

1944

Present: Howard C.J.

HAPUMALI, Appellant, and UKKUA, Respondent.

261—C. R. Panwila, 10,420.

Kandyan deed of gift—Services to be rendered—Services duly performed by donee—Deed irrevocable.

Where a Kandyan deed of gift is given in consideration of services to be rendered in the future and the services are duly performed, the deed cannot be revoked.

A PPEAL from a judgment of the Commissioner of Requests, Panwila.

H. W. Thambiah for the plaintiff, appellant.

Cyril E. S. Perera, for the defendant, respondent.

Cur. adv. vult.

June 12, 1944. HOWARD C.J.—

The plaintiff appeals from the decision of the Commissioner of Requests dismissing her action asking for a declaration of title to certain land and damages. The defendant, who is the plaintiff's daughter, pleaded that the land in question had been donated to her by deed P 1 dated December 28, 1924, by the plaintiff and that the latter had no right to revoke the gift which the plaintiff purported to do by deed P 2 dated July 18, 1941. The learned Commissioner held that a deed of gift like P 1 was revocable, that the defendant had rendered all assistance to her mother, the plaintiff, and that the plaintiff had no right to revoke the deed of gift. Such revocation was, therefore, of no effect.

P 1 recites that the donation to the defendant is made "with the intention of receiving assistance and necessary succour during the term of natural life in this world and in consideration of the love and affection I have and bear unto" the defendant. The habendum states that the donee, her heirs, executors, administrators and assigns, is to hold the said premises with all the donor's right, title and interest thereto free from dispute. It is conceded by Counsel for both parties that the amendment of the law effected by section 5 of the Kandyan Law Declaration and Amendment Ordinance (No. 39 of 1938) does not affect the question that has to be decided in this case. I have, therefore, been referred to various decisions on the law as it stood prior to the enactment

of this amending Ordinance. In *Gunadasa v. Appuhamy*¹, Garvin S.P.J. held that, where a Kandyan deed of gift given in consideration of services to be rendered in the future granted "all the right, title and interest of me the said donor in and to the premises for ever," the donor did not renounce the right of revocation by the use of the words "for ever". In his judgment the learned Judge states that the purpose of the gift would seem to be to secure to the donor that she would be well cared for during what remained of her life and such deeds are always revocable under the Kandyan law unless they are expressly declared to be irrevocable or where the power of revocation is expressly renounced. He then went on to hold that the use of the words "for ever" cannot fairly be construed as containing language which imposes a limitation or a renunciation of the ordinary right of the donor. The language of the deed in *Gunadasa v. Appuhamy* (*supra*) is very similar to that employed in the present case. But the learned Judge did not deal specifically with the point as to whether, if the services are duly performed, the right to revoke inherent in such a deed is exercisable. The implication of the judgment is that such right is still exercisable. In fact it was so held by Wijeyewardene J. in *Wijesinghe v. Mohotty and another*² where services had been performed up to date and for twenty years. In spite of this the learned Judge held that the deed was revocable. Considerations of natural equity cannot be permitted to override Kandyan law on this subject. In doing so he referred to D. C., Kandy, No. 22,404 (Austin P 140) in which case the Supreme Court held a deed to be revocable when the donor transferred a land to another in consideration of assistance to be rendered even after such assistance had been rendered. It was held further that, if the donee had spent any money, he could make a claim for it, "the assumption being that the gifted land left him harmless during the time he rendered assistance."

Passages from judgments in other cases indicate that a different view to that expounded in the cases I have cited has been taken. In affirming the decree of the Court below in *Bologna v. Punchi Mahatmaya*³ the Supreme Court stated as follows:—

"It is impossible to reconcile all the decisions as to the revocability or non-revocability of Kandyan deeds; but the Supreme Court thinks it clear, that the general rule is, that such deeds are revocable, and also that before a particular deed is held to be exceptional to this rule, it should be shown that the circumstances which constitute non-revocability appear most clearly on the face of the deed itself. The words in the present deed as to services 'continued to be rendered by the donee' do not appear to the Supreme Court to be sufficiently clear and strong."

The judgment of the Supreme Court which I have cited above was cited with approval by Pereira J. in *Ram Menika v. Banda Lekam*⁴ in the following passage that is to be found at page 410:—

"This dictum strikes the keynote of the situation. It implies that if it was clear that the deed in question had been given for future

¹ 36 N. L. R. 122.

² 26 C. L. W. 48.

³ *Ramanathan's Repts. 1863-1868, p.195.*

⁴ 15 N. L. R. 407.

services and those services had been actually rendered, the Court would have inclined towards pronouncing against revocability. The position appears to me to be simply this. If a deed is given in consideration of something to be done in future by the donee, and that thing is done by him, being induced thereto by the giving of the deed, it would, to say the least, be inequitable to allow such a deed to be revoked."

The question was also considered by Lascelles C.J. and Pereira J. in *Mudiyanse v. Banda*¹. At page 57, Pereira J. cites the following passage from the ruling of the Full Court in *Kiri Menika v. Ganrala*²:—

"The Supreme Court thinks it clear that the general rule is that Kandyan deeds of gifts are revocable, and also that before a particular deed is held to be exceptional to this rule, it should be shown that the circumstances which constitute non-revocability appear most clearly on the face of the deed itself. The words in the present deed as to services 'continued to be rendered' do not appear to the Supreme Court to be sufficiently clear and strong."

Pereira J. held that the concluding portion of this passage clearly means that, if the words as to service continued to be rendered were clear, and such services were actually rendered, the deed would be an exception to the rule. It is clear that the motive for the deed P 1 was the implied promise on the part of the defendant to render the plaintiff assistance and necessary succour during her lifetime. The Commissioner has found that such assistance and necessary succour was actually rendered. I see no reason to disturb this finding of fact. In these circumstances the power to revoke was not exercisable. The appeal is, therefore, dismissed with costs.

Appeal dismissed.
