Present : Dalton J. and Jayewardene A.J. 1926.

KANDAPPA *v.* CHARLES APPU *et al.*

302—D. C. Kegalla, 6,652.

Kandyan law—Dowry deed—Valuable consideration—Revocability.

Under the Kandyan law a deed of gift given by parents in pursuance of a promise before marriage, as dowry, before or at the time of marriage or even after marriage is one for valuable consideration, and is irrevocable.

In such a case the donees are not bound to prove that the deed operated as an inducement to contract the marriage.

Ram Menika v. Banda Lekam[1] considered.

PLAINTIFF sued first defendant, his son-in-law, for the declaration of title to a land on the ground that the deed of gift (D2) by which he gave the property to his deceased daughter, the first defendant's wife, has been revoked by a subsequent deed (P1). The defendant maintained that the deed was irrevocable as it was given by way of dowry. The learned District Judge held that the deed of gift was executed as a marriage settlement and that the defendant was induced to marry the plaintiff's daughter by reason of the settlement. He dismissed the plaintiff's action, holding that the deed was irrevocable.

Hayley (with him *C. V. Ranawake*), for plaintiff, appellant.

H. V. Perera for defendant, respondents.

March 29, 1926. JAYEWARDENE A.J.—

In this case the plaintiff is suing his son-in-law and his grandchildren, who have been added as parties, for a declaration that he is the owner of the land described in the plaint, on the ground that the deed of gift No. 9,670 of June 22, 1907, (D2) by which he gifted the property to his deceased daughter, the first defendant's wife, has been revoked by him by a subsequent deed, No. 30,237 of March 23, 1921 (P1). The defendants contend that the deed of gift is irrevocable as it was given as dowry and as an inducement to the first defendant to marry the plaintiff's daughter. The learned District Judge found on the facts that the deed of gift was executed as a dowry deed of gift or as a marriage settlement, in consideration of first defendant's marriage with the plaintiff's daughter, and that

[1] *15 N. L. R. 407.*

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the first defendant was induced to marry the plaintiff's daughter by reason of the said gift or settlement. He held, therefore, that the deed of gift was irrevocable, and dismissed plaintiff's action.

It is contended for the plaintiff that the deed of gift does not fall within the class of gifts which are considered irrevocable under the Kandyan law, and that the deed was not, in fact, a dowry deed, and was not the consideration for the first defendant's marriage, as it was executed after the marriage and granted not in his favour but in favour of his wife. It is, no doubt, true that the deed was executed about a month after the marriage, but the evidence shows, and the learned District Judge finds, that the plaintiff had agreed to settle property worth Rs. 1,000, on his daughter on her marriage, that the defendant, when he found on the eve of his marriage that this had not been done, threatened to break off the engagement, and that the plaintiff then agreed to give instructions to a notary to draw up a dowry deed the next morning, and accordingly gave instructions to the notary early on the morning of the wedding day and in the result this deed of gift was drawn up and signed some days later. The plaintiff admitted that he went to the notary on the morning of the wedding day and instructed him to draw up the deed, and that the registration of the marriage took place after he had given instructions for the deed.

On these facts the District Judge found, in my opinion rightly, that the promise of the plaintiff to give this deed of gift was wholly or partly the inducement to contract the marriage. That being so, the fact that the deed was executed after the marriage is of little consequence. Is a deed of gift given under such circumstances revocable under the Kandyan law? The text writers make no special reference to gifts in consideration of marriage, and such gifts are not included among irrevocable gifts under that law, *Perera's Armour pp. 91 and 95.* There are, however, several decisions of this Court in which the law applicable to cases of this kind has been discussed and laid down. The first case is *Ukku v. Dintuwa.*[1] In that case a deed of gift had been given by the husband's father in favour of his son and daughter-in-law, and on the face of the deed it appeared to be a mere voluntary deed made out of free will and affection. The facts proved, however, showed that the deed was given in consideration and in contemplation of a valid marriage being effected between the grantees. This Court held, that as the marriage of the parties constitued valuable consideration for the deed, it became irrevocable. It is to be noted that there, as in the present case, the promise was made before the marriage, but the deed was executed after its registration. But in *Dingiri Menika v. Dingiri Menika,*[2] it was held, that a donation

[1] *(1878) 1 S. C. C. 89.*

[2] *(1906) 9 N. L. R. 131.*

made by a person in favour of his daughter-in-law in contemplation of her marriage with the donor's son was revocable under Kandyan law, and in the course of his judgment Lascelles A.C.J. said :—

> "This exception to the general rule (that is of irrevocability as extended by this Court in the case of *Heneya v. Rana*[1]) where it was decided that a gift of land purporting to be made in consideration of assistance rendered and money advanced by the donee to the donor was not revocable under Kandyan law. Sir J. Phear in this case said : 'We think it plain that the deed A, upon which the plaintiff relies as his ground of title, was a conveyance to him from the owner for valuable consideration of a very substantial character.'
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> "It has been pressed upon us in the present case that the so-called gift, being in consideration of the marriage of the donee with the donor's son, was in reality a transfer for valuable consideration, and so within the principle of Sir J. Phear's judgment.
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> "It is true that by English law marriage is for certain purposes a valid consideration, but this circumstance is not sufficient to establish the proposition that donation in consideration of marriage constitutes an exception to the general rule of Kandyan law with regard to the revocable character of donations.
>
> "The fact that there is no mention of any such exception in the text-books on Kandyan law and in reported decisions is almost conclusive evidence that it does not exist, for donations in consideration of marriage are among the commonest of transactions."

and Middleton J. said :—

> "We have been referred to no decisions of this Court showing that it has ever been held that a grant or donation in consideration of marriage under the Kandyan law was irrevocable, and such authorities on the customary law to which we have access do not appear to contemplate any exception of such a nature to the general rule of revocability.
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> "In the case before us the donee has in fact accepted by signing the later deed (marked D1) the modification of the former gifts indicated in that document. It hardly lies, therefore, in her mouth to object to the variation of the gifts which she has according to the Notary's evidence specifically agreed to in that deed."

[1] *(1878) 1 S. C. C. 47.*

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The case of *Ukku v. Dintuwa* (*supra*) is not referred to in the judgments, and was evidently not cited at the argument. The fact mentioned by Middleton J. that the donee on the first deed was a party to the second deed would almost amount to an acknowledgment by her of the donor's right to revoke and a waiver of her own right to object to the revocation The Acting Chief Justice, however, made no point of this fact. This case was cited at the argument in *Tikiri Kumarihamy v. de Silva*,[1] and was commented on by Hutchinson C.J. He said :—

> "The appellant referred us to *Dingiri Menika v. Dingiri Menika* (*supra*) in which a grant of land to a woman, in consideration of the fact that the grantor's son was to be married to her, was held to be revocable, on the ground that a grant of that kind is a gift and not a transfer for value. The reasoning of the Court was this. All 'donations' are revocable ; a grant in consideration of marriage is a 'donation,' therefore it is revocable, there being no authority in Kandyan Law to the contrary. The argument assumes that such a grant is a 'donation,' that is, a gift. That question, however, does not arise here . . . ."

The learned Chief Justice appears to question the law as laid down by Lascelles A.C.J.

The question was again raised in *Ram Menika v. Banda Lekam* (*supra*), where the donor, the father, had gifted certain property as dowry to his daughter on the occasion of her marriage. The donor subsequently executed another deed conveying the same property to a third party The donee contended that the gift in her favour was for valuable consideration, namely, her marriage, and was irrevocable. This Court (Pereira and Ennis JJ.) held, that as there was nothing to show that the gift was wholly or partly a reason or inducement to contract the marriage, it must be regarded as a free-will gift, and so revocable. It distinguished the case of *Ukku v. Dintuwa* (*supra*), and purported to follow *Dingiri Menika v. Dingiri Menika* (*supra*). Pereira J. who delivered the judgment of the Court proceeded to state the rule to be applied in deciding the question whether a deed of gift is revocable or not. In his opinion, when a deed of gift has been given in consideration of something to be done by the donee in the future, as for instance, in consideration of an intended marriage, and that thing is done by the donee being induced to do so by the giving of the deed, it would be inequitable to allow the deed to be revoked. In fact, such a deed would not fall within the category of donations. But where a deed is given as a return for something already done, *e.g.*, in consideration of a marriage that has already taken place, or even in contemplation of marriage in cases where the donor is under no legal liability to give

[1] *(1909) 12 N. L. R. 74.*

such a deed, it is a deed of gift in the real sense of the term, as there is no consideration in law but a mere inducement or motive actuating the donor to exercise his generosity. He thought that *Ukku v. Dintuwa* (*supra*) came within the first class, and *Dingiri Menika v. Dingiri Menika* (*supra*) within the second, as he thought that there was nothing to show that the gift was a reason or inducement to contract a marriage. In *Ukku v. Dintuwa* (*supra*) the father-in-law had promised to his intended daughter-in-law that if she should marry his son he would execute a deed making some provision for her, and on the faith of this promise she had married the donor's son. In his opinion there was no real conflict between these two cases. Then dealing with the point that the deed of gift in question had been given as dowry to the daughter, he said :—

> "It is said that this is a dowry, and that dowry is usually the inducement agreed upon, in the course of negotiations for a marriage, for contracting the marriage. That may be so in some cases, but the proposition is not one of universal application. A dowry may be a spontaneous and free will gift by a parent to the contracting parties. It may even come as a surprise on the donees. Each case must depend upon its own circumstances. In the present case all the material that we have before us is that at (not before) the marriage of Ram Menika, the donor on the deed in question promised to give Ram Menika lands of the value of Rs.1,000, and after the marriage the donor donated the lands promised. There is nothing to show that this promise was, wholly or partially, the inducement to contract the marriage. For aught that appears on the record, it was a freewill gift, the motive for it being the marriage that at the time of the promise was taking place."

The result of this decision is to modify the broad principle laid down in *Dingiri Menika v Dingiri Menika* (*supra*), and to declare that a deed of gift given as dowry, or in contemplation of marriage, would be irrevocable if it operated an an inducement to contract the marriage.

In the case of a deed of gift given as dowry to a bride by her parents who may be said to be under a legal liability to give it, the law regards it as a conveyance for valuable consideration, and I do not think the donee should be called upon to prove that the marriage took place as a consequence of, or was induced by the dowry, that would be presumed. The distinction drawn by the learned Judge should, I think, be restricted to cases where gifts are

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given on the occasion of a marriage by friends or relations of the bride. For, as Hutchinson C.J. said in *Jayasekera v. Wanigaratne*[1] :—

> "A conveyance of land by father to, or for the benefit of, his daughter by way of dowry on her marriage is, *primâ facie*, a conveyance for valuable consideration. It is possible, of course, and it is a thing which is done every day, for the parents or friends of a bride to give her a present on the day of her marriage, a pure gift, which does not form the consideration or any part of the consideration for the bridegroom marrying her. But that is not dowry. And in this country, as in most others, the dowry is almost always the consideration for the man taking the woman as his wife. The fact of the deed being called a 'deed of gift' cannot make any difference, if it is clearly proved what the real nature of it was."

See also *Theodoris Fernando v. Rosalin Fernando*.[2]

I would say that in every case where the parents give a deed as dowry before or at the time of marriage, or even after marriage, if it be in pursuance of a promise made before marriage the deed should be regarded as a deed for valuable consideration, and so irrevocable. I do not think that the donees should be called upon to prove that the deed operated as an inducement for the marriage. The present case can also be distinguished from *Ram Menika v. Banda Lekam* (*supra*) on the facts, for here the promise was before the marriage and it was after the donor had given instructions to the notary that the first defendant consented to marry the plaintiff's daughter. The promise was, therefore, clearly the inducement to contract the marriage. These facts, however, bring D 2 within the class of donations which, in the opinion of Pereira J. are irrevocable. As regards the contention that as the dowry deed was in favour of the daughter, and not in favour of the son-in-law, there was no valuable consideration because it was not an inducement for the daughter to marry the first defendant, and the husband derived no benefit from, and had no control over the wife's property, the parties being Kandyans, I do not think there is any substance in it. The husband derives advantage from the property settled on the wife. He is relieved to some extent from the provision which he would otherwise have to make for her. If he lived amicably with his wife, her income would contribute to the expenditure of the family which would otherwise fall on him exclusively. During marriage the question of separate property would hardly arise and the income will be used as a common fund for the benefit of the wife and family, and the property itself will be under the control and management of the husband. The husband will therefore obtain considerable assistance in sustaining the *onera matrimonii* from the dowry property of his wife. Such

[1] (*1909*) *12 N. L. R. 364* (*365*).

[2] (*1901*) *5 N. L. R. 230*.

a deed is, in my opinion, for valuable consideration even as regards the husband, as it operates as an inducement to him to contract the marriage. In the local cases I have cited : *Theodoris Fernando v. Rosalin Fernando* (*supra*), and *Jayasekera v. Wanigaratne* (*supra*), the deed was in favour of the wife, and in *Ukku v. Dintuwa* (*supra*) it was in favour of the husband and wife. In all these cases, the deeds were held to be for valuable consideration. And in *Ram Menika v. Banda Lekam* (*supra*), although the deed was in favour of the donor's daughter, it was not suggested that that fact prevented the deed from being regarded as one for valuable consideration.

The dowry deed in question in this case is, therefore, for valuable consideration even as regards the first defendant, the husband, and is irrevocable. The appeal will be dismissed with costs.

DALTON J.—I agree.

Appeal dismissed.