

1898.

November 24.

CHINNIAH *et al.* v. VALLIPILLAI *et al.*

D. C., Trincomalee, 709.

*Deed of gift—Gift to take effect after lifetime of donor — Irrevocability of such gift.*

A gift of property to take effect after the lifetime of the donor is irrevocable.

THE plaintiffs claimed the lands in dispute in this case, averring that one Chinniah became the owner thereof under and by virtue of a deed of donation dated 4th November, 1867, granted by one Theivane; that the said Theivane purported to cancel that deed by deed dated 3rd April, 1894; that the latter deed was set aside by a judgment of the District Court of Trincomalee pronounced in case No. 22,787; that Chinniah, the donee, died in 1885, leaving him surviving his widow and two

children on whom devolved the said lands; that the said widow granted to her daughter, the second plaintiff, an undivided one-fourth share of the said land by deed dated 2nd December, 1895; that the second plaintiff, by virtue of the said deed from her mother and by right of inheritance from her father, became entitled to an undivided half share of the said lands; that the said widow sold to the third plaintiff an undivided one-fourth of the said lands by deed dated 7th December, 1896; that the fourth plaintiff inherited from her late father Chinniah an undivided one-fourth of the said land; and that defendants since November, 1892, have been in forcible possession of the lands and claimed them as their own.

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The defendants pleaded that the deed of donation bearing date 4th November, 1867, from Theivane to Chinniah was a *donatio mortis causa*, and was revokable; and that as the donee Chinniah had died before the donor, the latter had a right to revoke the said deed; that the Judge of the District Court of Trincomalee, in case No. 22,787, did not bar her right to revoke the said deed, nor did he set aside the deed of revocation, &c.

Several issues were framed, including the issue material to the present appeal, whether the deed of gift dated 4th November, 1867, was a *donatio inter vivos* or a *donatio mortis causa*, and whether title to the said lands passed to Chinniah under the said deed.

The deed in question ran as follows:—

“ Know all men by these presents that I, the undersigned  
“ Theivane Pillai, wife of Sithambara Pillai ..... donate the  
“ immovable properties described hereunder, after the lifetime  
“ of both of us, to our youngest son Chinniah,” &c.

The District Judge held that this gift was a *donatio inter vivos*, not to be revoked except for one of the grave causes mentioned by the jurists; that it was not a conditional gift, but merely reserved to the donors a life interest in the property; and that upon the death of Chinniah it passed to his heirs subject to a life interest in favour of the donor. The District Judge also found that the judgment in 22,787 declared this deed to be a *donatio inter vivos*, and though no appeal was taken against it he held it was binding on the present defendants. On the facts of the case the District Judge found in favour of the plaintiffs and entered up judgment for them.

The defendants appealed.

H. Jayawardena, for appellants.

Sampayo, for respondents.

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24th November, 1898. BONSER, C.J.—

The only ground of appeal which was urged before us was that a deed of donation which was expressed to take effect after the death of the donor failed of effect by reason of the death of the donee before the death of the donor.

It seems to me that this is already covered by authority (see Voet. XXXIX., 5, 4), where it is stated that such gifts are irrevocable gifts, although the enjoyment of the gift is postponed for a later day. *Quibus consequens est, talem donationem ad heredes donatarii transitoriam esse, si contigerit, donatarium ante mortem donantis, adeoque ante diem donationi adjectum factum fungi.*

The appeal will be dismissed.

WITHERS, J.—Agreed.

