

1963 Present : Sansoni, J., and L. B. de Silva, J.

K. M. PUNCHI BANDA, Appellant, and W. D. NAGASENA, Respondent

S. C. 42/1961—D. C. Kurunegala, 415/L

Kandyan Law—Irrevocable deed of gift—Form—Kandyan Law Declaration and Amendment Ordinance (Cap. 59), ss. 4 (1), 5 (1) (d).

By the use of the single word “irrevocable” in a Kandyan deed of gift the donor may, under section 5 (1) (d) of the Kandyan Law Declaration and Amendment Ordinance, expressly renounce his right to revoke the gift.

APPEAL from a judgment of the District Court, Kurunegala.

N. E. Weerasooria, Q.C., with *W. D. Gunasekera*, for the Defendant-Appellant.

C. R. Gunaratne, for the Plaintiff-Respondent.

Cur. adv. vult.

March 11, 1963. SANSONI, J.—

There is only one question for determination in this appeal, and it is whether the deeds of gift P1 and P2 are revocable or not. The relevant provisions, which are common to both deeds, read as follows :—

“ Know all men by these presents that I, Manapaya Kulatunga Mudiyanselege Kiri Banda of Bogomuwa in Hewawisse Korale in consideration of the natural love and affection which I have and bear unto and for divers other causes and considerations me hereunto moving do hereby give grant convey make over and confirm unto as a gift or donation inter vivos absolute and irrevocable the premises in the schedule hereto subject however to my life interest.

. . . . To have and to hold the said premises hereby donated unto and his heirs executors administrators and assigns absolutely for ever. ”

The deeds were executed on 8th July, 1948, and the Kandyan Law Declaration and Amendment Ordinance (Cap. 59) therefore applies to this case, since the parties are subject to the Kandyan Law. Sections 4 (1) and 5 (1) of that Ordinance require consideration in this connection, and they are as follows :—

“ 4 (1) Subject to the provisions and exceptions hereinafter contained a donor may, during his lifetime and without the consent of the donee or of any other person, cancel or revoke in whole or in part any gift, whether made before or after the commencement of this Ordinance, and such gift and any instrument effecting the same shall thereupon become void and of no effect to the extent set forth in the instrument of cancellation or revocation :

Provided that the right, title, or interest of any person in any immovable property shall not, if such right, title, or interest has accrued before the commencement of this Ordinance, be affected or prejudiced by reason of the cancellation or revocation of the gift to any greater extent than it might have been if this Ordinance had not been enacted.

5 (1) Notwithstanding the provisions of section 4 (1), it shall not be lawful for a donor to cancel or revoke any of the following gifts where any such gift is made after the commencement of this Ordinance :—

(d) any gift, the right to cancel or revoke which shall have been expressly renounced by the donor, either in the instrument effecting that gift or in any subsequent instrument, by a declaration containing the words “ I renounce the right to revoke ” or words of substantially the same meaning or, if the language of the instrument be not English, the equivalent of those words in the language of the instrument. ”

I omit those portions which have no application to this case.

The District Judge held that the deeds are revocable, and the Defendant-Appellant has challenged that finding before us.

The question of the revocability of the deeds depends solely on whether the first clause of the deeds, already reproduced, satisfies the requirements of Section 5 (1) (d) of the Ordinance. Those requirements are :—

- (1) A renunciation of the right to revoke
- (2) which is express
- (3) made by the donor in a declaration
- (4) containing the words " I renounce the right to revoke " or words of substantially the same meaning.

The fourth requirement seems to be merely illustrative of the other three.

Now the clause under consideration is nothing less than a declaration by the donor, expressed in the first person, for he declares that he gives the property as a gift. He describes the gift as " irrevocable ", and the question that remains for consideration is whether, by the use of that single word, he has expressly renounced the right to revoke. I can see no need for a separate clause containing such a renunciation. The Notary could have drafted the deed in that way, but he has chosen a more abbreviated form which is just as effective. The donor has, by describing his gift as " irrevocable ", declared that he has renounced the right to revoke, for it is only a donor who has the right to revoke a gift. When he declares that the gift is irrevocable, he is expressly renouncing that right.

We were referred to the report of the Kandyan Law Commission (Sessional Paper 24 of 1935). I do not think this report is of assistance in interpreting the words used in the Ordinance. It usefully summarises the case law relating to Kandyan deeds of gift, and para 58 contains a recommendation that there should be a clause renouncing the right to revoke, made in explicit terms and according to a prescribed form, to render a deed otherwise revocable absolute and irrevocable. Parliament has not accepted the recommendation so far as it relates to a clause or to a prescribed form, and we thus come back to the actual words of the Ordinance.

I do not think it is helpful to refer to the earlier cases which deal with the revocability of Kandyan deeds of gift, but there are two decisions which throw light on the questions arising here. In *Kumarasamy v. Banda*¹, where a deed in the same terms as these deeds was considered, it was held that there was a declaration by the donor. In *Ukku Banda v. Paulis Singho*² it was held that the words " absolute and irrevocable " are an express and unmistakable renunciation of the right to revoke.

For these reasons I would allow the appeal and dismiss the plaintiff's action with costs in both Courts.

L. B. DE SILVA, J.—I agree.

Appeal allowed.

¹ (1959) 62 N. L. R. 68.

² (1926) 27 N. L. R. 449.