Present: Lascelles C.J. and Pereira J.

MUDIYANSE *et al. v.* BANDA *et al.*

231—D. C. Kegalla, 3,410.

Kandyan law—Deed of gift—Consideration in part money and in part assistance to be rendered in the future—Revocation.

A Kandyan deed of gift was given by reason of the love and affection of the donor to the donees, and of divers other good reasons, and also with the object of obtaining assistance and succour, and also in consideration of the sum of Rs. 100, which was about a tenth of the value, paid by the donees. The deed did not contain a clause renouncing the right of revoking the donation.

Held, that the deed of donation was revocable; the donee was declared entitled to receive back from the donor's representatives the sum of Rs. 100, and to be compensated for improvements made by him to the property.

PEREIRA J.—Under the Kandyan law a deed which purports to constitute a donation, and which is presumably intended by the donor to operate as a donation, and is accepted by the donee as such, whatever the motive for the deed may be, is, as a general rule, revocable. This rule must be followed in all cases, unless the special circumstances of any particular case render it manifestly unfair that it should be applied to it. Thus, where a deed is executed in consideration of something to be done in future by the donee, and that thing is actually done by him, having been induced thereto by reason of the execution of the deed, the deed should, on grounds of natural equity, be deemed to be irrevocable; but it is doubtful that a donation for the past consideration should be allowed to be regarded as an exception to the rule.

THE facts appear from the judgment.

Bawa, K.C., for plaintiffs, appellants.

A. St. V. Jayewardene, for defendants, respondents.

Cur. adv. vult.

October 31, 1912. LASCELLES C.J.—

The deed of gift under consideration purports to be given by reason of the love and affection of the donor to the donees, and of divers other good reasons, "and also with the object of obtaining assistance and succour, and also in consideration of the sum of Rs. 100 paid by the donees." The deed does not contain the clause

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frequently found in similar instruments renouncing the right of revoking the donation.

The question for determination is whether such a deed is revocable by the donor, on the ground that the donees have not given the promised succour and assistance. In order to decide the question, it is necessary to have regard to what appears to be the real nature of the transaction and the intention of the parties; viewed, of course, by the light of Kandyan custom and law.

Now, but for the circumstance that the donation purports to have been made partly in consideration of Rs. 100, there would be no room for doubt. The deed would in no way have differed from the common form of donation by which Kandyans are accustomed to make provision for their old age. The property is given to relations on the condition that the latter should help the donor. If the donees fail to carry out this condition, the deed is revocable by Kandyan law. The question is thus whether a donation which would otherwise be revocable loses the character of revocability by reason of the fact that it is expressed to be made in part for a monetary consideration.

What was the intention of the parties? On the face of the deed, it is clear that the object which the donor had principally in view was to secure the future assistance of the donees. Is it reasonable to suppose that the donor, by accepting a sum of money representing one-tenth of the value of the property, intended to make the transaction an unconditional transfer, so as to deprive himself of all security for receiving succour and assistance from the donees? The answer must clearly be in the negative. In my opinion the decisions of the Full Court in *Tikiri Kumarihamy v. De Silva* [1] and that of Wendt J. and Wood Renton J. in the same case [2] do not constitute any authority in favour of the irrevocability of the deed now in question, as the terms of that deed differ in the most essential particulars from those of the deed which was the subject-matter of the decision in *Tikiri Kumarihamy v. De Silva.*[1] Here the donation was made partly, and, as I hold, principally, in consideration of future services to be rendered by the donees, and there is no clause renouncing the power of revocation. In the case to which I have referred, the deed was given entirely for services already rendered, and the deed contained a covenant that the donor and her descendants are bound by the donation, and would not dispute it. The form of the donation was such as to displace the presumption of revocability.

In the present case the fact that some monetary consideration was paid on the execution of the deed is not enough to indicate an intention on the part of the donor that the deed should not, like ordinary Kandyan deeds of gift, be revocable.

I agree with the order proposed by my brother.

[1] *(1909) 12 N. L. R. 74.* [2] *(1906) 9 N. L. R. 202.*

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The question in this case is whether the deed of gift No. 3,964, dated October 15, 1908, executed by Punchirala in favour of the defendants and two others, was revocable under the Kandyan law. The deed on the face of it (according to the translation filed of record) purports to be a deed of gift made by the donor in favour of the donees owing to the "love and affection" borne by the former to the latter, "and also with the object of obtaining assistance and succour, and also in consideration of the sum of Rs. 100 paid by the donees to the donor." In the deed by which the donor revoked this deed he sets forth, as his reason for the revocation, the fact that he got no assistance and succour from the donees, and that it had become necessary to raise money for his sustenance. The District Judge relies on the case of *Tikiri Kumarihamy v. De Silva*,[1] in which, as he himself states in his judgment, the ruling was that a Kandyan deed of gift made for past services rendered by the donee to the donor was irrevocable; but it has to be borne in mind that in the present case a part of the consideration was future services to be rendered by the donees to the donor. The Kandyan law, pure and simple as it seems to me, is that, subject to one or two exceptions which are not worth noticing here, a deed of gift, that is to say, a deed to constitute a donation, and which is intended by the donor to operate as a donation, and is accepted by the donee as such, whatever the motive for the deed may be, is revocable (see *Armour's Grammar of the Kandyan Law 90*). That being the law, it must, I think, in all cases be followed, except in a case to the special circumstances of which it is quite manifest that it was not intended to apply in all its rigour. As observed by an eminent Judge, "it is far more important the law should be administered with absolute integrity than that in this case or that the law should be a good law or a bad one" (Lord Coleridge, *Reg. v. Ramsey*[2]). In a recent case that was argued before my brother Ennis and myself, I expressed my opinion that the Kandyan law as to the revocability of deeds of gift, so long as it is not modified by the Legislature, should, as far as possible, be given effect to (21,338 D. C. Kandy, *circa* September 25, 1912). I expressed my view there that a past consideration was no consideration at all, and that, as laid down by Anson in his work on the *Law of Contracts 99*, it was a "mere sentiment of gratitude or honour prompting a return for benefits received," and I doubted very much the wisdom and expediency of making a donation for a past consideration an exception to the rule as to the revocability of deeds of gift. In my opinion it is only where a deed of gift is executed in consideration of something to be done in future by the donee, and that thing is actually done by him, having been induced to do so by the execution of the deed that the deed should,

[1] *(1909) 12 N. L. R. 74.*

[2] *(1883) Cab. & Ellis, Q. B. D. Rep. 134.*

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on grounds of natural equity, be deemed to be irrevocable. That is, indeed, the Kandyan law. Armour, at page 95 of his work, says: " Some gifts are irrevocable; for instance, if the proprietor executed a deed, and thereby made over his lands to another person, stipulating that the donee shall pay off the donor's debt's and also render assistance and support to the donor during the remainder of his life, and if the said deed contain also a clause debarring the donor from resuming the land and from making any other disposal thereof, if the donee did discharge the said debt, he will have acquired thereby the rights of a purchaser to the lands in question, and consequently that deed will be irrevocable; but the donee, although he acquired the title of purchaser, will yet continue under the obligation of rendering assistance and support to the former proprietor." Here the motive, so to say, for the deed was the promise on the part of the donee to pay off the donor's debts and to render him assistance. He had done the former, and, apparently, he was doing the latter. In the present case, however, the donee omitted altogether to render assistance to the donor, and he was therefore not entitled to claim for his deed exemption from the operation of the general rule permitting revocation of deeds of gift.

I should, before closing, like to say a word about two at least of the cases referred to in the course of the argument. In *Tikiri Kumarihamy v. De Silva* [1] Hutchinson C.J. says: " This case is concluded by the decision of the Full Court in D. C. Kurunegala, 13,801, reported in *3 Lorenz 72* "—a mistake for 76; but on reference to the latter case, it will be seen that the deed in question in it was a deed granted not only in consideration of past services, but of future services as well. And so in the case of *Henaya v. Rema*,[2] the consideration for the gift, *inter alia*, was abstention (that is, in the future) on the part of the donee from recovering money lent to the donor, and apparently an undertaking by the donee to render " assistance for the future." In *Tikiri Kumarihamy v. De Silva* [1] Middleton J. observes: " In my opinion the ruling laid down by the Full Court in *Bologna v. Punchi Mahatmaya*,[3] taken in conjunction with the ruling of the Full Court in *Kiri Menika v. Ganrala*,[4] should guide the decisions whether or not a Kandyan deed of gift is revocable or not." Both these cases, especially the latter, appear to me to support the views that I have expressed above. In the latter case the Supreme Court held as follows: " The Supreme Court thinks it clear that the general rule is that Kandyan deeds of gift 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

[1] *(1909) 12 N. L. R. 74.*
[2] *(1909) 1 S. C. C. 47.*
[3] *Ram. 63-68, 195.*
[4] *3 Lorenz 76.*

Court to be sufficiently clear and strong." The concluding portion of this passage clearly means that if the words as to services continued to be rendered were clear, and such services were actually rendered, the deed would be an exception to the rule.

For the reasons given above I would set aside the judgment, and enter judgment for the plaintiffs in terms of the first and second prayers of the plaint. No execution will issue until the plaintiffs pay the defendants, or deposit in Court for their benefit, the sum of Rs. 100 paid by them to the donor, and such compensation—to be assessed by the District Judge—as may be due to the defendants for improvements, if any, effected by them on the land. Each party will bear his own costs, so far, in both Courts.

Set aside.