

1959

Present : Basnayake, C. J., and Pulle, J.

K. M. KUMARASAMY, Appellant, *and* W. T. R. BANDA
and another, Respondents

S. C. 221—D. C. Kandy, L 3980/A

Kandyan Law—Donation—Revocability.

Where in a Kandyan deed of gift the donor declares in most clear language that the deed is irrevocable, he is not entitled to go back on it.

APPPEAL from a judgment of the District Court, Kandy.

S. Nadesan, Q.C., with *B. S. C. Ratwatte*, for Plaintiff-Appellant.

H. W. Jayewardene, Q.C., with *T. B. Dissanayake* and *L. C. Seneviratne*, for 2nd Defendant-Respondent.

July 20, 1959. BASNAYAKE, C. J.—

The only question for decision in this appeal is whether the deed of gift marked 2D1 is revocable. The material portion of the deed reads as follows :—

“ Know all men by these presents that I, Appullanagedera Kiri Muttuwa of Yatawara Pallegampaha Korale Pata Dumbara in the District of Kandy Central Province am seised and possessed upon Deed of transfer No. 2177 dated 31st day of October 1886 attested by D. J. C. Gunatilleke Notary Public of all that portion in extent half an acre towards the North from and out of the land called and known as Nikaattahenewatte in extent three acres and six perches in the whole situated at Yatawara aforesaid the said portion towards the North being

¹ (1916) 19 N. L. R. 142.

bounded on the North by the ditch of Ramadeniyehena on the East by the road on the South by the Mala Ela and on the West by the limit of Kiri Muttuwa's garden of the value of rupees one hundred (Rs. 100) lawful money of Ceylon, which said portion of land together with the plantations and everything thereto belonging I have hereby given and grant by way of gift which cannot be revoked for any reason or in any manner whatsoever unto my grand-daughter Gallange Appullangedera Horatalie residing at Yatawara aforesaid in consideration of the love and affection I have towards her and with the object of obtaining succour and assistance from her during the lifetime of me the said Kiri Muttuwa Veda. ”

During the course of the trial in the District Court there appears to have arisen a difference of opinion as to the correctness of the translation of the deed produced by the 2nd defendant and a translation by the interpreter mudaliyar of the court was produced. The material portion of that translation reads as follows :—

“ Know all men by these presents that I, Appullangedera Kirimutuwa Veda of Yatawara in Pallegampaha Korale of Pata Dumbara in the Kandy District in the Central Province, for and in consideration of the natural love and affection which I have and bear towards my beloved grand-daughter Gallange Appullanagedera Horatalie also of Yatawara aforesaid and for divers other good reasons, and with the expectation of getting the said Horatalie to render me the donor Kirimutuwa Veda succour and assistance during my lifetime do hereby donate grant and convey the premises described in the schedule hereto valued at Rs. 100 (Rupees One Hundred of lawful money of Ceylon) and held and possessed by me under and by virtue of the annexed deed of transfer in my favour bearing No. 3177 dated 31st October 1886 attested by D. J. C. Gunathilaka, Notary Public, together with the trees plantations, buildings and everything appertaining thereto, by way of gift absolute and irrevocable under any circumstances whatsoever hereafter, unto the said Horatalie. ”

It is not necessary to refer to all the cases cited to us by learned counsel for the appellant. In our view, the law as regards Kandyan deeds of gift is laid down in the case of *Bologna v. Punchi Mahatmaya*¹. In that case this court stated that “ it is impossible to reconcile all the decisions as to the revocability or non-revocability of Kandyan deeds ; but the Supreme Court thinks it clear, that the general rule is, that such deeds 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 ”. In the instant case we have no doubt that the words “ which cannot be revoked for any reason or in any manner whatsoever ” make the deed irrevocable and an exception to the rule set out above. It is settled law that the words in a deed are to be construed most strongly against him who uses them, if so doing works no wrong. The authorities

¹ 1863-68 *Ramanathan's Reports*, 195.

are collected in *Norton on Deeds* (2nd edition) at page 127 *et seq.* Of those the following quotation from Co. Litt. 183a, 183b, merits repetition :—

“ It is a maxime in law, that every man’s grant shall be taken by construction of law most forcible against himself. *Quaelibet concessio fortissime contra donatorem interpretanda est*, which is so to be understood, that no wrong be thereby done ; for it is another maxime in law, *Quod legis constructio non facit injuriam.* ”

In this deed the donor having declared that the deed is irrevocable in most clear language, he is not entitled to go back on it. In our opinion the learned District Judge is right in the conclusion he has arrived at. The appeal is dismissed with costs.

PULLE, J.—I agree.

Appeal dismissed.

