1922.

Present : De Sampayo and Porter JJ.

THE GOVERNMENT AGENT, CENTRAL PROVINCE, *v.* SILVA *et al.*

19—D. C. (Inty.) Kandy, 300.

Fidei commissum—*Deed of gift—Prohibition against alienation—Property to go after death of donees to their children, grandchildren, or their lawful heirs—Right of widow of a donee to claim benefit under the deed.*

A deed of gift after prohibiting the immediate donees (his three children) from alienating the property provided that after their death it should devolve on their children, grandchildren, or their lawful heirs.

Held, that the deed created a *fidei commissum*, and that the addition of the words "or their lawful heirs" did not make the class of persons to be benefited obscure. The first object of the donor's munificence were the children and grandchildren. A widow of one of the donees was held not to be a beneficiary as long as there were descendants.

THE Government Agent, Central Province, in terms of the Land Acquisition Ordinance, acquired a portion of land called Naranwitakumbura and brought a sum of Rs. 2,789.47 into Court as compensation. The third defendant-appellant claimed a one-sixth share of the said sum by right of inheritance as widow of James de Silva, deceased, who with two others, the first and second defendants, became entitled to the said land by virtue of deed No. 9,161 of July 9, 1910. James de Silva left one child, the fourth defendant.

The deed in question was as follows:—

No. 9,161.

Know all men by these presents: I, the undersigned, Hettihewage Francis de Silva *alias* Hettihewage Punchiappu, hereinafter called Francis de Silva of Gampola, in Udapalata, in consideration of the love and affection I bear towards my children Hettihewage James de Silva *alias* Sugathapala de Silva, Hettihewage Charles de Silva, and Hettihewage Samuel de Silva, all of Gampola, and for various other important reasons do hereby gift, subject to the under-mentioned conditions and stipulations, the lands mentioned in the under-mentioned schedules marked A and B, together with the unpaid balances due upon deeds Nos. 5,266 and 5,267 dated August 13, 1903, attested by F. C. Loos, Notary Public, deed No. 27 dated May 30, 1907, attested by A. V. van Langenberg, Notary Public, and deed No. 4,542 dated August 18, 1909, attested by R. F. de Saram, Notary Public, of the value of Rs. 50,000.

Therefore it is hereby stipulated that the said Hettihewage James de Silva *alias* Sugathapala de Silva, Hettihewage Charles de Silva, and Hettihewage Samuel de Silva shall, in future, only possess the lands everything appearing in schedule A herein, but shall not subject the same to any sale, security, mortgage, or lease, nor do any act calculated to vary or alter their title or rights, and that after their deaths the said property shall devolve on their children, grandchildren, or their lawful heirs.

Further, that until the debts due on the mortgage bonds Nos. 5,266, 5,267, 27, and 4,542 shall have been fully paid and discharged, the donees shall not appropriate to their own use the income or any portion of the income of the other lands, except the field called Naranwitakumbura mentioned in schedule A, and the creditors shall be allowed to receive such income or profits in payment and discharge of the debts.

Attested by M. KOTALAWALA,
Notary Public.

Dated July 9, 1910.

Samarawickreme (with him *Goonesekera*), for the appellant.

June 1, 1922. DE SAMPAYO J.—

This is a contest to a fund in Court, being the amount of compensation paid by the Crown for the acquisition of a portion of land. The land would appear to have belonged to a man named Francis Silva. He, by deed of gift dated July 9, 1910, gifted the land to his three sons James, the first defendant, and the second defendant. The gift was subject to a certain condition which is the subject of dispute in this case. James died leaving his widow, the third defendant. The third defendant appears to have made an application to the Court to draw one-sixth of the fund in Court, on the ground that she was entitled, after the death of her husband James, to the share claimed under the deed of gift of Francis Silva. The District Judge decided that she was not entitled under the deed of gift, and dismissed her claim. The condition in the deed of gift, which is in the Sinhalese language, is as follows: After prohibiting the immediate donees from alienating or otherwise disposing of the property, it provided that after their death " the said property shall devolve on their children, grandchildren, or their lawful heirs." The third defendant-appellant strongly relies on the last words of the passage just quoted, and contends that as the widow of James, as they were married since the Ordinance of 1876, she is an heir of James and is one of the beneficiaries under the deed of gift. But we must give effect to the whole condition, and have in view the fact that the first objects of the donor's munificence were the children and grandchildren. If the contention of the appellant is right, she would be practically ignoring the children and grandchildren nominated under the gift.

1922.

DE SAMPAYO J.

The Government Agent, Central Province, v. Silva

Mr. Samarawickreme. for the appellant, however, contends that at all events the expression " or their lawful heirs " makes it very uncertain and doubtful as to what class of people the donor intended to benefit, and that, therefore, the title is absolute, and the rights of the parties should be determined as though there were no *fidei commissum* created by the gift. But I do not regard the provision in this gift as being so uncertain and obscure as contended. There is a clear intention on the part of the donor to benefit his descendants. There is no doubt that the Sinhalese notary who attested the deed added these words, probably without appreciating the possible difficulty he was creating. But after all the word " heirs " is very often used, especially in deeds attested by Sinhalese and Tamil notaries, to mean " descendants," and in the context I am inclined to think that the expression conveys the meaning that the children and grandchildren and other lawful descendants of the donees are the beneficiaries. Moreover, even if the word " heirs " is not to be taken in the natural sense, but in the strictly legal sense, it is possible to hold that the donor provided that in default of children and grandchildren, the heirs generally of the donees should get the property. In either point of view the present appellant would appear not to be entitled to any share of the proceeds. The case of *Cornelis v. Wattuhamy* [1] which was cited to the District Judge has no bearing on the present question, as the District Judge himself rightly remarked. I am indebted to counsel at the Bar for a reference to another case, namely, *Umiatty v. Ramiah*,[2] in which the word " heirs " used in a last will was constructed in the same way as I have above suggested, and a widow of a certain legatee was held not to come under that designation and to be entitled to the property she claimed. I think the decision of the District Judge was right, and I would dismiss the appeal.

PORTER J.—I agree.

Appeal dismissed.

[1] *(1921) 22 N. L. R. 77.*

[2] *C. W. R. 26.*