had in fact been fine with the separate units of the flat that she had acquired after the deed in dispute came into force. It was much later that she changed her mind, and contended the deed was void because she was indeed a minor when it came into force.

The judgement is unequivocal: "It would be pertinent to state that the plaintiff-appellant has come out with the present allegation for the first time after the demise of the donor (Sir Cyril de Soysa) only after the admitted ill feelings had set in between the parties due to the plaintiff-appellant's husband having to vacate premises No. 14/1 and hand over possession subsequent to the refusal of the first defendant-respondent, to the sale of the premises bearing No. 14/1."

Considering the above, the Appeal was dismissed with costs.

