

1934

Present : Garvin S.P.J.

GUNADASA *v.* APPUHAMY *et al.*20—C. R. *Dandagamuwa*, 3,051.

*Kandyan law—Deed of gift—Renunciation of right to revoke—Right to possess the land for ever.*

Where a Kandyan deed of gift given in consideration of services to be rendered in the future granted “all the right, title, and interest of me the said donor in and to the premises for ever”,—

*Held*, that the donor did not renounce the right of revocation by the use of the words “for ever”.

**A** PPEAL from a judgment of the Commissioner of Requests, *Dandagamuwa*.

*J. R. Jayawardene*, for the plaintiff, appellant.

*Rajapakse* (with him *Kariapper*), for the defendants, respondents.

July 17, 1934. GARVIN S.P.J.—

By a certain deed of gift bearing No. 9,565 and dated October 13, 1924, one Dingiri Menikhamy donated unto her five children the premises which are the subject-matter of this action. The only question which arises for decision is whether or not there is anything in the language of this deed of gift which would justify the conclusion that it was a gift irrevocable. Inasmuch as it has been urged by certain of the defendants and urged with success in the Court below that this is such a deed, it is necessary to examine its terms more closely to ascertain whether the contention can be sustained.

Now the learned Commissioner in a careful judgment in which he has referred to some of the more important cases in our books came to the conclusion that there are certain words here which indicate that the donor

intended to and did in fact renounce the ordinary right of every donor under the Kandyan law to revoke a gift. He draws attention to the passage in which these words occur and, while observing that they were almost identical in terms with the words which were relied on for a similar contention in *Dharmalingam v. Kumarihamy*<sup>1</sup>, without success, remarks that there are here a few additional words, namely, the words "for ever", which he thinks are so inconsistent with the existence or the retention of a right to revoke that they must be regarded as indicative of an intention to renounce that right.

Now the clause to which the Judge refers is this:—"Therefore I do hereby invest the said donees, Wimalahamy, Ram Menika, Mutu Menika, Siyatu Banda, and Punchappuhamy and their heirs, executors, administrators, and assigns with the full power and authority that they be owners from this date and possess the said premises hereby donated and all the right, title, and interest of me the said donor in and to the same for ever without any interruption whatsoever or deal with the same in whatsoever manner they may desire". Now upon a careful examination of that passage it seems to me that the fact that the words "for ever" appear in it makes no difference whatever to the meaning of the words. Manifestly the purpose in view when the clause was framed was to vest the donees with full dominium to the land which was the subject of the gift, and whether the words "for ever" appear therein or not the effect of vesting the dominium would be to vest it for ever in the absence of special words imposing a definite limitation upon the grant. The donor recites that the gift is made "in consideration of the natural love and affection which I have and bear unto my said five children and for divers other causes and considerations for the purpose of obtaining help and good treatments during the remainder of my life". The purpose of the gift would seem to be to secure to the donor that she would be well cared for during what remained to her of her life and such deeds are always revocable under the Kandyan law unless they are expressly declared to be irrevocable, *vide Ukku Banda v. Paulis Singho*<sup>2</sup>, or where the power of revocation is expressly renounced. In this instance the deed is not declared to be irrevocable; there is no expression of renunciation of the power to revoke; and in my judgment the clause which I have quoted and to which I have referred cannot fairly be construed as containing language which imposes a limitation or a renunciation of the ordinary right of the donor to revoke such a deed.

For these reasons I would set aside the judgment of the learned Commissioner. The plaintiff will be declared entitled to a 1/5 share of the premises in question and to the other relief claimed by him save that there will be no award of damages in view of the agreement entered of record at page 30. He is also entitled to his costs both here and below.

*Appeal allowed.*

<sup>1</sup> 27 N. L. R. 8.

<sup>2</sup> 27 N. L. R. 449.