

1972 *Present* : H. N. G. Fernando, C.J., and Deheragoda, J.

M. P. MOHAMED, Appellant, and A. L. M. P. MOHAMED,
Respondent

S. C. 67/69 (Inty.)—D. C. Galle, 3213/P

Partition Act (Cap. 69)—Section 48 (1)—“ Charitable trust ”.

Where a deed conveying certain immovable property required the transferees to provide three alms givings annually—

Held, that the substantial purpose of the deed was not to create a charitable trust but to convey title to the property subject to the condition that the alms givings should be provided as an obligation attached to the ownership. Accordingly, the provisions of the deed could not prevent a partition of the property.

APPPEAL from a judgment of the District Court, Galle.

M. M. I. Kariapper, for the 1st defendant-appellant.

A. Mampitiya, for the plaintiff-respondent.

May 29, 1972. H. N. G. FERNANDO, C.J.—

Counsel for the appellant has contended that the property which is the subject of this action, is subject to a religious or charitable trust created by the deed 1D2 of 1881. He has argued that for this reason the property cannot properly be subject of a partition.

As a general answer to this argument, there is the fact that Section 48 of the Partition Act expressly provides that property which is partitioned may be declared in the decree to be subject to a trust. In the present case, the trust applies to four properties referred to in the deed of 1881, but only requires the owners to provide three alms givings annually. It cannot be said, therefore, that the substantial purpose of the deed was to create a charitable trust and not instead to convey title to the four properties subject to the condition that the alms givings should be provided as an obligation attached to the ownership. We therefore agree with the learned District Judge that the provisions of the deed do not prevent a partition of the property.

All that needs to be done to protect the interest of the beneficiaries under this trust is that the decree should specify that the owners of the shares allotted in the land will be liable proportionately to pay the costs of the alms givings specified in deed No. 9969 of 1881.

Subject to this order, the appeal is dismissed with costs.

DEHERAGODA, J.—I agree.

Appeal dismissed.