Present: The Hon. Mr. A. G. Lascelles, Acting Chief Justice, and Mr. Justice Middleton.

1906.
April 3.

DINGIRI MENIKA *v.* DINGIRI MENIKA *et al.*
D. C., Ratnapura, 1,327.

Kandyan Law—Donation in consideration of marriage—Revocability.

A donation made by a person in favour of his daughter-in-law in contemplation of her marriage with the donor's son is revocable under the Kandyan Law.

APPEAL from a judgment of the District Judge of Ratnapura. The facts and arguments sufficiently appear in the judgments.

Bawa, for defendants, appellants.

Dornhorst, K.C. (*H. Jayewardene* with him), for plaintiff, respondent.

Cur. adv. vult.

3rd April, 1906. LASCELLES A.C.J.—

This appeal involves the question whether, under Kandyan customary law, it is competent for a donor to revoke a donation of land made in favour of his daughter-in-law in contemplation of her marriage with the donor's son.

The facts, shortly stated, are these. By deed dated 8th January, 1870, one Abeyewardana Notary gifted the entirety of certain lands and undivided shares in certain other lands to Dingiri Menika.

The gift is expressed to be made in consideration of the fact that the donor's beloved son Ratnayaka Muhandiram was according to the custom of the country to be married to Dingiri Menika and conducted home.

The deed contained the following clauses: "Therefore after the said marriage I nor my heirs, &c., shall raise any objection or dispute to the grant herein made, and the donee, the said Dingiri Menika, and her heirs, &c., shall possess the same after the said marriage."

After the execution of the deed the donor remained in possession of the land comprised in the deed up to his death, the donee and her husband living in the donor's house with his family.

On the 17th May, 1901, the donor, who was then in failing health executed a second deed of gift by which he purported to give one third of the lands therein specified to his son Martinus Appu, one-third to the plaintiff, and one-third to the widow and children of his deceased son William Appuhamy.

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LASCELLES A.C.J.

Two of the lands comprised in this instrument had been disposed of by the previous deed of gift in favour of the plaintiff.

The plaintiff now vindicates her title to these lands under the deed of 1871. The defendants contend that the effect of the latter deed was to revoke the gift of the entirety of the lands in question to the plaintiff.

Before dealing with the main question I would mention that I have no doubt that the right of the parties must be determined by Kandyan Law. The situation of the land, the names and residence of the parties, and the language of the deeds are conclusive on that point.

It is also clear to me that the plaintiff, who kept for many years and then produced in Court the deed of 1871, must be taken to have accepted the donation thereby conferred.

There is also authority that the revocability of the deed is not affected by the covenant on the part of the donor not to object to the donation.

The general rule of Kandyan Law with regard to the revocation of deeds is thus stated by Sawers: " All deeds of gifts excepting those made to priests and temples, whether conditional or unconditional, are revocable by the donor in his life. "

But, according to Armour (p. 95), deeds of gift which contain the condition that the donee should pay all the donor's debts or should render him assistance are not revocable, if the condition precedent is fulfilled.

This exception to the general rule was 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."

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.

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.

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

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.

I am of opinion that the donation of 1871, so far as it relates to the property named in the plaint, was revoked by the subsequent deed of 1891, and that the rights of the plaintiff, as regards the land, are now regulated by the latter deed.

I would set aside the judgment of the District Court and dismiss the action with costs allowing the appellant the costs of appeal.

MIDDLETON J.—

I agree that the judgment of the District Court must be set aside for the reasons given by my Lord.

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.

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.