1931

Present: **Macdonell C.J. and Garvin S.P.J.**

RAZEEKA *et al. v.* MOHAMED SATHUCK.

10—D. C. Colombo, 35,823.

Muslim law—Gift by mother and grandmother to minor children—Possession by mother—Right to revoke—Acceptance unnecessary.

Where the mother and grandmother of minor children, subject to Muslim law, gifted certain property to the minors, and the mother collected the rents on their behalf,—

Held, that the gift was a valid one under Muslim law and that no acceptance was necessary to complete it.

APPEAL from a judgment of the District Judge of Colombo.

A. E. Keuneman, for third defendant, appellant.

Nadarajah (with him *Abeyesekera*), for plaintiffs, respondents.

November 18, 1931. MACDONELL C.J.—

The facts in this case so far as material are as follows:—Mohamed Zain died on January 9, 1925, in possession of an undivided half share of the premises No. 43, Main Street, Colombo. He left him surviving his mother Saffra Umma, his wife Fatheela, and five minor children who are the first to fifth plaintiffs in this action. He died intestate and his widow Fatheela administered his estate under letters granted her in testamentary suit 2,714. Thereafter by notarial deed No. 685 of October 21, 1927, she, as administratrix, conveyed her deceased husband's half share of the above-mentioned premises to herself, to the deceased's mother Saffra Umma, and to her own minor children, the first to fifth plaintiffs aforesaid, for the share to which each was respectively entitled. The administratrix, therefore, had in her capacity as such divested herself of her rights as such and had conveyed to the beneficiaries entitled under the intestacy of her late husband. On the same day, namely, October 21, 1927, the same Fatheela joined with Saffra Umma in conveying by notarial deed No. 687 all their right, title, and interest in their shares in the said premises as a gift " absolute and irrevocable " to Fatheela's five minor children, being plaintiffs one to five in this action. The five minor children therefore by this deed of gift No. 687, if a valid one, became owners of the shares that had previously belonged to their

mother Fatheela and their grandmother Saffra Umma. The deed itself was handed to the notary executing for registration, and was duly registered. Thereafter, the grandmother Saffra Umma by notarial deed No. 1,485 of February 4, 1928, purported to revoke her deed of gift No. 687 of October 21, 1927, to her five minor grandchildren and by the same deed No. 1,485 to give to her son Mohamed Sathuck, the added defendant-appellant in this case, her own undivided share of the said premises. This deed No. 1,485 was also registered. Thereafter the additional defendant-appellant got deed No. 687 from the possession of the notary, alleging that he intended to give it to Fatheela, and it was from his custody that it was produced in this case. Instead of handing it to Fatheela, he kept it by him until Saffra Umma had executed deed No. 1,485 purporting to revoke it. There was sufficient evidence that Fatheela after the execution of deed No. 687 was colleting the rents of the property on behalf of the five minor plaintiffs, her children. They, by their next friend, brought this action for partition and sale of the premises in question, and the learned District Judge gave judgment in their favour, holding that Saffra Umma had no power to revoke the gift by her under deed No. 687 of her share of the premises, and that consequently deed No. 1,485 was of no force. It is from this decree that the present appeal is brought. The parties to these deeds are Muslims and the validity or otherwise of these deeds must be tested by Muhammedan law. Muhammedan law in the Island requires three conditions as to gifts: " Manifestation of the wish to give on the part of the donor; the acceptance of the donee either impliedly or expressedly, and the taking possession of the subject-matter of the gift by the donee either actually or constructively " (*1 Ameer Ali, 4th ed., 41*).

The question here is, could there be revocation by Saffra Umma of her gift in deed No. 687 expressed to be " absolute and irrevocable " or was there acceptance by or on behalf of the donees and did they acquire possession of the thing given? For, if there was such acceptance and acquisition of possession, then Saffra Umma could not revoke her gift. The donees were minors at the time and are so still. The law on the subject is stated as follows in *Ameer Ali, 4th ed.*, at page 123:—" in the case of a gift by a father to his minor child, no acceptance is necessary. The gift is completed by the contract, and it makes no difference whether the subject of the gift is in the hands of the father or in that of a depositary (on behalf of the father). When a father makes a gift of something to his infant son, the infant, by virtue of the gift, becomes proprietor of the same, provided the thing given be at the time in the possession either of the father or of any person who stands in the position of a trustee for the father, because the possession of the father is tantamount to the possession of the infant by virtue of the gift, and the possession of the trustee is equivalent to that of the father. With regard to the validity of gifts to minors of property in the occupation of tenants "—which is the character of the property in this case—" it has been shown that a father may make a gift to his minor child of immovable property in the occupation of tenants or in the possession of a lessee or mortgagee without any change of possession on the part of the persons directly holding the subject-matter of the gift, nor, to make the gift complete, is any acceptance on

the part of the donee necessary. The gift once made and the intention to convey the property unequivocally expressed, the donation is complete so far as the donor is concerned, though he may continue to hold the property in his own name in the same manner as before the gift. The same rule applies to a gift by a mother to her infant child, whom she maintains and whose father is dead and there is no constituted guardian ", which is exactly the case here, for the mother Fatheela is certainly exercising the powers of guardian of the five minor plaintiffs. *1 Ameer Ali, 4th ed., 173:*—" In the case of a gift by a parent to a minor child, no acceptance is necessary; ' the gift is completed by the contract and it makes no difference whether the subject of the gift is in the father's hands or in that of a depositary '. Nor is transmutation of possession necessary, for the possession of the parent is tantamount to that of the child."

These statements of the law make it clear that the gift under deed No. 687 by Fatheela, the mother, of her share to her children, the five plaintiffs, was complete and irrevocable from the moment of the execution of that deed. Her possession became that of those minors and no acceptance on their part became necessary.

The gift under deed No. 687 by Saffra Umma of her share will be governed by the application of the same principle. *1 Ameer Ali, 4th ed., 124:*—" Where a gift is made to an infant by a person other than the father the gift is rendered complete by the seisin of the father of the infant. When the father is dead, the possession of the person primarily entitled to the guardianship of the child is sufficient." Here, the seisin of the share gifted by Saffra Umma was in the mother, Fatheela. The evidence is that she was in possession and that the tenants had paid her half of the rent due, that is the whole rent that would be due on the half share that had belonged to her husband the deceased. Then the gift by Saffra Umma was a gift of something to a minor by a person other than the father or guardian, which something was at the time of the gift in the possession of the guardian, in this case the mother. The mother's seisin becomes the seisin of the minor donees, and no formal acceptance by her is necessary. Consequently the gift by Saffra Umma under deed No. 687 was a complete one and being complete could not be revoked.

One other fact must be mentioned. At the end of deed No. 687 there is a clause stating that the witness Abdul Azeez Mohamed Ismail " thankfully accepts and takes delivery of the foregoing gift for and on behalf of " the five minor donees, plaintiffs in this action. There is no evidence of this person Mohamed Ismail having ever done anything to accept or take delivery or possession of the subject-matter of the gift; for instance, he could have manifested a taking possession by giving notice to the tenants of the premises to attorn to him for half the rent, but, on the evidence, he did nothing. Still, if the statement of the law, as given above, is correct, then from the moment of the execution of the deed the seisin of the mother, Fatheela, became that of the donees. Then this clause as to the witness Mohamed Ismail " thankfully accepting and taking delivery " was surplusage, and as such can be disregarded.

For the foregoing reasons I am of opinion that this appeal must be dismissed with costs.

GARVIN S.P.J.—

I agree and would only add a few words as to the revocability of this gift which was expressed in the deed to be " absolute and irrevocable ". Under the Kandyan law gifts are ordinarily revocable, but this Court has held and it is now settled law that when such a gift is expressed to be irrevocable the donor may not revoke it. I can see no reason why the principle of these decisions should not be applied to the case of gifts between Muslims. This view of the law is affirmed in section 3 of Ordinance No. 10 of 1931, which while defining and declaring the law as to donations by Muslims domiciled in Ceylon provided " that no deed of donations shall be deemed to be irrevocable unless it is also stated in the deed ".

Appeal dismissed.